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9 Attorneys for Plaintiff Sierra Club  
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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 SIERRA CLUB, a non-profit organization,	)	
	)	
15 Plaintiff,	)	Case No.:
	)	
16 v.	)	
	)	
17 DONALD RUMSFELD, in his official	)	<b>COMPLAINT FOR DECLARATORY</b>
capacity as Secretary of the Department of	)	<b>AND INJUNCTIVE RELIEF</b>
18 Defense; and UNITED STATES	)	
DEPARTMENT OF DEFENSE,	)	(Administrative Procedure Act Case)
	)	
19 Defendants.	)	
	)	
20	)	



1 capacities; and 3) 28 U.S.C. §§ 1361 and 1391(e) (West 2006) provide for venue in the judicial  
2 district of a plaintiff's residence, including the San Francisco Division.

3 **PARTIES**

4 5. Plaintiff Sierra Club was founded in 1892 and is the nation's oldest grassroots  
5 environmental organization. The Sierra Club is incorporated in California, and has its  
6 headquarters in San Francisco, California. It has more than 750,000 members nationwide,  
7 including over 191,000 members in California.

8 6. Sierra Club is dedicated to the protection and preservation of the natural and  
9 human environment. One of the Sierra Club's national initiatives is finding solutions to the  
10 pressing problems of global warming, air pollution, and our national dependence on dirty, non-  
11 renewable energy sources such as nuclear power, oil and coal. A central part of this initiative is  
12 to promote the use of clean energy sources. Impediments to wind energy development  
13 undermine the Club's campaign to promote renewable energy sources. In addition, our nation  
14 becomes more dependent on oil, coal and nuclear power when wind energy developments are  
15 impeded; which in turn exacerbate global warming and air pollution problems.

16 17 7. Gas and electric companies throughout the nation allow their customers to  
18 purchase electricity generated specifically from wind energy. Unfortunately, the demand for  
19 wind energy is higher than the supply of wind energy, and many customers, including many  
20 Sierra Club members, cannot purchase their electricity from wind power. For instance, Madison  
21 Gas & Electric allows its customers to purchase their electricity from wind energy. However,  
22 the demand for wind energy exceeds the supply and many Wisconsin residents, including many  
23 Sierra Club members, are on a waiting list with Madison Gas & Electric to purchase their  
24 electricity from wind power.  
25



1 of Representatives a report on the effects of windmill farms on military readiness, including an  
2 assessment of the effects on the operations of military radar installations of the proximity of  
3 windmill farms to such installations and of technologies that could mitigate any adverse effects  
4 on military operations identified.” (emphasis added)

5 13. May 8, 2006 was the first business day that was 120 days after the enactment of  
6 the Authorization Act.

7 14. The May 8, 2006 deadline has passed and Secretary Rumsfeld has failed to submit  
8 to the Committees on Armed Services of the Senate and the House of Representatives the  
9 required Wind Report.

10 15. On March 21, 2006, DOD and the United States Department of Homeland  
11 Security issued an “Interim Policy on Proposed Windmill Farm Locations,” (the “Interim  
12 Policy”) which states that the “DOD/DHS [Department of Homeland Security] Long Range  
13 Radar Joint Program Office Interim Policy is to contest any establishment of windmill farms  
14 within radar line of site [sic] of the National Air Defense and Homeland Security Radars. This  
15 [Interim Policy on Proposed Windmill Farm Locations] is to remain in effect until the  
16 completion of the study and publishing of the Congressional Report.”

17 16. In order to operate and construct a windmill farm, an energy developer must  
18 obtain a notice from the Federal Aviation Authority (FAA) stating that the installation is not a  
19 hazard to air navigation.

20 17. The FAA is interpreting the “Interim Policy” to mean that it cannot issue such a  
21 notice to a proposed windmill farm that is within radar line of sight of any National Air Defense  
22 and Homeland Security Radar. Instead, the FAA has been issuing “Notices of Presumed  
23 Hazard,” which contain statements such as the following (emphasis added):  
24  
25

1 At the discretion [sic] of Congress, the Secretary of Defense is tasked to submit a  
2 report on the effects of windmill farms on military readiness. This report is to  
3 include an assessment of the effects of windmills on the operations of military  
4 radar installations, proximity of windmill farms to such installations and of the  
5 technologies that could mitigate any adverse effects on military operations.

6 The Department of Defense and the Department of Homeland Security Long  
7 Range Radar Joint Program Office Interim Policy is to contest any establishment  
8 of windmill farms within radar line of site of the National Air Defense and  
9 Homeland Security Radars. This is to remain in effect until the completion of the  
10 study and publishing of the Congressional Report.

11 This study should be completed by summer 2006. Therefore, the Federal  
12 Aviation Administration concurs with the development of wind turbines within  
13 the radar line-of-sight and recommends that the subject proposal be delayed until  
14 the comprehensive analysis is completed.

15 18. Since much of the nation is “within radar line of sight,” the Interim Policy and the  
16 FAA’s implementation of that policy have created a de facto moratorium on new wind power  
17 projects in our nation, and this will continue until Defendants complete and publish the Wind  
18 Report.

### 19 COUNT 1

20 19. The Administrative Procedure Act, 5 U.S.C. § 702 (West 2006), provides that “[a]  
21 person suffering legal wrong because of agency action, or adversely affected or aggrieved by  
22 agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”  
23 The APA defines “agency action” to include an agency’s “failure to act,” 5 U.S.C. §§ 701(2),  
24 551(13) (West 2006).

25 20. The APA, 5 U.S.C. § 706(1) (West 2006), further provides that a reviewing court  
shall “compel agency action unlawfully withheld or unreasonably delayed.”



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