

***Cleveland National Forest Foundation v. San Diego Association of Governments* (Nov. 16, 2017) __ Cal.App.5th __**

This is the appellate court's reconsideration of the case of the same name decided by the Supreme Court. The Supreme Court limited its decision to issues related to greenhouse gas (GHG) emissions in the EIR for SANDAG's 2011 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) and remanded to the Court of Appeal to consider the case in light of the Supreme Court's holding. The Court of Appeal revised its prior decision to match the Supreme Court's direction that the GHG analysis was adequate. However, it then proceeded to affirm its prior findings that the 2011 EIR was inadequate on numerous other grounds.

SANDAG argued that the 2011 EIR was now moot because SANDAG had adopted a new RTP/SCS and related EIR in 2015 that superseded its 2011 documents. The Court declined to take that approach, instead concluding:

...there is no evidence indicating the EIR at issue in this case has been decertified and can no longer be relied upon for the current version or future versions of the transportation plan, or for projects encompassed with the transportation plan. Additionally, while there is evidence suggesting the environmental review documents associated with the 2015 version of the transportation plan may have addressed this court's concerns about the EIR's greenhouse gas emissions impacts analysis, there is no evidence indicating these environmental review documents addressed this court's concerns about any of the EIR's other analytical deficiencies. Consequently, on this record, it appears this case may still be able to provide Cleveland and the People with effective relief because correcting the defects in the EIR may result in modifications to the current version or future versions of the transportation plan, or to projects encompassed within the transportation plan. [citation omitted]

This conclusion is actually without any basis. In reality, given the litigation history of the 2011 EIR and the fact that it does not reflect the adopted RTP/SCS, no agency would use it as the basis for CEQA reviews.

Picking up where it had left off prior to the Supreme Court's decision on the GHG issue, the Court of Appeal found that SANDAG had failed to support many of its conclusions with substantial evidence and therefore had failed to adequately analyze agricultural, air quality, traffic, and other impacts of the 2011 RTP/SCS. The Court remanded the case to the superior court with direction to issue a writ requiring SANDAG to revise its 2011 EIR to match the decisions of the Supreme Court and Court of Appeal.