

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

October 19, 2006

Mr. Will Kempton, Director
California Department of Transportation
Post Office Box 942873
Sacramento, California 94273-0001

RE: Marin-Sonoma Narrows Project, Highway 101

Dear Director Kempton:

This office represents Transportation Solutions Defense and Education Fund (TRANSDEF). TRANSDEF is a public interest organization dedicated to regional transportation planning in the San Francisco Bay Area. TRANSDEF has participated in virtually all major transportation planning processes in the Bay Area for over a decade, including the Marin-Sonoma Narrows Project located on Highway 101.

We recognize that your senior management team was not involved in the early stages of environmental review for this project, and are writing to make sure you are aware of the problematic way this project was scoped over five years ago. We understand that your office is preparing to release a Draft environmental impact report/environmental impact statement for this project pursuant to the California Environmental Quality Act and National Environmental Policy Act, California Public Resources Code § 21,000 et seq. and 42 U.S.C. § 4321, et seq. We are gravely concerned that the way this project is described (the alternatives are listed at <http://www.dot.ca.gov/dist4/msn/alt.html>) will result in environmental review documents that fail to meet the minimal legal requirements of these two statutes and preclude Caltrans and the United States Department of Transportation from acting legally concerning the underlying project. We suggest that your office investigate the issues identified herein and direct that the environmental review processes ensure that current conditions and policy directives are given full consideration through either recommencement of the scoping process or integrating specific changes to the draft document prior to circulation. The three minimum changes are: 1) redefine the range of potentially feasible alternatives; 2) update the baseline/existing conditions analyses to reflect the current policy context; and 3) expand the scope of impact areas studied to include greenhouse gas emissions.

The scoping process is integral to CEQA's alternatives analysis, and flawed scoping, such as relying on stale project information and baseline conditions, can infect the adequacy of the entire environmental review process. Public Resources Code § 21080.4; Guidelines § 15082; see also *Citizens for Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 552, 569. Scoping was previously commenced nearly five and one-half years ago, when both the baseline environmental conditions and regional policy priorities were much different.

MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email: airlaw5@cox.net

The adequacy of CEQA's environmental review process depends upon a fair definition of the project's objectives to frame the alternatives analysis. *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1353. The lead agency cannot rely on unsupported statements of a project applicant's desires and their internal rejection of alternatives. *Id.*, 141 Cal.App.4th at 1356-58. The lead agency bears the duty of ensuring that the environmental review document's evaluation of alternatives is complete and unbiased, despite the preferences of parties to the application process. *Id.*

Our greatest issue of concern is founded upon the very narrow manner that this project was scoped and described, which eliminated consideration of viable alternatives in violation of CEQA and NEPA. We raised this concern early in the environmental review process (see NOP/NOI letter, Marc Chytilo to Susan Simpson and C. Glenn Clinton, June 15, 2001, attached) and believe that this issue has been ignored throughout the process. The objective of the Marin-Sonoma Narrows project is obviously to relieve recurring traffic congestion on the roadway, but the project purpose identified in scoping appears to be improperly constrained by exclusively calling for a continuous HOV lane. Modern transportation and land use planning do not presume solutions, but seek to use the environmental review process and consideration of alternatives to identify them. CEQA and NEPA's environmental review process are informational procedures, requiring the flexibility to find the best solution. We are gravely concerned that this EIR/EIS will improperly attempt to embed a preferred alternative through a narrow project purpose.

Environmental review documents and approvals that improperly limit evaluation by excluding transit and other alternative strategies for providing expanded transportation capacity in specific corridors are vulnerable to rejection. It is vitally important that current information be used, including consideration of impending actions affecting transportation choices. *Utahns for Better Transportation v. United States Department of Transportation*, 305 F.3d 1152, 1170, (10th Cir., 2002) (observing that "the regional transit choices that are at issue here are not ones 'that may be made in the future,' but are being made."). In this case, absentee voting has begun, including a local measure proposing to fund regional commuter services under the auspices of the Sonoma Marin Area Rail Transit District (SMART). SMART planners have proposed a specific service with railway access, equipment and service parameters already identified, and have completed their own environmental review process. As SMART's service is designed to address the same commuters that are creating congestion purportedly addressed in the instant Narrows project, and the two projects may create more capacity than necessary and even compete with each other, it is essential that the environmental review document provide a robust examination and consideration of SMART as an alternative to the proposed project.

We believe several SMART alternatives should be studied as alternatives to this project: 1) the one studied in the SMART FEIR; 2) one that provides SMART with the same dollar amount as is determined to be needed by the Narrows highway Build option; and 3) one that provides SMART with all of its capital funds. These last two alternatives would test the impact of additional funding on the SMART project. This funding would allow SMART's sales tax

revenues to be dedicated to operations, supporting a dramatic increase in train service over the currently planned operational schedule, which would result in a very substantial increase in projected ridership. With the extremely high estimated cost of the 17 mile Marin-Sonoma Narrows project, comparing its benefits to the benefits of that level of investment in an entire two-county 72 mile rail transit system that is designed to alleviate the same commuter-based congestion problem is the responsible thing to do, and an action which addresses the agencies' duties to consider a reasonable range of alternatives under CEQA and NEPA.

We believe it significant that the Sonoma Marin Multimodal Land Use and Transportation Study (Calthorpe Assoc., 1997), substantially funded by Caltrans, identified the use of the existing railroad right of way as a superior alternative to highway capacity increases in the Marin-Sonoma Narrows to meet congestion problems in this corridor. With frequent service, the train developed a very high level of projected ridership. This study is the closest thing the 101 Corridor has had to an objective Major Investment Study and must be integrated in the environmental impact analysis, including the alternatives analysis, for the proposed project.

The Metropolitan Transportation Commission has adopted policies favoring transit oriented development (see, for example, Resolution 3434) and the region has undertaken several land use planning exercises demonstrating both the community desire for, and regional commitment to practices that enhance the effectiveness of public transportation systems rather than the automobile as the primary commuter transportation vehicle. This project was previously scoped in 2001 during a time when the Regional Transportation Plan and transportation priorities were considerably different than they are today.

In 2003, ABAG released its first policy-based Projections, a set of demographic projections identifying where the next two decades of growth should go. It was a major departure from its Projections 2002, which, along with its predecessors, were extrapolations from past trends and current general plans. By placing much more of the region's future population and jobs near transit stations, Projections 2003 created a Smart Growth context where investment in transit will be significantly more effective than in the past. MTC's 2005 Regional Transportation Plan was based on Projections 2003. The Project Objectives and Description require updating to reflect the rapidly changing focus of transportation planning in the Bay Area that seeks to integrate land use principles into public transportation design and recognizes the confounding effect that additional highway capacity can have on transit system success.

We implore Caltrans to ensure that the recently expressed desires and intentions of the Bay Area populace in promoting a regional public transportation system to address future transportation needs be considered and integrated into the instant project and planning process. Given that the 2001 project description and scoping process is over five years old and thus is "stale" due to significant regional policy changes, we request that the environmental review process for this Project include some form of "re-scoping" before any environmental review document is circulated.

Mr. Kempton, Caltrans

October 19, 2006

Page 4

We note there are other changes since the 2001 scoping that necessitate renewed agency review of potential impacts. There is growing governmental acknowledgement of global climate change impacts from transportation sources, necessitating consideration of this issue in any environmental review document of a project that would induce or facilitate increased automobile transportation use, including this project. The California Attorney General's office has recently submitted comments on an DEIR circulated by the Orange County Transportation Authority. See Comment Letter, California Attorney General Bill Lockyer to Glenn Campbell, OCTA, March 30, 2006, attached. Even more recently, the enactment of AB 32 identifies the release of global greenhouse gas emissions as a matter of statewide concern, and thus triggers the need for consideration of greenhouse gas emissions in CEQA environmental review documents. The project will induce automobile travel by relieving congestion and increasing highway capacity, and the cumulative effects of this action must be considered for the environmental review document to fulfill its informational purpose.

The efficiency and form of the Bay Area's transportation system requires integrated and strategic planning. The Marin-Sonoma Narrows project conflicts with the current direction of transportation planning and priorities in the Bay Area, and will result in substantial future adverse environmental effects that can be avoided through a viable alternative currently undergoing development and funding approval. As currently scoped, the environmental review process is not responsive to either community need or the applicable legal requirements.

We request that the scoping of this project be reevaluated to address the numerous changes in regional transportation planning and current environmental conditions before a draft environmental review document is publicly circulated.

Thank you for your consideration of our views in this important matter.

Sincerely,

Marc Chytilo

CC: Gene Fong, Division Administrator, Federal Highway Administration
Bijan Sartipi, Caltrans District 4 Director
LTC Craig Kiley, US Army Corps of Engineers
David Schonbrunn, President, TRANSDEF