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May 27, 2016

Via FedEx

Edith Hannigan, Board Analyst
Board of Forestry and Fire Protection
1416 9th Street, Room 1506-14
Sacramento, CA 95814-5511

Re: Vegetation Treatment Program Environmental Impact Report

Dear Ms. Hannigan:

This firm represents the Endangered Habitats League (“EHL”) in connection with the Vegetation Treatment Program (“VTP” or “Program”) and its associated Draft Environmental Impact Report (“DEIR”).¹ EHL is southern California’s only regional conservation organization, and it and its members have a direct stake in maintaining the health of Southern California’s unparalleled biodiversity and the native ecosystems that support it. Our client is deeply concerned about the far-ranging environmental impacts that would result from implementation of the VTP.

This letter is also submitted on behalf of Audubon California; California Chaparral Institute; California Native Plant Society, San Diego Chapter; Laguna Greenbelt, Inc.; Natural Resources Defense Council; San Diego Audubon Society; and Sea and Sage Audubon Society.

After carefully reviewing the VTP DEIR, we have concluded that it fails to comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.* (“CEQA”). As described below, the DEIR violates CEQA because it: (1) fails to adequately describe the VTP; (2) fails to properly analyze the Program’s environmental impacts, especially its impacts to biological resources; (3) relies on ineffective and unenforceable mitigation to conclude that the VTP’s impacts would be reduced to levels that are less than significant; and (4) fails to

¹ The VTP and the DEIR have been prepared as one document. To avoid confusion, this letter distinguishes the Program from the DEIR.

undertake a legally sufficient study of alternatives to the Program. Such fundamental errors undermine the integrity of the DEIR. While this letter focuses predominantly on the VTP's impacts on biological resources, it is important to acknowledge that the Program would also have other extensive impacts including but not limited to increased greenhouse gas and criteria air pollutant emissions, degraded water quality, and ironically, an increased risk of wildland fires.

I. Introduction

The proposed VTP is a plan to burn, treat with herbicides, and otherwise modify the vegetative landscape of California on a massive and unprecedented scale. The Board of Forestry and Fire Protection's ("Board") Program requires the implementation of fuel management activities that would affect an area of about 22 million acres. DEIR at E-1 and E-6. That is an area greater than that of South Carolina and Delaware combined. The premise upon which the VTP rests—the Board's view that a substantial part of this vast amount of land must be "treated" to prevent wildfire—is not only grandiose but, for California's extensive shrub vegetation communities, entirely lacking in scientific basis. For this very large and vital component of the VTP, we can find no evidence in the DEIR that the VTP would even achieve the Board's mission of safeguarding the people and protecting the property and resources of California from the hazards associated with wildfire. Indeed, we are unaware of any other state that threatens the elimination of populations of sensitive wildlife and vegetation to prevent wildfires.

The current VTP is particularly concerning as EHL and its expert scientists in the fields of fire science and ecology, fire management, biogeography, native plant ecology, biodiversity, and wildlife conservation biology submitted extensive comments on the prior proposed VTP and its DEIR.² Wildlife regulatory agencies, including the United

² The following letters and reports are attached and are incorporated by reference into this letter: Letter from Dan Silver, Executive Director, Endangered Habitats League to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 1; Letter from CJ Fotheringham, Research Ecologist, USGS to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 2; Letter from Wayne D. Spencer, Chief Scientist, Conservation Biology Institute to Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 3; and Letter from Alexandra D. Syphard, Research Scientist, Conservation Biology Institute to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 4.

States Fish and Wildlife Service and the California Department of Fish & Wildlife, and other environmental organizations also submitted comments on the prior VTP and the DEIR.³ Each of these letters and reports explained that the prior Program's approach to reducing the severity and frequency of fires lacked a reasoned justification based on science and substantial evidence.

The prior VTP indefensibly treated the diverse ecological regions of the state with the same broad brush. For the scrub systems of Southern California, in particular, its

³ The following letters and reports are attached and are incorporated by reference into this letter: Letter from Karen A. Goebel, Assistant Field Supervisor, U.S. Department of the Interior, Fish and Wildlife Service to George Gentry, Executive Officer, California Department of Fire and Forest Protection, February 25, 2013, attached as Exhibit 5; Letter from Robert Taylor, Fire GIS Specialist, Department of the Interior, National Park Service, to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 6; Memorandum from Sandra Morey, Deputy Director, Ecosystem Conservation Division, California Department of Fish and Wildlife to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 7; Letter from Van K. Collinsworth, Natural Resource Geographer, to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 21, 2013, attached as Exhibit 8; Letter from Richard W. Halsey, Director, California Chaparral Institute to George Gentry, Executive Officer, Board of Forestry and Fire Protection, January 25, 2013, attached as Exhibit 9; Letter from Richard W. Halsey, Director, California Chaparral Institute and Justin Augustine, Attorney, Center for Biological Diversity to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 10; Letter from Richard W. Halsey, Director, California Chaparral Institute to George Gentry, Executive Officer, Board of Forestry and Fire Protection, April 8, 2013, attached as Exhibit 11; Letter from Anne S. Fege, Adjunct Professor, Department of Biology, San Diego State University to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 23, 2013, attached as Exhibit 12; Letter from Greg Suba, Conservation Program Director, California Native Plant Society to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013, attached as Exhibit 13; Letter from Frank Landis, Conservation Chair, California Native Plant Society to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 15, 2013, attached as Exhibit 14; and, Letter from Sweetgrass Environmental Consulting to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 24, 2013; attached as Exhibit 15.

management prescriptions—to the extent they could be gleaned from the DEIR—were bereft of scientific basis and lacked demonstrable efficacy. Furthermore, as EHL explained, the assumption that fire safety could be manufactured through vegetation removal is illusory as certain of the strategies contemplated by the VTP would likely result in an increase in fire frequency. Equally concerning, the VTP would encourage the continued expansion of the Wildland Urban Interface (“WUI”), and the resulting vicious cycle of additional home construction in high fire hazard areas.

The DEIR for the prior VTP was equally deficient. Wildlife regulatory agencies and environmental organizations including EHL explained that the environmental document defined the Program so vaguely as to preclude reasoned and meaningful assessment of its environmental impacts. The DEIR relied on speculation, not substantial evidence, in its analysis of environmental impacts. These agencies and organizations explained that although the VTP had the potential for irreversible environmental damage, there was simply no basis for determining the extent of the impact on the physical environment that would result from the burning or other modification of millions of acres of vegetation.

A peer review of the prior VTP and its EIR, conducted by the California Fire Science Consortium (“CFSC”) was commissioned by CAL FIRE and the Board. *See* Panel Review Report of Vegetation Treatment Program Environmental Impact Report Draft, California Board of Forestry and Fire Protection in Association with CAL FIRE Agency, August 2014, at 5, attached as Exhibit 16. The CFSC peer review largely echoed the concerns raised by the other scientists, wildlife regulatory agencies and environmental organizations. It criticized the VTP’s flawed approach of attempting to collapse the state’s varied fire and fuel regimes into a standardized matrix where all treatments would be equally effective in all landscapes. CFSC Peer Review at 5-8. The CFSC explained that without deliberate oversight and revisions, the VTP would result in unassessed environmental impacts and irreparable damage to public agency relationships. The peer review culminated in a recommendation that the VTP undergo a major revision if the Plan was to be a contemporary, science based document. Specifically, the CFSC recommended that the VTP and its EIR explicitly describe how the treatments proposed for private lands fit into the state’s overall fire plan, including protection of high value assets, state and local land use planning policies, and federal land use practices. The panel also called for a revised plan to utilize formal adaptive management: rigorous analysis of monitoring data collected in response to implementation of VTP projects. From these monitoring efforts, the CFSC explained, the EIR could be used to implement

projects and collect information on the relative efficacy and ecological effects of treatment and vegetation combinations. *Id.*

EHL has a long history of supporting reasonable strategies to protect people and property from the hazards associated with wildfire. Recognizing the critical importance of promoting sound wildfire prevention strategies, EHL offered the assistance of its world-renowned scientists to collaborate and assist on a revised VTP that would better protect natural resources and incorporate the most recent science.

Upon learning that the prior VTP had been withdrawn, EHL was optimistic that the Board would take these suggestions and offers of assistance to heart and make substantive modifications to the VTP and revise the EIR in a manner that complied with CEQA. *See e.g.*, Letter from Dan Silver, Executive Director, Endangered Habitats League to Duane Shintaku, Deputy Director, California Department of Forestry and Fire Protection, October 2, 2014, attached as Exhibit 17. Yet, after carefully reviewing the current VTP and DEIR, it is clear that the Board's response to these comments and suggestions is, lamentably, denial. The vast majority of concerns raised by the CFSC, wildlife regulatory agencies and scientists about the Program and its EIR appear to have been rejected out of hand. Rather than substantively revise the VTP or accurately analyze the environmental harm that would accompany the Program, the VTP and its DEIR merely seek to defend the faulty science, erroneous assertions and conclusions of the prior documents.

Submitted under separate cover are reports prepared by Dr. Wayne D. Spencer, Ph.D, Conservation Biology Institute and CJ Fotheringham, Ph.D. that address the substantive flaws in the Board's approach to fire prevention and the inability of the VTP to achieve its own objectives. (*See* Letter from Wayne D. Spencer, Chief Scientist, Conservation Biology Institute to E. Hannigan, California Board of Forestry and Fire Protection, May 31, 2016 and letter from CJ Fotheringham, Research Ecologist, USGS to E. Hannigan, California Board of Forestry and Fire Protection, May 31, 2016). We respectfully request that the Final EIR respond separately to each of the points raised in the scientists' technical reports as well as to the points raised in this letter. In addition, this letter also incorporates by reference the letter from Richard Halsey, Director, California Chaparral Institute to E. Hannigan, California Board of Forestry and Fire Protection, May 24, 2016 and the letter from Frank Landis, Conservation Chair of the San Diego Chapter of the California Native Plant Society to E. Hannigan, California Board of Forestry and Fire Protection, May 31, 2016.

II. The DEIR Fails to Comply With CEQA.

A. The DEIR's Justifications For Failing to Provide a More Detailed Analysis of the VTP's Environmental Impacts Are Groundless.

Among the DEIR's most notable deficiencies is the lack of a detailed accounting of the VTP's environmental impacts. The DEIR attempts to defend its vague analysis by suggesting that the document serves as a first-tier document for later CEQA review of individual projects included in the Program and that further environmental review will likely be undertaken as each project is implemented. This justification is unavailing. Not only does the DEIR improperly defer analysis of ascertainable environmental impacts to a future process, but that future process lacks any workable means for analyzing and mitigating the impacts of individual projects, and effectively shuts out public participation.

Under CEQA, the "programmatic" nature of this DEIR is no excuse for its lack of detailed analysis. The DEIR grossly misconstrues both the meaning and requirements of a "program" EIR by suggesting that the broad scope of the VTP plays an important role in determining the appropriate level of detail to include in the DEIR. *See* DEIR at 4-116 ("Effects of fuel reduction on wildlife depend on the specific ecological requirements of individual species and thus are difficult to generalize, especially in a treatment area as large and complex as that considered here."). This approach is flawed, at the outset, because CEQA mandates that a program EIR provide an in-depth analysis of a large-scale project, looking at effects "as specifically and comprehensively as possible." Cal. Code Regs., tit. 14, § 15168(a), (c)(5); (hereafter "CEQA Guidelines"). Indeed, because it is designed to look at the "big picture," a program EIR must (1) provide "more exhaustive consideration" of effects and alternatives than can be accommodated by an EIR for an individual action, and (2) consider "cumulative impacts that might be slighted in a case-by-case analysis." CEQA Guidelines § 15168(b)(1)-(2).

Furthermore, whether a lead agency prepares a "program" EIR or a "project-specific" EIR under CEQA, the requirements for an adequate EIR remain the same. CEQA Guidelines § 15160. "Designating an EIR as a program EIR also does not by itself decrease the level of analysis otherwise required in the EIR." *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 533. Even a program-level EIR must contain "extensive, detailed evaluations" of a plan's effects on the existing environment. *Env'tl Planning and Info. Council v. Cnty. of El Dorado* (1982) 131 Cal.App.3d 350, 358. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723-24 (where the record before an agency contains

information relevant to environmental impacts, it is both reasonable and practical to include that information in an EIR). The “extensive, detailed evaluations” required by CEQA are absent from the DEIR.

The DEIR’s reliance on future, project-level environmental review is also misplaced. Again, CEQA’s policy favoring early identification of environmental impacts does not allow agencies to defer analysis of a plan’s impacts to some future EIR for specific projects contemplated by that plan. *See Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282-84; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194 (1986); *City of Redlands v. Cnty. of San Bernardino* (2002) 96 Cal.App.4th 398, 409 (2002). As CEQA Guidelines section 15152(b) explicitly warns, “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”

Moreover, as discussed below, there is no guarantee in this case that such future, detailed environmental review will happen or, if it does, that environmental impacts will be identified or mitigated. Under these circumstances, a detailed environmental impact analysis must be performed now, prior to the VTP’s approval. As the Court of Appeal explained in *Stanislaus Natural Heritage Project v. Cnty. of Stanislaus* (1996) 48 Cal.App. 4th 182, 196 (1996), CEQA requires that this environmental review take place before project approval. In *Stanislaus*, the court rejected the argument that a programmatic EIR for a specific plan and general plan amendment could ignore site-specific environmental review because future phases of the development project would include environmental review, stating that tiering “is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause.” *Id.* at 199.

Because the Board intends to allow unspecified project-level approvals in reliance on this DEIR, and because there is no indication that any meaningful future environmental review will take place, the DEIR must include a detailed, project-level analysis of the impacts that could arise from the implementation of all aspects of the VTP, as well as a meaningful discussion of alternatives and mitigation measures, so the Board and the public can understand the consequences of the VTP before considering whether it should be approved.

B. The DEIR's Description of the VTP Is Vague and Not Finite.

An accurate description of a proposed project is “the heart of the EIR process” and necessary for an intelligent evaluation of the project’s environmental effects. *Sacramento Old City Ass’n. v. City Council* (1991) 229 Cal.App.3d 1011, 1023; *see Rio Vista Farm Bureau v. Cnty. of Solano* (1992) 5 Cal.App. 4th 351, 369-370 (project description is the “sine qua non” of an informative and legally sufficient EIR) (citation omitted). Consequently, courts have found that, even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor/Wildlife Rescue Center v. Cnty. of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. While extensive detail is not necessary, the law mandates that EIRs should describe proposed projects with sufficient detail and accuracy to permit informed decision-making. *See* CEQA Guidelines § 15124 (requirements of an EIR).

Here, one of the essential defects of this DEIR is its thoroughgoing failure to accurately describe the Program. The DEIR identifies categories of fuel management treatments (e.g., wildland urban interface; fire breaks and ecological restoration) and explains that within each of these treatment categories, a menu of treatment activities would be implemented to modify fuels within the landscape. These treatment activities include, for example, prescribed fire, “beneficial” grazing, and herbicide applications. *See* DEIR at 2-2; 2-3; 2-17; and 3-4. The fuel management treatments are projected to take place over a staggering 21.9 million acres throughout the state. *Id.* Within a ten year period, it is estimated that there would be approximately 2,300 projects implemented – approximately 231 projects per year at an average project size of 260 acres. *Id.* at 2-35. Yet, when one attempts to drill down to determine how the Program would actually be implemented, it becomes clear that the Board has no idea which program activities would take place or where they would be implemented. Consequently, the vagueness of the DEIR’s description of the VTP creates all sorts of analytical problems.

For example, the DEIR states that the number and type of vegetation activities would be selected based on a number of parameters including: the potential for significant adverse impacts; opportunities to conserve desirable vegetation and wildlife habitat; and proximity of the treatment area to sensitive areas, such as wetlands, streams, or habitat for plant or animal species of concern, rare plants and...” DEIR at 2-34. The DEIR explains that these parameters would be considered before activity methods are selected, but the document provides no criteria as to how these parameters would be

applied. And, as discussed below, the DEIR lacks the necessary analysis of the VTP's environmental impacts. Thus a parameter suggesting that a specific vegetation treatment activity would be selected based on the "potential for significant adverse impacts" is entirely meaningless. Indeed, there is no way to know what the environmental impacts of the Program will be if there is not even a finite, stable project description. *San Joaquin Raptor, supra*, 27 Cal.App.4th 713, 730 (requiring "[a]n accurate, stable and finite project description" in an EIR) (citation omitted). In essence, the Project Description here is no more than an idea – an idea that may be changed in a never-ending variety of ways over the next decade or more.

As another example, the DEIR includes principles for implementing fuel break treatment projects but the principles are so broad and vague as to be meaningless. The DEIR suggests that fuel breaks would be constructed to significantly increase the chance of reducing the occurrence and impact of landscape-scale fires and be located at the most effective position on the landscape. DEIR at 2-23. Later, the DEIR states that the fuel breaks would be located and designed to protect "critical infrastructure" and to mitigate the "loss of high value assets." *Id.* But the DEIR never identifies the criteria for determining "the most effective position on the landscape," does not define the term "critical infrastructure," and provides no description of what would constitute a "high value asset." The DEIR also states that the fuel breaks would be constructed to minimize or avoid environmental impacts (*Id.*), but how would the Board decide whether the protection of infrastructure or a high value asset should come at the expense of important environmental resources such as special-status species? This built-in conflict is bound to arise over and over again during the Program's implementation, yet the DEIR does not provide even a hint as to how conflicts such as these would be resolved. Nor does the DEIR give readers any real indication as to where fuel breaks would be located or how the Board would ever determine the optimal locations for fuel breaks. Again, without specificity regarding this critical Program component, there can be no analysis of the VTP's environmental impacts.

Piling even more uncertainty on top of the already vague Project description, this DEIR, like its predecessor, lacks sufficient maps of potential treatment areas. The DEIR asserts that the California Fire Alliance undertook spatial modeling to determine the total footprint of the WUI, areas eligible for Ecological Restoration, and treatment areas for Fuel Breaks. DEIR at 4-32, 4-41, and 4-51. Yet, these maps are not serious tools of measurement to identify the locations of areas that would be treated or to evaluate the Program's environmental impacts. As an initial matter, the maps' scale of about 1:16 million render the maps useless to decision-makers and the public. There is no logical

reason why the maps could not have been printed at a larger scale on multiple pages and included as a technical appendix to the EIR. More importantly, as Wayne Spencer and Frank Landis explain, the maps are based on an outdated and problematic fire hazard analysis, which, in turn, was based on faulty science. (See May 31, 2016 Report from W. Spencer and May 31, 2016 letter from F. Landis).

Perhaps the most problematic component of the DEIR's Project Description though pertains to the Program's approach to the "Implementation" and "Subsequent Review" processes. We understand that the VTP is meant to provide an overview of the comprehensive wildfire risk reduction program, but the DEIR must still provide sufficient information to be able to determine how the VTP would be implemented and how it will affect environmental resources. The document suggests that "subsequent review" would occur at the project level, but this EIR and the approvals it informs are the only opportunity for the public to understand and weigh in on the big-picture questions that will determine the magnitude of ecological devastation that would accompany this broad Program.

The DEIR asserts that the VTP includes a built-in mechanism to evaluate the environmental impacts at the project-specific phase. Yet, there are so many loopholes in the VTP's suggested mechanism, that it is almost impossible to envision that a comprehensive evaluation of the VTP's environmental impacts would *ever* be undertaken.

First, the sheer number of projects that are envisioned to be implemented on a yearly basis and the geographic scope of each project alone would suggest that determining each project's environmental impacts would not be subject to a sufficient level of scrutiny. In other words, the multi-step project implementation process – of which the determination of environmental impacts is only one part—would be extraordinarily cumbersome, to put it mildly. The Board contemplates implementing 231 projects every year at an average project size of 260 acres. DEIR at 2-35. That is about one project for every work day of the year. For each such project, CAL FIRE would have to: (a) prepare a Project Scale Analysis ("PSA"); (b) hold a public workshop; (c) submit the PSA for three levels of review (county, regional and state); and (d) send the final determination to the Sacramento CEQA Coordinator. Does CAL FIRE even have sufficient staff to undertake this process for each of the 231 projects that are proposed for implementation every year? The DEIR does not say, but common sense tells us that meaningful review under these conditions is implausible.

Second, the specific process by which CAL FIRE would determine whether further environmental review would be necessary is also highly problematic. The DEIR explains that a CEQA Coordinator would make a final determination as to whether the project is consistent with the Program EIR. If it is determined that the project falls within the scope of the Program EIR, *then “no additional CEQA documentation would be required.”* DEIR at 2-47 (emphasis added). Thus, it would appear that a project need only be included in the scope of the Program EIR to escape further environmental review. Given the excessively broad scope of the VTP and the fact that the DEIR discusses the potential environmental impacts from all projects that could be implemented over a 22 million acre area, it is almost impossible to imagine the Coordinator making a determination that a project is outside the scope of the Program EIR. Given the absence of any specific environmental analysis in the Program EIR, the process is effectively designed so that such analysis will never occur.

Third, even assuming that the Coordinator intends to undertake an actual evaluation of a project’s environmental impacts—and there is no assurance that this separate study would ever occur—there is still no indication that this evaluation would result in a project-level environmental review pursuant to CEQA. In fact, the DEIR includes numerous statements indicating that this DEIR satisfactorily evaluates the environmental impacts that would occur from the VTP’s projects. For example, it states: (a) the VTP would result in beneficial environmental impacts ; (b) the specific projects would be “designed to avoid significant effects;” and (c) the Coordinator will ensure that the SPR measures reduce impacts to levels that are less than significant.” DEIR at 4-117; 4-121; 4-124; 4-132; 4-156. Statements such as these give the distinct impression that the Board and CAL FIRE have pre-determined that any environmental impacts will be effectively addressed by the measures in the DEIR and that no further environmental review need be undertaken. Moreover, there is no indication that the Coordinator has the necessary expertise to evaluate all of the projects’ potential environmental consequences – much less to do so at the rate of a project a day. The CEQA Coordinator may have sufficient experience to manage environmental review, but it is highly unlikely that this person has the expertise to evaluate the effect that a treatment project would have on, for example, a rare, threatened or endangered species, or any of the other myriad impacts that could occur from individual projects throughout the state. In light of these procedural uncertainties, the DEIR’s assurance that future projects would undergo further environmental review is meaningless, misleading, and disingenuous.

It is also particularly disconcerting that the Coordinator’s review and determination would happen behind closed doors. It is clear that the public would have

no opportunity to be notified of, or influence, the process. The public's right to participate in the environmental review process under CEQA is mandated in the statute itself and is vigilantly protected by the California courts that interpret and enforce CEQA. Pub. Resources Code, § 21091. Put simply, the public participation process is a critical tool to ensure that the public has an opportunity to hold agencies accountable for their actions.

The Subsequent Review process set out in the DEIR is grossly deficient. It must be revised to provide that each VTP project will receive full environmental review pursuant to CEQA, with full public participation, and must demonstrate how CALFIRE intends to provide such review for such a massive number of projects given its current staffing and budgetary limitations.

In sum, the total failure of the Project Description makes the rest of the DEIR inadequate as well. Because the specific details of the Program are unknown, its environmental impacts cannot be accurately analyzed, nor can effective mitigation be identified. The fog of uncertainty surrounding the Program and its impacts leads inevitably to deferred analysis and mitigation; over and over again the DEIR states essentially that impacts will be determined as they happen and mitigation will be worked out then. This strategy, while made necessary by the inadequate Project Description, is unlawful under CEQA.

C. The DEIR's Analysis of and Mitigation for the Impacts of the VTP Are Inadequate.

The discussion of a proposed project's environmental impacts is at the core of an EIR. See CEQA Guidelines § 15126.2(a) ("[a]n EIR shall identify and focus on the significant environmental effects of the proposed project"). As explained below, the DEIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the Board and the public to make informed decisions about the Program. An EIR must effectuate the fundamental purpose of CEQA: to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. To do so, an EIR must contain facts and analysis, not just an agency's bare conclusions. *Id.* at 568. Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational mandate.

Although it is clear that the proposed VTP has the potential to cause extraordinary environmental degradation, neither the public nor the Board have any way of knowing the magnitude of this harm. As we explain below, the DEIR fails entirely to provide the Board and the public with detailed, accurate information about the Program's significant environmental impacts and to analyze mitigation measures that would reduce or avoid such impacts.

1. The DEIR's Analysis of the VTP's Impacts on Biological Resources is Inadequate.

The DEIR's biological resources chapter is emblematic of the impossible task the Board has created for the DEIR authors by proceeding with CEQA review of a vague and standardless Plan. They must evaluate the environmental consequences of implementing a Plan that has not yet been defined but has the potential to severely affect millions of acres of lands that have biological resources of unparalleled importance. It is therefore not surprising that the DEIR's "analysis" of impacts is a pile of contradictions which renders it utterly useless, as the following paragraph demonstrates.

Regarding the scale of the analysis, the DEIR initially asserts that "evaluating impacts at the bio-regional scale allows for a reasonable analysis of the foreseeable impacts without being neither so large an area as to dilute the impacts or too small an area to magnify the impacts." DEIR at 4-79. The DEIR then completely reverses itself and explains it is not possible to evaluate the VTP's impacts at a bio-regional level. DEIR at 4-121 ("In order for an effect to be considered significant at the bioregional level, the species in question would have to be impacted enough to meet one of the Significance Criteria stated above. The amount of habitat that would have to be adversely modified to cause a substantial adverse effect has not been scientifically determined for most species and is likely unknowable until the threshold has been crossed and the species is in jeopardy."). The DEIR then states that an analysis at this macro level is appropriate since the VTP's impacts to biological resources *would be similar throughout the state* (at 4-120) while also acknowledging that vegetation and wildlife *differ across California*". DEIR at 4-120 and 4-85 (emphasis added).

The DEIR fares no better with regard to its conclusions as to the Plan's specific effect on biota, as the document explains that the Plan would both benefit and harm these resources. For example, in one instance, the DEIR states that the potential exists for *substantial adverse effects* to special status wildlife taxa. DEIR at 4-121 (emphasis added). In another instance, it asserts that the fire management treatments would be a

benefit to biological resources. (See *Id.* at 4-124 stating that “prescribed fire is believed to benefit the overall health of [...] ecosystems” (emphasis added)).

Given this hodge-podge of contradictory statements, the DEIR’s so-called analysis of biological impacts achieves a result exactly opposite from what CEQA requires. Under CEQA, decisionmakers and the public are to be given sufficient information about impacts and mitigation to come to their own judgments and decisions. See Pub. Resources Code, § 21061. This DEIR’s strategy is to withhold information and to encourage the public to accept the decision that the agency wants. The DEIR never mentions, let alone analyzes, the actual and specific consequences to vegetation communities and wildlife that would result from this massive Program. The document makes no attempt, for example, to identify the locations of important habitat areas, to identify the specific species that would be impacted, to quantify the expected losses to species and habitat, to analyze the significance of the expected impacts in light of these facts, and finally to propose mitigation measures capable of reducing these impacts to a less than significant level.

A complete revision and recirculation is the only way that this document can come into compliance with CEQA. The VTP and its specific projects must be fully and accurately described, and the critical discussion of biological impacts must explain what will happen on the 10.7 million acres that are designated for Wildland Urban Interface treatments, the 7.4 million acres are designated for ecological restoration treatments, and the 4.0 million acres that are designated for fuel break treatment. DEIR at 4-38; 4-46; 4-54. See *Citizens of Goleta Valley, supra*, 52 Cal. 3d 553, 568 (“[T]he EIR must contain facts and analysis, not just the agency’s bare conclusions”) (quotation marks omitted). A sample of some of the most egregious flaws in the DEIR’s analysis of impacts to biological resources follows.

(a) The DEIR Fails to Describe the VTP’s Biological Setting.

The flaws in the biological resources analysis start at the very beginning, with the description of the Program’s environmental setting. The DEIR lacks sufficient information regarding the resources within each bio-region and thus lacks a sufficient baseline for determining impacts. An EIR’s description of a project’s environmental setting crucially provides “the baseline physical conditions by which a lead agency determines whether an impact is significant.” CEQA Guidelines § 15125(a). “Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project.” *Save Our Peninsula*

Committee v. Monterey Cnty. Bd. of Supervisors (2001) 87 Cal.App.4th 99, 119. Here, the DEIR fails to identify each bio-region's resources and therefore undercuts the legitimacy of the environmental impact analysis from the outset.

The DEIR does acknowledge that the South Coast bio-region is "the most threatened biologically diverse area in the continental U.S. More than 250 species of vertebrate animals and 200 species of plants are either listed as protected or considered sensitive by wildlife agencies and conservation groups." DEIR at 4-92. Notwithstanding this remarkable biodiversity, the DEIR never even attempts to identify the species within the South Coast that could potentially be impacted by the VTP. Instead, it merely lists the number of each species that inhabit the region. *See e.g.*, page 4-92, "there are 476 vertebrate species... including 287 birds, 87 mammals, 52 reptiles, 16 amphibians and 34 fish." Without some meaningful identification of the resources that would be at risk, the DEIR preparers have no way of determining the Plan's potential impacts or identifying effective mitigation.

We can find no plausible explanation for this omission especially because it appears that CAL FIRE has access to specific data regarding biological resources when it states the following: "Over 600 special status wildlife taxa occur in California and over 300 occur in habitats likely to be treated under the VTP." DEIR at 4-118. Certainly the DEIR could disclose the identity of these wildlife taxa, including information as to their habitat requirements. The revised EIR should include this information.

(b) The DEIR Lacks Thresholds of Significance.

Determining whether a project may result in a significant adverse environmental effect is one of the key aspects of CEQA. CEQA Guidelines § 15064(a) (determination of significant effects "plays a critical role in the CEQA process"). CEQA specifically anticipates that agencies will use thresholds of significance as an analytical tool for judging the significance of a Project's impacts. *Id.* § 15064.7.

Thus, one of the first steps in any analysis of an environmental impact is to select a threshold of significance. Here, the DEIR contains no thresholds of significance for determining impacts on biological resources. This flaw leads to a cascade of other failures: without a threshold, the DEIR cannot do its job. For example, the DEIR states that the VTP would result in a significant effect if would contribute to a substantial, long-term reduction in the viability of any native species (at 4-115), but the document provides no standard by which to evaluate this impact's significance. This is critical; without a significance threshold, there is no means by which to conclude whether impacts would or

would not be significant, and findings under CEQA section 21081 cannot be properly made (i.e., whether significant impacts are reduced to a less-than-significant level and, if so, how). The revised EIR should identify appropriate thresholds for determining impacts to vegetation and wildlife.

(c) The DEIR Inappropriately Defers its Analysis of Impacts.

Contrary to CEQA's requirements, analysis of the Plan's impacts on biological resources is left until after project approval. Under CEQA, such deferred analysis and mitigation of these important impacts are unlawful. *See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296, 306-30. As the California Supreme Court has explained, environmental review must happen before a project is approved if an EIR is to be anything more than a "post hoc rationalization of a decision already made." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 81 (internal quotation marks omitted).

CEQA also requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. CEQA Guidelines § 15151. The document should provide a sufficient degree of analysis to inform the public about the proposed project's adverse environmental impacts and to allow decision-makers to make intelligent judgments. *Id.* Consistent with this requirement, the information regarding the project's impacts must be "painstakingly ferreted out." *Env't'l Planning and Info. Council, supra*, 131 Cal.App.3d 350, 357 (finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment). Here, the DEIR provides no analysis of impacts to vegetation communities and only the most superficial analysis of impacts to wildlife.

(i) Vegetation Impacts

In its discussion of vegetation impacts, the DEIR explains that impacts to botanical resources were analyzed by examining special status plants and communities listed in the California Natural Diversity Database ("CNDDDB"). DEIR at 4-115. Setting aside for a moment the validity of using CNDDDB to evaluate the Plan's impacts on vegetation (*see e.g.*, May 31, 2016 letter from F. Landis), the DEIR never actually uses the database—or any other method—to evaluate impacts. Indeed, it fails to provide *any* analysis at all. Instead, the DEIR calls for a project applicant to "check" for occurrences of special status plants in their project area and provide the information to the wildlife agencies. DEIR at 4-115, 116 (citing SPR BIO-2). Similarly, the DEIR explains that the wildlife agencies have developed guidelines for assessing the effects of projects on rare,

threatened or endangered plants and natural communities (at 4-116), but here too, the DEIR makes no attempt to use these guidelines to evaluate the VTP's impacts on vegetation.

In lieu of actually analyzing the Plan's impacts on vegetation communities, the DEIR simply asserts that BIO-2 (the measure calling for the applicant to check for special status plants) would reduce the Plan's impacts to a less than significant level. *Id.* The document, however, provides no evidentiary support for this conclusion. Quite simply, it appears the DEIR was set up to arrive at this preordained result. A conclusion that a measure will be effective in mitigating an impact must be supported by substantial evidence. *See Gray v. Cnty. of Madera* (2008) 167 Cal.App.4th 1099, 1115-18; *see also San Franciscans for Reasonable Growth v. City & Cnty. of San Francisco* (1984) 151 Cal.App.3d 61, 79 (measures must not be so vague that it is impossible to gauge their effectiveness). The DEIR fails to fulfill this paramount CEQA purpose because it neglects to present any factual support for its cursory conclusions.

The DEIR's failure to evaluate the VTP's impacts on chaparral/sage scrub is particularly troubling as EHL and its scientists along with wildlife regulatory agencies, including the California Department of Fish and Wildlife ("CDFW"), criticized the prior VTP EIR for failing to disclose the severity and extent of damage to this unique and increasingly rare community. *See Letter from Sandra Morey, CDFW, February 25, 2013.* As CDFW explained, fire management of California's shrublands has been heavily influenced by policies designed for coniferous forests; however, fire suppression has not effectively excluded fire from chaparral and coastal sage scrub landscapes and catastrophic wildfires are not the result of unnatural fuel accumulations. There is also considerable evidence that high fire frequency is a very real threat to native shrublands in southern California, sometimes leading to loss of species when fire return intervals are shorter than the time required to reach reproductive maturity. Both common and rare plant species and the habitats they provide are vulnerable to adverse impacts where fire regimes are altered. Since chaparral and coastal scrub are adapted to a regime of infrequent, relatively intense, dry season fires, imposition of low intensity cool season fires through prescribed burning can produce undesirable ecological effects and damage vegetation. Inasmuch as the current VTP proposes extensive treatment of chaparral/sage scrub lands, the DEIR's failure to analyze how these activities would affect these plant communities is a fatal flaw.

(ii) **Wildlife Impacts**

The DEIR's pattern of unlawfully deferred and delegated analysis and mitigation is repeated over and over again as the DEIR acknowledges that the VTP would cause impacts to wildlife, but fails to perform the required impact analysis. The DEIR begins its discussion of impacts to wildlife by explaining that it is difficult to determine the effects of fuel reduction on wildlife because of the size of the treatment area and the complexity of the program. It goes on to state that responses of wildlife to fuel reduction have not been studied extensively and information on is lacking. DEIR at 4-116. California courts explain that an agency cannot evade its obligation to analyze a project's environmental impacts on the grounds that the project is just too such large and complex. Following this convoluted reasoning, the greater the environmental harm contemplated by an agency, the lesser the obligation of conducting environmental review. As explained by the Court in *Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 399 (1988), "[w]e find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency's task may be difficult."

Rather than provide an extensive analysis of impacts on wildlife as CEQA requires, the DEIR provides only cursory, unsupported statements. For example, it mentions that impacts to wildlife should be mostly beneficial however, the temporal and spatial effects as well as the short-and long-term effectiveness that fire will have on animals needs to be considered. DEIR at 4-117. The DEIR never mentions any of the specific species that could be impacted nor what type of impacts might occur. Nor does it provide any factual analysis to support its conclusion that impacts "should be mostly beneficial."

The DEIR generally takes a "trust us" approach when it asserts that direct wildlife mortality due to fire is low since most animals are able to escape or take shelter. *Id.* Yet, the DEIR's biological resources appendix repeatedly contradicts the DEIR's text. In its *two-sentence* evaluation of the effect that prescribed fire has on mammals, the appendix states that direct mortality of small mammals as a result of fire are primarily from heat effects and asphyxiation. Biological Resources Appendix at page 2. Direct mortality would not appear to be a beneficial effect. The appendix's *three-sentence* evaluation of the effect that prescribed fire has on ground dwelling invertebrates is vague and therefore entirely meaningless. Here, the appendix states that the direct effects of prescribed fire depend largely on the invertebrates' locations at the time of the fire and fire intensity, which depends, in large part on duff consumption. *Id.* Common sense would dictate that the VTP's effects on wildlife would depend on location and fire intensity, but here too, the DEIR does not tell us which species of invertebrates would be most at risk nor what

the direct effects to these invertebrates would be. Nor does the DEIR explain “duff consumption” or how it relates fire intensity.

The DEIR’s analysis of impacts on biological resources is so fundamentally deficient that it does not come close to meeting CEQA’s clear requirements. Revisions of the required magnitude will require recirculation of the DEIR. If this DEIR truly reflects the current state of the VTP, then this is not a Program ready for approval. The first step in revising the DEIR must be serious commitment by the Board to define the VTP in a manner that would allow the Program’s impacts to be effectively evaluated.

2. The DEIR Contains Inadequate Mitigation Measures that Are Unenforceable, Uncertain, and Vague and Thus Do Not Ensure Impacts Will Be Reduced to Insignificant Levels.

CEQA requires an EIR not only to identify a project’s significant effects, but also to identify ways to avoid or minimize them. Pub. Resources Code, § 21002.1. An EIR generally may not defer evaluation of mitigation to a later date. CEQA Guidelines § 15126.4(a)(1)(B). Furthermore, for every mitigation measure evaluated, the agency must demonstrate that the mitigation measure either: (1) will be effective in reducing a significant environmental impact; or (2) is ineffective or infeasible due to specific legal or “economic, environmental, social and technological factors.” *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 841-44; Pub. Resources Code, §§ 21002, 21061.1; CEQA Guidelines §§ 15021(b), 15364.

In addition, the lead agency must adopt all feasible mitigation measures that can substantially lessen the project’s significant impacts, and it must ensure that these measures are enforceable. Pub. Resources Code, § 21002; CEQA Guidelines §§ 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 359, 368-69. The requirement for enforceability ensures “that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (italics omitted); CEQA Guidelines § 15126.4(a)(2). Uncertain, vague, and speculative mitigation measures have been held inadequate because they lack a commitment to enforcement. *See, e.g., Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188-1189 (holding traffic mitigation fee measure inadequate under CEQA due to vagueness in program for implementing required improvements). Here, the DEIR is woefully inadequate because it relies on measures that are unenforceable,

uncertain and vague to conclude that the VTP's impacts would be less than significant.⁴ Indeed, these measures simply do not and cannot reduce to insignificance the severe impacts caused by the Program.

For example, SPR BIO-3 calls for the Coordinator to prepare a summary of all special status species which would be affected by the project and then to conduct a field review to determine the presence or absence of any special status species. DEIR at 4-157. The fact that this measure requires a study of special status species does not save the DEIR's analysis; it is too little too late. "A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." *Sundstrom, supra*, 202 Cal.App.3d 296, 307. Moreover, this measure relies largely on the California Natural Diversity Database ("CNDDDB") to identify species that would be affected by VTP projects. Yet, as Wayne Spencer and Frank Landis explain in their letters, this database is incomplete, at best. While it may identify some of the species that would be impacted by a VTP project, it is highly unlikely to identify all potentially impacted species. The CNDDDB records rely on field biologists to voluntarily submit information on the results of surveys and monitoring. As a result, the database is biased geographically towards areas where surveys have been conducted or where survey efforts are greater. Many areas, including private lands where the VTP projects would likely be implemented, have not been surveyed at all. Moreover, even if the Coordinator were able to identify all species that could be affected, SPR BIO-3 does nothing to ensure that species would actually be protected during the project's implementation.

The DEIR fares no better with SPR BIO-13. This measure states that if any special status species are identified within the project area, the project manager would evaluate the habitat requirements of the species, identify the SPRs or mitigation measures, and take "necessary actions." See BIO-13 at 2-58. While this measure calls for the agency to take necessary actions, it does not specify the nature of such actions. It

⁴ The DEIR identifies a series of "Standard Project Requirements ("SPRs") that are considered minimum standards for each of the individual projects that would be implemented by the VTP. DEIR at 4-156. The DEIR appears to use the terms SPRs and mitigation measures interchangeably. See *e.g.*, Table 4.1-1 (DEIR p. 4-6): Impact Summary Analysis and Reference Locations which includes a column "Mitigation/SPR" and indicates that impacts to biological resources were to determined to be less than significant after mitigation is applied.

could include suggesting that the project applicant attempt to protect sensitive habitats, if feasible. But, attempting to protect habitats is a vague, voluntary concept and therefore provides no assurance that the habitat would in fact be protected. There is no indication in the document as to what would constitute a “necessary action”, much less whether those actions would be effective in avoiding significant impacts to special status species.

BIO-4 calls for the Coordinator to submit the evaluation of impacts to wildlife agencies with a request for information relating to avoidance measures to be implemented. (See BIO-4 at 4-157). Yet, simply submitting an evaluation to wildlife agencies does not ensure that impacts would be mitigated. The SPR does not call for any action by the wildlife agencies. Nor could it since the Board has no authority to force another agency to adopt or implement mitigation.

At first glance, BIO-5 appears promising as it suggests that limitations should be placed on vegetation treatment projects in southern California. See DEIR at 4-157. Unfortunately, a detailed review of this measure reveals it is nothing more than an empty shell as it contains numerous loopholes. For example, the measure calls for designing a project to prevent vegetation type conversion. Yet, the DEIR never defines “vegetation type conversion;” nor does it provide any indication as to how a project would be designed to prevent such conversion. The measure also lacks definitions for important terms such as “critical infrastructure” and “forest health.” It does not provide any criteria for making a determination as to which projects would be necessary to protect forest health. The measure also fails to include any criteria for determining whether vegetation has or has not reached the age of “median fire return intervals.” Finally, the measure does not require the Board, or anyone else for that matter, to take any action at all. The closest it comes, in this regard, is a suggestion that the agency take into account wildlife when planning and implementing a project.

Yet another fatal flaw common to all of the DEIR’s measures is their failure to include *any* basis to judge their effectiveness. Rather, it appears that these measures are a mere expression of hope that the Board will eventually be able to devise a way to address the VTP’s impacts on plant and wildlife. CEQA requires more than that to mitigate significant impacts. *Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.

Since the DEIR relies on vague, malleable and non-enforceable mitigation measures, it lacks the evidentiary basis to conclude that the VTP’s impacts would be reduced to less than significant levels.

D. The DEIR's Analysis of Alternatives Inadequate.

A core substantive requirement of CEQA is that “public agencies should not approve projects as proposed if there are feasible alternatives . . . which would substantially lessen the significant environmental effects of such projects.” Pub. Resources Code, § 21002; *see also* CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. Accordingly, a major function of the EIR “is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” *Laurel Heights, supra*, 47 Cal.3d 376, 400 (quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197). To fulfill this function, an EIR must consider a “reasonable range” of alternatives “that will foster informed decisionmaking and public participation.” CEQA Guidelines § 15126.6(a). “An EIR which does not produce adequate information regarding alternatives cannot achieve the dual purpose served by the EIR . . .” *Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 733.

In addition, under CEQA, readers must be able to “evaluate [alternatives] comparative merits.” *Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 733 (absence of comparative data in EIR precluded meaningful consideration of alternatives). A thorough comparison of the Program’s alternatives’ impacts is therefore crucial to a successful environmental document. This evaluation “shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d).

The DEIR for the VTP fails to heed these basic mandates. First, while the document purports to identify four alternatives, these alternatives are so similar that they become identical for purposes of environmental review. Second, the DEIR’s perfunctory comparative analysis of the VTP alternatives fails to adequately distinguish the environmental impacts of each option, to the extent there are differences. Finally, the DEIR fails to identify a feasible, less environmentally damaging alternative for managing wildfire risk in California.

1. The DEIR Fails to Consider A Reasonable Range of Alternatives.

Other than the No Project Alternative, the DEIR presents four alternatives that are extraordinarily similar. Indeed, each alternative includes identical vegetation management treatments: prescribed fire, mechanical, manual, herbivory and herbicide applications. The only difference between each alternative and the proposed VTP is the

locations of the areas that would be treated and the times of these treatments.⁵ DEIR at 3-15; 3-21; 3-25.

Alternative A would treat vegetation within the WUI only; Alternative B would treat vegetation within the WUI and Fuel Breaks; Alternative C would treat vegetation within Very High Hazard Severity Zones; and Alternative D would treat vegetation on all of the lands within the VTP but would limit the timing of prescribed burns to reduce the Program's air quality impacts. In comparison to the proposed VTP which would treat about 22 million acres, the remaining three geographic alternatives would have substantially reduced footprints. DEIR at 3-36. "Alternative A: WUI Only" would treat about 10.6 million acres; "Alternative B: WUI and Fuel Breaks" would treat about 14.6 million acres; and "Alternative C: Very High Hazard Severity Zone" would treat about 11.8 million acres. *Id.*

However, because the *annual* area treated under the alternatives is virtually identical, the DEIR asserts that each of the alternatives would pose nearly identical environmental risks to the VTP. This approach is untenable. Since the primary purpose of an alternatives analysis under CEQA is to explore different options to proposed actions that will adversely affect the environment, analyzing only slight variations of the same proposal – all of which have essentially identical environmental effects – does not constitute an adequate alternatives analysis. *Laurel Heights, supra*, 47 Cal.3d 376, 403 (purpose of an EIR's alternatives analysis is to identify ways to reduce or avoid significant environmental effects); CEQA Guidelines § 15126.6(c) (agency should analyze alternatives that "could avoid or substantially lessen one or more of the significant effects."); Pub. Resources Code, § 21002 (same).

To the extent that the Board believes it has no obligation to consider alternatives other than vegetation treatment because the Program allegedly results in no significant environmental impacts, the agency is mistaken. As this letter clarifies, the only reason that the DEIR determines the Program would not result in significant environmental impacts is that the document fails to conduct the necessary examination. Had the DEIR conducted a thorough investigation of the VTP's environmental impacts, the Board would be compelled to conclude that the Program will cause extensive adverse effects.

⁵ Alternative D: Reduction of Prescribed Fire Treatments to Reduce Air Quality Impacts calls for allowing prescribed burns in non-attainment areas only on "burn days."

2. The DEIR Fails to Conduct the Necessary Comparative Analysis of the Alternatives' Environmental Impacts.

CEQA requires an EIR to include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed Project. CEQA Guidelines § 15126.6(d). Yet, the DEIR's perfunctory and uninformative "analysis" here makes it impossible to determine which, if any, of the alternatives would effectively reduce the Program's significant environmental impacts.

Indeed, the DEIR provides no actual analysis of each alternative's impact on the environment. Instead, it merely asserts the overall impacts of Alternatives A, B and C would be similar to, or even *more impactful*, than the proposed VTP.⁶ *Id.* The DEIR reaches this contrived conclusion because the agency has crafted the alternatives so that each one would treat the exact same amount of acreage (60,000 acres) every year with identical vegetation treatment activities expected to occur. DEIR at 4-154;155.

The DEIR's cursory approach is no substitute for the in-depth discussion comparing each alternative's impacts that the law and common sense require. In order to be adequate, the DEIR must contain enough information to define the issue and provide a clear basis for choice between the alternatives. The alternatives that calls for focusing treatments in the very high fire hazard severity zone or only within the WUI would appear to be logical, less environmentally damaging alternatives since they would concentrate treatments in smaller geographic areas. DEIR at 4-155. Yet, because the DEIR provides no way to distinguish between the impacts caused by the alternatives and those caused by the VTP, the alternatives' analysis thus becomes a meaningless exercise.

3. There are Valid Alternatives to the VTP That Are Far Less Environmentally Damaging.

Given that each of the DEIR's alternatives include identical vegetation treatment strategies, it is clear that the Board believes that the VTP is the only valid approach to

⁶ In addition to being incorrect, the DEIR's conclusion that each alternative would have identical impacts to the VTP, is wholly unsupported by facts or *any* analysis. Instead of supplying a thorough comparison of the environmental impacts of each alternative, the document merely asserts, as regards biological resources for example, that all impacts would be expected to be similar in nature to those from the proposed VTP. DEIR at 4-155.

prevent wildfires. However, there are far more effective methods to minimizing wildfire, that would be less environmentally harmful, yet these are completely ignored in the DEIR. The most effective way to protect lives, property, and the natural environment from wildfire is through a comprehensive approach that focuses on fuel modifications within and directly around communities at risk, ignitability of structures and effective land use planning.

To this end, EHL has developed an alternative that would achieve these goals without the severe environmental impacts that would accompany the VTP. This alternative is described in Wayne Spencer's May 31, 2016 report.

Given the truly enormous impacts that the VTP would have on the environment, and to remedy the DEIR's faulty alternatives analysis, the Board must consider alternatives that actually lessen the VTP's significant environmental impacts. Without this opportunity, the public is merely asked to take on "blind trust" that the proposed VTP is the best alternative. Asking for this sort of faith is not only unfair to the people of California, it is unlawful "in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." *Laurel Heights, supra*, 47 Cal.3d 376, 494. Because the EHL Alternative is reasonable and viable, and because it would lessen the Program's impacts, the Board must examine it in the revised DEIR.

E. The DEIR Must Be Revised and Recirculated.

Under California law, the present EIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances which require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification⁷, or (2) the draft EIR is so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." CEQA Guidelines § 15088.5(a)(4).

Here, both circumstances apply. The Board and the public cannot possibly assess the VTP's impacts, or even its feasibility, through the present DEIR, which is riddled with errors. Among other fundamental deficiencies, the DEIR repeatedly understates the

⁷ Significant new information includes the identification of new significant impacts, a substantial increase in the severity of identified significant impacts, and the mitigation measures that could reduce impacts below a level of significance. *Id.*

VTP's significant environmental impacts and assumes that unformulated or clearly useless mitigation measures will effectively reduce these impacts. In order to resolve these issues, the Board must prepare a revised EIR that would necessarily include substantial new information. Failure to recirculate the revised DEIR would thus violate CEQA.

III. Conclusion

For the reasons set forth above, we respectfully request that the Board revise its VTP in a manner that provides a far more specific process and set of governing criteria for determining how, where and whether a specific project should be implemented, based on up-to-date scientific research. We also request that no further consideration be given to the VTP until the Board has prepared an EIR for the revised Program that provides meaningful environmental analysis in full compliance with CEQA.

Very truly yours,

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List of Exhibits:

- Exhibit 1 Letter from Dan Silver, Executive Director, Endangered Habitats League to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013.
- Exhibit 2 Letter from CJ Fotheringham, Research Ecologist, USGS to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013.
- Exhibit 3 Letter from Wayne D. Spencer, Chief Scientist, Conservation Biology Institute to Board of Forestry and Fire Protection, February 25, 2013.
- Exhibit 4 Letter from Alexandra D. Syphard, Research Scientist, Conservation Biology Institute to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013.
- Exhibit 5 Letter from Karen A. Goebel, Assistant Field Supervisor, U.S. Department of the Interior, Fish and Wildlife Service to George Gentry, Executive Officer, California Department of Fire and Forest Protection, February 25, 2013.
- Exhibit 6 Letter from Robert Taylor, Fire GIS Specialist, Department of the Interior, National Park Service, to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013.

- Exhibit 7 Memorandum from Sandra Morey, Deputy Director, Ecosystem Conservation Division, California Department of Fish and Wildlife to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013.
- Exhibit 8 Letter from Van K. Collinsworth, Natural Resource Geographer, to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 21, 2013.
- Exhibit 9 Letter from Richard W. Halsey, Director, California Chaparral Institute to George Gentry, Executive Officer, Board of Forestry and Fire Protection, January 25, 2013.
- Exhibit 10 Letter from Richard W. Halsey, Director, California Chaparral Institute and Justin Augustine, Attorney, Center for Biological Diversity to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013.
- Exhibit 11 Letter from Richard W. Halsey, Director, California Chaparral Institute to George Gentry, Executive Officer, Board of Forestry and Fire Protection, April 8, 2013.
- Exhibit 12 Letter from Anne S. Fege, Adjunct Professor, Department of Biology, San Diego State University to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 23, 2013.
- Exhibit 13 Letter from Greg Suba, Conservation Program Director, California Native Plant Society to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 25, 2013.
- Exhibit 14 Letter from Frank Landis, Conservation Chair, California Native Plant Society to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 15, 2013.
- Exhibit 15 Letter from Sweetgrass Environmental Consulting to George Gentry, Executive Officer, Board of Forestry and Fire Protection, February 24, 2013.

- Exhibit 16 Panel Review Report of Vegetation Treatment Program
Environmental Impact Report Draft, California Board of Forestry
and Fire Protection in Association with CAL FIRE Agency,
August 2014.
- Exhibit 17 Letter from Dan Silver, Executive Director, Endangered Habitats
League to Duane Shintaku, Deputy Director, California Department
of Forestry and Fire Protection, October 2, 2014.

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