BEFORE THE HEARING BOARD OF THE SAN LUIS OBISPO COUNTY
AIR POLLUTION CONTROL DISTRICT
STATE OF CALIFORNIA

In the Matter of
SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT,
   Petitioner,

v.

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION OFF-HIGHWAY MOTOR VEHICLE RECREATION DIVISION,
   Respondent.

The Petition to Modify the Existing Stipulated Order of Abatement and/or Issue a New Order of Abatement came on for hearing on November 18, 2019 at South County Regional Center, 800 West Branch Street, Arroyo Grande, California 93420.

On proof made to the satisfaction of the Hearing Board that Good Cause exists to modify the existing Stipulated Order of Abatement (“Original Stipulated Order”) in Case 17-01, between San Luis Obispo County Air Pollution Control District (“District”, “APCD”, or “Petitioner”) and the California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division (“Parks”, “OHMVR”, or “Respondent”), the Hearing Board

ORDER TO MODIFY EXISTING STIPULATED ORDER OF ABATEMENT (Case No. 17-01)

December 9, 2019
Hearing Board
San Luis Obispo County Air Pollution Control District
issues the following modification of the Original Stipulated Order of Abatement requiring Respondent to:

1. Complete installation of perimeter fencing for the 48-acre vegetated foredune project described in Section 3.1.6 of the Third Draft Work Plan, and shown in its Exhibit 9, as expeditiously as possible given the CEQA and Coastal Commission approvals discussed in Section 3.1.6 and Table 5-5 of the Third Draft Work Plan, with the planting of native vegetation begun by April 1, 2020. Table 5-5 of the Third Draft Work Plan shall be updated to reflect these deadlines. With regard to the CEQA and Coastal Commission approvals discussed in Section 3.1.6 and Table 5-5 of the Third Draft Work Plan, Respondent shall work as expeditiously as possible to obtain those approvals. Until the foredune project is approved by the California Coastal Commission and mitigation measures are fully implemented, non-motorized public access to the vegetated foredune proposed project area may be permitted as long as plantings are protected, but off-highway vehicle activity and camping is prohibited after January 1, 2020.

2. Complete all other elements of the Third Draft Work Plan dated October 15, 2019, and submitted by Respondent to the APCO, by the timelines proposed in that document, except as noted below and in compliance with any conditional approval of the Work Plan by the District. A true and correct copy of the Third Draft Work Plan is attached hereto as Exhibit A and incorporated herein by this reference.

3. Implement the 40 acres of season dust controls as discussed in Section 3.1.5 of the Third Draft Work Plan, with the following modifications:

   i. The dust controls must be undertaken within areas of the ODSVRA where off-highway vehicular activity is currently allowed.

   ii. By January 1, 2020, Respondent shall submit a proposal that shall include the specific season dust control measures that will be utilized, and proposed locations of the specific measures, to the APCO and Advisory Group. This proposal shall include an implementation plan schedule, including, but not limited to, an increment of progress schedule and a final completion date.
iii. Within 10 business days of receipt of Respondent’s proposal, the Advisory Group shall evaluate the proposed measures and locations and recommend to the APCO whether to approve the proposals. If requested by the Advisory Group, the APCO may extend the 10-day business day deadline by up to an additional 10 business days.

iv. Within 5 business days of receipt of the Advisory Group’s evaluation the APCO shall either approve the measures and locations or provide Respondent with comments explaining why the proposal is not approvable.

v. If the initial proposal is not approved, Respondent shall submit a new proposal by February 1, 2020, which addresses the deficiencies identified by Advisory Group and the District.

vi. Within 10 business days of receipt of Respondent’s proposal, the Advisory Group shall evaluate the proposal and recommend to the APCO whether to approve the measures and locations. If requested by the Advisory Group, the APCO may extend the 10-day business day deadline by up to an additional 10 business days.

vii. Within 5 business days of receipt of the Advisory Group’s evaluation, the APCO shall either approve the measures and locations or impose a 40-acre season dust control measures project for the Respondent to implement.

viii. By March 15, 2020, Respondent shall begin implementation of the approved plan, or imposed 40-acre project, and Respondent shall comply with the implementation plan schedule, including, but not limited to, an increment of progress schedule and a final completion date, as approved, or imposed, by the APCO.

ix. Respondent must fully fence the 40 acres of season dust controls project perimeter to exclude off-highway vehicular activity by March 15, 2020, and the Respondent shall complete the project by April 1, 2020.

x. This project shall be maintained until at least October 31, 2020.
4. Complete an additional 4.2 acres of permanent dust controls within the high emissions area just south of the western edge of the “Pavilion Hill” vegetation island shown in Attachment 1 of the Original Stipulated Order. The Original Stipulated Order specified this as one of the areas to be fenced off and revegetated or implement an alternate mitigation measure as approved the APCO, as part of the Initial Particulate Matter Reduction Actions. Alternatively, Respondent may establish this additional acreage in a different location within the ODSVRA upon approval by the Advisory Group and APCO. The Respondent must comply with the following mitigations:

i. The Respondent shall establish a perimeter fence around the additional 4.2 acres of permanent dust control area by March 15, 2020. Off-highway vehicular activity and camping is prohibited within the fenced area.

ii. The Respondent shall complete internal controls by June 1, 2020. Internal controls may be fence arrays, strawbales, or revegetation.

iii. The Respondent shall maintain the area as specified in Section 1.b of the Original Stipulated Order.

iv. If Respondent chooses to seek Advisory Group approval for a different location, the selection and approval process shall follow the same timeline as that established above for the selection and approval of the 40-acres of season dust control measures, paragraphs 3.ii thru 3.x, above.

5. Conduct the field calibration of MetOne Particulate Profiler Equipment, which is described in Section 3.1.19 and Attachment 4 of the Third Draft Work Plan, using equipment other than the “APCD Portable BAM station.” In discussions between the District and Respondent, it has now been determined that the District’s equipment is not suitable for this purpose.

6. Complete conditions 2 through 5 of Advisory Group’s October 23rd response to Respondent’s Third Draft Work Plan (Exhibit B):

2. The 2019 [Work Plan] "Implementation Schedule” (Sec. 5) shall include a table specifying a detailed process for [Advisory Group] consultation and evaluation, including submission of interim reports and
work plans [“Interim Work Plans”] as follow-on updates to the 2019 [Work Plan]. This table shall include the following tasks and schedules for completion:


c. By December 31, 2019, Respondent and Advisory Group will develop a mutually agreeable schedule for regular updates and communication regarding progress towards the Particulate Matter Reduction Plan goals.


f. [Respondent] prepares the full 2020 [Work Plan], which shall include values for all evaluation metrics for the associated reporting period (July 2020).

3. The 2019 [Work Plan] “Implementation Schedule” (Sec. 5) shall provide a more detailed planting schedule, either through amendments to Tables 5-1, 5-3, and 5-5, or through inclusion of a new table. In Appendix A to this letter, [Advisory Group] offers recommendations for elements to be included in this detailed planting schedule.

4. Each task listed above shall be completed by the last day of the final month for performance of the task. Thus, the outline 2020 [Work Plan] shall be submitted by May 31, 2020. To ensure timely completion of these and all other tasks included in the 2019 [Work Plan], we encourage [Respondent] to consult early and often with [Advisory Group].

5. As indicated in the above schedule of tasks, going forward [Advisory Group] shall be given a minimum of 30 days to review and comment on all [Interim Work Plans] and [Work Plans]. Exceptions to this 30-day review period shall be granted only by written consent of [Advisory Group] and APCO. For all other tasks requiring [Advisory Group] consultation and review, [Advisory Group] requests at least 10 business days for completion of [Advisory Group] reviews. It is expected that [Respondent] will adhere to these review periods to maintain effective communication and due process toward the requirements of the [Order for Abatement] and [Particulate Matter Reduction Plan].
This Hearing Board further orders the following additional modifications to the Original Stipulated Order:

7. For each year from 2020 through 2022, the approval process for the Work Plans, specified in Section 5 of the Original Stipulated Order, shall be modified as follows:

i. The Respondent shall submit a draft Work Plan to the Advisory Group for their review and recommendations by July 1 of each year. The deadline for submittal of the draft Work Plan to the APCO shall remain August 1 of each year, but Respondent is encouraged to submit earlier. The draft Work Plan submitted to the APCO shall have incorporated the Advisory Group’s recommendations.

ii. Notwithstanding the deadlines in the previous sections, the Advisory Group’s review and recommendations of the draft Work Plan shall be completed within 10 business days after the draft Work Plan is submitted. If requested by the Advisory Group, the APCO may extend the 10 business day deadline by up to an additional 10 business days.

iii. Upon receipt of the Advisory Group recommendations, the APCO shall have 7 days to either return the Work Plan to Respondent with an itemization of deficiencies for correction; or, if the draft Work Plan appears provisionally approvable, the APCO shall schedule a public workshop subject to the conditions described below.

iv. If the APCO deems the draft Work Plan deficient and returns it to Respondent with an itemized list of deficiencies of correction, Respondent shall have up to 21 days to submit a corrected Work Plan to the Advisory Group for further review.

v. Subsequent reviews by the Advisory Group and the APCO will follow the same timeline as noted in sections ii and iii, above, with Advisory Group review and submittal of recommendations due 14 business days after receipt
of Respondent’s next corrected Work Plan. APCO review and comments are
due 7 business days after receipt of the Advisory Group’s recommendations.

vi. The iterative submit—review—revise process may repeat until October 1,
after which Respondent may submit no further drafts. If approval of the
draft Work Plan has not occurred prior to October 1 of each year, the
Advisory Group and APCO shall complete their reviews of the most
recently submitted draft by the timelines specified above if they have not
already done so. If the APCO determines that the draft Work Plan is
provisionally approvable, the APCO shall schedule a public workshop, as
described below. If the APCO determines the draft Work Plan is not
approvable, the APCO shall impose conditions on the draft Work Plan prior
to approval. Respondent must comply with the implementation of the
additional conditions imposed by the APCO and the schedule of increments
of progress associated with those conditions.

vii. Regardless of the number of revisions, a public workshop shall be held on
the draft Work Plan prior to APCO approval. The APCO shall publish a 15-
day notice of public workshop within 7 days of receipt of a provisionally
approvable plan. The notice shall announce the availability of the draft
Work Plan and Advisory Group recommendations, solicit public comments,
and solicit public participation at the workshop to review the draft Work
Plan and Advisory Group recommendations.

viii. Within 7 days of conclusion of the public workshop, the APCO shall
approve the draft Work Plan with or without additional conditions.

8. Section 5.e. of the Original Stipulated Order is modified to read: “If a
disagreement arises between Respondent and APCO regarding the approval of the [Work
Plan], either Party may request a hearing before the Hearing Board to resolve the
disagreement.”
9. Unless specifically modified by this Order, all other provisions of the Original Stipulated Order shall remain in full force and effect.

10. To the extent the terms of the Original Stipulated Order of Abatement conflict with the terms modified by this Order, the terms modified by this Order shall take effect.

11. In October of each year from 2019 through 2022, the Hearing Board, upon request by the Chair or any two members, may convene a meeting to receive an informational update on the Report. If a hearing is also requested as set forth in section 5(e) above, this meeting shall also include that hearing.

12. The Hearing Board, upon request by the Chair or any two members, may convene a public hearing to review the progress of the Respondent in carrying out the requirements of this order. The Hearing Board may also revoke the APCO’s approval of any conditions or modifications.

13. The California Department of State Parks shall identify a project manager by December 31, 2019 and provide the APCO with that person’s contact information.

Moved By:  Mr. Paul Ready
Seconded By: Dr. Thomas Richards
Ayes: Mr. Paul Ready, Mr. William Johnson, Dr. Thomas Richards, Dr. Yarrow Nelson—Acting Chair
Noes: Mr. Robert Carr
Abstentions: None

Dated this 18th day of November 2019

Dr. Yarrow Nelson
Vice-Chair
San Luis Obispo County
APCD Hearing Board