SUPREME COURT COPY

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IN THE SUPREME COURT OF CALIFORNIA

CLEVELAND NATIONAL FOREST FOUNDATION; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; CREED-21; AFFORDABLE HOUSING COALITION OF SAN DIEGO COUNTY; PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs, Intervenor and Respondents,

v.

SAN DIEGO ASSOCIATION OF GOVERNMENTS; SAN DIEGO ASSOCIATION OF GOVERNMENTS BOARD OF DIRECTORS,

Defendants and Appellants.

SUPREME COURT
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After a Decision by the Court Of Appeal
Fourth Appellate District, Division One
Case No. D063288

Appeal from the San Diego County Superior Court,
Case No. 37-2011-00101593-CU-TT-CTL (Lead Case)
[Consolidated with Case No. 37-2011-00101660-CU-TT-CTL]
The Honorable Timothy B. Taylor, Judge Presiding

Plaintiffs' Consolidated Answer to Amici Curiae Briefs

*Rachel B. Hooper (SBN 98569)
Amy J. Bricker (SBN 227073)
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816

Daniel P. Selmi (SBN 67481)
919 S. Albany Street
Los Angeles, CA 90015
Telephone: (213) 736-1098
Facsimile: (949) 675-9861

Marco Gonzalez (SBN 190832)
Coast Law Group LLP
1140 South Coast Highway 101
Encinitas, CA 92024
Telephone: (760) 942-8505
Facsimile: (760) 942-8515

Attorneys for Plaintiffs and Respondents Cleveland National Forest Foundation and Sierra Club

Kevin P. Bundy (SBN 231686)
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Telephone: (510) 844-7100 x313
Facsimile: (510) 844-7150

Attorney for Plaintiff and Respondent Center for Biological Diversity

Cory J. Briggs (SBN 176284)
BRIGGS LAW CORPORATION
99 East "C" Street, Suite 111
Upland, CA 91786
Telephone: (909) 949-7115
Facsimile: (909) 949-7121

Attorneys for Plaintiffs and Respondents Creed-21 and Affordable Housing Coalition of San Diego County

TABLE OF CONTENTS

Page

INTRODUCTION 1

I. Although This Court's Review Is De Novo, the EIR Would Fail Even Under Substantial Evidence Review................................ 5

A. An Agency's Interpretation of CEQA's Requirements Is Reviewed De Novo. 5

B. Amici's Arguments for Substantial Evidence Review Lack Merit.. 10

C. Substantial Evidence Does Not Support the EIR's Omission of Analysis of the Plan's Inconsistency with California's Long-Term Climate Stabilization Goals.... 13

II. SANDAG's Omissions Were Not a Proper Exercise of Discretion, But Rather an Abuse of Discretion....................... 16

A. SANDAG Erred by Omitting Critical Information from the EIR.. 16

B. Selection of a "Threshold of Significance" Is Not Conclusive of CEQA Compliance................................. 21

C. Agencies Lack Discretion to Produce Incomplete and Misleading EIRs.. 27

III. A Ruling in Plaintiffs' Favor Would Not Have "Unreasonable Consequences," but Would Be Entirely Consistent with CEQA and Longstanding CEQA Precedent. 29

A. The Question Before the Court Is Indisputably Narrow and Does Not Implicate Every Future CEQA Approval.30

1. CEQA's Tiering and Other Streamlining Provisions Allow Many Projects to Proceed Without an EIR. 32

2. The CEQA Guidelines Simplify Review of Projects Consistent with Specific Greenhouse Gas Reduction Plans. 36

B. CEQA's Information Disclosure Provisions, Not Policy Disagreements, Require SANDAG to Analyze the Plan's Inconsistencies with Long-Term Climate-Stabilization Goals 38

C. Requiring SANDAG to Analyze Its Plan in Light of Current Scientific Information Does Not Add a "New" CEQA Mandate. 42

D. SANDAG's CEQA Violation Does Not Implicate Separation of Powers 44

IV. As SANDAG Has Acknowledged, the Requested GHG Analysis Is "Easily Performed." 50

CONCLUSION 55

TABLE OF AUTHORITIES

Page(s)

State Cases

Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal.3d 392 28

Association of Irritated Residents v. Air Resources Board (2012) 206 Cal.App.4th 1487 .... 20, 27, 48

Association of Irritated Residents v. County of Madera (2003) 107 Cal.App.4th 1383 10

Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184 .... 10, 18

In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143 34

Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086 37

Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344 .... *passim*

Californians for Alternatives to Toxics v. Department of Food and Agriculture (2005) 136 Cal.App.4th 1 40

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc. (1984) 467 U.S. 837 28

Citizens To Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421 .... 18, 43, 52

City of Marina v. Board of Trustees of the California State University (2006) 39 Cal.4th 341 6

City of San Diego v. Board of Trustees of the California State University (2015) 61 Cal.4th 945 .... 6, 8

Communities for a Better Environment v. City of Richmond
(2010) 184 Cal.App.4th 70 .... 54, 55

Communities for a Better Environment v. South Coast Air Quality Management District
(2010) 48 Cal.4th 310 .... *passim*

E. L. White, Inc. v. Huntington Beach
(1978) 21 Cal.3d 497 32

Ebbetts Pass Forest Watch v. California Department of Forestry and Fire Protection
(2008) 43 Cal.4th 936 .... 19, 46

Federation of Hillside & Canyon Associations v. City of Los Angeles
(2000) 83 Cal.App.4th 1252 11

Friends of the Eel River v. Sonoma County Water Agency
(2003) 108 Cal.App.4th 859 43

Keep Our Mountains Quiet v. County of Santa Clara
(2015) 236 Cal.App.4th 714 46

Kings County Farm Bureau v. City of Hanford
(1990) 221 Cal.App.3d 692 43

Laurel Heights Improvement Association v. Regents of University of California
(1988) 47 Cal.3d 376 .... *passim*

Los Angeles Unified School District v. City of Los Angeles
(1997) 58 Cal.App.4th 1019 54

Mira Monte Homeowners Association v. County of Ventura
(1985) 165 Cal.App.3d 357 17

Napa Citizens for Honest Government v. Napa County Board of Supervisors
(2001) 91 Cal.App.4th 342 54

Neighbors for Smart Rail v. Exposition Metro Line Construction Authority
(2013) 57 Cal.4th 439 27

No Oil, Inc. v. City of Los Angeles
(1974) 13 Cal.3d 68 6

Pratt v. Coast Trucking, Inc.
(1964) 228 Cal.App.2d 139 32

Protect the Historic Amador Waterways v. Amador Water Agency
(2004) 116 Cal.App.4th 1099 .... 12, 22

Save Tara v. City of West Hollywood
(2008) 45 Cal.4th 116 8

Sierra Club v. County of San Diego
(2014) 231 Cal.App.4th 1152 2

Sierra Club v. State Board of Forestry
(1994) 7 Cal.4th 1215 .... *passim*

Stanislaus Natural Heritage Project v. County of Stanislaus
(1996) 48 Cal.App.4th 182 34

Utility Consumers' Action Network v. Public Utilities Commission
(2010) 187 Cal.App.4th 688 14

Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova
(2007) 40 Cal.4th 412 .... *passim*

Whitman v. Board of Supervisors
(1979) 88 Cal.App.3d 397 14

Yamaha Corp. of America v. Board of Equalization
(1998) 19 Cal.4th 1 .... 8, 28

State Statutes

Government Code
§ 65080 .... *passim*

Health and Safety Code
§ 38500 et seq. 1

Public Resources Code
§ 21002 41
§ 21003.1 41
§ 21005 45
§ 21061 45
§ 21080 45
§ 21082.1 41
§ 21082.2 45
§ 21083 42
§ 21084 37
§ 21091 41
§ 21092 41
§ 21093 32
§ 21094 32
§ 21100 45
§ 21155 .... 33, 35
§ 21155.1 .... 33, 35
§ 21155.2 .... 33, 35
§ 21155.3 .... 33, 35
§ 21155.4 .... 33, 35
§ 21159.28 .... 33, 35

State Regulations

Cal.Code Regs., Title 14
§ 15007 23
§ 15064 .... 17, 36, 40, 43, 45
§ 15064.4 .... 36, 43, 45
§ 15126.2 42
§ 15142 .... 17, 40, 43, 45
§ 15144 54
§ 15148 .... 17, 40, 43, 45
§ 15152 32
§ 15167 32
§ 15168 .... 32, 34
§§ 15175-15179.5 32
§§ 15182-15183 32
§ 15183.5 .... 33, 36

Other Authorities

Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Vols. 1 & 2)
§§ 1.24-1.26 46
§ 10.2 33
§ 10.19 349
§ 20.88 37

Recommendations of the Regional Targets Advisory Committee (RTAC) Pursuant to Senate Bill 375: A Report to the California Air Resources Board 48

INTRODUCTION

The foremost goal of the California Environmental Quality Act ("CEQA") is to ensure that decision-makers and the public have the information necessary for meaningful consideration of the environmental consequences of planning and development projects. Here, the San Diego Association of Governments ("SANDAG") prepared an environmental impact report ("EIR") that thwarted this goal. The EIR omitted any analysis of the stark inconsistency between the long-term increase in greenhouse gas emissions projected under SANDAG's Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS" or "Plan") and the long-term reductions in greenhouse gas emissions demanded by both science and California's overall climate stabilization policy. That science and policy—reflected not only in Executive Order S-3-05, but also in Senate Bill ("SB") 375,[1] Assembly Bill ("AB") 32,[2] the AB 32 Scoping Plan, and even SANDAG's own Climate Action Strategy—establish that in order to avoid the worst effects of climate change, steep greenhouse gas reductions must continue through 2050.

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[1] Citations to "SB 375" are to Statutes 2008, chapter 728, codified in part at Government Code 65080, subdivision (b)(2).

[2] Citations to "AB 32" are to Health and Safety Code section 38500 et seq.

SANDAG's Plan, in sharp contrast, would allow regional land use and transportation emissions to rise again after 2020 and increase through 2050. SANDAG's decision to forgo any analysis of this inconsistency rendered the EIR fundamentally and prejudicially misleading. The EIR assured decision-makers and the public that the Plan would advance California's long-term climate goals, when in reality it would do exactly the opposite. SANDAG's own Climate Action Strategy recognized the scientific basis and overall policy importance of the emissions reductions needed between 2020 and 2050 to stabilize the climate. SANDAG thus could not simply ignore the real, long-term consequences of approving a Plan that would cause emissions to rise over that same time period. (See *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1175 [finding climate action plan's rising emissions after 2020 likely significant in light of conflict with Executive Order's long-term goals].)

Rather than engage with the EIR's basic failings, Amici Curiae Building Industry Legal Defense Foundation, et al. ("Building Industry"), California Infill Builders Federation, et al. ("Federation"), California Association of Councils of Governments, et al. ("CACOG"), and Pacific Legal Foundation ("PLF") (collectively

"Amici") attempt to avoid them by invoking the wrong standard of review, inventing nonexistent threats to agency discretion, raising misplaced concerns about the scope and effect of executive orders, and speculating about the dire consequences of holding SANDAG to its fundamental statutory responsibilities.

Amici's arguments are molehills, not mountains. Of course lead agencies like SANDAG retain substantial discretion under the statute, including discretion to select thresholds of significance, but that discretion does not permit agencies to undercut core statutory requirements by preparing misleading or uninformative EIRs. Nor may agencies ignore the basic scientific facts underlying state policy—facts reflected not only in legislative actions and expert state agency judgments, but also in SANDAG's own Climate Action Strategy—simply because those facts were at one time reflected in an executive order. And no parade of horribles will flow from affirmance of the appellate court's judgment, Amici's overblown claims to the contrary notwithstanding. This case presents a relatively narrow set of circumstances where an agency could and should have evaluated the very real and serious long-term consequences of its transportation Plan, but instead decided to truncate the analysis to

paint a rosier picture.

CEQA requires that the public and decision-makers be provided with the kind of analysis SANDAG omitted here in reviewing the long-term implications of regional transportation planning decisions. Indeed, this case illustrates why scrupulous enforcement of CEQA's requirements is so important. Although SANDAG's Sustainable Communities Strategy technically met SB 375's short- and medium-range targets, it would increase long-term emissions in a manner contrary to both science and overall California climate policy. Analysis of that conflict—which CEQA alone can provide—is critical to informed decision-making and adequate mitigation of the Plan's long-term climate impact. SANDAG's decision to omit this analysis violated both CEQA's explicit requirements and its basic purposes. Plaintiffs and Respondents Cleveland National Forest Foundation, et al. ("Plaintiffs") thus respectfully request that the Court affirm the decision of the Court of Appeal holding that SANDAG's EIR prejudicially violated CEQA, require SANDAG to decertify the deficient EIR, and remand the matter for further proceedings and issuance of a writ consistent with its decision.

I. Although This Court's Review Is De Novo, the EIR Would Fail Even Under Substantial Evidence Review.

Amici, like SANDAG, urge this Court to review the EIR for substantial evidence. (CACOG Amici Curiae Brief ("CACOG Br.") at pp. 12-24; see also (SANDAG Consolidated Reply Brief ("SANDAG Reply Br.") at pp. 12-18.) As both Plaintiffs and the People demonstrated in their merits briefs, however, this case turns on SANDAG's erroneous *legal* interpretation of CEQA's requirements. (Plaintiffs' Answer Br. at pp. 18-22; People of the State of California's Answer Brief on the Merits ("People's Answer Br.") at pp. 21-22.) Accordingly, the correct standard of review is de novo. But even if the Court were to apply substantial evidence review, the EIR would fail.

A. An Agency's Interpretation of CEQA's Requirements Is Reviewed De Novo.

This Court has made the basic principles governing judicial review more than clear. An agency may abuse its discretion under Public Resources Code section 21168.5[3] in either of two ways: (1) "by failing to proceed in the manner CEQA provides" or (2) "by reaching

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[3] All further undesignated statutory references are to the Public Resources Code. Citations to "Guidelines" are to the CEQA Guidelines, codified at title 14, California Code of Regulations, section 15000 et seq.

factual conclusions unsupported by substantial evidence." (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Review of these two types of error "differs significantly": on one hand, this Court determines de novo "whether the agency has employed the correct procedures," while on the other, it "accord[s] greater deference to the agency's factual conclusions." (*Ibid.*) The Court thus independently reviews an agency's interpretation of CEQA's legal requirements. (See, e.g., *City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945, 956; *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 355-56; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 88.) An agency's purely factual determinations, in contrast, are given greater deference. (See *Vineyard*, *supra*, 40 Cal.4th at p. 435.)

This case is predominantly, if not exclusively, one of improper procedure: SANDAG reached an erroneous *legal* conclusion that CEQA did not require analysis of its Plan's long-term inconsistency with California's science-based climate stabilization goals because those goals were articulated in an Executive Order. Plaintiffs' position is not "sleight of hand," as CACOG insinuates (CACOG

Brief at page 16), but rather plain from the face of the record. (See Plaintiffs' Answer Br. at pp. 18-19 [citing AR 8b:3767, 3769, 3770, 4431, 4433].)[4] Moreover, SANDAG's decision did not rest solely on whether the Executive Order binds local agencies (CACOG Brief at pages 17-18), but rather involved an interpretation of CEQA itself. (AR 8b:3769, 4432 [concluding there was "no legal requirement" to use the Executive Order as a "threshold of significance" because it was not an "adopted [greenhouse gas] reduction plan within the meaning of CEQA Guidelines 15064.4(b)(2)"].) SANDAG's explicitly "legal" conclusion that CEQA did not require use of the Executive Order as a "threshold of significance" misconstrued CEQA's requirements and led the agency to ignore the obvious conflict between the Plan's rising emissions and the Executive Order's science-based downward emissions trajectory. SANDAG's use of an incorrect legal standard thus rendered the EIR incomplete and misleading.

Accordingly, SANDAG's refusal to analyze the full consequence of its project is the same type of misinterpretation of

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[4] Citations to the Administrative Record are in the format "AR [tab number]:[page number]." Citations to the Supplemental Administrative Record are in the format "SAR [tab number]:[page number]."

CEQA that this Court reviewed de novo in *City of San Diego* and *City of Marina*. It is similarly akin to the University of California Regents' mistaken conclusion that CEQA did not require any assessment of the reasonably foreseeable future consequences of carrying out a project until future uses were formally approved (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 393-99 ("*Laurel Heights I*"))—a conclusion this Court also reviewed de novo (see *Vineyard, supra*, 40 Cal.4th at p. 435).

As CACOG acknowledges, this Court is the "final arbiter of what [CEQA] means." (CACOG Br. at p. 16 [citing *Yamaha Corp. of America v. Board of Equalization* (1998) 19 Cal.4th 1, 11; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 128-30].) To that end, this Court "scrupulously enforce[s] all legislatively mandated CEQA requirements" (*Vineyard, supra*, 40 Cal.4th at page 435)—including the fundamental requirement that an EIR function as an "informative document" (*City of San Diego, supra*, 61 Cal.4th at page 956 [use of incorrect legal standard for determining feasibility of mitigation rendered EIR invalid; citation omitted]). (See, e.g., *Communities for a Better Environment v. South Coast Air Quality*

Management District (2010) 48 Cal.4th 310, 319, 322 [choice of incorrect baseline for determining air pollutant emissions was inconsistent with CEQA guidelines and rendered EIR fundamentally misleading]; *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236-37 ("*Sierra Club*") [agency violated CEQA's procedures by failing to provide relevant information about species on project site].)

Substantial evidence review, in contrast, is reserved for true factual disputes. Because it is not the role of this Court to "weigh conflicting evidence and determine who has the better argument," deference to an agency's well-supported factual judgments is appropriate. (See *Vineyard*, *supra*, 40 Cal.4th at p. 435 [quoting *Laurel Heights I*, *supra*, 47 Cal.3d at p. 393].) Here, however, Plaintiffs are not challenging SANDAG's methodology for calculating greenhouse gas emissions or disputing expert opinion regarding the effects of climate change. Rather, Plaintiffs challenge SANDAG's complete failure to disclose and analyze the Plan's long-term rising greenhouse gas emissions in relation to the long-term emissions reductions all parties now agree are necessary to stabilize the climate. The substantial evidence test does not apply to this type

of challenge. (See, e.g., *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1208; *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392.) Simply put, the dispute here is not about the facts, but rather about what CEQA requires.

B. Amici's Arguments for Substantial Evidence Review Lack Merit.

Amici's pleas for substantial evidence review beg an important but unanswered question: substantial evidence of what? Amici seem to suggest that this Court should look only for substantial evidence that the EIR adequately informed decision-makers and the public. (See, e.g., Federation Amici Curiae Brief in Support of SANDAG ("Federation Br.") at pp. 15-18 [contending substantial evidence supports the conclusion SANDAG "made a good faith and reasonable effort" to analyze emissions]; cf. also SANDAG Reply Br. at p. 17 [framing inquiry as whether substantial evidence supports SANDAG's "certification of the EIR . . . as adequate"].) But Amici would have this Court apply substantial evidence review to a fundamentally *legal* conclusion—whether the EIR satisfied CEQA's basic information disclosure requirements—and thus muddle this Court's clear distinctions between the different CEQA standards of

review. (See *Vineyard*, *supra*, 40 Cal.4th at p. 435.)

In a similar vein, CACOG suggests this Court need only determine whether there is substantial evidence to support SANDAG's selection of a "methodology" or "scope" for the EIR. (See CACOG Br. at pp. 13-15.) However, an agency's decisions regarding the scope of analysis or methodology employed are reviewed for substantial evidence only to the extent they present factual questions—and even then, only if they do not involve application of an erroneous legal standard. (See *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259.) If SANDAG had grounded its decision to omit any analysis of the inconsistency between the Plan's rising emissions and the Executive Order's downward trajectory in factual determinations—say, that the Plan's emissions would not rise after 2020, but would continue on a downward trajectory—then substantial evidence review might be appropriate. But—as the record here clearly shows—that is not what SANDAG did.[5]

In any event, the Court still must determine whether the

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[5] As discussed in Plaintiffs' Answer Brief (pages 19-20), the factual rationales SANDAG belatedly advanced in litigation are not reflected in the record and cannot save its decision.

resulting analysis served CEQA's fundamental information disclosure purpose. (See, e.g., *Communities for a Better Environment*, *supra*, 48 Cal.4th at pp. 319, 322.) Absent judicial scrutiny of this requirement, agencies could simply choose a "scope" or "methodology" for analysis that omits inconvenient facts, elides or downplays actual impacts, and leads to misleading conclusions. Just as an agency may not use a threshold of significance in a manner that ignores substantial evidence of significant impacts (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109), or choose an environmental "baseline" that results in illusory comparisons (*Communities for a Better Environment*, *supra*, 48 Cal.4th at p. 322), so it may not employ a "scope" or "methodology" of analysis that fails to inform decision-makers and the public of the project's real environmental consequences. An agency cannot entitle itself to extra-statutory discretion and absolute judicial deference simply by characterizing its strategic omissions as decisions about "scope" or "methodology."

Amici's (and SANDAG's) suggestions that de novo review would violate Public Resources Code section 21083.1 by imposing a requirement not explicitly stated in the statute or Guidelines fail for

the same reason. The requirement that an EIR adequately inform both decision-makers and the public of a project's environmental consequences has always been at the very core of the statute. (See, e.g., *Laurel Heights I*, *supra*, 47 Cal.3d at p. 392.) This Court has long recognized that CEQA precludes approval of a project in the absence of information "necessary to make an informed assessment" of environmental impacts. (*Sierra Club*, *supra*, 7 Cal.4th at pp. 1220-21.) By definition, enforcement of CEQA's most fundamental requirements cannot stretch the statute beyond legislatively authorized bounds.

C. Substantial Evidence Does Not Support the EIR's Omission of Analysis of the Plan's Inconsistency with California's Long-Term Climate Stabilization Goals.

SANDAG's EIR would fail even under the substantial evidence standard Amici advocate. Again, SANDAG's stated reasons for omitting a comparison with the Executive Order trajectory were almost exclusively legal, and only a few scattered, conclusory objections in the EIR arguably could be characterized as factual. (See, e.g., AR 8b:3767, 3769, 4431 [noting Executive Order did not contain an "implementation plan" and characterizing role of transportation and land use in achieving goals as uncertain].)

Conclusory statements of this kind, without further explanation or evidentiary support, are inadequate under CEQA. (See, e.g., *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411.) None of these conclusory statements constitutes substantial evidence supporting SANDAG's decision to forgo any analysis of the inconsistency between the Plan's rising emissions and the reductions necessary to stabilize the climate.

Moreover, no evidence supports the conclusion that the EIR's selection of a "scope" or a "methodology" or "thresholds of significance" resulted in adequate disclosure of the Plan's long-term greenhouse gas impacts. Tellingly, although the Federation insists that "abundant evidence in the record" supports this conclusion (Federation Brief at page 17), it provides not a single citation to the record. The point is therefore not only unsupported, but also waived. (See *Utility Consumers' Action Network v. Public Utilities Commission* (2010) 187 Cal.App.4th 688, 693.) For its part, CACOG cites two pages of the record where SANDAG sets forth its chosen thresholds and claims "[t]hat was enough to comply with CEQA." (CACOG Br. at p. 37.) As discussed in Part II.B., *infra*, however, mere identification of a threshold is not conclusive of CEQA

compliance.

As shown in Plaintiffs' answer brief, SANDAG's various "thresholds of significance" eliminated any scientifically relevant benchmark for evaluating the Plan's 2050 emissions increase in relation to the long-term reductions all parties now apparently agree are necessary for climate stabilization. (See Plaintiffs' Answer Br. at pp. 26-35; see also Amici Curiae Brief of Climate Scientists Dennis D. Baldocci, Ph.D., et al. ("Climate Scientists Br."), at pp. 27-30.) Specifically, the EIR's discussion of the AB 32 Scoping Plan and SANDAG's own Climate Action Strategy completely ignored portions of those documents incorporating the state's 2050 goals. (Plaintiffs' Answer Br. at pp. 30-35.) And the EIR's analysis of the Plan's consistency with SB 375's static, isolated 2020 and 2035 targets provided no basis for evaluating the significance of its rising emissions through 2050. (*Id.* at pp. 29-30.)

In sum, this Court should review SANDAG's erroneous legal interpretation of CEQA's requirements de novo. But even if the Court were to do otherwise, no substantial evidence in the record supports SANDAG's decision to omit any discussion of its Plan's fundamental inconsistency with the state's long-term, science-based climate

stabilization goals. Nor is there substantial evidence to support a conclusion that the EIR adequately informed decision-makers and the public absent such analysis.

II. SANDAG's Omissions Were Not a Proper Exercise of Discretion, But Rather an Abuse of Discretion.

Amici view this case through the exceedingly narrow and ultimately distorting lens of an agency's discretion to choose "thresholds of significance" for evaluating environmental effects. Their myopic focus obscures three key points. *First*, this case does not turn primarily on the EIR's "thresholds of significance," but rather on its omission of information critical to determining the Plan's climate impacts. *Second*, it is well established that mere selection and application of a "threshold of significance" are not conclusive of CEQA compliance. And *third*, as the appellate court below properly recognized, it is axiomatic that agency discretion must be exercised in accordance with CEQA's fundamental purposes.

A. SANDAG Erred by Omitting Critical Information from the EIR.

CEQA is first and foremost concerned with "identifying any substantial adverse changes in physical conditions" (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001)

91 Cal.App.4th 1344, 1380 ("*Berkeley Jets*"))—in other words, with a project's actual effects on the physical environment. (See, e.g., *Mira Monte Homeowners Association v. County of Ventura* (1985) 165 Cal.App.3d 357, 364-66 [finding further environmental review required following discovery that proposed project would affect additional sensitive wetland habitat].) An agency thus must obtain and fully disclose the information necessary to permit meaningful evaluation of those effects, including relevant scientific data where available. (See, e.g., Guidelines §§ 15064, subd. (b), 15142, 15148.)

Failure to disclose that information violates CEQA. In *Sierra Club v. Board of Forestry*, for example, the Board of Forestry approved a logging plan despite lacking information critical to evaluating the plan's impacts on sensitive species; the Board erroneously concluded it lacked legal authority to compel the landowner to provide the needed information. (*Sierra Club, supra*, 7 Cal.4th at pp. 1220, 1236.) This Court held that CEQA not only authorized but also obligated the Board to collect the information necessary to identify significant environmental impacts and propose feasible mitigation measures; without the required information, meaningful assessment of the plan's impacts under CEQA was

impossible. (*Id.* at pp. 1236-37.) Other courts have also invalidated EIRs that omitted information and analysis based on erroneous interpretations of CEQA's requirements or relied on outdated and incomplete scientific information. (See, e.g., *Bakersfield Citizens for Local Control*, *supra*, 124 Cal.App.4th at pp. 1208, 1211-12 [EIR improperly omitted analysis of urban decay based on conclusion impact was purely economic and outside scope of CEQA]; *Berkeley Jets*, *supra*, 91 Cal.App.4th at p. 1367 [EIR using "scientifically outdated information" was not a reasoned, good-faith effort to inform decision-makers and the public]; *Citizens To Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 430-32 [EIR violated CEQA by omitting any analysis of major source of cumulative air pollution].)

Here, SANDAG chose three "thresholds" for evaluating the significance of the Plan's greenhouse gas emissions. (AR 8a:2567.) Yet under each of these thresholds, the EIR failed to provide any scientifically relevant basis for evaluating the significance of the Plan's long-term emissions increase, because it omitted any analysis of the inconsistency between the Plan's upward emissions trajectory through 2050 and the downward emissions trajectory necessary to

stabilize the climate and achieve California's overall 2050 emissions reduction goals. (Plaintiffs' Answer Br. at pp. 26-35; see also People's Answer Br. at pp. 41-44, 46-47.) As in *Sierra Club*, SANDAG's erroneous legal conclusion that it need not analyze its Plan's long-term emissions in the context of California's science-based climate stabilization goals led the agency to approve the Plan in the absence of information critical to a meaningful assessment of its long-term impacts.[6] (*Sierra Club*, *supra*, 7 Cal.4th at pp. 1236-37.)

Indeed, the EIR strongly suggested that the Plan was *consistent* with California climate policy. (AR 8a:2584-85 [concluding Plan did not impede the AB 32 Scoping Plan but rather "encouraged and promoted" its goals].) It maintained this fiction, however, only by ignoring key aspects of the thresholds against which it measured the Plan's impacts. The AB 32 Scoping Plan, for example, recognized the scientific imperative to reduce emissions consistently through 2050 and proposed an interim target for 2020 designed to "put the state on a

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[6] This is not a case where the EIR simply lacked additional detail *beyond* that needed to assess impacts. (See, e.g., *Ebbetts Pass Forest Watch v. California Department of Forestry and Fire Protection* (2008) 43 Cal.4th 936, 950-51.) Rather, it is a case where the EIR entirely omitted information essential to an understanding of the Plan's long-term effects—namely, its inconsistency with the mid-century emissions reduction trajectory necessary to stabilize the climate.

path to meet" that long-term goal. (AR 320:27875; see also *Association of Irritated Residents v. Air Resources Board* (2012) 206 Cal.App.4th 1487, 1496.) The EIR, however, stated that "[t]he Scoping Plan does not have targets established beyond 2020," and therefore failed to analyze any longer-term inconsistency. (AR 8a:2586, 2588.) SANDAG's own Climate Action Strategy similarly adopted the 2050 emissions reduction trajectory as a long-term guiding principle: "By 2030, the region must . . . be well on its way to doing its share for achieving the 2050 greenhouse gas reduction level."[7] (AR 216:17629.) The EIR, however, concluded the Plan "would not impede" the Strategy (AR 8a:2586, 2588)—a baldly misleading claim that rests entirely on the EIR's omission of any discussion of the Plan's plain inconsistency with the emissions reductions necessary to achieve the 2050 goal. Contrary to Amici's (and SANDAG's) contentions, these omissions demonstrate that there was no substantial evidence to support a conclusion that the EIR adequately informed decision-makers and the public as CEQA requires.

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[7] SANDAG's claim that the Strategy "does not adopt" the 2050 goal (SANDAG Reply Brief at page 29) is disingenuous; the mandatory language of the Strategy speaks for itself.

B. Selection of a "Threshold of Significance" Is Not Conclusive of CEQA Compliance.

Amici's arguments appear to assume that agencies have absolute discretion to select and apply whatever "thresholds of significance" they see fit, and that once a threshold is chosen, compliance with CEQA is conclusively presumed. Like SANDAG, however, Amici read CEQA far too narrowly. Even assuming for the sake of argument that SANDAG had selected "thresholds of significance" consistent with Guidelines section 15064.4, this action alone would not be conclusive of CEQA compliance. (See Opinion at pp. 19-20.)

Indeed, Amici's arguments overlook established law. Courts have long recognized that agencies violate CEQA by choosing thresholds of significance that obscure rather than elucidate impacts of concern. In *Berkeley Jets*, for example, the court held that an EIR for an airport expansion plan improperly relied on a daily average threshold for noise impacts that failed to provide critical information about the environmental impact of most concern—individual nighttime noise events linked to sleep disruption. (*Berkeley Jets*, *supra*, 91 Cal.App.4th at pp. 1381-82.) Other courts similarly have held that thresholds of significance "cannot be used to determine

automatically whether a given effect will or will not be significant." (*Protect the Historic Amador Waterways*, *supra*, 116 Cal.App.4th at pp. 1108-09.) Rather, agencies must consider all substantial evidence that a project may have significant effects notwithstanding compliance with a threshold. (*Ibid.*)

An important corollary to these principles is that an agency cannot simply declare an impact significant because it exceeds a threshold; rather, it must disclose and analyze how significant the effect is likely to be. (Plaintiffs' Answer Br. at pp. 28-29; see *Berkeley Jets*, *supra*, 91 Cal.App.4th at p. 1371; cf. also *Sierra Club*, *supra*, 7 Cal.4th at p. 1233 [agency must properly "identify the adverse effects of [a] proposed project" before approving project despite significant impacts].) The relevant question, therefore, is not whether SANDAG simply went through the motions of selecting thresholds of significance, but rather whether the resulting analysis contained the information necessary to inform decision-makers and the public of the Plan's long-term environmental impacts.

Having framed the question improperly, Amici reach the wrong answers. CACOG, for instance, relies primarily on inferences from agency and legislative silence to contend that CEQA did not require

SANDAG to use the Executive Order as a threshold of significance.[8] First, CACOG points out that the Governor's Office of Planning and Research ("OPR") did not mention the Executive Order in its 2008 "Technical Advisory" on greenhouse gases and CEQA. (CACOG Br. at pp. 29-31.) Yet CACOG overlooks OPR's specific comments on the Draft EIR for *this project*, in which OPR explicitly "encourage[d] SANDAG to place its predicted emissions reductions in the context of state policy goals by providing a quantification of the role its planning efforts will play in helping the state achieve its 2050 GHG emissions reduction target of 80 percent." (AR 308:25005.) CACOG also fails to mention that the Technical Advisory was issued only as "interim" guidance pending finalization of the CEQA Guidelines amendments that included section 15064.4. (AR 319:26459.) Its relevance to this EIR, which was first circulated for public review more than a year after the effective date of the Guidelines, is therefore minimal. (See Guidelines § 15007, subd. (d).)

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[8] CACOG also spends roughly a quarter of its brief detailing the "maze" of federal and state requirements applicable to metropolitan planning organizations. (CACOG Br. at pp. 38-51.) As CACOG correctly concedes, however, none of these "complexities" entitle SANDAG or any other metropolitan organizations to heightened discretion or other "different standards" under CEQA. (*Id.* at p. 50.) This material is therefore irrelevant to the question before the Court.

In the same vein, CACOG notes that the Legislature did not explicitly reference the Executive Order in SB 375. (CACOG Br. at pp. 29-30.) It did, however, require regional emissions targets to be updated *through* 2050.[9] (Gov. Code § 65080, subd. (b)(2)(A)(iv).) Nothing in SB 375 indicates that the Legislature intended regional emissions targets to *increase* through 2050; indeed, this would be directly contrary to the Legislature's explicit emissions *reduction* purpose. (Gov. Code § 65080, subd. (b)(2) [repeatedly requiring that targets "reduce" emissions]; see also SB 375, § 1, subd. (c) [finding that despite increasing fuel efficiency, "it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation" to meet AB 32 goals].) The reference to 2050 in SB 375 is thus more reasonably read as encompassing, rather than eschewing, the long-term emissions reduction trajectory expressed in the Executive Order.

Expert agencies like OPR and the California Air Resources Board ("CARB") expressed concern about SANDAG's Plan on this

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[9] The Federation argues that this provision does not require the Air Resources Board to "create" targets for 2050, but rather requires the Board only to "update" targets every eight years "until 2050." (Federation Br. at pp. 9-10; see Gov. Code § 65080(b)(2)(A)(iv).) It is difficult to see the distinction. By "updating" targets "until 2050," the Board necessarily must "create" targets for 2050.

very point. (AR 308:25004 [OPR stating "we are concerned that the [Plan] implies that future growth will be unavoidably less transportation efficient, which counters SB 375's underlying purpose"]; SAR 344:30143 [CARB noting "unexpected" long-term increase in Plan's per capita emissions].) The fact that SB 375 did not mention the Executive Order by name or number does not relieve SANDAG of its independent responsibility under CEQA to disclose and analyze the extent to which its Plan fundamentally contravenes the actions California has deemed necessary, based on the best science, to stabilize the climate. (See Gov. Code § 65080, subd. (b)(2)(K) [providing that "nothing in this section relieves a public or private entity . . . from compliance with any other local, state, or federal law"].)

For their part, the Federation and the Building Industry contend Guidelines section 15064.4 endorses SANDAG's choice of thresholds. Their arguments, however, cannot be squared with SANDAG's actual approach to the EIR. The Federation echoes SANDAG (and Justice Benke's dissent below) in insisting that because the Executive Order was not a "plan" adopted through a "public review process," analysis cannot be required under Guidelines

section 15064.4. (Federation Br. at pp. 18-20.) The Building Industry similarly contends that because the Resources Agency "deliberately avoided" linking significance determinations to statewide statutes and broad plans like AB 32, the AB 32 Scoping Plan, and SB 375, the Agency could not have anticipated that significance determinations would consider a "broad statewide document" like the Executive Order. (Brief of Amici Curiae Building Industry in Support of SANDAG ("Building Industry Br.") at pp. 8-10.) Yet the AB 32 Scoping Plan and SANDAG's Climate Action Strategy—both of which SANDAG explicitly relied on in making its significance determinations under section 15064.4—adopted and incorporated the Executive Order's science-based climate stabilization trajectory. The Federation's objection, based solely on the process used to adopt the Executive Order that SANDAG rejected as a threshold, cannot excuse SANDAG's failure to address long-term inconsistencies between the Plan and California's climate goals, as articulated in the documents the EIR *did* choose to analyze. In any event, the EIR's reliance on both the Scoping Plan and SB 375 indicates that SANDAG had no objection to using "broad statewide document[s]" in assessing the Plan's significance. This Court reviews the rationale for SANDAG's

actions that is reflected in the record, not reasons advanced later in litigation. (See Plaintiffs' Answer Br. at p. 20; People's Answer Br. at pp. 50-51.) The Building Industry's objections to the breadth or statewide scope of the Executive Order are thus of no moment.

C. Agencies Lack Discretion to Produce Incomplete and Misleading EIRs.

Amici place great emphasis on agency discretion to select and apply thresholds of significance. Plaintiffs recognize that agencies retain discretion. But stating this fact does not answer the question as to whether that discretion has been exercised in accordance with CEQA's requirements. Rather, as the appellate court correctly held, an agency "abuses its discretion if it exercises it in a manner that causes an EIR's analysis to be misleading or without informational value." (Opinion at p. 19 [citing *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445, 457].)

That agency discretion is cabined by express statutory requirements and fundamental legislative goals is a bedrock principle of administrative law. Agency actions "that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them."

(*Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal.3d 392, 419 [internal quotation omitted]; see also *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837, 843, fn. 9 [judiciary is " final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent"]; *Yamaha Corp.*, *supra*, 19 Cal.4th at p. 11, fn. 4 [granting no deference "to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature"].) Amici neglect this principle in arguing that requiring SANDAG to address the inconsistency between its Plan's rising emissions and the downward emissions trajectory necessary for climate stabilization would unduly infringe on the discretion agencies generally retain under CEQA. As the Opinion below correctly held, an agency never has discretion to certify a misleading EIR. (Opinion at p. 19; see also, e.g., *Communities for a Better Environment*, *supra*, 48 Cal.4th at p. 322.)

Moreover, as discussed below (Part III.A, *infra*), the Court need not decide how much discretion each agency in the state might retain in determining whether and how to address long-term climate impacts for each and every imaginable type of project. In this case, however,

it is not only reasonable, but clearly essential, that the long-term climate implications of transportation and land use planning in one of California's most populous regions be addressed in light of accepted science and overarching state policy.

III. A Ruling in Plaintiffs' Favor Would Not Have "Unreasonable Consequences," but Would Be Entirely Consistent with CEQA and Longstanding CEQA Precedent.

Amici attempt to create controversy by drumming up a list of "unreasonable consequences" that will purportedly result if the Court rules for Plaintiffs. (Building Industry Br. at p. 12.) In reality, none of these scenarios bears any relation to the present case. The list can be boiled down to four central themes: any ruling in Plaintiffs' favor would allegedly (1) create a broad rule that would require lead agencies to prepare an EIR for every future approval; (2) allow Plaintiffs to prevail in CEQA cases on policy grounds alone; (3) impermissibly expand CEQA's requirements beyond explicit statutory and regulatory boundaries; and (4) eviscerate the separation of powers doctrine by allowing changes to CEQA without a proper legislative process. (See Building Industry Br. at pp. 12-25; Brief of Amicus Curiae PLF in Support of SANDAG ("PLF Br.") at pp. 10-13; Federation Br. at pp. 13-15; CACOG Br. at pp. 35-37.) As shown

below, Amici are wrong on all four counts.

This case presents an important but hardly groundbreaking question regarding CEQA's fundamental requirements for information disclosure. Amici have it exactly backwards: A ruling in Plaintiffs' favor will not shake CEQA's foundation, but will reinforce it.

A. The Question Before the Court Is Indisputably Narrow and Does Not Implicate Every Future CEQA Approval.

Amici Building Industry assert that a holding in Plaintiffs' favor would necessarily set a broad rule that, for every future project approval, lead agencies must prepare an EIR to analyze the project's consistency with the Executive Order's climate stabilization goal. (Building Industry Br. at pp. 12-14, 18-21.) They then venture further into hyperbole, suggesting the rule would apply to otherwise exempt projects, such as single family homes and those that benefit the environment. (*Id.* at 20.) They speculate that preparation of an EIR for all future projects would be necessary because it is always possible to make a "fair argument" that a project is not reducing greenhouse gas emissions enough to help the state achieve its climate stabilization goal. (*Id.* at 18-19.)

However, as explained above (*supra*, Part II.B), this case is not

about setting an across-the-board mandatory CEQA threshold for greenhouse gases. Plaintiffs do not seek such a broad and rigid rule, nor would such a rule be appropriate under the statute. Rather, this case presents a relatively limited circumstance involving the planning of a large-scale, regional transportation infrastructure system and associated development patterns over a 40-year period. As amici Building Industry admits elsewhere, "[t]he question the Court has asked—must an EIR for an RTP include a consistency analysis with EO S-03-05 under CEQA—is a narrow one." (Building Industry Br. at p. 12.)

The answer to this question is straightforward under long-standing CEQA precedent requiring an EIR to discuss and mitigate significant environmental consequences over the full life of a project. (See, e.g., *Vineyard*, *supra*, 40 Cal.4th at p. 431.) Here the project at issue is a 40-year planning document for an enormous and densely populated California region. (AR 8a:1997-98.) Further, the Plan's primary purpose is to set the region on a course to reduce greenhouse gas emissions consistent with California policy. (AR 8a:1997, 2071.) Therefore, SANDAG's Plan is of a nature, scope, and scale where an analysis of the Executive Order's downward emissions trajectory,

based on undisputed climate science, is absolutely necessary to fulfill CEQA's fundamental purposes.

The type of analysis appropriate for smaller-scale projects is therefore not before the Court. "[I]t is the general rule that an amicus curiae accepts the case as he finds it and may not 'launch out upon a juridical expedition of its own unrelated to the actual appellate record.'" (*E. L. White, Inc. v. Huntington Beach* (1978) 21 Cal.3d 497, 510-11 [quoting *Pratt v. Coast Trucking, Inc.* (1964) 228 Cal.App.2d 139, 143].) Nonetheless, as shown below, numerous CEQA provisions indicate that any required analysis need not be as onerous as Amici assert.

1. CEQA's Tiering and Other Streamlining Provisions Allow Many Projects to Proceed Without an EIR.

While CEQA requires disclosure of the full impacts of large-scale and long-term planning projects, the statute provides numerous avenues for streamlining or "tiering" environmental review for future elements of those projects so that agencies may avoid duplication of analysis. (See, e.g., §§ 21093, 21094; Guidelines, §§ 15152 [Tiering], 15167 [Staged EIRs], 15168 [Program EIRs], 15175-15179.5 [Master EIRs], 15182-83 [EIRs for land use plans]; see generally 1 Kostka &

Zischke, Practice Under the Cal. Environmental Quality Act (Cont. Ed. Bar 2nd ed. 2015) ["Practice Under the Cal. Environmental Quality Act"] § 10.2.) The CEQA Guidelines clarify that such streamlining provisions apply in the context of a greenhouse gas analysis. (Guidelines, § 15183.5, subd. (a).) Further, pursuant to SB 375, certain projects consistent with a Sustainable Communities Strategy receive streamlined CEQA review or are exempt from the statute entirely. (§§ 21155-21155.4 ["transit priority" projects consistent with SCS are either exempt from CEQA or eligible for streamlined review]; § 21159.28 [residential and mixed-use residential projects consistent with SCS may receive streamlined environmental review provided they incorporate mitigation required by prior EIR].)

The present case does not alter these provisions, which may speed environmental review of smaller-scale projects. At the same time, however, these provisions underscore the importance of reviewing a large-scale project's greenhouse gas emissions trajectory early in the planning process. The purpose of tiering is to allow public agencies to evaluate "big picture" environmental impacts of long-term planning or program-wide decisions, in order to determine whether those broader policy decisions are wise, before expending the

resources on specific projects undertaken to implement the plan or program. (See *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 197-98; *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1169-70; Practice Under the Cal. Environmental Quality Act § 10.19 at p. 10-26.) Reviewing impacts with a broader focus enables a "lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (Guidelines § 15168, subd. (b)(4).)

Contrary to these provisions, SANDAG approved a 40-year "blueprint" for the region's transportation system while ignoring the "big picture" consequences of its decision to set the region on a course that is wholly inconsistent with both science and state climate policy. The Opinion below recognized that in the context of this type of project—a regional transportation plan calling for billions of dollars in highway, transit, and other investments over the next four decades—an assessment of the Plan's long-term inconsistency with climate science and policy is particularly important:

> Such an omission is particularly troubling where, as here, the project under review involves long-term, planned

> expenditures of billions of taxpayer dollars. No one can reasonably suggest it would be prudent to go forward with planned expenditures of this magnitude before the public and decision makers have been provided with all reasonably available information bearing on the project's impacts to the health, safety, and welfare of the region's inhabitants.

(Opinion at pp. 19-20.)

The transportation projects and development scenarios contemplated in the Plan will go a long way toward determining whether and how the San Diego region helps achieve California's science-based climate stabilization goals. And, under the CEQA streamlining provisions discussed above, future projects adopted pursuant to the Plan may undergo limited or no environmental review. (See §§ 21155-21155.4.) In fact, certain Plan-consistent residential development projects may not need to address the impact of vehicle trips on global warming at all. (§ 21159.28, subd. (a)(1).) Clearly, any such subsequent review would be much less effective in evaluating and mitigating climate change, which is a cumulative problem calling for systemic solutions. Thus, it is critical that SANDAG conduct a thorough review now of its long-term regional plan. (See Opinion at pp. 6-7.)

2. The CEQA Guidelines Simplify Review of Projects Consistent with Specific Greenhouse Gas Reduction Plans.

Recent amendments to the CEQA Guidelines envision preparation of geographically specific plans and regulations with clear and enforceable measures for reduction of greenhouse gas emissions from particular types of projects. (See, e.g., Guidelines §§ 15064, subd. (h)(3), 15064.4, subd. (b)(3), 15183.5, subd. (b).) These amendments may enable agencies to avoid EIR-level discussion of greenhouse gas emissions for individual projects that comply with applicable regulations or requirements implementing these plans, so long as there is no substantial evidence that the project's greenhouse gas emissions would still be cumulatively considerable. The Guidelines further specify that "[t]he mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable." (Guidelines § 15064, subd. (h)(4).)

Likewise, CEQA provides that greenhouse gas emissions alone will not preclude the use of a categorical exemption (such as for a single family home) so long as the project complies with a greenhouse gas reduction plan consistent with Guidelines section 15183.5.

(§ 21084, subd. (b).) Even if an otherwise exempt project is not consistent with such a plan, a CEQA petitioner would still need to demonstrate that there are "unusual circumstances" that may result in significant greenhouse gas impacts to remove the project from the exemption. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086; see also Practice Under the Cal. Environmental Quality Act (Vol. 2) § 20.88 at p. 20-120.) Thus, purely beneficial or otherwise exempt projects would not require an EIR solely due to the cumulative emissions of other projects or the mere fact that the state has identified a long-term objective for climate stabilization.

In sum, the case at bar involves a relatively narrow set of circumstances concerning a critical aspect of the state's long-term planning efforts to reduce greenhouse gases. Here, the link between the Plan and the state's long-term climate policy is absolutely clear. Moreover, numerous CEQA provisions allow and encourage streamlined CEQA review of greenhouse gas emissions from individual projects that follow a larger emissions reduction plan or program. There is simply no basis for Amici's exaggerated claims that a holding in Plaintiffs' favor would set a broad rule requiring an EIR for every future approval.

B. CEQA's Information Disclosure Provisions, Not Policy Disagreements, Require SANDAG to Analyze the Plan's Inconsistencies with Long-Term Climate-Stabilization Goals.

Amici next contend that Plaintiffs' claims stem solely from a policy disagreement, and that a ruling for Plaintiffs would allow anyone to challenge any CEQA document on policy grounds alone. (PLF Br. at pp. 3, 11; see also Building Industry Br. at pp. 24-25.) Amici are wrong on both counts.

According to amicus PLF, Plaintiffs' claims amount to a disagreement with SANDAG's policy choice to achieve only SB 375's greenhouse gas emission reduction targets rather than the longer-range targets set forth in the Executive Order. (PLF Br. at p. 3.) PLF misstates the record and Plaintiffs' position. SANDAG did not, in fact, reject the policy goal set forth in the Executive Order. Rather, its chief policy document on greenhouse gas emissions embraces that goal. SANDAG's Climate Action Strategy recognizes that "the 2050 reduction goal [set forth in the Executive Order] is based on the scientifically-supported level of emissions reduction needed to avoid significant disruption of the climate and is used as the long-term driver for state climate change policy development." (AR 216:17627.) The document further declares that "state efforts are

driving climate change action at the regional and local level." (AR 216:17626.) Consequently, SANDAG's Strategy proposes and evaluates "policy measures" according to "their effectiveness in helping to achieve short-term (2020) and longer-term (2035 and 2050) goals for greenhouse gas emission reduction." (AR 216:17624; see also *id.* at p. 17629 [stating that "[b]y 2030" the region must be "well on its way to doing its share for achieving" the 2050 goal].) Given that SANDAG concurs with the Executive Order's science-based goal of reducing emissions considerably through 2050, and that its own Plan extends through 2050, SANDAG should have addressed the inconsistency between its Plan's rising greenhouse gas trajectory and the declining trajectory through 2050 necessary to stabilize the climate.

Plaintiffs' claims thus rely on the very same science-based, long-range targets that SANDAG 's own Climate Action Strategy endorsed as the driver for regional policy development. If SANDAG had disagreed with the trajectory set forth in the Executive Order, including the underlying science, and had provided substantial evidence in support of its alternative view of the science, this might have been a different case. But that is not what SANDAG did.

Accordingly, Plaintiffs' claims do not stem from a policy disagreement with SANDAG. If anything, SANDAG's Climate Action Strategy indicates the agency's basic agreement with Plaintiffs that the Executive Order establishes scientifically relevant policy guidance.

Striking a similar note, other Amici object that a ruling in Plaintiffs' favor might require agencies to evaluate the significance of their projects' impacts in light of established scientific facts. CACOG, for example, protests that requiring agencies to address the significance of environmental effects based on the existence of a "scientific consensus" will interfere with agency discretion and improperly involve the courts in factual disputes. (See CACOG Br. at pp. 20-24; see also Building Industry Br. at pp. 22-23 [worrying that agencies might have to analyze consistency with policies "that are based in science"].) Yet CEQA already requires agencies to base their significance determinations on "scientific and factual data." (CEQA Guidelines, §§ 15064, subd. (b), 15142, 15148; see also *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1, 15-17; *Berkeley Jets*, *supra*, 91 Cal.App.4th at pp. 1367-68, 1370-71.) It is nonsensical to suggest

that those same "scientific and factual data" become irrelevant to CEQA simply because they are also reflected in a "policy." (See Climate Scientists Br. at p. 28.)

CACOG also contends that members of the public will improperly "pack the administrative record" with scientific evidence. (CACOG Br. at p. 22-23.) Informed public input, however, is not contrary to CEQA, but rather key to its design. (See, e.g., §§ 21002, 21003.1, 21082.1, 21091, 21092.) Moreover, agencies can counter any public effort to "pack" the record with inaccurate information by providing correct information, giving rise to the kind of factual dispute in which agencies are routinely granted deference. CACOG comes perilously close to arguing that agencies should have discretion to ignore scientific facts altogether—even where, as here, there is no real dispute among the parties as to their accuracy or applicability.

In sum, a ruling for Plaintiffs in this case would not set a precedent that allows a petitioner to succeed in a CEQA suit based on its own preferred policies or those stated in any administrative policy document. As always, CEQA requires a petitioner to demonstrate that the agency prejudicially abused its discretion either by failing to adhere to CEQA's procedures for information disclosure, failing to

support its factual conclusions with substantial evidence, or failing to evaluate feasible measures to lessen or avoid a significant impact. Here, Plaintiffs have demonstrated that SANDAG's EIR misled the public by claiming that the 2050 Plan was doing its part to meet the state's and SANDAG's long-term climate stabilization objectives, when in fact the Plan was working directly counter to those objectives.

C. Requiring SANDAG to Analyze Its Plan in Light of Current Scientific Information Does Not Add a "New" CEQA Mandate.

Amici's arguments based on CEQA's so-called "safe harbor" provision also fail. Requiring analysis of the Plan's long-term impacts by reference to accepted scientific goals would not "impose[] procedural or substantive requirements beyond those explicitly stated" in CEQA or the Guidelines (section 21083.1) but would simply give effect to several explicit statutory and Guidelines requirements.

For example, CEQA expressly requires complete, good-faith disclosure and analysis of a project's long-term impacts. (§ 21083, subd. (b)(1) [requiring mandatory finding of significance for projects that have the potential "to achieve short-term, to the disadvantage of long-term, environmental goals"]; Guidelines § 15126.2, subd. (a)

[EIR must give "due consideration to both the short-term and long-term effects" of a project].) Here, SANDAG's failure to address its Plan's long-term rising emissions in the context of scientifically relevant climate stabilization goals thwarted these requirements. Environmental analyses, moreover, must reflect consideration of relevant scientific information to the extent possible. (Guidelines §§ 15064, subd. (b), 15064.4, subd. (a), 15142 [EIR "shall" be prepared in a manner which "will ensure the integrated use" of the natural sciences], 15148 [recognizing preparation of EIR "is dependent upon . . . scientific documents relating to natural features"].) Consistent with the Guidelines, the courts have routinely insisted that EIRs include relevant scientific and factual information whenever it is reasonable and practical to do so. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 398-99; see also *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 870-71; *Berkeley Jets*, *supra*, 91 Cal.App.4th at pp. 1367, 1370; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723; *Citizens to Preserve the Ojai*, *supra*, 176 Cal.App.3d at p. 432.) SANDAG violated these requirements by declining to consider relevant scientific information based on the erroneous legal judgment that CEQA did not require

consideration of anything reflected in an executive order. SANDAG may not avail itself of CEQA's "safe harbor" provision to justify an EIR whose analysis violated both the fundamental goals and express requirements of the statute and Guidelines.

D. SANDAG's CEQA Violation Does Not Implicate Separation of Powers.

Largely reiterating Justice Benke's dissent below, Amici contend that this case presents "serious separation of powers concerns." (CACOG Br. at p. 35; see also Building Industry Br. at pp. 11-12.) These concerns, however, are misplaced.

Like SANDAG, Amici argue that general directives from the executive branch cannot be "binding [] on local agencies." (CACOG Brief at 35; Building Industry Br. at pp. 11-12.) Amici also claim that requiring adherence to the Executive Order would violate state law by giving the order the force of law in the absence of appropriate procedures. (CACOG Br. at pp. 36-37; Building Industry Br. at pp. 23, 25; Federation Br. at pp. 13-15.) But Amici, like SANDAG, mischaracterize Plaintiffs' claims. Plaintiffs do not argue that the Executive Order either binds a local agency to meet its reduction targets or establishes a mandatory CEQA threshold. (See Plaintiffs' Answer Br. at pp. 46, 53-54.) The only "binding" requirements at

issue here are the ones already contained within CEQA itself.

As previously discussed, CEQA requires full disclosure of a project's significant environmental impacts, and prohibits EIRs that mislead the public. (See, e.g., §§ 21061, 21100, 21005, subd. (a); *Communities for a Better Environment*, *supra*, 48 Cal.4th at p. 322.) Furthermore, CEQA requires an agency to consider the best scientific information available when analyzing a project's physical impacts on the environment, including GHG impacts. (§§ 21080, subd. (e), 21082.2; Guidelines §§ 15064, subd. (b), 15064.4, subd. (a), 15142, 15148.) The Executive Order did not establish the science underlying California climate policy; rather, the science informed the Executive Order, which in turn has guided subsequent legislative and executive action related to climate change. (See Brief of Amici Curiae of League of Women Voters, et al. ("League of Women Voters Br."), at pp. 5-10 [describing scientific foundation and ongoing relevance of Executive Order].) Again, even SANDAG's own Climate Action Strategy confirms this. (AR 216:17627.) Agencies may not ignore scientific facts simply because they are reflected in an executive order. Rather, CEQA's provisions direct an agency to consider information relevant to its project's physical impacts on the

environment, whatever form that information may take.

Amici attempt to read these provisions out of CEQA in favor of a narrow rule that would require environmental analysis only where a legislative enactment specifically spells out the criteria and information to be utilized in that analysis. The Legislature, however, has consistently rejected such an approach in favor of a more flexible method based on the pertinent physical conditions and applicable science. (See generally Practice Under the Cal. Environmental Quality Act §§ 1.24-1.26 at pp. 1-25 to 1-41; see also Plaintiffs' Answer Br. at pp. 54-55 [courts also have rejected this reading of CEQA].) It is well-settled that compliance with a regulatory standard does not automatically indicate a less-than-significant effect. (See, e.g., *Ebbetts Pass Forest Watch*, *supra*, 43 Cal.4th at p. 957 [compliance with herbicide registration requirements and label restrictions alone insufficient to show no adverse effects in context of logging plan]; *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733 [compliance with noise ordinance does not foreclose possibility of significant noise impacts].) Thus, it is Amici, not Plaintiffs, who effectively ask this Court to amend CEQA by altering this settled standard.

Amici also follow Justice Benke's dissent in arguing that because the Legislature in AB 32 and SB 375 exclusively delegated to CARB authority to set greenhouse gas reduction targets, the Governor had no authority to set a target for 2050 through the Executive Order. (See, e.g., Federation Br. at pp. 2-10.) Again, these arguments misperceive the reason that the Executive Order is important here—not because it somehow establishes a binding target, but because it reflects the best scientific judgment concerning the long-term emissions reductions necessary to stabilize the climate. The Federation's brief also misstates the issues and holding in *Association of Irritated Residents*, *supra*. There, the plaintiffs did not argue that CARB erred by limiting the AB 32 Scoping Plan's reduction goals to 2020, as the Federation insists (at pages 4-5), but rather that CARB should have set a stricter target *for 2020* in accordance with AB 32's direction to implement the "maximum" feasible emissions reductions. (206 Cal.App.4th at p. 1496.) The court upheld CARB's target in part because the 2020 goal is just the first step in California's efforts to stabilize the climate under AB 32, and explicitly recognized that the 2050 goal articulated in the Executive Order is the statute's "ultimate objective." (*Ibid.*)

The Federation is thus correct that AB 32 delegated broad target-setting authority to CARB. But the Federation overlooks the fact—emphasized by the court in *Association of Irritated Residents*—that CARB actually used that authority to *adopt* the 2050 climate stabilization goal as the long-term guiding principle behind the interim reductions outlined in the 2008 Scoping Plan. (*Ibid.*; see also AR 320:27851, 27864, 27875, 27882, 27977-80.) CARB once again confirmed the importance of the 2050 goal in its 2014 Scoping Plan update, as the Federation effectively concedes. (Federation Br. at p. 9 [describing 2030 interim target as necessary to reach "California's emissions goals"].)

The Federation's arguments based on SB 375 fail for similar reasons. It is true that SB 375 required CARB to convene a "Regional Targets Advisory Committee" to provide a broad range of input on targets for 2020 and 2035. (Gov. Code § 65080, subd. (b)(2)(A)(i).) That Committee's final report, however, concluded that targets should be set at a level that puts California on a path to achieving its 2050 goals.[10] CARB's expectation that SB 375 would reduce emissions

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[10] *Recommendations of the Regional Targets Advisory Committee (RTAC) Pursuant to Senate Bill 375: A Report to the California Air Resources Board* at pp. 26-27 (Sept. 29, 2009), available at

over time—an expectation entirely consistent with the Committee's view of SB 375's objectives, and which informed CARB's regional targets—led the agency to express significant concern about the Plan's long-term emissions increase notwithstanding its technical compliance with the SB 375 targets for the San Diego region. (SAR 344:30143.) Finally, SB 375's targets address only per capita emissions from automobiles and light trucks. (Gov. Code § 65080, subd. (b)(2)(A); SAR 344:30142 [defining regional targets as " a percent reduction in per capita GHG emissions from passenger vehicles from a base year of 2005"].) SB 375's targets thus do not address the full range of transportation and land use emissions associated with SANDAG's Plan in any event.

In sum, the Legislature's delegation of authority to CARB is not relevant to the question presented here. But even if it were, CARB's exercise of that authority supports requiring analysis of the Plan's inconsistency with the state's long-term climate goals, as articulated in the plans and policies adopted pursuant to that legislative delegation. The Opinion below holds that in order to provide the public and decision-makers with adequate information,

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http://www.arb.ca.gov/cc/sb375/rtac/report/report.htm (visited Oct. 29, 2015).

CEQA required SANDAG to address its Plan's stark inconsistency with the science underlying California's long-term climate policy. That holding does not unsettle the balance of power between the branches of California's government. Amici's arguments, in contrast, *would* contravene the intent of the Legislature—and thus threaten the separation of powers—by investing administrative agencies with near-absolute discretion to ignore CEQA's fundamental information disclosure requirements.

IV. As SANDAG Has Acknowledged, the Requested GHG Analysis Is "Easily Performed."

Several amici argue that analyzing a project's consistency with statewide climate stabilization goals for 2050 is far too uncertain and difficult for an agency to perform. (See, e.g., Building Industry Br. at pp. 15-18; PLF Br. at p. 12 ["There is no way for SANDAG—or, for that matter, a court—to convert the executive order's broad goals into an amount of emissions reductions that a particular region's land use and transportation planning must achieve."]) For this, Amici cite nothing in the record. Instead, they invoke Justice Benke's statement that it would impossible to calculate the region's "fair share" of 2050 emissions reductions without specific guidance from CARB. (See Building Industry Br. at pp. 15-16; see also Federation Br. at p. 17).

However, SANDAG has previously stated that this calculation is "easily performed." (SANDAG Appellants' Petition for Rehearing at p. 7; *see also* AR 216:17628 [Climate Action Strategy chart showing regional emissions targets through 2050].)

Indeed, SANDAG addressed (at least in general terms) the Executive Order's declining emissions trajectory in its 2015 EIR for the next update to its Plan, even though CARB has not yet set regional or sector targets for 2050. (See Declaration in Support of People's Amended Motion for Judicial Notice, Ex. 1.) As Plaintiffs' Answer Brief demonstrates, all of the information SANDAG utilized in its 2015 EIR was readily available to the agency when it prepared the EIR at issue here. (Plaintiffs' Answer Br. at pp. 49-51.) Furthermore, several other regional transportation agencies have performed a similar analysis for their own regional transportation plans. (See League of Women Voters Br. at pp. 17-18.)

Thus, SANDAG readily could have conducted a meaningful analysis of its Plan's dramatic deviation from the continuous emissions reduction trajectory needed to achieve climate stabilization. By purposefully omitting such an analysis from its EIR, SANDAG subverted informed consideration of the Plan's consequences—a

result directly at odds with CEQA. (See Opinion at pp. 14-15, 19-20.) SANDAG has not shown that the Executive Order's lack of a detailed, regionally specific plan for achieving the state's long-term climate stabilization goals made it impossible to conduct at least a basic assessment of the Plan's obvious inconsistency with the overall downward emissions trajectory guiding those goals. As this Court has observed, "[t]he fact that precision may not be possible . . . does not mean that no analysis is required." (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 399.) CEQA does "not require prophecy" – but where an agency *can* provide "meaningful, reliable data" in an EIR, even in "general terms," it *must* do so. (*Id.* at pp. 398-99; see also *Citizens to Preserve the Ojai*, *supra*, 176 Cal.App.3d at p. 432 ["assuming a sophisticated technical analysis was not feasible, if some reasonable, albeit less exacting, analysis of the [impact] could be performed, the [agency] was required to do so and report the results"].)

The appellate court's Opinion below reflects these same settled principles. (Opinion at pp. 15-16.) The fatal flaw in the EIR was not its failure to analyze the Plan's consistency with the Executive Order *per se*, but rather "more particularly" its failure to address the Plan's inconsistency with "the Executive Order's *overarching goal of*

ongoing greenhouse gas emissions reductions." (Opinion at pp. 14-15 [emphasis added].) SANDAG concedes the scientific validity of this overarching climate stabilization goal, even if Amici seemingly continue to quibble. SANDAG had no basis for omitting at least some level of analysis of its Plan's inconsistency with that goal.

Amici's related claim that other agencies will be saddled with an impossible task is likewise unfounded. A similar analysis could be performed, if necessary, for other regions and sectors, based on the best available scientific data. But even if this inquiry proved to be more difficult for certain regions or sectors, this alone would not relieve an agency of its responsibilities under CEQA. As this Court held long ago in *Laurel Heights*, *supra*, there is "no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency's task may be difficult." (47 Cal.3d at 399.)

Indeed, the information Plaintiffs seek for this long-range plan is no more "fuzz[y]" (PLF Brief at page 13) than the information this and other courts have consistently held an agency must provide for other long-term projects. Examples include analyzing the impacts from water usage (which is particularly uncertain under California's

current drought conditions), growth inducement, air pollution, and noise, even though many such impacts are based on cumulative and undefined conditions. (See, e.g., *Vineyard, supra*, 40 Cal.4th at p. 431 ["An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project."]; *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 370 [EIR must analyze number, type, and general location of future housing units, even though precise details of future housing were not yet known]; *Berkeley Jets, supra*, 91 Cal.App.4th at p. 1370 [agency must investigate and disclose impacts from toxic air contaminants, despite lack of universally accepted method for doing so]; *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028 [EIR must include analysis of cumulative traffic noise on schools from future buildout of plan area].)

Preparing an EIR "necessarily involves some degree of forecasting." (Guidelines § 15144.) However, "an agency must use its best efforts to find out and disclose all that it reasonably can." (*Id.*; see also *Communities for a Better Environment v. City of Richmond*

(2010) 184 Cal.App.4th 70, 96 ["difficulties caused by evolving technologies and scientific protocols do not justify a lead agency's failure to meet its responsibilities under CEQA"].) Those efforts must reflect the best available scientific information, be it embodied in an Executive Order, a scientific study, or both.

CONCLUSION

Amici speculate that a ruling in Plaintiffs' favor would undermine agency discretion, exacerbate uncertainty, and transform CEQA into a free-for-all for every project opponent with a policy axe to grind. However, it is Amici, not Plaintiffs, who would strip CEQA of its most meaningful requirements by allowing agencies near unfettered discretion to ignore both scientific facts and long-term environmental consequences. Plaintiffs urge the Court to reject Amici's attempts to subvert CEQA, and instead to uphold CEQA's core principles: to provide a complete and accurate view of a project's physical impacts on the environment, and to identify feasible ways to reduce or avoid significant impacts, so that the reviewing agency and the public may make informed and accountable choices.

Here, SANDAG developed a 40-year Plan with the express purpose of reducing greenhouse gas reductions from land use and

transportation. Although SANDAG met SB 375's targets for 2020 and 2035, it did so in a manner that contradicted both California's climate goals and the expectations of agencies like CARB and OPR. SANDAG's truncated examination of the Plan's consistency with other standards—such as AB 32's interim emissions reduction goal for 2020, or SB 375's regional targets for cars and trucks—failed to elucidate the Plan's real climate consequences in a manner that facilitated meaningful public input and informed decision-making.

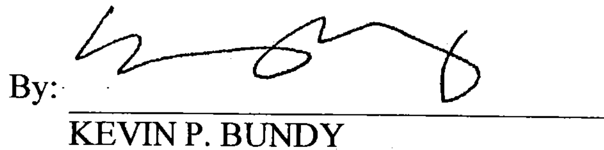
This case demonstrates CEQA's critical importance in California's fight to stabilize our climate. CEQA's objectives can be achieved only by requiring SANDAG to examine whether its Plan will ultimately help or hinder achievement of California's long-term, science-based climate stabilization goals. This evaluation is especially important for a large and densely populated region such as San Diego. Only scrupulous compliance with CEQA can inform decision-makers and the public whether SANDAG's long-term planning decisions will play a significant role in the effort to combat climate change, or will inhibit that effort.

DATED: November 12, 2015 SHUTE, MIHALY & WEINBERGER LLP

By: RACHEL B. HOOPER

Attorneys for Plaintiffs and Respondents Cleveland National Forest Foundation and Sierra Club

DATED: November 12, 2015 CENTER FOR BIOLOGICAL DIVERSITY



By: KEVIN P. BUNDY

Attorney for Center for Biological Diversity

DATED: November 12, 2015 BRIGGS LAW CORPORATION

By: CORY J. BRIGGS

Attorney for CREED-21 and Affordable Housing Coalition of San Diego County

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CERTIFICATE OF WORD COUNT
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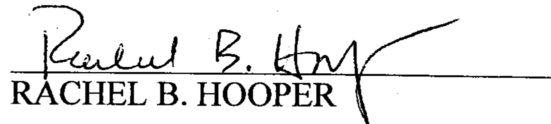

RACHEL B. HOOPER

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Cleveland National Forest Foundation, et al. v.
San Diego Association of Governments, et al.
Case No. S223603
California Supreme Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On November 12, 2015, I served true copies of the following document(s) described as:

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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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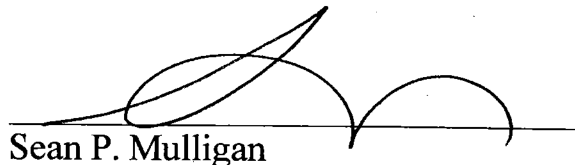

Sean P. Mulligan

SERVICE LIST
Cleveland National Forest Foundation, et al. v. San Diego Association of Governments, et al.
Case No. S223603
California Supreme Court

Julie D. Wiley, Special Counsel
San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Telephone: (619) 699-1995
Facsimile: (619) 595-8605
E-mail: jwi@sandag.org

Attorney for Defendants and Appellants San Diego Association of Governments, San Diego Association of Governments Board of Directors

Margaret M. Sohagi
Philip Seymour
The Sohagi Law Group, PLC
11999 San Vicente Boulevard, Suite 150
Los Angeles, CA 90049
Telephone: (310) 475-5700
Facsimile: (310) 475-5707
E-mail: msohagi@sohagi.com
pseymour@silcom.com

Attorney for Defendants and Appellants San Diego Association of Governments, San Diego Association of Governments Board of Directors

Michael H. Zishcke
Andrew B. Sabey
Linda C. Klein
Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Telephone: (415) 262-5100
Facsimile: (415) 262-5199
Email: mzischke@coxcastle.com
asabey@coxcastle.com
lklein@coxcastle.com

Attorney for Defendants and Appellants San Diego Association of Governments, San Diego Association of Governments Board of Directors

Timothy R. Patterson
Supervising Deputy Attorney General
Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266
600 West Broadway, Suite 1800
San Diego, CA 92101
Telephone: (619) 645-2013
Facsimile: (619) 645-2271
E-mail: tim.patterson@doj.ca.gov

Attorney for Intervenor and Respondent People of the State of California

Janill L. Richards
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612
Telephone: (510) 622-2130
Facsimile: (510) 622-2270
E-mail: janill.richards@doj.ca.gov

Attorney for Intervenor and Respondent People of the State of California

Kevin P. Bundy
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Telephone: (510) 844-7113
Facsimile: (510) 844-7150
E-mail: kbundy@biologicaldiversity.org

Attorney for Plaintiff and Respondent Center for Biological Diversity

Marco Gonzalez
Coast Law Group LLP
1140 South Coast Highway 101
Encinitas, CA 92024
Telephone: (760) 942-8505
Facsimile: (760) 942-8515
E-mail: marco@coastlawgroup.com

Attorneys for Plaintiffs and Respondents Cleveland National Forest Foundation and Sierra Club

Daniel P. Selmi
919 S. Albany Street
Los Angeles, CA 90015
Telephone: (213) 736-1098
Facsimile: (949) 675-9861
E-mail: dselmi@aol.com

Attorneys for Plaintiffs and Respondents Cleveland National Forest Foundation and Sierra Club

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111
Upland, CA 91786
Telephone: (909) 949-7115
Facsimile: (909)-949-7121
E-mail: cory@briggslawcorp.com

Attorneys for Plaintiffs and Respondents CREED-21 and Affordable Housing Coalition of San Diego County
In Consolidated Case No. 37-2011-00101660-CU-TT-CTL

M. Reed Hooper
Jonathan C. Wood
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
E-mail: mrh@pacificlegal.org
E-mail: jw@pacificlegal.org

Attorneys for Amicus Curiae Pacific Legal Foundation

Michelle Wilde Anderson
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
Telephone: (650) 498-1149
Facsimile: (650) 725-0253
Email:
manderson@law.stanford.edu

Deborah Ann Sivas
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
Telephone: (650) 723-0325
Facsimile: (650) 723-4426
Email: dsivas@stanford.edu

Attorneys for Amici Curiae League of Women Voters of California. et al.

Nancy C. Miller
Jennifer V. Gore
Miller & Owen
428 J Street, Suite 400
Sacramento, CA 95814
Telephone: (916) 447-7933
Email: miller@motlaw.com

Attorneys for Amici Curiae Building Industry Legal Defense Foundation, et al.

Whitman F. Manley
Laura M. Harris
Christopher L. Stiles
Remy Moose & Manley, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
Telephone: (916) 443-2745
Facsimile: (916) 443-9017
Email:
wmanley@rmmenvirolaw.com
lhanis@rmmenvirolaw.com
cstiles@rmmenvirolaw.com

Attorneys for Amici Curiae California Association of Councils of Governments, et al.

Cara Ann Horowitz
Jesse Lueders
UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90095
Telephone: (310) 206-4033
Facsimile: (310) 206-1234
Email: horowitz@law.ucla.edu

Attorneys for Amici Curiae Dennis D. Baldocchi, Ph.D., et al.

Tina A. Thomas
Thomas Law Group
455 Capitol Mall, Suite 801
Sacramento, CA 95814
Telephone: (916) 287-9292
Facsimile: (916) 737-5858

Attorneys for Amici Curiae California Infill Builders Federation and San Diego Housing Commission

Richard M. Frank
UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

Ethan N. Elkind
UC Berkeley School of Law
2850 Telegraph Avenue
Suite 500
Berkeley, CA 94705

Jayni Foley Hein
Policy Director
Institute for Policy Integrity
New York University
School of Law
Wilf Hall
139 MacDougal Street
Third Floor
New York, NY 10012

Attorneys for Amici Curiae Council of Infill Builders and Planning and Conservation League

Stephan C. Volker
Alexis E. Krieg
Daniel P. Garrett-Steinman
Law Offices of
Stephan C. Volker
436 14th Street, Suite. 1300
Oakland, CA 94612
Telephone: (510) 496-0600
Facsimile: (510) 496-1366

Attorney for Amicus Curiae Backcountry Against the Dump, Inc.

Clerk of the Court
San Diego Superior Court
330 West Broadway
San Diego, CA 92101

California Court of Appeal
4th District, Division 1
750 B Street, Suite 300
San Diego, CA 92101