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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.
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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.
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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

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

16
17 The Harrison Letter: The DEPARTMENT restated the Cahill Policy nine
18 years later in a letter written by Jack V. Harrison, Deputy Director
19 for Operations. A true and correct copy of the "Harrison Letter" is
20 attached hereto at Exhibit "B" and incorporated by this reference.
21 The Harrison letter was written in response to People v. Eric John
22 Bost. The Bost case overturned on appeal of a misdemeanor conviction
23 for public nudity to the Placer County Superior Court. The Harrison
24 letter advised law enforcement that "[s]o long as [nude sunbathing]
25 takes place in a traditionally recognized area, it is legal unless and
26 until a complaint from a member of the public is received." Mr.
27 Harrison further advised that "[f]urther activities of [the nude
28

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;

4 www.geocities.com/rvcampingformooners ;

5 www.communitywalk.com/clothing-optional-places;

6 friendsofsanonofre.org;

7 bayareanaturists.org; and

8 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.
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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. 4th 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. 4th 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 The intent of the Administrative Procedure Act was best stated by
27 the Tidewater court (quoting San Diego Nursery Co. v. Agricultural
28

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.

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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
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