September 8, 2012

East Bay Regional Park District
Master Plan Policy Update
2950 Peralta Oaks Court
Oakland, CA 94605

Re: District Interference for Planned OHV Use in Tesla Property

Dear EBRPD:

Please accept these comments filed on behalf of the BlueRibbon Coalition (BRC), a national trail-based recreation group. These comments are in regards to the East Bay Regional Park District’s 2012 Master Plan (Plan). BRC is concerned about certain CEQA-related deficiencies in the current planning process. This concern is primarily centered on District’s historic overreaching with respect to its jurisdiction and to its most recent historic lack of any concern for or substantive “outreach” to county, regional, state, or national OHV-related agencies and stakeholder groups such as California State Park’s Carnegie State Vehicular Recreation Area, Santa Clara County’s Metcalf Cycle Park, AMA District 36, BlueRibbon Coalition, AMA, Carnegie Forever, California Association of Four Wheel Drive Clubs, California Enduro Riders Association, and TimeKeepers Motorcycle Club.

According to the District’s website it provides and manages the regional parks for Alameda and Contra Costa counties, a 1,700 square mile area which is home to over 2.5 million people. The District manages 65 regional parks, over 112,000 acres of open space, and 1,200 miles of trails. However, unfortunately for the District and a significant segment of the public, the District currently provides no OHV recreational opportunity.

This has not always been the case. On page 31 of the District’s 1973 Master Plan it states, “The District will, as part of its on-going implementation and specific site planning program, maintain a systems/site analysis of present opportunities and any deficiencies for activities which require assigned space...such activities authorized for consideration in planning are archery, hang-gliding horseback riding...motorcycling [OHV], and quarter midget racing.”

Likewise on page 30 of the District’s 1980 Master Plan it once again describes activities authorized for consideration including field archery, stables and rental strings, model airplanes, motorcycle and O.R.V’s, pet exercise and training.
According to the District’s website, the Master Plan defines the vision and mission of the Park District and sets priorities for at least the next decade. The policies set forth in the Master Plan help guide the stewardship and development of current and future parks to maintain a careful balance between the need to protect and conserve natural resources, while offering recreational use of parklands for all [including OHV] to enjoy.

Recently however, the District has changed its policy. The following discussions appear to show the District has deviated from its historic legislative mandates and related polices and plans when it comes to OHV recreation. This all despite the case that OHV recreation is the fastest growing and most popular activity on state park lands.

**District Collaboration with Sister Agencies**

BRC believes the District has not complied with the spirit and intent of the Public Resources Code 5541.1 where it prohibits the District from interfering with the control of any vehicular recreation area within its sphere of influence. The code specifically references “municipality” and “county.”

The Public Resources Code Section 5541.1 states:

*The East Bay Regional Park District may plan, adopt, lay out, plant, develop, and otherwise improve, extend, control, operate, and maintain vehicular recreational areas and trails for the use and enjoyment of all the inhabitants of the district, and it may select, designate, and acquire land, or rights in land, within or without the district, to be used and appropriated for such purposes. The East Bay Regional Park District may cause such vehicular recreational areas and trails to be opened, altered, widened, extended, graded or regraded, paved or repaved, planted or replanted, repaired, and otherwise improved.*

*The Board of Directors of the East Bay Regional Park District shall not interfere with the control of any vehicular recreational area or trail that is existing, owned, or controlled by a municipality or county in the district, except with the consent of the governing body of the municipality, or of the county if the same is in unincorporated territory, and upon such terms as may be mutually agreed upon between the board of directors of the district and the governing body.*

Past District planning narratives describe robust participation and coordination with sister agencies.

Here is a related citation from the District’s 1997 Master Plan (pages 38-39) …*In the case of parklands located adjacent to lands owned by other jurisdictions, the District fully considers the comments of these neighboring agencies in the plan preparation process. (Refer to page 54 for information about facilities planning.) The District also complies with applicable laws and permit requirements.*”

On page 41 of the 1997 Master Plan the District further commits to working with sister agencies when it states, *“The District will work actively with cities, counties, districts, and other governmental agencies to assure that they understand and consider District interests. The District will protect its interests when other jurisdictions plan or approve projects that affect the District and will work with them to develop and articulate mutual goals. The District will seek to understand the perspectives of other governmental agencies and to resolve conflicts in mutually satisfactory ways.”*
Currently, there does not appear to be any substantive outreach to the OHV-related sister agencies (e.g. Division and Metcalf Cycle Park) in the development of the 2007 Master Plan Map upon which the current 2012 Master Planning Process is based. The 2007 Master Plan Map includes (e.g. interferes with) the Tesla property that was purchased by the Division in the late 1990s with OHV Trust Fund monies for future OHV use.

**District Outreach to Impacted OHV Stakeholder Groups**

Notwithstanding and according to planning guidelines on page 38 in the 1997 Master Plan...”The District encourages public participation in all of its planning processes... As a part of this process, the District notifies interested agencies, groups, individuals, and park neighbors; notifies neighborhoods; and publishes news releases to publicize the public meetings.”

However in this instance, no substantive outreach to any OHV groups has been found related to development of the 2007 General Plan Map that was approved on November 6, 2007 which included a vote to include the Carnegie/Tesla OHV property into the District’s future acquisitions.

No such outreach has been found to date regarding the District’s 2012 planning process.

**CEQA Concerns in Creation of 2007 Master Plan Map**

In addition to the concerns noted above and according to the 1997 Master Plan (page 38) about CEQA compliance...”The District follows policies and procedures that comply with the California Environmental Quality Act (CEQA). The District evaluates the environmental impact of planned projects and prepares the appropriate CEQA documentation for Board approval. In the case of parklands located adjacent to lands owned by other jurisdictions, the District fully considers the comments of these neighboring agencies in the plan...”

No documentation could be found where the District substantively considered comments from the Division on how including (e.g. interfering) Tesla on the 2007 Master Plan Map could impact current and future management of OHV recreation at Carnegie SVRA and the Tesla property. Nor has any documentation been found where the District substantively considered comments from the OHV community on how including (e.g. interfering) Tesla on the 2007 Master Plan Map could impact current and future management of OHV recreation at Carnegie SVRA and the Tesla property. More significantly we see no CEQA document for the project.

CEQA allows stakeholders to challenge a planning decision for up to one year. However, the OHV community and other stakeholders were not able to challenge the 2007 Map because no formal CEQA process associated with it could be found.

Additionally on what appears to include violations of the Brown ACT, there appears to be undue influence on the planning process by preservationist groups and those who are actively engaged in efforts to ban or restrict OHV recreation on the Tesla property and elsewhere.
According to a March 19, 2007 email from Celeste Garamendi (founder of Save Tesla Park) to Ayn Wieskamp (District Board Member), Wieskamp and the District Board were petitioned to support and join their efforts to ban OHV use on the Tesla property. Wieskamp and the Board were invited to a not-open-to-the-public tour of Tesla on March 24, 2007. No members of the OHV community were invited.

On August 27, 2007, Ms. Wieskamp and the Board were petitioned to include the Tesla property in its future growth plans (e.g. the Nov. 6, 2007 Master Plan Map and 2012 Master Plan). No such closed-door opportunity was given to the OHV community to challenge such a proposal.

According to the District’s website, “The 2007 Master Plan Map encompasses creating new regional trails and expanding the East Bay Regional Park District in the following areas (continued from 1997 Map): Alameda Shoreline (Naval Air Station), Bethany Reservoir, Cedar Mountain, Delta Access, Delta Recreation, Dublin Hills Open Space, Duarte Canyon, North Richmond Wetlands, Pittsburg-Antioch Shoreline, Point Edith Wetlands and Point Molate, and (additions to 2007 Draft map): Altamont/Tesla, Byron Vernal pools, Concord Naval Weapons Station, Doolan Canyon, Deer Valley, Oakland Shoreline, Rancho Pinnol.”


According to the District, voters in 1988 approved, Measure AA, a $225 million bond measure. Over the next 20 years, Measure AA made possible the preservation of 34,000 acres of some of the most beautiful and pristine East Bay land, creeks, and shoreline, and added over 100 miles of trails.

Approved by voters in 2008, measure WW (500M) extended Measure AA. AA is to be used for space for recreation and wildlife habitat. It will also provide funding directly to cities and special park districts for high priority community park projects. Homes are taxed at a rate of $10 per year per $100,000 of assessed valuation (i.e., a home assessed at $400,000 will pay $40 per year).

According to 2011 DMV statistics, there are over 12,000 non-street legal registered OHVs in Alameda County and over 15,000 non-street legal registered OHVs in Contra Costa County. This does not count the tens-of-thousands of street legal OHVs (e.g. dual-sport motorcycles and 4WD vehicles) in said counties. Yet, the District does not provide a single acre of OHV opportunity on its 112,000 acres and 65 regional parks. These numbers represent a significant user group and activity that is not provided for by the District. Instead of citing these numbers and working to provide a recreational experience for these county residents, the District is collaborating with environmental groups to prohibit legal OHV use on the 2,000 acre Tesla property.

Despite tax contributions, currently there is no legal OHV recreation in Contra Costa and Alameda Counties on District lands. Most of the state-owned 1,300 acre Carnegie SVRA resides in San Joaquin County, not in Alameda County. The District should plan for a representative amount of OHV recreation on its lands that will serve the almost 28,000 non-street legal OHVs registered in Contra Costa and Alameda Counties and the tens-of-thousands of street legal dual-sport motorcycles and 4WD vehicles in the area.
Compared with the District’s 112,000 acres, the 1,300 acres at Carnegie SVRA represents just 1% of land in the District’s sphere of influence available for OHV recreation. If the 2,000 acres of the Tesla property are added to Carnegie SVRA for OHV recreation that combined total of 3,300 acres would represent just 3% of lands in the District’s sphere of influence available for OHV recreation.

**CEQA Concerns Regarding 2012 Master Planning Process**

The current authority for the District to interfere with the planning process for OHV recreation at Carnegie SVRA and the Tesla property appears to be based on a non-compliant or ethically challenged CEQA document (2007 Master Plan Map).

Also, there are a number of planning tools that were ignored or biased in a manner to create momentum for the District to interfere with OHV recreation at Carnegie SVRA and the Tesla property.

The District has continued to neglect its duty to OHVs. The District failed to incorporate findings from the 2007 Survey on Public Opinions and Attitudes on Outdoor Recreation in California (SPOA) in creating management alternatives in, and directions for, the current planning process. OHV recreation was identified as a popular activity on park lands. SPOA found (Table 133, pages 162-163) that 48.1% of respondents in the Central Valley participated in OHV recreation in the last year compared with 45.9% for beach activities, 39.3% for swimming in lakes and streams, and 12.5% for day hiking on trails.

Instead, the District hosted a biased recreation survey in 2011 which did not have a motorized recreation component. OHV recreation is a legitimate use of state lands including lands managed by the District. The District ignored data from the 2005 National Survey on Recreation and the Environment (NSRE) which shows on page 18 that 17.2% of Californians participate in OHV recreation. Yet, the District provides zero OHV recreational opportunity. In fact, the District is actively working with environmental groups to stop the planning process for managed OHV recreation at the Tesla property.

There appears to be inappropriate contact and undue influence between a selected public and the District during the current planning process. A February 2, 2012 email from Nancy Wenninger (the District’s Asst. General Manager) to Celeste Garamendi (founder of Save Tesla Park) describes the eagerness of the District by stating, “I enjoyed meeting with you and your group today. Tesla sounds like a very exciting project...”

More undue influence is noted in a February 27, 2012 email from John Icanberry (a volunteer for Friends of Tesla Park) to Ayn Wieskamp where he states, “...We recently met with the EBRPD. We discussed their support of our efforts to redirect the purpose of the Off-Highway Motor Vehicle Division’s efforts to expand the Carnegie SVRA into the pristine Tesla Park land. Nancy Wenninger extended EBRPD’s support for our purpose.”

Inappropriate contact with a selected user group is highlighted in an April 4, 2012 email from Nancy Wenninger (the District’s Asst. General Manager) to Celeste Garamendi where she states, “...Your meeting with Ayn Wieskamp certainly stirred her interest. She has requested that staff set up a tour of Tesla for the entire Board of Directors. I think this would be very important for your efforts to solidify Park District support...”
It appears that District board members and staff attended two tours of the Tesla property during the current CEQA planning process that were not open to the public. Those tours occurred on 4/16/12 and 4/23/12.

On July 11, 2012 the District submitted formal comments to the Division’s Carnegie State Vehicular Recreation General Plan. In that letter they stated their desire for non-motorized recreation on the Tesla property. This constitutes another formal action taken by the District to “interfere” with OHV recreation.

CEQA guidelines for the District are found in the California Code of Regulations, Title 14, and Section 1500.

The following citation about agenda driven decision-making is found in Section 15003 - (j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. (Laurel Heights Improvement Assoc. v. Regents of U.C. (1993) 6 Cal.4th 1112 and Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553)

The following citations about a pre-decisional outcome are found in Section 15004 - (2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

The District also appears to be in the practice of piece-mealing. By including the Tesla property in a large planning process where a project(s) is analyzed incrementally, the District is attempting to minimize the appearance of environmental impacts of its pre-decision to interfere with OHV recreation planning in a sister agency’s CEQA process.

BRC is concerned the aforementioned CEQA deficiencies have placed the District’s 2012 planning process in legal jeopardy and subject to administrative or legal challenges.

**BRC recommends the following remedies:**

1) Replace or amend the 2007 General Plan Map to reflect current and future needs for OHV recreation on public lands in the District’s jurisdiction.

2) Immediately remove the Tesla/Alameda property from the 2007 General Plan Map
3) Conduct a new District Survey that includes OHV recreation as an approved or authorized activity on District lands.

4) Cease and desist the District’s current effort to influence (e.g. ban OHV recreation) OHV recreation on the Tesla property which is part of the ongoing Carnegie SVRA General Plan Update.

5) Withdraw the District’s July 11, 2012 comment letter to the Carnegie SVRA General Plan where the District advocates for non-motorized use on the Tesla property.

BRC looks forward to working with the District to promote and protect environmentally sound OHV recreation on state and District lands.

Respectfully submitted,

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