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CITY OF SAN DIEGO AND
7 CITY OF SAN DIEGO PLANNING DEPARTMENT

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9
10 LIVABLE SAN DIEGO, an unincorporated) Case No. 37-2023-00014623-CU-TT-CTL
association,)
11) **RESPONDENT CITY OF SAN DIEGO AND**
Petitioner,) **REAL PARTY IN INTEREST CITY OF SAN**
12) **DIEGO PLANNING DEPARTMENT'S**
v.) **BRIEF IN OPPOSITION TO PETITIONER'S**
13) **OPENING BRIEF IN SUPPORT OF**
CITY OF SAN DIEGO, a public body) **PETITION FOR WRIT OF MANDATE**
14 corporate and politic, and DOES 1 through)
5, inclusive,) **[IMAGED FILE]**
15)
Respondents.) Date: January 10, 2025, 2024
16) Time: 9:00 a.m.
Judge: Hon. James A. Mangione
17) Dept.: 75
CITY OF SAN DIEGO PLANNING)
18 DEPARTMENT, and DOES 6 through 10,)
inclusive,) Action Date: April 7, 2023
19) Trial Date: January 10, 2025
20)
Real Parties in Interest.)
21)

22 Respondent City of San Diego and Real Party in Interest City of San Diego Planning
23 Department (City) submit the following in opposition to petitioner Livable San Diego
24 (Petitioner) petition for writ of mandate (Petition).
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I.

INTRODUCTION

At its core, this action opposes a change to a geographic designation that brings new housing to public transit from ½-mile up to 1-mile based on more accurate data in how that geographic area is measured. It was previously measured in a *straight line* or “as the crow flies” that did not consider barriers such as canyons and highways and was defined as a “Transportation Priority Area” (TPA). The TPA was adopted in 2020 by Ordinance No. O-21275¹ as part of the Complete Communities Housing Solution Program (Complete Communities Program). It is undisputed that the Complete Communities Program was adopted under an unchallenged Program Environmental Impact Report (PEIR) and any challenge to the PEIR is time-barred.

In 2023, the City adopted its annual update to City’s Land Development Code² (2022 Update). All changes comprising the 2022 Update are identified in the 2022 LDC Update Matrix in Administrative Record (AR) Bates No. 4201-4212. As part of the LDC update, the City included a new definition of a “Sustainable Development Area” (SDA) under Item 5 (“SDA” or “the Project.”) The Project was adopted on March 7, 2023, by Ordinance No. 21613. (AR Tab 22, Bates No. 199-296.)

Unlike TPAs which measure distance to public transit in a straight line, SDAs measure by *walking distance* taking natural and physical barriers into account to maximize more home opportunities near public transit. Unlike TPAs which used a 0.5-mile “as the crow flies” measure, SDAs use a 0.75 to 1-mile walking distance measure. Like projects located in TPAs, projects located in SDAs receive development incentives as detailed below to induce them to build more homes near public transit. Most of the objection to the Project, including by Petitioner, is a NIMBY-rooted distaste of densely populated multifamily homes near single family residences.

¹ See City’s Request for Judicial Notice (RJN), Exh. 1

² The City’s Land Development Code “LDC” means chapters 11-15 of the San Diego Municipal Code (SDMC) comprising the regulations for development and use of property within the City.

1 While Petitioner challenges SDAs, Petitioner does not and cannot challenge that: (1)
2 building new homes close to public transit forms the foundation of the City’s Climate Action
3 Plan (CAP)³, (2) building new homes to close to public transit forms the foundation of all City
4 planning documents, including its General Plan,⁴ which is the blue print for all local
5 development, (3) the development incentives offered to build more homes near public transit
6 were adopted several years ago under the City’s Complete Communities Program, and (4) all the
7 above regulations, as well as their supporting environmental documents, are at this point immune
8 from legal challenge. In other words, the entire City is being developed to bring as many people
9 as possible closer public transit and that cannot be second guessed by Petitioners or challenged in
10 this action. Yet, that is precisely what Petitioner attempts to do when it challenges the
11 measurement from a straight line to walking distance under the theory that the environmental
12 impacts were not previously considered. The impacts were extensively considered and
13 determined to be in conformance with four (4) previously certified environmental documents.
14 Requiring preparation of yet another environmental impact report (EIR) serves no further
15 purpose and only invites abuse of the California Environmental Quality Act (CEQA).

16 **II.**

17 **FACTUAL AND PROCEDURAL HISTORY**

18 **A. Complete Communities Housing Solutions – Transportation Priority Areas**

19 Petitioner spends little time discussing the underlying policy it did not timely challenge,
20 namely Ordinance No. O-21275 adopted on December 9, 2020, relating to the Complete
21 Communities Housing Solution Program (Complete Communities Program). (RJN, Ex. 1.) The
22 Complete Communities Program offers an opt-in incentive program intended to assist the City in
23 meeting its goals for increased affordable housing by incentivizing the construction of housing in
24 multi-family and mixed-use commercial areas served by transit. (*Ibid.*) The Complete
25 Communities Program is intended to streamline the development process and remove regulatory
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27 _____
28 ³ See City’s Request for Judicial Notice (RJN), Exh. 3.

1 barriers to housing construction where possible. (*Ibid.*) Development projects must comply with
2 several requirements in order to benefit under the Complete Communities Program, including the
3 requirement that the project must be located within a TPA [now SDA]. (*Ibid.*) “Transit priority
4 area” is defined in Municipal Code § 113.0103 as “the area defined in California Public
5 Resources Code Section 21099, . . . or an area within one-half mile of a major transit stop that is
6 existing or planning, if the planned major transit stop is scheduled to be completed within the
7 planning horizon included in a Transportation Improvement Program.” “Major transit stop,” in
8 turn, is defined in Municipal Code § 113.0103 as “a site as defined in California Public
9 Resources Code section 21064.3, . . . or a site that contains an existing rail transit station, a ferry
10 terminal served by either a bus or rail transit service, or the intersection of two or more major bus
11 routes with a frequency of service interval of 15 minutes or less during the morning and
12 afternoon peak commute periods.”

13 Development projects that meet the requirements for the Complete Communities
14 Program receive a number of development incentives, including: (1) development density
15 governed by a new floor area ratio; (2) development height governed by the allowed floor area
16 ratio; (3) affordable housing incentives and waivers; and (4) scaling of development impact fees
17 based on development square footage. (*Ibid.*) Projects qualifying under Complete Communities
18 are processed with ministerial review unless site-specific conditions such as impacts to
19 environmentally sensitive lands or historical resources or a coastal development permit warrant a
20 discretionary approval. (*Ibid.*) While these development incentives increase affordable housing
21 near transit because larger more densely populated projects become possible, they’re also what
22 drive the opponents here.

23 **B. LCD 2022 Update Item 5 - Sustainable Development Areas (SDAs)**

24 As detailed in the staff report to City Council (AR Tab 32, Bates No. 4186-4189), the
25 Project creates a new definition for geographic designation for certain housing programs that
26 used the geographic area defined as a TPA in SDMC section 113.0103. This new geographic
27 designation is intended to align with the City’s CAP goals to ensure that the City’s home
28 development incentive programs focus development in areas have convenient access to high

1 quality transit and safe and enjoyable walking, rolling and biking options for moving around.
2 Locating new homes near transit where people are more likely to have lower rates of vehicular
3 travel is a key component identified in Strategy 3 of the City’s CAP. SDA means the area within
4 a defined walking distance along a pedestrian path of travel from a major transit stop that is
5 existing or planned, if the planned major transit stop is included in a transportation improvement
6 program or applicable regional transportation plan, as follows: (a) Within Mobility Zones 1 and
7 3, as defined in Section 143.1103, the defined walking distance is 1.0 mile; (b) Within Mobility
8 Zone 4, as defined in Section 143.1103, the defined walking distance is 0.75 miles; and (c) For
9 parcels located in Mobility Zone 4, in an area identified as a High or Highest Resource
10 California Tax Credit Allocation Committee Opportunity Area, the defined walking distance is
11 1.0 mile. (AR Tab 32, Bates No. AR 4186) In addition, an adopted specific plan shall be within
12 the SDA if the SDA is within a portion of the adopted specific plan. This requirement was also
13 applicable to TPAs. (AR Tab 32, Bates No. 4186; 5076.290-91.)

14 The existing definition of a TPA, which is rooted in state law, is a high-level definition
15 that measures the areas located near transit by measuring a 0.5-mile straight line distance, rather
16 than a walking distance. At the time that the definition was originally applied to the City’s
17 development programs, more refined data showing the areas of the City that were within a close
18 walking distance to transit – considering physical barriers such as freeways and steep hillsides –
19 was unavailable. As more refined data is available, the ability to focus development in the areas
20 of the City with the best access to transit is now feasible. (AR Tab 32, Bates No. 4187.)

21 To ensure the City remains focused on maximizing opportunities for new home
22 development and to achieve the City’s climate goals, the use of the 0.5 mile straight line distance
23 from a major transit stop has been reevaluated, taking into consideration areas that have safe,
24 comfortable access to transit, and biking, walking, and rolling options for moving around. It is
25 also important to recognize that our climate goals are not just served by eliminating vehicular
26 trips with transit, but by reducing overall vehicle miles travelled (VMT). Project sites located in
27 areas with other walking, rolling and bicycle infrastructure, as well as areas that are in

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1 communities with relatively less overall vehicular travel, are also places where new development
2 can implement Strategy 3 of the CAP. (AR Tab 32, Bates No. 4187.)

3 To define a new SDA, City staff identified areas that have good walk, roll, bike and other
4 micromobility (such as e-bike, electric scooter, electric skateboard, etc.) access to transit. Taking
5 this into consideration, people who live in homes located 0.75 miles from a major transit stop, at
6 an average walking pace of three miles per hour, can reach their destination in about 15 minutes.
7 Taking into account the more compact development anticipated to occur through the City's
8 incentive programs, this is a reasonable distance of travel to a major transit stop, especially
9 where neighborhood amenities, such as grocery stores, restaurants, and other social gathering
10 spaces, can be visited along the way. This is even more true in the City's communities with
11 relatively less vehicular travel (in Mobility Zone 1 and VMT efficient communities, also defined
12 as Mobility Zone 3), where people are more likely to walk, and when they choose to drive, drive
13 fewer overall miles. In this instance, people who live in homes located one mile from a major
14 transit stop, at an average walking pace of three miles per hour, can reach their destination in
15 about 20 minutes. This is a reasonable distance for VMT efficient communities with more
16 investments existing and planned for walking, rolling, biking and transit. This is especially
17 important because these are areas where critical active transportation investments can be
18 delivered most efficiently, resulting in the greatest levels of VMT reductions, especially where
19 increased density will exist to support the investments. (AR Tab 32, Bates No. 4187.)

20 To ensure the SDA furthers fair housing throughout the City, the walking distance of a
21 major transit stop increases from 0.75 to 1.0 miles in Mobility Zone 4 to include properties in
22 areas designated as Highest and High Resource Opportunity Areas by the California Tax Credit
23 Allocation Committee. This would expand the eligibility of the City's housing incentive
24 programs and allow for more affordable housing in areas with more economic and education
25 opportunities and fewer environmental issues. These additional home opportunities are in
26 alignment with the City's climate goals since these are areas where generally people are more
27 likely to walk, roll, bike or use transit to move around, as opposed to areas that would be

28 ///

1 removed from SDA (areas that are currently outside a 0.5 mile walk distance from transit).

2 (*Ibid.*)

3 The SDA expands land areas beyond a TPA while also refocusing City incentive
4 programs in areas that are more transit supportive. In some instances, land areas outside of the
5 TPA definition will now be eligible for City incentive programs, while in other instances, the
6 number of eligible land areas would retract. (AR Tab 32, Bates No. 4188.)

7 Staff completed a parcel level analysis to determine the overall impact of the changes
8 from a TPA to an SDA. The analysis shows an increase in the approximate acreage of
9 developable land overall and in the acreage available to use the City's home incentive programs.
10 (AR Tab 32, Bates No. 4188.) The new areas added in the SDA have better overall access to
11 transit, neighborhood services, shopping, and jobs, making them generally more attractive for
12 new development over areas located further from transit. These areas also provide easier and
13 more efficient opportunities to expand infrastructure investments because they are located closer
14 to existing services and facilities. Additionally, parcels that are within a TPA and not within an
15 SDA will continue to be able to use housing programs established by the State of California.
16 Areas that fall under the existing definition of a TPA because they are located within the
17 measurable distance of 0.5 mile from transit, but that are located outside of the designated
18 walkshed for the SDA are proposed to be removed from eligibility from local bonus programs,
19 essentially shifting development to areas that are more conveniently located to transit. (AR Tab
20 32, Bates No. 4188.)

21 While developing the SDA definition, staff reviewed the use of a 0.5 mile walkshed and
22 the use of the Regional Transportation Improvement Program five-year transportation network.
23 Both proposals would result in a reduction of the area of eligibility for the City's housing
24 programs compared to the current TPA. The reduction would also be more prevalent in high
25 resource communities. Removing opportunities for increased housing in high opportunity areas
26 could be counter to the State of California Housing Crisis Act of 2019, which limits cities'
27 ability to reduce the intensity of land uses available for housing. Additionally, cities are required
28 by State Law to take meaningful actions that affirmatively further fair housing by addressing

1 significant disparities in housing needs and replacing segregated living patterns with truly
2 integrated and balance living patterns. The City committed to affirmatively further fair housing
3 in its Housing Element programs and policies. (AR Tab 32, Bates No. 4188-4189.)

4 If the City were to reduce intensity of land uses in high resource communities, this could
5 be a violation of these requirements. The Department of Housing and Community Development
6 has an Accountability and Enforcement Division that enforces these statutes and has the ability
7 to decertify housing elements that are not in compliance with state law. Without a certified
8 housing element, the City could face limited access to state funding, fines, and fees, and could be
9 subject to legal challenges that suspend local land-use authority. (AR Tab 32, Bates No. 4189)

10 In addition to the staff report cited above, City staff prepared a CEQA Guidelines section
11 15162 consistency evaluation memorandum (Consistency Memorandum) detailing why the
12 Project is consistent with prior certified environmental documents and would not result in new or
13 more severe significant impacts over and above those previously disclosed. (AR Tab 940, Bates
14 No. 21299-21328.) The full memorandum is incorporated by reference herein and discussed in
15 detail in Section III below. After having considered all environmental impacts, City staff
16 determined the Project is consistent with (1) the Addendum to the General Plan PEIR for the
17 Housing Element Update, (2) Final Program Environmental Impact Report (PEIR) for Complete
18 Communities: Housing Solutions and Mobility Choices, (3) Final PEIR for the Climate Action
19 Plan (CAP) and Addendum to the CAP EIR for the CAP Update (collectively “the Previously
20 Certified Environmental Documents” (AR Tab 940, Bates No. 21317). The Consistency
21 Memorandum was available in the backup materials to all decisionmakers and members of the
22 public.

23 The Project was heard by City Council on February 14, 2024, and the meeting lasted
24 several hours. (AR Tab 48A). Most of the speakers against the Project voiced objection to the
25 dense development afforded under the development incentives approved by the Complete
26 Communities Program several years prior as part of TPAs. This protracted NIMBY opposition
27 has been rejected by the Council as the City is in need of affordable housing near transit. Many
28 speakers supported the Project including non-profits:

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JESSE O'SULLIVAN: Good afternoon. My name is Jesse O'Sullivan, and I'm Policy Counsel with Circulate San Diego. We're a local nonprofit dedicated to creating excellent mobility choices and vibrant, healthy neighborhoods. I'm here speaking in support of the proposed changes to Sustainable Development Areas. City staff have taken fair housing concerns seriously, and put forward a proposal that will advance equity and climate goals. As you know, we're in a housing crisis. There is an abundance of empirical evidence to show that the answer to the housing crisis is more housing. The proposed - this proposal increases housing capacity in areas where residents can bike, walk, and take transit. You've heard some complaints that most people won't walk a mile to take the bus. That's true. But this isn't just about walking to the bus. Neighborhoods in SDAs are walkable, bikeable, and closer to jobs. This means fewer car trips. Even if our new neighbors in SDAs drive to work, they'll be driving shorter distances than they ever would. It's important to remember that the alternative to building infill homes isn't the status quo. It's more people commuting from Temecula or Campo all the way into San Diego. We need homes here. (AR Tab 48A, Bates No. 5076.313-14.)

...

Other commentators submitted evidence in support of micromobility including the rising use of electric bikes and scooters. (AR Tab 1223, Bates No. 24903.)

City staff presented an in-depth presentation with PowerPoint (AR Tab 48A, Bates No. 5076.243-5076.261; Tab 1160, AR 23477-23507) and responded to questions by the City Council:

[COUNCILMEMBER VON WILPERT]: So I would have been a hundred percent supportive had this been just a simple half mile walking distance, and I'm wondering why you changed from a half mile to a mile.

PLANNING DIRECTOR HEIDI VONBLUM: Yeah, I can answer that question. So we were asked to look into this issue of addressing the challenges associated with an as the crow flies distance. We do know that that currently results in some outlying instances of projects within a half mile as the crow flies, but because of canyons, or highways, or other physical barriers, these areas are really located much further away from transit, and have a very low probability that the City would be able to efficiency - efficiently deliver walking, biking, transit investments because of their lack of connectivity to the other network. As we looked to just simply decrease and take out those areas, one of the challenges that we have is that we are in a housing crisis, and we need to really look and make sure that we are not decreasing opportunities for new homes, and constantly looking to increase them. Of course, we want to make sure that we are increasing these home opportunities in alignment with our Climate, as well as Fair Housing goals. So when we looked to reduce it to just the half mile walking distance, it did reduce the amount of land

1 that would be available for these increased home opportunities, somewhat
2 significantly. We did check in with our partners at the State of California, in the
3 Housing Community Development Department, to see what impacts this could
4 potentially have on our Housing Element certification, as well. In order to ensure
5 that we are providing increased rather than decreased opportunities for homes
6 through the proposed amendment, we did look at the increased walking distance.
7 And keep in mind that when we say walking distance, this also means that, you
8 know, people can take an e-bike, they bike, they can roll, they can skate, skip, hop,
9 jump, whatever. So these were opportunities for us to look at different ways to
10 increase the home opportunities in the areas that are going to bring more people –
11 not just close to transit, but close to other land uses, where we have increased
12 densities, we have more opportunities to be able to deliver the needed infrastructure
13 to support the density, right? So it's, it's - I think it's Council Montgomery -
14 Councilmember Montgomery Steppe said, you know, we're, we sometimes do have
15 to walk and chew gum at the same time. We cannot have infrastructure investments
16 without the supporting density. We also can't have the density without the
17 supporting infrastructure. (AR Tab 48A, 5076.370-5076.372)

18 ...

19 **[COUNCIL PRESIDENT ELO-RIVERA]:** I do have a couple questions for
20 Planning staff. So if you could kind of just, specifically focusing on our CAP goals,
21 speak to how SDAs further our CAP goals.

22 **PLANNING DIRECTOR HEIDI VONBLUM:** Yeah. So I think I started a little
23 bit on this in the responses to Councilmember von Wilpert. Really, what we are
24 looking to do is address our housing goals, our fair housing goals, as well as our
25 climate goals, all at the same time, along with our infrastructure goals, as well.
26 They're all important, and they can't really be separated from part of the discussion.
27 One strategy within the Climate Action Plan is Strategy Three, which relates to
28 strategic land use planning, and it calls for the concentration of more housing being
accommodated in areas that can most easily have transit access. That means that
they have access to transit today, but it also means that these are areas that can have
transit and other types of nonvehicular travel infrastructure investments delivered.
It is much easier for the City to be able to deliver these types of investments in
concentrated areas across the city, instead of to lower density areas that are located
much further from other services. That includes not just jobs and access to transit
stops, but also daily activities such as visits to the park, shopping, visiting friends,
etc. These areas are areas that, that today may be located one mile away from transit,
but are much easier to increase those levels of investments to those areas. So those
levels should shrink over time. I do want to point out that this Council did just adopt
amendments to Council Policy 800-14 in December, related to infrastructure
prioritization. And now, our infrastructure prioritization process through our CAP
process specifically includes sustainability, as well as equity within the
prioritization. It also includes language that prioritizes infrastructure projects that
serve the greatest number of people, which is consistent with these areas and this
proposal. (AR Tab 48A, 5076.370-5076.372)

1 Finally, after hearing all public testimony, several councilmembers spoke in favor of
2 SDAs:

3 **[COUNCILMEMBER LEE]:** The lack of housing is also inextricably tied to our
4 homelessness crisis. The recent analysis we saw from the Voice of San Diego
5 showed that San Diego's progress on housing supply is significantly behind for well
6 over two decades. When it comes to TPAs or SDAs, what I think we can all agree
7 on is that the move from a standard based on as the crow flies, to determining actual
8 walking paths is a positive move. What we've immediately seen as a result of that
9 is the removal of a number of areas which the actual access to transit was multiple
10 miles - completely unrealistic. But I find it preposterous for any of us to assume
11 that all San Diegans either live within a half mile of transit, or can afford both
12 housing and a vehicle for travel to live anywhere else that they want. The argument
13 that no one would consider the use of transit beyond half a mile is a privileged
14 notion that none of us should accept. There are plenty of San Diegans who often
15 travel a mile, if not miles, every single day to get to work, pick up groceries, get
16 their children to and from school. And just because they're not here today to share
17 their stories doesn't mean that they don't exist. What we should ultimately aim to
18 continuously do as a Council is to activate opportunities for affordable and middle-
19 income housing, for those with the highest propensity to consider transit. (AR Tab
20 48A, 5076.348-5076.350)

...

14 **[COUNCIL PRESIDENT PRO TEM MONTGOMERY STEPPE]:** The last
15 thing I will say is that we cannot presume what another person's life is like. You
16 will walk a mile to transit if you have to. You will. And for those of us that maybe
17 have never had to, then it's easy to say that folks won't do that. But you will if you
18 have to. And I think that our job is to provide as many opportunities as possible, in
19 the way of housing, for folks who just cannot afford it, in our city. In doing that,
20 we have to consider the' infrastructure concerns - we have to. In doing that, we
21 have to consider the operational impacts. And we do need to find simplicity in this.
I also get calls from developers who want to build all types of different things, and
find it very confusing to go through our system. So I think that we have to, based
on decisions that were made before we got here. We have to do everything - we
have to walk and chew gum at the same time. We have to. (AR Tab 48A, 5076.360.)

22 Not only do Petitioner's arguments that the public and decision makers were never appraised of
23 project impacts run contrary to the record as a whole, they also run contrary to the law.

24 **III.**

25 **LEGAL ANALYSIS**

26 **A. Standard of Review Under CEQA**

27 The court must review Petitioner's challenge to the Project for prejudicial abuse of
28 discretion. "Abuse of discretion is established if the agency has not proceeded in a manner

1 required by law or if the determination or decision is not supported by substantial evidence.”
2 (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40
3 Cal.4th 412, 435). “In applying the substantial evidence standard, ‘the reviewing court must
4 resolve reasonable doubts in favor of the administrative finding and decision.’” (*Laurel Heights*
5 *Improvement Assn. v. Regents of UC* (1998) 47 Cal.3d 376, 393 (quoting *Topanga Assn. for a*
6 *Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 514.) Substantial evidence
7 means “enough relevant information and reasonable inferences from this information that a fair
8 argument can be made to support a conclusion, even though other conclusions might also be
9 reached.” (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco*
10 (2002) 102 Cal.App.4th 656, 675 (quoting CEQA Guidelines § 15384(a)). Substantial evidence
11 may include “facts, reasonable assumptions predicated upon facts, and expert opinion supported
12 by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence.”
13 (*San Franciscans, supra*, 102 Cal.App.4th at 675.)

14 “A reviewing court may neither substitute its views for those of the agency whose
15 determination is being reviewed, nor reweigh conflicting evidence presented to that body.”
16 (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497.) A court’s task “is not to
17 determine who has the better argument.” (*Vineyard Area Citizens, supra*, 40 Cal.4th at 435.)
18 Instead, “[t]he decisions of the agency are given substantial deference and are presumed correct.
19 The parties seeking mandamus bear the burden of proving otherwise, and the reviewing court
20 must resolve reasonable doubts in favor of the administrative findings and
21 determination.” (*Sierra Club, supra*, 121 Cal.App.4th at 1497.)

22 When reviewing an alleged procedural violation under CEQA, the “courts shall continue
23 to follow the established principle that there is no presumption that error is prejudicial.” (Cal.
24 Pub. Res. Code § 21005(b); *Neighbors for Smart Rail v. Exposition Metro Line Construction*
25 *Authority* (2013) 57 Cal.4th 439, 463.) Prejudice can only be found if the error “deprived the
26 public and decision makers of substantial relevant information about the project’s likely adverse
27 impacts.... Insubstantial or merely technical omissions are not grounds for relief.” (*Ibid.*) The
28 petitioner bears the burden of showing how an alleged defect “deprived any affected persons the

1 realistic opportunity to protect their interests.” (*Rominger v. County of Colusa* (2014) 229
2 Cal.App.4th 690, 709, 711.) Substantial evidence does not include “argument, speculation,
3 unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or
4 evidence of social or economic impacts which do not contribute to or are not caused by physical
5 impacts on the environment.” (CEQA Guidelines § 15384(a).)

6 With respect to consistency determinations, after the certification process for the program
7 EIR is complete, implementation of the program can proceed without further environmental
8 review unless specific circumstances requiring “major revisions” to the certified EIR exist. (Cal.
9 Pub. Res. Code § 21166, CEQA Guidelines §15162; *Ctr. for Biological Diversity v. Dep’t of*
10 *Fish & Wildlife* (2015) 234 Cal.App.4th 214, 233-34.) The California Supreme Court has held
11 that “once an agency has prepared [a program] EIR, its decision not to prepare an SEIR for a
12 later project is reviewed under the deferential substantial evidence standard. (*Friends of the*
13 *College of San Mateo Gardens v. San Mateo Comm. College Dist.* (2016) 1 Cal.5th 937, 957
14 [hereinafter *San Mateo Gardens*]; *Citizens for Responsible Equitable Environmental*
15 *Development v. City of San Diego Redevelopment Agency (CREED)* (2005) 134 Cal.App.4th
16 598, 610; see also *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th
17 689, 702; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco (CSTI)*
18 (2014), 227 Cal.App.4th 1036, 1049-50; *Latinos Unidos de Napa v. City of Napa* (2013) 221
19 Cal.App.4th 192, 201-02.) *CREED* explained that a “reviewing court upholds the agency’s
20 decision not to require an SEIR if the administrative record as a whole contains substantial
21 evidence to support the determination that the changes in the project or its circumstances were
22 not so substantial as to require major modifications of the EIR. This deferential standard is a
23 reflection of the fact that in-depth review has already occurred.” (134 Cal.App.4th at 611
24 [internal citations and quotations omitted].) Accordingly, the California Supreme Court
25 commented that “[w]e expect occasions where a court finds no substantial evidence to support an
26 agency’s decision to proceed under CEQA’s subsequent review provisions will be rare, and
27 rightly so; a court should tread with extraordinary care before reversing an agency’s

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1 determination, whether implicit or explicit, that its initial environmental document retains some
2 relevance to the decisionmaking process.” (*San Mateo Gardens*, 1 Cal.5th at 953.)

3 Importantly, the petitioner bears of burden of demonstrating that the record does not
4 contain sufficient evidence justifying a contested project approval. To do so, a petitioner must set
5 forth in its brief all the material evidence on the point, not merely its own evidence. A failure to
6 do so will be deemed a concession that the evidence supports the findings. (*Latinos Unidos De*
7 *Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 206.)

8 Petitioner’s reliance on *Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819
9 is unavailing. There, the court held the City relied on email statements by the planning
10 department providing unsubstantiated opinions two years *after* the City adopted the PEIR,
11 resulting in evidence supporting a fair argument that significant adverse effects on the
12 environment were not examined in the PEIR. Petitioner attempts to fit into these narrow
13 parameters by allocating much of its brief to show the Previously Certified Environmental
14 Documents used the term TPA (not SDA). This argument ignores that the *impacts* of the new
15 SDA designation were heavily and contemporaneously assessed here against the Previously
16 Certified Environmental Documents in the City’s 30-page Consistency Memorandum.

17 Here, the Consistency Memorandum states the Planning Department determined the
18 Project is consistent with the Certified Underlying Environmental Documents. (AR Tab 940,
19 Bates No. 21243.) It concludes the “implementation of the Project would not result in new or
20 more severe significant impacts over and above those disclosed in the previously certified
21 environmental documents.” It separates the citywide amendments into five categories, the first
22 being “Align Policy with City’s Climate, Equity and Housing Goals.” It states the topics of the
23 amendments relate to the following areas of the LDC: housing and housing incentives. It then
24 delves into an analysis of the Final PEIR for the General Plan (2008), Addendum to the General
25 Plan PEIR for the Housing Element, Update (2020), and Addendum to the General Plan PEIR
26 for the Recreation Element Update (2021); Final PEIR for Complete Communities: Housing
27 Solutions and Mobility Choices (2020); and Final PEIR for the Climate Action Plan (2015) and

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1 Addendum to the Climate Action Plan PEIR for the Climate Action Plan Update (2022). (AR
2 Tab 940, Bates No. 21243.)

3 It states the Final PEIR for the General Plan found that, although significant impacts
4 could be mitigated through a review of discretionary projects, implementation of the General
5 Plan would result in significant and unavoidable impacts as listed therein. The Addenda to the
6 General Plan for the Housing Element Update and the Recreation Element Update found that
7 implementation of the Housing Element Update and the Recreation Element Update would not
8 result in new or more severe significant impacts than what was previously analyzed in the Final
9 PEIR for the General Plan. (AR Tab 940, Bates No. 21245.)

10 With respect to the Final PEIR for Complete Communities: Housing Solutions and
11 Mobility Choices (2020), it found implementation of the project would result in significant and
12 unavoidable impacts to Air Quality; Biological Resources; Historical, Archaeological, and Tribal
13 Cultural Resources; Hydrology and Water Quality; Noise; Public Services and Facilities;
14 Transportation; Public Utilities and Infrastructure; Wildfire; and Visual Effects and
15 Neighborhood Character. (AR Tab 940, Bates No. 21245.)

16 With respect to the Final PEIR for the Climate Action Plan (2015) and Addendum to the
17 Climate Action Plan PEIR for the Climate Action Plan Update (2022), it identified significant
18 and unavoidable impacts related to Visual Effects and Neighborhood Character, Air Quality,
19 Historic Resources, and Transportation and Circulation. The Addendum to the CAP PEIR for the
20 CAP Update found that implementation of the CAP Update would not result in new or more
21 severe significant impacts than what was previously analyzed in the Final PEIR for the CAP.
22 (AR Tab 940, Bates No. 21245-6.)

23 It cites CEQA Guidelines section 15162 identifying when changes require additional
24 review, concluding none of the three criteria has occurred, therefore there is no need to prepare
25 subsequent or supplemental environmental documents. (AR Tab 940, Bates No. 21250-51.)
26 Staff's consistency evaluation for Item 5 based on the Addendum to the General Plan Final PEIR
27 for the Housing Element Update (2020) states that the Housing Element of the General Plan
28 provides a coordinated strategy for addressing the comprehensive housing needs of the City.

1 Petitioner’s borrowed ADU arguments are addressed in pages 8-9 of the consistency
2 evaluation. It states the Project includes five amendments that are consistent with and would
3 implement the Housing Element Update’s Objective C to provide programs that incentivize
4 development. Housing Element policies HE.C.11 and 12 call for allowing densities that exceed
5 ranges defined in the zone for projects using State density bonus provisions and for projects
6 within designated TPAs, and for permitting FARs and heights that exceed the adopted
7 maximums for projects that provide smart growth benefits. The Project would be consistent with
8 and would support these policies by adding approximately 6,603 more developable acres near
9 transit that are eligible for the ADU Home Density Bonus, while also removing 1,991
10 developable acres from eligibility that are currently further outside the walkshed of transit
11 (amendment 5) aligning the FAR bonuses in the CCPDO with the Citywide LDC and allowing
12 density bonus programs to be stacked (amendment D5), and by adding provisions to the existing
13 density bonus language to further incentivize affordable housing on underutilized sites in
14 Downtown (amendment D16). Amendment 5 changes the definition of TPA, which is discussed
15 below under Final PEIR for Complete Communities: Housing Solutions and Mobility Choices
16 (2020). (AR Tab 940, Bates No. 21249-51.)

17 The area in question, however, will still be centered around a major transit stop, and the
18 development would predominantly be infill development, similar in nature to what was analyzed
19 in the Addendum to the General Plan Final PEIR for the Housing Element. Additionally,
20 Housing Element policy HE-C.3 directs the City to develop a comprehensive strategy to address
21 the need for more housing near employment centers, serving moderate- to middle-income
22 workers in San Diego, and strive to promote the location of housing proximate to employment
23 and multimodal transportation facilities ... Thus, the proposed amendments are consistent with
24 the objectives and policies in the General Plan Housing Element Update and would not result in
25 new or more severe significant impacts above what was previously analyzed in the Addendum to
26 the General Plan PEIR for the Housing Element Update. (AR Tab 940, Bates No. 21250-51.)

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1 Staff's consistency evaluation for Item 5 is also based on the Final PEIR for Complete
2 Communities: Housing Solutions and Mobility Choices (2020) and states it analyzed the
3 environmental impacts associated with implementing the City's Complete Communities:
4 Housing Solutions program (Housing Program) and the Complete Communities:
5 Mobility Choices program (Mobility Choices). (AR Tab 940, Bates No. 21250-56.) The
6 Housing Program is an incentive program designed to help the City provide housing at all
7 income levels and meet its affordable housing targets and CAP goals by incentivizing the
8 construction of housing in multi-family and mixed-use commercial areas served by transit. As
9 discussed in the Final PEIR, future development projects that opt into the Housing Program
10 would be required to provide new affordable housing and replace existing affordable units that
11 would be displaced by redevelopment of the development site. Amendment 47 would clarify that
12 future development implemented under the Housing Program would be required to build
13 affordable housing on-site; thus, the proposed amendment would support the Housing Program's
14 goal of preserving affordable housing. Additionally, amendments which would align the
15 definition of a Community of Concern with current policy and include communities with
16 moderate access to opportunity (amendment 45), replace the word "or" with "and" in two
17 instances when referring to the income requirements for the affordable units to participate in the
18 Housing Program (amendment 46), and correct the income level cited in the Municipal Code to
19 refer to very low income households when referring to 50% of the area median income
20 (amendment 48) would further the Housing Program's goal to provide adequate housing for all
21 economic segments of the community. Thus, the Project would be consistent with the
22 development program analyzed in the Final PEIR. (AR Tab 940, Bates No. 21250-56.)

23 As discussed in the Final PEIR, development under the Housing Program would be
24 required to provide new community-serving infrastructure improvements. Amendment 49, which
25 would remove the statement, "The trees shall be placed on each side of the sidewalk where
26 feasible", would not result in an inconsistency with the Housing Program as the proposed
27 amendment would remove ambiguity in the regulations, and future development projects would
28 still be required to provide community-serving infrastructure as discussed in the Final PEIR. The

1 Final PEIR anticipated that development under the Housing Program would be approved through
2 a ministerial process with limited exceptions. Under the existing Housing Program regulations,
3 development that proposes one or more structures over 95 feet would be required to obtain a
4 Neighborhood Development Permit. However, there are sites within the Housing Program areas
5 where the base zone regulations would permit development at a height greater than 95 feet;
6 therefore, if development under the Housing Program were to occur on these sites, those
7 developments would not be able to take advantage of the ministerial process incentive.
8 Amendment 50 would correct this by stating that a Neighborhood Development Permit would be
9 required for development that includes one or more structures over 95 feet or development which
10 exceeds the height limit of the base zone, whichever is greater. The proposed amendment would
11 not expand the areas eligible for development under the Housing Program, and future projects
12 would still be required to meet the criteria set forth in the Housing Program regulations to take
13 advantage of the Housing Program. Thus, the proposed amendment would be consistent with the
14 development program analyzed under the Final PEIR. (AR Tab 940, Bates No. 21250-56.)

15 The Final PEIR for Complete Communities used the Senate Bill (SB) 743 definition of a
16 TPA, which defines a TPA as the “area within one-half mile of a major transit stop that is
17 existing or planned, if the planned stop is scheduled to be completed within the planning horizon
18 included in a Transportation Improvement Program adopted pursuant to Section 450.216 or
19 450.322 of Title 23 of the Code of Federal Regulations.” “Major Transit Stop,” as defined in the
20 California Public Resources Code (CPRC) Section 21064.3, is defined as, “a site containing an
21 existing rail transit station, a ferry terminal served by either a bus or a rail transit service, or the
22 intersection of two or more major bus routes each having a frequency of service of 15 minutes or
23 less during the morning and afternoon peak commute periods.” In Section 4.0, Environmental
24 Analysis, of the Final PEIR for Complete Communities, it is acknowledged that TPA boundaries
25 may shift or new TPAs may be added that would affect the areas that would qualify for use of
26 the proposed Complete Communities ordinance amendments. (AR Tab 940, Bates No. 21250-
27 56.)

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1 It states that Amendment 5 of this LDC Update would replace TPAs with Sustainable
2 Development Areas (SDAs). An SDA is defined as the area within a defined walking distance
3 along a pedestrian path of travel from a major transit stop that is existing or planned, if the
4 planned major transit stop is included in a transportation improvement program or applicable
5 regional transportation plan, as follows: (1) Within Mobility Zones 1 and 3, as defined in Section
6 143.1103, the defined walking distance in 1.0 mile; (2) Within Mobility Zone 4, as defined in
7 Section 143.1103, the defined walking distance in 0.75 mile; (3) For parcels located in Mobility
8 Zone 4, in an area identified as a High or Highest Resource California Tax Credit Allocation
9 Committee (CTCAC) Opportunity Area, the defined walking distance is 1.0 mile. The Planning
10 Department added the third category, above, to the areas within SDAs to align the proposed SDA
11 with the City’s climate, equity, and housing goals after the October 27, 2022, Planning
12 Commission hearing, where Commissioners requested a further evaluation of the proposed
13 definition of an SDA and the differences between the TPA and SDA boundaries. (AR Tab 940,
14 Bates No. 21250-56.)

15 Amendments were also made to the definitions of the Mobility Zones. Within the
16 Mobility Choices Requirements, Mobility Zone 2 is amended to be any premises located either
17 partially or entirely within an SDA, and Mobility Zone 4 is amended to be any area within a
18 community planning area with a VMT efficiency that is greater than 85 percent of the regional
19 average for either resident VMT per capita or employee VMT, as determined by the City
20 Manager. The SDA definition expands land areas beyond the TPA definition while also
21 refocusing city development incentives in areas that are more transit-supportive (including
22 removing other areas from the current eligibility). For the City’s local housing incentive
23 programs, the data summary below shows the approximate acreage of developable land net
24 increases in the areas identified as in the TPA outside of the SDA or in the SDA outside of the
25 TPA. Some highlights from this data include: the SDA provides approximately 5,224 more
26 developable acres than the current TPA and the SDA furthers Fair Housing Goals by providing
27 approximately 3,342 more developable acres in high and highest opportunity areas determined
28 by the California Tax Credit Allocation Committee (TCAC). (AR Tab 940, Bates No. 21250-56.)

1 It states the SDA includes approximately 688 more developable acres eligible for the
2 Complete Communities Housing Solutions Program. The SDA includes approximately 4,612
3 more developable acres eligible for the ADU Home Density Bonus program The SDA also
4 excludes 2,309 developable acres from the current TPA where these areas presently allow for
5 additional incentives in areas located a farther walking distance from transit than the acreages
6 described above. The new areas added have better overall access to transit, neighborhood
7 services, shopping, and jobs, making them generally more attractive for new development areas
8 over areas located further from transit, and excluded areas that are currently located a farther
9 walking distance from transit. These added areas also provide easier and more efficient
10 opportunities to expand infrastructure investments – including transit, biking, and walking
11 investments - because they are closer to existing services and facilities. (AR Tab 940, Bates No.
12 21250-56.)

13 As mentioned above, while some areas will be added that were not specifically included
14 in Complete Communities: Housing Solutions and Mobility Choices, these would be areas that
15 are immediately adjacent to the areas covered by the Final PEIR for Complete Communities and
16 are well within the TPA boundary shift addressed in the Final PEIR. Furthermore, development
17 within 0.75 to 1.0-mile of a major transit stop would predominantly be infill development,
18 similar in nature to what was analyzed in the Final PEIR. During the January 12, 2023, Council
19 Committee on Land Use and Housing Hearing, public comment was made regarding the
20 potential for additional wildfire risk from this amendment. Wildfire was one of the issue areas
21 determined to be significant and unavoidable in the Final PEIR for Complete Communities.
22 Future development that would occur per the Complete Communities: Housing Solutions
23 program would be required to comply with the City’s Fire Code, Building Regulations, and
24 Brush Management Regulations; however, it was determined that while adherence to regulation
25 would reduce potential wildfire impacts, the Complete Communities program still has the
26 potential to increase the number of residents located at risk of wildland fires. Amendment 5
27 would not significantly change the potential for people and structures to be exposed to wildland
28 fires, nor would it increase the severity of any of the other environmental impacts analyzed in the

1 Final PEIR. Amendment 5 would exclude 11,320 acres that are in the Very High Fire Severity
2 Zone (VHFSZ) from the developable areas in the current TPA, and, thus, would not increase the
3 potential for people and structures to be exposed to wildland fires. Adoption of amendment 5
4 would not increase the severity of any environmental impacts analyzed in the Final PEIR, nor
5 would it deprive the public of a meaningful opportunity to comment upon a substantial adverse
6 environmental effect of the project or a feasible way to mitigate or avoid such an effect. (AR Tab
7 940, Bates No. 21250-56.)

8 The Final PEIR used the Senate Bill (SB) 743 definition of a TPA, which defines a TPA
9 as the “area within one-half mile of a major transit stop that is existing or planned, if the planned
10 stop is scheduled to be completed within the planning horizon included in a Transportation
11 Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code
12 of Federal Regulations.” “Major Transit Stop,” as defined in the California Public Resources
13 Code (CPRC) Section 21064.3, is defined as, “a site containing an existing rail transit station, a
14 ferry terminal served by either a bus or a rail transit service, or the intersection of two or more
15 major bus routes each having a frequency of service of 15 minutes or less during the morning
16 and afternoon peak commute periods.” (AR Tab 940, Bates No. 21250-56.)

17 In Section 4.0, Environmental Analysis, of the Final PEIR for Complete Communities, it
18 is acknowledged that TPA boundaries may shift or new TPAs may be added that would affect
19 the areas that would qualify for use of the proposed Complete Communities ordinance
20 amendments. Amendment 5 of this LDC Update would replace TPAs with Sustainable
21 Development Areas (SDAs). An SDA is defined as the area within a defined walking distance
22 along a pedestrian path of travel from a major transit stop that is existing or planned, if the
23 planned major transit stop is included in a transportation improvement program or applicable
24 regional transportation plan, as follows: (4) Within Mobility Zones 1 and 3, as defined in Section
25 143.1103, the defined walking distance in 1.0 mile and (5) Within Mobility Zone 4, as defined in
26 Section 143.1103, the defined walking distance in 0.75 mile. (AR Tab 940, Bates No. 21250-56.)

27 The existing definition of a Transit Priority Area measures the areas located near transit
28 by looking at a 0.5-mile “as the crow flies” distance, rather than a walking distance. At the time

1 that the definition was originally applied to the City’s development programs, more refined data
2 showing the areas of the City that were within a close walking distance to transit – taking into
3 account physical barriers such as freeways and steep hillsides – was not available. As more
4 refined data has become available, the ability to focus development in the areas of the City that
5 truly have the best access to transit is now technically feasible. In looking to define a new
6 Sustainable Development Area, City staff looked to identify areas that have good walk/roll, bike,
7 and other micromobility access to transit. Taking into account physical barriers, a large portion
8 of existing TPAs is beyond a 0.5-mile walk from a major transit stop, and in some instances,
9 some areas were miles away taking into account these physical barriers. (AR Tab 940, Bates No.
10 21250-56.)

11 To ensure the City remains focused on maximizing opportunities for new home
12 development and achieve the City’s climate goals, it is important to take into consideration areas
13 of the City that are not just within a 0.5-mile walk from a major transit stop, but overall have
14 good access to transit, where people are most likely to safely and enjoyable access the transit. It
15 is also important to recognize that our climate goals are not just served by eliminating vehicular
16 trips with transit, but by reducing overall vehicle miles travelled (VMT). Project sites located in
17 areas with other walking/rolling and bike infrastructure, as well as areas that are located in
18 communities with relatively less overall vehicular travel, are also places where new development
19 can implement Strategy 3 of the CAP. (AR Tab 940, Bates No. 21250-56.)

20 To define a new SDA, City staff identified areas that have good walk/roll, bike, and other
21 micromobility access to transit. Taking this into consideration, people that live in homes located
22 0.75-mile from a major transit stop, at an average walking pace of 3 miles per hour, can reach
23 their destination in about 15 minutes, and can reach their destination even quicker than that by
24 bike or other micromobility device. Taking into account the more compact development
25 anticipated to occur through the City’s incentive programs, this is a reasonable distance of travel
26 to a transit stop, especially where neighborhood amenities, such as grocery trips and social visits,
27 can be achieved along the way. This is even more true in the City’s communities with relatively
28 less vehicular travel (in Mobility Zone 1 and VMT efficient communities, also defined as

1 Mobility Zone 3), where people are more likely to walk, and when they do choose to drive, drive
2 fewer overall miles. In this instance, people that live in homes located 1 mile from a major transit
3 stop, at an average walking pace of 3 miles per hour, can reach their destination in about 20
4 minutes which is a reasonable distance for the more VMT efficient communities with even more
5 investments existing and planned for walking/rolling, biking and transit investments. Therefore,
6 the proposed SDA consists of areas located within 1.0 mile walking distance of a major transit
7 stop in Mobility Zones 1 (Downtown) and 3 (VMT efficient areas) and with a 0.75-mile walking
8 distance of a major transit stop in Mobility Zone 4 (relatively VMT inefficient areas). (AR Tab
9 940, Bates No. 21250-56.)

10 The SDA definition expands land areas beyond the TPA definition while also refocusing
11 city development incentives in areas that are more transit-supportive. In some instances, places
12 outside of the TPA definition will be allowed increased development incentives. In other
13 instances, the number of eligible lands will retract within TPAs, leading to a reduction of about a
14 1 percent total reduction in overall developable land area within the City. Although a small
15 decrease, it is not anticipated that this would result in any real world decrease in home
16 opportunities. The new areas added have better overall access to transit, neighborhood services,
17 shopping, and jobs, making them generally more attractive for new development areas over areas
18 located further from transit. These added areas also provide easier and more efficient
19 opportunities to expand infrastructure investments because they are closer to existing services
20 and facilities. Additionally, parcels that are within a TPA and not within an SDA will continue to
21 be able to take advantage of housing programs established by the State of California. (AR Tab
22 940, Bates No. 21250-56.)

23 As mentioned above, while some areas will be added that were not included in Complete
24 Communities: Housing Solutions and Mobility Choices, these would be areas that are
25 immediately adjacent to the areas covered by the Final PEIR for Complete Communities and are
26 well within the TPA boundary shift addressed in the Final PEIR. Furthermore, development
27 within 0.75 to 1.0-mile of a major transit stop would predominantly be infill development,
28 similar in nature to what was analyzed in the Final PEIR. (AR Tab 940, Bates No. 21259.)

1 Staff's consistency evaluation for Item 5 is also based on the Final PEIR for the CAP
2 (2015) and Addendum to the CAP PEIR for the CAP Update (2022). (AR Tab 940, Bates No.
3 21250-56.) Amendment 5, which would replace TPAs with SDAs, would be consistent overall
4 with Strategy 3: Mobility and Land Use, and specifically with Measure 3.5: Climate-Focused
5 Land Use. The Addendum to the CAP PEIR for the CAP Update determined that compact
6 mixed-use land development near transit along with mobility features to encourage walking,
7 biking, and other non-vehicular forms of travel would have similar impacts as those outlined in
8 the Final PEIR for the 2015 CAP for Measure 3.6: Implement Transit Oriented Development
9 within Transit Priority Areas. This new geographic designation is intended to align with the
10 City's Climate Action Plan (CAP) goals to ensure that the City's home development incentive
11 programs have convenient access to high quality transit and safe and enjoyable walking/rolling
12 and biking options for moving around. Locating new homes near transit where people are more
13 likely to have lower rates of vehicular travel is a key component identified in Strategy 3 of the
14 City's CAP. Increased desirability to walk is a critical metric to achieve the number of people
15 who travel by walking, rolling, biking or taking transit. Increased density and increased
16 investments in active transportation and transit infrastructure are critical factors to achieving
17 increased desirability to walk. Providing infrastructure investments needed to support this
18 enhancement is significantly more efficient when the investments are serving greater densities
19 (more people). The SDA definition facilitates these outcomes by providing concentrated areas
20 located near transit, allowing for generally greater densities that can most efficiently be served
21 by greater investments in walking, rolling, biking, and transit, continually increasing the amount
22 of non-vehicular travel. Therefore, the GHG emissions reductions to be achieved through these
23 actions is consistent with the Climate Action Plan, Strategy 3. (AR Tab 940, Bates No. 21250-
24 56.)

25 Replacing TPAs with SDAs would have similar impacts as those disclosed in the Final
26 PEIR for the CAP and the Addendum to the CAP PEIR for the CAP Update, such as impacts to
27 Historical and Cultural Resources and to Visual Resources and Neighborhood Character.
28 Replacing a 0.5-mile radius with an area within a 0.75- to 1.0-mile walking distance from a

1 major transit stop would not result in new or more severe significant impacts over what was
2 previously analyzed in the Final PEIR for the CAP and the Addendum to the CAP PEIR for the
3 CAP Update. The proposed amendments are consistent with and fall within the scope of the
4 implementation program identified in the CAP and CAP Update. Thus, the Project would not
5 result in new or more severe significant impacts over what was previously analyzed in the Final
6 PEIR for the CAP and the Addendum to the CAP PEIR for the CAP Update.

7 In sum, there is an enormous amount of substantial evidence to support the City's
8 determination that the Project is consistent the Previous Certified Environmental Documents.

9 **IV.**

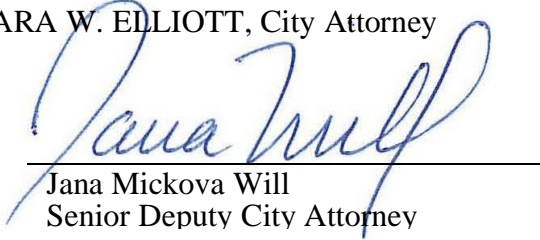
10 **CONCLUSION**

11 Based on the foregoing, the shift in designation from TPAs to SDAs was carefully
12 considered and properly found in conformance with the Previous Certified Environmental
13 Documents. Based on the public testimony, it is clear Petitioners do not want these dense infill
14 developments near transit in their neighborhoods. However, for the City to meet its housing
15 needs and CAP goals, that is exactly where new development must go. The City respectfully
16 request the Petition for Writ of Mandate be denied.

17 Dated: November 18, 2024

MARA W. ELLIOTT, City Attorney

18
19 By



Jana Mickova Will
Senior Deputy City Attorney

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21 Attorneys for CITY OF SAN DIEGO AND
22 CITY OF SAN DIEGO PLANNING
23 DEPARTMENT
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