

Case No. D063288

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

**CLEVELAND NATIONAL FOREST FOUNDATION; SIERRA
CLUB; CENTER FOR BIOLOGICAL DIVERSITY; CREED-21;
AFFORDABLE HOUSING COALITION OF SAN DIEGO COUNTY**

Petitioners, Respondents, and Cross-Appellants

v.

**SAN DIEGO ASSOCIATION OF GOVERNMENTS; SAN DIEGO
ASSOCIATION OF GOVERNMENTS BOARD OF DIRECTORS;
and DOES 1 through 20, inclusive**

Respondents and Appellants.

PEOPLE OF THE STATE OF CALIFORNIA

Intervener, Respondent, and Cross-Appellant

Appeal From a Judgment Entered in Favor of Petitioners
San Diego County Superior Court
Case No. 37-2011-00101593-CU-TT-CTL
Consolidated with Case No. 37-2011-00101660-CU-TT-CTL
Honorable Timothy B. Taylor, Judge

**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF; AMICUS
BRIEF OF THE COUNCIL FOR INFILL BUILDERS AND THE
PLANNING AND CONSERVATION LEAGUE**

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APPLICATION TO FILE

Pursuant to Rule 8.200(c) of the California Rules of Court, the Council of Infill Builders and the Planning and Conservation League (hereinafter, collectively “Amici”) respectfully request leave to file the accompanying brief in this proceeding in support of cross-appellants and respondents, Cleveland National Forest Foundation, Sierra Club, Center for Biological Diversity, Creed-21, Affordable Housing Coalition of San Diego, and People of the State of California.

This brief was entirely drafted by counsel for the amici and no party or counsel for a party in the pending case authored the proposed amicus brief in whole or in part, or made any monetary contribution intended to fund its preparation. (*See* Cal. Rules of Court, rule 8.200(c).)

STATEMENT OF INTEREST AS AMICI CURIAE

The Council of Infill Builders

The Council of Infill Builders is a 501(c)(3) nonprofit corporation of real estate professionals committed to improving California through infill development. Infill development revitalizes neighborhoods and communities, provides transportation choices, creates viable close-knit mixed-use areas, reduces greenhouse gas emissions and sustainably improves the overall economy. The Builders seek to educate the public about these benefits through research and outreach.

The Planning and Conservation League (PCL)

The Planning and Conservation League (PCL) was formed in 1965 by individuals who were concerned about the uncontrolled development taking place throughout California and the destruction that accompanied it. PCL was thus created to remedy the state's fast paced development. Today, PCL continues to work on the leading challenges facing our state, such as advocating for land-use planning focused on our urban cores that will transform neighborhoods into thriving, livable and healthy communities. PCL also partners with hundreds of California organizations, to provide an effective voice in Sacramento for sound planning and responsible environmental policy at the state level.

For more than 40 years, PCL has fought to develop a body of environmental laws that is the best in the United States. Its staff works closely with legislators to promote environmental legislation that protects and improves the California environment. PCL was the first organization solely devoted to making California a better place to live through enacting environmental protections. One of its greatest accomplishments was the enactment of the California Environmental Quality Act (CEQA), the most powerful environmental law in the state. PCL helped draft this critically important measure. PCL continues to advocate for the integrity of CEQA to ensure it remains a vibrant tool to empower the public to participate in decisions that impact their communities and environment.

Statement of leave to file:

Amici are leading planning and transportation organizations in California. They are very familiar with the economic feasibility of “smart growth” and “transit-oriented development,” and are acutely aware of the environmental dangers presented by climate change caused by greenhouse gas emissions. Amici frequently use CEQA as a tool to evaluate environmental impacts and feasible alternatives: an issue at the heart of this case and amicus brief. Further, they seek economically and environmentally sound planning and policy at the state level, and support development that aligns with current science, including climate science.

As Amici will be directly affected by the decision of this Court and may assist the Court’s decision through their unique perspectives, Amici respectfully request the permission of the Honorable Justice McConnell to file this amici curiae brief.

DATED: January 31, 2014 UC BERKELEY SCHOOL OF LAW
CENTER FOR LAW, ENERGY & THE
ENVIRONMENT

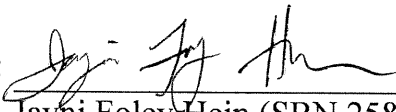
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AMICI CURIAE BRIEF

I. INTRODUCTION

Climate science, policy and law all make clear that California must reduce its greenhouse gas emissions to reduce the risk of catastrophic climate change. Land use planning and transportation play a prominent role in the reduction of greenhouse gas emissions. While the task before it was clear, the San Diego Association of Governments (SANDAG) passed a Regional Transportation Plan (RTP or Plan) that will not, in the long run, reduce greenhouse emissions. Rather, the Plan continues to fund and expand highways instead of public transit, and promotes sprawl over infill development near cities through 2050. SANDAG's failure to reveal, mitigate and propose viable alternatives to the environmental consequences of its chosen RTP/Sustainable Communities Strategy (SCS) violates the requirements of the California Environmental Quality Act (CEQA), and the Plan must be set aside on this basis.

While the SANDAG Plan technically meets its SB 375 targets (reducing passenger vehicle-related emissions 7% below 2005 baseline conditions by 2020, and 13% by 2035), it does so largely by relying on effects of the recession, which reduced travel demand, and due to fuel efficiency standards adopted by other agencies. In fact, after 2020, emissions in the region are expected to increase according to SANDAG's

Plan. And by 2050, SANDAG expects the region's residents to drive even more miles than they do today.

SANDAG's Environmental Impact Report (EIR) failed to analyze feasible "smart growth" or transit-oriented alternatives that would avoid the Plan's significant environmental effects, such as increased GHG emissions, air pollution, traffic, and more. By failing to analyze at least two viable alternatives that would create more robust, transit-oriented communities—the 50-10 Transit Plan and the "FAST Plan"—SANDAG eliminated the public's opportunity to understand its options and to demand changes that are necessary to house a growing population and meet the significant challenge of climate change. (See AR 19690-91, 19749-68). The EIR's failure to analyze viable, environmentally superior alternatives is an error that pervades the analysis and renders the EIR inadequate as an informational document. Such error is prejudicial, and the Plan must be set aside.

As the Amici here are well-positioned to explain, directing growth to infill locations, as the 50-10 Plan and FAST Plan do, would meet growing demand for walkable communities; reduce traffic congestion, greenhouse gas emissions, and air pollution; preserve open space; and provide economic benefits to the region. SANDAG's failure to consider these viable alternatives, which would meet the objectives of the RTP/SCS, violates the requirements of CEQA.

II. ARGUMENT

A. SANDAG Failed to Comply with CEQA Because Its EIR Did Not Consider Feasible Alternatives that Would Avoid Significant Environmental Impacts of the Regional Transportation Plan.

SANDAG failed to properly analyze feasible alternatives in its EIR that would substantially improve the Regional Transportation Plan's proposed transit components and reduce significant environmental impacts such as increased GHG emissions and impacts to air quality. This failure renders the EIR inadequate as an informational document, and violates CEQA.

CEQA requires an EIR to set forth a reasonable range of feasible alternatives which "offer substantial environmental advantages over the project proposal." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350-1351). The requirement to examine feasible alternatives is a core requirement of CEQA. Public agencies "should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . ." (Pub. Resources Code § 21002).

To be "reasonable," the alternatives in an EIR must provide enough variation from the proposed project "to allow informed decisionmaking."

(Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 404-405). The alternatives must also avoid or substantially lessen the project's significant environmental impacts while attaining most of the project's objectives. (Pub. Resources Code § 21100(b)(4); CEQA Guidelines § 15126.6(a), (b)). Reasonable alternatives that lessen or avoid significant adverse impacts must be addressed even if doing so would "impede to some degree the attainment of the project objectives or would be more costly." (CEQA Guidelines § 15126.6(b)).

Whether an EIR is required to discuss a reduced development alternative depends on whether that alternative would have been capable of avoiding or substantially lessening any significant effects of the project, even if it would impede to some degree the attainment of the project objectives. (CEQA Guidelines, § 15126.6, subd. (b); *see also Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1086-1088 ("*Watsonville*"). An EIR is required to consider alternatives that will attain most of the basic objectives while avoiding or substantially reducing the environmental impacts of the project. (CEQA Guidelines, § 15126.6, subd. (a); *Watsonville*, 183 Cal.App.4th at 1087-1088). Since the purpose of an alternatives analysis is to allow the decision maker to determine whether there is an environmentally superior alternative that will meet most of the project's objectives, the key to the selection of the range of alternatives is to identify alternatives that meet most of the project's

objectives yet have a reduced level of environmental impact. (*Watsonville*, 183 Cal.App.4th at 1089).

SANDAG's Regional Transportation Plan will shape transportation and growth patterns in the region for decades; an adequate assessment of reasonable alternatives is critical to avoiding or lessening the project's significant environmental impacts. Yet here, SANDAG failed to properly analyze feasible alternatives that would substantially improve the Plan's proposed transit components and reduce significant environmental impacts such as increased GHG emissions and impacts to air quality.

SANDAG's EIR analyzed six alternatives that vary only slightly from the proposed project: all six would construct all, or a large portion of, the Plan's highway projects. (AR 8a:2109-22, 3140-62). Unfortunately, even the two "Transit Emphasis" alternatives (3a and 3b) would implement the vast majority of highway projects in the 2050 RTP/SCS in their early stages, and would defer at least half of the transit projects to the Plan's middle or late stages. (AR 8a:3153, 3158-60). Fatally, none of the alternatives analyzed by SANDAG in its EIR would "avoid or substantially lessen" the Plan's significant environmental impacts. (*See* Pub. Resources Code § 21100(b)(4); CEQA Guidelines § 15126.6(a), (b)). Rather, five of the six alternatives would result in the same or *increased* impacts for the Plan's GHG emissions, and for nearly all of the Plan's significant transportation impacts. (AR 8a:3323-24, 3328-29). Even the "Slow

Growth” alternative “would result in additional growth and associated impacts in surrounding counties.” (AR 3:148).

These alternatives are inadequate under CEQA. (*See, e.g.*, Pub. Resources Code § 21100(b)(4); CEQA Guidelines § 15126.6(b)).

SANDAG was required to consider alternatives that “will attain most of the basic objectives while avoiding or substantially reducing the environmental impacts of the project.” (*Watsonville*, 183 Cal.App.4th at 1087). SANDAG did not consider an alternative that would meaningfully increase public transit in the Plan’s early years. Such an alternative would prioritize transit projects over highway development and thereby reduce significant impacts such as air quality impacts, GHG emissions, and impacts to open space. Specifically, SANDAG refused to include two viable transit-oriented alternatives in the EIR: the 50-10 Transit Plan and the “FAST Plan” introduced by public participants. (AR 296:19690-91, 19749-68). The 50-10 Plan in particular would have prioritized transit planning in the Plan’s first ten years, and each of these alternatives would have significantly reduced the detrimental impacts of the Plan on transportation, air quality and GHG emissions. (*See id.*).

SANDAG’s failure to consider feasible alternatives that would avoid the most detrimental aspect of its project violates CEQA. (*See Watsonville*, 183 Cal.App.4th at 1087-1088; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884). Just as the Court of

Appeal in *Watsonville* held that the city's alternatives analysis should have included "an assessment of a reduced growth alternative that would meet most of the objectives of the project but would avoid or lessen these significant environmental impacts," the same holds true here. (See *Watsonville*, 183 Cal.App.4th at 1087). The 50-10 Transit Plan and the FAST Plan would each reduce the significant environmental impacts of the Plan while still meeting its objectives. (See AR 296:19690-91, 19749-68). Moreover, each of these alternatives would *better* meet the agency's task as laid out in SB 375, as they prioritize infill development and public transit in the Plan's earliest years, leading to meaningful reductions in vehicle miles traveled (VMT), GHG emissions, air pollution, and traffic/congestion, to name a few significant environmental impacts. The 50-10 Transit Plan and the FAST Plan would each allow transit to expand and improve services, drawing ridership and reducing the emissions that are scientifically proven to contribute to catastrophic climate change. (AR 320:27722-23; 8b: 4296-97).

By failing to include these feasible transit-oriented alternatives, the EIR fails as an informational document. Analysis of one or both of these alternatives would have provided decision makers and the public with information about how the project's objectives could be satisfied without the detrimental, long-term environmental impacts that flow from the chosen 2050 Plan. (See *Watsonville*, 183 Cal.App.4th at 1090). This failure renders

the EIR deficient as an informational document, and the Plan should be set aside on this basis.

B. Transit-Oriented Development Promotes Economic Vitality, Reduces Environmental Harm, and Aligns With Public Demand.

In analyzing alternatives under CEQA, SANDAG should have included the 50-10 Transit Plan, the FAST Plan, or another transit-focused alternative that meets the requirements of the RTP/SCS in its EIR. These alternatives would provide greater environmental benefits than the 2050 Plan, align with climate science, and position the San Diego region to serve a growing population that desires smart growth.

Infill that takes the form of transit-oriented developed (TOD)—mixed-use use development within walking distance of a transit station—is particularly likely to result in reduced automobile use, higher rates of public transit ridership and walking, and lower VMT and emissions. Directing growth to infill locations also meets growing demand for walkable communities, reduces traffic congestion and air pollution, preserves open space, and provides economic benefits to the region. An alternative that captures these benefits and reduces the significant environmental effects of the RTP should have been present in SANDAG's EIR in order to comply with CEQA.

1. There Is Heightened Demand for Sustainable Development.

California is projected to grow by 5.6 to 10 million residents in the next decade, and communities that facilitate transit-oriented development will be best positioned to accommodate this growth. Demographic changes and shifting market preferences are creating heightened demand for sustainable communities, which is expected to continue well into 2050. Such communities typically include a socio-economically diverse range of compact housing types in mixed use neighborhoods including office and retail, offering safe pedestrian and bicycle access to businesses and services.

The Journal of the American Planning Association reported in 2008 that approximately 50% of American households want sustainable development features in their neighborhoods, an increase from the roughly one-third of households that desired these features decades earlier.¹ Studies from the National Association of Homebuilders and high-production builders confirm that a high percentage of consumers now prefer “smart growth products,” with many homebuyers willing to trade lot or home size for shorter commute times.²

¹ S.J. Handy, F. Sallis, D. Weber, E. Maibach, and M. Hollander, “Is Support for Traditionally Designed Communities Growing? Evidence From Two National Surveys,” *Journal of the American Planning Association*, Vol. 74, no. 3, 2008, pp. 209-221.

² *Growing Cooler* 8 (AR 296:19745).

As the draft RTP recognizes, moreover, the region's growing elderly population will require communities that can support a variety of services within walking distance, rather than requiring transport by automobile.³

In addition, young "millennials" prefer living closer to city centers in proximity to workplaces, restaurants, cultural attractions, and public spaces.⁴ In one national survey, "walkability" was reported as the most important feature in Generation Y housing preferences. One-third of respondents born between 1980 and 2001 said they would pay more for home with high walkability, diversity and proximity to jobs.⁵ And millennials are not as eager to own cars and travel by automobile as prior generations. In 2008, 46.3 percent of potential drivers 19 years old and younger had drivers' licenses, compared with 64.4 percent in 1998, according to the Federal Highway Administration, and drivers ages 21 to 30 drove 12 percent fewer miles in 2009 than they did in 1995.⁶

Financial and social trends also support more mixed-use, walkable communities, like the 50-10 Transit Plan and the FAST Plan would create.

Between 2002 and 2012, for example, gasoline prices rose by more than

³ CNFF, 50-10 Transit Plan 18 (AR 296:19767).

⁴ See, e.g., RCLCO, The Impact of Gen Y on Housing - The Market and Demographic Perspective, 2013 APA Virginia Annual Planning Conference, available at <http://www.rclco.com/pub/doc/presentation-2013-07-23-APA-Virginia-Annual-Planning-Conference.pdf>.

⁵ *Id.*

⁶ Amy Chozik, *As Young Lose Interest in Cars, G.M. Turns to MTV for Help*, The New York Times (March 22, 2012), available at http://www.nytimes.com/2012/03/23/business/media/to-draw-reluctant-young-buyers-gm-turns-to-mtv.html?pagewanted=all&_r=0

10% per year compounded, or four times faster than inflation.⁷ Such rising gasoline prices and increasing traffic congestion motivate people to live closer to their jobs and seek transit-oriented communities. For many, driving is no longer the preferred mode of transport it was 50 or even 10 years ago. With over 250 million registered automobiles and trucks in service in the U.S., auto commuting has become an expensive experience that excessively harms our environment. In one of the most economically vibrant and successful cities in the U.S., New York City, over 40 percent of its residents do not own, or need to own, an automobile; in Manhattan that percentage is more than 75 percent.

Only by prioritizing public transit and infill projects will the San Diego region be positioned to capitalize on this growing demand for higher density sustainable development. And importantly, demand alone is not enough to have effective smart growth—a highly functioning transit system is critical. In recognition of this fact, state law appropriately dictates that it is SANDAG's job to lead the region toward transit-oriented development to meet this growing demand. (*See* AR 8a:2995; AR 190:13251).

⁷ Council of Infill Builders, *A Home for Everyone; San Joaquin Valley Housing Preferences and Opportunities to 2050* (January 2013), available at <http://www.councilofinfillbuilders.org/resources/PDFs/ValleyHousing.pdf>.

2. Transit-Oriented Development Provides Tax Revenue and Benefits Existing Businesses.

Investing in California's downtowns and city opportunity sites through infill makes fiscal sense. Improvements in transit would bolster the region's economic competitiveness by generating tax revenue and facilitating greater connectivity between employers, employees, and customers. Plans like the 50-10 Transit Plan and the FAST Plan are economically feasible and would lead to better economic outcomes in the region long-term.

According to a recent report by Amici, the Council of Infill Builders, investment in downtown development yields more property tax revenue per acre than building on the periphery outside downtowns.⁸ Moreover, building on the periphery also contributes to urban sprawl, smog, GHG emissions, and other land use and environmental health impacts. Of course, the costs of catastrophic climate change are enormous: sea level rise, drought, heat waves, reduced rainfall and snowpack, and increased incidence of wildfires, are just a few of the scientifically-proven impacts that will have devastating fiscal, environmental, and health effects.

Transit-oriented development will also have specific benefits to San Diego's population and downtown businesses. Only an estimated 29% of

⁸ Council of Infill Builders, *Valuing Downtowns: Upward Not Outward is a Smart Revenue Strategy For Local Governments*, January 2013, available at <http://www.councilofinfillbuilders.org/resources/PDFs/Valuing-Downtowns.pdf>.

jobs in San Diego County are accessible by transit,⁹ and up-front investments in public transportation are critical to ameliorating this deficiency. Transit investments also provide immediate returns in the form of job generation in the construction and service sectors, with every \$1 billion invested yielding an estimated 19,299 job-months.¹⁰

In addition to generating new jobs from transit-oriented construction and development, by supporting greater residential densities, transit-oriented development increases the potential customer base around commercial hubs and improves the viability of neighborhood-serving stores and businesses.¹¹ In fact, every \$10 million of capital investment in transit infrastructure yields \$30 million in increased sales.¹² Accordingly, cities and towns have successfully used transit-oriented development to revitalize town centers and fill-in underutilized, vacant lots.¹³

By not including the 50-10 Transit Plan or the FAST Plan in its EIR, SANDAG failed to adequately inform the public about alternatives that

⁹ San Diego and Imperial Counties Labor Council, letter on the 2050 RTP/SCS, July 8, 2011 (AR 281:19473).

¹⁰ San Diego and Imperial Counties Labor Council, letter on the 2050 RTP/SCS, July 8, 2011 (AR 281:19474). Note that because transportation projects are of different durations, a “job month” is a more accurate way of comparing quantities of employment created than is a “job year.”

¹¹ *Growing Cooler* 4 (AR 296:19741).

¹² Center for Transportation Excellence – Transit Benefits (AR 320(29):28687).

¹³ *Growing Cooler* 5, 7 (AR 296:19742, 19744); Metropolitan Transportation Commission: *Transit-Oriented Development: Transit Villages, Policies and Studies* (AR 320(25):28517) (describing the transit-oriented Uptown Oakland project).

would significantly reduce environmental impacts and still provide economic benefits over the short and long-term.

3. Transit Access Yields Quality of Life Improvements that Support a Healthy Economy.

Promoting alternatives to single-vehicle travel also improves a community's quality of life in ways that directly impact economic vitality. Proximity to adequate transit is a key factor in making communities more livable,¹⁴ evidenced by studies showing that development near public transportation yields greater improvements in property values.¹⁵ A March 2010 national poll by Transportation for America, moreover, found that three out of five voters, including rural voters, place a lower priority on new and expanded roads than on improved public transportation and policies that make walking and biking easier.¹⁶

Living in mixed-use communities where daily needs are within walking and biking distance also improves a variety of health outcomes by increasing physical activity levels.¹⁷ This heightened quality of life not only makes transit-oriented development more attractive to potential residents, but also benefits the region's employers by boosting the health of the local

¹⁴ San Diego and Imperial Counties Labor Council, letter on the 2050 RTP/SCS, July 8, 2011 (AR 281:19473).

¹⁵ Center for Transportation Excellence – Transit Benefits (AR 320(29):28687).

¹⁶ *Transportation for America, Future of Transportation National Survey*, 2010. Available at: <http://www.slideshare.net/t4america/future-of-transportation-poll-summary-032910>.

¹⁷ *Elevating Health & Equity into the Sustainable Communities Strategy Process* (AR 304:19791).

workforce and reducing absenteeism. Further, there is a well-documented link between the growing obesity and Type 2 diabetes epidemic and housing sprawl, as reduced physical activity levels are caused, in part, by auto dependency.¹⁸

Finally, investing in public transportation improves residents' quality of life by facilitating greater access to parks and recreational amenities.¹⁹ Improving transit access to Balboa Park, for instance, could mean saving the substantial cost of road widening and parking construction, while improving the experience of park visitors.²⁰ Because a region's quality of life impacts its ability to attract and retain a skilled workforce, investing in transit and promoting smart growth are critical components of economic development.

4. Transit-Oriented Development Promotes Efficient Use of Scarce Public Resources.

Compact development also helps preserve dwindling resources such as open space²¹ and water.²² Focusing development around transit hubs rather than allowing sprawl into outlying areas will also help protect the

¹⁸ Lopez R. *Urban sprawl and risk for being overweight or obese*. Am J Public Health. 2004; 94:1574–9; Berrigan D, Troiano RP. *The association between urban form and physical activity in U.S. adults*. Am J Prev Med. 2002; 23:74–9.

¹⁹ *Elevating Health & Equity into the Sustainable Communities Strategy Process* (AR 304:19792).

²⁰ CNFF, 50-10 Transit Plan 18 (AR 296:19767).

²¹ CNFF, 50-10 Transit Plan 17 (AR 296:19766).

²² CNFF, 50-10 Transit Plan 5 (AR 296:19754).

region's working farmland, which is critical given that agriculture in San Diego County enjoys the highest per-acre value in the state.²³

Sustainable development also allows cities and counties to accommodate population growth while avoiding an undue strain on fiscal resources. Studies indicate, for example, that transit-oriented development saves municipalities money by reducing the cost of extending roads, water and sewer infrastructure to new areas.²⁴ A report by Vision California quantified the infrastructure costs involved with different types of development, and found that shifting towards compact development and making corresponding investments in transit would result in a savings of \$4,000 per new household.²⁵ Applying Vision California's analysis to the San Diego region, this shift would amount to over \$1 billion in infrastructure savings between now and 2050.²⁶

Finally, choices over transportation priorities implicate another major source of municipal spending: subsidies for public parking.²⁷ Where commercial or entertainment centers are accessible almost exclusively by car, cities and towns are often forced to subsidize public parking in order to support their patronage. While sometimes overlooked, the fiscal impact of

²³ American Farmland Trust, letter on the 2050 RTP/SCS, July 8, 2011 (AR 279:19462).

²⁴ *Growing Cooler* 9 (AR 296:19746).

²⁵ CNFF, 50-10 Transit Plan 18 (AR 296:19767).

²⁶ CNFF, 50-10 Transit Plan 18 (AR 296:19767).

²⁷ CNFF, 50-10 Transit Plan 6 (AR 296:19755).

this obligation is hardly insignificant. As part of building a new home for the Los Angeles Philharmonic, for example, the City of Los Angeles subsidized construction of underground parking to the tune of \$50,000 per parking space, amounting to over one third of the project's total construction costs.²⁸ Sustainable development where residents can walk to businesses and entertainment helps spare municipalities from the "high cost of free parking."²⁹

In short, SANDAG's highway-centric Plan misses the mark by failing to prioritize smart growth and public transportation, contrary to growing public demand and economic foresight. The enumerated economic and community benefits of smart growth and infill development belie SANDAG's claim that alternatives involving transit-centered growth are infeasible. Smart growth is economically feasible, in demand, and necessary in order to reduce the risk of catastrophic climate change.

III. CONCLUSION

By not including viable transit-oriented alternatives in its EIR, SANDAG failed to adequately inform the public about options that would significantly reduce the environmental impacts of the 2050 Plan and provide economic benefits to the region. The Court should uphold the

²⁸ CNFF, 50-10 Transit Plan 6 (AR 296:19755).

²⁹ CNFF, 50-10 Transit Plan 6 (AR 296:19755).

decision of the trial court, which found the SANDAG Plan in violation of CEQA.

DATED: January 31, 2014

UC BERKELEY SCHOOL OF LAW
CENTER FOR LAW, ENERGY & THE
ENVIRONMENT

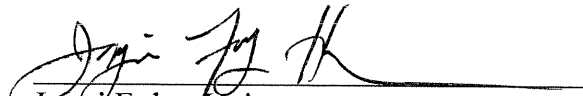
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CERTIFICATE OF WORD COUNT
(California Rules of Court 8.204(c))

The text of this Amicus Brief of the Council for Infill Builders and the Planning and Conservation League consists of 3,659 words, not including tables of contents and authorities, signature block, and this certificate of word count as counted by Microsoft Word, the computer program used to prepare this brief.


Jayni Foley Hein

PROOF OF SERVICE

*Cleveland National Forest Foundation, et al. v.
San Diego Association of Governments, et al.
California Court of Appeal Fourth District, Division One
Case No. D063288*

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 3500 5th Ave #202, San Diego, CA 92103.

On February 3, 2014, I served true copies of the following document(s) described as:

**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF;
AMICUS BRIEF OF THE COUNCIL FOR INFILL
BUILDERS AND THE PLANNING AND CONSERVATION
LEAGUE**


on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Advanced Attorney Service's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 3, 2014, at San Diego, California.


A handwritten signature in dark ink, appearing to be 'JR' or similar, is written over a horizontal line.

SERVICE LIST

**Cleveland National Forest Foundation, et al. v.
San Diego Association of Governments, et al.
California Court of Appeal Fourth District, Division One
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