

Happy 20th Anniversary to ABAG PLAN

ABAG PLAN is celebrating a significant milestone — twenty years of providing pooled liability coverage to Bay Area cities and towns. This significant achievement was recognized at the June ABAG PLAN Board of Directors' meeting and at the July ABAG Executive Board Meeting. In 1986, the first year of operation, ABAG PLAN provided 25 charter members with \$5 million in General Liability Coverage. The premium for that year was \$2,657,000 and losses were \$1,651,000. Twenty years later, ABAG PLAN has over \$40 million in assets and now offers a pooled risk property program, various insurance purchasing pools, claims administration, recovery services, and risk management services. All services are provided at significant savings to its now 31 members. The ABAG PLAN estimates it has saved members over \$70 million since its inception.

The first chair of the ABAG PLAN Board of Directors was Harry Peacock, Saratoga City Manager. Since that time, the organization has successfully relied on the talents

of its members to govern the organization. The recently elected Chair is Larry Anderson, Burlingame City Attorney, and the new Vice-Chair is Julie Carter, Assistant to the Dublin City Manager. According to Larry

Anderson, "ABAG PLAN's biggest benefit is the ability for members to understand how premiums are set and claims are settled. The membership's involvement in organization management makes PLAN's value much larger than just getting a reasonably priced bill."

The early 1990s saw the creation of the Mobile Police Training Program, now common throughout United States. ABAG PLAN received numerous awards for this innovative program and others, such as the "Be

Sewer Smart" loss prevention program.

Summarizing what the future holds for the organization, Marcus Beverly, ABAG PLAN Risk Manager, commented: "I expect that ABAG PLAN will meet the next twenty years' worth of challenges with new services, good leadership, and great staff, just like in the first."



ABAG PLAN Today: Board Meeting Highlights

At the June meeting, the Board of ABAG PLAN discussed, celebrated, and set policy for the next fiscal year. Highlights from that meeting are outlined below.

Financial Stability

ABAG PLAN has increased its financial stability after the record amount of claim payments made in FY 04-05. Assets have increased 10 percent, or \$4 million, while liabilities increased \$1 million, resulting in a reserve

increase of \$3 million or 12 percent. These results demonstrate a good recovery from FY 04-05, due at least in part to effective risk management programs.

Program Funding

The liability program continues to maintain stable rates while increasing the total limit for claims. Total funding is up 5.4%, compared with a 7.3% increase last year. This is due mostly to member payroll increases, since our loss rate

Board Meeting cont. on page 3

What's Inside

- 2 **COVERAGE CORNER** – Things That Move
- 3 **RISK MANAGEMENT** – Board Meeting Highlights
- 4 **RISK MANAGEMENT** – Sewer Summit
- 5 **MEMBER NEWS** – Foster City Recognized
- 5 **PEOPLE** – New Staff Member
- 6 **RISK BRIEFS** – Sidewalk Ordinance, Administrative Tort Ordinance
- 7 **RISK BRIEFS** – Skateboard Law Update
- 8 **CALENDAR, WEIRD CLAIMS, NEWEST BEST PRACTICE CITY**

Coverage for Things that Move

Vehicle coverage continues to cause confusion among member cities and employees. Questions about what is covered, replacement cost, and use of personal vehicles are the most common questions. The following should clarify the ABAG PLAN coverage.

Auto Liability Coverage

Coverage for personal vehicles driven in the course of employment relies on this rule: “the insurance follows the car,” meaning the vehicle owner’s insurance is always primary, or first to pay, in the event of an accident. If an employee was acting “for or on behalf of” a member at the time of the accident, the ABAG PLAN liability coverage would apply to that employee in the event his or her own insurance was exhausted. We recommend that employees carry their own collision coverage and liability limits of at least 100/300/50.

However, neither the Liability Program nor the Property Program covers damage to the employee’s vehicle itself. Coverage applies only for property that is owned by a member, or in some cases within the care, custody, or control of a member, under the Property Program.

Property Program Coverage

For member vehicles, the policy pays Actual Cash Value (ACV) with a \$10,000 deductible. Members often report losses for less than that to take advantage of ABAG PLAN recovery services. For damage caused by a negligent third party, ABAG PLAN will assist in documenting and collecting for the damage or total loss.

The Property Program will pay the Replacement Cost Value (RCV) of the property, using like kind and quality materials, without deduction for depreciation. If a member chooses not to replace the property, the payment is for its ACV. This is defined as replacement cost less depreciation and is often similar to the market value of the property. The member deductible is \$5,000, with the pool paying the difference up to the insurance policy’s \$100,000 deductible.

Members may choose to cover specific vehicles or Mobile (Contractors) Equipment for RCV, but a list must be provided that includes the estimated replacement cost of each vehicle. This is an especially attractive option for large-value utility vehicles, equipment, and fire trucks that are still functional, but would cost much more than their original purchase price or market value to replace if they were totaled in an accident. A member may also opt to collect RCV in the event of a “yard” loss that damages a concentration of vehicles beyond repair.

Vehicles’ replacement costs are currently listed under Large Value (LV) Vehicles in each member’s property schedule, along with a listing for Contractors Equipment. Members are encouraged to review their schedules and compare the values with their current inventory.

The LV values for members were originally based on an all member estimate and it is time for an update. We encourage members to provide us with a list of vehicles and their costs. ABAG PLAN will be working with members throughout the year to update the values in the property schedule. Send Marcus Beverly the latest inventory list via e-mail marcusb@abag.ca.gov or contact him with questions at 510-464-7969.

 **ABAG PLAN Corporation**
A Pooled Liability
Assurance Network

Providing self-insured coverage to cities in the San Francisco Bay Area

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Board Meeting cont. from page 1

has remained steady at \$1.10 per \$100 of payroll. In addition, while members agreed to purchase up to \$10 million in coverage, staff was subsequently able to purchase \$15 million in excess insurance, for a total limit of \$20 million, twice the limit previously offered.

The property program saw a rate increase of 13.5 percent, due largely to the impact of Hurricane Katrina on the insurance market. Although our pool rate increased to \$0.58 per \$1,000 in Insured Value, some members saw a decrease in funding due to lower appraised values on some properties. All those factors considered, the coverage offered through the PLAN is still a good value when compared to other options.

Claims Audit and Committee Update

An audit of our Claims Department was conducted on November 2005. It revealed strengths in a number of areas, including technical expertise, investigation, litigation management, and documentation of member claims. Areas for improvement that are being addressed were the diary system and follow-up for revised litigation management plans. Examiners are all now using our claim program diary system to allow for consistent follow-up.

The Claims Committee authorized settlement of a number of claims, including road design and flooding claims, totaling close to \$3 million. This is down from past years and is a welcome change. The Committee did not recommend any changes to the Claim Policy or MOC.

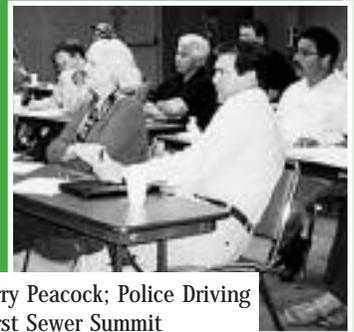
Risk Management Strategy Implementation

The process of implementing the Risk Management Policy is moving forward with a completion date for grant qualification of December 31st. Three ABAG PLAN members—Burlingame, Colma, and Dublin—have met the requirements and qualified for grants. Seven members—Hillsborough, Millbrae, Foster City, Saratoga, Gilroy, Los Altos Hills, Milpitas, San Carlos, American Canyon and Atherton—are expected to qualify soon.

Once all members have met the recommended best practices, the next step is to determine the ongoing level of service desired and how best to cover the costs. The options are adding staff to provide services in-house or continuing to use an external consultant. These issues will be discussed in detail at the Strategic Planning meeting in October.

Sewer Smart Program

The Sewer Risk Management continues the Sewer Smart Program, offering its public education materials, back flow devices, and assistance in a variety of operational areas, including system maintenance, overflow response, and ordinance revision. Grants are available to provide backflow prevention devices or to fund incentive programs for property owners to maintain and improve their systems.



Photos Lft-Rht/Top-Btm: Harry Peacock; Police Driving Simulator; Police Training; First Sewer Summit

Additional Grant Programs

The ABAG PLAN grant program continues to expand to meet member needs. Grants include:

- Risk Management Program Grants – New for FY 2006-2007, up to \$10,000 for any risk management purpose
- Risk Management Framework & Best Practices – up to \$10,000 for completing the Best Practices process
- Risk Management Services Credit – each member has a credit to pay for consulting services
- Defensive Driver Training – paid in full for member staff
- Risk Management Training – up to \$2,000 per member
- Police Risk Management general order reviews, equipment, and training grants – up to \$10,000.

More details about these programs are available on the ABAG PLAN website at www.abag.ca.gov/plan/. For more information, contact Marcus Beverly, ABAG PLAN Risk Manager at 510-464-7969 or marcusb@abag.ca.gov.

Being Sewer Smart

Preventing sewer backups was the topic at the second ABAG PLAN Sewer Summit. Ninety attendees representing government regulators, plumbing professionals, industry, and many of the cities and counties around the San Francisco Bay Area met to discuss this important topic on May 17, 2006.

Designed to reduce the frequency and severity of sewer backups, this year's Sewer Summit also established partnerships within Bay Area communities and dispelled myths about the State Water Resources Control Board Order No. 2006-0003, Statewide General Wastewater Discharge Requirements (WDRs) for Wastewater Collection Agencies.

The Sewer Smart Summit consisted of afternoon presentations focusing on the new regulations and various approaches to sanitary sewer backup prevention.

Speaker Highlights

- State Water Resource Control Board, Byran Brock, Senior Engineer, provided a detailed presentation on the new WDR adoption process and information regarding agency enrollment, training, and reporting.
- The U.S. EPA's Ken Greenberg, Environmental Engineer, outlined the benefits and challenges of the new WDR.
- Peter Sevcik, P.E., Director of Engineering Operations for the West Valley Sanitation District, described their rehabilitation program.
- E. J. Shalaby, District Manager of the West County Wastewater District, discussed the Building Sewer Replacement Grant Program and lateral program.
- Doug Humphrey, P.E., District Manager, STEGE Sanitary District, focused on how to pass an EPA collection system audit.



- Effective emergency response to sewage spills was the focus of David Patzer, Risk Control Advisor for the California Sanitation Risk Management Authority.
- Peter Langes, IAPMO Central Valley Chapter, presented information on backwater prevention devices, including a new prototype device with an alarm.
- ABAG's Competitive Bond Pool was described by Clarke Howatt, ABAG Public Finance Director.



Doug Humphrey, P.E., District Manager, STEGE Sanitary District; Marcus Beverly; and E. J. Shalaby, District Manager, West County Wastewater District (left to right)

ABAG PLAN will continue to host forums to further the work begun at this Summit and fulfill requests by those interested in participating to continue sharing information and resources to help achieve our goals.

Based on the tremendous interest in this second Sewer Smart Summit and the outpouring of ideas regarding better prevention of sewer backups and backflows—ABAG PLAN believes there is great potential for further improving efforts to prevent these events in our Bay area communities. Throughout the summit, the need for a comprehensive public education campaign was identified.

For more information and a more detailed report on the Sewer Summit, visit www.sewersmart.org.

Peter Sevcik, P.E., Director of Engineering Operations, West Valley Sanitation District

ABAG PLAN Member Best in the State

California Water Environment Association (CWEA) selected the **City of Foster City/Estero Municipal Improvement District** as the “Collection System of the Year Award” winner for small systems. The award was presented at the 78th annual CWEA Conference in Sacramento, on Friday, April 7, 2006.



Foster City Sewer Crew: Robert Walker, James Hardie, Allen Smith, Randy Stilwell, Frank Sanchez, George Beavers, Brandon Basas, Juan-Carlos Ruiz (right to left) Missing: Gary Batis, Luis Diaz, Greg Baeza, Chad Fried. Also not pictured are Public Works Director Ray Towne and Public Works Maintenance Manager Norm Dorais.

The CWEA awards recognize outstanding professional achievements within the wastewater field. Their goal is to improve the professional status of all personnel working in the wastewater industry and related field, and stimulate public awareness of the importance of wastewater treatment to public health and the water environment.

Foster City/District was awarded “Best in the State Honors” in the category for systems fewer than 250 miles in length. Before advancing to state level competition, Foster City had to win at the local level to qualify for the 16 state sections eligible for the top prize. Nominations for this award were submitted along with a video

production illustrating the system. The wastewater sewer system was visited and evaluated by a committee comprised of the previous year’s winners of CWEA awards. ABAG PLAN congratulates the **City of Foster City/Estero Municipal Improvement District** for the award. The application has been reviewed and information has been incorporated into ABAG PLAN best practices for implementation throughout the region.

Evaluation Categories

The City of Foster City’s application was evaluated in the following areas:

- Regulatory compliance (overflows, reporting and clean-up procedures)
- Accomplishments during the past year
- Preventive Maintenance Program (stoppages, preventive actions)
- Corrective Maintenance Program (repairs, replacement, rehabilitation)
- Safety Programs and Records (written rules, program elements, CAL OSHA Form 500 accidents/injuries)
- Training Programs (materials, facilities, documentation, and budget)
- Site Inspection (introductory presentation, personnel, housekeeping, and equipment)
- Emergency Procedures (written procedures, training)
- Administrative Procedures (documentation, forms)
- Video of Foster City Wastewater Collection System Operations and Maintenance

Welcome New Staff

Marken Hew is simultaneously our newest employee and a veteran ABAG PLAN claims adjuster. Marken has been a temporary worker for ABAG at various times, providing backup while other adjusters were on vacation or leave. “I have probably worked with every PLAN member in that time,” he commented.

Hew is now responsible for claims in American Canyon, Atherton, Colma, Los Altos, Los Altos Hills, Susiun City, Morgan Hill, and Woodside. “We are pleased to have someone with his



experience on board to handle our wide variety of claims,” said Marcus Beverly, ABAG PLAN Manager.

What you may not know about Marken is that he is a native of Honolulu, and he moved to the San Francisco Bay Area 20 years ago. He lives in the Sunset District of San Francisco and now prefers the somewhat cooler climate. He and his wife make sure to keep a set of “guest sweats” in their extra bedroom for all the family members that come to visit and freeze.

Marken cont. on page 7

Update on Sidewalk Ordinances

A Solution to High Sidewalk Claims Costs

Sidewalk claims continue to be one of ABAG PLAN's most frequent and expensive claims. Five million dollars have been paid due to sidewalk claims during the past 10 years.



Recent claim for \$20,000

However, members have seen a decrease in amounts paid out since last year, due in part to implementation of sidewalk ordinances, a risk management best practice. The ordinance assigns responsibility to property owners if they fail to maintain their sidewalk and as a result someone is injured.

A recently settled claim illustrates how the claims are paid. The member city paid \$155,000 and the property owners paid out \$85,000 for a trip and fall incident. The city's attorney believes the results would have been much more favorable had the recommended ordinance been in place at the time of the incident.

ABAG PLAN continues to offer sidewalk workshops to discuss the risk issues in detail. Conducted by ABAG PLAN's risk manager and an attorney, this seminar is available by contacting Marcus Beverly. Sample ordinances are available in each member's Risk Management Manual and also on the ABAG website.

For more information, contact Marcus Beverly, Risk Manager, 510-464-7969 or marcusb@abag.ca.gov.



Potential claim

Administrative Tort Claims Ordinance

Reducing Liability

ABAG PLAN cities should implement ordinances defining the claim procedures for administrative tort claims against public entities. An administrative tort claim ordinance would help cities avoid or greatly diminish liability for such claims through the application of the one-year statute. Government Code section 935(a) authorizes local public agencies to adopt claim procedures for those types of claims exempted by Government Code section 905.

The procedures for filing administrative tort claims are regulated by California Government Code 905, which exempts some tort claims from the tort claims notification requirements. As a prerequisite to filing a civil action for damages against a public entity, the Tort Claims Act, GC 905 generally requires the filing of an administrative tort claim for damages. Claims must be filed within a specified period, and the failure to do so generally bars a lawsuit for damages.

Without an ordinance defining the claims procedure, cities and towns are exposed to additional liability. Once the filing procedure is established, compliance is a prerequisite to filing a lawsuit, providing cities and towns with an opportunity to investigate claims. Failure to file a claim within the Act's statute of limitations will bar the lawsuit.

Several ABAG PLAN cities, including Los Gatos and Gilroy, have passed ordinances. Draft text is available on the website at www.abag.ca.gov/plan/.

Limited Liability Protection for Public Skateboarding Parks Has Been Extended

A bill directly affecting local governments' liability and immunity in the operation of public skateboard parks has made its way through the 2006 state legislative session.

Introduced by Senator Morrow, SB 1179 has become law (Chapter 140, Statutes of 2006) and extends the sunset provision that makes skateboarding a *Hazardous Recreational Activity (HRA)* from 2008 until 2012. It also lowers the age at which skateboarding in a public skateboard park is considered a HRA, from 14 years of age to 12 years.

Skateboarding was added in 1997 to the list of Hazardous Recreational Activities (HRA) as a result of Senator Morrow's initial legislation (AB 1296). Because of the qualified immunity granted ("if specified conditions were met"), many communities built public skateboarding parks. The aim was to provide dedicated locations for individuals to skateboard without worry of trespassing or vehicular hazards.

The previous law, which was only effective until January 1, 2008, described the existing legal liability

protections for cities, counties and other public agencies that build public skateboard parks. It stated that skateboarding is a HRA when a person 14 years of age or older skateboarding at a public skateboard park is injured while stunt, trick, or luge skateboarding. The law further stipulated that all skateboard parks post signs requiring skateboarders to use safety equipment—helmets, elbow pads, and knee pads. The limited immunity currently enjoyed by public entities is conditioned upon this notice to wear safety equipment.



The new law extends limited liability protection for public skateboarding parks and all its current provisions for four more years to 2012 and reduces the age limit to 12 years or

older. Lowering the age requirement from 14 to 12 years increases the amount of protection local agencies have from liability at public skate parks in correlation with the growing number of skateboarders who fit into this particular age range.

Codifying Hazardous Recreational Activities

In 1983, California codified a qualified immunity for public entities and employees for injuries suffered by individuals engaged in hazardous recreational activities. The included activities, such as rock climbing, sky diving and sport parachuting, all posed a substantial risk of injury to a participant or spectator. Over the years, other attempts have been made to expand the list of hazardous recreational activities. For example, mountain biking, but not ordinary use of a bicycle, was added in recent years to the list of hazardous recreational activities. Skateboarding was added in 1997.

Marken cont. from page 5

One of Marken's hobbies combines travel and collecting. He and his wife collect pins from Hard Rock Cafes from around the world. During the last five years, they have been to Tokyo, Cologne, the Grand Canary Islands and several other exotic locales to visit the local Hard Rock Café. They have made friends from all over the world.

"Marken is the consummate professional. We're pleased to have him as a permanent member of the team," commented Claims Manager, Angela Salsbury.

Please help us welcome Marken Hew to ABAG PLAN.

His contact information is 510/464-7977 and markenh@abag.ca.gov.

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2006 - 2007 Meeting Schedule

All meetings are 10:00 a.m. to 1:00 p.m. at ABAG's offices unless noted.

10/18/06

Board of Directors Planning
8:30 a.m. to 4:30 p.m.
Half Moon Bay

12/13/06

Risk Management Committee
TBD

1/24/07

Claims Committee

2/28/07

Police Chief Steering Committee

3/14/07

Finance Committee

4/4/07

Risk Management Committee
TBD

5/2/07

Actuary Committee
10 a.m. to 1:30 p.m.

5/16/07

Executive Committee, ends at 1:30 p.m.

6/6/07

Board of Directors
11:30 a.m. to 4:30 p.m.
TBD



CERTIFICATE OF APPRECIATION

Newest Best Practice City

The City of Burlingame recently completed the Risk Management Assessment process and is now eligible for up to \$20,000 in risk management grants. Burlingame joins Dublin and Colma as recipients of the award, with many more members soon to qualify.

Would You Believe... Weird Claims

Recent headlines have featured the twisted humor of real claims that cities experience. One such claim involved a city of Lodi employee suing himself. What happened was that a city employee, while driving a city dump truck, backed into his own car. Even though the accident was his fault, he decided to sue the city. After the city claim was denied, the employee's wife then insisted that she had a right to sue since the city damaged her private vehicle. Lodi's City Attorney has indicated that her suit also lacks merit because a wife can't sue her own husband: "You can sue your spouse for divorce, but you can't sue your spouse for negligence. They're a married couple under California law. They're one entity. It's damage to community property." Proving once again the claims' adage, "you can't be liable to yourself."

ABAG PLAN claims examiners have had similar experiences. Recently an anonymous homeowner called an ABAG PLAN examiner asking how she could sue her city because she had backed into a city truck, and she felt it was the city's fault for having a city vehicle in the wrong place. When asked for her name and other details, she hung up when it occurred to her that she might be sued by the city as well.

In another instance, a woman did file a claim against her city because she was on a city street when she was almost hit by a passing car and twisted her knee. The claim was rejected.

