

CLARK HILL

Morris
Polich &
Purdy

Contact:

Christopher G. Foster
Of Counsel
213.417.5130
cfoster@clarkhill.com

California Supreme Court Gives Narrow Victory to Local Agency on Greenhouse Gas Impacts Analysis

In June 2005, Governor Schwarzenegger signed Executive Order No. 5-3-05 (EO), which set overall greenhouse gas emissions reduction targets for California. The EO established three general benchmarks: (1) reduce emissions to 2000 levels by 2010; (2) reduce emissions to 1990 levels by 2020; and (3) reduce emissions to 80 percent below 1990 levels by 2050. As a means to achieving these reductions, Senate Bill 375, formally titled the Sustainable Communities and Climate Protection Act of 2008, for the first time linked California regional transportation planning and funding with state land use regulation and planning – the ultimate goal being to reduce greenhouse gas (GHG) emissions from California's transportation sector, the state's single largest source of those emissions. The legislation does so by requiring each of the state's regional transportation agencies to incorporate a "sustainable communities strategy" (SCS) into its periodically updated regional transportation plan (RTP). SB 375's objective is to incentivize more sustainable land use and transportation practices, thereby reducing California's aggregate GHG emissions.

The San Diego Association of Governments (SANDAG) was the first regional transportation agency in California to adopt an updated RTP with an SB 375-required SCS component. SANDAG did so after a lengthy regulatory process that included preparation of an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) to assess the overall environmental consequences of its proposed RTP and SCS.

Environmental organizations and housing advocates sued SANDAG, challenging the EIR's adequacy under CEQA. The trial court ruled in favor of the plaintiffs and a divided panel of the court of appeal affirmed, finding the EIR prepared by the agency in support of its RTP and SCS to be legally deficient in numerous respects. The California Supreme Court limited review to a single issue, which they reframed as follows: "Must the environmental impact report for a regional transportation plan include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05 to comply with the California Environmental Quality Act?"

In *Cleveland National Forest v. San Diego Ass'n of Governments* (Case No. S223603; July 13, 2017), the Court reversed the ruling of the court of appeal. At the outset of its discussion, the Court noted three

points not in dispute. First, the parties agree that the EIR should consider the RTP's long-range GHG emission impacts for the year 2050. Second, neither party disputes that the EO lacks the force of a legal mandate binding on SANDAG in the preparation of its EIR. Third, the parties do not dispute that the projected increase in GHG emissions under the RTP from 2020 through 2050 is a significant environmental effect.

Notwithstanding these conclusions, the Court upheld the EIR, finding that SANDAG did not abuse its discretion by declining to adopt the EO as a measure of significance because the EO does not specify any plan or implementation measures to achieve its goal, particularly at a local or regional level. Further, the Court found that, given the lack of clarity around the role of an RTP in meeting greenhouse gas reduction goals, the EIR met the minimum requirements of CEQA.

In reaching its ruling, the Court stated: "We emphasize the narrowness of today's holding. Our decision is not a general endorsement of the adequacy of SANDAG's EIR, much less an endorsement of the adequacy of the regional plan that the EIR analyzes...We hold only that SANDAG, in analyzing greenhouse gas impacts at the time of the EIR, did not abuse its discretion by declining to adopt the Executive Order as a measure of significance or to discuss the Executive Order more than it did."

Finally, the Court further cautioned any public agencies that its decision finding SANDAG's analysis of GHG emission impacts in this particular EIR as adequate does not mean that this analysis will be sufficient in future EIRs. The majority clarified that "[n]othing we say today invites regional planners to 'shirk their responsibilities' under CEQA or other environmental statutes. To the contrary, we affirm that planning agencies like SANDAG must ensure that CEQA analysis stays in step with evolving scientific knowledge and state regulatory schemes."