



GOLDEN GATE UNIVERSITY

SCHOOL OF LAW
ENVIRONMENTAL LAW AND JUSTICE CLINIC

536 Mission Street, Suite 3326
San Francisco, CA 94105-2968
Telephone: (415) 442-6647
Facsimile: (415) 896-2450
www.ggu.edu/law/eljc

October 16, 2023

San Francisco Planning Department
Attention: Elizabeth White, Senior Environmental Planner
CPC.SFGatewayProject@sfgov.org
49 South Van Ness Ave., Suite 1400
San Francisco, CA 94103

Submitted via email.

Re: Comments on Draft Environmental Impact Report for San Francisco Gateway Project

Dear Ms. White:

The Environmental Law and Justice Clinic at Golden Gate University School of Law submits these comments on behalf of Greenaction for Health and Environmental Justice and the Bayview Hunters Point Mothers and Fathers Committee. Greenaction submits these comments on behalf of its frontline staff, community members, and constituents who are longtime residents of Bayview Hunters Point. The Draft Environmental Impact Report (“DEIR”) for the San Francisco Gateway Project (“project”) is inaccurate and inadequate, and it fails to comply with the California Environmental Quality Act (“CEQA”).¹

The purpose of CEQA is to assist agencies in identifying the significant environmental effects of proposed projects and adopting feasible alternatives or mitigation measures that would lessen or avoid these impacts.² An environmental impact report (“EIR”) must “identify the significant effects on the environment of a project, [] identify alternatives to the project, and [] indicate the manner in which those significant effects can be mitigated or avoided” before a project may be approved.³ Public agencies are responsible for mitigating or avoiding the “significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”⁴ An EIR further serves to provide “detailed information about the effect which a project is likely to have on the environment.”⁵

The DEIR circulated by the San Francisco Planning Department (“Planning Department” or “City”) is procedurally inadequate, fails to rise to the level of specificity required by CEQA, fails to adequately and accurately analyze cumulative impacts, fails to adequately and accurately analyze feasible mitigation measures, fails to adequately and accurately analyze environmental

¹ Cal. Pub. Res. Code § 21000 et seq.

² *Id.* at 1002.

³ *Id.* at 21002.1(a).

⁴ *Id.* at 21002.1(b).

⁵ CEQA Guidelines § 15201.

and health impacts, and fails to adequately and accurately analyze alternatives. Accordingly, the Planning Department must substantially revise the DEIR and recirculate it for public comment.

Prologis, the world's largest warehouse developer of PDR projects, is determined to redevelop two parcels of land that will take up 2,160,000 square feet in the historically Black Bayview Hunters Point neighborhood.⁶ Since the 1940s, Bayview Hunters Point has been subjected to pollution produced from industrial intensification.⁷ World War II only exacerbated the problem, as the U.S. Navy purchased the dry dock in 1940 and converted the area into a naval shipyard where nuclear research was conducted.⁸ The environmental impact was so extensive that the naval shipyard was designated as a federal Superfund Site and placed on the National Priorities List in 1989.⁹

Because of the naval shipyard's significant impact on the environment, Bayview Hunters Point now suffers an increased contamination risk.¹⁰ This contamination risk can lead to health problems such as asthma, heart disease, and even some types of cancer.¹¹ In Bayview Hunters Point, 79.7% of the population are people of color.¹² Additionally, about 41.3% of the population falls below 200% of the poverty rate.¹³ Moreover, Bayview Hunters Point has been subject to redlining policies which, in turn, has attracted industrial businesses that continue to overburden the community.¹⁴ San Francisco's current land use zoning, places all PDR projects in Bayview Hunters Point because of these past practices of consolidating industry in predominately Black and Brown Communities.¹⁵ These areas are considered infill for future industrial projects and cementing this legacy of discrimination will impact the future of Bayview Hunters Point.

I. THE DEIR IS PROCEDURALLY INADEQUATE.

CEQA Guidelines and San Francisco Administrative Code Chapter 31 encourage public participation in the planning and environmental review process.¹⁶ However, for the public to be able to participate they must have been made aware that the EIR exists. Under CEQA guidelines sections 15063 and 15082, the planning department has claimed they have made a good faith effort to provide notice to organizations and persons who may have an interest in the proposed project.¹⁷ Unless an individual or organization was already placed on the mandatory Planning Department list for notices, the Notice of Preparation ("NOP") was only mailed to tenants and property owners within 300 feet of the project site.¹⁸ It is completely unacceptable for a project

⁶ DEIR at S-1.

⁷ DEIR 3.A-7.

⁸ *Id.*

⁹ United States Nuclear Regulatory Commission, <https://www.nrc.gov/info-finder/decommissioning/complex/hunters-point-naval-shipyard.html#>

¹⁰ San Francisco Climate and Health Program, <https://sfclimatehealth.org/neighborhoods/bayview-hunters-point-2/>

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ San Francisco Public Press

<https://www.sfpublishpress.org/state-report-links-redlining-and-pollution-threats/>

¹⁵ DEIR at 2.C.2

¹⁶ DEIR at 1.C-2.

¹⁷ DEIR at 1.C-1.

¹⁸ *Id.*

of this magnitude to have only provided notice of what can be compared to the size of an entire football field.

While the NOP was translated into Chinese, Spanish, Filipino, and Vietnamese, the draft EIR itself was never translated.¹⁹ Though San Francisco Administrative Code Chapter 91 does not require translation of technical documents, what good is a notice if you cannot read what the notice is referring to? In actuality, it would be no good. Environmental Impact Reports are informational documents that inform the public as well as decision-makers about the environmentally significant impacts of a proposed project.²⁰ CEQA stresses the importance of disclosing feasible mitigation measures and alternatives.²¹ However, the present DEIR is not translated into other languages which means people are being deprived of the opportunity to read for themselves what those measures are.

Greenaction has repeatedly called on the Planning Department to provide translations of DEIRs on prior projects, and this project was no exception. Language access is a fundamental right and is paramount to ensuring equal access to participation in the government's decision-making process that affects both community and well-being. The City's best practice should include translating substantive portions of the DEIR to fulfill CEQA's informational purpose. Considering that 155,765 people out of the total of 740,776 people who live in San Francisco speak a language other than English, shows how important it is that these technical documents be readily accessible to them.²²

The DEIR is also improperly focused. Under CEQA Guidelines 15063(c)(3), the City can narrow the environmental issues it focuses on based on the initial study. The DEIR should have included hazardous materials and greenhouse gases ("GHGs"). The fact that Prologis has been sued twice in Southern California for damage caused by their tenant's improperly storing hazardous materials is relevant to whether the DEIR's mitigation measures are sufficient, and the omission of Prologis's track record is alarming.²³ Additionally, there should have been more of a focus on GHGs because trucks are a significant source of GHGs which significantly contribute to climate change.²⁴ The letter submitted by the California Air Resource Board stated the City should consider GHGs, particularly because local mitigation strategies are key to achieving the state's GHG goals.²⁵ The City did not disclose, analyze, or mitigate the impacts of GHGs on the project. Because the City did not translate technical portions of the DEIR and improperly focused the DEIR by excluding potentially significant impacts from the DEIR analysis, the DEIR

¹⁹ *Id.*

²⁰ CEQA Guidelines § 15121(a)

²¹ CEQA Guidelines § 15126.4

²² San Francisco Language Diversity Data,
<https://sf.gov/data/san-francisco-language-diversity-data>

²³ Real Estate News,
<https://therealdeal.com/la/2023/07/11/reckless-and-illegal-residents-sue-prologis-over-warehouse-fire/>

²⁴ United States Environmental Protection Agency,
<https://www.epa.gov/climatechange-science/basics-climate-change#:~:text=Carbon%20dioxide%20is%20the%20primary,reactions%2C%20such%20as%20cement%20manufacturing.>

²⁵ DEIR Appendix A at 10-17

should not be approved. The deficiencies should be corrected, and the DEIR should be recirculated for public comment.

II. THE DEIR DOES NOT RISE TO THE LEVEL OF SPECIFICITY REQUIRED BY CEQA AND SHOULD BE A PROGRAM EIR.

The San Francisco Planning Department is the lead agency responsible for preparing the DEIR in compliance with CEQA.²⁶ The DEIR defines the demolition and construction of the PDR site as a “project,” so a project-level EIR was drafted that focused on changes in the environment that would result from the development of this specific project.²⁷ The scope of this DEIR, however, is too broad for a project-level EIR. It fails to contain the level of specificity that the Planning Department and the public require to make informed decisions on the impacts and mitigation measures needed. As such, the Planning Department must prepare a program EIR.

A program EIR is “an EIR which may be prepared on a series of actions that can be characterized as one large project.”²⁸ The advantage of using a program EIR is that the lead agency may consider “broad policy alternatives and program wide mitigation measures early when the agency has greater flexibility to deal with basic problems or cumulative impacts.”²⁹ A program EIR is distinct from a project EIR, which requires more specific details and considerations. A program EIR may be used in conjunction with tiering, which is “the coverage of general matters in broader EIRs with subsequent narrower EIRs.”³⁰ Tiering is proper “when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects.”³¹ The DEIR does not list the tenants of the site, it bases its studies on similar projects, and it does not accurately consider the impacts that it will have for being in operation for 100 years. Therefore, a program-level EIR is more appropriate.

The Planning Department failed to adequately list the tenants that would occupy the site. Instead, they attempted to analyze potential environmental impacts based on “an evolving mix of users or tenants.”³² Furthermore, the DEIR reports that “it is anticipated that the special use district would [] allow for the specific assortment of PDR tenants to change over time in response to economic and technological conditions.”³³ The Planning Department does not know who the tenants will be and what they will use the space for, and yet they created and circulated this DEIR with estimates and assumptions on what they believe is likely to happen. The DEIR merely “describes and analyzes a mix of PDR uses that are likely to occur based on the project sponsor’s familiarity with leasing trends.”³⁴

²⁶ DEIR at S-1.

²⁷ CEQA Guidelines § 15161.

²⁸ CEQA Guidelines § 15168.

²⁹ *Id.*

³⁰ CEQA Guidelines § 15385.

³¹ Cal. Pub. Res. Code § 21093(a).

³² DEIR at 2-1.

³³ DEIR at 2-20.

³⁴ DEIR at S-2.

The proposed project would provide space for various PDR uses, which include “manufacturing and maker space; parcel delivery service, including last-mile delivery; wholesale and storage; and fleet management.”³⁵ There is a wide range of different tenants that might occupy the PDR site, including major corporations such as Amazon, FedEx, and BMW. Some of these uses, however, are incompatible with the intended functionality of the PDR site.

Not only that, but the DEIR indicates that the PDR space will be in operation for at least 100 years.³⁶ The Planning Department, therefore, attempted to complete all environmental reviews for the next century through this one DEIR. It is impossible to accurately analyze the scope of a project for this long of a period due to changes in science and technology. The City also improperly defers all future assessment and mitigation to a Special Use District (“SUD”) that does not exist. There is no information about the power of the SUD, the governance structure, or the criteria the SUD will use to adjust the facility when impacts fall outside of the approved EIR. The City does not need to create an SUD. CEQA itself provides a mechanism for accounting for future impacts with less uncertainty for decision-makers and the public. Instead, the Planning Department should engage in tiering and continuously perform environmental reviews throughout the life of the project.

The Planning Department should prepare a program EIR and clarify that the above concerns require further CEQA review. However, since it was presented as a project DEIR, the following explains how the project DEIR fails to adequately and accurately analyze cumulative impacts, mitigation measures, environmental and health impacts, and alternatives.

III. THE DEIR FAILS TO ANALYZE CUMULATIVE IMPACTS ADEQUATELY AND ACCURATELY.

Bayview Hunter's Point has a long history of pollution since the U.S. Navy’s purchase of the San Francisco Dry Dock in 1940.³⁷ The negative effects of the nuclear research conducted at the dock continue to persist today, including negative health impacts among the community in the forms of cancer, asthma, and more.³⁸ Bayview Hunter’s Point is considered a community that is disproportionately burdened by pollution from multiple sources under the CalEnvrioScreen.³⁹

In addition to the significant radioactive and hazardous waste contamination at the Shipyard Superfund Site, the health and environment of Bayview Hunters Point residents are impacted by other contamination sites including Yosemite Slough, large-scale freight transport and diesel truck traffic, two freeways, unpermitted concrete plants and an animal rendering plant at the Port of San Francisco, Circosta Iron and Steel recycling, and many small unregulated businesses that emit harmful pollution. Furthermore, the City approved the pending India Basin Mixed-Use Development Project, and the City’s own EIR concluded that the project could cause significant, harmful, unavoidable, localized air pollution forever, not just during construction. Residents must not be exposed to yet another large-scale, 100-year polluting project. In

³⁵ *Id.*

³⁶ DEIR at 2-1.

³⁷ DEIR at 3.A-7.

³⁸ DEIR at 3.A-12.

³⁹ DEIR at 3.A-6.

consideration of this complex history, adequate and accurate analysis of the cumulative impacts faced by the community is essential. The analysis of the cumulative impacts in the DEIR is not adequate and fails to look at several considerations that will increase the impacts.

The Bay Area Quality Management District (“BAAQMD”) submitted a comment letter to the Planning Department on the San Francisco Gateway Project on April 6, 2022. The letter recommends that the EIR use a very conservative threshold to evaluate impacts because Bayview Hunters Point is already impacted by air pollution. Additionally, BAAQMD suggests that the EIR evaluate potential cumulative health risk impacts of TAC and PM_{2.5} emissions on sensitive receptors near the Project area.

Among the factors weighed to determine the level of cumulative analysis in the DEIR include geographic scope and location.⁴⁰ The DEIR states that geographic scope varies and provides an example of a situation in which “health risk impacts from exposure to air pollutants are generally localized, the cumulative context for health risk analysis is the project site and vicinity within 1,000 feet of the project site.”⁴¹ The DEIR focuses on three major cumulative impacts: noise and vibration, transportation and circulation, and air quality.⁴²

A. Noise and Vibration

The evaluation of noise and vibration impacts on the area surrounding the proposed project is insufficient, as the geographic scope for these impacts encompasses projects only within 1/4 of a mile of the proposed project.⁴³ The DEIR states that beyond this scope, the cumulative projects would be “attenuated through both distance and intervening structures, and their contributions would be minimal.”⁴⁴ Under CEQA guidelines, “an EIR shall discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable.”⁴⁵ Even if the project’s impact is minimal, there is still a possibility that, combined with other impacts in the surrounding area, it could be significant. The location proposed for this project is in an area that houses all other PDR uses in the city. It is extremely likely that any impact from the proposed project will cumulatively be a significant impact. Consequently, any potential impact requires proper and accurate analysis. It is crucial to analyze all cumulative impacts, including those that are considered “minimal.” Only considering projects within 1/4 of a mile of the proposed project ignores relevant data that needs to be considered for the cumulative analysis to be adequate and accurate.

B. Transportation and Circulation

The DEIR also fails to analyze cumulative impacts adequately and accurately regarding transportation and circulation. The same geographic scope as applied to noise and vibration

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² DEIR at 1-7.

⁴³ DEIR at 3.C-48.

⁴⁴ *Id.*

⁴⁵ Cal. Code Regs., tit. 14 § 15130.

impacts is applied here; relevant projects considered are within 1/4 mile of the proposed project.⁴⁶ However, there is no justification or explanation for limiting the scope. The range set for these projects needs to be expanded to ensure accurate and adequate cumulative impacts and community considerations.

A project of this size will result in more cars on the road as no bus routes are operating to the location of the site.⁴⁷ Workers are likely to use their own vehicles to drive to the location because of this lack of transportation, which will inevitably result in more vehicular emissions. Furthermore, with tenants engaging in PDR, there will be more trucks traveling to and from the site that will be operating beyond 1/4 mile. The proposed project would generate a net new increase of 330 inbound and 101 outbound vehicle trips during the weekday a.m. peak hour (431 vehicle trips total), and 246 inbound and 325 outbound vehicle trips during the weekday p.m. peak hour (571 vehicle trips total).⁴⁸ These potential cumulative effects must be analyzed. To do so accurately and adequately, cumulative impacts must include past, present, and future projects beyond 1,000 feet from the proposed project site for the cumulative impact analysis to be adequate and accurate.

C. Air Quality

The geographic scope under this cumulative impact for the health impacts analysis is oddly narrower than other impacts. A cumulative health risk analysis was conducted to evaluate health risks from existing emission sources, proposed project emissions, and emissions from nearby projects only within 1,000 feet of the offsite maximally exposed residential and worker receptors.⁴⁹ This range is not far enough to provide for accurate and adequate community impacts. A broadened geographic scope in analyzing all cumulative impacts is necessary. Furthermore, the cumulative impact of air emissions needs to be analyzed further. The DEIR states that this cumulative impact will be less than significant with the implementation of mitigation measures.⁵⁰ However, as discussed below, the proposed feasible mitigation measures are inadequate and unrealistic. Therefore, it is highly likely that air pollutant emissions will be significantly higher than expected and essential to be analyzed.

The DEIR fails to adequately consider the proposed project's impact on air quality and air pollution, specifically regarding the demolition process of the existing buildings at the site. While there are mentions of a few tools that will be used in this process, the DEIR fails to explain the process in detail and thus fails to consider the potential impacts of demolishing US Navy buildings from the 1940s.⁵¹ The DEIR does not analyze impacts such as the release of asbestos and other chemicals harmful to the health of the Bayview Hunter's Point community. The community is already facing health problems from a long history of pollution, and the

⁴⁶ DEIR at 3.B-59.

⁴⁷ *See generally* 3.B-24-27.

⁴⁸ DEIR at 3.B-51.

⁴⁹ DEIR at 3.D-71.

⁵⁰ *Id.*

⁵¹ DEIR at 3.C-23.

pollution from the demolition process will likely add to this existing pollution, further raising the risks to the community.⁵² As these impacts are threatening a community plagued by pollution, it is critical to provide details of all stages of the proposed project to obtain an accurate analysis. The demolition process must be described in detail, and the effects from it must be estimated concerning surrounding existing pollution to obtain an adequate and accurate cumulative analysis.

Furthermore, the proposed site is an area with poor air quality and a higher air pollution exposure zone (“APEZ”).⁵³ An APEZ community experiences an excess cancer risk greater than 100 per 1 million population from the contribution of emissions from all modeled sources.⁵⁴ Additionally, based on the air district’s evaluation of health vulnerability in the Bay Area, the project site is located within the worst quintile.⁵⁵ The DEIR explains that “within 1,000 feet of the project site, the existing modeled cancer risk ranges from 150 to 404 per 1 million.”⁵⁶ This is as far as the DEIR goes. There are no measures in place aimed at reducing the increased levels of adverse health impacts on the residents of Bayview Hunters Point, which the City and State have already found to be disproportionately overburdened. Thus, the cumulative impact analysis and mitigation measures are inadequate under CEQA.

Not only is the analysis for cumulative impacts on air quality deficient due to the narrow geographic scope applied, but it is also inadequate due to it being based on a faulty assumption. It assumes that air emissions, along with surrounding cumulative emissions, will be less significant because all trucks are expected to be electrified by 2050.⁵⁷ While California is attempting to achieve this, whether it can do so depends on whether it will be feasible. Since the regulation is based on whether there will be enough market availability for electric vehicles, if there is not enough then this goal will not be feasible.⁵⁸ In that case, the EIR’s analysis of cumulative impacts on air quality would be completely inaccurate. There needs to be another analysis conducted on the assumption that California will not be able to meet its goal of electrifying all trucks in that timeframe. All different outcomes must be considered.

IV. THE DEIR FAILS TO ADEQUATELY AND ACCURATELY IMPLEMENT FEASIBLE MITIGATION MEASURES.

The mitigation measures proposed in the DEIR are painfully inadequate and extremely unreasonable. CEQA requires public lead agencies to impose feasible mitigation measures as part of the approval of a “project” to lessen or avoid significant adverse effects of the project on the physical environment.⁵⁹ Additionally, the mitigation measures have to be enforceable.⁶⁰

⁵² DEIR at 3.A-7.

⁵³ DEIR at 3.D-13.

⁵⁴ *Id.*

⁵⁵ DEIR at 3.D-14.

⁵⁶ *Id.*

⁵⁷ DEIR at 3.D-20.

⁵⁸ *Id.*

⁵⁹ CEQA Guidelines § 15370

⁶⁰ CEQA Guidelines § 15126.4(a)(2)

The City owes a duty to the community to incorporate all feasible mitigation measures to reduce significant impacts.

The DEIR has undoubtedly failed to meet this requirement. First, the DEIR explicitly states that this project would result in an increase in air pollution to the extent that it could conflict with or obstruct the implementation of the 2017 Clean Air Plan.⁶¹ Considering that, the DEIR provides mitigation measures M-AQ-3a, M-AQ-3b, and M-AQ-3c as feasible mitigation measures which will analyzed below.

A. Electrification of Yard Equipment (M-AQ-3a)

The project sponsor claims that the tenant lease agreement will ensure that all yard equipment will be electric. However, the project sponsor does not share specifications on how they will ensure they carry this mitigation measure through. How will this be monitored and enforced? What if such equipment is not on the market? While ideal, it is difficult for the community to support a mitigation measure that is so vague, leaving many no choice but to believe this mitigation measure is not feasible, and thus inadequate.

B. Electrification of Transportation Refrigeration Units (M-AQ-3b)

1. Operational Emissions

The project sponsor claims all transportation refrigeration units operating on the site will be electric or alternative zero-emissions technology. The DEIR does not specify when this will occur. How the project sponsor will ensure compliance, the DEIR also does not specify. The DEIR also does not describe the electrification infrastructure that will be available on-site and any indirect emissions from the increased demand for electricity at the site.

2. Construction Emissions

Considering that construction will last approximately 31 months if not more, the mitigation measure must be in effect throughout the entire construction of the project. It is important to note that there is no guarantee that the trucks that will provide the necessary equipment and resources for the construction of this project are presumably not electric. Therefore, pollution from those trucks will inevitably affect the environment and the community.

C. Truck and Van Idling for More Than Two Minutes (M-AQ-3c)

The project sponsor claims that onsite idling of all visiting gasoline- or diesel-powered vans and trucks will not exceed two minutes. They also claim that onsite workers and truck drivers will be provided with training to effectively implement this mitigation measure. However, it is entirely unrealistic and unreasonable to believe that this mitigation measure is going to be effective. It seems highly unlikely that onsite workers or visiting truck drivers will set a timer for two minutes and comply with this mitigation measure by proceeding to turn off the vehicle. This is especially unbelievable if there are no repercussions for failing to do so or no

⁶¹ DEIR at S-10-11.

cameras in place to ensure compliance. It is also inconceivable that this mitigation measure will be effective and more reasonable to believe that a truck will idle for longer than it's supposed to. For example, an onsite worker or visiting truck driver could easily idle for two minutes and thirty seconds by unintentionally becoming distracted by their surroundings or other matters. Therefore, this mitigation measure is not feasible.

D. Additional Mitigation Measures Should Be Implemented

1. All TRUs That Enter the Site Should be Plug in Capable.

The California Air Resource Board ("CARB") recommends that developers and government planners minimize public exposure to air pollution.⁶² One of the recommendations includes requiring all transportation refrigeration units ("TRUs") that enter the project site to be plug-in capable without exception.⁶³ The DEIR only states that there will be charging infrastructure to accommodate necessary plug-ins for TRUs that happen to be electric on site.⁶⁴ To truly minimize exposure to air pollution in an area already categorized as an APEZ, the DEIR should adopt this mitigation measure. Because Bayview Hunters Point is already overburdened, the DEIR should implement as many mitigation measures as possible to ensure the health and safety of those in the community.

2. All Emergency Generators Should be Powered by Non-diesel Fuel.

Additionally, CARB recommends that all emergency generators should be powered by non-diesel fuel.⁶⁵ The DEIR states that Prologis will "ensure that the diesel backup generators meet or exceed the air board's Tier 4 final off-road emission standards."⁶⁶ However, the DEIR does not state how Prologis will "ensure" that they meet this standard. Not only does it make their proposed mitigation measure unenforceable, but Prologis wishes to redevelop land in an area that is already suffering from companies just like Prologis. Therefore, Prologis, who claims to be the world's largest PDR developer, should be implementing mitigation measures that go beyond what is necessary for the approval of this project. The DEIR should not allow for diesel or fossil fuel backup generators on site as an additional mitigation measure.

V. THE DEIR FAILS TO ADEQUATELY AND ACCURATELY ANALYZE ENVIRONMENTAL AND HEALTH IMPACTS.

An EIR must be prepared "with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences."⁶⁷ The DEIR circulated by the Planning Department, however, is

⁶² DEIR Appendix A at 1.

⁶³ *Id.* at 2.

⁶⁴ DEIR at 3.D-46.

⁶⁵ DEIR Appendix A at 2.

⁶⁶ DEIR at S-11.

⁶⁷ Cal. Code Regs. Tit. 14 § 15151.

extremely broad in scope and fails to adequately analyze the impacts that a 2.1 million square foot PDR site will have on the environment and human health being in operation for a century.⁶⁸

A. Health Impacts

The socioeconomic stressors of the adjacent populations and these health conditions render populations in the project area especially vulnerable to the impacts of pollution. For example, the age-adjusted rate of emergency room visits due to asthma in Bayview Hunters Point is 93.40, while the San Francisco citywide average is only 34.86.⁶⁹ For chronic obstructive pulmonary disease (“COPD”), the emergency room visit rate in Bayview Hunters Point is 45.08, while the citywide average is 18.55.⁷⁰ Based on available data, the project is in a community with some of the highest rates of asthma and COPD-related emergency room visits and hospitalizations in the city.⁷¹ The DEIR acknowledges that “national and state air quality standards have been set at levels considered safe to public health, including the health of sensitive populations such as asthmatics...” This is as detailed as the report gets.⁷²

It is impossible to believe that the demolition and construction of an entirely new PDR site will not affect asthma and COPD rates in the area. Although CEQA does not require the project to mitigate these existing impacts, the project must mitigate its impacts moving into such a sensitive area. San Francisco has designated Bayview Hunters Point as a neighborhood overly burdened by environmental concerns such as air pollution and quality, so additional measures should be required as part of the City’s policy.⁷³ In addition, the BAAQMD designated Southeast San Francisco as a “CARE” community through the Community Air Risk Evaluation program.⁷⁴ Meaning, 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.⁷⁵

The DEIR provides a brief description of the health effects of exposure to criteria air pollutants that will result from the project.⁷⁶ In particular, the DEIR discusses the effects of ozone, carbon monoxide, suspended particulates, and nitrogen dioxide.⁷⁷ Again, the DEIR acknowledges that these air pollutants have adverse effects on human health, but fails to address how the project will affect these rates. The proposed project plans to demolish the existing site and construct an entirely new PDR facility that is over 2.1 million square feet in size and that will last for at least a century.⁷⁸ The Planning Department and Prologis cannot reasonably assume that the increase in air pollution will not detrimentally affect human health across the city.

⁶⁸ DEIR at S-1.

⁶⁹ DEIR at 3.A-12.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² DEIR at 3.D-3.

⁷³ *See generally* DEIR 5.A.6.

⁷⁴ Bay Area Air Quality Management District

<https://www.baaqmd.gov/community-health/community-health-protection-program/community-air-risk-evaluation-care-program>

⁷⁵ *Id.*

⁷⁶ *See generally* DEIR 3D.

⁷⁷ DEIR at 3.D-4.

⁷⁸ DEIR at 20-1.

In addition to criteria air pollutants, projects may directly or indirectly emit Toxic Air Contaminants (“TACs”). TACs collectively refer to a diverse group of air pollutants that are capable of causing chronic and acute adverse effects on human health, including cancer.⁷⁹ The DEIR includes a table depicting ambient concentrations of carcinogenic TACs compared to the risk of cancer at the nearest air district ambient TAC monitoring station but only mentions the cancer risk for the next 70 years.⁸⁰ This is inadequate because the project is expected to last over a century, so the risk of cancer needs to be evaluated for at least 100 years.

B. Asbestos Impacts

The Bayview Hunters Point community has long been subjected to dust and asbestos from ongoing large-scale development.⁸¹ To address health concerns from asbestos exposure, CARB enacted an asbestos Airborne Toxic Control Measure (“ATCM”) for construction, grading, quarrying, and surface mining operations.⁸² The asbestos ATCM became effective for projects in the San Francisco air basin in 2002.⁸³ Under the measure, the air district requires construction activities where naturally occurring asbestos is likely to be found to employ the best available dust control measures and obtain air district approval of an asbestos dust mitigation plan.⁸⁴ The asbestos mitigation plan must address and describe how the operator will mitigate potential emissions.⁸⁵

The DEIR failed to provide an asbestos mitigation plan. There is no information contained in the DEIR that says, specifically, what the project intends to do to lessen asbestos exposure. Instead, it briefly mentions some measures that are typically implemented to protect workers and the public.⁸⁶ None of the actions are specific enough, however, to comply with the requirements of a project-level EIR. There is also no data available for the level of asbestos present at the project site. This is especially problematic here because the Navy constructed the building to be demolished in the 1940s. The City did not provide an assessment of the building materials and hazards present in the existing buildings that will be released during demolition. An adequate DEIR needs to give projections for past, present, and future levels so that the community can be informed. Given the historic uses of the site by the Navy and the location being in an overburdened community of color, more information about how the buildings will be demolished and potential mitigation is necessary to comply with CEQA.

VI. THE DEIR FAILS TO ANALYZE ALTERNATIVES ADEQUATELY AND ACCURATELY.

An EIR is required to describe reasonable alternatives to the project that would “substantially lessen any of the significant effects of the project,” while still being able to

⁷⁹ DEIR at 3.D-10.

⁸⁰ *Id.*

⁸¹ DEIR at 3.D-15.

⁸² DEIR at 3.D-20.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

feasibly attain most of the objectives of the project.⁸⁷ It is required that a reasonable range of potentially feasible alternatives be considered and that they “foster informed decision making and public participation.”⁸⁸

A. Code-Compliant Alternative

The Code Compliant Alternative proposes replacing the existing buildings on the land with modern facilities.⁸⁹ It is offered as an alternative because the proposed buildings do not meet height restrictions under district requirements.⁹⁰ Furthermore, the EIR claims it will “reduce impacts related to noise, air quality, and wind hazards.”⁹¹ However, this alternative would still be located in an area that is already overburdened by pollution, and not an area to relax standards.⁹² While there may be some emission reduction, it is still likely that the environmental effects produced, combined with other cumulative effects, will be significant. Alternatives that significantly reduce the significant effects of the project are required to be analyzed, and further alternatives need to be considered to fulfill this requirement.⁹³ Given the project is slated for an overburdened area, a code-compliant project should be the bare minimum. At the very least the City should adopt this alternative for the reduced impacts.

B. Fleet Management Use Mix Alternative

The Fleet Management Use Mix Alternative is considered the environmentally superior alternative.⁹⁴ This alternative would “offer a substantial reduction in air pollutant emissions, particularly of NOx, and health risks compared to the proposed projects.”⁹⁵ This alternative proposes including less space for parcel delivery and eliminating wholesale/storage space.⁹⁶ Furthermore, this alternative would not include maker or retail spaces and ground-floor manufacturing.⁹⁷ This alternative should be chosen over the proposed project since it is considered the environmentally superior alternative. It also provides more certainty about future uses of the project site.

However, it is questionable whether this alternative would be the environmentally superior alternative. As discussed above in the Air Quality section, the assumption that all trucks will be electrified by 2050 is faulty. By relying on this assumption, this alternative may very well turn out to be more harmful to the environment than other possible alternatives. The integrity of the analysis of alternatives depends on the data being accurate. With the potential for the data to be false and irrelevant in the future, the entire analysis is undermined. This alternative has not

⁸⁷ Cal. Code Regs., tit 14, § 15126.6(a).

⁸⁸ *Id.*

⁸⁹ DEIR at 5-54.

⁹⁰ DEIR at S-45.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Cal. Code Regs., tit 14, § 15126.6(a).

⁹⁴ DEIR at S-47.

⁹⁵ *Id.*

⁹⁶ DEIR at S-46.

⁹⁷ DEIR at S-47.

been accurately or adequately analyzed. Another analysis must be conducted using data based on the assumption that all trucks will not be electrified by 2050.

C. Alternative Site Outside of San Francisco

Prologis has used the promise of jobs in their attempt to garner community support. First, the number of jobs being promised is wishful thinking, as the project and businesses it will attract are undefined.⁹⁸ Secondly, the same number of jobs would be created wherever the project is located and can still be in proximity to Highway 101 without being in or near a residential neighborhood in Bayview Hunters Point or another city's residential areas.

The DEIR claims that the project site being in San Francisco allows it to be readily accessible to workers via Muni, BART, and Caltrain.⁹⁹ The possibility of an alternative site within the Bay Area may be less accessible to workers and less likely to reduce miles traveled.¹⁰⁰ However, this is false. BART runs through the entire Bay Area, and there are buses throughout the Bay Area as well. In fact, the project location is not conveniently located to public transit within San Francisco and projects significant private vehicle traffic at the site during peak am and pm commute times.¹⁰¹

Furthermore, the DEIR states that while there are likely multiple sites in the Bay Area that could feasibly provide space for the proposed project, the ability to avoid significant impacts would be "speculative" and uncertain.¹⁰² These potential sites are mentioned but no specific sites are identified, and no explanation is provided for this uncertainty.¹⁰³ This alternative has not been adequately or accurately analyzed. Prospective sites need to be identified and analyzed to determine whether an alternative site would result in the reduction of significant impacts and be an appropriate alternative. Without analyzing specific sites, the Alternative Site outside of San Francisco, but within the Bay Area has not been adequately and accurately analyzed. Analyzing all possible alternatives thoroughly is essential, and this alternative must be given the attention it deserves.

VII. CONCLUSION

In light of the above, and in addition to the defects and inadequacies of public notice and the DEIR, it is clear this proposed project if approved would have a significant, harmful impact on public health and the environment for decades into the future and could not be mitigated to less than significant.

The Planning Department, Planning Commission, and Board of Supervisors must not approve such a harmful project with significant impacts that cannot be mitigated to less than significant in this already overburdened, health-impacted community. We call on the City and

⁹⁸ DEIR at 2-1.

⁹⁹ DEIR at 3.B-9.

¹⁰⁰ DEIR at 5-60.

¹⁰¹ DEIR at 3.B-62.

¹⁰² DEIR at 5-60.

¹⁰³ *Id.*

County of San Francisco to reject this proposed project and instead protect the health, environment, and civil rights of residents who are people of color and have suffered from pollution for too many decades.

Respectfully Submitted by:

Brandon Turner
Certified Law Student*

Ariana Salcedo
Certified Law Student*

Jessica Reardon
Certified Law Student*

Caroline Farrell
Supervising Attorney

*Brandon Turner, Ariana Salcedo, and Jessica Reardon are certified law students under the State Bar Rules governing the Practical Training of Law Students (PTLS), working under the supervision of Caroline Farrell pursuant to the PTLS rules.