



August 27, 2018

Clerk of the Board  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall  
San Francisco, CA 94102-4689

**GREENACTION FOR HEALTH AND ENVIRONMENTAL JUSTICE APPEAL OF PLANNING COMMISSION APPROVAL OF INDIA BASIN MIXED USE PROJECT**

Greenaction for Health and Environmental Justice files this appeal of the Planning Commission's approval of the EIR and the India Basin Mixed Use Project. We file this appeal on behalf of our many members and constituents in Bayview Hunters Point whose health, environment, and civil rights will be adversely, disproportionately and significantly impacted by the approval of this project.

Greenaction is a San Francisco-based non-profit organization founded in 1997 and led by grassroots leaders from urban, rural and Indigenous communities which are impacted by pollution, environmental racism, and injustice. We have participated in the project's environmental review and permit process since it began with the Planning Department, submitted written comments starting with the Notice of Preparation/Scoping process, and testified at public hearings held by the Planning Department and Planning Commission on this matter. Due to our extensive participation in the process, and our many members and constituents in the affected community, we have standing to file this appeal.

**I. Planning Commission Improperly Told Greenaction their Decision was Not Appealable**

On August 17, 2018, Michael Li of the Planning Department emailed Bradley Angel, Greenaction's Executive Director, in response to our inquiry about the Planning Commission's decision and questions about appealing that decision.

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Mr. Li's email to Greenaction stated incorrectly that "The Planning Commission's decision to adopt CEQA findings and a Statement of Overriding Considerations (M-20248) is not subject to appeal under the EIR certification, as they are related to the project's approvals and not to the adequacy or accuracy of the EIR."

On August 27<sup>th</sup>, Greenaction confirmed via a phone call to the Clerk of the Board of Supervisors that the India Basin Mixed Use Project decision is in fact subject to appeal and we were informed that we can file an appeal today by 5 pm, which we have done.

We are concerned that others may also have been misled by Mr. Li's statement, and we therefore request that a new notice be published and a new appeal period be enacted.

It also appears that the final decision was not posted until August 1, 2018, impacting our appeal of this decision.

## **II. Refusal to Translate Notices and Key Documents Violates the Civil Rights of Non-English Speaking Residents and Improperly and Illegally Excludes them from Meaningful Civic Engagement**

It is unfortunate, and a violation of language access and civil rights, that the "Sanctuary City" of San Francisco refused to translate key notices and key documents into languages spoken by many residents of Bayview Hunters Point.

Following numerous emails and testimony by Greenaction that are part of the administrative record, Lisa Gibson, Environmental Review Officer, Director of Environmental Planning wrote to Greenaction on September 8, 2017.

In that letter, attached and incorporated as part of this appeal, Ms. Gibson wrote:

"We acknowledge that the department did not provide a translated Notice of Availability of the Notice of Preparation of an EIR, an oversight that we deeply regret. At the same time, we respectfully disagree with your proposed remedy that the department restart the CEQA process again, with language noticing as you describe."

As the Planning Department acknowledged the violation of language access, yet refused to remedy it, this project cannot be approved. Approving this project while acknowledging the de facto but very real exclusion of the non-English speaking residents of the affected community is unjust, nothing less than racism, and a violation of civil rights.

The Response to Comments document claimed that CEQA does not require agencies to provide language access services. However, civil rights laws also apply to decisions and actions of the City and County of San Francisco. Denying non-English speakers equal access to this process is a violation of civil rights, regardless of CEQA requirements.

## **III. Compliance with Civil Rights Laws:**

Since the City and County of San Francisco receives federal and state funding, it is subject to and must comply with state and federal civil rights laws (California Government Code 11135 and Title VI of the United States Civil Rights Act). Approval of this project will violate state and federal civil rights laws and the approval must therefore be reversed.

Due to the refusal to translate key notices and documents, and due to approval of this project by the adoption of a Statement of Overriding Consideration, the project will have a significant, negative and disproportionate impact on the at-risk and vulnerable Bayview Hunters Point community. This decision enables the project to add significant unhealthy air pollution about that cannot be mitigated. Therefore, approval of this project would have an unlawful negative impact on protected classes of persons - people of color and non-English speakers - in violation of state and federal civil rights laws. The approval must be reversed.

#### **IV. Statement of Overriding Consideration is Improper, Illegal, and Would Allow Significant Increase in Unhealthy Air Pollution in an At Risk Community**

As mentioned above, the EIR concluded that the project would have several significant negative impacts that cannot be mitigated. The most alarming negative impact that the EIR acknowledges cannot be mitigated would be the addition of air pollution above health thresholds, and the air pollution would occur both during construction and the life of the project.

The City and County of San Francisco have long acknowledged that Bayview Hunters Point residents already suffer the cumulative health impacts from many pollution sources, including the notorious radioactive contamination at the Hunters Point Shipyard Superfund Site located next to India Basin.

The Bay Area Air Quality Management District has identified Bayview Hunters Point as a CARE Community, an acknowledgement of the air quality problems afflicting the community.

The State of California's CalEnviroScreen 3.0 confirms Bayview Hunters Point is one of the communities most at risk from pollution in the entire state, and concluded that it has a higher pollution burden than 90% of the state. CalEnviroScreen, developed by California EPA, measures vulnerability through evaluating and quantifying pollution exposures, environmental effects, sensitive populations and socioeconomic factors. For example, it ranks in the 98th percentile for asthma and very high for both diesel emissions and hazardous waste.

The addition of expensive housing, with some so-called affordable housing, is not a primary overriding consideration. In addition to the fact the increase in housing doesn't help those suffering from air pollution, the so-called affordable housing is still quite expensive and not affordable to those city residents most in need: 20% less than market value is still not affordable in any real world definition.

It is shocking and unacceptable that the City and County would approve any project that would add significant and unhealthy amounts of air pollution to Bayview Hunters Point, claiming that other "benefits" are "overriding."

*Nothing is more important than life, and air pollution kills. That is a fact.*

**V. Comprehensive Testing of the BUILD LLC Site for Hazardous and Radioactive Contamination Has Not Taken Place, and No Remediation Has Occurred**

Unlike the Rec and Park component of the project, BUILD LLC to our knowledge has not conducted comprehensive testing of the proposed project site. In addition, BUILD LLC has publicly stated they have no plan to test for radiation, despite the site's proximity to the radioactive Shipyard Superfund site. In addition, early in the project BUILD LLC actually said to Greenaction via phone and an in person meeting that the only toxic waste at the site is a "few paint cans" – an incorrect statement.

It is improper and premature for the project to be approved for housing and open space without considering the extent and type of toxic contamination at the site and the remediation plan.

**VI. Effects of Sea Level Rise Were Never Evaluated**

The DEIR failed to discuss or evaluate the impact sea level rise will have on the proposed project. The Bay Conservation and Development Commission predict sea level rise of 11 to 19 inches by 2050 and 30 to 55 inches by 2100. An increase of sea level in addition to storm surges exacerbated by climate change will cause coastal flooding, erosion/shoreline retreat, rising groundwater and wetland loss.

**VII. Significant Population and Housing Impacts**

The EIR's conclusion that "The proposed project or variant would not induce substantial population growth..." and would be "less than significant" is contradicted by the project proposal itself. The project would add several thousand primarily upper class residents to Bayview Hunters Point, significantly increasing population size, and dramatically changing the neighborhood's demographics. This would be a major contributor to gentrification – especially when evaluated in combination with the shipyard project.

**VIII. Conclusion**

For all the above reasons, we respectfully urge the Board of Supervisors to uphold justice and civil rights. We ask the Board to protect the health, well-being and community of our city's most at risk residents by rejecting the project's approval.

Sincerely,

Bradley Angel  
Executive Director