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9 FRIENDS OF OCEANO DUNES, INC.

10 SUPERIOR COURT OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN LUIS OBISPO

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

14 Petitioner and Plaintiff,

15 vs.

16 CALIFORNIA COASTAL COMMISSION,
17 an agency of the State of California,
18 and DOES 1-50, inclusive,

19 Respondent and Defendant;

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

24 Real Party-in-Interest and
25 Respondent and Defendant with Respect to
26 the First Cause of Action, Count 7;

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

Real Parties-in-Interest and
Respondent and Defendant with Respect to
the First Cause of Action, Count 7;

Case No.: 17CV-0576

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

1 CALIFORNIA AIR RESOURCES BOARD, a
2 State Board, and DOES 1-50, inclusive,

3 Real Party-in-Interest and
4 Respondent and Defendant with Respect to
5 the First Cause of Action, Count 7;

6 SAN LUIS OBISPO COUNTY, a
7 governmental unit and subdivision of the
8 State of California, and DOES 1-50,
9 inclusive,

10 Real Party-in-Interest and
11 Respondent and Defendant with Respect to
12 the First Cause of Action, Count 7;

13 and

14 the CITY OF GROVER BEACH, an
15 incorporated City in San Luis Obispo
16 County, California, and DOES 1-50,
17 inclusive,

18 Real Party-in-Interest.

19 Petitioner and Plaintiff Friends of Oceano Dunes, Inc., a California not-for-profit
20 corporation (“Friends” or “Petitioner”), on its own behalf, on behalf of its members, on
21 behalf of the general public and in the public interest, petition this Court for a writ for
22 traditional mandamus (C.C.P. § 1085) and/or a writ for administrative mandamus (C.C.P.
23 § 1094.5), and for injunctive relief, directed to Respondent/Defendant California Coastal
24 Commission (“CCC”), Real Party-in-Interest (and partial Respondent/Defendant)
25 California Department of Parks and Recreation (“State Parks”), Real Parties-in-Interest
26 (and partial Respondent/Defendant) San Luis Obispo County Air Pollution Control
27 District and its Board of Directors (collectively, the “Air District”), Real Party-in-Interest
28 (and partial Respondent/Defendant) California State Air Resources Board (“CARB”),
Real Party-in-Interest (and partial Respondent/Defendant) County of San Luis Obispo,
California (“SLO County”), and Real Party-in-Interest the City of Grover Beach (the
“City”) as follows:

By this Verified Petition and Complaint, Friends alleges:

1 **INTRODUCTION**

2 1. Friends brings this lawsuit to challenge Respondent and Defendant CCC's
3 September 14, 2017 approval, subsequent October 11, 2017 approval of Revised Findings
4 for the permit approval, and related issuance of a coastal development permit to State
5 Parks for expansive dust control measures for Oceano Dunes State Vehicular Recreation
6 Area (SVRA) ("Dust Control Measures"). The Dust Control Measures seek to implement
7 Rule 1001, adopted by the Air District in late 2011. Part of Rule 1001 has been invalidated
8 by the Court of Appeal, Second Appellate District, Division Six, in *Friends of Oceano*
9 *Dunes v. San Luis Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th
10 957.

11 2. The Dust Control Measures are a major public works project involving
12 hundreds of acres of dust emissions control measures and mechanisms located squarely
13 within the coastal zone and sensitive habitat. The CCC's *raison d'être* is to ensure that all
14 development projects, including public works projects such as this one, do not
15 significantly, adversely impact coastal resources. Rather than ensure that the proposed
16 Dust Control Measures are implemented in a way that protects coastal resources, the CCC
17 disregarded the project's obvious coastal resource impacts and authorized a vastly
18 expanded dust control program that even the primary applicant, State Parks, didn't ask
19 for. The result is a coastal development permit that literally purports to authorize dust
20 control measures on every square inch of environmentally sensitive habitat and listed-
21 species critical habitat within Oceano Dunes SVRA so long as CARB computer modeling
22 deems it necessary. But regardless how well-intentioned the CCC was in approving the
23 expansive measures, it neglected the one thing it is authorized to do – to ensure that new
24 development doesn't significantly impact coastal resources.

25 3. The CCC's approval and issuance of the coastal development permit in this case
26 is invalid, and must be set aside, in whole or part, because the CCC (a) failed to comply
27 with mandatory notice, comment and public disclosure and participation statutes; (b)
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1 purported to authorize development within “environmentally sensitive habitat area,” or
2 “ESHA” in violation of the prohibition in Pub. Res. Code § 30240, and otherwise failed to
3 comply with that statute; (c) purported to authorize development in violation of
4 numerous provisions of the Coastal Act intended to protect public access and unique and
5 sensitive coastal recreational opportunities; (d) purported to authorize development in
6 violation of other Coastal Act provisions enacted to protect coastal visual resources; (e)
7 purported to authorized development in violation of the California Environmental Quality
8 Act (“CEQA”) and the CCC’s certified regulatory program; and (f) purported to authorize
9 development that will result in take of a protected shorebird species, in violation of state
10 endangered species laws. Petitioner Friends will file a separate lawsuit in federal court
11 alleging that the approval also will cause take of at least two protected species in violation
12 of the federal Endangered Species Act.

13 4. In approving and issuing a coastal development permit for the Dust Control
14 Measures, Respondent/Defendant CCC exceeded its authority, acted in an arbitrary and
15 capricious manner, failed to proceed in a manner required by law, failed to support its
16 determination with substantial evidence, and prejudicially abused its discretion.

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18 **THE PARTIES, JURISDICTION AND VENUE**

19 5. Petitioner Friends is, and at all times referenced in this Petition and Complaint,
20 a California not-for-profit corporation and watchdog association, with its principal place
21 of business in San Luis Obispo County, California.

22 6. Friends was expressly created to preserve and create recreational uses,
23 including off-highway vehicle recreation, at Oceano Dunes SVRA, which is located within
24 the coastal zone. Friends is a voluntary organization which represents approximately
25 28,000 members and users of Oceano Dunes SVRA, who routinely engage, have engaged
26 and plan to continue to engage in motorized off-highway vehicle (“OHV”) recreation,
27 beach driving and beach camping at Oceano Dunes, as well as hiking and enjoyment of
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1 coastal resources, habitat and species. No less than hundreds of members engage, have
2 engaged and plan to continue to engage in coastal access, motorized OHV recreation,
3 beach driving, beach camping and enjoyment of coastal resources at Oceano Dunes SVRA
4 multiple times each year.

5 7. Friends was formed in 2001 for the express purpose of “preserving and
6 developing recreational uses” at Oceano Dunes in San Luis Obispo County.

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

12 9. Friends' members are taxpayers in California and many pay taxes in San Luis
13 Obispo County. Respondent and Defendant CCC has expended, are expending, and are
14 proposing to expend, substantial public funds to unlawfully authorize the implementation
15 of dust control measures at Oceano Dunes SVRA in violation of the Coastal Act, CEQA,
16 the California Endangered Species Act (“CESA”) and related statutes. The expenditure is
17 illegal and wasteful.

18 10. Friends maintains the instant lawsuit for itself and as a representative of its
19 injured members, including its President, Jim Suty, whom it is duly authorized to
20 represent.

21 11. Friends and its members are adversely affected by the CCC's illegal September
22 14, 2017 approval, illegal October 11, 2017 approval of Revised Findings, and issuance of a
23 coastal development permit to State Parks, SLO County and the City for the Dust Control
24 Measures. State Parks' environmental studies already concluded that the dust control
25 activities will have unavoidable, significant adverse impacts to recreational uses and
26 lands, as well as to sensitive coastal dune habitat that is part of the aesthetic,
27 environmental and recreational resources of Oceano Dunes SVRA enjoyed by Friends and
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1 its members. As regular users, and future users, of Oceano Dunes SVRA with an
2 established purpose of protecting and expanding recreational uses of Oceano Dunes,
3 Friends and its members have a beneficial interest in participating in ensuring that the
4 CCC and its staff follow the Coastal Act requirements and do not exceed their authority
5 under that statute. Friends and its members also have an interest in ensuring that the
6 CCC follows the coastal development permit process including holding a public hearing
7 and comment process.

8 12. Respondent and Defendant CCC is a state commission housed in the
9 California Natural Resources Agency, established pursuant to the provisions of the
10 California Coastal Act (Pub. Res. Code §§ 30000 et seq.). The CCC is responsible for
11 implementing the Coastal Act. A coastal development permit is required for development
12 within the coastal zone, (Pub. Res. Code, § 30600, subd. (a)), and, with respect to Oceano
13 Dunes SVRA, the CCC has assumed jurisdiction to process applications and issue coastal
14 development permits. On or about September 14, 2017, the CCC purported to approve
15 and issue a coastal development permit for the Dust Control Measures at Oceano Dunes
16 SVRA. On October 11, 2017, the CCC purported to adopt Revised Findings for its
17 September 14, 2017 approval of the permit. The CCC issued the coastal development
18 permit for the Dust Control Measures to State Parks, SLO County, and the City on or
19 about September 20, 2017. The CCC has a duty to enforce and uphold the Coastal Act
20 policies and provisions and through these above approvals and actions has failed to do so
21 here.

22 13. Real Party-in-Interest State Parks is, and has been, the state department
23 responsible for managing and operating Oceano Dunes SVRA. It seeks to implement
24 Rule 1001 through the installation of the Dust Control Measures at issue in this coastal
25 development permit challenge. Under Special Condition 4 to the coastal development
26 permit, State Parks is required to reimburse the CCC for all CCC costs and attorneys' fees
27 that the CCC incurs in connection with the defense of any action brought against the CCC
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1 challenging the approval or issuance of the permit. State Parks is additionally named
2 herein as a Defendant and Respondent solely with respect to the First Cause of Action,
3 Count 7, given its role in implementing the Dust Control Measures in a manner and in
4 locations within Oceano Dunes SVRA that will result in the take of the California least
5 tern, a bird species protected by the California Endangered Species Act and California's
6 "fully protected species" statutes.

7 14. Real Party-in-Interest Air District is and was the local agency which created
8 and adopted Rule 1001 for Oceano Dunes SVRA. The Dust Control Measures
9 implementation Rule 1001, in whole or part, and thus rulings on this coastal development
10 permit may affect the legal interests of the Air District. The CCC asserts that it approved
11 and issued the coastal development permit with conditions specifically designed to
12 authorize compliance with Air District requirements. The Air District is additionally
13 named herein as a Defendant and Respondent solely with respect to the First Cause of
14 Action, Count 7, given its role in directing and/or approving the manner and location of
15 the Dust Control Measures within Oceano Dunes SVRA in such a way that will result in
16 the take of the California least tern, a bird species protected by the California Endangered
17 Species Act ("CESA") and California's "fully protected species" statutes.

18 15. Real Party-in-Interest Air District Board is the decision-making body for the
19 Air District and is responsible for adopting rules and regulations regarding non-vehicular
20 sources of pollution in San Luis Obispo County. The Air District Board is comprised of 12
21 members, five San Luis Obispo County Supervisors and one city council representative
22 from each of the seven incorporated cities. It adopted Rule 1001 in late 2011. The Dust
23 Control Measures implement Rule 1001, in whole or part. The CCC asserts that it
24 approved and issued the coastal development permit with conditions specifically
25 designed to authorize compliance with Air District requirements. The Air District Board
26 is additionally named herein as a Defendant and Respondent solely with respect to the
27 First Cause of Action, Count 7, given its role in directing and/or approving the manner
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1 and location of the Dust Control Measures within Oceano Dunes SVRA in such a way that
2 will result in the take of the California least tern, a bird species protected by the California
3 Endangered Species Act and California’s “fully protected species” statutes.

4 16. Real Party-in-Interest California State Air Resources Board (“CARB”) is an 11-
5 member board established within the California Environmental Protection Agency under
6 Health & Safety Code § 39510. As articulated in the CCC staff report for the coastal
7 development permit at issue in this lawsuit, CARB is engaged in a “collaborative” process
8 with State Parks and the Air District to implement the Dust Control Measures, and the
9 CCC asserts that it approved and issued the coastal development permit with conditions
10 specifically designed to authorize compliance with CARB requirements, and thus CARB’s
11 legal interests may be affected by this action. CARB is additionally named herein as a
12 Defendant and Respondent solely with respect to the First Cause of Action, Count 7, given
13 its role (through its computer emissions modeling) in directing and/or approving the
14 manner and location of the Dust Control Measures within Oceano Dunes SVRA in such a
15 way that will result in the take of the California least tern, a bird species protected by the
16 California Endangered Species Act and California’s “fully protected species” statutes.

17 17. Real Party-in-Interest County of San Luis Obispo (“SLO County”) is a local
18 governmental agency and subdivision of the State of California with the authority to
19 regulate and administer land use and development within its territory, but only in
20 compliance with state and federal law. SLO County is a co-applicant with State Parks for
21 the coastal development permit at issue in this action, and thus has legal interests that
22 may be affected by this action. SLO County is additionally named herein as a Defendant
23 and Respondent solely with respect to the First Cause of Action, Count 7, given its role as
24 a co-applicant for the coastal development permit, and given its role in authorizing the
25 placement and installation of the Dust Control Measures at locations on property that it
26 owns (known as the 584-acre “La Grande Tract”) within Oceano Dunes SVRA in such a

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1 way that will result in the take of the California least tern, a bird species protected by the
2 California Endangered Species Act and California's "fully protected species" statutes.

3 18. Real Party-in-Interest the City of Grover Beach (the "City") is an incorporated
4 city located in San Luis Obispo County, California. The City is a co-applicant with State
5 Parks for the coastal development permit at issue in this action and thus has legal
6 interests that may be affected by this action.

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

12 20. Pursuant to Code of Civil Procedure §§ 393 and 394(a), venue is proper in that
13 the cause of actions arose and State Parks, the Air District and the Air District Board, SLO
14 County and the City are each located in San Luis Obispo County.

15 21. This Court has jurisdiction pursuant to CCP §§ 1085, 1086, 1094.5, 1060,
16 527(a), and Pub. Res. Code §§ 30801, 30803 and 30804. This action is timely since it is
17 filed within 60 days of the illegal September 14, 2017 approval, the CCC's October 2, 2017
18 Notice of Determination announcing the September 14, 2017 approval, the California
19 Resources Agency's October 4, 2017 posting of that Notice of Determination, and the
20 CCC's October 11, 2017 adoption of Revised Findings. Claims under CEQA and/or
21 certified regulatory program also are timely as they are filed within 30 days of the CCC's
22 October 4, 2017 posting of the Notice of Determination, as noted above.

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1 **FACTUAL BACKGROUND**

2 **Oceano Dunes SVRA and State Parks' Management Authority**

3 22. State Vehicular Recreation Areas, or SVRAs, like Oceano Dunes, are off-
4 highway vehicle (“OHV”) parks which are established and operated pursuant to state law
5 by State Parks to provide managed OHV recreation opportunities and camping.

6 23. The public has engaged in motorized recreation in the Oceano Dunes area for
7 more than 110 years, and “dune buggies” were invented there in the 1950s.

8 24. In the early 1970s, State Parks began purchasing land to establish what is now
9 Oceano Dunes SVRA. In August 1982, the California Legislature adopted the Off-
10 Highway Motor Vehicle Recreation Act (the “SVRA Act”). The law declares a state policy
11 of setting aside “effectively managed areas and adequate facilities for the use of off-
12 highway vehicles” Pub. Res. Code § 5090.02(b). The SVRA Act further provides that
13 “existing off-highway motor vehicle recreational areas, facilities, and opportunities
14 should be expanded” Id., § 5090.02(c)(1). Pursuant to Pub. Res. Code § 5090.32(a),
15 State Parks has the duty and responsibility for “[p]lanning, acquisition, development,
16 conservation, and restoration of lands” in SVRAs, as well as “management, maintenance,
17 administration, and operation of” those lands. Pub. Res. Code §§ 5090.32(a), (b), and
18 (d). Under the SVRA Act, State Parks also must “prepare and implement management
19 and wildlife habitat protection plans for lands in, or proposed to be included in, state
20 vehicular recreation areas” Id., § 5090.32(g); and 5090.35(a), (b) and (c). The SVRA
21 Act also specifies that “any development [within an SVRA] is subject to the requirements
22 of [CEQA].” Id., § 5002.2(c).

23 25. Established under the authority of the SVRA Act, Oceano Dunes SVRA is
24 operated and managed by State Parks pursuant to Coastal Development Permit No. 4-82-
25 300 issued by the CCC in 1982. Coastal Development Permit No. 4-82-300 does not
26 authorize the activities that comprise the Dust Control Measures that are at issue in this
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1 lawsuit, and the Dust Control Measures are a “development” under Pub. Res. Code §
2 5002.2(c) and Pub. Res. Code § 30106 subject to CEQA.

3 26. Within the SVRA system, Oceano Dunes SVRA is particularly popular.
4 Between 2005 and 2014, Oceano Dunes SVRA provided 68 percent of the total individual
5 campsites in the SVRA system (1,000 out of 1,469 campsites) and accounted for
6 approximately 52% of the total day use and overnight visitors to the California SVRA
7 system (1,747,123 out of 3,394,836 total visitors). Despite being the third smallest SVRA
8 in the state (in terms of total SVRA acreage), Oceano Dunes SVRA was the most visited
9 SVRA in every year from 2005 to 2014, except 2006. Recent Off Highway Motor Vehicle
10 Recreation Commission Program Reports forecast that the demand for OHV recreation in
11 California will increase.

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13 **The “Dust Rule” Implementation, the Abbreviated Coastal**
14 **Development Permitting Process and CCC Approval of a Vastly**
15 **Expanded Dust Control Program Without Regard to Impacts to Coastal**
16 **Resources**

17 27. In late 2011, the Air District promulgated and adopted Rule 1001 to address
18 dust emissions from Oceano Dunes SVRA. Litigation brought by Petitioner Friends in
19 this court resulted in the partial invalidation of Rule 1001.

20 28. Beginning in 2012, State Parks began efforts to implement Rule 1001 dust
21 monitoring and control measures through a dust control project/program.

22 29. That year, State Parks began implementing a series of seasonal dust control
23 measures. To evade the Coastal Act’s requirement for a regular coastal development
24 permit, State Parks applied for annual “emergency” permits from 2013-2016 from the
25 Respondent and Defendant CCC. The CCC granted these emergency permits each year,
26 2013-2016. In a separate pending lawsuit, San Luis Obispo County Superior Court Case
27 No. 16CV-0160, Petitioner Friends challenged the CCC’s authority to issue an
28 “emergency” permit for the 2016 seasonal activities, rather than a regular coastal

1 development permit which requires a public hearing and public comment. That lawsuit is
2 presently stayed.

3 28. In 2017, State Parks failed to apply to the CCC for any type of coastal
4 development permit for additional seasonal dust control measures. Unilaterally, the CCC
5 issued an illegal March 29, 2017 determination that a coastal development permit was not
6 required because the seasonal measures constitute abatement of a public nuisance. In a
7 separate pending lawsuit, San Luis Obispo County Superior Court Case No. 17CV-0267,
8 Petitioner Friends challenged the CCC's authority to waive the permit requirement based
9 on nuisance abatement because the statute that the CCC relied upon does not apply to
10 special districts like the Air District.

11 29. Pressed by Friends to stop relying on these illegal maneuvers, State Parks
12 finally pursued a regular coastal development permit from the CCC for the Dust Control
13 Measures.

14 30. State Parks' application to the CCC for a regular coastal development permit
15 defined the dust control measures to include: (a) planting approximately 20 acres of
16 vegetation per year for a total of 100 acres over a five-year period; (b) installing an
17 additional 40 acres of seasonal dust control measures, including dense wind fencing,
18 straw bales, metal mesh ground cover, and large orange boxes (as well as additional
19 unidentified measures) from March 1 to September 30 each year (which coincides exactly
20 with the breeding and nesting season for the endangered California least tern); (c)
21 possibly planting scores of acres of trees on the eastern edge of Oceano Dunes SVRA; (d)
22 installing, maintaining, and operating monitoring equipment; and (e) installing,
23 operating, and maintaining grooved concrete at Pismo State Beach exits on Grand Avenue
24 in the City of Grover Beach and Pier Avenue in the City of Oceano, California.

25 31. However, on September 1, 2017 – years after State Parks submitted its
26 application to the CCC – the CCC staff unilaterally enlarged the scope of the coastal
27 development permit authorization. The CCC staff recommended for the first time that
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1 the coastal development permit authorize a vastly *expanded* version of the Dust Control
2 Measures. Specifically, the CCC staff proposed changing the permit by massively
3 expanding the Dust Control Measures in the following ways: (a) eliminating the setback
4 and exclusions in the Dust Control Measure project area that State Parks had imposed
5 expressly to avoid take of sensitive species, including the endangered California least tern,
6 and adverse impacts to that bird's habitat (i.e., expanding the project area in an open-
7 ended manner that will be determined entirely by dust emissivity predicted by CARB's
8 computer model and the Air District's direction, regardless of impacts to sensitive species
9 or other resources); (b) removing any limitation on the amount of acreage of vegetation
10 (or seasonal measures such as wind fencing), i.e., eliminating the cap on annual acreage
11 (20 acres of vegetation and 40 acres of seasonal measures), and dispensing with the total
12 acreage cap of 100 acres over five years, allowing for *unlimited acreage* if deemed
13 "necessary" under CARB computer modeling; and (c) allowing the dust control measures
14 to be installed closer to the shore and within foredunes even though those areas are
15 deemed sensitive habitat. The CCC staff report described these changes as a "slight"
16 modification to State Parks' application. So, while State Parks carefully crafted a proposal
17 to achieve dust emission reductions, while at the same time avoiding take of the
18 California least tern, or adverse modification of the bird's sensitive habitat, the CCC threw
19 out these environmental protections, and instead authorized dust control measures to be
20 placed literally anywhere in Oceano Dunes SVRA, with no limitations on the amount or
21 location of dust control measures so long as the CARB computer modeling determined
22 that its placement was "necessary." The CCC failed to include any new mitigation to
23 address the expanded impacts to the least tern, or the bird's habitat. As explained below,
24 the CCC also ignored express findings in State Parks' EIR for the dust control measures
25 that expanding the measures in such a way would result in significant additional
26 environmental impacts, including impacts to the birds and their habitat. The CCC issued
27 a 159-page staff report that recommended that the permit authorize this expanded

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1 version of the dust control program, and allowed the public four business days to submit
2 written comments. The CCC staff itself had been evaluating these issues since late 2012,
3 or for five years, but staff decided that four business days was a “reasonable” amount of
4 time for the public to digest and understand a complete change in the scope of the
5 proposed dust control measures.

6 32. After issuance of the September 1, 2017 CCC staff report, Friends submitted a
7 series of letters commenting on, and objecting to, the coastal development permit, as
8 modified by the CCC. On September 6, 2017, Friends also formally requested a
9 continuance of the CCC hearing in light of the CCC’s last-minute substantial changes to
10 the project, and the severely limited time that the CCC allowed for public comment. The
11 CCC denied the request for continuance.

12 33. The night before the CCC hearing on the permit application, on September
13 13, 2017, sometime after 7:30 p.m., and without any specific notice to Friends, the CCC
14 staff placed a staff report addendum on its website, which made further changes to the
15 permit and permit conditions. The next morning, on September 14, 2017, Friends again
16 submitted comments and objections. Friends was severely hampered and unduly
17 prejudiced by the extremely limited amount of time to comment on the staff report and
18 the staff report addendum, which was the intent of CCC staff.

19 34. On September 14, 2017, the full Coastal Commission held a hearing on the
20 coastal development permit application and the expanded dust control program
21 recommended by the CCC staff. It allotted 2 minutes to each member of the public who
22 wished to make oral comments on the permit application and the CCC staff reports.
23 Friends’ President and certain Friends’ members spoke at the hearing and opposed the
24 coastal development permit issuance. The full Commission then approved the expanded
25 Dust Control Program that CCC staff had proposed on Friday evening, September 1, 2017.

1 **State Parks’ Underlying Environmental Review of the Dust Control**
2 **Measures and Concerns About Expanding the Measures**

3 35. To fully understand how radical the CCC’s action was, it is necessary to
4 understand the years of environmental review that State Parks had undertaken on the
5 Dust Control Measures. Putting aside the question of whether the Dust Control Measures
6 are desirable or will be effective to reduce emissions, the primary question that the CCC
7 should have been answering is whether the measures would have adverse impacts on
8 coastal resources. In answering that question, the CCC had at its fingertips voluminous
9 environmental documentation prepared by State Parks. The CCC disregarded and
10 discounted this information, as well as State Parks’ findings dating back to 2012.

11 36. In December 2012, State Parks issued a Notice of Preparation for an
12 Environmental Impact Report for the Dust Control Measures. State Parks decided the
13 law required it to undertake a full-blown Environmental Impact Report (“EIR”) because
14 the agency’s November 2012 Initial Study concluded that the Dust Control Measures
15 could have a potentially significant adverse impact on a range of coastal resources,
16 including, but not limited to, sensitive plant and animal species and land use.
17 Specifically, the Initial Study concluded that the Dust Control Measures might impact the
18 western snowy plover, a species that is protected under the federal Endangered Species
19 Act and listed by the U.S. Fish and Wildlife Service as “threatened.” State Parks also
20 concluded that the measures could impact the California least tern, which is listed as
21 endangered under both the federal and state endangered species protection laws, and
22 protected by California’s “fully protected species” laws. Section 9 of the federal
23 Endangered Species Act, and implementing regulations, prohibit take of a species listed
24 as endangered or threatened, as does the California Endangered Species Act (“CESA”)
25 and the state’s “fully protected species” laws.

26 37. On February 6, 2015, State Parks issued a Revised Notice of Preparation for
27 an Environmental Impact Report for the Dust Control Measures. One of the main
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1 purposes of the Revised Notice was to adjust the project area boundary in order to ensure
2 that the project would avoid officially designated critical habitat for the western snowy
3 plover, as well as habitat for the California least tern.

4 38. In August 2016, State Parks released a draft EIR for the Dust Control
5 Measures, and in March 2017, State Parks issued the Final EIR.

6 39. State Parks' EIR admitted that some of the activities of the Dust Control
7 Program "may occur in the vicinity of" the western snowy plover. Vegetation or seasonal
8 dust control measures could be installed anywhere within the 690-acre dust
9 program area, which immediately borders snowy plover critical habitat designated by the
10 U.S. Fish and Wildlife Service. Importantly, the EIR also concluded that an alternative,
11 *expanded* dust control program pushed by the Air District would place dust control
12 measures **within** snowy plover critical habitat, and **within** California least tern habitat.
13 In its draft EIR, State Parks considered the Air District's recommendation to (a) expand
14 the project area to include all off-highway vehicle ("OHV") recreation lands; (b)
15 emphasize vegetation island placement closer to the shoreline and foredunes; and (3)
16 increase the amount of wind fencing by 20 percent per year (resulting in a doubling of the
17 covered acreage to 83 acres). State Parks' EIR concluded that this expansion would result
18 in significant additional, adverse biological, recreational, visual and aesthetic impacts.
19 State Parks specifically concluded that the expanded alternative would result in the
20 adverse modification of designated critical habitat for the western snowy plover. The EIR
21 further concluded that the expanded alternative "could result in new, potentially
22 significant or significant and unavoidable impacts on aesthetics and/or biological
23 resources. The alternate dust control program could more than double the amount of
24 wind fencing installed in Year 5 (83 acres versus 40 acres) if the Rule 1001 performance
25 standard is not met, which would increase the visibility of the fencing array from all
26 receptor vantage points. The alternate dust control program could also result in direct
27 and/or indirect impacts on biological resources because the emphasis on planting

1 vegetation in nearshore areas would likely modify, to some degree, USFWS designated
2 critical habitat for the western snowy plover (federal-listed as threatened). Planting
3 vegetation in this critical habitat area could impact active nests by providing habitat for
4 predators to hide and stalk nesting western snowy plovers and California least terns
5 (federal- and state-listed as threatened).”

6 40. Despite State Parks’ findings that the expanded dust control measures desired
7 by the Air District would result in significant environmental impacts and impacts to
8 coastal resources, the CCC – in its approval of the Dust Control Measures coastal
9 development permit – disregarded, and/or unreasonably and arbitrarily discounted these
10 findings, and made opposite assertions without explaining itself and without credible or
11 substantial evidence. The CCC approved a coastal development permit for the *expanded*
12 Dust Control Measures even though State Parks didn’t include those measures in its
13 permit application, and even though the CCC didn’t add any mitigation requirements to
14 address the added environmental impacts that the EIR concluded would occur.

16 **RELEVANT LEGAL PROVISIONS**

17 **Coastal Act Development Permit Requirements**

18 41. Under the Coastal Act, any person wishing to perform or undertake any
19 development in the coastal zone must obtain a coastal development permit in addition to
20 obtaining any other permit required by law” (Pub. Res. Code, § 30600(a).)
21 Development is defined broadly under the Coastal Act, Pub. Res. Code § 30106, and
22 includes the Dust Control Measures. Public Resources Code § 21066 defines a person to
23 include "the state, and any of the agencies and political subdivisions of those entities,"
24 and therefore includes State Parks, SLO County and the City.

25 42. Here, the CCC has assumed jurisdiction over permitting of the Dust Control
26 Measures under Public Resources Code § 30601.3. Under that provision, the CCC may
27 assume jurisdiction under a “consolidated” permit application where a permit is required
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1 from both a local government and the CCC, i.e., here, SLO County and the City. However,
2 this type of permit is authorized only if “public participation is not substantially impaired
3 by that review consolidation.” (Pub. Res. Code § 30601.3(a)(2).) The standard of review
4 for a consolidated coastal development permit application is conformance with the
5 Coastal Act, “with the appropriate local coastal program used as guidance.” (Pub. Res.
6 Code § 30601.3(b).)

7 43. Under Public Resources Code § 30607, the CCC may impose “reasonable
8 terms and conditions” in order to ensure that the development or action accords with the
9 Coastal Act provisions and policies.

10 44. Before granting a coastal development permit, the CCC must find based on
11 the record before it that the proposed development action is consistent with the Coastal
12 Act, using SLO County’s certified local coastal program used as guidance. A number of
13 Coastal Act provisions and policies are relevant to this petition for writ, as described
14 below.

15
16 **Coastal Act Environmentally Sensitive Habitat Area Protections**

17 45. The Coastal Act provides special protection for “environmentally sensitive
18 habitat areas” within the coastal zone.

19 46. Public Resources Code § 30240 provides in subsection (a) that
20 “environmentally sensitive habitat areas shall be protected against any significant
21 disruption of habitat values, and only uses dependent on those resources shall be allowed
22 within those areas.” Subsection (b) provides that “development in areas adjacent to
23 environmentally sensitive habitat areas and parks and recreation areas shall be sited and
24 designed to prevent impacts which would significantly degrade those areas, and
25 shall be compatible with the continuance of those habitat and recreation areas.”
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27
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1 **Coastal Act Recreational Resource Protections**

2 47. Both the California Constitution and the Coastal Act protect and maximize
3 public access and recreational opportunities on the California coast.

4 48. Section 4 of Article X of the California Constitution ensures maximum public
5 access to coastal waters and commands the Legislature to enact laws that “give the most
6 liberal construction to this [Constitutional] provision, so that access to the navigable
7 waters of this State shall be always attainable for the people thereof.”

8 49. In fulfilling its constitutional duty, the Legislature has adopted in the Coastal
9 Act and elsewhere laws maximizing public access and recreational opportunities.

10 50. In Public Resource Code § 30001.5(c), the Legislature “finds and declares”
11 that a basic State goal in the coastal zone is to “maximize public access to and along the
12 coast and maximize public recreational opportunities in the coastal zone consistent with
13 sound resources conservation principles and constitutionally protected rights of private
14 property owners.” In subsection (d), the Legislature further finds and declares that
15 another goal is to “assure priority for coastal-dependent and coastal-related development
16 over other development on the coast.” In subsection (b), the Legislature also finds and
17 declares the need to account for “the social and economic needs of the people of the
18 state,” when balancing the use and conservation of coastal zone resources.

19 51. Under Public Resources Code § 30114, a “publicly financed recreational
20 facility” like Oceano Dunes SVRA, is deemed to be a “public works.”

21 52. Under Public Resources Code § 30116(b), any area “possessing significant
22 recreational value,” like Oceano Dunes SVRA, is deemed to be a “sensitive coastal
23 resource area.” A “highly scenic area,” which Oceano Dunes SVRA is, also is deemed to
24 be a “sensitive coastal resource area.” (Pub. Res. Code § 30116(c).) The Legislature
25 declares these areas to be of “vital interest and sensitivity.”

1 53. Under Public Resources Code § 30213, “lower cost visitor and recreational
2 facilities shall be protected, encouraged, and, where feasible, provided. Developments
3 providing public recreational opportunities are preferred.”

4 54. Under Public Resources Code § 30255, “coastal-dependent developments
5 shall have priority over other developments on or near the shoreline.”

6 55. Under Public Resources Code § 30525(a), “every state agency that owns or
7 manages land or water areas within the coastal zone, including public beaches [and]
8 parks . . . shall identify the sensitive resource values within those areas that are
9 particularly susceptible to adverse impacts from nearby development that
10 is not carefully planned. Every such agency shall also identify the location and type of
11 development that would have a significant adverse impact on those sensitive resource
12 values.” Subsection (d) expressly states that “sensitive resource values” includes “specific
13 public recreation areas where the quality of the recreational experience is dependent on
14 the character of the surrounding area.” Here, in its 2017 EIR, State Parks identified
15 Oceano Dunes SVRA as a sensitive area that was uniquely suited for OHV recreation,
16 beach driving and beach camping, and found that the Dust Control Measures would
17 significantly impact these sensitive resources. State Parks further found that the
18 expanded dust control measures recommended by the Air District also would
19 significantly impact these sensitive coastal resources.

20
21 **Coastal Act Scenic and Visual Resource Protections**

22 56. The Coastal Act protects scenic and visual resources within the coastal zone.

23 57. Public Resources Code § 30251 provides that “. . . scenic and visual qualities
24 of coastal areas shall be considered and protected as a resource of public importance.
25 Permitted development shall be sited and designed to protect views to and along the
26 ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be
27 visually compatible with the character of surrounding areas, and, where feasible, to
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1 restore and enhance visual quality in visually degraded areas. New development in highly
2 scenic areas such as those designated in the California Coastline Preservation and
3 Recreation Plan prepared by the Department of Parks and Recreation” The
4 California Coastline Preservation and Recreation Plan recognizes the demand for “sand
5 hills or dunes for dunebugging.” The Plan further recognizes that OHV enthusiasts once
6 enjoyed “the sights of California’s most scenic sand dune complex” which extended “for 17
7 miles between Point Sal and Pismo Beach State Park.” The Plan notes that “dune buggies
8 require large sand dune areas which occur infrequently along California’s shoreline.” The
9 Plan also recognizes the need for beach camping, and that “for some people camping near
10 the throbbing beat of ocean waves is almost a religious experience.” The Plan recognizes
11 Oceano Dunes, which it refers to as the Santa Maria Dunes, “as the major center for dune
12 buggy riding in California.”

13
14 **Certified Regulatory Program Requirements and CEQA**

15 58. Pursuant to Public Resources Code § 20180.5, state regulatory programs
16 which meet certain environmental requirements and are certified by the Secretary of the
17 Resources Agency (“certified regulatory program”) provide a partial exemption from the
18 California Environmental Quality Act (“CEQA”). Public Resources Code § 21080.5(a)
19 provides that when a certified program requires environmental documentation to be
20 submitted in support of certain activities “the plan or other written documentation may
21 be submitted in lieu of the environmental impact report” required by CEQA. A certified
22 program may use other documentation which is considered the “functional equivalent” of
23 documents CEQA would otherwise require, and which serve as substitute document for
24 the usual environmental review papers.

25 59. Here, the CCC operates under a certified regulatory program, see CEQA
26 Guidelines, § 15251(c), and it relies on its staff report (analyzing the coastal development
27 permit application) as the substitute for the usual CEQA documentation.

1 required by law, approving the coastal development permit without adequate findings,
2 and/or by adopting findings that are not supported by the evidence or substantial
3 evidence. Alternatively, pursuant to Code of Civil Procedure § 1085, Petitioner Friends
4 brings this action for a traditional writ on the basis that Respondent and Defendant CCC's
5 approval of the coastal development permit was arbitrary, capricious, or entirely lacking
6 in evidentiary support, contrary to established public policy, unlawful, procedurally
7 unfair, and on the basis that the CCC failed to follow the procedure and give the notices
8 the law requires.

9 64. Petitioner Friends and its members are beneficially interested in the issuance
10 of the subject writ mandating that the CCC, nullify, withdraw, set aside and/or vacate the
11 CCC September 14, 2017 approval of State Parks' application for a coastal development
12 permit for the Dust Control Measures at Oceano Dunes SVRA, in whole or in part, and
13 the related issuance of a coastal development permit for that purpose. Friends and its
14 members are also beneficially interested in having the OHV riding areas which are closed
15 due to the Dust Control Measures re-opened or remain open to provide mandated
16 recreational opportunities at the coastal site. Petitioner Friends and its members are
17 beneficially interested in the issuance of the writ to allow on-going and future users of
18 Oceano Dunes SVRA to use the facility for OHV recreation and other recreational and
19 environmental uses, including beach driving and beach camping, bird watching, wildlife
20 conservation and observation, photography and enjoyment of natural coastal resources.
21 Friends' purpose and Articles of Incorporation include preserving and expanding
22 recreational opportunities at Oceano Dunes. Friends' members who live, work near and
23 use the SVRA have a beneficial interest in State Parks' compliance with the Coastal Act,
24 CEQA and sensitive species protections. Friends' members live and work near Oceano
25 Dunes SVRA and use the SVRA for beneficial interests of enjoyment of natural resources
26 and wildlife/plant species, aesthetic, economic, recreational, and resource protection
27 interests of Oceano Dunes. And as a not-for-profit corporation specifically formed under
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1 the laws of the state of California to preserve, continue and expand OHV recreation at
2 Oceano Dunes, and whose membership includes taxpayers of the State of California and
3 payers of special OHV registration fees and gas taxes paid into a special State of
4 California budget fund expressly established for the purpose of maintaining OHV and
5 SVRA facilities within the State, Petitioner Friends and its members have an interest in
6 ensuring: (1) that the CCC does not unlawfully exceed its jurisdiction or authority in
7 implementing projects or undertaking activities at Oceano Dunes SVRA; (2) that laws,
8 regulations, and duties are executed and enforced uniformly, fairly, and as written; (3)
9 that the CCC does not abuse its discretion or exceed their jurisdiction at Oceano Dunes
10 SVRA; and (4) that neither the CCC, nor State Parks, the Air District, the Air District
11 Board, CARB, or SLO County, act in a way that exceeds the law, including, but not limited
12 to CESA and fully protected species protections, in an arbitrary and capricious manner,
13 without proper evidentiary support, or by failing to implement proper procedures or
14 proper notice. Friends and its members have a beneficial interest in full compliance in
15 the process for the evaluation and issuance of coastal development permits and the
16 evaluation of environmental and recreational impacts from dust control measures, that
17 include relevant specifics of Oceano Dunes SVRA, the resources involved, physical
18 changes to the SVRA and sensitive coastal resources, alterations to ecological systems and
19 sensitive habitat of the SVRA, the human use of the land in these projects, impacts to
20 sensitive species and the scenic resource of the coastal park environment. Friends'
21 beneficial interest, as described above and including recreational interests and coastal
22 access, has been and continues to be threatened by the CCC's prejudicial abuse of
23 discretion and violation of law in approving and issuing a coastal development permit for
24 the Dust Control Measures at Oceano Dunes SVRA in the ways described herein, and also
25 the CCC's purported authorization to exclude the public and Friends and its members
26 from large areas of the SVRA, failing to protect and conserve sensitive coastal resources,

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1 and curtailing fair and meaningful participation in the permitting and environmental
2 review process.

3 65. Alternatively, Petitioner Friends and its members are citizens seeking to
4 enforce public rights and the object of this mandamus action is to enforce a public duty of
5 complying with the Coastal Act, CESA, fully protected species statutes and state law, by
6 the listed agencies, as detailed herein.

7 66. Petitioner Friends has performed all conditions precedent to the filing of this
8 Petition and Complaint and otherwise exhausted all required and applicable
9 administrative remedies, or is otherwise excused given that this is a challenge to the
10 authority of the CCC. Friends filed detailed written comments on State Parks' draft EIR,
11 on the CCC staff report, on the CCC staff report addendum, and on the Revised Findings.
12 Friends provided to the CCC and State Parks a written Notice of Intent to file a suit for
13 violation of CEQA (or the CCC's certified regulatory program suit) on or about September
14 26, 2017. A copy is attached as **Ex. A** hereto.

15 67. Petitioner Friends has no plain, speedy, and adequate remedy in the ordinary
16 course of law, other than the relief sought in this petition. Absent intervention by this
17 Court, the CCC will treat its September 14, 2017 approval and issuance of the coastal
18 development permit for the Dust Control Measures at Oceano Dunes SVRA as lawful, and
19 State Parks, SLO County and the City, as well as the Air District, the Air District Board
20 and CARB, will accept it as lawful. No additional administrative appeal or other form of
21 relief is available to prevent such an occurrence. Petitioner Friends has a clear, present
22 and beneficial right to performance of the public business in accordance with the Coastal
23 Act, CEQA and endangered species protections, its implementing regulations and state
24 law as set forth herein.

25 68. Administrative agencies such as the CCC have only the power conferred upon
26 them by statute, and an act in excess of those powers is void. An agency such as the CCC
27 also must follow its own regulations. The CCC has a duty to comply with the provisions of
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1 the Coastal Act, implementing regulations, sensitive species protection laws, and certain
2 aspects of CEQA.

3 69. Defendant and Respondent CCC violated numerous statutes in approving the
4 coastal development permit at issue here:

5
6 **Count 1: Violation of Notice and Comment Statutes**
7 **(Public Resources Code**
8 **§§ 21080.5(d)(3)(B), 30601.3(a)(2), and 20091)**

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

11 71. The CCC violated several notice, comment and public disclosure and
12 participation statutes in its approval and issuance of a coastal development permit to
13 State Parks for the Dust Control Measures at Oceano Dunes SVRA.

14 72. Public Resources Code § 21080.5(d)(3)(B) provides that the environmental
15 review document of a state agency's certified regulatory program must be "available for a
16 reasonable time for review and comment by other public agencies and the general
17 public." Here, the CCC relies on its staff report as the "environmental review document"
18 under the certified regulatory program. The CCC's regulations similarly state that "[s]taff
19 reports shall be distributed within a reasonable time to assure adequate notification prior
20 to the scheduled public hearing."

21 73. Separately, Public Resources Code § 30601.3(a)(2) allows the CCC to assume
22 jurisdiction under a "consolidated" permit application, as the CCC purports to do here,
23 only if "public participation is not substantially impaired by that review consolidation."

24 74. In addition, Public Resources Code § 21091 requires a 30-day comment
25 period.

26 75. Despite having received State Parks' "consolidated" application for a coastal
27 development permit for the Dust Control Measures in 2012, the CCC neither invited nor
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1 allowed any public participation in the permit process until some five years later at 3 p.m.
2 on Friday, September 1, 2017, at the commencement of Labor Day weekend. At that time,
3 the CCC posted on its website a 159-page staff report (and exhibits) that significantly
4 modified State Parks' Dust Control Measure proposal. The CCC staff recommended for
5 the first time that the coastal development permit authorize a vastly *expanded* version of
6 the dust control measures. Specifically, the Commission staff proposed changing the
7 permit by massively expanding the dust control measures in the following ways: (a)
8 eliminating the setback and exclusions in the dust control measure project area that State
9 Parks had imposed expressly to avoid take of the threatened shorebird known as the
10 western snowy plover and adverse modification of the plover's critical habitat, and to
11 avoid take of another shorebird, the endangered California least tern, and adverse
12 impacts to that bird's habitat (i.e., expanding the project area in an open-ended manner
13 that will be determined entirely by dust emissivity without regard to impacts to sensitive
14 species or other resources); (b) removing any limitation on the amount of acreage of
15 vegetation (or seasonal measures such as wind fencing), i.e., eliminating the cap on
16 annual acreage (20 acres of vegetation and 40 acres of seasonal measures), and
17 dispensing with the total acreage cap of 100 acres over five years, allowing for *unlimited*
18 *acreage* if deemed "necessary" under CARB modeling; and (c) allowing the dust control
19 measures to be installed closer to the shore and within foredunes even though those areas
20 are designated plover critical habitat. While State Parks had carefully crafted a proposal
21 to achieve dust emission reductions, while at the same time avoiding take of the plover or
22 least tern, or adverse modification of the birds' sensitive habitat, the CCC threw out these
23 environmental protections, and instead authorized dust control measures to be placed
24 literally anywhere in Oceano Dunes SVRA, with no limitations on the amount or location
25 of dust control measures so long as the CARB computer modeling determined that its
26 placement was "necessary." State Parks had issued a detailed EIR in March 2017, after
27 releasing a draft to the public in August 2016, that had set forth a specific dust control
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1 program. Friends and the public reviewed and commented on that program. State Parks
2 also studied and rejected an expanded dust control program similar on the basis that it
3 would result in significant environmental impacts, including significant impacts to the
4 plover and its habitat. Petitioner Friends and the public reviewed and commented on
5 State Parks' EIR and findings. In its action on September 1, 2017, the CCC rejected these
6 findings and re-defined the scope of the project and permit application. It then allowed
7 **four business days** for public comment on the substantially expanded dust control
8 measures.

9 76. Then, the night before the CCC hearing on the permit application, on
10 September 13, 2017, sometime after 7:30 p.m., and without any specific notice to Friends,
11 the CCC staff placed a staff report addendum on its website, which made further changes
12 to the permit and permit conditions. By doing so, the CCC allowed Friends and the public
13 a matter of hours during the middle of the night to comment on the additional changes.
14 Friends was severely hampered and unduly prejudiced by the extremely limited amount
15 of time to comment on the staff report and the staff report addendum.

16 77. On September 14, 2017, the full Coastal Commission held a hearing on the
17 coastal development permit application and the expanded dust control program
18 recommended by the CCC staff. It allotted 2 minutes to each member of the public who
19 wished to make oral comments on the permit application and the CCC staff reports. The
20 full Commission then approved the expanded Dust Control Program first proposed by
21 CCC staff less than two weeks earlier on September 1, 2017.

22 78. Allowing four business days for the public to comment on a 159-page staff
23 report that substantially changed the scope of the Dust Control Measures that the permit
24 would authorize when compared to the Dust Control Measures that had been announced
25 and explained to Friends and the public in State Parks' EIR (from August 2016 until
26 September 1, 2017), and allowing a few hours during the middle of the night before the
27 permit hearing to respond to additional modifications to the project, failed to comply
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1 with Public Resources Code §§ 21080.5(d)(3)(B), and 30601.3(a)(2). It failed to make the
2 environmental review document “available for a reasonable time for review and comment
3 by other public agencies and the general public.” Four business days (or a matter of
4 hours during the middle of the night before the hearing) is not a reasonable time given
5 the scope of the changes and given that the government had led the public to believe for
6 more than one year that the size and scope of the Dust Control Measures would be as
7 State Parks’ had announced in its EIR. This violation was further exacerbated by the
8 CCC’s limitation of 2 minutes per speaker at the public hearing on the permit. It also
9 failed to ensure that “public participation is not substantially impaired” by the
10 consolidated permit process. It likewise fails to comply with the 30-day comment period
11 required by Public Resources Code § 21091. A certified regulatory program is exempt
12 only from chapters 3 and 4 and § 21167 of CEQA. Since § 21091 is part of chapter 2.5, the
13 CCC must comply with the 30-day public comment requirement, which memorialized
14 the CEQA policy of full and meaningful public disclosure and participation in
15 environmental review.

16 79. The CCC’s failure to comply with these notice, comment and public disclosure
17 and participation statutes is contrary to law and a prejudicial abuse of discretion, and
18 resulted in an unfair hearing.

19 80. In addition, to the extent that the CCC relies on Cal. Code Regs., tit. 14, §
20 13532, that regulation is invalid as it exceeds the CCC’s authority under the Coastal Act
21 and state law, including but not limited to, Public Resources Code § 30006, which
22 provides the official state policy “that the public has a right to fully participate in
23 decisions affecting coastal planning, conservation and development” and coastal zone
24 decisions “should include the widest opportunity for public participation.” Arbitrary
25 restriction of the time allotted for public comment on a CCC action regardless of the
26 complexity of the issue, the length of the staff materials to be reviewed, the ability of other
27 agencies to review the material in the allotted timeframe, the degree of change in the
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1 permit authorization proposed by the CCC when compared to the public agency
2 applicant's proposal that had been circulated to the public previously, and other relevant
3 factors is inconsistent with the meaningful public disclosure, review and comment
4 required under the Coastal Act and state law.

5
6 **Count 2: Violation of Coastal Act ESHA Protections**
7 **(Public Resources Code § 30240)**

8 81. Petitioner Friends repeats, realleges and incorporates herein by reference, the
9 allegations contained in paragraphs 1-80, inclusive, as though fully set forth.

10 82. The CCC violated the Coastal Act's protections of environmentally sensitive
11 habitat area in its approval and issuance of a coastal development permit to State Parks
12 for the Dust Control Measures at Oceano Dunes SVRA.

13 83. Public Resources Code § 30240 provides in subsection (a) that
14 "environmentally sensitive habitat areas shall be protected against any significant
15 disruption of habitat values, and only uses dependent on those resources shall be allowed
16 within those areas." Subsection (b) provides that "development in areas adjacent to
17 environmentally sensitive habitat areas and parks and recreation areas shall be sited and
18 designed to prevent impacts which would significantly degrade those areas, and
19 shall be compatible with the continuance of those habitat and recreation areas."

20 84. The area identified by State Parks for the Dust Control Measures is in its
21 entirety designated as "environmentally sensitive habitat area," or "ESHA," both by the
22 CCC and, separately, by the County of San Luis Obispo.

23 85. The CCC's approval and permit issuance is illegal because § 30240 prohibits
24 the location of the Dust Control Measures in ESHA given that the measures are not a "use
25 dependent on those resources." The Dust Control Measures is not a use dependent on the
26 habitat resources. The CCC has sought to evade this prohibition by illegally attempting to
27 redefine the project and project objectives in a false and inaccurate way that is not stated,
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1 specified or articulated in the permit application or in the EIR reviewing the impacts of
2 the proposal, i.e., by claiming that the project is to “stabilize dune structure,” and “protect
3 and restore dune surface properties,” or “qualities,” rather than accepting the purpose
4 clearly and unambiguously set forth in the permit application and accompanying EIR – to
5 control dust. The Commission erroneously and falsely concludes that the Dust Control
6 Measures are “inherently an allowed use within dune ESHA,” when nothing in the statute
7 or the permit application supports that conclusion dust control measures and activities
8 are “inherently allowed.” The dust control measures are not being implemented to
9 protect the habitat, but rather to protect the *surrounding* human land uses and public
10 health, and therefore, the measures are not a use dependent on the habitat.

11 86. The CCC’s approval and permit issuance is also illegal because § 30240
12 prohibits the location of the Dust Control Measures in ESHA where the use results in
13 “*any* significant disruption of habitat values,” which is the case here. The CCC purported
14 to authorize Dust Control Measures to be placed in ESHA that includes officially-
15 designated critical habitat for the federally-threatened western snowy plover, known
16 occupied habitat for the federally- and state- endangered California least tern, and
17 officially-designated critical habitat for the La Graciosa thistle (listed as endangered by
18 the U.S. Fish and Wildlife Service, and as threatened by the California Department of Fish
19 and Wildlife). State Parks’ EIR, long-collected data and studies, and biological reports
20 specific to Oceano Dunes show that the Dust Control Measures placed in this ESHA will
21 result in a “significant disruption of habitat values,” because it will result in take of the
22 legally protected plover and California least tern, adversely and significantly modify the
23 critical habitat of the plover, adversely and significantly modify occupied tern habitat, as
24 well as have significant adverse effects on the thistle. In its final approval, the CCC
25 expanded the Dust Control Measures and removed all limitations (proposed by State
26 Parks in its permit application and EIR) on the location and scope of those measures that
27 State Parks designed to help prevent impacts to sensitive species and habitat and avoid
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1 take of sensitive species. The CCC disregarded substantial evidence that showed that
2 installation of the Dust Control Measures in, and adjacent to, occupied plover and tern
3 habitat, would significantly disrupt the habitat values (by resulting in take of the legally
4 protected birds and disruption of their nesting and breeding), and the CCC failed to
5 include any additional mitigation measures to counteract the impacts of vastly expanding
6 the Dust Control Measures.

7 87. The Commission asserts that Special Condition 1(a), which it added to the
8 permit, “prioritizes dust control measures in areas that are already disturbed, ensuring
9 that implementation of those dust control measures will not further disrupt the dune
10 ESHA” In essence, the Commission argues that placing development in disturbed
11 ESHA will not disturb ESHA because it is already disturbed. This tautology doesn’t
12 comply with § 30240. The Commission has a legal obligation to protect ESHA regardless
13 whether it’s disturbed, and approving the installation of Dust Control Measures in ESHA
14 fails to comply with the Coastal Act. The Coastal Act contains no special exception for
15 placing development in disturbed ESHA. Disturbed ESHA and non-disturbed ESHA have
16 the same legal standing and protection under the Coastal Act. In addition, placing
17 development in disturbed ESHA ensures that the ESHA remains disturbed. Placing
18 development in a disturbed ESHA can worsen the disturbance, which is what happens
19 here. Placing metal mesh and chains, large boxes or dense wind fencing in ESHA
20 disturbs even the disturbed ESHA by escalating and continuing the disturbance. The legal
21 standard is whether placement of the new development will significantly disrupt habitat
22 values, and placing metal mesh and large boxes on the ground and dense fencing
23 structures will clearly worsen habitat values, even compared to disrupted ESHA. The
24 CCC admits that even hay bales will disrupt habitat values. Thus, the Commission takes
25 inconsistent positions on hay bales, on the one hand, and dense wind fencing and metal
26 mesh and chains, on the other. In truth, all of these measures will significantly affect
27 habitat values and it is false to claim that hay bales will affect the values but metal mesh,
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1 large boxes and fencing won't. The CCC's determination is not supported by evidence is
2 not supported by substantial evidence, is arbitrary and capricious and is contrary to law.

3 88. The CCC's approval and permit issuance also is illegal because it purports to
4 authorize "development in areas adjacent to environmentally sensitive habitat areas and
5 parks and recreation areas shall be sited and designed to prevent impacts which would
6 significantly degrade those areas, and shall be compatible with the continuance of those
7 habitat and recreation areas." In addition possessing sensitive species habitat values as
8 noted above, these areas are also protected as sensitive coastal resources under other
9 Coastal Act provisions. Under Public Resources Code § 30116(b), any area "possessing
10 significant recreational value," like Oceano Dunes SVRA, is deemed to be a "sensitive
11 coastal resource area." A "highly scenic area," which Oceano Dunes SVRA is, also is
12 deemed to be a "sensitive coastal resource area." (Pub. Res. Code § 30116(c).) The
13 Legislature declares these areas to be of "vital interest and sensitivity." Again, the CCC
14 has expanded the Dust Control Measures and removed all limitations (proposed by State
15 Parks in its permit application and EIR) on the location and scope of those measures that
16 State Parks designed to help prevent impacts to recreation areas and to habitat. And the
17 CCC added no mitigation to offset these additional impacts, and failed to address
18 inadequacies in State Parks' proposed mitigation.

19 89. The CCC's failure to comply the Coastal Act's ESHA protections is contrary to
20 law, exceeds its authority, is arbitrary and capricious, constitutes a prejudicial abuse of
21 discretion and is not supported by substantial evidence or data, or in some cases any
22 evidence or data.

23 **Count 3: Violation of Coastal Act Recreational Area**
24 **and Public Access Protections**
25 **(Public Resources Code §§ 30001.5, 30116, 30213, 30255, 30525)**

26 90. Petitioner Friends repeats, realleges and incorporates herein by reference, the
27 allegations contained in paragraphs 1-89, inclusive, as though fully set forth.
28

1 91. In Public Resources Code § 30001.5(c), the Legislature “finds and declares”
2 that a basic State goal in the coastal zone is to “maximize public access to and along the
3 coast and maximize public recreational opportunities in the coastal zone consistent with
4 sound resources conservation principles and constitutionally protected rights of private
5 property owners.” In subsection (d), the Legislature further finds and declares that
6 another goal is to “assure priority for coastal-dependent and coastal-related development
7 over other development on the coast.” In subsection (b), the Legislature also finds and
8 declares the need to account for “the social and economic needs of the people of the
9 state,” when balancing the use and conservation of coastal zone resources.

10 92. Under Public Resources Code § 30116(b), any area “possessing significant
11 recreational value,” like Oceano Dunes SVRA, is deemed to be a “sensitive coastal
12 resource area.” A “highly scenic area,” which Oceano Dunes SVRA is, also is deemed to
13 be a “sensitive coastal resource area.” (Pub. Res. Code § 30116(c).) The Legislature
14 declares these areas to be of “vital interest and sensitivity.”

15 93. Under Public Resources Code § 30213, “lower cost visitor and recreational
16 facilities shall be protected, encouraged, and, where feasible, provided. Developments
17 providing public recreational opportunities are preferred.”

18 94. Under Public Resources Code § 30255, “coastal-dependent developments
19 shall have priority over other developments on or near the shoreline.”

20 95. Under Public Resources Code § 30525(a), “every state agency that owns or
21 manages land or water areas within the coastal zone, including public beaches [and]
22 parks . . . shall identify the sensitive resource values within those areas that are
23 particularly susceptible to adverse impacts from nearby development that
24 is not carefully planned. Every such agency shall also identify the location and type of
25 development that would have a significant adverse impact on those sensitive resource
26 values.” Subsection (d) expressly states that “sensitive resource values” includes “specific
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1 public recreation areas where the quality of the recreational experience is dependent on
2 the character of the surrounding area.”

3 96. In approving the coastal development permit for the Dust Control Measures
4 at Oceano Dunes SVRA, and authorizing the installation of expanded Dust Control
5 Measures as described herein, the CCC violated Public Resources Code § 30001.5(c) by
6 failing to “maximize public access to and along the coast and maximize public
7 recreational opportunities in the coastal zone consistent with sound resources
8 conservation principles” The CCC also violated subsection (d), by failing to “assure
9 priority for coastal-dependent and coastal-related development over other development
10 on the coast” in selecting, emphasizing and authorizing expanded non-coastal-dependent
11 development (the Dust Control Measures) over coastal-dependent and coastal-related
12 OHV riding on the beach and coastal sand dunes, driving on the beach, and beach and
13 foredune camping. The CCC also violated subsection (b) by failing to account for “the
14 social and economic needs of the people of the state,” i.e., the socio-economic value and
15 history of OHV-riding when balancing the use and conservation of coastal zone resources.
16 The CCC also errs by rejecting State Parks’ conclusion that OHV riding at this location is a
17 “coastal dependent” resource. As State Parks notes, the Coastal Act defines “ ‘coastal-
18 dependent development or use’ to mean any development or use which requires a site on,
19 or adjacent to, the sea to be able to function at all (PRC § 30101).” Beach- and dune-
20 oriented recreational opportunities like those uniquely available at Oceano Dunes are
21 therefore coastal-dependent recreation activities. As State Parks has determined and as
22 determined in the California Coastline Preservation and Recreation Plan, adopted in
23 accordance with Public Resources Code § 30251, Oceano Dunes SVRA is the only location
24 in California where beach driving, RV beach camping and coastal dune off-road
25 recreation is available. It is therefore coastal-dependent.

26 97. In approving the coastal development permit for the Dust Control Measures at
27 Oceano Dunes SVRA, and authorizing the installation of expanded Dust Control

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1 Measures as described herein, the CCC violated Public Resources Code § 30116 by failing
2 to recognize the recreational riding area to be a “sensitive coastal resource area,” and a
3 “highly scenic area,” of “vital interest and sensitivity.”

4 98. In approving the coastal development permit for the Dust Control Measures at
5 Oceano Dunes SVRA, and authorizing the installation of expanded Dust Control
6 Measures as described herein, the CCC violated Public Resources Code § 30213 by failing
7 to “protect, encourage, and provide” the “preferred” recreational facility and
8 opportunities of OHV riding at Oceano Dunes SVRA.

9 99. In approving the coastal development permit for the Dust Control Measures at
10 Oceano Dunes SVRA, and authorizing the installation of expanded Dust Control
11 Measures as described herein, the CCC violated Public Resources Code § 30255, by failing
12 to give priority to OHV riding as a “coastal-dependent development” compared to the
13 non-coastal dependent Dust Control Measure development.

14 100. In approving the coastal development permit for the Dust Control Measures
15 at Oceano Dunes SVRA, and authorizing the installation of expanded Dust Control
16 Measures as described herein, the CCC violated Public Resources Code § 30525 by
17 ignoring and disregarding State Parks’ identification of the sensitive resource value (as
18 the statute defines that term in subsection (d)) of OHV-riding, as well as State Parks’
19 assessment of the adverse impacts that the Dust Control Measures would have on OHV
20 riding. The CCC disregarded the findings of State Parks’ and removed all limitations on
21 the placement, acreage and extent of the Dust Control Measures, undermining the policy
22 articulated in § 30525.

23 101. In its 2017 EIR, State Parks identified Oceano Dunes SVRA as a sensitive
24 area that was uniquely suited in California for OHV recreation, beach driving and beach
25 camping, and found that the Dust Control Measures would significantly impact these
26 sensitive resources. Besides Oceano Dunes, none of the state beaches or other park units
27 allow OHV recreation or beach driving and camping. No other sand dunes next to the
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1 coast, or in the coastal zone, are available for riding and camping in California. It
2 provides a unique experience for OHV riders and RV campers in California, and it has
3 remained popular with the public and those seeking this special access to the California
4 coast. The Guadalupe Nipomo Dunes Complex in general, and Oceano Dunes SVRA
5 specifically, have been a popular recreation destination for more than 100 years for this
6 reason. According to State Parks, the “thrill of driving for miles on natural sand beach
7 with the surf breaking just a few yards away . . . has always been among the most popular
8 activities” at Oceano Dunes SVRA. Under Public Resources Code § 30255, OHV riding
9 and RV beach camping is a “coastal-dependent development” that has “priority” over
10 other developments on or near the shoreline. Beach camping is a “lower cost visitor and
11 recreational facilities,” protected and given preferential status under Public Resources
12 Code § 30213. The CCC disregarded these findings and failed to consider the unique
13 character of Oceano Dunes SVRA, or the Coastal Act’s mandate that it be given priority.

14 102. This unique coastal recreational opportunity has been restricted more and
15 more each passing year. The availability of the unique recreational opportunity and
16 experience provided at Oceano Dunes has been substantially limited and reduced over
17 time. Whereas as much as 15,000 to 18,000 acres had historically been open to vehicle
18 recreation historically, only about 1,450 acres are open today, and that acreage is reduced
19 to about 1,100 acres from March through September each year (the prime riding season)
20 in order to protect the western snowy plover and California least tern. In other words,
21 only about 6 percent of the OHV riding area once utilized remains open and available
22 year around. If coastal OHV riding were an species that had lost that much historical
23 “habitat,” it would be on the endangered species list.

24 103. In its coastal development permit application, and in its EIR, State Parks
25 proposed Dust Control Measures that included the permanent closure of 70 acres of OHV
26 riding area, and the temporary annual closure of an additional 43 acres. State Parks
27 found that this additional closure of land inside the Oceano Dunes SVRA open riding and
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1 camping area was a potentially significant impact on OHV recreation. State Parks sought
2 to mitigate this impact by planting vegetation outside the open riding and camping area,
3 and avoiding established paths of travel in the SVRA, among other mitigations. State
4 Parks also proposed “identifying areas to provide additional camping or OHV recreation
5 opportunity and diligently pursue opening those areas to OHV recreation.”

6 104. The CCC ignored, disregarded and discounted these findings and rejected
7 State Parks’ proposed mitigation. Instead, the CCC expanded the permit authorization
8 drastically. The CCC authorized a permit that: (a) eliminated the setback and exclusions
9 in the dust control measure project area, and allowed placement of the Dust Control
10 Measures anywhere in the SVRA; (b) removed any limitation on the amount of acreage of
11 vegetation (or seasonal measures such as wind fencing), i.e., eliminating the cap on
12 annual acreage (20 acres of vegetation and 40 acres of seasonal measures), and
13 dispensing with the total acreage cap of 100 acres over five years, allowing for *unlimited*
14 *acreage* if deemed “necessary” under CARB computer modeling; and (c) allowed the dust
15 control measures to be installed closer to the shore and within foredunes. Thus, while
16 State Parks had found that its smaller alternative proposal would result in adverse
17 impacts to existing sensitive and unique recreational opportunities, the CCC vastly
18 expanded program (well beyond the smaller alternative program evaluated in the EIR
19 and in the CCC staff report) will have much greater adverse impacts. Under the CCC
20 expanded permit, literally every inch of the SVRA could be closed to OHV riding if CARB
21 computer modeling supported it. There are no other binding significant limitations on
22 the acreage devoted to dust control or where the measures are located.

23 105. State Parks had evaluated a so-called expanded dust control alternative in its
24 EIR that was much smaller than the unlimited expansion adopted by the CCC, and State
25 Parks concluded that even the smaller expansion would result in much more significant
26 impacts to recreational opportunities. According to the EIR, the expanded alternative
27 “would substantially increase the magnitude of the proposed Program’s significant and
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1 unavoidable recreation and land use impacts because all proposed vegetation planting
2 and wind fencing would occur inside the SVRA's open riding and camping area. Thus, the
3 total loss in OHV recreation lands that would occur under this alternative would be at
4 least 143 acres in Year 5 (30 acres more than the proposed Program) and as much as 183
5 acres in Year 5 (70 acres more than the proposed Program) if the Rule 1001 performance
6 standard is not met by Year 4. In addition, because the OHMVR Division would
7 emphasize planting vegetation in near shore areas, this alternative would have a greater
8 impact on beach and near-shore camping than the proposed Dust Control Program
9 (because the most popular campsites would be planted in vegetation).”

10 106. By vastly expanding the locations where Dust Control Measures may be
11 placed under the permit, as well as the overall acreage, the CCC has vastly increased the
12 impacts to the existing, unique recreational opportunity. The CCC made this even worse
13 by rejecting State parks' proposed mitigation. The CCC's action in approving and issuing
14 this expanded coastal development permit violated numerous provisions of the Coastal
15 Act. It is inconsistent with Public Resources Code § 30001.5(c), because it fails to
16 “maximize public access to and along the coast and maximize public recreational
17 opportunities in the coastal zone consistent with sound resources conservation principles
18” It is inconsistent with Public Resources Code § 30001.5(d), because it fails to
19 “assure priority for coastal-dependent and coastal-related development over other
20 development on the coast.” It is inconsistent with Public Resources Code § 30001.5(b),
21 because it fails to account for “the social and economic needs of the people of the state,”
22 when balancing the use and conservation of coastal zone resources. It is inconsistent with
23 Public Resources Code § 30116(b), because it fails to recognize Oceano Dunes SVRA, and
24 the OHV riding and beach camping areas as “possessing significant recreational value,”
25 and therefore, a “sensitive coastal resource area,” under that statute. It is inconsistent
26 with Public Resources Code § 30213 because it fails to protect, encourage and provide
27 “lower cost visitor and recreational facilities,” or protect them as “preferred” use under
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1 that statute. It is inconsistent with Public Resources Code § 30255 because it fails to give
2 priority to OHV riding as a “coastal-dependent development” compared to other
3 development like the Dust Control Measures. It is inconsistent with Public Resources
4 Code § 30525(a) because it ignores State Parks’ findings that the OHV riding and beach
5 camping areas are sensitive resource values that are particularly susceptible to adverse
6 impacts from the Dust Control Measures.

7 107. The CCC’s failure to comply these Coastal Act public access and coastal
8 recreational protection statutes is contrary to law, exceeds its authority, is arbitrary and
9 capricious, constitutes a prejudicial abuse of discretion and is not supported by
10 substantial evidence or data, or in some cases any evidence or data.

11
12 **Count 4: Violation of Coastal Act Scenic and Visual Resource**
13 **Protections (Public Resources Code § 30251)**

14 108. Petitioner Friends repeats, realleges and incorporates herein by reference,
15 the allegations contained in paragraphs 1-107, inclusive, as though fully set forth.

16 109. Public Resources Code § 30251 provides that “. . . scenic and visual qualities
17 of coastal areas shall be considered and protected as a resource of public importance.
18 Permitted development shall be sited and designed to protect views to and along the
19 ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be
20 visually compatible with the character of surrounding areas, and, where feasible, to
21 restore and enhance visual quality in visually degraded areas. New development in highly
22 scenic areas such as those designated in the California Coastline Preservation and
23 Recreation Plan prepared by the Department of Parks and Recreation”

24 110. State Parks determined that Oceano Dunes SVRA contains high scenic
25 quality -- the SVRA is “broadly situated within the Nipomo Dunes-Point Sal National
26 Natural Landmark, which is known for dramatic coastal views, long stretches of
27 shoreline, and unique dune systems.”

1 111. State Parks' original application to the CCC for a coastal development permit
2 for the Dust Control Measures included, among other things, installing 40 acres of
3 seasonal dust control measures, including dense wind fencing, straw bales, metal mesh
4 ground cover, and porous roughness elements (PREs). PREs consist of rectangular,
5 approximately 3-feet-long by 2- feet-wide by 2 feet-high crates. Other unidentified
6 seasonal measures might be deployed. State Parks admits that these measures would
7 change the view: "Seasonal dust control measures would consist of artificial materials
8 such as wind fencing and straw bales that are *uncharacteristic of and contrast with an*
9 *unaltered dune environment.*"

10 112. The wind fencing that will be deployed will be bright orange and highly
11 visible. More muted colors will be used only when existing orange-colored fencing
12 supplies "run out." Neither State Parks' EIR nor the CCC staff report provide any
13 information on the extent of existing orange fencing supplies, or when those supplies
14 might run out. Therefore, there are likely to be hundreds of acres of bright orange fencing
15 covering the sand dunes. The PRE dust control measures are also bright orange, and
16 there is no representation that muted colors will be used for the PREs.

17 113. State Parks admitted in its EIR that the proposed Dust Control Program
18 activities have the potential to impact the scenic qualities of Oceano Dunes SVRA and its
19 surroundings and thus change the visual character of the area and its surroundings.

20 114. But the CCC made it worse. The CCC, in its permit approval, purported to
21 authorize these same components "in any area" and "in any amounts necessary," *even*
22 *outside of the La Grande Tract and original project area described in State Parks' EIR,*
23 *i.e., anywhere and everywhere* in the 3,500-acre SVRA. The CCC dispensed with all
24 limitations and mitigation that State Parks had imposed in order to protect sensitive
25 coastal resources. Thus, rather than 40 acres per year in wind fencing, PREs and metal
26 mesh covering the sand dunes, the CCC authorized the entire SVRA, *i.e., thousands of*
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1 acres, of bright orange wind fencing, bright orange PREs and metal mesh covering the
2 sand dunes.

3 115. The CCC approval and issuance of the coastal development permit thus fails
4 to comport with the protections established by the Coastal Act in Public Resources Code §
5 30251. The CCC failed to consider and protect the scenic and visual resources at Oceano
6 Dunes SVRA. The CCC failed to include conditions that would ensure that the visually-
7 disruptive seasonal measures are sited and designed to protect views to and along the
8 “ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be
9 visually compatible with the character of surrounding areas, and, where feasible, to
10 restore and enhance visual quality in visually degraded areas.” The bright-orange
11 fencing, PREs and metal mesh is not visually compatible with the character of the sand
12 dunes. To the contrary, the expanded authorization granted by the CCC places *no*
13 limitations on the siting or design of the fencing, PREs and metal mesh in order to protect
14 coastal scenic and visual resources as mandated by § 30251.

15 116. The CCC’s failure to comply these Coastal Act scenic and visual resource
16 protection provisions is contrary to law, exceeds its authority, is arbitrary and capricious,
17 constitutes a prejudicial abuse of discretion and is not supported by substantial evidence
18 or data, or in some cases any evidence or data.

19
20 **Count 5: Violation of CEQA’s “Stable” Project Description Mandate**

21
22 117. Petitioner Friends repeats, realleges and incorporates herein by reference,
23 the allegations contained in paragraphs 1-116, inclusive, as though fully set forth.

24 118. The CCC operates under a certified regulatory program (CEQA Guidelines, §
25 15251(c)), and it relies on its staff report (analyzing the coastal development permit
26 application) as the substitute for the usual CEQA documentation.

1 119. While a Public Resources Code § 21080.5 certified regulatory program
2 creates a partial exemption from CEQA, that exemption is limited. As articulated in the
3 CEQA Guidelines, while a certified regulatory program is “exempt from the requirements
4 for preparing EIRs, negative declarations, and initial studies,” such programs are still
5 “subject to the other provisions in CEQA such as the policy of avoiding significant adverse
6 effects on the environment where feasible.” (Cal. Code regs., tit. 14, § 15250.) An agency
7 relying on the § 21080.5 exemption still must comply with all other CEQA provisions that
8 are not expressly listed in the exemption.

9 120. The CCC is required to comply with CEQA's policy goals, substantive
10 standards and provisions not expressly exempted by the Legislature.

11 121. California courts have consistently held that an accurate, stable, and finite
12 project description is indispensable to an informative and legally sufficient EIR. This
13 broad policy goal and substantive standard applies equally to the environmental review
14 document under a certified regulatory program like the CCC's.

15 122. Here, the CCC modified the project description by including
16 elements of dune stabilization and dune surface rehabilitation that State Parks' did not
17 state in its permit application or set forth or analyze in its EIR. The CCC unilaterally
18 expanded the project to include elements requested by the Air District that State Parks
19 had in part evaluated and expressly rejected due to significant adverse environmental
20 impacts.

21 123. State Parks had articulated a project description to Friends and the public for
22 more than a year, through the draft and final EIR process, only to have the CCC change
23 the project substantially at the last minute within a matter of days before the CCC
24 hearing. Modifying the project description at such a late stage (after issuance of a draft
25 and final EIR which the public reviewed and commented on) violates the core principle in
26 CEQA that the project description must be “stable” and accurate.” The CCC expanded the
27 project by removing all limitations on where and how much acreage of control measures
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1 were authorized to be implemented, effective expanding installation authorization to the
2 entire 3,500 SVRA. That is a substantial change in the project and project description,
3 especially given that State Parks in its EIR had rejected a smaller expansion due to
4 substantial impacts on sensitive coastal resources. State Parks focused on one project
5 description for nearly 13 months in a draft and final EIR only to have the CCC
6 substantially modify that project description in a staff report issued at 3 pm on the Friday
7 heading into Labor Day weekend, allowing only four business days for public comment.
8 That is the antithesis of fair public disclosure allowing informed, meaningful comment,
9 which is contrary to the broad policy goals and substantive standards of CEQA, as
10 implemented through the staff report. It is a classic, last-minute “bait and switch” tactic
11 that is not consistent with a fair CEQA hearing and process, based on timely and
12 meaningful public disclosure. Project description stability also is of special concern here
13 where the CCC expanded the scope of the proposed project, and the likely environmental,
14 sensitive species and coastal resources impacts. The CCC vastly expanded the acreage and
15 scope of the dust control measures from about 100 acres to as much as 3,500 acres, which
16 is a 3,500 percent increase.

17 124. At the very least, the CCC had an obligation to re-circulate the new project
18 description and environmental review documentation so that the public and consulting
19 agencies have a fair chance to understand and comment on it. The certified regulatory
20 program does not exempt the CCC from CEQA’s recirculation requirements. Public
21 Resources Code § 21003.1(b) provides that “[i]nformation relevant to the significant
22 effects of a project, alternatives, and mitigation measures which substantially reduce the
23 effects shall be made available as soon as possible by lead agencies, other public agencies,
24 and interested persons and organizations.” Section 21092.1 also provides, that “[w]hen
25 significant new information is added to an environmental impact report after notice has
26 been given ... and consultation has occurred ... but prior to certification, the public agency
27 shall give notice again ... and consult again ... before certifying the environmental impact

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1 report.” Expanding the acreage of Dust Control Measures from 100 acres to up to 3,500
2 acres is “significant new information,” especially given that State Parks’ EIR had
3 concluded that a lesser expansion to about 180 acres (including in plover critical habitat)
4 would result in take of the threatened snowy plover and adverse modification of the bird’s
5 critical habitat, and impacts to the least tern. Such a massive expansion is significant
6 because the information changed the project in a way that deprived Friends and the
7 public a meaningful opportunity to comment upon a substantial adverse environmental
8 effect of the project or a feasible way to mitigate or avoid such an effect (including a
9 feasible project alternative). Recirculation is required when the new information
10 discloses: (1) a new substantial environmental impact resulting from the project or from a
11 new mitigation measure proposed to be implemented; (2) a substantial increase in the
12 severity of an environmental impact unless mitigation measures are adopted that reduce
13 the impact to a level of insignificance; (3) a feasible project alternative or mitigation
14 measure that clearly would lessen the environmental impacts of the project, but which the
15 project's proponents decline to adopt; or (4) that the environmental review document was
16 so fundamentally and basically inadequate and conclusory in nature that public comment
17 was in effect meaningless. Recirculation and re-consultation was required here because
18 expanding the acreage of Dust Control Measures, or authority for such acreage, to up to
19 3,500 acres dwarfs the assumptions in the EIR and the CCC staff report, that there would
20 be only 100 or 200 acres of Dust Control Measures, and adds substantial risk of
21 significant adverse environmental impacts, including take of federal and state-listed
22 species, given that the CCC’s new, expanded authorization expressly allows the Dust
23 Control Measures to be placed in plover critical habitat (and in occupied least tern
24 habitat) during nesting and breeding season. It also potentially could result in the
25 complete shutdown of all OHV riding, thus impacting what State Parks and the Coastal
26 Act have defined as a “sensitive coastal resource.” CEQA requires re-circulation and an
27 additional 30-day public and agency comment period.

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1 125. Re-circulation and an additional 30-day comment period here would have
2 resulted in no prejudice.

3 126. The CCC's failure to comply with this CEQA policy and substantive standard
4 is contrary to law, exceeds its authority, is arbitrary and capricious, constitutes a
5 prejudicial abuse of discretion and is not supported by substantial evidence or data, or in
6 some cases any evidence or data.

7
8 **Count 6: Violation of CEQA and the CCC Certified Regulatory Program**
9 **Due to Failure to Evaluate and Impose Mitigation Measures**
10 **to Address the Vastly Expanded Approved Project**

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

13 128. Even where an agency relies on its certified regulatory program, the agency
14 must still comply with the broad policy goals and substantive standards of CEQA that are
15 not specifically exempted by the certified regulatory program exemption.

16 129. As provided in Public Resources Code §§ 21002 and 21081, CEQA contains a
17 policy goal and substantive mandate that public agencies refrain from approving projects
18 for which there are feasible alternatives or mitigation measures. A decision-making
19 agency is prohibited from approving a project for which significant environmental effects
20 have been identified unless it makes certain findings about alternatives and mitigation
21 measures. The requirement ensures there is evidence of the public agency's actual
22 consideration of alternatives and mitigation measures, and reveals to citizens the
23 analytical process by which the public agency arrived at its decision. Under CEQA, the
24 public agency bears the burden of affirmatively demonstrating that, notwithstanding a
25 project's impact on the environment, the agency's approval of the proposed project
26 followed meaningful consideration of alternatives and mitigation measures. The record
27 here indicates the CCC failed to meet this burden, and that failure precluded informed
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1 decision-making and informed public participation. Because the CCC failed to proceed as
2 required by CEQA, it has subverted the purposes of CEQA by omitting material necessary
3 and mitigation measures necessary to informed decision-making and informed public
4 participation, and, as such is prejudicial error. As a matter of policy, in CEQA cases a
5 public agency must fully explain the reasons for its actions (including rejecting impact
6 findings and mitigation proposed by a sister public agency) to afford the public and other
7 agencies a meaningful opportunity to participate in the environmental review process,
8 and to hold it accountable for its actions.

9 130. The purpose of environmental review is to identify the significant effects on
10 the environment of a project, to identify alternatives to the project, and to indicate the
11 manner in which those significant effects can be mitigated or avoided. (Pub. Res. Code §
12 21002.1, subd. (a).) CEQA defines “significant effect on the environment” as “a
13 substantial, or potentially substantial, adverse change in the environment.” (Id., §§
14 21068, 21000, subd. (d).) The term “environment” refers to “the physical conditions
15 which exist within the area which will be affected by a proposed project, including land,
16 air, water, minerals, flora, fauna....” (Id., § 21060.5.) An environmental review must
17 present facts and analysis, not simply the bare conclusions or opinions of the agency.
18 Thus, the environmental review must set forth specific data, as needed to meaningfully
19 assess whether the proposed activities would result in significant impacts, or be
20 adequately mitigated. It also must explain why it is rejecting data, analysis or findings of
21 a sister state agency.

22 131. The CCC’s regulatory program for considering and granting coastal
23 development permits requires compliance with CEQA, including preparing “responses to
24 significant environmental points raised during the evaluation of the proposed
25 development as required by the California Environmental Quality Act.” (Cal. Code Regs.,
26 tit. 14, § 13057, subd. (c)(3).) To the extent that the CCC contends that the certified
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1 regulatory program does not require or mandate compliance with CEQA (other than
2 expressly exempted by CEQA), it is invalid and inconsistent with CEQA and state law.

3 132. State Parks' application to the CCC for a regular coastal development permit
4 defined the dust control measures to include: (a) planting approximately 20 acres of
5 vegetation per year for a total of 100 acres over a five-year period; (b) installing an
6 additional 40 acres of seasonal dust control measures, including dense wind fencing,
7 straw bales and metal mesh ground cover (as well as additional unidentified measures)
8 from March 1 to September 30 each year (which coincides exactly with the breeding and
9 nesting season for the threatened western snowy plover); (c) possibly planting scores of
10 acres of trees downwind of Oceano Dunes SVRA; (d) installing, maintaining, and
11 operating monitoring equipment; and (e) installing, operating, and maintaining grooved
12 concrete at Pismo State Beach exits on Grand Avenue in the City of Grover Beach and Pier
13 Avenue in Oceano.

14 133. However, on September 1, 2017, the CCC staff, unilaterally and without State
15 Parks' consent, massively expanded the scope of the pending coastal development permit
16 authorization. The CCC staff recommended for the first time that the coastal
17 development permit authorize a vastly *expanded* version of the dust control measures.
18 Specifically, the Commission staff proposed changing the permit by expanding the dust
19 control measures in the following ways: (a) eliminating the setback and exclusions in the
20 dust control measure project area that State Parks had imposed expressly to avoid take of
21 the threatened shorebird known as the western snowy plover and adverse modification of
22 the plover's critical habitat, and to avoid take of another shorebird, the endangered
23 California least tern, and adverse impacts to that bird's habitat (i.e., expanding the project
24 area in an open-ended manner that will be determined entirely by dust emissivity without
25 regard to impacts to sensitive species or other resources); (b) removing any limitation on
26 the amount of acreage of vegetation (or seasonal measures such as wind fencing), i.e.,
27 eliminating the cap on annual acreage (20 acres of vegetation and 40 acres of seasonal
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1 measures), and dispensing with the total acreage cap of 100 acres over five years, allowing
2 for *unlimited acreage* if deemed “necessary” under CARB modeling; and (c) allowing the
3 dust control measures to be installed closer to the shore and within foredunes even
4 though those areas are designated plover critical habitat. These changes, adopted by the
5 CCC, removed limitations on where and how much acreage of control measures would be
6 allowed, and expanded authorization for placement of the Dust Control Measures
7 anywhere and *everywhere* within the 3,500 SVRA so long as CARB modeling identified
8 significant dust emissions.

9 134. The CCC failed, however, to adequately evaluate and consider the
10 environmental and coastal resource impacts that the expanded Dust Control Measures
11 would have, and the CCC failed to consider and require mitigation measures to address
12 the massively expanded Dust Control Measures. Mitigation must be discussed and
13 analyzed before a coastal development permit is approved. A state agency considering
14 proposed action under a certified regulatory program must not approve or adopt the
15 activity if there are feasible alternatives or mitigation measures available that would
16 substantially lessen a significant adverse effect that the activity may have on the
17 environment. It also the general rule under CEQA that it is unlawful to postpone the
18 formulation of mitigation measures until after approval.

19 135. In its draft EIR for the dust control measures, State Parks considered
20 expanding its dust control measures to accommodate the APCD by (1) expanding the
21 project area to include all OHV recreation lands, including the plover seasonal exclosure
22 land; (2) emphasizing vegetation island placement closer to the shoreline and foredunes;
23 and (3) increasing the amount of wind fencing by 20 percent per year (resulting in a
24 doubling of the covered acreage to 83 acres). State Parks concluded that this expanded
25 alternative would result in significant additional, adverse biological, recreational, visual
26 and aesthetic impacts. State Parks also concluded that the expanded alternative would
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1 result in the adverse modification of designated critical habitat for the federally-listed
2 western snowy plover and impacts to the protected California least tern.

3 136. State Parks' EIR establishes a number of thresholds of significance for
4 biological resources, including a finding of significance if the dust control program would
5 "have a substantial adverse effect, either directly or through habitat modifications, on any
6 species identified as a candidate, sensitive, or special-status species in local or regional
7 plans, policies, or regulations, or by CDFW or USFWS." The EIR concluded that the
8 "Dust Control Program activities . . . have the potential to result in direct and indirect
9 effects on special-status *plant* species and their habitat." The EIR also finds that the
10 "Dust Control Program activities would have the potential to result in direct and indirect
11 effects on special-status *wildlife* species and their habitat." The EIR continues: "Direct
12 effects could include habitat loss and harassing, harming, and/or inadvertent trapping,
13 wounding, or killing special-status wildlife species during work activities (including
14 project access). Indirect effects could include habitat alteration or loss (i.e., changing
15 existing habitat to a different type of habitat), increased predation of special-status
16 species, and interference with or loss of reproductive interest and/or success. The EIR
17 also notes: "Currently, western snowy plover and California least tern breed primarily
18 breed directly west of the Program area. It is possible western snowy plover and
19 California least tern, would be encountered in the western part of the Program area.
20 Although unlikely, western snowy plovers could possibly be encountered throughout the
21 Program area during foraging and wintering activities. Given their listed status, impacts
22 to California red-legged frog, western snowy plover, and California least-tern would likely
23 be of the greatest magnitude; however, all impacts to special- status wildlife species and
24 their habitat could be potentially significant." State Parks suggested certain mitigation
25 measures it thought would mitigate for impacts to these biological resources. Friends
26 contends that those measures would be inadequate to mitigate significant impacts to
27 those biological resources. However, even State Parks agreed that an *expanded* Dust
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1 Control Program like that suggested by the Air District would result in significant
2 environmental and coastal resource impacts. The EIR concluded that expanded Dust
3 Control Measures would result in greater and significant impacts to biological resources:
4 "... this alternative could result in new, potentially significant or significant and
5 unavoidable impacts on aesthetics and/or biological resources. The alternate dust control
6 program could more than double the amount of wind fencing installed in Year 5 (83 acres
7 versus 40 acres) if the Rule 1001 performance standard is not met, which would increase
8 the visibility of the fencing array from all receptor vantage points. The alternate dust
9 control program could also result in direct and/or indirect impacts on biological
10 resources because the emphasis on planting vegetation in nearshore areas would likely
11 modify, to some degree, USFWS-designated critical habitat for the western snowy plover
12 (federal-listed as threatened). Planting vegetation in this critical habitat area could
13 impact active nests by providing habitat for predators to hide and stalk nesting western
14 snowy plovers and California least terns (federal- and state-listed as threatened)." Based
15 on these findings, State Parks did not develop any mitigation that it thought would
16 address the significantly greater impacts that an expanded Dust Control Program would
17 cause. Rather, it concluded that the expanded Dust Control Measures should not be
18 implemented because there would be unacceptable environmental and coastal resource
19 impacts.

20 137. In approving the coastal development permit, the CCC not only ignored and
21 discounted all of State Parks' analysis and findings, it doubled-down. The CCC expanded
22 the Dust Control Measures *beyond* the expanded alternative that State Parks studied in
23 its EIR. The CCC expanded authorization for placement of the Dust Control Measures so
24 they can be placed anywhere and *everywhere* within the 3,500 SVRA so long as CARB
25 computer modeling identifies significant dust emissions. Rather than merely authorizing
26 an additional 100 acres (the alternative that it and State Parks evaluated in part), the CCC
27 authorized a 3,400-acre expansion. It did so without the slightest environmental or
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1 coastal resource impact analysis. The CCC undertook a faux analysis of an additional
2 100-acre expansion but there was no lawful basis for limiting the analysis to 100-acres
3 when the new authorization expanded permit authority to an additional 3,400 acres. To
4 do so was a prejudicial abuse of discretion and a violation of CEQA and the certified
5 regulatory program. The CCC was so anxious to approve an expansion of the Dust
6 Control Measures that it didn't bother to fulfill its only purpose – to meaningfully
7 evaluate the impacts of the vastly expanded development on sensitive coastal resources.
8 It failed to study or include any mitigation measures to address the vast expansion of
9 Dust Control Measures to anywhere and *everywhere* within the 3,500-acre SVRA,
10 including plover critical habitat, occupied least tern habitat, and occupied thistle critical
11 habitat. In fact, a U.S. Congressman alerted the CCC that the U.S. Fish and Wildlife
12 Service was in the process of evaluating the impacts of the Dust Control Measures on
13 plover critical habitat, and requested that the CCC postpone its decision for a short period
14 of time to wait for the FWS study. The CCC ignored the request, which was a prejudicial
15 abuse of discretion.

16 138. The CCC further violated CEQA by relying on demonstrably inadequate
17 biological resource mitigation proposed by State Parks for the smaller 100-acre original
18 Dust Mitigation Measures proposal. The EIR itself admitted a number of shortcomings in
19 the mitigation plan (and that plan was expressly not designed for the vastly expanded
20 Dust Control Measures that the CCC approved on September 14, 2017).

21 139. The EIR states that Dust Control Program installation and work activities
22 will occur in the snowy plover's non-nesting season only "to the extent feasible." In other
23 words, State Parks admits that Dust Control Program installation and work activities are
24 likely to occur in the vicinity of the snowy plover *during nesting season*. The CCC carried
25 this feasibility requirement forward, in violation of CEQA. In addition, with the CCC
26 *expanded* authorization, the Dust Control Measures are authorized to be installed *in*
27 *plover critical habitat during breeding and nesting season*. In violation of CEQA, the
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1 CCC failed to disclose that this significantly increases the likelihood of unlawful “take” of
2 the western snowy plover. Since the plover habitat and the tern habitat are very closely
3 aligned, work activities and the Dust Control Measures will have similar impacts and
4 result in take of the California least tern, in violation of state and federal law.

5 140. Despite the obvious fact that the biological mitigation measures proposed in
6 the EIR were intended to address the impacts resulting from the smaller 100-acre dust
7 control proposal submitted by State Parks, the CCC, as part of its permit approval,
8 **adopted the EIR mitigation measures** without any modification or any meaningful
9 study as to whether they would address biological impacts resulting from a Dust Control
10 Program that was authorized to be 35 times larger. These measures were inadequate to
11 address the impacts from a 100-acre Dust Control Program, and thus, under no
12 circumstance, would they be adequate to address the biological impacts of a program 35
13 times larger. Below, examples of these shortcomings are described. References to the
14 EIR mitigation should be read as a CCC mitigation also since the CCC adopted these same
15 mitigation measures without change.

16 141. As a biological mitigation measure, the EIR provides that “No more than
17 three days prior to starting work in the vicinity of western snowy plover and California
18 least tern habitat from March 1st to September 30th, a qualified biologist shall survey for
19 western snowy plover and California least tern nests. If nests are found during this
20 survey, [State Parks] shall establish a minimum 300-foot buffer zone around the nest.”
21 This mitigation measure is inadequate because it is reasonable to assume that during
22 nesting season, a snowy plover may nest in the expanded Dust Control Program area
23 during the 3-day gap between the species survey and the work activities since the activity
24 may well be in critical habitat. The CCC fails to disclose the heightened risk of take
25 during this gap period. In addition, the mitigation is internally inconsistent. In the core
26 discussion of plover mitigation, State Parks states that surveys will be performed “no
27 more than seven (7) days prior to the start of work.” Thus, it is unclear whether the
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1 mitigation requires no more than a 3-day gap or no more than a 7-day gap. Seven days
2 provides an even greater window to allow plovers to nest in the work area without
3 detection, and, as a result, substantially increases the risk of take. The CCC adopted these
4 measures without comment, and without addressing their application to 3,500 acres,
5 rather than 100 or 200 acres, which violates CEQA.

6 142. As a biological mitigation measure, the EIR provides that if nesting activity is
7 initiated within 300 feet of in-progress or installed dust control activities, State Parks will
8 stop all active work and install additional fencing. It also says that no additional dust
9 control activities shall be performed within 300 feet of such enclosure until after the nest
10 fate is determined. However, the EIR fails to include any mitigation measures to
11 ascertain whether the additional fencing and buffer achieves the objective of no take of
12 the snowy plover. Under federal law, “take” including interference with breeding activities
13 resulting in death. Since work activities will be allowed to commence after the fence is
14 installed, the work activity could still interfere with plover breeding activity during
15 breeding season even with a 300-foot buffer, especially under the expanded Dust Control
16 Measures which are now allowed even within critical habitat. The CCC adopted these
17 measures without comment, and without addressing their application to 3,500 acres,
18 rather than 100 or 200 acres. Therefore, the mitigation measure (adopted by the CCC) is
19 inadequate, and the CCC staff report is inadequate in that it fails to disclose this
20 heightened risk of take if a nest is located near the work activity.

21 143. As a biological mitigation measure, the EIR provides “A biological monitor
22 shall be available to monitor for the presence of nesting activity throughout the
23 installation of all dust control measures. The on-site biological monitor shall have the
24 authority to halt any action that might result in impacts to individual birds or nests. If
25 work is stopped, the USFWS shall be notified immediately by the on-site biological
26 monitor.” This mitigation measure, adopted by the CCC, is inadequate in several
27 respects. The measure simply states that the biological monitor will “be available,” not
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1 that he or she will actually monitor nests near the work activities. Also, while the EIR
2 states that the biological has the “authority” to halt activity, it does not require the
3 biologist to halt the activity. Thus, the activity could continue and result in a take of the
4 snowy plover or least tern. The mitigation measure is inadequate and the CCC failed to
5 disclose the heightened risk of take as a result of this deficiency. Worse yet, the EIR
6 leaves open the possibility that “regular monitoring of active nests by a qualified
7 biologist” may not be “feasible.” Yet, the CCC provides no alternative mitigation measure.
8 The CCC adopted these measures without comment, and without addressing their
9 application to 3,500 acres, rather than 100 or 200 acres, which violates CEQA.

10 144. As another biological mitigation measure, the EIR provides “Program
11 activities that could facilitate predator movement into known or potential nesting areas
12 for plover and tern shall be minimized.” Friends’ biologist alerted State Parks that adding
13 100 acres (or more) of new vegetation provides perfect cover for bird predators such as
14 red foxes and coyotes. The CCC rejected this concern without any studies or data, and
15 without substantial evidence, and worsened the risk by vastly expanding the
16 authorization to plant such vegetation over the entire 3,500-acre SVRA. Hundreds or
17 even thousands of acres of vegetation would clearly provide cover for predators pursuing
18 plover and plover nests. The CCC permit now even allows this *within* plover critical
19 habitat, which violates CEQA.

20 145. Also under CEQA and the Coastal Act, the mitigation measure of
21 preconstruction surveys is inadequate as a matter of law because the EIR fails to
22 define and specify what additional actions the biologist must take other than setting up
23 buffer areas around nests. There is no requirement that the buffer areas must insure no
24 take of protected bird species, and there is no required action if the buffer areas fail to
25 protect the plover and tern nests other than consulting the U.S. Fish and Wildlife Service
26 and/or the California Department of Fish and Wildlife “for additional avoidance and
27 minimization measures,” which are not listed or specified. The CCC fails to comply with
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1 CEQA by including the vague mitigation measure of “consulting” with the resources
2 agencies with no explanation of what specific actions would be taken to address the
3 impact to the protected birds. The EIR even admits that active and on-going surveys and
4 monitoring may not be “feasible,” but then fails to identify any additional mitigation
5 measures that would apply to listed and protected bird species such as the plover and
6 tern. The CCC adopted these measures without comment, and without addressing their
7 application to 3,500 acres, rather than 100 or 200 acres, which violates CEQA.

8 146. Finally, the EIR includes revised biological mitigation measures such as the
9 removal and/or relocation of any specific structures found to contribute to California
10 least tern and western snowy plover predation. The problem with this mitigation
11 approach is that by definition it waits until there has been an actual take of a California
12 least tern or western snowy plover before it requires action to protect the species from
13 further take. That violates CEQA by providing inadequate mitigation. It also violates the
14 California Endangered Species Act and state statutes protecting “fully protected species.”
15 It violates the federal Endangered Species Act, which is the subject of separate litigation
16 to be filed by Petitioner Friends. It also demonstrates on its face that the Dust Control
17 Program does not prohibit all take of listed and protected species such as the California
18 least tern and western snowy plover. Therefore, the EIR is also deficient in that it fails to
19 discuss the need for an incidental take permit from the U.S. Fish and Wildlife Service or
20 from the California Department of Fish and Wildlife for a Dust Control Program that
21 implicitly acknowledges there may be take of a protected wildlife species. Further, since a
22 prerequisite to any incidental take permit of a federally protected species is a habitat
23 conservation plan and compliance with the National Environmental Quality Act, the
24 FEIR (and the CCC in its staff report) also is deficient by failing to make these disclosures.
25 The CCC adopted these mitigation measures with their deficiencies and thus the CCC has
26 violated CEQA. The CCC adopted these measures without comment, and without

1 addressing their application to 3,500 acres, rather than 100 or 200 acres, which violates
2 CEQA.

3 147. The CCC also violated CEQA and its certified regulatory program by failing to
4 adequately and meaningfully evaluate and consider the impacts that the expanded Dust
5 Control Measures would have on the California least tern and its habitat, and the CCC
6 failed to consider and require mitigation measures to address the massively expanded
7 Dust Control Measures' impact on this biological resource.

8 148. State law prohibits the "take" of a species deemed to be "fully protected."
9 Fish & G. Code, § 3511 ("a fully protected bird may not be taken or possessed at
10 any time.") Pursuant to Fish & G. Code, § 3511(b)(6), the California least tern is a
11 "fully protected species." The California Department of Fish and Wildlife alerted State
12 Parks that the habitat within and in the vicinity of the Dust Control Program likely
13 provides nesting habitat for shorebirds including the California least tern. The
14 Department of Fish and Wildlife advised State Parks that the EIR must include
15 adequate measures to prevent "take" of "fully protected species," such as the California
16 least tern, during construction, operation, and maintenance of the Dust Control Program.
17 The Department of Fish and Wildlife also expressed concern that certain Dust Control
18 Program components such as monitoring equipment could provide perching habitat for
19 predatory avian species that could prey on California least tern and/or western snowy
20 plover. The EIR admits that California least tern are known to nest just to the west of the
21 Dust Control Program area, and *within* the area that will be covered in the expanded
22 project area actually adopted by the CCC. California least tern nest in the area where the
23 CCC authorized the expanded Dust Control Measures. State Parks asserts that the dust
24 control activities will avoid "active" California least tern nests, but that analysis did not
25 consider the vastly expanded program actually authorized by the CCC. The CCC failed to
26 meaningfully supplement the analysis or propose additional mitigation measures that
27 would address the increased impacts to least tern. In addition, the EIR shows there will
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1 be a 3 or 7 day gap between surveying for the species and the commencement of work,
2 during which time least tern nesting is possible, and for which the CCC failed to account
3 for. State Parks asserts that the revised FEIR requires State Parks, “in the vicinity of
4 California least tern habitat,” to “perform work activities outside the nesting season for
5 these species, if feasible.” Given the long nesting season, it is very likely that State Parks
6 will perform work activities during the nesting season. The FEIR’s only answer is that
7 surveys will be performed, but as noted previously the significant time gaps between
8 surveys and work commencement will allow for tern nesting to go undiscovered before
9 work is commenced. In that situation, there will be no buffer area established by the
10 biologist, and in fact, the nest and nesting birds may be destroyed by Program work
11 activities without being discovered. And there is no analysis in the EIR or by the CCC that
12 addresses the impact of vastly expanded Dust Control Measures on the least tern or its
13 habitat. It is thus not reasonable to presume or to conclude that these limited mitigation
14 measures will preclude prohibited take of the California least tern, thus violating state law
15 prohibiting take of a “fully protected” bird, and violating CEQA. Any finding that there
16 will not be take of the California least tern because of these limited mitigation measures is
17 not supported by substantial evidence, and fails to fully disclose impacts. The mitigation
18 includes the removal and/or relocation of any specific structures found to contribute to
19 California least tern and western snowy plover predation. The problem with this
20 mitigation approach is that by definition it waits until there has been an actual take of a
21 California least tern or western snowy plover before it requires action to protect the
22 species from further take. That violates CEQA, its goals and substantive standards, as well
23 as Fish & G. Code, § 3511 and related statutes protecting “fully protected” species. It also
24 demonstrates that the Dust Control Program does not prohibit all take of fully protected
25 species such as the California least tern. For all the reasons stated above, the CCC
26 approval is inadequate under CEQA. The CCC has simply incorporated the EIR analysis
27 and these mitigation measures into the CDP process, and the staff report contains little or
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1 no additional analysis. Thus, the CCC has carried forward these same deficiencies, and
2 the staff report thus also fails to comply with CEQA and/or its goals and substantive
3 standards.

4 149. The CCC also violated CEQA and its certified regulatory program by failing to
5 adequately and meaningfully evaluate and consider the impacts that the expanded Dust
6 Control Measures would have on sensitive coastal recreational opportunities, and the
7 CCC failed to consider and require mitigation measures to address the massively
8 expanded Dust Control Measures' impact on this resource.

9 150. State Parks acknowledges in its EIR that any dust control measures located
10 within the open riding area would adversely affect public access and recreation resources.
11 Under Public Resources Code § 30116(b), any area "possessing significant recreational
12 value," like Oceano Dunes SVRA, is deemed to be a "sensitive coastal resource area." The
13 Legislature declares these areas to be of "vital interest and sensitivity." This especially
14 applies to the OHV riding areas.

15 151. For this reason, and to comply with the Coastal Act, State Parks proposed to
16 plant any new vegetation outside the OHV riding area "to the maximum extent feasible."
17 State Parks considered an alternative project scenario that called for larger vegetation
18 island area, and greater vegetation and temporary seasonal measures within the riding
19 areas. But it rejected that alternative on the basis that it would have excessive impacts on
20 the recreational resource of riding.

21 152. The CCC ignored this analysis and falsely asserts that restricting public
22 access by foreclosing use is allowable under the Coastal Act because it is merely
23 regulating the time, place and manner of access, depending on the "capacity of the site to
24 sustain use and at what level of intensity." That is a prejudicial abuse of discretion
25 because State Parks did not propose the dust control program due to the "capacity of the
26 site to sustain use." There is no evidence whatsoever in the record (much less substantial
27 evidence) that the dust control program is intended to sustain use or capacity. Rather, it
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1 is intended to mitigate the effects of dust on surrounding areas. Nor is there any evidence
2 that the dust control measures have been proposed to mitigate the “fragility of the natural
3 resource,” as falsely alleged by the CCC. The CCC argues that the prohibition of riding in
4 these areas is necessary to preserve the resource, but there is nothing in the record to
5 support that contention either. Data and historical evidence shows that the new large
6 vegetation islands are likely to create deep depressions, which is exactly the opposite of
7 preserving and protecting the dune resource. The CCC also falsely asserts that the project
8 is intended to stabilize the dunes and restore the dune surface. Nothing in State Parks’
9 EIR or CDP application even hints that is the purpose of the project or an objective of the
10 project. Redefining the project in this manner was contrary to the CCC’s authority under
11 the Coastal Act, including the permitting provisions, and constitutes a prejudicial abuse
12 of discretion.

13 153. Due to these false assertions, the CCC not only failed to adequately consider
14 the impacts of expanding the Dust Control Measures by 3,400 acres on sensitive and
15 unique recreational opportunities, and mitigation for that, but the CCC amazingly
16 rejected and *eliminated* all of the mitigation that State Parks had developed to address
17 these impacts. This violates CEQA and the Coastal Act.

18 154. Worse yet, the CCC falsely asserted that “several thousand” acres will still be
19 available for OHV recreation at Oceano Dunes SVRA – the actual acreage will be at most
20 900 acres, and possibly *no* acreage.

21 155. The CCC also violates CEQA by ignoring the cumulative impact of serial
22 reductions in the OHV riding area over time. Since the 1970s, the riding area has been
23 reduced by 10,000 to 17,000 acres. Since 1981, the riding area has been reduced by 91
24 percent or more. The expanded Dust Control Measure authorization would allow the area
25 to be reduced to zero. That obviously is a significant impact under CEQA and contrary to
26 the Coastal Act mandates.

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1 156. The also ignores that the OHV riding areas within Oceano Dunes SVRA are
2 subject to an implied or express easement (or fee) for off-road recreation, held for the
3 public in trust, as the public, Friends' members and State Parks have maintained since
4 the 1970s, and that implied or express public trust dedication for OHV recreational use
5 cannot be revoked or changed. The CCC has exceeded its authority under the Coastal Act
6 and the California Constitution in attempting to do so.

7 157. The CCC further asserts that under any scenario "over two square miles"
8 will be available for off-road use and that's enough. That is false. The CCC authorized
9 Dust Control Measures anywhere and everywhere in the SVRA, which would reduce the
10 riding area to zero. Failure to disclose that potential impact violates CEQA. In any event,
11 the CCC also fails to consider that two square miles (even under optimistic scenarios it
12 will never be two square miles) must service nearly two million visitors per year. Given
13 this level of visitation by off-riders, and given that this is the single most visited park in
14 the entire California park system, there is no basis to argue that this reduction is "minor,"
15 or that two square miles is adequate under the Coastal Act.

16 158. The CCC also ignores State Parks' thresholds of significance analysis without
17 any basis. In determining whether the Dust Control Program would substantially limit,
18 reduce, or interfere with established recreational activity, State Parks considered the
19 following factors:

- 20 • The recreational history of Oceano Dunes SVRA
- 21 • The number of visitors that could be affected by a change in established
22 recreational opportunities
- 23 • The extent to which changes to established recreational opportunities
24 would be perceptible to visitors
- 25 • The ability of visitors to use similar facilities instead of Oceano Dunes
26 SVRA
- 27 • The legislative mandate and mission of the OHMVR Division.

1 The CCC failed to refute this threshold of significance, standard or analysis. Using this
2 standard, State Parks determined that under either its proposal, or a larger Air District
3 proposal (alternative scenario), “closure of land inside the Oceano Dunes SVRA open
4 riding and camping area” is “a potentially significant impact on OHV recreation.” In
5 violation of CEQA, the CCC discounts or ignores these findings with little or no data or
6 evidence that contradicts State Parks’ conclusion. The CCC also ignores the EIR finding
7 that the expanded alternative would result in greater impacts to public access and
8 recreational lands, including impacts to the “Sand Highway.” The CCC’s determination
9 that OHV riding would not be significantly impacted is erroneous, contrary to law,
10 arbitrary and capricious, unsupported by substantial evidence, and a prejudicial abuse of
11 discretion.

12 159. The CCC argues that mitigation is unnecessary because both the preferred
13 and alternative scenarios are consistent with the Coastal Act standards for public access
14 and recreation areas. As explained above and herein, the CCC’s conclusion is erroneous,
15 contrary to law, unsupported by substantial evidence, a prejudicial abuse of discretion,
16 ignores basic information and facts, and rejects State Parks’ standard of significance
17 without any support or argument.

18 160. The CCC also violated CEQA and its certified regulatory program by failing
19 to adequately and meaningfully evaluate and consider the impacts that the expanded
20 Dust Control Measures would have on sensitive coastal scenic and visual resources, and
21 the CCC failed to consider and require mitigation measures to address the massively
22 expanded Dust Control Measures’ impact on these resources in light of its massive
23 expansion of the dust program authorization.

24 161. Public Resources Code § 30251 mandates that “. . . scenic and visual qualities
25 of coastal areas” “shall be considered and protected as a resource of public importance.”
26 “Permitted development shall be sited and designed to protect views to and along the
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1 ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be
2 visually compatible with the character of surrounding areas, and, where feasible, to
3 restore and enhance visual quality in visually degraded areas.”

4 162. State Parks determined that Oceano Dunes SVRA contains high scenic
5 quality -- the SVRA is “broadly situated within the Nipomo Dunes-Point Sal National
6 Natural Landmark, which is known for dramatic coastal views, long stretches of
7 shoreline, and unique dune systems.”

8 163. State Parks’ original application to the CCC for a coastal development permit
9 for the Dust Control Measures included, among other things, installing 40 acres of
10 seasonal dust control measures, including dense wind fencing, straw bales, metal mesh
11 ground cover, and porous roughness elements (PREs). PREs consist of rectangular,
12 approximately 3-foot-long by 2- feet-wide by 2 feet-high crates. Other unidentified
13 seasonal measures might be deployed. State Parks admits that these measures would
14 change the view: “Seasonal dust control measures would consist of artificial materials
15 such as wind fencing and straw bales that are *uncharacteristic of and contrast with an*
16 *unaltered dune environment.*”

17 164. The wind fencing that will be deployed will be bright orange and highly
18 visible. More muted colors will be used only when existing orange-colored fencing
19 supplies “run out.” Neither State Parks’ EIR nor the CCC’s staff report provide
20 information on the extent of orange fencing supplies, or when those supplies might run
21 out. Therefore, there are likely to be hundreds of acres of bright orange fencing covering
22 the sand dunes. The PREs are also bright orange and inconsistent with the scenic
23 resource.

24 165. State Parks admitted in its EIR that the proposed Dust Control Program
25 activities have the potential to impact the scenic qualities of Oceano Dunes SVRA and its
26 surroundings and thus change the visual character of the area and its surroundings.

1 166. The CCC made it worse. The CCC, in its permit approval, purported to
2 authorize these same components “in any area” and “in any amounts necessary,” even
3 outside of the La Grande Tract and original project area described in State Parks’ EIR,
4 i.e., anywhere and *everywhere* in the 3,500 acre SVRA. The CCC dispensed with all
5 limitations and mitigation that State Parks had imposed in order to protect sensitive
6 coastal resources. Thus, rather than 40 acres per year in wind fencing, PREs and metal
7 mesh covering the sand dunes, the CCC authorized the entire SVRA, i.e., hundreds or
8 *thousands of acres*, of bright orange wind fencing, bright orange PREs and metal mesh
9 covering the sand dunes.

10 167. In its approval and issuance of the coastal development permit, the CCC did
11 not evaluate the impacts of many hundreds of acres or thousands of acres of bright
12 orange fencing and PREs on coastal scenic and visual resources in the SVRA which has
13 been deemed by statute and by State Parks to be a sensitive scenic coastal resource. The
14 CCC failed to study or add necessary mitigation to address the scenic and visual resource
15 impacts, in violation of CEQA. The CCC failed to include conditions that would ensure
16 that the visually-disruptive seasonal measures are sited and designed to protect views to
17 and along the “ocean and scenic coastal areas, to minimize the alteration of natural land
18 forms, to be visually compatible with the character of surrounding areas, and, where
19 feasible, to restore and enhance visual quality in visually degraded areas.” The bright-
20 orange fencing, PREs and metal mesh is not visually compatible with the character of the
21 sand dunes. To the contrary, the expanded authorization granted by the CCC places *no*
22 limitations on the siting or design of the fencing, PREs and metal mesh in order to protect
23 coastal scenic and visual resources as mandated by § 30251.

24 168. The CCC’s failure to comply with this CEQA policy and substantive standard
25 is contrary to law, exceeds its authority, is arbitrary and capricious, constitutes a
26 prejudicial abuse of discretion and is not supported by substantial evidence or data, or in
27 some cases any evidence or data.

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**Count 7:
Violation of the California Endangered
Species Act and California Fully Protected Species Laws**

169. Petitioner Friends repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-168, inclusive, as though fully set forth.

169. Under Fish & Game Code § 2080, take of a species designated as endangered or threatened under the California Endangered Species Act (“CESA”) is prohibited. Take is defined by the Fish and Game Code § 86 to mean hunt, pursue, catch, capture, or kill, or attempt to do those things. Even a generally lawful activity may result in an illegal take in violation of CESA. Incidental take also is prohibited unless an incidental take permit has been granted by the California Department of Fish and Wildlife, or mandatory notice has been given regarding coverage under a federally-issued incidental take permit. A claim of a future injury to protected wildlife is sufficient to establish an actionable take under CESA. State agencies, as well as local governments and other public agencies such as the Air District, are “persons” subject to the CESA’s prohibition on the unlicensed taking of endangered species.

170. The California least tern is designated as endangered under CESA, and is present at Oceano Dunes SVRA. Its habitat at Oceano Dunes SVRA is located in essentially the same area as the area designated as critical habitat for the threatened western snowy plover by the U.S. Fish and Wildlife Service.

171. No agency including the CCC has obtained any type of incidental take permit from any state or federal agency for take of the California least tern that will result from the Dust Control Measures at Oceano Dunes SVRA. As described herein, take of the least tern will occur at Oceano Dunes as a result of the Dust Control Measures. Vast vegetation areas will be installed near occupied tern habitat at the SVRA, providing perfect cover for predators of least tern, and biological opinions find that such take will occur, especially in light of the vast expansion of the Dust Control Measures authorized by the CCC in its

1 granting of the coastal development permit to State Parks and Parks' co-applicants.
2 Seasonal measures will provide perches for avian predators, and also will result in take of
3 the state-protected least tern.

4 172. State law also prohibits the "take" of a species deemed to be "fully
5 protected." Fish & Game Code, § 3511 ("a fully protected bird may not be taken or
6 possessed at any time.") Pursuant to Fish & Game Code, § 3511(b)(6), the California least
7 tern is a "fully protected species." Take will occur as described above, caused by the Dust
8 Control Measures.

9 173. The California Department of Fish and Wildlife alerted State Parks that the
10 habitat within and in the vicinity of the Dust Control Program likely provides nesting
11 habitat for shorebirds including the protected California least tern. The Department of
12 Fish and Wildlife advised State Parks that the project must include adequate measures to
13 prevent take of endangered and "fully protected species," such as the California least tern,
14 during construction, operation, and maintenance of the Dust Control Program. The
15 Department expressed concern that certain Dust Control Program components such as
16 monitoring equipment could provide perching habitat for predatory avian species that
17 could prey on California least tern. The EIR admits that California least tern are known
18 to nest just to the west of the Dust Control Program area, and *within* the area that will be
19 covered in the expanded project area actually adopted by the CCC. California least tern
20 nest and breed in the exact area where the CCC authorized the expanded Dust Control
21 Measures.

22 174. State Parks asserts in its EIR that the dust control activities will avoid "active"
23 California least tern nests, but that analysis did not consider the vastly expanded program
24 actually authorized by the CCC in its granting of the coastal development permit. The
25 CCC failed to meaningfully supplement the analysis or propose additional mitigation
26 measures that would address the increased impacts to least tern and its occupied habitat.
27 Friends' biologist alerted State Parks that adding large acreage of new vegetation provides
28

1 perfect cover for bird predators such as red foxes and coyotes, which, based on historical
2 data and occurrences in the SVRA, will result in take of the California least tern as a result
3 of these Dust Control Measures. In addition, State Parks' EIR shows there will be a 3 or 7
4 day gap between surveying for the species and the commencement of work, during which
5 time least tern nesting is possible, and for which the CCC failed to account for. State
6 Parks asserts that the revised FEIR requires State Parks, "in the vicinity of California least
7 tern habitat," to "perform work activities outside the nesting season for these species, *if*
8 *feasible.*" It is likely that State Parks will determine that installing the Dust Control
9 Measures outside of the tern nesting and breeding season is not feasible because the
10 nesting season is long, lasting from early March through late September each year. Thus,
11 it is very likely that State Parks will perform work activities during the nesting season,
12 and the measures will be within the tern occupied habitat during the nesting season after
13 they are installed. State Parks' only answer is that surveys will be performed, but as
14 noted previously the significant time gaps between surveys and work commencement will
15 allow for tern nesting to go undiscovered before work is commenced. In that situation,
16 there will be no buffer area established by the biologist, and in fact, the nest and nesting
17 birds may be destroyed by program work activities without being discovered. And there is
18 no analysis in the EIR or by the CCC that addresses the impact of vastly expanded Dust
19 Control Measures on the least tern or its habitat. It is thus not reasonable to presume or
20 to conclude that these limited mitigation measures will preclude prohibited take of the
21 California least tern, thus violating state law prohibiting take of a listed "fully protected"
22 bird. Any finding that there will not be take of the California least tern because of these
23 limited mitigation measures is not supported by substantial evidence, and fails to fully
24 disclose impacts and limitations in the proposed mitigation. The mitigation includes the
25 removal and/or relocation of any specific structures found to contribute to California
26 least tern and western snowy plover predation. The problem with this mitigation
27 approach is that by definition it waits until there has been an actual take of a California
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1 least tern or western snowy plover before it requires action to protect the species from
2 further take. That violates CESA, as well as Fish & Game Code, § 3511 and related statutes
3 protecting “fully protected” species. It is also unlikely that if State Parks determines that
4 the added vegetation is resulting in take that Parks will remove the vegetation since that
5 would constitute abandonment of the Dust Control Measures. This shows that that the
6 Dust Control Program does not prohibit all take of endangered and fully protected species
7 such as the California least tern, and contains inadequate mitigation to prevent take.

8 175. Government agencies charged or tasked with land or resource management
9 (including governmental authorization, mandate or direction to third parties) engage in a
10 take in violation of CESA and the fully protected species statutes both by conduct and the
11 failure to act that results in harm to a listed species, or significant impairment of habitat
12 or breeding patterns. A government violates CESA's take prohibition when that official
13 authorizes someone to exact a taking of an endangered species, which, but for the
14 authorization, could not have taken place.

15 176. As described herein, at Oceano Dunes SVRA, government entities either
16 responsible for land management or resource management are authorizing, mandating or
17 implementing actions that will result in the take of the protected Californi least tern
18 species through increased bird predation caused by the Dust Control Measures (or the
19 take is reasonably foreseeable in light of the biological opinions of Dr. Rob Roy Ramey,
20 the history of predation activities at Oceano Dunes SVRA and in the area, and scientific
21 articles and studies linking vegetation cover, proximity and increased predation).

22 177. While predation of tern in this area of the California coast has been a
23 historical problem, the actions by the governmnetal entities in this case in approving,
24 authorizing and implementing the Dust Control Measures, will cause a great increase in
25 that take of the California least tern.

26 178. Both State Parks, as the land manager of Oceano Dunes SVRA, and the CCC
27 as the regulatory agency, have long been aware of the problem of predation at Oceano
28

1 Dunes SVRA. Here, the CCC's approval, express authorization and issuance of the coastal
2 development permit for the Dust Control Measures at Oceano Dunes SVRA, and State
3 Parks' implementation of those measures (either voluntarily, or as a result of mandates by
4 the Air District or CARB, or a as a result of a combination of voluntary measures and
5 mandated measures) will exacerbate and cause, directly and indirectly, predation and
6 increased predation of tern at Oceano Dunes SVRA, in violation of CESA and the fully
7 protected species statute.

8 179. The Air District, and the Air District Board are also violating CESA and the
9 fully protected species statute by mandating that State Parks install the Dust Control
10 Measures, and specifically, that State Parks (1) install the Dust Control Measures outside
11 the initial Program boundary area and elsewhere in the SVRA including in or adjacent to
12 occupied habitat for the California least tern if those areas are determined to be a "highly
13 emissive" dust area by the Air District or CARB; (2) increase substantially the acreage of
14 Dust Control Measures, both seasonal and permanent, including including in or adjacent
15 to occupied habitat for the California least tern if those areas are determined to be a
16 "highly emissive" dust area by the Air District or CARB; and (3) increase substantially the
17 acreage of Dust Control Measures within open sand riding areas which substantially
18 increases the cover for predators of the least tern when compared to the present situation,
19 and includes areas in or adjacent to occupied habitat for the California least tern. These
20 mandates and direction substantially increase take of the California least tern in violation
21 of CESA and the fully protected species statutes.

22 180. CARB also is violating CESA and the fully protected species statute by
23 mandating, directing, and/or recommending as part of an overall ad hoc regulatory
24 scheme, agreement or understanding with State Parks, the Air District, the Air District
25 Board, and the CCC, that the Dust Control Measures be implemented in areas, and to
26 such an extent, as deemed warranted by CARB computer modeling or by other means
27 (which have not been made public), where such areas include occupied habitat for the
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1 California least tern, or areas adjacent to said habitat, resulting in take of the species
2 through increased predation.

3 181. SLO County also is violating CESA and the fully protected species statute by
4 by virtue of its co-application with State Parks for a coastal development permit to the
5 CCC, its acceptance of the permit conditions, including the vast expansion of the Dust
6 Control Measures as described herein, and its express or implied authorization to
7 implement the expanded Dust Control Measures on its land or within its jurisdiction, on,
8 near or adjacent to occupied habitat of the California least tern, resulting in increased
9 predation and take of the tern.

10 182. Again, State Parks' proposed to plant 100 acres of new vegetation in large
11 sections. The CCC expanded this proposal massively, authorizing the placement of these
12 dust control measures anywhere and *everywhere* in the 3,500 acre SVRA, including in
13 occupied least tern habitat, so long as it is deemed necessary by CARB's computer
14 modeling. Biologists, numerous scientific studies, articles and papers, as well as State
15 Parks itself (in its environmental studies) concluded that adding large vegetation areas at
16 the SVRA will provide perfect cover for a range of predators of the tern, causing an
17 increase in predation and significant impairment of breeding patterns. Each of the
18 named governmental entities is complicit in this expansion in the violation of CEQA and
19 the fully protected species statute.

20 183. Thus, the CCC's over-expanded permit authorization, and State Parks'
21 commitment to implement the permitted project through acceptance of the permit
22 conditions, will directly and indirectly result in take of terns, as well as adverse
23 modification of occupied tern habitat. Likewise, the Air District's and Air District Board's
24 actions, including enforcement of Rule 1001 and other District nuisance abatement rules,
25 to compel State Parks to place the expanded dust control measures at locations near,
26 adjacent or within occupied tern habitat also make the Air District and its Board liable for
27 take of tern stemming from this project, and in locations that ensure take will occur.

1 CARB is in a similar liability stance given that CARB computer modeling will dictate
2 where the Dust Control Measures are placed, including in occupied tern habitat, and the
3 extent and scope of the measures.

4 184. The CCC's, State Parks', the Air District's, the Air District Board's, CARB's,
5 and SLO County's violation of CEQA and the fully protected species statute is contrary to
6 law, exceeds their authority, is arbitrary and capricious, constitutes a prejudicial abuse of
7 discretion and is not supported by substantial evidence or data, or in some cases any
8 evidence or data.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, the Petitioner Friends respectfully prays for relief as follows:

12 1. That the Court issue a decision and a writ of mandate ordering Respondent
13 CCC, to withdraw, set aside and vacate its September 14, 2017 approval, the October 11,
14 2017 Revised Findings, and issuance of a coastal development permit for the Dust Control
15 Measures, in whole or in part, and requiring removal of unauthorized development,
16 equipment and material consistent with the Court's decision;

17 2. That the Court issue a ruling, order and judgment that the CCC's approval,
18 findings and issuance of the coastal development permit for the Dust Control Measures
19 exceeds the CCC's authority under the Coastal Act and state law, and violates the Coastal
20 Act, CEQA and sensitive species protection laws, in whole or in part;

21 3. That the Court issue a ruling, order and judgment that State Parks'
22 authorization and implementation of the Dust Control Measures at Oceano Dunes SVRA
23 as described herein violates CESA and the fully protected species statute, in whole or in
24 part;

25 4. That the Court issue a ruling, order and judgment that Air District's and Air
26 District Board's actions, authorizations, mandates, orders and direction to State Parks to
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1 install the Dust Control Measures at Oceano Dunes SVRA as described herein violates
2 CESA and the fully protected species statute, in whole or in part;

3 5. That the Court issue a ruling, order and judgment that CARB's actions,
4 authorizations, recommendations, mandates, orders and direction to State Parks to
5 install the Dust Control Measures at Oceano Dunes SVRA as described herein violates
6 CESA and the fully protected species statute, in whole or in part;

7 6. That the Court issue a ruling, order and judgment that SLO County's actions,
8 authorizations, mandates, orders and direction to State Parks to install the Dust Control
9 Measures at Oceano Dunes SVRA as described herein violates CESA and the fully
10 protected species statute, in whole or in part;

11 7. That the Court award costs of suit to Petitioner Friends;

12 8. That the Court award reasonable attorneys' fees to Petitioner Friends, pursuant
13 to C.C.P. § 1021.5, the equitable private attorney general doctrine and state law.

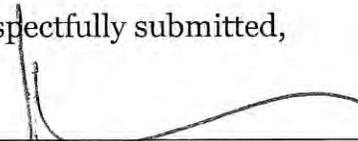
14 Throughout the late Spring and summer of 2017, Friends has engaged in settlement
15 discussions with State Parks regarding the dust control measures and related issues at
16 Oceano Dunes SVRA. Those discussions are on-going. On or about September 27, 2017,
17 counsel for Petitioner Friends sent by email and mail to John (Jack) Ainsworth, the
18 Executive Director of the CCC, and legal counsel for the CCC, State Parks, the District and
19 CARB, a settlement letter constituting a good faith effort to resolve Friends' objections
20 regarding the Dust Control Measures at least in the short term before the expiration of
21 the short statute of limitations. Shortly thereafter, Friends also sent a 60-day notice of
22 intent to sue under the federal Endangered Species Act, in which Friends again expressed
23 willingness to discuss ways to settle issues raised regarding harm to sensitive species.
24 Despite Friends' efforts and overtures, none of the agencies responded to Friends' letters
25 or expressed an immediate interest in discussing ways to avoid further litigation.
26 Further, beginning in mid-October 2017, State Parks began installing and implementing
27 the Dust Control measures. Due to that action, and because of looming statutes of
28

1 limitations, Friends is legally mandated to file this action without further delay. The
2 fundamental disagreements could not be resolved within the statute of limitations for
3 filing and service. For this reason, Petitioner Friends has made a good faith effort to settle
4 the dispute short of litigation, and any further attempts to resolve the dispute prior to the
5 expiration of the statutes of limitation would have been, and would be, futile, or
6 jeopardized missing the statute of limitations to great prejudice to Friends and its
7 members.

8 9. For any other equitable or legal relief that the Court deems just and proper.
9

10 Dated: October 23, 2017
11

12 Respectfully submitted,
13

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

20 Attorneys for
21 Petitioner Friends of Oceano Dunes
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Exhibit A

**NOTICE OF COMMENCEMENT OF
PETITION FOR WRIT AGAINST THE
CALIFORNIA COASTAL COMMISSION AND
THE CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION FOR VIOLATION OF
CEQA AND/OR THE COMMISSION'S
CERTIFIED REGULATORY PROGRAM**

TO: Jack Ainsworth
Executive Director
California Coastal Commission
20 Fremont, Suite 2000
San Francisco, CA 94105

Lisa Mangat, Director
California Department of Parks and Recreation
1416 9th Street, Rm 1405
Sacramento, CA 95814

PLEASE TAKE NOTICE, under Public Resources Code § 21167.5, **FRIENDS OF OCEANO DUNES, INC.**, a California not-for-profit corporation, intends to file a petition for writ in San Luis Obispo County Superior Court pursuant to the California Environmental Quality Act and/or the certified regulatory program against the California Coastal Commission and/or the California Department of Parks and Recreation, challenging its approval and issuance of a coastal development permit (and associated environmental reviews) for the dust control program/measures at Oceano Dunes State Vehicular Recreation Area.

The petition will seek a Court Order finding that the environmental review under CEQA and/or the Commission's certified regulatory program is inadequate and commanding the Commission to set aside its approval and issuance of a coastal development permit for the dust control program/measures until the agencies are fully compliant with CEQA or associated environmental review requirements.

Date: September 26, 2017



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

Attorney for
FRIENDS OF OCEANO DUNES

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PROOF OF SERVICE BY MAIL
Friends of Oceano Dunes, Inc. v. California Coastal Commission, et al.,

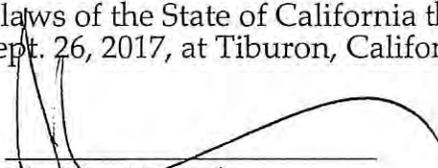
I am over 18 years old, not a party to this lawsuit and am employed by the Law Offices of Thomas D. Roth, One Market, Spear Tower, Suite 3600, San Francisco, CA 94105.

On September 26, 2017, I served the foregoing NOTICE OF COMMENCEMENT OF PETITION FOR WRIT AGAINST the CALIFORNIA COASTAL COMMISSION and STATE PARKS FOR VIOLATION OF CEQA AND/OR ITS CERTIFIED REGULATORY PROGRAM by sending a copy by certified mail, postage prepaid to:

Jack Ainsworth, Executive Director
California Coastal Commission
20 Fremont, Suite 2000
San Francisco, CA 94105

Lisa Mangat, Director
California Department of Parks and Recreation
1416 9th Street, Rm 1405
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on Sept. 26, 2017, at Tiburon, California.


Thomas D. Roth

VERIFICATION

State of California

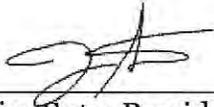
County of Santa Clara

I am the President of FRIENDS OF OCEANO DUNES, INC., a California not-for-profit corporation, and I am authorized to make this verification on its behalf, and I make this verification for that reason.

I have read the foregoing FRIENDS OF OCEANO DUNES' VERIFIED PETITION OF ADMINISTRATIVE MANDAMUS (C.C.P. § 1094.5) and/or TRADITIONAL MANDAMUS (C.C.P. § 1085); and COMPLAINT FOR INJUNCTIVE RELIEF and know the contents thereof. I am informed of my own knowledge that the matters therein are true and on that ground allege that the matters stated therein are true, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed October 21, 2017, at San Jose, California



Jim Suty, President