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To justify its decision to exempt oak forests from regulation, the Board relies on

Public Resources Code section 4526, which defines the "timberland" that will be subject

to regulation under the Act. "Timberland" is defined as:

[L]and, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the board on a district basis after consultation with the district committees and others.

Pub. Res. Code § 4526. According to Defendants, because the Board has discretion to

determine which species are "commercial," the Board also has authority to determine

which "forestlands" are "timberland" and thus subject to the Act. According to

Defendants, the Board may thus exempt an entire forest ecosystem (oak woodlands)

from regulation by simply failing to list oak species as "commercial species." Defendants

justify this result by asserting that the Board has complete discretion to determine which

tree species - and thus which lands - are subject to the Forest Practice Act. Under

Defendants' view, the Board would have discretion not to regulate the harvesting of

redwoods, for example, or any other tree species in California logged for "commercial"

purposed, including pines and firs.

Defendants' broad interpretation of its discretion to exempt commercial harvesting

and conversion activities is inconsistent with the Forest

1 Practice Act and should be
2 rejected. In enacting the Forest Practice Act, the Legislature
3 did not confer unlimited
4 power on the Board to determine the scope of the Act through
5 the Board's limited
6 discretion to define commercial species. Instead, the Board's
7 authority under section 4526
8 is bounded by 1) whether a particular tree species is utilized
9 commercially in California,
10 and 2) whether such commercial utilization has the potential
11 for significant adverse
12 impacts on the forest resources to be protected under the Act.
13 In this case, the facts are
14 undisputed that 1) oak forests are being utilized commercially;
15 and 2) this commercial
16 utilization has the potential for significant adverse impacts
17 on "forest, air, water, or soil resources." See Pub. Res. Code
18 § 4527. By ignoring these legislative boundaries, Defendants
19 have violated their statutory obligation to preserve parts of
20 California's forest resources as a future source of timber,
21 recreational and aesthetic enjoyment, and fish and wildlife
22 habitat through a comprehensive system of regulation. See Pub.
23 Res. Code §§ 4512, 4513, 4551

24 **a. The Commercial Utilization of Oaks is Not**
25 **Exempt from the Forest Practice Act**

26 The Board's regulatory exclusion of oaks as "commercial
27 species" is wholly unrelated to how oaks are utilized for
28 "commercial purposes," as that term is defined in Public
Resources Code § 4527. As the Board's documents attest, oaks

1 are commonly harvested and sold as cords of firewood, a
2 "commercial purpose" under Public Resource Code section 4527.
3 (See Sep. St., Fact No. 3; Pls. 1st RJN, Ex. 8, pp. 28-30; Ex.
4 12, pp. 4-5). Oak woodland habitats are also being converted
5 to non-forest land uses such as residential development or
6 agriculture at an increasing rate. (See Sep. St., Fact No. 3;
7 Pls. 1st RJN, Ex. 12, p. 5; Ex. 14, p.1; Ex. 15, p. 1; Exs. 22-
8 27). Both of these activities constitute commercial purposes
9 under the Act. See Pub. Res. Code § 4527.

10 The Board has adopted the view that a species may be
11 utilized "commercially" under the Forest Practice Act, but
12 still not be a "commercial" species for purposes of regulation
13 under the Timber Harvest Plan program. (See Graf Decl., Ex. 2,
14 p. 17:7-12). This interpretation allows the Board to
15 substitute its own discretion for that of the Legislature as to
16 which "commercial activities" should be regulated under the
17 Act. Thus, under the Board's regulations, harvesting or
18 conversion of "Group A" species such as Monterey Pine, or
19 "Group B" species such as the non-native Eucalyptus, is
20 regulated even though many of these species are not subject to
21 a fraction of the commercial harvesting or development
22

1 pressures -- commercial purposes under Section 4527 -
2 experienced by oaks. (See Pls. 1st RJN, Exs. 22-27).
3

4 Defendants' belief that the Board's discretion under
5 section 4526 is unlimited should be rejected. A reading of
6 section 4526 that is consistent with the Forest Practice Act
7 limits the Board's discretion to define commercial species
8 according to whether a tree "species" is being utilized
9 "commercially," as defined in section 4527. "Commercial"
10 utilization under the Act focuses on exactly those activities -
11 harvesting for sale and conversion - which pose the greatest
12 threat to the maintenance of California's forest resources.
13 Since the Board does not have discretion to ignore these
14 legislative parameters, its exemption of oaks from regulation
15 exceeds its authority under the Forest Practice Act.

16 *Environmental Protection Information Center v. Department of*
17 *Forestry and Fire Protection*, supra, 43 Cal. App. 4th at 1022.

18 **b. The Commercial Utilization of Oaks has the**
19 **Potential for Significant Statewide**
20 **Environmental Impacts and thus Must be**
21 **Regulated**

22 The Board's decision not to regulate oak woodlands creates
23 a statutory gap in
24 which a significant portion of California's precious forest
25 resources are left either
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unprotected or at the mercy of local jurisdictions, which as a rule, provide no specific protections for oaks. (See Pls. 1st RJN, Exs. 18, 28).^{1/} There is no dispute, however, that the harvesting or conversion of oak woodlands poses a potential "threat to forest, air, water, or soil resources." Pub. Res. Code § 4527 (See Sep. St., Fact No. 4).^{1/} As discussed above, harvesting of oaks for firewood, and expanding development for

^{1/}While these impacts to native California forests are thus ignored, the Board's regulations include several non-native or naturalized species within the regulatory protections of the Act. See 14 Cal. Code Reg. 895.1 (designation of Eucalyptus, a native tree of Australia, as a Group "B" commercial species; designation of Monterey pine, a non-native species outside of Monterey, California, as a Group "A" commercial species).

^{2/} See also Pls. 1st RJN, Ex. 15, pp. 4-5 (California Department of Fish & Game notes that "human uses in hardwood habitats are widespread and have reached a level of intensity in many areas which have and will continue to result in significant adverse impacts to fish and wildlife resources."); Ex. 14, p. 3 (Fish and Game notes that the loss or adverse modification of oak woodland habitats will have "permanent and far-reaching implications to California's natura

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housing, vineyards, or other forms of agriculture over the last 5 years have destroyed thousands of acres of oak woodland forest without any regulatory oversight from CDF. (See Sep. St., Fact No. 3; Pls. 1st RJN, Ex. 8, pp. 28-30); Ex. 12, pp. 4-5; Ex. 20, p. 18; Ex. 21; Ex. 22, pp. 5-6; Ex. 24, pp. 3-4; Ex. 27, pp. 8-9). Since oaks are not regulated under the Forest Practice Act, the potential for significant impacts from these commercial activities are neither reviewed nor even addressed at the state level. Indeed, Defendants still lack basic information regarding the actual extent of oak woodlands in California, much less how quickly they are being destroyed. (See Pls. 1st RJN, Ex. 3, pp. 2-3, 27; Ex. 12, pp. 4-5; Ex. 17, p. 33). At this time, for example, neither the Board nor CDF has compiled any cumulative impact information regarding the conversion of oak forests to hillside vineyards. (See Graf Decl., Ex. 2, pp. 6-7; p. 19: 13-17). ^{1/} The potentially significant impacts to oak woodlands from commercial activities are compounded by the fact that many oak populations are now experiencing mortality in "epidemic proportions" due to a pathogenic fungus, about which Defendants still appear to have little information. (See Pls. 1st RJN, Ex. 30, p. 1; Ex. 31, p.

^{2/}Almost 20 years after the enactment of the Forest Practice Act, the soil and water consultants hired by the Board noted that "[o]ne of the most notable and surprising gaps in our knowledge of hardwood rangelands is the absence of field measurements of surface erosion." (See Pls. 1st RJN, Ex. 10, p. 3-1).

1
2.)^{1/} As a result, Defendants have no idea whether they are
2
3 fulfilling their statutory obligation to conserve the forest
4
5 resources of the state for current and future generations. See
6
7 Pub. Res. Code § 4512(c).^{1/} This failure violates Defendants'
8
9 mandate to establish a "comprehensive system of regulation"
10
11 under the Act (Pub. Res. Code § 4513), and violates their
12
13 obligation under CEQA to assess the cumulative impacts of
14
15 projects under their jurisdiction. See *Laupenheimer v. State of*
16
17 *California* (1988) 200 Cal. App. 3d 440, 462. See also *Sierra Club v. State*
18
19 *Board of Forestry, supra*, 7 Cal. 4th at pp. 1230-1231 (CDF must
20
21 also comply with the general policy goals of CEQA.)

22
23 Defendants' failure to meet their statutory
24
25 responsibilities is not "cured" by simply "encouraging" local
26
27 jurisdictions to adopt protective guidelines. First, as
28
discussed, local protections are typically absent, voluntary,
or not designed with the intent of protecting the oak forest
resources at issue in this case. (See Pls. 1st RJN, Exs. 18,
22-23; Ex. 25, p. 11; Ex. 28). Second, local jurisdictions do
not have the ability, much less the expertise, to oversee the

^{4/}If healthy populations of oaks are dying due to disease, the impacts to still healthy populations from conversion and harvesting become even more significant.

^{5/}The 1983 Task Force Report, for example, found it difficult to assess the significance of impacts to oak forests from harvesting since such activities took place on lands not presently classified as timberlands and thus "not being monitored by anyone." (Pls. 1st RJN, Ex. 3, p. 27.) 10 years later, the Board's 1993 Status Report on Hardwood Rangelands notes that "conversion of hardwood rangelands by land use change is having the largest impact on sustainability of resource values," but provides no figures for analysis. (Pls. 1st RJN, Ex. 12, p. 5.) Even the Board's research arm, the IHRMP acknowledges that "CDF has not been able to definitely estimate changes in hardwood cover over the
st RJN, Ex. 17, p. 33.) Today, Defendants are still unable to provide accurate assessments of the amount of oak woodlands remaining in the state, and the rate at which they are being harvested or converted. (Graf Decl., Ex. 2, pp. 6-7).

1 regulation of oak harvesting and conversion on the statewide
2 level. Due to limited resources and inadequate regulations,
3 local jurisdictions typically lack information regarding
4 commercial operations utilizing oaks in their own
5 jurisdictions, much less at the state level. (See Pls. 1st
6 RJN, Exs. 22-23; Ex. 26, p. 7 (“Mendocino County does not have
7 a monitoring program or an administrative process that can
8 track human impacts on oak woodlands over time and space); Ex.
9 27, p. 9 (discussing underreporting of vineyard expansions by
10 Sonoma County Agricultural Commissioner). Moreover, local
11 jurisdictions have no information on the regional impacts of
12 loss of oak habitats that stretch across county lines.^{6/}

13
14 In enacting the Forest Practice Act, the Legislature did
15 not intend to delegate the required “comprehensive system of
16 regulation” to local cities and counties, which have no ability
17 to address state-wide impacts to California’s forest
18 resources. The Court should reject Defendants’ attempt in
19 this case to duck their regulatory responsibilities under the
20 Act.

21 **IV. CONCLUSION**

22 For the reasons stated above, Plaintiffs request that this

23
24 ^{6/}Defendants’ IHRMP program has identified the significant impacts arising from habitat fragmentation
25 on the landscape level. (See Pls. RJN, Ex. 21; Ex. 27, pp. 14-18).

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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. Plaintiffs request 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 include the harvesting and clearing of oak woodlands under the Timber Harvest Plan and Timberland Conversion Permit review processes.

DATED: March 30, 2001

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—

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