

**From:** [Richard Drury](#)  
**To:** [BOS Legislation \(BOS\)](#); [Gibson, Lisa \(CPC\)](#); [Peskin, Aaron \(BOS\)](#); [ChanStaff \(BOS\)](#); [DorseyStaff \(BOS\)](#); [EngardioStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Ronen, Hillary](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Walton, Shamann \(BOS\)](#)  
**Cc:** [Hanmin Liu](#); [Clayton Timbrell](#)  
**Subject:** 1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)  
**Date:** Friday, June 23, 2023 4:24:53 PM  
**Attachments:** [2023.06.23.BOS Ltr 1151 Washington w attachments.pdf](#)

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Dear President Peskin and Honorable San Francisco Board of Supervisors:

This letter is filed on behalf of the Upper Chinatown Neighborhood Association (“UCNA”) and Clayton Timbrell (“Appellants”) concerning the proposed project at 1151 Washington Street (“Project”). This letter responds to the letters filed by the Project developer (“Developer”) and Planning Department on June 16, 2023. As discussed below, CEQA review is required for the Project because it will have significant adverse impacts related to shadow, toxic soil contamination, and fire safety. We urge the Board to require a focused environmental impact report (“EIR”) to analyze and mitigate these impacts.

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Richard Drury  
Lozeau Drury LLP  
1939 Harrison Street, Suite 150  
Oakland, CA 94612  
(510) 836-4200  
[richard@lozeaudrury.com](mailto:richard@lozeaudrury.com)



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

June 16, 2023

***By Email***

President Aaron Peskin and  
San Francisco Board of Supervisors  
Angela Calvillo, Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
bos.legislation@sfgov.org

Lisa Gibson, Environmental Review Officer  
San Francisco Planning Department  
49 S. Van Ness Ave, Suite 1400  
San Francisco, CA 94103  
lisa.gibson@sfgov.org

**Re: Responsive Comment Supporting Appellant Upper Chinatown  
Neighborhood Association and Clayton Timbrell's Appeal of  
the Planning Commission's Approval of a Categorical Exemption for the  
1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)**

**Board of Supervisors Hearing Date: June 27, 2023**

Dear President Peskin and Honorable San Francisco Board of Supervisors:

This letter is filed on behalf of the Upper Chinatown Neighborhood Association ("UCNA") and Clayton Timbrell ("Appellants") concerning the proposed project at 1151 Washington Street ("Project"). This letter responds to the letters filed by the Project developer ("Developer") and Planning Department on June 16, 2023. As discussed below, CEQA review is required for the Project because it will have significant adverse impacts related to shadow, toxic soil contamination, and fire safety. We urge the Board to require a focused environmental impact report ("EIR") to analyze and mitigate these impacts.

**I. CEQA REVIEW IS REQUIRED FOR THE PROJECT.**

**A. Legal Standard.**

The City seeks to exempt the Project entirely from all CEQA review using the Infill Exemption. The Infill Exemption may not be used if approval of the Project would "*result in any significant effects relating to traffic, noise, air quality, or water quality.*" 14 Cal. Code Regs. §§ 15332(c), (d). The exemption also may not be relied upon: (1) if the project may have adverse impacts due to unusual circumstances, or 2) if the project *will* have a significant environmental impact. The second provision does not require unusual circumstances. (*Berkeley Hillside Pres. v. City of Berkeley*, 60 Cal. 4th 1086, 1105 (2015)).

The City and Developer's letters both ignore entirely the second exception, when a project *will* have a significant environmental impact, and focus solely on the first exception, which requires a showing of unusual circumstances. As discussed below, since the Project *will* have significant environmental impacts related to shadow, the City may not avoid CEQA review. In addition, there are unusual circumstances that create significant environmental impacts related to fire safety and toxic soil contamination, which also precludes the CEQA exemption.

**B. CEQA Review is Required Because the Project will Cast Significant Shadows on the Betty Ann Ong Recreation Center.**

Both the Developer and City argue that Appellants submitted an inaccurate shadow analysis based on a prior version of the Project. This is because the prior version was the operative version at the time the shadow analysis was conducted. However, attached to our June 16, 2023 letter was an updated shadow analysis based on the most recent version of the Project. The updated shadow analysis clearly shows that the Project will have massive shadow impacts on the Betty Ann Ong Recreation Center, causing shadows on **86.2 percent** of the outdoor areas and leaving only a small sliver of sunlight. (Exhibit A).

The City contends that the massive shadow impact is acceptable because a 40-foot height building is not "unusual." However, as discussed in the *Berkeley Hillside* case, a showing of unusual circumstances is not required if the Project *will* have significant environmental impacts.

The City's own CEQA Initial Study Checklist identifies any shadow impacts on a public park to be a significant impact, regardless of whether the project exceeds 40-feet in height. The Checklist provides that a project will have a significant environmental impact under CEQA if it would:

"Create new shadow that substantially and adversely affects the use and enjoyment of publicly accessible open spaces."

There is no requirement that the building height exceed 40-feet for the impact to be significant under CEQA. (CEQA initial study template available at: <https://citypln-m-extnl.sfgov.org/SharedLinks.aspx?accesskey=8eecbd6a8b410f4c784f00a26ab4ac8533194950f321880196d954d265f86103&VaultGUID=A4A7DACD-B0DC-4322-BD29-F6F07103C6E0>).

The Planning Department's on guidance document on shadow impacts under CEQA makes clear that there are two ways to have a significant shadow impact. It states as follows:

In the City and County of San Francisco, there are two circumstances which could trigger the need for a shadow analysis:

- (1) If the proposed project would be over 40 feet tall, and could potentially cast new shadow on a property under the jurisdiction of the Recreation and Park Department, per San Francisco Planning Code Section 295; and/or
- (2) If the proposed project is subject to review under the California Environmental Quality Act (CEQA) and would potentially cast new shadow on a park or open space such that the use or enjoyment of that park or open space could be adversely affected.

(San Francisco Planning Department, Shadow Analysis Procedures and Scope Requirements, p.1 (July 2014) (Exhibit B).)

The Planning Department letter of June 16, 2023 discusses only the first prong of the shadow guidance and ignores the second prong entirely. Since there is no dispute that the Project will cast significant shadows on a public park, it *will* have a significant environmental impact and the CEQA exemption may not be used regardless of unusual circumstances.

The Planning Department letter states that Prop K (Planning Code Section 295) suggests that shadow impacts are acceptable if the building height is less than 40-feet. There is nothing in Prop K to support this interpretation, and it contradicts the Planning Department's own guidance memo (Exhibit B). Prop K prohibits construction of buildings over 40-feet in height if they will cast shadows on public parks, but it nowhere states that shadow impacts are insignificant if the budding is less than 40-feet. Buildings of less than 40-feet still have significant impacts that require CEQA review if they cast shadows on public parks. Such buildings are not prohibited by Prop K, but CEQA review is still required to determine if there are feasible ways to reduce significant shadow impacts, such as reorienting the buildings, different building design, different building materials, etc. In other words, Prop K did not and could not preempt CEQA. The two provisions can and must be harmonized.

### **C. CEQA Review is Required Because the Site is Heavily Contaminated with Toxic Chemicals and is Adjacent to a Children's Playground.**

As discussed in our prior letters, the Project site is contaminated with highly toxic chemicals, including hexavalent chromium ("Chrome VI") and thallium exceeding regulatory screening levels. Soil vapor beneath the site is impacted with volatile organic compounds (specifically, PCE or tetrachloroethylene) at concentrations exceeding regulatory screening levels. This is particularly concerning since the Project will involve extensive soil excavation adjacent to the Betty Ann Ong Recreation Center.

The Developer and City contend that the presence of toxic soil contamination does not preclude reliance on the CEQA exemption because such contamination is not "unusual." While it may be true that there are a large number of contaminated sites in the City, the particular

chemicals found at this site are highly unusual. Most of the contaminated sites in the City are contaminated with petroleum from old leaking underground storage tanks. They are not contaminated with Chrome VI and PCE.

Hexavalent Chromium (Chrome VI) is widely known from the Erin Brokovich movie. Chrome VI can cause lung cancer and nasal cancers; irritation of the nose, throat and lungs (runny nose, coughing); allergic symptoms (wheezing, shortness of breath). It is particularly toxic when airborne.

Certified Hydrogeologist Matthew Hagemann has submitted a supplemental comment letter demonstrating that there are **only eleven (11) sites in the entire City of San Francisco where Chrome VI has been found**. (Letter from M. Hagemann, p. 1 (June 22, 2023) (Exhibit C)). By contrast there are 206,042 parcels in the City. ([https://www.sfassessor.org/sites/default/files/uploaded/2020.12\\_2020%20Annual%20Report\\_Final2.pdf](https://www.sfassessor.org/sites/default/files/uploaded/2020.12_2020%20Annual%20Report_Final2.pdf)). So, **Chrome VI is found on only five one-thousandths (0.005 percent) of one percent of sites in the City**. Mr. Hagemann concludes that the presence of the highly toxic Chrome VI is therefore a highly unusual circumstance.

Similarly, Mr. Hagemann points out that Perchloroethylene (PCE) has only been found on 24 sites in the City of San Francisco. (Exhibit C, p. 1). As a result, PCE contamination at the Project site is also a highly unusual circumstance.

Mr. Hagemann states:

The presence of hexavalent chromium-contaminated soil may pose a risk to those playing and recreating at the adjacent playground and basketball court. When excavated, contaminated soil may become airborne as dust and may be inhaled by kids and adults at the playground and basketball court located directly adjacent to the project as shown below in an image obtained from Google Street View Maps. Provisions for dust management are provided in the October 7, 2022 Site Mitigation Plan; however, the plan inexplicably fails to mention the presence of the directly adjacent playground and therefore fails to take specific steps to protect the children and adults who would be within inches of excavation as it proceeds. (Exhibit C, p. 1).

Therefore, there is a fair argument that the Project may have adverse environmental and human health impacts due to the unusual circumstance of the presence of Chrome VI and PCE.

The City's Initial Study Checklist states that a project may have a significant environmental impact if it will "Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school." Not only is the Project adjacent to the Betty Anne Ong Recreation Center, but it is within one quarter mile of Gordon Lau Elementary School, and Cathedral School. Thus, under the City's own guidance document, the Project may have significant environmental impacts from the release during excavation of Chrome VI and PCE.

As discussed in our prior letter, the Site Mitigation Plan (SMP) is wholly inadequate. It was designed for a prior, smaller version of the Project and covers less than half of the Project site. Mr. Hagemann concluded that the SMP is inadequate and further mitigation is required. The fact that the SMP was approved under the Maher Ordinance despite its glaring inadequacies shows that the Maher Ordinance is no substitute for CEQA review. Indeed, a local ordinance cannot supplant state law.

Finally, the City makes the almost absurd argument that the Site Mitigation Plan is not a mitigation measure. Of course, this ignores the obvious fact that even the Site Mitigation Plan calls itself a "Mitigation Plan" and contains mitigation measures (albeit inadequate). As discussed in our prior letter, a categorical exemption may not be used if a project requires mitigation measures. (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1108). The City contends that the Site Mitigation plan is not a mitigation plan at all, but is instead a fixed standard. The courts have held that agencies may apply fixed standards to reduce project impacts. But fixed standards are things like building codes that require no judgment or discretion, such as the spacing of building studs, or the thickness of rebar. The SMP here contains numerous discretionary measures designed specifically for this project, as well as the possible need for as yet undetermined and illegally deferred additional measures. The Site Mitigation Plan is clearly a mitigation plan (as it says it is), and it precludes reliance on the CEQA exemption.

#### **D. CEQA Review is Required to Analyze the Mitigate the Project's Fire Safety Impacts.**

The City's Initial Study checklist requires a mandatory finding of significance if a project will "Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly." The Project will create human health risks due to its unusual configuration and design which create serious fire safety risks.

As discussed in our prior letter, the unusual Project design creates a single means of egress which would be via a 5-foot-wide, 137-foot-long alleyway with eight flights of stairs. No other means of access are provided. Were a fire to occur in one or more of the front townhomes, residents living behind a burning unit would have no means of escape. Residents would be forced to run towards the fire, down a total of eight flights, and make their way down a 137-foot-long alley before reaching Washington Street.

As discussed in the expert comments of Burt Engineering and Construction, included as Exhibit F to Appellant's May 17, 2023 appeal letter, California's Building Codes expressly prohibit such dangerous conditions by requiring two exits, or special exit-access doorways from spaces who share a common path of egress over a certain distance.<sup>1</sup> A path of 137-feet exceeds

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<sup>1</sup> CA Building Code § 1028.1; *see also* Table 1006.3.4. SFBC 1006.3.4.

the 125-foot maximum travel distance for fire and life safety.<sup>2</sup> The Project's proposed exit route is unsafe, hazardous, defies common sense and cannot be approved.

In response to concerns about inadequate access for fire department ladders, the Developer proposes to mount ladders perpendicular to the building on ladder rests. However, this will place the fire ladders directly in the middle of the sole means of egress, largely blocking the egress route. This violates the fire code provision which requires that the exit discharge must be free of obstructions. (SFBC 1032.3). Even if the ladders were placed parallel to the building (at an unsafe angle), they would still block the entire sole means of egress, violating the fire code.

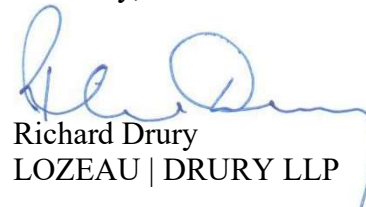
The Planning Department states that the Fire Marshall has approved the design, but the Department provides no evidence to support this assertion. There is no letter from the Fire Marshall or any evidence from the fire department whatsoever – only pure hearsay. In any case, it would be an abuse of discretion for the Fire Marshall to allow a violation of state law.

Finally, the city argues that that the fire risk is not caused by an unusual circumstance. Architect Robert Baum concludes that the Project design is highly unusual. In over 30-years of practice he has not seen such an unusual Project with 10 access doors placed on a narrow, five-foot-wide, 137-foot-long corridor. There is no credible contradictory evidence to show that this design is not unusual. Of course, the fire safety risks result directly from this unusual and dangerous design.

## II. CONCLUSION

The Planning Commission improperly exempted the proposed Project from CEQA review. The Project does not meet the requirements for a Class 32 Infill Exemption. The Project will have significant shadow impacts. The Project will have significant toxic soil contamination impacts due to unusual circumstances, including the presence of Chrome VI and PCE. The Project will have significant fire safety impacts due to unusual circumstances, such as the unusual building design. For these reasons, we respectfully ask the Board to reject the CEQA Exemption and direct staff to prepare a focused EIR to analyze and mitigate impacts from shadow, soil contamination and fire safety. Thank you for considering these comments.

Sincerely,



Richard Drury  
LOZEAU | DRURY LLP

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<sup>2</sup> *Id.*

1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)  
Appellants' Response to Comments on CEQA Class 32 Infill Exemption  
June 23, 2023  
Page 7 of 7

Cc: President Aaron Peskin (Aaron.Peskin@sfgov.org)  
Sup. Connie Chan (ChanStaff@sfgov.org)  
Sup. Matt Dorsey (DorseyStaff@sfgov.org)  
Sup. Joel Engardio (EngardioStaff@sfgov.org)  
Sup. Rafael Mandelman (MandelmanStaff@sfgov.org)  
Sup. Myrna Melgar (MelgarStaff@sfgov.org)  
Sup. Dean Preston (Dean.Preston@sfgov.org)  
Sup. Hillary Ronen (Hillary.Ronen@sfgov.org)  
Sup. Ahsha Safai (Ahsha.Safai@sfgov.org)  
Sup. Catherine Stefani (Catherine.Stefani@sfgov.org)  
Sup. Shamann Walton (Shamann.Walton@sfgov.org)



# EXHIBIT A

Approved



remaining sunlight in play areas

Play areas (indicated by dashed lines)



LEGEND

-  Existing Structures
-  Existing Shadows

-  Approved Proposal
-  Approved Proposal's Net New Shadow

5:00 PM

AUGUST 9  
*(MAY 3 MIRROR)*

# EXHIBIT B



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** July 2014  
**TO:** Planning Department Staff, Shadow Analysis Consultants  
**FROM:** Rachel Schuett, Kevin Guy, SF Planning Department  
**RE:** Shadow Analysis Procedures and Scope Requirements

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

In the City and County of San Francisco, there are two circumstances which could trigger the need for a shadow analysis:

- (1) If the proposed project would be over 40 feet tall, and could potentially cast new shadow on a property under the jurisdiction of the Recreation and Park Department, per *San Francisco Planning Code Section 295*; and/or
- (2) If the proposed project is subject to review under the California Environmental Quality Act (CEQA) and would potentially cast new shadow on a park or open space such that the use or enjoyment of that park or open space could be adversely affected.

This memorandum documents the Planning Department's standard procedures for conducting a shadow analysis both for the purposes of CEQA review and for the purposes of *Section 295* review. A complete Shadow Analysis has three main components: (1) Shadow Diagrams, (2) Shadow Calculations, and (3) a Technical Memorandum. In some cases, survey information may also be required.

A shadow analysis should be completed in five sequential steps:

- Step 1. Preliminary Shadow Fan
- Step 2. Project Initiation
- Step 3. Shadow Diagrams
- Step 4. Shadow Calculations
- Step 5. Technical Memorandum

Each of these steps is described, in detail, below.

## **Step 1. Preliminary Shadow Fan**

The Planning Department typically prepares a preliminary shadow fan as part of the Preliminary Project Assessment (PPA) process for projects which exceed 40 feet in height. If the preliminary shadow fan indicates that the proposed project has the potential to cast new shadow on a park or open space which is protected by Section 295 of the *Planning Code*, a shadow analysis will be required for the purposes of Section 295 review.

Typically, this information is included in the PPA Letter. For projects not subject to the PPA process, and/or if the project is over 40 feet in height and has potential to cast new shadow on a park or open space that is not protected by Section 295 of the *Planning Code*, or if the project is less than 40 feet in height and could cast new shadow on any park or open space a shadow analysis may also be required for the purposes of CEQA review. This would be determined on a case-by-case basis as part of the scoping process for the environmental review. A preliminary shadow fan would be prepared by Planning Department staff at that time.

## Step 2. Project Initiation

If the preliminary shadow fan indicates that there is potential for the proposed project to cast new shadow on a park or open space, and the Planning Department requests the preparation of a shadow analysis by a qualified consultant, the project sponsor should initiate the analysis by (1) filing a Shadow Analysis Application, (2) retaining the services of a qualified consultant, and (3) providing a scope of work for the shadow analysis.

- (1) Shadow Analysis Application. Filing a shadow analysis application initiates the process of shadow analysis review. The Shadow Analysis Application Packet can be found here: <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=8442>. The fee is currently \$525.00, payable to the San Francisco Planning Department. Once the Shadow Analysis Application is received, a technical specialist will be assigned.
- (2) Qualified Consultant. The project sponsor should retain the services of a qualified shadow consultant. Currently, the Planning Department does not maintain a list of qualified consultants for the purposes of Shadow Analysis preparation. Thus, consultant selection should be based on the consultant's demonstrated capacity to prepare a Shadow Analysis as outlined in Steps 3 – 5, below.
- (3) Scope of Work. Once a technical specialist is assigned, the consultant should prepare and submit a scope of work for the Shadow Analysis. The scope of the Shadow Analysis should be based on the preliminary shadow fan, and Steps 3 – 5, below. Once the technical specialist has approved the scope of work the Shadow Analysis may be initiated.

## Step 3. Shadow Diagrams

The preliminary shadow fan prepared by the Planning Department indicates whether or not there is any possibility that a project may cast new shadow on a park or open space. However, the shadow fan does not take into consideration intervening shadow that is cast by existing buildings and/or permanent infrastructure (such as elevated roadways, on- and off-ramps, etc.). Further, the preliminary shadow fan is typically based on full build out of the zoning envelope including; complete lot coverage and maximum height plus a penthouse allowance (typically 16 feet). Therefore, shadow diagrams should be prepared for the building as defined in the project description for environmental review, which should be determined in consultation with the Planning Department.

**Please note:** shadow cast by vegetation should not be included as part of existing or net new shadow.

Diagrams of shadows cast by the proposed project should be provided for the following four days of the year:

- Winter Solstice (December 21) - midday sun is lowest and shadows are at their longest.
- Summer Solstice (June 21) - midday sun is at its highest and shadows are at their shortest.
- Spring/Fall Equinox (March 21/September 21) - shadows are midway through a period of lengthening.
- The "worst case" shadow day – the day on which the net new shadow is largest/longest duration.

On the days the graphical depictions are required, the shadows should be shown on an hourly basis, from one hour after sunrise (Sunrise + 1 hour) to one hour before sunset (Sunset - 1 hour) and at the top of each hour in between.

**Example:** On June 21, the sun rises at 5:48 a.m. and sets at 8:35 p.m. Therefore shadow graphics should be included at the following times:

- A.M.: 6:48, 7:00, 8:00, 9:00, 10:00, 11:00
- P.M.: 12:00, 1:00, 2:00, 3:00, 4:00, 5:00, 6:00, 7:00, 7:35

All shadow diagrams should clearly indicate the outline of the project site and any parks or open spaces that may be affected including a generalized layout of park features such as seating areas, landscaped areas, playgrounds, recreational courts, and walking paths. The shadow diagrams should clearly indicate the shadow outline from the proposed project and should graphically distinguish between existing shadows versus net new shadow being cast by the project.

Shadow diagrams should also include the following, at a minimum:

- A north arrow
- A legend
- A figure number
- The project name (Ex. 555 Lyon Street)
- The date and time depicted (Ex. June 21 Sunset – 1 hr. or June 21 6:00 p.m.)

Shadow diagrams should be submitted as one file in .pdf format with a technical memorandum described in Step 5, below.

#### **Step 4. Shadow Calculations**

In order to obtain the information needed for a determination under Section 295, a detailed quantitative study of the new shadow cast upon an open space or park under the jurisdiction of, or designated for acquisition by, the Recreation and Park Commission is required. The quantitative study must include spreadsheets and/or tables that indicate the amount of existing shadow and net new shadow, measured in square foot hours (sfh), in 15 minute increments throughout the day during the hours regulated by Section 295 " on each day where the proposed project would result in net new shadow on the park.

The hours regulated by Section 295 occur between one hour after sunrise through one hour prior to sunset. Each 15 minute entry should expressly indicate the date, the time of sunrise, and the time of sunset. It is important to indicate the corresponding amount of existing shadow on the subject open space or park, as this amount is key in determining the relative effect of any new shadow.

In order to inform the CEQA analysis, the Planning Department may also require a detailed quantitative analysis for non-Section 295 properties, or in cases where Section 295 does not apply due to the project's height, or based on some other circumstance. This will be determined on a case-by-case basis.

These spreadsheets and tables should be summarized in the Technical Memorandum, as described in Step 5 below, and appended, in their entirety, to the report.

## Step 5. Technical Memorandum

The shadow diagrams, shadow calculations, and any other supporting materials should be accompanied by a technical memorandum which includes (at a minimum) the following information:

- **Project Description.** Include the location of the project site (neighborhood, address, Assessor's Block/Lot, nearby landmarks), general topography, and project boundaries. Describe existing building(s) and land use(s) on and around the project site, including building height(s). Include proximity to parks, open spaces, and community gardens. Describe the proposed project including demolition and new construction. Describe the physical characteristics of the proposed building(s) as well as the proposed use(s). Include and refer to building elevations.
- **Modeling Assumptions.** The shadow graphics and calculations should be accompanied by clear documentation of the assumptions for the modeling including:
  - The height assumed for each of the buildings (or building envelopes).  
**Please note:** Please contact the Planning Department for specific direction in how to model intervening shadow cast from buildings between the proposed project site and the affected park or open space.
  - The allowance for penthouses and parapets (which should be determined in consultation with Planning Department staff).  
**Please note:** the Planning Department typically requires that final building designs be modeled rather than building envelopes, or hypothetical building forms based on existing or proposed zoning. However, building envelopes may be substituted in some circumstances as directed by Planning Department staff.
  - Building sections and elevations (for the proposed project).
  - If the project site is steep and/or has varied topography the documentation should identify where the height of the envelope of the building was measured from.
- **Potentially Affected Properties.** Potentially affected properties including: parks, publicly-accessible open spaces, and community gardens identified in the graphical depictions should be listed and described. The description of these properties should include the physical features and uses of the affected property, including but not limited to: topography, vegetation, structures, activities, and programming. Each identified use should be characterized as 'active' or 'passive.' Aerial photographs should be included, along with other supporting photos or graphics. The programming for each property should be verified with the overseeing entity, such as the Port of San Francisco, the Recreation and Parks Department, etc. Any planned improvements should also be noted.
- **Shadow Methodology and Results.** Describe how the analysis was conducted, what assumptions were made? Describe the "solar year", the "solar day" and define any other terms, as needed. Refer to shadow diagrams and describe results.
- **Quantitative Analysis (for properties subject to Section 295, and as required by the Planning Department).** The Technical Memorandum should include a narrative summary of the quantitative shadow effects that would result from the project, and discuss how these effects relate to the quantitative criteria set forth in the "Proposition K – Implementation Memo" as jointly adopted by the Planning and Recreation and Park Commissions in 1989.

The quantitative analysis discussion should (1) Identify the theoretical annual available sunlight (T.A.A.S.) for any/all affected Section 295 protected properties (and/or other properties identified by the Planning Department), calculated in square-foot-hours (sfh) by multiplying the area of the park by 3,721.4 (the number of hours in the year subject to Section 295), (2) Identify the amount of existing shadow on the park or open space (in sfh), (3) Identify the amount of net new shadow cast on the park or open space by the proposed project (in sfh), and (4) Where applicable for Section 295 properties, identify the park's 'shadow budget'. Compare (1) to (2) and (3), and (4) if applicable.

Summary tables and graphics should be included.

It should be noted that accurate park or open space boundaries are germane to an accurate calculation of the theoretical annual available sunlight hours (T.A.A.S.). It is advised that the shadow consultant verify park boundaries and area with Planning Department staff prior to initiating the calculation. Similarly, the assumptions for calculating the existing shadow load should also be verified with Planning Department staff prior to initiating the calculation.

- Shadow Characterization. The Technical Memorandum should include a narrative, qualitative summary of the effects of net new shadow on each park or open space on which new shadow would be cast. This narrative summary should be based on the following shadow characteristics:
  - Size
  - Times of year
  - Times/duration within a given day
  - Location of new shadow in relation to park features
  - Relationship of new shadow to surveyed<sup>1</sup> usage patterns in the park

The narrative description should clearly characterize the net new shadow that would occur over the course of the year.

**Example:** “the proposed project would cast net new shadow on Jackson Playground and Tennis Courts between March 3 and October 14, with the largest area of shadow being cast on July 27. . .”

Then go on to characterize the times of day during which the shadow would occur, and identify what is occurring in that area of the park or open space at that time.

- Cumulative Shadow Analysis. In the event that the proposed project would cast net new shadow on a park or open space that would also be affected by other proposed projects, the Planning Department may require a cumulative shadow analysis in addition to the 'existing plus project' analysis that is described above. The cumulative scenario should be developed in cooperation with Planning Department staff. The cumulative analysis requirement could potentially include all of the information required for the 'existing plus project' analysis, but would be determined on a case-by-case basis in consultation with Planning Department staff.

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<sup>1</sup> Note: the scope and approach for a use survey should be vetted in advance with Planning Department staff.



- Proposed Project-Related Public Good. Under Section 295 of the Planning Code decision-makers may weigh the amount and duration of shadow cast by the proposed project against the public good or public benefits associated with the proposed project. This section should identify (1) the public interest in terms of a needed use, (2) building design and urban form, (3) impact fees, and (4) other public benefits.

The Technical Memorandum should include summary tables and graphics to inform decision makers of the potential effects of net new shadow. The Technical Memorandum should only document facts and observations related to the amount and duration of shadow and the use of the park or open space and should not include a conclusion as to whether or not an impact(s) would occur.

### **Work Plan**

The scope of work identified in Steps 2 – 5 is a complete scope of work meeting the requirements of a shadow analysis for the purposes of a Section 295 determination and/or in support of an impact determination under CEQA, where net new shadow on a park or open space would be associated with a proposed project.

In some cases the Planning Department may wish to review the shadow diagrams, shadow calculations, and the descriptions of the use(s) of the affected properties, in advance of making further recommendations on the shadow analysis scope. Therefore, the graphics and descriptions may be requested in advance of the preparation of the full Technical Memorandum.

For example, the Planning Department may make a recommendation for the scope of a park survey(s) after reviewing the shadow diagrams, shadow calculations, and the descriptions of the use(s) of the affected properties. Therefore, the work plan for the shadow analysis should be developed in consultation with Planning Department staff.

### **Fees**

The current application fee for a shadow analysis (K Case) is \$ 525.00 (adjusted annually). Please note, any time spent by Planning Department staff over and above the initial application fee will be billed on a time and materials basis. Recreation and Park Department staff will also bill time spent on the shadow analysis; including, but not limited to; providing information about park properties, review of the shadow analysis, preparation of the staff report, presentation to the Capital Committee and/or Recreation and Park Commission.

### **Recreation and Park Commission and Planning Commission Hearings**

Projects which require a shadow analysis for the purpose of Section 295 compliance and which result in net new shadow on a park or open space under the jurisdiction of the Recreation and Park Department also require a hearing before the Recreation and Park Commission and the Planning Commission.

Recreation and Park Commission Hearings consist of two steps:

- (1) Capital Committee Hearing (meets 1<sup>st</sup> Wednesday of each month)
- (2) Recreation and Park Commission Hearing (meets 3<sup>rd</sup> Thursday of each month)

At the second hearing, the Recreation and Park Commission issues a recommendation, and the proposed project may then be heard by the Planning Commission.

The environmental review document should be final (not certified) prior to the Capital Committee Hearing. This means that a Categorical Exemption, or Community Plan Exemption, or Mitigated Negative Declaration should be signed, for an EIR the Responses to Comments and changes to the DEIR should be finalized. Recreation and Park Department staff should be consulted on how far in advance of the Capital Committee Hearing the environmental review document should be finalized.

The shadow analysis should be finalized at least three weeks prior to the Capital Committee Hearing for inclusion in the staff report. Recreation and Park Department staff typically review one or two drafts of the shadow analysis prior to finalizing the document. Recreation and Park staff should be consulted as early in the process as possible.

It should be noted that in some cases, a joint hearing before the Planning Commission and the Recreation and Park Commission is required. If a joint hearing is required, you will be notified by Planning Staff. Joint hearings are scheduled on a case-by-case basis through the respective Commission Secretaries.

Please do not hesitate to contact Rachel Schuett at [Rachel.Schuett@sfgov.org](mailto:Rachel.Schuett@sfgov.org) or (415) 575.9030 or Kevin Guy at [Kevin.Guy@sfgov.org](mailto:Kevin.Guy@sfgov.org) or (415) 558.6163 with any questions, or if you need further clarification.

# EXHIBIT C



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

2656 29<sup>th</sup> Street, Suite 201  
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.  
(949) 887-9013  
[mhagemann@swape.com](mailto:mhagemann@swape.com)

June 22, 2023

Richard Drury  
Lozeau | Drury LLP  
1939 Harrison Street, Suite 150  
Oakland, CA 94618

**Subject: Response to Comments on the 1151 Washington Street Project**

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Dear Mr. Drury,

I have read the project sponsor response to our April 12, 2023 comments on the proposed 1151 Washington Street development. The project sponsor claims that the presence of toxic chemicals on the project site – namely tetrachloroethylene (PCE) and hexavalent chromium -- is not an "unusual circumstance" in San Francisco. The project sponsor states, "Encountering contaminated soils within San Francisco is the norm, not an unusual circumstance ...".<sup>1</sup>

Review of the California Department of Toxic Substances Control Envirostor database shows otherwise. Envirostor, a compendium of contaminated sites known to the California Department of Toxic Substances Control, lists only 24 sites in San Francisco where PCE contamination exists.<sup>2</sup> Similarly, Envirostor lists only 11 San Francisco sites where hexavalent chromium has been found.<sup>3</sup> Based on the review of Envirostor, it is my opinion that PCE contamination in soil vapor and hexavalent chromium contamination in soil, as found on the project site, is not the norm and is in fact unusual.

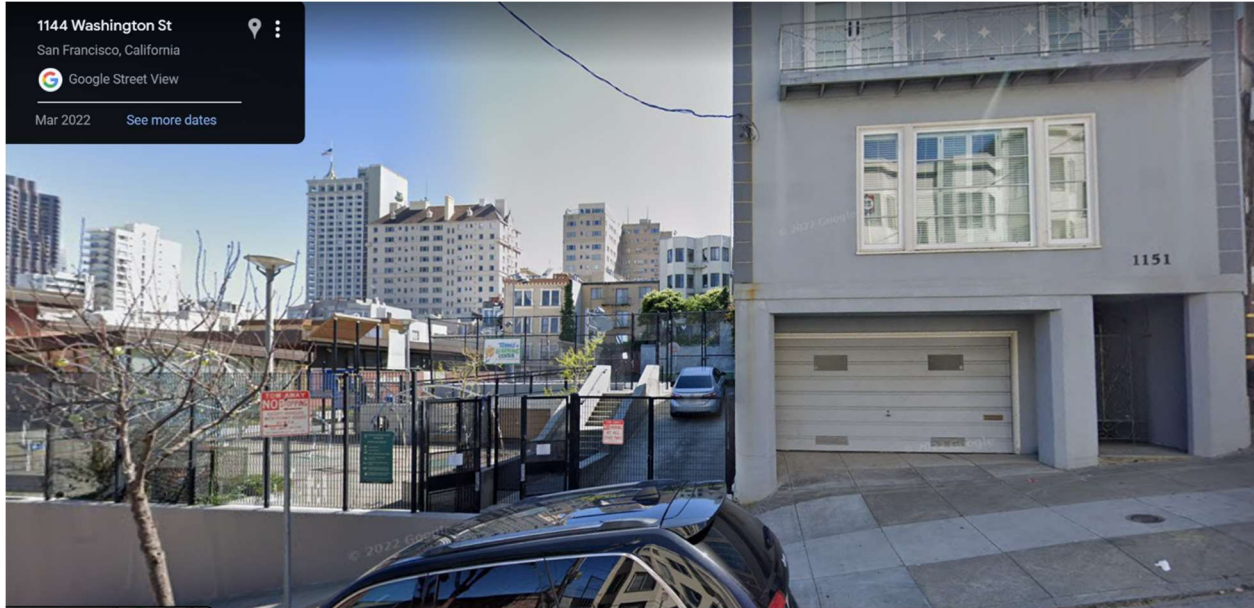
The presence of hexavalent chromium-contaminated soil may pose a risk to those playing and recreating at the adjacent playground and basketball court. When excavated, contaminated soil may become airborne as dust and may be inhaled by kids and adults at the playground and basketball court located directly adjacent to the project as shown below in an image obtained from Google Street View Maps. Provisions for dust management are provided in the October 7, 2022 Site Mitigation Plan; however, the plan inexplicably fails to mention the presence of the directly adjacent playground and therefore fails to take specific steps to protect the children and adults who would be within inches of excavation as it proceeds.

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<sup>1</sup> June 16, 2023 Letter to President Aaron Peskin and Supervisors, Patterson & O'Neill, p. 3

<sup>2</sup> Attachment 1

<sup>3</sup> Attachment 2



We reiterate our recommendation to prepare a full CEQA analysis that would disclose the extent of the soil and soil vapor contamination, the source of which remains unknown. We also maintain that the notification of a state regulatory agency is necessary to ensure an adequate contaminant assessment and cleanup, if required.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matt Hagemann'.

Matt Hagemann, P.G., C.Hg.

Attachment 1: Screenshot of an Advanced Search of the Envirostor Database using terms “San Francisco” and “Tetrachloroethylene (PCE)”

PROJECT SEARCH RESULTS								STATUS: All Statuses		GO
SEARCH CRITERIA: SAN FRANCISCO, TETRACHLOROETHYLENE (PCE)										
24 RECORDS FOUND										
										EXPORT TO EXCEL
										PAGE 1 OF 1
	SITE / FACILITY NAME	ESTOR / EPA ID	PROGRAM TYPE	STATUS	ADDRESS DESCRIPTION	CITY	ZIP	CALENVIROSCREEN SCORE	COUNTY	
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	1601-1633 OCEAN AVENUE	60002818	STATE RESPONSE	ACTIVE	1601-1633 OCEAN AVENUE	SAN FRANCISCO	94112	40-45%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	2550 IRVING STREET AFFORDABLE HOUSING	60003063	VOLUNTARY CLEANUP	ACTIVE	2550 IRVING STREET	SAN FRANCISCO	94122	25-30%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	AIRPORT BOULEVARD PROPERTIES	60002307	VOLUNTARY CLEANUP	ACTIVE - LAND USE RESTRICTIONS	309/315/401/411/421 AIRPORT BLVD, 401-407 CYPRESS AVE, 216 MILLER AVE	SOUTH SAN FRANCISCO	94080	70-75%	SAN MATEO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	ARLENE'S CLEANERS	60001242	STATE RESPONSE	ACTIVE	2017 CHESTNUT STREET	SAN FRANCISCO	94123	5-10%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	BAY AREA DRUM COMPANY	38280112	STATE RESPONSE	CERTIFIED	1212 THOMAS AVENUE	SAN FRANCISCO	94124	90-95%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	BAY VIEW CLEANERS & LAUNDRY AKA BAYAREA	60003284	EVALUATION	ACTIVE	1153 SHAFTER AVENUE	SAN FRANCISCO	94124	90-95%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	BAYVIEW PLUME STUDY AREA	70000015	EVALUATION	INACTIVE - NEEDS EVALUATION	NEAR INTERSECTION OF SHAFTER AVENUE AND HAWES STREET	SAN FRANCISCO	94124	90-95%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	BELLS CLEANERS_AND LAUNDRY	60003285	EVALUATION	ACTIVE	4726 3RD STREET	SAN FRANCISCO	94124	75-80%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	CP DEVELOPMENT-HUNTERS POINT	60002215	FEDERAL SUPERFUND - LISTED	ACTIVE	HUNTERS POINT	SAN FRANCISCO	94124	80-85%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	DOMBO JOS LAUNDRY	60002734	VOLUNTARY CLEANUP	INACTIVE - WITHDRAWN	3319-3321 BALBOA STREET	SAN FRANCISCO	94121	25-30%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	FORMER ALBRITE CLEANERS	60003141	STATE RESPONSE	ACTIVE	2511 IRVING STREET	SAN FRANCISCO	94122	25-30%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	FORMER VEL CLEANERS	60003019	STATE RESPONSE	ACTIVE	485 O'FARRELL STREET	SAN FRANCISCO	94102	60-65%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	HUNTERS POINT - REDEVELOPMENT	60002254	VOLUNTARY CLEANUP	ACTIVE	HUNTERS POINT	SAN FRANCISCO	94124	80-85%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	HUNTERS POINT NAVAL SHIPYARD, PARCEL C	38440003	FEDERAL SUPERFUND - LISTED	ACTIVE - LAND USE RESTRICTIONS	965 ACRES; SE PORTION OF SF, CA	SAN FRANCISCO	94124	80-85%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	HUNTERS POINT NAVAL SHIPYARD, PARCEL D & PARCEL G	38440004	FEDERAL SUPERFUND - LISTED	ACTIVE - LAND USE RESTRICTIONS	965 ACRES; SE PORTION OF SF, CA	SAN FRANCISCO	94124	80-85%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	MORENA TRUST	60002386	VOLUNTARY CLEANUP	ACTIVE	111 STARLITE STREET AND 437, 439, 441 AND 447 CANAL STREET	SOUTH SAN FRANCISCO	94080	80-85%	SAN MATEO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	NAVAL STATION TREASURE ISLAND	38370044	STATE RESPONSE	ACTIVE - LAND USE RESTRICTIONS	550 ACRES; BETWN SAN FRANCISCO & OAKLAND	SAN FRANCISCO	94130	85-90%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	NAVAL STATION TREASURE ISLAND/SITE 21-VESSEL WASTE OIL RECOVERY AREA	60001093	STATE RESPONSE	CERTIFIED O&M - LAND USE RESTRICTIONS ONLY - LAND USE RESTRICTIONS	TREASURE ISLAND, BETWEEN SAN FRANCISCO AND OAKLAND	SAN FRANCISCO	94130	85-90%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	NAVAL STATION TREASURE ISLAND/SITE 24-DRY CLEANING FACILITY	60001094	STATE RESPONSE	ACTIVE - LAND USE RESTRICTIONS	TREASURE ISLAND, BETWEEN SAN FRANCISCO AND OAKLAND	SAN FRANCISCO	94130	85-90%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	PRESIDIO OF SAN FRANCISCO	38970002	STATE RESPONSE	CERTIFIED / OPERATION & MAINTENANCE - LAND USE RESTRICTIONS	1,400 AC; N-MOST TIP OF THE SF PENINSULA	SAN FRANCISCO	94129	1-5%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	SCHLAGE LOCK COMPANY	38340157	STATE RESPONSE	CERTIFIED / OPERATION & MAINTENANCE - LAND USE RESTRICTIONS	BAYSHORE BLVD AND SUNNYDALE AVE.	SAN FRANCISCO	94134	75-80%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	THE POLICE CREDIT UNION	60003000	VOLUNTARY CLEANUP	INACTIVE - NEEDS EVALUATION	2500 - 2525 IRVING STREET	SAN FRANCISCO	94122	25-30%	SAN FRANCISCO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	UNION PACIFIC - SITE ADJACENT TO 69 S. LINDEN AVENUE	60001636	VOLUNTARY CLEANUP	ACTIVE	EAST OF 69 S. LINDEN AVENUE	SOUTH SAN FRANCISCO	94080	80-85%	SAN MATEO
<a href="#">[REPORT]</a>	<a href="#">[MAP]</a>	UNION PACIFIC PROPERTY	60002804	VOLUNTARY CLEANUP	ACTIVE	DUBUQUE AVENUE	SOUTH SAN FRANCISCO	94080	80-85%	SAN MATEO

Attachment 2: Screenshot of an Advanced Search of the Envirostor Database using terms “San Francisco” and “Chromium VI”

SEARCH CRITERIA: SAN FRANCISCO, CHROMIUM VI

11 RECORDS FOUND [EXPORT TO EXCEL](#) PAGE 1 OF 1

	<a href="#">SITE / FACILITY NAME</a>	<a href="#">ESTOR / EPA ID</a>	<a href="#">PROGRAM TYPE</a>	<a href="#">STATUS</a>	<a href="#">ADDRESS DESCRIPTION</a>	<a href="#">CITY</a>	<a href="#">ZIP</a>	<a href="#">CALENVIROSCREEN SCORE</a>	<a href="#">COUNTY</a>
<a href="#">[REPORT]</a>	CAL WEST ELECTRIC, INC	41360099	HISTORICAL	REFER: OTHER AGENCY	1341 SAN MATEO AVENUE	S SAN FRANCISCO	94080	80-85%	SAN MATEO
<a href="#">[REPORT]</a> <a href="#">[MAP]</a>	HUNTERS POINT NAVAL SHIPYARD, PARCEL D & PARCEL G	38440004	FEDERAL SUPERFUND - LISTED	ACTIVE - LAND USE RESTRICTIONS	065 ACRES; SE PORTION OF SF, CA	SAN FRANCISCO	94124	80-85%	SAN FRANCISCO
<a href="#">[REPORT]</a> <a href="#">[MAP]</a>	MOBILE DEBRIS BOX SERVICE	38990012	EVALUATION	INACTIVE - NEEDS EVALUATION	1301V YOSEMITE AVENUE	SAN FRANCISCO	94124	80-85%	SAN FRANCISCO
<a href="#">[REPORT]</a> <a href="#">[MAP]</a>	NL INDUSTRIES, SAN FRANCISCO PAINT PLANT	38280040	EVALUATION	NO FURTHER ACTION	2240 24TH ST.	SAN FRANCISCO	94107	60-65%	SAN FRANCISCO
<a href="#">[REPORT]</a>	OYSTER POINT DUMP	41490033	HISTORICAL	REFER: RWQCB	OYSTER POINT BLVD AT OYSTER POINT MARINA	S SAN FRANCISCO	94080		SAN MATEO
<a href="#">[REPORT]</a>	PACIFIC PLASTIC PRODUCTS, INC	41300099	HISTORICAL	REFER: RWQCB	405 SOUTH AIRPORT BOULEVARD	S SAN FRANCISCO	94080	80-85%	SAN MATEO
<a href="#">[REPORT]</a> <a href="#">[MAP]</a>	PG&E - STATION T	38490008	STATE RESPONSE	NO FURTHER ACTION	465 STEVENSON STREET	SAN FRANCISCO	94103	70-75%	SAN FRANCISCO
<a href="#">[REPORT]</a> <a href="#">[MAP]</a>	POLITA HAWLEY FORGE	38340029	STATE RESPONSE	CERTIFIED	2350 JERROLD AVENUE	SAN FRANCISCO	94124	NA	SAN FRANCISCO
<a href="#">[REPORT]</a> <a href="#">[MAP]</a>	PRESIDIO OF SAN FRANCISCO	38970002	STATE RESPONSE	CERTIFIED / OPERATION & MAINTENANCE - LAND USE RESTRICTIONS	1,400 AC; N-MOST TIP OF THE SAN SF PENINSULA	SAN FRANCISCO	94129	1-5%	SAN FRANCISCO
<a href="#">[REPORT]</a> <a href="#">[MAP]</a>	PRESIDIO OF SAN FRANCISCO/BATTERY HOWE WAGNER	60001637	STATE RESPONSE	NO FURTHER ACTION	BATTERY WAGNER ROAD	SAN FRANCISCO	94129	1-5%	SAN FRANCISCO
<a href="#">[REPORT]</a>	U.S. STEEL CORP.	41330044	HISTORICAL	REFER: RWQCB	105 OYSTER POINT BLVD	S SAN FRANCISCO	94080	80-85%	SAN MATEO