

1 PAUL V. CARROLL/121369
2 *Attorney At Law*
3 1103 17th Avenue
4 Redwood City, California 94063
(650) 839-8644

5 Attorney for Petitioners
6 SIERRA CLUB, BOHEMIAN REDWOOD RESCUE CLUB

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

9
10 SIERRA CLUB, BOHEMIAN
11 REDWOOD RESCUE CLUB,
12 Petitioners,
13 v.
14 CALIFORNIA DEPARTMENT
15 OF FORESTRY AND FIRE
16 PROTECTION, and Does I
through X inclusive;

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

17 Respondents.

18 _____
/

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

21 Real Parties in Interest.
22 _____/

23 **INTRODUCTION**

24 1. On December 29, 2009, the California Department of Forestry and Fire
25 Protection (CDF) approved the Bohemian Club's nonindustrial timber management
26 plan (NTMP) for the Bohemian Grove, a mixed conifer forest of 2,500-plus acres near
27

1 the town of Monte Rio in Sonoma County. The NTMP will allow the Bohemian Club
2 to log the Grove for the next 100 years with limited environmental review and
3 regulatory oversight.

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

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

19 4. The NTMP's treatment of the "baseline" is no better. Under CEQA, a plan must
20 define the baseline, the reference against which the plan's impacts are measured. The
21 NTMP violated this requirement, because it changes the baseline to avoid
22 acknowledging adverse effects. Thus the NTMP defines the baseline as *more* logging
23 than the project as proposed as a way to argue that the project's greenhouse gas
24 emissions are insignificant. Elsewhere, it argues that the baseline is no logging
25 whatsoever as a way to dismiss the no project alternative. And elsewhere, it argues
26
27
28

1 that the baseline is the Grove’s previous logging regime as a way to defend one of its
2 alternatives.

3 5. In light of these and other violations of CEQA and the FPA, Sierra Club and the
4 Bohemian Redwood Rescue Club request the Court to set aside CDF’s approval of the
5 NTMP.
6

7 **GENERAL ALLEGATIONS**

8 6. Petitioner SIERRA CLUB is a non-profit corporation, organized under the laws
9 of the State of California, with its headquarters in San Francisco, California. The Club
10 is a national conservation organization with 1.3 million members. The general mission
11 of the Club includes the enjoyment, enhancement, protection, and preservation by all
12 lawful means of the forests, waters, wildlife, wilderness, and other natural and scenic
13 resources of the United States and the Earth in general. The Club and its members
14 believe that habitat alteration and elimination pose the greatest threats to the continued
15 well-being of healthy fish and wildlife populations. The Redwood Chapter of the
16 Sierra Club has approximately 9,000 members who reside in the north coast region of
17 California, including Sonoma County.
18

19 7. Petitioner BOHEMIAN REDWOODS RESCUE CLUB (BRRC) is a group of
20 Russian River residents, environmentalists and citizens from the Bay Area who came
21 together over environmental concerns regarding the Bohemian Club’s NTMP that
22 governs future management of the Club’s Bohemian Grove in Sonoma County. BRRC
23 seeks protection for old growth redwood and Douglas fir stands in the Bohemian
24 Grove, the development of a coherent plan for the restoration of old growth
25 characteristics, and genuine fire hazard reduction.
26
27
28

1 8. The personal and aesthetic interests of Petitioners and the persons associated
2 with them will be severely injured if logging pursuant to the NTMP as approved by
3 CDF is allowed to proceed as planned. Petitioners are within the class of persons
4 beneficially interested in and aggrieved by CDF's approval as alleged below.

5 Petitioners include individuals who expressed their concerns and objections to the
6 approval of the NTMP at CDF review team meetings and in correspondence to CDF.
7

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

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

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

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

20 13. The Bohemian Grove is located near the town of Monte Rio in Sonoma
21 County. According to CDF, the Bohemian Club's ownership comprises more than
22 2,500 acres, of which somewhat less than that amount is timberland.

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

24 15. A revised and final NTMP was issued in February 2009. Public comment was
25 taken until May 11, 2009. CDF issued its response to comments and approved the
26 NTMP on December 29, 2009.
27
28

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

3 17. Petitioners have performed all conditions precedent to the filing of this Petition
4 by raising issues known to them before CDF during the review process of the NTMP.
5 Petitioners requested that CDF not approve the NTMP, and have performed all
6 conditions precedent to the other causes of action.

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

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

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

19
20
21 **FIRST CAUSE OF ACTION (CEQA, FPA)**

22 **First Claim for Relief**

23 21. Under CEQA, CDF is required to consider a range of reasonable alternatives to
24 the proposed project. (Pub. Res. Code, §§ 21001, subd. (g); 21080.5, subds. (d)(2)(A)-
25 (d)(3)(A); CEQA Guidelines, § 15126.6, subd. (a).) The Forest Practice Act (FPA)
26 mandates the same. (Cal. Code Regs., tit. 14, §§ 895.1, 896, 898, 898.1, 1090.) In
27 addition, under the Forest Practice Act, CDF may not approve an NTMP that is based
28

1 upon insufficient information, or incomplete, incorrect, and misleading in a material
2 way. (Cal. Code Regs., tit. 14, § 898.2, subd. (c); 1090.)

3 22. A reasonable alternative is one that is feasible, less damaging, and meets the
4 basic objectives of the landowner. (CEQA Guidelines, § 15126.6, subds. (c), (f).) An
5 alternative is feasible even if it would impede to some degree the attainment of the
6 project objectives, or would be more costly. (CEQA Guidelines, § 15126.6, subd (b).)
7 The consideration of alternatives must be sufficiently detailed to provide
8 decisionmakers and the public with information to allow them to intelligently take
9 account of environmental consequences. (CEQA Guidelines, § 15126.6, subd (f).)
10

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

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

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

26 26. In addition, all of the alternatives considered were either more damaging and/
27 or infeasible, rather than less damaging and feasible, as CEQA requires.
28

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

7
8 28. CDF argues that it was entitled to consider a “more circumscribed” range of
9 alternatives because the NTMP was mitigated to avoid significant effects. This
10 reasoning is wrong as a matter of law and was expressly rejected in *Laurel Heights,*
11 *supra*, 47 Cal.3d 376, 401-402, and *Friends of the Old Trees v. Department of Forestry*
12 *& Fire Protection* (1997) 52 Cal.App.4th 1383, 1403. (See also Pub. Res. Code, §§
13 21002, 21002.1.)

14 29. The discussion of the no project alternative fails to describe what would be
15 reasonably expected to occur in the foreseeable future if the project were not approved.
16 (CEQA Guidelines, § 15126.6, subd. (e)(3)(A)-(C).) The discussion claims that
17 “harvesting would be precluded.” Harvesting would *not* be precluded and no reason is
18 given why it would be. Elsewhere, CDF acknowledges that if the NTMP were not
19 approved, timber management and harvesting would continue in the Grove as it had in
20 the past—through timber harvest management plans.

21 30. The discussion of alternatives fails to identify the environmentally superior
22 alternative. Instead, it identifies the proposed project as environmentally superior. The
23 proposed project, however, is not an *alternative*. CEQA requires identification of the
24 environmentally superior alternative. (CEQA Guidelines, § 15126.6, subd. (e)(2).)
25
26
27
28

1 substantially more logging than the project as proposed. Accordingly, the NTMP's
2 baseline is incomplete, incorrect, and misleading in a material way.

3 36. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially
4 abused its discretion.
5

6 **Third Claim for Relief**

7 37. An NTMP must identify, evaluate, and mitigate the possible significant
8 environmental impacts of the proposed project. (Pub. Res. Codes, 21080.5, subds. (d)
9 (2)(a), (d)(3)(a); see CEQA Guidelines, §§ 15126-15126.4; Cal. Code Regs., tit. 14,
10 896-898, 898.2, 1090.) The lead agency is required to conduct "a thorough
11 investigation" with respect to significant impacts and its conclusion must be based on
12 substantial evidence. (See Pub. Res. Codes, §§ 21168, 21168.5, 21082.2; CEQA
13 Guidelines, §§ 15144-15145.)

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

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

21 40. In response to public comments regarding this omission, CDF conceded that
22 no such calculations were performed. It reasoned that they were not necessary,
23 because greenhouse gas emissions would not be avoided if the project were not
24 approved; instead, they would be produced by other operations. Under CEQA and the
25 FPA, a project's significant effects must be evaluated and mitigated regardless whether
26 the effects will arise elsewhere if the project does not go forward.
27

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

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

9
10 47. Rather than identify and analyze the incremental effects of this project in
11 combination with others, the NTMP concludes that standard mitigations will obviate
12 such impacts. It identifies a resource, describes it, and then concludes that it will not
13 be cumulatively impacted because of the Forest Practice Rules. This rationale,
14 however, has been rejected as contrary to the concept of cumulative impacts. (*EPIC*,
15 *supra*, 170 Cal.App.3d 604.)

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

19 49. In light of the foregoing violations of CEQA and the FPA, CDF prejudicially
20 abused its discretion.
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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
5 Redwood Rescue Club and am authorized to file this Petition. Petitioners are unable to
6 make the verification because they are absent from San Mateo County. For that reason
7 I make this Verification on Petitioners' behalf.

8 I have read the foregoing petition and know the contents thereof. The same is true
9 of my own knowledge, except as to those matters stated on information and belief,
10 which I am 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.
13

14 _____
15 Paul Carroll
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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

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

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

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

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

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