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12 Attorneys for Center for Biological Diversity
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
FORESTRY and FIRE PROTECTION; and
DOES 1 through 20, inclusive,

Respondents.

FROST FIRE VINEYARDS II, LLC; and
DOES 21 through 40, inclusive,

Real Parties in Interest.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE RELIEF**

[(California Environmental Quality Act; Forest
Practice Act; Code Civ. Proc. § 1094.5 (§
1085)]

1 **INTRODUCTION**

2 1. Petitioner Center for Biological Diversity (“Petitioner”) challenges the decision of the
3 California Department of Forestry and Fire Protection (“CAL FIRE”) to approve the Davis Estates
4 Friesen Vineyards Timber Harvest Plan (“THP” or “Project”), 1-15-081 NAP, submitted by Frost Fire
5 Vineyards II, LLC. In approving this THP, CAL FIRE failed to comply with the California
6 Environmental Quality Act (“CEQA”), the Forest Practice Act (“FPA”), and applicable implementing
7 regulations. Petitioner seeks an order setting aside approval of this THP because CAL FIRE’s approval
8 constitutes an abuse of discretion and is contrary to law. (Code Civ. Proc. § 1094.5; Pub. Resources
9 Code § 21168.5.)

10 2. CEQA and the FPA require that the environmental impacts of a timber harvest project be
11 identified and analyzed so that significant impacts can be avoided or mitigated if feasible. Timber
12 harvest projects have the potential to significantly impact wildlife habitat, watershed health, air quality,
13 and the cumulative effects of greenhouse gas (“GHG”) emissions, among other impacts.

14 3. The Davis THP at issue in this case applies to the removal of all trees and vegetation
15 within 13.1 acres of the Project site, 10 acres of which are forested. The clear-cutting and subsequent
16 vineyard conversion of this forested area will destroy wildlife habitat, pose risks to surface water
17 quality, produce GHG emissions and eliminate the site’s capacity to sequester carbon. The THP fails to
18 properly identify and assess these impacts, which limits or precludes the ability to avoid and/or mitigate
19 the significant environmental harms.

20 4. The Petitioner respectfully requests that this Court vacate and set aside the approval of
21 the THP and order Respondent CAL FIRE to comply with CEQA and the FPA.

22 **THE PARTIES**

23 5. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is a non-profit
24 conservation organization dedicated to the protection of native species and their habitats through
25 science, policy, and environmental law. The Center has approximately 68,000 members worldwide,
26 including residents of Napa County and within the vicinity of the Project site. The Center has worked for
27 many years to protect imperiled plants and wildlife, open space, air and water quality, and the overall
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1 quality of life for people in Napa County where the Project is proposed. Members of the Center objected
2 to the approval and development of the Project and will be directly and adversely affected by the
3 Project.

4 6. Members of the Center have environmental, educational, recreational, scientific, and
5 aesthetic interests in the Project area and its plants and wildlife. These interests will be directly and
6 adversely affected by the Project, which violates provisions of law as set forth in this Petition and which
7 would cause irreversible harm to the natural environment and its recreational assets. The Center and its
8 members have a direct and beneficial interest in Respondents' compliance with the FPA and CEQA. The
9 maintenance and prosecution of this action will confer a substantial benefit on the public by protecting
10 the public from the environmental and other harms alleged herein.

11 7. Respondent CALIFORNIA DEPARTMENT OF FORESTRY and FIRE PROTECTION
12 ("CAL FIRE") is an agency of the State of California located in Sacramento, California, which
13 authorized and approved the THP challenged in this action.

14 8. The true names and capacities of Respondent Does 1-20 are not presently known to the
15 Petitioner. Petitioner may amend this Petition to add the true names and capacities of said Does at such
16 time as they are discovered.

17 9. Real Party in interest, FROST FIRE VINEYARDS II, LLC. ("Frost Fire") is the Project
18 applicant, and is incorporated in California.

19 10. The true names and capacities of Respondent Does 21-40 are not presently known to the
20 Petitioner. Petitioner may amend this Petition to add the true names and capacities of said Does at such
21 time as they are discovered.

22 **JURISDICTION AND VENUE**

23 11. Jurisdiction of this Court is invoked pursuant to Code of Civil Procedure section 1084 et.
24 seq.; and Public Resources Code sections 4514.5, 21080.5(g) and 21168.5.

25 12. Venue for this action properly lies in the Napa County Superior Court because the Real
26 Party in Interest and the proposed site of the Project are located in the County. Many of the significant
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1 environmental impacts of the Project that are the subject of this lawsuit would occur in Napa County,
2 and the Project would impact the interests of Napa County residents.

3 13. Petitioner has complied with the requirements of Public Resources Code section 21167.5
4 by serving a written notice of Petitioner's intention to commence this action on Respondents on October
5 19, 2018. A copy of the written notice and proof of service is attached hereto as Exhibit A.

6 14. Petitioner has complied with the requirements of Public Resources Code section 21167.7
7 by sending a copy of this Petition to the California Attorney General on October 19, 2018. A copy of the
8 letter transmitting this Petition is attached hereto as Exhibit B.

9 15. Petitioner has complied with the requirements of Public Resources Code section 21167.6
10 by concurrently filing Petitioner's election to prepare the record of administrative proceedings relating
11 to this action. A copy of Petitioner's election to prepare the administrative record is attached hereto as
12 Exhibit C.

13 16. The Petitioner has performed all conditions precedent to filing this instant action and has
14 exhausted all administrative remedies to the extent required by law, including, but not limited to, timely
15 submitting comments objecting to the approval of the THP and presenting to Respondents the flaws in
16 its environmental review on November 9, 2015.

17 17. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless
18 this Court grants the requested writ of mandate to require Respondents to set aside approval of the THP
19 and approval of the Project. In the absence of such remedies, Respondents' approval will remain in
20 effect in violation of state law.

21 **LEGAL AND FACTUAL BACKGROUND**

22 **A. Requirements of the FPA and CEQA**

23 18. A THP is evaluated under a certified regulatory program, meaning that it is exempt from
24 Chapters 3 and 4 of CEQA. When forming a THP, state or local agencies are not required to prepare a
25 full Environmental Impact Report ("EIR"), nor are they subject to the statutes of limitations for EIRs,
26 negative declarations and notices of exemption. (Pub. Res. Code § 21080.5.)
27
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1 19. Despite the exemptions from certain CEQA requirements, a THP is subject to “those
2 provisions of CEQA from which it has not been specifically exempted by the Legislature.” (*Sierra Club*
3 *v. Board of Forestry* (1994) 7 Cal.4th 1215, 1228.) It has been repeatedly held that THPs should be
4 analyzed not only using the Forest Practice Rules criteria, but also the “broad policy goals of CEQA as
5 stated in section 21000, and ... CEQA’s substantive standards designed to fulfill the act’s goal of long-
6 term preservation of a high quality environment.” (*Environmental Protection Information Center (EPIC)*
7 *v. Johnson* (1985) 170 Cal.App.3d 604, 620.)

8 20. As a functional equivalent of a CEQA document, the THP must pass muster as a stand-
9 alone document that meets the requirements of both the FPA and the CEQA document it is taking the
10 place of. (*Ebbetts Pass Forest Watch v. California Dep’t of Forestry & Fire Protection* (2008) 43 Cal.
11 4th 936, 943-44.) To the extent CAL FIRE describes the THP as the functional equivalent of a Mitigated
12 Negative Declaration (“MND”), it can only do so if there is no “fair argument” that the Project may
13 have a significant environmental impact. (*No Oil, Inc. v. Los Angeles* (1974) 13 Cal. 3d 68, 75.)

14 21. The substantive requirements of the THP are governed by the FPA and the Forest
15 Practice Rules (“FPRs”). The THP must, among other information, adopt feasible mitigation measures
16 and/or alternatives which would lessen or avoid an activity’s significant adverse impacts on the
17 environment; and provide sufficiently clear and detailed information to enable effective review by
18 responsible agencies and the public so that individual and cumulative impacts can be avoided or
19 reduced. (14 CCR §§ 896(a), 897(b)(3).)

20 22. In addition to the THP, the Project requires the issuance of a Timber Conversion Permit
21 (“TCP”), for which an EIR has been prepared by CAL FIRE. The Project also requires implementation
22 of an Erosion Control Plan (“ECP”), which must be prepared and approved by Napa County. CAL FIRE
23 has prepared the TCP, EIR and THP as lead agency under both CEQA and the FPA.

24 23. The Forest Practice Rules state that if a TCP is required for a project, CAL FIRE can only
25 approve a THP once the TCP has been issued. (14 CCR § 1106.2.)

24. An ECP approved by the County is required before a TCP can be issued. As both the ECP and TCP are the subject of the Project EIR, neither can be approved before CAL FIRE approves the EIR.

B. The Proposed Project

25. The Project site is a 38.7-acre property composed of two adjacent parcels located at 1875 Friesen Drive in rural northern Napa County. Situated approximately 2.5 miles northwest of the town of Angwin, the Project site is currently an undeveloped, natural landscape. The property currently has the Napa County zoning designation of Agricultural Watershed.

26. The property is located within the Bell Canyon Reservoir watershed; and contains an unnamed reservoir, three Class III watercourses and one Class II watercourse.

27. The site is home to forested areas that support a diverse array of tree and other vegetation species. The forest communities consist of mixed oak and Douglas fir forest alliances, and ghost pine woodland alliance. The non-forested areas contain mixed chaparral/scrub alliances, defined by the dominant plant species present, such as scrub oak, manzanita, or chemise. The site's varied ecological characteristics promote and sustain a biologically diverse ecosystem.

28. The 3,030-acre Dunn-Wildlake Ranch Preserve, which is managed by the Land Trust of Napa County, provides critical wildlife resources to the east, west and south of the property. The Preserve is directly adjacent to the proposed western border of the Project's vineyard block C. The Preserve provides habitat for a multitude of plant and animal species, while offering recreational and educational opportunities for Napa County residents.

29. The Project-related timber harvest requires the preparation of a THP. The THP applies to 13.1 acres that will be cleared of approximately 10 acres of timberland and approximately 3.1 acres of brush and ruderal lands before being converted to vineyard. The completed conversion under the TCP will result in approximately 10.0 acres of vineyard and approximately 3.1 acres of internal farm avenues and equipment staging.

30. The completed vineyard blocks will be fenced to keep out area wildlife. Seasonal viticulture practices will bring dozens of workers, in addition to heavy machinery and the use of pesticides, to this otherwise peaceful and undisturbed area.

31. Under the terms of the THP, harvested timber will be processed on-site using a portable mill and the transport of wood products off-site will be limited to three-axel trucks. Non-merchantable trees and vegetation will be removed, chipped, and/or burned on-site.

32. The Project site is a biologically diverse area that contains habitat for wildlife and plant species of special concern, including, but not limited to the western pond turtle, California red legged frog, and Napa County Lomatium.

33. In addition to the Project site's ecological value, the forests provide carbon sequestration capacity that is invaluable in the processes related to combating climate change. With GHG concentrations in the atmosphere already at dangerous levels, immediate reductions in both emissions and concentrations are necessary to avoid the worst impacts of climate change. In this context, any loss of forest-related sequestration potential must be viewed as cumulatively significant and given serious consideration.

C. Petitioners' Comments on the THP

34. On or about July 24, 2015, CAL FIRE issued a Notice of Intent to harvest timber, and released the THP that Real Party Frost Fire submitted on or about July 24, 2015. This issuance notified public agencies and interested individuals that public comments concerning the THP would now be accepted pursuant to the timeline provided in section 4582.7 of the California Public Resources Code.

35. Numerous comment letters were submitted to CAL FIRE during the comment period, many highlighting concerns about the Project and defects in the THP. Commenters, including Petitioner, explained the Project would have negative impacts on biological resources, deplete groundwater resources, worsen surface and drinking water quality in the Bell Canyon Watershed, interfere with the region's ability to meet its climate change goals, and contradict Napa County General Plan conservation policies, among other concerns.

36. Commenters also identified the THP's failure to adequately disclose, analyze, or mitigate the Project's significant and cumulative impacts on climate change, biological resources, water quality, and failed to analyze reasonable alternatives to lessen the Project's environmental impacts.

37. On or about November 9, 2015, Petitioner CBD submitted comments that described the following defects in the THP:

- i. The THP fails to properly describe the existing environmental conditions of the Project site, particularly regarding slope;
- ii. The THP contains inadequate analysis of the Project's impacts on special status species by failing to include sufficient surveys for biological resources. In particular, the letter described the THP's inadequate analysis of, and failure to properly mitigate, the Project's impacts on western pond turtles and California red legged frogs.

D. Respondent's Approval of the THP and Other Project Actions

38. On or about September 21, 2018, CAL FIRE issued the Director's Official Response to Significant Environmental Points Raised During the Timber Harvesting Plan Evaluation Process ("Official Response"), which addressed comments determined to be specific to the THP. CAL FIRE made minimal revisions to the THP in response to the comments received.

39. The final version of the THP, released concurrently with the Official Response, briefly addresses its status as a CEQA-equivalent document, going on to equate the THP to a Mitigated Negative Declaration, as opposed to an EIR. The THP states that since the THP concludes the Project will have no significant impact when mitigation is considered, it need only meet the requirements of a MND.

40. On or about September 21, 2018, CAL FIRE released a Notice of Conformance signifying its approval of the THP.

41. On or about July 7, 2018, CAL FIRE issued the TCP for the Project.

42. On or about August 1, 2018, CAL FIRE certified the Project EIR

43. On or about September 28, 2018, Napa County approved the ECP.

1 **FIRST CAUSE OF ACTION**

2 **(VIOLATION OF THE FOREST PRACTICE ACT)**

3 **(Abuse of discretion regarding the challenged THP)**

4 44. The Petitioner incorporates by reference the allegations set forth in the paragraphs above.

5 45. The Forest Practice Act of 1973 declared the legislature's recognition that "the forest
6 resources and timberlands of the state are among the most valuable of the natural resources of the state
7 and that there is great concern throughout the state relating to their utilization, restoration, and
8 protection." It was therefore declared "the policy of this state to encourage prudent and responsible
9 forest resource management calculated to serve the public's need for timber and other forest products,
10 while giving consideration to the public's need for watershed protection, fisheries and wildlife,
11 sequestration of carbon dioxide, and recreational opportunities alike in this and future generations."
12 (Cal. Pub. Res. Code § 4512.)

13 46. Regulations adopted pursuant to the Forest Practice Act specify the contents of a THP.
14 Among other things, the regulations state the following:

15 It is the Board's intent that no THP shall be approved which fails to adopt feasible
16 mitigation measures or alternatives from the range of measures set out or provided
17 for in these rules which would substantially lessen or avoid significant adverse
18 impacts which the activity may have on the environment. (14 CCR § 896 (a).)

19 The information in [THPs] shall also be sufficiently clear and detailed to permit
20 adequate and effective review by responsible agencies and input by the public to
21 assure that significant adverse individual and cumulative impacts are avoided or
22 reduced to insignificance. (14 CCR § 897.)

23 The Director shall disapprove a plan as not conforming to the rules of the Board if
24 . . . [t]here is evidence that the information contained in the plan is incorrect,
25 incomplete or misleading in a material way, or is insufficient to evaluate
26 significant environmental effects. (14 CCR § 898.2.)

1 47. The challenged THP did not contain sufficient information to permit an adequate and
2 effective review by responsible agencies or the public to assure significant adverse individual and
3 cumulative impacts are avoided or reduced to insignificance.

4 48. The THP fails to meet the statutory requirements of the Forest Practice Act for the
5 disclosure, analysis, and/or mitigation of significant Project impacts on biological resources, water
6 quality, and GHGs, among other areas.

7 49. **Biological Resources.** The THP fails to adequately disclose, analyze and/or mitigate the
8 Project's significant and cumulative impacts to biological resources, including animal and plant species
9 and oak woodland habitat affected by the Project. Those species include, but are not limited to, the
10 California red legged frog, western pond turtle, northern spotted owl and numerous migratory bird
11 species. The THP's biological resources analysis is inadequate because, *inter alia*:

- 12 i. The THP is inconsistent with Napa County General Plan policies in place to protect
13 biological resources;
- 14 ii. The THP doesn't provide sufficiently clear and detailed information about the
15 presence and potential occurrence of wildlife;
- 16 iii. The THP's mitigation measures, particularly the Habitat Retention Area, are
17 inadequate, deferred, and/or unenforceable.

18 50. **Water Resources.** The THP fails to adequately disclose, analyze and/or mitigate the
19 Project's significant and cumulative impacts on sensitive water resources such as Bell Canyon reservoir
20 and the Napa River.

21 51. **Greenhouse Gases.** The THP fails to adequately disclose, analyze and/or mitigate the
22 Project's significant and cumulative GHG impacts. The THP's GHG analysis is inadequate because,
23 *inter alia*:

- 24 i. The THP uses an unrealistic and misleading "business-as-usual" scenario that does
25 not account for existing laws and regulations governing the Project area;

- 1 ii. The THP's GHG mitigation measures are inadequate, deferred, and/or unenforceable,
2 and fail to set forth specific numerical reductions in GHG emissions these measures
3 will achieve.

4 52. **Alternatives.** The THP fails to provide a selection and discussion of alternatives that
5 foster informed decision-making and informed public participation. The alternatives analysis in the THP
6 does not meet the requirement of a reasonable range of feasible alternatives that lessen the Project's
7 significant environmental impacts, and does not focus on alternatives that either eliminate adverse
8 impacts or reduce them to insignificance, even if they would to some degree impede the Project's
9 objectives. The THP's alternatives analysis is inadequate because, *inter alia*:

- 10 i. The THP fails to consider consolidating the vineyard blocks in one section of the
11 property to reduce impacts on wildlife movement and habitat connectivity;
12 ii. The THP fails to consider a smaller project that reduces the area of the harvest and
13 minimizes environmental impacts;
14 iii. The THP fails to demonstrate that a smaller project is not feasible and would meet
15 the Project's objectives;
16 iv. The THP fails to consider the alternative of purchasing existing vineyards, or other
17 parcels of land presenting fewer environmental impacts.

18 53. CAL FIRE approved the challenged THP even though it did not comply with the Forest
19 Practice Act and applicable regulations.

20 54. As a result of the foregoing defects, CAL FIRE prejudicially abused its discretion by
21 approving the THP and adopting findings that do not comply with the requirements of the Forest
22 Practice Act. Accordingly, CAL FIRE's approval of the THP must be set aside.

23 **SECOND CAUSE OF ACTION**

24 **(VIOLATION OF CEQA)**

25 **(Abuse of discretion regarding the challenged THP)**

26 55. Petitioner incorporates by reference the allegations set forth in the paragraphs above.

27 56. The approval of a THP is a discretionary action subject to CEQA.

1 57. Though the Secretary of Resources has certified the California Department of Forestry as
2 a State regulatory program that is exempt from the requirement to prepare a CEQA document for timber
3 harvesting operations (Public Resources Code § 21080.5 and 14 CCR § 15251(a)), the document that is
4 used under CEQA must include:

- 5 i. Alternatives to the activity and mitigation measures to avoid or reduce any significant
6 or potentially significant effects that the project might have on the environment, or
- 7 ii. A statement that the agency's review of the project showed that the project would not
8 have any significant or potentially significant effects on the environment and
9 therefore no alternatives or mitigation measures are proposed to avoid or reduce any
10 significant effects on the environment.

11 (14 CCR § 15252(a)(2)(A) and (B).)

12 58. Respondent CAL FIRE is subject to the substantive mandates of CEQA not to approve a
13 project with significant adverse environmental impacts if feasible alternatives or mitigation measures
14 exist to mitigate those impacts. (Public Resources Code § 21002 and 21081.)

15 59. The THP fails as a functional equivalent of a Mitigated Negative Declaration by failing to
16 provide adequate analysis to support a finding that the Project would not have a significant effect on the
17 environment.

18 60. There is substantial evidence to support a fair argument that the Project may have a
19 significant effect on the environment notwithstanding proposed mitigation measures, requiring the
20 preparation of an EIR or EIR equivalent.

21 61. The THP fails as a functional equivalent of an EIR by failing to adequately disclose,
22 analyze or mitigate the Project's significant impacts on the environment.

23 62. CAL FIRE prejudicially abused its discretion by failing to meet CEQA's requirements to
24 provide adequate disclosure, analysis, and/or mitigation of the Project's significant impacts on biological
25 resources, water quality, and GHGs, as well as the required alternatives and mitigation analysis and
26 description of environmental setting, among other areas.

63. **Biological Resources.** The THP fails to adequately disclose, analyze and/or mitigate the Project's significant and cumulative impacts to biological resources, including animal and plant species and oak woodland habitat affected by the Project. Those species include, but are not limited to, the California red legged frog, western pond turtle, northern spotted owl and numerous migratory bird species. The THP's biological resources analysis is inadequate because, *inter alia*:

- i. The THP's mitigation measures are inadequate, deferred, and/or unenforceable;
- ii. The THP's does not adequately consider the cumulative impacts of the Project on wildlife species;
- iii. The THP fails to disclose the impacts on wildlife movement from the construction of a fenced vineyard on the border of the Dunn-Wildlake Ranch Preserve.

64. **Water Resources.** The THP fails to adequately disclose, analyze and/or mitigate the Project's significant and cumulative impacts on sensitive water resources such as Bell Canyon reservoir and the Napa River.

65. **Greenhouse Gases.** The THP fails to adequately disclose, analyze and/or mitigate the Project's significant and cumulative GHG impacts. The THP's GHG analysis is inadequate because, *inter alia*:

- i. The THP uses an unrealistic and misleading "business-as-usual" scenario that does not account for existing laws and regulations governing the Project area;
- ii. The THP relies upon an improper significance threshold when determining the significance of the Project's GHG emissions;
- iii. The THP's GHG mitigation measures are inadequate, deferred, and/or unenforceable, and fail to set forth specific numerical reductions in GHG emissions these measures will achieve.

66. **Alternatives.** The THP fails to provide a selection and discussion of alternatives that foster informed decision-making and informed public participation. The alternatives analysis in the THP does not meet the requirement of a reasonable range of feasible alternatives that lessen the Project's significant environmental impacts, and does not focus on alternatives that either eliminate adverse

1 impacts or reduce them to insignificance, even if they would to some degree impede the Project's
2 objectives. The THP's alternatives analysis is inadequate because, *inter alia*:

- 3 i. The THP fails to consider consolidating the vineyard blocks in one section of the
4 property to reduce impacts on wildlife movement and habitat connectivity;
- 5 ii. The THP fails to consider a smaller project that reduces the area of the harvest and
6 minimizes environmental impacts;
- 7 iii. The THP fails to demonstrate that a smaller project is not feasible and would meet
8 the Project's objectives;
- 9 iv. The THP fails to consider the alternative of purchasing existing vineyards, or other
10 parcels of land presenting fewer environmental impacts.

11 67. Based upon each of the foregoing reasons, the THP is legally defective as a functional
12 equivalent document under CEQA. Respondents prejudicially abused their discretion in violation of
13 CEQA in approving the THP. As such, the Court should issue a writ of mandate directing Respondent to
14 set aside the approval of the THP.


15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner prays for judgment as follows:

- 17 1. For a Peremptory Writ of Mandate ordering Respondent CAL FIRE to withdraw approval
18 of the challenged THP and to follow California regulations and statutes in reviewing the THP.
- 19 2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction
20 enjoining real party and its agents or employees from engaging in any timber operations, as defined in
21 Public Resources Code section 4527, pursuant to the challenged THP, until the plans comply with all
22 applicable California regulations and statutes.
- 23 3. For a declaration that Respondent's actions in approving the THP violated the Forest
24 Practice Act and the Forest Practice Rules, and that the approval is invalid and of no force or effect.
- 25 4. For reasonable attorney's fees under Code of Civil Procedure section 1021.5.
- 26 5. For costs of suit.
- 27 6. For such other and further relief as the Court deems proper.

1
2 DATED: October 19, 2018

CENTER FOR BIOLOGICAL DIVERSITY

3
4 By: 

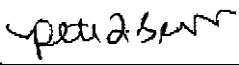
5 Aruna Prabhala

6 Attorneys for Petitioners CENTER FOR
7 BIOLOGICAL DIVERSITY

VERIFICATION

I am the Director of Programs for the Center for Biological Diversity, which is a party to this action. I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19 day of October 2018, in Shelter Cove, California.



Peter Galvin

EXHIBIT A



Via FedEx

October 19, 2018

Ken Pimlott
Director
CAL FIRE
P.O. Box 944246
Sacramento, California 94244-2460

Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act

Dear Mr. Pimlott:

The Center for Biological Diversity (“Petitioner”) intends to commence an action for writ of mandate to vacate and set aside the decision of the California Department of Forestry and Fire Protection (“Respondent”) approving the Davis Estates Friesen Vineyards Timber Harvest Plan (the “Project”), 1-15-081 NAP. Petitioner submits this notice pursuant to Public Resources Code section 21167.5.

The action will commence on October 19, 2018 and will be based on Respondent’s failure to comply with the California Environmental Quality Act, the Forest Practice Act, and applicable implementing regulations in approving the Project.

Sincerely,

Aruna Prabhala
Staff Attorney & Urban Wildlands Program Director
Center for Biological Diversity

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

3 I am employed in Oakland, California. I am over the age of 18 and not a party to the foregoing
4 action. My business address is Center for Biological Diversity, 1212 Broadway, Suite 800, Oakland,
5 California 94612. My email address is kthompson@biologicaldiversity.org.

6 On October 19, 2018, I served a true and correct copy of the following document(s):

7 **NOTICE OF COMMENCEMENT OF LEGAL ACTION PURSUANT TO THE CALIFORNIA**
8 **ENVIRONMENTAL QUALITY ACT**

9 [] BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
10 Center for Biological Diversity's electronic mail system to the email address(s) shown on the following
11 service list.

12 [x] BY MAIL: By placing a true and correct copy thereof in sealed envelope(s). Such envelope(s)
13 were addressed as shown below. Such envelope(s) were deposited for collection and mailing following
14 ordinary business practices with which I am readily familiar.

15
16 Ken Pimlott
17 Director
18 California Department of Forestry and Fire Protection
19 P.O. Box 944246
20 Sacramento, CA 94244-2460

21 [x] STATE: I declare under penalty of perjury under the law of California that the foregoing is
22 true and correct.

23 Executed on October 19, 2018 at Oakland, California.


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25 
26 Kyle Thompson
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EXHIBIT B



Via USPS

October 19, 2018

Office of the Attorney General
Attn: Environmental/CEQA Filing
1300 "I" Street
P.O. Box 944255
Sacramento, CA 94244-2550

Re: Notice of Commencement of Legal Action Alleging Environmental Harm

Dear Office of Attorney General:

The enclosed Verified Petition for Writ of Mandate, *Center for Biological Diversity v. California Department of Forestry and Fire Protection et al.*, is submitted to your office pursuant to Code of Civil Procedure section 388 and Public Resources Code section 21167.7. This case is being pursued under the private attorney general provisions of the Code of Civil Procedure section 1021.5.

The case is being brought by the Center for Biological Diversity challenging the California Department of Forestry and Fire Protection's approval of the Davis Estates Friesen Vineyards Timber Harvest Plan (the "Project"), 1-15-081 NAP. The Project would remove all trees and vegetation within the 13.1 acre Project site, of which 10 acres are forested. The clear-cutting and subsequent vineyard conversion of this forested area will destroy wildlife habitat, pose risks to surface water quality, produce GHG emissions and eliminate capacity to sequester carbon.

The Center for Biological Diversity alleges environmental harm that could affect the public generally and the natural resources of the state.

Thank you for your attention to this matter.

Sincerely,

Aruna Prabhala
Staff Attorney & Urban Wildlands Program Director
Center for Biological Diversity

Enclosure: Verified Petition for Writ of Mandate

EXHIBIT C

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2 Aruna Prabhala (SBN 278865)
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13 Attorneys for Center for Biological Diversity
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA

CENTER FOR BIOLOGICAL DIVERSITY

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
FORESTRY and FIRE PROTECTION; and
DOES 1 through 20, inclusive,

Respondents.

FROST FIRE VINEYARDS II, LLC; and
DOES 21 through 40, inclusive,

Real Parties in Interest.

Case No.

**NOTICE OF PETITIONER'S ELECTION
TO PREPARE ADMINISTRATIVE
RECORD**

[Pub. Res. Code § 21167.6]

1 **TO RESPONDENT CALIFORNIA DEPARTMENT OF FORESTRY and FIRE PROTECTION:**


2 In the above-captioned action (the “Action”), Petitioner Center for Biological Diversity petition
3 this Court for a Writ of Mandate, directed to Respondent California Department of Forestry and Fire
4 Protection (“Respondent”). Petitioner challenges Respondent’s September 21, 2018 approval of the
5 Davis Estates Friesen Vineyards Timber Harvest Plan, (“THP” or “Project”), 1-15-081 NAP, submitted
6 by Frost Fire Vineyards II, LLC. Petitioner seeks a determination that Respondent’s approval of the
7 Project is invalid and void and fails to comply with the California Environmental Quality Act, the Forest
8 Practice Act, and applicable implementing regulations.

9 Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner hereby elects to prepare the
10 record of proceedings related to the Action. The record will be organized chronologically, paginated
11 consecutively, and indexed so that each document may be clearly identified as to its contents and source,
12 in a form and format consistent with California Rules of Court, Rule 3.2205.

13 Petitioner will include in the record of proceedings all documents, including transcripts, minutes
14 of meetings, notices, correspondence, reports, studies, proposed decisions, final drafts, and any other
15 documents or records relating to Respondent’s determination to approve the Project.

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17 DATED: October 19, 2018

CENTER FOR BIOLOGICAL DIVERSITY

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19 By: 
20 Aruna Prabhala

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22 Attorneys for Petitioner CENTER FOR
23 BIOLOGICAL DIVERSITY
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