Filed 6/30/25

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CALIFORNIA CHAPARRAL INSTITUTE et al., Plaintiffs and Appellants, v. BOARD OF FORESTRY AND FIRE PROTECTION, Defendant and Respondent.	D083484 (Super. Ct. No. 37-2020-00005203-CU-TT-CTL) ORDER MODIFYING OPINION AND DENYING REHEARING NO CHANGE IN THE JUDGMENT

THE COURT:

It is ordered that the opinion filed on May 30, 2025, be modified as follows:

On page 22, in the second full paragraph, following the citation "(See *Laurel Heights, supra*, 47 Cal.3d at p. 391 citing §§ 21002, 21002.1, 21081, and Guidelines, §§ 15091–15093.)," add a new footnote 13 with the following language, which will require renumbering of all subsequent footnotes.

> 13 By way of a petition for rehearing, the Board argues the Report evaluated a broad range of potentially significant impacts to native vegetation and established a comprehensive

scheme of SPRs that project proponents must implement to avoid these impacts. It contends this court erred by omitting any reference to this comprehensive scheme.

Although the respondent's brief generally referenced the SPRs, it focused on SPR BIO-5. Now, the Board appears to argue for the first time that restoring vegetation to its natural condition class includes removing invasive species, which is accomplished by not only complying with SPR BIO-5 but also SPR BIO-1 and SPR BIO-9. It describes SPR BIO-1 as mandating site surveys and data reviews to ensure a thorough habitat assessment and SPR BIO-9 as tasking project proponents with "identify[ing] significant infestations of invasive plant species" and "target[ing] them for removal during treatment activities." It further explains that treatments must be "focused on removing invasive plant species that cause ecological harm to native vegetation types, especially those that can alter fire cycles." Finally, it highlights a section on SPR BIO-9 in the Report that mentions "preventing reestablishment" of invasive plants, "treatment maintenance," and implementation of a third-party best practices guide included in the administrative record.

We observe two issues with this argument. First, the Board did not even reference SPR BIO-1, SPR BIO-9, or invasive plants in the respondent's brief—even after Plaintiffs mentioned SPR BIO-9 in a footnote in its opening brief. Yet now it seeks to reframe its response in terms of these concepts, as well as some newly described mitigation measures. " 'It is well settled that arguments . . . cannot be raised for the first time in a petition for rehearing.' " (*Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1092, abrogated on another point in *Martinez v. Combs* (2010) 49 Cal.4th 35, 62–66.) And although we provided the parties with a pre-argument focus letter highlighting our concerns and implying Plaintiffs had met their burden on appeal, the Board did not discuss SPR BIO-9 during oral argument or otherwise explain how the best practices manual or comprehensive scheme resolved our concerns about deficiencies in the Report. Given the size and complexity of CEQA records, the court cannot comb the record for potentially viable but unstated explanations. For reasons of fairness and judicial economy, an argument that was

available from the inception of the litigation but was raised for the first time in a petition for rehearing " 'unaccompanied by an explanation for the delay' in bringing it to our attention" generally is forfeited. (*Alameda County Management Employees Assn. v. Superior Court* (2011) 195 Cal.App.4th 325, 338, fn. 10.)

Second, even accepting the Board's explanation, it appears the Report still delegates these considerations to the project level. The petition for rehearing has not persuaded us that the Program's significant environmental effects of causing type conversion and producing flammable grasses, which were brought to the Board's attention repeatedly throughout the EIR process, were not an impact the Board was required to consider at the program EIR stage.

There is no change in the judgment.

The petition for rehearing is denied.

IRION, Acting P. J.

Copies to: All parties

BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

06/30/2025

BRANDON L. HENSON, CLERK

By Deputy Clerk