

## **VIII. BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT**

### LOCATION, ADMINISTRATION AND OPERATIONS

The Bethel Island Municipal Improvement District (BIMID) was created in 1960 by a special act of the Legislature (Bethel Island Municipal Improvement District Act). It replaced and succeeded Reclamation District No. 1619, which had been formed in 1915. Reclamation District No. 1619 was created to consolidate Swamp Land District No. 1 (formed in 1868) and certain canals owned by Reclamation District 830.

Pursuant to the BIMID Act, the District's boundaries were set at the "bank" of the sloughs surrounding Bethel Island. In 1976, LAFCO established BIMID's sphere of influence (SOI) at the middle of the sloughs, approximately 500 feet, surrounding the island. A map of the District and its sphere is included.

BIMID encompasses Bethel Island, located in northeastern Contra Costa County. It is one of eight western islands considered essential in preventing water quality degradation from the transportation of tidal salt water into the California Delta, as it is adjacent to a major Delta channel where fresh and salt water mix.

The island contains about 3,500 acres of reclaimed lands, over 95% of which lie below sea level. The island is protected by a man-made levee, which over time has been improved by the District. It is 11.5 miles in length and defines the outer perimeter of the island.

The act creating BIMID authorizes the District to provide the following types of services:

- Collection, treatment and disposal of sewage, industrial wastes, storm water, garbage and refuse
- Production, storage, treatment and distribution of water
- Parks and playgrounds
- Airports
- Drainage of roads, streets and public places (including curbs, gutters, sidewalks, grading and pavement)
- Reclamation of submerged or other lands including excavation, fill, levees, bulkheads, water pumping facilities, and all related works and facilities
- Police services
- Abatement of nuisances that impair the District's ability to provide garbage, sewage, water, storm water and reclamation services

As discussed below, BIMID has not exercised all of these enumerated powers and can exercise its "latent" powers only with LAFCO's approval pursuant to procedures set forth in the Government Code.

The District maintains the levee that protects Bethel Island and provides storm water, seepage, and drainage control services. The District also reviews permit applications to determine any impacts that proposed projects may have on the levee and/or drainage system, and grants approvals, conditional approvals or denies applications,

as appropriate. Ancillary services that the District provides include emergency planning, erecting emergency sirens, conducting water table monitoring, maintaining access routes to the levee, and other incidental functions. The District also resells products related to levees and ditches and maintains and operates Bethel Island Park, a small public park and recreation area.

In past years, the District designated some of its employees to act as peace officers for the limited purpose of issuing infraction citations for the violation of the District's ordinances. The citations that were issued primarily related to the illegal parking of vehicles on the levee. A prior Board of the District suspended the issuance of infractions when the practice became controversial and was deemed too expensive. The present Board has indicated its willingness to review a resumption of the issuance of infractions.

#### Delta Coves and Other Development Projects

In 1973 the Delta Coves Limited Partnership proposed a waterfront residential project on a portion of Bethel Island by breaching the levee and constructing a lagoon. In 1976, the County Board of Supervisors approved the preliminary development plan. For a variety of reasons, including a Federal District Court lawsuit, the development of the project was delayed and final conditions of approval were extended to 2005.

Sewer and water services for the project will be provided, respectively, by Ironhouse Sanitary District, which encompasses all of Bethel Island, and Diablo Water District (DWD) in conjunction with the Contra Costa Water District. The annexation of the Delta Coves Project to these two water districts constituted the Delta Coves Reorganization that LAFCO approved in 2003.

The Delta Coves project is the only portion of BIMID that has been included within the boundaries and service area of DWD.

The 495-dwelling unit Delta Coves project was scheduled to start construction in 2008 and be completed in 2010; however, the developer recently announced a delay due to the sluggish economy.

In addition to the Delta Coves project, DWD is currently serving two small water systems: the Beacon West community on the northern edge of Bethel Island and the Willow Mobile Home Park (County Service Area M-28) on the eastern side of Bethel Island through a contractual agreement. There are numerous small water systems that are serving other communities on Bethel Island, as discussed below.

The County recently updated its General Plan with respect to Bethel Island; the majority of future development will remain along the perimeter. DWD has included the entire island within the study area for its 2006 Facilities Plan. Water service to serve future development on Bethel Island is discussed in the East County Water/ Wastewater Municipal Services Review.

## Procedures for BIMID to provide additional services such as retail water

One of the powers enumerated in BIMID's enabling legislation is the production, storage, treatment and distribution of water for public and private purposes; however, the District has never provided this service.

Other than the Delta Coves project that is within the boundaries and service area of DWD, the primary water supplies for uses on Bethel Island are individual private wells, private water purveyors utilizing well water (i.e., about 30 private water companies), and public water wells for a small area located in the Willow Park Marina, which is served by County Service Area (CSA) No. M-28. Groundwater (i.e., shallow wells) on Bethel Island has high iron, manganese, and Total Dissolved Solids concentrations that do not meet current drinking water standards.

BIMID has expressed interest in becoming a water purveyor and initiated a Water Supply Project. In December 2005, BIMID issued an Initial Study and Mitigated Negative Declaration (MND) for this proposed project. Subsequently, the LAFCO staff provided BIMID with comments in response to the MND. To date, the LAFCO comments have not been addressed; and we are informed that the District is not currently pursuing this project.

In addition to environmental documentation, a proposal to provide water services requires an application to LAFCO, including a service plan with projected costs and revenues. Such an application has not been submitted to LAFCO. According to District staff, any proposal to become a water purveyor is currently on hold and is not being pursued at this time.

## Other Governmental Agencies that Overlap the District

All or portions of the District are overlapped by the following special districts:

- Byron-Brentwood-Knightsen Union Cemetery District
- Contra Costa Mosquito and Vector Control District
- Contra Costa Resource Conservation District
- CSA EM-1 (Emergency Medical Services)
- CSA L-100 (Streetlighting)
- CSA M-28 (domestic water for Willow Park Marina)
- CSA P-6 (Police Protection)
- East Contra Costa Fire Protection District
- East Bay Regional Park District
- Ironhouse Sanitary District
- Contra Costa Water District
- Diablo Water District

## District Governance

A five-member board of directors chosen in District-wide elections governs BIMID. It is administered by a District Manager and staffed by three full-time, one part-time and two seasonal employees.

The District regularly meets monthly, posts notices and agendas at the District office and Bethel Island Post Office and maintains a website at [www.bimid.com](http://www.bimid.com).

## INFRASTRUCTURE AND SERVICE PROVISIONS

The District maintains the levee that protects the Bethel Island community of approximately 2,360 residents and visitors. The District provides services related to storm water, seepage, and drainage control, and also operates and maintains a small public park and recreation area. The District reviews permit applications to determine any impacts that proposed projects may have on the levee and/or the drainage system, and either approves, conditionally approves, or denies those applications. The District also owns title to four streets, three of which were acquired by the predecessor Reclamation District, and one which was acquired by the District from the County in 1992. Two of these streets provide access to and from the levee. As to one of those streets (Dutch Road), the District maintains it directly; and as to the other (commonly referred to as "the road to Emerald Point Marina"), the District contributes to the maintenance along with persons who own properties fronting the street. In addition to the streets, the District maintains various easements across private properties, which provide access to the levee.

Key infrastructure includes 11.5 miles of man-made levees, Bethel Island Park (approximately one acre), BIMID office and yard (approximately one-half acre), and a 106 acre "mitigation site" to provide materials for the rehabilitation of the levee or any disturbed wetland areas. The District also owns and maintains various pump stations, pipelines and canals that are used to collect and dispose of storm water runoff and seepage water on the island.

Standards for the design and construction of levees to protect the Delta involve both federal and state agencies. The Federal Emergency Management Agency (FEMA) has minimum standards for levees, and required districts, including BIMID, to meet those goals by a deadline of 1991. BIMID did not meet the original 1991 deadline but indicates that it continues to upgrade the levee and recently concluded "the levee is now compliant with FEMA standards." The District is in the process of documenting that information to FEMA to be formally recognized as eligible for federal disaster funds.

A partnership of federal and state agencies (CALFED) responsible for managing regional water supplies and improving quality of the delta habitat in its 2000 "Levee System Integrity Program Plan" recommends levees be brought up to a base level of protection, i.e., the Public Law 84-99 standard, that is higher than the FEMA standard.

BIMID's levee and water systems were the subject of a report by the 2004-05 Contra Costa County Grand Jury, "Cracks to Patch at Bethel Island." That report and the responses by BIMID were considered in preparing this report.

The significant recommendations in the Grand Jury report are that BIMID develop a long-range plan to upgrade the island's levee including evaluating methods, if needed, to fund this project; evaluate optional methods to provide water service; and

uniformly enforce the responsibilities of landowners and residents regarding levee maintenance.

In responding to the Grand Jury Report, the District indicates the recommendations have either been implemented or require further study. These recommendations and the District's responses are summarized below:

#### Levee Recommendations

1. Develop a long-range plan to upgrade the island levee to Public Law 84-99 standards:

Response: This recommendation has been implemented.

2. Determine funds available to implement levee plan and implement the plan to the extent permitted by those funds.

Response: This recommendation has been implemented.

3. If funding is not available to complete the levee plan, evaluate alternatives for local funding such as parcel tax, bond issue or benefit assessment district.

Response: On March 29, 2007, the BIMID Board of Directors adopted a Five Year Plan for Levee Improvements, a copy of which is available in the LAFCO office. The District reports it has recently learned that the voters in Sacramento County overwhelmingly supported a ballot measure for assessments to improve their levees; and BIMID hopes to learn and benefit from Sacramento's success. No corresponding assessment or special tax elections are pending in BIMID.

The District reports it is in negotiation with SunCal, the developer of the Delta Coves project, to develop a Mello-Roos (Community Facilities) District to fund ongoing costs to maintain the levees and drainage/water collection system related to the Delta Coves project. The District indicates the Community Facilities District should be created sometime in early 2009.

4. Update the community annually as to the progress in meeting levee plan.

Response: This recommendation has been implemented.

5. Provide letter to FEMA documenting BIMID's position that the Bethel Island levee is in compliance and requesting agreement that BIMID is eligible for federal disaster funds.

Response: This recommendation is in process.

6. Continue to work with elected federal and state representatives to find solutions to the FEMA compliance issue.

Response: This recommendation has been implemented.

#### Water Recommendations

7. Negotiate a revision to agreement with Delta Coves developer so the \$2,000,000 payment to BIMID is not restricted to developing water treatment facilities but

can be used for other purposes to benefit the entire community, such as levee maintenance or installation of water mains to service the entire island.

Response: This recommendation is being implemented. The District adopted an amendment to the agreement so there are no restrictions on the use of the money. On July 31, 2006, the District devoted \$200,000 for an operating reserve and designated the remaining funds (\$1,800,000) to be used as seed money for special projects and non-reoccurring specific projects for levee and drainage.

8. Prepare comprehensive study of new Bethel Island water treatment facility that includes a comparison with obtaining water from Diablo Water District and with the status quo, using funding provided by the Delta Coves developer.

Response: This recommendation is being implemented. In light of the July 2006 agreement with the Delta Coves developer, the District Board has decided not to proceed with a water project.

9. Conduct series of public meetings for island residents to discuss water system options with the BIMID Board of Directors.

Response: This recommendation has been implemented.

10. If BIMID selects new water treatment facility, establish a reciprocal agreement with Diablo Water District to interconnect the water systems to provide back up.

Response: The BIMID Board has decided not to proceed with a water project.

#### Other Recommendations

11. Communicate with landowners and residents regarding their responsibility, BIMID responsibility, and BIMID enforcement authority for levee and drainage systems.

Response: This recommendation has been implemented.

12. Make regular use of BIMID enforcement authority including fines, assessments and liens.

Response: This recommendation has been implemented.

13. Adopt written policy regarding acceptable of contributions.

Response: This recommendation has been implemented.

#### District Finances

Ongoing BIMID revenue is derived from a variety of sources, the major ones being property taxes and funds provided by Proposition 50, "Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002."

The total projected income for FY 2006-07 is \$1,741,861, of which \$400,000 is from property taxes, and \$183,000 is from prior year subventions. Federal and state revenues and county grants represent about \$728,416 (or 42%) of total revenues. In actuality only \$90,000 was from prior year subvention requests.

Funding for levee maintenance in California is dynamic and involves State funding changes that may affect BIMID and other agencies in the Delta area that maintain levees.

The District has determined that funding is not available at this time for all of the work that needs to be undertaken for the levee in the future. Past and current funding has been through work agreements with the State Department of Water Resources, most recently through Proposition 50 funds.

BIMID may be eligible for Proposition 84 funding. It was approved by the voters in 2006 to fund levee work in the Delta. The State Department of Water Resources is developing the specific regulations and requirements for this funding.

Also approved by the electorate in 2006 was Proposition 1E, the State infrastructure bond act which may be another potential funding source for BIMID and other agencies that improve and maintain levees. The regulations for the use of these funds are still being developed by the State Legislature.

Optional funding to improve the levee as identified in the Grand Jury Report include local revenues such as parcel taxes, benefit assessment districts and property related fees, each of which would require voter approval either by registered voters living on Bethel Island or by the affected property owners. The District reports this area needs further study and thus far the District has proposed no local revenue measures.

#### Delta Levee Coalition

Contra Costa County, the Contra Costa Council, East Bay Municipal Utilities District, and reclamation districts from the eight western and central Delta Islands, including Reclamation Districts 799, 830, 2024, 2025, 2026, 2059 and 2065 from Contra Costa County, have formed a coalition with support from the Delta Protection Commission.

The coalition will help obtain funding to repair levees (western and central), primarily from the State 1E levee bond (Disaster Preparedness and Flood Protection Bond Act of 2006) and to some extent, from Proposition 84 (Water Quality, Safety & Supply, Flood Control, Natural Resource Protection, Park Improvements Bond).

Moreover, recent legislation has created a commission to review the status of levees in the State, and develop approaches or methods to address issues of design, maintenance, and coordination to ensure the State's essential water resources are not further jeopardized by these levees. This is an ongoing effort at the State level for the San Joaquin Delta area.

#### SERVICE REVIEW DETERMINATIONS

##### **Infrastructure Needs and Deficiencies**

The District needs to improve the levee surrounding Bethel Island and has undertaken a program for levee improvement. Long term funding issues have not been fully resolved in respect to State funds and local revenue measures.

Bethel Island's water supply and distribution system is undergoing study and possible change from the current array of individual wells and private water companies to the possibility of a public water supply and distribution system. The District, however, is not at this time pursuing the option of becoming a water purveyor.

Island water supply, except for the proposed Delta Coves project, is derived from ground water. As noted in the Grand Jury report, "Drinking water quality is poor, causing some residents to purchase bottled water for drinking and cooking. Without treatment, some wells do not meet the California Department of Health Services ("DHS") standards for arsenic, manganese, iron and total dissolved solids."

### **Growth and Population**

Current population on Bethel Island is estimated to be approximately 2,360. This number is based on 2000 Census data, ABAG projections and County approved new development.

The approved Delta Coves marina project is expected to add 495 new housing units in the next decade, bringing the estimated population of Bethel Island to approximately 3,400. This represents an estimated increase in population of 44%.

There are no other known projects that would significantly increase the population of Bethel Island. Thus, it is estimated that an average of 10 new housing units per year will be constructed.

According to the County, future development on Bethel Island is predicated on significant upgrades to utility service infrastructure.

### **Financing Constraints**

Levee maintenance is becoming increasingly challenging due to regulatory constraints, lack of funding, deferred maintenance and other factors.

Funding for District operations relies on both property taxes and other local revenues and financial support primarily from State and Federal sources. Limitations on this funding restrict the District's ability to rebuild and maintain the levee and provide the related drainage services on the island.

BIMID faces severe financing constraints and the option of local voter-approved types of revenues is being considered.

### **Opportunities for Shared Facilities**

There are limited opportunities for shared facilities in current District operations. Bethel Island is a fairly discrete geographical feature confined by the levee.

Recognizing that each island and levee is separate and distinct from others, there may be advantages for BIMID and the Reclamation Districts in Contra Costa County to cooperate in preparing a long-range plan for levee improvement and maintenance. There may be opportunities for enhanced funding and improved services through a cooperative approach.

The District manager reports that Reclamation Districts 800 and 830 have not been receptive to jointly preparing plans and use of their equipment, though mutual aid discussions between the districts are still underway.

### **Government Structure Options**

One option is to maintain the status quo. This presents the advantage is continuity of service and representation but disadvantage is that changes in land use, economics, technology, operations and administration may create challenges for the District.

A basic question, worthy of further review, is whether levee maintenance is a regional issue that transcends individual district boundaries.

The option of consolidating agencies maintaining levees (i.e., BIMID and reclamation districts) within the region is a possibility worth consideration. The possible advantages of consolidation may include increased economies of scale, simplification in governance, possibly reducing costs and increasing potential for State and federal funding. Consolidation will be explored further in the 2009-10 Reclamation Services MSR.

### **Cost Avoidance Opportunities**

There do not appear to be readily available opportunities to avoid costs given the duties and location of the District. Greater collaboration with other agencies (e.g., County, other reclamation districts) on studies, sharing resources and staff, maintenance and such may result in savings.

### **Opportunities for Rate Restructuring**

District services for the most part are not funded through fees and charges. The Grand Jury recommends the District communicate with landowners and residents regarding their responsibilities and make use of BIMID authority including fines, assessments and liens.

### **Evaluation of Management Efficiencies**

The District has been in turmoil. It experienced the resignation of two Board members in 2007; subsequently, the Board appointed two replacement members. A recall is currently underway involving two Board members. Petition signatures are being gathered and the election is not yet scheduled. A new District Manager was appointed in March 2008. In light of these challenges, the District appears to be making a concerted effort to focus on its statutory responsibilities.

## **Local Accountability and Local Government**

The District is making efforts to enhance local accountability and is establishing protocols to ensure public notice of District meetings and Board actions.

### SPHERE OF INFLUENCE RECOMMENDATION AND DETERMINATIONS

As indicated above, the District's boundaries run along the "bank" of the sloughs, and the sphere of influence runs to the middle of the waterways surrounding the island.

According to counsel for BIMID, the term "bank" has received two different interpretations by the Courts: (1) the high water mark along the bank; and (2) the toe of the bank, which is a point under the water. Although the District has consistently adhered to the underwater boundary, it recognizes that its boundary is ambiguous. Even if the toe of the bank is the boundary, the District indicates its boundaries do not include enough of the underwater area necessary to protect the levees. The District's engineer has recommended that the District clarify its jurisdiction out to a point in the water at least 150 feet beyond the levee, in order to have the ability to review, approve, and impose safety regulations on dock and marina construction projects that could adversely affect the levee. Therefore, in 2006 BIMID authorized its counsel to begin the process of expanding its boundaries so that they are coterminous with its SOI. Such a proposal should include a plan for providing service and demonstrate the District's ability to fund the expansion. State Lands Commission approval would also be needed for the boundary change.

### SPHERE OF INFLUENCE RECOMMENDATION

It is recommended the Commission affirm the existing Sphere of Influence and adopt the following determinations:

1. Present and planned land uses in the area, including agriculture and open-space;

Present land uses consist of single-family homes on the periphery of the island and along roads in the interior of the island and some agricultural production. Between the District's present boundary and its existing SOI, the land use is water-related recreation, including private docks and marinas. No changes in land use are planned. Adoption of the SOI will not adversely affect agricultural or open space land or be growth inducing. No change to the present or planned uses will result from adoption of this SOI.

2. Present and probable need for public facilities and services in the area;

Long-term, proper maintenance of the levee protecting the island is essential, which will require some improvements. Due to water quality issues it may be necessary to develop a water system to treat on-site water supplies or import and distribute higher quality water to portions of the island in addition to the Delta Coves development.

3. Present capacity of public facilities and adequacy of public service that the agency provides or is authorized to provide;

The District is presently providing levee maintenance, although long-term improvements and future funding for ongoing levee maintenance are essential.

4. Existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.

Bethel Island is a separate and discrete community due to its relative isolation from other developed communities and is within the larger Eastern Contra Costa County community.

5. Existence of agricultural preserves or other important agricultural or open space land in the area which could be considered within an agency's SOI, and the effect on maintaining the physical and economic integrity of such resources in the event that such resources are within a SOI of a local governmental agency.

Levee maintenance, storm water, seepage, drainage control and related services are already being provided, and do not, by themselves, induce or encourage growth on agricultural or open space lands. Adoption of the SOI will not adversely affect agricultural or open space land or be growth inducing. No Williamson Act contracts will be affected.

6. Nature, location, extent, functions & classes of services to be provided.

The District maintains the levee system that protects Bethel Island and provides storm water, seepage, and drainage control services, as well as various related ancillary services. The District reviews permit applications for projects that could impact the levee or drainage system. The District also maintains and operates a small public park and recreation area, as well as two streets and various easements which provide access to the levee.

# Bethel Island Municipal Improvement District and Sphere of Influence

