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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 ANSWER TO AMICI'S BRIEFS

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I.

INTRODUCTION

Amici supporting Petitioners ("Amici") make a variety of arguments, several of which go beyond Petitioners' positions, and beyond the single question presented by this Court. Their six principle arguments are: (1) the Court should review SANDAG's choice of significance thresholds under the *de novo* standard of review; (2) use of Executive Order S-03-05 (the "Executive Order") as a significance criterion was necessary to provide the public and decisionmakers with adequate information on greenhouse gas impacts; (3) the EIR failed to fully explain the impacts on climate change of the 2011 Regional Transportation Plan ("RTP")/Sustainable Communities Strategy ("SCS") (together, the "Plan"); (4) Senate Bill (SB) 375 and the Scoping Plan implicitly require analysis of the Executive Order's 2050 goal; (5) requiring EIRs to evaluate consistency with the 2050 emissions reduction goal in Executive Order S-03-05 would be neither new nor burdensome; and (6) the 2011 Plan does not do enough to reduce greenhouse gas emissions.

Amici's claims all miss the mark. Although several claims go beyond the question before this Court, SANDAG will address all of Amici's issues in case they are of interest to the Court.

First, the substantial evidence standard of review applies here. Numerous decisions of this Court and the courts of appeal confirm that EIR methodology decisions, including the appropriate threshold of significance, are within a lead agency's discretion, and that those agency decisions are to be upheld if supported by substantial evidence. Amici cannot alter the standard of review simply by claiming that some alternate methodology or additional form of analysis that is not expressly required by CEQA would have added useful information to the EIR. But Amici make just such a claim about the methodology chosen to disclose greenhouse gas emissions.

That claim is squarely within the ambit of cases applying the substantial evidence standard to EIR methodology questions.

Second, contrary to Amici's allegation, the EIR provided more than sufficient information about the Plan's potentially significant impacts to global climate change to fully inform both the decisionmakers and the public. The EIR disclosed greenhouse gas emissions attributable to the Plan in 2020, 2035, and 2050. It also analyzed the Plan's consistency with the state Scoping Plan, SANDAG's regional Climate Action Strategy, and the relevant SB 375 targets. It was clear to both the public and SANDAG decisionmakers that long-term projected greenhouse gas emissions would increase as a result of ongoing development and population growth, despite meeting the nearer-term goals of the Scoping Plan and SB 375. Indeed, SANDAG concluded that the Plan's long-term emissions would be significant and SANDAG considered all feasible mitigation measures and alternatives to alleviate this significant impact before finding the impact to be unavoidable. Thus the EIR fully disclosed the significance of the Plan's long-term emissions, no feasible greenhouse gas reduction measure was left unexplored, and no prejudice occurred.

Third, although Amici assert the EIR did not adequately discuss climate change, the EIR did so. The EIR discusses generally how climate change will affect economically disadvantaged communities, wildland fire frequency, sea levels, flood risk, water supply, and sensitive species and habitats. CEQA does not require more specificity. Agencies cannot quantitatively determine the precise role of any particular amount of regional emissions in the complex interactions that create global climate change. For this reason, CEQA Guidelines (14 Cal. Code Regs., § 15000 *et seq.*) section 15064.4 focusses on the reduction of greenhouse gas emissions. So do climate action plans, the Scoping Plan, and SANDAG's Climate Action Strategy. As the EIR discloses, global reduction of

greenhouse gases should stabilize the climate. Any attempt to provide a finer-grain analysis, such as the specific amount of sea level rise, biodiversity loss, or other potential climate change effect related to the Plan would be pure speculation outside the appropriate scope of CEQA.

Fourth, Amici rehash Petitioners' claims regarding SB 375 and the Scoping Plan to no greater avail. Neither SB 375 nor the Scoping Plan can be read to require the Executive Order's 2050 reductions. SB 375 does not mention the Executive Order and the Scoping Plan mentions it only to say that the Plan's measures to meet the 2020 goal will put California on the right track to achieve the Order's 2050 goal. The Scoping Plan candidly admits that getting to the 2050 goal will require new technologies and other changes not contemplated by the Scoping Plan. This admission defeats Amici's claim.

Fifth, requiring EIRs to measure significance using the Executive Order's 2050 goal would unquestionably impose a new requirement. Nothing in CEQA or the CEQA Guidelines requires this analysis, and there is no precedent for requiring EIRs to analyze executive orders. Requiring such analysis also would be burdensome. Despite their claims of scientific expertise and backing for their views, Amici fail to address the numerous problems inherent in long-range forecasting of greenhouse gas emissions. Nor do Amici explain how an agency should convert the broad, long-term statewide goal of the Executive Order into a meaningful performance standard for individual local or regional projects. Development of such measuring tools is complex and Amici are unrealistic in suggesting otherwise. Similarly, Amici gloss over the potential burden to proponents of small projects that now rely on exemptions. Holding those projects to meeting the 80% reduction goal would result in many of those projects requiring EIRs. To require CEQA analysis based on comparison with emission levels 80% below what they were in 1990 is in direct conflict with

the general CEQA rule that environmental impacts be measured against existing conditions. It is difficult to see how any project could possibly be said to have no impact under such a standard, or how any local or regional project could reasonably be expected to mitigate projects' greenhouse gas emissions sufficiently to be "consistent" with the Executive Order goal. Although Amici argue that a few EIRs prepared subsequent to the EIR at issue in this case have included the type of analysis they advocate, this does not mean that such analysis is required or should be required by CEQA. At most, these recent EIRs indicate only that lead agencies react quickly to Court of Appeal decisions and take precautions to attempt to avoid litigation.

Finally, the merits of the Plan itself, the first such RTP/SCS prepared under SB 375, are not before the Court, though Amici present substantial argument on the merits. The substantive provisions of the Plan demonstrate SANDAG's substantial and precedent-setting commitment to reducing the region's contribution to global climate change, and the SCS component of the Plan was approved by the California Air Resources Board ("ARB") in addition to SANDAG. As envisioned by SB 375, the Plan promotes compact, higher density development located near public transit systems, and within the already urbanized areas of the region. The Plan also supports transit, committing almost one half of all transportation expenditures to public transit projects. The rest of the funding is divided among multi-purpose highway lanes, local streets and roads, and projects for bicycles, and pedestrians. The Plan's multi-modal transportation mix is the one that best reduces greenhouse gas emissions, while also meeting other Project objectives and the constraints imposed by state and federal law.

In sum, Amici, like Petitioners, have not shown that SANDAG failed to comply with CEQA in the EIR for the Plan it adopted in 2011.

SANDAG fulfilled all of CEQA's requirements and followed the best technical guidance that was available when the EIR was prepared in 2009 and 2010. That Amici and Petitioners would have preferred additional or different analysis is not enough to undermine the substantial evidence showing that SANDAG provided the disclosure and good faith analysis required by CEQA.

II.

ARGUMENT

A. An Agency Has Discretion to Decide How to Analyze Greenhouse Gas Emissions and Its Discretionary Decision is Reviewed for Substantial Evidence

Amicus Backcountry Against the Dump, Inc. ("Backcountry") contends the Court should apply a *de novo* standard of review rather than the substantial evidence test to the issue presented for review. As discussed in SANDAG's briefs, appellate courts have consistently applied the substantial evidence test where the question posed involves a lead agency's choice of analytical methods or significance criteria for evaluating greenhouse gas impacts. (See, e.g., *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 653; *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 335–336 ("*CREED*").) This is consistent with the general rule that issues involving the scope of analysis, methodologies, and other discretionary determinations involved in preparing an EIR are reviewed under the substantial evidence test. (See, e.g., *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162–1163 ("*In re Bay-Delta*"); *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 898–899; *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.) CEQA Guidelines section 15064.4 also explicitly states that the choice of methods and significance standards for assessing greenhouse gas emission impacts are matters of discretion for the lead agency. Even the Court of Appeal majority below purported to apply the substantial evidence test in reviewing the sufficiency of the EIR's analysis, although the majority did not apply the test in practice. (*Cleveland Nat'l Forest v. San Diego Ass'n of Gov'ts* (Nov. 24, 2014) Court of Appeal, Fourth Dist., Div. 1, Case No. D063288 (the "Opinion") at pp. 12–13.)

Backcountry contends *de novo* review is required for questions involving the sufficiency of information in an EIR to ensure that CEQA's informational purposes are met. They also contend that this purpose trumps the specific statutory mandate of Public Resources Code section 21083.1, which directs that courts not interpret CEQA "in a manner which imposes procedural or substantive requirements beyond those explicitly stated" in CEQA or the CEQA Guidelines. (See *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1107–1108; but see Section II.E.1, *infra*.)

This argument, in various forms, is surprisingly common in CEQA litigation given CEQA's clarity on this issue. (See, e.g., *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546–1547 [rejecting petitioners claim that a *de novo* standard of review applied because the "EIR failed to adequately analyze impacts" and finding that the substantial evidence standard applied]); *Cal. Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 997 [rejecting petitioners claim that the *de novo* standard of review applied and instead reviewing challenged findings under the substantial evidence standard].) As this case illustrates, even when the issue concerns the method of analysis in an EIR, which is left to the discretion of the lead agency, and even where the

analysis is consistent with specific mandates of the CEQA Guidelines and existing case law, petitioners commonly attack EIRs based on an alleged failure to satisfy vague and open-ended criteria such as "fulfilling CEQA's informational purposes." Such claims may be justified where an EIR is wholly lacking in meaningful information of any kind on a required topic. It is another matter, however, to attack an EIR based solely on disagreement with the manner or mode of analysis used in addressing a required subject. The effect of the latter type of claims, if reviewed under the *de novo* standard, would be to reduce CEQA compliance to a guessing game, in which lead agencies and project proponents can never be sure whether an independently minded court might find that some new, different or additional analysis should have been performed.

According to Backcountry, this Court's prior decisions in *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376 ("*Laurel Heights*"), and *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 ("*Vineyard*"), authorize courts to review EIRs using their independent judgment and find them deficient as a matter of law even where the alleged deficiencies cannot be traced to some specific procedural or substantive mandate set out in the text of CEQA or the CEQA Guidelines. But neither *Laurel Heights* nor *Vineyard* support Backcountry's claim that section 21083.1 may be disregarded to avoid "eviscerat[ing]" CEQA. (Backcountry Brief at p. 5.)

Laurel Heights was decided in 1988, five years before the enactment of section 21083.1. (Stats. 1993, ch. 1070, § 2, p. 5917.) Thus, that decision cannot be viewed as countenancing a narrow application of the subsequently enacted statutory mandate. Moreover, the portions of *Laurel Heights* relied on by Backcountry did not involve a close question over the type or amount of information required in an EIR. In *Laurel Heights* the

Court was addressing a one and a half page purported discussion of alternatives that was essentially devoid of factual analysis. The Court described the EIR's analysis of off-site alternatives as follows: "It defies common sense for the Regents to characterize this as a discussion of any kind; it is barely an identification of alternatives if even that." (47 Cal.3d at p. 403.) The Court then listed numerous specific omissions that deprived the analysis of any informational value. (*Id.* at pp. 403–404.) *Laurel Heights* thus stands for the unremarkable proposition that a complete or near-complete failure to provide information required by CEQA and the CEQA Guidelines may constitute a failure to proceed in the manner required by law. This principle has no application where the EIR contains an extensive, forty-two-page discussion of greenhouse gas emissions that includes detailed, factual analyses utilizing three different significance criteria, and the dispute is over whether some *additional* form of analysis was required.

Laurel Heights is inconsistent with Backcountry's view. In response to contentions that more detailed information was required on certain impacts, the Court stated, "[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*, *supra*, 47 Cal.3d at p. 415.) This principle has since been codified in CEQA Guidelines section 15204, subdivision (a), and reiterated in numerous published decisions. (See, e.g. *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 99, 937; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 245; *Ass'n of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396–1397.)

Vineyard, *supra*, 40 Cal.4th 412, was decided after the enactment of Public Resources Code section 21083.1, but does not purport to discuss the

effect of section 21083.1 on judicial review of CEQA claims. *Vineyard* is best known for its articulation of the distinction between claims involving alleged legal or procedural error, which are reviewed *de novo*, and claims that involve primarily underlying factual disputes, which are reviewed under the substantial evidence test. (40 Cal.4th at p. 435.)[1] *Vineyard* does not authorize courts to invalidate EIRs for failure to include information not required by CEQA or the CEQA Guidelines, even if the information is interesting, informative, or desirable. Similarly, *Vineyard* does not authorize courts to exercise independent review on questions of analytical approach or methodology where these questions are expressly left to discretion of the lead agency by CEQA and the CEQA Guidelines. Instead, *Vineyard* treats such questions as involving primarily factual disputes, which are reviewed under the substantial evidence standard.

In *Vineyard*, this Court interpreted how to apply CEQA and the CEQA Guidelines to CEQA's requirements for the analysis of water supply impacts. (40 Cal.4th at pp. 428–436.) *Vineyard* then reviewed the adequacy of an EIR's near-term water supply impact analysis "solely for substantial evidence." (*Id.* at p. 436.) Therefore, *Vineyard* does not support the contention that where an EIR has extensively addressed a subject in a manner that satisfies all ascertainable requirements of the CEQA Guidelines, courts may independently judge whether the most appropriate technical methodologies were employed, whether correct significance criteria were used, or whether the resulting information is subjectively satisfactory. *Vineyard* confirms that these questions turn on

[1] Which of these tests applies when the issue concerns *adequacy* of information in an EIR rather than a complete or near-complete absence of information has been the subject of ongoing debate. This issue will be addressed by the Court in another pending case (See *Sierra Club v. County of Fresno*, Case No. S219783, rev. granted Oct. 1, 2014) and need not be exhaustively discussed in this case, where the issue is not a close call.

factual judgment, and therefore must be reviewed under the substantial evidence test. (*Id.*)

Petitioners cannot alter the standard of review for agency decisions involving the exercise of discretion by relabeling the issue as whether the EIR was sufficient as an informational document. This is particularly true where, as in this case, the CEQA Guidelines provide explicit guidance as to how the impact analysis should proceed, and the EIR complies with this guidance. As extensively discussed in SANDAG's briefs, the EIR's analysis of greenhouse gas emissions impacts faithfully tracks the requirements of CEQA Guidelines section 15064.4. (Opening Brief at pp. 26–29; Reply Brief at pp. 37–40.) The analysis is neither conclusory nor lacking in substantive information on the physical quantity and extent of greenhouse gas emissions. No case or CEQA provision justifies a *de novo* standard of review where CEQA and the CEQA Guidelines have expressly granted discretion to the lead agency to choose how to analyze impacts and comply with CEQA's statutory mandates.

B. The EIR Provided Decisionmakers and the Public with Ample Information about the Plan's Anticipated Long-Term Contribution to Greenhouse Gas Emissions

The Council of Infill Builders and the Planning and Conservation League ("Council/PCL") and the League of Women Voters et al. ("LWV") properly focus on the issue presented for review, but their briefs add little to the arguments previously presented in the Petitioners' briefing. Amici's arguments do not rest on the CEQA statute, the CEQA Guidelines, or relevant case law, but on Amici's beliefs as to what an EIR analysis of greenhouse gas emissions impacts should contain. Some of these arguments ignore the actual content of the EIR while others contend the EIR was deficient for not presenting the particular comparative analysis they advocate, even though Amici rely on the extensive factual data

disclosed in the EIR to support their arguments. The LWV brief goes so far as dismissing the long-range quantitative analysis presented in the EIR as "burying the worst news . . . in raw data," as if presenting facts were not the proper focus of an EIR. (LWV Brief at p. 11.) Such arguments do not provide a basis for rejecting the Guidelines-based choice of analytical methods adopted by SANDAG. These arguments boil down to disagreements with the significance standards and analytical methods endorsed in CEQA Guidelines section 15064.4, standards and methods that SANDAG applied in good faith in preparing the EIR.

1. <u>As Directed by CEQA and Recommended by the State's Air Pollution Control Officers, the EIR Measured the Plan's Greenhouse Gas Emissions against Existing Physical Reality and Fully Disclosed Long-Range Emissions</u>

As discussed in SANDAG's Opening Brief at pages 22 to 32, the EIR fulfilled CEQA's requirements in analyzing the Plan's long-term impacts on greenhouse gas emissions. (See also supporting amicus brief of California Infill Builders Association ("Infill Builders") at pp. 15–18.) By comparing 2020, 2035, and 2050 emissions (both gross and per capita) to the 2010 baseline, as well as providing analysis of the Plan's consistency with SB 375, the Scoping Plan, and the Climate Action Strategy, the EIR did more than "show a few scattered numbers." (LWV Brief at p. 13.) The EIR gave readers a way to compare the difference between existing conditions and what conditions may be like in the future, out to 2050. (8a:2568–2578.) It also put those differences into an easily digestible chart that showed emissions reductions achieved in 2020 would decline over the years to 2050 (8b:3820) and explained why emissions in 2035 and 2050 would be greater than existing conditions (8a:2591; 8b:3821–3823). The EIR also discussed the Plan's relationship to the Executive Order's 2050 reduction goal. (8b:3766–3770.) In addition, comment letters included in the Final EIR and considered by SANDAG prior to approving the Plan

provided additional information about the emissions trajectory disclosed by the Draft EIR. (See, e.g., 8b:4231–4235 [information from commenters supplementing the Draft EIR's discussion on climate change], 8b:4434 [comments regarding the emission trajectory], 8b:4446 [graph of emission trajectories needed to meet the Executive Order's 2050 goal].)

For analysis of long-term (2050) greenhouse gas emissions, SANDAG chose two thresholds: zero increase over existing conditions and consistency with the Climate Action Strategy. These thresholds are supported by substantial evidence. For example, the "zero increase" threshold is one of the thresholds the California Air Pollution Control Officers Association ("CAPCOA") recommended agencies use in their CEQA documents when no statewide threshold exists. (AR 319:26306, 26316–26318.) And no statewide threshold has been adopted for 2050. Similarly, the threshold of consistency with a plan adopted to reduce greenhouse gas emissions, such as the Climate Action Strategy and Scoping Plan, has been recommended by the Natural Resources Agency. (AR 319:25840–25843.)

Nevertheless, Council/PCL and LWV claim the EIR is deficient because it did not compare projected greenhouse gas emissions to an emission reduction trajectory based on the Executive Order, i.e., reductions to 80% below 1990 levels by 2050, but only compared the projected 2050 emissions to existing conditions. (Council/PCL Brief at pp. 11–15; LWV Brief at pp. 5, 11.) As discussed above, SANDAG is not required use consistency with the Executive Order as one of its significant thresholds for long-term greenhouse gas emissions and using that threshold has challenges. SANDAG used well-established CEQA analysis methodologies, namely, comparing the environment with the project to existing conditions and analyzing the consistency of the project with SANDAG's Climate Action Strategy. Both of these types of analyses are

supported by CEQA and interpretive case law. (See *Neighbors for Smart Rail v. Exposition Metro Line Construction Auth.* (2013) 57 Cal.4th 439, 448–449 [interpreting CEQA Guidelines section 15125(a), which states the baseline "ordinarily must be the actually existing physical conditions"]; *North Coast Rivers Alliance*, *supra*, 216 Cal.App.4th at p. 651 [upholding an EIR that relied on a threshold tied to a goal from a county climate action plan].)

In addition, despite the EIR's disclosure that the Plan's emission reductions would decline over time, the Amici make two additional claims: (1) the EIR failed to provide comparisons that highlighted the declining decrease in emissions (Council/PCL Brief at p. 18; LWV Brief at p. 19), and (2) the EIR did not account for the full impact of greenhouse gas emissions, instead improperly curtailing analysis based on a finding of consistency with relevant regulations and greenhouse gas emission reduction plans (Council/PCL Brief at p. 27).[2]

First, the EIR does not downplay the forecasted rise in GHG emissions for the later years of the Plan. One of the thresholds used to analyze the significance of greenhouse gas emissions in 2050 was a "zero" threshold whereby any emissions over the baseline is significant. If SANDAG had intended to downplay backsliding, the significance threshold chosen would have been greater than zero.

Amici argue a "below zero" threshold was necessary because the Plan has a "performance standard" to reduce per capita transportation-related carbon dioxide emissions from 28 pounds per day to 18.8 pounds per day by 2050. (Council/PCL Brief at p. 14.) This argument is outside

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[2] Some Amici go so far as to claim the EIR omitted any analysis of emission reductions for the years between 2035 and 2050, ignoring the pages of the EIR cited above that provided that information. (Council/PCL Brief at p. 14.)

the scope of review granted by the Court and was never previously raised by Petitioners. The argument also distorts the record. The cited "performance standard" is merely a statement of what the Plan is expected to achieve, not a numerical goal. (AR 13081.) The Plan does include a general policy objective to "[r]educe greenhouse gas emissions from vehicles and continue to approve air quality in the region." (AR 13079.) This is too general a goal to constitute a performance standard of the type contemplated by CEQA Guidelines section 15064.4, subdivision (b)(3).

In addition, Amici's argument is nonsensical because it attempts to compare numbers with inconsistent units. Specifically, Amici are trying to compare a threshold that examines total greenhouse gas emissions, measured in carbon dioxide equivalents (CO_2e), to a goal expressed in per capita carbon dioxide emissions. Carbon dioxide is only one of many greenhouse gases accounted for in the carbon dioxide equivalents metric (see 8a:2554 [Table 4.8-1 lists common greenhouse gasses]) and total emissions cannot be compared to per capita emissions. (See generally 8b:3820–3821 [explaining the differences between vehicle miles traveled, a metric that goes into greenhouse gas emission modeling, and CO_2 projections].)[3] Further, given the anticipated large population increase, a significance threshold of no increase over existing conditions on an absolute level is consistent with the Plan's goal to reduce *per capita* carbon dioxide emissions from transportation sources.

Second, the EIR properly analyzes greenhouse gas emissions and does not rely solely on a finding of consistency with other plans or regulations when drawing its significance conclusion. Amici base their

[3] Amici's attempt at comparing the Plan's anticipated per capita per day reduction in CO_2 (18.8 pounds per capita per day) with the EIR's disclosure of the Plan's total per capita CO_2 emissions (27.8 tons per capita) suffers from the same inconsistent unit problem.

claim on *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716 ("*Kings County*"), but the analysis here contains none of the errors found in that case. (See Council/PCL Brief at p. 27.) The EIR at issue in *Kings County* analyzed a project's emissions from stationary sources separately from mobile sources, and never considered the combined emissions. (221 Cal.App.3d at p. 716.) The EIR there then relied on the fact that emissions from stationary sources would meet regulatory requirements for such sources to conclude that air quality impacts would be less than significant. (*Id.* at pp. 716–717.) The EIR did not examine the combined impact from stationary and non-stationary sources.

In contrast, the EIR here did not rely solely on compliance with regulatory requirements when analyzing the significance of greenhouse gas emissions. In addition to analyzing whether emissions would meet the targets established by SB 375, which accounts for only a subset of the Plan's emission sources (AR 8a:2578), the EIR also examined whether emissions from land use and transportation sources together would exceed baseline conditions and be consistent with the Scoping Plan and Climate Action Strategy. By using multiple thresholds, the analysis revealed that despite compliance with SB 375 and the Scoping Plan, the Plan would lead to significant greenhouse gas emissions in 2035 and 2050. (8a:2567–2578, 2581–2588.)

Through the EIR's analysis, SANDAG's Board of Directors and the public were informed that the emission reductions achieved in 2020 would decrease by 2050. SANDAG thus found that greenhouse gas emissions were significant in 2035 and 2050 despite compliance with certain 2020 and 2035 regulatory requirements and adopted feasible mitigation measures to mitigate the significant impact. (See 8a:2588–2591.) The EIR thus avoids the errors in the *Kings County* EIR and satisfies CEQA's disclosure requirements.

2. The EIR Properly Discussed the Executive Order's 2050 Goal Without Using It As a Threshold

Amici next claim the EIR failed to adequately discuss the Executive Order when addressing the Plan's long-range emissions. (Council/PCL Brief at pp. 19–22.) According to Amici, the EIR should have emphasized that the Executive Order is "an authoritative policy document that shows the magnitude of the reductions that climate science indicates are needed to avert the most serious climate changes." The EIR listed the Executive Order as one of many authoritative policy documents and regulations bearing on the analysis. (See 8a:2557–2566.) CEQA has no requirement that all "authoritative policy documents" must be used as significance thresholds. Instead, the lead agency is allowed to choose among such documents and policies, as well as among scientific data, when selecting significance criteria. (See *CREED*, *supra*, 197 Cal.App.4th at pp. 335–336 [holding that lead agencies "are allowed to decide what threshold of significance it will apply" for its climate change analysis].) CEQA and the CEQA Guidelines are specific about the type of state, regional, or local planning documents that should be reviewed for possible inconsistencies with a project. (Guidelines §§ 15064.4, subd. (b)(3), 15125(d).) Executive orders, even if considered as policy documents applicable to local or regional agencies, are not among those the CEQA Guidelines recommend for use as a threshold.

Amici cite no evidence refuting the EIR's characterization of the Executive Order as a statewide goal rather than a plan to achieve that goal. (See 8a:2581–2582.) The EIR correctly states that the Executive Order "does not call for implementation measures other than the Secretary of CalEPA being responsible for coordination of state agencies and progress reporting." (8b:3767.) Absent more specific implementation standards, such as those provided by the Scoping Plan, which allowed agencies to

understand their role in achieving the Executive Order's 2020 goal, or the targets set by ARB under SB 375, it is "uncertain what role regional land use and transportation strategies" play in reducing California's emissions to 80% below 1990 levels by 2050. (*Id.*; see 8b:4430–4431 [listing other sectors that also will play a role in reducing emissions to meet the 2050 goal and noting that the Scoping Plan has acknowledged that these other sectors must make significant contributions to the reduction effort]; see Section E, *infra*.)

SANDAG could have assumed that it was responsible for an 80% reduction from estimated 1990 emissions from land use and transportation patterns in the region, as it did in its most recent EIR for the Plan's update (adopted on October 9, 2015 and known as San Diego Forward: the Regional Plan). SANDAG chose to go to that extreme in the EIR for the Regional Plan in 2015, but that decision was not based on science showing land use planning or transportation changes in the region should be reduced 80% or foreseeable policy that would require such a reduction in land use and transportation related emissions in the SANDAG region. That decision was based on SANDAG's effort to use the most liberal reading possible of the Executive Order in order to address concerns raised by the majority in the Opinion below.

Scientific and policy papers looking at how to achieve the 2050 goal have concluded that the majority of post-2020 greenhouse gas reductions will come from (1) decarbonizing the fuel supply, (2) the electrification of transportation, (3) the electrification of industrial process heating, and (4) "technologies that have not yet been proven." (Respondents' Request for Judicial Notice ("RJN"), Ex. 2 at p. 4; AR 319:27848 [Scoping Plan calls for technological advances]; see AR 319:25811 [The Copenhagen Diagnosis states that "attractive options for particularly rapid and cost-effective climate mitigation are the reduction of black carbon (soot)

pollution and tropospheric low-level ozone," which is consistent with Ramboll Environ's conclusion that the energy supply needs to be decarbonized.].) These are changes mostly outside of SANDAG's control.[4] Given that scientific studies indicate that the majority of changes required to meet the 80% reduction goal are unrelated to land use and transportation planning, it is not reasonably foreseeable that SANDAG will be accountable for meeting the entire 80% reduction. Most likely, some sectors, such as the energy sector, will be required to achieve more than an 80% reduction and others, such as metropolitan planning agencies, will be responsible for less.

It is also not reasonably foreseeable that a statewide plan to reach the 80% reduction goal will require SANDAG to cut emissions 80%. At this point in time, the key process of translating the Executive Order's laudatory science-based goals into actions agencies can implement remains undone. The Scoping Plan has shown that this is a technically and politically complicated process that will take expertise and time, with many changes between the initial draft and the final, adopted plan. ARB took over two years to determine how to translate the goal to reduce greenhouse gas emissions 20% from 1990 levels by 2020 into an implementation program. SANDAG looks forward to being part of the process when it occurs, but is not required by CEQA to speculate on the results of that process before it even begins.

In light of this uncertainty, SANDAG chose thresholds unrelated to the Executive Order's 2050 goal to determine if long-term greenhouse gas emissions would be significant. Since those thresholds are supported by

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[4] SANDAG will need to continue to do its part to reduce greenhouse gas emissions, including considering technological advances when updating its regional transportation plan. For example, if technological advances cause cars to emit fewer greenhouse gases than other transportation modes, SANDAG would change its planning strategy accordingly.

substantial evidence and resulted in a good faith disclosure of the Plan's long-term climate change impacts, they fulfill CEQA's requirements and must be upheld.

3. The Analysis of GHG Impacts Did Not "Short Circuit" Consideration of Alternatives

Amici suggest that SANDAG's decision to base its analyses of greenhouse gas impacts on criteria specified in CEQA Guidelines section 15064.4, subdivision (b), rather than the Executive Order's statewide goal caused SANDAG to give "short shrift" to alternatives that might have further reduced greenhouse gas emissions. (Cf. Council/PCL Brief at pp. 10. 32–35, 44.) Because SANDAG identified the Plan's long-term greenhouse gas emissions as significant impacts, SANDAG was required to evaluate feasible mitigation measures and alternatives that could reduce the impacts to a less-than-significant level. (Pub. Resources Code §§ 21002, 21081.) It did so and concluded that there were no additional feasible mitigation measures or alternatives beyond those evaluated in the EIR. (See 3:179 [Statement of Overriding Considerations].)

Despite Amici's claim to the contrary, SANDAG did not miss any feasible alternatives that would have allowed the Plan to achieve additional emissions reductions, whether measured against the significance thresholds used in the EIR or other criteria. (See Council/PCL Brief at pp. 10, 32–35.) The EIR analyzed seven project alternatives: (1) no project, (2) modified funding strategy/2050 growth forecast land use, (3) modified funding strategy/modified land use, (4) transit emphasis/modified phasing/2050 growth forecast land use, (5) transit emphasis/modified phasing/modified land use, (6) 2050 RTP/SCS transportation network/modified land use, and (7) slow growth. (AR 8a:3131–3330.) These alternatives represented a wide-range of possible RTP/SCS scenarios. At least one of the alternatives would have reduced the Plan's short-term greenhouse gas emissions

(AR 3281) and the "slow growth" alternative also would have decreased the Plan's long-term greenhouse gas emissions (AR 3306). The EIR also considered six additional alternatives but rejected further consideration of those because they were duplicative of the Plan or one of the fully analyzed alternatives, infeasible, would not reduce the Plan's impacts, or failed to meet fundamental project objectives. (AR 8a:3331–3335.)

Amici nevertheless claim that SANDAG's failure to use the Executive Order as a significance threshold caused it to ignore feasible transit-oriented alternatives. (Council/PCL Brief at pp. 10, 32–35; see *id.* at p. 29 [correctly noting that this Court did not grant review of this question].) Not so. The EIR extensively analyzed the two transit-oriented alternatives named by Amici (the FAST Plan and the 50-10 Plan) and concluded they were infeasible and did not meet project objectives. (AR 8b:3805–3811.)

SANDAG found the FAST Plan was an alternative to only one component of the Plan, transit, rather than a comprehensive alternative addressing all of the Plan's requirements. (AR 8b:3806.) Specifically, the FAST Plan did not include an SCS or address highway improvements, and thus did not meet project objectives. (*Id.*) In addition, SANDAG found that the FAST Plan had so many similarities with the transit portion of the Plan that it could be considered a variation of the Plan rather than a true alternative. (AR 8b:3806–3808.) CEQA does not require a lead agency to consider variations of a studied alternative or the project. (See *In re Bay Delta, supra*, 43 Cal.4th at pp. 1163–1167 [upholding an EIR's alternative analysis even though it did not fully analyze petitioners' proposed alternative]; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491 [upholding an EIR's alternative analysis even though it did not include petitioners' suggestion because that suggestion was a variation with impacts covered by the alternatives analyzed].) Because of

the many similarities between the FAST Plan and the Plan, SANDAG concluded that the FAST Plan would not avoid or substantially reduce any of the Plan's significant impacts. (AR 8b:3808.)

SANDAG found the 50-10 Plan also did not meet most of the project objectives. (*Id.*) Like the FAST Plan, the 50-10 Plan dealt only with transit rather than addressing all the topics a Metropolitan Planning Organization must address in a RTP. (AR 3809.) In addition, no evidence existed that it would reduce the Plan's significant impacts since it was merely a variation of the timing of infrastructure improvements. (AR 3809–3810.) Most importantly, revenue constraints made the 50-10 Plan financially infeasible. (AR 8b:3810–3811; see AR 8b:3786–3787 [explaining the legal requirements that prohibit SANDAG from including more transit projects in the early years of the Plan's planning horizon].)

In short, SANDAG fully analyzed the alternatives Amici claim they failed to analyze. Since SANDAG analyzed those alternatives, Amici cannot show prejudice. Here, Amici's claim amounts to a demand that an alternative be adopted if a project has a significant impact. While CEQA requires alternatives to be studied, it does not demand that they be adopted, even if they would reduce a project's significant impacts. (*Citizens of Goleta Valley*, *supra*, 52 Cal.3d at pp. 564–565.) Further, given CEQA's requirement that an alternative (or mitigation measure) be roughly proportional to the impact caused by a project, it would be illegal to require an alternative to a project that causes no net increase in existing emission levels, or even reduces existing emission levels to some degree. (CEQA Guidelines, § 15041; see *In re Bay Delta*, *supra*, 43 Cal.4th at p. 1167 ["Under CEQA, the range of alternatives that an EIR must study in detail is defined in relation to the adverse environmental impacts of the *proposed project*" rather than existing adverse conditions].) A CEQA petitioner cannot claim a prejudicial abuse of discretion merely because an EIR fails

to analyze mitigation measures or alternatives that are not legally viable or enforceable. (*San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 16.)

C. The CEQA Guidelines Direct Agencies to Use Greenhouse Gas Emissions to Evaluate a Project's Contribution to Global Climate Change, and There Is No Basis for Amici's Claims that More Was Required

Consistent with CEQA Guidelines section 15064.4, the EIR conducted an in-depth quantitative analysis of greenhouse gas emissions. Nevertheless, Amici claim the EIR should have disclosed the Plan's precise effects on climate change rather than focusing on the Plan's contribution to greenhouse gas emissions. (See Council/PCL Brief at pp. 25–27; Scientists Brief at p. 26.) Although Amici are vague as to what this would entail, they apparently believe that the EIR should have attempted to evaluate the degree to which the Plan would affect such things as sea level rise, temperature increases, wildfire threats, rainfall patterns, or other climatic phenomena. (See Scientists Brief at pp. 5–21 [listing the impacts of global climate change].) They also contend that the general summary of potential climate change effects in the EIR (see, e.g., AR 8a:2553) was not enough. This issue is not within the scope of review granted by the Court, nor was it fairly raised in previous appellate and trial court proceedings in this case. Regardless, such analysis is not required by CEQA. Given the scientific uncertainties involved in forecasting future worldwide emissions or predicting the course of specific climate change effects, such analysis could not be meaningfully performed in individual EIRs.

1. As Directed by the Legislature, the CEQA Guidelines Focus on Greenhouse Gas Emissions Rather than Climate Change Impacts

The language of SB 97 (Dutton 2007), CEQA Guidelines section 15064.4, and other concurrent amendments to the CEQA Guidelines direct agencies to focus on greenhouse gas emissions as the measure of a project's

global climate change effects. (See CEQA Guidelines, §§ 15064.4, 15126.4(c), 15183.5.) As the California Natural Resources Agency ("Resources Agency") explained when adopting these amendments, the focus on greenhouse gas emissions is appropriate for a few reasons. (AR 319:25837.) First, the Legislative authorization for the Resources Agency to adopt CEQA Guidelines referred "specifically to guidelines on the 'mitigation of greenhouse gas emissions and the effects of greenhouse gas emissions.'" (*Id.*, quoting Pub. Resources Code, § 21083.05.) As the Resources Agency noted, "[h]ad the Legislature intended the Guidelines to address climate change or global warming specifically, it presumably would have so indicated." (*Id.*) Second, "the focus in a cumulative impacts analysis," such as the analysis of greenhouse gases, "is 'whether any additional effect caused by the proposed project should be considered significant given the existing cumulative effect.'" (*Id.*; see CEQA Guidelines, § 15130, subd. (a) [CEQA requires consideration of cumulative impacts only when an individual project's contribution is "cumulatively considerable."].) Accordingly section 15064.4 "appropriately focus[es] on a project's potential contribution of GHGs rather than on the potential effect itself (i.e., climate change)." (AR 319:25838.)

Other expert organizations agree with this approach. For example, the ideas offered by CAPCOA for measuring the climate change impacts of a single project under CEQA all involved measurement of greenhouse gas emissions. (AR 319:26291–26292.) Similarly, the mitigation measures suggested by the Attorney General all involve reducing greenhouse gas emissions. (AR 319:26437–26446.)

The focus on greenhouse gas emissions rather than specific climate change impacts is driven by practical as well as statutory considerations. Climate change is a global problem, mainly caused by the billions of tons of greenhouse gas emissions released worldwide each year. (AR 8a:2553.)

In this context, individual climate change effects cannot be meaningfully correlated to the minute fraction of worldwide annual emissions that might be attributed to any one project. (Cf. Scientists Brief at p. 34 [The "Plan's GHG emissions are, admittedly, a relatively small part of a very large problem."].) To forecast cumulative climate change effects, a forecaster would have to predict not only what a project's incremental contributions to future GHG emissions will be, but the volume of worldwide GHG emissions and other climate change causes with which these emissions would be interacting. Given the vast range of technological, economic and political factors that will influence future global emissions levels, this is impossible. Further, to correlate the impacts of a project's greenhouse gas emission levels to physical consequences of climate change would require a level of scientific precision that did not exist in 2011 and still does not exist. While numerous models exist for forecasting worldwide climate effects, the results of these models vary widely based on many factors and the results are not "project level." Amici themselves unwittingly disclose the potential variability and hence uncertainty of results. (See, e.g., Climate Scientists at p. 6 [estimates of future temperature increases range from 1.5 to 4.5 degrees for southern California]; p. 12 [estimates of sea level rise range from 1.6 to 11.8 inches by 2030 and 16.5 to 65.7 inches by 2100.)

Other scientific literature confirms that although scientists generally agree on the adverse effects that can be caused by global climate change, "projections of the extent and effect of the increases [in temperature] are . . . very uncertain," which makes the timing and scope of the impacts uncertain. (Respondents' RJN, Ex. 3 at p. 3.) In particular, the "net global climatic importance" of climatic effects from patterns of land use is "still speculative." (Respondents' RJN, Ex. 4 at p. 12.) The uncertainties involved in predicting future climate change effects can only increase if one attempts to forecast effects attributable to any individual project's

contribution. As the dissent correctly noted in this case, CEQA does not require agencies to "predict the unpredictable or quantify the unquantifiable." (Opinion, Dissent at p. 26, quoting *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1060–1061 [alterations and internal quotation marks omitted].)

2. The EIR Properly Summarized Many of the Adverse Effects of Global Climate Change

In addition, the EIR explained the existing environmental setting and science and summarized the adverse impacts of global climate change to provide context for the greenhouse gas analysis. For example, the EIR discusses how greenhouse gasses affect global temperatures (AR 8a:2553), the atmospheric lifetime of such gases (8a:2554), how much is already in the atmosphere (8a:2554–2555), which countries are emitting the most (8a:2555), California's emissions from various sectors (*id.*), and San Diego's emissions from various sectors (8a:2556). In addition, the EIR summarized impacts from climate change on economically disadvantaged communities (8a:2505), the frequency of wildland fires (8a:2659– 2664), sea levels (*id.*, 8a:2720, 8b:3812–3814), increasing flood risk (8a:2720–2725), San Diego's water supply and demand (8a:3032, 3035, 3045–48), and San Diego's sensitive species and habitats (8a:3077).

This type of general discussion of the impacts from global climate change, which gives context to a more detailed analysis of greenhouse gas emissions, is what CEQA requires. (See, e.g., *North Coast Rivers Alliance, supra*, 216 Cal.App.4th at pp. 650–653 [upholding an EIR that described impacts from climate change but based significance findings solely on the project's greenhouse gas emissions]; *Santa Clarita Org. for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1057–1059 [upholding an EIR that where the climate change analysis focused on

greenhouse gas emissions].) Given the global nature of climate change effects and the demonstrated uncertainty of accurately quantifying such effects at any level, the disclosures in the EIR satisfy CEQA's requirements.

D. SB 375 and the Scoping Plan Do Not Require Agencies to Consider a Project's Consistency with the Executive Order

SANDAG and supporting Amici have explained that no legislation has enacted the Executive Order's 2050 goal. (See, e.g., Infill Builders Brief at pp. 2–15.) Nonetheless, Amici argue that because the Scoping Plan and SB 375 stated a need for greenhouse gas emission reductions to continue out to 2050, the Executive Order's 2050 goal was implicitly adopted. (Council/PCL Brief at p. 15.) The text of the Scoping Plan and SB 375 does not support this assertion.

The Scoping Plan mentions the Executive Order in its executive summary, stating it shows "[g]etting to the 2020 goal is not the end of the State's effort." (AR 320:27848.) But the Scoping Plan itself is addressed to meeting the 2020 goal. (AR 320:27847, 27871–27873.) It provides no specific targets for reduction measures beyond 2020. To the extent it addresses longer-term emission reductions, the Scoping Plan makes it clear that there are no concrete plans, and the means by which major additional emission reductions will be accomplished are unknown. As the Scoping Plan recognizes, reducing California's "greenhouse gas emissions by 80 percent will require California to develop new technologies that dramatically reduce dependence on fossil fuels, and shift into a landscape of new ideas, clean energy, and green technology." (*Id.*) An EIR is not required to speculate on what new technologies and future regulatory initiatives may evolve. (See *Laurel Heights*, *supra*, 47 Cal.3d at pp. 411–412 ["An agency cannot be expected to predict the future course of

governmental regulation or exactly what information scientific advances may ultimately reveal. '[F]oreseeing the unforeseeable is not possible.'"].)

According to the Scoping Plan, even the reduction programs it already contains would "just be kicking into high gear" in 2020 and the reductions it anticipates from those programs "will take time" beyond that date to take effect. (AR 320:27858–27859.) The EIR disclosed that in 2011, as anticipated by the Scoping Plan, "many of the policies in the Scoping Plan have not been implemented, such as cap-and-trade, and therefore are not quantified in the GHG reductions that may be achieved" in the Plan's long-term greenhouse gas emission analysis. (8a:2584–2585.) Given this anticipated lag, the EIR's finding that the Plan is consistent with the Scoping Plan but that projected emissions in 2050, which did not account for Scoping Plan programs not yet in place, would be significant is unsurprising and not evidence that the Plan is inconsistent with the Scoping Plan's goal to reduce greenhouse gas emissions beyond 2020.

SB 375 does not mention the Executive Order's 2050 goal. It does state that ARB "shall update the regional greenhouse gas emission reduction targets every eight years . . . until 2050." (Gov't Code § 65080(b)(1)(F)(2)(A)(iv).) ARB will set future targets to achieve the emission reductions envisioned by SB 375. And SANDAG will need to comply with its updated reduction targets when it receives them. There is no reason to presume now that SANDAG will not comply with its future emission targets because SANDAG's 2011 modeling of the region's greenhouse gas emissions in 2050 shows an increase over 2035 emissions. (See *Bus Riders Union v. Los Angeles County Metro. Transp. Agency* (2009) 179 Cal.App.4th 101, 108 ["It is well established that courts 'may not speculate on the future intention of a public agency.'"].)

As Amici note, ARB found the modeling predictions of the Plan's long-term greenhouse gas emissions "unexpected." (Council/PCL Brief at

pp. 15–16, quoting AR 344:30143.) The fact that the EIR disclosed "unexpected" effects does not make the EIR inadequate. These "unexpected" results also did not mean that the Plan failed to meet the requirements of SB 375. ARB concluded the Plan met SB 375's reduction targets. (AR 328:29359–29361.) The surprise came from the fact that, even though the Plan complied with SB 375 and incorporated the smart growth policies promoted by that statute (AR 344:30148–30149), and would reduce per capita greenhouse gas emissions (AR 344:30143, 30190), total long-term greenhouse gas emissions from light-duty vehicles would increase. ARB staff recommended model upgrades that would allow SANDAG to "better estimate the GHG reductions associated with SCS strategies in the future." (AR 344:30159; see AR 346:30162–30163 [summarizing planned model changes to improve the model's response to smart growth strategies].) As with the first SCS, the first transportation model that needed to incorporate land use patterns and greenhouse gas emissions was a start—not an end. The EIR's conclusion that the Plan complies with SB 375 is not undermined by modeling anomalies that are encountered the first time this type of analysis is done. (See *Neighbors for Smart Rail*, *supra*, 57 Cal.4th at p. 455 ["However sophisticated and well-designed a model is, its product carries the inherent uncertainty of every long-term prediction, uncertainty that tends to increase with the period of projection."].)

E. A Requirement to Analyze a Project's Consistency with the Executive Order Injects Uncertainty into the CEQA Process and Imposes New Burdens on Agencies

1. <u>Adding a New Requirement to CEQA Through Judicial Action, as Amici Seek, Would Contradict Public Resources Code Section 21083.1</u>

As discussed above and in SANDAG's Opening Brief (pages 22–46), the Executive Order's 2050 goal is not law and is not a mandatory

CEQA threshold. Indeed, CEQA gives agencies discretion in choosing significance thresholds. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) A holding that requires an EIR to analyze consistency with the Executive Order would therefore create a new requirement, contradicting Public Resources Code section 21083.1.

Since the inception of CEQA, the Legislature has recognized that environmental goals, however important, must be balanced against other values. (See, e.g., Pub. Resources Code §§ 21001, subds. (d), (e), (g), 21002.1(c).) "This court does not sit in review of the Legislature's wisdom in balancing these policies against the goal of environmental protection because, no matter how important its original purpose, CEQA remains a legislative act, subject to legislative limitation and legislative amendment." (*Berkeley Hillside Preservation*, *supra*, 60 Cal.4th at pp. 1107–1108, quoting *Napa Valley Wine Train, Inc. v. Public Utilities Comm.* (1990) 50 Cal.3d 370, 376.)

In recent decades, this Court and the Legislature have also recognized that the purposes of CEQA and sound public policy may also be thwarted by excessive litigation and the costs, delays and uncertainty imposed on public agencies and project proponents. (*Id.* at p. 1108; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576.) Public Resources Code section 21083.1 is one legislative measure enacted in response to this concern. The words of this provision are as much a part of CEQA as the goals for disclosure exalted by Petitioners. As this Court has stated, courts are not at liberty to ignore the express language of CEQA. (See *Berkeley Hillside Preservation*, *supra*, 60 Cal.4th at p. 1107.)

Amici nevertheless argue that section 21083.1 is inapplicable here because Petitioners are seeking "a full and complete discussion of the project and its impacts" rather than a requirement for EIRs for long-term

plans to use the Executive Order as a significance threshold. (Backcountry at pp. 11–13.) But the EIR contains a sufficient degree of analysis under CEQA. (CEQA Guidelines, § 15151.) To ensure a sufficient degree of analysis, SANDAG chose thresholds to analyze the Plan's greenhouse gas emissions that were consistent with those outlined by CEQA Guidelines section 15064.4 and the recommendations from expert agencies and organizations at the time. (See AR 319:25840–25853 [Resources Agency's Final Statement of Reasons for Regulatory Action]; AR 319:26312–26319 [CAPCOA threshold recommendations, including the recommendation of a "zero" threshold].)

Neither CEQA Guidelines section 15064.4 nor other expert guidance provided a mandate for the "consistency" analysis demanded by Petitioners and their Amici. CEQA Guidelines section 15064.4, subdivision (b)(1), recommends a threshold based on existing conditions, which SANDAG's EIR included. CEQA Guidelines section 15064.4, subdivision (b)(2), allows an agency to choose a threshold it determines applies to the project, and does not require that an agency choose the Executive Order, particularly since the Executive Order is a statewide goal that lacks any indication that it was intended to be used as a project-level CEQA threshold. CEQA Guidelines section 15064.4, subdivision (b)(3), provides for performance-based analysis based on consistency with adopted greenhouse gas reduction plans. It expressly limits the scope of such analysis to conformity with "regulations or requirements" that are adopted "through a public review process," and which provide for mitigation of a "project's incremental contribution of greenhouse gas emissions." The Executive Order, which was not adopted through any open public process, and contains no specific regulations or requirements applicable to individual projects, does not fall within the scope of section 15064.4, subdivision (b)(3). In short, Petitioners demand to analyze the Plan's

consistency with the Executive Order is not required by the CEQA Guidelines. It was also implicitly rejected as unnecessary and unhelpful by the Governor's Office of Planning and Research ("OPR") when adopting the CEQA Guidelines. (See AR 319:25840–25843 [no mention of the Executive Order's 2050 goal in the Final Statement of Reasons for adopting CEQA Guidelines section 15064.4].) If there were ever a case for applying the "safe harbor" provisions of section 21083.1, this is it.

Despite the EIR's inclusion of a reasonable and practical analysis, Amici argue CEQA Guidelines section 15151 requires more disclosure. This argument ignores that section's language, particularly the emphasized words:

> An EIR should be prepared with a *sufficient* degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project *need not be exhaustive*, but the sufficiency of an EIR is to be reviewed in the light of what is *reasonably feasible. Disagreement among experts does not make an EIR inadequate*, but the EIR should summarize the main points of disagreement among the experts. The *courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.*

(Emphasis added.) Other provisions of CEQA and the Guidelines contain similar limitations that temper CEQA's broad disclosure requirements. (See, e.g., CEQA Guidelines, §§ 15003, subd. (j) ["CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."], 15024, subd. (a) ["CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors."].)

Section 21083.1 reminds courts to read CEQA and the CEQA Guidelines' various provisions "consistent with generally accepted rules of statutory interpretation." This means sections should be read together (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727 ["The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context."]) and read literally (*Picayune Rancheria of Chukchansi Indians v. Brown* (2014) 229 Cal.App.4th 1416, 1423, quoting *Leavitt v. County of Madera* (2004) 123 Cal.App.4th 1502, 1515 ["In the wake of the enactment of this provision [section 21083.1], it has been said that 'the literal, i.e., explicit, approach to statutory construction is [now] mandatory under CEQA.'"]). The reason for interpreting CEQA and the CEQA Guidelines this way is to eliminate the guessing game of what constitutes "sufficient" analysis. (*Berkeley Hillside Preservation*, *supra,* 60 Cal.4th at p. 1107.) The legislative history of section 21083.1 confirms that "the purpose of this statute was to 'limit judicial expansion of CEQA requirements' and to 'reduce the uncertainty and litigation risks facing local governments and project applicants by providing a 'safe harbor' to local entities and developers who comply with the explicit requirements of the law.'" (*Id.*)

If CEQA Guidelines sections 15064.4 and 15151, and other CEQA and CEQA Guidelines provisions, are read together as required by this Court's decision in *Lungren*, *supra*, and taken literally , as required by section 21083.1, they do not support the conclusion that CEQA requires a consistency analysis with the Executive Order. The CEQA Guidelines state an EIR's cumulative impact analysis, including analysis of climate change, should consider consistency with adopted plans, regulations, or programs, but, as discussed above, the Executive Order does not fall into any of those categories. (CEQA Guidelines §§ 15064, subd. (h)(3), 15064.4.) Further, the requirement for a "sufficient degree of analysis" is satisfied without

agencies undertaking every imaginable study. (See CEQA Guidelines § 15204, subd. (a); *Laurel Heights*, *supra*, 47 Cal.3d at p. 410.) A reasonable and practical analysis, such as proved in the EIR, is sufficient. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1228.)

Amici's claim that the EIR is deficient for failing to analyze consistency with the Executive Order is similar to that of petitioners in *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134. Chaparral Greens argued that the EIR at issue there was deficient because it failed to include "an analysis of the impact of the project on the regional goals for preservation of multiple species, as reflected in the MSCP [Multiple Species Conservation Program] and NCCP [Natural Community Conservation Planning] draft materials." (*Id.* at p. 1144.) Chaparral Greens claimed the City of Chula Vista was "obligated to consider all 'reasonably foreseeable' impacts from the project, including impacts on the regional planning efforts reflected by the MSCP and the NCCP." (*Id.*) The court disagreed, finding "Chaparral Greens' arguments unavailing in light of the legislative admonition that the courts should not interpret CEQA to impose 'procedural or substantive requirements beyond those explicitly stated in [the statutes or CEQA Guidelines].'" (*Id.* at p. 1145.) The court found that "in the case of draft or proposed regional conservation plans, there is no express legislative or regulatory requirement under CEQA that a public agency speculate as to or rely on proposed or draft regional plans in evaluating a project." (*Id.*)

The same logic applies here. CEQA does not require SANDAG to speculate on whether the Legislature will adopt a bill requiring ARB to prepare a plan to achieve the Executive Order's 2050 emission reduction goal. Nor does CEQA require SANDAG to speculate on how ARB may independently update the Scoping Plan or SB 375 targets to account for the

2050 goal. In light of CEQA's express language, CEQA's requirement for adequate disclosure of a project's climate change impacts is satisfied when an agency makes a good faith effort to quantify greenhouse gas emissions, describe a project's consistency with adopted plans, such as the Scoping Plan and Climate Action Strategy, and other applicable regulations designed to curb emissions, such as SB 375. The EIR fulfills these requirements.

2. Requiring Executive Order Consistency Analysis Would Introduce New Burdens on Agencies and Project Applicants and Cause More Projects to Require EIRs

As discussed in SANDAG's Opening Brief, requiring an EIR to analyze consistency with the Executive Order would introduce new burdens on agencies and project applicants. (See SANDAG's Opening Brief at pp. 35–38.) One of these burdens is the need to prepare more EIRs for projects now exempt from CEQA. Amici claim a holding requiring EIRs to analyze a project's consistency with the Executive Order's 2050 goal would not be burdensome or prevent the use of exemptions and mitigated negative declarations for many projects that now rely on them. (LWV Brief at p. 20.) Amici's argument is incorrect.

Notably, the 2050 goal has not been translated into a plan that allows agencies to know how to implement the greenhouse gas reductions needed to meet the 80% reduction goal, and therefore the requirement to analyze consistency with this aspiration places the burden to determine how to do so on the agency. Given the precedent of the "business as usual" approach to greenhouse gas emission analysis established by the Scoping Plan, a reasonable way to determine compliance with the 2050 goal would be to compare the Plan's greenhouse gas emissions to "business as usual" emissions projected from 1990. While such an approach would be consistent with how EIRs determine consistency with the 2020 goal, it also

has it perils. The approach has been challenged by other CEQA petitioners as violating CEQA because it does not compare a project's emissions to the existing, physical environment. (See *Center for Biological Diversity v. Department of Fish and Game* (2d Dist. 2014) 224 Cal.App.4th 1105, rev. granted, Cal. Supreme Court, Case No. S217763 ("*Newhall Ranch*").) Another type of new analysis approach would be equally susceptible to litigation by virtue of the fact that there is no expert guidance and an agency would have to invent it whole cloth.

Amici also fail to account for the exceptions that prevent the use of categorical exemptions. The most important exception for climate change impacts is CEQA Guidelines section 15300.2, subdivision (b), which states "[a]ll exemptions for these classes [defined in the categorical exemptions] are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant." The importance of this exception is shown by the example of constructing a new home in an area with many other homes. Typically, a single home is exempt from CEQA under Class 3. (CEQA Guidelines 15303, subd. (a).) But when the emissions associated with the new home are considered with the emissions associated with all the other homes in the area, the cumulative impact would be significant based on a threshold requiring an 80% reduction in emissions over 1990 levels. (See AR 319:26317–26318 [CAPCOA found one of the practical concerns of a "zero" threshold, let alone a below zero threshold, is that such a threshold for greenhouse gas emissions "is likely to preclude the use of a categorical exemption"].) The Class 3 exemption would be unavailable and the project would require an EIR.

Amici claim that the preclusion of an exemption would be avoided for a small project, such as a home, if the project incorporates mitigation measures or complies with a greenhouse gas reduction plan. (LWV Brief at p. 20.) With the requirement to use the 2050 reduction goal as a

significance threshold, feasible mitigation, such as incorporating energy-efficient features and compliance with a greenhouse gas reduction plan, would not be enough to avoid a finding of cumulatively significant emissions because every new home is responsible for some new emissions. Until energy is decarbonized, operation of a home and associated vehicle trips would still emit greenhouse gasses.

Amici also fail to acknowledge that CEQA's EIR rules apply equally to every project requiring an EIR (although the result of compliance with those rules can be vastly different), instead arguing that a requirement to analyze consistency with the 2050 goal would apply only to EIRs for regional transportation plans. (LWV Brief at p. 21.) But no provision of CEQA states EIRs for regional transportation plans have different requirements than other EIRs, particularly other EIRs that need to look at long-term impacts, such as an EIR for a general plan or specific plan. Thus a holding that this EIR is deficient because it fails to analyze the Plan's consistency with the Executive Order's 2050 goal would apply equally to all EIRs.

Amici also argue that, absent an analysis of Executive Order consistency in plan EIRs, greenhouse gas emissions of smaller projects may escape review, based on SB 375's tiering provisions. (LWV Brief at pp. 21, 24.) Given the limited nature of the tiering or streamlining provisions in SB 375, this is unfounded. SB 375's tiering provisions apply to a limited set of projects and provide only limited streamlining of CEQA reviews. (Pub. Resources Code §§ 21155–21155.4, 21159.28; see AR 190a:13162–13165 [summary of SB 375's tiering provisions].) For one set of projects (residential, mixed-use projects consistent with the use designation, building intensity, and applicable policies in an SCS), CEQA review is still required, excepting only analysis of growth-inducing impacts and project-specific or cumulative impacts from cars and light-duty truck trips. (Pub.

Resources Code § 21159.28, subd. (a).) For a second set of projects (transit priority projects), SB 375 changes the environmental analysis required by allowing lead agencies to find that cumulative climate change impacts are not considered "considerable" only if the lead agency determined that cumulative impacts have been addressed and mitigated in an SCS. (Pub. Resources Code § 21155.2, subd. (b)(1).) Since the EIR concludes that cumulative climate change impacts would be significant and unavoidable, analysis of the contribution to climate change from transit priority projects is still required. This limited streamlining does not change the fact that most projects will be fully subject to CEQA, and requiring Executive Order analysis will place a burden on those projects.

Another burden of adding to CEQA's requirements is that it increases the cost to prepare an EIR. Amici anticipate this claim by arguing even cash-strapped counties, such as Madera, have been able to include analysis of consistency with the Executive Order. (LWV Brief at p. 17.) This argument does not prove that the extra money expended for the analysis was not burdensome to the lead agency. It also does not account for the contribution this new analysis would make to the cumulative costs that have been added to producing EIR over the past eight years. For example, in 2007, SANDAG's RTP and EIR totaled 1,311 pages and cost about $2 million to develop. In 2011, the RTP and EIR totaled 6,251 pages and cost about $5.2 million to produce. For the most recently certified RTP/SCS and its EIR, SANDAG compiled 6,179 pages and expects to expend $9.2 million. Although the consistency analysis alone did not add approximately $4 million to the cost of the EIR, it contributed to the time and cost burdens. The escalating cost to produce an "adequate" EIR is another reason to resist adding requirements to CEQA that are not already in the statute or the CEQA Guidelines.

3. <u>Amici's Claim that Executive Order Consistency Analysis Is</u>

"Familiar and Feasible" Misconstrues the General Level of Analysis in the Documents They Cite, Fails to Recognize the Lack of Methodology Available to Provide the Analysis They Seek, and Improperly Uses General Disclosures in a 2015 EIR to Argue What was Required in 2011

Amici claim that the analysis required by the Majority Opinion is "familiar and feasible" and thus should be required, citing several SANDAG documents and planning documents from other agencies, all of which were prepared after the EIR. (LWV Brief at pp. 14–20.) This claim fails for several reasons.

First, many of the cited documents are greenhouse gas reduction plans, not EIRs, and these plans are not required to meet CEQA's requirements, have supportable significance criteria, or provide the same type of analysis. To the extent analysis was included in these documents, it was generally done as part of a general description of existing government policies that may influence greenhouse gas reduction requirements in California.

Second, Amici's argument fails to recognize the difference between generally describing a problem (as SANDAG did with respect to 2050 goals) and actually solving that problem (which cannot yet be done because the tools to do so are not yet available). Many policy documents describe the Executive Order's 2050 goal and the reductions needed to meet it. (See, e.g., 216:17628 [Climate Action Strategy]; City of Carlsbad, Draft Climate Action Plan (Mar. 2014), at pp. 3-1–3-3, web address provided by LWV Brief at p. 17, fn. 4 [describing the gap between business as usual and the Executive Order's 2050 goal, but providing policies only to close the gap to 2035 assuming fuel standard regulations and other state measures are effective].)[5] These documents generally conclude that "the long-term goal

[5] Notably all of the documents cited by LWV were prepared after the Plan and many after the Opinion. (See LWV Brief at pp. 17–18, fns. 4–8.) They

of reducing statewide greenhouse gas emissions to 80 percent below the 1990 level by the year 2050 will require fundamental changes in policy, technology, and behavior." (AR 216:17628.) Thus, as Amici claim, describing the problem is familiar and feasible.

But figuring out how to solve the problem is anything but familiar and feasible. The documents that describe the problem generally do not speculate on what fundamental changes allow the 2050 goal to be achieved. (See, e.g., Madera County Transportation Comm'n, *Presentation Overview, Final Regional Transportation Plan and Sustainable Communities Strategy and Program Environmental Impact Report* (2014) at pp. 23–24, cited by LWV Brief at p. 17, fn. 6 [After disclosing the reduction needed to meet a statewide goal of 80% below 1990 levels, Madera County states, "the Executive Order does not include any specific measures to achieve these reductions, and instead merely places oversight for reporting from all state agencies with CalEPA. As noted above, AB 32 and the Scoping Plan—as informed but not mandated by the Executive Order #S-3-05—establish the statewide standards and implementation measures for emissions reductions applicable to regional planning agencies such as MCTC."]; City of San Diego, *Climate Action Plan Draft* (Sept. 2014) at p. 3, cited by LWV Brief at p. 17, fn. 5 [describing the Executive Order, but noting that the climate action plan would attain the state's 2020 and 2035 goals].) Those that do speculate often suggest changes outside of any individual agency's control. (Respondents' RJN, Ex. 1 at pp. 8–9, Ex. 2 at p. 4; see Metro. Transp. Comm'n, *Draft Environmental Impact Report: Plan Bay Area 2040* (Apr. 2013) at pp. 2.5-48–2.5-49, cited by LWV Brief at p. 18, fn. 7 [assumes plan will not impede reaching the Executive Order's 2050 goal in part based on "[n]ew innovations in technology and science" and the need to

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are therefore not indicative of what was feasible in 2009 and 2010, when the EIR was prepared.

update the RTP/SCS every four years, which will allow the agency to reevaluate progress]; AR 319:25757 [stating that existing policies and strategies "are not likely to be sufficient to meet the ambitious emission reduction goals set by the governor" and to "meet these ambitious goals California will need to build on its legacy of environmental leadership and develop new strategies and technologies to reduce emissions"].) Even SANDAG's new EIR, which Amici claim has the analysis they seek, concludes that "achieving these goals [reductions consistent with the Executive Order's 2050 goal], whether statewide or within the San Diego region, would require major changes in clean technologies utilization, markets, and state and federal regulations," and these changes are "beyond SANDAG's or local agencies' current ability to implement." (Petitioners' RJN, Ex. 1 at pp. 38, 40.)

Alternatively, agencies punt, for example by requiring the agency to prepare a future plan to explain how to achieve the 2050 goal. (See County of Riverside, *Draft Environmental Impact Report No. 521: General Plan 2015* (Feb. 2015) at pp. 4.7-46–4.7-48, cited by LWV Brief at p. 18, fn. 8 [requiring the County to prepare a "post-2020" climate action plan that will keep the County on a downward greenhouse gas emission trajectory].) "Punting" undermines the disclosure benefits that may be obtained by including the analysis and in some cases could constitute inappropriate deferred mitigation. (See *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393–1395 [explaining when deferred mitigation does not comply with CEQA].)

Given the inability of agencies to implement the technological changes needed to achieve the Executive Order's 2050 reduction goal, analysis in an EIR is not necessary to fulfill the purpose of CEQA. The rationale for requiring an EIR is to inform the agency of the potential environmental consequences of its approval of a project and allow the

agency to consider alternatives. (*Laurel Heights Improvement Ass'n*, *supra*, 47 Cal.3d at p. 394.) For now, the consensus is that the technological changes required to meet the Executive Order's post-2035 goal are outside any agency's control. (See, e.g., Respondents' RJN, Ex. 1 at pp. 8–9, Ex. 2 at p. 4; AR 319:25757.) To the extent agencies must speculate on the technology available in 2050 and regulations that may be passed in the future that will influence the trajectory of global climate change, the analysis is burdensome to produce and easily subject to challenge based on others' best guess about the past and future. Accordingly, requiring an agency to use the 2050 goal as a significance criterion adds little to the concrete information an agency can act on and instead mostly creates a new burden and litigation risk. (See *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 938–939 [noting that the analysis in an EIR should be useful to an agency's decision about the need for mitigation measures or alternatives].)

Third, the fact that SANDAG and other agencies prudently reacted to the Majority Opinion by including more analysis in their EIRs is not relevant to what was "familiar and feasible" in 2009 through 2011, when the EIR was drafted. Nor is such analysis relevant to whether it is required by CEQA at all, then or now. The documents cited by Amici show only that agencies react quickly to CEQA decisions and take precautions to avoid controversy and litigation.

F. SANDAG's Plan Provides Substantial Greenhouse Gas Emissions Reductions and Lays the Foundation for Continually Increasing Reductions during the Future Plan Updates that Are Required Every Four Years

Several Amici suggest that the Plan fails to do enough to reduce greenhouse gases, and instead is "business as usual." (See, e.g., LWV Brief at pp. 22–25 [claiming SANDAG failed to show regional leadership in

reducing emissions].) First, this argument is outside the scope of review granted by this Court. Second, this argument ignores the Plan's substantial commitment to decreasing the region's contribution to greenhouse gas emissions and its many new policies supporting that commitment.

In responding to comments, SANDAG explained why the Plan does not consist of "'business as usual' investments in primarily highway expansion." (AR 8b:3782.) Instead, the Plan includes more investment in transit and alternative modes of transportation than any previous RTP. (*Id.*) Transit expenditures alone make up over half of the expenditures in the Plan. (*Id.*) The Plan includes funding for "five new light rail transit lines, new express bus services, and increased frequencies for all transit modes (see 2050 RTP/SCS Chapter 6)." (*Id.*)

The land use pattern in the SCS also demonstrates SANDAG's commitment to decreasing greenhouse gas emissions. Consistent with this commitment, SANDAG is planning for compact, higher density development located near transit and within the already urbanized areas of the region as envisioned by SB 375. (*Id.*; see AR 190a:13112 [the SCS shows that "the number of homes located within one half-mile of public transit services will increase from 45 percent in 2008 to 64 percent in 2050"].) The SCS increases the number of homes that will be within walking distance of transit services by increasing and adding transit services (see Chapter 6 of the Plan) and locates approximately 80 percent of new growth in urban areas served by transit. (AR 190a:13112) In addition, 79 percent of all housing and 86 percent of all jobs will be located within the areas where the greatest investments in public transit are being made. (*Id.*) The Plan also "will maintain more than 50 percent of the region's land area as open space and parkland (see 2050 RTP/SCS Chapter 3)." (AR 8b:3788.)

Amici claim the Plan is not "smart growth" and should be more like the "smart growth" alternatives proposed by Petitioners. (Council/PCL at pp. 35–44.) This ignores two facts. First, neither "smart growth" alternative included alternatives to the land use patterns proposed by the Plan. (AR 8b:3808.) Second, Amici ignore SANDAG's responsibility to consider local agencies' general plans and reasonably foreseeable changes to those plans when developing future land use patterns. (AR 8b:3788.) SANDAG was required by law to consider local general plans and planning assumptions when making assumptions about future land use because "federal air quality conformity law requires RTPs to be based on the 'most recent planning assumptions' at the time the conformity analysis begins." (*Id.*, citing 40 C.F.R. § 93.110, subd. (a); see Association of Councils of Governments at pp. 43, 44–45 [describing requirements for consistency with other agencies' plans].) Future land use assumptions that do not consider local planning decisions are unrealistic because SB 375 did not give SANDAG any authority to adopt local land use plans and local agencies are not required to change their land use plans and policies, including general plans, to be consistent with the Plan. (AR 8b:3788, citing Gov't Code § 65080, subd. (b)(2)(K).)

Even the Plan's highway planning reflects SANDAG's commitment to decreasing GHGs. The Plan includes funding for freeway improvements "that will greatly facilitate carpooling, and will accommodate additional transit vehicles in managed lanes," and unlike past plans, does not propose any new freeways. (*Id.*) The majority of the highway expenditures included in the Plan are for managed lanes; "[r]esearch has shown that Managed Lanes or high occupancy toll (HOT) lanes have increased carpooling," including on the following freeways: "I-25 in Denver, CO, SR 91 in Orange County, CA, I-10 and SR 290 in Houston, TX, and I-15 in San Diego, CA." (*Id.*) If managed lanes can get Houstonians and residents

of Orange County out of their single-occupancy vehicles, there is no reason to doubt their effectiveness in the San Diego region. Indeed, ARB determined the Plan's vanpool and carpool assumptions to be reasonable and consistent with the state of the practice. (*Id.*)

Amici's assertions that more money should have gone to rail projects ignores the effectiveness of well-executed bus rapid transit and the strings attached to many of the funds SANDAG allocates. (Cf. Council/PCL Brief at pp. 30–32 [claiming SANDAG has "considerable discretion" allocating funds]; see Association of Councils of Gov't Brief at p. 46, 49–50 [describing financial constraints applicable to an RTP].) "Many of the federal, state, and local revenues [SANDAG allocates] are tied to specific modes such as highway or transit projects." (AR 12:4488.) In addition, the "local *TransNet* sales tax is allocated for specific projects approved by the voters." (*Id.*) Given these constraints, as well as constraints on when certain funds must be spent, the Plan maximizes the investment in transit services. (AR 8b:3778.) For example, "[m]ore than half (56%) of the *TransNet* Early Action Program through 2015 (along with other local, state, and federal revenues it leverages) funds transit projects included in the 2050 RTP/SCS, including the Mid-City Rapid (2012), I-15 BRT [bus rapid transit] (2013), South Bay BRT (2014), and Mid-Coast LRT [light-rail transit] (2016-17)." (*Id.*) The Plan also includes other investments in transit "in each 10-year phasing period from 2020-2050." (*Id.*) The Plan is the result of balancing these funding constraints in light of SANDAG's objective to decrease greenhouse gas emissions. As Amici note, SANDAG has "flexibility to be creative in selecting transportation planning options," but only within the restrictions of local, federal, and state law. (See Council/PCL Brief at p. 31, quoting AR 218:17687; AR 218:17685–17823 [2010 RTP Guidelines, which include the state and

federal requirements applicable to Metropolitan Planning Organizations such as SANDAG].)[6]

As indicated by the above discussion, SANDAG is not "planning to increase its long-term GHG emissions." (Scientists Brief at p. 24.) SANDAG is actively trying to decrease greenhouse gas emissions in the region through the Plan, future regional transportation plans, and implementing its Climate Action Strategy. That SANDAG was unable to dramatically change the region's climate change trajectory in the first Plan that considered and tried to reduce greenhouse gas emissions is unsurprising. The foundation for the region's transportation system and land use choices was laid long ago and will take time to change. SANDAG is working to do just that as fast as it can. In the four years since the Plan was released, it appears SANDAG has made great strides. (Compare AR 8a:2578 [total GHG emissions in 2050 would be 33.65 MMT CO_2e] with Petitioners' RJN, Ex. 1 at p. 25 [total GHG emissions in 2050 would be 25.9 MMT CO_2e].)

III.

CONCLUSION

SANDAG's 2011 EIR provided a thorough analysis of greenhouse gas emissions and climate change impacts, including analysis of emissions in 2020, 2035, and 2050. The Plan that was the subject of the EIR, including the first sustainable communities strategy under SB 375, set forth substantial provisions and funding for efforts to reduce emissions.

Amici join Petitioners in seeking more. But their disagreement with the way SANDAG decided to evaluate climate issues is not a basis for

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[6] Amici's claim that SANDAG only has to meet the requirements for a Regional Transportation Planning Agency ignores the fact that SANDAG also is a Metropolitan Planning Organization and therefore must comply with all the rules applicable to Metropolitan Planning Organizations as well. (Council/PCL Brief at p. 31.)

setting aside the EIR, and their effort to require SANDAG to do more is misplaced. Holding a regional agency accountable for statewide efforts to counteract climate change is akin to holding California solely responsible for solving worldwide climate change. SANDAG certainly has a role to play in reducing the state's greenhouse gas emissions, and SANDAG respectfully submits that it fulfilled that role in preparing a thorough EIR and adopting a precedent-setting Plan. SANDAG will continue that work as it prepares further RTP/SCS plans and associated EIRs. Furthermore, SANDAG will continue its overall efforts to address climate change. Not just by planning, designing, building and investing in transportation-related projects such as bike, pedestrian, transit, and transportation demand management, but also by providing tools and funding for agencies to create climate action plans, smart growth projects, and energy reduction plans.

Amici seek to require SANDAG to do more to evaluate long-term emissions, but that is putting the cart before the horse. It may be tempting to charge SANDAG with not having done enough in its EIR, and thus to try to use CEQA to force local and regional agencies to step out ahead of the Legislature and the experts at state agencies like ARB. Based on what was available in 2011, however, SANDAG's EIR provided a more than adequate analysis of greenhouse gas emissions impacts. SANDAG should not be faulted for adopting an EIR that disclosed a lot of work remains to effectively address greenhouse gas emission reductions on a statewide basis.

Change—in law, science, and climate—takes time. There is a synergy and coalescence of ingredients that must occur. Amici's desire for rapid adjustments in law to address climate change is understandable. Changes of this magnitude and importance, however, require a plan for implementation (a process involving scientists, the public and law makers) to ensure that the rules that are created are understandable and realistic.

Time also is needed to determine if the implementation plan is working or needs additional revisions, whether based on changes in science and technology or policy. Solving climate change is, and will continue to be, an iterative process that involves a number of players, including SANDAG, but many others as well. Given the requirement that a RTP/SCS must be periodically updated, with updated CEQA reviews, SANDAG is in a particularly strong position to contribute to that iterative process, but it can do so effectively only when it proceeds based on rules and direction that have been formulated through an appropriate public process.

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 greenhouse gas emission reduction goals in the Executive Order.

Dated: November 13, 2015

Cox, Castle & Nicholson LLP

By: ______________________

Michael H. Zischke
Attorneys for Defendants and Appellants 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 District, Div. 1 No. D063288** **San Diego County Superior 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 50 California Street, Suite 3200, San Francisco, California 94111.

On **November 13, 2015**, I served the foregoing documents described as:

1) **SAN DIEGO ASSOCIATION OF GOVERNMENTS' CONSOLIDATED ANSWER TO AMICI'S BRIEFS**
2) **RESPONDENTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ANSWER TO AMICI'S BRIEFS**

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 documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.
☐	BY ELECTRONIC MAIL DELIVERY: By causing a true copy of the within documents to be mailed electronically to the offices of the addressees set forth below, on the date set forth above.

I hereby certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

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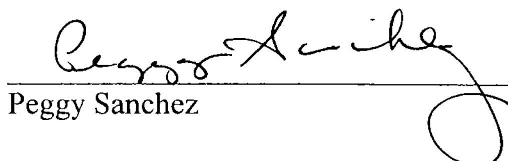

Peggy Sanchez

SERVICE LIST

CASE NAME: Cleveland National Forest Foundation v. San Diego Assn. of Governments
CASE NUMBER: California Supreme Court No. S223603

Court of Appeal **Fourth Appellate District, Division 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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