



APPEAL OF EXEMPTION DETERMINATION

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH LOCAL OVERSIGHT PROGRAM SITE NO. 12076 INVESTIGATION/REMEDATION AT 1776 GREEN STREET

Date: October 13, 2020
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer – lisa.gibson@sfgov.org
Jeanie Poling, Environmental Coordinator – jeanie.poling@sfgov.org

Re: **Board File No. 200908, Planning Record No. 2020-002484ENV**

Hearing Date: October 20, 2020
Attachments: A – Letter from San Francisco Planning Department to State Water Resources Control Board regarding Sites on Cortese List, July 9, 2020
B – Letter from SWRCB to San Francisco Planning Department regarding Sites on Cortese List, July 21, 2020

Project Sponsor: Josh Corzine, 1776 Green Street, LLC – jcorzine@localcapgroup.com
Appellant: Richard Drury, Lozeau Drury LLP, on behalf of The Hollow Revolution

Introduction

This memorandum is a response to a letter of appeal dated July 17, 2020 to the Board of Supervisors (the “Board”) regarding the San Francisco Planning Department’s (“planning department’s”) issuance of the common sense exemption (“exemption” or “exemption determination”) for the San Francisco Department of Public Health (“health department”) Local Oversight Program (“LOP” or “local oversight program”) Site No. 12076 Investigation/Remediation at 1776 Green Street (“project” or “LOP case”).

The appeal to the Board was filed on July 17, 2020 by Richard Drury on behalf of The Hollow Revolution (“appellant”). The exemption determination and appeal letter are part of Board File No. 200908 and can be accessed here: <https://sfgov.legistar.com/Legislation.aspx>.¹

The decision before the Board is whether to uphold the planning department’s decision to issue an exemption and deny the appeal, or to overturn the planning department’s decision to issue the exemption and return the project to the planning department for additional environmental review.

¹ The appellant also filed an earlier appeal on June 17, 2020; however, because that filing preceded any approval action for the LOP case, the appeal was not ripe for review. The June 17 appeal letter and attachments, which are virtually identical to the July 17 appeal that is the subject of this response, are part of Board File No. 200907 and can be accessed here: <https://sfgov.legistar.com/Legislation.aspx>.

Site Description and Existing Use

The project site is the sidewalk on the north side of Green Street between Octavia and Gough streets, at the 1776 Green Street parcel, within the city's Marina neighborhood and bordering the Pacific Heights neighborhood. The neighborhood is primarily residential with a mix of two- to three-story, two-unit residential buildings as well as mid-rise multi-unit residential buildings. The building at 1776 Green Street is a vacant automobile repair garage constructed circa 1914 that is eligible for listing on the California Register of Historical Resources.

Project Description

The health department, under the city's local oversight program, is currently overseeing the characterization and remediation of petroleum-based constituents in the subsurface associated with past leaks from four former underground petroleum blend fuel storage tanks that were located beneath the sidewalk and removed from the project site in 2016.² The work is being conducted in accordance with the California State Water Resources Control Board ("state water board") *Low-Threat Underground Storage Tank Case Closure Policy* ("low-threat closure policy").³

The health department is actively overseeing the LOP case, which involves the investigation (identification of the levels and extent) and remediation (removal or cleanup) of the identified constituents in the subsurface at the project site. Additional investigations were completed in July/August 2018 and August 2020. From August 10 to 14, 2020, approximately 6 cubic yards of soil was removed and disposed of off-site; and four groundwater monitoring wells were installed at the site. On August 28, 2020, all generated soil waste drums were removed from the site and transported to an appropriately permitted waste disposal facility.

The next step is for the applicant to submit a remedial action implementation and subsurface investigation report to the health department. The health department will review the report to determine if the LOP case may be closed or if additional investigation or remediation is necessary under the state water board's low-threat closure policy.

The project that is the subject of this appeal does not involve a change of use or modifications to the building at 1776 Green Street.⁴

Background

The following bullet points provide a chronological summary of the various actions documented in the record related to the proposed project that have occurred since 1987.

- In 1987, under the on-site supervision of the health department, L&W Environmental Services, the contractor on behalf of a former property owner, California Garage, closed in place four fuel tanks under the sidewalk in front of the automobile repair garage at 1776 Green Street, and in 1989, the health department issued a Certificate of Completion indicating that no further action was required for the tank closure.⁵

² AllWest Environmental, Remedial Action and Subsurface Investigation Workplan, 1776 Green Street, San Francisco, CA, SFDPH-LOP Site Number: 12076, January 30, 2020 (revised February 3, 2020).

³ State Water Resources Control Board, Low-Threat Underground Storage Tank Case Closure Policy, 2012. Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012_0016atta.pdf.

⁴ A separate development project that is proposed at 1776 Green Street, involving a proposed two-story vertical addition and a change of use to a five-unit residential building (Record No. 2018-011430ENV), is not an element of the LOP case. This is addressed in response 7 below.

⁵ AllWest workplan op. cit., page 3.

- In 2016, under the on-site supervision of the health department, L&W Construction Services on behalf of a former property owner Green Street Collision Center/Green Street Auto Body, removed the four closed-in-place tanks. Due to the presence of residual petroleum-based contaminants detected in soil, the health department required additional investigation/remediation.⁶
- In 2017, the current property owner purchased the property.
- In April 2018, the project sponsor's consultant, AllWest, prepared a site characterization workplan to characterize soil and groundwater conditions at the site.
- From May to August 2018, AllWest conducted subsurface investigations at the project site. Eight soil borings were advanced and sampled, of which three were completed as groundwater monitoring wells, which were also sampled.^{7,8} The sampling indicated that soil and groundwater contained elevated concentrations of contaminants of concern, including benzene, toluene, xylene, and lead.
- In 2019, AllWest completed quarterly groundwater monitoring events in compliance with the health department's January 30, 2019 letter.⁹
- On January 15, 2020, the health department requested a remedial action and subsurface investigation workplan ("workplan") to address elevated concentrations of subsurface contaminants and to further delineate the groundwater plume (polluted groundwater in the aquifer) at the site.
- On January 24, 2020, San Francisco Public Works ("the public works department") approved Boring/Monitoring Well Encroachment Permit No. 20BW-00003 and Temporary Street Occupancy Permit No. 20TOC-00794.
- On January 28, 2020, the health department approved Boring/Monitoring Well Drilling Permit No. 7470.
- On January 29, 2020, AllWest requested and the public works department approved date changes to the two approved public works permits.
- On January 30, 2020, AllWest submitted a workplan to the health department.¹⁰
- On January 31, 2020, the health department approved the workplan.¹¹
- On February 3, 2020, the health department requested revisions to the workplan.
- On February 3, 2020, AllWest submitted a revised workplan.¹²

⁶ Ibid., page 3.

⁷ AllWest Environmental, *Site Characterization Report, 1776 Green Street, San Francisco, California 94123, SFDPH-LOP Site Number: 12076*, June 7, 2018.

⁸ AllWest Environmental, *Groundwater Monitoring Well Installation Report, 1776 Green Street, San Francisco, CA, SFDPH-LOP Site Number: 12076*, September 13, 2018.

⁹ AllWest Environmental, *Fourth Quarter 2019 Groundwater Monitoring Well Installation Report, 1776 Green Street, San Francisco, CA 94123, SFDPH-LOP Site Number: 12076*, January 30, 2020; SFDPH, 1776 Green Street, SF LOP, January 30, 2019.

¹⁰ AllWest Environmental, *Remedial Action and Subsurface Investigation Workplan, 1776 Green Street, San Francisco, CA, SFDPH-LOP Site Number: 12076*, January 30, 2020.

¹¹ San Francisco Department of Public Health, Environmental Health, *Site Characterization Workplan Approval, 1776 Green Street, San Francisco, California*, January 31, 2020.

¹² AllWest Environmental, *Remedial Action and Subsurface Investigation Workplan, 1776 Green Street, San Francisco, CA, SFDPH-LOP Site Number: 12076*, January 30, 2020 (revised February 3, 2020).

- On February 4, 2020, the health department approved the revised Boring/Monitoring Drilling Permit No. 7470 to install a permanent groundwater monitoring well.
- From February 3 to 5, 2020, AllWest advanced and sampled two soil borings in the vicinity of the former tanks, and began advancing a boring to install the groundwater monitoring well, per the approved workplan.
- On February 5, 2020, in response to an inspection following a public complaint claiming that on-site sampling work was unpermitted, the public works department suspended workplan activities at the project site, and AllWest filled in the borings with cement grout. (Sealing borings with cement grout is standard procedure once drilling is completed and if no well is being installed.)
- On February 11, 2020, the health department approved the revised workplan.¹³
- On February 20, 2020, the planning department received an application for environmental review for implementation of the February 3, 2020 workplan.
- On June 16, 2020, the planning department issued the common sense exemption for the revised workplan under the California Environmental Quality Act (“CEQA”). This exemption determination is the subject of this appeal.
- On June 17, 2020, attorney Richard Drury on behalf of The Hollow Revolution filed an appeal of the common sense exemption.
- On July 9, 2020, the public works department issued Boring/Monitoring Well Permit No. 20BW-00033 and Temporary Street Occupancy Permit No. 20TOC-05173. Issuance of these permits triggered the start of the 30-day appeal period for the exemption. (Note that the permits themselves were appealable to the Board of Appeals within 15 days of permit issuance, which would have ceased all on-site activity, but no such appeals were filed.)
- On July 17, 2020, Richard Drury on behalf of The Hollow Revolution filed a second appeal of the June 16, 2020 common sense exemption.
- On August 4, 2020, the health department extended the timeline for revised Boring/Monitoring Well Drilling Permit No. 7470 (that was issued on February 4, 2020 to install a permanent groundwater monitoring well).
- On August 11, 2020, the planning department determined that the appeal of the common sense exemption filed on July 17, 2020 was timely, and that the appeal filed on June 17, 2020 was not timely.
- From August 10 to 14, 2020, AllWest conducted the remaining investigation work at the project site, which involved advancing four borings for the purpose of removing contaminated soil and installing a groundwater monitoring well. The borings were backfilled with cement grout and the sidewalk was restored to match pre-existing conditions. This work was conducted under the oversight of the health department. Approximately 20 55-gallon steel drums of excavated soil were stored in the 1776 Green Street building pending waste profiling and disposal.

¹³ San Francisco Department of Public Health, Environmental Health, 1776 Green Street, February 11, 2020.

- On August 25, 2020, AllWest installed a new groundwater monitoring well and attempted to sample groundwater from a previously installed monitoring well. One partially full 55-gallon steel drum of purged groundwater was generated by this activity and stored in the 1776 Green Street building pending use during additional monitoring events and waste profiling for off-site disposal at an appropriate disposal facility.
- On August 28, 2020, ACT Enviro on behalf of AllWest removed all generated soil waste drums from the site and transported them to an appropriately permitted waste disposal facility as non-hazardous waste.¹⁴
- On September 10, 2020, AllWest performed further sampling of groundwater monitoring wells.

The next step is that AllWest will submit a remedial action implementation and subsurface investigation report to the health department. The health department will review the report and determine if the case may be closed or if additional investigation and/or remediation is necessary. Ultimately, the project site would be remediated until applicable state standards are met.

CEQA Guidelines

CEQA Guidelines section 15061(b)(3) states that a project is exempt from CEQA if:

The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

In determining the significance of environmental effects caused by a project, CEQA Guidelines section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. CEQA Guidelines section 15064(f)(5) offers the following guidance: “Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

Planning Department Responses

Response 1: CEQA does not prohibit a lead agency from applying the common sense exemption to a project located on a site that is listed on the state water board’s Cortese list.

As noted above, CEQA Guidelines section 15061(b)(3) (“the common sense exemption”) applies to projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. CEQA does not establish any exceptions to the issuance of this type of exemption. The legal standard of review for a lead agency’s application of the common sense exemption is that it must be supported by substantial evidence in the record that the project would not have a significant effect on the environment. On June 16, 2020, the planning department issued the common sense exemption for the proposed project based on substantial evidence to this effect. As explained in Response 2, below, this includes the planning department’s determination that the proposed project would not have a significant impact with regard to hazardous materials.

¹⁴ Twenty drums from the February and August 2020 remediation drilling and one drum left over from the 2018 monitoring well installation were removed.

The appellant mistakenly claims that one of CEQA's exceptions to categorical exemptions applies to the common sense exemption issued by the planning department for the proposed project. CEQA Guidelines section 15300.2 establishes exceptions to the list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, not be exempt from the provisions of CEQA. These exceptions to categorical exemptions do not apply to the common sense exemption established by CEQA Guidelines section 15061(b)(3). Therefore, the appellant is incorrect in asserting that one of these exceptions, known as the Cortese list exception, prohibits the department's issuance of the common sense exemption for the proposed project.

The exception that the appellant confuses as applicable to the common sense exemption is referenced in CEQA Guidelines section 15300.2(e), which states, "[a] categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code." Government Code Section 65962.5 is commonly known as the Cortese list.

The planning department recently requested that the state water board clarify which databases of properties are considered to be on the Cortese list. The state water board indicated that all sites on the GeoTracker database, among others, are on the Cortese list, and, accordingly, are ineligible for a categorical exemption. The state water board further stated, however, that "the fact that a CEQA categorical exemption is not available for a specific property on the Cortese list does not foreclose the use of other applicable exemptions, including statutory exemptions or the common sense exemption." Correspondence with the state water board on this matter is attached to this appeal response as Attachments A and B.

The planning department does not dispute that 1776 Green Street is included on the state water board's GeoTracker database. The GeoTracker database lists 1776 Green Street as an open leaking underground storage tank site with the health department-LOP as the oversight agency. Accordingly, the planning department acknowledges that 1776 Green Street is on the Cortese list and that, therefore, any proposed project at this address is ineligible for a categorical exemption.

The planning department respectfully notes that state officials previously provided conflicting guidance on this matter. As referenced in Attachment A, in 2013, the state water board's toxics cleanup division chief informed planning department staff that sites on the GeoTracker database are not considered to be on the Cortese list unless the case status is listed as "open." Further, guidance to this effect appeared on the California Environmental Protection Agency's (CalEPA's) website since at least December 2017 and as recently as December 2019, and was independently confirmed again by CalEPA staff in December 2019. For these reasons, the planning department did not consider the Cortese site exception as applying to "closed" GeoTracker sites, and in a few cases issued categorical exemptions for projects located on GeoTracker sites that had been closed. All of the projects referenced in a recent Chronicle article cited by the appellant about 1776 Green Street and other development sites involving hazardous materials were appropriately referred to the health department for investigation and, when needed, remediation. Therefore, at no time did any of those projects pose a risk to public health.

The confusion that resulted from the conflicting guidance from the state is regrettable. Regardless, these historical factors have no bearing on the appropriateness of the common sense exemption that is the subject of this appeal. The subject exemption determination accurately notes that 1776 Green Street is on the Cortese list and concludes that this circumstance does not give rise to a significant impact on the environment. See Response 2, below, for discussion of the substantial evidence supporting the planning department's conclusion

in this regard. That response details how state and local regulations and performance standards for subsurface investigation and remediation ensure that the project would not have a significant effect on the environment with regard to subsurface soil and groundwater contamination. Those same regulatory programs apply to the few projects that received categorical exemptions based on the state's prior guidance. For similar reasons, those projects did not have a significant effect on the environment with regard to subsurface soil and groundwater contamination.

Response 2: State and local regulations and performance standards for subsurface investigation and remediation are overseen by health department, a qualified agency designated by the state. Such oversight ensures that the project would not have a significant effect on the environment with regard to subsurface soil and groundwater contamination.

California Health & Safety Code section 25297.01 authorizes the state water board to implement a local oversight program for the abatement and oversight of unauthorized releases of hazardous substances underground storage tanks by certified local agencies. The health department is the certified local agency for San Francisco. Under its LOP, the health department provides regulatory oversight of abatement of unauthorized releases at underground storage tank sites in accordance with the state water board's low-threat closure policy. The policy takes into account the protection of California's groundwater resources and health risk exposure to humans. It establishes the amount of petroleum products allowed to remain in the soil and groundwater and provides clear criteria for case evaluation and closure. Such regulatory actions are commonplace in San Francisco, which currently has 2,170 closed LOP cases and 93 open LOP cases.¹⁵

As detailed above under Background, the project site contains subsurface petroleum contamination from former leaking underground fuel storage tanks associated with the now-vacant automobile repair garage at 1776 Green Street. In 1989, the health department granted case closure of the tanks, which were closed in place in 1987. In 2016, after the tanks were removed from the site, the health department began overseeing soil and groundwater investigation and remediation activities. Under the health department's oversight, a qualified consultant conducted multiple rounds of soil and groundwater sampling in the vicinity of the former tank locations to fully characterize the nature and extent of contaminants present. The health department also oversaw removal of contaminated soils and is continuing to monitor soil and groundwater to determine whether the level of hydrocarbons present has been reduced to a level that meets the state water board's low-threat closure policy. The next step is that AllWest will submit a remedial action implementation and subsurface investigation report to the health department. The health department will review the report and determine if the case may be eligible for closure or if additional investigation and/or remediation is necessary.

The appellant notes that levels of benzene in the groundwater beneath the project site are over 900 times above residential standards. The appellant misleadingly references environmental screening levels set by the San Francisco Bay Regional Water Quality Control Board, which do not apply to the LOP tank closure case. Rather, the standards cited by the appellant are residential standards that apply to the separate case being overseen by the health department under the city's Maher Ordinance (Health Code chapter 22A).

The Maher Ordinance requires health department oversight of the characterization and remediation of hazardous substances in soil and groundwater in designated areas zoned for industrial uses, sites with industrial uses or underground storage tanks, sites with historic bay fill, and sites in close proximity to freeways or underground storage tanks. A residential development project at 1776 Green Street, separately proposed by the

¹⁵ State Water Resources Control Board GeoTracker, Sites/Facilities by County, October 12, 2020. Available at https://geotracker.waterboards.ca.gov/sites_by_county.

project sponsor, is subject to the Maher Ordinance because it requires a building permit and would disturb at least 50 cubic yards of soil at a location designated on the city's Maher map. The project sponsor enrolled in the Maher program in 2018. Through this program, the health department would ensure that the project site is suitable for the separately proposed residential use and would not pose a risk to public health. As discussed in Response 7, below, the residential development project is undergoing separate environmental review, and oversight of the Maher program requirements by the health department is independent of the LOP investigation that is the subject of this appeal.

As for the LOP case remediation activities, these must be undertaken in accordance with the workplan, which must follow California Hazardous Waste Operations and Emergency guidance (CCR section 5192). The approved workplan states, "AllWest will update the site specific health and safety plan prior to mobilizing to the site. A tailgate safety meeting will be given prior to commencing work. All site personnel will be required to review the health and safety plan." By following the health and safety plan, AllWest's soil removal activities posed no risk of exposure to workers, neighbors, passers-by, and nearby parks.

Because the project is being overseen by the health department and is required to comply with the state's performance standards for the low-threat closure policy, it can be clearly demonstrated that the project has no potential to have significant environmental effects with respect to hazardous substances on the site. Moreover, the very purpose of the project is to remediate (and hence, improve) the project site as compared to the prior conditions. The appellant has not provided substantial evidence supporting a fair argument that the project may have a significant effect regarding subsurface contamination.

Response 3: Compliance with state and local hazardous materials laws does not constitute mitigation within the meaning of CEQA.

CEQA Guidelines section 15370 defines "mitigation" to include avoiding an impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating, or restoring the impacted environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and compensating for the impact by replacing or providing substitute resources or environments.

Although compliance with state and local regulations ensures that project activities would not result in environmental impacts with regard to release of hazardous substances, such compliance does not constitute mitigation in the meaning of CEQA. Project activities – specifically, characterization and remediation of subsurface contamination from former leaking underground storage tanks – are required by law and are not imposed to avoid or lessen a significant environmental impact of the project identified through CEQA review. Regardless of the type of CEQA clearance issued for the project, project activities and health department oversight would remain the same.

Response 4: The City appropriately granted permits for the project, none of which were appealed.

As discussed above, under Background, the project sponsor obtained all permits from the public works department required to implement the project by carrying out the approved workplan. Neither the appellant nor any other party appealed the public works permits to the Board of Appeals; thus, these permits continue to remain in full force and effect.

The appeal of the underlying CEQA determination does not suspend or invalidate the project permits or require the project sponsor to stop work. Rather, once the appeal of the CEQA determination is set for hearing, city

boards, commissions, and departments may not carry out or consider any subsequent approvals of the project until the CEQA determination is affirmed by the Board. Here, the project sponsor did not require any further approvals for the project and none were issued. Thus, the project sponsor elected to proceed with the work based on the workplan approved by health department and public works permits, which remained valid and effective, notwithstanding the pending CEQA appeal.

Intent to close the LOP case is subject to posting and notification and appeal to the state water board.

Response 5: The project would not result in a significant impact on historic resources.

The building at 1776 Green Street is eligible for individual listing on the California Register of Historical Resources and is therefore a historic resource pursuant to CEQA. The project is the investigation and remediation of contamination below the sidewalk where leaking tanks were previously located. The project would not remove, alter, or obscure any of the character-defining features of the individually eligible historic resource at 1776 Green Street, nor would the project affect the character-defining features of any nearby individually eligible historic resources. The project would not remove, alter, or obscure the features, distinctive characteristics, or spatial relationships of any nearby buildings that have not been evaluated for individual California Register eligibility. The project is not located within, adjacent to, or near a California Register-eligible historic district. Therefore, the project would not result in impacts on historic resources. The appellant has not provided substantial evidence supporting a fair argument that the project may have a significant effect on historic resources.

Response 6: The project does not involve automotive repair use.

The project is the investigation and remediation of contamination from former underground storage tanks related to previous auto repair use at 1776 Green Street. The appellant states that the project sponsor proposes to “repurpose the project as an automobile repair shop.” The City has not received a building permit or planning department application, and the appellant has not offered substantial evidence to support the assertion that the project sponsor proposes such a use at 1776 Green Street.

Response 7: The proposed site investigation/remediation action has independent utility from the separately proposed 1776 Green Street development project. Issuance of the common sense exemption for the investigation/remediation therefore does not violate CEQA’s prohibition against piecemealing.

Under CEQA statute section 21159.27, a project may not be divided into smaller projects to qualify for one or more exemptions, which is defined in the state statute as “piecemealing.” There is no piecemealing, however, when projects serve different purposes or can be implemented independently.

The project that is the subject of this appeal is the investigation and remediation of contamination under the sidewalk in front of 1776 Green Street resulting from leaking underground storage tanks associated with the former automobile service use at 1776 Green Street. While a separate development project is proposed at 1776 Green Street, involving a proposed two-story vertical addition and a change of use from automotive repair to a five-unit residential building (Planning Department Record No. 2018-011430ENV), the residential development is neither a necessary element nor a foreseeable consequence of the LOP case.¹⁶

¹⁶ As previously noted, any future residential development project at 1776 Green Street would be subject to the Maher Ordinance (Health Code chapter 22A), which requires the project sponsor to undertake any required remediation beneath the 1776 Green Street project site that is appropriate for the proposed residential use. The project sponsor has enrolled in the Maher program (application received July 31, 2018). While health department staff would

Moreover, there is no improper piecemealing here because the LOP case and the potential future residential development serve different purposes and can be implemented independently of one another. The LOP workplan approved by health department and the permits issued by the public works department endeavor to investigate and remediate any soil contamination below the sidewalk, not to develop the 1776 Green Street site; indeed, the project that is the subject of this appeal does not reference or rely on any future development at 1776 Green Street. Further, the approval of the project does not commit to any definite course of action concerning any development proposal at 1776 Green Street.

Likewise, the development project at 1776 Green Street could proceed separately from the LOP case. Development of 1776 Green Street would require separate investigations and potential remediation at the project site pursuant to San Francisco's Maher Ordinance, which has stricter standards than the state's low-threat closure policy. The LOP and Maher Ordinance are independent programs, and an LOP case may remain open after the Maher case has closed.

Neither project is the consequence of the other, nor does either compel the other to move forward or necessitate the implementation of the other project. They serve different purposes and may be implemented independently of one another. As such, the CEQA determination for the LOP case analyzes the whole of that particular action without improperly piecemealing it from future residential development of 1776 Green Street.

Conclusion

The project is eligible for the common sense exemption. The project activities must comply with state and local regulations and performance standards for subsurface investigation and remediation, as overseen by health department, a qualified agency designated by the state for such oversight. Accordingly, it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment with regard to subsurface soil and groundwater contamination. Moreover, the project does not constitute mitigation and has not been improperly segmented from any potential future development at 1776 Green Street. There are no other aspects of the project that would result in a significant effect on the environment. The department's determination that the project qualifies for the common sense exemption is supported by substantial evidence in the record, and the appellant has not demonstrated that a fair argument can be made that the project may have a significant effect on the environment. The planning department therefore recommends that the Board uphold the CEQA determination and deny the appeal.

also oversee any required remediation for the potential future residential development project, this process would occur independent of the LOP investigation that is the subject of this appeal.

ATTACHMENT A

**Letter from San Francisco Planning Department to
State Water Resources Control Board regarding Sites
on Cortese List, July 9, 2020**



July 9, 2020

Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

SENT VIA E-MAIL TO: Eileen.Sobeck@waterboards.ca.gov

Re: Request for Clarification of GeoTracker Site Categories Included on Cortese List

Dear Ms. Sobeck:

The purpose of this letter is to request that your office provide official written guidance to the City and County of San Francisco (City) to clarify which sites on the State Water Resources Control Board's (SWRCB's) GeoTracker database are considered to be on the list of hazardous waste sites compiled pursuant to Government Code Section 65962.5, commonly referred to as the Cortese list.

One of San Francisco's overarching goals is to encourage housing production, including inclusionary (affordable) housing. This goal is consistent with similar goals of the Bay Area region and the state overall, given that housing production in the City and region has not kept up pace with housing demand, resulting in a severe housing crisis. As the City's Environmental Review Officer, I am responsible for California Environmental Quality Act (CEQA) compliance, including issuance of over 5,000 environmental determinations annually, ranging from simple categorical exemptions to complex environmental impact reports. A large portion of these determinations are for housing projects, particularly multi-family housing projects in transit-rich areas. Given that a variety of CEQA statutes and guidelines reference the Cortese list, it is important that we correctly ascertain which sites are on that list, as this distinction has implications for the number of housing projects that we are able to approve on an annual basis. Specifically, as explained further below, it affects the timing and complexity of environmental analyses for housing projects proposed on "closed" Cortese sites that could otherwise qualify for exemptions under CEQA.

As background, among the references, CEQA Section 21084(d) states, "[a] project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code shall not be exempted from this division pursuant to [a list of classes of projects which have been determined not to have a significant effect on the environment]." Furthermore, CEQA Guidelines Section 15300.2, Exceptions, states, "[a] categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code."

It is our understanding that the Cortese list consists of three databases relevant to sites in San Francisco: 1) the State Department of Toxic Substance Control's (DTSC's) Cortese List, 2) the SWRCB's Cease and Desist Orders (CDO) and Cleanup and Abatement Orders (CAO) database; and 3) the SWRCB's GeoTracker database.

July 9, 2020
Ms. Eileen Sobeck

Until recently, we understood that sites with the status “Completed – Case Closed” (closed) on the SWRCB’s GeoTracker database are not on the Cortese list. Our understanding was founded on the attached guidance from SWRCB in 2013 (Attachment A) and the California Environmental Protection Agency (CalEPA) in 2019 (Attachments B, C and D). However, in March 2020, staff from your Office of Chief Counsel informed my staff that closed GeoTracker sites are still considered to be on the Cortese list.

As of June 19, 2020, there are 2,254 GeoTracker cases in San Francisco, of which 2,168 are listed as closed and 86 are listed as open (“Open – Site Assessment,” “Open – Remediation,” “Open – Inactive,” “Open – Verification Monitoring,” or “Open – Long Term Management”). Therefore, the determination of whether closed cases are “on” the Cortese list has a significant bearing on CEQA procedures for projects on many sites in San Francisco. If cases determined to be “closed” are nonetheless “on” the Cortese list, the City cannot rely on a categorical exemption to satisfy environmental review requirements for projects on these sites, including for much-needed housing projects.

For the above reasons, I respectfully request that your office provide official written guidance to clarify which GeoTracker sites are on the Cortese list.

I would also like to note that in San Francisco, the Department of Public Health (DPH) administers and oversees a rigorous process for investigating, analyzing and, when deemed necessary, remediating or mitigating hazardous substances in soils and groundwater on sites in the city. This program, known as the Maher Program, is codified in the City’s Health Code. Sites subject to the Maher Program include all sites on the Cortese list, including closed GeoTracker sites. No building permits for Maher sites may be issued by the City’s Department of Building Inspection unless and until DPH has confirmed that any hazardous substances on the site have been removed or remediated to State standards for the intended use and any required deed restrictions have been recorded against the property. Thus, any project – including housing projects – with a closed status on the Cortese list is nevertheless subject to the requirements of the Maher Program.

Thank you for your time and attention to this matter. Please feel free to contact me at Lisa.Gibson@sfgov.org or Tania Sheyner at Tania.Sheyner@sfgov.org if you have questions.

Sincerely,



Lisa Gibson
Environmental Review Officer

Attachments: A: Email from Stephen Hill, State Water Resources Control Board, to Jeanie Poling, San Francisco Planning Department, August 12, 2013
B: Email from Sarah Taylor, California Environmental Protection Agency, to Jeanie Poling, San Francisco Planning Department, December 2, 2019
C: Screenshot of Archived California Environmental Protection Agency Cortese List Webpage on December 19, 2017 [Yellow highlight added]

July 9, 2020
Ms. Eileen Sobeck

D: Screenshot of Archived California Environmental Protection Agency Cortese List
Webpage on August 31, 2019 [Yellow highlight added]

cc: Rich Hillis, Planning Director, San Francisco Planning Department
Tania Sheyner, Principal Planner, San Francisco Planning Department
Jeanie Poling, Senior Planner, San Francisco Planning Department
Kate Stacy, Deputy City Attorney, San Francisco City Attorney's Office
Brian Crossman, Deputy City Attorney, San Francisco City Attorney's Office
Andrea Ruiz-Esquide, Deputy City Attorney, San Francisco City Attorney's Office
Michael A.M. Lauffer, Chief Counsel, State Water Resources Control Board
Yuri Won, Office of Chief Counsel, State Water Resources Control Board
Jared Blumenfeld, Executive Director, California Environmental Protection Agency
Erin Curtis, Deputy Secretary for Communications and External Affairs, California
Environmental Protection Agency
Kate Gordon, Executive Director, Governor's Office of Planning and Research
Jeannie Lee, Chief Counsel, Governor's Office of Planning and Research

Attachment A

From: Hill, Stephen@Waterboards
To: Poling, Jeanie
Subject: RE: Section 65962.5 of the Government Code
Date: Monday, August 12, 2013 4:19:29 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png

Jeanie – you’re asking a legal question, and I’d have to check with our legal staff before I could respond ... legality aside, the intent of the Cortese law was to provide more scrutiny of contaminated sites under CEQA, on the assumption that the contamination might lead to greater environmental impacts during (CEQA) project implementation ... given that intent, **once a site has been cleaned up and closed, there should be no need for that greater scrutiny (and so CEQA categorical exemptions should be OK)** ... as a practical matter, the Cortese law is outdated and had been overtaken by newer methods to flag contaminated sites (e.g., deed restrictions and entry on publicly-accessible databases like Geotracker and Envirostor) ... as a result, our agency doesn’t devote much effort to maintaining the Cortese list ... cheers, Stephen

From: Poling, Jeanie [mailto:jeanie.poling@sfgov.org]
Sent: Thursday, August 08, 2013 12:33 PM
To: Hill, Stephen@Waterboards
Subject: FW: Section 65962.5 of the Government Code

Hello Mr. Hill,

CEQA Guidelines Section 15300.2(e) states “A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.” We are trying to determine what sites in San Francisco are included on this list.

I reviewed the links sent to me by DTSC (see email below), and there appears to be three databases that include sites in San Francisco:

- DTSC’s Cortese List: 36 sites
- SWQCB’s CDO and CAO: 18 sites
- SWQCB’s Geotracker: 2,396 sites, of which 2,160 are closed and 236 are open

I would like to know if the Geotracker closed sites are on the “list” referred to in CEQA Guidelines Section 15300.2(e).

Thank you.

Jeanie Poling
Environmental Planner

Planning Department, City and County of San Francisco
1650 Mission Street, Suite 400, San Francisco, CA 94103
Direct: 415-575-9072 **Fax:** 415-558-6409
Email: jeanie.poling@sfgov.org

Web: www.sfplanning.org



Planning Information Center (PIC): 415-558-6377 or pic@sfgov.org
Property Information Map (PIM): <http://propertymap.sfplanning.org>

From: Naito, Janet@DTSC [<mailto:Janet.Naito@dtsc.ca.gov>]
Sent: Wednesday, August 07, 2013 12:10 PM
To: Poling, Jeanie
Cc: Tsuji, Denise@DTSC
Subject: RE: Section 65962.5 of the Government Code

Hi Jeanie, The provisions in Government Code Section 65962.5 are commonly referred to as the "Cortese List" (after the Legislator who authored the legislation that enacted it). Here's a link to information on the background and history of the Cortese List (<http://www.calepa.ca.gov/sitecleanup/corteselist/Background.htm>)

Here's a link to the sites on the Cortese List:
<http://www.calepa.ca.gov/sitecleanup/corteselist/>

As you'll see on the webpage for the Cortese List, the list is broader than just sites on DTSC's portion of the list. There's several other links you'll need to access in order to compile the Cortese List for the City of San Francisco.

I hope this addresses your question. Please feel free to send me a return email if you have any questions. Thank you!

From: Poling, Jeanie [<mailto:jeanie.poling@sfgov.org>]
Sent: Wednesday, August 07, 2013 12:02 PM
To: Naito, Janet@DTSC; Tsuji, Denise@DTSC
Subject: Section 65962.5 of the Government Code

Hello, I also left a voicemail for Denise about this.

CEQA Guidelines Section 15300.2(e) states "A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code." We are trying to determine what sites in San Francisco are included on this list.

When I click on the "Get Report" link on this page http://www.dtsc.ca.gov/SiteCleanup/Cortese_list.cfm and then sort for properties only in San Francisco, I get a list of 36 sites, and they are primarily those subject to federal or state response (see attached). So my question is whether Section 65962.5 covers other sites besides these 36, such as UST and other remediation sites that are subject to oversight by our local regulatory agency (the San Francisco Department of Public Health).

Thank you.

Jeanie Poling

Environmental Planner

Planning Department, City and County of San Francisco
1650 Mission Street, Suite 400, San Francisco, CA 94103

Direct: 415-575-9072 **Fax:** 415-558-6409

Email: jeanie.poling@sfgov.org

Web: www.sfplanning.org



Planning Information Center (PIC): 415-558-6377 or pic@sfgov.org
Property Information Map (PIM): <http://propertymap.sfplanning.org>

Attachment B

From: [Taylor, Sarah@EPA](mailto:Taylor.Sarah@EPA)
To: [Poling, Jeanie \(CPC\)](mailto:Poling, Jeanie (CPC))
Subject: FW: Question about closed sites listed on Geotracker database
Date: Monday, December 2, 2019 3:00:14 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)

Ms. Poling,

I asked your question of the CalEPA Unified Program staff who maintain the Cortese List database, and was told this:

The verbiage was provided by SWRCB; with approval from the CalEPA, I updated this paragraph on our website. The purpose of updating the site and adding this clarification was exactly for questions like the one asked from Jeanie. Once a site is on the Cortese List and noted in Geotracker it cannot be removed from Geotracker if they are removed from the Cortese list. To know if a site is on the Cortese List, you have to look at the [site status](#) on Geotracker.

“Sites that are no longer considered “active” because the Water Board, a regional board, or the County has determined that no further action is required ... and no remedial action is necessary, are listed as “closed” and deleted from the list.”

If this clarification does not satisfy her question that the 2,450 sites are no longer on the Cortese List, she will need to contact SWRCB’s Site Clean Up staff:

https://www.waterboards.ca.gov/water_issues/programs/scp/docs/scp.pdf

The quote referenced above can be found on our Cortese List [Background and History](#) page, under Section 65962.5(c) [here](#).

I hope that this information adequately answers your questions; if not, feel free to reply with any further questions, and I will assist you as best I can.

Best,

Sarah Taylor

Executive Assistant

Communications and External Affairs

California Environmental Protection Agency

Ph: (916) 324-9670



From: Poling, Jeanie (CPC) <jeanie.poling@sfgov.org>

Sent: Monday, December 2, 2019, 12:12 PM

To: Barnum, Alex@EPA

Subject: FW: Question about closed sites listed on Geotracker database

Hello Mr. Barnum,

I also left a voicemail for Sarah Taylor. Please see my question below. The SWRCB referred me to you.

Thank you.

Jeanie Poling

Senior Environmental Planner

San Francisco Planning Department

1650 Mission Street, Suite 400 San Francisco, CA 94103

Direct: 415.575.9072 | www.sfplanning.org

[San Francisco Property Information Map](#)

From: Tracker, Geo@Waterboards <Geo.Tracker@waterboards.ca.gov>

Sent: Wednesday, November 27, 2019 3:25 PM

To: Poling, Jeanie (CPC)

Subject: RE: Question about closed sites listed on Geotracker database

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good afternoon.

We don't have that information as we do not update the Cortese List. The CalEPA Communications Office would be who you should contact to get more information. Their email address is cepacomm@calepa.ca.gov.

Thank you,

Rebeca Griner

GeoTracker Help Desk

State Water Resources Control Board

geotracker@waterboards.ca.gov

From: Poling, Jeanie (CPC) <jeanie.poling@sfgov.org>

Sent: Wednesday, November 27, 2019 2:09 PM

To: Tracker, Geo@Waterboards <Geo.Tracker@waterboards.ca.gov>

Subject: Question about closed sites listed on Geotracker database

Hello,

I have a question about the “closed” sites listed on the Geotracker database. The CalEPA webpage (<https://calepa.ca.gov/sitecleanup/corteselist/section-65962-5c/>) says this:

Approximately 2,700 underground tank sites identified in unauthorized release reports are considered “active” and are found in the GeoTracker database. **Sites that are no longer considered “active” because the Water Board, a regional board, or the County has determined that no further action is required because actions were taken to adequately remediate the release, or because the release was minor, presents no environmental risk, and no remedial action is necessary, are listed as “closed” and deleted from the list.**

Of the approximately 2,700 sites in San Francisco on the Geotracker database, approximately 2,450 are listed with the status “Completed – Case Closed.” But since they are still visible on Geotracker, I’m trying to determine whether they have been “deleted from the list.”

CEQA Guidelines says this:

CEQA Guidelines Article 19. Categorical Exemptions 15300.2. EXCEPTIONS

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

Your input would be greatly appreciated so that we can decide whether we can issue categorical exemptions for projects located on those 2,450 sites.

Sincerely,

Jeanie Poling

Senior Environmental Planner

San Francisco Planning Department

1650 Mission Street, Suite 400 San Francisco, CA 94103

Direct: 415.575.9072 | www.sfplanning.org

[San Francisco Property Information Map](#)

https://calepa.ca.gov/sitecleanup/cortese/section-65962-5c/

Go

NOV DEC JUL

19

2016 2017 2019



About this capture

3 captures

19 Dec 2017 - 31 Aug 2019

Menu Search



CalEPA
California Environmental
Protection Agency

Search

Search

Home

About Us Sub Menu Toggle

Executive Management

History of CalEPA

Careers at CalEPA

Headquarters Building

Legislative Reports

Frequently Asked Questions

Contact Us

Departments Sub Menu Toggle

Air Resources Board

Department of Pesticide Regulation

Office of Environmental Health Hazard Assessment

CalRecycle

Department of Toxic Substances Control

State Water Resources Control Board

Programs Sub Menu Toggle

Awards

Emergency Response

Refinery Safety

Border Affairs

Enforcement

Regulated Site Portal

Cleanup

Environmental Justice

Tribal Relations

Climate Action

Loans and Grants

Unified Program

Newsroom Sub Menu Toggle

News Releases

Publications

https://calepa.ca.gov/sitecleanup/corteselist/section-65962-5c/ Go NOV DEC JUL
19
2016 2017 2019 About this capture

Listservs/E-lists

Education

Drive Clean

Carbon Calculator

Public Meeting Live Webcasts

Supplemental Environmental Projects

Report an Environmental Complaint

Skip to Main Content

Cortese List: Section 65962.5(c)

Information Required From the State Water Resources Control Board (SWRCB) Under Government Code Section 65962.5(c)

Section 65962.5(c)(1) “shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all the following: (1) all underground storage tanks for which an unauthorized release report is filed pursuant to [Section 25295 of the Health and Safety Code](#).

HSC § 25295 was enacted in 1983 and requires filing a report with the local agency designated under [HSC § 25283](#) of “any unauthorized release which escapes from the secondary containment, or from the primary containment... of the underground tank system...” In 2004, HSC § 25295(b) was enacted to require the board “to continuously post and update on its Web site” a report of all unauthorized releases from underground tanks. The Water Board now provides this information in its GeoTracker database, including reports filed each year going back to fiscal year 1996/1997.

- [GeoTracker: Reports by County by Fiscal Year of Sites with Leaking Underground Storage Tanks](#)

Approximately 14,700 underground tank sites identified in unauthorized release reports are considered “active” and are found in the GeoTracker database. Sites that are no longer considered “active” because the Water Board, a regional board, or the County has determined that no further action is required because actions were taken to adequately remediate the release, or because the release was minor, presents no environmental risk, and no remedial action is necessary, are listed as “closed” or deleted from the list.

Section 65962.5(c)(2) requires that the Water Board “shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all the following: ... (2) [a]ll solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of [Section 13273 of the Water Code](#). The list does not include facilities where actions were taken so that hazardous waste is no longer migrating into the water.” Water Code § 13273 was enacted in 1984 to set up a program for the regional water quality control boards (regional boards) to identify solid waste disposal sites and required them to conduct water quality assessment tests. Water Code § 13273(e) provides that based on the assessment tests, the regional boards should determine whether “any hazardous waste migrated into the water” and, if so, notify DTSC.

- [List of solid waste disposal sites identified by Water Board \(PDF\)](#)

https://calepa.ca.gov/sitecleanup/cortese/section-65962-5c/

NOV DEC JUL

19

2016 2017 2019



About this capture

3 captures

19 Dec 2017 - 31 Aug 2019

Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to [Section 13304](#) of the Water Code, that concern the discharge of wastes that are hazardous materials.”

The orders that are “active” — i.e., where the necessary actions have not yet been completed — are on the list provided below. The Water Board will update this list by deleting sites where there is no longer any discharge of wastes and/or where the necessary cleanup and abatement actions were taken.

- [List of “active” CDO and CAO](#) (MS Excel, 1,453 KB).

Background and History

[Back to Top](#)

[Privacy Policy](#)

[Conditions of Use](#)

[Accessibility](#)

[Contact Us](#)

[f facebook](#)

[twitter](#)

[instagram](#)

[in linkedin](#)

[rss](#)

Copyright © 2017 State of California

<https://calepa.ca.gov/sitecleanup/corteselist/section-65962-5c/>

Go

JUL AUG SEP

31

2017 2019 2020



About this capture

3 captures

19 Dec 2017 - 31 Aug 2019



Contact Us

Select Language

Settings

Powered by Google Translate



Home



About



Departments



Programs



Newsroom



Get Involved



Search

Cortese List: Section 65962.5(c)

Information Required From the State Water Resources Control Board (SWRCB) Under Government Code Section 65962.5(c)

Section 65962.5(c)(1) “shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all the following: (1) all underground storage tanks for which an unauthorized release report is filed pursuant to [Section 25295 of the Health and Safety Code](#).

HSC § 25295 was enacted in 1983 and requires filing a report with the local agency designated under [HSC § 25283](#) of “any unauthorized release which escapes from the secondary containment, or from the primary containment... of the underground tank system...” In 2004, HSC § 25295(b) was enacted to require the board “to continuously post and update on its Web site” a report of all unauthorized releases from underground tanks. The Water Board now provides this information in its GeoTracker database, including reports filed each year going back to fiscal year 1996/1997.

- [GeoTracker: List of Open Active Leaking Underground Storage Tank Sites](#)

Approximately 2,700 underground tank sites identified in unauthorized release reports are considered “active” and are found in the GeoTracker database. Sites that are no longer considered “active” because the Water Board, a regional board, or the County has determined that no further action is required because actions were taken to adequately remediate the release, or because the release was minor, presents no environmental risk, and no remedial action is necessary, **are listed as “closed” and deleted from the list.**

Section 65962.5(c)(2) requires that the Water Board “shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all the following:(2) [a]ll solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of [Section 13273 of the Water Code](#). The list does not include facilities where actions were taken so that hazardous waste is no longer migrating into the water.”

Water Code § 13273 was enacted in 1984 to set up a program for the regional water quality control boards (regional boards) to identify solid waste disposal sites and required them to conduct water quality assessment tests. Water Code § 13273(e) provides that based on the assessment tests, the regional boards should determine whether “any hazardous waste migrated into the water” and, if so, notify DTSC.

- [List of solid waste disposal sites identified by Water Board \(PDF\)](#)

Section 65962.5(c)(3) requires that the Water Board “shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all the following:(3) [a]ll cease and desist orders issued after January 1, 1986, pursuant to [Section 13301](#) of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to [Section 13304](#) of the Water Code, that concern the discharge of wastes that are hazardous materials.”

The orders that are “active” -- i.e., where the necessary actions have not yet been completed -- are on the list provided below. The Water Board will update this list by deleting sites where there is no longer any discharge of wastes and/or where the necessary cleanup and abatement actions were taken.

- [List of “active” CDO and CAO \(MS Excel, 1,453 KB\).](#)

Background and History

<https://calepa.ca.gov/sitecleanup/corteselist/section-65962-5c/>

Go

JUL AUG SEP
◀ 31 ▶
2017 2019 2020



[3 captures](#)

19 Dec 2017 - 31 Aug 2019

▼ About this capture

ATTACHMENT B

**Letter from State Water Resources Control Board to
San Francisco Planning Department regarding Sites
on Cortese List, July 21, 2020**



State Water Resources Control Board

July 21, 2020

Lisa Gibson
Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

CLARIFICATION OF GEOTRACKER SITES INCLUDED ON THE CORTESE LIST

Thank you for your July 9, 2020 letter requesting clarification of which sites included in the State Water Resources Control Board's (State Water Board) GeoTracker database are considered to be on the list compiled pursuant to section 65962.5 of the Government Code, commonly known as the Cortese list. You sent two identical letters, one to me and one to Executive Director Sobeck. I am responding on behalf of both of us.

For the Cortese list, the State Water Board is required to compile, update, and submit to the California Environmental Protection Agency (CalEPA) a list of: 1) all underground storage tanks (UST) for which an unauthorized release report is filed pursuant to section 25295 of the Health and Safety Code, 2) all solid waste disposal facilities with a migration of hazardous waste for which a regional board has notified the Department of Toxic Substances Control (DTSC) pursuant to subdivision (e) of section 13273 of the Water Code, and 3) all cease and desist orders (CDO) and cleanup and abatement orders (CAO) issued after January 1, 1986, pursuant to sections 13301 and 13304 of the Water Code respectively, that concern the discharge of hazardous waste. (Gov. Code, § 65962.5, subd. (c)(1)-(3).)

To satisfy the Cortese list reporting requirements concerning unauthorized releases from USTs, the State Water Board provides the CalEPA website with a live link to our GeoTracker database sorted to show all UST cases for which an unauthorized release report has been filed.¹ This link includes UST sites where the cleanup status is identified

¹ The State Water Board reports Cortese list information concerning solid waste disposal facilities and CDOs/CAOs by means of a list in table format and a list on a spreadsheet which are posted on the CalEPA website. Note that these sites are not treated the same as UST sites due to the differences in the statutory language that applies to these sites.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

as “Completed – Case Closed” and sites where cleanup is not complete and the status is identified as “Open.” The State Water Board reports both open and closed UST cleanup cases for the Cortese list because both open and closed cases meet the condition that requires inclusion on the list; they are sites with “underground storage tanks for which an unauthorized release report is filed pursuant to section 25295 of the Health and Safety Code.” (See Gov. Code, § 65962.5, subd. (c)(1).)

The Legislature did not provide statutory direction for removal of UST sites from the Cortese list. A closed UST cleanup case continues to have an unauthorized release report filed in the record. As a result, a closed UST site continues to satisfy the condition for inclusion on the Cortese list. Thus, the site of an unauthorized release from a former UST is included on the Cortese list even after cleanup is complete. (See *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 781 [recognizing that sites may stay on the Cortese list after a determination is made that no further remediation is required].)

The State Water Board maintains that both open and closed UST cases are required to be included on the Cortese list. As shown in the attachments to your letter, at certain times incorrect information has been posted to the CalEPA website. When those postings were brought to the attention of the State Water Board, staff worked with CalEPA to correct the errors. I regret any confusion they may have caused.

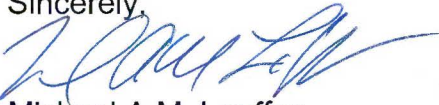
As you note, the California Environmental Quality Act (CEQA) and the CEQA Guidelines limit the application of provisions concerning exempt classes of projects if a project is located on a site that is included on the Cortese list. (Pub. Resources Code, § 21084, subd. (d); Cal. Code Regs., tit. 14, § 15300.2, subd. (e).) There have been past legislative efforts to either amend CEQA to permit the use of categorical exemptions for projects at Cortese-listed UST sites where remediation is complete, or to amend the Cortese list statute to provide that UST sites will be removed from the list once remediation is complete. So far, these efforts have been unsuccessful. (See, e.g., Assem. Bill No. 1187 (2007-2008 Reg. Sess.) as introduced Feb 23, 2007; compare with Assem. Bill No. 1187 (2007-2008 Reg. Sess.) as amended Jun. 21, 2007 [striking an amendment that would have limited listing to sites that “have not yet received a final cleanup decision”].)

Most recently, Assembly Bill No. 2323 (2019-2020 Reg. Sess.) (AB 2323), as amended on May 4, 2020, would have amended Public Resources Code section 21084 to permit the use of categorical exemptions for projects at sites on the Cortese list if DTSC cleared the site for the proposed land use. AB 2323 was amended on June 4, 2020, to delete the proposed CEQA amendment. The bill analysis from the policy committee noted that the author recognized the concerns of building trades and environmental justice organizations with regard to permitting the use of categorical exemptions at sites on the Cortese list and proposed future work with all parties to develop an approach that provides a reliable and objective standard to ensure sites are safe for construction and residential use. (Assem. Com. on Natural Resources, Analysis of AB 2323, as amended May 4, 2020, p. 4.)

It is often difficult to navigate the intersection of important policy concerns, in this case, providing needed housing and providing transparency in the cleanup of hazardous substances in soil and groundwater. Based on the existing statutory language, the State Water Board will continue to report the sites of both open and closed UST cases for inclusion on the Cortese list. As you, Ms. Ruiz-Esquide, and I discussed last Friday, though, the fact that a CEQA categorical exemption is not available for a specific property on the Cortese list does not foreclose the use of other applicable exemptions, including statutory exemptions or the common sense exemption.

If you have additional questions, please do not hesitate to contact me.

Sincerely,



Michael A.M. Lauffer
Chief Counsel

cc: **All via email only**

Rich Hillis, Planning Director, San Francisco Planning Department
Tania Sheyner, Principal Planner, San Francisco Planning Department
Jeanie Poling, Senior Planner, San Francisco Planning Department
Kate Stacy, Deputy City Attorney, San Francisco City Attorney's Office
Brian Crossman, Deputy City Attorney, San Francisco City Attorney's Office
Andrea Ruiz-Esquide, Deputy City Attorney, San Francisco City Attorney's Office
Jared Blumenfeld, Secretary, California Environmental Protection Agency
Erin Curtis, Deputy Secretary for Communications and External Affairs, California
Environmental Protection Agency
Kate Gordon, Executive Director, Governor's Office of Planning and Research
Jeannie Lee, Chief Counsel, Governor's Office of Planning and Research
Eileen Sobeck, Executive Director, State Water Resources Control Board
Yuri Won, Office of Chief Counsel, State Water Resources Control Board