

File No. 110795

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit & Oversight

Date: October 13, 2011

Board of Supervisors Meeting

Date: \_\_\_\_\_

#### Cmte Board

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Completed by: Andrea S. Ausberry

Date October 6, 2011

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



OFFICE OF THE MAYOR  
SAN FRANCISCO



orig: SAO clerk  
COB, page leg Dep  
EDWIN M. LEE  
MAYOR

August 15, 2011

The Honorable Katherine Feinstein  
Presiding Judge  
400 McAllister Street, Department 206  
San Francisco, CA 94102-4514

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BOARD OF SUPERVISORS  
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Dear Judge Feinstein:

The Office of the Mayor, the Office of Economic and Workforce Development ("OEWD"), the Department of Public Health ("SFDPH"), the Office of Labor Standards Enforcement ("OLSE"), and the San Francisco Redevelopment Agency ("SFRA") jointly submit the following response to the 2010-2011 Civil Grand Jury Report entitled "Hunters Point Shipyard: A Shifting Landscape" (the "Report"), pursuant to California Penal Code Section 933.05.

The City and County of San Francisco and the San Francisco Redevelopment Agency are firmly committed to the revitalization of the Bayview Hunters Point community which includes the former Hunters Point Naval Shipyard. The Mayor's Office, City departments and the SFRA have worked closely with the Bayview Hunters Point community to address the complex issues surrounding the cleanup and redevelopment of the Shipyard. Since 1991, the San Francisco congressional delegation, working in close partnership with the City, has secured more than \$700 million in federal funds to support the cleanup of the Shipyard, and the City remains committed to ensuring that the Navy remediates the Shipyard consistent with the City's reuse plans.

The City and the SFRA have worked diligently to make sure that public health and the environment are protected while the Navy's cleanup of the Shipyard is ongoing and that the community benefits from the development project through the creation of much needed affordable housing, hundreds of acres of parks and open space, and millions of square feet of job-generating commercial and retail space. After years of planning work and with the overwhelming support of San Francisco voters, the City secured all necessary approvals and land use entitlements for the development of the Shipyard and adjacent Candlestick Point area in August 2010.

The Hunters Point Shipyard-Candlestick Point project will create 10,500 units of housing, 32% of which will be offered at below-market rates, including the complete rebuild of the Alice Griffith Public Housing site, more than 300 acres of new or improved public parks and open space, millions of square feet of retail and research and development space with a focus on green technologies. The project will invest more than \$1 billion in sustainable public infrastructure and transportation improvements and includes an additional \$83 million in other programmatic community benefits. More than 10,000 permanent jobs and thousands of annual construction job opportunities will be generated by the project, and the City through the SFRA's agreements with the project developer, has policies and programs in place to ensure that as many as those jobs as possible are directed to the residents of the surrounding Bayview Hunters Point community and local residents of San Francisco generally. The first phase of the Shipyard's redevelopment is already underway and will ultimately include up to 1,600 additional homes, 27% to 40% of which will be affordable, and 26 acres of parks and open space.

We are issuing this joint response to refute some of the claims of the Civil Grand Jury ("Jury") that the City has not engaged in the process in a professional manner or in a manner that circumvents the public

process. The City has continuously met with community members and stakeholders to address environmental concerns and employment concerns.

This response will also address the Civil Grand Jury's concern about the status of redevelopment agencies. The finding and recommendation stated in the Report no longer reflect the State's adopted legislation, ABx1 26 and ABx1 27, concerning redevelopment and the recent decision by the California Supreme Court to stop the enforcement of the portions of the state law dissolving redevelopment agencies and requiring the payment of a community remittance pending a final decision of the Court, which is expected in January 2012. In any event, the disposition and development agreements between the SFRA and the master developer authorizing development at the Hunters Point Shipyard Phase 1 ("Phase 1 DDA") and Candlestick Point-Hunters Point Shipyard Phase 2 ("Phase 2 DDA") (collectively the "DDAs") are considered "enforceable obligations" under the state legislation. The SFRA will continue to implement its contractual obligations for the Hunters Point Shipyard and Candlestick Point areas and will continue authorized redevelopment activities at other redevelopment project areas. In the unlikely event that SFRA were dissolved, the City and County of San Francisco ("City"), as the successor agency, would assume these "enforceable obligations" under state law.

**The responses to the Civil Grand Jury's findings are as follows:**

**Finding 1:** The Jury found that the SFDPH is not in compliance with its pledge to the California Department of Public Health to keep its residents informed of developments at Shipyard. The website is not regularly updated.

**Response:** Disagree. SFDPH respectfully disagrees with the Civil Grand Jury's finding that SFDPH is not keeping residents informed of development activities at the Hunters Point Shipyard. SFDPH maintains and routinely updates a Hunters Point Shipyard webpage devoted solely to the role of the department in overseeing development at the Hunters Point Shipyard. The website provides historical records of SFDPH's oversight of the site and information on the regulatory structure that governs SFDPH's role. The website includes links to city laws and regulations, maps of the area, copies of Notice of Violations, memos, reports, FAQs, and available and verified historical monitoring data.

The air monitoring data, discussed in the Civil Grand Jury's findings, are updated at a minimum on a monthly basis and often on a biweekly basis. Furthermore, DPH routinely participates in community meetings and in public hearings in order to explain and answer questions related to SFDPH's environmental oversight of the Shipyard development. SFDPH responds promptly to requests for information from the media and members of the public. In addition to SFDPH activities, other City departments and organizations provide information to the public on the cleanup and redevelopment of the Shipyard, including the OEWD, SFRA, Planning Department, Navy, Hunters Point Shipyard Citizens Advisory Committee and Arc Ecology.

**Finding 2:** The Jury found that the City has placed itself in a potentially compromising situation with Lennar where in essence the wolf is paying the shepherd to guard the flock. By having the developer, Lennar, reimburse the City for monitoring expenses associated with the Shipyard redevelopment project, the SFDPH has created a situation that could raise doubts in the public's mind about its commitment to proactively and impartially enforce environmental health regulations even when it might adversely impact Lennar. Public trust in the SFDPH has been further jeopardized by its failure to update its website in a timely manner, and its apparent reluctance to comment publicly on the best method to deal with the cleanup of Parcel E-2.

**Response:** Disagree. SFDPH respectfully disagrees with Finding 2. SFDPH is committed to abiding by the following general ethics and principles for environmental health practice:

- Understand and uphold environmental health laws and regulations
- Maintain impartiality and objectivity by listening to opposing views

- Make judgments based on facts and evidence
- Avoid conflicts of interest
- Monitor environmental conditions that affect the health of the population
- Work collaboratively to improve the environmental conditions necessary for health
- Make information on health impacts available to the public and to policymakers.

The funding mechanism for SFDPH's implementation of oversight and regulatory activities is consistent with the funding mechanisms for other environmental and regulatory activities undertaken by the City, including activities by SFDPH, the Department of Building Inspection and the Planning Department. Fees are routinely charged to a regulated party to cover the City's cost of enforcement activities. Additionally, regulated parties pay for environmental analysis and measurement required for SFDPH to meet its regulatory responsibilities. These practices are normal and customary not only in San Francisco, but in all California jurisdictions. Ensuring the regulated party pays enforcement costs is required by the San Francisco Administrative Code and consistent with the "polluter pays" principle.

In the case of the Hunters Point Shipyard, SFDPH is reimbursed for two types of regulatory costs (1) for enforcement of Article 31 through separate mechanisms and (2) for technical review on behalf of the SFRA.

- ***Fees for Article 31 Enforcement:*** The San Francisco Health Code authorizes SFDPH to charge fees for the oversight of Article 31 including for the oversight of a Dust Control Plan implemented by a project developer. As part of these oversight roles, SFDPH staff reviews data and conducts inspections of development activities at the site.

The Dust Control Plan approved under Article 31 of the Health Code for work on Parcel A of the Hunters Point Shipyard requires the project developer, Lennar, to conduct airborne particulate measurements and to submit these monitoring results for review to SFDPH. As is true of all regulated entities, Lennar is required to conduct and pay for this monitoring. The data is submitted to and reviewed by SFDPH. In addition to this particulate monitoring equipment, the Bay Area Air Quality Management District ("BAAQMD") oversees Lennar's operation of airborne asbestos monitoring equipment at a five locations under the requirements of Lennar's Asbestos Dust Mitigation Plan, which is under the oversight of the BAAQMD.

- ***Reimbursements for Technical review:*** Under the DDAs, the SFRA reimburses SFDPH for costs incurred for technical review of the Shipyard development and the Navy's cleanup of the Hunters Point Shipyard. Lennar, however, provides the funding for those reimbursements. Nonetheless, the SFRA administers the contracts associated with this technical review and retains the discretion to enter into and terminate the contracts.

To provide an additional mechanism of oversight, SFRA retains an independent environmental consultant, Treadwell and Rollo, to conduct independent environmental monitoring at the site. Treadwell and Rollo operates five additional airborne asbestos monitoring equipment locations through a contract with a specialized asbestos consultant, Accumen, and an analytical laboratory, Microanalytical. These five additional monitoring locations provide an extra independent check on the monitoring undertaken by the developer and provide assurance to SFDPH and the community that Lennar's airborne asbestos monitoring is being conducted correctly. After reimbursement from Lennar, SFRA pays directly for this environmental monitoring through the project budget.

Five regulatory agencies (SFDPH, BAAQMD, California Department of Public Health, the federal Agency for Toxic Substances and Disease Registry, and the U.S. Environmental Protection Agency) have reviewed all data from all of the monitoring locations and all agencies

have reached similar conclusions that the monitoring processes and oversight by the regulatory agencies is being conducted properly and in a health protective manner.

With regard to Parcel E-2, for the past 18 years SFDPH has participated in technical discussions and reviewed the Navy's documentation as it has investigated the contamination in this area and all other areas of the Hunters Point Shipyard. With respect to Parcel E-2, the Navy has not yet completed the federally-mandated cleanup process to the point where the Navy has formally stated its preferred alternative for cleanup of the landfill. The Navy will state its preferred alternative in the Proposed Plan for Parcel E-2, which the Navy has indicated it plans to issue on September 7, 2011. Once the plan is issued, SFDPH will comment on the plan, along with the public and the U.S. EPA, the California Department of Toxic Substances Control ("DTSC") and the Regional Water Quality Control Board ("Regional Board"), which are the federal and state agencies with authority to oversee the Navy cleanup process. The Board of Supervisors has previously indicated an intent to hold a hearing for the public and the City to provide comments on the Parcel E-2 Proposed Plan to the Navy and SFDPH expects to participate in such a process.

The SFRA also disagrees with Finding 2. Reimbursement for technical review work done by SFDPH is provided by the SFRA after payment by Lennar, which is contractually obligated to make the payment. The SFRA retains the authority and responsibility under the DDAs to review and approve these invoices; it approves and manages all payments for these tasks.

**Finding 3:** These concerns were further reinforced by the recent release of e-mail messages that purportedly show inappropriate communications between senior officials at the SFDPH and the U.S. EPA and Lennar and one of its consultants.

**Response:** Disagree. SFDPH respectfully disagrees that communications between senior officials at the SFDPH and the EPA, Lennar, and its environmental consultants have been inappropriate. When allegations of impropriety arose based on public release of selective emails, SFDPH initiated an internal investigation of the referenced conduct. In its investigation, SFDPH did not find evidence of conflict of interest or evidence of a failure by the agency to uphold its regulatory responsibility.

It is normal, necessary, and common practice for regulators and the regulated parties to communicate directly. Effectively achieving the public health aims of regulations requires ongoing communications to educate the regulated party and re-enforce regulations, to apprise the regulated party when monitoring or inspections reveals the need for action, and to plan and implement adaptations in response to changing conditions and lessons learned.

Additionally, the professions and businesses involved in the sampling program adhere to strict standards of practice for their industry and codes of ethics for their professions and in the case of the laboratory, strict lab certification guidelines.

**Finding 4:** With the exception of Parcel A, the City has no legal control over the remaining Shipyard property. Consequently, in a technical sense the City has no authority over matters dealing with deadlines and deliverables for environmental clean-up. However, the City does in fact have some standing in these matters via the 2004 Conveyance Agreement between the San Francisco Redevelopment Agency (SFRA) and the Navy. The agreement stipulates that the Navy will work collaboratively with the SFRA and share information about cleanup work.

**Response:** Agree. SFDPH agrees with Finding 4. SFRA does not currently have legal title to any other Shipyard parcel, with the exception of Parcel A, which has been conveyed by the Navy. The SFRA and the Navy have agreed through the 2004 Conveyance Agreement to work collaboratively in sharing information about cleanup work. To this end, the Navy has agreed to provide documents to SFRA for review and SFDPH, on behalf of SFRA, participates extensively in the Comprehensive Environmental

Response Compensation and Liability Act ("CERCLA") cleanup process with the Navy and the applicable regulatory agencies.

**Finding 5:** Governor Brown's announcement earlier this year that he intends to cut funding to redevelopment agencies in the next fiscal year directly threatens the Shipyard redevelopment project. Up to now, there has been no indication from either the City or the San Francisco Redevelopment Agency as to how they intend to continue the Shipyard redevelopment project should redevelopment funds actually be cut or eliminated by the State.

**Response:** Disagree. The Mayor's Office, OEWD and the SFRA disagree that there has been no response from the City or the SFRA as to how they intend to proceed with the redevelopment plans for Hunters Point Shipyard in light of the passage of ABx1 26 and ABx1 27. These agencies have been actively engaged with State legislators and the Governor's office on all legislation pertaining to the elimination and reform of State redevelopment agencies. In June of this year, the State legislature passed and the Governor signed ABx1 26 and ABx1 27. ABx1 26 ("Dissolution Law") immediately suspends the authority of redevelopment agencies to undertake new activities and requires agencies to prepare for dissolution by October 1, 2011. ABx1 27 ("OptIn Law") provides a mechanism whereby redevelopment agencies may survive if the local legislative body, which in the City's case is the Board of Supervisors, adopts an ordinance committing the local jurisdiction to make certain payments in Fiscal Year 2011-12 and future years for the benefit of local school districts and taxing authorities.

The Mayor's Office, OEWD and the SFRA through public statements and presentations at public meetings before the SFRA Commission, other City boards and commissions, State commissions, and various local community groups have consistently stated that the development of the Hunters Point Shipyard (as well as other redevelopment projects) is a top priority and will work to ensure that changes to redevelopment agencies by the State do not prevent the ability of the SFRA to carry out its contractual obligations to implement this important project.

Since the passage of these two redevelopment bills by the State, the Mayor and nine members of the Board of Supervisors, introduced a resolution on July 19, 2011, expressing the intent of the City to comply with the provisions of Part 1.9 of the Health and Safety Code (recently added by ABx27) to continue redevelopment activities, including the implementation of the Hunters Point Shipyard - Candlestick Point project, by agreeing to make annual payments to the respective taxing entities. The Board of Supervisors unanimously adopted this resolution of intent on August 2, 2011, which the Mayor signed on August 3, 2011.

The City had planned to introduce legislation that would commit the City to make the required annual payments to taxing entities under the OptIn Law; however, the California Supreme Court issued a decision on August 11, 2011, to stop the enforcement of the portions of the state law dissolving redevelopment agencies and requiring the payment of a community remittance pending a final decision of the Court, which is expected in January 2012. In any event, the DDAs governing development at the Hunters Point Shipyard are considered "enforceable obligations" under the state legislation. Accordingly, the SFRA will continue to implement its contractual obligations for the Hunters Point Shipyard and Candlestick Point areas and, in the event of dissolution, the City will assume those obligations.

**Finding 6:** Previous efforts by the City to implement workforce policies at City-funded construction projects such as the Shipyard redevelopment project have largely proved ineffective as they only require a contractor to make a good faith effort to hire local workers. Earlier this year a new workforce ordinance came into effect that has stricter requirements and mandates.

**Response:** Disagree. The SFRA and OEWD disagree with the Civil Grand Jury's finding that the requirement to make a good faith effort to hire local workers has proven ineffective at the Hunters Point Shipyard. Local hiring efforts have been very successful at the Shipyard. To date, 52.2% of professional

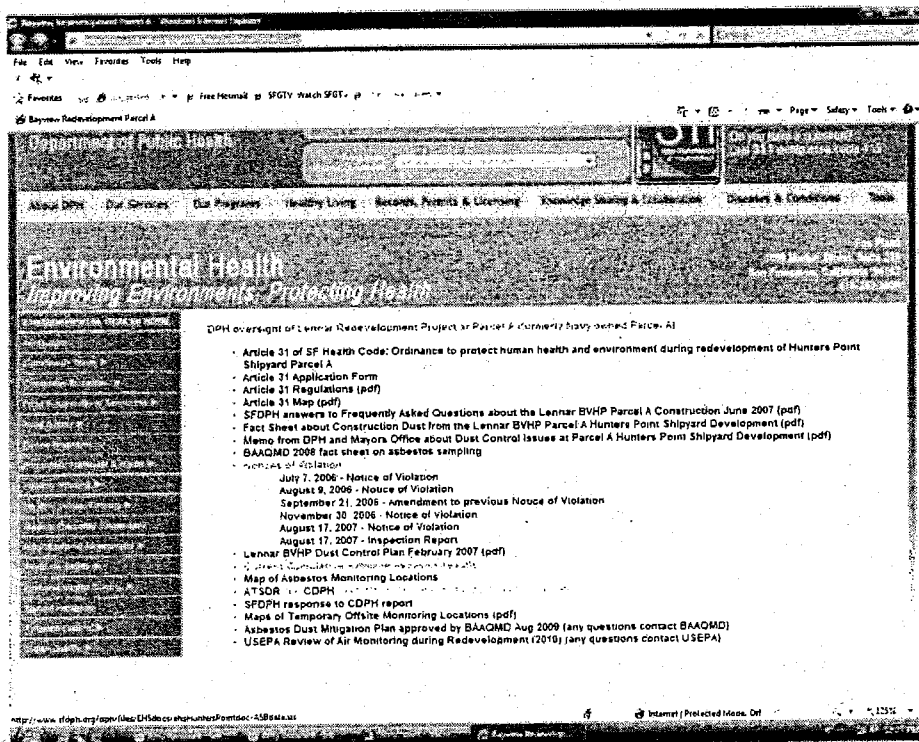
services contracts and 47.9% of construction contracts at the Shipyard totaling \$31,802,543 have been awarded to San Francisco firms.

In terms of construction workforce hires, the Shipyard has exceeded the 20% local hire requirement for City-funded projects. In 2008 and 2009, where significant horizontal infrastructure construction activity took place, the project also exceeded the SFRA's goal of 50% local hire. Specifically, in 2009, 52.5% of the construction was completed by San Francisco residents, including 19% completed by residents of District 10 and 33.5% completed by other San Francisco residents. In 2009, 53.1% of the construction was completed by San Francisco residents, including 17.7% completed by residents of District 10 and 35.4% completed by other San Francisco residents. Since the commencement of infrastructure work at the Shipyard in 2006 through June 2011, 31.81% of the work has been completed by San Francisco residents, including 8.8% completed by residents of District 10 and 23.01% completed by other San Francisco residents. This success was due to the close coordination with labor groups, City agencies and local community groups demonstrating that successful local hire practices have been implemented and will continue to be implemented independent of the City's local hire ordinance.

**The responses to the Civil Grand Jury's recommendations are as follows:**

**Recommendation 1:** The Department of Public Health should strictly adhere to its self-proclaimed pledge to keep the residents of San Francisco apprised of developments at Shipyard by updating its Shipyard project website "...on a weekly or monthly basis."

**Response:** Agree; Already Implemented. SFDPH has been and will continue to update its Hunters Point Shipyard web page on a monthly basis whenever new information is available. Below is a screen shot of what the webpage currently looks like.



When a web page user clicks on the orange highlighted link shown on the screen shot above an excel spreadsheet of all the airborne asbestos monitoring data opens up and includes all past data through approximately two weeks prior to the posting date.



**Recommendation 2:** In order to erase any doubt among the public with respect to its ability to remain independent and impartial in overseeing the cleanup work at the Shipyard, the SFDPH should immediately stop accepting money from Lennar to pay for monitors at the Shipyard and cover the cost from its own resources.

**Response:** Disagree. As described in the response to Finding 2, SFDPH implementation of this recommendation is not feasible or necessary. The current fee-based funding mechanism for regulatory oversight is legally authorized, necessary, and the normal practice of governmental regulatory agencies. Further, independent oversight monitoring conducted by SFRA is an effective method to assure the reliability of the monitoring conducted by the developer to meet SFDPH and BAAQMD requirements.

**Recommendation 3:** In order to avoid even the semblance of inappropriate behavior, government agencies should rigorously enforce conflict of interest guidelines governing dealings between its officials and the companies they monitor.

**Response:** Agree; Already Implemented. All SFDPH employees are provided with a Compliance Program Policy and Code of Conduct. This document provides employees with guidance on, among other things, the principles of compliance, conflict of interest, and business ethics. The SFDPH Compliance Program maintains an updated page on the SFDPH intranet, listing all policies and making training materials available to staff and managers.

SFDPH also maintains a compliance hotline accessible to all employees to facilitate identification, investigation, prevention and correction of any inappropriate conduct. SFDPH takes allegations of inappropriate conduct very seriously and thoroughly investigates any such allegations. Additionally, SFDPH strictly enforces conflict of interest guidelines in accordance with national standards of environmental health practice and will continue to do so. SFDPH will re-enforce the importance of maintaining professional and objective tone and language in all written communications.

**Recommendation 4:** SFDPH should conduct its own environmental assessment on capping Parcel E-2 and make its findings available to the public for comment. This should occur before the Board of Supervisors holds its next hearing on the Shipyard redevelopment project.

**Response:** Agree; Will be Implemented in the Future. Consistent with SFDPH's long-standing practice of commenting on Navy documents, this recommendation will be implemented after the Navy issues its Parcel E-2 Proposed Plan (the CERCLA document that specifies which remedy the Navy is proposing to implement) for public comment. The Navy has stated that it plans to issue that document on September 7, 2011. SFDPH will conduct an independent environmental review of the Navy's information in the Parcel E-2 Proposed Plan and supporting documentation. Prior to the selection of the final remedy by the Navy and regulatory agencies, if the Board of Supervisors holds a public hearing to discuss, review and make recommendations to the Navy and regulatory agencies on the Proposed Plan, SFDPH will participate in that process.

**Recommendation 5:** The Navy still owns the majority of the land comprising the Shipyard and consequently the City has no direct control over matters dealing with deadlines and deliverables for environmental cleanup. It is critical that the Bay Area Air Quality Management and the SFDPH be particularly vigilant in monitoring clean-up activities at the Shipyard.

**Response:** Agree; Already Implemented. SFDPH has been actively monitoring and reviewing the Navy's environmental cleanup for all areas of the Shipyard since 1993 and will continue to be vigilant in its ongoing monitoring of clean-up activities. SFDPH has used the expertise of a full time SFDPH staff environmental engineer and the resources of Treadwell and Rollo, including their team of geologists, hydrogeologists, geotechnical engineers, environmental engineers and risk assessors. SFDPH has

commented on hundreds of technical documents that the Navy has produced and has been a regular participant in the Navy's monthly Base Closure Team meetings.

The Navy conducts its cleanup work at Hunters Point Shipyard in accordance with requirements of federal CERCLA. This law prescribes a series of detailed investigation and cleanup tasks and the steps for documenting the decisions. All of the Navy's work is conducted under the review and oversight of the United States EPA with input from DTSC and the Regional Board. The process includes decision points where the Navy and the regulatory agencies are specifically mandated to consider the opinions of local government and community members in the selection of the cleanup alternatives. Consideration of public input is required before the Navy selects a remedy for Parcel E-2. In addition, as mentioned above, the conveyance agreement between the SFRA and the Navy provides for the Navy to collaborate with SFRA and regulatory agencies in reviewing the technical environmental information. The conveyance agreement also requires the Navy to obtain the assurance of regulatory agencies before transfer that the property is suitable for transfer and reuse.

Specifically, for Parcel E-2, SFDPH has sent the Navy a dozen technical comment letters after reviewing various versions of the E-2 Remedial Investigation and Feasibility Study and technical investigation documents. SFDPH commented on the Navy's investigation and landfill gas control and monitoring system and presented its assessment of the Navy's investigative work on the landfill to the Hunters Point Shipyard Citizens Advisory Committee and the District 10 Supervisor. Details of SFDPH's review of the assessment of the landfill were written in the Draft Executive Summary Regarding the Environmental Remediation of the Hunters Point Shipyard and distributed to the public, the Board of Supervisors, and numerous City boards and commissions in 2010. In addition, copies of SFDPH comment letters are made available to any members of the public who request them.

SFDPH will continue to closely monitor the Navy's work at Parcel E-2 and is in the process of commenting on the Administrative Draft of the Proposed Plan and will also review and comment on the Proposed Plan the Navy issues to the public. SFDPH will also conduct a thorough technical review of the documents produced by the Navy after completion of the Proposed Plan, the Record of Decision and subsequent Remedial Design and Remedial Action Work Plan documents.

**Recommendation 6:** The City and the SFRA should have contingency plans in place for continuing SFRA related projects, including the Shipyard redevelopment project, in the event that State redevelopment funds are cut or eliminated.

**Response:** Agree; Already Implemented. This recommendation is being implemented. The Mayor's Office, the SFRA and OEWD are working collectively to analyze the impacts of the Dissolution Law and the OptIn Law and to develop strategies of how to implement all of its contractual obligations, including development at Hunters Point Shipyard. On August 2, 2011, the Board of Supervisors unanimously adopted a resolution expressing the intent of the City to comply with the provisions of the OptIn Law to continue state-authorized redevelopment activities by agreeing to make annual payments to other taxing entities.

The City had planned to introduce legislation that would commit the City to make the required annual payments to taxing entities under the OptIn Law; however, the California Supreme Court issued a decision on August 11, 2011, to stop the enforcement of the portions of the state law dissolving redevelopment agencies and requiring the payment of a community remittance pending a final decision of the Court, which is expected in January 2012. In any event, the DDAs for the Hunters Point Shipyard are considered "enforceable obligations" under the state legislation. The SFRA will continue to implement its contractual obligations for the Hunters Point Shipyard and Candlestick Point areas and, in the event of dissolution, the City will assume those obligations.

**Recommendation 7:** In order to ensure that the job creation goals promised for the Shipyard redevelopment project are realized, the City should ensure that the Office of Labor Standards Enforcement has sufficient resources to allow it to effectively enforce the provisions of the new workforce laws.

**Response:** Disagree; Will Not be Implemented. The recommendation is not feasible. The Report incorrectly asserts that "It is the responsibility of the Office of Labor Standards Enforcement ["OLSE"] to monitor compliance with the new local hire ordinance." In fact, the OLSE enforces San Francisco Administrative Code section 6.22 (E), which provides that the City's public works contractors must pay prevailing wages. The OLSE has no enforcement authority related to San Francisco Administrative Code section 6.22 (G), the San Francisco Local Hiring Policy for Construction. Responsibility for enforcing the local hire ordinance will fall to the Office of Economic and Workforce Development, which received additional funding in Fiscal Year 2011-12 to carry out this function. Thus, the recommendation will not be implemented.

Moreover, development at the Hunters Point Shipyard is not subject to the City's local hiring ordinance. The development is governed by disposition and development agreements for Shipyard Phase 1 ("Phase 1 DDA") and Shipyard Phase 2 ("Phase 2 DDA"), which were executed by the SFRA before the City's adoption of the ordinance. These agreements were negotiated to include significant workforce and hiring goals and requirements, focused on the hiring of individuals specifically from the Bayview Hunters Point ("BVHP") and then from other City redevelopment project areas. These agreements also require hiring goals for permanent job opportunities at the affected sites, and not just construction-related job opportunities from City-funded construction, and provide for strong SFRA and developer support and management in the specific training and job development opportunities that will be created by this important redevelopment project. In addition, development at the Shipyard must also comply with the SFRA's Prevailing Wage Policy.

The Shipyard Phase 1 DDA equal opportunity program ("EOP") sets forth hiring goals for disadvantaged minority and women owned businesses and residents. As discussed in Finding 6, to date, 52.2% of professional services contracts and 47.9% of construction contracts at the Shipyard totaling \$31,802,543 have been awarded to San Francisco firms. Since the commencement of infrastructure work at the Shipyard in 2006 through June 2011, 31.81% of the work has been completed by San Francisco residents, including 8.8% completed by residents of District 10 and 23.01% completed by other San Francisco residents.

The Shipyard Phase 2 DDA employment and contracting policy (the "BVHP ECP") was based on the SFRA's then-existing Bayview Hunters Point Employment and Contracting Policy, which was the result of intensive collaboration with the Bayview Hunters Point community. This existing contracting policy was updated and improved based upon experience and lessons learned under the Shipyard Phase 1 development to date, with priorities given to the hiring of District 10 residents. The BVHP ECP establishes a 50% goal for local contracting, construction and permanent workforce hiring with first consideration in the following order: 1) BVHP residents living within the areas encompassed within the 94124 zip code, 2) BVHP area residents within the areas encompassed within the 94124, 94134 and 94107 zip codes, 3) residents living in any other active SFRA redevelopment project area in the City of San Francisco, 4) all San Francisco residents, and 5) all others. The BVHP ECP also requires compliance with the SFRA's Small Business Enterprise Policy.

All permanent employers and construction contractors will work with a SFRA identified workforce referral entity (currently CityBuild for construction) for hires. For permanent workforce jobs, the project will comply with the updated BVHP ECP (same goal as construction – 50% with same order of consideration above), which exceeds the City's local hire ordinance requirements. Furthermore, as a result of these direct agreements with the developer, the City will have the opportunity to train economically disadvantaged individuals for positions in the Shipyard, and project employers will give

first priority to hiring such individuals referred from the City's workforce program. The project will utilize SFRA's Job Readiness Initiative (JRI), the City's Sector Academies, and community based organizations to maximize access to professional development opportunities.

In order to ensure that local BVHP residents are prepared to realize these opportunities, the project includes an \$8,925,000 contribution by the developer to fund workforce training and placement programs for local BVHP residents. OEWD has committed to matching these funds with compatible programs and services. In addition, SFRA launched JRI in 2010, a 3-year pilot program to prepare 1,000 project area residents for jobs created through SFRA redevelopment activities. SFRA is investing \$3,950,130, funding eight CBOs over the 3-year term.

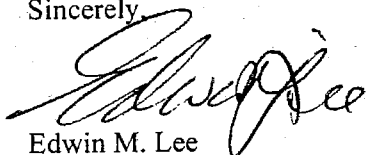
Oversight and monitoring of these SFRA workforce goals at the Shipyard as well as compliance with all applicable SFRA policies is implemented by the SFRA, which receives reimbursement for project-related staff costs in accordance with the SFRA's agreements with the project developer.

As stated in the response to Finding 6, local hiring efforts have been extraordinarily successful at the Shipyard: 52.2% of professional services contracts and 47.9% of construction contracts have been awarded to San Francisco firms. Of these percentages, 14.6% of professional service contracts and 12.2% of construction contracts have been awarded to minority and women-owned business enterprises.

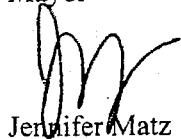
In addition, local District 10 residents and other San Francisco residents have been participating significantly in the construction workforce efforts at the Shipyard. In 2008 and 2009, in which significant horizontal infrastructure construction activity took place, the project exceeded its goal of 50% local hire. Specifically, in 2009, 52.5% of the construction was completed by San Francisco residents, including 19% completed by residents of District 10 and 33.5% completed by other San Francisco residents. In 2009, 53.1% of the construction was completed by San Francisco residents, including 17.7% completed by residents of District 10 and 35.4% completed by other San Francisco residents. These statistics demonstrate that the existing project agreements, as well as the strong relationships with community organizations and labor groups forged by the SFRA and the developer, have been successful in ensuring job opportunities for District 10 residents specifically, and San Francisco residents generally. Continuing such efforts will help ensure that local residents continue to benefit throughout the implementation of the project.

We thank the Civil Grand Jury for its time and effort on this Report. The City will continue its close coordination and collaboration on the Hunters Point Shipyard project in partnership with the Bayview Hunters Point community. The City recognizes that the redevelopment of the Hunters Point Shipyard area is a complex and challenging undertaking, and the City is firmly committed to doing all that it can to make the undertaking successful and beneficial to the community.

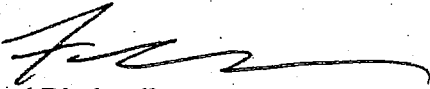
Sincerely,



Edwin M. Lee  
Mayor



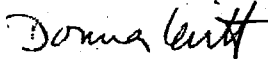
Jennifer Matz  
Director, Office of Economic and Workforce Development



Fred Blackwell  
Executive Director, San Francisco Redevelopment Agency



Barbara A. Garcia, MPH  
Director of Health, San Francisco Department of Public Health



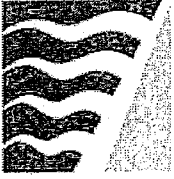
Donna Levitt  
Division Manager, Office of Labor Standards Enforcement

cc:

Civil Grand Jury (400 McAllister Street, Room 008)

Members of the Board of Supervisors (11)

Clerk of the Board of Supervisors (2)



**BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**

**ALAMEDA COUNTY**  
Tom Bates  
(Chairperson)  
Scott Haggerty  
Jennifer Hosterman  
Nate Miley.

**CONTRA COSTA COUNTY**  
John Gioia  
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David Hudson  
Mark Ross  
Gayle B. Uilkema

**MARIN COUNTY**  
Harold C. Brown, Jr.

**NAPA COUNTY**  
Brad Wagenknecht

**SAN FRANCISCO COUNTY**  
John Avalos  
Edwin M. Lee  
Eric Mar

**SAN MATEO COUNTY**  
Carole Groom  
Carol Klatt

**SANTA CLARA COUNTY**  
Susan Garner  
Ash Kalra  
(Secretary)  
Liz Kniss  
Ken Yeager

**SOLANO COUNTY**  
James Spering

**SONOMA COUNTY**  
Susan Gorin  
Shirlee Zane

Jack P. Broadbent  
EXECUTIVE OFFICER/APCO

August 15, 2011

The Honorable Katherine Feinstein  
Presiding Judge  
400 McAllister Street, Dept. 206  
San Francisco, CA 94102-4514

Re: Response to 2010-11 Civil Grand Jury Report

Dear Judge Feinstein:

The Bay Area Air Quality Management District ("Air District") is pleased to provide its response to the 2010-2011 San Francisco Civil Grand Jury report entitled "Hunters Point Shipyard: a Shifting Landscape". The Air District believes it is not required to respond to the report under California Penal Code section 925, because it is an independent special district created pursuant to state law for which none of the officers of the City and County of San Francisco who serve on the Air District Board do so in an ex officio capacity. Nevertheless, in a spirit of cooperation, the Air District responds to Recommendation No. 5 of the report, the report's only Finding or Recommendation for which a response from the Air District is requested.

The Air District monitors the activities at Hunters Point shipyard (HPS) to ensure compliance with applicable air quality regulations. At Parcel A, the Air District conducts daily inspections to ensure Lennar and its contractors comply with the measures contained within the "District approved" Asbestos Dust Mitigation Plan (ADMP), Required for any project greater than 1 acre subject to the State's Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations (California Code of Regulations (CCR) Title 17, Section 93105). In addition, daily inspections are conducted to ensure compliance with Air District Regulation 6, Rule 1 (Particulate Matter and Visible Emissions).

On the Navy owned portion of HPS, the Air District does not have direct authority over the cleanup efforts, as these activities are conducted under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Any compliance issues with any applicable Air District regulations are handled by the CERCLA lead agency. The Air District conducts daily inspections to ensure compliance with the Navy's Dust Control Plan (similar to an ADMP) and Air District Regulation 6, Rule 1 (Particulate Matter and Visible Emissions).

The Air District will continue its vigilance in monitoring the HPS site to ensure compliance with applicable air quality regulations.

If you have any questions regarding this letter, please contact Brian Bateman,  
Director of Compliance & Enforcement, at (415) 749-4653 or  
[BBateman@baaqmd.gov](mailto:BBateman@baaqmd.gov).

Sincerely,

Handwritten signature of Jeffrey McKay, consisting of stylized initials 'JM' followed by the word 'for'.

Jeffrey McKay  
Deputy Air Pollution Control Officer

cc: Civil Grand Jury (400 McAllister Street, Room 008)

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

DATE: June 24, 2011  
TO: Members of the Board of Supervisors  
FROM: Angela Calvillo, Clerk of the Board *AC for AC*  
SUBJECT: 2010-2011 Civil Grand Jury Report

We are in receipt of the San Francisco Civil Grand Jury (CGJ) report released June 23, 2011, entitled: **Hunters Point Shipyard: A Shifting Landscape.** (Attached)

Pursuant to California Penal Code Sections 933 and 933.05, the Board must:

1. Respond to the report within 90 days of receipt, or no later than **September 12, 2011.**
2. For each finding:
  - agree with the finding or
  - disagree with the finding, wholly or partially, and explain why.
3. For each recommendation:
  - agree with the recommendation or
  - disagree with the recommendation, wholly or partially, and explain why.

Pursuant to San Francisco Administrative Code Section 2.10, in coordination with the Committee Chair, the Clerk will schedule a public hearing before the Government Audit and Oversight Committee to allow the Board the necessary time to review and formally respond to the findings and recommendations.

The Budget and Legislative Analyst will prepare a resolution, outlining the findings and recommendations for the Committee's consideration, to be heard at the same time as the hearing on the report.

Attachment

- c: Honorable Katherine Feinstein, Presiding Judge (w/o attachment)  
Linda A. Clardy, Foreperson, 2010-2011 San Francisco Civil Grand Jury (w/o attachment)  
Mayor's Office  
Ben Rosenfield, Controller  
Cheryl Adams, Deputy City Attorney (w/o attachment)  
Rick Caldeira, Deputy Clerk



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
GRAND JURY

OFFICE  
400 MCALLISTER ST., ROOM 008  
SAN FRANCISCO, CA 94102  
TELEPHONE: (415) 551-3605

June 21, 2011

Supervisor David Chiu, President  
San Francisco Board of Supervisors  
#1 Dr. Carleton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Dear Supervisor Chiu:

The 2010-2011 San Francisco Civil Grand Jury will release its report to the public entitled "Hunters Point Shipyard: A Shifting Landscape" on Thursday, June 23, 2011. Enclosed is an advance copy of this report. Please note that by order of the Presiding Judge of the Superior Court, Hon. Katherine Feinstein, this report is to be kept confidential until the date of release.

California Penal Code section 933.05 requires the responding party or entity identified in the report to respond to the Presiding Judge of the Superior Court, within a specified number of days. You may find the specific day the response is due in the last paragraph of this letter.

For each Finding of the Civil Grand Jury, the response must either:

- (1) agree with the finding; or
- (2) disagree with it, wholly or partially, and explain why.

Further as to each recommendation made by the Civil Grand Jury, the responding party must report either:

- (1) that the recommendation has been implemented, with a summary explanation of how it was implemented;
- (2) the recommendation has not been implemented, but will be implemented in the future, with a time frame for the implementation;
- (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a time frame for the officer or agency head to be prepared to discuss it (less than six months from the release of the report); or

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- (4) that the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (California Penal Code sections 933, 933.05)

Please provide your responses to the Findings and Recommendations in this report to the Presiding Judge of the Superior Court, Hon. Katherine Feinstein, not later than Monday, September 12, 2011, with an information copy sent to the Grand Jury Office at the above address.

Very truly yours,



Linda A. Clardy, Foreperson  
2010-2011 San Francisco County Civil Grand Jury

cc: Members of the Board of Supervisors  
Angela Calvillo, Clerk of the Board

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CALIFORNIA SUPERIOR COURT  
CITY AND COUNTY OF SAN FRANCISCO

In The Matter of the 2010-11 )  
Civil Grand Jury of the City )  
And County of San Francisco )

Finding Re:  
Final Grand Jury Report


The 2010-2011 Civil Grand Jury of the City and County of San Francisco having submitted its Final Report entitled, "Hunters Point Shipyard: A Shifting Landscape" a copy of which is attached and marked as "Exhibit One"

The Court finds that this Final Report is in compliance with the Part II, Title 4, of the Penal Code, commencing with section 888. The Final Report reflects the investigative work, findings, conclusions and recommendations of the Civil Grand Jury. It does not reflect the investigative work, findings, conclusions or recommendations of the Superior Court or any of its members.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that a copy of the report is to be placed on file with the clerk of the court and is to remain on file with the office of clerk of the court as provided in Penal Code section 933(b).

IT IS FURTHER ORDERED that the attached report is to be kept confidential until said report is released to the public by the Civil Grand Jury of the City and County of San Francisco.

June 13, 2011

  
KATHERINE FEINSTEIN  
PRESIDING JUDGE



HUNTERS POINT SHIPYARD:  
A SHIFTING LANDSCAPE



CIVIL GRAND JURY  
CITY AND COUNTY OF SAN FRANCISCO  
2010-2011

### THE CIVIL GRAND JURY

The Civil Grand Jury is a government oversight panel of volunteers who serve for one year. It makes findings and recommendations resulting from its investigations.

Reports of the Civil Grand Jury do not identify individuals by name.  
Disclosure of Information about individuals interviewed by the jury is prohibited.  
California Penal Code, section 929

### STATE LAW REQUIREMENT California Penal Code, section 933.05

Each published report includes a list of those public entities that are required to respond to the Presiding Judge of the Superior Court within 60 to 90 days as specified. A copy must be sent to the Board of Supervisors.  
All responses are made available to the public.

For each finding the response must:

- 1) agree with the finding, or
- 2) disagree with it, wholly or partially, and explain why.

As to each recommendation the responding party must report that:

- 1) the recommendation has been implemented, with a summary explanation; or
- 2) the recommendation has not been implemented but will be within a set timeframe as provided; or
- 3) the recommendation requires further analysis. The officer or agency head must define what additional study is needed. The Grand Jury expects a progress report within six months; or
- 4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation.

# HUNTERS POINT SHIPYARD: A SHIFTING LANDSCAPE

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## HUNTERS POINT SHIPYARD : A SHIFTING LANDSCAPE

“The development of the Hunter’s Point Shipyard ... is one of the most important development projects in the city's history... to transform the blighted shipyard and bring new housing, parks and thousands of jobs to the southeast community.”<sup>1</sup>

Mayor Gavin Newsom

January 2011

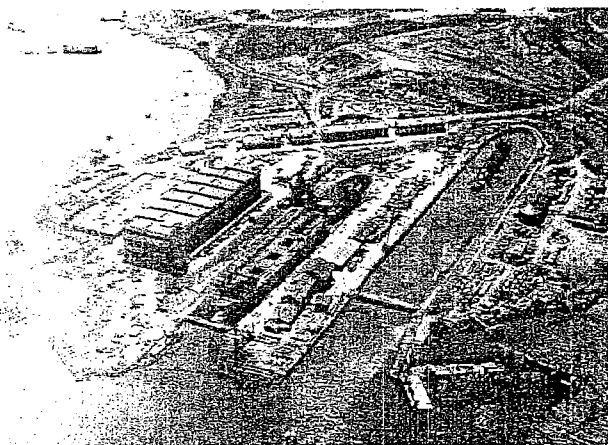
### SUMMARY

The 2010-2011 San Francisco County’s Civil Grand Jury (Jury) reviewed the Hunters Point Shipyard Redevelopment Project in an attempt to better understand how the City’s role has changed since the last Grand Jury’s investigation in 2001-2002.

The results of this inquiry lead the Jury to conclude that the Hunter’s Point Shipyard redevelopment project will require

more communication,  
more transparency, and  
more commitment

from the City in order to achieve its goals of providing housing, jobs and economic development, tax revenue and open spaces to San Francisco, and its residents, particularly those residing in the surrounding neighborhoods.



Dry Dock, circa 1947



Naval Shipyard, circa 1951



## BACKGROUND

A short history of the Hunter's Point Shipyard (HPS) helps highlight areas researched by the Jury, the origin of its hazardous conditions, the history and future promise of employment, and the optimistic plans for the City's new neighborhood.

The 500-acre HPS is located in the Southeast section of San Francisco on a peninsula that extends east into the Bay. From 1867 to December 1939, the facility was operated as a commercial dry dock facility. On December 16, 1941 just nine days after the attack on Pearl Harbor, the Navy purchased the property as part of the war effort.

From 1945 until 1974, the Navy predominantly used the shipyard to construct, maintain, and repair ships. The base was also home TO the Naval Radiological Defense Laboratory. The laboratory's activities included radiological decontamination of ships exposed to atomic weapons testing. The laboratory also conducted research and experiments on radiological decontamination, the effects of radiation on living organisms, and materials.

At the height of its active operations, HPS employed over 17,000 people, many of whom were from the Bay View Hunters Point (BVHP) area. In 1974, the Navy ceased shipyard operations at HPS, designating the site as industrial reserve. From May 1976 to June 1986, Triple A Machine Shop, Inc. leased most of HPS from the Navy and used it as a commercial ship repair facility. Over the years, parts of the site have been leased to an artists' community.

To organize the environmental investigation and cleanup activities, the Navy divided the shipyard into seven parcels, A through G. (see Appendix A) On December 3, 2004, the Navy transferred the first 75-acres of HPS (Parcel A) to the San Francisco Redevelopment Agency (SFRA.) Consequently, it is no longer Navy property.<sup>2</sup>

Since then, much grading and other construction work has been done by the developer, Lennar, to prepare the site for vertical development. The project plan envisions Parcel A being used for residential housing, community parks and commercial venues.

## THE HUNTERS POINT PROMISE

Originally adopted in 1997 and amended in 2010, the HPS redevelopment project aspires to transform the former shipyard and the adjacent Candlestick Point into a vibrant and green, community. When the entire project is completed in 2031, the community will cover an area of

935 acres and consist of:

- 12,500 housing units, 25% of which are to be affordable to low-income families
- Over 300 acres of parks and open space,
- Approximately 800,000 square feet of regional and neighborhood-serving retail space and,
- Approximately 3 million square feet of “clean” technology research and development space.

The construction of this large new community is expected to create thousands of temporary jobs and ultimately over 10,000 permanent jobs for the people of San Francisco and in particular the residents of the Bayview Hunters Point neighborhoods. In addition Lennar, the prime developer of HPS redevelopment project, has committed to providing various other benefits to the residents of BVHP, including the rebuilding of the Alice Griffith public housing project. Finally, the new community will eventually generate substantial tax revenue for the City of San Francisco.<sup>3</sup>

#### THE PLAN'S ENVIRONMENTAL HAZARDS

In a September 2007 report, the California Department of Public Health recommended the San Francisco Department of Public Health (SFDPH) assign an individual to monitor the HPS project.<sup>4</sup> SFDPH has complied with this recommendation. Lennar is reimbursing the SFDPH for the cost of maintaining a monitor at the HPS site.

During our interview with the SFDPH monitor, we related what we learned from conversations with environmental groups, reviewing Environmental Impact Reports, and voluminous naval documentation all of which supported the position that “shipyard tenants, the surrounding communities ... are not at risk from previous radiological activities at HPS.”<sup>5</sup>

The health official agreed and stated, “there is no evidence that the really bad stuff is here. It's in the Farallones.” The official was referring to the approximately 47,800 55-gallon drums that the Navy dumped in the Pacific Ocean, 27 miles West of San Francisco between 1946 to 1970, near the Gulf of the Farallones National Marine Sanctuary.<sup>6</sup>

However, this assessment seems at odds with SFDPH Health Director Mitch Katz's published report, “Health Programs in Bayview Hunters Point and Recommendations for Improving the Health of Bayview Hunter's Point Residents.” In his report Mr. Katz noted that the HPS “was placed on the federal government's National Priorities List as one of the nation's worst toxic sites and parts of the shipyard remain contaminated and unusable because of chemical pollution, radioactive waste, and neglect.”<sup>7</sup>

To help alleviate confusion among the general public over the degree of environmental risk associated with the HPS project, in 2007 the California Department of Public Health recommended that the SFDPH promptly report any violations of environmental regulations.

In its response to the State's recommendation, the SFDPH stated:

"We agree with the need for more timely public communication. SFDPH has created a website ... that includes: frequently asked questions; resources and referral information; the dust control plan; and Notices of Violation. Future plans are to update the status of development activities on a weekly or monthly basis. The SFDPH Hunter's Point website is accessible at:  
[www.sfdph.org/dph/EH/HuntersPoint/default.asp](http://www.sfdph.org/dph/EH/HuntersPoint/default.asp)"

Despite these assurances, when the Jury reviewed SFDPH's Hunter's Point Redevelopment website [[www.sfdph.org/dph/EH/HuntersPoint/default.asp](http://www.sfdph.org/dph/EH/HuntersPoint/default.asp)] in April 2011 it found that the website was last updated in 2009.

Shortly after we reviewed the website, it appears SFDPH uploaded: "Hunter's Point Re-analysis of Air monitoring Filters for Asbestos (2010)." Based on the properties of the document, it was modified on 4/15/11. So the last two documents uploaded were updates from outside agencies.

Adding to the confusion over the exact degree of environmental risk at the project site, the U.S. Environmental Protection Agency and the San Francisco Department of Public Health, in response to a series of e-mails recently released by Bayview neighborhood activists, both launched investigations into the relationship between their departments and Lennar.

The exchange of e-mails, which occurred between 2006 and 2009, purportedly show officials requesting assistance from Lennar and a consultant employed by Lennar in formulating public policy toward health risks associated with the HPS redevelopment project.<sup>8</sup>

The emails revealed officials instructing their colleagues to stop collecting additional data on worker exposure to asbestos, as the new data might not support the department's official position that asbestos does not constitute a health risk to workers at HPS. Another email from a senior Department of Public Health official to Lennar states, "I'm sure you will also want to change my wording on how I portray the problems, lack of monitors, etc."

Finally, an e-mail from an official at the U.S. Environmental Protection Agency (USEPA) addressed to a consultant employed by Lennar invites input to bolster the USEPA's risk assessment of dust generated from the developer's grading operation at HPS.<sup>9</sup>

## PARCEL E-2 -- TO CAP OR REMOVE

There are mixed opinions on what should be done with the 47.4 acre former Navy dump site designated Parcel E-2. Until the Obama Administration, the Federal government has been non-committal about its assessment of the site. But due to a number of factors, including a change in EPA leadership and pressure from governmental officials and local agencies, the Navy is now re-evaluating sites requiring further cleanup. As a result, in April 2010 the Navy drafted a 5,000 page addendum to their original assessment of Parcel E-2 detailing the various contaminants found, including Uranium, Cesium, Cobalt, Strontium, Radium, Plutonium, etc.<sup>10</sup>

The Navy is preparing a Final Feasibility Study to review the various options available for cleaning up Parcel E-2. The study will be made available to the public for comment. In arriving at a decision, the Navy is required to take into account the nine criteria mandated by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).<sup>11</sup> One of the criteria is community acceptance.

Options for E-2 include:

- Institutional Controls
  - Administrative and legal controls that restrict access to the site
- Fencing and Warning signs
  - Very low cost
  - Only effective if accompanied by very severe use restrictions
- Capping
  - Soil cap or asphalt and concrete cap are low cost
  - May result in exposing workers on the site to radio-toxicity
- Removal and Disposal
  - The most effective and expensive method.
  - Waste is trucked in water-tight steel bins and shipped to disposal sites in Utah and Idaho that are licensed to accept radiological waste. More than 9,400 truckloads have already been shipped. Residents and workers may be exposed to diesel truck fumes as diesel trucks load and haul the waste through the neighborhood. In 2002, the EPA classified diesel fumes as a probable carcinogen.<sup>12</sup>

In reaching its decision, the Navy will take into account the cost associated with each option. For example, the difference in cost between capping and excavating Parcel E-2 is estimated to be in the range of \$300 - \$700 million.

While admittedly less costly and time consuming than soil removal, the capping process does have its drawbacks as a method for cleaning up Parcel E-2. For example, in August 2000, a surface brush fire of unknown origin occurred on the Parcel E-2 landfill. Even after the brush fire was extinguished, a subsurface landfill fire continued to smolder for many weeks. In order to fully extinguish the subsurface fire, the Navy capped the landfill. The landfill cap was completed in early 2001. In August 2002, the Navy determined that landfill gas had migrated offsite and was found under an adjacent property. The Navy conducted an emergency removal action to address this landfill gas.<sup>13</sup>

At the same time, SFDPH, City Officials, and some environmental groups have voiced concern that physically removing the contaminated soil could prove more damaging to the environmental health of the community than burying the dump site. A similar process undertaken at parcels B, G, and D-2 took a decade to complete. It is felt that work on Parcel E-2 could also take a considerable amount of time to complete.

With the exception of Parcel A that was transferred by the Navy to the SFRA in 2004, the City has no legal control over the remaining HPS property. Consequently, in a technical sense, the City has no authority over matters dealing with deadlines and deliverables for environmental cleanup, and no formal right to disagree or dispute the Navy's actions.

But in the event that the City disagrees with all or parts of the Navy's report, it does in fact have an option. The City, through its chosen developer, Lennar, can refuse to accept the transfer of any parcel if the environmental cleanup does not meet, "the standards set by the City of San Francisco, State of California and the U.S. Environmental Protection Agency."<sup>14</sup>

Moreover, the City does in fact have some standing in these deliberations via the 2004 Conveyance Agreement which "is a framework that establishes the criteria, including environmental conditions, under which the City will accept property proposed for transfer by the Navy."<sup>15</sup> The agreement stipulates that the Navy will work collaboratively with SFRA and share information about their cleanup work.

For its part, the SFDPH has not taken a public position on what the Navy should do with respect to Parcel E-2. Its current policy is apparently to await the Navy's recommendation and the reasoning behind it. The SFDPH will then seek input from the public on the Navy's plan. Only then will it make public its own position on Parcel E-2.

THE MANTRA OF JOBS, JOBS, JOBS

A 2001-2002 Jury Report recommended that a Memorandum of Agreement between the Navy and the City be amended to include specific language for the hiring and training of BVHP residents for jobs created during the clean-up and development phases of HPS redevelopment project. In 2002, Leamon Abrams, Director of the Office of Economic & Workforce Development, stated that his office viewed community access to jobs, job training, educational opportunities and other opportunities for economic development as a critical component of the redevelopment of HPS.<sup>16</sup>

Jobs were central to the City’s pitch to sell the project to the public. Forecasts on job creation put forward by the city, community members, and the developer were based upon estimates for the potential uses of HPS. Jobs from preparing the land for development, jobs for developing the land vertically, jobs from the new businesses and jobs from infrastructure such as parks, schools, and roads were all factored in to reach a total number of potential employment opportunities.

City agencies and officials have given varying estimates on the number of jobs that will be created by the Hunter’s Point redevelopment project.

CITY AGENCY/OFFICIAL	NUMBER OF JOBS
Office of the Controller	11,000 to 12,000 direct permanent employment opportunities in numerous industries and occupations, from entry-level to advanced. <sup>15</sup>
Office of Economic and Workforce Development (OEWD)	10,000 permanent jobs over the next 10-15 years. Some of these would be low-entry jobs such as grounds keepers, food service, maintenance, delivery, facility management while other jobs would go to teachers, advisors, engineers, managers, administrators and professors.
Mayor Newsom	The Hunter’s Point redevelopment project “...will help bring economic vitality to this neglected corner of the city – including thousands of construction jobs and 8,000 PERMANENT JOBS following completion of the project with a priority for neighborhood residents.” <sup>16</sup>

In 2008, San Francisco voters added their voice by approving Proposition G that called for the, “... timely development of a mixed-use project in ... Candlestick Point and Hunter’s Point Shipyard.”<sup>17</sup>

In order to win public support for Proposition G, Senator Dianne Feinstein, Mayor Gavin Newsom, and Supervisor Sophie Maxwell argued as proponent’s in favor of Proposition G that, “...Proposition G will help bring economic vitality to this neglected corner of the city – including thousands of construction jobs and 8,000 PERMANENT JOBS following completion of the project with a priority for neighborhood residents.”<sup>18</sup>

In August of 2010, the Hunters’ Point Redevelopment Plan was amended and now includes a provision that the project should create a range of job and economic development opportunities for local economically disadvantaged individuals and business enterprises, particularly for residents and businesses located in the BVHP.<sup>19</sup>

In 2007, the SFRA introduced a workforce policy. The policy requires

“...each Employer to use its good faith efforts to employ 50% of its permanent temporary workforce from qualified BVHP Residents and then San Francisco Residents with First Consideration to BVHP Residents.”<sup>20</sup>

However, this policy seems to have been largely ignored by contractors. According to union representatives very familiar with the city's construction sites, these local hiring goals are meaningless. A union representative said,

“We started pushing for local hiring and the mistake we made was to use the word 'goal.' I used to hit 25 to 30 jobs [sites] a week and I've never saw anything close to even 15 percent, let alone 50 percent.”

During our meeting with the City last year, the Jury confirmed its own concern that under current rules a contractor is not under any firm requirement to hire local but needs only to make a good faith effort.

With input from the Office of Economic and Workforce Development and the City Attorney, on December 7, 2010 the Board of Supervisors voted to approve local hire legislation for city-funded construction projects.<sup>21</sup> The new ordinance came into affect March 25, 2011 with stricter requirements and mandates. [see for copy <http://bit.ly/LOCAL-SF> of ordinance ] It is the responsibility of the Office of Labor Standards Enforcement to monitor compliance with the new local hiring ordinance.

## HPS ON A TIGHT ROPE - REDEVELOPMENT FUNDS CUT?

In January 2011, Governor Brown announced his intention to cut funding to redevelopment agencies in the next fiscal year.<sup>22</sup> Under the governor's proposal, the state would confiscate unclaimed redevelopment funds and reallocate the money to other purposes. The development of the HPS site stems from several agreements between the SFRA, the Federal Government, and Lennar. The Conveyance Agreement was made between the Navy and SFRA so they are irrevocably tied together.

City personnel, who are overseeing the HPS project, have no idea how they will fare in light of the possible elimination of the SFRA. The governor's proposal allows for some funds to be set aside to help complete existing projects, tie up loose ends and cover debt.<sup>23</sup> Yet, the proposal does not spell out which pre-existing projects would be allowed to keep their funding and which would not.

"I don't know as of this second what it means for Hunters Point ... where construction has not begun," said Executive Director Gabriel Metcalf of the San Francisco Planning and Urban Research Association, a local think tank. "That's my fear."<sup>24</sup>

The recent release of Mayor Edwin Lee's Proposed Budget for FY11/12 stated: "the [Redevelopment] Agency continues to face significant uncertainty resulting from State budget deliberations. Several proposals are under discussion by the Governor and Legislature that could impact the Agency's funding...it remains unclear whether the Agency will continue to be able to operate as set forth under State laws of Redevelopment."<sup>25</sup>

## CONCLUSION

The Civil Grand Jury concludes that the Hunter's Point Shipyard redevelopment project will require more communication, more transparency, and more commitment from the City in order to achieve its goals of providing housing, jobs and economic development, tax revenue and open spaces to San Francisco, and its residents, particularly those residing in the surrounding neighborhoods.



## FINDINGS

1. The Jury found that the SFDPH is not in compliance with its pledge to the California Department of Public Health to keep residents informed of developments at HPS. The website is not regularly updated.
2. The Jury found the City has placed itself in a potentially compromising situation with Lennar where in essence the wolf is paying the shepherd to guard the flock. By having the developer, Lennar, reimburse the city for monitoring expenses associated with the HPS redevelopment project, the SFDPH has created a situation that could raise doubt in the public's mind about its commitment to proactively and impartially enforce environmental health regulations even when it might adversely impact Lennar. Public trust in the SFDPH has been further jeopardized by its failure to update its website in a timely manner, and its apparent reluctance to comment publicly on the best method to deal with the cleanup of Parcel E-2.
3. These concerns were further reinforced by the recent release of e-mail messages that purportedly show inappropriate communications between senior officials at the SFDPH and the EPA and Lennar and one of its consultants.
4. With the exception of Parcel A, the City has no legal control over the remaining HPS property. Consequently, in a technical sense the City has no authority over matters dealing with deadlines and deliverables for environmental clean-up. However, the City does in fact have some standing in these matters via the 2004 Conveyance Agreement between the San Francisco Redevelopment Agency (SFRA) and the Navy. The agreement stipulates that the Navy will work collaboratively with the SFRA and share information about cleanup work.
5. Governor Brown's announcement earlier this year that he intends to cut funding to redevelopment agencies in the next fiscal year directly threatens the HPS redevelopment project. Up to now, there has been no indication from either the City or the San Francisco Redevelopment Agency how they intend to continue the HPS redevelopment project should redevelopment funds be actually cut or eliminated by the State.
6. Previous efforts by the City to implement work force policies at city-funded construction projects such as the HPS redevelopment project have largely proved ineffective as they only require a contractor to make a good faith effort to hire local workers. Earlier this year a new work force ordinance came into effect that has stricter requirements and mandates.

## RECOMMENDATIONS

1. The Department of Public Health (SFDPH) should strictly adhere to its self-proclaimed pledge to keep the residents of San Francisco apprised of developments at HPS by updating its HPS Project website "... on a weekly or monthly basis."
2. In order to erase any doubt among the public with respect to its ability to remain independent and impartial in overseeing the cleanup work at HPS, the SFDPH should immediately stop accepting money from Lennar to pay for monitors at HPS and cover the cost from its own resources.
3. In order to avoid even the semblance of inappropriate behavior, government agencies such as the SFDPH should rigorously enforce conflict of interest guidelines governing dealings between its officials and the companies they are monitoring.
4. SFDPH should conduct its own environmental assessment of the issue of capping Parcel E-2 and make its findings available to the public for comment. This process should occur before the Board of Supervisors holds its next hearing on the HPS redevelopment project.
5. Due to the fact that the Navy still owns the majority of the land comprising HPS and consequently the city has no direct control over matters dealing with deadlines and deliverables for environmental cleanup, it is critical that the Bay Area Air Quality Management and the SFDPH be particularly vigilant in monitoring clean-up activities at HPS.
6. The City and the SFRA should have contingency plans in place for continuing SFRA related projects, including the HPS redevelopment project, in the event that State redevelopment funds are cut or eliminated.
7. In order to ensure that the job creation goals promised for the HPS redevelopment project are realized, the City should insure that the Office of Labor Standards Enforcement has sufficient resources to allow it to effectively enforce the provisions of the new workforce laws.

## METHOD OF INVESTIGATION

In preparing this report, the Jury reviewed various reports and conducted interviews with local and state officials, community stakeholders, environmental organizations and county agencies.

While investigating the topic, the Jury learned that one of its jurors may have a perceived conflict of interest, or the appearance thereof, due to their past occupation from which the juror has since retired. Due to this fact, the juror voluntarily recused himself from investigating, deliberating, or voting on this report. Finally, in preparing this report the Jury did not utilize any information provided by this juror.

## GLOSSARY

BAAQMD:	Bay Area Air Quality Management District
BVHP:	Bayview Hunters Point
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (aka Superfund)
HPS:	Hunters Point Shipyard
OEWD:	Office of Economic and Workforce Development
SFDPH:	San Francisco Department of Public Health
SFRA:	San Francisco Redevelopment Agency
US EPA:	US Environmental Protection Agency

## ENDNOTES

<sup>1</sup> Colliver, Victoria (2011, January). Hunters Point project moves forward. San Francisco Chronicle, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/01/09/BAOQ1H6A5I.DTL>

<sup>2</sup> Map of HPS Site: <http://bit.ly/HPSmap>

<sup>3</sup> <http://www.hunterspointcommunity.com/>

<sup>4</sup> San Francisco Department of Public Health response letter to California Department of Public Health, October 9, 2007. <http://bit.ly/CDPHSFDPH>

<sup>5</sup> Historical Radiological Assessment, Volume II, Use of General Radioactive Materials, 1939-2003, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility, US Navy Radiological Control Office, <http://bit.ly/NavyHRA>

<sup>6</sup> Farallon Island Radioactive Waste Dump retrieved November 30, 2010, USGS Pacific Coastal & Marine Science Center, <http://walrus.wr.usgs.gov/farallon/radwaste.html>

<sup>7</sup> Katz, Mitch, Health Programs in Bayview Hunters Point and Recommendations for Improving the Health of Bayview Hunter's Point Residents (July 2006), Page 4, San Francisco Department of Public Health <http://www.sfdph.org/dph/files/reports/StudiesData/HlthProgsBVHPyRecommends07052006B.pdf>

<sup>8</sup> The Bay Citizen (<http://s.tt/129eh>)

<sup>9</sup> Link to Alleged Emails from Governmental Officials and Lennar: <http://bayc.it/dDIV/>

<sup>10</sup> Draft radiological addendum to feasibility report April 27 2010

<sup>11</sup> <http://www.epa.gov/superfund/cleanup/analys.htm>

<sup>12</sup> EPA classifies diesel fumes as probable carcinogen, 09/04/02, <http://bit.ly/Cancerfumes>

<sup>13</sup> Superfund – Hunters Point Naval Shipyard, <http://1.usa.gov/SuperfundHPS>

<sup>14</sup> US Navy: 2004 Conveyance Agreement with the SF Redevelopment Agency

<sup>15</sup> <http://www.communitywindowontheshipyard.org/citypolicy/index.htm>

<sup>16</sup> Leamon Abrams, Office of Economic & Workforce Development Director, in his August 9, 2002 response to the 2001-2002 Civil Grand Jury Report.

<sup>17</sup> June 2008, Voter Pamphlet, [http://sfpl4.sfpl.org/pdf/main/gic/elections/June3\\_2008.pdf](http://sfpl4.sfpl.org/pdf/main/gic/elections/June3_2008.pdf)

<sup>18</sup> June 2008, Voter Pamphlet, [http://sfpl4.sfpl.org/pdf/main/gic/elections/June3\\_2008.pdf](http://sfpl4.sfpl.org/pdf/main/gic/elections/June3_2008.pdf)

<sup>19</sup> Hunters' Point Redevelopment Plan, <http://bit.ly/HPSplan>

<sup>20</sup> Redevelopment Agency's 2007 BVHP Contracting and Employment Policy, page 17

<sup>21</sup> SF Local Hiring Ordinance, <http://bit.ly/LOCAL-SF>

<sup>22</sup> Gov. Jerry Brown targets redevelopment agencies [broadcast January 10, 2011], ABC 7- KGO News. <http://bit.ly/BrownCuts>

<sup>23</sup> Kelkar, Kamala, California budget plan jeopardizes major projects in San Francisco, SF Examiner, 2/7/11

<http://bit.ly/budgetwoes>

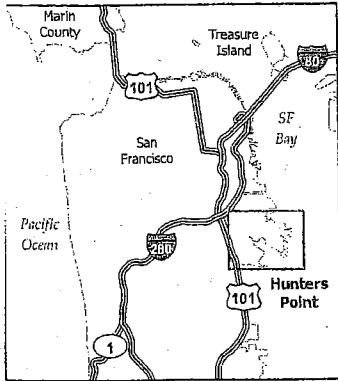
<sup>24</sup> Kelkar, Kamala, California budget plan jeopardizes major projects in San Francisco, SF Examiner, 2/7/11

<http://bit.ly/budgetwoes>

<sup>25</sup> Mayor Edwin M. Lee's Proposed Budget for FY11/12, June 1, 2011

<http://www.sfmayor.org/Modules/ShowDocument.aspx?documentid=112>

# APPENDIX A

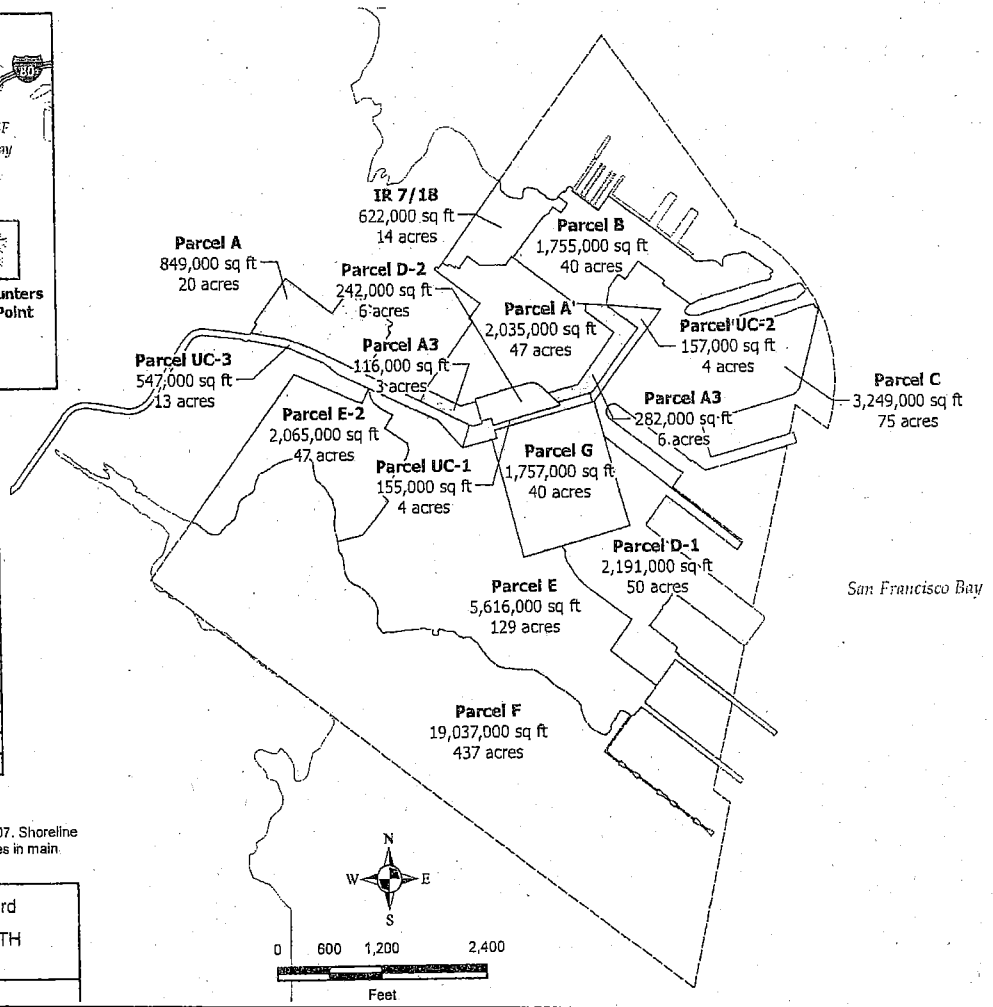


Parcel	Acreege
A	20
A1	47
A3 (combined)	9
B	40
C	75
D-1	50
D-2	6
E	129
E-2	47
F	437
G	40
IR 7/18	14
UC-1	4
UC-2	4
UC-3	13
<b>Total</b>	<b>935</b>

**Note:**

Inset map interstate highways from ESRI, 2007. Shoreline from San Francisco Enterprise GIS. Shorelines in main map adapted from TetraTech GIS data.

Hunters Point Naval Shipyard  
 PARCEL BOUNDARIES WITH APPROXIMATE AREAS



HUNTERS POINT SHIPYARD  
 PARCEL BOUNDARIES A - G

RESPONSE MATRIX

FINDINGS	RECOMMENDATIONS	RESPONSE REQUESTED
<p>Finding 1</p> <p>The Jury found that the SFDPH is not in compliance with its pledge to the California Department of Public Health to keep residents informed of developments at HPS. The website is not regularly updated.</p>	<p>Recommendation 1</p> <p>The Department of Public Health (SFDPH) should strictly adhere to its self-proclaimed pledge to keep the residents of San Francisco apprised of developments at HPS by updating its HPS Project website "... on a weekly or monthly basis."</p>	<p>SFDPH – Environmental Health Department</p>
<p>Finding 2</p> <p>The Jury found the City has placed itself in a potentially compromising situation with Lennar where in essence the wolf is paying the shepherd to guard the flock. By having the developer, Lennar, reimburse the city for monitoring expenses associated with the HPS redevelopment project, the SFDPH has created a situation that could raise doubt in the public's mind about its commitment to proactively and impartially enforce environmental health regulations even when it might adversely impact Lennar. Public trust in the SFDPH has been further jeopardized by its failure to update its website in a timely manner, and its apparent reluctance to comment publicly on the best method to deal with the cleanup of Parcel E-2.</p>	<p>Recommendation 2</p> <p>In order to erase any doubt among the public with respect to its ability to remain independent and impartial in overseeing the cleanup work at HPS, the SFDPH should immediately stop accepting money from Lennar to pay for monitors at HPS and cover the cost from its own resources.</p>	<p>SFDPH</p>

<p>Finding 3</p> <p>These concerns were further reinforced by the recent release of e-mail messages that purportedly show inappropriate communications between senior officials at the SFDPH and the EPA and Lennar and one of its consultants.</p>	<p>Recommendation 3</p> <p>In order to avoid even the semblance of inappropriate behavior, government agencies such as the SFDPH should rigorously enforce conflict of interest guidelines governing dealings between its officials and the companies they monitor.</p>	<p>SFDPH</p>
<p>Finding 4</p> <p>With the exception of Parcel A, the City has no legal control over the remaining HPS property. Consequently, in a technical sense the City has no authority over matters dealing with deadlines and deliverables for environmental clean-up. However, the City does in fact have some standing in these matters via the 2004 Conveyance Agreement between the San Francisco Redevelopment Agency (SFRA) and the Navy. The agreement stipulates that the Navy will work collaboratively with the SFRA and share information about cleanup work.</p>	<p>Recommendation 4</p> <p>SFDPH should conduct its own environmental assessment on capping Parcel E-2 and make its findings available to the public for comment. This should occur before the Board of Supervisors holds its next hearing on the HPS redevelopment project.</p> <p>Recommendation 5</p> <p>The Navy still owns the majority of the land comprising HPS and consequently the city has no direct control over matters dealing with deadlines and deliverables for environmental cleanup. It is critical that the Bay Area Air Quality Management and the SFDPH be particularly vigilant in monitoring clean-up activities at HPS.</p>	<p>SFDPH – Environmental Health</p> <p>BAAQMD</p> <p>SFDPH – Environmental Health</p>

<p>Finding 5</p> <p>Governor Brown's announcement earlier this year that he intends to cut funding to redevelopment agencies in the next fiscal year directly threatens the HPS redevelopment project. Up to now, there has been no indication from either the City or the San Francisco Redevelopment Agency how they intend to continue the HPS redevelopment project should redevelopment funds actually be cut or eliminated by the State.</p>	<p>Recommendation 6</p> <p>The City and the SFRA should have contingency plans in place for continuing SFRA related projects, including the HPS redevelopment project, in the event that State redevelopment funds are cut or eliminated.</p>	<p>Mayor's Office</p> <p>Board of Supervisors</p> <p>OEWD</p> <p>SFRA</p>
<p>Finding 6</p> <p>Previous efforts by the City to implement work force policies at city-funded construction projects such as the HPS redevelopment project have largely proved ineffective as they only require a contractor to make a good faith effort to hire local workers. Earlier this year a new work force ordinance came into effect that has stricter requirements and mandates.</p>	<p>Recommendation 7</p> <p>In order to ensure that the job creation goals promised for the HPS redevelopment project are realized, the City should insure that the Office of Labor Standards Enforcement has sufficient resources to allow it to effectively enforce the provisions of the new workforce laws.</p>	<p>OEWD</p> <p>Board of Supervisors</p> <p>OLSE</p>