

## **Carroll, John (BOS)**

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**From:** Gibson, Lisa (CPC)  
**Sent:** Tuesday, January 24, 2017 2:56 PM  
**To:** BOS Legislation, (BOS)  
**Cc:** Calvillo, Angela (BOS); Somera, Alisa (BOS); Navarrete, Joy (CPC)  
**Subject:** Re: 3516-3526 Folsom Street CEQA Appeal - Withdrawal of Catex

**Categories:** 161278

The Planning Department wishes to rescind the above categorical exemption scheduled for hearing today.

Lisa M. Gibson  
Acting Environmental Review Officer/  
Director of Environmental Planning

Sent from my iPhone

On Jan 24, 2017, at 2:35 PM, BOS Legislation, (BOS) <[bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org)> wrote:

Forwarding FYI.

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**From:** Navarrete, Joy (CPC)  
**Sent:** Tuesday, January 24, 2017 2:10 PM  
**To:** BOS Legislation, (BOS) <[bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org)>  
**Cc:** BOS-Legislative Aides <[bos-legislative\\_aides@sfgov.org](mailto:bos-legislative_aides@sfgov.org)>; Gibson, Lisa (CPC) <[lisa.gibson@sfgov.org](mailto:lisa.gibson@sfgov.org)>  
**Subject:** Request for Continuance 3516-3526 Folsom Street CEQA Appeal

On behalf of the Environmental Review Officer, the Planning Department would like to request a continuance for this CEQA Appeal hearing for at least 30 days to conduct further analysis. Apologies for the last minute request. We will appear at the hearing at 3:00pm to explain further.

**Joy Navarrete. Senior Environmental Planner**  
**San Francisco Planning Department**  
**1650 Mission Street. Suite 400**  
**San Francisco. CA 94103**  
**P. 415-575-9040 F. 415-558-6409**  
**[www.sfplanning.org](http://www.sfplanning.org)**

on behalf of Lisa Gibson, Environmental Review Officer

**Carroll, John (BOS)**

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**From:** BOS Legislation, (BOS)  
**Sent:** Tuesday, January 24, 2017 2:36 PM  
**To:** Calvillo, Angela (BOS); Somera, Alisa (BOS)  
**Cc:** BOS Legislation, (BOS); Navarrete, Joy (CPC); Gibson, Lisa (CPC)  
**Subject:** FW: Request for Continuance 3516-3526 Folsom Street CEQA Appeal

**Categories:** 161278

Forwarding FYI.

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**From:** Navarrete, Joy (CPC)  
**Sent:** Tuesday, January 24, 2017 2:10 PM  
**To:** BOS Legislation, (BOS) <bos.legislation@sfgov.org>  
**Cc:** BOS-Legislative Aides <bos-legislative\_aides@sfgov.org>; Gibson, Lisa (CPC) <lisa.gibson@sfgov.org>  
**Subject:** Request for Continuance 3516-3526 Folsom Street CEQA Appeal

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on behalf of Lisa Gibson, Environmental Review Officer

**Carroll, John (BOS)**

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**From:** Betzy Lesser <betzy@zfplaw.com>  
**Sent:** Tuesday, January 24, 2017 1:22 PM  
**To:** BOS Legislation, (BOS)  
**Cc:** Ryan Patterson  
**Subject:** Appeal No. 161278  
**Attachments:** Combined - Letter to Board 01.24.17.pdf

**Categories:** 161278

Dear Ms. Calvillo:

Attached, please find the letter and declaration submitted by the Appellants for today's 3:00 p.m. hearing. The attached document will be filed at your office shortly.

If you have any questions, please feel free to contact our firm.

Thank you,  
Betzy Lesser  
Zacks, Freedman & Patterson, PC  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Telephone: (415) 956-8100  
Fax: (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

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# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

January 24, 2017

235 Montgomery Street, Suite 400  
San Francisco, California 94104  
Telephone (415) 956-8100  
Facsimile (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

## VIA HAND DELIVERY

President London Breed  
c/o Angela Calvillo, Clerk of the Board  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Re: Appeal of CEQA Categorical Exemption Determination  
Planning Case No. 2013.1383ENV  
Building Permit Application Nos. 2013.12.16.4318 & 2013.12.16.4322  
3516-3526 Folsom Street ("Project Site")

Dear President Breed and Honorable Members of the Board of Supervisors:

This letter is respectfully submitted on behalf of the Appellants in this case, in response to the Project Sponsor's letter dated January 13, 2017.

Abundant evidence in the record establishes that "unusual circumstances" exist as defined in 14 Cal Code Regs §15300.2(c), which renders a Categorical Exemption ("CatEx") legally erroneous. This evidence includes previously filed reports from several leading geotechnical engineers and utilities consultants, as well as evidence presented in the Planning Department's own CatEx Determination.

A serious safety risk to the Pipeline 109 is presented by very steep topography, excavation requiring heavy machinery, and the undeveloped, unprotected area around the major gas transmission line. The CatEx fails to consider these circumstances.

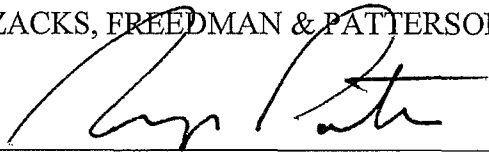
- The Department asserts, "the presence of a gas transmission pipeline beneath areas adjacent to residential development is not unusual in San Francisco or throughout the state because residential homes are commonly served by gas lines." (2016 Determination, p. 4 and Planning Department's Response, p. 5) However, there are only three gas transmission pipelines in San Francisco, as the Department admits. (*Id.* at p. 6) The Department appears to be conflating *distribution* lines (small gas lines to individual properties) with *transmission* lines (major pipelines serving an entire geographical region). The transmission line in this case, Line 109, is enormous: 26" in diameter.
- The Department asserts, "PG&E Pipeline #109's "alignment takes it through a variety of residential neighborhoods in the southeast area of the City, and other similar pipelines run beneath streets, in other areas of the city." (2016 determination, p. 4) However, this is the only site in San Francisco where a major

gas transmission line is not buried in asphalt. In addition to the resulting danger of puncturing the pipeline, there is an increased danger of damage to the pipeline's protective coating having *already occurred* over time. As the California Supreme Court recently held, "What CEQA does mandate, consistent with a key element of the Resources Agency's interpretation, is an analysis of how a project might exacerbate existing environmental hazards." (California Bldg. Industry Assn. v. Bay Area Air Quality Management Dist. (2015) 62 Cal.4th 369, 392)

- The Department assumes away the danger of excavating on top of the pipeline by noting that the Project Sponsor must call 811 prior to digging, and a PG&E representative must be on-site to observe the digging to "instruct and guide the excavating party, on-site, to avoid damage to the pipeline." (2016 Determination, p. 5) However, this kind of after-the-fact imposition of mitigation measures is legally erroneous under a CatEx. "If a project may have a significant effect on the environment, CEQA review must occur *and only then are mitigation measures relevant*. Mitigation measures may support a negative declaration but not a categorical exemption." (Salmon Protection and Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098, 1102 (italics added; internal citations omitted))
- The Determination at issue is a Class 3 CatEx, which allows for construction of *up to three* single-family homes without CEQA review. However, the Project includes construction of two homes—and it also enables the construction of at least *three additional homes* adjacent to the Project Site by installing a street and utilities to the surrounding vacant lots (Lots 27, 28, and 28). The owners of these lots have expressed—on the record—their intention to build houses there once this Project is approved. (See Declaration of Barbara Underberg, submitted herewith.) Unless environmental review is done now, each of these homes will qualify for a CatEx—and the entire six-house development will escape environmental review. "It is well settled that CEQA forbids 'piecemeal' review of the significant environmental impacts of a project. Rather, CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." (California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, 193; internal quotations and citations omitted)

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



Ryan J. Patterson  
Attorneys for Herb Felsenfeld and Gail Newman

Enclosures

1 RYAN J. PATTERSON (SBN 277971)  
2 ZACKS, FREEDMAN & PATTERSON, PC  
3 235 Montgomery Street, Suite 400  
4 San Francisco, CA 94104  
5 Tel: (415) 956-8100  
6 Fax: (415) 288-9755

7 Attorneys for Appellants,  
8 Herb Felsenfeld and Gail Newman

9  
10  
11 **SAN FRANCISCO BOARD OF SUPERVISORS**

BOS File No. 161278  
Planning Case No. 2013.1383ENV

**DECLARATION OF BARBARA  
UNDERBERG IN SUPPORT OF APPEAL**

CEQA Categorical Exemption Appeal  
Subject Address: 3516-3526 Folsom Street  
Hearing Date: January 24, 2017

12  
13  
14 I, Barbara Underberg, declare as follows:

15  
16 1. I make this declaration in support of the above-captioned appeal. Unless  
17 otherwise stated, I have personal knowledge of the facts stated herein and, if called as a witness,  
18 could and would testify competently thereto.

19 2. I am a resident of 76 Rosenkranz Street in Bernal Heights, near 3516-3526  
20 Folsom Street (the "Project Site").

21  
22 3. On or about November 21, 2016, I submitted a request for public records to the  
23 San Francisco Planning Department regarding Building Permit Application Nos.  
24 2013.12.16.4318 & 2013.12.16.4322 (the "Project"), pursuant to the San Francisco Sunshine  
25 Ordinance and California Public Records Act. On or about November 30, 2016, Planning  
26 Department staff member Christine Lamorena produced a number of paper and electronic  
27 records.  
28

1           4.       Included in the Planning Department’s record production was an email and letter  
2 attachment from Paul Kontos to the Planning Commission, dated March 25, 2016. A true and  
3 correct copy of the email and letter is attached hereto as Exhibit A.

4           5.       I am informed and believe that Paul Kontos is “the owner of lots 27 & 28  
5 directly across the street from the project (3516 & 3526 Folsom St.)” In his letter, Mr. Kontos  
6 encourages the Planning Commission to approve the Project and states that, “Right now, I will  
7 be trying to develop my lots.”  
8

9           6.       Additionally, I attended the Planning Commission Discretionary Review hearing  
10 on the Project on March 31, 2016. A video record of the hearing is available at  
11 [http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=20&clip\\_id=25047&meta\\_id=4878](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=20&clip_id=25047&meta_id=4878)  
12 72. A true and correct partial transcript of the hearing is attached hereto as Exhibit B.

13           7.       Mr. Kontos attended the hearing and stated, “I own two lots on the other of the  
14 street. I was going to build those for my children.” Exh. B at p. 48.

15           8.       Another neighbor, Ramon Romero, also spoke at the hearing in support of the  
16 Project. I am informed and believe that Mr. Romero owns Lot 29. He stated, “I bought the lot  
17 behind my house to help preserve open space. I didn't think it would last forever. I knew market  
18 conditions would change someday that would make them.” Exh. B at p. 47.  
19

20           9.       I am informed and believe that the Project will install a new street and utilities to  
21 Lots 27, 28, and 29, which will enable them to be developed.  
22

23           10.      I have significant expertise in public safety matters. I was chairperson of the  
24 Bernal Heights East and South Slope Improvement Committee – a committee elected by the  
25 residents and property owners of an area subject to life/safety improvements funded by  
26 Propositions B and K. I was also the chairperson of the San Francisco Neighborhood  
27  
28

ZACKS, FREEDMAN & PATTERSON, PC  
235 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94104

1 Emergency Response Team (NERT) Advisory Board, a citywide program administered by the  
2 San Francisco Fire Department. I was also a member of the Bernal Heights East Slope Design  
3 Review Board from 1993-1997 and the chairperson in 1997.  
4

5 11. Attached hereto as Exhibit C is a compilation of information regarding the  
6 Project's environmental impacts which I have researched and prepared.  
7

8 I declare, under penalty of perjury under the laws of the State of California that the  
9  
10 foregoing is true and correct.  
11

12 Dated: January 24, 2017

  
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28  
Barbara Underberg



# **Exhibit A**

**From:** [Paul Kontos](#)  
**To:** [Sucre, Richard \(CPC\)](#); [Fabien](#)  
**Subject:** letter to commission  
**Date:** Saturday, March 26, 2016 7:14:16 PM  
**Attachments:** [Fabien letter.docx](#)

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Attached letter for the commission hearing on March 31, 2016

Thank you,

Paul Kontos

Paul Kontos  
711 N. Voluntario St.  
Santa Barbara, CA 93103

---

March 25, 2016

President Rodney Fong & Planning Commission Members  
San Francisco Planning Department  
1650 Mission St. #400  
San Francisco, CA 94103

Dear President Fong and Members of the Planning Commission:

I am the owner of lots 27 & 28 directly across the street from the project (3516 & 3526 Folsom St.) in question is to start. I bought these lots years ago with the intent to develop them when my son and daughter needed housing. Fortunately or unfortunately for them, that time has come.

From attending several of the ESDRB meetings, I can see that the neighbors are very much in support of the development, but many are not. I have seen those naysayers use stalling tactics, scare tactics and overall selfish NIMBY tactics to try and stop or at least postpone indefinitely any kind of construction. None of their reasons to deny the said project from being developed have any socially beneficial merit.

The development of that end of Folsom Street can only benefit the community: It provides tax revenue for the city, desperately needed housing, participation by the residents for community betterment, and all at little or no cost to the city.

These lots have been designated as buildable lots, designed to provide housing and community for the city. Mr. Fabien Lannoye and Mr. Jim Fogarty's project fall exactly in line with the purpose of these lots. They have been gracious and accommodating to their neighbors, at great time and expense, working to design buildings to reasonably satisfy them.

Right now, I will be trying to develop my lots. I have two adult children, with children. Housing for them is a necessity, or they won't be able to afford San Francisco.

Your imprimatur on this project can only help all of us as a community

Very truly yours,

Paul Kontos

# **Exhibit B**

1 PARTIAL TRANSCRIPTION OF  
2 VIDEOTAPE OF THE  
3 SAN FRANCISCO PLANNING COMMISSION  
4 MEETING  
5 HELD ON THURSDAY, MARCH 31, 2016

6  
7 ---oOo---

8  
9 Entire Portion Relating to Items 11.a and 11.b  
10 Concerning  
11 3516 Folsom Street and  
12 3526 Folsom Street

13 (Includes previously transcribed portion of this  
14 videotape on the same matter, for continuity)

15  
16 ---oOo---

17  
18  
19  
20  
21 Transcribed by: Carol-Joy Harris  
22 C.S.R. No. 13938  
23 Job No. 18297  
24  
25

Page 2

---oOo---

1 MR. IONIN: Commissioners, that will place us  
2 on our final two items, 11a. and -b., for Case  
3 Nos. 2013.1383 DRP-10 at 3516 Folsom Street and  
4 Case No. 2013.1383 DRP-09 at 3526 Folsom Street.

5 These are discretionary reviews of two separate  
6 buildings that are essentially one project of two  
7 separate single-family dwellings.

8 Commissioners, there are 19 separate DRs that  
9 were filed on these two projects. Through the Chair, we  
10 agreed to provide the DR requesters a combined 20-minute  
11 presentation. The project sponsor would receive a  
12 10-minute presentation. The combined DR requesters  
13 would then receive a 10-minute rebuttal, with the  
14 project sponsor receiving the usual 2 minutes for their  
15 rebuttal.

16 All members of the public who are not a party  
17 to the DR -- in other words, they're just basically  
18 members of the public, okay, who did not file a DR or  
19 are a party to the DR, who are not part of the DR  
20 requesters' team -- will receive 3 minutes.

21 All right?

22 MR. SUCRE: Good evening, Commissioners. Rich  
23 Sucre, Department staff.

24 The item before you is a request for a

Page 3

1 discretionary review for the building permit  
2 applications associated with the new construction of two  
3 single-family residences at 3516 and 3526 Folsom Street.

4 The proposed projects would be located on two  
5 vacant lots, each measuring 20 feet by 70 feet in the  
6 RH-1 zoning district, Bernal Heights Special Use  
7 District, in a 40-X height and bulk district.

8 Currently, these parcels do not have vehicular  
9 street access or direct pedestrian access via sidewalks  
10 or other street improvements. This portion of Folsom  
11 Street is a paper street and is currently not improved.

12 The two new single-family residences are both  
13 two and one-half stories tall, with two off-street  
14 parking spaces. The two residences each measure  
15 approximately 2,200 gross square feet.

16 To date, the Department has received a number  
17 of public comments on the project, both for and against  
18 the request for a discretionary review. Included with  
19 two of the DR applications are petitions in opposition  
20 to the project signed by approximately 136 individuals,  
21 several of which would include the DR requesters.

22 Since publication of the Commission packets,  
23 the Department has received an additional 22 public  
24 comments, including 4 letters in support and 18 letters  
25 in opposition.

Page 4

1 In addition to the Commissioner packets I  
2 provided to you is a letter from the project sponsor's  
3 attorney that I neglected to include in the Commission  
4 packet.

5 Provided to you are copies of the additional  
6 public comments received after publication of the staff  
7 report.

8 The DR requesters have a number of issues with  
9 the proposed project, including: Paving of Folsom  
10 Street; emergency and infrastructure access; impacts on  
11 the underground PG&E pipeline; future development of the  
12 vacant lots along this portion of Folsom Street; impact  
13 on neighboring residences; on-street parking;  
14 construction; compliance with the Bernal Heights East  
15 Slope design guidelines; size and scale of the new  
16 residences; size yard setback of the new residences;  
17 off-street parking; rooftop, stair penthouses; public  
18 views from Bernal Heights Park; impact on open space;  
19 and affordability; among other issues as outlined in the  
20 staff report.

21 Issues surrounding Folsom Street and the PG&E  
22 pipeline are not under the purview of the Planning  
23 Commission. The Department of Public Works, or DPW, is  
24 the responsible agency for guiding and reviewing the  
25 extension and/or paving of Folsom Street.

Page 5

1 The projects are located in a residential  
2 district and have been reviewed by the Residential  
3 Design Team, or RDT. RDT found that the project does  
4 not create any extraordinary or exceptional  
5 circumstances and did not recommend any changes to the  
6 proposed project.

7 The Department finds the overall massing, form,  
8 and scale to be appropriate given the underlying zoning  
9 and height and bulk limits.

10 The proposed project is consistent with the  
11 residential character of the surrounding neighborhood  
12 and meets the requirements of the Bernal Heights East  
13 Slope design guidelines, the Bernal Heights Special Use  
14 District, and the residential design guidelines.

15 The projects will add two new single-family  
16 homes on a privately owned vacant lot at the base of  
17 Bernal Heights Park.

18 The project does not have any direct impacts on  
19 the adjacent Bernal Heights Community Garden or Bernal  
20 Heights Park.

21 The project sponsor has revised the garage  
22 layout to avoid the variance for parking access.

23 Therefore, the project is a fully code-  
24 compliant project and is not seeking any variances or  
25 special entitlements from the Planning Commission.

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1 mandatory mass reduction that's required, which in this  
2 case was exceeded.

3 The project sponsor made changes in the design  
4 at the request of Planning, made changes in design at  
5 the request of the East Slope Design Review Board.

6 As to whether or not they've complied with the  
7 Review Board's requirements, if you look at their table  
8 of contents for the -- what they require: Nine-foot  
9 curb cut, check; landscaping front yard setback, street  
10 trees, check; entry treatment, check; side yards, check;  
11 roof treatment, check; facade elements, check; colors  
12 and materials, check.

13 The only comment made in the DR request by the  
14 Design Review Board after five meetings was some  
15 additional design articulation or interest in the north  
16 facade of the north structure, and that is the one that  
17 is closest to the Bernal Heights Street, and that is  
18 where bedrooms will be placed.

19 The project sponsor has offered to do  
20 additional things to provide some additional elements or  
21 interest in that, but there are issues of privacy for  
22 the family.

23 But otherwise, as the Planning Department  
24 found, it met the design guidelines, met the residential  
25 design guides, the East Slope Design guidelines,

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1 complies with the planning code, complies with the  
2 Bernal Heights Special Use District.

3 Other issues raised by the DR requesters,  
4 garbage, mail service, these issues can all be dealt  
5 with.

6 Whether cars can actually drive out of the  
7 driveways up and down the street, again, the project  
8 sponsors are working with DPW. There's a preliminary  
9 approval for the street, including the grade, and they  
10 will continue to work with them after they get their  
11 approvals.

12 Finally, let me just talk about CEQA for a  
13 minute because that came up. I've been practicing CEQA  
14 case law and CEQA practice for 30 years. If -- if a  
15 project in San Francisco could not use a categorical  
16 exemption because it was subject to seismic shaking,  
17 then every single house in San Francisco would require  
18 an EIR.

19 There are six lots on this street, but there  
20 are only applications for two projects right now. It's  
21 categorically exempt, less than three units. There are  
22 no applications, as was put forth in the Planning  
23 report, no applications for the other four lots. In San  
24 Francisco, unless there's an application in, that's not  
25 a reasonably foreseeable project.

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1 As to the pipeline, the issue will be dealt  
2 with. That is not a significant issue that would cause  
3 an exception to the categorical exemption. If there  
4 was, I would have dealt with it a long time ago.

5 So with that, I know you've all had a long day.  
6 We've had a long day. Two couples, trying to build two  
7 modest residences, and trying very hard to be good  
8 neighbors in the process.

9 So thank for your time.

10 COMMISSION PRESIDENT FONG: Okay. DR request-  
11 -- I'm sorry; speakers in support of the project  
12 sponsor.

13 MR. FOGERTY: Commissioners, Jim Fogerty  
14 (phonetic). My wife and I own the lot at 3526 Folsom  
15 Street since May 2013.

16 When the lots were placed on the market, before  
17 we purchased the lots, we met with the Planning  
18 Department and other city agencies regarding the  
19 feasibility of their development. Satisfied with the  
20 responses, we proceeded to design two residences that  
21 comply with the City's design guidelines.

22 We worked with the Planning Department, made  
23 modifications in response to their suggestions. We met  
24 five times with --

25 MR. IONIN: I'm sorry, sir. Are you the owner

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1 of the property --

2 MR. FOGERTY: Yes.

3 MR. IONIN: -- or an owner of the property?  
4 Then you are part of the project sponsor's team, and  
5 your time to speak was during that initial 10 minutes.

6 You will have a two-minute rebuttal if you'd  
7 like to address the Commission at that time, or they may  
8 have questions for you later.

9 COMMISSION PRESIDENT FONG: So, asking for  
10 speakers who are in support of the project sponsor but  
11 not part of the ownership or project sponsor team.

12 MR. ROMERO: Thank you. I'm not part of the --  
13 the project team. My name is Ramone Romero (phonetic).  
14 I am a resident at 66 Banks Street.

15 I own Lot 29 and the space behind my home,  
16 which is directly across the street, the proposed  
17 street, that this project might be built on.

18 And I sent you a letter. I hope you saw it in  
19 your packet.

20 I served on the San Francisco Redevelopment  
21 Commission for almost 12 years. I was president of it  
22 for two terms.

23 You can imagine how many project that came  
24 before us that would fall into the classification that  
25 you probably know as NIMBYs. Okay?

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1 These are privately owned, buildable lots,  
2 properly zoned, and I honestly -- you've heard all the  
3 arguments here. I think the residents are very well  
4 organized. Obviously, they're very political folks.

5 I can tell you that when I moved into my house,  
6 I had nothing to do with the development of it. If you  
7 look on Banks Street, where I live, there's five  
8 relatively new homes there. A street was built as an  
9 extension of Banks Street in order to make those lots  
10 buildable.

11 Three homes were built by the same developer,  
12 and I happened to be one of the people who bought one of  
13 those homes. Little did I know that there had been this  
14 tremendous struggle to get those houses built and  
15 tremendous organization by the neighbors in opposition,  
16 just as you see here today.

17 I purchased my home in 1994, so I've been there  
18 22 years. I love living there. I love the  
19 neighborhood. These are good people that have come here  
20 to raise these concerns with you. And, you know, I  
21 think they do it in good faith.

22 But I don't think any of them are actually  
23 really valid. I went to two of the meetings of the East  
24 Slope Design Committee, and, you know, as you can see,  
25 as I said earlier, I've been to so many of these

Page 47

1 meetings in the Redevelopment Commission where these  
2 kinds of projects are before you. It's easy to get lost  
3 in emotion and in arguments that sound pretty good but  
4 really aren't necessarily, and I think this is -- this  
5 is a situation where you have that.

6 Steep street. Are there steep streets in San  
7 Francisco?

8 The firefighter, the fire danger. Well, the  
9 fire department had stairways built from Bernal Heights  
10 Boulevard above where these houses were built just  
11 recently, within the last five years, in order to  
12 provide firefighter access to these places.

13 It's a beautiful, open field. I bought the lot  
14 behind my house to help preserve open space. I didn't  
15 think it would last forever. I knew market conditions  
16 would change someday that would make them --

17 MR. IONIN: Thank you, sir. Your time is up.

18 MR. ROMERO: Okay. Thank you.

19 MR. SAFFLE: Good evening. My name is Tom  
20 Saffle (phonetic). I'm a resident at 307 Mullen Avenue.

21 I live on the same block that Fabian developed  
22 a house a few years ago, and I'm here tonight to say  
23 what a good neighbor he is and what a good person he is.

24 I think a lot of people in this room who are  
25 now treating him as an outsider because he is to them

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1 today. But I can tell you that I lived alongside him  
2 for three years. He's a really good guy.

3 And the way he built his house was very  
4 honorable. It's a house that fits into the neighborhood  
5 very well, despite being modern and despite our houses  
6 being built in 1907. He did build the house  
7 courteously. He was respectful of noise and dust.

8 He is a good man, and I hope that one day the  
9 people in this room get to take him in as their neighbor  
10 and discover that for themselves so they can treat him  
11 more like kin than an outsider.

12 Thank you.

13 MR. CANTOS: My name is Paul Cantos (phonetic).  
14 I own two lots on the other of the street. I was going  
15 to build those for my children.

16 The only thing I want to say about this project  
17 is give them a chance, for the proper agencies and the  
18 engineers to look at the project that they've gotten  
19 together, and let them do their work to see how well  
20 it's proposed, and give it a chance to ride it out  
21 completely to see how it stands.

22 Thank you.

23 COMMISSION PRESIDENT FONG: If there are any  
24 other speakers in support of the project sponsor.

25 I know you're coming up. You can certainly

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1 make your way to the mic here.

2 MR. KEIGHRAN: Good evening, Commissioners.  
3 Sean Keighran, RBA.

4 This project is consistent with the Bernal  
5 Heights Special Use District and the Eastern Slope  
6 Design guidelines. Those design guidelines call for a  
7 maximum mass of 650 feet less. These two houses are an  
8 additional 200 square feet.

9 Now, if you take that 200 square feet and apply  
10 it to the house we looked at earlier of 8,000 square  
11 feet, it may not be significant. But these houses are  
12 only about 2,000 square feet. That is a significant  
13 reduction.

14 I'm here also to address some concerns put  
15 forward about a whole variety of issues that really  
16 don't belong in this room. Let's start with the fire  
17 department. I spoke to the assistant fire marshal this  
18 afternoon. No such position has been taken with these  
19 streets or with these sites.

20 Project sponsor met with the captain in their  
21 pre-application meeting, and they were advised that  
22 these sites could be supported by the department.

23 Key components left out of the letter, hired --  
24 done by consultants state, streets less than 150 long  
25 will be treated differently. Houses fully sprinkled



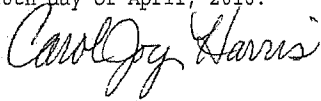
1 which I have no speaker cards.  
2 COMMISSION PRESIDENT FONG: Is there any  
3 general public comment this evening?  
4 Okay. Not seeing any, general public comment  
5 is closed.  
6 And the meeting is adjourned.  
7 /////

1 TRANSCRIBER'S CERTIFICATE

2  
3 I, Carol-Joy Harris, hereby certify that the  
4 foregoing video recording was by me accurately  
5 transcribed to best of my ability.

6 I further certify that I am not in any way  
7 interested in the outcome of said action nor connected  
8 with nor related to any of the parties in said action  
9 nor to their respective counsel.

10 In witness whereof I have hereunto subscribed  
11 my hand this 18th day of April, 2016.

12 

13 Carol-Joy Harris  
14 C.S.R. No. 13938

# Exhibit C

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

**CEQA 15061(b)(3):** *“Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”*

In assessing and ranking its risks, PG&E acknowledges that the risk of catastrophic pipeline failure may result in “significant environmental damage.” [See page 20 of PG&E 2016 Gas Safety Plan.] In other words, the risk is not zero, there is a possibility of significant environmental damage; therefore, the activity in question, development, including excavation over, under and around an unprotected 26-inch gas transmission line in hard bedrock and steep terrain, is subject to CEQA. The possibility of such a risk is more compelling given PG&E’s recent track record, which is documented herein.

### 1) High Consequence Area (HCA) Identification

<https://primis.phmsa.dot.gov/comm/FactSheets/FSHCA.htm>, (excerpts):

*“Pipeline safety regulations use the concept of “High Consequence Areas” (HCAs), to identify specific locales and areas where a release could have the most significant adverse consequences. Once identified, operators are required to devote additional focus, efforts, and analysis in HCAs to ensure the integrity of pipelines.*

*“HCAs for natural gas transmission pipelines:*

- *An equation . . . estimates the distance from a potential explosion at which death, injury or significant property damage could occur. This distance is known as the “potential impact radius” (or PIR), and is used to depict potential impact circles.*
- *Operators must calculate the potential impact radius for all points along their pipelines . . . to identify what population is contained within each circle.*
- *Potential impact circles that contain 20 or more structures intended for human occupancy are defined as HCAs. “*

Absent site-specific information, the default PIR is 660 feet. Per PG&E, the current Maximum Allowable Operating Pressure (MAOP) for the 26-inch diameter line 109 is 150 pounds per square inch gauge (psig), which means the current PIR for PG&E line 109 is 220 feet. According to PG&E’s FAQ, *“after the September 2010 San Bruno pipeline accident, we substantially reduced the pressure on pipelines that had segments with characteristics similar to the pipeline that ruptured. This was performed as a precautionary step until we can confirm the safety of the pipelines.”* Per NTSB Accident Report PAR-11/01 (page 35), line 109 operated at MAOP 375 psig prior to the reductions, which means the PIR for line 109 used to be 347 feet. According to PG&E, the higher pressure and increased PIR could return.

### 2) Integrity Management Programs

PG&E had an inadequate pipeline integrity management program, which failed to detect and repair or remove the defective pipe section in San Bruno, and the California Public Utilities Commission (CPUC) failed to detect the inadequacies of PG&E’s pipeline integrity management program.

**NTSB Pipeline Safety Study adopted 1/27/15 “Integrity Management of Gas Transmission Pipelines in High Consequence Areas”**

<http://www.nts.gov/safety/safety-studies/Documents/SS1501.pdf>:

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

(1<sup>st</sup> excerpt):

*“The NTSB undertook this study because of concerns about deficiencies in the operators’ integrity management programs and the oversight of these programs by PHMSA and state regulators -- concerns that were also identified in three gas transmission pipeline accident investigations conducted by the NTSB in the last five years. These accidents resulted in 8 fatalities and over 50 injuries, and they also destroyed 41 homes.” [Includes San Bruno.]*

(2<sup>nd</sup> excerpt -- regarding previous NTSB investigation of San Bruno, California: 9/9/2010):

*“The NTSB found that PG&E’s pipeline IM [Integrity Management] program was deficient and ineffective because it*

*(1) was based on incomplete and inaccurate pipeline information (that was contained in the operator’s GIS),*

*(2) did not consider the design and materials contribution to the risk of a pipeline failure,*

*(3) failed to consider the presence of previously identified welded seam cracks as part of its risk assessment,*

*(4) resulted in the selection of an examination method that could not detect weld seam defects, and*

*(5) led to internal assessments of the program that were superficial and resulted in no improvement.*

*“Furthermore, the NTSB also determined that the California Public Utilities Commission, the pipeline safety regulator within the state of California, failed to detect the inadequacies in PG&E’s IM program and that the IM program inspection tool used by state and federal inspectors, also known as the PHMSA IM inspection protocols, needed improvement.”*

### **Gas Transmission Integrity Management: FAQs**

<https://primis.phmsa.dot.gov/gasimp/faqs.htm#top2>, (excerpt):

*“Operators must . . . assess the risks associated with pipeline segments in HCAs . . . enhance damage prevention programs and implement additional risk control measures beyond those already required . . . Examples . . . include: . . . conducting drills with local emergency responders and implementing additional inspection and maintenance programs.”*

### **Gas Transmission Integrity Management: Fact Sheet**

<https://primis.phmsa.dot.gov/gasimp/fact.htm>

### **3) Excavation damage is a significant cause of pipeline accidents.**

As reported by PHMSA’s Office of Pipeline Safety, the major causes of pipeline accidents include: corrosion, excavation damage, incorrect operation, material/weld/equipment failure, natural force damage, and other outside force damage.

The predominant failure causes of gas transmission significant onshore incidents (right-of-way line pipe only 2005-2009) are corrosion (28%), material/weld failures (23%), and excavation damage (20%). (For the diagram, see page 16 of “Building Safe Communities” in link below).

### **Building Safe Communities: Pipeline Risk and its Application to Local Development Decisions**

<http://primis.phmsa.dot.gov/comm/publications/PIPA/PIPA-PipelineRiskReport-Final-20101021.pdf>

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

### 4) Welds. Lack of record of history of welds. Documentation of type of welds.

We need to know what the welds are and their history before construction can begin.

<http://www.sfgate.com/bayarea/article/PG-E-s-63-blast-an-early-warning-on-lines-safety-2366695.php>

### 5) Recordkeeping.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M162/K888/162888429.PDF>, (news release excerpts):

*“June 1, 2016 - The California Public Utilities Commission (CPUC) today issued a decision by an Administrative Law Judge that penalizes Pacific Gas and Electric Company (PG&E) \$24.3 million for failure to comply with laws and regulations in maintaining accurate records of its natural gas distribution system.*

*“. . . determined that PG&E's inaccurate records were relied on for locating and marking underground facilities in anticipation of excavation. The inaccurately mapped, and consequently inaccurately marked, facilities led to excavators damaging the distribution system in several instances. Release of natural gas, service interruptions and, in one case, significant property damage resulted.”*

[See Appendix A for list of violations.]

**6) Lack of overall responsibility about public safety within SF. No agency is taking responsibility for PG&E-related public safety -- and the resulting additional public safety problems caused by the presence of this pipeline: steep street, traffic congestion and obstructions, parking, etc. No agency is looking at the totality of public safety issues and impacts on the surrounding neighborhood. Hence, we need an EIR to address these issues.**

[See Appendix B for email exchange concerning agencies involved in the ROW approval process.]

**2/14/12, Herrera sues feds for failing to enforce gas pipeline safety standards before and after San Bruno blast. PHMSA ‘still asleep at the switch,’ City Attorney says, after ignoring S.F.’s concerns, recommendations of federal investigators. News Release:**

<http://www.naturalgaswatch.org/wp-content/uploads/2012/02/SF-PHMSA-complaint.pdf>

**Court Rejects San Francisco Lawsuit Against Federal Pipeline Safety Regulators:**

<http://cdn.ca9.uscourts.gov/datastore/opinions/2015/07/30/13-15855.pdf>, (excerpts):

*“The panel held that the plain statutory language, the statutory structure, the legislative history, the structure of similar federal statutes, and interpretations of similar statutory provisions by the Supreme Court and other circuits led to its conclusion that the Pipeline Safety Act did not authorize mandamus-type citizen suits against the Agency.*

*“San Francisco has presented very troubling allegations about the Agency’s approach to monitoring the CPUC’s regulation of intrastate pipelines. However, “[w]e have no authority to compel agency action*

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

*merely because the agency is not doing something we may think it should do.” Zixiang Li v. Kerry, 710 F.3d 995, 1004 (9th Cir. 2013). Neither the Pipeline Safety Act nor the APA authorize San Francisco’s claims. Therefore, the district court properly dismissed the action. We need not, and do not, reach any other argument raised by the parties.”*

### 7) Pipeline and Hazardous Materials Safety Administration (PHMSA) recommendations:

#### Creating Consultation Zones for Pipeline Safety

[http://www.naco.org/sites/default/files/documents/FINAL\\_Pipeline%20FAQ.pdf](http://www.naco.org/sites/default/files/documents/FINAL_Pipeline%20FAQ.pdf), (excerpts):

*“All pipeline safety is regulated by the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA). In 2010, PHMSA formed the Pipelines and Informed Planning Alliance (PIPA), a group of more than 130 stakeholder groups and individuals made up of property developers/owners, local government officials, pipeline operators, real estate commissions and relevant national organizations, including NACo, to develop recommended practices on land use and development near transmission pipelines. Although local governments do not have the regulatory or enforcement authority to propose pipeline transmission safety standards, PIPA developed recommendations for how local governments can apply their land use and development authority to reduce pipeline safety risks to overall public health. One of these recommended practices for local governments is the creation of consultation zones around transmission pipelines.*

*“A consultation zone is a local ordinance that requires communication and review among property developers, property owners and pipeline operators when new land uses and property developments are being planned within a designated distance of a pipeline. **The main purpose for creating consultation zones is to avoid situations where public safety and access to pipeline facilities is not considered before a new project is approved and permits are issued.**”*

Absent site-specific information, PIPA recommends that a standard consultation zone distance is 660 feet on either side of the centerline of natural gas pipeline.

Skagit County, Washington has implemented Consultation Zones for pipeline safety in land use and planning.

**Pipelines and Informed Planning Alliance (PIPA). 2010. “Partnering to Further Enhance Pipeline Safety in Communities Through Risk-Informed Land Use Planning: Final Report of Recommended Practices.”**

<http://primis.phmsa.dot.gov/comm/publications/PIPA/PIPA-Report-Final-20101117.pdf>

**Land Use Planning and Transmission Pipelines** (additional resource materials)

<http://primis.phmsa.dot.gov/comm/pipa/landuseplanning.htm>

**Hazard Mitigation Planning: Practices for Land Use Planning and Development near Pipelines**

[http://www.fema.gov/media-library-data/1422297186422-e43ce828d6821027c258e96eae10fd6d/PIPA\\_Hazard\\_Mitigation\\_Primer\\_Final.pdf](http://www.fema.gov/media-library-data/1422297186422-e43ce828d6821027c258e96eae10fd6d/PIPA_Hazard_Mitigation_Primer_Final.pdf)

## **CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street**

### **8) Inform residents within the Potential Impact Radius (PIR) of the emergency response plan for a pipeline incident, including evacuation plans.**

Under PHMSA's Integrity Management Program, pipeline operators must implement additional risk control measures beyond those already required, such as conducting drills with local emergency responders.

### **9) Pipeline depth and utility clearance regulations, and setback protocols.**

Elevations of the utilities crossing over the 26" PG&E gas transmission pipeline have not been determined. It may not be possible for utilities to cross over the pipeline while maintaining a safe separation.

Minimum depth of cover over gas transmission pipeline is 3'-4'.

Minimum crossing clearance distance is 24".

Excavation within 24" of pipeline must be done by hand and supervised by a PG&E monitor.

In conversation with a PG&E representative at their open house on 6/28/16 regarding the upcoming hydrostatic pressure test on line 109, PG&E requires a 15' clearance on either side of the pipeline centerline for pipeline maintenance heavy equipment access, if necessary. A 50' setback would be ideal, but not possible for development in the city.

The state of Minnesota, after considering the various "setbacks" found in present law and by example, established a minimum setback distance equal to the pipeline easement boundaries.

Minnesota considered the following:

--The Federal Housing Administration denies financing to any home within 10 feet of a high pressure pipeline.

--The fire marshal's association urged consideration of a 60 foot setback to accommodate fire equipment access to a pipeline failure.

--Industry representatives indicated that a general setback of 50 to 100 feet is sought through the purchase process of right-of-way.

--The city of Edmonton, Canada, was the only community found to have a specific setback.

### **10) PG&E's regular surveillance for pipeline hazards – critically inadequate**

Although PG&E claims regular surveillance of gas transmission pipelines for activities and encroachments that endanger the integrity of and inhibit access to pipelines, a 30-foot pine tree has been allowed to grow for years on top of PG&E Gas Transmission Pipeline 109 within the Project Area. Other large vegetation also grows over the pipeline in this area against safety recommendations.

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In addition, several small structures have been allowed to be built adjacent and over the pipeline:



This situation refutes PG&E's claims of regular patrols to examine safety breaches -- and directly contradicts published national and PG&E safety guidelines regarding trees, vegetation, and structures over and near transmission pipelines:

**Pipelines and Informed Planning Alliance (PIPA). 2010. "Partnering to Further Enhance Pipeline Safety in Communities Through Risk-Informed Land Use Planning: Final Report of Recommended Practices."**  
<http://primis.phmsa.dot.gov/comm/publications/pipa/PIPA-Report-Final-20101117.pdf>, (excerpt):



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*“ND 15 Plan and Locate Vegetation to Prevent Interference with Transmission Pipeline Activities, Practice Statement: Trees and other vegetation should be planned and located to reduce the potential of interference with transmission pipeline operations, maintenance, and inspections.”*

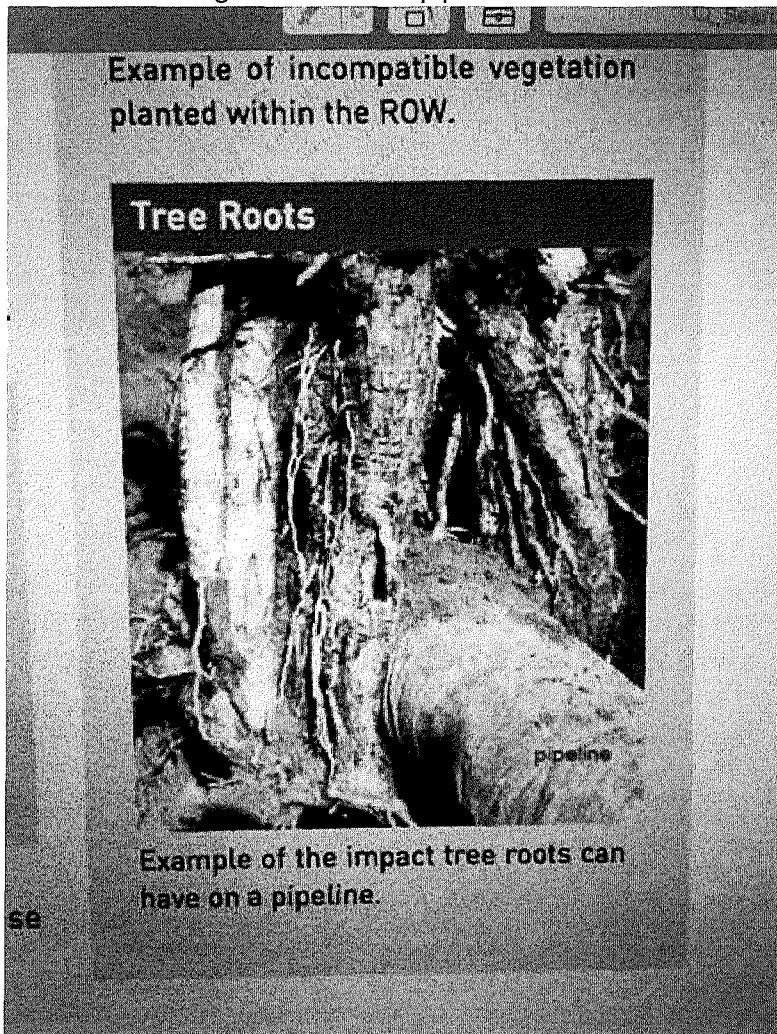
### PG&E "The Community Pipeline Safety Initiative" Putting Safety First:

<http://www.pge.com/en/safety/gassafety/pipeline/emergencyaccess/index.page>, (excerpt):

*“Trees, tree roots, brush and structures can threaten safety because they can block firefighters' access during emergencies and can prevent our crews from performing important safety and maintenance work. Tree roots also pose a safety risk because they can damage the protective coating of underground pipelines—leading to corrosion and leaks.”*

### 11) Proposed planting beds and trees over pipeline pose immediate and long-term dangers

The Project Plans propose building planting beds and putting trees over the pipeline -- ignorant of the dangers involved -- and against the recommendations of national and PG&E guidelines regarding planting over pipelines. There will be no street covering protecting the pipeline in this location -- unlike other sections of gas transmission pipelines in San Francisco.



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Tree root damage is a major cause of protective coating corrosion on pipelines. See **Final Report, Volume 1, Pacific Gas & Electric, "Tree Root Interference Assessment", January 17, 2014:** [http://www.pge.com/includes/docs/pdfs/myhome/customerservice/other/treertrimming/pipelinerightofway/PGE\\_TreeRootStudyReport.pdf](http://www.pge.com/includes/docs/pdfs/myhome/customerservice/other/treertrimming/pipelinerightofway/PGE_TreeRootStudyReport.pdf), (excerpt):

*"At locations where pipelines and tree root systems co-exist, there is a high occurrence of tree roots causing damage to the external coating on the pipeline (40 out of 53 sites, or approximately 75%). The susceptibility for external corrosion to occur on the pipeline is increased because the primary protective barrier, namely the external coating, is compromised."*



A thirty-foot tall pine tree, various large shrubs, and agaves with tap roots sit on top or adjacent to the transmission pipeline in violation of national and PG&E Safety Guidelines. [See 1st image.]

### **PG&E Community Gas Safety, Guidance from Industry Experts:**

<http://www.pge.com/includes/docs/pdfs/myhome/customerservice/other/treertrimming/pipelinerightofway/GuidancePipelineSafetyExperts.pdf>

Fronting homeowners and renters within a High Consequence Area will be responsible for enforcing safe practices -- with the very real possibility of one tree pole pounded in at the wrong place potentially causing a catastrophic accident.

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

### 12) Partial list of 'reported' PG&E natural gas pipeline accidents just in northern California since San Bruno explosion (thru June 2016):

--June 17, 2016, San Francisco: Miraloma neighborhood evacuated when **SFPUC crew hit a natural gas line** while installing a new water main. Large gas leak took an hour to cap.

--March 17, 2016, Morgan Hill, CA: 100 people were evacuated or asked to shelter in place due to **accidental rupture by private contractor** of distribution gas line **during construction activity**.

--2012 - 2015, Sacramento, CA: Journalist uncovered **six pipeline "strikes" by contractors during a two and one half hour period that went unreported by PG&E**. One incident included a rupture that went undetected for 48 hours until the pregnant homeowner smelled gas in her backyard. Experts said a **spark from a water heater would have ignited a deadly explosion**.

--August 26, 2015, San Jose, Ca: Five businesses were destroyed by a **car crash puncturing a natural gas line**.

--April 17, 2015, Fresno, CA: One person was killed and eight people were injured when **excavation activity by a large, earth-moving tractor punctured a 12-inch PG&E transmission gas pipeline** while on a steep slope during excavation. Fireball went 150 feet in the air. One fatality and entire work crew fifty feet away suffered critical and serious injuries. 400 feet of train tracks were warped by the heat. **Operator error was cited** by the state as to the cause of the explosion.

--March 3, 2014, Carmel, CA: Home exploded due to **PG&E crew working on four-inch gas pipeline** using faulty PGE records. Crew escaped injuries due to standing behind a truck. **PG&E allowed dangerous leak to persist** without calling 911 for 30 minutes, when leak exploded. Crew did not have proper equipment to stop leak; which took one hour to halt. Area not evacuated prior to explosion. House was destroyed. **Shrapnel and debris were hurled into neighboring houses**. People walking by were showered with debris. Nearby house windows were blown out by shock waves. PG&E fined \$10.8 million dollars.

--Post March 3, 2014, Carmel, CA: **Five pipeline accidents subsequent to the Carmel March 14th explosion "have shaken our confidence in the company's commitment to safety..."**, according to then Carmel mayor Jason Burnett, "despite PG&E's lip service and empty promises." Two examples: A **gas leak at a major hotel took PG&E five hours to respond**. At another hotel, **third-party crews hit a gas pipe** that sent a 20-foot gas cloud into the air. PG&E crews took one hour to stop the leak.

--July 13, 2013, Mountain View, CA: **PG&E welding crews accidentally melted** an "unmapped" plastic insert in a steel pipe. Leak forced evacuations. **PG&E recently conceded it has lost 12 years of gas-line paper repair records** for the South Bay.

--January 13, 2012, Rio Vista, CA: **8-inch pipeline exploded** in field.

--June, 2012, Morgan Hill, CA: **Contractor accidentally hit gas distribution pipeline** on Main Street line that caused evacuations due to leak. **PG&E worker was blamed for mistakenly identifying pipeline** as decommissioned.

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

--October, 2012, Milpitas, CA: **Error in PG&E records caused PG&E replacement crew to accidentally turn off gas valve.** Gas lost to 1,000 homes for 12 hours.

--November 20, 2012, Madera, CA: **Heavy equipment operator accidentally punctured a 12-inch transmission pipeline.** Houses and businesses were evacuated. Adjacent highway shut down for hours.

--August 31, 2011, Cupertino, CA: **Condo gutted after faulty plastic pipeline fitting filled garage with gas.** Six other plastic pipe failures were found near blast site. According to a Wikipedia list of pipeline accidents, PG&E has 1,231 miles of pre-1973 defective plastic pipes that federal regulators have singled out as being at risk of failing. **50 people have died in accidents caused by this type of defective plastic pipe since 1971.**

--Sept. 7, 2011, San Francisco, CA: **Construction crew ruptured a 10-inch gas pipeline at Post and Mason,** shutting down the neighborhood.

--Sept. 9, 2010, San Bruno, CA: High Consequence Area **catastrophic explosion** resulted in eight deaths, numerous burn victims, 38 houses destroyed. **PG&E's faulty record keeping, bad welds, response errors -- the list goes on -- caused catastrophic explosion.**

### 13) Liability and Maintenance issues

[See Appendix B for email exchange concerning agencies involved in the ROW approval process.]

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### Appendix A

In the Recordkeeping Violations Decision, the CPUC found that PG&E committed 33 violations, many of them continuing for years, for a total of 350,189 days in violation. These violations are:

1. PG&E's lack of accurate and sufficient records to determine whether it had used salvaged pipe in Segment 180 impacted its ability to safely maintain and operate this segment in violation of Pub. Util. Code § 451. (Felts Violation 1) **This violation ran from 1956 to September 9, 2010.**
2. PG&E violated Pub. Util. Code § 451 for failing to retain the necessary design and construction records in Job File GM 136471 for the construction of Segment 180. (Felts Violation 2) This violation ran from 1956 to September 9, 2010.
3. PG&E violated ASME B.31.8 § 841 and Pub. Util. Code § 451 for failing to perform a post-installation pressure test on Segment 180 and retaining the record of that test for the life of the facility. (Felts Violation 3) This violation ran from 1956 to September 9, 2010.
4. PG&E violated Pub. Util. Code § 451 by increasing the MAOP of Line 132 from 390 psi to 400 psi without conducting a hydrostatic test. (Felts Violation 4) This violation ran from December 10, 2003 to September 9, 2010.
5. PG&E violated Pub. Util. Code § 451 by operating Line 132 above 390 psi on December 11, 2003, December 9, 2008 and September 9, 2010 without having records to substantiate the higher operating pressure. (Felts Violation 11) These constitute three separate violations. The first violation ran from December 11, 2003 to September 9, 2010; the second violation ran from December 9, 2008 to September 9, 2010; and the final violation occurred on September 9, 2010.
6. PG&E violated Pub. Util. Code § 451 by failing to provide the proper clearance procedures for work performed at the Milpitas Terminal on September 9, 2010. (Felts Violation 5) This violation ran from August 27, 2010 to September 9, 2010.
7. PG&E violated Pub. Util. Code § 451 by failing to have accurate drawings and computer diagrams of the Milpitas Terminal. (Felts Violation 7) This violation ran from December 2, 2009 to July 2011.
8. PG&E violated Pub. Util. Code § 451 by failing to have accurate Supervisory Control and Data Acquisition System (SCADA) diagrams. (Felts Violation 7 and 9) This violation ran from December 2, 2009 to October 27, 2010.
9. PG&E violated Pub. Util. Code § 451 by failing to have the necessary backup software readily available at the Milpitas Terminal on September 9, 2010. (Felts Violation 8) This violation occurred on September 9, 2010.
10. PG&E's October 10, 2011 data response about the video recording for Camera 6 misled Commission staff and impeded their investigation into the San Bruno explosion. (Felts Violation 13) This is a violation of Rule 1.1 of the Commission's Rules of Practice and Procedure.
11. PG&E violated Rule 1.1 by misleading CPSD in two separate data responses regarding personnel present at the Milpitas Terminal who were working on the pressure problem on September 9, 2010. (Felts Violation 14) The first violation occurred on October 10, 2011, PG&E's response to DR 30, Q 8.d; the second violation occurred on December 17, 2011, PG&E's response to DR 30, Q 2. Both violations ran until January 15, 2012.
12. PG&E's recordkeeping practices with respect to Job Files adversely impacts its ability to operate its gas transmission pipeline system in a safe manner and violates Pub. Util. Code § 451. (Felts Violation 16) This violation ran from 1987 to December 12, 2012.
13. PG&E has failed to retain pressure test records for all segments of its gas transmission pipeline system as required by Pub. Util. Code § 451, ASME B.31.8, GO 112 through 112-B and PG&E's internal records retention policies. (Felts Violation 18) This violation ran from 1956 through December 20, 2012.
14. PG&E violated ASME B.31.8 § 828.2, GO 112 through 112-B § 206.1, 49 CFR 192.241 and 192.243

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

and PG&E's Standard Practice 1605 by failing to retain weld inspection reports. (Felts Violation 19) This violation ran from 1955 through December 20, 2012.

15. PG&E violated Pub. Util. Code § 451 for failing to maintain records necessary to ensure the safe operations of its gas transmission pipeline system by failing to create and retain operating pressure records over the life of the pipe. (Felts Violation 20) This violation ran from 1955 to December 17, 2004.

16. Starting in 1955, inaccurate and incomplete data in PG&E's leak reports would prevent PG&E from operating its gas transmission pipeline system safely, as required by Pub. Util. Code § 451. (Felts Violations 21 and 22) This violation ran from 1955 to December 20, 2012.

17. PG&E violated Pub. Util. Code § 451 by failing to retain records of reconditioned and reused pipe in its transmission pipeline system. (Felts Violation 23) This violation ran from 1940 to December 20, 2012.

18. PG&E violated Pub. Util. Code § 451 by failing to ensure the accuracy of data in its Geographic Information System (GIS) system and assuming values for missing data that were not conservative. (Felts Violation 24) This violation ran from 1995 to December 20, 2012.

19. PG&E violated Pub. Util. Code § 451 because its ability to assess the integrity of its pipeline system and effectively manage risk is compromised by the availability and accuracy of its pipeline data. (Felts Violation 25) This Violation ran from December 17, 2004 to December 20, 2012.

20. PG&E violated Pub. Util. Code § 451 for failing to retain a metallurgist report concerning a 1963 fire and explosion on Line 109 caused by a failure in a circumferential weld. (Felts Violation 27) This violation ran from 1963 to December 20, 2012.

21. The shortcomings in PG&E's records management activities has resulted in PG&E's inability to operate and maintain PG&E's gas transmission line in a safe manner and violate Pub. Util. Code § 451; GO 112 through 112-B, Section 107; ASME B.31.8. (Duller/North Violation A.1) This violation ran from 1955 to December 20, 2012.

22. PG&E violated ASME B.31.8 § 851.5 by failing to retain records of Leak Survey Maps for as long as the line remains in service. (Duller/North Violation B.1) This violation ran from April 16, 2010 to December 20, 2012.

23. PG&E violated ASME B.31.8 § 851.5 by failing to retain records of Line Patrol Reports for as long as the line remains in service. (Duller/North Violation B.2) This violation ran from September 1, 1964 to December 20, 2012.

24. PG&E violated ASME B.31.8 § 851.5 by failing to retain records of Line Inspection Reports as long as the line remains in service. (Duller/North Violation B.3) This violation ran from December 17, 1991 to December 20, 2012.

25. PG&E violated ASME B.31.8 § 851.417 by failing to retain pressure test records for the useful life of the pipeline. (Duller/North Violation B.4) This violation ran from September 1, 1964 to December 20, 2012.

26. PG&E violated ASME B.31.8 § 851.5 by failing to retain records of transmission line inspections for as long as the line remains in service. (Duller/North Violation B.5) This violation ran from September 1, 1964 to December 20, 2012.

27. PG&E violated 49 CFR 192.13(c) for failing to comply with its internal records retention policies. (Duller/North Violation B.6) This violation ran from 1955 to December 20, 2012.

28. PG&E violated Pub. Util. Code § 451 by failing to identify and include in the Gas Pipeline Replacement Plan (GPRP) all pipe segments with unusual longitudinal seams and joints. (Duller/North Violation C.1) This violation ran from June 1988 to December 20, 2012.

29. PG&E violated Pub. Util. Code § 451 because missing and inaccurate pipeline records prevented PG&E from properly identifying and replacing those pipelines that were prone to damage during severe earthquakes. (Duller/North Violation C.2) This violation ran from June 1992 to December 20, 2012.

## **CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street**

30. PG&E violated Pub. Util. Code § 451 for failing to maintain a definitive, complete and readily accessible database of all gas leaks for their pipeline system. (Duller/North Violation C.3) This violation ran from 1957 to December 20, 2012.

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

### Appendix B

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**From:** "Shah, Rahul (DPW)" <[Rahul.Shah@sfdpw.org](mailto:Rahul.Shah@sfdpw.org)>  
**To:** barbara underberg <[bjunderberg@yahoo.com](mailto:bjunderberg@yahoo.com)>  
**Cc:** Kathy Angus <[kathyangus@comcast.net](mailto:kathyangus@comcast.net)>; "Fong, Lynn (DPW)" <[Lynn.Fong@sfdpw.org](mailto:Lynn.Fong@sfdpw.org)>  
**Sent:** Friday, June 24, 2016 12:18 PM  
**Subject:** RE: 3500 Block Folsom Street Right-of-Way

Hi Barbara,

It is important to keep in mind what Public Works' review entails.

CPUC compliance is verified by SFPUC, and if SFPUC approves, CPUC guidelines are being met.

We only review the right-of-way. Rec. and Park property cannot be reviewed by Public Works. Any modifications to Rec. & park property requires approvals from Rec. and park.

Maintenance is tied to the property, and maintenance responsibility may only be transferred if authorized by Public Works. If there is new ownership, the encroachment is recorded to the title of the property, so any subsequent owners are responsible for maintenance and should be aware before purchasing the property since it is recorded on the title.

The project sponsor is responsible for construction, but if something were to happen, I am certain other parties including OSHA would become involved and perform an investigation, so I cannot fully answer this question since there are several variables that may affect the distinguishing of responsibility.

All construction liability will follow standard construction requirements and necessary inspection practices, and all OSHA requirements are required to be met.

The proposal, if a Major Encroachment, ultimately goes to SFMTA and the traffic review team for review and a final decision.

The receptacle location will need to be coordinated with Recology. All guidelines of maintaining path of travel in the public right-of-way will apply. SFMTA is responsible for any obstruction to vehicular access.

Rahul

**From:** barbara underberg [<mailto:bjunderberg@yahoo.com>]  
**Sent:** Friday, June 24, 2016 11:56 AM  
**To:** Shah, Rahul (DPW)  
**Cc:** Kathy Angus; Fong, Lynn (DPW)  
**Subject:** Re: 3500 Block Folsom Street Right-of-Way



## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

Thanks, Rahul, for this helpful information -- which leads me to additional questions:

Due to the presence of the 26" gas transmission pipeline, is the CPUC involved in any part of the review process?

Due to the proposed stairway through SF Rec & Park property, will they also be involved in the review process?

What happens to the maintenance responsibility of the Major Encroachment Permit incurred by the project sponsor, if he subsequently sells his property? Does it transfer to the new owner?

Due to the roadway design and alignment, it will not cover and protect the 26" gas pipeline. Who is liable in the event of a pipeline incident resulting from inappropriate usage of the area above the pipeline over time (e.g., repeated incursions of heavy equipment or vehicles on the unpaved portion)?

Is any agency responsible for taking into account the effects of the roadway design on the surrounding neighborhood (not just the mechanics of making the proposed street passable)? The design of the roadway will have a significant traffic impact on the functioning of the intersection at Folsom and Chapman Streets, which due to topography is the main access point to 28 homes bounded by Chapman, Folsom, Nevada Streets and Bernal Heights Boulevard.

This last issue by itself merits a larger discussion, but to cite just one example of concern: the design does not accommodate 24 garbage/recycling/compost bins to be set out weekly for collection (anticipating the eventual development of all eight lots in this block -- two existing residences, six undeveloped to-date). Where will they go? Due to the proposed 37% grade, Recology will not drive on this block. If the bins are placed at the bottom of the proposed roadway, they will obstruct this critical intersection.

Again, thanks for your help.

Regards,

Barbara Underberg

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**From:** "Shah, Rahul (DPW)" <[Rahul.Shah@sfdpw.org](mailto:Rahul.Shah@sfdpw.org)>  
**To:** barbara underberg <[bjunderberg@yahoo.com](mailto:bjunderberg@yahoo.com)>  
**Cc:** Kathy Angus <[kathyangus@comcast.net](mailto:kathyangus@comcast.net)>; "Fong, Lynn (DPW)" <[Lynn.Fong@sfdpw.org](mailto:Lynn.Fong@sfdpw.org)>  
**Sent:** Friday, June 24, 2016 8:18 AM  
**Subject:** RE: 3500 Block Folsom Street Right-of-Way

Hi Barbara,

I apologize for the delay. At this time, the status has not changed much since we last spoke. I have received a tentative approval from the Streets and Highways Division regarding the proposed grading of the roadway. However, they are still required to satisfy SFPUC requirements, SFFD requirements, and obtain the proper information from PG&E regarding the main. I have not seen these yet, and so they are unable to move forward at this point. I know they are currently working with Planning, but I am uncertain at exactly what stage they stand except that the CEQA clearance is being re-reviewed.

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

In regards to the Public Works process, in this case, they will need to obtain consent from each fronting property owner on that block since the fronting property owner will become responsible for the improvements up to the centerline for the width of their respective frontages. If they are unable to obtain consent, a Major Encroachment Permit is required which places the maintenance responsibility solely on the project sponsor. In this case, all relevant City agencies (e.g Planning, SFPUC, SFFD, SFMTA, etc.) review the project and must provide approval. There is then a Public Hearing held By Public Works, and if the Director determines it can move forward, it will go to the Board of Supervisors who will ultimately determine if this may be approved. The Board of Supervisors meetings are public and also allow for public comment.

At this point, since I have not seen any significant changes and because the development team is still working on obtaining necessary approvals, I do not think a meeting would be a good use of time. I hope this helps provide some clarity.

Thank you,

**Rahul Shah, P.E.**

Assistant Engineer  
Bureau of Street-Use & Mapping  
San Francisco Public Works  
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**From:** barbara underberg [<mailto:bjunderberg@yahoo.com>]  
**Sent:** Thursday, June 23, 2016 1:57 PM  
**To:** Shah, Rahul (DPW)  
**Cc:** Kathy Angus  
**Subject:** 3500 Block Folsom Street Right-of-Way

Hi Rahul,

To clarify the message I left you a few weeks ago, these are some of the questions we have:

What is the status of plans for the right-of-way of the 3500 block of Folsom Street?  
Could you please refer us to information regarding the approval process for changes to public rights-of-way, in general?  
Would it be helpful to meet about this?

Thanks, in advance, for any information you can provide.

Regards,  
Barbara Underberg

<image001.jpg>

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

### Appendix C – Selected Related Newspaper Articles

Chronicle (primarily Jaxon Van Derbeken and Bob Egelko) reporting on San Bruno and other PG&E gas related stories:

<http://www.sfchronicle.com/sanbrunoblast/>, primarily Jaxon Van Derbeken and Bob Egelko reporting on San Bruno and other PG&E gas related stories.

<http://www.sfchronicle.com/bayarea/article/Judge-asked-to-fine-PG-E-112-million-for-Carmel-6861837.php>, 2/29/16, updated 3/3/16

<http://www.sfchronicle.com/news/article/Carmel-fears-PG-E-tampered-with-records-in-2014-6764498.php>, 1/16/16

<http://www.sfchronicle.com/news/article/State-blames-Fresno-County-for-fatal-gas-line-6799536.php>, 2/1/16

#### From the SF Bay Guardian archives:

<https://issuu.com/sf.guardian/docs/45.23>, see page 12 for the article "For safety's sake, Gaps in PG&E pipeline info could carry implications for land-use decisions" by Rebecca Bowe dated March 9-15, 2011

<https://issuu.com/sf.guardian/docs/48.28>, see page 15 for the article "PG&E Indictment Falls Short" by Steven T. Jones dated April 9-15, 2014

#### Jaxon Van Derbeken reports (previously with the Chronicle, with NBC Bay Area as of 3/14/16):

<http://www.nbcbayarea.com/news/local/PGEs-Assessment-of-San-Bruno-Pipeline-Challenged-385276591.html>, 7/1/16 (excerpt, trial coverage):

Federal regulations preclude using corrosion only methods on gas lines with histories of seam weld failures or leaks.

Prosecutors highlighted a 2008 exchange between Aguiar and a supervisor in the integrity management division triggered when Aguiar blamed weld failure for a 2006 leak that sprung just after PG&E used the corrosion method to declare a gas line safe.

That supervisor, Bill Manegold, warned Aguiar to "watch" what he wrote as an inspection "process that walks right over active leaks and declares pipes safe is not a process I want to advertise too loudly."

Aguiar said no one was "advertising" the method could detect weld flaws.

"We are advertising that we've assessed the pipe and it is fit for service," Manegold shot back, adding that the leaks -- like the one found in 2006 on a girth weld -- "are not minor."

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

<http://www.nbcbayarea.com/news/local/Pipeline-Test-Records-Missing-Key-Data-in-PGE-Case-385117511.html>, 6/30/16 (excerpts, trial coverage):

Some of the pipeline test records that PG&E hoped would vindicate the company from federal pipeline safety charges actually are missing key data required by federal law to validate them, a company engineer acknowledged in the federal trial Thursday.

Many of the reports dated to after September 2010 San Bruno gas pipeline explosion. She asked whether the company launched a large-scale test effort in 2011. “Yes we did,” he said, and he also acknowledged that several lines – a total of ten, according to prosecutors – had failed those tests.

Earlier, Hoffman showed Arnett some emails in which engineers declared it would simply be “too expensive” to test pipelines with missing records.

<http://www.nbcbayarea.com/news/local/PGE-Failed-to-Follow-Agency-Guidance-on-Pipeline-Safety-Testimony-383884691.html>, 6/22/16 (excerpt, trial coverage):

A U.S. pipeline safety agency engineer testified Tuesday that the agency's website offers specific instructions about what utilities should do to inspect pipes following pressure surges, something prosecutors say the utility failed to mind so as to maximize profits.

<http://www.sfgate.com/crime/article/PG-E-management-allegedly-ordered-papers-6754580.php>, Chronicle 1/12/16 (excerpt, pre-trial coverage):

A former Pacific Gas and Electric Co. official hired after the San Bruno gas-pipeline explosion to clean up the company's records said management ordered her to destroy documents, and that she found a telltale preblast analysis of the pipe in the garbage, according to a federal court filing.

<http://www.sfgate.com/bayarea/article/PG-E-s-shady-conduct-hindered-probe-6501122.php>, Chronicle 9/14/15 (excerpt, pre-trial coverage):

. . . new court filings that shed light on prosecutors' decision to seek a criminal obstruction-of-justice case against the company.

*“PG&E really stood out as a company that was not forthcoming and lacked cooperation,”* Ravi Chhatre, lead investigator in the San Bruno case for the National Transportation Safety Board, told a team of federal investigators and prosecutors last year, the documents show.

<http://www.sfchronicle.com/news/article/Five-years-after-San-Bruno-PG-E-s-gas-safety-6491783.php>, 9/8/15, updated 9/9/15 (excerpt):

Five years after the catastrophic San Bruno blast, Pacific Gas and Electric Co. still accounts for the bulk of gas safety violations in California and nearly all the regulatory fines levied by the state, leaving regulators struggling to find ways to hold the company more accountable.

## CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

<http://www.sfchronicle.com/bayarea/article/State-considers-safety-audit-of-PG-E-6449751.php>,  
8/17/15 (excerpt):

Nearly five years after the San Bruno gas pipeline explosion, state regulators called Monday for a \$2 million utility-financed investigation into whether Pacific Gas and Electric Co. is putting enough emphasis on safety.

<http://www.sfchronicle.com/news/article/Regulator-s-gas-safety-efforts-lag-since-PG-E-6195293.php>,  
4/12/15 (excerpt):

The California Public Utilities Commission's gas safety enforcement efforts have deteriorated since the deadly 2010 pipeline explosion in San Bruno, undermined by an atmosphere of mistrust in the agency, outmoded technology and a lack of vision among top officials, according to a scathing new audit.

<http://www.sfchronicle.com/news/article/U-S-safety-board-says-agency-overseeing-6044595.php>,  
1/27/15 (excerpt):

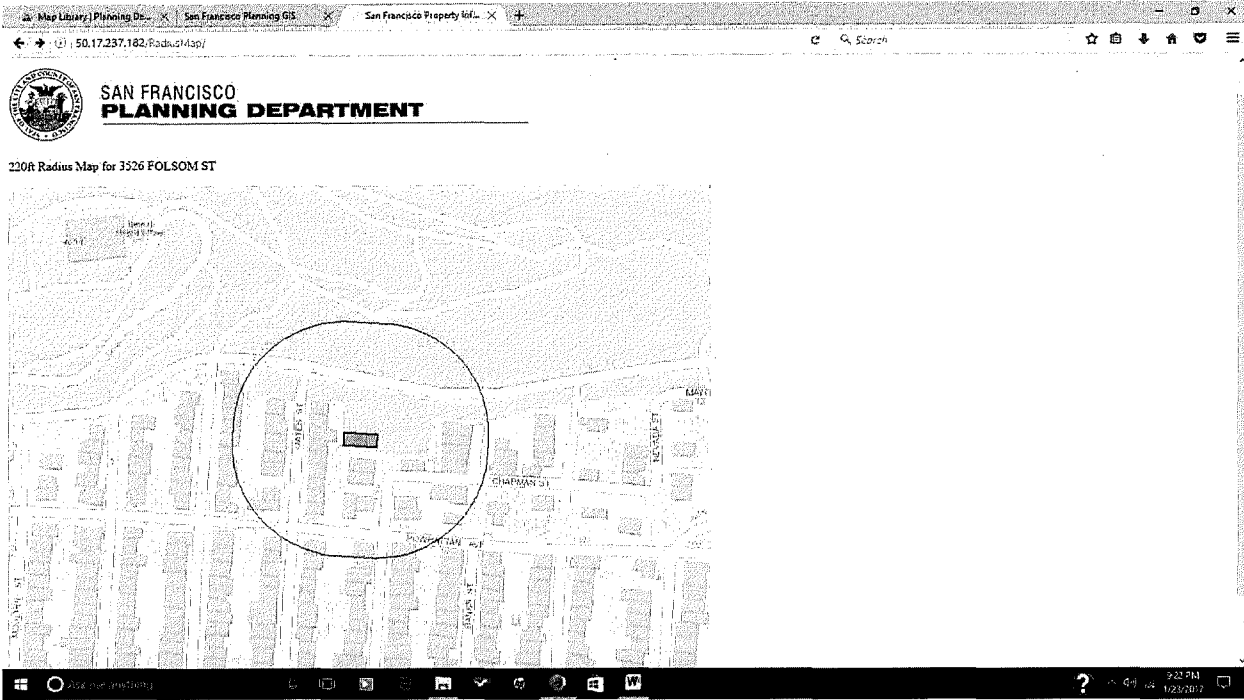
The federal pipeline agency responsible for preventing disasters such as the 2010 natural gas explosion in San Bruno needs to strengthen its enforcement efforts, the National Transportation Safety Board said Tuesday.

<http://www.sfchronicle.com/news/article/State-PUC-blistered-in-audit-for-slow-sloppy-6001010.php>,  
1/8/15 (excerpt):

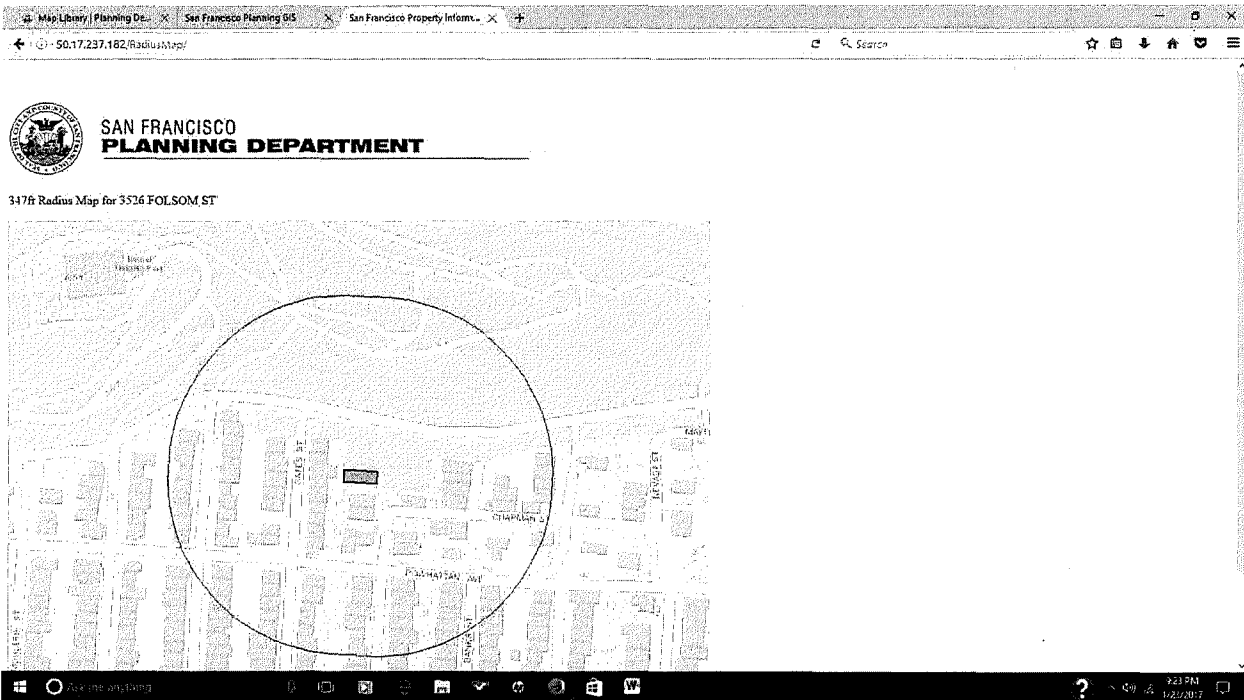
The state agency responsible for ensuring Pacific Gas and Electric Co. and other utilities operate their natural-gas systems safely has a two-year backlog of unfinished investigations, and its probes are often poorly documented and seldom result in penalties against the companies, a federal audit has found.

# CEQA Appeal PG&E Pipeline Safety Issues – 3516-3526 Folsom Street

## Appendix D – Potential Impact Radii



Potential Impact Radius of 220 feet, based on MAOP of 150 psig.



Potential Impact Radius of 347 feet, based on MAOP of 375 psig.