

RECEIVED *AK*
BOARD OF SUPERVISORS
SAN FRANCISCO
2025 DEC 01 PM03:04

Brandt-Hawley Law Group
PO Box 1659
Glen Ellen, California 95442
707.938.3900
www.preservationlawyers.com

December 1, 2025

Rafael Mandelman, Board President
and Members of the Board of Supervisors
c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**Subject: *Appeal of CEQA Emergency Exemption for
Disassembly and Removal of the Vaillancourt Fountain
from Embarcadero Plaza***

Dear President Mandelman and Supervisors:

I file this appeal on behalf of Docomomo US/Northern California (Docomomo NOCA), a chapter of Docomomo US, a non-profit organization dedicated to documenting and conserving the Modern Movement's buildings, sites, and neighborhoods. Docomomo NOCA challenges the Arts Commission's approval of an emergency CEQA exemption for proposed deaccession and removal of the Vaillancourt Fountain from Embarcadero Plaza by the Recreation and Park Department (the Department). The CEQA exemption determination by Environmental Review Officer Lisa Gibson on October 31, 2025, is attached. The Arts Commission proceeded to approve the project on November 3, 2025.

The grounds for appeal of the exemption determination are that the project does not conform to the requirements of CEQA for an exemption.

The Vaillancourt Fountain, designed by Canadian sculptor Armand Vaillancourt and completed in 1971, is the centerpiece of Embarcadero Plaza, designed by renowned landscape architect Lawrence Halprin and completed in 1972. Together, the Fountain and Plaza represent a commitment to participatory public spaces, and the Fountain's historic significance is recognized for its Abstract Expressionist and Brutalist design and its role in establishing San Francisco's nationally renowned public art program. The City's Planning Department formally determined on October 29, 2025, that the Fountain is a historic resource, automatically triggering CEQA's protections. The action affirmed that the Fountain is an eligible individual historic resource, in addition to its status as a contributing element to the Market Street Cultural Landscape Historic District, which was established in the Better Market Street EIR (certified 2019).

Regardless of the Fountain's historic status, Docomomo NOCA appreciates that at this stage the Board's review of the project must focus on evidence of the illegality of the Arts Commission's approved emergency exemption. While thus limiting this discussion, context is relevant. The City's multi-year administrative process illustrates a textbook violation of CEQA's prohibition of project pre-commitment. With *no* public review of potential significant environmental impacts such as likely destruction of a historic resource, or identification of feasible mitigations and alternatives—*e.g.*, better fencing and patrolling of the fountain site—the Department proposed to remove the Fountain to facilitate a park redesign long before declaring any “emergency.” The proposed emergency exemption occurred in tandem with pre-approval. (*See Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116.)

CEQA allows a lead agency to rely on a statutory exemption for emergency—thus eliminating environmental review—only for a narrowly construed “sudden, unexpected occurrence.” (Pub. Resources Code, § 21060.3; *see Western Municipal Water Dist. v. Superior Court* (1986) 187 Cal. App. 3d 1104; *Los Osos Valley Associates v. City of San Luis Obispo* (1994) 30 Cal. App. 4th 1670.) There has been no such occurrence here. The worn condition of the historic fountain is the logical outcome of the Department's calculated, long-term deferred maintenance. The exemption is a pretextual device to unlawfully bypass the mandatory EIR process that must analyze

and/or mitigate any potential impact to the historic fountain and the Market Street Cultural Landscape Historic District. The record discloses the Department's goal of demolition; once the fountain is removed from its site, it will surely not return. And such a fate cannot be considered by this Board without an EIR process.

As will be further explained and documented at the appeal hearing, the administrative record paints a clear picture: the Department decided to remove the Vaillancourt Fountain in late 2024 to make way for a pre-planned park renovation. Funding was secured for project management along with the explicitly declared strategy to use the removal of the fountain to "avoid an EIR."

The emergency exemption is not supported by the facts. It is intended to rationalize a pre-approved project, violating the definitions of emergency established in California law.

Please uphold this appeal, set aside the approval action and CEQA exemption, and require an EIR before consideration of removing the Fountain from Embarcadero Plaza. The City must openly analyze preservation alternatives and engage in bona fide community engagement regarding the overall renovation project.

Thank you for your consideration.

Sincerely,



Susan Brandt-Hawley

cc: Lisa Gibson, Environmental Review Officer



October 31, 2025

**RE: Statutory Exemption for San Francisco Recreation and Parks Department (SFRPD)
Emergency Project – Embarcadero Fountain by Armand Vaillancourt (Vaillancourt
Fountain)**

Project Description

The San Francisco Recreation and Park Department (SFRPD) proposes to address a significant public safety hazard at Embarcadero Plaza by disassembling and removing the Embarcadero Fountain by Armand Vaillancourt (“Vaillancourt Fountain” or “Fountain”). This action is intended both to eliminate an immediate safety risk and also to facilitate further investigation into the Fountain’s deteriorating structural integrity and carry out any necessary emergency repairs identified during that process.

The Fountain, located within the Embarcadero Plaza (Block/Lot: 0233/035), was designed by Armand Vaillancourt and completed in 1971 as part of Lawrence Halprin’s overall design for the plaza. The Fountain has been inoperable since May 2024, when its last functioning pump failed. The proposed project would be implemented over approximately two months and would include disassembling the Fountain, transporting its components to a secure off-site storage facility for a period of three years, and conducting a thorough inspection of both interior and exterior elements. The process would support a detailed evaluation of potential options for the Fountain’s future rehabilitation, relocation or reinterpretation.

A detailed project description prepared by SFRPD (Attachment A) outlines the urgent need for project implementation to prevent and mitigate a public health and safety risk. As described in the document, the project is necessary to eliminate an immediate public health risk posed by the Fountain’s structural vulnerabilities, which are compounded by the ineffectiveness of existing security measures implemented by SFRPD to restrict public access. This determination is supported by multiple reports and memoranda (the “Conditions Assessment”) prepared by qualified professionals, including a structural observation and evaluation report prepared by DCI Engineers dated May 19, 2025 (Attachment C) and a letter of concurrence with DCI Engineers’ conclusions prepared by the San Francisco Department of Building Inspection (SFDBI) dated October 27, 2025 (Attachments B). In its letter, SFDBI concludes, based on an inspection conducted by staff engineers on October 15, 2025 and review of the Conditions Assessment, that the Fountain “should remain vacated and secured from public access until the hazardous conditions are abated.”

Determination

Based on the SFRPD's determination that the project is necessary to prevent and mitigate a public health emergency and therefore constitutes an emergency project, as outlined in the project description, the Planning Department has determined that the project is statutorily exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15269. Specifically, under CEQA Guidelines section 15269(c), the following emergency projects are statutorily exempt from CEQA:

"Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility."

The Planning Department has determined that the project falls within the scope of the emergency projects described under section 15269(c), as it involves actions necessary to prevent or mitigate a significant public safety hazard. Specifically, the project includes the removal of the Fountain to eliminate immediate safety risks, along with further investigation into its deteriorated structural integrity and the implementation of any necessary emergency repairs identified during this process. As outlined in the project description (Attachment A), failure to timely implement the project would pose an imminent risk to public health and safety, including the potential for serious injury to persons or loss of life. (See also CEQA Guidelines section 15269(b): "Emergency repairs include those that require a reasonable amount of planning to address the anticipated emergency.")



Lisa Gibson
Environmental Review Officer

October 31, 2025

Date

Attachments

- A. Project Description submitted by SFRPD on October 30, 2025
- B. Letter prepared by SFDBI dated October 27, 2025
- C. Vaillancourt Fountain Conditions Assessment prepared by Page & Turnbull dated June 2, 2025, including Structural Observation and Evaluation Vaillancourt Fountain report prepared by DCI Engineers dated May 19, 2025

2005 DE DE POMO:05
SIN TITULO
ELEMENTOS
SABERES DE SUPERVIVENCIA
AK

Photo
Safe
Deposit®
Safe Deposit

Photo
Safe
Deposit®
Safe Deposit