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# california vegetation treatment program Information supplementary to the Final Program Environmental impact report

This document presents information to supplement the proposed Final Program Environmental Impact Report (PEIR) for the California Vegetation Treatment Program (CalVTP) that was released by the State Board of Forestry and Fire Protection (Board) on November 27, 2019 under State Clearinghouse Number 2019012052. The supplementary information comprises responses to certain issues raised in comments on the Final PEIR (Section 1, below) as well as minor changes to the text of the Final Program PEIR add or clarify information (Section 2, below). This document is intended to become part of the Final EIR in its final form. In its decision whether to certify the Final CalVTP PEIR, the Board will consider the November 2019 proposed Final PEIR as revised to include the information supplementary to the CalVTP Final PEIR presented herein.

## Responses to Certain Issues Raised on the CalVTP Final Program EIR

After issuing the proposed Final EIR in late November 2019, the Board received several written comments. Also, oral comments were received at a public hearing conducted by the Board on December 11, 2019. These public comments raised environmental issues that were previously identified in comments on the Draft PEIR and responded to in the proposed Final PEIR. Even so, because these issues are among the ones raised most frequently on the CalVTP and have continued to be raised even after the publication of the proposed Final PEIR, responses are presented below to clarify, elaborate on, and reinforce the explanations and information provided in responses to comments on the Draft PEIR.[[1]](#footnote-1)

### Standards Governing the Adequacy of Mitigation Measures and Standard Project Requirements

Comments assert that many of the mitigation measures and standard project requirements (SPRs) in the CalVTP Program EIR are legally inadequate for various reasons. One common contention is that, because particular mitigation measures or SPR lack precise “performance standards,” the measures are per se legally inadequate. This assertion is sometimes aimed at mitigation measures that the Board believes will mitigate impacts to less-than-significant levels, and at other times is aimed at measures for which the Board makes no such claim, as the Board considers the impacts at issue to be significant and unavoidable despite mitigation under CEQA.

This master response lays out both the general legal standards for adequate mitigation measures and the more specific standards for adequate performance standards within mitigation measures. The response distinguishes between the SPRs and the formal mitigation measures. The response then addresses specific examples of purportedly problematic SPRs and mitigation measures, and explains why such features and measures are in fact lawful and appropriate despite contentions to the contrary.

#### A. Definitions

The State CEQA Guidelines define “mitigation” as including:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.[[2]](#footnote-2)

Courts have treated as legitimate examples of mitigation measures both the payment of fair-share fees as part of a reasonable mitigation program,[[3]](#footnote-3) and the use of conservation easements or other legal mechanisms to preserve (and possibly enhance or manage) off-site agricultural land or wildlife habitat.[[4]](#footnote-4) In formulating mitigation measures, however, lead agencies must be cognizant of any limitations on their own regulatory powers or those of other agencies with potential mitigation responsibilities.[[5]](#footnote-5)

The California Natural Resources Agency has provided further general guidance on the subject of mitigation in section 15126.2[a] of the State CEQA Guidelines. That regulation states, in pertinent part, that

[t]he discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.[[6]](#footnote-6)

Later, the same regulation explains that

[w]here several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific *performance standards* the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.[[7]](#footnote-7)

Section 15126.2[a] then goes on to state that, when a project is approved, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.”

#### B. General Principles

##### Mitigation Measures Are Reviewed as a Whole

Under CEQA, the need for mitigation measures arises out of the so-called “substantive policy” of the Act, by which public agencies cannot approve proposed projects that would cause significant environmental effects without first adopting any feasible mitigation measures and considering any feasible alternatives that would substantially lessen such significant effects.[[8]](#footnote-8) This substantive goal can be met through: (i) the adoption of feasible mitigation measures, (ii) the approval of a feasible alternative other than the proposed project, or (iii) a combination of those two options.[[9]](#footnote-9) As the California Supreme Court has noted, “alternatives and mitigation measures have the same function—diminishing or avoiding adverse environmental effects. The chief goal of CEQA is mitigation or avoidance of environmental harm.”[[10]](#footnote-10) However, mitigation measures need not necessarily eliminate significant environmental impacts, but only lessen them.[[11]](#footnote-11)

Importantly, California courts generally do not review a set of mitigation measures to determine whether each and every one of them is “perfect” or meets some set of legal standards that applies to each and every mitigation measure viewed in insolation. Rather, courts review mitigation measures to see whether they support a lead agency’s conclusion that particular significant environmental effects can be mitigated to less-than-significant levels. Where a lead agency claims that a single mitigation measure or set of mitigation measures will achieve this level of effectiveness, a court should consider the mitigation measures as part of its *overall* determination as to whether substantial evidence in an agency’s administrative record supports the conclusion that the impacts at issue will indeed be less than significant after mitigation. The California Supreme Court explained this overall approach in its seminal decision in *Laurel Heights Improvement Association v. Regents of the University of California*:

[T]he reviewing court must consider the evidence *as a whole*. That an EIR’s discussion of mitigation measures might be imperfect in various particulars does not necessarily mean it is inadequate. We do not suggest that a reviewing court should refrain from carefully scrutinizing the record… The often technical nature of challenges to EIR’s also requires particular attention to detail by a reviewing court. The proper judicial goal, however, is not to review each item of evidence in the record with such exactitude that the court loses sight of the rule that the evidence must be considered as a whole.[[12]](#footnote-12)

Consistent with this approach, the Court of Appeal in in *Environmental Council of Sacramento v. City of Sacramento*[[13]](#footnote-13) (*Environmental Council*) chided the petitioners in that case both for “pars[ing] but one component from” a larger “integrated mitigation program” and for “ignoring the broader context, the broader findings, and the broader evidence relied on by the [lead] agencies.” The court went on to uphold the one individual measure to which the petitioners had objected, citing numerous items of evidence from the administrative record conveying that “broader context.”[[14]](#footnote-14) In another case, *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School District*, the Court of Appealexplained that “[t]he discussion of mitigation measures in [an EIR] must be assessed in accordance with the ‘rule of reason.’”[[15]](#footnote-15) The court added that “CEQA does not require analysis of every *imaginable* … mitigation measure; its concern is with *feasible* means of reducing environmental effects.”[[16]](#footnote-16)

Consistent with these principles, the Supreme Court, in its most recent case addressing CEQA mitigation, *Sierra Club v. County of Fresno*, emphasized that “[m]itigation measures need not include precise quantitative performance standards, but they must be at least partially effective, even if they cannot mitigate significant impacts to less than significant levels.”[[17]](#footnote-17) Thus, a package of mitigation measures addressing a particular category of environmental effects may include some measures with performance standards and some without them.

Another important California Supreme Court case dealing with the adequacy of mitigation measures is *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority*,[[18]](#footnote-18)which involved a challenge to an EIR for a proposed light rail line. In that case, the lead agency, a regional transportation agency, was required to address potential spill-over parking effects that might result from development of new transit facilities. Since the lead agency lacked legal authority to regulate parking in affected areas, the EIR proposed (and the agency adopted) mitigation measures that contemplated that local municipal governments would, with the lead agency’s assistance, develop and implement permit parking programs or other parking restrictions if monitoring proved that there was a problem. Project opponents objected that this mitigation was not legally enforceable. The Supreme Court disagreed, explaining that CEQA “allows an agency to approve or carry out a project with potential adverse impacts if binding mitigation measures have been ‘required in, or incorporated into’ the project, or if [t]hose changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.’”[[19]](#footnote-19) The court noted that, while the lead agency “[could] not guarantee local governments will cooperate to implement permit parking programs or other parking restrictions, the record supports the conclusion these municipalities ‘can and should’ do so.”[[20]](#footnote-20) Thus, the question for a reviewing court is *not* whether the lead agency can *guarantee* that impacts will be mitigated, but whether reasonable means for mitigating impacts are identified in the EIR, even if some uncertainty remains.[[21]](#footnote-21)

Most of the critical comments on the mitigation measures and SPRs in the CalVTP PEIR invoke the body of CEQA case law dealing with the subject of “deferred mitigation.” That body of law addresses circumstances in which public agencies can formulate only some of the details of mitigation measures when the environmental documents are being prepared and leave the formulation of further details until after project approval. When a lead agency points to measures of this kind to claim that significant impacts will be mitigated to less-than-significant levels, courts look for enforceable performance standards that, when satisfied, will ensure that impacts will indeed be less than significant. Because of the importance of the mitigation measures in the CalVTP PEIR, a careful look at that body of law will be helpful in explaining why the mitigation measures in those two documents are legally sufficient under CEQA.

The case that spawned the entire body of CEQA law dealing with “deferred mitigation” is [*Sundstrom v. County of Mendocino*](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=226&cite=202CAAPP3D296&originatingDoc=I333bf2b5fabd11d9bf60c1d57ebc853e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) (*Sundstrom*),[[22]](#footnote-22) a 1988 Court of Appeal decision involving a negative declaration for a sewage treatment plant intended to serve an existing development consisting of a small motel, restaurant, and filling station, to which a larger motel, restaurant, and apartments would be added. The court in *Sundstrom* held that the respondent county had violated CEQA by approving the project based on a negative declaration without first resolving uncertainties regarding the project’s potential to cause significant environmental impacts.

Among the conditions of approval were directions to the applicant and planning staff to develop and implement concrete mitigation measures *after* project approval. For instance, the applicant was instructed to prepare a hydrological study evaluating the project’s potential environmental effects and proposing any necessary mitigation measures. The study was to focus on soil stability, erosion, sediment transport, and the flooding of downslope properties. The court concluded that, because the success of mitigation was uncertain, the agency could not have reasonably determined that significant effects would not occur. This deferral of environmental assessment until after project approval violated CEQA’s policy that impacts must be identified before project momentum reduces or eliminates the agency’s flexibility to subsequently change its course of action. In addition, because the permit authorized the applicant himself, subject to planning staff approval, to conduct the required analyses, the county had violated CEQA’s requirement that an agency’s decision-making body must ultimately review and vouch for all environmental analysis mandated by CEQA.[[23]](#footnote-23)

The court also found inadequate a permit condition requiring subsequent county approval of a sludge disposal plan, pointing to evidence in the record showing that environmentally sound disposal might be hard to achieve, given that no suitable disposal site was known to exist. Both the county public works department and the Coastal Commission had recommended project denial until these problems could be worked out. The court found that, by approving the project without showing that a solution was possible, the county had “evaded its duty to engage in comprehensive environmental review.”[[24]](#footnote-24) The court held that the county had no right to expect the Regional Water Quality Control Board to devise a solution under such circumstances. The court also held that the county should have required the applicant to fully develop his design for an irrigation system, since preliminary data showed a danger that the tentative design could adversely affect soil stability and would cause drainage problems.[[25]](#footnote-25)

*Sundstrom* should not be read as an absolute constraint on the post-approval formulation of detailed mitigation measures. The case suggests that, in some instances at least, agencies can reasonably conclude that impacts will be mitigated to less-than-significant levels even if mitigation measures are not fully developed until after project approval. The court upheld permit conditions requiring compliance with air and water quality standards because the approving agency possessed “‘*meaningful* *information*’ reasonably justifying an expectation of compliance.”[[26]](#footnote-26)

The first reported CEQA precedent following *Sundstrom* to deal in depth with the use of performance standards as a basis for allowing some deferral of the formulation of mitigation specifics was *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1026-1030 (*SOCA*), which involved an EIR for a proposed convention center project. The court in that case upheld a mitigation measure requiring the future completion of a transportation management plan (TMP) that (i) set an enforceable performance goal of “an overall area parking utilization rate of 90 percent during the critical weekday afternoon period,” and (ii) identified a number of different options for how the goal might be met.[[27]](#footnote-27) In finding this approach to mitigation to be consistent with CEQA, the court rejected an argument based on the principles articulated in *Sundstrom*. The *SOCA* court explained why the use of a performance standard could solve the problem identified by the court in *Sundstrom*:

[I]n *Sundstrom* the county had determined, before the required studies were even performed, that the project would not have a significant impact on the environment. In contrast, the City in the present case acknowledged traffic and parking have the potential, particularly under the worst case scenario, of causing serious environmental problems. The City did not minimize or ignore the impacts in reliance on some future parking study.

Moreover, the county in *Sundstrom* approved the project without considering or addressing *any* mitigation measures. In the present case, the City has set forth a list of alternatives to be considered in the formulation of a transportation management plan, a plan the City itself, not the developer, will prepare.

As one commentator has opined, *Sundstrom* “need not be understood to prevent project approval in situations in which the formulation of precise means of mitigating impacts is truly infeasible or impractical at the time of project approval. In such cases, the approving agency should commit itself to eventually working out such measures as can be feasibly devised, but should treat the impacts in question as being significant at the time of project approval. Alternatively, for kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process (e.g., at the general plan amendment or rezone stage), the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated. (See [*Laurel Heights I, supra*, 47 Cal.3d at 418](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=233&cite=47CALIF3D418&originatingDoc=I333bf2b5fabd11d9bf60c1d57ebc853e&refType=RP&fi=co_pp_sp_233_418&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_233_418) [[253 Cal.Rptr. 426, 448]](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988154019&originatingDoc=I333bf2b5fabd11d9bf60c1d57ebc853e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) [upholds mitigation measure by which project noise levels will be kept within performance standards]; and [*Schaeffer Land Trust v. San Jose City Council* (6th Dist. 1989) 215 Cal.App.3d 612, 632](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=226&cite=215CAAPP3D612&originatingDoc=I333bf2b5fabd11d9bf60c1d57ebc853e&refType=RP&fi=co_pp_sp_226_632&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_226_632) [[263 Cal.Rptr. 813, 819]](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989163781&pubNum=227&originatingDoc=I333bf2b5fabd11d9bf60c1d57ebc853e&refType=RP&fi=co_pp_sp_227_819&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_227_819)  [upholding approval of general plan amendment based on a negative declaration because actual physical development will be contingent on devising plan to ensure compliance with city standards for traffic levels of service].)” (Remy et al., Guide to the Cal. Environmental Quality Act (1991 ed.) pp. 200-201, fn. omitted.)[[28]](#footnote-28)

Another important case on point is *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 244–245 (*Fairview Neighbors*), which involved an EIR for a proposed use permit authorizing the expansion of an existing surface mine. In that case, the Court of Appeal distinguished the situation it faced from the one at issue in *Sundstrom*, emphasizing that the lead agency in *Fairview Neighbors* was entitled to adopt mitigation measures that stopped short of mitigating impacts to less than significant levels:

*Sundstrom* is distinguishable from the instant case. In *Sundstrom*, a negative declaration relied on future proposed mitigation studies to provide presumed mitigation measures. That was improper. [Citation.] It simply deferred environmental assessment to a future date after approval of the project. That is not what occurred here. Here the EIR explains what the environmental impacts would be, and it concludes that the impacts would be significant and unmitigable regardless of the proposed mitigation measures or future studies. Under such circumstances, the Board may adopt a statement of overriding considerations and approve the project.[[29]](#footnote-29)

Over the last 30 years or so, a series of Court of Appeal opinions have developed detailed principles governing deferred mitigation and the use of performance standards. Although “the exception allowing the deferral of the formulation of mitigation measures has been expressed in a variety of ways,”[[30]](#footnote-30) the consensus seems to be that such deferral is permissible where the adopted mitigation measure both:

1. Commits the agency to a realistic performance standard or criterion that will ensure the mitigation of the significant effect
2. Disallows the occurrence of physical changes to the environment unless the performance standard is or will be satisfied.[[31]](#footnote-31)

Whether the performance standards included in a particular mitigation strategy are sufficiently definite and specific to satisfy CEQA’s mitigation requirements will generally depend on the circumstances surrounding the agency approval or even the particular impact at issue. In any event, the performance criteria must be sufficiently definite to ensure that the potential impacts will be mitigated.[[32]](#footnote-32)

Notably, courts have also upheld mitigation measures against allegations of improper deferral when the performance standards were based on regulatory requirements that would apply to a project independent of CEQA. A condition requiring compliance with regulations is a common and reasonable mitigation measure, and may be proper where it is reasonable to expect compliance. In *Oakland Heritage Alliance v. City of Oakland*,[[33]](#footnote-33) for instance, the court upheld deferring site-specific seismic impact mitigation measures when the EIR relied on compliance with “a regulatory scheme designed to ensure seismic safety” that gave “adequate assurance that seismic impacts will be mitigated through engineering methods known to be feasible and effective.”[[34]](#footnote-34)

Based on the general principles set forth above, it is clear that the legal adequacy of a mitigation measure under CEQA should be judged based on the following factors: whether the lead agency claims the measure will or will not reduce impacts to less-than- significant levels; whether the lead agency relies on the measure by itself to address a particular environmental impact, or instead relies on the measure as a part of a larger package of measures that, taken together, address the impact; whether the measure, and perhaps others that complement it, are sufficiently detailed that they do not need performance standards to achieve impact reduction; whether, if a measure or set of measures lacks sufficient detail to effectively mitigate impacts, at least one of the measures contains a performance standard that, if satisfied, would support the agency’s ultimate factual conclusion; and, finally, whether the lead agency’s administrative record, viewed as a whole, supports the lead agency’s ultimate factual conclusion regarding the effectiveness of the measure, or a package of measures, to reduce an environmental impact to a less-than-significant level or not.

Only when a lead agency has relied on a particular measure, *by itself*, to reduce an impact to a less–than-significant level must the measure either be sufficiently detailed to accomplish that purpose by itself or include a performance standard that, when translated in the future into a detailed measure, will accomplish that purpose by itself. To the extent that some commenters believe that, to be adequate under CEQA, each and every measure must have a performance standard, such commenters are simply mistaken. As noted earlier, the California Supreme Court has unequivocally stated that “[m]itigation measures need not include precise quantitative performance standards, but they must be at least partially effective, even if they cannot mitigate significant impacts to less than significant levels.”[[35]](#footnote-35)

##### Mitigation Measures Incorporated Into Projects

As noted earlier, an EIR “shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons[.]”[[36]](#footnote-36) In general, lead agencies may assume that measures proposed by project proponents will be carried out if the projects are approved.[[37]](#footnote-37) “[I]n the case of the adoption of a plan, policy, regulation, or other public project,” such measures can be incorporated directly “into the plan, policy, regulation, or project design.”[[38]](#footnote-38) In contrast, mitigation measures formulated by lead agencies and included in EIRs “‘are suggestions which may or may not be adopted by the decisionmakers. There is no requirement in CEQA that mitigation measures be adopted.’”[[39]](#footnote-39) Thus, agency decisionmakers may reject proposed mitigation measures as infeasible, leaving significant impacts unmitigated.[[40]](#footnote-40)

Because project features that tend to mitigate significant effects are not subject to being rejected as infeasible the way mitigation measures are, CEQA encourages project proponents to design their projects so as to avoid significant effects in the first place, even if such features are in a form that could have been imposed by lead agencies as mitigation measures. This approach to project design is consistent with the substantive policy of CEQA, which encourages all participants in the environmental review process to focus their efforts on mitigating significant environmental effects.[[41]](#footnote-41) For this reason, the Legislature encourages the use of *mitigated* negative declarations (MNDs). Such documents allow project proponents, in exchange for their willingness to embrace effective up-front mitigation, to avoid the expense and time necessary for the preparation of full EIRs. The fact that, in MNDs, the mitigation measures become “part of the project” is evident from the portion of the statutory definition of such documents that refers to “*revisions in the project plans or proposals* made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review[.]”[[42]](#footnote-42) A similar incentive for project proponents to embrace mitigation concepts is evident from the rules governing the recirculation of EIRs. Under those rules, project applicants can avoid recirculation by agreeing to adopt new mitigation measures that emerge after completion of public review on draft EIRs, even if those measures are “considerably different” from those set forth in draft EIRs.[[43]](#footnote-43)

The Program EIR for the CalVTP includes not only traditional mitigation measures, but also a variety of standard project requirements (SPRs) reflecting the Board’s proactive approach to minimizing effects through project design and project commitments. The Board’s inclusion of environmental commitments in the PEIR was intended to reassure readers that the Board was unambiguously committed to carrying out a large number of best management practices (BMPs) or other environmentally sound practices that would be effective either in avoiding or minimizing environmental effects such that they would be maintained at a less-than-significant level or in otherwise reducing the severity of such impacts by some substantial degree. These measures were developed by the Board in close coordination with various potential responsible and trustee agencies, including the California Department of Fish and Wildlife, California Air Resources Board, California Coastal Commission, and State Regional Water Resources Control Board. By labeling these practices *standard project requirements* rather than *mitigation measures*, the Board intended to dispel any concern that the practices and BMPs designated as SPRs either might be rejected as infeasible at the time of project approval or might not be undertaken by project proponents absent the imposition of permit conditions by state responsible agencies or other permitting agencies.

The Board was aware that, in many instances, the SPRs function as *de facto* mitigation measures insofar as they were intended to avoid or reduce the severity of significant environmental effects. The PEIR was therefore written with a recognition that, where appropriate and necessary, its text should explain how the SPRs would function, and whether particular SPRs would or would not be effective in reducing various significant or adverse effects to less-than-significant or less-than-adverse levels.

Despite these efforts reflected in the Draft and Final PEIRs, several commenters on those documents asserted that the PEIR does not comply with the requirements subsequently announced by the California Court of Appeal in the 2014 decision *Lotus v. Department of Transportation*.[[44]](#footnote-44) That case lays out principles that CEQA lead agencies should follow with respect to “‘avoidance, minimization and/or mitigation measures’ that ‘have been incorporated into the project to avoid and minimize impacts as well as to mitigate expected impacts.’”[[45]](#footnote-45) In general, lead agencies must not simply assume, without identifying and applying a threshold of significance, that such project features will be effective in avoiding or minimizing significant environmental effects.[[46]](#footnote-46) Rather the *Lotus* court held that such project features should be discussed in a manner similar to that required for formally proposed mitigation measures. In other words, for potentially significant environmental effects, an EIR should do the following: state whether, in the absence of such features, impacts would be significant; and explain, in light of the applicable significance thresholds, whether the project features would or would not be sufficient to render the effects less than significant.[[47]](#footnote-47) Such project features should also be made enforceable through some means at the time of project approval.[[48]](#footnote-48)

In 2016, the very same appellate panel that had issued the *Lotus* decision issued another decision clarifying what the earlier decision had meant. In *Mission Bay Alliance v. Office of Community Investment and Infrastructure*,[[49]](#footnote-49) the court explained that there is no per se problem with developing project features that reduce or avoid environmental effects, even if such features are not styled “mitigation measures.” “Any mischaracterization is significant … only if it precludes or obfuscates required disclosure of the project’s environmental impacts and analysis of potential mitigation measures.”[[50]](#footnote-50) Thus, a key question for a reviewing court is whether the characterization of a commitment to mitigate as a project feature instead of as a formal mitigation measure is whether such a characterization “interfere[s] with the identification of the [environmental] consequences of the project or the analysis of measures to mitigate those consequences.”[[51]](#footnote-51)

Here, the CalVTP PEIR meets all of these standards. The CalVTP PEIR does not assume a less-than-significant outcome without analysis. Rather, the environmental impact analysis in the PEIR presents considerable evidence supporting each of the impact conclusions. Following the principles of *Lotus*, each impact discussion in Chapter 3, “Environmental Setting, Impacts, and Mitigation Measures,” in Volume II of this Final PEIR explains how any identified SPR reduces the severity of the impact and whether the level of reduction is sufficient to maintain the impact at less than significant or if one or more mitigation measures must be applied to reduce the impact to less than significant, if feasible. Further, in comparison to mitigation measures, each SPR is a true component of the treatment design, rather than a mitigating action that is separate from the treatment itself, and responsive to the treatment’s impacts. Notably, the Mitigation Monitoring and Reporting Program prepared in connection with the PEIR (see Appendix B of Volume I of this Final PEIR) includes all SPRs along with all mitigation measures, ensuring that all such Board commitments will be enforced and carried out, and preparers of the PSAs for later treatment projects are required to document the application of relevant SPRs in the PSA as well as in project-specific MMRPs adopted with later vegetation treatment project approval.

##### Examples of Effective SPRs Critiqued by Commenters

Examples of SPRs that were critiqued by commenters are presented below, along with an explanation of the adequacy of each SPR individually or in combination with other SPRs and mitigation measures in meeting the standards set forth in CEQA and relevant case law as described in the preceding sections.

###### Aesthetics and Visual Resource SPRs

* SPR AES-1: Vegetation Thinning and Edge Feathering. Commenters assert that SPR AES-1 is vague. The example provided by the commenter is that “’thin and feather’ is undefined”. Thinning and feathering is the practice of selectively removing vegetation to achieve a desired aesthetic condition at the boundary of the treatment area. The desired condition, which is the performance standard, is identified in the SPR [emphasis added]:

“The project proponent will thin and feather adjacent vegetation *to break up or screen linear edges of the clearing and mimic forms of natural clearings* as reasonable or appropriate for vegetation conditions. In general, thinning and feathering in irregular patches of varying densities, as well as a gradation of tall to short vegetation at the clearing edge, will achieve a natural transitional appearance. The contrast of a distinct clearing edge will be faded into this transitional band.”

Commenters also assert that because the SPR includes “as reasonable and appropriate”, there is no assurance the measure will be implemented. This fear is unfounded. Including the qualifying phrase “as reasonable and appropriate” does not allow for discretion as to *whether* the entire SPR should or should not be implemented. Rather it allows for flexibility in *how* the vegetation will be thinned and feathered to achieve the identified performance standard, in recognition of the wide variability in vegetation types and vistas throughout the treatable landscape. As stated above, the MMRP prepared in connection with the PEIR (see Appendix B of Volume I of this Final PEIR) includes all SPRs along with all mitigation measures, ensuring that all such Board commitments will be enforced and carried out, and preparers of the PSAs for later treatment projects are required to document the application of relevant SPRs in the PSA and associated project-specific MMRP.

* **SPR AES-2: Avoid Staging Within Viewsheds**. Commenters assert that the provision in SPR AES-2 that requires the project proponent to store treatment-related materials and locate materials staging and storage areas outside of the viewshed of public trails, parks, recreation areas, and roadways to the extent feasible provides no assurance the measure will be implemented. The SPR states that it “applies to all treatment activities and treatment types, including treatment maintenance”; additionally, it is included in the MMRP prepared in connection with the PEIR (see Appendix B of Volume I of this Final PEIR) to ensure that all such Board commitments will be enforced and carried out. Furthermore, preparers of the PSAs for later treatment projects are required to document the application of relevant SPRs in the PSA and associated project-specific MMRP.
* **SPR AES-3: Provide Vegetation Screening**. Commenters assert that including the term “sufficient vegetation” in the SPR renders it meaningless because the term is not defined. However, sufficient vegetation is defined in the SPR as vegetation that is sufficient “to screen views from public trails, parks, recreation areas, and roadways as reasonable or appropriate for vegetation conditions”. As with SPR AES-1, the performance standard is clearly identified in the SPR. Providing flexibility to “preserve sufficient vegetation”…”as reasonable or appropriate for vegetation conditions” allows for flexibility in which specific pieces of vegetation will be left in place (preserved) to achieve the identified performance standard of “screen[ing] views from public trails, parks, recreation areas, and roadways”, in recognition of the wide variability in vegetation types and vistas throughout the treatable landscape.

None of the aesthetic and visual resources impact determinations rely on any single SPR to maintain impacts at a-less-than-significant level; rather it is the combination of multiple SPRs that is considered to reduce impacts. For example, Impact AES-1 (Result in Short-Term, Substantial Degradation of a Scenic Vista or Visual Character or Quality of Public Views, or Damage to Scenic Resources in a State Scenic Highway from Treatment Activities) relies on SPRs AES-1, AQ-2, and AQ-3 to minimize short-term visual impacts during treatment. Impact AES-2 relies on SPR AES-1 and SPR AES-3 to break up or screen linear edges of a clearing and screen views from public view points to minimize long-term visual impacts from implementation of shaded fuel breaks. As noted earlier, the California Supreme Court has held that the adequacy of the mitigation for a particular impact or set of impacts in an EIR requires consideration of a package of mitigation measures “as a whole.”[[52]](#footnote-52) By attacking SPRs AES-1, AES-2, and AES-3 without reference to the above-referenced mitigation measures, commenters have failed to give heed to the Supreme Court’s admonition not to assess the adequacy of single mitigation measures (or the equivalent) in isolation. The commenters also fail to note the same court’s much more recent statement that “that “[m]itigation measures need not include precise quantitative performance standards[.]”[[53]](#footnote-53)

###### Air Quality SPRs

* **SPR AQ-2: Submit Smoke Management Plan and SPR AQ-3: Create Burn Plan**. Commenters assert that these SPRs constitute deferred mitigation because they do not include performance standards, while allowing for plans to be prepared in the future. Pursuant to SPR AQ-2, a Smoke Management Plan for each later vegetation treatment project proposing prescribed burning must be prepared by the project proponent and submitted pursuant to 17 CCR Section 80160, which governs the preparation of smoke management plans. In this case, regulatory compliance with section 80160 is reasonably expected and SPR AQ-2 is intended to emphasize such effective compliance with this regulatory requirement to reduce human exposure to smoke during prescribed burning. For example, in the analysis of Impact AQ-1 (Generate Emissions of Criteria Air Pollutants and Precursors during Treatment Activities that Would Exceed CAAQS or NAAQS and Conflict with Regional Air Quality Plans), SPR AQ-2 and SPR AQ-3 are identified and analyzed together in combination with other SPRs (i.e., SPR AQ-6 and SPR AD-4) to reduce impacts. A detailed description is presented regarding how implementation of SPR AQ-3 would reduce impacts (from page 3.4-31 of Section 3.4.3, “Environmental Impacts and Mitigation Measures” in Section 3.4, “Air Quality” of Volume II of the Final PEIR):

Additionally, SPR AQ-3 requires completion of a burn plan. Contents of a prescribed burn plan also include the date, location, and description of the area in detail, prescriptive weather requirements, fire behavior modeling, the ignition plan (including technique, time of day, and mop-up), a contingency plan, the smoke management plan (SMP), public notification plan, a go/no go checklist, and contact information for the burn boss and others in charge of the prescribed burn. Burn plans reduce the potential for public exposure to smoke by requiring the activity to be designed in a way that prioritizes public safety, and by identifying the specific conditions under which a safe prescribed burn can commence and proceed. Specific to prescribed burns implemented by CAL FIRE, one crew member is typically assigned to report weather conditions to the Incident Commander every 30 minutes to make sure the burn is staying within its prescription. If conditions deviate from the burn plan, crews transition from active burning activities to patrolling and/or extinguishing. In the event a prescribed burn extends beyond the perimeter of its planned area, on-site hand crews are deployed to control the escape.

After implementation of SPRs, residual significant impacts would be further reduced by implementation of Mitigation Measures AQ-1, but not to less than significant. Impact AQ-1 would remain significant and unavoidable.

* **SPR AQ-4: Minimize Dust**. Commenters assert that certain terms in the SPR are vague or subject to interpretation and, therefore, unenforceable. Again, this fear is unfounded. SPR AQ-2 includes several measures to achieve effective compliance with the regulations identified and described in the SPR: California Air Resources Board (CARB) Fugitive Dust protocol, Vehicle Code Section 23113, and Health and Safety Code Section 41700. The commenters conclude that, in their interpretation of the SPR, if water supplies are unavailable, no dust control will occur. However, the provision sited by the commenter pertains to the removal of visible dust, silt, or mud tracked-out on to public paved roadways where sufficient water supplies and access to water is available. The SPR identifies several measures available to reduce visible dust transport (particulate pollution) outside the treatment boundary and states that the type of dust suppression method will be selected by the project proponent based on soil, traffic, site-specific conditions, and air quality regulations.

The impact analyses that rely on SPR AQ-4 also rely on other SPRs to function collectively to avoid, minimize and reduce impacts. For example, Impact AQ-1 (Generate Emissions of Criteria Air Pollutants and Precursors during Treatment Activities that Would Exceed CAAQS or NAAQS and Conflict with Regional Air Quality Plans) relies on SPR AQ-4, AQ-5, and AQ-6. After implementation of these SPRs, residual significant impacts would be further reduced by implementation of Mitigation Measures AQ-1, but not to less than significant. Impact AQ-3 (Expose People to Fugitive Dust Emissions Containing Naturally Occurring Asbestos and Related Health Risk) relies on SPRs AQ-4 and AQ-5, which emphasize effective regulatory compliance, to maintain this impact at less than significant.

As with the attack on the SPRs for aesthetics, the commenters overlook that the adequacy of the mitigation for a particular impact or set of impacts in an EIR requires consideration of a package of mitigation measures (or the equivalent) “as a whole.” [[54]](#footnote-54) By attacking SPRs AQ-2 and AQ-4 without reference to other pertinent SPRs and mitigation measures, commenters have failed to give heed to the Supreme Court’s admonition not to assess the adequacy of single mitigation measures (or the equivalent) in isolation. The commenters also fail to note the same court’s much more recent statement that “that “[m]itigation measures need not include precise quantitative performance standards[.]”[[55]](#footnote-55)

###### Biological Resources

The biological resources analysis in the PEIR contains 12 SPRs specific to biological resources and several from other resource areas, including hydrology and water quality, geology and soils, and hazards and hazardous materials. These SPRs are integral components of the proposed program and will be integrated into the design of later vegetation treatment projects, as applicable to the specific characteristics of particular sites and the proposed treatment types and activities. Although it is reasonable to assume that project proponents will comply with applicable regulations, certain SPRs include measures to emphasize effective regulatory compliance (see, e.g., SPR BIO-5 regarding compliance with SB 1260 and SPR HYD-4 regarding compliance with Fish and Game Code Section 1602). In general, the SPRs function in a stepwise manner intended to ensure that biological impacts are ultimately reduced to less than significant levels:[[56]](#footnote-56)

* First, resources will be identified pursuant to the methods and protocols identified in the SPRs.
* If resources are present, treatments will be designed to avoid and minimize impacts as directed by the specific requirements of SPRs (e.g., no-disturbance buffers, limited operating periods).
* If, with implementation of the SPRs, sufficient avoidance and minimization of impacts is not feasible because such options would not allow for the objectives of the treatment to be met and residual impacts would be potentially significant, mitigation measures, typically additional measures to reduce impacts and/or require compensation in coordination with resource agencies, will be implemented to reduce the impact.

Using the example of special-status plants (Impact BIO-1: Substantially Affect Special-Status Plant Species Either Directly or Through Habitat Modifications), project proponents using the PEIR must conduct data review, habitat assessment, and protocol surveys to identify special-status plant populations per the requirements of SPR BIO-1 and SPR BIO-7, and either protect special-status plant populations with a no-disturbance buffer or conduct treatment during the dormant season of special-status plants if it is determined this will not adversely affect the plants or their habitat, as described in Mitigation Measure BIO-1a and Mitigation Measure BIO-1b. If significant impacts on special-status plants cannot be avoided, Mitigation Measure BIO-1c requires compensation for unavoidable losses. The same is true for sensitive natural communities. Project proponents are required per SPR BIO-1 and SPR BIO-3 to identify the presence of sensitive natural communities through data review, site reconnaissance, and protocol surveys and to protect these resources per SPR BIO-2 and Mitigation Measure BIO-3a. If significant impacts on sensitive natural communities cannot be avoided, Mitigation Measure BIO-3b requires compensation for unavoidable losses.

Thus, as with the attack on the SPRs for aesthetics and air quality, the commenters overlook that the adequacy of the mitigation for a particular impact or set of impacts in an EIR requires consideration of a package of mitigation measures (or the equivalent) “as a whole.” [[57]](#footnote-57) By attacking SPRs BIO-3, BIO-5, and BIO-9 without reference to other pertinent SPRs and mitigation measures, commenters have failed to give heed to the Supreme Court’s admonition not to assess the adequacy of single mitigation measures (or the equivalent) in isolation. The commenters also fail to note the same court’s much more recent statement that “that “[m]itigation measures need not include precise quantitative performance standards[.]”[[58]](#footnote-58)

###### Geology, Soils, Paleontology, and Mineral Resources

* **SPR GEO-7: Minimize Erosion**. Commenters reiterate comments on the Draft PEIR, which were addressed in response to comment O30-76 (see Volume I of the Final PEIR). SPRs GEO-3 and GEO-4 address erosion control on slopes less than 50 percent by requiring mulch or an equivalent soil stabilization measure and requiring monitoring for erosion and remediation for any erosion control measures that are not properly implemented. Prescribed burns on very steep slopes would comply with SPR GEO-8, which would require measures that would be implemented such that substantial erosion or loss of topsoil would not occur. SPR GEO-7 has been modified to state that prescribed herbivory will not be used as a vegetation treatment on slopes greater than 50 percent.
* **SPR GEO-8: Steep Slopes**. Commenters reiterate comments on the Draft PEIR, which were addressed in response to comment O30-77 (see Volume I of the Final PEIR). SPR GEO-8 requires that a Registered Professional Forester or licensed geologist must evaluate treatment areas with slopes greater than 50 percent for unstable areas (areas with potential for landslide) and unstable soils (soil with moderate to high erosion hazard). If unstable areas or soils are identified within the treatment area, cannot be avoided, and will be potentially directly or indirectly affected by the treatment, a licensed geologist (P.G. or C.E.G.) will determine the potential for landslide, erosion, of other issue related to unstable soils and identify measures (e.g., those in SPR GEO-7) that will be implemented by the project proponent such that substantial erosion or loss of topsoil would not occur. As described in the analysis for Impact GEO-1 (Result in Substantial Erosion or Loss of Topsoil), it is the combination of implementation SPRs GEO-1 through GEO-8 that will avoid and minimize the risk of substantial erosion and loss of topsoil.

Again, commenters critiquing SPRs GEO-7 and GEO-8 have not considered them in a larger context and are holding them to standards that do not apply to individual mitigation measures or equivalent elements of a project description.

The examples presented above for the resources areas identified by commenters serve to illustrate the common themes that the SPRs are either adequate individually with an obvious performance standard, or were created (most in coordination with the agencies with regulatory or trustee authority over the resource) with the intent to implement the SPR in combination with other SPRs and mitigation measures to avoid or minimize adverse effects. The analysis in the PEIR makes this distinction in each impact description regarding how applicable SPRs function to avoid or minimize impacts.

### Supplemental Information on the Effectiveness of the CalVTP in Reducing Wildfire Risk

Comments question the effectiveness of the CalVTP in reducing wildfire risk, stating that the CalVTP would be ineffective during extreme wind-driven fires, which account for most of the destruction caused by recent major wildfires, examples of which include the 2019 Cave Fire and the 2018 Camp Fire. Comments further state that wildfire-risk reduction should primarily focus on community hardening, defensible space, and emergency evacuation systems, rather than vegetation treatment. The issue of effectiveness was addressed in master response 1 (Effectiveness of the CalVTP in Reducing Wildfire Risk) in Volume I of the Final PEIR. The following presents additional information to clarify and reinforce information and presented in the November 2019 Final PEIR.

As explained in Section 1.1, “Purpose of the CalVTP,” in Volume II of the Final PEIR, vegetation treatment at the landscape scale as proposed under the CalVTP is focused both on reducing the likelihood of a ground fire increasing in intensity and on helping fire responders more easily contain a wildfire. While the PEIR acknowledges that vegetation treatments alone may not slow or halt extreme wind-driven fires, it also states that once winds slow, vegetation treatments proposed under the CalVTP can play a valuable role in achieving containment of the more extreme wind-driven fires by providing firefighters increased visibility and safer access to the fire, reducing heat and smoke, and allowing for quicker suppression of spot fires. While vegetation treatments are *less* effective in controlling extreme wind-driven fires compared to other wildfires, the assertion that vegetation treatments are *ineffective* during wind-driven fires is not accurate.

Vegetation treatments improve firefighting effectiveness, and this is especially critical when firefighting resource levels are drawn down. In these instances, the presence of treated areas supports the effectiveness of the more limited firefighting resources in protecting lives, property, and critical infrastructure, as well as in establishing perimeter control. Vegetation treatments help with controlling wildfire under initial and extended attack under any weather conditions, even extreme wind events that result in extreme wind-driven wildfires.

The effectiveness of vegetation treatments in reducing wildfire risk was demonstrated during the 2019 Cave Fire that started on November 25, 2019, east of Camino Cielo in Santa Barbara County. The Painted Cave and San Marcos projects, two of the 35 High Priority vegetation treatment projects undertaken on an urgent basis pursuant to Executive Order N-05-19 signed by Governor Newsom in early 2019, included vegetation treatments that were implemented in the vicinity of the Cave Fire. The treated areas directly benefited firefighters on the ground with suppression efforts as well as with evacuating the public. As a result of these vegetation treatment projects, firefighters battling the Cave Fire had increased access to the fire itself, areas to stage equipment and personnel. Because of roadside vegetation treatments, reduced fire intensity in these areas allowed for implementation of perimeter control activities. In addition, the East Camino Cielo fuel break, which has served as a strategic fuel break for several decades and was vital to suppression efforts during the 2017 Thomas Fire, was maintained as part of the Painted Cave project and used by firefighters as an access point during the Cave Fire. Firefighters were able to use the East Camino Cielo fuel break to successfully prevent fire spread to the north. In contrast to the 1990 Painted Cave Fire in this same area where approximately 660 structures were lost, no homes were destroyed in the 3,126-acre Cave Fire (City of Santa Barbara Fire Department 2019).

Vegetation treatments also contributed to the protection of life, property, and critical infrastructure during the 2018 Camp Fire, which led to the destruction of most of the Town of Paradise in Butte County. Although that fire was catastrophic, it would have been even worse absent earlier vegetation treatment efforts. According to the oral testimony of Chief David Hawks during the Board’s hearing on December 11, 2019, CAL FIRE Butte Unit Chief and Butte County Fire Chief, a 30-acre vegetation treatment project completed by Butte County Fire Safe Council in 2015 allowed firefighters to save lives as well as the Feather River Hospital in Paradise. Similarly, because of an 11-acre vegetation treatment project completed by the Butte County Fire Safe Council in 2018, firefighters were able to protect Paradise Pines Elementary School and Paradise Pines Middle School. As wildfire burned along Skyway Road, which was used as a primary evacuation route during the Camp Fire, vegetation treatments completed on both sides of the roadway by CAL FIRE in 2016 and maintained in 2018, allowed the evacuation route not to be completely overrun with fire, likely saving multiple lives. In these examples, previous vegetation treatment projects made fire suppression efforts more efficient and safer for firefighters, allowing firefighters access to defend lives, property, and critical infrastructure in the Camp Fire (Hawks, 2019). In late 2018, video footage of people escaping Paradise for their lives during the Camp Fire captured the attention of people throughout the United States and the world. (See, e.g., <https://www.youtube.com/watch?v=amUW2NrA9S8>; and <https://www.youtube.com/watch?v=f3I77HsLwlc>). Absent the vegetation treatments along Skyway Road, the fire likely would have produced more fatalities.

As stated in Section 1.1, “Purpose of the CalVTP,” in Volume II and in master response 1 in Volume I of this Final PEIR, the Board acknowledges that vegetation treatments alone will not solve the wildfire crisis. The proposed CalVTP is one element of the comprehensive response by federal, state, and local agencies, as well as community organizations and private citizens, to address wildfire risk statewide, and it would serve as the primary vegetation management component of the range of actions underway throughout the state to reduce risks to life, property, and natural resources. The state’s approach to the crisis includes an array of strategies, such as cost-effective home hardening, expanded evacuation capacity, comprehensive emergency planning, and improved land use practices, as well as investment in new suppression and response equipment and resources, use of technology tools, and establishment of strong utility oversight. Although an important part of the state’s approach, the increase in the pace and scale of vegetation treatment to reduce wildfire risk, as proposed under the CalVTP, is not a singular solution to the complex problem of resolving wildfire hazards. Vegetation treatments implemented in the wildland-urban interface (WUI) and wildlands function in coordination with wildfire risk reduction strategies implemented within communities to create a more fire-safe and resilient California.

### Use of the CalVTP Program EIR by Responsible Agencies

The Board has received correspondence in which comments contend that the Board has failed to comply with CEQA provisions requiring lead agencies, during the environmental review process, to notify all potential responsible agencies associated with a proposed project. The Board finds these contentions to be without merit, as the Board went to great lengths during scoping and the Draft PEIR comment period to reach out to public agencies in California that might want to use the PEIR for their own individual vegetation treatment projects within the treatable landscape.

Under CEQA, responsible agencies are public agencies other than the lead agency that have discretionary approval power over some aspect of a project for which a lead agency is preparing or has prepared an EIR or negative declaration. (See CEQA Guidelines, § 15381.) In making their respective decisions under CEQA, responsible agencies rely on environmental documents prepared by lead agencies. (Id., § 15096.) In some instances, and in particular where there are substantial lag times between decisions by lead and responsible agencies, responsible agencies may have to undertake supplemental environmental review in order to account for project changes or changed circumstances that have occurred since lead agencies took their own actions. (See id., § 15162[c].) In such instances, responsible agencies essentially take on the role of lead agencies for the remaining project approvals. (Id., § 15052[b][2].)

Under CEQA, lead agencies preparing EIRs seek input from responsible agencies at two key points in the environmental review process: during scoping and during the public comment period on Draft EIRs. (See Pub. Resources Code, §§ 21080.4, 21104, 21153; CEQA Guidelines, §§ 15082, 15086, 15096.) Lead agencies thus consult with responsible agencies both with regard to the proper “scope” of the EIR and as to the substance of a draft EIR. CEQA Guidelines, §§ 15082 (determination of scope of EIR), 15086, subd. (a)(1) (consultation concerning draft EIR).

Program EIRs are authorized by CEQA Guidelines § 15168. Notably, nothing in that provision limits the universe of agencies that can make “within the scope” findings based on a program EIR. In other words, not only lead agencies, but also responsible agencies, may rely on program EIRs. Nor does CEQA Guidelines § 15168 limit the universe of agencies that may rely in part on a program EIR while preparing their own site-specific EIRs or negative declarations. Rather, the structure and wording of that provision allow agencies other than the lead agency that prepared the program EIR to rely on the program EIR in making decisions consistent with, or implementing, the program. Some programs (e.g., in the local planning context) may occur only within a single jurisdiction, with the lead agency relying again and again on the program EIRs involved. Other programs, such as the CalVTP, may cross jurisdiction lines, with multiple responsible agencies relying on program EIRs prepared by lead agencies.

Where an agency prepares an initial study revealing new impacts not addressed in a program EIR, the agency must prepare either a site-specific negative declaration or a site-specific EIR. (Id., § 15168[c][1].) In such an instance, the program EIR may supply a large amount of relevant information, though additional analysis is required. (Id., § 15168[d].) Where an initial study or similar environmental checklist document reveals that there are no new impacts not addressed in a program EIR, an agency relying on the program EIR may make a “within the scope” finding, which permits the agency to rely on the program EIR without the need for any site-specific negative declaration or site-specific EIR. (Id., § 15168[c][2].)

Within the Board’s PEIR for the CalVTP, certain types of responsible agencies – those that would carry out individual vegetation treatment projects based on the PEIR – are referred to as “project proponents.” The most common project proponent will be the California Department of Forestry and Fire Protection (CAL FIRE), which will implement many vegetation treatment projects and will provide grant funding for many others. Other categories of responsible agencies include agencies that will be called upon to issue regulatory approvals of various kinds associated with various vegetation treatment options. For example, numerous air pollution control districts and air quality management districts will be acting as responsible agencies in approving smoke management plans for treatments involving prescribed burns. Permits or other regulatory approvals will sometimes also be required from the California Department of Fish and Wildlife (CDFW), California Coastal Commission, and regional water quality control boards. Potential permits and approvals required to implement later vegetation treatment projects under the CalVTP are identified in Section 2.8 of Volume II of the Final PEIR.

In California, there are many state, regional, and local agencies that own large amounts of land or that have land management responsibilities on public lands located within the treatable landscape. At the state level, these include the Department of Parks and Recreation, CDFW, California State Lands Commission, and Caltrans, to name just a few. Other agencies with large land holdings include cities, counties, water and irrigation districts, conservation districts, park and open space districts, conservation agencies, community service districts, utility districts, flood control districts, water agencies, transportation authorities, cemetery districts, and airport districts. In Section 1.5.2 (pages 1-16 through 1-18) of Volume II of the Final PEIR, many such agencies are specifically identified. The Board’s administrative record also includes detailed lists of agencies with substantial land holdings within the treatable landscape. These lists include many, many examples of all of types of agencies mentioned generically above.

The Board has prepared the PEIR with the hope and expectation that it will support “within the scope” findings for many individual vegetation treatment projects carried out by such agencies. The Board has expressly recognized, however, that site-specific EIRs or negative declarations will be necessary where any Project-Specific Analysis (PSA) for a later vegetation treatment project under the CalVTP reveals at least one new impact not addressed in the PEIR. These PSAs will function as the “written checklist or other similar device” authorized for use by subdivision (c)(4).

Contrary to contentions made by some commenters, the Board’s goal of preparing a program EIR capable of supporting future “within the scope” findings is a legitimate exercise clearly authorized by the CEQA Guidelines and upheld by the courts. As noted above, CEQA Guidelines § 15168, subdivision (c)(2), expressly authorizes “within the scope” findings. In Center for Biological Diversity v. California Department of Fish and Wildlife (2015) 234 Cal.App.4th 214, the Court of Appeal upheld CDFW’s program EIR for its statewide fish hatchery and stocking program, knowing that CDFW intended to use the document to support future “within the scope” findings for individual hatchery and stocking activities. Challengers in the case argued that CDFW’s plan to use its program EIR for such a purpose was not authorized by CEQA, and that the document at issue was insufficient for the task, in any event. The court disagreed:

[A]fter a sufficiently comprehensive and specific program EIR has been certified, CEQA allows much of the initial site-specific review to occur outside a formal CEQA process and beyond public view. CEQA does not require the Department to engage in a public process when it determines whether the impacts from a site-specific project were addressed and adequately mitigated in the program EIR. And if the Department finds the impacts were addressed, it need not prepare a new environmental document at all.

“To hold that a project-specific EIR must be prepared for all activities proposed after the certification of the program EIR, even where the subsequent activity is ‘within the scope of the project described in the program EIR’ ([CEQA] Guidelines, § 15168, subd. (c)(5)), would be directly contrary to one of the essential purposes of program EIR’s, i.e., to streamline environmental review of projects within the scope of a previously completed program EIR. We conclude that a program EIR may serve as the EIR for a subsequently proposed project to the extent it contemplates and adequately analyzes the potential environmental impacts of the project....” (Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency (2005) 134 Cal.App.4th 598, 615, 36 Cal.Rptr.3d 249.) (Id. at p. 239.)

Here, the Board fully intends to take advantage of the streamlining opportunities that CEQA Guidelines § 15168 provides. Such streamlining should allow for faster and more complete implementation of the CalVTP while maintaining environmental protections, which is necessary to substantially increase the pace and scale of vegetation treatments to reduce wildfire risk, consistent with Executive Order B-52-18 and Public Resources Code (PRC) section 4483, subdivision (a). This increase in pace and scale is intended, among other things, to reduce risks to life and property. PRC Section 4483[a] specifically directs the Board to prepare the PEIR so that it could be used “as the programmatic environmental document for prescribed fires initiated by a third party for a public purpose pursuant to Section 4491.” This latter statute directs CAL FIRE to cooperate with any “person desiring to use prescribed burning as a means of converting brush-covered lands into forage lands or to help meet wildland management goals, which has as its objective the prevention of high intensity wildland fires, watershed management, range improvement, vegetation management, forest improvement, wildlife habitat improvement, restoring ecological integrity and resilience, community wildfire protection, carbon resilience, enhancement of culturally important resources, and maintenance of air quality, or any combination thereof[.]”

Because the Board itself, as lead agency, will not be carrying out any vegetation treatment programs on its own, all of the agencies that rely on the PEIR and associated “within the scope” findings based thereon would be acting as responsible agencies. Such agencies would demonstrate through their PSAs that the effects of their proposed actions are adequately addressed in the PEIR. In such instances, there would be no need for the agencies to become lead agencies charged with the need to prepare supplemental review documents or a lower-tier EIR or negative declaration. In contrast, if the PSA determines that a proposed project is not “within the scope” of the PEIR, then the project proponent may serve as a lead agency in the preparation of additional site-specific environmental documentation that accompanies the PEIR for CEQA compliance or may prepare a wholly separate, independent CEQA review and documentation process. This process is also described in master response 4 (Vegetation Treatment Project Development, Review, and Decision-Making Process) in Volume I of the Final PEIR.

With the CalVTP, as the lead agency with approval authority for the statewide program, the Board made a good faith effort to identify the known and likely agencies, as well as categories of public agencies, that may seek to implement vegetation treatment under the CalVTP. There are more than 200 agencies with land ownership or land management responsibilities in the treatable landscape. Because of this large number, the Board sent its Notice of Preparation (NOP), which initiated scoping, and the Notice of Availability (NOA), which commenced public review of the Draft PEIR, to all public agencies in the State known to own at least 1,000 acres in the treatable landscape. While this strategy did not provide direct notice to some public agencies with small land holdings, such agencies would not be precluded from relying on the CalVTP PEIR if their later vegetation treatment projects qualify for “within the scope” findings. Although these agencies with small holdings did not receive the NOP or NOA directly from the Board, the agencies could have become aware of the scoping process and Draft PEIR public review period from one of the several newspaper notices published statewide or from the Board’s website, or the press release for the NOP. These notices would have given these agencies the same opportunity to provide input to the Board as was provided to the agencies that directly received their own copies of the two notice documents.

As discussed above, the PEIR alone will not be sufficient for any agency to approve a vegetation treatment project unless the agency demonstrates, through completion of a PSA, that the environmental impacts of the proposed later vegetation treatment project are “within the scope” of the PEIR. Where the agency that did not receive the NOP or NOA is able to make such a determination, this outcome will demonstrate that the PEIR is adequate to provide sufficient CEQA coverage for the proposed project, and the agency will be acting as a responsible agency. In contrast, where an agency that did not receive the NOP or NOA determines, through a PSA, that the PEIR does not contain the information necessary to support a “within the scope” finding, possibly because of an agency-specific resource consideration that is not typically considered in CEQA documents and would constitute a “new impact” that was not considered in the CalVTP PEIR, the agency would prepare a site-specific negative declaration, mitigated negative declaration, or EIR. Under such a scenario, the agency at issue would be acting as a lead agency, not a responsible agency. In its capacity as a lead agency, the agency will be able to rely, through the mechanism of incorporation by reference, on the PEIR to the extent that it provides useful information. This mechanism can be used to incorporate any “document which is a matter of public record or is generally available to the public.” (CEQA Guidelines § 15150.) The agency, then, would be able to rely on the PEIR for some, but not all, of the information relevant to the proposed treatment project. In short, the need for a legally and factually defensible “within the scope” finding will operate as a check against would-be responsible agencies relying solely on the PEIR where there is truly a need for an additional environmental document.

Additionally, a project proponent agency relying on the CalVTP PEIR may follow its own implementing procedures in completing a PSA or additional environmental document. The fact that a certified CalVTP PEIR exists does not mean that use of the document is mandatory for any public agency proposing to implement, fund, or permit a vegetation treatment project. Rather, the certified PEIR should be considered a powerful optional tool that is available to many public agencies to expedite CEQA review while ensuring environmental protections to achieve the mandate to increase the pace and scale of vegetation treatments to reduce wildfire risk in California.

### Use of Best-Available Science in the CalVTP Program EIR

Certain comments assert that the CalVTP PEIR overgeneralizes and oversimplifies findings from studies cited and fails to address the context and/or scope of the scientific evidence it cites. Some such comments also argue that the studies cited are forest-centric and do not apply to all of California’s ecological communities, as presented in the Final PEIR.

Master response 1 in Volume I of the Final PEIR makes clear if cited studies are applicable to forest ecosystems and that the results of vegetation treatments vary depending on the area being treated, as demonstrated by the italicized text below. As discussed in master response 1:

…fuel reduction has proven successful where it is *targeted at protecting specific resources in limited geographic areas*, such as in areas of extreme fire danger or *in the WUI* (Loudermilk et al. 2014). Areas that are treated *often* exhibit different fire progression characteristics and reduced fire severity compared to areas that are not treated (Lydersen et al. 2017; Johnson and Kennedy 2019). Reducing fuels through mechanical treatments and prescribed fire has been found to be effective at reducing fire frequency, fire severity, and annual area burned when applied at the landscape scale over an extended period (Kim et al. 2013; Martinson and Omi 2013; Prichard and Kennedy 2014; Tubbesing et al. 2019). These effects have also been found to be most effective during extreme weather conditions (i.e., hotter and drier). At these times, there is also a higher likelihood that fires will intersect with treated areas, which contributes to higher effectiveness of those treatments at reducing wildfire behavior and effects (Cassell 2018). Another study found simulated fuel treatments in the *Lake Tahoe Basin* returned the *forest* to more historic and fire-resilient conditions, reduced wildfire risk and severity, controlled wildfire carbon emissions, and in the long run, resulted in a net carbon gain (Loudermilk et al. 2014). In another study, mechanical treatments followed by prescribed burning produced the strongest results, with more resilient *forest* structures, lower surface fuel loads, and a reduced rate of accumulation of surface fuels (Schwilk et al. 2009).

(Italics added.)

Master response 1 in Volume I of this Final PEIR further states that the Board acknowledges that the state of wildfire science is continuing to evolve. This acknowledgement is reflected under “Wildfire Risk Reduction” in Section 3.17.1, “Environmental Setting,” in Volume II of this Final PEIR, which states that there are *important data gaps* in documenting fuel treatment effectiveness. In part, these data gaps exist because the uncertainty of wildfire timing and location does not lend itself to a controlled experimental setting within which researchers can predict and measure prefire and postfire conditions, and the available datasets and records of past fire and fuel treatments are not complete and comprehensive (Syphard et al. 2011; Barnett et al. 2016). Despite the data gaps *and acknowledgment that more research is needed* to better understand studies within *conflicting conclusions*, studies cited in Volume II of this Final PEIR support the conclusion that vegetation treatments reduce wildfire risk in the large *majority* of fire conditions.

The assertions (i) that the Final PEIR is using forest-centric studies to suggest vegetation treatments can reduce wildfire intensity and severity in *all* of California’s nearly-200 unique ecosystem types; (ii) that vegetation treatments, in general, are able to slow fire movement and create favorable conditions in *all* of California’s ecological communities; (iii) and finally, that vegetation treatment is the “primary approach” throughout *all* of California’s different natural landscapes does not accurately characterize the use of these studies in the PEIR. The Final PEIR acknowledges that the effectiveness of treatments is based on many parameters and site-specific conditions. This is further acknowledged by the requirement to prepare Project-Specific Analyses to document site-specific resources and Section 3.6, “Biological Resources,” in Volume II of this PEIR, which documents the eighteen ecoregions within the treatable landscape and the various habitats and natural communities within each of those ecoregions.

## Minor additions and clarifications to the CalVTP Final Program EIR

Minor additions and clarifications to the text of the Final PEIR as released on November 27, 2019 are warranted in response to comments received on the Final PEIR or to increase its usefulness for implementation. These text additions and clarifications are presented below. The entire CalVTP Final PEIR, inclusive of these minor revisions, will be posted on the Board’s website if the Final PEIR is certified by the Board.

Changes in the text are signified by strikeouts (~~strikeouts~~) where text is removed and by underline (underline) where text is added. None of the information added to the PEIR constitutes “significant new information” by CEQA standards (CEQA Guidelines Section 15088.5); therefore, recirculation of the PEIR is not warranted.

### Clarification of Standard Project Requirement AD-7

The Board is committed to a transparent implementation process that makes information available to the public, above and beyond the requirements of CEQA. To ensure that information is available to interested parties as early as feasible in the planning phase of a later vegetation treatment project, administrative standard project requirement (SPR) AD-7 has been revised as set forth below. This SPR, as revised, is presented in Section 2.7.1 of Chapter 2, “Project Description,” in Volume II of this Final PEIR, as well as in the Mitigation Monitoring and Reporting Program for the PEIR in Appendix B in Volume I of this Final PEIR.

* **SPR AD-7 Provide Information on Proposed, Approved, and Completed Treatment Projects**. For any vegetation treatment project using the CalVTP PEIR for CEQA compliance, the project proponent will provide the information listed below to the Board or CAL FIRE during the proposed, approved, and completed stages of the project. The Board or CAL FIRE will make this information available to the public via an online database or other mechanism.

Information on proposed projects (PSA in progress):

* GIS data that include project location (as a point);
* project size (typically acres);
* treatment types and activities; and
* contact information for a representative of the project proponent.

The project proponent will provide information on the proposed project to the Board or CAL FIRE as early as feasible in the planning phase. The project proponent will provide this information to the Board or CAL FIRE with sufficient lead time to allow those agencies to make the information available to the public at least two weeks prior to project approval. The project proponent may also make information available to the public via other mechanisms (e.g., the proponent’s own website).

Information on approved projects (PSA complete):

* A completed PSA Environmental Checklist;
* A completed Mitigation Monitoring and Reporting Program (using Attachment A to the Environmental Checklist);
* GIS data that include a polygon(s) of the project area, showing the extent of each treatment type included in the project (ecological restoration, fuel break, WUI fuel reduction)

Information on completed projects:

* GIS data that include a polygon(s) of the treated area, showing the extent of each treatment type implemented (ecological restoration, fuel break, WUI fuel reduction)
* A post-project implementation report (referred to by CAL FIRE as a Completion Report) that includes
* Size of treated area (typically acres);
* Treatment types and activities;
* Dates of work;
* A list of the SPRs and mitigation measures that were implemented
* Any explanations regarding implementation if required by SPRs and mitigation measures (e.g., explanation for feasibility determination required by SPR BIO-12; explanation for reduction of a no-disturbance buffer below the general minimum size described in Mitigation Measures BIO-1a and BIO-2b).

This SPR applies to all treatment activities and all treatment types, including treatment maintenance.

### Clarification of Standard Project Requirement BIO-4

To provide clarification on the requirements for notifications under California Fish and Game Code Section 1602, text in Section 2.7.5 of Chapter 2, “Project Description,” Section 3.6.3 in Section 3.6, “Biological Resources,” and in Section 3.11.3 in Section 3.11, “Hydrology and Water Quality” in Volume II of this Final PEIR, , as well as the Mitigation Monitoring and Reporting Program for the PEIR in Appendix B in Volume I of this Final PEIR is revised as follows:

* **SPR BIO-4: Design Treatment to Avoid Loss or Degradation of Riparian Habitat Function**. Project proponents, in consultation with a qualified RPF or qualified biologist, will design treatments in riparian habitats to retain or improve habitat functions by implementing the following within riparian habitats:
* Retain at least 75 percent of the overstory and 50 percent of the understory canopy of native riparian vegetation within the limits of riparian habitat identified and mapped during surveys conducted pursuant to SPR BIO-3. Native riparian vegetation will be retained in a well distributed multi-storied stand composed of a diversity of species similar to that found before the start of treatment activities.
* Treatments will be limited to removal of uncharacteristic fuel loads (e.g., removing dead or dying vegetation), trimming/limbing of woody species as necessary to reduce ladder fuels, and select thinning of vegetation to restore densities that are characteristic of healthy stands of the riparian vegetation types characteristic of the region. This includes hand removal (or mechanized removal where topography allows) of dead or dying riparian trees and shrubs, invasive plant removal, selective thinning, and removal of encroaching upland species.
* Removal of large, native riparian hardwood trees (e.g., willow, ash, maple, oak, alder, sycamore, cottonwood) will be minimized to the extent feasible and 75 percent of the pretreatment native riparian hardwood tree canopy will be retained. Because tree size varies depending on vegetation type present and site conditions, the tree size retention parameter will be determined on a site-specific basis depending on vegetation type present and setting; however, live, healthy, native trees that are considered large for that type of tree and large relative to other trees in that location will be retained. A scientifically-based, project-specific explanation substantiating the retention size parameter for native riparian hardwood tree removal will be provided in the Biological Resources Discussion of the PSA. Consideration of factors such as site hydrology, erosion potential, suitability of wildlife habitat, presence of sufficient seed trees, light availability, and changes in stream shading may inform the tree size retention requirements.
* Removed trees will be felled away from adjacent streams or waterbodies and piled outside of the riparian vegetation zone (unless there is an ecological reason to do otherwise that is approved by applicable regulatory agencies, such as adding large woody material to a stream to enhance fish habitat, e.g., see *Accelerated Wood Recruitment and Timber Operations: Process Guidance from the California Timber Harvest Review Team Agencies and National Marine Fisheries Service*).
* Vegetation removal that could reduce stream shading and increase stream temperatures will be avoided.
* Ground disturbance within riparian habitats will be limited to the minimum necessary to implement effective treatments. This will consist of the minimum disturbance area necessary to reduce hazardous fuels and return the riparian community to a natural fire regime (i.e., Condition Class 1) considering historic fire return intervals, climate change, and land use constraints.
* Only hand application of herbicides approved for use in aquatic environments will be allowed and only during low-flow periods or when seasonal streams are dry.
* The project proponent will notify CDFW when required by ~~pursuant to~~California Fish and Game Code Section 1602 prior to implementing any treatment activities in riparian habitats. Notification will identify the treatment activities, map the vegetation to be removed, identify the impact avoidance identification methods to be used (e.g., flagging), and appropriate protections for the retention of shaded riverine habitat, including buffers and other applicable measures to prevent erosion into the waterway.
* In consideration of spatial variability of riparian vegetation types and condition and consistent with California Forest Practice Rules Section 916.9(v) (February 2019 version), a different set of vegetation retention standards and protection measures from those specified in the above bullets may be implemented on a site-specific basis if the qualified RPF and the project proponent demonstrate through substantial evidence that alternative design measures provide a more effective means of achieving the treatment objectives and would result in effects to the Beneficial Functions of Riparian Zones equal or more favorable than those expected to result from application of the above measures. Deviation from the above design specifications, different protection measures and design standards will only be approved when the treatment plan incorporates an evaluation of beneficial functions of the riparian habitat and with written concurrence from CDFW.

This SPR applies to all treatment activities and treatment types, including treatment maintenance.

### Clarification Regarding Effectiveness of Vegetation Treatments

To provide clarification on the wildfire conditions under which vegetation treatments can be effective, and consistent with the amplifications and clarifications explained in Section 1.1.2 above, text in Section 1.1 of Chapter 1, “Introduction,” and Section 2.5.1 of Chapter 2, “Project Description,” in Volume II of this Final PEIR have been revised as set forth below. The paragraph is identical in both of these sections.

Vegetation treatment at the landscape scale is focused on reducing the likelihood of a ground fire increasing in intensity and helping fire responders more easily contain a fire. Certain wind and weather conditions lead to high-intensity, fast-moving, wind-driven wildfires. Although the most individually destructive, these extreme fires represent a small number of the total fires that occur each year. While vegetation treatments under the CalVTP may not be able to slow or halt the extreme fires, most fires that occur within the state are not highly wind driven, and the proposed vegetation treatments can help slow and suppress them. Vegetation treatments can also play a valuable role in containing the more extreme fires, when weather conditions shift, wind subsides, when the fire moves from a crown fire to surface fuels**,** and/or fire intensity decreases. Vegetation treatments also improve the ability of firefighters to protect values at risk and to accomplish perimeter control when firefighting resources are overextended.

The “Introduction” section of the “Executive Summary” in Volume II of this Final PEIR has also been revised to include the text below.

These conditions have resulted in the largest, most destructive, and deadliest wildfires on record in California history, all occurring in 2018 and a growing total number of fires and acreage burned. Since 2010, the number of wildfires occurring annually has been increasing, as has the number of acres burned. Much of this increase in acreage, especially in 2017 and 2018, is the result of record-setting fires primarily driven by wind, such as the Thomas and Northern California wildfires (2017) and the Camp and the Mendocino Complex fires (2018). However, destructive fires primarily driven by wind are a small proportion of the thousands of fires that occur every year that do not reach catastrophic levels. Fires driven by topography and those that move more slowly through the landscape, as well as primarily wind-driven fires that have slowed, are those that might be further slowed or stopped entirely by a vegetation treatment implemented under the CalVTP. Vegetation treatments can also play a valuable role in containing the more extreme fires, when weather conditions shift, wind subsides, when the fire moves from a crown fire to surface fuels**,** and/or fire intensity decreases. Vegetation treatments also improve the ability of firefighters to protect values at risk and to accomplish perimeter control when firefighting resources are overextended.

### 2.1.4 Addition of CEQA Findings Template (Attachment B) to Appendix PD-3

Attachment B has been added to Appendix PD-3 in Volume II of this Final PEIR to provide a template for use by project proponents to streamline the preparation of CEQA findings and statements of overriding considerations. This attachment replaces the placeholder that was included the Final PEIR that was released on November 27, 2019.

## References

City of Santa Barbara Fire Department. 2019 (December 6). *2019 Cave Fire and High Priority Fuel Reduction Projects: Vegetation Management Section*. Santa Barbara, CA.

Hawks, David. Fire Chief. Butte County Fire Department, Butte County, Oroville, CA. December 11, 2019—testimony at Board of Forestry and Fire Protection Board Hearing regarding effectiveness of vegetation treatments in fighting the 2018 Camp Fire.

1. CEQA case law is clear that, after publishing a proposed final EIR and obtaining public input on it, a lead agency may add more information to the document before the lead agency’s decision-making body takes final action to officially certify the document. (See, e.g., *Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 664-666 [addendum to final EIR did not trigger recirculation or otherwise violate CEQA].) [↑](#footnote-ref-1)
2. State CEQA Guidelines, § 15370. [↑](#footnote-ref-2)
3. See, e.g., *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140. [↑](#footnote-ref-3)
4. See, e.g., *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 619-627; *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 523-529 (*Save Panoche Valley*); *Environmental Council, supra*, 142 Cal.App.4th at pp. 1038-1041. [↑](#footnote-ref-4)
5. *Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 289-292; see also Cal. Pub. Resources Code, § 21004 [“[i]n mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than [CEQA]”; “[h]owever, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law”]. [↑](#footnote-ref-5)
6. State CEQA Guidelines, § 15126.2[a][1][A]. [↑](#footnote-ref-6)
7. Italics added. [↑](#footnote-ref-7)
8. Cal. Pub. Resources Code, §§ 21002, 21081; State CEQA Guidelines, §§ 15002[a][3], 15021[a][2]; *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 134; *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233. [↑](#footnote-ref-8)
9. *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 403 (*Laurel Heights I*). [↑](#footnote-ref-9)
10. *Ibid*. [↑](#footnote-ref-10)
11. Cal. Pub. Resources Code, § 21100(b)(3); Guidelines, § 15126.4[a][1]. [↑](#footnote-ref-11)
12. (1988) 47 Cal.3d 376, 408, original italics (*Laurel Heights I*). [↑](#footnote-ref-12)
13. (2006) 142 Cal.App.4th 1018, 1039. [↑](#footnote-ref-13)
14. *Id*. at pp. 1039-1041. [↑](#footnote-ref-14)
15. (1994) 24 Cal.App.4th 826, 841. [↑](#footnote-ref-15)
16. *Ibid*., original italics; internal quotation marks omitted. [↑](#footnote-ref-16)
17. (2018) 6 Cal.5th 502, 523. [↑](#footnote-ref-17)
18. (2013) 57 Cal.4th 439, 465-466. [↑](#footnote-ref-18)
19. *Id*. at 465, original italics; internal citations omitted. [↑](#footnote-ref-19)
20. *Id*. at p. 519, quoting Pub. Resources Code, [§ 21081, subd. (a)(2)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000220&cite=CAPHS21081&originatingDoc=If7112fc2fddb11e28503bda794601919&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=%28sc.UserEnteredCitation%29#co_pp_d86d0000be040) [↑](#footnote-ref-20)
21. See also *Environmental Council, supra*, 142 Cal.App.4th at p. 1036 [“[a] public agency can make reasonable assumptions based on substantial evidence about future conditions without guaranteeing that those assumptions will remain true”]. [↑](#footnote-ref-21)
22. [(1988) 202 Cal.App.3d 296](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=226&cite=202CAAPP3D296&originatingDoc=I333bf2b5fabd11d9bf60c1d57ebc853e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), 307-308. [↑](#footnote-ref-22)
23. *Id*. at pp. 306–308. [↑](#footnote-ref-23)
24. *Id*. at p. 309. [↑](#footnote-ref-24)
25. *Id*. at pp. 308–309. [↑](#footnote-ref-25)
26. *Id*. at p. 308 (italics added). [↑](#footnote-ref-26)
27. *Id*. at p. 1021. [↑](#footnote-ref-27)
28. *Id*. at pp. 1028-1029. [↑](#footnote-ref-28)
29. *Fairview Neighbors, supra*, 70 Cal.App.4th at p. 245. [↑](#footnote-ref-29)
30. *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 737-738 (*POET*). [↑](#footnote-ref-30)
31. See *POET, supra*, 218 Cal.App.4th at p. 738 [noting two principles gleaned from deferral of mitigation cases: (1) “the deferral of the formulation of mitigation measures requires the agency to commit itself to specific performance criteria for evaluating the efficacy of the measures implemented” and (2) “the ‘activity’ constituting the CEQA project may not be undertaken without mitigation measures being in place ‘to minimize any significant adverse effect on the environment of the activity’”]; *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-794 [deferral is permissible where the agency commits itself to mitigation and either (1) adopts a performance standard and makes further approvals contingent on finding a way to meet the standard or (2) lists alternative means of mitigating the impact which must be considered, analyzed, and possibly adopted in the future]; *Cf. Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [deferral is impermissible when the agency “simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report”]. [↑](#footnote-ref-31)
32. *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 945 (*Rialto Citizens*). Accord *Save Panoche Valley, supra*, 217 Cal.App.4th at pp. 524-525. [↑](#footnote-ref-32)
33. (2011) 195 Cal.App.4th 884. [↑](#footnote-ref-33)
34. *Id*. at p. 912. See also *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, 409-413 [court upholds lead agency’s reliance on hazardous materials clean-up laws as being sufficient to ensure adequate mitigation under CEQA]; *Citizens Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360, 383-385 [court upholds mitigation measure requiring project applicant to obtain a “determination of no hazard to air aviation” from Federal Aviation Administration in order to mitigate wind farm’s potential impacts to aviation safety]; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 945-947 [court upholds mitigation measure requiring the private applicant and local lead agency to consult with the United States Fish and Wildlife Service Under the Endangered Species Act in order to address impacts to kangaroo rats]; and *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 245-246 [court upholds a state agency’s reliance on requirements of federal regulations implementing the Endangered Species Act as providing adequate CEQA mitigation for effects on fish species]. [↑](#footnote-ref-34)
35. *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 523. [↑](#footnote-ref-35)
36. State CEQA Guidelines, § 15126.2[a][1][A]. [↑](#footnote-ref-36)
37. See, e.g., *Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1029–1030; and *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1037-1038. [↑](#footnote-ref-37)
38. Cal. Pub. Resources Code, § 21081.6[b]. [↑](#footnote-ref-38)
39. *Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 908, quoting *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241, 256. [↑](#footnote-ref-39)
40. Cal. Pub. Resources Code, § 21081[a][3]. [↑](#footnote-ref-40)
41. Cal. Pub. Resources Code, § 21003[f]. [↑](#footnote-ref-41)
42. Cal. Pub. Resources Code, § 21064.5, italics added. [↑](#footnote-ref-42)
43. State CEQA Guidelines, § 15088.5[a][3]; *Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130 (*Laurel Heights II*); *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 329-330. [↑](#footnote-ref-43)
44. 223 Cal.App.4th 645. [↑](#footnote-ref-44)
45. 223 Cal.App.4th at p. 650. [↑](#footnote-ref-45)
46. 223 Cal.App.4th at p. 655 (holding that the analysis of impacts of the roadway improvement project violated CEQA because “the EIR fails to identify any standard of significance, much less to apply one to an analysis of predictable impacts from the project” on adjacent old-growth redwood trees). The court went on to explain the lead agency’s fundament error: “Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.” Id. at p. 656. [↑](#footnote-ref-46)
47. *Id*. at p. 656. [↑](#footnote-ref-47)
48. *Id*. at pp. 656-657. [↑](#footnote-ref-48)
49. (2016) 6 Cal.5th 160. [↑](#footnote-ref-49)
50. *Id*. at p. 185. [↑](#footnote-ref-50)
51. *Ibid*. [↑](#footnote-ref-51)
52. *Laurel Heights I, supra*, 47 Cal.3d at p. 408. [↑](#footnote-ref-52)
53. *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 523. [↑](#footnote-ref-53)
54. *Laurel Heights I, supra*, 47 Cal.3d at p. 408. [↑](#footnote-ref-54)
55. *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 523. [↑](#footnote-ref-55)
56. The only category of biological resource impacts that would be significant and unavoidable are impacts to special-status bumble bees. (See PEIR, vol. 2, p. 3.6-171.) [↑](#footnote-ref-56)
57. *Laurel Heights I, supra*, 47 Cal.3d at p. 408. [↑](#footnote-ref-57)
58. *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 523. [↑](#footnote-ref-58)