

# Transportation Solutions Defense and Education Fund

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## Current Litigation

### Environmental Defense v. EPA Court of Appeals for the D.C. Circuit

- Other Plaintiffs: TRANSDEF, Natural Resources Defense Council, Sierra Club
- Action seeks to preserve the efficacy of the Clean Air Act. Because motor vehicles generate a large fraction of the nation's air pollution, controlling the growth of motor vehicle emissions is critical to air quality. The regulatory scheme used by the Clean Air Act to control these emissions is transportation conformity.
- Action challenged new transportation conformity regulations. Prevailed on two claims. Seeking rehearing on two unsuccessful claims.

## Past Litigation

### Bayview Hunters Point Community Advocates v. MTC Federal District Court

- Other Plaintiffs: TRANSDEF, Communities for a Better Environment (CBE), Urban Habitat, Our Children's Earth Foundation, Latino Issues Forum, Sierra Club
- Action sought to enforce Transportation Control Measure (TCM) 2, requiring a 15% increase in regional transit ridership over 1982/83 levels.
- The goal of this action was a major increase in funding for urban transit systems.
- Obtained Court Orders 1) finding MTC is liable to achieve and maintain the specified ridership increase, 2) requiring MTC to demonstrate how the 15% increase will be achieved by Nov. 2006, through adopting a Regional Transportation Plan amendment within 6 months, 3) requiring MTC to file quarterly reports of its progress, 4) requiring MTC to file annual ridership reports and 5) awarding plaintiffs \$1.11 million in attorneys' fees and costs. *177 F. Supp. 2d 1011; 212 F. Supp. 2d 1156*
- Defendant paid \$100,000 to San Francisco Foundation to assist low-income and communities of color to participate in transit planning, in settlement of civil penalties for violation of the Clean Air Act.
- Defendant adopted a Regional Transportation Plan Amendment, as ordered by Court.
- Plaintiffs' Motion for Contempt, to force more aggressive action to increase transit ridership, was denied.
- Defendant rejected a proposed settlement of attorneys' fees claim, and filed an appeal. Defendant informed the Court the 2006 ridership goal would not be met.
- In April 2004, the 9<sup>th</sup> Cir. ruled 2-1 to reverse the District Court decisions.
- Plaintiffs' petition for rehearing and rehearing *en banc* was denied June 2, 2004.

Bayview Hunters Point Community Advocates v. EPA Federal District Court

- Other Plaintiffs: TRANSDEF, CBE, Urban Habitat, Our Children's Earth Foundation, Latino Issues Forum, Sierra Club
- Enforced EPA's duty under Clean Air Act to act on 1999 Bay Area Ozone Plan.
- Obtained Consent Decree in which EPA committed to Final Rulemaking.
- EPA subsequently partially disapproved 1999 Ozone Plan and found that the Bay Area had, once again, failed to attain the ozone standard. This triggered a conformity freeze, which became a lapse on 1/21/02, shutting off approval and funding for new highway projects.

CBE & TRANSDEF v. MTC, BAAQMD, CARB State Superior Court

- Action under CEQA to require preparation of an EIR on the 2001 Ozone Plan and under the CA Clean Air to require its procedures be followed for development of transportation control measures.
- Obtained Court Orders 1) requiring a Plan within 60 days to reduce VOC emissions by 26 tons per day and 2) EIRs on two area source control measure rules.
- Defendants filed an appeal. Mediation led to settlement, approved March '04. Defendants commit to: completing studies of potential refinery pollution control measures, modelling a TRANSDEF Smart Growth Alternative in MTC's 2005 RTP EIR, and providing annual reports indicating where MTC's money was spent, RTP project listings with cost-effectiveness calculations, and attorneys' fees and costs of \$325,000.

TRANSDEF v. EPA Federal Court of Appeals

- Other Petitioners: CBE, Our Children's Earth Foundation
- Action sought to invalidate EPA approval of Bay Area's Motor Vehicle Emissions Budget, needed for MTC's conformity determinations, a part of RTP and TIP approvals.
- This would have put the region back into conformity lapse (shutting off highway expansion funds) and invalidated RTP and TIP approvals.
- Obtained a Stay 7/23/02 from Ninth Circuit, blocking adoption of the 2003 TIP.
- Encouraged by plaintiffs' action, Sacramento Metropolitan and Yolo-Solano Air Pollution Control Districts filed a parallel MVEB adequacy review petition, focused on reducing ozone transport from the Bay Area. Districts settled their claims in exchange for expanding Smog Check II to the Bay Area, requiring an act of the Legislature.
- Petition dismissed 11/13/02 for lack of standing in non-published opinion. 28(j) letter filed, noting recent Ninth Circuit case granting standing to a group situated similarly to Petitioners.
- Stay lifted 12/24/02. Petition for rehearing en banc rejected 2/04/03.
- The State Legislature amended the California Clean Air Act, requiring Smog Check II in the Bay Area as the result of this litigation.

## Past Administrative Actions

### San Francisco Department of Building Inspection

After a decade of advocating for the preservation of the San Francisco Transbay Terminal and the extension of Caltrain to it, TRANSDEF and its colleagues succeeded in having a new Transbay Terminal and Downtown Extension funded in the 2001 Regional Transportation Plan. In 2004, Myers Development Company purchased the 80 Natoma parcel adjacent to the Terminal, slated for condemnation for the Caltrain rail tunnel. With Myers interference threatening the viability of the entire Terminal project, TRANSDEF convinced the Department of Building Inspection to issue a Stop Work Order on the Myers project, asserting that its permit had expired. In ruling eventually that the permit had not expired, the Building Inspection Commission relied on the novel theory that underpinning work on adjacent properties under a separate permit constituted commencement of work on the permit for the 80 Natoma project. By preventing the 80 Natoma project from establishing “facts on the ground” the Stop Work Order reduced the contentiousness of the condemnation process, resulting in a unanimous vote at the Board of Supervisors.

### Santa Clara Valley Transportation Authority

In the face of VTA’s planned 29% transit service cuts in 2003, TRANSDEF proposed using funds from 2000's Measure A to maintain service, and provided a legal opinion in support. After VTA’s General Counsel advised against this course of action, TRANSDEF and its allies lobbied the VTA Board, which authorized a validation suit to test whether Measure A could be interpreted as supporting current operations. The court approved the validation, clearing the way for VTA to issue bonds to maintain service.

### TRANSDEF v. MTC, BAAQMD, ABAG & CARB Administrative Agencies EPA & DOT

- Environmental justice administrative complaint.
- Seeks to involve federal agencies in pressuring MTC and BAAQMD to involve low-income and minority communities in air quality and transportation planning, and stop discrimination in the allocation of transportation investments.
- EPA rejected Petition without prejudice, as premature.
- DOT did not process the complaint.
- Complaint was withdrawn, per 2004 settlement with MTC.
- The Complaint’s claims are similar to those of the current case, Darensburg v. MTC.

City of Petaluma Application for at-grade railroad crossing California PUC  
TRANSDEF protested this application, seeking to ensure that growth in auto traffic volumes will not harm future SMART passenger service on the railroad. The PUC Commission ruled in February 2006 in favor of TRANSDEF, requiring a new evaluation of crossing safety when passenger service resumption is announced.

## Amicus Filings

### Sierra Club v. U.S.D.O.T. Federal Court of Appeals

Joined with Environmental Defense & Our Children's Earth Foundation as *amici curiae* to file a brief presenting epidemiological evidence in support of plaintiff's assertion that widening U.S. 95 in Las Vegas, Nevada would cause human health impacts. The case settled, yielding a multi-million dollar commitment to protect the health of schoolchildren from toxic pollution caused by the road widening.

### City and County of San Francisco, Peninsula Corridor Joint Powers Board, Transbay Joint Powers Authority v. The Superior Court of San Francisco County State Court of Appeals

Joined with Sierra Club, San Francisco Tomorrow, Train Riders Association of California, Regional Alliance for Transit, Transportation and Land Use Coalition, & Bay Rail Alliance as *amici curiae* to file a brief in support of the portion of the plaintiffs' petition that sought relief that would allow the resumption of planning for the Transbay Terminal project, pending resolution of their appeal of a writ of mandate resulting from a CEQA challenge to the project by Myers Development Company and Myers Natoma Venture, LLC. The Court of Appeals stayed the portion of the writ that prohibited further planning work and issued an Order to Show Cause, expediting the appeal.