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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN DIEGO

19 CENTRAL DIVISION

20 CLEVELAND NATIONAL FOREST  
FOUNDATION; CENTER FOR  
21 BIOLOGICAL DIVERSITY; and SIERRA  
CLUB;

22 Petitioners,

23 v.

24 SAN DIEGO ASSOCIATION OF  
25 GOVERNMENTS; SAN DIEGO  
ASSOCIATION OF GOVERNMENTS  
26 BOARD OF DIRECTORS; and DOES 1  
through 20, inclusive.

27 Respondents.  
28

Case No.: 37-2011-00101593-CU-TT-CTL

Consolidated with Case No.:  
37-2011-00101660-CU-TT-CTL

**IMAGED FILE**

**PETITIONERS' OPENING BRIEF**

Dept: C-72  
Judge: Timothy B. Taylor

Hearing Date: November 30, 2012  
Time: 1:30 p.m.

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1 PEOPLE OF THE STATE OF  
2 CALIFORNIA;

3 Intervenor.

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1  
2 **PRELIMINARY STATEMENT**

3 Petitioners Cleveland National Forest Foundation (“CNFF”), Center for Biological Diversity  
4 (“CBD”), and Sierra Club challenge the decision of the San Diego Association of Governments and the  
5 San Diego Association of Governments’ Board of Directors (collectively “SANDAG”) approving the  
6 2050 Regional Transportation Plan/Sustainable Communities Strategy (“Plan” or “Project”) based upon  
7 a legally inadequate Environmental Impact Report (“EIR”). The challenged Project is intended to serve  
8 two functions. First, the Regional Transportation Plan (“RTP”) establishes a blueprint for the San Diego  
9 region’s transportation network over the next 40 years. Second, the Project includes the state’s first  
10 Sustainable Communities Strategy (“SCS”), which coordinates this transportation network with the  
11 region’s land use plans to reduce greenhouse gas (“GHG”) emissions consistent with state targets, as  
12 required by Senate Bill (SB) 375.

13 SANDAG touts the 2050 RTP/SCS as a “sustainable” plan that encourages compact, city-  
14 centered development and robust public transit. The record, however, reveals an entirely different  
15 picture. In fact, the Plan retains a “business as usual,” automobile-oriented approach to transportation  
16 planning, continuing massive freeway expansions and deferring most transit projects until the later  
17 decades of the Plan. Far from supporting “smart” growth, the Plan’s much-enlarged freeway system will  
18 promote more sprawling development throughout the region, including its agricultural areas. Indeed,  
19 SANDAG readily admits that, rather than reducing vehicle-miles traveled (“VMT”), the Project’s  
20 purported goal, the Plan would allow VMT to *increase* by 50 percent over the next few decades.  
21 Administrative Record (“AR”) 4436. This increase inevitably will cause major increases in air pollution  
22 and GHG emissions throughout the region, an area already burdened with severe pollution levels.

23 Petitioners, the California Attorney General (Intervener) and others repeatedly warned SANDAG  
24 that the Project would inflict irreversible environmental harm and exacerbate hazards to public health.  
25 Nevertheless, SANDAG rushed to approve an EIR for the Project that violates the standards for  
26 adequate analysis set by the California Environmental Quality Act (“CEQA”), Public Resources Code  
27 section 21000 *et seq.* (All statutory references are to the Public Resources Code except as noted). The  
28 EIR’s flaws include basic omissions and analytic distortions that subvert CEQA’s core policies of public  
participation and agency accountability. *See Laurel Heights Improvement Assn. v. Regents of Univ. of*

1 *Cal.* (1988) 47 Cal.3d 376, 392 (“*Laurel Heights I*”) (An EIR is intended “to demonstrate to an  
2 apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications  
3 of its action.”) (citations omitted).

4 Most fundamentally, the EIR systematically masks the Project’s environmental effects. For  
5 example, the air quality analysis calculates the Project’s air pollutant emissions, but it never addresses  
6 how this pollution will actually affect human health. While SANDAG claims that no universally  
7 accepted methodology exists for such an analysis, the Court of Appeal rejected this exact excuse in  
8 *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1368-70  
9 (“*Berkeley Jets*”) (lack of universally accepted method for correlating health impacts to pollution levels  
10 does not excuse failure to “find out and disclose all that it reasonably can”).

11 The EIR’s analysis of climate impacts exhibits a similar glaring omission. GHG emissions under  
12 the Plan will *increase* between 2020 and 2050. Petitioners and the Attorney General warned that this  
13 trajectory would contravene Executive Order (“EO”) S-3-05, which requires steep GHG *reductions* over  
14 that same time period consistent with current scientific data, and thus would cause environmental  
15 damage. SANDAG nevertheless ignored this state policy—and the scientific data supporting it—when  
16 assessing the Plan’s emissions under CEQA. Instead, the EIR discusses the Plan’s alleged compliance  
17 with *other* climate guidelines, thus failing to confront the real environmental damage its Plan will cause.  
18 By omitting this key information, SANDAG violated black-letter CEQA law.

19 This pattern of understating or overlooking the Project’s effects persists throughout the entirety  
20 of the EIR. For example, while the Plan will greatly expand freeway capacity, the EIR never analyzes  
21 the effect of this auto-based infrastructure on transit. When evaluating the Project’s effect on agricultural  
22 lands, the EIR grossly underestimates impacts by using a mapping system that ignores farms of less than  
23 10 acres. Yet County of San Diego studies show that *68 percent* of farms in the County’s unincorporated  
24 area are located on such small parcels. By excluding those farms from its analysis, the EIR’s estimate of  
25 agricultural impacts fell short by over 45,000 acres.

26 Compounding this problem, the EIR’s perfunctory, 2-page examination of growth-inducing  
27 impacts never addressed the Plan-induced proliferation of sprawl development in the County’s  
28 agricultural areas. When Petitioners and others complained about such omissions, SANDAG refused to

1 revise its analysis.

2 SANDAG also never identified or adopted feasible measures to reduce the Project's most serious  
3 effects. For example, the EIR recognizes the significance of the Plan's air quality impacts but defers  
4 mitigating those impacts until future RTPs. Similarly, SANDAG refused to adopt a host of feasible  
5 measures to mitigate climate impacts that the Attorney General and other experts recommended. Instead,  
6 the agency merely said it would look into such measures in the future. Postponing mitigation to an  
7 unspecified future time violates CEQA. § 21002 (lead agency must adopt any feasible mitigation  
8 measure that can substantially lessen the project's significant impacts); *Federation of Hillside and*  
9 *Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 ("*Federation*") (lead agency  
10 must ensure that feasible mitigation measures are actually implemented).

11 Finally, SANDAG summarily rejected project alternatives that could reduce the Plan's most  
12 serious impacts, such as those on air quality and climate, to a level of insignificance. Instead, the EIR's  
13 six alternative plans each authorize construction of all or most of the Plan's highway projects; *none*  
14 would substantially improve the Project's transit features. By failing to evaluate a reasonable range of  
15 alternatives, including one that "would substantially lessen the [Project's] significant environmental  
16 effects," the EIR violates CEQA. *See* § 21002; Cal. Code Regs., tit. 14, § 15126.6(a) (part of the CEQA  
17 Guidelines, Cal. Code Regs., tit. 14, § 15000 *et seq.*, referred to herein as "Guidelines.")

18 In sum, SANDAG abused its discretion in certifying the EIR and approving the Project. A writ  
19 of mandate should order rescission of SANDAG's decision, whose environmental impacts will be felt  
20 for decades.

## 21 **STATEMENT OF FACTS**

### 22 **I. Environmental Setting for the Project.**

23 The San Diego region comprises more than 4,200 square miles of coastal plain, foothills,  
24 mountains, and desert. AR 2141. This landscape is home to more than three million people, largely  
25 concentrated in the region's more urbanized western part. AR 1031, 13094. The County's  
26 unincorporated portions are predominantly rural, and agriculture is a primary land use. AR 2175. The  
27 County's 6,687 farms comprise the fifth largest component of the region's economy. *Id.* The region's  
28 farms tend to be small and family-owned; more than two-thirds of them are less than ten acres. AR

20422. Because of the fertile land and unique microclimates, County agricultural land has the highest dollar value per acre of any county in the state. AR 19462-63.

The region's air quality is very poor. The American Lung Association ranks San Diego County as having the 7th worst ozone pollution and 15th worst particulate pollution of the nation's 277 metropolitan areas. AR 27707, 28010-12; *see also* AR 2214 (air basin has not attained state standards for ozone and particulate pollution). As the Attorney General informed SANDAG, and as the agency admits, the "region has some of the most serious local air quality problems in the state and the nation – in substantial part caused by vehicle emissions." AR 4418. This air pollution—particularly the pollution near busy roadways—causes myriad health problems. Substantial scientific evidence links residing or attending school near heavily traveled roadways with increased respiratory symptoms, increased risk of heart and lung disease, and elevated mortality rates. AR 2218.

Exacerbating these problems, the San Diego region emits millions of tons of GHGs every year, pollution that contributes to global climate change. AR 2553-56. Vehicles are by far the largest contributor of regional GHG emissions. AR 2556. Vehicular emissions are high not only because of the region's pattern of auto-dependent, sprawling development, but also because SANDAG has relied almost exclusively on roadway expansion to meet travel demand. AR 2079 (describing history of dispersed development and roads), 3939 (lack of transit use due to dispersed land use), 19750, 19671, 19687. While 91 percent of residents use the region's roadway network to commute to work in private vehicles, only 6.5 percent take public transit to work, and less than 4 percent bike or walk. AR 2981. As a result, on average a local resident travels on transit *less than half a mile* annually. AR 2984. In contrast, each resident travels an average of 24.2 miles per day, or 8,833 *miles per year*, in private vehicles. AR 2982.

## **II. Regulatory Setting for the Project.**

SANDAG is a regional Council of Governments, with representatives from the County of San Diego and the 18 cities in the region. AR 2071. It is a transportation planning and programming agency, serving as the Regional Transportation Commission and federally designated Metropolitan Planning Organization ("MPO") for the region. *Id.* SANDAG is charged by law with developing the region's long-range RTP, which it must update every four years. AR 2993. The RTP contains all of SANDAG's

1 proposed highway and transit enhancements for the coming years. *Id.* SANDAG allocates funds for  
2 these transportation projects, prioritizing them in the RTP, and oversees TransNet, the local sales tax  
3 measure that funds a large portion of the projects. AR 2991-95.

4 In 2006, the state passed “AB 32,” the Global Warming Solutions Act, which requires the state  
5 to reduce its GHG emissions to 1990 levels by 2020. AR 2561. To further these goals, the state later  
6 enacted SB 375. This law requires each MPO to adopt a SCS as part of its RTP. AR 2563. An SCS  
7 aligns regional transportation, housing, and land use plans to reduce GHG emissions associated with  
8 passenger vehicle trips. AR 2070. SB 375 recognizes that passenger vehicles account for 30 percent of  
9 the state’s GHG emissions and that, without significant GHG reductions from changed land use patterns  
10 and improved transportation, the state cannot meet AB 32’s reduction targets. AR 29376. Specifically, a  
11 SCS must:

12 set forth a forecasted development pattern for the region, which, when integrated with the  
13 transportation network, and other transportation measures and policies, will reduce the  
14 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.

15 Gov. Code § 65080(b)(2)(B)(vii). Pursuant to SB 375, the state set a target for the San Diego region  
16 requiring the reduction of per capita GHG emissions related to passenger vehicles by 7 percent by 2020,  
17 and 13 percent by 2035. AR 2080.

18 Governor Schwarzenegger established California’s long-term climate policy in Executive Order  
19 S-3-05. This order set target dates for progressively reducing statewide GHG emissions: (1) by 2010,  
20 reduce GHG emissions to 2000 levels; (2) by 2020, reduce GHG emissions to 1990 levels; and (3) by  
21 2050, reduce GHG emissions to 80 percent below 1990 levels. AR 2561. Thus, compliance with SB  
22 375’s reduction goals is essential but insufficient to meet the state’s long-term GHG reduction goals.

### 23 **III. SANDAG’s Plan: the 2050 RTP/SCS.**

24 SANDAG is the first California MPO to approve a SCS. AR 2075. Its RTP/SCS is the blueprint  
25 for a transportation system that will serve the San Diego region over the next four decades. *Id.* This Plan  
26 outlines projects for highways and local streets, rail and bus services, and bicycling and walking, and it  
27 describes systems for managing travel demand. *Id.* As SANDAG explains, the Plan’s “goal is to create  
28 communities that are more sustainable, walkable, transit-oriented, and compact—thereby providing

1 transportation options and lowering GHG emissions.” AR 2077. In particular, SANDAG boasts that its  
2 Plan “envision[s] an ambitious and far-reaching transit network that significantly expands the role that  
3 transit plays in meeting the region’s needs for mobility and reducing GHG emissions.” AR 2078.

4 The Plan contemplates a regional development pattern that assumes “83 percent of the 388,000  
5 new homes that are projected to be built by 2050 will be attached, multi-family housing” units. AR  
6 2082. SANDAG also anticipates that most of this new housing will occur in highly urbanized areas,  
7 designated the “Urban Area Transit Strategy study area” (“UATS”). AR 4438 (79 percent of housing  
8 will be in UATS), 14217 (map of UATS). These areas offer the greatest potential for transit to succeed  
9 in the region; indeed, SANDAG has determined that investments in transit would have maximum effect  
10 here. AR 14214.

11 However, despite its lofty, transit-friendly goals, SANDAG’s Plan actually prioritizes numerous  
12 expansions of freeways and arterial highways within the UATS. These projects include expansions of  
13 the I-5, I-8, I-15, I-805, SR-52, SR-56, SR-94 and SR-125. *See* AR 2116-21 (showing early projects),  
14 14217 (showing UATS); *see also* AR 14214. The Plan also calls for widening highways in the region’s  
15 suburban and rural communities, thus making travel to the County’s “back country” and other rural  
16 communities easier. *Compare* AR 2118 (showing road projects) *with* AR 14217 (showing UATS).

17 Although the Plan would fund some transit projects, most of them will not be built until the later  
18 decades of the Plan’s operation. AR 13247 (75% of transit expenditures after 2030), 13267-69 (majority  
19 of transit projects built in Plan’s later decades). Moreover, many of SANDAG’s “transit” projects would  
20 necessitate widening highways to include “managed lanes.” AR 2109 (early transit projects rely heavily  
21 on rapid bus routes), 2115 (bus routes rely on freeways and managed lanes), 2112 (“The 2050 RTP/SCS  
22 includes an extensive network of Managed Lanes”). While buses and carpools can use these lanes, most  
23 of them can also be used by single occupant vehicles. AR 2112. (describing highway system in which  
24 the same lanes used by transit can also be used by, among others, “fee-paying patrons”). Based on these  
25 features, independent reviewers concluded that, far from promoting regional transit, the dramatic  
26 increase in freeway capacity “will perpetuate auto-oriented development and reduce transit’s  
27 competitiveness.” AR 28481; *see also* AR 3940-41 (expert commenter criticizing Plan’s reliance on bus  
28 rapid transit as a “transit” measure).

1 Despite opting to greatly expand freeways in the Plan's early years, SANDAG still anticipates  
2 meeting SB 375's goals for 2020 and 2035. AR 2104. However, SANDAG admits that its Plan is not  
3 responsible for these near-term GHG reductions. Rather, they result entirely from the current economic  
4 downturn and state-mandated emission and fuel technologies. AR 13156 (initial GHG reductions due to  
5 the current "recessionary economic cycle"), 2571 (transportation-related GHG emissions lower in 2020  
6 solely because of state regulation of carbon content of fuels and increased vehicle efficiency). Critically,  
7 *these early GHG reductions are not sustainable*. SANDAG admits that, under its RTP/SCS, the region's  
8 emissions will *increase* after 2020. AR 2104, 2577 (2050 RTP/SCS "would increase transportation-  
9 related GHG emissions above baseline emissions").

10 SANDAG also admits that, despite its alleged emphasis on public transit, VMT will increase by  
11 more than 50 percent over the Plan's life. AR 4436. Tellingly, the Plan's increase in driving and  
12 associated GHG emissions are not solely linked to population increases. Rather, SANDAG recognizes  
13 that, *per capita*, people in 2050 will drive more miles daily than they do now. AR 4435 (Tables 2, 3).

#### 14 **IV. Public Comment on SANDAG's Plan and EIR.**

15 Petitioners' comments heavily criticized SANDAG's Plan.<sup>1</sup> *See, e.g.*, AR 17972-75, 18053-55,  
16 18119-208, 19037-48, 19667-768. In particular, Petitioners warned that the Plan incorrectly assumed  
17 that highway expansion would not affect patterns of land use development and used faulty assumptions  
18 in predicting transit ridership. AR 19657, 19678-79. Petitioner CNFF also developed an alternative to  
19 the Plan that called for "front-loading" anticipated transit projects within the first 10 years of the Plan's  
20 40-year implementation period. AR 19748-68. Consistent with the state's long term climate objectives,  
21 this alternative—termed the "50-10 Plan"—would accelerate investment in public transit to ensure  
22 transit's viability throughout the Plan's life. *Id.* Without such an investment, CNFF cautioned, public  
23 transit could not compete with vehicles in terms of travel times or convenience, and that outcome would  
24 then lead to further cycles of roadway expansions and increased VMT and GHGs. AR 19765-66, 19767.

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25 <sup>1</sup> For unknown reasons, SANDAG insisted that the public submit comments on the Plan prior to, and  
26 apart from, the environmental review process for the Plan. *See* AR 19101 (releasing RTP and SCS for  
27 comment on April 22, 2011), 19121-22 (releasing DEIR for comment on June 7, 2011). This tactic made  
28 public comment on the Plan more difficult. *See, e.g.*, AR 24873, 27699.

1 SANDAG's Plan drew a barrage of criticism. Along with Petitioners, other organizations,  
2 including San Diego Air Pollution Control District and American Lung Association, commented that the  
3 Plan's combination of rising emissions from increased driving and postponement of transit would cause  
4 adverse environmental consequences. AR 19459-60, 19470. The Attorney General also cautioned that  
5 the Plan's failure to establish a regional course of long-term GHG reductions could make it impossible  
6 to achieve the state's goal of reducing overall GHG emissions by 80 percent by 2050. AR 4437.

7 Petitioners also warned that the EIR for the Plan failed to comply with CEQA. In two letters  
8 Petitioners alerted SANDAG to serious deficiencies in its Draft EIR. *E.g.*, AR 19667-768, 24870-950.  
9 Petitioners first noted that the document's transportation impact analysis focused almost exclusively on  
10 factors such as travel time and congestion that favored roadway travel, while never evaluating the  
11 Project's significant impacts on public transit performance. AR 19674-81, 24875-76. They cautioned  
12 that the Draft EIR not only improperly analyzed the Project's impacts on climate change (AR 19683-88,  
13 24881-82), but also did not evaluate an alternative that would reduce GHG emissions over the Plan's  
14 life. AR 19688-90, 24882-85. Nor did the Draft EIR identify proper mitigation for many of the Project's  
15 significant environmental impacts. For example, although the Plan's express purpose was to reduce  
16 vehicular travel and GHG emissions, the Draft EIR failed to adopt meaningful measures to ensure such  
17 reductions. AR 19681-83, 19687-88, 24881-82. Rather, it merely offered vague ideas of mitigation that  
18 SANDAG or other local agencies might consider in the future. *Id.*

19 Similarly, the Governor's Office of Planning and Research ("OPR") submitted lengthy  
20 comments. OPR strongly suggested that SANDAG prioritize transit projects over highway expansion,  
21 analyze a true environmentally superior alternative, and explain the Plan's prediction that GHG  
22 reductions would decrease in the Plans' later years. AR 25002-08. The Attorney General also saw  
23 "significant legal problems" in the Draft EIR. AR 25634. The Attorney General criticized the Draft EIR  
24 for, among other deficiencies, failing to analyze the public health impacts caused by the Project's  
25 contribution to the region's already poor air quality (AR 25634-39), and "propos[ing] almost no  
26 mitigation measures to reduce or offset" these impacts. AR 25639. Other groups voiced similar  
27 concerns. *See, e.g.*, AR 19645 (The Nature Conservancy), 25647 (Environmental Health Coalition).

28 Petitioners and others later extensively commented on the Final EIR. AR 8; AR 27695-28325.



1 Although the Final EIR contained approximately 2,500 pages, including substantive Project changes and  
2 substantial new information and analysis (*see* AR 1969-4449), SANDAG gave the public only ten days  
3 to review the document. AR 8, 10. As Petitioners pointed out, the Final EIR still refused to address the  
4 most serious inadequacies previously identified. AR 27695-745. The Final EIR failed to correct the  
5 Draft EIR's climate analysis, continuing to ignore or minimize the impacts from GHG emissions over  
6 the Plan's life. AR 27704-06. It did not properly analyze the effect of the Project's air pollution on  
7 public health, again refusing to identify sensitive receptors or conduct the required health risk  
8 evaluation. AR 27706-19. The agency also refused to analyze the adverse impact on public transit or to  
9 evaluate feasible mitigation or project alternatives that could reduce the Plan's many significant impacts.  
10 Finally, Petitioners pointed out that SANDAG had grossly underestimated the Project's impacts on  
11 agricultural land. AR 27724-25.

12 **V. Approval of the Project.**

13 On October 28, 2011, SANDAG conducted a public hearing on the proposed Project and Final  
14 EIR. AR 29240-338. Despite extensive testimony opposing the Project (*e.g.*, AR 29263-79, 29241), the  
15 SANDAG Board of Directors adopted resolutions certifying the Final EIR and approving the Project.  
16 AR 223-24. The same day, SANDAG filed a Notice of Determination for the Project. AR 1-3.

17 **VI. Procedural History of Litigation.**

18 On November 28, 2011, Petitioners CNFF and CBD filed a Petition for Writ of Mandate and  
19 Complaint for Injunctive Relief challenging SANDAG's approval of the Plan and certification of the  
20 EIR. On the same date, CREED-21 and the Affordable Housing Coalition of San Diego County filed a  
21 separate action, Case No. 37-2011-00101660, challenging the Plan and EIR. On January 23, 2012,  
22 Petitioners CNFF and CBD filed a First Amended Petition for Writ of Mandate and Complaint for  
23 Injunctive Relief, adding Sierra Club as a Petitioner.

24 On January 23, 2012, the California Attorney General moved to intervene in the instant action on  
25 behalf of People of the State of California. On January 25, 2011, the Court granted the People's  
26 application. On April 9, 2012, the cases were consolidated for all purposes.

27 ///

28 ///

## ARGUMENT

### I. Standard of Review.

The EIR is “the heart of CEQA,” serving as an “environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Laurel Heights I*, 47 Cal.3d at 392 (citations omitted). An EIR must reflect a good faith effort at full disclosure, including “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Id.* at 405; Guidelines § 15151.

An EIR’s purpose is to give government and citizens the information needed for informed decisions, thus “protect[ing] not only the environment but also informed self-government.” *Laurel Heights I*, 47 Cal.3d at 392. An EIR is thus a “document of accountability”: if CEQA is “scrupulously followed,” the public “will know the basis on which its responsible officials either approve or reject environmentally significant action, and . . . can respond accordingly to action with which it disagrees.” *Id.* CEQA also incorporates substantive requirements. The lead agency may not approve a project if it fails to adopt feasible alternatives or mitigation measures that could substantially lessen the project’s significant environmental impacts. § 21002; Guidelines § 15002(a)(3).

In reviewing the EIR’s adequacy, this Court must determine whether SANDAG prejudicially abused its discretion by either: (1) failing to proceed in the manner required by law, or (2) reaching a decision or determination that is not supported by substantial evidence. § 21168.5; *Laurel Heights I*, 47 Cal.3d at 392. “Certification of an EIR which is legally deficient because it fails to adequately address an issue constitutes a prejudicial abuse of discretion . . . .” *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 428 (“*Ojai*”). A prejudicial abuse of discretion also occurs if the EIR omits relevant information and thus precludes informed decision-making. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712. A decision approving a project “is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project” required by CEQA. *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 (“*Santiago*”).

As the Supreme Court recently explained, “a reviewing court must adjust its scrutiny to the

1 nature of the alleged defect, depending on whether the claim is predominantly one of improper  
2 procedure or a dispute over the facts.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho*  
3 *Cordova* (2007) 40 Cal.4th 412, 435 (“*Vineyard*”). The court must “determine de novo whether the  
4 agency has employed the correct procedures, ‘scrupulously enforc[ing] all legislatively mandated CEQA  
5 requirements.’” *Id.* (quoting *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564  
6 (“*Goleta I*”). Failure to follow these requirements constitutes an abuse of discretion as a matter of law.  
7 *County of Amador v. El Dorado Water Agency* (1999) 76 Cal.App.4th 931, 946.

8 By contrast, the more deferential “substantial evidence” standard applies only to an agency’s  
9 “substantive factual conclusions.” *Vineyard*, 40 Cal.4th at 435. Thus, “the existence of substantial  
10 evidence supporting the agency’s ultimate decision on a disputed issue is not relevant when one is  
11 assessing a violation of the information disclosure provisions of CEQA.” *Association of Irrigated*  
12 *Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392.

13 This Court, then, must determine *as a legal matter* “whether the EIR is sufficient as an  
14 informational document.” *Kings County*, 221 Cal.App.3d at 711. Here, the EIR fails to disclose  
15 fundamental information about the Plan’s effect on public health and its contribution to global climate  
16 change. Further, despite analyzing freeway congestion, the document neglects to analyze the Plan’s  
17 effect on public transit. It also omits key information about the Project’s agriculture impacts, and only  
18 nominally addresses growth-inducing impacts. Finally, the EIR improperly defers key mitigation.  
19 Because SANDAG thus failed to proceed in the manner required by law, its approval of the Plan must  
20 be overturned.

21 While inapplicable to most of Petitioners’ claims, the “substantial evidence” test does apply to  
22 their challenge to SANDAG’s findings that various alternatives and mitigation measures are infeasible.  
23 *See, e.g., Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 598-99. “Substantial  
24 evidence” is “evidence of ponderable legal significance, reasonable in nature, credible, and of solid  
25 value, evidence that a reasonable mind might accept as adequate to support a conclusion.” *American*  
26 *Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th  
27 1062, 1070. Here, no credible evidence, let alone substantial evidence, supported SANDAG’s refusal to  
28 consider alternatives, or to adopt feasible mitigation, that could reduce or avoid the Plan’s significant

1 environmental impacts.

2 **II. The EIR Fails to Adequately Analyze the Project's Severe Air Quality Impacts.**

3 **A. The EIR's Description of Existing Toxic Air Pollution Is Deficient.**

4 SANDAG acknowledges that public exposure to Toxic Air Contaminants ("TACs")<sup>2</sup> is a  
5 "significant public health issue in California." AR 2251. The EIR, however, provides virtually no  
6 information about existing exposure to TACs. This omission violates CEQA's core requirement that an  
7 EIR include an adequate "description of the physical environmental conditions in the vicinity of the  
8 project." Guidelines § 15125(a). As the Guidelines instruct, "[k]nowledge of the regional setting is  
9 critical to the assessment of environmental impacts." Guidelines § 15125(c). Without an adequate  
10 description of the public's existing exposure to TACs, decision-makers cannot understand the scope of  
11 the existing TAC problem, measure the Project's TAC impacts against a baseline of current TAC  
12 emissions, or intelligently decide whether the Project's approval is worth the risk.

13 The EIR's air quality analysis does contain a section entitled "Existing Conditions" (AR 2209-  
14 23), but this section does not actually describe existing TAC emissions. Instead, it provides only generic  
15 information about the sources and dangers of these pollutants. AR 2215-20, 2251-53. For example, it  
16 describes how exposure to TACs "can result in cancer, poisoning, and rapid onset of sickness . . . ." AR  
17 2251. It notes that because diesel exhaust constitutes the largest TAC risk (*id.*), people living near busy  
18 roads are particularly at risk. AR 2219, 2252-53; *see also* AR 19812, 21385. It repeats the well-known  
19 fact that lower income individuals and minorities are disproportionately affected by these pollutants. AR  
20 4423; *see also* AR 19813.

21 This generic information is plainly inadequate under CEQA. A sufficient description must:  
22 (1) calculate existing levels of TAC pollutants, and (2) estimate the number and location of people  
23 currently exposed to unhealthy TAC levels. *See Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74,  
24

25  
26 <sup>2</sup> Petitioners use "TAC" to refer to the various pollutants, including carbon monoxide, diesel particulates  
27 and air toxics, that SANDAG evaluates together under Threshold AQ-4, related to exposing sensitive  
28 receptors to localized pollutant concentrations. *See* AR 2248-52. "Sensitive receptors" are populations,  
such as children and the elderly, particularly susceptible to negative impacts from pollutants. AR 2249.

1 92-95.

2 SANDAG's failure to even qualitatively—much less quantitatively—describe existing TAC  
3 levels is inexplicable. First, the information was readily obtainable from the five TAC monitoring  
4 stations in the region. AR 2215-16 (EIR describes monitoring stations but provides no data from them).  
5 Although Petitioners informed SANDAG that the EIR must include data from these stations (AR  
6 27708), the agency refused to do so. AR 29342. Alternatively, SANDAG could have obtained current  
7 TAC data from either EPA's AirData reports or the TAC predictions in the National Air Toxic  
8 Assessment Model, which are available for every U.S. census tract. AR 28081. Clearly, SANDAG  
9 simply lacked the will, not the means or the data, to address this critical omission.

10 SANDAG also cannot justify its refusal to identify the number and location of sensitive receptors  
11 near planned transportation projects. Critically, the EIR establishes its threshold of significance for TAC  
12 impacts as whether the Plan will “expose sensitive receptors to substantial pollutant concentrations.” AR  
13 2249. As Petitioners warned, SANDAG cannot possibly make this determination without knowing the  
14 number and location of sensitive receptors in the region. AR 27708.

15 In response to the Attorney General's criticism of its TAC impacts analysis, SANDAG cobbled  
16 together and inserted a “localized air quality index analysis” in the Final EIR. AR 2252-64. This  
17 “analysis” ranked segments of regional freeways as presenting high, medium or low risk levels from  
18 TAC pollution to those living within 500 feet. AR 2253. SANDAG based this ranking on data regarding  
19 traffic volumes, the percentage of truck traffic, and Level of Service<sup>3</sup> standards for the segments. *Id.*

20 SANDAG's last-minute addition cannot serve as a description of existing conditions under  
21 CEQA. First, the information describes only conditions adjacent to freeways and highways (AR 2253,  
22 2260), even though other high volume roads, warehouse centers, ports and rail yards can pose equally  
23 significant TAC risks. AR 2219 (pollutant levels higher near “main city streets, highways, and  
24

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25 <sup>3</sup> SANDAG defines Level of Service (“LOS”) as “[a] qualitative measure describing operational  
26 conditions within a traffic stream and motorists' perceptions of those conditions. LOS ratings typically  
27 range from LOS A, which represents free-flow conditions, to LOS F, which is characterized by heavy  
28 congestion, stop-and-go traffic, and long queues forming behind breakdown points.” AR 13634.

freeways”), 21385 (sensitive populations should not live near freeways, busy urban or rural roads, rail yards, ports, or distribution centers), 13288, 13293-96, 15033-54 (RTP includes a “Goods Movement Strategy,” which includes the direct expansion of rail, seaport, and associated warehouse distribution centers). Second, the new analysis does not estimate the number or location of hospitals, schools, residences, and other sensitive receptors that are adjacent to freeways. AR 2252-64. Thus, the analysis provides no information as to whether pollution from the various highway segments will actually affect anyone. Finally, because the EIR does not disclose the data underlying the analysis (*see* AR 2253), the public cannot even evaluate whether its incomplete conclusions are based on accurate information.

Where, as here, an EIR contains an “inadequate description of the environmental setting for the project, a proper analysis of project impacts [i]s impossible.” *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1122. In an analogous situation, the Court of Appeal invalidated a county’s certification of an EIR for a landfill. *Cadiz*, 83 Cal.App.4th at 92-95. There, a property owner was concerned about the landfill’s contamination of an underlying aquifer. He argued that the EIR failed to describe the aquifer in enough detail so that the project’s impacts could be measured. *Id.* at 91-92. The county responded that contamination of the aquifer was unlikely and that, because the aquifer was nearly depleted, any possible future contamination would not constitute a significant impact. *Id.* at 92-93.

The court emphatically rejected the county’s position. It noted that, although the EIR discussed the risk of contamination generally, it never estimated the volume of water in the aquifer. *Id.* at 93. This missing information was critical to understanding the project’s potential impacts on potable water, “a valuable and relatively scarce resource in the region.” *Id.* at 92. Specifically, the court noted that “[a]n estimate of the volume of groundwater in the aquifer is critical to a well-informed determination of whether the risk of groundwater contamination is worth taking.” *Id.* at 94

Similarly here, SANDAG failed to disclose information necessary to evaluate the Plan’s TAC impacts on sensitive populations. Clean air is a valuable and relatively scarce resource in the San Diego region, just like water in *Cadiz*. *See, e.g.*, AR 25635 (“The SANDAG region has some of the most serious local air quality problems in the State and the nation”). Accordingly, as in *Cadiz*, an estimate of existing TACs in the region, and the number of people exposed to these pollutants, is essential to an

1 informed determination of whether the risk of further air contamination is worth taking. At the least, the  
2 public has the right to information about its increased risk of cancer, asthma or other disease.

3 In sum, the EIR warns the public that it should be very concerned about exposure to TACs but  
4 provides virtually no information regarding their current risk. This failure to describe existing conditions  
5 “thwarted the goals of the EIR process by not disclosing . . . critical information necessary to evaluate  
6 the significance of the [project’s] impact on a valuable resource.” *Cadiz*, 83 Cal.App.4th at 95; *see also*  
7 *Galante Vineyards*, 60 Cal.App.4th at 1122 (setting aside an EIR because “a proper analysis of project  
8 impacts was impossible . . . [d]ue to the inadequate description of the environmental setting”).  
9 Accordingly, the EIR cannot stand.

10 **B. The EIR Fails to Analyze the Health Impacts Resulting from the Plan’s**  
11 **Emission of Toxic Air Contaminants.**

12 Commenters objected to the EIR’s failure to analyze the Plan’s TAC-related impacts on public  
13 health. SANDAG responded that it was not legally required to provide the analysis, that it could not do  
14 so, and that the EIR’s meager discussion of TAC impacts was sufficient. None of these excuses hold up.

15 **1. SANDAG’s Use of a “Program” EIR Does Not Excuse It from Fully**  
16 **Analyzing the Plan’s Health Impacts.**

17 Numerous commenters criticized the EIR’s failure to include any detail regarding the Plan’s  
18 TAC-related health impacts. For example, Petitioners noted that although the Plan’s transportation  
19 projects “have the potential to result in a substantial increase in toxic air contaminants . . . and therefore  
20 may pose a significant health risk to sensitive receptors, the DEIR failed to provide an analysis of these  
21 impacts.” AR 27708. Likewise, the Attorney General stated that “[t]he principal omission of the DEIR is  
22 the lack of any discussion of the impacts of the increased air pollution that will result from carrying out  
23 the [Plan] on communities already severely impacted by air pollution.” AR 4422.

24 In response, SANDAG complained that these commenters “misunderstand the purpose of and  
25 legal requirements for the Program EIR prepared for the [Plan].” AR 3765. Due to the Plan’s  
26 “geographic scope and complexity,” the agency asserted, “not all impacts can feasibly or meaningfully  
27 be analyzed quantitatively” now. *Id.* Instead, SANDAG urged that its use of a tiering process excused  
28 any detailed analysis until later project-specific CEQA documents. *Id.*; *see also* AR 4423.

1 CEQA, however, does not allow an agency to defer analysis simply by labeling its EIR a  
2 “program EIR.” CEQA recognizes that a program EIR “can provide . . . an occasion for a *more*  
3 *exhaustive* consideration of effects and alternatives” than a project-specific EIR. Guidelines §  
4 15168(b)(1) (emphasis added). In addition, program EIRs must “deal[] with the effects of the program  
5 as specifically and comprehensively as possible” and consider “cumulative impacts that might be  
6 slighted in a case-by-case analysis.” *Id.* § 15168(b)(2), (c)(5). As the Court summarized in *Friends of*  
7 *Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 533  
8 “[d]esignating an EIR as a program EIR also does not by itself decrease the level of analysis otherwise  
9 required in the EIR.” The California Supreme Court also recently cautioned, “[t]iering does not excuse  
10 the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of  
11 the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”  
12 *Vineyard*, 40 Cal.4th at 431 (quoting Guidelines § 15152(b)).

13 Thus, CEQA required SANDAG to analyze all reasonably foreseeable, health-related impacts  
14 from TACs, regardless whether the agency designated this EIR a “program EIR.”

## 15 2. SANDAG Could Have Conducted a Thorough Health Impact Analysis.

16 Next, SANDAG declared that it could not conduct detailed analysis at the program level because  
17 no methods are available for it to do so. AR 3815, 4423, 29342-43. In response to Petitioners’ request  
18 that SANDAG conduct a health risk assessment of TAC impacts, SANDAG stated that “health risk  
19 assessments are feasible only at the project level, when project-specific designs, meteorological  
20 condition[s], and sensitive receptors have been defined.” AR 29342; *see also* AR 2264 (same).

21 But SANDAG ignores that it already has gathered, or could gather, this information. First, the  
22 record includes an exhaustive list of the locations and specifications for each transportation project in  
23 SANDAG’s Plan. AR 2106-29, 13384-451. This information includes “[d]etailed highway and transit  
24 listings, cost estimates, and phasing” for each project, and data regarding Level of Service and average  
25 daily traffic for each project. AR 13385. SANDAG has also already estimated the volume of future  
26 traffic on regional roads, and the percentage of truck traffic there. AR 2255. SANDAG offers no reason  
27 why it needs more detailed, project-specific design information to conduct a health risk analysis. Indeed,  
28 it already has precise design information for some projects that will be implemented in the Plan’s early



1 stages. AR 28485-91 (design of I-5 North Coast Corridor and SR-11 projects). Providing risk  
2 assessments for these early projects would inform the public about the approximate level of impacts that  
3 future projects would cause.

4 Likewise, SANDAG can identify residential uses and other sensitive receptors currently located  
5 adjacent to each planned project. *See* AR 2735 (map of existing land uses). Because its Plan anticipates  
6 future housing locations and density in detail, SANDAG can calculate the approximate number of future  
7 sensitive receptors located adjacent to each project. *See* AR 13098-102, 13120-24, 13510-32 (showing  
8 location and density of housing in future years), 13096-97 (describing SANDAG's methodology for  
9 creating maps). Similarly, not knowing precise future meteorological conditions does not excuse  
10 SANDAG from analyzing the Project's public health impacts now.

11 Even if SANDAG could not have conducted a precise health risk assessment covering each  
12 project in its Plan, the lack of a "precise, or 'universally accepted,' quantification of the human health  
13 risk from TAC exposure does not excuse the preparation of any health risk assessment." *Berkeley Jets*,  
14 91 Cal.App.4th at 1368-70. As the *Berkeley Jets* court explained, "[d]rafting an EIR . . . involves some  
15 degree of forecasting' [and the lead agency must] educate itself about the different methodologies"  
16 available to assess health risks. *Id.* at 1370 (quoting Guidelines § 15144). Here, Petitioners provided  
17 SANDAG with a study detailing numerous ways in which agencies can evaluate and describe TAC-  
18 related health impacts for projects of all sizes. *See generally* AR 28066-325. SANDAG just dismissed  
19 these methods, claiming they are "intended of [sic] project-level analysis." AR 29343. SANDAG is  
20 wrong. The "study provides a suggested approach for the transportation analyst to follow [when  
21 analyzing TAC] impacts for transportation projects *and programs* . . . ." AR 28088 (emphasis added).  
22 Tellingly, SANDAG never attempted to explain why it could use none of the numerous modeling  
23 methods described in this study. *See* AR 28109-38, 27711-12.

24 Moreover, a health risk assessment or other qualitative analysis is useful even if SANDAG  
25 cannot conduct one at a high level of detail and certainty. *See* AR 29343 (SANDAG statement that  
26 conducting an assessment now might "over- or under-estimate impacts due to the uncertainty  
27 surrounding the specific roadway activities in the future"). Experts explained that "[a] large uncertainty  
28 range in M[obile] S[ource] A[ir] T[oxics] results does not automatically invalidate their use in

1 comparing alternatives. Relative (not absolute) differences among alternatives, when calculated by  
2 consistent methodology, are generally valid for purposes of ranking alternatives.” AR 28087. Thus, even  
3 an imperfect health risk analysis would assist the public in understanding the differences between  
4 SANDAG’s alternatives, yet SANDAG did not conduct a “localized air quality index analysis” for its  
5 Plan alternatives. Because of this omission—and the agency’s avoidance of any meaningful health risk  
6 analysis—the public cannot know whether SANDAG could have reduced the Plan’s enormous increase  
7 in high-risk TAC areas by selecting an alternative scenario. *See* AR 2255 (SANDAG predicts its Plan  
8 will cause 250 percent increase in high-risk TAC areas).

9 In short, SANDAG failed to “find out and disclose all that it reasonably can” regarding its Plan’s  
10 effect on public health. *Berkeley Jets*, 91 Cal.App.4th at 1370 (quoting Guidelines § 15144).

### 11 3. The EIR’s “Localized Air Quality Index Analysis” Is Useless.

12 Responding to criticism of its Draft EIR, SANDAG included a “localized air quality index  
13 analysis” in its Final EIR. *See* AR 2252-64, 4422 (explaining addition of new information). But this  
14 “analysis” is useless as a tool for understanding the Plan’s TAC impacts.

15 Most importantly, the study does not analyze health risks. It measures the number of freeway  
16 miles that will produce high levels of TAC emissions, but never estimates the number of individuals  
17 exposed to those risks, or the magnitude of their exposure. AR 2252-64. Instead, the analysis simply  
18 assumes that people—and sensitive receptors particularly—are evenly distributed along the freeways.  
19 But many freeway sections that SANDAG designates as “high risk” are located in areas with little or no  
20 population. *Compare* AR 2263 (I-15 just north of SR-52; I-15 just north of Escondido; and SR-76 east  
21 of I-15) *with* AR 2873 (same). The health risk from TACs directly correlates with the distance that  
22 people live from roads; thus, risk levels decrease considerably between 300 and 1000 feet from roads.  
23 AR 2219-20. Here, because SANDAG has not identified the location of sensitive receptors or their  
24 distance from road segments, the agency cannot validly assess the risk posed by each segment.

25 Accordingly, given these analytic flaws, SANDAG’s conclusion that 54 percent of freeway  
26 segments will be “high risk” in 2050 is insupportable, if not actually misleading. AR 2255. The agency’s  
27 conclusion that 18 percent of segments will be “low risk” in 2050 is similarly deficient. *Id.* SANDAG’s  
28 last-minute analysis cannot satisfy CEQA’s requirement that it provide the public with relevant

1 information regarding the Plan's significant impacts.

2                   **4. SANDAG's Conclusion that TAC-Related Health Impacts Are "Significant"**  
3                   **Does Not Excuse Its Lack of Analysis.**

4           Finally, SANDAG implies that its failure to conduct a proper analysis of TAC-related health  
5 impacts is excused because it "conservatively recognized that the impacts of transportation project  
6 operations on air toxics would be significant and unavoidable." AR 3815; *see also* AR 2264 (SANDAG  
7 statement of inability to analyze followed by summary conclusion that TAC impacts are significant).  
8 SANDAG is mistaken. An agency cannot cure an EIR's failure to analyze an impact by rotely  
9 acknowledging the impact's significance. As the court stated in *Galante Vineyards*, "[T]his  
10 acknowledgment is inadequate. 'An EIR should be prepared with a sufficient degree of analysis to  
11 provide decisionmakers with information which enables them to make a decision which intelligently  
12 takes account of environmental consequences.'" 60 Cal.App.4th at 1123 (quoting Guidelines § 15151);  
13 *see also Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 365 (EIR  
14 protects "the right of the public to be informed in such a way that it can intelligently weigh the  
15 environmental consequences of a[] contemplated action").

16           Thus, SANDAG may not "travel the legally impermissible easy road to CEQA compliance . . .  
17 [by] simply labeling the effect 'significant' without accompanying analysis . . . ." *Berkeley Jets*, 91  
18 Cal.App.4th at 1371. Rather, "a more detailed analysis of how adverse the impact will be is required."  
19 *Galante Vineyards*, 60 Cal.App.4th at 1123. The public and decision-makers must know whether the  
20 Plan's addition of TAC pollution will merely cause minor effects or will lead to major health  
21 consequences. SANDAG's refusal to provide this information violated CEQA.

22                   **III. The EIR Neither Fully Discloses Nor Properly Evaluates the Significance of the Plan's**  
23                   **Greenhouse Gas Emissions.**

24           The EIR's discussion of GHG emissions obscures the Plan's dramatic conflict with both science  
25 and long-term climate policy, thus omitting information essential to intelligently evaluating the Plan's  
26 consequences for the climate. Critically, while emissions under the Plan will decline somewhat by 2020,  
27 they will then increase again through 2050. This period is precisely when both climate science and  
28 California policy—specifically, Executive Order S-3-05—require emissions to decrease rapidly and

1 remain low permanently to avoid unacceptable climate change. A graph submitted to SANDAG  
2 illustrates the stark contrast between emissions allowed by the Plan—still drifting upward through 2035  
3 and 2050—and the steeply declining trajectory necessary for climate stabilization. AR 12684.

4       Incredibly, SANDAG simply *ignored* that information in evaluating the significance of Plan  
5 emissions under CEQA. By failing to evaluate the significance of Plan GHG emissions in light of EO S-  
6 3-05—which establishes a threshold of significance that would have elucidated this impact—SANDAG  
7 deprived the public of essential information and prevented informed decision-making.

8  
9           **A.     The EIR’s Failure to Evaluate Impacts in Light of EO S-3-05 Unlawfully**  
10           **Obscured the Severity of the Plan’s Impact on Climate.**

11       Evaluation of an impact’s significance calls for “careful judgment . . . based to the extent  
12 possible on scientific and factual data” and must reflect the project’s “setting.” Guidelines §§ 15064(b),  
13 15064.4(a). Lead agencies have some discretion in determining whether impacts are significant. *See,*  
14 *e.g., Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243. They must exercise  
15 that discretion, however, in light of CEQA’s overarching requirement that an EIR provide sufficient  
16 information to enable meaningful judgment and comment. *See, e.g., Laurel Heights I*, 47 Cal.3d at 391-  
17 92. An agency may consult applicable policies and plans in developing “thresholds” for evaluating the  
18 significance of environmental impacts. But it may not use compliance with those thresholds to foreclose  
19 consideration of substantial evidence of an impact’s significance. *Protect the Historic Amador*  
20 *Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109; *see also Mejia v. City of Los*  
21 *Angeles* (2005) 130 Cal.App.4th 322, 342.

22  
23       California climate policy, as reflected in EO S-3-05, requires reducing emissions 80 percent  
24 below 1990 levels by 2050 so as to avoid extreme climate impacts. AR 2561, 27049-50. The AB 32  
25 Scoping Plan incorporates this goal, establishing a “trajectory” for reaching it over time. That trajectory  
26 requires continuing and steady annual reductions in both total and per capita emissions. AR 27978.

27       Petitioners and other commenters urged SANDAG to use the EO S-3-05 trajectory as a threshold  
28

1 of significance in evaluating the Plan's environmental impacts. As they informed SANDAG, the EO  
2 embodies the reductions that climate scientists have concluded are needed to provide a 50-50 chance of  
3 limiting global average temperature rise to 2°C above pre-industrial levels.<sup>4</sup> AR 27705, 27791-92.  
4 CEQA requires analysis of a project's effects on the physical environment (Guidelines § 15064(d)), not  
5 merely its consistency with policies and plans. *See Lighthouse Field Beach Rescue v. City of Santa Cruz*  
6 (2005) 131 Cal.App.4th 1170, 1207. In contrast to the various thresholds considered by SANDAG, *only*  
7 the EO S-3-05 trajectory directly reflects climate science, and thus the Plan's impacts on the physical  
8 environment, over the long term.<sup>5</sup>

9       The Plan departs dramatically from this trajectory. It invests in major highway widening  
10 projects, defers most transit projects, and largely accepts current land use patterns. Under the Plan, per  
11 capita GHG emissions will decline somewhat through 2020. Then, however, they will start to rise again  
12 by 2035, and by 2050 will actually *exceed* existing (2010) emissions. *See* AR 3821, 4435, 13091.  
13 Because the Plan facilitates growth in "land use" emissions after 2020 and allows a nearly *50 percent*  
14 *increase* in emissions from on-road travel by 2050, absolute GHG emissions from land use and  
15 transportation will also increase in both 2035 and 2050 over existing conditions. AR 2575, 2577-78.

17       The EIR's failure to evaluate the Plan's emissions in light of the EO S-3-05 trajectory  
18 improperly hid the Plan's climate impacts. For example, the Plan just barely meets CARB's 2035 target  
19 of a 13 percent reduction in per capita GHG emissions, even after taking credit for fuel and vehicle  
20 efficiency measures that will occur anyway. This credit allows SANDAG to conclude that the impact is

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22 <sup>4</sup> According to the California Air Resources Board ("CARB"), even at these temperatures "disastrous  
23 effects become likely, including more extreme and more frequent severe weather, more wildfires,  
24 greater frequency of droughts and floods, rapid and higher sea level rise, and increased habitat  
25 destruction and extinctions." AR 27791. As a result, leading scientists have warned that CO<sub>2</sub>  
concentrations must be stabilized at 350 ppm—well *below* current concentrations—a level requiring  
even steeper emissions reductions. AR 27705, 27805-840.

26 <sup>5</sup> Indeed, the Bay Area Air Quality Management District has specifically recommended that CEQA  
27 analysis of long-range planning documents like the Plan look to the EO S-3-05 emissions reduction  
28 trajectory in evaluating post-2020 impacts. AR 4305.

1 less than significant. AR 2581. Yet a *35 percent reduction* in per capita emissions by 2035 would be  
2 required to keep pace with the EO S-3-05 trajectory for avoiding *highly* significant climate impacts. *See*  
3 AR 12689-90; *see also* AR 27978 (CARB AB 32 Scoping Plan identifying five percent annual  
4 reductions in per capita emissions between 2020 and 2030 as necessary to maintain EO S-3-05  
5 trajectory). SANDAG’s 2035 target under SB 375 is not even based on criteria derived from climate  
6 science or other factors reflecting environmental conditions, but rather on assumptions about projects the  
7 agency might implement. *See* AR 8242-45.

8 Because it ignores EO S-3-05, the EIR’s significance determination is profoundly misleading  
9 and fails to reflect available “scientific and factual data.” *See* Guidelines §§ 15064(b), 15064.4(a).  
10 CEQA requires SANDAG to “own up” to the Plan’s real impacts, not hide behind metrics obscuring  
11 evidence of those effects. *See Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1109.

12 Meeting the EO S-3-05 trajectory in 2050 similarly would require limiting total land use and  
13 transportation emissions to less than 5 million metric tons of carbon dioxide equivalent (“MMTCO<sub>2</sub>e”)  
14 by that date. AR 12605. Under the Plan, however, land use and transportation emissions in 2050 will  
15 total 43 MMTCO<sub>2</sub>e. AR 2576-77. Even “net” emissions (including reductions from renewable  
16 electricity, vehicle efficiency, and fuels standards) will be 33.65 MMTCO<sub>2</sub>e. *Id.* Total Plan GHG  
17 emissions<sup>6</sup> in 2050 are thus between *six and nine times* higher than they must be under a long-term  
18 trajectory aimed at stabilizing greenhouse pollution at the *high* end of the scientifically accepted range.  
19 AR12605.

20 Again, this comparison shows that the Plan is radically inconsistent with reduction trajectories  
21 called for by state climate policy and accepted science. Information about this inconsistency was critical  
22 to making an informed judgment—especially in a Plan whose very *purpose* is to reduce GHG emissions.

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24 <sup>6</sup> The EIR provides no per capita emissions estimates for 2050. *See* AR 2578. In responses to comments,  
25 SANDAG offered new tables stating that 2050 per capita emissions would total 27.8 tons CO<sub>2</sub> from all  
26 vehicles and 23.5 tons CO<sub>2</sub> from passenger vehicles. AR 4435. By way of comparison, the emissions  
27 trajectory in EO S-3-05 would limit total per capita emissions to 1.4 MT CO<sub>2</sub>e per person per year. AR  
28 4946. If SANDAG provided correct figures in its response to comments, per capita emissions under the  
Plan for vehicles alone would be between *16 and 20 times* higher than under the EO. AR 4435.

1 The EIR's failure to disclose the information violated CEQA.

2 **B. SANDAG's Excuses for Ignoring the EO S-3-05 Emissions Trajectory Are**  
3 **Unavailing.**

4 Petitioners, the Attorney General, and others objected to SANDAG's refusal to consider the  
5 Plan's consistency with EO S-3-05. In response SANDAG offered two inadequate explanations in the  
6 Final EIR. First, SANDAG raised a "red herring," asserting that the EO is not legally binding, and thus  
7 is not an adopted "regulation or requirement" that agencies should consider in establishing thresholds of  
8 significance. *See, e.g.*, AR 3769-70, 4432-33 (citing Guidelines § 15064.4(b)(2)). But whether EO S-3-  
9 05 is legally binding on SANDAG is irrelevant. As a *factual* matter, the EO provides the best proxy for  
10 the long-term emissions reductions necessary to avoid dramatic changes to the physical environment,  
11 CEQA's core concern. It is the Plan's impact *on the environment*—not its consistency with laws that  
12 bind SANDAG—that matters under CEQA. §§ 21100(b)(1), (d), 21060.5; *Lighthouse Field Beach*  
13 *Rescue*, 131 Cal.App.4th at 1207. SANDAG's objection is irrelevant.

14 Second, SANDAG suggests that a comparison with EO S-3-05 would be meaningless because  
15 the EIR deemed the Plan's 2050 emissions significant by comparing them with existing conditions. *See*  
16 AR 2578, 3769, 12605. Although consideration of existing conditions is appropriate (*see* Guidelines §  
17 15064.4(b)(1)), in this case it does not begin to tell the whole environmental story. Total 2050 emissions  
18 under SANDAG's Plan will exceed 2010 emissions by 4.8 MMTCO<sub>2</sub>e, an increase of about 15 percent  
19 over current levels. This obviously supports a conclusion that the impact is significant.

20 However, climate science reflected in the EO says what emissions *should* be in 2050 to attain the  
21 state's goals—less than 5 MMTCO<sub>2</sub>e in total, or about *one-eighth* of the Plan's projected 2050 impact.  
22 Absent a comparison to the EO's emissions projection, the public and decision-makers cannot  
23 meaningfully grasp the *extreme significance* of the Plan's proposal to allow land use and on-road travel  
24 emissions to grow dramatically. *See Santiago*, 118 Cal.App.3d at 831 (holding inadequate EIR's bare  
25 conclusion that supplying water to project would significantly affect supplies to other customers;  
26 "[w]hat is needed is some information about how adverse the adverse impact will be"); *see also*  
27 *Berkeley Jets*, 91 Cal.App.4th at 1371 (EIR may not avoid disclosure by deeming an impact significant  
28 without adequate analysis). By omitting this comparison, the EIR vastly understates the magnitude of

1 the Plan's climate impact, depriving the public and decision-makers of information required by CEQA.

2 In sum, Executive Order S-3-05 sets forth as California climate policy an emissions reduction  
3 trajectory grounded in physical reality—one that will result in climate stabilization, albeit at the highest  
4 end of the emissions range recommended by scientists. By refusing to use this information in evaluating  
5 the Plan's impacts, SANDAG misled the public and decision-makers on the Plan's true climate impacts.

6  
7 **IV. The EIR Fails to Analyze the Effect that the Increase in Highway Capacity Will Have on  
the Region's Transit System and Ridership.**

8 The Plan will substantially expand freeway capacity in the Plan's early years, but the EIR never  
9 analyzes the effect of this construction on regional transit service. Petitioners informed SANDAG that  
10 widening freeways can discourage transit use in at least three ways and specifically requested that  
11 SANDAG analyze these impacts. AR 4296-97, 27722-23. SANDAG's refusal violated CEQA.

12 First, Petitioners warned that the Plan's increases in freeway capacity will temporarily reduce  
13 traffic congestion and raise vehicle speeds, thus encouraging people to drive instead of use transit. *Id.*,  
14 AR 16839 (study stating that "increased capacity prompts behavioral shifts . . . For example, those who  
15 previously patronized transit to work might decide to drive once they see traffic flowing more  
16 smoothly."). Second, Petitioners noted that the Plan's allocation of funds to freeway expansion projects  
17 will divert funds otherwise available for transit. AR 4296-97, 27722-23. This is particularly concerning  
18 in San Diego, where there is a massive roadway system but anemic transit. AR 4296-97; *see also* 2982  
19 (currently more than 1,600 miles of highways and arterial roads), 4294 (currently only 116 miles of rail),  
20 2982 (residents travel an average of 8,833 miles per year in cars), 2984 (residents travel an average of  
21 .46 miles per year in transit).

22 Third, the Plan's increase in highway capacity will inevitably perpetuate land use patterns  
23 inherently unsuited to transit. AR 4297, 16837 (study stating that in California, "real estate development  
24 has gravitated to improved freeway corridors").

25 SANDAG's first response is that the EIR "examine[d the Plan's] impacts to the transportation  
26 system as a whole, inclusive of all modes including transit." AR 4296. But SANDAG never points to  
27 any portion of its EIR that actually analyzes the Plan's impact *on* transit. *Id.* Although the agency asserts  
28 that "Master Response 14" discusses the significance of the Plan's impacts, including impacts on transit,



1 this response does not address Petitioners' concerns. *Id.* Rather, after first discussing the performance  
2 measures for the RTP/SCS, Master Response 14 then admits that the EIR evaluated the Plan's impacts  
3 using only a limited set of significance criteria focusing on "travel time, congestion, and accessibility."  
4 AR 3799. These significance thresholds do not reveal the Plan's impacts on transit. In fact, they do the  
5 opposite. As Petitioners warned, the EIR's auto-centric criteria slant the analysis in favor of freeway  
6 expansion. AR 19675-79.

7 SANDAG next implies that the EIR studied the Plan's impact on transit because: (1) the Plan's  
8 "transit phasing strategy" maximizes feasible transit, and (2) the Plan includes more transit investment  
9 than previous San Diego RTPs. AR 4296. But regardless of whether the Plan actually maximizes transit  
10—a position Petitioners strongly reject—this investment *in* transit does not somehow serve as an  
11 *analysis* of the Plan's impact *on* transit. Petitioners asked SANDAG to analyze a critical point: whether  
12 construction of early roadway-widening projects might undermine existing transit or reduce the  
13 likelihood that later transit projects would be built. The concern here is very real; as Petitioners pointed  
14 out, transportation agencies do not always implement the transit projects identified in RTPs. AR 19759,  
15 27723. Again, SANDAG never considered this issue.

16 Finally, SANDAG suggests that its so-called analysis of impacts on transit is adequate because  
17 many of the new highway facilities include managed lanes that will accommodate transit. AR 4296. But,  
18 again, identifying project components does not constitute the requisite analysis. In any event, as a panel  
19 of transportation experts recently confirmed, managed lanes do *not* benefit transit. In reviewing  
20 SANDAG's approach to transportation mobility, the Independent Transit Panel determined that "[t]he  
21 dramatic increase in freeway capacity that managed lanes provide will perpetuate auto-oriented  
22 development and reduce transit's competitiveness." AR 28481; *see also* AR 28482 ("the extent of  
23 managed lanes in the RTP will reduce the transit mode share of regional trips"). This is because, in  
24 addition to transit, managed lanes would accommodate private vehicles, including single occupant  
25 vehicles. AR 359, 2112, 4397. Once again, SANDAG does not analyze whether the Plan's expansion of  
26 highways—even expansion accommodating a minor amount of transit—will undercut transit ridership.

27 SANDAG's portrayal of its highway expansions as somehow benefiting transit (*see, e.g.*, AR  
28 4296) simply does not withstand scrutiny. While SANDAG plans to spend \$ 7.3 billion on dozens of

1 miles of new highway lanes by 2020, these will serve only 18 rapid bus routes. AR 2109, 2116, 2119.  
2 Moreover, these buses will run only once every ten to thirty minutes. AR 2109. Thus, the lanes will  
3 overwhelmingly be used by private vehicles. Moreover, nothing guarantees that the lanes will always  
4 remain managed. AR 11117 (SANDAG admits need for managed lanes will be reevaluated in future).

5 Lead agencies must analyze *all* significant impacts of a project. § 21082.2(a); Guidelines  
6 15126.2(a) (“EIR shall identify and focus on the significant environmental effects of the proposed  
7 project.”). This requirement includes impacts on public transit. Guidelines App. G, § (XVI)(f) (requiring  
8 lead agencies to determine whether a project will “decrease the performance of” public transit); *see also*  
9 § 21092.4(a) (requiring lead agencies for certain large-scale projects to consult with transportation  
10 agencies “for the purpose of the lead agency obtaining information concerning the project's effect on . . .  
11 public transit . . . and rail transit service”); Guidelines § 15086(a)(5) (same).

12 Accordingly, courts have long held that agencies must analyze impacts on transit. For example,  
13 in *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d  
14 61, 68, the court invalidated an EIR due in part to its failure to adequately examine the project’s  
15 cumulative impacts on “such important areas of concern as public transit . . . .” *See also id.* at 78-80  
16 (agreeing that “the EIR is deficient in pointing out how serious the transit impacts are”).

17 Here, SANDAG’S EIR nowhere addresses the possibility that its early expansion of freeways  
18 may undercut existing and future transit services. After Petitioners noted this deficiency, SANDAG  
19 failed to identify any part of the EIR that analyzed this issue and then complained that it was unable to  
20 reprioritize funds for more transit in the Plan’s early years. The EIR’s failure to address the Plan’s  
21 potentially significant impacts on regional transit service renders it invalid. *Id.*; § 21082.2(a).

## 22 **V. The EIR Grossly Understates the Project’s Impacts on Agricultural Land.**

23 The Plan, which covers all of San Diego County, includes at least 75 specific road construction  
24 projects (AR 2120-28) and a forecasted development pattern for 388,000 new homes. AR 2082.  
25 However, despite the Project’s massive scale and the fact that San Diego County is the nation’s 16th  
26 largest agricultural county (AR 2175), the EIR estimates that the Plan’s transportation improvements  
27 will impact only 17 acres of farmland. AR 2194, 2199. Likewise, it estimates that construction of the  
28 388,000 new homes will impact less than 10,500 acres of farmland. AR 2194, 2199.

1 Overwhelming record evidence shows that impacts on agriculture will be far greater than  
2 SANDAG states. *E.g.*, AR 27724-25, 19462-65 (American Farmland Trust questioning SANDAG's  
3 analysis and estimating that the Plan will impact 51,000 acres of farmland). First, the record  
4 demonstrates that just three of the 75 individual road projects included in the current SANDAG Plan  
5 will impact—by themselves—425 acres of agricultural land. AR 27725, 28485, 28491. This is *25 times*  
6 the farmland acreage (17 acres) that the EIR estimates the Plan's transportation projects will impact.

7 Second, SANDAG based its regional growth projections on the general plans and planning  
8 assumptions of the County and local jurisdictions. AR 2075. Yet SANDAG's estimate of impacts on  
9 agricultural lands directly contradicts the County's estimates. Critically, the EIR for the recent County  
10 General Plan states that regional growth in the unincorporated portions of the County alone will impact  
11 55,963 acres of farmland by 2030. AR 20441; *see also* AR 19865-66 (General Plan analysis relates only  
12 to unincorporated lands). Thus, while SANDAG states that County growth will impact only 10,500  
13 acres of farmland in the entire County by 2050, the County itself acknowledges that growth in *just the*  
14 *County's unincorporated portions* will impact more than five times as much farmland. And it will do so  
15 twenty years earlier than the SANDAG plan estimates.

16 SANDAG offers no valid excuse for its wildly variant analysis. It merely suggests that it used a  
17 different method than the County to measure agricultural impacts, and that both methods are valid. AR  
18 29343-44. SANDAG measured the Project's impacts by considering only farmland designated and  
19 mapped under the state's Farmland Mapping and Monitoring Program ("FMMP") (AR 2175, 29343).  
20 By contrast, the County recognized that the FMMP maps did not reflect all the region's farmland, so it  
21 relied upon the FMMP maps *and* aerial photography. AR 20422, 29344.

22 SANDAG's exclusive reliance on FMMP data was arbitrary. As the County explained in the EIR  
23 for its General Plan, "FMMP data does not capture a *significant portion* of the agricultural resources  
24 located within the County." AR 20422 (emphasis added). This is because the "FMMP uses a 10 acre  
25 minimum mapping unit to determine farmland resources," yet "[s]ixty-eight percent of San Diego  
26 County's farms are between one and nine acres, with an average farm size of four acres." *Id.*; *see also*  
27 AR 2175 (SANDAG acknowledging that FMMP uses 10-acre minimum mapping unit). Thus, "[w]hile  
28 this [FMMP] standard would be appropriate in other areas of the State with larger farms, it does not

1 account for the numerous smaller farms located through San Diego County.” AR 20422.

2 SANDAG now floats one additional, “eleventh hour” defense: it contends that its analysis is  
3 valid because it is consistent with CEQA Guidelines Appendix G. AR 29343; *see also* Guidelines,  
4 Appendix G, § II(a). However, Appendix G is merely “a sample checklist form that is *suggested* for use  
5 in preparing an initial study.” *South Orange County Wastewater Auth. v. City of Dana Point* (2011) 196  
6 Cal.App.4th 1604, 1616 (emphasis in original). Its sample “significance” questions do not cover every  
7 situation, and agencies may not reflexively use them without analyzing whether a project will have  
8 significant impacts not addressed by the checklist. *Mejia*, 130 Cal.App.4th at 342 (“A threshold of  
9 significance is not conclusive . . . A public agency cannot apply a threshold . . . ‘in a way that forecloses  
10 the consideration of any other substantial evidence showing there may be a significant effect.’”) (quoting  
11 *Communities for a Better Envt v. Cal Resources Agency* (2002) 103 Cal.App.4th 98, 114);  
12 *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1111-12.

13 The decision in *Protect the Historic Amador Waterways* is directly on point. There, an agency  
14 used questions from Appendix G as thresholds of significance for measuring a project’s hydrologic  
15 impacts. 116 Cal.App.4th at 1110. Petitioners argued that these questions did not address the project’s  
16 particular hydrologic impacts and that, by using these questions, the agency failed to measure the  
17 project’s true impacts. *Id.* at 1110-11. The court agreed that an agency may not “rotely appl[y] standards  
18 of significance that d[o] not address . . . potential environmental effect[s] of the project.” *Id.* at 1112.  
19 Invalidating the EIR, the court held that the agency must demonstrate that the project would not result in  
20 significant environmental impacts, regardless of the Appendix G checklist. *Id.* at 1111-12.

21 Here, SANDAG applied an inappropriate threshold of significance in the same rote manner that  
22 the court rejected in *Protect the Historic Amador Waterways*. By using a threshold based solely on  
23 FMMP data, when it knew that the FMMP data did not accurately reflect farming in the County,  
24 SANDAG ignored Project impacts on approximately 68 percent of the region’s farms. *See* AR 20422  
25 (68 percent of County farms are smaller than the 10-acre mapping size used by the FMMP). A core  
26 purpose of an EIR is to accurately depict a project’s impacts so that the public and decision-makers can  
27 intelligently weight the consequences of approving the project. *Mira Monte Homeowners Assn.*, 165  
28 Cal.App.3d at 365. Here, the EIR’s gross understatement of the Plan’s impacts on agricultural land

1 rendered the EIR invalid. *See Berkeley Jets*, 91 Cal.App.4th at 1371 (EIR that lacked meaningful  
2 analysis of impacts was invalid).

3 **VI. The EIR Fails to Adequately Analyze the Project's Growth-Inducing Impacts.**

4 An EIR must provide a "detailed statement" of a project's growth-inducing impacts, including  
5 aspects of the project that "may encourage and facilitate other activities that could significantly affect  
6 the environment." § 21100(b)(5); Guidelines § 15126.2(d). Thus, the EIR must examine "the ways in  
7 which the proposed project could foster economic or population growth, or the construction of  
8 additional housing, *either directly or indirectly*." Guidelines § 15126.2(d). Likewise, the EIR must  
9 analyze the project's ability to "remove obstacles to population growth" or "encourage and facilitate  
10 other activities" that may impact the environment. *Id.* The Guidelines expressly recognize that growth-  
11 inducing impacts can occur "through extension of roads or other infrastructure." Guidelines App. G, §  
12 XIII(a). The EIR here does not come close to meeting these requirements.

13 The EIR admits that the Project will have significant growth-inducing impacts (*e.g.*, AR 2859-  
14 60), but fails to fully analyze them. The EIR sets forth population projections that the RTP/SCS is  
15 designed to accommodate. AR 2842-43. It then claims that the remainder of the EIR analyzes the  
16 secondary environmental impacts from that population growth, such as impacts to agricultural,  
17 biological, and cultural resources. *Id.*; *see also* AR 3339-40. These sections do purport to analyze the  
18 direct impacts of the RTP/SCS. However, they never examine the Project's *indirect* impacts. Indeed,  
19 they never mention the most-critical of those impacts: growth-inducing impacts. *See, e.g.* AR 2192-94  
20 (no mention of impacts on agriculture from indirectly induced growth).

21 An analysis of indirectly induced growth is essential. The project here involves the approval of  
22 large-scale transportation infrastructure that will shape regional growth for the next several decades. The  
23 EIR admits that by 2050 the Plan's provision for additional highway and roadway capacity in rural areas  
24 will cause the urbanization of "[l]arge pockets of land currently being used for agricultural purposes."  
25 AR 2262. But it then ignores the further environmental consequences of this infrastructure.

26 As Petitioners explained, authorizing any amount of development in rural, currently undeveloped  
27 areas will inevitably induce further growth. AR 27728. For example, when planned residential uses in  
28 rural areas overload septic capacity, new sewer lines will be built. AR 28496. To be cost effective, those

1 lines must include additional hook-ups, thereby incentivizing more housing development than the Plan  
2 currently contemplates. *Id.* Such growth in turn leads to the need for more public services and facilities,  
3 such as roads, water, schools, and police, the construction of which causes further environmental  
4 impacts. At the same time, this growth spiral increases land costs, thereby rendering farming less  
5 economically viable. AR 27728, 28496.

6 Black-letter CEQA law requires that the EIR analyze this “spiral” of sprawl development that the  
7 Project will cause, including the indirect environmental impacts resulting from that development. *See,*  
8 *e.g., Chawanakee Unified School District v. County of Madera* (2011) 196 Cal.App.4th 1016, 1028-29  
9 (Where a project will predictably result in the construction or expansion of facilities, the EIR must  
10 analyze the impacts of that construction on the surrounding environment.); *Anderson First Coalition v.*  
11 *City of Anderson* (2005) 130 Cal.App.4th 1173, 1182 (When economic and social effects caused by a  
12 project “could result in a reasonably foreseeable indirect environmental impact . . . the CEQA lead  
13 agency is obligated to assess this indirect environmental impact.”). The EIR failed to do so.

14 **VII. SANDAG Failed to Adopt Feasible Mitigation to Lessen the Project’s Significant**  
15 **Impacts.**

16 An EIR’s central purpose is to identify a project’s significant environmental effects and then  
17 evaluate ways of avoiding or minimizing them. §§ 21002.1(a), 21061. The lead agency also must adopt  
18 any feasible mitigation measure that can substantially lessen the project’s significant environmental  
19 impacts. § 21002; Guidelines § 15002(a)(3). In doing so, the lead agency must “ensure that feasible  
20 mitigation measures will actually be implemented as a condition of development, and not merely  
21 adopted and then neglected or disregarded.” *Federation*, 83 Cal.App.4th at 1261 (*italics omitted*).

22 SANDAG claims that “a first-tier EIR may contain generalized mitigation criteria.” AR 3766.  
23 But preparation of a first-tier or “program” EIR does not excuse an agency from complying with  
24 CEQA’s mitigation requirements. *See, e.g., Federation*, 83 Cal.App.4th at 1255, 1261 (rejecting as  
25 inadequate mitigation measures in program EIR certified for a General Plan Framework update). To the  
26 contrary, mitigation is especially crucial when an agency prepares a program EIR. As SANDAG itself  
27 recognized, “[a]n advantage of a Program EIR is that it allows the lead agency to consider broad policy  
28 alternatives and ‘program wide mitigation measures’ at an early time when the agency has greater

flexibility to deal with basic problems or cumulative impacts.” AR 3765 (citing Guidelines § 15168(b)(4)).

SANDAG violated this mandate. After admitting that the Plan will cause numerous significant environmental impacts, the EIR identified only a limited set of mitigation measures for most of those impacts. Moreover, the proposed measures would not effectively reduce the Plan’s impacts. Specifically, SANDAG violated CEQA by: (1) rejecting mitigation measures suggested by Petitioners and others without substantial evidence that such measures are infeasible; and (2) improperly deferring necessary mitigation to a later point.

**A. The EIR Improperly Rejects Feasible Mitigation Measures.**

Throughout the environmental review process, members of the public, the Attorney General and other public agencies suggested several well-accepted, feasible mitigation measures that would lessen the Project’s significant environmental impacts. SANDAG’s refusal to seriously consider or adopt them violates CEQA. *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724 (agency “cannot acknowledge a significant impact, refuse to do or find anything else about it, and approve the project anyway”); Guidelines § 15126.4(a)(1).

**1. Improper Rejection of “Parking Management” Measures.**

To mitigate the Project’s significant transportation, air quality and GHG impacts, Petitioners and others suggested that SANDAG employ a suite of “parking management” strategies. *See, e.g.*, AR 19682, 27731-32. As these commenters explained, studies show that measures to decrease the supply, and increase the cost, of parking can effectively discourage automobile travel and promote public transit. *See, e.g., id.*; AR 4154, 4214, 4402, 26496. SANDAG rejected “parking management” out of hand, claiming: (1) other tests proved that increasing parking costs would only slightly affect region-wide VMT and transit share; and (2) regional parking management measures are infeasible. AR 3800-3801.

Substantial evidence does not support these two conclusions. Initially, the EIR does not describe the tests’ protocols, assumptions or methodologies. The only study referenced—a CARB report—does not support the EIR’s conclusion that regional parking measures would not effectively reduce VMT or increase transit share. AR 28332-33. The CARB report found this “testing” inconclusive because it was conducted in only a few locations and did not assume a significant change in parking cost. *Id.* In fact, the

1 study skewed the results by including *lower* costs of parking meters. AR 28332. Moreover, other  
2 SANDAG studies conclude that “[p]arking costs help shift the true cost of parking to the user and both  
3 parking supply and cost have been shown to directly impact vehicle miles traveled (VMT) and transit  
4 mode share.” AR 14401 (SANDAG Menu of Policy Options to Support the Transit Network).

5 The EIR’s “evidence” that parking management measures are infeasible is similarly specious.  
6 SANDAG disclaims any “independent authority to require local governments or the [California Coastal  
7 Commission] to implement a coordinated regional parking fee program.” AR 3800. However, a lead  
8 agency may only “disclaim[] responsibility to mitigate environmental effects . . . when the other agency  
9 said to have responsibility has *exclusive* responsibility” for the mitigation. *City of Marina v. Bd. of*  
10 *Trustees* (2006) 39 Cal.4th 341, 366 (emphasis in original). Here, SANDAG has acknowledged that  
11 many regional parking management solutions are within its authority. *See, e.g.*, AR 14402-03; *see also*  
12 AR 8170 (Southern California Area of Governments (SCAG) implementing parking management policy  
13 on regional level). Indeed, the SANDAG Board has directed staff to consider such policies as part of the  
14 upcoming Regional Comprehensive Plan update. AR 3801.

15 SANDAG then protests that it was “logistically infeasible” to develop parking management  
16 measures before approving the 2050 RTP/SCS. AR 3801. But an agency may not avoid CEQA  
17 compliance because the task could prove difficult. *Laurel Heights I*, 47 Cal.3d at 399. Furthermore, even  
18 if SANDAG could not develop these measures now, the agency could have adopted specific  
19 performance standards for measures to be developed later.<sup>7</sup> *See* Part B, *infra*. Given the uncontroverted  
20 evidence that parking management feasibly and effectively lessens the Project’s significant impacts,  
21 rejecting such measures violated CEQA. *See County of San Diego v. Grossmont-Cuyamaca Community*

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23 <sup>7</sup> SANDAG also argues it rejected parking management measures due to “social considerations,”  
24 claiming they would increase the economic burden to workers and “may adversely impact the travel  
25 costs of drivers who do not have access to convenient transit options.” AR 121. In essence, SANDAG  
26 argues that its mission is to keep automobile travel affordable, no matter what the environmental cost.  
27 This approach contravenes the basic purpose of CEQA, which is “to afford the fullest protection to the  
28 environment within the reasonable scope of the statutory language.” *Friends of Mammoth v. Board of*  
*Supervisors* (1972) 8 Cal.3d 247, 259 (disapproved on other grounds). In any event, the conclusion is  
belied by the Board’s decision to consider such measures in the future. AR 3801.



1 *College Dist.* (2006) 141 Cal.App.4th 86, 108 (infeasibility finding lacked substantial evidence).

2 **2. Improper Rejection of Measure Reducing VMT.**

3 SANDAG also improperly rejected a proposed mitigation measure that would condition the  
4 funding for transportation projects on performance standards requiring reductions in VMT. AR 3829.  
5 SANDAG's excuse is that there are "other ways" to reduce GHGs, citing vehicle efficiency standards  
6 and low-carbon fuels regulations. *Id.*

7 SANDAG's excuse cannot withstand scrutiny. The agency's own Climate Action Strategy  
8 recognizes that reductions in VMT are necessary *in addition to these measures* in order to meet the  
9 state's 2050 emissions target. The Strategy finds, "Statewide forecasts of fuel used for personal  
10 transportation indicate that significant increases in vehicle fuel efficiency and use of alternative fuels  
11 will not achieve the long-term 2050 goal for greenhouse gas reduction unless per capita vehicle miles  
12 traveled in the state is reduced about five percent below the baseline 2005 level." AR 6602. Thus,  
13 SANDAG has violated CEQA by not adopting mitigation to reduce VMT, or providing substantial  
14 evidence that such mitigation is infeasible. Guidelines § 15021(a)(2); *Los Angeles Unified Sch. Dist. v.*  
15 *City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029 ("an adequate EIR must respond to specific  
16 suggestions for mitigating a significant impact unless the suggested mitigation is facially infeasible").

17 **B. The Deferral of Key Mitigation Violates CEQA.**

18 SANDAG also violated CEQA by deferring critical, program-wide mitigation of the Project's  
19 significant impacts. Rather than analyze or adopt feasible mitigation as part of the Project, SANDAG  
20 chose to adopt various measures that put this crucial task off until the future. CEQA allows a lead  
21 agency to defer mitigation only when: (1) an EIR contains criteria, or performance standards, to govern  
22 future actions implementing the mitigation; (2) practical considerations preclude development of the  
23 measures at the time of initial project approval; and (3) the agency has assurances that the future  
24 mitigation will be both "feasible and efficacious." *Communities for a Better Environment v. City of*  
25 *Richmond* (2010) 184 Cal.App.4th 70, 94-95 ("CBE"); *San Joaquin Raptor Rescue Center v. County of*  
26 *Merced* (2007) 149 Cal.App.4th 645, 669-71; Guidelines § 15126.4(a)(1)(B). Here, none of these  
27 requirements are met.

28 ///

1                   **1.       Improper Deferral of Mitigation for Air Quality Impacts.**

2           The EIR defers critical mitigation for its significant air quality impacts until the project-  
3 implementation stage. AR 64-74. For air quality impacts resulting from the Plan's land use components,  
4 SANDAG vaguely declares that its member agencies "can and should" develop "appropriate" mitigation  
5 when approving individual land use projects in the future. *Id.* at 65. This approach violates CEQA, for  
6 SANDAG provides no performance standards to guide such deferred mitigation. *CBE*, 184 Cal.App.4th  
7 at 94, 95. SANDAG argues it "has no legal authority to modify local general plans or development  
8 projects to reduce growth-related air emissions." AR 66. But this ignores SANDAG's role in influencing  
9 land use patterns through its transportation decisions. *See, e.g.*, AR 2733-34; *Marina*, 39 Cal.4th at 356  
10 ("An EIR that incorrectly disclaims the power and duty to mitigate identified environmental effects  
11 based on erroneous legal assumptions is not sufficient as an informative document.").

12           SANDAG runs into the same problem in deferring mitigation for the significant air quality  
13 impacts from the Project's transportation improvements. For instance, the EIR adopts mitigation  
14 measure ("MM") AQ-C to lessen the exposure of sensitive receptors to CO, PM10, and PM2.5  
15 emissions. But, this measure calls for SANDAG and its member agencies to evaluate such exposures at  
16 a future time, when individual transportation projects are approved. AR 69. Again, the measure violates  
17 CEQA because it lacks any performance standards to ensure its ultimate effectiveness.

18           In response to the Attorney General's criticisms about the EIR's failure to adequately mitigate  
19 the Project's significant air quality impacts, the Final EIR merely adds lists of suggested measures for  
20 SANDAG and local agencies to consider later, at the project level. AR 4426-28. For example, to  
21 mitigate the Project's ozone emissions, SANDAG added MM AQ-A1, which states that local agencies  
22 "can and should" consider measures such as smart growth, transit-oriented development ("TOD"), and  
23 infill development. AR 4426. Similarly, SANDAG expanded MM AQ-C to state that SANDAG and  
24 other agencies should consider mitigation such as "routing traffic away from populated zones, and  
25 replacing older buses with cleaner buses." AR 4427. However, these measures are merely non-exclusive  
26 suggestions; the EIR does not mandate adoption of them or any others. AR 4426-28. SANDAG's last-  
27 minute additions thus cannot suffice under CEQA. *CBE*, 184 Cal.App.4th at 93 (rejecting as inadequate  
28 measures that are "nonexclusive, undefined, untested, and of unknown efficacy").

1 Nor does the EIR ever explain why these air quality measures could not be adopted with the  
2 current RTP/SCS. This Plan enables SANDAG to manage project components on a comprehensive level  
3 to achieve effective region-wide mitigation *now*. Guidelines § 15168(b)(4). After SANDAG approves its  
4 complete transportation network, it will be difficult, if not impossible, to make changes at the individual  
5 project level. Moreover, as Petitioners and others documented, SANDAG could have included many  
6 feasible program-wide mitigation measures in the Plan, such as a TOD policy or prioritizing transit  
7 projects, to reduce VMT and attendant air quality impacts. AR 27733-35. The agency's failure to do so,  
8 or to provide substantial evidence that such mitigation is infeasible, is an abuse of discretion. § 21168.5.

9 **2. Improper Deferral of Mitigation for Transportation Impacts.**

10 The EIR provides only one vague mitigation measure (MM T-A) for the Project's significant  
11 transportation impacts, which include increased VMT in congested conditions during peak periods:

12 SANDAG, working with local jurisdictions and other transportation planning agencies,  
13 including Caltrans, shall reevaluate regional travel times, land use changes, and regional  
14 growth during the development of each RTP/SCS, occurring every four years. When  
15 feasible, SANDAG shall in future RTP/SCSs modify the timing and priority of  
transportation and network improvements to be consistent with available funding  
programs to most quickly implement those improvements that would reduce impacts T-3  
and T-4 to less than significant levels.

16 AR 3018-19. Thus, SANDAG defers mitigation to the *next* time that it completes an RTP.

17 Measure MM T-A's deferral of mitigation is unlawful. First, while the measure would have  
18 SANDAG "reevaluate" transportation issues and "modify the timing and priority" of projects "when  
19 feasible," it provides no criteria or standards to guide these actions. *Id.* This vague, open-ended approach  
20 flatly violates CEQA's mitigation requirements. *See Anderson First*, 130 Cal.App.4th at 1188-89  
21 (holding traffic mitigation fee measure inadequate under CEQA due to vagueness in program for  
22 implementing required improvements). Indeed, MM T-A is far less specific than measures rejected by  
23 the courts as lacking performance standards. *See, e.g., id.; San Joaquin Raptor*, 149 Cal.App.4th at 669-  
24 71 (county improperly deferred mitigation by relying on land management plan to be developed after  
25 EIR certification).

26 Second, the EIR provides no evidence of any practical considerations that prohibited SANDAG  
27 from adjusting the timing and priority of transportation projects now, rather than later. In fact, SANDAG  
28 had ample opportunity to reprioritize, or "front-load," important transit projects in conjunction with this

1 RTP/SCS, but refused to do so. Petitioner CNFF's independent transportation expert provided a fully  
2 developed alternative option under which SANDAG would complete many of the RTP/SCS's transit  
3 projects during the Plan's first ten years. The expert demonstrated that such a reprioritization could  
4 reduce many of the most significant impacts over the Plan's life. AR 19690-91, 19749-68.

5 SANDAG protested that this alternative is financially infeasible because TransNet restricts  
6 funding for transit projects. AR 3810-11. However, as SANDAG itself admitted, the Board may modify  
7 TransNet upon a two-thirds vote. *Id.*; see also AR 27739-40. Furthermore, Petitioners identified other  
8 feasible methods to shift funds from highway projects to transit. AR 27740-41. No substantial evidence  
9 exists that SANDAG could not reprioritize funding with the development of this RTP/SCS.

10 Third, even assuming *arguendo* that reprioritizing transportation projects is infeasible, the EIR  
11 provides no substantial evidence that reprioritization would somehow *become* feasible with the  
12 development of a future RTP/SCS. CEQA requires such evidence to support deferred mitigation. *CBE*,  
13 184 Cal.App.4th at 95. In other words, SANDAG's argument on feasibility cannot have it both ways.

14 In short, no evidence demonstrates that SANDAG's adopted mitigation, MM T-A, will be  
15 effective. *Id.* The measure is so vague as to be meaningless. Accordingly, SANDAG cannot support its  
16 claim that MM T-A will lessen the Project's significant transportation impacts. AR 118-23; *Grey v.*  
17 *County of Madera* (2008) 167 Cal.App.4th 1099, 1116-18 (vague measure insufficient as mitigation).

### 18 3. Improper Deferral of Mitigation for GHG Impacts.

19 The EIR's mitigation for the Plan's significant GHG's emissions suffers from precisely the same  
20 fatal flaws. Measure GHG-A consists of yet another vague reference to include unspecified "policies  
21 and measures that lead to reduced GHG emissions" in future RTPs. AR 2588. Once again, GHG-A  
22 contains no enforceable commitments to specific measures and no performance standards, rendering  
23 unlawful its deferral of mitigation to the future. *CBE*, 184 Cal.App.4th at 94, 95. Measure GHG-B  
24 promises to "encourage" other jurisdictions to "adopt climate action plans," but, like GHG-A, it  
25 provides no performance standards or enforceable guidelines for those plans. AR 2588-90. Moreover,  
26 even if other agencies should mitigate the impacts of their own projects, those obligations do not relieve  
27 SANDAG of its responsibility under CEQA to mitigate the Plan's impacts. *Citizens for Quality Growth*  
28 *v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 442, fn. 8 (city cannot avoid responsibility to

1 mitigate project impacts by pointing to potential action of another agency).

2       The Final EIR claims that Measures GHG-A and GHG-B somehow incorporated several GHG  
3 reduction measures recommended by the Attorney General. *See* AR 3824-25. However, because  
4 SANDAG's measures amount to only vague and unenforceable future plans, the public cannot even  
5 determine whether that incorporation occurred. Worse, SANDAG *rejected* some of the Final EIR's most  
6 important measures—*e.g.*, promoting smart growth, transit-oriented development, and infill  
7 development “through land use designations”—because “SANDAG does not have the legal authority to  
8 modify” local government's land use plans. AR 4301. Thus, SANDAG's “lack of authority” excuse  
9 necessarily means it cannot establish that any incorporated measures will effectively mitigate the Plan's  
10 impacts. Again, the agency cannot have it both ways.

#### 11           **4. SANDAG's Last Minute Measures Are Insufficient.**

12       After members of the public and the Attorney General commented that SANDAG had failed to  
13 mitigate the Plan's significant impacts, the agency then drew up and approved six additional measures.  
14 AR 223. But this eleventh hour “fix” is insufficient. First, in its rush SANDAG neglected to make  
15 findings regarding the feasibility or effectiveness of these measures, as required by CEQA. Guidelines §  
16 15091(a). Second, these new measures—just like MMs T-A, GHG-A, and GHG-B—improperly defer  
17 mitigation to the future. Once again, SANDAG repeated its pattern of failing to set performance  
18 standards or take any other steps to ensure the measures' effectiveness.

19       For example, SANDAG proposed to “[e]valuate alternative land-use scenarios as part of the  
20 Regional Comprehensive Plan (RCP) Update in an attempt to address the ‘backsliding’ of greenhouse  
21 gas levels between years 2035-2050.” AR 223. SANDAG, however, never explained how any future  
22 “evaluation” of alternative land uses would actually *address* the backsliding. This omission is especially  
23 telling in light of SANDAG's other finding that all current mitigation involving land use modifications  
24 was “infeasible” because of the agency's lack of authority. *See, e.g.*, AR 4301.

25       Similarly, SANDAG said it would “implement an action to develop a regional [TOD] policy in  
26 the 2050 RTP Sustainable Communities Strategy to promote and incentivize sustainable development.”  
27 AR 223. Again, SANDAG offers no information on the contents of the promised policy, much less  
28 standards to ensure its effectiveness. Nor did SANDAG explain why it could not implement a TOD

1 policy *now*, when Petitioners had submitted evidence of a TOD policy *already* implemented  
2 successfully by another regional transportation agency. AR 27733-34. Accordingly, SANDAG's last-  
3 minute measures cannot cure the EIR's failure to adopt feasible mitigation measures.

4 **VIII. The EIR Fails to Analyze a Reasonable Range of Alternatives.**

5 Every EIR must analyze a reasonable range of project alternatives. *See* § 21100(b)(4); Guidelines  
6 § 15126.6(a). The alternatives analysis lies at "[t]he core of an EIR" because it informs decision-makers  
7 and the public about ways of accomplishing some or all of the proposed project's objectives with fewer  
8 environmental impacts. *Goleta II*, 52 Cal.3d at 564-65; Guidelines § 15126.6(b). To be "reasonable," the  
9 alternatives in an EIR must provide enough variation from the proposed project "to allow informed  
10 decisionmaking." *Laurel Heights I*, 47 Cal.3d. at 404-05. Those alternatives must also avoid or  
11 substantially lessen the project's significant environmental impacts while attaining most of the project's  
12 basic objectives. *See* § 21100(b)(4); Guidelines § 15126.6(a) & (b).

13 Here, the EIR's analysis of alternatives does not satisfy these requirements. First, the six  
14 alternatives analyzed (other than the required "no project" alternative) vary only slightly from the  
15 substance of the proposed Project, and thus are not a "reasonable range." *See* Guidelines § 15126.6(b)  
16 (EIR must evaluate a reasonable range of alternatives even if they "would impede to some degree the  
17 attainment of the project objectives, or would be more costly"); AR 19689-91, 27735-37. SANDAG's  
18 Plan will shape regional transportation and growth patterns for decades; therefore, analyzing a range of  
19 transportation alternatives that could substantially reduce the Project's significant impacts is crucial.  
20 Yet, all six alternatives would construct most or all of the Plan's highway projects, using slightly  
21 different timeframes. *Compare* AR 2109-22, *with* AR 3140-62. No alternative would substantially  
22 improve the Project's planned transit components. *Id.*

23 For example, even the two so-called "Transit Emphasis" alternatives (Alternatives 3a and 3b)  
24 "implement the majority of highway projects in the 2050 RTP/SCS." AR 3153; *see also* 3160. Further,  
25 while these alternatives advance some transit projects, they still would defer at least half of them to the  
26 Plan's middle or latter phases. AR 3158-60. Neither alternative includes a *single* transit project not  
27 provided in the adopted RTP/SCS. AR 3153, 3158-60. And the so-called "environmentally superior  
28 alternative" ("Slow Growth," Alternative 5) would simply delay Plan implementation by five years.

1 AR 3162.

2 Second, none of the alternatives analyzed would “avoid or substantially lessen” the Project’s  
3 significant environmental impacts. *See* AR 3320-29. All six analyzed alternatives, including the  
4 “environmentally superior” alternative, would cause significant environmental impacts in the same 17  
5 issue areas as the Project over the life of the Plan.<sup>8</sup> *Id.* Indeed, five of the six alternatives result in the  
6 same or *increased* impacts for all of the Plan’s significant GHG emissions, and for all but one of the  
7 Project’s significant transportation impacts. AR 3323-24, 3328-29. While the EIR asserts that the Slow  
8 Growth alternative would reduce these impacts (although not substantially) (*id.*), SANDAG admits that  
9 this alternative “would result in additional growth and associated impacts in surrounding counties.” AR  
10 148. SANDAG then refuses to analyze such impacts, terming them “speculative.” *Id.* Thus, the EIR’s  
11 alternatives do not constitute a reasonable range. § 21100(b)(4); Guidelines § 15126.6(a) & (b);  
12 *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1086-90 (analysis must  
13 include alternative that alters the project components that primarily cause significant impacts).

14 Patently missing from the EIR—and needed for truly informed decision-making—is an  
15 alternative increasing transit service significantly in the Plan’s early years. This alternative would  
16 prioritize transit projects over some freeway construction and substantially decrease the Plan’s impacts  
17 on air quality and global climate change by reducing VMT. Here, members of the public presented  
18 SANDAG with two such alternatives—the 50-10 Transit Plan and the “FAST Plan”—early in the  
19 process. The 50-10 Plan, developed by Smart Mobility Inc. at Petitioner CNFF’s request, differs  
20 substantially from the Project and the alternatives in the EIR by accelerating the Plan’s transit projects to  
21 the Plan’s first ten years. AR 19690-91, 19749-68. The 50-10 Plan also would halt new freeway or  
22 tollway construction until the urban core transit system is functional. *Id.* Similarly, Move San Diego’s  
23 FAST Plan is a transit-focused alternative providing for more rapid transit connections and maximizing  
24

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25 <sup>8</sup> Two alternatives, 3a and 3b, would reduce a significant Project impact in *one* subcategory of  
26 transportation impacts (non-work trips accessible within 15 minutes) to a less than significant level in  
27 2050. However, they would also increase another impact (emergency response times based on  
28 congestion) from less than significant to significant in the same time period. AR 3319, 3329.

1 transit ridership. AR 19158-59. SANDAG refused to include either alternative plan in the EIR.<sup>9</sup>

2 The EIR's alternatives analysis and SANDAG's findings lead ineluctably to a conclusion that *no*  
3 RTP/SCS configuration is available that differs significantly from SANDAG's proposal. *See, e.g.,* AR  
4 131-55, 3133-35. But that conclusion is factually wrong. Moreover, if it were true, "CEQA's mandate to  
5 consider alternatives would be meaningless." *Kings County*, 221 Cal.App.3d at 737. Indisputably, the  
6 RTP/SCS will cause significant and unavoidable impacts in 17 different resource areas, including  
7 transportation, air quality, and GHG impacts. AR 3320-29. Because the SCS's statutory purpose is to  
8 achieve the state's GHG reduction targets, CEQA required SANDAG to consider a revised plan, like the  
9 50-10 Plan or the FAST Plan, that significantly lessened these impacts. *See Center for Biological*  
10 *Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884 (failure to consider alternative  
11 designed to avoid the most detrimental aspect of project violated CEQA). The EIR's failure to do so  
12 constitutes an abuse of discretion. *Id.*

### 13 CONCLUSION

14 For the foregoing reasons, Petitioners respectfully request that the Court set aside SANDAG's  
15 approval of the Project and certification of the EIR, until SANDAG complies with CEQA.

16 DATED: June 26, 2012

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17 By:

18   
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20 DATED: June 26, 2012

21 By:

22   
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23 Attorneys for CENTER FOR BIOLOGICAL DIVERSITY

24 <sup>9</sup> SANDAG asserts that these plans (1) are "transit only" alternatives, (2) constitute only a slight  
25 variation from the alternatives analyzed in the EIR, (3) are financially infeasible, and (4) may not be  
26 environmentally superior to the Project. AR 3805-11. As Petitioners explained (AR 27737-42), these  
27 assertions are either plainly incorrect or not supported by substantial evidence. But in any event, such  
28 excuses do not legally justify the EIR's failure to provide a reasonable range of alternatives that  
substantially lessens the Project's impacts while achieving most of the Project objectives.



1 **PROOF OF SERVICE**

2 ***Cleveland National Forest Foundation et al. v. San Diego Association of Governments, et al.***  
3 ***San Diego County Superior Court***  
4 ***Case No.: 37-2011-00101593-CU-TT-CTL***

5 At the time of service, I was over 18 years of age and **not a party to this action**. I am  
6 employed in the City and County of San Francisco, State of California. My business address is  
7 396 Hayes Street, San Francisco, California 94102.

8 On June 27, 2012, I served true copies of the following document(s) described as:

9 **PETITIONERS' OPENING BRIEF**


10 on the parties in this action as follows:

11 **SEE ATTACHED SERVICE LIST**

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

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

21 Executed on June 27, 2012, at San Francisco, California.

22   
23 Sean P. Mulligan

SERVICE LIST

Cleveland National Forest Foundation et al. v. San Diego Association of Governments, et al.

Case No.: 37-2011-00101593-CU-TT-CTL  
San Diego County Superior Court

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