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Chair Jerome Stocks and
Members of the Board
SANDAG
401 B Street, Suite 800
San Diego, CA 92101

Re: 2050 Regional Transportation Plan/Sustainable Communities Strategy and Environmental Impact Report

Dear Chair Stocks and Members of the Board:

We submit this letter on behalf of the Cleveland National Forest Foundation ("CNFF"), Save Our Forest and Ranchlands ("SOFAR"), the Center for Biological Diversity, and Sierra Club to provide comments on the proposed 2050 regional transportation plan/sustainable communities strategy ("RTP/SCS," "Plan" or "Project") and the accompanying environmental impact report ("EIR").

The particular purpose of this letter is to provide comments on the Final EIR ("FEIR") for the proposed Project and to inform SANDAG that the document fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*, and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 *et seq.* ("Guidelines"). For the reasons set forth below, we request that the Board delay further consideration of this Project until such time as a legally adequate EIR is prepared that fully complies with CEQA.

I. INTRODUCTION

This firm submitted extensive comments to SANDAG on the Draft EIR ("DEIR") for the Project, identifying scores of legal inadequacies in the DEIR. These comments expressed our grave concern that the RTP/SCS's highway-oriented approach to transportation would facilitate sprawling growth throughout the region; would undermine any attempt to ensure smart, city-centered growth; and would set the region on

a course that is inconsistent with the State's climate objectives. These concerns were echoed by a wide range of commenters with diverging interests, including the California Office of the Attorney General, the California Coastal Commission, the California Department of Fish & Game, the Office of Planning and Research, local jurisdictions, and numerous environmental and community organizations.

The FEIR's response to these concerns is, lamentably, denial. Rather than revise the RTP/SCS to provide a truly transit-focused plan, or analyze the actual environmental costs of a "business-as-usual" transportation plan, the FEIR merely seeks to defend the erroneous assertions and conclusions of the prior document.[1] The vast majority of the environmental community's concerns about the impacts to the region caused by SANDAG's auto-centric planning approach are rejected out of hand.

SANDAG is now further hampering the planning process—and frustrating the purposes underlying CEQA review—by providing the public only ten days to review an FEIR that comprises about 1,200 pages. The intense controversy surrounding this Project, exemplified by the 1,500 individuals and organizations commenting on the Project and its EIR, warrants sufficient time to review the agency's responses to comments. Moreover, the FEIR includes numerous revisions to the Project itself and substantive new analysis, but the agency is not allowing sufficient time to allow for members of the public to review, let alone synthesize, the contents of this new information.[2] This truncated review period makes meaningful review by the public exceedingly difficult, thereby undermining CEQA's informational and public participation objectives.

In short, the FEIR fails to remedy the deficiencies of the EIR. It also fails to respond adequately to our comments on the DEIR. As a result, we conclude, once again, that SANDAG would violate CEQA were it to certify this fatally flawed EIR.

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[1] The DEIR and the FEIR are sometimes referred to collectively as the "EIR."

[2] The RTP/SCS has been revised substantially since publication of the DEIR including numerous changes to transit, highways and arterials in the proposed transportation network. *See* DEIR at G-32 – G-35 and Table 1. The FEIR also includes substantive new analysis of the Project's environmental impacts including an evaluation—albeit entirely incomplete—of the Project's potential to expose sensitive receptors to elevated pollution levels. *Id.* at 4.3-41.

II. THE FEIR Does Not Remedy the Deficiencies of the DEIR or Adequately Respond to Comments.

A. The FEIR's Justifications for Failing to Provide a More Detailed Analysis of Its Project Are Unavailing.

Our firm's letter, along with numerous others, commented that the description of the RTP/SCS and the EIR's impact analyses lack sufficient detail and information to enable the public to assess the Project's environmental impacts. Among the EIR's most notable deficiencies is its lack of an adequate account of the Project's transportation components, especially transit, as well as the Project's plan for ensuring that its land use component will develop in the ambitious 80 percent infill development pattern indicated. SANDAG offers two primary responses to this line of comments, both of which must fail.

First, as with the remainder of the EIR, SANDAG attempts to excuse its lack of Project detail by claiming that the EIR is merely a "Program EIR" that may be extremely general in nature. The FEIR suggests that no more detailed environmental review is necessary at this time because more specific analysis will be conducted in connection with future, project-level environmental review. *See, e.g.*, FEIR Master Responses 1, 16; Responses to Comments R-17, R-18, R-23 at G-527, G-528, G-531.[3]

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[3] This response to our repeated requests for more detailed analysis is as pervasive as it is wrong. For example, in response to our request that the DEIR actually describe the RTP's proposed highway and arterial projects, the FEIR declares that "information included in the project description and [sic] was sufficient to conduct the EIR's environmental impact analysis using accepted methodologies appropriate for the Program EIR's level of detail." Response R-17 at G-527; *see also* Response R-13 at G-526 which fails to provide specific responses to our questions requesting an accounting of the number, location, and phasing of transit projects proposed for the Urban Area Transit Study geographical area. The FEIR also makes no attempt to identify the specific bottleneck/auxiliary projects proposed by the RTP, stating that these projects will be identified in the RTIP [Regional Transportation Improvement Plan]. Response R-18 at G-527. (Note that the RTIP does not appear to be incorporated by reference into the EIR as required by CEQA. *See* Guidelines §15150). The EIR also inappropriately defers mitigation measures, suggesting that impacts and mitigations will be assessed at the project level. *See, e.g.*, Measure AQ-B, FEIR at 4.3-63 Measure AQ-B.

The "programmatic" nature of this EIR, however, is no excuse for its lack of detailed analysis. The EIR grossly misconstrues both the meaning and requirements of a "program" EIR by suggesting that the geographic scope and complexity of the 2050 RTP/SCS played an important role in determining the appropriate level of detail to include in the EIR, as did the highly diverse nature of the Project itself. FEIR Master Response 1 at G-3. This approach is flawed, at the outset, because CEQA requires that a program EIR provide an in-depth analysis of a large-scale project, looking at effects "as specifically and comprehensively as possible." Guidelines § 15168(a), (c)(5). Indeed, because it is designed to look at the "big picture," a program EIR must provide "more exhaustive consideration" of effects and alternatives than can be accommodated by an EIR for an individual action, and must consider "cumulative impacts that might be slighted by a case-by-case analysis." Guidelines § 15168(b)(1)-(2).

Furthermore, whether a lead agency prepares a "program" EIR or a "project-specific" EIR under CEQA, the requirements for an adequate EIR remain the same. Guidelines § 15160. "Designating an EIR as a program EIR also does not by itself decrease the level of analysis otherwise required in the EIR." *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency*, 82 Cal.App.4th 511 (2000). Even a program-level EIR must contain "extensive detailed evaluations" of a plan's effects on the existing environment. *See Envt'l Planning and Info. Council v. County of E Dorado, 131 Cal.App.3d* 350, 358 (1982). *See also Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692,723-24(1990) (where the record before an agency contains information relevant to environmental impacts, it is both reasonable and practical to include that information in an EIR).

The FEIR's reliance on future, project-level environmental review is also misplaced. Again, CEQA's policy favoring early identification of environmental impacts does not allow agencies to defer analysis of a plan's impacts to some future EIR for specific projects contemplated by that plan. *See Bozung v. Local Agency Formation Comm.,* 13 Cal.3d 263, 282-84 (1975)*; Christward Ministry v. Superior Court,* 184 Cal.App.3d 180, 194 (1986)*; City of Redlands v. County of San Bernardino*, 96 Cal.App.4th 398, 409 (2002). As Guidelines section 15152(b) explicitly warns, "[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration."

Moreover, there is no guarantee that such future, detailed environmental review will happen. Several CEQA provisions provide that neither SANDAG nor other local agencies will have to conduct further environmental review for specific future

projects that are consistent with the RTP or SCS. *See, e.g.*, Pub. Res. Code § 21155.1 ("transit priority projects" that are consistent with an SCS and meet certain other criteria are exempt from CEQA review entirely); Guidelines § 15183 (streamlined environmental review for projects consistent with general or community plans for which EIRs have already been prepared). Thus, the time to analyze the potential environmental impacts caused by projects contemplated by the proposed RTP/SCS is now. In order to do so, SANDAG and the public must have a full understanding of the various components contemplated by and included within the 2050 RTP/SCS.

Second, SANDAG attempts to dismiss comments regarding the description of the 2050 RTP/SCS as comments unrelated to the environmental review process. This effort to bifurcate the development of the 2050 RTP/SCS from the CEQA process is fundamentally flawed. The 2050 RTP/SCS *is* the "project" under CEQA review. As noted in our prior comment letter, "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus,* 27 Cal. App. 4th 713, 730 (1994). Furthermore, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *Id.* at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. Therefore, the CEQA process is necessarily impacted by any inadequacies in the development of the 2050 RTP/SCS. As a result, the thousands of comments submitted on the RTP/SCS must be considered as part of the administrative record for the CEQA process, and are hereby incorporated by reference.

B. The EIR Does Not Adequately Analyze the True, Full Scope of the 2050 RTP/SCS.

In response to comments that the EIR does not set forth any details about the manner in which the 2050 RTP/SCS will in fact deliver its promise that "[n]ew development will be more compact, and more accessible to public transit" (RTP/SCS at 3-6), the FEIR states essentially that SANDAG is entitled to make assumptions regarding its Plan. *See, e.g.*, FEIR at G-525. SANDAG misses the point. CEQA requires that an EIR evaluate the environmental impacts of an agency's "project." CEQA defines a "project" as "*the whole of an action*, which has a potential for resulting in either a direct physical change" or "a reasonably foreseeable indirect change in the environment." Guidelines § 15378(a) (emphasis added); *see also* Guidelines § 15378(c) (term "project" means the whole of the "activity which is being approved"). Thus, CEQA requires that an agency take an expansive view of all project components as it conducts the

environmental review for that project. *See McQueen v. Bd. of Directors,* 202 Cal.App.3d 1136, 1143 (1988). Critically, environmental review of the development allowed by a large-scale planning enactment must take place regardless whether that development is amorphous and uncertain to occur. *See Bozung*,13 Cal.3d at 279, 282; *Christward Ministry*, 184 Cal.App.3d at 194-95.

The "project" under review here is the 2050 RTP/SCS, the purpose of which is to *lead* the region into more sustainable transportation and land use patterns in order to reduce environmental impacts, including GHG emissions. To comply with CEQA's informational purpose, the EIR may not just *assume* that the Plan provides an optimistic transit-oriented future. Rather, the EIR must "demonstrate to an apprehensive citizenry" that the Plan in fact includes project components that will result in such a future, or provide a complete analysis of the ultimate development that could occur under the agency's approval. *Laurel Heights Improvement Assn. v. Regents of the University of California*, 47 Cal. 3d 376, 392 (1988) ("*Laurel Heights I*"); *San Joaquin Raptor Rescue Center v. County of Merced,* 149 Cal.App.4th 645, 655 (2007).

In its response to comments, SANDAG argues repeatedly that it has no authority over land use. *See, e.g.*, FEIR at 4.8-14 (explaining that since SANDAG does not implement land use policy, decisions regarding how and when to implement land use strategies that will result in reduced GHG emissions outlined in the SCS will ultimately come from the local-agency level) and Master Response 4(at G-12) and Response R-29 (at G- 539)(asserting that "SANDAG has no authority to adopt land use plans or approve land use projects that will implement the SCS."). As such, SANDAG attempts to eschew any responsibility for its Project, and avoid an adequate analysis of its impacts. CEQA does not countenance such avoidance.

SANDAG is the regional transportation agency that has been given authority to develop a precedent-setting RTP/SCS. As explained further below, *infra*, SANDAG has the ability to adopt binding mitigation measures on local agencies to help ensure that the land use plan assumed by the RTP/SCS gets implemented. Furthermore, SANDAG is the agency that can and should plan for and fund transit in the immediate future, as suggested, for example, by the 50-10 Plan. Such front-loading of transit projects *would* ensure a transit-oriented future, as promised by SANDAG.

The 2050 RTP/SCS, however, does just the opposite. While claiming that its Project will result in 80 percent infill development (*e.g.*, RTP/SCS at 3-6) and that "[m]ore than 75 percent of the investments in the plan support public transit and carpool" (FEIR at G-527), the 2050 RTP/SCS in fact extensively relies on increases in highway

capacity and so-called "managed lanes" to meet the region's mobility needs—and especially highway expansion projects in the County's remote areas. Such a Plan will *not* result in land use patterns where 80 percent of jobs and homes are concentrated within the Urban Area Transit Study area.[4] Highway projects, and especially projects that increase highway capacity in the region's remote locations, will not lead to compact land uses in the region's urbanized locations (*i.e.*, the western third of the County). SANDAG provides no concrete evidence to support its assumptions to the contrary.[5] Thus, the case is analogous to *San Joaquin Raptor Rescue Center,* 149 Cal.App.4th at 655, where the court found the project description for a mine project was unstable and misleading because it promised, on the one hand, that the project did not anticipate any increase in mine production, but, on the other hand, allowed for such an increase to occur.

CEQA does not require that SANDAG's Project result in any particular outcome. It does require, however, that the EIR analyze the full consequences of the Project. Thus, if SANDAG cannot support its claim that the 2050 RTP/SCS will in fact result in the in-fill and transit-oriented development that it promises, the agency must

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[4] The EIR acknowledges that between 2035 and 2050 growth is expected in the remote locations in the County. However, by 2050, spaced rural residential development would have expanded beyond areas along existing transportation corridors and established rural communities and into areas with very minimal development at present. FEIR at 4.3-54. Large pockets of land currently used for agricultural purposes would be developed with spaced rural residential uses. *Id.*

[5] Indeed, instead of leading the region in a sustainable direction, SANDAG admits that its Plan would do little more than maintain the status quo or prevent the region from backsliding. *See* California Environmental Protection Agency and California Air Resources Board, *Informational Report on the San Diego Association of Governments Draft SB 375 Sustainable Communities Strategy* ("CARB Report") at 34,35, attached as Exhibit 11, stating "that housing within a half mile of a transit station increases from 79 to 80 percent between 2008 and 2020. Employment within a half mile of a transit station increases from 86 to 89 percent between 2008 and 2020, and slightly decreases from 89 to 88 percent between 2020 and 2035. SANDAG staff indicated that, in the absence of the draft SCS policies, the percentages of employment and housing within a half mile of a transit station would significantly decrease from 86 to 83 percent and from 79 to 76 percent, respectively, between 2008 and 2035."

analyze the environmental consequences of the sprawling development that could ultimately result under its Plan, even if that development never materializes.

Here, the EIR fails to analyze not only the full environmental consequences of the type and location of growth that is likely to result from implementation of the highway-focused Plan, but also the total *amount* of development that could result from its Plan. The EIR itself acknowledges that the RTP/SCS could allow greater residential and nonresidential development levels in 2050 than the EIR analyzes. Yet, the document fails to adequately analyze the environmental impacts resulting from full buildout. Instead, it relegates a summary of these potential impacts to a chapter near the end of the EIR. This chapter, entitled Maximum Theoretical Buildout Scenario, makes clear that the jurisdictional land use plans associated with the 2050 RTP/SCS land use forecast provide the capacity for residential units and nonresidential building square feet to allow buildout. The EIR then identifies the amount of housing and jobs that would be achieved under buildout. FEIR at 7-2. Specifically, while the main body of the EIR only analyzes a 34 percent increase in housing units by 2050, the RTP/SCS would actually allow a 38 percent increase in housing units during the same period. *Id.* Similarly, the EIR analyzes only a 33 percent increase in jobs by 2050, yet the RTP/SCS actually could result in a 42 percent increase, if full development of the Plan were to materialize. *Id.* These differences are not inconsequential, especially in light of the fact that much of the un-analyzed growth could occur in rural or agricultural areas, and that even small increases in development could result in significant cumulative impacts.

Despite acknowledging the full extent of development actually allowed under the RTP/SCS, the EIR provides only the most cursory analysis of the environmental impacts that would inevitably flow from such development. In fact, it makes no attempt to quantify or in any way estimate the impacts that would occur from maximum build-out, but instead merely labels many of the impacts "significant and unavoidable" without the requisite analysis. For example, with regard to air quality, the EIR includes vague statements such as "this increase in development could also create air emissions that could substantially degrade ambient air quality, including the exposure of sensitive receptors to substantial pollutant concentrations." FEIR, 7-3. Nor does the EIR provide any meaningful analysis of the Project's impact relating to climate change. The EIR merely provides the following unhelpful statement:

> Increased development and transportation impacts under the theoretical buildout scenario would create an overall increase in GHG emissions, although per capacity GHG emissions may remain the same if the type and location of development continue to be

> compact, mixed use, and near transit options as identified in the 2050 RTP/SCS. Therefore the theoretical buildout scenario would likely still achieve SB 375's per capacity emission reduction targets set by CARB for the San Diego region. *Id.* at 7-5.

Because the RTP/SCS will allow these extensive development levels, the EIR for the RTP/SCS should have provided a full analysis of the potential environmental impacts resulting from it. As the Court of Appeal held in *Christward Ministry* , 184 Cal.App.3d at 194:

> Even if a general plan amendment is treated merely as a "first phase" with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a "first phase-general plan amendment" must necessarily include a consideration of the larger project, i.e., *the future development permitted by the amendment*. Only then can the ultimate effect of the amendment upon the physical environment be addressed.

Id. (emphasis added); *see also City of Redlands*, 96 Cal.App.4th at 409 (quoting same). Thus, in its environmental impacts analysis, the EIR must use population and growth assumptions that reflect the substantial development permitted by the jurisdictions' general plans, not SANDAG's projections, which underestimate the new growth allowed by these general plans.

The Placer County Superior Court rejected an agency's similar attempt to analyze a reduced version of its project based on various growth "assumptions." *See Sierra Watch v. Placer County*, Case No. SCV 16652 (Decision Granting Writ of Mandamus) (May 3, 2005), attached hereto as Exhibit 1. In that case, the petitioners challenged the environmental review conducted for a community plan that was to govern development in the Martis Valley, just north of the Tahoe Basin. Like the EIR for this project, the EIR prepared for the Martis Valley Community Plan analyzed the impacts of developing a smaller number of residential units and commercial space than actually permitted by the community plan. So, while the community plan allowed 19,000 residential units and up to 5 million square feet of commercial space, the EIR only evaluated the project based on estimates of approximately 9,000 residential units and 1.1 million square feet of commercial space. *Id.* at 3. The County attempted to support these reduced numbers by pointing to a study suggesting that, on average, only 80% of permitted development was likely to actually occur. *Id.* at 7.

The court found this analysis inadequate, holding "the time to study the likely [e]ffects of specific and cumulative impacts [caused by the community plan] is at the time that the potential for development is known, whether or not that development actually occurs." *Id.* at 13. The court then described the result of the EIR's failure to analyze full build-out:

> Petitioners are correct in their assertion that the EIR failed to study the full scope of *permissible development and construction* under the [community plan]. This failure resulted in artificially limited studies of environmental impacts. . . . Flowing from this inadequacy are the mitigation measures proposed in the [community plan] which naturally fail to study and address the true nature and scope of the environmental consequences of the plan as adopted. Because of these combined failures, the Board of Supervisors was not provided with the real and potential magnitude of the environmental impacts of the proposed Community Plan. Accordingly, the County has not proceeded in a manner required by law . . . . *Id.* at 15 (emphasis added).

SANDAG cannot avoid informing the public of the potential environmental consequences of the RTP/SCS by asserting that the level of growth contemplated by the jurisdictions' general plans is unlikely to occur.

C. The EIR Ignores the RTP/SCS's Inconsistency with State Climate Objectives.

The FEIR's claim that it may ignore the long-term emission reduction targets set forth in Executive Order S-3-05 is fundamentally flawed. Indeed, the FEIR's discussion of the legal effect of an executive order is irrelevant for purposes of CEQA review. Under CEQA, a determination of the significance of an environment impact requires "careful judgment . . . based to the extent possible on scientific and factual data." Guidelines § 15064(b). The significance determination thus reflects CEQA's fundamental concern with a project's effects *on the physical environment*. The emission reduction targets embodied in both AB 32 and Executive Order S-3-05 inform a determination of significance thresholds to the extent they reflect scientific data regarding the level of emissions reductions needed to minimize the impacts of climate change. It is irrelevant whether they are legally binding in other contexts. *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004) (regulatory standards may serve as proxies for significance to the extent that they accurately reflect the level at which an impact can be said to be less than significant); *see*

also California Attorney General, *Frequently Asked Questions About Climate Change and CEQA*, attached as Exhibit 2.

As recognized by the California Air Resources Board's ("CARB") Draft CEQA Thresholds, the emission reduction targets set by AB 32 and Executive Order S-3-05 are consistent with a trajectory that aims to stabilize atmospheric concentrations of greenhouse gases at approximately 450 ppm, a level that climatologists estimate would provide a 50-50 chance of limiting global average temperature increases to 2°C above pre-industrial levels. *See* CARB, *Recommended Approaches for Setting Interim Significance Thresholds for GHGs under CEQA* (Oct. 2008), attached as Exhibit 3. Indeed, more recent scientific analysis indicates that deeper emissions reductions than prescribed in Executive Order S-3-05 are needed to avoid catastrophic climate impacts. Based on the alarming and unpredicted rate of loss of Arctic sea ice and other recent climate change observations, leading scientists have now concluded that "humanity must aim for an even lower level of GHGs." Hansen, J. et al., *Target Atmospheric CO2: Where Should Humanity Aim?,* 2 Open Atmospheric Science J. 217 (2008). Therefore, the emission reduction pathways set by AB 32 and Executive Order S-3-05 would appear to represent bare minimum reductions and are likely insufficient to minimize the risk of severe impacts to California.

The scientific and factual data underlying both AB 32 and Executive Order S-3-05 thus clarify that AB 32's objective of reducing emissions to 1990 emission levels by 2020 is only the first step toward climate stabilization. *See also* CARB *Scoping Plan* at 118, attached as Exhibit 5. AB 32's reductions alone, in the absence of further reductions by 2050 that meet or exceed the requirements of Executive Order S-3-05, are not consistent with a pathway that avoids the worst physical impacts of climate change. Therefore, as the SCS/RTP contemplates physical changes to the environment that will endure to 2050 and beyond, there is no legitimate basis under CEQA for the EIR's refusal to analyze the Project's consistency with 2050 emission reduction targets.

The FEIR also erroneously claims that it need not evaluate the significance of the RTP/SCS based on consistency with California's long-term emission reduction objectives because "impacts would be significant and unavoidable using either a net increase threshold … or an [Executive Order] based threshold." FEIR, Response to Comments at G-7. Under CEQA, "[w]hat is needed is some information about how adverse the adverse impact will be." *Santiago County Water Dist. v. County of Orange,* 118 Cal. App. 3d 818, 831 (1981). By refusing to disclose and acknowledge the fundamental inconsistencies of the RTP/SCS with the long-term emission reductions necessary to avoid catastrophic impacts, the EIR precludes informed decision making.

The EIR's failure to analyze the Project in relation to 2050 emission reduction objectives obscures the SCS/RTP's utter failure to seriously address its climate impacts. While the Project may reduce per capita emissions in the near-term through a series of short-lived fixes, per capita emissions increase again toward 2050, when climate science—as reflected in Executive Order S-3-05 and more recent published scientific work—unequivocally informs us that emissions must significantly decline. The failure of the SCS/RTP to achieve continued reductions in emissions indicates that the Project fails to set forth the meaningful changes to land-use and transportation investments required to avoid climate impacts over the long term.

The extent of future warming depends on whether and how rapidly California and the rest of the world reduce GHG emissions. As noted by the California Climate Change Center, a collaboration of researchers assembled by the California Energy Commission, "[b]ecause most global warming emissions remain in the atmosphere for decades or centuries, the choices we make today greatly influence the climate our children and grandchildren inherit." California Climate Change Center, *Our Changing Climate, Assessing the Risks to California* (2006) at 2, attached as Exhibit 2. SANDAG's failure to disclose the RTP/SCS's fundamental inconsistency with California's long-term emissions reduction goals, as well as its failure to describe an alternative scenario that could meet these objectives, both violates CEQA and profoundly disserves present and future generations of Californians.

D. The EIR's Analysis of Air Quality Impacts is Legally Inadequate.

1. The EIR Fails to Evaluate the RTP/SCS's Potential to Expose Sensitive Receptors to Substantial Pollutant Concentrations.

(a) The EIR Fails to Describe the Project's Air Quality Setting.

An EIR's description of a project's environmental setting plays a critical part in all of the subsequent parts of the EIR because it provides "the baseline physical conditions by which a lead agency determines whether an impact is significant." Guidelines § 15125(a). "Knowledge of the regional setting is critical to the assessment of environmental impacts." Guidelines §15125 (c). Although the FEIR asserts that the EIR's environmental setting section discussion meets CEQA's requirements (at response V-6), we disagree. The document's discussion of the region's environmental setting is entirely cursory and uninformative.

According to the American Lung Association's annual air-quality report, San Diego County has the distinction of having the 7th and 15th highest ozone days and particulate pollution days out of the nation's 277 metropolitan areas. *See* American Lung Association, *State of the Air*, attached as Exhibit 7 The FEIR nevertheless attempts to downplay the region's poor air quality by suggesting that air quality has improved significantly over the last 25 years. *See* FEIR Response V-3 at G-656. The region, like the entire nation, has made great strides in improving air quality over the last few decades. Pollution levels in the 1970s were abysmal, though; in 1977, residents of the San Diego region were forced to endure air quality that exceeded health based standards almost one-half of the year. *Id.* Despite the improvements, the United States Environmental Protection Agency ("USEPA"), the Office of the Attorney General, and the American Lung Association aptly acknowledge that people are still suffering pollution levels that are simply too often dangerous to breathe. *See, e.g.,* Exhibit 7 (American Lung Association).

As many of the RTP/SCS's highway projects will traverse communities that are already burdened by polluted air, one would have expected the EIR actually to describe these sensitive receptors and identify their location. Some land uses are considered more sensitive to air pollution than others due to the types of population groups or activities involved. The South Coast Air Quality Management District ("SCAQMD"), for example, includes in its list of sensitive receptors, residences, schools, playgrounds, childcare centers, convalescent homes, retirement homes, rehabilitation centers, and athletic facilities. Sensitive population groups include children, the elderly, and the acutely and chronically ill, especially those with cardio-respiratory diseases. Residential areas are also considered to be sensitive to air pollution because residents tend to be home for extended periods of time, resulting in sustained exposure to any pollutant present. While the FEIR now includes maps showing the location of proposed roadway projects that would be expected to have a medium or high air quality index (Figures 4.3-2 and 4.3-3), these maps do not provide any information about sensitive population groups.

Nor did the DEIR include any discussion about affected low-income and minority communities, even though they are already disproportionately burdened by air pollution. Studies conducted by CARB and others confirm that living close to high traffic and the associated emissions may lead to adverse health effects beyond those associated with regional air pollution in urban areas. *See* CARB Air Quality and Land Use Handbook, attached to this firm's comment letter on the RTP/SCS DEIR. Specifically, these studies found reduced lung function and increased asthma in children within 1,000 feet of heavy traffic. *Id.* In addition to the respiratory health effects,

proximity to freeways increases potential cancer risk. *Id.* The health impacts resulting from transportation systems are typically not distributed evenly across all populations, with lower income populations and communities of color often facing worse outcomes for a variety of reasons. *See* Human Impact Partners, *Elevating Health & Equity into the Sustainable Communities Strategy (SCS) Process SCS Health & Equity Performance Metrics* (August 2011), attached as Exhibit 8.

Despite the certain increase in air pollutants in the immediate area of the RTP/SCS's planned highway projects, the EIR entirely fails to quantitatively, or even qualitatively, identify the number and type of sensitive receptors that would be affected by the proposed Project. Such information must be provided so that the public and decision-makers can understand who will be at particular risk due to elevated pollutant concentrations resulting from the Plan's transportation projects.

Moreover, the EIR fails to adequately identify or describe local air pollution levels despite the availability of this information. For example, the San Diego Air Pollution Control District has been sampling for toxic air contaminants ("TACs") since the mid-1980s at several locations in the region. DEIR at 4.3-7. The Air District collects data at the Escondido, Otay Mesa, downtown San Diego, and Chula Vista monitoring stations. *Id.* Despite the availability of this data, the EIR does not disclose this information and thus has no baseline for use in evaluating the Project's air quality impacts.

(b) The EIR Fails to Conduct a Health Risk Analysis.

Although the transportation projects that would be implemented by the RTP/SCS have the potential to result in a substantial increase in toxic air contaminants ("TAC") and mobile source air toxics ("MSAT") emissions, and therefore may pose a significant health risk to sensitive receptors, the DEIR failed to provide an analysis of these impacts. This omission is particularly egregious inasmuch as the DEIR acknowledged that compounds, including diesel PM, benzene, and 1, 3- butadiene, are generated by on-road traffic and can result in elevated cancer risks and chronic non-cancer risks. DEIR at 3.4-7.

The DEIR provides two excuses for its failure to conduct this analysis. First, the EIR asserts that there are no established criteria for determining when MSAT emissions should be considered a significant impact. DEIR at 4.3-8. Second, the EIR suggests the level of exposure can only be determined through project-level analysis. *Id.* at 4.3-37.

The EIR is wrong on both counts and, in fact, contradicts itself regarding the significance threshold for MSAT emissions. First, the DEIR acknowledges that TACs/MSATs may pose a threat to public health even at low concentrations due to their high toxicity, warning that there are *no safe exposure levels* for these pollutants. *Id.* at 4.3-36 (emphasis added). The DEIR also suggests a threshold of significance when it states that the Project's "impact would be considered significant if projected emissions of MSATs in 2020, 2035 and 2050 are greater than baseline emission levels." [6] *Id.* at 4.3-8. Thus, the EIR should and could have used a "no net increase" as its significance threshold.

Second, as discussed above, the use of a program EIR does not excuse deferral of environmental review of the RTP/SCS's significant environmental impacts. Guidelines section 15152(b) explicitly admonishes, "[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration." By suggesting that SANDAG cannot conduct this analysis, the EIR authors sidestep the serious health effects resulting from the Project's massive increase in pollution.

Apparently recognizing this fatal omission, the FEIR now includes an "expanded discussion" of the health risks associated with diesel particulates and a new "localized air quality index analysis." *See* Response V-7 at G-660 and FEIR at 4.3-44. Yet, the EIR still does not evaluate the actual and specific health risk that would accompany the RTP/SCS's projects. Instead, the new text under the heading "local air quality" summarily recites the health risks that generally accompany TAC and MSAT exposure. FEIR at 4.3-7. The new impact "analysis" fares no better. The EIR simply includes a few tables ranking the percentage of highways that would have low, medium or high exposure to pollutants and a couple of maps identifying those highways that would be expected to result in the most potential harm based on the highway's projected level of traffic. *See* FEIR at 4.3-45, 48 and 49. Then, it includes the obvious assertion that as traffic volumes increase, communities would be exposed to higher localized concentrations of toxics. *Id.* That, however, is as far as the "analysis" goes before it culminates in the following unhelpful summary:

[6] This language was inexplicably deleted from the FEIR. *See* FEIR at 4.3-8.

> While this analysis generally suggests that both LIM [low income minority] and non–ILM communities will potentially be exposed to increases in localized CO and PM concentrations and concomitant health risks over the horizon years of the plan, health risks to specific communities from specific projects can be determined only through project-specific analysis. Project-specific hot spot analysis and HRAs will be conducted at the project level to identify project hotspots and specific health risks, and mitigation measures to reduce health risks that would be suitable for each individual project. It should also be noted that based on the analysis, the potential for increased impacts to both LIM and non-LIM communities over time is similar and there is not a disparate impact on LIM communities when compared to non-LIM communities. *Id.* at 4.3-37.

This generic discussion does not come close to meeting CEQA's requirements for a detailed impact analysis. A legally adequate EIR "must contain sufficient detail to help ensure the integrity of the process of decision making by precluding stubborn problems or serous criticism from being swept under the rug." *Kings County Farm Bureau*, 221 Cal. App. 3d at 733; Guidelines § 15151. *See, e.g., Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners*, 91 Cal.App.4th 1344, 1349-50 (2001) (requiring health impacts analysis for Port of Oakland's airport expansion).

Indeed, Table 4.3-8, which identifies the percentage of freeway segments that rank high in the air quality index, provides no explanation of how these values were even arrived at. For example, while the Table apparently ranks those transportation facilities that could potentially expose LIM and non-LIM communities to localized concentrations of pollutants based on traffic volumes, LOS decreases and truck traffic volumes (at 4.3-47), the EIR never identifies the specific highway projects on which the Table's ranking was based. Nor does the EIR inform the reader which transportation facilities are expected to have the highest truck volumes. This last piece of information is critical inasmuch as trucks are the major emitters of diesel particulate emissions and therefore would present the greatest potential health risk.

Moreover, although the FEIR asserts that the actual exposure levels cannot be evaluated until the project-specific level (this issue is addressed below), the document nonetheless boldly proclaims that "the potential for increased impacts to both LIM and non-LIM communities over time is similar and there is not a disparate impact on LIM communities when compared to non-LIM communities." *Id.* at 4.3-47. Incredibly, the

EIR provides no evidence to support this startling conclusion.[7] How can the EIR claim on the one hand that it is not possible to evaluate the health risks to sensitive receptors yet simultaneously conclude that all receptors would be equally impacted? Critically, there is no doubt that low income and minority communities will face far more severe health effects as a result of the RTP/SCS's highway projects because it is exactly these residents that live adjacent to highways and freeways. The RTP's highway projects will certainly have a disproportionate effect on LIM communities. The problem is that the EIR declines to tell us what that effect will be.

SANDAG can and must do better. If agencies can study the health effects of projects at the project-specific level as the EIR asserts (4-347), SANDAG can certainly examine the effects at the plan level. It knows the locations of the RTP's highway projects and that these projects will increase vehicle miles. Clearly, based on Table 4.3-8, it also knows how much traffic will be travelling on these facilities and the number of automobiles, light-duty and heavy-duty trucks. Using EMFAC, SANDAG could then calculate emission rates from these vehicle classes.[8] Once the emission rates are

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[7] In fact, the EIR raises more questions than it answers when it discusses the CARB regulations in the context of its localized air quality analysis, rather than in the regulatory setting section of the document. The EIR states that these regulations are expected to greatly reduce future diesel vehicle emissions and therefore that the air quality index likely overstates exposure to particulates. FEIR at 4.3-47. Such assertions are particularly disingenuous because they mislead the public about how extensive the Project's health risks will be, when no analysis has yet been completed. In fact, by the EIR's account, impacts would appear to be more, rather than less, severe over time. Despite the potential for the CARB regulation to reduce tailpipe emissions, the EIR nonetheless shows that particulate emissions will increase, not decrease, in 2050. *See* Table 4.3-5. Even worse, the EIR acknowledges that the communities that could potentially be exposed to elevated pollutant concentrations and concomitant health risks increase over the horizon years of the Plan. FEIR at 4.3-50. Especially given its failure even to conduct the impact analysis, SANDAG should not perpetuate these claims.

[8] EMFAC is the CARB's model for estimating emissions from on-road vehicles. *See* CARB, *EMFAC 2011 Overview* (September 19, 2011), attached as Exhibit 10. It includes a mobile source emissions inventory tool for assessing the population, activity, and emissions from mobile sources. These inventories are constantly being revised and updated to support the latest air quality plans and regulations. In fact, EMFAC2011 (footnote continued)

identified, the agency could convert the rates using an atmospheric dispersion model into ambient concentrations of TACs and MSATs near each of the individual highway projects. From these ambient concentrations, the agency can evaluate health risks. This approach may not result in the precise measurement that could be undertaken at the project-specific level, but uncertainties are an inherent part of estimating future conditions and do not themselves preclude analysis. We can find no logical reason to explain the EIR's failure to assess, at the very least, the health risks from a sampling of transportation facilities. Again, Table 4.3-8 discloses the location of highways that are expected to experience the highest concentrations of pollutants. Why did SANDAG not conduct a health risk study of these locations?

Guidance exists for these types of analyses. The American Association of State Highway and Transportation Officials ("AASHTO") has prepared guidelines on available analytical models and techniques to assess MSAT impacts. *See* AASHTO, *Analyzing, Documenting, and Communicating the Impacts of Mobile Source Air Toxic Emissions in the NEPA Process* (March 2007), attached as Exhibit 9. These AASHTO Guidelines include over 200 pages of detailed procedures, and were designed specifically to assist transportation agencies in the evaluation of the potential health impacts caused by exposure to toxic air pollutants emitted from surface transportation sources. *Id.* at 6,14. The AASHTO Guidelines explain that modeling tools are widely available that are capable of predicting MSAT impacts from transportation projects and that there are a variety of air quality dispersion models applicable to transportation projects. *Id.* at 2,3 and Appendix B. Clearly SANDAG could use AASHTO's Guidelines as a starting point for preparing its own analysis of the health impacts of the RTP/SCS.

It is important to note that SANDAG has an obligation to assess not only the health risk of TACs and MSATs, but other pollutants as well. The EIR acknowledges the health risk associated with diesel particulates ("DPM"), which is considered a TAC, but exposure to PM_{10} and $PM_{2.5}$ emissions also can result in health effects. There are quantitative correlations between increased levels of fine particulates and hospitalizations.

As described in an article published in the Journal of the American Medical Association, researchers "found evidence of an association between recently measured $PM_{2.5}$ concentrations and daily hospitalizations on a national scale." Francesca Dominici,

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includes new detailed data and methods to estimate emissions from diesel trucks and buses and future improvements. *Id.*

Roger D. Peng *et al.*, *Fine Particulate Air Pollution and Hospital Admission for Cardiovascular and Respiratory Diseases*, Journal of the American Medical Association, Vol. 295 No. 10 (March 8, 2006), attached as Exhibit 12. Among other findings, the researchers discovered that there was more than a statistically significant increase in hospitalization rates among seniors for each 10 µg increase in PM2.5 concentration. *Id.* Other studies also document the health risk from particulate air pollution and increased mortality. *See* Krewski, *Reanalysis of the Harvard Six Cities Study and the American Cancer Society of Particulate Air Pollution and Mortality*, attached as Exhibit 13, and Dockery, *An Association Between Air Pollution and Mortality Rates in Six Cities*, The New England Journal of Medicine, attached as Exhibit 14.

The EIR does not specifically acknowledge the health effects from PM emissions and therefore also does not analyze the effect the Project's elevated PM concentrations would have on public health. Inasmuch as the EIR identifies the Project's substantial increase in PM_{10} and $PM_{2.5}$ emissions as a significant impact (Table 4.3-5 at 4.3-29 and 4.3-30), the document must examine the serious health effects that will result from this substantial increase in particulate pollution.

Finally, as discussed above, the EIR must be recirculated when it introduces new, significant information. Here, the FEIR includes a greatly expanded discussion of the serious implications on public health that will potentially result from the RTP/SCS. In addition, we have provided extensive evidence documenting the effect that elevated PM_{10} and $PM_{2.5}$ concentrations has on public health. In this regard, the DEIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft EIR was essentially meaningless. *Laurel Heights Improvements Ass'n v. Regents of the University of California*, 6 Cal.4th 1112, 1130 (1993); Guidelines § 15088.5(a). Moreover, in light of the 10-day review period prior to the Board's consideration of the Project and its EIR, the public has not had the opportunity to absorb this new information, let alone determine how the proposed RTP/SCS may impact them. The EIR must be recirculated to allow for this public review.

2. The EIR Fails to Evaluate the Project's Potential to Conflict With or Obstruct Implementation of the State and Federal Air Quality Plans.

The EIR's analysis of impacts relating to the Project's potential to conflict with, or obstruct, implementation of the region's air quality plan suffers from two serious

flaws. First, as regards the transportation component of the proposed Project, the EIR fails to analyze the Project's consistency with the state air quality plan. Second, the EIR provides no evidence to support its conclusion that impacts relating to the Project's land use component would be consistent with the federal or state air quality plan.

(a) The EIR Never Evaluates the Project's Transportation Component's Consistency with the State Air Quality Plan.

Determining whether a project may result in a significant adverse environmental effect is one of the key aspects of CEQA. Guidelines § 15064(a) (determination of significant effects "plays a critical role in the CEQA process"). CEQA specifically anticipates that agencies will use thresholds of significance as an analytical tool for judging the significance of a Project's impacts. *Id.* at § 15064.7. Because the requirement to provide mitigation is triggered by the identification of a significant impact, an EIR's failure to identify all of a project's significant impacts also results in a failure to mitigate these impacts.

The DEIR states that the RTP/SCS would have a significant impact on the environment if it would conflict with or obstruct implementation of the region's air quality plan. DEIR at 4.3-14. Despite this significance threshold, the DEIR fails to perform a key component of this exercise: it does not evaluate whether the Project would conflict with or obstruct the California air quality plan (referred to as "the 2009 Regional Air Quality Strategy Revision" or "RAQS"). Instead the DEIR focuses on the Project's conformity under the Clean Air Act to the federal air quality plan. *Id.* at 4.3-16, 17, 20, and 22.[9]

An analysis of the Project's consistency with the RAQS is particularly important because the California Ambient Air Quality Standards ("CAAQS") are more stringent than the National Standards. *See* DEIR at 4.3-2 and Table 4.3-1 at 4.3-3. The California Clean Air Act requires all local air districts in the state to achieve and maintain the CAAQS by the earliest practical date. *Id.* at 4.3-9. To that end, the Act requires the region to reduce ozone precursor emissions by five percent per year or, if that goal is not achievable, to develop an expeditious schedule for adopting every feasible control

[9] Rather than repeat the valid claims raised in the Office of the Attorney General's September 16, 2011 Letter, we incorporate the letter by reference. *See* Letter from Timothy R. Patterson and Susan Durbin to Honorable Jerome Stocks, September 16, 2011.

measure under the air pollution control district's purview. *Id.* at 4.3-10. In order to comply with CEQA, the EIR must evaluate whether the emissions from the Project will create new air quality violations, worsen existing violations, or delay the attainment of the CAAQS. FEIR at 4.3-18. If the results of this analysis show that the RTP/SCS would cause any of these phenomena, the impact would be deemed significant, and SANDAG must identify feasible mitigation measures capable of reducing ozone precursor emissions.

The FEIR suggests that it has conducted this analysis because it has analyzed the Project's potential to violate an air quality standard or contribute substantially to an existing or projected air quality violation. Response V-6 at G-659. Yet this analysis, while important, does not evaluate compliance with the RAQS; the purpose of the EIR's analysis is very different.[10] Indeed, the EIR's analysis of the Project's impacts relating to consistency with the federal air quality plan did not assess air quality violations; instead, it attempted to demonstrate that the emissions associated with the RTP/SCS were actually anticipated by the federal air plan. *See, e.g.*, 4.3-16. While the analysis may consider violations of standards as one measure of consistency with the air plan, it is not the only measure. A project may result in an isolated air quality violation yet still be considered to be consistent with an air quality plan.

An accurate analysis would have determined if the emissions from the RTP/SCS would support the goals of the RAQS. This would necessarily include: (1) a comparison of the Project's emission estimates to those in the RAQS; and (2) incorporation of the applicable RAQS control measures in the RTP/SCS. The RTP/SCS EIR never conducts the first exercise. Nor does it identify the RAQS transportation control measures ("TCMs") or explain how the RTP/SCS would implement them. In fact, the RAQS calls for strategies to reduce motor vehicle trips and vehicle miles travelled and the proposed RTP/SCS is certainly not consistent with this important ozone reduction strategy. *See* RAQS at 3-10.

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[10] Indeed, that is why the CEQA Guidelines suggest that an environmental document analyze both a project's potential to conflict with an air quality plan *and* a project's potential to violate an air quality standard. Guidelines Appendix G III (a) and (b). SANDAG apparently recognizes this obligation to conduct both impact analyses since it includes a discussion of the RTP/SCS's potential to conflict with the air quality plan (Impact AQ-1) and separately discusses the Project's potential to violate air quality standards (Impact AQ-2). *See* FEIR at 4.3-19, 27.

(b) The EIR Fails to Provide Evidentiary Support That the Project Would Be in Compliance with the Federal Air Quality Plan.

Setting aside the issue of whether a federal conformity determination is sufficient for purposes of determining whether the Project would conflict with the federal air quality plan, the EIR fails to provide sufficient documentation that the emission estimates in the EIR in any way reflect the emissions from the proposed Project. The DEIR simply reports that the RTP/SCS would result in 39, 30 and 31 tons per day of NO_x emissions in 2020, 2035 and 2050, respectively (at 4.3-17), and concludes that impacts relating to the Project's compliance with the federal air quality plan would be less than significant. DEIR at 4.3-17, 22. The DEIR provides no supporting information—no assumptions, data or even methodology in support of these emission projections. To conclude, as this DEIR does, that an impact is less than significant, the document must provide substantial evidence. *Santiago County Water Dist.,* 118 Cal.App.3d at 831 (an EIR must contain facts and analysis, not just an agency's bare conclusions). Thus, the conclusion—that a Project that is expected to result in a 50 percent increase in VMT over the next 40 years will have no significant air quality impact—is unsupported by any evidence and, in fact, defies credulity.

While the EIR suggests that the modeled emissions are located in an appendix, it is not proper to bury important analyses in background documents. Initially, CEQA requires that the analysis be presented in the EIR. *See Santa Clarita Organization for Planning the Environment v. County of L.A.,* 106 Cal.App.4th 715, 722 (2003) (agency's analysis must be contained in the EIR, not "scattered here and there in EIR appendices"). The decision-makers and the general public should not be forced to sift through obscure minutiae or appendices in order to ferret out the fundamental assumptions that are being used for purposes of the environmental analysis." *San Joaquin Raptor Rescue Center,* 149 Cal.App. 4th at 659; *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova,* 40 Cal.4th 412, 442 (2007) ("The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.") Moreover, the EIR's appendix does not even provide the assumptions; instead it simply provides spreadsheets.

(c) The DEIR Provides No Analysis of the Effect That the Project's Land Use Component Would Have on the Region's Air Quality Plan.

Although the DEIR concedes that the emissions of pollutants from the regional growth and land use change associated with the 2050 RTP/SCS would result in a significant air quality impact (at 4.3-16, 19, 21), the EIR fails to actually analyze the impact that would inevitably flow from this growth.[11] Instead, the EIR offers up an excuse: because this is a program-level document, it is unnecessary to predict the project-specific air quality impacts of future land use changes. *Id.* and 4.3-23.

The EIR has it backwards. As discussed above, because the RTP/SCS identifies this growth as part of the Project, the EIR for the Plan must analyze the potential environmental impacts resulting from it. As the Court of Appeal held in *Christward Ministry*, 184 Cal.App.3d at 194,

> Even if a general plan amendment is treated merely as a "first phase" with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a "first phase-general plan amendment" must necessarily include a consideration of the larger project, i.e., *the future development permitted by the amendment*. Only then can the ultimate effect of the amendment upon the physical environment be addressed.

Id. (emphasis added); *see also City of Redlands*, 96 Cal.App.4th at 409 (quoting same). Here, SANDAG's EIR is inadequate because it is not a study of the "project" that is actually proposed by the agency.

SANDAG identifies the increase in population, households and employment that is expected to accompany the RTP/SCS in 2020, 2035, and 2050. *See*

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[11] CEQA requires that an environmental document describe the entirety of a project, including reasonably foreseeable future actions that are part of a project, and must analyze those reasonably foreseeable actions. Guidelines § 15378(a). Agencies may not improperly "segment" projects in order to avoid preparing an EIR; instead, they must consider related actions in a single document. *Laurel Heights I*, 47 Cal.3d at 395. Breaking the project into parts by leaving out the future activity is illegal segmentation and leads to inadequate environmental review. *See, e.g., Bozung,* 13 Cal. 3d at 283-84 (CEQA mandates that "environmental considerations do not become submerged by chopping a large project into many little ones"). A lead agency must provide environmental review of an entire project at the time of the first approval. *See, e.g., City of Carmel-By-the-Sea v. Board of Supervisors* 183 Cal. App. 3d 229, 233-35, 244 (1986).

DEIR at 4.3-15, 18. The agency certainly could have: (1) determined whether these projections exceed the estimates assumed in the regional air quality plans; (2) described the amount of exceedance; and (3) explained the implications of this exceedance. Meaningful analysis of impacts effectuates one of CEQA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Assn. v. Regents of the University of California*, 6 Cal.4th 1112, 1123 (1993)("*Laurel Heights II*"). To accomplish this purpose, an EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990).

Inasmuch as the RAQS and the federal air quality plan are designed to bring the region into compliance with national and state ambient air quality standards for ozone-precursor pollutants, the EIR must analyze the actual implications of the Project's conflict with these plans. Would implementation of the RTP/SCS push compliance with the air quality standards back by one year, five years, or ten years? What would be the health implications for the region's residents from this lack of compliance? Simply concluding that the Project would conflict with the air quality plans does not allow decision-makers to evaluate whether implementation of the proposed Project is worth a potentially extensive delay in achieving attainment of health-based air quality standards. The EIR should be revised to explain the actual and specific implications associated with the region's failure to attain the state and federal standards for ozone precursor emissions.

3. The EIR Fails to Evaluate Whether the Project Would Violate an Existing Air Quality Standard or Contribute Substantially to an Existing or Projected Air Quality Violation.

According to the EIR, the 2050 RTP/SCS would have a significant impact if the projected emissions of criteria air pollutants in 2020, 2035, and 2050 would violate any air quality standard ("NAAQS" or "CAAQS") or contribute to an existing or projected violation of NAAQS or CAAQS. DEIR at 4.3-22, 23. The NAAQS and the CAAQS are identified in terms of ambient levels of pollutant concentrations. *See* Table 4.3-1 at 4.3-3 which shows that air quality standards are based on hourly and daily ambient pollutant concentrations. *See also*, U.S EPA, *National Ambient Air Quality Standards*, attached as Exhibit 15.

Here, the EIR identifies the increase in emissions, but fails to translate this increase into ambient concentrations. The EIR must be revised to include the modeled

concentrations of air pollutants to determine whether the transportation projects contemplated by the RTP would violate applicable air quality standards.

E. The FEIR Fails to Adequately Analyze and Mitigate the Project's Impact on Public Transportation.

A fundamental omission in the EIR is its failure to analyze the Project's impact on the region's public transportation system. CEQA includes as a significance criterion a project's potential to conflict with public transit facilities or otherwise decrease the performance of such facilities. *See* Guidelines Appendix G XVI. While the Guidelines do not require that an agency rely on the CEQA significance thresholds, "lead agencies should normally address the questions that are relevant to a project's environmental effects in whatever format is selected." Guidelines Appendix G , Evaluation of Environmental Impacts (8).

Here, SANDAG dodges its responsibility to analyze the Project's effect on transit by asserting that "the 2050 RTP/SCS is a regional plan that will set the regional framework and direction for other transportation plans, ordinances, policies, and programs, thereby minimizing the potential for any conflicts." FEIR at 4.16-16. As discussed below, it is entirely because of the transportation plan's framework and direction that the Project would impact the region's public transit. Consequently, the EIR's failure to conduct this impact analysis is indefensible.

1. The EIR Fails to Describe the Region's Public Transportation in a Meaningful Manner.

An EIR's description of a project's environmental setting plays a critical role in all of the subsequent parts of the EIR because it provides "the baseline physical conditions by which a lead agency determines whether an impact is significant." Guidelines § 15125(a). In our comments on the DEIR, we explained that the DEIR failed to analyze the Project's impact on the region's public transportation system. In large part because the EIR failed to include sufficient information about the region's existing public transportation system, it lacked the ability to analyze how the increase in highway capacity contemplated by the Plan would impact transit systems and transit use. While the document included an ample description of the performance of the region's existing highway network, it failed to provide this same information regarding the current operating characteristics of the region's public transportation system. *See* Comment R-23 at G-532.

A thorough description of how the region's public transportation system functions is critical. San Diego County, like many urbanized regions in the nation, has an extensive highway network. The public and decision-makers almost certainly understand how highways in the region operate. They know how to get from point A to point B on a freeway or an arterial. They know which routes to avoid during certain hours because of traffic congestion. They also have a general sense of how long it will take to get from point A to point B depending on the time of day (commute versus non-commute periods).

Yet, the vast majority of the public does not have this same level of information for the region's public transportation system. For those who do rely on transit and especially for those that must rely on transit, there are inefficiencies in service that are extraordinarily cumbersome. Some routes may not operate on the appropriate time-tables (10-minute frequency of headways). There may be some routes that would have higher use if connections to other transit routes were more convenient (less than a 10 minute walk) or if transit connections were more timely (less than 5-minute wait for the next train or bus). Finally, there are already urbanized locations (compact development with relatively high densities) where transit could succeed but where no transit exists (*i.e.*, transit gaps). This is the type of information we deemed critical to allow the most basic understanding of how the existing public transportation system functions.

Rather than actually describe the region's public transportation system in this meaningful way, the FEIR merely asserts that the DEIR's description of the transit system provided sufficient detail for a program level analysis and directs the reader to various technical appendices. *See, e.g.*, Technical Appendix 3 (Goals and Performance Measurement) and Appendix A (2050 RTP Projects, Costs, and Phasing). Response R-23 at G-531. As discussed above, the "programmatic" nature of this EIR is no excuse for its lack of detailed information.

Indeed, this EIR is precisely the forum for describing and analyzing this large planning project "as specifically and comprehensively as possible." Guidelines § 15168(a), (c)(5). Rather than provide a big-picture assessment of the region's existing public transportation system, though, the FEIR directs the reader to technical appendices. Yet, these appendices are indeed technical; they consist solely of table after table of data. Consequently, they do not provide the meaningful description of how the region's public transportation system functions, as CEQA requires. Until such a description is provided, the EIR cannot meaningfully evaluate the Project's impact on transit, and the public and decision-makers will be left in the dark as to this important issue.

2. The FEIR's Analysis of Impacts on Public Transportation Remains Legally Deficient.

The DEIR's lackluster analysis of the Project's impact on public transportation belies SANDAG's claim that its goal in this RTP/SCS is to create a "world-class" transit system. FEIR at 2-8, 9. Like the DEIR, the FEIR refuses to examine these impacts and instead repeats its mantra that the RTP maximizes transit to the extent feasible. Response R-25 at G-534. As discussed below, promising to build transit is not the same as evaluating the Project's impact on transit.

(a) The EIR's Performance Measures and Thresholds of Significance Are Insufficient To Evaluate the RTP/SCS's Impact on Public Transportation.

One of the main reasons for the EIR's failure to study the Project's effect on the region's public transit system is its reliance on performance indicators and significance criteria that foster auto-oriented transportation. In our comments on the DEIR, we explained that that the EIR should have included performance indicators and significance criteria that measured the sustainability of the proposed transportation network. We explained, for example, that rather than rely exclusively on performance measures such as travel time and traffic congestion levels, the EIR should have evaluated the Project's potential to result in an increase in vehicle miles traveled ("VMT"). VMT is a very informative transportation indicator because it is a quantifiable method of gauging the extent of a region's auto-dependency. An assessment of the Project's effect on VMT would shed light on whether the region is continuing its trend of auto-based travel or instead shifting toward other transportation modes. It is the region's ability to shift toward non-auto based travel that is the true measure of a sustainable transportation plan.

The FEIR explains that it did not use VMT as a significance criterion because it does not address transit, bicycle or pedestrian travel. Master Response 14 at G-37. The EIR is correct that VMT does not directly measure transit, bicycle or pedestrian travel. However, what the EIR fails to disclose is that VMT is one of the most important statistics for determining a region's propensity to travel by automobile. *See, e.g.*, "Growing Cooler: the Evidence on Urban Development and Climate Change," Reid Ewing et.al, October 2007, attached to this firm's comment letter on the DEIR.

It is not uncommon for regional planning agencies to use VMT as a gauge for studying the effect of a RTP. For example, in the San Francisco Bay Area, the Metropolitan Transportation Commission ("MTC") used overall VMT and per capita

VMT as one of its significance criteria. *See* MTC, RTP EIR at 2.1-7, excerpts attached as Exhibit 16. In fact, MTC's analysis determined that the RTP's slight improvement in VMT was due to the RTP's investments in transit expansion, bicycle, pedestrian projects and sustainable land use programs. *Id.* at 2.1-22. In marked contrast to SANDAG's assertion, the MTC RTP EIR clearly shows that VMT can be used as a gauge to evaluate a RTP's impact on alternative modes of transportation.

Moreover, the MTC EIR also relied on other performance indicators in an effort to evaluate the region's dependence on the automobile. For example, the EIR included a measure of the RTP's projected increase in roadway lane miles in comparison to transit seat miles. The results of that analysis showed that, over the 30-year planning horizon, total transit seat miles would increase by 11 percent while total roadway lane miles would increase by only 2 percent. *Id.* at Table 2.1-1: Roadway Lane Miles and Transit Seat Miles. The EIR explains that this data reveals that transit capacity is increasing as a result of the RTP's improvements in the frequency of transit service and the addition of new routes. *Id.* at 2.1-13. The MTC EIR also evaluated how the RTP would affect the growth in daily vehicle trips. *Id.* at Table 2.1-8: Growth in Daily Regional Vehicle Trips. By contrast, SANDAG's FEIR, like its DEIR, refuses to ask these questions and thus does not disclose the RTP/SCS's true effect on public transportation.

In sum, because the EIR does not use proper metrics, the EIR is unable to evaluate the Project's impact on the region's public transportation system.

(b) The FEIR Fails to Resolve the Issues Raised in Our Letter on the DEIR, and the EIR's Analysis of Impacts to Public Transportation Remains Legally Inadequate.

In our comments on the DEIR, we explained that the EIR failed to analyze the impact on public transportation that would occur upon implementation of the RTP/SCS. Specifically, because the RTP/SCS would result in a substantial increase in highway capacity, we argued that the EIR should have evaluated the effect that such highway widening would have on the region's public transit.

We provided numerous examples of the deleterious effect that increases in highway capacity would have on transit. First, funding that would otherwise go to public transportation would be directed toward highway expansion projects, thereby thwarting the potential for transit ever to become a viable alternative to the automobile in the San Diego region. Second, we explained that increases in highway expansion would undercut

transit ridership since traffic congestion serves as a significant incentive for use transit. Third, highway projects would also remove riders from the transit system causing transit agencies to cut service because of declining ridership. Finally, we explained that increases in highway capacity to distant suburbs and San Diego's backcountry would cause decentralized land use, which is inherently unsuited for transit service. *See* comment R-26.

Instead of responding to these substantive comments, the FEIR's first tact is simply to assert that the DEIR analyzed impacts to the transportation system as a whole, inclusive of all modes including transit. Response R-25 at G-534. Yet, we can find no evidence that the EIR's "system as a whole" analysis evaluated any of the substantive impacts we identified. A legally adequate EIR "must contain sufficient detail to help ensure the integrity of the process of decision making by precluding stubborn problems or serous criticism from being swept under the rug." *Kings County Farm Bureau,* 221 Cal. App. 3d at 733; Guidelines § 15151.)

The FEIR then implies that the EIR has studied the RTP's impact on transit because the Project's "transit phasing strategy" maximizes transit to the extent feasible. The document also asserts that the 2050 RTP/SCS includes more investment in transit than any previous RTP. Response R-25 at G-534. Yet, the FEIR's claim that the implementation of transit projects somehow serves as an analysis of the Project's impact has no merit. The EIR must actually evaluate what the impacts will be to the current transit system as the Project gets implemented over time. In any event, what the FEIR does not state, however, is that SANDAG does not intend to implement the majority of the transit projects in the early years of the Plan. RTP/SCS 6-14, 15. Instead, it defers many of the most important transit projects, such as double-tracking the Sprinter and trolley service increases, for at least 20 years. *Id.* Other important trolley projects are not planned until 2040 or even 2050. *Id.* It is therefore entirely unclear whether the transit projects that are contemplated by the RTP in 2030 and beyond will *ever* be implemented. *See* 50-10 Plan at 10, stating that transportation agencies do not always implement the transit projects identified in transportation plans. (Moreover, as discussed below, it is feasible to implement some of these transit projects sooner than SANDAG suggests.)

Finally, the EIR suggests that its analysis of impacts on public transit is adequate because many of the highway facilities that will be constructed will accommodate transit since they will include managed lanes. Response R-25 at G-534. However, building freeways and highways that may serve transit is not the same as funding transit infrastructure and transit operations. As a panel of transportation experts concluded, managed lanes do not benefit transit. In its review of SANDAG's approach to

transportation mobility, the Independent Transit Panel determined that "managed lanes are primarily a highway solution to mobility, not a "transit first" approach. The dramatic increase in freeway capacity that managed lanes provide will perpetuate auto-oriented development and reduce transit's competitiveness." *See* Wilbur Smith Associates, *Independent Transit Panel Review Report* at ES-5, excerpts attached as Exhibit 17. Additionally, SANDAG's policy of allowing single-occupancy vehicles to utilize the so-called "managed lanes" further undermines its claim that these lanes will provide a transit-oriented future.

In any event, the building of managed lanes cannot substitute for an analysis of the Project's impacts on the area's public transportation system. Here, because SANDAG proposes substantial increases in highway capacity within the region's most urbanized locations, the impact on existing and proposed transit service will be particularly severe. The RTP/SCS would widen numerous freeways within the exact area that SANDAG has determined that investments in transit would be the most effective. These freeways include I-5, I-8, I-15, I-805 SR-52, SR-56, SR-94, SR-125. *See* FEIR 2-46 through 2-51 and TA 7-7. *See* Urban Area Transit Study ("UATS") at TA 7-4 and FEIR at 4.13-25, stating "substantial dense growth within the urban centers corresponds with major transportation corridors such as I-5, I-8, I-15, and I-805 and these are also alignments that would have extensive transit opportunities." Despite these massive increases in highway capacity, the EIR provides no analysis of the consequences to existing public transportation service or plans for future service. The EIR's failure to provide this analysis is a fatal flaw that requires the EIR be revised and recirculated.

F. The FEIR Fails to Adequately Analyze the Project's Impact to Agricultural Land.

The FEIR states that by 2050 the roadway and transit improvements contemplated in the RTP will impact a total of 10.57 acres of land with existing agricultural uses. FEIR at 4.2-25. It also states that these projects will impact 7.05 acres of specially designated farmland. FEIR at 4.2-20. Presumably, these 7.05 acres are included within the 10.57 acres, as the specially designated agricultural lands are most likely also lands with existing agricultural uses. Although the FEIR's lack of clarity on this point renders its analysis confusing, even if the numbers are cumulative—*i.e.*, that the RTP will impact 17.62 acres of farmland— this is still a very small amount of farmland. Indeed, it is curious that dozens of massive highway projects in the nation's 16th largest agricultural county would impact less than 18 acres of farmland. A quick check of the facts shows that SANDAG's numbers are simply inaccurate.

A number of transportation projects included in the RTP have already undergone some level of environmental review. The environmental documents for these projects show that the FEIR's tiny acreage for agricultural impacts is incorrect. For example, the planned I-5 North Coast Corridor Project, which is part of the RTP (*see* FEIR at 4.2-25), would impact between 24 and 27 acres of agricultural land *all by itself. See* I-5 North Coast Corridor Draft EIR/EIS p. 3.3-3, attached as Exhibit 18. There are also 200 acres of "unique farmland" within the proposed right of way for the I-805/I-5 expansion project to the south of State Route (SR) 54. SANDAG, I-805/I-5 Corridor Study, Final Environmental Constraints Report, 2004, attached as Exhibit 19. This project appears to be part of the RTP. FEIR Appendix A, p. A-9. Likewise, the SR-11 and Otay Mesa East Project is expected to convert between 190 and 220 acres of farmland. SR-11 and Otay Mesa East POE PEIR/PEIS, 2008, attached as Exhibit 20. This project is also part of the RTP. FEIR Appendix A, p. A-9. Thus, these three projects by themselves will convert approximately 425 acres of farmland—nearly 25 times more farmland than acknowledged by the FEIR. Of course, it is highly likely that even more farmland will be converted by the numerous other transportation projects in the RTP.

In addition, the FEIR states that approximately 10,500 acres of agricultural land will be impacted due to regional growth and land use change by the year 2050. FEIR at 4.2-19, 4.2-24. The FEIR also acknowledges that its regional growth projections are based on current planning assumptions for San Diego County and the jurisdictions therein. FEIR at 2-5. However, the EIR for the County's current General Plan update, which by definition reflects current planning assumptions (as of 2011), shows that the General Plan expects *55,963* acres of agricultural land to convert to non-agricultural uses by the year 2030. San Diego County General Plan Update EIR, August 2011, pp. S-7, 1-20, attached as Exhibit 21. Even though they account for conditions expected to exist 20 years sooner, these impacts are more than five times greater than the impacts identified in the FEIR.

It is not clear how the RTP/SCS EIR could use current planning assumptions for growth and determine that there will be only 10,500 acres of agricultural land impacted, when the current plans on which it bases its assumptions assume there will be more than five times as many acres impacted. SANDAG must explain if there is a basis for this discrepancy. Without any such explanation, the FEIR appears to severely underestimate the amount of agricultural land that will be impacted, in contravention of CEQA.

In sum, the FEIR's failure to accurately account for impacts to agricultural land renders it inadequate as a matter of law.

G. The EIR Fails to Analyze the Project's Growth-Inducing Effects.

CEQA requires an EIR to include a "detailed statement" setting forth the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337. The statement must "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." Guidelines § 15126.2(d). It must also discuss how projects "may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively." *Id.* The EIR here does not begin to meet these requirements.

The EIR concedes that the RTP/SCS would have significant growth-inducing impacts and states that the secondary impacts associated with population growth, such as impacts to agricultural, biological, and cultural resources, are analyzed in the EIR. FEIR at 4.13-8,9, 42 and 7-1, 2. Despite this pronouncement, however, we find no indication that the EIR has, in fact identified this resultant growth or evaluated its environmental consequences. Indeed, none of the EIR's environmental impact analyses (save population and housing) even mention induced or indirect growth. The EIR's analysis of impacts to agricultural resources, for example, does not differentiate between: (1) environmental impacts that would occur directly as a result of the RTP/SCS's transportation and land use components, and (2) impacts that would result from indirect growth. *See* FEIR at 4.2-18 through 20.

Moreover, the EIR's truncated discussion of the Project's growth-inducing consequences is vague and contradictory and therefore entirely uninformative. In one instance, the EIR states that because the Plan focuses population and economic growth in areas near transit and transportation services and in areas with existing utilities and municipal or public services, the RTP/SCS would decrease environmental impacts to vacant or undisturbed lands or open space. FEIR at 7-1. At the same time, the EIR acknowledges that the region's growth will also occur in the more remote areas of the County and will have adverse environmental effects:

> Similar to the description in the 2035 analysis, growth would continue in more eastern locations of the region, such as east of I-15 in the northern area, east of SR 67 through the middle portion of the region, and east of SR 94 in the southern area. However, by 2050, spaced rural residential development would have expanded beyond areas along existing

> transportation corridors and established rural communities and into areas with very minimal development at present. As shown in Figure 4.11-5, some of these areas include northeast of Escondido to SR 76, areas east of Camp Pendleton, and areas north and south of the SR 78 corridor. Large pockets of land currently used for agricultural purposes would be developed with spaced rural residential uses. FEIR at 4.3-54.

Despite the RTP/SCS's goal of fostering efficient concentrated land development patterns, development will inevitable occur outside currently developed areas and therefore will impact vacant or undisturbed lands and/or open space. In fact, if the SCS's land use pattern accommodates more than 80 percent of the new homes and jobs within the Urban Area Transit Strategy Study Area (RTP/SCS at 3-6), this necessarily implies that about 20 percent of this growth will occur outside the region's urbanized areas. Consequently, about 80,000 new homes and about 100,000 new jobs could potentially be located in areas that are rural or undeveloped altogether.[12] Moreover, the amount of housing and jobs in these more remote locations could be even greater assuming maximum buildout. *See* FEIR at 7-2; Part II.B, *supra*. Even though this is a staggering amount of development and growth, the EIR fails entirely to evaluate the impacts of induced growth in these undeveloped areas.

It is not hard to envision how this level of development outside the region's urban areas will result in rapid and uncontrolled urbanization of the County's backcountry and other rural communities. The EIR acknowledges that both Project components (transportation and land use) are growth-inducing. FEIR at 4.13-25,26. The EIR explains that the RTP/SCS used as its foundation the land use pattern derived from the region's 2050 Regional Growth Forecast. *Id.* at 2-12. This land use pattern was used, in turn, to plan the transportation network in the 2050 RTP/SCS. *Id.* By the EIR's own admission, these highways and freeways will be growth-inducing. *Id.* at 4.13-26. Thus, once the Project's roadways are built, additional development will occur, spawning the need for additional roadways. CEQA requires the EIR to analyze not only the significant environmental effects from the land use and transportation plans included in the Project itself, but also the indirect impacts from the cycle of sprawl development that the Project's implementation will inevitably induce.

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[12] The San Diego region's 2050 Regional Growth Forecast projects that 400,000 new homes will be built and 500,000 new jobs will be added to the region by 2050. FEIR at 2-12.

The indirect impacts of sprawl are legion. Likewise, the effect of sprawl begetting more sprawl is well understood. *See* Daniels, *What to Do About Rural Sprawl?*, State University of New York at Albany, Department of Geography and Planning, April 28, 1999, attached as Exhibit 22. For example, rural homeowners rely on septic systems, yet often these systems are not properly sited or maintained. When septic systems fail in large numbers, sewer lines must be extended into these remote locations, often a mile or more. *Id.* Public sewer is priced according to average cost pricing, meaning that when sewer lines are extended, there is a strong incentive to encourage additional hook-ups along the line. *Id.* Thus, when a sewer line is extended a mile or more, development pressure increases along the line. *Id.* In addition, spread-out rural residents are completely auto-dependent, and residents frequently must commute long distances. *Id.* Long commutes result in the burning of more fossil fuels, producing more air pollution. *Id.* Allowing or encouraging development of rural lots of 2- to 10-acres also drives up land prices in rural fringe areas, making farming less viable. *Id.* As land prices rise, farmers are more likely to sell their land for house lots, resulting in a loss of precious agricultural lands. *Id.*

The RTP/SCS simply does not address any of these issues and impacts. Such an analysis is particularly important here because of the expansive geographic scope of this Project and its potential for radical change to the region's rural/agricultural environment. It is only at this early stage that SANDAG can evaluate county-wide environmental impacts and explore mitigation measures and alternatives to address these impacts. *See* Guidelines § 15168(b)(4).

SANDAG references a CARB study to argue that the agency's modeling data adequately accounts for induced traffic. This is a proposition that we dispute, but even it were true, the CARB study does not purport to address the indirect environmental impacts—such as conversion of agricultural lands, impacts to water quantity and quality, and other impacts—from the induced growth that the EIR acknowledges will occur as a result of its Project. Thus, the CARB study cannot rescue the deficiencies in the EIR's analysis of the Project's growth-inducing impacts, or the lack of required mitigation.

In sum, SANDAG must revise the EIR to comprehensively address the RTP/SCS's growth inducing impacts. In addition, inasmuch as the EIR determined that the Project's growth- inducing impacts would be significant, the EIR must propose mitigation measures to minimize these impacts. *See City of Antioch,* 187 Cal. App. 3d 1325.

H. The FEIR Fails to Adequately Identify and Analyze Feasible Mitigation Measures for the Project's Significant Environmental Impacts.

We and other members of the public submitted numerous comments explaining that the DEIR failed to adequately mitigate the Project's significant environmental impacts. The FEIR dismisses the vast majority of these comments, and instead reiterates the claims made in the DEIR. Often the FEIR provides no facts or substantive analysis to support its claims, and relies entirely on conclusory statements. SANDAG thus repeatedly disregards feasible mitigation measures that could reduce the Project's impacts, and suggests instead vague and unenforceable measures. In many cases, the agency simply elides public comments by offering "responses" that fail to address the point raised by the commenter. We will not here reiterate those comments in full. Instead, we detail below some of the FEIR's more egregious shortcomings.

The EIR concludes that the RTP/SCS would result in 66 significant environmental impacts and then concludes, incredibly, that at least 25 of these impacts cannot be mitigated but remain significant, unavoidable and adverse. *See* FEIR at 7-10,7-11. This approach violates the most basic principle of CEQA: to reduce identified impacts of growth *before* development is approved. *See Laurel Heights I*, 47 Cal.3d at 392.

SANDAG cannot abdicate its responsibility under CEQA to consider and approve specific mitigation measures that would reduce the Project's significant impacts. The agency cannot approve a project with significant environmental impacts if there are feasible mitigation measures which would substantially *lessen* those effects (even if they are not completely avoided or reduced to a less than significant level). Pub. Res. Code § 21002. Moreover, an EIR may not avoid disclosure and analysis of the significant environmental impacts of a project by merely concluding that those impacts are unavoidable. CEQA does not permit a lead agency to "travel the legally impermissible easy road to CEQA compliance" by "simply labeling [an] effect 'significant' without accompanying analysis." *Berkeley Keep Jets Over the Bay Committee,* 91 Cal.App.4th at 1371.

For the vast majority of the RTP/SCS's significant impacts, the EIR identifies a very limited set of mitigation measures that would not, in any event, be effective in reducing Project impacts. For example, with regard to the Project's significant transportation impacts, the EIR includes exactly one mitigation measure. This measure calls for SANDAG to work with jurisdictions and other agencies to evaluate traffic and land use for each upcoming RTP/SCS and to consider modifying, if necessary,

the transportation projects in these subsequent plans. FEIR at 4.16-38, 39. This measure is fatally flawed, for at least two reasons.

First, rather than require SANDAG to take action now, the measure merely offers a promise to study the region's transportation system in future plans. Deferring mitigation without clear performance standards contravenes CEQA's clear requirements. "[F]or kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process . . . , the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval." *Sacramento Old City Ass'n v. City Council*, 229 Cal. App. 3d 1011, 1028-29 (1991). Here, the RTP/SCS EIR includes no performance standards.

Second, even if the measure called for SANDAG to take action in the current RTP/SCS, the measure is vague and directory. Uncertain, vague, and speculative mitigation measures have been held inadequate because they lack a commitment to enforcement. *See, e.g.*, *Anderson First Coalition v. City of Anderson*, 130 Cal.App.4th 1173, 1188-89 (2005)(holding traffic mitigation fee measure inadequate under CEQA due to vagueness in program for implementing required improvements). Here, the measure simply suggests that SANDAG may consider modifications to the region's transportation system if necessary. In other words, SANDAG proposes to wait four years and *then* conduct more of the same ineffective transportation planning that is evident in the proposed RTP/SCS (*i.e.*, increases in highway capacity to reduce traffic congestion).

Importantly, if the EIR had identified adequate mitigation measures as required under CEQA, many of the Project's significant environmental impacts could have been avoided, or at least substantially lessened. For example, SANDAG could reprioritize transportation projects now; it need not wait for the next RTP/SCS. We can find no evidence that the agency ever even attempted such a reprioritization of the Plan's projects to remedy the Project's extensive transportation impacts. As discussed below, in the alternatives section of this letter, front-loading at least some additional transit projects into RTP/SCS is feasible.

In comments on the RTP/SCS DEIR, members of the public pointed out numerous other mitigation measures that would lessen the Project's transportation and other impacts. The FEIR either dismisses these measures without adequate analysis, or ignores them altogether. Despite these seemingly reasonable, and certainly feasible, suggestions for mitigation, the EIR preparers make no effort to identify other specific procedures or mechanisms to reduce the RTP/SCS's significant environmental impacts.

For example, numerous commentors, including Sierra Club, CNFF, SOFAR and CBD, requested that SANDAG study a suite of parking management strategies. We explained the relationship between the supply and cost of parking and travel, and urged that parking management has been proven to effectively discourage automobile travel and encourage use of public transit. In fact, we provided studies supporting the viability and feasibility of such strategies in reducing transportation and other impacts related to automobile travel. Yet, the FEIR refused to include a parking management strategy as a mitigation measure. Instead, it proclaims that parking management strategies would be ineffective in substantially reducing the Project's impacts. Master Response 15, FEIR at G-38. The document explains that SANDAG conducted tests examining the effect of changes in parking costs on the regional travel model and that these tests showed that regionwide VMT and transit share varied only slightly in response to these changes. *Id.*

SANDAG's response is inadequate. The FEIR provides no description of these tests' protocols—neither the assumptions nor the methodologies—so it is impossible to verify the accuracy of the agency's analysis. Instead, the FEIR cites a CARB Report as the basis for SANDAG's conclusions. *Id.* We can find no indication, however, that the CARB Report is incorporated by reference in the EIR. Nevertheless, we were able to locate the Report on the internet. *See* Exhibit 11 (CARB Information Report on the San Diego Association of Governments' Draft SB 375 Sustainable Communities Strategy ("CARB Report").

The CARB Report explains that the SANDAG "testing" protocol was flawed and that additional data was needed to understand the relationship between parking cost, travel, and transit ridership. *Id.* at 32, 33. The tests were conducted in only a few locations within the County, included the cost of parking at parking meters, and did not assume a significant change in the cost of parking. For example, while SANDAG tested the effect of 50, 75, 125, and a 150 percent change in baseline parking costs (*id.* at 32), on-street parking meters are generally quite inexpensive (*i.e.,* 25 cents per hour). Increasing the cost of metered parking by 150 percent increases the hourly cost of parking to about 38 cents per hour. Moreover, even if private parking lots cost $5.00 per hour, a 150 percent increase amounts to only $2.50, not enough of an increase to cause a measurable change in travel behavior. The CARB Report summarizes SANDAG's testing as follows:

> These minor changes are likely the result of relatively small changes in parking costs compared to the region overall, and the comparatively small areas over which parking costs are

> adjusted within the urban area. Additional data is needed about the parking policy being implemented and how it is reflected in the model, in order to establish a better understanding of the relationship between parking cost, travel, and transit ridership. *Id.*

SANDAG failed to include these pertinent facts in the FEIR. Consequently, the EIR provides no evidence to support the rejection of parking management strategies as an effective mitigation measure. Moreover, SANDAG itself recommends, in the context of another mitigation measure, that local jurisdictions consider the adoption of a comprehensive parking policy that discourages private vehicle use and encourages the use of alternative transportation. *See* FEIR at ES-32. Thus, according to SANDAG itself, parking management strategies are effective in changing travel behavior and therefore reducing transportation impacts.

The EIR fares no better in its attempt to mitigate the Project's impact on GHG emissions. Here, too, the agency promises to include in future RTP/SCSs, policies and measures that will reduce GHG emissions. *See, e.g.*, ES-31. SANDAG suggests that it has no further obligation to adopt GHG reduction strategies in this EIR because the RTP/SCS already incorporates numerous provisions that reduce GHG emissions and allow the Plan to meet SB 375's GHG reduction targets. Master Response 21 at G-62, Response R-36 at G-544.

Again, SANDAG's approach is unlawful. While the EIR does include some GHG strategies, these strategies, like the transportation mitigation measure discussed above, are vague and unenforceable and therefore would not effectively reduce GHG impacts. For example, the EIR notes that the concepts of "smart growth, jobs/housing balance, transit-oriented development, and infill development through land use designations, incentive and fees, zoning, and public-private partnerships" are included in several of the EIR's mitigation measures. FEIR at G-62. Yet, even in those instances where the EIR purports to include these concepts, these strategies are not specifically identified or enforceable.

For example, the EIR asserts that these strategies are contained within Mitigation Measures GHG-A. Yet, GHG-A does not mention these specific concepts at all. Instead, it calls for SANDAG to incorporate "policies and measures that lead to reduced GHG emissions" in future plans. FEIR at 4.8-36. SANDAG cannot, then, point to this measure to demonstrate that it is actually requiring any of these strategies. Furthermore, while one of the concepts calls for "infill development through land use designations," this strategy was specifically rejected by SANDAG. *See* Comment and

Response R-29 (our comment letter suggesting that the EIR include a measure calling for intensive land use scenarios that increase employment and residential densities around transportation corridors; SANDAG response rejecting such a measure, stating that it "does not have the legal authority to modify or require modification of local jurisdictions land use inputs.")

Apparently recognizing the flaws in its approach to the mitigation measure calling for other agencies to adopt and implement climate action plans ("CAPs") (GHG-B), the FEIR now provides some additional information. It does not, however, provide either:(1) a model CAP, as we suggested, or (2) a source of funds so that agencies have the financial means to prepare their own CAPs. *See* Comment R-36. Nor does the FEIR explain why SANDAG could not have adopted a measure that requires SANDAG itself to take some action to effectively reduce GHG emissions. Rather than substantively responding to our comments in this regard, the FEIR simply provides some suggestions for what these other agencies might want to consider including in the CAPs. *See* FEIR at 4.8-36 through 38. Tellingly, the FEIR still uses terms such as "should" and "when appropriate," thus providing no assurance that this measure will be effective to reduce GHG emissions.

SANDAG also does not consider revising this measure to incorporate actions within its own authority, such as increasing cost-effective transit and promoting infill development, that could reduce GHG emissions. Certainly, SANDAG could limit or restrict altogether funding for local jurisdiction's transportation projects unless these jurisdictions have adopted CAPs that include performance standards demonstrating that they will achieve the necessary GHG emission reductions. The San Francisco Bay Area's Metropolitan Transportation Commission ("MTC") takes such a proactive approach when it conditions the allocation of regional discretionary funds on local agencies' demonstration that they are implementing land uses capable of supporting transit. *See* MTC, Transit-Oriented Development ("TOD"): Transit Villages, Policies and Studies, attached as Exhibit 23, and MTC TOD Policy, attached as Exhibit 24.

In contrast to SANDAG, MTC actually adopted and implemented these programs, demonstrating that agency's commitment to pursuing transit and land use programs to effectively reduce GHG emissions. Like SANDAG, MTC has no direct land use authority. Yet by holding the region's transportation purse strings, MTC has tremendous leverage to bring about planning change and reductions in GHG emissions. Thus, while SANDAG promises to adopt a TOD program in its next RTP/SCS (FEIR at 2-33 and RTP-SCS response to comment 1689 at 199), MTC has already implemented this effective program. Like MTC, SANDAG has the authority to adopt such a program

now to further minimize the significant GHG impacts that would result from the 2050 RTP/SCS.[13]

SANDAG can and must adopt a TOD program—which, as demonstrated, is a feasible mitigation measure being implemented by a similarly situated agency—as part of the 2050 RTP/SCS. It should model its program after MTC's policy and include financing strategies as MTC's policy does. *See* Reconnecting America, *Financing Transit Oriented Development in the San Francisco Bay Area: Policy Options and Strategies*, attached as Exhibit 25. Such a TOD program would also serve to mitigate the Project's significant transportation impacts discussed above.

It is important to note that SANDAG has been down this road before. Indeed, four years ago, SANDAG promised to seriously address GHG emissions in its next RTP (*i.e.*, the 2050 RTP/SCS). SANDAG specifically included a mitigation measure in the EIR for the 2007 RTP that promised to identify an "action plan" and "possible funding sources for SANDAG to implement a course of action and implement measures to address climate change in the RTP." *See* Letter from Shute, Mihaly & Weinberger LLP to Chair Sessom, SANDAG Board Member, November 14, 2007, attached as Exhibit 26; *see also* Settlement Agreement between SANDAG and SOFAR, Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and San Diego Public Transit Riders' Alliance, April 29, 2008, attached as Exhibit 27. Even though the 2050 RTP/SCS continues to result in significant and unavoidable climate change impacts, SANDAG has not lived up to this promise.

We see no reason to wait another four years with a mere hope that the agency will take this issue more seriously next time. SANDAG has the means, as well as the legal obligation, to implement feasible, concrete, and enforceable mitigation measures to reduce GHG emissions now.

Furthermore, inasmuch as the FEIR does not include a model CAP, we are attaching the City of San Carlos' Plan, as Exhibit 28. San Carlos' CAP, adopted in 2009, includes effective strategies to reduce GHG emissions. We strongly urge SANDAG to prepare a model CAP similar to that of San Carlos.

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[13] Nor can SANDAG suggest that it had no knowledge of this program. Commentors brought MTC's program to SANDAG's attention. *See* Response to RTP/SCS comment number 1689.

Finally, SANDAG should adopt a mitigation measure that will ensure additional funds for public transportation operations in the region. Additional operational funding, in particular, is critical in order to reduce the RTP/SCS's significant impact on transportation, air quality and climate change. The FEIR states that "most of the highway facilities to be constructed over the next ten years support public transit because they will be available for carpools and buses" and "SANDAG provides FasTrak funding to the transit operators for transit services in these corridors." R-25 at G-534 and Master Response 7 at G-16. The EIR never discloses, however, whether these FasTrak monies (or any other funding source that is generated by the use of these managed lanes) are earmarked exclusively for transit service operations (*i.e.*, specifically for bus, light rail and heavy rail service). If 100 percent of these monies is not already earmarked for bus or rail, SANDAG should commit to placing these monies in a trust fund exclusively for transit operations.

I. The FEIR Fails to Identify and Analyze a Reasonable Range of Alternatives to the Project.

Under CEQA, a proper analysis of alternatives is essential to comply with the Act's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta*, 198 Cal.App.3d 433, 443-45 (1988). As stated in *Laurel Heights I*, "[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.3d 376, 404. The discussion of alternatives must focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. Guidelines § 15126.6(b). Furthermore, CEQA requires that SANDAG evaluate a reasonable range of alternatives to its Project.

Here, the EIR fails to heed these basic mandates. Although the EIR identifies six alternatives, there is very little substantive difference between each of the alternatives. While the EIR purports to include two transit emphasis alternatives, they are crafted in a manner so that their environmental impacts differ only slightly from—or even result in greater impacts than—those resulting from the RTP/SCS. For example,

one would expect that Alternative 3b: Transit Emphasis/Modified Phasing/Modified Land Use would be designed in a manner consistent with its title. It would front-load the vast majority of the RTP/SCS's transit projects to the first ten years of the Plan, include additional transit projects, and delay or eliminate the Project's highway projects. Yet, this Alternative does none of that. Instead, it actually implements the majority of highway projects included the 2050 RTP/SCS. FEIR at 6-23, 6-30 and Table 6.2-6. While the Alternative advances some of the transit projects, it still proposes to defer at least half of the transit projects to the middle or latter phases of the Plan. *See* Table 6.2-7. Notably, the Alternative does not add *any* transit service to that proposed in the RTP/SCS.

In comparing Alternative 3b to the Project, the EIR determines that impacts relating to the GHG emissions would be greater than the GHG impacts of the Project. *Id.* at 6-128. Yet, because the EIR's discussion provides none of the relevant details or assumptions, let alone substantive analysis, it is not possible to substantiate the EIR's conclusions. If Alternative 3b had been crafted to eliminate or greatly reduce highway projects,[14] it would have been logical to conclude that by 2050, GHG impacts would be considerably less than the proposed Project. At the same time, the EIR determines, illogically, that Alternative 3b would result in reduced air quality impacts compared to the Project in 2050 (*see* FEIR at 6-122). This nonsensical conclusion is also unsupported by substantial evidence.

Most importantly, the EIR determines that the Project's transportation impacts would be greater under Alternative 3b than the RTP/SCS. FEIR at 6-140. Here, because the EIR does not front-load all, or the vast majority, of the transit, Alternative 3b is destined to fail. As discussed in our prior letter and in the 50-10 Plan, the San Diego region has an incomplete transit network. Therefore, to ensure the success of any transit-focused plan, SANDAG must implement enough transit to complete a network so that transit can become competitive with the automobile.

The FEIR states that an EIR is not required to consider "every conceivable alternative to a project" and that "absolute perfection" is not the legal standard. Master Response 16, FEIR at G-40. We are, by no means, seeking perfection. We are, however, interested in an alternative that is clearly different from, and environmentally superior to, the 2050 RTP/SCS, as required by CEQA. The purpose of such an alternative would be

[14] For example, the Alternative could have included only those highway projects that are necessary for maintenance.

to substantively reduce the RTP/SCS's significant and unavoidable impacts in the vast majority of the impact areas: aesthetic and visual resources, agriculture and forest resources, air quality, biological resources, cultural resources, greenhouse gas emissions, noise, population and housing, and recreation. *See* ES-11 through ES-52. Thus far, SANDAG has not identified such an alternative. Each of the alternatives, with the exception of No Project, continues to result in significant and unavoidable impacts. SANDAG must evaluate a transit alternative that truly prioritizes transit in order to reduce the RTP/SCS's extensive environmental impacts.

CNFF and SOFAR have developed an alternative to the RTP—the 50-10 Plan—yet SANDAG erroneously declines to evaluate the alternative or include it in the EIR. The FEIR lists several reasons for its refusal to include this alternative. We address each of these issues below.

First, the FEIR states that it cannot consider a "transit only" alternative because, to comply with federal transportation law and SB 375, the RTP/SCS must address transit projects, highway projects, and sustainable land use patterns—and that all three components must be integrated into the EIR's fundamental project objectives. FEIR at G-40 and 41. The FEIR then states that when a large-scale program contains multiple, interrelated objectives, the agency may exclude an alternative that does not met all of those objectives. *Id.* This argument lacks merit. The 50-10 Plan is *not* a "transit only" alternative. Rather, it calls for front-loading the RTP/SCS's transit projects in the first ten years of the plan and deferring the highway projects until such time as a comprehensive public transit network is implemented in the region's urban core. Therefore, the 50-10 Plan would satisfy the core objectives of the Project. Moreover, even if the 50-10 Plan required changes to federal or state law (which it does not), the fact that some legislative action would be required is not a sufficient reason to reject an alternative. *Citizens of Goleta Valley*, 52 Cal. 3d at 573. If appropriate from an environmental standpoint, this alternative should have been given serious consideration. Without such analysis, the EIR again asks the public and decision-makers to accept, rather than examine, its conclusions.

Furthermore, an EIR cannot provide a meaningful comparison between a proposed project and various alternatives unless the project's objectives are defined broadly enough to make such options at least potentially possible. *See Kings County Farm Bureau*, 221 Cal. App. 3d at 735-37; *City of Santee v. County of San Diego* 214 Cal. App. 3d 1438, 1455 (1989). Here, the EIR essentially states that highways must be built as planned by the proposed 2050 RTP/SCS. This is tantamount to saying that the objective of the Project is to implement the Project. Narrowing the Project's goals in this

way tilts the analysis of alternatives unavoidably—and illegitimately—toward the RTP/SCS as proposed. Rather than providing the required reasoned, objective analysis, the RDEIR has become "nothing more than [a] *post hoc* rationalization[]" for a decision already made. *Laurel Heights I*, 47 Cal. 3d at 394.

Second, the EIR then switches gears to suggest that the 50-10 Plan is already within the scope of the transit components of the 2050 RTP/SCS and alternatives. FEIR at G-47. This assertion— that the 50-10 Plan is a mere variation of the RTP/SCS—is as absurd as it is disingenuous. While one of the major differences between the 50-10 Plan and the 2050 RTP/SCS is the timing of the transit and highway projects, it is not the only "meaningful" difference, as SANDAG asserts. As is discussed below, other components of the 50-10 Plan, such as revisions to TransNet and pursuing other approaches to funding transit, are critical for the implementation of a comprehensive transit network in the County. Moreover, the importance of timing cannot be understated. As we explained in our prior letter, by proposing such a substantial increase in capacity throughout the County, SANDAG is all but foreclosing the potential for public transportation ever to succeed in the region.

Third, the FEIR states that it has no obligation to evaluate the 50-10 Plan because we have not provided the substantial evidence that this alternative would reduce the environmental impacts resulting from the 2050 RTP/SCS. FEIR at G-47. Indeed, the FEIR states that it is the public's responsibility to provide a "regional analysis" demonstrating the environmental benefits of the 50-10 Plan to the San Diego region. *Id.* We find it remarkable that SANDAG suggests that members of the public must undertake a regional analysis of this alternative. It is the agency's responsibility to provide this information to the public, not the other way around.

Moreover, contrary to this assertion, we did provide evidence demonstrating: (1) that the suite of strategies relied on by SANDAG, which include heavy reliance on roadway expansion projects, is environmental harmful, and (2) the environmental benefits that would accompany increased transit use. *See, e.g.*, Urban Land Institute, Growing Cooler: Evidence on Urban Development and Climate Plan, attached to our July 22, 2011 comment letter. For example, the Urban Land Institute report states that:

> As a larger and larger share of our built environment has become automobile dependent, car trips and distances have increased, and walking and public transit use have declined. Population growth has been responsible for only a quarter of

> the increase in vehicle miles driven over the last couple of decades. A larger share of the increase can be traced to the effects of a changing urban environment, namely to longer trips and people driving alone. As with driving, land is being consumed for development at a rate almost three times faster than population growth. This expansive development has caused CO_2 emissions from cars to rise even as it has reduced the amount of forest land available to absorb CO_2. *Id.* at 2.

Furthermore, the 50-10 Plan itself identifies environmental benefits associated with the 50-10 Plan and compares these benefits to the environmental impacts that would result from implementation of the RTP/SCS. *See, e.g.*, 50-10 Plan at 15 (discussing the reduction in VMT and traffic congestion that will accompany the 50-10 Plan). In addition, we have attached several studies to this letter that provide further evidence demonstrating that the increase in transit use that would accompany the 50-10 Plan would reduce traffic congestion (once the comprehensive transit network is implemented), reduce criteria air pollutant emissions (and the public health impacts that result from exposure to these emissions), reduce GHG emissions, protect open space and agricultural lands, and reduce energy use. *See* Center For Transportation Excellence, *Transit Benefits*, attached as Exhibit 29; *see also* CARB Air Quality and Land Use Handbook (attached to this firm's letter on the DEIR); Exhibit 9 (AASHTO "Analyzing, Documenting , and Communicating the Impacts of Mobile Source Air Toxic Emissions in the NEPA Process; Exhibit 22 (SUNY Study).

Fourth, the FEIR asserts that the 50-10 Plan alternative is legally and economically infeasible. FEIR at G-24, 48. However, neither of these claims has merit. SANDAG suggests in Master Response 17 that the 50-10 Plan alternative is legally infeasible because federal law requires RTP's to be revenue-constrained, *i.e.*, include only projects that are based on reasonable revenues. *Id.* The FEIR also refers to "funding restrictions" that prevent major shifts in funding from highway projects to transit. *Id.* The FEIR fails, however, to provide detail regarding these restrictions; it does not identify the specific funds that are "restricted," or even whether they are federal, state, or local funds.

To the extent that the FEIR suggests these funding restrictions prevent SANDAG from modifying TransNet projects and phasing, the TransNet Ordinance clearly indicates that the TransNet Expenditure Plan can be modified. The Board has the authority to modify, or at least to propose modifying, the Expenditure Plan. TransNet Ordinance section 16 states: ". . . this ordinance may be amended to further its purposes

by ordinance, passed by roll call vote entered in the minutes, with two-thirds of the Commission concurring consistent with the Commission's standard voting mechanism." *See* TransNet Extension & Ordinance, Exhibit 30. Proof that modifying the Expenditure Plan is possible is contained in the FEIR itself, which lists four examples of amendments to the Expenditure Plan that the Commission has made since passage of the TransNet Extension in 2004. *See* FEIR at G-49 [citing 2006 amendment to include completion of SPRINTER; 2008 amendment to extend deadline to fund habitat conservation plans; 2009 amendment regarding RTCIP auditing; 2009 amendment to extend deadline to fund habitat conservation plans]. Inasmuch as SANDAG has modified the TransNet Expenditure Plan in the past, it could undertake additional modifications and remain within federally required revenue constraints. Consequently, it does not appear that TransNet is a major constraint to funding transit.

SANDAG's assertion that it is has limited flexibility to shift funding from highways to transit due to restrictions in federal and state funding, is simply not supported by substantial evidence. To the contrary, federal agencies, in particular, are seeking new opportunities to ensure sustainable communities. For example the USEPA, the Housing and Urban Development ("HUD"), and the Department of Transportation ("DOT") have initiated an interagency effort to help communities nationwide to improve access to affordable housing, to increase transportation options, and to lower transportation costs while protecting the environment and peoples' health. *See* DOT et al., *Leveraging the Partnership: DOT, HUD, EPA Programs for Sustainable Communities* (April 2010), attached as Exhibit 31. To achieve these objectives, this interagency partnership makes clear that opportunities exist for flexibility in highway/transit funding,

> Many Federal-Aid Highway programs have specific eligible transit activities identified in legislation. In addition, funds from other programs that do not have specific transit eligibility may be transferred by states to other Federal-Aid Highway programs that do have such eligibility. If funds are transferred from one Federal-Aid Highway program to another, those funds then have the same eligibility as the program that they are transferred to. For example, Interstate Maintenance (IM) funds transferred to the Surface Transportation Program (STP) would have the same eligibility as STP funds. To transfer funds from FHWA to FTA, the state department of transportation must request that the funds be transferred, with the concurrence of the MPO if

> the project is within a metropolitan planning area, in a letter to the FHWA Division Office. Funding transfers are permitted only for projects contained in an approved metropolitan transportation improvement program (TIP) and/or statewide transportation improvement program (STIP). *Id.* at 6.

It is unclear whether SANDAG has taken advantage of this opportunity—or investigated other transit-supporting federal grant programs to which the agency could apply, either directly or through the state DOT. We are attaching to this letter information pertaining to various grant programs that could provide funding for transit. For example, DOT has identified a series of grant programs funding transportation projects that enhance or relate to livability. *See* DOT, *DOT Livability: Grants and Programs*, attached as Exhibit 32, and DOT, Federal Transit Administration, *Metropolitan and Statewide Planning*, attached as Exhibit 33. Certainly SANDAG could have included an evaluation of these and similar funding opportunities prior to rejecting the 50-10 Plan Alternative. Furthermore, as discussed above, even if legislation changes regarding funding were necessitated by the 50-10 Plan, such changes do not render the alternative per se infeasible.

In sum, SANDAG fails to support with substantial evidence its rejection of the 50-10 Plan. Moreover, if SANDAG cannot fully implement the 50-10 Plan alternative, it could certainly develop a different option that prioritizes transit. For the reasons explained in our various submittals, such an alternative would substantially reduce many, if not all, of the myriad significant and unavoidable impacts that would accompany implementation of the 2050 RTP/SCS.

Finally, it is important to note that the FEIR inappropriately rejects the Fast Plan alternative, claiming that the 2050 RTP/SCS would achieve a similar level of network connectivity and high speed service (*i.e.*, transit service). Because SANDAG's model is not available to the public, however, it is impossible to evaluate how the RTP/SCS itself would affect this transit service, let alone compare the Fast Plan alternative to the RTP/SCS. Although, after threat of litigation, SANDAG provided CNFF and SOFAR with limited access to SANDAG's travel demand modeling software, this license agreement with SANDAG "automatically terminated" on October 1, 2011. In fact, the license agreement requires that we destroy any copies of the travel demand software. *See* Settlement Agreement and Limited License, paragraph 11(i), and related correspondence, attached as Exhibit 34. Without access to the model, we had no opportunity or ability to compare the 2050 RTP/SCS to the Fast Plan alternative, or to

assess other of SANDAG's responses to comments. SANDAG may not use its own lack of transparency as a shield to defend its myopic focus on the 2050 RTP/SCS, or its refusal to analyze other potentially feasible alternatives such as the Fast Plan and the 50-10 Plan.

III. CONCLUSION

For the reasons set forth above, we respectfully request that SANDAG refrain from approving the 2050 RTP/SCS until it has prepared and recirculated an EIR that fully complies with CEQA.

Very truly yours,

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List of Exhibits:

Exhibit 1. *Sierra Watch v. Placer County*, Case No. SCV 16652 (Decision Granting Writ of Mandamus), May 3, 2005

Exhibit 2. California Attorney General, *Frequently Asked Questions About Climate Change and CEQA*

Exhibit3. CARB, *Recommended Approaches for Setting Interim Significance Thresholds for GHGs under CEQA*

Exhibit4. James Hansen, et al., *Target Atmospheric CO2: Where Should Humanity Aim?,* 2008

Exhibit5. CARB, *Scoping Plan*

Exhibit6. California Climate Change Center, *Our Changing Climate, Assessing the Risks to California*

Exhibit7. American Lung Association, *State of the Air*

Exhibit8. Human Impact Partners, *Elevating Health & Equity into the Sustainable Communities Strategy (SCS) Process: SCS Health & Equity Performance Metrics*, 2011

Exhibit 9. American Association of State Highway and Transportation Officials, *Analyzing, Documenting, and Communicating the Impacts of Mobile Source Air Toxic Emissions in the NEPA Process*, 2007

Exhibit 10. EMFAC, *2011 Overview, California Air Resources Board*, 2011

Exhibit 11. California Environmental Protection Agency and California Air Resources Board, *Informational Report on the San Diego Association of Governments, Draft SB 375 Sustainable Communities Strategy*

Exhibit 12. Francesca Dominici, et al., *Fine Particulate Air Pollution and Hospital Admission for Cardiovascular and Respiratory Diseases*, 2006

Exhibit 13. Daniel Krewski, *Reanalysis of the Harvard Six Cities Study and the American Cancer Society of Particulate Air Pollution and Mortality*

Exhibit 14. Douglass Dockery, *An Association Between Air Pollution and Mortality Rates in Six Cities*, 1993

Exhibit 15. U.S. Environmental Protection Agency, *Ambient Air Quality Standards*

Exhibit 16. MTC , *Regional Transportation Plan EIR*, excerpts

Exhibit 17. Wilbur Smith Associates, *Independent Transit Panel Review Report at ES-*, relevant excerpts

Exhibit 18. *I-5 North Coast Corridor Draft EIR/EIS*, relevant excerpts

Exhibit 19. SANDAG, *I-805/I-5 Corridor Study, Final Environmental Constraints Report,* 2004, relevant excerpts

Exhibit 20. *SR-11 and Otay Mesa East POE PEIR/PEIS*, 2008, relevant excerpts

Exhibit 21. *San Diego County General Plan Update EIR*, 2011, relevant excerpts

Exhibit 22. Tom Daniels, *What to Do About Rural Sprawl?,* State University of New York at Albany, Department of Geography and Planning, 1999.

Exhibit 23. MTC, *Transit-Oriented Development ("TOD"): Transit Villages, Policies and Studies*

Exhibit 24. MTC, *TOD Policy*

Exhibit 25. Reconnecting America, *Financing Transit Oriented Development in the San Francisco Bay Area: Policy Options and Strategies*

Exhibit 26. Letter from Shute, Mihaly & Weinberger LLP to Chair Sessom, SANDAG Board Member, regarding thr 2007 RTP EIR, November 14, 2007

Exhibit 27. Settlement Agreement between SANDAG and SOFAR, Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and San Diego Public Transit Riders' Alliance, April 29, 2008

Exhibit 28. *San Carlos General Plan 2030*

Exhibit 29. Center For Transportation Excellence, *Transit Benefits*

Exhibit 30. TransNet Expenditure Plan

Exhibit 31. DOT, et al., *Leveraging the Partnership: DOT, HUD, EPA Programs for Sustainable Communities*, 2010

Exhibit 32. DOT, *DOT Livability: Grants and Programs*

Exhibit 33. DOT, Federal Transit Administration, *Metropolitan and Statewide Planning*

Exhibit 34. Settlement Agreement and Limited License and related correspondence

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