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Proposed Housing on Laguna Honda Hospital Campus Senior Housing on “Cortese List” (Toxic) Site

by Patrick Monette-Shaw

Who knew large portions — if not all — of LHH’s campus may be on the State of California’s “Cortese List” of toxic land sites having hazardous materials that haven’t been mitigated? The sites would be very expensive to remediate, and may involve removing tons and tons of soil.

Fifteen months ago in October 2020, I published an [article](#) titled “LHH: Inappropriate Site for Senior Housing.” The article outlined multiple reasons why former Supervisor Norman Yee’s proposal to build senior housing on Laguna Honda Hospital’s campus was (and still is) a really bad idea, including that isolating seniors on a remote parking lot on the campus is inhumane. As far back as 2006, some disability rights advocates asserted the LHH location would be like *institutionalizing* them.

At the time I wrote that article, I had no idea of what the *Cortese List* even was or what it portended. It may be the most important reason why the LHH campus is wholly inappropriate for seniors, people with disabilities, and children (given plans for a Day Care center as part of the housing project).

All of the concerns I raised in October 2020 remain valid and worthy of reading carefully, because of the difficult topography and very steep elevation of the site, along with other problems seniors and people with disabilities would face having, being so isolated on LHH’s campus and a sense of being “institutionalized” far from their own neighborhoods.

Although I’ve been following the rebuild of Laguna Honda Hospital since 1999, I only just learned from documents recently released from the Mayor’s Office of Housing and Community Development (MOHCD) in response to a long-stalled public records request that the two proposed alternative locations on LHH’s campus for the senior housing project are on the *Cortese List*. One of the documents is Mercy Housing California’s 50-page draft [Laguna Honda Senior Living Master Plan](#) dated September 17, 2021. Pages 7 and 10 of the *Master Plan* report the two optional sites on LHH’s campus are on the *Cortese List*.

I don’t recall reading in the 2001 and 2002 draft or final *Laguna Honda Hospital Replacement Project* EIR’s anything about LHH being on a *Cortese List* site, or any plans to do *Cortese* remediation (other than doing a very limited amount of asbestos abatement in a few of the administrative areas of the old main hospital). Nor do I recall reading anything in the Anshen + Allen architectural reports and Turner Construction Company documents presented to the Health Commission about LHH being a *Cortese List* location and remediation plans. And I also don’t recall reading anything in MOHCD status reports presented to San Francisco’s *Citizen’s General Obligation Bond Oversight Committee* about progress on the *Replacement Project* bond measure that LHH’s campus was a *Cortese List* site.

The other document just released is an accompanying 62-page analysis titled “[Affordable Assisted Living in San Francisco: Feasibility Study](#)” dated September 8, 2021 prepared for Mercy Housing California.



FIGURE 1 : SITE A & SITE B LOCATION MAP
A Toxic Site?: Mercy Housing’s draft “*Master Plan*” for senior housing includes three potential site options: “Site A” and “Site B” on the northwest campus (upper left in photo), and “still to be determined” “Option 5” on San Francisco’s former *Youth Guidance Center* grounds.”

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Cortese List History

Back in 1985, then-California Assemblymember Dominic Cortese authored a law to enact a list of hazardous-waste sites in the State; the list quickly became known as the “*Cortese List*.” He created the list, in part, to highlight the potential dangers of developing projects on sites that could pose severe health risks to construction workers and future occupants without mitigation efforts designed to clean up or eliminate hazardous substances.

Six years later, in 1991 then-Assemblymember Samuel Farr passed AB-869, a bill that prohibits any project from being exempt under CEQA if located on a *Cortese List* site. Farr’s law was in response to actual instances of construction projects having been carried out on *Cortese List* sites without thorough environmental analysis due to CEQA exemptions.

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The list is an annually-updated planning document used to inform the public about the location of hazardous materials release sites — say the Bayview-Hunters Point Shipyard, for example. California’s Department of Toxic Substance Control (DTSC) and the State Water Resources Control Board (SWRCB), along with other state and local agencies, are required to include listing certain contaminated sites on the *Cortese List*, presumably until the sites are fully abated and remediated. California Public Resources Code §21084 states CEQA exemptions cannot be granted for projects on *Cortese List* sites for any reason or under any condition.

CEQA exemptions are usually reserved for projects that do not have any possibility of posing a significant impact on the environment or human health, according to state law.

Unfortunately, many local entities and jurisdictions eventually found a creative way to intentionally bypass CEQA environmental review requirements of *Cortese List* sites by granting so-called “common sense” exemptions, claiming those types of exemptions aren’t subject to Public Resources Code §21084. That quickly became a barn door-wide *loophole* allowing entities — including, somewhat shockingly, even San Francisco’s Planning Department — to implement development projects on *Cortese List* sites by issuing “common sense” loophole exemptions without notifying the public about potential health risks to a project’s construction workers or the surrounding community.

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Along came Dominic Cortese’s son, current State Senator Dave Cortese, who introduced [SB-37 Contaminated Site Cleanup and Safety Act](#) on December 7, 2020 to close the “common sense” exemption loophole that is used to get around toxic site development rules. SB-37 is unofficially named the “*Dominic Cortese ‘Cortese List’ Act of 2021*” in honor of his father. SB-37 bolsters the Public Resources Code to confirm all types of exemptions, including CEQA exemptions, that explicitly allow “common sense” objections cannot be granted to projects on *Cortese List* sites.

Thanks to SB-37 and the *Cortese List*, CEQA requires that a clean-up plan for a contaminated site must be presented for at least a 20-day public review and comment period so the public may review the plan and ensure that it is adequate to safeguard the health and safety of neighbors, future residents, construction workers, and others.

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Clearly, a 20-day review period — which many view as completely inadequate to begin with and should be extended to a longer period of time — wouldn’t take the skin off of anyone’s nose (not even the noses of developers)!

San Francisco Board of Supervisors Supported SB-37

Then came San Francisco Supervisor Gordon Mar, the lead sponsor of Board of Supervisors [Resolution #205-21](#). The Board's Resolution sought to affirm The City's support of State Senator Cortese's SB-37 to prohibit local jurisdictions from issuing any "common sense" exemptions to sites included on the *Cortese List*.

Resolution 205-21 asserts that a *categorical exemption* cannot be issued for a project proposed for construction on any *Cortese List* site, as established by CEQA statutes in Section 21084(d), and also states *preliminary mitigated negative declarations* under CEQA require a clean-up plan for a contaminated site that must be presented to the public for at least a 20-day public review and comment period. The Resolution also asserts Public Resources Code §21084 states CEQA exemptions cannot be granted for projects on *Cortese List* sites for any reason, presumably not even the "common sense" exemption.

Mar was joined by seven other supervisor's to gain a mayoral veto-proof piece of legislation, including current D-7 Supervisor Myrna Melgar who was formerly president of the San Francisco Planning Commission.

The Resolution was heard by the Board's Land Use and Transportation Committee on May 3, 2021. The next day it was passed unanimously by the full Board (including by Melgar) on May 4, essentially preventing Mayor Breed from vetoing it.

Public comments [posted](#) on the Board of Supervisors web site as background materials for the hearing on Resolution #205-21 included this notable comment:

*"SB 37 will close a loophole that has been improperly **exploited** by the San Francisco Planning Department to allow projects built on contaminated sites to evade CEQA review. SB 37 will help to safeguard public health and safety by ensuring that contaminated sites are properly cleaned up before development projects are allowed to proceed."* [Emphasis added]

A [48Hills](#) article about the Board of Supervisors challenging the Planning Department over construction on toxic sites is informative and well worth reading.

The City and County of San Francisco already requires preparation of clean-up plans for contaminated sites pursuant to our City's Maher Ordinance — a program managed by San Francisco's Department of Then came San Francisco Supervisor Gordon Mar, the lead sponsor of Board of Supervisors [Resolution #205-21](#). The Board's Resolution sought to affirm The City's support of State Senator Cortese's SB-37 to prohibit local jurisdictions from issuing any "common sense" exemptions to sites included on the *Cortese List* Public Health — with associated costs for mitigation in a process developers are familiar with. Unfortunately, the Maher Program doesn't involve a public process or public comment periods to provide citizen oversight.

The Board's Resolution was passed unanimously to affirm SB-37's requirement that remediation plans for *Cortese List* projects be presented to the public for a brief 20-day review period prior to Planning Department CEQA review and approval.

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" The Resolution was passed unanimously by the full Board of Supervisors (including by Supervisor Merna Melgar) on May 4, to affirm SB-37's requirement remediation plans for Cortese List projects must be presented to the public for a brief 20-day review period. Its unanimous passage essentially prevented Mayor Breed from vetoing it. "

" Strangely, Mayor Breed returned Resolution #205-21 unsigned to the Board of Supervisors on May 14, 2021. Why would Breed *oppose* merely supporting getting rid of the CEQA 'common sense' loophole (unless it was of no concern to her so she could — unimpeded — advance her housing and construction agendas)? "

Strangely, Mayor London Breed returned Resolution #205-21 unsigned to the Board of Supervisors on May 14, 2021. Why would Breed *oppose* merely supporting getting rid of the CEQA “common sense” loophole (unless it was of no concern to her so she could — unimpeded — advance her housing and construction agendas)? Why would she oppose a mere Resolution from the Board, which has little effect in law? And why would Breed oppose a mere 20-day review period for the members of the public who elected her to office?

Planning Department’s Environmental Review

San Francisco’s Planning Department maintains a [web page](#) with a searchable map showing project locations throughout the City that have either completed environmental reviews (shown using green dots) vs. project locations that are currently receiving environmental reviews (shown using blue dots). The page is titled “*CEQA Exemptions*,” but the text claims the map displays Exemptions (Categorical, Statutory, and Community Plan Exemptions), Mitigated Negative Declarations, and Environmental Impact Reports related to applications filed with the San Francisco Planning Department. The types of exemptions granted for each project are not reported on-line.

The top map in Figure 1 from the Planning Department shows where limited environmental review is complete on LHH’s campus (marked using green dots). The bottom map adds an overlay in yellow showing the two proposed alternative locations for Mercy Housing’s proposed housing projects.

It’s thought that Mercy Housing’s project for LHH’s campus has not yet filed a formal application with the Planning Department. But there are no blue dots on the map showing any environmental reviews that may be underway anywhere on LHH’s campus.

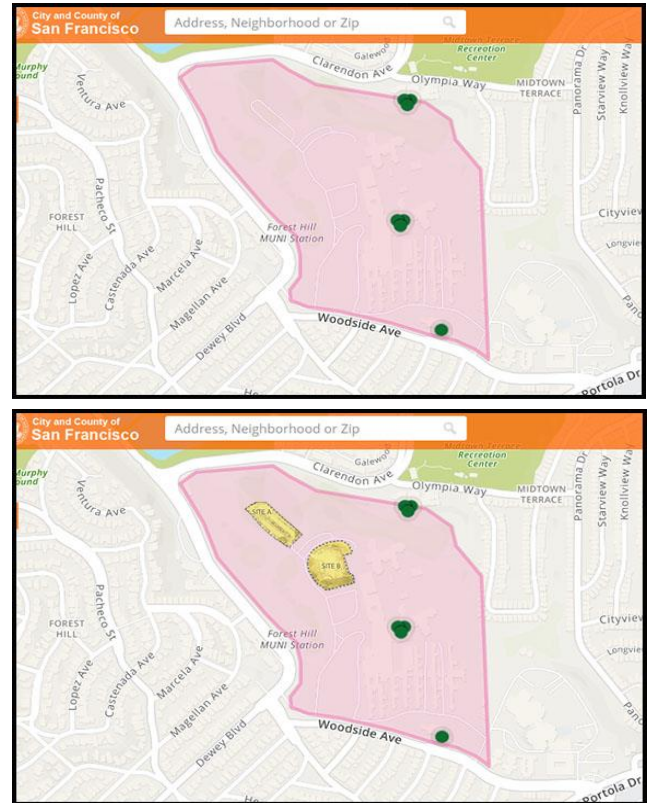
Mercy’s Senior Living Master Plan Concerns

As I’ve previously written, former Supervisor Yee, Mercy Housing, MOHCD, and the Department of Public Health have been planning to piggy-back and creatively shoehorn the proposed LHH senior housing project onto the EIR conducted in 2002 for the LHH replacement hospital rebuild to prevent having to perform another CEQA review. Obviously, the proposed “Site A” and “Site B” locations are *not* the same locations proposed for an assisted living facility on the east side of LHH’s campus in the 2002 LHH EIR, so it should require a new EIR.

Should Mercy Housing receive an SB-35 “clearance letter” from the State for its LHH housing project on this *Cortese List* site, it essentially means no CEQA review will occur because the project is subject only to a “ministerial” approval process, and the project will not be subject to applicable neighborhood notice requirements. That would essentially mean that there will be no 20-day review and comment period for a clean-up plan to be presented to the public.

“*Ministerial approval*” means a process for development approval that involves little or no personal judgment by public officials as to the wisdom or manner of carrying out a given project. It’s thought the City’s existing *Maher Program* has all along utilized objective

Figure 1: LHH Campus Environmental Review vs. Housing Sites



Proposed Housing Sites vs. Environmental Review: Top map is from Planning Department’s “*CEQA Exemptions*” web page enhanced with a pink overlay outlining the LHH campus perimeter, plus green dots where environmental review is complete. There are no blue dots showing Campus sites currently receiving reviews. Bottom map adds yellow overlay of the “Site A” and “Site B” proposed housing locations. It doesn’t appear Planning has performed “*Cortese List*” environmental reviews of the two locations in yellow shading.

“ The proposed ‘Site A’ and ‘Site B’ locations are not the same locations proposed for an assisted living facility on the east side of LHH’s campus in the 2002 LHH EIR, so it should require a new EIR. ”

not be subject to applicable neighborhood notice

“ SB-35 requires developers document their project site is zoned for residential development, or residential mixed-use development. LHH’s campus is *not* zoned principally for residential housing. ”

evaluation criteria that are outside the scope of “personal judgments,” and, therefore, are outside the scope of ministerial approval processes.

SB-35 amends Government Code §65913.4 to require local entities streamline the approval of certain housing projects by providing a *ministerial approval* process. Developers must document that their project site is zoned for residential use or residential mixed-use development, or a general plan designation that allows residential use or a mix of residential and nonresidential uses. The LHH campus is *not* zoned principally for housing. Instead, the campus is zoned “P, Public” which until recently did not permit *any* residential housing; voters recently approved allowing only residential uses for 100% affordable housing and educator housing projects on sites zoned “P.” The campus has also not been re-zoned as a “*Special Use District*” by the Board of Supervisors to allow residential uses.

“ Mercy’s proposed senior housing project is *not* planned to be a 100% affordable housing project because it envisions a good percentage of the units will be market-rate units to help fund future ongoing operating costs. ”

Mercy’s proposed senior housing project is *not* planned to be a 100% affordable housing project because it envisions a good percentage of the units will be market-rate units to help fund future ongoing operating costs. Mercy Housing’s draft *Master Plan* for senior housing on LHH’s campus wrongly asserts that the housing “Site A” option is zoned “OS, Open Space,” and “Site B” is zoned as “80-D,” which is not a zoning code but rather the height and density code.

“ Mercy Housing’s proposal for senior housing on LHH’s campus does not appear to meet SB-35’s residential zoning requirement because LHH’s campus is zoned ‘P, Public’ and allows limited residential housing only for 100% affordable housing and educator housing projects, *not* 50% mixed-income projects. ”

To qualify for the streaming and ministerial provisions provided by SB-35, housing projects have to provide on-site affordable housing to households earning 80% AMI or less. Alternatively, SB-35 also applies to mixed-income projects if at least 50% of the proposed units are affordable to qualifying households. In both cases, SB-35 requires that the proposed site be zoned for residential use. To repeat, Mercy Housing’s proposal for senior housing on LHH’s campus does not appear to meet SB-35’s residential zoning requirement because LHH’s campus is zoned “P, Public” and allows limited residential housing *only* for **100% affordable housing** and educator housing projects, *not* 50% mixed-income projects.

“ We have no idea how many of the 249 to 269 total units Mercy is proposing will be market-rate units. ”

Mercy’s financial feasibility study analyzed the feasibility of 80 to 95 licensed assisted living units or unlicensed housing-with-enhanced-services units, plus 169 to 174 independent senior housing units. By its own admission, Mercy’s feasibility study noted the licensed assisted living units in a *Residential Care Facility for the Elderly* (RCFE) model of assisted living would need to include market-rate units for private-pay clients paying up \$6,000 or more per month. The feasibility study did not indicate how many — or what percentage — of the 80 to 95 assisted living units would need to be market-rate units to pencil out. And the feasibility study creatively excluded reporting whether, or how many of, the 169 to 174 independent senior housing units may also be market-rate units in order for the project to pencil out as financially feasible. We have no idea how many of the 249 to 269 total units Mercy is proposing will be market-rate units.

“ Developers seeking SB-35 approval are also required to demonstrate that their development is *not* located on a parcel that is listed as a hazardous waste site. ”

Obviously, including market rate units on LHH’s campus does not qualify under San Francisco’s November 1999 voter-approved “Proposition E” that allows only 100% affordable housing or educator housing projects on sites zoned “Public.” Prop. E made no provision for *any* market-rate units on public lands, even if SB-35 applies to mixed-income projects with at least 50% of the proposed units are affordable to qualifying households.

Mercy’s senior housing project at LHH project should not be eligible for ministerial approval under SB-35 to evade being subject to CEQA and a new EIR under Senator Cortese’s SB-37.

Developers seeking SB-35 approval are also required to demonstrate that their development is *not* located on a parcel that is listed as a hazardous waste site under California Government Code §65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code §25356.

Mercy Housing clearly knows SB-35 approval for building on a *Cortese List* site requires a “clearance letter” issued by the California Department of Toxic Substances Control or by California’s State Water Board. Mercy Housing’s draft LHH Senior Housing Master Plan didn’t indicate whether or not the proposed senior housing project has received such a “clearance letter” yet, or when it may expect to receive one. So-called SB-35 “clearance letters” should not be exploited in an end run in order to evade the legislative intent of either Senator Cortese’s SB-37 or the legislative intent of Board of Supervisors Resolution #205-21.

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Subverting SB-37 for *Cortese List* Sites Is Wrong!

Although LHH’s campus sits in her district (but is a citywide resource for *all* Supervisorial Districts), Supervisor Melgar must know that the will of the Board of Supervisors is to prohibit the Planning Department from exploiting and issuing any more “common sense” CEQA exemptions for *Cortese List* sites. Melgar should take the lead on ensuring the *Cortese List* two alternative locations proposed for Mercy’s Housing independent living housing project and the potential additional assisted living project on LHH’s campus are fully remediated.

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SB-37 is not completely dead in the State Senate, but is in a temporary inactive status. The Board of Supervisors should find a way to honor the intent of SB-37 by requiring a CEQA review of LHH’s campus *Cortese List* site before Mercy Housing is allowed to proceed.

Supervisor Melgar must know California Public Resources Code §21084 states CEQA exemptions cannot be granted for projects on *Cortese List* sites for any reason, in particular not “common sense” exemptions.

As far as that goes, California’s Department of Toxic Substances Control and the State Water Board must both know that the legislative intent of the State Senate is that no more “common sense” exemptions be issued to proposed projects on *Cortese List* sites. Neither State agency should issue Mercy Housing a “clearance letter” to obtain SB-35 approval and evade full CEQA review, or evade SB-37.

It’s probable that if Mercy Housing is required to actually clean up and remediate either, or both, of the two proposed sites for its senior housing and assisted living projects it may kill any chance either project will pencil out as being financially feasible. But not mitigating the toxic contamination may well contribute to killing actual senior citizens and people with disabilities.

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I-Team investigative journalist Dan Noyes noted on ABC Channel 7 on December 7, 2021 “*Your government doesn’t always tell you the truth.*” That pretty much sums up whether LHH, San Francisco’s Department of Public Health and Planning Department, and others are telling San Franciscans the truth about developing senior housing on the toxic *Cortese List* sites on Laguna Honda Hospital’s campus.

[A follow-up article is planned for January 2022 to explore additional concerns in Mercy Housing’s just-published “*Laguna Honda Senior Living Master Plan*” and its separate financial “*Feasibility Study*.”]

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