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9 TRANSPORTATION SOLUTIONS
10 DEFENSE AND EDUCATION FUND

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 TRANSPORTATION SOLUTIONS
14 DEFENSE AND EDUCATION FUND, a
15 California Nonprofit Corporation,

16 Petitioner,

17 vs.

18 CALIFORNIA DEPARTMENT OF
19 TRANSPORTATION (“CALTRANS”);
20 RANDELL H. IWASAKI, DIRECTOR OF
21 CALTRANS; BIJAN SARTIPI, CALTRANS
22 DISTRICT FOUR DIRECTOR; UNITED
23 STATES DEPARTMENT OF
24 TRANSPORTATION, FEDERAL
25 HIGHWAY ADMINISTRATION; WALTER
26 WAIDELICH JR., FEDERAL HIGHWAY
27 ADMINISTRATION CALIFORNIA
28 DIVISION ADMINISTRATOR, and DOES 1-
15,

Respondents,

TRANSPORTATION AUTHORITY OF
MARIN; SONOMA COUNTY
TRANSPORTATION AUTHORITY and
DOES 16-30,

Real Party in Interest

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDAMUS**

CALIFORNIA ENVIRONMENTAL
QUALITY ACT (“CEQA”) [CAL. PUBLIC
RESOURCES CODE §§ 21000 et seq.]

1 Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND
2 (“TRANSDEF”) bring this action on its behalf, on behalf of its members, and on behalf of the
3 general public under the California Code of Civil Procedure § 1085, § 1094.5, and the California
4 Constitution and allege as follows:

5 **INTRODUCTION**

6 1. This action challenges actions by Respondents California Department of Transportation,
7 Mr. Randell H. Iwasaki, Director of Caltrans, and Mr. Bijan Sartipi, Caltrans District 4 Director
8 (collectively “Respondents”) approving the Marin-Sonoma Narrows (MSN) HOV Widening
9 Project (“Project”), certifying an Environmental Impact Report (“EIR”) for the Project, and
10 adopting findings required under the California Environmental Quality Act (“CEQA”), Public
11 Resources Code, section 21000 *et seq.*

12 2. Petitioner seeks a determination from this Court that Respondent’s approval of the
13 Project is invalid and void and that the EIR prepared for the Project fails to satisfy the
14 requirements of CEQA, and the CEQA Guidelines, Title 14, California Code of Regulations,
15 section 15000 *et seq.*

16 **PARTIES**

17 3. Petitioner Transportation Solutions Defense and Education Fund (“TRANSDEF”) is a
18 California nonprofit public benefit corporation headquartered in the Bay Area, established and
19 operating under the laws of the State of California as a regional advocate to promote
20 transportation solutions favoring transit over new highway capacity, development around transit
21 stops rather than sprawl into the Bay Area's open spaces, and more market-oriented pricing of
22 private motor vehicle travel. TRANSDEF advocates on behalf of its members and the public at
23 large for effective regional planning, smart growth, improved transit service, and cleaner air.
24 TRANSDEF has participated in the development of the 2001, 2005 and 2009 Bay Area Regional
25 Transportation Plans and Transportation Improvement Programs. TRANSDEF has actively
26 engaged in numerous public agency proceedings involving transportation and air quality issues,
27 including specifically the administrative proceedings around the Project and its environmental
28 review under CEQA.

1 4. The environment and residents of Sonoma and Marin Counties will be directly affected
2 by the impacts of the Project. TRANSDEF's members live, work, travel and enjoy recreational
3 activities in Sonoma and Marin Counties. These members have a particular interest in the
4 protection of the environment of Sonoma and Marin Counties, and are increasingly concerned
5 about worsening environmental and land use conditions from sprawl, leapfrog development,
6 auto-centric development and the lack of viable transportation alternatives that detrimentally
7 affect their well being and that of other residents and visitors of Sonoma and Marin Counties.
8 TRANSDEF's members are adversely impacted by the contribution of motor vehicle travel
9 emissions to global climate change, and specifically the effect that highway widening has in
10 encouraging ever more vehicle travel and precluding the development and use of alternative
11 transportation systems.

12 5. Petitioner and its members have a direct and substantial beneficial interest in ensuring
13 that Respondents comply with laws relating to environmental protection. Petitioner and its
14 members are adversely affected by Respondents' failure to comply with CEQA in approving the
15 Project.

16 6. Respondent California Department of Transportation ("Caltrans") is an agency of the
17 State of California. Caltrans is the CEQA "lead agency" for the Project. As lead agency for the
18 Project, Caltrans is responsible for preparation of an environmental document that describes the
19 Project and its impacts, and, if necessary evaluates mitigation measures and/or alternatives to
20 lessen or avoid any significant environmental impacts. Caltrans is responsible for implementing
21 and complying with the provisions of CEQA and the CEQA Guidelines with respect to the
22 Project.

23 7. Respondent Randell H. Iwasaki is the Director of Caltrans, responsible for all Caltrans
24 actions and decisions, including approval of the Project and certification of its EIR. Director
25 Iwasaki is sued in his official capacity. Respondent Mr. Bijan Sartipi is the District Four
26 Director of Caltrans and is sued in his official capacity. As District Four Director, Mr. Sartipi is
27 responsible for the actions of the Caltrans District where the Project is located.
28

1 8. Respondent United States Department of Transportation, Federal Highway
2 Administration is an agency of the United States. The Federal Highway Administration is the
3 federal lead agency for the Project under the National Environmental Policy Act and is a source
4 of Project funding. Mr. Walter Waidelich Jr. is the Federal Highway Administration California
5 Division Administrator and is sued in his official capacity.

6 9. Petitioner is unaware of the true names and capacities of Respondents identified as Does
7 1-15. Petitioner is informed and believes, and on that basis alleges, that Respondents Does 1-15,
8 inclusive, are individuals, entities or agencies with material interests affected by the Project with
9 respect to the Project or by Caltrans' actions with respect to the Project. When the true identities
10 and capacities of these Respondents have been determined, Petitioner will, with leave of Court if
11 necessary, amend this Petition to insert such identities and capacities.

12 10. Real Parties in Interest Transportation Authority of Marin and Sonoma County
13 Transportation Authority are local agencies that have assisted and cooperated with the lead
14 agency in developing the Project and have an interest in the outcome of this litigation.

15 11. Petitioner is unaware of the true names and capacities of Real Parties in Interest identified
16 as Does 16-30. Petitioner is informed and believes, and on that basis alleges, that Respondents
17 Does 16-30, inclusive, are individuals, entities or agencies with material interests affected by the
18 Project or by Respondents' actions with respect to the Project. When the true identities and
19 capacities of these Real Parties in Interest have been determined, Petitioner will, with leave of
20 Court if necessary, amend this Petition to insert such identities and capacities.

21
22 **BACKGROUND FACTS**

23 12. On July 21, 2009, Respondent Caltrans, at the direction of Director Iwasaki, approved the
24 Project to widen and add high occupancy vehicle ("HOV") lanes and make numerous
25 "operational improvements" to a 16 mile stretch of Highway 101 in Marin and Sonoma counties.
26 The proposed project would widen US 101 along the urban, access-controlled southern and
27 northern freeway portions (Segments A and C, respectively). This widening would occur
28 primarily in the existing freeway median. The proposed project also includes widening and

1 realigning the roadway in the rural central portion from the Atherton Avenue Interchange in
2 Novato to State Road 116 (East) in Petaluma, (Segment B) thereby converting this segment from
3 an expressway into an access-controlled freeway and upgrading the US 101 facility along its
4 entire length. The Project includes new bridges over San Antonio Creek and replacement of the
5 Petaluma River Bridge, as well as sound walls, bicycle and pedestrian paths, and drainage
6 facilities.

7 13. Prior to approving the Project, Caltrans' District Director Sartipi certified the FEIR as
8 adequate on July 16, 2009. Learning anecdotally that the Project had been approved, Petitioners
9 made inquiry to Caltrans staff on July 27, 2009 requesting a copy of the FEIR and were advised
10 it would be available publicly the following week. Caltrans nevertheless filed the Project's
11 Notice of Determination with the State Office of Planning and Research on July 27, 2009.

12 14. The Project is located in a highly scenic area that includes a number of sensitive cultural
13 sites and extensive wetlands and riparian habitat, bay-oak woodlands and numerous wildlife
14 preserves. The central Segment B is adjacent to the Olompali State Historic Park and includes
15 lands in agricultural production including dairy farming, vineyards, other agricultural uses. The
16 Project will cause agricultural lands protected by the Williamson Act to be removed from
17 protection, agricultural uses terminated, and the paving over of valuable agricultural soils.

18 15. The Bay Area, including the communities affected by the Project, has undertaken various
19 regional land use studies, surveys, and planning processes. While the region's earlier approach
20 to transportation was to widen roadways to expand capacity, enabling the sprawling expansion of
21 areas of urban development, in recent years the region has shifted to more fully embrace policies
22 that encourage preservation of rural lands and instead favor the intensification of development in
23 existing urban areas. These policies, reflected in the 2009 Regional Transportation Plan, rely on
24 increased use of public transportation, including trains and express buses. A joint powers agency
25 has been formed to plan and promote a commuter rail service between population centers in
26 Marin and Sonoma, including the area served by the Project. This agency, dubbed the Sonoma
27 Marin Area Rail Transit ("SMART"), is currently in the planning stages for implementation of
28 rail service in the same corridor as the Project. Widening congested highways causes increased

1 levels of automotive travel, referenced as increased vehicle miles traveled (“VMT”) and induces
2 additional travel as longer commutes become considered acceptable. Increased highway
3 capacity makes automobile use more attractive and diminishes the success of public
4 transportation systems. Marin has the highest number of car trips per household in the entire
5 Bay Area.

6 16. Respondents justified the Project using antiquated travel demand and population
7 demographic data from 1998, which after public comment, they updated to reflect data
8 assembled by the Association of Bay Area Governments (“ABAG”) from the year 2000.
9 Subsequently, ABAG assembled growth projections based on year 2003 demographic data that
10 embody the newer policies and reflect changing travel patterns, including increased public
11 transportation services, but Respondents rejected Petitioner’s request that it use this data, and
12 continued to rely on the year 2000 data in justifying the Project.

13 17. Petitioners submitted extensive comments on the Draft environmental impact report
14 detailing the importance and viability of a Project Alternative that embraced expanded public
15 transit rather than increased roadway capacity. Respondents refused at a screening level to
16 consider this or any other alternative that did not involve roadway widening.

17 18. Respondents began planning for this project in 2000, and since that time, the State has
18 recognized the substantial threats posed by global climate change, and further has endeavored to
19 both assess the State’s inventory of anthropomorphic “greenhouse gas” emissions and to reduce
20 emissions of such gasses, including reductions in carbon dioxide from vehicles. Rather than
21 faithfully quantifying the level to which emissions could be reduced from other, non-widening
22 alternatives or assessing the potential significance of the Project’s increased emissions on global
23 climate change, Respondents sought to sweep this issue under the rug. Increased use of public
24 transportation is a widely accepted strategy to reduce the effects of global climate change
25 through reduced total emissions of greenhouse gases.

26 19. Respondents failed to undertake an accurate or complete assessment of the Project’s
27 increased emissions on regional air quality, particularly ozone. Respondents did not attempt to
28 quantify total emissions of ozone precursors and evaluate the effects of the Project’s increased

1 emissions on the region's attainment and maintenance of both the state and federal ambient air
2 quality standards, but instead relied on a finding of conformity with the federal state
3 implementation plan as the sole mechanism for evaluating the project's effects on regional air
4 quality. Respondents relied on the Bay Area Air Quality Management District's year 2000
5 Clean Air Plan despite the District having adopted more recent and comprehensive plans in 2001
6 and 2005 which embrace smart growth and public transportation to improve air quality.

7 20. The Project will cause significant impacts to visual resources, even after Respondents'
8 application of "Standard Highway Planting" as mitigation measures. Applicable local policies
9 are mentioned in brief, but the EIR fails to apply the relevant local policies to the Project's
10 specific visual impacts and recognize this inconsistency as a significant impact.

11 21. Petitioners identified potentially feasible Project alternatives, including expanding rail
12 services for passengers and goods, that could achieve most of the Project objectives.
13 Respondents and their environmental impact report did not give this or other Project alternatives
14 consideration and instead rejected them at a preliminary stage. Respondents' final action,
15 Findings and Statement of Overriding Considerations failed to address such alternatives.

16 22. On July 27, 2007, Caltrans filed with the State of California, Office of Planning and
17 Research (State Clearinghouse) a Notice of Determination under Public Resources Code section
18 21152.

19 **JURISDICTION AND VENUE**

20 23. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code of
21 Civil Procedure section 1085, and Public Resources Code section 21168.5. In the alternative,
22 this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and Public
23 Resources Code section 21168. The Court also has jurisdiction over the matters alleged in this
24 Petition and Complaint seeking Declaratory and Injunctive Relief pursuant to Code of Civil
25 Procedure sections 526 and 1060.

26 24. Venue is proper in this Court because Caltrans' principal offices are located in the
27 County of Sacramento and Director Iwasaki maintains offices there.

EXHAUSTION OF ADMINISTRATIVE REMEDIES
AND INADEQUACY OF REMEDY

25. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 24, inclusive, of this Petition, as if fully set forth below.

26. Petitioners have performed any and all conditions precedent to filing the instant action and have exhausted any and all available administrative remedies to the extent required by law.

27. Petitioner and others, by and through their representatives and members, have performed all conditions precedent to the filing of this petition by raising each and every issue known to them in writing to Caltrans, in compliance with Public Resources Code Section 21177 and Code of Civil Procedure Sections 1085 and 1094.5. Petitioners have no adequate remedy at law.

28. Petitioners have complied with the requirements of Public Resources Code, section 21167.5 by mailing written notice of this action to the Respondents. A copy of this written notice and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

29. Petitioners have complied with Public Resources Code section 21167.6 by concurrently filing a request concerning preparation of the record of administrative proceedings relating to this action.

30. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require respondents to set aside their approval of the Project and certification of the EIR. In the absence of such remedies, Caltrans' approval will remain in effect in violation of State law.

31. This action has been brought within 30 days of Caltrans filing of the Notice of Determination as required by Public Resources Code section 21167(c).

STANDING

32. Petitioner has standing to assert the claims raised in this Petition because of Petitioner's environmental interests, including those of its members that reside and visit the Project area. Those interest areas include smart land use and development patterns, enhanced and expanded public transportation systems, improved air quality, reduced climate change and the protection of

1 aesthetic, cultural and biological resources that are directly and adversely affected by Caltrans’
2 approval of the Project.

3 **FIRST CAUSE OF ACTION**

4 (Violation of the California Environmental Quality Act)

5 33. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 32, inclusive, of
6 this Petition, as if fully set forth below.

7 34. Respondents committed a prejudicial abuse of discretion and failed to proceed in a
8 manner required by law by relying on an EIR that fails to meet the requirements of CEQA for
9 disclosure, analysis, and/or mitigation of significant project impacts.

10 35. The EIR fails to comply with the requirements of CEQA in that it fails to adequately
11 disclose, analyze and/or mitigate the Project’s cumulative environmental impacts as required by
12 law, and its conclusions regarding the Project’s cumulative environmental impacts are not
13 supported by substantial evidence. The EIR fails to adequately disclose, analyze and/or mitigate
14 the cumulative impacts associated with the Project such as air quality associated with increased
15 and induced vehicle miles traveled and increased and induced traffic and growth, including the
16 further conversion of agricultural lands, loss of open space, loss of biological habitat, sustained
17 and accelerated global climate change and reduced public use and economic viability of SMART
18 and similar alternative transportation systems.

19 36. The EIR fails to comply with the requirements of CEQA in that it fails to adequately
20 disclose, analyze and/or mitigate the Project’s environmental impacts as required by law, and its
21 conclusions regarding the Project’s environmental impacts are not supported by substantial
22 evidence. As a result, the Project will result in significant environmental impacts that the EIR
23 failed to address or mitigate.

24 a. The EIR failed to adequately disclose, analyze and/or mitigate the
25 Project’s inconsistency with the Marin Countywide Plan and the Sonoma County General Plan.
26 Specifically, the Project is inconsistent with the Marin Countywide Plan and the Sonoma County
27 General Plan’s land use objectives including protection of aesthetics, open-space, biotic
28 resources and agriculture.

1 b. The EIR failed to adequately disclose, analyze and/or mitigate the
2 Project's traffic impacts on Highway 101, including the impacts associated with increasing the
3 carrying capacity of Highway 101. The EIR's assumptions that increasing capacity will result in
4 only a 'slight' increase in vehicle miles of travel ("VMT") is not supported by substantial
5 evidence in the record.

6 c. The EIR failed to adequately disclose, analyze and/or mitigate the
7 Project's impacts on air quality. The EIR fails to account for the potential increase in ozone
8 precursors, including oxides of nitrogen and volatile organic compounds, and both gross and fine
9 particulate matter emissions resulting from Project operations, and impermissibly relies on
10 federal Clean Air Act conformity as the sole threshold of significance.

11 d. The EIR failed to adequately disclose, analyze and/or mitigate the
12 Project's impacts on global climate change.

13 37. The EIR fails to discuss a reasonable range of project alternatives because it manipulated
14 the Project purpose and need and avoided consideration of feasible alternatives to the Project that
15 were presented to Caltrans. In violation of CEQA, Respondents proposed a narrow purpose and
16 need for the Project based on antiquated data and a highway-focused solution, then categorically
17 rejected without any substantial evidence non-highway alternatives as not feasible on the basis
18 that such alternatives did not completely meet each of the stated purposes and needs as well as
19 the Project did, thus ignoring and refusing to evaluate feasible alternatives that could meet most
20 of the Project's purposes and needs or which would meet all such needs to a lesser extent. As a
21 consequence, the alternatives analysis did not serve its fundamental function under CEQA of
22 identifying ways to avoid significant impacts.

23 38. Respondents failed to properly consult with all transportation planning agencies and
24 public agencies with transportation facilities that could be affected by the Project, including all
25 public transit system operators within 5 miles and rail transit services within 10 miles as required
26 by CEQA.

27 39. Respondents failed to make the Final EIR publicly available, despite certifying that it was
28 available in the Notice of Determination.

1 40. Respondents' Findings violate the requirements of CEQA. The CEQA Findings fail to
2 establish whether significant Project impacts are reduced to insignificance or remain significant
3 even after mitigation. The Findings fail to address alternatives at all, including a failure to
4 consider whether alternatives could have reduced or avoided Project significant impacts and why
5 certain alternatives that could have lessened the Project's impacts to insignificance were not
6 adopted or otherwise rejected. They further fail to specify the location and custodian of
7 documents constituting the record of proceedings. Finally, the Findings are not supported by
8 substantial evidence.

9 41. Based upon each of the foregoing reasons, the EIR is legally defective under CEQA.
10 Caltrans prejudicially abused its discretion in violation of CEQA in approving the Project. As
11 such, the Court should issue a writ of mandate directing Caltrans to set aside its certification of
12 the EIR and approval of the Project.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioners pray for judgment as follows:

16 1. That this Court issue a peremptory writ of mandate ordering Respondents to:

17 (a) vacate and set aside their certification of the EIR on the grounds that it
18 violates the California Environmental Quality Act, Public Resources Code section 21000 *et*
19 *seq.*

20 (b) prepare, circulate and consider a new legally adequate EIR for the Project;

21 (c) vacate and set aside its approval of the Project;

22 (d) suspend approval of any and all contracts for construction of the Project
23 until the Respondents are in compliance with CEQA;

24 (e) suspend all activity that could result in any change or alteration to the
25 physical environment until Respondents have taken such actions as may be necessary to bring
26 their determination, findings or decision regarding the Project into compliance with CEQA;
27
28

1 2. For an injunction and order staying the approval and prohibiting Respondent from
2 engaging in any physical activity pursuant to the Project until the environmental review and the
3 Project complies with California statutes and regulations, including but not limited to the
4 requirements of CEQA;

5 3. For Petitioner's costs associated with this action;

6 4. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure
7 section 1021.5; and

8 5. For such other and further relief as the Court may deem just and proper.
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10 Dated: August 25, 2009

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

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15 By _____

Marc Chytilo

Attorneys for Petitioner TRANSDEF
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18 Exhibit 1: Notice of Commencement of Action, August 25, 2009

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Verification

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3 I, David Schonbrunn, in my capacity as the President of TRANSDEF, Petitioner in this
4 matter and duly authorized to make such statement, declare that I have read the attached Petition
5 and know its contents, which are true of my own knowledge except as to those matters stated on
6 my information and belief, and as to those matters I believe the Petition to be true.

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

9 Executed on August 25, 2009, at Sausalito, California.

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12 _____
13 David Schonbrunn, President
14 TRANSDEF
15 Petitioner
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