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6 SIERRA CLUB, BOHEMIAN REDWOOD RESCUE CLUB

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 IN AND FOR THE COUNTY OF SONOMA

9 SIERRA CLUB, BOHEMIAN REDWOOD  
10 RESCUE CLUB,

11 Petitioners,  
12 v.

13 CALIFORNIA DEPARTMENT OF  
14 FORESTRY AND FIRE  
15 PROTECTION, and Does I through X  
inclusive;

16 Respondents.

17 \_\_\_\_\_/

18 THE BOHEMIAN CLUB and DOES XI  
19 through XX, inclusive,

20 Real Parties in Interest.

21 \_\_\_\_\_/

No.:  
UNLIMITED CIVIL CASE  
PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE,  
CEQA (CCP § 1094.5)

22 **INTRODUCTION**

23 1. On December 29, 2009, the California Department of Forestry and Fire Protection  
24 (CDF) approved the Bohemian Club's nonindustrial timber management plan (NTMP) for  
25 the Bohemian Grove, a mixed conifer forest of 2,500-plus acres near the town of Monte  
26 Rio in Sonoma County. The NTMP will allow the Bohemian Club to log the Grove for the  
27 next 100 years with limited environmental review and regulatory oversight.  
28

1           2. From its inception, the NTMP generated public and expert opposition as a result of  
2 miscalculations and unscientific claims. Scientists strongly criticized its assertions that, for  
3 example, old growth forests were characterized by relatively small, widely-spaced trees,  
4 and that redwood groves were prone to catastrophic crown fires. It took members of the  
5 public to uncover the fact that the NTMP miscalculated sustained yield and proposed to log  
6 more than the forest grew, an error so fundamental as to defy belief.  
7

8           3. Despite the public's efforts, the final iteration of the plan violates the California  
9 Environmental Quality Act (CEQA) and the Forest Practice Act (FPA) on numerous  
10 grounds. The NTMP's treatment of alternatives, for example, is a mockery of CEQA's  
11 most important requirement. Much of the discussion is literally "boilerplate," that is text  
12 lifted verbatim from quite different logging operations. Even CDF concedes the treatment  
13 of alternatives was "circumscribed," but argues such treatment is proper since the plan  
14 otherwise mitigated significant effects. This rationale was rejected by the courts long ago,  
15 including a case in which CDF was the losing party.  
16

17           4. The NTMP's treatment of the "baseline" is no better. Under CEQA, a plan must  
18 define the baseline, the reference against which the plan's impacts are measured. The  
19 NTMP violated this requirement, because it changes the baseline to avoid acknowledging  
20 adverse effects. Thus the NTMP defines the baseline as *more* logging than the project as  
21 proposed as a way to argue that the project's greenhouse gas emissions are insignificant.  
22 Elsewhere, it argues that the baseline is no logging whatsoever as a way to dismiss the no  
23 project alternative. And elsewhere, it argues that the baseline is the Grove's previous  
24 logging regime as a way to defend one of its alternatives.

25           5. In light of these and other violations of CEQA and the FPA, Sierra Club and the  
26 Bohemian Redwood Rescue Club request the Court to set aside CDF's approval of the  
27 NTMP.  
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## GENERAL ALLEGATIONS

6. Petitioner SIERRA CLUB is a non-profit corporation, organized under the laws of the State of California, with its headquarters in San Francisco, California. The Club is a national conservation organization with 1.3 million members. The general mission of the Club includes the enjoyment, enhancement, protection, and preservation by all lawful means of the forests, waters, wildlife, wilderness, and other natural and scenic resources of the United States and the Earth in general. The Club and its members believe that habitat alteration and elimination pose the greatest threats to the continued well-being of healthy fish and wildlife populations. The Redwood Chapter of the Sierra Club has approximately 9,000 members who reside in the north coast region of California, including Sonoma County.

7. Petitioner BOHEMIAN REDWOODS RESCUE CLUB (BRRC) is a group of Russian River residents, environmentalists and citizens from the Bay Area who came together over environmental concerns regarding the Bohemian Club's NTMP that governs future management of the Club's Bohemian Grove in Sonoma County. BRRC seeks protection for old growth redwood and Douglas fir stands in the Bohemian Grove, the development of a coherent plan for the restoration of old growth characteristics, and genuine fire hazard reduction.

8. The personal and aesthetic interests of Petitioners and the persons associated with them will be severely injured if logging pursuant to the NTMP as approved by CDF is allowed to proceed as planned. Petitioners are within the class of persons beneficially interested in and aggrieved by CDF's approval as alleged below. Petitioners include individuals who expressed their concerns and objections to the approval of the NTMP at CDF review team meetings and in correspondence to CDF.

9. Respondent CDF is an agency of the State of California.

10. The true names and capacities, whether individual, corporate, or otherwise, of

1 DOES I through X are unknown to Petitioners, who therefore sue said Respondents by  
2 such fictitious names. Petitioners will seek leave to amend this petition when they have  
3 been ascertained.  
4

5 11. Real party in interest The Bohemian Club is a private men's club headquartered in  
6 San Francisco, California. The Bohemian Club is the owner of the Bohemian Grove, the  
7 timberland subject to the NTMP.

8 12. The true names and capacities, whether individual, corporate, or otherwise, of  
9 DOES XI through XX, are unknown to Petitioners who therefore sue said Real Parties in  
10 Interest by such fictitious names. Petitioners will seek leave to amend this petition when  
11 they have been ascertained.

12 13. The Bohemian Grove is located near the town of Monte Rio in Sonoma County.  
13 According to CDF, the Bohemian Club's ownership comprises more than 2,500 acres, of  
14 which somewhat less than that amount is timberland.

15 14. The Bohemian Club filed its NTMP 1-06NTMP-011 SON on May 21, 2006.

16 15. A revised and final NTMP was issued in February 2009. Public comment was  
17 taken until May 11, 2009. CDF issued its response to comments and approved the NTMP  
18 on December 29, 2009.

19 16. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure  
20 1094.5; Public Resources Code sections 4514.5, 21168.5, and 21080.5(g).

21 17. Petitioners have performed all conditions precedent to the filing of this Petition by  
22 raising issues known to them before CDF during the review process of the NTMP.  
23 Petitioners requested that CDF not approve the NTMP, and have performed all conditions  
24 precedent to the other causes of action.  
25

26 18. At all times mentioned herein, CDF has been able to deny the approval and  
27 operation of the NTMP at issue. Despite such ability, and despite Petitioners' demand for  
28 denial, CDF has failed and continues to fail to perform its duty to deny the approval and

1 operation of the plan.

2 19. If CDF is not ordered to withdraw its approval of the NTMP, and real party is not  
3 enjoined from engaging in timber operations on this NTMP site, the land, wildlife habitat,  
4 and environmental values subject to and affected by the NTMP will suffer irreparable, and  
5 permanent damage.

6 20. If CDF is not ordered to withdraw its approval of the NTMP, or if its decision is  
7 not stayed pursuant to CCP section 1094.5, subdivision (g), the land, wildlife habitat, and  
8 environmental values subject to and affected by the NTMP will suffer irreparable, and  
9 permanent damage.

## 11 **FIRST CAUSE OF ACTION (CEQA, FPA)**

### 12 **First Claim for Relief**

13 21. Under CEQA, CDF is required to consider a range of reasonable alternatives to the  
14 proposed project. (Pub. Res. Code, §§ 21001, subd. (g); 21080.5, subs. (d)(2)(A)-(d)(3)  
15 (A); CEQA Guidelines, § 15126.6, subd. (a).) The Forest Practice Act (FPA) mandates the  
16 same. (Cal. Code Regs., tit. 14, §§ 895.1, 896, 898, 898.1, 1090.) In addition, under the  
17 Forest Practice Act, CDF may not approve an NTMP that is based upon insufficient  
18 information, or incomplete, incorrect, and misleading in a material way. (Cal. Code Regs.,  
19 tit. 14, § 898.2, subd. (c); 1090.)

20 22. A reasonable alternative is one that is feasible, less damaging, and meets the basic  
21 objectives of the landowner. (CEQA Guidelines, § 15126.6, subs. (c), (f).) An alternative  
22 is feasible even if it would impede to some degree the attainment of the project objectives,  
23 or would be more costly. (CEQA Guidelines, § 15126.6, subd (b).) The consideration of  
24 alternatives must be sufficiently detailed to provide decisionmakers and the public with  
25 information to allow them to intelligently take account of environmental consequences.  
26 (CEQA Guidelines, § 15126.6, subd (f).)

27 23. The discussion of alternatives must include identification of the environmentally  
28

1 superior alternative. If the environmentally superior alternative is the “no project”  
2 alternative, the discussion shall also identify an environmentally superior alternative among  
3 the other alternatives. (CEQA Guidelines, § 15126.6, subd. (e)(2).)  
4

5 24. Discussion of the no project alternative, shall include the existing conditions, as  
6 well as what would be reasonably expected to occur in the foreseeable future if the project  
7 were not approved, based on current plans and consistent with available infrastructure and  
8 community services. (CEQA Guidelines, § 15126.6, subd. (e)(3)(A)-(C).)

9 25. CDF violated these and related laws, regulations and rules in approving the NTMP.  
10 The NTMP gives “detailed examination” only to two alternatives, the no project  
11 alternative, which is required in every case, and the so-called “alternative approach to  
12 harvesting.” This is not a *range* of reasonable alternatives as CEQA requires.

13 26. In addition, all of the alternatives considered were either more damaging and/or  
14 infeasible, rather than less damaging and feasible, as CEQA requires.

15 27. In addition, the one alternative (other than the no project alternative) that  
16 supposedly received “detailed examination” was barely considered. Such cursory  
17 consideration violates CEQA because it prevents meaningful public participation and  
18 informed decision making. (*Laurel Heights Improvement Assn. v. Regents of University of*  
19 *California* (1988) 47 Cal.3d 376, 403-404; CEQA Guidelines, § 15126.6, subd (f).)  
20

21 28. CDF argues that it was entitled to consider a “more circumscribed” range of  
22 alternatives because the NTMP was mitigated to avoid significant effects. This reasoning  
23 is wrong as a matter of law and was expressly rejected in *Laurel Heights, supra*, 47 Cal.3d  
24 376, 401-402, and *Friends of the Old Trees v. Department of Forestry & Fire Protection*  
25 (1997) 52 Cal.App.4th 1383, 1403. (See also Pub. Res. Code, §§ 21002, 21002.1.)

26 29. The discussion of the no project alternative fails to describe what would be  
27 reasonably expected to occur in the foreseeable future if the project were not approved.  
28 (CEQA Guidelines, § 15126.6, subd. (e)(3)(A)-(C).) The discussion claims that

1 “harvesting would be precluded.” Harvesting would *not* be precluded and no reason is  
2 given why it would be. Elsewhere, CDF acknowledges that if the NTMP were not  
3 approved, timber management and harvesting would continue in the Grove as it had in the  
4 past—through timber harvest management plans.

5  
6 30. The discussion of alternatives fails to identify the environmentally superior  
7 alternative. Instead, it identifies the proposed project as environmentally superior. The  
8 proposed project, however, is not an *alternative*. CEQA requires identification of the  
9 environmentally superior alternative. (CEQA Guidelines, § 15126.6, subd. (e)(2).)

10 31. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially  
11 abused its discretion in approving the NTMP; the NTMP does not include an adequate  
12 description, discussion, and analysis of alternatives to the project.

### 13 **Second Claim for Relief**

14 32. Under CEQA, an environmental review document must include a description of the  
15 “environmental setting” or “baseline” to assist in the determination whether an impact is  
16 significant. (CEQA Guidelines, § 15125, subd. (a).) In some circumstances, the no project  
17 alternative will be identical to the environmental setting that establishes the baseline.  
18 (CEQA Guidelines, § 15126.6, subd. (e)(1).)

19 33. Under CEQA, an agency cannot use an inflated baseline to minimize the significant  
20 effects of a project. (E.g., *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno*  
21 (2007) 150 Cal.App.4<sup>th</sup> 892.)

22 34. The NTMP employs an incorrect baseline and violates these authorities. For  
23 example, in evaluating greenhouse gas emissions, the NTMP establishes a baseline that  
24 requires substantially *more* logging than the project as proposed, or than the no project  
25 scenario. The correct baseline is either the no project scenario projected over the plan  
26 horizon, which would involve less logging than the project as proposed; or the current  
27 environmental setting projected over the plan horizon, which would involve no logging. In  
28

1 either case, the correct baseline would involve significantly less logging than the NTMP's  
2 inflated baseline.

3  
4 35. The NTMP also changes the baseline to avoid environmental analysis. For  
5 example, it variously takes the position that the no project alternative would involve no  
6 logging whatsoever; that the no project alternative would involve logging under the  
7 previous regime/management plan; or that the no project alternative would involve  
8 substantially more logging than the project as proposed. Accordingly, the NTMP's  
9 baseline is incomplete, incorrect, and misleading in a material way.

10 36. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially  
11 abused its discretion.

### 12 **Third Claim for Relief**

13 37. An NTMP must identify, evaluate, and mitigate the possible significant  
14 environmental impacts of the proposed project. (Pub. Res. Codes, 21080.5, subs. (d)(2)  
15 (a), (d)(3)(a); see CEQA Guidelines, §§ 15126-15126.4; Cal. Code Regs., tit. 14, 896-898,  
16 898.2, 1090.) The lead agency is required to conduct "a thorough investigation" with  
17 respect to significant impacts and its conclusion must be based on substantial evidence.  
18 (See Pub. Res. Codes, §§ 21168, 21168.5, 21082.2; CEQA Guidelines, §§ 15144-15145.)

19  
20 38. Under CEQA and the FPA, a project's significant effects must be evaluated and  
21 mitigated regardless whether the effects will arise elsewhere if the project does not go  
22 forward. (See CEQA Guidelines, §§ 15026.6, subd. (e)(3)(B); 15126-15126.4.)

23 39. The NTMP fails to identify, evaluate, and mitigate all of the project's significant  
24 environmental effects. For example, the NTMP fails to calculate or even estimate the  
25 project's greenhouse gas emissions. (CEQA Guidelines, § 15064; see newly promulgated  
26 Guidelines, § 15064.4, subd. (a).)

27 40. In response to public comments regarding this omission, CDF conceded that no  
28 such calculations were performed. It reasoned that they were not necessary, because



1 greenhouse gas emissions would not be avoided if the project were not approved; instead,  
2 they would be produced by other operations. Under CEQA and the FPA, a project's  
3 significant effects must be evaluated and mitigated regardless whether the effects will arise  
4 elsewhere if the project does not go forward.  
5

6 41. The NTMP states that the significance of the project's effects regarding greenhouse  
7 gas emissions may be measured according to the extent the project "could help or hinder  
8 attainment of the state's goals of reducing greenhouse gas emissions to 1990 levels by the  
9 year 2020 as stated in the Global Warming Solutions Act of 2006." The project  
10 concededly failed this test: During its first 20 years, the project shows a decline in carbon  
11 stocking, thus hindering the state's 2020 goal.

12 42. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially  
13 abused its discretion.  
14

#### 15 **Fourth Claim for Relief**

16 43. An NTMP must analyze the project's cumulative impacts. (Pub. Res. Code, §  
17 21080.5, subd. (d)(3)(A); Cal. Code Regs., tit. 14, §§ 896-898.2, 912.9, 1090;  
18 *Environmental Protection Information Center, Inc. v. Johnson (EPIC)* (1985) 170 Cal.  
19 App. 3d 604; see CEQA Guidelines, § 15130, subd. (b).)

20 44. Cumulative impacts are the incremental effects from multiple projects that combine  
21 to affect the environment. "The cumulative impacts from several projects is the change in  
22 the environment which results from the incremental impact of the project when added to  
23 other closely related, past, present, and reasonably foreseeable probable future projects."  
24 (Guidelines, § 15355, subd. (b).) Cumulative impacts are "two or more individual effects  
25 which, when considered together, are considerable or which compound or increase other  
26 environmental impacts...[they] can result from individually minor but collectively  
27 significant projects taking place over a period of time." (Guidelines, § 15355, subd. (b);  
28 *accord EPIC, supra*, 170 Cal.App.3d at p. 625.) Such incremental effects must be

1 analyzed whether they fall on-site or off-site. (E.g., *Friends of the Old Trees v. Department*  
2 *of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1396; Cal. Code Regs., tit. 14,  
3 § 912.9.)  
4

5 45. The NTMP fails to adequately consider cumulative impacts. It does not describe  
6 and analyze the incremental effects of related projects in combination with the incremental  
7 effects of the present project.

8 46. The plan contemplates scores of logging operations over the next 100 years. But it  
9 does not describe a single operation, including its location, size, sequence, silviculture,  
10 yarding method, whether there will be winter operations, or any other relevant information,  
11 let alone analyze how those operations may combine with other similar operations and  
12 projects to effect the environment.

13 47. Rather than identify and analyze the incremental effects of this project in  
14 combination with others, the NTMP concludes that standard mitigations will obviate such  
15 impacts. It identifies a resource, describes it, and then concludes that it will not be  
16 cumulatively impacted because of the Forest Practice Rules. This rationale, however, has  
17 been rejected as contrary to the concept of cumulative impacts. (*EPIC, supra*, 170  
18 Cal.App.3d 604.)  
19

20 48. The NTMP's failure to adequately consider incremental effects extends to  
21 numerous resources, including but not limited to, fisheries, wildlife, water quality, old  
22 growth, and greenhouse gas emissions.

23 49. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially  
24 abused its discretion.  
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WHEREFORE, Petitioners prays for judgment as follows:

1. For Writ of Mandate ordering CDF to set aside approval of NTMP 1-06NTMP-011 SON, based on its violations of CEQA, the FPA, and their regulations.
2. For a permanent injunction enjoining real party, its agents, employees, representatives, and all persons acting in concert or participating with it, from engaging in any activity, including timber harvesting, pursuant to NTMP 1-06NTMP-011 SON until it meets California statutes and regulations.
3. Alternatively, for a stay of CDF's decision approving the plan pending judgment pursuant to CCP, § 1094.5 (g).
4. For reasonable attorney's fees under California Code of Civil Procedure Section 1021.5.
5. For costs of suit.
6. For such other and further relief as the Court deems proper.

Dated: January \_\_\_\_, 2010

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PAUL V. CARROLL  
Attorney for Petitioners

1 **VERIFICATION**

2 I, Paul Carroll, declare as follows: I am an attorney admitted to practice before the  
3 courts of the State of California and have my office in Redwood City, County of San  
4 Mateo, California. I am the attorney for Petitioners Sierra Club and Bohemian Redwood  
5 Rescue Club and am authorized to file this Petition. Petitioners are unable to make the  
6 verification because they are absent from San Mateo County. For that reason I make this  
7 Verification on Petitioners' behalf.

8 I have read the foregoing petition and know the contents thereof. The same is true of  
9 my own knowledge, except as to those matters stated on information and belief, which I am  
10 informed and believe are true, and on that basis allege them to be true.

11 I declare under penalty of perjury that the foregoing is true and correct and that this  
12 verification was executed on January \_\_\_\_, 2010, in Redwood City, California.

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14 \_\_\_\_\_  
15 Paul Carroll  
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1 PROOF OF SERVICE

2 I am a citizen of the United States and a resident of the County of San Mateo. I am  
3 over the age of eighteen years and not a party to the within entitled action; my business  
4 address is: 1103 17<sup>th</sup> Avenue, Redwood City, CA 94063.  
5

6 On January 27, 2010, I served one true copy of PETITION FOR WRIT OF  
7 ADMINISTRATIVE MANDATE, PETITIONERS' NOTICE REGARDING  
8 PREPARATION OF ADMINISTRATIVE RECORD by placing a true copy thereof  
9 enclosed in a sealed envelope, and postage thereon fully prepaid, in the United States mail  
10 at Redwood City, California addressed as follows:  
11

12 Attorney General, Resources Div.  
13 455 Golden Gate Ave., Ste. 11000  
14 San Francisco, CA 94102

Bohemian Club  
624 Taylor Street  
San Francisco, CA 94102-1016

15 Attn: Ginevra Chandler, Esq.  
16 Cal. Department of Forestry  
17 P.O. Box 944246  
Sacramento, CA 94244-2460

18 I, Paul V. Carroll, declare, under penalty of perjury, that the foregoing is true and  
19 correct. Executed on January 27, 2010, at Redwood City, California.  
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