

Clerk of the Superior Court  
By T. Automation, Deputy Clerk

1 Everett L. DeLano III (Calif. Bar No. 162608)  
2 Ezgi Kuyumcu (Calif. Bar No. 353069)  
3 **DELANO & DELANO**  
4 104 W. Grand Avenue, Suite A  
5 Escondido, California 92025  
6 (760) 741-1200  
7 (760) 741-1212 (fax)

8 Attorneys for Petitioner

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**  
12

13 LIVABLE SAN DIEGO, an unincorporated )  
14 association; )

15 Petitioner, )

16 vs. )

17 CITY OF SAN DIEGO, a public body corporate )  
18 and politic, and DOES 1 through 5, inclusive, )

19 Respondents. )

20 CITY OF SAN DIEGO PLANNING )  
21 DEPARTMENT, and DOES 6 through 10, )  
22 inclusive )

23 Real Parties of Interest, )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No. 37-2023-00014623-CU-TT-CTL

**PETITIONER’S REPLY TO  
RESPONDENT’S OPPOSITION**

(California Environmental Quality Act)

Judge: Hon. James Mangione

Dept.: C-75

Date: January 1, 2024

Time: 9:00 AM

Action Filed: April 7, 2023

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INTRODUCTION.....4

ARGUMENT.....5

I. The Opposition Ignores Legal Issues While Disparaging Concerned Residents.....5

II. The Opposition Misrepresents CEQA’s Requirements.....9

III. Elimination of the Transit Priority Area Definition Was Not “the Same as or Within the Scope” of Prior Environmental Analysis.....12

IV. The Replacement of the TPA Definition and Increase in Development Incentives Will Lead to Significant Environmental Impacts.....15

CONCLUSION.....17

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Citizens for Responsible Equitable Environmental Development v. City of San Diego*  
4 *Redevelopment Agency* (2005) 134 Cal.App.4th 598.....9,11  
5 *Friends of the College of San Mateo Gardens v. San Mateo County Community*  
6 *College Dist.* (2016), 1 Cal.5th 937..... 9,10,15  
7 *Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819.....9,10,11,12  
8 *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.....10,11,12,15  
9

10 **STATUTES AND OTHER AUTHORITIES**

11 CEQA Guidelines § 15168(c).....11  
12 CEQA Guidelines § 15168(c)(5).....10  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **INTRODUCTION**

2 Petitioner’s Opening Brief went to great lengths to explain how the City’s adoption of what it  
3 labeled “Item No. 5” of the 2023 LDC Update was well outside the scope of any prior environmental  
4 analysis, introducing impacts in a host of areas never previously considered or addressed. The Opening  
5 Brief made it clear that by adopting the new “SDA” definition, the City was ignoring those impacts  
6 and pretending as if the Project was consistent with its previously-stated commitment to implement  
7 sustainable transit-oriented development.

8 Yet reading the City’s Opposition Brief, one would think the new Project will lead to far  
9 greater transit-oriented development. One might also think, from reading the Opposition, that  
10 Petitioner prefers the City measure the distance to transit as if people flew like “crows.” Nothing could  
11 be further from the truth, and it is notable that the Opposition provides no evidence for this assertion.  
12 Indeed, within the first page of the Opposition, one finds the usual pejorative term thrown at anyone  
13 who would dare question the City’s rationale: the “NIMBY” label.

14 It is indeed disturbing the City chooses to throw mud at those who would express their  
15 concerns. And yet again, the City offers no evidence in support of this ad hominem. In fact, the  
16 evidence shows the opposite – Petitioner and others have advocated for development in walking  
17 proximity to transit, and transit in walking proximity to development. Contrary to the Opposition’s  
18 baseless allegations, this case does not seek to challenge the City’s previously-adopted Climate Action  
19 Plan or other previously-adopted “incentives offered to build more homes near public transit.”

20 Rather, this case challenges the failure of the City to comply with those previously-adopted  
21 commitments. The record shows that less than ten percent of San Diego bus and trolley riders walk a  
22 mile to transit. Yet in its hurry to curry favor to those who stand to gain huge financial rewards from  
23 such development, the City approved the “SDA” definition not only with a one-mile distance, but also  
24 with no actual transit in place. And even then, in a last-minute rush to curry additional favor, it added  
25 specific plan areas into the mix, even if only a tiny fraction of the area is actually within that one-mile  
26 distance. Each of these steps is well outside the scope of any prior environmental analysis considered  
27 and adopted by the City. And it is noteworthy that the Project barely received a majority of votes by  
28 the City Council, several of whom expressed concerns about the ill-considered impacts.

1 Contrary to the Opposition’s portrayal, this is not a case of elitist “distaste” of transit-oriented  
2 development. This is a case challenging the City’s failure to abide by its own previously-adopted plans  
3 and analysis and, as such, challenging the City’s failure to comply with CEQA’s mandates.

4 Accordingly, this Court should grant the writ and overturn the approvals of the Project.

## 5 ARGUMENT

### 6 I. The Opposition Ignores Legal Issues While Disparaging Concerned Residents

7 As Petitioner’s Opening Brief explained, the City’s adoption of the ironically-named  
8 “Sustainable Development Area” (“SDA”) presents a project well outside the scope of prior  
9 environmental analysis, including over 5,000 “more developable acres than the current TPA” analyzed  
10 in prior environmental documents. Opening Brief at 12 – 18. And staff acknowledged the “SDA  
11 definition expands land areas beyond the TPA definition while also refocusing city development  
12 incentives ....” AR21310. And, as the Opening Brief noted, the City’s CEQA Evaluation Memo never  
13 even bothered to consider whether the SDA was within the scope of prior analysis, as required by  
14 CEQA. Opening Brief at 12:14 – 17.

15 Instead of addressing the relevant legal or factual issues, the Opposition chooses to “pound the  
16 table” with disparaging claims of elitist NIMBY’s who, the Opposition claims, have a “distaste of  
17 densely populated multifamily homes near single family residences.” Opp. at 4:23 – 25. The irony in  
18 this is rich. Petitioner and many others who objected to adoption of the SDA pointed out the many  
19 ways in which the Project would actually do the opposite of both what the City claimed it would do  
20 and what the City’s Climate Action Plan and other plans call for.

21 For example, Nico Calavita, a Professor Emeritus in the Graduate City Planning Program at  
22 San Diego State University, explained:

23 To understand the potential impact of this proposal it is important to understand that  
24 increasing density can have positive and negative consequences. Densification is good  
25 because it allows the production of much needed housing and — when placed in the right  
26 places — increases mass transit ridership. ... If not concentrated near transit, it will  
27 increase car usage — and with it, traffic congestion, pollution, demand for parking, and  
so on. Additionally, it will increase the demand for public facilities, especially parks and  
open space.

28 AR22058 (emphasis added). He noted: “density — very high density — should be concentrated along  
transit corridors and close to major transit stops, not a long walk away from them.” AR22059.

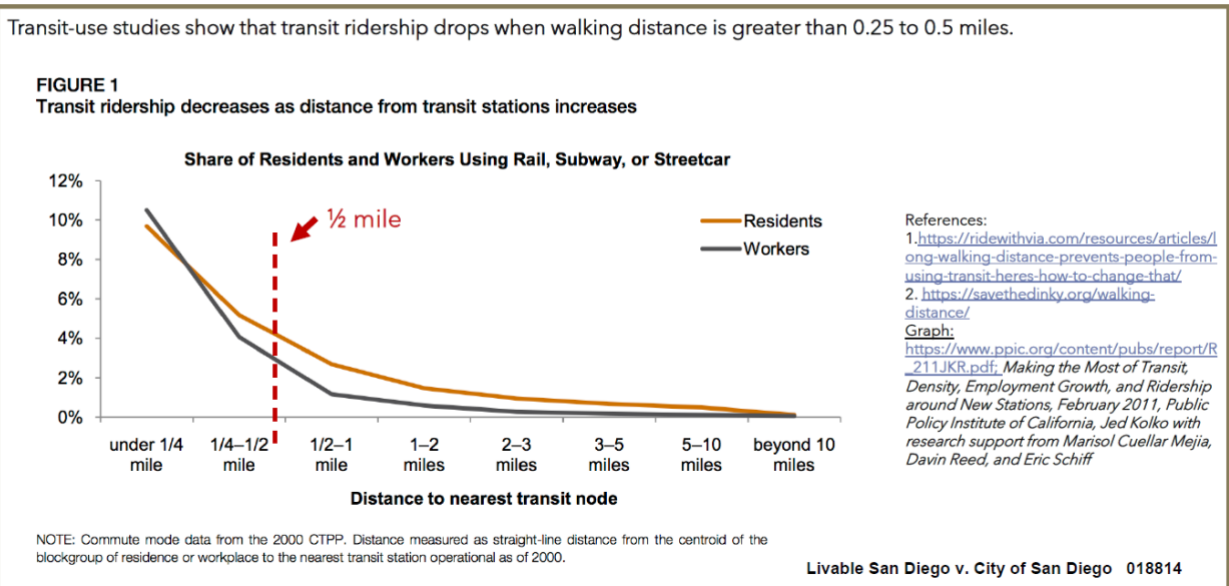
1 Petitioner and others commented that studies show people are more likely to walk 5-10 minutes  
2 or 0.25 or 0.5 miles to use transit. AR 21168; 21170. Neighbors for a Better San Diego (“NFABSD”)  
3 discussed academic research and data demonstrating that the proposed SDA definition “will reinforce  
4 our existing suburban, automobile-focused mobility patterns and permanently hobble San Diego’s  
5 mass transit plans.” AR24012. Noting “that San Diego is among the least dense of major U.S. cities ...  
6 in terms of both population density and transit adoption,” NFABSD explained:

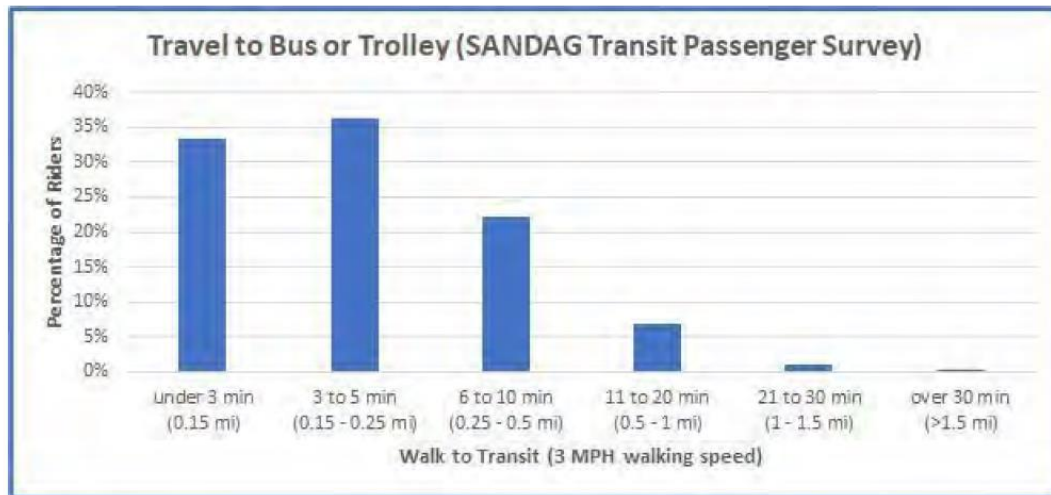
7 This indicates that in planning new housing and commercial development to maximize  
8 transit adoption and minimize VMT, we will have the greatest success if we use added  
9 population to increase density in focused areas rather than distributing the density across  
10 half of San Diego’s area as proposed by the current SDA definition.

11 AR24010. It included a model that predicts the “level of transit usage that will result from distributing  
12 anticipated added population within different SDA walking distances.” AR24011.

13 Two graphs provided by NFABSD demonstrate the stark change in transit usage as the distance  
14 increases beyond a half mile, providing evidence that refocusing development in the SDA areas will  
15 decrease access to transit instead of increasing it:

## 16 Transit adoption depends heavily on how close it is





AR18814 & 24009.

A commenter explained real-world examples of how this distance is perceived:

The City has not presented sufficient data to show that most people will walk, bike, or scooter one mile to transit. Half mile? Yes, and I support that. But one mile, no. Council members with young children have admitted themselves that they would not walk one mile to transit, but that perhaps people in other parts of the city would. If this is correct, then the City should present area specific data, or remove this item to develop the data. We need housing for families. But can working parents, who are unable to comment today, with kids in daycare, add 40 minutes a day to their commute? It seems unlikely. This SDA program will increase housing in areas where people will drive, increasing GHG emissions, and working against the City's climate goals.

AR5076.325:21 – 326:12.

Petitioner and NFABSD also noted that contrary to the City's claims, the SDA definition is inconsistent with the City's other plans and policies that call for density in proximity to transit.

AR24038; AR24042 – 24045; AR24063; 23146 - 23147. For instance, NFABSD observed that "expanding [Complete Communities Program] out to 1 mile from transit with SDAs is ... inconsistent with smart growth principles as outline in the [Complete Communities] PEIR and would not create the 'compact, walkable communities close to transit connections' on which the PEIR evaluated impacts."

AR24063. NFABSD explained:

Creating 'compact, walkable communities close to transit' requires that projects be clustered together near transit to allow a person to make multiple stops (shopping, dining, entertaining, medical, etc.) within a single visit. ... San Diego is projected to add less than 250,000 residents by 2050. If these residents are distributed over an area a mile away from transit, as proposed by the SDA, then there won't be a sufficient increase in

1 collective density in any one area to generate the needed variety of uses needed to make  
2 the area a transit destination.

3 AR24064.

4 NFABSD further noted that adoption of the SDA is inconsistent with the City’s Climate Action  
5 Plan (“CAP”) and the General Plan policies: “Simply substituting SDAs for TPAs does not account for  
6 the dramatic environmental impacts of adding ½ mile distance between dense housing and transit on  
7 reaching CAP goals or achieving City of Villages (compact villages) or urban hub strategies prescribed  
8 by the San Diego General Plan.” AR24065. “[T]he dense development that SDAs will allow beyond ½  
9 mile from transit is likely to result in significant increases in GHG and VMT, in direct conflict to San  
10 Diego’s CAP.” AR24044. “The City won’t be focusing new growth along high density transit  
11 corridors, so future housing development within the project areas will not be consistent with the  
12 General Plan’s City of Villages strategy or with Action 3.1 of the CAP, which calls for implementation  
13 of the General Plan’s Mobility Element and the City of Villages strategy **in TPAs** to increase use of  
14 transit and active modes of transportation.” AR24068 (emphasis in original).

15 Instead of directing development where active transportation already exists or is planned, the  
16 City is presenting an aspirational goal that building more houses and increasing density might  
17 encourage future investment in transportation in more remote areas. The SDA definition provides that  
18 “Sustainable Development Area means the area within a defined walking distance along a pedestrian  
19 path of travel from a major transit stop that is existing or planned, if the planned major transit stop is  
20 included in a transportation improvement program or applicable regional transportation plan ...”  
21 AR4186. Commenters noted that the City’s inclusion of “applicable regional transit plans” would  
22 mean not only that no transit currently existed, but that it might not exist for decades. AR5076.032.  
23 “Regional Transit Plans” provide long-range transportation plans over many years, referring to transit  
24 stops that might or might not get funded and realized in the near future. On the other hand, “Regional  
25 Transportation Improvement Programs” “allocate[]funding to near-term projects that implement the  
26 Regional Plan.” AR1974. The City is not only expanding the distances from the transit stops, but also  
27 basing the reference point for so called transit-oriented development on transit that might or might not  
28 be funded or come online in the near future.



1 NFABSD commented: “we also want to target development where there's a realistic sense - a  
2 possibility of ... transit coming online, either existing now, or in the next four to five years.”

3 AR5076.032:12 – 15. “If this is the incentive we're going to use - it's one thing to say we're going to  
4 walk a mile to get to the bus stop, but waiting a couple of decades for the bus to arrive doesn't make  
5 sense to us.” AR5076.033:11 – 14.

6 Without a substantiated assessment of transit usage or other impacts, the proposed SDA  
7 definition will lead to unplanned development across the City rather than “transit-oriented  
8 development.” The chair of the Planning Commission observed:

9 Higher density is great where it makes sense. And it definitely makes sense in transit-  
10 oriented areas. So that's why, to me it's important that transit-oriented areas is realistic; ...  
11 and it actually produces what we're trying to do, which is to get people close to transit.  
12 But when ... 60 percent of the city is in transit-oriented areas, to me, that's, that's building  
13 potentially, the sprawl, the horizontal sprawl that we're trying to avoid by making sure  
we, we put our higher density and condensed areas that really can take advantage of  
transit oriented areas.

14 AR5076.104:12 – 19.

## 15 **II. The Opposition Misrepresents CEQA’s Requirements**

16 The Opposition, basing its arguments solely in a “Standard of Review” section, claims once a  
17 program EIR is prepared, the agency’s “decision not to prepare an SEIR for a later project is reviewed  
18 under the deferential substantial evidence standard.” Opp. at 15:10 – 12 (quoting *Friends of the*  
19 *College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016), 1 Cal.5<sup>th</sup> 937,  
20 957 (“*San Mateo Gardens*”). It further asserts “this deferential standard is a reflection of the fact that  
21 in-depth review has already occurred.” Opp. at 15:22 – 23 (quoting *Citizens for Responsible Equitable*  
22 *Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4<sup>th</sup> 598,  
23 611 (“*CREED*”). However, this argument ignores CEQA’s requirements and its reliance on caselaw is  
24 misplaced.

25 The California Supreme Court in *San Mateo Gardens* observed: “The subsequent review  
26 provisions can apply only if the project has been subject to initial review; they can have no application  
27 if the agency has proposed a new project that has not previously been subject to review.” *San Mateo*  
28 *Gardens*, 1 Cal.5<sup>th</sup> at 950 (emphasis added). In *Save Our Access v. City of San Diego* (2023) 92  
Cal.App.5<sup>th</sup> 819 (“*Save Our Access*”), the court further explained the applicable section of CEQA and

1 the correct standard when a project is “not the same as or within the scope of” prior environmental  
2 analysis:

3 The California Supreme Court explained “when a program EIR is employed, if a later  
4 project is not ‘either the same as or within the scope of the project ... described in the  
5 program EIR,’ then review of the proposal is not governed by section 21166’s deferential  
6 substantial evidence standard. [*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th  
7 1307, 1321 (citing CEQA Guidelines § 15168(c)(5).] Instead, under ... section 21094, the  
8 agency is required to apply a more exacting standard to determine whether the later  
project might cause significant environmental effects that were not fully examined in the  
initial program EIR.” [*Friends of the College of San Mateo Gardens v. San Mateo County  
Community College Dist.* (2016) 1 Cal.5th 937, 960.]

9 *Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819, 845.

10 In an attempt to distract from the applicable case law and the correct standard of review, the  
11 Opposition faults Petitioner for relying on *Save Our Access*. Opp. at 16:8 -16. However, in doing so it  
12 misrepresents the court’s holding and the reasoning for applying the fair argument standard. Contrary  
13 to the Opposition’s claims, the court’s decision was not based on “email statements by the planning  
14 department providing unsubstantiated opinions.” *Id.* The emails were only a part of the argument  
15 raised by the City that the court did not find convincing to support that the prior environmental  
16 analysis considered environmental impacts of the later project. *Save Our Access v. City of San Diego*  
17 (2023) 92 Cal.App.5th 819, 858. In *Save Our Access*, the court “appl[ied] the fair argument test to  
18 review an agency’s determination whether to prepare a new or supplemental EIR in a later new project  
19 following certification of a program EIR” and held that removal of the Coastal Zone height limit from  
20 the Midway-Pacific Highway Community Planning Area was not considered in the prior EIR the  
21 agency relied on. *Id.* at 860. The Court considered multiple evidence in the record beyond the staff  
22 emails mentioned in the Opposition and explained:

23 The City’s strained argument that removal of the height limit is within the scope of the  
24 PEIR is simply not supported by the administrative record. The CPU’s proposed land-use  
25 map identified the number of dwelling units permitted per acre for specific lots. The land  
26 use table identified the number of residential dwelling units allowed for each community  
27 plan designation along with the City-wide base zone designation and the base zone floor  
28 area ratio. The proposed zoning map showed new zoning designations per parcel. The  
PEIR’s project description summary stated, “The land use is analyzed at build-out using  
total dwelling unit yield.” (Italics added.) These documents primarily focused on how  
many dwelling units were allowed per parcel under the newly proposed zones. There was  
no discussion or analysis of building heights.

1 *Id.* at 852 – 53.

2 Similarly, the City’s reliance on the CEQA Evaluation Memo is flawed as the administrative  
3 record does not support the City’s strained argument that “the *impacts* of the new SDA designation  
4 were heavily and contemporaneously assessed” Opp. at 16:14 – 16. Contrary to the City’s arguments  
5 and similar to the situation in *Save Our Access*, the CEQA Evaluation Memo did not consider whether  
6 elimination of the TPA definition and adopting the SDA definition that expands land areas beyond  
7 TPA while refocusing development incentives was “the same or within the scope of” any of the four  
8 environmental documents.

9 Furthermore, the Opposition erroneously relies on *CREED*, which is distinguishable here. Opp.  
10 at 16:19 – 27. In *CREED* the court applied the substantial evidence standard under Section 21166, as it  
11 found that the later hotel project was within the scope of the prior environmental analysis. *Citizens for*  
12 *Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency*  
13 (2005) 134 Cal.App.4th 598, 616 (“Respondents point to considerable evidence in support of their  
14 determination that the potential environmental impacts of the hotel project were within the scope of the  
15 MEIR and the SEIR”). However, that is not the case here. The Opposition’s reliance upon *CREED* is  
16 misplaced as it skips a crucial step of CEQA’s statutory scheme: assessing whether the later project is  
17 within the scope of the prior environmental analysis. CEQA Guidelines § 15168(c). In fact, the *Save*  
18 *Our Access* court also distinguished the holding of the *CREED* decision:

19 This is not like the situation in *CREED*, supra, where the City pointed to considerable  
20 evidence in support of its determination that the environmental impacts of a hotel project  
21 were adequately considered in a program EIR prepared in connection with a community  
22 plan. It is more like the facts in *Sonoma*, ... [where] [t]he appellate court determined that  
23 the request to mine on land that was designated as an agricultural resource was not within  
24 the scope of the project or plan described in the program EIR. It, therefore, applied the  
25 fair argument test to determine if further environmental analysis was necessary under  
26 CEQA.

27 *Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819, 858-859 citing *CREED*, 134  
28 Cal.App.4th 598 at 603-604 and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-  
1321. The same consideration applies here.

As explained by the *Save Our Access* court, the City must first assess whether the SDA  
definition is “the same as, or within the scope of” the prior environmental analysis. If the project is not

1 “the same as, or within the scope of” the prior environmental analysis, the fair argument standard is  
2 applicable. *Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819, 860; *See also Sierra*  
3 *Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. And in this instance, the City failed entirely to  
4 support any such determination.

5 **III. Elimination of the Transit Priority Area Definition Was Not “the Same as or Within the**  
6 **Scope” of Prior Environmental Analysis**

7 The Opposition claims the CEQA Evaluation Memo “determined the Project is consistent with  
8 the Certified Underlying Environmental Documents” and concluded that “implementation of the  
9 Project would not result in new or more severe significant impacts over and above those disclosed in  
10 the previously certified environmental documents.” Opp. at 16: 17 – 21. However, the CEQA  
11 Evaluation Memo had not considered whether the Project, Item No.5, was “the same or within the  
12 scope of” any of the four environmental documents it identifies. It did not provide an explanation of  
13 how expansion of land areas beyond the TPA definition and refocusing development incentives was  
14 considered in the scope of those prior environmental analyses. The Opposition does not argue  
15 otherwise either, it is simply parroting the Staff’s evaluation in the CEQA Evaluation Memo. It  
16 provides no other evidence from the record, no citations to where these prior environmental documents  
17 discussed a change imposed by the SDA definition. It does not and cannot, because this change was  
18 not the same as prior projects and was not considered within the prior environmental analysis.

19 The Opposition contends that “Petitioner spends little time discussing the underlying policy it  
20 did not timely challenge” referring to the Complete Communities Program. Opp. at 5:19 – 22. It  
21 further claims that the development incentives provided by the Complete Communities Program  
22 “increase affordable housing near transit ... [and] they are also what drive the opponents here.” Opp. at  
23 6:20-22. These assertions show that the City has missed the purpose of the discussion regarding the  
24 Complete Communities Program, as well as Petitioner and other commenters’ concerns that the SDA  
25 definition is expanding beyond the TPA areas that are eligible for the Complete Communities Program  
26 without analyzing the environmental impacts of such expansion.

27 To address the Opposition’s concern and explain the discussion in the Opening Brief regarding  
28 the Complete Communities Program, the scope of the environmental analysis in the Complete

1 Communities PEIR is limited to impacts of the increased development that will occur within the TPAs  
2 with the incentives provided by the Complete Communities Program. Opening Brief at 12:20 – 14:6.  
3 As acknowledged by the Opposition, “[d]evelopment projects must comply with several requirements  
4 in order to benefit under the Complete Communities Program, including the requirement that the  
5 project must be located within a TPA.” Opp. at 6:1-4. The Complete Communities Program provides a  
6 streamlined environmental analysis for development projects within the TPAs. The staff report  
7 regarding the Complete Communities program explained:

8 A straight application of guidance from the State Office of Planning and Research  
9 regarding SB 743 would result in burdensome environmental review for the areas within  
10 San Diego that are the closest to transit and the most likely to utilize new investments in  
11 walking, biking, and transit facilities. Mobility Choices tailors the requirements of SB  
12 743 to San Diego’s needs by providing a clear and easy streamlined process for all new  
13 development located in transit priority areas and in VMT efficient communities, as well  
14 as ensuring corresponding investments in these same areas to ensure that facilities needed  
15 to reduce vehicular travel are implemented. Without Mobility Choices, new development  
16 – in the precise areas where we want to see most new development occurring – will face  
17 burdensome and lengthy environmental review procedures under CEQA.”

18 AR3140 (emphasis added).

19 The Complete Communities PEIR analyzed the impacts associated with new development  
20 specifically located in the Transit Priority Areas, or TPAs. There is no indication that the analysis in  
21 the Complete Communities PEIR anticipated expansion of these areas beyond what was described in  
22 the Complete Communities Program as the Transit Priority Areas. However, that is exactly what the  
23 SDA definition provides. Indeed, the CEQA Evaluation Memo when discussing the project’s  
24 “consistency” with the Complete Communities PEIR states that “the SDA definition expands land  
25 areas beyond the TPA definition while also refocusing city development incentives in areas that are  
26 more transit-supportive. In some instances places outside of the TPA definition will be allowed  
27 increased development incentives.” AR21312. The Opposition’s policy arguments that the City  
28 Council approved the project because “the City is in need of affordable housing near transit” does not  
change the fact that the City cannot bypass the environmental analysis required under CEQA. At the  
October 27, 2022 Planning Commission Hearing, Commissioner Miyahara questioned whether the  
Land Development Code could have included the SDA definition without changing the TPA  
definition, and the Planning Director Heidi Vonblum’s responded:

1 The tension there is our compliance with our California Environmental Quality Act. So  
2 you have in your materials, a memo written by our Department's environmental team,  
3 relying and tiering off of prior environmental impact analyses done, including the  
4 Complete Communities EIR. And so we would need to go back and do an additional  
5 analysis, confer with the City Attorney's Office to see if we can provide the proper  
6 CEQA coverage for that type of expansion.

7 AR5076.087:24 – 0.88:8. This response acknowledges that expansion of the previously defined areas  
8 requires additional analysis. The City expanded the previously defined and analyzed TPA areas by  
9 replacing this definition with “SDA” definition, however, it failed to provide the required analysis in  
10 this case. Contrary to the Opposition’s claims the expansion the City is proposing with the SDA  
11 definition is not simply adding areas “immediately adjacent to areas” covered by the existing TPA  
12 definition. Opp. at 22:15. A close up of the maps presented by the City staff at the Planning  
13 Commission meeting demonstrates the extent of this expansion the City is undermining. AR18626;  
14 Exhibit 1.

15 Furthermore, the Opposition claims that one mile from a major transit stop is “a reasonable  
16 distance for VMT efficient communities” referring to the policy discussion in the CEQA Evaluation  
17 Memo regarding the Complete Communities PEIR. Opp. at 8:3-10:9; See AR21311-213112. Without  
18 any evidence from the environmental analysis, the Opposition claims that the new SDA areas are  
19 “areas where critical active transportation investments can be delivered most efficiently, resulting in  
20 the greatest level of VMT reductions...” Opp. at 8:17-18; See AR21311. However, this argument is not  
21 supported by the analysis in the Complete Communities PEIR. A close look into the transportation  
22 analysis provided by the Complete Communities PEIR shows the opposite.

23 The Complete Communities Program included adoption of the Transportation Study Manual  
24 (“TSM”) that will “implement the required shift from a level of service (LOS) analysis to a vehicle  
25 miles travelled (VMT) CEQA analysis.” AR3139, AR3161. The TSM provides guidance for  
26 transportation studies in addressing all future developments’ environmental impacts and explains that  
27 “[t]ransportation studies are intended to identify the transportation impacts of proposed development  
28 projects and to determine the need for any improvements to the adjacent and nearby road system to  
achieve acceptable mobility for vehicles, bicyclists, pedestrians, and transit.” AR3162. The  
transportation analysis imposed by TSM considers adjustments “for projects that are in close proximity

1 to transit stops,” which TSM defines as “0.5 miles from the Major Transit Stop”. AR3168 (emphasis  
2 added). Specifically, Table 1 of the TSM titled “Driveway Trip Reductions to Account for Transit,  
3 Bicycle, And Pedestrian Use Within ½ Mile Path Of Travel To A Major Transit Stop,” “displays  
4 driveway trip rate reductions that are allowable for development within a ½ mile path of travel to a  
5 Major Transit Stop” as daily, AM peak and PM peak hour percentages. AR3168. Accordingly, the  
6 TSM states that “[t]he percentages provided in Table 1 can be used for the percentage of trips that are  
7 expected to be transit, bicycling, or walking trips if a project is located within ½ mile path of travel to a  
8 Major Transit Stop. If the project is not located within ½ mile path of travel to a Major Transit Stop,  
9 then these values should be entered as 0%.” AR3169 (emphasis added). The City’s determination that  
10 developments “within ½ mile path of travel to a Major Transit Stop” can apply transit adjustments as  
11 trip reductions in their VMT analysis shows that “ ½ mile” is a reasonable expectation for use of  
12 transit. The City’s subsequent determination in the CEQA Evaluation Memo that one mile from a  
13 major transit stop is a “reasonable distance for VMT efficient communities” is inconsistent with the  
14 analysis in the TSM adopted with the Complete Communities PEIR. The SDA definition “expands  
15 land areas beyond the TPA definition” in other words will direct projects to land areas not “located  
16 within ½ mile path of travel to a Major Transit Stop.” This is beyond what was considered within the  
17 scope of Complete Communities PEIR. The project analyzed in the Complete Communities PEIR  
18 adopted a detailed metric that expected “transit, bicycling and walking trips” would occur within ½  
19 mile, yet the SDA definition doubles the distance expected and analyzed by the prior environmental  
20 analysis. Adoption of the SDA definition is inconsistent with the City's prior environmental analysis.

#### 21 **IV. The Replacement of the TPA Definition and Increase in Development Incentives Will** 22 **Lead to Significant Environmental Impacts**

23 “[I]f there is substantial evidence in the record that the later project may arguably have a  
24 significant adverse effect on the environment, which was not examined in the prior program EIR,  
25 doubts must be resolved in favor of environmental review and the agency must prepare a new tiered  
26 EIR, notwithstanding the existence of contrary evidence.” *Sierra Club v. County of Sonoma* (1992) 6  
27 Cal.App.4th 1307, 1319; see also *Friends of the College of San Mateo Gardens*, 1 Cal.5th at 960.  
28

1 The replacement of the TPA definition and increase in development areas eligible for  
2 incentives with the SDA definition will lead to significant impacts that were not analyzed in the prior  
3 environmental analyses. At the October 27, 2022 Planning Commission Hearing Commissioner  
4 Miyahara expressed the concerns regarding potential environmental impacts of the Project:

5 There's some, some impacts in areas that I would think would be great for housing. ... So  
6 I'm having a hard time just trying to digest this on the fly, and understand what potential  
7 impacts this could create. I think that some of the public comment, there is some merit to  
8 it, right? I haven't seen this much public comment since becoming a commissioner. So I  
9 think that's a testament to some of the concern from the public. .. I think that we need to  
10 digest this a bit more, and then really understand what potential impacts this could have.

11 AR5076.068: 17 – 069:15.

12 Professor Nico Calavita's letter pointed out several impacts the proposed SDA definition might  
13 cause:

14 To understand the potential impact of this proposal it is important to understand that  
15 increasing density can have positive and negative consequences. Densification is good  
16 because it allows the production of much needed housing and — when placed in the right  
17 places — increases mass transit ridership. ... If not concentrated near transit, it will  
18 increase car usage — and with it, traffic congestion, pollution, demand for parking, and  
19 so on. Additionally, it will increase the demand for public facilities, especially parks and  
20 open space.

21 AR22058. The letter further explained:

22 Allowing greater density will increase the value of the land under existing homes, making  
23 them more expensive and less affordable to home buyers or renters. This is the  
24 unintended, but tragic, consequence of the SDAs. Some “affordable” housing will be  
25 provided, but only temporarily; the increase in the cost of housing will be permanent.

26 ...  
27 Additionally, the city seems to have abandoned plans to provide additional acreage for  
28 parks/open space in the areas where the most densification is taking place. That is odd,  
because a centuries-old tenet of planning is that higher density should be accompanied by  
additional open space. If implemented, SDAs would eliminate the existing network of  
informal open space provided by backyards, add more density, and not provide additional  
open space where especially needed.

AR22059.

The Opposition claims “this new geographic designation is intended to align with the City’s  
[Climate Action Plan] (“CAP”) goals to ensure that the City’s home development incentive programs  
focus development in areas have convenient access to high quality transit and safe and enjoyable



1 walking, rolling and biking options for moving around.” Opp. at 6:26 - 7:1. However, that is not what  
2 is proposed with the SDA definition. NFABSD’s analysis regarding the relationship between distance  
3 and transit usage showed that the decrease in transit ridership as homes move away from the transit  
4 stops would result in a likely failure to meet “climate action goal even in the SDA, let alone over the  
5 entire city.” AR24011. The letter explained:

6 Contrary to the assertion of the Planning Department that extending the SDA to one mile  
7 walking distance provides “transit supportive” housing, modeling of San Diego’s limited  
8 future population growth demonstrates that increasing the SDA distance actually  
9 decreases overall transit adoption citywide. Given San Diego’s ambitious transit adoption  
10 goals, it is paramount that we add new housing and residents as close as possible to  
11 transit corridors.

12 AR24012. “By moving new housing opportunities further away from transit, employment, shopping,  
13 etc., SDAs will result in increased auto usage, greenhouse gas emissions, vehicle miles traveled, etc.  
14 These impacts have not been evaluated by an EIR.” AR24037. At the October 27, 2022 Planning  
15 Commission Hearing a representative of NFABSD stated that this kind of expansion is considered “to  
16 be infield sprawl, not taking climate action.” AR5076.033:2 – 8.

17 Considering various comments raised against the adoption of the SDA definition and the data  
18 presented by the commenters, the predicted transit usages within the proposed SDAs constitute a  
19 substantial change that will lead to significant environmental impacts. These impacts were not  
20 addressed by the City in any prior environmental analysis, and therefore, require the City to conduct  
21 the appropriate analysis.

## 22 CONCLUSION

23 Accordingly, the writ should be granted and the approval of the Project overturned by this  
24 Court.

25 DATED: December 9, 2024

26 Respectfully Submitted,

27 **DELANO & DELANO**

28 By:  //s/Ezgi Kuyumcu\_\_\_\_\_  
Ezgi Kuyumcu  
Attorneys for Petitioner

# **EXHIBIT 1**

**Enlarged versions of the maps provided by the City staff at the October 27, 2022 Planning Commission Meeting (AR18626):**

