

1 Everett L. DeLano III (Calif. Bar No. 162608)
2 **DELANO & DELANO**
3 104 W. Grand Avenue, Suite A
4 Escondido, California 92025
5 (760) 741-1200
6 (760) 741-1212 (fax)

7 Attorneys for Petitioners

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**
11

12 CALIFORNIA CHAPARRAL INSTITUTE, a)
13 non-profit corporation, ENDANGERED)
14 HABITATS LEAGUE, a non-profit corporation;)
15 Petitioners,)
16 vs.)
17 BOARD OF FORESTRY AND FIRE)
18 PROTECTION, a public agency, CALIFORNIA)
19 DEPARTMENT OF FORESTRY AND FIRE)
20 PROTECTION, a public agency, and DOES 1)
21 through 5, inclusive,)
22 Respondents.)

Case No.37-2020-00005203

**PETITIONER'S OPENING BRIEF IN
SUPPORT OF WRIT OF MANDATE**

(California Environmental Quality Act)

Date: November 9, 2023

Time: 9:30 a.m.

Dept: C-66

Judge: Honorable Kenneth J. Medel

Petition Filed: January 28, 2020

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1 **INTRODUCTION**

2 This case concerns fire risk, and the manner in which the agency charged with addressing those
3 risks throughout vast portions of California went about addressing them. At a simplistic level, clearing
4 large areas of vegetation, up to half a million acres annually, might seem like an ideal way to “reduce
5 wildfire risk and diminish or avoid the harmful effects of wildfire on people, property, and natural
6 resources.” One would have to live underground not to be aware of the substantial harms that have
7 been caused by wildfires in recent years, exacerbated by climate change and the continued march of
8 homes and people into more remote, and fire prone, areas.

9 But as with many things in life, the simple approach is not always the right approach. Fire risk
10 can be addressed by managing vegetation, but it would be a fool’s errand to think fire can be avoided
11 merely by clearing acres of land. Science shows quite clearly that fire in California is inevitable and
12 even beneficial under the right circumstances. Science also shows that the clearing of all vegetation
13 actually increases fire risk, in part because the non-native grasses that grow rapidly in cleared areas are
14 one of the leading causes of fast-moving wildfires. There is still a great deal that scientists are learning
15 about fire and its behavior, but there is broad consensus that merely clearing large swaths of land is not
16 an effective strategy to “reduce wildfire risk and diminish or avoid the harmful effects of wildfire on
17 people, property, and natural resources.”

18 Unfortunately, Respondent Board of Forestry and Fire Protection (the “Board”) ignored sound
19 science when it approved the California Vegetation Treatment Program (“CalVTP”). It sought to
20 mandate “vegetation treatment” to some 250,000 acres annually on over 20 million acres of both
21 public and private lands throughout the State. The Board claimed it was doing so in order to “to reduce
22 risks to life, property, and natural resources” and to “improve ecosystem health in fire-adapted habitats
23 by safely mimicking the effects of a natural fire regime.” But the CalVTP will accomplish neither.
24 Indeed, the Board admitted that the Program would provide essentially no benefit to addressing what it
25 described as “record-setting wildfires,” observing that “vegetation treatment would do little, if
26 anything, to stop downwind advance of the fire front.” The Board also admitted that its mandate for the
27 “treatment” of chaparral and coastal sage scrub communities was based on guesswork rather than
28

1 science, observing that although it had decreed a “cover retention value” as part of the CalVTP, it
2 really had no sound basis for doing so.

3 In commenting on the CalVTP and associated Program Environmental Impact Report
4 (“PEIR”), numerous experts and others repeatedly warned the Board of the significant environmental
5 impacts associated with such failings. Commenters noted that the California Legislature had demanded
6 “additional consideration” for the protection of chaparral and coastal sage scrub communities.
7 Commenters noted how the failure to address large fires, which are a tiny percentage of the total fires
8 throughout the State but account for over 95 percent of the total acres burned, would result in even
9 further losses of “life, property, and natural resources.” And they warned that both the CalVTP and the
10 PEIR failed miserably to accomplish a goal even the Board set for itself to “improve ecosystem health
11 in fire-adapted habitats by safely mimicking the effects of a natural fire regime.”

12 But the Board refused to listen, or to address these significant concerns, and the Program and
13 PEIR it adopted reflect an utter failure to consider and adopt a sound approach to address the
14 significant risks fire poses throughout the State. Rather than addressing the risks associated with large
15 fires, the Board chose to adopt broad “vegetation treatment” measures that will only further weaken
16 chaparral and coastal sage scrub communities and lead to even greater losses of “life, property, and
17 natural resources.”

18 Accordingly, this Court should grant the writ and overturn the approvals of the Program and
19 PEIR.

20 **FACTUAL BACKGROUND**

21 The Board has described the CalVTP as follows:

22 The California Vegetation Treatment Program (CalVTP) is proposed by the
23 California Board of Forestry and Fire Protection (Board) to treat vegetation that could
24 become fire fuel. The purpose of the CalVTP is to serve as one component of the state’s
25 range of actions to reduce wildfire risk and diminish or avoid the harmful effects of
26 wildfire on people, property, and natural resources with the California Department of
27 Forestry and Fire Protection’s (CAL FIRE’s) State Responsibility Area (SRA).... The
28 treatable landscape, which is the portion of the SRA where vegetation conditions are
suitable for treatment, consists of approximately 20.3 million acres. As part of the
CalVTP, CAL FIRE and other project proponents would implement treatment activities
on up to approximately 250,000 acres annually within the treatable landscape....

AR1773.079.

1 It identified five objectives of the CalVTP:

- 2 1. serve as the vegetation management component of the state’s range of actions
underway to reduce risks to life, property, and natural resources ...
- 3 2. substantially increase the pace and scale of vegetation treatments to contribute to a
4 statewide total of at least 500,000 acres per year on non-federal lands ...
- 5 3. increase the use of prescribed burning as a vegetation treatment tool ...
- 6 4. contribute to meeting California’s GHG emission goals by managing forests and
other natural and working lands as a net carbon sink ... and
- 7 5. improve ecosystem health in fire-adapted habitats by safely mimicking the effects of
a natural fire regime, considering historic fire return intervals, climate change, and
land use constraints.

8 AR1773.079 – 080. The Board explained:

9 The Board is mandated to regulate forestry activities within the SRA and develop
10 policies and regulations that contribute to fire prevention and recovery efforts The
Board’s proposed discretionary action needing CEQA compliance is approval of the
11 CalVTP. After approval, implementation of the CalVTP would consist of vegetation
treatment activities carried out by CAL FIRE on private and public land, by public
12 agencies and organizations funding by grants from CAL FIRE or other state agencies, or
potentially by public agencies that own land within the treatable landscape.

13 AR1773.080; *see also* AR1773.083 (Figure 2-1: “Treatable Landscape”).

14 The Board issued a Draft Program Environmental Impact Report (“PEIR”) regarding the
15 CalVTP on June 24, 2019. AR16. The PEIR explained that it was intended to address two areas:

- 16 • Expansion of CAL FIRE’s vegetation treatment activities to reach a total treatment
17 acreage target of approximately 250,000 acres per year The expanded target
would be a substantial increase compared both to current activity and to the level
18 proposed in the 2017 VTP Draft PEIR (i.e., 60,000 acres per year).
- 19 • A project-specific implementation approach for streamlining CEQA review of later
20 site-specific, vegetation treatment activities ..., in accordance with procedures
described in CEQA Guidelines Section 15168.... A “within the scope” finding for
later activities would facilitate an increase in the pace and scale of project approvals
in a manner that includes environmental protections in compliance with CEQA

21 AR1773.080 – 081.

22 The Board received over 90 comment letters on the Draft PEIR from a variety of agencies,
23 elected officials, organizations (including Petitioners), and individuals. AR1590.005 – 009. The
24 comments raised a host of issues and concerns, and the Board prepared “Master Responses” on nine
25 specific topic areas. AR1590.010. These included concerns about the effectiveness of the CalVTP in
26 reducing wildfire risk, concerns about vegetation treatment maintenance, and concerns about the
27 effects of vegetation treatments in chaparral and coastal sage scrub communities. AR1590.010 – 017.
28 The latter concern was punctuated by Public Resources Code Section 4483, which proclaims a

1 legislative intent “that additional consideration be provided for chaparral and coastal sage scrub plant
2 communities that are being increasingly threatened by fire frequency in excess of their natural fire
3 return patterns due to climate change and human-caused fires.” AR1590.017.

4 The Board held a meeting to consider the CalVTP and PEIR on December 11, 2019. AR2703 –
5 06. In advance of the meeting, Petitioners and other parties submitted letters in opposition to the
6 CalVTP and PEIR. AR26089 – 148. Among other things, commenters warned:

7 At a time when the Board should be prioritizing the safety and protection of existing
8 communities and developing strategies for minimizing the number of people and homes
9 that are placed in harm’s way, it is instead proposing to waste precious State resources on
10 vegetation treatment strategies that leading wildfire scientists agree are ineffectual at
11 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.

12 AR26112 – 13. Comments noted the PEIR’s inadequate project description, inadequate analysis of the
13 Program’s environmental impacts, flawed mitigation measures, and failure to adequately address
14 alternatives. AR26114 – 25. A December 10, 2019 letter from Petitioner California Chaparral Institute
15 noted the PEIR admitted “the VTP’s approach will fail during wind-driven fires, the fires that kill the
16 most people and destroy the most homes.” AR26128. And it observed that “the PEIR provides a blank
17 check for local entities to ignore the impacts of climate change on native plant communities and allow
18 for the ‘treatment’ of chaparral regardless of the cumulative impacts of those treatments.” AR26131.

19 Petitioner submitted stark images of what “intact, ecologically healthy chaparral looks like”
20 and what “chaparral will look like as per the PEIR’s prescribed ‘ecological restoration’ treatment
21 regime – a ‘mosaic’ of shrub patches surrounded by non-native, flammable weeds.” AR26131 & 132.



1 The Board held a further meeting to consider the CalVTP and PEIR on December 30, 2019.
2 AR2712 – 14. Despite the numerous expressed concerns about the CalVTP and the PEIR, the Board
3 adopted Resolution No. 2019-02, approving the Program and adopting CEQA findings and a statement
4 of overriding considerations. AR 8 – 10. The findings acknowledged:

5 California is experiencing a wildfire crisis. As noted in a report of the Governor’s
6 Wildfire Strike Force (2019):

7 “Climate change has created a new wildfire reality for California. The
8 state’s fire season is now almost year round. More than 25 million acres of
9 California wildlands are classified as under very high or extreme fire
10 threat. Approximately 25 percent of the state’s population – 11 million
11 people – lives in that high-risk area.”

12 The effects of climate change and decades of suppression have been manifested on the
13 landscape. Wildfire risk levels have been exacerbated by the location of developed land
14 uses and communities in the high hazard zones....

15 These conditions have resulted in the largest, most destructive, and deadliest wildfires on
16 record in California history Since 2010, the number of wildfires occurring annually
17 has been increasing, as has the number of acres burned. Much of this increase ... is the
18 result of record-setting fires driven by wind

19 AR13 (emphasis in original).

20 The Board filed a Notice of Determination on December 30, 2019. AR1. This litigation was
21 filed on January 28, 2020.

22 STANDARD OF REVIEW

23 Under CEQA, an agency has committed a prejudicial abuse of discretion “if the agency ‘has
24 not proceeded in a manner required by law or if the determination or decision is not supported by
25 substantial evidence.’” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*
26 (2007) 40 Cal. 4th 412, 426 (quoting Pub. Res. Code § 21168.5). “[A]n agency may abuse its
27 discretion under CEQA either by failing to proceed in the manner CEQA requires or by reaching
28 factual conclusions unsupported by substantial evidence. Judicial review of these two types of error
differs significantly: While we determine de novo whether the agency has employed the correct
procedures, ‘scrupulously enforce[ing] all legislatively mandated CEQA requirements,’ we accord
greater deference to the agency’s substantive factual conclusions.” *Banning Ranch Conservancy v.*
City of Newport Beach (2017) 2 Cal.5th 918, 935 (citations omitted).

1 **ARGUMENT**

2 “CEQA was intended to be interpreted in such a manner as to afford the fullest possible
3 protection to the environment within the reasonable scope of the statutory language.” CEQA
4 Guidelines § 15003(f). It has been explained as follows:

5 The CEQA process is intended to be a careful examination, fully open to the public, of
6 the environmental consequences of a given project, covering the entire project, from start
7 to finish. This examination is intended to provide the fullest information reasonably
8 available upon which the decision makers and the public they serve can rely in
9 determining whether or not to start the project at all, not merely to decide whether to
finish it. The EIR is intended to furnish both the road map and the environmental price
tag for a project, so that the decision maker and the public both know, before the journey
begins, just where the journey will lead, and how much they – and the environment – will
have to give up in order to take that journey.

10 *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal. App. 4th 268, 271. Here, the
11 EIR failed to provide “the road map and the environmental price tag” associated with approval of the
12 Program.

13 I. The Board Failed to Adequately Analyze CalVTP Impacts

14 A “legally adequate EIR must contain sufficient detail to help ensure the integrity of the
15 process of decision making by precluding stubborn problems or serious criticism from being swept
16 under the rug.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.

17 A. The PEIR Failed to Adequately Analyze Impacts Associated with Increased Fire
18 Frequency and Duration

19 The findings acknowledged: “California is experiencing a wildfire crisis.” AR13. Yet despite
20 this recognition of a crisis, the CalVTP will do nothing about large fires and will actually make the
21 situation worse. Petitioners and other organizations observed:

22 [T]he premise upon which the CALVTP relies – the Board’s view that a substantial part
23 of this vast amount of land must be “treated” to prevent wildfire – is not only grandiose
24 but, for California’s extensive shrub vegetation and forest communities, entirely lacking
25 in scientific basis. For this very large and vital component of CALVTP, we can find no
26 evidence in the PEIR that the CALVTP 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. Nor can we find any evidence in the PEIR that the
Program would be effective for non-wind-driven fires or that non-wind-driven fires cause
significant harm, or that the PEIR would lead to ecological restoration.

27 AR1691.365.
28

1 The Board’s response (Response O30-2) was to refer to “Master Response 1 regarding the
2 effectiveness of the CalVTP in reducing wildfire risk and the current state of wildfire science.”

3 AR1590.268. But Master Response 1 was nothing more than a mish-mash mosaic of confusion:

- 4 • First, it mischaracterized the particular comment, claiming that Petitioners were somehow
5 “disputing the assertion that the state is facing a wildfire crisis” AR1590.010.
6 Petitioners said nothing of the sort.
- 7 • Second, it acknowledged that “[s]ince 2010, the number of wildfires occurring annually has
8 been increasing, as has the number of acres burned. Much of this increase in acreage,
9 especially in 2017 and 2018, is the result of record-setting wildfires primarily driven by
10 wind” *Id.* That was precisely Petitioners’ point, yet the Board’s response said nothing
11 further about what the CalVTP would do about it.
- 12 • Third, the Board’s response acknowledged: “When high-wind conditions drive a large fire,
13 such as when large embers travel long distances in advance of the fire, vegetation treatment
14 would do little, if anything, to stop downwind advance of the fire front.” AR1590.011. In
15 other words, the Board acknowledged that the CalVTP would not be effective to address
16 the very “wildfire crisis” the Board’s findings identified.
- 17 • Fourth, the Board’s response spends an inordinate amount of time trying to justify why its
18 Program might help, even asserting that “extreme fires represent a small number of the total
19 fires that occur each year.” *Id.* Of course, it is not the number of fires that are of concern –
20 as the Board’s own documents acknowledge, the “wildfire crisis” is a result of extreme fire
21 events.

22 Finally, the Board’s response evinces a tendency throughout its consideration of the Program
23 that anyone who critiqued the Program or the EIR was simply urging the Board to reject any form of
24 treatment. In fact, the relevant question was not such an either/or position but an understanding of fire
25 behavior. An August 9, 2019 letter from Petitioners and other organizations noted their “long history
26 of supporting reasonable strategies to protect people and property from the hazards associated with
27 wildfire.” AR1691.366. And it reminded the Board that Petitioner Endangered Habitats League “has at
28 least twice offered the assistance of its world-renowned scientists to collaborate and assist on an

1 approach to treating vegetation that would better protect natural resources and incorporate the most
2 recent science.” *Id.*

3 Petitioner and others noted: “Fine fuels (weeds and grasses) that typically grow within
4 vegetation treatments or type-converted areas increase the flammability of the landscape.”
5 AR1691.463 (emphasis in original). Yet the Board refused to address these impacts. As Petitioner
6 noted: “What the draft VTP is saying is that the State will only deal with the wildfires that can be
7 controlled, not the ones that cause nearly all the damage.” *Id.* (emphasis in original).

8 The Board acknowledged the current severity of the fire hazards within the SRA and the fact
9 that proposed treatments under CalVTP is not adequate to slow or halt the most destructive wind-
10 driven, high intensity wildfires. AR 163.015. The Board stated: “when high-wind conditions drive a
11 large fire, such as when large embers travel long distances in advance of the fire, vegetation treatment
12 would do little, if anything, to stop downwind advance of the fire front.” AR1590.011.

13 Additionally, a letter submitted by the Petitioners and others explained that the scientific
14 studies cited in the PEIR in support of vegetation treatment as a method of reducing wildfire intensity
15 and severity in fact show that it is an insufficient method. One of these studies report that
16 “effectiveness of these treatments in changing wildfire behavior are not supported by a significant
17 consensus of scientific research at this point in time.” AR 1691.369. Further, there is lack of scientific
18 evidence regarding effectiveness of fuel treatment:

19 Kalies and Yocom Kent (2016)’s review of empirical studies in the western U.S.
20 specifically concluded that there is not good evidence that fuel treatments lead to
21 increased public safety or firefighting effectiveness. Kalies and Yocom Kent (2016)
22 classified the data as “weak” for assessing fuel treatment effectiveness for saving human
23 lives and property (i.e., speed of evacuation; number of homes lost/saved) and for
24 increasing firefighting safety and decreasing firefighting costs. Specifically, the six
25 papers that reported on fuel treatment effectiveness for firefighter safety, suppression
26 factors, homes burned, heat and smoke, and visibility, were anecdotal reports except for
27 one published study. The single published study was an anecdotal account of a single fire
28 in a small area that provides no quantitative scientific evidence.

AR1691.369.

And Petitioners and others noted that the scientific evidence shows that treatment immediately
around structures is effective whereas treatments in wildland areas is not:

In a California-focused study, Syphard et al. (2014) found that structures were more
likely to survive a fire if the vegetation was treated in the defensible space immediately

1 adjacent to them.... “[t]he most effective treatment distance varied between 5 and 20 m
2 (16 – 58 ft) from the structures, but distances larger than 30 m (100 ft) did not provide
3 additional protection

3 AR1691.414.

4 The CalVTP is not intended to address the most severe threats to realize its objectives but
5 merely accepts the significant impacts of these large, most destructive fires and aims to address the less
6 severe threats by suggesting solutions that work only when the conditions are “right.”

7 The Board embraced the idea that “while vegetation treatments under the CalVTP may not be
8 able to slow or halt the extreme fires, most fires that occur within the state are not highly wind driven,
9 and vegetation treatments can help slow and suppress them.” AR74. This logic is faulty because the
10 number of wildfires is not a direct indicator of risk and harm. Instead, the wildfires that pose the most
11 challenging situations and cause the most destruction to natural fire patterns, biodiversity and human
12 life are wind-driven fires that move rapidly. Therefore, the Program is not addressing the actual
13 problem, and leaving the wildfires that cause nearly all the damage undealt with. AR1691.463.

14 In response to the concerns that the Program is not addressing the real threat of extreme
15 wildfires, the Board asserted that “vegetation treatments can also play a valuable role in containing the
16 more extreme fires, when weather conditions shift, wind subsides, and fire intensity decreases.” AR
17 163.015. However, as Petitioners noted: “People die and communities burn during wind-driven fire,
18 not when the weather is cooperating.” AR1691.463. Indeed, the Board looked at studies that evaluated
19 the effectiveness of the proposed treatments in varying weather conditions:

20 In circumstances where extreme weather conditions exist, such as in cases of extremely
21 low humidity and very high winds, fuel treatments are less effective (Brown et al. 2008),
22 particularly when persistently high winds can blow hot embers over long distances.
23 While evidence has not definitively concluded that forest fuel treatments lead to a
24 reduction in the overall size of a fire (USFS 2009; Schoennagel et al. 2017), such
25 treatments can aid in protecting public safety and homes and other structures by reducing
26 wildfire intensity and severity in treated areas under normal fire conditions and by
27 increasing firefighting effectiveness (Kalies and Yocom Kent 2016).

28 AR75. Climate change induces extreme weather conditions that lead to divergence from normal fire
conditions. Consequently, proposing solutions that are known to be ineffective for conditions that are
predicted to get worse and far from “normal” are not addressing the impacts associated with the
“wildfire crisis” the Board acknowledges exists.

1 Petitioner and others cited several studies that proved this very point. For example, quoting a
2 2013 study discussed in the PEIR, Petitioner noted:

3 About 1% of all fires account for 97.5% of the total acres burned (Calkin et al. 2005) and
4 85% of fire suppression costs (Brookings Institution 2005). Research shows that where
5 they occur, restoration and fuel treatments can be valuable assets for both suppressing
6 and managing fire exhibiting moderate behavior. However, where fire behavior is
extreme – such as plume-driven fires – the fire can overwhelm even the best treatments
(Graham 2003), leading to expensive damage and ecological harm.

7 AR26142. And quoting a 2017 study cited in the PEIR, Petitioner pointed out:

8 Policy and management have focused primarily on specified resilience approaches aimed
9 at resistance to wildfire and restoration of areas burned by wildfire through fire
10 suppression and fuels management. These strategies are inadequate to address a new era
11 of western wildfires. In contrast, policies that promote adaptive resilience to wildfire, by
12 which people and ecosystems adjust and reorganize in response to changing fire regimes
13 to reduce future vulnerability, are need. Key aspects of an adaptive resilience approach
14 are (i) recognizing that fuels reduction cannot alter regional wildfire trends; (ii) targeting
15 fuels reduction to increase adaptation by some ecosystems and residential communities to
16 more frequent fire; (iii) actively managing more wild and prescribed fires with a range of
17 severities; and (iv) incentivizing and planning residential development to withstand
18 inevitable wildfire.

14 AR26146.

15 Despite the fact that the uncontroverted evidence showed significant impacts associated with
16 failing to address large fires, and despite the fact that the Board acknowledged the CalVTP would not
17 address large fires, the PEIR failed to address such impacts and the Board essentially buried its head in
18 the ashes.

19 B. The PEIR Failed to Adequately Analyze Impacts to Chaparral and Coastal Sage Scrub
20 Communities

21 The Board claimed that a prime objective of the CalVTP is to “improve ecosystem health in
22 fire-adapted habitats by safely mimicking the effects of a natural fire regime, considering historic fire
23 return intervals, climate change, and land use constraints.” AR15. However, the CalVTP does anything
24 but.

25 Public Resources Code Section 4483 identifies a Legislative intent to protect chaparral and
26 coastal sage scrub communities: “It is the intent of the Legislature that additional consideration be
27 provided for chaparral and coastal sage scrub plant communities that are being increasingly threatened
28 by fire frequency in excess of their natural fire return patterns due to climate change and human-caused

1 fires.” Pub. Res. Code § 4483(b)(1). Yet with approval of the CalVTP, the scale and pace of vegetation
2 treatment will substantially increase. And with that substantial increase will come significant impacts
3 to the very “fire-adapted habitats” the Board claimed it was trying to protect.

4 Commenters noted vegetation treatments proposed under CalVTP in chaparral and coastal sage
5 scrub communities includes areas that “have experienced fire too frequently and are becoming
6 increasingly rare.” AR1590.015. With a treatment plan at this scale, the Program will lead to
7 significant impacts on chaparral and coastal sage scrub communities and threaten their very existence.
8 The Board claimed that “20.3 million acres within 31-million-acre SRA” were identified as
9 “appropriate for vegetation treatment under the proposed CalVTP” in the final PEIR, however, the
10 project proponents will determine specific sites and consider mitigation measures before implementing
11 a treatment. AR1590.015. The Board deferred responsibility to assess suitability of the treatments and
12 the resulting effects to the chaparral and coastal sage scrub communities to project proponents.

13 The Board claimed:

14 Even though chaparral vegetation is fire adapted, and some chaparral species are even
15 fire dependent (e.g., have seeds that are stimulated to germinate by fire), most chaparral
16 types require a minimum of 10 years to recover from fire and chaparral types dominated
17 by obligate seeder shrubs that are fire stimulated and generally require a minimum of 15
18 years to accumulate enough seed in the soil seedbank to recover (Syphard et al. 2019).
19 Chaparral vegetation types that are characterized by facultative seeders (i.e., regenerate
20 by resprouting and from seed) are more resilient to fire than those characterized primarily
21 by obligate seeders, but these, too, can be degraded by repeated short-interval fires.
22 Therefore, vegetation treatment projects implemented under the CalVTP, including
23 prescribed burning, could potentially result in type conversion of chaparral vegetation if
24 the treatment does not replicate the natural fire regime of the vegetation type present.

25 AR1590.015. But the evidence in the record establishes the fallacy in the Board’s rationale.

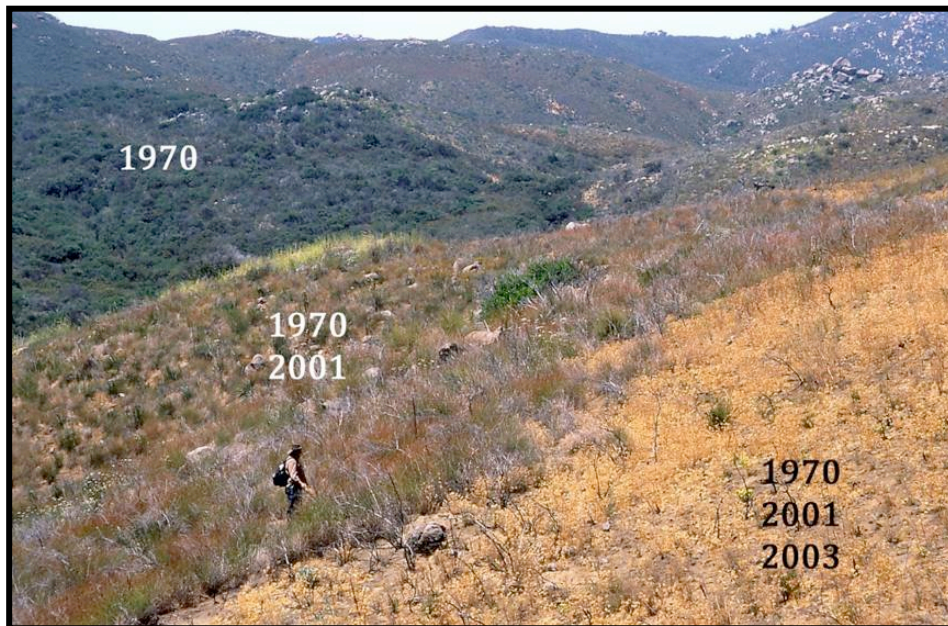
26 Petitioners and other organizations observed:

27 The PEIR quantifies percent cover of native vegetation for “ecological restoration
28 treatments,” including the retention of 35% of existing shrubs and associated native
29 vegetation, and thinning would be no more than 20% from the baseline density. However,
30 the PEIR fails to provide scientific evidence to support the notion that ecological
31 restoration of chaparral or coastal sage scrub with these parameters would be effective. In
32 addition, APR BIO-5 vaguely states that “If the stand within the treatment area consists
33 of multiple age classes, patches representing a range of middle to old age classes will be
34 retained to maintain and improve heterogeneity.” This provides no guidance or
35 enforceable requirement for a practice that is not based on sound science.

36 AR1691.405. The Board’s response did not even try to defend this approach, asserting it was “based
37 on professional judgment in the absence of established guidelines and standards.” AR1590.310.

1 Indeed, in response to a comment from Petitioners the Board admitted: “Because of the vast range of
2 variability in cover density among chaparral and coastal sage scrub types, it is not possible to identify a
3 cover retention value that is appropriate for all vegetation alliances within the chaparral and coastal
4 sage scrub category.” AR1590.327.

5 Petitioner California Chaparral Institute noted in commenting on the Final PEIR: “The notion
6 that somehow the ‘ecological restoration’ of chaparral can consist of ‘35 percent relative cover,’ with
7 ‘patches distributed in a mosaic pattern,’ that retains a yet to be defined ‘habitat function,’ is a
8 complete misunderstanding of the natural structure of chaparral, and fails to grasp our current
9 understanding of chaparral ecology.” AR26131. Petitioner submitted stark images of what “intact,
10 ecologically healthy chaparral looks like” and what “chaparral will look like as per the PEIR’s
11 prescribed ‘ecological restoration’ treatment regime – a ‘mosaic’ of shrub patches surrounded by non-
12 native, flammable weeds.” AR26131 & 132. Indeed, in commenting on the Draft PEIR, Petitioner
13 submitted photos which depicted just how devastating the loss of chaparral and coastal sage scrub
14 communities can be, and how remarkably obvious it can appear. See AR1691.475 – 477. “Figure 4,” a
15 single yet powerful photograph, shows the clear distinctions between a chaparral community burned in
16 1970, burned again in 2001 with healthy recovery, and a portion that was burned a third time in 2003
17 demonstrating type conversion by non-native grasses. AR1691.477.



1 Petitioner California Chaparral Institute also noted:

2 When compared to most forests, chaparral has comparatively long intervals
3 between fires (30 – 150 years or more). Long fire return intervals are vital for the
4 chaparral’s ecological health. It can take up to thirty years for the native shrubs to build
5 up enough seed in the soil to provide adequate germination rates post fire.

6 However, increases in fire frequency due to human-caused ignitions and the
7 effects of climate change cause chaparral stands to become more open and are often
8 invaded by nonnative grasses. Fire-return intervals fewer than 10 years have been shown
9 to be highly detrimental to the persistence of chaparral species (Haidinger and Keeley
10 1993, Jacobsen et al. 2004). As grasses increase, the flammability of the chaparral
11 ecosystem also increases. As a consequence, a positive feedback loop is created whereby
12 more grass encourages frequent ignitions. Such frequent fires not only eliminate the
13 native shrubs, but they facilitate the further spread of invasive weeds and grasses due to
14 the fact that grass fires are less intense than shrubland fires. The type conversion process
15 can ultimately lead to the complete replacement of native chaparral with nonnative
16 grasses (Halsey and Syphard 2015).

17 When fire management policies commonly used in forests – such as prescribed
18 fire and vegetation clearing – are misapplied to chaparral, the results are destructive to
19 the ecosystem and can actually increase fire....

20 Similarly, large-scale vegetation clearing projects ("fuelbreaks") also cause the
21 loss of native chaparral and the spread of invasive grasses that leads to more frequent
22 fires. Amid the increasing dangers to chaparral from the effects of climate change, it is
23 imperative that land management agencies do not exacerbate the loss of chaparral
24 through activities like prescribed burns and large-scale habitat clearance projects away
25 from homes. Instead, fire management in chaparral should focus on reducing the
26 unnaturally high level of fire ignitions that has accompanied human development in this
27 ecosystem (Keeley et al. 2005b, Keeley 2006, Syphard et al. 2007).

28 AR559. Despite the substantial evidence of the damaging effects associated with “treatments” to
chaparral and coastal sage scrub communities, and despite the clear expression of the intent of the
California Legislature to protect such communities, the PEIR and CalVTP provided no evidence to
support what is an indefensible program that will result in significant impacts to the very vegetation
communities the Board claimed it was trying to protect.

29 C. The PEIR Failed to Adequately Describe and Address the Program

30 CEQA requires the EIR’s project description to provide an accurate description of the entire
31 project. “A curtailed, enigmatic or unstable project description draws a red herring across the path of
32 public input.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 197 – 98. “The
33 adequacy of an EIR’s project description is closely linked to the adequacy of the EIR’s analysis of the
34 project’s environmental effects. If the description is inadequate because it fails to discuss the complete
35

1 project, the environmental analysis will probably reflect the same mistake.” *Dry Creek Citizens*
2 *Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 31 – 32 (citations omitted).

3 CEQA requires consideration of “[a]ll phases of project planning, implementation, and
4 operation.” CEQA Guidelines § 15063(a)(1). It defines a project to be “the whole of an action, which
5 has a potential for resulting in either a direct physical change in the environment, or a reasonably
6 foreseeable indirect physical change in the environment.” CEQA Guidelines § 15378(a) (emphasis
7 added). “The term ‘project’ refers to the activity which is being approved and which may be subject to
8 several discretionary approvals by governmental agencies. The term ‘project’ does not mean each
9 separate governmental approval.” *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170
10 Cal.App.4th 1186, 1203 (quoting CEQA Guidelines § 15387(c)).

11 “Pursuant to SPR BIO-5, the project proponent will design treatment projects to avoid type
12 conversion where native coastal sage scrub and chaparral are present”. AR1590.015. However,
13 Respondents failed to provide reasonable guidance to project proponents within the PEIR on how to
14 define type conversion. The PEIR provides an ecological definition that hinges on habitat functions
15 and states that “it is beyond legal scope of the Draft PEIR to define type conversion...” AR1590.017.
16 The Board interprets the general intent of the legislation to consider type conversion based on
17 “whether there is substantial reduction in the value or function of affected habitats”. AR1590.017.
18 However, this approach fails to adequately assess the significant impacts on the chaparral and coastal
19 sage scrub plant communities, therefore, fails to protect the entire community and is contrary to
20 established science.

21 The PEIR passes on the responsibility of defining type conversion to the “project proponent.”
22 Respondents expressed that “the project proponent, acting as lead agency for the proposed later
23 treatment project, will be responsible for compliance with the type conversion prohibition.”
24 AR1590.017. Passing off the determination of a key environmental impact of a project to a future,
25 unknown entity not only violates the spirit of SB 1260, but is also a clear violation of CEQA.”
26 AR1691.467.

27 “Designating an EIR as a program EIR also does not by itself decrease the level of analysis
28 otherwise required in the EIR.” *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment*

1 *Agency* (2000) 82 Cal. App. 4th 511, 533. Reasonably foreseeable impacts and results must be
2 analyzed in the PEIR, and should not be left to project proponents to decide with minimal guidance. As
3 pointed out in many of the comment letters, many of the risks were known as they were repeatedly
4 mentioned in previous EIRs but have not been addressed adequately:

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

9 AR1691.371.

10 II. The Board Failed to Adequately Analyze Feasible Mitigation Measures and Alternatives

11 “The core of an EIR is the mitigation and alternatives section.... ‘The purpose of an [EIR] is to
12 identify the significant effects of a project on the environment, to identify alternatives to the project,
13 and to indicate the manner in which those significant effects can be mitigated or avoided.’” *Citizens of*
14 *Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564 – 65.
15 CEQA contains a “substantive mandate” that agencies refrain from approving a project with significant
16 environmental effects if “there are feasible alternatives or mitigation measures” that can substantially
17 lessen or avoid those effects. *Mountain Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th
18 105, 134. CEQA provides in part: “The Legislature finds and declares that it is the policy of the state
19 that public agencies should not approve projects as proposed if there are feasible alternatives or
20 feasible mitigation measures which would substantially lessen the significant environmental effects of
21 such projects” Pub. Res. Code § 21002.

22 In *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, the court explained:

23 Governmental agencies at all levels are required to “consider qualitative factors as
24 well as economic and technical factors and long-term benefits and costs, in addition to
25 short-term benefits and costs and to consider alternatives to the proposed actions
26 affecting the environment.” Further, the Legislature has also declared it to be the policy
27 of the state “that public agencies should not approve projects as proposed if there are
28 feasible alternatives or feasible mitigation measures available which would substantially
lessen the significant environmental effects of such projects” “Our Supreme Court
has described the alternatives and mitigation sections as ‘the core’ of an EIR.” In
furtherance of this policy, section 21081, subdivision (a), “contains a ‘substantive
mandate’ requiring public agencies to refrain from approving projects with significant
environmental effects if ‘there are feasible alternatives or mitigation measures’ that can
substantially lessen or avoid those effects.” Subdivision (b) of section 21081, which
“codifies an ‘override’ requirement and comes into play where the lead agency has issued

1 an infeasibility finding under section 21081(a)(3)” allows the lead agency to approve the
2 project if it “finds that specific overriding economic, legal, social, technological, or other
3 benefits of the project outweigh the significant effects on the environment.” Under
4 CEQA “feasible” is defined as “capable of being accomplished in a successful manner
within a reasonable period of time, taking into account economic, environmental, social,
and technological factors.”

5 *Id.* at 597 – 98 (citations omitted); *see also Woodward Park Homeowners Assoc., Inc. v. City of Fresno*
6 (2007) 150 Cal.App.4th 683, 730 – 31 (City violated CEQA when it failed to require mitigation for one
7 freeway impact even though it did provide mitigation for other freeway impacts).

8 CEQA requires an agency to avoid approving a project “if there are feasible alternatives or
9 feasible mitigation available which would substantially lessen the significant environmental effects
10” Pub. Res. Code § 21002 (emphasis added). Yet the Board never analyzed, much less adopted,
11 alternatives that would substantially lessen the several impacts it found as “significant and
12 unavoidable.”

13 A. The EIR Failed to Consider Mitigation and Alternatives to Address Increased Fire
14 Frequency and Duration

15 As discussed *supra*, the CalVTP and PEIR failed to address the many significant impacts
16 associated with failing to address the large fires. The Board’s own findings acknowledged that
17 “conditions have resulted in the largest, most destructive, and deadliest wildfires on record in
18 California history Since 2010, the number of wildfires occurring annually has been increasing, as
19 has the number of acres burned. Much of this increase ... is the result of record-setting fires driven by
20 wind “ AR13. The Board claimed “extreme fires represent a small number of the total fires that
21 occur each year.” AR1590.011. Yet as Petitioners noted, studies have shown “[a]bout 1% of all fires
22 account for 97.5% of the total acres burned” AR26142. And the Board admitted that “vegetation
23 treatment would do little, if anything, to stop downwind advance of the fire front” in wind-driven
24 conditions. AR1590.011.

25 “If, as so many courts have said, the EIR is the heart of CEQA, then to continue the anatomical
26 metaphor, mitigation is the teeth of the EIR. A gloomy forecast of environmental degradation is of
27 little or no value without pragmatic, concrete means to minimize the impacts and restore ecological
28 equilibrium. Thus, CEQA requires project proponents to mitigate all significant environmental impacts

1 of their project.” *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th
2 1018, 1039. The Board’s reliance upon a “gloomy forecast” – i.e., that nothing can be done about the
3 most devastating fires – is inconsistent with CEQA’s mandates.

4 Petitioner Endangered Habitats League submitted comments noting “two examples of
5 alternative approaches to the proposed VTP which show the inadequacy of the alternative analysis in
6 the Draft PEIR.” AR1590.152. These comments included “important excerpts” from the Santa Monica
7 Mountains National Recreation Area Fire Management Plan (“SMM Plan”), and explained how that
8 plan “is grounded in sound and up-to-date fire science and ecology, as well as long experience.” *Id.*
9 The Board responded that “Alternative C incorporates elements of the” SMM Plan, then proceeded to
10 reject the alternative. AR1590.153.

11 However, as a December 10, 2019 letter from Petitioners and others noted, the PEIR “grossly
12 misstates the premise and components of the SMM Plan.” AR26121. The letter explained:

13 The SMM Plan is laser focused on creating “house out” defensible space within
14 100 feet of homes (“defensible space zone”).... Moreover, the SMM Plan’s approach of
15 focusing the treatable areas in the WUI to the defensible space zone is intended to
16 provide much needed resources to communities for retrofitting of landscape and homes,
17 significantly reduce environmental impacts, and allow additional resources to be devoted
18 to restoration treatments where they belong, in frequent fire forest ecosystems.

17 AR26121. The failure to consider, let alone adopt, anything close to practicable mitigation and/or
18 alternatives that would reduce the many significant impacts associated with California’s “wildfire
19 crisis” was a fundamental abuse of CEQA.

20 B. The EIR Failed to Consider Mitigation and Alternatives to Address Significant Impacts
21 to Chaparral and Coastal Sage Scrub Communities

22 To address “type conversion,” the CalVTP included SPR BIO-5, which requires a “project
23 proponent [] design treatment activities to avoid type conversion where native coastal sage scrub and
24 chaparral are present.” AR1773.120. This provision expressed that a project proponent will:

- 25 • Develop a treatment design that avoids environmental effects of type conversion in
26 chaparral and coastal sage scrub vegetation alliances, which will include evaluating
27 and determining the appropriate spatial scale at which the proponent would consider
28 type conversion and substantiating its appropriateness....
- The treatment design will maintain a minimum percent cover of mature native shrubs
within the treatment area to maintain habitat function; the appropriate percent cover
will be identified by the project proponent in the development of the treatment design

1 and be specific to the vegetation alliances that are present in the identified spatial
2 scale used to evaluate type conversion....

3 AR1773.120 – 121. It also asserted: “A determination of compliance with the SB 1260 prohibition of
4 type conversion in chaparral and coastal sage scrub is a statutory issue separate from CEQA
5 compliance that may involve factors additional to the ecological definition and habitat functions
6 presented in the PEIR, such as geographic context. It is beyond the legal scope of the PEIR to define
7 SB 1260 type conversion and statutory compliance.” AR1773.121.

8 Petitioners and others submitted comments explaining that this measure “is both vague and
9 improperly deferred mitigation.” AR1691.405. They noted:

10 Without any quantification or science to support the efficacy of treatment design
11 to both improve fire safety for structures and communities and minimize adverse impacts
12 to chaparral and coastal sage scrub, the public and decisionmakers are unable to evaluate
13 the effectiveness of the plans in avoiding, minimizing, and mitigating the impacts from
14 treatment activities.

15 *Id.* Petitioners also explained that SPR BIO-5 was essentially leaving the fox to guard the henhouse:
16 “This measure includes provisions to ‘avoid’ type conversion, however, the SPRs remain vague,
17 inadequate, not based on the best available science, and defers critical details to the project proponent.”
18 AR26119.

19 The Board failed to consider feasible mitigation and alternatives to the Program’s significant
20 impacts to the chaparral and coastal sage scrub communities. The Board deferred responsibility to
21 future project proponents that will implement the Program and undertake vegetation treatment. The
22 Board failed to provide adequate guidance to the project proponents by ensuring there is an effective
23 mitigation.


24 CONCLUSION

25 For the foregoing reasons, the writ should be granted and the PEIR and Program approvals
26 overturned by this Court.

27 DATED: September 19, 2023

Respectfully Submitted,

28 **DELANO & DELANO**

By: 
Everett DeLano
Attorneys for Petitioner