

Known Soil Contamination and Building Permit Applications

Who Asks? Who Should Ask? Who Knows?

Summary

The Grand Jury is concerned that land use and building permits are being issued for activities/construction on sites without prior consideration for existing soil contamination. Further, we are concerned that not all permit applicants are informed, prior to issuance of the permits, that there is easily accessible information on existing contaminated soil sites. In Santa Cruz County permitting agencies do not ask land use or building permit applicants whether they are aware of existing soil contamination on the property. Environmental Health Services (EHS), a division of the Public Health program of the County Health Services Agency, is responsible for monitoring known contaminated sites and for advising the county's various jurisdictions as to the locations. EHS also directs soil contamination mitigation work mandated by state law prior to approval of a land use and/or building permit. However, not all permit applications are referred to EHS for review.

Background

The 2010/2011 Grand Jury reported that the City of Watsonville does not usually check for environmental hazards at a proposed development site prior to the issuance of land use or building permits.^[1] The Grand Jury recommended that the City of Watsonville collaborate with EHS to develop a procedure that alerts staff to the presence of hazardous materials before issuing land use or building permits.^[1]

The City of Watsonville did not implement this recommendation, on the grounds that they would be assuming a new liability that should rightfully stay with the property owner or developer, who are required to notify the City "of potential or known contamination on the site for proposed development."^[2] This response sidesteps the finding that the "City of Watsonville Community Development Department issues land use and building permits without consideration of the presence of hazardous materials or recorded land use restrictions."^[1]

The current Grand Jury investigation was triggered by this response and by the discovery of inconsistent collaboration between local permitting agencies and EHS. This may increase the likelihood that the public will unwittingly be exposed to soil contaminants.

The Grand Jury subsequently examined the permit application procedures that have been implemented by the various building departments within the County of Santa Cruz for identifying known contaminated soil sites. We found no routine communications

between the various jurisdictions and the County EHS regarding soil contamination. The primary coordination between EHS and any building departments is on large and/or commercial projects.

EHS maintains, updates, and continues to expand its database of contaminated sites in the county. With continuing growth in Santa Cruz County, development on contaminated soil sites is an ever-increasing possibility. Property owners, with little or no experience in seeking building permits, may not be aware of any potentially hazardous materials or contaminated soil under their property.

It is important to educate property owners about how to determine if their property is on a contaminated-site list. To this end, we believe there is a need for a consistent notification statement to be present on all county and city jurisdiction permit applications.

Scope

The Grand Jury interviewed personnel of various planning and building departments, local consultants and agencies, as well as EHS and Santa Cruz County Geographic Information Systems (GIS) personnel. We asked specific questions regarding building permit procedures pertaining to soil contamination. We gathered and reviewed documents which included: permit decision matrices, permit applications, permit information made available to contractors and the public, and documents and websites from agencies dealing with hazardous materials and contamination.

Investigation

The 2011-2012 Grand Jury interviewed the departments responsible for issuing permits in the cities of Santa Cruz, Capitola, Watsonville, Scotts Valley, and the County of Santa Cruz.

The Grand Jury pursued the following lines of investigation:

- Reviewed all building permit application forms^{[3] [4] [5] [6] [7]}
- Reviewed the 2010-2011 Grand Jury report and the response from the City of Watsonville, regarding the issue of known soil contamination sites and the issuance of building permits^{[1] [2]}
- Interviewed key staff in all city and county building and planning departments and at EHS

Our interviews, coupled with the examination of planning and building permit documents in the county and the cities of Scotts Valley, Watsonville, Capitola and Santa Cruz, revealed that there is not a uniform approach for addressing soil contamination during the permitting process. In each jurisdiction, only certain types of projects require a check for hazardous and/or contaminated soil. The various criteria for checking include:

- Large building projects (e.g. homes over 3,000 sq. ft.)
- Projects in watershed areas
- Projects involving septic tanks and lines
- Publicly-funded projects
- Known hazardous sites

We learned through interviews that the permitting staff may, on occasion, check with EHS for evidence of known soil contamination for a given site. However, this procedure is rarely implemented for a small project. With the exception of Santa Cruz County's LORI Property Disclosure Statement, none of the permit application forms require the applicant to provide any information regarding the applicant's knowledge of existing soil contamination at the proposed build site.

The Grand Jury confirmed that EHS is responsible for enforcing state and federal statutes and regulations, as well as any applicable local ordinance regarding soil contamination.^[8] Pursuant to State of California Code Of Regulations, Title 27, Division 1, Subdivision 4, Chapter 1,^[9] in 1996, the California Environmental Protection Agency (EPA) designated EHS as the "Certified Unified Program Agency" (CUPA) within the geographic boundaries of Santa Cruz County (Santa Cruz County Code Chapter 7.100),^[10] pertaining to the storage, use and disposal of hazardous materials and hazardous wastes.

EHS maintains their own database and tracks various others as part of their responsibilities. Sites with known hazardous materials contamination and mitigation activity are listed on different websites. The locations of the websites are noted in the table below.

Source	Contents	Access Availability
GeoTracker ^[11]	Primarily concerned with groundwater contamination and related topics	Publicly available online
EnviroStor ^[12]	Information on hazardous waste sites of various kinds	Publicly available online
Santa Cruz County GIS website ^[13]	Geographic database that is updated with various land use and planning, hydrography, and jurisdictional data.	Limited online data. Only accessible from Internet Explorer 8. More accessible version in process. Full version available in County Building, 701 Ocean Street, Room 316.
Santa Cruz County Site Mitigation List ^[14]	List of sites where soil contamination has been addressed	Publicly available online
Santa Cruz County Environmental Health Database	Has links and data regarding soil contamination	Only available in EHS County Building, Room 312

The County of Santa Cruz maintains a comprehensive resource entitled Environmental Health Database (EHD). Using the EHD, the Grand Jury easily found that the site referred to by last year's Grand Jury, 618 Main Street, Watsonville, was listed on "EnviroStor,"^[12] "GeoTracker,"^[11] and "Santa Cruz County Site Mitigation List."^[14] An examination of the EHD reveals that contaminated sites are listed by street address only. In contrast, the Santa Cruz County Site Mitigation List, EnviroStor, and GeoTracker do present the data in an easy-to-access geographical manner. The EHD is only available in the EHS office at the County Building, 701 Ocean Street, Room 312 (3rd Floor), Santa Cruz, or by phoning (831) 454-2022.

Findings

F1. The building departments of the County of Santa Cruz, and the Cities of Watsonville, Capitola, Santa Cruz and Scotts Valley, do not consistently communicate with Environmental Health Services (EHS) to identify known soil contamination sites during the building permit application process.

F2. Public access to the Environmental Health Database is unnecessarily limited because it is only available by visiting or calling the EHS office.

F3. With the exception of the county's LORI Property Disclosure Statement, nowhere in the examination of city and county building permits was the issue of existing or possible soil contamination brought to the attention of the applicant.

Recommendations

R1. The building departments of the County of Santa Cruz and of the cities of Watsonville, Capitola, Santa Cruz and Scotts Valley should establish a procedure with Environmental Health Services to identify known soil contamination sites during the building permit application process.

R2. Environmental Health Services should make the Environmental Health Database available as an online geographic resource within the existing Santa Cruz County Geographic Information Systems database. Environmental Health Services should also provide their department phone number as a link on the GeoTracker website.

R3. Building departments should make property owners and developers aware that the Environmental Health Database lists known soil contamination sites, as a routine step in the building permit application process.

R4. Environmental Health Services and the building departments should notify applicants that the identification of contaminated soils on their property may impact the building permit process.

R5. Environmental Health Services and the building departments should develop a soil contamination advisory statement, such as the sample given below, and incorporate that statement and information into the building permit application process.

Sample:

Property owners or their agents can find a list of all known contaminated soil sites by viewing the [Geotracker](#), [Santa Cruz County Site Mitigation List](#) websites, and/or by contacting the Environmental Health Services at (831) 454-2022 and asking if their property is on the list of known contaminated sites. The identification of contaminated soils on the property may impact the building permit process.

Responses Required

Respondent	Findings	Recommendations	Respond Within/ Respond By
City of Watsonville Community Development Department	F1-F3	R1-R5	60 Days September 1, 2012
City of Santa Cruz Department of Planning and Community Development	F1-F3	R1-R5	60 Days September 1, 2012
City of Capitola Community Development Department	F1-F3	R1-R5	60 Days September 1, 2012
City of Scotts Valley Building Department	F1-F3	R1-R5	60 Days September 1, 2012
County of Santa Cruz Planning Department	F1-F3	R1-R5	60 Days September 1, 2012
County of Santa Cruz Health Services Agency	F1-F3	R1-R5	60 Days September 1, 2012

Definitions

- **CEQA:** *California Environmental Quality Act* - A statute that requires state and local agencies to identify the significant environmental impacts and to avoid or mitigate those impacts if feasible when the agency considers approving a project.
- **CEPA:** *California Environmental Protection Agency* - A state cabinet-level agency within the government of California responsible for performing environmental research, regulating and administering the state's environmental protection programs and fulfilling hazardous waste cleanup.
- **CUPA:** *Certified Unified Program Agency* - An agency certified by the California Department of Toxic Substances Control to conduct the Unified Program, which consists of hazardous waste generator and on-site treatment programs; above ground and underground storage tank programs; Hazardous Materials Management, and Business Plans and Inventory Statements; and the Risk Management and Prevention Program.

- **DTSC:** *California Department of Toxic Substances Control* - DTSC programs include dealing with the aftermath of improper hazardous waste management by overseeing site cleanups; preventing the releases of hazardous waste, by ensuring that those who generate, handle, transport, store and dispose of wastes do so properly; and taking enforcement actions against those who fail to manage hazardous wastes appropriately.
- **EHS:** *Santa Cruz County Environmental Health Services* - Environmental Health Services is a division of the Public Health program of the County Health Services Agency. Their mission is to protect, preserve and enhance the public health and safety and the environment through the delivery of effective environmental health inspection, consultation and education, enforcement, monitoring and oversight services to the citizens of and visitors to Santa Cruz County.
- **EnviroStor:** The California Department of Toxic Substances Control online database search and Geographic Information System tool for identifying sites where extensive investigation and/or cleanup actions are planned or have been completed at permitted facilities and cleanup sites. It also identifies facilities that are authorized to treat, store, dispose of or transfer hazardous waste. Users can conduct searches using various criteria, including facility/site name, address, city, and county.
- **GeoTracker:** A data management system maintained by the California State Water Resources Control Board for managing sites that impact groundwater, especially those that require groundwater cleanup, as well as permitted facilities such as operating Underground Storage Tanks and land disposal sites. GeoTracker portals retrieve records and view integrated data sets from multiple State Water Resources Control Board programs and other agencies through an easy-to-use Google maps Geographic Information System interface. The interface allows users to view data in relationship to streets/roads, satellite imagery, and terrain map views as well as other sites that affect groundwater quality and wells and other beneficial uses that may be affected.
- **GIS:** *Geographic Information Systems* - GIS is the merger of maps, statistical analysis and databases. As used throughout this report, the acronym defines a specific GIS managed by the Santa Cruz County Information Services Department. The County of Santa Cruz maintains a vast amount of geographic data, much of which is available through a number of resources. Online mapping applications allow interaction directly with geographic data holdings to create a custom map on a computer screen. These interactive mapping applications help to visualize information about land use and planning, hydrography, and jurisdictional data. There are also mapping applications geared toward elections information as well as water quality along shores and streams.
- **LORI:** *List of Required Information* - Required by the Santa Cruz County Planning Department when applying for certain property development permits.

- **SWRCB:** *State Water Resources Control Board* - The mission of the SWRCB is to ensure the highest reasonable quality for waters of the State, while allocating those waters to achieve the optimum balance of beneficial uses. The joint authority of water allocation and water quality protection enables the Water Board to provide comprehensive protection for California's waters.
- **Unified Program:** The Unified Program consolidates, coordinates, and makes consistent the administrative requirements, permits, inspections, and enforcement activities of six environmental and emergency response programs. The state agencies responsible for these programs set the standards for their programs while local governments implement the standards. Cal/EPA oversees the implementation of the program as a whole. The Unified Program is implemented at the local level by 83 government agencies certified by the Secretary of Cal/EPA.

Sources

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