



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

BOARD OF DIRECTORS  
EXECUTIVE COMMITTEE MEETING

COMMITTEE MEMBERS

JERRY HILL – CHAIR  
BRAD WAGENKNECHT - SECRETARY  
JOHN GIOIA  
MARK ROSS  
GAYLE B. UILKEMA

PAMELA TORLIATT – VICE CHAIRPERSON  
CHRIS DALY  
SCOTT HAGGERTY  
TIM SMITH

WEDNESDAY  
JUNE 11, 2008  
10:00 A.M.

4<sup>TH</sup> FLOOR CONFERENCE ROOM  
DISTRICT OFFICE

AGENDA

1. **CALL TO ORDER – ROLL CALL**
2. **PUBLIC COMMENT PERIOD** (*Public Comment on Non-Agenda Items Pursuant to Government Code § 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 Committee's subject matter jurisdiction. Speakers will be limited to three (3) minutes each.
3. **APPROVAL OF MINUTES OF MAY 12, 2008**
4. **STATUS REPORT ON DISCUSSIONS WITH THE BAY AREA ENVIRONMENTAL HEALTH COLLABORATIVE ON A PROPOSED RESOLUTION TO ADDRESS CUMULATIVE IMPACTS**  
**J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Committee will receive a status report on discussion with the Bay Area Environmental Health Collaborative on a proposed resolution to address cumulative impacts.*

5. **CONSIDERATION OF COMMUNITY GRANT PROGRAM**  
**L. Fasano /5170**  
[lfassano@baaqmd.gov](mailto:lfassano@baaqmd.gov)

*The Committee will consider recommending Board of Directors' approval of a community grant program.*

6. **CONSIDERATION OF RECOMMENDATIONS REGARDING AIR DISTRICT FOUNDATION**  
**B. Bunger/4920**  
[bbunger@baaqmd.gov](mailto:bbunger@baaqmd.gov)

*The Committee will consider recommending Board of Directors' approval of various decisions necessary to establish a nonprofit entity to support the Air District.*

**7. CONSIDERATION OF RECOMMENDATION AUTHORIZING THE EXECUTIVE OFFICER/APCO TO ENTER INTO A MASTER SERVICE CONTRACT AGREEMENT FOR AUDIT SERVICES WITH MAZE & ASSOCIATES**

**J. Broadbent/5052**

[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Committee will consider recommending Board of Directors' approval to allow the Executive Officer/APCO to enter into a Master Service Agreement with Maze & Associates for audit services.*

**8. ESTABLISHING A SELF-INSURED DENTAL PLAN**

**J. Broadbent/5052**

[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Committee will receive a report on establishing a self-insured dental plan.*

**9. CLOSED SESSION WITH DISTRICT'S LABOR NEGOTIATORS**

*(Government Code § 54957.6(a))*

*Agency Negotiators: Jack P. Broadbent, Executive Officer/APCO  
Michael Rich, Human Resources Officer*

*Employee Organization: Bay Area Air Quality Management District Employees' Association, Inc.*

**10. COMMITTEE MEMBER COMMENTS/OTHER BUSINESS**

*Any member of the Committee, 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).*

**11. TIME AND PLACE OF NEXT MEETING: AT THE CALL OF THE CHAIR**

**12. ADJOURNMENT**

**CONTACT EXECUTIVE OFFICE- 939 ELLIS STREET SAN FRANCISCO, CA 94109**

**(415) 749-5073**

**FAX: (415) 928-8560**

**BAAQMD homepage:**

[www.baaqmd.gov](http://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 Clerk's Office should be given at least three working days prior to the date of the meeting so that arrangements can be made accordingly.

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

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

**JUNE 2008**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Advisory Council Technical Committee</b> <i>(Meets 1<sup>st</sup> Monday of every even Month)</i> - CANCELLED	Monday	2	9:30 a.m.	Board Room
<b>Board of Directors Regular Meeting</b> <i>(Meets 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	4	9:45 a.m.	Board Room
<b>Advisory Council Technical Committee –</b> <i>(Meets 2<sup>nd</sup> Monday Even Month)</i>	Monday	9	9:30 a.m.	Board Room
<b>Advisory Council Public Health Committee –</b> <i>(Meets 2<sup>nd</sup> Wednesday Even Month)</i>	Monday	9	1:30 p.m.	Board Room
<b>Board of Directors Executive Committee</b> <i>(Meets At the Call of the Chair)</i>	Wednesday	11	10:00 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Climate Protection Committee</b> <i>(Meets 3<sup>rd</sup> Thursday every other Month)</i>	Thursday	12	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Advisory Council Air Quality Planning Committee</b> <i>(Meets 1<sup>st</sup> Thursday Even Month)</i>	Monday	16	9:30 a.m.	Room 716
<b>Board of Directors Regular Meeting</b> <i>(Meets 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i> - CANCELLED	Wednesday	18	9:45 a.m.	Board Room
<b>Board of Directors Legislative Committee</b> <i>(Meets 4<sup>th</sup> Monday of every Month)</i> - CANCELLED	Monday	23	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets 4<sup>th</sup> Wednesday of each month)</i> - CANCELLED	Wednesday	25	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Mobile Source Committee –</b> <i>(Meets 4<sup>th</sup> Thursday of each Month)</i> - CANCELLED	Thursday	26	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room

**JULY 2008**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Mobile Source Committee –</b> <i>(Meets 4<sup>th</sup> Thursday of each Month)</i>	Tuesday	1	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Ad Hoc Cme. on Port Emissions</b>	Wednesday	2	9:30 a.m.	Port of Oakland Board Room 530 Water Street Oakland, CA 94607
<b>Board of Directors Public Outreach Committee</b> <i>(Meets 1<sup>st</sup> Thursday every other Month)</i>	Thursday	3	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room

## JULY 2008

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Regular Meeting</b> ( <i>Meets 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month</i> )	Wednesday	9	11:00 a.m.	Board Room
<b>Advisory Council Regular Meeting</b> ( <i>Meets 2<sup>nd</sup> Wednesday Every Other Month</i> )	Wednesday	9	2:00 p.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Regular Meeting</b> ( <i>Meets 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month</i> ) - CANCELLED	Wednesday	16	9:45 a.m.	Board Room
<b>Joint Policy Committee</b>	Friday	18	10:00 a.m. – 12:00 p.m.	MTC 101 - 8 <sup>th</sup> Street Oakland, CA 94607
<b>Board of Directors Budget &amp; Finance Committee</b> ( <i>Meets 4<sup>th</sup> Wednesday of each month</i> )	Wednesday	23	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Legislative Committee</b> ( <i>Meets 4<sup>th</sup> Monday of the Month</i> )	Monday	28	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room

## AUGUST 2008

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Advisory Council Technical Committee</b> ( <i>Meets 1<sup>st</sup> Monday of every even Month</i> )	Monday	4	9:30 a.m.	Board Room
<b>Board of Directors Regular Meeting</b> ( <i>Meets 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month</i> ) - CANCELLED	Wednesday	6	9:45 a.m.	Board Room
<b>Advisory Council Air Quality Planning Committee</b> ( <i>Meets 1<sup>st</sup> Thursday Even Month</i> )	Thursday	7	9:00 a.m.	Room 716
<b>Advisory Council Public Health Committee</b> – ( <i>Meets 2<sup>nd</sup> Wednesday Even Month</i> )	Wednesday	13	1:30 p.m.	Board Room
<b>Board of Directors Regular Meeting</b> ( <i>Meets 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month</i> ) - CANCELLED	Wednesday	20	9:45 a.m.	Board Room
<b>Board of Directors Legislative Committee</b> ( <i>Meets 4<sup>th</sup> Monday of every Month</i> ) - CANCELLED	Monday	25	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Budget &amp; Finance Committee</b> ( <i>Meets 4<sup>th</sup> Wednesday of each month</i> ) - CANCELLED	Wednesday	27	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Mobile Source Committee</b> – ( <i>Meets 4<sup>th</sup> Thursday of each Month</i> ) - CANCELLED	Thursday	28	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room

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6/4/08 (4:30 p.m.)  
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BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Jerry Hill and Members  
of the Executive Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: May 27, 2008

Re: Executive Committee Draft Minutes

RECOMMENDED ACTION:

Approve attached draft minutes of the Executive Committee meeting of May 12, 2008.

DISCUSSION

Attached for your review and approval are the draft minutes of the May 12, 2008 Executive Committee meeting.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

**Bay Area Air Quality Management District  
939 ELLIS STREET  
SAN FRANCISCO, CALIFORNIA 94109  
(415) 749-5000**

**DRAFT MINUTES**

Summary of Board of Directors  
Executive Committee Meeting  
9: 30 a.m., Thursday, May 12, 2008

1. **Call to Order - Roll Call:** Chair Jerry Hill called the meeting to order at 9:33 a.m.  
**Present:** Jerry Hill, Chair, John Gioia, Scott Haggerty, Mark Ross, Tim Smith, Pamela Torliatt.  
**Absent:** Chris Daly, Gayle B. Uilkema and Brad Wagenknecht.
2. **Public Comment Period:** There were none.
3. **Approval of Minutes of April 10, 2008:** Director Torliatt moved approval of the minutes; seconded by Director Haggerty; carried unanimously without objection.
4. **Joint Policy Committee Update:** *Ted Droettboom provided an update on the activities of the Joint Policy Committee.*  
  
Ted Droettboom distributed a report on the progress on the Regional Agency Climate Protection Program, said the JPC met on Friday and discussed efforts to date.  
  
**Committee Action:** None. This report provided for information only.
5. **Discussion of Population Estimates for Cities, Counties and the State, 2001-2008 and its Implications to the Board Size:** *The Committee considered information on population data received from the Department of Finance and its implications to the size of the Board of Directors.*  
  
Jack Broadbent presented population data from the Department of Finance and its implications to the size of the Board of Directors, said the increase in Solano County's population will require an additional seat on the Board of Directors which would increase the composition to 23 members, and that within the next year or two San Mateo County's population will increase, resulting in 24 members. He reviewed options to 1) maintain the Board Room's current design; 2) expand the current design; and 3) consider meeting at an offsite location.  
  
The Executive Committee discussed each option and associated costs and previous discussions held with regard to amending legislation relative to the Board.  
  
**Committee Action:** The Executive Committee unanimously agreed to maintain the current design of the Board Room with the addition of new chairs.

**6. Discussion of Bay Area Environmental Health Collaborative Proposed Resolution:** *The Committee discussed a proposed cumulative impact resolution presented by the Bay Area Environmental Health Collaborative.*

Jack Broadbent said at the March 5, 2008 Board of Directors meeting, members of the Bay Area Environmental Health Collaborative submitted a proposed resolution regarding cumulative risk and asked for their comments.

Amy Cohen, BAEHC, said they came before the Board in December 2007 and March 2008 to discuss goals and policy changes, acknowledged the need for minor revisions, and asked for the support of the District in adopting the proposed resolution.

Karen Cohn, BAEHC, presented a handout on roadway emissions and asthma emergency room visits showing matching areas of impact, she discussed their desire to address cumulative impacts and asked the District to take the lead in addressing existing proportional effects and new cases.

Karen Pierce gave a brief summary of the resolution and its goals and discussed an example of a building recently converted from a warehouse to one having multiple users. The user was granted permits for 18 backup diesel generators with testing done monthly. She discussed more frequent occurrences of similar situations and the need for the District to impose regulations.

Janet Whittick, CCEEB, believed impacts within neighborhoods are a result of poor land decisions, a gap in land use regulations and disagreed with the resolution's approach expressing that the first step should be validating cumulative impact methodologies. She acknowledged the District's work, asked Board members to work with CCEEB to encourage action by the State and assist in representing concerns specific to the Bay Area.

Dennis Bolt, WSPA, stated serious work was being done with stakeholder groups, said initiatives were underway through the Governor's direction and Cal-EPA who has directed the Office of Environmental Hazard Health Assessment to evaluate a risk screen and identify gaps in the current system. He believed the resolution has subjective terms in it that commits the Board and District staff to do things for which it has no legal authority.

Director Haggerty questioned whether additional dollars were associated with adopting the resolution. Mr. Broadbent said staff met last week with BAEHC, he does not disagree with the concerns being raised, money is being targeted through the CARE Program to regulate trucks at the Port and staff plans on developing guidelines for making these decisions which the Board can consider it its leadership role. He recommended continuing the dialogue, working with BAEHC and returning the resolution at a subsequent meeting. Chair Hill suggested that staff present options where there is disagreement at the time the resolution returns.

Director Gioia suggested forming a working group to move forward in developing policy direction and said he preferred dedicating grant funds to those communities that already have a greater burden rather than allocating monies generally to the entire Bay area. Executive Committee members further discussed the need for revisions to paragraphs 3, 5 and 7 of the resolution, agreed

with comments to ensure methodologies are established using quantitative evaluation and agreed with the need for private monies and matching I-Bond funds to decrease diesel emissions.

**Committee Action:** The Executive Committee directed staff to continue to work with BAEHC, CCEEB and WSPA in revising the resolution and return at the June meeting.

**7. Discussion of Community Mitigation Fund:** *The Committee discussed a proposed Community Mitigation Grant Program.*

Mr. Broadbent said the concept of the program is to utilize penalty resources collected by the District to fund local community projects through the CMG program. The goals are to enhance public health, reduce sources of air pollution, allow communities to become part of the solution and build stronger relationships with communities. The types of programs targeted include emission reduction, outreach and education and public engagement, and staff recommends that \$200,000 be allocated for the fiscal year where penalties collected exceeds the budgeted amount. He said the District would solicit projects, communities would put together proposals for application of grants and the Executive Committee would review applications, approve grants and distribute funds to projects throughout the Bay Area and not necessarily where violations occurred.

The Executive Committee discussed historical uses of mitigation funds, the need for the District to prioritize communities that have disparate health and those most impacted, recommended information be brought back to identify the last 5 years on the types of fines collected, their location, possibly bifurcating the allocation for those having a regional pool and those with a specific incident and whether or not to set the amount of funding to \$200,000 versus allocating funds on a percentage basis by region or sub-region.

**Committee Action:** The Executive Committee directed staff to return with information over the last 5 years which identifies types of fines collected, their location and whether allocations were regionally-based or specific in nature.

**8. Consideration and Approval of Contract in Excess of \$70,000:** *The Committee considered recommending Board of Directors' approval of a contract for professional services with Quetin Consulting Inc. and authorizing the Executive Officer/APCO to execute a contract with Quetin Consulting Inc. in an amount not to exceed \$175,000.*

Mr. Broadbent discussed the request for the Committee's consideration to recommend that the Board of Directors approve a contract for professional services with Quetin Consulting, Inc. and authorize the Executive Officer/APCO to execute the contract in an amount not to exceed \$175,000. He discussed Mr. Quetin's qualifications and said the work would be to assist in development and implementation of audits in the Engineering and Compliance and Enforcement Divisions.

The Executive Committee questioned the consultant's hourly rate and confirmed with Mr. Broadbent the amount of the contract was not to exceed \$175,000 and Jeff McKay would provide oversight of consultant services.



**Committee Action:** Director Smith moved to authorize the Executive Officer/APCO to execute a contract with Quetin Consulting, Inc. in an amount not to exceed \$175,000; seconded by Director Gioia; carried unanimously without objection.

9. **Committee Member Comments/Other Business:** None
10. **Time and Place of Next Meeting:** 10:00 a.m., Wednesday, June 11, 2008 at 939 Ellis Street, San Francisco, CA 94109.
10. **Adjournment.** The meeting was adjourned at 10:41 a.m.

*/s/Lisa Harper*  
Clerk of the Board

BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
Memorandum

To: Chairperson Jerry Hill and Members  
of the Executive Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 2, 2008

Re: Status Report on Discussions with the Bay Area Environmental Health  
Collaborative on a Proposed Cumulative Impact Resolution

RECOMMENDED ACTION

Receive and File.

DISCUSSION

At the May 12, 2008 Executive Committee meeting, the Committee discussed: 1) the District's various programs to address air quality impacts in Bay Area communities, and; 2) a proposed resolution regarding cumulative risk submitted by members of the Bay Area Environmental Health Collaborative. Since the Committee meeting, staff has been in discussions with the BAEHC regarding the wording of such a resolution. Staff will update the Committee on the status of the discussions.

BUDGET CONSIDERATION/FINANCIAL IMPACT

No impact.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Henry Hilken

BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
Memorandum

To: Chairperson Jerry Hill and Members  
of the Executive Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 5, 2008

Re: Consideration of Community Grant Program

RECOMMENDED ACTION:

Recommend the Board of Directors approve the establishment of a Community Grant Program.

BACKGROUND

The Air District has historically supported community-based grant projects. Through these grants the Air District has worked with local communities on programs to improve public health and reduce air pollution. The Community Grant Program seeks to formalize this process to maximize the opportunity for community participation. This would allow communities to be active participants in achieving clean air and protecting the environment.

DISCUSSION

The Air District seeks to continue funding local projects that enable communities to be part of the solution in reducing sources of air pollution. Staff will present a framework for this program and respond to questions posed at the previous Committee meeting.

BUDGET CONSIDERATIONS/FINANCIAL IMPACT:

Staff is proposing that the Community Grant Program be funded at \$100,000 through the funds to be set aside for incentives in the FY 08-09 budget.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Richard Lew  
Reviewed by: Lisa Fasano

BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
Memorandum

To: Chairperson Jerry Hill and Members  
of the Executive Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 5, 2008

Re: Consideration of Recommendations Regarding Air District Foundation

RECOMMENDED ACTION:

Consider recommending Board of Directors' approval of (1) key decisions necessary to establish an Air District Foundation; and (2) authorizing District Counsel to make additional minor decisions and work with outside counsel to prepare and file Articles of Incorporation and to prepare Bylaws.

BACKGROUND

The Board of Directors has discussed establishing a nonprofit corporation to attract tax deductible contributions to support various Air District activities (the "Nonprofit"). Such funds might support research on greenhouse gases and climate change, fund mitigation efforts, help expand the Spare the Air program, enhance the Air District's education and outreach efforts, and/or pursue other charitable activities consistent with the Air District's charter. Although even in the absence of the Nonprofit, tax benefits might be available to potential contributors supporting the Air District's activities, the Nonprofit would also provide separation between contributors and the Air District in the likely event that contributors to the Nonprofit include entities regulated by the Air District.

In previous discussions, the Board has expressed a desire to establish a Nonprofit that can engage in the broadest possible activities in support of the Air District. The Board also indicated that it desires to maintain some level of control over the Nonprofit to ensure that the Nonprofit remains focused on supporting the District's activities. In addition, the Board expressed an interest in providing some funding to the Nonprofit.

District Counsel has reviewed these various requirements with outside counsel with expertise in establishing nonprofits, and it appears that a public benefit nonprofit entity that is a "supporting organization" for the Air District as defined in Internal Revenue Code section 509(a)(3) and qualifies for tax exemption under Internal Revenue Code section 501(c)(3) would best fit the Air District's requirements. In order to qualify as a "supporting organization" the Air District will have to appoint at least a majority of the Board of Directors of the Nonprofit. To further ensure control over the Nonprofit, the Air District will be the sole member of the Nonprofit. As the sole member, the Air District can reserve the power to control many aspects of the function of the Nonprofit. Creating the Nonprofit as a "supporting organization" will make it more straightforward for the District to provide funding to the Nonprofit because it will not be necessary to limit the use of such funding.

In order to incorporate the Nonprofit, the Board of Directors needs to make several decisions regarding the Nonprofit as described below. Once these decisions are made, the Articles of Incorporation can be finalized and filed with the Secretary of State, the Bylaws of the Nonprofit can be finalized and the process for obtaining tax exempt status from the Internal Revenue Service and Franchise Tax Board can be undertaken.

## DISCUSSION:

### **Articles of Incorporation**

In order to complete the task of preparing the Articles of Incorporation for the Nonprofit, in addition to several minor decisions (e.g., agent for service of process, address of the Nonprofit, identity of Incorporator, etc.), several key decisions need to be made. These decisions include selecting a name, approving drafting a statement of purpose that provides the broadest possible purpose for the Nonprofit, approving optional language in the clause restricting the Nonprofit from lobbying activities, and deciding where assets will go upon dissolution of the Nonprofit. Staff has the following recommendations on these issues and will discuss each issue more fully with the Committee during the meeting.

#### **Name**

It is helpful to name the Nonprofit in a way that makes clear its affiliation with the Air District as well as the mission of clean air. For these reasons, and to avoid cumbersome names that include the District's entire name or abbreviation, Staff recommends that the Committee recommend that the Board approve naming the Nonprofit either "Bay Area Clean Air Foundation" or "Bay District Clean Air Foundation." Both of these names appear to be available and outside counsel will be requested to ensure that whatever name is chosen can be used.

#### **Statement of Purpose**

Because the Board has expressed a desire to have the Nonprofit potentially perform several functions in support of the Air District, the purpose of the Nonprofit should be broadly defined in the Articles of Incorporation. Although the purpose can certainly be stated more narrowly, Staff recommends that the Committee recommend that the Board approve a broad statement that would allow the Nonprofit to engage in any activity (other than those prohibited by law such as regulatory activities, lobbying, etc.) in support of the Air District.

#### **Lobbying Activities**

A section 501(c)(3) corporation is prohibited from participating in any political campaigns for or against any candidate for public office. Participation in or contributions to political campaigns can result in the revocation of section 501(c)(3) tax exempt status and assessment of special excise taxes against the organization and its managers.

Section 501(c)(3) organizations are also prohibited from acting to influence legislation, "except to an insubstantial degree." If a section 501(c)(3) corporation engages in lobbying to a substantial degree, again, tax exempt status might be revoked and special excise taxes can be levied against the organization and its managers.

Optional language in some Articles of Incorporation mentions potential lobbying activities under Internal Revenue Code section 501(h). Staff recommends that the Committee recommend that the Board of Directors approve use of such optional language in the Articles of Incorporation for the Nonprofit.

### **Dedication of Assets**

The Articles of Incorporation need to specify to what entity the remaining assets of the Nonprofit will be distributed after the dissolution or winding up of the Nonprofit. Staff recommends that the Committee recommend that the Board of Directors approve specifying the Air District itself as the entity to receive the Nonprofit's remaining assets upon dissolution or winding up, and that in the event that the District no longer exists or no longer qualifies as a political subdivision under Internal Revenue Code section 170(c)(1) at that time, that the remaining assets be distributed to any 501(c)(3) entity which mission includes promotion of air quality or another public agency with a compatible purpose.

### **Bylaws of Nonprofit**

Although not necessary for preparation of the Articles of Incorporation, in addition to certain provisions that must be included in the Bylaws (e.g., that the Nonprofit will be a membership organization with the Air District as the sole member, the address of the principal office of the Nonprofit (939 Ellis Street), restatement of the Nonprofit's purpose), there are several provisions about which the Board will need to make decisions in order to prepare the Bylaws, as follows:

### **Board of Directors of Nonprofit**

The Board will need to decide upon the size and composition of the Board of Directors as well as the term of office of Board members. The Board does not need to decide upon appointment of specific Board members at this time.

Based on discussions with outside counsel, Board sizes that are established as a range appear to be the most workable (e.g., "3-5 members," "5-7 members," etc.). Accordingly, staff recommends that the Committee recommend that the Board of Directors approve the Board size for the nonprofit as 3-9 members. This range allows for a small Board so that it is easier to get a quorum for meetings, but gives the Board room to grow if the Nonprofit becomes more active and might benefit from additional leadership.

Staff further recommends that the Committee recommend that the Board approve staggered terms of two years for Board members and that those members serve no more than 6 consecutive years with a mandatory one year hiatus before additional service under the same limits.

Staff will discuss the implications of appointing certain types of members to the Nonprofit Board during the Committee meeting.

### **Nonprofit Board Committees**

Although the Bylaws may provide for a variety of committees and may provide that any, all, or none of those committees have decision-making authority, the simplest provision regarding Board Committee for the Nonprofit is to specify that the only Committees are those that are essential and

required by the Nonprofit Integrity Act (e.g., once annual revenues of a nonprofit exceed \$2 million, it must have an Audit Committee). Staff recommends that the Committee recommend that the Board take this streamlined approach to committees for the Nonprofit at this time. If committees later prove useful or necessary, the Bylaws can be amended to provide for them at that time.

### **Slate of Officers**

The law requires that the Nonprofit have at least the following officers (1) a President (or Chairperson); (2) a Financial Officer; and (3) a Secretary. The Financial Officer and Secretary can be the same individual, but the President (or Chair) cannot hold any other office. Other officers can be specified in the Bylaws. Staff recommends that the Committee recommend that the Board approve specifying only the minimum required officers (President, Secretary and CFO).

### **Quorum Requirements**

The Bylaws should specify what constitutes a quorum for action by the Board of the Nonprofit as well as whether a simple majority or super-majority of some level is required for certain actions. Staff recommends that the Committee recommend that the Board approve Bylaw provisions that provide that a simple majority constitutes a quorum for transaction of business by the Board of the Nonprofit and that the Bylaws further specify that the Articles of Incorporation and the Bylaws of the Nonprofit may be amended upon the vote of a majority of the members present at the meeting at which such action is to be taken.

### **Reserved Powers**

As the sole member of the Nonprofit, the Air District may reserve various powers of the Nonprofit to itself. Staff recommends that the Committee consider recommending that the Board approve reserving to the Air District the following powers in addition to the reserved powers that are required by law (e.g., approval of sale of all or substantially all assets):

- Adopt or materially revise the Foundation's annual budget or long-range plan.
- Adopt or revise the Foundation's mission statement.
- Approve the chief executive.
- Incur any debt or enter into any contract not contemplated by the annual budget, if the dollar amount exceeds a sum specified by the Air District, from time to time, by resolution.
- Make any gifts or gratuitous transfers in excess of a specified sum in a calendar year.
- Create a taxable or tax-exempt subsidiary.
- Acquire a controlling interest in another entity.
- Appoint outside auditors.

Staff will discuss these various decisions in more detail with the Committee during the Meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Funds for use of outside counsel to assist in formation of the Nonprofit are included in the Professional Services budget for the District Counsel's Office.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Brian C. Bunger



BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
Memorandum

To: Chairperson Jerry Hill and Members  
of the Executive Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 5, 2008

Re: Consideration of Recommendation Awarding of a Master Service Agreement for  
Audit Services to Maze & Associates

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RECOMMENDED ACTION:

Consider recommending Board of Directors approval to allow the Executive Officer/APCO to enter into a three year Master Service Agreement with Maze & Associates for audit services.

BACKGROUND:

In accordance with the provisions of the *Administrative Code*, Division II, Section 4.6 (d) 6, the Air District is required to rebid a contract for financial auditing every three years. As the audit firm of Caporicci & Larson has completed their three year contract, the Air District rebid the audit contract in April.

DISCUSSION:

Accordingly, the Air District staff recommends the firm of Maze & Associates be selected as the Air District's auditor for the fiscal year ending June 30, 2008, with an option to renew for two years, for a total of three years. The staff's recommendation is based on both a panel review of the submitted proposals, and interviews conducted by staff.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Funds for the recommended contract with Maze & Associates are included in the 2008/09 budget, which will include the Annual Financial and Compliance audit in the amount of \$56,010 and the TFCA Audit estimated at \$75,000.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

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

**BAY AREA AIR QUALITY MANGEMENT DISTRICT**

Memorandum

To: Chairperson Jerry Hill and Members  
of the Executive Committee

From: Jack Broadbent  
Executive Officer/APCO

Date: May 30, 2008

Re: Establishing a Self-Insured Dental Plan

RECOMMENDATION

Receive and file staff's report regarding a Self-Insured Dental Plan.

BACKGROUND

Currently, the District has traditional insurance to cover dental service claims for District employees. Delta Dental is the provider. After meeting with the District's insurance broker, Alliant, to renew the District's dental insurance and discuss premium rates for FY08-09, staff concluded that self-insuring the dental benefit would likely result in cost savings.

DISCUSSION

Staff has reviewed the amount of premiums paid as compared to the amount of claims paid for the past several years, and the premiums usually exceed the actual claims by a significant amount. In 2007, for example, the District paid \$893,561 in premiums and administrative fees. However, only a total of \$608,260 in claims were paid. Moreover, Delta Dental had proposed to increase the District's insurance premium for the dental insurance by more than 7% for FY 08-09; the premiums had not increased for the previous four years and the utilization was higher in some years and lower in others during that period.

The likelihood of a sudden spike in dental claims is relatively low and the annual benefit per employee is limited to \$3,000, which limits the overall potential liability. Approximately 2.6% of those enrolled have used the entire \$3,000 annual amount available to them. In the event that there is an unforeseen rise in claims that makes the self-insured program more expensive than traditional insurance, the District can again purchase traditional insurance.

Finally, the District's dental plan benefits would remain the same under a self-insured model, and Delta Dental will continue to administer the payment of claims. The District would receive copies of every claim for tracking purposes.

BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no additional fiscal impact for the current Fiscal Year beyond that contemplated in the current budget. While there are no guarantees, staff anticipates that self-insuring the dental benefit would result in savings of between \$50,000 and \$100,000 a year.

Respectfully Submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Michael Rich