Case No. S223603

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Cleveland National Forest Foundation; Sierra Club; Center for Biological Diversity; CREED-21; Affordable Housing Coalition of San Diego; People of the State of California,

Petitioners and Cross-Appellants,

vs.

San Diego Association of Governments and San Diego Association of Governments Board of Directors,

Defendants and Appellants.

Court of Appeal of the State of California, Case No. D063288
Superior Court of the State of California, County of San Diego
The Honorable Timothy B. Taylor, Judge Presiding
Case No. 37-2011-00101593-CU-TT-CTL

SAN DIEGO ASSOCIATION OF GOVERNMENTS' CONSOLIDATED REPLY BRIEF

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I.

INTRODUCTION

This Court granted review of a single issue: Was SANDAG's EIR required to "include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-03-05 to comply" with CEQA. Both Petitioners and the Attorney General argue that the issue is whether the EIR must evaluate long-term emissions to 2050, but that is not the question this Court asked. In fact, the EIR did provide analysis to 2050, and the EIR included substantially more analysis of long-term emissions than has been included in other EIRs reviewed and upheld by California courts.

The answer briefs also misstate the record, asserting the EIR failed to evaluate long-term emissions at all. Contrary to their misstatements, the EIR contains an extensive analysis of long-term emissions, including a description of the science underlying state climate goals. The EIR and the Plan also set forth substantial mitigation measures to reduce greenhouse gas emissions. The EIR concluded, however, that while the mitigation measures would encourage emission reductions, implementation of those measures would not guarantee that emissions would be reduced to a less-than-significant level, and overall emissions would increase due to population growth, housing and employment. For those reasons, the EIR concluded that long term emissions impacts would be significant and unavoidable. Despite all the claims that long-term emissions were not addressed or summarily addressed, they were addressed in detail, mitigation was proposed, the reasoning was explained, and the conclusions were clearly set forth. This is the reasoned good-faith analysis CEQA requires.

The answer briefs further argue the EIR is misleading because it measures greenhouse gas (GHG) impacts against existing conditions, against the then-current state Scoping Plan, which is the state's official strategy for reducing greenhouse gas emissions, and against the SB 375 targets that are the greenhouse gas reduction performance measure assigned to regional transportation plans by the Legislature, but not the Executive Order. These criteria are precisely the criteria that lead agencies are directed to use by CEQA and the CEQA Guidelines. The analyses in the EIR are accurate, consistent with CEQA's requirements, and supported by substantial evidence.

Indeed, SANDAG's analysis went well beyond the typical level of GHG analysis in an EIR (which is generally to consider whether a project would meet AB 32's 2020 target). This reflected SANDAG's commitment as the first planning agency to prepare a plan under SB 375 to both prepare a comprehensive analysis under CEQA and to do its part to reduce emissions and meet the reduction targets set by the Air Resources Board.

That the EIR did not take the factual information about GHG emissions that it already contains and compare those emissions to another, more abstract statewide or international goal does not make the EIR inadequate. The issue is not, as Petitioners and the Attorney General insist, whether SANDAG accepts the science underlying the goals in Executive Order S-03-05 (the "Executive Order"). The same science underlies the Scoping Plan, SB 375, and SANDAG's Climate Action Strategy, all of which the EIR examined.

Petitioners and the Attorney General note that CEQA is an "environmental alarm bell," but they fail to recognize that the state, acting through the Legislature and designated state agencies, has moved beyond the alarm bell phase in regulating greenhouse gas emissions, and on to the practical question of how far greenhouse gas emissions may feasibly be

reduced within technical, legal, economic and social constraints that must be considered during a public review process. At present, it is unknown how the steep long-term reduction goals of the Executive Order will be reached. Predictions about methods to achieve the long-term reductions are, and were when this EIR was certified, speculative. What can practically and meaningfully be done at the level of individual projects or programs reviewed under CEQA is to measure impacts against performance standards that have been determined to be scientifically sound and technically feasible for that program through an open legislative or administrative process. This is precisely what CEQA Guidelines section 15064.4 contemplates and what was done in SANDAG's EIR.

Conversely, there is no legal or scientific justification for requiring the significance of local or regional emissions to be measured against a statewide goal derived from estimates of emission reductions necessary to stabilize climate change on an international basis, when that statewide goal has not yet been translated into locally or regionally applicable performance standards. If the state Scoping Plan and other existing state initiatives are any indication, reaching long term climate goals will require coordination of a vast array of technological, regulatory, and other measures affecting every sector of social and economic activity. It does not denigrate science or state policy to recognize that appropriate standards for assessing progress toward a statewide goal may vary, depending on the evolution of the statewide strategy, the nature of the project or program at issue, and precisely where the project or program fits in the statewide strategy at the particular time the project or program is evaluated. To argue otherwise, as Petitioners and the Attorney General do, is to ignore the state's existing climate change strategies and the tremendous scientific and technical complexities involved in implementing those strategies. That argument does not make good law, sound public policy, or good science.

It is noteworthy that Petitioners and the Attorney General have abandoned much of the argument they presented in the lower courts about the significance of the "Executive Order, and also much of the reasoning of the majority opinion below. The Attorney General goes so far as to say that her position is not based on the Executive Order at all, but on CEQA's requirements that a public agency "exercise its careful judgment in light of available facts and science" in addressing long-term environmental goals and environmental effects. (People's Answer Brief ("AG Brief") at p. 1.) Cleveland National Forest Foundation and its allied private petitioners ("Petitioners") are more ambiguous on this point, but have clearly shifted the focus of the argument from the Executive Order to the science underlying the Executive Order. Neither Petitioner nor the Attorney General claims the Executive Order in and of itself imposes any legal obligations on lead agencies complying with CEQA. Petitioners and the Attorney General therefore essentially concede that the dispute here is not over a question of law, but one of differing opinions as to what analytical approach a lead agency should follow in assessing GHG impacts. These are methodology issues that under CEQA and CEQA case law are fully within a lead agency's discretion, and that courts review only to determine if the agency's decision was supported by substantial evidence. SANDAG's decision was so supported.

II.

CLARIFICATION OF MISTATED FACTS

The answer briefs substantially mischaracterize the record, most notably by repeatedly stating that the EIR failed to evaluate "state policy and science" regarding climate stabilization. (See, e.g., AG Brief at p. 23, Plaintiffs' Answer Brief ("Petitioners Brief") at p. 3.) In fact, the EIR fully disclosed the goals of the Order, including the science relating to climate change and climate stabilization. (AR 8a:2553–91, 3091–96.) The EIR

sets forth a detailed, 45-page discussion, including a summary of the science that generally has served as the basis for state policies on climate change, as well as a summary of those policies themselves. (AR 8a:2553–66; see Opening Brief at pp. 26–32.)

There are numerous other misstatements in the Answer Briefs. For example, the Attorney General refers to SANDAG's Climate Action Strategy as establishing regional "targets" for 2050 (AG Brief at p. 19) when the cited page specifically states that regional targets have *not* been set, so "theoretical" projections are provided to give a sense of the magnitude of reductions that will be needed (AR 216:17628). The Attorney General also misleads in characterizing the 2050 Plan as primarily focusing on highways and highway expansion. (AG Brief at p. 25.) A more neutral observer, the Air Resources Board ("ARB"), noted that the Plan includes more transit than any prior RTP and the "largest investment in bicycle and pedestrian infrastructure to date." (AR 344:30147.) Similarly, the Attorney General claims the 2050 Plan contemplates the construction of projects that will "expand or extend hundreds of miles of freeways in the San Diego region" (AG Brief at p. 25) even though the EIR describes the Plan's highway-related projects as including only "funding to maintain and preserve the existing highway system," completing "missing links," and adding 20 miles of "managed lanes" to existing highways (AR 2115; see AR 190a:13063–72 [overview of the Plan]).[1] In addition, the Attorney General claims that the EIR jumps to a significant and unavoidable impact conclusion without providing any analysis (AG Brief at p. 45) when, in fact, the EIR includes multiple pages of analysis explaining how it reached that conclusion (AR 2572–78, 3095–96).

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[1] As stated in the Opening Brief (see pages 5–6), a regional transportation plan must address all major types of transportation, including highways. (See Gov. Code, § 65080, subd. (b)(1); AR 218:17702.)

Petitioners' Brief is likewise riddled with inaccuracies. Petitioners claim SANDAG's Climate Action Strategy "adopts the Executive Order's 2050 goal" (Petitioners Brief at pp. 9, 17) when the Climate Action Strategy only acknowledges that goal, referencing it in the "Framework for Climate Action" section (AR 216:17627) and projecting "theoretical" reductions to illustrate the magnitude of change the region would need to make over the next four decades to achieve the Executive Order's target (AR 216:17628). Petitioners also claim the Plan's reductions in GHG emissions originate from two factors, but one of those factors, "vehicle efficiency and fuel standards," was excluded from the model used to project the Plan's 2050 GHG emissions. (Compare Petitioners Brief at p. 12 with AR 8b:3821–22.) Petitioners further claim the EIR "cuts off meaningful analysis after 2020" (Petitioners Brief at p. 26) when the EIR includes analysis beyond 2020, to 2050 (AR 2572–78, 2579–81, 2585–88, 3095–96).

III.

STANDARD OF REVIEW

Both Petitioners and the Attorney General contend the issue presented in this case concerns a failure to proceed in the manner required by law which the Court reviews using an independent judgment standard. (Petitioners Brief at p. 18; AG Brief at p. 21, citing *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) But Plaintiffs' Answer Brief and People's Answer Brief (collectively, the "Answer Briefs") cite no CEQA (Pub. Resources Code §§ 21000 et seq.) or CEQA Guidelines (14 Cal. Code Regs., §§ 15000 et seq.) provisions that require the particular form of additional analysis

demanded.[2] This is fatal to any claim of procedural error. The Legislature has directed that CEQA and the CEQA Guidelines may not be interpreted "in a manner which imposes procedural or substantive requirements beyond those *explicitly* stated in this division or in the state guidelines." (Pub. Resources Code, § 21083.1 [emphasis added].) As this Court recently recognized in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1107–8, Public Resources Code section 21083.1 is intended to provide a "safe harbor" for lead agencies that follow the express requirements of CEQA and the Guidelines. Lead agencies are not required to perpetually guess what additional requirements that project opponents or a court, using its independent judgment, might deem advisable or necessary to comply with the overall intent or spirit of CEQA. Whether additional information or an alternate form of analysis demanded by challengers might be useful, interesting, or even necessary in the challenger's eyes, is not the legal test. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 245; *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396–1397; 14 Cal. Code Regs., § 15204, subd. (a).) As this Court stated almost three decades ago, "[a] project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR." (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 415.)

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[2] Petitioners briefly reference CEQA Guidelines section 15125, subdivision (d), for the proposition that an EIR "must discuss any 'inconsistencies' between a project and applicable general, specific and regional plans, including 'plans for the reduction of greenhouse gas emissions.'" (Petitioners Brief at p. 25.) Aside from begging the question of whether an executive order can be deemed "applicable" to a local or regional agency that is outside the executive branch itself, a Governor's executive order is obviously not a local general plan, specific plan, or a regional plan.

The Answer Briefs also do not cite any case law suggesting that CEQA affirmatively *requires* an analysis of "consistency" with the Executive Order or consistency with what the Answer Briefs characterize as the Executive Order's "underlying science." The Attorney General never references any of the existing case law concerning analysis of GHG emissions. Petitioners briefly try to distinguish two of the cases, but do not appear to contend that these cases in any way support their position on the role of Executive Order or its "underlying science" in analysis of greenhouse gas impacts. (Petitioners Brief at pp. 48–49.) As discussed later, these cases are completely at odds with Petitioners' contentions about the need for analysis going beyond the goals currently set out in the state Scoping Plan and antithetical to Petitioners' notions of how consistency with the Scoping Plan should be analyzed. As noted in SANDAG's opening brief, these existing cases also uniformly apply the substantial evidence test to questions concerning the adequacy of analysis of the greenhouse gas analysis. (SANDAG Opening Brief ("Opening Brief") at pp. 20–21.)

Instead of identifying any explicit provision of CEQA or the Guidelines that SANDAG allegedly violated, as required by Public Resources Code section 21083.1, the Answer Briefs fall back on generalities about the "intent" of CEQA: the need for "careful judgment," consideration of "long-term environmental effects," a "good faith" effort at full disclosure, and the like. (See, e.g., Petitioners Brief at pp. 1–3.) Indeed, the Attorney General goes so far as to suggest that the case is not, as the Court of Appeal supposed, about the Executive Order at all, but about these more generalized standards. (AG Brief at p. 1.) At the same time, the Attorney General repeatedly acknowledges that in applying such generalized principles, a lead agency must necessarily use "its own judgment and discretion" in determining the content of the EIR. (AG Brief

at pp. 23, 38.) The standard of review that the Attorney General and Petitioners propose thus boils down to the proposition that lead agencies may have broad discretion as to how to evaluate and discuss environmental impacts in an EIR, but if challengers object to the manner in which this discretion is exercised, the issue becomes an issue of law.

This is not the law. The application of generalized principles distilled from CEQA inherently involves the exercise of sound discretion, based on facts, as to the applicable universe of information available on a particular topic, what methodologies or analytical approaches are best suited to analyze the topic, the degree to which reliable (as opposed to speculative) forecasting is possible with existing modeling tools and data, and a host of other considerations. This court and other courts have frequently recognized that such questions are reviewed under the substantial evidence test. (*Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 407–18; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 898–99; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 898; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.) Even the court of appeal majority below held the applicable standard of review was the substantial evidence test, although, as the dissent points out, the majority did not apply that test in practice. (Slip Opn. at pp. 12–13; Dissent at p. 23 fn. 11.)

To avoid the foregoing body of case law, the Answer Briefs argue that SANDAG's rationale for declining to add analysis based on the Executive Order was "legal" or an "interpretation of CEQA" that the Court should review de novo. The EIR's statements that there is "no legal requirement" that a greenhouse gas analysis be based on the Executive Order are, however, just another way of saying, that SANDAG had *discretion* to not conduct the requested analysis and to instead rely on the

alternate analyses based on CEQA Guidelines section 15064.4. The discussion of the Executive Order in the EIR makes it clear that SANDAG was making such a discretionary choice. (AR 8b:3767, 3679–770, 4432.)[3] This is not a case like *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 355–56 where the respondent based its conclusions on an erroneous premise of law. A petitioner cannot convert a substantial evidence question into an issue of law simply by labeling the dispute as one over what is "legally required." (*Center for Biological Diversity v. Dep't of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 947–48 [discussing that "[w]hile Petitioners seek to frame the issues as failure to provide adequate information and analysis, the real question presented is whether CAL FIRE's conclusions are supported by substantial evidence" and applying the substantial evidence standard to the legal analysis].) If this were the case, then essentially every CEQA dispute could be converted into an alleged failure to proceed in the manner required by law by mere semantics.

The Answer Briefs also cite *Association of Irritated Residents* for the proposition that any claim concerning an allegedly prejudicial omission of information from an EIR must be reviewed under an independent judgment standard as a failure to proceed in the manner required by law. (107 Cal.App.4th at p. 1392.) This Court granted review on this question in *Sierra Club v. County of Fresno*, Case No. S219783. A short answer,

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[3] Petitioners also suggest that a de novo standard of review should be applied to other statements in the EIR, e.g. whether the Executive Order is an "adopted [greenhouse gas] reduction plan" within the meaning of CEQA Guidelines 15064.4, subdivision (b)(2) or whether "an executive order has no binding legal effect on agencies and personnel outside the Governor's chain of command." (Petitioners Brief at p. 19, citing AR 8b:3769, 3770, 4432, 4433.) Petitioners, however, later concede that the Executive Order has no binding effect, and do not pursue the other issue at all. (Petitioners Brief at pp. 53–54.)

however, is that the cited passages in *Association of Irritated Residents* are irreconcilable with the vast majority of post-*Vineyard* cases dealing with choices of analytical methods and scope of analysis in an EIR. (See Opening Brief at pp. 19–21.) Even *Association of Irritated Residents* ultimately applied a deferential test, finding that the analysis in the EIR was *not* required to be based on Fish & Game survey guidelines that had not been expressly incorporated into CEQA or other statutory law. (*Id.* at pp. 1396–97.) Where, as in this case, questions implicating a lead agency's judgment or discretion over methodologies are involved, a petitioner cannot avoid substantial evidence review by simply labeling the claim as one concerning an "omission" of information.

Finally, the Answer Briefs' claim that even if the substantial evidence test applies, there is no substantial evidence to support SANDAG's decision to forego analysis of consistency with the Executive Order. This states the issue backwards. The inquiry is whether there is substantial evidence to support SANDAG's certification of the EIR, including its discussion of greenhouse gas impacts, as adequate, not whether there is substantial evidence to support SANDAG's rejection of alternate modes of analysis. (See *Laurel Heights Improvement Ass'n*, *supra*, 47 Cal.3d at p. 407; *Santa Clarita Org. for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1059.) The Answer Briefs' disagreement with the conclusions drawn by SANDAG from the body of scientific and regulatory opinion that existed in 2011 does not mean that the evidence supporting SANDAG's decision is insubstantial. (See Opening Brief at pp. 40–45.)

Significantly, the EIR is presumed adequate. The burden of proving error is on the challengers. (*San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 11; *Al Larson Boat Shop, Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.) If Petitioners and

the Attorney General are contending that some analysis based on the Executive Order's generalized goals or "underlying science" was required, they must produce substantial evidence supporting their claim that such analysis is essential for adequate CEQA review of individual local or regional planning or development projects. The Answer Briefs cite no evidence suggesting that an analysis of a project's consistency with the Executive Order's long-term statewide goals is a meaningful method for assessing the significance of greenhouse gas emissions for local or regional projects generally, nor in the specific context of this case, i.e., assessing potential impacts of a regional transportation plan that must be reviewed and amended every four years and whose statutory mandate for greenhouse gas emission reductions is specifically defined in terms of targets for automobile and light truck emissions specified pursuant to SB 375. What the Answer Briefs offer is not evidence, but sustained policy arguments based entirely on their own non-expert opinions that such analysis should be required, even if the expert state agencies charged with implementing state climate action strategy have, to date, not endorsed such an approach.

IV.

ARGUMENT

A. The EIR Contains the Good-Faith Analysis Required by CEQA and CEQA Confirms an EIR with this Type of Analysis is Not Misleading

The EIR contains the good-faith analysis of the 2050 Regional Transportation Plan/Sustainable Community Strategy (the "Plan") that CEQA requires. Regarding GHG emissions, the EIR explained the existing environment and regulatory setting (AR 2553–66), analyzed how the Plan would alter the existing physical environment in 2020, 2035, and 2050 (AR 2567–78), analyzed whether the Plan would be consistent with the regional targets for the Plan set by the ARB under SB 375 (AR 2578–81),

analyzed whether the Plan would be consistent with applicable GHG reduction plans in the short- and long-term (AR 8a:2581–88), analyzed the impacts of the Plan's contribution to the state's cumulative GHG emissions in the short- and long-term (AR 8a:3091–96), and provided mitigation measures (AR 8a:2588–91). (See Opening Brief at pp. 26–29.)

Nonetheless, the Answer Briefs claim the EIR is misleading because it fails to fully inform the public and decisionmakers about the Plan's long-term (2050) impacts on climate change. Although Petitioners and the Attorney General use the term "misleading" repeatedly, they do not challenge the factual accuracy of the EIR's analysis. Instead, they contend that additional analysis was required to complete the public's and decisonmakers' understanding of greenhouse gas impacts. As discussed below, the record refutes their claims.

1. The EIR Sets Forth a Detailed Analysis of How the Plan's Long-Term Emissions Would Impact the Environment, Providing the Reasoned Analysis CEQA Requires

As required by CEQA, the EIR discloses how the Plan would alter the existing physical environment, specifically the amount of GHGs being emitted in the San Diego region, through 2050. (See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 448 [holding "that existing conditions is the normal baseline under CEQA"]; accord Petitioners Brief at p. 24.) To analyze how the Plan would affect the existing environment, SANDAG chose a threshold under which "[a] significant impact would occur if the emissions from operational and construction-related activities [with the Plan] result[] in greater GHG emissions than occurred in 2010," i.e., than currently existed. (AR 8a:2568.) This threshold acknowledges the severity of any addition to existing GHG emissions, because under this threshold, even "if per-service population GHG emissions decline but mass emissions increase, a

significant impact would result." (*Id.*) In other words, SANDAG found any additional "drop in the bucket" of existing GHG emissions would cause a significant impact. (See *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1072 [comparing an agency's appropriate threshold to those cases where an agency "erred by labeling a project's impact as insignificant merely because that impact was a 'drop in the bucket' to an already existing environmental problem"].)

Petitioners allege the EIR's "existing conditions" comparison obscures the severity of the Plan's long-term impacts on GHG emissions. (Petitioners Brief at pp. 27–29.) But the EIR quantified the Plan's projected GHG emissions in 2050 (as well as 2020 and 2035), which allowed the emissions to be compared to other quantitative projections, and found these emissions would cause a significant impact. (AR 8a:2578, 3096.) The message that if implemented, the Plan would contribute to, but not meet the reductions the state would need to meet its goal of reducing GHG emissions 80% from 1990 levels by 2050 was therefore not obscured by the EIR's analysis. Petitioners' and the Attorney General's ability to produce graphs showing that the Plan's long-term GHG emissions would not decrease based solely on the information disclosed in the EIR reinforces the fact that the EIR contained the information necessary to understand the Plan's significant long-term GHG emissions. (See AG Brief at pp. 26–27; see also AR 187:12728:3–4, 12767:16–12769:21 [comments during a Board hearing showing the public understood that the Plan would not achieve an 80% reduction in GHG emissions from 1990 levels]; see also 14 Cal. Code Regs., § 15065, subd. (a)(2) [Consistent with this provision, the EIR concluded the Plan's long-term GHG emissions would be significant even though the Plan would meet short-term emission reduction targets.].) While graphs are an effective means to communicate information, the narrative format chosen by SANDAG also satisfied CEQA. (See *Laurel*

Heights Improvement Ass'n, *supra*, 47 Cal.3d at p. 415 ["A project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR."].)

The Answer Briefs' claim that judging a project's impacts based on how they would affect existing conditions is "misleading" is ultimately a claim against CEQA. As discussed in *Neighbors for Smart Rail*, impact analysis under CEQA is normally based on comparing existing physical conditions with physical conditions assuming project approval. (57 Cal.4th at pp. 448–49, 510.) A lead agency must generally perform this analysis unless it determines that an analysis based on existing conditions would be misleading or without informational value. (*Neighbors for Smart Rail*, *supra*, 57 Cal.4th at p. 457.)[4] CEQA requires this analysis because it supports an EIR's purpose, which is to evaluate the impacts on the environment *caused by a specific project*, and not to study environmental conditions in general. (See *Citizens for East Shore Parks v. Cal. State Lands Comm'n* (2012) 202 Cal.App.4th 549, 564 ["EIR did not need to consider impacts that are not 'effects of [the] individual project'"]; see also *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1167–68 [focus of EIR, including EIR alternatives analysis, is on impacts of project, not preexisting environmental conditions].) This analysis also provides agencies with the information they need to impose enforceable mitigation measures, which

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[4] The alternate baseline must still be one based on *physical* "*environmental conditions* projected to exist in the future." (*Id.* [emphasis added].) A lead agency has no discretion to substitute a baseline based on non-physical conditions or conditions that are desired. This Court disapproved the use of baselines predicted on "allowable conditions defined by a plan or regulatory framework" rather than actually existing conditions. (*Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 321.)

must have a nexus to and be roughly proportional with the environmental impacts caused by the project, not also impacts caused by already existing projects. (14 Cal. Code Regs., § 15126.4, subd. (a)(4).)

By impugning the EIR's existing conditions analysis, the Answer Briefs imply that CEQA (as it currently exists) is not up to the task of promoting achievement of the Executive Order's long-term statewide goals through its normal methods of assessing impacts. But "[e]xcept where CEQA or the CEQA Guidelines tie CEQA analysis to planning done for a different purpose . . . , an EIR must be judged on its fulfillment of CEQA's mandates, not those of other statutes." (*Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 462.) That the Petitioners and the Attorney General believe additional information or analysis not required by CEQA is important to the public's understanding of climate change does not change the requirements of CEQA or the CEQA Guidelines.[5]

Petitioners also fault the EIR for not sufficiently elaborating on the ultimate climate change effects that are predicted to result from ongoing GHG emissions. (Petitioners Brief at p. 28.) The Legislature and state agencies charged with implementing state climate policy have determined that EIRs should focus on GHG emissions rather than attempt to catalogue all the potential global effects that may ultimately result from those cumulative emissions. (14 Cal. Code Regs., §§ 15064.4, 15126.4, subd.

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[5] Notably, although the Answer Briefs claim the EIR did not adequately discuss the Executive Order (AG Brief at p. 47, Petitioners Brief at p. 63), they present no evidence that CEQA requires discussion of executive orders or that the EIR's discussion of the Executive Order is misleading. (See AG Brief at p. 32 [no dispute that Executive Order is not binding on SANDAG].) Further, the EIR's discussions of the Executive Order is not "scattered" (AG Brief at p. 47), but instead where a reader would expect to find them, i.e., in the regulatory setting section of the chapter addressing impacts from GHG emissions and in response to comments raising questions about the Executive Order.

(c), 15183.5; see AR 319:25837–38 [The Natural Resources Agency's statement of reasons for adopting the CEQA Guidelines amendments pursuant to SB 97 states: "[S]ome comments submitted to OPR during its public workshops indicated that the Guidelines should be addressed to 'Climate Change' rather than just the effects of GHG emissions. The focus in the Guidelines on GHG emissions is appropriate."].)

Nevertheless, the EIR discloses the information necessary to understand the severity and type of harm caused by the inability to decrease GHG emissions over the long term. (See 8a:2553–54.) For example, the EIR summarized the conclusion of the scientific report from the United Nations Intergovernmental Panel on Climate Change ("IPCC") that the Attorney General states led to the Executive Order's GHG reduction goals. (AG Brief at p. 13.)[6] As the EIR notes, the "IPCC concluded that a stabilization of GHGs at 400 to 450 parts per million (ppm) CO_2 equivalent concentration is required to keep global mean warming below 3.6°F (2° Celsius), which is assumed to be necessary to avoid dangerous climate change." (AR 8a:2553–54.) The EIR also explains that human caused GHG emissions "have led to a trend of unnatural warming of Earth's climate," which has changed not just average temperatures, but also "wind patterns, precipitation, and storms." (AR 8a:2553.) Increasing GHG emissions would continue this trend, which has the potential to result in "sea level rise, to affect rainfall and snowfall, to affect temperatures and habitats, and to result in many other adverse effects." (*Id.*; see AR 8b:3812 [master response to comments regarding the Plan's impact on sea-level rise].) Since "[t]he quantity of GHGs that it takes to ultimately result in climate change is not precisely known" (8a:2553), the existing conditions

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[6] The Executive Order does not reference the IPCC report (319:27049–50), but SANDAG does not dispute that the conclusions of this report are consistent with the Executive Order's goals.

analysis assumed *any* increase caused by the Plan would result in a significant impact. No party disputes this assumption was amply supported by climate science.

The EIR's detailed analysis of and conclusions about the Plan's long-term GHG emissions distinguishes this case from those cited by the Answer Briefs in which an EIR failed to disclose a project's impact on the physical environment. (AG Brief at pp. 36–37; Petitioners Brief at p. 28.) For example, the EIR at issue in *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344 ("*Berkeley Keep Jets*") entirely "failed to assess the health effect of TACs [toxic air contaminants]" from the project. (*Id.* at p. 1367, see *id.* at p. 1369 [EIR did not perform a health risk assessment].) The EIR there offered only a qualitative discussion of TACs and no determination of the significance of the impact, stating only that the significance was "unknown." (*Id.* at p. 1368.)

The EIR at issue in *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1123 was equally lacking. There, "the EIR fail[ed] to discuss the additional traffic and construction-related impacts affecting the area," including "the impact of fugitive dust on viticultural and horticultural enterprises." (*Id.*) Although "[t]he final EIR acknowledge[d] that impacts from fugitive dust [would] be significant and unavoidable, even with mitigation measures," it did not explain the analysis that caused the agency to reach this conclusion. (*Id.*)

In contrast to the EIRs in *Berkeley Keep Jets* and *Galante Vineyards*, the EIR here includes not only a qualitative discussion of the potential impacts caused by human-created GHG emissions (8a:2553), but also quantifies the Plan's projected GHG emissions in 2020, 2035, and 2050, compares those emissions to existing conditions, and then makes a supported significance determination (8a:2572–78). The EIR thus provides

the well-reasoned analysis missing from the EIRs in *Berkeley Keep Jets* and *Galante Vineyards*.

2. The EIR's Conclusions that the Plan Is Consistent with Applicable Law and Climate Action Plans Are Accurate, Not Misleading

The Answer Briefs also argue that the EIR's analyses of consistency with existing state and regional GHG reduction plans (the Scoping Plan, SB 375 targets and SANDAG's Climate Action Strategy) were inadequate and somehow "mask" the Project's GHG impacts. As an initial matter, the adequacy of these sections of the EIR is not within the scope of review granted by this Court. These issues also were never raised in the lower courts or during the administrative process. (See Slip Opn. at p. 21 fn. 11.) Accordingly, these issues are not properly before this Court. (Pub. Resources Code, § 21177, subd. (a).)

Contrary to claims in the Answer Briefs (AG Brief at pp. 29–30; Petitioners Brief at pp. 29–35), the EIR's analysis and conclusions that the Plan is consistent with the Scoping Plan and SANDAG's Climate Action Strategy, as well as SB 375, are not misleading because, as shown by substantial evidence in the record, the conclusions are correct (see AR 8a:2578–88). These conclusions also do not undercut the EIR's disclosure that the Plan will have significant and unavoidable impacts on GHG emissions. EIRs that disclose that a project's impact on GHG emissions will be significant under one threshold, but not another threshold, fully comply with CEQA, which encourages more (rather than less) disclosure. (Cf. *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 653 [upholding an EIR that concluded a project's GHG impacts would be consistent with a 2020 emission reduction target derived from AB 32 even though it also "may

result in a cumulatively considerable contribution to the global [GHG] problem"].)

The Answer Briefs' arguments on these issues reveal that the Petitioners and the Attorney General are dissatisfied with the state and regional GHG plans themselves, as they would like them to have targets to meet the Executive Order's 2050 goal when they do not. Thus, as discussed below, to support their argument that these plans incorporate the Executive Order's 2050 goal, the Answer Briefs misrepresent what these plans (and the laws enacting them) say.

a. *Substantial Evidence Supports the EIR's Conclusion that the Plan is Consistent with AB 32 and the Scoping Plan*

Contrary to the Answer Briefs' description (AG Brief at p. 30; Petitioners Brief at pp. 31–33, 58–60), AB 32 and the Scoping Plan do not incorporate the Executive Order's 2050 target.[7] As stated in the EIR, the "Scoping Plan functions as a roadmap for plans to achieve GHG reductions in California as defined in AB 32, which calls for GHG emissions to be reduced to 1990 levels by 2020." (AR 8a:258.) Prepared by the California Air Resources Board ("ARB") pursuant to AB 32, the "Scoping Plan contains the main strategies California will implement to reduce CO_2e emissions by 169 MMT, or 28.4 percent below the state's projected 2020 emissions level of 596 MMT CO_2e under a business-as-usual (BAU) scenario." (*Id.*)

The Scoping Plan itself confirms the EIR accurately described the Scoping Plan and AB 32 as setting a target only for 2020, and not for 2050.

[7] The Attorney General admits as much later in her brief, stating "[t]he state Senate is considering updates to AB 32 to guide the Air Resources Board in setting post-2020 targets." (AG Brief at p. 52.) If AB 32 already set post-2020 targets, the Senate would not need to update the statute to include them.

(See AR 320:27847.) The Scoping Plan's introduction states that AB 32 requires " a reduction of greenhouse gas (GHG) emissions to 1990 levels by 2020" and the ARB "is the lead agency for implementing AB 32." (*Id.*) Pursuant to AB 32, ARB assembled "an inventory of historic emissions, establishing greenhouse gas emission reporting requirements, and set[] the 2020 emissions limit." (*Id.*; AR 320:27865–66; see AR 320:27871–74, 27880–81 [summarizing the how ARB determined emissions that would occur in 2020 if no action was taken (business as usual) and the percent reduction needed from those emission levels required to meet the 2020 target of reducing emissions to 1990 levels].) ARB then drafted the "Scoping Plan[,] outlining the State's strategy to achieve the *2020 greenhouse gas emissions limit*." (AR 320:27847 [emphasis added]; see *Ass'n of Irritated Residents*, *supra*, 206 Cal.App.4th at p. 1496 ["The scoping plan states repeatedly that it is designed 'to achieve the *2020* greenhouse gas emissions limit'" (emphasis added).]; *id.* at p. 1497 ["Resolution 08-47, by which the [Air Resources] Board conditionally approved the scoping plan, recites, 'The recommendations in the *Proposed Scoping Plan* are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by *2020*'" (emphasis added).].)

It is Petitioners' description of the Scoping Plan as including policies to meet a 2030 and 2050 target rather than the EIR's description that is misleading. Petitioners quote extensively from a section of the Scoping Plan that looks forward to 2030. (Petitioners Brief at pp. 31–32, quoting AR 320:27977–80.) This section poses questions about whether *expansions* of the programs outlined in the previous 130 pages to meet AB 32's 2020 target would keep California on track to reduce GHG emissions by approximately 35% from 1990 levels by 2030 and beyond. (AR 320:27977.) ARB presents a scenario that would achieve this

reductions, noting "the potential mix of future climate policies articulated in this section is only an example . . . to demonstrate that the measures in the Scoping Plan can not only move California to its 2020 goal, but also provide an expandable framework for much greater long-term greenhouse gas emissions reductions." (AR 320:27980.) ARB acknowledges that it has not figured out exactly how reductions beyond 2020 will be achieved or whether they would progress linearly, and is "prepared to make mid-course corrections" as it updates its Scoping Plan every five years pursuant to AB 32. (AR 320:27981; see AR 320:27967 ["As the proposed measures are developed over the coming years, it is possible that some of these strategies will not develop as originally thought or not be technologically feasible or cost-effective at the level given in the plan. It is equally likely that new technologies and strategies will emerge after the initial adoption schedule required in AB 32, that is, regulation adopted by January 1, 2011."].)

The Scoping Plan thus refutes Petitioners' claim and affirms what the EIR states: that the Scoping Plan implements AB 32's 2020 GHG reduction target and ARB has not yet determined what will be needed to continue progress towards reducing GHG emissions. (AR 8a:2561–62, 2581, 8b:3767; see *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 99, 939 ["Assembly Bill 32 implements one of the 'reduction targets' of Executive Order No. S-3-05 by requiring the State of California to reduce its global warming emissions to 1990 levels by 2020."]; *Citizens for Responsible Equitable Environmental Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 336 ("*CREED*") ["Assembly Bill No. 32 (2005–2006 Reg. Sess.) sets a target of reducing greenhouse gas emissions to 2000 levels by 2010 and 1990 levels by 2020."].) In the absence of a state plan with a method for determining how to judge a project's consistency with the state's 2050 target, the EIR was not required to

speculate. (See *Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th at p. 941.)

b. *Substantial Evidence Supports the EIR's Conclusion that the Plan is Consistent with the Climate Action Strategy*

The Answer Briefs also wrongly claim the Climate Action Strategy incorporates long-term reduction targets that the Plan will not meet (AG Brief at p. 30; Petitioners Brief at pp. 33–34), and thus the EIR's conclusion that the Plan "would not impede the [Climate Action Strategy] and would constitute a less than significant impact" is misleading. (AR 8a:2582, 8a:2583.) Petitioners' description of the Climate Action Strategy as is particularly dishonest. The Climate Action Strategy, like many planning documents, contains extensive discussion of background facts, explanatory material, and general policy issues. Petitioners selectively quote from such discussion to falsely suggest the Climate Action Strategy adopts specific goals or targets for 2050 that were somehow neglected in the EIR. (See Petitioners Brief at p. 33–34, quoting AR 216:17623–24, 17628–29.) As explained below, this is false.

While the Climate Action Strategy discusses the Executive Order's 2050 goal, it does not adopt it. Indeed, although the measures in the Climate Action Strategy are designed to achieve both short-term and long-term emission reductions, the Climate Action Strategy does not assign numerical targets to each individual measure or all measures combined. (AR 216:17623–25.) Rather than numerical targets, the Climate Action Strategy emphasizes a set of flexible measures that are intended to help SANDAG's member agencies meet their GHG emission goals over a specific reduction target. (AR 8a:2556.) Such measures include those that reduce total VMTs, minimize GHGs when vehicles are used, promote use of low carbon alternative fuels, and protect transportation infrastructure

from climate change impacts. (*Id.*) The measures in the Climate Action Strategy "are intended to be a list of potential options – 'tools in the toolbox,'" and "not requirements." (AR 216:17619 ; see AR 8a:2566 [correctly summarizing the Climate Action Strategy], 8b:3847 [Climate Action Strategy "provides a toolbox of land use, transportation, and related policy measures and investments that help implement the 2050 Plan through reducing GHG emissions"].) Further, the Climate Action Strategy acknowledges that long-term reductions will require "fundamental changes in policy, technology, and behavior" that are beyond its scope. (AR 216:17628.)

Since the Plan includes many of the measures in the Climate Action Strategy, including emphasis on "compact urban development of multi-family housing units that tend to be more energy efficient than single-family residences" (AR 8a:2582) and " transit upgrades and additions that encourage transit ridership," and "projects that would reduce GHG emissions in transportation through more efficient traffic flow" (AR 8b:2583), the EIR correctly concluded "implementation of the [Plan] would not impede the [Climate Action Strategy]." (AR 8a:2582–83). Indeed, one of the implementation actions in the sustainable communities strategy portion of the Plan is to implement the "the Climate Action Strategy in coordination within state and local jurisdiction efforts," which confirms the Plan will not impede implementation of the Climate Action Strategy. (AR 8b:4431.) The Answer Briefs provide no reason to doubt that SANDAG will faithfully implement the Plan, including measures incorporated from the Climate Action Strategy. (See *City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 365 ["courts ordinarily presume that the government . . . will comply with the law"].)

Importantly, as the Climate Action Strategy notes, "[p]ast investments and decisions that shaped the region's land use patterns and

transportation systems are major determinants of current greenhouse gas emissions and will continue to be into the future." (AR 216:17642.) These past investments and decisions put the region on pace for a 30% increase in transportation-related GHG emissions by 2030 relative to 2006. (*Id.*) "Once in place, land use patterns and transportation infrastructure typically remain part of the built environment and influence travel behavior and greenhouse gas emissions for several decades, perhaps longer." (*Id.*) The inability of the first Plan drafted to incorporate the Climate Action Strategy's measures to completely reverse the GHG emission trajectory prior decisions had established is consistent with this statement. That said, the Plan's incorporation of the Climate Action Strategy's measures began the process needed to correct the region's GHG trajectory. For example, the Plan would have a long-term decrease in per capita VMTs over 2005 levels. (AR 8b:3784.) Despite this decrease, modeled total GHG emissions and VMTs increased 51% between 2010 and 2050, in part due to SANDAG's conservative modeling assumptions. (AR 8b:3823.)[8] Despite this decrease, this result does not make the Plan inconsistent with the Climate Action Strategy.

c. *Substantial Evidence Supports the EIR's Conclusion that the Plan is Consistent with SB 375*

The Answer Briefs claim that the EIR's SB 375 analysis makes the EIR misleading by masking the Plan's rising emissions trajectory; this

[8] "[A]bsolute VMT increases are due to several conservative modeling assumptions made for the 2050 RTP/SCS. These assumptions result in average trip length increasing by 2050. As modeling approaches evolve, future versions of the RTP/SCS may project lower total VMT in 2050 than projected in the 2050 RTP/SCS." (AR 8b:3823; see AR 8b:3822 [listing some of the conservative modeling assumptions, such as assuming "no further technological advances such as increases in fuel efficiency between 2041 and 2050"]) SANDAG has actively pursued improvements to its model for the next version of the Plan. (AR 8b:3831.)

claim also fails. (See AG Brief at pp. 29–30, Petitioners Brief at pp. 29–30, 60–61.) Petitioners and the Attorney General do not dispute the technical correctness of the analysis. Their claim is that the reversal of the downward trend in vehicle emissions predicted in the EIR after 2020 is somehow inconsistent with SB 375 even though the Plan still achieves SB 375's 2035 reduction targets.

There is no inconsistency. ARB, the agency charged with implementing SB 375, found the Plan complies with SB 375. (AR 328:29359, 329:29360–61; see AR 344:30190 [ARB staff recommends approval].) ARB's staff also recommended approval, but characterized as "unexpected" the EIR's finding that the Plan would not cause a continuous decrease in GHG emissions to 2050. (AG Brief at p. 29, citing AR 344:30143.) The finding was "unexpected" exactly because the Plan complied with SB 375. ARB's staff's reaction proves only that determining how to model GHG emissions and create effective strategies to curb them is complicated. (See AR 344:30144.) It is uncertain whether the reversal of the downward trend in vehicle emissions is a result of anomalies in the modeling technologies available when the EIR was prepared or a flaw in SB 375's emission reduction strategy itself. (See AR 344:30190.) In neither case can the EIR be faulted for reporting the facts nor evaluating consistency against the specific targets mandated by the ARB under SB 375.

The EIR would have been remiss not to include the SB 375 analysis because it is directly relevant to the specific role the Plan is supposed to play in achieving the state's overall GHG reduction strategy. (AR 8a:2578.) As discussed in the Opening Brief, regional transportation planning is by itself expected to achieve only 3% of the total statewide emission reductions programmed in the Scoping Plan. (AR 319:26185–89.) That the EIR accurately reported SANDAG's success in achieving its regional share of this goal does not mean that the EIR somehow masked the fact that

GHG emissions overall will increase in future decades due to multiple causes, many beyond SANDAG's control or legal responsibility. Rather the analysis of consistency with SB 375 added a fuller picture of the Plan's contribution to GHG emissions from light duty trucks and passenger vehicles, which is narrower than the analysis that compared all the Plan's emissions to existing conditions. (AR 8a:2578; see AR 8b:3821–23 [explaining the Plan's diminishing decline of per capita GHG emissions revealed by the long-term GHG emission analysis and how that relates to the Plan's compliance with SB 375].)

3. The EIR Considers and Describes Climate Science and Policy

The EIR does not ignore or misstate climate science or the state's climate policy and therefore did not mislead the public or decisionmakers about those topics. (Contra AG Brief at pp. 31–39.) As discussed above and in the Opening Brief, SANDAG took a "hard look" at the Plan's impact on the region's long-term GHG emissions (see, e.g., AR 8a:2575–78, 3095–96), found the impact to be significant, and adopted feasible mitigation measures to reduce the impact (AR 8a:2588–91). That look considered relevant climate science by, among other things, summarizing the science of climate change as set forth in the reports of the Intergovernmental Panel on Climate Change. (AR 8a:2553–54; see AR 8a:3377–78.) Based on that hard look, the EIR disclosed the Plan would not reduce GHG emissions from existing levels by 2050, causing SANDAG to express "concerns about the implications of the diminishing decline of per capita GHG emissions" and discuss the reasons why the Plan may not achieve long-term reductions. (AR 8b:3821–23.)

Petitioners nevertheless argue that the EIR must consider consistency with the Executive Order to be legally adequate under CEQA because the Executive Order is rooted in climate science. (Petitioners Brief at p. 57.) This argument proves nothing since all of the EIR's significance

thresholds are based on science, with thresholds GHG-2 (conflict with SB 375 emission reduction targets) and GHG-3 (conflict with applicable GHG reduction plans) based on the same science as the Executive Order. (See AR 8a:2561–62 [summary of AB 32 and the Scoping Plan], AR 2563 [summary of SB 375], 8a:2566–67 [summary of the Climate Action Strategy]; see also AR 8a:3377–78.)

Although the Executive Order is rooted in climate science, no provision in CEQA requires EIRs to consider all documents, including executive orders, supported by science. (See AG Brief at p. 32 fn. 19 [noting SANDAG could meet CEQA's requirements without specifically citing the Executive Order].) Instead, "CEQA gives lead agencies discretion to design an EIR and the agency is not required to conduct every recommended test or perform all requested research or analysis." (*Rialto Citizens for Responsible Growth*, *supra*, 208 Cal.App.4th at p. 937 [citation and internal quotation marks omitted].) SANDAG appropriately exercised its discretion to rely on thresholds other than the Executive Order that are equally rooted in climate science and policy. Given the complexity of climate change, reasonable persons may disagree on how to measure a project's impact on global climate change, and no scientific consensus has emerged to suggest that comparing a project's emissions with abstract statewide goals rather than existing conditions or applicable plans for reducing GHG emissions is meaningful for CEQA review. There also is no legal basis for this suggestion. (See, e.g., *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 841 [holding an EIR "properly adopted" AB 32's reduction target for GHG emissions as the threshold of significance], *North Coast Rivers Alliance*, *supra*, 216 Cal.App.4th at p. 651 [upholding EIR with a single GHG threshold: "whether the Project would interfere with the county's goal of reducing GHG emissions to 15 percent below the 1990 levels by 2020"]; *Santa Clarita Org. for Planning*

the Environment, *supra*, 197 Cal.App.4th at p. 1057–58 [upholding EIR that analyzed significance of GHG emissions by comparing emissions with the project to existing conditions].)

The Answer Briefs further suggest the EIR's statement that "SANDAG's role in achieving [the Executive Order's 2050 target] is uncertain and likely small" misrepresents climate science by ignoring the significant cumulative impact of small amounts of GHG emissions. (AG Brief at p. 48, quoting AR 8b:3769.) To the contrary, this statement is reflects climate science. As the EIR states, "impacts of GHGs are borne globally" and a global effort is need to stabilize the climate. (AR 8a:2553.) "The quantity of GHGs that it takes to ultimately result in climate change is not precisely known; suffice it to say, the quantity is enormous, and no single project alone would measurably contribute to a noticeable incremental change in the global average temperature, or to global, local, or micro climate." (AR 8a:2553.) SANDAG's relatively small assigned role in decreasing just California's GHG emissions is shown by the Scoping Plan, which anticipates a mere 5 MMT CO_2E of the required 146.7 MMT CO_2E reductions needed to meet AB 32's 2020 target will come from regional planning efforts such as the Plan. (AR 320:27881.) As SANDAG's Climate Action Plan states, meeting the 2050 GHG reduction goal "will require fundamental changes in policy, technology, and behavior"; such changes are largely outside SANDAG's control. (AR 216:17628; see AR 320: 27967, 27981 [noting uncertainty about how the state's emission reduction goal will be achieved]; see AR 8b:4431 ["[T]he primary strategies to achieve this target [80% below 1990 levels by 2050] should be major 'decarbonization' of electricity supplies and fuels, and major improvements in energy efficiency (CEC 2011)."].)

Importantly, SANDAG's admission that its role in stabilizing the climate is small and uncertain did not cause the EIR to misrepresent the

significant adverse impacts on the climate caused by the Plan's long-term GHG emissions. (See, e.g., AR 8a:3095–96 [EIR finds the Plan's contribution to the state's GHG emissions would be cumulatively considerable].) Nor should it be construed as lack of recognition by SANDAG of its important responsibility to carry out its fair share of the work needed statewide to address California's goals. The EIR treats any addition from the Plan to existing GHG emissions as significant. (AR 2568.) The EIR also finds the Plan's contribution to California's long-term GHG emissions to be cumulatively considerable. (AR 8a:3096.) This conclusion reflects the science the Answer Briefs allege SANDAG ignored.

Fundamentally, the Answer Briefs reject the scientific verdict reflected in the Scoping Plan and Climate Action Plan that, as of 2011 (when the EIR was prepared), the methods to sufficiently reduce GHG emissions to meet the Executive Order's 2050 goal were, and still are, unknown. (See, e.g., AR 319:26255 [the Scoping Plan acknowledges that "the measures needed to meet the 2050 goal are too far in the future to define"].)[9] This verdict is one reason CEQA Guidelines section 15064.4, subdivision (b)(3), directs lead agencies to focus EIR analysis on relevant, publicly developed emission reduction plans rather than engage in speculation about consistency with goals that are not reflected in existing plans or performance standards. (See AR 319:25842–43 [when adopting the Guideline amendments, the Natural Resources Agency noted why CEQA analysis should not typically focus on "consistency with plans that

[9] Even the methods to reduce GHG emissions to meet the 2020 goal were somewhat uncertain. According to the Scoping Plan, "ARB recognize[d] that due to several factors, including information discovered during regulatory development, technology maturity, and implementation challenges, actual reductions from individual measures aimed at achieving the 2020 target may be higher or lower than current estimates." (AR 319:26160.)

are purely aspirational"].) The approach endorsed by the CEQA Guidelines, which SANDAG followed, is not a denial of climate science, but recognition of the scientific complexities and uncertainties involved in achieving the immense GHG reductions envisioned in the Executive Order.

B. SANDAG Fully Complied With CEQA's Requirements and the Answer Briefs Propose a Compliance Standard Unsupported by CEQA

1. The CEQA Guidelines Set Forth Detailed Provisions Specifying How Lead Agencies Should Evaluate Greenhouse Gas Emissions and Climate Change, and SANDAG's EIR Complied with Those Provisions

As explained in the Opening Brief, the CEQA Guidelines include detailed provisions specifying appropriate ways for lead agencies to evaluate GHG emissions and climate change in section 15064.4. (Opening Brief at pp. 23–25.) These provisions were developed by the Office of Planning and Research and adopted by the Natural Resources Agency in response to direction from the Legislature in SB 97. (8a:2564.)[10] SANDAG complied with those CEQA Guidelines provisions. (Opening Brief at pp. 26–29.)

Contrary to the Attorney General's claim (AG Brief at p. 40), SANDAG's compliance with the CEQA Guidelines was not "rote." SANDAG considered climate science and legislative requirements that reflect climate science when selecting its three GHG emission thresholds. (See AR 8a:2553–67 [summarizing climate science and legislative

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[10] Contrary to Petitioners' claim (Petitioners Brief at p. 55), the Legislature demonstrated a special interest in how the analysis of climate change is performed under CEQA by enacting SB 97, which directed the Resources Agency to provide specific guidance on this issue by amending the Guidelines. Regardless, the point is not whether the Legislature retained ultimate control; it is that the Legislature directed the Resources Agency to establish Guidelines telling regional and local agencies how to evaluate climate change and SANDAG complied with that direction.

enactments, and listing the chosen thresholds], AR 8a:3377–78 [listing the scientific and other sources relied on to undertake the GHG analysis in the EIR]; AG Brief at p. 43 fn. 23.) SANDAG thus thoughtfully relied on the suggestions in CEQA Guidelines section 15064.4 to choose its three significance thresholds. (AR 8a:2564, 8b:3767–70.) As discussed above, SANDAG's three thresholds resulted in an EIR that disclosed how the Plan would impact the existing environment in the short- and long-term, whether the Plan would comply with plans adopted to reduce GHG emissions (i.e., the Scoping Plan and the Climate Action Strategy), and whether the Plan complied with regulations (SB 375) designed to reduce regional GHG emissions from cars and light-duty vehicles, giving a full picture of the Plan's impacts on GHG emissions. This is the hard look of a project's potential impacts on the physical environment CEQA requires.

Petitioners' claim that SANDAG's use of GHG thresholds that fit with those suggested by CEQA Guidelines section 15064.4 narrows CEQA into a checklist for compliance with other laws. (Petitioners Brief at p. 54.) Not so. The very first threshold that SANDAG used—no increase over existing GHG emissions—is not based on another law, but instead on science indicating that any addition to the world's cumulatively significant GHG emissions should be considered significant. (AR 8a:2567–68, 3095–96.) The other thresholds chosen by SANDAG (consistency with the Scoping Plan, Climate Action Strategy, and SB 375's targets) are based on the presumption that compliance with those plans and laws will prevent significant impacts.

As the Attorney General notes, this is a "working presumption" that is "highly relevant to determining significance," but does not always support a conclusion that a project's impacts will be less than significant. (AG at p. 42; see *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 114–16, disapproved on other grounds

by *Berkeley Hillside*, *supra*, 60 Cal.4th at p. 1109 fn. 3 [upholding what is now CEQA Guideline section 15064(h)(3), which allows a lead agency to determine a project's contribution to cumulative impacts such as climate change is not significant if the project complies with the requirements in an approved plan or mitigation program, such as plans or regulations for the reduction of greenhouse gas emissions, that provides specific requirements that will avoid or substantially lessen the cumulative problem].) SANDAG's EIR presents an example of exactly what the Attorney General describes. Specifically, although the Plan would comply with the Scoping Plan, the Climate Action Plan, and SB 375, the EIR concludes the Plan would nevertheless have significant impacts on climate change because, despite the Plan's emission-reducing provisions, regional emissions overall would increase. (AR 2572–78, 2588–91, 3094–96.)

Because the EIR went beyond determining whether the Plan complied with existing laws and plans designed to decrease GHG emissions by disclosing that despite compliance with those laws and plans, the Plan would have a significant impact on long-range GHG emission reduction efforts, it is unlike the EIRs in the cases cited by the Attorney General. (AG Brief at p. 42.) For example, the EIR at issue in *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1 ("*CATS*") relied *solely* on the project's compliance with the Department of Pesticide Regulation's certified regulatory and registration program to determine the project's use of pesticides would not have significant adverse environmental impacts. (*Id.* at p. 16.) The EIR failed to consider that project's specific uses of pesticides. (*Id.*) The EIR at issue in *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 also is distinguishable. There, the EIR was invalid not because the agency used the thresholds suggested by the CEQA Guidelines, but because when doing so, the agency failed to include its

reasons for finding a certain impact to be less than significant. (*Id.* at pp. 1111–12.)

By including analysis that compares the Plan's projected GHG emissions with existing conditions in three key years (2020, 2035, and 2050), SANDAG's analysis not only avoided the error identified in *CATS*, but also went beyond the single threshold other agencies have used to measure project's impacts on climate change, which is compliance with an applicable GHG target from a GHG emission reduction plan or AB 32. (See, e.g., *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 650–52 [upholding EIR that determined significance based on whether project would interfere with local GHG emission reduction target based on AB 32]; *CREED*, *supra*, 197 Cal.App.4th at p. 335–37 [upholding negative declaration that used a significance threshold based on AB 32].) The EIR also explains how it reached its significance conclusions (AR 8a:2567–91, 3095–96), avoiding the error in *Protect the Historic Amador Waterways*.

2. The EIR Contained the Information Required by CEQA and Therefore CEQA's "Safe Harbor" Provision Applies

In addition to complying with the express requirements of CEQA Guidelines section 15064.4, the EIR also complies with CEQA's other requirements. As discussed above, the EIR analyzed the Plan's long-range GHG emissions, put those emissions in a scientific and regulatory context, and explained the analytical route to the EIR's significance conclusions. Because SANDAG complied with the explicit requirements of CEQA and the CEQA Guidelines, the EIR deserves "safe harbor" under Public Resources Code section 21083.1. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1107; see Opening Brief at pp. 28–29.)

The Legislature enacted Public Resources Code section 21083.1 to direct courts "'not [to] interpret [the CEQA statutes] or the state guidelines

adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those *explicitly* stated in [CEQA] or in the state guidelines.'" (*Berkeley Hillside Preservation*, *supra*, 60 Cal.4th at p. 1107, quoting Pub. Resouces Code, § 21083.1.) The Legislature intended to "'limit judicial expansion of CEQA requirements" and to "'reduce the uncertainty and litigation risks facing local governments and project applicants.'" (*Id.*)

A decision that an EIR for a long-range plan must analyze consistency with emission targets from an executive order would undermine the purpose of Public Resources section 21083.1 by adding a new requirement to CEQA. After such a decision, lead agencies would no longer be confident that following the CEQA Guidelines addressing GHG emissions will yield a legally adequate EIR. Instead, lead agencies would be left to guess whether the analysis they devise to address the Executive Order will pass muster with a court. In the absence of an accepted methodology, lead agencies would need to determine what qualifies as a "long-range plan" and how to provide the consistency analysis in a meaningful way. For example, the lead agency would need to determine which technologies to include in its emission projections, what percent of the total statewide reduction may be appropriate for a particular plan to try to achieve, and other practical considerations. Lead agencies also would be uncertain about what other executive orders or specific scientific reports must be addressed in an EIR to satisfy CEQA.

Another repercussion of holding the Executive Order must be considered under CEQA would be to inhibit the ability of lead agencies to rely on negative declarations and categorical exemptions. Such a holding would imply that an agency should use consistency with the Executive Order as a significance criterion in any environmental analysis or risk litigation based on a claim the agency ignored climate science. Under this

significance criterion, any project that does not decrease GHG emissions would have a significant (and likely unavoidable) impact on climate change. Thus, projects that typically would be exempt from CEQA, such as a new single-family home, or require a negative declaration, would instead require an EIR. (See 14 Cal. Code Regs., §§ 15070 [agency "shall prepare . . . a proposed negative declaration" only when there is no substantial evidence that the project may have a significant effect on the environment], 15303 [categorical exemption for small projects such as single-family homes], 15300.2, subd. (b) [exception to exemption if there is a potential for a significant cumulative impact from successive projects of the same type].) Lead agencies, out of an abundance of caution, likely would prepare an EIR for almost every project because such a holding would inject undue uncertainty into the CEQA process. Such uncertainty was exactly what the Legislature intended to prevent by adding section 21083.1 to CEQA.

C. SANDAG's Current EIR, With Its Analysis Based on Methodologies, Studies and Policies Developed Since 2011, Does Not Demonstrate Any Inadequacy in SANDAG's 2011 EIR

Petitioners and the Attorney General seek to bolster their argument that the EIR should have included analysis of the Plan's consistency with the Executive Order by noting that SANDAG's 2015 Draft EIR for the next regional transportation plan update has compared the projected emissions under the proposed new plan against the Executive Order's 2050 target.

(AG Brief at pp. 37, 51; Petitioners Brief at pp. 49–50).[11] This analysis was done in response to this litigation and the Court of Appeal decision below, but the 2015 Draft EIR does not demonstrate the EIR at issue here is inadequate for at least three reasons.

First, although there is new and updated analysis in the 2015 Draft EIR, its basic conclusions with respect to long-term climate impacts are similar to those in the EIR. The EIR concluded that long-term emissions in both 2035 and 2050 would increase from 2010 levels and would constitute a significant impact (AR 8a:2572–78), while the 2015 Draft EIR concludes that GHG emissions increases would be inconsistent with Executive Order goals, also a significant impact (AG Motion for Judicial Notice ("RJN"), Ex. 1 at pp. 35–39). (See also AR 8b:4432 ["These impacts [long-range GHG emissions] would be significant and unavoidable using either the net increase threshold used in Impact GHG-1, or an Executive Order based threshold."].) Both documents note that mitigation measures will substantially reduce emissions, but not to a less-than-significant level. (Compare AR 8a:2591 with RJN, Ex. 1 at p. 40–46.) Because the significance conclusions would have been the same (AR 14:4513–14), analysis of consistency with the Executive Order would not have caused SANDAG to consider additional mitigation measures or alternatives, as it

[11] To allow the Court to review the 2015 EIR, the Attorney General has submitted a motion for judicial notice. Since the 2015 EIR is not at issue here, and was not part of the administrative record before SANDAG when it made its decision to approve the Plan, the Court should deny the motion. (See *Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 573 ["a court generally may consider only the administrative record in determining whether a quasi-legislative decision was supported by substantial evidence within the meaning of Public Resources Code section 21168.5"].) In contrast, the information SANDAG cited in its Opening Brief that the Attorney General describes as "extra-record" (AG Brief at p. 51) is, in fact, in the administrative record (see, e.g., AR 319:26282–436, 320:27841–993).

was already considering every measure and alternative feasible to minimize significant long-term GHG emissions.

Second, the inclusion of the analysis in the 2015 EIR does not indicate the analysis in 2011 would not have been speculative. In 2011, SANDAG stated that "[a]s modeling capacities improve in future iterations of the RTP/SCS, SANDAG will consider quantifying the role of the RTP/SCS in helping the state achieve the EO S-3-05 2050 goal, if feasible," indicating that the analysis was infeasible in 2011. (AR 8b:3858.) The 2015 EIR does not show SANDAG's 2011 conclusion was unreasonable. (See *Environmental Protection Info. Center v. Cal. Dep't of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 490–91 ["the question of how much economic and employment analysis over how long a period of time is feasible, and at what point it becomes speculative, is a judgment call, and we will not disturb the agency's determination without a demonstration that it is clearly unreasonable"].) If anything, the 2015 EIR supports SANDAG's 2011 conclusion. As noted in the 2015 EIR, SANDAG was able to account for many factors in the GHG inventories that were not accounted for in 2011, reflecting "additional certainty regarding the regulatory environment, including future projections of renewable energy, building energy efficiency, water conservation programs, and solid waste diversion." (RJN, Ex. 1 at p. 21.)

Even with the increased certainty as compared to 2011, the 2015 EIR finds "substantial uncertainty in projecting emissions for future horizon years, especially for 2050." (*Id.*) Studies produced since 2011 show that the path to achieving the state's 2050 goal remains uncertain because it "would require major changes in clean technologies utilization, markets, and state and federal regulations." (*Id.* at p. 38.) This uncertainty results in part because state laws related to GHG reduction for electricity, natural gas, and fuel efficiency requirements, and other sectors that

contribute GHG emissions only go to 2020 or 2025. (See, e.g., 17 Cal. Code Regs., §§ 95482 [low carbon fuel standards out to 2020]; 95841 [GHG allowance budgets for California's cap-and-trade program are set through 2020]; 95663 [GHG exhaust emission standards for heavy-duty vehicles established through 2019]; see also 77 Fed.Reg. 62624 (Oct. 15, 2012) [fuel economy standards for light-duty vehicles for model years 2017–2025].) Lead agencies know more aggressive measures must be enacted to meet the 2050 target, but do not know what those measures will be, which sectors will be subject to those measures, when those measures will begin, or the ultimate success of those measures in reducing GHG emissions, all of which adds to the speculative nature of analyzing the Plan's consistency with the 2050 target. For example, agencies do not know what the fuel mix, percent of zero-emission vehicles, or percent of energy that will be supplied by renewable sources will be in 2050. The consistency analysis in the 2015 EIR is based on SANDAG's conservative projection regarding future legislation and technological advances. Other planning agencies may have different projections, making it impossible for the state or the public to look at the analysis produced by each planning agency and gauge the cumulative success of all regional transportation plans/sustainable community strategies in meeting the state's 2050 target. (See Gov. Code, § 65072, subd. (b) [requiring the state to consider regional transportation plans when preparing the California Transportation Plan].)

Nevertheless, the Answer Briefs take issue with SANDAG's argument that analyzing the Plan's consistency with the Executive Order would be speculative. Petitioners wrongly claim the argument is "sweepingly overbroad" because it would relieve lead agencies from ever analyzing long-range impacts. (Petitioners Brief at p. 52.) Petitioners misinterpret the argument, which is not that agencies do not need to disclose a project's long-term impacts, but instead that the method

proposed by Petitioners (consistency with the Executive Order) would require too much speculation about the future and thus would not yield more reliable information about the Plan's long-term emissions than the analyses performed by SANDAG. The Attorney General's claim that the argument is "post hoc" (AG Brief at pp. 49–50) ignores statements in the record that existing models were unable to quantify the Plan's role in achieving the state's 2050 goal, which would make analyzing consistency with that goal infeasible. (See, e.g., AR 8b:3858.)

Third, the inclusion of the analysis in the 2015 EIR does not show CEQA requires this analysis, which is the question at issue here. No provision of CEQA requires this analysis—not its general principle to disclose a project's significant impact on the existing physical environment or the provisions specifically addressing GHGs. Even without an analysis of consistency with the Executive Order, the EIR fulfilled its purpose "'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; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.'" (*Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1045, quoting Pub. Resources Code, § 21061.)

Even if there was a provision of CEQA that required the analysis sought by the Answer Briefs, the EIR's failure to provide it was not prejudicial. Under CEQA, "[t]he absence of information in an EIR does not per se constitute a prejudicial abuse of discretion." (*Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899, 925, citing Pub. Resources Code, § 21005.) "A prejudicial abuse of discretion occurs [only] if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the

statutory goals of the EIR process." (*Id.* [alteration, citations, and internal quotation marks omitted].) The party challenging the EIR bears the burden to show the alleged absence of information was prejudicial. (*Id.*)

Despite the burden to explain how the lack of a consistency analysis with the Executive Order's 2050 goal "made it impossible for SANDAG to consider a full range of mitigation measures and alternatives" (Petitioners Brief at p. 65), Petitioners fail to present such evidence because the record does not support their claim. The EIR set "forth sufficient information to foster informed public participation" (*Citizens for a Sustainable Treasure Island*, *supra*, 227 Cal.App.4th at p. 1046) about the Plan's long-term GHG emissions as illustrated by the ample comments on the EIR and throughout the public hearing process on this topic. (See, e.g., AR 8b:4434–46 [Attorney General's comments regarding GHG emissions].)[12] Given SANDAG's consideration of the Petitioners' and the Attorney General's extensive comments during the EIR process, including their suggested mitigation measures and alternatives, it is unclear what additional measures or alternatives Petitioners image they could have suggested for SANDAG to consider. (See AR 8b:3824–29 [addressing comments on GHG mitigation measures, in part by incorporating some suggestions from the Attorney General], 3801–11 [addressing comments regarding alternatives].) Thus, to the extent the Court finds the EIR failed to include adequate information about the Project's inconsistency with the state's goal to continuously decrease GHG emissions, that error was harmless.

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[12] Petitioners comments also show the EIR did not require anyone to "do the math" to figure out that the Plan's long-term emissions were not decreasing. (Contra Petitioners Brief at p. 62.) While one could do the math to figure out that the Plan's increasingly decreasing GHG reductions would not result in an 80% reduction from 1990 levels by 2050, Petitioners' comments show actual calculations were not required to understand the Plan's significant impacts on long-range GHG emissions.

D. The Appropriate Remedy Is to Issue an Opinion and Not Remand the Case to a Lower Court

The specific facts that led to the dispute in front of this Court will likely be moot by the time oral argument is set in this case, as SANDAG will have prepared a new EIR and adopted a new regional transportation plan/sustainable communities strategy that supersedes the one at issue. "Although courts generally avoid issuing advisory opinions" on moot controversies, here, the Court retains power to decide the issue under the mootness exception for public interest issues. (*Saltonsall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 849.) Under this exception, the Court "may resolve controversies that are technically moot if the issues are of substantial and continuing public interest" and likely to recur in the future. (*Id.* at p. 849.) The issue of whether an EIR must consider a project's consistency with the Executive Order is of substantial public interest and likely to recur, as it arises every time an agency prepares an EIR, particularly an EIR for a long-range plan, such as a general plan, area plan, specific plan, and, of course, a regional transportation plan. It likely also will arise each time executive orders dealing with issues covered in CEQA documents, such as GHG emissions and water supply, are issued. Accordingly, the appropriate "remedy" is an opinion that advises agencies whether, or how, to account for the Executive Order in EIRs going forward.

A writ directing SANDAG to decertify the EIR, remedy the EIR, or remanding the case back to the trial court as suggested by the Attorney General would serve no purpose since both the EIR and the Plan will soon be superseded. (See AG Brief at p. 54.) In addition, contrary to the Attorney General's claim (*id.* at p. 53), it would be inappropriate for this Court to preemptively anticipate future violations in the 2015 EIR by issuing a writ directing SANDAG to correct in the 2015 EIR the alleged defects identified by the Court of Appeal in the 2011 EIR. Alleged defects

in the 2011 EIR related to mitigation, project alternatives, air quality impacts and mitigation, and agricultural impacts are outside the scope of issues presented to this Court. Although the Attorney General could have briefed these issues and provided the Court with evidence that the same issues would be raised by the 2015 EIR, the Attorney General chose not to do so. Without such knowledge, the question whether the 2015 EIR will comply with CEQA is unripe. (See *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573, 1582–83 [holding declaratory relief inappropriate on unripe issue]; see also *Giraldo v. Dep't of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 253 ["'it is not the proper function of this Court to decide unripe issues, without the benefit of adequate briefing, not involving an actual controversy, and unrelated to a specific factual situation'"].)

The Attorney General also wrongly claims a preemptive remedy is not precluded by Public Resources section 21168.9. Public Resources section 21168.9 "gives trial courts the option to void the finding of the agency (§ 21168.9, subd. (a)(1)), or to order a lesser remedy which suspends a specific project activity which could cause an adverse change in the environment (§ 21168.9, subd. (a)(2)), or to order specific action needed to bring the agency's action into compliance with CEQA." (*Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 961.) This provision does not give courts authority to direct agencies to take specific actions needed to bring a future, unchallenged EIR for a new project into compliance with CEQA. Instead, the Court should presume SANDAG will comply with CEQA absent evidence from the 2015 EIR to the contrary (see *City of Marina*, *supra*, 39 Cal.4th at p. 365), and no such evidence has been presented. Further, although a court "must specify what action by the agency is necessary to comply with CEQA (§ 21168.9, subd. (b))[, it] cannot direct the agency to exercise its discretion in a particular way

(§ 21168.9, subd. (c))." (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1266.) Accordingly, the Court cannot issue a writ directing SANDAG to include specific significance thresholds, alternatives, or mitigation measures in its 2015 EIR, as such a writ would inappropriately curtail SANDAG's discretion.

V.

CONCLUSION

For the foregoing reasons, SANDAG respectfully requests the Court hold that CEQA does not require the EIR to include analysis of the Plan's consistency with the GHG emission reduction goals in the Executive Order.

Dated: July 30, 2015

Cox, Castle & Nicholson LLP

By: _____

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c)(1))

The text of this brief consists of 13,420 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate of word count was executed on July 30, 2015, at San Francisco, California.

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San Diego Association of Governments
and San Diego Association of Governments
Board of Directors

CERTIFICATE OF SERVICE
DECLARATION OF SERVICE BY MAIL

CASE NAME: Cleveland National Forest Foundation v. San Diego Association of Governments
CASE NO.: California Supreme Court No. S223603
Court of Appeal, 4th Appellate District, Division 1, No. D063288
San Diego County Superior Court Case No. 37-2011-00101593-CU-TT-CTL

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 California Street, 10th Floor, San Francisco, California 94104.

On July 30, 2015, I served the foregoing documents described as:

1) **APPLICATION FOR LEAVE TO FILE consolidated, OVERSIZED REPLY BRIEF ON THE MERITS**

2) **SAN DIEGO ASSOCIATION OF GOVERNMENTS' CONSOLIDATED REPLY BRIEF**

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

On the above date:

☒ **BY U.S. MAIL:** The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Cox, Castle & Nicholson LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

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Executed on **July 30, 2015**, at San Francisco, California.

Catherine Schmitz

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Court of Appeal **Fourth Appellate District, Div. 1** 750 B Street, Suite 300 San Diego, CA 92101 *(Case No. D063288* *(via mail only)*	**Superior Court – San Diego County** The Honorable Timothy B. Taylor 330 West Broadway San Diego, CA 92101 *(Case No. 37-2011-00101593-CU-TT-CTL* *(via mail only)*
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