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,

Plaintiffs and Cross-Appellants,

v.

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

Defendants and Appellants.

Case No. S223603

Fourth Appellate District, Div. Two, Case No. D063288
County Superior Court, Case No. 37-2011-00101593-CU-TT-CTL
Timothy B. Taylor, Judge

PEOPLE OF THE STATE OF CALIFORNIA'S ANSWER TO AMICUS CURIAE BRIEFS

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Amici supporting the San Diego Association of Governments (SANDAG) predict dire consequences if SANDAG is required to consider the significance of its regional transportation plan's longer-term greenhouse gas emissions in light of the State's long-term climate-stabilization objectives.[1] While their briefs collectively span some 100 pages, amici's primary concerns may be quickly summarized: They contend that a decision requiring more of SANDAG in this case will (i) substantially expand every agency's obligation to assess the greenhouse gas-related impacts of every project and (ii) erode the important role of agency discretion in the CEQA process. The People first generally address those two concerns, which are not well founded, and then provide more specific responses to some of amici's particular contentions.

GENERAL RESPONSE TO SANDAG AMICUS BRIEFS

A decision adverse to SANDAG in this case will not require a new or expanded climate-related analysis for every "project" subject to CEQA.[2] SANDAG's 2050 Regional Transportation Plan and Sustainable Communities Strategy is not a run-of-the-mill development project. It is a "blueprint" governing and guiding 40 years of transportation infrastructure and land use planning for a region covering some 4,200 square miles.[3] It

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[1] Four amicus briefs have been filed in support of SANDAG, and four in support of plaintiffs. The People generally agree with the points made by plaintiffs' amici. This brief discusses and responds only to SANDAG's amici.

[2] CEQA applies only to a "project." (Pub. Resources Code, §§ 21002, 21065.) The definition includes individual residential, industrial and commercial development projects. It also includes planning projects such as regional transportation plans. (*Edna Valley Assn. v. San Luis Obispo County and Cities APCC* (1977) 67 Cal.App.3d 444, 447-448.)

[3] (Administrative Record (AR) 8a:2071, 2078 [Environmental Impact Report]; see also below at 30-31.) This case challenges only the

(continued...)

will govern the expenditure of over $200 billion for transportation and infrastructure projects, influence and guide land use in the region's cities and counties, and commit the region to substantial, long-term greenhouse emissions.[4] Further, the region's sources of emissions are fairly representative of statewide sources, making statewide objectives particularly relevant, and its emissions are of sufficient volume that regional action could well affect the State's ability to meet its ultimate climate-stabilization objectives.[5]

The question here, moreover, is not whether additional analysis might arguably have improved the 2050 Plan EIR. It is whether additional discussion was required in order to serve CEQA's informational purposes and prevent the EIR from being so incomplete as to be legally inadequate and, indeed, misleading. The challenged EIR suggested to the public and decision makers that the 2050 Plan would help the State meet its climate-stabilization objectives. It emphasized, for example, that the Plan would meet the 2020 and 2035 regional targets established under the Sustainable Communities and Climate Protection Act of 2008 (SB 375), and stated that

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(...continued)
2011 EIR and the approval of the 2011 regional transportation plan based on that environmental document. SANDAG has since revised its regional transportation plan and issued a new EIR. (See San Diego Forward website at <http://www.sdforward.com/> [as of Nov. 12, 2015].) The updated plan and accompanying EIR appear to differ in substantial respects from their 2011 counterparts. The sufficiency of the new EIR under CEQA is outside the scope of this appeal.

[4] (AR 8a:2071, 2078.)

[5] Because this is a large-scale planning project, virtually all of the categories of emission sources reflected in statewide emissions are also reflected in regional emissions. (See, e.g., AR 8a:2555-2557 [EIR]; see also AR 216:17631-17634 [SANDAG's Climate Action Strategy (2010)].) From the EIR, it appears that the San Diego region accounts for over 8% of the State's total transportation emissions. (AR 8a:2555-2557.)

the Plan would not "impede" the AB 32 Scoping Plan (2008) in the year 2020.[6] But the 2050 Plan's early greenhouse gas reductions, and reductions in vehicle miles traveled, are not sustainable; projected emissions *rise* from 2020 through 2050. The Plan's longer-term, upward emissions trajectory thus is contrary to the intent of SB 375, AB 32 and its Scoping Plan, and SANDAG's own 2010 Climate Action Strategy—laws and plans designed to serve the State's ultimate environmental objective of climate stabilization. And, according to the science, achieving climate stabilization requires substantial and continuous statewide reductions over the same 2020-2050 time period.[7] The EIR never squarely confronted this conflict. As a result, as the court of appeal observed, the EIR made it "falsely appear as if the transportation plan is furthering state climate policy when, in fact, the trajectory of the transportation plan's post-2020 [greenhouse gas] emissions directly contravenes it."[8]

This case is also not about whether SANDAG selected the best possible methodology for evaluating the 2050 Plan's longer-term greenhouse gas-related impacts. SANDAG declined even to attempt to address the apparent disconnect between climate-stabilization science and policy and the Plan's projected post-2020 emissions, even when requested

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[6] (See People's Answer Brief on the Merits (ABM) 28-30 [citing the Administrative Record]; AR 8a:2584 [EIR].) For additional information on SB 375, see the California Air Resources Board's "Sustainable Communities" webpage (<http://www.arb.ca.gov/cc/sb375/sb375.htm> [as of Nov. 12, 2015]) and 21-24, below.

[7] (See, e.g., AR 320(5):27864 [2008 Scoping Plan, observing that 2005 Executive Order's 2050 target is based on science]; AR 216:17623, 17627 [SANDAG's Climate Action Strategy]; see also Appellants' Opening Brief on the Merits 7 [acknowledging that Executive Order's 2050 target is grounded in climate science]; People's ABM 31-35.)

[8] (Opinion (Nov. 24, 2014) 19.)

to do so by the Attorney General and others.[9] SANDAG did not decline because, exercising its discretion, it determined that the additional analysis was impossible or irrelevant. Rather, it refused because neither the Legislature nor a state entity had fixed a specific longer-term reduction target that applied directly to SANDAG.[10] That was legal error. CEQA required SANDAG to make a good faith effort to disclose all it reasonably could about the 2050 Plan's greenhouse gas-related impacts, in the short and long term, "based to the extent possible on scientific and factual data[.]" (CEQA Guidelines, §§ 15064, subd. (b); 15064.4, subd. (a).)[11]

Lead agencies have substantial discretion to determine how best to disclose and assess the significance of a project's impacts, particularly where there is no well defined, accepted and routine approach.[12] Indeed, in such circumstances, judicial respect for lead agency discretion exercised through "careful judgment" must be at its zenith. (See CEQA Guidelines, § 15064, subd. (b) ["[a]n ironclad definition of significant effect is not always possible"]; see also *id.*, § 15064.4, subd. (a).) But the protections afforded agency discretion do not apply where the agency flatly refuses to engage with substantial scientific and factual questions presented by a project. And general respect for discretion cannot sanction a document that is, as in this case, incomplete and misleading. Any other result would be at odds with CEQA's core purposes of ensuring a fully informed public and fully informed and accountable agency decision making. (See *Laurel*

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[9] (AR 311:25640-25643 [Attorney General's comment letter].)

[10] (AR 8b:4430-4433 [response to Attorney General's comment letter].)

[11] The CEQA Guidelines are located at Cal. Code Regs., tit. 14, § 15000 and following. (See also People's ABM 31-35.)

[12] See discussion at 27-30, below.

Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 391, quoting Pub. Resources Code, § 21061 [EIR is "'informational document'"]; see also CEQA Guidelines, § 15003, subds. (b)-(e).)[13]

The object of this case is modest: to require SANDAG to make a good faith effort to confront and discuss, as part of its environmental evaluation, the apparent conflict between the Plan's projected long-term, increasing greenhouse emissions trajectory and the State's science-based objective of long-term climate stabilization. This will ensure that the public and decision makers understand the environmental, economic and social trade-offs at issue, and allow them to explore whether there are opportunities for the region to "bend the curve" toward more carbon-efficient development. There is no suggestion in the record that such an analysis is impossible. Rather, this type of longer-term analysis seems well within SANDAG's expert planning capabilities. In its 2010 Climate Action Strategy, SANDAG charted theoretical regional reduction targets through 2050. And in the draft EIR for its updated 2050 Plan, released in May 2015, it in fact compares the long-term trajectory of projected regional emissions to the trajectory required to meet state climate-stabilization objectives.[14]

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[13] All citations are to the Public Resources Code unless otherwise noted.

[14] (AR 216:17628 [Climate Action Strategy]; People's Motion for Judicial Notice (MJN), People's Amended Decl., Ex. 1, p. 34 [May 2015 Draft EIR].) While the People express no view on the sufficiency of the 2015 EIR, they note that including a comparative discussion of the Plan's long-term emissions and long-term climate objectives in the most recent EIR appears to have resulted in a more robust exploration of greenhouse gas-related mitigation and alternatives. (See People's ABM 24; People's MJN, People's Amended Decl., Ex. 1, pp. 37-45.)

The People seek a ruling that is tailored to the specific facts of this case and a remand remedy that is respectful of agency discretion. This court should hold that where a regional transportation plan—a large-scale, long-term infrastructure and land use planning project—may commit a region to substantial greenhouse gas emissions for decades to come, the lead agency in its EIR must disclose not only the project's near-term emissions, but also whether early trends are projected to be sustainable over the life of the project. If the project's near-term emissions reductions are not expected to continue, the lead agency should make a reasonable effort to analyze and discuss whether the project may conflict or interfere with the State's long-term climate-stabilization objectives, or explain why it cannot conduct such an analysis, supporting its explanation with substantial evidence. The court should hold that SANDAG erred here in determining that, for the 2050 Plan, it had no legal obligation under CEQA to consider the environmental objective of climate stabilization.[15] It should affirm the judgment of the court of appeal that SANDAG's error was prejudicial, provide that SANDAG must decertify the deficient 2011 EIR, and remand the case for further proceedings and the issuance of a writ consistent with this court's opinion.[16]

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[15] Courts review an agency's action under CEQA for a prejudicial abuse of discretion. (§ 21168.5; *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109; see People's ABM 21-22.) An agency abuses its discretion if it either commits legal error or fails to support its fact-based determinations with substantial evidence in the record. (*Berkeley Hillside*, *supra*, 60 Cal.4th at pp. 1109-1110; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.)

[16] (People's ABM 5-6.)

SPECIFIC RESPONSES TO SELECTED ARGUMENTS

Having generally addressed amici's broadest themes, the People will now respond to some of their specific arguments in more detail. Below, under topic headings that summarize the People's positions, each section begins by setting out representative arguments raised in one or more of the amicus briefs. The People's responses follow.

I. CEQA REQUIRED SANDAG TO DISCLOSE AND DISCUSS THE 2050 PLAN'S APPARENT INCONSISTENCY WITH THE STATE'S SCIENCE-BASED OBJECTIVE OF LONG-TERM CLIMATE STABILIZATION

Requiring an "analysis of the plan's consistency with the greenhouse gas (GHG) reduction goals reflected in Executive Order S-3-05" would "impose a new obligation on lead agencies that finds no support in CEQA or the CEQA Guidelines . . . ." (California Association of Councils of Governments, et al. Amici Curiae Brief (CACOG) 10.)

The People have never contended that CEQA requires SANDAG to determine whether the 2050 Plan's projected greenhouse gas emissions precisely track the statewide reductions described in the AB 32 Scoping Plan and 2005 Executive Order through the year 2050, and to conclude that any deviation is necessarily significant.[17] But CEQA does require that the environmental analysis for this large-scale, 40-plus-year regional planning document take meaningful account of the State's established environmental objective of long-term climate stabilization and of what science clearly establishes will be necessary to achieve that objective—continuous,

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[17] (People's ABM 5; see AR:320(5):27978 [Scoping Plan]; AR 319:27049-27050 [Executive Order].)

substantial, and long-term reductions of greenhouse gas emissions across the State.[18]

In the particular circumstances of this case, the way SANDAG addressed the 2050 Plan's greenhouse gas emissions was affirmatively misleading. The 2011 EIR disclosed that the regional transportation plan's greenhouse gas emissions would be higher in 2050 than in 2010, but then moved quickly to minimize rather than highlight any concern that might be raised by the longer-term increase.[19] The EIR stated that the 2050 Plan's impacts would be less than significant in 2020 and 2035 because the Plan complied with SB 375.[20] While it is correct that the Plan complies with the letter of SB 375 by exceeding the 2020 target and meeting the 2035 target, the statute and its targets are intended to foster *declining* emissions from 2020 through 2035. Under the 2050 Plan, however, per capita emissions from SB 375 vehicles (cars and light-duty trucks) begin to *rise* after 2020.[21] The EIR further asserted that the 2050 Plan would not "impede" the Air Resources Board's initial AB 32 Scoping Plan—a framework document setting out how the State will meet the 2020 statewide greenhouse gas emissions limit established by the Global Warming Solutions Act of

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[18] (People's ABM 31-35; AR 311:25641-25643 [Attorney General's comment letter].)

[19] (AR 8a:2027; see AR 8a:2567-2578, 3092, 3095-3096; People's ABM 28.)

[20] (People's ABM 29-30; AR 8a:2030, 2578-2581, 3092, 3094-3095.) SB 375's targets are expressed in per capita emissions from passenger vehicles (cars and light trucks). See discussion at 21-24, below.

[21] (AR 8b:4435 [response to Attorney General's comments, table 2]; SANDAG's Supplement to the Administrative Record (AR Supp.) 344:30143 [Air Resources Board staff's comments on purpose of targets]; People's ABM 29-30.)

2006—and therefore would not have significant impacts in 2020.[22] The EIR failed to note, however, that the Scoping Plan's 2020 target is not an environmental end in itself, but rather an interim step towards achieving substantial longer-term emissions reductions and climate stabilization.[23] The fact that the Plan's projected emissions rise from 2020 through 2050 seems plainly inconsistent with this objective. Similarly, in analyzing compliance with SANDAG's own Climate Action Strategy, the EIR summarily asserted that the 2050 Plan "would not impede" the Strategy because the 2050 Plan "encourage[es] compact development" and "promotes reduced [vehicle miles traveled] VMT[.]"[24] But SANDAG's own Strategy notes that "[b]y 2030, the region must have met and gone below the 1990 level and be well on its way to doing its share for achieving the 2050 greenhouse gas reduction level"—a result that will not occur under the 2011 version of the 2050 Plan.[25]

As the court of appeal noted, the EIR created the impression that the 2050 Plan would advance the State's climate-stabilization objectives when, in fact, the Plan's post-2020 rising greenhouse gas emissions trajectory

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[22] (AR 8a:2583-84; see 320(5):27887 [Scoping Plan]; People's ABM 4, 30.)

[23] (AR 320(5):27875, 27880, 27900, 27977 [Scoping Plan, noting that nearer-term actions create "path" to further longer-term reductions necessary to meet climate-stabilization objective]; AR 216:17628-17629 [SANDAG's Climate Action Strategy]; see also *Assn. of Irritated Residents v. California Air Resources Bd.* (2012) 206 Cal.App.4th 1487, 1496 ["the goal that the [Scoping Plan] sets for 2020 is but a step towards achieving a longer-term climate goal"]; AB 32, Health & Saf. Code, §§ 38501, subd. (i), 38551, subd. (b), 38561, subd. (h).)

[24] (See AR 8a:2585-2586, 2588; People's ABM 30.)

[25] (See AR 216:17629.)

appears to work against them.[26] By failing to note and discuss the Plan's apparent inconsistency with the State's long-term objective of climate stabilization, the document failed in its central purpose—to "ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug." (*Kings County Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 692, 733; see also CEQA Guidelines, § 15151 ["EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences"].)

II. NOTHING IN THE RESOURCES AGENCY'S SB 97 RULEMAKING SUGGESTS THAT LEAD AGENCIES MAY IGNORE THE LONG-TERM CLIMATE IMPACTS OF THEIR LARGE-SCALE, LONG-TERM LAND USE AND TRANSPORTATION PLANNING PROJECTS

> *[T]he Resources Agency specifically stated that because the "Scoping Plan does not contain binding regulations or requirements," "'compliance' with the Scoping Plan would not be a basis for determining significance under section 15064.4 (b)(3)." (Resource[s] Agency's Response to Comment Letter 71, at p. 32 . . . . ¶Yet Petitioners ask the Court to mandate that lead agencies apply EO S-03-05, which (like the Scoping Plan) contains no binding regulations or requirements, in the same way the Resources Agency itself would have declined to apply it—as a basis for determining significance of GHG emissions.*

(Building Industry Legal Defense Foundation, et al., Amici Curiae Brief (BILDF) 10. [footnote omitted]; see also CACOG 31.)

As a threshold matter, the premise of this argument is not supported. Amici argue that the Resources Agency's response to a comment letter submitted during the SB 97-mandated rulemaking, quoted in the excerpt

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[26] (Opinion 19.)

above, should be read to express the Agency's view that the AB 32 Scoping Plan has no place in an EIR's discussion of significance. This takes out of context and misconstrues the Agency's statement.

The letter at issue was submitted by the Center for Biological Diversity and a number of other environmental organizations.[27] Among other things, the letter advised against proposed language that might be read to suggest that a general assertion of a project's "consistency with the AB 32 Scoping Plan"—in the absence of any specific regulatory requirements that apply to the project—could be a basis to determine that the project's impacts were less than significant.[28] (See CEQA Guidelines, § 15064, subd. (h)(3) [a "lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with" specific requirements in a defined "plan or mitigation program" designed to address the same effect].) The concern at this time was that some agencies and project proponents might argue that climate change was being fully addressed by the California Air Resources Board through AB 32, and, therefore, there could be no occasion under CEQA to consider feasible, project-specific greenhouse gas mitigation measures. The letter pointed to a previous statement by the Governor's Office of Planning and Research that "'consistency with the Scoping Plan,

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[27] CBD's comment letter (71) is available at <http://resources.ca.gov/ceqa/docs/proposed_amendments_comments/Center_for_Biological_Diversity_et_al.pdf> [as of Nov. 12, 2015]. The Resources Agency's response to CBD's comment letter is available at <http://resources.ca.gov/ceqa/guidelines/summaries_and_responses_to_public_comments_july-august.html> [as of Nov. 12, 2015] [click on link 71].

[28] (CBD Letter at p. 22.)

by itself, is not a sufficient basis to determine that a project's emissions of greenhouse gases is not cumulatively considerable.'"[29]

The Resources Agency agreed with the Center's comment, responding:

> Clarification of the description of the Scoping Plan is appropriate. The text of section 15064.4(b)(3) states that compliance with "regulations or requirements" may be considered in the determination of the significance of the project's greenhouse gas emissions. The Scoping Plan does not contain binding regulations or requirements, and so "compliance" with the Scoping Plan would not be a basis for determining significance under section 15064.4(b)(3). This clarification has been made in the Final Statement of Reasons.[30]

The Resources Agency's observation thus was not intended to forbid lead agencies from using the AB 32 Scoping Plan (including its discussion of climate science and state objectives) in their EIRs, but rather to prevent the Scoping Plan's mere existence from short-circuiting the CEQA process.

The People have never argued that SANDAG must develop specific benchmarks and criteria based on the 2005 Executive Order, engage in any rigid "consistency" analysis through the year 2050, and conclude that any deviation renders the 2050 Plan's greenhouse gas-related effects significant. But the fact that the greenhouse gas emissions trajectory for this 40-year regional transportation plan *rises* from 2020 through 2050, while the statewide emissions trajectory necessary to achieve climate stabilization *declines* steeply during the same time period, is relevant to the discussion of the project's environmental impacts. To satisfy CEQA's informational purposes, SANDAG was required to address this apparent gross

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[29] (*Ibid.*)

[30] (Response Letter, Response 71-60; see also AR 319(1):25852-25853 [Final Statement of Reasons].)

*in*consistency with climate science and the State's objective of long-term climate stabilization.[31]

III. CEQA REQUIRED SANDAG TO CONSIDER THE SIGNIFICANCE OF THE 2050 PLAN'S POST-2020 RISING EMISSIONS TRAJECTORY OR TO EXPLAIN WHY IT COULD NOT

> *[W]hether SANDAG's EIR was required to include an analysis of the plan's consistency with the greenhouse gas (GHG) emission reduction goals reflected in Executive Order S-3-05. . . . concerns the methodology used to analyze GHG emissions—an inherently factual question. For this reason, the Court's review is limited to whether the analysis is supported by substantial evidence.*

(CACOG 10; see also *id.* at 12, 14-15.)[32]

> *[T]he EIR's statement that there is "no legal requirement" that a GHG analysis be based on the Executive Order is simply another way of saying that CEQA gives SANDAG discretion not to conduct the requested analysis . . . .*

(CACOG 19.)

The People specifically requested that SANDAG discuss the 2050 Plan's impacts in light of the State's long-term, science-based climate-stabilization objectives, citing the 2005 Executive Order (establishing a statewide reduction target of 80% below 1990 levels by 2020), the science underlying the Executive Order, and the longer-term objectives embedded

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[31] Some discussion of the State's long-term climate-stabilization objective in the 2011 EIR was particularly important where SANDAG elected to use a 2020 benchmark derived from the AB 32 Scoping Plan to portray the project's impact as less than significant, while the very purpose of AB 32 is to place the State on a path to continuing greenhouse gas reductions through mid-century. See 9, fn. 23, above.

[32] For a discussion of "consistency" versus "inconsistency," see 7-13, above.

in the very statutes and documents that SANDAG elected to rely on in determining significance.[33] SANDAG did not reject that request on the ground that such an analysis would be infeasible, duplicative or irrelevant, or would be misleading under the circumstances. Indeed, SANDAG acknowledged that "the Executive Order target for 2050 can inform CEQA analysis . . . ."[34] Nonetheless, it "chose not to" include any such analysis, emphasizing its discretion to select "thresholds of significance" and stating that the Executive Order was "not an adopted GHG reduction plan within the meaning of CEQA Guidelines[.]"[35] It further stated that "SANDAG plays no formal role in implementing the Executive Order, as an executive order has no binding legal effect on agencies and personnel outside of the Governor's chain of command."[36] And it asserted—in a single sentence and without supporting evidence—that "SANDAG's role in achieving" the 2050 "target is uncertain and likely small."[37]

Amici contend that this Court must defer to SANDAG's decision to truncate its climate change analysis without discussing the relationship of the 2050 Plan's rising, post-2020 greenhouse gas emissions trajectory to the State's climate-stabilization objectives. The cases they cite, however, involve agencies making factual, technical and scientific judgment calls based on evidence in the administrative record. (See, e.g., CACOG 14-15, citing *Laurel Heights*, *supra*, 47 Cal.3d at pp. 415-416 [rejecting argument that university should have provided additional information about pollution dispersion from exhaust stacks, where university included detailed initial

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[33] (AR 311:25641-25642; People's ABM 31.)

[34] (AR 8b:4432.)

[35] (*Ibid.*)

[36] (AR 8b:4433; see also 8b:3768-3770, 8a:2581-2582.)

[37] (AR 8b:3769; People's ABM 31.)

discussion and, in response to comments, "provided considerable further specific information, including detailed charts in the final EIR, regarding prevailing wind characteristics and mean temperatures"]; *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 457 [agency has "discretion to omit an analysis of the project's significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future" but "must justify its decision by showing an existing conditions analysis would be misleading or without informational value"]; *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1164-1167 ["CALFED's determinations that an integrated solution [to meet all project objectives] was necessary to the success of the program, and that the water supply objective could not feasibly be achieved with a reduced [water] exports alternative, are supported by substantial evidence and consistent with the rule of reason."]; see also *Vineyard, supra*, 40 Cal.4th at pp. 439-440, 447 [EIR's "use of inconsistent supply and demand figures, and its failure to explain how those figures match up, results in a lack of substantial evidence that new surface water diversions are likely to supply the project's long-term needs"].)[38]

Here, SANDAG's decision not to examine longer-term impacts was based not on any analysis of the facts, but rather on SANDAG's view of the law. An agency's decision not to engage in analysis based on a purported

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[38] CACOG also cites *Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection* (2008) 43 Cal.4th 936, 950-951, but the relevance of this case is not apparent. (See *id.* at pp. 945, 949-951 [on appeal, challengers' claim that agency failed to follow regulatory methodology in selecting geographic areas for assessing the cumulative impacts of logging on species was procedural and subject to independent review; any claim that document failed to discuss cumulative impacts at sufficient level of detail was outside scope of review].)

"finding" that is actually legal in nature is reviewed de novo, and legal error by the agency in this context constitutes an abuse of discretion. (*City of Marina v. Bd. of Trustees of the California State University* (2006) 39 Cal.4th 341, 355-356 [rejecting board's determination that it lacked power to mitigate off-site impacts "based on [board's] erroneous legal assumptions"]; *City of San Diego v. Bd. of Trustees of California State University* (2015) 61 Cal.4th 945, 956 [board's "finding" that mitigation was not feasible without an earmarked appropriation depended on question of law, which courts review de novo].) And SANDAG's legal conclusion was in error. SANDAG's obligation to discuss the 2050 Plan's greenhouse gas emissions in context flows not from the 2005 Executive Order (which the People agree is not of its own force binding on SANDAG), but from SANDAG's obligation under CEQA to make a reasonable, good faith effort to disclose and consider all that it reasonably can about the project's short- and long-term impacts.[39]

In any event, SANDAG's refusal to consider the Plan's emissions in the context of State climate policy and climate science could not be sustained as some sort of factual finding. SANDAG's only arguably factual basis for that decision was a summary assertion that its contribution to the problem was uncertain and likely small—an assertion not supported by any evidence in the record. "[A]n agency may abuse its discretion under CEQA . . . by reaching factual conclusions unsupported by substantial evidence. ([Pub. Resources Code,] § 21168.5.)" (*Vineyard, supra*, 40 Cal.4th at p. 435; see also CEQA Guidelines, § 15384, subd. (b) [substantial evidence does not include "unsubstantiated opinion or narrative"].) And where an EIR fails CEQA's informational requirements,

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[39] (See People's ABM 31-35.)

there is necessarily an abuse of discretion. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1105-1106.)

This matter thus should be remanded to SANDAG with directions that it make a reasonable effort to analyze and discuss whether the 2050 Plan may conflict or interfere with the State's long-term climate stabilization objectives, or explain why it cannot, supporting its explanation with substantial evidence.

IV. SANDAG'S CONSIDERATION OF THE AB 32 SCOPING PLAN'S 2020 GREENHOUSE GAS EMISSION LIMIT IN DETERMINING SIGNIFICANCE WAS REASONABLE, BUT ITS FLAT REFUSAL TO CONSIDER AB 32'S UNDERLYING PURPOSE—LONG-TERM CLIMATE STABILIZATION—WAS NOT

> *[C]onsistent with North Coast and Chula Vista, there is substantial evidence in the record to demonstrate that SANDAG properly exercised its discretion when it chose not to use the Executive Order's 2050 statewide emission target as a threshold for its regional plan, and instead used AB 32's goals.*

(California Infill Builders Federation, et al. Amici Curiae Brief (CIBF) 17-18; see also *id.* at 16.)[40]

> *Here, SANDAG exercised [its] discretion [to select an appropriate threshold], and explained in detail its thinking for selecting its significance thresholds that did not include the Executive Order. (AR [8b:]003768-003770.)*

(CACOG 37.)

Given the scope and nature of the project, it was appropriate for SANDAG to look to the 2020 greenhouse gas emissions reduction limit set out in the AB 32 Scoping Plan, as it did, in considering whether the 2050

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[40] This organization is not to be confused with the Council of Infill Builders, which filed an amicus brief in support of plaintiffs.

Plan's impacts would be significant.[41] However, under the particular circumstances in this case, SANDAG was required to say more. The 2050 Plan's greenhouse gas emission *rise* after 2020, while the very purpose of the Scoping Plan is to place the State on track for continuing and substantial emissions reductions through 2050. Truncating the analysis resulted in an incomplete account of this large-scale, long-term project's climate impacts.

Contrary to amici's assertions, there is no detailed discussion in the record suggesting that an analysis of the project's longer-term impacts would, for example, be impossible, uninformative or misleading. SANDAG's contemporaneous justifications for refusing to consider the science and state policy concerning long-term climate stabilization were legal ones (primarily, that the 2005 Executive Order does not bind SANDAG), and they were in error.[42]

North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors (2013) 216 Cal.App.4th 614 and *Citizens for Responsible and*

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[41] (AR 8a:2581-2585 [EIR].) It appears that SANDAG considered, among other things, whether the region would meet a 2020 greenhouse gas emissions reduction target of 15% below roughly current (2005) levels. (AR 8a:2582-2584; see also 320(5):27851 [Scoping Plan, recommending "greenhouse gas reduction goal for local governments of 15 percent below today's levels by 2020 to ensure that their municipal and community-wide emissions match the State's reduction target"]; *id.* at 27858 ["In order to achieve the deep cuts in greenhouse gas emissions we will need beyond 2020 it will be necessary to significantly change California's current land use and transportation planning policies."].) It does not appear that SANDAG used any type of "business as usual" approach. See 19, fn. 43, below.

[42] (AR 8b:3768-3770; 4432-4433; People's ABM 49-51 [noting SANDAG counsel's post hoc justifications for failing to consider longer-term climate effects]; see also *Vineyard, supra*, 40 Cal.4th at p. 443 [declining to supplement deficient EIR with arguments in briefs].)

Equitable Development v. City of Chula Vista (2011) 197 Cal.App.4th 327 do not support a different result. Those cases involve environmental documents for individual development projects (an EIR for a desalination plant in *North Coast*, and a mitigated negative declaration for a retail store replacement in *Chula Vista*). They provide no guidance on the type of analysis that may be appropriate for a large-scale, long-term planning project. Further, while the documents at issue relied in part on meeting 2020 greenhouse gas-related objectives, there is no suggestion in the opinions that emissions for either project were expected to steadily rise after 2020, or that anyone argued that post-2020 analyses were required to serve CEQA's informational purposes. (See *North Coast*, *supra*, 216 Cal.App.4th at pp. 650-654; *Chula Vista*, *supra*, 197 Cal.App.4th at pp. 335-337.)[43] Neither case supports the proposition that CEQA permits an agency to refuse to consider longer-term impacts, where, as here, the project involves long-term, large-scale planning.

V. REQUIRING SANDAG TO CONSIDER THE STATE'S LONG-TERM CLIMATE OBJECTIVES WOULD NOT TRANSFORM THE 2005 EXECUTIVE ORDER INTO A MANDATORY "THRESHOLD OF SIGNIFICANCE"

> *Executive Order S-03-05 announces broad goals for reducing greenhouse gas emissions statewide. . . . There is no way for SANDAG—or, for that matter, a court—to convert the executive*

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[43] The agency in *Chula Vista* used what it referred to as a "business as usual" approach to determine the significance of the store's greenhouse gas emissions. *Chula Vista*, *supra*, 197 Cal.App.4th at pp. 336-337. The regulatory concept of "business as usual" appears in the AB 32 Scoping Plan; as used in that document, it refers to what statewide emissions would be in 2020 "without any greenhouse gas reduction measures." (See AR 320(5):27871.) While SANDAG in its EIR used the potential for "conflict" with the Scoping Plan as one of several "significance criteria" (AR 8a:2567, 2581), SANDAG did not rely on any discussion of "business as usual."

> *order's broad goals into an amount of emissions reductions that a particular region's land use and transportation planning must achieve.*

(Pacific Legal Foundations Amicus Curiae Brief (PLF) 11-12; see also *id.* at 4; BILDF 15-18)

> *Nothing in CEQA Guideline section 15064.5 states, or implies, that agencies must use the emission reduction goals in Executive Order S-3-05 as "significance thresholds" for CEQA purposes.*

(CACOG 33; see also *id.* at 24-25.)

The People do not contend that SANDAG or any other regional planning agency must downscale the targets in the 2005 Executive Order and apply them directly to their projects as mandatory greenhouse gas emission reduction targets or CEQA "thresholds of significance." Rather, the People's point is that the science-based environmental objective of climate stabilization, reflected in state law and policy, should inform the CEQA analysis for the 2050 Plan.

SANDAG's analysis of its regional transportation plan's longer-term climate impacts need not be highly technical to serve CEQA's informational purposes. It might, for example, include at its center a clear statement of whether any early greenhouse gas reductions are sustained beyond 2020, and, if not, whether the 2050 Plan's post-2020 rising emissions trajectory would appear to conflict with the State's long-term climate objectives embodied in AB 32, the Scoping Plan, and SB 375 (which sets declining targets). A graph similar to that included in the draft EIR for SANDAG's 2015 update to its 2050 Plan, comparing projected regional emissions over the longer term to what is required for climate stabilization, would assist the public and decision makers in understanding the climate implications of the project, and might spur additional discussion and analysis concerning changes to the project or mitigation (as it seemed

to do in the most recent Plan update process).[44] In addressing the apparent conflict, SANDAG might have more to say about the role of future Plan updates, and whether the emissions curve might still be bent downward through future action, even after large-scale durable infrastructure is funded and built—or about whether rising emissions in the region are simply unavoidable. Such discussion cannot occur, however, if the EIR understates the project's longer-term impacts and fails in its essential role as an "'environmental alarm bell[.]'" (*Vineyard*, *supra*, 40 Cal.4th at p. 441, quoting *Laurel Heights*, *supra*, 47 Cal.3d at p. 392.)

VI. IN THE CIRCUMSTANCES OF THIS CASE, WHERE VEHICLE MILES TRAVELED AND PER CAPITA PASSENGER VEHICLE EMISSIONS RISE AFTER 2020, SANDAG'S DISCUSSION OF COMPLIANCE WITH SB 375'S DISCRETE TARGETS TOLD AN INCOMPLETE STORY

> *Contrast [the 2005 Executive Order] with the concrete requirements of S.B. 375, which directs the Air Resources Board to set region-specific greenhouse gas emission reduction targets for land-use and transportation planning. . . . This statute—which, unlike the executive order is legally binding on SANDAG—results in clear requirements for SANDAG, which courts can easily apply.*

(PLF 12; see also BILDF 17.)

The People agree that regional planning entities reasonably can and should discuss compliance with their SB 375 targets in determining the significance of a regional transportation plan's greenhouse gas impacts. (See CEQA Guidelines, § 15064.4, subd. (b)(3) [lead agency should consider "extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions"].) Indeed, in

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[44] (People's MJN, People's Amended Decl., Ex. 1, p. 34.)

many instances, it may make sense to use compliance with SB 375's declining targets as a key "threshold of significance" for passenger vehicle emissions. Used this way, "non-compliance" with the SB 375 targets "means the effect will normally be determined to be significant by the agency and compliance . . . means the effect normally will be determined to be less than significant." (See CEQA Guidelines, § 15064.7.)[45]

Simple compliance with SB 375 in the particular circumstances of this case, however, could not tell the complete story about the effects of the 2050 Plan's passenger vehicle emissions, because the terms of the Plan's compliance—meeting the 2035 target on a *rising* trajectory—were exceptional, not "normal." As illustrated in the People's Answer Brief on the Merits, the 2050 Plan's emissions are projected to exceed the expectations of the 2020 SB 375 target, but immediately begin to rise in 2020, only just meet the 2035 target, and then continue to increase:[46]

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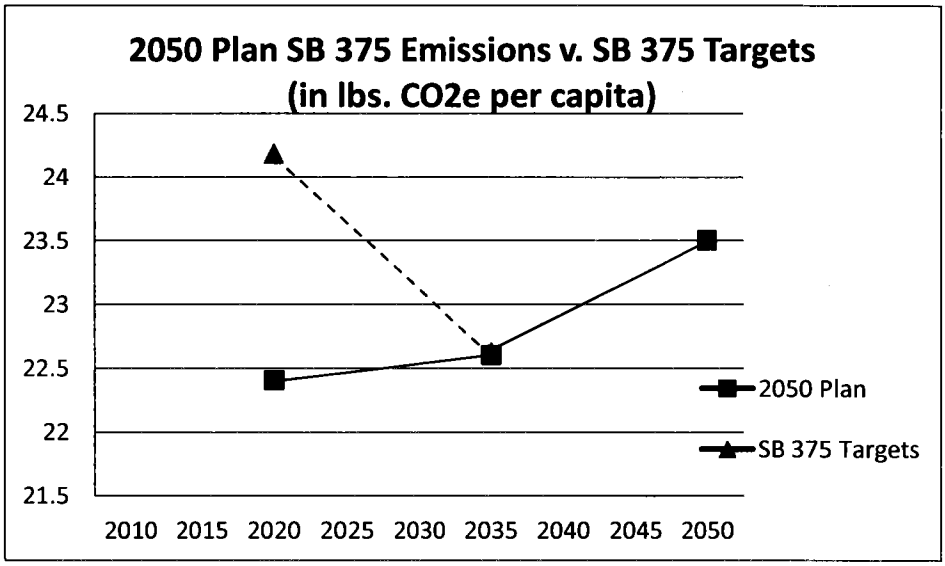
[45] Agencies can develop and employ thresholds of significance on a project-by-project basis (see *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896) or adopt them through a formal process for general use (see CEQA Guidelines, § 15064.7, subd. (b)).

[46] This data was not plotted in the EIR; the People presented it in graphic form in their Answer Brief on the Merits, and present it here again, for purposes of argument. (See People's ABM 29.)



Both the Attorney General and the Governor's Office of Planning and Research expressed concern that this result, while it achieves technical compliance with SB 375, would appear to run counter to the law's purposes.[47] Air Resources Board staff noted that the increase was "unexpected" given the "expectation that the benefits of an SCS [Sustainable Communities Strategy] would increase with time given the nature of land use patterns and transportation systems" and "regional targets [were set] with that expectation."[48]

CEQA is not a mere checklist for ensuring that a project will comply with any presently applicable environmental laws. While compliance with environmental laws may be relevant to determining significance, an agency must always consider whether there is substantial evidence that a project

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[47] (AR 311:25643 [Attorney General's comment letter]; *id.* at 308:25004-25005 [OPR's comment letter, stating "we are concerned that the [Sustainable Community Strategy] implies that future growth will be unavoidably less transportation efficient, which counters SB 375's underlying purpose"]; People's ABM 29-30, 43.)

[48] (SANDAG's Supplement to the Administrative Record (AR Supp.) 344:30143; People's ABM 29-30.)

may have significant effects notwithstanding such compliance. (*Protect the Historic Amador Waterways*, *supra*, 116 Cal.App.4th at pp. 1108-1111 [reduction in stream flow may be a significant environmental effect despite water pipeline project's compliance with environmental requirements]; *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-16 [lead agency's sole reliance on state agency's registration of pesticides and its regulatory program was inadequate to address environmental concerns under CEQA].) Under the circumstances of this case, SANDAG could not satisfy CEQA's informational requirements by discussing only technical compliance with SB 375, without also addressing the rising emissions that seem fundamentally at odds with the law's intent.[49]

VII. SANDAG MUST EXERCISE ITS CAREFUL JUDGMENT TO DETERMINE SIGNIFICANCE IN THE SHORT AND LONG TERM BASED ON THE AVAILABLE SCIENTIFIC AND FACTUAL DATA

> *At the time SANDAG approved the [2050 Plan], CARB [the California Air Resources Board] had not adopted a state-wide threshold to determine whether GHG emissions are significant for purposes of CEQA.*

(CACOG 32; see also *id.* at 31, fn. 4, 32.)

> *AB 32 states that the Legislature's intent is to "continue reductions in emissions of [GHGs] beyond 2020," but, it does not include a 2050 target or direct CARB to establish one. (Health & Saf. Code, § 38551, subd. (b).)*

(CIBF 4; see also BILDF 2.)

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[49] (See also SB 375, Gov. Code, § 65080, subd. (b)(2)(K)["[n]othing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law"].) Such state laws include CEQA.

SB 375, the 2008 AB 32 Scoping Plan, and the 2014 AB 32 Scoping Plan Update do not include binding 2050 targets. (CIBF 7-10; BILDF 7-8; CACOG 29-30.)

The Air Resources Board does not promulgate CEQA regulations. It, like other expert state and local agencies, can recommend approaches to determine significance and thresholds of significance, which lead agencies may consider in their discretion. (CEQA Guidelines, § 15064.7, subd. (c).)[50] To date, the Board has not issued any recommendation on greenhouse gas significance thresholds.[51] Neither SB 375 nor the Scoping Plan includes a 2050 target that applies specifically to regional transportation plans. This lack of specific regional targets does not, however, mean that the question of long-term greenhouse gas emissions and climate stabilization requires no analysis in an EIR. SANDAG must still follow the general principles and guidance set out in CEQA and its implementing guidelines in determining the significance of the 2050 Plan's greenhouse gas-related effects.[52] Nothing in these sources sanctions the type of truncated, short-term analysis in SANDAG's 2011 EIR.

As discussed in the People's Answer Brief on the Merits, one of CEQA's fundamental purposes is to require lead agencies to consider the

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[50] (See, e.g., the California Air Pollution Control Officers, CEQA and Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (Jan. 2008), available at <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf> [as of Nov. 12, 2015].)

[51] (See People's ABM 45-46.)

[52] Courts "accord the Guidelines great weight except where they are clearly unauthorized or erroneous." (*Neighbors for Smart Rail*, *supra*, 57 Cal.4th at p. 448, fn. 4.)

long-term impacts of the projects they approve or undertake.[53] (§§ 21000, subd. (a), § 21001, subds. (a), (c).) All public agencies are enlisted to "[e]nsure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, [is] the guiding criterion in public decisions." (§ 21001, subd. (d).) The CEQA Guidelines similarly provide that a lead agency may not focus only on the short term, but must also consider a project's long-term environmental impacts, and whether the project will work "to the disadvantage of long-term environmental goals" (CEQA Guidelines, § 15065, subd. (a)(2); see also *id.* at § 15126.2, subds. (a), (c).) There is no suggestion that an agency can elect to end its analysis before the end of a project's anticipated life. (See, e.g., CEQA Guidelines, §§ 15003, subd. (h) [lead agency "must consider the whole of an action"]; 15126 ["[a]ll phases of a project must be considered"].) Further, as the CEQA Guidelines provide, "[t]he determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on *scientific and factual data*." (CEQA Guidelines, §§ 15064, subd. (b) [italics added]; 15064.4, subd. (a) [stating that determination of significance of greenhouse gas-related impacts is made consistent with the provisions of section 15064].)

These obligations are, of course, governed by CEQA's rule of reason—that lead agencies fulfill their duties if they make a reasonable, good-faith effort at full disclosure in their EIRs. (See, e.g., CEQA Guidelines, § 15003, subd. (i) ["CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith

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[53] (People's ABM 33-35.)

effort at full disclosure."]; see also *id.* at §§ 15144 [in forecasting, "agency must use its best efforts to find out and disclose all that it reasonably can"]; 15151 [standards for adequacy of EIR]; 15204, subd. (a) [adequacy of EIR determined by what is "reasonably feasible"].) SANDAG's flat refusal to consider the 2050 Plan's longer-term climate impacts excludes it from the protections afforded by this rule.

VIII. A REGIONAL TRANSPORTATION PLANNING ENTITY'S SUBSTANTIAL DISCRETION TO DETERMINE HOW BEST TO ANALYZE LONGER-TERM CLIMATE IMPACTS MUST BE RESPECTED, BUT ONLY WHERE IT IS ACTUALLY EXERCISED

> *The [court of appeal's] Opinion requires lead agencies to use the Executive Order as a significance threshold, stripping them of the discretion CEQA provides, and essentially handing that discretion to the Governor's office.*

(CIBF 1; see also BILDF 5-6, 11; CACOG 20-21, 23, 35; BILDF 6.)

> *Requiring "consistency" with the executive order under CEQA would result in an unadministrable rule. No matter how much a government's plan reduces emissions, anyone could argue that it was nonetheless inconsistent with the executive order because it should have achieved more.*

(PLF 12; see also *id.* at 10-11.)

> *If a lead agency cannot determine what level of GHG emissions for a particular project would be consistent with EO S-03-05's 2050 goal for GHG reductions, it would also be unable to determine whether the reduction in GHG emissions to be achieved by a proposed mitigation measure will be sufficient to render an impact "less than significant," to support a determination that the project, after incorporating mitigation measures, has no significant impact on GHG emissions.*

(BILDF 20-21.)

> *The courts also recognize that differentiating between significant and insignificant impacts necessarily involves agency*

discretion, and that the exercise of such discretion is entitled to deference.

(CACOG 27.)

The People do not contend that regional planning organizations must use the Executive Order as a threshold of significance. Nor do they ask this Court to prescribe a strict "consistency" analysis, requiring regional planning organizations to downscale the State's long-term, science-based climate objectives, create hard emission reduction targets for their region through the year 2050, and determine that any failure to meet those targets necessarily causes the regional transportation plan's greenhouse gas-related effects to be significant. An agency has ample discretion in determining how to analyze and address climate-related impacts. But it must exercise that discretion before a reviewing court can defer to its determination of exactly how to address the issue. And it may not simply decide not to address the issue at all.

The fact that it might be difficult to set specific, *quantitative* greenhouse gas thresholds of significance for the 2050 Plan does not mean that SANDAG is excused from its general obligations under CEQA. Significance must often be determined without resort to clear thresholds. It is well-recognized that certain effects resist "ironclad" definitions of significance. (CEQA Guidelines, §§ 15064, subd. (b), 15064.4, subd. (a).) This can result, for example, because the significance of the impact varies with context, is not subject to precise quantification, or must be judged on a continuum, or because the determination of significance is, at the end of the day, at least in part subjective. Effects such as changes in noise levels, aesthetic impacts, historical and cultural impacts, and "objectionable odors"

may fall into this category. (See CEQA Guidelines, Appendix G.)[54] So too climate change where an agency has no quantified and prescribed greenhouse gas reduction target and must make certain assumptions and predictions about both the operation of the project and larger carbon-reduction trends.

In these types of circumstances, the agency must draw lines. Those lines may reflect the exercise of substantial discretion, in that other lines might also be reasonable (and perhaps even arguably wiser). Where the agency explains its decision-making process and supports its determination by substantial evidence, including any available scientific and factual data, its actions are not legally "arbitrary," and must be upheld. (*Laurel Heights*, *supra*, 47 Cal.3d at p. 393; see also *Carrancho v. California Air Resources* (2003) 111 Cal.App.4th 1255, 1277, fn. 8 [courts generally defer to agency decision-making involving technical matters requiring assistance of experts and collection and study of data]; *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 593 [declining to engage in "comparative analysis of [groundwater sufficiency] methodologies employed by different experts"].) "When the administrative agency has provided relevant data supporting its decision, [courts] owe deference to the agency's line-drawing." (*Yakutat, Inc. v. Gutierrez* (2005) 407 F.3d 1054, 1072; accord *Laurel Heights*, *supra*, 47 Cal.3d at p. 393 [courts have "neither the resources nor scientific expertise" to weigh conflicting evidence, even if it were permitted].) But where, as in this case, the agency failed to engage with the substantial scientific and factual questions presented by a project, and produced a document that was incomplete and

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[54] (Available at <http://resources.ca.gov/ceqa/guidelines/Appendix_G.html> [as of Nov. 12, 2015]. See, in particular, the suggested analyses for impacts related to aesthetics, air quality (subd. (e), odors), cultural resources, and noise.)

misleading, judicial deference to that agency's abdication would defeat the informational purposes of CEQA.

IX. REQUIRING MORE FROM SANDAG IN THE CIRCUMSTANCES OF THIS CASE WILL NOT SET PRECEDENT FOR EVERY AGENCY AND EVERY PROJECT

> *[T]he reasoning urged by Petitioners and the Attorney General, and the reasoning of the Appellate Court, would not limit the need for a consistency analysis to an EIR for [a Regional Transportation Plan]. Rather, any project subject to CEQA involving a potential impact on GHG emissions would be required to use consistency with the 2050 goal in EO S-03-05 as a threshold of significance.*

(BILDF 13.)

> *The practical effect of requiring a consistency analysis will be that an EIR will be prepared for every non-exempt project subject to CEQA that may have any impact, positive or negative, on GHG emissions.*

(BILDF 18.)

The People do not suggest that an extensive climate impact analysis should be required for every lead agency and for every project—no matter its size, scope, emissions volume and source, or duration. It is, however, appropriate for large-scale, long-term planning projects to consider the significance of projected long-term greenhouse gas emissions in the context of the State's long-term climate objectives and the science of climate stabilization. Indeed, regional transportation plans may well play a key role in the ability of the State to meet its climate objectives. As SANDAG observed, the 2050 Plan "is the blueprint for a regional transportation system[.]"[55] It will affect the region's "quality of life" for decades.[56] It

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[55] (AR 8a:2071.)

[56] (*Ibid.*)

"looks 40 years ahead, accommodating another 1.2 million residents, half a million new jobs, and nearly 400,000 new homes."[57] The Plan will govern how new projects are integrated within the existing transportation system, using more than $200 million in funding anticipated over the coming decades.[58] Certainly some discussion of the apparent conflict between the 2050 Plan's post-2020 rising emissions trajectory, and the State's long-term climate-stabilization objectives, is required.

Further, since the project at issue is a regional transportation plan, the accompanying document is a *program* EIR. (See CEQA Guidelines, § 15168, subd. (a)(3) [program EIR "may be prepared on a series of actions that can be characterized as one large project" in connection with issuance of plan].) Together with the Sustainable Communities Strategy, the program EIR will be used to streamline and in some cases avoid altogether CEQA review for individual infrastructure and development projects. (See, e.g., CEQA Guidelines, §§15152 [tiering]; 15183.5 ["Tiering and Streamlining the Analysis of Greenhouse Gas Emissions"]; see also SB 375 CEQA incentives in §§ 21155 and 21155.1 [exemption for certain transit priority projects]; 21155.2 [streamlined review for other transit priority projects]; 21159.28 [streamlined review for certain mixed-use projects].)[59] The purposes of a program EIR include: "[p]rovid[ing] an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action"; "[e]nsur[ing] consideration of cumulative impacts that might be slighted in a case-by-case analysis" and "[a]llow[ing] the Lead Agency to consider broad policy alternatives and

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[57] (*Ibid.*)

[58] (*Ibid.*; AR 190a:13246)

[59] (See <http://opr.ca.gov/docs/SB375-Intro-Charts.pdf >[flowchart of SB 375 CEQA incentive provisions] [as of Nov. 12, 2015].)

programwide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts[.]" (CEQA Guidelines, § 15168, subd. (b)(1), (2), (4).)

CEQA thus contemplates that the effects of greenhouse gas emissions—a cumulative impact—are best addressed in the first instance at the program and plan level.[60] In other circumstances, faced with a substantially smaller, shorter-term project that does not itself facilitate and create momentum for development, a lead agency may well determine that examination of the project's longer-term greenhouse gas-related impacts is neither feasible nor informative. If supported by substantial evidence, any such determination would be entitled to judicial deference.

X. CEQA RESPECTS THAT LEAD AGENCIES HAVE DIFFICULT CHOICES TO MAKE, BUT REQUIRES THAT ENVIRONMENTAL TRADE-OFFS BE TRANSPARENT AND INFORMED

> *[I]n enacting AB 32, the Legislature understood that while imposing aggressive GHG limits within the state has myriad of benefits, it could also result in unintended economic and environmental consequences.*

(CIBF 14.)

> *[A]n RTP/SCS is a complex document with numerous, and often competing, policy considerations. The preparation of an*

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[60] BILDF also asserts that a ruling in favor of plaintiffs "would also impact the ability of projects that are typically exempt from CEQA, such as single family homes, to utilize such exemptions." (BILDF 20.) This is incorrect. Public Resources Code, section 21084, subdivision (b) provides: "A project's greenhouse gas emissions shall not, in and of themselves, be deemed to cause an exemption adopted pursuant to subdivision (a) to be inapplicable if the project complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with Section 15183.5 of Title 14 of the California Code of Regulations ['Tiering and Streamlining the Analysis of Greenhouse Gas Emissions']."

RTP/SCS involves striking a balance between a wide range of concerns.

(CACOG 50.)

CEQA recognizes that concerns for environmental protection and conservation do not displace all other considerations. The alternatives the Act requires to be considered, and any mitigation to be imposed, must be "feasible." (§§ 21002, 21003, subd. (c), 21081, subd. (a)(3).) "Feasible" in this context "means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (§ 21061.1.) And an agency is not prevented from approving a project that, even with mitigation and appropriate design changes, will have significant environmental impacts. So long as the agency determines that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment[,]" it may approve the project. (§ 21081, subd. (b).)

A CEQA document that is truly informative may, at times, raise difficult questions and spur vigorous public debate about a project that many may believe is in the public interest and should be approved. This is as the Legislature intended. An EIR "is a document of accountability." (*Laurel Heights*, *supra*, 47 Cal.3d at p. 392.)

> If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government

(*Ibid.* [citations omitted].) And it is the process that SANDAG itself contemplated when it prepared its Climate Action Strategy in 2010, presenting a range of potential measures to reduce regional greenhouse gas

emissions over the longer term for consideration during the 2011 regional transportation plan update and future general plan updates.[61] As SANDAG then observed, "[d]ecisions on which climate action measures to pursue are best debated among regional and local officials and the general public during the development of these subsequent public policy documents (and related regulatory mechanisms)."[62]

The People acknowledge that, in designing and approving the San Diego Regional Transportation Plan and Sustainable Communities Strategy, it is SANDAG's responsibility to strike the appropriate balance between sometimes competing interests. CEQA requires only that SANDAG carry out its regional planning responsibilities in a transparent way, fully informing the public and its Board about the longer-term climate effects of its planning and infrastructure decisions. That much, however, the law does require.

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[61] (AR 216:17619.)

[62] (*Ibid.*)

CONCLUSION

The People respectfully request that the court hold that SANDAG abused its discretion in determining that in the EIR for the 2050 Plan—a large-scale, long-term transportation infrastructure and land use planning project—it had no obligation under CEQA to consider the science and state policy of long-term climate stabilization. It should further affirm the decision of the court of appeal that SANDAG's error was prejudicial, provide that SANDAG must decertify the deficient 2011 EIR, and remand the case for further proceedings consistent with this court's opinion.

Dated: November 13, 2015

Respectfully submitted,

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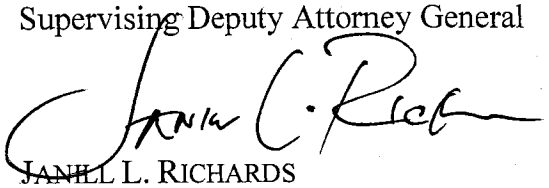

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CERTIFICATE OF COMPLIANCE

I certify that the attached **PEOPLE OF THE STATE OF CALIFORNIA'S ANSWER TO AMICUS CURIAE BRIEFS** uses a 13 point Times New Roman font and contains 9,261 words.

Dated: November 13, 2015

KAMALA D. HARRIS
Attorney General of California

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DECLARATION OF SERVICE BY FIRST CLASS AND ELECTRONIC MAIL

Case Name: ***Cleveland National Forest Foundation; Sierra Club; Center for Biological Diversity; CREED-21; Affordable Housing Coalition of San Diego; People of the State of California v. San Diego Association of Governments; San Diego Association of Governments Board of Directors***

Case No.: S223603
(California Court of Appeal, Fourth Appellate District,
Division One, Case No. D063288;
San Diego County Superior Court,
Case No. 37-2011-00101593-CU-TT-CTL
[Consolidated with Case No. 37-2011-00101660-CU-TT-CTL])

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **November 13, 2015**, I served the attached **PEOPLE OF THE STATE OF CALIFORNIA'S ANSWER TO AMICUS CURIAE BRIEFS** by placing a true copy of this document enclosed in a sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, California 94612, and by sending an electronic version of the same document, addressed as set out in the attachment.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 13, 2015**, at Oakland, California.

Debra Baldwin
Declarant

Debra Baldwin
Signature

SERVICE LIST

Cleveland National Forest Foundation, et al.
v. San Diego Association of Governments, et al.
(Case No. S223603)

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