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**Subject:** 1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)  
**Date:** Tuesday, June 27, 2023 12:12:49 PM  
**Attachments:** [LTR to BOS 1151 Washington CEQA Appeal Supplemental Response.pdf](#)

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Dear President Peskin and Supervisors:

Please see the attached supplement response submitted on behalf of the project sponsors responding to the appellants' most recent submittals regarding the proposed density bonus project at 1151 Washington Street Project that is on today's Board agenda (Board File No. 230592 and 230630).

Thank you,

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June 27, 2023

## *VIA E-MAIL*

President Aaron Peskin and Supervisors  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: 1151 Washington Street (2022-010833CUA)  
CEQA Exemption Appeal (Board File No. 230592)

Dear President Peskin and Supervisors:

Our office represents Alison and Todd Davis, owners of 1151 Washington Street. The proposed project includes the construction of a four-story, ten-unit building within a fully developed urban neighborhood. The Planning Department determined that the Project qualified for a Class 32 In-fill Development CEQA exemption, which was appealed by Clayton Timbrell, a neighbor who lives next door at 1157 Washington Street.

The appellant has submitted multiple additional letters, largely repeating the same erroneous arguments included in his initial appeal. The appellant (again) incorrectly asserts that the Site Mitigation Plan was prepared for a different project. It wasn't. The appellant (again) incorrectly asserts that the project does not meet fire code requirements, this time asserting that the Fire Marshal does not understand the fire code as well as the appellant does. These arguments and misstatements have already been addressed in our June 16 letter, and in the Planning Department responses, and we need not repeat those arguments again. However, the appellant continues to play fast and loose with the facts and the law to stoke fear and confusion. We submit this letter only to address the latest false statements included in the appellant's past three submittals.

### ***There Are No Unusual Circumstances Applicable to the Project.***

The appellant continues to argue that the substances found at the project site, which slightly exceed the Regional Water Quality Control Board's most conservative environmental screening levels (ESLs) for residential land use, is an unusual circumstance. As previously explained, ESLs are established to determine when additional evaluation is warranted, and they differ from toxicity levels that measure when a contamination may impact public health. The project's environmental consultants, who have 25 years of experience, have reviewed the appellant's letters. The environmental consultants have determined the appellant's letters do not raise any evidence or issues, and reconfirmed that the Site Mitigation Plan (SMP) is adequate to protect public health and safety. (See **Exhibit A.**)

The appellant's consultants now falsely state that the presence of tetrachloroethylene and hexavalent chromium is highly unusual because they did an internet search, which they claim confirms that these substances have rarely been found in San Francisco. The consultants relied on the California Department of Toxic Substances Control's (DTSC) Envirostor Database to make this erroneous statement, but apparently forgot to read the Database's "Frequently Asked Questions." The Envirostor Database explicitly states that it **does not** include sites "where Federal, City, County or other State level agencies hold jurisdiction and DTSC was not involved." (See **Exhibit B**.) In other words, this database **does not** include sites that are subject to the City's Maher Ordinance. The Envirostor Database *only* includes information regarding contaminated sites where DTSC was involved in site remediation. The consultants' claim that the database shows all substances that have been found to exceed ESLs in San Francisco is simply wrong.

As the Planning Department confirmed, approximately a quarter of the entire City is subject to the Maher Ordinance. Finding slightly elevated ESLs is not unusual. And as the San Francisco Department of Public Health has confirmed, the SMP for the project is adequate to protect public health.

**The Project is Not Relying on Mitigation Measures to Qualify for an Exemption.**

The appellant continues to argue that the project SMP that was developed in compliance with the City's Maher Ordinance constitutes impermissible mitigation. The appellant fails to address the caselaw that directly contradicts his position, as courts have already confirmed that an "agency may rely on generally applicable regulations to conclude an environmental impact will not be significant and therefore does not require mitigation." (*S. F. Beautiful v. San Francisco* (2014) 226 Cal.App.4th 1012, 1033; *see also Protect Telegraph Hill v. San Francisco* (2017) 16 Cal.App.5th 261, 273.) This project was subject to the generally applicable Maher Ordinance standards, and the City did not impose unique site-specific special conditions to mitigate potential impacts. The appellant's new citation to *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215, where the Supreme Court rejected a lumber company's argument that the issuance of a permit to harvest timber was completely exempt from CEQA, simply has nothing to do with site-specific mitigation versus generally applicable regulations.

The appellant also now argues that the project must have necessarily relied on mitigation measures because the SMP includes the word "mitigation" in the title. As previously explained, the City must be able to rely on generally applicable regulations designed to offset project impacts. Any other result would be unworkable. The City relies on generally applicable inclusionary housing requirements to "mitigate" impacts to housing, as well as a whole suite of in-lieu fees, enacted under the *Mitigation Fee Act* (Gov. Code § 66300), to "mitigate" impacts for everything from traffic to public infrastructure. If a project that complies with generally applicable regulations that include the word "mitigation" caused a project to require in-depth CEQA review, there could never be another exemption in the City – or the State of California.

**Shadows Do Not Qualify as a Public Health and Safety Impact.**

The appellant also erroneously argues that the City may deny a density bonus project if the City finds that the project will have a specific adverse impact on public health, safety, or the physical

environment, claiming the City “conveniently neglected to mention the ‘physical environment’ exception.” City staff “failed” to mention the “physical environment” exception because the Legislature amended the density bonus law two years ago to specifically delete the “physical environment” exception. (See Senate Bill 728 (2001).) City staff was correct that a density bonus project may only be denied based on a specific, adverse impact on public health or safety, and shadow impacts do not constitute a health and safety impact.

The appellant also now claims that his original shadow analysis, which found that 76% of the Betty Ann Ong Recreation Center is already covered in shadows and that the project would increase shadows by less than 3%, was wrong. The Board should apparently *not* trust his first shadow analysis, but instead should rely on a cropped picture from the appellant’s purported “updated” shadow analysis, which contains no explanation or quantitative analysis at all. The appellant’s cropped picture certainly does not constitute convincing evidence – if this could be considered evidence at all.

The appellant boldly asserts, without a citation or any legal support, that any project that casts a shadow on a public park requires in-depth CEQA review, regardless of size, even if the project is exempt from conducting a shadow analysis under Planning Code § 295. The Planning Department has specifically, and correctly, rejected this assertion. The City acknowledged in the Housing Element Update that “the CEQA Guidelines do not require an analysis” of shadow. (Housing Element, Appendix C, p. 60.) As a result, Housing Element Policy 8.5.6 includes a commitment to revise the CEQA process to eliminate San Francisco specific CEQA review, including shadow impacts, that “goes beyond the CEQA statute.” Courts have similarly confirmed that the City’s “shadow limits were policy restrictions, *not a CEQA threshold.*” (*S. of Mkt. Cmty. Action Network v. San Francisco* (2019) 33 Cal.App.5th 321, 351.) This project does not even exceed the City’s Planning Code own shadow thresholds policy restrictions, and therefore certainly do not exceed CEQA thresholds *that do not consider shadow impacts at all.* The City must follow-through on its Housing Element commitment to eliminate unnecessary review of non-CEQA topics, which cause significant delays in the approval of desperately needed housing projects.

**Conclusion.**

The project clearly qualifies for a Class 32 In Fill Exemption. The appellant fails to show the existence of any unusual circumstances and fails to provide convincing evidence that the project will have a significant effect on the environment. The Board should reject this appeal, uphold the exemption, and allow this much needed housing project to move forward.

Very truly yours,

PATTERSON & O’NEILL, PC



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Ryan J. Patterson

Brian J. O’Neill

Attorneys for Alison and Todd Davis

# **EXHIBIT A**



June 27, 2023

**SUBJECT: Letter Response to SWAPE’s “Comments on the 1151 Washington Street Project”**

Dear Board of Supervisors,

The Site Mitigation Plan (SMP) was prepared for the San Francisco Department of Health by a California Professional Geologist with 25 years of experience completing similar investigations and reports. The Department of Health approved the SMP in January 2023, confirming that the SMP complied with Maher Ordinance requirements and is adequate to protect human health and safety. The San Francisco Department of Health will continue to have jurisdiction over the project to ensure that the project complies with the recommendations included in the SMP.

The SMP includes a recommendation for the design and installation of a vapor intrusion mitigation system (VIMS) to mitigate the identified vapor intrusion hazard to the planned buildings. The SMP recommends the review and approval of the VIMS design prior to installation. Additionally, the SMP recommends the completion of reports detailing the installation and subsequent monitoring of the VIMS in order to ensure its efficacy in mitigating vapor intrusion to the planned buildings. VIMS are a commonly used method to address potential soil vapor hazards in San Francisco, and have been proven effective to mitigate potential vapor intrusion hazards.

Soils at the Site were characterized according to SF County Health requirements for a property located within a Maher zone. Soil analytical results were compared to the SF Bay Regional Water Quality Control Board's (RWQCB) most conservative environmental screening levels (ESLs) for residential land use. ESLs are guidelines established by the RWQCB and by definition, any detected concentration below its applicable ESL can be assumed to not pose a significant threat to human health, water resources, or the environment.

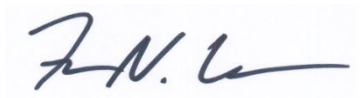
Similarly, the presence of a chemical at concentrations in excess of an ESL does *not* necessarily indicate adverse effects on human health or the environment, rather that additional evaluation is warranted (RWQCB, 2019). We provided that additional evaluation of the soil samples and developed an appropriate SMP to address the potential hazards.

Although soil samples were found to contain levels of hexavalent chromium and thallium slightly exceeding the most conservative residential ESL, no contaminants were detected above construction worker health ESLs. Finding soil samples in San Francisco that slightly exceed RWQB’s conservative ESLs is a common occurrence. Again, the SMP was designed to adequately address the chemicals found on this site, as confirmed by the San Francisco Department of Health.

We have reviewed the letter by SWAPE, a consulting firm based in Santa Monica. SWAPE's letter does not raise any issues of concern or provide any new evidence of potential hazards. This letter does not alter our conclusion that the SMP is adequate to protect health and safety.

Sincerely,

**Environmental Investigation Services, Inc.**



Forrest Cook, PG # 8201 exp 9/24  
Professional Geologist

Peter Willits  
Staff Geologist

## **EXHIBIT B**



# ENVIROSTOR FAQs

## Frequently asked Questions & Answers

### Q: What is EnviroStor?

A: The Department of Toxic Substances Control's (DTSC's) EnviroStor database is an online search and Geographic Information System (GIS) tool for identifying sites that have known or potential contamination as well as facilities permitted to treat, store, or dispose of hazardous waste. You can conduct searches by site/facility name, address, city, and county, EPA ID number, or EnviroStor ID number.

### Q: How do I access EnviroStor?

A: The EnviroStor public webpage is located at: [www.envirostor.dtsc.ca.gov](http://www.envirostor.dtsc.ca.gov). If you need assistance with EnviroStor, please contact the EnviroStor Help Desk (email: [envirostor@dtsc.ca.gov](mailto:envirostor@dtsc.ca.gov), phone: 1-877-7TOXICS (1-877-786-9427)).

### Q: What type of information can be obtained from EnviroStor?

A: The EnviroStor database includes the following hazardous waste facilities and cleanup sites: Permitted Treatment, Storage, and Disposal Facilities (TSDFs); Federal Superfund sites (National Priorities List (NPL)); State Response sites, including Military Facilities and State Superfund sites; Voluntary Cleanup sites; School sites; and Corrective Action sites. You can obtain information that includes site/facility name, site/facility type, status, address, any restricted use (recorded deed restrictions), past use(s) that caused contamination, potential contaminants of concern, potential environmental media affected, site history, last approved and in-progress permits, planned and completed site investigation and cleanup activities, and completed inspections and enforcement actions. For more information about site type and status, please refer to the [Glossary of Terms](#).

### Q: What type of information is not included in EnviroStor?

A: The EnviroStor database does not include all statewide-contaminated sites.

EnviroStor provides information on permitted hazardous waste facilities and on sites where DTSC oversaw or conducted investigation/remediation work. The following site/facilities types are not listed on the EnviroStor website:

- Sites where DTSC conducted an emergency removal at a former methamphetamine laboratory
- Sites where DTSC has issued an emergency permit or a variance for hazardous waste activities

- Sites/Facilities where Federal, City, County or other State level agencies hold jurisdiction and DTSC was not involved, including facilities under the jurisdiction of the Certified Unified Program Agency (CUPA).
- Electronic Waste (E-Waste) Facilities prior to July 1, 2021.
- Hazardous Waste Generators prior to July 1, 2021.
- Hazardous Waste Transporters prior to July 1, 2021.

**Q: I know DTSC has worked/is working on a Site/Facility, but why can't I find it?**

A: Below are the most common reasons why you may not be able to find a site/facility in EnviroStor, and suggestions for how to modify your search:

- Your search parameters may be too narrow, try expanding your search parameters for better results. For example, instead of entering the exact street address, search by only the street name. Or start by searching by the zip code.
- If you are searching by Site Name and the system is not returning results, the site may have changed names or was entered into the system under a different name. For example, Pacific Gas and Electric may be entered into the database as "PG&E," "P G&E," "P G & E," "PG & E," or "Pacific Gas & Electric. Try searching by alternate names or a partial name. If searching by Site Name is not returning the expected results, you may also want to try entering the address into the main **Search** tool to identify sites around an address.
- If searching by address, please note that sites located in unincorporated areas may not have an official address (such as abandoned mine sites). Additionally, some sites may have been entered into the system without a street address. Try the main **Search** tool to identify sites around the area.
- The site was given an incorrect latitude / longitude information, placing it at an incorrect location on the map. Try searching for the site using the **Site/Facility Search** tool using the site name or address instead.
- DTSC may not be the "Lead-Agency" working on the site or facility. DTSC also provides support to sister agencies (Regional Water Quality Control Board or CalRecycle) and to Certified Unified Program Agencies (County Lead Agencies). In these cases, DTSC does not generally track the project on EnviroStor.

[Tutorial for how to search EnviroStor](#)

**Q: What is the difference between using the main Search tool versus using the Site/Facility Search or Advanced Search?**

A: The main **Search** tool on the EnviroStor Home page will suggest potential sites/facilities as you enter information. In addition, it allows you to conduct a map search for any sites/facilities located near the location you searched by. The **Site/Facility Search** and **Advanced Search** tools are designed to find a specific site/facility in EnviroStor.

[Tutorial for how to search EnviroStor](#)

**Q: How can I search for contaminated sites/permitted hazardous waste facilities near me?**

A: From the EnviroStor home page you can use the main **Search** tool to search by partial/full address, city, zip code, or county to obtain a listing of local sites and display those sites on the interactive map. You can further refine your search to only display sites/facilities within a specific radius of an address.

[Tutorial for how to search EnviroStor](#)

**Q: How can I search for a specific site/facility?**

A: There are two search options for finding a specific site - **Site/Facility Search** or **Advanced Search**. Both options are located in the **Tools** menu. The **Site/Facility Search** allows you to enter partial information, such as a site/facility name, address, city, zip code, or county to bring up a list of sites matching the entry. The **Advanced Search** includes the same fields found in the **Site/Facility Search** and provides additional fields you can query the system by. Depending on the Program Type you wish to search by the additional fields can include: Assessor's Parcel Number (APN), Status, Program Type, DTSC Office, School District, Funding, National Priorities List, Special Program, Potential Contaminants of Concern, Past Use(s) that Caused Contamination, Potential Media Affected, and past Regulatory Actions.

[Tutorial for how to search EnviroStor](#)

[Tutorial for how to use the Advanced Search tool](#)

**Q: I am interested in information about a specific property or area. Can the EnviroStor database tell me if the property is potentially contaminated?**

A: You can search by full/partial address information using the main **Search** tool to see if the property is included in EnviroStor. As you enter information, the system will provide suggestions on possible sites/facilities that meet your criteria. If the site/property is entered in EnviroStor, you can view the site details for the current cleanup status. For cleanup status definitions, please refer to the [Glossary of](#)

[Terms.](#)

[Tutorial for how to locate the Cleanup Status](#)

[Tutorial for how to search EnviroStor](#)

**NOTE:** The absence of the site in EnviroStor does not mean the site is contamination-free. The EnviroStor database does not include ALL contaminated sites throughout California. Other State and local agencies maintain lists of contaminated properties under their jurisdiction. Also, if a contaminated property has not been reported, DTSC will have no way of knowing that the property is contaminated. The only way to be sure that a site does not have contamination is to have the site evaluated. For more information on environmental consultants, please consult source information like telephone directories or contact DTSC's Regulatory Assistance Office at 1-800- 72TOXIC (1-800-728-6942). From outside California, please call (916) 255-3545.

**Q: What are some of the other search features?**

A: Under the **Reports** menu you can view and export results for the following standard reports:

- Permitted Facilities - Permitted hazardous waste facilities
- Facilities with Pending Permits Decisions - Hazardous waste facilities with pending permit decisions and public comment periods
- Inspection Report - Completed inspections on hazardous waste facilities
- Enforcement Report - Completed enforcement actions on hazardous waste facilities
- Corrective Action Sites - DTSC's corrective action sites
- Cleanup Sites by Program - DTSC cleanup sites by programs including Voluntary Cleanup, Schools, etc.
- Land Use Restrictions – List of DTSC site/facilities with land use restrictions)
- Cortese List - DTSC's portion of the Hazardous and Substance Site List(Cortese)
- Site/Facilities by Assembly/Senate/Congressional District – View sites and facilities by Assembly, Senate or Congressional District as a list or on the EnviroStor map
- Commercial Offsite Facilities - Commercial hazardous waste and used oil facilities that accept offsite waste for a fee)

[Tutorial for how to search EnviroStor](#)

**Q: Can I search for a site using the APN (Assessor's Parcel Number)?**

A: Under the **Tools**, menu click on the **Advanced Search** option, and you can search for a site by entering the APN. Please note that APNs are only available for a limited number of sites.

[Tutorial for how to search EnviroStor](#)

**Q: Does the EnviroStor database contain information on the location of public drinking water wells?**

A: No, DTSC does not maintain information on public drinking water wells. For information regarding well data, please contact the State Water Resources Control Board:

([http://www.waterboards.ca.gov/drinking\\_water/programs/index.shtml](http://www.waterboards.ca.gov/drinking_water/programs/index.shtml)).

**Q: Does the EnviroStor database include information regarding disposal of batteries, tires, waste oil, and recycling of scrap metal?**

A: No, the EnviroStor database does not include information regarding disposal of household hazardous waste, such as batteries and waste oil. For more information, you can access DTSC's general information on Universal Waste at: <http://www.dtsc.ca.gov/HazardousWaste/UniversalWaste/index.cfm>, or contact the California Integrated Waste Management Board at:

<http://www.calrecycle.ca.gov/>.

**Q: How often is information in the EnviroStor database updated?**

A: DTSC is continuously updating data and uploading documents in EnviroStor. Downloadable files are updated nightly.

**Q: What is the Cortese List?**

A: The Hazardous Waste and Substances Sites (Cortese) List is a planning resource used by the State, local agencies, and developers to comply with the California Environmental Quality Act (CEQA) requirements in providing information about the location of hazardous materials release sites. Government Code section 65962.5 requires the California Environmental Protection Agency to develop, at least annually, an updated Cortese List. DTSC is responsible for a portion of the information contained in the Cortese List. Other State and local government agencies are required to provide additional hazardous material release information for the Cortese List. For more information on the Cortese list, please refer to the [California Environmental Protection Agency's Cortese webpages](#).

**Q: Is the Cortese List included in EnviroStor?**

A: EnviroStor provides one component of the Cortese List data by identifying State Response and National Priorities List (NPL) (Federal Superfund), and Backlog sites listed under Health and Safety Code section 25356. Please note that this report also includes Certified with Operation and Maintenance sites. The **Cortese Report** can be found in the **Reports** menu or at:

[http://www.dtsc.ca.gov/SiteCleanup/Cortese\\_List.cfm](http://www.dtsc.ca.gov/SiteCleanup/Cortese_List.cfm)

**NOTE:** The EnviroStor Cortese List report does not include information on DTSC's hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code. Please refer to the [California Environmental Protection Agency's Cortese webpages](#) for more information.

**Q: What is the list of Land Use Restrictions?**

A: The Land Use Restrictions report provides a list of properties where DTSC has placed limits or requirements on future use of the property due to varying levels of cleanup possible, practical, or necessary at the site/facility. The list includes land use restrictions that are active. It is possible for sites to have multiple land use restrictions. Not all land use restrictions are available online at this time. DTSC will continue to update its list as documents become available. You can access the Land Use Restrictions report at:

[http://www.envirostor.dtsc.ca.gov/public/deed\\_restrictions.asp](http://www.envirostor.dtsc.ca.gov/public/deed_restrictions.asp)

**Q: How can I export or download files from EnviroStor, and what information do they include?**

A: You can export or download EnviroStor search results and reports as an MS Excel spreadsheet by using the **Export to Excel** feature available on most EnviroStor reports and search functions. EnviroStor also provides downloadable files that include all information contained on the profile report such as site name, location, status, site type, planned and completed activities, site management requirements, ID codes, regulatory agencies, etc. To access the downloadable files, click on the **Download Data** option in the **Tools** menu. Please note that uploaded documents are not included in the download files.

[Tutorial on reports available in EnviroStor](#)

**Q: What should I do if I think there is inaccurate information about a site/facility?**

A: If you believe there is inaccurate information about a site, please contact the EnviroStor Help Desk (email: [envirostor@dtsc.ca.gov](mailto:envirostor@dtsc.ca.gov), phone: 1-877-7TOXICS (1-877-786-9427)), or you may contact the Project Manager directly, if one is assigned to the site.

[Tutorial on how to find contact information in EnviroStor](#)

**Q: How do I obtain more information about a site/facility?**

A: To obtain additional information about a site/facility, please contact the Project Manager/Most Recent inspector listed or contact the regional file room for an appointment to view the project file. If there is no Project Manager/Inspector listed, please contact the Supervisor or Division/Branch Chief listed for the site.

[Tutorial on how to find contact information in EnviroStor](#)

**Q: Can I sign up for a mailing list on a particular site/facility?**

A. Yes, you can sign up to receive email notifications when new documents become available for a site/facility. Please refer to the [How to Subscribe to Email Alerts](#) tutorial for instructions on how to subscribe.

**Q: What is a Brownfield, and how can I search for Brownfield sites?**

A: Brownfields are properties that are contaminated, or thought to be contaminated, and are underutilized due to perceived remediation costs and liability concerns. DTSC has integrated existing programs and developed a number of new tools to facilitate reuse of brownfields properties. All of the categories of sites where DTSC is involved with site investigation or cleanup include properties that fit the broad federal definition of brownfields. Because of the broad nature of the brownfields definition, DTSC has not developed a specific list of brownfield sites. In general, the category “Voluntary Cleanup Sites” may contain more sites that are eligible for various brownfield programs and services. Historically, DTSC did not include information regarding redevelopment and reuse plans for properties in its site database; in the future, DTSC will include this information, when available. You can access additional information about DTSC’s various brownfields programs and services at: <https://dtsc.ca.gov/brownfields/>

**Q: I received a report from a disclosure source, but a site listed in the report is not in the EnviroStor database.**

A: Many companies export data from the EnviroStor database and combine data from multiple sources into a common report. DTSC is not responsible for misrepresentation of data that is obtained from the EnviroStor database. If a site is listed on a disclosure source report, but is not listed in the EnviroStor database, please contact the company that generated the report.

**Q: How do I get to the Department of Toxic Substances Control website?**

A: You can access the Department of Toxic Substances Control website by going to <http://www.dtsc.ca.gov>. You can also access the website from the **DTSC Web** menu and click on **DTSC Home**.

**Q: I have a question that is not on the FAQ. How do I get help?**

A: Additional guidance documents are available on the [How to Use EnviroStor](#) page.

Please refer to the [Glossary of Terms](#) for definitions of terms found in EnviroStor. If you have any questions regarding EnviroStor, please contact the EnviroStor Help Desk: email: [envirostor@dtsc.ca.gov](mailto:envirostor@dtsc.ca.gov), phone: 1-877-7TOXICS (1-877-786-9427).