Jim Suty, President
E-mail: jim@oceanodunes.org
Phone: 805-994-9309
www.oceanodunes.org

October 11, 2024

Via email

San Luis Obispo County Air Pollution Control District Hearing Board
3433 Roberto Court
San Luis Obispo, California 93401
APCD Hearing Board boardclerk@slocleanair.org
Alyssa Roslan aroslan@co.slo.ca.us

Dear Hearing Board:

Friends of Oceano Dunes (Friends) objects to the SLO APCD Hearing Board's newest amendment to the Stipulated Order of Abatement ("SOA").

While the APCD asserts that PM10 has been reduced, it still fails to focus on what sources are actually causing air quality standard exceedances. The SCRIPPs' study showed only 14% of the PM10 measured down wind is mineral dust. This accounts for both natural and that resulting from OHV. That means that the OHV contribution must be lower than 14%. The APCD has failed to explain adequately what other sources are contributing to PM10. For political reasons, the APCD focuses on OHV recreation, but the data shows clearly that OHV is not the primary source of emissions.

The APCD asserts that PM10 has been reduced due to dust mitigation at Oceano Dunes SVRA, but no one can say if the PM10 being reduced is ambient water, salt, mineral dust or any other specific element that has been reduced.

What if the dust mitigation is only trapping natural salt and ambient water providing a false positive of reduced PM10?

The Phillips 66 website (https://www.phillips66.com/refining/santa-maria-refinery/) states that "The Santa Maria Refinery ceased operations in January of 2023, concluding nearly 68 years of . . . operations on the Nipomo Mesa in California." The APCD, SAG and State Parks have failed to identify how closing the Phillips 66 oil refinery, which existed in VERY close proximity to the CDF and MESA monitoring sites, may have caused a reduction in PM10 emissions separate and apart from any dust mitigation.

For decades, the APCD has monitored the refinery and all of its PM10 contributions. The APCD website states that; “Flare emissions can include water, carbon dioxide, oxides of sulfur (SOx), oxides of nitrogen (NOx), particulate matter (PM10), carbon monoxide (CO), and reactive organic gases (ROG) including Volatile Organic Compounds (VOC)”.

A dedicated task force with a website was established: https://www.slocleanair.org/rules-regulations/refinery-task-force.php So, the APCD should have the data for a proper analysis.

The Phillips 66 refinery produced nearly 50,000 barrels of crude oil per day and also used semitrucks and railcars to transport materials.

As shown on the APCD chart below, after the refinery closing, there was a drastic reduction in exceedances of the California air quality standard for PM10 in 2023 for the CDF and MESA monitors. That occurred only for those monitors that are in close proximity to Oceano Dunes SVRA and the refinery. The APCD has failed to acknowledge this correlation or evaluate whether the refinery and its related operations actually was over the years a greater cause of PM10 emissions than OHV recreation.

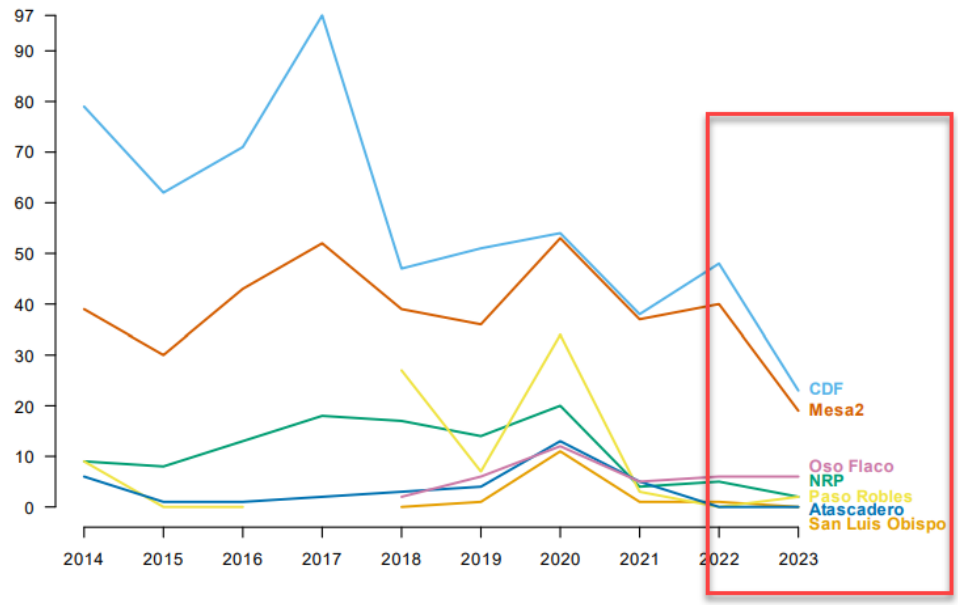


Figure 3: Exceedances of the California 24-hour PM_{10} Standard, 2014–2023.

Friends has asked for over a decade what the OHV contribution is (vs. natural or other emissions) to the downwind dust. The APCD has not adequately analyzed that question.

The APCD has worked on a "pre-disturbance" model using 1939 aerial photos, but it has forced State Parks to install far more vegetation than existed in 1939, making a mockery of the idea of baseline natural emissions. Once again, the APCD and this Hearing Board are driven by political considerations rather than science, costing California taxpayers and OHV users millions of dollars in needless costs.

As stated in the 2024 Application to Modify Stipulated Order of Abatement #17-01 : Page 5, "As discussed in the 2024 ARWP, the **revised modeling indicates that the ODSVRA emits less dust today than it did before significant vehicular disturbance**. For this reason, no new mitigation areas are proposed in the ARWP." Since the ODSVRA is emitting less dust today than before, acreage should be returned for OHV recreation. Notably, the 48-acre foredune mitigation area is less than 1% of the total acres closed, and data indicates that this area can be returned to OHV recreation without affecting compliance with the SOA standard. In a similar fashion, the 300-acre area should be returned to OHV and camping access during the non-windy season because during that time it contributes very little to dust reduction.

The APCD must account for every PM10 emitter in the area and not focus solely on OHV recreation to meet a predetermined outcome. Other emitters are not being held accountable for their "fair share" of dust mitigation.

Friends demands that:

- The SOA be terminated since the standards in that Order have been met.

- The experimental 48-acre foredune project be removed immediately and camping reestablished in that area since the data shows that the SOA standards are met without that mitigation, and that mitigation within western snowy plover critical habitat is resulting in the take of the protected plover (to a far greater extent than OHV recreation).
- The 300-acre exclosure return to seasonal since the seasonal implementation corresponds to the annual windy season and provides little to no dust mitigation benefit in the non-windy season.
- Any reference to Rule 1001in the SOA amendment or otherwise be deleted since the San Luis Obispo County Superior Court issued a final judgment holding that Rule 1001 is invalid and "the District is hereby ordered to set aside the agreement." See attached October 2021 ruling.
- 40-foot industrial wind fence be installed to mitigate dust transport inland in lieu of vegetation so as to preserve and expand OHV recreation in the park. Much like APCD demands farmers and construction sites install fencing on the perimeter of the project …a similar approach needs to be used at ODSVRA.
- OHV trails be re-established within the vegetation islands.
- Monitoring of the chemical composition of the sand at various locations within the ODSVRA be studied in order to compare with what is monitored at CDF, MESA, P66, Haybale and Boyscout.
    - Example: what is the salt content in these locations? How does the composition of the sand compare to what is measured downwind?
- Air monitoring of the ocean spray at the waters edge be performed to know what the ocean contribution is.
    - Example: what is the salt content, what is the mineral dust concentration from direct aeolian transport from the ocean? As dust lands on roofs, parking lots, etc. the rain transports these dust particles down the creeks and back into the ocean to repeat the cycle. It is important to know what percentage of PM10 is a source from the ODSVRA and not blown in because of recirculation.

As a final comment, it is unclear why the APCD is expanding the modeling domain to include agricultural lands. In doing so, is the APCD skewing the data by failing to account for agricultural fields' contribution to PM10?

Sincerely,

Jim Suty
President, Friends of Oceano Dunes

Cc: Friends BOD
Tom Roth

Attachment: Final Judgment, case No. 14cv-0514

Friends of Oceano Dunes is a 501(c)(3) California Not-for-Profit Public Benefit Corporation formed in 2001 is comprised of over 28,000 supporters. We represent those who enjoy beach camping and Off-Road recreation as well as others who enjoy the benefits of Public Access through Responsible Recreation at the Oceano Dunes State Vehicular Recreation Area (ODSVRA). We want to maintain Access For All!

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
Thomas D. Roth, SBN 208601
Law Offices of Thomas D. Roth
1900 S. Norfolk Street, Suite 350
San Mateo, California 94403
TELEPHONE NO.: (415) 508-5810 FAX NO. *(Optional)*:
E-MAIL ADDRESS *(Optional)*: rothlaw1@comcast.net
ATTORNEY FOR *(Name)*: Petitioner FRIENDS OF OCEANO DUNES, INC.

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
STREET ADDRESS: 1050 Monterey St
MAILING ADDRESS:
CITY AND ZIP CODE: San Luis Obispo 93408
BRANCH NAME:

PLAINTIFF/PETITIONER: FRIENDS OF OCEANO DUNES, INC.

DEFENDANT/RESPONDENT: SAN LUIS OBISPO COUNTY AIR POLLUTION

NOTICE OF ENTRY OF JUDGMENT OR ORDER

CASE NUMBER:
14CV-0514

(Check one): ☒ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☐ **LIMITED CASE** (Amount demanded was $25,000 or less)

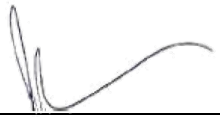
TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: October 27, 2021, including Writ of Mandate issued by the Clerk of the Court on October 27, 2021

2. A copy of the judgment, decree, or order is attached to this notice.

Date: October 29, 2021

Thomas D. Roth
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)


(SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
CIV-130 [New January 1, 2010]
www.courtinfo.ca.gov

NOTICE OF ENTRY OF JUDGMENT OR ORDER

www.courtinfo.ca.gov

THOMAS D. ROTH, SBN 208601
LAW OFFICES OF THOMAS D. ROTH
1900 S. NORFOLK STREET, SUITE 350
SAN MATEO, CA 94403
TELEPHONE:(415) 508-5810
EMAIL: ROTHLAW1@COMCAST.NET

Attorney for Petitioner and Plaintiff
FRIENDS OF OCEANO DUNES

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

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

Petitioner and Plaintiff,

vs.

SAN LUIS OBISPO COUNTY AIR 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

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

Respondents and Defendants

Case No.: 14cv-0514

~~[PROPOSED]~~ FINAL JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE AGAINST SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT

Assigned to the
Hon. Tana L. Coates, Dept. 9

CCP § 1085 Writ Hearing:
Date: September 15, 2021
Time: 9:00 a.m.
Dept. 9

The Court, having reviewed the record in this matter and heard oral argument, and the briefs and papers submitted by counsel; the matter having been submitted for decision; and the Court having issued an October 7, 2021 written ruling in favor of Petitioner Friends, grants, in part, Friends' Petition for a Writ of Mandate, and hereby issues this Final Judgment and directs that a Writ of Mandate issue against the San Luis Obispo County Air Pollution Control District:

ACCORDINGLY, IT IS SO ORDERED, ADJUDGED AND DECREED THAT PETITIONER FRIENDS OF OCEANO DUNES' PETITION FOR WRIT OF MANDATE BE GRANTED AS FOLLOWS:

1. Judgment shall be entered in favor of Petitioner Friends of Oceano Dunes in accordance with this Court's October 7, 2021 written ruling which is attached hereto as Ex. A.

2. A Writ of Mandate under CCP § 1085 shall issue from this Court to Respondent, San Luis Obispo County Air Pollution Control District and its Board of Directors (the "Air District"), directing and finding the 2014 intergovernmental agreement concerning Rule 1001 by and between the Air District and Parks, as amended, to be void as against public policy, as detailed in the attached written ruling, and, as such, set aside.

3. Petitioner Friends of Oceano Dunes, as prevailing party, is awarded costs of suit.

4. Petitioner Friends of Oceano Dunes may file a motion for attorney's fees in accordance with the ordinary procedures and the Court reserves jurisdiction to hear that motion.

IT IS SO ORDERED.

Dated: 10/27/2021

Hon. Tana L. Coates
Judge of the Superior Court

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

FRIENDS OF OCEANO DUNES, INC., a California not-for profit corporation, Petitioner and Plaintiff, v. SAN LUIS OBISPO COUNTY AIR 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 to 50, Inclusive, And CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a department of the State of California, and DOES 1-50, inclusive, Respondent and Defendant.	Case No.: 14CV-0514 **RULING ON PETITION FOR WRIT OF MANDATE**

The Petition for Writ of Mandate came on for hearing on September 15, 2021. Appearing before the Court were Attorney Thomas Roth on behalf of Petitioner; Attorney

Michelle Gearhart on behalf of SLO County Air Pollution Control District; Attorney Mitchell Rishe on behalf of the Department of Parks and Recreation; and County Counsel Jon Ansolabehere on behalf of San Luis Obispo County. After considering the arguments of counsel and review of the pleadings filed herein, the Court took the matter under submission and now issues this ruling.

On October 6, 2014, Friends of Oceano Dunes, Inc. ("Petitioner") filed a Verified Petition for a Writ of Traditional Mandamus (Code Civ. Proc., § 1085) and Complaint for Declaratory and Injunctive Relief, against the San Luis Obispo County Air Pollution Control District and its Board of Directors (the "APCD" or the "District"), and the California Department of Parks and Recreation ("State Parks"). Petitioner filed a First Amended Verified Petition on October 27, 2014.

Petitioner brings its Petition on the grounds that the APCD, through an agreement with State Parks, substantively changed a District regulation (Rule 1001) without public notice, an opportunity for public comment, or a hearing as required by state air quality statutes; and as such, the agreement is void as against public policy.

Health and Safety Code section 40725(a) does not allow the District to adopt or amend any new rule without first holding a public hearing. Changes or amendments to a rule can be made without notice only if they are not so substantial as to significantly affect its meaning. (Health & Saf. Code, § 40726 ["Following consideration of all relevant matter presented, a district board may adopt, amend, or repeal a rule or regulation, unless the board makes changes in the text originally made available to the public that are so substantial as to significantly affect the meaning of the proposed rule or regulation."].)

Petitioner seeks a writ of mandate invalidating the agreement. Petitioner contends that should the agreement be invalidated, the District will be free to hear and re-adopt the agreement (or not) after complying with the Health and Safety Code, including public notice, public comment period, public hearing and corresponding findings, reports, and analyses. (Health and Saf. Code, §§ 40725, 40726, 40727, 40727.2, 40703.)

The District and State Parks oppose the petition, contending that the agreement

was not a substantive change or amendment to Rule 1001, requiring a public hearing. The District further contends that the agreement is no longer enforced and the petition is moot.[1] State Parks contends that it is at most a real party to the litigation, and not a proper respondent in this case, as it is not subject to the Health and Safety Code's public hearing requirements.

The Court grants Petitioner's Request for Judicial Notice filed on July 28, 2021. As set forth *infra*, the Court sustains the District's objections to Petitioner's subsequent requests.

I. Background

The District maintains a regulation known as Rule 1001. The Rule is a self-described "dust-control" regulation that applies to any operator of a coastal dune vehicle activity area ("CDVAA") which is greater than 100 acres in size, i.e., the Oceano Dunes State Recreational Vehicle Area. (Declaration of Thomas D. Roth, Exh. 1 [Rule 1001].) Rule 1001 requires the operator (State Parks) to prepare and implement a Particulate Matter Reduction Plan (PMRP) to minimize PM^{10} emissions in the areas under its control; it does not dictate how the operator is to achieve a reduction in emissions. (*Id.*, ¶ C, C.2.)

Petitioner filed a legal challenge to Rule 1001 in this Court. After an adverse ruling, Friends appealed, as did Real Party-in-Interest State Parks. In 2015, the Court of Appeal, Second Appellate District, overturned, in part, the trial court in a published opinion in Friends' favor. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist.* (2015) 235 Cal.App.4th 957.) On remand, a permit system was severed from the remainder of Rule 1001.

In April 2014, while that appeal was pending, the District and State Parks proposed a "consent decree" to the Court of Appeal, seeking to resolve State Parks' appeal and to move forward with implementation of the portion of the Rule that was not being challenged on appeal. (Roth Decl., Exh. 2.; see also District Nov. 26, 2014, Answer, ¶ 2.) The Court of Appeal denied the District and State Park's motion to dismiss and declined

[1] State Parks joins the District's opposition that the agreement has been rendered moot.

to enter the consent decree. (*Id.*, Exh. 3.)

The District and State Parks then drafted a "First Amendment" that converted the "decree" into a settlement agreement between the two agencies (the "Agreement").[2] (Roth Decl., Exh. 4.) The Agreement was executed by the agencies in September 2014, and the District adopted it in closed session and without a public hearing later that month. (District Answer, ¶ 2; Roth Decl., ¶ 5.)

II. Standard of Review

"The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1483.)

When the facts are not in dispute and the primary issue is a matter of law, the court employs de novo review. (*Vargas v. Balz* (2014) 223 Cal.App.4th 1544, 1552.) When the determination of an administrative agency's jurisdiction involves a question of statutory interpretation, the issue of whether the agency proceeded in excess of its jurisdiction is a question of law. (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1999) 73 Cal.App.4th 338, 349; *BullsEye Telecom, Inc. v. Public Utilities Com.* (2021) 66 Cal.App.5th 301, 309-310.)

Agency actions are sometimes afforded judicial deference. Quasi-legislative rulemaking receives the most deferential level of judicial scrutiny. (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 106; *Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75 Cal.App.4th 1315, 1331.) However, when an agency is merely construing a statute, whether and to what extent courts defer to the agency's interpretation is situational and dependent on various factors. (*Yamaha Corp. of Am. v. State Bd. of Equalization, supra,* 73 Cal.App.4th at p. 349.) "[A]dministrative

---

[2] The settlement agreement never because a consent decree because no court approved or entered it.

construction of a statute, while entitled to weight, cannot prevail when a contrary legislative purpose is apparent." (*Khan, supra,* (2010) 187 Cal.App.4th 98, 107.) "A court does not... defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued." (*Yamaha Corp. of America, supra,* 19 Cal.4th at p. 11, fn. 4 (citations omitted).) Moreover, "the general rule of deference to interpretations of statutes subject to the regulatory jurisdiction of agencies does not apply when the issue is the scope of the agency's jurisdiction." (*BullsEye Telecom, supra,* 66 Cal.App.5th at pp. 309-310.)

Here, the issue is whether the Agreement substantially or significantly affects the meaning of Rule 1001 such that public notice and hearing was required before entering the Agreement. The Court reviews this question as a matter of law.

III. Discussion

Petitioner contends that the Agreement made substantial changes to Rule 1001 without the mandatory public notice and public hearing requirements pursuant to the Health and Safety Code, and therefore the Agreement is void as against public policy.

A. State Parks as Respondent

State Parks contends that it is at most a real party to the litigation, and not a proper respondent in this case, as it is not subject to the Health and Safety Code's public hearing requirement. Petitioner does not contend that State Parks is subject to the public hearing requirements but advises that it named State Parks as a respondent because State Parks is a party to the Agreement that Petitioner seeks to invalidate.

A person is a necessary party to an action if his or her absence will prevent the court from rendering any effective judgment between the parties or the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in his or her absence may as a practical matter impair or impede the person's ability to protect that interest. (Code Civ. Proc., § 389(a).)

Ordinarily, all parties to a contract are necessary parties in an action involving

rights under the contract. (*Deltakeeper v. Oakdale Irrigation District* (2001) 94 Cal.App.4th 1092, 1106; see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) ¶ 2:177.) Here, Petitioner does not seek to compel compliance with the public hearing statutes, but rather to invalidate the Agreement. At the outset, as a party to the Agreement that Petitioner seeks to invalidate, State Parks was properly named as a respondent, because Friends seeks to compel both the District and CDPR to set aside the agreement, even though State Parks is not subject to the public hearing and notice requirements under Health and Safety Code sections 40725 and 40726.

Notwithstanding the foregoing, after hearing the arguments of counsel, and reconsidering the caselaw cited by State Parks, the Court determines that State Parks is more properly deemed a real party in interest. (See e.g., *Sonoma County Nuclear Free Zone v. Superior Court* (1987) 189 Cal.App.3d 167, 173.)

B. Strong Public Policy for Public Notice and Opportunity to be Heard

The California Legislature has established mandatory requirements for public notice, an opportunity for public comment, and a public hearing, before the District can lawfully adopt, amend or appeal any rule or regulation. (Health and Saf. Code, §§ 40725, 40726.)

Notice and hearing requirements created by the Legislature implicate protection of the public and strong considerations of policy. (*San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 826-827.) Civil statutes enacted to protect the public are generally broadly applied in favor of that protective purpose. (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 530; *Southern California Gas Co. v. South Coast Air Quality Management Dist.* (2011) 200 Cal.App.4th 251, 268.)

"[T]he purpose of requiring that proposed regulations be submitted to a public-hearing process is to ensure that every interest is represented, that the rule makers are well informed, and that an equally well-informed public is able to persuade and monitor government through the democratic process." (*Association of Irritated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.* (2008) 168 Cal.App.4th 535, 548.)

In *Association of Irritated Residents, supra*, a writ of mandate was granted on appeal, instructing the district to complete an assessment of the public health impacts of a rule designed to reduce air emissions from agricultural sources. The rule was adopted without compliance with Health and Safety Code section 40724.6, which mandated an assessment of its impact on public health. The court found that "[t]he prejudice is not that the rule was adopted, but that it was adopted without informed and transparent decisionmaking." (*Association of Irritated Residents, supra,* 168 Cal.App.4th at p. 548.)

Health & Safety Code § 40725, et seq., requiring public notice, meetings, and an opportunity to be heard before a rule is adopted or amended, reflects a strong public policy. The District and State Parks do not contend otherwise.

To determine whether the Agreement violates this public policy, the Court must consider whether the Agreement substantially changes Rule 1001.

C. The Agreement Substantially Modified Rule 1001

Petitioner contends that the Agreement changes Rule 1001 in at least two substantial ways: (1) by changing the dust control performance standards; and (2) by deleting the Rule's compliance deadlines in favor of a mutual stipulation between the District and State Parks determining when compliance will be required.

The District and State Parks contend that the Agreement does not change or amend Rule 1001.

The test of whether the Agreement required public notice and hearing is whether the Agreement changed Rule 1001 "so substantial[ly] as to significantly affect the meaning of the . . . rule."[3] (Health and Saf. Code, § 40726.)

i. Dust Control Performance Standards

Rule 1001's performance standards provide:

> The CDVAA operator [State Parks] shall ensure that if the 24-hr average PM^{10} concentration at the CDVAA Monitor is more than 20% above the 24-hr average PM^{10} concentration at the Control Site Monitor, the 24-hr average PM^{10} concentration at the CDVAA Monitor shall not exceed 55

[3] The Court could locate no published case authority interpreting section 40726.

ug/m3.

(Roth Decl., Exh. 1, p. 1001-3 [¶ C.3].)

Petitioner contends that, per the plain language of the Rule, the performance standards only apply if the CDVAA Monitor reading exceeds the Control Site Monitor by more than 20 percent; if the difference is less than 20 percent, State Parks need not take any action under Rule 1001 even if there are violations of state and federal PM^{10} standards. If the difference exceeds 20 percent, then State Parks must meet the performance standards of 55 ug/m3. (Roth Decl., Exh. 1, p. 1001-3 [¶ C.3].)

Nothing in Rule 1001 references or explicitly requires compliance with state or federal standards for PM^{10} concentrations. (Roth Decl., Exh. 1.) The standards under Rule 1001 (once the 20 percent difference is exceeded) is 55 ug/m3, which is less rigorous than the state standards of 50 ug/m3. (See Roth Decl., Exh. 10.)

Meanwhile, the Agreement, which states that it is the "method of implementation of Rule 1001", provides:

> That given the interest in acting immediately, the District and State Parks, in consultation with CARB [California Air Resources Board], have agreed to take action to reduce PM 10 emissions as soon as possible. This will involve an iterative process of mitigation actions, evaluation, and revision **to achieve the immediate goal of meeting the Federal PM 10 standard at the monitor located on the Nipomo Mesa known as 'CDF'** [the CDVAA Monitor] **and to provide ongoing progress toward achieving the State PM 10 standards and meet the standards set forth in Rule 1001**.

(Roth Decl., Exh. 2, p. 5, ¶ 3.ii, emphasis added.)

Petitioner contends that this changes the performance standards by mandating compliance with the more rigorous state standards.

Petitioner further argues that while Rule 1001 based the performance standards on a comparison between the CDVAA Monitor and the Control Site Monitor, the Agreement's standards must be achieved regardless of whether there is a 20 percent greater amount of emissions. Instead, it requires meeting the state and federal PM^{10} standards at the monitor regardless of the difference, eliminating the 20 percent trigger before the standards apply.

The Agreement further requires the standards be met "immediately" rather than by May 31, 2015, as set forth in Rule 1001. (Roth Decl., Exh. 1, p. 1001-4 [¶ F.1.g.]; Roth Decl., Exh. 2, p. 5, ¶ 3.ii.)

Paragraph 3.ii of the Agreement references state and federal standards as well as "the standards set forth in Rule 1001", acknowledging that the state and federal standards are different than those set forth in Rule 1001. (Roth Decl., Exh. 2, p. 5, ¶ 3.ii.)

Petitioner contends that these are material changes to the Rule 1001 performance standards.

The District[4] argues in opposition that nothing in the Agreement constitutes a change in the performance standards under Rule 1001 nor abrogates State Parks' independent statutory obligation to comply with state and federal air quality standards as required by both the Federal Clean Air Acts and California's Clean Air Act.

The District contends that Rule 1001 was created because State Parks was in violation of the state standards at least 65 days per year, and that attainment of state and federal air quality standards is implicit because it is expressly defines the role of the District to enforce those standards and promulgate rules and regulations aimed at achieving those standards. The District does not argue, however, that Rule 1001 expressly requires compliance with state and federal standards; those standards are not mentioned in the Rule. Moreover, as noted above, the Agreement specifically differentiates between state and federal standards, and the standards in Rule 1001. (Roth Decl., Exh. 2, p. 5, ¶ 3.ii.)

The District further maintains that the Board was reminded of its statutory obligation to enforce state and federal ambient air quality standards when it was considering adoption of Rule 1001. (Gearhart Decl., Exh. 2 [AR 1747-1748 ("California law requires the District to plan for and attain Federal and State ambient air quality standards in our basin.").] However, that reminder was not in the context of determining the specific performance standards included in Rule 1001. And those standards were not

[4] State Parks joins the District's opposition.

explicitly incorporated into the Rule 1001 performance standards when clearly, they could have been.

Moreover, the District Air Pollution Control Officer ("APCO") stated at the adoption hearing that "the rule itself is designed to reduce violations of the Health Standards to natural background levels." (Gearhart Decl., Exh. 2 [AR 1654.]) This is where the 20 percent threshold appears to come in – natural events at the Dunes, including wind, create emissions, and State Parks need not act under Rule 1001 when the emission levels are natural, measured by comparison with the control monitoring site rather than by absolute standards.

The District contends that Section C.3 of Rule 1001 requires that when PM^{10} concentrations at the monitor located within the Dunes exceed the control monitor's 24-hour average by more than 20 percent, State Parks must reduce emissions to the state standards of 50 ug/m3, plus 5 ug/m3, to address monitor accuracies. (Willey Decl., ¶ 3.)

The District argues that Rule 1001 thus recognizes that there will be violations of state air quality standards that are the result of naturally occurring phenomena for which State Parks is not responsible; but, that when there are violations attributable to the operation of the Dunes (as determined by a more than 20 percent differential of emissions from the riding area versus the control monitor), State Parks must reduce emissions to the state standards, and the Agreement does not alter this requirement.

However, as pointed out in reply by Petitioner, not only does the Agreement not incorporate the 20 percent differential, but even if the 55 ug/m3 standard incorporates the state standards, the Agreement has no allowance for monitor inaccuracies, which Rule 1001 does, and thus, the Agreement still changes the performance standards under Rule 1001.

The District contends that nothing in the Agreement expresses any intent that overrides the specific mandates set forth in Rule 1001, but that it makes clear its sole purpose is to implement the requirements of Rule 1001. However, while much of the Agreement does implement Rule 1001, the mere fact that the Agreement states that it is

implementing Rule 1001 is not dispositive as to whether some portions substantially change Rule 1001.

The Court finds that the plain language of the Agreement substantially and materially changes the performance standards set forth in Rule 1001.

The drafters of Rule 1001 were clearly aware of the state and federal standards but did not reference or incorporate them into Rule 1001. Meanwhile, the Agreement calls for compliance with state and federal standards at the CDVAA monitor *in addition to* those set forth in Rule 1001, showing on its face, that the drafters of the Agreement considered the Rule 1001 standards to be different from the state and federal standards.

The Agreement further fails to incorporate the 20 percent differential as a trigger requiring compliance, and, to the extent that the 55 ug/m3 standard was based on the state standards, the Agreement eliminates the 5 ug/m3 margin of error, making the standards in the Agreement more restrictive than the standards in Rule 1001.

Moreover, even if the Court gave some deference to the Agency's interpretation of Rule 1001, the Court is not convinced, from the evidence submitted by the District, that Rule 1001 was intended to incorporate the state and federal standards such that the Agreement is not a change or amendment.

The District discusses at some length the extent of agency enforcement discretion and contends that here, the APCO has been charged with enforcing Rule 1001, and possesses the authority by virtue of his independent status under the Health and Safety Code to implement the Rule through the settlement agreement to best accomplish its objectives. The District contends that the settlement agreement and amendment provide mutually agreed upon methods of *implementing* Rule 1001 within the ambit of the APCO's existing enforcement discretion.

However, while the Agreement states that it is solely implementing Rule 1001, and many provisions of the settlement agreement do implement the Rule within the APCO's enforcement discretion (e.g., provisions relating to a special master), the

Agreement compels compliance with different performance standards then those specified in Rule 1001.

Neither the APCO, nor his staff, has authority to unilaterally change a regulation. Health and Code section 40752 provides that "the air pollution control officer shall observe and enforce all of the following: (b) All orders, regulations, and rules prescribed by the district board."

As noted by Petitioner, at the November 16, 2011, public hearing on Rule 1001, Gary Willey, who is now the APCO stated:

> As far as a process of updating or amending the rule, obviously, this is going to be something that the Board is very close to . . . . **Should there be any need to change any of the milestones or final compliance dates or any part of the rule, we would bring it back to the Board and propose changes**.

(Roth Decl., Exh. 7, p. 1665, lines 7-11, emphasis added.)

While the APCO has discretion in how to implement and enforce the standards set forth in Rule 1001, changes to the adopted performance standards clearly set out in the Rule (or deadlines, as discussed below) do not enforce or implement the Rule.

The Court finds that the agreement substantially and significantly changes the performance standards set forth in Rule 1001.

ii. Compliance Deadlines

Petitioner further contends that the Agreement materially changes the compliance deadlines set forth in Rule 1001.

Rule 1001 sets forth a Compliance Schedule, with which the CDVAA operator "shall comply", and which sets forth specific deadlines. (Roth Decl., Exh. 1, p. 1001-4 [¶ F.1.].)

Meanwhile, the Agreement provides:

> The Parties acknowledge that Rule 1001 and the enforcement agreement contained in the District's May 24, 2013 letter...presently sets forth certain timeframes and deadlines for the performance of specific requirements of Rule 1001. The Parties further acknowledge some of those deadlines may,

> from time to time, need to be adjusted through the enforcement discretion of the District Air Pollution Control Officer or the determination of the Superior Court under Paragraph 6, above. Therefore, the Parties may modify any deadline or other term of this Decree by written stipulation or, if the Parties cannot agree on a modified deadline or other term, in accordance with the dispute resolution procedure set forth in Paragraph 6, above.

Petitioner contends that modifying the deadlines set forth in Rule 1001 by stipulation is a material change to Rule 1001, which does not allow for stipulations, but instead sets concrete deadlines and authorizes civil penalties. (Roth Decl., Exh. 1, p. 1001-4 [¶¶ F.1, F.2.])

Petitioner contends that while the APCO may have discretion on whether to impose civil penalties against State Parks for violations, he has no authority to change deadlines established by the legislatively-adopted Rule 1001 without Board approval in a public hearing.

The District mentions the compliance deadlines only briefly. The District argues that instead of amending Rule 1001, the Agreement, consistent with the language of the Rule, authorizes the APCO to implement the requirements of the Rule through his existing enforcement discretion, including the compliance deadlines.

However, Rule 1001 adopted clear, straightforward compliance deadlines. It includes no provision for the exercise of discretion in changing those deadlines and does not delegate authority to the APCO to change the deadlines. Rule 1001 does not allow for the deadlines to be changed through a mutual stipulation with State Parks and is a substantial and significant change to Rule 1001.[5]

D. Agreement is Void as Against Public Policy

Petitioner contends that State Parks and the District have exceeded their respective

[5] The Court notes that all of the compliance deadlines set forth in Rule 1001 have long since passed. Nonetheless, that does not necessarily mean that the District and State Parks have the authority to set different compliance deadlines than those set forth in the Rule via stipulation pursuant to the Agreement.

authority by purporting to enter into an Agreement that amends, changes, and modifies Rule 1011 without compliance with the public notice and hearing requirements. As such, Petitioner contends the Agreement is ultra vires, void, and without force and effect.

As set forth above, the public hearing and notice statutes and requirements represent a strong public policy.

"Generally a contract made in violation of a regulatory statute is void. Normally, courts will not lend their aid to the enforcement of an illegal agreement or one against public policy. This rule is based on the rationale that the public importance of discouraging such prohibited transactions outweighs equitable considerations of possible injustice between the parties." (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 291 [citations omitted].)

"Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." (Civ. Code, § 3513; see also *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 100.)

Petitioner contends that the mandated public rule-making process is essential to fairness and the democratic process and cannot be discarded for mere administrative convenience, and because the Agreement here contravenes that public policy, it is ultra vires and void.

Petitioner further argues that the Agreement is void because it failed to include findings of "necessity, authority, clarity, consistency, nonduplication", as well as other required analyses, as mandated for rule air district regulation amendments under Health and Safety Code sections 40727 [same], 40727.2 [proposed amendment analysis], and 40703 [cost effectiveness analysis].

Because the Court finds that the changes to the compliance standards as set forth above are substantial, public hearing and notice was required under Health and Safety Code sections 40725 and 40726. Failure to provide such notice and hearing is contrary to the statutes, and contrary to a strong public policy.

The Court therefore finds that the Agreement is void.

E. Petition is Not Moot

The District contends that the petition is now moot and the Court should not rule.

Courts consider only actual and present controversies. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 (Wilson) ["California courts will decide only justiciable controversies."]) The pivotal question in determining if a case is moot is whether the court can grant the plaintiff any effectual relief. (*Id.* at p. 1574.)

The District contends that the APCO took action to abate the continued violation of emission standards for PM^{10} at Oceano Dunes by invoking the jurisdiction of the Hearing Board, which has original jurisdiction over abatement proceedings. (Health & Saf. Code, § 42451(a).) State Parks and the District entered into a Stipulated Order of Abatement in 2018 pursuant to subsection (b) of section 42451. The Order was subsequently Amended in 2019. (See Exhibits 4 and 5 to Gearhart Decl.)

The District contends that the Agreement has been superseded by the abatement statutory schedule and the Orders of Abatement as the implementation and enforcement mechanism for PM^{10} emissions at the Oceano Dunes. (Willey Decl., ¶¶ 6-11.)

The District further contends that the Agreement was rendered moot by the passage of time, as the compliance deadlines have come and gone, and any enforcement discretion on the part of the APCO, as contemplated in paragraph 15 of the Agreement, has been replaced by the Orders of Abatement, and disputes are now resolved by the Hearing Board, not by a neutral special master.

Nonetheless, the abatement statutory scheme does not provide that it is the exclusive regulatory mechanism for addressing air pollution violations. Moreover, there has been no showing that abatement and Rule 1001 may not be pursued simultaneously. The District does not contend that Rule 1001 is no longer in effect, but rather, contends that the implementation of the Rule via the Agreement has been rendered moot by the Stipulated Order of Abatement and Amended Stipulated Order of Abatement.

Nonetheless, the Agreement states that it is a method of implementation of Rule 1001, which Rule is still in effect. While the Agreement may not have been enforced since

July 2017 and the District may intend to use the abatement proceedings to address air pollution, Rule 1001 and the "implementing" Agreement remain, and could still be enforced. The petition is not moot.

IV. Objections

The District objects to evidence submitted by Petitioner on reply, and has made eight evidentiary objections. The Court sustains all five evidentiary objections filed on September 7, 2021, and objections 1 and 3 filed on September 9, 2021. As to objection 2 filed on September 9, 2021, the objection is as to argument, not evidence. Nonetheless, the Court has reviewed and considered the District's contentions set forth in the objection.

The Court notes that the evidence to which the District objected was immaterial to the Court's decision.

V. Conclusion

Petitioner's petition for a writ of mandate invalidating the Agreement is granted as to the District, and the District is hereby ordered to set aside the agreement.

DATED: October 7, 2021

Hon. TANA L. COATES
Judge of the Superior Court

TLC:jn

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

Friends Of Oceano Dunes Inc vs. San Luis Obispo County Air Pollution Control Board	14CV-0514

Thomas D Roth
Law Offices of Thomas D. Roth
1900 S. Norfolk Street, Suite 350
San Mateo, CA 94403

Raymond A Biering
Adamski Moroski Madden Cumberland Green
P.o. Box. 3835
San Luis Obispo, CA 934033835

Mitchell E Rishe
Deputy Attorney General
300 South Spring Street, Ste 1702
Los Angeles, CA 90013

Jeffrey A Minnery
Adamski Moroski Madden Cumberland Green
P. O. Box 3835
San Luis Obispo, CA 93403

Michelle Landis Gearhart
Adamski, Moroski, Madden, Cumberland & Green LLP
PO Box 3835
San Luis Obispo, CA 93403

I, Chelsie Simms, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **10/07/2021** I deposited in the United States mail at San Luis Obispo, California, first class postage prepaid, in a sealed envelope, a copy of the attached **Ruling on Petition for Writ of Mandate.** The foregoing document was addressed to each of the above parties.

OR

☒ Document served electronically pursuant to CRC§2.251(b)(1)(B).

Dated: 10/7/2021 Michael Powell, Clerk of the Court

By: /s/ Chelsie Simms Deputy Clerk
Chelsie Simms

PROOF OF SERVICE

Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District
Case No.: 14CV-0514

I am over 18 years old, not a party to this lawsuit and am employed by the Law Offices of Thomas D. Roth, 1900 S. Norfolk Street, Suite 350, San Mateo, Ca 94403. On October ~~8~~, 2 021, I served the foregoing document described as: **[PROPOSED] FINAL JUDGMENT** as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the above document(s) to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Mitchell Rishe
Deputy Attorney General
California Department of Justice
Office of the Attorney General
300 S. Spring Street
Los Angeles, CA 90013
E-mail: Mitchell.Rishe@doj.ca.gov
(Counsel for State Parks)

Michelle Gearhart
Adamski Moroski et al
6633 Bay Laurel Place
Avila Beach, CA 93424
E-mail: Gearhart@ammcglaw.com
(APCD counsel)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 8, 2021, at San Mateo, California.

Thomas D. Roth

Thomas D. Roth

THOMAS D. ROTH, SBN 208601
LAW OFFICES OF THOMAS D. ROTH
1900 S. NORFOLK STREET, SUITE 350
SAN MATEO, CA 94403
TELEPHONE:(415) 508-5810
EMAIL: ROTHLAW1@COMCAST.NET

Attorney for Petitioner and Plaintiff
FRIENDS OF OCEANO DUNES

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

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

Petitioner and Plaintiff,

vs.

SAN LUIS OBISPO COUNTY AIR 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

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

Respondents and Defendants

Case No.: 14CV-0514

~~[PROPOSED]~~ WRIT OF MANDATE AGAINST SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT

Assigned to the
Hon. Tana L. Coates, Dept. 9

CCP § 1085 Writ Hearing:
Date: September 15, 2021
Time: 9:00 a.m.
Dept. 9

Judgment having been entered ordering that a writ of mandate be issued from this Court,

IT IS ORDERED, that the 2014 intergovernmental agreement concerning Rule 1001 by and between the Air District and Parks, as amended, is held to be void as against public policy, as detailed in the attached written ruling (Ex. 1), and, as such, set aside.

IT IS SO ORDERED.

Dated Issued: 10/27/2021

C Linda McGuire

Clerk of the Superior Court

/s/Michael Powell

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

FRIENDS OF OCEANO DUNES, INC., a California not-for profit corporation, Petitioner and Plaintiff, v. SAN LUIS OBISPO COUNTY AIR 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 to 50, Inclusive, And CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a department of the State of California, and DOES 1-50, inclusive, Respondent and Defendant.	Case No.: 14CV-0514 **RULING ON PETITION FOR WRIT OF MANDATE**

The Petition for Writ of Mandate came on for hearing on September 15, 2021. Appearing before the Court were Attorney Thomas Roth on behalf of Petitioner; Attorney

Michelle Gearhart on behalf of SLO County Air Pollution Control District; Attorney Mitchell Rishe on behalf of the Department of Parks and Recreation; and County Counsel Jon Ansolabehere on behalf of San Luis Obispo County. After considering the arguments of counsel and review of the pleadings filed herein, the Court took the matter under submission and now issues this ruling.

On October 6, 2014, Friends of Oceano Dunes, Inc. ("Petitioner") filed a Verified Petition for a Writ of Traditional Mandamus (Code Civ. Proc., § 1085) and Complaint for Declaratory and Injunctive Relief, against the San Luis Obispo County Air Pollution Control District and its Board of Directors (the "APCD" or the "District"), and the California Department of Parks and Recreation ("State Parks"). Petitioner filed a First Amended Verified Petition on October 27, 2014.

Petitioner brings its Petition on the grounds that the APCD, through an agreement with State Parks, substantively changed a District regulation (Rule 1001) without public notice, an opportunity for public comment, or a hearing as required by state air quality statutes; and as such, the agreement is void as against public policy.

Health and Safety Code section 40725(a) does not allow the District to adopt or amend any new rule without first holding a public hearing. Changes or amendments to a rule can be made without notice only if they are not so substantial as to significantly affect its meaning. (Health & Saf. Code, § 40726 ["Following consideration of all relevant matter presented, a district board may adopt, amend, or repeal a rule or regulation, unless the board makes changes in the text originally made available to the public that are so substantial as to significantly affect the meaning of the proposed rule or regulation."].)

Petitioner seeks a writ of mandate invalidating the agreement. Petitioner contends that should the agreement be invalidated, the District will be free to hear and re-adopt the agreement (or not) after complying with the Health and Safety Code, including public notice, public comment period, public hearing and corresponding findings, reports, and analyses. (Health and Saf. Code, §§ 40725, 40726, 40727, 40727.2, 40703.)

The District and State Parks oppose the petition, contending that the agreement

was not a substantive change or amendment to Rule 1001, requiring a public hearing. The District further contends that the agreement is no longer enforced and the petition is moot.[1] State Parks contends that it is at most a real party to the litigation, and not a proper respondent in this case, as it is not subject to the Health and Safety Code's public hearing requirements.

The Court grants Petitioner's Request for Judicial Notice filed on July 28, 2021. As set forth *infra*, the Court sustains the District's objections to Petitioner's subsequent requests.

I. Background

The District maintains a regulation known as Rule 1001. The Rule is a self-described "dust-control" regulation that applies to any operator of a coastal dune vehicle activity area ("CDVAA") which is greater than 100 acres in size, i.e., the Oceano Dunes State Recreational Vehicle Area. (Declaration of Thomas D. Roth, Exh. 1 [Rule 1001].) Rule 1001 requires the operator (State Parks) to prepare and implement a Particulate Matter Reduction Plan (PMRP) to minimize PM^{10} emissions in the areas under its control; it does not dictate how the operator is to achieve a reduction in emissions. (*Id.*, ¶ C, C.2.)

Petitioner filed a legal challenge to Rule 1001 in this Court. After an adverse ruling, Friends appealed, as did Real Party-in-Interest State Parks. In 2015, the Court of Appeal, Second Appellate District, overturned, in part, the trial court in a published opinion in Friends' favor. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist.* (2015) 235 Cal.App.4th 957.) On remand, a permit system was severed from the remainder of Rule 1001.

In April 2014, while that appeal was pending, the District and State Parks proposed a "consent decree" to the Court of Appeal, seeking to resolve State Parks' appeal and to move forward with implementation of the portion of the Rule that was not being challenged on appeal. (Roth Decl., Exh. 2.; see also District Nov. 26, 2014, Answer, ¶ 2.) The Court of Appeal denied the District and State Park's motion to dismiss and declined

[1] State Parks joins the District's opposition that the agreement has been rendered moot.

to enter the consent decree. (*Id.*, Exh. 3.)

The District and State Parks then drafted a "First Amendment" that converted the "decree" into a settlement agreement between the two agencies (the "Agreement").[2] (Roth Decl., Exh. 4.) The Agreement was executed by the agencies in September 2014, and the District adopted it in closed session and without a public hearing later that month. (District Answer, ¶ 2; Roth Decl., ¶ 5.)

II. Standard of Review

"The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1483.)

When the facts are not in dispute and the primary issue is a matter of law, the court employs de novo review. (*Vargas v. Balz* (2014) 223 Cal.App.4th 1544, 1552.) When the determination of an administrative agency's jurisdiction involves a question of statutory interpretation, the issue of whether the agency proceeded in excess of its jurisdiction is a question of law. (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1999) 73 Cal.App.4th 338, 349; *BullsEye Telecom, Inc. v. Public Utilities Com.* (2021) 66 Cal.App.5th 301, 309-310.)

Agency actions are sometimes afforded judicial deference. Quasi-legislative rulemaking receives the most deferential level of judicial scrutiny. (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 106; *Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75 Cal.App.4th 1315, 1331.) However, when an agency is merely construing a statute, whether and to what extent courts defer to the agency's interpretation is situational and dependent on various factors. (*Yamaha Corp. of Am. v. State Bd. of Equalization, supra,* 73 Cal.App.4th at p. 349.) "[A]dministrative

---

[2] The settlement agreement never because a consent decree because no court approved or entered it.

construction of a statute, while entitled to weight, cannot prevail when a contrary legislative purpose is apparent." (*Khan, supra,* (2010) 187 Cal.App.4th 98, 107.) "A court does not... defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued." (*Yamaha Corp. of America, supra,* 19 Cal.4th at p. 11, fn. 4 (citations omitted).) Moreover, "the general rule of deference to interpretations of statutes subject to the regulatory jurisdiction of agencies does not apply when the issue is the scope of the agency's jurisdiction." (*BullsEye Telecom, supra,* 66 Cal.App.5th at pp. 309-310.)

Here, the issue is whether the Agreement substantially or significantly affects the meaning of Rule 1001 such that public notice and hearing was required before entering the Agreement. The Court reviews this question as a matter of law.

III. Discussion

Petitioner contends that the Agreement made substantial changes to Rule 1001 without the mandatory public notice and public hearing requirements pursuant to the Health and Safety Code, and therefore the Agreement is void as against public policy.

A. State Parks as Respondent

State Parks contends that it is at most a real party to the litigation, and not a proper respondent in this case, as it is not subject to the Health and Safety Code's public hearing requirement. Petitioner does not contend that State Parks is subject to the public hearing requirements but advises that it named State Parks as a respondent because State Parks is a party to the Agreement that Petitioner seeks to invalidate.

A person is a necessary party to an action if his or her absence will prevent the court from rendering any effective judgment between the parties or the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in his or her absence may as a practical matter impair or impede the person's ability to protect that interest. (Code Civ. Proc., § 389(a).)

Ordinarily, all parties to a contract are necessary parties in an action involving

rights under the contract. (*Deltakeeper v. Oakdale Irrigation District* (2001) 94 Cal.App.4th 1092, 1106; see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) ¶ 2:177.) Here, Petitioner does not seek to compel compliance with the public hearing statutes, but rather to invalidate the Agreement. At the outset, as a party to the Agreement that Petitioner seeks to invalidate, State Parks was properly named as a respondent, because Friends seeks to compel both the District and CDPR to set aside the agreement, even though State Parks is not subject to the public hearing and notice requirements under Health and Safety Code sections 40725 and 40726.

Notwithstanding the foregoing, after hearing the arguments of counsel, and reconsidering the caselaw cited by State Parks, the Court determines that State Parks is more properly deemed a real party in interest. (See e.g., *Sonoma County Nuclear Free Zone v. Superior Court* (1987) 189 Cal.App.3d 167, 173.)

B. Strong Public Policy for Public Notice and Opportunity to be Heard

The California Legislature has established mandatory requirements for public notice, an opportunity for public comment, and a public hearing, before the District can lawfully adopt, amend or appeal any rule or regulation. (Health and Saf. Code, §§ 40725, 40726.)

Notice and hearing requirements created by the Legislature implicate protection of the public and strong considerations of policy. (*San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 826-827.) Civil statutes enacted to protect the public are generally broadly applied in favor of that protective purpose. (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 530; *Southern California Gas Co. v. South Coast Air Quality Management Dist.* (2011) 200 Cal.App.4th 251, 268.)

"[T]he purpose of requiring that proposed regulations be submitted to a public-hearing process is to ensure that every interest is represented, that the rule makers are well informed, and that an equally well-informed public is able to persuade and monitor government through the democratic process." (*Association of Irritated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.* (2008) 168 Cal.App.4th 535, 548.)

In *Association of Irritated Residents, supra*, a writ of mandate was granted on appeal, instructing the district to complete an assessment of the public health impacts of a rule designed to reduce air emissions from agricultural sources. The rule was adopted without compliance with Health and Safety Code section 40724.6, which mandated an assessment of its impact on public health. The court found that "[t]he prejudice is not that the rule was adopted, but that it was adopted without informed and transparent decisionmaking." (*Association of Irritated Residents, supra,* 168 Cal.App.4th at p. 548.)

Health & Safety Code § 40725, et seq., requiring public notice, meetings, and an opportunity to be heard before a rule is adopted or amended, reflects a strong public policy. The District and State Parks do not contend otherwise.

To determine whether the Agreement violates this public policy, the Court must consider whether the Agreement substantially changes Rule 1001.

C. The Agreement Substantially Modified Rule 1001

Petitioner contends that the Agreement changes Rule 1001 in at least two substantial ways: (1) by changing the dust control performance standards; and (2) by deleting the Rule's compliance deadlines in favor of a mutual stipulation between the District and State Parks determining when compliance will be required.

The District and State Parks contend that the Agreement does not change or amend Rule 1001.

The test of whether the Agreement required public notice and hearing is whether the Agreement changed Rule 1001 "so substantial[ly] as to significantly affect the meaning of the . . . rule."[3] (Health and Saf. Code, § 40726.)

i. Dust Control Performance Standards

Rule 1001's performance standards provide:

> The CDVAA operator [State Parks] shall ensure that if the 24-hr average PM^{10} concentration at the CDVAA Monitor is more than 20% above the 24-hr average PM^{10} concentration at the Control Site Monitor, the 24-hr average PM^{10} concentration at the CDVAA Monitor shall not exceed 55

[3] The Court could locate no published case authority interpreting section 40726.

ug/m3.

(Roth Decl., Exh. 1, p. 1001-3 [¶ C.3].)

Petitioner contends that, per the plain language of the Rule, the performance standards only apply if the CDVAA Monitor reading exceeds the Control Site Monitor by more than 20 percent; if the difference is less than 20 percent, State Parks need not take any action under Rule 1001 even if there are violations of state and federal PM^{10} standards. If the difference exceeds 20 percent, then State Parks must meet the performance standards of 55 ug/m3. (Roth Decl., Exh. 1, p. 1001-3 [¶ C.3].)

Nothing in Rule 1001 references or explicitly requires compliance with state or federal standards for PM^{10} concentrations. (Roth Decl., Exh. 1.) The standards under Rule 1001 (once the 20 percent difference is exceeded) is 55 ug/m3, which is less rigorous than the state standards of 50 ug/m3. (See Roth Decl., Exh. 10.)

Meanwhile, the Agreement, which states that it is the "method of implementation of Rule 1001", provides:

> That given the interest in acting immediately, the District and State Parks, in consultation with CARB [California Air Resources Board], have agreed to take action to reduce PM 10 emissions as soon as possible. This will involve an iterative process of mitigation actions, evaluation, and revision **to achieve the immediate goal of meeting the Federal PM 10 standard at the monitor located on the Nipomo Mesa known as 'CDF'** [the CDVAA Monitor] **and to provide ongoing progress toward achieving the State PM 10 standards and meet the standards set forth in Rule 1001**.

(Roth Decl., Exh. 2, p. 5, ¶ 3.ii, emphasis added.)

Petitioner contends that this changes the performance standards by mandating compliance with the more rigorous state standards.

Petitioner further argues that while Rule 1001 based the performance standards on a comparison between the CDVAA Monitor and the Control Site Monitor, the Agreement's standards must be achieved regardless of whether there is a 20 percent greater amount of emissions. Instead, it requires meeting the state and federal PM^{10} standards at the monitor regardless of the difference, eliminating the 20 percent trigger before the standards apply.

The Agreement further requires the standards be met "immediately" rather than by May 31, 2015, as set forth in Rule 1001. (Roth Decl., Exh. 1, p. 1001-4 [¶ F.1.g.]; Roth Decl., Exh. 2, p. 5, ¶ 3.ii.)

Paragraph 3.ii of the Agreement references state and federal standards as well as "the standards set forth in Rule 1001", acknowledging that the state and federal standards are different than those set forth in Rule 1001. (Roth Decl., Exh. 2, p. 5, ¶ 3.ii.)

Petitioner contends that these are material changes to the Rule 1001 performance standards.

The District[4] argues in opposition that nothing in the Agreement constitutes a change in the performance standards under Rule 1001 nor abrogates State Parks' independent statutory obligation to comply with state and federal air quality standards as required by both the Federal Clean Air Acts and California's Clean Air Act.

The District contends that Rule 1001 was created because State Parks was in violation of the state standards at least 65 days per year, and that attainment of state and federal air quality standards is implicit because it is expressly defines the role of the District to enforce those standards and promulgate rules and regulations aimed at achieving those standards. The District does not argue, however, that Rule 1001 expressly requires compliance with state and federal standards; those standards are not mentioned in the Rule. Moreover, as noted above, the Agreement specifically differentiates between state and federal standards, and the standards in Rule 1001. (Roth Decl., Exh. 2, p. 5, ¶ 3.ii.)

The District further maintains that the Board was reminded of its statutory obligation to enforce state and federal ambient air quality standards when it was considering adoption of Rule 1001. (Gearhart Decl., Exh. 2 [AR 1747-1748 ("California law requires the District to plan for and attain Federal and State ambient air quality standards in our basin.").] However, that reminder was not in the context of determining the specific performance standards included in Rule 1001. And those standards were not

[4] State Parks joins the District's opposition.

explicitly incorporated into the Rule 1001 performance standards when clearly, they could have been.

Moreover, the District Air Pollution Control Officer ("APCO") stated at the adoption hearing that "the rule itself is designed to reduce violations of the Health Standards to natural background levels." (Gearhart Decl., Exh. 2 [AR 1654.]) This is where the 20 percent threshold appears to come in – natural events at the Dunes, including wind, create emissions, and State Parks need not act under Rule 1001 when the emission levels are natural, measured by comparison with the control monitoring site rather than by absolute standards.

The District contends that Section C.3 of Rule 1001 requires that when PM^{10} concentrations at the monitor located within the Dunes exceed the control monitor's 24-hour average by more than 20 percent, State Parks must reduce emissions to the state standards of 50 ug/m3, plus 5 ug/m3, to address monitor accuracies. (Willey Decl., ¶ 3.)

The District argues that Rule 1001 thus recognizes that there will be violations of state air quality standards that are the result of naturally occurring phenomena for which State Parks is not responsible; but, that when there are violations attributable to the operation of the Dunes (as determined by a more than 20 percent differential of emissions from the riding area versus the control monitor), State Parks must reduce emissions to the state standards, and the Agreement does not alter this requirement.

However, as pointed out in reply by Petitioner, not only does the Agreement not incorporate the 20 percent differential, but even if the 55 ug/m3 standard incorporates the state standards, the Agreement has no allowance for monitor inaccuracies, which Rule 1001 does, and thus, the Agreement still changes the performance standards under Rule 1001.

The District contends that nothing in the Agreement expresses any intent that overrides the specific mandates set forth in Rule 1001, but that it makes clear its sole purpose is to implement the requirements of Rule 1001. However, while much of the Agreement does implement Rule 1001, the mere fact that the Agreement states that it is

implementing Rule 1001 is not dispositive as to whether some portions substantially change Rule 1001.

The Court finds that the plain language of the Agreement substantially and materially changes the performance standards set forth in Rule 1001.

The drafters of Rule 1001 were clearly aware of the state and federal standards but did not reference or incorporate them into Rule 1001. Meanwhile, the Agreement calls for compliance with state and federal standards at the CDVAA monitor *in addition to* those set forth in Rule 1001, showing on its face, that the drafters of the Agreement considered the Rule 1001 standards to be different from the state and federal standards.

The Agreement further fails to incorporate the 20 percent differential as a trigger requiring compliance, and, to the extent that the 55 ug/m3 standard was based on the state standards, the Agreement eliminates the 5 ug/m3 margin of error, making the standards in the Agreement more restrictive than the standards in Rule 1001.

Moreover, even if the Court gave some deference to the Agency's interpretation of Rule 1001, the Court is not convinced, from the evidence submitted by the District, that Rule 1001 was intended to incorporate the state and federal standards such that the Agreement is not a change or amendment.

The District discusses at some length the extent of agency enforcement discretion and contends that here, the APCO has been charged with enforcing Rule 1001, and possesses the authority by virtue of his independent status under the Health and Safety Code to implement the Rule through the settlement agreement to best accomplish its objectives. The District contends that the settlement agreement and amendment provide mutually agreed upon methods of *implementing* Rule 1001 within the ambit of the APCO's existing enforcement discretion.

However, while the Agreement states that it is solely implementing Rule 1001, and many provisions of the settlement agreement do implement the Rule within the APCO's enforcement discretion (e.g., provisions relating to a special master), the

Agreement compels compliance with different performance standards then those specified in Rule 1001.

Neither the APCO, nor his staff, has authority to unilaterally change a regulation. Health and Code section 40752 provides that "the air pollution control officer shall observe and enforce all of the following: (b) All orders, regulations, and rules prescribed by the district board."

As noted by Petitioner, at the November 16, 2011, public hearing on Rule 1001, Gary Willey, who is now the APCO stated:

> As far as a process of updating or amending the rule, obviously, this is going to be something that the Board is very close to . . . . **Should there be any need to change any of the milestones or final compliance dates or any part of the rule, we would bring it back to the Board and propose changes**.

(Roth Decl., Exh. 7, p. 1665, lines 7-11, emphasis added.)

While the APCO has discretion in how to implement and enforce the standards set forth in Rule 1001, changes to the adopted performance standards clearly set out in the Rule (or deadlines, as discussed below) do not enforce or implement the Rule.

The Court finds that the agreement substantially and significantly changes the performance standards set forth in Rule 1001.

ii. Compliance Deadlines

Petitioner further contends that the Agreement materially changes the compliance deadlines set forth in Rule 1001.

Rule 1001 sets forth a Compliance Schedule, with which the CDVAA operator "shall comply", and which sets forth specific deadlines. (Roth Decl., Exh. 1, p. 1001-4 [¶ F.1.].)

Meanwhile, the Agreement provides:

> The Parties acknowledge that Rule 1001 and the enforcement agreement contained in the District's May 24, 2013 letter...presently sets forth certain timeframes and deadlines for the performance of specific requirements of Rule 1001. The Parties further acknowledge some of those deadlines may,

> from time to time, need to be adjusted through the enforcement discretion of the District Air Pollution Control Officer or the determination of the Superior Court under Paragraph 6, above. Therefore, the Parties may modify any deadline or other term of this Decree by written stipulation or, if the Parties cannot agree on a modified deadline or other term, in accordance with the dispute resolution procedure set forth in Paragraph 6, above.

Petitioner contends that modifying the deadlines set forth in Rule 1001 by stipulation is a material change to Rule 1001, which does not allow for stipulations, but instead sets concrete deadlines and authorizes civil penalties. (Roth Decl., Exh. 1, p. 1001-4 [¶¶ F.1, F.2.])

Petitioner contends that while the APCO may have discretion on whether to impose civil penalties against State Parks for violations, he has no authority to change deadlines established by the legislatively-adopted Rule 1001 without Board approval in a public hearing.

The District mentions the compliance deadlines only briefly. The District argues that instead of amending Rule 1001, the Agreement, consistent with the language of the Rule, authorizes the APCO to implement the requirements of the Rule through his existing enforcement discretion, including the compliance deadlines.

However, Rule 1001 adopted clear, straightforward compliance deadlines. It includes no provision for the exercise of discretion in changing those deadlines and does not delegate authority to the APCO to change the deadlines. Rule 1001 does not allow for the deadlines to be changed through a mutual stipulation with State Parks and is a substantial and significant change to Rule 1001.[5]

D. Agreement is Void as Against Public Policy

Petitioner contends that State Parks and the District have exceeded their respective

[5] The Court notes that all of the compliance deadlines set forth in Rule 1001 have long since passed. Nonetheless, that does not necessarily mean that the District and State Parks have the authority to set different compliance deadlines than those set forth in the Rule via stipulation pursuant to the Agreement.

authority by purporting to enter into an Agreement that amends, changes, and modifies Rule 1011 without compliance with the public notice and hearing requirements. As such, Petitioner contends the Agreement is ultra vires, void, and without force and effect.

As set forth above, the public hearing and notice statutes and requirements represent a strong public policy.

"Generally a contract made in violation of a regulatory statute is void. Normally, courts will not lend their aid to the enforcement of an illegal agreement or one against public policy. This rule is based on the rationale that the public importance of discouraging such prohibited transactions outweighs equitable considerations of possible injustice between the parties." (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 291 [citations omitted].)

"Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." (Civ. Code, § 3513; see also *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 100.)

Petitioner contends that the mandated public rule-making process is essential to fairness and the democratic process and cannot be discarded for mere administrative convenience, and because the Agreement here contravenes that public policy, it is ultra vires and void.

Petitioner further argues that the Agreement is void because it failed to include findings of "necessity, authority, clarity, consistency, nonduplication", as well as other required analyses, as mandated for rule air district regulation amendments under Health and Safety Code sections 40727 [same], 40727.2 [proposed amendment analysis], and 40703 [cost effectiveness analysis].

Because the Court finds that the changes to the compliance standards as set forth above are substantial, public hearing and notice was required under Health and Safety Code sections 40725 and 40726. Failure to provide such notice and hearing is contrary to the statutes, and contrary to a strong public policy.

The Court therefore finds that the Agreement is void.

E. Petition is Not Moot

The District contends that the petition is now moot and the Court should not rule.

Courts consider only actual and present controversies. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 (Wilson) ["California courts will decide only justiciable controversies."]) The pivotal question in determining if a case is moot is whether the court can grant the plaintiff any effectual relief. (*Id.* at p. 1574.)

The District contends that the APCO took action to abate the continued violation of emission standards for PM^{10} at Oceano Dunes by invoking the jurisdiction of the Hearing Board, which has original jurisdiction over abatement proceedings. (Health & Saf. Code, § 42451(a).) State Parks and the District entered into a Stipulated Order of Abatement in 2018 pursuant to subsection (b) of section 42451. The Order was subsequently Amended in 2019. (See Exhibits 4 and 5 to Gearhart Decl.)

The District contends that the Agreement has been superseded by the abatement statutory schedule and the Orders of Abatement as the implementation and enforcement mechanism for PM^{10} emissions at the Oceano Dunes. (Willey Decl., ¶¶ 6-11.)

The District further contends that the Agreement was rendered moot by the passage of time, as the compliance deadlines have come and gone, and any enforcement discretion on the part of the APCO, as contemplated in paragraph 15 of the Agreement, has been replaced by the Orders of Abatement, and disputes are now resolved by the Hearing Board, not by a neutral special master.

Nonetheless, the abatement statutory scheme does not provide that it is the exclusive regulatory mechanism for addressing air pollution violations. Moreover, there has been no showing that abatement and Rule 1001 may not be pursued simultaneously. The District does not contend that Rule 1001 is no longer in effect, but rather, contends that the implementation of the Rule via the Agreement has been rendered moot by the Stipulated Order of Abatement and Amended Stipulated Order of Abatement.

Nonetheless, the Agreement states that it is a method of implementation of Rule 1001, which Rule is still in effect. While the Agreement may not have been enforced since

July 2017 and the District may intend to use the abatement proceedings to address air pollution, Rule 1001 and the "implementing" Agreement remain, and could still be enforced. The petition is not moot.

IV. Objections

The District objects to evidence submitted by Petitioner on reply, and has made eight evidentiary objections. The Court sustains all five evidentiary objections filed on September 7, 2021, and objections 1 and 3 filed on September 9, 2021. As to objection 2 filed on September 9, 2021, the objection is as to argument, not evidence. Nonetheless, the Court has reviewed and considered the District's contentions set forth in the objection.

The Court notes that the evidence to which the District objected was immaterial to the Court's decision.

V. Conclusion

Petitioner's petition for a writ of mandate invalidating the Agreement is granted as to the District, and the District is hereby ordered to set aside the agreement.

DATED: October 7, 2021

Hon. TANA L. COATES
Judge of the Superior Court

TLC:jn

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

Friends Of Oceano Dunes Inc vs. San Luis Obispo County Air Pollution Control Board	14CV-0514

Thomas D Roth
Law Offices of Thomas D. Roth
1900 S. Norfolk Street, Suite 350
San Mateo, CA 94403

Raymond A Biering
Adamski Moroski Madden Cumberland Green
P.o. Box. 3835
San Luis Obispo, CA 934033835

Mitchell E Rishe
Deputy Attorney General
300 South Spring Street, Ste 1702
Los Angeles, CA 90013

Jeffrey A Minnery
Adamski Moroski Madden Cumberland Green
P. O. Box 3835
San Luis Obispo, CA 93403

Michelle Landis Gearhart
Adamski, Moroski, Madden, Cumberland & Green LLP
PO Box 3835
San Luis Obispo, CA 93403

I, Chelsie Simms, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **10/07/2021** I deposited in the United States mail at San Luis Obispo, California, first class postage prepaid, in a sealed envelope, a copy of the attached **Ruling on Petition for Writ of Mandate.** The foregoing document was addressed to each of the above parties.

OR

☒ Document served electronically pursuant to CRC§2.251(b)(1)(B).

Dated: 10/7/2021 Michael Powell, Clerk of the Court

By: /s/ Chelsie Simms Deputy Clerk
Chelsie Simms

PROOF OF SERVICE

Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District
Case No.: 14CV-0514

I am over 18 years old, not a party to this lawsuit and am employed by the Law Offices of Thomas D. Roth, 1900 S. Norfolk Street, Suite 350, San Mateo, Ca 94403. On October ~~8,~~ 2021, I served the foregoing document described as: **[PROPOSED] WRIT OF MANDATE** as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the above document(s) to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Mitchell Rishe
Deputy Attorney General
California Department of Justice
Office of the Attorney General
300 S. Spring Street
Los Angeles, CA 90013
E-mail: Mitchell.Rishe@doj.ca.gov
(Counsel for State Parks)

Michelle Gearhart
Adamski Moroski et al
6633 Bay Laurel Place
Avila Beach, CA 93424
E-mail: Gearhart@ammcglaw.com
(APCD counsel)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 8, 2021, at San Mateo, California.

Thomas D. Roth

Thomas D. Roth

PROOF OF SERVICE

Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District
Case No.: 14CV-0514

I am over 18 years old, not a party to this lawsuit and am employed by the Law Offices of Thomas D. Roth, 1900 S. Norfolk Street, Suite 350 San Mateo, California 94403. On October 29, 2021, I served the foregoing document described as: **NOTICE OF ENTRY OF JUDGMENT OR ORDER** as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the above document(s) to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Mitchell Rishe
Deputy Attorney General
California Department of Justice
Office of the Attorney General
300 S. Spring Street
Los Angeles, CA 90013
E-mail: Mitchell.Rishe@doj.ca.gov
(Counsel for State Parks)

Michelle Gearhart
Adamski Moroski et al
6633 Bay Laurel Place
Avila Beach, CA 93424
E-mail: Gearhart@ammcglaw.com
(APCD counsel)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 29, 2021, at San Mateo, California.

Thomas D. Roth