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EXEMPT FROM FILING FEES
UNDER GOV. CODE § 6103

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

13
14 **California Chaparral Institute, a non-profit**
corporation; Endangered Habitats League,
15 **a non-profit corporation,**
16
17 **v.**
18
19 **Board of Forestry and Fire Protection, a**
public agency; California Department of
Forestry and Fire Protection, a public
20 **agency; and DOES 1 through 5, inclusive,**
21
22 Respondents.

Case No. 37-2020-00005203-CU-TT-CTL

**BOARD OF FORESTRY AND FIRE
PROTECTION'S OPPOSITION TO
PETITIONERS' OPENING BRIEF IN
SUPPORT OF WRIT OF MANDATE**

Trial Date: November 9, 2023
Time: 9:30 a.m.
Dept: C-66
Judge: The Honorable Kenneth J. Medel
Action Filed: January 28, 2020

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1 **INTRODUCTION**

2 This Court should deny the petition for writ of mandate brought by California Chaparral
3 Institute and Endangered Habitats League (Petitioners) because the Board of Forestry and Fire
4 Protection (Board or Respondent) complied with the California Environmental Quality Act
5 (CEQA) in approving the California Vegetation Treatment Program (CalVTP) and certifying the
6 programmatic environmental impact report (PEIR) associated with it. The CalVTP directs
7 implementation of vegetation treatments within the State Responsibility Area¹ in California as
8 one component of the range of actions the state is undertaking to reduce risks to life and property,
9 reduce fire suppression costs, and protect natural resources and other assets from wildfire. While
10 the Board approved the CalVTP, it will not implement it. Rather, entities such as the California
11 Department of Forestry and Fire Protection (CAL FIRE) will undertake specific CalVTP projects.

12 Petitioners apparently dispute the CalVTP’s efficacy in reducing wildfire risk and advocate
13 a different approach. But CEQA is not concerned with policy disputes, and Petitioners do not
14 meet their burden of proof and demonstrate how the Board violated CEQA in approving the
15 CalVTP and certifying the PEIR. The PEIR complies with CEQA because it describes the
16 proposed program (the CalVTP) with sufficient detail to inform the public of the program being
17 evaluated and allow the public and Board to assess the CalVTP’s potential environmental
18 impacts. The PEIR also properly evaluates the CalVTP’s potential environmental impacts related
19 to wildfire and to chaparral and coastal sage scrub plant communities. And its analysis of
20 mitigation measures and alternatives is consistent with CEQA, which demands only that a
21 reasonable range of alternatives be considered.

22 The PEIR explains, as well, that section 4483 of the Public Resources Code, which
23 Petitioners rely upon in their opening brief, is a distinct statutory requirement separate from
24 CEQA compliance. Section 4483’s plain language shows it requires CAL FIRE (*not* the Board),
25 to make certain findings before it approves vegetation treatments in chaparral and coastal sage

26 ¹ The State Responsibility Area is the area within California “in which the financial
27 responsibility of preventing and suppressing fires is primarily the responsibility of the state.” (Pub.
28 Resources Code § 4125.) The California Department of Forestry and Fire Protection (CAL FIRE)
has primary responsibility for preventing and suppressing fires within the State Responsibility
Area. (*Id.* §§ 4113 and 4125.)

1 scrub habitats, and such findings are expressly *in addition* to any requirements under the PEIR. If
2 it were to apply to a project that implements the CalVTP, the entity undertaking that project
3 would be responsible for section 4483 compliance. But the Board was not required to make any
4 findings under section 4483 in approving the CalVTP and certifying the PEIR.

5 Therefore, this Court should deny the petition which evidences a policy dispute with the
6 Board regarding the most effective strategy for addressing California's wildfire crisis, rather than
7 violations of CEQA or Public Resources Code section 4483.

8 **FACTUAL AND PROCEDURAL BACKGROUND**

9 The Board is a gubernatorially appointed body within CAL FIRE. (Pub. Resources Code,
10 § 730.) It is responsible for developing the state's general forest policy, determining guidance
11 policies for CAL FIRE, and representing California's interests in federal forestland within the
12 state. (*Id.*, § 740; see AR1773.080.) The Board also is charged with protecting all wildland forest
13 resources in California that are not under federal jurisdiction, and works with CAL FIRE to
14 protect and enhance the state's forest and wildland resources including within the State
15 Responsibility Area. (*Ibid.*)

16 **I. THE CONTENT AND PURPOSE OF THE CALVTP**

17 The Board approved its plan for vegetation management, the CalVTP, on December 30,
18 2019, and also certified the PEIR on that date. (AR1, AR4-10, AR11-97 [Findings of Fact &
19 Stmt. of Overriding Considerations], AR98-161 [Mitigation Monitoring & Reporting Prog.]) The
20 CalVTP is a critical part of the state's multi-faceted strategy to address California's wildfire
21 crisis. (AR1773.079.) It includes the following five objectives:

22 (1) Serve as *the vegetation management component of the state's range of actions to*
23 *counter wildfires*, directing the implementation of vegetation treatments within the State
24 Responsibility Area to reduce the loss of lives and property, reduce fire suppression costs,
and protect natural resources and other assets at risk from wildfire. (AR1773.079 [emphasis
added].)

25 (2) Expand vegetation treatment activities to reach a total treatment acreage target of about
26 250,000 per year, from about 33,000 acres prior to the CalVTP's adoption. (AR1773.002,
AR1773.079.)

27 (3) Increase the use of prescribed burning as a vegetation treatment tool
28 (AR1773.079);

1 (4) Contribute to meeting California’s GHG emission goals by managing forests and other
2 natural and working lands as a net carbon sink . . . (AR1773.079); and

3 (5) Improve ecosystem health in fire-adapted habitats by safely mimicking the effects of a
4 natural fire regime, considering historic fire return intervals, climate change, and land use
5 constraints. (AR1773.079-080.)

6 Implementation of the CalVTP includes vegetation treatment activities carried out by CAL
7 FIRE on private or public land, by public agencies and organizations funded by grants from CAL
8 FIRE or other state or local agencies, or potentially by public agencies that own and/or manage
9 land within the treatable landscape. (AR1773.002, AR1773.059, AR1773.074.) Through the
10 CalVTP, the Board and CAL FIRE are helping to meet California’s goal of managing hundreds of
11 thousands of acres of forest and wildlands each year to reduce or minimize the most severe
12 consequences of wildfires. (AR1773.002.)

13 The CalVTP outlines vegetation treatments at the landscape scale, and “is focused on
14 reducing the likelihood of a ground fire increasing in intensity and on helping fire responders
15 more easily contain a wildfire.” (AR1590.011.) It includes three treatment types: wildland-urban
16 interface (WUI) fuel reduction, fuel breaks, and ecological restoration. (AR1773.085-
17 AR1173.095.) More specifically:

- 18 • Wildland-Urban Interface Fuel Reduction treatments are located in WUI-designated
19 areas, where fuel reduction would generally consist of strategic removal of
20 vegetation to prevent or slow the spread of non-wind driven wildfire between
21 structures and wildlands, and vice versa;
- 22 • Fuel Breaks are in strategic locations, and create zones of vegetation removal and
23 ongoing maintenance, often in a linear layout, that support fire suppression by
24 providing fire responders with staging areas or access to remote landscapes for fire
25 control actions; and
- 26 • Ecological Restoration treatments are generally outside of the wildland-urban
27 interface, in areas that have departed from the natural fire regime as a result of fire
28 exclusion, where treatments would focus on restoring ecosystem processes,
conditions, and resiliency by moderating uncharacteristic wildland fuel conditions
to reflect historic vegetative composition, structure, and habitat values.

(AR1773.085.)

27 The CalVTP’s vegetation treatments are “designed to reduce hazardous vegetative fuels,
28 improve protection from wildfires that are not primarily driven by high winds through

1 strategically located fuel breaks, and/or mimic a natural fire regime using prescribed burning.”
2 (AR1773.081.) The CalVTP’s ecosystem restoration activities are “designed to approximate
3 natural habitat conditions, processes, and values to those occurring prior to the period of fire
4 suppression.” (*Ibid.*) The specific treatment activities proposed for implementing each treatment
5 type include prescribed burning, mechanical treatment², manual treatment³, prescribed
6 herbivory⁴, and targeted ground application of herbicides. (AR1773.079, AR1773.096.)

7 The Board recognizes that “[w]hen high-wind conditions drive a large fire, such as when
8 large embers travel long distances in advance of the fire, vegetation treatment would do little, if
9 anything, to stop [the] downward advance of the fire front.” (AR1590.11.) Once winds slow,
10 however, the “vegetation treatments proposed under the CalVTP can play a valuable role in
11 achieving containment of the more extreme fires by providing firefighters increased visibility and
12 safe access to the fire, reducing heat and smoke, and allowing for quicker suppression of spot
13 fires.” (*Ibid.*) The Board also determined that “the large majority of wildfires” in California “are
14 not highly wind driven,” and that the CalVTP’s proposed vegetation treatments “can slow and
15 help suppress [wildfires] by reducing the risk that ground burns will climb to crown fires in
16 forests, providing improved access to fire in fuel breaks, and slowing fire movement by reducing
17 levels of fuel.” (*Ibid.*)

18 **II. THE CONTENT AND PURPOSE OF THE PEIR**

19 Before approving the CalVTP, the Board examined the environmental impacts of its
20 implementation in a program EIR (the PEIR) that analyzed the effects of vegetation management
21 throughout the state within approximately 20.3 million acres of the State Responsibility Area.
22 (AR1773.001, AR1773.079, AR1579-AR2627 [Final PEIR with appendices], AR2628-AR2649
23 [Info. Suppl. to Final PEIR]; see Cal. Code Regs., tit. 14, § 15168 [defining “Program EIR”].) A
24 program EIR “is an EIR which may be prepared on a series of actions that can be characterized as

25 ² “Mechanical treatment” means the use of motorized equipment to cut, uproot,
26 crush/compact, or chop existing vegetation. (AR1773.096, AR1773.100-.102.)

26 ³ “Manual treatment” means using hand tools and hand-operated power tools to cut, clear,
27 or prune herbaceous or woody species. (AR1773.096, AR1773.102-.103.)

27 ⁴ “Prescribed herbivory” means using domestic livestock such as goats to reduce a target
28 plant population thereby reducing fire fuels or competition [for] desired plant species.
(AR1773.096, AR1773.104-.105.)

1 one large project and are related either: (1) geographically; (2) as logical parts in the chain of
2 contemplated actions; (3) in connection with issuance of rules, regulations, plans, or other general
3 criteria to govern the conduct of a continuing program, or (4) as individual activities carried out
4 under the same authorizing statutory or regulatory authority and having generally similar
5 environmental effects which can be mitigated in similar ways.” (Cal. Code Regs., tit. 14, §
6 15168.) “[A] *program* EIR is distinct from a *project* EIR, which is prepared for a specific project
7 and must examine in detail site-specific considerations.” (*In re Bay-Delta Programmatic Env’t*
8 *Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1169, [hereinafter “*In re Bay-*
9 *Delta*”] [emphasis in original]; see Cal. Code Regs., tit. 14, § 15161 [defining “Project EIR”].)

10 The Board utilized a program EIR for the CalVTP to streamline environmental review of
11 vegetation treatment projects in the State Responsibility Area. (AR1773.002, AR1773.007,
12 AR1773.079.) The PEIR describes the CalVTP’s objectives, its geographic scope, its treatment
13 types and activities, and its implementation framework. (AR1773.079-AR1773.136 [program
14 description].) The PEIR also evaluates the CalVTP’s potentially significant environmental
15 impacts, and discusses the Standard Project Requirements or “SPRs” and specific mitigation
16 measures that individual CalVTP projects must implement to avoid and address potentially
17 significant environmental impacts. (AR1773.137-AR1773.656.) For example, SPR BIO-5
18 requires project proponents to avoid type conversion and maintain habitat function in chaparral
19 and coastal sage scrub plant communities. (AR1773.120 [“The project proponent will design
20 treatment activities to avoid type conversion where native coastal sage scrub and chaparral are
21 present.”].) And the PEIR analyzes alternatives to the CalVTP. (AR1773.657-AR1773.704.)

22 CAL FIRE and other agencies use the PEIR for projects that implement the CalVTP to
23 focus the environmental review of those projects on site-specific issues. (AR1773.007,
24 AR1773.081.) Consistent with CEQA’s provisions for tiering and the use of program EIRs, the
25 CalVTP requires project proponents to evaluate a proposed treatment project’s impacts by
26 completing the CalVTP Project-Specific Analysis or “PSA,” and documenting how a project’s
27 environmental effects were analyzed in the PEIR. (*Ibid.*; see also AR2511-2627.) A Project-
28 Specific Analysis must also state which Standard Project Requirements and feasible mitigation

1 measures from the CalVTP PEIR are incorporated into the project. (AR1773.081, AR1773.108-
2 110.) And a PSA requires evaluating whether a site-specific vegetation treatment project would
3 have any impacts that were not fully addressed in the PEIR. (*Ibid.*)

4 Building on the broad analysis and common Standard Project Requirements and mitigation
5 measures identified in the PEIR allows project proponents to focus their environmental review on
6 site-specific concerns. (AR1590.018-.020.) In some cases, implementing agencies may find that
7 all impacts of CalVTP projects were addressed in the PEIR. But if a CalVTP project is not within
8 the scope of the PEIR, project proponents will be obligated to conduct additional site-specific
9 environmental review and prepare additional CEQA documentation such as a mitigated negative
10 declaration or EIR. (*Ibid.*; see also AR1773.081.)

11 The Board provided extensive and multiple opportunities for public participation and
12 comment as it completed the PEIR and drafted the CalVTP. On January 30, 2019, it distributed a
13 notice of preparation (NOP) for the draft PEIR to responsible agencies, trustee agencies,
14 interested parties and organizations, and to individuals who could have an interest in the CalVTP.
15 (AR164-186, AR1773.076.) The Board also held three public scoping meetings (in Redding,
16 Sacramento, and Ontario given the statewide scale of the CalVTP), to provide information on the
17 proposed program and solicit the public's input on the PEIR's scope and content. (AR1773.076.)

18 After the draft PEIR was complete, the Board circulated it for 45 days for public review and
19 comment. (AR1773.077.) The Board received numerous comments from state, regional, and local
20 agencies, elected officials, nongovernmental organizations, and members of the public.
21 (AR1590.001-009.) The Board reviewed and responded to those comments in the final PEIR
22 which it publicly released on November 27, 2019. (AR5, AR1579-AR1590.430.) The Board then
23 held two public meetings concerning the CalVTP and PEIR (one on December 11, 2019 and a
24 second on December 30, 2019), and on December 30, 2019, approved the CalVTP and certified
25 the PEIR. (AR5-10.) Petitioners initiated this litigation on January 28, 2020.

26 LEGAL BACKGROUND AND STANDARD OF REVIEW

27 A reviewing court considers whether an EIR is adequate and complete, and reflects "a good
28 faith effort at full disclosure." (*South of Market Community Action v. City and County of San*

1 *Francisco* (2019) 33 Cal.App.5th 321, 334.) It reviews an agency’s CEQA compliance for a
2 prejudicial abuse of discretion. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of*
3 *Rancho Cordova* (2007) 40 Cal.4th 412, 426.) “Abuse of discretion is established if the agency
4 has not proceeded in a manner required by law or if the determination or decision is not supported
5 by substantial evidence.” (Pub. Resources Code, § 21168.5.) Substantial evidence means “enough
6 relevant information and reasonable inferences from this information that a fair argument can be
7 made to support a conclusion, even though other conclusions might also be reached.” (Cal. Code
8 Regs., tit. 14, § 15384, subd. (a).)

9 The substantial evidence standard applies to an agency’s analysis of a project’s potential
10 environmental impacts, and to the methodology used to assess possible impacts. (*San Francisco*
11 *Baykeeper, Inc. v. Cal. State Lands Commn.* (2015) 242 Cal.App.4th 202, 228 [holding “the
12 substantial evidence standard is applied to conclusions, findings and determinations” and also “to
13 challenges to the scope of an [environmental impact report’s] analysis of a topic, the methodology
14 used for studying an impact, and the reliability or accuracy of the data upon which the EIR
15 relied”], internal citations omitted.) The substantial evidence standard also applies to an agency’s
16 assessment of the mitigation measures proposed in an EIR. (*Sacramento Old City Ass’n v. City*
17 *Council* (1991) 119 Cal.App.3d 1011, 1027.)

18 An overarching consideration in this action is that an agency’s action, such as the Board’s
19 certification of the PEIR and approval of the CalVTP, is subject to a presumption of validity. (See
20 Evid. Code, § 664 [“It is presumed [an agency’s] official duty has been regularly performed”].)
21 Petitioners, as the party challenging the PEIR’s adequacy, “[have] the burden of proving
22 otherwise by establishing a prejudicial abuse of discretion,” (*Claremont Canyon Conservancy v.*
23 *Regents of the University of California* (2023) 92 Cal.App.5th 474, 483), and the presumption is
24 that an agency’s environmental impact report is legally sufficient. (*Al Larson Boat Shop, Inc. v.*
25 *Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.) Further, “the mere presence of
26 conflicting evidence in the administrative record does not invalidate” an agency’s CEQA
27 determinations. (*Barthelemy v. Chino Basin Municipal Water Dist.* (1995) 38 Cal.App.4th 1609,
28 1620.) Rather, all reasonable doubts must be decided in favor of the agency’s determination, and

1 the court may not set aside the agency’s decision even if the opposite decision would have been
2 more reasonable. (*Laurel Heights Improvement Assn. v. Regents of the University of Cal.* (1988)
3 47 Cal.3d 376, 393 (*Laurel Heights*.)

4 The court must also defer to an agency’s substantive determinations on factual issues. This
5 deference is required because courts “have neither the resources nor scientific expertise to engage
6 in such analysis.” (*Laurel Heights, supra*, 47 Cal.3d at p. 393.) As a result, “[t]he court does not
7 pass upon the correctness of the EIR’s environmental conclusions, but only upon its sufficiency
8 as an informative document.” (*Id.* at p. 392, quoting *County of Inyo v. City of Los Angeles* (1977)
9 71 Cal.App.3d 185, 189.)

10 Finally, informed decision making is the touchstone of CEQA. (*See e.g., In re Bay-Delta,*
11 *supra*, 43 Cal.4th at p. 1162.) What “is required is that the documents be responsive to the
12 opposition [citations] and provide the members of the [] board with information which enables
13 them to make a decision which intelligently takes account of the environmental consequences.”
14 (*Dunn-Edwards Corp. v. S. Coast Air Quality Mgmt. Dist.* (1993) 19 Cal.App.4th 519, 534.)
15 CEQA does not require perfection, “nor does it require an analysis to be exhaustive,” but instead
16 “requires an EIR to reflect a good faith effort at full disclosure.” (*Kings County Farm Bureau v.*
17 *City of Hanford* (1990) 221 Cal.App.3d 692, 712; see also Pub. Resources Code, § 21005.) In
18 evaluating an EIR for CEQA compliance, a reviewing court must “adjust its scrutiny to the nature
19 of the alleged defect, depending on whether the claim is predominantly one of improper
20 procedure or [is instead a factual dispute.]” (*Vineyard Area Citizens for Responsible Growth, Inc.,*
21 *supra*, 40 Cal.4th at p. 435.)

22 ARGUMENT

23 There is no merit to Petitioners’ position that the PEIR violates CEQA, or to their
24 suggestion that the Board was obligated to comply with Public Resources Code section 4483
25 when it certified the PEIR and approved the CalVTP. Many of Petitioners’ arguments do not
26 concern CEQA and instead focus on Petitioners’ policy dispute with the Board regarding the
27 correct strategy for addressing wildfires in California. (See, e.g., Pets’ OB at 9:17-13:18.) But
28 “CEQA is not intended to resolve disagreements on public policy issues between a public agency

1 that approves a project and those who oppose it.” (*San Franciscans for Livable Neighborhoods v.*
2 *City and County of San Francisco* (2018) 26 Cal.App.5th 596, 631). Rather, under CEQA “[t]he
3 purpose of an environmental impact report is to provide public agencies and the public in general
4 with detailed information about the effect which a proposed project is likely to have on the
5 environment; to list ways in which the significant effects of such a project might be minimized;
6 and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061; *Id.* at § 21102.1,
7 subd. (a).)

8 Contrary to Petitioners’ arguments, the PEIR correctly analyzes the CalVTP’s potential
9 impacts related to wildfire and to chaparral and coastal sage scrub communities, and the PEIR’s
10 program description complies with CEQA by including sufficient detail for a program-level
11 document, as opposed to a project-specific document. The PEIR’s evaluation of mitigation
12 measures and alternatives also meets CEQA’s mandates, as the PEIR assessed a reasonable range
13 of alternatives to the CalVTP. In addition, Public Resources Code section 4483—by its plain
14 terms—does not apply to the Board’s certification of the PEIR and approval of the CalVTP, and
15 there is no merit to Petitioners’ suggestion otherwise. Consequently, this Court should deny
16 Petitioners’ request for a writ of mandate.

17 **I. THE PEIR PROPERLY ANALYZED THE CALVTP’S POTENTIALLY SIGNIFICANT**
18 **ENVIRONMENTAL IMPACTS**

19 CEQA requires an EIR to identify and assess a proposed program’s or project’s significant
20 effects on the environment, meaning “a substantial or potentially substantial adverse change in
21 the environment.” (Pub. Resources Code, §§ 21068, 21100, subds. (b)(1) and (d); Cal. Code
22 Regs., tit. 14, §§ 15126.2, subd. (a), 15143, 15382.) To assess a proposed program’s potentially
23 significant environmental impacts, the lead agency examines the changes *to existing*
24 *environmental conditions* that would occur if the proposed program was implemented. (Cal. Code
25 Regs., tit. 14, § 15126.2, subd. (a) [emphasis added]; see also *San Joaquin Raptor Rescue Ctr. v.*
26 *County of Merced* (2007) 149 Cal.App.4th 645, 660.)

27 While an EIR “should be prepared with a sufficient degree of analysis to provide
28 decisionmakers with information which enables them to make a decision which intelligently

1 [accounts for environmental consequences],” an evaluation of a proposed project’s environmental
2 effects “need not be exhaustive” (Cal. Code Regs., tit. 14, § 15151.) The “sufficiency of an EIR is
3 to be reviewed in the light of what is reasonably feasible,” and “[d]isagreement among experts
4 does not make an EIR inadequate.” (*Ibid.*) The impacts analysis in the PEIR complies with CEQA
5 and Petitioners have not met their burden of proof on this issue.

6 **A. The PEIR Correctly Analyzed the CalVTP’s Potentially Significant**
7 **Environmental Impacts Related to Wildfire**

8 Petitioners argue that the “PEIR failed to adequately analyze impacts associated with
9 increased fire frequency and duration.” (Pets’ OB at 9:17-18.) They acknowledge that California
10 is experiencing a wildfire crisis, but claim that “CalVTP will do nothing about large fires and will
11 actually make the situation worse.” (*Id.* at 9:19-21.) Petitioners raise policy arguments and contest
12 the strategy the Board adopted in the CalVTP to address the state’s wildfires. (*Id.* at 9:13-13:18.)
13 But they do not meet their burden of proof under CEQA because substantial evidence supports
14 the Board’s assessment of the CalVTP’s potential impacts related to wildfire. (AR1773.609-.624;
15 *San Francisco Baykeeper, Inc., supra*, 242 Cal.App.4th at p. 228 [rejecting petitioner’s CEQA
16 challenge to impacts analysis, concluding substantial evidence supported the EIR’s conclusions].)

17 Petitioners’ arguments suffer from three fatal flaws. First, Petitioners misconstrue CEQA’s
18 requirements for impacts analysis. Under CEQA, the Board was required to evaluate the
19 CalVTP’s potentially significant environmental impacts including those related to wildfire, based
20 on changes to existing environmental conditions that could occur if the proposed program was
21 implemented. (Pub. Resources Code, §§ 21060.5, 21100; Cal. Code Regs., tit. 14, § 15126.2,
22 subd. (a).) The Board was not required to evaluate, as a CEQA issue, the CalVTP’s efficacy in
23 addressing the wildfire crisis in California because that is not a potential environmental impact,
24 and wildfires are part of the baseline/existing environmental conditions. (*Ibid.*)

25 To assess potential impacts, the Board properly utilized the thresholds of significance
26 outlined in Appendix G of the CEQA Guidelines⁵, and used existing environmental conditions as

27 ⁵ The CEQA regulations contained in Title 14 of the California Code of Regulations,
28 sections 15000 to 15387, and also appendices A-N, are promulgated by the California Natural

1 the baseline for the impacts analysis. (AR1773.609-.624; Cal. Code Regs., tit. 14, § 15064.7,
2 subd. (a) [defining thresholds of significance]; § 15125, subd. (a) [defining environmental setting
3 and baseline].) Under the Appendix G thresholds, a treatment implemented under the CalVTP
4 would result in a significant impact related to wildfire if it would:

- 5 • Impair an adopted emergency response plan or emergency evacuation plan;
- 6 • Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and
7 thereby expose project occupants to pollutant concentrations from a wildfire or the
8 uncontrolled spread of a wildfire;
- 9 • Require the installation or maintenance of associated infrastructure (such as roads,
10 fuel breaks, emergency water sources, power lines, or other utilities) that may
11 exacerbate fire risk or that may result in temporary or ongoing impacts to the
12 environment; or
- 13 • Expose people or structures to significant risks, including downslope or
14 downstream flooding or landslides, as a result of runoff, post-fire slope instability,
15 or drainage changes.

16 (AR1773.620-.621.)

17 Based on the vegetation treatment types and activities included in the CalVTP, the Board
18 determined that certain of the Appendix G thresholds were not applicable and did not discuss
19 them further in the PEIR. (AR1773.621.) The Board did assess whether the CalVTP would
20 substantially exacerbate fire risk and expose people to the uncontrolled spread of wildfire due to
21 temporary risks associated with prescribed burning and the use of vehicles and heavy machinery
22 to treat vegetation, since both activities “can increase the risk of accidental wildfire ignition.”
23 (AR1773.621-.622.) The Board then concluded based on substantial evidence that with
24 implementation of Standard Project Requirements such as preparation of prescription burn plans,
25 this impact would be less than significant. (*Ibid.*)

26 The Board also evaluated whether the CalVTP would expose people or structures to
27 substantial risks related to post-fire flooding. (AR1773.622-.623.) The Board concluded that
28 because the CalVTP does not include new housing and would not result in substantial unplanned

Resources Agency and are referred to as the “State CEQA Guidelines.” (Cal. Code Regs., tit. 14,
§ 15001.) Appendix G of the CEQA Guidelines includes standards that lead agencies may use in
an EIR to assess a program’s or project’s potentially significant environmental impacts. (See
Mission Bay Alliance v. Office of Community Investment & Infrastructure (2016) 6 Cal.App.5th
160, 192-194 [affirming lead agency’s use of an Appendix G threshold to assess project’s
potential noise impacts].)

1 population growth, it would not place people or structures in an area with risks related to post-
2 wildfire flooding or landslides. (*Ibid.*) And with implementation of Standard Project
3 Requirements, this potential impact would also be less than significant. (*Ibid.*)

4 Petitioners do not challenge this impacts analysis in their opening brief, but assert that the
5 PEIR should have analyzed the CalVTP's ability to reduce the risk of wind-driven fires as an
6 environmental impact under CEQA. (Pets' OB at 9:17-13:18.) They also contend that vegetation
7 management "is an insufficient method" of "reducing wildfire intensity and severity." (*Id.* at
8 11:13-25.) Petitioners' position highlights the second flaw in their argument, which is that they
9 attempt to foist a policy dispute with the Board about the preferred approach for addressing the
10 state's wildfires into CEQA's framework for evaluating environmental impacts. But CEQA does
11 not require a lead agency to evaluate whether its proposed project is the best solution to a public
12 issue. (*San Franciscans for Livable Neighborhoods, supra*, 26 Cal.App.5th at p. 631.)

13 The third flaw in Petitioners' argument is that they ignore the Board's explanation about the
14 CalVTP's effectiveness in reducing wildfire risk, and that it is only one aspect of the state's
15 multi-faceted approach to wildfire management. (AR1590.010-.014, AR2641-2642.) The PEIR
16 explains, "[V]egetation treatment at the landscape scale as proposed under the CalVTP is focused
17 on reducing the likelihood of a ground fire increasing in intensity and on helping fire responders
18 more easily contain a fire." (AR1590.011.) The PEIR also notes that most fires in California are
19 not wind-driven, and it discusses research from numerous experts that supports the CalVTP's
20 vegetation treatment strategy, while also recognizing that "the state of wildfire science is
21 continuing to evolve." (AR1590.011-.013.) "Despite the data gaps and acknowledgement that
22 more research is needed to better understand studies with conflicting conclusions, [the] studies
23 cited [in the PEIR] support the conclusion that vegetation treatments reduce wildfire risk in the
24 large majority of fire conditions." (AR1590.012.) Petitioners' experts may have a different view,
25 but "disagreement among experts does not make an EIR inadequate." (*Ibid.*; Cal. Code Regs., tit.
26 14, § 15151.) Therefore, Petitioners' argument that the PEIR fails to analysis wildfire impacts
27 should be rejected.
28

1 **B. The PEIR Evaluated the CalVTP’s Potentially Significant Impacts to**
2 **Chaparral and Coastal Sage Scrub Communities, Consistent with CEQA**

3 Petitioners argue next that the PEIR “failed to analyze impacts to chaparral and coastal sage
4 scrub communities,” and suggest that Public Resources Code section 4483 applies to the Board’s
5 certification of the PEIR and approval of the CalVTP. (Pets’ OB at 13:19-16:21.) Petitioners are
6 wrong on both fronts.

7 To start, the plain language of section 4483 illustrates that it did not obligate the Board to
8 make any findings pertinent to chaparral and coastal sage scrub, or conduct any additional review
9 in the PEIR on the avoidance of type conversion in chaparral and coastal sage scrub communities.
10 (See *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 519
11 [when interpreting statutes, courts “begin with the plain, commonsense meaning of the language
12 used by the Legislature” and “[i]f the language is unambiguous, the plain meaning controls”].)
13 In 2019 when the Board was completing the PEIR and the CalVTP, section 4483 stated as
14 follows:

15 (a) To the extent feasible, the board’s Vegetation Treatment Program Programmatic
16 Environmental Impact Report [the PEIR], when certified, shall serve . . . as the
17 programmatic environmental document for prescribed fires initiated by a third party for a
public purpose pursuant to Section 4491.

18 (b) (1) It is the intent of the Legislature that additional consideration be provided for
19 chaparral and coastal sage scrub plant communities that are being increasingly
20 threatened by fire frequency in excess of their natural fire return patterns due to
climate change and human-caused fires.

21 (2) Prescribed burning . . . or other vegetative treatments of chaparral or sage scrub
22 shall occur only if the department [*meaning CAL FIRE and not the Board*⁶] finds that
the activity will not cause “type conversion” away from the chaparral and coastal
sage scrub currently on site.

23 (3) This subdivision shall be in addition to the requirements of the Vegetation
24 Treatment Program Programmatic Environmental Impact Report [the PEIR.]

(Pub. Resources Code, § 4483.)

25 _____
26 ⁶ Public Resources Code, section 4002 states, “‘Board’ means the State Board of Forestry
27 and Fire Protection.” Public Resources Code, section 4003 states, “‘Department’ means the
28 Department of Forestry and Fire Protection.” Public Resources Code, section 701.6 states, in
relevant part: “(a) Notwithstanding any other provision of law, on and after January 1, 2007, the
Department of Forestry and Fire Protection may be referred to, where appropriate and as
determined by the director, as CAL-FIRE.”)

1 Under section 4483, third parties that seek CAL FIRE’s approval for prescribed fires
2 conducted for a public purpose may use the PEIR as the starting point for environmental review
3 and CEQA compliance, if feasible. (Pub. Resources Code, § 4483, subd. (a).) And before CAL
4 FIRE approves prescribed burns or other vegetation treatments of chaparral or coastal sage scrub,
5 it must find that “type conversion” will not occur. (*Id.*, subd. (b)(2).) But section 4483 requires
6 nothing from the Board. (*Ibid.*) As noted in the PEIR, “a determination of compliance with the SB
7 1260 [meaning the section 4483] prohibition of type conversion . . . is a statutory issue separate
8 from CEQA compliance.” (AR 1590.017.) Thus, Petitioners are just wrong in suggesting that
9 section 4483 required the Board to make additional findings concerning type conversion in the
10 CalVTP and PEIR.

11 And much like Petitioners’ arguments on potential wildfire impacts, their contention that
12 the PEIR lacks analysis of potential impacts to chaparral and coastal sage scrub reflects a policy
13 dispute with the Board versus actual CEQA violations. The PEIR extensively evaluates potential
14 impacts to chaparral and coastal sage scrub habitats (see AR1590.015-.017, AR1773.354-.359),
15 and the CalVTP requires implementation of multiple Specific Project Requirements such as SPR
16 BIO-5 to ensure that chaparral and coastal sage scrub communities are protected and that type
17 conversion will not occur. (AR1773.357-.359.) SPR BIO-5 obligates project proponents to design
18 treatment projects to avoid type conversion where native coastal sage scrub and chaparral are
19 present. (AR 1590.015-.016, AR1773.120-.122, AR1773.357-.359.)

20 Concerning “type conversion” as used in SPR BIO-5, the PEIR explains:

21 Because a legislative or regulatory definition of ‘type conversion’ has not yet been
22 formulated, an ecological definition of ‘type conversion’ has been developed to guide the
23 CalVTP PEIR environmental analysis: a change from a vegetation type dominated by native
24 shrub species that are characteristic of chaparral and coastal sage scrub vegetation alliances
25 to a vegetation type characterized predominantly by weedy herbaceous cover or annual
26 grasslands. While this definition is suitable for environmental analysis, it does not have
27 application outside of the PEIR. For the PEIR, type conversion is considered in terms of
28 habitat function, which is defined here as the arrangement and capability of habitat features
to provide refuge, food source, and reproduction habitat to plants and animals, and thereby
contribute to the conservation of biological and genetic diversity and evolutionary
processes.

(AR1590.015-.016.)

Substantial evidence supports the PEIR’s assessment of potential impacts to chaparral and

1 coastal sage scrub, and Petitioners do not meet their burden of proof by pointing to their comment
2 letters and the opinions of their experts. (AR2639-2640, AR1590.015-.017, AR1773.120-.122,
3 AR1773.357-.359; *San Francisco Baykeeper, Inc., supra*, 242 Cal.App.4th at p. 228; Cal. Code
4 Regs., tit. 14, § 15151 [“Disagreement among experts does not make an EIR inadequate”].) Also,
5 contrary to Petitioners’ argument (see Pets’ OB at 14:9-12), there was no improper deferral of
6 impacts analysis on the “suitability” of treatments for chaparral and coastal sage scrub. The level
7 of analysis in the PEIR is appropriate for a programmatic EIR, where CEQA expressly authorizes
8 project proponents to “tier” from the PEIR in evaluating the potentially significant environmental
9 impacts from the individual project that implement the CalVTP. (AR1590.018-.020, AR2642-
10 26455; Pub. Resources Code, § 21068.5; Cal. Code Regs., tit. 14, § 15168.) Consequently, there
11 is no merit to Petitioners’ arguments on potential impacts to chaparral and coastal sage scrub.

12 **C. The Program Description in the PEIR Complies with CEQA**

13 Program descriptions in EIRs must include enough information to enable the public to
14 understand the proposed program, and allow the reviewing agency to assess its potentially
15 significant environmental impacts. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70
16 Cal.App.4th 20, 26-27; see also Cal. Code Regs., tit. 14, § 15124.) The program description in the
17 PEIR meets those requirements, consistent with CEQA. Petitioners argue for a level of detail in
18 the PEIR’s program description that exceeds CEQA’s mandates, particularly for a programmatic-
19 level document where project proponents will conduct site-specific environmental review before
20 implementing the CalVTP. (Pet’s OB at 16:22-18:9; AR1773.079-.135.)

21 CEQA requires EIRs to contain a description of the program or project being analyzed, but
22 that description “should not supply extensive detail beyond that needed for evaluation and review
23 of the environmental impact.” (Cal. Code Regs., tit. 14, § 15124.) A program or project
24 description must include:

- 25 (a) The precise location and boundaries of the proposed program on a detailed map;
26 (b) A statement of the program’s objectives, including the underlying purpose of the
27 program and its benefits;
28

1 (c) A general description of the program’s technical, economic, and environmental
2 characteristics; and

3 (d) A statement briefly describing the intended uses of the EIR.

4 (*Ibid.*)

5 CEQA case law also outlines requirements for program and project descriptions. In *Tiburon*
6 *Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, the court concluded, “[a]
7 project description need only disclose the nature of the project and its main features. In addition,
8 the degree of specificity required depends on the type of project.” (*Id.* at p. 739; see also Cal.
9 Code Regs., tit. 14, § 15146 [“The degree of specificity required in an EIR will correspond to the
10 degree of specificity involved in the underlying activity which is described in the EIR.”].) The
11 key factor is whether the program description provides sufficient detail to inform the public of the
12 program being evaluated, and allow the public and decision makers to assess a program’s
13 potential environmental impacts. (*Dry Creek Citizens Coalition, supra*, 70 Cal.App.4th at pp. 26-
14 27; see also Cal. Code Regs., tit. 14, § 15146, subd. (a) [explaining “[a]n EIR on a construction
15 project will necessarily be more detailed in the specific effects of the project than will an EIR on
16 the adoption of a local general plan or comprehensive zoning ordinance because the effects of the
17 construction can be predicted with greater accuracy”].)

18 The program description in the PEIR is consistent with CEQA. (AR1773.079-.135; *Dry*
19 *Creek Citizens Coalition, supra*, 70 Cal.App.4th at pp. 26-27; see also Cal. Code Regs., tit. 14,
20 § 15124.) It contains multiple maps showing the CalVTP program location, including a map
21 depicting the treatable landscape of 20.3 million acres within the 31 million-acre State
22 Responsibility Area (AR1773.083), a map showing the fuel types (grass, shrub, and tree) within
23 the treatable landscape (AR1773.084), and maps illustrating the areas where the CalVTP’s three
24 different vegetation treatment types (wildland-urban interface fuel reduction, fuel break, and
25 ecological restoration treatment areas) could be implemented. (AR1773.088, AR1773.092,
26 AR1773.095.)

27 The PEIR’s program description also states the CalVTP’s objectives (AR1773.079-.080),
28 includes a general description of the CalVTP’s technical, economic, and environmental

1 characteristics including its vegetation treatment types, treatment activities, and Standard Project
2 Requirements (AR1773.080-.135), and has a statement “briefly describing the intended uses of
3 the [P]EIR.” (AR1773.080-.081; Cal. Code Regs., tit. 14, § 15124.) That is all that CEQA
4 requires, and the level of detail is appropriate for a program EIR. (See Cal. Code Regs., tit. 14, §
5 15146; see also *Claremont Canyon Conservancy, supra*, 92 Cal.App.5th at p. 488-493 [holding
6 that the project description in a project-level EIR concerning vegetation removal on the UC
7 Berkeley campus to reduce wildfire risk complied with CEQA, and noting a “project description
8 must be sufficiently flexible to account for [variable] future conditions” like those present in
9 vegetation management projects].)

10 Also, Petitioners again criticize the PEIR’s analysis of the CalVTP’s potential impacts to
11 chaparral and coastal sage scrub and its description of SPR BIO-5, this time characterizing their
12 arguments as a challenge to the PEIR’s program description. (Pets’ OB at 17:11-18:9.) Petitioners
13 argue that the PEIR “fails to adequately assess the significant impacts on the chaparral and coastal
14 sage scrub plant communities” (Pets’ OB at 17:18-20), and that the Board “failed to provide
15 reasonable guidance to project proponents within the PEIR on how to define type conversion.”
16 (Pets’ OB at 17:13-14.) These arguments do not actually contest the PEIR based on CEQA’s
17 requirements for program descriptions, but restate Petitioners’ arguments on alleged deficiencies
18 in the PEIR’s impacts analysis that this Court should reject for the reasons stated *supra* at
19 Argument I.B, and *infra* at Argument II.B in response to Petitioners’ claims of improper deferral
20 of mitigation measures. And Petitioners’ reference to “the spirit of SB 1260,” which is the senate
21 bill that became section 4483, is misplaced because that statute does not apply to the Board’s
22 certification of the PEIR. (See, *supra*, Argument I.B; see also Pub. Resources Code, § 4483.)

23 Further, substantial evidence supports the Board’s approach to avoiding type conversion as
24 outlined in SPR BIO-5, and also for defining “type conversion” in terms of habitat function for
25 purposes of the PEIR. (AR1590.015-016.) The PEIR outlines the “[p]rovisions of SPR BIO-5 that
26 would be implemented to avoid environmental effects of type conversion (i.e., a substantial
27 reduction in the value or function of affected habitats) and maintain habitat values and functions
28 in chaparral and coastal sage scrub.” (AR1590.016.) SPR BIO-5 requires project proponents to

1 work with a qualified registered professional forester or biologist to: (1) develop a treatment
2 design that avoids the environmental effects of type conversion in chaparral and coastal sage
3 scrub alliances, and; (2) ensure that the treatment design will maintain a minimum percent cover
4 of mature native shrubs within the treatment area to maintain habitat function. (*Ibid.*) Petitioners’
5 apparent disagreement with SPR BIO-5 does not overcome this evidence, and they have not met
6 their burden of proof and demonstrated any CEQA violations. (*San Francisco Baykeeper, Inc.*,
7 *supra*, 242 Cal.App.4th at p. 228; Cal. Code Regs., tit. 14, § 15151.)

8 Finally, Petitioners’ assertion that the PEIR should have included project-level review of
9 the CalVTP’s potential environmental impacts is baseless. (Pets’ OB at 18:1-9.) Petitioners again
10 fail to show how this argument relates to CEQA’s requirements for program descriptions, and
11 they ignore the project-specific environmental review (the “Project-Specific Analysis”) that all
12 CalVTP project proponents must complete before implementing vegetation treatments.
13 (AR1590.272; see Cal. Code Regs., tit. 14, § 15168, subd. (c) [“Later activities in the program
14 must be examined in the light of the program EIR to determine whether an additional
15 environmental document must be prepared”].) CEQA expressly authorizes the use of program
16 EIRs for “a series of actions that can be characterized as one large project,” which is consistent
17 with the Board’s use of the PEIR for the CalVTP. (Cal. Code Regs., tit. 14, § 15168.)

18 **II. THE PEIR MEETS CEQA’S REQUIREMENTS FOR EVALUATING FEASIBLE**
19 **MITIGATION MEASURES AND ALTERNATIVES TO THE PROPOSED PROGRAM (THE**
20 **CALVTP)**

21 There is no merit to Petitioners’ assertion that the PEIR’s analysis of mitigation measures
22 and alternatives violates CEQA. (Pets’ OB at 18:10-21:21.) Program EIRs such as the PEIR
23 should identify ways to mitigate or avoid significant effects of a program on the environment.
24 (Pub. Resources Code, § 21002.1, subd. (a).) Like all EIRs, they “shall describe feasible measures
25 which could minimize significant adverse impacts” (i.e. mitigation measures), and “shall describe
26 a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic
27 objectives of the project but would avoid or substantially lessen any of the significant effects of
28 the project, and evaluate the comparative merits of the alternatives.” (Cal. Code Regs., tit. 14, §

1 15126.6, subd. (a).) The PEIR does just that, consistent with CEQA. (AR98-161, AR1773.137-
2 .656, AR1773.657-.704, AR2628-2641.)

3 **A. The PEIR’s Analysis of Mitigation Measures and Alternatives to Address**
4 **Potential Wildfire Impacts Complies with CEQA**

5 In asserting that the PEIR lacks sufficient analysis of mitigation measures and alternatives,
6 Petitioners first argue that the PEIR “failed to address the many significant impacts associated
7 with failing to address the large fires.” (Pets’ OB at 19:15-16.) But Petitioners do not identify any
8 “significant effects of the proposed [program] on the environment” (i.e. the potentially
9 significant environmental impacts caused by the CalVTP), which is the analysis that CEQA
10 actually requires. (See Cal. Code Regs., tit. 14 § 15126.2, subd. (a) [emphasis added].) They
11 instead point out “significant impacts associated with California’s ‘wildfire crisis,’” (Pets’ OB at
12 20:18-19), and incorrectly characterize wildfires as being an environmental impact caused by the
13 CalVTP when such fires are actually part of the environmental setting and existing conditions in
14 California, as properly discussed in the PEIR. (AR1773.609-.616; Cal. Code Regs, tit. 14,
15 § 15125, subd. (a).) They then attack the Board for certifying a PEIR that does not employ their
16 preferred method to reduce the risk of such fires. (Pets’ OB at 19:15-20:19.)

17 Petitioners misstate the purposes of the CalVTP and the requirements for program EIRs and
18 of CEQA more generally. The CalVTP is not the state’s entire strategy for addressing wildfires.
19 Rather, it is meant to “serve as the *vegetation management component of the state’s range of*
20 *actions* underway to reduce risks to life, property, and natural resources by managing the amount
21 and continuity of hazardous vegetative fuels that promote wildland fire.” (AR1773.002 [stating
22 the objectives of the Cal VTP]; see AR1590.013 [“Although an important part of the state’s
23 approach, *the increase in the pace and scale of vegetation treatment to reduce wildfire risk . . . is*
24 *not a singular solution to the complex problem of resolving wildfire hazards.*”].)

25 Petitioners’ argument reflects a policy disagreement with the Board’s conclusion that
26 vegetation treatment is an effective tool to reduce wildfire risk. (AR1590.010-.014, AR2641-
27 2642.) But policy disputes do not constitute CEQA violations. (*San Franciscans for Livable*
28

1 *Neighborhoods, supra*, 26 Cal.App.5th at p. 631 [“CEQA is not intended to resolve
2 disagreements on public policy issues”].) Petitioners’ argument here is just a rehash of their
3 contentions regarding the CalVTP’s alleged ineffectiveness at addressing the wildfire crisis in
4 California, which have been addressed *supra* at Argument I.A. and should be rejected by this
5 Court.

6 Petitioners next argue that the Board relies on a “gloomy forecast” to avoid mitigation
7 measures to address large, wind-driven fires, (Pets’ OB at 20:1-3), but they do not explain how
8 the conclusions regarding wildfire risks in the PEIR are unsupported by the record. (See *Save*
9 *Panoche Valley v. San Bruno County* (2013) 217 Cal.App.4th 503, 526 [holding petitioners
10 needed to specify what evidence the lead agency relied upon and show it was deficient].)
11 Consequently, Petitioners have failed to meet their burden of proof in arguing that the PEIR
12 violates CEQA concerning its treatment of wildfires.

13 Moreover, substantial evidence supports the Board’s assessment of the CalVTP’s potential
14 impacts related to wildfire, and its conclusion that no mitigation measures are required. (See,
15 *supra*, Argument I.A; see also AR1773.621-.623.) The PEIR analyzes the potential for the
16 CalVTP to “substantially exacerbate fire risk and expose people to uncontrolled spread of a
17 wildfire,” and to “expose people or structures to substantial risks related to post-fire flooding or
18 landslides.” (AR1773.621-.623.) It explains that these impacts are “less than significant” and no
19 mitigation is required, because “[Standard Project Requirements] would be implemented to
20 reduce the risk of uncontrollable spread of fire from treatment activities,” and there would be
21 “extensive planning and preparation before a prescribed burn,” “active monitoring and
22 maintenance during a burn, and implementation of stringent safety protocols.” (AR1773.621.)
23 Further, the “CalVTP does not include new housing nor would it result in substantial unplanned
24 population growth.” (AR1773.622.) “Mitigation measures *are not required* for effects which are
25 not found to be significant.” (Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(3) [emphasis added].)
26 And “implementation of the treatment activities under the CalVTP would reduce wildfire risk.”
27 (AR1773.622, see also AR1590.010-.014, AR2641-2642.)

28 Petitioners also argue that the PEIR fails to consider practicable alternatives to the CalVTP,

1 and they refer to the two examples of alternatives provided in their comments to “show the
2 inadequacy of the alternatives analysis.” (Pets’ OB at 20:4-19.) But the question is “whether the
3 range of alternatives that the EIR *did* analyze meets the rule of reason.” (*Make UC A Good*
4 *Neighbor v. Regents of Univ. of California* (2023) 88 Cal.App.5th 656, 675 [explaining “if the
5 range of alternatives is reasonable, it does not become unreasonable simply because another
6 potential alternative exists”]; see also Cal Code Regs., tit. 14, § 15126.6, subd. (a) [“An EIR need
7 not consider every conceivable alternative to a project”]; *Id.*, § 15126.6, subd. (e) [“The range of
8 alternatives required in an EIR is governed by a ‘rule of reason’”]; *Id.*, § 15151 [“Disagreement
9 among experts does not make an EIR inadequate”].)

10 The substantial evidence standard applies to the court’s review of the alternatives analysis in
11 the PEIR, and Petitioners have not met their burden. (*Make UC A Good Neighbor, supra*, 88
12 Cal.App.5th at p. 669.) The PEIR analyzed in detail five different alternatives, all of which focus
13 on varying degrees and methods of vegetation management (the purpose of the CalVTP), and also
14 a ‘no project’ alternative, as required under CEQA. (AR1773.660-.697.) For example, Alternative
15 A would reduce the scale of vegetation treatments, Alternative B would treat vegetation only
16 within the Wildland-Urban Interface (WUI), and Alternative D would treat vegetation using a
17 combination of WUI fuel reduction, fuel break, and ecological restoration projects without the use
18 of prescribed burning. (AR1773.660.) To develop the range of alternatives, the Board evaluated
19 alignment with program objectives, feasibility, and reduction or avoidance of significant effects
20 of the proposed program, and it incorporated input from agencies, organizations, and individuals,
21 including Petitioners. (AR1773.658.) This is a reasonable basis for its choices, and “[i]f a
22 reasonable basis for the choices the agency makes is found in the EIR or elsewhere in the record,
23 a reviewing court will defer to the agency’s selection of alternatives.” (*Center for Biological*
24 *Diversity v. Dep’t of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 256.)

25 The Board also explained why it did not adopt the alternative approaches that Petitioners
26 advanced in their comment letters. (Pets’ OB at 20:4-19.) Petitioners’ comments admit that their
27 first proffered alternative (the Santa Monica Mountains National Recreation Fire Management
28 Plan [“Santa Monica Plan”]) employs an approach “profoundly different” from the CalVTP, as it

1 excludes landscape-level treatments upon which the CalVTP relies. (AR1590.152.) The Board
2 clarified that the PEIR incorporated elements of the Santa Monica Plan in Alternative C, but that
3 Alternative C resulted in greater impacts than the proposed CalVTP in certain resource areas like
4 aesthetics. (AR1590.153.) And the Board noted that unlike the CalVTP, other elements of Santa
5 Monica Plan “do not involve vegetation management.” (AR1590.154.) Thus, the Santa Monica
6 Plan proposed alternative fails to meet the CalVTP’s basic program objectives, which CEQA
7 provides is a rationale “to eliminate alternatives from detailed consideration in an EIR.” (Cal.
8 Code Regs., tit. 14, § 15126.6, subd. (c).) The Board concluded that the Petitioners’ second
9 proffered alternative “is not an alternative,” but rather “is a project prioritization tool,”
10 (AR1590.154), and Petitioners have not challenged this conclusion in their opening brief.

11 The PEIR’s analysis of mitigation measures and alternatives to address potential wildfire
12 impacts complies with CEQA, and Petitioners have not met their burden to show otherwise.

13 **B. The PEIR’s Analysis of Mitigation Measures and Alternatives to Address**
14 **Potentially Significant Impacts to Chaparral and Coastal Sage Scrub**
15 **Communities Complies with CEQA**

16 Petitioners also argue that the Board “failed to consider feasible mitigation measures and
17 alternatives to the Program’s significant impacts to the chaparral and coastal sage scrub
18 communities” (Pets’ OB at 21:17-20), because SPR BIO-5 is “vague and improperly deferred
19 mitigation.” (*Id.* at 21:8-9.) But SPR BIO-5 is a Standard Project Requirement (“SPR”)⁷—not a
20 mitigation measure under CEQA. No mitigation measures are required in the PEIR for chaparral
21 and coastal sage scrub because the Board concluded that “there would be no loss of function and
22 no conversion of these habitat types such that the environmental effects . . . would be significant
23 under CEQA.” (AR1590.310, AR1590.015-.017; Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(3)
24 [“Mitigation measures are not required for effects which are not found to be significant.”].)

25 Petitioners’ challenge to the Board’s conclusion that no additional mitigation is required is

26 ⁷ “Standard project requirements (SPRs) are presented as part of the proposed [CalVTP]
27 program to avoid and minimize environmental impacts and comply with applicable laws and
28 regulations.” (AR1773.004.) “For purposes of this PEIR, SPRs are intended to be implemented
and enforced in the same way as mitigation measures . . .” (*Id.*) “[A] project proponent must
incorporate all standard project requirements relevant to the proposed activity and all feasible
mitigation measures from the PEIR into the later activity, as needed, to address significant or
potentially significant effects on the environment.” (AR1773.007, see also AR2628-2641.)

1 reviewed under the substantial evidence standard, and Petitioners have not carried their burden to
2 demonstrate that the PEIR is inadequate. (*San Francisco Baykeeper, Inc.*, *supra*, 242
3 Cal.App.4th at p. 228.) Rather, substantial evidence in the record supports the Board’s
4 determination that no significant impacts to chaparral and coastal sage scrub would occur as a
5 result of the CalVTP due to the implementation of SPR BIO-5 and compliance, by the project
6 proponent, with Public Resources Code section 4483, which compliance *is in addition to* the
7 requirements under the PEIR. (AR1590.310; see also, *supra*, Argument Part I.B.)

8 Under SPR BIO-5, project proponents “will design treatment projects to avoid type
9 conversion where native coastal sage scrub and chaparral are present.” (AR1590.015.) The Board
10 explained that “[i]mplementation of SPR BIO-5 would avoid environmental effects of type
11 conversion of chaparral and coastal sage scrub by designing treatment projects to replicate the
12 natural fire regime, return the vegetation type to its natural condition class, and maintain or
13 improve the natural habitat function of those alliances.” (AR1590.015; see AR1590.015-017
14 [explaining the Board’s conclusion]; [AR1773.120-.121[describing SPR BIO-5].) The Board
15 developed an ecological definition of “type conversion” because “a legislative or regulatory
16 definition of ‘type conversion’ has not been formulated.” (AR1590.015-.017.) Substantial
17 evidence supports the Board’s formulation of SPR BIO-5 and assessment of its effectiveness.
18 (AR1590.015-017, AR1773.120-.121, 2628-2641; see also *supra*, Argument Part I.B.)

19 Moreover, the Board’s explanation of SPR BIO-5 is not vague, and the level of detail
20 provided in the PEIR is commensurate with that required for programmatic environmental review
21 where subsequent projects will “tier” their review from the programmatic document. As noted
22 above, “[a] program EIR is an EIR which may be prepared on a series of actions that can be
23 characterized as one large project,” (Cal. Code Regs., tit. 14 § 15168, subd. (a)), and they are
24 commonly used with the process of tiering. Tiering “refers to using the analysis of general
25 matters contained in a broader EIR (such as one prepared for a general plan or policy statement)
26 with later EIRs and negative declarations on narrower projects; incorporating by reference the
27 general discussions from the broader EIR; and concentrating the later EIR or negative declaration
28 solely on the issues specific to a later project.” (*Id.*, § 15152, subd. (a); see also *Id.*, § 15385

1 [defining “Tiering”].) “[T]he level of detail contained in a first tier EIR [such as the CalVTP
2 PEIR] need not be greater than that of the program, plan, policy, or ordinance being analyzed.”
3 (*Id.*, § 15152, subd. (b); *Id.*, § 15146.) Substantial evidence shows that the PEIR sufficiently
4 analyzed SPR BIO-5 and the CalVTP’s potential impacts to chaparral and coastal sage scrub at
5 the program level, consistent with CEQA. (AR1590.015-017, AR1590.310, AR1773.120-.121,
6 AR1773.357-.359; see also, *supra*, Argument Part I.B.)

7 The CalVTP PEIR also does not improperly defer any mitigation measures, because, as
8 explained above, there are no mitigation measures in the PEIR for chaparral and coastal sage
9 scrub given implementation of SPR BIO-5 and other Standard Project Requirements, and
10 compliance with Public Resources Code section 4483. (AR1590.310.) The Standard Project
11 Requirements—including SPR BIO-5—are considered part of the CalVTP program, and the
12 “[i]mpact analysis [in the PEIR] considers the extent to which implementation of SPRs will avoid
13 or minimize impacts and identifies the significance of residual impacts on biological resources;
14 those that are potentially significant require mitigation measures.” (AR1590.243, AR1773.111.) If
15 a later project, as part of implementing the CalVTP, could cause significant effects on chaparral
16 and coastal sage scrub, then further environmental review under CEQA by the project proponent
17 would be required to assess and mitigate those impacts. (AR1590.018-.020; Cal. Code Regs., tit.
18 14, §§ 15152, subd. (f), 15168, subd.(c)(1).) In addition, Public Resources Code section
19 4483(b)(2) prohibits type conversion of chaparral and coastal sage scrub when conducting certain
20 vegetative treatments, and proponents of vegetation projects covered by that statute are required
21 to comply with its requirements, which are *in addition to* the requirements in the PEIR.⁸
22 (AR1590.017.)

23 Even assuming, *arguendo* that SPR BIO-5 was deemed a mitigation measure, it would not
24 constitute improper deferral of mitigation because “[t]iering is properly used to defer analysis of

25 _____
26 ⁸ Notably, Public Resources Code section 4483 does not apply to the Board’s approval of
27 the CalVTP and certification of the PEIR. Rather, the prohibitions in Section 4483 apply to CAL
28 FIRE when it carries out vegetation treatment projects and finds that the treatments—including
prescribed burning, mastication, herbicide application, and mechanical thinning—will cause type
conversion away from the on-site chaparral and coastal sage scrub. (Pub. Resources Code,
§ 4483, subd. (b)(2).)

1 environmental impacts and mitigation measures to later phases when the impacts or mitigation
2 measures are not determined by the first-tier approval decision but are specific to the later
3 phases.” (*Vineyard Area Citizens for Responsible Growth, Inc.*, *supra*, 40 Cal.4th at p. 431.)

4 Tiering is appropriate because the CalVTP is a statewide vegetation treatment program, and the
5 PEIR meets the requirements for program-level document. (Cal. Code Regs., tit. 14, § 15168.)

6 Petitioners have not met their burden and demonstrated that the PEIR failed to address required
7 mitigation measures for potentially significant impacts to chaparral and coastal sage scrub at a
8 programmatic level of review, and regardless, the PEIR’s analysis complies with CEQA.

9 (*Sacramento Old City Ass’n*, *supra*, 119 Cal.App.3d at p. 1027.)

10 Finally, Petitioners have not presented any legal argument in their opening brief to support
11 their unexplained, conclusory challenge that the PEIR failed to consider alternatives to “address
12 significant impacts to chaparral and coastal sage scrub.” (Pets’ OB at 20:20-21.) Consequently,
13 Petitioners have waived this argument. (*Shenefield v. Shenefield* (2022) 75 Cal.App.5th 619, 641.)
14 In addition, the Board already explained why the PEIR’s analysis of alternatives complies with
15 CEQA, (see, *supra*, Argument Part II.A.), and the same reasoning applies here.

16 CONCLUSION

17 The PEIR properly describes the CalVTP, evaluates its potential environmental impacts
18 including those related to wildfires and chaparral and coastal sage scrub, and analyzes mitigation
19 measures when necessary to address significant impacts. It also discusses a reasonable range of
20 alternatives to the proposed program. And it explains that it is a programmatic EIR, and that
21 project proponents may be required to conduct additional environmental review for specific
22 projects that implement the CalVTP if site-specific issues are not covered in the PEIR. Nothing
23 more is required under CEQA, and Petitioners’ dispute about the CalVTP’s efficacy (or lack
24 thereof) in addressing California’s wildfire crisis does not constitute a CEQA violation. In
25 addition, based on its plain language Public Resources Code section 4483 does not apply to the
26 Board’s approval of the CalVTP and certification of the PEIR. Therefore, Petitioners’ petition for
27 writ of mandate should be denied.

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Dated: October 17, 2023

Respectfully submitted,

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DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: **California Chaparral Institute, et al v. Board of Forestry, et al (Vegetation Treatment Program)**

Case No.: **37-2020-00005203-CU-TT-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 17, 2023, I served the attached **BOARD OF FORESTRY AND FIRE PROTECTION'S OPPOSITION TO PETITIONERS' OPENING BRIEF IN SUPPORT OF WRIT OF MANDATE** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 17, 2023, at San Francisco, California.

Zainub Tayeb
Declarant



Signature