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Attorneys for Plaintiffs
CALIFORNIA OAK FOUNDATION and
MOUNTAIN LION FOUNDATION

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

CALIFORNIA OAK FOUNDATION, a non-profit California
corporation; MOUNTAIN LION FOUNDATION, a non-
profit California corporation

Plaintiffs,

vs.

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE
PROTECTION, ANDREA TUTTLE, in her official capacity
as Director of the California Department of Forestry and
Fire Protection and CALIFORNIA STATE BOARD OF
FORESTRY, and DOES 1 - 15,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE
RELIEF

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2 Plaintiffs respectfully allege:

3 **I. GENERAL ALLEGATIONS**

4 1. Plaintiff California Oak Foundation is a nonprofit tax-exempt corporation dedicated
5 to protecting and perpetuating California's native oak woodlands and the wildlife habitat
6 and watershed benefits they provide. The California Oak Foundation, a statewide
7 membership organization, provides technical assistance and educational material to
8 those engaged in protecting oak woodlands and planting oak trees. The California Oak
9 Foundation also works to encourage adoption of state and local laws protecting oaks.
10 The conservation, restoration and education programs of the Foundation serve citizens in
11 all areas - rural, suburban, urban. Members of the California Oak Foundation are
12 interested in the aesthetic enjoyment and continued productivity of the land, in the
13 preservation of the genus Quercus, and of the wildlife and associated recreational values
14 accompanying the preservation of oaks in California and in environmental protection.

15 2. Plaintiff Mountain Lion Foundation is a nonprofit, tax-exempt corporation organized
16 under the laws of the State of California for the purpose of protecting wildlife and their
17 habitat in California. Mountain Lion Foundation has over 20,000 members, contributors,
18 and supporters who live in California. Mountain Lion Foundation's members are
19 committed to the protection of California's diverse wildlife species and the natural
20 landscapes that are essential to their survival. Mountain Lion Foundation was a principal
21 sponsor of the California Wildlife Protection Act of 1990 (Proposition 117), enacted by the
22 voters in June 1990. This Act established the Habitat Conservation Fund, a \$30 million
23 annual fund for the acquisition of wildlife habitat, including native oak woodlands,
24 necessary to protect deer and mountain lions. Mountain Lion Foundation members are
25 interested in preserving the diverse habitats which support biological diversity in
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2 California, including native oak woodlands.

3 3. Defendant ANDREA TUTTLE is director of the California Department of Forestry
4 and Fire Protection. Defendant CALIFORNIA DEPARTMENT OF FORESTRY and FIRE
5 PROTECTION is an agency of the State of California located in Sacramento, California.
6 Defendants CALIFORNIA DEPARTMENT OF FORESTRY and FIRE PROTECTION and
7 ANDREA TUTTLE are hereinafter referred to as "CDF."

8 4. Defendant STATE BOARD OF FORESTRY (hereinafter "Board") is an agency of
9 the State of California located in Sacramento, California. The Board is part of CDF and
10 consists of nine members appointed by the Governor and subject to confirmation by the
11 Senate. Public Resources Code § 730.

12 5. The true names and capacities, whether individual, corporate or otherwise, of
13 DOES 1 through 15, are unknown to Plaintiffs who therefore sue said defendants by such
14 fictitious names and will seek leave to amend this Complaint for Declaratory Relief when
15 they have been ascertained. Plaintiffs are informed and believe and therefore allege that
16 each of the defendants designated herein as a Doe is legally responsible in some manner
17 for the events and happenings referred to herein.

18 6. At all times relevant to this action, each and every defendant was the agent and
19 employee of each and every other defendant and in doing the acts herein alleged was
20 acting within the course and scope of such agency and employment, and with the
21 consent, permission, and authorization of each of the remaining defendants. All actions
22 of each defendant herein alleged were ratified and approved by the officers and
23 managing agents of every other defendant.

24 7. Defendants CDF and Board have established and are implementing unlawful
25 policies with respect to the harvest of oak woodlands on private land in California by
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2 failing to enforce the Timber Harvest Plan and Timberland Conversion Permit
3 requirements of the Forest Practice Act.

4 8. Plaintiffs' members and staff regularly use, and intend to continue to use, lands in
5 California on which grow California oak species affected by the activities of the
6 Defendants named and challenged herein. Plaintiffs' members and staff have
7 researched, studied, observed, and sought protection for groves of California oak species
8 on land affected by Defendants' policies. Plaintiffs' members and staff derive scientific,
9 recreational, health, conservation, spiritual and aesthetic benefits from the protection and
10 preservation of California oak species. Plaintiffs bring this action both on behalf of
11 themselves and their adversely affected members.

12 9. Plaintiffs' members and staff rely on the CDF and the Board to comply fully with the
13 California Forest Practice Act, which requires (1) that logging on private land requires
14 prior approval by CDF of a Timber Harvest Plan, and (2) that logging for the purpose of
15 converting timberlands to a non-timber use requires prior approval by the Board of a
16 Timberland Conversion Permit. Plaintiffs' members and staff spend time in areas where
17 the logging of timberlands containing California oak species is occurring without
18 environmental review under the Timber Harvest Plan or Timberland Conversion Permit
19 process. These activities directly and immediately affect the environmental values in
20 which the Plaintiffs are interested. Plaintiffs' members and staff have been, are being,
21 and unless the relief requested is granted, will continue to be directly adversely affected
22 and injured by these activities.

23 10. Plaintiffs' members and staff have also suffered procedural and informational
24 injuries connected to their substantive conservation, recreational, scientific, and aesthetic
25 interests, from the Defendants' violations of California Forest Practice Act. Plaintiffs'
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members and staff rely on the environmental review process established by the California Legislature to protect the environment from degradation inflicted by public agencies and their permittees. The Timber Harvest Plan review process provides state and local agency decision-makers, Plaintiffs, and the public with essential information regarding the effects of permitted actions on the environment. The actions of Defendants have led to, are leading to, and will continue to lead to further harmful environmental impacts that could be mitigated or avoided if the Defendants complied with the mandatory requirements and prohibitions of the California Forest Practice Act. Plaintiffs have no other adequate remedy at law, making injunctive relief necessary and appropriate.

11. Jurisdiction of this Court is invoked pursuant to California Code of Civil Procedure §1060.

12. Oak woodlands occur throughout California and provide necessary habitat for wildlife, including sensitive wildlife species, as well as aesthetic and recreational enjoyment to citizens of the state. Widespread clearing of oak woodlands in California causes serious adverse effects on the environment, including loss of wildlife habitat, loss of endangered or sensitive species and biodiversity, changes in microclimate, erosion from steep slopes and sedimentation of streams and rivers.

13. The state's only regulatory tool for protecting the environment from adverse impacts associated with timber harvesting is the Forest Practice Act ("FPA") (at Public Resources Code § 4512 *et. seq.*), and its implementing regulations at Title 14, Code of California Regulations, § 895.1 *et. seq.* ("Rules".) The FPA is implemented by the CDF. Under the FPA and its accompanying regulations, timber harvesting operations in this state must be conducted pursuant to a Timber Harvesting Plan submitted to and approved by CDF. (Public Resources Code § 4581; 14 Cal. Code Reg. § 898 *et seq.*, §

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2 1031 et. seq.)

3 14. The Timber Harvest Plan process substitutes for the environmental review process
4 under the California Environmental Quality Act ("CEQA") (commencing with Section
5 21000 of the Public Resources Code), because the timber harvesting regulatory program
6 has been certified pursuant to Public Resource Code § 21080.5. 14 Cal. Code Reg. §
7 896. (See *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th
8 105, 113 and *Sierra Club v. State Board of Forestry* (1984) 7 Cal.4th 1215, 1229-1230.)
9 As a result, the Timber Harvest Plan process is designed to meet several environmental
10 objectives including the protection and preservation of fish and wildlife, watershed
11 integrity, aesthetic enjoyment and recreational opportunities for present and future
12 generations. (See Public Resources Code § 4512, 4513).

13 15. The FPA requires a Timber Harvest Plan to be submitted and approved by CDF
14 prior to the start of "timber operations" on private "timberlands" in the state of California.

15 Public Resources Code § 4581 states:

16 No person shall conduct timber operations unless a timber harvesting plan prepared by a
17 registered professional forester has been submitted for such operations to the department
18 pursuant to this article. (emphasis added).

19 16. "Timber operations" is defined by reference to two different kinds of "commercial"
20 activities: 1) logging to sell or exchange timber; and 2) converting "timberland" to other
21 land uses, as follows:

22 "Timber operations" means the cutting or removal or both of timber or other solid
23 wood forest products, including Christmas trees, from timberlands for commercial
24 purposes, together with all the work incidental thereto, including, but not limited to,
25 construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings,
26 skid trails, beds for the falling of trees, fire hazard abatement, and site preparation that
27 involves disturbance of soil or burning of vegetation following timber harvesting activities
28 conducted after January 1, 1988, but excluding preparatory work such as tree marking,
surveying, or road flagging. "Commercial purposes" includes (1) the cutting or removal of
trees which are processed into logs, lumber, or other wood products and offered for sale,
barter, exchange, or trade, or (2) the cutting or removal of trees or other forest products
during the conversion of timberlands to land uses other than the growing of timber which

1 are subject to the provisions of Section 4621, including, but not limited to, residential or
2 commercial developments, production of other agricultural crops, recreational
3 developments, ski developments, water development projects, and transportation projects.
4 Removal or harvest of incidental vegetation from timberlands, such as berries, ferns,
5 greenery, mistletoe, herbs, and other products, which action cannot normally be expected to
6 result in a threat to forest, air, water, or soil resources, does not constitute timber
7 operations. Public Resources Code § 4527 (emphasis added).

8 17. The cutting or removal of oak trees which are processed into logs, lumber, or other
9 wood products and offered for sale, barter, exchange, or trade, constitutes "commercial"
10 timber operations requiring that CDF approve a Timber Harvest Plan prior to
11 commencement of the timber operations.

12 18. The harvesting of oak woodlands for purposes of converting "timberlands" to non-
13 timber land uses constitutes "commercial" timber operations requiring that CDF approve a
14 Timber Harvest Plan prior to commencement of the timber operations, and requiring that
15 CDF approve a Timberland Conversion Permit pursuant to Pub. Res. Code § 4621 prior
16 to commencement of the timber operations.

17 19. "Timberlands" are defined as follows:

18 "Timberland" means land, other than land owned by the federal government and
19 land designated by the board as experimental forest land, which is available for, and
20 capable of, growing a crop of trees of any commercial species used to produce lumber and
21 other forest products, including Christmas trees. Commercial species shall be determined
22 by the board on a district basis after consultation with the district committees and others.
23 Public Resources Code § 4526 (emphasis added.)

24 20. CDF and the Board, as a matter of departmental policy, fail to require Timber
25 Harvest Plans for timber operations involving the removal of oak trees even when the
26 land to be converted is "available for, and capable of, growing a crop of trees of any
27 commercial species used to produce lumber and other forest products," as "timberlands"
28 are defined under Public Resources Code § 4526.

29 21. CDF and the Board, as a matter of departmental policy, fail to require Timberland
30 Conversion Permits for timber operations involving the removal of oak trees even when

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2 the land to be converted is "available for, and capable of, growing a crop of trees of any
3 commercial species used to produce lumber and other forest products," as "timberlands"
4 are defined under Public Resources Code § 4526.

5 22. CDF has established a policy of not assessing whether land growing non-
6 commercial species of timber is "available for, and capable of, growing a crop of trees of
7 any commercial species," as "timberlands" are defined under Public Resources Code §
8 4526. Instead, CDF has in effect exempted, without statutory or regulatory authority, an
9 entire category of "timberlands" from environmental review under the Forest Practice Act
10 and Forest Practice Rules.

11 23. Many oak woodlands occur on "timberlands," as defined under Public Resources
12 Code § 4526 because they are lands "available for, and capable of, growing a crop of
13 trees of any commercial species used to produce lumber and other forest products." As a
14 result of the CDF's and the Board's failure to require Timber Harvest Plans and
15 Timberland Conversion Permits for the logging or conversion of oak woodlands or to
16 assess whether such lands are available for and capable of growing commercial species,
17 oak woodlands are being cleared without any environmental review by CDF and/or the
18 Board.

19 24. CDF and the Board are legally responsible for enforcing both the Timber Harvest
20 Plan and conversion permit requirements of the Forest Practice Act and their failure to
21 enforce these requirements with respect to clearing oak woodlands is illegal.

22 25. An actual and present controversy has arisen and now exists between Plaintiffs
23 and Defendants CDF and the Board concerning Defendants' pattern, practice and policy
24 of failing to enforce the Timber Harvest Plan and Timber land Conversion Permit
25 requirements of the Forest Practice Act with respect to timber operations on oak
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woodlands.

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WHEREFORE, Plaintiffs pray for judgment as follows:

26. For a declaration that Defendants CDF and the Board have a policy of failing to enforce the Timber Harvest Plan and Timber land Conversion Permit requirements of the Forest Practice Act with respect to timber operations on oak woodlands.

27. For a permanent injunction requiring Defendants CDF and the Board to discontinue this unlawful policy and institute a new policy in compliance with the Forest Practice Act to review the clearing of oak woodlands and other non-commercial timber species on timberlands under the Timber Harvest Plan and Timberland Conversion Permit review process.

28. For reasonable attorneys' fees under California Code of Civil Procedure section 1021.5.

29. For costs of suit.

30. For such other and further relief as the court deems proper

DATED: September 5, 2000

LAW OFFICE OF J. WILLIAM YEATES

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By: _____

Thomas N. Lippe
Attorneys for Plaintiffs

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