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5 Attorney for Petitioners
6 SIERRA CLUB, FRIENDS OF THE GUALALA RIVER,

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF SONOMA

9 SIERRA CLUB, FRIENDS OF THE
10 GUALALA RIVER,

11 Petitioners,
12 v.

No.:

PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE (CCP
§ 1094.5)

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

16 Respondents.

17 _____ /
18 STIG HANSEN, JENNIFER
19 WHISTLER, EMILY MARTIN,
20 ROBERT MARTIN, ROGER
21 ROESSLER, ZAPAR, INC., and DOES
XI through XX, inclusive,

22 Real Parties in Interest.
23 _____ /

24 **INTRODUCTION**

25 1. In October 2004, the California Department of Forestry (CDF) approved three
26 projects converting timberland to vineyards and adopted a negative declaration for each.
27 All three conversions are located just north of Annapolis in Sonoma County, and all three
28 drain into the Little Creek watershed. They are the Hansen/Whistler timberland

1 conversion (TCP 04-530), the Sleepy Hollow timberland conversion (04-531), and the
2 Roessler timberland conversion (TCP 04-533).

3
4 2. Members of the public, including a number of scientists, submitted evidence
5 demonstrating that the conversions would have potential significant and cumulative
6 impacts on the environment. Among other things, the evidence showed that the
7 conversions have the potential to adversely impact native plants, terrestrial wildlife,
8 anadromous salmonids (coho salmon and steelhead trout); and aquatic habitat, by among
9 other things, increasing sedimentation, depleting ground water, reducing base flows,
10 increasing temperatures, increasing runoff and peak flows, and degrading terrestrial
11 habitat.

12 3. Under the Californian Environmental Quality Act (CEQA), the lead agency must
13 prepare an environmental impact report (EIR) for a project when there is substantial
14 evidence that the project *may* have an adverse impact on the environment. The evidence
15 in this case goes well beyond this low threshold. CDF violated the law in failing to
16 require an EIR for each of the conversions.

17 4. The Petitioners request this Court to issue a writ of mandate setting aside CDF's
18 approvals of the three conversions and its adoption of a negative declaration for each.
19

20 **GENERAL ALLEGATIONS**

21 5. Petitioner SIERRA CLUB is a non-profit corporation, organized under the laws of
22 the State of California, with its headquarters in San Francisco, California. The Club is a
23 national conservation organization with nearly 600,000 members. The general mission of
24 the Club includes the enjoyment, enhancement, protection, and preservation by all lawful
25 means of the forests, waters, wildlife, wilderness, and other natural and scenic resources
26 of the United States and the Earth in general. The Club and its members believe that
27 habitat alteration and elimination pose the greatest threats to the continued well-being of
28 healthy fish and wildlife populations. The Redwood Chapter of the Sierra Club has

1 approximately 9,000 members who reside in the north coast region of California,
2 including Sonoma County. The Sierra Club is composed of persons whose personal
3 interests will be injured if the conversions as approved by CDF are allowed to proceed as
4 planned. Sierra Club brings this petition on behalf of all others similarly situated who are
5 too numerous to be named and brought before this Court as petitioners. Sierra Club is
6 within the class of persons beneficially interested in, and aggrieved by, CDF's approvals
7 as alleged below. Sierra Club voiced objection to the timberland conversions prior to
8 their approval by CDF.
9

10 6. Friends of the Gualala River (FoGR) is a non-profit, grassroots watershed
11 protection association formed to share common concerns and research regarding the
12 welfare of the Gualala River, its estuary and habitat. FoGR's goal is to protect the
13 Gualala River watershed and the species that rely on it. FoGR is composed of persons
14 whose personal interests will be injured if the conversions as approved by CDF are
15 allowed to proceed as planned. FoGR brings this petition on behalf of all others similarly
16 situated who are too numerous to be named and brought before this Court as petitioners.
17 FoGR is within the class of persons beneficially interested in, and aggrieved by, CDF's
18 approvals as alleged below. FoGR voiced objection to the timberland conversions prior to
19 their approval by CDF.
20

21 7. Respondent CDF is an agency of the State of California.

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

26 9. Real parties in interest Stig Hansen and Jennifer Whistler are listed in the initial
27 study for the Hansen/Whistler conversion as the project's sponsors.
28

1 10. The Hansen/Whistler conversion is located about one mile north of Annapolis,
2 California along the divide between Buckeye Creek and its tributary Little Creek in
3 northwestern Sonoma County. The project is about 16 acres in size and drains into Little
4 and Buckeye Creeks. The notice of decision approving Hansen/Whistler and its negative
5 declaration was filed on October 4, 2004.
6

7 11. Real parties in interest Robert Martin and Emily Martin are listed in the initial
8 study for the Sleepy Hollow conversion as the project's applicants.

9 12. This Sleepy Hollow conversion is located about one-half mile north of Annapolis,
10 California. It drains into Little Creek. The conversion is 25 acres in size. CDF approved
11 the conversion and adopted a negative declaration for it on or about October 14, 2004.

12 13. Real party in interest Roger Roessler is listed in the initial study for the Roessler
13 conversion as the project's sponsor, and is listed as president of real party in interest
14 Zapar, Inc., the timber owner of record.

15 14. The Roessler conversion is about one-half mile north of Annapolis, California. It
16 drains into Little Creek. The project is approximately 8 acres in size. CDF approved the
17 conversion and adopted a negative declaration for it on or about October 14, 2004.

18 15. The true names and capacities, whether individual, corporate, or otherwise, of
19 DOES XI through XX, are unknown to Petitioners who therefore sue said real parties in
20 interest by such fictitious names. Petitioners will seek leave to amend this petition when
21 they have been ascertained.
22

23 16. Jurisdiction of this court is invoked pursuant to California Code of Civil
24 Procedure 1094.5; California Public Resources Code sections 21167, 21168, and
25 21168.5.

26 17. Petitioners have performed all conditions precedent to the filing of this Petition
27 by raising issues known to them before CDF during the review process of the
28

1 conversions. Petitioners requested that CDF not approve the conversions, and have
2 performed all conditions precedent to the other causes of action.

3
4 18. At all times mentioned herein, CDF has been able to deny the approvals of the
5 conversions at issue, and to require an EIR for each of them. Despite such ability, and
6 despite Petitioners' demands for denial, CDF has failed and continues to fail to perform
7 its duty to deny the approvals and require an EIR for each of them.

8
9 19. If CDF is not ordered to withdraw its approvals of the conversions, and real
10 parties in interest are not enjoined from converting timberlands to vineyards, the land,
11 aquatic resources, wildlife habitat, and environmental values subject to and affected by
12 the conversions will suffer immediate, irreparable, and permanent damage.

13
14 20. If CDF is not ordered to withdraw its approval of the conversions, and if its
15 decisions are not stayed pursuant to CCP section 1094.5, subdivision (g), the land,
16 aquatic resources, wildlife habitat, and environmental values subject to and affected by
17 the conversions will suffer immediate, irreparable, and permanent damage.

18
19 21. Real parties will not be prejudiced by an injunction, or alternatively issuance of a
20 stay pending judgment because they will have future opportunities for their projects if
21 such operations conform to the law.

22 **FIRST CAUSE OF ACTION (Hansen/Whistler Conversion)**

23
24 22. Pursuant to Public Resources Code section 21100 and CEQA Guidelines 15064,
25 an agency must prepare an environmental impact report whenever there is substantial
26 evidence in the record or it can be fairly argued based on such evidence that a project
27 may have significant impacts on the environment. (Pub. Res. Code, § 21100; Cal. Code
28 Regs., tit. 14, § 15064.)

29
30 23. Under CEQA Guidelines 15065, an agency must prepare an EIR if a project's
31 effects are individually limited, but cumulatively significant. (Cal. Code Regs., tit. 14, §
32 15064.)

1 24. There is substantial evidence in the record for the Hansen/Whistler conversion
2 that the project will have significant adverse impacts on the environment in a number of
3 ways, including but not limited to the following:
4

- 5 a. The project will cause increased runoff into local watercourses, increase
6 sedimentation, degrade local watercourses and aquatic habitat, and harm
7 anadromous salmonids.
- 8 b. The project will deplete groundwater supplies, which, among other things, may
9 reduce flows in local watercourses, degrade aquatic habitat, and harm anadromous
10 salmonids.
- 11 c. The project will result in increased traffic over roads in very poor condition,
12 increase sedimentation, degrade local watercourses and aquatic habitat, and harm
13 anadromous salmonids.
- 14 d. The project will result in increased temperatures in local watercourses, degrade
15 aquatic habitat, and harm anadromous salmonids.
- 16 e. The project will cause an increase in peak flows, increase sedimentation, degrade
17 local watercourses and aquatic habitat, and harm anadromous salmonids.
- 18 f. The project will deplete habitat for the northern spotted owl, listed as threatened
19 under the federal Endangered Species Act.
- 20 g. The project may degrade wetlands in the form of seeps, springs, or near-surface
21 groundwater.
- 22 h. The project may lead to fertilizer transport and degrade local watercourses and
23 aquatic habitat.
- 24 i. The project may impact sensitive plant species.

25 25. There is also substantial evidence in the record that the Hansen/Whistler
26 conversion will have incremental effects that when combined with the incremental effects
27 of other related projects will be cumulatively considerable. The potential cumulative
28

1 impacts identified in the record include, but are not limited to, loss of timberland and
2 wildlife habitat, increased sedimentation in local watercourses, increased runoff and peak
3 flows, increased temperatures in local watercourses, reduction in base flow regimes,
4 depletion of ground water, degradation of aquatic habitat, and increased peril to
5 anadromous salmonids.
6

7 26. Because the record contains substantial evidence that the Hansen/Whistler
8 conversion may have significant and cumulative impacts on the environment, CDF
9 should have required preparation of an EIR. CDF violated the law and abused its
10 discretion in approving the conversion and adopting a mitigated negative declaration.
11 (Pub. Res. Code, §§ 21082.2, 21100.)

12 27. Petitioners have information and on that basis believe that during review of the
13 negative declaration, CDF allowed the plan proponent to add a hydrology study to the
14 administrative record without notice to the public. Petitioners have information and on
15 that basis believe that other documents containing substantive information about the
16 project and its potential environmental effects were similarly added to the record without
17 public notice. CEQA mandates that the public receive notice of the negative declaration
18 and “all documents referenced in the...negative declaration.” (Pub. Res. Code, § 21092,
19 subd. (b)(1).) CEQA also requires that the public and other agencies be provided a
20 reasonable opportunity to comment on the negative declaration. (Pub. Res. Code, §
21 21091, subd. (b).)
22

23 28. Petitioners have information and on that basis believe that CDF violated these
24 provisions because it considered and relied on documents, such as the hydrology report,
25 that were added to the record without public notice. The lack of notice in turn deprived
26 the public of a meaningful opportunity to comment on the hydrology report and the other
27 documents that may been added to the record without notice. (Pub. Res. Code, §§ 21091,
28 subd. (b); 21092, subd. (b)(1).)

1 29. Under CEQA, a lead agency may not hide behind a negative declaration's failure
2 to undertake an analysis of a project's potential significant and cumulative impacts.
3 (E.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Members of
4 the public, including scientists, provided substantial evidence that the negative
5 declaration failed to undertake the studies necessary to support its conclusions, relating to
6 a number of issues, including but not limited to, increased water temperatures, reduced
7 ground water flows, reduced base flows, increased peak flows, cumulative loss of
8 wildlife and aquatic habitats, and increase in sedimentation to local watercourses.
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10 **SECOND CAUSE OF ACTION (Sleepy Hollow Conversion)**

11 30. Pursuant to Public Resources Code section 21100 and CEQA Guidelines 15064,
12 an agency must prepare an environmental impact report whenever there is substantial
13 evidence in the record or it can be fairly argued based on such evidence that a project
14 may have significant impacts on the environment. (Pub. Res. Code, § 21100; Cal. Code
15 Regs., tit. 14, § 15064.)
16

17 31. Under CEQA Guidelines 15065, an agency must prepare an EIR if a project's
18 effects are individually limited, but cumulatively significant. (Cal. Code Regs., tit. 14, §
19 15064.)

20 32. There is substantial evidence in the record for the Sleepy Hollow conversion that
21 the project will have significant adverse impacts on the environment in a number of
22 ways, including but not limited to the following:

- 23 a. The project will cause increased runoff into local watercourses, increase
24 sedimentation, degrade local watercourses and aquatic habitat, and harm
25 anadromous salmonids.
- 26 b. The project will deplete groundwater supplies, which, among other things, may
27 reduce flows in local watercourses, degrade aquatic habitat, and harm anadromous
28 salmonids.

- 1 c. The project will result in increased traffic over roads in very poor condition,
2 increase sedimentation, degrade local watercourses and aquatic habitat, and harm
3 anadromous salmonids.
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5 d. The project will result in increased temperatures in local watercourses, degrade
6 aquatic habitat, and harm anadromous salmonids.
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8 e. The project will cause an increase in peak flows, increase sedimentation, degrade
9 local watercourses and aquatic habitat, and harm anadromous salmonids.
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11 f. The project will deplete habitat for the northern spotted owl, listed as threatened
12 under the federal Endangered Species Act.
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14 g. The project may degrade wetlands in the form of seeps, springs, or near-surface
15 groundwater.
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17 h. The project may lead to fertilizer transport and degrade local watercourses and
18 aquatic habitat.
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20 i. The project may impact sensitive plant species.

21 33. There is also substantial evidence in the record that the Sleepy Hollow conversion
22 will have incremental effects that when combined with the incremental effects of other
23 related projects will be cumulatively considerable. The potential cumulative impacts
24 identified in the record include, but are not limited to, loss of timberland and wildlife
25 habitat, increased sedimentation in local watercourses, increased runoff and peak flows,
26 increased temperatures in local watercourses, reduction in base flow regimes, depletion
27 of ground water, degradation of aquatic habitat, and increased peril to anadromous
28 salmonids.

34. Because the record contains substantial evidence that the Sleepy Hollow
conversion may have significant and cumulative impacts on the environment, CDF
should have required preparation of an EIR. CDF violated the law and abused its

1 discretion in approving the conversion and adopting a mitigated negative declaration.
2 (Pub. Res. Code, §§ 21082.2, 21100.)

3 35. Under CEQA, a lead agency may not hide behind a negative declaration's failure
4 to undertake an analysis of a project's potential significant and cumulative impacts.
5 (E.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Members of
6 the public, including scientists, provided substantial evidence that the negative
7 declaration failed to undertake the studies necessary to support its conclusions, relating to
8 a number of issues, including but not limited to, increased water temperatures, reduced
9 ground water flows, reduced base flows, increased peak flows, cumulative loss of
10 wildlife and aquatic habitats, and increase in sedimentation to local watercourses.

12 **THIRD CAUSE OF ACTION (Roessler Conversion)**

13 36. Pursuant to Public Resources Code section 21100 and CEQA Guidelines 15064,
14 an agency must prepare an environmental impact report whenever there is substantial
15 evidence in the record or it can be fairly argued based on such evidence that a project
16 may have significant impacts on the environment. (Pub. Res. Code, § 21100; Cal. Code
17 Regs., tit. 14, § 15064.)

18 37. Under CEQA Guidelines 15065, an agency must prepare an EIR if a project's
19 effects are individually limited, but cumulatively significant. (Cal. Code Regs., tit. 14, §
20 15064.)

21 38. There is substantial evidence in the record for the Roessler conversion that the
22 project will have significant adverse impacts on the environment in a number of ways,
23 including but not limited to the following:

- 24 a. The project will cause increased runoff into local watercourses, increase
25 sedimentation, degrade local watercourses and aquatic habitat, and harm
26 anadromous salmonids.
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- 1 b. The project will deplete groundwater supplies, which, among other things, may
2 reduce flows in local watercourses, degrade aquatic habitat, and harm anadromous
3 salmonids.
4
5 c. The project will result in increased traffic over roads in very poor condition,
6 increase sedimentation, degrade local watercourses and aquatic habitat, and harm
7 anadromous salmonids.
8
9 d. The project will result in increased temperatures in local watercourses, degrade
10 aquatic habitat, and harm anadromous salmonids.
11
12 e. The project will cause an increase in peak flows, increase sedimentation, degrade
13 local watercourses and aquatic habitat, and harm anadromous salmonids.
14
15 f. The project will deplete habitat for the northern spotted owl, listed as threatened
16 under the federal Endangered Species Act.
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18 g. The project may degrade wetlands in the form of seeps, springs, or near-surface
19 groundwater.
20
21 h. The project may lead to fertilizer transport and degrade local watercourses and
22 aquatic habitat.
23
24 i. The project may impact sensitive plant species.

25 39. There is also substantial evidence in the record that the Roessler conversion will
26 have incremental effects that when combined with the incremental effects of other related
27 projects will be cumulatively considerable. The potential cumulative impacts identified
28 in the record include, but are not limited to, loss of timberland and wildlife habitat,
increased sedimentation in local watercourses, increased runoff and peak flows, increased
temperatures in local watercourses, reduction in base flow regimes, depletion of ground
water, degradation of aquatic habitat, and increased peril to anadromous salmonids.

40. Because the record contains substantial evidence that the Roessler conversion
may have significant and cumulative impacts on the environment, CDF should have

1 required preparation of an EIR. CDF violated the law and abused its discretion in
2 approving the conversion and adopting a mitigated negative declaration. (Pub. Res.
3 Code, §§ 21082.2, 21100.)
4

5 41. Under CEQA, a lead agency may not hide behind a negative declaration's failure
6 to undertake an analysis of a project's potential significant and cumulative impacts.
7 (E.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Members of
8 the public, including scientists, provided substantial evidence that the negative
9 declaration failed to undertake the studies necessary to support its conclusions, relating to
10 a number of issues, including but not limited to, increased water temperatures, reduced
11 ground water flows, reduced base flows, increased peak flows, cumulative loss of
12 wildlife and aquatic habitats, and increase in sedimentation to local watercourses.

13 WHEREFORE, Petitioners prays for judgment as follows:

14 1. For Writ of Mandate ordering CDF to set aside its approvals of TCP 04-530, TCP
15 04-533, and TCP 04-531, and its adoption of negative declarations for each of them, and
16 to prepare EIRs for each project as required by CEQA and its regulations.

17 2. For a permanent injunction enjoining real parties in interest, their agents,
18 employees, representatives, and all persons acting in concert or participating with them,
19 from engaging in any activity, including timber harvesting and timberland conversion,
20 pursuant to CDF's approval of their respective conversions until those activities have
21 been lawfully approved under California statutes and regulations.
22

23 3. Alternatively, for a stay of CDF's decision approving the plans pending judgment
24 pursuant to Code of Civil Procedure section 1094.5, subdivision (g).

25 4. For reasonable attorney's fees under California Code of Civil Procedure Section
26 1021.5.

27 5. For costs of suit.

28 6. For such other and further relief as the Court deems proper.

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Dated: October ____, 2004

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 Menlo Park, County of San Mateo,
4 California. I am the attorney for Petitioners SIERRA CLUB, FRIENDS OF THE
5 GUALALA RIVER 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 I
7 make this 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
10 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 October 30, 2004, Menlo Park, California.

13
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: 5 Manor Place, Menlo Park, CA 94025.
5

6 On October 30, 2004, I served one true copy of PETITION FOR WRIT OF
7 ADMINISTRATIVE MANDATE and 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
10 mail at Menlo Park, California addressed as follows:

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

California Department of Forestry and Fire
Protection
1416 9th Street, Rm. 1505
14 Sacramento, CA 94244-2460

15 I, Paul V. Carroll, declare, under penalty of perjury, that the foregoing is true and
16 correct. Executed on October 30, 2004, at Menlo Park, California.
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