

Bayview Hunters Point Mothers and Fathers Committee & Greenaction for Health and Environmental Justice

January 21, 2021

Bay Conservation and Development Commission
Bay Area Metro Center
375 Beale St, Suite 510
San Francisco, CA 94105

Bayview Hunters Point Mothers and Fathers Committee and Greenaction for Health and Environmental Justice Comments on Agenda Item #10_Public Hearing on BCDC Permit Application No. 2020.001.00 – India Basin Open Space and 700 Innes Mixed Use Development Project

The Bayview Hunters Point Mothers and Fathers Committee and Greenaction for Health and Environmental Justice submit these comments on behalf of our diverse members and constituents who live in Bayview Hunters Point, San Francisco.

We respectfully urge the Bay Conservation and Development Commission (BCDC) to reject the application for the 700 Innes Mixed Use Development Project. Approval of the project application would violate BCDC's statutory mandate to protect the Bay from harmful development, would make a mockery of your Environmental Justice and Social Equity Policies, and would violate the civil rights of people of color residents and limited/non-English speaking residents of Bayview Hunters Point.

We urge the Commission to take the time necessary to fully review all the facts, to correct the false and misleading information in the Staff Recommendation, provide proper public notice including adequate advance notice, and comply with language access laws and policies by providing multilingual public notices and translations of key documents (or at least summaries of key documents).

We continue to object to BCDC's failure to provide adequate advanced public notice of this hearing, including only receiving the Staff Recommendation a few days before the January 21st hearing (which was emailed to us by BCDC staff after 6 pm on Friday, January 15th). The public and the Commission deserve adequate time to review and comment on this extensive document that has significant ramifications for the health and environment of Bayview Hunters Point residents and of San Francisco Bay.

We also object to the confusing and misleading way information is presented on the "Revised January 21, 2021 Commission Meeting" page, which is intended to facilitate public participation.

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The main contact number for the Commission's office is the first number that is listed, and is directly below the meeting time and right above the Zoom meeting link. This is confusing and misleading because there is no indication that this is not the correct number for joining the meeting, and its placement at the very top of the page along with meeting details gives the impression that this is the correct number to call for members of the public who wish to exercise their right to participate.

Finally, we object to the Commission's refusal and failure to provide notice and documents in languages spoken in the affected community, a violation of language access and civil rights laws and policies, and of your agency's own stated commitment to meaningful public participation.

As we have worked closely with BCDC staff and leadership for many years now to help your agency develop and implement environmental and social justice policies and practices, we sincerely hope the Commission abides by these policies will be complied with rather than violated.

1. BCDC must uphold and carry out its stated mission and strategic goals:

We urge the Commission to follow its mission "to protect and enhance the San Francisco Bay and encourage the **responsible** and productive use of its resources **for this and future generations**" (emphasis added). The facts are clear: The City's own Environmental Impact Report (EIR) for the 700 Innes Mixed Use Development confirmed that the project will cause significant, harmful, unavoidable, localized air pollution in Bayview Hunters Point for the life of the project, not just during construction. Approving this project is not a responsible use of Bay resources because it will harm this generation through its unavoidable and significant harmful air impacts, and will potentially harm future generations who may face the consequences of insufficient planning for sea level rise.

BCDC should also follow its own goals set forth in its 2017-2020 Strategic Plan, the first of which is to "[e]nhance the Bay's unique contributions to the Bay Area and enable **all** its communities to flourish" (emphasis added). The project is contrary to that stated goal: the project, the majority of which will be at-market (in other words, unaffordable) housing in the most expensive housing market in the United States, is designed to benefit wealthy people who can pay for unaffordable housing and a for-profit corporation over the long-time residents of Bayview Hunters Point who are low-income, working class, people of color who have borne the brunt of pollution in the air, water, and soil for decades. The project's proposal of mostly luxury housing indicates that whatever benefits BCDC hopes to gain from more open green space and access to the Bay shoreline, they are not meant for existing residents but rather for newer, wealthier, and whiter folks who have been gentrifying communities all across San Francisco and the entire Bay Area.

2. BCDC has a duty to protect the Bay shoreline in the public trust:

BCDC derives its jurisdiction over the shoreline of the Bay as the state agency holding these lands and waters in the public trust to protect them for public use and enjoyment. BCDC has "an affirmative duty to take the public trust into account in the planning and allocation of water resources." *National Audubon Society v. Superior Court*, 33 Cal.3d 419, 446 (1983). "Uses that are generally not permitted on public trust lands are those that are not trust use related, do not

serve a public purpose, and can be located on non-waterfront property, such as **residential and non-maritime related commercial and office uses**” (emphasis added) (2001 State Lands Commission Memo on Public Trust Doctrine).

The project at hand proposes several uses that are not related to the public trust, including a large mixed-use development with luxury residential and non-maritime related commercial and office uses. Granting this permit application and handing over lands held in the public trust for a private development is inherently an action that runs contrary to the public trust doctrine. Further, given the immediate proximity of this proposed luxury development to the more traditional public trust uses of open space and wetland preservation, it is doubtful whether those proposed benefits can truly be enjoyed by the public at large rather than exclusively by the smaller, wealthier subset that will reside just steps away from the shoreline.

Since this project is contrary to the mission, goals, and legal mandate of BCDC to protect the Bay shoreline under the public trust, we urge the Commission to reject the application.

3. We support green, clean, open space and parks for Bayview Hunters Point residents, but they must be healthy open spaces that are protected from this harmful proposed project:

We want to make it clear once again that the Bayview Hunters Point Mothers and Fathers Committee and Greenaction for Health and Environmental Justice support green, clean open space and parks for residents – including improving and remediating the toxic and radioactive contaminated waterfront in Bayview Hunters Point.

The community needs open space and parks, but these places must be healthy spaces for kids and families and other residents to safely enjoy.

The EIR has stated in unambiguous terms that the project will cause significant, harmful, unavoidable, localized air pollution in Bayview Hunters Point for the life of the project, not just during construction. Very importantly, the EIR also made clear that the harmful air pollution cannot be mitigated to less than significant – a fact that your staff suspiciously omitted from their Staff Recommendation. Residents and other members of the public who would make use of the open space and parks that are part of this proposed project would be subjected to this localized, significant and harmful air pollution.

Moreover, the parks and open spaces will be built on land that sits next to the contaminated Naval Shipyard Superfund site, which has not been properly tested for hazardous waste and radioactive contamination. If people use these recreational spaces without adequate testing and cleanup, they will likely be exposed to harmful contamination as well.

If the Commission approves of the Mixed Use Development Project, it would directly result in harming the health and environment of residents of Bayview Hunters Point due to the increased air pollution and possible exposure to radioactive contamination, and undermine any benefit that the parks and open space would provide the community, which the State of California and the Bay Area Air Quality Management District acknowledge to be highly at risk from pollution.

4. The Staff Recommendation is misleading and omits key facts about the harmful, significant, and unavoidable air pollution from the project that cannot be mitigated to less than significant:

BCDC Commissioners need to understand what the EIR for this project says. The EIR is clear that the air quality impact of the proposed project would be “**significant and unavoidable with mitigation.**” In plain language, the EIR and Statement of Overriding Consideration make it abundantly clear that the mitigation measures that the City and County of San Francisco included would not reduce the harmful, significant, and everlasting air quality impacts to less than significant. The fact is that this project, if approved, will cause harm to the health and environment of Bayview Hunters Point residents.

The Final EIR document (Responses to Comments on Draft EIR

<http://sfmea.sfplanning.org/India%20Basin%20Final%20RTC.pdf>) states in relevant part on pages 2-20 to 2-21:

*“The Draft EIR concluded that the proposed project would generate emissions of criteria pollutants and precursors during construction, operations, and overlapping construction and operational activities that **could violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria pollutants....Area-source emissions with the revised proposed project would...also continue to exceed the thresholds of significance. Therefore, the impact of the revised proposed project would be significant and unavoidable with mitigation, the same impact conclusion as reported in the Draft EIR for the proposed project.**”* (bold and italics added for emphasis)

On page 54, the Staff correctly note that:

*[T]he EIR concluded that the project would have **significant and unavoidable impacts to air quality**, including that it would: 1) generate emissions of criteria pollutants and precursors **during construction and operations** that could violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria pollutants; 2) generate emissions that could **expose sensitive receptors to substantial pollutant concentrations**; 3) contribute to cumulative regional air quality impacts; and 4) **contribute to cumulative health risk impacts on sensitive receptors**. The EIR includes a series of mitigation measures to address these impacts...”*

India Basin Open Space and 700 Innes Mixed Use Development Project, Page 54, Staff Recommendation on Permit Application No. 2020.001.00 January 15, 2021

Unfortunately, the Staff conspicuously failed to mention that the EIR and SF Planning Commission’s findings were clear that the project’s air quality impacts would be “significant and unavoidable with mitigation for ROG [Reactive Organic Gas] and NOx [Nitrogen Oxides] emissions during construction, operation, and overlapping construction and operation, and cumulatively even with implementation of Mitigation Measures...” and that “PM2.5 [Particulate

Matter smaller than 2.5 microns] concentrations during construction and operation of the Project [...] that would expose sensitive receptors to substantial pollutant concentrations would be significant and unavoidable with mitigation.” (SF Planning Commission Motion No. 20248: CEQA Findings). Not sharing this important, vital fact with the BCDC commissioners is an unacceptable omission and flaw in the Staff Recommendation, and taints the overall process.

5. The Staff Recommendation incorrectly claims air quality harm is not directly related to BCDC’s regulatory authority:

BCDC’s Staff Recommendation on the permit application states – incorrectly – “(T)he issues of air quality and gentrification, while not directly related to the Commission’s regulatory authority, are briefly discussed below.” (India Basin Open Space and 700 Innes Mixed Use Development Project, Page 54 Staff Recommendation on Permit Application No. 2020.001.00 January 15, 2021)

In fact, the issue of air quality is directly related to the Commission’s regulatory authority and mandate to protect the Bay from harmful industrial development.

As is obvious but apparently necessary to state, air pollution will end up falling back to the ground, both on to the open space related to the permit application but also into San Francisco Bay. No analysis has been done to determine the air pollution impacts on water quality, but it is likely that some negative impact would occur.

6. The Project does not include adequate measures to address threats from sea level rise:

The proposed project does not properly address threats due to sea level rise. The BCDC agrees, and states that one of the “primary issues raised by the proposed project” includes whether the project is “consistent with the Commission’s fill policies, including those related to... sea level rise.” (Page 5, India Basin Open Space 700 Innes Mixed Use Development Application Summary on Permit Application No. 2020.001.00)

According to BCDC policies relating the Safety of Fills (https://www.bcdc.ca.gov/plans/sfbay_plan.html):

“Adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project... New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity...”

In a response to a comment regarding sea level rise, the developers of the project state that “some project features at the project site properties may be inundated by sea-level rise,” including paths, a grassy area, and an ADA-accessible ramp, among others. ([Responses to Comments on the](#)

[Draft EIR India Basin Mixed-Use Project](#), page 4-102). By acknowledging that portions of development for the project will be inundated by water, including important aspects of development such as the ADA-accessible ramp, it is clear that “effective means of addressing the impacts of future sea level rise and storm activity” are not being employed. In fact, impacts of sea-level rise are being ignored.

Rising sea levels and rising groundwater caused by climate change also threaten to inundate waterfront contamination that may remain at the project site as well as at the adjacent Hunters Point Shipyard Superfund Site. The Shipyard Superfund Site is contaminated with radioactive and toxic waste, and the government and corporate developer plan on leaving radioactive and toxic waste – including waste residue from atomic bomb testing – buried at the waterfront at the Shipyard. If and when that contamination is inundated by rising sea levels and rising groundwater, that contamination could spread to adjacent areas including the project site. This threat needs to be investigated and adequately evaluated.

7. Toxic contamination must be remediated, and testing for radiation should be required before project is considered for approval by BCDC:

The entire proposed project site needs to be fully tested for both hazardous and radioactive waste. We have previously heard from the developer that they feel there is no need to test for radiation, despite the fact that the site is adjacent to the radioactive contaminated Shipyard Superfund Site. Comprehensive testing and comprehensive cleanup that is verified, with community oversight, must be a prerequisite to any decision on the permit application.

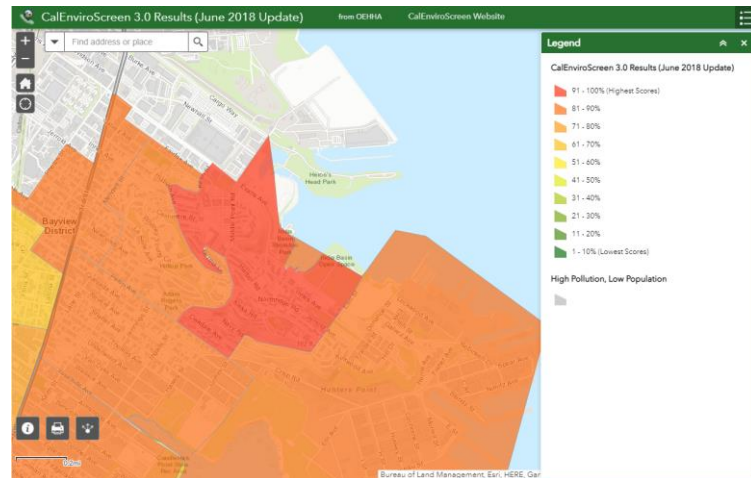
8. The Bay Area Air Quality Management District and the California Environmental Protection Agency confirm Bayview Hunters Point is already disproportionately burdened by, and vulnerable to, multiple sources of pollution:

In January 2017, the Office of Environmental Health Hazard Assessment (OEHHA), on behalf of the California Environmental Protection Agency (CalEPA), released Version 3.0 of the California Communities Environmental Health Screening Tool (CalEnviroScreen). CalEnviroScreen identifies California communities by census tract that are disproportionately burdened by, and vulnerable to, multiple sources of pollution.

CalEnviroScreen evaluates pollution and other environmental indicators along with health and socio-economic indicators to determine vulnerability.

CalEnviroScreen 3.0 ranks BVHP in the top 90th percentile of communities most at risk from pollution:

- Diesel Particulate Matter 99%
- Groundwater Threats 98%
- Hazardous Waste 86%
- Asthma 98%
- Low Birth Weight 99%
- Cardiovascular 69%
- Poverty 87%
- Unemployment 84%
- Housing 91%



Furthermore, the Bay Area Air Quality Management District (BAAQMD) designated BVHP as a “CARE Community.” The goal of the Community Air Risk Evaluation (CARE) Program is to address areas of concentrated air pollution and related public health effects in the Bay Area. CARE communities like Bayview Hunters Point experience higher pollution levels than others. According to BAAQMD, “these communities are generally near pollution sources (such as freeways, busy distribution centers, and large industrial facilities) and negative impacts on public health in these areas are greater. The CARE Program aims to reduce these health impacts linked to local air quality.” For example, Bayview Hunters Point residents are more than six times as likely to visit the emergency room for adult asthma than other San Francisco residents. They also experience significant respiratory health issues, as well as increased rates of diabetes and lung disease. See: [Community Air Risk Evaluation Program \(https://www.baaqmd.gov/community-health/community-health-protection-program/community-air-risk-evaluation-care-program\)](https://www.baaqmd.gov/community-health/community-health-protection-program/community-air-risk-evaluation-care-program).

As the California EPA and BAAQMD both acknowledge that Bayview Hunters Point is at risk and vulnerable to pollution, BCDC must not further harm the community by giving approval to a project whose own EIR confirms it will cause significant, harmful, ongoing, unavoidable, and localized air pollution that cannot be mitigated to less than significant.

9. Approval of the Application would violate BCDC’s Environmental Justice and Social Equity Guiding Principles, unanimously adopted on October 17, 2019:

On October 17, 2019, the San Francisco Bay Conservation and Development Commission (BCDC) adopted an environmental justice and social equity policy to the Bay Plan Amendment (BPA 2-17) and unanimously approved BCDC's Environmental Justice and Social Equity Guiding Principles (21-0-0).

As BCDC’s Chair Jack Wasserman stated on the day of the Amendment’s adoption:

“As a result of this amendment, the Bay Plan will acknowledge, for the first time, the history of environmental justice in the Bay Area. The Bay must be shared and enjoyed by all, public access must reflect the needs and desires of shoreline and adjacent communities and diverse users of the Bay, and adapting to rising seas will pose huge

challenges to all communities, especially those with fewer resources. This amendment will help us strive to ensure that all of our policy decisions incorporate the results of meaningful and robust community involvement to lessen disproportionate impacts.”

See: <https://bcdcc.ca.gov/ejwg/WassermanEJSocialEquity.pdf>

However, the harmful and disproportionate impact that the proposed Mixed Use Development would have on the environment and health of Bayview Hunters Point residents goes against the purpose of and directly conflicts with BCDCC’s Environmental Justice and Social Equity Guiding Principles. The Commission must not approve this project when the project’s own EIR concluded it would cause significant, harmful, and unavoidable air pollution that cannot be mitigated to less than significant, and that could violate air quality standards. To do so would mean that BCDCC has a direct and traceable role in contributing to the environmental injustice and social inequity that the community has experienced for decades and continues to experience.

In addition to the direct health and environmental harms this project will have on Bayview Hunters Point residents, the approval process does not reflect environmental justice or social equity values. Although BCDCC’s policy supports the incorporation of meaningful and robust community involvement, from the beginning, the entire approval process for the Mixed Use Development has been plagued with acts and omissions that have undermined the community’s ability to meaningfully engage. We call attention specifically to the process mandated by the California Environmental Quality Act, that violated language access and civil rights laws and policies by excluding limited and non-English speaking residents from the process.

For the Commission to now follow your staff recommendation to approve a harmful project that has been flawed from the beginning, would undermine years of work by BCDCC commissioners, staff, and community and environmental justice groups, and erode public trust in the Commission.

10. Approval of the application would violate applicable civil rights and language access laws and policies:

We call the Commission’s attention to California Government Code Section 11135, the state’s civil rights law. Section 11135(a) provides in relevant part that “No person in the State of California shall, on the basis of race, national origin, ethnic group identification [or] color...be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that...is funded directly by the state, or receives any financial assistance from the state.” An agency violates Section 11135(a) if it receives state funding and takes an action that results in a significantly adverse or disproportionate impact on minorities. Intentional discrimination as well as discriminatory impact are both prohibited.

As a recipient of state funding, BCDCC is subject to the nondiscrimination provisions of this section. The Mixed Use Development would, as the EIR confirms, have a harmful, significant, ongoing and unavoidable impact on the residents of color, as well as immigrant residents, non-English and limited-English speaking residents of Bayview Hunters Point who are vulnerable and at risk to pollution. The Commission’s support and approval of this polluting project would

have a significantly adverse and disproportionate impact on protected classes of people who make up the Bayview Hunters Point community.

Even if the Commission makes the right decision and decides not to approve the project, which we believe is the socially just and legally correct action to take, we are concerned about BCDC's ongoing failure to provide notices and other critical documents, or at the very least summaries of those documents, in the languages that impacted residents speak, in violation of the civil rights of this protected class of people.

On January 20th, BCDC's Schuyler Olsson responded to an inquiry from Greenaction via email and confirmed that "BCDC did not provide materials in any other language than English."

Bradley Angel of Greenaction sent a written comment in reply, stating:

This will confirm your acknowledgement that "BCDC did not provide materials in any other language than English."

This is a violation of Language Access laws and policies, of BCDC's policies mandating meaningful civic engagement/public participation, and of the civil rights of limited and non-English speaking residents of Bayview Hunters Point potentially impacted by the proposed Mixed Use Development Project.

In light of this profoundly serious violation that disenfranchises many residents from their right to know about and participate in the BCDC public process, BCDC must not approve the permit application and should provide proper, advanced, multilingual notices and documents in key languages spoken in the BVHP community. This includes Spanish, Chinese and Vietnamese.

We have raised this issue for several years with BCDC, and it is a disgrace that your agency continues to exclude so many residents from your processes. Please enter this email comment into the administrative record.

Excluding residents from participating on account of their race, color, national origin, or ethnic group identification violates their civil rights and goes against BCDC's Environmental Justice and Social Equity Policies that call for meaningful civic engagement.

11. Conclusion:

For the above reasons, we strongly urge the Commission not to approve the Mixed-Use Development. The Commission must reject any request for regulatory action or a permit from a company whose project EIR concluded it would cause significant and unavoidable air pollution that would harm the health of the already overburdened and at risk residents of Bayview Hunters Point.

As the EIR confirmed the harmful health impacts cannot be mitigated to less than significant, we request that BCDC fulfill its duty to protect the health and environment of San Francisco Bay

and with it, the vulnerable and disproportionately impacted residents of Bayview Hunters Point from this harmful project.

Respectfully submitted,

A handwritten signature in black ink that reads "Bradley Angel". The signature is written in a cursive, flowing style.

Bradley Angel, Executive Director, Greenaction for Health and Environmental Justice
Leaotis Martin, Co-Coordinator, Bayview Hunters Point Mothers and Fathers Committee