

To:  
Nicholas R Bollo, CIV Commander, (EFDSW)  
ATTN: DoN Environmental Counsel for Hunters Point  
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Dear Commander Bollo,

I wish to file an administrative complaint under Title VI the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a– 2000h-6, and Executive Order 12898, as implemented by the Department of Defense at 32 CFR Part 195, against the City and County of San Francisco (CCSF) and its San Francisco Redevelopment Agency (SFRA). I am an African American resident of public housing in the Bay View Hunters Point Community in San Francisco California. I allege that the actions taken by the CCSF and SFRA in regards to the Hunters Point Naval Shipyard violated my statutory, civil, and constitutional rights including but not limited to due process and equal protection. I further allege that these actions violate my civil rights under Title VI of the Civil Rights Act of 1964, and that these acts discriminated against me on the basis of income and race.

I am the Vice –President of CALifornians for Renewable Energy, Inc. (CARE). This is relevant because CARE has filed a prior Title VI complaint with the US Department of Energy (DOE) {DOE Complaint 03-003-HQ} against CCSF

on June 21, 2003, along with myself as an individual in behalf of the affected Bay View Hunters Point community adversely impacted by the continued operations of local antiquated natural gas fired power plants. This complaint is also in behalf of CARE, and its members. This complaint herein was prepared with the Technical Assistance of Michael E. Boyd, President of CARE.

I am a former member of the Bayview Hunters Point Shipyard Restoration Advisory Board (RAB), and its former co-chair. I resigned because of the participation of members of the RAB who have an economic interest with the Developer Lennar/BVHP, a private, non-governmental organization that has the Disposition Development Agreement with CCSF for the development of the Shipyard. This is relevant because the RAB has authority to act in behalf of the affected Bay View Hunters Point community under Federal laws to insure compliance with all federal environmental, restoration, civil rights and base reuse laws (i.e., Laws Ordinance Regulations and Standards) including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.; 40 CFR Parts 300–311, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq.; 40 CFR Parts 240–281, the Clean Water Act (CWA), 33 U.S.C. §§ 1251–1387; 33 CFR Parts 320–330, 335–338; 40 CFR Parts 104–140, 230–233, 401–471; Executive Order 11990 (Protection of Wetlands), the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq.; 40 CFR Parts 50, 60, 61, and 80, the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f–300j- 26; 40 CFR Parts 141–149, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Redevelopment Act), Pub. L. 103-421; 32 CFR Part 176, the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 et seq.; and the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a– 2000h-6, by the CCSF, the SFRA, and US Navy, and other federal (US EPA), state (DTSC), and local agencies of the government, in all its programs, plans, and actions. And the US Navy has a specific duty under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and its implementing regulations, 40 CFR Parts 300–311, to take community acceptance into account in all its cleanup decisions.

The San Francisco Redevelopment Agency (SFRA) took action at its April 29, 2004<sup>1</sup> meeting in that, “it was moved by Mr. King, Seconded by Ms. Sexton, that item 4 (a) resolution no. 50-2004, adopting environmental findings pursuant to the California Environmental Quality Act and authorizing execution of the following documents with the United States Department of the Navy concerning the former Hunters Point Naval shipyard site: (1) the Conveyance Agreement, (CA), (2) the Security Services Cooperative agreement, and (3) ancillary related documents [including the Disposition Development Agreement (DDA) between the San Francisco Redevelopment Agency (SFRA) and Lennar-BVHP for the Redevelopment of the Shipyard]; and authorizing related actions; Hunters Point Shipyard Redevelopment project area.”

The SFRA took discretionary action on December 2, 2003, by approving the DDA for the development of the Hunters Point Shipyard<sup>2</sup>. The minutes of the December 20, 2003 meeting of the RAB reflects they unanimously adopted my motion before the RAB.<sup>3</sup>

Mr. Brown reintroduced a document that concerned a civil rights violation by the Redevelopment Agency related to the Disposition Development Agreement (DDA). He made a motion to accept the document.... and Ms. Pendergrass called the question and the RAB supported Mr. Brown’s motion.

Additionally, by and through Mayor Gavin Newsom, CCSF took what is clearly discretionary action by approving (*i.e.*, entering into) the CA with the U.S. Navy. The CA sets a specific timetable for giving CCSF a portion of the Hunters Point Shipyard for residential development (herein referred to as Parcel A), as well as giving commercial development rights to Lennar/BVHP, a private, non-governmental organization.

To my knowledge (and please advise me immediately if and how I am wrong), neither of the discretionary actions involving the CA and DDA previously

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<sup>1</sup> See Exhibit A.

<sup>2</sup> See attached Exhibit B <http://mecresources.com/RABonViolations1.htm> motion unanimously adopted by the RAB at its December 20, 2004 meeting.

<sup>3</sup> See <http://www.efdsww.navy.mil/environmental/pdf/hpmin012204.pdf> at

described has been subjected to public review or comment, nor have these actions been subjected to environmental review as required by CEQA for such projects.

On November 7, 2000, CCSF voters passed, with 87% approval, Proposition P calling upon the US Navy to remediate the Hunters Point Naval Shipyard to the highest levels practical to assure the flexible reuse of the property. The Navy is required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and its implementing regulations, 40 CFR Parts 300–311, to take community acceptance into account in its cleanup decisions. On July 30, 2001, CCSF’s Board of Supervisors (the Board) passed unanimously a resolution implementing the will of the voters as expressed by Proposition P. The Board's vote confirmed as the policy of CCSF that the Navy should clean the Hunters Point Naval Shipyard of toxic and hazardous pollution to the highest practical level. Since the voters empowered the Board to enforce Proposition P, and the Board then proceeded to do so, the Board clearly has a duty to also vote on the CA.

Both the CA and the DDA must be subjected to all applicable government approvals including all required environmental reviews under both CEQA and its federal counterpart, the National Environmental Policy Act (NEPA). There are a number of additional governmental approvals that must be obtained prior to the development allowed by the CA and DDA, including General Plan amendment(s) and redevelopment area mergers. There are also legal mandates for a subsequent or supplemental environmental analysis to augment the study done in 1999, which provides no complete or adequate environmental analysis of the impacts associated with the development envisioned and allowed by the CA and DDA. The impacts that are being ignored pose imminent threats of grave if not fatal harm to human life and safety, as well as the environment.

The impacts and their potentially grave harm must be analyzed by considering the pertinent documentation from the Navy and the Hunters Point and San Francisco Fire Departments, particularly in regard to the residential

development being planned for Parcel A under the CA and DDA. It is common knowledge that this area has been the site of a series of fires during the summer months of the years 2003, 2002, 2001 and 2000. The ignition of these fires was fueled by flammable, explosive chemicals whose presence is documented in the Parcel A Record of Decision and include petroleum products, pesticides, volatile organic compounds in the air and soil, and gaseous emissions from the partially capped industrial landfill on Parcel E, which is immediately adjacent to Parcel A.<sup>4</sup>

The US Navy and Tetra Tech Em, Inc., have provided documentation that five separate fires occurred in upland Parcel A between July and August of 2003 at the exact site where the Lennar/BVHP developers propose to begin the demolition and deconstruction of existing Parcel A buildings in time for CCSF/SFRA proposed construction of 1600 homes this summer.

As a further example of matters that must be fully investigated and analyzed to adequately protect human health and safety as well as the environment, Hunters Point Fire District Run report #45, dated September 11, 2001, documents that at 3:15 p.m. that day both SFFD and HPFD were dispatched to Crisp Avenue near Parcel A where they encountered "fire moving at a rapid speed with flames 15 to 25 feet high". The fire was observed moving towards the parking lot area of Building 815 in the Parcel A region of the Shipyard. According to the email alert sent by the Navy under the Community Notification Plan "family dwellings above the fire were threatened. After deployment of several hundred feet of hose and equipment, the fire was extinguished at 5pm". HPFD was reactivated to the Building 815 site to extinguish hot spots over the next two days as verified in fire run reports #56 and #47. A total of seven fires were responded to in September of 2001. All occurred in the Parcel A and B regions of the Shipyard.

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<sup>4</sup> Information on these vital subjects is readily available, and we respectfully request that to the extent it hasn't been done yet, a full investigation be conducted prior to an further discretionary action involving the CA and DDA. If such an investigation has been done or commenced, please consider this our request for an opportunity to inspect all writings in your possession concerning such an investigation.

Further CEQA/NEPA analysis is legally required for the proposed development of Parcel A given the additional facts that:

1. Parcel A has undergone boundary changes as documented in the Parcel A FOST Revision 2 dated August 26, 2002, to include sub parcels N-13a and N-18A. Additionally, in the Draft final FOST dated March 19, 2004, Parcel A boundaries were revised to exclude radiation-impacted buildings 813 and 819 situated along Spear Avenue. A NEPA compliant EPA risk assessment protecting human health is, therefore, a requirement (morally as well as legally).
2. On August 16, 2000 the Parcel E landfill, adjacent to Parcel A, was the site of a fire that burned for 6 hours. Several areas estimated to be less than five acres continued to burn for several weeks according to the ATSDR Consultation Summary. The Parcel E landfill has been classified by ATSDR as a Completed Exposure Pathway, meaning that in assessment of risk to nearby residents, it could be shown that "exposure to contaminants could have occurred in the past, is occurring or will occur in the future.
3. An August 2002 landfill gas survey detected flammable, explosive methane gas emanating from the Parcel E landfill within 100 feet of Parcel A in concentrations exceeding 80% in air. This represents a violation of state law mandating that methane gas concentrations be less than 5% in air. A recent decision by the California Integrated Waste Management Board forbids construction within 1000 feet of the detection of methane gas. The Navy publicly acknowledges in the Draft Final FOST that it was required to use active extraction to remove subsurface methane gas from beneath laboratories and kennels operated by the University of California at San Francisco at the boundary of Parcel E and A in January of 2004.
4. The Draft Final Historical Radiological Assessment, released on February 25, 2004, documents Parcel A to be the site of five MARSSIM Class 1 Radiation impacted/contaminated buildings including buildings 816, 821, 813, 819 and FUDs site 815. Parcel A covers approximately 75 acres and

is the site of 61 buildings and 43 foundations according to the 1995-ROD.

The Navy conducted investigations on nine Parcel A sites only.

Additionally, radiation impacted buildings on Parcel A have been cleared for unrestricted use by an outdated cleanup standard that is well below the EPA recommended level and is currently being challenged in California Superior court.

5. Parcel A buildings and foundations have been determined to contain lead and asbestos. Deconstruction of these structures during development may lead to the release of these toxins into surrounding air and soil, thus producing pathways for exposure for future Parcel A residents.
6. Proposition P, which contains a Declaration of Policy, passed by a landslide 87% of the CCSF electorate after the November 7, 2000 municipal election. Proposition P states, in pertinent part: "[T]he National Contingency Plan, the regulation governing cleanup of a toxic site, established community acceptance as one of its nine principal criteria. The Bayview Hunters Point community wants HPS cleaned to a level enabling the unrestricted use of the property- the highest standard for cleanup established by the U.S. environmental Protection Agency." Proposition P was ratified by the CCSF Board of Supervisors on July 30, 2001, and signed by the Mayor on August 10, 2001.
7. The Memorandum of Agreement between the City of San Francisco and the Navy, signed on November 2, 2000, stipulates that cleanup of Parcel A and the remaining five shipyard land parcels adhere to strict health based preliminary remediation goals to provide total estimates of carcinogenic and noncarcinogenic health hazards under the residential scenario. The Parcel A Human Health Risk Assessment Report (HHRA) assesses the probability and magnitude of potential harm to human health from exposure to threaten and actual releases of hazardous substances on Parcel A sites. The HHRA and supporting documents do not support the Navy's contention that the nine sites explored on Parcel A pose no threat to human health or the environment. The Navy reports hazard

indices up to 36 times greater than health protective standards for children exposed to soil on Parcel A under a residential scenario; soil lead contamination above California preliminary remediation goals; hazard indices 100 times greater than health protective standards for vegetable consumption at numerous Parcel A sites; and an exceedingly high cancer risk of  $2 \times 10^{-3}$  at the major IR site investigated. Studies conducted by the San Francisco Department of Public Health in 1995 and 1997 identify a high incidence and mortality from cancer among BVHP residents. The scientific documentation by the Navy of hazard indices and cancer risks above health protective standards on Parcel A is in violation of multiple federal, state and local laws and regulations in addition to violating the terms of the original Conveyance Agreement signed by Mayor Willie Brown on November 2, 2000. These laws and regulations include the CERCLA act of 1980 as amended by the SARA act of 1986, NEPA, CEQA and Proposition P.

Executive Order 12898, 59 Fed. Reg. 7629 (1994), Section 1-101, requires that each federal agency, including the US Navy and US EPA, make achieving "Environmental Justice" part of its mission by identifying and addressing any disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations. The BVHP neighborhood is a predominately African-American community of color that is disproportionately impacted by existing environmental hazards and has a disproportionately high number of families with household incomes below the poverty level compared to the CCSF as a whole.

Title VI of the Civil Rights Act of 1964 requires CCSF, and the SFRA, in coordination with the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), to identify and address any disproportionately high human health, socioeconomic, or environmental impacts of their programs, policies, and actions on minority or low-income populations. CEQA is primarily a public disclosure statutory scheme allowing the affected community to be



informed and members of the public to voice their opinion, and to have input, about projects that may affect their environment. CEQA requires a review of the environmental impacts of overall activities ("the whole of an action" -- 14 Cal. Code Regs. § 15378(a)) defined as "projects." (Pub. Res. Code § 21065.) This strong, broad right of public participation under CEQA has a political component (*i.e.*, CEQA allows the compilation of a record concerning the approval of development projects that can be used by the public to vote environmentally insensitive decision makers out of office come election day), the violation or deprivation of which has constitutional ramifications on an affected community as well as the public at large.

In mandating separate Disposition Development Agreements and "conveyance agreements" for the development of the shipyard (Parcels A- E), SFRA as the lead agency under CEQA, is "piecemealing" the overall activity. CEQA strongly forbids this kind of "chopping up [of] a proposed project into bite-size pieces which, individually considered, might be found to have no significance on the environment." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716, citing *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171, 1172; see also *Bozung v. LAFCO* (1975) 13 Cal.3d at 283-284; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309.)

CEQA provides that a proposed project may have a significant effect on the environment when the possible effects on the environment are individually limited but "cumulatively considerable." (Pub. Res. Code § 21083(b); 13 Cal. Code Regs. § 15065. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (14 Cal. Code Regs. § 15065.) In addition to analyzing the direct impacts of a project, the CEQA Lead Agency must also consider a project's potentially significant cumulative impacts.

Recent statutory law has invigorated CEQA's role in ensuring "**the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental**

**laws, regulations, and policies" (i.e., environmental justice).**" (Emphasis added; see SB 115, Solis; Stats. 99, ch. 690, Gov. Code § 65040.12 and Pub. Res. Code §§ 72000-720001.)

In conjunction with the regulatory provisions of the federal Clean Air Act and Division 26 of the Health and Safety Code,<sup>5</sup> CEQA provides an ideal mechanism for ensuring that Environmental Justice will be addressed in all activities and projects that may have a significant effect on the environment.

CEQA requires that environmental documents (*i.e.*, an environmental impact report (EIR) or a negative declaration) be prepared whenever a public agency proposes to undertake a discretionary activity (which is defined extremely broadly as the "whole of an action" being engaged in) that may have a significant effect on the environment. (See Pub. Res. Code §§ 21002.1, 21061, 21064, and 21080.1; see *also* 14 Cal. Code Regs. §15002.)

In enacting CEQA, the Legislature expressly declared a number of important policies with which activities and documentation must be consistent, and which must be complied with and enforced, including:

"It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, ***shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.***" (Pub. Res. Code § 21000(g) (emphasis added).)

It is California policy to "[d]evelop and maintain a high-quality environment now and in the future, and ***take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.***" (Pub. Res. Code § 21001(a) (emphasis added).)

It is the policy of this state to require that public agencies "[t]ake all action necessary to ***provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.***" (Pub. Res. Code § 21001(b) (emphasis added).)

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<sup>5</sup> 42 U.S.C. § 7401 *et seq.* (Public Law 88-206, 77 Stat. 392, December 17, 1963, as last amended by the Clean Air Act Amendments of 1990, P. L. 101-549, November 15, 1990); Health & Saf. Code § section 39000 *et seq.*

State policy calls for ensuring "that the long-term protection of the environment, consistent with ***the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions.***" (Pub. Res. Code § 21001(d) (emphasis added).)

State policy requires "governmental agencies at all levels to ***develop standards and procedures necessary to protect environmental quality***" (Pub. Res. Code § 21001(f) (emphasis added).)

California policy requires "governmental agencies at all levels to ***consider qualitative factors as well as economic and technical factors and long-term benefits and costs ...***" (Pub. Res. Code § 21001(g) (emphasis added).)

"The interrelationship of policies and practices in the management of natural resources and waste disposal requires ***systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.***" (Pub. Res. Code § 21000(f).)

"Every citizen has a responsibility to contribute to the preservation and enhancement of the environment." (Pub. Res. Code § 21000(e).)

The recent enactment of Public Resources Code sections 71110 through 71115, and Government Code section 65040.12, in conjunction with other statutory and regulatory requirements, such as the Bay Area Air Quality Management District State Implementation Plan, and EPA regulations, require the SFRA, as well as other agencies, to infuse **Environmental Justice** into every aspect of decisionmaking. This panoply of statutory authority supplements the general authority to "do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon [a public agency] ..." (Health & Saf. Code § 39600.) Further, the rules, regulations, and standards that the SFRA and other agencies adopt must be "consistent with the state goal of providing a decent home and suitable living environment for every Californian"<sup>6</sup> (*Id.* § 39601(c).)

Therefore the two agreements, the CA and DDA, and all associated activities constituting the "whole of an action" being carried out by the public

agencies involved capable of having an adverse environmental impact (14 Cal. Code Regs. § 15378(a); see also Pub. Res. Code § 21065), must be subjected to environmental review pursuant to CEQA to ensure that all the project's adverse, potentially significant impacts on the Bayview Hunters Point community, as well as the entire region in which the project is located, are fully and fairly investigated, identified, analyzed, evaluated and, perhaps most importantly of all, **mitigated** -- while also ensuring that project alternatives capable of avoiding or reducing the impacts are considered and, if feasible, adopted.

### **Commission Members failed to Recuse Themselves Who have Appearance of Conflict of Interest**

I respectfully request that all members of the Redevelopment Commission currently under investigation by any federal or state agency, including the San Francisco Ethics Commission, be barred from voting on these matters because of the appearance -- if not the actual existence -- of conflicts of interest in dealings with the Lennar/BVHP developers. I am informed and believe the SFRA has been subjected to questions of conflict of interest of several of its members -- such as Benny Yee, Leroy King and Darshan Singh -- for their dealings with Lennar/BVHP, which is apparently comprised of Lennar Communities, LNR Partners, Luster Venture, and Mariposa Management. The following excerpt from the SF Chronicle explains the conflict under investigation:

#### **Ethics panel eyes redevelopment role in Hunters Point SFChronicle, Monday, March 17, 2003**

**San Francisco** -- The trio whose habit of voting together on controversial items has tagged them the "Pep Boys" of the San Francisco Redevelopment Commission -- Benny Yee, Leroy King and Darshan Singh -- were all hit with subpoenas from the city's ethics watchdog agency this past week.

Soon to join the list: City Hall insider Susan Horsfall, who works for the law firm that represents Lennar Corp. -- the developer that won the right to take over the old Hunters Point shipyard.

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<sup>6</sup>This overlapping of statutory goals and requirements (*see* Pub. Res. Code § 21000(g), quoted above) is typical among statutory schemes aimed at protecting the public health.

No one at the Ethics Commission is talking, but word among Redevelopment insiders is that a complaint came in more than a year ago alleging that Horsfall and the Pep Boys appeared to be a little too close for comfort -- often dining out together after meetings.

Right around the time, it seems, that the commission -- including the Pep Boys -- voted to disregard its consultant's findings and award the rights to develop the shipyard to Lennar.

Under these highly unusual circumstances, there would clearly be, at the very least, an appearance of impropriety to allow these individuals to vote on pending matters as to which a conflict of interest can be reasonably inferred. Indeed, we believe any member of the SFRA who has any type of economic interest in or in regard to Lennar/BVHP (positive or negative, *e.g.*, the possibility of having to return, refund or pay for benefits wrongly obtained from the developer, not to mention the cost of having to go to jail for having requested or obtained such benefits) is required under the Political Reform Act of 1974, Gov. Code § 81000 *et seq.*, to recuse him or herself from voting on any project or agreement with the developer.

Apparently, this did not take place at the SFRA's December 2, 2003, meeting, and again at its April 29, 2004 meeting, however, and I hereby object to and request that all action taken at that meeting (as well as any subsequent meeting in which the so called "Pep Boys" participated) be declared null and void and set aside, without having any force or effect whatever *ab initio*. Our request is supported by the strict, express requirements of the Political Reform Act, including the following prohibition, which the SFRA apparently violated by letting the Pep Boys vote on matters in which Lennar/BVHP, or any of its associated entities or individuals, are in any way involved:

**"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."** (Gov. Code Section 87100 (emphasis added).)

## Conclusion

Wherefore, for good cause shown, I respectfully request the US Navy remand your Agency's approval of the "conveyance agreement" between the US Navy and the City and County of San Francisco for the Hunters Point Shipyard, back to CCSF and SFRA until such time as the SFRA as the lead agency under the California Environmental Quality Act completes its environmental review on its proposed project, including the April 1, 2004 conveyance agreement and the Lennar/BVHP Disposition Development Agreement executed December 2, 2003 by the SFRA.

Secondly, I respectfully request that members Benny Yee, Leroy King and Darshan Singh, be barred from participating in these proceedings because of the appearance of impropriety or actual conflict of interest involving the project applicant or beneficiary, Lennar/BVHP. Further if any criminal violations are disclosed as a result of Benny Yee's, Leroy King's and Darshan Singh's participation, I respectfully request that they be barred from serving to future elected or appointed office.

Thirdly, I respectfully request that you declare all actions taken in which Lennar/BVHP or any of its associated persons or entities have been involved, and also including those in which Benny Yee, Leroy King and Darshan Singh (aka the Pep Boys) participated, be declared null and void and immediately set aside, having no legal force or effect whatever *ab initio*.

Respectfully submitted,  
**Complainant:**



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Lynne Brown  
Resident, Bayview Hunters Point  
24 Harbor Rd.  
San Francisco, CA 94124

CC: Mayor Gavin Newsom,  
City Attorney Dennis Herrera,  
Board of Supervisors,  
Congresswoman Nancy Pelosi,  
Mabel Ng- Executive Director Ethics Commission  
San Francisco Redevelopment Agency

**Respondents:**

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**Verification**

I am an officer of the Complaining Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 20<sup>th</sup> day of October 2004, at San Francisco, California



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Lynne Brown Vice-President, CALifornians for Renewable Energy, Inc. (CARE)  
Resident, Bayview Hunters Point  
24 Harbor Rd.  
San Francisco, CA 94124

## EXHIBIT A

May 04, 2004

### MINUTES OF A SPECIAL MEETING OF THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO HELD ON THE 29TH DAY OF APRIL 2004

The Commissioners of the Redevelopment Agency of the City and County of San Francisco met in a special meeting at the Bayview Opera House (Ruth Williams Memorial Theater), 4705 Third Street, in the City of San Francisco, California, at 6:00 p.m. on the 29th day of April 2004, at the place and date duly established for holding of such a meeting.

President Ramon E. Romero called the meeting to order at 6:00 p.m. Mr. Romero welcomed members of the public and asked that cell phones and pagers be turned off during the meeting.

#### 1. RECOGNITION OF A QUORUM

The Commission Secretary announced the presence of a quorum with the following Commissioners present:

Ramon E. Romero, President

Mark Dunlop, Vice-President

Leroy King

Kathryn C. Palamountain

Michelle W. Sexton

Benny Y. Yee

and the following were absent:

Darshan Singh

Marcia Rosen, Executive Director and staff members were also present.

#### 2. REPORT ON ACTIONS TAKEN AT PREVIOUS CLOSED SESSION MEETING, IF ANY. None.



3. MATTERS OF UNFINISHED BUSINESS: None.

4. MATTERS OF NEW BUSINESS:

#### REGULAR AGENDA

4 (a) Resolution No. 50-2004, Adopting environmental findings pursuant to the California Environmental Quality Act and authorizing execution of the following documents with the United States Department of the Navy concerning the former Hunters Point Naval Shipyard site: (1) the Conveyance Agreement, (2) the Security Services Cooperative Agreement, and (3) ancillary related documents; and authorizing related actions; Hunters Point Shipyard Redevelopment Project Area

Presenters: Don Capobres (Agency staff), Jesse Blout (MOEJD)

Speakers: Maurice Campbell, Elouise Westbrook, Barbara George, Willie Ratcliff, Charlie Walker, Scott Madison, Espanola Jackson, Mary Bull, Francisco Da Costa, Rev. Ted Frazier, Ulysses T. Bill, Lani Asher, Pauline Peele, Oscar James, Michael Boyd, Derek Smith, William Fobbs, Jim Salinas, Kevyn Lutton, Marie Franklin, Raymond Tompkins, Sululagi Palega, Recheal Genochio, Dorris Vincent, Dr. George Davis, Saul Bloom, Lisa Laulu, James Bryant, Norma Faris Taylor, Angelo King, Rev. Gregory Richardson, Piero Patri, Chris Finn, Sam Ripley, Michele Senders

Commissioner King put forth a motion to adopt item 4 (a) and recalled that when he was appointed in 1980 by then Mayor Feinstein to the Redevelopment Agency Commission, his main focus was on the Western Addition and Bayview Hunters communities and to engage and motivate the people to get involved in the revitalization of their communities. Mr. King stated he was proud of the progress that had been made and the approval of the Conveyance Agreement for the Hunters Point Shipyard was a very good step in the right direction to move the Bayview Hunters Point community forward. Mr. King added that Mayor Newsom, Senators Feinstein and Boxer and Congresswoman Pelosi had done a terrific job in shepherding the conveyance of the shipyard and ensuring that federal funds were available for the environmental cleanup. Mr. King urged his fellow Commissioners to move forward and support the approval of the Conveyance Agreement and stated that he believed it was the best agreement the City and the Agency could get.

Commissioner Sexton commended Agency and City staff for doing a fabulous job in putting the conveyance agreement documents together. Ms. Sexton thanked the community for all of its hard work and involvement in the process. Ms. Sexton seconded Commissioner King's motion and lent her support for the approval of the Conveyance Agreement. Ms. Sexton shared that in her work in Oakland's City Attorney's Office, she had been involved in the Oakland Base Reuse Authority and their negotiations with the U.S. Navy have yet to achieve anything remotely close to what the City and Agency staff had achieved in the Hunters Point Shipyard and their work was remarkable. Ms. Sexton stated she

shared the same concerns about environmental issues brought up by members of the public and recognized that the Conveyance Agreement was a framework document that set forth the process for transferring of parcels to the Agency, and noted that there was nothing in the documents that required staff to come back to the Commission to ensure that all of the conditions for transfer or closing had been met. Ms. Sexton requested that staff come back to the Commission before it exercised any transaction and to present the process so that the Commission and the community have an opportunity to comment and provide its input.

Executive Director Rosen stated that staff would be happy to comply with Commissioner Sexton's request and added that before any parcel could be closed, a resolution must be adopted by the Agency Commission accepting conveyance after reviewing all of the relevant materials, including conditions for closing, assurances from regulators and the Agency's independent investigations.

Commissioner Sexton stated she wanted to reiterate that the Conveyance Agreement did not require the Agency to accept any parcel nor did it require the Agency to move forward and likewise, the Disposition and Development Agreement (DDA) with Lennar/BVHP did not require the Agency to proceed. Ms. Sexton stated that agreement puts in place the process in which the Agency, City and the Navy would work in cleaning up the parcels and transferring them to the Agency, and if the conditions were not met, transfer would not occur.

Commissioner Sexton inquired about the Security Services Cooperative Agreement, but the document did not have any dollar amounts in it and asked if staff had the funding amounts for the agreement.

Mr. Don Capobres, Senior Project Manager, stated that Appendix 3 of the Security Services Cooperative Agreement outlined an estimated budget, but staff was still working on putting out a bid for the agreement. Mr. Capobres acknowledged comments from the public that indicated a desire to participate in the provision of security services for the Shipyard, and staff was in the process of preparing a public solicitation process for the services.

Commissioner Yee thanked the community for coming to the meeting and showing its support for the project and stated he believed that when there are important community issues to be discussed, Commission meetings should be held in the respective communities to show the Agency's commitment to the community's well-being and to receive the community's input first hand. Mr. Yee recalled Professor Tompkins comments about underground contamination and urged staff to take note and ensure that the Navy cleaned up the parcels to the highest environmental standards. Mr. Yee stated there had been four long years of hard work by the community at large, the Citizens' Advisory Committee (CAC), Agency and City staff on the conveyance of the Shipyard and thanked everyone

involved for their hard work and participation. Mr. Yee lent his support for the approval of the Conveyance Agreement for the Hunters Point Shipyard.

Commissioner Dunlop thanked the community for coming to the meeting and letting the Commission hear about its concerns about the project. Mr. Dunlop reiterated that the Conveyance Agreement before the Commission was not the actual conveyance of parcels, rather it represented a roadmap for the conveyance of the parcels after cleanup by the Navy. Mr. Dunlop stated that the process for the conveyance of the Shipyard was not rushed-through as was stated by some of the speakers, because the Agency had been in negotiations for at least as long as he had been an Agency Commissioner, which had been seven years. The Conveyance Agreement itself would not create jobs for the community, but the Hunters Point Shipyard project would indeed create much needed jobs and would fulfill many of the community's needs including economic development. Mr. Dunlop thanked the community for its hard work as well as the City and Agency staff, and lent his support for the approval of the Conveyance Agreement.

Commissioner Palamountain stated she was moved by some of the public's testimony and that it was important for the community to let the Commission know its concerns and organizations like the Rotary Club and other small business were in the best position to advise the Agency on how best to formulate the community benefits package so that it truly addressed the community's needs. Ms. Palamountain urged members of the community to get involved now in the discussion of the community benefits package and to contact Agency staff like Mr. Don Capobres, Ms. Gaynell Armstrong and Ms. Nicole Franklin on how to participate in that process. Ms. Palamountain stated that since the environmental standards contained in the Conveyance Agreement set a higher benchmark than the general standards contemplated in the Final Environmental Impact Report (EIR), she did not see any need for additional environmental analysis. Likewise, the phasing of the project did not require additional environmental review because the Final EIR did contemplate a phased project. Ms. Palamountain stated she believed that the Conveyance Agreement was a significant document because it stated that if the Navy cleaned up the parcels to the standards outlined in the Conveyance Agreement, then the Agency must accept the parcels and that it was important to her that the standards outlined in the agreement were standards that the Agency was willing to accept if the Environmental Protection Agency (EPA) and the City/Agency's independent reviewers found that those standards had been met by the Navy. Ms. Palamountain stated she was comfortable with the ten to the negative six-hazard index for cancer and also contemplated including other conditions such as asthma. Ms. Palamountain shared that she had met with representatives from the EPA and discussed the standards for measuring the likelihood of occurrences of conditions like asthma in the Bayview and stated she felt comfortable with the standards used by the EPA. Ms. Palamountain stated there was mention about modifications to the Parcel B standards and asked what the anticipated process was for Parcel B specifically.

Mr. Jess Blout, Director of the Mayor's Office of Economic and Job Development, stated that concerns raised by the community focused on the Navy's current approach to the cleanup of Parcel B since completion of the Record of Decision in 1997, where the Navy now used a process called Explanation of Significant Difference (ESD), which had a much lower bar for community input, as opposed to an amendment of the Record of Decision, which had a much more robust process for community input and participation.

Commissioner Palamountain stated that the Navy retained the right to select a methodology for cleanup and requested verification that the selected methodology for cleanup did not affect the cleanup standards.

Mr. Blout affirmed that the selected methodology by the Navy did not affect the cleanup standards and under the law, the Navy was the responsible party in the cleanup of the parcels under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Navy must chose the methodology under which they would achieve cleanup. The agreement stipulated that the Navy was the lead and responsible party who had the ultimate decision as to what methodology it would use to clean up portions of the Shipyard. Mr. Blout stated he wanted to make a distinction between the contractual obligations of the Navy in its agreement with the Redevelopment Agency, where the Navy was bound to achieve certain standards, which were the risked-based standards that stated what the condition of the property needed to be in, in order to convey it to the Agency, and the methodology, which was up to the Navy with input from the regulatory bodies.

Commissioner Palamountain noted that the Conveyance Agreement established a partnership between the Navy, the community and the City and stated it was important to her that the Restoration Advisory Board (RAB) was a part of the community in its involvement in the process and that the RAB would have participation and input in the cleanup of Parcels E and F. Ms. Palamountain requested verification of the City's position in recognizing the RAB as a part of the community review process.

Mr. Blout stated the City and the Mayor believed that the RAB was an important and critical element in the definition of the community within the collaborative partnership in the cleanup of the Shipyard, including cleanup of Parcels E and F.

Commissioner Palamountain requested an explanation of the "technically impracticable" standard in the Conveyance Agreement. Ms. Palamountain

asked staff to address the issue of adjacency of parcels and how the agreement contemplated cleanup efforts going on while development was proceeding.

Ms. Amy Brownell of the Department of Public Health stated there were two instances where the technically impracticable standard would be invoked: one would relate to ground water contamination where the Navy could argue that there was no available technology to remedy the contamination to the cleanup standards, and another where the contamination was deemed to be so pervasive that remediation would be cost-prohibitive. Ms. Brownell added that throughout this process, the regulators and the public would have extensive input and approval of the cleanup procedures. Ms. Brownell stated that the regulators would have input in the adjacency issues while cleanup was taking place to ensure that there was no contamination to the workers, first of all, and to anyone else in the community that may be exposed. Ms. Brownell added that there would be an extensive public process for each of the parcel cleanup by the regulators, the community, and the City's own technical and environmental consultants.

Commissioner Palamountain inquired about Article 24 of the Conveyance Agreement, which dealt with liabilities for environmental contaminations and noted that the article stated that the Navy was liable for environmental impacts and damage located on the property prior to the date of conveyance, and asked what the Navy's liability would be if environmental damage was found prior to conveyance, but there was no harm until after conveyance.

Mr. Michael Cohen, Deputy City Attorney, stated there were two protections under two separate laws. First, under Section 128 of CERCLA, if something was found in the ground after the transfer and after the City accepted property without knowing this, the City would have the legal ability to go back to the Navy and make them remove it. The second is Section 330 of the Base Realignment and Closure Act (BRAC) closure process where there was a recognition ten years ago that many of the military bases were contaminated. While the U.S. government rarely gave an indemnity, Congress passed statutory indemnity that provided that should subsequent owners, users, and tenants be damaged by environmental contamination, the Navy was legally liable for that damage. Mr. Cohen added that the City had a second layer of protection before a piece of property was brought to the Agency for acceptance, and that was the procurement of environmental insurance. If there was a claim upon the Navy, it may take a very long time to get the claim paid, and the environmental insurance would pay for the claim and the insurance company would subrogate a claim against the U.S. Navy and the same thing was true with a third-party liability claim under the Section 330 indemnity.

Commissioner Palamountain thanked Mr. Jesse Blout and Mr. Michael Cohen for their hard work on the Conveyance Agreement and stated her support for the approval of the Conveyance Agreement.

President Romero thanked everyone for coming to the special meeting and stated it was very important for the Commission to hear the community's concerns. Mr. Romero agreed with earlier testimonies that there were no perfect agreements or plans and the delays in the development of the Shipyard was a lot more than just a few years, but in fact over 30 years since the base was closed. Mr. Romero recalled testimonies about the importance of jobs for the community and stated that even though on the surface, the matter before the Commission did not directly discuss jobs, he stated that the Commission's approval of the Conveyance Agreement was a significant step in the development of the Shipyard, which would produce not only jobs, but overall revitalization of the community. Mr. Romero added that the community, the City and Agency, and the developer were headed in the right direction. Mr. Romero asked the General Counsel to clarify the substitute resolution provided to the Commission just prior to the meeting.

General Counsel Morales stated that staff had provided the Commission with a corrected version of the resolution, which corrected typographical errors and there were no material changes to the resolution.

ADOPTION: IT WAS MOVED BY MR. KING, SECONDED BY MS. SEXTON, THAT ITEM 4 (a) RESOLUTION NO. 50-2004, ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AUTHORIZING EXECUTION OF THE FOLLOWING DOCUMENTS WITH THE UNITED STATES DEPARTMENT OF THE NAVY CONCERNING THE FORMER HUNTERS POINT NAVAL SHIPYARD SITE: (1) THE CONVEYANCE AGREEMENT, (2) THE SECURITY SERVICES COOPERATIVE AGREEMENT, AND (3) ANCILLARY RELATED DOCUMENTS; AND AUTHORIZING RELATED ACTIONS; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA, BE ADOPTED AND ON ROLL CALL, THE FOLLOWING VOTED "AYE":

Mr. Dunlop

Mr. King

Ms. Palamountain

Ms. Sexton

Mr. Yee

Mr. Romero

And the following were absent:

Mr. Singh

THE SECRETARY DECLARED THE RESULTS OF THE ROLL CALL VOTE, SIX (6) AYES AND ONE (1) ABSENT.

THE PRESIDENT THEREUPON DECLARED THAT RESOLUTION 50-2004 WAS ADOPTED.

5. MATTERS NOT APPEARING ON THE AGENDA None.

6. PERSONS WISHING TO ADDRESS THE MEMBERS ON NON-AGENDA, BUT AGENCY RELATED MATTERS

Scott Madison

7. REPORT OF THE PRESIDENT None.

8. REPORT OF THE EXECUTIVE DIRECTOR None.

9. COMMISSIONERS' QUESTIONS AND MATTERS None.

10. CLOSED SESSION: None.

11. ADJOURNMENT

It was moved by Mr. King, seconded by Ms. Palamountain, and unanimously carried that the meeting be adjourned. The meeting adjourned at 9:35 p.m.

Respectfully submitted,

Erwin R. Tanjuaquio

Agency Secretary

**EXHIBIT B**

**Resolution # \_\_\_\_\_**

**Protest and Objection of the Hunters Point Shipyard Restoration Advisory Board (RAB) to the Redevelopment Commission's Actions taken At its December 2, 2003 Meeting**

**Whereas;**

The City and County of San Francisco (CCSF) Redevelopment Commission took action at its December 2, 2003 meeting approving the Disposition Development Agreement (DDA) between the San Francisco Redevelopment Agency (SFRA) and Lennar-BVHP for the Redevelopment of the Shipyard on a vote 5-0-0, despite objections from the affected community and members of the RAB. Also on a vote 5-0-0, on December 2, 2003 the SFRA also adopted an amendment to a separate redevelopment proposal that mandated the forced dislocation of the low-income communities of color (predominantly African American) of Hunters Point (see figure 1), and



**Whereas;**



Prior to the SFRA vote RAB Co-chair; Lynne Brown's filed an objection and protest, along with other RAB members to the SFRA Commissioners and SFRA executive director Marshal Rosen on December 2, 2003 as follows;

"I am a resident of Bay View Hunters Point and Co-Chair of the Restoration Advisory Board. I object to the piecemealing the Redevelopment Agency is doing to the Bay View Hunters Point Community. The redevelopment of the Hunters Point Naval Shipyard and the Hunters Point Community is not separate projects because Hunters Point is the affected Community. The current processes as proposed disenfranchises the affected community. This is in violation of Title VI, The Civil Rights Act of 1964. The Restoration Advisory Board is entrusted to protect the Civil Rights of the affected community of Bay View Hunters Point. This means the affect community may file complaints with the Federal Government under the Civil Rights Act of 1964. As representatives of the affected community the Restoration Advisory Board will not sign-off on the transfer of the Hunters Point Shipyard to the City and County of San Francisco until it can Certify compliance with the Civil Rights Act and the Base Closure Act. The Redevelopment Agency and its Commissioners should read the Base Closure Act, CERCLA, NEPA and prepare an EIR on their project.

**Whereas;**

It has become clear that the City and the SFRA has failed to fulfill its fiduciary duties, in behalf of designated beneficiaries, to abide by federal, state, and local laws in all its process and plans regarding the transfer of the Shipyard. This is because laws and policies require that the Shipyard be developed in the "best interests" of, and to "maximize the economic benefits" to: the community affected by the Shipyard's closure, which the SFRA has determined is Bay View Hunters Point (which community is comprised, by general consensus, to be the approximately 37,000 residents and small business owners of the area encompassed by the Postal Zip Code 94124), but the SFRA did not do so, and

**Whereas;**

In fact, the SFRA acted "against" these beneficiaries "best interests" and "minimized" the beneficiaries' economic benefits, by forcing through a plan which provides the beneficiaries no ownership, nor control of, and no direct share of the profits from: the Shipyard development, and

**Whereas;**

In addition, plans to redevelop the affected community of 94124 have taken place without public participation of this low and very low-income community of color. This redevelopment project will induce gentrification; displacement of the residents and the neighborhood businesses and services destroys not only the

equilibrium of those who are moving, also the residents left behind. As long term residents leave, the schools, churches, and social networks that make-up the social fabric of the community is compromised, and

**Whereas;**

The only feasible way is for the City and County of San Francisco and its Redevelopment Agency to establish compliance is for it to rescind its December 2, 2003 actions and in the future for it to act in the “best interests” of, and to “maximize the economic benefits” to the described beneficiaries, the BVHP low and very low-income community of color, and thereby meet the letter and intend of these laws and policies. That is the one and only way that these required law’s and policies’ goals to meet required laws and policy goals is for the BVHP residents to be guaranteed 100% ownership and control of the Shipyard and to receive all of the profits derived from its development.

**Whereas;**

In order for the transfer of the shipyard to the SFRA to take place, the Restoration Advisory Board (RAB) must in behalf of the affected Hunters Point community insure compliance with all federal environmental, restoration, civil rights and base reuse laws (i.e., Laws Ordinance Regulations and Standards) including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*; 40 CFR Parts 300–311, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*; 33 CFR Parts 240–281, the Clean Water Act (CWA), 33 U.S.C. §§ 1251–1387; 33 CFR Parts 320–330, 335–338; 40 CFR Parts 104–140, 230–233, 401–471; Executive Order 11990 (Protection of Wetlands), the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*; 40 CFR Parts 50, 60, 61, and 80, the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f–300j- 26; 40 CFR Parts 141–149, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Redevelopment Act), Pub. L. 103-421; 32 CFR Part 176, the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 *et seq.*; and the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a– 2000h-6, and

**Whereas;**

Title VI of the Civil Rights Act of 1964 requires CCSF, and the SFRA, in coordination with the California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control (DTSC) to identify and address any disproportionately high and/or adverse human health, socioeconomic, or environmental impacts of their programs, policies, and actions on minority and/or low-income populations, and

**Whereas;**

The California Environmental Quality Act (CEQA) is the California law that allows the affected community to be informed and members of the public to voice

their opinion about projects that may affect their environment. CEQA requires a review of the environmental impacts of projects. CEQA has a broad, strong right of public participation, which has a political component and the violation or deprivation of which has constitutional consequences to the affected community, and

**Whereas;**

In mandating separate project areas for the shipyard and the Hunters Point Community the SFRA as the lead agency under the California Environmental Quality Act (CEQA) is being allowed to piecemeal the process which is analogous to the strongly forbidden “chopping up [of] a proposed project into bite-size pieces which, individually considered, might be found to have no significance on the environment.” (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 716, citing Orinda Assn. v. Board of Supervisors (1986) 182 Cal.App.3d 1145, 1171, 1172; see also Bozung v. LAFCO (1975) 13 Cal.3d at 283-284; Sundstrom, 202 Cal.App.3d 296, 309.)

**Whereas;**

In the present case what we have is a chopping up of the CEQA duty to provide information that trivialize the nature and extent of the two project’s impacts. In addition, the piecemealing requires that the affected community and the RAB to respond, and allows the developer Lennar-BVHP to then reply, without any opportunity for reply by the affected community and the RAB, without requiring a comprehensive analysis, and without providing structure or finality to the process. And when the process gets near the end, strict time lines are imposed which create additional burdens on the RAB and other members of the public, further hindering if not completely preventing their full and meaningful participation in a process heavily weighed in favor of Lennar-BVHP with virtually unlimited resources whose only excuse for piecemealing the required information is to use it as a tactic to avoid or minimize opposition.

**Whereas;**

CEQA provides that a proposed project may have a significant effect on the environment when the possible effects on the environment are individually limited but “cumulatively considerable.” (Pub. Resources Code, §21083(b); Cal. Code Regs. tit. 14, §15065.) “‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (Cal. Code Regs. tit. 14, §15065.) In addition to analyzing the direct impacts of a project, the CEQA Lead Agency must determine whether or not a project will result in a significant cumulative impact.

**Whereas;**

Recent statutory law has invigorated the utility of the California Environmental Quality Act<sup>7[1]</sup> as the procedural means for the CCSF SFRA to ensure

**"the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies" (i.e., environmental justice)."**<sup>8[2]</sup>

In conjunction with the regulatory provisions of the federal Clean Air Act and Division 26 of the Health and Safety Code,<sup>9[3]</sup> CEQA provides an ideal mechanism for ensuring that environmental justice will be addressed in all activities and projects that may have a significant effect on the environment.

**Whereas;**

The California Environmental Quality Act requires that environmental documents (i.e., an environmental impact report [EIR] or a negative declaration or equivalent document) be prepared whenever a public agency proposes to undertake a discretionary activity that may have a significant effect on the environment.<sup>10[4]</sup> The Legislature has declared that all agencies that

**"regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian."**<sup>11[5]</sup>

Projects that are directly undertaken by public agencies are subject to the same level of accountability as private projects that require a permit or other governmental approval to proceed.<sup>12[6]</sup>

**Whereas;**

The recent enactment of Public Resources Code sections 71110 through 71115 and Government Code section 65040.12, in conjunction with the requirements of federal law, the US EPA's Bay Area Air Quality Management District (BAAQMD) State Implementation Plan (SIP), and EPA regulations, require the

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<sup>7[1]</sup> CEQA; Public Resources Code sections 21000 et seq. See also, CEQA Guidelines developed by the Office of Planning and Research for adoption by the Secretary for Resources, 14 Cal. Code Regs. Sections 15000 et seq.

<sup>8[2]</sup> SB115, Solis; Stats. 99, ch. 690, Gov't. Code section 65040.12 and Public Resources Code sections 72000-01

<sup>9[3]</sup> 42 U.S.C. sections 7401 et seq. (Public Law 88-206, 77 Stat. 392, December 17, 1963, as last amended by the Clean Air Act Amendments of 1990, P. L. 101-549, November 15, 1990); and Health and Safety Code sections 39000 et seq., respectively

<sup>10[4]</sup> See Public Resources Code (PRC) sections 21002.1, 21061, 21064, and 21080.1. See also, 14 Cal. Code Regs. §15002

<sup>11[5]</sup> SB115, Solis; Stats. 99, ch. 690, Gov't. Code section 65040.12 and Public Resources Code sections 72000-01

<sup>12[6]</sup> PRC §21001.1

SFRA to infuse EJ into every aspect of decisionmaking. This panoply of statutory authority animates the general authority of the SFRA to "do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division [26 of the Health and Safety Code] and by any other provision of law."**13[7]** Further, the rules, regulations, and standards that the SFRA adopts must be "consistent with the state goal of providing a decent home and suitable living environment for every Californian"**14[8]** – and so, full circle back to CEQA.

**Therefore Be It Resolved,**

1. 1. The Bayview Hunters Point Restoration Advisory Board (RAB) hereby Adopts and Incorporates this day the above cited Protests and Objections of Lynne Brown and any other RAB member present at the December 2, 2003 SFRA meeting, and
2. 2. The RAB hereby authorizes this issuance to the US Navy, DoD, US and California EPA, and California Department of Toxic Substance Control, Notice that the RAB has determined the CCSF SFRA to be in Noncompliance with the aforementioned statutes specifically with the requirements of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a– 2000h-6, and the California Environmental Quality Act, with Notice in the Federal Register if available, and
3. 3. The RAB will not sign-off on the transfer of the Hunters Point Shipyard to the City and County of San Francisco until it can Certify compliance with the Civil Rights Act, the Base Closure Acts including but not limited to the aforementioned statutes.

Vote	Ayes	Nays	Abstentions
_____	_____	_____	_____

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**13[7]** Health and Safety Code §39600; emphasis added

**14[8]** Health and Safety Code §39601(c)