

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of June 18, 2014 by and between Petitioners COMMUNITIES FOR A BETTER ENVIRONMENT and THE SIERRA CLUB and Respondents METROPOLITAN TRANSPORTATION COMMISSION and ASSOCIATION OF BAY AREA GOVERNMENTS and to settle ongoing litigation in the matter *Communities for a Better Environment, et al. v. Metropolitan Transportation Commission, et al.* (Alameda County Superior Court Case No. RG13692189).

### DEFINITIONS

For purposes of this Agreement, the terms listed below are defined as follows:

1. “AB 32” shall mean the California Global Warming Solutions Act enacted by Assembly Bill 32.
2. “ABAG” shall mean Association of Bay Area Governments.
3. “Agencies” shall mean Association of Bay Area Governments and Metropolitan Transportation Commission, collectively.
4. “BAAQMD” shall mean Bay Area Air Quality Management District.
5. “BAIFA” shall mean the Bay Area Infrastructure Financing Authority.
6. “Caltrans” shall mean the California Department of Transportation.
7. “CARB” shall mean the California Air Resources Board.
8. “CARE communities” shall mean those communities designated by the Bay Area Air Quality Management District as impacted by toxic air contaminants pursuant to the Community Air Risk Evaluation program.
9. “CBE” shall mean Communities for a Better Environment.
10. “CEQA” shall mean the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.).
11. “CEQA Guidelines” shall mean the regulations adopted by the California Natural Resources Agency for implementation of CEQA (14 Cal. Code Regs., § 15000 et seq.).
12. “Effective Date” shall mean the date this Agreement takes effect. The Effective Date shall be the date the Parties sign this Agreement, as indicated below. If the Parties sign this Agreement on different dates, then the latest date of signing by a Party shall be the Effective Date.

13. "EIR" shall mean Environmental Impact Report.
14. "Feasibility Analysis" shall mean the Priority Development Area Development Feasibility and Readiness Assessment for Plan Bay Area dated March 29, 2013.
15. "Lawsuit" shall mean the lawsuit initiated by the Verified Petition for Writ of Mandate filed by Petitioners, entitled *Communities for a Better Environment, et al v. Metropolitan Transportation Commission, et al.* (Alameda County Superior Court Case No. RG13692189).
16. "LCFS" shall mean the Low Carbon Fuel Standard administered by CARB and established by Executive Order S-01-07.
17. "MTC" shall mean Metropolitan Transportation Commission.
18. "NOP" shall mean a notice of preparation prepared pursuant to Public Resources Code section 21080.4 and CEQA Guidelines section 15082.
19. "OBAG Program" shall mean the One Bay Area Grant Program of grants distributed to local jurisdictions by MTC and ABAG to fund planning and infrastructure investments in accordance with Plan Bay Area.
20. "Parties" shall mean Petitioners and Respondents, collectively.
21. "Party" shall mean either Petitioners or Respondents.
22. "Pavley" shall mean the State-wide emission reduction regulations to reduce greenhouse gas emissions from passenger vehicles adopted by CARB and authorized by Assembly Bill 1493.
23. "PDA" shall mean a Priority Development Area within an existing community that has been identified and approved by a local city or county for future growth and adopted by the ABAG Board.
24. "Plan Bay Area" shall mean the combined 2040 Regional Transportation Plan and Sustainable Communities Strategy for the San Francisco Bay Area region approved by ABAG and MTC on July 18, 2013 pursuant to the requirements of SB 375.
25. "Plan Bay Area EIR" shall mean the Environmental Impact Report (State Clearinghouse Number 2012062029) prepared for Plan Bay Area and certified by the Association of Bay Area Governments and the Metropolitan Transportation Commission on July 18, 2013.

26. "Petitioners" shall mean Communities for a Better Environment and The Sierra Club, collectively.

27. "Respondents" shall mean Association of Bay Area Governments and Metropolitan Transportation Commission, collectively.

28. "RTP" shall mean a Regional Transportation Plan prepared pursuant to the requirements of state and federal law.

29. "SB 375" shall mean the California Sustainable Communities and Climate Protection Act of 2008 enacted by Senate Bill 375.

30. "Scoping Plan" shall mean the AB 32 Scoping Plan adopted by CARB in December, 2008.

31. "SCS" shall mean a Sustainable Communities Strategy prepared pursuant to the requirements of SB 375 as part of the RTP.

32. "TIP" shall mean the Transportation Investment Program prepared pursuant to 23 U.S.C., § 134.

33. "TPP" shall mean a Transit Priority Project, as defined in Public Resources Code section 21155, subdivision (b).

34. "update to Plan Bay Area" and other references to the update required by Government Code section 65080, shall mean subsequent versions of Plan Bay Area, and are distinct from the "Plan Bay Area" approved by the Agencies on July 18, 2013.

35. "VMT" shall mean vehicle miles travelled.

#### RECITALS

A. On July 18, 2013, the Agencies held a public hearing and certified the Plan Bay Area EIR, adopted findings and a statement of overriding considerations pursuant to CEQA, and adopted a mitigation monitoring and reporting program by MTC Resolution No. 4110 and ABAG Resolution No. 05-13.

B. At the July 18, 2013 hearing, ABAG also approved Resolution No. 06-13, adopting Plan Bay Area, and Resolution No. 07-13, adopting the Final Regional Housing Need Allocation Plan (2014-2022).

C. At the July 18, 2013 hearing, MTC also approved Resolution No. 4111, adopting Plan Bay Area; Resolution No. 4075, adopting the 2013 Transportation Improvement Program;

and Resolution No. 4076, adopting the Transportation-Air Quality Conformity of Plan Bay Area and 2013 Transportation Improvement Plan to the State Implementation Plan for Achieving and Maintaining National Ambient Air Quality Standards.

D. On August 19, 2013, Petitioners filed the Lawsuit challenging MTC and ABAG approvals related to Plan Bay Area, and certification of the Plan Bay Area EIR by the Agencies, alleging violations of CEQA and SB 375.

E. The Parties to this Agreement believe that their mutual interests will be best served if any and all legal disputes between them involving Plan Bay Area, certification of the EIR, and included in the Lawsuit are resolved without further litigation.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Each definition and recital set forth above is incorporated herein by reference and made a part of this Agreement.

2. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission by any Party of any inadequacy or impropriety in connection with the approvals by the Agencies with respect to Plan Bay Area, including certification of the Plan Bay Area EIR.

3. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as superseding zoning or other land use regulations approved by local jurisdictions or voter initiative.

4. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as interfering with MTC's full discretion and authority to make transportation funding decisions, including the metrics and inputs required to determine how transportation funding, programming, and allocation decisions are made.

5. Obligations of Respondents. The following obligations shall apply to the next four-year update required by Government Code section 65080, subdivision (d) to Plan Bay Area, scheduled to occur in 2017.

a. *Greenhouse Gas Analysis.* In an EIR analyzing the environmental effects of any update of Plan Bay Area to which this Agreement applies, the analysis of direct and indirect total on-road transportation greenhouse gas emissions over the planning period must include disclosure of the total amount of emissions, with and without emissions reductions achieved from other State-wide emission reduction programs implementing AB 32, including the Scoping Plan, Pavley, and LCFS.

i. The EIR shall include a clear and transparent analysis of the greenhouse gas emissions associated with the updated Plan Bay Area, including land use-related emissions, and a separate showing of on-road transportation emissions.

b. *Analysis of Environmental Impacts of Conversion of Freeway Lanes to Express Lanes and Construction of Express Lanes.* The Parties understand that BAIFA and Caltrans are currently undertaking environmental review of express lane conversions occurring on Interstate 680 and Interstate 880, and this review will result in preparation of technical reports analyzing greenhouse gas emissions and VMT impacts of these projects, as well as the use of express lanes by low-income populations. The Parties further understand that Caltrans will perform similar analyses for other express lane projects, such as those planned for 101 and 580, in conjunction with responsible agencies. Where those technical reports are made available for public review by Caltrans and its partners following April 8, 2014, the Agencies shall provide a summary of the results of the technical reports and any updates to the public prior to the release of the NOP of the next draft EIR for any update of Plan Bay Area and no later than ninety (90) days after the technical reports have been made available by Caltrans and its partners. In addition, the Agencies shall disclose the effects of financing the construction of express lanes by using toll bridge revenues, and shall disclose the effect of such financing on the current uses of toll bridge revenues. Disclosures regarding the effects of financing shall be made thirty (30) days prior to the release of the NOP of the next draft EIR for any update of Plan Bay Area.

i. *Greenhouse Gas Emissions and VMT Effects.* Where they have been made available to the public by Caltrans and its partners, the results of the technical analyses on greenhouse gas emissions and VMT effects prepared for express lane projects described in Paragraph 5(b) shall inform the environmental analysis included in any EIR prepared for an update of Plan Bay Area.

ii. Effects on Interregional Car and Light Truck Travel. An analysis of the extent to which the construction of new express lanes will facilitate additional interregional car and light truck travel shall inform the environmental analysis included in any EIR prepared for an update of Plan Bay Area.

iii. Equitable Use by Low-Income Residents. Where they have been made available to the public by Caltrans and its partners, the results of the technical analysis of use of new express lanes by low-income populations described in Paragraph 5(b) shall inform the environmental analysis included in any EIR prepared for an update of Plan Bay Area.

c. Analysis of PDA Performance. To validate the assumptions made in Plan Bay Area, the Agencies shall implement robust monitoring of regional and local development patterns through an update of the Feasibility Analysis for growth projected in PDAs in the updated Plan Bay Area. The update to the Feasibility Analysis will be prepared in consultation with stakeholders, in a manner comparable to the Feasibility Analysis undertaken for Plan Bay Area, and shall include analysis of local land use policies, market demand, financial feasibility, site related issues, financing, and infrastructure needs, and also including the items described in Paragraphs 5.c.i. through 5.c.v. of this Agreement. Any update to the Feasibility Analysis shall provide the required information for each PDA. To the extent a local jurisdiction has not provided information necessary to perform the analysis, this shall be noted in the Feasibility Analysis. Any update to the Feasibility Analysis shall be published prior to issuance of an NOP for the EIR prepared for the updated Plan Bay Area. The results of the analysis shall inform each update of Plan Bay Area to which this Agreement applies. The Feasibility Analysis shall include the following topics:

i. Current transit availability for the PDAs, including: (A) whether a PDA meets the criteria for a TPP, (B) whether public transit routes or lines operate at 15 minute frequencies or less at peak commute times within a quarter mile of the PDA; (C) availability of short-term funding for capital and operating expenses for public transit service required to serve the PDA population; and (D) if right-of-way acquisition is required for fixed guideways (including BRT), the routing has been identified

ii. To the extent data is available, readiness for development, including: (A) tracking building permit issuance throughout the region for residential and non-

residential development, and (B) whether the PDA is in a jurisdiction that has a “complete streets” policy that complies with the requirements under the OBAG Program, and (C) whether highway or freeway construction or lane expansions are planned within or adjacent to the PDA.

iii. Environmental factors, including: (A) whether any place within or adjacent to the PDA is subject to flooding due to sea level rise, (B) whether any place within or adjacent to the PDA is located on land with liquefaction susceptibility of “Very High” or “High,” and (C) whether sites for parks and recreation are already established within the PDA; and (D) whether there is adequate green space in the PDA, relative to the existing population of the PDA.

iv. Housing and jobs information, including: (A) to the extent data is available, changes in population of the PDA, including information on household demographics, (B) to the extent data is available, the number and type of affordable units created by county, local jurisdiction, and PDA, including new and acquisition/rehabilitation units, (C) whether the PDA sponsor has reported that there is no feasible way to meet the need for affordable housing in the PDA; (D) to the extent data is available, changes in employment levels; and (E) where applicable, the anti-displacement programs that have been put into place in the PDA.

v. Public health and environmental information, including: (A) whether there is any overlap between the PDA and CARE communities, (B) whether the PDA is in a local jurisdiction that has prepared a Community Risk Reduction Plan, as described in paragraph 5.c of this Agreement, and (C) whether the Community Risk Reduction Plan addresses freight impacts, and whether the results are consistent with the goals of the Freight Emissions Reduction Action Plan, described in paragraph 5.d of this Agreement.

d. *Analysis of Freight Movement.* The Agencies shall create a Regional Freight New Technologies Task Force that will study and recommend freight strategies and projects that advance zero-emission and near zero-emission freight movement. The task force shall include at least one representative jointly authorized by Petitioners. The Agencies shall be responsible for preparing a Freight Emissions Reduction Action Plan as follows:

i. The Freight Emissions Reduction Action Plan shall study options for achieving the following goals, to the extent feasible: (A) encouraging zero-emission truck technologies, which may include developing a zero-emission truck demonstration project within two (2) years of the completion of the Freight Emissions Reduction Action Plan; (B)

encouraging rail zero-emission technologies, which may include developing a rail demonstration project; (C) evaluating the potential for electrifying rail yards and use of zero/near-zero-emission switchers; (D) evaluating the potential for zero-emission truck-only lanes along the Interstate 880 corridor and an implementation schedule for these lanes or other zero-emission freight transport system to be constructed along the Interstate 880 corridor by 2025; and (E) developing programs and policies to incentivize retrofitting and replacing trucks with zero- and near-zero--emission truck technologies. If the Agencies find it is not feasible to achieve the goals set forth in Paragraph 5.d.i. of this Agreement, the Agencies shall provide a clear explanation for that finding in the Freight Emissions Reduction Action Plan.

ii. Strategies for achieving the goals of the Freight Emissions Reduction Action Plan as stated in Paragraph 5.d.i of this Agreement shall include, at a minimum, identifying, to the extent feasible, the following: (A) potential funding sources; (B) key agencies and stakeholders and potential partnerships that will move the Bay Area toward the Freight Emissions Reduction Action Plan goals; (C) policy changes that need to occur for the Freight Emissions Reduction Action Plan goals to be realized; (D) other planning mechanisms and tools that the Agencies may use; and (E) ways to incentivize retrofitting and replacing diesel trucks and electrifying rail and rail yards. If the Agencies find it is not feasible to identify one or more of the strategies identified in Paragraph 5.d.ii. of this Agreement, the Agencies shall provide a clear explanation for that finding in the Freight Emissions Reduction Action Plan.

iii. The Freight Emissions Reduction Action Plan shall be included in the 2017 RTP.

e. *Healthy Infill Guidelines.* The Parties understand that BAAQMD is currently preparing healthy infill guidelines, entitled "Planning Healthy Places," which will include policies and best practice measures for local agencies to implement and ways to address air quality-related health impacts. The Agencies shall partner with BAAQMD to make these guidelines available to the public prior to the release of the NOP of the next draft EIR for any update of Plan Bay Area to which this Agreement applies. The Agencies shall consider, and to the extent applicable, use the Healthy Infill Guidelines in the update to Plan Bay Area. The Parties understand that the healthy infill guidelines are expected to address, among other things, the air-quality impacts of freight movement on CARE communities. MTC and ABAG shall



consider the data, maps and any related analysis from the Healthy Infill Guidelines in the update to Plan Bay Area and to the Draft EIR and shall consider this information and identified mitigations in preparing the update to Plan Bay Area. In addition, current BAAQMD policy recommends that local jurisdictions prepare Community Risk Reduction Plans as a proactive approach for communities to achieve the greatest reductions in emissions and exposure to toxic air contaminants and particulates. The Agencies shall partner with BAAQMD to encourage local jurisdictions to develop such plans.

6. Obligations of Petitioners. In consideration of the commitments by Respondents set forth in paragraph 5, Petitioners shall comply with the commitments set forth in this paragraph 6.

a. *Dismissal.* Within ten (10) days of the Effective Date, Petitioners shall file a request for dismissal, with prejudice, of the entire Lawsuit. A copy of the request for dismissal shall be served on all parties to the Lawsuit via fax or pdf/e-mail the same day Petitioners file the request for dismissal and shall also be served by U.S. Mail.

7. Attorneys' Fees and Costs. The Agencies shall provide Petitioners with \$50,000 in attorneys' fees and costs within thirty days of the request for dismissal being filed.

8. Miscellaneous Provisions.

a. *Cooperation.* The Parties shall use best efforts to cooperate to ensure that the steps necessary to implement this Agreement are carried out.

b. *Waiver; Defenses.* Each Party expressly releases, waives, and relinquishes and forever discharges the other Parties from all claims, actions, liabilities, and causes of action, of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, or hereafter discovered or ascertained, in law or equity, by reason of any matter, cause or thing whatsoever, it has, or may have, with respect to the claims set forth in the petition for writ of mandate filed in the Lawsuit, and those claims Petitioners could have included in the petition. Each Party acknowledges and agrees that all rights under Section 1542 of the California Civil Code are expressly waived. That section provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING

THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Each Party understands, acknowledges and agrees that this Agreement constitutes a complete and sufficient defense barring any such claim, and the Parties can rely upon this Agreement as a complete defense.

c. *Headings.* The titles and headings of the various paragraphs of this Agreement are intended solely for convenience of reference and they shall not be used to explain, limit, or extend the meaning of any part of the Agreement.

d. *Modifications.* This Agreement may not be altered or modified except in writing by a document signed by all the Parties.

e. *Entire Agreement.* This Agreement contains all of the representations and the entire understanding and Agreement among the Parties with respect to the matters described in this Agreement. Correspondence, memoranda, and oral and written agreements that originated before the date of this Agreement are replaced in total by this Agreement, unless otherwise expressly stated in this Agreement.

f. *Authority; Warranties.* The individuals signing this Agreement on behalf of each Party represent and warrant that they have full authority and are duly authorized to do so on behalf of the Party they represent.

g. *Severability.* The invalidity of any portion of this Agreement shall not invalidate the remainder. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the court.

h. *Interpretation.* This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each Party acknowledges that it is represented by counsel, and has had the benefit of advice from counsel with respect to this Agreement.

i. *Specific Performance; Remedies.* The Parties agree that specific performance is an appropriate remedy for enforcement of this Agreement. Any enforcement of this Agreement may be sought against only the Party or Parties claimed to be in breach of the Agreement, as well as the heirs, successors, assignees, and transferees of the Parties.

j. *Notice.* All notices required under this Agreement shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested) or facsimile. Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. Such notice shall be given to the Parties at their addresses set forth below:

For Petitioners:

Irene Gutierrez  
William Rostov  
EARTHJUSTICE  
50 California Street, Suite 500  
San Francisco, CA 94111

For Petitioner CBE:

Maya Golden-Krasner  
COMMUNITIES FOR A BETTER ENVIRONMENT  
6325 Pacific Blvd., Suite 300  
Huntington Park, CA 90255

For Petitioner Sierra Club:

Coordinating Attorney  
SIERRA CLUB  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105

For MTC:

Adrienne Weil, General Counsel  
METROPOLITAN TRANSPORTATION COMMISSION  
101 8<sup>th</sup> Street  
Oakland, CA 94607-4700

And:

Tina A. Thomas  
THOMAS LAW GROUP  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814

For ABAG:

Kenneth Moy, Legal Counsel  
ASSOCIATION OF BAY AREA GOVERNMENTS  
101 8<sup>th</sup> Street  
Oakland, CA 94607-4700

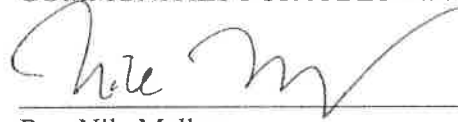
And:

Tina A. Thomas  
THOMAS LAW GROUP  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814

k. *Execution.* This Agreement may be executed in counterparts. The counterparts shall together comprise a single Agreement.

Dated: June 17, 2014

COMMUNITIES FOR A BETTER ENVIRONMENT



By: Nile Malloy  
Its: Northern California Program Director

Dated: \_\_\_\_\_, 2014

THE SIERRA CLUB

By: Matt Williams  
Its: Chair, San Francisco Bay Chapter Transportation and  
Compact Growth Committee

Dated: \_\_\_\_\_, 2014

ASSOCIATION OF BAY AREA GOVERNMENTS

By: Ezra Rapport

Tina A. Thomas  
THOMAS LAW GROUP  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814

For ABAG:

Kenneth Moy, Legal Counsel  
ASSOCIATION OF BAY AREA GOVERNMENTS  
101 8<sup>th</sup> Street  
Oakland, CA 94607-4700

And:

Tina A. Thomas  
THOMAS LAW GROUP  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814

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Dated: \_\_\_\_\_, 2014 COMMUNITIES FOR A BETTER ENVIRONMENT

\_\_\_\_\_  
By: Nile Malloy  
Its: Northern California Program Director

Dated: June 16, 2014 THE SIERRA CLUB

M. Williams  
By: Matt Williams  
Its: Chair, San Francisco Bay Chapter Transportation and Compact Growth Committee

Dated: \_\_\_\_\_, 2014 ASSOCIATION OF BAY AREA GOVERNMENTS

\_\_\_\_\_  
By: Ezra Rapport

Tina A. Thomas  
THOMAS LAW GROUP  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814

For ABAG:

Kenneth Moy, Legal Counsel  
ASSOCIATION OF BAY AREA GOVERNMENTS  
101 8<sup>th</sup> Street  
Oakland, CA 94607-4700

And:

Tina A. Thomas  
THOMAS LAW GROUP  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814

k. *Execution.* This Agreement may be executed in counterparts. The counterparts shall together comprise a single Agreement.

Dated: \_\_\_\_\_, 2014      COMMUNITIES FOR A BETTER ENVIRONMENT

\_\_\_\_\_  
By: Nile Malloy  
Its: Northern California Program Director

Dated: \_\_\_\_\_, 2014      THE SIERRA CLUB

\_\_\_\_\_  
By: Matt Williams  
Its: Chair, San Francisco Bay Chapter Transportation and Compact Growth Committee


Dated: JUNE 18, 2014      ASSOCIATION OF BAY AREA GOVERNMENTS

  
\_\_\_\_\_  
By: Ezra Rapport

Dated: June 18, 2014

Its: Executive Director

METROPOLITAN TRANSPORTATION COMMISSION

  
\_\_\_\_\_  
By: Steve Heminger  
Its: Executive Director