

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

*Orinda Watch  
21 C Orinda Way #312  
Orinda, CA 94563  
www.orindawatch.com*

May 10, 2013

Mayor Amy Worth and the Orinda City Council  
22 Orinda Way  
Orinda, CA 94563

*re: Comments for the Orinda City Council on Draft Bay Area Plan and Draft Bay Area Plan Draft Environmental Impact Report*

Dear Mayor Worth and City Council members,

Orinda Watch is submitting these comments for your consideration at the Council's May 13, 2013, Special Meeting on Plan Bay Area.

We have met with each one of you independently on this issue, and we respect your role as our elected officials. We want to work with and support you in advocating for the interests of our city. We will be formidable allies to the extent that you do so.

We are more than 400 Orindans who are not only deeply committed to our city and its wellbeing, but we are also passionately, uniformly, and adamantly opposed to Plan Bay Area. We come from all walks of life and all points of view—but we are unified in our commitment to our city and to our fellow residents, and in our opposition to this Plan and all that it represents. We urge you to consider the strength of our conviction here, as well as the facts and analysis we will provide you in this letter.

It is our considered opinion that (1) the comment period allowed for the draft Plan Bay Area and its draft EIR has been grossly inadequate, and must be extended, (2) The Plan and the process are so deeply flawed that no vote can take place until these flaws are remedied, and (3) Plan Bay Area, at its core, is based on models, assumptions, forecasts, and omissions that are gravely deficient and profoundly dishonest.

**I. Plan Bay Area's inadequate process**

a) Plan Bay Area is being promulgated by two unelected,<sup>1</sup> unaccountable agencies: the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation

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<sup>1</sup> We are of course aware of the argument made by ABAG and MTC supporters, that all of the ABAG board members and most of the MTC Commissioners are locally elected officials, and that these board

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Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

Commission (MTC). The City should demand of ABAG and MTC that they extend the deadline for accepting comments on the draft Plan and draft EIR by a minimum of 60 days, from May 16, 2013 until July 15, 2013.<sup>2</sup> There is absolutely no way that members of the public can adequately review the 160 page Plan, its 1,300 page EIR, and the thousands of pages of essential, supporting documents, then adequately research and draft a comment letter. Without this additional time, the entire process is completely invalid.

b) The City should demand that no vote whatsoever should take place on the Plan by ABAG and MTC, under any circumstances, until both of the following two non-negotiable and essential conditions are met:

First, no vote should be permitted to take place for at least six months from the date of release of the final Plan Bay Area and its Final EIR, currently scheduled for June of this year. This Plan will change our way of life forever. The vast majority of our fellow Orindans, and fellow Bay Area citizens, have no idea that this Plan even exists, let alone any awareness of the irreversible and inevitable impact it will have on all our lives. And, of the citizens that are aware of the Plan and are not “stakeholders” receiving special benefits from the Plan, our observation is that the vast majority passionately oppose the Plan--people from all walks of life, and all ends of the political spectrum. Please do not disregard this.

Second, no vote on the Plan, any Plan, can take place until all of the substantive and material concerns that have been raised by the citizens, repeatedly, in public hearings, and in writing, have been addressed. Not a single concern of the citizens has been acknowledged, let alone addressed. Not a single concern of the citizens has had an impact on the Plan and the process whatsoever. This is an illegitimate Plan, and an illegitimate process.

Considering any of the citizen concerns, let alone considering all of them, will take far more than six months, and will necessitate rejecting all of the “alternatives” that ABAG and MTC are considering, and will require the process to start again from the beginning.

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members were in turn elected by their colleagues among the locally elected officials in their city, or county. Our point is that none of the ABAG Executive Committee and none of the MTC Commissioners were elected by the public to serve on these bodies. And, we adamantly oppose any suggestion or proposal that the members of these boards now be elected and thus that these agencies be inserted, formally, as yet another tier of government.

<sup>2</sup> We consider the proposal being discussed at the Joint MTC Planning Committee and ABAG Administrative Committee hearing, Friday, May 10, 2013, for a two week extension for submitting comments to be entirely disingenuous on the part of ABAG and MTC officials. They have framed this as an extension that cannot be finally decided upon until May 22, 2013. Thus, the official deadline will remain May 16 until after that deadline has already expired. Any city, organization, or citizen who is serious about submitting comments, will do everything they can to submit them by May 16—thus, no one submitting a serious comment will get additional time to research and draft their comments. ABAG and MTC will have all serious comments submitted by May 16, yet they will take “credit” for their flexibility in extending their deadline in response to citizen requests. We categorically reject this kind of strategic gamesmanship as completely unacceptable conduct by agencies that are funded with public monies.

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This is not the responsibility or the fault of the public. It is the inevitable consequence of a failed and dishonest process that needs to be reformed before a legitimate process and Plan can be developed.

## **II. Plan Bay Area, at its core, is based on models, assumptions, forecasts, and omissions that are gravely deficient and profoundly dishonest**

Because of the extent and nature of the deficiencies of the Plan and its draft EIR, we will limit our comments here to several key issues. We offer here not only our own analysis, but two draft comments on the Plan and its draft EIR from persons that are well known to, and respected by, Orinda Watch. The following provides the Council with unassailable and indisputable facts and analysis that establish conclusively that the Plan will not and cannot work, even according to its own premises, which are in and of themselves deeply flawed.

Please note that, given the short time allowed for analyzing and responding to this Plan and its draft EIR, there are many other deficiencies that will simply not get noted by us, or by any member of the public, because the public has not been given enough time to review and comment on the Plan.

The points we are raising herein not only discredit the Plan, the agencies promulgating it, and the process--they de-legitimize them. Together they paint a devastating picture of two unaccountable agencies and a process that has gone terribly awry.

### **A. The Plan's transit elements will not increase ridership, will not reduce greenhouse gases (GHGs), and will do nothing to help lower income citizens who are dependent on transit for their personal mobility**

We are attaching here<sup>3</sup> the comment letter submitted by Tom Rubin on Plan Bay Area's conformity analysis this past Friday. Conformity analysis is a federal Clean Air Act requirement--essentially it requires that the transit elements of the Plan be reasonable and achievable. We have not included the appendices in the interests of space, but would be happy to provide you with them upon your request.

Mr. Rubin is one of the nation's leading experts in transportation. He built and led the leading transportation and land use consulting practice for a then-Big 8 firm in the 1980s, then served as chief financial officer for one of the nation's largest public transit agencies (in the Los Angeles area) from the 1980s through mid-1990s. He's been a highly respected independent consultant since then.

Mr. Rubin is also a long time Bay Area resident, as well as deeply committed to honest government and effective public policy, and he cares deeply about transit that works and serves the interests of transit dependent folks that need it (largely lower income residents

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<sup>3</sup> As Appendix A.

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

who rely on bus routes for personal mobility). Orinda Watch has the highest respect for Mr. Rubin, and we have secured his permission to submit this report to you.

Mr. Rubin concludes, based on indisputable data and analysis:

- Plan Bay Area ignores the one form of transportation subsidies that are proven to increase transit usage, benefit the environment, and benefit lower income, transit-dependent residents (lowering fares and increasing service quality on existing routes, especially bus lines),
- The Plan continues the same transit strategies that have been deployed for the past 30 years in the Bay Area that have led to massive increases in the cost of transit while ridership has declined in absolute numbers (not just per capita usage),
- MTC has an appalling record of cost overruns for its transit projects, and
- MTC and ABAG are substantially overestimating expected revenues by willfully and intentionally ignoring the full impact of already on-the-books regulations regarding average mileage per gallon of the vehicle fleet sold in California that will dramatically reduce gasoline tax revenues available to this Plan (and we will discuss this more, below).

**B. The Plan’s mandate requiring that 80% of all new housing in the Bay Area be built in high density, multistory, multifamily attached units near mass transit in suburban and urban downtowns will not reduce GHGs**

We are attaching here<sup>4</sup> the letter, in draft form, that will be submitted by Bob Silvestri as his comments on draft Plan Bay Area and its draft EIR. Mr. Silvestri has given us his permission to submit this to you.

Mr. Silvestri is well known to Orinda Watch, and we have the highest respect for him. He has spoken at our public meetings, and we have met with him and discussed his research and conclusions. Mr. Silvestri is an architect, an affordable housing developer, a long time environmental activist, and a respected expert on land use issues. Mr. Silvestri resides in Marin County, is frequently quoted in the local press, and he’s authored a book on Plan Bay Area called *The Best Laid Plans*.

Mr. Silvestri’s report not only establishes that the Plan’s draft EIR fails to provide “proof of the efficacy of the proposed Plan or the Alternatives in reducing per capita or overall greenhouse gas emissions (GHGs), to meet SCS goals,” pp. 1-2, but it concludes “that Plan Bay Area and the Alternatives will increase overall and per capita GHGs rather than decrease them.” *Id.* at p. 2.

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<sup>4</sup> As Appendix B.

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

Plan Bay Area is a transportation plan, and a land use plan. Mr. Rubin's report establishes that the transportation elements of the Plan will not reduce GHGs, will not increase ridership, and will not help lower income residents who are dependent on public transit for personal mobility. Mr. Silvestri's report, in turn, establishes that the land use elements of the Plan will similarly not meet their stated objectives (reducing GHGs), and in fact will be counterproductive.

If the transportation plan and the land use plan won't work and cannot work, and in fact are counterproductive, what then are we left with? A Plan that is bereft of public benefits, that limits our ability to live where and how we wish as well as how we can travel, and that dramatically limits our ability to make our own decisions as a city. And we are left with a Plan that imposes massive and undisclosed unfunded mandates on the City (and on all cities in the Bay Area).

Could it get any worse than this? Yes, unfortunately it can. A Plan this fatally flawed and lacking in integrity could only have been fabricated and sold to the public through misleading representations and profoundly dishonest analysis. And it has been.

Given the short time that we have to prepare this letter for the Council, we will limit our analysis to just two of the grave deficiencies in the Plan and its analysis, though there are many others that are deeply troubling.

**C. The Plan and its draft EIR consider the impact of emission and mileage standards in ways that are misleading and profoundly dishonest**

The following chart<sup>5</sup> summarizes the discussion that follows:

<b>California Air Resources Board (CARB) MPG regulation</b>	<b>Particulates and pollutants other than CO2</b>	<b>CO2</b>	<b>Reduction in gasoline use and gas tax revenues</b>
<p><u>Pavley 1</u></p> <p><u>Clean Car Standard</u>, governing passenger vehicles sold 2009 – 2016 and beyond. Finalized 2009, announced 2004.</p>	<p>EMFAC2011 appears to consider the significant impacts of Pavley 1 in reducing particulates and pollutants and thus those reductions appear to be reflected in the Plan analysis. This substantially reduces the health risks of forcing people to live in high density housing near transit in suburban and urban downtowns, but doesn't eliminate them.</p>	<p>EMFAC2011 doesn't consider in its main model, but considers in a separate postprocessor. MTC ran the postprocessor on every model run. It ignores everything other than CO2 impact of Pavley 1 and LCFS (Low Carbon Fuel Standard). Those impacts are massive, <u>and were undisclosed</u>.</p>	<p>ABAG and MTC modeled a 2.00% decline in gasoline demand per year through 2020 due to Pavley 1, but considered no impact of Pavley 1 on gasoline demand after 2020, despite their models of Pavley 1 showing continued Pavley 1 related gains in fleetwide MPG until at least 2035.</p> <p>ABAG and MTC also appear to have "mitigated" the budgetary impact of the modeled 2.00% decline in gasoline demand per year until 2020 by also, "coincidentally," modeling an 8.00% per year gasoline price increase through 2020.</p>

<sup>5</sup> Please note that EMFAC2011 is the modeling software that ABAG and MTC used to model particulate matter, other criteria pollutants, CO2, and miles per gallon (MPG) of the vehicle fleet in use during the Plan period.

<b>California Air Resources Board (CARB) MPG regulation</b>	<b>Particulates and pollutants other than CO2</b>	<b>CO2</b>	<b>Reduction in gasoline use and gas tax revenues</b>
<p><u>Pavley 2</u></p> <p><u>Advanced Clean Car Standard</u>, governing passenger vehicles sold 2017 – 2025 and beyond. Finalized December 31, 2012, announced January 27, 2012 (CARB simply adopted for California the federal 2025 CAFÉ standard requiring average 54.5 MPG for fleet sold in 2025).</p>	<p>EMFAC2011 does not consider, CARB does not have a postprocessor, and MTC did not consider in their analysis, despite the regulations having been announced 15 months before their analysis was completed on the draft Plan and draft EIR, and having been finalized three months before the draft Plan was released March 22, 2013, and the draft EIR was released April 2, 2013</p>	<p>EMFAC2011 does not consider, CARB does not have a postprocessor, and MTC did not consider in their analysis, despite the regulations having been announced 15 months before their analysis was completed on the draft Plan and draft EIR, and having been finalized three months before the draft Plan was released March 22, 2013, and the draft EIR was released April 2, 2013.</p> <p>The impact of Pavley 2, alone, on CO2 should be at least as great as 2/3 the impact of Pavley 1 and LCFS together (likely reduction of CO2 of more than 19 thousand tons per day, versus Pavley 1 and LCFS reduction of 30 thousand tons per day, for a total reduction by 2035 of more than 49 thousand tons of CO2 per day.</p>	<p>Completely ignored the <u>very substantial budgetary impact</u> of Pavley 2 on reductions in gasoline demand hence reductions in gas tax revenues.</p>

## **1. California’s Clean Car Standard (“Pavley 1”) and Advanced Clean Car Standard (“Pavley 2”)**

California has two major sets of regulations that set mandates for the average miles per gallon (MPG) of the new passenger vehicle fleet sold in the state in a given year. Both have been promulgated by the California Air Resources Board (CARB) pursuant to the authority granted it by Assembly Bill 1493 (2002, Pavley).

### *Pavley 1:*

California’s Clean Car Standard (“Pavley 1”) governs the passenger vehicle fleet sold in the years 2009 through 2016 (and beyond). Pavley 1 regulations became effective and final in 2009.

Pavley 1 became effective before MTC and ABAG’s analysis of Plan Bay Area’s draft EIR began formally in July of 2012. Thus, all impacts attributable to Pavley 1 should have been fully analyzed by ABAG and MTC and fully disclosed to the public.

### *Pavley 2:*

California’s Advanced Clean Car Standard (“Pavley 2”) was announced by CARB on January 27, 2012, and these regulations became final on December 31, 2012. Pavley 2 adopts in California the federal CAFÉ MPG standard that requires the passenger vehicle fleet that is sold in 2025 to average 54.5 MPG. Pavley 2 governs new vehicles sold between 2017 through 2025 (and beyond).

Pavley 2 became effective during the period of time that MTC and ABAG performed their analysis of the draft Plan and its draft EIR—in fact, it became fully effective almost three months before the draft Plan was released on March 22, 2013, and more than three months before the draft EIR was released on April 2, 2013. Thus, all impacts attributable to Pavley 2 should have been fully analyzed by ABAG and MTC, and fully disclosed to the public.

The draft Plan and draft EIR mention both Pavley 1 and Pavley 2 in several locations.<sup>6</sup> However, the impacts of Pavley 1 were analyzed differently according to whether they were favorable to the Preferred Alternative. The impacts that were favorable to the Plan were incorporated in the analysis and results. The impacts that were not favorable to the Plan were either analyzed but not incorporated into the results, or were minimized by the use of improper and unjustifiable assumptions. The impacts of Pavley 2--which would have been devastating on the Plan’s analysis of CO<sub>2</sub> and on the Plan’s budget--were ignored entirely.

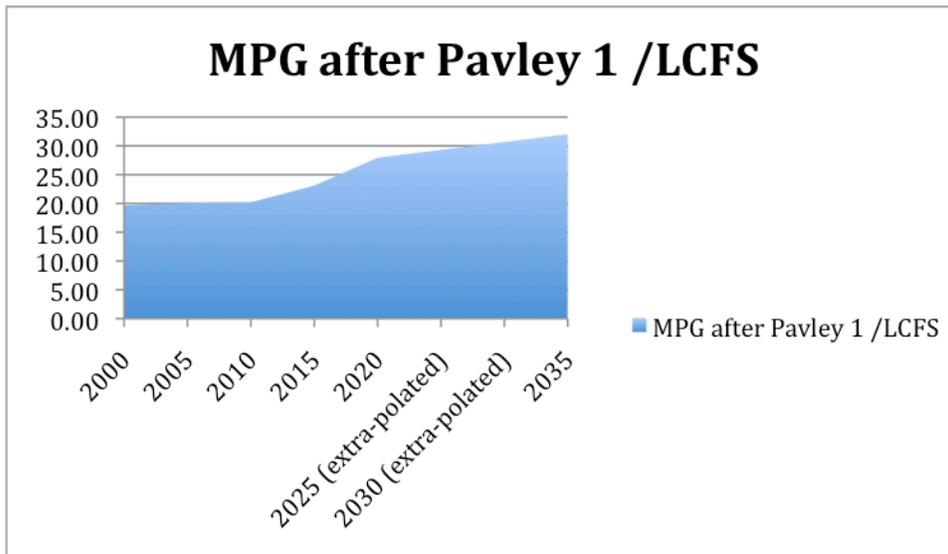
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<sup>6</sup> See, for example, draft EIR, p. 2.5-43; Financial Assumptions, p. 4.

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

Pavley 1 and Pavley 2 each lead to substantial increases in the average MPG of the passenger vehicle fleet sold in California--and over time, in the average MPG of the passenger vehicle fleet in use in the state. ABAG and MTC's own, undisclosed models<sup>7</sup> show that Pavley 1 increases the average MPG of the passenger vehicle fleet in use in the Bay Area by almost 60% (from 20.18 MPG in 2010 to 32.02 MPG in 2035 in their analysis of the Preferred Alternative, with almost identical results projected for the other alternatives including No Project).<sup>8</sup>

	2000	2005	2010	2015	2020	2025 (extra- polated)	2030 (extra- polated)	2035
MPG after Pavley 1 /LCFS	19.69	20.09	20.18	23.09	27.92	29.29	30.65	32.02
% increase		2.03%	0.45%	14.42%	20.92%	4.89%	4.67%	4.46%



<sup>7</sup> The data source for the charts below is from MTC's own model run results, attached here as Appendix C, *MTC Model Run 2035\_03\_84, 2013 RTP/SCS CO2 and Criteria Pollutant Summary Results, September 11, 2012.pdf*.

<sup>8</sup> Please note that the results ABAG and MTC's undisclosed models show for the MPG impact of Pavley 1 are included in their results shown for Pavley 1 + LCFS. However, CARB's Low Carbon Fuel Standard (LCFS) is a set of standards for formulation of gasoline and other motor fuels, and as such, LCFS reduces CO2 emissions when burned in the vehicle's engine, but should have little or no impact on the vehicle's MPG.

Pavley 1, on the other hand, regulates the minimum MPG of the passenger vehicles sold in the state during a given year. Therefore, it is a reasonable assumption to make that all or virtually all of the MPG increases attributed to Pavley 1 + LCFS in ABAG and MTC's undisclosed models are attributable solely to the impact of Pavley 1.

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Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

A reasonable assumption would be that by the end of the Plan Bay Area planning period in 2040, the increase in average fleetwide MPG due to Pavley 2 will be approximately the same as that of Pavley 1, and those impacts will be additive, leading to an average MPG for the vehicle fleet in use in California of close to 50 MPG.<sup>9</sup>

Why is this important? Because of the massive impact of these vehicle fleet MPG gains on the three most important considerations in the Plan: CO2 emissions; emission-related particulate matter and other pollutants; and on the budget.

To restate the above, we know from ABAG and MTC's own, undisclosed models, that Pavley 1 alone will increase average fleetwide MPG by almost 60% between 2010 and 2035. As gallons of gasoline burned are reciprocal to MPG, we know as a matter of simple arithmetic, Pavley 1 will reduce gallons of gas burned by more than 37% per vehicle mile traveled (VMT) between 2010 and 2035.

This means that according to MTC and ABAG's own, undisclosed models, as a matter of simple arithmetic, that the Pavley 1 MPG regulations will:

- reduce emission-related particulate matter and pollutants from passenger vehicles (the dominant source of these emissions) by more than 37% by 2035,
- reduce CO2 from passenger vehicles by more than 37% by 2035 , and
- reduce gallons of gasoline sold per VMT by more than 37% by 2035.

ABAG and MTC were required to account for these effects and to faithfully incorporate these effects into the results of their analysis. But this is precisely what ABAG and MTC did not do.

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<sup>9</sup> ABAG and MTC's undisclosed models show that from Pavley 1's second year in 2010 until 2035, fleetwide MPG gains attributable to Pavley 1 will be more than 59% (from 20.18 MPG in 2010 to 32.02 MPG in 2035). Pavley 2 requires the average new passenger vehicle sold from 2025 and later in California to average at least 54.5 MPG. A reasonable assumption would be that 23 years after Pavley 2 regulations begin to first affect the passenger vehicle fleet sold in California (2017)--that is by 2040--that the impact of Pavley 2, added to the impact of Pavley 1 (which appears to cap out at just over 32 MPG in 2035), will lead to a further increase of close to 60% in the fleetwide MPG by 2040, or to a fleetwide average of just over 51 MPG.

Pavley 1 impacts:

	<b>Do the Impacts Benefit Preferred Alternative?</b>	<b>Did ABAG and MTC incorporate in results?</b>
<b>Particulates and pollutants</b>	YES	YES
<b>CO2</b>	NO	NO
<b>Gas tax revenues</b>	NO	“Mitigated” with high gas prices until 2020, ignored after 2020

When the impact of Pavley 1 MPG regulations benefits their Plan--as it does with emission-related particulate matter and pollutants--they incorporate those impacts in their analysis and in the results they report to the public. Where the impact of Pavley 1 MPG regulations doesn't benefit their Plan, when in fact it renders their Plan unnecessary and an utter sham--as it does with CO2 emissions--ABAG and MTC ignore those impacts in their analysis. Nor do they disclose to the public the results of the analysis they actually ran but didn't incorporate in their assessment of the Plan.<sup>10</sup>

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<sup>10</sup> ABAG and MTC attempt to deflect this objection by saying on p. 2.5-43 of the draft EIR,

Emissions for Criterion 1 are considered to be conservative estimates because they are presented without accounting for reductions in mobile source emissions that would be expected to result from ongoing implementation of Pavley 1 and the LCFS; per SB 375 the impact assessment does not include the emissions reductions from these legislative requirements." (emphasis added).

First, no reasonable reading of the text of the statute supports such an interpretation. Second, the CO2 reductions attributable to the Pavley 1 regulations alone by 2035, according to ABAG and MTC's own, undisclosed models, will be 12x the amount that their models show will be the difference between their Preferred Alternative and No Project that same year. When one considers the impact of both Pavley 1 and Pavley 2 in the last year of the Plan, 2040, those MPG regulations, which are already on the books now and fully effective, will lead to more than 16x the CO2 reductions than the CO2 reductions from choosing the Preferred Alternative over No Project—even assuming the rest of the Plan's models and assumptions are correct!

ABAG and MTC are like a doctor who insists that the patient (the public) take an immensely costly, immensely risky regimen of treatment that has a good chance of killing the patient, while failing to tell the patient that the treatment is entirely unnecessary.

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Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

And, last, when the impact of Pavley 1 MPG regulations requires ABAG and MTC to accommodate them in the budget, as fewer gasoline gallons sold equals lower gas tax revenues for the Plan's projects and initiatives, ABAG and MTC appear to have "mitigated" the impact of those declining gallons of gasoline sold by assuming strikingly high increases in the price of gasoline each of those years. Thus, ABAG and MTC models show decreases of 2.00% per year through 2020 in gallons of gas sold, but "mitigate" those decreases in the gallons of gasoline sold by assuming that the retail price of gasoline will increase by 8.00% per year through those same years! It was a simple matter of adjusting the financial model's assumption regarding the price per gallon of gas sold to make the problem of Pavley 1's impact of reducing the number of gallons sold per year through 2020 go away. Problem solved.

What about after 2020? ABAG and MTC's own undisclosed models show that fleetwide MPG continues to rise substantially due to the impact of Pavley 1's MPG regulations, past 2020 and at least until 2035. Yet ABAG and MTC ignore this impact entirely on the budget. Could it be because they could only "mitigate" the impact of the gasoline usage declines on their budget with an offsetting assumption of a 8.00% per year increase in the retail price of gasoline only for 7 years until 2020, but doing so for additional years beyond that would draw too much attention?

The Plan already uses the astonishing device of a plug number. Their expenditure plans, assuming their programs come in on budget--which Mr. Rubin's report shows is not even plausible--are underfunded by 5%. Do ABAG and MTC dial back their expenditure plans by 5% to keep their budget in balance? Of course they don't. They insert a plug number of 5% of the budget for "unanticipated," "anticipated" revenues. Yes, they really call it that.<sup>11</sup>

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<sup>11</sup> Plan, p. 64.

Pavley 2 impacts:

	<b>Do the Impacts Benefit Preferred Alternative?</b>	<b>Did ABAG and MTC analyze and incorporate in results?</b>
<b>Particulates and pollutants</b>	YES	NO
<b>CO2</b>	NO	NO
<b>Gas tax revenues</b>	NO	NO

And what of California’s Advanced Clean Car Standards (“Pavley 2”)? Those regulations governing the passenger vehicle fleet sold in California from 2017 through 2025 and beyond, will have at least as great an effect on fleetwide MPG as Pavley 1, and Pavley 2’s impact will be additive—in addition to—that of Pavley 1. And all completely unanalyzed and ignored in the Plan and its draft EIR.

**2. The benefits to the Preferred Alternative of incorporating Pavley 1 impacts on emission-related particulate matter and pollutants**

The Preferred Alternative mandates that 80% of all new housing units be in high density, multi-family, multi-story projects near mass transit in suburban or urban downtowns. The Plan was required to disclose what it described as significant and unmitigatable impacts on human health to the residents who will live in those units.

The draft EIR discusses in section 2.2(d) on page 2.2-81,<sup>12</sup> the mitigations it recommends to reduce those health risks to people who will live in these new high density housing units. Those include air filtration units for each living unit, and presumably may mean, at least in some locations, windows that don’t open. Of course, in a suburban home, “air conditioning” means open two windows, and let the breeze blowing through the trees flow through your house.

The draft EIR further suggests keeping housing units at least 500 feet from freeways, and as far from trucks, buses, and rail as possible, and recommends planting as much vegetation as possible. The Plan’s mitigations sound like recreating the living conditions in a single family home in a suburban town, but alas, the Plan mandates that 80% of all

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<sup>12</sup> Attached as Appendix D.

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

new housing units be in these high density dwelling units near transit in suburban and urban downtowns.

Given these significant and unmitigatable health risks posed by the Plan's mandates that 80% of all new housing units be built in these conditions, it makes great sense that ABAG and MTC would want their analysis of the Plan to incorporate the significant reductions in emission-related particulates and pollutants that will result from Pavley 1, and that's exactly what they've done. While there are a number of other regulations<sup>13</sup> that contribute to the significant, and persistent declines in these particulates and pollutants during the Plan period which can be seen in the model results in Appendix C, the estimated 37% reduction in these particulates and pollutants attributable solely to Pavley 1's increase in fleetwide MPG by 2035 were a major factor in the Plan's analysis, and in the reduced, but nowhere near eliminated, health risks to the residents in the mandated 80% of all new housing units that must be high density units near transit in suburban and urban downtowns.

## **2. The benefits to the Preferred Alternative of ignoring Pavley 1 impacts on CO2**

Reporting the CO2 results of Pavley 1 would have required ABAG and MTC to disclose that the Pavley 1 regulations, together with CARB's Low Carbon Fuel Standards (LCFS) will lead to twelve times (12 times!) the reduction in CO2 than the reductions in CO2 that their land use and transportation plan elements would produce, even if their models were to be believed and were believable (which of course they aren't). We don't need to guess at this difference. ABAG and MTC's own models show us this, though none of this has been disclosed to the public.

MTC's own model run on November 2, 2012 (results attached as Appendix E, though cut off) show that even assuming ABAG and MTC's high density housing mandates and additional mass transit subsidies produce all of the GHG gains that ABAG and MTC believe they will, the difference between No Project and ABAG and MTC's Preferred Alternative is only 3.01 thousand tons per day of CO2 out of more than 100 tons per day for either No Project or the Preferred Alternative. That is, assuredly within the margin of error, even assuming ABAG and MTC's models are correct. And at an appalling cost, not only those costs borne by individual members of the public, also public sector spending at all levels and massive new unfunded mandates, but also upon our ability to live where and how we choose, travel the way we wish to, and upon our ability to make our own decisions within our own communities.

It's instructive to display the data in ABAG and MTC's own models, in a few simple charts, to see the dishonest and misleading story that they are telling the public about their Plan, and compare that story with what their own data actual shows.

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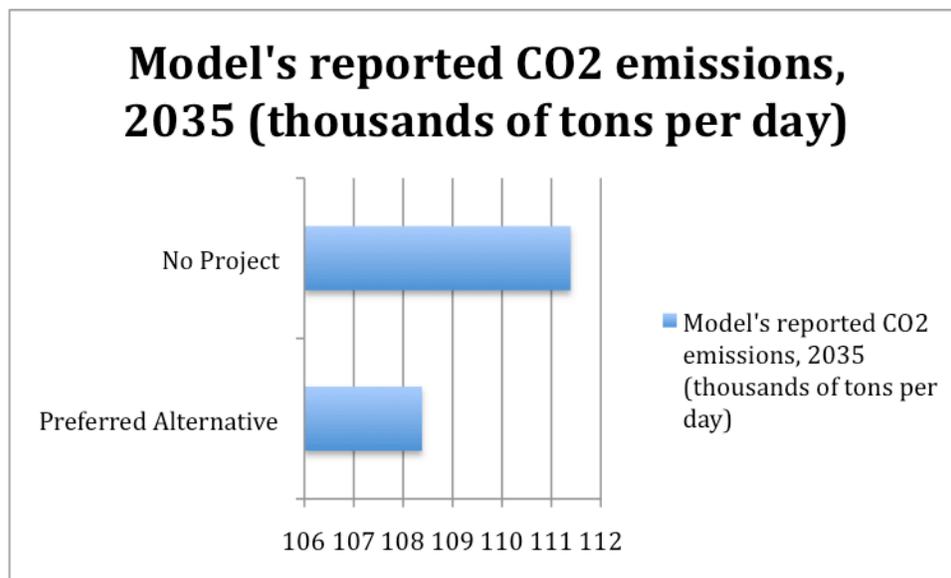
<sup>13</sup> Especially CARB's Low Emission Vehicle (LEV) and Low Emission Vehicle II (LEV II) regulations.

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

ABAG and MTC's narrative—“there's a massive difference between No Project and their Preferred Alternative”

ABAG and MTC are telling the public, in effect, that their analysis shows a massive difference between No Project and their Preferred Alternative, and thus that the immense costs, and risks, and the Plan's sharp limits on the ability of citizens to live where and how they wish, and to make decisions in their own communities as to how those communities will grow and change, are somehow justified.<sup>14</sup>

	<b>Preferred Alternative</b>	<b>No Project</b>
Model's reported CO2 emissions, 2035 (thousands of tons per day)	108.38	111.39

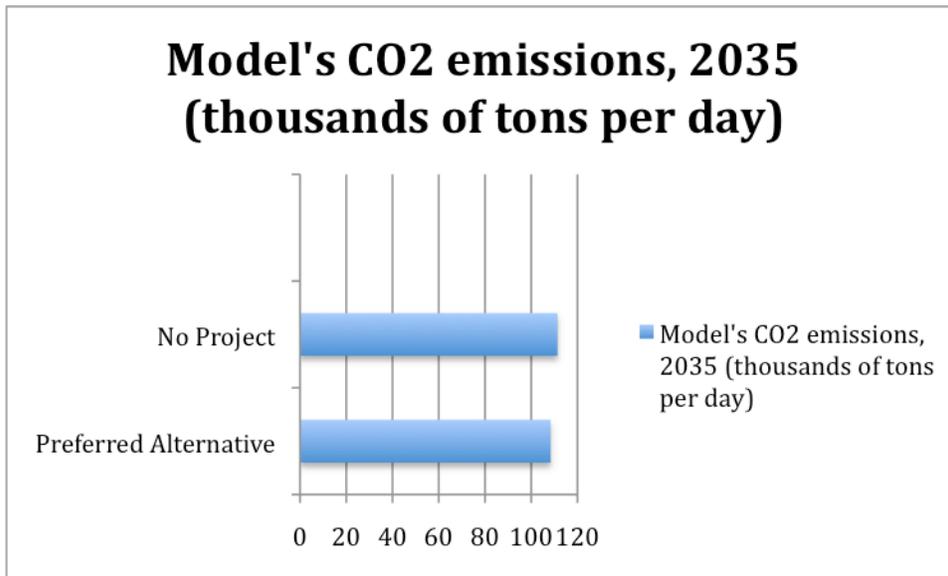


The above chart is based ABAG and MTC's own data from their own Model runs, apparently near the end of their analysis of the various alternatives considered in the draft EIR. This is not a chart used by ABAG and MTC to sell their Plan to the public--rather it is shown here as an illustration of the image in the public mind after ABAG and MTC describe the difference between their Preferred Alternative and No Project—suggesting a massive difference between the two.

<sup>14</sup> These costs, and risks, and the limits on individual liberties and local decision making are not justifiable, but this is ABAG and MTC's underlying rationale.

*What their model results really show*

However, changing the scale on the chart to their true values on ABAG and MTC's model run here (and all of their model runs were very similar) shows the true difference between No Project and their Preferred Alternative—less than a 3.00% difference, assuredly within the margin of error in their calculations here.



*But their model results reported in their analysis describe a mythical future that will not and cannot exist—and they know that, but don't tell the public*

Even more problematic, though, is that the future Bay Area portrayed in these charts above, which are directly sourced from ABAG and MTC's own model runs, is a myth created by ABAG and MTC to convince the public that GHG emissions in California and the Bay Area are a dire problem that has no solution other than dramatic changes in our lifestyles, and dramatic limitations on our choices. Their implied narrative is that the only way to reduce GHGs is to reduce automobile use, or, to use their term, to reduce vehicle miles traveled (VMT). And the only way to reduce VMT is to change the way Bay Area residents live and the way Bay Area residents travel. Whether Bay Area residents want to change the way they live and travel, or not.

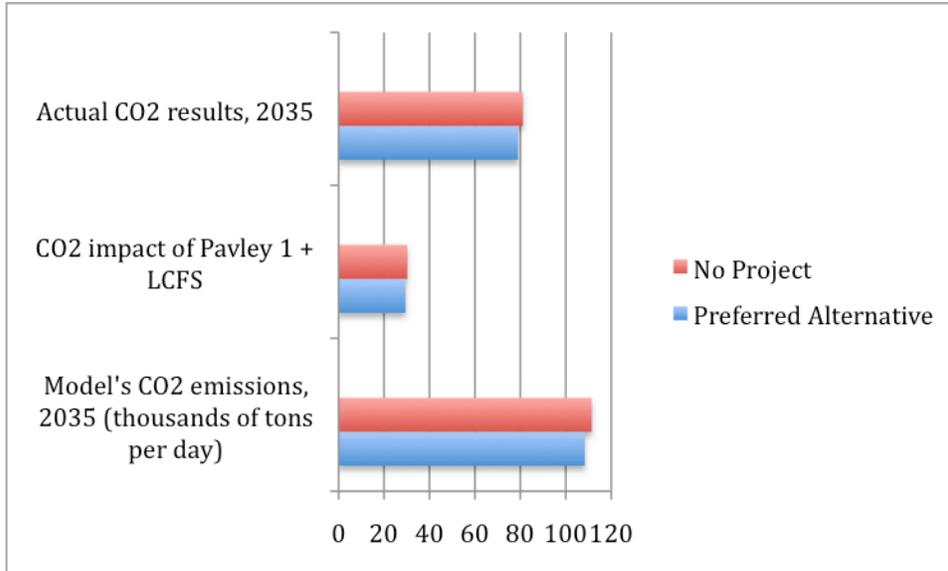
However, their implied narrative assumes there is only one way to reduce GHGs from automobiles—and that is to reduce automobile use (e.g., reduce VMT). But, as a simple matter of logic, there is another way to reduce GHGs from automobiles, and that is to reduce the amount of GHGs that automobiles emit (e.g., reduce GHG per VMT). And it turns out that doing the latter is vastly easier and less expensive, and vastly less restrictive of individual choice in how Bay Area residents live and travel. And, doing so doesn't incur the extraordinary risks and uncertainties that Plan Bay Area poses to our economy, and to our communities.

*Let's keep Orinda, Orinda . . .  
and let us make our own decisions*

And, the regulations are already on the books. In fact, the outcomes of some of those regulations on GHG emissions in the Bay Area have already been modeled by ABAG and MTC. However, they didn't consider the impacts of those GHG reductions in their analysis of Plan Bay Area and the draft EIR, and they haven't disclosed the results of their modeling of the GHG reductions from Pavley 1 to the public. For obvious reasons, which will become clear upon looking at a chart of the models that ABAG and MTC ran that reflected the future Bay Area as it will be, not the mythical future with no GHG reductions due to MPG regulations:

*ABAG and MTC's model runs incorporating Pavley 1 and LCFS, that weren't incorporated in their analysis of the Plan and its alternatives, and haven't been disclosed, reflect the reality of the Bay Area's future (rather than the mythical future used to analyze the Plan*

	<b>Preferred Alternative</b>	<b>No Project</b>
<b>Model's CO2 emissions, 2035 (thousands of tons per day)</b>	108.38	111.39
<b>CO2 impact of Pavley 1+ LCFS</b>	29.42	30.25
<b>Actual CO2 results, 2035</b>	78.96	81.14



There is no future world contemplated by ABAG and MTC that does not include the Pavley 1 regulations, and LCFS.<sup>15</sup> So the true analysis that should have been presented to the public in the draft Plan and its draft EIR, and should have been used to evaluate the Plan and its alternatives, is the chart and data above, not the fraudulent and dishonest data that ABAG and MTC actually did present to the public.

What the above chart shows, again, sourced solely from ABAG and MTC's model runs (which were all roughly consistent to the one disclosed above), is that for ABAG and MTC's immensely expensive, immensely risky Preferred Alternative (and all of the three other alternatives that ABAG and MTC considered in their analyses were only minor variants of the Preferred Alternative)--even assuming their models showing GHG reductions from their housing mandates and transit subsidies are accurate--the difference between No Project, and the Preferred Alternative is infinitesimal overall, and infinitesimal compared to the certain-to-occur CO2 reductions from California regulations that are already on the books, and that ABAG and MTC have modeled the impact of.<sup>16</sup>

<sup>15</sup> Pavley 1, again, affects the overall MPG of the vehicle fleet sold in California from 2009 through 2016 (and forward from 2016), and the Low Carbon Fuel Regulations affect the formulation of gasoline sold in California.

<sup>16</sup> It's also worth noting in the table of data that underlies the above chart (immediately above the chart), that ABAG and MTC's own models show that including the impact of Pavley 1 and LCFS on CO2 emissions also reduces the absolute gap that their models show between No Project and their Preferred Alternative (by almost 1/3 from a gap of 3.01 thousand tons per day in their mythical world of the future with no Pavley 1 and LCFS to 2.18 thousand tons per day in the actual world that does include Pavley 1 and LCFS).

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

Reporting the CO2 results of Pavley 2 would show further, vast decreases in CO2 from passenger vehicles that need to be added to the impact of Pavley 1 and LCFS.<sup>17</sup>

So, if we do nothing, already on-the-books, mandatory regulations for MPG, with the full impacts already modeled by ABAG and MTC for the first set of regulations (Pavley 1 + LCFS) and the added impacts of the second set of regulations (Pavley 2) easily estimatable, reductions in CO2 by the end of the Plan's period will likely be more than 49 thousand tons of CO2 per day, more than 16x the reductions claimed that will occur as a result of the Plan's housing mandates and additional transit subsidies, over No Project.<sup>18</sup>

*Why No Project is the Superior, in fact, Only, Alternative*

Adopting No Project is not “doing nothing.” It's just not doing the fantastically-expensive, unworkable policy elements that not only characterize the Preferred Alternative, but also all three other alternatives as well, which are just minor variants of the Preferred Alternative.

Adopting No Project is simply letting people live where they want, how they want. It's letting local cities decide how to zone as they wish. It doesn't require the massive new regional redevelopment agencies that the Plan tells us are essential to its success. Essential to the success of the Plan, of course, because the Plan's housing mandates will require the vast majority of all of the new high density housing units be heavily subsidized, except for those locations such as in the larger cities where there is already existing, unmet market demand for high rise, high density multi family housing in downtown locations.

Plan Bay Area requires regional redevelopment agencies also because its high density housing mandates require large projects in suburban downtowns where much of that land already has existing uses—often small businesses serving the local community. Many of those small landowners will not want to sell and those small businesses will not want to move—so Plan Bay Area insists that it needs to have eminent domain powers to force all those landowners to sell, and all those small businesses to move, in order to build all the high density housing that ABAG and MTC insist must be built.

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<sup>17</sup> Assuming that Pavley 2 increases fleetwide MPG by the same 60% that Pavley 1 does, hence that Pavley 2 decreases gallons of gasoline burned per VMT that Pavley 1 does (the reduction in gallons of gas burned are simply a reciprocal of the increase in MPG), then just from the impact of Pavley 2 alone in 2035 would lead to another 19.34 thousand tons in CO2 reductions, on top of the 30 thousand tons in CO2 reductions, from the 51.92 thousand tons per day due to passenger vehicles in 2035 (Preferred Alternative calculations).

<sup>18</sup> And, since as noted in footnote 16, since the gap between the Preferred Alternative and No Project's modeled CO2 emissions narrowed by almost a third when the correct models were used, including the impacts of Pavley 1 + LCFS, also including the impact of Pavley 2 will presumably narrow the difference between the Preferred Alternative and No Project's modeled CO2 emissions even further, perhaps to 1.5 thousand tons per day.

**D. The Plan's Models Use Unreasonable and Unrealistic Assumptions that Could Only have been Selected by ABAG and MTC to Assure the Preferred Alternative Performs Better than No Project**

And, what of that paltry difference projected between No Project and the Preferred Alternative in 2040, the 3 thousand tons per day difference in CO2 emitted between the two alternatives that the ABAG and MTC's models project, out of more than 100 thousand tons per day in the mythical world that ABAG and MTC have created to sell the public on Plan Bay Area (or the likely true difference of 1.5 thousand tons per day out of a total of 60 thousand tons in the actual world that will exist where the impacts of Pavley 1, LCFS, and Pavley 2 are considered)? How was that difference between the Preferred Alternative and No Project actually arrived at in the Plan's models?

We know from the reports of Mr. Rubin and Mr. Silvestri that none of the GHG gains from the Plan's Preferred Alternative will materialize. But assuming, for the sake of argument, that the Plan's models for the Preferred Alternative are correct, and ignoring Plan Bay Area's appalling cost and dramatic limits on Bay Area residents ability to live as they chose and travel as they wish, what about the analysis comparing the Preferred Alternative and No Project? Should we expect honest analysis here? Of course not, and that's exactly what we don't find. We find the same thumb on the scales and gearing of the results here that we find elsewhere.

The Plan itself waxes poetic about the coming dramatic shift in demand by Bay Area residents away from single family homes and toward apartments and condos in densely packed suburban downtowns. Despite the lack of empirical and analytical support for these models, which are easily falsifiable by the Plan's data and the data in its supporting documents, let's assume, as does the Plan's analysis, that there will be a substantial increase in market demand for high density housing in suburban and urban downtowns. And, further, let's assume that high density housing will reduce GHG emissions, and that high density housing is the only kind of housing to reduce GHG emissions—as, for the sake of argument here, we must make these assumptions because the Plan's models make these assumptions, and ABAG and MTC used their models to analyze the difference between No Project and the Preferred Alternative.

Under no project in the world as it exists, by definition, the cities can zone as they wish within the limits of state law, and landowners and developers can build where cities allow them to build and in the ways cities allow them to build—as long as they can make a profit doing so (e.g., as long as there is a market so those housing units can be sold at a higher price than their cost). But under No Project, an artificial construct created by ABAG and MTC to guarantee that their Preferred Alternative performs well in the analysis and No Project performs poorly, the models analyzing No Project disallow any new zoning changes in any of the 101 cities and towns in the Bay Area and in the unincorporated areas of the nine counties. Not even a variance is accommodated for in the modeling for No Project. Only housing units that could be built today under today's zoning codes are allowed, and no changes in zoning are allowed for the next 30 years. Ponder, if you will, how astonishingly untethered from reality this assumption is—but the

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

assumption served its purpose in the analysis, which was to impair the results of the analysis for No Project.

Remember, Plan Bay Area's models assume a vast new demand for high density housing in suburban and urban downtowns. However, the mythical construct of No Project will not allow any of this to be built unless it is already zoned for today. Thus, despite this vast new demand, these units will not get built. And, because the Plan's models also assume that only high density housing will reduce GHG emissions, then the mythical construct of No Project, by definition, cannot reduce GHG.

On the other hand, the Preferred Alternative is defined as allowing unlimited upzoning for cities and towns, to accommodate this assumed vast new demand for high density housing in suburban and urban downtowns. And since by definition—that is, according to the Plan's models--these high density housing units are the only housing units that reduce GHGs, and Preferred Alternative is defined as allowing unlimited upzoning to get these units built, and No Project is defined as barring any upzoning to increase the capacity for cities to build these, by these assumptions and these assumptions alone, the Preferred Alternative will be an environmentally superior alternative and No Project will be an environmentally inferior alternative.

Not because one is superior or inferior to the other in fact. It's simply by definition. Before the analysis began, ABAG and MTC made sure that their Preferred Alternative would perform better on their analysis than No Project.

This gearing of the outcome by the definition of the models analyzing the alternatives was so egregious that two of the modeling professionals attending the October 2, 2012 Regional Modeling Working Group meeting (minutes attached here as Appendix F) where ABAG and MTC's handiwork was reviewed, complained about this:

Chris and George asked about the implementation of existing general plans in UrbanSim and why zoning was changed in the Project alternative; Michael responded that the maximum zoning in city plans was used for the No Project, while upzoning was performed in the Project to support focused growth in PDAs.

### **III. Summary**

Councilmembers and Madame Mayor, earlier in this section we said to you that “[a] Plan this fatally flawed and lacking in integrity could only have been fabricated and sold to the public through misleading representations and profoundly dishonest analysis. And it has been.” We have only detailed a few of the ways that this Plan was fabricated and sold to the public through misleading representations and profoundly dishonest analysis. There are many more but time does not permit us to detail them here.

Orinda Watch, Comments submitted to Orinda City Council on draft Plan Bay Area and its draft Environmental Impact Report, Friday, May 10, 2013

What we have laid out for you is indisputable and unassailable, and compels this Council to go on the record opposing this Plan, and opposing a public vote on this Plan until all of the citizen concerns that have been raised about this Plan have been addressed.

Respectfully,

Orinda Watch

attachments