

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

January 11, 2018

Via FedEx and E-Mail

Edith Hannigan, Board Analyst
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460
VegetationTreatment@bof.ca.gov

Re: Vegetation Treatment Program Recirculated Revised Draft 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 Recirculated Revised Draft Program 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.

The following organizations have reviewed, and endorse, this letter: California Native Plant Society; Orange County Chapter, California Native Plant Society; Marin Chapter, California Native Plant Society; San Diego Chapter, California Native Plant Society; Riverside-San Bernardino Chapter, California Native Plant Society; Mount Lassen Chapter, California Native Plant Society; The Urban Wildlands Group; Audubon California; San Diego Audubon Society; Sea and Sage Audubon Society; Los Angeles

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

Audubon Society; California Chaparral Institute; Natural Resources Defense Council; Laguna Greenbelt, Inc.; and Center For Biological Diversity. This letter represents the comments of EHL and each of the foregoing organizations.

The catastrophic wildfires in northern and southern California this past year have demonstrated more than ever the urgency of addressing wildfire issues in the state. But the Board and CAL FIRE seem to have drawn all the wrong lessons from those tragic events. At a time when the Board should be prioritizing the safety and protection of existing communities and developing strategies for minimizing the number of people and homes that are placed in harm's way, it is instead proposing to waste precious State resources on vegetation treatment strategies that leading wildfire experts agree are ineffectual at protecting lives and property from the most destructive wildfires. Indeed, the proposed VTP would serve to facilitate the expansion of development into extremely hazardous wildlands. And it does so at the cost not only of the State's limited fire-fighting resources, but of much of our natural and biological heritage.

Unfortunately, the VTP DEIR neither discloses nor provides mitigation for the devastating impacts the program will have on the environment. We had hoped that, after revising and recirculating the 2016 DEIR, the new draft would address the numerous deficiencies of that document identified by EHL and others. But after carefully reviewing the 2017 DEIR, we have concluded that virtually nothing has changed. As described below, the new DEIR violates the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.* ("CEQA") because it: (1) fails to adequately describe the VTP; (2) fails to properly analyze the Program's environmental impacts; (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 undertake a legally sufficient study of alternatives to the Program. Such fundamental errors undermine the integrity of the DEIR.

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 make about 23 million acres of land subject to treatment. DEIR at 2-12. 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.²

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 (2013) VTP and its DEIR.³ Wildlife regulatory agencies, including the United States Fish and Wildlife Service and the California Department of Fish & Wildlife, and other environmental organizations also submitted comments on the 2013 VTP and the DEIR.⁴ Each of these letters and reports explained that the 2013 Program's approach to

² The DEIR explains that there are over 600 special-status wildlife species in California, and that over 300 occur in habitats likely to be treated under the VTP. DEIR at 4-198. Thus, about half of the special-status animal species that occur in California could be affected by the proposed Project.

³ 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.

⁴ 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

reducing the severity and frequency of fires lacked a reasoned justification based on science and substantial evidence.

The 2013 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 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 in its prior submissions to the Board, 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 2013 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

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.

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 2013 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 2013 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

2016 version of the VTP and the current proposed VTP and DEIR, it is clear that the Board's response to these comments and suggestions is, lamentably, denial. While the post-2013 versions no longer lump varied landscapes together, 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.

CAL FIRE's response to the recent catastrophic fires throughout the state epitomizes the agency's flawed approach to wildfire management largely because it continues to conflate fire prevention and fuel treatment. According to Chief Ken Pimlott, "CAL FIRE is focused on increasing the pace and scale of fire prevention activities, including vegetation management, across the state." "These activities play a critical role in helping reduce the impacts large, damaging wildfires have on our communities." *See* Board of Forestry and Fire Protection and CAL FIRE News Release "Working to Increase Pace and Scale of Wildfire Prevention Activities," December 19, 2017, attached as Exhibit 18. We agree that any sound wildfire plan must include fire prevention techniques that reduce sources of ignitions (e.g., arson watch programs, undergrounding powerlines, building roadside barriers to make it harder for motor vehicles to start roadside fire, regulating commerce in fireworks and teaching people not to operate power equipment in the weeds in red flag weather), but the VTP does not actually include any fire prevention techniques. Instead, the VTP focuses on fuel treatments such as prescribed burns that have been proven to be ineffective in suppressing the weather driven fires that currently plague California. In fact, as fire scientists explain, in southern California, there is no evidence of any inhibitory effect of past fire on subsequent fire. This is because only two percent of the vegetation burns each year and so wildfires rarely encounter burned patches. *See*, "The impact of antecedent fire area on burned area in southern California coastal ecosystems," *Journal of Environmental Management*, O. Price et. al., April 18, 2012, attached as Exhibit 19. In addition, California shrub and grass fuels accumulate rapidly and are sufficient to carry a repeat fire very soon (e.g., within 1 or 2 years) after previous fire. *Id.*

Moreover, it is critical that the Board recognize there are far less ecologically destructive ways to minimize the harm posed by wildfires. As Robert Hamilton explains,

The VTPEIR accepts as inevitable the dangerous and irresponsible expansion of housing into California's highest wildfire hazard severity zones, and yet fails to observe that humans have much more control over the methods used to build structures in fire-prone areas than we have over

wildfires. Nothing in the VTPEIR acts as a disincentive to building new houses within the highest wildfire severity zone, or requires any would-be developer to use only the least-flammable feasible construction methods (both of which would temper the need for extensive fuel-reduction actions). Instead, the VTPEIR prescribes the disturbance and degradation of 600,000 acres of natural communities, over a period of ten years, in part to facilitate expansion of housing into extremely hazardous areas that will only become more so as the climate warms and dries. *See* Letter from Robert Hamilton to Dan Silver, January 5, 2018, submitted under separate cover.

Numerous other experts have weighed in on the ability of vegetation treatment to achieve the state's fire management goals and the environmental impacts of these approaches. Submitted under separate cover and incorporated by reference into this letter are reports prepared by Dr. Wayne Spencer and Dr. Alexandra D. Syphard to California Board of Forestry and Fire Protection, January 10, 2018; letter from CJ Fotheringham, Research Ecologist, USGS to California Board of Forestry and Fire Protection, January 9, 2018; letter from R. Halsey et al., to California Board of Forestry and Fire Protection, January 10, 2018; letter from CJ Fotheringham, Research Ecologist, USGS to E. Hannigan, California Board of Forestry and Fire Protection, May 31, 2016; and 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. The resubmitted 2016 letters comment on the prior VTP and DEIR, but the comments raised therein remain applicable to the revised VTP and DEIR. We respectfully request that the Final EIR respond separately to each of the points raised in these other letters as well as to the points raised in this letter.

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 analysis will be undertaken as each project is implemented. DEIR at 2-40; 4-142; 4-186; 4-199; 4-211. 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. *Id.* at 4-211.

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 4-198 (“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; *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, 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 break 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 and 2-23. The scale of the Project is staggering as it would subject about 23 million acres of land throughout the state to fuel management treatments. *Id.* at 2-12. 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.* 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 treatment activities would be selected based on a number of parameters including the potential for significant adverse impacts and opportunities to conserve desirable vegetation and wildlife habitat. DEIR at 2-35. The DEIR suggests 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 located and designed to help protect critical infrastructure and high value natural resources. DEIR at 4-38. But the DEIR never defines the terms “critical infrastructure” or “high value natural resources.” The DEIR also states that the fuel breaks would be constructed to minimize or avoid environmental impacts, but how would the Board decide whether the protection of critical infrastructure should come at the expense of important environmental resources such as special-status plant or wildlife 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 provide any indication as to where fuel breaks would be located or how they would be designed. In fact, the DEIR explains that “given the diversity of California fuel types, topography, and weather conditions, general guidelines under this program for standardized fuel width or volume of fuels to remove *would not be feasible*.” DEIR at 4-39 (emphasis added). 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 predecessors, lacks sufficient maps of potential treatment areas. The DEIR explains, for example, that the area to be treated by a wildland urban interface (“WUI”) activity was defined through a complex modeling process. DEIR at 2-18. These modeling results are displayed in Figure 2.2-10, a map intended to depict the WUI within the VTP study area. *Id.* at 2-20. Yet, this map is not a serious tool of measurement to identify treatment locations within the WUI areas because it is too small a scale to be useful. There is no logical reason why the maps could not have been printed at a larger scale on multiple pages.⁵ More importantly, as Frank Landis explains, the maps are based on an outdated and problematic fire hazard analysis, which, in turn, was based on faulty science. (*See* May 31, 2016 letter from F. Landis). Consequently, the DEIR does not even disclose the location of specific lands that would be treated by the VTP. As Frank Landis explains:

How can local impacts be analyzed if the time and place affected by any program is not specified? How can cumulative impacts be analyzed if there is insufficient local data on where and when the program occurs, and what is affected? How can landowners determine whether they or neighboring properties are susceptible to the VTP, in case they want to take action? Why does the DEIR show maps that are insufficiently detailed for any landowner to determine whether they are subject to the proposed program or not? *See* May 31, 2016 Letter from F. Landis, PhD, Conservation Chair, California Native Plant Society, at 4, attached under separate cover.

It is especially disconcerting that the VTP relies on deficient mapping because state agencies including the California Department of Fish & Wildlife and the California Native Plant Society have mapped California’s vegetation and have created two editions

⁵ The DEIR appendix does include a map of each bioregion. But the scale of these maps, which show each bioregion on an 8 ½ by 11 page, is far too small to provide useful graphic information.

of *The Manual of California Vegetation* (“MCV”). *Id.* at 10. Dr. Landis explains that the MCV contains a wealth of information on fire ecology. *Id.* CEQA requires an EIR to include the precise location and boundaries of a proposed project to be shown on a detailed map. CEQA Guidelines § 15124(a). Because the VTP DEIR fails to include this fundamental information, there can be no meaningful evaluation of the Project’s environmental impacts.

Perhaps the most problematic component of the DEIR’s Project Description though pertains to the Program’s approach to the “Implementation” 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 during the implementation process (at 2-45), but the Board’s consideration of this EIR and the VTP is 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 states that the VTP includes a built-in mechanism to evaluate the environmental impacts at the project-specific phase. DEIR at 2-45. 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 subsequent activity’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 about 230 projects every year at an average project size of 260 acres. DEIR at 2-12. 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) submit the PSA for three levels of review (county, regional and state); and (c) send the final determination to the Sacramento CEQA Coordinator. DEIR at 2-45-46. Does CAL FIRE even have sufficient staff to undertake this process for each of the 230 projects that are proposed for implementation every year? The DEIR itself answers this question in the negative, stating that one key advantage of the Project compared to the No Project alternative is that the No Project alternative would require the preparation of further

CEQA review – which is “costly, time consuming, repetitive, and *unsustainable from a personnel standpoint.*” DEIR at 3-8 (emphasis added); *see also* DEIR at 2-37.

Second, the DEIR makes clear that the VTP has been specifically designed to *avoid* further environmental review. *See* DEIR at 2-37, “This VTP replaces the existing costly, time consuming, and repetitive process of preparing multiple CEQA documents for projects located in forested fuel types. This streamlined process would result in a more efficient use of staff time and finances, leading to CAL FIRE’s ability to treat additional acres than they could historically.”

Third, despite CAL FIRE’s intent to avoid further environmental review under CEQA and its lack of capacity to carry out such review, the DEIR nonetheless outlines a process by which CAL FIRE would determine whether such review would be performed. Not surprisingly, this process is entirely perfunctory. The DEIR explains that a CEQA Project Coordinator would make a final determination as to whether the subsequent activity is consistent with the Program EIR. If it is determined that the subsequent activity falls within the scope of the Program EIR, *then “no additional CEQA documentation would be required.”* DEIR at 2-50 (emphasis added). Thus, it would appear that a subsequent activity need only be included in the scope of the Program EIR to escape further environmental review. Due to 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 23 million acre area, it is almost impossible to imagine the Coordinator(s) making a determination that a subsequent activity 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.

Fourth, even assuming that a Coordinator intends to undertake an actual evaluation of a subsequent activity’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 2-36, 4-184, 4-185, 4-191; 4-193, 4-196, 4-198, 4-200, 4-208, 4-237. 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 a Coordinator would have 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. A Coordinator may have sufficient experience to manage an environmental review process, 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. Proper environmental review requires experts covering the range of impact categories of which CEQA requires analysis—the opinion of a “coordinator” on these subjects does not pass legal muster. 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 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.

Because the DEIR provides no assurance that the environmental impacts from the VTP's subsequent activities will be adequately evaluated or mitigated, the document is grossly deficient. The VTP must be redesigned and the EIR revised to commit to a program that ensures that each subsequent activity will receive full environmental review pursuant to CEQA with full public participation. As part of this program redesign, CAL FIRE must demonstrate that it has sufficient staffing to provide thorough environmental review for all of the subsequent activities 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 is not surprising given the inadequate Project Description, but it 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 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 explains that the bioregion was determined to be the appropriate scale to analyze the impacts of the VTP because it 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 4-142. The DEIR then completely reverses itself and explains it is not possible to evaluate the VTP's impacts at a bioregional level. DEIR at 4-186 ("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.”).

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 bioregion’s resources and therefore undercuts the legitimacy of the environmental impact analysis from the outset.

The DEIR does acknowledge that the South Coast bioregion is “the most threatened biologically diverse area in the continental U.S.” DEIR at 4-155. There are 476 vertebrate species that inhabit the South Coast Region at some point in their life cycle, including 287 birds, 87 mammals, 52 reptiles, 16 amphibians, and 34 fish. Of the total vertebrate species that inhabit this region, 82 bird taxa, 40 mammalian taxa, 19 reptilian taxa, eight amphibian taxa, and nine fish taxa are included on the Special Animals List. *Id.* Notwithstanding this remarkable biodiversity, the DEIR makes no attempt to identify the specific wildlife species within the South Coast that could potentially be impacted by the VTP. As biologist Robert Hamilton explains, “this is literally the first EIR I have reviewed in 30 years of consulting that fails to include a list of the special-status species potentially occurring in the area proposed for impacts, or any analysis of potential project effects on listed or other special-status species.” *See* letter from Robert. Hamilton to Dan. Silver, January 5, 2018, submitted under separate cover.

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 4-198. Certainly the DEIR could disclose the identity of these wildlife taxa, including information as to their habitat requirements.

The document’s depiction of vegetation treatment types is equally deficient. The DEIR simply identifies the number of treatable acres within each vegetation type (e.g., tree-dominated, shrub-dominated, and grass-dominated). *See* Table 4.5-16, DEIR at 4-168. But this gross categorization is absurd. There are countless species of trees, shrubs, and grasses and each species would be expected to have very different vulnerabilities to the VTP’s treatment activities. As Dr. Frank Landis explains, “California’s flora is immensely complex, but the VTP [EIR] analysis oversimplifies it by shoehorning all species into trees, shrubs, and herbs. No knowledgeable fire fighter would assume that ponderosa pine (*Pinus ponderosa*) and white fir (*Abies concolor*) have the same fire ecology, but they are all lumped together as “tree-dominated” vegetation (e.g. Table 4.5-16) for the purposes of describing the vegetation in the Sierra Nevada.” *See* F. Landis May 31, 2016 letter. In fact, the DEIR confirms this fact. (*See* DEIR at 4-187, “each plant species in a community responds differently to the seasonal timing of prescribed burns or wildfires.”) Without some meaningful identification of the resources that would

be at risk, the DEIR preparers have no way of determining the Plan's potential environmental impacts or identifying effective mitigation. The revised EIR must 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 lacks adequate thresholds of significance for determining impacts on biological resources. This flaw leads to a cascade of other failures: without a proper 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 the bioregion scale (at 4-182), but the document provides no standard by which to evaluate this impact's significance. It does not define what CAL FIRE considers “substantial” or “long term.” This is critical; without a quantitative or otherwise descriptive 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).

Other thresholds of significance appear to be vague, arbitrary and lack scientific justification. For example, the DEIR state that the VTP would constitute a significant impact if a “net effect in a local subsequent activity area was a substantial increase in the population of invasive species AND this occurred on over 10 percent of a WHR [wildlife habitat relationship] lifeform in a bioregion.” DEIR at 4-183. The DEIR does not define “substantial.” How will the agency determine whether there will be a substantial increase in the population of an invasive species? How did CAL FIRE arrive at 10 percent of a WHR lifeform as its threshold of significance? If a subsequent activity affected 9 percent of the WHR lifeform, why would this not be a significant impact? What exactly is a WHR lifeform? The revised EIR must clearly articulate, define, and provide scientific support for its thresholds of significance.

(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'tl 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

There are numerous flaws in the DEIR's approach to analyzing the Project's impact on vegetation communities. First, 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 4-183. Yet, according to Robert Hamilton (and as explained further below), the use of CNDDDB for purposes of evaluating the VTP's impacts is inadequate because CNDDDB does not provide anything close to a full accounting of all the populations of special-status species in California. *See* Robert Hamilton's January 5, 2018 letter. Moreover, as Hamilton explains, the DEIR does not even use the CNDDDB system accurately. The CNDDDB's list of alliances and associations is actually quite thorough and it contains annotations for those vegetation alliances and associations that have regulatory sensitivity. Specifically, the State of California's *List of Vegetation Alliances and Associations* specifies the sensitive plant alliances and associations of interest to CNDDDB. *Id.* Yet, instead of using the *List of Vegetation Alliances and Associations*, and acknowledging the VTP's potential to impact various alliances and associations of high priority to the CNDDDB, the DEIR treats the concept of classifying and characterizing plant communities as little more than an

afterthought. Because the DEIR fails to adhere to the State's own classification system, the document fails to identify the vegetation alliances and associations that the State recognizes as having special regulatory status. Failure to identify these sensitive resources precludes the possibility of conducting an adequate analysis of the Project's impact on vegetation communities. *See* Robert Hamilton January 5, 2018 letter.

Nor does the DEIR even use CNDDDB—or any other method—to evaluate impacts. Indeed, it fails to provide *any* specific analysis at all. Instead, the DEIR generally describes all of the variables that have the potential to come into play when attempting to evaluate whether, for example, prescribed burning would be expected to have a significant impact on vegetation. 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. DEIR at 4-187, 4-188. 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. Instead, it offers up examples. (*See* DEIR at 4-189, "Many chaparral species germinate much better after stimulated by fire such as sugar bush (*Rhus ovata*), sumac (*Malosma laurina*), chamise, manzanita (*Arctostaphylos* spp), yerba santa (*Eriodictyon* spp.), and ceanothus (*Ceanothus* spp.) (CAL FIRE, 1981)."). This approach is contrary to CEQA's clear requirements 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." *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado* (1982), 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).

In addition, the DEIR relies on a specious assumption to conclude that the Project would not impact plant communities. The document compares the average size of a VTP subsequent activity (260 acres) to the purported average size of a wildfire (10,000) acres. DEIR at 4-188. Based on this comparison, the DEIR concludes that the VTP would be unlikely to eliminate a sub-population (e.g., of a rare plant species). *Id.* According to Robert Hamilton, this is incorrect. Many rare plant populations occur in small, discrete populations that may be limited to an area of only a few square feet. Therefore, rare plant sub-populations have the potential to occur in the subsequent activity study areas. *See* R. Hamilton January 5, 2018 letter. Without focused rare plant surveys (and mitigation, if

rare plants are detected), the DEIR lacks scientific support for its conclusion that the VTP would not impact rare plants.

In lieu of actually analyzing the Plan's impacts on vegetation communities, the DEIR relies on a few mitigation measures to conclude that the Plan's impacts would be less than significant. DEIR at 4-192. However, the DEIR lacks the evidentiary support that such measures will in fact reduce the Project's impacts. Mitigation Measure BIO-2, for example, calls for certain actions to be taken for subsequent activities that "are not deemed necessary to protect critical infrastructure or forest health." DEIR at 4-211. As we explained above, the DEIR never defines critical infrastructure, so how would an implementing entity determine the applicability of the mitigation measure. Moreover, how would vegetation impacts be eliminated in those circumstances when critical infrastructure should be protected?

Mitigation Measure BIO-3 only pertains to shrublands containing native oaks. DEIR at 4-212. Consequently, it provides no protection for other vegetation types such as trees and grasslands. Mitigation Measure BIO-4 calls for the establishment of a buffer zone around special-status animals and plants. DEIR at 4-212. Yet, a measure calling for the establishment of a buffer zone around sensitive species is meaningless since there has been no survey for sensitive species.

Consequently, the DEIR lacks the evidentiary support to ensure that adverse impacts to sensitive vegetation will actually be mitigated as required by CEQA. 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 2013 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. *Id.* 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. *Id.* Both common and rare plant species and the habitats they provide are vulnerable to adverse impacts where fire regimes are altered. *Id.* 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. *Id.* 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 wildlife impacts 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. DEIR at 4-198. It goes on to state that responses of wildlife to fuel reduction have not been studied extensively and information is lacking. *Id.* California courts explain that an agency cannot evade its obligation to analyze a project's environmental impacts on the grounds that the project is too 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, "[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 conduct a thorough analysis of impacts on wildlife as CEQA requires, the DEIR provides cursory and unsupported statements. Although the DEIR asserts the importance of evaluating the temporal and spatial effects and the short-and long-term effects that fire will have on animals (at 4-200), it never actually conducts this analysis. In fact, the DEIR only provides examples of potential impacts and even these examples are contradictory, confusing, and ultimately meaningless for purposes of CEQA compliance. (See e.g., DEIR at 4-198, "the reproduction of California Spotted Owls (CSO) can be negatively impacted by certain management strategies. Increasing habitat heterogeneity, including edge between forest and shrubs, has shown to be beneficial to help support owl and prey habitat. However, forgoing treatment may not always be

beneficial, as the viability of CSO populations may be declining due to high-canopy cover loss from high severity wildfire.”)

The VTP would have wide-ranging impacts on mammals, reptiles, amphibians, fish, and birds (DEIR at 4-155), but the reader can find no actual evaluation of these impacts in the body of the DEIR. Rather, one must look to the EIR’s technical appendix for a discussion of how the VTP might impact wildlife. Initially, CEQA requires that the analysis be presented in the EIR. See *Santa Clarita Organization for Planning the Environment v. County of L.A.* (2003) 106 Cal.App.4th 715, 722 (agency’s analysis must be contained in the EIR, not “scattered here and there in EIR appendices”). “Decision-makers and the general public should not be forced to sift through obscure minutiae or appendices in order to ferret out the fundamental assumptions that are being used for purposes of the environmental analysis.” *San Joaquin Raptor Rescue Center*, 149 Cal.App. 4th at 659; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 (“The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.”)

However, even the scant information in the EIR technical appendix is largely a recitation of generic information relating to treatment activities on various orders of species, rather than on the species themselves. Thus, as regards the effect that prescribed fire would have on ground-dwelling invertebrates, for example, the appendix includes just *three-sentences* stating 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

As regards mammals, the sum total of the “impact analysis” is *two-sentences*: “Direct mortality of small mammals as a result of fire are [sic] primarily from heat effects and asphyxiation. Using cooler prescriptions may reduce heat effects.” Biological Resources Appendix at pdf pg. 5. Under CEQA, such self-evident ruminations cannot substitute for meaningful analysis. *City of Antioch v. City Council* (1986) 187 Cal. App. 3d 1325. Rather, an EIR must contain analysis sufficient to allow informed decision-making.

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 a serious commitment by the Board to define the VTP in a manner that would allow the Program's impacts to be effectively evaluated.

(d) 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.⁶

⁶ The DEIR identifies a series of "Standard Project Requirements ("SPRs") that are considered minimum standards for each of the individual projects that would be

Indeed, these measures simply do not and cannot reduce to insignificance the severe impacts caused by the Program.

For example, SPR BIO-1 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 4-211. 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. As numerous experts explain, it is not sufficient to rely exclusively on CNDDDB. While this data base may identify some of the species that would be impacted by a VTP project, it is highly unlikely to identify all potentially impacted species. (*See, e.g.*, May 31, 2016 letter from F. Landis; February 25, 2013 letter from K. Goebel, United States Fish & Wildlife Service; and January 5, 2018 letter from R. Hamilton, submitted under separate cover). The CNDDDB records rely on field biologists to voluntarily submit information on the results of surveys and monitoring. *Id.* 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. *Id.*

BIO-1 also calls for the Project Coordinator to submit the evaluation of impacts to wildlife agencies with a request for information regarding the known location of any special-status species and information relating to potential avoidance measures. DEIR at 4-211. Yet, simply submitting an evaluation to wildlife agencies does not ensure that impacts would be mitigated. *See* Hamilton Report, January 5, 2018 Report. Without focused surveys, the wildlife agencies would not be able to identify the location of special-status species. Moreover, until the specific special-status species are identified, it

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.

is not possible to develop “avoidance” measures. The entire approach embodied in BIO-1 –the development of future mitigation plans—is contrary to the explicit mandates of CEQA.

“Formulation of mitigation measures should not be deferred until some future time.” Guidelines § 15126.4(a)(1)(b). Thus, an EIR is inadequate if “[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.” *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 670. A lead agency is only allowed to defer mitigation if specific performance criteria are articulated at the time of project approval and if the lead agency shows that mitigation complying with such criteria is both “feasible and efficacious.” *Communities for a Better Environment*, 184 Cal.App.4th at 95. Here, mitigation calls for the Coordinator to determine the presence or absence of sensitive species after the Project is approved. Even if the Coordinator were sufficiently trained to identify all species, which is highly unlikely, BIO-1 does nothing to ensure that species would actually be protected during the Project’s implementation. Nor is it sufficient to simply coordinate with wildlife agencies and request that they provide information about impacted species and avoidance measures. The agencies have no obligation to respond to the Coordinator’s inquiry, and the DEIR provides no explanation as to how impacts will be properly identified and avoided in the event of the agencies’ failure to timely respond.

The DEIR fares no better with BIO-2. At first glance this measure appears promising as it suggests that limitations should be placed on vegetation treatment projects in southern California. *See* DEIR at 4-211, 212. 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. To compound matters, the current DEIR deleted an important provision that had been included with this mitigation measure in the 2016 DEIR. The 2016 DEIR stated that vegetation treatment projects would “not take place in old-growth

chaparral without consultation regarding the potential for significant impacts with the CDFW and CNPS.” 2016 DEIR at 4-157. By removing this provision, does the Board intend to eliminate all restrictions in old-growth chaparral?

BIO-4, a measure calling for the establishment of a 50-foot avoidance buffer around any special-status animal, nest site, or den is also ineffective in protecting wildlife resources. Again, without appropriate presence/absence species, there is no way to determine which species are in need of protection. In addition, we query how one can place a buffer around wildlife that are mobile, e.g., mammals, fish, or birds. As the January 5, 2018 Hamilton Letter explains, scientific literature suggests that much larger buffers are needed to protect species including burrowing owl, Swainson’s hawk, California spotted owl, numerous reptiles and amphibians, San Fernando Valley spineflower, and numerous at-risk prairie plants.

The DEIR also looks to a series of Standard Project Requirements (“SPRs”) that are intended to be implemented at the start of each subsequent activity purportedly to address the Project’s impact to biological resources. DEIR at 4-183, 184. Unfortunately, these SPRs, like the mitigation measures, defer necessary analysis, are vague, unenforceable, and lack any assurance that they will be effective in reducing the Project’s environmental impacts. For example, the SPRs look to the Project Coordinator to identify all of the special-status species and natural plant communities that require protection. This would involve, among other things, conducting a review of the species’ life history, identifying the species in the field, and determining the habitat requirements for each species (including their known or probable locations in the vicinity of the treatment site). DEIR at 4-183, 184. The Project Coordinator would also monitor the effectiveness of the SPRs’ and mitigation measures’ implementation. If the Coordinator determines that the SPR and mitigation measures are not performing adequately to protect the specified resources, the Coordinator would determine corrective strategies and require their implementation. *Id.* These SPRs reveal several problems. Would the Coordinator be a qualified biologist? If not, how would he be able to identify sensitive species? What experience does he have to evaluate how a particular vegetation treatment will impact sensitive species or to monitor the implementation of treatment activities to determine their impact on species. What knowledge does he have to identify appropriate corrective strategy in the event that mitigation measures are not performing adequately? Moreover, because the SPRs are not included as mitigation measures in the EIR, there is no assurance they will even be adopted or implemented.

The fatal flaw common to all of the DEIR’s mitigation measures and SPRs 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 and SPRs, it lacks the evidentiary basis to conclude that the VTP's impacts would be reduced to less than significant levels.

2. The DEIR Fails to Adequately Analyze the Project's Air Quality Impacts From the VTP's Prescribed Fire Activities.

The DEIR takes an unorthodox approach to analyzing the air quality impacts from prescribed fire and concludes, incorrectly, that such impacts would be less than significant. Had the analysis been conducted in a manner consistent with CEQA's clear requirements, the DEIR would have found the Project's impacts to be significant which, in turn, would trigger the requirement to adopt feasible mitigation and/or Project alternatives.

According to the DEIR, prescribed fire emissions account for the most significant emission source of the entire VTP. DEIR at 4-109. The DEIR identifies the increase in criteria air pollutant emissions that would occur from prescribed burning under the VTP. See Table 4.3-10 at p. 4-109. Not surprisingly, the volume of these emissions is quite large and greatly exceeds the quantitative thresholds of significance established by California's air districts. DEIR at 4-95; 4-99; 4-109. The DEIR explains, however, that prescribed fire emissions differ from most other VTP sources because they occur infrequently and are generally of short duration. *Id.* at 4-95. Consequently, the DEIR relies on alternative significance criteria for prescribed fire. Instead of relying on air district thresholds of significance, the DEIR proposes that a prescribed fire would have a significant impact on air quality if it would produce emissions greater than those produced by a wildfire burning the same acreage. *Id.* at 4-96. The DEIR then establishes the environmental baseline for evaluating the expected air quality impacts from prescribed burns: "the baseline disturbance for most vegetation types in California is fire and [therefore] periodic emissions are expected to occur naturally outside of VTP treatment." *Id.*

The DEIR's use of a future indeterminate baseline (i.e., fire) to calculate the VTP's impacts violates CEQA. CEQA requires "a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation [NOP] is published . . ." Guidelines § 15125(a). In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* 57 Cal.4th 439 (2013), the

California Supreme Court recognized that, under limited circumstances, a departure from existing conditions (i.e., NOP date) may be appropriate. But only when “justified by substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users.” *Id.* at 445. The primary underlying legal principle set forth in the *Smart Growth* case is that the use of a future scenario as an impact baseline should be avoided where the practical consequence of such an approach would be to artificially understate the true environmental consequences of proposed projects. That is precisely what the DEIR’s approach does here.

The fundamental problem with the DEIR’s approach is the underlying premise that prescribed burning will result in less frequent, smaller (i.e., less acres burned), and shorter duration wildfires over time. DEIR at 4-110. Specifically, CAL FIRE assumes that the VTP would reduce the number of fires and/or burned acres, and, as a result avoid some of the air pollutant emissions associated with wildfire events. *Id.* The DEIR, however, lacks the evidentiary support for this assumption. In fact, the EIR admits there is no scientific support for its assumption. (*See e.g.*, DEIR at 4-110, “there is not currently a direct correlation between implementation of a vegetation treatment subsequent activity and a proportionate reduction in numbers of fires or acres burned.”) Fire scientists have debunked the idea that prescribed burning reduces the potential for wind-driven wildfires. *See* Letter from R. Halsey et al., January 10, 2018. Such wildfires frequently burn right over—and beyond—areas that had recently been subject to a prescribed burn. *See, e.g., Id.*, Figure 4 (Prescribed burns within the Thomas Fire).

Fire scientists have also shown reducing fuels in shrublands does not correlate with wildfire frequency. As Alexandra Syphard explains, “The VTPEIR attributes the trend of increasing fire hazard to fuel accumulation resulting from fire exclusions policies, but this has not been true for shrublands in the southern part of the state, which on the contrary, have experienced unprecedented high fire frequencies that well exceed historical conditions (Keeley et.al 1999, Syphard et al.)” *See*, Letter from A. Syphard, Ph.D. to G. Gentry, February 25, 2013 at 2, attached under separate cover. There is simply no evidence for the DEIR’s proposition that every acre of prescribed burn will eliminate an acre of wildfire. Based on its flawed reasoning, the DEIR therefore incorrectly concludes that the substantial increase in emissions of criteria air pollutants resulting from prescribed fire would be less than significant because prescribed fire emissions would not exceed wildfire emissions. DEIR at 4-110.

The DEIR’s faulty reasoning results in a substantial underestimation of the Project’s air quality impacts. Because there is no evidence that prescribed burns reduce the potential for major wildfires, there is also no basis for the DEIR to conclude that the VTP’s air pollutant emissions would be less than significant merely because they might

not exceed the amount of emissions generated by a hypothetical wildfire. Because the location of future wildfires is so unpredictable, the most likely scenario is that there would be emissions from prescribed burns *and* from future wildfires. Existing conditions, rather than a hypothetical future scenario (i.e., wildfire) should have been the basis for determining the significance of the VTP's air quality impacts.

The DEIR also fails to analyze the threat to public health from prescribed burns. The hazards chapter of the DEIR acknowledges that prescribed burning produces smoke which may create hazards for people if the activity is not carefully managed. DEIR at 4-328. However, neither the air quality chapter or the hazard chapter of the DEIR provide *any* analysis of these impacts. In lieu of actually analyzing the effect that smoke inhalation from prescribed fires would have on public health, the DEIR looks to a mitigation measure that would allegedly reduce the Project's impacts to a less than significant level. DEIR at 4-328. Mitigation Measure FBE-2 calls for the project coordinator to post signs along roadways and to develop a list of smoke sensitive persons and to contact them prior to burning. *Id.* The DEIR provides no explanation as to how CAL FIRE would obtain its list of smoke sensitive persons. Nor does it explain how a list of smoke sensitive persons would protect public health during a prescribed burn. The DEIR's conclusion that a weakly defined notification program would reduce the health effects of smoke from prescribed burns is pure speculation without scientific support.

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 goal. *See Stanislaus Natural Heritage Project*, 48 Cal.App.4th at 182; *Citizens of Goleta Valley*, 52 Cal.3d at 568. The DEIR fails to fulfill this paramount purpose of CEQA, both because it neglects to present all relevant facts relating to the Project's potential to harm public health, and because its cursory conclusions are based upon no analysis.

In order to serve as an informational document, the VTP should have provided a thorough description of how smoke inhalation affects public health. We can find no logical explanation for this omission particularly because the DEIR references two documents that discuss the effect of smoke on public health. *See* Smoke Management Guide For Prescribed and Wildland Fire, National Wildfire Coordination Group, 2001 and the U.S., EPA's Interim Air Quality Policy on Wildland and Prescribed Fires, 1998. It is not enough for the DEIR to simply refer to outside documents that summarize the health effects of smoke; CAL FIRE is required to include this important information in the EIR. CEQA obligates a lead agency to present the information in an accessible manner. As the California Supreme Court put it in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 443, "The question is [] not whether the project's significant environmental effects *can* be clearly

explained [in a brief], but whether they *were* explained in the EIR.” (emphasis in original).

Had the DEIR conducted a thorough analysis of the Project’s potential to cause adverse health effects, it would have determined such impacts were significant and been obligated to identify feasible mitigation measures. Yet, it does no such thing. There are techniques that could reduce emissions that cause smoke-related health impacts that could be adopted as mitigation measures. In fact, the DEIR casually acknowledges certain of these techniques, *but it never commits to actually implementing such measures*. For example, CAL FIRE could reduce emissions by (1) burning only when specific fuel conditions (specifically fuel moistures of the live and dead fuels) and meteorological conditions are present, thereby controlling the quantity and location of smoke, and the time spent in each combustion phase; (2) reducing the burn area (burn concentrations, isolating fuels, mosaic burning); (3) scheduling burning before new fuel appears (burning before fall litter, burning before green-up); (4) increasing combustion efficiency (burning piles and windrows, backing fires, dry conditions, rapid mop-up, aerial ignition/mass ignition); and (5) taking measures to increase the flaming period and decrease the smoldering duration. DEIR at 4-93; 4-94; 4-110. Clearly, because the DEIR mentions these techniques for reducing emissions from prescribed fire, they must be feasible. Consequently, CAL FIRE can and should adopt these measures.

Finally, it is important to point out that had the DEIR correctly acknowledged the Project’s significant air quality impacts, it would have been required to examine alternatives to the VTP that reduce emissions from prescribed fire. Because the primary source of the VTP’s criteria air pollutant, toxic air contaminant, and as discussed below, greenhouse gas emissions, is prescribed fire, the elimination of this vegetation treatment would necessarily eliminates these emissions. In section II.D.3 of this letter, we identify an alternative to the VTP that *does not* include prescribed fire.

3. The DEIR Fails to Adequately Analyze or Mitigate the Project’s Contribution to Climate Change.

Analysis of the Project’s climate change impacts is particularly important because existing conditions are such that we have already exceeded the capacity of the atmosphere to absorb additional greenhouse gas (“GHG”) emissions without risking catastrophic and irreversible consequences. Therefore, even seemingly small additions of GHG emissions into the atmosphere must be considered cumulatively considerable. *See Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“[T]he greater the existing environmental problems are, the lower the threshold

for treating a project's contribution to cumulative impacts as significant."); *see also Center for Biological Diversity v. National Highway Traffic Safety Administration* (9th Cir. 2007) 508 F.3d 508, 550 ("[W]e cannot afford to ignore even modest contributions to global warming.").

According to the DEIR, prescribed fire treatments would be the primary driver of GHG emissions contributions from the VTP's subsequent activities. DEIR at 4-228, 229. Given this fact, coupled with the severity of the climate crisis, we would expect the DEIR to have thoroughly analyzed the effect that GHG emissions from prescribed burns would have on the changing climate. Unfortunately, the DEIR provides a superficial analysis before concluding that any impacts would be less than significant.

The DEIR begins its analysis of the Project's GHG emissions with a few unsubstantiated statements. First, the document asserts that "in general, the net emissions from prescribed fire are considered to be of relatively smaller quantity than those that would be produced by wildfire (EPA 1995)." DEIR at 4-227. Other than a citation to a 22-year old EPA study, the DEIR provides no justification for this assertion. We did find one sentence pertaining to this issue in the DEIR's technical appendix but this sentence raises more questions than it answers. The appendix states that prescribed fire emissions are typically much less than those created by wildfires due to less "available fuel" during prescribing burning. Appendix H at pdf p. 2. It is our understanding that the VTP proposes prescribed fire specifically to eliminate or substantially reduce available fuel from a landscape. *See e.g.*, DEIR at 2-2, 2-5, 2-10, 2-34. If this is the case, why would a landscape proposed for a prescribed fire treatment have less available fuel than a landscape that experiences a wildfire?

Second, in its discussion of thresholds of significance, the DEIR asserts that historic emissions from wildfires in California's forests, shrublands, and grasslands were substantially higher than current emissions (Stephens, et. al. 2007). DEIR at 4-229. Other than citing a 2007 report, the DEIR fails to explain the basis for this statement or what it means for the analysis. An assumption that emissions from historic wildfires were "substantially higher" than current emissions is meaningless without a definition of "substantial." Even if the DEIR's assumption was accurate for 2007, it must be updated to reflect the last decade of California wildfire events. There has been increased forest fire activity across the west in recent decades due to a number of factors including the legacy of fire suppression and climate change.⁷

⁷ *See* Impact of anthropogenic climate change on wildfire across western U.S. forests, J. Abatzoglou and A. P. Williams, available at:

Third, the DEIR asserts that “. . . it is reasonable to assume that the collection of subsequent activities conducted at the scale of the program will modify wildland fire behavior by reducing the risk of ignition or the potential size and severity of wildland fire in the treated areas and adjacent landscape . . . “. DEIR at 4-229. As we explained in the air quality section of this letter, the DEIR lacks the evidentiary support that the Project will reduce the size and severity of wildland fire. In order for the DEIR to accurately characterize current GHG emissions from wildfire and to evaluate the extent of GHG emissions from the VTP, the DEIR must rely on scientific and up-to-date assumptions.

Similar to the faulty approach taken in the DEIR’s air quality analysis, the GHG chapter relies on a flawed threshold of significance and an improper baseline for evaluating the VTP’s contribution to climate change. The GHG chapter proposes that a prescribed fire would result in significant GHG and climate change impacts if subsequent activities would produce emissions greater than those produced by a wildfire burning the same acreage. DEIR at 4-231. The problems with this approach are two-fold. First the DEIR asserts that a 260-acre wildfire would generate 510,030 million tons per year of GHG emissions (at 4-231 and 4-232), but it never explains how it arrives at this figure.⁸ Second, and more importantly, the DEIR errs because it uses wildfire as the baseline for evaluating the Project’s climate change impacts, rather than existing conditions as CEQA generally requires. And, as we explained, the DEIR’s underlying premise that prescribed burning will result in less frequent, smaller, and shorter duration wildfires—much less an acre for acre reduction in wildfires—is baseless.

The DEIR ultimately determines that GHG emissions from prescribed burns (298,070 million tons per year) would be less than those from wildfire (510,030 million tons per year), suggesting that the Project would not result in a considerable contribution to GHGs and would result in a less than significant impact.⁹ DEIR at 4-233, 4-235. Because there is no evidence that prescribed burns reduce the potential for wildfires, there is also no basis for the DEIR to conclude that the VTP’s GHG emissions would be less than significant merely because they might not exceed the amount of emissions

http://wildfiretoday.com/documents/Fires_Climate_Change.pdf, accessed December 19, 2017.

⁸ DEIR Appendix H also arrives at this figure, but the document does not include any assumptions or a description of the methodology that was used to calculate wildland fire emissions.

⁹ The DEIR does not explain how it determined that prescribed burn treatment activities would generate 298,070 million tons per year of GHG emissions.

generated by a hypothetical wildfire. An accurate analysis would have identified the increase in GHG emissions from prescribed burns together with the VTP's other treatment activities (298,745 million tons per year) as a significant impact. DEIR at 4-235.

Toward the end of the DEIR's analysis, the DEIR looks to a few mitigation measures that are "built into the VTP" to ensure that the VTP's treatment activities would generate fewer emissions than a similar size wildfire. DEIR at 4-235. These measures are vague, illusory, and unenforceable. MM AIR-1, for example, calls for pre-activity modeling, consultation with the air district, and then attempting to implement the district's recommendations to reduce emissions. DEIR at 4-235. This measure will do nothing to reduce GHG emissions as it addresses criteria air pollutant, not GHG, emissions. DEIR at 4-115. Moreover, even if this mitigation measure addressed GHG emissions, there is no assurance that consultation with the air district would result in a reduction in GHG emissions.

The DEIR also looks to MM AIR-2 (actually SPR AIR-2) which requires the submittal of a smoke management plan. DEIR at 4-235; 2-51. SPR-AIR-2 provides no explanation as to how a smoke management plan will reduce GHG emissions; instead it refers to Appendix J. Appendix J does not provide evidence that the measure would reduce GHG emissions. Instead, it simply states that if subsequent treatment activities have complied with CEQA, no additional narrative need be prepared, i.e., no smoke management plan need be prepared. *See* Appendix J at pdf page 17 (page 5 of the sample smoke management plan). As discussed in Section IIB of this letter, the VTP has been explicitly designed to avoid further environmental review. Consequently, there is no assurance SPR AIR-2's requirement to submit a smoke management plan will translate into a reduction in GHG emissions.

The EIR must be revised to provide a legally adequate analysis of the Project's GHG impacts and identify feasible mitigation as these impacts are certain to be significant.

4. The DEIR Fails to Adequately Analyze the Project's Visual/Aesthetic Impacts.

Under CEQA, it is the State's policy to "[t]ake all action necessary to provide the people of this state with . . . enjoyment of aesthetic, natural, scenic, and historic environmental qualities." Pub. Res. Code § 21001(b). Thus, courts have recognized that aesthetic issues "are properly studied in an EIR to assess the impacts of a project." *The Pocket Protectors v. City of Sacramento* (2004), 124 Cal. App. 4th 903, 937 (overturning

a mitigated negative declaration and requiring an EIR where proposed project potentially affected street-level aesthetics).

The accepted approach to analyzing visual and aesthetic impacts is as follows: (1) characterize the existing conditions of the project site and the surrounding area by photograph and description, and select key viewpoints within the area, including scenic corridors and landscapes; (2) describe the criteria for significance thresholds; (3) use photomontages or visual simulations to illustrate the change in character of the project site before and after project implementation; and (4) identify feasible mitigation measures and alternatives to reduce or eliminate significant impacts. Where mitigation measures are proposed, use the simulations to illustrate the change in character before and after project mitigation measures are imposed. With the exception of thresholds of significance—which the DEIR does not bother to apply—the DEIR omits every one of these key components.

The DEIR's purported analysis of the Project's visual impacts is crippled in large part because the document fails to describe the visual setting. The VTP proposes vegetation treatment on about 23 million acres throughout California's natural lands. Consequently, the DEIR should have showed the reader – both in text and in photographs—what this land actually looks like. The DEIR does no such thing. In a stunning display of understatement, the DEIR merely states: “Public and private lands contain many outstanding scenic landscapes. Visual resources in these landscapes consist of land, water, vegetation, wildlife, and other natural or manmade features visible on public lands.” DEIR at 4-67. This bland and utterly characterless description of California's natural lands makes no honest attempt to capture the striking scenery of the state.

Instead, the DEIR takes the opposite tack. The sum total of the DEIR's photographic depiction of the Project's study area contains exactly *two* photographs of the same location: the first shows a pine forest before a vegetation treatment while the second shows the same site after treatment. DEIR at 4-69. The DEIR should have photographed varying landscapes throughout the state, especially of course, scenic locations. The photographic representation of the VTP study area is critical as it should form the basis of the entire visual impact analysis, i.e., photomontages or visual simulations are needed to illustrate the change in character of the Project study area before and after Project's implementation. The DEIR's deliberate misrepresentation of the area's visual setting alone warrants recirculation of the DEIR.

There can be no doubt that the VTP's extensive treatment activities will visually degrade the natural environment. Yet, rather than select key scenic viewpoints

throughout the VTP study area (i.e., the entire state of California), the DEIR refers exclusively to impacts from scenic highways. DEIR at 4-67. This is undoubtedly an important set of impacts to consider, but it is far from the entire picture. The DEIR ignores altogether vantage points from other public locations such as wilderness areas and recreation sites such as parks and trails. The revised EIR must show how vegetation treatments will impacts views and vistas from all important scenic viewpoints; not just highways.

Moreover, the DEIR's "analysis" of impacts to motorists is entirely deficient because it does not provide visual simulations that show how the various vegetation treatments would alter the overall appearance of the land. Instead, it presents tables of data that have no practical value in evaluating the Project's visual impacts. Specifically, the DEIR attempts to estimate the amount of each type of vegetation type (i.e., tree, shrub, and grass) that occurs along scenic roads within each bioregion.¹⁰

The DEIR then relies on arbitrary numerical thresholds to conclude that the Project's visual impacts would be less than significant. The DEIR asserts that any shrub or grass area blackened from prescribed fire, mechanically disturbed by heavy equipment, or treated with herbicides within the viewshed of a scenic highway would be considered a potentially significant effect. DEIR at 4-71. However, the DEIR does an immediate 180 degree turn and concludes that any impacts on shrub and grassland would be less than significant. *Id.* at 4-72. It lists two key reasons: both of which lack any explanation, let alone scientific support. First, it asserts that shrub and grass viewshed acres are less than two percent of the overall potentially treated acres. *Id.* at 72. Second, it states that it is highly unlikely that the vegetation treatments causing visual impacts would exceed more than 10 percent of the scenic highway's viewshed acreage within any bioregion in any 10 year period. *Id.* The DEIR never explains why it relies on these arbitrary numerical thresholds of significance that bear no relationship to thresholds

¹⁰ As regards the South Coast bioregion, for example, the DEIR explains that there are 190 miles of scenic roads and travelers along these road have views of 16,598 acres of trees, 23,114 acres of shrubs, and 4,673 acres of grasslands. DEIR Table 4.2-2, p. 4-70. The DEIR states that it derived these statistics by using a Digital Elevation Model. DEIR at 4-69. However, despite a thorough review of the DEIR and its technical appendix, we could find no explanation of how this model arrived at these statistics.

identified in the DEIR.¹¹ If the DEIR intends to rely on these numerical thresholds, it must provide some evidence that they would protect the environment. California courts are clear on this issue. In evaluating a project's impacts under CEQA, an agency must address the actual impacts of a project and cannot hide behind metrics obscuring evidence of those impacts. *Protect Amador Waterways*, 116 Cal.App.4th at 1110-11 (finding that narrowly designed significance standards improperly foreclose complete consideration of a project's impacts). In its current form, the DEIR reads as if the preparers are just guessing at what might constitute a significant impact.

The DEIR's approach in evaluating the Project's impact on tree vegetation is even more deficient. Here, the DEIR simply asserts that treatments of trees will retain most of the existing overstory canopy. Consequently, the natural character of the trees would remain and impacts would be less than significant. DEIR at 4-71. Here too, the DEIR offers no evidence to support its less than significant conclusion.

5. The DEIR Fails to Adequately Analyze or Mitigate the Project's Water Quality Impacts.

The DEIR neglects to adequately examine the Project's impacts on water quality. The document devotes the bulk of the water quality chapter to describing the location of where treatment activities will occur around the state. The document also describes "generalized water quality impacts" from the various treatment activities. The DEIR never, however, does the hard work of actually analyzing how the various treatment activities would affect impaired water bodies around the state. Rather, the sum total of the DEIR's "analysis" of the Project's potential to violate water quality standards or degrade water quality consists of only two sentences:

Potential significant impacts from the proposed program activities include violating water quality related to the following water quality objectives: suspended sediment, settleable material, turbidity, oil and grease, temperature, and potential toxicity from pesticides. Violations of water quality standards would most likely be associated with all proposed program activities, but particularly prescribed fire,

¹¹ The DEIR identifies three thresholds of significance, none of which have a numerical component: (1) Have a substantial adverse effect on a scenic vista; (2) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway; (3) Substantially degrade the existing visual character or quality of the site and its surroundings;

mechanical treatments, herbivory, and herbicide activities proximal to water course. DEIR at 4-417, 418

The DEIR offers up an excuse for its lack of analysis: “modeling water quality impacts is too difficult.” DEIR at 4-424. As we have explained, as agency may not avoid impact analysis because the task is too difficult. *Laurel Heights Improvement Ass’n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 399.

The DEIR’s mitigation measures for the Project’s water quality impacts confirm that the document has deferred its impact analysis. HYD-2 calls for the Project Coordinator to request information from the Regional Water Quality Control Board (“RWQCB”) regarding the potential for significant water quality impacts. DEIR at 2-63. However, the requirement to evaluate the Project’s impacts rests with CAL FIRE, not the RWQCB. Moreover, as discussed above, this impact analysis must be included in the DEIR, not deferred until after Project approval. CEQA Guidelines § 15151.

The DEIR also ignores altogether the project’s potential water supply impacts. The DEIR acknowledges that fire can impact water supply. DEIR at 4-330. It stands to reason, therefore, that prescribed fire could also impact water supplies. Unfortunately, the DEIR fails to even identify, let alone analyze these potential effects.

The revised DEIR must provide a thorough analysis of the Project’s water quality and water supply impacts. If this analysis reveals significant impacts, which appears quite likely, the EIR must identify feasible mitigation measures and/or alternatives capable of reducing or avoiding these impacts.

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.¹² 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 23 million acres, the remaining three geographic alternatives would have substantially reduced footprints. DEIR at 3-10. “Alternative A: WUI Only” would treat

¹² 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.” DEIR at 3-32.

about 10 million acres; “Alternative B: WUI and Fuel Breaks” would treat about 14 million acres; and “Alternative C: Very High Hazard Severity Zone” would treat about 11.8 million acres. *Id.* at 3-16; 3-21; 3-26.

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. DEIR at 4-209; 4-210. 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.

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.¹³ DEIR at 4-210.

¹³ 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

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 4-209; 210.

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 4-210. 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 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 environmental 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 requests that CAL FIRE evaluate an alternative to the VTP that is modeled after the Fire Management Plan ("SMM Plan") prepared by the Santa Monica Mountains National Recreation Area ("SMMNRA"). *See* Fire Management Plan, Santa Monica Mountains National Recreation Area, June 7, 2016, attached as Exhibit 20. Similar to the VTP, the SMM Plan provides a framework for the management of wildland fire. However, the SMM Plan takes a very different approach to wildland fire management than does the VTP as it is ecologically based and includes as a top priority

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 4-210.

conservation and restoration. SMM Plan at 1, 17. To this end, the SMM Plan does *not* include prescribed fire or other landscape level vegetation treatments on its properties. In fact, prescribed fire has not been used since 2005 because it has been determined to *not* be the most effective method to meet the park's resource management or strategic fuel objectives (Moyes et al, 2005; SAMO FMH ANGR biomass plots; Keeley et al, 2009). *See* SMM Plan at 29 (emphasis added). To this end, the VTP EIR must evaluate an alternative that eliminates landscape-level treatments (prescribed fire, grazing, mastication, herbicides, etc.) in shrublands, and particularly prescribed fire in chaparral, while maintaining defensible space and well-placed, strategic fuel breaks for access purposes.

The SMM Plan includes the following fuels management actions, including community education, that are tied to specific goals of the U.S. Department of the Interior Office of Wildland Fire's National Cohesive Wildland Management Strategy as follows:

1. Restore and Maintain Landscapes: Landscapes across all jurisdictions are resilient to fire-related disturbances in accordance with management objectives.
 - Focus on fine fuels management and ignition prevention to reduce wildfire risk and extend fire return intervals
 - Maintain maximum shrub canopy cover and minimize soil disturbance to reduce establishment of invasive, non-native fine fuels, but recognize that shrub fuels need to be managed when they threaten safety.
 - Reduce annual clearing in fuel modification zones that extend beyond 100' if fire behavior modeling demonstrates that safety zone guild lines are met with less than 100' clearance.
 - Utilize existing roads, trails and hardscape to create defensible or strategic space
 - Coordinate fuel modification with invasive species control
 - Work to create ignition resistance at strategic locations and collaborate on prevention of fire starts

- Work with communities on appropriate fuel modification techniques and standards
2. Create Fire-Adapted Communities: Human populations and infrastructure can withstand a wildfire without loss of life and property.
- Work with communities to educate them on the importance of house-out defensible space, structural ignition resistance, and the hazard of “urban” fuels
 - Work with communities on evacuation planning and emergency shelter-in-place for high risk locations
 - Work with communities to implement fuel reduction projects that exceed the ability of individual community members to carry out
3. Respond to Wildfire: All jurisdictions participate in making and implementing safe, effective, efficient risk-based wildfire management decisions.
- Minimize area burned while providing for firefighter safety and avoiding damaging suppression tactics
 - Use suppression tactics that are consistent with fire behavior (e.g. do not bulldoze lines that cannot be used for backfire operations or will be jumped by spotting)
 - Work with county fire collaboratives on early detection technology and response in critical locations

The revised DEIR should evaluate an Alternative to the VTP that incorporates the aforementioned fuel management actions that have been successfully implemented by SMMNRA. The Alternative should also include a commitment to work with local agencies to ensure the implementation of appropriate fire prevention techniques that reduce sources of ignitions (e.g., ArsonWatch, undergrounding powerlines, building roadside barriers to make it harder for motor vehicles to start roadside fire, regulating commerce in fireworks and teaching people not to operate power equipment in the weeds in red flag weather).

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 SMM Plan Alternative is reasonable and viable, and because it would achieve the VTP’s objectives and lessen its environmental 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 certification¹⁴, 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 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,

¹⁴ 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.*

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,

SHUTE, MIHALY & WEINBERGER LLP

Laurel L. Impett (VF)

Laurel L. Impett, AICP,
Urban Planner

Dan Silver, Executive Director
Endangered Habitats League

Greg Suba
California Native Plant Society

Celia Kutcher
Orange County Chapter, California
Native Plant Society

David C. Long
Marin Chapter, California Native
Plant Society

Frank Landis, Ph.D
San Diego Chapter, California Native Plant
Society

Arlee Montalvo, Ph.D
Riverside-San Bernardino Chapter,
California Native Plant Society

Woody Elliott
Mount Lassen Chapter, California
Native Plant Society

Travis Longcore, Ph.D
The Urban Wildlands Group

Richard Halsey
California Chaparral Institute

Mike Lynes
Audubon California

James A. Peugh
San Diego Audubon Society

Scott Thomas
Sea and Sage Audubon Society

Margot Griswold, Ph.D
Los Angeles Audubon Society

Elisabeth Brown, Ph.D
Laguna Greenbelt, Inc.

Damon Nagami
Natural Resources Defense Council

Brian Nowicki
Center For Biological Diversity

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.
- Exhibit 18 Board of Forestry and Fire Protection and CAL FIRE News Release “Working to Increase Pace and Scale of Wildfire Prevention Activities,” December 19, 2017.

- Exhibit 19 “The impact of antecedent fire area on burned area in southern California coastal ecosystems,” *Journal of Environmental Management*, O. Price et. al., April 18, 2012.
- Exhibit 20 Fire Management Plan, Santa Monica Mountains National Recreation Area, June 7, 2016.

961209.1