



Protecting Marin Since 1934

January 11, 2018

Board of Forestry and Fire Protection
Attn: Edith Hannigan, Board Analyst
VTP Draft PEIR Comments
Via email: VegetationTreatment@bof.ca.gov

Re: VTP Recirculated Revised Draft Program Environmental Impact Report

Dear Ms. Hannigan:

Marin Conservation League has reviewed the Board of Forestry and Fire Protection's (CAL FIRE) Vegetation Treatment Program and (Revised and Recirculated) Draft Program EIR ("DEIR"). We recognize the extreme importance of establishing sound wildfire prevention strategies to protect people and property in California from the increasing hazards associated with wildfire, and the significant responsibility CAL FIRE has over millions of acres across the state. At the same time, as the VTP is implemented in specific projects over the coming years, it is essential to maintain the state's unique ecological wealth and to protect its sensitive resources.

The proposed VTP does not stand alone. It is part of a comprehensive fire prevention strategy implemented by CAL FIRE and is intended to provide a tool to address hazardous fuel conditions. The VTP, together with its DEIR, is a significant step in the right direction of reducing fire hazard. Nonetheless, after review of the DEIR, we have a number of concerns. The VTP and DEIR, in our view, are seriously flawed. The VTP, as described, is at best a blunt tool to advance the state's objective of better protecting people and resources from wildfire. Further, the DEIR fails to comply with the California Environmental Quality Act (CEQA), and as a consequence the VTP could result in widespread environmental damage as it is being implemented. Our focus is on the CEQA deficiencies.

The Draft EIR does not comply with CEQA requirements for Program EIRs.

Several MCL board members have many years of experience in preparing and otherwise working with program EIRs through tiered environmental reviews, in both Marin County and elsewhere in the state. We understand the advantage of a program EIR in covering a series of related actions under the same authority. A program EIR can provide an exhaustive consideration of effects, offer programmatic mitigation measures, avoid duplicative discussion of policies, and identify cumulative impacts more efficiently than individual EIRs prepared case-by-case. On the other hand, when a program EIR attempts to cover too broad a geographic scope and/or too many disparate actions over an extended period of time, it can become impossible to assure that all significant impacts of subsequent projects have been identified and adequately mitigated to less than significant levels. In its quest for efficiency, the CEQA lead agency can exclude the public from meaningful participa-

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tion as subsequent projects are implemented. *These are central problems with the subject DEIR.*

Our comments take their cue from a detailed critique provided by the law firm Shute Mihaly Weinberg (SMW) on behalf of the Endangered Habitats League (EHL), numerous local chapters of the California Native Plant Society and the Audubon Society, as well as Audubon California, and Natural Resources Defense Council. These organizations have been tracking the development of the VTP and criticized the previous Draft PEIR. They continue to be concerned about the far-ranging environmental impacts that could result from implementation of the VTP.

MCL agrees with the major conclusions of the SMW letter. We summarize here the key points that we believe support that conclusion, but urge you to review SMW's detailed critique in full.

1. As a general observation, **the VTP is a plan to modify the vegetative landscape of California on a massive and unprecedented scale.**

The proposed fuel reduction activities could affect an area of more than 23 million acres of State Responsibility Areas that are highly diverse in their natural resource conditions and their behavioral response to fire. In an attempt to encompass such a vast scale, the DEIR over-generalizes Existing Conditions in the VTP DEIR. For example, it divides the state into 10 bioregions; lumps vegetation communities for treatment into three major formations: tree-dominated, grass-dominated, and shrub-dominated, which, in fact, have very different vulnerabilities to the VTP's treatment activities; and stratifies treatment areas into three basic types: wildland-urban interface (WUI), fuel breaks, and ecological restoration. Even with supporting detail, these generalizations of existing conditions lead to deficient impact analysis on several levels, discussed below.

2. **The VTP's project description is vague.**

The DEIR provides no clear understanding of where or when vegetation treatments would be applied. As stated above, the DEIR identifies three categories of fuel management treatments (e.g., wildland-urban interface; fire break and ecological restoration) and explains that within each of these treatment areas, a suite of treatment activities (prescribed fire, manual and mechanical methods, selected herbivory, and targeted herbicide applications) would be implemented to modify fuels within the landscape. According to the SMW analysis, the fuel management treatments could, overall, affect 23 million acres throughout the state – lands that have biological resources of unparalleled importance. (Over 600 special status wildlife taxa occur in California and over 300 occur in habitats likely to be treated under the VTP.) Projects would target approximately 60,000 acres per year – or approximately 231 projects annually at an average size of 260 acres. Over ten years, more than 2,300 projects could be implemented throughout the state.

It is impossible for the DEIR to identify which program activities would take place or where they would be implemented, except to suggest that they would be selected according to parameters such as potential for significant adverse impacts, or opportunities to conserve desirable vegetation and wildlife habitat. In the absence of specific criteria for selection of

projects, or clear protocols for how treatments would be applied, it is impossible to identify specific impacts of projects in the program DEIR. Therefore, the DEIR's Project Description is deficient as a basis for identifying significant impacts of the VTP even at a program level.

3. The DEIR fails to properly analyze the environmental impacts on sensitive resources that could occur as individual treatment projects are implemented.

Because of its broad scope and generalized descriptions of the project and existing conditions, the DEIR is unable to provide more than a limited analysis of the VTP's environmental impacts. The DEIR never analyzes the actual and specific consequences to plant 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 wildlife and plant species that would be impacted, to quantify the expected losses to species and habitat, to evaluate the significance of the expected impacts, and, most important, to propose mitigation measures that can assure identified impacts will be reduced to a less than significant level. And yet the DEIR claims that all significant impacts will be mitigated.

One must look to a technical appendix to find even generic information relating to the effect of different treatment activities on wildlife (grouped in a matrix as invertebrates, amphibians/reptiles, birds and mammals, grouped as ground dwelling, shrub dwelling, arboreal, and subterranean). There is no information on the species themselves. As noted in the SMW letter, the DEIR admits that the effects of fuel reduction on wildlife will depend on the specific ecological requirements of affected species. Therefore, it is difficult to generalize wildlife impacts, especially in the large and highly dispersed areas considered for implementation. The identification of significant impacts on wildlife will be deferred to the future, project-level environmental review. There is no guarantee, however, that such future, detailed environmental review will happen or, if it does, that impacts will be identified and mitigated to less than significant levels.

The DEIR explains that vegetation's response to burning will depend on factors including the season of the burn, the spatial pattern of the burn, the burn size and intensity, the change in fire frequency, and the distribution of vegetation species. The DEIR never bridges the gap from a theoretical overview to a specific analysis of which species in which locations would be impacted by each of the VTP's activities.

The DEIR also lacks adequate thresholds of significance for determining impacts on biological resources. For example, the DEIR states that the VTP would result in a significant effect if it would contribute to a substantial, long-term reduction in the viability of any native species at the bioregion scale. It does not define what CAL FIRE considers "substantial" or "long term." Without a quantitative or otherwise descriptive significance threshold, there is no means by which to conclude whether impacts would or would not be significant.

4. The DEIR defers mitigation and/or relies on vague and unenforceable mitigation measures.

In the absence of specific impact analysis, it is impossible for the DEIR to provide explicit measures to mitigate significant impacts. For example, BIO-1 calls for the Project Coordinator to submit (project level) evaluation of impacts to wildlife agencies with a request for specific information regarding the known location of any special-status species and potential avoidance measures. At the outset, consultation with wildlife agencies, alone, does not constitute mitigation. Further, late consultation to determine such basic strategies as avoidance improperly defers mitigation and does not ensure that significant impacts would be mitigated. A lead agency is only allowed to defer mitigation if specific performance criteria are articulated at the time of project approval and can show that mitigation will be effective. The DEIR does not offer such criteria.

The DEIR also lists a series of Standard Project Requirements (SPRs). Somewhat akin to “Best Management Practices,” SPRs are intended to address general impacts of each project as it is implemented. However, like the mitigation measures, they defer appropriate application of SPRs to the project stage. They are non-specific, vague and unenforceable in that they cannot be assured to effectively reduce significant environmental impacts. Further, their implementation and effectiveness are reliant on the expertise and judgment of the Project Coordinator, who, presumably, has been assigned many projects in many different conditions. Finally, because the SPRs are not included as mitigation measures, *per se*, in the DEIR, there is no assurance they will even be adopted or implemented.

In view of the above problems, the DEIR lacks any basis to conclude that the VTP’s impacts would be reduced to less than significant level.

5. The DEIR unnecessarily excludes feasible alternatives.

The DEIR limits alternatives analyzed to those that are so similar to the proposed VTP as to be indistinguishable in their impacts. In focusing on only one tool in a complex of wildfire prevention strategies – vegetation fuel reduction – the VTP conflates fuel treatment with fire prevention. A sound wildfire plan must include fire prevention techniques that reduce sources of ignitions in a variety of ways. In justifying the need for the program, the VTP takes as a “given” that residential construction will continue in high fire hazard areas and, in so doing, appears to encourage the continued expansion of the Wildland Urban Interface (“WUI”). Reducing this vicious cycle of additional home construction in high fire hazard areas should be studied in an alternative that is based on fire prevention. According to SMW, “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. The SMW critique offers a detailed alternative that should be analyzed in a revised DEIR.

6. The DEIR does not assure identification of significant impacts or public transparency as projects are implemented under the program.

MCL's major concern is that the deficiencies in the DEIR will not be "corrected" as the program is implemented over a period of years – that is, significant impacts will not be identified nor will mitigation measures, where they do apply, be adequately monitored and enforced to achieve their desired effect. The DEIR describes the VTP as having a built-in mechanism to evaluate the environmental impacts at the project-specific phase, yet, as SMW points out, this is impossible to envision, given the sheer number of projects expected to be implemented annually (230), the potential geographic dispersal of different projects, and the cumbersome, multi-step project implementation process.

The DEIR also makes it clear that the VTP has been specifically designed to *avoid* the time consuming and repetitive process of preparing multiple CEQA documents. The document does outline a process by which CAL FIRE would determine whether such review would be performed. A CEQA Project Coordinator would first determine whether the subsequent activity falls within the scope of the program EIR. Given the broad scope of the program EIR covering all projects that could be implemented over a 23 million acre area, it is almost impossible to imagine the Coordinator making a determination that a subsequent activity is *outside* the scope of the program EIR. Therefore, the necessary specific environmental analysis called for in the program EIR, might never occur or, at a minimum, be considered in an Initial Study or Negative Declaration. This is reinforced by statements in the document that suggest that significant impacts have been satisfactorily mitigated within the body of the program DEIR: (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." Furthermore, the Coordinator's review and determination would happen behind closed doors. The public would have no opportunity to be notified of, or influence, the process or the direction of individual projects.

What does the revised VTP and its EIR need?

MCL believes that the DEIR needs substantial revision to comply with CEQA. Among other additions, the VTP and either a revised Draft or Final EIR should explicitly describe how the treatments proposed for private lands fit into the state's overall fire plan, including protection of high value ecological and structural assets, and how they mesh with state and local land use planning policies and federal land use practices. A revised VTP and EIR should also incorporate formal adaptive management protocols for monitoring and analyzing data collected as each project is implemented to determine its efficacy in decreasing fire hazard and identify the ecological impacts and/or benefits of the program.

Above all, the EIR must commit to a program that ensures that each subsequent activity, as it is proposed for implementation, will receive full and transparent environmental review pursuant to CEQA's public requirements.

Sincerely,

A handwritten signature in blue ink that reads "Kate Powers". The signature is written in a cursive, flowing style.

Kate Powers
President

A handwritten signature in black ink that reads "Nona Dennis". The signature is written in a cursive, flowing style.

Nona Dennis
Chair, Parks and Open Space Committee

Cc: Assemblymember Marc Levine, Senator Mike McGuire