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SAN LUIS OBISPO SUPERIOR COURT

BY: _____

Jennifer Novick, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

FRIENDS OF OCEANO DUNES, INC., a California not-for-profit corporation,

Plaintiff and Petitioner,

v.

SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, a local air pollution control district; et al.;

Respondent and Defendant.

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a Department of the State of California, and DOES 1 – 50, inclusive,

Real Party in Interest.

CASE NO. CV12-0013

RULING ON SCOPE OF JUDGMENT AND MOTION TO TAX COSTS

Rule 1001 is a regulation adopted in 2011 by the San Luis Obispo County Air Pollution Control District (the "District") for the purpose of protecting the health of the residents of the Nipomo Mesa through the reduction of airborne particulate matter levels. Now before the Court is a dispute over the scope of the judgment to be entered following

reversal of this Court's writ decision by the Second Appellate District, Division Six, in *Friends of Oceano Dunes, Inc. v. San Luis Obispo Cty. Air Pollution Control Dist.*, 235 Cal.App.4th 957, *as modified on denial of reh'g* (Apr. 23, 2015).

While it is clear from the appellate decision that the permit requirement of Rule 1001 subdivision C.5 must be stricken, and that the prior judgment must be vacated in its entirety, the question remains whether Rule 1001 is entirely invalid, as Petitioner Friends of Oceano Dunes, Inc. (Friends) argues, or instead survives mostly intact, as the District claims.

Upon consideration of the full record, including the briefs and arguments of counsel, this Court concludes that removal of the permit requirement in subdivision C.5 does not vitiate Rule 1001. The District retains the power to enforce Rule 1001 through civil penalties and additional corrective action. The critical need for the Rule remains. Accordingly, comprehensive air pollution monitoring can and should go forward as required by the Rule.

The permit provision of section C.5 can be lawfully excised, leaving the remainder of Rule 1001 intact. Section C.5 is: grammatically "complete and distinct" since it is found in a stand-alone section of the Rule; "functionally separable," since it only eliminates one of several enforcement options; and, "volitionally separable," since it was only of minor importance in the District's effort to ameliorate the public health impacts of emissions on the Nipomo Mesa.

Given the significant costs and genuine health concerns underlying Rule 1001, this Court must be careful not to discard it entirely without having solid reasons to do so. Requiring new rulemaking under the circumstances present here would be wasteful, unnecessary, and inappropriate.

PROCEDURAL AND FACTUAL BACKGROUND

On November 16, 2011, the District adopted Rule 1001, which addresses the dispersion of particulate matter (PM) into the Nipomo Mesa (Mesa) related to off-highway vehicle (OHV) use at the Oceano Dunes State Vehicular Recreation Area (SVRA).

Rule 1001 requires the real party-in-interest, the California Department of Parks and Recreation (State Parks), to design and implement a plan to reduce the emission of particulate matter emanating from the SVRA as a result of OHV activity. It imposes a timeline on State Parks to reach certain milestones of monitoring and particulate matter reduction, and requires State Parks to apply for an APCD permit to operate the SVRA once it has reached certain milestones. Penalties and additional corrective action are available for failure to comply with this Rule.

On January 4, 2012, Friends, a group of off-road users of the SVRA, brought this writ petition challenging the District's adoption of Rule 1001, on the basis that the District exceeded its authority in requiring State Parks to obtain a permit for the operation of the SVRA. Friends asserted it was an improper method of regulating an "indirect" source of air pollution and that the District had failed to make the required findings of necessity and authority under Health & Safety Code §§40001 and 40727.

On April 19, 2013, in a comprehensive written ruling this Court concluded, among other things, that: the SVRA was a "direct source" of pollution; the District had the authority to require permits within the general statutory definition of Health & Safety Code §42300; the SVRA was a "fixed" or "stationary" man-made installation that emitted air pollutants; the SVRA was a "contrivance" within the meaning of Health & Safety Code §42300(a); and, there was sufficient evidence in the record establishing the necessity of a Rule to alleviate the elevated particulate matter on the Mesa.

On April 23, 2015, the Second Appellate District, Division Six, reversed this Court's ruling in a published decision. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo Cty. Air Pollution Control Dist.* (2015) 235 Cal.App.4th 957.) The Court of Appeal concluded that the SVRA is not a "contrivance" within the meaning of Health & Safety Code §42300(a), and that the SVRA is therefore only an "indirect" source of pollution that could not be regulated through a permit system. Friends was awarded its costs on appeal.

On July 15, 2015, having been advised of a dispute regarding the form of the judgment, the Court ordered the parties to brief the issue so that the judgment actually

entered would be consistent with the appellate decision. Due to scheduling conflicts, the matter was continued on several occasions.

On December 23, 2015, the Court heard oral argument and thereafter took the matter under submission.[1]

THE VALIDITY OF RULE 1001

In explaining that the SVRA is neither a "contrivance" within the meaning of Health & Safety Code §42300(a) nor a "direct" source of emissions, the Court of Appeal stated that air pollution districts are not statutorily authorized to impose a permit requirement on air pollution sources such as the SVRA. The appellate opinion concluded that "Rule 1001, as written, attempts to do indirectly what District cannot do directly," and it reverses this Court's "judgment (order dismissing petition for writ of mandate and complaint for injunctive/declaratory relief). (*Friends of Oceano Dunes,* 235 Cal.App.4th at 966.)

Two conclusions inexorably flow from the opinion. First, the requirement of Rule 1001, subdivision C.5, mandating a "Permit to Operate from the Air Pollution Control District," cannot stand. Second, the prior judgment must be vacated in its entirety.[2] (*Weisenburg v. Cragholm* (1971) 5 Cal.3^{d} 892, 896; *Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1015.) Beyond these two obvious commandments, it is less clear what, if any, additional action need be taken.

Friends asserts that "Rule 1001 cannot stand when it is premised on an incorrect presumption and legal authority purporting to underlie the rule." (Friends' Reply Brief at p. 1.) The District responds that it has authority to regulate all sources of non-vehicular emissions, that the statutory basis of authority is the same for "direct" and "indirect" sources

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[1] On January 7, 2016, Friends advised the Court that it was in violation of Rule 3.1590, subsections (k) and (l), stating that a judgment must be signed and filed within 10 days after the hearing. Given the voluminous pleadings submitted and the importance of the issue, the Court felt it necessary to take longer than the statutory time allowed, which constitutes good cause under subsection (m) for an extension of the time limits.

[2] On July 15, 2015, this Court vacated its earlier judgment.

of emissions, and that, excised of the permit provision, "the Rule remains a valid exercise of the District's regulatory authority for either type of emissions sources." (District's Responsive Brief at p. 2.)

The District unquestionably has broad legal authority to regulate both "direct" and "indirect" sources of emissions. (See, e.g., Health & Safety Code §§39001, 39002, 40000, 40001(a), and 40702.) Yet, when adopting Rule 1001, the District chose to enumerate only its general regulatory authority set forth in sections 40001 and 40702, rather than the more specific authority for regulating "indirect" sources of air pollution under Health & Safety Code §§40716(a) and 42311(g). (November 16, 2011 Staff Report, p. 10) It is also true that, at various points during the administrative proceedings, District staff treated the SVRA as a "direct" source of emissions. (See, e.g., Roth Declaration, Exhibit B [p. 944, ¶18; p. 946, ¶¶ 29, 30]) The critical question is whether these distinctions make any substantive difference in terms of the validity of Rule 1001 going forward.

Aside from the requirement of obtaining a permit to operate, there seems to be little difference with respect to how the District regulates emissions from off-road vehicle facilities under the Health and Safety Code, whether as "direct" and "indirect" sources of air pollution. Indeed, the two statutory structures are remarkably similar. Direct sources of pollution can be regulated through the issuance of permits, civil penalties, and corrective actions. (Health & Safety Code §42300, et seq.) Indirect sources are regulated very similarly.

In order to carry out its responsibilities "with respect to the attainment of state ambient air quality standards, a district may adopt and implement regulations to [r]educe or mitigate emissions from indirect and areawide sources of air pollution." (Health & Safety Code §40716(a)(1).) In conjunction with such regulations, a district may collect fees to recover its costs (Health & Safety Code §42311 (g)), as well as civil penalties of up to $1,000 per day for regulatory violations. (Health & Safety Code §§42403 and 39674; *California Bldg. Indus. Ass'n v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 128 (upholding, under indirect source authority, air impact assessment rules for new developments, including mitigation measures, impact fees, and mitigation fund).)

While the District's regulatory authority over "indirect" sources is very broad, *permits to operate* for indirect sources are **not** authorized, as such are thought to unduly interfere with local land use decisions. (*Friends of Oceano Dunes,* 235 Cal.App.4th at 964; Health & Safety Code §40716(b); 76 Cal. Op. Att'y Gen. 11 (1993) (construing a district's authority to adopt and enforce regulations over indirect sources of emissions, but without direct permitting authority).)

The District has now excised the forbidden permit requirement from the Rule.[3] Although one important arrow in the compliance quiver has been eliminated, the remaining provisions of Rule 1001 require State Parks to: 1) develop a monitoring program; 2) prepare and implement a Particulate Matter Reduction Plan for minimizing emissions under a compliance schedule with specific time deadlines; and, 3) face the prospect of civil penalties if it fails to comply with the administrative regulations. Nothing is changed in terms of the health-based need for regulation, the Rule's structure (including the operative definitions, baseline monitoring program, monitoring sites, data collection strategy, compliance schedule, or recordkeeping requirements), or its fundamental purpose.

An examination of Rule 1001 and the supporting 11-page Staff Report, attached to this Ruling as **Exhibits A** and **B**, respectively, show that the District was, first and foremost, focused upon an effective testing and monitoring program to substantially reduce airborne emissions from off-road vehicle activity at the Oceano Dunes. More specifically, Rule 1001 (**Exhibit A**) refers to the operating permit in only two places: Section C.5 (discussed above and since repealed); and, Section F.1.f, which sets forth the time to apply deadline. The Staff Report (**Exhibit B**) barely mentions the word "permit" at all (**Exhibit B**, p.5), with the permit concept being discussed almost as an afterthought.

Friends is incorrect that Rule 1001, without the permit requirement, has become a toothless tiger. Civil penalties and additional corrective measures are important continuing enforcement tools, as plainly stated in the Staff Report:

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[3] On May 27, 2015, at a public hearing, the District excised the permit requirement of subsection C.5 from Rule 1001.

> Should State Parks fail to meet any of the rule requirements, fines could be levied under the California Health & Safety Code, subject to limitation for delays caused by regulatory or other oversight agencies. As an alternative, or in addition to the appropriate penalty, settlements could include requirements for additional corrective measures if deemed necessary. Penalty fees could also be used to implement appropriate off-site mitigation or other programs to benefit impact the communities, such as health awareness programs. (Exhibit B at p. 3).[4]

Given the substantive requirements and methods of enforcement still present in Rule 1001, invalidating the Rule in its entirety based on the District's failure to specifically list its "indirect source" regulatory authority would seem to promote form over substance.

The remaining question is whether the offending permit requirement of Section C.5 can lawfully be "severed" so as to preserve the remainder of the Rule. (*Hollywood Park Land Co. LLC v. Golden State Transportation Financing Corp.* (2009) 178 Cal.App.4th 924, 941–942.) Public policy favors retaining valid provisions of a statute or ordinance whenever possible in order to preserve the validity of the remainder. (*See Moore v. Municipal Court of Salinas Judicial Dist.* (1959) 170 Cal. App. 2d 548, 557.) District Rule 108, entitled "Severability," mimics the above-stated judicial doctrine. The Rule stands if the text to be severed is volitionally, grammatically, and functionally severable from the remainder. (*McMahan v. City & Cnty. of San Francisco* (2005) 127 Cal.App.4th 1368, 1374.)

Ironically, both parties took opposite positions on the "severability" issue during the appeal. Friends advanced the severability doctrine in forcefully urging the appellate court to invalidate the permit requirement but to leave the remainder of Rule 1001 intact:

> "[T]he operating permit requirement is mechanically, functionally, and volitionally separable from the remainder of the Rule 1001. *The Court is authorized- and should- invalidate and sever the permit requirement from Rule 1001.*" (Appellant's Opening Appellate Brief at p.54.) (Emphasis added)[5]

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[4] During the pendency of the appeal, the District and State Parks advised that they had agreed upon the terms of a settlement in the form of a Proposed Consent Decree, which was apparently amended on at least one occasion. The Proposed Consent Decree apparently abandons the need for an operating permit in favor of other enforcement or corrective measures.

[5] On the other hand, the District told the appellate court that "the permit provision is not functionally or volitionally separable because it would defeat the very purpose of the legislation, which is preventative –

Text is grammatically (or "mechanically") severable only when it constitutes a "physically separate section [ ] of the proposition." (*Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315.) Here, as discussed above, Section C.5 is in a separate section of the Rule, making it grammatically "complete and distinct." (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316; *Gerken v. Fair Political Practices Comm'n,* (1993) 6 Cal.4th 707; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805.

Text is functionally severable if it is not necessary to the ordinance's operation and purpose. (*Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach* (1993) 14 Cal.App.4th 312, 315; *McMahan,* 127 Cal.App.4th at 1379). As discussed above, the operating permit requirement is functionally separable from the remainder of the Rule as it represents but one enforcement provision among several other options. (*Compare Long Beach Lesbian & Gay Pride, Inc.,* 14 Cal.App.4th at 312, 315 (invalidating provision of Long Beach Municipal Code because, without "the pivotal permit-granting function … these sections have no verbal anchor or basis. … [and because] "the trial court's invalidation of section 5.60.030(C) has removed the hub from Chapter 5.60's wheel, and without it the spokes cannot stand.")

Text passes the test for volitional severability if "it can be said with confidence that the [enacting body]'s attention was sufficiently focused upon the parts to be [validated] so that it would have separately considered and adopted them in the absence of the invalid portions." *Gerken,* 6 Cal.4th 707 (other citations omitted).

As reflected in the text of Rule 1001, as well as the Staff Report (discussed above), the permit to operate occupied a minor role in the course of the District's overall effort to regulate emissions on the Nipomo Mesa. Moreover, the District retains the ability to seek $1,000 per day civil penalties for each regulatory violation or to require other corrective measures. All told, the permit provision was *not* of paramount importance to the enactment

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not punitive after a violation occurs." The District explains its waffling advocacy as the product of its mid-appeal settlement with State Parks.

of Rule 1001.[6]

The Court is mindful of enforcing procedural requirements that are designed to make the legislative and administrative process transparent. Indeed, Friends sees invalidation as an opportunity for the District "to craft a new rule (or not) as it sees fit... [which] is the proper course in a democracy". (*Id.* at 18) However, adoption of Rule 1001 followed eight years of comprehensive data-gathering efforts, scientific studies, and hearings to determine the source of the airborne contamination on the Nipomo Mesa, costing over $1 million in staff time and public funds.

An important public health regulation intended to improve the quality of the air breathed by local residents is at issue. Given that County residents are continually exposed to levels of unhealthy air in violation of state health standards approximately 65 days *each year*, this Court must be careful not to discard the District's regulation without a solid and practical rationale, which is missing in this case.

Accordingly, Friends shall prepare a new Judgment and Peremptory Writ of Mandate in accordance with this Ruling.

MOTION TO TAX TRIAL COURT AND APPELLATE COSTS

As the prevailing party, Friends was awarded its appellate costs by the Court of Appeal. Based on the appellate court's reversal, Friends also asserts that it is the prevailing party at the trial court level and should receive its trial court costs as well.

On June 17, 2005, Friends filed two memoranda of costs, one for $6,434.76 incurred at the trial court level, and the other for $4,163.65 incurred at the appellate level. The memorandum of trial court costs submitted by Friends is premature and shall be stricken without prejudice. Upon entry of the final judgment, which appears to be imminent, the prevailing party may again seek its trial court costs.

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[6] Although Friends now questions the applicability of the severance doctrine to administrative regulations, the appellate court in *Aguiar v. Superior Court*, 170 Cal.App.4th 313, 328-29, *as modified on denial of reh'g* (Feb. 19, 2009), addressed the severability doctrine on its merits. Its comment questioning the doctrine's applicability is mere dicta.

As to the appellate costs, the District initially contended that the filing fees, printing, service fees, and appendix copying costs, submitted by Friends were excessive. In response, Friends identified and provided justification for each contested cost and expense category.

In reply, the District now objects only to the $1,274 in paralegal costs for preparation and copying of the Appendix, on the grounds that those costs are not recoverable under Rule of Court 8.278(d). Friends claims it was justified in expending $1,274 in paralegal time and $570.65 in photocopy charges for preparation of the Appendix.

Rule of Court 8.278(d) limits the costs recoverable on appeal and does not include paralegal costs for preparing the Appendix. Nonetheless, Friends asserts that it is entitled to recover the prevailing market rate for legal assistant time. (*Otay Ranch, L.P. v. Cty. of San Diego* (2014) 230 Cal.App.4th 60, 69.)

The *Otay Ranch* case addressed the recovery of paralegal costs for the preparation of an administrative record in a CEQA case, which is separate and distinct from the authority to recover costs for the preparation of an Appendix during an appellate process.

The motion to tax the memorandum of appellate costs is granted only as to the paralegal costs. Friends is awarded $2,889.65 in appellate costs.[7]

It is so ORDERED.

Dated: March 7, 2016

CHARLES S. CRANDALL
Judge of the Superior Court

CSC:jn

[7] The District also moves to consolidate two actions, *Friends of Ocean Dunes, Inc. v. San Luis Obispo County Air Pollution Control District,* CV13-0457, and *Friends of Ocean Dunes, Inc. v. San Luis Obispo County Air Pollution Control District,* 14CV-0514, into this action. However, it is not possible to do so. When CV13-0457 was reassigned to this Court, Friends timely filed a CCP §170.6 peremptory challenge. Although Friends' writ action challenging the validity of the Consent Decree, 14CV-0514, is a related action also pending before this Court, consolidation is unnecessary. Instead, the two cases before this Court can proceed on a related path. The motion for consolidation is denied.

EXHIBIT "A"

REGULATION X

FUGITIVE DUST EMISSION STANDARDS, LIMITATIONS AND PROHIBITIONS

RULE 1001 Coastal Dunes Dust Control Requirements *(Adopted 11/16/2011)*

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 PM_{10} 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) PM_{10} monitor capable of measuring hourly PM_{10} 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 PM_{10} 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) PM_{10} monitor capable of measuring hourly PM_{10} 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. "PM_{10}": 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 PM_{10} Concentration": The value obtained by adding the hourly PM_{10} 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 PM_{10} 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 PM_{10} monitoring network containing at least one CDVAA Monitor and at least one Control Site Monitor.
   b. A description of all PM_{10} control measures that will be implemented to reduce PM_{10} 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 PM_{10} concentration at the CDVAA Monitor is more than 20% above the 24-hr average PM_{10} concentration at the Control Site Monitor, the 24-hr average PM_{10} 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 "B"

AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN LUIS OBISPO

STAFF REPORT

PROPOSED RULE 1001, COASTAL DUNES DUST CONTROL REQUIREMENTS

PUBLIC HEARING – NOVEMBER 16, 2011

I. INTRODUCTION

At the direction of the Air Pollution Control Board (Board), staff has developed a rule that will require implementation of a particulate matter emission reduction plan and set particulate matter performance standards for the Oceano Dunes State Vehicle Recreation Area (ODSVRA) operated by the California Department of Parks and Recreation's Off Highway Motor Vehicle Recreation Division (State Parks). The proposed Rule 1001 was not part of the State mandated "all feasible measures" requirement for air districts that do meet the State particulate matter standard, Health and Safety Code §39614. Those measures were adopted during a July 2005 public hearing which was as required at that time. Section of the Health and Safety Code §39614 was automatically repealed in January 1, 2011 by the regulation itself when the legislature did not act to extend it.

II. DISCUSSION

Over the past year, the District has worked with the California Department of Parks and Recreation and the County of San Luis Obispo on ways to reduce particulate matter emissions emanating from the ODSVRA. These efforts occurred under two separate Board-approved Memoranda of Agreement and have so far resulted in three emission reduction pilot projects at Oceano Dunes and a voluntary sand removal program on Pier Avenue. At Board direction, staff has also concurrently worked to develop a regulation to ensure efforts to reduce emissions from the dunes meet air quality requirements and protect public health. The attached rule, titled Rule 1001, *Coastal Dune Dust Control Requirements*, is the result of that direction.

At your May 19, 2010 meeting, the Board directed staff to develop a Memorandum of Agreement (MOA) between the District, the California Department of Parks and Recreation (State Parks) and the County of San Luis Obispo (County) to define the requirements and process for developing a Particulate Matter Reduction Plan (PMRP) to address emissions from the ODSVRA. The Board further directed staff at that meeting to concurrently develop a regulation designed to implement and enforce the PMRP.

A comprehensive MOA was adopted by the Board in July 2010 and required formation of two committees tasked with crafting and overseeing the development of the PMRP, with the required plan contents and development process specified in the MOA. The highly structured MOA process, which included periodic outreach to and input from the public, proved valuable and ultimately led to a voluntary sand removal program on Pier Avenue in Oceano and implementation of three emission reduction pilot projects on the dunes. With the rule adoption

Exhibit "B"

process underway and the pilot projects proceeding, the need for such a formal process was greatly diminished. At the March 23, 2011 hearing, your Board adopted a less formal MOA to facilitate continued cooperation and more timely progress by the three agencies.

The pilot projects completed last spring included studies of the effect of native vegetation and artificial surface disturbance on reducing sand transport, which has been identified as the main source of PM emissions from the ODSVRA. The third pilot project examined the difference in emissions potential (emissivity) between a riding area and a non-riding area. The data from those studies will be used to help craft the PMRP required in the dust rule.

Development of Rule 1001 started with the primary goal of ensuring vehicle activity on the dunes does not result in significant increases in downwind ambient PM levels when compared to PM levels downwind of similar dune areas where vehicle activity is not allowed. The rule is written to apply to any coastal dune vehicle activity area (CDVAA) larger than 100 acres. Currently, the ODSVRA is the only known affected location; however, any new vehicle activity area proposed within coastal dunes in San Luis Obispo County would also be subject to the rule.

Following are the key concepts outlined in the rule:

- a comprehensive PMRP requiring APCD approval
- a performance standard for measuring effectiveness and ensuring accountability
- a compliance schedule with phased milestones of progress

Under the rule, the PMRP would be developed by the facility operator (State Parks); it must include all measures necessary to meet the performance standard and also identify the expected emission reduction effectiveness and implementation timeline for each measure. District input would occur during the development process, and APCO approval is required prior to implementation of the plan. Since the rule does not define specific projects to implement, State Parks will need to obtain all the required permits from the appropriate land-use agencies for any PMRP project that may require those approvals. It is unknown if those projects would also trigger requirements under the California Environmental Quality Act (CEQA) and/or the National Environmental Quality Act (NEPA); they could also involve State Coastal Commission review and oversight.

A performance standard in the rule was deemed essential to ensure the PMRP included sufficient measures to reach the emission reduction goals and to provide accountability for measuring their effectiveness. Staff initially considered using sand transport/sand flux measurements as an indirect method of measuring PM reductions achieved by the PMRP; however, this proved difficult to implement and would not ensure the primary air quality goal was met. After considerable research and discussions with experts, it was determined the most appropriate performance standard would be to measure ambient PM10 concentrations downwind of the ODSVRA and compare them to a "control" site located downwind of a similar dune area where vehicle activity is not allowed. The control site would be chosen to best match the topography and meteorological conditions of the ODSVRA site. The equipment specifications and site locations of the PM10 and meteorological monitoring network needed to perform these comparison measurements would be identified in the PMRP and require District approval.

The compliance milestones contained in the rule represent staff's estimate of the minimum time necessary to craft a comprehensive PMRP; obtain necessary permits and begin implementing the

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proposed control measures and PM monitoring; and for the measures (like re-vegetation) to become effective in reducing emissions. The milestones also assume some PMRP projects may trigger CEQA/NEPA review and/or result in Coastal Commission review before they can be implemented.

Should State Parks fail to meet any of the rule requirements, fines could be levied under the California Health and Safety Code, subject to the limitation for delays caused by regulatory or other oversight agencies. As an alternative, or in addition to the appropriate penalty, settlements could include requirements for additional corrective measures if deemed necessary. Penalty fees collected could also be used to implement appropriate offsite mitigation or other programs to benefit impacted communities, such as health awareness programs.

The District held a public workshop on September 7, 2011, where over 70 members of the public attended and were given the opportunity to ask questions and make comments on the concept rule. Additionally, the concept rule was presented to your Board at the September 28, 2011 meeting, where public comment and further Board direction were given. Several changes were made to the proposed rule based upon Board direction, focusing on earlier implementation of the monitoring requirement and adding a requirement for submittal of a draft PMRP for APCD review in advance of the final Plan.

In addition, a change to the performance standard and the addition of conditional relief language related to milestone compliance has been proposed in the attached rule based on comments from State Parks, which are also explained below in section III.

III. RULE DISCUSSION

The proposed rule is shown in Attachment 1. Shown below are key sections of the Rule and an explanation of that section in italics.

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.

This section is based on Board direction to start monitoring before PMRP projects begin.

2. The operator of a CDVAA shall prepare and implement an APCO-approved Particulate Matter Reduction Plan (PMRP) to minimize PM_{10} 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 PM_{10} monitoring network containing at least one CDVAA Monitor and at least one Control Site Monitor.
   b. A description of all PM_{10} control measures that will be implemented to reduce PM_{10} emissions to comply with this rule, including the expected

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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.

This section establishes the PMRP and monitoring requirements and specifies that a Pier Avenue track-out must be part of the PMRP.

3. The CDVAA operator shall ensure that if the 24-hr average PM_{10} concentration at the CDVAA Monitor is more than 20% above the 24-hr average PM_{10} concentration at the Control Site Monitor, the 24-hr average PM_{10} concentration at the CDVAA Monitor shall not exceed 55 ug/m3.

This section is the performance standard used to ensure the PMRP measures reduce the dust emissions from the SVRA to levels similar to those at comparable control sites where no vehicle activity occurs. It is based on close compliance with the State 24-hour average PM_{10} standard of 50 ug/m3, but allows for a margin of error.

The first version of this performance standard contained in the concept rule specified that, if the 24-hour average PM_{10} concentration at the Coastal Dunes Vehicle Activity Area (CDVAA) monitor exceeds 55 ug/m3, it cannot also be more than 10 ug/m3 above the PM10 concentration measured at the control site monitor for the same period. The 55 ug/m3 compliance threshold is based on the state PM_{10} standard plus a 5 ug/m3 buffer for equipment tolerances; the 10 ug/m3 violation trigger was proposed to account for known monitoring equipment tolerances as well as possible variations in upwind topography and meteorological conditions.

State Parks has requested the 10 ug/m3 difference between monitoring sites be changed to a 20% difference. Staff evaluated the request and determined it could be granted without weakening the enforceability of the Rule. The applied result of this proposed change is insignificant at lower PM_{10} levels but allows for a greater margin between the sites as concentrations increase, as shown in the following example: if the 24-hour PM_{10} concentration at the CDVVA monitor was 56 ug/m3, a violation would occur if the control site monitor was 44 ug/m3 (-21%) or less; under the previously proposed 10 ug/m3 margin, a violation would occur if control site monitor was 45 ug/m3 or less. In contrast, if the CDVAA 24-hour PM_{10} concentration was 150 ug/m3, the 20% violation threshold would allow a 30 ug/m3 difference between the monitors compared to the previous 10 ug/m3. Staff analyzed the Phase II study data using the 20% value and found it would not significantly change enforcement of the rule or the level of emission reductions needed to meet the performance standard.

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 require environmental review.

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This requirement ensures any project proposed in the PMRP or Temporary Baseline Monitoring Program complies with CEQA and NEPA requirements, as well as the requirements of any other regulatory or oversight agency.

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.

This section was added to clarify a requirement for an operating permit. Currently, no specific fee category exists for this type of operation. Prior to adopting a new fee category, the District Board is required to hold two hearings to receive public comment on the proposed fee.

D. EXEMPTIONS

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

This exemption is consistent with Federal and District policies and was added to explicitly state that monitoring readings during exceptional events such as wildfires are not considered rule violations; it also addresses a comment from Blue Scape Environmental.

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.

   Requires drafting and submitting this plan proposal within 3½ months of Board approval.

   b. By May 31, 2012, submit a draft PMRP for APCO review.

   Requires drafting and submitting the draft PMRP within 6½ months of Board approval.

   c. By November 30, 2012, submit complete applications to the appropriate agencies for all PMRP projects that require regulatory approval.

   Allows an additional 6 months for further consultation with oversight agencies and application filings if necessary.

   d. By February 28, 2013, obtain APCO approval for a Temporary CDVAA and Control Site Baseline Monitoring Program and begin baseline monitoring.

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Allows 12 months after submittal of the Monitoring Site Selection Plan to select sites, obtain oversight agency approval and install a monitoring system.

e. By May 31, 2013, complete all environmental review requirements and obtain land use agency approval of all proposed PMRP projects.

Allows 12 months after submittal of the draft PMRP to obtain oversight agency approval of the PMRP projects, including any environmental reviews.

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.

Allows 2 months to finalize the PMRP based on oversight agency conditions and obtain APCO approval.

g. By May 31, 2015, the requirements of Section C.3 shall apply.

Allows 20 months for PMRP projects to reduce emissions to meet the performance standard.

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 operator's PMRP or any part thereof.

All timelines were drafted to be the most expeditious possible given the expected time requirements. Section F.2 was added to explicitly state the APCD intention not to unfairly penalize the Operator for delays reasonably beyond the Operator's control.

IV. AFFECTED SOURCES

The only known facility that would be subject to Rule 1001at this time is the ODSVRA.

V. CONSIDERATION OF FINDINGS RELATED TO COST-EFFECTIVENESS OF CONTROL MEASURES

Pursuant to Health and Safety Code sections 40703 and 40922, the District has considered the cost effectiveness of the control measures required as a result of Rule 1001. District studies have concluded that the operations subject to this regulation are the only known emission sources that could be controlled and that would result in improvement to the ambient air quality at the impacted locations. The regulation's PMRP presents a best management practices approach that does not require specific projects or controls, but does require the Plan to contain emission reduction strategies sufficient to reduce ambient PM10 concentrations to levels comparable to natural background. Based upon ambient air monitoring data collected during the Phase 2 South County PM Study, achieving this goal is estimated to reduce exceedances of the State PM10 standard at the District's CDF monitoring site by about 75% compared to existing conditions.

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When the PMRP is implemented Staff expects significant emission reductions. The mass of the reductions will be dependent on the types of measures selected by the facility operator and cannot be reasonably estimated. Staff also expects an economic benefit from the reduction of heath care costs associated with a reduction in ambient particulate matter concentrations, but again those cannot be reasonably calculated. A traditional cost effectiveness analysis to evaluate the cost per ton of emissions reduced is not applicable in this instance because the individual strategies and their emission reduction effectiveness is currently unknown, and will depend entirely on the measures proposed by the applicant. In the process of developing the PMRP, the affected source will develop the control strategies, rank their effectiveness and propose those measures they deem necessary and feasible, subject to APCD approval. Presumably, the operator will choose those control strategies that can meet the standard at the lowest cost.

The cost of developing the PMRP and complying with any necessary land use or other regulatory agency permitting requirements could range from $200,000 to $400,000 and possibly more, depending on whether development of the plan is outsourced and the type and extent of environmental review required for the various projects proposed in the Plan. Although significant costs associated with implementing proposed PMRP projects and programs are possible, those costs cannot be reasonably estimated because the projects of the PMRP are dependent upon the measures developed by the facility operator and are unknown. The cost for air monitoring has been estimated in Attachment 3, Monitoring Cost Estimate Spreadsheet. The cost of equipment purchase and installation per monitoring site is estimated at approximately $69,000, with annual operating and maintenance costs estimated at $15,500 per site. If utility based electrical power is unavailable as a selected site location, additional costs would be incurred based on distance to the nearest utility line or other power generation system.

VI. ENVIRONMENTAL DETERMINATIONS

The District is the regulatory and public agency with the principal responsibility for approving and implementing the proposed new Rule 1001. Clean air is a valuable and essential natural resource. Proposed new Rule 1001 will serve to aid in the restoration of this natural resource by reducing the amount of air pollutants introduced into the ambient air. The proposed rule will also serve to enhance and protect the environment by controlling and decreasing sources of air pollutants. Therefore, the adoption of proposed new Rule 1001 is not a "project" within the meaning of Section 21065 of the California Environmental Quality Act (CEQA).

The proposed rule simply requires a CDVAA operator to develop and implement a Temporary Baseline Monitoring Program and Particulate Matter Reduction Plan (PMRP), subject to review and approval by the APCD and further subject to all required land-use and other environmental approvals for the proposed PMRP, including review as required under CEQA and NEPA, to provide for particulate matter control measures to reduce PM emissions to comply with the rule. After significant staff analysis, there is no substantial evidence that implementation of the proposed rule itself will have a significant adverse effect on the environment, including indirect effects on the environment. Any potential environmental effects, whether direct or indirect, will depend entirely on the particular measures the CDVAA operator chooses to propose as part of the PMRP

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Even assuming the rule were somehow considered to be a project under the California Environmental Quality Act (CEQA), it would be categorically exempt under CEQA as "Class 7 and 8" exemptions under Public Resources Code sections 20183 and 21084, and sections 15307 and 15308 (Actions by Regulatory Agencies for Protection of Natural Resources and the Environment) of the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3. The categorical exemptions provide as follows:

> ***Section 15307. Actions by Regulatory Agencies for Protection of Natural Resources.*** *Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.*
>
> ***Section 15308. Actions by Regulatory Agencies for Protection of the Environment.*** *Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.*

Public Resources Code Section 21159 Analysis

As identified above, this regulation does not constitute a project, or is categorically exempt under CEQA. However, Public Resources Code Section 21159 does require an abbreviated environmental assessment, as set forth below:

> *21159. (a) An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance. In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include all of the following:*
> *(1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.*
> *(2) An analysis of reasonably foreseeable feasible mitigation measures.*
> *(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.*
> *(b) The preparation of an environmental impact report at the time of adopting a rule or regulation pursuant to this division shall be deemed to satisfy the requirements of this section.*
> *(c) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.*
> *(d) Nothing in this section shall require the agency to conduct a project level analysis.*
> *(e) For purposes of this article, the term "performance standard" includes process or raw material changes or product reformulation.*

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(f) This section is not intended, and may not be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to this section.

Environmental Analysis of Reasonably Foreseeable Methods of Compliance

The primary components of the rule that have any potential to cause an environmental impact are the requirement to develop and implement a Particulate Matter Reduction Plan (PMRP), and the requirement to establish and conduct air monitoring downwind of the riding area and a comparable non-riding area.

Particulate Matter Reduction Plan: There are numerous potential emission reduction measures that could be considered for inclusion in the PMRP, including installation of sand fencing; adding artificial roughness elements to the sand surface; planting vegetation in the dunes; re-establishment of foredunes; planting a wind row of trees; reducing vehicle access or activity; and various other possible PM emission reduction measures used successfully in other areas. A few of these potential measures were recently studied as pilot projects in an effort partially funded by State Parks.

Implementation of one or more of these measures may have the potential to cause an environmental impact. However, the rule is not prescriptive regarding these or any other measures that could be chosen for inclusion in the Plan. Thus, which measures will be selected, and how and where they will be implemented, is currently unknown. As a result, it is not possible to evaluate the potential environmental impacts of implementing the PMRP without engaging in significant speculation and conjecture, which Section 21159 expressly provides the District is not required to do. However, the rule requires compliance with CEQA prior to final approval of the PMRP to ensure any potential environmental impacts are evaluated once specific projects are defined.

Establishment of an Air Monitoring Network: The requirement to establish and maintain a minimum of two air monitoring sites also contains a significant level of uncertainty regarding the number and potential location of such monitoring sites; it is currently unknown if the monitoring sites will be located within or outside the SVRA. Nonetheless, some of the likely siting requirements are known, such as the need for electrical power; possible need for minor grading to install a small shed to house the monitoring equipment; and the need for vehicle access to each monitoring site.

There are a number of possible configurations for the equipment and structures needed to comply with the monitoring requirement in the rule. The configuration with the potential largest footprint would likely consist of a mobile trailer no larger than 8 feet by 10 feet to house a particulate sampler and related electronic equipment; a narrow, ten meter aluminum tower would likely be attached to the side of the trailer, with a weather vane and wind anemometer mounted on top of the tower. Data from the monitoring and meteorological equipment would likely be electronically telemetered via cell phone or land line to the APCD and the affected facility offices. Each site would likely need to be visited at least once every other week to perform equipment calibrations and other routine maintenance.

The rule requires that at least one monitoring site be located downwind of the riding area in a location designed to capture peak particulate levels generated by that area, and at least one monitoring site be located in a comparable area downwind of a non-riding area. Research will need to be conducted by the affected facility to determine the most appropriate locations for each

site. Without knowing the potential locations of those sites, it is not possible to evaluate their potential environmental impacts without engaging in significant speculation and conjecture. However, the rule requires compliance with CEQA prior to final approval of the monitoring plan to ensure any potential environmental impacts are evaluated once specific monitoring site locations are defined.

Analysis of Reasonably Foreseeable Feasible Mitigation Measures
Since it is not possible to identify any reasonably foreseeable environmental impacts from this rule, it is not possible to identify feasible mitigation measures.

Analysis of Reasonably Foreseeable Alternative Means of Compliance with the Rule
A reasonably foreseeable alternative means of complying with the PMRP requirement to develop and implement PM reduction strategies would be to reduce or eliminate vehicle activity on the dunes. Neither of these alternatives would result in significant environmental impacts.

A reasonably foreseeable alternative means of complying with the air monitoring requirements in the rule would be to utilize an existing APCD monitoring site downwind of the riding area to meet that portion of the monitoring requirement. Such use would not result in significant environmental impacts as those sites are already established and in use.

VII. PUBLIC AND AGENCY COMMENTS

Comments and responses are found in Attachment 2.

VIII. RULE ADOPTION FINDINGS

As required by Section 40727 of the California Health & Safety Code (H&SC), the District Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference.

A. Necessity: The revisions are necessary to achieve the State PM10 ambient air quality standard.

B. Authority: Authority is given to the District to adopt rules pursuant to H&SC Sections 40001 and 40702.

C. Clarity: The proposed rule has been found by the District to be written in clear English and to be as easily understood as possible.

D. Consistency: The District has found the proposed rule consistent with existing District Rules and Regulations, existing state and federal guidelines, and similar Districts in the area.

E. Non-duplication: The revision does not result in a duplication of federal or state statutes or regulations where the requirements of any such statutes or regulations would be the same.

F. Reference: By adoption of the proposed rule the District is implementing, and making specific by adoption, applicable provisions of the state Health and Safety Code.

IX. CONCLUSION AND RECOMMENDATION

Staff recommends the adoption of proposed Rule 1001, Coastal Dunes Dust Control Requirements

X. ATTACHMENTS

Attachment 1, Proposed Rule 1001, Coastal Dunes Dust Control Requirements.

Attachment 2, Agency and Public Comments and Staff Responses.

Attachment 3, Monitoring Cost Estimate Spreadsheet

Exhibit "B"

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
CERTIFICATE OF MAILING

Friends Of Oceano Dunes Inc vs. Board of Directors of the San Luis Obispo County Air Pollution Control District	CV120013

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I, Jennifer Novick, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **03/07/2016** I deposited in the United States mail at Paso Robles, California, first class postage prepaid, in a sealed envelope, a copy of the attached **Ruling on Scope of Judgment and Motion to Tax Costs.** The foregoing document was addressed to each of the above parties.

OR

If counsel has a pickup box in the Courthouse a copy was placed in said pickup box this date.

Dated: 3/7/2016

Michael Powell, Clerk of the Court

By: _____ Deputy Clerk
Jennifer Novick