1	PAUL V. CARROLL/121369	
2	Attorney At Law	
3	5 Manor Place Menlo Park, California 94025	
4	(650) 322-5652	
5	Attorney for Petitioner	
6	FRIENDS OF THE GUALALA RIVER	
7	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
8	IN AND FOR THE COUNTY OF SONOMA	
9	FRIENDS OF THE GUALALA RIVER,	No.:
10	Dotitionan	PETITION FOR WRIT OF
11	Petitioner, v.	ADMINISTRATIVE MANDATE (CCF § 1094.5)
12	CALIFORNIA DEPARTMENT OF	8 1094.3)
13	FORESTRY AND FIRE	
14	PROTECTION, and Does I through X	
	inclusive;	
15 16	Respondents.	
	/	
17	RAUL HERNANDEZ, WARREN	
18	LINNEY, JOAN LINNEY, A. TERRY	
19	PATTEN, EMILY MARTIN, ROBERT	
20	MARTIN, and DOES XI through XX, inclusive,	
21	Real Parties in Interest.	
22	Real Farties III Interest.	
23	GENERAL ALLEGATIONS	
24	1 Friends of the Gualala Piver (FoGP) is a non-profit grassroots watershed	
25	1. Friends of the Gualala River (FoGR) is a non-profit, grassroots watershed	
26	protection association formed to share common concerns and research regarding the welfare	
27	of the Gualala River, its estuary and habitat. F	oGR's goal is to protect the Gualala River

watershed and the species that rely on it. FoGR is composed of persons whose personal

interests will be injured if the Nonindustrial Timber Management Plan 1-06NTMP-009 SON (NTMP) as approved by the California Department of Forestry and Fire Protection (CDF) is allowed to proceed as planned. FoGR brings this petition on behalf of all others similarly situated who are too numerous to be named and brought before this Court as Petitioner. FoGR is within the class of persons beneficially interested in, and aggrieved by, CDF's approval as alleged below. FoGR voiced objection to the NTMP prior to its approval by CDF.

- 2. The land subject to the NTMP is located between one-quarter mile north, northeast and one mile northwest of the Town of Annapolis in Sonoma County, California.
 - 3. Respondent CDF is an agency of the State of California.
- 4. The true names and capacities, whether individual, corporate, or otherwise, of DOES I through X are unknown to Petitioner, who therefore sue said Respondents by such fictitious names. Petitioner will seek leave to amend this petition when they have been ascertained.
- 5. Real party in interest Raul Hernandez is listed in the NTMP as a plan submitter and one of the timber and timberland owners of three of the four parcels making up the NTMP.
- 6. Real parties in interest Robert Martin and Emily Martin are listed in the NTMP as plan submitters, and timber and timberland owners of one of the parcels.
- 7. Real parties in interest Warren Linney and Joan Linney are listed in the NTMP as plan submitters, and timber and timberland owners.
- 8. Real party in interest A. Terry Patten is listed in the NTMP as a plan submitter, and timber and timberland owner.
- 9. The true names and capacities, whether individual, corporate, or otherwise, of DOES XI through XX, are unknown to Petitioner who therefore sues said real parties in interest by such fictitious names. Petitioner will seek leave to amend this petition when they have been ascertained.

- 10. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure 1094.5; California Public Resources Code sections 4514.5, 21168.5, and 21080.5, subdivision (g).
- 11. Petitioner has performed all conditions precedent to the filing of this Petition by raising issues known to it before CDF during the review process of the NTMP. Petitioner requested that CDF not approve the NTMP, and has performed all conditions precedent to the other causes of action.
- 12. At all times mentioned herein, CDF has been able to deny the approval of the NTMP at issue. Despite such ability, and despite Petitioner's demand for denial, CDF has failed and continues to fail to perform its duty to deny the approval.
- 13. If CDF is not ordered to withdraw its approval of the NTMP, and real parties in interest are not enjoined from conducting logging operations, including the removal of downed trees, the land, aquatic resources, wildlife habitat, and environmental values subject to and affected by the NTMP will suffer immediate, irreparable, and permanent damage.
- 14. If CDF is not ordered to withdraw its approval of the NTMP, and if its decision is not stayed pursuant to CCP section 1094.5, subdivision (g), the land, aquatic resources, wildlife habitat, and environmental values subject to and affected by the NTMP will suffer immediate, irreparable, and permanent damage.
- 15. Real parties will not be prejudiced by an injunction, or alternatively issuance of a stay pending judgment because they will have future opportunities for their project if its operations conform to the law.

FIRST CAUSE OF ACTION (Forest Practice Act) First Claim for Relief

16. Under the Z'berg Nejedly Forest Practice Act of 1973 (FPA), an 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.)

- 17. Thus, under the plain language of the FPA, an NTMP may only apply to a parcel or contiguous parcels.
- 18. The NTMP here comprises four parcels, only two of which are contiguous. 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 two contiguous easternmost parcels.
- 19. The NTMP thus violates the FPA as a matter of law and CDF prejudicially abused its discretion by approving the plan.

Second Claim for Relief

- 20. Under the FPA, an owner of timberland who has an approved nonindustrial timber management plan may not be "primarily engaged in the manufacture of forest products." (Pub. Res. Code, § 4593.2, subd. (b).)
- 21. Real party Raul Hernandez is the founder and a principal with Old Growth Again Restoration Forestry, Inc., which is listed as a for-profit corporation with the California Secretary of State. Real parties Warren Linney and A. Terry Patten are also principals and investors in Old Growth Again Restoration Forestry, Inc.
- 22. Old Growth Again Restoration Forestry, Inc. is in the business of manufacturing furniture from redwood trees obtained in part from lands owned by Hernandez, his partners, and investors.
- 23. As such, Petitioner maintains that Hernandez is "primarily engaged in the manufacture of forest products" within the meaning of the FPA. (Pub. Res. Code, § 4593.2, subd. (b).)

24. Accordingly, Hernandez is prohibited from having "an approved nonindustrial timber management plan." (Pub. Res. Code, § 4593.2, subd. (b).) CDF prejudicially abused its discretion by approving the plan.

SECOND CAUSE OF ACTION (California Environmental Quality Act) First Claim for Relief

- 25. CDF is required to respond in writing to significant environmental issues raised by members of the public. (Pub. Res. Code, § 21080.5, subd. (d)(2)(D).) Such response must include a detailed and reasoned analysis of the concern raised and why it was rejected.
- 26. Members of the public expressed their concern to CDF that real party Hernandez and his partners and investors were engaged in the practice of removing downed trees from their properties to supply Old Growth Again Restoration Forestry, Inc. for furniture manufacture. Such downed trees are considered a vital component of forest ecosystems, and their removal can cause adverse environmental impacts.
- 27. In its response, among other things, CDF conceded that Hernandez had been removing downed trees pursuant to the exemption for dead, dying, and diseased trees set forth in FPA Rule 1038, subdivision (b). (Cal. Code Regs., tit. 14, § 1038, subd. (b).) In addition, CDF noted that the NTMP contains an enforceable standard for the preservation of large woody debris and downed trees.
- 28. Petitioner contends that CDF response is inadequate for several reasons. First, the exemption for dead, dying, and diseased trees is not intended to apply to downed logs and large woody debris. If it were, at the allowable rate of ten percent removal per year, large woody debris would be rapidly eliminated from the environment, causing significant and cumulative adverse ecological consequences. Second, the protection standard that CDF cites applies only to stands 1 and 2; it does not appear to apply to stands 3 and 4.

29. Accordingly, CDF prejudicially abused its discretion, because it's response to public comment falls short of a reasoned analysis required by CEQA.

Second Claim for Relief

- 30. Members of the public expressed their concern that real party Hernandez through the for-profit corporation Old Growth Again Restoration Forestry, Inc. was "primarily engaged in the manufacture of forest products."
- 31. In response, CDF stated that Old Growth Again Restoration Forestry, Inc. was not one of the timberland owners on the NTMP; that none of the timberland owners qualify as "industrial" timberland owners; and that the timberland owners were "small-scale artisan furniture craftsman."
- 32. Petitioner contends that CDF's response was inadequate on numerous grounds. The fact that Old Growth Again Restoration Forestry, Inc. is not listed as an owner on the NTMP does not respond to the question whether Hernandez is primarily engaged in the manufacture of forest products. The fact that none of the timberland owners qualifies as an "industrial" timberland owner begs the question. The relevant question under the Forest Practice Act is whether a timberland owner is primarily engaged in the manufacture of forest products, not whether his operations are "nonindustrial" or "industrial"—terms that CDF concedes are not defined by the Forest Practice Act. Finally, CDF's response that the timberland owners are small-scale artisan craftsmen is belied by the record. Rather, most of the real parties are principals and/or investors in a for-profit corporation that hires others to construct its products.
- 33. Accordingly, CDF prejudicially abused its discretion, because it's response to public comment falls short of a reasoned analysis required by CEQA. (Pub. Res. Code, § 21080.5, subd. (d)(2)(D).)

Third Claim for Relief

- 34. Under CEQA, CDF is required to identify, analyze, and mitigate significant and cumulative adverse impacts on the environment. (Pub. Res. Code, § 21080.5, subd. (d)(3)(A).) If feasible mitigations are not available, CDF should so state and deny the project or issue a statement of overriding considerations why the project should go forward despite its negative environmental consequences. (Pub. Res. Code, § 21081, subd. (b).)
- 35. Based on CDF's response to comment, it appears that real parties will need to use Little Creek Road to haul their harvested timber. Little Creek Road is a continuing source of deleterious amounts of sedimentation caused in part by heavy truck and equipment traffic.
- 36. CDF refused to acknowledge that the real parties' use of Little Creek Road and its production of sedimentation to the watershed constituted a potential cumulative impact, reasoning that the real parties do not own or control the road or its use, and have no legal right to improve it.
- 37. However, real parties inability to mitigate an impact caused by their project does not lessen CDF's obligation under CEQA to acknowledge and analyze the impact.
- 38. Accordingly, CDF prejudicially abused its discretion, because it failed to analyze an unmitigated impact of the project, and because it approved the project in the absence of an overriding statement of considerations. (Pub. Res. Code, §§ 21080.5, subd. (d)(3)(A), 21081, subd. (b).)
- 39. In addition, to the extent CDF concludes that use of Little Creek Road will not cause and adverse significant or cumulative impact, its conclusion is not supported by substantial evidence as required by CEQA. (Pub. Res. Code, §§ 21168, 21168.5.)
- 40. CDF also prejudicially abused its discretion because it failed to adequately respond to comments regarding real parties' use of Little Creek Road. (Pub. Res. Code, § 21080.5, subd. (d)(2)(D).)

- 41. CDF acknowledges that large woody debris and downed logs constitute an important environmental resource, particularly for wildlife. It further concedes that Hernandez has been removing large woody debris and downed logs from his ownerships pursuant to an exemption.
- 42. CDF contends that the removal of additional amounts of large woody debris will not result in a significant or cumulative adverse impact because the NTMP contains a prescriptive standard limiting the amount of large woody debris and down logs that can be removed. However, that standard does not appear to apply to stands 3 and 4.
- 43. Accordingly, CDF's conclusion that the removal of large woody debris from stands 3 and 4 will not cause an adverse environmental impact is not supported by substantial evidence as required by CEQA. (Pub. Res. Code, §§ 21168, 21168.5.)

WHEREFORE, Petitioner prays for judgment as follows:

- 1. For Writ of Mandate ordering CDF to set aside its approval of 1-06NTMP-009 SON as required by the FPA and CEQA and their regulations.
- 2. For a permanent injunction enjoining real parties in interest, their agents, employees, representatives, and all persons acting in concert or participating with them, from engaging in any activity, including timber harvesting and removal, pursuant to CDF's approval of the NTMP until those activities have been lawfully approved under California statutes and regulations.
- 3. Alternatively, for a stay of CDF's decision approving the plan pending judgment pursuant to Code of Civil Procedure section 1094.5, subdivision (g).
- 4. For reasonable attorney's fees under California Code of Civil Procedure Section 1021.5.
 - 5. For costs of suit.

VERIFICATION

I, Paul Carroll, declare as follows: I am an attorney admitted to practice before the courts of the State of California and have my office in Menlo Park, County of San Mateo, California. I am the attorney for Petitioner FRIENDS OF THE GUALALA and am authorized to file this Petition. Petitioner are unable to make the verification because they are absent from San Mateo County. For that reason I make this Verification on Petitioner' behalf.

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

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on September 18, 2007, Menlo Park, California.

Paul Carroll

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: 5 Manor Place, Menlo Park, CA 94025.

On September 18, 2007, I served one true copy of PETITION FOR WRIT OF ADMINISTRATIVE MANDATE, by placing a true copy thereof enclosed in a sealed envelope, and postage thereon fully prepaid, in the United States mail at Menlo Park, California addressed as follows:

Attorney General, Resources Div.	Cal. Dept. of Forestry and Fire Protection
455 Golden Gate Ave., Ste. 11000	P.O. Box 944246
San Francisco, CA 94102	Sacramento, CA 94244-2460
Robert and Emily Martin	A. Terry Patten
3045 Monte Rosa Avenue	621 Blackstone
Las Vegas, Nevada 89120	San Rafael, CA 94903
Raul Hernandez	Warren and Joan Linney
P. O. Box 42	7899 St. Helena Rd.
Annapolis, CA 95412	Santa Rosa, CA 95404

I, Paul V. Carroll, declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 18, 2007, at Menlo Park, California.