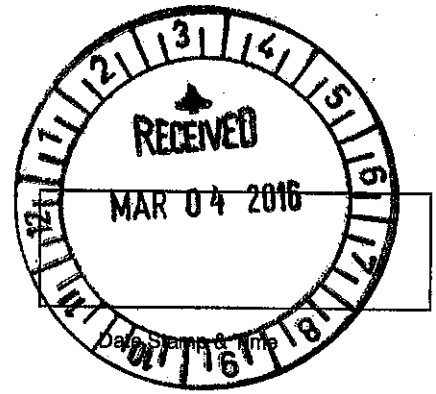


**OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
Civil Service of Process Cover Sheet
SAC SF OAK LA SD FR**



Service of Process Disclaimer:

To All Persons Attempting Service of Process Upon The Office Of The Attorney General:

Please be advised that staff assigned to receive documents delivered to the Attorney General's Office are not authorized to accept such documents as properly served. Further, **staff are not authorized to receive documents on behalf of any individual.** In receiving documents delivered by process servers and/or other members of the public, office personnel do not thereby waive any right of the State of California, the Attorney General's Office, any other entity of the State of California, or any individual to object to the validity of the service.

Please complete this form when delivering documents to the Attorney General's Office:

Case Name: <u>Friends -vs- CA Dept of Parks</u>	
County :	Court No.:
Document(s) served:	<input checked="" type="checkbox"/> Summons and Complaint/Cross Complaint/Amended Complaint <input type="checkbox"/> Notice to Attorney General's Office pursuant to Section _____ <input type="checkbox"/> Petition For Relief From Late Claim Filing (Gov. Code, § 946.6) <input type="checkbox"/> Pitchess Motion <input type="checkbox"/> Small Claims <input type="checkbox"/> Deposition Subpoena for Production of Business Records <input type="checkbox"/> Notice of Consumer or Employee and Objection and check for \$15.00 <input type="checkbox"/> Writ of Mandate and Complaint for Declaratory Relief <input checked="" type="checkbox"/> Other (please list): <u>Civil Case Cover Sheet</u> <u>Standing Order</u> <u>Notice of Assignment</u>
Document(s) For (Specify State Agency):	<u>State of CALIFORNIA</u>
Process Server's Name:	<u>Jenice Rossner</u>
Name of Company: (business name, address, and number)	<u>CPS</u> <u>3104 Ost # 230</u> <u>Sac CA 95816</u> <u>916-247-7990</u>
Receptionist Signature:	<u>C. HED</u>
FOR SERVICE DEPUTY'S USE ONLY	
Forwarded to:	<u>Deborah Smith</u> (5) Date Forwarded: <u>3/4/16</u>
Name of Service Deputy, section, and telephone number:	<u>Tamsha Wormley CLS</u> <u>916 3231976</u>
NOTES:	

The attached document(s) appear(s) to be the responsibility of your section; if they are **not**, please return them to the Service Deputy named above, noting the section to which they are to be directed. (Rev. 7/2014).

SUMMONS (CITACION JUDICIAL)

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

FILED

3/4/2016 9:36:38 AM

SAN LUIS OBISPO SUPERIOR COURT
BY *[Signature]*
M. Zapeda, Deputy Clerk

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a department of the State of California, Defendant, and *SLO A.F. Pollution Control District, and Board of Directors of*

YOU ARE BEING SUED BY PLAINTIFF: *SLO APCD, 1021 Park*
(LO ESTÁ DEMANDANDO EL DEMANDANTE): *in interest*
FRIENDS OF OCEANO DUNES, INC., a 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 o más de valor recluida 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 Ct
1050 Monterey Street, San Luis Obispo, CA 93408

CASE NUMBER:
(Número del Caso): 16CV-0113

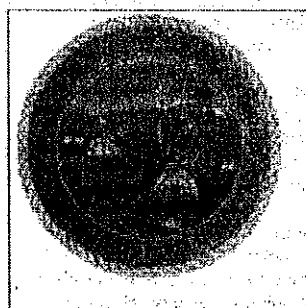
The name, address, and telephone number of plaintiff's attorney, or plaintiff
(El nombre, la dirección y el número de teléfono del abogado del demandante):
Thomas D. Roth, Law Offices of Thomas D. Roth, One Marl
415 293-7684

Matthew Zapeda 35
[Signature]

DATE: *(Fecha)* 3/4/2016 */s/*Michael Powell Clerk, *(Secre*

) Deputy *(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

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): *State of California*

- under: CCP 413.10 (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)

4. other (specify): *416.50 (public entity)*

by personal delivery on (date):

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) 276-2376
7 Email: rothlaw1@comcast.net

FILED

3/4/2016 9:36:38 AM

SAN LUIS OBISPO SUPERIOR COURT
BY *[Signature]*
M. Zapata, Deputy Clerk

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

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.: 16CV-0113

15 vs.

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

16 CALIFORNIA DEPARTMENT OF PARKS
17 AND RECREATION, a department of the
18 State of California, and DOES 1-50,
19 inclusive

(California Environmental Quality Act
"CEQA"), Pub. Res. Code § 21000, et
seq.; Code of Civil Procedure § 1085)

20 Respondent and Defendant

21 and

22 SAN LUIS OBISPO COUNTY
23 AIR POLLUTION CONTROL DISTRICT, a
24 local air pollution control district; the
25 BOARD OF DIRECTORS OF THE SAN
26 LUIS OBISPO COUNTY AIR POLLUTION
27 CONTROL DISTRICT, the District's
28 governing body, and DOES 1-50, inclusive

Real Parties-in-Interest

Petitioner and Plaintiff Friends of Oceano Dunes, Inc., a California not-for-profit corporation ("Friends"), on its own behalf, on behalf of its members, on behalf of the general public and in the public interest, petition this Court for a writ of traditional

1 mandamus (C.C.P. § 1085), and for declaratory and injunctive relief, directed to
2 Respondent/Defendant California Department of Parks and Recreation ("State Parks")
3 and Real Parties-in-Interest San Luis Obispo County Air Pollution Control District and its
4 Board of Directors (the "District").

5 By this verified petition and complaint, Friends alleges:

6 **INTRODUCTION**

7 1. Friends brings this lawsuit to challenge the activities, actions and decisions of
8 State Parks in approving and seeking to implement a project to address certain dust
9 particle emissions from Oceano Dunes State Vehicular Recreation Area (the "Park")
10 located in San Luis Obispo County (the "Project") and State Parks' illegal assertion,
11 issuance and/or reliance on one or more categorical exemptions for the Project from the
12 California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq., as
13 reflected in State Parks' Notice of Exemption issued on or about February 12, 2016. As
14 such, State Parks has exceeded its authority, abused its discretion by failing to proceed in
15 a manner required by law and/or failed to support its determination with substantial
16 evidence.

17 2. The Project includes dust suppression methods at three independent locations
18 within the Park. The dust suppression methods would physically cover the ground with
19 extensive artificial and nonnative materials including large areas of metal mesh, 43,000
20 linear feet of fencing (about 40 acres), 1,000 large straw bales (more than 20 additional
21 acres), monitoring equipment, trailers, multiple 10 foot high "wind towers,"
22 meteorological instruments, solar panels, toxic batteries, control equipment, station
23 amenities and additional fencing. Based on information and belief, much of the
24 equipment and material must be flown in by helicopter.

25 3. The Project is part of the implementation of Rule 1001, adopted by the District
26 in 2010.

1 4. In December 2012, State Parks announced it would act as the lead agency in
2 preparing an environmental impact report ("EIR") for a dust control project to
3 implement Rule 1001. State Parks concluded that an EIR was necessary because the
4 agency had completed an Initial Study that determined that the dust control project
5 would have potentially significant environmental impacts. The Initial Study described
6 the dust control project as "the installation, operation, and maintenance of
7 meteorological, sand flux (i.e., sand movement), and particulate matter (PM) monitoring
8 equipment and dust and track-out control measures." State Parks also issued a Notice of
9 Preparation for the EIR.

10 5. Despite failing to complete the EIR (or even to release a draft EIR), and without
11 complying with CEQA, during 2013, 2014 and 2015, State Parks implemented elements of
12 the dust control project on a temporary basis lasting multiple months each year, and then
13 removed the dust control measures. Subparts of the dust control project that State Parks
14 has implemented without complying with CEQA since 2010 include:

- 15 2010: installed a wind tower that is currently in operation
- 16 2011: installed 200 straw bales and associated instruments
- 17 2012: installed an acre of native vegetation in an open dune
- 18 2013: installed two acres of native vegetation
- 19 2013: installed 12 monitoring sites
- 20 2014: installed two treatment areas totaling 45 acres with 15 acres of wind fencing
- 21 in the off-road vehicle riding area and 30 acres of straw bales
- 22 2015: installed two treatment areas totaling 65 acres with 40 acres of wind fencing
- 23 and 25 acres of straw bales
- 24 2015: installed a monitoring station south of Oso Flaco Lake
- 25
- 26
- 27
- 28

1 6. In February 2015, State Parks issued a revised Notice of Preparation for the
2 dust control project EIR. In a subsequent public hearing, State Parks announced that it
3 intended to release a draft of the EIR no later than December 2015.

4 7. To date, State Parks has failed to release, issue or certify either a draft or final
5 EIR for the dust control project, or any of its subcomponents.

6 8. In February 2016, State Parks again illegally asserted reliance on one or more
7 categorical exemptions for the third straight year of a "temporary" dust control project
8 that is simply a smaller version, or a subpart, of the dust control project for which State
9 Parks is currently preparing an EIR, and for which State Parks already concluded (in an
10 December 2012 Initial Study) would potentially result in significant adverse
11 environmental impacts. The 2016 Project is within the area or boundary of the dust
12 control project for the EIR as presented in the 2012 Initial Study.

13 9. By failing to perform any CEQA review of the Project, and by issuing a
14 categorical exemption for the Project, Respondents/Defendants failed to proceed in a
15 manner required by law.

16 **THE PARTIES, JURISDICTION AND VENUE**

17 10. Friends is, and at all times mentioned in this Petition and Complaint, a
18 California not-for-profit corporation and watchdog association, with its principal place of
19 business in San Luis Obispo County.

20 11. Friends was expressly created to preserve and create recreational uses,
21 including off-highway vehicle recreation, at Oceano Dunes State Vehicular Recreation
22 Area. Friends is a voluntary organization which represents approximately 28,000
23 members and users of Oceano Dunes SVRA, who routinely engage, have engaged and
24 plan to continue to engage in motorized off-highway vehicle ("OHV") recreation, beach
25 driving and beach camping at Oceano Dunes. Hundreds of members engage, have
26 engaged and plan to continue to engage in motorized OHV recreation, beach driving and
27 beach camping at Oceano Dunes SVRA multiple times each year.

1 12. Friends was formed in 2001 for the express purpose of "preserving and
2 developing recreational uses" in the "Oceano Dunes area" of San Luis Obispo County.

3 13. Friends' members live near, use, recreate, visit and personally enjoy the
4 aesthetic, environmental, wildlife and recreational resources of Oceano Dunes SVRA,
5 including but not limited to hiking, walking on the beach, exploring, camping, swimming,
6 horseback riding, motorized and non-motorized recreation, bird watching, surf fishing,
7 surfing, photography of scenic environment and observing wildlife.

8 14. Friends' members are taxpayers in California and many pay taxes in San Luis
9 Obispo County. State Parks has expended, is expending, and is proposing to expend,
10 substantial public funds to erroneously determine that the Project is categorically
11 excluded, and to unlawfully segment the Project from the larger dust control and
12 monitoring Project that is being implemented as part of Rule 1001. The expenditure is
13 illegal and wasteful.

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

16 16. Friends and its members are adversely affected by State Parks' illegal
17 determination that the dust control project is categorically exempted from CEQA.

18 17. Respondent and Defendant State Parks is and has been the state department
19 responsible for managing and operating Oceano Dunes SVRA.

20 18. Real Party-in-Interest District is and was the local agency which created and
21 legislatively adopted Rule 1001. The Project is being proposed as part of the
22 implementation of Rule 1001. The District is also responsible for compliance with CEQA
23 for Rule 1001 and its implementation.

24 19. Real Party-in-Interest Board is the decision-making body for the District and is
25 responsible for adopting rules and regulations regarding nonvehicular sources of
26 pollution in San Luis Obispo County (the "County"). The District Board is comprised of 12
27

1 elected officials, representing each district of San Luis Obispo County and the
2 incorporated cities.

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

8 21. Pursuant to Code of Civil Procedure §§ 393 and 394(a), venue is proper in that
9 the cause of actions arose and the Respondent and Defendant State Parks, and the Real
10 Parties-in-Interest, the District and the Board, are located in San Luis Obispo County.

11 22. This Court has jurisdiction pursuant to C.C.P. §§ 1085, 1086, 1095.5, 1060,
12 and 527(a), and Public Resources Code §§ 21168 and 21168.5.

13
14 **FACTUAL BACKGROUND**

15 **Background on Oceano Dunes SVRA**

16 23. State Parks operates Oceano Dunes SVRA pursuant to a Permit No. 4-82-300
17 issued in 1982 by the California Coastal Commission.

18 24. In August 1982, shortly after the Coastal Commission granted the permit to
19 State Parks, the California Legislature adopted the Off-Highway Motor Vehicle
20 Recreation Act (the "SVRA Act"). The law declared a state policy of setting aside
21 "effectively managed areas and adequate facilities for the use of off-highway vehicles . . ."
22 Pub. Res. Code § 5090.02(b). The Legislature also tasked State Parks with "making the
23 fullest public use of the outdoor recreational opportunities [for off-highway motor
24 vehicles] . . ." Id., § 5090.43(a).

25 25. Pursuant to the SVRA Act, Pub. Res. Code § 5090.32(a), State Parks has the
26 duty and responsibility for "planning, acquisition, development, conservation, and
27

1 restoration of lands” within SVRAs. Pub. Res. Code §§ 5090.32(b), (d) and (h); and
2 5090.35(a), (b) and (c). State Parks thus manages and operates Oceano Dunes SVRA.

3
4 **Background on District Rule 1001**

5 26. On November 16, 2011, the District adopted Rule 1001 to implement “coastal
6 dunes dust control requirements” for Oceano Dunes SVRA. In January 2012, Friends
7 filed a Petition for Traditional Writ against the District in San Luis Obispo Superior Court
8 challenging the validity of Rule 1001. Friends named State Parks as a Real Party-in-
9 Interest.

10 27. On April 19, 2013, the trial court issued a Ruling and Order Denying Petitions
11 for Peremptory Writ of Mandate.

12 28. In May 2013, Friends appealed the trial court’s ruling to the Second Appellate
13 District, Division Six. On April 6, 2015, in a published opinion *Friends of Oceano Dunes*
14 *v. San Luis Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th 957, the
15 Court of Appeal reversed the trial court. The Court of Appeal remitted the case to the trial
16 court on June 10, 2015.

17 29. Shortly thereafter, in the summer of 2015, Friends submitted a proposed
18 judgment and writ to set aside Rule 1001 entirely. The trial court set a hearing for
19 September 15, 2015 to consider the proposed judgment and writ against the District.
20 Judge Crandall, the trial court judge, *sua sponte*, postponed the hearing on the proposed
21 judgment and writ three times until December 23, 2015. At that December 23, 2015
22 hearing, Judge Crandall issued a tentative ruling that a judgment and writ should be
23 issued in favor of Friends and that Rule 1001 should be vacated completely. The Court
24 took the case under submission.

25 30. Although California Rules of Court, Rules 3.1590(k) and (l), state that the
26 “court must sign and file the judgment... within 10 days after the hearing,” the Court has
27 failed to do so as of the date of the filing of this Petition and Complaint.

1 31. With the legal validity of Rule 1001 in question, State Parks nonetheless has
2 proceeded with efforts to implement the illegal rule.

3 32. As part of that effort, State Parks has proposed a temporary dust control
4 project (the "Project"), on a smaller geographic area than contemplated by the overall
5 dust control and monitoring project that is being studied by State Parks in its unfinished
6 and uncertified EIR.

7 **State Parks' Unlawful Categorical Exemption Assertion**

8 33. On February 9, 2016, State Parks issued a "Notice of Exemption" asserting
9 that its temporary dust control project at Oceano Dunes SVRA is categorically exempted
10 under CEQA Guidelines §§ 15304, 15306 and 15330.

11 34. On February 12, 2016, the Governor's Office of Planning and Research, known
12 as the State Clearinghouse, posted State Parks' Notice of Exemption.

13 35. On February 24, 2016, Friends served by U.S. mail a "Notice of Intent to File
14 CEQA Petition" on State Parks, thus complying with Pub. Res. Code § 21167.5. The
15 Notice and proof of service is attached as Exhibit A hereto.

16 36. On February 24, 2016, the undersigned counsel sent via email a letter to Brent
17 Marshall, the Superintendent for State Parks' Oceano District, where Oceano Dunes
18 SVRA is located, making reasonable efforts to settle the dispute. State Parks did not
19 respond to the letter.

20 37. Friends filed this CEQA action within the applicable statute of limitations.

21
22 **FIRST CAUSE OF ACTION**
23 **(Petition for Writ of Traditional Mandate, C.C.P. § 1085)**

24 38. Petitioner Friends repeats, realleges and incorporates herein by reference, the
25 allegations contained in paragraphs 1-37, inclusive, as though fully set forth.

26 39. Petitioner Friends and its members are beneficially interested in the issuance
27 of the subject writ mandating that State Parks withdraw, set aside and vacate its February
28

1 9, 2016 Notice of Exemption and the underlying determination that the Project is
2 categorically exempt from CEQA. Petitioner Friends and its members are beneficially
3 interested in the issuance of the writ as historical, on-going and future users of Oceano
4 Dunes SVRA for off highway vehicle recreation and other recreational and environmental
5 uses, including beach driving and beach camping, bird watching, wildlife conservation
6 and observation, photography and enjoyment of natural resources. Friends' purpose and
7 Articles of Incorporation include preserving and expanding recreational opportunities at
8 Oceano Dunes. Friends' members who live, work near and use the Park have a beneficial
9 interest in State Parks' compliance with CEQA. Friends' members live and work near the
10 Park and use the Park for beneficial interests of enjoyment of natural resources and
11 wildlife/plant species, aesthetic, economic, recreational, and resource protection interests
12 in the local environment. And as a not-for-profit corporation specifically formed under
13 the laws of the state of California to preserve, continue and expand OHV recreation at
14 Oceano Dunes, and whose membership includes taxpayers of the State of California and
15 payers of special OHV registration fees and gas taxes paid into a special State of
16 California budget fund expressly established for the purpose of maintaining OHV and
17 SVRA facilities within the State, Petitioners Friends and its members have an interest in
18 ensuring (1) that public officials and agencies do not unlawfully exceed their jurisdiction
19 in implementing projects or undertaking activities at Oceano Dunes SVRA; (2) that laws,
20 regulations, and duties are executed and enforced uniformly, fairly, and as written; (3)
21 that public officials and agencies do not abuse their discretion or exceed their jurisdiction
22 at Oceano Dunes SVRA; and (4) that public officials and agencies do not take said action
23 in an arbitrary and capricious manner, lacking in evidentiary support, or in the absence
24 of proper procedures or proper notice. Friends and its members have a beneficial interest
25 in CEQA compliance and participation in a CEQA analysis of the significant
26 environmental and recreational impacts that includes relevant specifics of the Park, the
27 resources involved, the physical changes, alterations to ecological systems and sensitive

28 A special OHV registration fee was paid to the State of California in 2016.

VERIFIED PETITION FOR WRIT/COMPLAINT - 9

16 California's special OHV registration fee was established for the purpose of maintaining OHV and

17 SVRA facilities within the State. The fee is levied on all OHV registrations in the State.

18 ensuring that the special OHV registration fee is used for the purpose of maintaining OHV and

1 habitat of the Park, the human use of the land in these projects, and the scenic quality of
2 the Park environment. Friends' beneficial interests has been and continues to be
3 threatened by State Parks' implementation of the Project and the overall dust control
4 project now and over multiple years without completing an EIR, thus changing and
5 shifting the environmental baseline and excluding the public and Friends' and its
6 members from participating in the EIR process. A prejudicial abuse of discretion has
7 occurred here due to the erroneous determination of an exemption from CEQA and the
8 failure to complete an EIR, thus precluding informed decisionmaking and informed
9 public participation, thereby thwarting the statutory goals of CEQA. This interest is
10 especially paramount here since State Parks continues to implement the Project, related
11 activities and projects, and components of the overall dust control project without
12 complying with CEQA.

13 40. Alternatively, Petitioner Friends and its members are citizens seeking to
14 enforce public rights and the object of this mandamus action is to enforce a public duty.
15 Friends and its members have a geographical nexus to the Project.

16 41. Petitioner has performed all conditions precedent to the filing of this Petition
17 and Complaint and otherwise exhausted all required and applicable administrative
18 remedies, or is otherwise excused given that this is a challenge to the authority of State
19 Parks.

20 42. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of
21 law, other than the relief sought in this petition. Absent intervention by this Court, State
22 Parks will proceed with the implementation of the temporary dust control project to the
23 detriment of Petitioner Friends and its members as described herein. No additional
24 administrative appeal or other form of relief is available to prevent such an occurrence.
25 Petitioner Friends has a clear, present and beneficial right to performance of the public
26 business in accordance with the standards under CEQA and set forth herein.

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COUNT 1
(State Parks Exceeded its Authority
and Violated CEQA in Determining
That the Project Is Categorically Exempt)

43. Petitioner Friends repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-42 inclusive, as though fully set forth.

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

45. CEQA applies to public agencies including a state agency such as State Parks. (Pub. Res. Code § 21063)

46. The Project is a project under CEQA and is subject to CEQA. (Pub. Res. Code § 21080(a); 14 Cal. Code Regs § 15002(d)) It is a discretionary activity directly undertaken by a public agency, State Parks (pursuant to District Rule 1001 promulgated by the District), which has the potential to result in a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. (Pub. Res. Code § 21065; 14 Cal. Code Regs § 15378(a))

47. Categorical exemptions apply to projects that fall within a predefined type of activity that have been analyzed and determined not to have a significant effect on the environment. (Pub. Res. Code § 21084(a); 14 CCR § 15300; § 15354 ("Categorical exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.")) State Parks illegally determined that the Project is categorically exempt under CEQA Guidelines §§ 15304, 15306, and 15330 (14 Cal. Code Regs §§ 15304, 15306, and 15330).

48. The Project is not categorically exempt under CEQA Guidelines § 15304. Section 15304 exempts "minor public or private alterations in the condition of land, water, and/or vegetation . . ." Specifically, in its Notice of Exemption, State Parks asserts an exemption based on "project activities consist of the minor temporary use of

1 land having negligible or no permanent effect on the environment," which is a reference
2 to categorical exemption § 15304(e): "Minor temporary use of land having negligible or
3 no permanent effects on the environment, including carnivals, sales of Christmas trees,
4 etc." State Parks' NOE states the Project includes the use of metal mesh siding of thick
5 wire with plastic fencing material over 1.5 acres of open sand in the riding and camping
6 area; up to approximately 43,000 linear feet of 4-foot tall wind fencing up to 40 acres; up
7 to 1,000 straw bales up to 20 acres in the off-road vehicle riding area; and the inclusion of
8 monitoring stations and equipment. The project is not similar to § 15304(e) minor
9 temporary use of land as illustrated by carnivals or sales of Christmas trees. State Parks'
10 project description is for the placement of new straw bales on 20 acres of open sand at
11 Oceano Dunes SVRA. This Project is not covered by the predefined activities that have
12 been analyzed and determined to not have a significant effect on the environment for a
13 "minor temporary use of land." The CEQA Guidelines make clear that this exemption
14 should not apply if the project is located on an environmentally sensitive area. A 2015
15 California Coastal Commission Staff Report regarding management of Oceano Dunes
16 SVRA concluded that the entire Oceano Dunes SVRA has been identified by the
17 Commission as an environmentally sensitive habitat area and part of a larger and
18 significant and sensitive ecological system, the Nipomo-Guadalupe dunes complex. Based
19 on information and belief, the area selected for the Project is designated as
20 "environmentally sensitive habitat area" by San Luis Obispo County. Based on
21 information and belief, the area selected for the Project also is separately designated as
22 critical habitat by the U.S. Fish and Wildlife Service for the federally endangered La
23 Graciosa thistle. In addition, the Project does not qualify under Section 15304 because
24 physically covering 20-60 acres of the ground with artificial and nonnative materials
25 including metal mesh, fencing and straw bales, and other areas with monitoring
26 equipment, trailers, multiple 10 foot high "wind towers," meteorological instruments,
27 solar panels, toxic batteries, control equipment, station amenities and additional fencing

1 that must be flown in due to environmental impacts is much more than a "minor"
2 alteration in the condition of the land and/or vegetation, and thus, the Project does not fit
3 within this categorical exemption.

4 49. The Project also is not categorically exempt under CEQA Guidelines § 15306.
5 Section 15306 exempts "basic data collection, research, experimental management, and
6 resource evaluation activities *which do not result in a serious or major disturbance to an*
7 *environmental resource.*" The Project does not qualify under § 15306 because physically
8 covering 20-60 acres of the ground with artificial and nonnative materials including
9 metal mesh, fencing and straw bales, and other areas with monitoring equipment,
10 trailers, multiple 10 foot high "wind towers," meteorological instruments, solar panels,
11 toxic batteries, control equipment, station amenities and additional fencing that must be
12 flown in would result in a serious or major disturbance to an environmental resource.

13 50. The Project also is not categorically exempt under CEQA Guidelines § 15330.
14 Section 15330 exempts "minor cleanup actions taken to prevent, minimize, stabilize,
15 mitigate, or eliminate the release or threat of release of a hazardous waste or substance
16 which are small or medium removal actions costing \$1 million or less." The Project does
17 not qualify under Section 15330 because the Project is not a hazardous waste or substance
18 "clean up" action, or is not minor or within the cost limitation, and does not address a
19 hazardous waste or substance. The exemption covers only minor removal actions under
20 the California Hazardous Substance Account Act (Health and Safety Code §§ 25300-
21 25395.45) and the Comprehensive Environmental Response, Compensation, and Liability
22 Act ("CERCLA") (42 U.S.C. §§ 9601-9675).

23 51. The Project also is not categorically exempt under any other exemption,
24 including, but not limited to, any exemption regarding actions to prevent or mitigate an
25 emergency since there is no sudden and unexpected environmental issue here.

26 52. State Parks also erred, exceeded its authority and violated CEQA in finding the
27 Project categorically exempted since one or more exceptions to the exemptions apply,
28

1 including: because there is a reasonable possibility of a significant effect on the
2 environment due to unusual circumstances (14 Cal. Code Regs § 15300.2(c)); because
3 significant cumulative impacts from projects of the same type would result (14 Cal. Code
4 Regs § 15300.2(b)); and because the Project is within the CEQA-specified five classes of
5 projects that does not allow the use of a categorical exemption if the project will have
6 impacts on a uniquely sensitive environment (14 Cal. Code Regs § 15300.2(a)).

7 53. There is a reasonable possibility of a significant effect on the environment due
8 to unusual circumstances. (14 Cal. Code Regs § 15300.2(c)) The circumstances of the
9 Project differ from the circumstances of projects typically falling within categorical
10 exemptions allowed by CEQA Guidelines §§ 15304, 15306 and 15330, and those
11 differences create an environmental risk that is inconsistent with each of those
12 exemptions. The project has features that distinguish it from the type of project
13 contemplated in the exempt classes, such as its size, location and duration of time and
14 reinsertion of the project actions repeatedly for multiple years, creating a significant
15 effect due to those unusual circumstances. The wind fencing, metal mesh and straw bales
16 will physically cover the ground surface. The size of the project is 60 acres of dust control,
17 not the small area of a Christmas tree lot: 40 acres of open sand area inside the open
18 riding and camping area (for wind fencing and roughness elements) and 20 acres of open
19 sand area outside the open riding and camping area. The CEQA baseline is being altered
20 by State Parks' repeated annual projects, thus illegally shifting the analysis of the
21 significant environmental effects to a new and different physical environment than
22 existed at the commencement of the EIR process. Thus, the Project presents unusual
23 circumstances and there is a reasonable possibility that a significant environmental
24 impact will result from those unusual circumstances. State Parks ignored these unusual
25 circumstances and disregarded the reasonable possibility that significant environmental
26 impacts will result from the Project.

1 54. None of the categorical exemptions apply because the cumulative impact of
2 successive projects of the same type in the same place over time is significant. 14 Cal.
3 Code Regs § 15300.2(b). State Parks Project makes clear that the activities and projects
4 implemented since 2010 are interrelated parts of the overall dust control project for
5 which State Parks has failed to analyze. The 2016 dust control project is part of a series of
6 related, continuing or similar dust control projects since 2010 in the same general area:

- 7
- 8 2010: installed a wind tower that is currently in operation
 - 9 2011: installed 200 straw bales and associated instruments
 - 10 2012: installed an acre of native vegetation in an open dune
 - 11 2013: installed two acres of native vegetation
 - 12 2013: installed 12 monitoring sites
 - 13 2014: installed two treatment areas totaling 45 acres with 15 acres of wind fencing
 - 14 in the off-road vehicle riding area and 30 acres of straw bales
 - 15 2015: installed two treatment areas totaling 65 acres with 40 acres of wind fencing
 - 16 and 25 acres of straw bales
 - 17 2015: installed a monitoring station south of Oso Flaco Lake
- 18

19 55. With respect to five classes of projects, such classes of projects cannot be
20 categorically exempted if the subject project is located in a uniquely sensitive
21 environment. The Project at issue falls within many of these special classes, including the
22 construction of facilities and equipment (Class 3)(14 Cal. Code Regs § 15303); minor
23 alterations to land or vegetation (Class 4)(14 Cal. Code Regs § 15304); information
24 collection (Class 6)(14 Cal. Code Regs § 15306); and construction or placement of
25 accessory structures (Class 11)(14 Cal. Code Regs § 15311). The Project, as proposed also
26 is within a uniquely sensitive environment and may have an impact on an environmental
27 resource of "hazardous or critical concern where designated, precisely mapped, and

1 officially adopted pursuant to law by federal, state, or local agencies.” (14 Cal. Code Regs §
2 15300.2(a)) Specifically, the Project is located within an area “designated, precisely
3 mapped, and officially adopted” for critical habitat for the federally endangered La
4 Graciosa thistle by the U.S. Fish and Wildlife Service, and as environmentally sensitive
5 habitat area by the County of San Luis Obispo in its official planning documents. In
6 addition, State Parks' 2012 Initial Study for the overall Dust Control Project stated that
7 the proposed project area includes 320 acres (including the area for the Project at issue),
8 consisting of mostly flat, bare sand beach areas or vegetated dunes that are considered
9 environmentally sensitive habitat under the Grover Beach and SLO County local coastal
10 plans. The Initial Study identified as "potentially significant impact" on candidate,
11 sensitive, or special status species because most project components would be located in
12 open sand or paved areas that are adjacent or close to vegetation that provides habitat for
13 native wildlife. The project area is known to support six federally and/or state listed plant
14 species, including: marsh sandwort (*Arenaria paludicola*, federally and state endangered),
15 surf thistle (state threatened), La Graciosa thistle (*Cirsium scariosum* var. *loncholepis*,
16 federally endangered and state threatened), beach spectaclepod (state threatened),
17 Nipomo Mesa lupine (*Lupinus nipomensis*, federally and state endangered) and Gambel's
18 watercress (*Nasturtium gambelii*, federally endangered and state threatened); surf thistle,
19 La Graciosa thistle and beach spectaclepod also occur or are likely to occur in the Santa
20 Barbara County project area. The proposed project could impact ground nesting birds if
21 monitoring equipment or other project features are placed on or near nesting areas. The
22 federally threatened western snowy plover (*Charadrius alexandrinus* ssp. *nivosus*) and
23 the federally and state endangered California least tern (*Sternula antillarum browni*) nest
24 in the SLO County project area annually; the western snowy plover also nests at the Santa
25 Barbara County project area annually and the California least tern has been recorded
26 nesting in the Santa Barbara County project area in the past. Special-status birds known
27 to or likely to nest in vegetation in one or both of project areas include Allen's

1 hummingbird (*Selasphorus sasin*, USFWS Bird of Conservation Concern), Nuttall's
2 woodpecker (*Picoides nuttallii*, USFWS Bird of Conservation Concern), loggerhead shrike
3 (*Lanius ludovicianus*, California Species of Special Concern and USFWS Bird of
4 Conservation Concern) and yellow warbler (*Setophaga petechia*, California Species of
5 Special Concern and USFWS Bird of Conservation Concern). Raptors such as Cooper's
6 hawk (*Accipiter cooperii*) and red-tailed hawk (*Buteo jamaicensis*) as well as a variety of
7 other common bird species also likely nest in the project areas. The proposed project
8 could impact sensitive coastal dune habitat. "Central dune scrub" and "central foredunes"
9 are listed by the California Natural Diversity Database as sensitive habitats. The EIR will
10 evaluate the project's potential impacts to coastal dune vegetation and, if necessary,
11 identify mitigation measures to ensure temporary and permanent monitoring equipment
12 and control measures do not result in a substantial adverse effect to coastal dune habitat.
13 No EIR has yet been completed. Accordingly, the Project cannot be categorically
14 exempted.

15 56. In addition, State Parks illegally relied on mitigation measures in concluding
16 that the Project is categorically exempted and/or in determining that the above stated
17 exceptions to the categorical exemptions do not apply. Neither CEQA nor its Guidelines
18 authorize consideration of mitigation measures in connection with a categorical
19 exemption.

20
21 **COUNT 2**
22 **(State Parks Exceeded its Authority**
23 **and Violated CEQA By Segmenting**
24 **the Overall Dust Control Project into**
25 **Multiple Subparts Including the Project at Issue Here)**

26 57. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
27 reference, the allegations contained in paragraphs 1-56 inclusive, as though fully set forth.

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

3 59. Under CEQA, a project is "the whole of the action" with potential
4 environmental impacts. (14 Cal Code Regs § 15378(a)); Pub. Res. Code § 21065.) CEQA
5 prohibits piecemeal review of the significant environmental impacts of a project where a
6 project is segmented into smaller components and environmental considerations are
7 submerged by chopping a large project into multiple smaller projects.

8 60. Here, the Project is a subpart of the overall dust control and monitoring
9 project, i.e., "the whole of the action." State Parks has illegally, in excess of its authority
10 and in violation of CEQA, attempted to segment or piecemeal the temporary Project from
11 the overall dust control project. The Revised Notice of Preparation for the Oceano Dunes
12 SVRA Dust Control Project EIR (February 6, 2015) is for a 5-year Dust Control Project at
13 Pismo State Beach and Oceano Dunes SVRA. The project location in the Revised 2015
14 NOP for implementing dust control measures is approximately 690-acre area of Oceano
15 Dunes SVRA. The Initial Study states that the proposed project area includes
16 approximately 3,060 acres in Oceano Dunes SVRA.) State Parks decided to prepare a
17 Program EIR for its Dust Control Project under 14 Cal Code Regs § 15168(a) because this
18 Dust Control Project constituted a logical series of actions that are connected, would
19 occur in approximately the same geographic area, and would result in generally similar
20 environmental effects that can be mitigated in similar ways. The proposed activities for
21 this 5-year Dust Control Project show how the 2016 Project, and the other segmented
22 projects since 2010, are components of the 5-year Dust Control Project that State Parks
23 has been conducting and implementing without yet preparing a final EIR. The proposed
24 activities for the 5-year Dust Control Project include: (1) planting native vegetation on 20
25 acres per year at Oceano Dunes SVRA with a total of approximately 100 acres of native
26 vegetation over the 5 years covered by the yet completed Program EIR; (2) temporarily
27 deploying up to 40 acres of wind fencing and/or straw bales at Oceano Dunes SVRA from

1 March through September of each year; (3) potentially applying soil stabilizers; (4)
2 preventing track-out of sand onto Grand Avenue; and (5) dust and meteorological
3 monitoring at Oceano Dunes SVRA. The 2015 Notice of Preparation expressly states that
4 the Dust Control Project also includes continuing existing dust control, monitoring and
5 track-out prevention activities currently taking place at Oceano Dunes SVRA. State Parks
6 determined an EIR for this proposed project should be prepared because the proposed
7 activities have the potential to cause one or more adverse environmental effects related to
8 aesthetics, biological resources, cultural resources and recreation. State Parks has
9 implemented the following subparts of the overall dust control project, thus segmenting
10 the project:

- 11 2010: installed a wind tower that is currently in operation
- 12 2011: installed 200 straw bales and associated instruments
- 13 2012: installed an acre of native vegetation in an open dune
- 14 2013: installed two acres of native vegetation
- 15 2013: installed 12 monitoring sites
- 16 2014: installed two treatment areas totaling 45 acres with 15 acres of wind fencing
17 in the off-road vehicle riding area and 30 acres of straw bales
- 18 2015: installed two treatment areas totaling 65 acres with 40 acres of wind fencing
19 and 25 acres of straw bales
- 20 2015: installed a monitoring station south of Oso Flaco Lake

21 The 2016 Project adds yet another part of the overall dust control program.
22 Instead of preparing a final Program EIR for the Dust Control Project, State Parks has
23 implemented by unlawful segmentation over the past years some of the activities of the
24 overall dust control project. State Parks has included statements in one or more of these
25 previous projects admitting that these subparts include "the specific dust control and
26 monitoring actions necessary to gather information for a longer-term dust control
27 program at Oceano Dunes SVRA."

1 61. State Parks has been preparing an EIR on the overall dust control and
2 monitoring project since 2012. In preparing that EIR, State Parks must include all
3 components of the overall dust control and monitoring project, including the temporary
4 Project at issue in this lawsuit. (See, e.g., 14 Cal Code Regs § 15378(a)) It must include
5 reasonably foreseeable elements and actions that are part of the overall dust control and
6 monitoring project and the Project at issue here is reasonably foreseeable. It has failed to
7 do so here.

8
9
10 **SECOND CAUSE OF ACTION**
11 **(Declaratory Relief)**

12 62. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
13 reference, the allegations contained in paragraphs 1-61, inclusive, as though fully set
14 forth.

15 63. An actual controversy has arisen and now exists between Petitioner and
16 Plaintiff Friends and Respondent State Parks concerning that agency's compliance with
17 CEQA. Friends contends that State Parks has illegally, in excess of its authority and in
18 violation of CEQA determined that the Project is categorically exempt from CEQA.
19 Friends further contends that such a determination improperly segments the overall dust
20 control project also in violation of CEQA. Respondent and Defendant State Parks
21 disputes these contentions.

22 64. Petitioner and Plaintiff Friends desires a judicial determination of said rights
23 and duties under CEQA, and a declaration as to the validity or invalidity of State Parks'
24 compliance with these provisions, and its own regulations.

25 65. Petitioner and Plaintiff Friends desires a judicial determination and
26 declaration that:

1 (1) State Parks exceeded its authority and violated CEQA in determining that the
2 Project is categorically exempt;

3 (2) The Project is not categorically exempt from CEQA pursuant to 14 Cal. Code
4 Regs § 15304;

5 (3) The Project is not categorically exempt from CEQA pursuant to 14 Cal. Code
6 Regs § 15306;

7 (4) The Project is not categorically exempt from CEQA pursuant to 14 Cal. Code
8 Regs § 15330;

9 (5) The Project is not categorically exempt under any other exemption to CEQA;

10 (6) State Parks exceeded its authority and violated CEQA in finding the Project
11 categorically exempted since one or more exceptions to the exemptions apply;

12 (7) The Project is not categorically exempt because CEQA exception that there is
13 significant effect on the environment due to unusual circumstances is applicable (14 Cal.
14 Code Regs § 15300.2(c));

15 (8) The Project is not categorically exempt because CEQA exception that there are
16 significant cumulative impacts from projects of the same type in the same place would
17 result is applicable (14 Cal. Code Regs § 15300.2(b));

18 (9) The Project is not categorically exempt because the Project is within the
19 CEQA-specified five classes of projects that does not allow the use of a categorical
20 exemption if the project will have impacts on a uniquely sensitive environment (14 Cal.
21 Code Regs § 15300.2(a));

22 (10) State Parks illegally relied on mitigation measures in concluding that the
23 Project is categorically exempted and/or in determining that the categorical exemptions
24 do not apply; and

25 (11) State Parks exceeded its authority and violated CEQA by segmenting the
26 overall dust control project into multiple subparts including the 2016 Project at issue
27 here.

1 66. A judicial declaration is necessary and appropriate at this time under the
2 circumstances in order that Petitioner and Plaintiff may ascertain the legitimacy and
3 lawfulness of the Respondent and Defendant's determination that the Project is
4 categorically exempt and that such categorical exemption is permitted for subparts of the
5 overall dust control project.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Petitioner and Plaintiff Friends respectfully prays for relief as
9 follows:

- 10 1. That the Court issue a writ of mandate ordering Respondent State Parks to
11 vacate and set aside its determination that the Project is categorically exempt;
- 12 2. That the Court issue a writ of mandate ordering Respondent State Parks and
13 the District/Board to comply with CEQA before proceeding with the dust control project
14 or any subpart;
- 15 3. That the Court issue a declaratory judgment against Respondent and Defendant
16 State Parks, and Real Parties-in-Interest the District and its Board, finding the following:
- 17 (1) State Parks exceeded its authority and violated CEQA in determining that the
18 Project is categorically exempt;
- 19 (2) The Project is not categorically exempt from CEQA pursuant to 14 Cal. Code
20 Regs § 15304;
- 21 (3) The Project is not categorically exempt from CEQA pursuant to 14 Cal. Code
22 Regs § 15306;
- 23 (4) The Project is not categorically exempt from CEQA pursuant to 14 Cal. Code
24 Regs § 15330;
- 25 (5) The Project is not categorically exempt under any other exemption to CEQA;
- 26 (6) State Parks exceeded its authority and violated CEQA in finding the Project
27 categorically exempted since one or more exceptions to the exemptions apply;

1 (7) The Project is not categorically exempt because CEQA exception that there is
2 significant effect on the environment due to unusual circumstances is applicable (14 Cal.
3 Code Regs § 15300.2(c));

4 (8) The Project is not categorically exempt because CEQA exception that there are
5 significant cumulative impacts from projects of the same type in the same place would
6 result is applicable (14 Cal. Code Regs § 15300.2(b));

7 (9) The Project is not categorically exempt because the Project is within the
8 CEQA-specified five classes of projects that does not allow the use of a categorical
9 exemption if the project will have impacts on a uniquely sensitive environment (14 Cal.
10 Code Regs § 15300.2(a));

11 (10) State Parks illegally relied on mitigation measures in concluding that the
12 Project is categorically exempted and/or in determining that the categorical exemptions
13 do not apply; and

14 (11) State Parks exceeded its authority and violated CEQA by segmenting the
15 overall dust control project into multiple subparts including the 2016 Project at issue
16 here.

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

18 5. That the Court award reasonable attorneys' fees to Petitioner and Plaintiff
19 Friends, pursuant to C.C.P. § 1021.5, the equitable private attorney general doctrine, and
20 state law. On February 24, 2016, counsel for Petitioner Friends sent by email to State
21 Parks a settlement demand constituting a good faith effort to resolve Friends' objections
22 that State Parks had failed to comply with CEQA for the Project. As of the date of this
23 Petition and Complaint, State Parks had not responded. Prior to that, on February 4,
24 2016, counsel for Petitioner Friends orally made a request to the California Attorney
25 General's Office (who represents State Parks in other litigation by Friends regarding
26 Oceano Dunes SVRA in which State Parks is a Respondent and a Real Party-in-Interest)
27 that State Parks cease its implementation of Rule 1001 and withdraw its Notice of

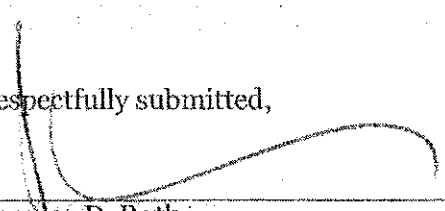
1 Exemption. On February 24, 2016, Mitch Rische of the California Attorney General's
2 office in Los Angeles responded orally that he had communicated the request and that
3 State Parks had no response. For these reasons, Petitioner Friends has made a good faith
4 effort to settle the dispute short of litigation, and any further attempts would be futile.

5 6. That the Court grant injunctive relief and enjoin State Parks and its agents,
6 employees and consultants from further implementing or taking any action to implement
7 the Project unless and until full CEQA compliance is achieved.

8 7. For any other equitable or legal relief that the Court deems just and proper.

9
10
11 Dated March 3, 2016

12
13 Respectfully submitted,

14
15 
16 Thomas D. Roth
17 Law Offices of Thomas D. Roth
18 One Market, Spear Tower, Suite 3600
19 San Francisco, California 94105
20 (415) 293-7684

21
22
23
24
25
26
27
28 Attorneys for
Petitioner/ Plaintiff Friends of Oceano
Dunes, Inc.

VERIFICATION

State of California

County of San Luis Obispo

I am the President of FRIENDS OF OCEANO DUNES, INC. 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 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 March 3, 2016 at San Luis Obispo, California.



JIM SUTY

Exhibit A

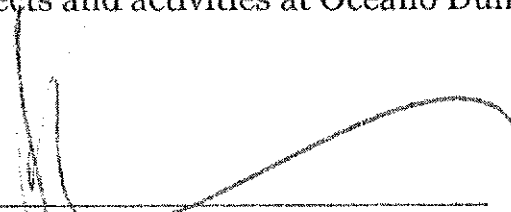
NOTICE OF INTENT TO FILE CEQA PETITION

TO: Lisa Mangat, Director
California State Parks
1416 9th Street, Rm 1405
Sacramento, CA 95814

PLEASE TAKE NOTICE, under Public Resources Code § 21167.5, FRIENDS OF OCEANO DUNES, INC., a California not-for-profit corporation, intends to file a petition pursuant to the California Environmental Quality Act against the California Department of Parks and Recreation, challenging its determination or decision that a proposed dust control project and/or temporary measures at Oceano Dunes State Vehicular Recreation Area are categorically exempt from CEQA review (see attached Notice of Exemption).

The petition will seek a Court Order commanding State Parks to cease the dust control project/measures immediately and until such time when and if State Parks certifies a legally adequate environmental impact report for all dust control measures and related projects and activities at Oceano Dunes SVRA.

Date: Feb. 24, 2016



By: Thomas D. Roth
Law Offices of Thomas D. Roth
One Market, Spear Tower, Suite 3600
San Francisco, CA 94105

Attorney for
FRIENDS OF OCEANO DUNES, INC.



State of California • Natural Resources Agency
 DEPARTMENT OF PARKS AND RECREATION
 Off-Highway Motor Vehicle Recreation Division
 1725 23rd Street, Suite 200
 Sacramento, California 95816

Edmund G. Brown Jr., Governor
 Lisa Ann L. Mangat, Director

2016028252

Notice of Exemption

To: Office of Planning and Research P.O. Box 3044, Room 113 Sacramento, CA 95812-3044	From: California Department of Parks and Recreation (CDPR), Off-Highway Motor Vehicle Recreation (OHMVR) Division 1725 23 rd Street, Suite 200 Sacramento, CA 95816-7100
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Project Title: Oceano Dunes SVRA 2016 Temporary Dust Control Effort

Project Location – Specific: Oceano Dunes State Vehicular Recreation Area

Project Location – City: Oceano

Project Location – County: San Luis Obispo

Description of Nature, Purpose, and Beneficiaries of Project: The purpose of this proposed project is to monitor and reduce the levels of fugitive dust particles from select locations of the Guadalupe-Nipomo Dunes Complex within Oceano Dunes SVRA. Project activities would consist of the use three different suppression methods at three different sites of ODSRVA to physically cover the ground surface and break the flow of wind across the landscape, thereby reducing sand transport and dust generation. The three methods will include; (1) portable and reusable "porous roughness" elements, (2) temporary deployment of wind fencing, and (3) placement of new straw bales and reconfiguring of old straw bales. To measure project effectiveness, wind monitoring equipment will also be stationed nearby to each project site.

The porous roughness material will consist of metal mesh siding (3'x3'x3') of thick wire with plastic fencing material for 50% porosity over 1.5 acres of open sand within the riding and camping area. Up to approximately 43,000 linear feet of 4-foot-tall wind fencing (up to 40 acres) and up to 1,000 new certified weed free straw bales (up to 20 acres) would be placed in an array perpendicular to the prevailing wind direction within the open riding area and where public use is prohibited.

Each project site would also contain monitoring stations to measure and assess PM 10 levels, sand transport, and wind direction and wind speed upwind, downwind, within and adjacent to dust control projects. Monitoring stations would include: one small, single-axle trailer or wooden platform, 10 meter wind tower, tripod with particulate or meteorological instruments, solar panels, batteries, and solar control system. All dust control projects and monitoring equipment would be secured and enclosed by a perimeter fence.

Name of Public Agency Approving Project: California State Parks, Off-Highway Motor Vehicle Recreation Division

Name of Person or Agency Carrying Out Project: OHMVRD, Oceano Dunes District

Exempt Status: Categorical Exemption (CE): 15304, 15306, 15330

Reasons why project is exempt: Project activities consist of the minor temporary use of land having negligible or no permanent effect on the environment, resource evaluation activities which do not result in a serious or major disturbance to an environmental resource and the minor action to minimize a hazardous substance by the application of dust suppressants to surface soils.

Lead Agency Contact Person:

Rick LeFlore, EPM I

Area Code/Telephone/Extension:

(916) 324-4442

Governor's Office of Planning & Research

Signature

Date:

FEB 12 2016

STATE CLEARINGHOUSE

1 PROOF OF SERVICE

2 I am over 18 years old, not a party to this lawsuit and am employed by the Law
3 Offices of Thomas D. Roth, One Market, Spear Tower, Suite 3600, San Francisco, CA
4 94105.

5 On Feb. 24, 2016, I served the foregoing Notice of Intent to File CEQA Petition by
6 sending regular mail a copy to:

7 Lisa Mangat, Director
8 California State Parks
9 1416 9th St., Rm 1405
10 Sacramento, CA 95814

11 Mitchell E. Rishe
12 Deputy Attorney General
13 Public Rights Division-Land Law Section
14 California Department of Justice
15 300 South Spring Street, Suite 1702
16 Los Angeles, California 90013
17 Mitchell.Rishe@doj.ca.gov
18 Attorneys for State Parks

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed on Feb. 24, 2016, at San Francisco, California.

21
22
23
24
25
26
27
28

Thomas D. Roth

SUPERIOR COURT OF SAN LUIS OBISPO COUNTY
San Luis Obispo Branch, 1035 Palm Street, Rm 385, San Luis Obispo, CA 93408
Paso Robles Branch 901 Park Street, Paso Robles, CA 93446

Friends Of Oceano Dunes Inc vs. California Department of Parks and Recreation	CASE NUMBER 16CV-0113
	Case Management Conference

NOTICE OF ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

This case is assigned to **Judge LaBarbera, Barry T.** for all purposes.

Plaintiff must serve the Summons and Complaint, a copy of this Notice; the Standing Case Management Order (located at http://slocourts.net/forms_filing) 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 with 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 April 18, 2016, 9:00 AM, San Luis Obispo Department 2** THE PARTIES OR THEIR ATTORNEYS MUST APPEAR AT THE CASE MANAGEMENT CONFERENCE. For information about telephone appearances call **COURTCALL** at (888)882-6878.
2. Parties are responsible for reviewing and following the Case Management Order of the assigned judge. The orders are located at http://slocourts.net/forms_filing.
3. Each party must file and serve a Case Management Statement at least 15 days before the conference.
4. 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.
5. 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.
6. All law and motion matters will be calendared in the department of the assigned judge and filed with the Clerk's office.
7. 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.

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, Ste. 3600
 San Francisco, CA 94105
 TELEPHONE NO: 415 293-7684 FAX NO:
 ATTORNEY FOR (Name): Friends of Oceano Dunes, Inc.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Luis Obispo
 STREET ADDRESS: 1050 Monterey Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Luis Obispo, CA
 BRANCH NAME: Main

CASE NAME:
 Friends of Oceano Dunes v. California Department of Parks

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

FOR COURT USE ONLY

FILED

3/4/2016 9:36:38 AM

SAN LUIS OBISPO SUPERIOR COURT
 BY M. Zapeda
 M. Zapeda, Deputy Clerk

CASE NUMBER: 16CV-0113

JUDGE:
 DEPT:

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:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) <p>Non-P/IPD/W/D (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <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) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <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)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <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) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <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. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. 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): 2

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: March 4, 2016
 Thomas D. Roth

(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 2

**STANDING CASE MANAGEMENT ORDER
FOR CASES ASSIGNED TO THE HON. BARRY T. LaBARBERA**

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 Kathy.Martindalcampo@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 SloCourtAttorneys@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: October 13, 2012

HON. BARRY T. LaBARBERA
Judge of the Superior Court
County of San Luis Obispo

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