

1 CHATTEN-BROWN & CARSTENS

2 Jan Chatten-Brown, SBN 050275

3 Douglas P. Carstens, SBN 193439

4 Michelle Black, SBN 261962

5 2601 Ocean Park Blvd, Suite 205

6 Santa Monica, CA 90405

7 310.314.8040; Fax 310.314.8050

8 Lisa T. Belenky (Cal. Bar No. 203225)

9 CENTER FOR BIOLOGICAL DIVERSITY

10 351 California Street, Suite 600

11 San Francisco, CA 94104

12 Telephone: (415) 436-9682

13 Facsimile: (415) 436-9683

14 Email: lbelenky@biologicaldiversity.org

15 Attorneys for Petitioner and Plaintiff

16 Center for Biological Diversity

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SANTA CRUZ**

20 CENTER FOR BIOLOGICAL DIVERSITY)

21 Petitioner and Plaintiff,)

22 v.)

23 CALIFORNIA DEPARTMENT OF PARKS)
24 AND RECREATION, an agency of the State)
25 of California; and CALIFORNIA STATE)
26 PARK & RECREATION COMMISSION ,)

27 Respondents and Defendants.)
28)

CASE NO.:

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY RELIEF**

(California Environmental Quality Act, Pub.
Res. Code § 21000, et seq.; Code of Civil
Procedure §§ 1094.5, 1085; California
Endangered Species Act, California Fish &
Game Code §§ 2050-2061.)

Petitioner CENTER FOR BIOLOGICAL DIVERSITY, a non-profit corporation, (hereinafter "Center" or "Petitioner") brings this action on its own behalf, on behalf of its members, on behalf of the general public, and in the public interest, pursuant to Code of Civil Procedure § 1094.5 and Public Res. Code § 21168, or, in the alternative, pursuant to Code of Civil Procedure §1085 and Public Res. Code § 21168.5; and pursuant to California Fish & Game Code §§ 2050-2061 in order to protect the endangered marbled murrelet from extirpation in the Santa Cruz Mountains exacerbated by expansion of public uses in and near its habitat. The Center respectfully alleges as follows:

INTRODUCTION

1. Over extensive public opposition and in violation of the California Environmental Quality Act ("CEQA"), on May 17, 2013, the California State Park and Recreation Commission ("Commission") approved the Department of Parks and Recreation's ("Department's") Big Basin Redwoods State Park General Plan ("Project" or "General Plan"), certified an inadequate environmental impact report ("EIR"), and adopted an inadequate Statement of Overriding Considerations for the Project. The Department of Parks and Recreation ("Department") filed the Notice of Determination on May 20, 2013, which was received by the State Clearing House on May 21, 2013.

2. The Big Basin General Plan authorizes increased activities within the Big Basin Redwoods State Park that attract predators of the endangered marbled murrelet and degrade the value of essential murrelet nesting habitat, and was adopted by the Commission without requiring that those impacts that could be feasibly minimized and mitigated would be implemented, in violation of CEQA. The Commission and the Department also failed to adopt an alternative that would avoid jeopardy to the marbled murrelet and destruction or adverse modification of its essential habitat, and support conservation of the species as required by CESA. Instead, the Commission and Department engaged in hand-wringing and obfuscation regarding the scientific information available on the status of the murrelet in the Santa Cruz

1 Mountains and the causes of its decline to support the adoption of vague and unenforceable
2 guidelines which may or may not be implemented under the General Plan to protect the species.
3 The Draft Environmental Impact Report (EIR) prepared for the General Plan failed entirely to
4 describe the status of the endangered marbled murrelet in the Santa Cruz Mountains, their
5 locations at Big Basin Redwoods State Park (Park), and how the expansion of activities under
6 the General Plan would further aggravate the amount of predation of murrelet eggs and young.
7 Although the Final EIR admits that the proposed General Plan which would authorize increased
8 visitor facilities, including new headquarters, staff housing and new campsites, would have
9 significant impacts on the marbled murrelet and that the two alternatives examined in the EIR
10 would both reduce the impacts to the marbled murrelet, neither of the alternatives were adopted.
11 Alternative 1 would remove some existing facilities in old growth areas and increase resource
12 protection throughout the park. These measures, which mirror those proposed by scientists and
13 agencies working to protect the marbled murrelet, would help to reduce predation by corvids on
14 marbled murrelet nests and have been recommended by scientific experts as an effective means
15 of recovering the Santa Cruz Mountains murrelet population. The Draft EIR concluded that
16 Alternative 1 "would minimize the negative impacts to the forest understory, and minimize soil
17 compaction around the redwood trees. This would also help restore the health of associated
18 plant and wildlife habitats, with special attention to the federally protected marbled murrelet.
19 This action would reduce the overall amount and variety of visitor facilities in the park.
20 Removing food sources to jays, ravens, and raccoons would also help protect murrelets and
21 other nesting birds." Alternative 2 would expand wilderness areas by up to 4,000 acres and
22 "encourage greater use of the park for more primitive visitor experiences and low-impact type
23 of recreational use." The Draft EIR concluded that Alternative 2 "would increase opportunities
24 for visitors seeking a more primitive wilderness experience. With imposed restrictions on
25 development and use within a state wilderness, other benefits would include greater protection
26 of the old growth forest and reduced impacts on watersheds, streams and associated native plant
27 and wildlife habitats."
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1 3. Additionally, feasible mitigation measures were not adopted. The General Plan
2 includes guidelines for, but does not make a commitment to implement, measures to protect the
3 marbled murrelet. These guidelines are directed towards minimizing impacts to the marbled
4 murrelet and include specific feasible measures that could be taken to conserve the species, but
5 none of those measures are adopted as mitigation measures to reduce or minimize the
6 significant impacts to the marbled murrelet. No mitigation measures were made a condition of
7 approval and no mitigation and monitoring plan was required.

8 4. The Commission adopted a Statement of Overriding Considerations and Findings
9 for Overriding Considerations. The Statement attempts to dismiss the unanimous concerns
10 expressed by experts commenting on the General Plan regarding the current dire status of the
11 marbled murrelet population in the Santa Cruz Mountains and the significant threats from nest
12 predators which are supported at unnaturally high densities in and near Park campgrounds by
13 food subsidies from visitors (the food brought into the park by campers and hikers). The
14 Statement also attempts to dismiss requests to adopt specific protective measures based on more
15 than a decade of scientific data and analysis. Rather than adopt the feasible mitigation
16 measures or one of the two alternatives that would avoid many of the impacts of the proposed
17 General Plan to the marbled murrelet, while still increasing public access to the Park, the
18 Statement confusingly claims that "Guidelines in the General Plan substantially lessen the
19 overall impact to the marbled morale [sic] habitat; however, due to disagreement among experts
20 about the cause and resolution of the reasons for the decline of the marbled murrelet and the
21 need for further studies, the impact cannot be found to be avoided." Guidelines are not
22 enforceable mitigation measures and no mitigation monitoring plan was adopted. Further, there
23 is no disagreement among experts as to the causes or how to best address the decline of the
24 species. While additional studies are certainly needed to monitor the species and ensure its
25 conservation, the EIR evaluated two alternatives that it admitted would avoid some impacts to
26 the murrelet, but refused to adopt.

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6. This Court also has jurisdiction over the writ action under section 1085 of the Code of Civil Procedure, and section 21168.5 of the Public Resources Code.

8. Venue for this action properly lies in the Santa Cruz Superior Court because Big Basin State Park is in Santa Cruz County.

PARTIES

11. Respondent and Defendant CALIFORNIA DEPARTMENT OF PARKS AND RECREATION (“Department”) is a state agency under the laws of the State of California, the CEQA “lead agency” for the Big Basin General Plan (the “Project”), and the agency responsible for management of the Big Basin Redwoods State Park in accordance with the law.

12. Respondent and Defendant CALIFORNIA STATE PARK & RECREATION COMMISSION ("Commission"), is a Commission in the Department as constituted under Public Resources Code §§ 530 et seq., and is expressly required to approve all general plans for park units, Public Resources Code § 5002.2 . The Commission approved the General Plan at issue in this action, certified the EIR, and adopted the Statement of Overriding Considerations and findings for the Statement of Overriding Considerations challenged in this action.

13. Respondents and Defendants herein are collectively referred to as "State Parks."

14. The Center has exhausted all administrative remedies, as required by Public Resources Code section 21177, by submitting timely written comments regarding the Scoping Notice, Draft EIR, and Final EIR to the Department and testifying at the hearing before the Commission prior to the General Plan approval requesting compliance with CEQA and other laws, and seeking the completion of full and adequate environmental review. All issues raised in this petition were raised before Respondents by Petitioner, other members of the public, or public agencies, including the U.S. Fish and Wildlife Service ("Service").

STATEMENT OF FACTS

The Marbled Murrelet

15. The marbled murrelet was listed as an endangered species under the California Endangered Species Act (CESA) March 12, 1992.¹ The marbled murrelet was also listed as a threatened species under the federal Endangered Species Act (ESA) in California, Oregon, and Washington in 1992 (57 Fed. Reg. 45328-45337, October 1, 1992), and received federal critical habitat designation in 1996 that included Big Basin State Park (61 Fed. Reg. 26257-26320, May 24, 1996). The importance of critical habitat in Big Basin State Park to the species was again confirmed in the 2011 federal revised designation of critical habitat (76 Fed. Reg. 61599-61621, October 5, 2011). The Service has also conducted status reviews on the species. Both the

¹ The Department maintains a list of federally listed species and state listed species on line and a consolidated list for state and federally listed threatened and endangered animals is available at <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf>

1 2004 and 2009 status reviews were submitted to State Parks and emphasize the perilous status
2 of the species in the Santa Cruz Mountains and the importance of nesting habitat in Big Basin
3 State Park and other nearby State Parks' lands to the species.

4 16. The status and threats to the marbled murrelet population in the Santa Cruz
5 Mountains have been relatively well-studied and well-characterized, and there are at least 23
6 peer-reviewed, published studies and at least 34 scientific reports on this population, primarily
7 from the past decade.

8 17. Marbled murrelets in the Santa Cruz Mountains are highly vulnerable to extinction
9 due to small population size, continuing population declines, and low reproductive success
10 resulting in large part from corvid nest predation, primarily by common ravens and Steller's
11 jays.

12 18. There are various methods that have been used to monitor the population over the
13 past decades—at-sea surveys conducted offshore of breeding habitat that estimate population
14 size and land-based surveys that estimate levels of breeding activity. According to the
15 Service's 2009 status review, the at-sea surveys indicate that marbled murrelet populations have
16 continued to decline significantly across the listed range, with the most severe declines in
17 central California's Conservation Zone 6 in the Santa Cruz Mountains. While the overall
18 population of the murrelet declined at an estimated 26 percent from 2004 to 2008 (equivalent to
19 an annual rate of decline of 2.4 to 4.3 percent), Conservation Zone 6 declines were estimated at
20 75 percent decline between 2003 and 2008 (equivalent to an annual decline of 15 percent). At-
21 sea surveys through 2011 indicate that the average population size in the Santa Cruz Mountains
22 during recent years (2007 to 2011) of 412 birds was substantially lower than the average
23 population size during 2001 to 2003 of 681 birds, adding further evidence of a dramatic
24 population decline.

25 19. Evidence of significant murrelet decline in the Santa Cruz Mountains is also
26 shown in the land-based surveys in Big Basin State Park and three other parks--Portola State
27 Park, Butano State Park, and San Mateo County Memorial Park—which have found steep
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1 reductions in detections of murrelets. Surveys from 2003-2008 by Suddjian found significant
2 declining trends for both total detections and occupied site behaviors for all parks combined.
3 Declining trends for the two parks with longer-term data sets – Big Basin State Park (1995-
4 2008) and Peter’s Creek Bridge in Portola State Park (1992-2008) – were highly significant.

5 20. A 2007 study by Beissinger and Peery found that murrelet reproductive success in
6 the Santa Cruz Mountains appears to have declined by nearly an order of magnitude during the
7 past century, and that current reproductive rates are at levels expected to lead to population
8 declines. That study concluded that conserving murrelets will require increasing the juvenile
9 ratio (the ratio of young to adult birds) to 0.2 to 0.3, from the current juvenile ratio averaging
10 0.05 from 2007 to 2011, and the USFWS 5-year status report from 2009 concurs with that
11 conclusion. The population is now thought by respected scientists to be too low to sustain itself
12 without management interventions to reduce threats.

13 21. A 2010 study by Peery and Henry synthesizing much of the research and data
14 available on the marbled murrelet found that approximately half of known murrelet nests in
15 central California are within one kilometer of heavily used campgrounds in Big Basin
16 Redwoods State Park. This study concluded that reducing predation by corvids on marbled
17 murrelet nests “likely constitutes an effective means for recovering a declining murrelet
18 population in central California” and that “significant gains in viability could be achieved by
19 targeting efforts in small areas providing corvid food subsidies.”

20 22. The primary factor in the low reproductive success of marbled murrelets in the
21 Santa Cruz Mountains is predation on eggs and chicks by corvids, particularly Steller’s jays and
22 common ravens, that have increased in number and are maintained at unnaturally high
23 population levels due to human food subsidies. One study documented predation by Steller’s
24 jays and common ravens as the cause of nest failure for 44 percent of nests with known
25 breeding outcomes in Big Basin and Butano State Parks, and found that corvid predation may
26 have accounted for up to 70 percent of nest failures. This finding is consistent with studies in
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1 other regions that have found that corvids cause a large percentage of known murrelet nest
2 failures.

3 23. Corvid populations have increased significantly in Big Basin and other State Park
4 campgrounds in the Santa Cruz Mountains and are impacting marbled murrelet breeding
5 success due to high nest predation. Abundances of Steller's jays and common ravens have
6 increased dramatically in the Santa Cruz Mountains in recent decades with particularly high
7 densities near campgrounds and nearby murrelet nest sites according to recent studies. Surveys
8 in the Santa Cruz Mountains in 2009 found that Steller's jays in Big Basin State Park were 10
9 times more abundant in campgrounds or their immediate vicinity than in areas more than 300
10 meters from campgrounds, picnic areas, or residential areas. Steller's jay densities were
11 significantly positively correlated with the number of occupied campsites; the U.S. Fish and
12 Wildlife Service concurred with this finding. In 2009, ravens were 20 times more abundant in
13 Big Basin State Park campgrounds than in areas more than 300 meters from campgrounds.

14 **Big Basin State Park and Proposed General Plan**

15 24. Big Basin is California's oldest State Park, established in 1902 and
16 has been expanded to include additional lands over the intervening years. The park includes the
17 largest continuous stand of old-growth redwoods south of San Francisco. It contains
18 approximately 10,000 acres of old-growth forest, along with second growth redwood forest, and
19 mixed conifer, oaks, chaparral and riparian habitats. The park has over 80 miles of trails and
20 227 campsites, most of which are in the old-growth areas of the park.

21 25. On January 28, 2010, State Parks issued a notice of preparation for the Big Basin
22 General Plan and the EIR (SCH#2001112104). On June 18, 2012, State Parks issued a notice of
23 availability of the Draft EIR ("DEIR") for public comment. The DEIR stated that impacts to all
24 biological resources, including the marbled murrelet, would be less than significant. (DEIR at
25 5-22.)

1 26. Comments on the DEIR were timely submitted by the Center, the Service, and
2 many other members of the public regarding the perilous status of the marbled murrelet and
3 impacts to its habitat and breeding success from activities within the Park.

4 27. In April, 2013, State Parks released the Final EIR ("FEIR"). The FEIR revised the
5 proposed General Plan in several ways that are relevant here: the additional newly proposed
6 cabins in the Sky Meadows area in close proximity to old growth areas were removed from the
7 proposal, and proposed visitor amenities in the Sky Meadows group camp were required to be
8 located outside of the old growth forest, although they would still be in proximity to old growth
9 areas.

10 28. However, the Final EIR rejected the comments from the Center that suggested
11 modifications to the proposed General Plan to shift some camping, picnic areas, and the food
12 store out of old growth areas to less sensitive, non-old-growth areas such as the proposed new
13 campsites in Little Basin and the proposed new visitor center at Saddle Mountain, with a
14 potential option for no net loss of camping availability. The Final EIR also failed to address the
15 Center's comments suggesting removing the intent to build new facilities in and adjacent to old
16 growth habitat, including removing the proposal to create new staff housing and amenities in
17 Lower Sky Meadows and removing the proposal to add new trails, expand trailhead parking,
18 and add trailside camps within the backcountry and wilderness area. Finally, the Final EIR
19 failed to address many of the Center's comments recommending specific improvements to trash
20 management, corvid management, and public education in the Park to benefit the murrelet.

21 29. In response to comments, the FEIR admitted for the first time that impacts to the
22 marbled murrelet from the proposed General Plan would be significant. However, the FEIR
23 did not include any proposed mitigation nor recommend adoption of one of the alternatives or
24 suggested modifications to the proposed General Plan that would have avoided and reduced
25 impacts to the marbled murrelet. Instead, the FEIR suggests that due to alleged uncertainty
26 regarding the precise population figures in the Santa Cruz Mountains and the fact that local data
27 on predation rates was collected several years in the past, the precise cause of the murrelet
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1 population decline in the park was uncertain. The FEIR also alleged that the effectiveness of
2 various measures to avoid or mitigate impacts to the murrelet was unknown. Based on this
3 alleged uncertainty, the FEIR states that, therefore, a statement of overriding consideration
4 would be adopted.

5 30. In response to the FEIR's statements regarding the alleged uncertainty regarding
6 the status of the species, the precise causes of decline of the murrelet in the park, and alleged
7 uncertainty regarding effective mitigation measures, the Center, the primary scientists working
8 on the species in the Santa Cruz Mountains, and the Service submitted additional timely
9 comments to State Parks. Those comments directly refuted the statements made in the FEIR
10 regarding alleged uncertainty in the population data and the causes and nature of the impacts to
11 the murrelet from activities in the park, and support the effectiveness of adopting alternatives to
12 avoid impacts or mitigation measures that would minimize impacts.

13 31. A State Parks' staff report was also prepared and submitted to the Commission and
14 provided to the public. Although the staff report states that State Parks is "choosing to make the
15 required overriding findings for a significant unavoidable impact" regarding the marbled
16 murrelet, no draft Statement of Overriding Considerations or Findings for the Overriding
17 Considerations were provided to the public before the hearing, even after a direct request by the
18 Center to the designated Department contact for the Big Basin General Plan and the designated
19 contact for the Commission.

20 32. At the Commission hearing on May 17, 2013, the Department presented the
21 General Plan amendment to the Commission for approval along with an Errata, draft findings
22 for the Statement of Overriding Considerations, and a draft Statement of Overriding
23 Considerations. The hearing was the first time the draft Statement of Overriding Considerations
24 and findings were provided to the public.

25 33. During the May 17, 2013 hearing, Center staff and many other members of the
26 public raised issues regarding the unavaoided and unmitigated significant impacts to the marbled
27 murrelet from the activities authorized in the proposed General Plan. In addition, staff from the
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1 Service spoke during the public comment period of the meeting and emphasized the importance
2 of minimizing impacts to marbled murrelet during breeding season and the need to relocate
3 camping out of old-growth forest areas or adopt seasonal closures of camping in those areas
4 during breeding season. The Service also mentioned the need to analyze potential take of the
5 species from activities in the park. At the hearing, Department staff stated that the additional
6 "conservation activities" regarding the marbled murrelet that were listed in the Errata to the
7 Overriding Considerations were included in direct response to the May 14, 2012 letter from the
8 Service. This list of activities was not adopted as enforceable mitigation measures as part of the
9 General Plan approval.

10 34. At the hearing, the Commission approved the Big Basin General Plan, certified the
11 EIR, and adopted the Statement of Overriding Considerations and findings for the Statement of
12 Overriding Considerations.

13 35. A Notice of Determination was filed by the Department on May 20, 2013 and the
14 Notice was marked received by the State Clearing House on May 21, 2013.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 **AND INADEQUATE REMEDIES AT LAW**

17 36. Petitioner objected to the Project in the administrative process, and fully exhausted
18 its administrative remedies. Petitioner submitted letters during the comment period raising the
19 issues set forth herein.

20 37. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
21 unless this Court grants the requested writ of mandate and request for declaratory relief. In the
22 absence of such remedies, Respondents' approval of the Big Basin General Plan would
23 authorize activities to go forward that would proceed in violation of state law.

24 38. Petitioner has complied with Public Resources Code section 21167.7 by filing a
25 copy of this petition with the California Attorney General. A copy of that notice is attached as
26 Exhibit A.

1 39. Petitioner has complied with Public Resources Code section 21167.5 by providing
2 the Respondents, and each of them, with notice of its intention to commence the action. A copy
3 of that notice is attached as Exhibit B.

4 40. Petitioner elects to prepare the administrative record. A copy of that election is
5 attached as Exhibit C.

6 **FIRST CAUSE OF ACTION**
7 **(VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT)**

8 41. Petitioner incorporates all previous paragraphs as if fully set forth.

9 **The Description of the Environmental Setting Used as a Baseline for Analysis is Inaccurate**
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11 42. Every EIR must contain a project description that gives a “general description of
12 the project’s technical, economic, and environmental characteristics.” (CEQA Guidelines
13 Section 15124(c)).

14 43. The General Plan EIR failed to adequately or accurately describe the current status
15 of the marbled murrelet in the park.

16 44. The FEIR does not cure the failure to accurately describe the baseline
17 environmental setting regarding the murrelet in the DEIR. Rather, it attempts to inject
18 “uncertainty” where none exists. Instead of utilizing the existing scientific survey information
19 and studies to describe the current status of the marbled murrelet in the Park, the FEIR argues
20 that the studies are imperfect and therefore unreliable.

21 45. The inadequate project description regarding the marbled murrelet, therefore,
22 infects the EIR’s analysis and conclusions regarding the direct, indirect and cumulative impacts
23 to the marbled murrelet and renders the EIR inadequate.

24 **The EIR Failed to Adequately Analyze and Mitigate Significant Impacts to the Marbled**
25 **Murrelet**

26 46. CEQA requires the lead agency to conduct an adequate environmental review prior
27 to making any formal decision regarding projects subject to CEQA. (CEQA Guidelines, 14 Cal.
28 Code Regs. § 15004).

1 47. CEQA imposes upon State Parks a clear, present and mandatory duty to certify an
2 EIR only if the EIR fully discloses to the public the significant environmental effects that may
3 occur. The EIR for the General Plan lacks the necessary analysis.

4 48. Further, CEQA requires adoption of feasible alternatives that will reduce the
5 adverse impacts and all feasible mitigation measures that will reduce adverse environmental
6 impacts. Two feasible alternatives were rejected without substantial evidence that would
7 support such findings. Additionally, many feasible mitigation measures were discussed in the
8 Final EIR but no mitigation measures were adopted.

9 49. CEQA requires a lead agency to adopt all feasible mitigation for significant
10 environmental impacts.

11 50. Although the Draft EIR claimed that there would be no significant impacts to the
12 marbled murrelet, the Final EIR admits that the Park management under the General Plan will
13 have significant impacts on marbled murrelet populations but the EIR fails to implement all
14 feasible mitigation for these impacts. The proposed General Plan analyzed in the EIR fails to
15 commit State Parks to any mitigation measures to minimize impacts to the marbled murrelet.

16 51. The FEIR attempts to elude the requirements of CEQA by stating that the impacts
17 are significant but "speculative." The Final EIR misleadingly states:

18 Parks finds that there is a significant, unavoidable impact with respect to the
19 speculative nature of the research at this time. It is unclear what is causing the
20 decline in numbers, whether disturbance of habitat, predation, or loss of other
21 habitat in other areas. Conversely, it cannot be said with certainty that the activity
22 of Parks visitors in the old-grove redwoods is the reason for the dwindling
23 numbers. This lack of definitive information leads State Parks to make the
24 required overriding findings for a significant unavoidable impact.

25 (FEIR at 20.) There are several problems with this statement. First, this statement contradicts
26 the EIR which itself admits that the two alternatives considered would avoid many impacts to
27 the marbled murrelet, including the conclusion that "removing food sources to jays, ravens, and
28 raccoons would also help protect murrelets and other nesting birds." The statement also
contradicts the DEIR which states that nest predation by Steller's jays and common ravens is a

1 “current major threat” to the marbled murrelet population and is “a factor in the decline in
2 marbled murrelet detections and nesting success within the park’s historic core area.” Second,
3 comments submitted by scientists who have worked extensively with the marbled murrelet and
4 by the Service in response to the FEIR show that the research is not speculative, the causes of
5 decline are well known, and that mitigation measures can be developed to minimize impacts to
6 the marbled murrelet and its habitat that would support conservation of the species.

7 52. State Parks disregarded the unanimous findings of the existing scientific studies
8 and the opinion of the expert agency (the Service) that addressed the issues of the causes of the
9 decline of marbled murrelet populations in the park and what is needed to stabilize and begin to
10 recover the population to achieve conservation goals.

11 53. While there will never be absolute certainty as to what mitigation actions will be
12 most effective in protecting and recovering the population, that is not a valid basis for State
13 Parks to fail to adopt alternatives that would avoid some of the impacts to the species or to
14 commit to specific mitigation measures identified in the record that will minimize impacts and
15 promote conservation.

16 54. There is no evidence to support State Parks’ conclusion that it should not commit to
17 any mitigation at this time.

18 55. The final decision by State Parks did not require implementation of any mitigation
19 measures as a condition of the project approval and State Parks did not adopt a mitigation
20 reporting or monitoring plan.

21 56. State Parks entirely failed to commit to alternatives or mitigation that would reduce
22 or minimize impacts to the marbled murrelet.

23 57. While State Parks claims that impacts to marbled murrelet will be reduced under
24 the General Plan, the final decision fails to incorporate any mitigation measures in an
25 enforceable manner.

26 **Inadequate Response to Comments Were Provided**

1 58. Under CEQA, the lead agency must provide written responses to comments
2 submitted during the EIR comment period. (Public Resources Code § 21092.5.) Responses
3 require good faith, reasoned analysis. (CEQA Guidelines § 15088(c).)

4 59. Objections to the lead agency's position must be "addressed in detail giving
5 reasons why specific comments and suggestions were not accepted." (CEQA Guidelines §
6 15088(c).)

7 60. In response to comments, the FEIR includes some changes to the proposed General
8 Plan described in the DEIR that would have increased impacts to the marbled murrelet —such
9 as retracting the proposal to build new cabins at Sky Meadows. However, on balance, many of
10 the responses to comments were off-point and non-responsive regarding impacts to the marbled
11 murrelet, instead, attempting to inject uncertainty and speculation into the scientific debate
12 where none exists. The response also dismisses out of hand comments providing modifications
13 to the proposed General Plan to achieve both no net loss of camping facilities and increased
14 protection of marbled murrelets through seasonal camping restrictions in old growth areas.
15 Several commenters, including the Center, the U.S. Fish and Wildlife Service, and several
16 marbled murrelet scientists submitted additional comments after the FEIR to refute various
17 statements by State Parks in the response to comments.

18 **Unlawful Rejection of Environmentally Superior Alternatives**

19 61. Under CEQA, it is the policy of the State that a proposed project cannot be
20 approved if an alternative to the project will reduce the project's significant impacts, and that
21 alternative is feasible.

22 62. CEQA imposes upon lead agencies a clear duty to consider a reasonable range of
23 alternatives, including any feasible alternative which could substantially lessen the significant
24 environmental effects of the Project.

25 63. Here, the EIR considered two feasible alternatives that would reduce and avoid
26 many of the significant impacts to marbled murrelet but State Parks refused to adopt either
27 feasible alternative in violation of CEQA's mandate. State Parks also refused to consider
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1 modifications to the proposed General Plan that would comprise another reasonable alternative
2 under which expansion of facilities would be authorized but seasonal restrictions in camping
3 would be required, resulting in no net loss in camping availability in any season.

4
5 **The Findings and Statement of Overriding Considerations Are Unsupported by**
6 **Substantial Evidence**

7 64. CEQA only allows a project with significant adverse environmental impacts to be
8 approved if the lead agency makes findings, supported by substantial evidence, that the project's
9 benefits will outweigh its adverse impacts and that there are not feasible mitigation measures or
10 less damaging alternatives available.

11 65. There is no finding that the alternatives evaluated in the EIR are infeasible nor that
12 proposed mitigation measures are infeasible.

13 66. The Statement of Overriding Considerations and the findings state that the
14 recreational needs justify the Project's adverse impacts but there is no substantial evidence in the
15 record that recreational needs outweigh the need to conserve the endangered marbled murrelet
16 or that both needs cannot be met. For example, the park could adopt seasonal closures in the old
17 growth campgrounds and still meet the existing recreational needs for camping with no net loss
18 during the breeding season by utilizing the new additional campgrounds at Little Basin—this
19 would still increase the availability of camping in the park throughout the year and also ensure
20 greater protections for the marbled murrelet population.

21 67. In addition, substantial evidence does not support the Commission's findings relied
22 on for the Statement of Overriding Considerations that the guidelines in the General Plan would
23 be sufficient. Because no enforceable standards are included in the General Plan and no
24 mitigation measures were adopted, the Commission could not properly rely on the General
25 Plan's future implementation of measures that are not sure to occur or enforceable to protect the
26 murrelet.

27 68. Thus, the Statement of Overriding Considerations lacks substantial evidence, in
28 violation of CEQA.

SECOND CAUSE OF ACTION
(Violations of CESA)

69. Petitioner hereby refers to and fully incorporate by reference the paragraphs set forth above as though fully set forth at length herein.

70. The marbled murrelet is listed as state endangered bird under the California Endangered Species Act ("CESA").

71. The California Endangered Species Act ("CESA"), Cal Fish & Game Code § 2050 et seq, provides that:

The Legislature hereby finds and declares all of the following:

(a) Certain species of fish, wildlife, and plants have been rendered extinct as a consequence of man's activities, untempered by adequate concern and conservation.

(b) Other species of fish, wildlife, and plants are in danger of, or threatened with, extinction because their habitats are threatened with destruction, adverse modification, or severe curtailment, or because of overexploitation, disease, predation, or other factors.

(c) These species of fish, wildlife, and plants are of ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern.

(Fish & Game Code § 2051.) The statute expressly calls on agencies and commissions to implement the policies in the CESA in furtherance of the goal of conserving the species.

The Legislature further finds and declares that it is the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the purposes of this chapter.

(Fish & Game Code § 2055.)

"Conserve," "conserving," and "conservation" mean to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. These methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, restoration and

1 maintenance, propagation, live trapping, and transplantation, and, in the
2 extraordinary case where population pressures within a given ecosystem cannot be
otherwise relieved, may include regulated taking.

3 (Fish & Game Code § 2061.)

4 “Endangered species” means a native species or subspecies of a bird, mammal,
5 fish, amphibian, reptile, or plant which is in serious danger of becoming extinct
6 throughout all, or a significant portion, of its range due to one or more causes,
7 including loss of habitat, change in habitat, overexploitation, predation,
competition, or disease.

8 (Fish & Game Code § 2062.)

9 72. Another key provision of the CESA that implements protections for listed species
10 is Fish & Game Code section 2053, entitled “Alternative projects consistent with conservation,”
11 which states:

12 The Legislature further finds and declares that it is the policy of the state that state
13 agencies should not approve projects as proposed which would jeopardize the
14 continued existence of any endangered species or threatened species or result in
15 the destruction or adverse modification of habitat essential to the continued
16 existence of those species, if there are reasonable and prudent alternatives
available consistent with conserving the species or its habitat which would prevent
jeopardy.

17 Furthermore, it is the policy of this state and the intent of the Legislature that
18 reasonable and prudent alternatives shall be developed by the department [of Fish
19 and Wildlife], together with the project proponent and the state lead agency,
20 consistent with conserving the species, while at the same time maintaining the
project purpose to the greatest extent possible.

21
22 73. Taken together, these provisions of CESA required State Parks to take affirmative
23 steps to conserve the marbled murrelet populations, to prevent jeopardy to the species, to avoid
24 actions which destroy or adversely modify the value of its essential habitat (including designated
25 critical habitat, breeding habitat, etc.), and to adopt reasonable and prudent alternatives that
26 would avoid jeopardy to the species and destruction or adverse modification to its habitat.
27 Pursuant to statute, State Parks was required to disapprove the General Plan if implementation
28

1 of the plan would result in jeopardy, or destruction or adverse modification of essential habitat,
2 or would fail to conserve the marbled murrelet (which includes undermining its potential for
3 recovery in this area).

4 74. State Parks is required to comply with these CESA mandates in adopting the
5 General Plan, but did not. There is no evidence that State Parks has fulfilled any of its duties
6 under the statute to conserve the marbled murrelet, and to avoid jeopardy and destruction and
7 adverse modification of essential habitat.

8 75. Rather, the proposed General Plan adopted by State Parks authorizes increased
9 activities in the Park that will significantly impact murrelet populations. State Parks rejected the
10 two alternatives evaluated in the EIR that would both reduce and avoid impacts that have led to
11 a decline in the marbled murrelet population nesting in the old growth habitat in the Park in
12 violation of CESA. This habitat, which is essential nesting habitat and designated critical habitat
13 by the U.S. Fish and Wildlife Service, is of incalculable importance to the future well-being of
14 the endangered marbled murrelet populations in this area and is essential to the continued
15 existence of this southernmost remaining population of the species. The murrelet's endangered
16 status is largely due to the fact that so little old growth forest, upon which the species depends,
17 is left.

18 76. The current information on the status of the species demonstrates that the marbled
19 murrelet is in critical condition and any additional adverse impacts to the population could cause
20 an extirpation of the murrelet in a significant portion of its range. Therefore, any further
21 introduction of new facilities that will attract ravens and jays to marbled murrelet habitat in the
22 Park will also preclude conservation of this imperiled bird, will jeopardize its continued
23 existence, and will adversely modify habitat essential to its continued existence in violation of
24 CESA.

25 77. The General Plan continues to allow activities that attract and support populations
26 of predators (ravens and jays) in old growth areas of the Park that result in takes of murrelets
27 both directly through nest predation and by undermining breeding activities. The General Plan
28

1 also authorizes additional activities that will increase this threat throughout the Park, allowing
2 additional cumulative impacts to the species. As a result, the General Plan significantly
3 undermines the value of the old-growth nesting habitat in the park for the marbled murrelet,
4 increases take of the species, and undermines conservation of the species.

5 78. Because the old growth nesting habitat in this area is already fragmented from
6 larger stands in Northern California, the failure of State Parks to take the actions necessary
7 protect this population of marbled murrelet from take due to subsidized predators also increases
8 the influence of other adverse environmental and demographic events on the murrelet, thus
9 pushing it closer to extirpation in Santa Cruz County and loss of a significant portion of its
10 range, and undermines recovery of the species in violation of CESA.

11 79. Further, although the U.S. Fish and Wildlife Service and several scientist stated that
12 the proposed General Plan needed to do more to protect the marbled murrelet and its population
13 and the EIR recognizes that threats to the species may increase from the activities authorized in
14 the General Plan, State Parks refused to adopt an alternative that would avoid impacts and made
15 no firm commitment to adopt any specific, enforceable mitigation measures that would reduce
16 impacts to the marbled murrelet from subsidized predators in the Park. The General Plan
17 provides no firm commitment and no enforceable mechanism whereby impacts to the marbled
18 murrelet will be decreased over time in order to contribute to species recovery, as required by
19 CESA.

20 80. In sum, State Parks' approval of the General Plan is in violation of CESA's
21 mandates that a) endangered species be conserved, protected, restored, and enhanced, b)
22 jeopardy be avoided, c) habitat essential to the continued existence of endangered species be
23 protected, and d) take be avoided.

24 **PRAYER FOR RELIEF**

25 In each of the respects enumerated above, Respondents have violated their duties under
26 law, abused their discretion, failed to proceed in the manner required by law, and decided the
27 matters complained of without the support of substantial evidence. Accordingly, the
28

1 certification of the EIR and the approval of the Big Basin General Plan must be set aside.

2 WHEREFORE, Petitioner prays for relief as follows:

3 1. For an alternative and peremptory writ of mandate, commanding Respondents:

4 A. To set aside and vacate the certification of the FEIR, Findings and
5 Statement of Overriding Considerations supporting the approval of the Big Basin General Plan;
6 and

7 B. To set aside and vacate the approval of the General Plan based upon the
8 FEIR, Findings and Statement of Overriding Considerations; and

9 2. For an order precluding Respondents from taking any action to expand and
10 construct additional facilities and infrastructure in the Big Basin State Park without first
11 addressing impacts to the marbled murrelet from existing facilities, infrastructure, and activities
12 in old growth areas of the Park and without first adopting binding commitments to mitigation
13 measures for the murrelet, or to undertake any other actions that could result in a significant
14 adverse impact on marbled murrelet until after the preparation and consideration of an adequate
15 EIR and adoption of all feasible alternatives and mitigation measures;

16 3. For a declaration that Respondents, and each of them, have failed to fulfill their
17 statutory obligations under the California Endangered Species Act, Fish & Game Code § 2053,
18 by failing to adopt "reasonable and prudent alternatives available consistent with conserving the
19 species or its habitat which would prevent jeopardy" when they adopted the proposed General
20 Plan rather than a feasible alternative that would support conservation and significantly reduce
21 impacts to the endangered marbled murrelet and its essential habitat.

22 4. For costs of the suit;

23 5. For reasonable attorneys' fees; and

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

25 //

26 //

27 //

1 DATE: June 18, 2013

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

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3
4 By: 
5 Jan Chatten-Brown
6 Michelle Black

7
8 By: 
9 Lisa T. Belenky

10 Attorneys for Petitioner and Plaintiff
11 Center for Biological Diversity
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I, Lisa T. Belenky, **VERIFICATION** declare that I am the Senior Attorney of Center

I declare under penalty of perjury that the foregoing is true and correct. Executed this

Lisa T. Belenky

EXHIBIT A

TELEPHONE: (310) 798-2400
FACSIMILE: (310) 798-2402

CHATTEN-BROWN & CARSTENS
2200 PACIFIC COAST HIGHWAY
SUITE 318
HERMOSA BEACH, CALIFORNIA 90254
www.cbcearthlaw.com

E-mail:
MNB@CBCEARTHLAW.COM

June 18, 2013

By U.S. Mail

Office of the Attorney General
1515 Clay Street / P.O. Box 70550
Oakland, CA 94612-0550

Re: Challenge to Environmental Impact Report and Approval of the General Plan for
Big Basin Redwoods State Park; SCH No. 2001112104
Center for Biological Diversity v. California Department of Parks and Recreation

Dear Attorneys General:

Pursuant to Public Resources Code section 21167.7 and Code of Civil Procedure Section 388, please find enclosed a copy of the Petition for Writ of Mandate filed to challenge the California Department of Parks and Recreation's certification of an environmental impact report for the Big Basin Redwoods State Park General Plan ("Project"). The Department approved the Project on May 17, 2013. A Notice of Determination was posted on May 21, 2013. As approved, the Project would maintain campgrounds, picnic areas, and other visitor-serving facilities in old growth areas of the park that provide habitat to the marbled murrelet, a species listed under both the California and federal Endangered Species Acts, despite overwhelming scientific evidence that food subsidies associated with visitors negatively impact murrelet reproduction. The Project also rejects feasible alternatives and mitigation measures, and was approved with an unsupported Statement of Overriding Considerations.

Please call if you have any questions.

Sincerely,



Michelle Black

Enclosure: Petition for Writ of Mandate

EXHIBIT B

CHATTEN-BROWN & CARSTENS

2200 PACIFIC COAST HIGHWAY

SUITE 318

HERMOSA BEACH, CALIFORNIA 90254

www.cbcearthlaw.com

TELEPHONE: (310) 798-2400

FACSIMILE: (310) 798-2402

E-mail:

MNB@CBCEARTHLAW.COM

June 18, 2013

Via U.S. Mail

California Department of Parks and Recreation
Planning Division
1416 9th Street
Sacramento, CA 95814

P.O. Box 942896
Sacramento, CA 94296

Re: Notice of Intent to Challenge to Environmental Impact Report and
Approval of the General Plan for Big Basin Redwoods State Park
SCH No. 2001112104
*Center for Biological Diversity v. California Department of Parks and
Recreation*

To Whom it May Concern:

Please take notice that on behalf of the Center for Biological Diversity, we intend to commence an action to challenge the Department of Parks and Recreation's approval of a General Plan for Big Basin Redwoods State Park and the May 17, 2013 certification of the EIR prepared for the General Plan, for which a Notice of Determination was posted on May 21, 2013.

Sincerely,



Michelle Black

cc: Santa Cruz District Office
303 Big Trees Park Road
Felton, CA 95018-9660

EXHIBIT C

1 CHATTEN-BROWN & CARSTENS

2 Jan Chatten-Brown, SBN 050275

3 Douglas P. Carstens, SBN 193439

4 Michelle N. Black, SBN 261962

5 2601 Ocean Park Blvd, Suite 205

6 Santa Monica, CA 90405

7 310.314.8040; Fax 310.314.8050

8 Lisa T. Belenky (Cal. Bar No. 203225)

9 CENTER FOR BIOLOGICAL DIVERSITY

10 351 California Street, Suite 600

11 San Francisco, CA 94104

12 Telephone: (415) 436-9682

13 Facsimile: (415) 436-9683

14 Email: lbelenky@biologicaldiversity.org

15 Attorneys for Petitioner and Plaintiff

16 Center for Biological Diversity

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SANTA CRUZ**

19 CENTER FOR BIOLOGICAL DIVERSITY)

20 Petitioner and Plaintiff,)

21 v.)

22 CALIFORNIA DEPARTMENT OF PARKS)
23 AND RECREATION, an agency of the State)
24 of California; CALIFORNIA STATE PARK)
25 & RECREATION COMMISSION)

26 Respondents and Defendants.)
27)
28)

CASE NO.:

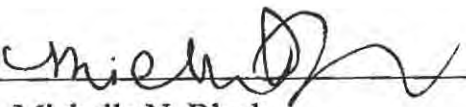
**NOTICE OF ELECTION TO PREPARE
ADMINISTRATIVE RECORD**

(California Environmental Quality Act, Pub.
Res. Code § 21000, et seq.; Code of Civil
Procedure §§ 1094.5, 1085; California
Endangered Species Act, California Fish &
Game Code §§ 2050-2061.)

1 PLEASE TAKE NOTICE: Petitioner Center for Biological Diversity hereby elects to prepare the
2 administrative record.
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6 Date: June 18, 2013
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CHATTEN-BROWN & CARSTENS

10 By: 
11 Michelle N. Black
12 Attorneys for Petitioner
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