



STATUTORY EXEMPTION APPEAL

Supplemental Appeal Response

Embarcadero Fountain (a.k.a. “Vaillancourt Fountain”) Removal

Date: January 8, 2026

To: Angela Calvillo, Clerk of the Board of Supervisors

From: Lisa Gibson, Environmental Review Officer – (628) 652-7571
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RE: Board File No. 251202
Planning Record No. 2025-010275APL
Appeal of Statutory Exemption for Embarcadero Fountain Removal

Hearing Date: January 13, 2026

Project Sponsor: Eoanna Harrison Goodwin, SFRPD, (628) 652-6645
Stacy Radine Bradley, SFRPD, (628) 652-6610

Appellant(s): Susan Brandt-Hawley on behalf of Docomomo US/Northern California (Docomomo NOCA)

This memorandum provides responses to the January 2, 2026 supplemental appeal letter and January 2, 2026 supplemental evidentiary records submitted to the board of supervisors (board) regarding the planning department’s issuance of a statutory exemption under the California Environmental Quality Act (CEQA) for the proposed Embarcadero Fountain (Fountain; also known as “Vaillancourt Fountain”) removal project. The numbering of the responses continues the numbering from the department’s January 5, 2026 appeal response to the December 1, 2025 appeal letter (first appeal response).

Supplemental Responses

Response 5: The appellant disregards substantial evidence of a sudden and escalating public safety emergency that serves the basis for the emergency statutory exemption issued to prevent an emergency.

The appellant asserts that no emergency exists that would justify an emergency statutory exemption. The appellant argues that an emergency statutory exemption must be based on a “sudden, unexpected occurrence” based on the statutory definition of “emergency” in CEQA Guidelines section 21060.3. However, the appellant disregards both the language of Guidelines section 15269(c) (“Specific actions necessary to prevent or mitigate an emergency” [emphasis added]) and the documented evidence of a sudden and

escalating public safety emergency associated with the Fountain discussed in the department's first appeal response.

As explained in the department's January 5, 2026 appeal response, the department's determination to issue the emergency statutory exemption is supported by substantial evidence in the record that the project is a specific action necessary to prevent an emergency. Specifically, the DCI report dated May 19, 2025 identified the following deficiencies that, in combination, constitute a substantial structural deterioration of the Fountain, triggering the need for its removal and further assessment:

- Cracked and deteriorated concrete throughout the Fountain,
- Advanced corrosion of embedded structural steel, as well as missing or failed critical structural elements that support the Fountain's weight,
- Partial structural failure of one of the Fountain's approximately 10-ton cantilevered concrete arms, which is now bearing on an adjacent arm, resulting in unintended load redistribution and a demonstrable loss of structural capacity,
- As-built conditions do not conform to its design drawings,
- Missing or discontinuous reinforcing steel, including the absence of reinforcement in the back wall, and a missing post-tensioning rod, reducing the load-carrying capacity of at least one arm by approximately 25 percent,
- Noncompliance with current seismic or safety standards, with the Fountain likely to yield or deform under both design-basis and maximum-considered earthquake loads,
- Heightened structural risks due to the Fountain's location on unconsolidated fill and Bay Mud, combined with pervasive internal corrosion,
- Accelerated structural deterioration caused by previous exposure to water inside the fountain and its current site conditions, and
- Severe corrosion of internal steel tubes resulting from prolonged water immersion.

See Appendix G to Attachment C (Vaillancourt Fountain Conditions Assessment) to the statutory exemption, included as Attachment A to the first appeal response, for additional information.

The report also states:

"Visual observations indicate significant corrosion and damage have occurred to the precast concrete tubes and steel components that make up the Vaillancourt Fountain in San Francisco. This deterioration is the result of spalling of the concrete, which has exposed the steel anchor plates and reinforcing to the marine atmosphere. The degradation of the structure is such that the steel connecting rods, which lock together the precast concrete tubes, are missing in at least one location. **Any missing steel rods substantially reduce the capacity of the fountain to self-support or resist potential earthquakes.** In addition, nonvisible corrosion is likely pervasive throughout the steel plate lining that is used to reinforce vertical precast concrete elements. **This corrosion and degradation have a significant impact on the resilience of the tubes to resist future seismic events.**" (Emphasis added.)

The record also documents breaching of fencing and security measures intended to restrict public access. Despite interim controls, individuals have entered the structure, including sleeping within the concrete tubes, at a site located in one of the City's most heavily trafficked civic spaces and the frequent location of large public gatherings.

Based on the above, as further elaborated in DCI's report, San Francisco department of building inspection's (SFDBI) letter dated October 27, 2025, and Page & Turnbull's report dated June 2, 2025 (see Appendices B and C to the statutory exemption), SFRPD - one of the City agencies responsible for maintaining the Fountain – determined that the Fountain's conditions constitute a "life-safety emergency." SFRPD has explained that the Fountain's structural system is failing, its subsurface environmental support from the underlying Bay Mud is unstable, and the marine environment of the Embarcadero Plaza means that the Fountain and its plumbing and electrical infrastructure cannot be safely accessed or maintained. (See Appendix A to the statutory exemption.)

In addition, SFRPD's project description states that asbestos-containing materials and lead paint are present throughout the Fountain, which was designed and intended to be an interactive art piece that people can walk through and touch, and the Fountain's pump room. Based on these factors, SFRPD concluded that the known and suspected structural damage to the Fountain, along with the presence of hazardous materials, the leaking substructure, and dangerous conditions of the electrical and plumbing systems of the Fountain, create a significant public health and safety hazard. That risk is exacerbated by the underlying soils and the environment in which the Fountain is located.

As discussed above, in the October 31, 2025 emergency statutory exemption determination, and the January 5, 2026 appeal response, an emergency exists that justifies the issuance of the emergency statutory exemption. It would be unreasonable in light of these circumstances to delay the project in order to complete an Environmental Impact Report.

Response 6: The department's issuance of the emergency statutory exemption does not constitute impermissible piecemealing under CEQA.

CEQA generally prohibits piecemealing of a project into smaller components to qualify for exemptions. However, lead agencies may conduct environmental review for project components when those components serve different purposes or have independent utility, even if they are related. Independent utility exists where a project can be implemented separately from, and independently of, a larger project and does not rely on that larger project for its operation.

Here, the proposed project – the Fountain removal - has independent utility and is separate from the broader Embarcadero Plaza and Sue Bierman Park Improvements ("Embarcadero Plaza Improvements"). Although the Fountain's hazardous condition was discovered through expert reports commissioned in preparation for the Embarcadero Plaza and Sue Bierman Park improvement projects, it became evident upon receipt of these reports that the Fountain's hazardous condition should be addressed immediately and independent of any future project at the Embarcadero Plaza. Because the Fountain removal does not rely on the Embarcadero Plaza Improvements to be implemented, the two projects have independent utility and

therefore implementation of the Fountain removal does not constitute impermissible piecemealing under CEQA.

The appellant alleges that the department engaged in impermissible piecemealing under CEQA, but does not explain how such piecemealing occurred. The department did not impermissibly segment the project by issuing the emergency statutory exemption for the Fountain removal.

Response 7: The City has not made a final determination regarding the ultimate future of the Fountain.

In alleging that the City is avoiding CEQA review, the appellant implies that no environmental review will be conducted for any future repair, replacement, or reimagination of the Fountain. This implication is not correct. As stated in the January 5, 2026 appeal response, any future repair, replacement, or reimagination of the Fountain will be screened by the planning department to ensure compliance with CEQA.

Conclusion

For the reasons stated above, and in the October 31, 2025 emergency statutory exemption determination and the January 5, 2026 appeal response, the department's determination to issue the statutory exemption complies with the requirements of CEQA, and the department appropriately determined that the project is exempt from further environmental review pursuant to the cited exemption. Therefore, the department respectfully recommends that the board uphold the emergency statutory exemption determination and deny the appeal of the CEQA determination.