

April 29, 2011

TO: Commissioners and Alternates
FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Jessica Davenport, Coastal Planner (415/352-3660 jessicad@bcdc.ca.gov)
SUBJECT: Proposed Bay Plan Amendment No. 1-08 Concerning Climate Change,
City Council Resolution and Related Materials from the City of East Palo Alto
(For Commission information only)

Staff Report

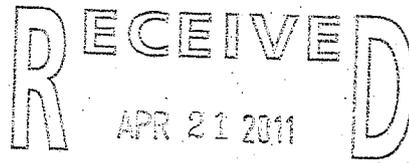
The following attached documents were submitted to the Commission by the City of East Palo Alto on April 21, 2011:

- City Council Resolution No. 4114
- Planning Staff Recommendation to Adopt Resolution
- Planning Staff Report
- Attachment 1: Draft Resolution
- Attachment 2: Planning Commission Minutes
- Attachment 6: Planning Commission Staff Report

The following list of additional documents were also submitted by the City of East Palo Alto but are not included in this mailing because they have been provided to the Commission in previous mailings:

- Attachment 3: Bay Planning Coalition Proposed Amendments and Comparison to Bay Plan
- Attachment 4: BCDC's Spanish Language Information on the Proposed Amendments
- Attachment 5: Public Comment Submitted to BCDC
- Presentation: "Responding to Rising Tides: San Francisco Bay", Steve Goldbeck, Deputy Director, San Francisco Bay Conservation and Development Commission





Reso. No. 4114

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

WHEREAS, BCDC staff has presented no analysis regarding the consistency of the proposed Bay Plan Amendment with existing General Plans or zoning laws of the City of East Palo; and

WHEREAS, BCDC staff has determined that low-income residents will be disproportionately affected by:

- Sea level rise in five Bay Area Counties
- Preparing for and coping with sea level rise
- Indirect impacts of sea level rise (e.g., from retrofits to protect critical infrastructure)

WHEREAS, BCDC staff has stated that "...BCDC has no authority to address social equity issues..." and has proposed no mitigation measure to address these disproportionate impacts to low-income communities; and

WHEREAS, BCDC staff concluded in its report accompanying the proposed Bay Plan Amendment that "the proposed amendment will have no significant adverse environmental impacts," without consulting with impacted communities and without considering various direct, indirect, and cumulative adverse impacts of the proposed Bay Plan Amendment, including those relating to displacement of people and businesses, traffic congestion, and tail pipe and green house gas emissions that would result from limiting shoreline protection and infill development opportunities; and

WHEREAS, the proposed Bay Plan Amendment, if adopted, could adversely affect existing residential, commercial, institutional, and industrial uses and property values of the land within the inundation zone, including the Ravenswood Business District; and

WHEREAS, BCDC held its first public hearing on the proposed Bay Plan Amendment in almost one year on October 7, 2010; and

WHEREAS, numerous cities, agencies, land owners, employers and Bay Area residents testified at the public hearing expressing great concern that insufficient outreach has occurred in the development of the proposed Bay Plan Amendment; and

WHEREAS, the Bay Plan Amendments incorporates the precautionary principle without consideration of how the proposal will redistribute costs and benefits.

NOW, THEREFORE, BE IT RESOLVED, THAT the City Council does hereby oppose the adoption of the Bay Plan Amendment proposed by BCDC staff and recommends consideration of the following alternative amendment attached

Reso No. 4114

hereto as Attachment 1, and incorporated by reference, along with two revisions thereto, including:

- Removal of the term, if feasible, from Attachment 1; and Acknowledgment of the shared responsibility of habitat conservation and preservation.

PASSED AND APPROVED on this 15th day of March, 2011, by the following vote:

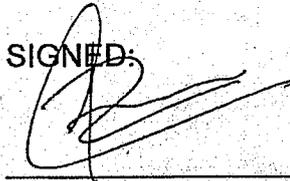
AYES: ABRICA, MARTINEZ, ROMERO

NOES: EVANS

ABSENT: WOODS

ABSTAIN: 0

SIGNED:



Carlos Romero, Mayor

ATTEST:



M L Gordon, City Clerk

APPROVED AS TO FORM:

Neelam Naidu, Deputy City Attorney
Vincent C. Ewing, City Attorney

CITY COUNCIL/REDEVELOPMENT AGENCY

Tuesday, March 15, 2011 Item No. 29

Public Hearing

San Francisco Bay Conservation and Development Commission Bay Plan Amendments in response to Climate Change (*Brent Butler, Planning Division Manager*)

Recommendation:

Adopt a Resolution advocating that the San Francisco Bay Conservation and Development Commission (BCDC) revise the Bay Plan amendments consistent with the February 14, 2011 Planning Commission recommendation.

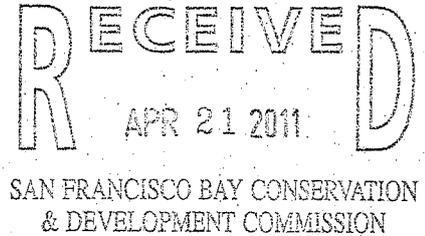
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APR 21 2011

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION



CITY OF EAST PALO ALTO
Community Development Department— Planning Division
1960 Tate Street • East Palo Alto, CA 94303
Tel: (650) 853-3185 • Fax: (650) 853-3179

Date: March 15, 2011
To: Honorable Mayor and Members of the City Council
Via: ML Gordon, City Manager
From: Brent A. Butler, AICP, CFM, Planning Manager



Subject: San Francisco Bay Conservation and Development Commission ("BCDC")
Bay Plan Amendments in response to Climate Change

RECOMMENDATION:

That the City Council

Adopt a Resolution advocating that the San Francisco Bay Conservation and Development Commission (BCDC) revise the Bay Plan amendments consistent with the February 14, 2011 Planning Commission recommendation.

ALIGNMENT WITH CITY COUNCIL STRATEGIC PLAN:

This recommendation is primarily aligned with:

Priority #2 Enhance Economic Vitality, and
Priority #4 Improve Public Facilities and Infrastructure.

BACKGROUND:

At the February 14, 2011 Planning Commission meeting, the Commission in a 4-0-1 vote, recommended changing the Bay Plan amendments¹ ("BP Amendments") to incorporate the suggested alternative language proposed by a coalition of organizations including the Bay Area Council, the Bay Planning Coalition and the Building Industry Association, hereinafter referred to as the 'Coalition Revision'. The Planning Division recommends that Council forward the attached Resolution to the BCDC, recommending

¹ Under the McAteer-Petris Act, the BCDC was established along with the scope of its authority and the area of its jurisdiction over San Francisco Bay and the shoreline. Administered by BCDC, the Bay Plan contains the policies and maps to guide future uses of the Bay and shoreline.

approval of the Coalition Revision with two modifications, as recommended by the Planning Commission: Removing the term, *if feasible*, as well as adding language concerning the shared responsibility of habitat/wetlands preservation. By adding these changes to the Coalition Revision, staff believes that preservation of the 'Commons'² would be done equitably and the burden would be shared.

Planning Commission's Proposed Changes to Coalition Language

Given the complexity of the Bay Plan, and the amendments proposed thereto, staff provided copies of the Bay Plan, the language proposed by BCDC, and that proposed by the Coalition Revision to the Planning Commission four weeks in advance of their deliberation. After reviewing the proposed amendments (See Attachment 5 – Planning Commission Staff Report) and considering three options³, the Planning Commission chose to adopt the Coalition proposed amendments with two changes:

TABLE 1: Planning Commission Recommendation

Revision 1 –Habitat preservation should be identified as a shared responsibility and one that should not unduly burden one municipality.
Revision 2 – The use of the term, if feasible, should be removed from the draft, as it is perceived to include consideration of profits.

BCDC Bay Plan Amendments (Precautionary Principle)

BCDC's December 7, 2009 minutes state: "He [BCDC staffer] believes that staff has implemented the precautionary principle in terms of how the plan is drafted in order to make sure that there are a number of strategies and approaches in the plan that will ensure that wildlife is protected, and at the same time making sure that opportunities for recreation are provided and expanded throughout the Bay."⁴ Review of the draft of the BP Amendments suggests that, as stated by BCDC staff, with the exception of engaging affected communities⁵, the precautionary principle ("PP") has largely been

² Commons refers to those resources shared by all and is defined as 'Of or relating to the community as a whole; public'. Many resources in the commons are held in trust by agencies such as the California State Lands Commission ("CSLC"), or in the case of Fisheries, the Federal Fish and Wildlife Service. According to the CSLC the Public Trust Doctrine which governs these resources has roots in Roman law, and as stated by the United States Supreme Court on the nature of a state's title to its tide and submerged lands "it is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing free from obstruction or interference from private parties. (See Illinois Central RR. Co. v. Illinois (1892) 146 U.S. 387, 452.

³ Three options include: (1) Adopting the Coalition proposed amendments, (2) Adopting the Coalition proposed amendments with modification by the Planning Commission, or (3) taking No Action.

⁴ See http://www.bcdc.ca.gov/minutes/2007/12-06_minutes.shtml.

⁵ As a result of public comment from those affected communities such as the Cities of Richmond and East Palo Alto, BCDC has begun the process to include affected communities.

incorporated in the amendments. The principle, which was incorporated into the Convention on Biological Diversity in 1992 urges for consideration of the greatest potential impact, such as would be expected with climate change's most dire sea-level rise predictions (55 inch sea level rise by 2100).⁶ In the event that no science is available, the PP would restrict development in anticipation of those impacts. 'Application of the precautionary principle can alter the distribution of costs and benefits that are faced by a range of actors. At its simplest, those who are engaged in an activity that is identified as possibly harmful (and therefore the object of precautionary action) may face costs or a loss of benefits, after precautionary action has been undertaken, if their freedom to engage in that activity has been circumscribed. Conversely, if precautionary action prevents harm occurring, then those who would have suffered as a result of that harm will be better off as a result of that precautionary action.'⁷

Excerpt from the Precautionary Principle

"Therefore it is necessary to implement the Precautionary Principle: Where an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.

In this context the proponent of an activity, rather than the public bears the burden of proof.

The process of applying the Precautionary Principle must be open, informed and democratic, and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action."

Potential for Impact

Based on the above interpretation, is it reasonable to anticipate that the BP Amendments could restrict development in the City's Ravenswood Business District, and therefore also limit the ability of the City to finance critical infrastructure improvements? Could the City finance new or upgraded levees to prevent flooding that is not attributable either in part or in whole to the San Francisquito Creek, which is under the jurisdiction of a Joint Powers Authority ("JPA")? Does the City expect the JPA to assume responsibility for substandard levees known to be inadequate only when high

⁶ The Convention on International Trade in Endangered Species endorsed a version of the principle in 1994.

⁷ Barney Dickson, Biodiversity and the Precautionary Principle: Risk, Uncertainty and Practice in Conservation and Sustainable Use, p. 275 (2005)

tide coincides with above normal precipitation? Has any comprehensive analysis of the levees been undertaken?

As identified in Table 2, the BP Amendments may require answers to these questions before allowing issuance of new permits without the contribution of other beneficiaries.⁸

TABLE 2: Areas of Potential Impact

Drafter	BCDC Policy Purpose
BCDC Staff	New policy requires assessment of sea level rise and flood risks in shoreline area planning and project design for permit applications submitted to BCDC.
BCDC Staff	New policy requires certain developments to be designed resilient to sea level rise based on a mid-century sea level rise protection and for developments of longer duration to also develop an adaptive management plan for addressing ongoing sea level rise, based on an end-of-century [2100] sea level rise projection.
BCDC Staff	New policy provides that low-lying areas with diverse habitat values or those that are suitable for natural resource enhancement should be protected or enhanced and where appropriate, permanently protected for these purposes.
BCDC Staff	New policy requires and recommends that development in low-lying areas be limited to minor repairs or small projects that do not increase risks to public safety, infill, natural resources restoration or enhancement, development providing significant regional benefits, interim or temporary uses, redevelopment that meets certain criteria, development outside of low-lying areas, or projects in low-lying areas that will not require future bay fill for shoreline protection to address future sea level rise.
Source: BCDC Bay Plan Amendments page 15 – 18	

Since the world's largest concentration of clapper rail are found within the City's sphere of influence, and other species requiring wetland resources have a disproportionate burden on low-lying areas, should equity issues envisioned in the PP be addressed now? Should regional resources be made available to those municipalities rich in natural resource, such as engendered species and wetlands, where the resource results in net resource expenditures?

Equity Considerations / Environmental Justice

While other non-profits were actively participating by urging the precautionary approach, few, if any local governments that would be identified by the PP as 'affected communities' were involved in the drafting of the document.⁹ Equity tests are frequently answered by questions such as: Was the City of East Palo Alto formally consulted about the draft language in a meaningful way prior to distribution of the BP

⁸ Beneficiaries in this context refers to the general public

⁹ See http://www.bcdc.ca.gov/minutes/2009/11-05_minutes.pdf comments from Mr. David Lewis, Save The Bay Executive Director

amendments? Were any of the authors of the proposed amendments residents, staff or non-profits of the City of East Palo Alto, or similarly affected municipalities? According to other authorities adopting the PP, this examination should include an economic cost/benefit analysis when this is appropriate and feasible.¹⁰ Other analysis methods, such as those concerning efficacy and the socioeconomic impact of the various options, may be relevant.

Steps Initiated by BCDC to Address Equity

Starting in the fall of 2010, BCDC initiated efforts to be responsive to the disproportionate burden that the BP Amendments will have on populations residing in the low-lying areas by: 1) providing translations that explain the proposal in several languages; 2) hosting meetings in various communities around the Bay, and 3) delaying final action until the spring of 2011.

FISCAL IMPACT

The adoption of this Resolution is not anticipated to have any direct fiscal impact. However, if BP Amendments are adopted that restrict development of areas such as the City's Ravenswood Business District, significant impacts are anticipated. First, the City's investment in the specific planning process currently underway would be undermined. Second, increased contribution of the RBD to the City's General Fund would likely be eliminated without a realistic financing plan in place for levee improvement. Contributing to the discussion underway by the BCD C poses no risk, and allows the interests of the City of East Palo Alto to be considered at the policy level.

ATTACHMENTS

ATTACHMENT 1 – Draft Resolution

ATTACHMENT 2 - Planning Commission Minutes

ATTACHMENT 3 – Coalition Proposed Amendments and Comparison to Bay Plan

ATTACHMENT 4 – Spanish Language Information on the proposed amendments

ATTACHMENT 5 – Public Comment Submitted to BCDC

ATTACHMENT 6 - Planning Commission Staff reports

¹⁰ Excerpt from the European Commission guidance on the PP.

ATTACHMENT 1 – Draft Resolution

RESOLUTION NO. ____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO
PROTECTING THE RESIDENTS AND BUSINESSES OF THE CITY OF EAST
PALO ALTO FROM FUTURE SEA LEVEL RISE AND REQUESTING
MODIFICATION OF THE PROPOSED CLIMATE CHANGE BAY PLAN
AMENDMENT 1-08**

WHEREAS, the City of East Palo Alto was incorporated in 1983 in San Mateo County and maintains police powers to ensure the health and well-being of its residents; and

WHEREAS, the State of California has recognized the role of local government in planning for and responding to climate change through its legislative actions, such as the Global Warming Solutions Act of 2006 (AB 32) and the Sustainable Communities and Climate Protection Act of 2008 (SB 375), and the California Air Resources Board has stated in its Climate Change Scoping Plan, that local governments are "essential partners" to achieving the State's climate change goals; and

WHEREAS, the City currently evaluates the effects of sea level rise and climate change as part of its standard environmental review process under the California Environmental Quality Act; and

WHEREAS, the City is incorporating Climate Change as part of its General Plan Update; and

WHEREAS, the Bay Conservation Development Commission (BCDC) is a limited purpose agency of the State of California; and

WHEREAS, BCDC staff has projected that sea level will rise 55 inches by the year 2100, identifying 213,000 acres of land around the Bay as being in the potential sea level rise inundation zone and vulnerable to flooding; and

WHEREAS, substantial portions of the City are within the identified inundation zone; and

WHEREAS, BCDC staff has prepared a proposed Bay Plan Amendment that would establish a policy that specifies, among other things, "until a regional sea level rise adaptation strategy can be completed, when planning or regulating new development in areas vulnerable to future shoreline flooding, new projects should be limited..."; and

WHEREAS, the proposed Bay Plan Amendment may impose additional burdens on the City in its compliance with the California Environmental Quality Act and may expose the City to additional risks of litigation under that Act; and

WHEREAS, BCDC staff has presented no analysis regarding the consistency of the proposed Bay Plan Amendment with existing General Plans or zoning laws of the City of East Palo; and

WHEREAS, BCDC staff has determined that low-income residents will be disproportionately affected by:

- Sea level rise in five Bay Area Counties
- Preparing for and coping with sea level rise
- Indirect impacts of sea level rise (e.g., from retrofits to protect critical infrastructure)

WHEREAS, BCDC staff has stated that "...BCDC has no authority to address social equity issues..." and has proposed no mitigation measure to address these disproportionate impacts to low-income communities; and

WHEREAS, BCDC staff concluded in its report accompanying the proposed Bay Plan Amendment that "the proposed amendment will have no significant adverse environmental impacts," without consulting with impacted communities and without considering various direct, indirect, and cumulative adverse impacts of the proposed Bay Plan Amendment, including those relating to displacement of people and businesses, traffic congestion, and tail pipe and green house gas emissions that would result from limiting shoreline protection and infill development opportunities; and

WHEREAS, the proposed Bay Plan Amendment, if adopted, could adversely affect existing residential, commercial, institutional, and industrial uses and property values of the land within the inundation zone, including the Ravenswood Business District; and

WHEREAS, BCDC held its first public hearing on the proposed Bay Plan Amendment in almost one year on October 7, 2010; and

WHEREAS, numerous cities, agencies, land owners, employers and Bay Area residents testified at the public hearing expressing great concern that insufficient outreach has occurred in the development of the proposed Bay Plan Amendment; and

WHEREAS, the Bay Plan Amendments incorporates the precautionary principle without consideration of how the proposal will redistribute costs and benefits.

NOW, THEREFORE, BE IT RESOLVED, THAT the City Council does hereby oppose the adoption of the Bay Plan Amendment proposed by BCDC staff and recommends consideration of the following alternative amendment attached

ATTACHMENT 1

hereto as Attachment 1, and incorporated by reference, along with two revisions thereto, including:

- Removal of the term, if feasible, from Attachment 1; and Acknowledgment of the shared responsibility of habitat conservation and preservation.

PASSED AND APPROVED on this 15th day of March, 2011; by the following vote:

AYES:NOES:

ABSENT:

ABSTAIN:

SIGNED:

Carlos Romero, Mayor

ATTEST:

M L Gordon, City Clerk

APPROVED AS TO FORM:

Vincent C. Ewing, City Attorney

ATTACHMENT 2 - Planning Commission Minutes

Action: Motion to require another code compliance review in three months – Chantler; second – Allen. Vote: 5-0.

8. **Public Hearing:** Allow by right the development of Single Room Occupancy (SRO) projects in High Density Residential Zones.
Location: Citywide
Project Planner: Brad Tarr

Senior Planner Tarr delivered a presentation.

Action: Motion to open the public hearing – Sherrard; second - Allen. Vote: 5-0.

Chairperson Glover Chantler and Vice Chair Sherrard shared concerns about NIMBYism since such developments are not always welcomed. Palo Alto's two SRO were recommended as a 'best practice'. The use of the term Efficiency Units, as opposed to SRO, was recommended.

Commissioner Allen advocated incorporating the R-M-1000 zones as permitted designations for SRO developments.

Action: Motion to approve the resolution to approve SROs as a permitted use in the R-M-500 zones and that the definition of SRO be added to the list of definitions – Sherrard; - second – Quezada. Vote: 4-1 (Allen dissenting).

9. **Presentation:** Bay Conservation Development Commission (BCDC) Bay Plan Update
Location: All regions of the San Francisco Bay.
Owner/Applicant: San Francisco Bay Conservation Development Commission
Project Planner: Brent Butler

After a brief presentation by the Planning Manager that included an explanation that proposed amendments to the Bay Plan seem to incorporate the Precautionary Principal interpretation that the Bay Plan Amendments attempts to incorporate, the Planning Commission recommended adoption of the proposed alternative language for City Council action.

Action: Motion to recommend that the City Council recommend approving the coalition proposed amendments with two friendly amendments, including: one amendment proposed by Chair Glover that staff draft language removing the term, 'if feasible', since this frequently is used to ensure that a developer receives a profit, and adding language proposed by Commissioner Huerta acknowledging that responsibility for habitat/species preservation should be universally shared – Allen; second – Huerta. Vote: 4-0-1 (Sherrard abstaining).

10. **Adjournment** – 9:45 pm

ATTACHMENT 6 - Planning Commission Staff reports



PRELIMINARY STAFF REPORT

*City of East Palo Alto
Planning Division*

Project: Amendments to the Bay Plan
Date: October 21, 2010
To: Honorable Chair & Members of the East Palo Alto Planning Commission
From: Brent A. Butler, CFM, AICP

I. Introduction

Applicant/Owner: City of East Palo Alto

Request: Issue Findings on Proposed Amendments to the Bay Plan

Location: All Areas of the City

General Plan/Zoning Designations: All General Plan and Zoning Designations of the City of East Palo Alto

Environmental: The San Francisco Bay Conservation Development Commission ("BCDC") finds this project exempt under the California Environmental Quality Act ("CEQA")

Recommendation: After reviewing the Bay Plan, the proposed amendments to the Bay Plan, the CEQA determination concerning those plans, the presentation by the BCDC Deputy Executive Director, and the record as included herein, staff recommends that the Planning Commission forward for consideration to the City Council the following:

1. A resolution with findings that the Bay Plan amendments, as proposed, are not exempt under CEQA and should include social policy considerations, as outlined by the CA Office of Planning and Research; and
2. Alternative amendments to the Bay Plan, as proposed by the Planning Commission, should be forwarded to the City Council for consideration.

II. Planning Commission Action

Introduction

This review of the Bay Plan amendments is to deliberate ideas for the purpose of developing alternative language that addresses anticipated climate change and to inform the City Council of the findings (See attachment 2). The amendments, which have been proposed by BCDC, may have significant and long-lasting impacts on cities in the 100 year and 500 year floodplain, such as the City of East Palo Alto. No formal response has been submitted to BCDC, and the process is moving rapidly without any input from the City of East Palo Alto ("EPA").

Planning Agency Action

On 14 December 2009, the EPA Planning Commission held a study session (See attachment 3), which included a presentation by the Deputy Executive Director of the San Francisco Bay Conservation Development Commission ("BCDC"). Under the McAteer-Petris Act, BCDC was established along with the scope of its authority, and the area of its jurisdiction over San Francisco Bay and the shoreline. The Bay Plan ("BP"), a copy of which is attached, is administered by BCDC. BP contains the policies to guide future uses of the Bay and shoreline, and the maps that apply these policies to the present Bay and shoreline. At the time of BCDC's presentation to the Planning Commission, neither pending amendments to the plan, nor details of those proposed amendments were discussed. The December 2009 study session occurred to inform the Planning Agency¹ (Agency) and the City Council which higher regulatory standards should be considered for adoption. Study sessions are generally used to inform the Agency of new science, or to receive further direction so that informed recommendations can be proposed.

Action 1

In response to the presentation by BCDC, the Planning Division drafted a resolution along with the Floodplain Management Action plan, which was adopted unanimously by the City Council on April 6, 2010 (See Attachment 4).

Action 2

The Planning Division also received City Council support for the City's enrollment in the Community Rating System, so that those property owners who are required to purchase flood insurance could receive discounts based on the higher regulatory standards adopted locally (See Item 5c – October 25, 2010).

Outreach Concerning the Proposed Amendments

After the above actions were taken by the Planning Division, no further legislative or advisory body action was taken, as the Planning Agency was not informed of the proposed amendments to the BP. Since consultation surrounding the proposed amendments to the BP did not occur as part of that study session, the Planning Division is now gathering feedback on the amendments which, given their proposed adoption date of December 2010, leaves little time for the extensive public outreach considered necessary in a community where more than 60% of the population speak English as a second language. ***No materials have been provided by BCDC in Spanish.*** Nonetheless, the Planning Division requests your consideration of the proposed BCDC amendments so that the City Council has the possibility of reviewing recommendations on November 3, 2010. Moreover, you are hereby advised that the BCDC will consider comments from the general public in Oakland at 1PM on October 29, 2010, and in San Francisco on

¹ Planning Agency, includes the Planning Division and the Planning Commission.

November 4, 2010. While BCDC originally requested the alternative language to amend the Bay Plan be proposed at these meetings, at the BCDC meeting on Thursday, October 28, 2010 the staff indicated that the process to adopt amendments to the Bay Plan may be delayed in recognition that additional outreach to local government is necessary.

III. BAY PLAN²

In response to development activities in the Bay resulting in fill, and the long history of the San Francisco Bay as a resilient body of water providing cultural, social, and economic sustenance for the residents of the greater San Francisco Bay Area, and the Native Americans in the area prior to the arrival of the Europeans, the Bay Plan was established along with governance provisions. The final Bay Plan was adopted in 1968, and approved by the State legislature in 1969.

A. PROPOSED CLIMATE CHANGE AMENDMENTS

During the last twenty years increasing awareness that humans have contributed to global climate change, and that the effects of climate change may vary by region resulted in the consideration of new policy, first at the international level through the establishment of the International Framework Convention on Climate Change based in Bonn, Germany, then at the State level through the adoption by the State of California of new legislature, and now, at the local level. The United States became a Party to the UN Framework Convention on Climate Change (UNFCCC) upon ratification of the treaty by congress in October 1992.³ Now, eighteen years later, the City of East Palo Alto is being asked to act through the agency designated under the Bay Plan to recommend alternative language if necessary.

B. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on language in the BCDC proposed amendments, the Planning Division encourages the Planning Commission to issue findings that are relevant under CEQA, and then to review alternative language that ensure future growth, but do so in a way that limits risks to future populations.

Issue 1 – Aesthetics

Based on the proposed amendments highlighted below, the Planning Division sees the potential for disinvestment, which could result in blight, thereby impacting the aesthetics of the City.

TABLE 1.1 – POTENTIAL BLIGHT INDUCING LANGUAGE		
Proposed Amendment	Section	Language
	Climate Change	Until a regional sea level rise adaptation strategy can be completed, when planning or regulating new development in areas vulnerable to future shoreline flooding, new project should be limited to: <i>See sub categories (c) and (d)</i>
	Safety of Fills	Local governments and special districts with responsibilities for flood protection should assure that their requirements and criteria address future relative sea level rise so that new structures and uses attracting people are not approved in current or future flood prone areas, and that structures and uses that are approved will be built at stable elevations and are property designated to assure long-term protection.

² See <http://www.bcdc.ca.gov/pdf/planning/plans/bayplan/bayplan.pdf>; available online October 20, 2010

³ See http://www.epa.gov/climatechange/policy/international_unfccc.html, available online October 20, 2010

Discussion: Aside from certain infrastructure projects, which are also called out, the Amendments provide that new, permanent commercial development should be confined to: (1) infill projects that would be protected anyway; and (2) a limited number of Brownfields redevelopment projects that, among other things, have an internal financial assurance mechanism covering the cost of sea level rise and storm events in perpetuity (e.g., Katrina self-insurance). There is other language in the Amendments that addresses retreat and abandonment of development.

By prohibiting the productive use of urban lands throughout the region, the Amendments are likely to conflict with General, Specific, and Redevelopment Plans of the City of East Palo Alto. If the Amendments are adopted, the likely consequences will be measured in terms of capital disinvestment, decreased property values/tax base, litigation, and stalled projects.

Issue 2 – Hazards and Hazardous Materials

Equally of concern are findings that EPA, a designated brownfields showcase community by the United States Environmental Protection Action, will not have the resources necessary to remediate the sites of concern thus increasing the likelihood that during inundation that these contaminants can be transported offsite to other areas of the City.

The specific amendments of concern include:

Redevelopment that will remediate existing environmental degradation or contamination, particularly on closed military bases, if the redevelopment will (1) provide significant regional benefits and meet regional goals by concentrating employment or housing near adequate transit service sufficient to serve the project, and (2) include the following elements; (i) an adaptation strategy for dealing with rising sea level... for the life of the project; (ii) measures that will achieve resilience and sustainability in all elements of the project; (iii) a permanent financial strategy that will guarantee the general public will not be burdened with the cost of protecting the project from any sea level rise or storm damage in the future. Climate Change Policy 6(d).

Issue 3 – Population and Housing

Since the City has designated that new housing required by the California Department of Housing and Community Development's Regional Housing Needs Assessment (RHNA) would be accommodated within future areas impacted by Climate Change, the question as to how to plan and prepare for future growth is significant.

In conclusion, BCDC has elected not to issue an environmental impact report. Instead, the Amendments' Staff Report concludes "that the proposed amendment will have no significant adverse environmental impacts." While the environmental effects created by the Amendments as highlighted above do not appear to have been considered. BCDC has developed environmental assessment regulations that have been certified by the California Secretary of Resources as "functionally equivalent" to CEQA, the staff findings allow it to avoid following CEQA's public process⁴.

PPROCESS TO PROPOSE AMENDMENTS

After issuing findings concerning the proposed amendments, the Planning Division will use a PowerPoint presentation to provide a method by which alternative language can be considered.

ATTACHMENT 1 – DRAFT Resolution

ATTACHMENT 2 – Bay Plan and Proposed Amendments (omitted) 3-11-2011

ATTACHMENT 3 - December 14, 2009 Study Session

ATTACHMENT 4 - April 6, 2010 City Council Packet (omitted) 3-11-2011

⁴ SF Bay Conservation Development Commission, Bay Plan Amends CEQA