

**Remarks of Nicholas Targ to the Bay Conservation and
Development Commission on November 4, 2010**

(edited and submitted on November 14, 2010)

Thank you very much for the opportunity to comment on the proposed Climate Change Bay Plan Amendment, No. 1-08. At the Special Commission meeting of November 2, 2010, I was asked to propose ways that the proposed Bay Plan Amendment could address environmental justice issues and to identify the Bay Conservation Development Commission's (BCDC) authority for addressing social equity issues.

Presently, the only provisions of the Bay Plan Amendment oriented toward equity are certain findings and a policy pertaining to the future regional sea level rise adaptation strategy plan. The proposed Amendment does not address equity concerns relevant to the immediately policies applicable to land use decisions. The Environmental Assessment supporting the proposed Amendments also does not identify the range of environmental impacts caused by the proposed Amendments on disadvantaged or other communities.

This approach of addressing potential impacts at a later time appears to be based on the view expressed in the Staff Background Report. This Report states, "Although BCDC has no authority to address social equity issues, the social equity analysis in this report highlights the need for further study of the significant impacts to low-income communities."

Please accept these remarks as a down payment on the request for ways the proposed Bay Plan Amendment can address environmental justice issues under existing statutory authority. The strategies identified below address the issue under the California Environmental Quality Act (CEQA) and are also more generally applicable to sprawl-inducing effects of the proposed Amendment. I have also prepared a summary background document on BCDC's obligations under Title VI of the Civil Rights Act of 1964 and California Government Code § 11135. Please see Attachment 1.

Together, CEQA and the civil rights statutes establish ample authority for BCDC to consider and address equity issues. CEQA provides the obligation to avoid significant environmental impacts

on all communities to the extent feasible. The civil rights statutes prohibit the creation of disparate impacts on the basis of race and other protected classifications unless a substantial legitimate justification is identified. Title VI also establishes obligations with regard to translation.

What is the Issue?

The proposed Bay Plan Amendment Background Report, "Living with a Rising Bay," which is incorporated into the proposed Bay Plan Amendment's Environmental Assessment, states that low-income residents will be disproportionately affected by:

- **Sea level rise in five Bay Area Counties**
- **Preparing for and coping with sea level rise (e.g., "a more difficult time relocating or enduring interruptions in services"); and, potentially,**
- **Indirect impacts.**

However, neither the Background Report nor the associated Staff Report identifies the range of impacts to low-income residents or

residents of other communities from the proposed Amendment, itself. Nonetheless, the Staff Report concludes that the "proposed amendment will have no significant adverse environmental impacts."

Based on the Background Report's findings that low-income populations are likely to be disproportionately affected by sea level rise (given their disproportionate representation within the inundation zones), the proposed Amendment's sea level rise policies are likely also to disproportionately impact low-income communities. And, more than a fair argument can be made that the proposed Amendment may cause significant adverse impacts to these low-income and to other communities, as well.

By way of example, for a host of historical and policy reasons, which are unconnected to BCDC, many low-income communities have less shoreline protection, less development or critical infrastructure, and less financial wherewithal than other communities. Therefore, cash-strapped communities will be less likely to fall within one of the narrow exceptions that allow for

infill development or redevelopment (e.g., establishment of financial assurance mechanisms, be otherwise protected).

Amplifying the intensity of effects caused by limitations to development, the areas of developable land covered by the proposed Amendment represent assets of critical importance for growth, affordable housing and the vitality of low-income communities.

In addition, numerous former industrial areas and hazardous waste sites in disadvantaged areas and elsewhere that could be remediated through brownfield redevelopment are located in the inundation zone. The proposed Amendment will make this clean-up, and consequently the protection of the environment and residents, much more challenging.

Further, and with respect to the Bay Area as a whole, much of the region's job base is located in the Bay-rim area. Housing demand vastly exceeds supply and prices are among the highest and unaffordable in the nation. This jobs-housing imbalance and lack of affordability has also resulted in sprawl and the associated

effects of severe traffic congestion (second only to Los Angeles), excess air and greenhouse gas emissions, and a loss of regional diversity. Further restricting development in the Bay-rim area will likely amplify these conditions.

How Can BCDC Address Equity Issues? What is BCDC's Authority to Do So?

In addition to civil rights law, which is discussed separately, CEQA and BCDC's functionally equivalent "certified regulatory program" create a window onto the effects of the proposed Amendment with respect to all communities, including low-income communities. Specifically, BCDC's certified regulatory program requires an analysis of whether a proposed activity may have any individually or cumulatively significant adverse impact on the physical environment. Moreover, CEQA and BCDC's regulatory program create both the challenge and obligation to "avoid all significant impacts to the extent feasible."

Therefore, CEQA and BCDC's certified regulatory program establish invaluable tools for examining environmental effects

and helping to ensure that adverse impacts on all communities are avoided to extent feasible.

What Specific Things Can BCDC Do Without Additional Authority To Address Equity Issues?

The following are some specific things BCDC can do to address equity issues and other related issues under CEQA and BCDC's certified regulatory program:

- **Meet with low-income community residents and businesses at times and locations that make sense for working families and specifically solicit their views.**
- **Translate summaries of documents into languages common in the Bay Area (e.g., Spanish, Chinese, Tagalog) and provide translation services when meeting with communities with limited English proficiency.**
- **Allow comments to be submitted to the administrative record during the planned outreach period and commit to responding to these comments.**
- **Use the Environmental Assessment to identify how the proposed Bay Plan Amendment will affect residents of low-income communities, their environment, and that of other communities. For example, consider the potential direct, indirect, and cumulative effect of the proposed Amendment with respect to the potential for:**

- **Blight induced by capital disinvestment.** Limitations established on infill and other redevelopment will likely increase the challenge of undertaking such projects and reduce property values in the inundation zone, resulting in capital disinvestment. The policies may also have the effect of moving population centers away from established consumer areas along the Bay rim and toward more inland areas, which may also induce blight).
- **Displacement of low-income residents and businesses.** By constricting infill and redevelopment opportunities in the inundation zone, housing prices/gentrification and displacement are likely to increase. Moreover, potential sea level rise infrastructure retrofits may also be located in or on disadvantaged communities. *For a hypothetical example involving the potential displacement of low-income communities in Redwood City, Menlo Park, and East Palo Alto see Staff Background Report at 62.*
- **Limitations on affordable housing development opportunities in the inundation zone.** Numerous areas identified in municipal housing elements as potential low-income housing sites are included in the inundation zone, creating both conflicts with existing plans and loss of affordable housing sites.
- **Increased traffic congestion and cost of commuting.** By limiting residential development opportunities in job-rich areas and increasing the cost of housing, the proposed Amendment may increase the distance workers will be required to commute.
- **Increased tail pipe emissions (including greenhouse gasses).** Longer commutes and increased congestions caused by the reasons discussed are likely to result in direct, indirect and cumulative air pollution and climate change effects.

- **Increased public health and water quality impacts caused former industrial sites.** New barriers to redevelopment and the absence of policies that provide for remediation of hazardous waste sites until a regional adaptive management policy is in place may limit or delay the remediation of environmentally impacted sites, leaving releases from former industrial sites uncontrolled.
- **Identify feasible mitigation measures or design the proposed policies to avoid significant impacts. And, to the extent that BCDC does not have authority or the resources to mitigate identified significant impacts, the staff report should call these out.**

Conclusion:

In conclusion, BCDC does not need additional statutory authority to identify and address adverse impacts to residents of low-income communities or other communities and their environments. Based on existing law, BCDC has the needed authority and, in fact, the obligation to help ensure that impacts are identified and mitigated for all communities.

Attachment 1

Background on State and Federal Civil Right Obligations under Title VI and § 11135

Existing civil rights laws create the opportunity for the San Francisco Bay Conservation and Development Commission (BCDC) to proactively: (1) engage communities in the development of approaches and plans to address sea level rise; and (2) evaluate potential sea level plans to avoid disparate impacts on people of color and other communities. Indeed, applicable federal and state civil rights law creates the obligation to avoid actions that have the effect of creating adverse disparate impacts based on race and national origin, among other classifications, unless there is substantial, legitimate justification. *See* Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* and implementing regulations at 15 C.F.R. Part 8 (Title VI); *see also* California Government Code § 11135 and implementing regulations at 22 Cal. Code of Regs. § 98101(i)(1). Civil rights obligations also extend to limited English proficiency individuals as related translation issues. The following is a summary overview of Title VI and the California state law analogue.

A. Background on Civil Rights Authorities

Federal and state civil rights laws proscribe actions undertaken by the recipients of federal or state assistance that intentionally discriminate or that have the effect of creating disparate impacts based on race or other protected classifications. The federal and state laws operate in a similar manner and are addressed in turn.

1. Title VI prohibits recipients of federal assistance from engaging in intentional discrimination or taking actions that have the effect of creating adverse disparate impacts based on race or other identified classifications.

Title VI of the Civil Rights Act of 1964 is the principle federal civil rights statute proscribing discriminatory conduct (intentional or race-neutral actions that have disparate effects) on the part of recipients of federal assistance. The statute provides, in pertinent part:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d(d)-1

Section 602 of Title VI directs each federal agency and department (agency) to promulgate regulations specifying how it will implement Title VI's mandate. In 1964 the Department of Justice issued model Title VI regulations establishing that recipients of federal funds not use "criteria or methods of administration which have the effect of subjecting individuals to discrimination." *Guardians Ass'n v. Civil Service Comm'n*, 463 U.S. 582, 618 (1983) (Marshall, J.) internal citations omitted, emphasis added. Each federal agency was directed to adopt regulations based on the model.

The Department of Commerce, which provides financial assistance to BCDC through the National Oceanic and Atmospheric Administration, promulgated regulations that provide, in part:

A recipient or other party subject to this part shall not... utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin..."

15 C.F.R. § 8.4(b)(2).

The Supreme Court has confirmed that a demonstration of discriminatory intent is not required under a disparate impact theory. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971) (holding that).

The regulations implementing Title VI apply to issues of translation. *See Lau v. Nichols*, 414 U.S. 563 (1974) (Supreme Court upholding the Title VI regulations of the former Department of Health, Education and Welfare, which are analogous to the Department of Commerce's, and finding that the regulations prohibit conduct that has a disproportionate effect on limited English proficiency individuals because such conduct constitutes national-origin discrimination.).¹ In particular, the Department of Commerce's regulations establish the principle that recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency. *See* 15 C.F.R. 8.4(b)(2).²

¹ In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs. *See Lau v. Nichols*, 414 U.S. 563.

² The Department of Commerce has provided guidance to recipients of federal assistance on the implementation of its Title VI program with respect to limited English proficiency persons. *Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 68 *Fed. Reg.* 14180-14189, available online at www.justice.gov/crt/cor/lep/CommerceLepGuidanceReqComment.php. Among other things the guidance document provides,

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by [limited English proficiency] LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs." to ensure meaningful access for LEP persons.

68 *Fed. Reg.* at 14183

It is also noted that at least one court has required a California government body to translate environmental review documents into Spanish to ensure due process for Spanish speaking residents under the California State Constitution. *See El Pueblo para el Aire y Agua Limpio v. County of Kings*, Civ. 366,045, 22 *Env'tl. Rep.* 20, 357.

Therefore, BCDC, as a recipient of federal assistance from the Department of Commerce, has an obligation to avoid policies and other actions that have the effect of causing disparate adverse impacts based on race, national origin or other protected classifications.

2. California civil rights law prohibits discrimination in state funded programs in a manner analogous to Title VI.

California Government Code § 11135(a) includes language that is broader but structurally similar to Title VI.³ The statute provides, in part:

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. . . .

The regulations implementing the state statute, like those of Title VI, establish a prohibition against use of "criteria or methods of administration that: (1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability..." 22 Cal. Code Regs. § 98101(i)(1).

B. Actions Resulting in Disparate Impacts that are Race-neutral Will Not be Upheld Unless They are Supported by a Substantial Legitimate Purpose, and the Complainant Cannot Show that there are Alternate Means to Meet the Objective.

A prima facie case of disparate impact discrimination under Title VI or § 11139 requires proof that: "(1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on minorities produced by the defendant's facially neutral acts or practices." *Darensburg v. Metropolitan Transportation Commission*, No. C-05-01597 EDL (N.D. CA 2009); *See also, Gambe v. City of Escondido*, 104 F.3d 300, 306 (9th Cir. 1997).

Once the plaintiff or petitioner has made out its prima facie case, the defendant must demonstrate a "substantial legitimate justification" for its actions. *See New York Urban League v. State of New York*, 71 F.3d 1031 (2d Cir. 1995). If the defendant carries this burden, then a plaintiff must show the existence of an equally effective alternate practice that results in a less disparate impact. *See Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).

C. BCDC is Required to Provide Assurances of its Compliance with Title VI

³ Unlike the Civil Rights Act of 1964, the California analogue provides for a private right of action to enforce the disparate impact provisions. *See* Cal. Gov't Code § 11139 ("This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief."); *see also Blumhorst v. Jewish Family Servs. of Los Angeles*, 126 Cal. App. 4th 993, 1002(2005).

In addition to meeting obligations if challenged, the U.S. Department of Commerce Title VI regulations require each recipient of federal assistance, to implement compliance a program designed to ensure compliance with Title VI's obligations. Key required elements of the compliance regulations include, among others:

- *Assurances*: Every application for Department of Commerce financial assistance must include assurances that the applicant will comply with the department's Title VI regulations.
- *Approved Methods of Administration*: Every application by a state agency to carry out a program involving continuing federal assistance must provide for "methods of administration" that the Department of Commerce finds will give a "reasonable guarantee" of compliance with the Title VI regulations.
- *Compliance Reports*: Each recipient of federal assistance must submit compliance reports to the Department of Commerce containing information sufficient to enable the Department to determine whether the recipient is complying with the Title VI regulations.
- *Availability of Information*: Recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

D. BCDC Has the Authority and Should Follow the Lead of Other Agencies to Proactively Assess and Address Potential Disproportionate Impacts.

BCDC can avoid causing adverse disparate impacts by proactively assessing the effects of its proposed actions. While additional and tailored approaches can be developed for BCDC, the practices required of Metropolitan Planning Organizations by the Federal Transportation Administration's Title VI compliance program are instructive as to steps BCDC could take to address equity and Title VI issue. Among other things, Metropolitan Planning Organizations undertake the following activities to address potential discriminatory impacts under the authority of Title VI:

- MPOs establish an analytic basis for certifying their compliance with Title VI. Examples of this analysis can include:
 - A demographic profile of the metropolitan area that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI.
 - A metropolitan transportation planning process that identifies the needs of low-income and minority populations.
 - An analytical process that identifies the benefits and burdens of metropolitan transportation system investments for different socioeconomic groups, identifying imbalances and responding to the analyses produced.

- Provide steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals with limited English proficiency.
- Collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

To help ensure compliance with Title VI and equity in its actions BCDC should undertake actions and analysis similar to those described above with respect to the proposed Bay Plan Amendment.

E. Conclusion

For the reasons stated above, BCDC has the authority and obligation to avoid disparate impacts based on racial classification, national origin and other protected classifications in the proposed Bay Plan Amendment unless a substantial legitimate reason justifies such impacts. This obligation extends to meaningful access to individual with limited English proficiency. Under the authority describe above, BCDC may also take proactive steps to identify and address potential disparate adverse impacts.

Agenda Item #10

COPY

From: <JLucas1099@aol.com>
Date: Mon, 1 Nov 2010 12:55:15 -0400
To: Joe LaClair <joel@bcdc.ca.gov>
Subject: BCDC Bay Plan Amendment: No. 1-08

Joe LaClair,

As cannot attend your November 2 BCDC session on the Bay Plan Amendment addressing climate change, due to election precinct duties, will hopefully be able to support this BCDC policy at November 4 meeting.

After hearing Salt Pond Restoration presentation by Conservancy staff in regards the Bay Shoreline Study last Thursday in Menlo Park, I have concerns that fluvial flooding is not being fully assessed in bay level rise. The low barometric conditions that result in high bay tide levels also result in storm intensity and peak flows.

US COE criteria evidently is now calling previous 100 year events only a ten year storm event. The 1% event flow for San Francisquito Creek which used to be 7600 cfs is now estimated by the COE at 9400 cfs.

Bay level rise as depicted on maps at SBSP meeting was said to be not so bad as some thought, perhaps only an inch or two in depth as map of Palo Alto was shown. From personal knowledge in 1998 one resident was evacuated by her son in a motorboat as floodwaters in street in front of house were five feet deep. True, this was not from San Francisco Bay flood waters but from San Francisquito Creek. This street was between Oregon Expressway and Matadero Creek and inboard of #101 by a few blocks.

For BCDC to be able to assess the impacts of any bayside development on existing residences they have to have a thorough analysis of levels of fluvial flows likely to impact or overwhelm capacity of adjacent marshes. The Foster City, Redwood Shores and Alviso communities need as much regional protection as BCDC can possibly assure them. Any filling or padding up of wetlands that have historically buffered them from high tide and wave action should not be a consideration.

Shoreline development that BCDC reviewed used to be intended only for water dependent facility or industry. Such beneficial use criteria makes basic sense now, given both present and future constraints of Bay levels.

Please ask the US COE for an official update for fluvial impacts anticipated to bay shorelines and sloughs from all San Francisco Bay rivers and watersheds as currently evaluated for the 1% event. These studies of the watersheds were started some twenty years ago so there must be a mountain of data on which to draw.

Thank you for any consideration that you may give to my concerns.

Libby Lucas, 174 Yerba Santa Ave., Los Altos, CA 94022

----- End of Forwarded Message

Agenda Item #10

COPY

From: Andrew Gunther [mailto:gunther@cemar.org]
To: joel@bcdcc.ca.gov
Sent: Thu, 18 Nov 2010 15:37:52 -0800
Subject: Climate Change Bay Plan Amendment

Mr. LaClair:

I am writing to express my strong support for the proposal by BCDC staff to add a section on climate change to the San Francisco Bay Plan. There can be no doubt at this time that climate change is occurring, and that it has major implications for the San Francisco Bay shoreline. Higher sea levels, combined high runoff events, wave run-up, and storm surges will result in more coastal erosion and flooding in the future. It is essential and prudent that our region plan for these changes, and I commend BCDC staff for taking the proactive approach represented by the proposed amendments.

I would note that given recent scientific findings, the IPCC ranges on sea level rise published by the IPCC are most definitely on the low side. I am pleased to see that you have adapted the sea level rise that you are planning for to reflect the newer findings, and I hope you will provide a mechanism for such adaptation in the future.

I would encourage one edit, but I did not know where to put this and so I will ask that you consider its proper placement. While the public discussion focuses upon how much sea level will rise by 2050 or 2100, lost in this framing is that the rate of sea level rise continues to accelerate. Models suggest this will occur even with a major global mitigation effort that presently seems unlikely. This means that whatever sea level rise we might plan for between 2050 and 2100, we will need to plan for even a bigger rise between 2100 and 2150. While I know this is a long way into the future, all our scientific understanding presently supports the concept of an accelerating rate, and I would suggest that this understanding be reflected in your findings.

Thank you for considering my comment.

Andrew Gunther

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November 23, 2010

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Subject: Comments on Proposed *Bay Plan Amendment 1-08* Concerning Climate Change

Dear Chairman Randolph and Executive Director Travis:

My letter dated October 21, 2010 requested that the Commission give local agencies and stakeholders, including the Authority, more time to review the proposed changes to the Bay Plan's policies and guidelines before it adopts Amendment 1-08. We appreciate your flexibility in allowing additional review time.

The Authority shares BCDC's concerns about the negative impacts of climate change and the forecast rise in sea level on the ecological systems and the billions of dollars in public and private investments along the Bay. Those impacts have the potential to severely affect the health of the Bay, the livability of local communities, and the vitality of the region's economy.

We are concerned, however, that the policies and guidelines in *Proposed Bay Plan Amendment 1-08* (the *Amendment*) may interfere with our efforts and those of our partners to implement projects and programs that would help to maintain and improve our transportation system while achieving the Bay Area greenhouse gas emission reduction targets established by CARB in response to SB 375. Accordingly, with this letter we are submitting the following comments for your consideration:

- First, we seek revisions to the *Amendment* to avert conflicts between the *Bay Plan* and the Authority's primary mission – to deliver the Measure J transportation projects as approved by the voters of Contra Costa;
- Second, we seek to avert conflicts between the *Bay Plan* and the efforts of local jurisdictions to develop Priority Development Areas (PDAs), several of which are located near the Bay; and

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Sean Randolph and Will Travis

November 23, 2010

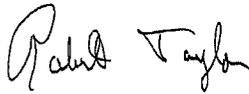
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- Third, we wish to make sure that the existing infrastructure we rely on daily for the transport of people and goods will be adequately protected from sea level rise.

Attached for your consideration are the revisions we wish to have incorporated into the *Amendment*. The revisions are limited to the findings and policies in paragraphs "o", "p", "r", "s", 5 and 6 of the Climate Change section, and paragraph 1 of the Shoreline Protection section. For clarity, we have accepted all proposed changes to the Bay Plan as if incorporated. Requested changes are shown in underline/~~strikeout~~.

The Authority agrees that the Commission needs to respond to climate change and predicted rises in sea level and their effects on the Bay. We hope, however, that together the Commission and its partner agencies can create an approach that furthers our mutual goals and objectives.

Sincerely,



Robert Taylor
Chair

cc via e-mail: BCDC Members and Alternates
The Contra Costa Mayors' Conference
Contra Costa County Supervisors
Contra Costa Transportation Authority Members
Liisa Stark, Union Pacific Railroad
Walt Gill, Chevron Richmond Refinery

Attachment: Proposed Revisions to *Bay Plan Amendment 1-08*

ATTACHMENT
 PROPOSED REVISIONS TO BAY PLAN AMENDMENT 1-08
 Contra Costa Transportation Authority, November 23, 2010

NOTE: Proposed additions in language are shown as underlined, while proposed language deletions are shown as ~~struck through~~.

Climate Change	
Findings	
p. 12	<p>o. Approaches for ensuring public safety, <u>supporting existing development, and promoting economic health</u> in developed vulnerable shoreline areas include: (1) protecting existing development; (2) accommodating flooding by building structures that are resilient (3) discouraging permanent new development; (4) allowing only interim new uses that can be removed or phased out as inundation threats increase; and (5) removing existing development.</p>
p.13	<p>p. Infill development is the economic use of underutilized or vacant land, or the rehabilitation of existing structures or infrastructure located in an area where supporting infrastructure is in place and that is surrounded by existing development that either is or will be served by transit. Infill development has been identified as an important strategy for reducing greenhouse gas emissions in the Bay Area by providing jobs and housing in locations and at densities that can be served by transit. Some vulnerable shoreline areas are already improved with development that has regionally significant economic, cultural or social value, and can accommodate infill development. <u>Other shoreline areas are potential sites for development that supports economic health and reduces greenhouse gas emissions.</u></p> <p>r. In some cases, the regional goals of encouraging infill development, remediating environmentally degraded land, redeveloping closed military bases and concentrating housing and job density near transit may conflict with the goal of minimizing flood risk by avoiding development in low-lying areas vulnerable to flooding. To minimize this conflict, infill or redevelopment in low-lying areas can be clustered on a portion of the property to reduce the area that must be protected; an adaptation strategy for dealing with rising sea level and shoreline flooding can be formulated with definitive goals and an adaptive management plan for addressing key uncertainties for the life of the project; measures can be incorporated that will achieve</p>

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PROPOSED REVISIONS TO BAY PLAN AMENDMENT 1-08

	<p>resilience and sustainability in all elements of the project; <u>economic analysis can be applied to evaluate the potential costs and benefits of alternative plans</u>; and a permanent financial strategy can be developed to guarantee that the general public will not be burdened with the cost of protecting the project from any sea level rise or storm damage in the future.</p>
p. 14	<p>s. Some undeveloped low-lying areas that are vulnerable to shoreline flooding contain critical habitat or provide opportunities for habitat enhancement. Allowing <u>proposed projects and new development to proceed</u> in these areas would preclude important habitat enhancement opportunities. <u>An adaptation strategy can be formulated to address the trade-offs and analyze the opportunity costs of allowing such developments to proceed.</u> [Move the following sentence to new and revised paragraph "t" below.] Some developed areas may be suitable for ecosystem restoration if existing development is removed to allow the Bay migrate inland, although relocating communities is very costly and may result in the displacement of neighborhoods.</p> <p>t. <u>Some developed areas may be suitable for ecosystem restoration if existing development and infrastructure¹ is are removed to allow the Bay [to] migrate inland, although Relocating communities existing development and infrastructure is very costly and may result in the displacement of neighborhoods and loss of capital investment. An adaptation strategy can be formulated to address the trade-offs and fully account for the economic impacts of relocating existing development and infrastructure.</u></p>

¹[Commentor's Note: "Infrastructure" includes all public/private service and system providers such as transportation, flood control, power and water supplies, buildings (such as schools or hospitals) telecommunications, treatment plants, and industrial facilities. The term "infrastructure" is inclusive of regional and subregional transportation facilities, such as the Capital Corridor, I-80, and I-580, and surface streets in West Contra Costa that may be affected by sea level rise.]

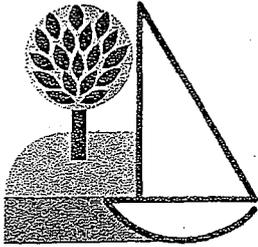
ATTACHMENT
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Policies	
p. 16	<p>5. The Commission, in collaboration with the Joint Policy Committee, other regional, state, and federal agencies, local governments, and the general public, should formulate a regional sea level rise adaptation strategy for protecting critical developed shoreline areas and natural ecosystems, enhancing the resilience of Bay and shoreline systems and increasing their adaptive capacity. The strategy should incorporate an adaptive management approach, be updated regularly to reflect changing conditions and information, and include maps of shoreline areas that are vulnerable to flooding based on projections of future sea level rise and shoreline flooding. The maps should be prepared and regularly updated in consultation with government agencies with authority over flood protection.</p> <p>The regional strategy should determine <u>identify</u> where existing development <u>and infrastructure</u> should be protected, and infill development encouraged, where new development, <u>including infill development</u>, should be permitted, [and] where existing development should eventually be removed to allow the Bay to migrate inland.</p> <p>The goals of the strategy should be to:</p> <ul style="list-style-type: none"> a. advance regional public safety and prosperity by protecting most existing shoreline development <u>and infrastructure</u>, especially development that provides regionally significant benefits, and by protecting infrastructure that is critical to public health or the region's economy, such as airports, ports, regional <u>and subregional</u> transportation <u>facilities</u>, wastewater treatment facilities, major parks, recreational areas and trails;
p. 17	<p>6. Until a regional sea level rise adaption strategy can be completed, when planning or regulating new development in areas vulnerable to future shoreline flooding, new projects should be limited to:</p> <ul style="list-style-type: none"> a. minor repairs of existing facilities or small projects that do not increase risks to public safety; b. transportation facilities, <u>including projects that are: 1) included in the most recently adopted Regional Transportation Plan (RTP) and/or 2) included in a voter-</u>

ATTACHMENT
PROPOSED REVISIONS TO BAY PLAN AMENDMENT 1-08

	<p><u>approved transportation sales-tax Expenditure Plan;</u></p> <ul style="list-style-type: none">c. public utilities or other critical infrastructure that is necessary for the continued viability of existing development;d. <u>infill development that is consistent with an adopted Sustainable Communities Strategy.</u>e. infill development within existing urbanized areas that contain development and infrastructure of such high value that the areas will likely be protected whether or not the infill takes place;
Shoreline Protection	
p. 24	<ul style="list-style-type: none">1. New shoreline protection projects and the maintenance or reconstruction of existing projects should be authorized if:<ul style="list-style-type: none">a. the project is necessary to protect existing shoreline development <u>and infrastructure</u> from flooding or erosion;...

Agenda Item #10



City of Foster City

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

610 FOSTER CITY BOULEVARD
FOSTER CITY, CA 94404-2222
(650) 286-3200
FAX (650) 574-3483

November 1, 2010

Mr. R. Sean Randolph
Chairman
SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION
c/o Bay Area Council
201 California Street, Suite 1450
San Francisco, CA 94111

*Re: Process for Consideration of Proposed Bay Plan Amendment 1-08
Concerning Climate Change Following October 21 Hearing*

Dear Chairman Randolph:

We applaud the Commission's recognition on October 21 of continued substantive and procedural concerns voiced by local government, business, labor, affordable housing and environmental justice entities and other organizations regarding the proposed amendments to the Bay Plan. Concerns include, among other things, the land-use policies in the proposed amendments speaking to areas projected to be vulnerable to sea level rise of 55 inches—some 213,000 acres in all nine Bay Area counties, according to your own documents. These proposed policies will have real consequences for development, flood-protection and restoration plans, and, accordingly, they must be considered in the context of other economic and environmental goals.

The many stakeholders to these discussions need time to study and review the possible effects of the proposed Bay Plan amendment on matters of local control, public health and safety, private property interests and organizational mission. These stakeholders further need time to express those findings once fully understood, offer improvements and request changes and alternatives, if so desired.

To those ends, we understand that BCDC staff held a workshop targeting local governments on October 29 and that a special meeting of the BCDC commission sitting as a committee of the whole will take place on November 2.

However, given the short-notice of these sessions and that the special meeting of the Commission is set to occur on Election Day, we trust and urge that this is just the beginning of an outreach and deliberative process that genuinely engages the region,

respects competing time demands on stakeholders, and focuses on finding consensus on sea level rise preparation and adaptation strategies.

While we must step up to the challenge posed by sea level rise proactively and with a sense of urgency commensurate to the threat, the long-term challenge of climate change and global warming is of such a scale and scope that we would be well served to take the time necessary to get right our collective responses to it.

Respectfully,


Rick Wykoff
Mayor

Cc: Congresswoman Jackie Speier
State Senator Leland Yee
State Assemblymember Jerry Hill
City Council
BCDC Commission
Will Travis, Executive Director
James C. Hardy, City Manager
Richard D. Marks, Community Development Director
Ellen Joslin Johnck, Executive Director of the Bay Planning Coalition

From: rdg128@sonic.net
To: info@bcdc.ca.gov
Date: 10/25/2010 11:54 AM
Subject: Pass the Bay Plan Climate Change Policy

Robert Griffin
1467 Funston Avenue
San Francisco, CA 94122-3511

October 25, 2010

Sean Randolph

Dear Sean Randolph:

When BCDC was first formed, I was teaching General Science in a high school. Your publications provided me with a splendid abundance of information about the Bay, the sharp reduction in its health from previous filling, and the importance of not filling it any further.

I was able to pass on most of that information to at least 1,500 students over the years I was there, and then to at least 3,500 students in my 32 years teaching Biology at City College of San Francisco. I know numerous teachers who have done the same, and a colleague and I utilized those same publications of yours in conducting a National Science Institute in-service institute in Marine Ecology for 25 other teachers.

PLEASE CONTINUE YOUR LEADERSHIP IN SAVING OUR BAY BY ADOPTING YOUR STAFF'S BAY PLAN CLIMATE CHANGE POLICY. Their two years of extensive research, workshops, and public hearings should NOT be thrown out with the trash.

Don't let corporate developers utilize their millions to buy their way into filling any more of our precious Bay in total denial of the conspicuous need to avoid doing so.

Sincerely,

Robert D. Griffin
415-661-3217

From: gail.wechsler@gmail.com
To: info@bccdc.ca.gov
Date: 10/23/2010 10:04 PM
Subject: Adopt the Climate Change Amendment

Gail Wechsler
221 San Jose Avenue #5
San Francisco, CA 94110-3745

October 24, 2010

Sean Randolph

Dear Sean Randolph:

I applaud BCDC for proposing a sound policy to guide local planning with regard to climate change and sea level rise. I urge BCDC to adopt the policy promptly.

Yours truly,

Gail Wechsler

From: followingsea2001@yahoo.com
To: info@bcdc.ca.gov
Date: 10/22/2010 03:39 PM
Subject: Pass the Bay Plan Climate Change Policy

Martin Thomas
6071 Rockridge Blvd
Oakland, CA 94618-1864

October 22, 2010

Sean Randolph

Dear Sean Randolph:

I support the Climate Change Policy inclusion in the BCDC's Bay Plan. Developers are opposed of course, as if were not for the BCDC they would have been able to fill most of t he shallow water areas of the Bay with development. The people on the other hand appreciate the preservation of the Bay and are not as concerned with the loss of profits to the developers.

Sincerely,

Martin Thomas

From: boutin@goldrush.com
To: info@bcdc.ca.gov
Date: 10/21/2010 09:09 PM
Subject: Pass the Bay Plan Climate Change Policy

Dolores Boutin
PO Box 1450
Tuolumne, CA 95379-1450

October 22, 2010

Sean Randolph

Dear Sean Randolph:

BCDC has shown its leadership by educating the Bay Area about the challenges of sea level rise. I urge you now to promptly adopt the staff's proposal for the Bay Plan Climate Change Policy that gives cities guidance on how to protect infrastructure and crucial habitat in areas vulnerable to sea level rise.

This policy has been carefully crafted through two years of extensive outreach, public hearings and BCDC workshops. It advances the California Climate Adaptation Strategy that Governor Schwarzenegger adopted in 2009 and it will help ensure a common and cautious approach to sea level rise planning, instead of allowing cities and developers to ignore risks.

Please reject the false claims and attacks of developers, and adopt these policies that will help guide the Bay Area's sea level rise planning to protect people and wildlife habitat.

The protection of the Bay is important also to those of us who visit the Bay even though we don't live there. The developers don't own the Bay and should not be allowed to destroy it for the rest of us, for posterity, and for the ecosystems. What they do will affect everything in the area.

Sincerely,

Dolores Boutin

CITY/COUNTY ASSOCIATION OF GOVERNMENTS
OF SAN MATEO COUNTY

*Atherton • Belmont • Brisbane • Burlingame • Colma • Daly City • East Palo Alto • Foster City • Half Moon Bay • Hillsborough • Menlo Park • Millbrae
Pacifica • Portola Valley • Redwood City • San Bruno • San Carlos • San Mateo • San Mateo County • South San Francisco • Woodside*

November 1, 2010

Honorable R. Sean Randolph
Chairman
San Francisco Bay Conservation Development Commission
50 California Street Suite 2600
San Francisco, CA 94111

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NOV -9 2010

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Honorable Chair Randolph and BCDC Commissioners:

The City/ County Association of Governments of San Mateo County (C/CAG) is composed of one representative from each of the 20 cities and the County. Through C/CAG the cities and the County work together to address countywide issues including congestion and land-use.

San Francisco Bay Conservation Development Commission's (BCDC) proposed Bay Plan amendment would set land-use policies, priorities, and guidelines for property under threat of the projected 55-inch sea-level rise by the end of the century. By your own estimates this is 213,000 acres with the vast majority falling outside your current purview. This will have a significant impact on the land-use policies and procedures of the cities and counties on the Bay. By all indications it appears there was minimal substantive and adequate outreach to the affected cities and counties. It is critical that those most impacted by this policy be part of its development in order to have a reasonable Bay Plan that doesn't have negative unintended consequences.

Therefore, it is requested that the Bay Plan amendment approval be delayed indefinitely and a much more inclusive and broad-based outreach be made to the cities and the counties for their input on the proposed amendment. In addition, I encourage you to include all interested stakeholders in this outreach effort. This will ensure that the Bay Plan amendment meets the needs of all concerned.

Thank you for your consideration of this request.

Sincerely,



Tom Kasten, C/CAG Board Chairperson

cc: Richard Gordon - San Mateo County Representative
Carol Groom - San Mateo County Representative
Mark Addiego - ABAG Representative



East Bay Economic Development Alliance
The bright side of the San Francisco Bay

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Gregory Young
 New United Motor Mfg., Inc. (NUMMI)

Mr. Will Travis
 Executive Director
 San Francisco Bay Conservation and Development Commission
 50 California Street, Suite 2600
 San Francisco, California 94111

November 12, 2010

Dear Mr. Travis,

East Bay EDA agrees with the comments made by several Commissioners at your November 4 meeting that focusing local government attention on the issues surrounding sea level rise is critically important and that taking extra time to ensure local governments are fully invested in addressing these issues is worth the extra time.

East Bay EDA represents 27 cities in Alameda and Contra Costa Counties and has heard from the cities that stand to be most affected by sea level rise. They recognize the seriousness of the issue and would like additional time to understand the issues of jurisdiction, impact on CEQA, court proceedings, federal law and other matters. Some of these cities attended early hearings, but did not remember discussion of sea level amendments at the time. In some cities the information has not circulated sufficiently among departments. Some cities are just becoming aware of the issues.

The cities with whom we have been in contact would all like to have the opportunity to make recommendations but do not feel they will be able to complete internal discussions in time to present carefully considered recommendations by November 18. For this reason, and on behalf of all our city members, East Bay EDA respectfully requests that you hold hearings open at least through your scheduled December 2 staff meeting.

Thank you for your consideration of this request.

Sincerely,

Karen Engel

cc: Alameda County Supervisor Alice Lai-Bitker
 Contra Costa County Supervisor John Gioia
 Chair, East Bay EDA, Keith Carson

November 5, 2010

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NOV 12 2010

Joe LaClair
Chief Planner
San Francisco Bay Conservation and Development Commission
50 California Street, Ste 2600
San Francisco, CA 94111

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

SUBJECT: EBMUD Comments on Proposed Bay Plan Amendment 1-08 Concerning Climate Change

Dear Mr. LaClair:

Thank you for the opportunity to comment on BCDC's proposed Bay Plan Amendment 1-08. The East Bay Municipal Utility District (EBMUD) is providing comments in response to BCDC's Draft Staff Report and Revised Preliminary Recommendations for Proposed Bay Plan Amendment 1-08 Concerning Climate Change dated October 14, 2010.

EBMUD provides wastewater treatment services for 650,000 residential, commercial, and industrial customers in the East Bay communities of Alameda, Albany, Berkeley, Emeryville, Piedmont, Oakland, and Stege Sanitary District (includes El Cerrito, Kensington, and part of Richmond) at an average rate of 66 million gallons per day. EBMUD owns, operates, and maintains significant wastewater infrastructure, including collection system pipes and pump stations, wet weather facilities, a Main Wastewater Treatment Plant in Oakland, a dechlorination facility and transition structure, and a final effluent outfall. These facilities are critical to wastewater conveyance and treatment, and may be susceptible to sea level rise.

EBMUD agrees that regional planning and coordination in response to climate change and potential sea level rise is important, and applauds BCDC for acknowledging wastewater treatment facilities as "infrastructure that is critical to public health."

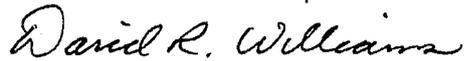
During the public workshop held by BCDC on October 29, 2010, it was suggested by some attendees that BCDC consider creating a separate climate change guidance document as an alternative to including such language in the Bay Plan. EBMUD supports this alternative approach and requests that BCDC consider the value of preparing a separate guidance document focused on climate change and associated planning for sea level rise impacts rather than seeking an amendment to the Bay Plan.

EBMUD urges BCDC to continue the public participation process recently established and allow for additional time and opportunity for stakeholder discussion of this important matter. A collaborative and interactive process between the numerous stakeholder agencies and interests

Joe LaClair
November 5, 2010
Page 2

along the Bay shoreline is essential to creating an effective regional approach to addressing potential climate change impacts.

Sincerely,



DAVID R. WILLIAMS
Director of Wastewater

DRW:VPD:vpd

W:\NAB\Planning\AGENCY COORDINATION\Agency Contact Corres\BCDC\Climate Change\Bay Plan Amendment Comment Letter
110510.doc



CITY OF BRISBANE

50 Park Place
Brisbane, California 94005-1310
(415) 508-2100
Fax (415) 467-4989

November 17, 2010

Commission Members
San Francisco Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111

Re: Proposed Bay Plan Amendment 1-08- Climate Change

Dear Commission Members:

The City of Brisbane appreciates the Commission and staff's willingness to continue the dialogue on this significant matter before taking final action. We look forward to participating in the forthcoming regional workshops and hope they will specifically include an opportunity for dialogue between potentially affected local government agencies and BCDC staff.

In reviewing the November 12, 2010 staff report, the City would strongly encourage you to pursue Option #6, the development of a guidance document addressing sea level rise adaptation. Creating an informational guidance document separate from the Bay Plan will eliminate much of the confusion surrounding the regulatory/advisory status of the pending amendment as originally proposed. Additionally, a guidance document containing supporting technical information, best practices and adaptation case studies would be an extremely valuable resource for local agencies, landowners and the public in understanding and addressing this challenge we will collectively face in the future.

Thank you for your consideration regarding this matter.

Sincerely,

Clayton L. Holstine
City Manager

c: John Swiecki, Community Development Director

From: Ian Wren <ian@baykeeper.org>
Subj: Bay Plan Amendment Stakeholder Panels
Date: Wed Nov 17, 2010 11:02 am
To: Will Travis <travis@bcdc.ca.gov>
cc: Joe LaClair <JoeL@bcdc.ca.gov>; Tim Eichenberg <TimE@bcdc.ca.gov>

Dear Mr. Travis,

As a supporter of BCDCs efforts to implement a sea-level rise adaptation strategy for the Bay Area I wanted to send a brief note expressing our frustration with the stakeholder panel process that has recently been initiated pursuant to the proposed Bay Plan amendment. While I appreciate your efforts to include representatives with opposing views it seems at odds with the concept of a stakeholder panel to host those in favor of the amendment during a last-minute election day meeting and request that those in opposition express their views during a regularly scheduled hearing this Thursday. Since this weeks panel is comprised of individuals with overwhelmingly similar perspectives it is unclear what the goal is of offering this group a larger forum than those with positions more closely aligned with BCDC.

In the event stakeholder panels are being considered for upcoming months I urge you to offer equal representation from a range of viewpoints before the commission and members of the public during regularly scheduled meetings. In addition, since we are bound to hear messages similar to those we have already heard over the next several months I would urge BCDC to ensure that during public hearings commentators from all sides are not simply given a forum to re-raise concerns and propose open-ended delays, but are forced to focus their comments towards productive suggestions for how to move forward. In particular the public should be urged to provide constructive language improvements, firm timetables (considering this process has proceeded for over a year and a half) and presentation of well developed alternatives for reliably adapting to sea level rise on a region-wide basis.

Thank you for your on-going efforts in the face of such bold opposition to pursue a balanced sea level rise adaptation policy for San Francisco Bay. As you know, this process will be seen as a model for the rest of the country, requiring that any final policy be binding rather than recommended guidance. We look forward to working with your staff to assist in offering solutions that benefit San Francisco Bay and its surrounding communities while ensuring your policy retains its existing scope and authority.

Regards,

Ian Wren
Staff Scientist

San Francisco Baykeeper
785 Market St., Suite 850
San Francisco, CA 94103
t. 415 856 0444 x108
m: 415 810 6956



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925 941 3235

November 17, 2010

Dr. Sean Randolph, Chairman
San Francisco Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111

Re: Proposed Bay Plan Amendment No. 1-08 Addressing Climate Change

Dear Chairman Randolph and Honorable Members of the Commission:

This letter is in regards to the Commission's consideration of Proposed Bay Plan Amendment 1-08. Our law firm, Miller Starr Regalia, serves as legal counsel in a variety of land use and real estate matters across the state. As long-time practitioners in this ever-evolving field, we appreciate the opportunity to actively participate in this regional effort to achieve the collective goals of encouraging sustainable infill projects while developing effective strategies to address climate change.

We commend the Commission for its leadership in this regard. We also appreciate BCDC staff's recognition of the importance of public input and its willingness to encourage additional public participation in this process. That said, we believe the current anticipated timing for the Commission's consideration of the proposed amendments is unduly constrained and that additional time is warranted for several reasons.

While progress has been made in understanding the cause and impact of climate change, there remains a high degree of scientific uncertainty regarding the complex issue of sea level rise (SLR). In order to develop strategies focused on vulnerabilities and innovative adaptation approaches, further investigation and analysis — from a scientific and engineering perspective — is imperative.

The multiple levels of government agencies involved and the potential jurisdictional reach of the proposed amendments further complicate matters. In order to successfully integrate each agency's individual mission and scope of land use authority within a regional context, a thoughtful, coordinated approach is necessary. While such cooperative action can be achieved, it will take time.

Finally, given that the proposed amendments, if adopted, would result in a new policy and regulatory framework that would undeniably affect development patterns,

Dr. Sean Randolph, Chairman
November 17, 2010
Page 2

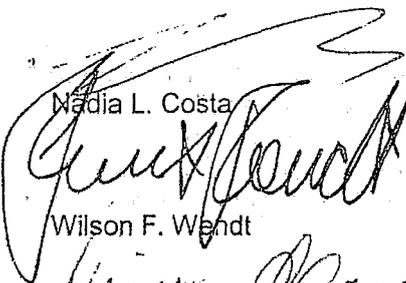
the question of the appropriate scope of environmental review merits further evaluation. In addition, the potential implications of the proposed amendments, if adopted, on the scope of CEQA review for other projects throughout the nine-county Bay Area region must be considered. Questions of applicable baselines, the integration of tiering provisions, and potential conflicts with local, regional and statewide plans, among others, will need to be confronted and fully analyzed.

Accordingly, we believe it would be premature to take action on the proposed amendments at this time. Instead, we respectfully request that the Commission and BCDC staff revise the current schedule to accommodate additional public involvement and to continue to encourage a highly inclusive, thoughtful dialogue on this matter. In so doing, this process has the opportunity to yield tremendous results in the form of innovative solutions that address climate change while also encouraging private investment and enhanced economic opportunities for our communities.

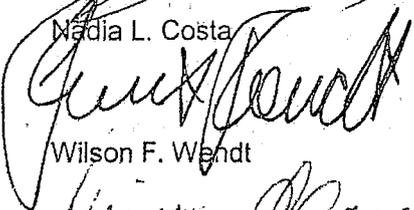
We look forward to actively participating in this process and hope to work cooperatively with the Commission, BCDC staff and other stakeholders to achieve these collective goals.

Very truly yours,

MILLER STARR REGALIA



Nadia L. Costa



Wilson F. Wendt



Kristina D. Lawson



Sean R. Marciniak

NLC:jj