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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BAYVIEW HUNTERS POINT COMMUNITY) Case No. C-01-0750 TEH

ADVOCATES, COMMUNITIES FOR A BETTER)

ENVIRONMENT, LATINO ISSUES FORUM,)

OUR CHILDREN'S EARTH FOUNDATION,)

SIERRA CLUB, TRANSPORTATION)

SOLUTIONS DEFENSE AND EDUCATION)

FUND, and URBAN HABITAT PROGRAM, a)

project of the TIDES CENTER,)

Plaintiffs,

vs.

METROPOLITAN TRANSPORTATION)

COMMISSION, SAN FRANCISCO MUNICIPAL)

RAILWAY, and ALAMEDA-CONTRA COSTA)

TRANSIT DISTRICT,)

Defendants.

**[PROPOSED] ORDER FOR
VOLUNTARY DISMISSAL WITH
PREJUDICE OF CLAIMS AGAINST
DEFENDANT CITY AND COUNTY
OF SAN FRANCISCO**

1 Upon the stipulation of Plaintiffs Bayview Hunters Point Community Advocates,
2 Communities for a Better Environment, Latino Issues Forum, Our Children's Earth Foundation,
3 Sierra Club, Transportation Solutions Defense and Education Fund, and Urban Habitat Program
4 (collectively "Bayview Advocates") and Defendant City and County of San Francisco (sued as San
5 Francisco Municipal Railway) ("MUNI"), and for good cause showing,

6 IT IS HEREBY ORDERED that Bayview Advocates' claims against MUNI are hereby fully
7 dismissed with prejudice in accordance with the stipulation of these Parties and in light of their May
8 __, 2002 Settlement Agreement (attached hereto).

9 IT IS FURTHER ORDERED that the Settlement Agreement attached hereto is incorporated
10 herein for the purpose of retaining the Court's jurisdiction to enforce said Agreement.

11 The Clerk is directed to enter this Order for Voluntary Dismissal with Prejudice forthwith.

12
13
14 Dated: _____

THE HONORABLE THELTON E. HENDERSON
UNITED STATES DISTRICT COURT JUDGE

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made this ____ day of April, 2002, by and between Plaintiffs Bayview Hunters Point Community Advocates, Communities for a Better Environment, Latino Issues Forum, Sierra Club, Transportation Solutions Defense and Education Fund, Urban Habitat Program, and Our Children's Earth Foundation (collectively "Bayview Advocates") and the City and County of San Francisco ("MUNI"). Bayview Advocates and MUNI are sometimes collectively referred to in this Agreement as the "Parties."

RECITALS

A. Bayview Advocates filed a Complaint on February 21, 2001, alleging that the Metropolitan Transportation Commission ("MTC"), MUNI and the Alameda-Contra Costa Transit District ("AC Transit") (collectively "Defendants") have violated the Clean Air Act, 42 U.S.C. §7401, et. seq.

B. Bayview Advocates allege in their Complaint that Defendants failed to implement Transportation Control Measure 2 ("TCM 2"), originally adopted in the 1982 Bay Area Air Quality Plan and retained in the region's current plan for attaining the national standards set by the U.S. Environmental Protection Agency for ozone pollution.

C. In an Order entered November 9, 2001 (the "Order"), the Court ruled that TCM 2 requires MTC, MUNI and the other five major transit operators to increase regional transit ridership by 15% from fiscal year ("FY") 1982/83 levels in the San Francisco Bay Area ("Bay Area") within five years. The Court further found Defendants liable for failing to achieve the requisite 15% increase.

D. MUNI's best estimate of its actual ridership for FY 1982/83 is 264 million boardings (not including paratransit ridership).

1 E. According to the most recent ridership statistics reported to the Federal
2 Transit Administration, MUNI's ridership in FY 2000/2001 was 234.9 million boardings
3 (not including paratransit ridership).

4 F. Bayview Advocates and MUNI agree that avoiding continued litigation of
5 this matter through settlement is in the public interest and therefore enter into this
6 Settlement Agreement.

7 NOW THEREFORE, in consideration of the terms, conditions and covenants
8 herein set forth, the Parties agree as follows:

9 1. **Parties Bound.** The provisions of this Settlement Agreement shall apply
10 to and be binding upon the undersigned Parties to this action, and any of their officers,
11 directors, agents, and employees, who may be acting in concert or participation with
12 them, whether or not such person has notice of this Settlement Agreement, and on any
13 successors in interest to the Parties.

14 2. **Vision Plan Projects.** MUNI has issued a document entitled *A Vision for*
15 *Rapid Transit in San Francisco* ("Vision Plan"). Among other things, the Vision Plan
16 contains projects that could substantially increase ridership above current levels. Of the
17 following list of projects, which have been taken from the Vision Plan, MUNI estimates
18 that projects (a) through (p) could be completed within five (5) years after initial funding,
19 provided that adequate funding is programmed to complete the project and there is not
20 significant public opposition to the project. MUNI estimates that projects (q) through (t)
21 could not be completed within five (5) years after funding. MUNI further estimates that
22 projects (a) through (j) and (k)(1) could be complete by November 2006 given prompt,
23 adequate funding and provided that there is not significant public opposition to the
24 project.

- 25 a) Electrification of 47-Van Ness
- 26 b) Electrification of 9-San Bruno
- 27 c) Transit Preferential Street ("TPS") treatments for J-
28 Church from Duboce Portal to 30th Street

- d) TPS treatments for K-Ingleside from St. Francis Circle to Green Terminal
- e) TPS treatments for L-Taraval from West Portal to Wawona/46th Avenue
- f) TPS treatments for M-Ocean View from St. Francis Circle to Green Terminal
- g) TPS treatments for N-Judah from Duboce Portal to La Playa
- h) TPS treatments on Fillmore
- i) TPS treatments on Market Street from Castro to the Embarcadero
- j) TPS treatments from Stockton/Market to the Presidio through North Beach and the Marina
- k) (1)TPS treatments on Geneva and (2) Ocean from Junipero Serra to Bayshore/Sunnydale, including exclusive Right of Way ("ROW") for K
- l) TPS treatments on 19-Polk route to Hunters Point
- m) Terminal loop for historic E-line on the Embarcadero
- n) BRT on Folsom from the Embarcadero to 16th Street
- o) BRT on Potrero and TPS on San Bruno
- p) BRT on Geary from Pacific Ocean to Van Ness, and TPS to Transbay Terminal
- q) BRT on Van Ness and TPS on Mission
- r) BRT on 19th Avenue and Park Presidio from Stonestown to Lake
- s) Electrification of 19-Polk
- t) Bus Rapid Transit ("BRT") on 16th Street, including electrification on 16th Street

3. **TCM 2 Chapter.** MUNI shall prepare a document ("TCM 2 Chapter"), which shall be adopted as an amendment to its Short-Range Transit Plan ("SRTP"), and which shall include, for each of the projects listed in Paragraph 2 above, the following:

- a. A detailed description of the specific improvements for each corridor or line at the same or greater level of detail contained in the Vision Plan;
- b. The current ridership (in annual unlinked passenger trips) on the corridor or line on which such improvements are to be made;
- c. A calculation, using generally accepted methodologies, of the projected increase in ridership by November 9, 2006, or by such other

1 date by which the project shall be operational (as
2 determined by the timeline in paragraph 3(d)), for
3 each corridor or line, both with and without
4 implementation of the proposed improvements;

5 d. A timeline for implementation of corridor or line
6 improvements expressed in terms of the total
7 months necessary for each phase of implementation
8 to full operation;

9 e. The estimated cost for each project, including
10 projections for both capital expenditures and annual
11 operating costs;

12 f. An analysis of the demographics, using U.S. census
13 categories, including race, ethnic background,
14 national origin and income, of the riders served by
15 the corridors or lines to be improved by each
16 project.

17 4. **Implementation of Projects; Funding.** Consistent with its priorities,
18 MUNI agrees to implement every project listed in Paragraph 2 (a) - (p) that is promptly
19 and adequately funded, provided there is not significant public opposition to the project.

20 5. **SRTP Amendment.** By no later than December 1, 2002, MUNI shall
21 adopt the TCM 2 Chapter as an amendment to its SRTP ("SRTP Amendment"), after
22 providing an opportunity for written comment and holding a public hearing. Within 30
23 days of the adoption of the SRTP Amendment, but in no event later than December 31,
24 2002, MUNI shall submit the SRTP Amendment to MTC for funding consideration.

25 6. **Prioritization of Projects.** MUNI retains sole authority to prioritize its
26 funding requests in the SRTP. However, MUNI agrees to make a good faith effort to
27 secure funding from MTC for the projects specified in the TCM 2 Chapter, in accordance
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1 with MUNI's funding priorities, which are established according to the Project Criteria
2 listed in MUNI's SRTP (see Chapter VII [Capital Improvement Program] of MUNI's
3 2002-2021 SRTP). MUNI agrees to rank the TCM 2 Chapter projects for funding in
4 accordance with the Project Criteria in the SRTP, and will give consideration to the
5 ridership impact of each project, as set forth in the TCM 2 Chapter. The Parties prefer
6 that funding for the projects come from funds that are not programmed for current MUNI
7 projects or projects that are prioritized higher by MUNI than the projects in the TCM 2
8 Chapter..

9 7. **Public Meeting.** MUNI agrees to conduct a public meeting in the
10 Bayview Hunters Point community within 60 days of the date of this Settlement
11 Agreement for the purpose of identifying potential improvements to the 54-Felton, 29-
12 Sunset, 44-O'Shaughnessy and 23-Monterey lines. The meeting shall be held within
13 Bayview Hunters Point on an evening or Saturday, with 30 days' advance notice to the
14 community, and specifically to counsel for Bayview Advocates. Within 30 days
15 following the meeting, MUNI shall meet with representatives of Bayview Advocates and
16 their counsel to describe the projects and improvements identified at the public meeting
17 and discuss the feasibility of each as a ridership increase measure to be included in
18 MUNI's SRTP. MUNI shall address each such measure identified as feasible in the
19 SRTP Amendment.

20 8. **Reports to Plaintiffs.** In order for Bayview Advocates to monitor
21 MUNI's compliance with the terms of this Settlement Agreement, MUNI agrees to notify
22 Bayview Advocates, through their attorney representatives as set forth in Paragraph 13,
23 within 30 days of their fulfillment of certain obligations required by this Settlement
24 Agreement, including: (1) the adoption of the amendment incorporating the TCM 2
25 Chapter into the SRTP; and (2) the submission of the SRTP Amendment to MTC for
26 funding consideration. Additionally, MUNI shall notify Bayview Advocates when any
27 TCM 2 Chapter project receives a funding commitment. On an annual basis, Bayview
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1 Advocates may request a report on the status of funding and implementation on each of
2 the projects. Within 30 days after receipt of such a request, MUNI shall submit a status
3 report to Bayview Advocates.

4 9. **Full and Final Settlement.** This Settlement Agreement is in full and final
5 settlement of the allegations in the Complaint against MUNI.

6 10. **Attorneys' Fees.** In full resolution of all of Bayview Advocates' claims
7 for attorneys' fees and costs, MUNI shall pay Bayview Advocates the total amount of
8 \$75,000. A check for that amount shall be made payable to Earthjustice and delivered to
9 the attention of Deborah S. Reames at the address set forth in Paragraph 13 within 45
10 days of entry of the Court's Order for Voluntary Dismissal with Prejudice of Claims
11 Against City and County of San Francisco. Nothing in this Settlement Agreement shall
12 be construed to affect Bayview Advocates' entitlement to attorneys' fees under the Clean
13 Air Act in connection with future actions to enforce this Settlement Agreement.

14 11. **Waiver of Penalties.** Bayview Advocates hereby waive their claim for
15 the assessment of civil penalties against MUNI, and release MUNI from all liability for
16 attorneys fees except as set forth in Paragraph 10 above.

17 12. **No Admission of Liability.** By entering into this Settlement Agreement,
18 MUNI is in no way admitting any liability for the allegations set forth by Bayview
19 Advocates in the Complaint.

20 13. **Notices.** Except as specified otherwise herein, when written notification,
21 communication, or submission is required by any party to this Settlement Agreement, it
22 shall be addressed as follows:

23 As to the Plaintiffs:

24 Deborah S. Reames
25 Earthjustice
26 Oakland Regional Office
27 426 17th Street, 5th Floor
28 Oakland, CA 94612

Helen H. Kang

1 Environmental Law & Justice Clinic
2 Golden Gate University School Of Law
3 536 Mission Street
4 San Francisco, CA 94105-2968

5 Richard T. Drury
6 Communities For A Better Environment
7 1611 Telegraph Ave., Suite 450
8 Oakland, CA 94612

9 Marc S. Chytilo
10 Law Office of Marc Chytilo
11 PO Box 92233
12 Santa Barbara, CA 93190

13 As to MUNI:

14 Donald P. Margolis
15 Robin M. Reitzes
16 Deputy City Attorneys
17 San Francisco City Attorney's Office
18 1390 Market St., 6th Floor
19 San Francisco, CA 94102

20 14. **No Warranty.** Bayview Advocates do not, by their consent to this
21 Settlement Agreement, warrant or aver in any manner that MUNI's complete compliance
22 with this Settlement Agreement shall result in compliance with the Clean Air Act, except
23 with respect to the violations alleged in the Complaint.

24 15. **Limited Release.** Except as provided below in this paragraph, and except
25 for any claim or action to enforce the obligations contained in this Settlement Agreement,
26 Bayview Advocates agree, for the term of this Agreement, not to bring any action against
27 the City and County of San Francisco, and its departments and agencies (including
28 MUNI) and employees, based on any and all claims, actions, causes of action, liabilities,
damages, demands, attorneys' fees, expenses and costs (including without limitation
court costs) of any kind or nature whatsoever, which arises out of TCM 2. Bayview
Advocates do not waive any rights or remedies available to them for any violation by
MUNI of Federal or State laws, regulations or permit conditions other than those civil
violations covered by this Settlement Agreement and alleged in the Complaint.

16. **United States Not Bound.** Nothing in this Settlement Agreement shall be

1 construed to bind the United States.

2 **17. Submission of Agreement to Department of Justice.** The Parties agree
3 and acknowledge that after lodging this Settlement Agreement with the Court, but prior
4 to entry, Bayview Advocates shall submit this Proposed Order and Settlement Agreement
5 to the United States Department of Justice, Environmental and Natural Resources
6 Division, Legislation and Special Litigation Section for review and comment in writing
7 by the United States (including Region IX of the U.S. Environmental Protection Agency)
8 for a 45-day review period, pursuant to 42 U.S.C. § 7604(c)(3). In so agreeing, MUNI
9 does not concede that 42 U.S.C. § 7604(c)(3) – which by its terms applies only to
10 “consent judgments” – applies to this settlement, which is not a consent judgment or
11 consent decree. The Parties reserve the right to withdraw consent to this Settlement
12 Agreement if the United States notifies the Court in writing that it opposes this
13 Settlement Agreement. The Parties agree not to oppose this Settlement Agreement or to
14 withdraw consent to any provision of this Settlement Agreement unless the United States
15 notifies the Court in writing that it opposes this Settlement Agreement. The Parties
16 hereby agree that this Court may enter this Proposed Order and Settlement Agreement
17 without further consent from either party. After the 45-day period required by 42 U.S.C.
18 § 7604(c)(3) has expired, any party to this Settlement Agreement may file an unopposed
19 request that the Court enter this Settlement Agreement. The Parties hereby agree that
20 after the 45-day period required by 42 U.S.C. § 7604(c)(3) has expired, this Court may
21 enter the Proposed Order for Voluntary Dismissal, with attached Settlement Agreement
22 (the “Dismissal”) without further consent of either party. Bayview Advocates will notify
23 the court when the 45 days have elapsed; should it fail to do so, MUNI may file an
24 unopposed request that the Court enter the Dismissal.

25 **18. Retention of Jurisdiction to Enforce Agreement.** The Parties agree that
26 this Settlement Agreement shall be submitted to the Court for incorporation into an Order
27 for Voluntary Dismissal With Prejudice of this lawsuit and that the Court shall retain
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1 jurisdiction over these proceedings for the purpose of enforcing the terms of this
2 Settlement Agreement. The Plaintiffs shall notify the Court when all of the obligations
3 set forth in this Settlement Agreement have been fulfilled and the Court's jurisdiction to
4 enforce the Settlement Agreement shall terminate at that time

5 19. **Baseline Ridership for 1982-1983.** For purposes of this Settlement
6 Agreement, the parties acknowledge that MUNI's best estimate of its actual ridership for
7 FY 1982-83 was 264 million boardings, and that this figure will be used as the baseline
8 figure for 1982-83.

9 20. **Enforcement Provisions.** Upon any alleged violation of the terms of this
10 Settlement Agreement, Bayview Advocates shall notify MUNI in writing of the nature
11 and scope of the alleged violation. Within 14 calendar days of receipt of such written
12 notice, MUNI shall respond in writing. Counsel shall thereafter meet and confer within
13 30 calendar days after such response in an effort to resolve the issue(s). Should any
14 issues remain after the Parties have met and conferred, Bayview Advocates may seek to
15 enforce the terms of this Settlement Agreement before this Court. In the event of a
16 breach of this Settlement Agreement, the Court shall have the power to enforce this
17 Agreement. Should Bayview Advocates prevail in an action to enforce the terms of this
18 Settlement Agreement, the Court may award Bayview Advocates reasonable attorneys'
19 fees and costs incurred in that action.

20 21. **Term of Agreement.** The terms of this Settlement Agreement shall
21 terminate as of February 9, 2007. If there is a motion to enforce this Settlement
22 Agreement pending as of February 9, 2007, the Court shall retain jurisdiction to
23 adjudicate said motion and to enforce any resulting order. .

24 22. **Entire Agreement.** This Settlement Agreement constitutes the entire
25 agreement between the Parties, and it is expressly understood and agreed that this
26 Settlement Agreement may not be altered, amended, modified, or otherwise changed in
27 any respect without a writing duly executed by the Parties or their authorized
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1 representatives. The Parties acknowledge and agree that none of them shall make any
2 claim that this Settlement Agreement has been orally altered or orally modified in any
3 respect.

4 23. **Rule of Construction.** This Settlement Agreement is the product of arms-
5 length negotiations between the Parties and their respective attorneys. Each of the Parties
6 expressly acknowledges and agrees that this Settlement Agreement shall be deemed to
7 have been mutually prepared so that the rule of construction to the effect that ambiguities
8 are to be resolved against the drafting party shall not be employed in the interpretation of
9 this Settlement Agreement.

10 24. **Counterparts.** This Settlement Agreement may be executed in one or
11 more counterparts, and each executed copy shall be deemed to be an original, which shall
12 be binding upon the signatories hereto.

13 25. **Authority of Parties.** Each undersigned representative of a party to this
14 Settlement Agreement certifies that he or she is fully authorized to enter into the terms
15 and conditions of this Settlement Agreement and to execute and legally bind such party to
16 this document.

17
18 IN WITNESS THEREOF, the undersigned have executed this Settlement
19 Agreement as of the date first set forth above.

20 Dated: May 16, 2002 By: Olivia Z. Kahl
21 As Its: GR. Director

22 For BAYVIEW HUNTERS POINT COMMUNITY
23 ADVOCATES

24 Dated: _____ By: _____
25 As Its: _____

26 For COMMUNITIES FOR A BETTER
27 ENVIRONMENT
28

1 Dated: _____

By: _____

2 As Its: _____

3 For SIERRA CLUB

4 Dated: _____

By: _____

5 As Its: _____

6 For LATINO ISSUES FORUM

7 Dated: _____

By: _____

8 As Its: _____

9 For TRANSPORTATION SOLUTIONS
10 DEFENSE AND EDUCATION FUND

11 Dated: _____

By: _____

12 As Its: _____

13 For URBAN HABITAT PROGRAM, a project of
14 the TIDES CENTER

15 Dated: _____

By: _____

16 As Its: _____

17 For OUR CHILDREN'S EARTH FOUNDATION

18 Dated: 05/15/02

19 By: Michael J. Burman

20 As Its: Director of Transportation

21 For THE CITY AND COUNTY OF SAN
22 FRANCISCO