



Midpeninsula Regional
Open Space District

R-11-62
Meeting 11-20
July 27, 2011

AGENDA ITEM 5

AGENDA ITEM

Adoption of a Comprehensive Use and Management Plan Amendment for Ravenswood Open Space Preserve, Approval of a Partnership Agreement Amendment to allow the City of East Palo Alto (City) to begin site remediation and initial public access work at Cooley Landing, Approval of a Joint Permitting Agreement among the District, City of East Palo Alto and City of Menlo Park to facilitate the development review process of the proposed Cooley Landing Project, and Concurrence with the City's Certification of the Mitigated Negative Declaration (MND)

GENERAL MANAGER'S RECOMMENDATIONS

1. Adopt the Comprehensive Use and Management Plan Amendment as contained in this report.
2. Find that the District, acting as a Responsible Agency, has reviewed and considered the MND prepared by the City of East Palo Alto as lead agency, and concurs with the findings therein with respect to the Project.
3. Adopt the attached Resolution authorizing execution of the Partnership Agreement Amendment with the City of East Palo Alto for the Cooley Landing Area and the Joint Permitting Agreement among the District, the City of East Palo Alto. and the City of Menlo Park.

SUMMARY

On February 24, 2010, the Board adopted a Resolution authorizing execution of a Partnership Agreement with the City of East Palo Alto (City) for the Cooley Landing Area with the goal of developing the site into a park (see Report R-10-29). On July 14, 2010, the Board received an oral presentation on the Cooley Landing Vision Plan and gave its support for using the Vision Plan as the Project Description for the environmental review process (see Report R-10-85). In support of the proposed Project, the District, as a Responsible Agency whose action is needed for the Project to proceed, assisted the City with its California Environmental Quality Act (CEQA) review of the Project. The City certified a MND for the Project on February 15, 2011. Since then, the District has continued to actively participate in the City's planning, design, and environmental review process, including providing input on the bid documents the City has prepared for implementation of Phase 1 of the Project. Phase 1 includes site remediation and

initial public access via a proposed trail loop through the site. The City hopes to begin remediation work in late September 2011. The two Amendments and the Joint Permitting Agreement before the Board are critical path items that will allow the City to begin construction, and after the work is complete, conduct operations and maintenance for Cooley Landing.

DISCUSSION

Background

The Comprehensive Use and Management Plan for Ravenswood Open Space Preserve (Preserve) was last amended by the Board on February 24, 2010 (see Report 10-29) to designate a portion of the Preserve as the “Cooley Landing Area” (see Exhibit A), and authorize execution of a Partnership Agreement with the City for the Project.

The Partnership Agreement better positioned the City for grant funding opportunities, including Proposition 84 monies (*Statewide Park Development and Community Revitalization Program of 2008* through the California Department of Parks and Recreation). The Partnership Agreement describes the various roles, responsibilities, and the anticipated timeframes for Project development. The Partnership Agreement sets a methodical and phased approach with milestones to accomplish the long-term development of the Cooley Landing Area. Tasks under Milestone I consist of planning, design, and environmental review of the Project. Tasks under Milestone II consist of bidding and construction of the final design. Tasks under Milestone III consist of the official opening and subsequent management and operation of the Project.

As the City proceeds with Project implementation, amendments to both the Comprehensive Use and Management Plan and the Partnership Agreement must be in place prior to initiating each new Milestone under Phase 1 of the Vision Plan. Timing is critical to allow the City to expend grant funds awarded to date, many of which will expire in 2012. Given these deadlines, the City is motivated to begin construction as soon as all necessary permits are obtained. To facilitate continued progress on the Project, the General Manager recommends that the Board adopt the Comprehensive Use and Management Plan Amendment, the Partnership Agreement Amendment with the City and the Joint Permitting Agreement among the District, the City of East Palo Alto, and the City of Menlo Park for the Cooley Landing Area.

COMPREHENSIVE USE AND MANAGEMENT PLAN AMENDMENT

The Comprehensive Use and Management Plan Amendment addresses Phase 1 of the Vision Plan only and, if approved by the Board, will be amended in the future as the City implements subsequent phases of the Vision Plan. Implementation of future phases will depend on funding availability and the restricted period of time that construction may take place, from September 1st to January 1st, due to regulatory agency concerns about nesting clapper rail.

Phase 1 includes site remediation in the form of a soil cap over the entire project area past the Preserve parking lot. Phase 1 also includes a proposed trail loop, accessible parking spaces, picnic tables, trash cans, a portable restroom, and possibly temporary bike racks.

This Amendment supersedes prior use and management plans for the Cooley Landing area of Ravenswood Open Space Preserve.

Operation and
Maintenance of
Cooley
Landing:

Related to the City's responsibilities:

Allow the City to:

1. Operate and maintain the Cooley Landing area.

Site Safety
Inspection:

Related to the City's responsibilities:

Allow the City to:

1. Install a soil cap over the Cooley Landing area of the Preserve as part of the Remedial Action Plan (RAP) as approved by the Regional Water Quality Control Board (Regional Board).
2. Remove 40 to 50 existing trees as part of the RAP to install a soil cap as required by the Regional Board and San Mateo County Environmental Health Division.

Related to the District's responsibilities:

1. Commit to working with the Regional Board and the City to establish institutional control to implement operations and maintenance of the soil cap in perpetuity.

Public Access:

Related to the City's responsibilities:

Allow the City to:

1. Share the use of the Preserve parking lot for users to access both the Preserve and Cooley Landing.
2. Improve and pave the existing drive and parking lot.
3. Add accessible parking spaces on District land as part of the City's proposed access roadway within Cooley Landing.
4. Install a portable restroom as a temporary measure in preparation for permanent facilities in future phases.
5. Install picnic tables and trash cans.
6. Install temporary bike racks if so desired.

Related to the District's responsibilities:

1. Upon completion of construction, designate the now closed Cooley Landing area of the Preserve open to the public.
2. Designate the proposed loop trail through Cooley Landing as a Bay Trail spur trail segment.
3. Prohibit equestrian and dog use in the Cooley Landing area.
4. Issue a Right of Entry to the Cooley Landing Area to the City consistent with the Agreement and Amendment for a 35-year term.
5. Commit to working with the City to study the effects and implications of allowing fishing and kayaking/canoeing off the District's portions of the Cooley Landing area.

Signs and Site
Security:

Related to the City's responsibilities:

Allow the City to:

1. Install new information, interpretive, and regulatory signs associated with the Cooley Landing area, including:
 - Partners recognition sign
 - Entry sign at the main gate at the end of Bay Road, which will include the Preserve
 - Bay Trail signage
 - City rules and regulations signage, which will direct the public to direct calls to the City for Cooley Landing related issues
 - Accessible parking signage
2. Install an automatic electric gate to facilitate and automate opening and closing of the Preserve and Cooley Landing, thereby relieving the District of the need to close the gate in the evening. City staff currently opens the gate in the morning on most days (City holidays and weekends are the exception).

Structures and
Improvements:

Related to the City's responsibilities:

Allow the City to:

1. Install a utility trench and associated utilities for future project phases down the center of the existing access drive
2. Remove the existing barbed wire fencing and metal gate preventing access to Cooley Landing
3. Remove the existing wood curb fencing along the access drive to facilitate the proposed roadway improvements
4. Install new fencing to prevent access to existing wetlands to the south.

Related to the District's responsibilities:

1. Commit to working with the City to adjust the current access easement to follow the center of the drive instead of the southern edge of the parcel.

Resource
Management:

Related to the City's responsibilities:

Allow the City to:

1. Conduct invasive plant and animal management activities, including any required predator control, consistent with the District's standard policies and procedures.
2. Remove existing invasive vegetation and restore with drought-tolerant herbaceous plants and grasses.
3. Remove 40 to 50 existing trees to install a soil cap as required by the Regional Board.
4. Allow the City to retain a selection of existing trees if permitted by the regulatory agencies.

- Patrol: *Related to the City's responsibilities:*
 Allow the City to:
1. Continue to jointly patrol the access drive and existing Preserve parking lot.
 2. Continue patrolling Cooley Landing.
- Related to the District's responsibilities:*
1. Continue to routinely patrol the Preserve utilizing the existing access drive and trails, existing and proposed.
 2. Commit to working with the Menlo Park Fire Protection District (Fire District) to allow the Fire District to conduct rescue and training operations from the proposed airboat launch area at Cooley Landing.
- Roads and Trails: *Related to the City's responsibilities:*
 Allow the City to:
1. Jointly maintain the existing Preserve lot and access drive.
 2. Maintain the Cooley Landing parking area and Cooley Landing trails.
- CEQA: A MND was prepared in 2009 by the City as lead agency, circulated for public comment, and certified by the City on February 10, 2011. The City will implement the Mitigation Monitoring and Reporting Program (MMRP) during all phases of construction, operation and maintenance.
- Dedication: The Preserve is currently comprised of 372 acres of dedicated open space land.
- Subsequent Planning and Coordination: Future coordination with the City and other agencies includes the following:
1. Under the leadership of the City, continue to work in partnership to develop future phases of the Vision Plan for the Cooley Landing area, with the overall goal of developing a public park featuring environmentally compatible recreational amenities for the benefit of the community, such as nature study, historic interpretation, outdoor education, and low-intensity outdoor recreation.
 2. Commit to working with the City to study the effects and implications of allowing fishing and kayaking/canoeing off the District's portions of the Cooley Landing area.
 3. Establish institutional control for long-term operations and maintenance of the soil cap as required by the Regional Board.
 4. Establish a use/access agreement with the Menlo Park Fire Protection District.
 5. Commit to working with the City to adjust the current access easement to follow the center of the drive instead of the southern edge of the parcel.
 6. Designate the proposed new loop trail as a Bay Trail spur trail segment.

7. Amend the Partnership Agreement as needed and as the City moves forward with future phases of work and establish parameters of future park operations and maintenance.

PARTNERSHIP AGREEMENT AMENDMENT

The Amendment to the Partnership Agreement addresses only Phase 1 of the Vision Plan, and provides a framework within which the District and the City can coordinate in the future as more phases are developed and constructed. The City would coordinate and provide the District with the opportunity to review, approve, and comment on construction plans and specifications and bid packages prepared by City for all subsequent phases of Project construction and implementation.

The Amendment to the Partnership Agreement allows for all of the elements in the Use and Management Plan Amendment listed in the above section. In addition, the Amendment addresses use, operations, and maintenance of Cooley Landing, including the following:

1. Equestrian and dog use is prohibited except for guide and service dogs.
2. The City will continue to open the gate to Cooley Landing and the Preserve no later than 9 a.m. and close the gate one half hour after sunset every day. The operating hours of Cooley Landing will match the Preserve's hours.
3. The City will enforce City regulations and ordinances and County ordinances at Cooley Landing.
4. The City will guard against or eliminate fire hazards, including prohibiting smoking or allowing vehicles to be parked on dry grass.
5. The City will issue permits for vending and special uses at Cooley Landing subject to District regulations.
6. The City will maintain Cooley Landing, including trails, infrastructure (lights, utilities, signs, picnic tables, trash cans, restroom, etc.), landscaping, regular trash removal, graffiti removal, and other maintenance as required to keep the park in a high-quality condition.
7. The City will also follow the standards of care outlined in the MND and MMRP certified by its City Council on February 15, 2011.
8. The City will continue to patrol Cooley Landing past the Preserve parking lot and share patrol responsibility of the existing access drive and Preserve parking lot. The District will continue to patrol the Preserve and associated trails.

The District and City will continue to prepare and present amendments to the Partnership Agreement as the Project continues from one phase of construction to the next. Amendments to the Partnership Agreement, authorizing each phase, will be brought back to the Board for consideration and approval.

JOINT PERMITTING AGREEMENT

The proposed Project is located within the jurisdictions of the City of East Palo Alto and the City of Menlo Park (the Cities). Staff for the Cities and District collaborated on developing a draft Joint Permitting Agreement to achieve a timely, efficient, orderly and proper development review process for the proposed Project in accordance with the land use regulations of the respective jurisdictions of the Cities. Under the proposed Joint Permitting Agreement, if the Project is approved and implemented, then the City of East Palo Alto would serve as the lead permitting agency for all necessary Project approvals. Accordingly, under the terms of the proposed Joint Permitting Agreement, a Conditional Use Permit would be the only Project approval that the City of East Palo Alto would be required to obtain from the City of Menlo Park for that portion of the Project proposed to be developed within Menlo Park's jurisdictional boundaries. The proposed Joint Permitting Agreement would terminate upon completion of the Project or upon determination by the District or the City of East Palo Alto that environmental or legal obstacles to the proposed Project would render its implementation infeasible.

FISCAL IMPACT

Construction of Phase 1 is expected to begin in the fall of 2011 and is being financed by City funds and City-obtained grants. No District funds will be expended other than those required for District coordination, monitoring, and review which is included in the FY2011-12 budget. The City has obtained approximately \$1.7 million in grant funds for the Project, including a \$200,000 grant recently awarded in early June from the U.S. Environmental Protection Agency (US EPA) Brownfields Cleanup Grant Program. City staff continues to actively seek grant funding for future phases of the Project.

PUBLIC NOTICE

Public notice of this Agenda Item was provided pursuant to the Brown Act. No additional notice is required.

CEQA COMPLIANCE

Amending the Comprehensive Use and Management Plan and the Partnership Agreement and entering into the Joint Permitting Agreement are consistent with the MND and MMRP for the Cooley Landing Vision Plan as certified by East Palo Alto's City Council on February 15, 2011 (see Attachment 4). The District, acting as a Responsible Agency, has reviewed and considered the MND and MMRP and concurs with the findings therein with respect to the Project.

NEXT STEPS

Following Board approval of the proposed Amendments and Joint Permitting Agreement, Project implementation is anticipated to begin in the fall of 2011 with completion estimated by the summer of 2012. District staff will continue coordinating with the City throughout the construction of Phase 1 of the Vision Plan. District staff will also continue coordinating on the Subsequent Planning and Coordination elements listed above under the Comprehensive Use and Management Plan Amendment. Staff will bring these items to the Ad Hoc Committee for review and recommendation and then to the full Board at a public meeting likely in the spring of 2012.

Attachment(s)

1. Resolution
2. Partnership Agreement Amendment
3. Signed Partnership Agreement dated February 24, 2010
4. Joint Permitting Agreement
5. Map
6. City of East Palo Alto Staff Report regarding MND and MMRP for City Council meeting on February 15, 2011

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RESOLUTION NO. 11-XX

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING
THE AMENDMENT TO PARTNERSHIP AGREEMENT WITH THE CITY OF EAST
PALO ALTO AND THE JOINT PERMITTING AGREEMENT AMONG THE
DISTRICT, CITY OF EAST PALO ALTO AND CITY OF MENLO PARK FOR THE
COOLEY LANDING AREA OF RAVENSWOOD OPEN SPACE PRESERVE**

The Board of Directors of the Midpeninsula Regional Open Space District (“District”) does resolve as follows:

Section One. The District and City of East Palo Alto are parties to the Partnership Agreement (“Agreement”) for the Cooley Landing Project (“Project”) dated February 24, 2010. District and City wish to enter into an amendment to the Agreement in the form attached hereto as Exhibit A and made a part hereof which, among other things, would establish a template of terms and conditions that the parties would incorporate into the Agreement to continue facilitating development of future phases of the Project.

Section Two. The proposed Project is located within the jurisdictions of the cities of East Palo Alto and Menlo Park (“Cities”). To achieve a timely, efficient, orderly and proper development review process for the proposed Project in accordance with the land use regulations of the respective jurisdictions of the Cities, the Cities and District wish to enter into a joint permitting agreement, in the form attached hereto as Exhibit B and made a part hereof which, among other things, would provide that if the proposed Project is approved and implemented, then the City of East Palo would serve as the lead agency for permitting approvals.

Section Three. The Board of Directors of the Midpeninsula Regional Open Space District does hereby approve the Amendment to Partnership Agreement (“Amendment”) between the District and the City of East Palo Alto and the Joint Permitting Agreement among the District, the City of East Palo Alto and the City of Menlo Park. The Board hereby authorizes the President or other appropriate officers to execute said Amendment and the General Manager or the General Manager’s designee to execute the Joint Permitting Agreement on behalf of the District.

Section Four. The General Manager and General Counsel are further authorized to approve minor revisions to the Amendment and/or Joint Permitting Agreement which do not substantially change any material terms of the Agreement. The General Manager or the General Manager’s designee is further authorized to execute any and all other documents necessary or appropriate to entering into the Amendment and/or Joint Permitting Agreement.

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ATTACHMENT 2

AMENDMENT TO PARTNERSHIP AGREEMENT BETWEEN THE CITY OF EAST PALO ALTO AND THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT FOR THE COOLEY LANDING PROJECT

This Amendment to Partnership Agreement (“Amendment”) is entered into by and between the City of East Palo Alto, a municipal corporation (“City”), and the Midpeninsula Regional Open Space District, a public district under the laws of California (“District”), dated _____ (“Effective Date”).

WHEREAS, the City and District are parties to that certain Partnership Agreement between the City of East Palo Alto and the Midpeninsula Regional Open Space District for the Cooley Landing Project (“Project”) dated February 24, 2010 (“Agreement”).

WHEREAS, Section 4 of the Agreement provides that City and District shall meet and discuss in good faith all necessary amendments that may be needed at the completion of each plan review and permitting process to allow the Project to continue to the next Milestone (defined below).

WHEREAS, the plan review and permitting process Milestone for Phase 1 of the Project, remediation and trail access is near completion and the parties have discussed certain terms and conditions that should be reflected in the Agreement going forward.

WHEREAS, District and City desire to enter into this Amendment to, among other things, establish a template of terms and conditions which the parties wish to incorporate into the Agreement to continue facilitating development of future phases of the Project.

WHEREAS, except where specifically stated the terms and conditions set forth herein shall supplement those terms and conditions set forth in the Agreement.

WHEREAS, capitalized terms used but not defined in this Amendment shall have the respective meanings provided in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, City and District agree to the Amendment as follows:

1. **Recitals.** The recitals above are incorporated by reference as though fully stated herein.
2. **Project Milestones.** The term “Phase” as used and described in Section 2 of the Agreement is hereby deleted and replaced with the term “Milestone.” The term “Phase,” when used herein and in any subsequent amendment, shall refer to a phase or those phases of Construction as more specifically described in the Cooley Landing Vision Plan Project Plans and Specifications approved in concept by the City of East Palo Alto on July 20, 2010 (“Vision Plan”) and incorporated herein by reference.

3. **Term.** The third sentence in Section 3 is hereby deleted in its entirety and shall be replaced with the following:

“The maximum term of this Agreement shall not exceed 35 years without a written renewal or extension entered into by the parties acting on the authority of their appropriate legislative body.”
4. **Fulfillment of Conditions.** City agrees to cause the construction of the Project (“Construction”) and fulfill all conditions imposed by the City’s Planning Commission, City Council, District and other applicable laws and regulations.
5. **Applicability of Mitigated Negative Declaration.** City acknowledges and agrees that all activities performed or caused to be performed on the Preserve and in all Phases of the Project, now and in the future, shall be done in accordance with the Mitigated Negative Declaration and Mitigation Monitoring Program No. 10-13 certified and adopted by the East Palo Alto City Council on February 15, 2011, attached hereto as Exhibit A and made a part hereof.
6. **Grant of Permit to Enter; Conditions.** District hereby grants City a permit to enter the Preserve in connection with the Construction for Phase One of the Vision Plan. District and City understand and acknowledge that while the parties intend for this Amendment to serve as a template of terms and conditions to govern all phases of Project construction, the permit granted by District to City pursuant to this Section 6 is only applicable for Phase One activities as described in the Vision Plan. The parties further understand and acknowledge that City must receive a permit to enter from District prior to commencing any subsequent Project Construction Phase on the Preserve. Activities in connection with this permit to enter are subject to the following conditions, which City shall incorporate into any Phase One Construction agreement:
 - a. City shall at all times comply with all applicable District regulations, and with all other applicable federal, state and local authorities, laws, ordinances and regulations.
 - b. City shall limit the Construction activities on the Preserve to the area specifically depicted on Exhibit B and may not conduct activities on any District property outside of this area without prior written approval of the District.
 - c. If fueling must occur on-site, City shall cause designated areas located away from drainages and a drip pan to catch spills to be used. City shall use its best efforts to ensure that vehicles do not block roadways unless the vehicle is attended and can be moved immediately.
 - d. City shall cause all equipment and tools on the Preserve to be used with reasonable care and diligence, and take such precautions as are necessary to avoid damage to land, property, and people. District assumes no risk and shall have no responsibility for safeguarding Construction equipment, property,

and personnel from injury, death, or damage as a result of the construction of the Project.

- e. All vehicles involved in Project construction shall carry properly maintained ABC fire extinguishers while on the Preserve.
- f. City shall cause all concrete mixing to be done in secure containments. Concrete shall not be mixed within five feet of any waterway. Cleaning of tools shall occur in secure containments; City shall not allow tools to be cleaned in drainages or water bodies. All concrete waste shall be off-hauled; water is allowed to first evaporate in containments for ease of off-haul.
- g. City shall leave the Preserve in a condition equal to or better than the condition at commencement of Construction.
- h. City shall promptly notify the District upon completion of the Construction conducted hereunder.

7. **Construction.**

- a. Construction Plans and Specifications. District acknowledges that the City has provided, and the District has reviewed and commented on, in-progress plans for Phase One of Construction. For District's review, City will provide District with a final bid package for the Phase One of construction upon completion and prior to public release. City will provide District the opportunity to review and comment on construction plans and specifications and bid packages prepared by City for all subsequent Phases of Project construction prior to their implementation. All improvements shall be installed in accordance with all such corresponding construction plans and specifications.
- b. Commencement. Construction of the Project improvements shall commence and be performed by the City in an expedited, workmanlike manner. City shall provide District with a Construction schedule ("Construction Schedule") for each Phase of Construction within ten days following pre-Construction meetings that are held for each Phase of Construction. City shall use its best efforts to ensure that each Phase of Construction commences and proceeds in accordance with the Construction Schedule. The City shall notify the District, in writing and in a timely manner, of the timeframes established by the City for each bid opening process for each Phase of Project construction and any modifications thereto.
- c. Completion. City shall take all steps necessary to cause diligent prosecution and completion of the Project construction within the times set forth in the Construction Schedule.
- d. Coordination. City recognizes that the District may concurrently continue to utilize the District portions of Area B (as defined in the Agreement), which may remain open to the public as determined by the District in its sole

discretion. District and City shall meet and confer on a regular basis in order to coordinate all development and construction work.

- e. Construction Safeguards. City shall cause all necessary safeguards for the protection of workers and the public, as required by the conditions and the progress of Project work, to be erected and properly maintained at all times.

8. **Inspection and Access to Work.** All equipment, materials, and work shall be subject to inspection by the District. The District may at any time, subject to and in accordance with all applicable laws and regulations, observe the progress and quality of the work and determine, in general, if Construction is proceeding in accordance with the corresponding Construction plans and specifications. The District is not required to make comprehensive or continuous inspections to check the quality of the work, and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the District shall not relieve the City of its obligation to conduct comprehensive inspections of the work and to cause the furnishing of proper materials, labor, equipment and tools, construction of acceptable work, and providing adequate safety precautions, in conformance with the Agreement, as amended. If District discovers an issue during an inspection, the District may contact the City, and the City shall address such issue to the District's satisfaction within 30 days from the date of the District's contact with the City.

9. **Default.**

- a. Default Remedies. Failure by either party to perform any action or covenant required by this Amendment within the time periods provided herein following notice shall constitute a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Amendment, the claimant shall not institute any proceeding against the other party if (i) such party cures the Default within thirty (30) days following receipt of such notice of Default where the failure or delay is capable of being cured within 30 days, or (ii) such party immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence, but in any event no later than 90 days following the notice of Default, where such Default cannot be cured within 30 days.
- b. Institution of Legal Actions. Except as otherwise specifically provided herein, upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover actual damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California. Notwithstanding anything herein to the contrary, neither party shall have the

right to recover any consequential, special or punitive damages in the event of a Default by the other party.

10. **Maintenance and Management of Project and Related Infrastructure.** Except as otherwise provided in Section 11 herein, City shall assume responsibility for the patrol, operation, maintenance and management of the Project Site. City shall be responsible for maintaining and operating all Project-related infrastructure in the manner required to serve the Project and in accordance with the use and operating covenants set forth in Section 12.
11. **Parking Area.** City and District shall be jointly responsible for operating, maintaining and managing that area of the Project Site where the visitor parking lot is located. In the event any disagreement between the City and District arises involving the parking lot, including but not limited to issues regarding proportional use and sufficient accommodation for Preserve visitors, the parties agree to make diligent, good faith efforts to meet, discuss and develop a mutually agreeable resolution regarding any such disagreement(s). Additionally, the parties shall meet and confer prior to the commencement of each Construction Phase to assess parking lot usage and operations.
12. **Construction, Use, Operating and Maintenance Covenants.** City and its successors and assigns shall be required to construct, use, operate and maintain the Project in a high-quality manner and in accordance with the Vision Plan, and as more particularly provided below.
 - a. General. City covenants and agrees on behalf of itself and its successors and assigns that City shall use and continuously operate the Project for the uses herein specified and for no other purpose.
 - b. Governmental Requirements. City shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, labor codes, ordinances, rules and regulations, as well as the Consent Decree entered on November 16, 2005 by the United States District Court for the Northern District of California in the matter captioned United States of America and the State of California, by and through the California Department of Fish and Game and California State Lands Commission v. County of Santa Clara, et al. (No. CV-0373 PVT) (collectively, "Laws") which apply to the operation and use of the Project or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Project or any portion thereof under any Laws now or hereafter adopted, enacted or made and applicable to the Project or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Project or any portion thereof. All construction, use, operation and maintenance of the Project shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations.

- c. General Use Prohibitions. City covenants and agrees that in connection with the use and operation of the Project, and any portion thereof, City will not:
- i. Permit equestrian use; or
 - ii. Permit dogs, except guide and service dogs under physical control either participating in training program or already a specifically trained to assist the blind, deaf or disabled, and wearing an identifying vest or tag; ; or
 - iii. Permit undue accumulations of garbage, trash, rubbish or any other refuse; or
 - iv. Create, cause, maintain or permit any nuisance (as the same may be defined by applicable Law) in, on or about the Project; or
 - v. Commit or suffer to be committed any waste in, on or about the Project; or
 - vi. Use or allow the Project to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Project; or
 - vii. Do or permit to be done anything which in any way unreasonably disturbs the occupants of neighboring property; or
 - viii. Cause or permit any insurance coverage on the Project to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates; or
 - ix. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Project or to any adjacent public or private property or improvements; or
 - x. Violate any Law, ordinance or regulation applicable to the Project.
- d. General Operating Standards. City covenants and agrees that it shall operate the Project in such manner and by such means as will reflect positively upon District and City. City's responsibilities with respect to operating the Project shall include, but are not limited to:
- i. Should any unauthorized use or activity occur in Project, City may exercise its authority to correct these matters, including, where necessary, enforcing City regulations and ordinances and County ordinances.
 - ii. City shall cause all necessary precautions to be taken to guard against and eliminate fire hazards. No smoking or open campfires are allowed

on the Preserve, per District Ordinance. City shall not allow any vehicles to be parked on dry grass.

- iii. City shall report any encroachments or trespass by the neighboring properties upon the Project to the District.
- iv. The City shall set hours of Project operation to match those of the District's Preserve.
- v. Section 3.c. of the Agreement is hereby deleted and replaced with the following paragraph.

“The parties understand and acknowledge that City intends to install an electric gate which shall open and close in accordance with the District's Preserve hours. Prior to the installation of such electric gate, City is responsible for opening the Cooley Landing and Preserve gate at the end of Bay Road by 9 a.m. and closing the gate one half hour after sunset every day. If City is unable to fulfill this obligation, City shall immediately notify District at District's 24-hour Emergency Dispatch telephone number at (650) 903-6395. The District is responsible for opening and closing the gate when the City notifies the District it is unable to fulfill this obligation.”

- vi. Subject to District regulations, City shall issue and administer all permits for vending and special uses for the Project. District and City agree to jointly establish standards regarding the issuance of permits governing commercial solicitations on the Project Site in accordance with District Regulation section 600.1
 - vii. City may close portions of the Project where and when deemed necessary to avoid or correct a public health, safety or environmental hazard.
 - viii. City shall provide for routine patrols and emergency or urgent response, to, in and around the Project, at or above the level of services existing upon the date of execution of this Agreement.
- e. General Standards of Maintenance. City covenants and agrees that it shall maintain, or cause to be maintained, the Project, and all improvements and landscaping within the Project (including all structures, sidewalks, pedestrian lighting, landscaping, and any and all other improvements on the Project and associated open space and common areas) in high-quality condition and repair, subject only to normal wear and tear, and in compliance with the Maintenance Standards (defined below). City's compliance with the Maintenance Standards shall be judged by a comparative standard with the custom and practice generally applicable to comparable District open space preserve. To accomplish such maintenance, City shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance

work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section 12.e. The following standards ("Maintenance Standards") shall be complied with by City and its maintenance staff, contractors and subcontractors:

- i. Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing material originally installed thereon or such substitute therefor as shall be in all respects equal thereto or better in quality, appearance and durability;
- ii. Remove all papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required;
- iii. Maintain such appropriate entrance, exit and directional signs, markers and lights as shall be reasonably required;
- iv. Clean lighting fixtures and relamp and/or reballast as needed;
- v. Maintain landscaping as necessary to maintain in high-quality condition;
- vi. Maintain signs, including relamping and/or reballasting and/or repairing as required;
- vii. Maintain and keep in first-class condition and repair all benches, shelters, planters, trash containers, and other exterior elements;
- viii. Maintain and keep in a sanitary condition public restrooms and other common use facilities;
- ix. Clean, repair and maintain all common utility systems to the extent that the same are not cleaned, repaired and maintained by public utilities;
- x. Maintain all fountains, water courses and associated structures, drinking fountains, pumps and associated plumbing;
- xi. Provide adequate security lighting in all areas during periods of unrestricted public access, and maintain all security and decorative light fixtures and associated wiring systems;
- xii. Maintain all surface and storm lateral drainage systems;
- xiii. Maintain all sanitary sewer lateral connections;

- xiv. Promptly remove any graffiti on or about the Project;
- xv. Perform landscape maintenance including watering/irrigation, fertilization, pruning, trimming, shaping, and replacement, as needed, of all trees, shrubs, grass, and other plants or plant materials, weeding of all plants, planters and other planted areas, staking for support of plants as necessary, and clearance, cleaning and proper disposal of all cuttings, weeds, leaves and other debris; and
- xvi. Perform other maintenance as required by Law.

13. Indemnification.

- a. City agrees to indemnify, hold harmless, defend, and protect the District, its officers, directors, agents, and employees from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including all reasonable attorney's fees), penalties, judgments, or obligations whatsoever, made in connection with any injury, death, or damage to any person or property or pecuniary or monetary loss that results from, arises out of, or in any way relates to the activities contemplated in this Amendment.
- b. City hereby waives all claims and recourse against the District, including the right of contribution for loss or damage to property, and releases the District from liability to the extent such claims or liability were not caused by the sole negligence or willful misconduct of the District and provided such claims are related to City's activities under this Amendment or City's use of the Preserve.
- c. City shall be responsible for any and all personal injury and property damage on the Preserve caused by its acts or omissions as a result of any activities conducted pursuant to this Amendment, and shall indemnify the District against any and all claims, liabilities, or losses, including attorney's fees, on account thereof.
- d. City shall indemnify, defend, and hold harmless the District from and against any legal or administrative proceedings brought against the District, and all claims, liabilities, losses, damages, cleanup costs, remediation costs or other costs, foreseen and unforeseen, including without limitation, attorney, engineering, and other professional or expert fees, due to the existence of any hazardous substance of any kind on, in or under the Preserve, when the existence of such hazardous substance, in whole or in part, arises out of, is attributable to or is caused by any activities, acts or omissions by City under this Amendment, whether on-site or off-site.

14. Signage and Brochures. City shall include the following in all promotion materials about City's operations in the Project Site:

“Brought to you in partnership with the Midpeninsula Regional Open Space District.”

15. **Partnership Agreement Remains in Effect.** The Agreement, except as amended herein, shall continue in full force and effect with all other terms and conditions unchanged. If a conflict between terms in the Agreement and those in the Amendment arises, the provisions of this Amendment shall control the construction and interpretation thereof.

16. **Counterparts.** This Amendment may be executed in duplicate counterparts, which of which will be deemed an original.

17. **Authority.** Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

CITY OF EAST PALO ALTO:

By: _____
ML Gordon, City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Valerie J. Armento, Interim City Attorney

Date: _____

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT:

By: _____
President, Board of Directors

Date: _____

ATTEST:

District Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Susan M. Schectman, General Counsel

Date: _____

DRAFT

Exhibit A

Mitigated Negative Declaration

(to be attached)

DRAFT

Exhibit B
Construction Area
(to be attached)

DRAFT

**PARTNERSHIP AGREEMENT BETWEEN THE CITY OF EAST PALO ALTO AND
THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT FOR THE
COOLEY LANDING PROJECT**

THIS AGREEMENT is entered into by and between the CITY OF EAST PALO ALTO, a municipal corporation, ("CITY") and the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a public DISTRICT under the laws of California, ("DISTRICT"), dated February 24, 2010.

RECITALS

WHEREAS, DISTRICT's Mission is to acquire, restore, preserve and protect, in perpetuity, open space land as part of the regional greenbelt, and to provide opportunities for ecologically sensitive public enjoyment and education; and

WHEREAS, District owns those certain lands more specifically identified as San Mateo County Assessor's Parcel Numbers 063-590-040, 063-590-060, 096-230-150 and 096-230-130, comprising a portion of Ravenswood Open Space Preserve ("Preserve") and which have been legislatively dedicated for purposes of public open space pursuant to the California Public Resources Code; and

WHEREAS, CITY owns that certain parcel of land more specifically identified as San Mateo County Assessor's Parcel Number 063-590-030 which it has zoned for Resource Management purposes; and

WHEREAS, the CITY parcel and portions of the DISTRICT parcels make up that certain promontory of land into the San Francisco Bay generally known as Cooley Landing; and

WHEREAS, CITY and DISTRICT desire to further their common goal of providing accessible public open spaces to further the recreational and educational opportunities of their constituents, and

WHEREAS, CITY has undertaken a planning and development process (the "Project") to enhance such public open space and the associated recreational and educational values at Cooley Landing; and

WHEREAS, City intends to apply for grant funding for the Project under the Statewide Park Development and Community Revitalization Program of 2008; and

WHEREAS, DISTRICT desires that the Project include the Cooley Landing Area of Ravenswood Open Space Preserve owned by DISTRICT;

NOW, therefore, in consideration of the mutual promises, covenants and obligations contained herein, CITY and DISTRICT agree:

1. Project Site. DISTRICT owns the real property within the City of Menlo Park, State of California, as shown on Exhibit A, attached hereto and incorporated herein (“Project Site”), which consists of Area A, the upland portions of APNs 096-230-130 and 096-230-150 which are closed to the public, and Area B, within the Cities of East Palo Alto and Menlo Park, State of California, the Preserve public parking lot (portions of APN 063-590-040 and 063-590-060) which is open to the public.
2. Term. The term of this Agreement shall commence upon execution hereof by the duly authorized representatives of the CITY and the DISTRICT and shall consist of:
 - a. Phase I - Plan development, environmental review and permitting
 - b. Phase II - Project construction from completion of Phase I design
 - c. Phase III – Project operation upon completion of Phase II construction

Time is of the essence to this Agreement. City shall diligently pursue completion of Phases I and II consistent with its contractual obligations for grant funding and with all otherwise applicable laws and regulations. The maximum term of this Agreement shall not exceed 30 years without a written renewal or extension entered into by the parties acting on the authority of their appropriate legislative body. Before each subsequent phase, CITY and the DISTRICT shall amend this Agreement, as necessary to accommodate evolving conditions, including development of supplemental operations and maintenance agreements. The Parties agree to timely meet, and to negotiate in good faith, toward an extension of this Agreement, as it may be amended from time to time, at such time(s) as appropriate.

3. Site Use, Access, Control and Security.
 - a. CITY is permitted to access and use to the Project site for all purposes reasonably in furtherance of the Project plan development to be completed during such Phase I hereof.
 - b. CITY shall maintain control and security of the Project Site – Area A, including but not limited to restricting public access, securing the site by fencing or other appropriate means and regular law enforcement patrols. DISTRICT shall continue to maintain and secure Area B, except as otherwise noted in this Agreement.
 - c. CITY is responsible for opening the Preserve gate at the end of Bay Road by 9 a.m., each weekday morning (Monday through Friday), excluding CITY holidays. If CITY is unable to fulfill this obligation, City shall immediately notify DISTRICT at DISTRICT’s 24-hour Emergency Dispatch telephone number at (650) 903-6395. The District is responsible for opening and closing the gate at all other times, i.e. all evenings, all weekends, and on all CITY holidays and any time the City notifies the DISTRICT it is unable to fulfill this obligation.
 - d. CITY, its employees, agents, contractors and consultants shall be helpful and courteous in all contacts with visitors, neighbors, agents, officials, tenants, lessees and employees of the DISTRICT. DISTRICT, its employees, agents, contractors and consultants shall

be helpful and courteous in all contacts with visitors, neighbors, agents, officials, tenants, lessees and employees of the CITY. CITY shall inform DISTRICT staff of all of its public meetings related to the design and use of Cooley Landing. CITY shall provide biannual updates to the DISTRICT. All signage and public documents shall recognize the DISTRICT (as appropriate) as a partner. DISTRICT shall inform CITY staff of all of its public meetings related to the design and use of Cooley Landing. DISTRICT shall provide biannual updates to the CITY. All signage and public documents shall recognize the CITY (as appropriate) as a partner.

- e. CITY shall promptly notify DISTRICT's 24-hour Emergency Dispatch telephone number at (650) 903-6395 to report any observed or known fires, trespassing, hunting, or illegal activities on the Project Site or on adjoining District lands. DISTRICT shall promptly notify the Menlo Park Fire Department at (650) 688-8400 to report any observed or known fires and shall promptly notify the CITY's Police Department at (650) 321-1112 to report any observed trespassing, hunting, or illegal activities on the Project Site.
 - f. Except as otherwise provide herein or by express written permission granted by DISTRICT, CITY shall not during Phase I of this Agreement cause or allow any physical changes on the Project site (Area A). Such changes shall include but not be limited to grading, paving, excavating or other earthmoving activities, cutting or removing trees, native shrubs, brush or other vegetation, and damaging or demolition of improvements or structures on the Premises.
 - g. Any use of the Project Site not specifically granted to CITY herein must be approved in writing by DISTRICT prior to such use commencing.
4. Amendment. CITY will diligently pursue development of the Project consistent with this Agreement. CITY and DISTRICT agree to meet and discuss in good faith all necessary amendments that may be needed at the completion of Phase I plan (development, review and permitting) and again at the completion of Phase II (construction) to allow the Project to continue to the next Phase. These shall include operation and maintenance plans for Phases II and III. Should the Proposition 84 Statewide Park Program grant be awarded, and a grant contract is issued, any proposed amendments by City and District shall be submitted to the State Department of Parks and Recreation, Office of Grants and Local Services for approval.
5. Insurance. At all times during the term of this Agreement CITY shall carry general liability insurance, or a policy of self-insurance, including owned, non-owned and hired auto; property damage; and death and bodily injury, covering its risks arising out of the performance of any acts pursuant to this Agreement or relating to its operation of the Project. DISTRICT shall be named as additional insured on the policy. Said policy shall be in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability in aggregate per occurrence combined single limit and One Million Dollars (\$1,000,000) combined single limit for auto liability. CITY shall furnish DISTRICT with a Certificate of Insurance evidencing such insurance coverage. At all times during the term of

this Agreement DISTRICT shall carry general liability insurance, or a policy of self-insurance, including owned, non-owned and hired auto; property damage; and death and bodily injury, covering its risks arising out of the performance of any acts pursuant to this Agreement or relating to its operation of the Project. CITY shall be named as additional insured on the policy. Said policy shall be in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability in aggregate per occurrence combined single limit and One Million Dollars (\$1,000,000) combined single limit for auto liability. DISTRICT shall furnish CITY with a Certificate of Insurance evidencing such insurance coverage.

6. Indemnification. CITY hereby agrees to indemnify, defend and hold harmless DISTRICT from and against all liability for all claims, suits, damages, injuries, costs, losses and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of the Project, and/or the operation and/or the use of Cooley Landing under this Agreement to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of CITY's employees or agents or otherwise arises out of matters which, by the terms of this Agreement, are the responsibility of CITY.

DISTRICT hereby agrees to indemnify, defend and hold harmless CITY from and against all liability for all claims, suits, damages, injuries, costs, losses and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of the Project, and/or the operation and/or the use of Cooley Landing under this Agreement, to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of DISTRICT's employees or agents or otherwise arises out of matters which, by the terms of this Agreement, are the responsibility of DISTRICT.

CITY and DISTRICT agree to cooperate in the event of claims or litigation against either CITY or DISTRICT by a third party. In the event liability arises due to the alleged concurrent negligence of CITY and DISTRICT, or any combination thereof, each party shall contribute costs of any such suits, defense, damages, costs and liability in proportion to its fault as determined under the principles of comparative negligence.

7. Termination for Default. In the event there is a breach of this Agreement by CITY or DISTRICT, the parties shall meet to resolve the matter. If the parties are unable to resolve a material matter informally, they shall attempt to resolve the matter by mediation through JAMS or other mediator agreeable to the parties. If the parties remain unable to resolve the matter, DISTRICT or CITY may terminate this Agreement sixty days following the giving of notice of such as set forth herein.
8. Applicable Laws. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

9. Notices:

Any notice required to be given to DISTRICT shall be deemed to be duly and properly given if mailed, postage prepaid with a receipt and signature from the receiving party, and addressed to:

Midpeninsula Regional Open Space District
General Manager
330 Distel Circle
Los Altos, CA 94022
(650) 691-1200

or personally delivered to DISTRICT at such address or at such other address as DISTRICT may designate in writing to CITY.

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed, postage prepaid with a receipt and signature from the receiving party, and addressed to:

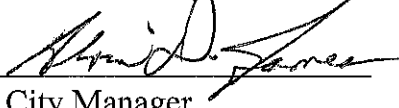
City of East Palo Alto
City Manager
2415 University Avenue, 2nd Floor
East Palo Alto, CA 94303
(650) 853-3100

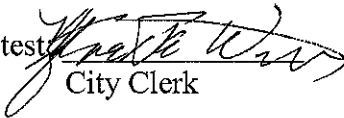
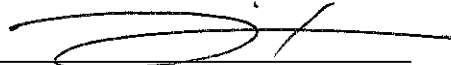
or personally delivered to CITY at such address or such other address as CITY may designate in writing to DISTRICT, with a receipt and signature from the receiving party.

10. Waiver: The failure of any party to insist upon a strict performance of any of the terms, conditions and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY or DISTRICT may have and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions and covenants contained herein.
11. Severability: If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.
12. Captions: The captions in the articles of this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.

IN WITNESS WHEREOF, CITY and DISTRICT execute this Agreement.

For the CITY OF EAST PALO ALTO

By:  Date: 3/1/10
City Manager

Attest:  Approved as to form for CITY: 
City Clerk Vincent C. Ewing
City Attorney

For the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: Mary Dancy Date: Feb. 24, 2010
President
Board of Directors

Attest: Anna Duong
District Clerk

Approved as to form for DISTRICT: Susan Schectman
Susan Schectman
General Counsel



File: G:\Projects\Ravenswood\Cooley Landing\AreaA_AreaB.mxd



Exhibit A: Cooley Landing Area, Ravenswood Open Space Preserve

Produced by Midpeninsula Regional Open Space District, December 2009

Area A	MROSD Property	City Boundary
Area B	Parcel Boundary	



ATTACHMENT 4

COOLEY LANDING PROJECT JOINT PERMITTING AGREEMENT

This Cooley Landing Project Joint Permitting Agreement (“Agreement”) is entered into by and among the City of East Palo Alto, a municipal corporation (“EPA”), the City of Menlo Park, a municipal corporation (“Menlo”) and the Midpeninsula Regional Open Space District, a public district under the laws of California (“District”), collectively “the Parties,” dated _____ (“Effective Date”).

RECITALS

WHEREAS, EPA owns that certain parcel of land more specifically identified as San Mateo County Assessor’s Parcel Number 063-590-030 (“EPA Property”) which it has zoned for Community Open Space Conservation Purposes;

WHEREAS, District owns those certain parcels of land more specifically identified as San Mateo County Assessor’s Parcel Number 063-590-040, 063-590-060, 096-230-150 and 096-230-130, as shown on Exhibit A attached hereto and incorporated herein by this reference (“District Property”) comprising a portion of Ravenswood Open Space Preserve (“Preserve”) and which have been legislatively dedicated for purposes of public open space pursuant to the California Public Resources Code;

WHEREAS, the Preserve is located within Menlo’s and EPA’s jurisdictional boundaries;

WHEREAS, the EPA parcel and portions of the District parcels make up that certain promontory of land into the San Francisco Bay generally known as Cooley Landing;

WHEREAS, EPA has undertaken a planning and development process to enhance public open space and the associated recreation and education values at Cooley Landing, has approved the Cooley Landing Vision Plan in concept on July 21, 2010, and proposes to allow development of a bayland park at Cooley Landing (“Project”);

WHEREAS, the Parties desire a timely, efficient, orderly and proper development review process for the proposed Project in accordance with the land use regulations of their respective jurisdictions;

WHEREAS, the Parties have reached agreement and desire to voluntarily enter into this Agreement to facilitate the development review process of the proposed Project subject to conditions and requirements set forth herein.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the promises, obligations and covenants herein contained, the Parties agree as follows:

1. No Commitment to Develop Project. The Parties acknowledge and agree that none of them can precommit to approval or implementation of the proposed Project since EPA’s,

Menlo's and the District's respective approvals are contingent upon fulfillment of all applicable regulating requirements including but not limited to obtaining any required governmental approvals and completion of any environmental review required under the California Environmental Quality Act (CEQA) and any mitigation measures that may be associated with such review. The Parties acknowledge that such process may identify environmental or legal obstacles to the implementation of all or a portion of the proposed Project. Notwithstanding any other sections of this Agreement, the provisions of this Section 1 shall control the Parties agreements herein.

2. Applicable Rules and Regulations. In consideration for the benefits of the proposed Project provided to District and Menlo, the Parties agree that the terms and conditions governing the development of the proposed Project, including but not limited to the permitted uses of the underlying property and the intensity of use, shall be those applicable rules, regulations, permitting requirements and ordinances of EPA, as may be amended, added or deleted during the term of this Agreement ("EPA Regulations"), and applicable state and federal law, including National Pollutant Discharge Elimination System ("NPDES") permit requirements set forth in NPDES Permit No. CAS 612008 applicable to regulated projects located in Menlo and EPA. EPA shall provide Menlo with copies of the approved grading and drainage plans, executed stormwater Operations and Maintenance Agreement, and all subsequent reports per the Operations and Maintenance Agreement for the Project as may be necessary for Menlo to comply with Menlo's reporting requirements pursuant to the NPDES Permit.
3. Authority; Processing. EPA shall serve as the lead agency in facilitating the development review process for the proposed Project. District and Menlo acknowledge that, if approved and implemented, a significant portion of the proposed Project would be located on the EPA Property. In order to facilitate and expedite EPA's development review process for the proposed Project, if approved, the Parties authorize EPA to develop those portions of the proposed Project that are located on the District Property and within Menlo's jurisdiction boundaries in accordance with the EPA Regulations and state and federal law. Accordingly, it is understood and acknowledged that if the Project is approved by District and EPA, the only Project approvals that would be required by EPA, as the lead agency, from Menlo for that portion of the Project proposed to be developed within Menlo's jurisdictional boundaries is a conditional use permit and a heritage tree removal permit, which have both been approved by Menlo subject to approval and execution of this Agreement by all parties hereto. Nothing in this Agreement is intended to contract away any party's right to exercise its police power, including zoning authority.
4. Other Governmental Permits. Upon application by EPA for approvals required by other governmental agencies or quasi-governmental agencies having jurisdiction over the proposed Project, which permits and approvals do not conflict with EPA's, Menlo's and District's regulatory requirements, Menlo and District shall cooperate with EPA in facilitating the processing of such approvals.

5. Effective Date; Term. This Agreement shall become effective upon the Effective Date and shall terminate upon (i) the completion of the proposed Project, as determined jointly by EPA and the District, or (ii) upon determination by EPA or the District that the existence of environmental or legal obstacles to the proposed Project renders its implementation infeasible. This Agreement may be amended at any time by mutual agreement of the Parties in writing.
6. Authority to Execute Agreement. Each party covenants that the individual executing this Agreement on behalf of the party is a person duly authorized and empowered to execute this Agreement for such party.
7. Indemnity.

EPA agrees to indemnify, defend and hold harmless Menlo and District and its and their respective elected and appointed councils, boards, commissions, officers, agents, contractors and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly from the acts or omissions of EPA pursuant to this Agreement.

Menlo agrees to indemnify, defend and hold harmless EPA and District and its and their respective elected and appointed councils, boards, commissions, officers, agents, contractors and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly from the acts or omissions of Menlo pursuant to this Agreement.

District agrees to indemnify, defend and hold harmless EPA and Menlo and its and their respective elected and appointed councils, boards, commissions, officers, agents, contractors and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly from the acts or omissions of District pursuant to this Agreement.

8. Default/Remedies/Termination.
 - a. Notice and Opportunity to Cure. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the party or parties seeking relief ("Nondefaulting Party") shall comply with the notice and cure provisions of this Section 8.a. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of any other party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Nondefaulting party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the

Nondefaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in “default” of its obligations set forth in this Agreement if the Defaulting Party has failed to take action and cured the default within thirty (30) days after the date of such notice.

- b. Remedies for Breach. The parties acknowledge that the purpose of this Agreement is to carry out the Parties’ objectives as set forth in the Recitals above. In the event of a default, the Nondefaulting Party may, at its option, institute legal action to cure, correct or remedy such default, enjoining any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy. Furthermore, any Nondefaulting party, in addition to or as an alternative to exercising the remedies set forth in this Section 8.b., in the event of a default by any party, may give notice of its intent to terminate this Agreement.
9. Severability. Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent.
10. Agreement Runs with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, devisees, administrators, representatives, lessees and all of the persons or entities acquiring the property on which the Project is located or any portion thereof, or an interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns.
11. Further Actions and Instruments. Each of the Parties shall cooperate and provide reasonable assistance to the other Parties to the extent necessary to implement this Agreement. Upon the request of a party at any time, the other Parties shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonable necessary to implement this Agreement.
12. Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in San Mateo County.
13. Dispute Resolution. Any dispute or claim in law or equity between any or all of the Parties arising out of this Agreement, if not resolved by informal negotiation between the Parties, shall be submitted to alternate dispute resolution, with each party bearing its own costs and legal fees. Should litigation result, the court shall determine who bears legal fees and costs.

14. Notices. Any notice or communication required hereunder between the Parties must be in writing and may be given either personally, by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated below as the party to whom the notice is sent. A party may at any time, by giving ten (10) days written notice to the other Parties, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

EPA: City of East Palo Alto
City Manager
2415 University Avenue
East Palo Alto, CA 94303

Menlo: City of Menlo Park
City Manager
701 Laurel Street
Menlo Park, CA 94025

District: Midpeninsula Regional Open Space District
General Manager
330 Distel Circle
Los Altos, CA 94022

15. Execution of Agreement; Counterparts. This Agreement may be executed by the Parties in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF EAST PALO ALTO:

Approved as to Form:

By: _____
ML Gordon, City Manager

By: _____
Valerie J. Armento, Interim City Attorney

Date: _____

Date: _____

CITY OF MENLO PARK:

Approved as to Form:

By: _____
Glen Rojas, City Manager

By: _____
William L. McClure, City Attorney

Date: _____

Date: _____

MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT

Approved as to Form:

By: _____
Steve Abbors, General Manager

By: _____
Sue Schectman, General Counsel

Date: _____

Date: _____

SFPUC

Ravenswood
Open Space
Preserve

San
Francisco
Bay

Area A
(Closed to Public)

Area B
(Open to Public)

City of East
Palo Alto







Palo Alto
Baylands

File: G:\Projects\Ravenswood\Cooley_Landing\AreaMap_2_10.mxd

Exhibit A: Cooley Landing Area, Ravenswood Open Space Preserve

Midpeninsula Regional
Open Space District

February 2010

-  Cooley Landing
-  MROSD Land
-  Viewing Platform
-  Preserve Boundary
-  East Palo Alto Property
-  Parking Lot

0 125 250 500 Feet



CITY COUNCIL/REDEVELOPMENT AGENCY

TUESDAY, FEBRUARY 15, 2011

AGENDA ITEM No. 22

PUBLIC HEARING

Proposed Mitigated Negative Declaration determination and Zone Change to create Cooley Landing Park

(Brad Tarr, Senior Planner, Planning Division and Lily Lee, Cooley Landing Project Manager, Office of the City Manager)

Recommendation:

Open the Public Hearing

Take Testimony

Close the Public Hearing, and:

Adopt a resolution to certify the Mitigated Negative Declaration determination and approve a zone change for the Cooley Landing Park project



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: February 15, 2011
To: Honorable Mayor and Members of the City Council
From: Brad Tarr, AICP, Senior Planner
Lily Lee, Cooley Landing Project Manager
Via: ML Gordon, City Manager
Subject: MND 10-13 (Cooley Landing), Mitigation Monitoring Program, and
Zone Change 11-1

RECOMMENDATION:

That the City Council:

- 1) Hold a Public Hearing regarding the adoption of the Mitigated Negative Declaration MND 10-13), the Mitigation Monitoring and Reporting Program (MMRP), and zone change of Resource Management (RM) to Community Open Space Conservation (COSC) for Cooley Landing Park at 2100 Bay Road.
- 2) Certify by resolution the MND, MMRP and zone change to COSC for the Cooley Landing project.

ALIGNMENT WITH CITY COUNCIL STRATEGIC PLAN:

This recommendation is primarily aligned with:
Goal #3 – Increase organizational effectiveness and efficiency;
Goal #4 – Improve Public Facilities and Infrastructure; and
Goal #6 – Create a Healthy Community, by providing a park space for fitness and recreational activity and contemplative reflection.

BACKGROUND:

Cooley Landing restoration and conversion into a public park has been the subject of a long and involved public process culminating in the preparation of the *Cooley Landing Vision Plan* (available at www.cooleylanding.org), which the City Council voted to support for further study on July 20, 2011 (Attachment A, Resolution 4019). On December 22, 2010, the Initial Study and proposed MND (Attachment

B) was released for a 30 day public comment period. On January 24, 2011, the Planning Commission voted unanimously to approve the MND. The Commission had previously on June 28, 2010, recommended the zone change of Cooley Landing from Resource Management (RM) to Community Open Space Conservation (COSC).

ANALYSIS:

A. Environmental Review

The MND discusses significant impacts that will occur as a result of the project, but that are able to be mitigated. These subject areas include:

- 4.4.2 (p. 43) Biological Resources
 - (a) have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
 - (b) have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
 - (c) have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act, including, but not limited to, marsh, vernal pool, coastal, etc., through direct removal, filling, hydrological interruption, or other means;
 - (d) interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory fish or wildlife corridors, impede the use of native wildlife nursery sites.

- 4.5.2 (p. 57) Cultural Resources
 - (a) cause a substantial adverse change in the significance of a historic resource as defined in Section 15064.5 of the California Environmental Quality Act (CEQA);
 - (b) cause a substantial adverse change in the significance of an archaeological resource as defined in Section 15064.5 of CEQA.

- 4.9.2 (p. 77) Hydrology and Water Quality
 - (a) violate any water quality standards or waste discharge requirements;
 - (b) otherwise substantially degrade water quality.

- 4.10.2 (p. 87) Land Use
 - (conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project, including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance, adopted for the purpose of avoiding or mitigating an environmental effect).

- 4.18 (p. 114) Mandatory Findings of Significance

(have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory).

For specific discussion in the Initial Study environmental checklist, please refer to the appropriate section. These topics have been studied thoroughly, and the MMP discussed below includes conditional approval wording that obligates the City, as lead agency, to fulfill the requirement to mitigate significant impacts that would otherwise occur without their implementation.

B. Mitigation Monitoring and Reporting Program

The MMRP (Attachment C) embodies the impact reduction commitment, pursuant to CEQA, which requires that a Lead Agency establish a program to monitor and report on mitigation measures adopted as part of the environmental review process to avoid or reduce the severity and magnitude of potentially significant environmental impacts associated with project implementation. CEQA (Public Resources Code Section 21081.6 (a) (1)) requires that a Mitigation Monitoring and Reporting Program (MMRP) be adopted at the time that the agency determines to carry out a project for which a Mitigated Negative Declaration (MND) has been prepared, to ensure that mitigation measures identified therein are fully implemented.

C. Zone Change

The *Cooley Landing Vision Plan* contained language that contemplated the change in zoning designation from Resource Management to Community Open Space Conservation. This change would permit both the actual transformation into an improved public park consistent with Zoning Ordinance Section 6227(a)(2) and an application for the conversion of the existing boathouse building to an interpretive center (Section 6227(b)(4)(c) commensurate with the *Vision Plan*.

FISCAL IMPACT

This action by itself does not by itself obligate the City to expend any funds for project construction or mitigation measures.

Attachment: Proposed Resolutions

Attachment A: City Council Resolution 4019 supporting the Cooley Landing Vision Plan for further study under CEQA

Attachment B: Initial Study/Negative Declaration

Attachment C: Mitigation Monitoring and Reporting Program

Attachment D. Community outreach

Attachment E: Public comments received and responses to those comments

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO
CERTIFYING A MITIGATED NEGATIVE DECLARATION DETERMINATION
AND THE ASSOCIATED MITIGATION MONITORING PROGRAM FOR THE
COOLEY LANDING PARK PROJECT**

WHEREAS, the City has for many years planned to develop a public park and nature and history education center at Cooley Landing; and

WHEREAS, the City Council has reviewed and approved the *Cooley Landing Vision Plan* a project description for further study under the requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, the Cooley Landing Initial Study and Mitigation Monitoring Program have been distributed for public review as required by CEQA and received no comments that would substantially alter its findings regarding environmental impacts; and

WHEREAS, on January 24, 2011, the Planning Commission held a public hearing and voted unanimously to recommend that the City Council certify a Mitigated Negative Declaration (MND) determination and the associated Mitigation Monitoring Program (MMP);

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby certifies a MND determination and the associated MMP for the Cooley Landing.

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

AYES:

NOES:

ABSENT:

ABSTENTION:

Carlos Romero, Mayor

ATTEST:

ML Gordon, City Clerk

APPROVED AS TO FORM:

Vincent C. Ewing, City Attorney

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO TO
CHANGE THE ZONING FOR THE COOLEY LANDING PARK PROJECT TO
COMMUNITY OPEN SPACE CONSERVATION**

WHEREAS, Cooley Landing is currently zoned Resource Management (RM); and

WHEREAS, the City has for many years planned to develop a public park and nature and history education center at Cooley Landing; and

WHEREAS, the Community Open Space Conservation (COSC) zone designation would allow the creation of a nature center in a public park; and

WHEREAS, the Planning Commission voted on June 24, 2010, to recommend to the City Council a zone change for Cooley Landing from RM to COSC;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby changes the zone designation for Cooley Landing from RM to COSC.

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

AYES:

NOES:

ABSENT:

ABSTENTION:

Carlos Romero, Mayor

ATTEST:

ML Gordon, City Clerk

APPROVED AS TO FORM:

Vincent C. Ewing, City Attorney

Attachment A:

RESOLUTION NO: 4019

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO TO SUPPORT THE *COOLEY LANDING VISION PLAN* AS A PROJECT DESCRIPTION FOR AN ENVIRONMENTAL REVIEW DOCUMENT, AS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the community and City Council of East Palo Alto have long wanted to create a new public open space park and nature/history education center at Cooley Landing; and

WHEREAS, on November 17, 2009, the City Council approved a contract with Callander Associates to collect community and stakeholder input to create a *Cooley Landing Vision Plan*; and

WHEREAS, the *Cooley Landing Vision Plan* incorporates community and stakeholder input to create a new park consistent with City Council direction; and

WHEREAS, the California Environmental Quality Act (CEQA) requires a Project Description and an Environmental Review Document based on that Project Description before construction on any proposed development project;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of East Palo Alto supports the *Cooley Landing Vision Plan* as a Project Description for an Environmental Review Document as required by CEQA.

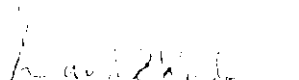
Approved and adopted this 20th day of July, 2010. I, the undersigned, hereby certify that the foregoing Resolution Number 4019 was duly adopted by the City Council of the City of East Palo Alto.

Ayes: ABRICA, ROMERO, WOODS

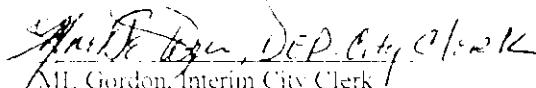
Noes: EVANS

Absent: Martinez

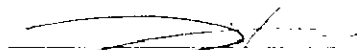
Abstention: 0


David Earl Woods, Mayor

ATTEST:


M.L. Gordon, Interim City Clerk

APPROVED AS TO FORM:


Vincent C. Ewing, City Attorney

ATTACHMENT B:

Cooley Landing Initial Study and Proposed Mitigated Negative Declaration

Note: Staff put this document, as well as Attachment E: Comments and Responses, into the mailboxes of Council Members on Tuesday, February 8, 2011, to allow them extra time for review.

The full document is also available at www.cooleylanding.org, at public library at 2415 University Ave., at the Planning Division at 1960 Tate Street, or at the City Hall office at 2415 University Ave., 2nd Floor.

ATTACHMENT C: MITIGATION MONITORING AND REPORTING PROGRAM

COOLEY LANDING PARK PROJECT

CITY OF EAST PALO ALTO

JANUARY 2011

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration concluded that the implementation of the project could result in a number of significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

**MITIGATION MONITORING AND REPORTING PROGRAM
COOLEY LANDING PARK PROJECT
CITY OF EAST PALO ALTO**

Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
BIOLOGICAL RESOURCES				
<p>Impact BIO-1: Project development could result in significant impacts to federally and state listed endangered salt marsh harvest mouse individuals.</p>	<p>MM BIO-1.1: A qualified biological monitor(s) will be present during all construction work taking place adjacent to salt marsh habitats. This monitoring shall be repeated in each construction phase that occurs adjacent to salt marsh habitats. The monitors must have experience in monitoring sensitive resource issues on construction projects. Prior to the initiation of construction, qualifications of the prospective biological monitor(s) will be submitted to the USFWS and CDFG for review and approval. The monitor(s) will have the authority to halt construction, if necessary, when noncompliance actions occur. The biological monitor(s) will be the contact person for any employee or contractor who might inadvertently kill or injure a listed species or anyone who finds a dead, injured, or entrapped listed species.</p> <p>MM BIO-1.2: Prior to the start of any ground disturbing activities on the site, the biological monitor will provide an endangered species training program to all personnel involved in project construction. This training shall be repeated for new personnel in each of construction phase that involves ground disturbance. At a minimum, the employee education program will consist of a brief presentation by persons knowledgeable about salt marsh harvest mouse biology and legislative protection to explain concerns to contractors, their employees, and agency personnel involved with implementation of the project. The program will include the following: a description of the species and their habitat needs; any reports of occurrences</p>	<p>The project proponents are responsible for implementing mitigation measures MM BIO-1.1 to MM BIO-1.12 prior to, during, and after construction.</p>	<p>City Planning Manager shall ensure all measures are implemented</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>City Planning Manager</p> <p>USFWS</p> <p>CDFG</p>

**MITIGATION MONITORING AND REPORTING PROGRAM
COOLEY LANDING PARK PROJECT
CITY OF EAST PALO ALTO**

Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>in the action area; an explanation of the status of the salt marsh harvest mouse and their protection under FESA and CESA; and a list of measures being taken to reduce impacts to these species during the work. Fact sheets containing this information will be distributed to all involved in the training.</p> <p>MM BIO-1.3: Prior to initiation of ground disturbing activities related to soil remediation or debris removal in the refugial habitat restoration area, the qualified biologist will remove pickleweed and saltgrass by hand. The qualified biologist will then complete a pre-construction survey for salt marsh harvest mouse to ensure that all mice have left the work area. To prevent salt marsh harvest mice from moving through the restoration area during construction activities, temporary exclusion fencing will be placed around a defined work area prior to the start of any ground disturbing activities on the site. The fence will be made of a material that does not allow harvest mice to pass through, and the bottom will be buried to a depth of two inches so that mice cannot crawl under the fence. All support for the exclusion fencing will be placed on the inside of the project area.</p> <p>MM BIO-1.4: If a salt marsh harvest mouse is observed on-site at any time during construction, work will be stopped immediately by the biological monitor until the mouse leaves the vicinity of the work area on its own volition and the USFWS and CDFG are notified. If the mouse does not leave the work area, work will not be reinitiated until the USFWS and CDFG are contacted and has made a decision on how to proceed with work</p>			

**MITIGATION MONITORING AND REPORTING PROGRAM
COOLEY LANDING PARK PROJECT
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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>activities. The biological monitor will direct the contractor on how to proceed accordingly. The biological monitor or any other persons at the site will not pursue, capture, handle, or harass any mouse observed. The City will contract with the United States Department of Agriculture (USDA) Wildlife Services to provide predator control services. During construction, if the biological monitor or other personnel observe ravens, crows, or other predators, they will alert USDA staff to address predators appropriately.</p> <p>MM BIO-1.5: All personnel and any equipment will be required to stay within the designated work sites and access corridors and will not be allowed to enter adjacent salt marsh wetlands, drainages, or habitat of listed species. Pets will not be allowed in or near the work site during or after construction. Firearms will not be allowed in or near the work sites. No intentional killing or injury of wildlife will be permitted. The work sites will be maintained in a clean condition. All trash (e.g., food scraps, cans, bottles, containers, wrappers, cigarette butts, and other discarded items) will be placed in closed containers and properly disposed of offsite on a daily basis. No fires will be permitted at any of the work sites.</p> <p>MM BIO-1.6: Prior to the start of construction, a Refugial Habitat Design Plan for the marsh restoration work at the southwestern portion of the site will be prepared by a qualified biologist for review and approval by the USFWS and CDFG. No construction associated with restoration and enhancement activities within this area will be allowed to begin until approval</p>			

**MITIGATION MONITORING AND REPORTING PROGRAM
COOLEY LANDING PARK PROJECT
CITY OF EAST PALO ALTO**

Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>from the USFWS and CDFG has been received. All design components incorporated into the final restoration plan will be considered in light of their benefits to the salt marsh harvest mouse. All long-term habitat restoration and enhancement items will be designed and implemented so that these areas may be utilized by the salt marsh harvest mouse for nearly 100 years given current sea level rise predictions. The restored refugial habitat in the southwestern portion of the site will remain closed to public access in perpetuity.</p> <p>MM BIO-1.7: Appropriate erosion control materials such as straw rolls will be installed as needed during construction activities within the project area. During construction activities, exclusion fencing (silt type) will be placed on both sides of the access road, between the MROSD gate and the east end of the access road. All vehicle speeds on unpaved roads will be limited to 15 mph.</p> <p>MM BIO-1.8: Hazardous materials used during the work period (e.g., fuels, lubricants, solvents, etc.) will be controlled, cleaned up, and properly disposed of outside the tidal marsh areas. Refueling areas for any equipment will be located at upland sites outside of wetlands.</p> <p>MM BIO-1.9: After construction, a final clean-up will include removal of all refuse, materials, and facilities generated by the work. Vegetation will not be removed or disturbed in the clean-up process.</p>			

**MITIGATION MONITORING AND REPORTING PROGRAM
COOLEY LANDING PARK PROJECT
CITY OF EAST PALO ALTO**

Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>MM BIO-1.10: If requested, before, during, or upon completion of construction, the City of East Palo Alto will allow access by USFWS and CDFG personnel to the work areas to inspect effects, if any, upon the activities on the salt marsh harvest mouse.</p> <p>MM BIO-1.11: Subsequent to construction, the City of East Palo Alto will submit a compliance report, prepared by the biological monitor, to the USFWS and CDFG within 60 days after completion of the work. This report will detail the dates the work occurred; information concerning the success of the actions in meeting the recommended avoidance and minimization measures; any effects on the salt marsh harvest mouse; documentation of the worker environmental awareness training; and any other pertinent information.</p> <p>MM BIO-1.12: The following describes various design measures that will further avoid impacts to salt marsh harvest mouse during project operation:</p> <ul style="list-style-type: none"> • Interpretative signage will be placed along the length of the proposed shoreline trail to encourage awareness within the public of wetlands ecology, endangered species life histories, species/predator interactions, and how predation of sensitive species can be minimized. Additional signs will be placed at various points throughout the trail system to remind park users that pets are not allowed, and to indicate that trespassing is not allowed within refugial habitat restoration area. Signage in picnic areas will be provided to 			

**MITIGATION MONITORING AND REPORTING PROGRAM
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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>indicate that feeding of wildlife is prohibited and why it is not allowed. Enforcement of the ban on dogs will be the responsibility of the City of East Palo Alto Police Department.</p> <ul style="list-style-type: none"> • Educational materials and signage at the kayak/canoe launch will advise against recreational use of canoes and kayaks within or in the vicinity of the marshes of the Laumeister Tract due to danger of stranding during low tide conditions. • Trash cans, recycling containers, and the dumpster will be animal proof to reduce the amount of waste available to vermin and other predators. All loose trash (e.g., litter, food scraps, cans, bottles, containers, wrappers, cigarette butts, and other discarded items) will be properly disposed on a daily basis. • All new lighting poles, interpretative signs, information kiosks, and fencing will be designed and established so as to discourage perching or roosting activities of avian predators (e.g., spikes can be placed on light fixtures and other possible perches). • Native shrubs will be planted along the shoreline below the pedestrian access trail to provide visual screening between wildlife and public trail users. The shrubs will have growth characteristics that discourage perching or roosting of avian predators. Prior to implementing landscaping designs for this area, the proposed planting palette will be submitted for review and approval by the USFWS, CDFG, and predator control staff. • Use of the trail system will be limited to pedestrian and/or 			

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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>bicycle use only. Public users will be prohibited from using all terrain vehicles (ATVs) or other motorized equipment on the parkland trail system. Battery operated wheelchairs or other similar mechanisms associated with access for disabled individuals will be allowed.</p> <ul style="list-style-type: none"> • Educational pamphlets, brochures, and other materials will be provided to park users to educate the public on minimization measures that can be undertaken to prevent feral and domestic pets and rodents from diminishing habitat quality within the project area. • The City will contract with USDA Wildlife Services to provide ongoing predator control services as needed, including trapping. 			
<p>Impact BIO-2: Project construction could result in short-term significant impacts to federally and state listed endangered California clapper rail individuals.</p>	<p>MM BIO-2.1: Construction work will be initiated on or after September 1 and completed on or before January 31 to avoid the nesting season of the California clapper rail. If work in this area is proposed after January 31 and prior to September 1, protocol breeding surveys for California clapper rail will be completed prior to any ground disturbing activities to determine the extent and location of nesting clapper rails. Results of protocol breeding surveys will be submitted to the USFWS and CDFG for a determination of whether work proposed within 700 feet of a clapper rail nest (or the activity center of vocalizing clapper rails) discovered during such surveys will be rescheduled to occur during the period from September 1 to January 31.</p> <ul style="list-style-type: none"> • In addition to the construction period above, the following specific construction work may also be completed June 1 through September 1: 	<p>Prior to the start of construction, if construction is initiated after January 31 and prior to September 1, the project contractor shall retain a qualified biologist to complete the necessary surveys.</p> <p>All additional</p>	<p>A report prepared by a qualified biologist documenting the results to the survey shall be submitted to the City Planning Manager, CDFG, and USFWS prior to construction.</p> <p>All measures shall be printed on all construction</p>	<p>City Planning Manager</p> <p>CDFG</p> <p>USFWS</p>

**MITIGATION MONITORING AND REPORTING PROGRAM
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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<ul style="list-style-type: none"> ▪ Tree pruning and installation of temporary fencing around trees to remain ▪ Tree removal ▪ Removal of barbed wire fence, unused pedestrian bridge, utility poles, water tank ▪ Removal of asphalt paving (16,000 sf) and gravel access road (6,000 sf) ▪ Temporary construction fencing at east end of existing parking lot ▪ Stormwater pollution prevention measures (silt fences, truck tire wash-offs, wattles, etc.) ▪ Clearing and grubbing understory vegetation east of parcel line (avoiding wetland, shoreline, and tidal marsh areas) ▪ Rough grading of upland areas ▪ No more than 4 trucks per day importing clean soil and rough grading to distribute soil and placing only on the eastern half of the peninsula, farthest from the marsh area. • The following construction activities may only take place between September 1 and January 31: <ul style="list-style-type: none"> ▪ Removal/relocation of concrete debris in wetland area ▪ Rip rap augmentation along shoreline ▪ Disassembly of steel boat launch structure between jetties ▪ Revegetation efforts near the wetland or tidal marsh areas ▪ Import clean fill onto the site <p>MM BIO-2.2: Implement MM BIO-1.5 through MM BIO-1.12. The California clapper rail and salt marsh harvest mouse are</p>	<p>measures shall be completed according to the specified construction timeframe by the project proponents.</p>	<p>documents, contracts, and project plans.</p>	

**MITIGATION MONITORING AND REPORTING PROGRAM
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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	found in similar locations in the vicinity of the project site and the measures necessary for species protection are similar for both. Thus, implementing Mitigation Measures BIO-1.5 through 1.12 relevant to the salt marsh harvest mouse would also mitigate impacts to the California clapper rail.			
<p>Impact BIO-3.: Project construction could result in significant short-term impacts to federally and state listed threatened Central California coast steelhead and green sturgeon.</p>	<p>MM BIO-3.1: Bank stabilization work along the shoreline will be subject to the following measures:</p> <ul style="list-style-type: none"> • disturbance and removal of aquatic vegetation will be avoided; • limit the duration and extent of in-water work to the minimum necessary to complete the work; • implement best management practices and use of silt fence or straw wattles to control sedimentation in runoff; and • complete in-water work only during low tides to minimize the number of fish in the vicinity, and when steelhead are less likely to be in the project vicinity (from June 1 through November 30). <p>MM BIO-3.2: Hazardous materials used during the construction period (e.g., fuels, lubricants, solvents, etc.) will be controlled, cleaned up, and properly disposed of outside the tidal marsh areas. Refueling areas for any equipment will be located at upland sites outside of wetlands.</p>	During all bank stabilization work along shoreline by project contractors.	<p>The City Planning Manager and/or designated project representative will ensure that the contractors implement the bank stabilization measures.</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	City Planning Manager
<p>Impact BIO-4: The project would result in significant impacts to nesting birds, if present</p>	<p>MM BIO-4.1: If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors will be completed by a qualified ornithologist</p>	Prior to the start of construction the project proponents shall	A report prepared by a qualified ornithologist documenting the	City Planning Manager CDFG

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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
on-site prior to project construction.	to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys will be completed no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys will be completed no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist will inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist will, in consultation with CDFG, designate a construction-free buffer zone (typically 250 feet) around the nest. The ornithologist will submit a report to the City's Planning Manager indicating the results of the survey and any designated buffer zones to the satisfaction of the City prior to the issuance of any grading or building permit. The City will contract with the USDA Wildlife Services to address any nests found during construction in a manner they determine appropriate.	retain a qualified ornithologist to complete the required surveys.	results to the survey and any designated buffer zones shall be submitted to the City's Planning Manager prior to construction. All measures shall be printed on all construction documents, contracts, and project plans.	
CULTURAL RESOURCES				
Impact CUL-1: Implementation of the proposed project could adversely impact buried cultural resources.	MM CUL-1.1: Should any archaeological or paleontological indicators be exposed or discovered during either site preparation or subsurface construction activities, all construction work within a 50-foot radius of the find will be halted, the City Planning Manager and City Engineer will be notified, and a qualified archaeologist or paleontologist will be retained to examine the find and make recommendations. The City of	To be implemented if any significant archaeological or paleontological resources are encountered.	If cultural resources are encountered a report will be submitted by qualified archaeologist/	City Planning Manager City Engineer

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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>Menlo Park Community Development Director will also be notified.</p> <p>MM CUL-1.2: If human remains are discovered, the San Mateo County Coroner will be notified. The Coroner will determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he/she will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased.</p> <p>MM CUL-1.3: If an archeologist or paleontologist determines that the find is not a significant resource, work will resume only after the submittal of a preliminary report and after provisions for reburial and ongoing monitoring are accepted. Provisions for identifying descendants of the deceased Native American and for reburial will follow the protocol set forth in the CEQA Guidelines Section 15126.4. If the site is found to be a significant archaeological site, a mitigation program will be prepared and submitted to the City Planning Manager for consideration and approval, in conformance with the protocol set forth in the CEQA Guidelines Section 15126.4.</p> <p>MM CUL-1.4: A final report will be prepared when a find is determined to be a significant archaeological or paleontological site, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, testing, other recovered information, and conclusions.</p>	<p>Contractors shall stop work, in the immediate area of the find, and notify the City representative and Coroner as appropriate.</p>	<p>paleontologist to the City Planning Manager and the City Engineer</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	

**MITIGATION MONITORING AND REPORTING PROGRAM
COOLEY LANDING PARK PROJECT
CITY OF EAST PALO ALTO**

Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
HYDROLOGY AND WATER QUALITY				
<p>Impact HYD-1: Implementation of the proposed project could result in significant water quality impacts during construction.</p>	<p>MM HYD-1.1: Prior to the commencement of any clearing, grading or importing soil, the project will comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the East Palo Alto Director of Public Works, as follows:</p> <ul style="list-style-type: none"> • The City will develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and • The City will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). <p>MM HYD-1.2: The project will include Best Management Practices (BMPs) to control the discharge of stormwater pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit by the City of East Palo Alto, the project may be required to submit an Erosion Control Plan to the City Project Engineer. The Erosion Control Plan will include applicable BMPs as specified in ABAG's Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City of East Palo Alto's storm drainage system from construction activities.</p> <p>MM HYD-1.3: The project will comply with the City of East Palo Alto's Grading Ordinance, including erosion and dust control measures during site preparation and with the City of</p>	<p>Prior the start of grading and demolition by the project engineer</p>	<p>The City Engineer shall review and approve the finalized SWPPP.</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>City Planning Manager</p> <p>City Engineer</p> <p>RWQCB</p>

**MITIGATION MONITORING AND REPORTING PROGRAM
COOLEY LANDING PARK PROJECT
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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>East Palo Alto's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:</p> <ul style="list-style-type: none"> • Restrict grading to the dry season (April 15 through October 15) or meet City of East Palo Alto requirements for grading during the rainy season; • Utilize on-site sediment control BMPs to retain sediment on the project site; • Utilize stabilized construction entrances and/or wash racks; • Implement damp street sweeping; • Provide temporary cover of disturbed surfaces to help control erosion during construction; • Provide permanent cover to stabilize the disturbed surfaces after construction has been completed; • No equipment will be operated in tidal water areas of the shorelines on or adjacent to the site; • All in-water work will only be completed during low tide to minimize the number of fish in the vicinity; • No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material will be allowed to enter into or be placed where it may be washed by rainfall or runoff into aquatic or wetland habitat; • Standard erosion control and slope stabilization measures will be required for work completed in any area where erosion could lead to sedimentation of a water body. For 			

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	<p>example, silt-fencing will be installed just outside the limits of grading and construction in any areas where such activities will occur upslope from, and within 50 feet of, any wetland, aquatic, or marsh habitat. This fencing will be inspected and maintained regularly throughout the duration of construction;</p> <ul style="list-style-type: none"> • Machinery will be refueled at least 60 feet from any aquatic habitat, and a spill prevention and response plan will be developed and approved by the City of East Palo Alto. All workers will be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur. • Soil stockpiling, equipment staging, construction access, and other intensive soil-disturbing activities will not occur immediately adjacent to any wetlands. The limits of the construction area will be clearly demarcated with Environmentally Sensitive Area fencing by a qualified biologist to avoid inadvertent disturbance outside the fence during construction activities. • Dust suppression (e.g., using watering trucks) will be implemented during all grading, construction, and soil stockpiling activities that have the potential to mobilize dust to keep dust from being transported to vegetated wetlands nearby. If soil stockpiles are to remain on the site for long periods of time prior to the start of grading, they will be hydro-seeded so that vegetation will suppress dust and inhibit erosion. 			

**MITIGATION MONITORING AND REPORTING PROGRAM
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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
LAND USE				
Impact LU-1: Implementation of the fishing and boating provision of the project could result in a conflict with MROSD land use ordinances.	MM LU 1.1: Prior to opening the Cooley Landing area to fishing and boating, project proponents shall obtain MROSD designation of the area as a permitted fishing and boating area. In the event that such designation is not obtained, facilities will be designed to discourage such uses and signs prohibiting fishing and boating will be posted.	The project proponents shall obtain necessary designation for fishing and boating from MROSD	Approval from MROSD	MROSD and City Planning Manager

SOURCE

City of East Palo Alto, *Cooley Landing Park Project Initial Study*, December 2010.

ATTACHMENT D: PUBLIC OUTREACH REGARDING COOLEY LANDING PROPOSED
MITIGATED NEGATIVE DECLARATION

12/22/2010 – Notification of 30 day public comment period
1/14/2011 – Notification of Planning Commission Public Hearing
2/4/2011 – Notification of City Council Public Hearing

- 1- Mailed to property owners within 1000 ft and to interested parties on the Midpeninsula Regional Open Space District mailing list (12/22/2010, 1/14/2011, 2/4/2011)
- 2- Notices laminated and tacked or stapled onto wooden posts at several locations at and near Cooley Landing site within 1000 foot radius (12/22/2010, 1/14/2011, 2/4/2011)
- 3- Posted at bulletin boards at City Hall (2415 University Ave.) and Planning Division (1960 Tate St.) (12/22/2010, 1/14/2011, 2/4/2011)
- 4- Daily News classified advertisement - Notice of Intent (NOI) ran 12/24/2010, 1/14/2011, 2/4/2011
- 5- Hard copy of full document at East Palo Alto Branch of San Mateo County Public Library 12/22/2010
- 6- County stamped NOI 12/22/2010 and posted at Redwood City Courthouse
- 7- Newsletter announcement emailed to 250 community members and 100 external partners (1/12/2011, 1/14/2011, 2/5/2011)
- 8- Host community meeting at City Hall on January 20, 2011, 7 pm, to take comments and answer questions
- 9- Facebook posting 1/15/2011 inviting people to Community Meeting 1/20/2011 and Planning Commission Meeting 1/24/2011
- 10- Website post on www.cooleylanding.org (12/21/2010, 1/14/2011, 2/7/2011)
- 11- Emailed to agencies (12/22/2011, 1/14/2011, 2/4/2011):
 - US Fish and Wildlife Service – Regulatory & Don Edwards Wildlife Refuge
 - US Army Corps of Engineers
 - City of Menlo Park Menlo Park – Community Development, Parks & Recreation Commission staff, City Attorney
 - County Airport Land Use Commission staff
 - Coastal Conservancy
 - San Francisquito Creek Joint Powers Authority (JPA)
 - City of Palo Alto
 - San Francisco Public Utilities Commission(SF PUC)
 - Peninsula Open Space Trust (POST)
 - Midpeninsula Regional Open Space District
 - State Lands Commission
 - Don Edwards Refuge
 - National Marine Fisheries Service
 - San Francisco Bay Conservation and Development Commission
 - California State Fish & Game
 - Menlo Park Fire Protection District
 - County of San Mateo Parks Division

- Silicon Valley Bike Coalition
- Ravenswood City School District
- Sequoia Union High School District
- County of San Mateo Parks Division
- San Francisco Bay Trail Program
- County of San Mateo Health Department
- Cal Recycle
- US Coast Guard
- East Palo Alto Sanitary District
- County of San Mateo Mosquito Abatement District
- San Francisco Regional Water Quality Control Board

**ATTACHMENT E: Cooley Landing CEQA Initial Study
Comments/Questions and Responses
February 15, 2011**

The Cooley Landing Initial Study, as required by the California Environmental Quality Act (CEQA) was released for public comment on December 22, 2010, through January 21, 2011, and available through the www.cooleylanding.org website or at the East Palo Alto Public Library. Below are comments received, mostly at the community meeting January 20, 2011, and the Planning Commission Meeting January 24, 2011, both held in East Palo Alto City Hall. Below are responses drafted by the City of East Palo Alto staff and its partners and consultants.

Commenter & date	Comment/questions	Responses
<i>Agency comments</i>		
Daren Anderson, Division Manager, Parks, Open Space, and Golf, City of Palo Alto Community Services (email, 1/7/2011)	"I received and read the initial study. Thank you for sending it to me. It looks terrific! "	N/A
Arlinda Heineck, Director, Community Development, City of Menlo Park (Telephone conversation, 1/7/2011)	We will not be making any comments	Note: Ms. Heineck gave comments to help clarify various details on an earlier draft of the Initial Study, and these comments were incorporated in the version released to the public.

<p>Megan Peterson Environmental Compliance Manger - Bay Tunnel Project Consultant, TRC San Francisco Public Utilities Commission (SFPUC)</p>	<p>1) The City of East Palo Alto will need to do their own verification (testing) of the appropriateness of Bay Tunnel spoils for onsite reuse on the City of East Palo Alto's Cooley Landing Project.</p>	<p>If the timing and other factor works out to make the Bay Tunnel spoils the best source for fill, then the project would work with the SF PUC and the Regional Water Quality Control Board, the County of San Mateo Environmental Health Division to ensure protection of public health and the environment.</p>
	<p>2) The disposal of Bay Tunnel spoils is part of the scope of the Bay Tunnel Contractor (Michels-Jay Dee- Coluccio Joint Venture); therefore, the City of East Palo Alto will have to coordinate with MJC-JV as they are responsible for spoil disposal.</p>	
	<p>3) Use of Bay Tunnel spoil material would require truck travel from the Ravenswood access road entrance southbound on University Avenue to Bay Road and out to Cooley Landing. Currently SFPUC Bay Tunnel EIR mitigation requirements prohibit southbound travel on University Avenue through the City of East Palo Alto. This would require a Minor Project Modification to the Bay Tunnel mitigation measures and an agreement with the City of EPA to allow truck travel through the City.</p>	
	<p>4) The Cooley Landing site was not identified in SFPUC's BDPL EIR as a disposal site and would likely require a Minor Project Modification to add this site to the list of disposal options, first verifying that the City of East Palo Alto's regulatory and resource agency permits are in place to accept fill material on their project.</p>	

Community Comments

NOTE: The comments in the next section all came verbally from at the Community Meeting January 20, 2011

Bernardo Huerta, East Palo Alto Planning Commissioner	How will you keep the soil from washing off in the rain after you cap the contamination on the site	Contractors will install silt fences and will cover the soil with mulch and seeds as soon as possible after the rainy season starts so that new vegetation will hold in the soil. (See pp. 52 -- 55 of Appendix D, the Remedial Action Plan)
Bob Gomez, East Palo Alto resident	You should reuse the existing telephone poles.	Unfortunately, these are very old and likely to be contain creosote, which has arsenic, which is toxic. We will have to remove them and properly dispose of them in a manner that does not expose people or the environment to that hazard. (Specification will made be in the final construction documents)
Anna Turner, Youth United for Community Action	How will you avoid impacts from construction on the onsite wetlands area?	Before construction begins, a biological monitor will look for Salt Marsh Harvest Mice and hand-remove pickleweed to make sure no mice are hiding. We will install silt fencing. We will replace all contaminated soil removed with new clean soil that is at the same or lower elevation to facilitate restoration. A biological monitor will oversee construction activities. (See pp.46-53 of the Initial Study)
Nancy Leech, Jane Leech Memorial Fund Advisory Committee	Will debris removal harm endangered species?	The southwest portion of the site contains large piles of concrete debris abandoned on the site decades ago. The debris harbors predators to endangered California Clapper Rails and Salt Marsh Harvest Mice. These predators could include rats, feral cats, red foxes, raccoons, or other predators. The project plans to either remove or bury this concrete debris, which will actually improve conditions for endangered species. (See p. 46 of Initial Study)
Joel Kushins, Environmental Consultant	Will you have a buffer zone to protect endangered species?	Construction will not occur during California Clapper Rail nesting season except very limited construction during June – August only in the eastern portion of the site, farthest from endangered species habitat. Outside of this season, the US Fish and Wildlife Service (USFWS) has not asked for any buffer zone. Cooley Landing is mostly upland and does not have habitat that is likely to host any endangered species. (See p. 45 and p. 49 of Initial Study)

Joel Kushins, Environmental Consultant	Will the project have enough time to lay all the soil needed before the rainy season begins?	The USFWS has informally asked to limit soil import to no more than 4 trucks per day before September 1, the end of California Clapper Rail nesting season. After that, at 64 trucks per day, the contractor should be able to import 27,000 cubic yards of soil in 5 weeks. Botanists from various agencies have recommended that the ideal planting time for a mix of native plant species is October 15 – November 7 because of the rain and temperature. Even if the project is delayed and this window is missed, the landscape architect is building in a backup plan to plant the site with a smaller mix of native species that can germinate later in the season and then plant the broader mix the following year at the ideal time. (See p. 51 of the Initial Study)
Bernardo Huerta, Planning Commissioner	Clapper rails are resilient, so construction should not need to be limited	It will probably take until September 1 to be ready for construction anyway, so this restriction does not delay the project. (See p. 51 of the Initial Study)
Bob Gomez, East Palo Alto resident	Will you take out the cement?	The project will either remove or bury the existing concrete debris. See above explanation about concrete debris removal and burial. (See p. 46 of the Initial Study)
Bob Gomez, East Palo Alto resident	Can local high school students do this work?	Much of the earthmoving work involves exposure to contamination, so workers will need special health and safety training to do this work safely. Some local youth-serving organizations have asked to contribute volunteer services. Planting new vegetation after the contamination has been capped is one way to contribute. The project will organize events in which high school students can contribute. In addition, the project has already hired local high school students for outreach and design. (See p. 73 of the Initial Study)
Bernardo Huerta, Planning Commissioner	Will construction workers be allowed to eat their lunch at the site? Or will that harm endangered species?	Construction workers will be allowed to eat lunch, but all trash will be contained onsite to avoid attracting predators such as crows. (See pp. 47-48 of Initial Study)

Bernardo Huerta, Planning Commissioner	Will you plant big trees, such as redwoods and oaks?	The project will work with Canopy Non-profit group to plant new trees, focusing on native and/or drought tolerant species that do not provide perches for predators. Coast Live Oaks onsite now are doing well, so that is one species that arborists at Canopy recommends. Redwoods would not be appropriate because they require more water. In addition, they have shallow root systems so they are more easily blown over. Blowing over would bring roots up and potentially expose contaminated soil. (See p. 23 of Initial Study)
Bernardo Huerta, Planning Commissioner	Please save the large tree by the current mud boat ramp area in the southwest portion of the site	Unfortunately, the soil in this mud boat ramp was tested and found to have contamination. Therefore, this soil will need to be dug out and replaced with new clean soil. This tree is not likely to survive the removal of contamination. Nevertheless, other new trees will be planted as part of the project. (See p. 73 of Initial Study)
Nancy Leech, Jane Leech Memorial Fund Advisory Committee	Please minimize parking	In response to previous community preference for less parking, the project has been changed to remove the parking on the south side of the road and note that in Phase 6, which would be constructed no sooner than 6 years from now, it could be added as a last resort if, and only if, community need for the extra parking has been established based on actual park usage. (See p. 107 of Initial Study)
Bernardo Huerta, Planning Commissioner	Will you cap the jetties?	Yes, the project will put an asphalt cap on top of the two jetties to protect the public and the environment from contamination. (Specification will be in final construction documents)

Planning Commission Comments/Questions January 24, 2011
The following comments/questions are all from Planning Commissioners

Robert Allen	Cooley Landing has many non-native plants. Will you plant areas of native grass species?	Currently the site is covered with non-native, invasive weeds. The project would cover these with 2 feet of clean dirt and plant new mostly native grasses and forbs. The plant experts from the Midpeninsula Regional Open Space District and Don Edwards Wildlife Refuge have recommended plant communities appropriate for the conditions and anticipated uses at different sections of the site and plant palettes that would create ecosystems at those locations that would be similar to mixes in natural environments. (See p. 20 of the Biological Assessment)
Robert Allen	What is the alkali flat habitat area?	This is the 0.08 acre section of the site in the southwest corner that supports wetlands. It contains pickleweed. Lead was found in this area. Therefore the project plans to excavate the existing lead and replace it with clean soil at the same or even slightly lower grade to facilitate natural restoration with seeds that will float in from the adjacent Faber Laumeister tract, which is never-developed native wetlands. (See p. 12 of the Biological Assessment)
Bernardo Huerta	Will you include Fire Hydrants? Will the Menlo Park Fire Protection District review fire hydrants?	The Menlo Park Fire Protection District has asked for fire hydrants every 500 feet, so three fire hydrants are in the more detailed construction documents in progress now. We will invite this District to a meeting February 24 of the Design Review Committee to comment on the 60% construction documents, which should be done within a week.
Bernardo Huerta	Will the access road impact endangered species?	The access Road has been in place at least since 1932 when the site opened as a County burn dump. The project would not widen the road or change the road in any way that would increase negative impacts to endangered species. The US Fish & Wildlife Service regulatory staff person assigned to the project agreed that it would not require that we remove the existing road as part of this project. The overall project will actually enhance habitat for endangered species.
Court Skinner	Does the lead onsite affect the pickleweed or the Salt Marsh Harvest Mouse now?	The lead on this portion of the site exceeds the levels that the State Water Resources Control Board has determined to be a human health threat, so this agency is requiring that the Project clean up this portion of the site. It might also have ecological impacts. But the Project will take care of those.
Court	What is a forb?	According to wikipedia, "Forbs are herbaceous flowering plants that are not graminoids

Skinner		(grasses, sedges and rushes). The term is frequently used in biology and in vegetation ecology, especially in relation to grasslands. Forbs represent a guild of plant species with broadly similar growth form, which in ecology is often more important than taxonomic relationship.”
Robert Sherrard	Have any responsible parties been found for the contamination?	The contamination in the top layer of soil is the concern because it could cause public or ecological exposure. Carl Schoof, the former boat repair shop operator, brought that soil in. He closed his business in 1999 to retire and passed away in 2004. Staff searched for record of his business, but the State Board of Equalization staff could not find a record. Staff believe it is unlikely to be able to find any responsible party to conduct the cleanup.
Robert Sherrard	Does the project have funding? If so, who is paying?	The total project cost is expected to be \$9 million. The project has received \$ 3 million in grant and in-kind assistance from many funders and the City has committed \$1 million mostly in park-in-lieu fees. This is enough funding to finish Phase 1, which is cleanup and revegetation and a basic trail. The largest funders are the Packard Foundation, State Department of Toxic Substances Control, US Environmental Protection Agency, and the Pacific Forest and Watershed Lands Stewardship Council.
Bernardo Huerta	How many jobs will be created? Will they be suitable for East Palo Alto residents? Are you working with Marie McKenzie, the City’s First Source Hiring Coordinator?	The project is committed to implement the City’s First Source Hiring (FSH) Policy. In many community meetings, staff have distributed forms that potential job applicants can fill out to register as a local business or potential employee with Marie McKenzie’s database. So far, whenever it has hired consultants or staff, it has gone to Marie McKenzie to see if any local residents have registered as offering the requested skill set. The project has already hired 13 local residents or businesses for outreach, planning, design, and technical studies. It asked finalists competing for the landscape architect contract to report what they would do to comply with the FSH policy. Callander Associates hired two local high school students to help with design. The Project will continue these practices, with the caveat that it must also comply with City and grant requirements for competitive bidding practices. The project has also talked with Job Train, which has a brownfields cleanup program, founded with help from the US Environmental Protection Agency. Many of its graduates are likely to have skills the project would need.

Jorge Prado	What will you do with the predators you catch in the predator control program?	The Project plans to contract with the US Department of Agriculture Wildlife Services program to control predators that threaten endangered California Clapper Rails and endangered Salt Marsh Harvest Mouse. If that program finds pets with tags, it would try to return it to its owners. In the past, its contract has specified that if it finds unidentified animals, e.g. feral cats, it would send them to the Peninsula Humane Society in Redwood City. With crows and ravens, their populations are high, so USDA shoots and kills them. The project has not yet entered into a contract with USDA, but it would probably follow similar practices.
Renee Glover Chantler	The Initial Study says the project will restrict the frequency of gatherings of over 25 people. Would this restriction also apply to environmental education programs?	The proposed restriction was intended to restrict impacts of the large social events, such as birthday parties or family reunions, on the endangered species habitat. It was not intended to restrict environmental education programs. If these programs were controlled and low impact then they should not be a problem. This issue will be worked out in greater detail later when regulations relating to operations are developed.

Questions or comments? Contact Lily Lee, Cooley Landing Project Manager, 650-853-3166, llee@cityofepa.org or see www.cooleylanding.org