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BY E-MAIL AND US MAIL

October 14, 2020

President Norman Yee and
Honorable Members of the Board of Supervisors
c/o Angela Cavillo, Clerk of the Board of Supervisors
San Francisco City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Bos.legislation@sfgov.org

RE: 1776 Green Street (File No. 200908; 2018-011430CUA; 2018-011430VAR; 2018-011430ENV; 2020-002484ENV). BOS File No. 200908.

President Yee and Honorable Members of the Board of Supervisors:

I am writing on behalf of The Hollow Revolution ("THoR"), an association of neighbors living near 1776 Green Street, San Francisco, California, concerning certain applications filed with the Planning Department to convert the existing automotive garage at 1776 Green Street (built in 1914) to a new residential development consisting of five market rate, luxury three-bedroom units,[1] with a two-story addition ("Project"). (2018-011430CUA; 2018-011430VAR; 2018-011430ENV; 2020-002484ENV). This letter supplements our earlier letter submitted on July 17, 2020 and responds to the Planning Department letter dated October 13, 2020 from Environmental Review Officer Lisa Gibson and Environmental Coordinator Jeanie Poling ("Gibson/Poling Letter", "Letter").

Perhaps the most shocking revelation in **the Gibson/Poling Letter is that staff admits that the Planning Department has been violating CEQA since at least 2013** by granting CEQA exemptions to projects built on contaminated sites. The Letter states that the City, "In a few cases issued categorical exemption for projects located on GeoTracker sites that had been closed." (Gibson/Poling Letter p.6). The Letter further states that this is "regrettable" and attempts to blame the violations of law on emails received from staff at the State Water Board and from a website. (Id.). Of course, the City has its own city attorney and must interpret the law independently – not based on emails from or public websites of other agencies. Despite this shocking admission, rather than admitting egregious errors that put human health at risk and vowing to change their ways, Gibson and Poling now double-down on the Planning Department's years of law-breaking and attempt to invoke yet another CEQA exemption for contaminated sites – the

[1]The project also includes one unit deemed an accessory dwelling unit ("ADU"), creating a total of six units.

so-called “common sense exemption.” (Common sense exemptions are also prohibited for contaminated sites, as explained in Section I below.) The result is the same – they intend to continue to allow contaminated sites to escape the public scrutiny and environmental oversight required by CEQA.

The Gibson/Poling letter claims that the violations were limited to “closed” sites, however, the case of 1776 Green Street reveals the falsity of the statement. Here, Gibson and Poling issued two CEQA categorical exemptions despite that fact that it is an “open” site on the State of California’s Cortese List of Hazardous Waste and Substances Sites (“Cortese List”) – meaning that clean-up is ongoing and has not been completed. Thus, their statement is simply a falsehood. Gibson/Poling also claim that their illegal actions did not “pose a risk to public health,” yet they provide no evidence of this allegation, nor can they since CEQA review was never conducted. The Letter reveals a fundamental misunderstanding of the important role of CEQA review, both in terms of protecting public health and also in terms of promoting public participation in environmental decision-making. It is shocking that the City’s leading CEQA staff members would display such a cavalier attitude toward CEQA after being caught violating the state law for nearly a decade.

THoR supports the conversion of the former auto repair shop to residential use but strongly believes that any plans for development must include adequate clean-up of high levels of toxic contamination found in the soil at the Project site. This is a matter of public health and is critical to safeguarding the surrounding community which includes neighbors, important public resources (including an elementary school, library and park), doctors’ offices, businesses, construction workers and future residents of the Project. This is exactly what CEQA is intended to do. The City should comply with CEQA and conduct CEQA review prior to allowing any activities to proceed in furtherance of the Project. When it comes to matters of public health, once cannot “ask for forgiveness later.”

CEQA review is crucial because the Project site has been used as an automobile repair shop for over 100 years. Through a public records request, we obtained data compiled by AllWest Environmental, the Project sponsor’s environmental consultant, which reveals that 1776 Green Street is heavily contaminated with a number of highly toxic chemicals including cancer-causing benzene at levels more than **900 times above residential standards** and 200 times above commercial standards. Furthermore, the condo Project involves the disturbance of over 37,000 cubic feet of the contaminated soil. CEQA review is required by law to ensure that a clean-up plan is developed and presented to the public prior to any activities that may disturb the soil so that the public may review its adequacy and suggest additional measures or safeguards. (CEQA section 21084(d)).

While Gibson/Poling’s Letter claims that their errors were limited to “a few cases,” a recent exposé in the San Francisco Chronicle (Exhibit 1) shows that 1776 Green Street is not an isolated incident. During the tenure of former Planning Director John Rahaim, the City illegally exempted at least a dozen residential projects from CEQA review despite the fact that they were constructed on contaminated sites that are on the Cortese List.

These projects exist in Supervisorial Districts across the City. Had the public not discovered this years-long violation, it is likely that this "regrettable" practice would have continued unchecked.

This practice is unambiguously illegal and must stop. The Planning Department argues that requiring CEQA review for these type of projects would significantly delay approval, however, CEQA documents have only a 20- to 30-day comment period. Before Director Rahaim's tenure, it appears that such projects were routinely subject to CEQA review, without causing undue delays. The comment period is critical as it supports public participation and transparency and can ensure that the City requires adequate and appropriate clean-up. To allow the exemption of Cortese List sites, whether by a common sense or categorical exemption, is not only illegal, but also a deliberate decision to prioritize financial interests over public health.

Even more disturbing in the case of 1776 Green Street is that the CEQA Exemption Determination materials made available to the public by the Planning Department failed to detail the extensive contamination by toxic materials. It simply noted that the Project site is on the Cortese List. Only through a public records request made by THoR in November 2019 to the San Francisco Department of Public Health ("SFDPH") were we able to discover the extremely concerning levels of contamination. This is a prime example of the importance of public review.

We urge the Board to:

1. Determine that the Project may not be exempted from CEQA Review.
2. Require the City to prepare a CEQA document and circulate it for public review prior to the issuance of any additional permits in furtherance of the Project.
3. Ensure that the CEQA document analyzes the "whole of the Project," including all permits in furtherance of the Project.
4. Ensure that an independent environmental consultant conducts the environmental analysis.

I. A CEQA Exemption for the Project is Illegal Because the Project is on the State of California's Cortese List of Contaminated Sites.

The law could not be clearer that a project proposed to be constructed on a Cortese List site may not be exempted from CEQA review. (CEQA section 21084(d)). Projects on the Cortese List are one of only three types of projects that may never be exempted from CEQA review. The Cortese List is the State's list of highly contaminated sites. 1776 Green is listed as an "open" Cortese List site, meaning that the contamination remains on site at dangerous levels and has not been adequately cleaned up. Nevertheless, the City has attempted to exempt the Project from CEQA review on three occasions since 2019, using four different CEQA exemptions. Despite having a 3-page chronology, the Gibson/Poling Letter conveniently fails to mention that they issued two prior CEQA exemptions for the project at 1776 Green. The chronology also fails to mention that SFDPH staff even attempted to "close"/remove the Project from the Cortese

List despite the fact that high levels of contamination remain. Each time, it was only through community opposition that City staff were forced to reverse their decisions.

In a case of throwing the proverbial spaghetti against the wall to see what sticks, after unsuccessfully invoking three different CEQA exemptions (Class 1 existing facilities, Class 3 conversion of small structures, and Class 32 urban in-fill) for the Project over the course of 2019 and 2020, Planning Staff's latest attempt is a "Hail Mary" to use the narrowest of CEQA exemptions, known as the "common sense exemption." The common sense exemption is only allowed for projects when "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." (14 CCR 15061(b)((3)). It is for projects where it is manifestly obvious that there can be no environmental impacts, such as decks and retaining walls.

After exempting at least a dozen projects on contaminated sites, Planning Staff now admits that CEQA categorical exemptions are not allowed for contaminated sites on the Cortese List. But Gibson/Poling contend that going forward they can exempt such projects from CEQA review using the narrow common sense exemption. Despite the fact that THoR cited these cases in its appeal letter, the Gibson/Poling Letter ignores entirely published case law holding that **the common sense exemption cannot be used for projects on contaminated sites because the presence of toxic chemicals is an unusual circumstance creating a fair argument that the project may have adverse impacts.** *McQueen v. Bd. of Directors*, 202 Cal.App.3d 1136, 1149 (1988) (common sense exemption may not be used for project proposed on contaminated site).[2]

The Gibson/Poling Letter also ignores completely the CEQA statutory language of CEQA section 21084(d), which states, "A project located on a site that is included on [the Cortese List] shall not be exempted from this division pursuant to subdivision (a)." Subdivision (a) of section 21084 is the only statute giving the Secretary of Resources power to create CEQA exemptions. Both categorical exemptions and the common sense exemption were created by the Secretary pursuant to that section. Therefore, CEQA prohibits both categorical exemptions and common sense exemptions for projects proposed on contaminated sites.

The Gibson/Poling Letter conveniently ignores the published caselaw and statutory language, relying instead on an email from a Water Board staff member (the same agency that allegedly mislead City staff in the first place). Gibson/Poling also cite the CEQA Guidelines regulations, but ignore the statutory language of CEQA section 21084. Of course, the statutory language takes precedence over regulations, and in the case of conflict, the regulations must yield to the statute.[3]

Oddly the Staff's attempt to exempt these projects from CEQA review using the common sense exemption itself defies common sense. Since the legislature specifically

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[2] See also, *Citizens for Responsible Equitable Envt'l Dev. v. City of Chula Vista ("CREED")* (2011) 197 Cal.App.4th 327, 331-333, ("it can be fairly argued that the Project may have a significant environmental impact by disturbing contaminated soils.")

[3] *Communities for a Better Environment v. Calif. Resources Agency* (2002), 103 Cal. App. 4th 98.

stated that projects proposed to be built on Cortese List sites cannot be exempted from CEQA review, then those very same projects certainly cannot be exempted from CEQA review using the common sense exemption. Such an interpretation makes an end-run around the legislative intent to require CEQA review for projects on contaminated sites.

II. The City is Involved in Unlawful "Piecemealing."

Gibson/Poling contend that the current proposal is merely a soil boring permit under the City sidewalk and is therefore not part of the pending residential Project. This is both factually misleading and legally untenable. Most projects involve multiple permits: building permits, grading permits, variances, use permits, soil permits, etc. Under CEQA, environmental review must be done prior to the issuance of the first permit in furtherance of the project. The City may not chop a project into pieces and call each permit a separate "project," each with seemingly limited impacts. Courts call this practice "piecemealing" and it is strictly prohibited. CEQA requires analysis of "the project as a whole,"[4] so that "environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimum potential impact on the environment – which cumulatively may have disastrous consequences."[5] As the court of appeal explained:

> "It is true that "CEQA contemplates consideration of environmental consequences at the ' "earliest possible stage, even though more detailed environmental review may be necessary later." ' … The requirements of CEQA cannot be avoided by piecemeal review which results from 'chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences.' … For example, "[w]here an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project." (Guidelines, § 15165.) The prohibition against piecemeal review is the flip side of the requirement that the whole of a project be reviewed under CEQA. (See Guidelines, § 15378, subd. (a).)

Lighthouse Field Beach Rescue v. City of Santa Cruz, 131 Cal. App. 4th 1170, 1208 (2005).

Here, there is no question that the site clean-up is being done in furtherance of the Project. It is a "necessary precedent for a larger action." *Id*. Indeed the application for the luxury condo building is still pending before the Planning Commission. The developer of the condo Project is paying for the work related to the soil boring permit and the current clean-up plan, which has not been subject to CEQA review. Also, it appears that the condo Project proposes to use the area under the sidewalk as part of the expanded underground parking garage for the Project, and if so this area will be part and parcel of the condo Project. Therefore, CEQA review is required now for the whole of the Project before any additional permits are issued in furtherance of the Project.

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[4] *Arviv Ent., Inc. v. South Valley Area Planning Com*., 101 Cal.App.4th 1333, 1341, 1346 (2002).
[5] *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975);

Furthermore, even if the soil boring permits were the only permits at issue (which they are not), these are still discretionary permits for a project proposed on a site that is listed on the Cortese List. As such, CEQA review is required for the soil boring permits alone. Again, the Gibson/Poling Letter ignores the case law on this issue despite the fact that it was cited in THoR's appeal letter three months ago.

III. Maher Ordinance Cannot Substitute for CEQA Review.

The Gibson/Poling Letter also argues that the Maher Ordinance is an adequate substitute for CEQA review. This is false and ignores the law. The Maher Ordinance has no mechanism for public review of clean-up plans or public participation in environmental reviews. Decisions are made by unaccountable staff with no appeal available to elected or appointed decision-makers. As such, Maher does not provide an adequate substitute for CEQA review.

In this case, SFDPH staff proposed to list the site as "closed" in a futile attempt to remove it from the Cortese List at the end of 2019. Only public oversight and opposition caused this decision to be reversed. THoR submitted a comment letter and expert report demonstrating that the site should not be "closed" on the Cortese List because soil contamination exists in the soil at levels hundreds of times above both residential and commercial safety standards. Many other neighborhood residents also submitted letters of concern to SFDPH. This displays the importance of public participation and oversight in the CEQA process.

The record is tragically replete with examples of City staff turning a blind eye, misleading the public, or apparently covering up evidence of contamination at Hunters Point, Treasure Island and other sites, leading to disastrous and irreversible consequences to public health. This is precisely why public oversight under CEQA is so important. Under CEQA, the public has a "privileged position" in the environmental review process. As the California Supreme Court has stated:

> "The 'privileged position' that members of the public hold in the CEQA process ... is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making … This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action."

Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Assn., 42 Cal. 3d 929, 936 (1986).

In the case of San Francisco, the Maher Ordinance does not provide for the public participation and involvement that is so central to CEQA, and it therefore does not provide an adequate substitute to CEQA review. The Supreme Court has also determined that other environmental laws may not substitute for CEQA. For example, the Supreme Court held that the State Board of Forestry's Timber Harvest Plan program did not exempt the agency from CEQA review. *Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1231

(1994). As such, the City's Maher Ordinance does not exempt the City from compliance with CEQA.

IV. This Appeal is Not Moot.

The Gibson/Poling Letter suggests that this appeal is moot because much of the soil boring work has been completed. Gibson/Poling contend that THoR should have appealed to the Board of Appeals to stop work under the permit. This is incorrect because, as discussed above, the City must analyze the "whole of the project," not just the first permit. The soil boring was merely the first phase of a multi-phase project involving many permits. CEQA review must be conducted prior to the issuance of any additional permits in furtherance of the Project.

More importantly, the Board of Appeals does not have jurisdiction over CEQA appeals. The Administrative Code vests sole authority for CEQA exemption appeals in the Board of Supervisors. Admin. Code section 31.16. So an appeal to the Board of Appeals would have been nonsensical.

Furthermore, on June 19, 2020, Senior Environmental Planner Jeanie Poling wrote to the undersigned stating:

> Per the Clerk of the Board's instructions, we will await their request for a determination of appeal timeliness. The CEQA exemption states that the 30-day appeal period begins when DPW issues the well boring permit. I have instructed the applicant that they may apply for DPH and DPW permits, but no physical work should occur until after the appeal is determined timely and is scheduled and heard. (Exhibit 2).

Having informed the public that no work would be allowed on the permit once a CEQA appeal was filed, Ms. Poling cannot now argue the opposite position. Such disinformation should not be countenanced by the Board. City Staff should not be allowed to misinform and mislead the public and then argue the opposite position to the Board of Supervisors.

The courts have held that the doctrine of equitable estoppel applies when, as here, City staff has misled the public. Courts have held that "strong considerations of policy" are needed to deny the application of estoppel where government entities have misled the public. *Co. of San Diego v. Cal. Water and Telephone Co.* (1947) 30 Cal.2d 817. "One cannot justly or equitably lull his adversary into a false sense of security, and thereby cause his adversary to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by his course of conduct as a defense to the action when brought." *Lantzy v. Centrex Homes* (2003) 31 Cal.4th 363, 383. As the Supreme Court stated, "'Men must turn square corners when they deal with the Government', it is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens." *Farrell v. Co. of Placer* (1944) 23 Cal.2d 624, 627.

Also, under the doctrine of "capable of repetition yet evading review," this appeal cannot be rendered moot. Otherwise, the City could allow the Project to proceed one permit at a time. By the time each permit is scheduled for hearing by the Board, the work under that permit may have been completed and the appeal rendered moot. In this way, the developer could complete the Project piece by piece without ever having the CEQA issues considered by the Board. The courts have developed the "capable of repetition yet evading review" doctrine to avoid such absurd results. Under the doctrine the agency should consider actions even after they are complete if those actions are capable of repetition.[6] In *Californians for Alternatives to Toxics v. California Department of Pesticide Regulation* (2006) 136 Cal.App.4th 1049, the court held that "if a matter is of general public interest and is likely to recur in the future, a resolution of the issue by the court is appropriate" and "cases are not moot when they present questions that are capable of repetition, yet evade review."

The City should not be allowed to call each permit a separate project, allow work to proceed on the permit pending hearing by the Board, and then deem each appeal moot. Such a result essentially deprives the Board of its lawful jurisdiction and deprives the public of due process of law.

V. Work on Permits Should Not be Allowed to Proceed During the Pendency of an Appeal.

On July 17, 2020, THoR filed an appeal to the Board of Supervisors of the Planning Department's June 16, 2020 issuance of CEQA exemption for 1776 Green Street. This appeal addressed the SFDPH grant of Temporary Occupancy Permits and Boring Permits on July 8 and 9, 2020, to AllWest Environmental, and the SFDPH Environmental Health Division action of January 31, 2020, granting an approval of a Site Characterization Workplan submitted on behalf of the Project Sponsor, Local Capital Group by AllWest Environmental. However, City staff shockingly allowed work to proceed starting on August 10, 2020, even though there was a pending appeal – despite written assurances from Ms. Poling that no such work would be allowed. (Exhibit 2).

The City must not allow work to proceed on permits during the pendency of an appeal. A city may not require parties to exhaust administrative remedies unless the agency's rules stay the effectiveness of the decision being appealed. As the U.S. Supreme Court stated:

> "In no case may appeal to 'superior agency authority' be required by rule unless the administrative decision meanwhile is inoperative, because otherwise the effect of such a requirement would be to subject the party to the agency action and to repetitious administrative process without recourse. There is a fundamental inconsistency in requiring a person to continue 'exhausting' administrative processes after administrative action has become, and while it remains, effective."

Darby v. Cisneros, 509 U.S. 137, 148 (1993).

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[6] *N. Coast Rivers All. v. Westlands Water Dist*., 227 Cal. App. 4th 832, 849 (2014).

VI. Conclusion

The Project may not be exempted from CEQA review because the site is so heavily contaminated with toxic chemicals that it is on the State's Cortese List of contaminated sites. CEQA review is therefore required prior to the issuance of any permits in furtherance of the Project. The City must prepare a CEQA document that analyzes these impacts and proposes alternatives and feasible measures to mitigate the impacts. The public and the City's own Planning Commission must be afforded the opportunity to review the clean-up plan and the CEQA document to ensure that mitigation measures have been implemented to adequately safeguard the health and safety of nearby residents, workers and future residents of the Project. Once again, we urge the Board to:

1. Determine that the Project may not be exempted from CEQA Review.
2. Require the City to prepare a CEQA document and circulate it for public review prior to the issuance of any additional permits in furtherance of the Project.
3. Ensure that the CEQA document analyzes the "whole of the Project," including all permits in furtherance of the Project.
4. Ensure that an independent environmental consultant conducts the environmental analysis.

Thank you for your consideration of our comments and concerns.

Sincerely,

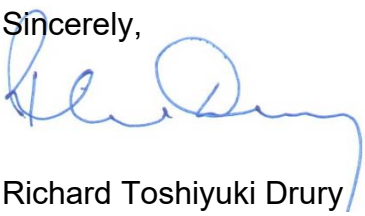

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EXHIBIT 1

LOCAL // BAY AREA & STATE

Exclusive: How SF sidestepped state law on developing toxic sites

Cynthia Dizikes

June 7, 2020 | Updated: June 7, 2020 1:03 p.m.

Ben Ellis and daughter Emmy, 8, throw a football outside their house in San Francisco last year. They live across the street from a former auto repair garage that is on a state list of hazardous waste sites. Despite that status, the city planning department considered exempting a development on the site from the state's environmental review ...

Photo: Gabrielle Lurie / The Chronicle

Contaminated gas stations, vehicle repair shops and parking garages have become prized development commodities in San Francisco in recent years as the city struggles with a crushing housing shortage.

bypass environmental reviews required under state law, a Chronicle investigation has found.

The California Environmental Quality Act prohibits certain exemptions for the tens of thousands of properties on a statewide roster of hazardous-waste sites called the Cortese list. “Categorical” exemptions are only supposed to go to projects with no significant impact on the environment or human health. The prohibition was designed to protect the public, construction workers and future occupants from exposure to dangerous substances, environmental lawyers said.

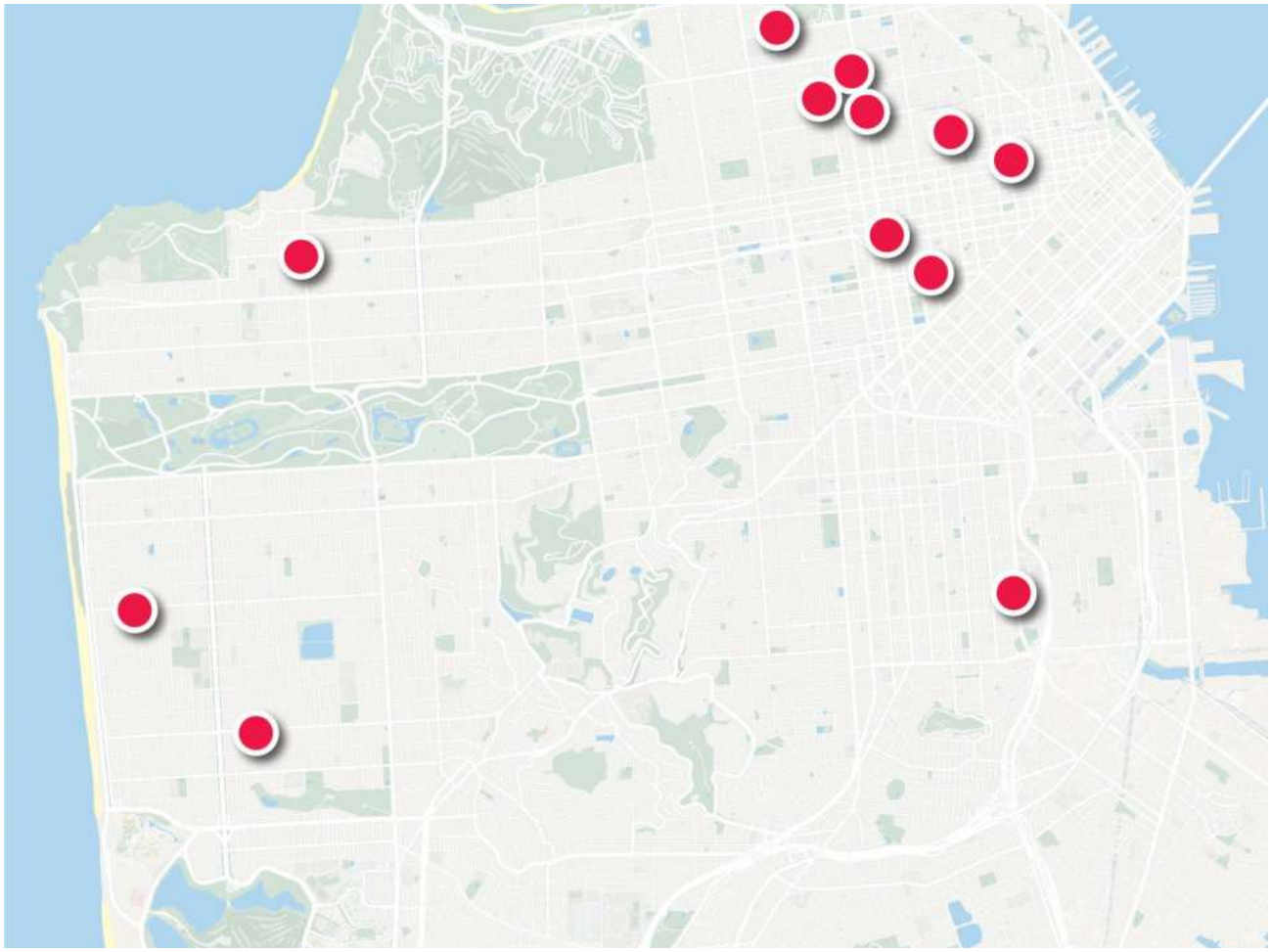
The state law mandates transparency and requires local governments to notify the public about potential hazards at a site before development begins. It allows the public to demand health protections and additional levels of cleanup, and requires formal consideration of those comments. To enforce compliance, people can sue agencies they think are failing to adhere to the law.

But in the past five years, the San Francisco Planning Department granted or considered categorical exemptions for at least a dozen projects on Cortese list sites, a Chronicle

The mixed-use residential development at 2255 Taraval St. in San Francisco. The city granted the development an exemption from the state's environmental review process, despite the site's presence on a state list of hazardous waste sites.

The city exempted nine of those projects from the state's public environmental review process. At four of the sites, work hasn't begun. Two are under construction. The final three have newly built condominiums, and at least one of those is occupied.

The city considered exempting the three other projects — including a condo development on the site of a vacant auto repair garage at 1776 Green St. in Cow Hollow, despite the presence of high levels of cancer-causing benzene in the soil and groundwater. The city abandoned that plan in February after neighbors hired a lawyer to fight it.



Then, following inquiries about the exemptions from The Chronicle in early March, before the coronavirus shut down the economy, the Planning Department said it will stop giving categorical exemptions to projects on the Cortese list.

"The Planning Department is revising its approach to projects on these sites," spokeswoman Gina Simi said.

Simi said the city relied on state guidance in granting some of the exemptions. Despite repeated requests from The Chronicle to see the guidance, however, Simi has not provided it.

An attorney with the State Water Resources Control Board, which oversees the largest part of the Cortese list with regional water boards, said he was unaware of any such guidance issued by the agency.

properties to state and regional standards under a local ordinance carried out by the Public Health Department, regardless of whether a project receives an exemption from the state's environmental review process, she said.

"We strongly disagree with the false assertion that the city's local process is not as rigorous or as transparent as what is required under (state law), that it doesn't consider public comment or concerns, and that we intend to circumvent the state's environmental law," Simi said. "The city's environmental review procedures are meticulous."

But several environmental lawyers told The Chronicle that the California Environmental Quality Act allows far more scrutiny of development on toxic sites than the city's process alone. Under state law, the public can require safer measures be taken to reduce significant impacts on the environment and health, and can more easily sue if they are not. They said the city flouted state law and, in doing so, deprived the public of the ability to vet developments.

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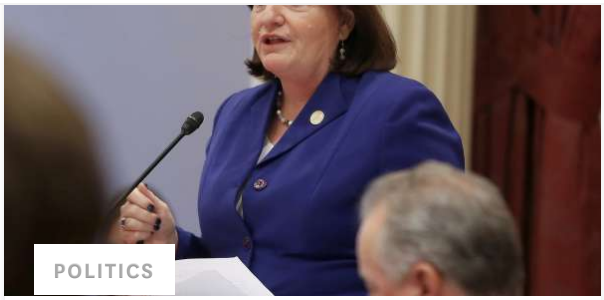

POLITICS

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BY PHIL MAT

Ambitio growth c

"The city made a huge mistake and has been blatantly violating state law for years, thereby potentially placing an untold number of city residents at risk of exposure to highly toxic chemicals," said Richard Drury, an environmental lawyer representing neighbors of the vacant auto repair garage on Green Street.

by the city's lengthy approval process and bans on apartments in large swaths of San Francisco, have turned to polluted land, including former garages and gas stations where toxic substances in underground tanks have leaked into the soil and groundwater.

The city and developers are motivated, as with any project, to get these properties developed as soon as possible — and exemptions from the state law can speed the process by reducing procedural hurdles, legal hangups and costs.

San Francisco has more than 2,000 leaky underground storage tank sites on the Cortese list, named for former state Assemblyman Dominic Cortese of San Jose. Nearly all of them, about 97%, have been cleaned to some extent, records show. Yet many may still contain contamination that could be hazardous.

The Chronicle looked at projects on Cortese list sites for which the city granted or considered categorical exemptions. There were at least 20 such projects since 2015, according to city data. The Chronicle focused on 12 where developers planned to excavate thousands of cubic yards of soil to build hundreds of new residential units.

Public documents for five of the 12 sites show the city also tried a second method to avoid state review and fast-track development: "common sense" exemptions.

State law restricts such exemptions to projects that present "no possibility" of significant hazards.

A sign at 986 South Van Ness Ave. in San Francisco where the city considered exempting a proposed development from the state's environmental review process. The site is on a state list of hazardous waste sites that prohibits such exemptions.

That wouldn't apply to the five sites, however. Developing them would mean disturbing a great deal of potentially contaminated soil: from 1,400 to nearly 17,000 cubic yards, depending on the site, said Douglas Carstens, an environmental lawyer near Los Angeles.

"Transparency is sorely needed," Carstens said. "So the cleanup is not just a bilateral negotiation between the project proponent and the city."

One of those sites is 2255 Taraval St. in the Outer Sunset neighborhood, where a former auto garage and laundromat left toxic residue behind.

The site is so clean "we could bring it down to the beach," said the project's general contractor one recent afternoon as a crew built a wooden frame on the property. The development will be a four-story, mixed-use building with 10 residential units.

fumes at bay on the property. He asked that his name not be used because he wasn't authorized to speak publicly about the project.

He said the property now has a "serious vapor barrier and a probe buried under 2 feet of concrete." The equipment, though, will have to be tested every few years to ensure it continues to contain the hazards, he said.

"If there's gas, then they might have to put in a fan," he said.

That kind of uncertainty is precisely why contaminated sites should go through the state-mandated environmental review process, Drury said.

The state process allows the public to demand greater levels of cleanup so that measures such as vapor barriers — which are effective, but can fail — are not necessary.

Drury said the Green Street garage site is a case in point for why public involvement matters.

For years, the auto repair business stored gasoline in four large underground storage tanks. The tanks were removed in 2016, but crews later found they had leaked benzene and other hazardous substances into the soil and groundwater.

Nevertheless, last October the Planning Department considered a categorical exemption for a five-unit condo that developers planned to build on the site.

Drury protested. But rather than drop its effort to exempt the project, the city added a common-sense exemption to its options. Drury argued that the site remained significantly contaminated, pointing to the city's own records showing that benzene in the groundwater exceeded safety thresholds by about 900 times.

The city then tried a third tactic: announcing that the developer could investigate and clean the site without going through the public environmental review process.

Alarmed neighbors appealed to the Board of Supervisors.

process.

This prompted Drury to fire off another written objection in April. He and the Green Street neighbors are still waiting for a response.

One of the neighbors who hired Drury last fall is Dr. Youjeong Kim, who lives across the street from the garage with her two children and husband, Ben Ellis.

The group of neighbors has spent many months and thousands of dollars trying to get the city to run the development through the state's environmental review.

"As a doctor and a parent it is really concerning and upsetting to me that of all places on Earth, we in San Francisco are going to skirt the law that is there to protect us," Kim said. "If we hadn't had the time and the resources to press this issue, they would have just exempted it."

San Francisco Chronicle staff writer Nanette Asimov and newsroom developer Evan Wagstaff contributed to this report.

Cynthia Dizikes is a San Francisco Chronicle staff writer. Email: cdizikes@sfchronicle.com Twitter: @CDizikes

EXHIBIT 2

From: **Poling, Jeanie (CPC)** <jeanie.poling@sfgov.org>
Date: Fri, Jun 19, 2020 at 11:07 AM
Subject: RE: 1776 Green Street
To: Richard Drury <richard@lozeaudrury.com>
Cc: May, Christopher (CPC) <christopher.may@sfgov.org>, Hillis, Rich (CPC) <rich.hillis@sfgov.org>

Hello Mr. Drury,

Per the Clerk of the Board's instructions, we will await their request for a determination of appeal timeliness. The CEQA exemption states that the 30-day appeal period begins when DPW issues the well boring permit.

I have instructed the applicant that they may apply for DPH and DPW permits, but no physical work should occur until after the appeal is determined timely and is scheduled and heard.

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

From: Richard Drury <richard@lozeaudrury.com>
Sent: Thursday, June 18, 2020 4:51 PM
To: Poling, Jeanie (CPC) <jeanie.poling@sfgov.org>; May, Christopher (CPC) <christopher.may@sfgov.org>; Hillis, Rich (CPC) <rich.hillis@sfgov.org>
Subject: 1776 Green Street

Dear Ms. Poling, Mr. May, and Director Hillis:

Please note that on June 17, 2020, our firm appealed the Third CEQA Categorical Exemption issued by the San Francisco Planning Department on June 16, 2020 for 1776 Green Street. Pursuant to the City's ordinance, no activity in furtherance of the project may occur until the appeal is resolved by the Board of Supervisors. Thank you.

Richard Drury

--

Richard Drury

Lozeau Drury LLP

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Oakland, CA 94612

(510) 836-4200

richard@lozeaudrury.com