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17 CALIFORNIA OAK FOUNDATION and
18 MOUNTAIN LION FOUNDATION

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

21 CALIFORNIA OAK FOUNDATION, a non-profit)
22 California corporation; MOUNTAIN LION)
23 FOUNDATION, a non-profit California)
24 corporation)
25 Plaintiffs,)
26 vs.)
27 CALIFORNIA DEPARTMENT OF FORESTRY)
28 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. 314859

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Date: May 24, 2001
Time: 9:30 a.m.
Room 301

Filing Date: September 5, 2000

Trial Date: August 6, 2001

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs California Oak Foundation and Mountain Lion Foundation (“Plaintiffs”) bring this motion for summary judgment on their Complaint for Declaratory and Injunctive Relief against Defendants’ California Department of Forestry (“CDF”) and California State Board of Forestry (“Board”). Plaintiffs request that this Court issue a Declaratory Judgment that Defendants’ exclusion of oak trees from the definition of commercial species in Forest Practice Rule 895.1 unlawfully exempts timber operations on oak woodlands from regulation under the Timber Harvest Plan and Timberland Conversion Permit requirements of the Forest Practice Act.^{1/}

^{1/}The Z' berg-Nejedley Forest Practice Act of 1973 (Public Resources Code §§ 4511 *et seq*; hereinafter the "Forest Practice Act" or "Act") provides a "comprehensive system of regulation and use of all timberlands" in the state. Public Resources Code ("Pub. Res. Code") § 4513. To implement the Act, the Board has adopted the Forest Practice Rules, which are codified at Title 14, California Code of Regulations (“CCR”), § 895 *et seq*.

1 Plaintiffs challenge the Board's wholesale exemption of the logging of oak trees on
2 millions of acres of oak woodlands^{1/} in California from the Timber Harvest Plan and Timberland
3 Conversion Permit requirements of the Z'berg Nejedly Forest Practice Act, at Public Resources
4 Code § 4511 et. seq. This exemption has "impaired the scope" of the Act; therefore it is void.
5 *Environmental Protection Information Center v. Department of Forestry and Fire Protection*
6 (1996) 43 Cal. App. 4th 1011, 1022 ("the first task of the reviewing court is to decide that the
7 agency reasonably interpreted its legislative mandate, as regulations that alter or amend the
8 statute or impair its scope are void. This standard of review is one of respectful nondeference");
9 *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384,
10 391 ("if the Court determines that the regulation at issue has, in effect, 'alter[ed] or amend[ed]
11 the statute or enlarg[ed] or impair[ed] its scope,' it must be declared void").

12 Understanding how the Board's definition of "commercial species" at Rule 895.1
13 exempts oak woodland logging from the Act requires a description of several related provisions
14 of the Forest Practice Act. First and foremost, the Act requires private landowners to submit
15 and obtain CDF's approval of a Timber Harvest Plan prior to the start of "timber operations" on
16 private land in the state. Public Resources Code § 4581 ("No person shall conduct timber
17 operations unless a timber harvesting plan prepared by a registered professional forester has
18 been submitted for such operations to the department pursuant to this article." (emphasis
19 added).) CDF's process for approving Timber Harvest Plans is a certified regulatory program
20 pursuant to the California Environmental Quality Act ("CEQA").^{1/} Therefore, the timber harvest
21 plan is a document that functions as the equivalent of an environmental impact report under

22 ^{2/}Oak woodlands may be generally defined as forestlands in which the tree species are primarily
23 composed of oaks, in the genus *Quercus*. Researchers have identified several different oak woodland
24 types in California that have been exempted from regulation under the Forest Practice Act. These
25 include valley oak woodland, blue oak woodland, blue oak-foothill (or gray) pine woodland and coastal
oak woodland. (See Plaintiffs' First Request for Judicial Notice ("Pls. 1st RJN"), Ex. 19, pp. 9-17. See also
Pls. 1st RJN, Ex. 8, pp. 31-50 (setting forth different ecotypes.))

26 ^{3/}CEQA is codified at Public Resources Code § 21000 et. seq. Public Resources Code § 21080.5
27 sets forth the requirements for certified regulatory programs under CEQA. CEQA Guideline § 15251
28 lists all programs currently certified pursuant to Public Resources Code § 21080.5. The CEQA
Guidelines are regulations adopted by the Secretary of the California Resources Agency to implement
CEQA and are codified at Title 14, Code of California Regulations, § 15000 et. seq.

1 CEQA. *Sierra Club v. State Board of Forestry* (1994) 7th Cal.4th 1215, 1230-1231.

2 Second, the Act requires that any person intending to conduct timber operations for
3 purposes of converting timberlands to non-timber land uses must obtain CDF's approval of a
4 Timberland Conversion Permit pursuant to Public Resources Code § 4621 prior to
5 commencement of the timber operations. Unlike the Timber Harvest Plan approval programs,
6 the Timberland Conversion Permit program is not a certified regulatory program under CEQA.
7 Therefore, for timberland conversion permits CDF follows the usual CEQA process of preparing
8 an initial study, followed by either a negative declaration or an environmental impact report. Pub.
9 Res. Code, §21080(a), CEQA Guidelines §§15268, 15060, 15063, 15070, 15081. (*See also*
10 **Exhibit 1 attached to the Declaration of Michael W. Graf in**
11 **Support of Plaintiffs' Motion for Summary Judgment ("Graf Decl.")**,
12 p. 73:8-11)

13 "Timber operations" are defined by reference to two key terms in the Act: "commercial
14 purposes" and "timberlands:"

15 "Timber operations" means the cutting or removal or both of timber or other solid wood
16 forest products, including Christmas trees, from timberlands for commercial purposes,
17 together with all the work incidental thereto, including, but not limited to, construction and
18 maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails,
19 beds for the falling of trees, fire hazard abatement, and site preparation that involves
20 disturbance of soil or burning of vegetation following timber harvesting activities
21 conducted after January 1, 1988, but excluding preparatory work such as tree marking,
22 surveying, or road flagging. "

19 Public Resources Code § 4527 (emphasis added).

21 "Commercial purposes" is defined as including two types of activities: logging to sell or
22 exchange timber and converting "timberland" to other land uses:

23 (1) the cutting or removal of trees which are processed into logs, lumber, or other wood
24 products and offered for sale, barter, exchange, or trade, or (2) the cutting or removal of
25 trees or other forest products during the conversion of timberlands to land uses other than

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1 the growing of timber which are subject to the provisions of Section 4621, including, but
2 not limited to, residential or commercial developments, production of other agricultural
3 crops, recreational developments, ski developments, water development projects, and
4 transportation projects.

5 *Id.*

6 "Timberlands" are defined as:

7 "... land ... which is available for, and capable of, growing a crop of trees of any
8 commercial species used to produce lumber and other forest products, including
9 Christmas trees. Commercial species shall be determined by the board on a district
10 basis after consultation with the district committees and others.

11 Public Resources Code § 4526 (emphasis added.)

12 The Board of Forestry is charged with adopting regulations governing the conduct of
13 timber operations and the criteria for CDF's approval of Timber Harvest Plans and Timberland
14 Conversion Permits. Pub. Res. Code §4551.^{1/} In addition, pursuant to section 4526 of the Act,
15 the Board has adopted a rule defining commercial species. This definition establishes two
16 "groups" of commercial tree species: Group A and Group B commercial species. See Title 14,
17 CCR § 895.1, Definition of "commercial species". Under Rule 895.1, Group A species consist
18 of conifer species (e.g. redwood, Douglas fir, etc.) that are considered "commercial" under all
19 circumstances. Group B consists of a few conifer species and numerous hardwood species,
20 including two species of oak.^{1/} Under Rule 895.1, group B oak species are "commercial
21 species" only in the limited circumstance where they are "found on lands where the species in
22 group A are now growing naturally or have grown naturally in the recorded past."

23 In addition, and more important for this case, the Board's commercial species definition
24 fails to include, as either Group A or Group B species, numerous oak species that comprise
25 millions of acres of oak woodlands in California. (See Plaintiffs' Separate Statement of
26 Undisputed Facts ("Pl. Sep. St."), Fact 1).^{1/} In fact, the Board has given a term to oak

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28 ^{4/}This rulemaking process is also a certified regulatory program pursuant to CEQA. 14 Cal. Code
Reg. § 15251.

^{5/} The oak (*Quercus*) species included in group B are California Black oak
(*Quercus kelloggii*), and Oregon white oak (*Quercus garryana*). These species are occasional
in, and often absent from, oak woodland environments. (See Pls. 1st RJN, Ex. 8, pp. 40-45).

^{6/}These include valley oak (*Quercus lobtata*), blue oak (*Quercus douglasii*), coast live oak (*Quercus
agrifolia*) interior live oak (*Quercus wislizenii*), canyon live oak (*Quercus chrysolepis*), and Engelman

1 woodlands that do not contain "commercial species" as defined in Rule 895.1: they are
2 characterized as "hardwood rangelands." (See e.g., Pls. 1st RJN, Ex. 12, p. 5 ("conversion of
3 'hardwood rangelands' is having the largest impact on sustainability of resource values.") As a
4 result of the Board's definition of commercial species, owners of oak woodlands are not
5 currently required to submit and obtain CDF's approval of a Timber Harvest Plan or Timberland
6 Conversion Permit prior to logging. (Pl. Sep. St., Fact 2).

7 Thus, the Board has created a massive exemption from the permit requirements of the
8 Forest Practice Act. This exemption is not within the Board's authority for three reasons.

9 First, where legislation includes specific statutory exemptions, an administrative agency
10 may not create additional exemptions from the statute. See e.g., *Sierra Club v. Board of*
11 *Forestry* (1994) 7 Cal.4th 1215, 1230; *Wildlife Alive v. Chickering* (1978) 18 Cal. 3d 190, 195;
12 *Environmental Protection Information Center v. Department of Forestry and Fire Protection* ,
13 *supra*, 43 Cal. App. 4th at 1022. In this case, the Forest Practice Act, at Public Resources
14 Code § 4584 states a number specific exemptions from the Timber Harvest Plan requirement,
15 including the cutting or removing trees for utility lines right of way, cutting or removal of dead,
16 dying or diseased trees, or the one-time conversion of less than three acres to a non-timber use.
17 See also Pub. Res. Code § 4527 (exemption for removal of "incidental vegetation" that would
18 "not normally pose a threat to forest, air, water, or soil resources.") Under the case law cited
19 above, the Board's addition of another exemption to this list is in excess of its authority.

20 Second, the Board's definition of commercial species "impairs the scope" of the Act;
21 therefore it is void. *Environmental Protection Information Center v. Department of Forestry*
22 *and Fire Protection, supra*; *Association for Retarded Citizens v. Dept. of Developmental*
23 *Services, supra*.

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oak (*Quercus engelmannii*). (See Pls. 1st RJN, Ex. 8, pp. 33-50).

1 Third, the legislative grant of authority to the Board, in Public Resources Code §4526, to
2 define "commercial species," cannot be interpreted to grant the Board unfettered authority to
3 determine the scope and applicability of the Act. Instead, an analysis of the structure,
4 substantive provisions, and purposes of the Act demonstrate that the Board's authority to define
5 commercial species is limited by 1) whether a tree species is harvested for commercial
6 purposes, and 2) whether such harvesting has the potential for significant adverse impacts on
7 the forest resources to be protected under the Act. This construction of the Act is consistent with
8 the case law discussed in points one and two above, and with the legislative intent expressed in
9 the Act. It is undisputed that oak trees on oak woodlands are harvested for commercial
10 purposes (Pl. Sep. St., Fact 3) and that such harvesting has the potential for significant adverse
11 impacts on forest resources (Pl. Sep. St., Fact 4). Therefore, the Board's exclusion of this
12 harvesting from the regulatory scope of the Act is unlawful.

13 In enacting the Forest Practice Act, the Legislature declared that:
14 the forest resources and timberlands of the state are among the most valuable of the
15 natural resources of the state and that there is great concern throughout the state relating
16 to their utilization, restoration, and protection.

17 Pub. Res. Code § 4512(a). By excluding oaks occurring on oak woodlands from the definition
18 of "commercial species," the Board's regulations exclude from regulation under the Act a huge
19 category of "forest resources and timberlands" which are regularly harvested for "commercial
20 purposes" under the Act and the harvesting of which adversely affects forest resources and the
21 environment. The Forest Practice Act does not, however, exclude these tree species or these
22 areas from the scope of its coverage. Indeed, there is no dispute that oak woodlands are "forest
23 -quality timber, recreational opportunities, and
24 aesthetic enjoyment" while "providing watershed protection and maintaining fisheries and
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1 wildlife” that the Legislature intended to protect by enacting the Forest Practice Act See Pub.
2 Res. Code § 4512(b).

3 The Legislature specifically listed the types of “commercial” activities that would be
4 exempted from the THP requirement. Pub. Res. Code § 4527 exempts the following activities
5 from its definition of commercial timber operations:

6 Removal or harvest of incidental vegetation from timberlands, such as berries, ferns,
7 greenery, mistletoe, herbs, and other products, which action cannot normally be expected
to result in a threat to forest, air, water, or soil resources.

8 Pub. Res. Code § 4512. Thus, the Legislature's intent is clear: to allow exemptions for specific
9 activities, even if they are commercial in purpose, only where there is no possibility of adverse
10 environmental impacts. It is undisputed that commercial harvesting of oak trees in California has
11 the potential to threaten forest, air, water and soil resources (Sep. St., Fact No. 4). Thus, the
12 Board's exemption of oak woodland harvesting from the permit requirements of the Act is
13 inconsistent with the express purpose of the Act: “to create and maintain an effective and
14 comprehensive system of regulation and use of all timberlands so as to assure that . . . the goal
15 of maximum sustained production of high-quality timber products is achieved while giving
16 consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries,
17 regional economic vitality, employment, and aesthetic enjoyment” (Pub. Res. Code § 4513), and
18 to “encourage prudent and responsible forest resource management calculated to serve the
19 public's need for timber and other forest products, while giving consideration to the public's need
20 for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and
21 future generations.” Pub. Res. Code § 4512(c).

22 Defendants are aware of their responsibility to protect oak woodlands under the Forest
23 Practice Act, but decided in 1987 to pursue a non-regulatory approach consisting of research,
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1 education and monitoring. (See Pls. 1st RJN, Ex. 7 p. 10.) As a result, Defendants exert no
2 regulatory authority over the commercial harvesting of oak woodlands for firewood and wood
3 products and conversion of oak woodlands to non-forest uses such as agricultural vineyards.
4 The Forest Practice Act, however, requires Timber Harvest Plans or Timberland Conversion
5 Permits for such “commercial” timber operations. Plaintiffs thus seek declaratory relief from this
6 Court that Defendants’ policy of exempting this category of logging from these permit
7 requirements is unlawful. See *Californians for Native Salmon etc. Assn. v. Department of*
8 *Forestry* (1990) 221 Cal. App. 3d 1419 (declaratory relief action is proper to challenge unlawful
9 agency policy).

10 II. FACTUAL AND LEGAL BACKGROUND

11 A. BACKGROUND ON FOREST PRACTICE ACT

12 The state’s only regulatory tool for protecting the environment from adverse impacts
13 associated with timber harvesting is the Forest Practice Act (Pub. Res. Code §4512 *et. seq.*),
14 and its implementing regulations at Title 14, California Code of Regulations, § 895.1 *et. seq.*
15 (“Forest Practice Rules”). In enacting the Forest Practice Act, the Legislature declared:

16 (a) that the forest resources and timberlands of the state are among the most valuable of
17 the natural resources of the state and that there is great concern throughout the state
18 relating to their utilization, restoration, and protection.

19 (b) that the forest resources and timberlands of the state furnish high-quality timber,
20 recreational opportunities, and aesthetic enjoyment while providing watershed protection
21 and maintaining fisheries and wildlife.

22 (c) ...the policy of this state to encourage prudent and responsible forest resource
23 management calculated to serve the public's need for timber and other forest products,
24 while giving consideration to the public's need for watershed protection, fisheries and
25 wildlife, and recreational opportunities alike in this and future generations

1 The key element of the “comprehensive system of regulation” envisioned by the Forest
2 Practice Act to protect forest resources is the requirement that an applicant submit a Timber
3 Harvest Plan ("THP") to CDF for approval prior to conducting timber operations. Pub. Res.
4 Code § 4581.^{1/} The Timber Harvest Plan process is designed to meet several environmental
5 objectives including the protection and preservation of fish and wildlife, watershed integrity,
6 aesthetic enjoyment and recreational opportunities for present and future generations. See Pub.
7 Res. Code §§ 4512, 4513, 4581.

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^{1/}Public Resources Code § 4581 states:

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

A THP is an informational and analytical report, and a plan of operations, intended to ensure that timber harvesting is conducted in conformance with all rules and regulations. The minimum contents of a timber harvesting plan are set forth in Pub. Res. Code § 4582.

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1 Upon submission of a THP by an applicant seeking to harvest timber, CDF must review
2 the THP to determine whether the proposed timber harvesting complies with the Act, with the
3 Forest Practice Rules (at 14 C.C.R. § 895.1 *et seq.*) promulgated under the Act (Pub. Res.
4 Code § 4582.7) and with applicable portions of the California Environmental Quality Act
5 (“CEQA”). See Pub. Res. Code §§ 21000 *et seq.*; *Sierra Club v. Board of Forestry, supra*, 7
6 Cal. 4th at 1228-1229. In addition, a THP is reviewed by other resource management agencies
7 such as the California Department of Fish and Game, the California Regional Water Quality
8 Control Board and the county planning agency. Pub. Res. Code § 4582.6. Further, the public
9 must be provided an opportunity to review and comment on the THP (*Id.*). CDF is required to
10 consider the recommendations and mitigation measures made by other agencies and input
11 from the public, and to respond to those comments. Pub. Res. Code §4582.7. If, after review of
12 the THP and consideration of the other agencies' and public's comments, CDF determines that
13 the THP does not conform to all of the applicable rules and regulations, it must reject the THP
14 (*Id.*).^{1/}

15 The Timber Harvest Plan process substitutes for the environmental review process under
16 CEQA because the timber harvesting regulatory program has been certified pursuant to Public
17 Resource Code § 21080.5. 14 Cal. Code Reg. § 896. See *Mountain Lion Foundation v. Fish*
18 *and Game Commission* (1997) 16 Cal.4th 105, 113; *Sierra Club v. State Board of Forestry,*
19 *supra*, 7 Cal.4th at 1229-1230. In addition to preparing THPs for projects to assess
20 environmental impacts, CDF must also comply with the general policy goals of CEQA. *Sierra*
21 *Club v. State Board of Forestry, supra*, 7 Cal. 4th at pp. 1228, 1230-1231; *EPIC v. Johnson*

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23 ^{8/} The THP process also includes a post-harvest report (Pub. Res. Code §4585) and a
24 compliance inspection by CDF (Pub. Res. Code §4586), and a requirement that a harvested area be
“stocked” -- revegetated with trees (Pub. Res. Code §4587 and 4561 *et seq.*)

1 (1985) 170 Cal. App. 3d 604, 620-621.^{1/}

2 **B. IMPORTANCE OF OAK WOODLANDS IN CALIFORNIA**

3 Oak woodlands occur throughout California and provide necessary habitat for wildlife,
4 including sensitive wildlife species, as well as aesthetic and recreational enjoyment to citizens of
5 the state. Over the last decades, however, oak woodlands, referred to by Defendants as
6 "hardwood rangelands," have been increasingly disappearing due to harvesting for firewood or
7 wood products, and due to conversion to non-forest land uses such as agriculture.

8 **1. The Benefits of Oak Woodlands to Wildlife**

9 Numerous studies conducted by Defendants CDF and the Board have established that
10 hardwood ecosystems support an unusually high amount of wildlife, approximately 331 breeding
11 species, the largest number of any habitat type in California. (See Pls. 1st RJN, Ex. 4, pp. 2-3,
12 34). As noted by Defendants' own documents:

13 These habitats support a rich wildlife fauna because they are complex and diverse, with
14 many plant species and layers, providing many habitats and niches. This layering, or
15 "vertical edge," is the most important element contributing to the diversity of these
hardwood communities. [] Gophers, moles, and mushrooms occupy the subsurface layer;
grasses, forbs, duff, mulch, and litter clothe the forest floor and support mice, towhees,

16 ^{2/}These include general CEQA directives that an agency consider the "cumulative impacts" of its
17 project approvals, (*Laupenheimer v. State of California* (1988) 200 Cal. App. 3d 440, 462), provide
18 timely and adequate responses to comments made by the public, (*Dunn-Edwards Corp. v. Southcoast*
19 *Air Quality Management District*(1993) 19 Cal. App. 4th 519, 534) and consider feasible alternatives to
20 the proposed action. (*Friends of Old Trees v. Dept. of Forestry and Fire Protection* (1997) 52 Cal. App.
21 4th 1383, 1404-1405.) CEQA is to be interpreted "to afford the fullest possible protection to the
22 environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of*
23 *Supervisors* (1972) 8 Cal. 3d 247, 259)

1 skunks and many other species. Subcanopy layers (e.g., shrubs) vary in number and
2 support representative wildlife, especially birds. The canopy itself may be layered, and
3 supports its own characteristic fauna. Some wildlife species are restricted to one layer;
4 some use all. Note all hardwood stands have as many layers as a mature stand, but
5 even a lone oak tree contains parts of several layers, and is, by itself, a rich habitat
6 element.

7 (Id., p. 34).

8 Oak woodlands also provide a rich source of feeding for wildlife species:

9 Martin et. al. (1951), in their classic study of wildlife food habits in the United States,
10 found that oaks were fed upon by 96 species of wildlife, more than any other plant group.
11 Wildlife browse leaves, twigs and flowers of oak, gnaw on bark and tender wood, and
12 eat acorns, galls, lichens and mistletoe. Predators catch prey that live in and on oak
13 trees. The list of plant foods, predators, and prey expands rapidly if we consider the
14 entire oak stand or forest, not just individual trees. Associated tree species, shrubs,
15 grasses, forbs, mushrooms and other fungi, all contribute to the rich feeding network
16 provided by oak environments. Verner (1980) listed 45 species of birds that obtain
17 insects from oak foliage, twigs, bark or wood; 9 species that catch aerial insects by
18 launching from perches in oaks; 3 species that eat sap; and 2 species that eat the
19 berries of mistletoe growing in oaks. Moreover, hawks and owls perch in oak trees to
20 search for prey.

21 (Id., p. 36). The most important single food supplied by oaks are acorns, which are considered
22 to be as important as any forest wildlife food in the United States. (Id.). Acorns are an ideal
23 food, providing rich stores of fat and carbohydrates in the fall when wildlife species in California
24 strive to build extra fat stores to survive the winter. Many California species are almost wholly
25 dependant on seasonal supplies of acorns, including deer, black bear, wild pig, western grey
26 squirrel, wild turkey, wood duck, and acorn woodpecker. (Id.) Acorns are especially important
27 for deer in California, making up 75% or more of the diet when they are available. (Id.)^{10/} (See
28 also Pls. 1st RJN, Ex. 13 (California Fish and Game report discussing wildlife values of
California's oak woodlands).^{11/}

23 ^{10/}The 1983 Task Force commissioned by the Board to assess the status of oak
24 woodlands found that these hardwood range lands were “part of clear migratory
25 corridors or winter feed areas” that provide acorns and browse, which the Task
26 Force described as “critical food sources.” (Pls. 1st RJN, Ex. 3, p. 61). To
27 protect these valuable forest resources consistent with the Forest Practice Act,
28 the Task Force recommended minimum basal retention areas of hardwoods based on the
size of the timber operation, the current level of hardwoods on the site and the
importance of the wildlife habitat at issue. (Id., pp. 62-63).

29 ^{11/}The 1993 Fish and Game report notes that the impacts to wildlife of loss or degradation of oak
30 woodland habitat “is analogous to what would occur to wildlife if other habitats, such as wetlands and
31 riparian or old-growth coniferous forests, were substantially altered.” (Id., p. 3)

1 **2. Benefits of Oak Woodlands to Soil and Water**

2 Oaks also play an important role in stabilizing soil, maintaining nutrients, and reducing
3 erosion runoff to streams in oak woodland habitats. A 1991 Report prepared for the Board of
4 Forestry found, where ground cover was reduced by grazing, oaks were an important factor in
5 controlling the erosion observed on hardwood rangelands throughout California. (See Pls. 1st
6 RJN, Ex. 10, p. 4-3) Oaks were also found to contribute to improved watershed conditions by
7 contributing to higher water infiltration rates, soil fertility, and increased organic matter,
8 compared to open grasslands without oaks. (*Id.*) The Report also found that due to the
9 importance of oaks in nutrient cycling, the removal of oak canopy cover below 20% has adverse
10 impacts on soil fertility. (*Id.* at 5-7). Overall, the Report confirmed the wealth of literature showing
11 that the clearing of oak woodlands has the potential for significant negative impacts on soil
12 stability, soil fertility, and water quality. (*Id.* at p. 3-7; Table 3-1).^{12/}

13 **C. DEFENDANTS' ACTIONS WITH RESPECT TO OAK WOODLANDS**

14 During the 1980s, Defendants considered regulating oak woodlands pursuant to their
15 powers under the Forest Practice Act. In 1982 the Board appointed a Hardwood Task Force to
16 assess California hardwood resources, identify problem areas and recommend solutions. (See
17 Pls. 1st RJN, Ex. 3, p. 1). The Task Force noted that the Board's emphasis in carrying out the
18 Forest Practice Act was "directed towards lands which grow conifers." (*Id.*) The Task

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25 ^{12/}The 1983 Hardwood Task Force found that "the harvesting of hardwoods can, and does, cause
26 damage to soil and water related resources....Resource damage occurs through soil erosion, stream
27 bank degradation, degraded water quality, and sedimentation of spawning grounds or other destruction
28 of water related resources." (Pls. 1st RJN, Ex. 3, p. 27; See also Ex. 13, p. 2
("Increased erosion, flooding and turbidity; reduced water quality; and reduced
amounts of wildlife habitat were the consequences of these extensive woodland
losses. "))