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IN THE SUPREME COURT OF CALIFORNIA

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

v.

SAN DIEGO ASSOCIATION OF GOVERNMENTS; SAN DIEGO ASSOCIATION OF GOVERNMENTS BOARD OF DIRECTORS,
Defendants and Appellants.

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

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

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INTRODUCTION

The physical science is clear: to preserve anything like today's climate, emissions of greenhouse gases ("GHGs") must fall dramatically between now and 2050. Maintaining existing emissions levels—or worse, allowing them to rise—will only increase concentrations of long-lived pollutants, thereby increasing the likelihood of dangerous climate disruption.

As the San Diego Association of Governments' ("SANDAG") own Climate Action Strategy recognizes—and as SANDAG concedes here—Executive Order S-3-05's goal of reducing greenhouse gas emissions to 80 percent below 1990 levels by 2050 rests firmly on this scientific foundation. Despite this goal, emissions under SANDAG's 2050 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS" or "Plan") will rise and keep rising through 2050. Yet SANDAG's Environmental Impact Report ("EIR") for the Plan ignored the consequences of this rise by refusing to address the Plan's inconsistency with the long-term emissions reduction trajectory articulated in the Executive Order. It did so despite Plaintiffs' and the California Attorney General's specific demand for that analysis prior to the Plan's approval.

SANDAG's omission violated the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.,[1] because it undermined both the quality of the agency's decision-making and the public's ability to participate in the process. It also unlawfully truncated the robust discussion of mitigation measures and alternatives that CEQA requires. And at the same time, it lulled the public into thinking that SANDAG was helping achieve state climate goals when in reality SANDAG was doing just the opposite. Under these circumstances, the omission was highly prejudicial.

For the first time in this litigation, SANDAG now concedes the scientific basis of the Executive Order. Its Opening Brief directly acknowledges that the Order's targets "appear to be based on studies estimating that stabilization of atmospheric CO_2 levels at approximately 450 parts per million (ppm) would stabilize global temperatures at approximately 2 degrees centigrade over pre-industrial levels." (Opening Brief ("OB") at 7.) Yet SANDAG still refuses to accept that this information in any way affects the analysis required under CEQA. While SANDAG insists that its excuses for ignoring the information reflect good-faith choices regarding the best "methodology" for disclosing impacts (OB

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

at 19-21), the record reveals it made an erroneous legal judgment aimed at avoiding disclosure.

This is not a case about whether SANDAG can exercise discretion to choose a "threshold" for determining the significance of impacts, or whether the Executive Order constitutes a "plan" for emissions reductions. Rather, the case concerns SANDAG's fundamental responsibility to disclose the long-term impacts of its RTP/SCS in a manner that reflects the science underlying California's climate policy, informs meaningful decision-making, and enables the public to hold officials accountable for their actions. While SANDAG seeks a "safe harbor" for its EIR (OB at 29), there is no such shelter for an EIR that fails to do its fundamental job.

Nor is this a case about the Governor's executive authority, the separation of powers doctrine, or the Legislature's purported occupation of the field of climate regulation. Instead, it is a straightforward case about the kind of analysis that CEQA has required for more than 40 years: a good-faith and complete effort at full disclosure, consistent with current scientific knowledge, of a project's actual physical environmental consequences. Scientific facts are central to that analysis, and CEQA requires agencies to confront those facts whether they are embodied in a piece of legislation, a regulation, an executive order, or the scientific literature.

Thus, despite SANDAG's protestations to the contrary (OB at 1), this case does center on climate change. Global warming is the quintessential cumulative environmental impact: it is the sum total of individual decisions to increase emissions that could be catastrophic. CEQA wisely requires a pause for informed consideration of each of these decisions. The Court of Appeal correctly found SANDAG's EIR violated this requirement.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. The Science of Climate Change and the Emission Reductions Required to Avoid Climate Disruption.

The global climate is changing as humans continue to emit increasing amounts of heat-trapping gases into the atmosphere. (AR216:17622.[2]) Current atmospheric measurements of carbon dioxide and methane—the two most important greenhouse gases—have reached their highest levels in 650,000 years. (*Ibid.*) If atmospheric concentrations rise further, "we face the prospect of water shortages, rising sea levels along our coast, more frequent and intense wildfires, longer and more severe heat waves, loss of native plants and animals, worsening air quality, and difficulty meeting peak energy needs." (*Ibid.*)

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[2] Citations to the Administrative Record are in the format "(AR[Tab number]:[Page number].)" Citations to the Supplemental Administrative Record are in the format "(SAR[Tab number]:[Page number].)"

To stabilize the climate, atmospheric concentrations of greenhouse gases must quickly stabilize as well. (AR216:17622-23; AR320:27791). Avoiding dangerous climate change means that sources cannot continue emitting climate pollutants at current levels. If present levels of emissions continue, atmospheric concentrations of greenhouse gases will still rise because many climate pollutants accumulate in the atmosphere and exert their warming influence for decades or even centuries. (See, e.g., AR216:17622; AR320:27805-06, 27995, 27997.) Thus, the cumulative nature of greenhouse gas emissions requires greatly *reducing* emissions below current levels. Executive Order S-3-05's goal—reducing emissions to 80 percent below 1990 levels by 2050—reflects the scientific consensus about the reductions necessary to stabilize the climate and avoid the most catastrophic impacts of climate change. (AR216:17627; AR320:27848.)

II. California's Efforts to Reduce Emission of Climate Pollutants.

California took its first major step toward addressing climate change by enacting AB 1493 (Pavley) in 2002. This law required the California Air Resources Board ("CARB") to adopt regulations reducing greenhouse gas emissions from vehicles. (AR320:27864.)

Three years later, Governor Schwarzenegger issued Executive Order S-3-05. The Executive Order laid the foundation for California's long-term climate change policy by setting increasingly stringent targets for reducing statewide greenhouse gas emissions to (1) 2000 levels by 2010; (2) 1990

levels by 2020; and (3) 80 percent below 1990 levels by 2050. (AR319:27049-50; AR8a:2561.) The Executive Order also directed several state agencies to coordinate "efforts made to meet" these targets. (AR319:27050.)

The next year, the Legislature enacted the Global Warming Solutions Act, Health and Safety Code section 38500 et seq. ("AB 32"). Consistent with the Executive Order, AB 32 among other things directed CARB to set a specific target for 2020 based on the state's 1990 emissions and to adopt regulations that would attain the target. (Health & Saf. Code §§ 38550, 38562.) As the Court of Appeal below noted, however, the Legislature did not view the 2020 target as a final end point; rather, it "intended for the [2020] emissions limit to '. . . be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.'" (Op. at p. 10[3] [quoting Health & Saf. Code § 38551, subd. (b)].)

As required by AB 32, CARB adopted a "Climate Change Scoping Plan" in 2008. (Health & Safety Code § 38561; AR320:27842.) The Scoping Plan contains various strategies for reducing greenhouse gases and functions as a roadmap for achieving AB 32's reduction mandate. (Op. at 21, fn. 10.) The Scoping Plan also emphasizes that efforts to reduce

[3] Citations to the Court of Appeal's majority opinion below are abbreviated "Op." and refer to the slip opinion filed on November 24, 2014 and subsequently modified on December 14, 2014.

emissions cannot end in 2020. Rather, the Plan's purpose is to "put the state on a path to meet the long-term 2050 goal of reducing California's greenhouse gas emissions to 80 percent below 1990 levels." (AR320:27875.) As the Scoping Plan explains, this "trajectory is consistent with the reductions that are needed globally to help stabilize the climate." (*Ibid.*; see also AR320:27848 ["Getting to the 2020 goal is not the end of the State's effort."], 27858-59 [Scoping Plan "will help put California on course to cut statewide greenhouse gas emissions by 80 percent in 2050"].)

In 2008, the Legislature enacted SB 375 (Stats. 2008, ch. 728), to specifically address transportation-related emissions. SB 375 requires each metropolitan planning organization, including SANDAG, to adopt a "sustainable communities strategy" ("SCS") as part of its Regional Transportation Plan. (See Gov. Code § 65080, subd. (b)(2); AR8a:2563.) An SCS coordinates regional transportation, housing, and land use plans for the purpose of reducing greenhouse gas emissions associated with passenger vehicle trips. (AR8a:2071.) Although new vehicle and fuel technologies can reduce greenhouse gas emissions, SB 375 recognizes that meeting AB 32's reduction target also will require improved transportation plans and smarter land use policies that reduce driving. (Stats. 2008, ch. 728 § 1(a), (c) (S.B. 375); AR333:29376.) Accordingly, each SCS must

> set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the

> greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the state board.

(Gov. Code § 65080, subd. (b)(2)(B)(vii).)

Pursuant to SB 375, CARB established specific greenhouse gas reduction targets for various regions throughout the state. The San Diego region's target requires two successive reductions in per capita greenhouse emissions from 2005 emission levels: (1) a 7 percent reduction by 2020, and (2) a 13 percent reduction by 2035. (AR8a:2080.)

Most recently, on April 29, 2015, Governor Brown issued Executive Order B-30-15. This order reiterates the state's goal—initially established in Executive Order S-3-05—of reducing statewide greenhouse gas emissions 80 percent below 1990 levels by 2050. (Exec. Order No. B-30-15 (April 29, 2015), http://gov.ca.gov/news.php?id=18938.) To help achieve that goal, Governor Brown's order sets an interim target to reduce emissions 40 percent below 1990 levels by 2030. (*Ibid.*)

III. SANDAG's Pivotal Role in Transportation Planning and Achieving Climate Stabilization.

SANDAG is a regional Council of Governments comprised of representatives from the County of San Diego and the 18 cities in the region. (AR8a:2071.) It serves as the Regional Transportation Commission and federally designated metropolitan planning organization for the region. (*Ibid.*) In those capacities, it has broad responsibility for

regional transportation planning. Pursuant to SB 375, it also has responsibility for integrating transportation and land use planning by adopting an SCS that will reduce greenhouse gas emissions. (AR8a:2994.)

A. SANDAG's Climate Action Strategy.

In March 2010, prior to approving the Plan, SANDAG adopted a Climate Action Strategy. (AR216:17616-72.) Recognizing that the Legislature, the Governor, and other agencies have acted to combat climate change, the Strategy declares that the San Diego region must "do [its] part to reduce greenhouse gases that contribute to climate change." (AR216:17618.) The Strategy expressly references and adopts the Executive Order's 2050 goal of reducing emissions to 80 percent below 1990 levels. (AR216:17624, 17627-28.) SANDAG's Strategy acknowledges that this goal "is based on the scientifically-supported level of emissions reduction needed to avoid significant disruption of the climate and is used as the long-term driver for state climate change policy development." (AR216:17627.) The Strategy also recognizes that meeting the Executive Order's 2050 goal "will require fundamental changes in policy, technology, and behavior." (AR 216:17628.)

After expressly adopting the 2050 goal, the Strategy proceeds to quantify the emissions reductions necessary for the San Diego region to meet its share of this goal. (*Ibid.*) It then sets forth a general approach for achieving the required reductions by "identif[ying] the many types of land

use and transportation-related policy options available to help SANDAG and local governments achieve greenhouse gas reductions from the on-road transportation sector." (AR216:17643; see also AR216:17624 [these policies are intended to "help[] achieve short-term (2020) and longer-term (2035 and 2050) goals for greenhouse gas emission reduction"].)

Not surprisingly, the first goal identified by the Strategy is reducing total miles of vehicle travel. (AR216:17643.) The Strategy explains that although state efforts to promote fuel efficient vehicles and low carbon fuels are critical, they "will not achieve the long-term 2050 goal for greenhouse gas reduction unless per capita vehicle miles traveled in the state is reduced." (AR216:17644.)

B. SANDAG's Regional Transportation Plan/Sustainable Communities Strategy.

1. SANDAG's Plan Facilitates Increased Driving and Emission of Climate Pollutants.

State law charges SANDAG with developing the region's regional transportation plan ("RTP"), which it must update every four years. (AR8a:2993.) The RTP constitutes SANDAG's blueprint for the transportation system—including highways, local streets, transit, bicycling, walking, airports, and systems for managing travel demand—that will serve the San Diego region over the next four decades. (AR8a:2071.) SANDAG's RTP prioritizes and allocates funds for all of these proposed transportation enhancements. (AR190a:13063-66, 13237-51, 133385-446.)

SANDAG also administers a local sales tax measure, known as TransNet, that funds a large number of these enhancements. (AR8a:2995.)

As SANDAG's EIR explains, the Plan's stated "goal is to create communities that are more sustainable, walkable, transit-oriented, and compact—thereby providing transportation options and lowering GHG emissions." (AR8a:2077.) In particular, the Plan "envisions an ambitious and far-reaching transit network that significantly expands the role that transit plays in meeting the region's needs for mobility and reducing GHG emissions." (AR8a:2078.)

Unfortunately, SANDAG's Plan falls short of these goals. Although SANDAG acknowledged that regional transit investments would have maximum effect in urbanized areas (AR190b:14214), the Plan fails to make these investments. Instead, it prioritizes numerous freeway and highway expansions within urbanized areas, including expansions of the I-5, I-8, I-15, I-805, SR-52, SR-56, SR-94 and SR-125. (*See* AR8a:2116-22; 190b:14217.) The Plan also calls for widening highways in the region's suburban and rural communities, thus facilitating travel to the County's back country. (AR8a:2118; AR190b:14217.)

Although the Plan would fund some transit projects, it postpones their construction for decades. (AR190a:13247 [scheduling 75 percent of transit expenditures after 2030], 13267-69 [majority of transit projects built in Plan's later decades].) Moreover, many of SANDAG's "transit" projects

involve widening highways to include "managed lanes." (AR8a:2119, 2115, 2112.) While buses and carpools can use these lanes, single-occupant vehicles can also pay to use most of them. (AR8a:2112.) Independent reviewers concluded that, far from promoting regional transit, the Plan's surge in freeway capacity "will perpetuate auto-oriented development and reduce transit's competitiveness." (AR320:28481.)

Under its Plan, SANDAG anticipates exceeding SB 375's greenhouse gas reduction goal for 2020 but just barely meeting the goal for 2035. (AR8a:2104.) However, its Plan deserves little credit for achieving these goals. Rather, the reductions principally originate from two sources unrelated to the Plan: the lengthy economic recession and the state's mandatory vehicle efficiency and fuel standards sustain these early emissions reductions; the agency projects that the region's overall emissions will increase after 2020 and exceed current levels by 2050. (AR8a:2578 [overall greenhouse gas emissions in 2050 will be 17 percent *higher* than 2010 emissions].) Regional per capita emissions also will rise again after 2020. (See AR8a:2104.) CARB emphasized in a letter to SANDAG that this "trend in per capita GHG emissions is unexpected," as SB 375 and RTP/SCSs are designed to provide greater, not lesser, greenhouse gas reductions over time. (SAR344:30143; see also *id.* at pp. 30144, 30188-89.)

Moreover, despite the Plan's purported emphasis on transit, by 2050 vehicle miles traveled will balloon by more than 50 percent. (AR8b:4436.) Population growth alone will not cause this increase; under the Plan, individuals in 2050 also will drive more miles daily on a *per capita* basis than they do now. (AR8b:4435 [Tables 2, 3].)

2. Public Comment on SANDAG's Plan and EIR.

Plaintiffs and others submitted comments that criticized SANDAG's Plan, focusing in particular on its postponement of transit measures. (See, e.g., AR224:17972-75; AR227:18053-55; AR229:18119-18204; AR230:18205-08; AR239:19037-40; AR296:19667-19768.) Plaintiffs warned that the Plan incorrectly assumed aggressive highway expansion would not affect patterns of land use development and employed incorrect assumptions in predicting transit ridership. (AR292:19657; AR296:19678-79.)

Plaintiffs and others also commented that the EIR failed to comply with CEQA. In particular, the Cleveland National Forest Foundation and Center for Biological Diversity criticized the EIR's failure to compare the Plan's upward emissions trajectory for greenhouse gases to the Executive Order's reduction goals. (AR296:19684-85.) Likewise, the Attorney General warned SANDAG that the Plan allows "per capita GHG emissions from cars and light-duty trucks [to] *increase* as compared to the previous year after 2020" and that the EIR failed to address the impact of this

emissions trajectory on the state's ability to meet its long-term climate objectives. (AR311:25641-42 [emphasis in original].) Commenters also criticized the EIR's failures to analyze an alternative that would reduce greenhouse gas emissions over the Plan's life and to include enforceable mitigation for the Plan's significant climate impacts. (AR296:19681-83, 19687-91; AR306:24881-85; AR311:25642; AR320:27704-19.)

Despite these criticisms, SANDAG approved the Plan and certified the EIR for the Plan on October 28, 2011. (AR6:223-24.)

IV. Procedural History of the Litigation.

A. The Superior Court Ruling Against SANDAG.

In November, 2011, Plaintiffs filed two separate actions challenging SANDAG's approval and EIR. (JA2:14-42; JA1:1-13.[4]) In January, 2012, the trial court granted the People's motion to intervene. (JA29:198-99.) The cases were subsequently consolidated. (JA38:264-74.)

The trial court ruled for Plaintiffs on December 3, 2012, holding that SANDAG failed to adequately analyze or mitigate the Project's significant climate impacts. (JA75:1046-59.) In particular, it held that the EIR violated CEQA by failing "to cogently address the inconsistency between the dramatic increase in overall GHG emissions after 2020 contemplated by the RTP/SCS and the statewide policy of reducing same during the same

[4] Citations to the Joint Appendix filed in the Court of Appeal are in the format "(JA[Tab number]:[Page number].)"

three decades (2020-2050)." (JA75:1057.) The court noted that SANDAG's Plan extends to 2050, yet the agency unlawfully "failed to extend the [climate] analysis to 2050." (*Ibid.*) Because the EIR "simply ignore[d]" the Plan's inconsistency with the state's long-term reduction goals, it "fail[ed] . . . to provide the SANDAG decision makers (and thus the public) with adequate information" about the Project's impacts. (*Ibid.*) The court also ruled that SANDAG failed to adopt adequate mitigation for the Project's climate impacts. Instead, SANDAG improperly "'kick[ed] the can down the road' and defer[ed] to 'local jurisdictions'" by vaguely suggesting that other agencies could adopt some type of mitigation in the future. (*Ibid.*)

The court declined to reach Plaintiffs' other CEQA claims, concluding that it could "resolve the case solely on the inadequate treatment in the EIR of the greenhouse gas emission issue." (JA75:1058.) SANDAG appealed (JA92:1140-44), and Plaintiffs and the People cross-appealed on the CEQA issues not addressed by the trial court (JA95:1161-63; JA96:1164-68).

B. The Court of Appeal Ruling Against SANDAG.

The Court of Appeal upheld the trial court's decision and also ruled for Plaintiffs on all cross-appealed issues. (Op. at 3.) The court held that the EIR "did not reflect a reasonable, good faith effort at full disclosure" of climate impacts because it omitted any analysis of the Plan's inconsistency

with the state's long-term climate policy. (*Id.* at 14.) Indeed, the court found the EIR to be affirmatively misleading because it suggested the Plan would actually advance that policy. (*Id.* at 19.)

The court's ruling did not rest solely on the Executive Order's goals, but also on the adoption of those goals by the Legislature, expert state agencies, *and even SANDAG itself.* Those adopted goals reflect the scientific underpinnings of California's long-term climate policy. (*Id.* at 14; see also *id.* at 21, fn. 11 [describing how SANDAG's own Climate Action Strategy recognizes that the region must "do[] its share [to] achiev[e] the 2050 greenhouse gas reduction level"].) The court noted SANDAG's "discretion to select the criteria it uses to determine the significance of the transportation plan's impacts." (Op. at 19.) However, the court emphasized that SANDAG abused that discretion by preparing what the court termed a "fundamentally misleading" EIR. (*Id.* at 18, 19.) The court also rejected the notion that its ruling would impermissibly expand CEQA, holding that the statute explicitly requires an agency to disclose a project's long-term impacts. (*Id.* at 20, fn. 9 [citing § 21083, subd. (b)(1), Guidelines § 15065, subd. (a)(2)].)

Finally, the court clarified that its ruling did not require SANDAG to *achieve* the Executive Order's 2050 target. Rather, the court's concern arose from "the EIR's failure to recognize, much less analyze and attempt to mitigate, the conflict between the transportation plan's long-term

greenhouse gas emissions increase and the state climate policy goal, reflected in the Executive Order, of long-term emissions reductions." (Op. at 16, fn. 6.) As the court noted, SANDAG "could have reasonably analyzed" the conflict, especially when its own Climate Action Strategy had already identified emissions reductions necessary for the region to meet its share of the Executive Order's goals. (*Id.* at 15-16.)[5]

Justice Benke dissented. She wrote that the court should have been more deferential in reviewing SANDAG's EIR (Dissent at 8-9) and that the Governor lacked the authority to unilaterally impose a threshold of significance through an Executive Order (*id.* at 2-3). However, the dissent did not address SANDAG's endorsement of the Executive Order's goals in its own Climate Action Strategy.

C. This Court Granted Review of One Issue.

SANDAG petitioned this Court for review of all issues decided by the Court of Appeal. This Court, however, granted review only on a single question: whether an EIR for a regional transportation plan must analyze

[5] The court also ruled that SANDAG failed to adopt feasible mitigation to lessen the Plan's significant climate impacts (Op. at 26) and failed to analyze an alternative that would reduce the number of miles people drive (*id.* at 30-31). Additionally, it ruled that the EIR did not: (1) describe residents' exposure to existing, poor air quality, (2) correlate Plan-related emissions of toxic air pollutants with resulting health impacts, or (3) adopt legally adequate mitigation for the Plan's significant air quality impacts. (*Id.* at 32-41.) Lastly, it held that the EIR failed to accurately analyze the Plan's impacts on farmland. (*Id.* at 42-44.) This Court's statement limiting its review to only one issue does not affect these other rulings.

the plan's consistency with the Executive Order's greenhouse gas reduction goals.

STANDARD OF REVIEW

CEQA's dual standard of review is well-settled. When reviewing an agency's compliance with the statute, "a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 ("*Vineyard*").) Courts review an agency's "primarily factual" determinations for substantial evidence. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 457 ("*Neighbors*").) In contrast, they review de novo an agency's legal determinations, including its interpretation of CEQA's requirements. (*Vineyard*, 40 Cal.4th at 427, 435; *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 355-56, 365-66.)

SANDAG characterizes this case as involving a factual dispute over "methodology" that should be reviewed for substantial evidence. (OB at 19-21.) However, SANDAG's decision to omit analysis of its Plan's consistency with state climate policy was based on *legal* determinations, not factual ones. As the EIR explains, SANDAG concluded there was "*no legal requirement* to use [the Executive Order] as a threshold of significance" because SANDAG did not view it as an "adopted [greenhouse

gas] reduction plan within the meaning of CEQA Guidelines 15064.4(b)(2) [*sic*]." (AR8b:3769, 4432 (emphasis added); see also, e.g., AR8b:3767, 4431 ["the 2050 RTP/SCS emissions reductions are not legally required to be consistent with" the Executive Order's 2050 target]; AR8b:3770, 4433 ["an executive order has no binding legal effect on agencies and personnel outside of the Governor's chain of command"].)

SANDAG's interpretation of CEQA's requirements is a purely legal judgment that this Court must review de novo. (*City of Marina, supra*, 39 Cal.4th at pp. 355-56; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1207-08.) As this Court has explained, courts do not defer to an agency's interpretation of a statute, or of regulations that the agency did not itself adopt; rather, questions about the "statute's legal meaning and effect [are] questions lying within the constitutional domain of the courts." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11.) Accordingly, legal judgments concerning the required scope of CEQA analysis are "predominantly procedural" decisions and are reviewed de novo. (See *Ebbetts Pass Forest Watch v. Cal. Dept. of Forestry and Fire Protection* (2008) 43 Cal.4th 936, 949, 954.)

SANDAG advances a different rationale—that it decided to ignore the Executive Order based on factual rather than legal judgments—in this Court. (OB at 30 [claiming SANDAG used its "scientific and technical

expertise" in rejecting analysis of the Executive Order], 35-38 [asserting analysis would be too complicated].) But belated justifications developed in litigation are unavailing. It is a bedrock principle of administrative law that "courts may not accept appellate counsel's *post hoc* rationalizations for agency action. [Citations.] [A]n agency's action must be upheld, if at all, on the basis articulated by the agency itself." (*Motor Vehicle Manufacturers Assn. v. State Farm Mutual Automobile Ins. Co.* (1983) 463 U.S. 29, 50; accord *S. Cal. Edison Co. v. Pub. Utilities Com.* (2000) 85 Cal.App.4th 1086, 1111.)

Nor is this a case where an agency "include[d] the relevant information, but the *adequacy* of the information is disputed." (OB at 20 [quoting *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 12].) Rather, SANDAG omitted *any* analysis of whether its Plan is consistent with the long-term greenhouse gas reduction targets embedded in both state policy and its own Climate Action Strategy. Where an EIR omits relevant information and thus precludes informed decision-making, courts determine, as a legal matter, whether the omission violated CEQA's disclosure requirements. (*Assn. of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392 [substantial evidence standard does not apply to claims "that information has been omitted from an EIR"].)

SANDAG's fallback argument that its EIR should survive de novo review because this Court cannot impose any "additional" requirements not already stated in CEQA (OB at 22) merely begs the very question at issue here: whether CEQA requires analysis of a regional transportation plan's consistency with the scientifically derived, long-term greenhouse gas reduction targets first articulated in Executive Order S-3-05 and subsequently used as the driver of California climate policy. As explained below, requiring this analysis would effectuate CEQA's existing provisions, not expand on them.

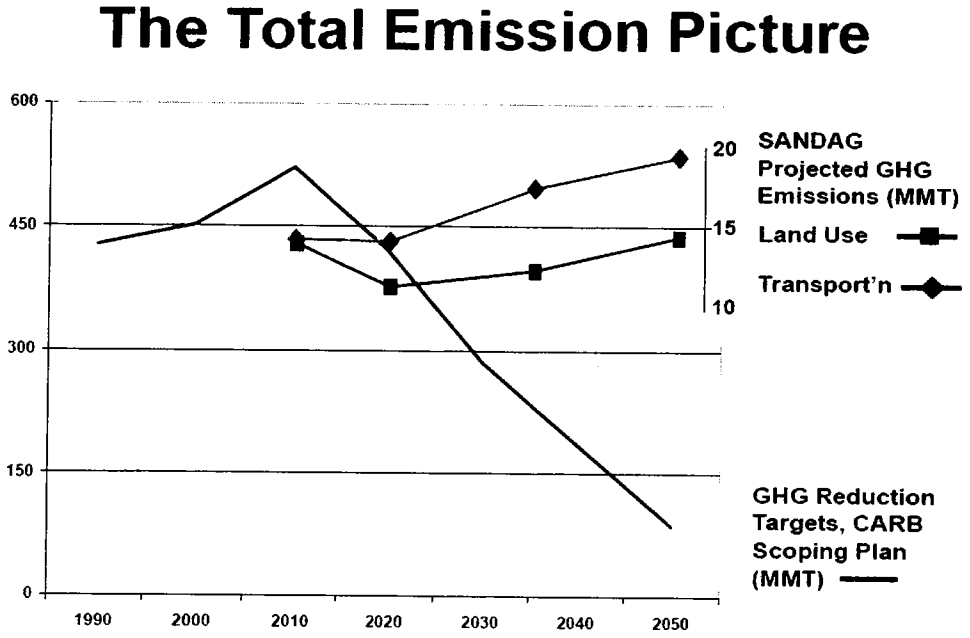
Although this Court should apply de novo review for the reasons stated above, SANDAG's EIR also fails under the substantial evidence standard. "Substantial evidence" is evidence "reasonable in nature, credible, and of solid value, evidence that a reasonable mind might accept as adequate to support a conclusion." (*American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1070.) Here, no credible evidence, let alone substantial evidence, supports SANDAG's refusal to analyze the Plan's inconsistency with California's science-based, long-term emissions reduction goals simply because those goals were identified in an Executive Order. On the contrary, as the Court of Appeal found, SANDAG's decision to omit this analysis resulted in a misleading EIR—one that "deprived the public and

decision makers of relevant information about the transportation plan's environmental consequences." (Op. at 15.)

ARGUMENT

I. SANDAG's Incomplete and Misleading EIR Fails to Fulfill CEQA's Fundamental Purposes.

Under SANDAG's Plan, greenhouse gas emissions will decline somewhat through 2020 but then begin to rise again until they exceed current emission levels by 2050. (AR8a:2572, 2577-78; AR8b:3820-21, 4435; 190a:13091.) This is the same time period during which undisputed science—reflected in both the Executive Order and SANDAG's own Climate Action Strategy—dictates that emissions must decline sharply to help avoid the most serious effects of climate change. (See OB at 7; AR216:17627.) Yet SANDAG stubbornly refused to address this inconsistency in its EIR, even after members of the public presented graphic illustrations of this sharp dichotomy:



(AR185:12684.) Instead, SANDAG erroneously concluded that it bore no legal responsibility to address the state's reduction goals because they were articulated in an Executive Order. SANDAG's omission produced an incomplete and prejudicially misleading EIR.

A. CEQA Requires Accurate, Complete, and Good-Faith Disclosure of a Project's Long-Term Physical Impact on the Environment.

As this Court has recognized, an EIR serves as an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.'" (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) An EIR is also "a document of accountability": it enables the public not only to know and understand the basis on which officials approve or reject environmentally significant

projects, but also to "respond accordingly to action with which it disagrees." (*Ibid.*) In this sense, the "EIR process protects not only the environment but also informed self-government." (*Ibid.*)

An EIR must set forth facts and analysis, not just an agency's conclusions and opinions. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.) Moreover, it must present the most accurate picture possible of a project's impacts. (See *Neighbors*, *supra*, 57 Cal.4th at p. 449.) To this end, an agency "must use its best efforts to find out and disclose all that it reasonably can." (Guidelines § 15144.) Although an EIR need not be perfect, it nonetheless must reflect "adequacy, completeness, and a good faith effort at full disclosure." (Guidelines § 15151.) An analysis that misleads the public and decision-makers as to the nature or scale of environmental impacts directly contravenes CEQA and fails as a matter of law. (See *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322.)

CEQA analysis focuses on actual changes to the physical environment. (§§ 21065 [defining "project" as an activity that may cause either a direct or an indirect "physical change in the environment"]; 21068 [defining "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in the environment"]; Guidelines § 15064, subd. (d) [requiring lead agency to consider direct and indirect "physical changes in the environment" in evaluating significance].)

Furthermore, CEQA requires analysis of both short-term and long-term environmental impacts. (§ 21083, subd (b); Guidelines § 15126.2, subd. (a); see also, e.g., *Vineyard, supra*, 40 Cal.4th at p. 431 [holding that adequate analysis of water supply for a long-term project "cannot be limited to . . . the first stage or a few years"]; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195 [same].)

In evaluating these environmental changes, an agency must rely on scientific and factual data to the extent possible. (Guidelines §§ 15064, subd. (b), 15064.4, subd. (a), 15142, 15148; see also, e.g., *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1367-68, 1370-71 ("*Berkeley Jets*") [finding agency's failure to use available scientific information, despite lack of universally accepted methodology, was not reasoned, good-faith effort to inform decision makers and public about increases in toxic air contaminant emissions]; *Californians for Alternatives to Toxics v. Dept. of Food and Agriculture* (2005) 136 Cal.App.4th 1, 15-17 ("*CATS*") [faulting EIR discussing emergency pesticide regulations for failing to consider available toxicology data].)

Finally, an EIR must discuss any "inconsistencies" between a project and applicable general, specific, and regional plans, including "plans for the reduction of greenhouse gas emissions." (Guidelines § 15125, subd. (d).) However, an EIR ultimately "must be judged on its fulfillment of CEQA's

mandates, not those of other statutes," unless CEQA itself provides otherwise. (*Neighbors*, *supra*, 57 Cal.4th at p. 462.)

B. SANDAG's Decision to Omit Analysis of Its Plan's Inconsistency with Long-Term Targets for Emissions Reduction Resulted in a Misleading and Incomplete EIR.

SANDAG's EIR fails to fulfill CEQA's requirements. Rather than assessing the Plan's impacts over its entire 40-year term, the EIR cuts off meaningful analysis after 2020. Rather than basing its climate analysis on the best available scientific information, the EIR declines to evaluate the Plan's upward emissions trajectory against California's scientifically derived goals for reducing those emissions. And rather than acknowledging the Plan's stark inconsistency with those goals, the EIR misleads readers by asserting that the Plan will actually advance state climate policy.

SANDAG emphasizes its use of three different "significance criteria" in discussing the Plan's climate impacts. (AR8a:2567.) But the issue is not SANDAG's choice of criteria; rather, it is the agency's complete failure to assess the Plan's actual long-term consequences against any scientifically relevant benchmark. The EIR thus masks the Plan's true impacts, thwarting meaningful comment and informed decision-making.

1. The EIR's "Existing Conditions" Comparison Obscures the Plan's Impacts.

SANDAG's EIR first compares projected Plan emissions in 2020, 2035, and 2050 to regional land use and transportation emissions in 2010, which totaled 28.84 million metric tons carbon dioxide-equivalent ("MMT CO_2e"). (AR8a:2556.) Although 2020 emissions would remain below 2010 levels (AR8a:2572), emissions would begin to rise again thereafter, exceeding 2010 levels by about 1.34 MMT CO_2e (4.6 percent) in 2035 and 4.81 MMT CO_2e (16.7 percent) in 2050. (See AR8a:2575 [projecting 2035 emissions of 30.18 million metric tons CO_2e], 2578 [projecting 2050 emissions of 33.65 million metric tons CO_2e].) On this basis, SANDAG found the Plan's 2035 and 2050 emissions significant. (*Ibid.*)

SANDAG's legal decision not to address the Executive Order, however, deprived the EIR's readers of a scientifically meaningful context for understanding the true scale of the Plan's 2050 emissions. Because greenhouse gases accumulate and remain in the atmosphere over long periods, emissions cannot remain constant through mid-century but must decline along the trajectory outlined in the Executive Order to stabilize the climate and avoid serious, adverse global warming effects. SANDAG's EIR does not include *any* regional emissions target for 2050 that even generally reflects the declining emissions trajectory underlying California climate policy; rather, it waited until the very day it approved the Plan to

disclose a rough regional target in a staff memorandum. (AR14:4513-14.) The EIR thus never gave decision-makers or the public any basis for understanding that the Plan's 2050 emissions would be starkly inconsistent with California's long-term climate stabilization goals. Indeed, the Plan's 2050 emissions would exceed the rough regional figure in SANDAG's staff memorandum by *nearly 700 percent.* (Compare AR:8a:2578 [estimating 2050 land use and transportation emissions of 33.65 MMT CO_2e] with AR14:4514 [SANDAG staff memo stating that "[t]he EO S-3-05 target for 2050 . . . would require land use and transportation emissions to equal 5.02 MMT CO_2e"].)

As a result, the EIR's "existing conditions" analysis hides the Plan's climate impacts. Although SANDAG concluded the impacts were significant and unavoidable, it unlawfully failed to disclose their true extent or severity, or to place them in a meaningful environmental context. (*Berkeley Jets*, *supra*, 91 Cal.App.4th at pp. 1370-71 [holding EIR inadequate where agency declared health effects significant and unavoidable without determining extent of harm]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123 [holding EIR inadequate for concluding impacts of fugitive dust on vineyards were significant without disclosing how significant those impacts would be]; Guidelines § 15125, subd. (c) [EIR "must permit the significant effects of the project to be considered in the full environmental context"];

Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4th 859, 875 [invalidating EIR for water diversion project because its incomplete description of the project's environmental setting "fail[ed] to set the stage for a discussion of the cumulative impact"].)

2. The EIR's SB 375 Analysis Masks the Plan's Rising Emissions Trajectory.

SANDAG next considered whether the Plan's per capita emissions would comply with regional targets established under SB 375 for 2020 and 2035. (AR8a:2567). The EIR, however, again omits information critical to fulfilling CEQA's mandates. After initial declines due primarily to the recession (AR190a:13156), per capita emissions under the Plan would start to rise again after 2020 and continue to rise through 2050. (AR8b:4435.) By discussing only whether per capita emissions met SB 375's discrete 2020 and 2035 targets, the EIR obscures the Plan's longer-term adverse environmental consequences. (See AR8a:2581 [stating only that "[b]ecause ARB has not developed a target for 2050, no analysis is provided for that year"].)

Notwithstanding its technical compliance with SB 375, the Plan's rising long-term per capita emissions are contrary to climate science and policy. As CARB staff explained in reviewing SANDAG's draft Plan,

> [a]lthough the staff review shows that the draft SCS would meet ARB targets, the trend in per capita GHG emissions is unexpected. The San Diego SCS would achieve double the 2020 target and just meet the target in 2035. During the

> target setting process, including in meetings of ARB's Regional Targets Advisory Committee, there was an expectation that the benefits of an SCS would increase with time given the nature of land use patterns and transportation systems. ARB set regional targets with that expectation.

(SAR344:30143; *see also id.* at 30144, 30188-89.) The EIR's discussion of the Plan's nominal compliance with SB 375's near-term targets therefore fails to provide the public and decision-makers with the information necessary to understand the Plan's long-term environmental consequences.

CEQA requires this information. (§ 21001, subd. (d) ["the long-term protection of the environment . . . shall be the guiding criterion in public decisions"]; § 21083, subd. (b)(1) [agencies must analyze both short-term and long-term environmental goals]; Guidelines § 15126.2, subd. (a) [EIR must give "due consideration to both . . . short-term and long-term effects"].) The EIR's narrow focus on the Plan's compliance with SB 375's targets misleadingly minimizes the effects of its long-term per capita emissions increase.

3. The EIR's Analysis of Consistency with the AB 32 Scoping Plan and SANDAG's Climate Action Strategy Ignores These Plans' Incorporation of the Executive Order's Goals.

The EIR purports to analyze the Plan's consistency with both the AB 32 Scoping Plan and SANDAG's own Climate Action Strategy. (AR8a:2581.) Again, however, the EIR misleadingly omits any discussion of the Plan's inconsistency with provisions in both documents that

explicitly incorporate the Executive Order's 2050 goals. SANDAG thus avoided confronting the real environmental consequences of its Plan.

(a) Scoping Plan.

The Scoping Plan not only repeatedly emphasizes the Executive Order's scientific basis (see, e.g., AR320:27977, 27864), but also incorporates its specific goals, quantifying both the state's 2050 target (85 MMT CO_2e) and an interim 2030 emissions target (less than 300 MMT CO_2e). (AR320:27977-78.) The Scoping Plan also calculates overall and per capita annual rates of reduction (four percent and slightly less than five percent per year, respectively) necessary to maintain linear progress toward the Executive Order's 2050 goal. (AR320:27978.)

Additionally, the Scoping Plan outlines specific policy measures necessary to meet the 2030 goal—and thus stay on track toward the 2050 target. Several of those measures relate directly to SANDAG's Plan: "[a]chieving a 40 percent fleet-wide passenger vehicle reduction by 2030"; "[i]ncreasing energy efficiency and green building efforts so that the savings achieved in the 2020 to 2030 timeframe are approximately double those accomplished in 2020"; and "[c]ontinuing to implement sound land use and transportation policies to lower [vehicle miles traveled] and shift travel modes." (AR320:27979.) By 2030, moreover, "[r]egional land use and transportation strategies would grow in importance" and would need to "reverse the trend of per-capita vehicle miles traveled." (AR320:27980.)

The Scoping Plan's 2020 target is thus only the first step in a long-term effort guided by the Executive Order's goals. (AR320:27851 [assessing "how well the recommended measures put California on the long-term reduction trajectory needed to do our part to stabilize the global climate"], 27875 [finding 2020 measures "put the state on a path to meet the long-term 2050 goal of reducing California's greenhouse gas emissions to 80 percent below 1990 levels"], 27882 [stating measures in plan were designed "to initiate the transformations required to achieve the 2050 target"]; accord *Assn. of Irritated Residents v. Cal. Air Resources Bd.* (2012) 206 Cal.App.4th 1487, 1496.)

SANDAG's EIR mentions none of these provisions of the Scoping Plan, much less assesses whether the emissions trajectory of its own Plan conflicts with them. (See AR8a:2561-62, 2581.) Instead, the EIR flatly declines to analyze the RTP/SCS's long-term inconsistency with the Scoping Plan, misleadingly claiming that "[t]he Scoping Plan does not have targets established beyond 2020." (AR8a:2586, 2588; see also AR3:20 [findings of approval stating that "AB 32 does not contain emission reduction targets for 2035 and 2050"].) In responses to comments on the EIR, SANDAG notes in passing that the Scoping Plan "examine[d] the policies needed to keep us on track through at least 2030." (AR8b:3767.) Yet SANDAG completely fails to address the Scoping Plan's 2030 interim goal, the annual emission reductions needed to meet it, the numerous

policies directly relevant to SANDAG's Plan, or the overall goal of continued reductions through 2050 in accordance with the Executive Order.

CEQA required good-faith disclosure and analysis of the stark conflict between rising emissions under SANDAG's Plan and the state's long-term policy of reducing emissions. As Plaintiffs and others pointed out during the administrative process, the Scoping Plan contains a great deal of relevant post-2020 detail that would have enabled analysis of this inconsistency. SANDAG failed to acknowledge any of this information in the EIR, and thus misled both its own decision-makers and the public.

(b) Climate Action Strategy.

The EIR also fails to acknowledge that SANDAG's own Climate Action Strategy both recognizes the Executive Order's scientific basis and expressly adopts a policy of making progress toward the Order's 2050 goal. According to the Strategy, "[c]limate science tells us that all nations must find ways to decrease their emissions by 50 to 95 percent below today's levels by the middle of the century, with high-emitting developed nations like ours needing to make the steepest cuts." (AR216:17623.) To this end, "Governor Schwarzenegger's Executive Order S-3-05 establishes a long-term climate goal for the state of reducing emissions 80 percent below the 1990 level by 2050 . . . *based on the scientifically-supported level of emissions reduction* needed to avoid significant disruption of the climate." (AR216:17627 (emphasis added).)

Consistent with its recognition that the Executive Order "is used as the long-term driver for state climate change policy development" (*ibid.*), SANDAG's Strategy outlines "[c]onsiderations for evaluating policy measures includ[ing]: (1) their effectiveness in helping to achieve short-term (2020) and longer-term (2035 and 2050) goals for greenhouse gas emission reduction . . . ." (AR216:17624.) The Strategy even calculates rough regional greenhouse gas targets, consistent with the Executive Order trajectory, for every year through 2050. (AR216:17628 [Fig. 3-1]). The Strategy then explicitly concludes 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." (AR216:17629.)

The EIR ignores all of this. Instead, it misleadingly concludes that SANDAG's Plan would be consistent with the Strategy in 2035 and 2050, based on a generic discussion of various broad policies outlined therein (such as promoting energy efficiency, reducing energy demand, reducing driving, and minimizing emissions from transportation). (See AR8a:2585-86 [concluding Plan would encourage "compact development" and thus "would be aligned with the [Strategy] and help to implement the goals and policies within the [Strategy]" as of 2035]; 2588 [concluding Plan's "focus on transit and compact development . . . [is] aligned with the policies outlined in the [Strategy] and . . . would not impede the [Strategy]" as of 2050].) The EIR never acknowledges that the "policies outlined" in the

Strategy explicitly call for making progress toward the Executive Order's 2050 goal. (AR216:17624, 17629.)

As a result of these omissions, the EIR unlawfully avoids acknowledging the severity of the Plan's long-term climate impacts. SANDAG not only thwarted disclosure of the Plan's inconsistency with state climate policy, as embodied in the Executive Order and the AB 32 Scoping Plan, but also frustrated analysis of the Plan's inconsistency with SANDAG's *own* long-term climate policy, as expressed in its Climate Action Strategy. As the Court of Appeal found, SANDAG's EIR misled decision-makers and the public by wrongly suggesting that the 2050 Plan would actually advance state climate policy. The court stated: "By disregarding the Executive Order's overarching goal of ongoing emissions reductions, the EIR's analysis of the transportation plan's greenhouse gas emissions makes 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 emissions directly contravenes it." (Op. at 19.)

SANDAG's obfuscation was unquestionably prejudicial. It not only deprived readers of information essential to a meaningful assessment of the Plan's consequences, but also prevented SANDAG's full consideration of feasible mitigation measures and alternative courses of action. (*Ibid.* [citing *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 658].)

II. SANDAG's Excuses for Omitting the Required Analysis Are Unavailing.

A. CEQA Offers No "Safe Harbor" for a Fundamentally Misleading EIR.

SANDAG argues that because the EIR's analysis roughly tracked the categories outlined in Guidelines section 15064.4, subdivision (b), any additional analysis would exceed CEQA's express requirements, and thus contradict the "safe harbor" provided by section 21083.1. (OB at 26-29.) The argument rests on several basic misconceptions, and therefore fails.

1. SANDAG's Purported Compliance with One Guideline Section Cannot Excuse the EIR's Omission of Crucial Information.

SANDAG apparently assumes that alleged compliance with one Guidelines section absolves its EIR from compliance with any other provision of CEQA. This is plainly wrong. CEQA's "safe harbor" requires compliance with *all* of CEQA's "explicitly stated" requirements. (§ 21083.1.)

Here, SANDAG's EIR violated a number of CEQA's explicit requirements. For example, SANDAG failed to exercise "careful judgment" based on "scientific and factual data" relevant to the state's long-term climate goals. (Guidelines §§ 15064, subd. (b), 15064.4, subd. (a).) SANDAG also failed to provide any scientifically relevant context for understanding the Plan's long-term consequences. (§§ 21001, subd. (d) [agencies must "[e]nsure that the long-term protection of the environment"

is "the guiding criterion in public decisions"], 21083, subd. (b)(1) [mandating a finding of significance where a project "has the potential . . . to achieve short-term, to the disadvantage of long-term, environmental goals"]; Guidelines § 15126.2, subd. (a) [EIR shall "give due consideration to . . . long-term effects"].) And most critically, SANDAG's omission of any analysis of its Plan's inconsistency with state climate policy produced a misleading EIR, a result that this Court has characterized as "at direct odds with CEQA's intent." (*Communities for a Better Environment*, *supra*, 48 Cal.4th at p. 322.) There is no "safe harbor" for an EIR that, like this one, squarely undercuts the statute's express requirements.

Finally, SANDAG's argument ignores the actual language of Guidelines section 15064.4. As the Court of Appeal held, because the list of factors in subdivision (b) of that section is "not exclusive," agencies must consider other factors where necessary to ensure compliance with the statute. (Op. at 18 & fn. 8.)

2. CEQA's Lack of Explicit Reference to the Executive Order Is Irrelevant.

SANDAG also apparently assumes that unless some CEQA provision explicitly mentions the Executive Order, SANDAG need not analyze it. This assumption, however, fails to differentiate between the Executive Order and its underlying scientific basis, which SANDAG now concedes. (OB at 7.) Under CEQA, this undisputed science is clearly

relevant to the environmental analysis, regardless of the type of document that conveys it.

SANDAG similarly misreads the statutory provision that authorized adoption of Guidelines section 15064.4. (See OB at 24.) Section 21083.05 did not mention the Executive Order, AB 32, or any other specific document or criteria by name; rather, it required OPR and the Resources Agency generally to "incorporate new information or criteria established" by CARB pursuant to AB 32 into the Guidelines. The Scoping Plan's express confirmation of the Executive Order's scientific basis, and its incorporation of the 2050 goal, "established" this kind of "information or criteria." Whether or not Guidelines section 15064.4 mentioned the Executive Order specifically, requiring consideration of the scientific information that it embodies is entirely consistent with the authorizing statute.

3. This Court's Decision in *Berkeley Hillside* Is Inapposite.

This Court's decision in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086 does not require application of the "safe harbor" provided by section 21083.1 here. Applying the "generally accepted rules of statutory interpretation" prescribed by section 21083.1, the Court declined to find an exception to one of CEQA's categorical exemptions applicable where the plaintiff had failed to demonstrate that the

challenged project's potential to significantly impact the environment resulted from "unusual circumstances." (*Id.* at pp. 1097-98 [discussing Guidelines § 15300.2, subd. (c)].) The Court concluded that requiring a project proponent to prepare an EIR for an otherwise categorically exempt project in the absence of "unusual circumstances" would add a new requirement beyond those explicitly stated in CEQA and the Guidelines. (*Id.* at p. 1107.)

Here, in contrast, those same "generally accepted rules of statutory interpretation" preclude applying the "safe harbor." The "overarching principle" of statutory interpretation is to discern and give effect to "the intent of the enacting body." (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 186.) Statutory language is not read "in isolation," but "in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." (*Ibid.* [quotation omitted]; *Prospect Medical Group, Inc. v. Northridge Emergency Medical Group* (2009) 45 Cal.4th 497, 506.) Even assuming SANDAG's "significance criteria" follow Guidelines section 15064.4, in this instance its decision to omit any analysis of its Plan's conflict with the state's long-term emissions reduction policy resulted in an incomplete and misleading EIR, "a result at direct odds with CEQA's intent." (*Communities for a Better Environment, supra*, 48 Cal.4th at p. 322.) Applying the "safe harbor" provision here would frustrate rather than

effectuate the intent of CEQA as a whole, and thus would contradict the "generally accepted rules of statutory interpretation" incorporated into section 21083.1.

Accordingly, unlike *Berkeley Hillside*, this case does not involve application of any "new" CEQA requirement. Instead, it involves an EIR that thwarted CEQA's foundational requirement of good-faith and complete disclosure of a project's actual physical environmental consequences.

B. Substantial Evidence Does Not Support SANDAG's Decision to Omit Analysis of Its Plan's Inconsistency with California's Long-Term Climate Goals.

SANDAG contends its EIR must be upheld because substantial evidence supported the "significance criteria" that it selected. (See OB at 29-32.) Again, SANDAG's decision not to evaluate its Plan's inconsistency with the state's long-term emissions reduction goals was based on legal error, and thus is reviewed de novo. But even under substantial evidence review, SANDAG's decision fails.

The Court of Appeal correctly concluded that SANDAG's "decision to omit an analysis" of its Plan's consistency with the Executive Order trajectory was unsupported by substantial evidence because it "ignored" the Executive Order's scientific basis and foundational role in state climate policy. (Op. at 14.) SANDAG attempts to reframe the issue as one of agency discretion to select "significance thresholds." (See OB at 30-31). However, an agency cannot use a "significance threshold" to foreclose

consideration of significant effects or otherwise produce a misleading analysis. (Op. at 18-19; see *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

Nor does any other substantial evidence in the record support SANDAG's refusal to compare the Plan's long-term emissions increase with the state's long-term emissions reduction policy. SANDAG argues that it relied on "scientific and technical expertise" in choosing its significance criteria (OB at 30), but the portions of the record SANDAG cites do not relate to SANDAG's decision to omit analysis of its Plan's inconsistency with the state's long-term climate goals. The issue here is not the accuracy of SANDAG's emissions calculations (AR8b:3717-22), its modeling of emissions resulting from different transportation scenarios (AR87:7192-95), or its general growth forecasting models (AR225:17976-18049). None of these documents even mentions the Executive Order or California's long-term climate goals, much less supports SANDAG's refusal to fully analyze the Plan's long-term climate impacts. Similarly beside the point is SANDAG's argument that substantial evidence supports the Resources Agency's adoption of Guidelines section 15064.4, and CARB's adoption of AB 32 and SB 375 targets (OB at 29-30), as those enactments are not challenged here.

SANDAG claims "the almost unanimous weight of expert opinion from other sources" supports its decision, but this claim rests almost

entirely on inferences from what those "other sources" did *not* say. (OB at 31.)[6] For example, SANDAG contends that when the Resources Agency adopted Guidelines Section 15064.4, subdivision (b)(3), it "implicitly rejected" the Executive Order's targets by "advis[ing]" lead agencies to consider only greenhouse gas reduction plans that "have been vetted through a public review process and contain identifiable standards." (OB at 31.) This excuse is unavailing. As the Court of Appeal held, subdivision (b) of Guidelines section 15064.4 is both advisory and non-exclusive. (Op. at 18 & fn.8.) Moreover, SANDAG concluded that the AB 32 Scoping Plan and the Climate Action Strategy—both of which recognize the Executive Order's scientific bases and incorporate its emissions reduction goals—met the Guideline's "public review" and "identifiable standards" requirements. (See OB at 27-28.) SANDAG cannot have it both ways by claiming the Executive Order's goals were not "vetted" in a "public review" process, yet ignoring that those same goals are incorporated into two other documents that SANDAG determined met these criteria.

SANDAG also misconstrues the Resources Agency's Final Statement of Reasons accompanying Guidelines section 15064.4. The Agency plainly warned that "while subdivision (b) provides a list of factors

[6] SANDAG cites nothing in the record—either in the EIR text or responses to comments—indicating that it chose not to analyze consistency with the state's long-term climate goals based on "expert opinion" rather than on its own mistaken interpretation of CEQA's requirements. (AR8b:3768-69.)

that should be considered by public agencies in determining the significance of a project's GHG emissions, other factors can and should be considered as appropriate." (AR319:25850.) The Agency also emphasized that Guidelines section 15064.4 "does not alter the pre-existing rule under CEQA" that substantial evidence of an effect's significance must be considered "irrespective of whether an established threshold of significance has been met." (AR319:25852 [citing *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342; *Protect the Historic Amador Waterways, supra,* 116 Cal.App.4th at p. 1109].) Moreover, SANDAG's attempt to label the Executive Order's long-term goals as "purely aspirational" (OB at 30) contradicts its concession that those goals are grounded in the emissions reductions scientifically necessary to stabilize the climate (*id.* at 7). Accordingly, the Resources Agency's Statement of Reasons does not justify the analytic omissions in SANDAG's EIR.

Furthermore, SANDAG is simply wrong in claiming that CARB's "draft guidelines for CEQA review [did not recommend] use of the Order as a standard." (OB at 31 [citing AR320:27783-27804]). In fact, CARB's draft staff proposal explicitly references the Executive Order's 2050 target and confirms its consistency with the "scientific consensus" on "the reductions needed to stabilize" atmospheric greenhouse gas concentrations. The proposal also insists quite clearly that any CEQA significance threshold "must be sufficiently stringent to make substantial contributions

to . . . putting California on track to meet its interim (2020) *and long-term (2050)* emissions reduction targets." (AR320:27791-92 & fn.21 [emphasis added].) CARB's draft staff proposal thus expressly affirmed the importance of the Executive Order's long-term target in CEQA significance determinations.

Finally, SANDAG argues that a report prepared by the California Air Pollution Control Officers Association ("CAPCOA") recommended against using the Executive Order trajectory to assess CEQA significance due to "practical problems." (OB at 32.)[7] In fact, the CAPCOA report notes that using the Executive Order's 2050 goal rather than AB 32's 2020 target "may be more appropriate to address the long-term adverse impacts associated with global climate change." (AR319:26322.) Moreover, SANDAG's own Climate Action Strategy, which calculates rough regional targets consistent with the Executive Order's goal for *every* year through 2050 (AR216:17628 [Fig. 3-1]), directly addresses CAPCOA's concern about measuring progress toward these goals in "non-milestone years" (AR319:26322). Although CAPCOA notes that projecting long-term future inventories involves uncertainty (AR319:26325), drafting an EIR always "involves some degree of forecasting"; an agency need not "foresee[] the unforeseeable" but "must use its best efforts to find out and disclose all that

[7] Again, SANDAG cites nothing in the record showing its omission was motivated by "practical problems."

it reasonably can" (Guidelines § 15144). Indeed, the EIR modeled regional emissions inventories through 2050 notwithstanding such uncertainty. (See AR8a:2569, 2572, 2574-75, 2576-77 [Tables 4.8-7 through 4.8-12].) Although this modeling was done for the EIR's comparison to 2010 emissions, SANDAG has pointed to nothing in the record showing that it could not also have compared the modeled inventories to the Executive Order's (and Climate Action Strategy's) longer-term emissions reduction trajectory.

In short, even if SANDAG had omitted analysis of the Plan's inconsistency with California's long-term climate goals for practical rather than purely legal reasons, as it now claims, the record does not support its new excuses. On the contrary, such an analysis was not only feasible and practical, but also critical to informed decision-making about the Plan's long-term effects. The Court of Appeal correctly concluded that SANDAG's omissions "did not reflect a reasonable, good faith effort at full disclosure and [were] not supported by substantial evidence." (Op. at 14.)

C. An Agency's Discretion to Choose a "Threshold of Significance" Does Not Include Discretion to Produce a Misleading and Incomplete EIR.

SANDAG claims any requirement that it analyze its Plan's consistency with California's long-term climate goals would interfere with its discretion to adopt "thresholds of significance" (OB at 32-35). However, its plea for discretion is both overbroad and off-target.

SANDAG claims a "consistency" analysis is "functionally equivalent to a threshold of significance." (OB at 32.) This premise—effectively the linchpin of SANDAG's argument—is simply wrong. A "threshold of significance" is "an identifiable quantitative, qualitative, or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant." (Guidelines § 15064.7, subd. (a).) This definition appears in Article 5 of the CEQA Guidelines (commencing with section 15060), which is devoted to "preliminary" review of projects to determine whether an EIR must be prepared in the first instance. (See Guidelines § 15063.)

The "consistency analysis" at issue here, in contrast, concerns the thoroughness and accuracy of the EIR's assessment of the Plan's climate impacts. The question before this Court is not whether SANDAG had discretion to choose some threshold beyond which its Plan's impacts would be deemed significant. Rather, the question is whether SANDAG failed to provide information and analysis critical to understanding the full extent of those impacts. Once an EIR is prepared, it must set forth a complete, good-faith analysis of each significant impact, not just a bald conclusion regarding its significance. (Guidelines § 15151.) Accordingly, this case does not concern *whether* SANDAG properly found the climate impacts of its Plan significant; instead, it addresses the agency's failure to inform decision-makers and the public *how* significant those impacts will be.

(*Berkeley Jets*, *supra*, 91 Cal.App.4th at pp. 1370-71; *Galante Vineyards*, *supra*, 60 Cal.App.4th at p. 1123; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

SANDAG is similarly wrong in representing that Plaintiffs "have always argued that the Executive Order's 2050 target should be treated as a significance criterion." (OB at 33, fn. 7.) Rather, Plaintiffs have always argued that in failing to disclose its Plan's stark inconsistency with California's goal for long-term reductions in greenhouse gas emissions, SANDAG thwarted CEQA's fundamental informational purpose.

Even if SANDAG's characterization of the question were correct, its plea for discretion would fail. Merely choosing and applying a significance threshold does not automatically fulfill an agency's disclosure and analysis responsibilities under CEQA. (See *Protect the Historic Amador Waterways*, *supra*, 116 Cal.App.4th at p. 1109; *Mejia*, *supra*, 130 Cal.App.4th at p. 342). Whatever discretion SANDAG may have to select significance thresholds, it "abuses its discretion if it exercises it in a manner that causes [its] EIR's analysis to be misleading or without informational value." (Op. at 19.)

The cases SANDAG cites in general support of its argument are inapposite. The present case does not raise any question as to whether agencies have discretion to deviate from the "checklist" in Guidelines Appendix G. (See *Rominger v. County of Colusa* (2014) 229 Cal.App.4th

690, 716-17; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) Likewise, this case does not involve an agency's decision to forgo supplemental environmental review in light of new information about climate change. (*Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 806-08.)[8]

Nor do the greenhouse gas cases cited by SANDAG support its appeal for near-limitless discretion. In *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327 ("*CREED*"), for example, the Court of Appeal rejected plaintiffs' claim that a city should have found greenhouse gas emissions from a remodeled Target store significant using a different threshold. (*Id.* at 336-37.) The decision is inapposite. The issue here is not whether SANDAG should have applied a different threshold, but whether SANDAG produced a misleading EIR by not disclosing how significant the Plan's long-term impacts would be in relation to the scientifically determined targets of California climate policy.

SANDAG's reliance on *North Coast Rivers Alliance v. Marin Municipal Water Dist.* (2013) 216 Cal.App.4th 614 is similarly misplaced.

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[8] SANDAG also cites *Utility Consumers' Action Network v. Public Utilities Com.* (2010) 187 Cal.App.4th 688, but that decision did not address CEQA's requirements. (*Id.* at 693-94 [explaining that Supreme Court had exclusive jurisdiction over separate CEQA challenge and was holding challenge in abeyance pending resolution of "nonenvironmental" issues before Court of Appeal].)

That decision, which upheld the climate change analysis in an EIR for a desalination plant, did not involve a claim, as this case does, that the agency omitted analysis critical to meaningful disclosure of the project's long-term impacts. Rather, the primary issue was whether substantial evidence supported the EIR's conclusion that the project would not exceed particular significance thresholds. (See *id.* at 652.) The issue here, in contrast, is whether SANDAG incorrectly concluded that CEQA required no assessment of its Plan's long-term inconsistency with scientifically derived emissions reductions necessary to stabilize the climate.

D. The Analysis Requested Here—Which SANDAG Has Already Performed for its Next Regional Transportation Plan—Would Have Been Neither Speculative Nor Uncertain.

SANDAG protests that analysis of its Plan's inconsistency with California's long-term climate goals would be so speculative and uncertain as to be useless. (OB at 35-38.) But SANDAG's own actions belie this claim. In May 2015, SANDAG released a draft EIR for the next update to its Plan which conducts the very analysis that its brief in this Court claims would be impossible.[9] (See Decl. in Support of People's Motion for Judicial Notice, Ex. 1.) That SANDAG was actively preparing this analysis, while simultaneously telling this Court such an analysis "would

[9] Whether SANDAG's current EIR satisfies CEQA is outside the scope of this appeal, and Plaintiffs take no position on that question.

not benefit the public's understanding" and would "lead to guesswork and speculative predictions that are themselves misleading" (OB at 38), fatally undermines SANDAG's argument.[10]

SANDAG's "impossibility" claim also lacks support in the record here. Indeed, SANDAG's brief cites no record evidence supporting the claim; rather, it relies almost entirely on the dissenting opinion below. (OB at 35-38.) SANDAG's responses to comments on the EIR contain a couple of conclusory statements to the effect that its precise role in *achieving* the Executive Order's targets remains undefined. (See AR8b:3769, 4431.) But such statements are not factual evidence that it would have been impossible to disclose and assess the Plan's inconsistency with overall California climate policy. (See *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1050 [conclusions in responses to comments "must be supported by references to specific scientific and empirical evidence"].)

To the extent SANDAG argues that the lack of a region- and sector-specific "plan" for achieving the Executive Order's goals made it impossible to analyze its Plan's consistency with the Order's long-term trajectory (see OB at 35-36), this claim also fails. SANDAG found no "inherent incompatibility" when it measured its Plan's impacts against the

[10] Even if SANDAG does not believe CEQA requires this analysis, it could not lawfully have included the analysis in an EIR even on a voluntary basis if it thought the analysis would be speculative or uninformative. (See Guidelines § 15145.)

"broad statewide standards" of the Scoping Plan; its objection to assessing the Executive Order's statewide goals on this same ground lacks merit. (OB at 36-37.)

SANDAG readily could have undertaken a meaningful analysis in the EIR challenged here. SANDAG was able to project regional emissions from the land use and transportation sectors for 2020, 2035, and 2050 (see AR8a: 2569, 2572, 2574-75, 2576-77 [Tables 4.8-7 through 4.8-12]), and to calculate regional emissions from those same sectors for the 2005 baseline year. (AR8a:2581.) SANDAG could have estimated regional land use and transportation sector emissions in 1990, despite uncertainty in existing inventories, using CARB's "equivalent metric of 15 percent below 2005 GHG emissions." (*Ibid.*) Because SANDAG could have determined regional, sector-specific emissions in 1990, SANDAG also could have calculated regional, sector-specific goals representing an 80 percent reduction from 1990 levels and then compared them with projected 2050 emissions under the Plan. Even if goals calculated in this manner might not have been perfectly precise, they still would have meaningfully conveyed the Plan's inconsistency with climate science and long-term California policy—which the EIR completely fails to do.

Finally, SANDAG claims that analysis of long-term state climate goals "would be speculative and misleading" because "state mandates," scientific information, and technological developments could change in

ways unforeseeable today. (OB at 36-38.) This claim is specious. Plainly, potential future changes provide no excuse for entirely omitting analysis of currently available scientific data. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 96 [rapid developments in climate science and policy do not excuse failure to formulate legally adequate mitigation plan]; Guidelines § 15144 [agency must "use its best efforts to find out and disclose all that it reasonably can"].) Indeed, SANDAG's argument is sweepingly overbroad. If agencies could forgo analysis of environmental impacts based on their inability to predict what future scientists might find and legislators might do decades from now, CEQA would be deprived of much if not all of its force. Future developments cannot excuse SANDAG's failure to use information available today.

E. SANDAG's Focus on the Nature and Effect of Executive Orders Is Misplaced.

Contrary to SANDAG's claims (OB at 38-44), this case simply does not turn on the nature and effect of executive orders. Nor does it present any concerns regarding separation of powers. SANDAG, like the dissenting opinion from which it borrows heavily, advances a number of erroneous arguments in trying to convince this Court otherwise.

1. Whether the Executive Order Directly "Binds" SANDAG Is Irrelevant.

SANDAG claims that because the "Governor does not have the authority to legislate," the Executive Order "is not binding as to SANDAG." (OB at 39, 40.) But this is a red herring. Nobody contends that the Executive Order is "binding" on SANDAG in the sense that SANDAG must *comply* with the Order's greenhouse gas reduction targets. The majority opinion below made this amply clear:

> We do not intend to suggest the transportation plan must achieve the Executive Order's 2050 goal or any other specific numerical goal. Our concern is with the EIR's failure to recognize, much less analyze and attempt to mitigate, the conflict between the transportation plan's long-term greenhouse gas emissions increase and the state climate policy goal, reflected in the Executive Order, of long-term emissions reductions.

(Op. at 16, fn.6.)

Accordingly, much of SANDAG's disquisition on executive authority (OB at 39-41), including its reliance on *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, is entirely beside the point. *Professional Engineers* involved the Governor's attempt to directly and unilaterally modify the terms and conditions of state employment. (See *id.* at 1012.) Following a "close and careful interpretation of the applicable statutory provisions" (*id.* at 1024), this Court concluded that neither the California Constitution nor statutes

pertaining to terms and conditions of state employment authorized such unilateral action. (*Id.* at 1040-41.)

The present case, in contrast, does not raise any issue as to the Governor's authority to directly and unilaterally require SANDAG to *comply* with Executive Order S-3-05. Nor does anything in the Executive Order expressly dictate how local agencies must perform CEQA analysis. Rather, the Executive Order utilizes now-undisputed science to articulate a long-term greenhouse gas reduction goal for the state. CEQA itself, not anything in the Executive Order, required analysis of this goal in order to present a complete, good-faith, and scientifically accurate picture of the Plan's long-term climate impact.

2. SANDAG's Argument Would Transform CEQA into a Mere Checklist for Compliance with Other Laws.

SANDAG's argument that it may ignore the Executive Order presumes that CEQA does not require an agency to address an environmental factor unless and until the Legislature has expressly ratified it in some other piece of legislation. (See OB at 38-39 [claiming analysis not required because Executive Order's Goals "have never been enacted into law or adopted as a CEQA measuring standard by the Legislature or state agencies . . . charged with addressing climate change"].) The overreach in this argument is astounding: it strikes at the heart of CEQA by narrowing it to a mere checklist for compliance with other laws—a result

this and other courts have rejected. (*Neighbors, supra*, 57 Cal.4th at p. 462 [unless CEQA itself ties analysis to "planning done for a different purpose . . . , an EIR must be judged on its fulfillment of CEQA's mandates, not those of other statutes"]; *see also, e.g., Ebbetts Pass Forest Watch, supra*, 43 Cal.4th at 956-957; *CATS, supra*, 136 Cal.App.4th at pp. 16-17; *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 112-14.) CEQA required SANDAG to analyze its Plan's consistency with the Executive Order's goals because they were grounded in sound climate science. (See Guidelines § 15064, subd. (b).) That these goals were first articulated in an Executive Order, rather than a statute, is irrelevant.

SANDAG's argument also fails as a matter of basic statutory construction. Although the Legislature has adopted several statutes pertaining to climate change, it has not limited agencies' responsibilities under CEQA to the terms of those other statutes. If the Legislature wished to demonstrate a "special interest in retaining . . . ultimate control" (see *Professional Engineers, supra*, 50 Cal.4th at p. 1024) over how agencies analyze climate change under CEQA, it would have amended CEQA accordingly.

The Legislature did not do so. AB 32 did not change CEQA at all. SB 375 amended CEQA, but only to establish narrowly tailored exemptions for developments consistent with sustainable communities strategies (see

§§ 21155-21155.4, 21159.28); SB 375 did not address how agencies should evaluate RTPs under CEQA. SANDAG quotes the dissent's view that the Legislature "fully occupied this enormously complex field" by delegating responsibility for setting regional SB 375 targets to CARB (OB at 45-46; Dissent at 16]), but this delegation has nothing to do with CEQA. Indeed, the Legislature explicitly provided that neither AB 32 nor SB 375 affects public agency compliance with other laws. (Health & Saf. Code § 38592, subd. (b); Gov. Code § 65080, subd. (b)(2)(K).) SANDAG overlooks that CEQA itself—which *is* binding on regional agencies (§ 21063)—has independent legal force.

In short, SANDAG's argument proves too much. If SANDAG were correct, agencies could ignore any and all scientific information about the environment not expressly endorsed by legislation. Here, SANDAG refused analysis of a scientifically relevant, long-term goal simply because it was expressed in an Executive Order. But similar goals have been expressed in authoritative scientific articles and governmental studies. In 2006, for example, prominent scientists affiliated with the California Climate Change Center prepared a report summarizing current climate science and outlining potential adverse effects on California under different emissions scenarios. (AR320:27994-27809.) The report concluded that if California and other industrial economies were to follow the Executive Order's emissions reduction trajectory, such action would help "keep

temperatures from rising to the medium or higher (and possibly even the lower) warming ranges and thus avoid the most severe consequences of global warming." (*Id.* at 27808.)

Nobody would argue that these scientists could "legislate" policy for California. Their report, however, is an authoritative source of scientific and factual data that CEQA requires agencies to consider. (See, e.g., Guidelines §§ 15064, subd. (b) [significance determination must be "based to the extent possible on scientific and factual data"], 15142 [requiring "interdisciplinary approach which will ensure the integrated use of the natural and social sciences"], 15148 [EIR preparation "is dependent upon information from many sources, including . . . scientific documents relating to environmental features"].) An EIR must meaningfully disclose scientific facts, even if those facts happen to underlie goals stated in an Executive Order.

3. The Legislature Has Referenced and Adopted the Executive Order's Goals.

SANDAG errs in claiming that the Legislature has never recognized the validity of the Executive Order's goal for emission reductions. (*See* OB at 42, 44.) In fact, the Legislature has incorporated the Executive Order's long-term policy goals into subsequent legislation, including both AB 32 and SB 375. (See *Professional Engineers, supra*, 50 Cal.4th at pp. 1047-48

[Legislature ratified disputed executive action through budget legislation].) SANDAG's complaints about the Executive Order are thus unfounded.

(a) AB 32.

SANDAG notes that AB 32 did not specifically reference the Executive Order's 2050 *target*. (OB at 42-44.) As SANDAG admits (OB at 43), however, AB 32 expressly directs the "Climate Action Team established by the Governor to *coordinate the efforts set forth* under Executive Order S-3-05" to "continue its role in *coordinating overall climate policy*." (Health & Saf. Code § 38501, subd. (i) [emphasis added].) The "efforts set forth" under the Executive Order necessarily include "efforts" to achieve emissions reductions of 80 percent below 1990 levels by 2050. (AR319:27050 [tasking agencies with coordinating "efforts made to meet the targets" established in the Order].) The Legislature also delegated to these agencies the "role" of "coordinating overall climate policy" for the state. CARB, as a leading member of the team, explicitly incorporated the Executive Order's 2050 goal and acknowledged its scientific basis in the AB 32 Scoping Plan (see, e.g., AR320:27848, 27882), which the Legislature expressly directed CARB to prepare (Health & Saf. Code § 38561, subd. (a)).

Read in context, therefore, the Legislature's direction to CARB to "make recommendations" on "how to continue reductions of greenhouse gas emissions beyond 2020" (Health & Saf. Code § 38551, subd. (c))

reflects an understanding that reductions consistent with the "efforts set forth under Executive Order S-3-05" will be necessary. SANDAG's reading, not that of the Opinion below, would render AB 32's charge to CARB largely meaningless.

SANDAG claims a statute explicitly directing the California Department of Transportation to assess consistency with the Executive Order also shows that the 2050 "target was not made binding on agencies by AB 32." (OB at 43-44 [citing Gov. Code § 65072.2].) However, SANDAG misreads the statute. The Legislature adopted Government Code section 65072.2 in 2009 as part of Senate Bill 391. (Stats. 2009, ch. 585, § 5.) In section 1 of the bill, codified at Government Code section 14000.6, the Legislature found and declared both that (1) the Executive Order "identifies a greenhouse gas emissions limit of 80 percent below 1990 levels to be achieved by 2050" and (2) a "comprehensive, statewide, multimodal planning process" was needed "to meet objectives of mobility and congestion management consistent with the state's greenhouse gas emission limits . . . ." Sections 2 and 3 of the bill, codified at Government Code sections 65071 and 65072, required the Department to update the long-range California Transportation Plan, with particular attention to "policies and objectives . . . consistent with the legislative intent" expressed in Government Code section 14000.6. That intent expressly includes consistency with the Executive Order's "emissions limit[s]."

The Legislature thus not only expressed approval of the Executive Order's target, but also directed the Department of Transportation to assess consistency with that target in preparing a long-range transportation plan for the state. It would be utterly illogical to read this provision as *precluding* regional transportation agencies from undertaking the same analysis in their own long-range transportation planning—especially because the Department's plan must "incorporate the broad system concepts and strategies synthesized from the adopted regional transportation plans" under SB 375. (Gov. Code § 65072(b).)

Finally, the fact that the Legislature has considered requiring CARB to go beyond AB 32 by setting detailed emission reduction targets for 2050 (see OB at 45-46) in no way undercuts its prior affirmation of the Executive Order. Again, as SANDAG acknowledged in its Climate Action Strategy, the Executive Order's 2050 goal is "used as the long-term driver for state climate change policy development" because it is grounded in the science of climate stabilization. (AR216:17627.) The Legislature's continuing effort to develop that policy does not undermine the scientific basis or policy relevance of the Executive Order. Both are critical to analysis of the long-term effects of an RTP/SCS under CEQA.

(b) SB 375.

SANDAG notes that SB 375, like AB 32, does not specifically adopt the Executive Order's 2050 targets. (OB at 44-45.) Rather, SANDAG

argues, SB 375 built on AB 32 by exclusively delegating target-setting authority to CARB. (*Ibid.*) Because AB 32 actually did incorporate the Executive Order, however, SB 375's references to AB 32 necessarily do the same.

Moreover, nothing in SB 375 precludes CARB from looking to the Executive Order's goals in updating regional targets through 2050, as the statute requires. (Gov. Code § 65080, subd. (b)(2)(A)(iv).) Indeed, SB 375 established a Regional Targets Advisory Committee and empowered it to consider "any relevant issues" in recommending factors to be considered and methodologies to be used in setting targets. (Gov. Code § 65080, subd. (b)(2)(A)(i).) That committee's "members agreed that the targets need to be set to help put California on the path to achieving the state's ambitious climate goals by 2050." (Regional Targets Advisory Committee report at 26 [cited in OB at 30; available at http://www.arb.ca.gov/cc/sb375/rtac/report/092909/finalreport.pdf].) In context, the Legislature's delegation of target-setting authority to CARB assumed the continuing relevance of the Executive Order.

F. SANDAG's Failure to Analyze Its Plan's Inconsistency with Science-Based State Climate Goals Was Prejudicial.

After arguing that a "consistency analysis" would be impossible, SANDAG entirely reverses course. It contends that its error could not have been prejudicial because the analysis was so simple that any reader of the

EIR could have done it using mere arithmetic. (OB at 46-47.) This Court should reject SANDAG's attempt to have it both ways.

Almost by definition, an EIR that requires readers to "do the math" falls short of a good-faith effort at full disclosure. CEQA does not require this degree of self-help. (*See, e.g., Vineyard, supra*, 40 Cal.4th at p. 442 ["data in an EIR . . . must be presented in a manner calculated to adequately inform the public and decision makers"]; *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1390-1391 [members of the public "are not required to . . . make their own deductions regarding whether the project would significantly affect the existing environment"]; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 198-200.)

Here, SANDAG did not disclose any calculation as to what regional transportation and land use emissions consistent with the Executive Order's 2050 goals might look like until the day it approved the Plan, and it never conducted any actual analysis of what that calculation meant. (AR14:4513-14.) SANDAG's reliance on *Pfeiffer v. City of Sunnyvale* (2011) 200 Cal.App.4th 1552, is therefore misplaced. In the cited portion of that decision, the court upheld an EIR's actual "analysis" of "raw data," not an agency's decision to make an EIR's readers analyze the "raw data" themselves. (*Id.* at p. 1572.)

SANDAG's fall-back contention—that it discussed the Executive Order "at length in the EIR and elsewhere in the administrative record" (OB at 47)—borders on the cynical. The EIR discusses the Executive Order only to dismiss it. The cited portions of the record contain a one-sentence recitation of the 2050 target (AR8a:2561), a one-sentence dismissal of the Executive Order as "not constitut[ing] a 'plan' for GHG reduction" (AR8a:2581-82), and a few pages of legal conclusions as to why SANDAG chose *not* to address the long-term trajectory (AR8b:3766-70, 4436.) They also include a single bare calculation—prepared not for public review and comment in the EIR, but in a staff memo released on the day SANDAG approved the final Plan—of regional transportation and land use emissions roughly consistent with the Executive Order's 2050 goal. (AR14:4514.) Whatever its "length," SANDAG's discussion of the Executive Order in the EIR did nothing to inform the public and decision-makers about the Plan's stark inconsistency with the state's long-term climate goals.

SANDAG also claims its "primary reason" for not analyzing the Plan's consistency with the Executive Order trajectory was that the Order lacked "specificity" regarding how its goals could be achieved, rendering analysis uninformative. (OB at 47.) The cited portions of the record, however, directly contradict this claim. SANDAG's "primary reason" for refusing to analyze the Executive Order was its erroneous legal judgment

that neither CEQA nor the Order itself required such an analysis. (AR8b:3768-70.)

Finally, the cases SANDAG cites do not aid its argument. For example, *Save Cuyama Valley* found an EIR's "mislabeling of [an] impact as less than significant" non-prejudicial not because the impact was "fully discussed" (OB at 48), but because an enforceable condition of approval would have eliminated the impact entirely (213 Cal.App.4th at pp. 1073-74.) This Court's decision in *Neighbors* is also distinguishable. There, the omitted analysis—evaluation of a light-rail project's traffic impacts against existing traffic conditions—would not have produced "any substantially different information." (See *Neighbors*, *supra*, 57 Cal.4th at pp. 463-64.) Here, in contrast, a comparison between the Plan's rising long-term emissions and the science-based reductions needed to stabilize the climate would have produced not just "substantially different" information, but information absolutely critical to informed assessment of the Plan's consequences.

Omission of that information and analysis was prejudicial. Here, SANDAG told the public and decision-makers the Plan would have a significant effect only because it increased emissions over existing conditions. However, SANDAG omitted any analysis of long-term effects that was grounded, like the Executive Order, in standards relating to the actual physics of climate change. Had SANDAG disclosed the true extent

of its Plan's long-term impacts, it would have recognized that its Plan will seriously impede achievement of climate goals. As a result, the EIR's failures made it impossible for SANDAG to consider a full range of mitigation measures and alternatives that might have reduced the Plan's true impacts.

As the Court of Appeal correctly concluded, SANDAG's misleading analysis constituted prejudicial error.

CONCLUSION

In sum, SANDAG erred in certifying an EIR for its 2050 RTP/SCS that omitted any analysis of the Plan's stark inconsistency with the state's long-term goals for steep reductions in greenhouse gas emissions. Plaintiffs respectfully request that the Court affirm the decision of the Court of Appeal holding that SANDAG's EIR prejudicially violated CEQA, require SANDAG to decertify the deficient EIR, and remand the matter for further proceedings consistent with its decision.

DATED: July 10, 2015

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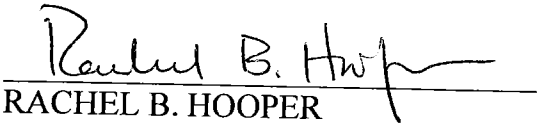
By: 
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690149.16

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(California Rules of Court 8.504(d)(1))

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PROOF OF SERVICE

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

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

On July 10, 2015, I served true copies of the following document(s) described as:

PLAINTIFFS' ANSWER BRIEF

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

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

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

Executed on July 10, 2015, at San Francisco, California.

Sean P. Mulligan

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