

**In the Supreme Court of the State of California**

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

Plaintiffs and Cross-Appellants,

v.

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

Defendants and Appellants.

Case No. S223603

SUPREME COURT  
FILED

JUL 13 2015

Frank A. McGuire Clerk

Deputy

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

**PEOPLE OF THE STATE OF CALIFORNIA'S  
MOTION FOR JUDICIAL NOTICE; PROPOSED ORDER**

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## MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rules 8.54, 8.252 and 8.520(g), the People of the State of California, ex rel. Kamala D. Harris, Attorney General (People) request that the Court in its discretion take judicial notice of the following, to the extent that these matters will assist the Court in ruling on the appeal:

(1) Chapter 4.8 of the currently circulating draft Environmental Impact Report for the San Diego Association of Governments' pending update to the 2050 Regional Transportation Plan and Sustainable Communities Strategy, entitled "Greenhouse Gas Emissions" (People's Decl., Ex. 1); and

(2) the California Environmental Quality Act as originally enacted in 1970 (Stats. 1970, ch. 1433, pp. 2780-2783) (People's Decl., Ex. 2).

A supporting declaration is being filed together with this motion, as required by rule 8.54(a)(2). A proposed order immediately follows the memorandum of points and authorities.

### MEMORANDUM OF POINTS AND AUTHORITIES

**"Greenhouse Gas Emissions" section of SANDAG's circulating draft EIR for the pending 2050 Plan update.** SANDAG has asserted in its opening brief that "[i]t would be practically impossible for agencies to be accountable for accomplishing the [Executive] Order's statewide goal for 2050 when the state has not figured out how to allocate that responsibility among its regions and the various emitters in those regions" and that discussing the Executive Order would be "speculative and potentially misleading . . ." (Appellants' Opening Brief (AOB) 36-38); see also *id.* at 4, 23, 47.) If the Court considers these extra-record assertions, which it should not, the People ask the Court to take judicial notice of the fact that SANDAG, in the draft EIR for its pending 2050 Plan update, in a

chapter entitled “Greenhouse Gas Emissions,” has added the following query to its list of “significance criteria”:

Whether the proposed Plan would be “[b]e inconsistent with the State’s ability to achieve the Executive Order [Nos.] B-30-15 and S-3-05 goals of reducing California’s GHG emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.

(People’s Decl., Ex. 1, p. 19.) It has also included a chart comparing the updated 2050 Plan’s emissions with reference points derived from Executive Order No. S-3-05. (*Id.* at p. 33; see also *id.* at pp. 35, 36.)

SANDAG released the draft EIR on May 21, 2015, well after the Court of Appeal’s decision, which was issued on December 16, 2014. (See Notice of Availability at <http://www.sdforward.com/pdfs/EIR/EIRnotice.pdf> [as of July 3, 2015]; see also, generally, <http://www.sdforward.com> [announcement of release of draft plan and draft EIR].)

This Court may take judicial notice of any matter specified in Evidence Code section 452, which includes official acts of public entities. (Evid. Code, §§ 452, subd. (c), 459, subd. (a); see *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 374, fn. 4 [transcripts of public hearings before San Francisco Airports Commission].) “Official acts include records, reports and orders of administrative agencies.” (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518.) The preparation and circulation of a draft EIR is an official act of a public agency (see, e.g., Public Resources Code, sections 21002.1, subd. (a), 21153; CEQA Guidelines sections 15362, 15105, 15120-15131) and thus may be judicially noticed.

The People seek judicial notice of the existence, content, and authenticity of the EIR excerpt, but not the truth of the matters contained in the excerpt. (See *People v. Castillo* (2010) 49 Cal.4th 145, 157 [noting that

taking judicial notice of existence, content, and authenticity of document does not establish truth of factual matters asserted in document].)

**CEQA as enacted in 1970.** The California Environmental Quality Act was enacted in 1970. (Stats. 1970, ch. 1433, pp. 2780-2783; People's Decl., Ex. 2.) These four fundamental pages set out the Act's original and now longstanding purposes, and may assist the Court as it considers the arguments advanced in this appeal. To take one example, CEQA from its outset has provided that:

The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(§ 21000, subd. (d), added by Stats. 1970, ch. 1433, p. 2780; People's Decl., Ex. 2, p. 2.) The People did not request that the trial court or the Court of Appeal take judicial notice of CEQA as enacted, but this Court may do so pursuant to Evidence Code section 452, subdivision (a), which allows notice of "[t]he decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state."

Dated: July 10, 2015

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Janill L. Richards", written in a cursive style.

JANILL L. RICHARDS  
Principal Deputy Solicitor General  
*Attorneys for People of the State of  
California, ex rel. Kamala D. Harris,  
Attorney General*

**PROPOSED ORDER**

The People's motion for judicial notice is granted. The Court takes judicial notice of the following:

(1) the existence and content of Chapter 4.8 of draft Environmental Impact Report for the San Diego Association of Governments' pending update to the 2050 Regional Transportation Plan and Sustainable Communities Strategy, entitled "Greenhouse Gas Emissions"; and

(2) the California Environmental Quality Act as originally enacted in 1970 (Stats. 1970, ch. 1433, pp. 2780-2783).

Dated: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice

**DECLARATION OF SERVICE BY FIRST CLASS AND ELECTRONIC MAIL**

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

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


I declare:

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

On July 10, 2015, I served the attached **PEOPLE OF THE STATE OF CALIFORNIA'S MOTION FOR JUDICIAL NOTICE; PROPOSED ORDER** by placing a true copy of this document enclosed in a sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at [ fill in address] , and by sending an electronic version of the same document, addressed as set out in the attachment.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 10, 2015, at Oakland, California.

Debra Baldwin  
Declarant

  
Signature



## SERVICE LIST

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

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**SERVICE LIST – Contd.**

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

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