

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

SEP 11 2013

SAN LUIS OBISPO SUPERIOR COURT

BY R. Veerman
F. Veerman, Deputy Clerk

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, a local air pollution control district (see additional parties)

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
FRIENDS OF OCEANO DUNES, INC., California not-for profit corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.**

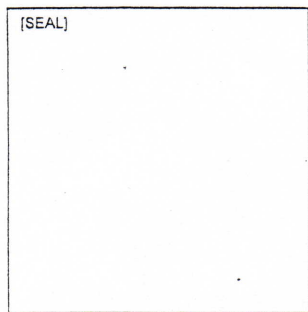
The name and address of the court is:
(El nombre y dirección de la corte es): San Luis Obispo County Superior Court
1035 Palm Street
San Luis Obispo, California 93408

CASE NUMBER:
(Número del Caso) **CV 130457**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Thomas D. Roth, Law Offices of Thomas D. Roth, One Market, Spear Tower, Ste. 3600, San Francisco, CA
415-293-7684

DATE: Sept. 11, 2013
(Fecha) **SUSAN MATHERLY** Clerk, by **R. VEERMAN**, Deputy
(Secretario) *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of *(specify):*
- on behalf of *(specify):* San Luis Obispo County Air Pollution Control District
a local air pollution control district.
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify):* CCP section 416.50 (public entity)
- by personal delivery on *(date):*

SHORT TITLE: Friends of Oceano Dunes v. SLO County APCD	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant
 San Luis Obispo County APCD Board of Directors, the APCD's governing body

Page _____ of _____

Page 1 of 1

SHORT TITLE: Friends of Oceano Dunes v. SLO County APCD	CASE NUMBER:
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INSTRUCTIONS FOR USE

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- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

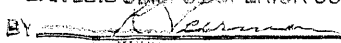
List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

California Department of Parks and Recreation, a department of the State of California, as a Real Party-in-Interest

Page _____ of _____

Page 1 of 1

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas D. Roth, SBN 208601 LAW OFFICES OF THOMAS D. ROTH One Market, Spear Tower, Suite 3600 San Francisco, California 94105 TELEPHONE NO.: 415 293-7684 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Friends of Oceano Dunes, Inc.</p>	<p>FOR COURT USE ONLY</p> <p style="font-size: 24pt; font-weight: bold;">FILED</p> <p style="font-size: 18pt; font-weight: bold;">SEP 11 2013</p> <p>SAN LUIS OBISPO SUPERIOR COURT</p> <p>BY  R. Vecerman, Deputy Clerk</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Luis Obispo STREET ADDRESS: 1035 Palm Street MAILING ADDRESS: CITY AND ZIP CODE: San Luis Obispo, California BRANCH NAME: Main</p>	<p>CASE NUMBER: CV 130457</p> <p>JUDICIAL OFFICER:</p>
<p>PLAINTIFF/PETITIONER: Friends of Oceano Dunes DEFENDANT/RESPONDENT: San Luis Obispo County APCD</p>	<p>DEPT.:</p>
<p>NOTICE OF RELATED CASE</p>	

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Friends of Oceano Dunes v. San Luis Obispo APCD
 b. Case number: CV 120013
 c. Court: same as above
 other state or federal court (name and address):
 d. Department: 9
 e. Case type: limited civil unlimited civil probate family law other (specify):
 f. Filing date: Jan. 4, 2012
 g. Has this case been designated or determined as "complex?" Yes No
 h. Relationship of this case to the case referenced above (check all that apply):
 involves the same parties and is based on the same or similar claims.
 arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 involves claims against, title to, possession of, or damages to the same property.
 is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 Additional explanation is attached in attachment 1 h
 i. Status of case:
 pending
 dismissed with without prejudice
 disposed of by judgment

2. a. Title:
 b. Case number:
 c. Court: same as above
 other state or federal court (name and address):
 d. Department:

PLAINTIFF/PETITIONER: Friends of Oceano Dunes DEFENDANT/RESPONDENT: San Luis Obispo County APCD	CASE NUMBER:
--	--------------

2. (continued)

- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 2h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

3. a. Title:

b. Case number:

c. Court: same as above
 other state or federal court (name and address):

d. Department:

e. Case type: limited civil unlimited civil probate family law other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" Yes No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 3h

i. Status of case:

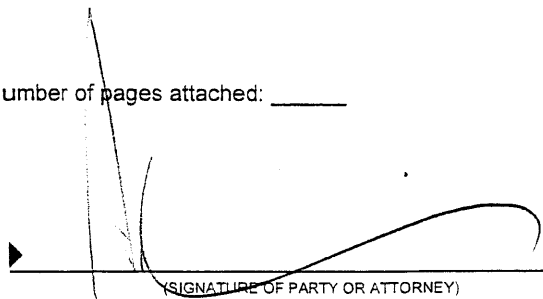
- pending
- dismissed with without prejudice
- disposed of by judgment

4. Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: 9/11/13

Thomas D. Roth

 (TYPE OR PRINT NAME OF PARTY OR ATTORNEY)



 (SIGNATURE OF PARTY OR ATTORNEY)

1 THOMAS D. ROTH, CAL. BAR NO. 208601
2 LAW OFFICES OF THOMAS D. ROTH
3 ONE MARKET, SPEAR TOWER, SUITE 3600
4 SAN FRANCISCO, CALIFORNIA 94105
5 TELEPHONE: (415) 293-7684
6 FACSIMILE: (415) 435-2086
7 Email: rothlaw1@comcast.net

8 Attorney for Petitioner and Plaintiff
9 FRIENDS OF OCEANO DUNES, INC.

FILED
SEP 11 2013
SAN LUIS OBISPO SUPERIOR COURT
BY *[Signature]*
R. Veerman, Deputy Clerk

10 SUPERIOR COURT OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN LUIS OBISPO

12 FRIENDS OF OCEANO DUNES, INC., a
13 California not-for profit corporation,
14 Petitioner and Plaintiff,

Case No.: **CV 130457**

15 vs.

**FRIENDS OF OCEANO DUNES'
VERIFIED PETITION FOR A WRIT OF
ADMINISTRATIVE MANDAMUS
(C.C.P. § 1094.5) AND/OR A PETITION
FOR TRADITIONAL MANDAMUS
(C.C.P. § 1085), AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

16 SAN LUIS OBISPO COUNTY
17 AIR POLLUTION CONTROL DISTRICT, a
18 local air pollution control district; the
19 BOARD OF DIRECTORS OF THE SAN
20 LUIS OBISPO COUNTY AIR POLLUTION
21 CONTROL DISTRICT, the District's
22 governing body, in its/their official
23 capacity, and DOES 1-50, inclusive;

24 Respondents and Defendants; and

25 CALIFORNIA DEPARTMENT OF PARKS
26 AND RECREATION, a department of the
27 State of California, and DOES 1-50,
28 inclusive;

Real Party-in-Interest

COMES NOW Petitioner and Plaintiff Friends of Oceano Dunes, Inc. ("Friends")
requesting this Court for a writ of administrative mandamus (C.C.P. § 1094.5) and/or a

1 writ of traditional mandamus (C.C.P. § 1085), directed to Respondent San Luis
2 Obispo County Air Pollution Control District (the "District") pursuant to this Verified
3 Petition for Writ and Complaint, ordering it to set aside and vacate Permit to Operate No.
4 1897-1 as exceeding its authority under state law and District Rule 1001, and prohibiting
5 it from requiring any such permit to operate Oceano Dunes State Vehicular Recreation
6 Area, and for other relief, as follows:

7 **The Parties and Venue**

8 1. Friends is, and at all times mentioned in this Petition and Complaint, was a
9 California not-for-profit corporation, with its principal place of business in San Luis
10 Obispo County.

11 2. Friends was expressly created to preserve and create recreational uses,
12 including off-highway vehicle recreation, at Oceano Dunes State Vehicular Recreation
13 Area ("SVRA") located near Pismo Beach, California. Friends is a voluntary organization
14 which represents approximately 28,000 members and users of Oceano Dunes SVRA, who
15 routinely engage, have engaged and plan to continue to engage in motorized off-
16 highway vehicle ("OHV") recreation, beach driving and beach camping at Oceano Dunes
17 SVRA. Hundreds of members engage, have engaged and plan to continue to engage in
18 motorized OHV recreation, beach driving and beach camping at Oceano Dunes SVRA
19 multiple times each year.

20 3. Friends maintains the instant lawsuit for itself and as a representative of its
21 injured members, whom it is duly authorized to represent.

22 4. Friends and its members are adversely affected by Rule 1001, which purports to
23 set standards regulating and limiting alleged dust and particulate matter emissions from
24 areas used for motorized OHV recreation within Oceano Dunes SVRA, and Permit to
25 Operate No. 1897-1, which purports to implement Rule 1001. Rule 1001, and Permit to
26 Operate No. 1897-1 may require the closure of certain areas within Oceano Dunes SVRA,
27 and the prohibition of OHV recreation in certain areas, or even park wide. Such
28

1 restrictions would harm Friends and its members by limiting or prohibiting OHV
2 recreation within Oceano Dunes SVRA, which was created and is maintained pursuant to
3 State law. Some members of Friends own fee title to private parcel in-holdings located
4 within Oceano Dunes SVRA, and their respective parcels will be affected by closure to
5 OHV, mitigation measures or even claims of violations. Friends and its members are
6 adversely affected by the District's August 19, 2013 issuance of Permit to Operate No.
7 1897-1, as the purported permit exceeds the District's authority under state law, as well
8 as its purported authority under Rule 1001, and may be enforced by requiring the closure
9 of all or portions of Oceano Dunes SVRA in the event of any alleged violations of District
10 or Rule 1001 requirements. This Court previously held that Friends has standing to
11 bring suit against the District for allegedly exceeding its statutory authority to require a
12 permit to operate Oceano Dunes SVRA.

13 5. Respondent and Defendant San Luis Obispo County Air Pollution Control
14 District (the "District") is and was the local agency which created and legislatively
15 adopted Rule 1001, and issued Permit to Operate No. 1897-1. The District is and has been
16 established in California pursuant to Health and Safety Code §§ 40000 – 41133 to adopt
17 and enforce lawful rules regarding nonvehicular sources of pollution to achieve the state
18 and federal ambient air quality standards in areas affected by emission sources under its
19 jurisdiction, and is responsible for the issuance of Permit to Operate No. 1897-1.

20 6. Respondent and Defendant Board of the District (the "Board") is the decision-
21 making body for the District and is responsible for adopting rules and regulations
22 regarding nonvehicular sources of pollution in San Luis Obispo County (the "County").
23 The District Board is comprised of 12 elected officials, representing each district of San
24 Luis Obispo County and the incorporated cities. This action seeks relief against the Board
25 members only in their official, not their individual, capacities.

26 7. Real Party-in-Interest California Department of Parks and Recreation ("State
27 Parks") is and has been the state department responsible for managing and operating
28

1 Oceano Dunes SVRA. In that capacity, State Parks is purportedly subject to Rule 1001,
2 and Permit to Operate No. 1897-1, and would be purportedly responsible for ensuring
3 that certain emissions from Oceano Dunes SVRA do not exceed certain ambient air
4 quality standards and for complying with all other aspects of Rule 1001 and Permit to
5 Operate No. 1897-1.

6 8. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of Does 1 through 50 are unknown to the Petitioners, who therefore sue these
8 defendants/respondents/real-parties-in-interest by fictitious names. The Petitioners
9 will amend this Petition/Complaint to show the Doe defendants/respondents/real-
10 parties-in-interests' true names and capacities when ascertained.

11 9. Pursuant to Code of Civil Procedure §§ 393 and 394(a), venue is proper in that
12 the cause of actions arose and the Respondents District and District Board are located in
13 San Luis Obispo County. Real Party-in-Interest State Parks also maintains an office in
14 San Luis Obispo County.

15 10. This Court has jurisdiction pursuant to C.C.P. §§ 1085, 1094.5, 1095.5, 1060,
16 and 527(a).

17
18 **Background on the Regulated Facility: Oceano Dunes SVRA**

19 11. The area that is now Oceano Dunes SVRA has been a gathering point for "off-
20 highway" motor vehicle recreation for more than 100 years. By the early 1900s, as the
21 automobile became popular, large automobile "meets" were organized, drawing
22 thousands to watch races along the flat sandy beach "speedway" running from the City
23 of Pismo Beach to Mussel Rock which is south of the Santa Maria River. By the 1950s,
24 stock car speed trials were approved by the County and held on Oceano Dunes beach.
25 Also in the 1950s, the first "dune-buggy" was created in Oceano Dunes, spawning the
26 popular "off-highway" vehicle phenomenon. Use of the area for off-road vehicle
27 recreational activities has continued to grow during the past 30 years.

1 12. In 1934, the California Department of Parks and Recreation (then known as the
2 California Department of Natural Resources) began acquiring the lands that would
3 eventually become Pismo State Beach and Oceano Dunes SVRA. Additional acquisition
4 occurred in 1949, 1951, 1958-1964, and 1974. In the early 1970s, the California Legislature
5 recognized the popularity of off-highway vehicles, recreational vehicles (RVs), and beach
6 camping and adopted the Chappie-Z'berg Off-Highway Vehicle Act, along with the Off-
7 Highway Gas Tax Act. The legislation further authorized the state to acquire and
8 designate areas for the specific purpose of OHV recreation.

9 13. Pursuant to this authority and partially funded by the special gas tax, State
10 Parks assembled lands in the Pismo area to create what was then called the Pismo Dunes
11 SVRA. The creation of the new SVRA "was the result of a compromise worked out
12 between then [State Parks] Director William Mott and the environmental community to
13 close the majority of vehicular beaches in San Luis Obispo County in exchange for
14 creation of . . . [the SVRA] specifically for vehicle recreation." Beaches in the north
15 county were closed to vehicles. State Parks established the area "to make available to the
16 people opportunities for recreational use of off-road vehicles in a large area of
17 unstabilized sand dunes exceptionally adapted to [OHV] recreational activity. . . ."

18 14. State Parks applied for a permit for the SVRA from the California Coastal
19 Commission, and, after a public hearing, the Commission on June 17, 1982 granted State
20 Parks Permit No. 4-82-300 for Pismo Dunes SVRA. The permit recognized OHV
21 recreational activity within the SVRA. The Coastal Commission authorized the
22 establishment of three kiosks "for access control," as well as the construction of 35,000
23 linear feet of fencing to cordon off OHV recreation from certain sensitive vegetated dunes
24 and wetlands.

25 15. In August 1982, shortly after the Coastal Commission granted the permit to
26 State Parks, the California Legislature adopted the Off-Highway Motor Vehicle
27 Recreation Act (the "SVRA Act"). The law declared a state policy of setting aside
28

1 “effectively managed areas and adequate facilities for the use of off-highway vehicles . . .
2 .” Pub. Res. Code § 5090.02(b). The Legislature also tasked State Parks with “making the
3 fullest public use of the outdoor recreational opportunities [for off-highway motor
4 vehicles]” Id., § 5090.43(a).

5 16. The SVRA Act gave the OHV Division within State Parks broad powers to
6 plan and administer SVRAs including the newly created Pismo Dunes. Pursuant to Pub.
7 Res. Code § 5090.32(a), State Parks has the duty and responsibility for “planning,
8 acquisition, development, conservation, and restoration of lands” within SVRAs. Pub.
9 Res. Code §§ 5090.32(b), (d) and (h); and 5090.35(a), (b) and (c).

10 17. Today, Oceano Dunes SVRA is unique in the California State Parks system. Its
11 hard surface supports driving and RV camping on the beach. It is the only remaining
12 public beach along the entire 1,100 mile California coastline that legally permits the
13 general public to drive on the beach in street legal vehicles. Approximately 5 ½ miles of
14 beach and 1,500 acres of sand dunes are open to vehicular use at Oceano Dunes SVRA
15 and adjoining Pismo State Beach. (Prior to the 1980s, most of the approximately 18,000
16 acre Guadalupe-Nipomo Dunes Complex was available to vehicular use.) Oceano Dunes
17 draws more visitors than any other park in the entire California State Park system –
18 about 2 million visitors annually. It also generates hundreds of millions of dollars in
19 economic activity annually within San Luis Obispo County, as well as significant fees for
20 State Parks. State Parks, pursuant to its special statutory powers, its long-standing
21 permit from the Coastal Commission, more than 40 years of active and actual use for
22 OHV recreational purposes, and millions of dollars in investment in the creation and on-
23 going operation of the Oceano Dunes SVRA, has a fundamental vested right in the
24 continued operation of the SVRA.

25 18. One 584-acre parcel within Oceano Dunes SVRA known as the LaGrande
26 Tract is not owned by State Parks, but rather is owned by San Luis Obispo County. In
27
28

1 2006, State Parks offered to purchase the La Grande Tract for about \$ 5 million, but a deal
2 could not be reached with the County.

3 19. However, State Parks and the County did agree on terms to allow State Parks
4 to continue to administer the La Grande Tract as part of Oceano Dunes SVRA, including
5 the payment of a substantial amount of money to compensate the County for any
6 environmental impacts.

7 20. The County was not entirely satisfied with this financial arrangement. It was
8 no coincidence that at this same time, the District began to work to identify and claim
9 additional "environmental" and other impacts for which "mitigation" compensation
10 could be demanded from State Parks. Although the County and the district are legally
11 separate, the District Board consists of all of the sitting County Board of Supervisors, and
12 those supervisors have significant influence over the District's actions.

13 **The District's Effort to Establish Justification for Higher "Mitigation" Payments**
14 **from State Parks**

15 **The Phase 1 Particulate Matter Report**

16 21. The District began preparing reports seeking to establish that Oceano Dunes
17 SVRA was causing violations of state particulate matter air quality standards.

18 22. In March 2007, staff for the District prepared the "South County Phase 1
19 Particulate Matter Study - Phase 1 Study Report" ("Phase 1 Report").

20 23. The Phase 1 Report concluded that increased particulate matter ("PM")
21 readings were being caused by wind blown sand, dirt, and dust rather than by vehicle
22 combustion. Although several staff members blindly insisted that OHV riding activity
23 was causing increased particulate matter violations, the Phase 1 Report and underlying
24 data completely failed to establish that OHV riding at Oceano Dunes SVRA contributed
25 in any significant way to particulate matter standard violations in the County.

26 24. At the public hearing on the Phase 1 Report, Petitioner Friends of Oceano
27 Dunes objected to the Report and questioned whether the County/District was merely
28

1 attempting to gin up alleged SVRA impacts in order to give SLO County leverage against
2 State Parks in the on-going discussions over the appropriate level of "mitigation"
3 payments from the State to the County regarding the La Grande Tract . (At this time,
4 operational aspects of the District were integrated closely with the County.)

5 25. In the end, the Phase 1 Report recommended that PM reduction efforts be
6 focused *not on OHV*, but rather on dirt roads in the County: "This includes a control
7 strategy to reduce emissions from *high volume unpaved roads* by working with County
8 Public Works, County Planning and Building Department, South County Advisory
9 Council and developers to evaluate and implement measures such as speed limit
10 reductions, application of dust suppressants or paving new and existing unpaved roads
11 in areas of higher population where exposure is greatest."

12 26. The emphasis on reducing PM emissions from dirt roads made sense given
13 that *dirt roads are by far the largest cause of PM emissions in SLO County*, and given that the
14 County originally appeared to be developing plans to attack dirt roads as the most
15 effective way to reduce PM emissions in the State. Previously, in 2003, the California
16 Legislature enacted Senate Bill 656 to reduce public exposure to particulate matter. SB
17 656 required the California Air Resource Board ("ARB") in consultation with local air
18 pollution control districts, to develop and adopt a list of PM reduction strategies. The
19 Phase 1 Report recommended that the District move forward with PM control strategies
20 which had been previously adopted by the District as part of the 2005 Particulate Matter
21 Report to meet the requirements of SB 656.

22 27. With respect to alleged emissions from secondary effects of OHV activity at
23 Oceano Dunes SVRA, the Phase 1 Report simply recommended that the District work
24 with State Parks to investigate the impact of OHV activity and to identify mitigation
25 measures if necessary.

1 **The Phase 2 Particulate Matter Report**

2 28. At the hearing on the Phase 1 Report, the District Board quickly abandoned
3 the Phase 1 Report's primary recommendation – to implement control strategies to
4 decrease PM emissions from dirt roads. In fact, to date, the District has taken no
5 additional action to control PM emissions from dirt roads.

6 29. Instead, the District Board returned to its core political goal – to prepare a new
7 report that placed the primary blame for PM10 emissions on OHV activity, and that
8 justified higher mitigation payments from (or even monetary fines on) the State of
9 California. To this end, in March 2010, the District released this new report called the
10 "South County Phase 2 Particulate Matter Study" ("Phase 2 Report").

11 30. The Phase 2 Report asserted that greater amounts of PM10 are generated when
12 wind blows over areas where OHV riding occurs within Oceano Dunes SVRA, when
13 compared to areas within the SVRA that are closed to riding. The premise of the report
14 was that OHV activity breaks a "crust" on the sand dune surface, and that "increases the
15 ability of winds to entrain sand particles from the dunes and carry them to the Mesa,
16 which is an indirect emissions impact from the vehicles." The Report continues: "The
17 data strongly suggests these *indirect emissions are the primary cause* of the high PM levels
18 measured on the Nipomo Mesa during episode days." (Emphasis added.) The Phase 2
19 Report Executive Summary similarly claims that "the data strongly suggests this is the
20 primary cause of the high PM levels measured on the Nipomo Mesa during episode
21 days."

22 31. Thus, the linchpin of the Report is the novel theory (never before asserted with
23 respect to sand dunes) that the dunes have a "crust" and that OHV riding breaks up that
24 crust, allowing wind to more easily carry dust off the dunes. Notably, during the
25 presentation of the Phase 2 Report to the District Board, District staff member Joel Craig
26 admitted that the "ability to carry out such a complex study was really beyond our
27 ability." He also acknowledged that State Parks is "really . . . the expert[] on the dunes."

1 District staff has no expertise on dune geology, and was forced to rely entirely on well
2 paid outside consultants to reach these conclusions.

3 32. Leading up to and at the public hearing, the Phase 2 Report was heavily
4 criticized. Even members of the District Board itself were highly critical of the
5 methodology, monitoring, testing and data analysis used in the Phase 2 Report.

6 33. Likewise, the real expert agency on dune geology – the State of California
7 Geological Survey, housed within the California Department of Conservation – was
8 highly critical of the Phase 2 Report and its conclusions.

9 34. The California Geological Survey concluded that high wind events disturb all
10 of the dunes at Oceano Dunes SVRA, not just areas where OHV riding occurs. Sand and
11 dust is naturally blown from all areas, regardless whether there is OHV riding activity.
12 In fact, that is precisely how the sand dunes are formed. Because of the natural dune
13 formation process, higher PM10 levels can be expected whether or not there is OHV
14 activity at Oceano Dunes SVRA.

15 35. The California Geological Survey also concluded that the Phase 2 Report
16 erroneously equated the coastal dune environment at Oceano Dunes with the dust
17 problem that historically occurred at the dry Owen Lake lakebed in the high desert in
18 Inyo County, California. The agency concluded that “there is no ‘stabilizing crust’ in the
19 dunes south of the SVRA that is comparable to the salt flats of the Owen Lake playa.
20 There is no ‘stabilizing crust’ at all. The authors mistakenly identify dune laminae as a
21 ‘stabilizing crust.’ ” The agency also questioned the sufficiency and scientific accuracy of
22 the District’s discussions with outside consultants regarding dune morphology. State
23 Parks also expressed concerns with the scientific validity of the Phase 2 Report.

24 36. The District also ignored historical data that shows that dust is anything but
25 new to the Nipomo Mesa and surrounding region. Historical records reflect that blowing
26 sand from the dunes in the area from the mid-1800s through the early 1900s ruined
27 barley and other crops. The area was a “breeding place of winds that turned into an
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1 inferno of frequent sandstorms about as formidable as those of the Sahara." Neither
2 these winds nor the resulting sand storms had anything to do with OHV recreation
3 which started years later. A 1916 U.S. Department of Agriculture Soil Survey noted that
4 "Santa Maria Valley, being open to the ocean, receives the full force of the west and
5 northwest winds, resulting in the building of extensive sand dunes and the formation of
6 other wind-blown soils." "A land use survey for only the Nipomo Mesa Management
7 Area was performed in 2007 based on 2007 aerial photography. Based on these surveys,
8 land use in the NMMA has changed dramatically over the past half-century. Urban
9 development has replaced native vegetation at an increasing rate, especially over the past
10 10 years. The generalized loss of vegetation resulting from increased development has
11 likely increased the blowing of dust and sand." The District also ignored recent studies
12 of sand dunes elsewhere which concluded that unvegetated dunes produce little or no
13 dust emissions.

14 37. The District rejected all of these concerns.

15 38. The District staff admits that the PM-10 levels include naturally-occurring dust
16 caused by winds emanating from the non-riding areas of the SVRA, and that dust would
17 blow off the dunes regardless whether there is OHV riding.

18
19 **The District Adopted Rule 1001 Requiring a Permit to Operate Oceano Dunes**
20 **SVRA**

21 39. Undeterred with the errors in the Phase 1 and Phase 2 Reports, the District
22 staff began developing a regulation to control the emissions of PM10 from Oceano Dunes
23 SVRA, even though there was little or no credible evidence that OHV riding was actually
24 a cause of the wind-driven emissions.

25 40. At the September 28, 2011 District Board meeting, staff presented a draft
26 regulation "to reduce fugitive dust emissions from the ODSVRA." The draft regulation,
27 known as Rule 1001, was purportedly based on the Phase 1 and 2 Reports.

1 41. During the public hearing which considered an earlier draft version of Rule
2 1001, District Executive Director Larry Allen acknowledged that "the extent of . . .
3 [mitigation] strategies is a pretty big unknown at the moment."

4 42. Certain District Board members continued to express concerns about the draft
5 rule and the underlying studies and data: "My concern still is that if we don't get
6 everything right, that this is subject to legal challenges I certainly found several
7 flaws in the study [for instance] a strong signature for the effect of road traffic. You have
8 much higher, 50% higher . . . particulate on weekdays at 7 am than you do on weekends.
9 That's not been studied. The data is there This is a strong signature for dust from the
10 road Those kinds of things, if the data is there, weren't studied . . . road dust is
11 common thing you look for. Those kinds of holes I see in the study could undermine this
12 effort toward getting any regulations done For example, the wind speeds. State Parks
13 has been gathering wind data on the dunes since I think about April of this year, and yet
14 there's been no inclination by staff to even look at the possible application of those wind
15 speeds to this study Unless we address those items, I think we're subject to legal
16 challenge and instead of moving forward, we'll go to the courts." (District Board member
17 Waage) "I am disturbed when I hear Mr. Allen state that he doesn't know what the
18 mitigation measures will be. I think at this stage and time, we have a lot of data on our
19 plate, this data is very helpful to making these decisions, but it is not conclusive because
20 of the variables that are out there in terms of wind speed and other things that we
21 probably will not know for quite some time until these practices are put into place. I find
22 hard numeric standards to be a difficult position to take." (District Board member Fonzi)

23 43. At that same hearing, District Board member Bright commented "I do have
24 some concerns though regarding the rule. And that is enforcement at this point seems to
25 be fee driven." In other words, the rule seemed more about collecting fees and fines than
26 anything else.

1 44. In preparation for the September 28, 2011 hearing, Petitioner Friends retained
2 James Westbrook and Bluescape Environmental, a firm specializing in air quality science,
3 to review the Phase 1 and 2 Reports and proposed Rule 1001.

4 45. Bluescape concluded that the Phase 2 Report was flawed for several reasons.
5 First, it failed to provide direct, reliable scientific evidence that PM10 generated at
6 Oceano Dunes SVRA is causing or contributing to the exceedances of the state 24-hour
7 average PM10 standard. The District refused to perform direct dust emission
8 calculations or perform dispersion modeling work needed to make that determination.
9 Second, the Phase 2 Report ignored factors that could directly affect the conclusions of
10 the Report such as localized dust emissions sources (like dirt roads, or even Highway
11 One) close to PM10 monitors, the distance of monitors, inaccuracies in wind data and
12 monitoring, other transport factors, improper control sites, and upwind obstructions.
13 Third, the Phase 2 Report failed to ascertain what portion, if any, of the total Oceano
14 Dunes SVRA dust emissions are from "natural sources," and what portion is from OHV
15 riding area emissions. Such a determination is crucial before finding that OHV riding
16 area emissions are contributing significantly to violations of State PM10 ambient air
17 quality standards, and before finding that a rule is necessary (or even authorized).
18 Fourth, the Phase 2 Report failed to prove a direct, conclusive correlation between PM10
19 impacts and OHV riding within the Oceano Dunes SVRA. Fifth, the District ignored its
20 own emissions inventory which shows that unpaved roads contribute 32.9 percent of
21 PM10 emissions in SLO County, 19.7 percent from paved roads and 14.9 percent from
22 construction activity. The District asserts that windblown dust constitutes 6.4 percent of
23 total PM10 emissions within SLO County, but that includes natural sources. The District
24 failed to demonstrate that any significant portion of the 6.4 percent windblown dust
25 emissions are caused by OHV riding. Sixth, not enough information is available to
26 reliably select a "control" site to predict what portion, if any, of Oceano Dunes SVRA
27 PM10 emissions are caused by OHV riding. There are prohibitive uncertainties in wind
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1 direction, shifts in wind direction, fetch of dunes, mixing with other regional and
2 localized sources, and technical limitations of the monitoring equipment.

3 46. Both Petitioner Friends and Real Party-in-Interest State Parks submitted
4 detailed written comments and also objected to many of the draft rule's provisions at the
5 September 28, 2011 Board public hearing.

6 47. The District rejected all of these concerns.

7 48. At the September 28, 2011 hearing, the District Board instructed staff to
8 finalize the draft Rule 1001 to be considered and voted on at the November 16, 2011
9 District Board meeting and public hearing.

10 49. State Parks continued to express concerns with the draft rule. In preparation
11 for the final hearing on November 16, 2011, State Parks filed written comments highly
12 critical of the proposal.

13 50. State Parks was concerned that the proposed rule was putting the cart before
14 the horse. "The absence of data from an agreed upon baseline monitoring system means
15 the Board is unable to determine that the rule as proposed will, in fact, result in
16 alleviating the problem of particulate matter emissions and promote the attainment or
17 maintenance of the PM10 ambient air quality standard on the Nipomo Mesa. The
18 District's responsibility for making this determination before adopting the rule is spelled
19 out in California Health and Safety Code Section 40001(c)." It noted that scientific
20 studies had not sufficiently established measurable differences between naturally
21 occurring PM10 and PM10 arising from the OHV recreation activities on the SVRA. It
22 commented that "the data produced to date do not provide sufficient information on the
23 amount of particulate matter that is produced from the Oceano Dunes State Vehicular
24 Recreation Area (SVRA) when compared with particulate matter that is produced from
25 areas where no riding occurs. In the absence of this information, neither the APCD staff
26 nor State Parks is in a position to propose a plan for controlling emissions caused by
27 riding, because those emission levels are not known. Because of this, the District is

1 unable to determine that the rule will alleviate the problem or promote the attainment of
2 the PM10 standard. Thus, contrary to the requirement above, the rule proposes to defer
3 this determination.”

4 51. State Parks also alerted the District that the District had failed to perform the
5 required cost effectiveness analysis.

6 52. State Parks further objected to a flaw in the performance standard provision of
7 Rule 1001. “. . . the draft rule should not require the state to achieve a concentration of 55
8 $\mu\text{g}/\text{m}^3$ at times when the control site reads a far higher level. The draft rule Section C.3.
9 requires the CDVAA operator to reduce PM10 emissions from the activity area of the
10 park to 55 $\mu\text{g}/\text{m}^3$ any time the difference in measurement between the control site and
11 the CDVAA monitor site exceeds 10 $\mu\text{g}/\text{m}^3$. This potentially obligates State Parks to
12 reduce PM levels below naturally occurring levels that exceed the ambient air quality
13 standard. For example, if the control site measured a concentration of 90 $\mu\text{g}/\text{m}^3$ and the
14 OHV site measured 110 $\mu\text{g}/\text{m}^3$, the state would be considered out of compliance due the
15 difference between the two sites exceeding 10 $\mu\text{g}/\text{m}^3$, and the OHV site exceeding 55
16 $\mu\text{g}/\text{m}^3$. As the rule is written, the state would not be in compliance until the SVRA site is
17 at 55 $\mu\text{g}/\text{m}^3$, well below the control site measurement. The state cannot mitigate beyond
18 ambient levels.”

19 53. State Parks, California Geological Survey (CGS) and Friends filed additional
20 comments on, and objections to, the rule.

21 54. Despite all of these concerns, at the November 16, 2011 the District Board
22 meeting, the District Board voted to adopt Rule 1001 to implement “coastal dunes dust
23 control requirements.” Resolution No. 2011-12 to amend the rules and adopt Rule 1001
24 states that Rule 1001 “establishes requirements for coastal dunes vehicle activity areas.”
25 In adopting Rule 1001, the District rejected all of the concerns raised about the rule and
26 the underlying reports and data. A true and correct copy of the final version of Rule 1001
27 adopted is attached as Exhibit 1 hereto.

1 55. The November 16, 2011 Staff Report includes District responses to public
2 comments. One District response states that "all land areas within the boundaries of the
3 SVRA where vehicle activity is allowed are subject to the rule." Another District
4 response states: "While vehicle trips to and from the facility would be considered indirect
5 emissions, by allowing and managing the additional vehicle use and activity at the dune
6 facility itself, State Parks is altering and operating a 'contrivance which may cause the
7 issuance of air contaminants' The operation of the park is altering the natural state of
8 dunes leading to higher than natural particulate emissions. . . ." The District further stated
9 in the rule-making: "The proposed rule regulates the fugitive dust emissions from a
10 Coastal Dune Vehicle Activity Area/facility" All of these statements demonstrate
11 that the District viewed Rule 1001 and its requisite permit to operate as regulating all
12 land areas within Oceano Dunes SVRA, as operated by State Parks, and emissions
13 resulting from such operations.

14 56. Rule 1001 by its own terms applies "to any operator of a coastal dune vehicle
15 activity area, as defined by this Regulation, which is greater than 100 acres in size." [Rule
16 1001(A).] The Rule defines "Coastal Dune Vehicle Activity Area (CDVAA)" as "Any
17 area within 1.5 miles of the mean high tide line where public access to coastal dunes is
18 allowed for vehicle activity." [Rule 1001 (B)(4).] The November 16, 2011 District Staff
19 Report states that the only facility subject to Rule 1001 is Oceano Dunes SVRA, and the
20 operator is State Parks.

21 57. Rule 1001 provides that "All *facilities* subject to this rule shall obtain a Permit
22 to Operate from the Air Pollution Control District by the time specified in the
23 Compliance Schedule." [Rule 1001 (C)(5) (emphasis added).] Thus, by its own terms, the
24 permit to operate under Rule 1001 regulates the facility, i.e., Oceano Dunes SVRA.

25 58. The District also stated during the rule-making that "The goal of the proposed
26 rule is to ensure vehicle activity at a CDVAA does not result in significant increases in
27 downwind ambient PM levels when compared to PM levels downwind of similar dune
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1 areas where vehicle activity is not allowed." This further makes clear that Rule 1001 was
2 written to regulate the Oceano Dunes SVRA facility, and the permit to operate is issued
3 to State Parks to allow it to operate the facility.

4 59. The District admits that it does not have authority under Health and Safety
5 Code § 39614 to adopt Rule 1001. Stated differently, the District is not relying on the
6 authority of SB 656 for Rule 1001, because that statutory authority has sunset and is no
7 longer available.

8 **Friends' and State Parks' Challenge to Rule 1001 and Preservation of Lack of**
9 **Authority Claim Pending Appeal**

10 60. In January 2012, Friends filed a Petition for Traditional Writ against the
11 District in San Luis Obispo Superior Court challenging the validity of Rule 1001. Friends
12 also named State Parks as a Real Party-in-Interest.

13 61. Friends and State Parks prosecuted the action. In the briefs before the trial
14 court, the District argued "Rule 1001 regulates the Riding Facility as a direct source of
15 PM10 emissions. As a direct source, the District has established a permit requirement as
16 part of Rule 1001."

17 62. On April 19, 2013, the trial court issued a Ruling and Order Denying Petitions
18 for Peremptory Writ of Mandate. In its Order, the trial court held Rule 1001 "requires
19 State Parks to apply for a . . . [District] rule-based permit to operate the Off-Road Riding
20 Facility once it has reached certain milestones."

21 63. In May 2013, Friends appealed the trial court's Ruling and Order to the Second
22 Appellate District (Case No. B248814), arguing specifically that the District lacks
23 authority to require a permit to operate Oceano Dunes SVRA. State Parks filed a
24 separate appeal. The appeal is pending.

25 64. Friends reasserts this claim in the context of this new writ petition to preserve
26 the cause of action as it applies to the issuance of the August 19, 2013 permit.

1 **The District’s Issuance of the So-Called “Permit to Operate”**

2 65. In late 2012 and during 2013, State Parks submitted various materials to the
3 District including drafts of a particulate matter reduction plan, as required by Rule 1001.

4 66. In July 2013, the District conditionally approved the draft particulate matter
5 reduction plan.

6 67. On July 31, 2013, State Parks submitted under protest to the District an
7 application for a permit to operate Oceano Dunes SVRA.

8 68. No public hearing was held on the application for the permit to operate.

9 69. On August 19, 2013, the District issued Permit to Operate No. 1897-1. The
10 permit by its terms pertained to the remediation and/or mitigation of dust emissions
11 from the SVRA. The permit stated that “this permit does not regulate the operation of
12 the SVRA or the vehicle activity within the SVRA,” but in fact by its nature it did, and
13 does, regulate the operation of Oceano Dunes SVRA. A true and correct copy of Permit
14 to Operate No. 1897-1 is attached hereto as Exhibit 2.

15
16 **FIRST CAUSE OF ACTION**
17 **(Petition for Writ of Administrative Mandamus, C.C.P. § 1094.5)**

18 70. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
19 reference, the allegations contained in paragraphs 1-69, inclusive, as though fully set
20 forth.

21 71. Petitioner Friends and its members are beneficially interested in the issuance of
22 the subject writ mandating that the District set aside Permit to Operate No. 1897-1.
23 Petitioner Friends and its members are beneficially interested in the issuance of the writ
24 because as historical, on-going and future users of Oceano Dunes SVRA for OHV
25 recreation and other recreation, beach driving and beach camping, and as a not-for-profit
26 corporation specifically formed under the laws of the state of California to preserve,
27 continue and expand OHV recreation at Oceano Dunes, and whose membership includes

1 taxpayers of the State of California and payers of special OHV registration fees and gas
2 taxes paid into a special State of California budget fund expressly established for the
3 purpose of maintaining OHV and SVRA facilities within the State, Petitioners Friends
4 and its members have an interest in ensuring (1) that public officials and agencies do not
5 unlawfully exceed their jurisdiction in adopting or attempting to impose standards or
6 rules or require permits that ultimately will or may restrict or prohibit said OHV
7 recreation at Oceano Dunes SVRA; (2) that laws, regulations, and duties are executed and
8 enforced uniformly, fairly, and as written; (3) that public officials and agencies do not
9 abuse their discretion or exceed their jurisdiction in requiring permits to operate; and (4)
10 that that public officials and agencies do not take said action in an arbitrary and
11 capricious manner, lacking in evidentiary support, or in the absence of proper
12 procedures or proper notice. Alternatively, Petitioner Friends and its members are
13 citizens seeking to enforce public rights and the object of this mandamus is to enforce a
14 public duty. The imposition of the permit requirement through Permit to Operate No.
15 1897-1 interferes with the fundamental vested rights of State Parks' long-standing and
16 continued operation of Oceano Dunes SVRA.

17 72. Petitioner has performed all conditions precedent to the filing of this Petition
18 and Complaint and otherwise exhausted all required and applicable administrative
19 remedies, or is otherwise excused given that this is a challenge to the authority of the
20 District or under the doctrine of futility.

21 73. Petitioner has no plain, speedy, and adequate remedy in the ordinary course
22 of law, other than the relief sought in this petition. Absent intervention by this Court, the
23 District will enforce, implement and apply Rule 1001 and/or Permit to Operate No. 1897-
24 1 to the detriment of Petitioner Friends and its members as described above. No
25 additional administrative appeal or other form of relief is available to prevent such an
26 occurrence. Petitioner Friends has a clear, present and beneficial right to performance of
27 the public business in accordance with the standards set forth herein.

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COUNT 1
(Permit to Operate 1897-1 Exceeds the District's Authority
to Regulate an Indirect Source of Air Pollution)

74. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-73, inclusive, as though fully set forth.

75. Administrative agencies have only the power conferred upon them by statute, and an act in excess of those powers is void.

76. While Health and Safety Code § 40716 (a)(1) authorizes APCDs to adopt and implement rules to "reduce or mitigate emissions from indirect and areawide sources of air pollution," the statute does not authorize an APCD, expressly or implicitly, to require permits for indirect sources of air pollution, or to operate one.

77. Rule 1001 is written in a way so that it presently applies only to Oceano Dunes SVRA.

78. Oceano Dunes SVRA, to the extent that it is a source of pollutant emissions at all, is an "indirect" source of said pollutants.

79. The only reference to indirect sources in the statutory provisions of the California Clean Air Act pertaining to permitting is contained in Health and Safety Code § 42311(g): "A district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources."

80. In adopting § 42311(g), the Legislature has recognized indirect sources as different from other sources of pollution and consequently has made them exempt from ordinary permitting requirements.

81. Permits may not be required of indirect sources under either the general permitting authority (§ 42300), the special permitting authority provisions relating to the

1 attainment of state ambient air quality standards (§§ 40910-40926), or any other
2 provision.

3 82. Statutory authority under Health & Safety Code § 42300(a) to establish a
4 permit system is limited to permitting machines, equipment, or other contrivances that
5 emit air contaminants, not indirect sources like Oceano Dunes SVRA.

6 83. Because Rule 1001 seeks to require a CDVAA Operator, i.e., State Parks, to
7 obtain a "permit to operate" from the District, and imposes a "performance standard," as
8 well as civil penalties and fines for violations, Rule 1001, taken wholly, and each of these
9 provisions taken separately, exceeds the authority of the District under the statutory
10 provisions discussed above, and constitutes an unlawful attempt to impose a permitting
11 scheme on an indirect source.

12 84. Permit to Operate No. 1897-1 in fact regulates Oceano Dunes SVRA, which is
13 an indirect source, and thus exceeds the District's authority under the general permitting
14 authority (§ 42300), the special permitting authority provisions relating to the attainment
15 of state ambient air quality standards (§§ 40910-40926), or any other provision.

16
17 **COUNT 2**

18 **(Permit to Operate 1897-1 Exceeds the District's Authority
19 to Require a Permit for a Direct Source of Air Pollution)**

20 85. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
21 reference, the allegations contained in paragraphs 1-84, inclusive, as though fully set
22 forth.

23 86. Administrative agencies have only the power conferred upon them by statute,
24 and an act in excess of those powers is void.

25 87. Rule 1001 is written in a way so that it presently applies only to Oceano Dunes
26 SVRA.

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1 88. To the extent to which Oceano Dunes SVRA is lawfully determined to be a
2 direct source of emissions, rather than an indirect source, Health and Safety Code § 42300
3 does not grant authority to the District to require a permit to operate the SVRA.

4 89. Statutory authority under Health & Safety Code § 42300(a) to establish a
5 permit system is limited to permitting machines, equipment, or other contrivances that
6 emit air contaminants, and such list does not include or encompass parks like Oceano
7 Dunes SVRA.

8 90. Permit to Operate No. 1897-1 in fact regulates Oceano Dunes SVRA, , and thus
9 exceeds the District's authority under the general permitting authority (§ 42300), the
10 special permitting authority provisions relating to the attainment of state ambient air
11 quality standards (§§ 40910-40926), or any other provision.

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14 **COUNT 3**
15 **(Permit to Operate 1897-1 Unlawfully Exceeds the District's Authority**
16 **By Failing to Comply with Rule 1001,**
17 **or Unlawfully De Facto Amending Rule 1001)**

18 91. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
19 reference, the allegations contained in paragraphs 1-90, inclusive, as though fully set
20 forth.

21 92. Administrative agencies have only the power conferred upon them by statute,
22 and an act in excess of those powers is void.

23 93. Rule 1001 states that "all facilities subject to this rule shall obtain a Permit to
24 Operate from the Air Pollution Control District by the time specified in the Compliance
25 Schedule."

26 94. Rule 1001 is written in a way so that it presently applies only to Oceano Dunes
27 SVRA.
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1 95. Thus, by its terms, Rule 1001 purports to require a Permit to Operate the
2 "facility" of Oceano Dunes SVRA.

3 96. The District issued Permit to Operate No. 1897-1 on or about August 19, 2013.
4 Permit to Operate No. 1897-1 asserts that "this permit does not regulate the operation of
5 the SVRA or vehicle activity within the SVRA."

6 97. If this statement is true, then Permit to Operate No. 1897-1 is invalid on the
7 basis that Rule 1001 purports to authorize a permit to operate for the facility, but the
8 District failed to abide by its own regulation since the permit denies that it regulates the
9 facility.

10 98. Alternatively, Permit to Operate No. 1897-1 is invalid on the basis that the
11 permit to operate actually doesn't authorize the operation of anything, and thus is not a
12 "permit to operate," but rather simply relists mitigation and compliance deadlines
13 already stated in Rule 1001.

14 99. Alternatively, the District staff has exceeded its legislative and administrative
15 authority by de facto amending Rule 1001 without proper notice and hearing by deleting
16 the requirement that a facility obtain a permit to operate.

17
18 **SECOND CAUSE OF ACTION**
19 **(Petition for Writ of Traditional Mandate, C.C.P. § 1085)**

20 100. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
21 reference, the allegations contained in paragraphs 1-99, inclusive, as though fully set
22 forth.

23 101. Petitioner Friends and its members are beneficially interested in the issuance
24 of the subject writ mandating that the District set aside Permit to Operate No. 1897-1.
25 Petitioner Friends and its members are beneficially interested in the issuance of the writ
26 because as historical, on-going and future users of Oceano Dunes SVRA for OHV
27 recreation and other recreation, beach driving and beach camping, and as a not-for-profit
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1 corporation specifically formed under the laws of the state of California to preserve,
2 continue and expand OHV recreation at Oceano Dunes, and whose membership includes
3 taxpayers of the State of California and payers of special OHV registration fees and gas
4 taxes paid into a special State of California budget fund expressly established for the
5 purpose of maintaining OHV and SVRA facilities within the State, Petitioners Friends
6 and its members have an interest in ensuring (1) that public officials and agencies do not
7 unlawfully exceed their jurisdiction in adopting or attempting to impose standards or
8 rules or require permits that ultimately will or may restrict or prohibit said OHV
9 recreation at Oceano Dunes SVRA; (2) that laws, regulations, and duties are executed and
10 enforced uniformly, fairly, and as written; (3) that public officials and agencies do not
11 abuse their discretion or exceed their jurisdiction in requiring permits to operate; and (4)
12 that that public officials and agencies do not take said action in an arbitrary and
13 capricious manner, lacking in evidentiary support, or in the absence of proper
14 procedures or proper notice. Alternatively, Petitioner Friends and its members are
15 citizens seeking to enforce public rights and the object of this mandamus is to enforce a
16 public duty. The imposition of the permit requirement through Permit to Operate No.
17 1897-1 interferes with the fundamental vested rights of State Parks' long-standing and
18 continued operation of Oceano Dunes SVRA.

19 102. Petitioner has performed all conditions precedent to the filing of this Petition
20 and Complaint and otherwise exhausted all required and applicable administrative
21 remedies, or is otherwise excused given that this is a challenge to the authority of the
22 District or under the doctrine of futility.

23 103. Petitioner has no plain, speedy, and adequate remedy in the ordinary course
24 of law, other than the relief sought in this petition. Absent intervention by this Court, the
25 District will enforce, implement and apply Rule 1001 and/or Permit to Operate No. 1897-
26 1 to the detriment of Petitioner Friends and its members as described above. No
27 additional administrative appeal or other form of relief is available to prevent such an
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1 occurrence. Petitioner Friends has a clear, present and beneficial right to performance of
2 the public business in accordance with the standards set forth herein.

3
4 **COUNT 1**
5 **(Permit to Operate 1897-1 Exceeds the District's Authority**
6 **to Regulate an Indirect Source of Air Pollution)**

7 104. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
8 reference, the allegations contained in paragraphs 1-103 inclusive, as though fully set
9 forth.

10 105. Administrative agencies have only the power conferred upon them by statute,
11 and an act in excess of those powers is void.

12 106. While Health and Safety Code § 40716 (a)(1) authorizes an Air Pollution
13 Control District to adopt and implement rules to "reduce or mitigate emissions from
14 indirect and areawide sources of air pollution," the statute does not authorize an Air
15 Pollution Control District, expressly or implicitly, to require permits for indirect sources
16 of air pollution, or to operate one.

17 107. Rule 1001 is written in a way so that it presently applies only to Oceano
18 Dunes SVRA.

19 108. Oceano Dunes SVRA, to the extent that it is a source of pollutant emissions at
20 all, is an "indirect" source of said pollutants.

21 109. The only reference to indirect sources in the statutory provisions of the
22 California Clean Air Act pertaining to permitting is contained in Health and Safety Code
23 § 42311(g): "A district may adopt, by regulation, a schedule of fees to be assessed on
24 areawide or indirect sources of emissions which are regulated, but for which permits are
25 not issued, by the district to recover the costs of district programs related to these
26 sources."
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1 110. In adopting § 42311(g), the Legislature has recognized indirect sources as
2 different from other sources of pollution and consequently has made them exempt from
3 ordinary permitting requirements.

4 111. Permits may not be required of indirect sources under either the general
5 permitting authority (§ 42300), the special permitting authority provisions relating to the
6 attainment of state ambient air quality standards (§§ 40910-40926), or any other
7 provision.

8 112. Statutory authority under Health & Safety Code § 42300(a) to establish a
9 permit system is limited to permitting machines, equipment, or other contrivances that
10 emit air contaminants, not indirect sources like Oceano Dunes SVRA.

11 113. Because Rule 1001 seeks to require a CDVAA Operator, i.e., State Parks, to
12 obtain a "permit to operate" from the District, and imposes a "performance standard," as
13 well as civil penalties and fines for violations, Rule 1001, taken wholly, and each of these
14 provisions taken separately, exceeds the authority of the District under the statutory
15 provisions discussed above, and constitutes an unlawful attempt to impose a permitting
16 scheme on an indirect source.

17 114. Permit to Operate No. 1897-1 in fact regulates Oceano Dunes SVRA, which is
18 an indirect source, and thus exceeds the District's authority under the general permitting
19 authority (§ 42300), the special permitting authority provisions relating to the attainment
20 of state ambient air quality standards (§§ 40910-40926), or any other provision.

21
22 **COUNT 2**
23 **(Permit to Operate 1897-1 Exceeds the District's Authority**
24 **to Require a Permit for a Direct Source of Air Pollution)**

25 115. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
26 reference, the allegations contained in paragraphs 1-114 inclusive, as though fully set
27 forth.
28

1 116. Administrative agencies have only the power conferred upon them by statute,
2 and an act in excess of those powers is void.

3 117. Rule 1001 is written in a way so that it presently applies only to Oceano
4 Dunes SVRA.

5 118. To the extent to which Oceano Dunes SVRA is lawfully determined to be a
6 direct source of emissions, rather than an indirect source, Health and Safety Code § 42300
7 does not grant authority to the District to require a permit to operate the SVRA.

8 119. Statutory authority under Health & Safety Code § 42300(a) to establish a
9 permit system is limited to permitting machines, equipment, or other contrivances that
10 emit air contaminants, and such list does not include or encompass parks like Oceano
11 Dunes SVRA.

12 120. Permit to Operate No. 1897-1 in fact regulates Oceano Dunes SVRA, , and
13 thus exceeds the District's authority under the general permitting authority (§ 42300), the
14 special permitting authority provisions relating to the attainment of state ambient air
15 quality standards (§§ 40910-40926), or any other provision.

16
17 **COUNT 3**
18 **(Permit to Operate 1897-1 Unlawfully Exceeds the District's Authority**
19 **By Failing to Comply with Rule 1001,**
20 **or Unlawfully De Facto Amending Rule 1001)**

21 121. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
22 reference, the allegations contained in paragraphs 1-120 inclusive, as though fully set
23 forth.

24 122. Administrative agencies have only the power conferred upon them by
25 statute, and an act in excess of those powers is void.

26 123. Rule 1001 states that "all facilities subject to this rule shall obtain a Permit to
27 Operate from the Air Pollution Control District by the time specified in the Compliance
28 Schedule."

1 124. Rule 1001 is written in a way so that it presently applies only to Oceano
2 Dunes SVRA.

3 125. Thus, by its terms, Rule 1001 purports to require a Permit to Operate the
4 "facility" of Oceano Dunes SVRA.

5 126. The District issued Permit to Operate No. 1897-1 on or about August 19,
6 2013. Permit to Operate No. 1897-1 asserts that "this permit does not regulate the
7 operation of the SVRA or vehicle activity within the SVRA."

8 127. If this statement is true, then Permit to Operate No. 1897-1 is invalid on the
9 basis that Rule 1001 purports to authorize a permit to operate for the facility, but the
10 District failed to abide by its own regulation since the permit denies that it regulates the
11 facility.

12 128. Alternatively, Permit to Operate No. 1897-1 is invalid on the basis that the
13 permit to operate actually doesn't authorize the operation of anything, and thus is not a
14 "permit to operate," but rather simply relists mitigation and compliance deadlines
15 already stated in Rule 1001.

16 129. Alternatively, the District staff has exceed its legislative and administrative
17 authority by de facto amending Rule 1001 without proper notice and hearing by deleting
18 the requirement that a facility obtain a permit to operate.

19
20 **THIRD CAUSE OF ACTION**
21 **(Declaratory Relief)**

22 130. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
23 reference, the allegations contained in paragraphs 1-129, inclusive, as though fully set
24 forth.

25 131. An actual controversy has arisen and now exists between Petitioner and
26 Plaintiff Friends and Respondent and Defendant District concerning their respective
27 rights and duties under numerous provisions of the California Clean Air Act. Friends
28

1 contends that Rule 1001 exceeds the District's authority under Health and Safety Code §§
2 40716(a)(1), 42311(g), § 42300 and the California Clean Air Act to regulate an indirect or a
3 direct source of pollution. Respondent and Defendant District disputes these
4 contentions.

5 132. Petitioner and Plaintiff Friends desires a judicial determination of said rights
6 and duties under these provisions of the California Clean Air Act, and the Health and
7 Safety Code, and a declaration as to the validity or invalidity of the District's compliance
8 with these provisions, and its own regulations.

9 133. Petitioner and Plaintiff Friends desires a judicial determination or declaration
10 that: (1) Permit to Operate 1897-1 exceeds the District's authority to regulate an indirect
11 source of air pollution; (2) Oceano Dunes SVRA, to the extent that it is a source of
12 pollutant emissions at all, is an "indirect" source of said pollutants; (3) Statutory
13 authority under Health & Safety Code § 42300(a) to establish a permit system is limited
14 to permitting machines, equipment, or other contrivances that emit air contaminants; (4)
15 Permit to Operate No. 1897-1 in fact regulates Oceano Dunes SVRA, which is an indirect
16 source, and thus exceeds the District's authority under the general permitting authority
17 (§ 42300), the special permitting authority provisions relating to the attainment of state
18 ambient air quality standards (§§ 40910-40926), or any other provision; (5) Section
19 42311(g) recognizes indirect sources as different from other sources of pollution and
20 consequently has made them exempt from ordinary permitting requirements; (6) Health
21 and Safety Code § 40716 (a)(1) authorizes an Air Pollution Control District to adopt and
22 implement rules to "reduce or mitigate emissions from indirect and areawide sources of
23 air pollution," but the statute does not authorize an Air Pollution Control District,
24 expressly or implicitly, to require permits for indirect sources of air pollution, or to
25 operate one; and (7) Permit to Operate No. 1897-1 exceeds District's authority under state
26 law and District Rule 1001, and thus District is prohibited from requiring any such
27 permit to operate Oceano Dunes SVRA.

1 134. Alternatively, Petitioner and Plaintiff Friends desires a judicial determination
2 or declaration that in the event that the Court determines Oceano Dunes SVRA to be a
3 direct source of emissions, then: (1) Health and Safety Code § 42300 does not grant
4 authority to the District to require a permit to operate the SVRA as Health & Safety Code
5 § 42300(a) authority to establish a permit system is limited to permitting machines,
6 equipment, or other contrivances that emit air contaminants, and such list does not
7 include or encompass parks like Oceano Dunes SVRA and (2) Permit to Operate No.
8 1897-1 in fact regulates Oceano Dunes SVRA, and thus exceeds the District's authority
9 under the general permitting authority (§ 42300), the special permitting authority
10 provisions relating to the attainment of state ambient air quality standards (§§ 40910-
11 40926), or any other provision.

12 135. Petitioner and Plaintiff Friends further desires a judicial determination or
13 declaration that Permit to Operate No. 1897-1 **unlawfully exceeds the District's authority**
14 **by failing to comply with Rule 1001, or unlawfully de facto amending Rule 1001 because**
15 **Rule 1001 purports to authorize a permit to operate for the facility** of Oceano Dunes
16 SVRA yet Permit to Operate No. 1897-1 asserts that "this permit does not regulate the
17 operation of the SVRA or vehicle activity within the SVRA." Alternatively, Petitioner
18 and Plaintiff Friends desires a judicial determination or declaration that Permit to
19 Operate No. 1897-1 actually doesn't authorize the operation of anything, and thus is not a
20 "permit to operate," but rather simply relists mitigation and compliance deadlines
21 already stated in Rule 1001, and thus is **not authorized, exceeds the District's authority**
22 and/or fails to comply with Rule 1001 and the District's own regulations.

23 136. A judicial declaration is necessary and appropriate at this time under the
24 circumstances in order that Petitioner and Plaintiff may ascertain the legitimacy and
25 lawfulness of the Respondent and Defendant's adoption of Rule 1001.
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27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Petitioner and Plaintiff Friends respectfully prays for relief as
3 follows:

4 1. That the Court issue a writ of mandate (administrative or traditional) and/or
5 injunctive relief ordering Respondent District to vacate the District's inclusion of a permit
6 to operate requirement in Rule 1001;

7 2. That the Court issue a writ of mandate (administrative or traditional) and/or
8 injunctive relief ordering Respondent District to vacate Permit to Operate No. 1897-1;

9 3. That the Court issue a declaratory judgment against Respondent District
10 declaring and finding that the Rule 1001 exceeds the District's authority under Health
11 and Safety Code §§ 40716(a)(1), 42311(g), § 42300 and the California Clean Air Act to
12 regulate an indirect or direct source of pollution; and that Permit to Operate No. 1897-1
13 exceeds the District's authority under Health and Safety Code §§ 40716(a)(1), 42311(g), §
14 42300, the California Clean Air Act, and Rule 1001 to regulate an indirect or direct source
15 of pollution;

16 4. That the Court award costs of suit to Petitioner and Plaintiff Friends;

17 5. That the Court award attorneys' fees to Petitioner and Plaintiff Friends,
18 pursuant to C.C.P. § 1021.5, the equitable private attorney general doctrine, and state law.
19 On September 2, 2013, counsel for Petitioner Friends sent by fax and email to counsel for
20 the District a settlement demand in a good faith effort to resolve Friends objections to
21 Rule 1001 and to Permit-to-Operate No. 1897-1 short of litigation. By the terms of the
22 letter, Friends requested a response from the District by September 6, 2013. The District
23 met in closed session on September 5, 2013. The District did not respond to Friends'
24 letter.

25 6. For any other equitable or legal relief that the Court deems just and proper.
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1 Dated September 11, 2013

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Respectfully submitted,



Thomas D. Roth
Law Offices of Thomas D. Roth
One Market, Spear Tower, Suite 3600
San Francisco, California 94105
(415) 293-7684

Attorneys for
Petitioner/ Plaintiff
Friends of Oceano Dunes, Inc.

VERIFICATION

State of California

County of Santa Clara

I am the President of Friends of Oceano Dunes, Inc., a California not-for-profit corporation, and I am authorized to make this verification on its behalf, and I make this verification for that reason.

I have read the foregoing FRIENDS OF OCEANO DUNES' VERIFIED PETITION FOR A WRIT OF ADMINISTRATIVE MANDAMUS (C.C.P. § 1094.5) AND/OR A PETITION FOR TRADITIONAL MANDAMUS (C.C.P. § 1085), AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe and on that ground allege that the matters stated in the document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 9th, 2013 at San Jose, California.



Jim Suty

EXHIBIT 1

Exhibit A

RULE 1001 Coastal Dunes Dust Control Requirements (adopted (date of Adoption))

- A. APPLICABILITY. The provisions of this Rule shall apply to any operator of a coastal dune vehicle activity area, as defined by this Regulation, which is greater than 100 acres in size.
- B. DEFINITIONS. For the purpose of this Rule, the following definitions shall apply:
1. "APCD": The San Luis Obispo County Air Pollution Control District.
 2. "APCO": The San Luis Obispo County Air Pollution Control Officer.
 3. "Coastal Dune": means sand and/or gravel deposits within a marine beach system, including, but not limited to, beach berms, fore dunes, dune ridges, back dunes and other sand and/or gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands.
 4. "Coastal Dune Vehicle Activity Area (CDVAA)": Any area within 1.5 miles of the mean high tide line where public access to coastal dunes is allowed for vehicle activity.
 5. "CDVAA Monitor": An APCO-approved monitoring site or sites designed to measure the maximum 24-hour average PM₁₀ concentrations directly downwind from the vehicle riding areas at the CDVAA. At a minimum, the monitoring site shall be equipped with an APCO-approved Federal Equivalent Method (FEM) PM₁₀ monitor capable of measuring hourly PM₁₀ concentrations continuously on a daily basis, and an APCO-approved wind speed and wind direction monitoring system.
 6. "CDVAA Operator": Any individual, public or private corporation, partnership, association, firm, trust, estate, municipality, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties, who is responsible for the daily management of a CDVAA.
 7. "Control Site Monitor": An APCO-approved monitoring site or sites designed to measure the maximum 24-hour average PM₁₀ concentrations directly downwind from a coastal dune area comparable to the CDVAA but where vehicle activity has been prohibited. At a minimum, the monitoring site shall be equipped with an APCO-approved Federal Equivalent Method (FEM) PM₁₀ monitor capable of measuring hourly PM₁₀ concentrations continuously on a daily basis, and an APCO-approved wind speed and wind direction monitoring system.
 8. "Designated Representative": The agent for a person, corporation or agency. The designated representative shall be responsible for and have the full authority to implement control measures on behalf of the person, corporation or agency.

9. "Monitoring Site Selection Plan": A document providing a detailed description of the scientific approach, technical methods, criteria and timeline proposed to identify, evaluate and select appropriate locations for siting the temporary and long-term CDVAA and control site monitors.
10. "Paved Roads": An improved street, highway, alley or public way that is covered by concrete, asphaltic concrete, or asphalt.
11. "PM₁₀": Particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns as measured by the applicable State and Federal reference test methods.
12. "PMRP": Particulate Matter Reduction Plan.
13. "PMRP Monitoring Program": The APCO approved monitoring program contained in the PMRP that includes a detailed description of the monitoring locations; sampling methods and equipment; operational and maintenance policies and procedures; data handling, storage and retrieval methods; quality control and quality assurance procedures; and related information needed to define how the CDVAA and Control Site Monitors will be sited, operated and maintained to determine compliance with section C.3.
14. "Temporary Baseline Monitoring Program": A temporary monitoring program designed to determine baseline PM₁₀ concentrations at the APCO-approved CDVAA and Control Site Monitor locations prior to implementation of the PMRP emission reduction strategies and monitoring program. The program shall include a detailed description of the monitoring locations; sampling methods and equipment; operational and maintenance policies and procedures; data handling, storage and retrieval methods; quality control and quality assurance procedures; and related information needed to define how the temporary monitors will be sited, operated and maintained to provide the required baseline data. The temporary monitors shall meet the specifications of the CDVAA and Control Site Monitors unless otherwise specified by the APCO.
15. "Track-Out": Sand or soil that adhere to and/or agglomerate on the exterior surfaces of motor vehicles and/or equipment (including tires) that may then fall onto any highway or street as described in California Vehicle Code Section 23113 and California Water Code 13304.
16. "Track-Out Prevention Device": A gravel pad, grizzly, rumble strip, wheel wash system, or a paved area, located at the point of intersection of an unpaved area and a paved road that is designed to prevent or control track-out.
17. "Vehicle": Any self-propelled conveyance, including, but not limited to, off-road or all-terrain equipment, trucks, cars, motorcycles, motorbikes, or motor buggies.
18. "24-Hour Average PM₁₀ Concentration": The value obtained by adding the hourly PM₁₀ concentrations measured during a calendar 24-hour period from midnight to midnight, and dividing by 24.

C. GENERAL REQUIREMENTS

1. The CDVAA operator shall develop and implement an APCO-approved Temporary Baseline Monitoring Program to determine existing PM₁₀ concentrations at the APCO-approved CDVAA and Control Site Monitor locations prior to implementation of the PMRP emission reduction strategies and monitoring program.
2. The operator of a CDVAA shall prepare and implement an APCO-approved Particulate Matter Reduction Plan (PMRP) to minimize PM₁₀ emissions for the area under the control of a CDVAA operator. The PMRP shall contain measures that meet the performance requirements in C.3 and include:
 - a. An APCO-approved PM₁₀ monitoring network containing at least one CDVAA Monitor and at least one Control Site Monitor.
 - b. A description of all PM₁₀ control measures that will be implemented to reduce PM₁₀ emissions to comply with this rule, including the expected emission reduction effectiveness and implementation timeline for each measure.
 - c. A Track-Out Prevention Program that does not allow track-out of sand to extend 25 feet or more in length onto paved public roads and that requires track-out to be removed from pavement according to an APCO-approved method and schedule.
3. The CDVAA operator shall ensure that if the 24-hr average PM₁₀ concentration at the CDVAA Monitor is more than 20% above the 24-hr average PM₁₀ concentration at the Control Site Monitor, the 24-hr average PM₁₀ concentration at the CDVAA Monitor shall not exceed 55 ug/m³.
4. The CDVAA operator shall ensure they obtain all required permits from the appropriate land-use agencies and other affected governmental agencies, and that the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Quality Act (NEPA) are satisfied to the extent any proposed measures identified in the PMRP or Temporary Baseline Monitoring Program require environmental review.
5. All facilities subject to this rule shall obtain a Permit to Operate from the Air Pollution Control District by the time specified in the Compliance Schedule.

D. Exemptions

1. Section C.3 shall not apply during days that have been declared an exceptional event by the APCO and where the United States Environmental Protection Agency has not denied the exceptional event.

E. RECORDKEEPING REQUIREMENTS: The CDVAA operator subject to the requirements of this Rule shall compile and retain records as required in the APCO

approved PMRP. Records shall be maintained and be readily accessible for two years after the date of each entry and shall be provided to the APCD upon request.

F. COMPLIANCE SCHEDULE:

1. The CDVAA operator shall comply with the following compliance schedule:
 - a. By February 28, 2012, submit a draft Monitoring Site Selection Plan for APCO approval.
 - b. By May 31, 2012, submit a draft PMRP for APCO review.
 - c. By November 30, 2012, submit complete applications to the appropriate agencies for all PMRP projects that require regulatory approval.
 - d. By February 28, 2013, obtain APCO approval for a Temporary CDVAA and Control Site Baseline Monitoring Program and begin baseline monitoring.
 - e. By May 31, 2013, complete all environmental review requirements and obtain land use agency approval of all proposed PMRP projects.
 - f. By July 31, 2013, obtain APCO approval of the PMRP, begin implementation of the PMRP Monitoring Program, and apply for a Permit to Operate.
 - g. By May 31, 2015, the requirements of Section C.3 shall apply.
2. With the exception of section F.1.g, the CDVAA operator will not be subject to civil penalties for failure to meet any timeframe set forth in section F.1 caused solely by delays from regulatory or other oversight agencies required to consider and approve the operator's PMRP or any part thereof.

EXHIBIT 2



Air Pollution Control District
San Luis Obispo County

PERMIT TO OPERATE

Number 1897-1

OWNER-OPERATOR:

California Department of Parks and Recreation
Off-Highway Vehicle Division
Oceano Dunes District Office
340 James Way, Suite 270
Pismo Beach, CA 93449

LOCATION:

Oceano Dunes State Vehicular Recreation Area (SVRA)

DESCRIPTION:

This permit pertains to the remediation and/or mitigation of dust emissions from the SVRA through the implementation of a Particulate Matter Reduction Plan (PMRP) approved by the Air Pollution Control Officer (APCO). This permit does not regulate the operation of the SVRA or the vehicle activity within the SVRA.

CONDITIONS:

1. The permit holder shall comply with all provisions of Rule 1001, Coastal Dunes Dust Control Requirements.
2. The permit holder shall meet all requirements of any plan approved by the Air Pollution Control Officer under the provisions of Rule 1001.
3. The permit holder shall provide all information collected or held by the permit holder or its agents and contractors needed to estimate air pollution emissions or ambient pollution concentrations to the APCO within 14 days of a request by the APCO or the APCO's designee. This information may consist of, but is not limited to: pollutant release characteristics, raw and corrected particulate and meteorological monitoring data, and any other data required by, or collected to facilitate compliance with, Rule 1001.

CONDITIONS (continued):

4. The following conditions and timelines are based on Rule 1001 and the mutual settlement letter dated May 24, 2013. In accordance with Rule 1001, the permit holder will not be subject to civil penalties for failure to meet any timeframe set forth in conditions 4.a. through 4.i. below caused solely by delays from regulatory or other oversight agencies required to consider and approve the operator's PMRP or any part thereof.
 - a. By August 31, 2013, the permit holder shall submit a revised Coastal Development Permit (CDP) application to the California Coastal Commission (CCC) and obtain a completeness finding from CCC.
 - b. By September 30, 2013, the permit holder shall submit a Rule 1001 required Temporary Baseline Monitoring Program to the APCO for review.
 - c. By December 31, 2013, the permit holder shall obtain APCO approval for the Temporary Baseline Monitoring Program.
 - d. By May 31, 2014, the permit holder shall obtain CDP approval from the CCC.
 - e. By June 1, 2014, the permit holder shall begin Temporary Baseline Monitoring.
 - f. By July 31, 2014, the permit holder shall obtain final agency approvals for all Particulate Matter Reduction Plan (PMRP) projects and obtain final APCO approval of the PMRP.
 - g. By November 1, 2014, the permit holder shall install and operate an APCO-approved PM₁₀ monitoring network as required by Rule 1001.
 - h. By December 31, 2015, the permit holder shall obtain all necessary permits, including an APCD Authority to Construct for a track-out control system.
 - i. The permit holder shall install and operate a track-out control system within 6 months of obtaining the required permits.
5. Effective May 31, 2015, the permit holder shall meet the performance requirements of Rule 1001.C.3.
6. The permit holder shall comply with all requirements of the California Health and Safety Code, Federal Air Quality Regulations and District Rules and Regulations.
7. Data and Site Access and Recordkeeping
 - a. The permit holder shall maintain records of all monitoring data required by any plan approved by the APCO in raw and corrected format for the most current three years in a format approved by the APCO. Chain of custody records shall be included for all monitoring data from raw to corrected formats.

CONDITIONS (continued):

- b. The APCO or the APCO's designee shall be given real-time remote access to all data collected at any monitoring site used for Rule 1001 compliance.
- c. The APCO or the APCO's designee shall be granted the right of entry and inspection for all air quality monitoring sites and control measure installations associated with Rule 1001.

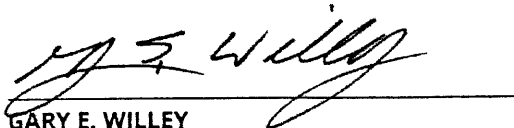
August 19, 2013

ISSUANCE DATE

September (annually)

ANNIVERSARY

LARRY R. ALLEN
Air Pollution Control Officer



GARY E. WILLEY
Manager, Engineering Division

Application Number: 5956

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

FRIENDS OF OCEANO DUNES INC Plaintiff(s), VS.	CASE NUMBER CV130457
SAN LUIS OBISPO COUNTY AIR Defendant(s).	Case Management Conference

Roth, Thomas D
LAW OFFICES OF THOMAS D ROTH
One Market St, Spear Tower, Ste 3600
San Francisco CA 94105

NOTICE OF ASSIGNMENT & CASE MANAGEMENT CONFERENCE.

This case is assigned to **Hon. Martin J. Tangeman** for all purposes.
Plaintiff must serve the Summons and Complaint, a copy of this Notice, the Standing Case Management Order of the judge assigned for all purposes and must file proofs of service within 60 days after the complaint is filed.

Defendants shall file responsive pleadings within 30 days of service

unless the parties stipulate to an extension of not more than 15 days.

IT IS HEREBY ORDERED:

1. The parties must appear for a first Case Management Conference on:

January 16, 2014 at 9:00 am in Department 1

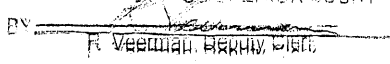
THE PARTIES OR THEIR ATTORNEYS MUST APPEAR AT THE CASE MANAGEMENT CONFERENCE ***

For information about telephone appearances call COURTCALL at (888) 882-6878

2. Each party must file & serve a Case Management Statement at least 15 days before the conference.
3. The person appearing at the first Case Management Conference must be familiar with the case and prepared to discuss suitability of the case for mediation, binding arbitration, judicial arbitration or some form of alternative dispute resolution.
4. Trial will be set within the 11th or 12th month after the filing of the complaint. Counsel must arrange their schedules, reserve dates with witnesses and schedule trial preparation with this in mind. Continuances will be granted only on a clear showing of good cause.
5. All law and motion matters will be calendared in the department of the assigned judge and filed with the Clerk's Office.
6. Each party should be prepared to show cause why sanctions should not be imposed for a failure to comply with these rules.

*****LIMITED JURISDICTION ONLY:** unless the parties have entered into arbitration as required by Local Rules 9.00 and 26.00. "Entered into arbitration" means the date upon which the administrator mails the arbitration list.

encs . 3

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas D. Roth, SBN 208601 LAW OFFICES OF THOMAS D. ROTH One Market, Spear Tower, Suite 3600 San Francisco, California 94105 TELEPHONE NO.: 415 293-7684 FAX NO.: ATTORNEY FOR (Name): Plaintiff Friends of Oceano Dunes, Inc.	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="font-size: 1.5em; font-weight: bold; margin: 10px 0;">SEP 11 2013</div> SAN LUIS OBISPO SUPERIOR COURT BY:  F. VERONICA BERKOW, CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Luis Obispo STREET ADDRESS: 1035 Palm Street MAILING ADDRESS: CITY AND ZIP CODE: San Luis Obispo, California BRANCH NAME: Main	CASE NUMBER: CV 130457 JUDGE: DEPT:
CASE NAME: Friends of Oceano Dunes v. San Luis Obispo County APCD	CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

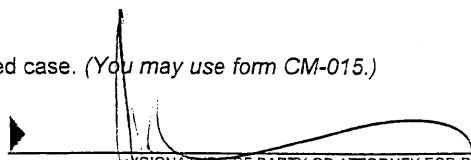
Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 3
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 9/11/13
Thomas D. Roth
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO**

Department 1

**STANDING CASE MANAGEMENT ORDER
FOR CASES ASSIGNED TO THE HON. MARTIN J. TANGEMAN**

INSTRUCTIONS TO PLAINTIFF(S)/CROSS-COMPLAINANT(S):

YOU shall serve a copy of this Standing Case Management Order on all Defendants/Cross-Defendants at the same time the complaint/cross-complaint is served.

I. GENERAL MATTERS

A. It is the Court's policy to provide a dignified forum in which to resolve disputes in a peaceful, professional, legally correct and expeditious manner. All of the following rules are designed to achieve these goals. It is not the Court's intention to prohibit a party from raising any issue by any means allowed by Rule of Court, Code or statute. If any of the rules or procedures discussed herein creates a problem, counsel should raise the matter with the Court at the earliest opportunity.

B. Electronic communication with the courtroom clerk is permissible for routine communications having to do with scheduling, stipulated continuances, and/or joint requests. Substantive arguments are not permitted unless approved by the Court. In any correspondence with the clerk, opposing counsel should be copied in order to avoid ex-parte communications. The clerk's email address is Erin.Brown@slo.courts.ca.gov.

C. Counsel shall turn off all audible telephones and pagers and instruct their clients and witnesses to do so. Communication devices worn on the head are not permitted in the courtroom.

II. CASE MANAGEMENT CONFERENCES ("CMC")

A. Unless otherwise specifically ordered, CMC Statements are required. The Court expects that counsel will be prepared to discuss the current status of the case, discovery, amenability to mediation, and any unusual factual, legal or evidentiary issues that may need resolution. Counsel who fail to appear will typically be set for an OSC hearing why sanctions should not be issued. The initial amount is ordinarily \$150.00.

B. Early mediation is strongly encouraged. Good faith participation in mediation will ordinarily excuse participation in a Mandatory Settlement Conference. The Court will typically sign an order to mediate at an early CMC.

C. It is the Court's policy to resolve discovery disputes informally and efficiently. Accordingly, the Court has instituted special procedures for the resolution of discovery disputes through Pretrial Discovery Conferences, which can be scheduled on forms that are available from the clerk's office (see section IV.C, below).

III. MEDIATION

A. The parties are strongly encouraged to engage in early, meaningful mediation. Mediation will ordinarily take place within 90-120 days of all parties' appearance, but a longer time may be allowed. Either private or judicial mediation is acceptable.

B. Parties who select private mediation should comply with the mediator's instructions regarding briefing and payment of fees, which ordinarily should be divided equally.

C. A worthwhile mediation process means that parties, attorneys and any other person whose consent or authority is required to achieve a final disposition of the dispute shall be present, as well as a representative of any insurer who has authority to settle the case for any amount up to the limits of the policy.

D. Plaintiff should file a one-page Notice of Mediation with the clerk's office notifying the Court of the date of the mediation and name of the mediator.

IV. LAW AND MOTION MATTERS

A. To the extent practicable, the Court will post tentative rulings on law and motion matters on the Court's website no later than the evening before the hearing. The Court's website is located at www.slocourts.net.

B. When parties agree to submit the matter based on a tentative ruling, or to have a matter taken off calendar, counsel should promptly notify both the courtroom clerk and the research attorneys via e-mail or by phone. This is important in order to avoid unnecessary commitment of judicial resources to moot matters. The contact information for the research attorneys is SloCourtAttorney@slo.courts.ca.gov.

C. Resolution of Discovery Disputes

1. The parties may stipulate to proceeding with an informal Pretrial Discovery Conference in lieu of filing and serving discovery motions under Sections 2016.010 through 2036.050. In that event, the parties shall proceed as follows:

a. All parties to the discovery dispute shall sign a written stipulation electing to resolve the specified discovery dispute(s) between them according to the procedure outlined in this section IV.C. In such event, the parties stipulate to waive their right to proceed with regularly noticed motions and stipulate that the Court can issue binding discovery orders as a full and final resolution of such dispute(s).

b. Any request for a Pretrial Discovery Conference must be filed with the clerk's office on the approved form (which is available online or can be requested from the clerk), must include a brief summary of the dispute, and must be served on opposing counsel in the same manner as the request is filed with the clerk. Any opposition to a request for a Pretrial Discovery Conference must also be filed on an approved form (provided by the clerk), must include a brief summary of why the requested discovery should be denied, must be filed within two (2) business days of receipt of the request, and must be served on opposing counsel in the same manner as the opposition is filed with the clerk.

c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.

d. The parties will be notified by minute order whether the request has been granted or denied and, if granted, the date and time of the Pretrial Discovery Conference.

e. The Court will issue a binding order at the conclusion of the Pretrial Discovery Conference.

V. READINESS CONFERENCE

A. These conferences are typically scheduled during the week before trial. At these conferences, trial counsel should be *personally present*, and prepared to discuss at least the following topics:

1. Estimated trial length. A jury trial will ordinarily be in session from Monday through Friday from 1:30 to 4:45 p.m., although trial days beginning at 10:00 a.m. are not uncommon.

2. Number, timing and availability of witnesses, as well as any special witness needs, or the need to call witnesses out of order.

a. Counsel have responsibility for arranging the appearance of all witnesses during their presentation of the case so as to eliminate delays. Counsel should confer among themselves as to when witnesses will be needed *at least 24-48 hours in advance of a witness' testimony*.

b. Counsel are to inquire of their clients and witnesses to determine whether they are in need of any type of accommodation with an interpreter, under the Americans with Disabilities Act, or any other type of assistance.

3. Numbering and exchange of exhibits. The parties are encouraged to agree upon a reasonable exhibit numbering system. Exhibits to be used in the case-in-chief should be pre-marked and exchanged *no later than the morning of trial and earlier if feasible*. The use of exhibit books or binders is strongly encouraged

4. Voir dire procedures, including mini-opening statements and preinstruction, and jury questionnaires. Counsel should attempt to agree upon a brief neutral statement of the case to be read to the prospective jury panel.

5. Jury instructions and verdict forms.

a. Counsel are to deliver all proposed instructions, verdict forms and requests for special findings to the Court and to opposing counsel *no later than the morning of trial*. Proposed instructions shall be complete in all respects without unfilled "blanks" or "bracketed" portions.

b. Either before or shortly after trial starts, counsel are to meet and confer with the goal of reducing the amount of contested jury instructions and disagreement as to the form of the verdict. Within two (2) court days after beginning trial, all counsel should notify the Court in writing as to which of the proposed instructions, and which sections of the verdict form, are acceptable to all parties, and which are disputed.

6. Stipulations to reduce the length of trial. Counsel should consult with each other regarding all possible stipulations and reduce them to writing. In particular, counsel should consider waiving the necessity for authentication/foundational evidence regarding all trial exhibits, unless authentication is an important issue

7. Motions in limine. Prior to hearings on motions in limine, counsel should review *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 669-677, and its progeny. Counsel should advise their clients and witnesses about rulings on motions in limine that pertain to evidentiary issues. Counsel will be held responsible for any violations of rulings on motions in limine.

VI. TRIAL

A. The Court will typically hear organizational and scheduling matters, procedural issues and in limine motions at the beginning of trial, including any matters left over or continued from the Readiness Conference.

1. Originals of all depositions to be used in the trial are to be lodged with the clerk at the beginning of trial. At the end of the trial, these depositions can be picked up from the clerk, or they can be returned by mail at the party's expense.

B. Jury Selection Procedures

1. Jury selection ordinarily begins at 1:30 p.m. the first day of trial.

2. Mini opening statements of no more than 3 minutes per side are encouraged prior to jury selection.

3. After the entire panel is screened for hardship, eighteen names are drawn at random, and voir dire is conducted. Unless otherwise ordered, a time limit of thirty minutes per side for 18 prospective jurors will apply.

4. Challenges for cause are exercised and ruled upon at sidebar. Upon request, counsel will be given the opportunity to make a record of any unreported sidebar conference once the jury is not present.

5. At least two alternate jurors are typically selected. If it becomes necessary to substitute an alternate juror, the first alternate chosen will be the first substitute.

6. Trial Procedures

a. No charts, diagrams or other exhibits should be shown or read aloud to the jury unless by stipulation or after admission of the item into evidence.

b. Counsel should provide hard copies of any power point presentations, audio or video recordings and the like to opposing counsel in advance of showing them to the jury

c. If counsel will seek to introduce an audio recording (or audio portion of a video recording), please review California Rule of Court 2.1040.

d. Marking documents out of files: Please review *Neal v. Farmers Insurance Exchange* (1978) 21 Cal.3d 910, 923-924.

e. Any object that cannot be folded into 8½" x 11" such as models, blowups, etc. should be accompanied by either a photograph or a photocopy to be retained by the Court in lieu of the oversized exhibit.

f. When objections are made, counsel should state only the legal basis, without speaking objections.

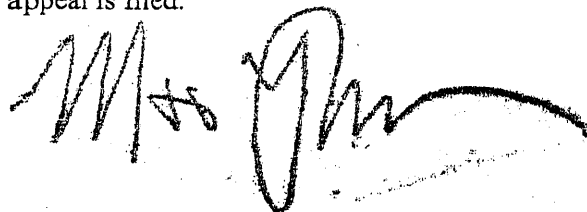
g. Sidebar conferences are normally held off the record. Counsel may make a record of any unreported sidebar conference at an appropriate opportunity in the proceedings. During trial, if counsel wish to place matters on the record, he or she may so request and the Court will provide an opportunity to do so, ordinarily at the end of the trial day once the jury has been excused.

7. Post-Trial Procedures

a. After the verdict is rendered by the jury, the prevailing party is expected to prepare the judgment, which should be submitted on the next Court day following trial unless otherwise ordered.

b. Counsel should make arrangements with the clerk to withdraw exhibits in cases that will not be appealed. The clerk will hold the exhibits for sixty days after the filing of the notice of entry of judgment. Any exhibits remaining after that time will be destroyed unless a notice of appeal is filed.

DATED: November 13, 2012



HON. MARTIN J. TANGEMAN
*Judge of the Superior Court
County of San Luis Obispo*