

CEQA and Post-2020 GHG Emissions Reduction Planning

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CEQA & Post-2020

1. Precedent Setting GHG Case Law
2. Post-2020 Emissions for CEQA Analyses
3. CEQA GHG Analyses Version 2.0

We Thought We Were Doing Good

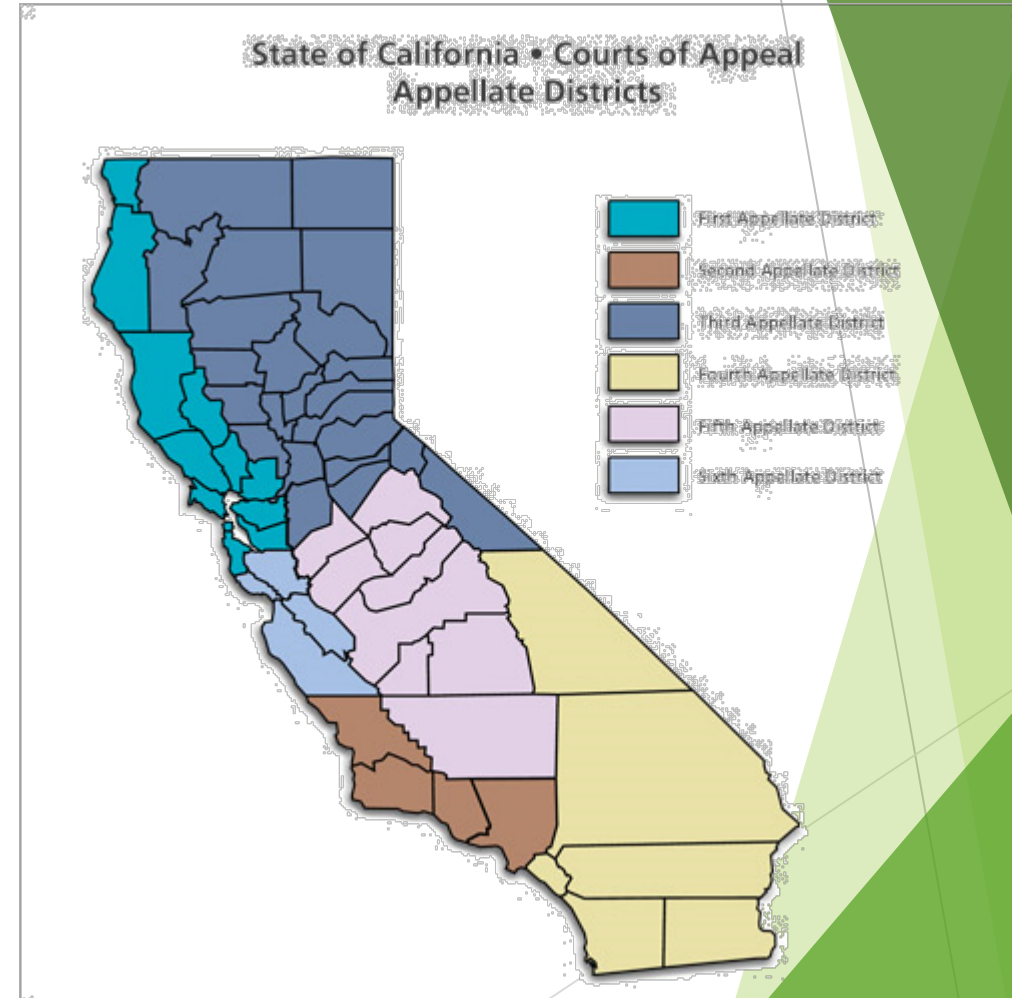
- ▶ Air Districts drafted GHG significance thresholds
- ▶ Climate Action Plans or Equivalent Completed in Many Jurisdictions
- ▶ CEQA approaches tested in court and upheld....

And Then...



Precedent Setting GHG Case Law

- ▶ Cleveland National Forest v. SANDAG (2014)
Supreme Court review granted 12/16/2014
- ▶ Sierra Club v. County of San Diego (2014)



Cleveland National Forest Foundation v. SANDAG (2014) 231 Cal.App.4th 1056

review granted 12/16/2014

- ▶ SANDAG adopted its RTP/SCS and certified EIR
- ▶ PEIR concluded that although the RTP/SCS would meet the 2020 reduction target, it would increase GHG emissions levels in comparison to 2010 conditions for the 2035 and 2050 planning years
- ▶ CNFF sued, alleging the PEIR failed to analyze the inconsistency between EO S-03-05, and the RTP/SCS's increase in GHG emissions after 2020

Cleveland National Forest Foundation v. SANDAG (2014) 231 Cal.App.4th 1056

review granted 12/16/2014

- ▶ First Regional Transportation Plan with a Sustainable Communities Strategy (RTP/SCS)
- ▶ Planned to 2050; GHG emissions disclosed.
- ▶ GHG mass emissions would at first decline with plan, but in the long-run increase.
- ▶ EIR demonstrated consistency with AB 32, SB 375
- ▶ EIR asserted no adopted target or plan to 2050

Cleveland National Forest Foundation v. SANDAG (2014) 231 Cal.App.4th 1056

review granted 12/16/2014

Court (2-1) held for CNFF, invalidated PEIR

- ▶ EO S-03-05, including its 2050 goal, was “**effectively endorsed**” by the adoption of AB 32 and SB 375.
- ▶ SANDAG was obligated to address whether the increase in GHG emissions after 2020 “conflicted with the Executive Order, or would impair or impede the achievement of the Executive Order’s goal.”
 - ▶ SANDAG argued that it could not analyze RTP/SCSs consistency with EO S-03-05 because there is **no statute or regulation** creating scientifically based emissions reduction targets for 2050
 - ▶ Court stated that SANDAG could use forecasting to disclose general consistency with EO S-03-05

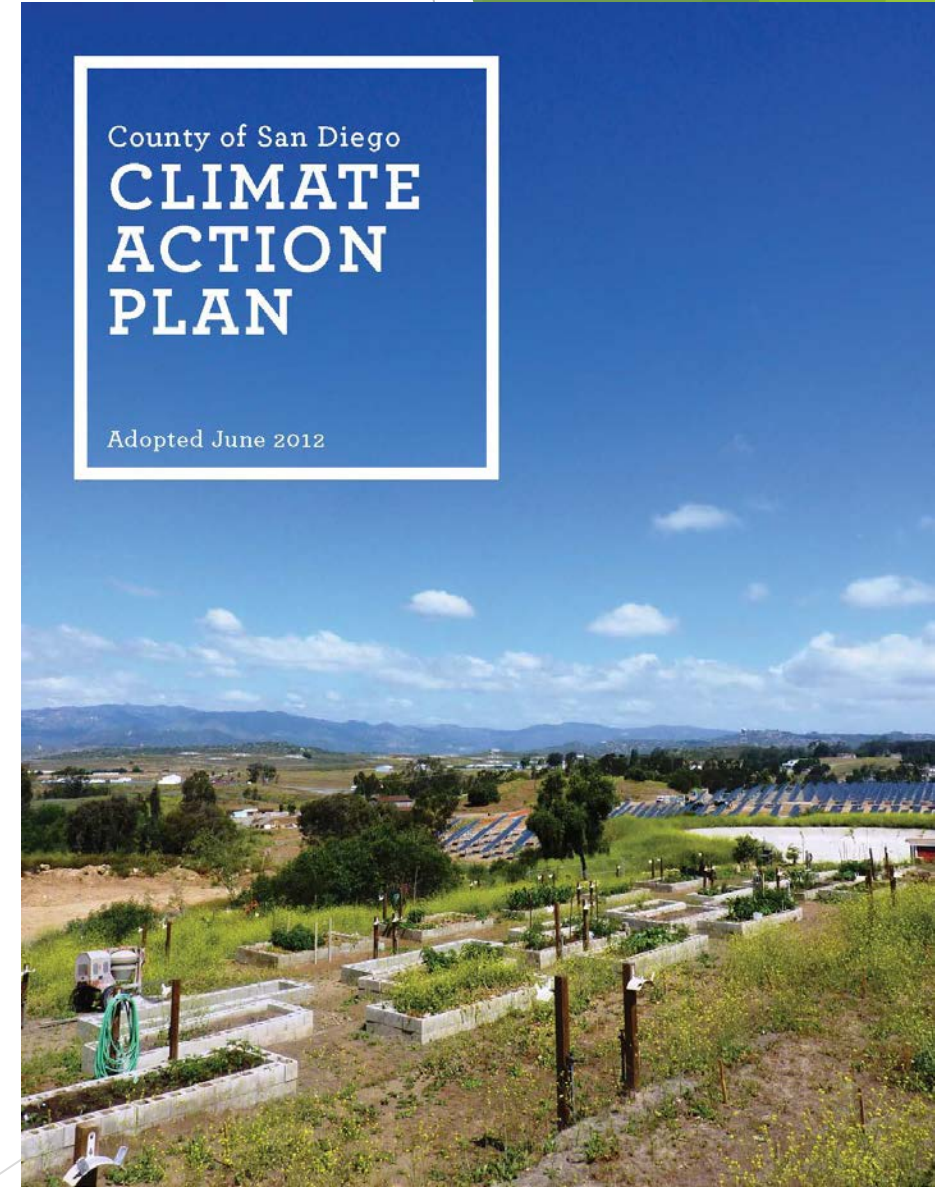
Cleveland National Forest Foundation v. SANDAG (2014) 231 Cal.App.4th 1056

review granted 12/16/2014

- ▶ Court would not defer to SANDAG's adoption of the GHG thresholds used in the PEIR
- ▶ Dissenting judge sharply disagreed with the majority on all issues
 - ▶ Notes that EO S-3-05 is not a statewide policy and, as a Governor's action, "**does not unilaterally qualify as a threshold of significance**"
 - ▶ EO S-3-05 is "merely a broad policy statement of goals issued by the Governor" that "does not have an identifiable foundation in the constitutional power of the Governor or in statutory law."
 - ▶ Regarding the threshold of significance, "there is no legal support for our action, which **strips lead agencies of the discretion** vested in them by the Legislature and reposes that discretion in the courts"

Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152

- ▶ Decision published; can be cited as precedent
 - ▶ California Supreme Court did not take up appeal.
 - ▶ But Supreme Court ruling on SANDAG appeal might affect 2050 portion of SD CAP appellate court ruling.



Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152

- ▶ County prepared CAP as Mitigation Measure from General Plan Program EIR
 - ▶ CAP demonstrated consistency with AB 32
 - ▶ CAP analyzed emissions for 2005, 2020, 2035, and 2050
 - ▶ Targets for 2020 and 2035
 - ▶ Reductions measures analyzed for 2020; and 2035 reduction potential
 - ▶ 2020 target met
 - ▶ Monitoring plan
- ▶ Sierra Club sued, claiming CAP required a stand alone EIR and did not comply with 2011 mitigation measure

Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152

- ▶ Court held for the Sierra Club striking down San Diego County's CAP because:
 - ▶ Addendum not allowed.
 - ▶ CAP measures unenforceable; and
 - ▶ Should have considered 2050 goal

Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152

- ▶ CAP did not ensure the necessary GHG reductions and lacked sufficient enforceability; and :
 - ▶ Some measures - retrofitting County's vehicles, implementing water conservation programs, preparing town-center plans - were unfunded
 - ▶ Transit-related measures - improved mass transit, improved bike/pedestrian facilities, expanded ridesharing - were either unfunded or dependent on coordination with other agencies

Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152

- ▶ County failed to analyze the impacts of the CAP and should have considered EO S-03-5 and post-2020 reductions
 - ▶ CAP measures need a CEQA analysis
 - ▶ Failure to comply with MM, AB 32, and Executive Order S-3-05 changed conclusions reached in adopting the General Plan
 - ▶ CAP's threshold of significance could free some projects from CEQA
 - ▶ Consideration of EO S-3-05:
 - ▶ Unlike AB 32 goal, no legislation requires this
 - ▶ No standards exist for meeting EO S-3-05

2050 Now!



She can't assure an
80% reduction in
GHGs by 2050....
May we burn her?

GHG Thresholds for CEQA

- ▶ CEQA GHG Thresholds Based on AB 32 Goals
 - ▶ No Legislative Target for 2030 (yet...) or 2050
 - ▶ No Scoping Plan beyond 2020 (yet... initiate update Fall 2015 ARB per EO B-30-15)
 - ▶ For most jurisdictions, 2050 target is NOT attainable
 - ▶ For a Project, a 2050 efficiency target is also NOT attainable

Post-2020 CEQA

- ▶ How do you analyze post-2020 emissions?
- ▶ Is it possible to have a less-than-significant finding post 2020 without demonstrating 80% < 2050?
- ▶ What are the implications to long term planning?
- ▶ What level of enforcement (“teeth”) is needed?
- ▶ What does an adequate monitoring plan consist of?

GHG Thresholds for CEQA

- ▶ Project-Level Buildout 2020 and Earlier:
 - ▶ Tier off the Climate Action Plan
 - ▶ Use current thresholds
- ▶ Post-2020 - Not So Clear
 - ▶ Probably can't tier of the Climate Action Plan
 - ▶ Use Current Thresholds - Maybe?
 - ▶ Extrapolate Threshold based on EO B-30-15 and EO S-03-05
 - ▶ [Missing Link is State Plan that achieves these goals]

GHG Thresholds for CEQA

- ▶ Extrapolating the CEQA GHG Efficiency Targets based on State Goals...

	Proposed or Adopted GHG Efficiency Thresholds (SAR GWPs)		
	Proposed/ Adopted Threshold AB 32 Consistency (1990 Levels)	EO B-30-15 Consistency Year 2030 (40% Below 1990)	EO B-30-15 Consistency Year 2050 (80% Below 1990)
BAAQMD	4.6 MTCO ₂ e/SP	2.76 MTCO ₂ e/SP	0.92 MTCO ₂ e/SP
SCAQMD	4.8 MTCO ₂ e/SP	2.88 MTCO ₂ e/SP	0.96 MTCO ₂ e/SP
SDAPCD	4.32 MTCO ₂ e/SP	2.59 MTCO ₂ e/SP	0.86 MTCO ₂ e/SP
SLO County APCD	4.9 MTCO ₂ e/SP	2.94 MTCO ₂ e/SP	0.98 MTCO ₂ e/SP

Will AB 32 + 1 (e.g., SB 32, AB 33, AB 21) Solve Our CEQA Woes?

- ▶ For example: If SB 32 - Senate Bill 32 is Adopted
 - ▶ 2030, 2040, and 2050 GHG Legislative Targets
 - ▶ Once CARB prepares GHG Reduction Plan(s) for 2030, 2040, and 2050
 - ▶ Then... CEQA significance criteria based on consistency with these plans can be developed



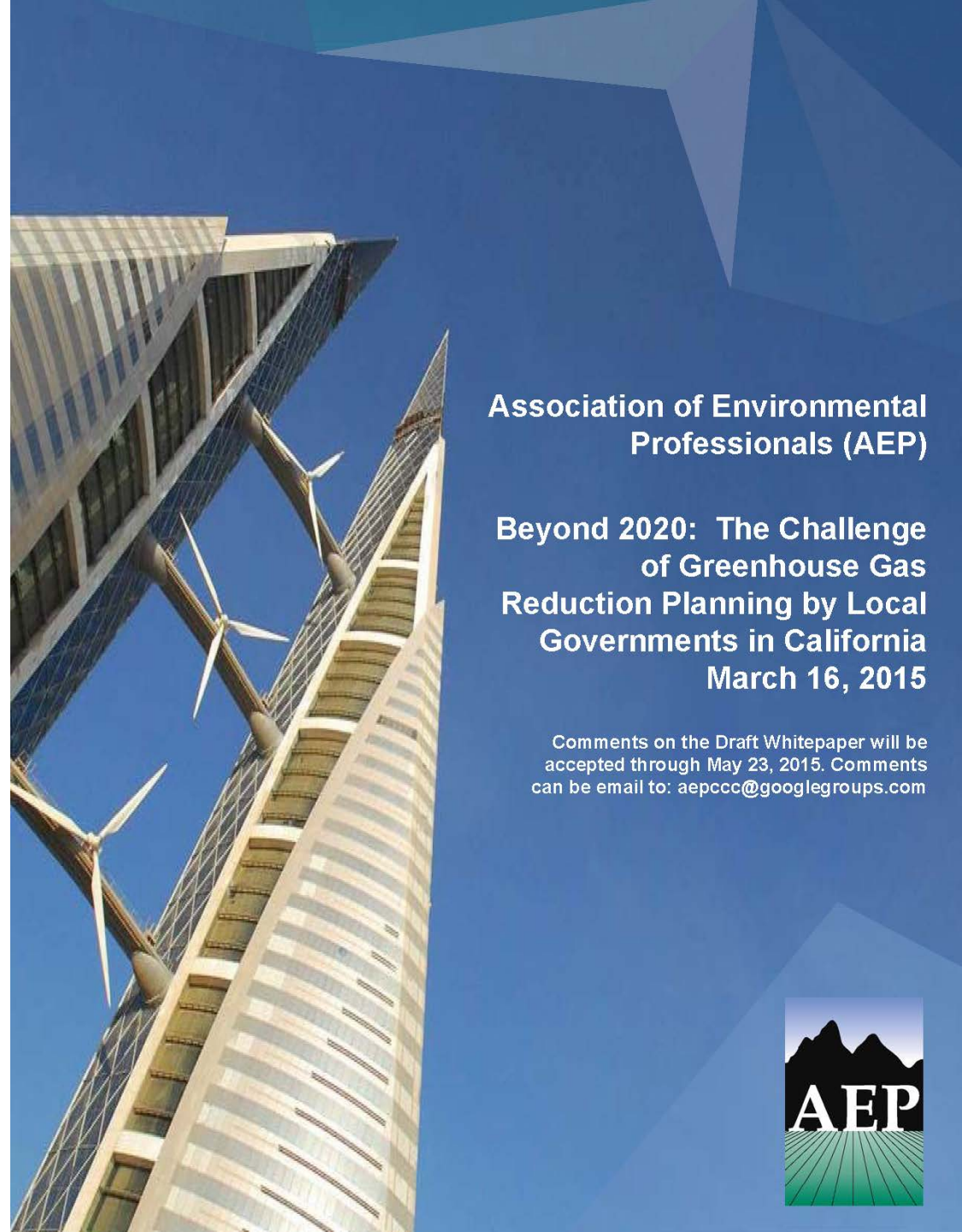
Will AB 32 + 1 Solve Our CEQA Woes?

- ▶ Will GHG thresholds be based on Buildout Year? OR
- ▶ Will Petitioners argue 2050 target be met now?
 - ▶ i.e., If there is no State Plan for 2050; how can projects be expected to achieve it!
- ▶ Scoping Plan to Achieve the new Legislative Targets is Needed!



AEP Climate Change Committee

- ▶ Beyond 2020: The Challenge of GHG Reduction Planning by Local Governments in California



Association of Environmental Professionals (AEP)

Beyond 2020: The Challenge of Greenhouse Gas Reduction Planning by Local Governments in California
March 16, 2015

Comments on the Draft Whitepaper will be accepted through May 23, 2015. Comments can be email to: aepccc@googlegroups.com



CEQA Wish List

- ▶ **Post-2020 CEQA Recommendations**
 - ▶ "Substantially Mitigate"
 - ▶ Allow CEQA Tiering from GHG Reduction Plans that Make "Substantial Progress" Toward Long-Term Goals
 - ▶ CEQA Exemption for CAPs?

CEQA Wish List

Tiering from CAPs

- ▶ County of San Diego Comparison to CEQA Guidelines Section 15183.5.
 - ▶ Inventory & Forecast
 - ▶ Quantified GHG Reductions and estimated post-2020 reduction
 - ▶ Mix of Voluntary and Mandatory Measures - But not written as “mitigation”
 - ▶ Adopted in a Public Process
- ▶ We need carrots!!



CEQA Wish List



- ▶ Legislature Amend CEQA Guidelines (§15813.5)
 - ▶ Allow tiering for “substantial progress” toward long-term GHG reduction goals
- ▶ “Substantially Mitigate” is not a new concept:
 - ▶ SB 226 allows lead agencies to tier off development standards that “substantially mitigate” impacts.
 - ▶ “Create additional flexibility and incentives to create and implement CAPs.
 - ▶ Allow post-2020 CEQA streamlining for projects to tier off CAPs.

CEQA Wish List

- ▶ **CEQA Exemption(s) for CAPs**
 - ▶ Many elements of CAPs result in less than significant impacts.
 - ▶ Project-level analysis can address aspects that may have significant impacts.
 - ▶ Legislature should create partial/categorical exemption for GHG Reduction Plans

Thank You

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