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IN THE SUPREME COURT OF CALIFORNIA

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

v.

SAN DIEGO ASSOCIATION OF GOVERNMENTS; SAN DIEGO ASSOCIATION OF GOVERNMENTS BOARD OF DIRECTORS,
Appellants and Cross-Respondents.

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

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

ANSWER TO PETITION FOR REVIEW

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PRELIMINARY STATEMENT

The San Diego Association of Governments ("SANDAG") seeks to re-litigate issues decided by the Fourth District Court of Appeal, which affirmed a trial court ruling that SANDAG violated the California Environmental Quality Act ("CEQA"). However, SANDAG never explains why this case merits Supreme Court review, as its petition fails even to mention the grounds for review established in Rule of Court 8.500(b). This omission is telling, as those grounds do not exist here. SANDAG has not demonstrated that Supreme Court review is needed either to resolve a conflict in decision or to settle an important question of law; the court of appeal simply applied well-established CEQA authority to the facts of this case. Indeed, SANDAG is unable to cite a single precedent from which the appellate court's decision diverges.

The trial court below found that SANDAG violated CEQA by failing to analyze the serious, long-term climate impacts of its 2050 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS" or "Plan"), and the court of appeal affirmed. SANDAG does not dispute that its Plan will *increase* climate-disrupting greenhouse gas emissions through 2050. In contrast, California's science-based climate policy calls for steep *reductions* in greenhouse gas emissions over that same time period. That policy originated in Governor Schwarzenegger's Executive Order S-3-05, which—as SANDAG's own Climate Action

Strategy acknowledges—"is based on the scientifically-supported level of emissions reduction needed to avoid significant disruption of the climate and is used as the long-term driver for state climate change policy development." Opinion:14.

SANDAG's Environmental Impact Report ("EIR") for the Plan, however, never analyzed the Plan's basic inconsistency with these long-range emissions reduction goals. The court of appeal held that this failure "deprived the public and decisionmakers of relevant information about the transportation plan's environmental consequences" (Opinion:15), and that the EIR's attempt to portray the Plan as consistent with relevant state climate policy was "fundamentally misleading." (Opinion:18). These holdings are firmly grounded in long-standing precedent emphasizing that an EIR's purpose is to provide information that will "alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." Opinion:17 (quoting *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392).

Instead of addressing the court of appeal's measured ruling, SANDAG resorts to hyperbole and distortion. The dissent's concerns, while undoubtedly sincere, are also misplaced. This is not a case about whether the governor or the court of appeal overstepped their constitutional authority. It is a case where an agency simply failed to disclose and analyze its project's long-term impacts, as CEQA requires. Nor does the Opinion

undercut agency discretion in determining the significance of environmental impacts. The court of appeal holds only that SANDAG must exercise this discretion in light of CEQA's fundamental informational purpose. Nothing about this Opinion is "breathtaking." Dissent:9; SANDAG Petition for Review ("Petition") Petition:1. Rather, it is based on settled law, creates no conflicts with prior decisions, and is entirely correct under the facts of this case.

This Court similarly need not review the Opinion's holding that SANDAG failed to mitigate the climate impacts of its Plan. Here again, the Opinion simply applied established CEQA law on mitigation to the facts of this case. Indeed, SANDAG readily concedes that "[m]ost of the relevant background principles of law here are not in dispute." Petition:16.

Next, SANDAG raises a procedural issue, objecting to the court of appeal's consideration of several of Petitioners' CEQA issues that, SANDAG claims, Petitioners had forfeited below. Again, SANDAG articulates no ground for Supreme Court review. To begin with, the Opinion nowhere held that Petitioners forfeited these claims, which they fully briefed in the trial court, and the record does not support such a holding. Furthermore, this Court has repeatedly held that an appellate court may adjudicate claims even where—as was *not* the situation here—a party has failed to preserve them for review. *E.g., People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6. In the present case, because SANDAG must update

its RTP every four years, it made perfect sense for the court of appeal to decide the remaining CEQA claims and thereby potentially avoid additional litigation on future RTPs.

Last, SANDAG frankly admits that the remaining CEQA issues are inappropriate for Supreme Court review. SANDAG states that "these issues did not inherently pose 'important issues of law.' All were highly fact-bound substantial evidence questions going to the particulars of one EIR." Petition:23. The Court need not wade into these questions, which are unique to this case and do not meet the standards for review in this Court.

In short, SANDAG has failed to identify a single issue that merits this Court's review.

BACKGROUND

Petitioners agree with the procedural background set out in the petition. Petition:4.

ARGUMENT

I. The Court of Appeal's Holding Regarding State Greenhouse Gas Reduction Goals Is Firmly Grounded in Settled CEQA Principles.

The long-term climate pollution reduction goal first articulated in Executive Order S-3-05 is firmly grounded in climate science, has been endorsed by the Legislature, and now serves as the guidepost for all California climate policy. Applying settled CEQA principles, the Opinion held that SANDAG's refusal to analyze its Plan's inconsistency with this

goal resulted in a misleading EIR. Both SANDAG's petition and the dissent misconstrue the Opinion, and neither states any adequate ground for review of this issue.

A. Background: Executive Order S-3-05's Place in California Climate Policy.

1. The Executive Order Is Firmly Grounded in Climate Science.

The Executive Order "underpins all of the state's current efforts to reduce greenhouse gas emissions." Opinion:14. The Order occupies this vital role for good reason: its goals rest on established scientific information about the physical reality of climate change.

In 2005, Executive Order S-3-05 established a long-term goal of reducing California's emissions 80 percent below 1990 levels by 2050. Administrative Record ("AR") AR:319:27050. The Executive Order also directed several state agencies (collectively known as the "Climate Action Team") to carry its goals forward. *Id.*; *see* Petition:6.

The following year, the Legislature enacted the Global Warming Solutions Act of 2006 ("AB 32"). Health & Saf. Code § 38500 *et seq*. The Legislature declared its intent that the Climate Action Team "established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy." Health & Saf. Code § 38501(i).

One of those team members, the California Air Resources Board ("CARB"), underscored the Executive Order's scientific basis in its "Scoping Plan" implementing AB 32:

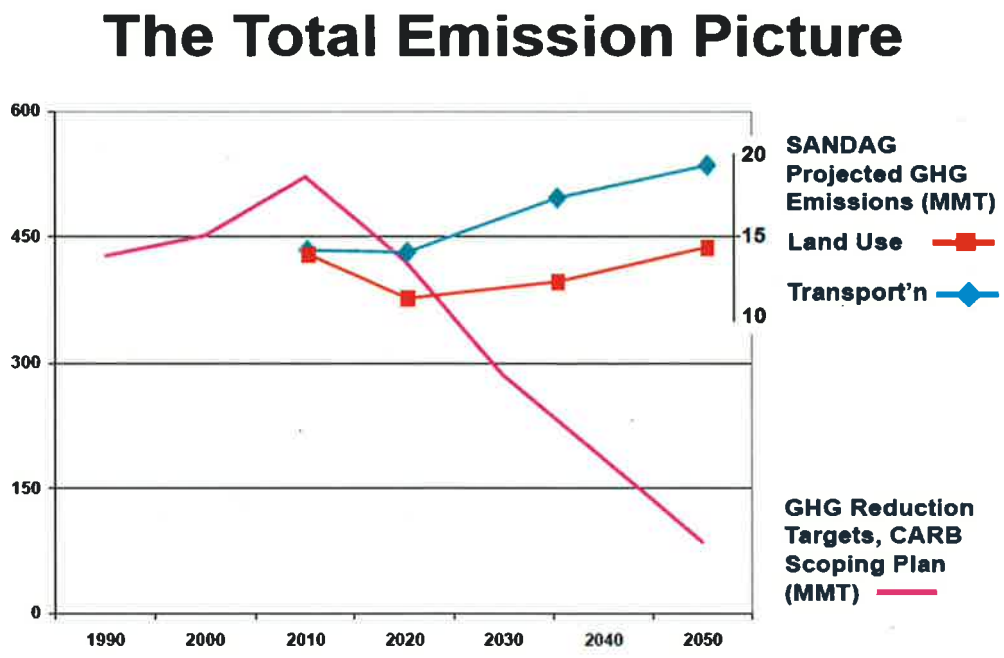
> According to climate scientists, California and the rest of the developed world will have to cut emissions by 80 percent from today's levels to stabilize the amount of carbon dioxide in the atmosphere and prevent the most severe effects of global climate change. This long range goal is reflected in California Executive Order S-3-05 that requires an 80 percent reduction of greenhouse gases from 1990 levels by 2050.

AR:320:27848. The Scoping Plan also expressly incorporated the Executive Order's 2050 goals. AR:320:27882 (measures in Scoping Plan designed "to initiate the transformations required to achieve the 2050 target"); *see also Assn. of Irritated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487, 1496 (describing Scoping Plan's 2020 target as "a step toward the ultimate objective by 2050").

Even SANDAG's own Climate Action Strategy adopted the 2050 goal. The Strategy explicitly recognized that the goal represents both "the scientifically-supported level of emissions reduction needed to avoid significant disruption of the climate" and "the long-term driver for state climate change policy development." AR:216:17627. Accordingly, SANDAG's strategy concluded that by 2030, the San Diego region must "*be well on its way to doing its share for achieving the 2050 greenhouse gas reduction level.*" AR:216:17629 (emphasis added).

2. SANDAG's EIR Never Analyzed Inconsistency With California's Long-Term Climate Goals.

Under SANDAG's Plan, regional greenhouse gas emissions will decline somewhat through 2020 but then begin to rise again, until they exceed even present-day emission levels by 2050. AR:8a:2572, 2577; 8b:4435. This is the same time period during which the best science—reflected in the Executive Order's goals—dictates that emissions should decline sharply. A graph submitted to SANDAG during the administrative process (AR:185:12684) illustrates this sharp contrast:



SANDAG's EIR, however, never addressed this inconsistency. Instead, the EIR buried it in incomplete and misleading comparisons. For example, SANDAG recognized that 2050 emissions under the Plan would be about 15 percent above existing (2010) levels (*see* AR:8a:2578)—but

the EIR never acknowledged that overall Plan emissions would be *nearly 700 percent* above levels consistent with California's long-term climate stabilization goals. *See* AR:8a:2578 ("net" 2050 land use and transportation emissions of 33.65 million metric tons will exceed 2010 emissions of 28.85 million metric tons); 185:12605 (SANDAG staff memo calculating that regional transportation and land use emissions of 5.02 million metric tons would be consistent with 2050 goal).

SANDAG also found the Plan consistent with both the AB 32 Scoping Plan and its own Climate Action Strategy *through 2020*. AR:8a:2581-88. But the EIR failed to disclose, much less assess, the Plan's stark inconsistency with the *post-2020* goals incorporated into both of those plans—goals first established in the Executive Order.

3. The Opinion Applied Settled CEQA Principles.

The Opinion held that SANDAG violated CEQA by refusing to analyze its Plan's long-term inconsistency with California's 2050 emissions reduction goal. First, the Opinion recognized that the Executive Order "led directly to the enactment" not only of AB 32, but also SB 375, which requires CARB to establish regional automobile and transportation emissions targets and to update those targets periodically through 2050. Opinion:14; *see* Gov. Code § 65080(b)(2)(A)(iv). Through these enactments, the Executive Order received "the Legislature's unqualified endorsement," and its goals will continue to "underpin the state's efforts to

reduce greenhouse gas emissions throughout the life" of SANDAG's Plan. Opinion:14.

The Opinion acknowledged that lead agencies retain discretion to determine the significance of environmental impacts, including greenhouse gas emissions, under CEQA. Opinion:17-19. The Opinion also correctly recognized that this discretion is bounded by fundamental CEQA principles, including the long-standing rule that agencies may not deploy a significance standard in a manner that obscures evidence of potentially significant effects. *Id.* at 18-19 (citing *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109; *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 717). Indeed, as this Court has recently found, an agency "abuses its discretion if it exercises it in a manner that causes an EIR's analysis to be misleading or without informational value." Opinion:19 (citing *Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal.4th 439, 445, 457).

Supported by these settled principles, the Opinion held that SANDAG's "failure to consider the transportation plan's consistency with the state climate policy of ongoing emissions reductions reflected in the Executive Order frustrates the state climate policy and renders the EIR fundamentally misleading." Opinion:18. "By disregarding the Executive Order's overarching goal of ongoing emissions reductions, the EIR's analysis of the transportation plan's greenhouse gas emissions makes it

falsely appear as if the transportation plan is furthering state climate policy when, in fact, the trajectory of the transportation plan's post-2020 emissions directly contravenes it." *Id.* at 19.

Because this omission precluded both identification and informed consideration of the Plan's environmental consequences—a "particularly troubling" result in the context of "long-term, planned expenditures of billions of taxpayer dollars"—the Opinion held that SANDAG prejudicially abused its discretion. *Id.* at 19-20. Critically, this conclusion did not rest on the legal effect of the Executive Order's goals alone. Rather, it also rested on adoption of those goals by the Legislature, expert state agencies, *and even SANDAG itself* as the scientific "underpin[ning]" for California's long-term climate policy. *Id.* at 14.

B. Neither the Petition Nor the Dissent Raises Grounds for Review of This Issue.

1. The Opinion Raises No Legal Questions Regarding Executive or Judicial Authority.

SANDAG misreads the Opinion's straightforward application of settled CEQA principles as somehow raising serious questions about the limits of executive and judicial power. For example, SANDAG insists the Opinion requires all agencies to "comply" with the Executive Order as "binding state policy." Petition:7; *see also id.* (claiming the Opinion "elevates a governor's executive order to hitherto unprecedented status"). The Opinion, however, does no such thing: "We do not intend to suggest

the transportation plan must achieve the Executive Order's 2050 goals or any other specific numerical goal. Our concern is with the EIR's failure to recognize, much less analyze and mitigate, the conflict between the transportation plan's long-term greenhouse gas emissions increase and the state climate policy goal, reflected in the Executive Order, of long-term emissions reductions." Opinion:16, fn. 6.

SANDAG similarly contends that the Opinion "sets a radically new significance standard" by mandating use of the Executive Order "as a baseline or standard for evaluating the significance of [greenhouse gas] impacts" in "practically every EIR." Petition:5. This argument is beyond hyperbole. The court of appeal carefully concluded that SANDAG's failure to analyze its Plan's "consistency with state climate policy"—a policy that "underpin[s] the state's efforts to reduce greenhouse gas emissions throughout the life of [SANDAG's] transportation plan"—rendered the EIR incomplete and misleading. Opinion:14-15. This conclusion is unremarkable under the facts of this case and in no way establishes a "radically new" significance standard.

The dissent's concerns about executive and judicial authority are similarly misplaced. For example, the dissent concludes that analysis of the Executive Order's emissions reduction goals cannot be required in CEQA analysis because the Legislature "has fully occupied this enormously complex field," particularly by delegating to CARB the ability to set

emissions reduction targets for transportation. Dissent:16; *see also id.* at 26-27 (arguing SANDAG cannot be required to address its Plan's inconsistency with California's long-term goals until CARB sets 2050 targets under SB 375). Analogizing this case to *Professional Engineers in Cal. Gov. v. Schwarzenegger* (2010) 50 Cal.4th 989 ("*Professional Engineers*"), the dissent concludes that the Executive Order "does not unilaterally qualify as a threshold of significance." Dissent:2.

This conclusion flows from two mistaken premises. First, the Opinion does not hold that the Executive Order "unilaterally" established a CEQA "threshold of significance." It held only that under the circumstances of this case, SANDAG's failure to analyze the inconsistency between its Plan's 2050 emissions increase and the state's 2050 emissions reduction goals resulted in a misleading EIR. Opinion:14-15, 19-20.

Second, *Professional Engineers*, which involved a challenge to an Executive Order mandating state employee furloughs, arose in a markedly different constitutional and statutory context, where the Legislature had demonstrated a "special interest in retaining . . . ultimate control" over the wages and hours of state employees. *Professional Engineers*, 50 Cal.4th at 1024; *see also id.* at 1010-11, 1013. Here, in contrast, the Legislature has endorsed the Executive Order and has not expressed any desire to retain "ultimate control" over how agencies analyze climate change under CEQA.

In fact, the Legislature directed the *executive branch* (the Governor's Office of Planning and Research) to prepare "guidelines for . . . the effects of greenhouse gas emissions." Stats. 2007, ch. 185 § 1 (SB 97), former Pub. Res. Code § 21083.05(a).[1] Far from requiring agencies to use only criteria explicitly endorsed by the Legislature, those guidelines offer a non-exclusive, advisory list of factors for agency consideration. *See* Part I.B.2, *infra* (discussing CEQA Guidelines[2] § 15064.4(b)).

As the Opinion recognizes, the Legislature also directed CARB to update its transportation-related targets under SB 375 through 2050. Opinion:11 (citing Gov. Code § 65080(b)(2)(A)(iv)). Nothing in SB 375, however, mandates that analysis of a regional transportation plan's long-term climate impacts under CEQA must await development of these targets, as the dissent concludes. *See* Dissent:25-26.[3] Nor did the

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[1] All further statutory references are to the Public Resources Code unless otherwise indicated.

[2] References to the "CEQA Guidelines" are to section 15000, *et sequitur*, of title 14 of the California Code of Regulations.

[3] The dissent mistakenly claims there was legislation pending at the time of the decision that would have required CARB to "set 2050 GHG emissions reduction targets" for regional transportation agencies like SANDAG. Dissent:16 & fn.7, 26 (citing Assem. Bill No. 2050 (2013-2014 Reg. Sess.)). This bill, however, would have amended *AB 32*, not SB 375, and would have directed CARB to develop a "proposal for further reducing greenhouse gas emissions by 2050" *solely* for purposes of updating the AB 32 Scoping Plan. *Id.* (proposed Health & Safety Code § 38561.5(a)(1), as

Legislature indicate that such analysis cannot be required where necessary to produce a meaningful and accurate EIR. In any event, as this Court has held, "[e]xcept where CEQA or the CEQA Guidelines tie CEQA analysis to planning done for a different purpose . . . , an EIR must be judged on its fulfillment of CEQA's mandates, not those of other statutes." *Neighbors for Smart Rail*, 57 Cal.4th at 462; *see also Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 112-14. Neither CEQA nor the CEQA Guidelines expressly "tie" analysis of a transportation plan's climate change impacts to CARB's target-setting responsibilities under SB 375. The Legislature has not chosen to retain "ultimate control" over agencies' CEQA determinations in the greenhouse gas context. Accordingly, the dissent's reliance on *Professional Engineers* is misplaced.

If anything, *Professional Engineers* supports the Opinion because the Legislature has by now endorsed and incorporated the Executive Order's goals several times over. Opinion:10 (citing *Professional Engineers*, 50 Cal.4th at 1000, 1043-44, 1051). Even the dissent cites a statutory provision expressly requiring the California Transportation

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amended June 30, 2014). CARB already had authority to set regional targets for 2050 under SB 375. Gov. Code § 65080(b)(2)(A)(iv).

Commission to address in the California Transportation Plan how the state will "attain a statewide reduction of . . . 80 percent below 1990 levels by 2050"—the very long-term goal first articulated in the Executive Order. Dissent:16, fn. 8 (quoting Gov. Code § 65072.2). This appeal simply does not present any serious question regarding executive or judicial authority.

2. The Opinion Does Not Conflict With CEQA Guidelines Section 15064.4.

SANDAG claims the Opinion conflicts with CEQA Guidelines section 15064.4. Petition:9-11. There is no such conflict.

Section 15064.4 provides a non-exclusive list of factors that agencies "should" consider in assessing the significance of greenhouse gas emissions. CEQA Guidelines § 15064.4(b)(1)-(3). SANDAG essentially argues that its EIR automatically complied with CEQA because it relied on these factors. The Opinion holds otherwise, but not by "repudiat[ing]" the Guideline or "declar[ing]" it "invalid." Petition:9, 11. Rather, the Opinion holds that under the circumstances of this case, SANDAG erred by deploying the Guideline in a way that omitted critical information. Opinion:18 ("the use of the Guideline's thresholds does not necessarily equate to compliance with CEQA" where SANDAG's failure to consider California's long-term climate goals "frustrates the state climate policy . . . and renders the EIR fundamentally misleading"). This holding—that an agency cannot exercise its discretion in a manner that results in misleading

and incomplete disclosure and analysis of environmental impacts—is both unsurprising and fully supported by the cited case law. *See id.* at 18-19 (citing *Neighbors for Smart Rail*, 57 Cal.4th at 445, 457; *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1109, 1111).

SANDAG objects that section 15064.4 does not mention the Executive Order by name (Petition:6), and protests that the Order is not a publicly adopted "plan" for emissions reduction. Petition:11 (citing CEQA Guidelines § 15064.4(b)(3)). But two of the publicly adopted emissions reduction "plans" discussed in SANDAG's EIR—the AB 32 Scoping Plan and SANDAG's own Climate Action Strategy—*expressly incorporate* the Executive Order's 2050 goals. *See* AR:216:17627, 17629; 320:27848. SANDAG's Petition—like its EIR (s*ee* AR:8a:2581-88)—fails to mention this key fact.

SANDAG also claims that draft guidelines for CEQA review prepared by CARB do not "contain any mention of EO S-3-05 as a standard for measuring [greenhouse gas] impacts." Petition:6. This assertion is misleading at best. CARB's draft guidelines specify that CEQA significance thresholds "must be sufficiently stringent . . . to [put] California on track to meet its interim (2020) *and long-term (2050)* emissions reduction targets." AR:320:27792 (emphasis added). Those "long-term (2050)" targets, of course, were first articulated in the Executive Order. CARB's reference to those targets in its draft CEQA guidance only

underscores the correctness of the Opinion's conclusion that the Executive Order's goals now "underpin[] all of the state's current efforts to reduce greenhouse gas emissions." Opinion:14.

The dissent fears the Opinion "usurps the broad discretion" reserved to lead agencies by CEQA Guidelines section 15604.4. Dissent:20. Again, this concern is unwarranted. The Opinion recognizes that agencies retain discretion to utilize the advisory, non-exclusive list of factors in CEQA Guidelines section 15064.4. Opinion:18-19. However, it emphasizes that agencies have never possessed discretion to produce misleading and incomplete EIRs, and nothing in section 15604.4 modifies this core CEQA principle. *See* Opinion:17-20.

3. The Opinion Does Not Conflict with Prior Case Law.

Both SANDAG and the dissent contend the Opinion conflicts with appellate cases addressing CEQA analysis of greenhouse gas emissions. *See* Petition:11-12 (citing *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327; *North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614; *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832); *see also* Dissent:25-26.

No such conflict exists. None of these cases considered whether an EIR for a long-range transportation plan that will increase greenhouse gas

emissions through mid-century must analyze consistency with the science-based emissions reduction goals underpinning California climate policy over that same time frame. Accordingly, none of these cases could have "tacitly reject[ed]" the Opinion's conclusions (Petition:12), because none of these cases confronted analogous facts or legal arguments. "It is axiomatic that an opinion is not authority for an issue not considered therein." *Santa Clara County Local Trans. Auth. v. Guardino* (1995) 11 Cal.4th 220, 243. A conflict does not arise every time an opinion applies settled law to a new set of facts.

To the extent the cases cited by SANDAG and the dissent contain general language affirming agency discretion to determine the significance of greenhouse gas emissions, there is still no conflict. The Opinion does not hold that the Executive Order established a mandatory "threshold of significance" for all CEQA purposes. Indeed, SANDAG retains discretion to *determine the significance* of its Plan's inconsistency with California's long-term climate goals, provided it does so in accordance with CEQA's informational requirements. The Opinion holds only that SANDAG lacks discretion to ignore the inconsistency altogether where doing so results in an incomplete and misleading EIR. Again, this holding reflects long-settled CEQA principles.

4. The "Consistency" Analysis Required by the Opinion Is Neither Speculative Nor Inconsistent with CEQA Principles.

There is no "great myster[y]" (Petition:12) as to how the Plan's consistency with California's long-term climate goals can be analyzed. Although the dissent questions how SANDAG will calculate the region's "fair share" of 2050 emissions reductions (Dissent:6-7), SANDAG has previously stated that this calculation is "easily performed." SANDAG Appellants' Petition for Rehearing at 7; *see also* AR:216:17628 (Climate Action Strategy chart showing regional emissions targets through 2050). Thus, SANDAG readily could have conducted a meaningful analysis of its Plan's dramatic deviation from the 2050 target. SANDAG simply chose not to do so, and its EIR therefore subverted informed consideration of the Plan's consequences—a result directly at odds with CEQA. *See* Opinion:14-15, 19-20. Moreover, even if this calculation were difficult, this would not relieve SANDAG of its responsibilities under CEQA. *Laurel Heights*, 47 Cal.3d at 399 ("We find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency's task may be difficult.").

Although it fails to develop the argument, SANDAG further suggests the Opinion conflicts with this Court's prior holding that agencies should normally use existing environmental conditions as a "baseline" for CEQA analysis. *See* Petition:13 (citing *Communities for a Better*

Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 322). But nothing in the Opinion states that the Executive Order's goals must be used as a CEQA "baseline"; indeed, the section of the Opinion discussing greenhouse gas analysis does not use the word "baseline" at all.

Finally, SANDAG's speculation about the constitutionality of theoretical mitigation measures and the future ability of other agencies to issue negative declarations for unspecified hypothetical projects (Petition:13) is just that—speculation. In any event, the Court's fact-specific analysis in no way sets a blanket rule for all future CEQA documents, SANDAG's rhetoric to the contrary notwithstanding. Once again, SANDAG identifies no conflict or serious legal question warranting this Court's review.

II. The Court of Appeal's Correct Ruling on Climate Change Mitigation Does Not Merit This Court's Review.

Although SANDAG's climate change analysis was deficient, the EIR did admit that the long-range Plan's greenhouse gas emission impacts would be significant. Yet, SANDAG adopted only three measures to mitigate these impacts. The agency (1) committed to incorporate greenhouse gas reduction policies into future plans, (2) suggested that other agencies should adopt climate action plans, and (3) committed that SANDAG will, and other agencies should, require best available

technologies to reduce greenhouse gas emissions during construction and operation of future projects. AR:8a:2588-90. The trial court held that these measures merely "kick[ed] the can down the road" and fell "well short" of CEQA's mitigation requirements. Joint Appendix ("JA") JA:75:1057. The court of appeal upheld this ruling, finding that SANDAG failed to consider and adopt feasible and effective climate-related mitigation measures. Opinion:26-27. SANDAG now asks this Court to adjudicate the issue yet again, without offering any reason why this Court's review is necessary. Indeed, SANDAG admits that "principles of [mitigation] law here are not in dispute." Petition:16.

A. The Opinion Properly Applies the Substantial Evidence Test.

SANDAG claims the court of appeal dispensed with CEQA's substantial evidence test, but this mischaracterizes the Opinion. Petition:18. Far from ignoring the substantial evidence test, the court of appeal explicitly applied it. Opinion:27 (finding "there is not substantial evidence to support SANDAG's determination the EIR adequately addressed mitigation for the transportation plan's greenhouse gas emissions impacts."). SANDAG also faults the Opinion for "summarily dismissing" the EIR's mitigation measures and "leap[ing] precipitously" to incorrect conclusions. Petition:18. But SANDAG mistakes the Opinion's conciseness in addressing this issue—which merely reflects the absence of any

substance in SANDAG's three mitigation measures—for lack of analytic rigor. The measures were obviously inadequate, and the court of appeal correctly found SANDAG's defense of them unpersuasive.

The court cut to the heart of the issue by recognizing the disconnect between the core goals in SANDAG's Climate Action Strategy and the agency's failure to implement these goals in its Plan. Opinion:21, fn. 11. As the court explained, the EIR's meager climate mitigation fell far short of facilitating the "fundamental changes in policy, technology, and behavior" that SANDAG previously admitted were necessary in order to put the region "on its way to doing its share for achieving the [Executive Order's] 2050 greenhouse gas reduction level." Opinion:21, fn. 11. Indeed, the "mitigation" consisted principally of a commitment to yet another round of future planning or to changes that SANDAG suggested other agencies should implement. Unquestionably, CEQA demands more. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 96 (emphatically rejecting deferral of climate mitigation); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 442, fn. 8 (agency cannot avoid responsibility to mitigate project impacts by pointing to potential action of another agency).

Accordingly, the Opinion's holding that there was no substantial evidence that the EIR analyzed and adopted effective, feasible mitigation is

unsurprising in light of established CEQA principles. There is no reason for this Court to disturb it.

B. The Opinion Utilizes the Correct Burden of Proof and Does Not Improperly Direct SANDAG's Discretion.

SANDAG also asserts that the Opinion ignores Petitioners' alleged burden to demonstrate that additional, specific mitigation measures are feasible and effective. Petition:17-18. SANDAG misapprehends the law established by this Court. It is "the public agency"—not the public—that "bears the burden of affirmatively demonstrating that . . . the agency's approval of the proposed project followed meaningful consideration of alternatives and mitigation measures." *Mountain Lion Found. v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134. Moreover, in cases where commenters do propose specific potentially feasible mitigation measures that the lead agency chooses not to adopt, the agency has the burden of demonstrating that such measures are infeasible. *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029-30.

SANDAG claims that *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 15-17 supports its position. *See* Petition:17. However, the court there nowhere held that petitioners bear the burden of both developing mitigation measures and producing evidence that they are feasible and effective. Rather, the case involved a situation in which an EIR already contained eleven mitigation measures, and the

agency had found that other measures were infeasible because they would conflict with the project's core purpose. *San Diego Citizenry Group,* 219 Cal.App.4th at 8, 15-16. Although petitioners in the case had not suggested other potentially feasible mitigation (*id.* at 15), the court did not task them with doing so. It merely upheld the agency's finding that no other mitigation was feasible, and ruled that the EIR need not discuss infeasible measures. *Id.* at 15-16.

Although they were not required to do so, Petitioners here actually did propose specific mitigation measures and explained how those measures were feasible and consistent with the Plan's objectives. For example, Petitioners and others repeatedly asked SANDAG to adopt a transit-oriented development policy and provided the agency with an exemplar. AR:320:27733-34, 28499-504; 185:12560.; 310:25210. Petitioners also requested adoption of a regional parking management program to reduce driving, and thus greenhouse gas emissions. AR:296:19682; 320:27731-32. Rather than adopting these measures or demonstrating that they were infeasible, as CEQA requires (*L.A. Unified,* 58 Cal.App.4th at 1029-30), SANDAG raised a host of unconvincing excuses for rejecting them.

For example, SANDAG claims that the measures suggested by Petitioners might not be effective. Petition:17 (referring to Petitioners' proposed measures as "nickel and dime" mitigation). The contention is

specious. In fact, even though SANDAG refused to adopt a transit-oriented development policy or a parking program in this RTP/SCS, the agency committed to adopt them in the future as part of a different plan. AR:6:223; 8a:2102; 8b:3801. This commitment demonstrates that such policies are feasible and that SANDAG believes they will be effective. Tellingly, SANDAG has cited no evidence that it could not have adopted these key measures in the RTP/SCS, as the public requested and as CEQA requires. *City of Richmond*, 184 Cal.App.4th at 95 ("the time to analyze the impacts of the Project and to formulate mitigation measures . . . was during the EIR process, *before* the Project was brought to the [lead agency] for final approval") (emphasis in original).

SANDAG also claims that, by identifying four examples of additional mitigation measures that SANDAG could have considered, the court of appeal improperly "substitut[ed] its own inexpert judgment for that of qualified experts." Petition:18. But SANDAG misreads the Opinion, which expressly does *not* require SANDAG to consider, much less adopt, the illustrative list of mitigation measures suggested by the court. Opinion:24, fn. 14. The court was thus careful to abide by CEQA's prohibition on directing agencies to exercise their discretion in a particular manner. *Id.* ("We do not express any view on precisely how SANDAG must remedy the analytical deficiencies identified in this opinion . . ."). Further, SANDAG is wrong that the suggested measures are either already

included in the Plan or were properly rejected as infeasible. Petition:18-19. For example, the Plan expressly deferred formulation of a transit-oriented development policy. AR:8a:2102. And, as explained above, SANDAG did not find that parking management measures were infeasible, but rather deferred adoption of such measures until a future plan.

In sum, it was incumbent on SANDAG to develop and adopt all feasible mitigation measures to address the Plan's serious climate impacts. SANDAG chose not to do so. Again, the court of appeal's ruling on this issue is hardly surprising, much less deserving of Supreme Court review.

C. This Court Need Not Review Issues Not Addressed by the Court of Appeal.

Finally, SANDAG asks this Court to review mitigation-related issues that it claims the court of appeal never addressed. Petition:19-20 (addressing issue of whether adopted mitigation was adequately enforceable and included adequate performance standards). There is no need for this Court to review these issues. First, because the Opinion did not directly address whether the EIR's adopted mitigation measures comply with CEQA's standards for enforceability, by definition it did not create a conflict in the law that this Court should resolve.

Second, these claims do not raise issues of law important enough to warrant this Court's review. SANDAG agrees with Petitioners that agencies may defer adoption of mitigation measures in a program-level EIR only

when the "impacts or mitigation measures are not determined by the first-tier approval." Petition:20 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431); *see also* section IV.B, (discussing same standard). Application of this undisputed standard to the facts of this case would present straightforward issues of settled law. SANDAG offers no argument to the contrary, and thus no reason for review.

III. The Court of Appeal's Discretionary Decision to Reach the Remaining CEQA Issues Does Not Merit This Court's Review.

SANDAG argues that the court of appeal erred in adjudicating the CEQA claims raised in Petitioners' cross-appeal, which SANDAG alleges were forfeited. This Court need not review this question. SANDAG's forfeiture claim is baseless, and the court of appeal's decision to reach the remaining CEQA issues does not meet this Court's standard for review.

Petitioners did not "seemingly abandon[]" their remaining CEQA claims. Petition:20. Rather, they properly raised these claims through extensive briefing to the trial court; no law required that Petitioners reiterate them at oral argument, much less object to the trial court's explicit decision not to reach them. *See United Servs. Auto. Assn. v. Dalrymple* (1991) 232

Cal.App.3d 182, 185-86 (parties only need to object to tentative decisions that are ambiguous).[4]

Moreover, the record shows that any such objections would have been futile, as the trial judge unequivocally stated his intention to rule only on the climate issues. JA:70:995. The law is clear that "[f]ailure to make a futile objection or argument does not constitute waiver." *M.T. v. Superior Court* (2009) 178 Cal.App.4th 1170, 1177. In short, Petitioners fully presented these issues and never forfeited them.

Even if Petitioners had forfeited their claims, the court of appeal did not abuse its discretion by reaching them. *See Williams*, 17 Cal.4th at 161, fn. 6 (an appellate court's decision to reach forfeited claims "is entrusted to its discretion"). SANDAG argues that the court's decision undercuts CEQA's policy of quickly resolving CEQA claims (Petition:22, citing

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[4] SANDAG's cited cases are not on point. In *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1, the court simply ruled that because a party failed to present evidence to the trial court, it was unfair to raise that evidence on appeal. Here, Petitioners fully briefed all issues at the trial court and raised the exact same issues on appeal. In *Porterville Citizens for Responsible Hillside Dev. v. City of Porterville* (2008) 157 Cal.App.4th 885, 891, the court ruled that a party forfeited claims by not objecting to the trial court's failure to reach them in its tentative statement of decision. Here, because the case did not involve a statement of decision (JA 75:1049), the requirements for formal objection to a proposed statement of decision, and consequences for failure to object, are inapplicable. *See* Cal. Rules of Court §§ 3.1590(g), (k); Code Civ. Proc. § 634.

§ 21005(c)), but SANDAG is wrong. In fact, section 21005(c) specifically *directs* courts of appeal to decide all alleged CEQA violations. Opinion:28, citing § 21005(c) ("any court, which finds, or, *in the process of reviewing a previous court finding*, finds that a public agency has taken an action without compliance with this division, *shall specifically address each of the alleged grounds for noncompliance*") (emphasis added). Here, the court's adjudication of Petitioners' claims will likely *reduce* future CEQA litigation. Because SANDAG must adopt a new RTP every four years—with the next RTP due in 2015— the court provided timely guidance to the agency, which could prevent the need to relitigate these issues in future RTPs.

Finally, SANDAG's suggestion that the issues on cross-appeal were not important enough to warrant the court of appeal's attention (Petition:23), misses the mark. The importance of the issue is just one factor for the court to consider. A more critical factor is whether a case involves purely legal issues that an appellate court can review de novo. *People v. Trujillo,* (January 12, 2015, S213687) __Cal.4th__, Slip Op. at 6 (claims of factual error, which can be forfeited if not timely raised, are "distinct from 'clear and correctable' legal errors that appellate courts can redress on appeal") (citation omitted); *People v. Rosas* (2010) 191 Cal.App.4th 107, 115 ("appellate courts regularly use their discretion to

entertain issues not raised at the trial level when those issues involve only questions of law based on undisputed facts.").

Here, because all the remaining CEQA issues were purely legal, the court of appeal's decision to reach them was proper. *Vineyard*, 40 Cal.4th at 427 ("appellate judicial review under CEQA is de novo"). There is no need for this Court's review.

IV. The Remaining CEQA Issues Do Not Merit this Court's Review.

SANDAG states that, as a substantive matter, the CEQA issues raised in Petitioners' cross-appeal "did not inherently pose 'important issues of law.' All were highly fact-bound substantial evidence questions going to the particulars of one EIR." Petition:23. SANDAG thus concedes that these issues do not meet the standards for Supreme Court review, and the Court may end its inquiry there. *See* Rule of Court 8.500(b).

SANDAG nevertheless presents pages of argument in an attempt to re-litigate each of these issues. Petition:20-33. The arguments lack merit and provide no basis for review.

A. The Court of Appeal's Ruling on Alternatives Is Correct.

The court of appeal held that the alternatives analysis in SANDAG's EIR violated CEQA because the agency failed to consider any option that could significantly reduce driving, or vehicle-miles traveled ("VMT"), in the region. Opinion:30-32. SANDAG concedes that the "background law on this [alternatives] issue appears well settled" (Petition:24), so there is no

conflicting case law for this Court to resolve. The agency merely objects to the court's *application* of that law to the facts of this case. *Id.* at 24-27. Again, this objection does not provide grounds for review.

In any event, SANDAG's disagreement with the court of appeal's application of settled law is unfounded. SANDAG first claims that the court erred in requiring the EIR to "focus[] on a single factor that may contribute to environmental effects – in this case, . . . vehicle miles travelled." Petition:23. But here, reducing VMT is a *core purpose* of SANDAG's Plan. AR:190a:13151. It is also a major objective of SB 375. Gov. Code § 65080(b)(2)(B)(vii); AR:7:253. Past CEQA cases have routinely invalidated alternatives analyses that ignore a project's core significant impact. *See, e.g., Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 876 (invalidating EIR for improperly dismissing alternative that addressed significant air quality impacts of composting facility); *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872-73 (requiring agency to analyze alternative that addressed significant cumulative impacts of project's change in river flow diversions); *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089-90 (invalidating EIR for failing to analyze alternative that addressed general plan's impacts from growth).

own Climate Action Strategy expressly acknowledges that "the state's efforts to reduce greenhouse gas emissions from on-road transportation will not succeed if the amount of driving, or vehicle miles traveled, is not significantly reduced." Opinion:30-31; *see also* AR:8a:2556 (EIR disclosing that vehicles are largest single source of greenhouse gas emissions in San Diego region); 320:27979 (Scoping Plan emphasizing goal to reduce VMT).[5]

SANDAG next contends that the appellate court erred in "assum[ing]" that a feasible alternative existed that *could* reduce VMT and, in turn, greenhouse gases. Petition:27. This argument, however, ignores abundant record evidence demonstrating that an alternative prioritizing public transit would succeed in reducing VMT and thereby produce significant, long-term benefits. *See, e.g.,* AR:8b:4370, 4383-85; 320:27721-23, 27779, 27884, 27908-10, 28512, 28454-75; *see also* AR:216:17625. And once again, SANDAG's own Climate Action Strategy recognizes

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[5] SANDAG is also wrong that reducing VMT will address only "one specific environmental effect." Petition:25. It will also, for example, lessen health impacts on communities near freeways (AR:8a:2218) and on drivers experiencing long commutes (AR 320:28028). It will also decrease residents' consumption of transportation fuels (AR:7:1102) and prevent the premature conversion of valuable open space and farmland (AR:204:17346).

increased public transit as critical to achieving a low-carbon future. AR:216:17625.

Finally, SANDAG claims that the Opinion contravenes case law holding that it is Petitioners' "burden" to identify a feasible alternative. Petition:26, citing *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 195. In fact, the Opinion specifically recognizes that a "court will uphold the selection of project alternatives *unless the challenger demonstrates*" that the range of alternatives is inadequate. Opinion:30 (emphasis added).

Here, Petitioners both (1) demonstrated that none of the EIR's alternatives provided significant environmental benefits over the RTP/SCS, and (2) presented detailed alternatives, prepared by transportation experts, that would achieve such environmental benefits. Cross-Appellants' Opening Brief at 132-36 and Reply Brief at 49-52; *see also* AR:296:19749-68; 8b:3936-4025. The law does not require more. *See Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568 (the "duty of identifying and evaluating potentially feasible project alternatives lies with the . . . lead agency, not the public"). In addition, SANDAG's own Climate Action Strategy provided alternative VMT-reduction policies that the agency should have considered. Opinion:30-31. The court of appeal correctly found that the agency's refusal to consider these policy alternatives was "inexplicable." *Id.* at 30.

In short, SANDAG has identified no reason for this Court to delve into this concededly "fact-bound" alternatives issue. SANDAG disagrees with the Opinion, but has not shown how it misapplies or deviates from settled law, let alone creates a conflict warranting this Court's resolution.

B. The Court of Appeal's Ruling on Air Quality Analysis and Mitigation Is Correct.

According to SANDAG, the court of appeal erred by requiring the EIR to present more detail on air quality impacts and mitigation than is necessary or practical for a programmatic document. Petition:27-28. SANDAG characterizes the Opinion as holding that any information that "*could* be produced in a program EIR *must* be produced in a first tier program EIR," and it claims that this notion is "antithetical to [the] entire purpose of *tiering.*" Petition:28 (emphasis in original). SANDAG then repeats its mantra that the Opinion will be burdensome and will "invite endless litigation." *Id.*

Once again, SANDAG both distorts the Opinion and provides no valid rationale for this Court's review. The Opinion does not hold that program EIRs must include all possible information on project impacts or that agencies are prohibited from deferring analysis in appropriate circumstances. Rather, it reiterates the longstanding and unremarkable proposition that "[d]esignating an EIR as a program EIR . . . does not by itself decrease the level of analysis otherwise required in the EIR."

Opinion:7; *see also* Petition:29 (conceding that "this proposition is not in dispute"). Whether a project- or program-level EIR contains sufficient information depends simply on whether it provides "'decision makers with sufficient analysis to intelligently consider the environmental consequences of [the] project.'" Opinion:7 (citation omitted).

Here, the court of appeal merely held that SANDAG's EIR failed to provide sufficient information for the public to understand the Plan's adverse air quality-related health impacts. Opinion:38. It also rejected the notion that SANDAG was unable to provide more useful information. *Id.* at 36, 38. The Opinion expressly acknowledged that "there are limitations to the precision of a program-level analysis." Opinion:38. However, it emphasized that meaningful analysis and mitigation are important at the program level because agencies have greater flexibility to "consider broad policy alternatives and program wide mitigation measures" at that time. Opinion:5 (citing CEQA Guidelines § 15168(b)).

Indeed, the Opinion conforms to the legal standards articulated by SANDAG itself. The agency agrees that tiering—with its associated deferral of analysis—is appropriate only when impacts and mitigation measures are determined by later, implementing projects, and not by a first-tier approval. Petition:31 (quoting *Vineyard,* 40 Cal.4th at 431). Here, it is the Plan's regional road *network*—not later individual projects—that allows and encourages increased driving and the resultant emissions. Accordingly,

SANDAG must adopt effective *regional* mitigation now. As SANDAG admitted in the court of appeal, lead agencies for later, individual road projects will be unable to implement key mitigation measures—such as regional demand management or transit improvements—that could reduce driving. SANDAG Appellants' Reply Brief at 59 ("it is difficult to envision just precisely how VMT reduction requirements could realistically be imposed on individual projects in the RTP/SCS"). Meaningful environmental review and mitigation are also crucial at this stage because later projects may not receive any further review. Opinion:6-7; *see also* §§ 21155, 21155.1 & .2, 21159.28 (certain projects consistent with the SCS will receive streamlined environmental review or be exempt from CEQA).

Importantly, SANDAG nowhere claims that the Opinion creates a conflict in the law. Nor could it. The agency cites cases that upheld deferral of detailed environmental analysis. Petition:31. But those cases utilized the same legal principles as the court of appeal used here; they simply reached different conclusions under the specific facts presented.

For example, *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1151-52, involved environmental review of the CALFED program, which set broad policies for use of water statewide. This Court noted that deferral of environmental analysis is proper "'when the impacts or mitigation measures are not determined by the first-tier approval decision'" or when it

is not feasible to provide site-specific impact analysis. *Id.* at 1170 (citation omitted). Because the CALFED program "consist[ed] of multiple possible actions that are diverse, geographically dispersed, and described in general terms" (*id.*), the Court held that it was "impracticable to foresee" and analyze the impacts of utilizing specific, future water supplies (*id.* at 1172). Accordingly, it upheld the agency's deferral of analysis on this issue. *Id.* at 1173. SANDAG's other cases similarly involved first-tier plans that did not take material steps toward determining the final locations or design of specific projects, and thus properly deferred review of those projects' site-specific impacts, alternatives, and mitigation measures. *See Al Larson Boat Shop v. Bd. of Harbor Comrs.* (1993) 18 Cal.App.4th 729, 742-44, 746-49; *Town of Atherton v. Cal. High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 347.

Here, in contrast to the broad programs under review in *Bay Delta* and similar cases, the RTP was intended to be a material step in selecting and funding specific transportation projects included in the Plan. AR:218:17692 (RTPs establish the basis for funding transportation projects). SANDAG knew specific details of these projects, including their exact location, size, function, and cost, when it approved the Plan. *See, e.g.*, AR:8a:2115-29; 190a:13390-13418; 190b:13830-37. SANDAG thus could feasibly provide commensurately detailed analysis. Further, as explained

above, the Plan's air quality impacts will be determined primarily by the Plan, not by later projects.

The court of appeal correctly ruled, based on settled law, that SANDAG failed to adequately analyze and mitigate the Plan's significant air quality impacts. SANDAG's disagreement with that ruling is not a reason for this Court to accept review.

C. The Court of Appeal's Ruling on Agricultural Impacts Is Correct.

SANDAG does not claim that review of the court of appeal's holding regarding farmland impacts is necessary to secure uniformity of decision or to settle an important question of law. Rather, the agency frankly admits that it believes the issue is "simply one of plain judicial error." Petition:32. Accordingly, SANDAG presents no grounds for the Court to review this issue.

In any event, the court of appeal's ruling was plainly correct. The EIR was faulty for the most basic of reasons: it analyzed the Plan's agricultural impacts based on data sets that either were outdated or failed to account for all relevant farmland. *See* Opinion:43. This commonsense decision can hardly "spawn endless future litigation over minor alleged technical errors," as SANDAG predicts. Petition:33. Agencies only rarely make such obvious errors. Moreover, the ruling is further circumscribed by the unique requirement that agencies use the "best practically available

scientific information" when analyzing a Sustainable Community Strategy's impacts on farmland. Opinion:44 (citing Gov. Code § 65080(b)(2)(B)(v). The level of precision identified by the court of appeal as necessary for analysis of farmland impacts here will have no bearing in cases involving other types of projects and impacts.

CONCLUSION

Petitioners respectfully request that the Court deny SANDAG's petition for review.

DATED: January 26, 2015

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CERTIFICATE OF WORD COUNT
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RACHEL B. HOOPER

PROOF OF SERVICE

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

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

On January 26, 2015, I served true copies of the following document(s) described as:

ANSWER TO PETITION FOR REVIEW

on the parties in this action as follows:

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

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

Executed on January 26, 2015, at San Francisco, California.

Sean P. Mulligan

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