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January 13, 2017

San Diego Association of Governments  
Board of Directors, Chair Ron Roberts  
401 B St. Ste. 800  
San Diego, CA 92101

**RE: Circulate San Diego Comments for SANDAG NOP of Program EIR for the 2019 Regional Plan**

Honorable Ron Roberts and SANDAG Board and Committee members:

On behalf of Circulate San Diego, whose mission is to create excellent mobility choices and vibrant, healthy neighborhoods, I am writing to submit comments in response to the Notice of Preparation for the Program Environmental Impact Report (EIR) for the 2019 Regional Plan (Regional Plan), issued by SANDAG on November 14, 2016.

Circulate San Diego is a non-profit organization devoted to transit, active transportation, and sustainable growth. As such, we support SANDAG's efforts to integrate land uses, transportation systems, infrastructure needs, and public investment strategies within a regional smart growth framework. We submit this letter with the aim of providing SANDAG with useful comments to ensure preparation of an EIR that reflects SANDAG's goal to plan for a smart growth transportation network and that it fully complies with CEQA. Thank you for this opportunity to provide valuable feedback on this essential component of the 2019 Regional Plan.

**1. The EIR must contain one or more transit-friendly reasonable alternatives that are financially constrained and do not require an amendment of the 2004 TransNet Ordinance.**

SANDAG's EIR for the 2019 Regional Plan must contain one or more transit-friendly reasonable alternative that will mitigate the environmental impacts of the preferred scenario. For the purpose of this letter, any such alternative will be referred to as a "TransNet-Constrained Transit Alternative." Such an alternative should advance as much transit and active transportation as possible, subject to the following constraints:

Constraint 1: It must cost approximately the same as SANDAG's preferred alternative, paying for the acceleration of transit through the delay or removal of highway expenditures; and

Constraint 2: It must not delay or remove so much highway expenditures as to violate the text of the 2004 TransNet Extension Ordinance.

- a. Both the courts in California and SANDAG agree that SANDAG must analyze a transit-friendly reasonable alternative to its preferred scenario.

The courts in California have found that SANDAG is obligated to consider reasonable alternatives that mitigate the environmental impacts of its preferred scenario by advancing public transit.<sup>1</sup> SANDAG recognized this obligation in its 2015 EIR and analyzed a variety of alternatives that substantially advanced transit to mitigate the greenhouse gas impacts of its preferred scenario.<sup>2</sup>

- b. None of the transit-friendly scenarios considered by SANDAG in 2015 were financially or politically viable, and were therefore not reasonable alternatives.

Circulate San Diego wrote a letter to SANDAG in 2015 commenting on the failure to perform a reasonable alternatives analysis for the agency's Draft 2015 Regional Plan.<sup>3</sup> All of SANDAG's transit-friendly alternatives in 2015 were so aggressive with their transit acceleration that they would require either an amendment to the 2004 TransNet Ordinance, or unreasonable expectations about the availability of local, state, or federal funding. While such contingencies may not be legally impossible, they are very unlikely to occur. As such, SANDAG's alternatives were not sufficient to meet SANDAG's obligation to analyze reasonable alternatives for the SANDAG Board and the public to consider.

- c. Including one or more TransNet-Constrained Transit Alternative does not preclude SANDAG from analyzing even more ambitious alternatives in its EIR.

Circulate San Diego certainly supports SANDAG if it chooses to analyze alternative Regional Plan scenarios that assume ambitious federal funding, or optimistic views about the willingness of the SANDAG Board to amend TransNet to prioritize transit. Those scenarios could be useful to examine the potential outcomes if the SANDAG board changes or evolves.

However, alternative scenarios that would rely on contingences that are very unlikely to occur are not sufficient to meet SANDAG's obligation to provide a transit-friendly reasonable alternative for mitigating environmental impacts of the preferred scenario. "Unrealistic mitigation measures, similar to unrealistic project alternatives, do not contribute to a useful CEQA analysis."<sup>4</sup> Such alternatives are permissible to analyze, but not sufficient.

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<sup>1</sup> *Cleveland National Forest Foundation v. San Diego Association of Governments*, 231 Cal.App.4th 1056 (2014) (The California Supreme Court did not grant certiorari on this issue).

<sup>2</sup> San Diego Association of Governments, Final EIR for San Diego Forward: The Regional Plan, Chapter 6, Alternatives Analysis (October 9, 2015), available at [http://www.sdforward.com/pdfs/EIR\\_final/Chapter%206.0%20Alternatives%20Analysis.pdf](http://www.sdforward.com/pdfs/EIR_final/Chapter%206.0%20Alternatives%20Analysis.pdf).

<sup>3</sup> Circulate San Diego, Policy Letter: Comments on Draft Environmental Impact Report for SANDAG's 2015 Draft Regional Plan, (July 14, 2015), available at [http://www.circulatesd.org/comments\\_sandag\\_2015\\_regional\\_plan\\_eir](http://www.circulatesd.org/comments_sandag_2015_regional_plan_eir).

<sup>4</sup> *Cleveland National Forest Foundation v. San Diego Association of Governments*, 231 Cal.App.4th 1056 (2014) (citing *Watsonville Pilots Assn. v. City of Watsonville*, 183 Cal.App.4th 1059, 1089 (2010)).

- d. Any TransNet-Constrained Transit Alternative should advance only as much transit as is financially viable through the delay or removal of highway projects.

SANDAG can avoid replicating the same deficiencies in its 2015 EIR by providing in the 2019 EIR one or more TransNet-Constrained Transit Alternatives that are both financially and politically viable. Any TransNet-Constrained Transit Alternative should cost roughly the same as SANDAG's preferred scenario. This will allow the SANDAG Board and the public to make a more apples-to-apples comparison between maintenance of SANDAG's current status quo plans, and the alternative of changing those plans to prioritize transit.

Delaying highway spending will free up near-term resources that SANDAG can dedicate to front-load transit projects. A TransNet-Constrained Transit Alternative should only accelerate as much transit as can be accomplished by freeing up funding through the delay or removal of highway expenditures.

As we stated in 2015, a viable transit-friendly alternative likely could not accelerate all of SANDAG's transit projects into the first ten years of the plan. Accelerating all such transit projects would likely make any Regional Plan financially infeasible. Instead, SANDAG should prepare at least one TransNet-Constrained Transit Alternative that accelerates as much transit as can be financially feasible, given the flexibility the agency has to delay or remove highway projects, as described below.

- a. A TransNet-Constrained Transit Alternative should be consistent with the requirements of the 2004 TransNet Extension Ordinance.

When determining how much of SANDAG's highway projects to delay or remove to free up resources to accelerate transit in a TransNet-Constrained Transit Alternative, SANDAG should limit changes to highway plans to be consistent with the text of the 2004 TransNet Extension Ordinance.

In 2015, Circulate San Diego and Transform California published *TransNet Today*,<sup>6</sup> which explains the substantial flexibility SANDAG has over how to implement the 2004 TransNet Extension Ordinance.

While TransNet does require SANDAG to build certain highway projects, it allows substantial flexibility as to when those projects must be built. SANDAG has itself chosen the order and phasing of TransNet projects, an ordering they can elect to rebalance at their discretion. Such a rebalancing would require only a majority vote by the SANDAG Board, and would be consistent with both the text and the intent of the 2004 TransNet Extension Ordinance approved by the voters.

As explained by *TransNet Today*, if SANDAG were to delay or remove highway projects from its Regional Plan, it could free up other near-term resources planned to be spent on highways, like the State Transportation Improvement Program funds, and instead repurpose them to transit.

Any TransNet-Constrained Transit Alternative should only delay highway projects required by TransNet in a manner that would still allow SANDAG to complete them within the 40-year time horizon required by the text of the 2004 TransNet Extension Ordinance. For highway projects that are not required by the 2004 TransNet Extension Ordinance, they could be delayed or removed entirely as needed in a TransNet-Constrained Transit Alternative, to free up resources to accelerate transit.

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<sup>6</sup> Circulate San Diego, *TransNet Today* (2015), available at <http://www.circulatesd.org/transnettoday>.

While the TransNet Extension Ordinance is legally capable of amendment with a two thirds vote of the SANDAG Board, that would be politically very difficult, bordering on the impossible. Assuming such an amendment is unreasonable for the purpose of SANDAG's obligation to analyze reasonable alternatives in its EIR. One or more TransNet-Constrained Transit Alternative should be presented to the SANDAG Board that simultaneously advances transit, and preserves the text of TransNet, so that the SANDAG Board can make a real choice within the bounds of the politically possible.

- b. A TransNet-Constrained Transit Alternative should present a reasonable alternative for the SANDAG Board to consider, even if it does not solve all of the region's transit challenges in one stroke.

A TransNet-Constrained Transit Alternative that is required to be financially and politically viable may not allow SANDAG to accelerate all of its planned transit projects into early periods. Such a plan may be deemed insufficient to many advocates for transit and active transportation.

However, for the SANDAG Board to reasonably consider a change of direction from the status quo, they must be presented with an option that meets Boardmembers' legal, financial, and political obligations to their constituencies.

If the SANDAG Board were to adopt a TransNet-Constrained Transit Alternative, even with the constraints outlined in this letter, it could present meaningful improvements to the region's transit future. The SANDAG Board can only implement such a change if an option is presented to them in the form of a TransNet-Constrained Transit Alternative, consistent with the text of the 2004 TransNet Extension Ordinance.

Transit advocates, including Circulate San Diego, would likely desire even greater progress on transit that this limited transit-alternative could achieve. If SANDAG did adopt such an alternative in 2019, that would not preclude transit supporters from seeking still further improvements to transit through a future ballot measure, or changes to state or federal law.

## **2. The EIR should analyze the extent to which the Regional Plan does or does not meet the mode-share goals for local jurisdictions with Climate Action Plans.**

The City of San Diego and other jurisdictions in the region have Climate Action Plans (CAPs) that adopt greenhouse gas reduction targets, as well as mode-share goals for transit, walking, and bicycling.

In 2015, Circulate San Diego and the Climate Action Campaign published a report titled *New Climate for Transportation*.<sup>7</sup> That report detailed how SANDAG's own data predicted that the 2015 Regional Plan would not result in the mode-share outcomes called for by the City of San Diego's CAP.

The EIR for the 2019 Regional Plan should include information and analysis showing to what extent SANDAG data projects mode-share goals in the geographic areas for which cities have mode-share goals

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<sup>7</sup> Circulate San Diego and Climate Action Plan, *New Climate for Transportation* (2015), available at [http://www.circulatesd.org/new\\_climate\\_for\\_transportation](http://www.circulatesd.org/new_climate_for_transportation).

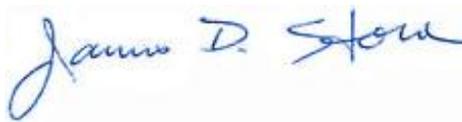
in their CAPs. This will help inform SANDAG Boardmembers and the public about whether SANDAG's efforts are sufficient to help cities meet their own climate goals.

Cities with CAPs and advocates like Circulate San Diego will likely be seeking this data in any event. So SANDAG can help a variety of stakeholders in the region by preemptively sharing this information in their Regional Plan EIR.

### **3. Conclusion.**

Circulate San Diego looks forward to working with the SANDAG staff and Board as they develop the 2019 Regional Plan, so that San Diego can enjoy the robust transportation network it deserves.

Sincerely,

A handwritten signature in blue ink that reads "Jim Stone". The signature is written in a cursive style with a large initial "J".

Jim Stone  
Executive Director  
Circulate San Diego

Cc: Andrew Martin, Associate Regional Planner, San Diego Association of Governments, via email to [andrew.martin@sandag.org](mailto:andrew.martin@sandag.org).