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Via Facsimile and Mail

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

Re: 1-06NTMP-009 SON

Dear Ms. Markham:

I write on behalf of Friends of the Gualala River regarding the above-referenced NTMP. The plan violates the law on several grounds.

The NTMP Parcels Are Not Contiguous

The NTMP comprises three non-contiguous parcels. The westernmost parcel is almost a mile from the central parcel to the east. The central parcel in turn is several hundred feet from the easternmost parcel.

Under the Z'berg Nejedly Forest Practice Act of 1973, a NTMP must be comprised of a parcel or "contiguous parcels": " 'Nonindustrial timber management plan' means a management plan for nonindustrial timberlands with an objective of an uneven aged managed timber stand and sustained yield for each parcel or group of *contiguous* parcels meeting the requirements of section 4593.3." (Pub. Res. Code, § 4593.2, subd. (e), italics added.)

According to the courts, "contiguous" means touching. (E.g., *Sonora Elementary School District v. Tuolumne County Board of Education* (1966) 239 Cal.App.2d 824, 826-829; *San Dieguito Partnership v. City of San Diego* (1992) 7 Cal.App.4th 748, 757-758 & n. 9.) Moreover, the Legislature knows how to expand the definition of "contiguous" to mean "adjacent" or "close to" when it wants to. (E.g., Gov. Code, § 51104, subd. (b); *San Dieguito Partnership, supra*, 7 Cal.4th at p. 758, n. 8 ["Thus the Legislature is not using 'contiguous' in its commonly

understood sense as involving property that is touching or adjoining” in Gov. Code, § 66424.]

In this case, however, the Legislature has used “contiguous” in its ordinary sense, i.e., touching, without expanding that definition. (See Pub. Res. Code, § 4593.2, subd. (e).) Under the plain language of the FPA, an NTMP may consist only of a parcel or “contiguous parcels.” The parcels here are not contiguous; indeed, the westernmost parcel is not even “adjacent”—as the courts have defined that term.

In light of these authorities, the NTMP violates the law. It comprises three non-contiguous parcels, one of which cannot even be fairly characterized as adjacent.

The Owner Is Primarily Engaged in the Production of Wood Products

Under the FPA, the owner of timberland subject to an NTMP may not be “primarily engaged in the manufacture of forest products.” (See Pub. Res. Code, §§ 4593.2, subd. (b), 4593.3.) The NTMP violates this prohibition because it comprises timberland owners who are primarily engaged in the manufacture of forest products.

According to the NTMP, Raul Hernandez is an owner and part owner of several of the parcels. Hernandez is the founder of Old Growth Again Restoration Forestry (OGA), an enterprise devoted to forestry and to the manufacture of forest products, namely redwood furniture and lumber. (See www.oldgrowthagain.com.) In a December 8, 2004, article, Hernandez said that the manufacture and sale of redwood furniture has “now become our primary funding source.” (www.metroactive.com/papers/sonoma/12.08.04/oga-0450.html.) OGA and Hernandez are thus primarily engaged in the manufacture of forest products.

It seems clear that the NTMP will be devoted to OGA’s venture. Besides Hernandez, two of the additional parcel owners, Warren Linney and Terry Patten, are principals with OGA. (See www.oldgrowthagain.com/who.html.) OGA is also listed as the licensed timber operator for the NTMP.

In sum, the timberland owners of record are proxies for OGA, which is primarily engaged in the manufacture of forest products. Even if one cannot say that each of the timberland owners is primarily engaged, certainly Hernandez is. The NTMP thus violates the FPA. It comprises owners who are primarily engaged in the manufacture of forest products.

I note that the two laws being violated here are fundamental to the NTMP program. The limits that they impose are intended to protect nonindustrial timberland from aggressive logging by limiting the ability of investors to bring land under the umbrella of an NTMP. CDF must ensure that these laws are strictly

enforced.

Thank you for your consideration of this letter.

Very truly yours,

Paul V. Carroll