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Putting the Brakes on San Diego's Transportation Plan

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The first "Sustainable Communities Strategy" adopted to guide long-range land use and transportation planning under SB 375 now has the distinction of being the first such plan set aside for failing to comply with the California Environmental Quality Act. Last week, a San Diego judge ruled that the San Diego Association of Governments (SANDAG) abused its discretion when it certified an Environmental Impact Report (EIR) for its Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS) that failed to address greenhouse gas (GHG) emission levels after 2020, in violation of an Executive Order signed by former Governor Schwarzenegger. Now, the state's regional planning agencies and communities will have to wait for an inevitable appeal to resolve uncertainty about planning for GHG emission reductions at the intersection of CEQA, SB 375, AB 32, and Executive Order S-03-05.

BACKGROUND: EO S-03-05, AB 32, AND SB 375

Today, the focal point for discussing California's efforts to reduce GHG emissions and mitigate the effects of climate change is AB 32, the Global Warming Solutions Act, enacted in 2006. But this focus may lead to overlooking EO S-03-05, signed by Schwarzenegger in 2005. This order set three target dates for progressive reductions in emissions: (1) 2000 levels by 2010; (2) 1990 levels by 2020; and (3) 80 percent below 1990 levels by 2050. AB 32, a legislative centerpiece of Governor Schwarzenegger's administration, requires only that the state's emissions to be reduced to 1990 levels by 2020. It does not provide for longer-term emissions reductions, although the Scoping Plan that the Air Resources Board (ARB) adopted as an implementation guide discusses the 2050 goal as "the level scientists believe is necessary to reach levels that will stabilize climate." (Our initial analysis of AB 32 is available here, and additional briefings on its implementation are available here.)

In 2008, the Legislature took a bold step toward addressing GHG emissions in the context of long-term planning for regional transportation systems, land use, and housing allocations. SB 375 requires the ARB to set GHG reduction targets for emissions from cars and light trucks, which apply to each of the state's 18 metropolitan planning organizations (MPOs). Each MPO must then prepare an SCS to achieve those targets through land use and transportation patterns, and incorporate it into that region's RTP. (Click here to read our 2008 briefing on SB 375, and here for our briefing on setting the emission reduction targets.) The ARB has established reduction targets for the MPOs for 2020 and 2035.

SANDAG'S RTP/SCS

Last year, SANDAG became the first MPO to adopt an SCS. It prepared an EIR to analyze the environmental impacts of the RTP/SCS. With respect to GHGs, the EIR concluded that the plan would ensure compliance with the ARB's targets for 2020 and (just barely) 2035, but found that both overall and per-capita emissions would substantially *increase* between 2020 and 2050. After SANDAG certified the EIR and approved the plan, two petitions were filed in the Superior Court alleging CEQA violations: one by the Cleveland National Forest Foundation and Center for Biological Diversity, later joined by the Sierra Club, and the other by CREED-21 and the Affordable Housing Coalition. Attorney General Kamala Harris was granted leave to intervene in the first case, and the two matters were subsequently consolidated. While the three sets of petitioners raised distinct issues under CEQA (including environmental-justice claims raised by the AG, as

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we described here), all argued that the EIR was deficient in its treatment of GHG emissions after 2020.

The San Diego Superior Court agreed. In the court's ruling, filed by judge Timothy Taylor on December 3, it found that the EIR's discussion of EO S-03-05 was "impermissibly dismissive" and constituted a legally defective failure to provide decision makers and the public with adequate information about the RTP/SCS's environmental impacts. Because EO S-03-05 represents an official policy that has never been withdrawn or modified, SANDAG "cannot simply ignore it." SANDAG had argued that EO S-03-05 only set a goal, and that the required reduction targets had actually been set by the ARB pursuant to AB 32 and SB 375—targets that SANDAG would meet. The court rejected these arguments, describing SANDAG's approach as "kick[ing] the can down the road" by attempting to defer mitigation requirements to local jurisdictions. As a result, the court directed the agency to set aside its certification of the EIR in order to adequately address the long-term GHG implications of the RTP/SCS.

One notable feature of the court's decision is what it did *not* address. The court noted that its findings were limited to violations of CEQA, and that it was not ruling on whether SB 375 itself had been violated. Moreover, because the court found it could resolve the case solely on the matter of the EIR's GHG analysis, it did not reach the other issues raised by the parties. The case was being closely watched, in particular due to the AG's aggressive (if not unprecedented) decision to intervene on environmental-justice grounds. However, planning agencies will have to continue waiting to see if these arguments, relating to the public health impacts of planning decisions on low-income communities, gain traction. The court also noted that although it did not accept briefing from amicus parties, those parties would "no doubt" argue that the decision "will retard growth, harm California's efforts to attract jobs and create economic activity, and slow down the state's recovery from the recession," but that these arguments would be "properly presented to the political branches of the government which adopted the Executive Order and enacted SB 375 in the first place."

UNANSWERED QUESTIONS

The Superior Court described itself as "but a way station in the life of this case, which is clearly headed for appellate review regardless of the outcome at the trial level"—assuredly an accurate description. Until the Court of Appeal (and potentially the California Supreme Court) considers the issue, the ruling only binds the parties and not the rest of the state's MPOs, all of which are at various stages of implementing SB 375's requirements. But the decision is likely to inject more uncertainty into an already speculative process for the MPOs. It also may create a push for other regional and local agencies to directly address the long-term effects of programmatic planning decisions in light of the Executive Order. Ultimately, if the Court of Appeal upholds the decision, the result could be a much more extensive analysis of, and mitigation for, GHG emissions that may occur not just today but decades in the future.

The case is Cleveland National Forest Foundation et al. v. San Diego Association of Governments, Case No. 2011-00101593 (San Diego Superior Court).

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