No. A165012

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

Claremont Canyon Conservancy, et al.
Petitioner and Respondent,

v.

The Regents of the University of California, et al.
Defendants and Appellants.

APPELLANTS' OPENING BRIEF

Appeal from the Superior Court of California, County of Alameda
Case No. RG21091666/RG21091977
The Hon. Frank Roesch, Judge

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(Cal. Rules of Court, rule 8.208)

Pursuant to California Rules of Court, rule 8.208, Appellant Regents of the University of California is a public agency of the State of California. Appellant Carol T. Christ is acting in her role as Chancellor of the University of California, Berkeley. Counsel for Appellants know of no other person or entity that must be listed under Rule 8.208, subdivision (e)(1), (2).

Amanda Monchamp

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I. INTRODUCTION

The Regents of the University of California, Berkeley ("Regents" or "University") approved the Wildfire Vegetation Fuel Management Plan ("WVFMP," "Plan" or "Project") on August 17, 2020 to manage vegetation to reduce fire risks in the 800-acre Hill Campus. Administrative Record ("AR") 1. The Regents certified an Environmental Impact Report ("EIR"), analyzing the environmental impacts of the Project pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code Section 21000, *et seq*.). Respondent Hills Conservation Network ("HCN") and Respondent Claremont Canyon Conservancy ("CCC") (collectively, "Respondents") challenged the adequacy of the project-level review for four of the nine Individual Treatment Projects ("ITPs") analyzed in the EIR.

Fourteen large fires burned through the East Bay Hills between 1923 and 1998, including the 1991 Oakland Tunnel Fire, which killed 26 people and destroyed over 3,000 homes. AR2235-36, 27945-46. In 2017, the Grizzly Fire burned 20 acres and required the evacuation of 1,000 people. AR1933. Since then, wildfire risk has increased dramatically. AR17429. Thus, the importance of the WVFMP and the four specific ITPs cannot be overstated: "The WVFMP will reduce dire risks to life, property, and natural resources on the UC Berkeley campus and in the greater East Bay region by managing the amount and continuity of vegetation in the Hill Campus that increases wildland fire hazards." AR229, 2360 (there are over 2,000 structures within and adjacent to the WVFMP area).

Now, after years of litigation delay and in the middle of a

climate change-driven drought, implementing the four challenged ITPs is critically important for the safety of the entire East Bay, including Respondents themselves.

The University relied on experts and scientists to determine the most appropriate and effective fire fuel management strategies for the Hill Campus. Consistent with this expert guidance, the University approved a Project that will reduce the fire fuel in specific areas of the Hill Campus using a management principle called variable density thinning, whereby only those trees that pose a high wildfire risk would be removed based on specific criteria related to the health and flammability of each tree, the surrounding vegetation, and the on-the-ground condition. AR1946. Many large trees would remain, including some eucalyptus, to maintain the habitat, aesthetic, and carbon sequestration values of the forest. AR1338. When finally allowed after this litigation, the University will rely on experts to determine which specific trees should be removed by applying the standards and criteria detailed in the WFVMP and analyzed in the EIR.

The heart of this litigation is simple: HCN wants the University to remove fewer trees; CCC wants the University to remove more trees. To thwart the University's ability to remove the non-native and fire-prone eucalyptus trees with the aim of preserving aesthetic views (Appellants' Appendix "AA" 345:18-26), HCN claims a rigid, prescriptive metric that assures more trees will be preserved is required. CCC has the opposite opinion, believes the Project does "too little" and wants all

eucalyptus trees removed. AA253:18-29, 254:1-9, 262:15-22, 1347. Both Respondents want the University to select a different fuel management strategy and both proposed project alternatives. AR2965-89, 4630-35. The University analyzed their proposals as alternatives in the EIR, showing that the Project is more effective at reducing wildfire risk. AR2280, 2286-99.

Though Respondents claim they do not understand the Project description, the Record shows they submitted informed comments, demonstrating in-depth understanding and that they simply do not *agree with* the Project. CEQA requires deference to the Regents in preparing the WVFMP, based on substantial evidence. The Regents have the discretion, and indeed the legal and moral responsibility, to approve a fuel management plan that reduces wildfire risk in the manner they deem most effective for the safety of campus and the adjacent lands.

The Regents appeal the trial court's decision, and request this Court determine that the Project description is adequate under CEQA and reject Respondents' substantive arguments that the EIR was inadequate. The Regents request this Court order the trial court to set aside its decision and deny all of Respondents' claims.

II. STATEMENT OF FACTS

A. The History of Fire Ecology in the East Bay Hills.

The Project intends to reduce wildfire risk by removing vegetation that could become fire fuel within the Hill Campus, an 800-acre forested area located uphill from the University's main

campus in the East Bay Hills ("Plan Area"). AR1938-39. The Hill Campus is a living, dynamic landscape that is "heavily vegetated" and consists of "steep and rugged land and has a history of wildfires." AR1932; 2360. The Plan Area borders private residences and the Lawrence Berkeley National Laboratory ("LBNL"), as well as other forested open space areas, including the East Bay Regional Park District's ("EBRPD") Claremont Canyon Regional Preserve. AR2361.

The East Bay Hills have a high fire risk because of the historic introduction of non-native blue gum eucalyptus. AR1339. The proliferation of this highly-flammable species results in much greater fuel loads than would have existed in a native ecosystem. *Id.*; *see* AR17428. Moreover, natural fires have been suppressed to protect the millions of people who live in the shadow of the East Bay Hills. *Id.* The combination of highly-flammable, non-native species, fire suppression, conducive topography, dense urban development, limited fire-fighting access, Diablo winds, and increasingly hot, dry summers presents catastrophic risks at the wildland/urban interface. AR1339, 2357.

B. Eucalyptus in the Project Area Are a Significant Fire Hazard that Must Be Reduced.

Eucalyptus stands represent a particularly extreme fire risk because of their oily foliage; the high volume of dead debris they produce spreads fire both vertically and horizontally. AR1338-39. Unlike native woodlands, where vertical separation of branches and surface-level fuels can prevent fires from reaching the tree crown, the structure and stringy bark of

eucalyptus provide a ready pathway for wildfire to climb vertically into the tree canopy. AR1338. On a scale of 1 to 10 for ignition potential, eucalyptus scored 1 to 2 (*i.e.*, very high ignition potential), while native oak/bay woodland scored 6 to 8. AR2236.

Eucalyptus stands can be made more fire-safe through repeated intervention to reduce fuel volumes; the gaps and wind blockages created by variable density thinning limit fire spread in tree crowns to slow wildfire's advance. AR1338-41. As noted by some stakeholders, eucalyptus forests in the East Bay Hills provide habitat, aesthetic, and carbon sequestration values. AR1337-38. To balance wildfire risk with these conflicting reasons to retain trees, the University chose targeted, not complete, removal of eucalyptus within the Plan Area, and retention of larger, less flammable eucalyptus. AR1338-41, 1410.

C. The University's Long-Standing Efforts for Fire Fuel Management of the Hill Campus.

Under the existing 2020 Hill Area Fire Fuel Management Program (approved in 2003), the University undertakes ongoing minor vegetation treatment maintenance actions that were approved under the 2020 Long Range Development Plan EIR. AR1938, 2345-46. The University proposed a fuel management plan for the Hill Campus in 2005, to be funded by the Federal Emergency Management Agency ("FEMA"), but HCN challenged the federal approvals, resulting in the continued build-up of fire fuel in the Hill Campus. AR1366.

In April 2019, the University received a $3.621 million grant from the California Department of Forestry and Fire Protection ("CalFire") to treat vegetation in 250 acres of the 800-

acre Hill Campus. AR2241, 2347-54, 6325-70. The CalFire grant also provided funding towards the preparation of the WVFMP, its EIR, and the ITPs' implementation. AR6369-70. CalFire is aggressively pursuing statewide wildfire risk reduction, having recently certified an EIR for the California Vegetation Treatment Program, to implement vegetation treatments similar to those in the WVFMP. AR5283.

The University has been waiting 17 years to implement Hill Campus fuel management; the need to move forward is urgent.

D. The Project's Objectives Are Intended to Reduce Risk of a Catastrophic Fire.

The Project objectives include substantially reducing risk to life, property, and natural resources by managing the amount and continuity of vegetation in the Hill Campus that increases wildland fire hazards, substantially reducing highly-flammable invasive plant species, like eucalyptus, and promoting the growth of fire-resistant native plant species.[1] AR1941.

The Plan was prepared by an expert wildland fire manager and fire ecologist with over 40 years of directly related experience and was reviewed by the UC Berkeley Fire Mitigation Committee, an inter-department committee headed by a Wildland Fire Science professor, with representation from the University's Facilities Services, Environment Health & Safety,

[1] The Project focuses on fuel management through vegetation treatment only; it is not a "wildfire management plan," which would include other aspects of fire management such as ignition detection or emergency response infrastructure. AR1361, 2339.

and police departments as well as LBNL Protective Services. AR1412.

To achieve the Project objectives, the Project includes four vegetation treatment types:

- Evacuation support treatments (to maintain emergency evacuation routes),
- Temporary refuge areas (for evacuees and firefighters),
- Fuel break treatments (strategically located linear strips to aid in containment of fire and reduce the likelihood of crown fire transitions), and
- Fire hazard reduction treatments (reducing hazardous fire conditions in areas near buildings).

AR1938-57. Five vegetation treatment activities are proposed to implement the four treatment types: manual treatment, mechanical treatment, prescribed broadcast burning, managed herbivory (livestock grazing), and targeted ground application of herbicides. *Id*.

The WVFMP identifies nine specific ITPs, including two fuel break projects, four temporary refuge areas, and three Fire Hazard Reduction projects ("FHRs"). *Id*. Each of these specific areas of the Hill Campus was identified as critical for life safety protection. AR746-49.

E. <u>The ITPs Challenged by Respondents.</u>

Respondents challenged the adequacy of the project-level review for four of the nine ITPs analyzed in the EIR. Both Respondents challenged the adequacy of the Claremont Canyon, Strawberry Canyon, and Frowning Ridge FHRs, which collectively comprise 98.4 acres of the 800-acre Hill Campus. The

Strawberry Canyon FHR covers 23.7 acres and will protect the LBNL, Lawrence Hall of Science, Space Science Laboratory, and the Mathematical Science Research Institute. AR1958, 2397. The Frowning Ridge FHR covers 49.2 acres and will protect LBNL and the Botanical Garden. *Id*. Both of these FHRs will also protect the main part of the University's campus. AR2397; 1938-39. The Claremont Canyon FHR is 25.5 acres that will protect nearby residential neighborhoods and East Bay Municipal Utility District watershed lands. *Id*. HCN also challenged the East-West Fuel Break project ("East-West FB"), which is 1.4 miles long and 126 feet wide. AR1957-60; AA250:11-18, 328:2-10. The East-West FB will help firefighters keep fire from spreading from Claremont Canyon to Strawberry Canyon, which is key to protecting the surrounding residences. AR2400, 2397, 2474.

The challenged ITPs are located in areas where the University has identified high wildfire risk because the areas are dominated by highly-flammable eucalyptus and coniferous forests. AR2049-50, 2075. Eucalyptus forest comprises approximately 93% of the Claremont Canyon FHR acreage and 90% of the Strawberry Canyon FHR acreage; eucalyptus and nonnative coniferous forest comprises approximately 81% of the Frowning Ridge FHR acreage. AR2075, 1958.

F. The Project EIR Provides Sufficient Detail to Inform the Decisionmakers and Public as to How Variable Density Thinning Will Be Applied to Reduce Wildfire Risk in the FHRs.

The Project description comprised over 30 pages of detailed description and photographs depicting the treatment methods

and forest. AR1938-1967. Each ITP is described in detail in the EIR, with additional information provided in the WVFMP itself (attached to the EIR as Appendix A). AR1940-46, 1957-59, 2331, 2391-401. There should be no question that the description of the East-West Fuel Break is clear because the EIR expressly assumes that it would require removal of all trees and vegetation, including areas of eucalyptus trees (i.e., a "non-shaded fuel break"), even though the WVFMP does indicate that some of the trees at both ends are likely to remain the EIR conservatively assumed no trees would remain. AR1945, 1959, 2000. Details on the location and expected methods used to remove dead and flammable vegetation within each FHR are included in the Project description. AR1946-57. The FHRs only include manual and mechanical treatments and herbicide use; no prescribed burning or herbivory would occur. AR1958. Mechanical treatment is only used on slopes less than 30 percent, and manual treatments used in steeper areas. AR1399, 2136, 2395-96. Removed and pruned trees are treated with herbicide to prevent regrowth. AR1955, 1958-59.

The University's manual and mechanical removal approach in the FHRs is to implement variable tree density thinning "influenced by the *condition of adjacent vegetation*" at the time of vegetation removal. AR1946 (emphasis added). Variable density thinning does not include "complete removal of the overstory" as HCN alleges (AA330:13-17, 339:1-3, 340:26-27), since variable density thinning will, by definition, result in a canopy of variable density. AR1338, 1946. As the University repeatedly made clear,

no clearcutting would occur in the FHRs. AR1402-04, 1410, 1418. The FHR treatments would focus on removing high hazard vegetation, which is not based on whether the species are native but on each tree's fire risk characteristics. AR1946, 1413. "Dead, unhealthy and structurally unsound" trees of all species would be removed due to their fire risks. AR1946, 2397. The FHRs target areas that are dominated by eucalyptus and Monterey pine because these species are the most prone to torching and burning with high intensity. AR1338-39, 2049, 2236. However, under variable density thinning, some of these trees would remain at safe distances based on the surrounding vegetation and topography, resulting in a more fire-resistant forest that preserves the aesthetics and carbon sequestration benefits of the remaining trees. AR1338-41, 1404. The tree removal criteria, as detailed in the EIR, is used by expert biologists, arborists, and registered professional foresters to determine which trees to remove. AR1338; 1946; 6361.

> Criteria for tree removal would include consideration of tree health, structure, height, potential for failure, flammability/fire hazard, high fuel volume production of small diameter fuels, and competition with other trees (including for water, space, and light). ***Dead, unhealthy, and structurally unsound trees would be removed, as would trees prone to torching or burning with high fire intensity.***

AR1946 (emphasis added). The EIR Project description includes a specific example of how variable density thinning would be implemented by the arborist and foresters:

> ***if two trees are adjacent and one is prone to torching,***

> ***the tree that is prone to torching would be removed***. *Shrubs would be removed from under the tree that is to be retained.* ***Shrubs would be removed from under and within 6 feet of the tree canopy.*** *There is no set tree density, because after trees that are unhealthy, structurally unsound, and prone to torching are removed, a canopy of variable density will result.* ***Variable canopy cover and tree density would be created to help reduce canopy fire spread.***

AR1946 (emphasis added).

> Near roads, trails, and buildings, lower limbs of trees would be pruned, understory vegetation shortened, and grass mowed. ***Shrubs and short trees under tall trees to be retained would be removed such that a vertical separation of 2.5 times the height of understory tree or shrub and the overstory tree canopy would be created***.

AR1946 (emphasis added); *see also* AR2398.

The WVFMP elaborates on these criteria, explaining that if a tall tree is to be retained (e.g., **with branches starting at 25 feet aboveground, as with some eucalyptus**), any shrubs or short trees underneath it and more than 10 feet tall would be removed to create vertical separation and reduce the risk of wildfire spreading. AR2398.

The EIR and WVFMP explain that in FHRs, "[g]rouping of multiple trees that have torching potential because of their vertical connectedness will be thinned so that the canopies are separated vertically, with a preference for retention being for healthier trees that will allow for sustained growth…. Canopy cover and tree density will be variable to help reduce canopy fire spread." AR2394; *see also* AR1945-46, 5311, 5385 (examples of

fuel reduction treatments).

Weather events have significantly changed conditions in the Project Area over time, including freezes in 1972 and 1990 that "top-killed" large numbers of eucalyptus. AR1373, 2241, 2346. California's ongoing droughts, which are increasingly frequent and severe, have induced tree mortality. AR2155, 2234-35. Thus, the condition of the Hill Campus's forest is changeable and by the time each FHR is implemented, the conditions of each tree and its surroundings will be different. Thus, arborists and foresters will evaluate the condition of the forest at the time of implementation. AR1381; 1946; 6361.

Both Respondents would prefer a plan that is so laboriously specific that identifies which specific trees will be removed, but a tree-by-tree analysis prior to implementation of the FHRs is time consuming, expensive, and would have little probative value to the EIR process, all the more so given the ever-changing nature of the wildland forest landscape. AR29257-60. As HCN admits: "Wildland fuel complexes are inherently dynamic. Several critical factors will change over time that in turn will change the fire hazard, both in nature and degree of severity." AR1413, 2471.

The EIR identified which specific areas of the Hill Campus will undergo fuel management, provided clear criteria to determine which trees will be removed upon implementation of the Plan, and analyzed the impact of the application of the criteria as well as the result of how removal of these flammable species would create a thinned forest to help stop the spread of wildfire. AR1940, 1946, 2049.

G. The EIR Approval Process.

On November 20, 2019, the University issued a Notice of Preparation for the EIR. AR4646. On December 2, 2019, the University held a public scoping meeting. AR3199-242. During the public review process, HCN submitted an alternative proposing retention of large eucalyptus and pine, prohibiting removal of any vegetation located more than 200 feet from a road or structure (*i.e.*, no vegetation removal in almost any portion of the FHRs), prohibiting removal of trees with a diameter greater than 18 inches, and prohibiting post-treatment application of herbicides. AR1384, 4630-40. CCC also submitted an alternative ("McBride Plan") to treat 400-500 acres of the 800-acre Plan Area, remove all eucalyptus and conifer, and replant native vegetation. AR2965-89. The McBride Plan would also establish additional fuel breaks and add wildfire management elements such as new wildfire detection equipment and placement of water tanks. AR2974, 2985-86. The University considered Respondents' comments, analyzed CCC's McBride Plan as Alternative A, and used HCN's proposal to develop Alternative B. AR2280, 2286-99.

The University issued its Notice of Availability for the Draft EIR on August 14, 2020, with a public comment period extended through October 5, 2020. AR1333, 3590-93. On January 27, 2021, the University released the Final EIR, which included revisions in response to comments. AR1328-1872 (Volume I), AR1873-2989 (Volume II); AR1393-1427 (responses to HCN comments); AR1346-48, 1352-93 (responses to CCC comments). On February 10, 2021, the Regents certified the EIR

and approved the WVFMP. AR2-230; *see also* AR5.

III. PROCEDURAL HISTORY AND STATEMENT OF APPEALABILITY

On March 12, 2021, HCN filed a petition for writ of mandate under CEQA challenging the EIR's Project description, along with the EIR's analysis of visual, wildfire, and biological impacts. AA13-40. On March 15, 2021, CCC filed a petition for writ of mandate under CEQA, challenging the EIR's Project description, wind speed modeling, and climate change analysis. AA47-64. On August 12, 2021, the cases were consolidated. AA180-83. On December 10, 2021, the trial court heard oral arguments. AA452. On February 2, 2022, the trial court issued its order granting Respondents' petitions on the grounds that the Project description was not "accurate, finite, and stable" and represented prejudicial error. AA453, 458. The trial court did not rule on any of Respondents' remaining arguments. The trial court issued the judgment and writ and served all parties on February 22, 2022. AA462-474, 475-77, 461.

The trial court's grant of a petition for writ of mandate and issuance of a writ under CEQA is an appealable final judgment pursuant to Code of Civil Procedure Section 904.1(a)(1) and CEQA Section 21168.9. The University timely filed its Notice of Appeal on April 18, 2022. AA480.

IV. STANDARDS GOVERNING THE COURT'S REVIEW

An appellate court's review of an agency's CEQA determination is the same as the trial court's: the appellate court reviews the agency's action, not the trial court's decision, and in that sense appellate judicial review under CEQA is independent

of the trial court. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427 (*Vineyard*).

In mandamus actions under CEQA, the court's review focuses on whether the agency prejudicially abused its discretion. *Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132-33; CEQA §21168.5. Abuse of discretion may occur in one of two ways: "by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence." *Vineyard*, 40 Cal.4th at 435, citing CEQA §21168.5. "Judicial review of these two types of error differs significantly" and "a reviewing court must adjust its scrutiny to the nature of the alleged defect." *Id*. While the court determines de novo whether the agency has employed the correct procedures under CEQA, the court gives greater deference to the agency's factual determinations under the substantial evidence test. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 (*Friant Ranch*).

A. The Substantial Evidence Standard Applies to Conclusions, Factual Findings and Methodology.

Courts "apply the substantial evidence test to conclusions, findings, and determinations and to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied." *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546. Courts apply this "highly deferential substantial evidence standard of review" because the

"agency is the finder of fact" and "has the discretion to resolve factual issues and to make policy decisions." *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 984-85 (*CNPS*) (internal citations omitted). This deferential standard applies to the University's findings of fact. *Friant Ranch*, 6 Cal.5th at 514; *South of Market Community Action Network v. City & County of San Francisco* (2019) 33 Cal.App.5th 321, 337 (*SOMCAN*).

Courts consider de novo whether an agency proceeded in a manner required by law, such as the omission of required information to such a degree that "it precludes informed decision-making" or "informed participation by the public." *CNPS*, 177 Cal.App.4th at 987. In *SOMCAN,* 33 Cal.App.5th at 332, this Court stated that "[w]hether an EIR correctly describes a project is a question of law, subject to de novo review", quoting *Rodeo Citizens Association v. County of Contra Costa* (2018) 22 Cal.App.5th 214, 219 (*Rodeo*). However, the *Rodeo* court actually applied the substantial evidence standard to the factual question in the project description because courts apply the substantial evidence standard to factual questions even when the issue relates to the project description. *Rodeo,* 22 Cal.App.5th at 225; *see Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26 (*Dry Creek*) and Practice Under the California Environmental Quality Act, 2d ed Cal CEB ("Practice Under CEQA") §11.39.

As stated in *Ebbetts Pass Forest Watch v. California Department of Forestry and Fire Protection* (2008) 43 Cal.4th 936,

954 (*Ebbetts Pass 2008*), whether an agency "applied the correct legal standard to determine the scope of analysis is a predominantly procedural question [the court reviews] independently, but the correctness of factual findings … is a predominantly factual matter [the court reviews] only for substantial evidence." As in *Ebbetts Pass 2008*, the substantial evidence standard of review applies to the University's factual determination that the prescribed fuel management criteria include sufficient detail to allow future determination of which trees would be removed and that a more detailed assessment of existing tree conditions was not necessary. The Project description here satisfies the requirements of CEQA, regardless of the standard of review.

Courts will find that an agency has satisfied the substantial evidence test if there "enough relevant information and reasonable inferences … that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." Cal. Code Regs, Tit. 14 ("Guidelines") §15384(a); *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391. Agency decisions are presumed correct, and Respondents bear the burden of proving otherwise. *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 117; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530. Respondents also bear the burden of identifying for this Court all evidence on point, not merely their own, and demonstrating why it does not support the determination; failing to do so concedes that the evidence supports the findings. *Latinos Unidos de Napa v. City of Napa*

(2013) 221 Cal.App.4th 192, 206 (*Latinos*).

B. Errors Are Not Presumed Prejudicial and Respondents Fail to Show Prejudice.

Even if a substantive or procedural error occurs, there is no presumption that error is prejudicial, and the challenger must show the error is prejudicial. CEQA §21005(b); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463-65 (*Neighbors*); *SOMCAN*, 33 Cal.App.5th at 331; *Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 728 (*Tiburon Open Space*). Prejudice occurs only when an agency's failure to adhere to CEQA deprives decisionmakers or the public of substantial information that precludes informed decision-making or public participation. *Neighbors*, 57 Cal.4th at 463-65; *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 963-64 (erroneous project description in notice did not interfere with petitioner's ability to make informed decision and was therefore not prejudicial error). Here, none of the alleged substantive inadequacies precluded informed decision-making.

C. The Court Must Address Each of the Alleged Grounds for CEQA Noncompliance.

Under CEQA Section 21005(c), "any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with [CEQA], shall *specifically address each of the alleged grounds for noncompliance*." (emphasis added). Although the trial court did not address Respondents' CEQA claims beyond the Project description, this Court is also bound by CEQA Section 21005(c)

and this brief therefore addresses all of Respondents' claims. We ask this Court to also address all of Respondents' claims. *Friends of Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1387-88.

V. ARGUMENT

A. The Guidelines Require Project Descriptions to Meet Four Elements and Explicitly State that Amount of Detail Will Vary Between Projects.

A project description under CEQA must "contain the following information but *should not supply extensive detail beyond that needed for evaluation and review* of the environmental impact.

> a) The precise location and boundaries of the proposed project shall be shown on a detailed map…
>
> b) A statement of the objectives sought by the proposed project… The statement of objectives should include the underlying purpose of the project and may discuss the project benefits.
>
> c) A *general description* of the project's technical, economic, and environmental characteristics…
>
> d) A statement briefly describing the intended uses of the EIR."

Guidelines §15124 (emphasis added). Here, the Project description satisfies the four requirements set forth in Guidelines Section 15124 as follows:

- Section 15124(a): The precise location and boundaries of FHRs were shown on a detailed map. AR1940.
- Section 15124(b): The Project description explains why these specific areas required treatment based on their

location and composition of high fire-risk vegetation and that the purpose and benefit of each of the FHRs was to protect certain structures from wildfire. AR1941.

- Section 15124(c): The Project description contains a *general description* of the criteria for vegetation management and how the management would be conducted. AR1942-60.
- Section 15124(d): The Project description includes the purpose and intended uses of the EIR. AR1934-35.

Guidelines Section 15146 also acknowledges that the amount of detail will vary between projects to "correspond to the degree of specificity involved in the underlying activity which is described in the EIR." Guidelines Section 15144 limits the detail required to assess a project. "While forecasting the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it *reasonably* can." Guidelines §15144 (emphasis added). Guidelines Section 15151 directs that an EIR "should be prepared with a sufficient level of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." *See also* Guidelines §15147. "An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 653 (*San Joaquin Raptor*).

CEQA caselaw explains the Guidelines "require[] an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive."

Tracy First v. City of Tracy (2009) 177 Cal.App.4th 912, 934. "Where the exact parameters of generally foreseeable future actions cannot confidently be predicted, the full-disclosure goals of CEQA … may nonetheless be met with an analysis that 'acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives ... and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.'" *Ebbetts Pass 2008,* 43 Cal.4th at 955, quoting *Vineyard*, 40 Cal.4th at 434.

Lastly, CEQA Section 21083.1 also explicitly cautions courts against interpreting CEQA in a manner that imposes requirements beyond those stated in the statute or in the Guidelines. *Dry Creek,* 70 Cal.App.4th at 36 (rejecting argument that project description should be more detailed, citing Section 21083.1).

1. The Project Description Provides More than the General Description Required by Guidelines Section 15124(c).

While Respondents argue that the "general description" required by Guidelines Section 15124(c) was not specific enough for them to understand the Project,[2] the Project description exceeds the directive to provide a "general description" to inform

[2] Respondents' challenge to the Project description is an attempt to obtain a more favorable standard of review, a common strategy in CEQA lawsuits. *CNPS,* 177 Cal.App.4th at 986-87 ("opponent cannot obtain a more favorable standard of review by arguing that the … the lead agency has not proceeded in a manner required by law").

the public, particularly given the nature of the Project.

As detailed above, the Project description includes the location, treatment type, treatment activities, and treatment acreage for each FHR. AR1957-60. Despite the trial court's claim that the Project description only contained "vague conceptual criteria" (AA457), the vegetation removal criteria are detailed, as discussed above in Section II.G. For example, "[e]ach shrub or group of plants should measure no wider than two times its height, or less than 120 square feet (or 6 feet x 20 feet). The space between groups should be greater than three times the height of the shrubs." AR2352. For the Strawberry, Claremont, and Frowning FHRs, "[s]hrubs would be removed from under and within 6 feet of the tree canopy. There is no set tree density, because after trees that are unhealthy, structurally unsound, and prone to torching are removed, a canopy of variable density will result. … Shrubs and short trees under tall trees to be retained would be removed such that a vertical separation of 2.5 times the height of understory tree or shrub and the overstory tree canopy would be created." AR1341, 1946. The shaded and non-shaded segments of the East-West FB were also described in detail. AR1944-45; 1358. This Project description exceeds the requirements of the Guidelines.

2. Respondents' Fears Do Not Equate to an Inadequate Project Description.

The trial court buttressed its holding that the Project description failed to comply with CEQA based on "the fact that each of the petitioners is ***fearful*** that the arborist's discretion will result in either the Regents clear cutting trees (HCN) or that

the Regents won't cut enough trees to provide meaningful hazardous fuel reduction (CCC)." AA458 (emphasis added).

First, Respondents' fear alone does not show the required prejudice – that the Project description was so lacking in detail that it impeded informed decision-making. *Neighbors,* 57 Cal.4th at 463. In *Southwest Regional Council of Carpenters v. City of Los Angeles* (2022) 76 Cal.App.5th 1154, 1183 (*Southwest Regional*), the court elaborated on when prejudice is shown:

> [P]etitioners cannot show any prejudice flowing from the City's inclusion of Alternative 5 in the FEIR and its approval of the Revised Project, although neither was circulated for an official period of public comment. The record establishes there was ***extensive commentary on the original alternatives***, and that commentary on factors like traffic and environmental contamination ***were taken into account*** before preparation of the FEIR, and formed the basis for the Revised Project. Thus, there was no prohibited impediment to informed decision-making.

(emphasis added), *Dry Creek,* 70 Cal.App.4th at 36 ("None of appellants' contentions demonstrate that the description of the water diversion elements was insufficient to understand the environmental impacts of the proposed project"); *see also Citizens for a Green San Mateo v. San Mateo County Community College Distr*ict (2014) 226 Cal.App.4th 1572, 1592-93 (disclosure of tree removal in project description was sufficient to put public on notice even if precise number of trees was not quantified).

Here, both Respondents demonstrated nuanced and detailed understanding of the Project as evidenced by their extensive commentary and submittal of their own Project

alternatives, both of which were analyzed in the EIR. AR2280, 2286-99.

Second, the Record factually shows that Respondents' "fears" are not based upon any lack of detail in the Project description. The specific criteria call for the removal of unhealthy and fire prone trees, and the retention of healthy trees at safe distances based on the surrounding vegetation. AR1946. There are also many direct statements which render unfounded HCN's fear of clearcutting. AR1410 ("clearcutting or other removal of large swaths of trees is not proposed under the WVFMP"); AR1418 (HCN's comments are "premised on the flawed assumption that 'the University's FHR Projects include eradication of eucalyptus and other non-native tree species.' They do not."); 1428 ("The WVFMP does not propose large-scale removal of forest vegetation or conversion of forests to nonforest vegetation types"). As such, the only way to find that HCN's fear of clearcutting is tenable is to discount the numerous factual statements and support in the Record, and assume the University's repeated assurances were in bad faith. This is contrary to the law. *Bus Riders Union v. L.A. County Metropolitan Transportation Agency* (2009) 179 Cal.App.4th 101, 108 (public agencies are presumed to act in good faith).

CCC's fears that the application of the criteria will not result in "meaningful fuel reduction" is a factual dispute about the effectiveness of tree removal that will occur under the Project. AA458. That is a factual dispute about the result and impact of the Project, governed by substantial evidence, not a dispute about

the level of detail in the Project description. *CNPS*, 177 Cal.App.4th at 984-85.

Ironically, both of Respondents' "fears" are because they **do** fully understand the **policy choice** the University made in exercising its discretion to approve the Project. As stated by a CCC Board Member at the NOP scoping hearing: "The university is ground zero for conflict over vegetation management with one group ***wanting to save eucalyptus trees*** and another group ***wanting to take them out*** and save maybe the vegetation under." AR3253 (emphasis added). This comment illustrates that each Respondent **wanted** a **different** project than the University selected – and they fully **understood** the Project and recognized that the University was adopting a project that neither Respondent **wanted**. Both are fearful that the Project is not the right choice, but the University is required to weigh and balance the facts and make that choice, which should be afforded deference. *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 276-77 (*California Oak*) ("CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives").

3. The Record Shows that Respondents Were Adequately Informed by the Project Description.

Respondents bear the burden to show both a procedural error and that the error led to prejudice. *Neighbors,* 57 Cal.4th at 463-65. Neither can carry that burden because the Record makes it clear that both Respondents understood the Project description

in sufficient detail to make informed commentary, to which the University responded. *Southwest Regional,* 76 Cal.App.5th at 1181-83.

i. *CCC Stated the Removal Criteria Represented the Right Methodology but Wanted More Acres of the Hill Campus to Be Treated.*

CCC recognized that "[***t]he Plan correctly lays out the methodology*** for removing these trees known to spread wildfire from their burning canopies but ***this methodology needs to be applied far more widely***." AR1390 (emphasis added). In addition, CCC acknowledged that "[t]he Plan *details how thinning and removing the understory can prevent wildfires*. … in the new reality all eucalyptus and pine trees should be removed from the Hill Campus." AR1347 (emphasis added). CCC's plan proposed to apply the thinning to a larger 400-500 acres of the Plan Area and believed the University "should commit to removing eucalyptus and Monterey pine." AR1376, 1379, 2965-89. Thus, CCC understood the University's methodology to thin, not remove trees and had an informed disagreement with the University's policy decision as they wanted all trees removed from a much larger area.

ii. *HCN Understood the Project Description but Wanted Fewer Acres Treated; Its Preferred Alternative and Cited Example Have the Same Level of Detail as the Project.*

On the other side of the debate, HCN proposed an alternative that "specifically calls for limiting vegetation removal activities to fuel breaks, evacuation routes, and adjacent to structures." AR4630, 4634. HCN's preferred alternative

included "***selective thinning*** … for the portions of the FHRs within 100 to 200 feet of roadways and structures. This Alternative would preclude the wholesale eradication of large trees and removal of the existing tree canopy. There would be **no treatment more than 200 feet away from roads and structures** within the FHRs." AR1421 (emphasis added); 4633-34; 2280. HCN ***wanted*** to limit the location of treatment areas to areas adjacent to roads and structures. AR4634. There is no lack of detail as to the location of the FHRs versus where HCN wanted to allow tree removal.

HCN's selective thinning would also only remove trees less than 18 inches in diameter. AR2280, 2295. HCN's proposed alternative was no more specific than the Project because the difference between "selective thinning" and "variable density thinning" is immaterial – tree removal in variable density thinning is based on the health and fire risk; HCN's selective thinning is based only on size of the tree – and neither result in a set percentage of trees or distance between trees. *Id.* Thus, HCN is disingenuous to allege the University's thinning criteria are too vague such that they could not understand the Project description when its preferred and provided alternative included the same level of detail.

Additionally, HCN cited the neighboring EBRPD's Wildfire Hazard Reduction and Resource Management Plan to the trial court as an example of a proper level of detail for a fuel management program. AA343, 438-39. However, the EBRPD's management plan does not materially differ from the University's WFVMP. AR17417-832.

- *Treatment areas are the same size:* EBRPD has 130 treatment areas ranging in size from 0.3 to 443.5 acres and average 22.8 acres. AR17432, 17478-86. The challenged FHRs are essentially the same size at 23.7, 25.5 and 49.2 acres. AR1958.
- *Criteria for thinning is not more specific:* EBRPD's plan describes broad eucalyptus thinning standards and provides spacing criteria of 10-15 feet for young eucalyptus and 20-35 feet for mature eucalyptus but does not state where exactly these young or mature eucalyptus are, how many there are, which will be removed, or how the tree canopy will change. *See* AR17570. EBRPD does not indicate where or how many young and mature eucalyptus are within its plan, and this wide range of 10-35 foot spacing provides expansive flexibility as to the number of trees that will be removed and the resultant tree canopy. It is therefore just as flexible and variable as the University's variable density criteria.

HCN further claimed that EBRPD was very specific in describing how the criteria would be applied by cherry-picking two treatment areas out of 130. AA438-39. One 30.9-acre treatment area did set an average spacing but the detail on removing unhealthy trees is no more specific than the WFVMP. AR17485 ("Develop a 35 foot average spacing in thinned eucalyptus stand within 100 feet of the road, 25 foot spacing otherwise, with an emphasis on removing small or unhealthy trees or those with multiple stalks"). The second small 2.4-acre treatment area simply stated "where EBRPD elected to remove the existing 'Eucalyptus Forest/Plantation' to create 'Grassland,' EBRPD specifies that it will '[r]emove eucalyptus to minimize

ember production and distribution.'" AR17485. This is not materially different than the EIR's lengthy discussion of eucalyptus risks and its tree removal criteria based on "flammability/fire hazard, high fuel volume production of small-diameter fuels", and "trees prone to torching or burning with high fire intensity." AR1340-41. The discussion also explains that "because of the eucalyptus [the FHRs] pose significant fire hazards in terms of flame lengths, ember production, and spotting distribution." AR1340.

The EBRPD's treatment plan briefly describes the vegetation and topography but provides just as much flexibility as to how the criteria will be applied as the WFVMP. AR17478-86, *see e.g.,* AR17479 (109-acre treatment area with no specificity and several areas stating "consider removing eucalyptus and pine trees where feasible to prevent ember production and distribution"). EBPRD therefore did not quantify the "number or percentage" of tree removal that HCN argues the University was required to do. AA339, 342. As such, under HCN's own argument, if the EBRPD was sufficient to inform the public, the WFVMP, having the same level of detail, is also sufficient to inform the public.

B. The Project Description Complies with All CEQA Caselaw.

While there are numerous cases addressing the adequacy of a project description, each significant case is discussed below.

As a first note, this Court decided *Tiburon Open Space*, 78 Cal.App.5th at 739, after the trial court ruled below. In *Tiburon Open Space*, this Court stated that "the project description **need**

only disclose the nature of the project and its **main features**. In addition, the degree of specificity required **depends on the type of the project**." (emphasis added, internal citations and quotations removed). This Court emphasized that the level of detail provided in the draft EIR in that case (a 22-page project description that grew to 34 pages in the final EIR; here the project description is 30 pages) "had significantly more detail than required." *Id.* at 738-40. This Court rejected the argument that the project description for 43 single family residences was "unduly narrow" and noted that it was apparent, as here, that "this argument is not really directed at the project description." *Id*. at 739. This Court should apply the same principles here and find that the Project description disclosed the nature of the Project and its main features with enough specificity given that the type of project is fire fuel management in a wildland forest environment.

Two other appellate decisions issued after the trial court's ruling also support the sufficiency of the Project description. In *Buena Vista Water Storage District v. Kern Water Bank Authority* (2022) 76 Cal.App.5th 576, 580 (*Buena Vista*), the court reviewed a water supply project and explained "when a project is subject to changing conditions . . . a project description must be sufficiently flexible to account for such changing conditions." As nature represents the prime example of "changing conditions," the Project description here provides the necessary flexibility to assess on-the-ground conditions when the Project is implemented.

In the second, *Southwest Regional*, 76 Cal.App.5th at 1165-67, the final EIR introduced a new alternative and the agency adopted a revised version of that alternative. The court also discussed the history of caselaw and distinguished *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 6 (*Millennium)* in a manner that is applicable here.

The Project description here complies with this new caselaw as well as all prior caselaw. Respondents' feigned confusion does not constitute grounds to find the Project description legally deficient.

1. The Project Description Is Consistent with Caselaw Requiring the Project Description to Be Accurate, Stable and Finite.

An "accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (*Inyo*). In *Inyo*, the EIR initially described a project to increase pumping from a groundwater basin solely for the Owens Valley but later contradictorily said the project would be used for operation of the Los Angeles aqueduct system, and then again as the operation of the entire aqueduct system. *Id.* at 189-92, 193. This moving target rendered the project description unlawful because "[t]he selection of a narrow project as the launching pad for a vastly wider proposal frustrated CEQA's public information aims." *Id.* at 199-200.

In cases following *Inyo*, project descriptions that have

internal inconsistencies (size, scope, magnitude) do not constitute a stable project description and thus hinder public participation. For example, in *San Joaquin Raptor*, 149 Cal.App.4th at 655, 657, the draft EIR stated the project would not significantly increase pre-existing annual production at a mine, but the proposed permit would have allowed for more than doubling of production. *See also, Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 84 (conflicting descriptions were unclear as to whether a more pollution-intensive petroleum product could be produced by oil refinery project).

In contrast, the description of the FHRs here remained accurate, stable, and finite throughout the EIR process. The Final EIR added more details to the Project description in response to comments, but it did not alter the boundaries of the FHRs, the treatment methods that would be used in those ITPs to achieve the fuel management goals of the WVFMP, or the criteria that would be applied in each FHR area. *See e.g.,* AR1940, 1958 (no change to location or size of FHRs); 1946 (revisions to Project description to clarify tree removal criteria). Thus, the Project description was accurate, stable, and finite throughout the CEQA process, consistent with the requirements of relevant caselaw.

2. The Project Description Is Consistent With Caselaw that Requires a Single Project.

In addition to being stable, a project description must describe a *single* project rather than a range of alternatives that

leaves the choice of project until a later date. In *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 283, 290 (*Washoe*), the draft EIR presented "five very different project alternatives," and the agency said it would select one of the alternatives as the "project" only *after* receiving public comment. Thus, the lead agency declared that it was not proposing a single project description.[3]

The difference between the alternatives in *Washoe* was "vast, each creating a different footprint on public land" and "[e]ach option creat[ing] a different set of impacts, requiring different mitigation measures." *Washoe,* 17 Cal.App.5th at 289. This Court said the EIR failed to "describe a project at all" which was "an obstacle to informed public participation." *Id*. at 288, 290; *Southwest Regional,* 76 Cal.App.5th at 1181 (explaining that *Washoe* project alternatives left the public confused about which project to comment upon).

Conversely, in *SOMCAN,* the petitioner claimed that a project description that included an office option and a residential option was like *Washoe* because it was "confusing" and "presented multiple possible Projects rather than a finite description of a single project." 33 Cal.App.5th at 332. This Court rejected that argument finding that, while in *Washoe* the agency had not

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[3] The agency took this route in part because the draft EIR also served as an Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA"), which allows consideration of multiple alternatives without identifying the proposed project in a draft EIS, but the court declined to follow NEPA precedent.

selected a project at all among vastly different alternatives, the project description in *SOMCAN* "clearly identified a mixed-use development project at a specific, defined location with two options" for land use allocation and thus the public was not confused as to what the project entailed. *Id*. at 335.

As in *SOMCAN* and *Southwest Regional*, the University selected a clear, singular project, and analyzed alternatives to the Project. AR1938-1967; 2275-2300.

3. The Project Description Includes a Sufficient Level of Detail under Caselaw.

As explained below, the level of detail in the Project description is sufficient and complies with CEQA caselaw.

i. *The EIR Is Consistent with Dry Creek's Clarification of "General Description".*

In *Dry Creek*, the project description included conceptual descriptions of stream diversion structures and accessory development, but the actual design of these structures was "deferred until after project approval," and would be determined by a registered engineer. 70 Cal.App.4th at 27, 31. The project opponents claimed that "only precise engineering designs [would] provide the necessary detail" to comply with CEQA. *Id*. at 27. The court stated "CEQA does not mandate the detail [the opponents] urge this court to require. CEQA requires a 'general description' of the technical aspects of the stream diversion structures of the project. The description must contain sufficient detail to enable the public and the decisionmakers to understand the environmental impacts of the proposed project." *Id*. at 36. The court observed that a "general description … means

involving only the main features of something rather than details or particulars." *Id*. at 28 (quoting the Webster's New Internat. Dict.,3d ed. 1986, p. 944).

Here, the Project description includes the main features of the University's plan to reduce wildfire risks in the Hill Campus. It includes the location, size, and characteristics of all the challenged FHRs. AR1940, 1957-60, 2392, 2394-2400. It also includes details on the technical methods and criteria that would be used to reduce fire fuel that allowed the University to analyze the potential environmental impacts of the Project. AR1942-57. This is akin to how detailed engineering drawings for the stream diversion structures would be prepared later by a professional engineer in *Dry Creek*. There is no caselaw requiring the University to apply thinning criteria to individual trees prior to EIR certification showing which specific trees will be removed.

ii. *The Project Description Complies With California Oak's Description of Guidelines Section 15124 as an Admonishment Against Too Much Detail.*

Similarly in *California Oak,* 188 Cal.App.4th at 269, the appellants contended that a project description of a parking garage and campus building was "inadequate because it lack[ed] the degree of specificity CEQA requires for a 'project-level' EIR." This Court stated that "[w]ith respect to an EIR's project description, only four items are mandatory" and upheld the project description because it met "the requirements of Guidelines section 15124, particularly in light of its *admonishment* that such description should not 'supply extensive detail beyond that needed for evaluation and review of the

[project's] environmental impact.'" *California Oak,* 188 Cal.App.4th at 269, 271 (emphasis added). Likewise here, the Project description meets the four requirements of Guidelines Section 15124 and contains a sufficient level of detail to evaluate the Project's environmental impacts. AR1337-41, 1946, 6361.

iii. *This Case is Analogous to Treasure Island, Which Allows a Project Description to Vary Based on Conditions that Are Not Yet Known.*

In *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1043, 1053-57 (*Treasure Island*), the project-level EIR analyzed a "comprehensive plan to redevelop a former naval station located on Treasure Island" but the ultimate type and location of development was dependent on soil and groundwater contamination, the level of which was unknown at the time of the EIR. This Court noted that "the EIR made an extensive effort to provide meaningful information about the project, while *providing for flexibility needed to respond to changing conditions*." *Id.* at 1053. This Court was clear that CEQA allows a project description to include "many Project features that are subject to future revision…[and] the EIR cannot be faulted for not providing detail that, due to the nature of the Project, simply does not now exist." *Id.* at 1054.[4]

[4] While the EIR in *Treasure Island* contemplated the possibility of supplemental review, *Id.* at 1050-51, as a matter of law, here supplemental review would be required if the University modified the Project or if the conditions in the Hill Campus changed in a

The present case contains similar facts and this Court's discussion of the law is applicable. Like in *Treasure Island*, the University should not be required to spend significant time and funding to determine the health of each tree and surrounding vegetation in the FHRs because the tree conditions will continue to change prior to implementation. *See* AR29257-60; 2155-56; 1413. This specific level of information is not required and did not hinder the University's ability to analyze the environmental impacts of the Project, because the management criteria (variable density thinning) was explained to the decisionmakers and public, and specific locations where the criteria would be applied were clearly identified. AR1940, 1946.

The trial court in this case attempted to distinguish *Treasure Island* by stating "the underlying facts [we]re unknown and unknowable at the time of the drafting of the EIR" but here "the Regents are presently able to evaluate each of the specific project areas and provide information detailing the actual impact of the application of the criteria itemized in the Plan on each of the tracts carved out in a specific project." AA457-58. The trial court's opinion is not accurate. The contamination in *Treasure Island* was knowable, as eventually the Navy would complete its analysis. *Treasure Island*, 227 Cal.App.4th at 1056-57. As such, the city could have been required to wait until the Navy produced the information about the type and extent of contamination. However, this Court found such information was *not required* –

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manner that resulted in new information or changed circumstances. CEQA §21166.

and the same is true here where the dynamic and changing forest conditions in the Hill Campus would render a detailed tree survey meaningless and require it to be repeated at the time of implementation. *Id.,* AR29257-60.[5]

Further, in *Treasure Island,* the petitioner claimed the trial court erred in upholding the EIR because it "provide[d] no project-level details as to precisely where, when or to what extent [remediation] activities may be required." 227 Cal.App.4th at 1057. This Court disagreed, holding that "the EIR … provides ample information regarding the standards that will be applied, the techniques used, and the oversight provided in the event the City assumes future responsibility for remediation." *Id.* at 1059-60 (discussion of a hazards mitigation measure). Similarly, the WVFMP provides ample information about standards that will be applied for the treatments, the techniques that will be used, and the standards that the forest professionals will be held to. AR1338, 1946.

In *Treasure Island*, this Court found it acceptable for the city to "identif[y] permitted uses, and provide[] detailed standards" that would be applied to the future development and here the University determined that detailed tree removal

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[5] It is contrary to public policy and CEQA for a public university to expend significant funding to conduct expensive studies of each tree when conditions may change and CEQA discourages having "bureaucratic and financial momentum …behind a proposed project" before conducting environmental review. *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 395; AR29257-60.

criteria will be applied by experts to determine exactly which trees will be removed when the Project is implemented. 227 Cal.App.4th at 1053; AR1338; 1946. Both are analogous to mitigation measures, which may specify performance standards when it is impractical or infeasible to identify the specific details during the EIR review process, provided the lead agency commits to implement the mitigation and identifies the types of actions that may achieve compliance with the performance standard. Guidelines §15126.4(a)(1)(B); *see* Practice Under CEQA §14.12, citing *City of Hayward v. Board of Trustees of California State University* (2015) 242 Cal.App.4th 833, 855 ("lead agency may rely on future studies to devise the specific design of a mitigation measure when the results of later studies are used to tailor mitigation measures to fit on-the-ground environmental conditions."). In contrast, a project description is only required to have a "general description" of the project. Guidelines §15124. Thus, the level of detail provided in the Project description in this case is more than sufficient to meet even the standards for mitigation measures.

As in *Treasure Island*, here the EIR provided meaningful information about the removal of trees in the FHRs, but it was not practicable to prospectively apply the tree removal criteria to identify which trees will be removed given the changing wildland conditions of the Hill Campus. This level of detail is not necessary for informed decision-making. As required by CEQA, the WVFMP sets forth detailed and particular criteria that experts (arborists and registered professional foresters) will use

to determine which trees should be thinned at the time of implementation of the FHRs. AR1946; 1357-58; 2394; 6361.

iv. *SOMCAN Held Detailed Drawings of What a Project Will Look Like Are Not Required, the Same Is True Here.*

In *SOMCAN*, the plaintiffs claimed that the EIR was inadequate "because it did not include renderings showing the specific architectural detailing, 'street level' views of the code compliant alternative, or perspectives of how the development would appear from surrounding neighborhoods." 33 Cal.App.5th at 334. This Court found that the plaintiffs failed to "explain how absences of additional renderings… concealed information that was crucial to a review of the environmental effects of the project, or how these purported defects impacted public participation." *Id*.

Respondents here seek similar detail in a different context. This Project is not a building, it is fuel management of a living forest. The petitioners in *SOMCAN* and Respondents both complain that the public did not know enough about what the project will ultimately look like. As discussed in Section A.3 above, Respondents engaged in informed public participation as reflected in their comments and proposed alternatives. As in *SOMCAN,* Respondents here have not and cannot show how their requested level of detail as to what the Project would look like "concealed information that was crucial to a review of the environmental effects of the project" or "impacted public participation" as further discussed in Section D. below.

v. *The Project Description Here Is Not Factually Analogous to Millennium's Project*

Description, Which Did Not Provide for the Use, Location, or Any Description of the Buildings and Thus Failed to Describe a Project at All.

In *Millennium*, a case that has never been followed by another court of appeal, the court reviewed an EIR for an urban development that would surround the historic Capitol Records Building. The trial court in this case oversimplified the *Millennium* case as holding "that the conceptual scenarios in the EIR, absent actual information about the *technical characteristics* of the construction project, did not satisfy" CEQA. AA457 (emphasis added). The trial court also erred in stating that "the EIR here is very much like the EIR in [*Millennium*] insofar as it provides conceptual *criteria which needs to be supplemented by a subjective decision maker*." AA458 (emphasis added). These statements mischaracterize *Millennium*.

"Missing from [the project description in *Millennium*] was any description or detail regarding what Millennium intended to build. This lack of detail about the proposed project and what it would look like and for what uses it would be built continued throughout the environmental review process." *Millennium*, 39 Cal.App.5th at 7. Moreover, the project description did not explain "how many buildings or towers would be built and where they would be located on the project site. Instead, the public had only conceptual drawings of a development that might not be built." *Id.* at 11. The *Millennium* EIR allowed so much flexibility that beyond the detail that "10 viewpoints would be preserved," the EIR did "not describe a building development project at all", and the project description was so "vague and ambiguous" that it

failed to meet the "basic Guidelines requirement" to include, at minimum, "a general description of the project's technical, economic and environmental characteristics." *Id*. at 11, 18-19, citing *SOMCAN*, 33 Cal.App.5th at 332. The court found that the lack of any development proposal thwarted the public's ability to comment since they didn't know what was being proposed. *Id.* at 20.

The *Millennium* court repeatedly cited to the original project proposal which had "specifically described what Millennium proposed to build." 39 Cal.App.5th at 7. The court also took issue with Millennium's use of "uncertainty about market conditions" as "ground[s] for the ambiguous and blurred Project Description" and noted that "there were no practical impediments" to Millennium making "firm commitments" about "what it intended to build." *Id*. at 14, 19.

Unlike *Millennium*, here the Project's use and location are not speculative and do not vary. The use is fuel management, not a park, a ball field or any other open space use. The location of the FHRs and the East-West FB are exact and have never varied. AR1940, 1958.

As to the height and design, the project in *Millennium* is entirely different (urban construction in Los Angeles compared to fire fuel management of a natural environment) and "[t]he degree of specificity required **depends on the type of project**." *Dry Creek,* 70 Cal.App.4th at 28. The variable density thinning criteria included in the Project and consistently described throughout the EIR are far more specific than the project

description in *Millennium* where there were no criteria as to what would be built.

The trial court was also incorrect to equate the Project's objective criteria to *Millennium*'s criteria as "*supplemented by a subjective decisionmaker*" because the decision in *Millennium* as to what to submit as a project *would* be made subjectively by the developer based on profit. AA458 (emphasis added); *see Millennium*, 39 Cal.App.5th at 14. Here, there is no financial incentive driving the density. The tree removal criteria were objectively determined based on expert advice as to how to thin the highly-flammable species to protect the public from fire risk and will be objectively applied by professionals to reduce fire risk, not to maximize profit. *Millennium* could not be more inapposite.

vi. *Southwest Regional Distinguishes Millennium and Its Analysis Is Applicable Here.*

In the recent *Southwest Regional* case, the court upheld the project description in the EIR for a mixed use commercial and residential project where, after the final EIR included a new alternative, the city adopted a smaller, revised version of the new alternative. *Southwest Regional*, 76 Cal.App.5th at 1165-67. The court provided an extensive review and analysis of the leading CEQA holdings on project descriptions (*Inyo*, *Washoe, SOMCAN, Treasure Island,* and *Millennium* described above). As noted above, the *Southwest Regional* court described *Millennium* as "finding [that] Millennium's conceptual approach to the project failed to present *any concrete proposal*, thereby creating an obstacle to informed public participation." *Southwest Regional*, 76 Cal.App.5th at 1179 (emphasis added). It readily

distinguished *Millennium*, explaining that *Millennium*'s EIR had "no meaningful project description" whereas the *Southwest Regional* "DEIR contained all the mandatory elements under CEQA, including a general description of the project's characteristics (including environmental impacts), its objectives, and its intended uses. (See Guidelines, §15124.)" *Id.* at 1181.

The present case is the same. As explained above, the Project description contained all the mandatory elements for a project description, and the public provided informed comments on the proposed Project.

vii. *Buena Vista Allows a Project Description to Respond to Changing Conditions in the Natural Environment Such as in the Hill Campus.*

In *Buena Vista,* the court explained how a project description for a project related to a changeable natural environment can meet the requirements of CEQA, even when the project itself changes due to its dynamic setting. *Buena Vista,* 76 Cal.App.5th at 580-81. "When a project is subject to changing conditions ... a project description must be sufficiently flexible to account for such changing conditions." *Id.* at 580. In *Buena Vista*, the EIR described diverting up to 500,000-acre feet of river water per year, depending on the availability of water. *Id.* at 584. The project description "adequately and consistently describes Project water as 'high flow Kern River water, only available under certain hydrologic conditions and after the rights of senior Kern River water right holders have been met.'" *Id.* at 588.

The plaintiff compared the project description to the one in

Millennium, claiming that the *Buena Vista* description suffered from the same defects. *Id*. at 590. The *Buena Vista* court found that *Millennium* was distinguishable, explaining that in *Millennium,* the project was for a "mixed-use development" and the description "fail[ed] to describe the siting, size, mass, or appearance of any building proposed to be built at the project site." *Id*. (citation omitted). In contrast, the court found the level of detail in the *Buena Vista* project description was appropriate in part because a "project description may use a flexible parameter when the project is subject to future changing conditions." *Id.*

Here, fire risk management and water resources are both based on variable natural resources. As in *Buena Vista*, the FHRs are "subject to future changing conditions." *Id*. at 590. Between when the Project was studied and when it is implemented, some trees and vegetation will grow larger, some will be knocked over in storms, succumb to drought conditions, die, and new tree seedlings will sprout. Thus, the level of detail needed, and possible, for a fire fuel management plan is not the same as for construction of a building.

C. The Project is Forest Management, not Construction of a Building, Thus Caselaw Regarding Timber Harvest Plans Is Analogous.

The body of CEQA caselaw related to project descriptions explained in Section B above addresses the development of buildings, built infrastructure, and water rights. Although there are some parallels to the facts of this case, there is a separate and relevant body of caselaw that is also analogous. Management of

the forests in California is under the jurisdiction of CalFire, and the potential environmental impacts associated with forest management are routinely analyzed using criteria similar to the University's WVFMP.

CalFire reviews Timber Harvest Plans ("THPs") pursuant to the Z'berg Nejedly Forest Practice Act and the Forest Practice Rules. Pub. Resources Code §4511 *et seq*.; 14 Cal. Code Regulations §895 *et seq*. (collectively, "FPA"). As the court in *Ebbetts Pass Forest Watch v. Department of Forestry and Fire Protection* (2004), 123 Cal.App.4th 1331, 1339-40, explained:

> Prior to cutting down timber, a company must submit a THP, prepared by a registered professional forester, to the Department for approval. The THP must contain a United States Geological Survey **map of the area showing the location of streams, logging roads, and the boundaries of timberlands to be stocked**. The THP also outlines the **methods** to be used to avoid excessive accelerated erosion from timber operations near streams. In addition, the THP must describe the **methods** of silviculture to be applied. The THP also includes a description of the controls used to protect wildlife and an analysis of cumulative impacts.

(citing 14 Cal. Code Regulations §1034, emphasis added) (*Ebbetts Pass 2004*). These required elements are similar to those required in a project description under Guidelines Section 15124 – notably a location map, as well as the technical, economic, and environmental characteristics. Therefore, these elements are required in both a THP under the FPA and in a project description under CEQA. Notably, there is nothing in the FPA that requires a detailed tree inventory or a description of what

the forest will look like after the THP is implemented. Pub. Resources Code §4511 *et seq*.; 14 CCR §896 *et seq*.

CalFire's review and approval of THPs is a certified CEQA "functional equivalent" process that fulfills the requirements of CEQA. CEQA §21080.5. As explained by the California Supreme Court, THPs are equivalent to an EIR: "as the functional equivalent of an EIR, a timber harvest plan must 'provide public and governmental decisionmakers with detailed information on the project's likely effect on the environment, describe ways of minimizing any significant impacts, point out mitigation measures, and identify any alternatives that are less environmentally destructive.' [Citation.]" *Ebbetts Pass 2008*, 43 Cal.4th at 943. Therefore, the *Ebbetts Pass* cases and other cases involving THPs, rely on CEQA caselaw. Because the University's Project proposes to manage a forest area in a manner similar to what would be proposed in a THP, and because those plans are the functional equivalent of an EIR, it is instructive to review relevant cases involving THPs.

In particular, two cases have found that "the lack of site-specific information" about potential herbicide application did not "undercut[] public participation and preclude[] meaningful environmental analysis." *Ebbetts Pass 2004,* 123 Cal.App.4th at 1363; *Ebbetts Pass 2008*, 43 Cal.4th at 955.

In *Ebbetts Pass 2004*, the petitioner insisted that the THP should have included more detailed, site-specific discussions of potential future herbicide use. *Id.* at 1363. Rejecting this contention, the court found that the agency "noted the

speculative nature of potential herbicide use and, instead of pursuing a site-specific discussion, provided an extensive discussion of general herbicide use and attendant impacts." *Id*. at 1363-64. The court disagreed with the petitioner's claim that the lack of site-specific information on herbicide use "undercuts public participation and precludes meaningful environmental analysis" because the THP "provide[s] the public with pertinent information and reveal[s] the Department carefully considered potential environmental impacts." *Id*. at 1363.

Similarly, in *Ebbetts Pass 2008*, the THP acknowledged that herbicides could be used to control vegetation post-harvest, but "whether and what herbicides would be used" would depend on "conditions on the ground." *Ebbetts Pass 2008,* 43 Cal.4th at 955. As described by the court, the use of pesticides was part of the project description in the THP, not the analysis of impacts or alternatives. *Id*. at 941, 952. The court found that substantial evidence supported the agency's factual finding that the "precise parameters of future herbicide use could not be predicted". *Id*. at 955. The THP nonetheless included an "extensive discussion" of the impacts of herbicide use in general, which the court concluded was sufficient. *Id*. at 957.

Notably, in the *Ebbetts Pass* cases, no party argued that a tree-by-tree determination was required for the project description as it is clearly not required under the FPA.

In creating the WVFMP, the University fashioned a plan with elements similar to a THP. The precise extent of tree removal in the FHRs will depend upon on-the-ground conditions,

just as the "conditions on the ground" determination of where herbicides would be applied in the *Ebbetts Pass* cases. The EIR here acknowledged the varied nature of the health of each tree means the University cannot predict which exact trees will be removed. AR1398 ("CEQA does not require the EIR to quantify the precise quantity and extent of tree removal that will occur since that level of specificity does not yet exist"). Nonetheless, the EIR provides an extensive discussion of impacts related to tree removal and the impacts from the treatment methods. AR1968-2300.

In the *Ebbetts Pass* cases, the reviewing courts upheld the impacts analysis regarding herbicide treatments even though there was flexibility and uncertainty as to where herbicides would be used. The Project description here has more certainty than the description of herbicide use in the *Ebbetts Pass* cases, and more than satisfies the level of description required in THPs, as well as under CEQA. And as described below, the Project description was detailed enough to allow the public to comment and for the University to make an informed decision on the environmental impacts of the Project.

D. Substantial Evidence Supports the University's Determinations Regarding the Project's Environmental Impacts.

The purpose of CEQA is to provide informed decision-making about a project's environmental impacts. CEQA §21000. As the California Supreme Court stated: "[a]n omission in an EIR's significant impacts analysis is deemed prejudicial if it deprived the public and decisionmakers of substantial relevant

information ***about the project's likely adverse impacts***." *Neighbors*, 57 Cal.4th at 463 (emphasis added). This is equally true as to alleged omission of information in a project description as "[t]he adequacy of an EIR's project description is closely linked to the adequacy of the EIR's analysis of the project's environmental effects." *Dry Creek,* 70 Cal.App.4th at 31, 36 (holding that the appellants failed to "explain how more detailed engineered drawings would allow the public and decisionmakers to 'fully understand the environmental consequences of the entire project'") (internal citations omitted). This Court agreed in *SOMCAN,* explaining that a lack of specificity in a project description results in prejudicial error only when it "concealed information that was crucial to a review of the environmental effects of the project or … impacted public participation." *SOMCAN,* 33 Cal.App.5th at 334.

Here, the Project description was sufficient for the University to analyze the impacts of implementing the FHRs, specifically impacts on aesthetics, wildfire, biological resources and climate change. Respondents have not shown how a more specific project description would have allowed Respondents to better understand the Project's impacts. Substantial evidence in the Record supports the adequacy of the University's assessment of impacts and Respondents fail to acknowledge or attempt to carry their burden to show otherwise.

1. The Project Description Provides Sufficient Detail to Properly Analyze Aesthetic Impacts.

The Project description provides sufficient information to

evaluate the aesthetic impacts of the FHRs and there is no evidence to the contrary. In addition, substantial evidence supports the University's determinations regarding aesthetic impacts.

Consistent with Guidelines Section 15064(b)(2), the EIR describes the thresholds of significance, including whether the projects will "have a substantial adverse effect on a scenic vista" or "substantially degrade the existing visual character or quality of public views of the site and its surroundings." AR1991. The EIR extensively describes the visual setting and factors for evaluating visual impacts in each of the FHR areas: public views, quality of views, viewer groups, viewer sensitivity, and viewer exposure. AR1982-89. The EIR describes the short-term visual impacts associated with treatment activities themselves (e.g., temporary disruption of recreationist views due to mechanical equipment) and long-term visual impacts associated with tree removal. AR1992-2001. The EIR imposes mitigation, including Mitigation Measure AES-2, which requires the University to "thin and feather adjacent vegetation to break up the linear edges of treatment areas and strategically preserve vegetation at the edge of the treatment area, to help screen public views and minimize the contrast between the treatment area and surrounding vegetation," ensuring that visual impacts in the FHRs will be mitigated to the extent feasible. AR2001.

The EIR assumes that the East-West FB would "require removal of all trees and vegetation…along its length… and width," which would "create a contrasting linear element…which

could reduce vividness, intactness, and unity of public views." AR2000. With respect to long-term visual impacts in the FHR areas, the EIR acknowledges (AR1999-2000):

> The FHR projects would retain most visually dominant vegetation. Along the Upper Jordan Fire Trail, scenic and long-range views would be improved by the thinning of dense vegetation. However, less vegetation would be present where these treatments occur, and eucalyptus trees exist in all three FHR project areas that would likely be removed.

The EIR conservatively concludes that vegetation removal would be significant given the public visibility of the treatment projects, and that these impacts would be significant and unavoidable given the infeasibility of relocating the strategically-sited fuel treatment areas. AR2001.

In the trial court, HCN repeatedly complained that it did not know what the FHRs would "look like," but the applicable threshold of significance is whether the Project would "substantially degrade the existing visual character or quality of public views of the site and its surroundings." AA328:16, 336:14, 339:7, 343. The Regents analyzed the impacts under that threshold, provided mitigation measures to minimize the impact on public views, and determined that removal of trees in the FHRs would substantially degrade the visual character of the Hill Campus. AR 1992-2001.

The Regents also analyzed HCN's preferred alternative that would not remove any trees over 18 inches in diameter. AR2294-99. But even retaining all trees over 18 inches would result in "long-term visual changes in landscape due to

vegetation treatments" along roads and trails and the impact would still be significant and unavoidable. AR2294-99. The analysis of HCN's alternative demonstrates that even defining tree removal by size rather than by health-based criteria would not change the significance of the visual impacts.

The public was not precluded from commenting on the aesthetics of the Project. HCN's suggested alternative was substantively evaluated and found to have the same visual impacts. Moreover, the Regents have the discretion to reject the suggested alternative – even if it had less of an impact. *Ocean Street Extension Neighborhood Association v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1016 (decisionmakers may "reject or approve any of the alternatives" and "may reject alternatives that are undesirable from a policy standpoint." (internal citations omitted)). The Project description provided sufficient detail for full public discourse and a complete analysis of aesthetic impacts and substantial evidence supports the University's assessment of visual impacts and its determination is afforded deference.

2. Substantial Evidence Supports the University's Analysis of Wildfire Impacts, Including Wind Speeds.

Seemingly without irony, Respondents claim that the University did not consider wildfire risk. The very purpose of the WVFMP is "to reduce dire risks to life, property, and natural resources… by managing the amount and continuity of vegetation in the Hill Campus that increases wildland fire hazards." AR229. The Project is the WVFMP, a 96-page document devoted entirely to documenting the University's

approach to fuel management and wildfire risk reduction. AR2332-428. As such, wildfire risks are discussed extensively throughout the EIR. *See, e.g*., AR2233-49; 1337-41; 1410-12. The EIR appropriately determined that, because the WVFMP would reduce wildfire risk, the Project would result in a less than significant impact to wildfire. AR2246-49;1411.

The EIR also analyzed HCN's alternative, which would retain all trees greater than 18 inches in diameter and only remove trees within 200 feet of roads or structures and explained this would result in increased wildfire because a greater amount of wildfire fuel would be left in place. AR2296-99. The University analyzed CCC's alternative and found that impacts related to wildfire would also be greater than the WVFMP in part because "substantially less vegetation removal would occur along evacuation routes and in areas determined to have high fire risks in the Plan Area." AR2294. Respondents' presentation of alternative plans and the University's analysis of these plans show that there was informed public participation and decision-making as to wildfire impact and that the Project description was therefore adequate to inform the public. *Southwest Regional,* 76 Cal.App.5th at 1182-83.

As to Respondents' disagreement about the best methodology to address wildfire risk, the University is afforded deference and the University thoroughly responded to conflicting comments related to removal of large trees. AR1409-12; 2280; 1358-59. The University relied on numerous experts in fire management, environment, health and safety as well as forestry

practices and risk management in evaluating the Project and Respondents' alternatives. AR1411. This is substantial evidence that the Project will reduce wildfire risk.

In the trial court, CCC questioned the University's use of 40 miles per hour as a maximum windspeed. AA266-68. The University's choice of wind speeds and decision to model fire behavior under two wind scenarios of 20 mph and 40 mph using FlamMap[6] is afforded deference by this Court. *SOMCAN*, 33 Cal.App.5th at 337, 339 ("[i]t is well established an agency has discretion in selecting the methodology to be used in evaluating environmental impact").

The University's use of 40 mph is consistent with observations of representative wind conditions in the East Bay Hills. *See* AR27942, 27944; 17712, 17717-18. These data include the immediate vicinity of the Hill Campus, some of which were provided to the University *by CCC's own Board Member*, and constitute substantial evidence in support of the University's decision to use 40 mph wind speeds. AR27942, 27944. CCC's failure to point the trial court to its own substantial evidence in the record is fatal to its claim. *Latinos*, 221 Cal.App.4th at 206.

Respondents' wildfire management opinions were acknowledged and responded to in the EIR. AR1393-1427, 1346-48, 1352-93. That is all that CEQA requires. *See generally*

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[6] FlamMap is relied on by wildland fire managers nationwide, in locations with extremely steep slopes, like the Hill Campus, and is an industry standard. AR1373 (FlamMap is used by "federal and state fire response agencies"); AR2371 (describing FlamMap).

Practice Under CEQA §11.35 ("agency may adopt the environmental conclusions reached by the experts that prepared the EIR even though others may disagree with the underlying data, analysis, or conclusions"). The University is entitled to rely on the experts who prepared the WVFMP and need not agree with Respondents' opinions regarding wildfire management. "When the evidence on an issue conflicts, the decisionmaker is 'permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others.'" *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 349 (internal citations omitted). The University is entitled to deference on its determinations and Respondents show no evidence to the contrary.

3. Substantial Evidence Supports the University's Analysis of Biological Resources Impacts.

The EIR includes an extensive discussion of the biological setting in the Hill Campus, specifically addressing Alameda whipsnake; the significance thresholds that apply to the evaluation of biological impacts; the specific analysis of potential project impacts on the whipsnake; and the mitigation measures adopted to address potential impacts to the whipsnake. AR2049-68; 2075; 2087-93.

HCN argued that the lack of detail in the Project description led to an incomplete analysis of the biological impacts. AA346-47. This is not true. It is uncontested that removal of non-native eucalyptus would create more whipsnake habitat. AR2084. Moreover, no greater detail was needed for

informed public understanding of the environmental impacts because the removal of non-native trees at any density will improve whipsnake habitat. Substantial evidence supports the University's determination that the FHRs will result in less-than-significant biological impacts and its determination is afforded deference.

E. The University Was Not Legally Required to Analyze the Impact of Climate Change on the Project.

CCC's argument to the trial court that the EIR does not adequately address climate change is legally flawed. AA268-70. "The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a **proposed project is likely to have on the environment**." CEQA §21061 (emphasis added). CEQA does not require an EIR to provide information on the effect the environment will have on the project. *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473-74 (EIR was not required to analyze impacts of climate change on the project); *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 386. CCC's arguments that the EIR was required to analyze how climate change might impact the WVFMP in the future directly conflicts with CEQA and its caselaw.

There is no question that the EIR takes climate change into account in analyzing wildfire risk. The EIR explains that the climate in the Project area may change between now and 2099

and includes a section titled "effects of climate change on wildfire risk." AR2153-56. The University analyzed the impacts of the Project on climate change as required by CEQA and is entitled to deference.

VI. CONCLUSION

For all of the above explained reasons, the trial court's grant of the writ of mandate should be reversed.

Dated: August 25, 2022

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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; and CAROL T. CHRIST, in her official capacity as Chancellor of the University of California, Berkeley

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

Pursuant to California Rules of Court, Rule 8.204(c)(1), I certify that this attached brief is proportionately spaced, uses Microsoft Word, is set in Century Schoolbook font, has a typeface of 13 points, and contains 13,924 words.

Amanda Monchamp