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Ms. Leslie Markham  
California Department of Forestry and Fire Protection  
135 Ridgeway Ave.  
Santa Rosa, CA 95401

Re: *Bohemian Grove* NTMP 1-06NTMP-011 SON

Dear Ms. Markham:

I write on behalf of the Bohemian Redwood Rescue Club regarding the above-referenced NTMP.

To qualify for an NTMP, a landowner must own less than 2,500 acres of timberland. (Pub. Res. Code, § 4521, subd. (b).) Cal-Fire concedes that the Bohemian Club may own more. Accordingly, the Club has donated an easement that prohibits commercial logging on 163 acres of its timberland.

According to Cal-Fire's legal counsel Giny Chandler, since the 163 acres are not available for commercial harvesting, they are not "timberland" as defined by the Forest Practice Act (Act), and therefore do not count in calculating the Club's total timberland. Not counting the 163 acres, the Club owns less than 2,500 acres of timberland, and therefore, according to Cal-Fire, qualifies for an NTMP.

The flaw in this argument is that nothing in the definition of "timberland," requires that it be available for commercial logging to qualify as "timberland."

**The Definition of "Timberland" Does Not Require That It be Available for Commercial Harvest**

The Act defines timberland as "land...which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees." (§ 4526.) Nothing in this definition limits timberland to land whose timber is harvested commercially.

Take for example the acreage donated as an easement: It easily satisfies this

definition of timberland. It is land available for and capable of growing a crop of trees of a commercial species, and it will be so used to produce lumber and other forest products. Although, these items will not be sold commercially, the definition of timberland contains no such requirement.

The easement makes clear that the 163 acres will be available *and* used for the production of a considerable amount of forest products. To that end, it authorizes a host of logging activities. In the Main Grove, for example, among other things the Club may—

Thin stands to improve growth and stocking levels;

Cut and remove live, dead, dying and down trees;

Cut and remove trees for posts, poles, firewood, and other products that will primarily be utilized within the Bohemian Grove Property;

Cut and remove trees for forest enhancement, watercourse restoration, and conservation activities.

(Easement, p. 11, ¶ i.) The same harvesting activities are allowed in the Bull Barn area. (Easement, p. 14, ¶ h.)

Cal-Fire arrives at its interpretative error by conflating the definition of “timber operations” with “timberland.” “Timber operations” means in pertinent part “the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes.” (§ 4527, subd. (a)(1).) “Commercial purposes” means the “cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade,” as well as the conversion of timberland for development. (§ 4527, subd. (a)(2).) Only timber operations, that is, logging for commerce, requires preparation of a timber harvesting plan. (§ 4581.) Other harvesting, like that proposed in the easement areas, does not.

Thus, while “timber operations” require a “commercial purpose,” “timberland” does not, and Cal-Fire’s assumption to the contrary does not withstand scrutiny. “It is a well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.” (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725.)

Cal-Fire’s interpretation renders meaningless the 2,500-acre limit for NTMPs, because anyone with more than 2,500 acres could simply agree not to

commercially harvest the excess. Say a landowner owns 3,000 acres of timberland. Under Cal-Fire's logic, he can obtain approval of a 2,499-acre NTMP by simply agreeing as a condition of approval not to commercially harvest the remaining 501 acres. And he wouldn't need an easement, because conditions of approval are binding and enforceable, just as easements are. One might argue that an easement acts in perpetuity. Well, so can a condition of approval. One simply agrees as a condition of approval *never* to commercially log the excess.

Moreover, under Cal-Fire's rationale—that timberland is not timberland if it cannot be logged commercially—an agreement in perpetuity would not be necessary. An owner with more than 2,500 acres of timberland could simply agree not to commercially log the excess for the life of the NTMP. According to Cal-Fire, he owns only 2,499 acres of timberland: The remainder is *not* timberland since it cannot be commercially logged.

Cal-Fire's interpretation leads to other absurdities. Frequently, areas of timberland are off-limits to logging for a variety of reasons, the presence of owls, wetlands, native plants at-risk, watercourse protection zones, and the like. According to Cal-Fire, these lands are not timberland. A landowner with more than 2,500 acres of timberland therefore could exclude them to bring his acreage below 2,500 and qualify for an NTMP.

This cannot possibly be the outcome the Legislature intended when it defined timberland and limited the size of NTMPs. Yet it is the outcome allowed by Cal-Fire if it approves the Bohemian Grove NTMP.

Very truly yours,

Paul V. Carroll

Further references are to the Public Resources Code unless otherwise noted.