

# Transportation Solutions Defense and Education Fund

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September 18, 2017  
By E-Mail to:  
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Tom Butt, Chair  
Contra Costa Transportation Authority  
2999 Oak Road, Suite 100  
Walnut Creek CA 94597

Re: FEIR for the 2017 Update to the Contra Costa Countywide Comprehensive Transportation Plan (SCH# 2017022054)

Dear Mr. Butt:

The Transportation Solutions Defense and Education Fund, TRANSDEF, submitted comments on the DEIR for the Contra Costa Countywide Comprehensive Transportation Plan. Your Board is scheduled to certify the FEIR at its Wednesday meeting.

TRANSDEF's comments assert that the EIR failed to acknowledge and mitigate several significant environmental impacts involving greenhouse gas emissions (GHGs) resulting from the implementation of the Contra Costa Countywide Comprehensive Transportation Plan. The responses to our comments were consistently incorrect and legally flawed. This letter will summarize the key issues, and explain the relevant legal standards.

TRANSDEF asserts that a potentially significant impact should have been disclosed for the second criterion of significance: "2. Result in a net increase in direct transportation-related GHG emissions in 2040 when compared to existing conditions." (EIR p. 2.2-16.) Table 2.2-8 of the EIR, p. 2.2-22, shows the Annual GHG Emissions (MTCO<sub>2</sub>e/yr), without reductions for Advanced Clean Cars/Pavley (state programs to reduce vehicle emissions) increasing by 24% over existing GHG levels from transportation.

The California Supreme Court addressed a situation similar to this in the Newhall Ranch case, *Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204:

In 2010, the Natural Resources Agency adopted a new CEQA Guideline on Determining the Significance of Impacts from Greenhouse Gas Emissions. (Cal. Code Regs., tit. 14, § 15064.4.)

The new guideline provides that a lead agency should attempt to "describe, calculate or estimate" the amount of greenhouse gases the project will emit, but recognizes that agencies have discretion in how to do so. (Guidelines, § 15064.4, subd. (a).) It goes on to provide that when assessing the significance of greenhouse gas emissions, the agency should consider these factors among others: "(1) The extent to which the *project* may increase or reduce greenhouse gas emissions as compared to the *existing* environmental setting; (62 Cal.4th 217, emphasis added, footnote omitted.)

It is quite clear cut that if the state measures (Advanced Clean Cars, Pavley, and the low-carbon fuel standard) are included in a calculation of the project's GHG emissions, this is not an accurate representation of the "extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting. As TRANSDEF explained, the state measures are not contained in the Project Description and will not be implemented by CCTA. As such, they are irrelevant to measuring project GHG emissions compared to baseline. As we asserted, CCTA is taking credit for the state measures, when claiming an emissions reduction.

The Newhall Ranch decision dealt with a situation analogous to the EIR's criterion 4: "Substantially impede attainment of goals set forth in Executive Order S-3-05 and Executive Order B-16-2012; 5. Substantially conflict with any other applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs." (EIR p. 2.2-16.)

The 2009 Newhall Ranch EIR used a GHG efficiency methodology, comparing the project's emissions to a calculation of the Business as Usual GHG emissions for the project, using the assumptions of the Air Resources Board's Scoping Plan. The Court determined that the project's claimed 31% reduction, compared to Business as Usual, was not a demonstration the project would not impede the implementation of AB 32 (which effectively requires a statewide 29% reduction), because of a lack of substantial evidence.

An EIR taking a goal-consistency approach to CEQA significance may in the near future need to consider the project's effects on meeting longer term emissions reduction targets. fn. 6 (62 Cal.4th 223.)

fn. 6: ... Executive Order No. B-30-15, signed by Governor Brown on April 29, 2015, endorsed the effort to set "an interim target of emission reductions for 2030." Pending legislation would codify this additional goal, directing the Air Board to establish a 2030 limit equivalent to 40 percent below 1990 levels. (Sen. Bill No. 32 (2015-2016 Reg. Sess.) § 4.)

The situation is exceedingly simple with the CCTA EIR, because the state goal is to reduce emissions, while project emissions are clearly increasing. In no way can CCTA claim to not be impeding the implementation of AB 32 and SB 32. Mitigation is required.

Finally, Response D-27 was entirely incorrect. TRANSDEF's comment letter was focused on the VMT and GHG emissions that the EIR projected will increase sharply, as a result of continued suburban land development. In a section labeled "Feasible Mitigations" TRANSDEF discussed a letter sent to the Sonoma County Transportation Authority, proposing a program for their sales tax that would mitigate the expected growth in VMT and GHGs there. (The proposal was actually inspired by conditions in Contra Costa County, and our work on the EPAC.) Contrary to the FEIR's assertion that the letter did not comment on the DEIR, it was offered as a potential mitigation measure for the identified significant impacts.

Based on the guidance of the Supreme Court, the FEIR is legally insupportable. We recommend CCTA withdraw the FEIR. TRANSDEF restates our offer to help develop a revised EIR and CTP.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,  
President