

Existing Contamination On A Development Site Does Not Necessarily Trigger Preparation Of An EIR

Proposals to redevelop infill sites can often present difficult issues relating to how the potential effects of preexisting contamination should be evaluated under CEQA. In a recently published opinion, the court in *Parker Shattuck Neighbors v Berkeley* made it clear that, in the absence of real evidence a significant environmental impact might occur, the fact that a development site might contain contaminated soil is not, standing alone, enough to trigger the requirement that an EIR be prepared.

The project opponents in *Parker Shattuck* challenged a mitigated negative declaration the city adopted for a mixed-use development made up of 155 residential units and 20,000 square feet of commercial space. Soils on the site had been contaminated by petroleum leaking from underground storage tanks, but after 75 tons of contaminated soil had been removed, the Regional Water Quality Control Board issued a closure letter stating that no further corrective action was needed. The opponents contended an EIR was required, claiming that excavating and disturbing contaminated soil on the site might have a significant adverse effect on construction workers and future project residents. The court disagreed, and upheld the city's determinations.

The court first rejected the argument that an EIR was automatically required because the site remained on the "Cortese list" of potentially contaminated sites. Noting that a site may stay on the Cortese list even after a determination that no further remediation is required, the court held that developing a site on the Cortese list does not invariably involve a significant effect on the environment.

The court also rejected the opponents' claim that suggestions by their expert that a vapor-intrusion study was needed required preparation of an EIR. The expert had asserted that project residents might be at risk that vapors from hydrocarbons remaining in the soil would travel through the soil into the buildings, exposing them to polluted air. The court found the expert's opinion insufficient "because a suggestion to investigate further is not evidence, much less substantial evidence, of an adverse impact." The court also was not persuaded by the expert's contention that soil contamination might put construction workers at risk because he did not explain why it would do so, but instead "simply claimed that the level of total petroleum hydrocarbons should lead to further investigation."

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