

National Lawyers Guild
San Francisco Bay Area Chapter



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Sent via electronic mail

RE: Request for Reconsideration of Approval and/or Major Mitigation of India Basin Mixed-Use Project and the Significant, Ongoing and Harmful Air Pollution it would cause in Bayview Hunters Point

Dear Mayor Breed, San Francisco Board of Supervisors, and the Planning Commission:

The Bayview Hunters Point Mothers and Fathers Committee, Greenaction for Health and Environmental Justice, and the San Francisco / Bay Area Chapter of the National Lawyers Guild (“NLGSF”) write to express our strong concern about the India Basin Mixed-Use Project that threatens the health and environment of Bayview Hunters Point, and to request that you **revisit the project in light of changed circumstances, namely 1) the global pandemic of COVID-19 and the increased vulnerability it has created for Bayview Hunters Point, and 2) the renewed calls to address institutional racism.** We write this while the community suffers with the worst air quality in the world¹ due to smoke from the wildfires, which grow more destructive every year.² As new information reveals troubling links between air pollution, race, and COVID-19, we call upon you to commit to work with the public to reduce the project’s impacts on air quality to *less than significant*, or if not feasible, to rescind approval of the project altogether for the health and safety of the community and in furtherance of long awaited racial justice.

I. Introduction

As you know, the India Basin Mixed-Use Project was approved after the Board of Supervisors rejected the appeal filed by Greenaction on behalf of its members and constituents who are residents of Bayview Hunters Point. We were alarmed by the findings in the Environmental Impact Reports that the overall impacts on air quality “would be significant and unavoidable with mitigation,” that “cumulative impacts related to regional air quality and health risks would be significant and unavoidable,”³ and that the project would “contribute to new, or exacerbate existing, air quality violations”⁴ in a community already disproportionately burdened with pollution.⁵ In response, the Board of Supervisors adopted a Statement of Overriding Consideration, a loophole in the California Environmental Quality Act, to try to justify the significant and harmful air pollution that this project would cause to community residents. They claimed that “open space” (which has toxic contamination and was never tested for radiation despite its proximity to the Shipyard Superfund Site) and so-called “affordable” housing (at approximately 20% less of market value in the most expensive housing market in the country) is more important than the health of residents and their right to breathe clean air. The Board of Supervisors then rejected the Greenaction appeal.

The Bayview Hunters Point Mothers and Fathers Committee is a neighborhood-wide grassroots community organization comprised entirely of residents working to protect and improve the well-being of the community. Greenaction for Health and Environmental Justice is a multi-racial grassroots organization based in San Francisco with many members, constituents, and staff who live in Bayview Hunters Point who will be affected by the project. We have participated in the project’s environmental review and permit process since it began with the Planning Department. From the start of this process, Greenaction and the Mothers and Fathers Committee raised concerns about the air pollution the project would cause, as well as the Planning Department’s blatant refusal to provide language access to the many limited and non-English speaking community residents who might be impacted by the project.

Today, the BVHP Mothers and Fathers Committee and Greenaction are joined by the Bay Area Chapter of the National Lawyers Guild and many other allies. The NLGSF has been at the forefront of supporting social movements demanding racial and economic justice in the Bay Area for the past 50 years. Given that the Indian Basin development is poised to contribute to and further magnify health, environmental, racial, and economic disparities in Bayview Hunters Point, NLGSF has a vested interest in the outcome of this proposed project.

We submit this letter on behalf of our members and constituents in Bayview Hunters Point, many of whom are low income and working class people of color whose health, environment, and civil rights will be adversely, disproportionately, and significantly impacted by the India Basin project. This letter focuses on our serious concerns with the significant and unavoidable impact that the proposed development would have on air quality in Bayview Hunters Point and its associated health risks.

For the record, we once again emphasize that we fully support cleanup of contamination and improvement of the India Basin Shoreline Park. We do not, however, support the increased, and harmful

air pollution the project would cause—air pollution that the EIR concluded would continue for the life of the project, not just during construction. Allowing the significant air pollution that would result from the project will make the India Basin Shoreline Park an unhealthy space for residents with sensitive health.

In February of this year, Mayor London Breed described this high-end housing project, designed to match the higher incomes of the city’s new residents, as “true environmental justice.”⁶ Moving forward with the project as approved would be antithetical to any notion of justice. The following discussion makes it clear that the harmful environmental and health outcomes and the racial disparities of the project far outweigh any supposed benefits. This was true when the Planning Commission approved the project; with the newest assault of COVID-19, **the increased pollution from the project on top of existing pollution, contamination, and racial and economic disparities would be, without exaggeration, a death sentence for some Bayview Hunters Point residents.**

II. COVID has exacerbated the effect of environmental racism in Bayview Hunters Point due to the high levels of existing pollution and related health issues.

Much has changed locally, nationally, and around the world since the India Basin project was approved in 2018, the most dramatic being the global outbreak of the coronavirus disease 2019 (“COVID-19”). We have seen a worrying link between air pollution and increased risk of death from COVID-19.⁷ Studies also show that in cities across the country, people of color make up a disproportionate percentage of deaths from the coronavirus, including here in San Francisco, often due to economic neglect and underlying health conditions caused or exacerbated by pollution in their communities.⁸ **The significant and unavoidable air pollution from the India Basin project, on top of existing pollution and related illnesses, poverty, and racial disparities would make Bayview Hunters Point even more vulnerable to COVID-19 and other diseases.**

A. Studies show links between air pollution and increased risk of death from COVID-19.

Research increasingly shows that people exposed to high levels of air pollution have worse COVID-19 outcomes, including an increased risk of contracting and dying from the disease.⁹ It is worth highlighting that fine particulate matter (PM2.5), one of the forms of air pollution that the India Basin project will generate, is associated with poorer and more fatal outcomes for COVID-19. Research has shown that long term exposure to pollutants such as PM2.5 can reduce lung function and cause respiratory illness.¹⁰ Air pollutants such as PM2.5 have been shown to cause a persistent inflammatory response, which increases the risk of infection by viruses like COVID-19 that target the respiratory system.¹¹ A nationwide study by Harvard researchers found that even a small increase in PM2.5 concentrations of 1 microgram per cubic meter is associated with an 8% increase in the overall death rate of the coronavirus.¹²

The India Basin EIR specifically addressed increased PM2.5 concentrations that would be generated during construction and operation of the India Basin project¹³ and warned that “PM2.5, can remain airborne for weeks and pose health concerns. Specifically, particulate matter can be deposited in the lungs when inhaled, causing respiratory illnesses and lung damage.”¹⁴ This is incredibly alarming given that the

project would increase PM2.5 concentrations to levels that would be “significant and unavoidable with mitigation” and would exceed healthy thresholds.¹⁵ In fact, the Bay Area Air Quality Management District (BAAQMD) withdrew its support for the India Basin Development Project due to the ‘unacceptable’ air pollution it would generate. BAAQMD wrote to the Board of Supervisors, citing its concern with the dangerous levels of PM2.5 that the project would generate. “PM2.5 is by far the most harmful air pollutant in the Air District's jurisdiction,” the agency said, and can cause a “wide range of health effects, such as aggravating asthma, bronchitis, respiratory and cardio-vascular symptoms, and contributing to heart attacks and death.” BAAQMD even offered to work with the city to minimize the project’s impacts and develop a comprehensive, community-scale air quality plan for vulnerable neighborhoods like BVHP.¹⁶

B. COVID-19 worsens existing racial, ethnic, and economic disparities.

While places with environmental pollution face increased COVID-19 infection and mortality rates, nationally, people of color and low-income communities are hardest hit by the coronavirus.¹⁷ More often than not, these groups overlap: communities of color are more likely to be economically marginalized, and there is a long and ongoing history of placing polluting activities in low-income areas and communities of color.¹⁸ For example, of the 1.8 million Californians living near drilling in heavily polluted areas, 92% are from communities of color.¹⁹

In the context of the coronavirus, we see wide COVID-19 disparities by race, most dramatically for Black, Indigenous, Pacific Islander, and Latinx people.²⁰ Black people nationwide continue to experience the highest actual COVID-19 mortality rates—about 2.5 times as high as the rate for white people.²¹ To put it another way, “about 18,000 Black, 6,000 Latino, 600 Indigenous, and 70 Pacific Islander Americans would still be alive” if they had died from COVID-19 at the same rate as whites.²² A May 2020 study of over 1,000 confirmed cases in California showed that Black patients diagnosed with the coronavirus are nearly three times more likely to require hospitalization than white patients.²³ In San Francisco, people of color make up the majority of coronavirus deaths; half of all COVID-19 cases are people who are Latinx; and neighborhoods that are predominately Black, Latinx, or Asian and low income or working class, have seen the highest number of cases according to the city’s COVID-19 data tracker.²⁴

Dr. Sheryl Davis, the Executive Director of San Francisco Human Rights Commission, recognizes that “The same people you see being impacted by [COVID-19] have experienced other inequities in San Francisco” and that our “system is flawed.”²⁵ Indeed, even Mayor Breed has acknowledged that the higher rates of COVID-19 in these communities demonstrates a “clear disparity.”²⁶ Yet this disparity is not a new development; it is the result of years of economic neglect, lingering radioactive and toxic contamination at the Hunter’s Point Shipyard Superfund Site, and prioritizing development money over the health and wellbeing of low-income residents and residents of color. This disparity will only multiply if the proposed India Basin project is allowed to go forward as currently planned.

C. Pollution, racism, and poverty make Bayview Hunters Point particularly vulnerable to and suffer disproportionately from COVID-19.

The City and County of San Francisco have long acknowledged that Bayview Hunters Point residents 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.

Given what we currently know about the role of pollution, race, and poverty in COVID-19 cases, it is unsurprising that Bayview Hunters Point has been hit especially hard by COVID-19. As of August, Bayview Hunters Point has the highest rate of COVID-19 infection.²⁷ The significant and unavoidable air pollution from the India Basin project would increase the community's risk of contracting COVID-19, aggravate other pollution-related disease, and all but ensure even more deaths in Bayview Hunters Point.

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 an already overburdened community like Bayview Hunters Point, claiming that other "benefits" are "overriding." Nothing is more important than life, and air pollution kills. The added danger of COVID-19 makes the exclusive housing project all the more unjustified.

III. Renewed national attention on institutionalized racism requires reconsideration of the India Basin project.

The brutal police killings of Breonna Taylor and George Floyd earlier this year, and the senseless deaths of several other Black Americans exposed the stark racial disparities in the US much like the coronavirus pandemic, but far more acutely. For the first time in decades, we are collectively reckoning with the deep-seated racism that infects every aspect of our society—from policing to healthcare, to education, jobs, law, religion, entertainment, and of course the environment. Communities and activists have transformed these deaths from moments of grief and outrage into a powerful movement for racial justice.

As millions take to the streets and brave the still raging pandemic, many institutions, including cities and other government bodies, have acknowledged the role that racism has historically played and continues to play in shaping their decisions. Some have even gone beyond issuing oblique commitments to justice and have begun to identify clear and effective steps to undo and rectify the harm of institutionalized racism.

The institutionalized racism here in San Francisco cannot be overstated. It is at the root of most if not all of the racial disparities plaguing the city, many of which have already been discussed. For Bayview Hunters Point, one of the last communities of color in the city, the various obstacles the residents have faced—from failures to translate key development notices and documents into languages spoken by residents,²⁸ to ongoing scandals of the Hunter’s Point shipyard testing and clean up,²⁹ to the decision to push ahead with the luxury residential development despite its significant and unavoidable health and environmental impacts—have all made it clear that racial equity has not been a priority in San Francisco for some time.

This is an unprecedented moment; the City and County of San Francisco can take the opportunity to ensure it ends up on the right side of history. Given the racial disparities outlined in this letter, it would run counter to this political moment to move forward with the proposed project, knowing the risks identified in the EIR are exacerbated by COVID-19. To reiterate, the supposed benefits of the project will not outweigh the projected burdens to an already overburdened community. Moreover, the India Basin project combined with the Shipyard project will add tens of thousands of mostly upper income residents to Bayview Hunters Point, resulting in the gentrification and ultimately displacement of long time residents and small community-owned businesses, and of one of the last communities of color in San Francisco. It would, to put it simply, be racially unjust to proceed with the project as approved.

IV. Request to the Mayor and Board of Supervisors:

Based on the above considerations, we ask that the Mayor, Board of Supervisors and Planning Commission provide the following remedies: (1) Offer feasible project alternatives or mitigation measures that are considerably different from those analyzed in the EIR such that they would lessen the health and environmental impacts of the project to *less than significant*; (2) open these project alternatives or mitigation measures up for public comment; (3) test the entire India Basin project area for radioactive and toxic contamination, with meaningful community oversight; (4) require much more extensive and proper testing and cleanup at the nearby Shipyard Superfund Site, with meaningful community oversight.

A. Need to confirm the extent of radioactive and toxic contamination at the proposed site.

The India Basin project must include a thorough testing, analysis, and summary of potentially radioactive and toxic contaminants before any use of the proposed site. The proposed project area is in close proximity to contaminated Superfund sites with radioactive and toxic contaminants. Initial data from the Hunters Point Community Biomonitoring Project suggests that shipyard contamination has likely migrated into nearby homes and businesses, and potentially sickening residents and workers.³⁰ As such, we request that all properties within the project area are thoroughly tested for radioactive contamination and remediated, with meaningful community oversight to assure the public that the proposed project will not threaten the health and safety of the community.

Conclusion

In response to the disproportionate toll COVID-19 has had on Bayview Hunters Point and other communities of color, Director Davis of the Human Rights Commission said that the City and County of San Francisco “must acknowledge a need to shift how our city systems partner and collaborate with those most impacted to change outcomes, not just during this crisis—but moving forward.” We agree. The coronavirus pandemic will eventually pass, but Bayview Hunters Point residents must live with the consequences of COVID-19 and its disparate effects caused by pollution and racial and economic inequity. Director Davis insisted that San Francisco's response “must also be rooted in **trusting the resilient communities most at-risk of exposure to the coronavirus to guide a community-led response.**”³¹ The Bayview Hunters Point Mothers and Fathers Committee, Greenaction, and the NLGSF also call upon the City and County of San Francisco to heed these words and trust the resilience of Bayview Hunters Point residents and allow them and other impacted communities to lead the way forward.

For all the above reasons, we ask you, Mayor Breed, Board of Supervisors, and the Planning Commission, to commit to working with the community to reduce the projected impacts to less than significant or rescind the approval of the India Basin Mixed-Use Project’s commercial component. We support remediation and improvement of the Shoreline Park, but that park needs to be a safe and healthy place for residents—free from the harmful air pollution the Mixed-Use Project would cause. We ask for a response to our letter with your stated course of action within 30 days of receipt of this letter.

Sincerely,

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Endnotes

1. Alix Martichoux, *Bay Area air quality worst in the world as wildfires rage in all but one county*, ABC 7 NEWS, (last visited Aug. 31, 2020), <https://abc7news.com/smoke-forecast-bay-area-in-sf-today-air-pollution-wildfire/6377953/>
2. Julie Cart & Judy Lin, *California's worsening wildfires, explained*, CALMATTERS (updated Aug. 20, 2020), <https://calmatters.org/explainers/californias-worsening-wildfires-explained/>
3. India Basin Final RTC, 2-23
4. *Supra*, 4-69
5. *Supra*, 2-21, 2-22.
6. *State Awards \$8.5 Million for Waterfront Park in India Basin*, CITY AND COUNTY OF SAN FRANCISCO, OFFICE OF THE MAYOR (Feb. 27, 2020), <https://sfmayor.org/article/state-awards-85-million-waterfront-park-india-basin> .
7. Rachel Frazin, *Experts see worrisome link between coronavirus, pollution*, THE HILL (Apr. 12, 2020), <https://thehill.com/policy/energy-environment/492314-experts-see-worrisome-link-between-coronavirus-pollution> .
8. Katherine Bagley, *Connecting the Dots Between Environmental Injustice and the Coronavirus*, YALE ENVIRONMENT 360 (May 7, 2020), <https://e360.yale.edu/features/connecting-the-dots-between-environmental-injustice-and-the-coronavirus>.
9. Paul Costello, *Why air pollution is linked to severe cases of COVID-19*, SCOPE BY STANFORD MEDICINE (Jul. 17, 2020), <https://scopeblog.stanford.edu/2020/07/17/why-air-pollution-is-linked-to-severe-cases-of-covid-19/>.
10. Matt Cole, "Air pollution exposure linked to higher COVID-19 cases and deaths – new study," *The Conversation*, <https://theconversation.com/air-pollution-exposure-linked-to-higher-covid-19-cases-and-deaths-new-study-141620> (Jul. 13, 2020).
11. *Supra*.
12. Xiao Wu et al., *Exposure to air pollution and COVID-19 mortality in the United States: A nationwide cross-sectional study*, MEDRXIV, (Apr. 24, 2020), <https://doi.org/10.1101/2020.04.05.20054502>.
13. *Supra*, note 1, 2-22.
14. *Supra*, 4-70.
15. *Supra*, 2-22.
16. Bay Area Air Quality Management District, *Re: India Basin Mixed Use Project* (Aug. 28, 2019), <https://greenaction.org/wp-content/uploads/2019/09/India-Basin.pdf>
17. Tiffany Ford et al., *Race gaps in COVID-19 deaths are even bigger than they appear*, BROOKINGS INSTITUTION (Jun. 16, 2020), <https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/> .
18. Rob Jordan, *Stanford researcher discusses link between air pollution and COVID-19*, STANFORD NEWS (Jun. 30, 2020), <https://news.stanford.edu/2020/06/30/links-covid-19-air-pollution/>.
19. Jane Fonda & Don Martin, *Why does California's Legislature tolerate the oil industry's environmental racism?* SACRAMENTO BEE (Jul. 17, 2020), <https://www.sacbee.com/opinion/california-forum/article244232417.html>.
20. AMP Research Lab Staff, *The Color of Coronavirus: Covid-19 Deaths by Race and Ethnicity in the U.S.*, AMERICAN PUBLIC MEDIA (last visited Aug. 7, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race>
21. *The COVID Racial Data Tracker*, ATLANTIC (last visited Aug. 7, 2020), <https://covidtracking.com/race>.
22. *Supra*, note 17.
23. Julian Glover, *Coronavirus Impact: Black COVID-19 patients nearly 3 times more likely to be hospitalized, study finds*, ABC 7 NEWS (last visited Aug. 7, 2020), <https://abc7news.com/coronavirus-by-race-sutter-health-study-african-american-community-deaths/6202118/>.
24. *See Population Characteristics*, DATASF (last visited Aug. 7, 2020), <https://data.sfgov.org/stories/s/w6za-6st8>, *Map of Confirmed Cases and Deaths*, DATASF (last visited Aug. 7, 2020), <https://data.sfgov.org/stories/s/adm5-wq8i/>.
25. Meaghan M. Mitchell, *With COVID-19 heavily impacting African-Americans, Bayview officials seek more help*, HOODLINE (May 1, 2020), <https://hoodline.com/2020/05/with-covid-19-heavily-impacting-african-americans-bayview-officials-seek-more-help>.
26. Amy Graff, *Who is getting COVID-19 in San Francisco? Here's a breakdown*, SF GATE (Jul. 24, 2020), <https://www.sfgate.com/news/editorspicks/article/Who-is-getting-COVID-19-in-San-Francisco-Here-s-15428888.php>.
27. *Supra* note 21, *Map of Confirmed Cases and Deaths*.
28. Bradley Angel, *Greenaction for Health And Environmental Justice Appeal of Planning Commission Approval of India Basin Mixed Use Project*, GREENACTION FOR HEALTH & ENVIRONMENTAL JUSTICE (Sept. 5, 2020), <https://greenaction.org/wp-content/uploads/2019/09/Press-Release-Sept-5-2019-Air-District-reverses-support-for-India-Basin-Mixed-Use-Development-in-Bayview-Hunters-Point.pdf>
29. Jason Fagone and Cynthia Dizikes, *SF shipyard scandal: Pelosi calls for federal probes*, SF CHRONICLE (Aug. 2, 2018), <https://www.sfchronicle.com/bayarea/article/San-Francisco-shipyard-scandal-Pelosi-calls-for-13121300.php>.
30. Chris Roberts, *Toxic Metals Found in Shipyard Neighbors, but Source Still Unknown*, SAN FRANCISCO PUBLIC PRESS (May 12, 2020), <https://sfpublicpress.org/toxic-metals-found-in-shipyard-neighbors-but-source-still-unknown/>.
31. *San Francisco Releases Map of Coronavirus Impact by Zip Code*, CITY AND COUNTY OF SAN FRANCISCO, OFFICE OF THE MAYOR (Apr. 20, 2020), <https://sfmayor.org/article/san-francisco-releases-map-coronavirus-impact-zip-code>.

