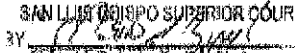


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SAN LUIS OBISPO SUPERIOR COURT
BY 
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5 Attorneys for Petitioner and Plaintiff
6 FRIENDS OF OCEANO DUNES, INC.

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN LUIS OBISPO

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

Case No.: 16CV-0160

13 vs.

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

14
15 CALIFORNIA COASTAL COMMISSION,
an agency of the State of California, and
16 JOHN (JACK) AINSWORTH, in his official
capacity as the Interim Executive Director
of the California Coastal Commission, and
17 DOES 1-50, inclusive,

18 Respondents and Defendants

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

22 Respondent and Defendant

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

27 Real Parties-in-Interest
28

1 Petitioner and Plaintiff Friends of Oceano Dunes, Inc., a California not-for-profit
2 corporation ("Friends"), on its own behalf, on behalf of its members, on behalf of the
3 general public and in the public interest, petition this Court for a writ for traditional
4 mandamus (C.C.P. § 1085) and/or a writ for administrative mandamus (C.C.P. § 1094.5),
5 and for declaratory and injunctive relief, directed to Respondent/Defendant California
6 Coastal Commission ("Commission"), Respondent/Defendant John ("Jack") Ainsworth,
7 in his official capacity as Interim Executive Director of the Commission ("CCC Executive
8 Director"), Respondent/Defendant California Department of Parks and Recreation
9 ("State Parks") and Real Parties-in-Interest San Luis Obispo County Air Pollution Control
10 District and its Board of Directors (collectively, the "District") as follows:

11 By this Verified Petition and Complaint, Friends alleges:

12 **INTRODUCTION**

13 1. Friends brings this lawsuit to challenge Respondent and Defendant California
14 Coastal Commission's and Respondent and Defendant Commission Interim Executive
15 Director John (Jack) Ainsworth's illegal issuance of an "emergency" coastal development
16 permit ("2016 Emergency Permit") to State Parks for implementation of certain dust
17 control and monitoring measures in 2016 ("2016 SubProject") – a project related to, and
18 a component part of, a larger, overall project to address certain dust emissions from
19 Oceano Dunes State Vehicular Recreation Area ("SVRA") located in San Luis Obispo
20 County (the "Overall Dust Control Project"). The Coastal Commission and Commissioner
21 Ainsworth have exceeded their authority, prejudicially abused their respective discretion
22 by failing to proceed in a manner required by law, failed to make findings, and/or failed
23 to support their determination and/or findings with substantial evidence, or any
24 evidence.

25 2. The 2016 SubProject includes dust control methods at two locations within the
26 SVRA. The 2016 Emergency Permit "authorizes" certain dust control measures. The dust
27 control methods would physically cover the ground with extensive artificial and
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1 nonnative materials including large areas of metal mesh, 43,000 linear feet of fencing
2 (about 40 acres), monitoring equipment, trailers, multiple 10-meter (33 feet) high “wind
3 towers,” meteorological instruments, solar panels, toxic batteries, station amenities and
4 additional perimeter fencing. Based on information and belief, much of the equipment
5 and material must be flown in by helicopter and/or trucked in through sensitive habitat.

6 3. The 2016 SubProject is part of the implementation of Rule 1001, adopted by
7 Real Party-in-Interest District in 2011. Rule 1001 requires certain dust control measures
8 at Oceano Dunes SVRA. Part (or all) of Rule 1001 has been invalidated by the Court of
9 Appeal, Second Appellate District, Division Six, in *Friends of Oceano Dunes v. San Luis*
10 *Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th 957.

11 4. The Overall Dust Control Project, and all of its subparts, including the 2016
12 SubProject, constitute “development” under the Coastal Act, and therefore require a
13 “coastal development permit” from the Coastal Commission before the projects can be
14 implemented. To date, the Commission has not issued a regular coastal development
15 permit for the Overall Dust Control Project, or any of its subparts, and Respondent and
16 Defendant State Parks has not obtained such a permit.

17 5. Instead, the Commission has exceeded its authority under the Coastal Act by
18 issuing a series of annual “emergency” permits since 2013 to allow partial
19 implementation of the dust control measures for Rule 1001. On or about March 11, 2016,
20 in excess of its jurisdiction and in violation of the Coastal Act, the Commission issued yet
21 another unlawful “emergency” permit for a subcomponent of the Overall Dust Control
22 Project. None of these activities or subprojects, including the 2016 SubProject, qualify as
23 an “emergency” under the Coastal Act. The Commission, when issuing previous
24 emergency permits for State Parks’ activities at Oceano Dunes SVRA, cautioned the
25 applicant, State Parks, to avoid “similar emergency situations in the future.” Yet, the
26 Commission issued the 2016 Emergency Permit anyway. State Parks is likewise violating

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1 the Coastal Act by failing to obtain a lawful regular coastal development permit for all of
2 its dust control activities.

3 6. Respondents/Defendants Commission and the CCC Executive Director
4 exceeded their authority and failed to proceed in a manner required by law by issuing the
5 2016 Emergency Permit, and by engaging in the pattern and practice of repeatedly
6 issuing emergency permits for Rule 1001 dust control measures on an annual basis since
7 2013 when no emergency existed at any time since 2013.

8
9 **THE PARTIES, JURISDICTION AND VENUE**

10 7. Petitioner and Plaintiff Friends is, and at all times referenced in this Petition
11 and Complaint, a California not-for-profit corporation and watchdog association, with its
12 principal place of business in San Luis Obispo County.

13 8. Friends was expressly created to preserve and create recreational uses,
14 including off-highway vehicle recreation, at Oceano Dunes SVRA. Friends is a voluntary
15 organization which represents approximately 28,000 members and users of Oceano
16 Dunes SVRA, who routinely engage, have engaged and plan to continue to engage in
17 motorized off-highway vehicle ("OHV") recreation, beach driving and beach camping at
18 Oceano Dunes. No less than hundreds of members engage, have engaged and plan to
19 continue to engage in coastal access, motorized OHV recreation, beach driving, beach
20 camping and enjoyment of coastal resources at Oceano Dunes SVRA multiple times each
21 year.

22 9. Friends was formed in 2001 for the express purpose of "preserving and
23 developing recreational uses" at Oceano Dunes in San Luis Obispo County.

24 10. Friends' members live near, use, recreate, visit and personally enjoy the
25 aesthetic, environmental, wildlife and recreational resources of Oceano Dunes SVRA,
26 including but not limited to hiking, walking on the beach, exploring, camping, swimming,

1 horseback riding, motorized and non-motorized recreation, bird watching, surf fishing,
2 surfing, photography of scenic environment and observing wildlife along the coast.

3 11. Friends' members are taxpayers in California and many pay taxes in San Luis
4 Obispo County. Respondent and Defendants, the Commission, the CCC Executive
5 Director, and State Parks have expended, are expending, and are proposing to expend,
6 substantial public funds to unlawfully implement partial dust control measures that do
7 not constitute an emergency under the law. The expenditure is illegal and wasteful.

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

10 13. Friends and its members are adversely affected by the Commission's and the
11 CCC Executive Director's illegal determination that State Park's 2016 SubProject
12 constitutes an "emergency" not subject to regular proceedings for coastal development
13 permits. The 2016 SubProject is a "development" under the Coastal Act that requires the
14 application and issuance of a regular coastal development permit. It does not constitute
15 an "emergency" and, as such, does not qualify for any exemption from the regular coastal
16 development permit process. Friends and its members are adversely affected by the
17 Commission's and the CCC Executive Director's issuance of a permit on an emergency
18 basis when no emergency exists because the emergency permit application is processed
19 with little or no public notice and with no public hearing, and thus effectively has
20 excluded Friends, its members and the general public, from public review and comment
21 that is designed to alert the Commission to adverse impacts to coastal resources and
22 failure to comply with the law. State Parks' preliminary environmental studies already
23 have concluded that the dust control activities could impact sensitive coastal dune habitat
24 that is part of the aesthetic, environmental and recreational resources of Oceano Dunes
25 SVRA enjoyed by Friends and its members. As regular users of Oceano Dunes SVRA with
26 an established purpose of protecting and expanding recreational uses of Oceano Dunes,
27 Friends and its members have a beneficial interest in participating in a public hearing and

1 comment process before the Commission before State Parks' development projects are
2 allowed to proceed.

3 14. Respondent and Defendant Commission is a state commission housed in the
4 California Natural Resources Agency, established pursuant to the provisions of the
5 California Coastal Act (Pub. Res. Code §§ 30000 et seq.). The Coastal Commission is
6 responsible for implementing the Coastal Act. A coastal development permit is required
7 for development within the coastal zone, (Pub. Res. Code, § 30600, subd. (a)), and, with
8 respect to Oceano Dunes SVRA, the Commission has assumed jurisdiction to process
9 applications and issue coastal development permits. The Coastal Commission purported
10 to issue the emergency permit for the 2016 SubProject to Respondent and Defendant,
11 State Parks, as well as emergency permits for dust control and monitoring projects at
12 Oceano Dunes SVRA in 2013, 2014 and 2015. The Commission has a duty to enforce the
13 Coastal Act requirement for a regular coastal development permit for development,
14 including dust control measures and monitoring, at Oceano Dunes SVRA and a duty to
15 not issue emergency permits in violation of the Coastal Act and state law.

16 15. Respondent and Defendant John (Jack) Ainsworth is the current Interim
17 Executive Director of the California Coastal Commission ("CCC Executive Director"). The
18 CCC Executive Director has jurisdiction to issue "emergency" coastal development
19 permits under the Coastal Act. Here, either, the CCC Executive Director, or his designee,
20 issued the 2016 Emergency Permit, and the other emergency permits at issue in this
21 action. Based on information and belief, Susan Craig, Central Coast District Manager,
22 issued the 2016 Emergency Coastal Development Permit, Emergency CDP G-3-16-0023
23 (ODSVRA Emergency Dust Control Program) on behalf of Interim CCC Executive
24 Director Ainsworth. Based on information and belief, Madeline Cavaliere, Central Coastal
25 District Manager, issued the 2013 Emergency Coastal Development Permit, Emergency
26 CDP G-3-13-0213 (ODSVRA Temporary Monitoring Program) on behalf of Charles
27 Lester, the CCC Executive Director in 2013. Based on information and belief, Madeline

1 Cavaliere, Central Coastal District Manager, issued the 2014 Emergency Coastal
2 Development Permit, Emergency CDP G-3-14-0007 (ODSVRA Dust Control Program) for
3 Charles Lester, the CCC Executive Director in 2014. Based on information and belief,
4 Susan Craig, Central Coastal District Manager, issued the 2015 Emergency Coastal
5 Development Permit, Emergency CDP G-3-15-0014 (ODSVRA Emergency Dust Control
6 Program) on behalf of Charles Lester, the Executive Director in 2015. CCC Executive
7 Director Charles Lester was fired by the Commission in early 2016.

8 16. Respondent and Defendant State Parks is, and has been, the state department
9 responsible for managing and operating Oceano Dunes SVRA. It also is implementing
10 Rule 1001. It applied to the Coastal Commission for all emergency permits at Oceano
11 Dunes SVRA being challenged in this litigation. It is obligated by the Coastal Act to
12 obtain from the Commission a regular coastal development permit for all aspects of the
13 Overall Dust Control Project, but it has failed to secure such a permit.

14 17. Real Party-in-Interest District is and was the local agency which created and
15 adopted Rule 1001 for Oceano Dunes SVRA. The dust control measures, including the
16 2016 SubProject, are part of the implementation of Rule 1001.

17 18. Real Party-in-Interest District Board is the decision-making body for the
18 District and is responsible for adopting rules and regulations regarding nonvehicular
19 sources of pollution in San Luis Obispo County. The District Board is comprised of 12
20 members, five SLO County Supervisors and one city council representative from each of
21 the seven incorporated cities. It adopted Rule 1001 in late 2011. The emergency permits
22 at issue in this action are for State Park's activities implementing Rule 1001.

23 19. The true names and capacities, whether individual, corporate, associate, or
24 otherwise, of Does 1 through 50 are unknown to the Petitioner, who therefore sues these
25 defendants/respondents/real-parties-in-interest by fictitious names. Friends will amend
26 this Petition/Complaint to show the Doe defendants/respondents/real-parties-in-
27 interests' true names and capacities when ascertained.

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

4 21. This Court has jurisdiction pursuant to CCP §§ 1085, 1086, 1094.5, 1060,
5 527(a), and Pub. Res. Code §§ 30801, 30803 and 30804.

6
7 **FACTUAL BACKGROUND**

8 **Oceano Dunes SVRA and Management by State Parks**

9 22. Respondent and Defendant State Parks operates Oceano Dunes SVRA
10 pursuant to Coastal Development Permit No. 4-82-300 issued in 1982 by the
11 Commission. Coastal Development Permit No. 4-82-300 does not authorize the activities
12 that comprise the 2016 SubProject or the Overall Dust Control Project.

13 23. In August 1982, shortly after the Commission granted the permit to State
14 Parks, the California Legislature adopted the Off-Highway Motor Vehicle Recreation Act
15 (the “SVRA Act”). The law declared a state policy of setting aside “effectively managed
16 areas and adequate facilities for the use of off-highway vehicles” Pub. Res. Code §
17 5090.02(b). The Legislature also tasked State Parks with “making the fullest public use
18 of the outdoor recreational opportunities [for off-highway motor vehicles]” Id., §
19 5090.43(a).

20 24. Pursuant to the SVRA Act, Pub. Res. Code § 5090.32(a), State Parks has the
21 duty and responsibility for “[p]lanning, acquisition, development, conservation, and
22 restoration of lands” within SVRAs. Pub. Res. Code §§ 5090.32(b), (d) and (h); and
23 5090.35(a), (b) and (c). State Parks manages and operates Oceano Dunes SVRA.

24
25 **Rule 1001 “Dust Rule” and Incomplete Environmental Analysis**

26 25. In 2011, the Real Party-in-Interest District promulgated and adopted Rule
27 1001 to address dust emissions from Oceano Dunes SVRA.

1 26. Beginning in 2012, Respondent and Defendant State Parks began efforts to
2 implement Rule 1001 dust monitoring and control measures through the Overall Dust
3 Control Project.

4 27. In December 2012, State Parks announced it would act as the lead agency in
5 preparing an environmental impact report (“EIR”) for the Overall Dust Control Project to
6 implement Rule 1001. Real Party-in-Interest District had neglected to comply with the
7 California Environmental Quality Act (“CEQA”) when it adopted Rule 1001 in 2011, and it
8 performed no environmental analysis at that time. It also has performed no
9 environmental analysis subsequently.

10 28. State Parks concluded that an EIR is mandated because the agency’s Initial
11 Study found that the Overall Dust Control Project potentially would have significant
12 environmental impacts, including impacts to coastal resources. The Initial Study noted
13 that the Overall Dust Control Project is “the installation, operation, and maintenance of
14 meteorological, sand flux (i.e., sand movement), and particulate matter (PM) monitoring
15 equipment and dust and track-out control measures.” Accordingly, the 2016 SubProject
16 as well as subprojects implemented from 2013-2015 (through the repeated illegal
17 issuance of emergency coastal development permits), are subparts of the Overall Dust
18 Control Project. To date, State Parks has failed to complete an EIR for the Overall Dust
19 Control Project (or even issue a draft EIR).

20 29. Beginning in 2013, State Parks began implementing a series of subcomponents
21 of the Overall Dust Control Project. To evade the Coastal Act’s requirement for a regular
22 coastal development permit, State Parks applied for annual “emergency” permits from
23 the Respondent and Defendant Commission.

24
25 **Previous “Emergency” Permits Issued by the Coastal Commission**

26 30. In April or May 2013, the Commission issued emergency coastal development
27 permit ECDP G-3-13-0213 to State Parks pursuant to 14 CCR §13142 for the alleged
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1 "emergency" of obtaining information during the "2013 windy season" for the
2 development and implementation of a Particulate Matter Reduction Plan that is part of
3 Rule 1001 ("2013 Emergency Permit"). The 2013 Emergency Permit authorized
4 temporary emergency monitoring consisting of 12 collection sites installed within Oceano
5 Dunes SVRA. The 2013 Emergency Permit admitted likely or potential environmental
6 impacts on Oceano Dunes SVRA by including a series of conditions intended to address
7 various impacts: For instance, the Commission required that "all areas affected by [the
8 equipment be] restored to their original pre-emergency . . . monitoring condition."
9 (Conditions of Approval #4) The Commission required State Parks to "employ a project
10 biologist/environmental monitor . . . to ensure compliance with all [emergency permit]
11 requirements during installation and removal of temporary monitoring equipment, and
12 restoration of the affected areas." (Conditions of Approval #8) Further, the Commission
13 mandated that "[a]ll emergency monitoring activities shall limit impacts to coastal
14 resources (including public recreational access and dunes) to the maximum extent
15 feasible... ." (Conditions of Approval #10) These conditions reveal that potential adverse
16 environmental impacts were expected, and that such impacts could change the
17 environmental baseline before the EIR was completed and adopted.

18 31. In March 2014, the Commission issued emergency coastal development permit
19 ECDP G-3-14-0007 (ODSVRA Dust Control Program) to State Parks pursuant to 14 CCR
20 § 13142 for the alleged "emergency" of obtaining information implementing dust control
21 during the "2014 windy season" for the development and implementation of a Particulate
22 Matter Reduction Plan that is part of Rule 1001 ("2014 Emergency Permit"). State Parks
23 described the 2014 SubProject as "deploying dust control on approximately 45 acres of
24 open sand areas at Oceano Dunes SVRA and undertaking associated monitoring
25 activities." The 2014 Emergency Permit admitted likely or potential environmental
26 impacts on Oceano Dunes SVRA by including a series of conditions intended to address
27 various impacts: For instance, the Commission required that "prior to removal of any
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1 straw bales, a biological monitor shall survey the straw bale deployment area and submit
2 a Restoration Plan to the [CCC] Executive Director for review and approval." (Conditions
3 of Approval #5) Another condition required State Parks to "employ a project
4 biologist/environmental monitor approved by the Executive Director to ensure
5 compliance with all . . . [emergency permit] requirements during installation and removal
6 of . . . monitoring equipment, wind fencing, and straw bales, and restoration of the
7 affected areas." (Conditions of Approval #9) Another condition stated that "[a]ll
8 emergency monitoring equipment, wind fencing, and straw bales shall limit impacts to
9 coastal resources (including public recreational access and dunes) to the maximum extent
10 feasible... ." (Conditions of Approval #11) These conditions reveal that potential adverse
11 environmental impacts were expected, and that such impacts could change the
12 environmental baseline before the EIR was completed and adopted.

13 32. In May 2015, the Commission issued emergency coastal development permit
14 ECDP G-3-15-0014 (ODSVRA Emergency Dust Control Program) to State Parks pursuant
15 to 14 CCR § 13142 for the alleged "emergency" of installing monitoring equipment
16 (including dust monitoring tower in South Oso Flaco Lake area) and dust control
17 measures to obtain information during the "2015 windy season" for the development and
18 implementation of a Particulate Matter Reduction Plan that is part of Rule 1001 ("2015
19 Emergency Permit"). The 2015 Emergency Permit authorized emergency monitoring and
20 dust control measures at Oceano Dunes SVRA, which included installation of wind
21 fencing and adding to straw bales installed in 2014. State Parks described the 2015
22 SubProject as ". . . specific dust control and monitoring actions necessary to gather
23 information for a longer-term dust control program at Oceano Dunes SVRA." The
24 activities included "alterations to land and information collection activities on open sand
25 areas, including installation of 40 acres of wind fencing," adding to previously placed
26 straw bales, "testing soil stabilizers (2.5 acres), and associated air quality, sand flux, and
27 wind monitoring." These conditions reveal that potential adverse environmental impacts

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1 were expected, and that such impacts could change the environmental baseline before the
2 EIR was completed and adopted.

3
4 The 2016 "Emergency Permit" Issued by the Coastal Commission

5 33. On or about March 11, 2016, the Commission issued yet another emergency
6 coastal development permit ECDP G-3-16-0023 (ODSVRA Emergency Dust Control
7 Program) to State Parks for the alleged "emergency" of installing dust control measures
8 and monitoring equipment within Oceano Dunes SVRA during the "2016 windy season."
9 Condition #4 states the monitoring equipment is located in at least nine locations. The
10 2016 Emergency Permit fails to identify the location or acreage involved for the dust
11 control measures. State Parks' application package states that the dust control measures
12 include installation of 40 acres of wind fencing of open sand riding areas at SVRA and 1.5
13 acres of roughness materials on open sand riding areas at Oceano Dunes SVRA. The 2016
14 Emergency Permit, CDP G-3-16-0023 (ODSVRA Emergency Dust Control Program), is
15 attached as Exhibit 1 hereto.

16 34. The 2016 Emergency Permit recognizes that the 2016 SubProject is likely to
17 cause adverse impacts to the environment, public access and recreational resources.

18 35. Accounting for the above sub-projects and other sub-projects, subcomponents
19 of the Overall Dust Control Project that State Parks already has implemented since 2010
20 include:

21 2010: installed a wind tower that is currently in operation

22 2011: installed 200 straw bales and associated instruments

23 2012: installed an acre of vegetation in an open dune

24 2013: installed two acres of vegetation

25 2013: installed 12 monitoring sites

26 2014: installed two treatment areas totaling 45 acres, with 15 acres of wind fencing
27 in the off-road vehicle riding area and 30 acres of straw bales

1 2015: installed two treatment areas totaling 65 acres, with 40 acres of wind fencing
2 and 25 acres of straw bales

3 2015: installed a monitoring station south of Oso Flaco Lake

4 The 2016 SubProject (previously described) is within the area or boundary of the
5 Overall Dust Control Project as presented in the 2012 Initial Study.

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

36. Petitioner Friends repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-35, inclusive, as though fully set forth.

37. Petitioner Friends and its members are beneficially interested in the issuance of the subject writ mandating that the Commission and the CCC Executive Director withdraw, set aside and vacate its March 11, 2016 issuance of an emergency coastal development permit and the underlying determination that the 2016 SubProject constitutes an “emergency” under the Coastal Act; that the Court issue a writ of mandate ordering Respondent State Parks and the Commission to comply with the Coastal Act and implementing regulations before proceeding with the dust control project or any subpart; and that the Court issue a writ of mandate ordering and enjoining Respondent State Parks to cease further on-the-ground projects and activities implementing Rule 1001 unless and until State Parks obtains a regular coastal development permit for the Overall Dust Control Project and all subparts, components and elements after a duly noticed public hearing in accordance with the Coastal Act and all regulations for issuance of said permit. Friends and its members are also beneficially interested in having the OHV riding areas which are closed due to the emergency projects re-opened to provide recreation at the coastal site. Petitioner Friends and its members are beneficially interested in the issuance of the writ as historical, on-going and future users of Oceano Dunes SVRA for off highway vehicle recreation and other recreational and environmental

1 uses, including beach driving and beach camping, bird watching, wildlife conservation
2 and observation, photography and enjoyment of natural coastal resources. Friends'
3 purpose and Articles of Incorporation include preserving and expanding recreational
4 opportunities at Oceano Dunes. Friends' members who live, work near and use the SVRA
5 have a beneficial interest in State Parks' compliance with the Coastal Act. Friends'
6 members live and work near Oceano Dunes SVRA and use the SVRA for beneficial
7 interests of enjoyment of natural resources and wildlife/plant species, aesthetic,
8 economic, recreational, and resource protection interests of Oceano Dunes. And as a not-
9 for-profit corporation specifically formed under the laws of the state of California to
10 preserve, continue and expand OHV recreation at Oceano Dunes, and whose membership
11 includes taxpayers of the State of California and payers of special OHV registration fees
12 and gas taxes paid into a special State of California budget fund expressly established for
13 the purpose of maintaining OHV and SVRA facilities within the State, Petitioners Friends
14 and its members have an interest in ensuring: (1) that public officials and agencies do not
15 unlawfully exceed their jurisdiction in implementing projects or undertaking activities at
16 Oceano Dunes SVRA; (2) that laws, regulations, and duties are executed and enforced
17 uniformly, fairly, and as written; (3) that public officials and agencies do not abuse their
18 discretion or exceed their jurisdiction at Oceano Dunes SVRA; and (4) that public officials
19 and agencies do not take said action in an arbitrary and capricious manner, lacking in
20 evidentiary support, or in the absence of proper procedures or proper notice. Friends
21 and its members have a beneficial interest in compliance and participation in the process
22 for the evaluation and issuance of coastal development permits and the evaluation of
23 environmental and recreational impacts from dust control measures that include relevant
24 specifics of Oceano Dunes SVRA, the resources involved, the physical changes, alterations
25 to ecological systems and sensitive habitat of the SVRA, the human use of the land in
26 these projects, and the scenic quality of the park environment. Friends' beneficial
27 interest, as described above and including recreational interests and coastal area access,
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1 has been and continues to be threatened by State Parks' implementation of the Overall
2 Dust Control Project and implementation of subprojects over multiple years without
3 complying with the Coastal Act requirements, and excluding the public and Friends' and
4 its members from certain areas of the SVRA and nor allowing participation in the
5 permitting process. A prejudicial abuse of discretion has occurred here due to the
6 erroneous determination of an emergency in violation of the Coastal Act and state law,
7 thus precluding informed decisionmaking and informed public participation. This
8 interest is especially paramount here since State Parks continues to implement the
9 Overall Dust Control Project and related activities and projects, and components without
10 complying with the Coastal Act, implementing regulations and state law.

11 38. Alternatively, Petitioner Friends and its members are citizens seeking to
12 enforce public rights and the object of this mandamus action is to enforce a public duty of
13 complying with the Coastal Act and state law.

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

18 40. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of
19 law, other than the relief sought in this petition. Absent intervention by this Court, the
20 Commission will treat the 2016 Emergency Permit as lawful, and State Parks will proceed
21 with the implementation of the 2016 SubProject to the detriment of Petitioner Friends
22 and its members as described herein. No additional administrative appeal or other form
23 of relief is available to prevent such an occurrence. Petitioner Friends has a clear, present
24 and beneficial right to performance of the public business in accordance with the Coastal
25 Act, its implementing regulations and state law as set forth herein.

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COUNT 1
(Commission and CCC Executive Director
Exceeded Their Authority
and Violated the Coastal Act and State Law By Improperly
Issuing the 2016 Emergency Permit to State Parks
When No Emergency Exists)

41. Petitioner Friends repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-40 inclusive, as though fully set forth.

42. Administrative agencies have only the power conferred upon them by statute, and an act in excess of those powers is void. An agency also must follow its own regulations.

43. The California Coastal Act, Public Resources Code, § 30600(a), imposes a mandatory requirement that any person must obtain a coastal development permit for performing or undertaking any development in the coastal zone: "(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit." See also, Pub. Res. Code, § 30601 ("Prior to certification of the local coastal program and, where applicable, in addition to a permit from local government pursuant to subdivision (b) or (d) of Section 30600, a coastal development permit shall be obtained from the commission for any of the following:

(1) Developments between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

1 (3) Any development which constitutes a major public works project or a major
2 energy facility.")

3 44. Public Resources Code § 21066 defines person to include "the state, and any of
4 the agencies and political subdivisions of those entities." Thus, State Parks must obtain a
5 coastal development permit from the Coastal Commission for any development within
6 the coastal zone, and Oceano Dunes SVRA is within the coastal zone.

7 45. Public Resources Code § 30106 defines development broadly and includes the
8 dust control measures and monitoring set forth in the emergency coastal development
9 permit for the 2016 SubProject: " 'Development' means, on land, in or under water, the
10 placement or erection of any solid material or structure; discharge or disposal of any
11 dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing,
12 dredging, mining, or extraction of any materials; change in the density or intensity of use
13 of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act
14 (commencing with Section 66410 of the Government Code), and any other division of
15 land, including lot splits, except where the land division is brought about in connection
16 with the purchase of such land by a public agency for public recreational use; change in
17 the intensity of use of water, or of access thereto; construction, reconstruction,
18 demolition, or alteration of the size of any structure, including any facility of any private,
19 public, or municipal utility; and the removal or harvesting of major vegetation other than
20 for agricultural purposes, kelp harvesting, and timber operations which are in accordance
21 with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly
22 Forest Practice Act of 1973 (commencing with Section 4511).

23 As used in this section, 'structure' includes, but is not limited to, any building,
24 road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power
25 transmission and distribution line."

26 46. The 2016 SubProject (and all previous subprojects and the Overall Dust
27 Control Project) constitute development under the Coastal Act.

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1 47. The 2016 SubProject is not exempt from the Coastal Act's coastal development
2 permit requirement on the basis of any of the exemptions in Pub. Res. Code § 30600,
3 such as that it is an emergency resulting from a "disaster in a disaster-stricken area in
4 which a state of emergency has been proclaimed by the Governor," or repair of highways
5 damaged by fire, flood, or other specific natural disasters listed in the statute. It is not a
6 disaster; it is not located in a disaster-stricken area in which a state of emergency has been
7 proclaimed by the Governor. It is not a highway repair project.

8 48. Likewise, the 2016 SubProject is not exempt from the Coastal Act's coastal
9 development permit requirement on the basis that it is a "temporary event" "which does
10 not have any significant adverse impact upon coastal resources within the meaning of
11 guidelines [adopted by the Commission]." Pub. Res. Code, § 30610(i)(1). Section
12 30610(i)(1) has 3 primary elements: (i) temporary, (ii) event and (iii) does not have any
13 significant adverse impacts upon coastal resources. None of these criteria have been met;
14 nor does the 2016 SubProject meet the criteria for a "temporary event" as defined by the
15 Commission's Guidelines on Temporary Events ("Guidelines").

16 49. The 2016 SubProject is not temporary in that it, or similar measures, repeat
17 every year. The subprojects also have significant adverse impacts upon coastal resources.
18 Based on information and belief, Respondants and Defendants Commission and the CCC
19 Executive Director performed no analysis of baseline conditions and made no
20 determination that the 2016 SubProject would have no significant environmental impact.
21 The installation of equipment and dust control features on up to **41.5 acres** in a sensitive
22 habitat area will likely cause direct or indirect impacts that diminish the value of the
23 habitat, or alter the physical or biological features or delay the development and growth
24 of such features. In fact, the 2016 Emergency Permit implicitly admits these
25 environmental impacts by imposing conditions attempting to reduce the likely harms.
26 For example, permit condition 3 requires perimeter fencing surrounding wind fencing
27 and the metal mesh ground cover to be "animal friendly" to "allow for the natural
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1 movement of animals in and out of the area." Based on information and belief, there was
2 no analysis of what animals are in the area, or whether they are likely to use an area that
3 is covered with metal mesh. Permit condition 6 requires the removal of the wind fencing,
4 metal mesh, and monitoring equipment at some point and that areas be "restored to their
5 original pre-emergency condition or better." Unfortunately, there is no way to restore
6 these areas to a pre-permit condition, and "better" is not defined or guided by any
7 standards. In addition, based on information and belief, there has been no pre-permit
8 survey in order to establish a baseline of environmental conditions. Permit condition 6
9 also requires a "biological monitor ... perform a pre-removal survey for California least
10 terns and western snowy plovers," endangered and threatened birds. But the condition
11 doesn't say what happens if the endangered or threatened birds are found in the dust
12 control area when the features are being installed. There is no required measure to
13 protect the birds or nests. Permit condition 7 requires straw bale removal for "bales that
14 were placed under prior emergency authorization" and requires a biological monitor to
15 survey the straw bale deployment area and submit a restoration plan for approval by the
16 CCC Executive Director prior to removal. This shows that while annual dust control
17 measures are intended to be "temporary" in some respect, parts of the controls remain
18 onsite from year-to-year and are not removed, meaning that they are not "temporary."
19 Temporary, by definition, does not mean an action or activity that is repeated on a regular
20 basis year after year. Again, also, any restoration plan cannot be effective because, based
21 on information and belief, there has been no baseline survey so the biologists won't know
22 what the area was like before the 2016 SubProject. While the "objective of the
23 Restoration Plan shall be to protect dune and related habitat resources to the greatest
24 extent feasible," if it is not "feasible," i.e., it costs too much or is not scientifically feasible,
25 restoration is not required by this standard. Permit condition 11 requires employment of
26 a biological monitor to ensure that all emergency monitoring equipment, wind fencing,
27 and metal mesh ground cover avoid impacts to habitat and resources "as much as

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1 possible." Again, if it is not "possible," it is not required by this standard. Permit
2 condition 13 provides that all emergency monitoring equipment, wind fencing, and metal
3 mesh shall limit impacts to coastal resources (including to public recreational access and
4 dunes) "to the maximum extent feasible...." If it is not "feasible" from a cost, engineering
5 or scientific standpoint, it not required by this standard.

6 49. The Commission's Guidelines focus on community events: "Temporary events,
7 such as volleyball tournaments, visual arts and music festivals, surfing contests, boat and
8 auto races, farmers markets, etc. have a long-standing tradition and history in California's
9 coastal communities." The 2016 SubProject is not a community event typically and
10 historically held in coastal communities where the general public is invited to attend and
11 participate or watch the event.

12 50. Only temporary events like these and otherwise meeting the Guideline criteria
13 are deemed "temporary." The 2016 SubProject does not meet those criteria.

14 51. The Guidelines define an event as temporary when it has a "limited duration,"
15 defined expressly as "a period of time which does not exceed a two week period on a
16 continual basis, or does not exceed a consecutive four month period on an intermittent
17 basis." Guidelines, Section V(b).

18 52. The 2016 SubProject is not temporary. Temporary, by definition, does not
19 mean an action or activity that is repeated on a regular basis year after year. The
20 Commission issued an emergency CDP in March 2016 for the 2016 SubProject where the
21 monitoring and dust control measures must be removed "as soon as possible after the
22 windy season and no later than August 31, 2016" (Condition 6), which is more than 2
23 weeks and therefore not temporary under the Guidelines.

24 53. The 2016 SubProject will likely have significant adverse impacts upon coastal
25 resources. Based on information and belief, the 2016 Emergency Permit does not require
26 full protections for the ESA protected birds, such as the western snowy plover and
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1 California least tern, when the monitoring equipment and dust control measures are
2 installed.

3 54. When the dunes are subjected to annual "emergency" dust control measure
4 subprojects, the ground and environment are disturbed. Recovery is delayed or
5 prevented by continued deployment of equipment, fencing and ground cover each year.
6 Qualifiers such as "to the greatest extent feasible" or "as much as possible" or "maximum
7 extent feasible" allow State Parks to avoid restoration and protection.

8 55. No other exemption from the Coastal Act's development permit requirement
9 applies to the 2016 SubProject.

10 56. The 2016 SubProject constitutes development that requires a coastal
11 development permit. The dust control measures include installation of wind fencing,
12 "roughness" and ground cover elements, and monitoring equipment. State Parks would
13 install 40 acres of new wind fencing in the open riding area and camping area, and
14 porous roughness elements on 1.5 acres of open sand at SVRA.

15 57. In a 2015 Commission Staff Report regarding Oceano Dunes SVRA, the
16 Commission admitted that State Parks' dust control mitigation measures constitute
17 development under the Coastal Act.

18 58. While Public Resources Code § 30624(a) allows the Commission to grant a
19 coastal development permit where there is an emergency, California courts hold an
20 "emergency" is a sudden, unexpected and unforeseen situation, and this is the approach
21 adopted by the Coastal Act.

22 59. The Coastal Act regulations, 14 CCR § 13009, define "emergency," as used in
23 Public Resources Code § 30624, to mean "a sudden unexpected occurrence demanding
24 immediate action to prevent or mitigate loss or damage to life, health, property or
25 essential public services." Thus, the Coastal Act and its regulations prohibit the
26 Commission from issuing an emergency permit unless there is a sudden unexpected
27 occurrence demanding immediate action. By analogy, the California Environmental
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1 Quality Act also defines an emergency only as a sudden, unexpected occurrence that
2 invokes a clear and imminent danger and that demands immediate action. Public
3 Resources Code § 21060.3. The 2016 SubProject and Overall Dust Control Project clearly
4 do not involve a clear and imminent danger that demands immediate action because
5 State Parks has been working on implementing Rule 1001 and its dust control measures
6 for more than 4 years. There is no substantial evidence of a clear and imminent danger
7 that demands immediate action, and the 2016 SubProject does not purport to solve or
8 resolve any substantial part of the dust emissions from Oceano Dunes SVRA. Nothing
9 about the dust emissions from Oceano Dunes SVRA are worse than conditions last year,
10 or the year before, or even back to 2011.

11 60. All components of an emergency must be established before State Parks can
12 qualify for an emergency permit. The components of emergency under 14 CCR § 13009
13 include: (a) a sudden unexpected occurrence; (b) demanding immediate action; and (c)
14 to prevent or mitigate loss or damage to life, health, property or essential public services.

15 61. State Parks' 2016 Application for Emergency Permit states that the "nature
16 and cause of emergency" are "sand dunes subject to strong onshore prevailing winds,"
17 and the "probable consequence of failing to take action," which is the "continued levels of
18 dust and PM10 in the air downwind of Oceano Dunes SVRA that exceed ambient air
19 quality standards" and the "risk to public health." For the reasons described above and
20 herein, this does not constitute an "emergency" under the Coastal Act or its regulations
21 and the Commission erroneously and unlawfully concluded that it did.

22 62. Respondent District issued a 2010 "South County Phase 2 Particulate Study,"
23 or Phase 2 Study, which stated that dust emissions from Oceano Dunes SVRA have
24 occurred on a historical basis dating back for as long as the dunes have existed (long
25 before OHV was invented). The dust control measures now being implemented address
26 this historical condition of dust emissions, not a "sudden unexpected occurrence." The
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1 annual strong winds at certain times of the year are historical, not a "sudden unexpected
2 occurrence."

3 63. Respondents and Defendants Commission and CCC Executive Director have
4 exceeded their respective authority by granting an emergency permit to State Parks for
5 the 2016 SubProject when no emergency exists, and Respondent and Defendant State
6 Parks, based on information and belief, has already commenced implementing
7 installation of the 2016 SubProject, and thus has violated the Coastal Act by engaging in
8 development at Oceano Dunes SVRA without obtaining a regular coastal development
9 permit from the Commission.

10 64. In addition, the Coastal Act provides that the "public has a right to fully
11 participate in decisions affecting coastal planning, conservation and development" and
12 "the continuing planning and implementation of programs for coastal conservation and
13 development should include the widest opportunity for public participation." (Public
14 Resources Code § 30006) The Coastal Act authorizes coastal development permits
15 without complying with the Coastal Act's procedures only when there is an actual
16 emergency. (Public Resources Code § 30624; 14 CCR § 13136 et seq.) Wrongful issuance
17 of an emergency permit unlawfully circumvents the Coastal Act's notice, hearing and
18 comment procedures which are designed to ensure protection of coastal resources and to
19 ensure input by the public. The 2016 SubProject does not constitute an emergency under
20 the Coastal Act and implementing regulations. The Commission's issuance of an
21 emergency permit for the 2016 SubProject exceeds its authority and abuses its discretion
22 because there is no emergency.

23 65. State Parks' activities and projects implemented since 2010 are interrelated
24 parts of the Overall Dust Control Project for which State Parks submitted an application
25 for a coastal development permit but has **not** received such a permit. The 2016
26 SubProject is part of a series of related, continuing, similar and/or subpart dust control

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1 projects since 2010 in the same general geographic area and within the area identified in
2 the coastal development permit application for the Overall Dust Control Project:

3 2010: installed a wind tower that is currently in operation

4 2011: installed 200 straw bales and associated instruments

5 2012: installed an acre of native vegetation in an open dune

6 2013: installed two acres of native vegetation

7 2013: installed 12 monitoring sites

8 2014: installed two treatment areas totaling 45 acres with 15 acres of wind fencing
9 in the off-road vehicle riding area and 30 acres of straw bales

10 2015: installed two treatment areas totaling 65 acres, with 40 acres of wind fencing
11 and 25 acres of straw bales from the 2014 season

12 2015: installed a monitoring station south of Oso Flaco Lake

13 66. As described above, the Commission and the CCC Executive Director have
14 exceeded their authority under the Coastal Act, prejudicially abused their discretion,
15 acted in an arbitrary and capricious manner, and acted without evidentiary support, and
16 failed to follow the requirements of the law. They failed to support their decision with the
17 required findings, failed to make required findings, and issued findings that are not
18 supported by the evidence.

19
20 **COUNT 2**

21 **(Commission and CCC Executive Director Exceeded Their Authority**
22 **by Failing to Comply with Emergency Permit Procedures)**

23 67. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
24 reference, the allegations contained in paragraphs 1-66 inclusive, as though fully set
25 forth.

1 68. Administrative agencies have only the power conferred upon them by statute,
2 and an act in excess of those powers is void. An agency also must follow its own
3 regulations.

4 69. The Coastal Act's emergency permit authorization is defined in greater detail in
5 regulations. 14 CCR § 13142 provides that the CCC Executive Director may grant an
6 emergency permit "upon reasonable terms and conditions, including an expiration date
7 and the necessity for a regular permit application later," if the CCC Executive Director
8 finds that:

9 “(a) An emergency exists and requires action more quickly than
10 permitted by the procedures for administrative permits, or for
11 ordinary permits and the development can and will be completed
12 within 30 days unless otherwise specified by the terms of the
13 permit;

14 (b) Public comment on the proposed emergency action has been
15 reviewed if time allows; and

16 (c) The work proposed would be consistent with the requirements
17 of the California Coastal Act of 1976.”

18 70. The applicant for an emergency permit can provide its opinion that the work
19 constitutes an emergency under Public Resources Code § 30624. 14 CCR § 13146.

20 71. However, 14 CCR § 13140 mandates that the CCC Executive Director verify the
21 “existence and nature of the emergency, insofar as time allows.” Thus, the responsibility
22 for determining whether there is an emergency rests with the CCC Executive Director.

23 72. If an emergency does not exist, the CCC Executive Director must notify the
24 applicant that a regular permit application is required. 14 CCR § 13147.

25 73. Here, Respondents and Defendants Commission and the CCC Executive
26 Director violated the Coastal Act, including Pub. Res. Code § 30624, and its regulations,
27 proceeded in excess of authority, and committed a prejudicial abuse of discretion in
28 granting the 2016 Emergency Permit. Respondents and Defendants Commission and the
CCC Executive Director further acted in an arbitrary and capricious manner, acted

1 without evidentiary support, and failed to follow the requirements of the law. They failed
2 to support their decision with the required findings, failed to make required findings, and
3 and issued findings that are not supported by the evidence.

4 74. Respondents and Defendants Commission and the CCC Executive Director
5 failed to find and/or verify that an emergency exists; failed to verify the nature of the
6 alleged emergency; failed to find that the procedure for ordinary permits was inadequate
7 to address the 2016 SubProject; failed to adequately review and account for public
8 comment on the proposed emergency action; and failed to determine that the work
9 proposed is consistent with the requirements of the Coastal Act, implementing
10 regulations and state law.

11 75. Respondents and Defendants Commission and the CCC Executive Director
12 also issued legally inadequate findings by failing to support findings with evidence that an
13 emergency exists; that the procedure for ordinary permits was inadequate to address the
14 2016 SubProject; and that the work proposed is consistent with the requirements of the
15 Coastal Act.

16 76. The CCC Executive Director also violated 14 CCR § 13147 because he failed to
17 notify State Parks that an emergency does not exist and that a regular coastal
18 development permit is required.

19 77. In a letter dated August 6, 2015, Friends objected to the Commission's
20 practice of granting emergency coastal development permits to State Parks for dust
21 control measures. Respondent Commission never responded to this objection or
22 addressed it in its issuance of the 2016 Emergency Permit. While an emergency permit
23 may be issued without an opportunity for the public to participate or "if time allows,"
24 since Petitioner Friends raised its objection more than 8 months prior to the issuance of
25 the 2016 Emergency Permit, the Commission and CCC Executive Director had time here,
26 but did not hold a hearing or otherwise invite public comment.

1 violating the Coastal Act, its implementing regulations, and applicable state laws and
2 regulations governing the review and issuance of emergency coastal development
3 permits.

4 83. Since 2013, Respondents Commission and CCC Executive Director have
5 engaged in a pattern and practice (or policy) of failing to lawfully assess and determine
6 whether annual weather events or conditions constitute an emergency under the Coastal
7 Act, its implementing regulations and state law. Such events and conditions are not a
8 sudden, unexpected, emergency occurrence. Emergency permits issued in 2013, 2014,
9 2015, and 2016, as described herein, are illustrative of this illegal pattern and practice.

10 84. In April or May **2013**, the Commission issued emergency coastal
11 development permit no. ECDP G-3-13-0213 to State Parks pursuant to 14 CCR § 13142 for
12 obtaining information during the "2013 windy season" as part of the Overall Dust Control
13 Project and Rule 1001 implementation. The 2013 windy season did not constitute an
14 emergency, and the project did not address the "emergency," as it only "monitored" dust
15 emissions. The CCC Executive Director issued ECDP G-3-13-0213 with the warning that
16 if State Parks "wish[es] to have the emergency temporary monitoring become permanent
17 monitoring, a regular CDP must be obtained." Three years later, State Parks has not
18 obtained a regular coastal development permit for the 2013 equipment.

19 85. On March 11, **2014**, the CCC Executive Director issued emergency coastal
20 development permit no. ECDP G-3-14-0007 (ODSVRA Dust Control Program) to State
21 Parks pursuant to 14 CCR § 13142 for temporary dust control measures and monitoring
22 during the "2014 windy season" and "current drought" as part of the Overall Dust Control
23 Project and Rule 1001 implementation. The 2014 windy season did not constitute an
24 emergency, and the project did not address an "emergency." When issuing this second
25 emergency permit, the CCC Executive Director admitted that it was stretching the law of
26 emergency. The CCC Executive Director thus conditioned this second emergency permit
27 on State Parks' representation that completion of the regular CDP application (no. 3-12-

1 050) would be “diligently pursued with the intent of avoiding similar emergency
2 situations in the future.” The CCC Executive Director warned that “[a]pplications for a
3 future [emergency coastal development permit] under similar circumstances without
4 deliberate pursuit of a CDP to permanently alleviate the identified public hazards may be
5 denied.” State Parks has not obtained a regular coastal development permit for the 2014
6 equipment.

7 86. On May 21, **2015**, the CCC Executive Director issued emergency coastal
8 development permit no. ECDP G-3-15-0014 (ODSVRA Emergency Dust Control
9 Program) to State Parks pursuant to 14 CCR § 13142 for temporary dust control measures
10 and monitoring during the "2015 windy season" and "current drought" as part of the
11 Overall Dust Control Project and Rule 1001 implementation. The 2015 windy season did
12 not constitute an emergency, and the project did not address the “emergency.” The 2015
13 Emergency Permit authorized monitoring equipment, a dust monitoring tower, wind
14 fencing, and reuse of placed straw bales from the prior year's dust mitigation effort. The
15 CCC Executive Director again conditioned this third emergency permit on State Parks'
16 representation that completion of the regular CDP application (no. 3-12-050) would be
17 “diligently pursued with the intent of avoiding similar emergency situations in the
18 future,” and “[a]pplication for any future ECDP under similar circumstances without
19 deliberate pursuit of a CDP to permanently alleviate the identified public hazards may be
20 denied.” State Parks has not obtained a regular coastal development permit for the 2015
21 equipment.

22 87. On February 19, **2016**, State Parks submitted an application to the
23 Commission for yet another emergency permit for the 2016 SubProject at Oceano Dunes
24 SVRA for the "2016 windy season." The 2016 application states that the information and
25 attachments are required in order to receive an emergency permit pursuant to Public
26 Resources Code § 30624(a). Again, the purpose of the emergency permit was to
27 implement measures and equipment as part of the Overall Dust Control Project and Rule
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1 1001 implementation. The 2016 windy season did not constitute an emergency, and the
2 project did not address an "emergency." The 2016 SubProject includes installation of
3 extensive wind fencing, metal mesh roughness elements, and monitoring equipment in at
4 least nine locations. State Parks proposed to install 40 acres of new wind fencing in the
5 open riding area and camping area, add 20 acres of existing straw bales and metal mesh
6 roughness material on 1.5 acres of open sand at the SVRA. State Parks' application states
7 that the "nature and cause of emergency" are "sand dunes subject to strong onshore
8 prevailing winds." On March 11, 2016, the CCC Executive Director issued ECDP no. G-3-
9 16-0023 (OSDVRA Emergency Dust Control Program) to State Parks that authorized
10 installation of the similar measures of monitoring equipment, wind fencing, and
11 roughness elements but did not authorize any deployment of straw bales or any
12 refreshing or reusing of straw bales from prior years' dust mitigation measures. The CCC
13 Executive Director again conditioned this fourth emergency permit "on the
14 representation of CDPR that completion of CDP Application 3-12-050 will be diligently
15 pursued, and that a CDP to implement a comprehensive dust control abatement and dune
16 restoration program, with the intent of avoiding similar emergency situations in the
17 future, is required to be submitted and approved by the Coastal Commission for Rule
18 1001 compliance....Application for any future ECDP under similar circumstances without
19 deliberate pursuit of a CDP to permanently alleviate the identified public health hazards
20 may be denied."

21 88. In 2016, the alleged emergency is again annual spring winds. State Parks' 2016
22 emergency permit application acknowledges the interconnectedness of the dust control
23 projects over the past years, showing that there is not an emergency each year, but a
24 continued pattern and practice (or policy) of the Commission and CCC Executive Director
25 issuing emergency permits unlawfully. These interconnected dust control measures, in
26 addition to the 2016 SubProject described above, include:

27 2010: installed a wind tower that is currently in operation
28

1 2011: installed 200 straw bales and associated instruments
2 2012: installed an acre of native vegetation in an open dune
3 2013: installed two acres of native vegetation
4 2013: installed 12 monitoring sites
5 2014: installed two treatment areas totaling 45 acres with 15 acres of wind fencing
6 in the off-road vehicle riding area and 30 acres of straw bales
7 2015: installed two treatment areas totaling 65 acres, with 40 acres of wind fencing
8 and 25 acres of straw bales from the 2014 season
9 2015: installed a monitoring station south of Oso Flaco Lake

10 89. The Commission's and CCC Executive Director's pattern and practice (or
11 policy) evidenced over a multi-year period of issuing emergency permits to State Parks
12 for subparts of Rule 1001 implementation when no emergency exists violates the Coastal
13 Act and implementing regulations. A pattern and practice (or policy) is evident by the
14 issuance in multiple consecutive years of emergency permits for annual wind events that
15 are not sudden and for projects that are part of the Overall Dust Control Project and
16 implementation of Rule 1001. The Commission's and CCC Executive Director's issuance
17 of emergency permits for the dust control project implementation are not isolated acts,
18 but now constitute a standard operating procedure, pattern, practice and policy for
19 implementing Rule 1001 and its requirements.

20 90. An action challenging an administrative agency's policy of ignoring or
21 violating applicable laws and regulations, but not challenging any specific agency
22 decision, is an actual, justiciable controversy for which declaratory relief is available.

23 91. An action for declaratory relief lies against an administrative agency when it is
24 alleged that the agency has a pattern and practice (or policy) of ignoring or violating
25 mandates of applicable laws and regulations. Respondents Commission and CCC
26 Executive Director have failed and continue to fail to comply with the law as alleged

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1 herein. Their repeated actions as described herein constitute an illegal pattern and
2 practice (or policy) of violating the Coastal Act.

3 92. Irreparable harm has occurred to the Petitioner's and the public's right to
4 expect its agencies to comply with state law, as well as their right to participate in the
5 procedures for issuance of coastal development permits in regular course and after public
6 notice, comment and hearing.

7 93. Petitioner Friends challenges the Commission's and CCC Executive Director's
8 pattern and practice (or policy) of issuing emergency coastal development permits in
9 violation of the Coastal Act and implementing regulations. Friends seeks declaratory
10 relief that this pattern and practice (or policy) violates the Coastal Act by annually
11 allowing development at Oceano Dunes SVRA by State Parks without obtaining a regular
12 coastal development permit when no emergency exists. Plaintiff seeks declaratory relief
13 that this policy or pattern or practice is a violation of the Coastal Act §§ 30600(a) and
14 30624.

15 94. Petitioner also seeks injunctive relief prohibiting further implementation of
16 the dust control measures and monitoring and prohibiting the issuance of future
17 emergency permits unless the Commission, the CCC Executive Director and State Parks
18 each comply with all Coastal Act requirements, including obtaining a coastal development
19 permit for the Overall Dust Control Project, all subparts and all activities related to Rule
20 1001 implementation.

21
22 **COUNT 4**
23 **(State Parks Failed to Obtain a Regular Coastal Development Permit as**
24 **Required by the Coastal Act and thus the 2016 SubProject Constitutes**
Unpermitted Development)

25 95. Petitioner Friends repeats, realleges and incorporates herein by reference, the
26 allegations contained in paragraphs 1-94, inclusive, as though fully set forth.

1 96. Administrative agencies have only the power conferred upon them by statute,
2 and an act in excess of those powers is void. An agency also must follow its own
3 regulations.

4 97. The 2016 SubProject is part of the implementation of Rule 1001, adopted by
5 Real Party-in-Interest District in 2011. Rule 1001 requires certain dust control measures
6 at Oceano Dunes SVRA. The 2016 SubProject is a project related to, and a component
7 part of, a larger, overall project to address certain dust emissions from Oceano Dunes
8 SVRA or the Overall Dust Control Project.

9 98. A coastal development permit is required for development within the coastal
10 zone, (Pub. Res. Code, § 30600, subd. (a)), and, with respect to Oceano Dunes SVRA, the
11 Commission has assumed jurisdiction to process applications and issue coastal
12 development permits.

13 99. The Coastal Act, Public Resources Code, § 30600(a), imposes a mandatory
14 requirement that any person must obtain a coastal development permit for performing or
15 undertaking any development in the coastal zone: "(a) Except as provided in subdivision
16 (e), and in addition to obtaining any other permit required by law from any local
17 government or from any state, regional, or local agency, any person, as defined in Section
18 21066, wishing to perform or undertake any development in the coastal zone, other than
19 a facility subject to Section 25500, shall obtain a coastal development permit." See also,
20 Pub. Res.Code, § 30601 ("Prior to certification of the local coastal program and, where
21 applicable, in addition to a permit from local government pursuant to subdivision (b) or
22 (d) of Section 30600, a coastal development permit shall be obtained from the
23 commission for any of the following:

24 (1) Developments between the sea and the first public road paralleling the sea or
25 within 300 feet of the inland extent of any beach or of the mean high tide line of the sea
26 where there is no beach, whichever is the greater distance.

1 (2) Developments not included within paragraph (1) located on tidelands,
2 submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or
3 within 300 feet of the top of the seaward face of any coastal bluff.

4 (3) Any development which constitutes a major public works project or a major
5 energy facility.")

6 100. Public Resources Code § 21066 defines person to include "the state, and any
7 of the agencies and political subdivisions of those entities." Thus, State Parks must
8 obtain a coastal development permit from the Commission for any development within
9 the coastal zone, which includes Oceano Dunes SVRA.

10 101. Public Resources Code § 30106 defines development broadly and includes the
11 dust control measures and monitoring set forth in the emergency coastal development
12 permit for the 2016 SubProject: " 'Development' means, on land, in or under water, the
13 placement or erection of any solid material or structure; discharge or disposal of any
14 dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing,
15 dredging, mining, or extraction of any materials; change in the density or intensity of use
16 of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act
17 (commencing with Section 66410 of the Government Code), and any other division of
18 land, including lot splits, except where the land division is brought about in connection
19 with the purchase of such land by a public agency for public recreational use; change in
20 the intensity of use of water, or of access thereto; construction, reconstruction,
21 demolition, or alteration of the size of any structure, including any facility of any private,
22 public, or municipal utility; and the removal or harvesting of major vegetation other than
23 for agricultural purposes, kelp harvesting, and timber operations which are in accordance
24 with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly
25 Forest Practice Act of 1973 (commencing with Section 4511).

1 As used in this section, 'structure' includes, but is not limited to, any building,
2 road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power
3 transmission and distribution line."

4 102. The 2016 SubProject constitutes development under the Coastal Act. In a
5 2015 Commission Staff Report regarding Oceano Dunes SVRA, the Commission admitted
6 that State Parks' dust control mitigation measures constitute development under the
7 Coastal Act. The 2016 SubProject is part of the Overall Dust Control Project.

8 103. The Commission admits in Condition 8 of its 2016 Emergency Permit that
9 State Parks' existing CDP application 3-12-050 must be amended to include this 2016
10 SubProject.

11 104. The 2016 SubProject is not exempt from the Coastal Act's coastal
12 development permit requirement on the basis of any of the exemptions in Pub. Res. Code
13 § 30600, such as that it is an emergency resulting from a "disaster in a disaster-stricken
14 area in which a state of emergency has been proclaimed by the Governor," or repair of
15 highways damaged by fire, flood, or other specific natural disasters listed in the statute.
16 It is not a disaster; it is not located in a disaster-stricken area in which a state of
17 emergency has been proclaimed by the Governor. It is not a highway repair project.

18 105. Likewise, the 2016 SubProject is not exempt from the Coastal Act's coastal
19 development permit requirement on the basis that it is a "temporary event" "which does
20 not have any significant adverse impact upon coastal resources within the meaning of
21 guidelines [adopted by the Commission]." It is not temporary in that it repeats every
22 year. It also has significant adverse impacts upon coastal resources. Based on
23 information and belief, Respondants and Defendants Commission and the CCC Executive
24 Director performed no analysis of baseline conditions and made no determination that
25 the 2016 SubProject would have no significant environmental impact. The installation of
26 equipment and dust control features on up to **41.5 acres** in a sensitive habitat area will
27 likely cause direct or indirect impacts that diminish the value of the habitat, or alter the
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1 physical or biological features or delay the development and growth of such features. In
2 fact, the 2016 Emergency Permit implicitly admits these environmental impacts by
3 imposing conditions attempting to reduce the likely harms. For example, permit
4 condition 3 requires perimeter fencing surrounding wind fencing and the metal mesh
5 ground cover to be "animal friendly" to "allow for the natural movement of animals in
6 and out of the area." Based on information and belief, there is no analysis of what
7 animals are in the area, or whether they are likely to use an area that is covered with
8 metal mesh. Permit condition 6 requires the removal of the wind fencing, metal mesh,
9 and monitoring equipment at some point and that areas be "restored to their original pre-
10 emergency condition or better." Unfortunately, there is no way to restore these areas to a
11 pre-permit condition, and "better" is not defined or guided by any standards. In addition,
12 based on information and belief, there has been no pre-permit survey in order to
13 establish a baseline of environmental conditions. Permit condition 6 also requires a
14 "biological monitor ...perform a pre-removal survey for California least terns and western
15 snowy plovers," endangered and threatened birds. Permit condition 7 requires straw bale
16 removal for "bales that were placed under prior emergency authorization" and requires a
17 biological monitor to survey the straw bale deployment area and submit a restoration
18 plan for approval by the CCC Executive Director prior to removal. This shows that while
19 annual dust control measures are intended to be "temporary" in some respect, parts of
20 the controls remain onsite from year-to-year and are not removed, meaning that they are
21 not "temporary." Temporary, by definition, does not mean an action or activity that is
22 repeated on a regular basis year after year. Again, also, any restoration plan cannot be
23 effective because, based on information and belief, there has been no baseline survey so
24 the biologists won't know what the area was like before the 2016 SubProject. While the
25 "objective of the Restoration Plan shall be to protect dune and related habitat resources to
26 the greatest extent feasible," if it is not "feasible," i.e., it costs too much or is not
27 scientifically feasible, restoration is not required by this standard. Permit condition 11

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1 requires employment of a biological monitor to ensure that all emergency monitoring
2 equipment, wind fencing, and metal mesh ground cover avoid impacts to habitat and
3 resources "as much as possible." Again, if it is not "possible," it is not required by this
4 standard. Permit condition 13 provides that all emergency monitoring equipment, wind
5 fencing, and metal mesh shall limit impacts to coastal resources (including to public
6 recreational access and dunes) "to the maximum extent feasible...." If it is not "feasible"
7 from a cost, engineering or scientific standpoint, it not required by this standard.

8 106. State Parks is obligated by the Coastal Act to obtain from the Commission a
9 regular coastal development permit for all aspects of the Overall Dust Control Project, but
10 it has failed to secure such a permit.

11 107. The Overall Dust Control Project, and all of its subparts, including the 2016
12 SubProject, constitute "development" under the Coastal Act, and therefore require a
13 "coastal development permit" from the Coastal Commission before the projects can be
14 implemented. To date, the Commission has not issued a regular coastal development
15 permit for the Overall Dust Control Project, or any of its subparts.

16 108. While Public Resources Code § 30624(a) allows the Commission to grant a
17 coastal development permit where there is an emergency, California courts hold an
18 "emergency" is a sudden, unexpected and unforeseen situation, and this is the approach
19 adopted by the Coastal Act.

20 109. The Coastal Act regulations, 14 CCR § 13009, define "emergency," as used in
21 Public Resources Code § 30624, to mean "a sudden unexpected occurrence demanding
22 immediate action to prevent or mitigate loss or damage to life, health, property or
23 essential public services." Thus, the Coastal Act and its regulations prohibit the
24 Commission from issuing an emergency permit unless there is a sudden unexpected
25 occurrence demanding immediate action. By analogy, the California Environmental
26 Quality Act also defines an emergency only as a sudden, unexpected occurrence that
27 invokes a clear and imminent danger and that demands immediate action. Public
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1 Resources Code § 21060.3. The 2016 SubProject and Overall Dust Control Project clearly
2 do not involve a clear and imminent danger that demands immediate action because
3 State Parks has been working on implementing Rule 1001 and its dust control measures
4 for more than 4 years. There is no substantial evidence of a clear and imminent danger
5 that demands immediate action, and the 2016 SubProject does not purport to solve or
6 resolve any substantial part of the dust emissions from Oceano Dunes SVRA. Nothing
7 about the dust emissions from Oceano Dunes SVRA are worse than conditions last year,
8 or the year before, or even back to 2011.

9 110. All components of an emergency must be established before State Parks can
10 qualify for an emergency permit. The components of emergency under 14 CCR § 13009
11 include: (a) a sudden unexpected occurrence; (b) demanding immediate action; and (c)
12 to prevent or mitigate loss or damage to life, health, property or essential public services.

13 111. State Parks' 2016 Application for Emergency Permit states that the "nature
14 and cause of emergency" are "sand dunes subject to strong onshore prevailing winds,"
15 and the "probable consequence of failing to take action," which is the "continued levels of
16 dust and PM10 in the air downwind of Oceano Dunes SVRA that exceed ambient air
17 quality standards" and the "risk to public health." This does not constitute an
18 "emergency" under the Coastal Act or its regulations and the Commission erroneously
19 and unlawfully concluded that it did.

20 112. Respondent District issued a 2010 "South County Phase 2 Particulate Study,"
21 or Phase 2 Study, that reported that dust emissions from Oceano Dunes SVRA have
22 occurred on a historical basis dating back for as long as the dunes have existed. The dust
23 control measures now being implemented address this historical condition of dust
24 emissions, not a "sudden unexpected occurrence." The annual strong winds at certain
25 times of the year are historical, not a "sudden unexpected occurrence."

26 113. The 2016 SubProject is a "development" under the Coastal Act that requires
27 the application and issuance of a regular coastal development permit. It does not
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1 constitute an “emergency” and, as such, does not qualify for any exemption from the
2 regular coastal development permit process. No other exemption from the Coastal Act’s
3 development permit requirement applies to the 2016 SubProject.

4 114. State Parks' failure to obtain a regular coastal development permit from the
5 Commission constitutes a violation of the Coastal Act and renders the 2016 SubProject as
6 unpermitted, unlawful development in violation of the Coastal Act.

7 **COUNT 5**
8 **(Commission and CCC Executive Director Exceeded Their Authority**
9 **and Violated the Coastal Act By Improperly**
10 **Shifting the Environmental Baseline Needed to Perform Proper**
11 **Environmental Impact Analysis of Coastal Resources of the Aggregate**
12 **SubProjects and the Overall Dust Control Project)**

13 115. Petitioner Friends repeats, realleges and incorporates herein by reference, the
14 allegations contained in paragraphs 1-114, inclusive, as though fully set forth.

15 116. The Coastal Act, Pub. Res. Code §§ 30000 et seq., calls for the protection of
16 coastal resources. In order to achieve that goal, the Commission and CCC Executive
17 Director must understand the baseline of environmental conditions so that they can
18 ascertain the likely adverse impacts that a project may have on the coastal resources.

19 117. From 2013-2016, Respondent and Defendant State Parks repeatedly
20 submitted applications for emergency coastal development permits to install and
21 implement monitoring and/or dust control measures as annual subprojects of the Overall
22 Dust Control Project at Oceano Dunes SVRA.

23 118. In 2013, 2014, 2015 and 2016, the Commission and CCC Executive Director
24 repeatedly granted emergency coastal development permits for these annual subprojects
25 of the primary Overall Dust Control Project.

26 119. These repeated subprojects have adversely affected, and continue to adversely
27 affect, coastal resources, and those adverse effects have shifted, and continue to shift, the
28 environmental baseline, thus undermining the ability of the Commission and the CCC

1 Executive Director to adequately evaluate the impact of the Overall Dust Control Project
2 and all of its subprojects on coastal resources and the environment.

3 120. Three years ago, State Parks concluded that an EIR is necessary for the
4 overall dust control measures, including all subparts, because the agency's Initial Study
5 determined that the dust control project would have potentially significant environmental
6 impacts. The Commission's and the CCC Executive Director's granting of multiple
7 emergency coastal development permits for annual subprojects undermine the validity of
8 the ultimate EIR by shifting the environmental baseline, and making it impossible to
9 evaluate the true full impact of the Overall Dust Control Project. The actions also side-
10 step the Commission's and the CCC Executive Director's legal obligations under the
11 Coastal Act to protect coastal resources.

12
13 **SECOND CAUSE OF ACTION**
14 **(Petition for Writ of Administrative Mandate, C.C.P. § 1094.5)**

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

18 122. Petitioner Friends and its members are beneficially interested in the issuance
19 of the subject writ mandating that the Commission and the CCC Executive Director
20 withdraw, set aside and vacate its March 11, 2016 issuance of an emergency coastal
21 development permit and the underlying determination that the 2016 SubProject
22 constitutes an "emergency" under the Coastal Act; that the Court issue a writ of mandate
23 ordering Respondent State Parks and the Commission to comply with the Coastal Act and
24 implementing regulations before proceeding with the dust control project or any subpart;
25 and that the Court issue a writ of mandate ordering and enjoining Respondent State
26 Parks to cease further on-the-ground projects and activities implementing Rule 1001
27 unless and until State Parks obtains a regular coastal development permit for the Overall
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1 Dust Control Project and all subparts, components and elements after a duly noticed
2 public hearing in accordance with the Coastal Act and all regulations for issuance of said
3 permit. Friends and its members are also beneficially interested in having the OHV
4 riding areas which are closed due to the emergency projects re-opened to provide
5 recreation at the coastal site. Petitioner Friends and its members are beneficially
6 interested in the issuance of the writ as historical, on-going and future users of Oceano
7 Dunes SVRA for off highway vehicle recreation and other recreational and environmental
8 uses, including beach driving and beach camping, bird watching, wildlife conservation
9 and observation, photography and enjoyment of natural coastal resources. Friends'
10 purpose and Articles of Incorporation include preserving and expanding recreational
11 opportunities at Oceano Dunes. Friends' members who live, work near and use the SVRA
12 have a beneficial interest in State Parks' compliance with the Coastal Act. Friends'
13 members live and work near Oceano Dunes SVRA and use the SVRA for beneficial
14 interests of enjoyment of natural resources and wildlife/plant species, aesthetic,
15 economic, recreational, and resource protection interests of Oceano Dunes. And as a not-
16 for-profit corporation specifically formed under the laws of the state of California to
17 preserve, continue and expand OHV recreation at Oceano Dunes, and whose membership
18 includes taxpayers of the State of California and payers of special OHV registration fees
19 and gas taxes paid into a special State of California budget fund expressly established for
20 the purpose of maintaining OHV and SVRA facilities within the State, Petitioners Friends
21 and its members have an interest in ensuring: (1) that public officials and agencies do not
22 unlawfully exceed their jurisdiction in implementing projects or undertaking activities at
23 Oceano Dunes SVRA; (2) that laws, regulations, and duties are executed and enforced
24 uniformly, fairly, and as written; (3) that public officials and agencies do not abuse their
25 discretion or exceed their jurisdiction at Oceano Dunes SVRA; and (4) that public officials
26 and agencies do not take said action in an arbitrary and capricious manner, lacking in
27 evidentiary support, or in the absence of proper procedures or proper notice. Friends

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1 and its members have a beneficial interest in compliance and participation in the process
2 for the evaluation and issuance of coastal development permits and the evaluation of
3 environmental and recreational impacts from dust control measures that include relevant
4 specifics of Oceano Dunes SVRA, the resources involved, the physical changes, alterations
5 to ecological systems and sensitive habitat of the SVRA, the human use of the land in
6 these projects, and the scenic quality of the park environment. Friends' beneficial
7 interest, as described above and including recreational interests and coastal area access,
8 has been and continues to be threatened by State Parks' implementation of the Overall
9 Dust Control Project and implementation of subprojects over multiple years without
10 complying with the Coastal Act requirements, and excluding the public and Friends' and
11 its members from certain areas of the SVRA and nor allowing participation in the
12 permitting process. A prejudicial abuse of discretion has occurred here due to the
13 erroneous determination of an emergency in violation of the Coastal Act and state law,
14 thus precluding informed decisionmaking and informed public participation. This
15 interest is especially paramount here since State Parks continues to implement the
16 Overall Dust Control Project and related activities and projects, and components without
17 complying with the Coastal Act, implementing regulations and state law.

18 123. Alternatively, Petitioner Friends and its members are citizens seeking to
19 enforce public rights and the object of this mandamus action is to enforce a public duty.

20 124. Petitioner Friends has performed all conditions precedent to the filing of this
21 Petition and Complaint and otherwise exhausted all required and applicable
22 administrative remedies, or is otherwise excused given that this is a challenge to the
23 authority of the Commission and State Parks.

24 125. Petitioner has no plain, speedy, and adequate remedy in the ordinary course
25 of law, other than the relief sought in this petition. Absent intervention by this Court, the
26 Commission will treat the 2016 Emergency Permit as lawful, and State Parks will proceed
27 with the implementation of the 2016 SubProject to the detriment of Petitioner Friends

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1 and its members as described herein. No additional administrative appeal or other form
2 of relief is available to prevent such an occurrence. Petitioner Friends has a clear, present
3 and beneficial right to performance of the public business in accordance with the Coastal
4 Act, its implementing regulations and state law as set forth herein.

5
6 **COUNT 1**
7 **(Commission and CCC Executive Director**
8 **Exceeded Their Authority**
9 **and Violated the Coastal Act and Law By Improperly**
10 **Issuing the 2016 Emergency Permit to State Parks**
11 **When No Emergency Exists)**

12 126. Petitioner Friends repeats, realleges and incorporates herein by reference, the
13 allegations contained in paragraphs 1-125 inclusive, as though fully set forth.

14 127. Administrative agencies have only the power conferred upon them by statute,
15 and an act in excess of those powers is void. An agency also must follow its own
16 regulations.

17 128. The California Coastal Act, Public Resources Code, § 30600(a), imposes a
18 mandatory requirement that any person must obtain a coastal development permit for
19 performing or undertaking any development in the coastal zone: "(a) Except as provided
20 in subdivision (e), and in addition to obtaining any other permit required by law from any
21 local government or from any state, regional, or local agency, any person, as defined in
22 Section 21066, wishing to perform or undertake any development in the coastal zone,
23 other than a facility subject to Section 25500, shall obtain a coastal development permit."
24 See also, Pub. Res. Code, § 30601 ("Prior to certification of the local coastal program and,
25 where applicable, in addition to a permit from local government pursuant to subdivision
26 (b) or (d) of Section 30600, a coastal development permit shall be obtained from the
27 commission for any of the following:
28

1 (1) Developments between the sea and the first public road paralleling the sea or
2 within 300 feet of the inland extent of any beach or of the mean high tide line of the sea
3 where there is no beach, whichever is the greater distance.

4 (2) Developments not included within paragraph (1) located on tidelands,
5 submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or
6 within 300 feet of the top of the seaward face of any coastal bluff.

7 (3) Any development which constitutes a major public works project or a major
8 energy facility.")

9 129. Public Resources Code § 21066 defines person to include "the state, and any
10 of the agencies and political subdivisions of those entities." Thus, State Parks must
11 obtain a coastal development permit from the Coastal Commission for any development
12 within the coastal zone, and Oceano Dunes SVRA is within the coastal zone.

13 130. Public Resources Code § 30106 defines development broadly and includes
14 the dust control measures and monitoring set forth in the emergency coastal development
15 permit for the 2016 SubProject: " 'Development' means, on land, in or under water, the
16 placement or erection of any solid material or structure; discharge or disposal of any
17 dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing,
18 dredging, mining, or extraction of any materials; change in the density or intensity of use
19 of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act
20 (commencing with Section 66410 of the Government Code), and any other division of
21 land, including lot splits, except where the land division is brought about in connection
22 with the purchase of such land by a public agency for public recreational use; change in
23 the intensity of use of water, or of access thereto; construction, reconstruction,
24 demolition, or alteration of the size of any structure, including any facility of any private,
25 public, or municipal utility; and the removal or harvesting of major vegetation other than
26 for agricultural purposes, kelp harvesting, and timber operations which are in accordance

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1 with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly
2 Forest Practice Act of 1973 (commencing with Section 4511).

3 As used in this section, 'structure' includes, but is not limited to, any building,
4 road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power
5 transmission and distribution line."

6 131. The 2016 SubProject (and all previous subprojects and the Overall Dust
7 Control Project) constitute development under the Coastal Act.

8 132. The 2016 SubProject is not exempt from the Coastal Act's coastal
9 development permit requirement on the basis of any of the exemptions in Pub. Res. Code
10 § 30600, such as that it is an emergency resulting from a "disaster in a disaster-stricken
11 area in which a state of emergency has been proclaimed by the Governor," or repair of
12 highways damaged by fire, flood, or other specific natural disasters listed in the statute.
13 It is not a disaster; it is not located in a disaster-stricken area in which a state of
14 emergency has been proclaimed by the Governor. It is not a highway repair project.

15 133. Likewise, the 2016 SubProject is not exempt from the Coastal Act's coastal
16 development permit requirement on the basis that it is a "temporary event" "which does
17 not have any significant adverse impact upon coastal resources within the meaning of
18 guidelines [adopted by the Commission]." Pub. Res. Code, § 30610(i)(1). Section
19 30610(i)(1) has 3 primary elements: (i) temporary, (ii) event and (iii) does not have any
20 significant adverse impacts upon coastal resources. None of these criteria have been met;
21 nor does the 2016 SubProject meet the criteria for a "temporary event" as defined by the
22 Commission's Guidelines on Temporary Events ("Guidelines").

23 134. The 2016 SubProject is not temporary in that it, or similar measures, repeat
24 every year. The subprojects also have significant adverse impacts upon coastal resources.
25 Based on information and belief, Respondants and Defendants Commission and the CCC
26 Executive Director performed no analysis of baseline conditions and made no
27 determination that the 2016 SubProject would have no significant environmental impact.

1 The installation of equipment and dust control features on up to **41.5 acres** in a sensitive
2 habitat area will likely cause direct or indirect impacts that diminish the value of the
3 habitat, or alter the physical or biological features or delay the development and growth
4 of such features. In fact, the 2016 Emergency Permit implicitly admits these
5 environmental impacts by imposing conditions attempting to reduce the likely harms.
6 For example, permit condition 3 requires perimeter fencing surrounding wind fencing
7 and the metal mesh ground cover to be "animal friendly" to "allow for the natural
8 movement of animals in and out of the area." Based on information and belief, there was
9 no analysis of what animals are in the area, or whether they are likely to use an area that
10 is covered with metal mesh. Permit condition 6 requires the removal of the wind fencing,
11 metal mesh, and monitoring equipment at some point and that areas be "restored to their
12 original pre-emergency condition or better." Unfortunately, there is no way to restore
13 these areas to a pre-permit condition, and "better" is not defined or guided by any
14 standards. In addition, based on information and belief, there has been no pre-permit
15 survey in order to establish a baseline of environmental conditions. Permit condition 6
16 also requires a "biological monitor ... perform a pre-removal survey for California least
17 terns and western snowy plovers," endangered and threatened birds. But the condition
18 doesn't say what happens if the endangered or threatened birds are found in the dust
19 control area when the features are being installed. There is no required measure to
20 protect the birds or nests. Permit condition 7 requires straw bale removal for "bales that
21 were placed under prior emergency authorization" and requires a biological monitor to
22 survey the straw bale deployment area and submit a restoration plan for approval by the
23 CCC Executive Director prior to removal. This shows that while annual dust control
24 measures are intended to be "temporary" in some respect, parts of the controls remain
25 onsite from year-to-year and are not removed, meaning that they are not "temporary."
26 Temporary, by definition, does not mean an action or activity that is repeated on a regular
27 basis year after year. Again, also, any restoration plan cannot be effective because, based

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1 on information and belief, there has been no baseline survey so the biologists won't know
2 what the area was like before the 2016 SubProject. While the "objective of the
3 Restoration Plan shall be to protect dune and related habitat resources to the greatest
4 extent feasible," if it is not "feasible," i.e., it costs too much or is not scientifically feasible,
5 restoration is not required by this standard. Permit condition 11 requires employment of
6 a biological monitor to ensure that all emergency monitoring equipment, wind fencing,
7 and metal mesh ground cover avoid impacts to habitat and resources "as much as
8 possible." Again, if it is not "possible," it is not required by this standard. Permit
9 condition 13 provides that all emergency monitoring equipment, wind fencing, and metal
10 mesh shall limit impacts to coastal resources (including to public recreational access and
11 dunes) "to the maximum extent feasible...." If it is not "feasible" from a cost, engineering
12 or scientific standpoint, it not required by this standard.

13 135. The Commission's Guidelines focus on community events: "Temporary
14 events, such as volleyball tournaments, visual arts and music festivals, surfing contests,
15 boat and auto races, farmers markets, etc. have a long-standing tradition and history in
16 California's coastal communities." The 2016 SubProject is not a community event
17 typically and historically held in coastal communities where the general public is invited
18 to attend and participate or watch the event.

19 136. Only temporary events like these and otherwise meeting the Guideline
20 criteria are deemed "temporary." The 2016 SubProject does not meet those criteria.

21 137. The Guidelines define an event as temporary when it has a "limited
22 duration," defined expressly as "a period of time which does not exceed a two week period
23 on a continual basis, or does not exceed a consecutive four month period on an
24 intermittent basis." Guidelines, Section V(b).

25 138. The 2016 SubProject is not temporary. Temporary, by definition, does not
26 mean an action or activity that is repeated on a regular basis year after year. The
27 Commission issued an emergency CDP in March 2016 for the 2016 SubProject where the
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1 monitoring and dust control measures must be removed "as soon as possible after the
2 windy season and no later than August 31, 2016" (Condition 6), which is more than 2
3 weeks and therefore not temporary under the Guidelines.

4 139. The 2016 SubProject will likely have significant adverse impacts upon coastal
5 resources. Based on information and belief, the 2016 Emergency Permit does not require
6 full protections for the ESA protected birds, such as the western snowy plover and
7 California least tern, when the monitoring equipment and dust control measures are
8 installed.

9 140. When the dunes are subjected to annual "emergency" dust control measure
10 subprojects, the ground and environment are disturbed. Recovery is delayed or
11 prevented by continued deployment of equipment, fencing and ground cover each year.
12 Qualifiers such as "to the greatest extent feasible" or "as much as possible" or "maximum
13 extent feasible" allow State Parks to avoid restoration and protection.

14 141. No other exemption from the Coastal Act's development permit requirement
15 applies to the 2016 SubProject.

16 142. The 2016 SubProject constitutes development that requires a coastal
17 development permit. The dust control measures include installation of wind fencing,
18 "roughness" and ground cover elements, and monitoring equipment. State Parks would
19 install 40 acres of new wind fencing in the open riding area and camping area, and
20 porous roughness elements on 1.5 acres of open sand at SVRA.

21 143. In a 2015 Commission Staff Report regarding Oceano Dunes SVRA, the
22 Commission admitted that State Parks' dust control mitigation measures constitute
23 development under the Coastal Act.

24 144. While Public Resources Code § 30624(a) allows the Commission to grant a
25 coastal development permit where there is an emergency, California courts hold an
26 "emergency" is a sudden, unexpected and unforeseen situation, and this is the approach
27 adopted by the Coastal Act.

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1 145. The Coastal Act regulations, 14 CCR § 13009, define “emergency,” as used in
2 Public Resources Code § 30624, to mean “a sudden unexpected occurrence demanding
3 immediate action to prevent or mitigate loss or damage to life, health, property or
4 essential public services.” Thus, the Coastal Act and its regulations prohibit the
5 Commission from issuing an emergency permit unless there is a sudden unexpected
6 occurrence demanding immediate action. By analogy, the California Environmental
7 Quality Act also defines an emergency only as a sudden, unexpected occurrence that
8 invokes a clear and imminent danger and that demands immediate action. Public
9 Resources Code § 21060.3. The 2016 SubProject and Overall Dust Control Project clearly
10 do not involve a clear and imminent danger that demands immediate action because
11 State Parks has been working on implementing Rule 1001 and its dust control measures
12 for more than 4 years. There is no substantial evidence of a clear and imminent danger
13 that demands immediate action, and the 2016 SubProject does not purport to solve or
14 resolve any substantial part of the dust emissions from Oceano Dunes SVRA. Nothing
15 about the dust emissions from Oceano Dunes SVRA are worse than conditions last year,
16 or the year before, or even back to 2011.

17 146. All components of an emergency must be established before State Parks can
18 qualify for an emergency permit. The components of emergency under 14 CCR § 13009
19 include: (a) a sudden unexpected occurrence; (b) demanding immediate action; and (c)
20 to prevent or mitigate loss or damage to life, health, property or essential public services.

21 147. State Parks' 2016 Application for Emergency Permit states that the "nature
22 and cause of emergency" are "sand dunes subject to strong onshore prevailing winds,"
23 and the "probable consequence of failing to take action," which is the "continued levels of
24 dust and PM10 in the air downwind of Oceano Dunes SVRA that exceed ambient air
25 quality standards" and the "risk to public health." For the reasons described above and
26 herein, this does not constitute an “emergency” under the Coastal Act or its regulations
27 and the Commission erroneously and unlawfully concluded that it did.

28

1 148. Respondent District issued a 2010 "South County Phase 2 Particulate Study,"
2 or Phase 2 Study that reported that dust emissions from Oceano Dunes SVRA have
3 occurred on a historical basis dating back for as long as the dunes have existed. The dust
4 control measures now being implemented address this historical condition of dust
5 emissions, not a "sudden unexpected occurrence." The annual strong winds at certain
6 times of the year are historical, not a "sudden unexpected occurrence."

7 149. Respondents and Defendants Commission and CCC Executive Director have
8 exceeded their respective authority by granting an emergency permit to State Parks for
9 the 2016 SubProject when no emergency exists, and Respondent and Defendant State
10 Parks, based on information and belief, has already commenced implementing
11 installation of the 2016 SubProject, and thus has violated the Coastal Act by engaging in
12 development at Oceano Dunes SVRA without obtaining a regular coastal development
13 permit from the Commission.

14 150. In addition, the Coastal Act provides that the "public has a right to fully
15 participate in decisions affecting coastal planning, conservation and development" and
16 "the continuing planning and implementation of programs for coastal conservation and
17 development should include the widest opportunity for public participation." (Public
18 Resources Code § 30006) The Coastal Act authorizes coastal development permits
19 without complying with the Coastal Act's procedures only when there is an actual
20 emergency. (Public Resources Code § 30624; 14 CCR § 13136 et seq.) Wrongful issuance
21 of an emergency permit unlawfully circumvents the Coastal Act's notice, hearing and
22 comment procedures which are designed to ensure protection of coastal resources and to
23 ensure input by the public. The 2016 SubProject does not constitute an emergency under
24 the Coastal Act and implementing regulations. The Commission's issuance of an
25 emergency permit for the 2016 SubProject exceeds its authority and abuses its discretion
26 because there is no emergency.

1 151. State Parks' activities and projects implemented since 2010 are interrelated
2 parts of the Overall Dust Control Project for which State Parks submitted an application
3 for a coastal development permit but has **not** received such a permit. The 2016
4 SubProject is part of a series of related, continuing, similar and/or subpart dust control
5 projects since 2010 in the same general geographic area and within the area identified in
6 the coastal development permit application for the Overall Dust Control Project:

7 2010: installed a wind tower that is currently in operation

8 2011: installed 200 straw bales and associated instruments

9 2012: installed an acre of native vegetation in an open dune

10 2013: installed two acres of native vegetation

11 2013: installed 12 monitoring sites

12 2014: installed two treatment areas totaling 45 acres with 15 acres of wind fencing
13 in the off-road vehicle riding area and 30 acres of straw bales

14 2015: installed two treatment areas totaling 65 acres, with 40 acres of wind fencing
15 and 25 acres of straw bales from the 2014 season

16 2015: installed a monitoring station south of Oso Flaco Lake

17 152. As described above, the Commission and the CCC Executive Director have
18 exceeded their authority under the Coastal Act, proceeded without, or in excess of,
19 jurisdiction; committed prejudicial abuse of discretion, failed to proceed in the manner
20 and made a determination not supported by the findings. Further, the findings are not
21 supported by the evidence, and they failed to support their decision with the required
22 findings, failed to make required findings, and issued findings that are not supported by
23 the evidence.

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COUNT 2
(Commission and CCC Executive Director Exceeded Their Authority
by Failing to Comply with Emergency Permit Procedures)

153. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-152 inclusive, as though fully set forth.

154. Administrative agencies have only the power conferred upon them by statute, and an act in excess of those powers is void. An agency also must follow its own regulations.

155. The Coastal Act's emergency permit authorization is defined in greater detail in regulations.

156. 14 CCR § 13142 provides that the CCC Executive Director may grant an emergency permit "upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later," if the CCC Executive Director finds that:

"(a) An emergency exists and requires action more quickly than permitted by the procedures for administrative permits, or for ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;

(b) Public comment on the proposed emergency action has been reviewed if time allows; and

(c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976."

157. The applicant for an emergency permit can provide its opinion that the work constitutes an emergency under Public Resources Code § 30624. 14 CCR § 13146.

158. However, 14 CCR § 13140 mandates that the CCC Executive Director verify the "existence and nature of the emergency, insofar as time allows." Thus, the

1 responsibility for determining whether there is an emergency rests with the CCC
2 Executive Director.

3 159. If an emergency does not exist, the CCC Executive Director must notify the
4 applicant that a regular permit application is required. 14 CCR § 13147.

5 160. Here, Respondents and Defendants Commission and the CCC Executive
6 Director violated the Coastal Act [Pub. Res. Code § 30624] and its regulations, proceeded
7 in excess of authority, and committed a prejudicial abuse of discretion in granting the
8 2016 Emergency Permit. Respondents and Defendants Commission and the CCC
9 Executive Director prejudicially abused their discretion by failing to proceed in a manner
10 required by law, by failing to support their decision with the required findings, by failing
11 to make required findings, and by issuing findings that are not supported by the evidence
12 or by substantial evidence.

13 161. Respondents and Defendants Commission and the CCC Executive Director
14 failed to find and/or verify that an emergency exists; failed to verify the nature of the
15 alleged emergency; failed to find that the procedure for ordinary permits was inadequate
16 to address the 2016 SubProject; failed to adequately review and account for public
17 comment on the proposed emergency action; and failed to determine that the work
18 proposed is consistent with the requirements of the California Coastal Act, implementing
19 regulations and state law.

20 162. Respondents and Defendants Commission and the CCC Executive Director
21 also issued legally inadequate findings by failing to support findings with evidence or
22 substantial evidence that an emergency exists; that the procedure for ordinary permits
23 was inadequate to address the 2016 SubProject; and that the work proposed is consistent
24 with the requirements of the Coastal Act.

25 163. The CCC Executive Director also violated 14 CCR § 13147 because he failed to
26 notify State Parks that an emergency does not exist and that a regular coastal
27 development permit is required.

1 168. Petitioner Friends is informed and believes, and thereon alleges, that
2 Respondents and Defendants Commission and CCC Executive Director have been
3 following and implementing a pattern and practice, or policy, of illegally approving
4 emergency coastal development permits to Respondent State Parks for aspects or
5 subparts of the dust control measures and monitoring being implemented under District
6 Rule 1001, where said pattern or practice (or policy) involves ignoring or violating the
7 Coastal Act, its implementing regulations, and applicable state laws and regulations
8 governing the review and issuance of emergency coastal development permits.

9 169. Since 2013, Respondent Commission and CCC Executive Director have
10 engaged in a pattern and practice (or policy) of failing to lawfully assess and determine
11 whether annual weather events or conditions constitute an emergency under the Coastal
12 Act, its implementing regulations and state law. Such events and conditions are not a
13 sudden, unexpected, emergency occurrence. Emergency permits issued in 2013, 2014,
14 2015, and 2016 are illustrative of this illegal pattern and practice.

15 170. In April or May **2013**, the CCC Executive Director issued emergency coastal
16 development permit no. ECDP G-3-13-0213 to State Parks pursuant to 14 CCR § 13142 for
17 obtaining information during the "2013 windy season" as part of the Overall Dust Control
18 Project and Rule 1001 implementation. The 2013 windy season did not constitute an
19 emergency, and the project did not address the "emergency," as it only "monitored" dust
20 emissions. The CCC Executive Director issued ECDP G-3-13-0213 with the warning that
21 if State Parks "wish[es] to have the emergency temporary monitoring become permanent
22 monitoring, a regular CDP must be obtained." Three years later, State Parks has not
23 obtained a regular coastal development permit for the 2013 equipment.

24 171. On March 11, **2014**, the CCC Executive Director issued emergency coastal
25 development permit no. ECDP G-3-14-0007 (ODSVRA Dust Control Program) to State
26 Parks pursuant to 14 CCR § 13142 for temporary dust control measures and monitoring
27 during the "2014 windy season" and "current drought" as part of the Overall Dust Control
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1 Project and Rule 1001 implementation. The 2014 windy season did not constitute an
2 emergency, and the project did not address an “emergency.” When issuing this second
3 emergency permit, the CCC Executive Director admitted that it was stretching the law of
4 emergency. The CCC Executive Director thus conditioned this second emergency permit
5 on State Parks' representation that completion of the regular CDP application (no. 3-12-
6 050) would be “diligently pursued with the intent of avoiding similar emergency
7 situations in the future.” The CCC Executive Director warned that “[a]pplications for a
8 future [emergency coastal development permit] under similar circumstances without
9 deliberate pursuit of a CDP to permanently alleviate the identified public hazards may be
10 denied.” Years later, State Parks has not obtained a regular coastal development permit
11 for the 2014 equipment.

12 172. On May 21, **2015**, the CCC Executive Director issued emergency coastal
13 development permit no. ECDP G-3-15-0014 (ODSVRA Emergency Dust Control
14 Program) to State Parks pursuant to 14 CCR § 13142 for temporary dust control measures
15 and monitoring during the “2015 windy season” and “current drought” as part of the
16 Overall Dust Control Project and Rule 1001 implementation. The 2015 windy season did
17 not constitute an emergency, and the project did not address the “emergency.” The 2015
18 Emergency Permit authorized monitoring equipment, a dust monitoring tower, wind
19 fencing, and reuse of placed straw bales from the prior year's dust mitigation effort. The
20 CCC Executive Director again conditioned this third emergency permit on State Parks'
21 representation that completion of the regular permit application (no. 3-12-050) would be
22 “diligently pursued with the intent of avoiding similar emergency situations in the
23 future,” and “[a]pplication for any future ECDP under similar circumstances without
24 deliberate pursuit of a CDP to permanently alleviate the identified public hazards may be
25 denied.” State Parks has not obtained a regular coastal development permit for the 2015
26 equipment.

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1 173. On February 19, **2016**, State Parks submitted an application to the
2 Commission for yet another emergency permit for the 2016 SubProject at Oceano Dunes
3 SVRA for the "2016 windy season." The 2016 application states that the information and
4 attachments are required in order to receive an emergency permit pursuant to Public
5 Resources Code § 30624(a). Again, the purpose of the emergency permit was to
6 implement measures and equipment as part of the Overall Dust Control Project and Rule
7 1001 implementation. The 2016 windy season did not constitute an emergency, and the
8 project did not address an "emergency." The 2016 SubProject includes installation of
9 extensive wind fencing, metal mesh roughness elements, and monitoring equipment in at
10 least nine locations. State Parks proposed to install 40 acres of new wind fencing in the
11 open riding area and camping area, add 20 acres of existing straw bales and metal mesh
12 roughness material on 1.5 acres of open sand at the SVRA. State Parks' application states
13 that the "nature and cause of emergency" are "sand dunes subject to strong onshore
14 prevailing winds." On March 11, 2016, the CCC Executive Director issued an ECDP no. G-
15 3-16-0023 (OSDVRA Emergency Dust Control Program) to State Parks that authorized
16 installation of the similar measures of monitoring equipment, wind fencing, and
17 roughness elements but did not authorize any deployment of straw bales or any
18 refreshing or reusing of straw bales from prior years' dust mitigation measures. The CCC
19 Executive Director again conditioned this fourth emergency permit "on the
20 representation of CDPR that completion of CDP Application 3-12-050 will be diligently
21 pursued, and that a CDP to implement a comprehensive dust control abatement and dune
22 restoration program, with the intent of avoiding similar emergency situations in the
23 future, is required to be submitted and approved by the Coastal Commission for Rule
24 1001 compliance....Application for any future ECDP under similar circumstances without
25 deliberate pursuit of a CDP to permanently alleviate the identified public health hazards
26 may be denied."

1 174. In 2016, the alleged emergency is again annual spring winds. State Parks'
2 2016 emergency permit application acknowledges the interconnectedness of the dust
3 control projects over the past years, showing that there is not an emergency each year,
4 but a continued pattern and practice (or policy) of the Commission issuing emergency
5 permits unlawfully. These interconnected dust control measures, in addition to the 2016
6 SubProject described above, include:

7 2010: installed a wind tower that is currently in operation

8 2011: installed 200 straw bales and associated instruments

9 2012: installed an acre of native vegetation in an open dune

10 2013: installed two acres of native vegetation

11 2013: installed 12 monitoring sites

12 2014: installed two treatment areas totaling 45 acres with 15 acres of wind fencing
13 in the off-road vehicle riding area and 30 acres of straw bales

14 2015: installed two treatment areas totaling 65 acres, with 40 acres of wind fencing
15 and 25 acres of straw bales from the 2014 season

16 2015: installed a monitoring station south of Oso Flaco Lake

17 175. The Commission's and CCC Executive Director's pattern and practice (or
18 policy) evidenced over a four year period of issuing emergency permits to State Parks for
19 subparts of Rule 1001 implementation when no emergency exists violates the Coastal Act
20 and implementing regulations. A pattern and practice (or policy) is evident by the
21 issuance in 4 consecutive years of emergency permits for annual wind events that are not
22 sudden and for projects that are part of the Overall Dust Control Project and
23 implementation of Rule 1001. The Commission's issuance of emergency permits for the
24 dust control project implementation are not isolated acts, but now constitute a standard
25 operating procedure, pattern, practice and policy for implementing Rule 1001 and its
26 requirements.

1 176. An action challenging an administrative agency's policy of ignoring or
2 violating applicable laws and regulations, but not challenging any specific agency
3 decision, is an actual, justiciable controversy for which declaratory relief is available.

4 177. An action for declaratory relief lies against an administrative agency when it
5 is alleged that the agency has a pattern and practice (or policy) of ignoring or violating
6 mandates of applicable laws and regulations. Respondents Commission and CCC
7 Executive Director have failed and continue to fail to comply with the law as alleged
8 herein. Their repeated actions as described herein constitute an illegal pattern and
9 practice (or policy) of violating the Coastal Act.

10 178. Irreparable harm has occurred to the Petitioner's and the public's right to
11 expect its agencies to comply with state law, as well as their right to participate in the
12 procedures for issuance of coastal development permits in regular course and after public
13 notice, comment and hearing.

14 179. Petitioner Friends challenges the Commission's pattern and practice (or
15 policy) of issuing emergency coastal development permits in violation of the Coastal Act
16 and implementing regulations. Friends seeks declaratory relief that this pattern and
17 practice (or policy) violates the Coastal Act by annually allowing development at Oceano
18 Dunes SVRA by State Parks without obtaining a regular coastal development permit
19 when no emergency exists. Plaintiff seeks declaratory relief that this policy or pattern or
20 practice is a violation of the Coastal Act, including Pub. Res. Code §§ 30600(a) and
21 30624.

22 180. Petitioner also seeks injunctive relief prohibiting implementing the dust
23 control measures and monitoring to be implemented and prohibiting the approval of
24 future emergency permits unless State Parks complies with all Coastal Act requirements,
25 including obtaining a coastal development permit for the Overall Dust Control Project, all
26 subparts and all activities related to Rule 1001 implementation.

1 181. As described above, the Commission and the CCC Executive Director have
2 exceeded their authority under the Coastal Act, proceeded without, or in excess of,
3 jurisdiction; committed prejudicial abuse of discretion, failed to proceed in the manner
4 and made a determination not supported by the findings. Further, the findings are not
5 supported by the evidence, and they failed to support their decision with the required
6 findings, failed to make required findings, and issued findings that are not supported by
7 the evidence.

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10 **COUNT 4**
11 **(State Parks Failed to Obtain a Regular Coastal Development Permit as**
12 **Required by the Coastal Act and Thus the 2016 SubProject Constitutes**
13 **Unpermitted Development)**

14 182. Petitioner Friends repeats, realleges and incorporates herein by reference, the
15 allegations contained in paragraphs 1-181, inclusive, as though fully set forth.

16 183. The 2016 SubProject is part of the implementation of Rule 1001, adopted by
17 Real Party-in-Interest District in 2011. Rule 1001 requires certain dust control measures
18 at Oceano Dunes SVRA. The 2016 SubProject is a project related to, and a component
19 part of, a larger, overall project to address certain dust emissions from Oceano Dunes
20 SVRA.

21 184. A coastal development permit is required for development within the coastal
22 zone, (Pub. Res. Code, § 30600, subd. (a)), and, with respect to Oceano Dunes SVRA, the
23 Commission has assumed jurisdiction to process applications and issue coastal
24 development permits.

25 185. The Coastal Act, Public Resources Code, § 30600(a), imposes a mandatory
26 requirement that any person must obtain a coastal development permit for performing or
27 undertaking any development in the coastal zone: "(a) Except as provided in subdivision
28 (e), and in addition to obtaining any other permit required by law from any local

1 government or from any state, regional, or local agency, any person, as defined in Section
2 21066, wishing to perform or undertake any development in the coastal zone, other than
3 a facility subject to Section 25500, shall obtain a coastal development permit." See also,
4 Pub. Res.Code, § 30601 ("Prior to certification of the local coastal program and, where
5 applicable, in addition to a permit from local government pursuant to subdivision (b) or
6 (d) of Section 30600, a coastal development permit shall be obtained from the
7 commission for any of the following:

8 (1) Developments between the sea and the first public road paralleling the sea or
9 within 300 feet of the inland extent of any beach or of the mean high tide line of the sea
10 where there is no beach, whichever is the greater distance.

11 (2) Developments not included within paragraph (1) located on tidelands,
12 submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or
13 within 300 feet of the top of the seaward face of any coastal bluff.

14 (3) Any development which constitutes a major public works project or a major
15 energy facility.")

16 186. Public Resources Code § 21066 defines person to include "the state, and any
17 of the agencies and political subdivisions of those entities." Thus, State Parks must
18 obtain a coastal development permit from the Commission for any development within
19 the coastal zone, which includes Oceano Dunes SVRA.

20 187. Public Resources Code § 30106 defines development broadly and includes the
21 dust control measures and monitoring set forth in the emergency coastal development
22 permit for the 2016 SubProject: " 'Development' means, on land, in or under water, the
23 placement or erection of any solid material or structure; discharge or disposal of any
24 dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing,
25 dredging, mining, or extraction of any materials; change in the density or intensity of use
26 of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act
27 (commencing with Section 66410 of the Government Code), and any other division of
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1 land, including lot splits, except where the land division is brought about in connection
2 with the purchase of such land by a public agency for public recreational use; change in
3 the intensity of use of water, or of access thereto; construction, reconstruction,
4 demolition, or alteration of the size of any structure, including any facility of any private,
5 public, or municipal utility; and the removal or harvesting of major vegetation other than
6 for agricultural purposes, kelp harvesting, and timber operations which are in accordance
7 with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly
8 Forest Practice Act of 1973 (commencing with Section 4511).

9 As used in this section, 'structure' includes, but is not limited to, any building,
10 road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power
11 transmission and distribution line."

12 188. The 2016 SubProject constitutes development under the Coastal Act. In a
13 2015 Commission Staff Report regarding Oceano Dunes SVRA, the Commission admitted
14 that State Parks' dust control mitigation measures constitute development under the
15 Coastal Act. The 2016 SubProject is part of the Overall Dust Control Project.

16 189. The Commission admits in Condition 8 of its 2016 Emergency Permit that
17 State Parks' existing CDP application 3-12-050 must be amended to include this 2016
18 SubProject.

19 190. The 2016 SubProject is not exempt from the Coastal Act's coastal
20 development permit requirement on the basis of any of the exemptions in Pub. Res. Code
21 § 30600, such as that it is an emergency resulting from a "disaster in a disaster-stricken
22 area in which a state of emergency has been proclaimed by the Governor," or repair of
23 highways damaged by fire, flood, or other specific natural disasters listed in the statute.
24 It is not a disaster; it is not located in a disaster-stricken area in which a state of
25 emergency has been proclaimed by the Governor. It is not a highway repair project.

26 191. Likewise, the 2016 SubProject is not exempt from the Coastal Act's coastal
27 development permit requirement on the basis that it is a "temporary event" "which does
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1 not have any significant adverse impact upon coastal resources within the meaning of
2 guidelines [adopted by the Commission].” It is not temporary in that it repeats every
3 year. It also has significant adverse impacts upon coastal resources. Based on
4 information and belief, Respondants and Defendants Commission and the CCC Executive
5 Director performed no analysis of baseline conditions and made no determination that
6 the 2016 SubProject would have no significant environmental impact. The installation of
7 equipment and dust control features on up to **41.5 acres** in a sensitive habitat area will
8 likely cause direct or indirect impacts that diminish the value of the habitat, or alter the
9 physical or biological features or delay the development and growth of such features. In
10 fact, the 2016 Emergency Permit implicitly admits these environmental impacts by
11 imposing conditions attempting to reduce the likely harms. For example, permit
12 condition 3 requires perimeter fencing surrounding wind fencing and the metal mesh
13 ground cover to be "animal friendly" to "allow for the natural movement of animals in
14 and out of the area." Based on information and belief, there is no analysis of what
15 animals are in the area, or whether they are likely to use an area that is covered with
16 metal mesh. Permit condition 6 requires the removal of the wind fencing, metal mesh,
17 and monitoring equipment at some point and that areas be "restored to their original pre-
18 emergency condition or better." Unfortunately, there is no way to restore these areas to a
19 pre-permit condition, and "better" is not defined or guided by any standards. In addition,
20 based on information and belief, there has been no pre-permit survey in order to
21 establish a baseline of environmental conditions. Permit condition 6 also requires a
22 "biological monitor ...perform a pre-removal survey for California least terns and western
23 snowy plovers," endangered and threatened birds. Permit condition 7 requires straw bale
24 removal for "bales that were placed under prior emergency authorization" and requires a
25 biological monitor to survey the straw bale deployment area and submit a restoration
26 plan for approval by the CCC Executive Director prior to removal. This shows that while
27 annual dust control measures are intended to be "temporary" in some respect, parts of
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1 the controls remain onsite from year-to-year and are not removed, meaning that they are
2 not "temporary." Temporary, by definition, does not mean an action or activity that is
3 repeated on a regular basis year after year. Again, also, any restoration plan cannot be
4 effective because, based on information and belief, there has been no baseline survey so
5 the biologists won't know what the area was like before the 2016 SubProject. While the
6 "objective of the Restoration Plan shall be to protect dune and related habitat resources to
7 the greatest extent feasible," if it is not "feasible," i.e., it costs too much or is not
8 scientifically feasible, restoration is not required by this standard. Permit condition 11
9 requires employment of a biological monitor to ensure that all emergency monitoring
10 equipment, wind fencing, and metal mesh ground cover avoid impacts to habitat and
11 resources "as much as possible." Again, if it is not "possible," it is not required by this
12 standard. Permit condition 13 provides that all emergency monitoring equipment, wind
13 fencing, and metal mesh shall limit impacts to coastal resources (including to public
14 recreational access and dunes) "to the maximum extent feasible...." If it is not "feasible"
15 from a cost, engineering or scientific standpoint, it not required by this standard.

16 192. State Parks is obligated by the Coastal Act to obtain from the Commission a
17 regular coastal development permit for all aspects of the Overall Dust Control Project, but
18 it has failed to secure such a permit.

19 193. The Overall Dust Control Project, and all of its subparts, including the 2016
20 SubProject, constitute "development" under the Coastal Act, and therefore require a
21 "coastal development permit" from the Commission before the projects can be
22 implemented. To date, the Commission has not issued a regular coastal development
23 permit for the Overall Dust Control Project, or any of its subparts.

24 194. While Public Resources Code § 30624(a) allows the Commission to grant a
25 coastal development permit where there is an emergency, California courts hold an
26 "emergency" is a sudden, unexpected and unforeseen situation, and this is the approach
27 adopted by the Coastal Act.

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1 195. The Coastal Act regulations, 14 CCR § 13009, define “emergency,” as used in
2 Public Resources Code § 30624, to mean “a sudden unexpected occurrence demanding
3 immediate action to prevent or mitigate loss or damage to life, health, property or
4 essential public services.” Thus, the Coastal Act and its regulations prohibit the
5 Commission from issuing an emergency permit unless there is a sudden unexpected
6 occurrence demanding immediate action. By analogy, the California Environmental
7 Quality Act also defines an emergency only as a sudden, unexpected occurrence that
8 invokes a clear and imminent danger and that demands immediate action. Public
9 Resources Code § 21060.3. The 2016 SubProject and Overall Dust Control Project clearly
10 do not involve a clear and imminent danger that demands immediate action because
11 State Parks has been working on implementing Rule 1001 and its dust control measures
12 for more than 4 years. There is no substantial evidence of a clear and imminent danger
13 that demands immediate action, and the 2016 SubProject does not purport to solve or
14 resolve any substantial part of the dust emissions from Oceano Dunes SVRA. Nothing
15 about the dust emissions from Oceano Dunes SVRA are worse than conditions last year,
16 or the year before, or even back to 2011.

17 196. All components of an emergency must be established before State Parks can
18 qualify for an emergency permit. The components of emergency under 14 CCR § 13009
19 include: (a) a sudden unexpected occurrence; (b) demanding immediate action; and (c)
20 to prevent or mitigate loss or damage to life, health, property or essential public services.

21 197. State Parks' 2016 Application for Emergency Permit states that the "nature
22 and cause of emergency" are "sand dunes subject to strong onshore prevailing winds,"
23 and the "probable consequence of failing to take action," which is the "continued levels of
24 dust and PM10 in the air downwind of Oceano Dunes SVRA that exceed ambient air
25 quality standards" and the "risk to public health." This does not constitute an
26 “emergency” under the Coastal Act or its regulations and the Commission erroneously
27 and unlawfully concluded that it did.

1 198. Respondent District issued a 2010 "South County Phase 2 Particulate Study,"
2 or Phase 2 Study that noted that dust emissions from Oceano Dunes SVRA have occurred
3 on a historical basis dating back for as long as the dunes have existed. The dust control
4 measures now being implemented address this historical condition of dust emissions, not
5 a "sudden unexpected occurrence." The annual strong winds at certain times of the year
6 are historical, not a "sudden unexpected occurrence."

7 199. The 2016 SubProject is a "development" under the Coastal Act that requires
8 the application and issuance of a regular coastal development permit. It does not
9 constitute an "emergency" and, as such, does not qualify for any exemption from the
10 regular coastal development permit process. No other exemption from the Coastal Act's
11 development permit requirement applies to the 2016 SubProject.

12 200. To evade the Coastal Act's requirement for a regular coastal development
13 permit, State Parks applied for an "emergency" permit from the Respondent and
14 Defendant Commission. State Parks' failure to obtain a regular coastal development
15 permit from the Commission constitutes a violation of the Coastal Act and renders the
16 2016 SubProject as unpermitted, unlawful development in violation of the Coastal Act.

17 201. As described above, State Parks exceeded its authority by violating the
18 Coastal Act, proceeded without, or in excess of, jurisdiction; committed prejudicial abuse
19 of discretion, failed to proceed in the manner and made a determination not supported by
20 the findings. Further, the findings are not supported by the evidence, and they failed to
21 support their decision with the required findings, failed to make required findings, and
22 issued findings that are not supported by the evidence.

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COUNT 5
(Commission and CCC Executive Director Exceeded Their Authority
and Violated the Coastal Act By Improperly
Shifting the Environmental Baseline Needed to Perform Proper
Environmental Impact Analysis of Coastal Resources of the Aggregate
SubProjects and the Overall Dust Control Project)

202. Petitioner Friends repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-201, inclusive, as though fully set forth.

203. The Coastal Act, Pub. Res. Code §§ 30000 et seq., calls for the protection of coastal resources. In order to achieve that goal, the Commission and CCC Executive Director must understand the baseline of environmental conditions so that they can ascertain the likely adverse impacts that a project may have on the coastal resources.

204. From 2013-2016, Respondent and Defendant State Parks repeatedly submitted applications for emergency coastal development permits to install and implement monitoring and/or dust control measures as annual subprojects of the Overall Dust Control Project at Oceano Dunes SVRA.

205. In 2013, 2014, 2015 and 2016, the Commission and CCC Executive Director repeatedly granted emergency coastal development permits for these annual subprojects of the primary Overall Dust Control Project.

206. These repeated subprojects have adversely affected, and continue to adversely affect, coastal resources, and those adverse effects have shifted, and continue to shift, the environmental baseline, thus undermining the ability of the Commission and the CCC Executive Director to adequately evaluate the impact of the Overall Dust Control Project and all of its subprojects on coastal resources and the environment.

207. Three years ago, State Parks concluded that an EIR is necessary for the overall dust control measures, including all subparts, because the agency's Initial Study determined that the dust control project would have potentially significant environmental impacts. The Commission's and the CCC Executive Director's granting of multiple emergency coastal development permits for annual subprojects undermine the validity of

1 the ultimate EIR by shifting the environmental baseline, and making it impossible to
2 evaluate the true full impact of the Overall Dust Control Project. The actions also side-
3 step the Commission's and the CCC Executive Director's legal obligations under the
4 Coastal Act to protect coastal resources.

5 208. As described above, the Commission and the CCC Executive Director have
6 exceeded their authority under the Coastal Act, proceeded without, or in excess of,
7 jurisdiction; committed prejudicial abuse of discretion, failed to proceed in the manner
8 and made a determination not supported by the findings. Further, the findings are not
9 supported by the evidence, and they failed to support their decision with the required
10 findings, failed to make required findings, and issued findings that are not supported by
11 the evidence.

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13 **THIRD CAUSE OF ACTION**
14 **(Declaratory Relief)**

15 209. Petitioner and Plaintiff Friends repeats, realleges and incorporates herein by
16 reference, the allegations contained in paragraphs 1-208, inclusive, as though fully set
17 forth. Also, specifically, all Counts above addressing the Commission's unlawful pattern
18 and practice are incorporated by this reference.

19 210. An actual controversy has arisen and now exists between Petitioner and
20 Plaintiff Friends and Respondent and Defendant Commission and the CCC Executive
21 Director concerning the agency's compliance with the Coastal Act and implementing
22 regulations and state law. Friends contends that Commission and CCC Executive
23 Director have illegally, in excess of its authority and in violation of the Coastal Act and
24 implementing regulations determined that the 2016 SubProject is qualified for an
25 emergency permit. Friends further contends that such a determination, which does not
26 sit in isolation, but constitutes another year of issuance of an emergency coastal
27 development permit improperly, constituted a unlawful Commission policy or pattern or
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1 practice of engaging in issuing emergency permits to State Parks in violation of the
2 Coastal Act and implementing regulations. In this regard, the Commission and CCC
3 Executive Director exceeded their authority and violated 14 CCR § 13140 by failing to
4 verify the claimed emergency. Respondent and Defendant Commission dispute these
5 contentions.

6 211. Petitioner and Plaintiff Friends desires a judicial determination of said rights
7 and duties under the Coastal Act and implementing regulations, and a declaration as to
8 the validity or invalidity of Commission's compliance with these provisions, and its own
9 regulations.

10 212. Petitioner and Plaintiff Friends desires a judicial determination and
11 declaration that:

12 (1) the Commission and CCC Executive Director exceeded their authority and
13 violated the Coastal Act and law by improperly issuing the 2016 Emergency Permit to
14 State Parks when no emergency exists;

15 (2) the Commission and CCC Executive Director exceeded their authority by failing
16 to comply with statutory and regulatory emergency permit procedures;

17 (3) the Commission and CCC Executive Director engaged in a pattern and practice
18 [or policy] of issuing emergency coastal development permits to State Parks for subparts
19 of the Overall Dust Control Project, or related activities, at Oceano Dunes SVRA in
20 violation of the Coastal Act, including but not limited to, Pub. Res. Code §§ 30600(a) and
21 30624 and implementing regulations;

22 (4) State Parks failed to obtain a regular coastal development permit as required
23 by the Coastal Act, and thus the 2016 SubProject constitutes unpermitted development ;
24 and

25 (5) The Commission and CCC Executive Director exceeded their authority and
26 violated the Coastal Act by improperly shifting the environmental baseline needed to
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1 perform proper environmental analysis of coastal resources of the aggregate subprojects
2 and the Overall Dust Control Project.

3 213. A judicial declaration is necessary and appropriate at this time under the
4 circumstances in order that Petitioner and Plaintiff may ascertain the legitimacy and
5 lawfulness of the Commission's determination that the 2016 SubProject constitutes an
6 emergency qualified for an emergency coastal development permit.

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PRAYER FOR RELIEF

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

11 1. That the Court issue a writ of mandate ordering Respondent Commission and
12 the CCC Executive Director to withdraw, set aside and vacate its March 11, 2016 issuance
13 of an emergency coastal development permit and the underlying determination that the
14 2016 SubProject constitutes an "emergency" under the Coastal Act, implementing
15 regulations and state law;

16 2. That the Court issue a writ of mandate ordering and enjoining Respondent
17 State Parks and the Commission to comply with the Coastal Act and implementing
18 regulations before proceeding with the Overall Dust Control Project or any subpart;

19 3. That the Court issue a writ of mandate ordering and enjoining Respondent
20 State Parks to cease further on-the-ground projects and activities implementing Rule
21 1001 unless and until State Parks obtains a regular coastal development permit for the
22 Overall Dust Control Project and all subparts, components and elements after a duly
23 noticed public hearing in accordance with the Coastal Act and all regulations for issuance
24 of said permit;

25 4. That the Court issue a declaratory ruling and judgment that:

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1 (1) the Commission and CCC Executive Director exceeded their authority and
2 violated the Coastal Act and law by improperly issuing the 2016 Emergency Permit to
3 State Parks when no emergency exists;

4 (2) the Commission and CCC Executive Director exceeded their authority by failing
5 to comply with statutory and regulatory emergency permit procedures;

6 (3) the Commission and CCC Executive Director engaged in a pattern and practice
7 [or policy] of issuing emergency coastal development permits to State Parks for Subparts
8 of the Overall Dust Control Project at Oceano Dunes SVRA in violation of the Coastal Act,
9 including but not limited to, Pub. Res. Code §§ 30600(a) and 30624 and implementing
10 regulations;

11 (4) State Parks failed to obtain a regular coastal development permit as required
12 by the Coastal Act and thus the 2016 SubProject constitutes unpermitted development;
13 and

14 (5) the Commission and CCC Executive Director exceeded their authority and
15 violated the Coastal Act by improperly shifting the environmental baseline needed to
16 perform proper environmental impact analysis of coastal resources of the aggregate
17 subprojects and the Overall Dust Control Project.

18 5. That the Court award costs of suit to Petitioner and Plaintiff Friends;

19 6. That the Court award reasonable attorneys' fees to Petitioner and Plaintiff
20 Friends, pursuant to C.C.P. § 1021.5, the equitable private attorney general doctrine, and
21 state law. On March 15, 2016, counsel for Petitioner Friends sent by email and mail to
22 John (Jack) Ainsworth, the Interim Executive Director of the Coastal Commission, a
23 settlement letter constituting a good faith effort to resolve Friends' objections regarding
24 the Commission's illegal determination and issuance of emergency Coastal Development
25 Permits and verbal authorizations to State Parks for dust control projects at Oceano
26 Dunes SVRA. Neither the Commission nor the CCC Executive Director responded. For
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1 this reason, Petitioner Friends has made a good faith effort to settle the dispute short of
2 litigation, and any further attempts would have been, and would be, futile.

3 7. That the Court grant injunctive relief prohibiting the Commission and State
4 Parks and its agents, employees and consultants from implementing the dust control
5 measures and monitoring to be implemented and prohibiting the approval of future
6 emergency permits unless and until State Parks complies with all Coastal Act
7 requirements, including obtaining a coastal development permit for the Overall Dust
8 Control Project, all subparts and all activities related to Rule 1001 implementation.

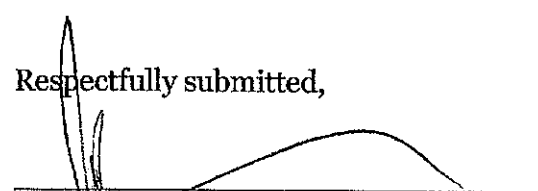
9 8. That the Court order State Parks to remove all facilities, devices, equipment
10 and dust control and monitoring elements, including, but not limited to, fencing, straw
11 bales, metal mesh ground cover, and added vegetation, until a regular coastal
12 development permit is issued after a lawfully noticed public hearing.

13 9. That the Court order State Parks to open off-highway vehicle riding areas that
14 it has closed or restricted due to the illegal dust control activities.

15 10. For any other equitable or legal relief that the Court deems just and proper.

16
17 Dated April 5, 2016

18
19 Respectfully submitted,

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21 
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24 One Market, Spear Tower, Suite 3600
25 San Francisco, California 94105
26 (415) 293-7684

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 WRIT OF TRADITIONAL MANDAMUS (C.C.P. § 1085), AND/OR ADMINISTRATIVE MANDAMUS (C.C.P. § 1094.5); 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 31, 2016 at San Luis Obispo, California.

JIM SUTY

