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

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

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

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2 10. The true names and capacities, whether individual, corporate, or otherwise, of
3 DOES I through X are unknown to Petitioners, who therefore sue said Respondents by
4 such fictitious names. Petitioners will seek leave to amend this petition when they have
5 been ascertained.

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

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

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

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

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

20 16. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure
21 1094.5; Public Resources Code sections 4514.5, 21168.5, and 21080.5(g).

22 17. Petitioners have performed all conditions precedent to the filing of this Petition by
23 raising issues known to them before CDF during the review process of the NTMP.
24 Petitioners requested that CDF not approve the NTMP, and have performed all conditions
25 precedent to the other causes of action.
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27 18. At all times mentioned herein, CDF has been able to deny the approval and
28 operation of the NTMP at issue. Despite such ability, and despite Petitioners' demand for

1 denial, CDF has failed and continues to fail to perform its duty to deny the approval and
2 operation of the plan.

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

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

12 **FIRST CAUSE OF ACTION (CEQA, FPA)**

13 **First Claim for Relief**

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

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

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2 23. The discussion of alternatives must include identification of the environmentally
3 superior alternative. If the environmentally superior alternative is the “no project”
4 alternative, the discussion shall also identify an environmentally superior alternative among
5 the other alternatives. (CEQA Guidelines, § 15126.6, subd. (e)(2).)

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

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

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

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

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.
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1 (CEQA Guidelines, § 15126.6, subd. (e)(3)(A)-(C).) The discussion claims that
2 “harvesting would be precluded.” Harvesting would *not* be precluded and no reason is
3 given why it would be. Elsewhere, CDF acknowledges that if the NTMP were not
4 approved, timber management and harvesting would continue in the Grove as it had in the
5 past—through timber harvest management plans.
6

7 30. The discussion of alternatives fails to identify the environmentally superior
8 alternative. Instead, it identifies the proposed project as environmentally superior. The
9 proposed project, however, is not an *alternative*. CEQA requires identification of the
10 environmentally superior alternative. (CEQA Guidelines, § 15126.6, subd. (e)(2).)
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12 31. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially
13 abused its discretion in approving the NTMP; the NTMP does not include an adequate
14 description, discussion, and analysis of alternatives to the project.
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16 **Second Claim for Relief**

17 32. Under CEQA, an environmental review document must include a description of the
18 “environmental setting” or “baseline” to assist in the determination whether an impact is
19 significant. (CEQA Guidelines, § 15125, subd. (a).) In some circumstances, the no project
20 alternative will be identical to the environmental setting that establishes the baseline.
(CEQA Guidelines, § 15126.6, subd. (e)(1).)
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22 33. Under CEQA, an agency cannot use an inflated baseline to minimize the significant
23 effects of a project. (E.g., *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno*
24 (2007) 150 Cal.App.4th 892.)
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26 34. The NTMP employs an incorrect baseline and violates these authorities. For
27 example, in evaluating greenhouse gas emissions, the NTMP establishes a baseline that
28 requires substantially *more* logging than the project as proposed, or than the no project
scenario. The correct baseline is either the no project scenario projected over the plan
horizon, which would involve less logging than the project as proposed; or the current

1 environmental setting projected over the plan horizon, which would involve no logging. In
2 either case, the correct baseline would involve significantly less logging than the NTMP's
3 inflated baseline.
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5 35. The NTMP also changes the baseline to avoid environmental analysis. For
6 example, it variously takes the position that the no project alternative would involve no
7 logging whatsoever; that the no project alternative would involve logging under the
8 previous regime/management plan; or that the no project alternative would involve
9 substantially more logging than the project as proposed. Accordingly, the NTMP's
10 baseline is incomplete, incorrect, and misleading in a material way.

11 36. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially
12 abused its discretion.
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14 **Third Claim for Relief**

15 37. An NTMP must identify, evaluate, and mitigate the possible significant
16 environmental impacts of the proposed project. (Pub. Res. Codes, 21080.5, subds.
17 (d)(2)(a), (d)(3)(a); see CEQA Guidelines, §§ 15126-15126.4; Cal. Code Regs., tit. 14,
18 896-898, 898.2, 1090.) The lead agency is required to conduct "a thorough investigation"
19 with respect to significant impacts and its conclusion must be based on substantial
20 evidence. (See Pub. Res. Codes, §§ 21168, 21168.5, 21082.2; CEQA Guidelines, §§
21 15144-15145.)

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

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

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2 40. In response to public comments regarding this omission, CDF conceded that no
3 such calculations were performed. It reasoned that they were not necessary, because
4 greenhouse gas emissions would not be avoided if the project were not approved; instead,
5 they would be produced by other operations. Under CEQA and the FPA, a project's
6 significant effects must be evaluated and mitigated regardless whether the effects will arise
7 elsewhere if the project does not go forward.

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

14 42. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially
15 abused its discretion.
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17 **Fourth Claim for Relief**

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

22 44. Cumulative impacts are the incremental effects from multiple projects that combine
23 to affect the environment. "The cumulative impacts from several projects is the change in
24 the environment which results from the incremental impact of the project when added to
25 other closely related, past, present, and reasonably foreseeable probable future projects."
26 (Guidelines, § 15355, subd. (b).) Cumulative impacts are "two or more individual effects
27 which, when considered together, are considerable or which compound or increase other
28 environmental impacts....[they] can result from individually minor but collectively

1 significant projects taking place over a period of time.” (Guidelines, § 15355, subd. (b);
2 accord *EPIC, supra*, 170 Cal.App.3d at p. 625.) Such incremental effects must be
3 analyzed whether they fall on-site or off-site. (E.g., *Friends of the Old Trees v. Department*
4 *of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1396; Cal. Code Regs., tit. 14,
5 § 912.9.)
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7 45. The NTMP fails to adequately consider cumulative impacts. It does not describe
8 and analyze the incremental effects of related projects in combination with the incremental
9 effects of the present project.

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

15 47. Rather than identify and analyze the incremental effects of this project in
16 combination with others, the NTMP concludes that standard mitigations will obviate such
17 impacts. It identifies a resource, describes it, and then concludes that it will not be
18 cumulatively impacted because of the Forest Practice Rules. This rationale, however, has
19 been rejected as contrary to the concept of cumulative impacts. (*EPIC, supra*, 170
20 Cal.App.3d 604.)
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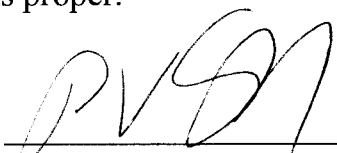
22 48. The NTMP’s failure to adequately consider incremental effects extends to
23 numerous resources, including but not limited to, fisheries, wildlife, water quality, old
24 growth, and greenhouse gas emissions.

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

- 3 1. For Writ of Mandate ordering CDF to set aside approval of NTMP 1-06NTMP-011
4 SON, based on its violations of CEQA, the FPA, and their regulations.
5
6 2. For a permanent injunction enjoining real party, its agents, employees,
7 representatives, and all persons acting in concert or participating with it, from engaging in
8 any activity, including timber harvesting, pursuant to NTMP 1-06NTMP-011 SON until it
9 meets California statutes and regulations.
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11 3. Alternatively, for a stay of CDF's decision approving the plan pending judgment
12 pursuant to CCP, § 1094.5 (g).
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14 4. For reasonable attorney's fees under California Code of Civil Procedure Section
15 1021.5.
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17 5. For costs of suit.
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19 6. For such other and further relief as the Court deems proper.

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Dated: January 27, 2010



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