



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Mitigated Negative Declaration Appeal

3516-3526 Folsom Street

DATE: September 5, 2017
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Acting Environmental Review Officer – (415) 558-9032
Joy Navarrete, Senior Environmental Planner – (415) 575-9040
Justin Horner, Environmental Coordinator – (415) 575-9023
RE: Planning Case No. 2013-1383ENV
Appeal of Mitigated Negative Declaration for 3516-26 Folsom Street
HEARING DATE: September 12, 2017

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT SPONSOR: Fabian Lannoye, Bluorange Designs, 415- 533-0415
APPELLANT: Zacks, Freeman and Patterson, on behalf of Bernal Heights South Slope Organization, Bernal Safe & Livable, Neighbors Against the Upper Folsom Street Extension, Gail Newman and Ann Lockett

INTRODUCTION

This memorandum is a response to the letter of appeal to the Board of Supervisors (the “Board”) regarding the Planning Department’s (the “Department”) issuance of a Mitigated Negative Declaration under the California Environmental Quality Act (“CEQA Determination”) for the proposed project at 3516-3526 Folsom Street (the “proposed project”).

The Department, pursuant to Title 14 of the CEQA Guidelines, issued a Preliminary Mitigated Negative Declaration for the Project on April 26, 2017 finding that the proposed project would not have a significant impact on the environment with the incorporation of mitigation measures.

The decision before the Board is whether to uphold the Department’s decision to issue a Mitigated Negative Declaration and deny the appeal, or to overturn the Department’s decision to issue a Mitigated Negative Declaration and return the project to the Department for additional environmental review.

SITE DESCRIPTION & EXISTING USE

The project site consists of two vacant lots located on the west side of the unimproved (“paper street”) segment of Folsom Street between Chapman Street and Bernal Heights Boulevard in the Bernal Heights neighborhood. The project site does not have vehicular or pedestrian access as the portion of Folsom Street providing access to the project site is unimproved. The project lots are both 25-feet-wide and 70-feet-deep and total 1,750 square feet in size. The project site has an approximately 32 percent slope to the north. To the south of the project site is a vacant lot and a two-story, single-family residence at 3574 Folsom Street (constructed in 1925). To the east of the project site are four vacant lots and a two-story, single-family residence at 3577 Folsom Street that also fronts on Chapman Street (constructed in 1925). There is a concrete driveway that leads from Chapman Street to the 3574 Folsom Street and 3577 Folsom Street residences. To the north of the project site is the Bernal Heights Community Garden, and Bernal Heights Park is located farther to the north across Bernal Heights Boulevard. Residential structures in the project vicinity are primarily two to three stories and are either single-family or two-family dwellings. The surrounding parcels are zoned either RH-1 (to the south of the project site) or Public (to the north of the project site). There is a PG&E gas transmission pipeline beneath Folsom Street that extends from Bernal Heights Boulevard to Alemany Boulevard.

PROJECT DESCRIPTION

An Environmental Evaluation Application (2013.1383E) for the proposed project at 3516 and 3526 Folsom Street (Assessor’s Block 5626, Lots 013 and 014) was filed by Fabien Lannoye on September 25, 2013 for a proposal to construct two single-family residences and the construction of the connecting segment of Folsom Street to provide vehicle and pedestrian access to the project site in the Bernal Heights neighborhood in the City and County of San Francisco. The project site is on a block bounded by Bernal Heights Boulevard to the north, Gates Street to the west, Powhattan Avenue to the south and Folsom Street to the east.

The project site is approximately 6,500 square feet in size (two contiguous lots of 2,230 sf each and a street improvement of approximately 2,000 sf). The project site is currently vacant and undeveloped.

The proposed project involves the construction of two single-family residences on two of the vacant lots along the west side of the unimproved portion of Folsom Street, the construction of the connecting segment of Folsom Street to provide vehicle and pedestrian access to the project site, and the construction of a stairway between Folsom Street and Bernal Heights Boulevard. Each single-family home would be 27 feet tall, two stories over-garage with two off-street vehicle parking spaces accessed from a twelve-foot-wide garage door.

The 3516 Folsom Street building would be approximately 2,230 square feet in size with a side yard along its north property line. The 3526 Folsom Street building would be approximately 2,210 square feet in size with a side yard along its south property line. The proposed buildings would include roof decks and full fire protection sprinkler systems. The proposed buildings would be supported by a shallow building foundation using mat slabs with spread footings.

The proposed Folsom Street extension improvements would include an approximately 20-foot-wide road with an approximately 10-foot-wide sidewalk on the west side of the street, adjacent to the proposed residences with a stairway leading up to Bernal Heights Boulevard, subject to Public Works approval.

BACKGROUND

The Planning Department published a Preliminary Mitigated Negative Declaration (“PMND”) for the proposed project on April 26, 2017. On May 16, 2017, Kathy Angus, for the Bernal Heights South Slope Organization, filed a letter appealing the PMND. The PMND appeal was heard before a publically-noticed hearing of the City Planning Commission on June 15, 2017. The commission denied the appeal, and finalized the PMND (“MND”). On July 17, 2017, Zacks, Freeman and Patterson, on behalf of Bernal Heights South Slope Organization, Bernal Safe & Livable, Neighbors Against the Upper Folsom Street Extension, Gail Newman and Ann Lockett (“Appellants”) filed a letter appealing the MND (“Appeal Letter”).

CEQA GUIDELINES

In determining the significance of environmental effects caused by a project, CEQA Guidelines Section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration. CEQA Guidelines Section 15604(f) offers the following guidance: “(4) The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment, and (5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns of the Appeal Letter focused on the adequacy of the MND’s vibration-related mitigation measure, cumulative impacts, the adequacy of the geotechnical report and a variety of other issues related to traffic, views, shadows and public safety. The concerns from the Appeal Letter are summarized and listed below, and are followed by the Department’s responses.

CONCERN 1: The Appellant asserts that the MND violates CEQA because it does not reduce the risk of a catastrophic PG&E gas transmission pipeline accident to a level that is “clearly insignificant;” that there is substantial evidence that a risk of catastrophic impacts still exists; that vibration level threshold used in the MND to determine environmental effects is not supported by data, sufficient analysis, or justification; and that the mitigation measure is inadequate because it

does not provide independent oversight of the vibration plan and it does not include a safety or evacuation plan.

RESPONSE 1: The MND vibration mitigation measure complies with CEQA requirements by ensuring that project construction would not have a significant effect on PG&E Pipeline 109. The required Vibration Management Plan includes oversight from both PG&E and the Planning Department, independent of the project sponsor. The MND uses a 2 inches/second peak particle velocity (PPV) threshold, consistent with PG&E. The 2 in/s PPV level is significantly lower than thresholds used for other projects adjacent to pipelines and was selected as a highly conservative performance standard in the assessment of environmental effects for this project. The San Francisco Department of Emergency Management (DEM) is responsible for leading disaster response efforts within the City and County of San Francisco.

CEQA Guidelines Section 15370 states that "mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

CEQA Guidelines Section 15126.4 also provides the following guidance:

- "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments;"
- "Mitigation measures are not required for effects which are not found to be significant;"
- "There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate government interest. *Nolan v. California Coastal Commission*, 483 US 825 (1987);"
- "The mitigation measure must be 'roughly proportional' to the impacts of the project *Dolan v. City of Tigard*, 512 US 374 (1994);"
- "Formulation of mitigation measures should not be deferred until some future time."

The MND (pages 60-62) includes a mitigation measure (Mitigation Measure M-NO-3: Vibration Management Plan) to ensure that project construction would not have a significant vibration effect on PG&E Pipeline 109 during construction. The mitigation measure requires monitoring of vibration levels, and includes limitations on materials storage and construction activity on or near Pipeline 109, as well as the development of a Vibration Monitoring Plan, and its approval by PG&E and the Planning Department prior to the issuance of any building permits. The mitigation measure applies to "any construction equipment operations performed within 20 feet of PG&E Pipeline 109," be it related to the two homes or the improvements to the road.

Enforcement of the mitigation measure is the responsibility of the Planning Department and the Department of Building Inspection. Both are public agencies required to share information related to implementation and enforcement of mitigation measures. The appellants have not provided any evidence that either Department is unqualified or otherwise unable to enforce the mitigation measure as written, or how the oversight of the two Departments, both independent of the project sponsor, is insufficient to address potential vibration impacts.

The Appeal Letter states that “[the Planning Department and the Department of Building Inspection] are not in a position to adequately analyze additional fatigue to be exerted on the pipeline, and a speculative after-the-fact plan which might be developed by PG&E is clearly inadequate.” While the Appellants do not provide any evidence to support the assertion that such a plan would be inadequate, the Department concurs with Rune Storesund, the Appellant’s own expert on pipeline safety, that PG&E is the foremost authority regarding the integrity of the pipeline. In his letter of June 5, 2017 (included with the Appeal letter), Storesund states:

“PG&E is the only organization in a position to analyze the additional fatigue expected to be exerted on the pipeline from the bedrock excavation activity and certify that no appreciable degradation will occur.” [Emphasis added]

In the case of *Ocean View Estates Homeowners Assoc. v. Montecito Water District* (2004)¹ the court held that mitigation measures stated in an MND need not specify precise details of design. Having recognized a significant environmental impact and having determined that mitigation measures reduce the impact to insignificance, the MND may leave the details to engineers.

In the case of the proposed project, the Department consulted with, and followed the guidance and recommendations of, PG&E pipeline engineers in the design of the MND’s mitigation measure and the threshold used to determine the potential for a significant impact. In addition to the mitigation measure included in the MND, the proposed project, which includes two homes, a street improvement and the creation of stairs to Bernal Heights Boulevard, would be reviewed and approved by PG&E engineers, and be subject to its regulations concerning work in proximity to a pipeline, after it has received its land use entitlements and the street improvement permit is approved by Public Works.

The Appeal Letter asserts that statements made in a June 14, 2017 letter from Rune Storesund of Storesund Consulting (included in Appeal packet) constitute substantial evidence of a significant effect on the environment. The Planning Department respectfully disagrees.

The MND analyzed potential vibration effects of the proposed project (p. 56-62). Given the proposed project’s proximity to PG&E Pipeline 109, a construction vibration analysis was

¹ Court of Appeal, Second District, Division 6, California. *Ocean View Estates Homeowners Association Inc v. Montecito Water District*, Decided: March 2, 2004,

performed for the proposed project to assess any potential adverse impact on the Pipeline from vibration due to construction-related equipment and work.² The report evaluated vibratory impacts related to excavation of the site for the purposes of developing a proper foundation for the buildings, digging trenches for utilities to the residences, and the extension of Folsom Street for access to the residences.

To determine the potential for an adverse impact to the PG&E Pipeline 109, the analysis compared the highest estimated Peak Particle Velocity (PPV) for each piece of equipment at its nearest proximity to the pipe during project work. The criteria for damage to a pipeline due to vibration cover a wide-range of PPV, as documented by Caltrans.³ For example, a PPV value of 25 inches/sec associated with an “explosive near [a] buried pipe” resulted in no damage, as did PPV values for “explosive[s] near [a] buried pipe” of 50-150 PPV. The analysis prepared for the proposed project utilized a conservative 12 inches/second, a value based on the West Roxbury Lateral Project in Massachusetts, as the criteria for potential damage to the pipe.⁴

Although the vibration assessment for the proposed project is based on a damage criterion of 12 in/sec, PG&E has evaluated the proposed project and, through its regulatory authority for work in proximity to its pipeline, set a PPV standard of 2 in/sec for this section of Pipeline 109.⁵ While the Storesund letter suggests that the vibration analysis simply infers a PPV standard of 2 in/sec is an acceptable threshold, this is incorrect. The MND clearly establishes that the PPV standard is highly conservative in that it is a factor of 10 lower (more stringent) than the already conservative damage criteria used in the vibration assessment. The Storesund letter does not present substantial evidence that the use of the very conservative 2 in/sec PPV standard results in a new or more severe environmental effect than disclosed in the MND.

The Storesund letter also questions whether the vibration analysis included in the MND takes into account all possible factors affecting pipeline integrity. However, the letter does not explain how these factors warrant a more conservative PPV threshold than that included in the MND’s vibration analysis. The Storesund letter does not provide substantial evidence that the MND has not adequately described the nature of that significant effect; it merely asserts that the vibration analysis is inadequate and, therefore, that “a reasonable possibility of a significant effect still exists.” The MND already concludes that the proposed project may result in a significant vibration impact; this is not a disputed fact.

² Illingworth and Rodkin, Inc., *Construction Vibration Evaluation for 3516 and 3526 Folsom Street*, March 24, 2017.

³ California Department of Transportation, *Transportation and Construction Vibration Guidance Manual*, September 2013, page 76.

⁴ The analysis notes that buried pipes can withstand higher PPV because they are constrained and do not amplify ground motion, like freestanding structures, like historic buildings, do. According to the Caltrans report cited in the analysis, PPV values as high as 150 have been shown to not harm underground pipes.

⁵ PG&E Gas Transmission Pipeline Services—Integrity Management, 3516/26 Folsom Street, March 30, 2017.

The MND includes a very conservative threshold for determining a possibility for a significant vibration effect, discloses that potential effect, and includes a feasible mitigation measure crafted in consultation with PG&E, acknowledged by Storesund himself in a June 5, 2017 letter as “the only organization in a position to analyze the additional fatigue expected to be exerted on the pipeline,” to reduce that environmental effect to a less-than-significant level.

The Appellant questions the reliability of PG&E and its ability to comply with regulatory requirements. PG&E’s prior mishandling of pipeline safety is well documented and is not disputed by the Planning Department. Nonetheless, the contention that PG&E therefore would be negligent in their regulation of the proposed project is unsupported speculation. Similarly, it is speculative of the Appellant to assert that indirect environmental effects would occur as a result of such hypothetical negligence. As such indirect effects are not reasonably foreseeable effects of the proposed project, they are not required to be analyzed under CEQA.⁶

Individual project sponsors are not responsible, nor qualified, to develop emergency response plans. Emergency preparedness and response are the responsibility of the San Francisco Department of Emergency Management, the San Francisco Police Department, the San Francisco Fire Department, and other local, state, and federal agencies.

Per CEQA Guidelines Section 15063(b), an Environmental Impact Report (EIR) must be prepared if there is substantial evidence that a project either individually or cumulatively may cause a significant adverse effect on the physical environment. The appellants do not provide substantial evidence that the proposed project would have a significant impact on the environment, necessitating the preparation of an EIR. The MND provides an accurate characterization of the proposed project as required by CEQA, and provides substantial evidence that the proposed project would not result in significant impacts to the environment. Therefore, preparation of an EIR is not required.

⁶ CEQA Guidelines Section 15064(d)(3): Determining the Significance of the Environmental Effects Caused By a Project: ... (d) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project... (3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

CONCERN 2: The MND did not adequately analyze the cumulative impacts of the proposed project. The MND did not analyze the environmental impacts of development on the four other undeveloped lots near the project site.

The Appeal Letter states:

“The MND errs in not individually listing ‘part, present and probable future projects that might result in related impacts’ despite acknowledging that ‘improvements proposed by the development would facilitate future development’ of four lots.” - p. 7

RESPONSE 2: The MND did properly consider cumulative impacts with respect to the four undeveloped parcels. The project as proposed is two homes and a street improvement, and does not include development of the adjacent lots. Nevertheless, the MND considered the entirety of the project, including installation of utilities for the four adjacent lots, and concluded that the project would not result in significant cumulative environmental impacts.

Pursuant to CEQA, the Department analyzed the project as proposed in the Environmental Evaluation Application which was for the construction of two single-family residences on two vacant lots located on the “paper street” segment of Folsom Street. The adjacent lots are all under different ownership than the project lots. Any future development proposals on the adjacent lots would require further environmental review, including consideration of cumulative impacts, and City approval.

As required by CEQA, the MND analyzed cumulative impacts for all resource areas. Since the 3516 and 3526 Folsom Street project is the first proposed development on the “paper street” segment of Folsom Street, the project sponsor would be required by Public Works’ Subdivision Regulations to construct pedestrian, vehicular, and utility access to this segment of Folsom Street as part of any street improvement. At this time, it is unknown whether utilities would come from Bernal Heights Boulevard to the north or from Chapman Street to the south. This would be determined by PG&E and SFPUC once the project is entitled. It is anticipated that utility lines would run under the entire length of the street extension, which would reduce or avoid the need for future utility-related construction activities should development occur on the adjacent lots. SFPUC has indicated that if the proposed street improvement is not accepted by Public Works, it would object extending utilities up the hill.⁷

CEQA prohibits piecemeal environmental review of large projects into many little projects, which each have minimal potential to impact the environment, but cumulatively could have significant impacts. The project application does not constitute piecemeal development under CEQA for the following reasons: the proposed project does not involve subdivision or creation of new lots as the six vacant lots along the “paper street” segment of Folsom Street have existed since at least 1935; the project sponsor is not the owner of the adjacent lots; and as previously stated, the Department has not received any applications from the other property owners to

⁷ Project sponsor notes from meeting with SFPUC, December 4, 2015.

construct projects on their properties, thus there is no larger project from which this one is being separated. It is Department practice to consider a project “reasonably foreseeable” when the Department has received a completed Environmental Evaluation Application for the proposed project. Testimony from property owners that they are planning on developing their property is not sufficient to be considered “reasonably foreseeable” for the purposes of cumulative environmental impact analysis under CEQA. Analysis of the impacts of theoretical projects would be speculative.

Any subsequent development would be required to comply with the same regulations as the proposed project including, but not limited to, compliance with the San Francisco Building Code and PG&E regulations for work in proximity to their pipeline. The appellants do not provide any evidence to support the claim that implementation of the proposed project would result in significant cumulative impacts.

Finally, the project as described in the MND includes installation of utilities for the four vacant lots located on the “paper street” segment of Folsom Street. Thus, any potential impacts from the installation of these utilities, and the reasonably foreseeable consequence that these other lots may be developed in the future, is both acknowledged and analyzed in the MND. Because no development is currently proposed for these other vacant lots, any further analysis of such future projects would be speculative at this point.

The appellants do not provide substantial evidence that would indicate that the proposed project would result in a significant and unavoidable cumulative impact; therefore the preparation of an EIR is neither warranted nor required under CEQA.

CONCERN 3: The geotechnical report prepared for the project is incomplete; the soils report does not include the street in its survey; the MND inadequately analyzed landslide risk; and the MND does not adequately analyze stormwater.

The Appeal Letter states:

“The geotechnical report dated August 3, 2013 focuses solely on the footprint sites of the two proposed houses, with no acknowledgment of the ‘revised’ Project scope.” - p. 8

“The current ‘incomplete’ geotechnical report raises the following concerns: uncertainties regarding slope stability...no mention of backfill soil over pipeline...significant risk...discrepancies...earthquakes and landslides...site drainage.” - p. 8-9

“Given that a steep hillside will be graded and a new street introduced—and that retaining walls will not be allowed over a gas transmission pipeline which runs under

the project site—the City must evaluate the landslide risks involved and how they will be mitigated.” – p. 9

“There is a question as to the validity of the Seismic Hazards Map indication that the site is not located in an area subject to landslide.” –p. 13

“The stormwater is currently absorbed into the hillside. Once the street is in, it will be flowing down the street, causing significant change in drainage.” - p. 13

RESPONSE 3: The geotechnical report for the project was completed by a California Registered Engineer, consistent with state requirements for a geotechnical report. Subsequent to the publication of the MND, a separate soils report was prepared for the proposed street and utility improvements. The proposed project is not in an area subject to the Slope Protection Act and is not in a Landslide Hazard Area. The project site is subject to SFPUC’s 2016 Stormwater Management Requirements and Design Guidelines. Stormwater flows on the project site are currently uncontrolled; the proposed project and street improvements would be required to direct stormwater into the City’s combined stormwater/sewer system, avoiding significant drainage impacts.

The soils and geotechnical studies for the proposed project were prepared by H. Allen Gruen, a California Registered Professional Engineer. The appellants do not provide any evidence to challenge or contradict the findings of the soils and geotechnical studies. Geotechnical, soils and vibration studies were prepared for the CEQA analysis of the proposed project. In addition, more detailed geotechnical analyses will be required for the issuance of building permits and the construction of the two single family homes, and the design and construction of the improvements to the “paper street” section of Folsom Street.

Subsequent to the publication of the PMND, a geotechnical investigation has been prepared for the proposed street and utility improvements.⁸ The investigation included site reconnaissance, review of existing geotechnical studies and one test boring to practical refusal at a depth of 6-1/2 feet below ground surface. The investigation found that the primary geotechnical concerns were siting the roadway and utility improvements in competent earth materials and seismic shaking and related effects during earthquakes. The investigation concluded that the project site “is suitable for support of the proposed improvements.” The investigation recommended a conventional spread footing foundation for the improvements and adherence with existing building codes to minimize the effects of earthquake shaking.

The MND (pages 94-100) analyzes potential geological and geotechnical impacts of the proposed project. For purposes of CEQA, the Department utilizes the Seismic Hazard Zones

⁸ H. Allen Gruen, *Report Geotechnical Investigation, Planner Street and Utility Improvements at 3516 and 3526 Folsom Street San Francisco, California*, July 6, 2017.

Map included in the Community Safety Element of the General Plan, which is the official State of California Seismic Hazards Zone Map for San Francisco prepared under the Seismic Hazards Mapping Act of 1990,⁹ to determine geotechnical impacts. As shown below in Figure 1, neither the project site nor the “paper street” section of Folsom Street are considered Landslide Hazard Zones. Areas not designated as Landslide Hazard Zones are not subject to the Slope Protection Act.¹⁰

Figure 1, Project Site, Right-of-Way and Landslide Hazard Areas



While the appellants assert that there is “a question as to the validity” of the Seismic Hazards Map because there was a landslide in the vicinity of the project site, it should be noted that the presence of a landslide in the vicinity of the project site does not equate to the presence of a Landslide Hazard at the project site. This does not mean that there will be no measures taken to avoid potential geotechnical impacts; only that the site is not located in a Landslide Hazard Area, which is a factor used in assessing whether there are certain geotechnical impacts under CEQA. The geotechnical report prepared for the proposed project indicates that the

⁹ The Seismic Hazards Mapping Act was developed to protect the public from the effects of strong ground shaking, liquefaction, landslides, or other ground failure, and from other hazards caused by earthquakes. This Act requires the State Geologist to delineate various seismic hazard zones and requires cities, counties, and other local permitting agencies to regulate certain development projects within these zones.

¹⁰ San Francisco Department of Building Inspection, *Information Sheet Errata in 2016 SFBC and SFBC Structural Provisions*, January 1, 2017. “Properties are subject to these requirements where any portion of the property lies within the areas of “Earthquake Induced Landslide” in the Seismic Hazard Zone Map, released by the California Department of Conservation, Divisions of Mines and Geology, dated November 17, 2000 or amendments thereto.

geotechnical engineer did not find any evidence of active slope instability at the project site. In addition, as stated in the MND (page 98), “[a]dherence to San Francisco Building Code requirements would ensure that the project applicant include analysis and avoidance of any potential impacts related to unstable soils as part of the design-level geotechnical investigation prepared for the proposed project.”

The appellants do not provide any substantial evidence that the proposed project is in a Landslide Hazard Area or in an area subject to the Slope Protection Act or that a significant impact would occur with respect to geology. Therefore the preparation of an EIR is neither warranted nor required under CEQA.

The MND (p. 100-104) discusses stormwater and drainage impacts from the proposed project. The analysis indicates that, while the project site is currently an unimproved hillside where stormwater flows are currently uncontrolled, the proposed project would include drainage elements that would control stormwater runoff and direct it into the City’s combined stormwater/sewer system. While the proposed project would increase impervious surfaces on the project site, the proposed project would also improve drainage by installing drainage controls to direct run-off into the combined sewer system. Public Works’ Subdivision Regulations require proposed streets to “remove sewage and storm water from each lot or parcel of land, and to remove storm water from all roads, streets, and sidewalks.”¹¹ The proposed project would also be required to comply with SFPUC’s Stormwater Management Requirements and Design Guidelines, which include meeting specific performance measures for impervious surfaces and stormwater run-off rate, the approval of a Preliminary Stormwater Control Plan before receiving a Site or Building Permit, and the approval of a Final Stormwater Control Plan before receiving the Certificate of Final Completion.¹² Therefore, the proposed project would not be expected to result in substantial erosion or flooding associated with changes in drainage patterns.

Per CEQA Guidelines Section 15063(b), an EIR is prepared if there is substantial evidence that a project either individually or cumulatively may cause a significant effect on the environment. The analysis in the MND indicates that the proposed project would not cause a significant impact with respect to stormwater. The appellants do not provide substantial evidence that would indicate that the proposed project would have a significant stormwater or drainage impact. Therefore, preparation of an EIR is not required.

¹¹ *Ibid.* Page 68.

¹² San Francisco Public Utilities Commission, *How Do I Comply with the Stormwater Management Requirements*, <http://sfwater.org/index.aspx?page=1006>. Accessed: May 25, 2017

CONCERN 4: The Appellant maintains that the project would result in potential hazards and nuisances related to project construction, including pedestrian access along Bernal Heights Boulevard, emergency access, traffic and parking. The Appellant also questions the opportunities for public input into, and monitoring of, the construction management plan.

RESPONSE 4: The MND analyzes the physical environmental impacts of the proposed project, and includes a mitigation measure for vibration-related impacts. To address street and sidewalk-related issues during construction, the project sponsor will be required to adhere to all regulations on building construction from the Department of Building Inspection, the San Francisco Municipal Transportation Agency, Public Works, and other agencies. The extent of public input into the Construction Plan is not a CEQA issue.

The MND is a document prepared pursuant to CEQA to analyze the physical environmental effects of a proposed project, disclose any significant environmental effects, and identify mitigation measures to reduce those effects to a less-than-significant level. The MND for the proposed project found a potential environmental impact related to vibration and provided a mitigation measure to reduce that impact.

The MND does not regulate the construction of the proposed project. As indicated in the MND, construction of the proposed project must comply with the San Francisco Noise Ordinance, the Construction and Demolition Debris Recovery Ordinance, and the Construction Site Runoff Ordinance, among other regulations. Construction work that requires the use and/or closure of city streets and sidewalks is subject to the San Francisco Municipal Transportation Agency's "Regulations for Working in San Francisco Streets," also known as the Blue Book, which "establishes rules and guidance so that work can be done both safely and with the least possible interference with pedestrians, bicycle, transit and vehicular traffic."¹³ Construction work in San Francisco is routinely coordinated among a number of City agencies.

The extent of public input and oversight of any construction management plan is outside the scope of CEQA. Any perceived lack of public participation in the construction management plan process does not in itself constitute an environmental impact under CEQA, and the appellants have provided no evidence that a lack of public input would lead, directly or indirectly, to an adverse environmental effect. Public participation in the construction management plan is a matter addressed by DBI, Public Works, the project sponsors and the parties concerned. Therefore, the preparation of an EIR is neither warranted nor required under CEQA.

¹³ SFMTA, *Regulations for Working in San Francisco Streets*, <https://www.sfmta.com/services/streets-sidewalks/construction-regulations>. Accessed: May 30, 2017.

CONCERN 5: The MND does not include analysis of the shadow impacts of the fence/railing on the community garden.

The Appeal Letter states:

“How does the addition of the fence/railing on the roof deck affect the shadow on the Community Garden or other property?” - p. 12

RESPONSE 5: The MND adequately assesses the shadow impacts of the proposed project on the community garden and correctly concludes that the impact would be less than significant. The appellants have not provided substantial evidence that the railings would have significant shadow effects.

The MND (on page 77) discusses shadow impacts of the proposed project. The MND states that the proposed project “would cast new shadow on the community garden,” but that the new shadow is “not expected to substantially affect the use or enjoyment of the Bernal Heights Community Garden such that a significant environmental effect would occur.” The railing on for the roof deck is indicated to be three-and-a-half feet tall and would be effectively transparent for purposes of shadow analysis. The appellants have not provided substantial evidence that this railing could substantially affect the use or enjoyment of Bernal Heights Community Garden beyond what is discussed in the MND. Therefore the preparation of an EIR is neither warranted nor required under CEQA.

CONCERN 6: The MND does not analyze how garbage, compost and recycling would be handled.

The Appeal Letter states:

“No plan has been put forth to accommodate garbage, compost, and recycling needs.” – p. 12

RESPONSE 6: Recycling, garbage and compost would be handled in the same manner as for neighboring residential properties.

In San Francisco, residents, employees and waste management personnel routinely transport waste receptacles along public streets and sidewalks, and waste management vehicles are routinely stopped or parked in front of existing residences and buildings as part of regular service. The appellants have not provided substantial evidence of any particular significant adverse impacts that these same activities would have if performed at this particular location, nor how the proposed project would create circumstances dissimilar to waste collection practices elsewhere in San Francisco. Therefore the preparation of an EIR is not warranted.

CONCERN 7: If the subdivision of the area around the project site were to happen today, the subdivision would be subject to CEQA. The Bernal Heights Slope Guidelines have not been followed.

The Appeal Letter states:

“If the Folsom Street extension and the six remaining lots along the ‘paper street’ were subdivided today, they would automatically be subject to an environmental impact analysis.” – p. 7

“The Bernal Heights East Slope Guidelines were not followed for this project.” – p. 11

RESPONSE 7: Neither concern is germane to the MND for the proposed project. The project site consists of current lots of record. The Planning Department has determined that the proposed project is consistent with the Bernal Heights Slope Guidelines.

While it is true that subdivisions are subject to CEQA, the proposed project does not include a subdivision. The proposed project includes the construction of two single-family homes, one on each of two legal lots of record, and the improvement of a public right-of-way. The PMND correctly analyzes the physical environmental effects of the proposed project, and not of the subdivision that occurred prior to 1935.

The Bernal Heights East Slope Guidelines establish design standards for development on the eastern slope of Bernal Heights, which includes the project site. As part of its building permit application review, the proposed project has been found by the Planning Department to be consistent with the Bernal Heights Slope Guidelines. The appellants have not provided any evidence in support of the contention that the proposed project is inconsistent with the Guidelines or how any such inconsistency would constitute a significant environmental effect under CEQA. Therefore the preparation of an EIR is neither warranted nor required under CEQA.

CONCERN 8: The proposed improvement to the paper street section of Folsom Street would result in a hazardously steep street.

The Appeal Letter states:

“The proposed steep street presents a significant threat to residents and drivers. It will be among the steepest streets in SF...The proposed street plans contain dangerous break-over angles and unclear plans for garage access to current residents.” – p. 7

RESPONSE 8: The MND analyzed the proposed street improvement and found that it did not constitute a hazard. The proposed street improvements are subject to Public Works review and approval.

The MND (p. 41-42) analyzes the proposed road and determines that it would not substantially increase hazards due to particular design features. The proposed project would not result in roadway design changes that would include sharp curves or other roadway design elements that would create dangerous conditions, and the improved street section would not be a through street; that is, the improved section would not be used by the general public but would typically be limited to the residents of the proposed project. The improved section would not include any on-street parking facilities.

The MND analyzes the road, as proposed, and does not make a determination as to whether PW would, or should, approve the road. Approval of the road is subject to PW's review of the sponsor's Street Improvement Permit application, which will be reviewed after the proposed project receives its entitlements.

The appellants have not provided any evidence in support of the contention that the proposed street improvements would constitute a significant environmental effect under CEQA. Therefore the preparation of an EIR is neither warranted nor required under CEQA.

CONCERN 9: The additional traffic to and from two additional residences would increase traffic volumes significantly.

The Appeal Letter states:

“...[T]he additional traffic to and from two additional residences potentially increases existing traffic volumes significantly.” – p. 10

RESPONSE 9: The Planning Commission has determined that automobile delay shall no longer be considered a significant impact under CEQA. The additional traffic volume would not result in a significant impact under CEQA.

The MND (p. 36-38) discusses recent changes to the Planning Department's analysis of transportation impacts; namely, that the Planning Commission has found that automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, shall no longer be considered a significant impact on the environment pursuant to CEQA, because it does not measure environmental impacts and therefore it does not protect environmental quality. The MND provides trip generation data for informational purposes only. That said, the appellants do not provide substantial evidence as to how the addition of 20 person trips per day, which includes two PM peak hour trips, constitutes a significant environmental effect under CEQA. Therefore the preparation of an EIR is neither warranted nor required under CEQA.

CONCERN 10: The MND dismisses the significant impacts of the project on the public vista from Bernal heights Park and Bernal Heights Boulevard.

The Appeal Letter states:

“The Planning Department uses inaccurate and misleading data to dismiss the significant impacts on the public vista from Bernal Heights Park and Bernal Heights Blvd.” – p. 10

RESPONSE 10: Views from Bernal Heights Boulevard are not considered significant views under CEQA; views from Bernal Heights Park would not be impacted.

The appellants assert that the proposed project would block significant public vistas from Bernal Heights Boulevard that would constitute a significant environmental impact. Neither Bernal Heights Boulevard nor any other nearby street is a designated state scenic highway.

The project site is located downhill from Bernal Heights Park and Bernal Heights Boulevard. The Urban Design Element of the General Plan includes three maps relevant to the proposed project: 1) *Street Areas Important to Urban Design and Views*, 2) *Quality of Street Views*, and 3) *Plan to Strengthen City Pattern through Visually Prominent Landscaping*. Neither Bernal Heights Boulevard nor Folsom Street is included on the map *Street Areas Important to Urban Design and Views*. Bernal Heights Boulevard, Folsom Street and Chapman Street in the area of the proposed project are designated as having Average views on the *Quality of Street Views* map. Bernal Hill is identified as an Important Vista Point to be protected on the *Plan to Strengthen City Pattern Through Visually Prominent Landscaping* map.

The proposed project (two buildings reaching a height of approximately 30 feet) would not obstruct views from Bernal Heights Park. The Bernal Heights East Slope Design Guidelines include roof treatment guidelines to minimize or avoid obscuring views, and the north elevation of the proposed project would comply with the Bernal Heights East Slope Design Guidelines. Furthermore, the proposed roofs of the two buildings would sit below the elevation of Bernal Heights Boulevard.¹⁴ Therefore, the two proposed buildings would not result in a substantial demonstrable adverse effect to any scenic views or resources.

The Appellants have not provided any evidence in support of the contention that the proposed project would constitute a significant view impact under CEQA. Therefore the preparation of an EIR is neither warranted nor required under CEQA.

¹⁴ According to the project sponsor, the sidewalk elevation at Bernal Heights Boulevard is +325". The roof elevation of the proposed project is +324.5" and the proposed top of parapet is +328".

CONCLUSION

Staff recommends that the Board of Supervisors adopt the motion to uphold the MND. No substantial evidence supporting a fair argument that a significant environmental effect may occur as a result of the project has been presented that would warrant preparation of an EIR.