

1 Elva P. Kopacz SBN 140274  
2 LAW OFFICE OF ELVA P. KOPACZ  
3 9043 Garfield Ave. Suite 306  
4 Huntington Beach, CA 92646  
5 Telephone: 714-593-8943  
6 Facsimile: 714-962-0930  
7 Attorney for Petitioner: Petitioners

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 COUNTY OF ORANGE

10 NATURIST ACTION COMMITTEE (a Non- ) Case No.: \_\_\_\_\_  
11 profit Corporation); FRIENDS OF )  
12 SAN ONOFRE BEACH (an ) NOTICE OF AND PETITION FOR  
13 Unincorporated Association); R. ) ALTERNATIVE WRIT OF MANDATE;  
14 ALLEN BAYLIS and GERDA HAYES ) MEMORANDUM OF POINTS & AUTHORITIES  
15 (Individuals) ) IN SUPPORT THEREOF; PROPOSED ORDER  
16 ) DIRECTING ISSUANCE OF ALTERNATIVE  
17 ) WRIT OF MANDATE; ORDER TO SHOW  
18 ) CAUSE.  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

11 Petitioners,  
12 v.  
13 CALIFORNIA STATE DEPARTMENT OF ) Hearing Date:  
14 PARKS & RECREATION; RUTH COLEMAN, ) Time:  
15 in her Official Capacity as ) Dept:  
16 DIRECTOR of the CALIFORNIA STATE )  
17 DEPARTMENT OF PARKS & RECREATION )  
18 )

19 Respondents.  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

19 COME NOW the above-named Petitioners for Issuance of an  
20 Alternative Writ of Mandate directing the CALIFORNIA STATE DEPARTMENT  
21 OF PARKS & RECREATION and RUTH COLEMAN in her Official Capacity as  
22 DIRECTOR of the CALIFORNIA STATE DEPARTMENT OF PARKS & RECREATION to  
23 comply with California Government Code §§11346, et.seq. regarding  
24 quasi-legislative action within the meaning of the California  
25 Administrative Procedure Act, by:

1 (1) Reinstating the "Cahill Policy" pending compliance with the  
2 California Administrative Procedure Act;

3 (2) Consulting with Petitioners (as "interested persons") prior to  
4 amending or repealing its regulation, commonly known as the "Cahill  
5 Policy" and restated in the "Harrison Letter", wherein nude sunbathing  
6 is allowed at Trail 6 at San Onofre State Beach; and, that C.C.R.  
7 Title 14 §4322 (prohibiting public nudity) will be enforced as  
8 follows:

9 (a) only upon the complaint of a **private citizen**;

10 (b) after a complaint, the sunbather will be asked to voluntarily  
11 comply with §4322 or leave the beach; and,

12 (c) the nude sunbather will be allowed to resume his activities  
13 any time after the day of complaint.

14 Cal. Gov. Code §11346 (b) (West, 2008);

15 (2) Providing public notice of the express terms of modification of  
16 the "Cahill Policy"; and

17 (3) Providing for public access to any meeting of any public agency  
18 regarding modification of the "Cahill Policy". Cal. Gov. Code  
19 §11346.4 (West, 2008).

20 Dated: \_\_\_\_\_

21 \_\_\_\_\_  
22 Elva P. Kopacz, Attorney for  
23 Petitioners

POINTS AND AUTHORITIES

1.  
FACTUAL BACKGROUND

The Cahill Policy: On May 31, 1979, Russell W. Cahill, then Director of the STATE OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION (hereinafter, the DEPARTMENT) issued what is commonly known as the "Cahill Policy". A true and correct copy of said Policy is attached hereto at Exhibit "A" and incorporated herein by this reference. Under the terms of the "Cahill Policy", clothing-optional beaches were not to be specifically designated within the California State Park System. However, finding that nude sunbathing is "certainly an innocuous action"; a policy was implemented wherein citation of nude sunbathers would be limited to instances of **public complaint** and then only after voluntary dressing was refused by the nude sunbather.

The Harrison Letter: The DEPARTMENT restated the Cahill Policy nine years later in a letter written by Jack V. Harrison, Deputy Director for Operations. A true and correct copy of the "Harrison Letter" is attached hereto at Exhibit "B" and incorporated by this reference. The Harrison letter was written in response to People v. Eric John Bost. The Bost case overturned on appeal of a misdemeanor conviction for public nudity to the Placer County Superior Court. The Harrison letter advised law enforcement that "[s]o long as [nude sunbathing] takes place in a traditionally recognized area, it is legal unless and until a complaint from a member of the public is received." Mr. Harrison further advised that "[f]urther activities of [the nude

1 sunbather] would be prohibited for the balance of the day, but allowed  
2 on later days unless proscribed by a new public complaint."

3 The Cahill Policy has been in effect with respect to San Onofre  
4 for 29 years. During this time, the public and petitioners in  
5 particular, have come to rely on the policy.

6 Unilateral Change of the Cahill Policy: On or about May 19, 2008,  
7 newly-placed Sector Superintendent, Richard Haydon, abruptly and  
8 unilaterally pronounced that nudity would be prohibited in the Trail 6  
9 area of San Onofre State Beach. On May 28, 2008, RUTH COLEMAN sent  
10 a memorandum to the Orange coast District Staff, California State  
11 Parks, immediately rescinding the Cahill Policy. A true and correct  
12 copy of said Memorandum is attached hereto at Exhibit "C". On June 1,  
13 2008, RUTH COLEMAN sent a letter, with wording identical to the May 28  
14 Memorandum, to bonnie M. Dumanis, District Attorney for the County of  
15 San Diego. A true and correct copy of the June 1 letter is attached  
16 hereto at Exhibit "D".

17 There has been absolutely no solicitation for comment by  
18 interested parties (or the public, in general) by the DEPARTMENT to  
19 the radical change in the Cahill Policy. The DEPARTMENT, through the  
20 actions of Mr. Haydon, has acted in direct violation of the California  
21 Administrative Procedures Act.

22 Public Reliance on the Cahill Policy as a Regulation: The Cahill  
23 Policy as it applies to the trail-six area of San Onofre has been well  
24 known by the naturist community and many members of the general public  
25 for 29 years. Numerous print guidebooks to nude beaches and beaches  
26 in general have listed Trail 6 at San Onofre as clothing optional.

1 The advent of the internet has resulted in at least the following  
2 websites which reference the Cahill Policy with respect to San Onofre:

3 [www.thebeachcities.com/recreation/beaches-tidepools](http://www.thebeachcities.com/recreation/beaches-tidepools);

4 [www.geocities.com/rvcampingformooners](http://www.geocities.com/rvcampingformooners) ;

5 [www.communitywalk.com/clothing-optional-places](http://www.communitywalk.com/clothing-optional-places);

6 [friendsofsanonofre.org](http://friendsofsanonofre.org);

7 [bayareanaturists.org](http://bayareanaturists.org); and

8 [cspra.com](http://cspra.com) (the California State Park Rangers Association  
9 official website).

10 The Bost case, referred to above, while not citable as legal  
11 precedent, is factually instructive. In People v. Bost, [a true and  
12 correct copy of which is appended hereto] the court overturned Mr.  
13 Bost's misdemeanor public nudity conviction based on the  
14 Constitutional right to freedom from unnoticed or ambiguous laws  
15 stating that, "**The 'Cahill Policy' has remained the enforcement policy**  
16 **of the State Park System throughout the State of California. The**  
17 **policy has been widely disseminated and is well known within the**  
18 **public, and particularly among those who enjoy nude sunbathing at the**  
19 **state parks."**

20 2.

21 Jurisdiction and Venue

22 Petitioner NATURIST ACTION COMMITTEE was formed to protect and  
23 advance the interests of naturists. Petitioner FRIENDS OF SAN ONOFRE  
24 BEACH is dedicated to protecting the clothing-optional status of the  
25 beach by promoting a good working relationship the Respondent,  
26 CALIFORNIA STATE DEPARTMENT OF PARKS & RECREATION. Petitioners R.  
27  
28

1 ALLEN BAYLIS and GERDA HAYES are naturists who are long-term and  
2 frequent visitors to Trail 6 of the San Onofre State Beach.

3 Any California citizen is an "interested person" entitled to  
4 initiate proceedings for purposes of enforcement of provisions of the  
5 California Administrative Procedures Act. Cal. Gov. Code §54960 (a)  
6 (West, 2008).

7 An "interested person" may commence an action by mandamus to  
8 prevent violation or threatened violation of the Act. Cal. Gov. Code  
9 §54960 (c) (West, 2008).

10 3.

11 The "Cahill Policy" is a Regulation within the Meaning of the  
12 California Administrative Procedures Act.

13 "Regulation" means every rule, regulation, **order, or standard of**  
14 **general application** . . . adopted by any state agency to implement,  
15 interpret, or make specific, the law enforced or administered by it,  
16 or to govern its procedure." Cal. Gov. Code §11342.600 (West, 2008).

17 The Administrative Procedure Act defines "regulation" very  
18 broadly. Tidewater Marine Western v. Bradshaw, 14 Cal. 4<sup>th</sup> 557, 59  
19 Cal.Rptr. 2d 186 (1996). the Tidewater court utilized a two-pronged  
20 test to determine whether an action proposed by a government agency  
21 reaches the level of "regulation" triggering mandatory A.P.A.  
22 application. "(1) The agency must intend its rule to apply generally,  
23 rather than in a specific case. The rule need not, however apply  
24 universally; **a rule applies generally so long as it declares how a**  
25 **certain class of cases will be decided.** (2) [The rule must "implement,  
26 interpret, or make specific law enforced or administered by [the  
27 agency], or . . . govern [the agency's] procedure." Tidewater, id. at

1 571. (Emphasis added.) The Cahill Policy meets both prongs of the  
2 test applied in Tidewater. First, it applies to all patrons of the  
3 San Onofre State Beach--to naturists and to any member of the public  
4 who might wish to complain about a particular naturist. Second, the  
5 Cahill Policy was written and has indeed been implemented for almost  
6 30 years to determine how California's laws regarding nudity will be  
7 interpreted and enforced in State Parks.

8 4.

9 The California Administrative Procedures Act Requires Public Notice of  
10 a Change to Current Regulations.

11 The California Administrative Procedure Act is intended to  
12 advance meaningful public participation in the adoption of  
13 administrative regulations by state agencies and to create an  
14 administrative record assuring effective judicial review. Pulaski v.  
15 Occupational Safety & Health Stds. Bd., 75 Cal. App. 4<sup>th</sup> 1215, 90 Cal.  
16 Rptr. 2d 54 (1999).

17 California Government Code §11346.2 requires that every agency  
18 shall make a proposed regulation, along with reasons for the proposal  
19 and alternatives to the proposal, available to the public. Cal. Gov.  
20 Code §11346.2 (West, 2008).

21 The Government Modernization, Efficiency, Accountability, and  
22 Transparency Act of 2005 requires that State agencies post information  
23 on their web sites about public meetings, proposed regulations, and  
24 how to comment or otherwise participate. Cal. Gov. Code §7528 (West,  
25 2008).

26  
27 The intent of the Administrative Procedure Act was best stated by  
28 the Tidewater court (quoting San Diego Nursery Co. v. Agricultural

1 Labor Relations Bd. 100 Cal. App. 3d 128,142-143, 160 Cal. Rptr. 822  
2 (1979)). “. . .[P]ublic participation in the regulatory process  
3 **directs the attention of agency policymakers to the public they serve,**  
4 **thus providing some security against bureaucratic tyranny.”**  
5 Tidewater, id. at 569.

6  
7  
8 5.

9 CONCLUSION

10 The DEPARTMENT has completely ignored the requirements for public  
11 notice and comment; and notice to “interested parties” prior to change  
12 of a 29 year-old regulation upon which Petitioners and members of the  
13 public at large rely.

14 Dated: \_\_\_\_\_

15 \_\_\_\_\_  
16 Elva P. Kopacz, Attorney for  
17 Petitioners

18 Verification:

19 I have read the foregoing Petition and, except as to those matters  
20 asserted as under information and belief, declare under penalty of  
21 perjury under the laws of the State of California that the facts  
22 asserted therein are true and correct.

23 Dated: \_\_\_\_\_

24 \_\_\_\_\_  
25 R. Allen Baylis, Petitioner  
26  
27  
28