

# Transportation Solutions Defense and Education Fund

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August 22, 2009  
By E-Mail

Christopher Calfee, Special Counsel  
California Resources Agency  
1017 L Street, #2223  
Sacramento, CA 95814

Re: Comments on Draft CEQA Guidelines Amendments

Dear Mr. Calfee:

The Transportation Solutions Defense and Education Fund (TRANSDEF) is a Bay Area environmental non-profit focused on the regional planning of transportation, air quality and land use. We expect to file suit next week challenging a Caltrans EIR for failure to adequately address climate change issues. We are participating in the California Transportation Commission's working groups on revising the Regional Transportation Plan Guidelines in response to climate change issues, including SB 375. From that context, we offer the following comments in response to the Notice of Proposed Amendment of Regulations Implementing the California Environmental Quality Act.

Our most important comment, which is expanded upon in detail below, is that we believe that the analysis of cumulative impacts in the Guidelines needs to be firmly anchored to ARB's GHG planning work, including its emissions inventories, regulations, targets and projections. We are concerned that the proposed scheme, in which each lead agency sets its own GHG significance thresholds and its own definition of "cumulatively considerable" impacts, will fail to achieve AB 32's GHG emissions reductions goals. Only when all of the GHG reduction plans across the State are coordinated, based on information from ARB, is there the possibility of concerted action and success.

## Failure to Use Mandatory Language

We note the use of permissive [in **bold**], rather than mandatory language in the following citations:

§ 15064(h)(3): When relying on a plan or program, the lead agency **should** explain how the particular requirements in the plan or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.

§15064.4(a): A lead agency **should** make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.

§15064.4(a)(1): The lead agency **should** explain the limitations of the particular model or methodology selected for use;

§15183.5(b)(1) Plan Elements. A greenhouse gas emissions reduction plan **may**:

Based on the following citations from the Initial Statement of Reasons (which use the mandatory form “must”), we believe the above-cited uses of “should” are in error, and that they need to be changed to “shall.”

p. 17: For example, an initial study **must** include ...

p. 20: Accordingly, lead agencies **must** use their best efforts....

p. 21: The **requirement** to disclose any limitations in the model ...

p. 58: Criteria (A) and (C) are **necessary** ... Criterion (B) establishes a **benchmark** to assist the lead agency in determining whether the plan provisions **will avoid or substantially lessen cumulative effects** of the area’s GHG emissions. Criteria (D) and (E) are **necessary** ... Criterion (F) reflects the **requirement** ...

#### Cumulative Impacts

§ 15130(a) cites a definition at § 15065(c). This is incorrect. It should be 15065(a)(3).

§ 15130(f): While § 15130(b)(1)(B) identifies where projections of future GHG emissions within a geographic scope may be found, it does not identify a means or method for determining whether such emissions are cumulatively considerable.

In the language of the Initial Statement of Reasons, what’s missing and/or confused is the definition of “the extent of the cumulative problem.” (p. 46) This results from a spatial mismatch between the geographic scope of the plans identified in § 15130(b)(1) (B), and the scope of the problem. The cumulative impacts of GHGs are qualitatively different from other environmental impacts, in that the impacts occur on a global scale.

This mismatch was resolved when the State defined the extent of the cumulative problem by adopting AB 32, which set forth GHG emissions reduction goals. These goals, to be accomplished by programs implemented by ARB, are to be applied to a geographic scope that includes the entire State.

As a result, the definition of “cumulatively considerable” in § 15130(f) needs to be explicitly tied to ARB’s GHG planning. It cannot be left solely to the discretion of the lead agency. (See discussion of Tiering and Emissions Targets below for additional discussion and possible language.)

### Tiering and Emissions Targets

§15183.5(b)(1)(D) is incomplete, because it does not set forth how an emissions level is to be “specified”: “Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;”

While arguably §15183.5(b)(1)(B) is intended to fulfill the purpose of setting a target, its language is ineffective both because it is part of a list of voluntary plan elements (“A greenhouse gas emissions reduction plan **may**”), and because each lead agency is free to define the meaning of the phrase “not cumulatively considerable.” Such a scheme would be inconsistent with statutory requirements.

AB 32 defined the state’s GHG emissions reduction targets as (1) 2000 levels by 2010, (2) 1990 levels by the year 2020, and (3) 80 percent below the 1990 levels by the year 2050. SB 375 requires ARB to develop passenger vehicle greenhouse gas emissions reductions targets for 2020 and 2035 by September 30, 2010.

The Proposed Guideline Amendments are incapable of ensuring that the cumulative impacts of GHG reduction plans statewide do not exceed the State’s AB 32 goals. The only way that AB 32 goals will not be frustrated is if the GHG emissions limits or emissions reduction targets in individual GHG reduction plans are directly tied to statewide planning by ARB.

To make a system of tiered documents effective in reducing GHG emissions, TRANSDEF recommends inserting a new §15183.5(b): “The GHG emissions limit for a programmatic analysis of greenhouse gases must be demonstrated to be derived from ARB publications, including emissions inventories, adopted or proposed GHG emissions reduction measures, and regional passenger vehicle GHG targets. Regions may allocate their regional passenger vehicle GHG targets between sub-regions in a publicly reviewed allocation plan.”

### Appendix F

The decision to remove references to “life cycle” is a major setback for a section on energy conservation, because this concept is central to the effective evaluation of energy conservation proposals. The changes that were proposed unfortunately distort and disrupt the meaning of the current text. They do not accurately reflect the considerations that need to occur as part of an adequate energy analysis.

The removal of “lifetime” from the introductory language in Section I resulted in a meaningless sentence. Energy efficiency and initial dollar cost cannot be compared in terms of cost-effectiveness. They are incomparable terms. The existing language makes a proper comparison, using lifetime cost as the common frame of reference. Nothing in the existing sentence raises any CEQA issues as discussed in the Initial Statement of Reasons. We urge that this sentence not be modified.

The proposed edits of Section II(A)4, including the removal of “initial and life cycle,” completely shifts the meaning of the sentence from a comparison of initial costs to lifetime energy costs to one of identifying energy supplies. If the problem is the undefined regulatory meaning of “lifecycle” the solution can be using the simpler word “lifetime” as it was used in Section II(H). Section II(A)4 should be rewritten: “Initial purchase cost and project energy costs over the project’s lifetime.”

Interestingly, the removal of “life cycle” from Section II(C)1 does not affect the meaning of the sentence, because of the articulation of each of the stages of the lifecycle. Thus, unlike the other deletions, this deletion is harmless.

The inclusion of “water conservation and solid-waste reduction” in Section II(C)3 resulted in another meaningless sentence. The purpose of the sentence is to identify whether the project will create an impact by adding to either the peak period or base period energy demands. Peak demand simply is not an issue in “water conservation and solid-waste reduction.” A new II(A)6 should be inserted instead of modifying II(C)3: “Energy savings resulting from water conservation and solid-waste reduction.” This is more properly a settings issue, rather than an environmental impact.

#### No Project Alternative

TRANSDEF urges the Resource Agency to address a subject that did not come up during the OPR proceedings. A crucial part of SB 375 implementation will be the sustainable communities strategy, which will be an element of regional transportation plans. There is an urgent CEQA practice question as to whether a regional transportation plan (RTP) should be considered under CEQA Guidelines Section 15126.6(e)(3)(a) or 15126.6(e)(3)(b).

15126.6(e)(3)(A): When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy, or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

15126.6(e)(3)(B): If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. ...

The Attorney General commented to the Metropolitan Transportation Commission (MTC) that the CEQA analysis of its 2009 RTP needed to evaluate the potential impacts of the “entire project, which in this case we believe represents the entire \$223 billion of authorized expenditures – not just the \$31.6 billion for projects MTC identifies as ‘discretionary,’ but also the \$191 billion for projects identified as ‘committed,’ projects included in the prior Transportation Plan but not yet constructed.” (Letter to MTC, Oct. 1, 2008, at 5. Attached.)

That comment criticized MTC's practice of comparing its "Project" to a No Project Alternative that contained all the unbuilt expansion projects it had adopted into its previous RTP, on the theory that CEQA required an analysis of only the impacts of the new RTP as compared to that previous RTP. MTC claimed this was consistent with CEQA Guidelines Section 15126.6(e)(3)(A), asserting that an RTP was similar to a land use plan.

The significance of this interpretation is that that only a small fraction of the total projects in the new RTP were identified as the "Project" for purposes of impact analysis. Projects from the previous RTP were considered part of the No Project Alternative, even if they were unbuilt at the time of the RTP adoption. (TRANSDEF asserted at the time that projects under a contract for construction were appropriately included in the No Project Alternative.)

CEQA Guidelines Section 15126.6(e)(3)(B) clearly distinguishes [conventional physical] projects from land use plans and regulatory plans. It is clear that an RTP is a collection of conventional projects, and bears no resemblance to a land use plan, which is a collection of unfunded hypothetical projects, as distinguished from the funded projects with sponsors, costs, and scopes that are found in an RTP. An RTP's No Project Alternative should be seen as a no build alternative, viewed at an analysis point decades hence.

This issue is specifically relevant to CEQA Guidelines that address GHGs: As the Attorney General noted, “MTC’s own research shows that achieving reductions in GHG emissions consistent with AB 32 will be extremely difficult: this highlights the need for careful and complete evaluation of impacts on VMT and GHG emissions of *all* expenditures for road and transit expansion in the Draft RTP.” (Oct. 1 letter at 5-6, emphasis in original.)

TRANSDEF urges the Resources Agency to resolve this issue once and for all by issuing guidance as to whether RTPs are to be considered within paragraph (A) or (B) of Section 15126.6(e)(3). The proper construction of No Project Alternatives will enable RTPs to be much more effective in reducing GHGs.

#### Other Comments

The phrase “regional blueprint plans” that is proposed to be added to § 15125(d) is about to be phased out, to be replaced by the statutory term from SB 375: sustainable community strategy. It is not clear to us whether the subtleties of SB 375 dictate that

the alternative planning strategy should also be added to this paragraph. Please investigate.

We question whether the regional plans identified in § 15125(d) should be stated in the plural form. For any given region, there is typically only one regional transportation plan, regional housing allocation, and regional blueprint plan.

§ 15126.4(c)(1) includes what appears to be the superfluous phrase “that are required as part of the lead agency’s decision.” This phrase adds no clarity to the identification of mitigation plans, and appears to add restrictive language when none is called for. Is it possible that this language is mistakenly referring to mitigations that have already been identified through the EIR process? That would be redundant.

§ 15126.4(c)(2): A more consistent focus on project elements could be achieved by eliminating “other” and a comma, so that the sentence reads “Reductions in emissions resulting from a project through implementation of project features, project design, or measures such as those described in Appendix F;” Without those minor changes, the “other measures” could refer to non-project related measures.

§ 15126.4(c)(5): By deleting the words “incorporation of” and “found” the following sentence may be clearer: “Mitigation may also include the specific measures or policies in an adopted ordinance or regulation that reduce the cumulative effect of emissions.” It is not clear to us why measures that are already adopted need to be further “incorporated” into a plan. Please note that “reduce” should be in the plural.

TRANSDEF strongly supports the proposed amendments to the Transportation/Traffic section of the Environmental Checklist Form. We believe these changes are needed to enable infill projects to be properly evaluated in the context of climate change.

TRANSDEF appreciates this opportunity to offer its comments on the Proposed CEQA Guidelines Amendments. Should any further clarification be needed, please do not hesitate to call us at the number above.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,  
President

Attachment  
Attorney General’s Letter to MTC