



LUBIN OLSON & NIEWIADOMSKI LLP

THE TRANSAMERICA PYRAMID

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DEADLINE, BY NOON, PURSUANT TO ADMIN.
CODE, SECTION 31.16(b)(5)
(Note: Pursuant to California Government Code, Section
65009(b)(2), information received at, or prior to, the public
hearing will be included as part of the official file.)

April 15, 2019

CHARLES R. OLSON
Direct Dial: (415) 955-5020
E-mail: colson@lubinolson.com

**HAND DELIVERY AND ELECTRONIC
MAIL**

Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Attn: Clerk of the Board of Supervisors
bos.legislation@sfgov.org

**RE: BOS File No. 190275 Appeal of 2016-010079CUA Categorical Exemption
3620 Buchanan Street, APN 0459003 (the "Project")
Response to Planning Department Memorandum dated April 8, 2019**

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

Our firm represents 1598 Bay Condominium Association ("1598 Bay"), the homeowner's association for the property located at 1598 Bay Street, which is immediately adjacent to 3620 Buchanan Street (the "Project"). The Board of Supervisors must overturn the Planning Department's decision to issue a Class 32 Categorical Exemption to support the Project's approvals because an exception to the Class 32 Categorical Exemption applies.

The Project does not qualify for reliance on the Class 32 exemption because the Project is on a hazardous site that is included on a list compiled pursuant to Government Code Section 65962.5. CEQA Guidelines section 15300.2 establishes exceptions to the application of a categorical exemption. When any of the exceptions to the exemption apply, a project must undergo some form of environmental review. Subsection (e) of CEQA Guidelines 15300.2 provides, "A categorical exemption **shall not** be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5." (Emphasis added). Under CEQA, the word "shall" is mandatory, which means that all public agencies must comply with this provision. 14 Cal. Code Regs Section 15005(a). The Planning Department has provided substantial evidence into the record that the Project is on a site which is included on a list compiled pursuant to Section 65962.5. Attachment A to the Planning Department's memorandum dated April 8, 2019, and attached hereto as Exhibit A, contains a letter from the Department of Toxic Substances Control ("DTSC") indicating that the Project has a DTSC site code and "is part of the Pacific Gas and Electric former North Beach Manufactured Gas Plant site." The Planning Department also provides references to a Property Investigation Report and Work Plan prepared under a Voluntary Cleanup Agreement between DTSC and PG&E. Further

President Norman Yee and
Honorable Members of the Board of Supervisors
April 15, 2019
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research attached hereto as Exhibit B confirms that the Project is specifically on a list of hazardous substance release sites selected for, and subject to, a response action. *See* Government Code §65962.5(a)(4) (requiring that DTSC “shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all the following: ... (4) [a]ll sites listed pursuant to Section 25356 of the Health and Safety Code.”); Health and Safety Code §25356(b)(1) (requiring “a listing of hazardous substance release sites selected for, and subject to, a response action under this chapter.”). Because the Project is on this list, the Planning Department cannot rely on a Class 32 exemption. To do so would be in violation of CEQA. An exception to the exemption applies. Further environmental review, such as a mitigated negative declaration or an EIR, must be conducted.

Categorical Exemptions are not absolute. The Project cannot be exempted from CEQA requirements because a specific exception to the Class 32 Categorical Exemption applies to the Project. We respectfully request that the Board of Supervisors affirm the appeal, and require the Project to undergo additional environmental review.

Sincerely,



Charles R. Olson

CRO/CJL

cc: Members of the Board of Supervisors
1598 Bay Condominium Association

EXHIBIT A

Letter from Department of Toxic Substances Control dated March 18, 2019



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721



Gavin Newsom
Governor

March 18, 2019

Darrell Klingman, PG, CHG (via email: DSK5@pge.com)
Pacific Gas and Electric Company
3401 Crow Canyon Road, Room 177B
San Ramon, California 94583

SUBJECT: PROPERTY INVESTIGATION REPORT APN 0459003, PACIFIC GAS AND ELECTRIC COMPANY FORMER NORTH BEACH MANUFACTURED GAS PLANT, SAN FRANCISCO, CALIFORNIA (DTSC Site Code: 201868-11)

Dear Mr. Klingman:

The Department of Toxic Substances Control (DTSC) has reviewed the *Property Investigation Report* (PIR) and *Response to Comments* (RTC) for the Property located at San Francisco assessor's parcel number (APN) 0459003. This property is part of the larger Pacific Gas and Electric (PG&E) former North Beach Manufactured Gas Plant (MGP) Site.

The PIR is approved based on the scope of work outlined in the *Initial Site Investigation Revised Work Plan Addendum: Property APN 0459003* dated July 20, 2017.

Additionally, DTSC concurs with Section 7: Property Investigation Conclusions and Recommendations that, '[s]ome form of risk management may therefore be warranted to ensure the ongoing protection of human health' and that when "[redevelopment] details are finalized, a remediation plan will be developed and submitted to DTSC in a subsequent Remedial Design and Implementation Plan Report." DTSC notes that the need for additional site characterization must be evaluated based on the final scope of the proposed redevelopment.

Darrell Klingman
March 18, 2019
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If you have any questions, please contact me at (510) 540-3835 or via email at Jessica.Tibor@dtsc.ca.gov.

Sincerely,



Jessica Tibor, PG
Project Manager
Site Mitigation and Restoration Program

cc: Angela Jade Olguín, PE
Haley & Aldrich, Inc.
via email: AOlquin@haleyaldrich.com

Gina M. Plantz
Haley & Aldrich, Inc.
via email: GPlantz@haleyaldrich.com

EXHIBIT B

DTSC Hazardous Waste and Substances List



The screenshot shows the EnviroStor website interface. At the top, there is a header with the California State Government logo on the left and the text "DEPARTMENT OF TOXIC SUBSTANCES CONTROL ENVIROSTOR" in the center. Below the header is a navigation menu with links for "Tools", "Reports", "Community Involvement", "How to Use EnviroStor", "ESI", and "DTSC Web". A dark blue banner below the menu reads "HAZARDOUS WASTE AND SUBSTANCES SITE LIST". Underneath the banner, a text link says "For additional information and listing of sites, please refer to the [California Environmental Protection Agency's Cortese web pages](#)". The main content area displays a table with one row of data.

| | | | | | | | | | |
|--|--|----------|-------------------|--------|------------------------------------|------------------|-------|------|------------------|
| REPORT MAP | POSE - NORTH BEACH MAHIA SUBSTATION | 38490007 | STATE RESPONSE | ACTIVE | BAY STREET AND BUCHAJAN, CORNER OF | SAN FRANCISCO | 94123 | 1-5X | SAN FRANCISCO |
|--|--|----------|-------------------|--------|------------------------------------|------------------|-------|------|------------------|

0988700002/674144v1



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PG&E FORMER NORTH BEACH MANUFACTURED GAS PLANT (60001239) [SIGN UP FOR EMAIL ALERTS](#)

1575 NORTH POINT STREET
SAN FRANCISCO, CA 94123
SAN FRANCISCO COUNTY
SITE TYPE: VOLUNTARY CLEANUP

| | |
|--|--------------------------------|
| PROJECT MANAGER: | JESSICA TIBOR |
| SUPERVISOR: | JULIE PETTIJOHN |
| OFFICE: | CLEANUP |
| | BERKELEY |
| PUBLIC PARTICIPATION SPECIALIST: | ASHA SETTY |
| PRESS CONTACT: | RUSS EDMONDSON |
| CENSUS TRACT: | 6075012602 |
| CALENVIROSCREEN PERCENTILE SCORE: | 1-5% (lowest scores) |

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Site Information

CLEANUP STATUS

ACTIVE AS OF 12/31/2009

SITE TYPE: VOLUNTARY CLEANUP

NATIONAL PRIORITIES LIST: NO

ACRES: 10.9 ACRES

APN: 0436F028, 0439032, 0445A026, 0459007

CLEANUP OVERSIGHT AGENCIES:

DTSC - SITE CLEANUP PROGRAM - **LEAD AGENCY**

ENVIROSTOR ID: 60001239

SITE CODE: 201868

SPECIAL PROGRAM: VOLUNTARY CLEANUP PROGRAM

FUNDING: SITE PROPONENT

ASSEMBLY DISTRICT: 19

SENATE DISTRICT: 11

Regulatory Profile

PAST USE(S) THAT CAUSED CONTAMINATION

LAND DISPOSAL / FILL, LANDFILL - CONSTRUCTION, LANDFILL - HAZARDOUS WASTE, MANUFACTURED GAS PLANT

POTENTIAL CONTAMINANTS OF CONCERN

NAPHTHALENE

[OTHER](#)

POLYNUCLEAR AROMATIC HYDROCARBONS (PAHS)

[UNCATEGORIZED](#)

[VOLATILE ORGANICS \(8260B VOCS\)](#)

POTENTIAL MEDIA AFFECTED

SOIL, SOIL VAPOR, UNDER INVESTIGATION

Site History

The North Beach Manufactured Gas Plant (MGP) was built in 1891 by San Francisco Gas Light Company. The facility produced gas used for lighting, cooking, and heating. Initially the MGP produced gas from coal. By 1893, the MGP also produced gas from oil. A merger with Edison Light and Power resulted in the San Francisco Gas and Electric Company, which in 1906 became Pacific Gas and Electric Company (PG&E). Subsequently, the North Beach MGP was destroyed in the 1906 earthquake and fire. Although gas production at the MGP ceased, its gas holders survived and were used to store gas from other facilities. PG&E currently owns one parcel of the land from the former MGP site. This parcel is used as a PG&E electrical substation (Marina Substation). The remaining MGP site parcels were sold off and redeveloped for various commercial and residential uses. Site soils and groundwater are impacted with MGP residues include polycyclic aromatic hydrocarbons (PAHs).

PG&E entered into a Voluntary Clean Up Agreement (VCA; docket no. HSA-VCA 09/10 - 077) with DTSC for agency oversight in February 2010. The Remedial Action Plan (RAP) for investigation and clean up of shallow soils on private properties impacted by the former MGP was finalized May 2012 following a public comment period. The RAP recommended soil excavation and disposal; importing clean fill soil; and institutional controls to prevent contact with MGP-impacted soil. Investigation and clean up of private properties is voluntary and conducted on a property-specific basis.

Site-wide and off-Site investigation of MGP impacts to soil, soil vapor, and groundwater have been conducted since 2014. Additional site characterization in public accessible areas is planned for 2018 and 2019. (Updated by JT August 23, 2018).

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| SUPERVISOR: | MARK MALINOWSKI |
| OFFICE: | CLEANUP |
| | BERKELEY |
| PUBLIC PARTICIPATION SPECIALIST: | ASHA SETTY |
| PRESS CONTACT: | RUSS EDMONDSON |
| CENSUS TRACT: | 6075012602 |
| CALENVIROSCREEN PERCENTILE SCORE: | 1-5% (lowest scores) |

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Site Information

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LAND DISPOSAL / FILL, LANDFILL - CONSTRUCTION, LANDFILL - HAZARDOUS WASTE, MANUFACTURED GAS PLANT

POTENTIAL CONTAMINANTS OF CONCERN

CYANIDE (HYDROGEN)

POLYNUCLEAR AROMATIC HYDROCARBONS (PAHS)

POLYNUCLEAR AROMATIC HYDROCARBONS (PAHS)

[VOLATILE ORGANICS \(8260B VOCS\)](#)

POTENTIAL MEDIA AFFECTED

UNDER INVESTIGATION

Area Description

NO DESCRIPTION ENTERED

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Completed Activities

| AREA NAME | SUB-AREA | TITLE | DOCUMENT TYPE | DATE COMPLETED | COMMENTS |
|-----------------------------|--------------------------|---|--|--------------------------------|--|
| APN 0459003 | | Property Investigation Report APN 0459003 | Site Characterization Report | 3/19/2019 | |
| APN 0459003 | | Initial Site Assessment WP Addendum APN 0459003 | Preliminary Endangerment Assessment Workplan | 7/21/2017 | DTSC reviewed and approved the revised ISI Workplan Addendum for the APN0459003 property dated July 20, 2017. The revised Workplan narrows the scope of investigation to the upper 10 to 15 feet for potential MGP related impacts to soil and soil vapor. |

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DOCUMENT DATE RANGE: TO

Completed Activities [HIDE DOCUMENTS > 1 YEAR OLD](#)

| AREA NAME | SUB-AREA | TITLE/DESCRIPTION | DOCUMENT TYPE | DATE COMPLETED |
|-----------------------------|----------|---|--|----------------|
| APN 0459003 | | Property Investigation Report APN 0459003 | Site Characterization Report | 3/19/2019 |
| APN 0459003 | | Initial Site Assessment WP Addendum APN 0459003 | Preliminary Endangerment Assessment Workplan | 7/21/2017 |

Community Involvement Documents [HIDE DOCUMENTS > 1 YEAR OLD](#)

DRAFT DOCUMENTS FOR REVIEW

| OU NAME | AREA | TITLE/DESCRIPTION | DOCUMENT TYPE | DOCUMENT DATE |
|--------------|------|--|----------------------|---------------|
| PROJECT WIDE | | Draft Negative Declaration | CEQA | 3/14/2012 |
| PROJECT WIDE | | Draft Preliminary Non-Binding Allocation of Responsibility | Remedial Action Plan | 3/14/2012 |
| PROJECT WIDE | | Draft Remedial Action Plan | Remedial Action Plan | 3/14/2012 |
| PROJECT WIDE | | Initial Study - Part 1 | CEQA | 3/14/2012 |
| PROJECT WIDE | | Initial Study - Part 2 | CEQA | 3/14/2012 |
| PROJECT WIDE | | Initial Study - Part 3 | CEQA | 3/14/2012 |
| PROJECT WIDE | | Statement of Reasons for Draft Remedial Action Plan | Remedial Action Plan | 3/14/2012 |

FACT SHEETS

| OU NAME | AREA | TITLE/DESCRIPTION | DOCUMENT TYPE | DOCUMENT DATE |
|--------------|------|---|---------------|---------------|
| PROJECT WIDE | | Fact Sheet - Minor Modifications to RAP | Fact Sheet | 10/16/2013 |
| PROJECT WIDE | | Fact Sheet - RAP | Fact Sheet | 3/14/2012 |
| PROJECT WIDE | | Fact Sheet - March 2011 | Fact Sheet | 3/3/2011 |
| PROJECT WIDE | | PG&E Former Manufactured Gas Plant Sites, San Francisco Marina District | Fact Sheet | 9/30/2010 |

UPDATES AND INFORMATION

| OU NAME | AREA | TITLE/DESCRIPTION | DOCUMENT TYPE | DOCUMENT DATE |
|---------------------|------|---|---------------|---------------|
| BASE WIDE | | Work Notice - Public Right of Way Sampling - April-Sept 2015 | Work Notice | 3/30/2015 |
| BASE WIDE | | Work Notice - Sampling Feb-July 2015 | Work Notice | 1/21/2015 |
| BASE WIDE | | Work Notice - Property Investigations Aug-Jan 2014 | Work Notice | 7/22/2014 |
| BASE WIDE | | Work Notice - Remediation July-Oct 2014 | Work Notice | 6/26/2014 |
| Public Access Areas | | Work Notice - Public Area Sampling - May - Oct 2014 | Work Notice | 4/24/2014 |
| BASE WIDE | | Work Notice - Property Investigations - February-July 2014 | Work Notice | 1/28/2014 |
| PROJECT WIDE | | Work Notice - Property Investigation - August 2013 | Work Notice | 7/24/2013 |
| BASE WIDE | | Work Notice - Property Investigations - Aug 2013 to Jan 2014 | Work Notice | 7/24/2013 |
| PROJECT WIDE | | Work Notice - Remediation - June 2013 | Work Notice | 6/1/2013 |
| PROJECT WIDE | | Work Notice - Property Investigations - February 2013 | Work Notice | 2/1/2013 |
| BASE WIDE | | Work Notice - Sampling Activities, Feb - July 2013 | Work Notice | 1/21/2013 |
| BASE WIDE | | Work Notice - Sampling Activities, Aug 2012 - Jan 2013 | Work Notice | 8/16/2012 |
| PROJECT WIDE | | Work Notice - Property Investigations - August 2012 | Work Notice | 8/1/2012 |
| PROJECT WIDE | | Work Notice - Remediation Activities - July 2012 | Work Notice | 7/3/2012 |
| BASE WIDE | | Work Notice - Remediation Activities, July-Dec 2012 | Work Notice | 7/3/2012 |
| PROJECT WIDE | | Public Notice | Public Notice | 3/14/2012 |
| PROJECT WIDE | | Work Notice - Property Investigations - February 2012 | Work Notice | 2/1/2012 |
| PROJECT WIDE | | Work Notice - Property Investigations - November 2011 | Work Notice | 11/1/2011 |
| BASE WIDE | | Work Notice - April 2011 | Work Notice | 4/4/2011 |
| PROJECT WIDE | | Work Notice, PG&E Former Manufactured Gas Plants, Marina District, San Francisco - April 2011 | Work Notice | 4/4/2011 |
| BASE WIDE | | Work Notice - For Sampling on Private Property and in Public Areas | Work Notice | 11/10/2010 |
| PROJECT WIDE | | Work Notice PG&E Former Manufactured Gas Plants, Marina District, San Francisco, California | Work Notice | 11/10/2010 |

PROJECT RELATED DOCUMENTS

| OU NAME | AREA | TITLE/DESCRIPTION | DOCUMENT TYPE | DOCUMENT DATE |
|--------------|------|---|---------------------------|---------------|
| PROJECT WIDE | | Public Participation Plan | Public Participation Plan | 12/21/2010 |

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PRESS CONTACT: [RUSS EDMONDSON](#)
CENSUS TRACT: 6075012602
CALENVIROSCREEN PERCENTILE SCORE: 1-5% (lowest scores)

AREA: APN 0459003 - [BACK TO PROJECT WIDE PROFILE REPORT](#)

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RELATED ENVIROSTOR SITES

NO RELATED ENVIROSTOR SITES FOUND

GEOTRACKER CASES ASSOCIATED WITH THIS ENVIROSTOR PROJECT

| GEOTRACKER PROJECT NAME | STATUS | ADDRESS | CITY |
|--|--------------------|---------------------------------------|---------------|
| PG & E BAY NORTHPT BUCHANAN & LAGUNA STS | Informational Item | BAY & NORTH POINT & BUCHANAN & LAGUNA | SAN FRANCISCO |

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CalEnviroScreen 3.0

CalEnviroScreen data is provided by the Office of Environmental Health Hazard Assessment (OEHHA). To learn more about CalEnviroScreen please go to www.oehha.ca.gov.

CalEnviroScreen Score

| | |
|---|-----------------|
| Census Tract: | 6075012602 |
| Population: | 2909 |
| | 1-5% |
| CalEnviroScreen Percentile Score | (lowest scores) |
| Pollution Burden Percentile | 61% |
| Population Characteristics Percentile | 1% |

Pollution Burden

| Exposure Indicators | Percentile |
|--|------------|
| Air Quality: Ozone: | 8% |
| Air Quality: PM 2.5: | 31% |
| Diesel Particulate Matter: | 99% |
| Pesticide Use: | 0% |
| Toxic Releases: | 40% |
| Traffic Density: | 35% |
| Drinking Water Contaminants: | 34% |

| Environmental Effects Indicators | Percentile |
|--|------------|
| Cleanups Sites: | 96% |
| Groundwater Threats: | 88% |
| Hazardous Waste Generators & Facilities: | 63% |
| Impaired Water Bodies: | 90% |
| Solid Waste Sites and Facilities: | 0% |

Population Characteristics

| Sensitive Population Indicators | Percentile |
|---------------------------------------|------------|
| Asthma: | 3% |
| Low Birth Weight: | 6% |
| Cardiovascular Rate: | 6% |
| Socioeconomic Factor Indicators | Percentile |
| Education: | 0% |
| Linguistic Isolation: | 40% |
| Poverty: | 4% |
| Unemployment: | 11% |
| Housing Burden: | 12% |

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