

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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**10/27/2023** at 03:41:00 PM  
Clerk of the Superior Court  
By E- Filing, Deputy Clerk

8  
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 REPLY TO BOARD OF  
FORESTRY AND FIRE PROTECTION'S  
OPPOSITION TO 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

**TABLE OF CONTENTS**

1

2 **INTRODUCTION**.....4

3 **ARGUMENT**.....4

4 I. The Board Failed to Adequately Analyze CalVTP Impacts.....4

5     A. The PEIR Failed to Adequately Analyze Impacts Associated with Increased Fire

6         Frequency and Duration.....4

7         1. The Evidence Shows the Wildfire Crisis is Far From An “Existing Condition”.....5

8         2. Even if the “Crisis” Constituted “Existing Conditions,” the VTP Will Worsen

9             Those Conditions.....7

10         3. The Board Must Not Ignore Large Fires.....8

11     B. The PEIR Failed to Adequately Analyze Impacts to Chaparral and Coastal Sage

12         Scrub Communities.....9

13         1. The EIR’s Analysis is Not Supported by Substantial Evidence.....10

14         2. The Board Failed to Address Impacts Associated with Type Conversion.....11

15     C. The PEIR Failed to Adequately Describe and Address the Program.....12

16 II. The Board Failed to Adequately Analyze Feasible Mitigation Measures and Alternatives.....13

17     A. The EIR Failed to Consider Mitigation and Alternatives to Address Increased Fire

18         Frequency and Duration.....14

19     B. The EIR Failed to Consider Mitigation and Alternatives to Address Significant

20         Impacts to Chaparral and Coastal Sage Scrub Communities.....14

21 **CONCLUSION**.....15

22

23

24

25

26

27

28

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Claremont Canyon Conservancy v. Regents of the University of California* (2023)

4 92 Cal.App.5th 474.....13

5 *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.....12

6 *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018.....14

7 *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.....11

8 *Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655.....13

9

10 **STATUTES AND AUTHORITIES**

11 CEQA Guidelines § 15126.6(b).....14

12 Pub. Contract Code § 6985(a)(2).....6

13 Pub. Res. Code § 4483(b)(1).....9

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **INTRODUCTION**

2 The Opposition filed by Respondent Board of Forestry and Fire Protection (“Opposition” or  
3 “Opp.”) repeatedly characterizes this litigation as a “policy dispute.” But in doing so, the Opposition  
4 belittles both the significant issues raised by this litigation and Board’s role and obligations under  
5 CEQA. While it might be obvious the parties disagree about the correct policies to “reduce wildfire  
6 risk and diminish or avoid the harmful effects of wildfire on people, property, and natural resources,”  
7 the relevant considerations in this case concern the Board’s utter failure to address the significant  
8 impacts associated with adoption of the VTP.

9 The Board essentially deferred the difficult questions and issues that arise when considering  
10 how to “reduce wildfire risk and diminish or avoid the harmful effects of wildfire on people, property,  
11 and natural resources” on more than 20 million acres. It refused to address the extreme fires, the ones  
12 that cause virtually all of the damage and destruction to people, property and the environment. It  
13 avoided tackling its own objective to improve fire-adapted habitats. And it punted the question of  
14 considering how and when “type conversion” might result from various VTP activities on important  
15 chaparral and coastal sage scrub communities.

16 The Opposition, meanwhile, tries to make these complicated issues associated with addressing  
17 wildfire risk into a simple formula – clearing vegetation is good policy. But that simplistic formula  
18 does not work, and the scientific research shows the fallacies of such an approach. Contrary to the  
19 Opposition’s arguments, the Board was not free to merely ignore these significant issues or sweep  
20 them under the rug for someone else to deal with. Accordingly, this Court should grant the writ and  
21 overturn the approvals of the Program and PEIR.

22 **ARGUMENT**

23 I. The Board Failed to Adequately Analyze CalVTP Impacts

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

26 The Opposition asserts: “The Board was not required to evaluate, as a CEQA issue, the  
27 CalVTP’s efficacy in addressing the wildfire crisis in California because that is not a potential  
28 environmental impact, and wildfires are part of the baseline/existing environmental conditions.” Opp.

1 at 16:22 – 24. At first blush, this is a remarkable, some might say outlandish, assertion – that the Board  
2 can adopt a Statewide program to supposedly “reduce wildfire risk and diminish or avoid the harmful  
3 effects of wildfire on people, property, and natural resources” covering over 20 million acres and  
4 simultaneously claim it has absolutely no obligation to evaluate the efficacy of whether that program  
5 will address the wildfire crisis in California. And it poses an obvious question: if the Board does not  
6 have such an obligation, then who does?

7 But the position also ignores the substantial evidence in the record, evidence which  
8 demonstrates both that the “wildfire crisis” is recent, real, and will continue to worsen and that the  
9 VTP will only further exacerbate the crisis. For the Board to claim otherwise is, as the Opening Brief  
10 noted, a clear sign it has chosen to bury its head in the ashes.

11 1. The Evidence Shows the Wildfire Crisis is Far From An “Existing Condition”

12 The argument that the “wildfire crisis” is a baseline condition ignores what the Board itself has  
13 said about that crisis. The Board’s own findings acknowledged:

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

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

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

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

26 AR13 (emphasis in original). Nothing about these findings indicates the “wildfire crisis” is a static  
27 “existing condition.” To the contrary, they acknowledge that climate change “has created a new  
28 wildfire reality.” They acknowledge the continuation of more development in “high hazard zones.”  
And they acknowledge the number of wildfires and number of acres burned is increasing annually.

There is absolutely no evidence in the record that any of these factors have dissipated or that  
somehow, miraculously, no further changes will occur. The factors present the exact opposite of a

1 stable “existing condition” – instead, they present a dire future in which people, property, and natural  
2 resources will continue to be under ever more severe threat from ever more devastating wildfires.

3 Citing Section 3.17 of the EIR, the Opposition asserts the Board “used existing environmental  
4 conditions as the baseline for the impacts analysis.” Opp. at 16:25 – 17:1. But a review of Section 3.17  
5 reveals that there is no baseline defined there, and certainly not one that claims the “wildfire crisis” as  
6 a baseline. See AR1773.609 – 24. To the contrary, the EIR acknowledged the substantial role of  
7 climate change in the crisis and that climate change will continue to make the wildfire situation worse:

8 It is estimated that since 1985, more than 50 percent of the increase in the area burned by  
9 wildfire in the western U.S. is attributable to anthropogenic climate change (Abatzoglou  
10 and Williams 2016). As climate change persists, it will produce increasing temperatures  
11 and drier conditions that will generate abundant dry fuels. All wildfires (those initiated by  
12 both natural and manmade sources) tend to be larger under drier atmospheric conditions  
13 and when fed by drier fuel sources (Balch et al. 2017).

14 ...  
15 Climate change will continue to produce conditions that facilitate a longer fire season,  
16 which, when coupled with human-caused changes in the seasonality of ignition sources,  
17 will produce more, longer, and bigger fires during more times of the year. According to  
18 California's Fourth Climate Change Assessment, *Statewide Summary Report (2018)*, if  
19 GHG emissions continue to rise, the frequency of extreme wildfires burning over 25,000  
20 acres could increase by 50 percent by 2100 and the average area burned statewide could  
21 increase by 77 percent by the end of the century (Bedsworth et al. 2018).

22 AR 1773.610. It also explained:

23 Three of the four variables controlling wildfire behavior described above (weather,  
24 vegetation, and human influence) are rapidly changing in California and elsewhere—  
25 changes which are producing a fire regime that is increasingly susceptible to fire danger  
26 and gradually becoming more hazardous. ... As previously discussed, wildfire frequency  
27 and severity in California are anticipated to increase over the next century.

28 AR1773.614 (emphasis added).

Furthermore, the 2018 “California Forest Carbon Plan” explains: “While California is  
experiencing the nascent effects of what climate change will bring later this century, the impacts are  
already significant and expected to get worse.” AR11727. Consistency with this plan is identified as  
VTP Objective #4. AR1773.079. And the California Legislature has noted the increasing severity of  
climate change. See e.g., Pub. Contract Code § 6985(a)(2) (“The effects of climate change have  
already cost the state billions of dollars and will only continue to increase if we do not take immediate  
and decisive action to cut emissions”). The Board’s assertion that California’s “wildfire crisis” is an  
“existing condition” is belied by its own statements, other evidence, and the State Legislature.

1                   2.       Even if the “Crisis” Constituted “Existing Conditions,” the VTP Will Worsen  
2                                   Those Conditions

3                   Even if the “wildfire crisis” were somehow a stable condition, the evidence in the record  
4 establishes that the VTP will make that crisis even worse for people, property, and natural resources.  
5 As Petitioner and others noted, “[f]ine fuels (weeds and grasses) that typically grow within vegetation  
6 treatments or type-converted areas increase the flammability of the landscape.” AR1691.463 (emphasis  
7 in original). Petitioner noted in comments to the Board:

8                   The authors of the PEIR obviously fail to grasp the future environment we are facing.  
9                   When an ecosystem is threatened by too many fires, and the threat is only going to  
10                  increase based on climate change predictions, there is NO justifiable rationale to “treat”  
11                  such an ecosystem with even more fire or other clearance techniques to “return the  
12                  vegetation types to its natural condition class.”

13 AR26131 (emphasis in original).

14                  The Opposition acknowledges “Appendix G thresholds” applicable to these impacts, including  
15 “slope, prevailing winds, and other factors, [which] exacerbate wildfire risks,” “the installation and  
16 maintenance of infrastructure (such as roads, fire breaks, [etc.]) that may exacerbate fire risk or that  
17 may result in temporary or ongoing impacts to the environment,” and the exposure of “people or  
18 structures to significant risks ....” Opp. at 17:5 – 12. The evidence establishes the VTP will lead to  
19 these very impacts.

20                  And the EIR itself acknowledged the devastating effects vegetation treatment can play in  
21 increasing wildfire risks:

22                  Other than direct residential development, one of the more important changes in  
23 shrubland ecosystems has been the anthropogenic alteration of the natural fire regime.  
24 Despite a long-standing policy of fire suppression, the primary impact to these  
25 ecosystems has been a dramatic acceleration of human-caused fire occurrence. Because  
26 of the increase in anthropogenic ignitions associated with human population centers,  
27 more fires now occur in the wildland-urban interface than in the backcountry. Too-  
28                  frequent fire may promote the invasion of nonnative plant species by providing canopy  
                  openings, reducing cover of competing vegetation, and creating favorable soil conditions,  
                  such as newly exposed soil surfaces and increased nutrient availability. Invasive plants  
                  may change fire behavior and fire regimes, often by increasing fuel bed flammability,  
                  which increases fire frequency. These changes may also impact habitat loss and small  
                  mammal populations. Cheatgrass serves as a classic example of an invasive plant that has  
                  significantly altered the fire ecology in the Western United States and Canada ...

AR1773.246 (emphasis added). The EIR explained:

                  Infestations of invasive plants generally originate in areas where soil and vegetation have  
                  been disturbed; the removal of native vegetation provides an opportunity for propagules

1 of introduced species to establish, grow, and reproduce. Prescribed-fire and mechanical  
2 treatments can each increase the abundance of invasive plant species, and this increase is  
3 generally greatest with combined mechanical and prescribed-fire treatments (Stephens et  
4 al. 2012).

4 AR1773.247. And it acknowledged the lack of evidence of the effectiveness of vegetative treatment:

5 Investigations, including model-based examinations, and associated publications  
6 addressing the effectiveness of fuel treatments and fire behavior are robust. However,  
7 there are some important data gaps in documenting fuel treatment effectiveness. In part,  
8 this is because the uncertainty of wildfire timing and location does not lend itself to a  
9 controlled experimental setting within which researchers could predict and measure pre-  
10 fire and post-fire conditions, and the available datasets and records of past fire and fuel  
11 treatments are not complete and comprehensive (Syphard et al. 2011, Barnett et al. 2016).

9 AR1773.611.

10 The Opposition references Master Response 1, which tried to justify the effectiveness of  
11 vegetation treatments. *See* AR1590.011 – 13. However, Petitioner noted that its comments on the  
12 DEIR “were focused on native shrubland ecosystems and the devastating power of wind-driven  
13 wildfires.” AR26134. It observed that Master Response 1 continued a theme of the Board, in which it  
14 “consistently ignored both issues and continually cited unrelated forest-based research .... This failure  
15 to cite research specific to the wildfires and ecosystems we address in our letter betrays the forest-  
16 centric approach that has plagued the VTP process over the past 15 years.” AR26134 – 35 (emphasis in  
17 original). Petitioner California Chaparral Institute explained how the Board’s response and analysis  
18 misapplied and misrepresented published scientific research in order to reach its result. AR26135 – 48.  
19 It described in detail how scientific research demonstrates that “wildfire does not exhibit any single  
20 standard of behavior or potential throughout the entire state.” AR26139. And Petitioner explained how  
21 the science actually shows that the “efficacy of [vegetation] treatments remains restricted to a single,  
22 narrow area when compared to the whole of California.” *Id.*

23 Accordingly, the Board’s failure to address the significant impacts of the VTP was a violation  
24 of CEQA.

### 25 3. The Board Must Not Ignore Large Fires

26 The Opposition argues that “most fires in California are not wind-driven ....” Opp. at 18:18 –  
27 19. This argument is flawed because the number of wildfires is not a direct indicator of risk and harm.  
28 Instead, the wildfires that pose the most challenging situations and cause the most destruction to



1 natural fire patterns, biodiversity and human life are wind-driven fires that move rapidly. Petitioner and  
2 others cited several studies that proved this very point. For example, quoting a 2013 study discussed in  
3 the PEIR, Petitioner noted:

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

10 AR26142. Therefore, the Board’s VTP does not address the “wildfire crisis,” leaving the wildfires that  
11 cause nearly all the damage undealt with. And the EIR fails to address the impacts of this negligent  
12 behavior.

13 B The PEIR Failed to Adequately Analyze Impacts to Chaparral and Coastal Sage Scrub  
14 Communities

15 The Opposition claims “the plain language of [Public Resources Code] section 4483 illustrates  
16 that it did not obligate the Board to make any findings pertinent to chaparral and coastal sage scrub  
17 ....” Opp. at 19:7 – 9. This argument is a red herring. Petitioner has not claimed Section 4483 requires  
18 the Board to make any findings. Rather, the Opening Brief noted the Legislature’s stated intention: “It  
19 is the intent of the Legislature that additional consideration be provided for chaparral and coastal sage  
20 scrub plant communities that are being increasingly threatened by fire frequency in excess of their  
21 natural fire return patterns due to climate change and human-caused fires.” Pub. Res. Code §  
22 4483(b)(1). The Opposition itself notes this legislative intention is discussed directly in relation to the  
23 VTP EIR. Opp. at 19:15 – 24.

24 But the Opposition’s attempts to divert this Court’s attention from the real issues in this case  
25 should not stand. As the Opening Brief explains, the VTP will lead to significant impacts to chaparral  
26 and coastal sage scrub communities, the very “fire-adapted habitats” the Board claimed the VTP was  
27 intended to improve. AR1773.080. The Opposition again attempts to label this litigation as just a  
28 “policy dispute” (Opp. at 20:11 – 13), but the evidence shows that much more is at stake. The  
Opposition conveniently ignores that evidence.

1                   1.       The EIR’s Analysis is Not Supported by Substantial Evidence

2                   The Opposition insists the “PEIR extensively evaluates potential impacts to chaparral and  
3 coastal sage scrub habitats ....” Opp. at 20:13 – 14. It cites Master Response 3, which states:

4                   Chaparral vegetation types that are characterized by facultative seeders (i.e., regenerate  
5 by resprouting and from seed) are more resilient to fire than those characterized primarily  
6 by obligate seeders, but these, too, can be degraded by repeated short-interval fires.  
7 Therefore, vegetation treatment projects implemented under the CalVTP, including  
8 prescribed burning, could potentially result in type conversion of chaparral vegetation if  
9 the treatment does not replicate the natural fire regime of the vegetation type present.  
10 Implementation of SPR BIO-5 would avoid environmental effects of type conversion of  
11 chaparral and coastal sage scrub by designing treatment projects to replicate the natural  
12 fire regime, return the vegetation types to its natural condition class, and maintain or  
13 improve the natural function of those alliances.

14 AR1590.015. But this claim ignores the effects fire has already had on the chaparral and coastal sage  
15 scrub communities, and it downplays the substantial differences between these vegetation communities  
16 and other types of vegetation.

17                   Petitioner California Chaparral Institute explained:

18                   There are approximately 15 million acres of mixed conifer/ponderosa pine forests in  
19 California that may have missed several fire return intervals due to past fire suppression.  
20 Most of these forests are far from the communities most impacted by the 2017 and 2018  
21 wildfires.... In contrast, the vast majority of the population at risk of wildfire live in and  
22 around approximately 12 million acres of native shrubland habitats, habitats that have  
23 suffered too much fire and as a consequence are at risk of type conversion to more  
24 flammable, weedy grasslands. Rather than suffering from decades of fire suppression,  
25 native shrublands have suffered from too much fire.

26 AR191. One expert observed: “As both California Chaparral Institute and CNPSSD have argued  
27 repeatedly, there is too much fire in chaparral, especially in Southern California. The simplest way to  
28 improve this fire return interval is to not burn in chaparral for the next century or so. Both Objective 4  
and the VTP itself need to become consistent and transparent about what they intend to burn, where,  
and why.” AR421.

29                   Petitioner also noted:

30                   [I]ncreases in fire frequency due to human-caused ignitions and the effects of  
31 climate change cause chaparral stands to become more open and are often invaded by  
32 nonnative grasses. Fire-return intervals fewer than 10 years have been shown to be highly  
33 detrimental to the persistence of chaparral species (Haidinger and Keeley 1993, Jacobsen  
34 et al. 2004). As grasses increase, the flammability of the chaparral ecosystem also  
35 increases. As a consequence, a positive feedback loop is created whereby more grass  
36 encourages frequent ignitions. Such frequent fires not only eliminate the native shrubs,  
37 but they facilitate the further spread of invasive weeds and grasses due to the fact that

1 grass fires are less intense than shrubland fires. The type conversion process can  
2 ultimately lead to the complete replacement of native chaparral with nonnative grasses  
(Halsey and Syphard 2015).

3 AR559. And an expert explained:

4 The VTP breaks California down into nine ecoregions; it proposes three types of fuel  
5 management treatments ...; it proposes a menu of treatment activities .... Just a simple  
6 combinatorial analysis, 9 ecoregions times 3 management treatments time 5 treatment  
activities, leads to 135 different scenarios, even without adding further very necessary  
complexities.

7 AR418. The Board’s attempts to simplify fire risk management by equating all vegetation types is  
8 unsupported by the evidence in the record. A “legally adequate EIR must contain sufficient detail to  
9 help ensure the integrity of the process of decision making by precluding stubborn problems or serious  
10 criticism from being swept under the rug.” *Kings County Farm Bureau v. City of Hanford* (1990) 221  
11 Cal.App.3d 692, 712.

12 2. The Board Failed to Address Impacts Associated with Type Conversion

13 The Opposition insists that the VTP “obligates project proponents to design treatment projects  
14 to avoid type conversion where native coastal sage scrub and chaparral are present.” Opp. at 20:17 –  
15 19. It references a “definition” of “type conversion” that, it asserts, “does not have application outside  
16 of the PEIR.” *Id.* at 20:20 – 27. What “application outside of the PEIR” means is never explained. The  
17 EIR states:

18 CAL FIRE or other project proponents must evaluate the later activities associated with  
19 each vegetation treatment project to determine whether such activities have been  
20 analyzed in this PEIR. Such evaluations must ascertain whether these future vegetation  
21 treatment projects are consistent with the activities contained in the CalVTP and would  
22 have effects that were analyzed in the PEIR. If the project proponent finds that the  
23 impacts were analyzed in the PEIR and no new or substantially more severe significant  
24 effects could occur or no new mitigation measures would be required for a subsequent  
treatment project, the project can be found to be within the scope of this PEIR. In this  
circumstance, no additional CEQA documentation would need to be prepared or publicly  
circulated (State CEQA Guidelines Section 15168[c][2] and [4]). The documentation  
used to substantiate the "within the scope" finding would provide the substantial evidence  
required to reach that conclusion.

25 AR1773.007. Therefore, a project proponent could easily claim “type conversion” had been adequately  
26 addressed in the PEIR and proceed without any further analysis or effort.

1           Petitioner and others noted this very problem: “Passing off the determination of a key  
2 environmental impact of a project to a future, unknown entity not only violates the spirit of [Section  
3 4483], but is also a clear violation of CEQA.” AR1691.467. They also observed:

4           What “habitat function” actually means is that based on a project proponent’s opinion, a  
5 chaparral stand could be modified to promote a particular value that has little to do with  
6 natural processes. In other words, a rare, old-growth stand could be treated to create deer  
7 browse in order to support the hunting industry, making it more susceptible to type  
8 conversion. Such projects have been done in the past, causing significant damage to  
9 healthy, intact shrubland plant communities (Fig. 2).

8 *Id.*

9           In fact, Petitioner provided a thorough explanation of type conversion:

10           Type conversion as related to California chaparral and coastal sage scrub is the process  
11 by which the dominant plant species of a native chaparral and/or coastal sage scrub plant  
12 community (shrubs and/or forbs) are extirpated over time by a series of disturbance  
13 events (e.g. short fire return intervals, mastication, grazing) or after a single disturbance  
14 even (e.g. cool season fires), leading to the reduction of biodiversity and often to the  
15 invasion of non-native annual grasses and forbs. In chaparral plant communities, fire  
16 return intervals less than 30 years, depending on soil, aspect, and climatic conditions, can  
17 lead to type conversion by compromising the ability of chaparral scrub species, especially  
18 obligate seeding species ..., from properly regenerating. Resprouting species ... can also  
19 be negatively impacted by short fire return intervals since these plants need sufficient  
20 time to recharge their underground starch supplies to produce viable resprouts; short fire  
21 return intervals short-circuit this process.... Too-frequent fire disturbance in either  
22 chaparral or coastal sage scrub favors the establishment of rapidly reproducing non-  
23 native annual grasses and forbs that have a higher ignition probability and produce cooler  
24 fires than chaparral or coastal sage scrub communities. Establishment of grasses and  
25 forbs in place of shrubs can lead to an undesirable feedback loop called the grass-fire  
26 cycle.

19 AR1691.475. But the EIR completely ignored any of this evidence.

20           Accordingly, the EIR failed to adequately analyze impacts to chaparral and coastal sage scrub  
21 communities.

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

23           The Opposition claims the “program description in the PEIR is consistent with CEQA.” Opp. at  
24 22:18. But the program description here drew “a red herring across the path of public input.” *County*  
25 *of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 197 – 98. However, as noted *supra*, the  
26 Board’s failure to adequately define “type conversion” “pass[es] off the determination of a key  
27 environmental impact of [the VTP] to a future, unknown entity....” AR1691.467.  
28

1 The Opposition cites *Claremont Canyon Conservancy v. Regents of the University of California*  
2 (2023) 92 Cal.App.5th 474, claiming that a “project description must be sufficiently flexible to account  
3 for [variable] conditions.” Opp. at 23:5 – 9. But the problem here is not one of flexibility, but of  
4 misleading the public and decision makers about the scope of the VTP. Not only did the Board fail to  
5 define “type conversion,” but it misled the public as to what the VTP was intended to address.

6 The Notice of Preparation (“NOP”) described the “Program Necessity” a direct result of  
7 “[d]rought conditions, low snow pack accumulation, and extreme temperature highs ... [all of which]  
8 are expected to worsen as climate change continues to alter landscapes and local climates.” AR166.  
9 And it stated: “These conditions have resulted in the largest, most destructive, and deadliest wildfires  
10 on record in California history ...” *Id.* The NOP identified the “Program Description” as a series of  
11 “vegetation treatments [to] alter fire behavior and mitigate the risks of larger, more severe wildfires  
12 throughout California.” AR167. Yet, as explained in the Opening Brief, the EIR defines the program as  
13 a series of “vegetation treatment activities would be designed to reduce hazardous vegetative fuels,  
14 improve protection from wildfires that are not primarily driven by high winds ....” AR1773.081  
15 (emphasis added). “Providing such conflicting descriptions to the reviewing public of such a key  
16 project element for purposes of determining the project's impact on a [] resource is inadequate under  
17 CEQA.” *Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 676.

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

19 The Opposition asserts Petitioners “do not identify any ‘significant effects’” of the VTP. Opp.  
20 at 25:7 – 9. This is a remarkable claim, since the Opening Brief goes into significant detail about  
21 several significant impacts. But it is also remarkable because the findings adopted by the Board  
22 acknowledge several environmental impacts, which the findings claim are “significant and  
23 unavoidable,” including impacts to air quality, archaeological, historical, and tribal cultural resources,  
24 biological resources, greenhouse gas emissions, transportation, public services, utilities, and service  
25 systems, and aesthetics. AR40 – 50. Tragically, the Board never analyzed, much less adopted,  
26 mitigation and/or alternatives that would substantially lessen the several impacts it found as  
27 “significant and unavoidable.”  
28

1           A.     The EIR Failed to Consider Mitigation and Alternatives to Address Increased Fire  
2                     Frequency and Duration

3           As discussed *supra*, the PEIR failed to address the many significant impacts associated with  
4 failing to address large fires. The Opposition asserts the EIR’s alternatives analysis “meets the rule of  
5 reason.” Opp. at 27:2 – 3. Yet its very discussion of those alternatives reveals that each of them does  
6 nothing more than tinker around the edges and none of them tackle “the largest, most destructive, and  
7 deadliest wildfires on record in California history.” AR13. “A gloomy forecast of environmental  
8 degradation is of little or no value without pragmatic, concrete means to minimize the impacts and  
9 restore ecological equilibrium.” *Environmental Council of Sacramento v. City of Sacramento* (2006)  
10 142 Cal.App.4th 1018, 1039. The Board’s reliance upon a “gloomy forecast” – i.e., that nothing can be  
11 done about the most devastating fires – is inconsistent with CEQA’s mandates, particularly when the  
12 Board was presented with reasonable alternatives.

13           The Opposition complains that the Santa Monica Mountains National Recreation Area Fire  
14 Management Plan (“SMM Plan”) was too “profoundly different” to be considered. Opp. at 27:26 –  
15 28:5. That argument itself reveals the Board’s myopic focus, one that is inconsistent with CEQA’s  
16 command. “Because an EIR must identify ways to mitigate or avoid the significant effects that a  
17 project may have on the environment [], the discussion of alternatives shall focus on alternatives to the  
18 project or its location which are capable of avoiding or substantially lessening any significant effects of  
19 the project, even if these alternatives would impede to some degree the attainment of the project  
20 objectives, or would be more costly.” CEQA Guidelines § 15126.6(b) (emphasis added). As Petitioner  
21 and others noted, “the SMM Plan’s approach of focusing the treatable areas in the WUI to the  
22 defensible space zone is intended to provide much needed resources to communities for retrofitting of  
23 landscape and homes, significantly reduce environmental impacts, and allow additional resources to be  
24 devoted to restoration treatments where they belong, in frequent fire forest ecosystems.” AR26121.

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

27           The Opposition argues substantial evidence “supports the Board’s formulation of SPR BIO-5”  
28 and the measure is “not vague ... [but] is commensurate with that required for programmatic

1 environmental review ....” Opp. at 29:16 – 21. However, as discussed *supra*, this measure passes the  
2 buck and defers analysis and the adoption of any measures to reduce impacts to an uncertain future.  
3 And as Petitioners noted: “Without any quantification or science to support the efficacy of treatment  
4 design to both improve fire safety for structures and communities and minimize adverse impacts to  
5 chaparral and coastal sage scrub, the public and decisionmakers are unable to evaluate the  
6 effectiveness of the plans in avoiding, minimizing, and mitigating the impacts from treatment  
7 activities.” AR1691.405.

8 Accordingly, the EIR failed to consider feasible mitigation measures and alternatives.

9 **CONCLUSION**

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

12 DATED: October 27, 2023

Respectfully Submitted,

13 **DELANO & DELANO**

14  
15 By: 

16 Everett DeLano  
17 Attorneys for Petitioner  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28