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.

Case No. 17-01

STIPULATED ORDER OF
ABATEMENT

Health & Safety Code §41700 and
District Rule 402

Hearing Date: April 30, 2018
Time: 9:00 am
Location: San Luis Obispo County
Government Center, Board of Supervisors
Chambers, 1055 Monterey Street, California

RECITALS

WHEREAS, on September 10, 2017, the San Luis Obispo County Air Pollution
Control District (hereinafter referred to as “Petitioner,” the “District” or “APCD”) filed with
this Hearing Board a Petition for Abatement Order (“Petition”), Case No. 17-01, pursuant to
California Health and Safety Code section 42451, against respondents California Department
of Parks and Recreation Off-Highway Motor Vehicle Recreation Division (hereinafter referred
to as “Respondent,” “State Parks” or “OHMVR”) with regard to alleged nuisances defined
pursuant to District Rule 402 and California Health and Safety Code section 41700, beginning on or about May 20, 2010, and on certain occasions thereafter, as a result of particulate matter emissions from the Oceano Dunes State Vehicular Recreation Area (“ODSVRA”). Petitioner and Respondent are referred to collectively herein as the “Parties.”

PARTIES AND THE FACILITY

1. The District was and is organized and exists pursuant to Division 26, Part 3 of the California Health and Safety Code, and is the sole and exclusive local agency with the responsibility for comprehensive air pollution control in San Luis Obispo County.

2. The Parties agree that State Parks is a California State Agency chartered with managing park units within California, including the Oceano Dunes State Vehicular Recreation Area (ODSVRA), which is managed by the Off-Highway Motor Vehicle Recreation Division (OHMVR), and that OHMVR is responsible for all activities that occur within the ODSVRA, including management and control of beach and dune riding areas, resource management including revegetation and erosion control, and public safety.

3. ODSVRA is located in the area known as the Oceano Dunes in southern San Luis Obispo County, three (3) miles south of Pismo Beach and west of Highway 1 (“facility”). The property on which the facility is located is comprised of five-and-one-half (5 ½) square miles of open beach and sand dunes, bordered on the west by the Pacific Ocean, and on the east, north and south by other privately held lands. A portion of the facility’s lands known as the La Grande tract is owned by numerous owners, including fifty-two (52) privately-owned lots, four-thousand-two-hundred-sixteen (4,216) lots owned by the County of San Luis Obispo, and two-hundred-twenty-five (225) lots owned by State Parks. The facility is within the jurisdiction of the San Luis Obispo County Air Pollution Control District and subject to District Rules and Regulations. The Parties agree that numerous private homes, businesses, schools and other entities are located directly downwind of the ODSVRA facility.

4. ODSVRA is subject to California Health and Safety Code section 41700, which prohibits the discharge from any source whatsoever quantities of air contaminants or other
material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public or that endanger the comfort, repose, health or safety of any of those persons or the public, or that cause or have a natural tendency to cause, injury or damage to business or property, and District Rule 402, Nuisance, (which contains language substantially similar to California Health and Safety Code section 41700).

BACKGROUND/STATEMENTS OF THE PARTIES

WHEREAS, following initiation of this action, the Parties agreed on the need for a comprehensive planning effort to effect a global solution to particulate matter emissions that addresses all the various interests, including: the surrounding and downwind communities, the ODSVRA user base, and the various regulatory and permitting agencies, as well as State Parks’ mission to operate ODSVRA for a variety of recreational uses, including off-highway motor vehicle recreation.

WHEREAS, APCD endorses State Parks’ strategy to develop and implement a Public Works Plan as the process for a comprehensive ODSVRA planning document that will affect the type and location of mitigation strategies.

WHEREAS, to that end, the Parties agree that State Parks shall develop and implement a Particulate Mitigation Plan (PMP), to address and resolve the allegations in the Petition. The PMP includes a restoration and emission reduction component that simulates the historic foredune complex, as determined by a 1930’s aerial photograph of the dune complex (APCD Exhibit 23), and that will provide critical information to inform the development of the Public Works Plan and a redesigned park.

WHEREAS, State Parks also agrees to:

a. Work with ODSVRA user groups to enhance the camping experience in front of the foredunes that will work in concert with the restoration of the foredunes; and
b. Additional monitoring within and downwind of the ODSVRA during the stipulated timeframe to assist modeling the emissions reduction, as well as informing State Park’s Public Works Plan; and

c. Conduct an education campaign for the purposes of making the public aware of the air quality issues at ODSVRA and how they can be a part of the solution; and

d. Continue crystalline silica testing downwind of the SVRA and publish results as part of a comprehensive report on crystalline silica as it relates to Oceano Dunes emissions; and

e. Consider disbursal of use appropriate as a method to reduce density-related emissions which may include the need to open operational corridors; and

f. Consider a southern entrance and southern camping opportunities outside of the dunes proper to replace any lost foredune camping; and

g. Optimize operational mitigations that prove to enhance the air quality mitigation measures.

PUBLIC HEARING

WHEREAS, the Clerk assigned this matter Case No. 17-01, set a public hearing on the Petition for November 13, 2017, and provided public notice of the public hearing in accordance with the provisions of California Health and Safety Code section 40823. The Hearing Board commenced the hearing on November 13, 2017, which it continued to January 30, 2018 and thereafter to March 21, 2018 and April 30, 2018, all of which continued hearings were similarly properly-noticed. A quorum of the Hearing Board was present on each day of the hearing. Except the initial day of the hearing, November 13, 2017, when Dr. Thomas Richards was absent, five (5) members of the Hearing Board were present: Dr. Yarrow Nelson, Acting Chair; Mr. Robert Carr; Mr. William Johnson; Dr. Thomas Richards; and Mr. Paul Ready. Petitioner District Air Pollution Control Officer was represented by District Counsel Raymond Biering. Respondent OHMVR was represented by Deputy Attorney General Mitchell Rishe. In advance of and throughout the hearing process, the Hearing Board
provided the opportunity for the public to submit written comments. During the public hearing, the Hearing Board provided the opportunity for members of the public to submit oral comments and to testify. The Hearing Board’s Acting Chair Yarrow Nelson swore in all those interested members of the public who sought to speak or testify. Each Party stipulated to the other Party’s proposed exhibits; the Hearing Board admitted all exhibits submitted by the Parties into the evidence and took those exhibits and the public’s testimony and comments into consideration during its deliberations and in its decision.

WRITTEN EXPLANATION IN SUPPORT ITS DECISION/FINDINGS AND DECISION OF THE HEARING BOARD:

Health and Safety Code Section 42451(b) provides that the Hearing Board may issue a stipulated conditional order for abatement without making the requisite findings set forth in Health and Safety Code Section 42451(a), but the Hearing Board must include a written explanation of its action to issue such an order. The Hearing Board issues the following determination of its action: The Hearing Board finds that GOOD CAUSE exists to approve this Stipulated Order for Abatement. This finding of good cause is based on the following:

1. The District reported that from May 29, 2012 through October 19, 2017, the District received one-hundred-thirty-three (133) complaints from residents downwind of ODSVRA. (See APCD Exhibit 7.)

2. The District monitors air quality throughout San Luis Obispo County, with multiple monitoring sites on the Nipomo Mesa located directly downwind of ODSVRA. These sites include CDF – Arroyo Grande; Mesa2 – Nipomo/Guadalupe Road; and NRP – Nipomo Regional Park. During the period between May 1, 2012 and March 31, 2017, there were three-hundred-sixty-three (363) days when the District observed violations of the state PM$_{10}$ standard at one or more of these sites. More specifically, the state standard was exceeded three-hundred-fifty-six (356) times at CDF, one-hundred-ninety (190) times at Mesa2, and fifty-nine (59) times at NRP measured during this period at monitoring sites downwind of ODSVRA riding areas. Seven (7) of the state standard exceedances recorded at CDF during this
timeframe also exceeded the federal PM$_{10}$ standard. The primary source of these exceedances and violations was determined by the District after examining the wind speed and wind direction under which they occurred, using data from the extensive air monitoring network located downwind of ODSVRA (APCD Exhibits 6 & 16). Recent computer modeling of particulate matter emissions from ODSVRA by the California Air Resources Board supports the finding of excessive levels of particulate matter in areas where complaints originated (APCD Exhibit 24).

3. The Environmental Protection Agency and the California Air Resources Board ("CARB") have set standards for particulate matter to protect human health and the environment (Title 40, Code of Federal Regulations, Part 50; and Title 17, California Code of Regulations, section 70200).

4. Numerous scientific studies and analyses conducted by APCD, State Parks, and CARB (APCD Exhibits 1, 2, 3, 4, 5 & 24) have documented emissions from ODSVRA off-highway vehicle riding areas upwind of the Nipomo Mesa as the main source of particulate matter causing the dust and air pollution that is the subject of the complaints received, and the associated public health concerns that are the subject of this proceeding. Those studies show the Le Grande tract, where most of the camping and a large portion of the riding activity occurs, contains some of the most emissive areas in ODSVRA and is a significant contributor to the particulate matter emissions impacting downwind residents. Like everywhere else in the county, the Nipomo Mesa is also impacted by other natural and manmade sources of particulate emissions, and those sources will always have some contribution to particulate concentrations. APCD, OHMVR and CARB will continue to refine all source contributions of emissions affecting the Nipomo Mesa.

5. The Parties agree that sand fencing closed to riding with an array of fencing within the perimeter has been used at ODSVRA with a demonstrated effectiveness in reducing dust generation of approximately seventy-five (75) percent. The Parties agree that there is scientific consensus that vegetation is the most effective in reducing dust generation with an effectiveness of nearly one hundred (100) percent within the vegetated area.
6. Based on findings of the Special Master as appointed pursuant to that certain agreement between the District and Respondent dated March 26, 2014 (State Parks’ Exhibit 4), who the Parties have retained to mediate certain disputes, and a report by the California Geological Society (APCD Exhibit 17), re-establishing a vegetative foredune area is a preferred sustainable mitigation tool. In State Parks’ Exhibit 73, (Mediation Report of the Special Master Dr. W. G. Nickling), Dr. Nickling stated:

“That ‘natural’ types of solutions are preferable to engineered solutions (e.g. fences and straw bales) given the areal extent of the problem. Engineered solutions are often unattractive and not in keeping with the Parks vision for maintaining the quality of the park experience. Natural solutions might include severely restricting rider activity, reducing the areal extent of rider activity, especially near the top of the tidal zone to allow the re-establishment of the foredunes that were formerly present at the site.”

7. Respondent denies the allegations in the Petition. Respondent further denies that it is violating California Health & Safety Code section 41700, District Rule 402, or District Rule 1001.11. Nonetheless, in the interest of resolving this matter promptly and without resort to litigation, and to allow the Parties to immediately implement meaningful dust mitigation measures, the Parties hereby stipulate to issuance of this Order for Abatement pursuant to California Health & Safety Code section 42451.

8. It is in the public’s interest to resolve this action promptly through a stipulated conditional order for abatement that will avoid the cost of litigation of complex issues and instead provide the Parties the opportunity to commence work to address the matters that are the subject of this action.

CONCLUSIONS

1. The issuance of this Order for Abatement will not constitute a taking of property without due process of law.
2. If the issuance of this Order for Abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.

3. This Order for Abatement is not intended to be, nor does it have the effect of permitting, a variance.

STIPULATED ORDER FOR ABATEMENT

Pursuant to Health and Safety Code Sections 42451(b) and 42452, subject to the aforesaid statements and good cause appearing therein, the Hearing Board of the San Luis Obispo County Air Pollution Control District (District) hereby orders Respondent to immediately cease and desist from violating California Health & Safety Code section 41700 and District Rule 402, or in the alternative comply with the following conditions and increments of progress throughout the term of this Stipulated Order for Abatement (Stipulated Order):

1. **Initial Particulate Matter Reduction Actions:** As of the Effective Date of this Stipulated Order, Respondent shall undertake and complete all of the following actions by the specific deadlines herein, unless otherwise modified in accordance with the terms of this Stipulated Order, and in accordance with any otherwise-applicable requirements associated with undertaking such actions:

   a. Respondent shall begin fencing off the foredune areas with a perimeter fence with an internal fence array as shown in **Map 1 of Attachment 1** no later than June 1, 2018 and finish as soon as possible, but no later than September 15, 2018. The fenced areas shall conform as closely as possible to diagrammed plots while considering public safety constraints. Riding, driving, and camping within those areas shall be prohibited.

   b. All fencing shall remain in place and be maintained as internal fenced arrays until being replaced by vegetation or until the APCO approves alternate mitigation measures. Respondent shall prioritize the fenced areas as shown in **Map 1 of**
Attachment 1 for vegetation to increase the dust mitigation effectiveness in years after 2018.

c. By June 30, 2019, install APCO-approved sand track-out control devices at the Grand and Pier Avenue entrances to the Oceano Dunes State Vehicle Recreation Area (ODSVRA).

2. Particulate Matter Reduction Plan: Respondent shall prepare a Particulate Matter Reduction Plan (Plan) that satisfies the following requirements:
   a. The term of the Plan shall be for four (4) years from the date of approval by the APCO;
   b. The Plan shall be designed to achieve state and federal ambient PM$_{10}$ air quality standards;
   c. To meet the objective of 2b, development of the Plan shall begin by establishing an initial target of reducing the maximum 24-hour PM$_{10}$ baseline emissions by fifty percent (50%), based on air quality modeling based on a modeling scenario for the period May 1 through August 31, 2013, and shall be carried out by the California Air Resources Board (CARB), or other modeling groups subject to the review of the Scientific Advisory Group (SAG), as defined in paragraph 3, below;
   d. The estimate of emission reductions identified in 2c may be modified based on air quality modeling conducted by CARB or other modeling subject to the review of the SAG required by 3a and 3b;
   e. Subject to permitting agency approval, the Plan shall include feasibility and effectiveness analyses of alternative mitigation measures or mitigation-support measures including, but not limited to, construction of a continuous foredune structure within the ODSVRA near the high water line to reduce wind shear on downwind high-emissivity areas; the vegetation of exposed sand sheet to reduce sand flux by stabilizing the dune surface and support the development of
biophysical sand crust formation; the introduction/reintroduction of straw bales or
other roughness elements within the ODSVRA to reduce sand flux and downwind
dust concentrations; and installation of temporary irrigation system(s) to ensure
substantive plant growth and vigor in areas of the ODSVRA identified for
 revegetation and the application of liquid fertilizer through the irrigation water;
f. The Respondent shall use its best efforts to increase the current rate of native
plant seed production, plant yield, dune planting, and take actions needed to
maximize plant survival to the level needed to meet the rate of dune revegetation
identified in the Plan (e.g. application of mulch, watering and fertilization;
g. A draft Plan demonstrating attainment of state and federal ambient PM_{10} air
quality standards, as expeditiously as practicable, shall be submitted to the APCO
and the SAG by Respondent no later than February 1, 2019 for the APCO’s
approval;
h. The SAG will review the draft Plan and submit comments to the APCO on the
completeness, adequacy, and efficacy of proposed control activities, and
recommendations for modifications, additions, or deletions to proposed control
activities no later than February 15, 2019;
i. The APCO shall publish a 30-day notice of public workshop no later than 10 days
following receipt of SAG recommendations to announce the availability of the
draft Work Plan and SAG recommendations, solicit public comments, and solicit
public participation at a workshop to review the draft Plan and SAG
recommendations;
j. At the conclusion of the workshop, the APCO shall consider the SAG
recommendations and all public comments, and either approve the Plan or return
the Plan to Respondent with an itemization of specific deficiencies for correction
and reconsideration;
k. If the APCO’s approval of the Plan precedes completion of the Public Works Plan
(PWP) public review process, Respondent shall integrate elements of the Plan,
upon approval by the APCO, into the PWP public review and comment process to facilitate public input on non-air quality impacts of the Plan;

3. **Scientific Advisory Group:** A Scientific Advisory Group (SAG) shall be created by mutual agreement of Respondent and the APCO, taking into advisement the recommendations of the Special Master as designated in that certain agreement between the District and Respondent dated March 26, 2014. The SAG will evaluate, assess, and provide recommendations on the mitigation of windblown PM$_{10}$ emissions from ODSVRA and on the development of the Particulate Matter Reduction Plan (Plan) and annual Report and Work Plan (Report). The process for selection and responsibilities of the SAG shall include:

   a. Respondent, APCO, and Special Master shall offer recommendations of experts in the fields of dune geomorphology; aolian erosion control; soil ecology; shoreline botany; biophysical sand crust formation; and air quality modeling, among other disciplines, to each other by June 1, 2018 for consideration of appointment to the SAG;

   b. By consensus, Respondent and the APCO, with consultation with the Special Master, shall appoint members of the SAG no later than July 1, 2018;

   c. The SAG will review scientific and technical issues related to the research, development and implementation of windblown PM$_{10}$ controls and prepare technical specifications and analyses of proposed mitigation measures. Respondent, APCO, and Special Master shall intend for the SAG to foster communication and understanding of the scientific and technical aspects of PM$_{10}$ emission control approaches, provide scientific analysis and recommendations to the Respondent for the development of the Plan, provide critical analyses of Respondent’s Plan for APCO’s use, provide critical analyses of Respondent’s annual Reports and Work Plans for use by the APCO, and become a vehicle for
increased cooperation and collaboration between the Respondent, APCO, and affected stakeholders;

d. The SAG will meet in person at least once annually to discuss the Plan and Reports including, but not limited to, increments of progress, timelines for increments of progress, and amendments to the Plan, and annual Reports based on new learnings. The SAG may meet more often telephonically or by other networked conferencing means as needed;

e. The duties of the SAG are both administrative and advisory in nature and in no way alter the authority and responsibility of the Respondent, District, District Board, Hearing Board, APCO, or CARB. The SAG does not have any powers of the Respondent, District, District Board, Hearing Board, APCO, or CARB. As such, it is not a sub-committee of the Respondent, District, District Board, Hearing Board, or CARB.

4. **Annual Report and Work Plan**: Respondent shall develop with assistance from the SAG, on an annual basis, a Report and Work Plan (Report or Work Plan) for each year of the 4-year term of the Particulate Matter Reduction Plan for APCO approval. Reports shall satisfy the following requirements:

a. Reports shall review the dust controls implemented over the previous year, and, using metrics specified in the approved Plan, compare achievements to increment of progress requirements approved in the previous Report;

b. Reports shall include increments of progress, using tracking metrics specified in the approved Plan, for each dust control and related action included in the proposals for mitigation to be undertaken in the upcoming year including, but not limited to foredune development, mitigation of foredune loss due to natural or anthropogenic impacts, quantities of seeds and plants produced on-site and by any contracted entities, the extent of new and replacement vegetation, plant survival
rates, new and replacement fencing installed, quantities of other groundcover applied in new and replacement areas and the extent of areas covered;
c. Additional metrics to assess mitigation progress may be added each year with input from the SAG;
d. Reports shall propose dust control activities to be undertaken or completed in the next year together with analyses of expected outcomes, mitigation effectiveness, and potential emissions reductions;
e. The SAG shall prepare and/or recommend and approve pertinent technical specifications of the mitigation techniques proposed in the annual Report, including the type, effectiveness, and geographical extent of applied mitigation. Mitigation will be considered both in riding and non-riding areas of the ODSVRA and in areas outside of the ODSVRA. The Respondent will obtain an evaluation by the SAG for all mitigation prior to seeking approval of each Report by the APCO;
f. Each Report will estimate, using air quality modeling, the benefits downwind of the ODSVRA and, specifically, the anticipated reduction in PM\textsubscript{10} concentrations in populated areas due east of the ODSVRA on the Nipomo Mesa. These estimates will include a sensitivity analysis on emissions rates of increasing the level of effort for each mitigation technique in subsequent years;
g. Budgetary considerations for development and implementation of the mitigations shall be described in the Report and shall detail the total funding for the one-year period, amount of funding assigned by mitigation type, the source of funding, and the availability of reserve funds in the event of cost increases prior to implementation of a given year’s mitigation;
h. Each Report shall include a detailed implementation schedule with deadlines associated with physical deployment of the mitigation, e.g., wind fencing set-up, emission measurements of the dune surface, in-situ mitigation, and replacement of any temporary mitigation;
i. Failure to meet any increments of progress or deadlines associated with the physical deployment of the mitigation specified in approved Reports except under conditions specified in 6(e) or (f) shall constitute a violation of this Order;
j. Implementation schedules will also specify the duration for each mitigation activity and the anticipated impact on emission reductions. The SAG will review and advise on the schedule included in each annual Report;
k. Annual Reports will include specific metrics and indicators to assess progress achieved toward planning objectives;
l. Agencies involved in development and implementation of the annual mitigation plans will have the defined roles and responsibilities identified below:
   i. District – Conduct public review processes and approve the Particulate Matter Reduction Plan and annual Work Plans; enforce increment of progress schedules and required action; evaluate and implement, as needed, emission controls on sources external to the ODSVRA that may impact PM$_{10}$ levels on the Nipomo Mesa; conduct all ambient monitoring at CDF, Oso Flaco, and other sites within the district outside ODSVRA.
   ii. State Parks – Develop and, if necessary, revise annual Work Plans in collaboration with the SAG; implement near-term and future mitigation efforts within ODSVRA that are specified in this Order or approved Work Plans, including establishment of seed production targets to ensure continuous supply of vegetation; provide funding for implementation of approved mitigation and monitoring efforts including reasonable costs incurred by the District; and conduct field emissions testing of dune surface as needed.
   iii. California Coastal Commission – Review and approve proposed annual Work Plans before any mitigation may commence for each year, pursuant to Special Condition 2 of Coastal Development Permit 3-12-050, for proposed mitigation within the scope of that permit; and issue new or
amended Coastal Development Permits for any work not within the scope
of Coastal Development Permit 3-12-050.

5. **Report Review:** The APCO shall determine the approvability of the Annual Reports and Work Plans (Reports). The process by which the APCO considers Reports for approval will include the following:

a. Draft Reports shall be submitted by Respondent to the APCO and SAG by August 1 of each year from 2019 through 2022;

b. The SAG will review each annual Report and submit comments to the APCO on the completeness, adequacy, and efficacy of proposed control activities, and recommendations for modifications, additions, or deletions to proposed control activities no later than September 1 of each affective year;

c. The APCO shall publish a 30-day notice of public workshop no later than 10 days following receipt of SAG recommendations to announce the availability of the draft Work Plan and SAG recommendations, solicit public comments, and solicit public participation at a workshop to review the draft Work Plan and SAG recommendations;

d. Within 10 days of the conclusion of the public workshop, the APCO shall either approve the draft Work Plan or return the Work Plan to Respondent with an itemization of specific deficiencies for correction and reconsideration subsequent to the solicitation of public comments using the same public process described in 5(c);

e. If a disagreement arises between Respondent and the APCO regarding the approval of the Report, the Respondent may request a hearing before the Hearing Board to resolve the disagreement;

f. Upon approval of the Work Plan by the APCO, Respondent shall immediately commence implementation of the Work Plan;
g. 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 by Respondent as set forth in section 5(e) above, this meeting shall also include that hearing.

6. General Conditions:
   a. The Hearing Board shall retain jurisdiction over this matter until December 1, 2023, during which period either Respondent or the APCO may apply to modify the terms and conditions of this Stipulated Order, including this deadline, or to terminate this Stipulated Order. At the conclusion of this period, as it may be modified, this Stipulated Order shall expire.
   b. This Stipulated Order for Abatement does not act as a variance, and Respondent is subject to all rules and regulations of the District, and with all applicable provisions of California law.
   c. Nothing herein shall be deemed or construed to limit authority of the APCO to issue Notices of Violation or to seek civil penalties for the allegations alleged in the Petition, or to seek injunctive relief, or to initiate abatement actions or seek other administrative or judicial relief for violations that are not the subject of this proceeding.
   d. Nothing herein constitutes a determination by the Hearing Board that ODSVRA constitutes a nuisance as defined by Health and Safety Code section 42451 or Air District Rule 402, which Respondent expressly denies.
   e. Notwithstanding Condition 6(c) above, if any part of Respondent’s failure to satisfy any increment of progress or deadline set forth in this Order results from force majeure, then that specific part only of Respondent’s failure shall not be considered a violation. “Force Majeure” as used in this section means any of the following events that prevents the Respondent’s performance of the specified act by the deadline set forth in this Order: (a) any act of God, war, fire, earthquake,
windstorm, flood, severe drought that is declared as an official state of emergency
by the Governor of the State of California, or natural catastrophe; (b) unexpected
and unintended accidents (excluding those caused by Respondent or the
negligence of its agents or employees); civil disturbance, vandalism, sabotage or
terrorism; (c) restraint by court order or public authority or agency; (d) action or
non-action by, or inability to obtain the necessary authorizations or approvals
from any governmental agency, provided that Respondent demonstrates it has
made a timely and complete application to the agency and used its best efforts to
obtain that approval; or (e) the inability to obtain private property owner access,
provided that Respondent demonstrates it has made a timely and complete request
to the owner, and used its best efforts to obtain that access. Force Majeure shall
not include normal inclement weather, economic hardship or inability to pay.

f. Also, notwithstanding Condition 6(c) above, and in addition to Condition 6(d)
above, if Respondent cannot satisfy any increment of progress or deadline set
forth in this Order due to any other circumstances beyond Respondent’s control,
Respondent may submit evidence to the APCO regarding the circumstances and
explaining why they prevented Respondent from satisfying the increment of
progress or deadline. The APCO shall have the authority to determine that either
(i) the circumstances were beyond Respondent’s control and excuse the failure to
satisfy the increment of progress or deadline; or (ii) the circumstances were within
Respondent’s control, and do not excuse the failure to satisfy the increment of
progress or deadline.

g. The Hearing Board, upon request by the Chair or any two members, may convene
a public hearing to review the APCO’s approval of any condition of this order or
modification of a deadline. The Hearing Board may revoke the APCO approval
of any condition or modification to a timeline.
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 30th day of April 2018.

Dr. Yarrow Nelson,
Acting Chair
San Luis Obispo County
APCD Hearing Board