

DYNAVAX TECHNOLOGIES CORP  
Form DEFR14A  
December 01, 2010

## SCHEDULE 14A INFORMATION

### Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to § 240.14a-12

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

## Dynavax Technologies Corporation

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box)

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1. Title of each class of securities to which transaction applies:

2. Aggregate number of securities to which transaction applies:

3. Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

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4. Proposed maximum aggregate value of transaction:

5. Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

6. Amount Previously Paid:

7. Form, Schedule or Registration Statement No.:

8. Filing Party:

9. Date Filed:

**EXPLANATORY NOTE**

This revised Definitive Proxy Statement on Schedule 14A is being filed solely to remove the **PRELIMINARY COPY SUBJECT TO COMPLETION** heading on the Notice of Special Meeting of Stockholders filed as part of the Dynavax Technologies Corporation Definitive Proxy Statement on Schedule 14A, filed with the Securities and Exchange Commission on November 30, 2010 (the **Original Filing** ). Except as described above, all other information included in the Original Filing remains unchanged.

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**DYNAVAX TECHNOLOGIES CORPORATION**

2929 Seventh Street, Suite 100

Berkeley, California 94710

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**To Be Held On January 5, 2011**

Dear Stockholder:

Notice is hereby given that a Special Meeting of Stockholders of Dynavax Technologies Corporation, a Delaware corporation (the Company), will be held on January 5, 2011 at 9:00 a.m. local time at the Company's executive offices at 2929 Seventh Street, Suite 100, Berkeley, California 94710. The Company is conducting this Special Meeting for the following purposes:

1. To approve an amendment to the Company's Sixth Amended and Restated Certificate of Incorporation to increase the authorized number of shares of common stock from 150,000,000 to 250,000,000 shares.
2. To approve the Dynavax Technologies Corporation 2011 Equity Incentive Plan.

These items of business are more fully described in the Proxy Statement accompanying this Notice.

The record date for the Special Meeting is November 5, 2010. Only stockholders of record at the close of business on that date may vote at the meeting or any adjournment or postponement thereof. In accordance with Delaware law, for ten days prior to the Special Meeting, a list of stockholders of record will be available for inspection in the office of the Corporate Secretary, Dynavax Technologies Corporation, 2929 Seventh Street, Suite 100, Berkeley, California 94710. The list of stockholders will also be available at the Special Meeting.

**Important Notice Regarding the Availability of Proxy Materials for the Stockholders Meeting to Be Held on January 5, 2011 at 9:00 a.m. local time at 2929 Seventh Street, Suite 100, Berkeley,**

**California 94710.**

**The proxy statement is available at <http://www.dynavax.com/2011specialproxy.html>.**

By Order of the Board of Directors

/s/ Michael S. Ostrach  
Michael S. Ostrach  
Secretary

Berkeley, California

December 9, 2010

**You are cordially invited to attend the meeting in person. Your vote is important, regardless of the number of shares you own. Whether or not you expect to attend the meeting, please complete, date, sign and return the enclosed proxy as promptly as possible in order to ensure your representation at the meeting. A return envelope (which is postage prepaid if mailed in the United States) has been**

**provided for your convenience. Even if you have voted by proxy, you may still vote in person if you attend the meeting. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must obtain a proxy issued in your name from that record holder.**

**DYNAVAX TECHNOLOGIES CORPORATION**

2929 Seventh Street, Suite 100

Berkeley, California 94710

**PROXY STATEMENT**

**FOR A SPECIAL MEETING OF STOCKHOLDERS**

**January 5, 2011**

**QUESTIONS AND ANSWERS ABOUT THESE PROXY MATERIALS AND VOTING**

**Why am I receiving these materials?**

We delivered these proxy materials to you because the Board of Directors of Dynavax Technologies Corporation (sometimes referred to as we, the Company or Dynavax ) is soliciting your proxy to vote at a Special Meeting of Stockholders, including at any adjournments or postponements of the meeting. You are invited to attend the special meeting to vote on the proposals described in this proxy statement. However, you do not need to attend the meeting to vote your shares. Instead, you may simply complete, sign and return the enclosed proxy card.

We intend to mail these proxy materials on or about December 9, 2010 to all stockholders of record entitled to vote at the special meeting.

**How do I attend the special meeting?**

The meeting will be held on Wednesday, January 5, 2011 at 9:00 a.m., California time at the Company's executive offices at 2929 Seventh Street, Suite 100, Berkeley, California 94710. Directions to the special meeting may be found at <http://www.dynavax.com/directions.html>. Information on how to vote in person at the special meeting is discussed below.

**Who can vote at the special meeting?**

Only stockholders of record at the close of business on November 5, 2010 will be entitled to vote at the special meeting. On this record date, there were 115,575,069 shares of common stock outstanding and entitled to vote.

***Stockholder of Record: Shares Registered in Your Name***

If on November 5, 2010 your shares were registered directly in your name with the Company's transfer agent, then you are a stockholder of record. As a stockholder of record, you may vote in person at the meeting or vote by proxy. Whether or not you plan to attend the meeting, we urge you to fill out and return the enclosed proxy card to ensure your vote is counted. You may still attend the meeting and vote in person even if you have already voted by proxy.

To vote in person, come to the special meeting and we will give you a ballot when you arrive. Directions to the special meeting location are available at <http://www.dynavax.com/directions.html>.

To vote using the proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the envelope provided. If you return your signed proxy card to us before the special meeting, we will vote your shares as you direct.

To vote using the telephone, simply follow the instructions on the enclosed proxy card. Voting by telephone has the same effect as voting by mail. If you vote by telephone, do not return your proxy card by mail. You may vote by telephone until 11:59 p.m., Eastern Standard Time, January 4, 2011.

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To vote using the internet, simply follow the instructions on the enclosed proxy card. If you vote by using the internet, do not return your proxy card by mail. You may vote by using the internet until 11:59 p.m., Eastern Standard Time, January 4, 2011.

***Beneficial Owner: Shares Registered in the Name of a Broker or Bank***

If on November 5, 2010 your shares were held, not in your name, but rather in an account at a brokerage firm, bank, dealer, or other similar organization, then you are the beneficial owner of shares held in street name and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered to be the stockholder of record for purposes of voting at the special meeting. As a beneficial owner, you have the right to direct your broker or other agent regarding how to vote the shares in your account. You are also invited to attend the special meeting. However, since you are not the stockholder of record, you may not vote your shares in person at the meeting unless you request and obtain a valid proxy from your broker or other agent.

**What am I voting on?**

We are asking you to vote on two (2) proposals:

Proposal 1: To approve an amendment to the Company's Sixth Amended and Restated Certificate of Incorporation to increase the authorized number of shares of common stock from 150,000,000 to 250,000,000 shares.

Proposal 2: To approve the Dynavax Technologies Corporation 2011 Equity Incentive Plan.

**Why are we proposing to increase the authorized number of shares of common stock pursuant to Proposal 1?**

We desire to have additional shares available to provide additional flexibility to use our capital stock for business and financial purposes in the future. The additional shares may be used for various purposes without further stockholder approval. These purposes may include raising capital; establishing strategic relationships with other companies; expanding our business or product candidates through the acquisition of other businesses or products; providing equity incentives to employees, officers or directors and other purposes related to our business. The additional shares of common stock that would become available for issuance if the proposal were adopted could also be used by us to oppose a hostile takeover attempt or to delay or prevent changes in control or our management.

**Why are we seeking stockholder approval of the increase in the authorized number of shares of common stock in Proposal 1?**

Section 242 of the Delaware General Corporation Law requires stockholder approval of an amendment to our certificate of incorporation, which is required in order to increase the authorized number of shares of our common stock.

**Why is Dynavax's Board of Directors recommending approval of the increase in the authorized number of shares of common stock in Proposal 1?**

As of our record date of November 5, 2010, our total common stock outstanding was 115,575,069. Taking into account shares of common stock reserved for issuance upon the exercise of outstanding warrants as well as shares of common stock reserved for issuance upon exercise of outstanding employee stock options, our total common stock outstanding on a fully diluted basis would represent approximately 149,700,000 of our currently authorized 150,000,000 shares. In developing its recommendation to the stockholders to vote in favor of the increase to the authorized number of shares of our common stock, our Board of Directors considered many factors, including but not limited to the following:

The benefits to us of having additional flexibility to use our capital stock for business and financial purposes in the future, including establishing strategic relationships with other companies and expanding our business or product candidates through the acquisition of other businesses or products.



The benefits to us of raising additional capital through sales of common stock under our at-the-market common stock purchase agreement with Aspire Capital Fund, LLC ( Aspire Capital ).

The benefits to the stockholders of using the additional shares to oppose a hostile takeover attempt or to delay or prevent changes in control or our management in order to maximize the value for our stockholders.

The dilution of the ownership interests in Dynavax held by our existing stockholders as a result of the potential issuance of the additional shares.

The consequences of our failure to increase the authorized number of shares of our common stock, including our inability to utilize our equity financing agreement with Aspire Capital and a lack of equity incentives to employees, officers or directors.

**What happens if the increase in the authorized number of shares of common stock in Proposal 1 is approved?**

If the increase in the authorized number of shares of our common stock is approved, we will file with the Secretary of State of Delaware a Certificate of Amendment to our Sixth Amended and Restated Certificate of Incorporation to increase our authorized number of shares of common stock from 150,000,000 shares to 250,000,000 shares.

**What happens if the increase in the authorized number of shares of common stock in Proposal 1 is not approved?**

If the increase in the authorized number of shares of our common stock is not approved, our Sixth Amended and Restated Certificate of Incorporation will remain as it is, and the authorized number of shares of our common stock will remain at 150,000,000. Our ability to use our capital stock for business and financial purposes will be limited to the number of authorized shares of our common stock available for issuance and we may lose the flexibility to operate our business optimally, for example, by limiting our ability to use our equity financing agreement with Aspire Capital. In addition, even if Proposal 2 is approved by a majority of the shares present, in person or represented by proxy and entitled to vote at the special meeting, the 2011 Plan will not become effective if the increase in the authorized number of shares of our common stock is not approved.

**Why are we proposing to adopt the 2011 Plan pursuant to Proposal 2?**

We currently have two stockholder-approved equity incentive plans: the Dynavax Technologies Corporation 1997 Equity Incentive Plan (the 1997 Plan ), which has expired and has no shares remaining available for issuance, and the Dynavax Technologies Corporation 2004 Stock Incentive Plan (the 2004 Plan ), which has 371,093 shares remaining available for grant as of November 5, 2010. We also sponsor a 2010 Employment Inducement Award Plan (the 2010 Inducement Plan ), which is a non-stockholder approved plan intended to rely on an exemption from stockholder approval under certain NASDAQ rules for equity awards to newly hired employees as a material inducement to the individual s entering into employment with us. The 2010 Inducement Plan has 595,500 shares remaining available for grant. Once we exhaust our remaining share reserve under the 2004 Plan and the 2010 Inducement Plan, we will be unable to issue new equity awards to our new and existing employees, consultants, officers or directors. We are asking you to approve the 2011 Plan, rather than increase the number of shares available for issuance under the 2004 Plan or the 2010 Inducement Plan, because the 2011 Plan contains provisions that are designed to protect our stockholders' interests and to reflect compensation and corporate governance best practices. The 2011 Plan will provide us with sufficient shares to enable us to grant equity awards to our employees for approximately two more years, and we anticipate seeking stockholder approval to increase the number of shares available for issuance under the 2011 Plan in fiscal year 2013. Upon the effectiveness of the 2011 Plan, no additional awards will be granted under either the 2004 Plan or the 2010 Inducement Plan. All shares currently subject to awards outstanding under the 1997 Plan, 2004 Plan or 2010 Inducement Plan, which awards expire or are forfeited, will be included in the reserve for the 2011 Plan to the extent such shares would otherwise return to such plans.

**Why are we seeking stockholder approval of the 2011 Plan in Proposal 2?**

NASDAQ Marketplace Rule 5635(c) generally requires stockholder approval when an equity compensation plan or other arrangement is established or materially amended, unless an exemption applies.

**Why is Dynavax's Board of Directors recommending approval of the 2011 Plan in Proposal 2?**

In developing its recommendation to the stockholders to vote in favor of the approval of the 2011 Plan, our Board of Directors considered many factors, including but not limited to the following:

The need to attract and retain highly qualified employees in a competitive market.

The desire to provide long term incentives that align employee compensation with stockholder interests.

Our gross burn rates for the last three years.

The addition of a number of specific terms and limitations in the 2011 Plan that our Board believes represent compensation and corporate governance best practices.

**What happens if the 2011 Plan in Proposal 2 is approved?**

If the 2011 Plan is approved by our stockholders, the 2011 Plan will become effective and it will replace the 1997 Plan, the 2004 Plan and the 2010 Inducement Plan.

**What happens if the 2011 Plan in Proposal 2 is not approved?**

If the 2011 Plan is not approved by our stockholders, the 2011 Plan will not become effective, and we will continue to issue awards under the 2004 Plan to existing employees, consultants, officers and directors until our share reserve under such plan is exhausted. In addition, we may continue to issue equity awards to newly hired employees as a material inducement to the individuals entering into employment with us under the 2010 Inducement Plan.

**How do I vote?**

For each of the matters to be voted on, you may vote For or Against or abstain from voting. The procedures for voting are fairly simple:

***Stockholder of Record: Shares Registered in Your Name***

If you are a stockholder of record, you may vote in person at the special meeting or vote by proxy using the enclosed proxy card. Whether or not you plan to attend the meeting, we urge you to vote by proxy to ensure your vote is counted. You may still attend the meeting and vote in person even if you have already voted by proxy.

To vote in person, come to the special meeting and we will give you a ballot when you arrive. Directions to the special meeting location are available at <http://www.dynavax.com/directions.html>.

To vote using the proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the envelope provided. If you return your signed proxy card to us before the special meeting, we will vote your shares as you direct.

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To vote using the telephone, simply follow the instructions on the enclosed proxy card. Voting by telephone has the same effect as voting by mail. If you vote by telephone, do not return your proxy card by mail. You may vote by telephone until 11:59 p.m., Eastern Standard Time, January 4, 2011.

To vote using the internet, simply follow the instructions on the enclosed proxy card. If you vote by using the internet, do not return your proxy card by mail. You may vote by using the internet until 11:59 p.m., Eastern Standard Time, January 4, 2011.

***Beneficial Owner: Shares Registered in the Name of Broker or Bank***

If you are a beneficial owner of shares registered in the name of your broker, bank, or other agent, you should have received a proxy card and voting instructions with these proxy materials from that organization rather than from Dynavax. Simply complete and mail the proxy card to ensure that your vote is counted. To vote in person at the special meeting, you must obtain a valid proxy from your broker, bank, or other agent. Follow the instructions from your broker or bank included with these proxy materials, or contact your broker or bank to request a proxy form.

**We provide internet proxy voting to allow you to vote your shares online, with procedures designed to ensure the authenticity and correctness of your proxy vote instructions. However, please be aware that you must bear any costs associated with your internet access, such as usage charges from internet access providers and telephone companies.**

**How many votes do I have?**

On each matter to be voted upon, you have one vote for each share of common stock you own as of November 5, 2010.

**What if I return a proxy card or otherwise vote but do not make specific choices?**

If you return a signed and dated proxy card or otherwise vote without marking voting selections, your shares will be voted For the approval of the amendment to our Sixth Amended and Restated Certificate of Incorporation to increase the authorized number of shares of our common stock.

**Who is paying for this proxy solicitation?**

We will pay for the entire cost of soliciting proxies. In addition to these proxy materials, our directors and employees and our transfer agent, BNY Mellon, may also solicit proxies in person, by telephone, or by other means of communication. Directors and employees will not be paid any additional compensation for soliciting proxies, but BNY Mellon will be paid its customary fee of approximately \$10,000 plus out-of-pocket expenses if it solicits proxies. We may also reimburse brokerage firms, banks and other agents for the cost of forwarding proxy materials to beneficial owners.

**What does it mean if I receive more than one set of proxy materials?**

If you receive more than one set of proxy materials, your shares may be registered in more than one name or in different accounts. Please follow the voting instructions on the proxy cards in the proxy materials to ensure that all of your shares are voted.

**Can I change my vote after submitting my proxy?**

Yes. You can revoke your proxy at any time before the final vote at the meeting. If you are the record holder of your shares, you may revoke your proxy in any one of the following ways:

You may submit another properly completed proxy card with a later date.

You may send a timely written notice that you are revoking your proxy to Dynavax's Secretary at 2929 Seventh Street, Suite 100, Berkeley, California 94710.

You may attend the special meeting and vote in person. Simply attending the meeting will not, by itself, revoke your proxy. Your most current proxy card or telephone or internet proxy is the one that is counted.

If your shares are held by your broker or bank as a nominee or agent, you should follow the instructions provided by your broker or bank.



**How are votes counted?**

Votes will be counted by the inspector of election appointed for the meeting, who will separately count For and Against votes, abstentions and broker non-votes. Abstentions will be counted towards the vote total for each proposal, and will have the same effect as Against votes. For Proposal 1, broker non-votes will be counted towards the vote total and have the same effect as Against votes. Broker non-votes have no effect and will not be counted towards the vote total for Proposal 2.

**What are broker non-votes and what is their effect on the vote?**

Broker non-votes occur when a beneficial owner of shares held in street name fails to provide instructions to the broker or nominee holding the shares as to how to vote on matters deemed non-routine. If the beneficial owner does not provide voting instructions, the broker or nominee cannot vote the shares with respect to non-routine matters. Both proposals are non-routine matters and broker non-votes will be counted towards the quorum requirement. On Proposal 1, broker non-votes will have the same effect as Against votes. On Proposal 2, broker non-votes will have no effect.

**How many votes are needed to approve each proposal?**

Proposal 1, to approve the amendment of the Company's Sixth Amended and Restated Certificate of Incorporation to increase the authorized number of shares of common stock from 150,000,000 to 250,000,000 shares, must receive For votes from the holders of a majority of the Company's outstanding shares entitled to vote. If you fail to return your proxy card, it will have the same effect as an

Against vote. If you return your proxy card and select Abstain, it will have the same effect as an Against vote. Broker non-votes will have the same effect as Against votes.

Proposal 2, to approve the Dynavax Technologies Corporation 2011 Equity Incentive Plan, must receive For votes from the holders of a majority of shares present either in person or by proxy, if a quorum of stockholders is achieved. If you return your proxy and select Abstain, it will have the same effect as an Against vote. Broker non-votes will have no effect.

**What is the quorum requirement?**

A quorum of stockholders is necessary to hold a valid meeting. A quorum will be present if stockholders holding at least a majority of the outstanding shares entitled to vote are present at the meeting in person or represented by proxy. On the record date, there were 115,575,069 shares outstanding and entitled to vote. Thus, the holders of at least 57,787,535 shares must be present in person or represented by proxy at the meeting to have a quorum.

Your shares will be counted towards the quorum only if you submit a valid proxy (or one is submitted on your behalf by your broker, bank or other nominee) or if you vote in person at the meeting. Abstentions and broker non-votes will be counted towards the quorum requirement. If there is no quorum, the holders of a majority of shares present at the meeting in person or represented by proxy may adjourn the meeting to another date.

**How does Dynavax's Board of Directors recommend that I vote?**

After careful consideration, our Board of Directors has approved the amendment to our Sixth Amended and Restated Certificate of Incorporation to increase the number of authorized shares of our common stock, and has determined that such action is advisable and in the best interests of Dynavax and our stockholders. Accordingly, our Board of Directors recommends that Dynavax stockholders vote For Proposal 1.

After careful consideration, the Compensation Committee of our Board of Directors has approved the Dynavax Technologies Corporation 2011 Equity Incentive Plan and has determined that such action is advisable and in the best interests of Dynavax and our stockholders. Accordingly, our Board of Directors recommends that Dynavax stockholders vote For Proposal 2.

**Am I entitled to appraisal rights?**

Under Delaware law, Dynavax stockholders are not entitled to appraisal rights in connection with the transactions described in this proxy statement.

**How can I find out the results of the voting at the special meeting?**

Preliminary voting results will be announced at the special meeting. Final voting results will be published in a current report on Form 8-K that we expect to file within four business days after the special meeting. If final voting results are not available to us in time to file a Form 8-K within four business days after the meeting, we intend to file a Form 8-K to publish preliminary results and, within four business days after the final results are known to us, file an additional Form 8-K to publish the final results.

**What proxy materials are available on the internet?**

The proxy statement is available at <http://www.dynavax.com/2011specialproxy.html>.

**When are stockholder proposals due for next year's annual meeting?**

To be considered for inclusion in the proxy materials for the 2011 annual meeting of stockholders, your proposal must be submitted in writing by February 13, 2011, to Michael S. Ostrach, Esq., Corporate Secretary. If you wish to bring a matter before the stockholders at next year's annual meeting and you do not notify us before March 15, 2011, for all proxies we receive, the proxy holders will have discretionary authority to vote on the matter, including discretionary authority to vote in opposition to the matter.

**PROPOSAL 1**

**APPROVAL OF INCREASE IN NUMBER OF AUTHORIZED SHARES OF COMMON STOCK**

The Board of Directors is requesting stockholder approval of an amendment to the Company's Sixth Amended and Restated Certificate of Incorporation to increase the Company's authorized number of shares of common stock from 150,000,000 shares to 250,000,000 shares.

In addition to the 115,575,069 shares of common stock outstanding as of our record date, November 5, 2010, the Board of Directors has reserved 7,981,262 shares for issuance upon exercise of employee stock options and delivery of restricted stock units and up to 25,833,879 shares of common stock that may be issued upon exercise of outstanding warrants.

On September 14, 2010, the Board of Directors authorized Dynavax to enter into that certain Common Stock Purchase Agreement (the "Purchase Agreement"), dated September 20, 2010, with Aspire Capital Fund, LLC ("Aspire Capital"), which provides that, upon the terms and subject to the conditions and limitations set forth therein, Aspire Capital is committed to purchase up to an aggregate of \$30.0 million shares of Dynavax common stock over the term of the Purchase Agreement. Under the Purchase Agreement, Dynavax has the right to sell up to a maximum of 150,000 shares per day on any business day on which the closing sale price of Dynavax common stock exceeds \$1.00 per share. Dynavax and Aspire Capital may mutually agree to increase the number of shares that may be sold per business day by up to an additional 1,000,000 shares per day. The purchase price per share is the lower of (i) the lowest sale price for the common stock on the date of sale or (ii) the arithmetic average of the three lowest closing sale prices for the common stock during the 12 consecutive business days ending on the business day immediately preceding the purchase date of those securities. As of November 5, 2010, Dynavax had raised approximately \$3.3 million from the sale of common stock to Aspire Capital pursuant to the Purchase Agreement. Dynavax expects to use the net proceeds from sales to Aspire Capital for general corporate purposes, including clinical trials, research and development expenses and general and administrative expenses. Dynavax has not determined the amounts it plans to spend on any of the areas listed above or the timing of these expenditures. Pending application of the net proceeds as described above, Dynavax intends to temporarily invest the proceeds in short-term interest bearing instruments.

Although, at present, the Board of Directors has no other plans to issue additional shares of common stock other than under the terms of our equity incentive plans, the Board of Directors believes it is prudent to have the shares available to provide additional flexibility to use its capital stock for business and financial purposes in the future. The additional shares may be used for various purposes without further stockholder approval. These purposes may include raising capital; providing equity incentives to employees, officers or directors; establishing strategic relationships with other companies; expanding the Company's business or product lines through the acquisition of other businesses or products; and other corporate purposes. The additional shares are also necessary to establish a share reserve for the 2011 Plan. As a result, if Proposal 1 is not approved, our 2011 Plan will not become effective. See Proposal 2 for a description of the 2011 Plan and the consequences if it does not become effective.

The additional shares of common stock that would become available for issuance if the proposal were adopted could also be used by Dynavax to oppose a hostile takeover attempt or to delay or prevent changes in control or management of Dynavax. For example, we have a "poison pill" which would, under certain circumstances related to an acquisition of shares not approved by the Board of Directors, give certain holders the right to acquire additional shares of common stock at a low price, or the Board of Directors could strategically sell shares of common stock in a private transaction to purchasers who would oppose a takeover or favor the current Board of Directors. Although this proposal to increase the authorized common stock has been prompted by business and financial considerations and not by the threat of any hostile takeover attempt (nor is the Board of Directors currently aware of any such attempts directed at Dynavax), nevertheless, stockholders should be aware that approval of this proposal could facilitate future efforts by Dynavax to deter or prevent changes in control of Dynavax, including transactions in which the stockholders might otherwise receive a premium for their shares over then current market prices.



In developing its recommendation to the stockholders to vote in favor of the increase to the authorized number of shares of our common stock, our Board of Directors considered many factors, including but not limited to the following:

The benefits to us of having additional flexibility to use our capital stock for business and financial purposes in the future, including establishing strategic relationships with other companies and expanding our business or product candidates through the acquisition of other businesses or products.

The benefits to us of raising additional capital through our at-the-market common stock purchase agreement with Aspire Capital.

The benefits to the stockholders of using the additional shares to oppose a hostile takeover attempt or to delay or prevent changes in control or our management in order to maximize the value for our stockholders.

The dilution of the ownership interests in Dynavax held by our existing stockholders as a result of the potential issuance of the additional shares.

The consequences of our failure to increase the authorized number of shares of our common stock include our inability to utilize our equity financing agreement with Aspire Capital and the failure of the 2011 Plan to become effective and therefore a lack of equity incentives that can be made available to employees, officers or directors.

The additional common stock to be authorized by adoption of the amendment would have rights identical to the currently outstanding common stock of the Company. Adoption of the proposed amendment and issuance of the common stock would not affect the rights of the holders of currently outstanding common stock of the Company, except for effects incidental to increasing the number of shares of the Company's common stock outstanding, such as dilution of the earnings per share and voting rights of current holders of common stock. If the amendment is adopted, it will become effective upon filing of a Certificate of Amendment of the Company's Sixth Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware. The form of proposed certificate of amendment to the Company's Sixth Amended and Restated Certificate of Incorporation to increase the authorized shares of our common stock is attached to this proxy statement as Annex A.

The affirmative vote of the holders of a majority of the outstanding shares of the common stock will be required to approve this amendment to the Company's Sixth Amended and Restated Certificate of Incorporation. As a result, abstentions and broker non-votes will have the same effect as negative votes.

**THE BOARD OF DIRECTORS RECOMMENDS**

**A VOTE IN FAVOR OF PROPOSAL 1.**

**PROPOSAL 2**

**APPROVAL OF 2011 EQUITY INCENTIVE PLAN**

In November 2010, the Compensation Committee of our Board of Directors adopted the Dynavax Technologies Corporation 2011 Equity Incentive Plan (the 2011 Plan ), subject to approval by our stockholders and subject to the approval of Proposal 1 to the increase in the authorized number of shares of our common stock, as the successor to and continuation of the Dynavax Technologies Corporation 1997 Equity Incentive Plan (the 1997 Plan ), which expired in 2007, the Dynavax Technologies Corporation 2004 Stock Incentive Plan (the 2004 Plan ) and the 2010 Employment Inducement Award Plan (the 2010 Inducement Plan, and together with the 1997 Plan and the 2004 Plan, the Prior Plans ), which were originally adopted by the Board in January 1997, January 2004 and January 2010, respectively.

Our Board of Directors is asking you to approve the 2011 Plan, which, in addition to providing clarity, ease of administration, and compliance with recent developments in applicable laws, will provide us with sufficient shares to enable us to grant equity awards to our employees for approximately two more years. Rather than simply request an increase in the share reserve of the Prior Plans, we are asking you to approve a new plan that we believe includes policies and terms that represent corporate governance best practices designed to protect our stockholders interests. If approved, the 2011 Plan will become effective on the date on which the Company files the Certificate of Amendment of the Company s Sixth Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware. We anticipate seeking stockholder approval to increase the number of shares available for issuance under the 2011 Plan in 2013.

If the 2011 Plan is approved and becomes effective, the aggregate number of shares of common stock available for issuance (including shares subject to stock awards outstanding on November 5, 2010) under the Prior Plans and the 2011 Plan will be 22,981,262 shares, representing approximately 15% of the shares of our fully-diluted common stock outstanding as of November 5, 2010. However, no new stock awards shall be granted under the Prior Plans from and after the effective date of the 2011 Plan. Instead, on the effective date of the 2011 Plan, a total of 15,000,000 newly approved shares will become available for grant under the 2011 Plan and any shares remaining available for new grants on the effective date of the 2011 Plan under the Prior Plans (but not including any shares that may be added to the 2004 Plan share reserve on the first business day in 2011 by operation of the evergreen provision in Section 3(a) of the 2004 Plan) shall become available for issuance under the 2011 Plan. In addition, the Prior Plans will be terminated (to the extent not previously expired) as soon as the 2011 Plan is effective. Any shares that would otherwise have returned to the Prior Plans on or after the effective date of the 2011 Plan shall instead return to, and become available for new grants under, the 2011 Plan. To be clear, no shares are available for future grants under the 1997 Plan, and, as of November 5, 2010, there were options covering 792,539 shares outstanding under the 1997 Plan. If those options under the 1997 Plan expire or are otherwise forfeited prior to exercise, the shares subject to those options will become available for future grants under the 2011 Plan.

Approval of the 2011 Plan requires the affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the special meeting. Abstentions will have the same effect as an Against vote. Broker non-votes will have no effect on the outcome of this Proposal.

**THE BOARD OF DIRECTORS RECOMMENDS**

**A VOTE IN FAVOR OF PROPOSAL 2.**

**Why You Should Vote for the 2011 Plan**

**Equity Incentives such as Stock Options Are an Important Part of Our Compensation Philosophy**

The 2011 Plan is critical to our ongoing effort to build stockholder value through retaining and motivating key employees. The purpose of the increase in available shares under the 2011 Plan is to provide us with a sufficient reserve of common stock to offer appropriate incentives to our employees, consultants and directors. Dynavax is a clinical-stage biopharmaceutical company whose lead product candidate is HEPLISAV™, a Phase

3 investigational adult hepatitis B vaccine. Our success in developing marketable products, achieving a competitive position and implementing our current initiatives, particularly for HEPLISAV, will depend on our ability to attract and retain qualified personnel in areas requiring specific technical, medical or commercial expertise. Like all biotechnology companies, we actively compete for highly qualified employees. Our equity programs are key components of our strategy to attract and retain those individuals. We continue to believe that equity compensation is a critical component to motivate key employees and effectively aligns employee compensation with stockholder interests. Traditionally, stock options have been the primary focus of our equity program. The potential value of stock options is realized only if our share price increases, and so we believe stock options provide a strong incentive for individuals to work to grow our business and build stockholder value, and are most attractive to individuals who share our entrepreneurial spirit. In addition, we have also granted a limited number of restricted stock awards in recent years in order to attract and retain exceptional employees.

#### **Our Prior Plans are Depleted**

Grants of equity awards to our named executive officers and our directors have been made from our Prior Plans. As of November 5, 2010, our Prior Plans have 966,593 shares remaining available for grant; therefore, we are limited in our ability to issue equity to our named executive officers, key employees, consultants or our directors unless our stockholders approve a new stock plan. While we could increase cash compensation if we are unable to grant equity incentives, we have taken measures to conserve our use of cash and anticipate that we will have difficulty attracting, retaining, and motivating our named executive officers, our key employees and our directors if we are unable to make equity grants to them. Equity awards are a more effective executive compensation vehicle than cash at a growth-oriented, entrepreneurial company because they deliver high potential value with a smaller impact on current income and cash flow. Therefore, we are asking our stockholders to approve the 2011 Plan.

#### **We Manage Our Equity Award Use Carefully**

We continue to believe that equity awards such as stock options are a vital part of our overall compensation program. However, we recognize that equity awards dilute existing stockholders and therefore we must responsibly manage the growth of our equity compensation program. We are committed to effectively managing our equity compensation share reserve, including our burn rate. Detailed information about equity awards issued in prior years as well as other relevant information is set forth in the [Information for Burn Rate Calculation](#) table below.

#### **The 2011 Plan Combines Compensation and Governance Best Practices**

We note that our 2011 Plan contains provisions that are designed to protect our stockholders' interests and to reflect compensation and corporate governance best practices, including:

*Stockholder approval is required for additional shares.* Unlike our 2004 Plan, the 2011 Plan does not contain an annual evergreen provision that provides for automatic increases of shares on an ongoing basis. The 2011 Plan authorizes a fixed number for our share reserve, so that stockholder approval is required to issue any additional shares from the 2011 Plan once we have used all shares available for issuance. The 2011 Plan is not an inducement plan, and therefore requires stockholder approval under the NASDAQ Marketplace Rules.

*No discount stock options or stock appreciation rights.* All stock options and stock appreciation rights will have an exercise price equal to or greater than the fair market value of our common stock on the date the stock option or stock appreciation right is granted.

*Repricing is not allowed.* The 2011 Plan prohibits the repricing or exchange of underwater stock options and stock appreciation rights without prior stockholder approval.

*Reasonable share counting provisions.* In general, when awards granted under the 2011 Plan lapse or are canceled, the shares reserved for those awards will be returned to the share reserve and be available for future awards. However, in contrast to our 2004 Plan, the 2011 Plan prohibits shares tendered to pay the exercise price of an award or shares withheld for payment of taxes to be returned to our share reserve.

*Removal of automatic change of control vesting acceleration provisions.* Our 2004 Plan provides for automatic accelerated vesting of equity awards issued under such plan upon a change of control if the acquiring company does not assume the awards (i.e., a single trigger provision) or if the acquiring company terminates the holder's employment within twelve months following the consummation of the change of control (i.e., a double trigger provision). Under the 2011 Plan, awards do not automatically accelerate upon a change of control unless there is an acceleration provision in an individual award agreement, or our Board of Directors elects to grant such accelerated vesting in connection with a particular transaction.

#### **Information for Burn Rate Calculation**

The following table provides the detailed information necessary to calculate our burn rates for the fiscal period ended November 5, 2010 and fiscal years ended 2009, 2008 and 2007. The table reflects grant information for our Prior Plans, but excludes our Employee Stock Purchase Plan.

	<b>Year to Date November 5, 2010</b>	<b>Fiscal 2009</b>	<b>Fiscal 2008</b>	<b>Fiscal 2007</b>
Options Granted	2,348,994	1,398,350	1,764,700	1,132,085
Restricted Stock Units Granted			435,000	
Restricted Stock Awards Granted				5,000
Options Cancelled	777,261	936,606	1,203,182	270,303
Restricted Stock Units Cancelled	15,000	60,000	90,000	
Restricted Stock Awards Cancelled				
Options and Awards Available for Grant	966,593	658,909	660,653	1,257,171
Weighted-Average Common Stock Outstanding	76,457,748	40,350,136	39,819,046	39,746,382
Common Stock Outstanding	115,575,069	54,279,270	39,854,265	39,764,520

#### **Summary of the 2011 Plan**

A summary of the principal features of the 2011 Plan follows below. The summary is qualified by the full text of the 2011 Plan that is attached as Annex B to this proxy statement.

#### **Types of Awards**

The 2011 Plan provides for the following types of awards: incentive stock options, nonstatutory stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards, performance cash awards, and other stock-based awards. We refer to these stock awards in this Proposal collectively as the stock awards or awards.

#### **Eligibility**

Stock awards may be granted under the 2011 Plan to employees (including officers) and consultants of Dynavax or our affiliates, and members of our Board of Directors. Pursuant to applicable tax law, we may only grant incentive stock options to our employees (including officers) and employees of our affiliates. As of November 5, 2010, we had a total of 129 employees and consultants and 8 non-employee directors who would be eligible to be granted awards from the 2011 Plan.

No person may be granted stock awards covering more than 2,000,000 shares of our common stock under our 2011 Plan during any calendar year pursuant to stock options, stock appreciation rights and other stock awards whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the fair market value on the date the stock award is granted. Additionally, no person may be granted a performance stock award covering more than 1,500,000 shares or a performance cash award having a maximum value in excess of \$5,000,000 in any calendar year. Such limitations are designed to help assure that any deductions to which we would otherwise be entitled with respect to such awards will not be subject to the \$1,000,000 limitation on the income tax deductibility of compensation paid to any covered executive officer imposed by Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code ).

#### **Administration**

The 2011 Plan is administered by our Board of Directors, which may in turn delegate authority to administer the 2011 Plan to a committee. Our Board of Directors has delegated administration of the 2011 Plan to the Compensation Committee of the Board of Directors (the Compensation Committee ), but has retained the authority to concurrently administer the 2011 Plan with the Compensation Committee and may, at any time, revert in itself some or all of the powers previously delegated to the Compensation Committee. Subject to the terms of the 2011 Plan, the Compensation Committee may determine the recipients, numbers and types of stock awards to be granted, and terms and conditions of the stock awards, including the period of their exercisability and vesting. Subject to the limitations set forth below, the Compensation Committee also determines the fair market value applicable to a stock award and the exercise price of stock options and stock appreciation rights granted under the 2011 Plan.

In the discretion of the Board of Directors, the Compensation Committee may consist solely of two or more non-employee directors within the meaning of Rule 16b-3 of the Exchange Act, or solely of two or more outside directors within the meaning of Section 162(m) of the Code. The Compensation Committee has the authority to delegate its administrative powers under the 2011 Plan to a subcommittee consisting of members of the Compensation Committee. The 2011 Plan also permits delegation to one or more officers of the ability to determine the recipients, number of shares and types of stock awards (to the extent permitted by law) to be granted to employees other than our officers, subject to a maximum limit on the aggregate number of shares subject to stock awards that may be granted by such officers.

#### **Stock Available for Awards**

If this Proposal 2 is approved (and if Proposal 1 is also approved), the total number of shares of our common stock reserved for issuance under the 2011 Plan will consist of:

15,000,000 shares; plus

the number of shares subject to the Prior Plans that are available for new grants on the effective date of the 2011 Plan (but not including any shares that may be added to the 2004 Plan share reserve on the first business day in 2011 by operation of the evergreen provision in Section 3(a) of the 2004 Plan); plus

the number of shares that are subject to stock awards outstanding under each of the Prior Plans that, on or after the effective date of the 2011 Plan, expire or terminate prior to exercise or settlement, or are forfeited because of a failure to meet a contingency or condition required to vest such shares, to the extent such shares would otherwise have returned to the Prior Plan.

We call this total number the Share Reserve. In no event will the Share Reserve exceed 22,981,262 shares. The Share Reserve does not limit the number of equity awards granted under the 2011 Plan so long as the number of shares of common stock issued under equity awards made under the 2011 Plan does not exceed the Share Reserve.

As of November 5, 2010, under the Prior Plans, (i) options to purchase approximately 6,744,669 shares of common stock were outstanding, (ii) no stock appreciation rights covering any shares were outstanding, (iii) awards other than options and stock appreciation rights covering an aggregate of 270,000 were outstanding and (iv) approximately 966,593 shares remained available for future awards under the 2004 Plan and 2010 Plan. The weighted average exercise price of all options outstanding as of November 5, 2010 was approximately \$3.15 and the weighted average remaining term of such options was approximately 7 years. A total of 115,575,069 shares of our common stock were outstanding at November 5, 2010.

The shares of common stock subject to stock awards granted under the 2011 Plan that expire, are forfeited because of a failure to vest, or otherwise terminate without being exercised in full will return to the Share Reserve and be available for issuance under the 2011 Plan. However, any shares that are withheld to satisfy tax requirements or that are used to pay the exercise or purchase price of a stock award will not return to the 2011 Plan.

Appropriate adjustments will be made to the Share Reserve, to the other numerical limits described in the 2011 Plan (such as the limit on the number of shares that may be issued as incentive stock options and the limit on the number of shares that may be awarded to any one person in any calendar year for purposes of Section 162(m) of the Code) and to outstanding awards in the event of any change in our common stock without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, other than the conversion of convertible securities.

### **Repricing Prohibition**

The 2011 Plan expressly provides that, without the approval of a majority of the votes cast in person or by proxy at a meeting of our stockholders, the Board of Directors may not provide for either the cancellation of underwater stock options or stock appreciation rights outstanding under the 2011 Plan in exchange for cash or the grant of a new award, or the amendment of outstanding stock options or stock appreciation rights to reduce the exercise price.

### **Terms of Options**

A stock option is the right to purchase shares of our common stock at a fixed exercise price for a fixed period of time. Stock option grants may be incentive stock options or nonstatutory stock options. Each option is evidenced by a stock option agreement. The Board of Directors determines the terms of a stock option including the exercise price, the form of consideration paid on exercise, the vesting schedule, restrictions on transfer and the term.

Generally, the exercise price of a stock option may not be less than 100% of the fair market value of the stock subject to the option on the date of grant. Options granted under the 2011 Plan will vest at the rate specified in the option agreement.

In general, the term of an option granted under the 2011 Plan may not exceed ten years. Unless the terms of an optionee's stock option agreement provides otherwise, if an optionee's continuous service relationship with us, or any of our affiliates, ceases for any reason other than disability or death, the optionee may generally exercise any vested options for a period of three months following the cessation of service. The option term may be extended in the event that exercise of the option following such a termination of service is prohibited by applicable securities laws or our insider trading policy. If an optionee's service relationship with us, or any of our affiliates, ceases due to disability or death, or an optionee dies within a certain period following cessation of service, the optionee or a beneficiary may generally exercise any vested options for a period of 12 months in the event of disability and 18 months in the event of death. In no event may an option be exercised beyond the expiration of its term.

Acceptable forms of consideration for the purchase of our common stock issued under the 2011 Plan may include cash, payment pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board, common stock previously owned by the optionee, payment through a net exercise feature, or other approved forms of legal consideration.

Generally, an optionee may not transfer a stock option other than by will or the laws of descent and distribution or pursuant to a domestic relations order. However, to the extent permitted under the terms of the applicable stock op