

1 [Supporting California State Senate Bill No. 37 (Cortese) - Contaminated Sites]

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3 **Resolution supporting California State Senate Bill No. 37, Contaminated Site Cleanup**
4 **and Safety Act, authored by Senator David Cortese, expressly prohibiting the use of**
5 **the commonsense exemption to be applied to construction projects located on**
6 **contaminated sites identified on the state’s Cortese List.**

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8 WHEREAS, The City and County of San Francisco has approximately 2000
9 underground storage tanks that have leaked hazardous substances such as the known
10 human carcinogen benzene due to previous industrial and/or commercial uses, and these are
11 identified on a comprehensive site known as the Cortese List; and

12 WHEREAS, The Cortese List is maintained and updated by the state of California's
13 Department of Toxic Substances Control (DTSC) to mitigate the risks to public health, safety,
14 and the environment from hazardous waste sites as well as underground storage tanks where
15 unauthorized releases have been documented, under California Government Code, Section
16 65926.5; and

17 WHEREAS, Housing development can occur on sites that have suspected or detected
18 contamination, with existing industrial sites in San Francisco that have been managed under
19 the Local Oversight Program, and housing redevelopment on these sites requiring a more
20 stringent process to mitigate hazards through the City’s Maher ordinance, a unique program
21 managed by the San Francisco Department of Public Health as a state-certified agency that is
22 designed to ensure cleanup of toxic substances based on standards for human habitation and
23 regulated through Article 22A of the San Francisco Health Code and Article 106.A.3.4.2 of the
24 San Francisco Building Code; and

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1 WHEREAS, Since 2015 at least 20 of these sites were considered for, or received a
2 categorical exemption from, the state’s environmental regulatory process known as the
3 California Environmental Quality Act or CEQA, in direct conflict with the legal mandate that a
4 categorical exemption cannot be issued for a project proposed for construction on any
5 Cortese List site, as established by CEQA statutes in Section 21084(d); and

6 WHEREAS, Categorical exemptions to environmental review under CEQA are defined
7 according to over 30 classes of projects including work on existing facilities, minor alterations
8 to land, small residential projects and other structures, as well as certain legal and regulatory
9 actions that don't involve physical alterations of property; and

10 WHEREAS, The common sense exemption is allowed in Title 14 CCR § 15061(b)(3),
11 for projects “where it can be seen with certainty that there is no possibility that the activity in
12 question may have a significant effect on the environment, the activity is not subject to
13 CEQA;” and

14 WHEREAS, The implementation of the City’s Maher program provides a process for
15 mitigating impacts from contaminated sites, but nothing in local or state law, including CEQA,
16 allows a CEQA exemption for a project proposed to be constructed on a Cortese List site,
17 even if the project will undergo environmental review pursuant to the Maher Ordinance or
18 other local ordinance; and

19 WHEREAS, The Maher program is not subject to a public process that allows for
20 scrutiny, oversight, or publicly documented procedures that are site-specific to ensure that
21 environmental protections or mitigation efforts have been properly undertaken on industrial
22 sites where toxic substances may have been discharged into the soil or subsurface
23 groundwater, and where the potential for exposure of residents, workers, the public and the
24 environment are serious considerations; and

1 WHEREAS, A preliminary mitigated negative declaration under CEQA requires a
2 clean-up plan for a contaminated site that must be presented to the public for at least a 20-
3 day public review and comment period so that the public may review the plan and ensure that
4 it is adequate to safeguard the health and safety of neighbors, future residents, construction
5 workers and others; and

6 WHEREAS, AB 869 was adopted by the California legislature in 1991, adding Section
7 21084(d) to CEQA following several construction projects in which building trades workers
8 were inadvertently exposed to toxic chemicals during projects built on contaminated sites, with
9 the passage of AB 869 assuring that workers and members of the public would be made
10 aware of soil contamination prior to construction so that proper safeguards would be
11 implemented and adequate clean-up would be undertaken; and

12 WHEREAS, Other major cities throughout California routinely require CEQA review for
13 projects proposed to be constructed on contaminated sites on the Cortese List, typically
14 requiring preparation of a mitigated negative declaration, allowing the public to review and
15 comment on the proposed clean-up plan for at least 20 days; and

16 WHEREAS, The San Francisco Chronicle reported on a case involving a 100-year-old
17 automobile repair shop that was proposed to be converted to residential condominiums
18 located at 1776 Green Street in San Francisco, which was on the Cortese List due to the
19 presence of benzene and other toxic chemicals from leaking underground storage tanks,
20 where— despite the presence of benzene at levels 900 times above residential standards,
21 and 200 times above commercial standards— the San Francisco Planning Department issued
22 a CEQA categorical exemption for the proposed project; and

23 WHEREAS, At least 20 sites in San Francisco on the Cortese List received categorical
24 exemptions from the Planning Department since 2015, with 12 of these sites documented with
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1 addresses in the San Francisco Chronicle report, which describes these as current and future
2 projects providing more than 250 housing units throughout the City; and

3 WHEREAS, The San Francisco Planning Department had indicated that it received
4 faulty communication from the state regarding the application of categorical exemptions to
5 sites on the Cortese List, stating that the confusion that resulted from the conflicting guidance
6 from the state is “regrettable;” and

7 WHEREAS, The Planning Department then contended that it could issue “common
8 sense” exemptions for such projects, citing regulatory interpretations as opposed to stronger
9 statutory requirements in Section 21084(d) which indicate that exemptions to CEQA are not
10 allowed for Cortese List sites, and in fact issued a CEQA common sense exemption for the
11 proposed project at 1776 Green Street; and

12 WHEREAS, The common sense exemption is very narrow and is only available for
13 projects “where it can be seen with certainty that there is no possibility that the activity in
14 question may have a significant effect on the environment,” and this is highly difficult to
15 demonstrate with projects proposed on a contaminated site on the Cortese List; and

16 WHEREAS, CEQA review for projects proposed to be constructed on Cortese List sites
17 often takes the form of a mitigated negative declaration, which includes a reasonable 20-day
18 public review period, which will not result in undue delay or burden; and

19 WHEREAS, Since the City and County of San Francisco already requires preparation
20 of a clean-up plan for contaminated sites pursuant to the Maher Ordinance, with associated
21 costs for mitigation in a process familiar to developers of these sites, CEQA review will
22 essentially add an additional requirement for this remediation plan to be presented to the
23 public for a brief 20-day review period prior to approval; and

24 WHEREAS, Senator David Cortese is advancing Senate Bill 37, the Contaminated Site
25 Cleanup and Safety Act, to address this practice of granting common sense exemptions, as

1 have been uniquely discovered and publicly reported in San Francisco Planning Department's
2 handling of 1776 Green St. and other Cortese List sites that have been redeveloped or may
3 be considered for redevelopment; and

4 WHEREAS, SB 37 makes explicit that local jurisdictions are prohibited from issuing a
5 common sense exemption to these sites on the Cortese List, amended in the bill as "a list
6 compiled pursuant to the Contaminated Site Cleanup and Safety Act;" now, therefore, be it

7 RESOLVED, That the San Francisco Board of Supervisors affirms its support for
8 Senate Bill 37 as it moves through the 2020-21 legislative session in the state of California;
9 and, be it

10 FURTHER RESOLVED, That the Clerk of the Board transmits copies of this Resolution
11 to the California State Assembly and California State Senate majority and minority leaders,
12 the San Francisco delegation to the state legislature, and members of key committees where
13 SB 37 is being deliberated, including the Senate's Appropriations Committee, and the
14 Assembly's Environmental Safety and Toxic Materials Committee.

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