ATTACHMENT 4

Julianne Ward

From: David Kendig
Sent: Wednesday, April 28, 2004 2:14 PM
To: Julianne Ward
Subject: FW: something entirely different

Here it is....

David

-- Original Message-----
From: David Kendig
Sent: Thursday, April 15, 2004 5:56 PM
To: Mark Deming
Cc: Julianne Ward
Subject: RE: something entirely different

Boy, nine or ten months ago I could very well have told him that - I recall speaking with Mr. Guth, but I don't remember the particulars at this point. It sounds like I forgot to get back to him when I got back from my trip to Canada last summer, so when you forward this along to him please pass along my apologies as well.

NOw that I understand that he's not asking whether it's OK to move from campsite to campsite, but rather from one State Park to another, I was able to refine my research a bit. Remember that California Code of Regulations Title 14, § 4455 sets forth Camping Time Limits. That section provides:

"(a) General. Occupancy by the same persons, equipment, or vehicles of any camping facility is limited to a total of 30 days in any calendar year in that unit. The Department may establish shorter or longer limits of occupancy.''

Thus, the main limitation (other than the Closure Order) is that one may not spend more than 30 days in a calendar year "in that unit". The question, again, becomes what is a Unit? I found the following section in the Code of Regulations helpful to answer that question. Title 14, Section 4751 provides as follows:

"§ 4751. State Parks

"In the interest of the public, the following units in the State Park System are classified in the category of State Parks, as provided in Section 5019.53 of the Public Resources Code, provided, however, that there is reserved the power to repeal, amend or modify this section as may from time to time hereafter be necessary and proper:

Ahjumawi Lava Springs State Park

Andrew Molera State Park

Angel Island State Park

Annadel State Park

Anza-Borrego Desert State Park

Big Basin Redwoods State Park

Border Field State Park

Bothe-Napa Valley State Park... [list continues from here)"

Note that it refers to the list of State Park as "units", suggesting that each one is a unit. This would tend to support the notion that the 30-day time limit in Section 4455 applies on a park-by-park basis, not County-wide.

That doesn't necessarily mean that the Closure Order is invalrd, however.

In fact, I see two problems with attempting a legal challenge to the Order. First, the Public Resources Code and the Title 14 generally set limitations on camping which appear designed to encourage recreational uses by limiting longer-duration (e.g., quasi-residential) uses of State Park camping grounds. While I can understand frustration that some parks may have empty campsites at some times under this policy at the same time that people are looking for housing, the flip side (no time limits) could be that there would be very few open sites available for recreational use if State Parks in Santa Cruz County were available for camping without time limitations. Thus, I think it is unlikely that a Court would find time limitations themselves unreasonable.

More importantly, Section 4455(a) itself expressly reserves to the Department the authority to "establish shorter or longer limits of occupancy" for camping facilities.

As a result, while each State Park appears to be a Unit, the Department nevertheless may adopt shorter limits on occupancy. The Closure Order appears to be an exercise of the discretion reserved to the Department to impose shorter limitations on occupancy.

If the HAC could convince the Board that the County should challenge the Closure Order, I'd be happy to give it a go. However, I believe that the most productive avenue for effecting a change in the policy is more likely to be a political appeal to the Departmen that issued the Order rather than a legal one asking a Court to set aside the Department' exercise of its discretion.

I hope that helps.

David Kendig

-----Original Message-----
From: Mark Deming
Sent: Thursday, April 15, 2004 5:08 PM
To: David Kendig
Cc: Julianne Ward
Subject: FW: something entirely different

David, hi....according to Mike Guth's recollection, you were going to revisit some of the issues regarding the limitation of State Park camping.....is this true? Mark

-----Original Message-----
From: Julianne Ward
Sent: Thursday, April 15, 2004 4:59 PM
TO: David Kendig; Mark Deming
Subject: FW: something entirely different

Hi there. Here is the response from Mike Guth on the whole park closure thing after I sen him David's 6/9/03 email to Mark. Please let me know if there is more information to provide him (and the HAC) and if not, when that information will be available.

Thanks so much.
Julianne

--- Original Message-----
From: Mike Guth (mailto:mguth@guthpatents.com)
Sent: Thursday, April 15, 2004 4:54 PM
To: Julianne Ward
Subject: RE: something entirely different

Julianne,
This might be it but .. the original opinion, which I am not sure if this is, but think it is, was discussed between Kendig and myself and he decided to revisit. To wit, the issue was that a region, comprising multiple separate state parks, was limited to 30 days. In other words,

persons who were in one campsite in one state park, then moved to another state park, or went out of town and then returned to another campsite in another park in the County, were still subject to this limit (it traveled with them for the year). Counsel opinion that the limit is valid at different "campsites" of a "state park" misses the question; which is that these are different state Parks, not different campsites in a state park.
Mr. Kendig was going to revisit this opinion, based on a discussion of the above points, when he had returned from his vacation last summer. From the looks of the unit discussion, it appears that the issue raised above was not finalized.
This closure has been applied to SC county residents even when the park in question is 90% empty.
There are some residents, including disabled veterans, who had been going out on occasional jobs to other areas, then returning to the County for a month, then repeating the cycle; these parks offered true low cost housing to some residents who live this lifestyle. The closure order impacts all other housing because now these residents must find another place to live while they are here.
Can we please confirm with Counsel with regard to the above mentioned points?

Yours Sincerely,
Michael A. Guth
Attorney at Law

This email may contain communications that fall under attorney-client privilege. If you have received this email in error please delete immediately.

-- Original Message-----
From: Julianne Ward [mailto:PLN777@co.santa-cruz.ca.us]
Sent: Thursday, April 15, 2004 3:54 PM
To: Michael Guth (E-mail)
Subject: FW: something entirely different

hi Mike. Perhaps this is what you were looking for with regard to the Parks closure issue.

Thanks.

Julianne

> -----Original Message-----
> From: Mark Deming
> Sent: Thursday, April 15, 2004 3:53 PM
> To: Julianne Ward
> Subject: FW: something entirely different
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> This was presented to the HAC in July 2003
> -----Original Message-----
> From: David Kendig
> Sent: Monday, June 09, 2003 5:46 PM
> To: Mark Deming
> Subject: RE: something entirely different
>
> Hi Mark:
>
> The following is my response to your June 5, 2003 question. Please let me know if you'd like me to formalize it into a Memo for presentation to the Commission:
>
> You have directed a question to me whether a Closure Order (No. 715-002-01) posted on June 1, 2001 by the State Department of Parks & Recreation conflicts with state law by preventing some people from

utilizing State Park campgrounds as > "> semi-permanent> "> living areas. County Counsel responds that the Closure Order is consistent with State Law by requiring temporary use of campgrounds.
>
> The Closure Order limits occupancy of specified State Park lands and campgrounds to an occupancy limit of 30 days by the same person, equipment or vehicle in any calendar year. According to the closure Order, any person who has occupied a State Park campsite or campsites in the Santa Cruz District for 30 days or more may not reregister for a site until the next calendar year.
>
> The California Legislature delegated State Park rule-making authority to the State Department of Parks & Regulations. Cal. Pub. Resources Code § 5003. Pursuant to that authority, the Department adopted Camping regulations which are set forth in Title 14 of the California Code of Regulations. California Code of Regulations § 4455 sets forth Camping Time Limits. That section provides:
>
> (a) General. Occupancy by the same persons, equipment, or vehicles of any camping facility is limited to a total of 30 days in any calendar year in that unit. The Department may establish shorter or longer limits of occupancy.
>
> (b) Shorter Limits. When the department has established shorter seasonal limits, no person (or persons) who have occupied a campsite for the established limit may reregister in the unit until the expiration of forty-eight (48) hours, from 12:00 noon of the checkout day to 12:00 noon of the second day following. Upon expiration of the established limit, the registered camper shall vacate the campsite of all persons, vehicles and equipment.
>
> These provisions indicate a State policy to reserve camping facilities in State Parks for temporary use - e.g. camping is generally limited to no more than 30 days - so the units are not intended for permanent occupancy.
>
> According to that provision, the time limit is initially established at 30 days in a calendar year > "> in that unit.> "> Thus, depending on the meaning of the term > "> unit> "> , the question might arise whether a camper who, after occupying a campsite for 30 days, vacates that campsite and occupies another site in the same campground has occupied a different > "> unit?> "> . Unit is defined at 14 Cal. Code Regs. 4301 as follows:
>
> > "> (t) Unit. Unit means any named and classified unit under control of the Department of Parks and Recreation, as well as any Department projects which have not yet been named or classified.> ">
>
> That definition defines the term > "> unit> "> by using the same term > "> unit,> "> and in doing so is not particularly helpful in resolving the question. However, the California Public Resources Code Section 5019.50 et seq. makes it clear that a > "> unit> "> in State Park parlance refers to a large portion of a park that is part of the state Part system. Section 5019.50, for instance, requires that units shall be classified into one of several specified categories, including > "> state parks> "> , > "> state recreation units,> "> > "> historical units,> "> > "> state seashores> "> , etc. This use of the term > "> unit> "> encompasses all or significant portion of a state park, and would ordinarily not be limited to individual camping sites.
>
> In addition, the Closure Order appears to be a valid exercise of the authority reserved to the Department under the final sentence Section 4455(a) to > "> establiah shorter or longer limits of occupancy7 "> for camping facilities.
>
> In conclusion, County Counsel concludes that the Closure Order is consistent with State Law by placing limits upon occupancy of camping

facilities and by requiring temporary rather than permanent use of campgrounds.
>
> I hope that this memorandum proves helpful in responding to the question. If you have any questions, please feel free to call me at x2072.
>
> David Kendig
> Assistant County Counsel
>
>
> ----- Original Message-----
> From: Mark Deming
> Sent: Thursday, June 05, 2003 3:41 PM
> To: David Kendig
> Subject: something entirely different
>
> Hi David...the Housing Advisory Commission requested an opinion from County Counsel regarding a closure order by State Parks District Superintendent...the problem, as articulated by Michael Guth (a Commissioner), is that the State Parks is preventing a number of people from utilizing the State Park campgrounds for their sem-permanent living area in conflict with State law.....anyhow, I have sent to you via interoffice snail-mail a copy of the closure order and an exerpt from the CCR regarding camping...please take a look at this material and we'll talk....I will need some response by July 1....thanks, Mark