

By Email

September 17, 2019

Laura Duchnak  
BRAC PMO  
33000 Nixie Way  
Building 50, Suite 207  
San Diego, CA 92147  
(laura.duchnak@navy.mil)

Re: Request to Reestablish the Hunters Point Naval Shipyard Restoration Advisory Board

Dear Director Duchnak:

Greenaction for Health and Environmental Justice (“Greenaction”), the Bayview Hunters Point Mothers and Fathers Committee, Literacy for Environmental Justice, Bayview Hunters Point Community Advocates, and 240 members of the Bayview Hunters Point community, respectfully request that you, as the Installation Commander and for the reasons stated below, take the steps necessary to reestablish the Hunters Point Naval Shipyard (“Shipyard”) Restoration Advisory Board (“RAB”).

The RAB is intended to serve the following purposes to provide:

- (1) An opportunity for stakeholder involvement in the environmental restoration process at Department of Defense (DoD) installations. Stakeholders are those parties that may be affected by environmental restoration activities at the installation.
- (2) A forum for the early discussion and continued exchange of environmental restoration program information between DoD installations, regulatory agencies, tribes, and the community.
- (3) An opportunity for RAB members to review progress, participate in a dialogue with, and provide comments and advice to the installation's decision makers concerning environmental restoration matters. Installations shall give careful consideration to the comments provided by the RAB members.
- (4) A forum for addressing issues associated with environmental restoration activities under the Defense Environmental Restoration Program (DERP) at DoD installations, including activities conducted under the Military Munitions Response program (MMRP) to address unexploded ordnance, discarded military munitions, and the chemical constituents of munitions. Environmental groups or advisory boards that address issues other than environmental restoration activities are not governed by this regulation.<sup>1</sup>

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<sup>1</sup> 32 C.F.R. § 202.1(b) (2006).

As further detailed below, the RAB should be reestablished because these purposes are important to the Bayview Hunters Point and the greater San Francisco community, which has a significant interest in the ongoing environmental restoration activities at the Shipyard. Community interest was strong when the RAB was dissolved in 2009, and community interest has only grown since then. Given that the community has demonstrated significant and sustained interest since the dissolution of the RAB, and because the circumstances that led the Navy to dissolve the RAB in 2009 no longer exist, the Navy should reestablish the RAB.

Initiating the establishment of the RAB is required by Department of Defense regulations, and is also a necessary first step in rebuilding trust and cooperation between the Navy and the community surrounding the Shipyard.

### **Sufficient and Sustained Community Interest**

Sufficient community interest is a key factor that must be assessed for reestablishing the RAB.<sup>2</sup> Community interest in the Navy's environmental restoration activities, which has always existed, has only increased in recent years. The Navy is required to assess community interest regularly and should reestablish the RAB where that interest is "sufficient and sustained."<sup>3</sup> To evaluate whether "sufficient and sustained" community interest is present, the Navy must look to indicators including petitions from community members, media coverage, and consultation with local community members and government officials.<sup>4</sup>

We attach a petition signed by 240 local residents to demonstrate the overwhelming desire of the local community to have a more active role in the Navy's environmental restoration activities. The Petition, included as Attachment 1, provides evidence of sufficient and sustained community interest on its own.

Sufficient and sustained community interest is also demonstrated by the volume of longstanding and thorough media coverage related to the Navy's cleanup at the Shipyard. All major media outlets have reported on the cleanup repeatedly over the last few years. A list representing a small sample of coverage dating from the present back to 2016, included as Attachment 2, shows that media has been constant, and all media outlets such as TV, radio, and newspapers, both online and print, have covered issues related to the cleanup. A simple search on the internet reveals the abundance of reporting published in recent years.

Sufficient and sustained community interest is further demonstrated by the focus of elected officials and their constituents on the Navy's environmental restoration activities at the Shipyard. For example, over a year ago, while calling for the San Francisco Board of Supervisors to hold hearings on the Shipyard cleanup, local representative Malia Cohen said, "I have families reaching out with questions about air quality. I have people asking about how to get out of their

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<sup>2</sup> *Id.* § 202.10(c) ("When additional environmental restoration decisions have to be made resulting from subsequent action, such as long-term management and five-year reviews, the installation will reassess community interest for reestablishing the RAB. Where the reassessment finds sufficient and sustained community interest at previously adjourned or dissolved RABs, the Installation Commander should reestablish a RAB.").

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 202.2; Department of Defense Restoration Advisory Boards, 71 Fed. Reg. 27612 (2006) ("In Section 202.2 of this rule... the Department has outlined several tools for Installation Commanders to use in the evaluation of 'sufficient and sustained community interest' including reviewing correspondence files and media coverage; consulting local community members and relevant government officials.").

leases because they are concerned about the lives and safety of their families.”<sup>5</sup> Cohen also mentioned that the Navy “has done an exceptionally poor job [at] communicating with the public.”<sup>6</sup> More recently, the Mayor convened an independent review of the Navy’s environmental restoration plans. These examples clearly demonstrate that community interest is significant, and that it has persisted over a course of years.

### **The Circumstances Which Led the Navy to Dissolve the RAB No Longer Exist**

Given the fact of sufficient and sustained community interest at the Shipyard, where restoration activities are still ongoing, not reestablishing a RAB can only be justified if the Installation Commander can demonstrate that the “same conditions exist” that required the original dissolution.<sup>7</sup> These conditions, purportedly relied upon by the Navy for dissolving the RAB, if indeed they existed, were internal to the RAB itself (i.e., a frustration with RAB members); the Navy can no longer rely on its purported rationale as that particular RAB has been disbanded.

The Navy’s dissolution of the RAB was unacceptable at the time, and the regulations now require the Navy to re-engage with the community in a meaningful way and begin to repair the relationship.

### **Reestablishing the RAB Is Necessary for Rebuilding Trust with the Community**

As stated above, among the purposes of a RAB are providing an “opportunity for stakeholder involvement,” a “forum for addressing issues associated with environmental restoration” and “continued exchange” of information, and an opportunity for community members’ comments to receive “careful consideration” by the Navy.<sup>8</sup> Dissolving the RAB undermined all of these processes, and the time is past due for the Navy to reestablish this cooperative forum with members of the community.

In fact, the Navy appears to be in violation of the regulatory requirement to “reassess community interest at least every 24 months.”<sup>9</sup> This comes as no surprise to the community, given the Navy’s track record of trying to dismiss and ignore the concerns of the local community.

The methods of community engagement the Navy has employed since 2009 are inadequate. In your Victim Impact Statement in *The Matter of U.S. v. Hubbard*, you noted that the Navy has lost its credibility with the community. You wrote that the community has a “total lack of confidence in the Navy’s intentions and ability to conduct a proper cleanup.”

If the Navy truly wants to start to rebuild the shattered trust of the community, reestablishing the RAB would be a positive step in the right direction.

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<sup>5</sup> Laura Waxman, *City Supervisor Calls For Hearing On Hunters Point Cleanup*, San Francisco Examiner, April 18, 2018, <http://www.sfexaminer.com/city-supervisor-calls-hearing-hunters-point-shipyard-cleanup/>.

<sup>6</sup> *Id.*

<sup>7</sup> 32 C.F.R. § 202.10(c) (“If there is interest in reestablishment at a previously dissolved RAB, but the Installation Commander determines that the same conditions exist that required the original dissolution, he or she will request, through the chain-of-command to the Military Component’s Deputy Assistant Secretary, an exception to reestablishing the RAB. If those conditions no longer exist at a previously dissolved RAB, and there is sufficient and sustained interest in reestablishment, the Installation Commander should recommend to the Deputy Assistant Secretary that the RAB be reestablished.”).

<sup>8</sup> *Id.* § 202.1(b).

<sup>9</sup> *Id.* § 202.109(c).

We look forward to a prompt and positive response to this Petition to Reestablish the Restoration Advisory Board. Thank you for your attention to this matter.

Sincerely,

**Greenaction for Health and Environmental Justice**

Bradley Angel, Executive Director

**Bayview Hunters Point Mothers and Fathers Committee**

Leaotis Martin and Renay Jenkins, Co-Coordiators

**Bayview Hunters Point Community Advocates**

Michelle Pierce, Executive Director

**Literacy for Environmental Justice**

Patrick Rump, Executive Director

cc: By Email

Derek Robinson, Navy BRAC Environmental Coordinator (derek.j.robinson1@navy.mil)

Yolanda Sanchez, EPA Region 9 Community Involvement Coordinator  
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Attachments:

- Petition signed by 240 Bayview Hunters Point residents
- Statement from Ahimsa Porter Sumchai, MD, Principle Investigator, Hunters Point Community Biomonitoring Program