

LOCAL

Exclusive: How SF sidestepped state law on developing toxic sites

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Ben Ellis and daughter Emmy Ellis, 8 (right) throw a football around outside of their house on Monday, Dec. 23, 2019 in San Francisco, California. They live across the street from a former auto-body repair shop that is on the state's list of most contaminated sites. Despite that status, the city planning commission is considering exempting the site from a thorough environmental review to make way for a new condo development. The Ellis family opposes this exemption.

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.

But city officials have repeatedly stymied public oversight when assessing whether these chemical-tainted properties are safe for hundreds of new homes by allowing developers to 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 analysis found.



2255 Taraval Street seen on Tuesday, June 2, 2020, in San Francisco, Calif. This is a site where the city allowed development on toxic sites to bypass the state's environmental review process.

Liz Hafalia / The Chronicle

The 12 projects involve more than 250 current and future housing units around the city, in the Mission, Sunset, Cow Hollow, Nob Hill and other neighborhoods.

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.

Although the city exempted a number of Cortese list sites from state review, Simi defended the quality of the cleanups carried out by the city. San Francisco decontaminates polluted 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.”



Ben Ellis embraces son Ethan Ellis, 6 as he takes a break from playing in the park at the end of their block on Monday, Dec. 23, 2019 in San Francisco, California. They live across the street from a former auto-body repair shop that is on the state's list of most contaminated sites. Despite that status, the city planning commission is considering exempting the site from a thorough environmental review to make way for a new condo development. The Ellis family opposes this exemption.
Gabrielle Lurie / The Chronicle

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.

"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.

How San Francisco handles contaminated properties has become critical in the effort to build new homes in a city that desperately needs more housing. Developers, discouraged 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 seen at 986 South Van Ness Avenue on Tuesday, June 2, 2020, in San Francisco, Calif. This is a site where the city allowed development on toxic sites to bypass the state's environmental review process.

Liz Hafalia / The Chronicle

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.

The contractor, who shepherded the development through the city’s hazardous waste cleanup process, described rigorous tests and mitigation measures meant to keep toxic 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.

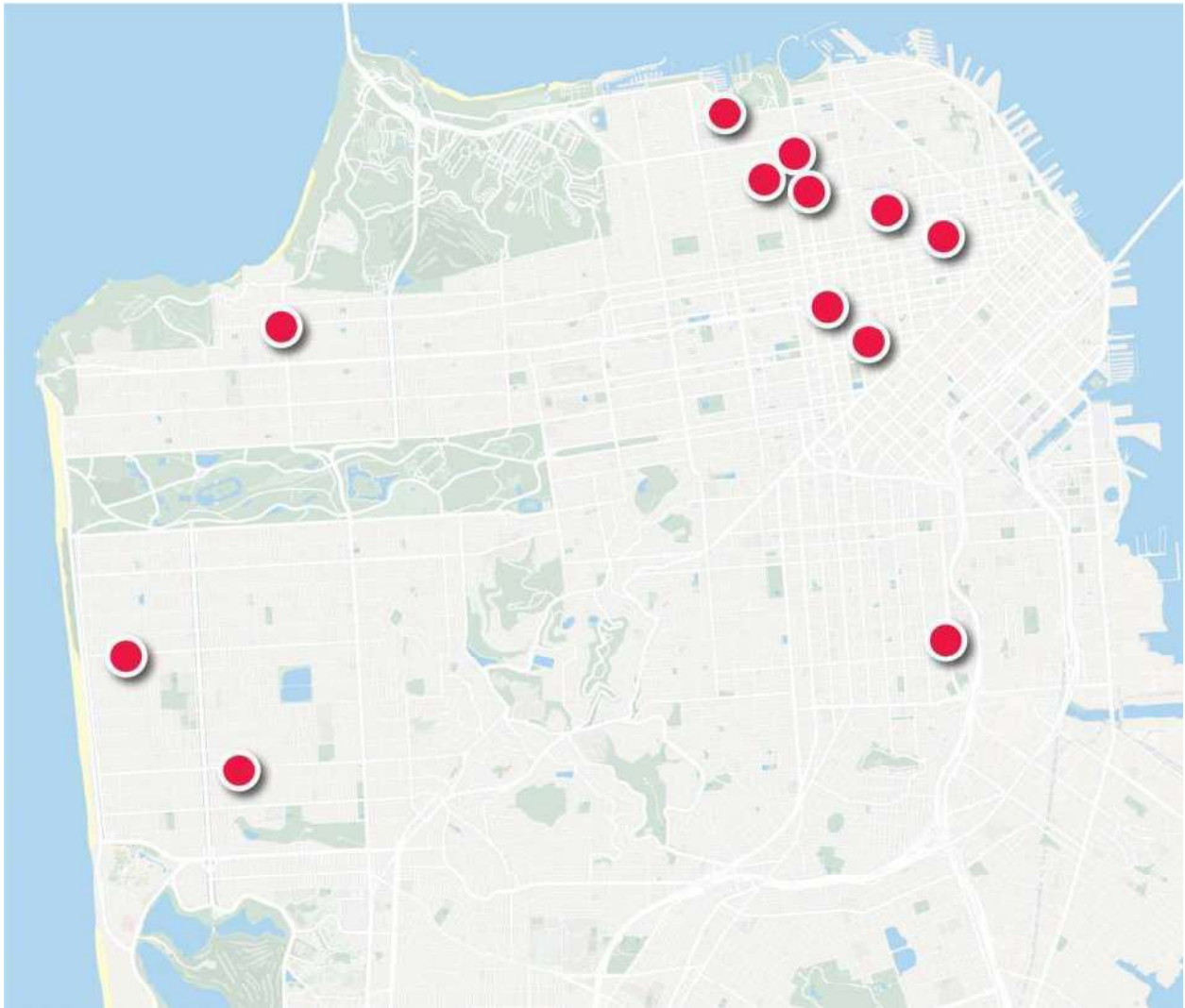
Drury protested. But rather than drop its effort to exempt the project, the city added a common-sense exemption to its options. Drury argued that the site remained significantly contaminated, pointing to the city’s own records showing that benzene in the groundwater exceeded safety thresholds by about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

In February, the city dropped its exemption of the project — but again gave the developer

the go-ahead to clean up the site without going through the state's environmental review process.

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



Interactive maps: 12 toxic site developments

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.

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