



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS' REGULAR MEETING

January 6, 2010

A meeting of the Bay Area Air Quality Management District Board of Directors will be held at 9:45 a.m. in the 7th floor Board Room at the Air District headquarters, 939 Ellis Street, San Francisco, California.

Questions About an Agenda Item

The name, telephone number and e-mail of the appropriate staff person to contact for additional information or to resolve concerns is listed for each agenda item.

Meeting Procedures

The public meeting of the Air District Board of Directors begins at 9:45 a.m. The Board of Directors generally will consider items in the order listed on the agenda. However, any item may be considered in any order.

After action on any agenda item not requiring a public hearing, the Board may reconsider or amend the item at any time during the meeting.

BOARD OF DIRECTORS' REGULAR MEETING

A G E N D A

WEDNESDAY
JANUARY 6, 2010
9:45 A.M.

BOARD ROOM
7TH FLOOR

CALL TO ORDER

Opening Comments
Roll Call
Pledge of Allegiance
Oath of Office/Swearing-in New Board of Directors

Chairperson, Pamela Torliatt
Clerk of the Boards

PUBLIC COMMENT PERIOD

Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3
Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at District headquarters, 939 Ellis Street, San Francisco, CA, at least 72 hours in advance of a regular meeting. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Board's subject matter jurisdiction. Speakers will be limited to three (3) minutes each.

BOARD MEMBERS' COMMENTS

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

CONSENT CALENDAR (ITEMS 1 – 5)

Staff/Phone (415) 749-

1. Minutes of December 16, 2009

L. Harper/5073

lharp@baaqmd.gov

2. Communications

J. Broadbent/5052

jbroadbent@baaqmd.gov

Information only.

3. District Personnel Out-of-State Business Travel

J. Broadbent/5052

jbroadbent@baaqmd.gov

In accordance with Section 5.4 (b) of the District's Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified that the attached memoranda lists District personnel who traveled on out-of-state business.

4. Adoption of Proposed Amendments to the Air District's Administrative Code, Division III Personnel Policies and Procedures - Section 11 Leave and Holidays: 11.5 Military Leave and 11.7: Family Care and Medical Leave

J. Broadbent/5052

jbroadbent@baaqmd.gov

The Board of Directors will consider adoption of Proposed Amendments to the Air District's Administrative Code, Division III Personnel Policies and Procedures - Section 11 Leave and Holidays: 11.5 Military Leave and 11.7: Family Care and Medical Leave.

5. Notice of Proposed Amendments to the Air District's Administrative Code Division I - Operating Policies and Procedures - Section 11 adding new subsections 11.1 through 11.4 concerned with management, retention, and destruction of public records

J. Broadbent/5052

jbroadbent@baaqmd.gov

Notification is hereby given of proposed amendments to the Administrative Code Division 1 - Operating Policies and Procedures - Section 11 adding new subsections 11.1 through 11.4 concerned with management, retention, and destruction of public records.

RESOLUTION

6. Consideration and Adoption of Proposed Bay Area Healthy Communities Resolution

J. Broadbent/5052

jbroadbent@baaqmd.gov

The Board of Directors will consider adopting a Bay Area Healthy Communities resolution, which identifies communities most impacted by toxic air contaminants, establishes a policy of no net increase of toxic emissions in such communities, and identifies strategies to reduce impacts in these communities.

PUBLIC HEARING(S)

7. Consideration and Adoption of California Environmental Quality Act (CEQA) Thresholds of Significance

H. Hilken/4642

hhilken@baaqmd.gov

The Board of Directors will consider adopting CEQA Thresholds of Significance. These thresholds are developed to assist local jurisdictions and agencies in complying with the requirements of CEQA regarding potentially adverse impacts to air quality. The thresholds provide a means to identify proposed local plans and development projects that may have a significant adverse effect on air quality, public health, attainment of state and national ambient air quality standards, and to provide recommendations to mitigate those impacts. The proposed amendments to the Thresholds of Significance include staff-recommended thresholds for construction, operational-related, and plan-level emissions of criteria air pollutants and ozone precursors, greenhouse gases, toxic air contaminants, and odors.

8. Public Hearing to Consider Proposed Amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants, and Adoption of a CEQA Negative Declaration

B. Bateman/4653

bbateman@baaqmd.gov

The Board of Directors will consider adopting the proposed amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants; and, adopt a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for this rule-making activity.

CLOSED SESSION

9. Conference with Legal Counsel – Existing Litigation

Pursuant to Government Code Section 54956.9(a), a need exists to meet in closed session with legal counsel to consider the following case(s):

1. **Patricia Howell v. Bay Area AQMD**, San Francisco County Superior Court, Case no. CGC-07-461887
2. **Duraflame, Inc. v. Bay Area AQMD**, Contra Costa County Superior Court, Case No. N09-0102
3. **Pacific Steel Casting Company v. Bay Area AQMD**, San Francisco County Superior Court, Case No. CGC-08-482228
4. **Healthy Air Coalition v. Bay Area AQMD**, San Francisco County Superior Court, Case No. CGC-09-486990

OPEN SESSION

PROCLAMATION/COMMENDATIONS

10. *The Board of Directors will recognize outgoing Chairperson, Pamela Torliatt for her dedicated leadership, and service to air quality in the Bay Area.*

The Board of Directors will acknowledge incoming Chairperson, Brad Wagenknecht.

OTHER BUSINESS

11. Report of the Executive Officer/APCO
12. Chairperson's Report
13. Time and Place of Next Meeting – 9:45 A.M. Wednesday, January 20, 2010 - 939 Ellis Street, San Francisco, CA 94109
14. Adjournment

CONTACT EXECUTIVE OFFICE - 939 ELLIS STREET SF, CA 94109

(415) 749-5130
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities. Notification to the Executive Office should be given at least 3 working days prior to the date of the meeting so that arrangements can be made accordingly.
- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's headquarters at 939 Ellis Street, San Francisco, CA 94109, at the time such writing is made available to all, or a majority of all, members of that body. Such writing(s) may also be posted on the Air District's website (www.baaqmd.gov) at that time.

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT
 939 ELLIS STREET, SAN FRANCISCO, CALIFORNIA 94109
 (415) 771-6000**

**EXECUTIVE OFFICE:
 MONTHLY CALENDAR OF DISTRICT MEETINGS**

JANUARY 2010

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	6	9:45 a.m.	Board Room
Board of Directors Public Outreach Committee <i>(Meets 1st Thursday each Month)</i> - CANCELLED	Thursday	7	9:30 a.m.	4 th Floor Conf. Room
Advisory Council Retreat and Regular Meeting	Wednesday	13	9:00 a.m.	Board Room
Board of Directors Climate Protection Committee <i>(Meets 2nd Thursday each Month)</i>	Thursday	14	9:30 a.m.	4 th Floor Conf. Room
Board of Directors Legislative Committee <i>(Meets 2nd Thursday each Month)</i>	Thursday	14	Following Board Climate Protection Cme. Mtg.	4 th Floor Conf. Room
Joint Policy Committee <i>(Meets 3rd Friday Every Other Month)</i>	Friday	15	10:00 a.m.	MTC Auditorium 101 8 th Street Oakland, CA 94607
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	20	9:45 a.m.	Board Room
Board of Directors Mobile Source Committee <i>(Meets 4th Thursday each Month)</i>	Thursday	28	9:30 a.m.	4 th Floor Conf. Room
HL – 12/31/09 (8:15 a.m.) P/Library/Forms/Calendar/Calendar/Moncal				

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Pamela Torliatt and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: December 30, 2009

Re: Board of Directors Draft Meeting Minutes

RECOMMENDED ACTION:

Approve attached draft minutes of the Board of Directors Regular Meeting of December 16, 2009.

DISCUSSION

Attached for your review and approval are the draft minutes of the Board of Directors Regular Meeting of December 16, 2009.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
(415) 749-5000

Board of Directors' Regular Meeting
December 16, 2009

DRAFT MINUTES

CALL TO ORDER: Chairperson Pamela Torliatt called the meeting to order at 9:56 a.m.

Roll Call: Chairperson Pamela Torliatt; Vice Chairperson Brad Wagenknecht; and Directors Chris Daly, Susan Garner, John Gioia, Carole Groom, Scott Haggerty, Jennifer Hosterman, Yoriko Kishimoto, Carol Klatt, Liz Kniss, Eric Mar, Nate Miley, Mark Ross, James Spering, Gayle B. Uilkema and Ken Yeager

Absent: Secretary Tom Bates; Directors Harold Brown, Dan Dunnigan and Shirlee Zane

PLEDGE OF ALLEGIANCE: Chairperson Torliatt led the Pledge of Allegiance.

Public Comments:

Marie Harrison requested the Board of Directors move aggressively by not allowing approval of additional permitting in CARE communities.

Board Member Comments: None

Commendations/Proclamations/Awards

The Board of Directors recognized outgoing Board Member Yoriko Kishimoto for her outstanding leadership on the Board this past year and spoke on her accomplishments, leadership, and service to improving air quality and addressing climate change.

Director Kishimoto thanked fellow Board Members for support of her service, said she was delighted with the significant progress made with regional agencies and regulatory powers to protect public health and the climate.

The Board of Directors recognized the following employees who have completed milestones of 25, 30 and 35 years of services with the Air District during the second half of the calendar year:

- 25 Years of Service: Dan Belik, Scott Owen, David Ray, Gregory Stone, Craig Ullery
- 30 Years of Service: Debra Mehlos
- 35 Years of Service: Ruth Argueta, Allan Chiu, Jim Karas

CONSENT CALENDAR (Items 1-5):

1. Approval of Minutes of December 2, 2009 Regular Meeting
2. Notice of Proposed Amendments to the Air District's Administrative Code Division I - Operating Policies and Procedures - Section 11 adding new subsections 11.1 through 11.4 concerned with management, retention, and destruction of public records (*Removed*)
3. Notice of Proposed Amendments to the Air District's Administrative Code Division III - Personnel Policies and Procedures - Section 11 Leave and Holidays: 11.5: Military Leave and 11.7: Family Care and Medical Leave
4. Advisory Council Report and Recommendations from the October 14, 2009 Meeting on California's 2050 GHG Emission Reduction Target: Electricity Generation and Commercial & Residential Energy Sectors
5. Proposed Regulatory Agenda for 2010

Director Garner requested removal of Consent Calendar Item 2.

Board Action: Vice Chairperson Wagenknecht made a motion to approve Consent Calendar Items 1, 3, 4, and 5; Director Kishimoto seconded the motion; carried unanimously without opposition.

Item Removed:

2. Notice of Proposed Amendments to the Air District's Administrative Code Division I - Operating Policies and Procedures - Section 11 adding new subsections 11.1 through 11.4 concerned with management, retention, and destruction of public records.

Director Garner questioned the retention and potential for the filing of claims relating to accident and injury claim files. She also questioned the retention period and the statute of limitations of personnel files. Deputy APCO Jeff McKay clarified that the trigger for accident and injury files is 3 years from the date of the accident; destruction of personnel files is 7 years from the date of retirement or resignation. He noted that adoption of the amendments is scheduled for the next Board of Directors meeting, and Chairperson Torliatt requested that staff provide clarification in the staff report memorandum.

Board Action: Director Garner made a motion to approve Consent Calendar Item 2; Director Hosterman seconded the motion; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

6. **Mobile Source Committee Meeting**
December 7, 2009
Report given by Chairperson S. Haggerty

The Mobile Source Committee met on Monday, December 7, 2009 and approved the minutes of the November 5, 2009 meeting.

The Committee received an overview of the Air District's Compliance Plan for enforcing CARB mobile source regulations at all CARE communities and Bay Area ports, and discussed regulations under the plan, an MOU and joint partnership with CARB, and implementation and compliance dates

for outreach and enforcement. The Committee voiced interest in touring the Port of Oakland to better understand enforcement and inspection processes.

The Committee then received an update on shorepower at the Port of Oakland, discussed infrastructure issues, grants supporting shorepower implementation and Staff's application for \$6 million in diesel emissions reduction act funds from the USEPA to support electrification at the Port.

The Committee then considered proposed revisions to Transportation Fund for Clean Air (TFCA) Regional Fund project approval process, which will further streamline and provide additional opportunities and flexibility for grantees, help leverage other funding opportunities and increase the volume of eligible applications, thereby increasing reductions of surplus emissions.

The Committee recommends Board of Directors' approval to authorize the Executive Officer/APCO to execute Grant Agreements for projects funded by the Transportation Fund for Clean Air (TFCA) Regional Fund, with individual grant awards up to \$100,000; and to execute no-cost amendments for TFCA Regional Fund projects, provided each project continues to meet all applicable Board-approved policies.

The next meeting of the Mobile Source Committee is scheduled for Thursday, January 28, 2010.

Board Action: Chairperson Haggerty made a motion to approve the report and recommendation of the Mobile Source Committee; Director Hosterman seconded the motion; which carried unanimously.

7. Climate Protection Committee Meeting

December 11, 2009

Report given by Chairperson Y. Kishimoto

The Climate Protection Committee met on Friday, December 11, 2009 and approved the Climate Protection Committee minutes of October 8, 2009.

The Committee received an overview of the new Joint Policy Committee initiative from Bruce Riordan, discussed outcomes from the first kick-off meeting held November 17 and activities planned for 2010. Mr. Riordan presented an outline of cross-sector and other top key initiatives representing inventories, discussed the comprehensive modeling efforts and local agency plans, and the need for public planning processes.

The Committee then received a status report on efforts to coordinate and plan for implementation of AB 32 greenhouse gas (GHG) reduction measures and the addition of Title V and PSD stationary source facilities which may fall under the District's permitting processes. The Committee also received a report on third party verification training and accreditation of District staff to participate in verification services for the mandatory reporting of GHG's.

The Committee then received and reviewed climate protection activities conducted by the Air District throughout 2009. The focus has been to work with local governments and provide technical assistance on how CEQA guidelines and initiatives on stationary sources work, GHG fee reporting and verification training, review of land use, energy and climate control measures, and building content on the Bay Area Climate planning web portal.

The next meeting of the Climate Protection Committee is Thursday, January 14, 2010 at 9:30 a.m.

Board Action: Chairperson Kishimoto made a motion to approve the report of the Climate Protection Committee; Director Garner seconded the motion; which carried unanimously.

Director Ross commended and recognized Climate Protection Committee Chairperson, Yoriko Kishimoto for her distinguished work as Chair of the Committee.

8. Personnel Committee Meeting

December 16, 2009

Report given by Vice Chairperson C. Groom

The Personnel Committee met on Wednesday, December 16, 2009 just prior to the Board of Directors meeting and approved the minutes of November 23, 2009.

The Committee held interviews of candidates to fill the vacancy of one incumbent member who is not seeking re-appointment, under the *Conservation Organization* category.

The Committee recommends that the Board of Directors appoint Debbie Mytels to the Advisory Council for a two-year term of office, effective January 1, 2010 through December 31, 2011, under the *Conservation Organization* category.

The next meeting of the Personnel Committee is at the call of the Chair.

Board Action: Vice Chairperson Groom made a motion to approve the report and recommendations of the Personnel Committee; Director Uilkema seconded the motion; which carried unanimously.

Vice Chairperson Wagenknecht added that the Personnel Committee had interviewed four, very qualified candidates.

9. Consideration and Adoption of Proposed Bay Area Healthy Communities Resolution

Executive Officer/APCO Jack Broadbent gave a brief introduction of the item, stating the resolution is an important step in the ongoing effort to reduce disproportionate air quality impacts in six communities. The resolution formally identifies those six communities and adopts the policy of no new net increases in toxic air contaminant emissions.

Director of Planning and Research, Henry Hilken gave a PowerPoint presentation on the elements of the resolution which supports and advances District initiatives relative to local air quality impacts and does the following:

- Formally adopts the CARE Impacted Community boundaries;
- Adopts a policy of “No Net Increase” for CARE communities;
- Directs staff to identify baseline emission levels for each CARE community;
- Directs staff to conduct enhanced monitoring in CARE communities;
- Directs staff to continue targeting District grants in impacted communities; and
- Directs staff to collaborate with local jurisdictions in developing Community Risk Reduction Plans for impacted communities.

Chairperson Torliatt confirmed with Mr. Hilken that staff is recommending changes as outlined in the one page proposal before Directors and as proposed by the Bay Area Environmental Health Collaborative (BAEHC).

Directors discussed the District's plan to work with cities and counties in developing and implementing their risk reduction plans, clarified that while the resolution is not a regulation, it re-emphasizes the commitment of the District to encourage comprehensive, community-wide approaches to reducing impacts from new and existing sources. Director Uilkema suggested that the last "Be It Further Resolved" paragraph include wording that states, that "the District seeks a reduction of impacts" and to "minimize impacts in the communities."

Director Kniss suggested staff position itself positively from a public relations standpoint. Director Daly discussed broader language relating to no new net increases from sources within the District's regulatory jurisdiction and suggested that an additional sentence be considered and added to the fourth "Be It Further Resolved" statement, to add language that identifies no net increases occur under the District's current regulatory jurisdiction and within the CARE communities."

Director Haggerty confirmed with staff that the resolution had not been presented in Committee. He acknowledged the need for cleaner air, noted that there are communities that would have been included on the map of impacted communities had their economic criteria been removed. He suggested that the District additionally partner with community-based organizations in the lower income areas and those without health care to help increase awareness to help solve the health aspect of the problem.

Director Kishimoto strongly supported adoption of the resolution, referred to the fourth "Be it Further Resolved" paragraph and suggested adding no net increase for criteria pollutants. Mr. Broadbent stated there are high levels of PM in the Tri-Valley and Gilroy area which is due to photochemical PM as well as directly emitted PM. He believed including criteria was somewhat premature and suggested limiting it to toxic air pollutants for now.

Director Mar acknowledged that almost the entire eastern side of San Francisco is included within impacted communities, supported Director Uilkema's suggested language to seek a reduction as opposed to not having any increases, as well as Director Daly's suggestion to look at pollutants within the District's regulatory jurisdiction. He also voiced support for a tiered approach in the CEQA guidelines and the new source rule.

Director Gioia referred to the fourth "Be it Further Resolved" paragraph relating to "weighted according to their cancer potency..." and clarified that diesel particulate matter is the most potent of toxic air contaminants and that emissions data is collective data. He questioned the situation of new residential development resulting in additional traffic and potentially new mobile sources. Mr. Broadbent stated that risk reduction plans will serve as guiding documents which can allow for development as long as there is a reduction of risk, which can be carried out through local measures, grants and statewide measures.

Director Garner commended staff for considering BAEHC's comments and adding protective measures in the resolution's language. She supported Director Haggerty's suggestions about funding for solutions and hoped that the District can provide funding to communities that cannot afford air

monitoring equipment. She confirmed that the term, "support" in the fifth "Be it Further Resolved" paragraph means that some jurisdictions will want to take on air monitoring and that the District will work with them.

Director Yeager voiced frustration that the Board is being pressed for time and suggested holding a workshop for questions to be answered. He voiced concern about how the new source review may intentionally make it harder to get approved in-fill development projects that reduce automobile trips, and Mr. Broadbent explained that the resolution is strictly a policy and while Items 9 and 10 are somewhat connected, today staff is requesting that the Board acknowledge the six impacted communities, adopt the policy of no new net increase, and new source review permitting for stationary source equipment will be complimentary. He stated that all grant and CARB work will also reduce risk and it was not the District's intent to impede infill development. He believed a third resolution could be developed to speak to reduction goals.

Director Ross cited the Air District's mission statement, stating that he thinks the resolution is a new strategy, a good first step, and he supported a decrease of air pollution everywhere. How the policies affect the real working data is an important question; the resolution as policy supports the District's core mission and strategy and he did not believe its adoption would stop residential development.

Public Comments:

Fabian Martinez, Richmond High School, cited inequities and poor air quality in impacted communities and asked the Board to adopt the resolution.

Tatiana Suriano, Richmond High School, cited poor air quality, asthma and hospitalization rates, and thanked the Board for allowing public comment on the matter.

Antonio Diaz, BAEHC, thanked the District for working with BAEHC and supported adoption of the resolution.

Marie Harrison, Green Action, supported adoption of the resolution for no new net increases of pollution.

Karen Cohn, BAEHC, San Francisco Health Department, supported adoption of the resolution and risk reduction plans, and hoped for available resources.

Ken Kloc, BAEHC, supported suggested amendments and adoption of the resolution and agreed the issue of particulate matter is complicated due to it being a primary and secondary pollutant.

Dennis Bolt, WSPA, voiced opposition to adoption of the resolution.

Linda Best, Contra Costa Council, voiced opposition to adoption of the resolution, cited the unintended consequences of completion of projects and job opportunities.

Janet Whittick, CCEEB, said she was very surprised with staff bringing forward the resolution for no new net increases, citing changes made which had not been vetted and requested delay of the resolution's adoption.

Joyce Eden, West Valley Citizen Air Watch, Cupertino, asked that the resolution include no pollution trading, voiced support of the CARE program, and agrees with suggested amendments to include a decrease and not just no new net increases.

Mr. Broadbent recommended the Board of Directors consider adding another "Be it Further Resolved" paragraph that the Board of Directors seeks to reduce emissions in impacted communities. He stated that staff would not be supportive of BAEHC's request to see no new permitting in these communities and suggested that the Board direct staff to return to a future Stationary Source Committee to review the concept and provide additional information. Regarding pollutants within the District's jurisdiction, he said staff would not be supportive of having the resolution speak to only those facilities within the District's regulatory jurisdiction, and also suggested reviewing this topic at a Stationary Source Committee as a future discussion item. He stated that the Board seemed to voice support for, and staff agrees, in having the discussion of minimizing impacts from new and existing sources in these communities.

Director Spring suggested that in the future, the Board take public comment prior to Board Member comments. He voiced concern with how fast the resolution is being pushed forward and thinks that it will restrict development in impacted communities. He suggested for the matter to be positively presented, include language for clean air and a healthy, sustainable community, and said he would not support adoption of the resolution in its current form, believing it will cause significant impact to the economic health of communities.

Director Hosterman commended staff for what she believes to be a great body of work, but believed that it had not yet fully vetted. She supported discussion at a workshop or Committee, supported the direction of identifying six impacted communities, reducing emissions and improving the health of the Bay Area, but suggested time to further reflect and discuss the matter.

Director Gioia said he represents CARE communities and lives by a rail switching yard. He thanked students from Richmond High School for their comments and supports moving in a direction of decreasing impacts in communities. However, he asked for more thought and linkage to the community risk reduction plans and asked that the matter be returned on January 6 for consideration when there was a greater quorum of the Board.

Director Daly stated that the Board has been talking about the CARE program and communities. It has cumulative impact policy on record, has moved toward no new net emissions and reductions and agreed with Director Haggerty that the matter could have been taken to a committee but cited lengthy Board meetings. He voiced the preference to vote on the resolution, with amendments as identified, and supported further discussion of total emissions and emissions within the District's regulatory jurisdiction at an upcoming Stationary Source Committee meeting.

Director Kishimoto agreed that the Board has discussed CARE communities for many years. She stated that it is not a matter of stigmatizing the communities as it is data-based decision making. She acknowledged that the entire Bay Area is in a non-attainment state, said communities need help from the District, and felt the District would do right by sending a message that dirty industries cannot locate in communities. She acknowledged concerns about transit-oriented communities and thinks the strategy of using risk reduction plans will work with offsets to allow for development of projects. The resolution is thoughtful and she supported its adoption, with additional language as recommended by Board Members and staff.

Director Kishimoto made a motion to adopt the resolution with additional language as recommended by staff. Director Mar seconded the motion.

Director Ross said he has heard that the resolution does not go far enough and that it also goes too far. He is sensitive to the concept that there is little time to absorb the idea, but stated that the District is a public health agency. The resolution recognizes the empirical and epidemiological data before the Board, the subject matter is not new, and he supported its adoption.

Director Garner echoed support of Director Spring's comments about hearing from the public first and questioned whether the process of CEQA guidelines conflicts with adoption of the resolution. Mr. Broadbent stated the resolution is not a regulation but a statement representing five years of work. He said staff has briefed the Board many times about disproportionately impacted communities. The CEQA guidelines are scheduled for the meeting of January 6, which will be complimentary of the resolution, with options for including or not including community risk plans. He said the resolution is not binding in terms of a regulatory effort; it is not designed to prevent the District from having permits in the communities, but rather defines the fact that communities are experiencing elevated levels of risk and cancer as a result of diesel particulate levels.

Director Gioia supported having a no net increase and reduction. He acknowledged that composition of the Board will soon change and supported the resolution, but asked for further discussion about how the District addresses infill projects, clarity of additional language, and motioned that the vote be taken up in January, which he thereafter withdrew.

Chairperson Torliatt stated that the Board has been dealing with the issue and identified communities over a year ago. She believed that language could be added to the resolution and if the Board does not take action on CEQA guidelines, the resolution, and new source review, it will be questioned as to why it is not protecting the public's health. She said the resolution is clear and represents the culmination of many years of work. She also noted that the majority of speakers are supportive of its adoption and she asked that it move forward.

Directors discussed delaying a vote to the first meeting in January, consensus by those present, availability of Board Members and the time to hold a workshop or committee meeting and confirmed that the item could be continued and kept open. Chairperson Torliatt received a commitment from those present to vote on the matter on January 6. She requested Directors to contact Mr. Broadbent if they had further questions or required clarification on the draft resolution. Mr. Broadbent stated that staff could also fully define information relating to infill development and community risk reduction plans as part of the CEQA discussion at that time.

Directors Kishimoto and Director Mar withdrew their previous motion and second.

Chairperson Torliatt requested that staff agendize the revised resolution paired with the CEQA guidelines and a separate item for the Toxics New Source Review Regulation 2, Rule 5.

10. Public Hearing to Consider Proposed Amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants, and Adoption of a CEQA Negative Declaration

Chairperson Torliatt confirmed with District Counsel Brian Bunger that the matter could be considered at the January 6, 2010 Board of Directors meeting.

OTHER BUSINESS:

11. **Report of Executive Officer/APCO:** Mr. Broadbent wished the Board of Directors a happy holiday.
12. **Report of the Chairperson** – Chairperson Torliatt reported that two new Directors would be sworn in at the next Board meeting.
13. **Time and Place of Next Meeting:** Regular Meeting - Wednesday, January 6, 2010 - 939 Ellis Street, San Francisco, CA 94109
14. **Adjournment:** The Board of Directors Meeting adjourned at 12:32 p.m.

Lisa Harper
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Pamela Torliatt and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: December 21, 2009

Re: Board Communications Received from December 16, 2009 through January 5, 2010

RECOMMENDED ACTION:

Receive and file.

DISCUSSION

A list of Communications directed to the Board of Directors received by the Air District from December 16, 2009 through January 5, 2010, if any, will be at each Board member's place at the January 6, 2010 Regular Board meeting.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Pamela Torliatt and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: December 17, 2009

Re: District Personnel on Out-of-State Business Travel

RECOMMENDED ACTION:

Receive and file.

BACKGROUND

In accordance with Section 5.4 (b) of the District's Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified that the following District personnel have traveled on out-of-state business: Jean Roggenkamp, Deputy APCO.

The out-of-state business travel summarized below covers the period from December 1 – December 31, 2009. Out-of-state travel is reported in the month following travel completion.

DISCUSSION

Jean Roggenkamp, Deputy APCO, attended the U.N. Climate Change Conference in Copenhagen, Denmark from December 12 – 18, 2009.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Linda J. Serdahl, CPA, CFE
Reviewed by: Jack M. Colbourn

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Pamela Torliatt and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: December 28, 2009

Re: Adoption of Proposed Amendments to the Air District's Administrative Code
Division III, Personnel Policies and Procedures Section 11 Leave and
Holidays: 11.5 Military Leave and 11.7, Family Care and Medical Leave

RECOMMENDED ACTION:

The Board of Directors will consider adoption of Proposed Amendments to the Air District's Administrative Code, Division III Personnel Policies and Procedures - Section 11 Leave and Holidays: 11.5 Military Leave and 11.7: Family Care and Medical Leave. The proposed amendments attached, clearly define the policies and comply with recent amendments to the federal Family and Medical Leave Act.

BACKGROUND

The Air District's Administrative Code Division I, Section 14 enables the Board of Directors to amend its Administrative Code "at any meeting by a vote of a majority of the members of the Board of Directors, provided notice of such amendments has been given at a preceding regular meeting."

In accordance with provisions of the Administrative Code Division I, Section 14, notice was given at the Board of Directors regular meeting of December 16, 2009 that the Board of Directors was considering amendments to Division III of the Administrative Code, Personnel Policies and Procedures, Sections 11.5 Military Leave and 11.7: Family Care and Medical Leave.

The amendments clarify that military leave is governed by applicable State and Federal law. The amendments also clarify and update the District's Family Care and Medical Leave policies and procedures by deleting the current Section 11.7 of Division III in its entirety and replacing it with updated policies and procedures that comply with recent amendments to the federal Family Medical and Leave Act.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Mary Ann Okpalaugo

Reviewed by: Jack M. Colbourn

Attachment: Proposed Amendments to Division III Personnel Policies and Procedures 11.5:
Military Leave and 11.7: Family Care and Medical Leave

PROPOSED ADMINISTRATIVE CODE AMENDMENTS

Proposed Amendment to Division III, “Personnel Policies and Procedures”, Section 11.5, Military Leave as follows:

11.5 MILITARY LEAVE

Military leave is governed by the Military and Veterans Code of the State of California and the federal Uniformed Services Employment and Reemployment Rights Act.

Proposed Amendments to Division III, “Personnel Policies and Procedures”, Section 11.7, Family Care Leave policy, by deleting the current provisions of 11.7 in their entirety and replacing it with the language proposed:

11.7 FAMILY CARE AND MEDICAL LEAVE (Revised ~~12/24/94~~12/09)

~~An employee may take family care and medical leave to care for the employee's child after birth or placement with the employee for adoption or foster care; to care for the employee's spouse, domestic partner, parent, or eligible son or daughter who has serious health condition; or because of a serious health condition that makes the employee unable to perform the functions of his or her position.~~

~~Each full time employee is entitled to a maximum of 480 hours of family care and medical leave during any 12 month period. The 12 month period begins on the first date family care and medical leave is taken. When medically necessary, leave may be taken on an intermittent basis or the employee may be authorized to work on a reduced schedule.~~

~~An employee is eligible for family care and medical leave if he or she has been employed for at least 12 months and has performed work for at least 1250 hours during the 12 months preceding the leave period.~~

~~An employee who works part time is eligible for family care and medical leave if he or she has been employed for at least 12 months. For eligibility purposes, the hours of work performed for by a part time employee will be calculated on a pro-rata or proportional basis. Leave entitlement is equal to the sum of work hours and paid leave, including paid or unpaid pregnancy disability leave, during the twelve week period immediately preceding the first request for family care and medical leave, to a maximum of 480 hours.~~

~~Family care and medical leave is without pay. However, an employee who is taking family care and medical leave to care for an eligible family member must use all accrued annual leave and floating holiday, except for 80 hours that may be retained or used at the employee's discretion, before unpaid leave may be taken. An employee who is taking family care and medical leave due to the employee's own serious medical condition is not required, but may choose to, use accrued annual leave and floating holiday.~~

~~Pregnancy disability leave, as described in Section 11.9, may be taken in addition to family care and medical leave, and is not subtracted from the family care and medical leave entitlement. However, any other form of leave (including sick leave and temporary disability leave) which is taken for the purposes of allowed under this Section 11.7, whether paid or unpaid, will be subtracted from the family care and medical leave entitlement. There is no need for the employee or the child to have a serious health condition, nor is it required that an employee continue to be disabled by her pregnancy, childbirth or any related medical condition before taking family care and medical leave in the year following the birth or adoption of a child.~~

~~A serious health condition is defined as an illness, injury, impairment, or a physical or mental condition that involves either inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or supervision by a health care provider.~~

~~Family care and medical leave will not be considered a break in service. An employee will continue to receive benefits, except that an employee on unpaid family care and medical leave for 80 hours or more during a fiscal year will not accrue annual and sick leave, receive transit subsidy, or receive education reimbursement, unless the course was approved prior to the commencement of the leave. Employee and~~

~~employer contributions to PERS are not paid during unpaid portions of family care and medical leave. Employees returning from family care and medical leave will be reinstated in the same position, or to a comparable position in the same job classification and at the same pay grade.~~

~~The following limitations apply to all family care and medical leaves:~~

~~(a) — If possible, the employee must provide the District with at least 30 days' notice before the leave begins. If this is not possible, the employee must provide as much notice as is practicable.~~

~~(b) — When an employee is taking intermittent leave or working a reduced work schedule, the employee may be transferred to an alternate position, with equivalent pay and benefits, that accommodates the periods of leave better than the employee's regular position.~~

~~(c) — Earned benefits shall be reduced for an employee with a reduced work schedule, if the reduction is one which is normally made for part time employees.~~

~~The following limitations apply to the entitlement to leave after the birth or placement of a child with an employee for adoption or foster care:~~

~~(d) — Entitlement to this leave expires at the end of the 12 month period beginning on the date of the birth or placement.~~

~~(e) — If both parents are employed by the District, the aggregate number of hours to which they both are entitled is the larger of their individual entitlements.~~

~~(f) — Before taking unpaid leave, the employee must use all available annual leave and floating holidays, except for 80 hours which that may be retained or used at the employee's discretion.~~

~~The following limitations apply to the entitlement to leave because of an employee's own serious health condition:~~

~~(g) — The employee must have a serious health condition that makes the employee unable to perform one or more essential functions of his or her position.~~

~~(h) — To the extent that the employee's absence is the result of planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as to avoid undue disruption of the District's operations.~~

~~(i) — At the time of seeking leave because of a serious health condition, or as soon thereafter as is reasonable, the employee must supply a medical certificate to the division director. The certificate shall state the date on which the serious health condition began, the probable duration of the condition, and a statement that due to the serious health condition the employee is unable to perform one or more of the essential functions of his or her position. If the employee is seeking intermittent leave or a reduced work schedule, a statement of the medical necessity for this schedule and the schedule's expected duration must be included in the certificate.~~

~~(j) — Before taking unpaid leave, the employee must use all available sick leave, except for 80 hours that may be retained or used at the employee's discretion.~~

~~The following limitations apply to the entitlement to leave because of an employee's need to care for an eligible family member:~~

~~(k) — The care must be needed because of a serious health condition.~~

~~(l) — Eligible family members are: spouse, domestic partner, parent, son or daughter under eighteen, or son or daughter age 18 or older who is incapable of self care.~~

~~(m) — Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee is acting as a parent.~~

~~(n) — At the time of seeking leave because of a serious health condition, or as soon thereafter as is reasonable, the employee must supply a medical certificate to the division director. The certificate shall state the date on which the serious health condition began, the probable duration of the condition, an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, spouse or domestic partner, and a statement that the employee's presence would be beneficial or desirable for the care of the family member. The employee is required to indicate the care he or she will provide and an estimate of the time for which leave will be needed. If the employee is seeking intermittent leave or a reduced work schedule, a statement of the medical necessity for this schedule and the schedule's expected duration must be included in the certificate.~~

~~(o) — Before taking unpaid leave, the employee must use all available annual leave and floating holidays, except for 80 hours that may be retained or used at the employee's discretion.~~

~~All medical certificates will be maintained in a confidential file in the Personnel Section.~~

~~In addition to the leave allowed under this Section 11.7, the employee may be entitled to additional leave time pursuant to Section 11.4 above due to the employee's disability. The APCO may also grant additional leave without pay pursuant to Section 11.6 above or a leave of absence pursuant to Section 11.8 below.~~

Reasons for Taking Family Care and Medical Leave

Eligible employees can take Family Care and Medical Leave for any of the following reasons:

1. Birth of an employee's child.
2. Placement of a child with an employee for adoption or foster care.
3. Due to the employee's own serious health condition.
4. To care for a spouse, domestic partner, child or parent with a serious health condition.
5. Due to a qualifying exigency arising out of the fact an employee's spouse, domestic partner, child or parent is on active military duty or has been notified of an impending order to active duty ("Qualifying exigency leave").
6. To care for a current member of the Armed Forces, National Guard or Reserves who has a serious injury or illness if the employee is the spouse, domestic partner, child, parent or next of kin of the servicemember ("Military caregiver leave").

Amount of Leave

Eligible full-time employees are entitled to up to 12 workweeks (480 hours) of family care and medical leave in a 12 month period when the leave is taken for reasons 1 through 5 above. The 12 month period begins on the first date family care and medical leave is taken.

Eligible full-time employees are entitled to up to 26 workweeks (1040 hours) of military caregiver leave within a single 12 month period. Unlike other types of family medical leave, military caregiver leave is a one time entitlement only; it does not renew annually.

An eligible employee may combine military caregiver leave with traditional family medical leave during a single 12 month period; however, the employee is limited to taking a maximum of 26 weeks of leave in such circumstances.

Intermittent or Reduced Schedule Leave

When necessary, family care and medical leave may be taken intermittently or the employee may be authorized to work on a reduced schedule. The District may require the employee to provide certification supporting the need for intermittent or reduced schedule leave. Employees are required to make a reasonable effort to schedule intermittent leave so as not to disrupt the District's operations.

When an employee is taking intermittent leave or working a reduced schedule, the employee may be transferred to an alternate position, with equivalent pay and benefits, that accommodates the periods of leave better than the employee's regular position.

Earned benefits shall be reduced for an employee with a reduced work schedule, if the reduction is one which is normally made for part-time employees.

Eligibility

An employee is eligible for family care and medical leave if he or she has been employed by the District for at least 12 months and has performed work for at least 1250 hours during the 12 months preceding the leave period.

An employee who works part-time is eligible for family care and medical leave if he or she has been employed for at least 12 months. For eligibility purposes, the hours of work performed for by a part-time employee will be calculated on a pro-rata or proportional basis. Leave entitlement is equal to the sum of work hours and paid leave, including paid or unpaid pregnancy disability leave, during the twelve week period immediately preceding the first request for family care and medical leave, to a maximum of 480 hours.

Use of Accruals

Family care and medical leave is unpaid.

An employee who is taking family care and medical leave to care for an eligible family member, for the birth or placement of a child, or for a qualifying exigency must use all accrued annual leave and floating holidays, except for 80 hours that may be retained or used at the employee's discretion. An employee may also use sick leave in an amount not less than the sick leave that would accrue during six months of the employee's current rate of entitlement when leave is taken to care for an ill family member.

An employee who is taking leave due to the employee's own serious health condition must use all available sick leave, except for 80 hours that may be retained or used at the employee's discretion. The employee is not required, but may choose to, use accrued annual leave and floating holidays during the leave.

Use of paid leave accruals during otherwise unpaid family care and medical leave does not increase the amount of leave available to an employee.

Notice

If possible, the employee must provide the District with at least 30 days' notice before the leave begins. If this is not possible, the employee must provide as much notice as is practicable.

To the extent that the employee's absence is the result of planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as to avoid undue disruption of the District's operations.

Certification

An employee will be required to submit a certification to the division director supporting the need for family care and medical leave. The content of the certification is dependent upon the type of leave being taken as described below.

- (a) For employee's own serious health condition: The certificate shall state (1) the date on which the serious health condition began; (2) the probable duration of the condition; and (3) a statement that due to the serious health condition the employee is unable to perform one or more of the essential functions of his or her position. If intermittent or reduced schedule leave is sought, the certificate must also indicate the medical necessity for the intermittent or reduced schedule leave and its expected duration.
- (b) For family member's serious health condition: The certificate shall state (1) the date on which the serious health condition began; (2) the probable duration of the condition; (3) the amount of time needed to care for the family member; and (4) a statement that the family member's condition warrants the participation of the employee to provide care. If intermittent or reduced schedule leave is sought, the certificate must also indicate that such leave is necessary for the care of the family member and the expected duration of the intermittent or reduced schedule leave.
- (c) For qualifying exigency leave: The certificate shall state (1) the name of the covered military member; (2) the employee's relationship to the military member; (3) a statement describing the reason for requesting qualifying exigency leave and any related supporting documentation; (4) the date on which the leave will commence; and (5) the probable duration of the leave. If intermittent or reduced schedule leave is sought, the certificate must also indicate the anticipated frequency and duration of such leave. The employee may also be required to provide a copy of the military member's active duty orders.
- (d) For military caregiver leave:

 - 1. An employee may be required to provide a certificate containing the following information: (1) the name of the servicemember; (2) the relationship of the employee to the servicemember; (3) whether the servicemember is a current member of the Armed Forces, National Guard or Reserves; (4) whether the servicemember is assigned to a military medical facility and the name of such facility; (5) whether the servicemember is on the temporary disability retired list; (6) a description of

the care to be provided to the servicemember; and (7) an estimate of the duration of the leave.

2. An employee may also be required to provide a certificate from an authorized health care provider setting forth the following: (1) whether the servicemember's injury or illness was incurred in the line of duty on active duty; (2) the date on which the injury or illness began and its probable duration; (3) whether the injury or illness renders the servicemember unfit to perform his or her duties; (4) whether the servicemember is receiving medical treatment, recuperation or therapy; (5) information sufficient to establish that the servicemember is in need of care; and (6) the estimated duration of the need for care. If intermittent or reduced schedule leave is sought, the certificate must also indicate that such leave is necessary for the care of the family member and the expected duration of the intermittent or reduced schedule leave. Health care providers authorized to provide this certificate include a U.S. Department of Defense (DOD) health care provider, a U.S. Department of Veterans Affairs health care provider, a DOD TRICARE network health care provider, or a DOD non-network TRICARE health care provider.
3. In lieu of certification forms containing the information set forth above, the District will accept Invitational Travel Orders (ITOs) or Invitational Travel Authorizations (ITAs) issued to a family member of a servicemember.

All certificates will be maintained in a confidential file in the Personnel Section.

Benefits

Family care and medical leave will not be considered a break in service. An employee will continue to receive benefits, except that an employee on unpaid family care and medical leave for 80 hours or more during a fiscal year will not accrue annual and sick leave, receive transit, subsidy, or receive education reimbursement, unless the course was approved prior to the commencement of the leave. Employee and employer contributions to PERS are not paid during unpaid portions of family care and medical leave.

Reinstatement

Employees returning from family care and medical leave will be reinstated in the same position, or to a comparable position in the same job classification and at the same pay grade.

An employee who takes leave for his or her own serious health condition may be required to produce a fitness for duty certification prior to returning to work.

Limitations on leave taken after the birth or placement of a child

Entitlement to this leave expires at the end of the 12-month period beginning on the date of the birth or placement of the child.

If both parents are employed by the District, the aggregate number of hours to which they both are entitled is the larger of their individual entitlements.

Important Definitions

Child:

For purposes of leave taken for birth or placement of a child or to care for a family member with a serious health condition, “child” means a biological, adopted, foster child, stepchild, legal ward, or a child for whom the employee is acting as a parent. The child must be under 18 years old or over 18 and incapable of self-care due to a physical or mental disability.

For purposes of military caregiver or qualifying exigency leave, “child” is a biological, adopted, foster child, stepchild, legal ward, or a child for whom the employee is acting as a parent who is of any age.

Next of Kin: For purposes of military caregiver leave, “next of kin” means the nearest blood relative other than the servicemember’s spouse, domestic partner, parent or child, in the following order: blood relatives who have been granted legal custody of the servicemember by court decree, siblings, grandparents, aunts and uncles, and first cousins, unless the servicemember has designated in writing another person as his or her nearest blood relative.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice or residential health care facility, or continuing treatment or supervision by a health care provider.

Interaction with Pregnancy Disability Leave

Pregnancy disability leave, as described in Section 11.9, may be taken in addition to family care and medical leave, and is not subtracted from the family care and medical leave entitlement. However, any other form of leave (including sick leave and temporary disability leave) which is taken for the purposes of allowed under this Section 11.7, whether paid or unpaid, will be subtracted from the family care and medical leave entitlement. There is no need for the employee or the child to have a serious health condition, nor is it required that an employee continue to be disabled by her pregnancy, childbirth or any related medical condition before taking family care and medical leave in the year following the birth or adoption of a child.

In addition to the leave allowed under this Section 11.7, an employee may be entitled to additional leave time pursuant to Section 11.4 above due to the employee’s disability. The APCO may also grant additional leave without pay pursuant to Section 11.6 above or a leave of absence pursuant to Section 11.8 below.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Pamela Torliatt and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: December 29, 2009

Re: Revised Notice of Proposed Amendments to the Air District's Administrative
Code Division I – Operating Policies and Procedures – Section 11 Adding New
Subsections 11.1 Through 11.4 Concerned with Management, Retention, and
Destruction of Public Records

RECOMMENDED ACTION:

None.

DISCUSSION

Notice is given of proposed amendments to the Air District's Administrative Code Division I – Operating Policies and Procedures – Section 11 adding new subsections 11.1 through 11.4 concerned with management, retention, and destruction of public records. This notice is a revision to a notice included in the Board's consent calendar for the December 16, 2009 meeting.

The proposed Administrative Code amendments are part of a records management program consisting of two components: (1) a records management policy contained in the Administrative Code amendments, and (2) a record retention schedule listing Air District records by type and assigning a retention period for each type of record. The December 16, 2009 notice did not include both the Administrative Code amendments and the record schedule, each of which requires Board approval pursuant to California Government Code section 60201. The accompanying records retention schedule makes minor changes to the schedule included with the earlier notice by increasing the retention interval for accident reports (changing it from 3 years to 7 years), adding introductory text explaining the schedule, and adding notes to the schedule explaining when the retention interval starts to run for certain types of records that have a lengthy use period, such as building blueprints and personnel records. Some of these changes and clarifications respond to comments by Board members raised at the December 16, 2009 meeting.

The Air District is currently managing its records in accordance with a 2001 court order that resolved a public records claim asserted in litigation over the 2001 Ozone Attainment Plan. The court order precludes destruction of any records unless electronic copies are made. The court order also requires a 14-day public comment period on any records policy that would replace the order. In addition to making the proposed Administrative Code amendments available through this notice, the Air District has made the proposal available to the parties involved in the 2001 litigation and is making it available to the general public through a notice on the Air District website.

The policy incorporated into the Administrative Code amendments is intended to provide the foundation for a modern records management program that complies with the requirements of state law, recommendations from the California Secretary of State, and recommendations of the Air District's auditors.

The Board of Directors will consider approval of both the proposed amendments to the Air District's Administrative Code and the record retention schedule at its next meeting.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Jeff McKay

Attachments: (1) Proposed Amendments to the Air District's Administrative Code Division I – Operating Policies and Procedures – Section 11 Adding New Subsections 11.1 Through 11.4 Concerned with Management, Retention, and Destruction of Public Records, and (2) Proposed Record Retention Schedule

Proposed Amendments to Administrative Code

SECTION 11 **GUIDELINES FOR PUBLIC ACCESS TO RECORDS MANAGEMENT AND ACCESS**

11.1 RECORDS MANAGEMENT POLICY

- (a) It is the policy of the Bay Area Air Quality Management District to identify, maintain, safeguard, and dispose of records in the normal course of business; to ensure prompt and accurate retrieval of records; and, to ensure compliance with legal and regulatory requirements.
- (b) District records shall be maintained as electronic records to the extent feasible and reasonable. Electronic records shall be created, stored, and maintained in accordance with standards adopted or recommended by the California Secretary of State pursuant to Government Code Section 12168.7.
- (c) Retention and disposal of records shall be governed by the provisions of Government Code Sections 60201 and 60203 and the provisions below in Sections I-11.3 and I-11.4.
- (d) The APCO is authorized by the Board of Directors to interpret and implement this policy, and, in order to ensure the efficient operation of the District in compliance with all legal requirements, to retain and destroy records in accordance with this policy.

11.2 DEFINITIONS

- (a) Duplicate record – Means a record that is produced by the same impression as the original, or from the same matrix, or by any other technique that accurately reproduces the original in a manner that complies with Government Code Section 60203, subdivisions (a)(1), (a)(2), and (a)(3).
- (b) Electronic record – Means a record created or reproduced in any medium by means of any system requiring the aid of electronic technology to make the record readable or otherwise comprehensible by ordinary human sensory capabilities.
- (c) Original record – Means a record prepared in the first instance or any counterpart intended to have the same effect by a person executing or issuing it. If data are stored in a computer or similar device, any printout or other output readable by sight shown to reflect the data accurately is an "original."
- (d) Public Record – Means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by the District, regardless of physical form or characteristics.
- (e) Record – Means, pursuant to Government Code Section 60201, a "writing" as defined by Government Code Section 6252, subdivision (f), i.e. any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or

OPERATING POLICIES & PROCEDURES

SECTION 11 **GUIDELINES FOR RECORDS MANAGEMENT AND ACCESS**

Last revision

representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

- (f) Retention Period – The length of time a record must be retained to fulfill its administrative, fiscal and/or legal function as specified in the record retention schedule developed in accordance with Section I-11.3.

11.3 RETENTION PERIODS

- (a) Pursuant to Government Code Section 60201, the APCO shall create and periodically revise a record retention schedule that classifies all of the District's records by category and establishes a retention period for each category.
- (b) Pursuant to Government Code Section 60201, the Board of Directors shall adopt by resolution the record retention schedule and any revisions to the schedule.

11.4 DESTRUCTION OF RECORDS

- (a) Except as provided in Section I-11.4(b), a record may be destroyed if:
- (1) The retention period for the record has passed; or
 - (2) The record is not expressly required by law to be filed and preserved in the format or medium in which it exists, and a duplicate record is retained.
- (b) In no instances is a record to be destroyed if there is a continuing need for the record for such matters as pending litigation or special projects, or if the record falls within one of the categories listed in Government Code Section 60201, subdivision (d).
- (c) The destruction of records pursuant to Section I-11.4(a)(1) shall occur as soon as possible after the retention period has passed.
- (d) The destruction of records pursuant to Section I-11.4(a)(2) may be carried out at any time provided the retained duplicate records comply with the provisions of Government Code Section 60203, subdivisions (a)(1), (a)(2), and (a)(3), which require that:
- (1) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document in compliance with Government Code Section 12168.7 for recording of permanent records or nonpermanent records.
 - (2) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one that accurately reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.
 - (3) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are placed in conveniently accessible

OPERATING POLICIES & PROCEDURES

files and provision is made for preserving, examining, and using the files.

[Note: Existing subsections to be renumbered to follow the above inserted subsections]

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Record Retention Schedule

This schedule is a catalog of all record types employed by the Bay Area Air Quality Management District (Air District) in carrying out the work of the agency. Pursuant to California Government Code section 60201, this schedule and any revisions to the schedule must be adopted by the Air District Board of Directors. This schedule is a component of the Air District's records management program. Guidelines for the records management program are set forth in the Air District Administrative Code, Division I, Operating Policies and Procedures, Section 11. The purpose of this program is to maintain records in a manner that furthers the public purposes of the Air District while ensuring prompt and accurate retrieval of records and compliance with all legal requirements.

For each record type, the schedule establishes a retention period. The record types are sorted by retention period. Certain records will be kept permanently because of their continuing importance to the Air District and the public. For records not kept permanently, the schedule establishes a retention period. The retention period is the period of time that the Air District will keep a record after its "use period" is over. For most records, use occurs at a point in time, with the retention period beginning after this brief active use period. Most of the records in this schedule are of this type.

For certain records, the use period extends over a significant period of time. Examples include building blueprints, equipment manuals, contract documents, and grant documents. For these records, the schedule includes a note in boldface indicating the triggering event for the running of the retention period.

The substance of a record, rather than the format or medium in which it is held, determines the appropriate category for the record. Thus, paper records, e-mails, and electronic data alike acquire the retention period of the applicable substantive category.

Record type	Including these specific records:
PERMANENT RECORDS	
Activity authorization	Asbestos dust mitigation plans, asbestos removal, naturally occurring asbestos reports
Board records	Board, Board subcommittees, Hearing Board, Advisory Council and Advisory Council committees: agenda packages, minutes, reports, resolutions, and rosters
Bonds, insurance and warrants records	Bonds, property and liability insurance policies and documentation, warrants
Emission inventory records	Criteria pollutant and toxic emissions by facility and source, plan emission inventory, modeling & other related data (baseline years), EPA update
Emission monitoring records	Continuous emission monitoring (CEMS) monthly reports, CEM indicated excesses – source test evaluation forms, CEM approvals pursuant to Regulation 1, Section 522
Employee HR records	Disciplinary action log, employee workforce data, grievances & arbitrations, negotiations, complaint summary logs
Fiscal information	End-of-year statements and expenditure ledgers, final budgets
Legal records	Litigation-pleadings and orders, settlement agreements, opinions and advice files, rule interpretations/opinions, civil enforcement case records
Meteorological and air monitoring data	Ambient air monitoring data – data logger data, forecasts, meteorological monitoring data, ground level monitoring data; ground level monitoring audit reports
Payroll records	Payroll direct deposit records, CALPERS reports, Form 941 quarterly reports, payroll history YTD totals report, SF county payroll records, year end clearing/closing reports
Permit update and renewal records	Forms related to regular permit information updates and permit renewal
Permit application records	Authority to Construct documents, Permit to Operate documents, banking documents, registration documents, application forms, permit exemptions
Plant (facility) files	Facility correspondence, change of ownership/facility status records, source data forms
Rules, regulations, and plans	All versions of rules and regulations and rule development files, state and federal air quality plans, EPA annual updates

Record type	Including these specific records:
Source test results and raw data	Source test results and raw data from both the District and outside contractors, field accuracy test results, raw data, and reports, contractor-conducted source test notifications (ref: Volume IV, V, MOP)
Training records	Training program files, employee training completion records, ethics training certificates.
Violation and violation recommendation records	Notice of Violation and internal activity and tracking documents, Notice to Comply and internal activity and tracking documents, recommendations for violations including District and outside contractor tests, CEM indicated recommendations for violations, notifications of breakdowns, episodes, excesses and supporting documentation KEEP FOR 35 YEARS
I-Bond records	I-Bond records KEEP FOR 7 YEARS
Accident and injury records	Accident files, employee injury (first aid) files
Activity authorization	Open burns, exemption petitions, tank pulls/excavations, PERP, landfill reports
Asset tracking records	Fixed asset list, library acquisition records
Board files	Oaths of office, expense reports for Advisory Council, Board, Hearing Board, Board member correspondence, Board member travel authorizations and Board expense claims END OF TERM + 7 YEARS
Building records	Building blueprints, building equipment information, building maintenance information, construction drawings & information, drawings – space plans, maintenance working records. LIFE OF BUILDING + 7 YEARS
CEQA records	CEQA responsible agency project comments
Community meeting records	Community outreach community meeting files and resource team records
Compliance records	Compliance advisories and compliance reports required by regulation (Regs. 8-5, 8-10, 8-17, 8-18, 8-40, 9-10)
Complaints	All complaint information including wood smoke and smoking vehicle complaints
Contracts	Contract files and any related task orders or purchase orders, and any related bids, RFPs, RFQs or accepted proposals, contractor timesheets, contractor logs CONTRACT FINAL EXPIRATION + 7 YEARS
Employee benefit records	Tuition reimbursement, COBRA documentation, Section 125 documentation

Record type	Including these specific records:
Employee recruitment records	Classification studies, class specifications, recruitment files, wage and salary data, acquisition records
Executive files	Chronological correspondence files, conflict of interest forms, lobbyist employer/lobbyist registration
Hearing Board docket	All case related files FINAL COMPLIANCE DATE + 7 YEARS
Invoice and payment records	Automotive services contractor invoices, utility & service invoices, receivable paid invoices, claims (expenses and mileage), credit card payment and records, contract payment and records, fixed asset invoices
Laboratory samples and air quality monitoring data	PM 2.5 filters and PM 10 filters collected from sampling equipment, ambient air monitoring data – strip charts, air monitoring station log books, asbestos samples submitted for analysis, instrument log books, laboratory notebooks, results, methods of analysis, photo-micrographics, standard operating procedures
Legal records	Comments on legislative, administrative and hearing board matters
News media records	News releases and clips
Reports to CARB/EPA	Engineering and grant reports to CARB/EPA REVISED + 7 YEARS
Payroll records	Payroll registers, tickler files, timecards, vacation requests, family/medical leave requests
Personnel files	Personal and professional files of Executive Officer, deputies and staff. disciplinary support files, discrimination complaint files LAST DAY OF EMPLOYMENT + 7 YEARS
Policies, procedures and workbooks	Engineering, Enforcement, Information Systems, Technical Services (including source test protocols and plans), BACT/TBACT workbook, Permit Handbook REVISED + 7 YEARS
Flare records	Flare minimization – approved plans (Reg. 12-12), flaring notifications and reports (Reg. 12-12), plan review documents (Reg. 12-12), flare monitoring reports (Reg. 12-11)
Inspection records	Inspection reports, internal correspondence on inspections
QA/QC and calibration records	Lab, source test, and air monitoring equipment calibration records and QA/QC records, quality assurance manual
Tax records	457 deferred comp documents, income tax reports (1099), supporting documents, W2, W2 reports , transmittal of W2, use/sales tax returns and records, quarterly underground storage tank tax
Toxics Hotspots records	Toxics emissions inventory reports, risk assessments FACILITY DEMOLITION + 7 YEARS
Title V reports	Title V semi-annual and annual reports, Title V 10-day and 30-day deviation reports

Record type	Including these specific records:
Tort and workers compensation claims	Tort claim liability files, worker’s compensation files UNTIL CLOSED + 7 YEARS
Cal OSHA reports	Cal OSHA reports and citations KEEP FOR 5 YEARS
Grant files	Program audit documents, program eligibility guideline documents; grant application, review and decision documents; grant program financial records; grantee monitoring documents; internal activity and tracking documents; project audit documents END OF PROJECT + 5 YEARS KEEP FOR 3 YEARS
Asset purchase records	Fixed asset purchase orders and requisitions LIFE OF EQUIPMENT + 3 YEARS
Check files	Bad checks, checks – self insurance, detailed accounts payable check register, Clerk of Board check registers
Deposit records	Bank deposits/receipts - supporting documents, bank statements, deposits permits
EPA grants	EPA grants, EPA 105 grant documents FINAL REPORT + 3 YEARS
Fiscal records	Account analysis statement, accounts receivable aging report, BAAQMD receipts, bills (payable) - supporting documents, general journal, journal report, miscellaneous revenue registers, monthly statements, PAATS – overpayment report, budget – draft, budget transfer documents, payroll tax deposits, request for trust warrant, Toxic Hot Spot fee records, subvention – AUDIT + 3 YEARS
Fleet vehicle records	vehicle maintenance expenses, vehicle mileage reports, vehicle request forms, vehicle registration fees, travel trip slips LIFE OF VEHICLE + 3 YEARS
General correspondence	General interoffice memoranda, general correspondence
Insurance benefits records	Insurance contracts, life insurance documentation, health insurance documentation LIFE OF POLICY + 3 YEARS
Inventory records	Plan emission inventory, modeling & other related data (non-baseline years)
Legislative and bill files	Bill file (documents, analyses, correspondence), Legislative Committee records
Mailroom records	Certified mail log, certified mail receipts – fee invoices, fee billing invoices, fee billing problem resolution files, returned mail (fee invoices and validations)
Physical security reports	Security guard activity reports

Record type	Including these specific records:
Rejected bids	RFPs/RFQs/evaluations/unaccepted proposals and bids FISCAL YEAR OF BID + 3 YEARS
Requests from public	Requests for general information, requests for publications, requests for speaker, public records requests and responses
Technical equipment records	Manuals and maintenance records, 10% quality assurance analysis reports, additional records required by NVLAP accreditation program, audit records, blind sample analysis reports, inter-laboratory analysis reports, maintenance and calibration reports, proficiency test, quality control charts and data LIFE OF EQUIPMENT + 3 YEARS KEEP FOR 1 YEAR
Board audio records	Audio records of Advisory Council, Board of Directors, and committee meetings; Hearing Board hearings
Meteorological reports	Meteorological reports
Stockroom records	Stockroom requisitions KEEP UNTIL REPLACED
IT system backups	System backups
Outreach documents	Brochures
Mailing lists	Mailing lists
Affirmative action plan	Affirmative action plan
Vehicle Buy Back program	Vehicle Buy Back program – duplicates of scrapped vehicle eligibility documents retained by scrappers

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Pamela Torliatt and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: December 24, 2009

Re: Resolution on Bay Area Healthy Communities

RECOMMENDED ACTION:

The Board of Directors will consider adopting the Bay Area Healthy Communities Resolution.

BACKGROUND

District staff presented the Bay Area Healthy Communities Resolution (Resolution) to the Board of Directors at the December 16, 2009 meeting. The proposed Resolution identifies communities most impacted by toxic air contaminants and would establish District policies and objectives to reduce toxic emissions in such communities.

The Board opened a public hearing on the proposed resolution in which numerous members from the public commented on the merits of the proposed resolution. Following public comment, the Board closed the public hearing and discussed the proposed Resolution. The following is a summary of the comments received from Board members during the deliberations: that air pollution emissions should be “minimized” in impacted communities; expressed concerns about the effect such a resolution could have on infill development; identified the need to understand the potential negative socio-economic impacts to these communities from being identified as an impacted community; recognition that a healthy economy is needed to achieve a healthy community; the need to identify measurable goals and timelines for improving air quality in the impacted communities; that local agencies need to adopt community risk reduction plans; that District staff should commit to working with planning and public health department staff to minimize any potential negative impacts from the resolution; the District should develop a strategy on how to deal with potential negative public relations implications of the healthy communities initiative; that no net increase of toxic emissions should be directed towards stationary sources specifically; that policy direction should be based on public health outcomes and not based on community income or economic criteria; District staff should develop partnerships with existing community based organizations

working within these communities to effect change; and that the Board needs more time to consider this type of resolution, especially regarding how NSR could make it harder for air quality beneficial projects to get through the approval process.

DISCUSSION

The Board directed staff to revise the Resolution addressing the concerns heard at the December 16, 2009 meeting and to bring back the Resolution for their consideration at the January 6, 2010, Board of Directors meeting. To address the concerns raised, the following additions were made to the Resolution (attached):

- The Board recognizes the importance of infill development in priority development areas;
- The Board recognizes the importance of a healthy economy;
- The Board seeks to reduce emissions of all air pollutants in impacted communities;
- The Board supports infill development and economic growth in impacted communities and will work with regional planning agencies to ensure that development proceeds in a manner that is health protective for both new and current residents.

This Resolution formally recognizes the CARE Communities and makes a clear commitment to no net increase in emissions of TAC, to creating a tracking mechanism for emissions in CARE Communities, to working with communities and their local jurisdictions to develop risk reduction plans and to support infill development. The Resolution includes the following actions:

- Formally adopt the CARE Impacted Community boundaries;
- Adopt a policy of “No Net Increase” of TAC emissions for CARE communities;
- Direct staff to identify baseline emissions and track emissions from all sources in each CARE community;
- Direct staff to conduct enhanced monitoring in CARE communities;
- Direct staff to continue targeting District grants in CARE communities;
- Direct staff to further develop the Community Risk Reduction Plan concept for impacted communities

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Implementing the actions outlined above represents a significant commitment of District resources. Staff will evaluate these resources during the FY 2010/11 budget process.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Phil Martien
Reviewed by: Jean Roggenkamp

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT
RESOLUTION No. 2009-**

**A Resolution of the Board of Directors of the Bay Area Air Quality Management District
Establishing the Bay Area Healthy Communities Initiative**

WHEREAS, it is the intent of the Bay Area Air Quality Management District (District) to achieve clean and healthful air for all who live and work in the Bay Area, including segments of the population exposed to higher levels of criteria and toxic air contaminants, ~~particularly near Bay Area highways and other sources of diesel emissions, and a variety of stationary sources;~~

WHEREAS, the governing Board of Directors (Board) of the District recognizes that while most criteria and toxic air contaminants have been substantially reduced in the Bay Area, these contaminants continue to pose serious health risks;

WHEREAS, the Board further recognizes that many of the areas in which pollution levels are higher have populations that are particularly vulnerable to the adverse effects of air pollution;

WHEREAS, the Board has expressed its strong commitment to reduce toxic air contaminants in the Bay Area through its creation of the Community Air Risk Evaluation (CARE) program;

WHEREAS, the Board also recognizes that criteria air pollutants can create localized health impacts, and this is especially true with respect to particulate matter;

WHEREAS, the Board, on July 30, 2008, Resolution No. 2008-10, committed to continue to address the cumulative impact of new and existing mobile and stationary sources of air pollution – particularly in disproportionately impacted communities – for sources that on a relative basis contribute most to health risk at a local and regional level, and also committed to continue to explore and consider additional actions to reduce cumulative impacts throughout the Bay Area;

WHEREAS, through the CARE Program, the Board recognizes that the highest levels of ambient toxic air contaminants in the Bay Area tend to occur in the core urban areas, along major roadways and adjacent to freeways and port activity;

~~WHEREAS, the Board supports regional planning agencies' identification of many of the Bay Area's core urban areas as priority development communities where infill development can preserve green space, promote public transportation, and reduce per capita air pollution emissions, while recognizing the need for infill development to be protective of public health;~~

~~WHEREAS, the Board recognizes that there are many elements required for healthy communities: a healthy environment, including clean air, and a healthy economy, which can support, good housing, schools, and job opportunities.~~

~~WHEREAS, the Board also recognizes that while mobile source pollution is a significant problem in core urban areas, stationary sources of air pollution singly or in combination may also contribute to health impacts in some areas and may require additional pollution control measures.~~

WHEREAS, the CARE Program has identified impacted communities within the Bay Area – defined as having a combination of highest exposure of sensitive populations to toxic air contaminants, higher emitting sources, nearby low income populations and bounded by major roadways – which include the urban core areas of Concord, eastern San Francisco,

western Alameda County, Redwood City/East Palo Alto, Richmond/San Pablo, and central San Jose as depicted in Attachment 1 and described in the ~~document~~ **District's Technical Memorandum** entitled "Applied Method for Developing Polygon Boundaries for CARE Impacted Communities" (December-9, 2009);

WHEREAS, the Board recognizes that these community boundaries can change over time with continued reductions in air pollutant emissions, with changes in population demographics, and with future progress in understanding health impacts of air pollutants; NOW, THEREFORE, BE IT RESOLVED that the Board does hereby establish the Bay Area Healthy Communities Initiative.

BE IT FURTHER RESOLVED that the Board adopts the CARE Impacted Community boundaries as shown in Attachment 1 and described in the ~~document~~ **District's Technical Memorandum** "Applied Method for Developing Polygon Boundaries for CARE Impacted Communities" (December-9, 2009), while allowing for periodic updates.

BE IT FURTHER RESOLVED that the Board will develop a baseline emissions inventory of criteria and toxic air pollutants for each CARE Community, including an inventory of mobile and stationary sources.

BE IT FURTHER RESOLVED that the Board, having been designated a nonattainment area for the national 24-hour PM_{2.5} standard, will prepare a plan to reduce PM_{2.5} for submittal as part of the State Implementation Plan for this standard and through this effort will conduct detailed modeling of PM emissions, transport and concentrations.

BE IT FURTHER RESOLVED that the Board adopts a policy of "No Net Increase" for CARE Communities such that emissions of toxic air pollutants within each of these communities, from all sources collectively within these communities, weighted according to their cancer potency, remain at or below baseline levels.

BE IT FURTHER RESOLVED that the Board seeks to reduce emissions of all air pollutants in impacted communities.

BE IT FURTHER RESOLVED that the Board will support enhanced air quality monitoring in CARE Communities as needed to evaluate local air quality conditions.

BE IT FURTHER RESOLVED that the Board will continue to focus grants and incentive funds in CARE Communities.

BE IT FURTHER RESOLVED that the Board will develop additional regulatory measures to reduce criteria and toxic air pollutant emissions from stationary and indirect air pollution sources in the CARE Impacted Communities and throughout the District.

BE IT FURTHER RESOLVED that the Board supports infill development and economic growth in CARE Impacted Communities and will work with regional planning agencies to ensure that development proceeds in a manner that is health protective for both new and current residents.

BE IT FURTHER RESOLVED that the Board will further support and provide technical assistance to local jurisdictions in developing Community Risk Reduction Plans for impacted communities to encourage comprehensive, community-wide approaches to ~~reducing~~ **minimizing** impacts from new and existing sources.

The foregoing Resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director _____, seconded by Director _____, on the ____ day of _____, **2009-2010** by the following vote of the Board:

AYES: NOES: ABSENT:

ATTEST:

_____ Pamela Torliatt Chairperson of the
Board of Directors

_____ Tom Bates Secretary of the Board of
Directors

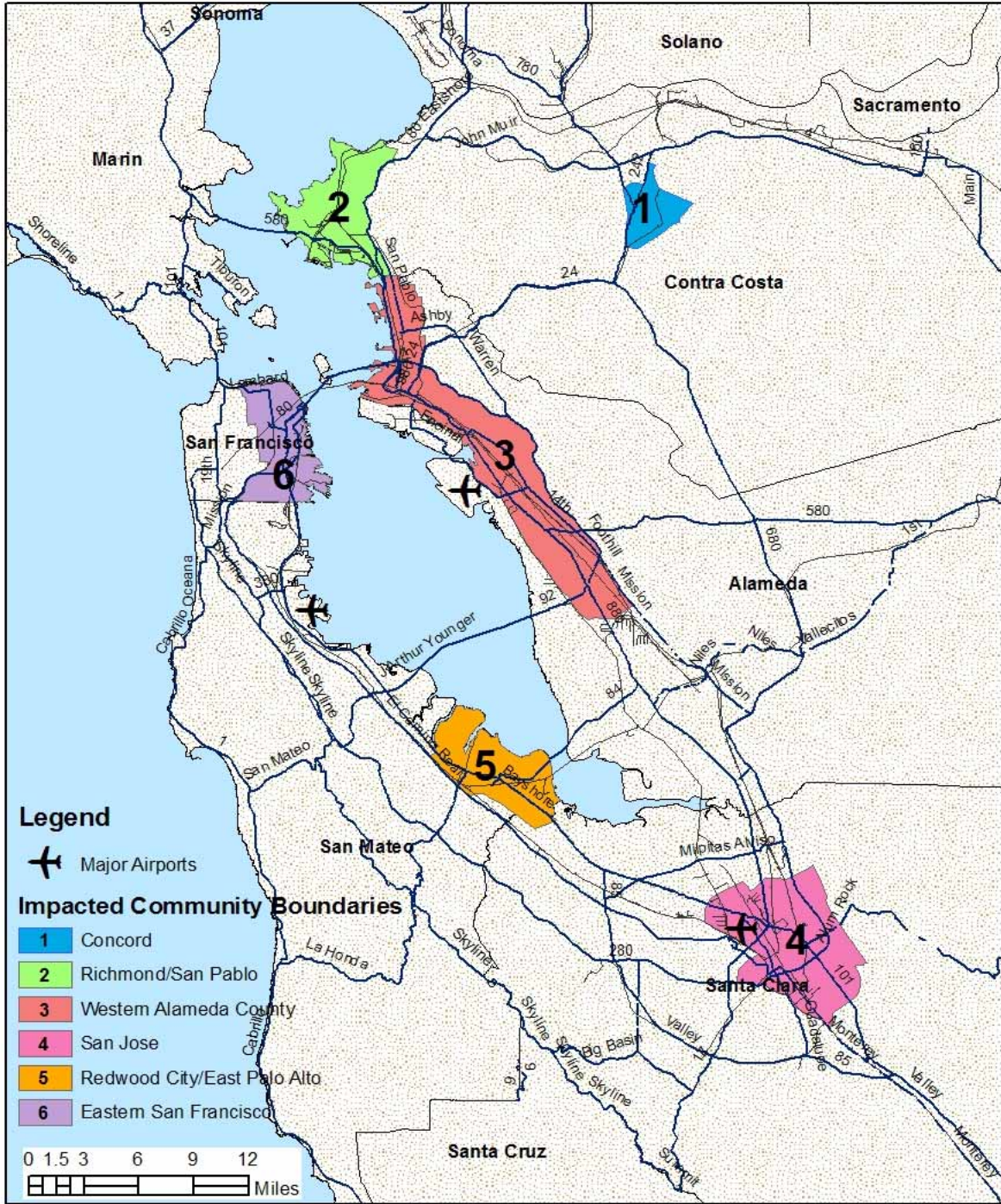
Attachment 1

CARE Program Impacted Community Boundaries



BAY AREA AIR QUALITY MANAGEMENT DISTRICT

CARE Impacted Communities



December 9, 2009

Lau.../Healthy Communities Initiative.mxd