

**From:** [Lee, Carolyn](#)  
**To:** [Board of Supervisors, \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [Yee, Norman \(BOS\)](#)  
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**Subject:** 3516-3526 Folsom - Project Sponsor Response to Appeal of RFMND  
**Date:** Friday, July 31, 2020 10:08:38 AM  
**Attachments:** [3516-3526 Folsom - Project Sponsor Respon\(1135895.2\).pdf](#)

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President Yee and Clerk of the Board,

Attached please find the Project Sponsor's response to the appeal of the Revised Final Mitigated Negative Declaration for the project located at 3516-3526 Folsom Street.

Thank you,  
Carolyn



Carolyn J. Lee | **LUBIN OLSON**

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July 31, 2020

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**VIA ELECTRONIC MAIL**

President Norman Yee  
c/o Angelo 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: **Response to Appeal of CEQA Revised Final Mitigated Negative Declaration  
Issued on March 25, 2020 (“RFMND”)  
Planning Case No. 2013.1383ENV  
Building Permit Application Nos. 2013.12.16.4318 and 2013.12.16.4322  
3516-3526 Folsom Street (“Project Site”)**

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

This firm represents two couples, Fabien Lannoye and Anna Limkin, and James and Patricia Fogarty (collectively, the “Project Sponsors”), who are the owners respectively of two vacant lots zoned for residential use located at 3516 and 3526 Folsom Street, upon which they propose to build two single-family homes and construct the adjacent “paper street” segment of Folsom Street to provide vehicular and pedestrian access to the site (the “Project”).

*The Project Sponsors applied for building permits almost seven years ago, and the Project has undergone numerous rounds of environmental review, multiple appeals to the Planning Commission and Board of Supervisors, and multiple drafts and re-drafts of environmental documents, evacuation plans, and vibration management and monitoring plans. The Project Sponsor’s efforts to comply with the California Environmental Quality Act (“CEQA”) and obtain building permits on lots already zoned for residential use are documented in extensive detail in the section titled “Background” in the Planning Department’s memorandum to this Board. Although the Project Sponsors have been working in good faith to assuage any lingering concerns by the Project’s neighbors regarding construction of the Project and its location near PG&E Pipeline 109, Bernal Heights South Slope Organization (“Appellants”) have still brought a meritless, overly broad, and repetitive appeal of the RFMND despite the clear guidance and direction stated in Board of Supervisor’s Motion No. M17-152, passed on September 26, 2017 (the “Motion”), which indicated that the only issues that remain for consideration are the Vibration Monitoring and Management Plan and the site-specific Emergency Response and Evacuation Plan.*

Indeed, Appellants conveniently fail to mention that Motion No. M17-152 explicitly states, “[A]s to all other issues, the Board finds the [Final Mitigated Negative Declaration] conforms to the requirements of CEQA and is adequate, accurate, and objective, the record does not include substantial evidence to support a fair argument that the project may have a significant effect on the environment, and no further analysis is required.” As such, most of Appellants’ arguments and “evidence” (the bulk of which are pure speculation and unfounded opinions not constituting substantial evidence under CEQA) have already been reviewed, and rejected, by the Board of Supervisors, and cannot now be reconsidered. (*See* San Francisco Administrative Code Section 31.16(d)(5)(A) (“In the event an organization or individual wishes to appeal the revised negative declaration, such appeal shall be made directly to the Board of Supervisors within 30 days of publication of the revised negative declaration and shall comply with the procedures set forth in this Section 31.16. *The Board’s subsequent review, if any, shall be limited to the portions of the negative declaration that the Planning Department has revised.*”) (emphasis added).)

**I. Issues Raised by Appellants Are Outside the Scope of the Motion and the San Francisco Administrative Code or Fail for Lack of Substantial Evidence.**

A majority of the issues raised by Appellants cannot now be reconsidered by the Board of Supervisors as they have previously been raised and rejected. First, Appellants cite the Project Site’s steep slope and its proximate location to PG&E Pipeline 109 as being an unusual and potentially dangerous situation. Appellants continuously refer to inaccurate information from a September 2017 letter by Lawrence Karp suggesting that the slope of the site is 40%, but the RFMND accurately describes both the slope of the site as being 33% and the Project’s location with respect to the pipeline. As stated in response to multiple prior appeals, the presence of a PG&E transmission line in a residential neighborhood is not an unusual circumstance in San Francisco, and this argument must be dismissed. Second, Appellants state that the RFMND’s Table 5 includes numerical inaccuracies relating to peak particle velocity and damage potential of project construction equipment. No changes have been made to Table 5 of the RFMND from the version that was previously found by this Board “to conform to the requirements of CEQA”, and thus Appellants cannot appeal this portion of the RFMND pursuant to the Motion and Section 31.16(d)(5)(A) of the San Francisco Administrative Code. Third, Appellants continuously refer to prior opinions prepared by professionals in 2017 that the presence of the PG&E Pipeline 109 will result in substantial public harm due to accidental rupture during construction of the Project. Again, this concern has previously been raised and rejected by this Board. Fourth, the RFMND clearly articulates the responsible agency roles of PG&E, the San Francisco Planning Department, the San Francisco Fire Department, the Department of Building Inspection, and the Department of Public Works, consistent with the Motion. Finally, the Motion states, with respect to the prior appeal, that “the record does not include substantial evidence to support a fair argument that the project may have a significant effect on the environment, and no further analysis is required.”

As before, Appellants fail to carry their burden under CEQA to demonstrate that there is substantial evidence supporting a “fair argument” that the Project may have a significant, adverse, unmitigated effect on the environment, which would thus require the preparation of an EIR. (*See* Public Resources Code Section 21064.5; *see also Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-02 (“[I]f substantial evidence in the record

supports a 'fair argument' significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified.”.) “Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.” (See CEQA Guidelines Section 15384(a) (defining “substantial evidence”).) CEQA Guidelines Section 15384(b) further states, “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (CEQA Guidelines Section 15384(b).) Here, Appellants merely rehash unsubstantiated opinion previously provided to this Board in 2017, and have provided no substantial evidence to support the need for any additional environmental review with respect to the Vibration Monitoring and Management Plan, the Emergency Response and Evacuation Plan, or the RFMND.

## **II. The Vibration Monitoring and Management Plan Included as Part of the RFMND Meets the Motion’s Requirements.**

Appellants’ recently raised issues relating to the Vibration Monitoring and Management Plan include requesting engineered plans for the extension of Folsom Street to the Project Site, concerns about the integrity of the pipeline elbow at Bernal Heights Boulevard, and monitoring after construction of the Project, amongst others. None of these concerns are required elements of the Motion, which states that the plan “specify what types of construction equipment may be used at the [P]roject and any limitations on the use or storage of such equipment in the project vicinity, the specific roles of the Planning Department, Department of Building Inspection, PG&E and any other necessary party in monitoring and enforcing the recommendations of the Vibration Monitoring Plan, and any appropriate safety protocols that must be employed during project construction, including communications between the contractors and PG&E, to reduce the risk of damage to the pipeline.” Indeed, the Vibration Monitoring and Management Plan was prepared specifically to meet the Motion’s requirements, which is explained on pages 3 through 6 of the RFMND. The plan specifies the vibration levels of construction equipment to be used at the project site, setting a maximum level of construction vibration and protocols should the vibration from equipment used exceed 2.0 in/sec. The plan also includes information on how construction equipment would be stored at the Project Site; delineates clear roles and responsibilities for the Planning Department, Department of Building inspection, and PG&E; and provides safety protocols and communication information between PG&E and the Project’s contractors in the event of an emergency.

Furthermore, the Planning Department oversaw an independent review of the Vibration Monitoring and Management Plan by a highly qualified engineer in direct response to concerns raised by Appellants at a meeting conducted in May 2019 with Appellants, the Project Sponsor, the Planning Department, and Supervisor Ronen’s staff. The Planning Department selected and retained the services of an independent peer reviewer according to strict protocols in order to ensure objectivity in the preparation of the environmental review documents, which is part of the Project’s administrative record. The independent peer reviewer determined that the Vibration Monitoring and Management Plan was technically accurate, consistent with common engineering practice, and based on conservative assumptions. As such, not only was the Vibration Monitoring and Management Plan prepared by an independent consultant under direction of the Planning

Department, it additionally underwent independent peer review supervised by the Planning Department and in response to Appellants' expressed concerns to reaffirm the technical validity of the plan.

**III. The Emergency Response and Evacuation Plan Included as Part of the RFMND Meets the Motion's Requirements.**

Appellants attempt to raise new issues that the Emergency Response and Evacuation Plan is inadequate despite good faith attempts by the Project Sponsors and the Planning Department to meet with the Appellants and address all lingering concerns. The Emergency Response and Evacuation Plan is site-specific and meets the Motion's requirements that it be "prepared to ensure adequate access for emergency response and the ability for a safe and timely evacuation." The Emergency Response and Evacuation Plan was reviewed and approved by the San Francisco Fire Department, the Planning Department and PG&E. The plan ensures adequate access for emergency response, which details evacuation routes and the posting of emergency routes within 300 feet of the Project Site and identifying areas where residents and workers on the Project can gather in event of an emergency. The plan also provides clear timelines of construction activities and safety initiatives prior to construction, during construction within 10 feet of PG&E Pipeline 109, and during construction outside the marked 10 foot area of PG&E Pipeline 109.

Appellants also continuously ignore the fact that Mitigation Measure M-NO-3 provides that any demolition or construction work done within 10 feet of the PG&E pipeline must be done with on-site PG&E supervision. If the vibration levels in the vicinity of the PG&E pipeline exceed 2 in/sec, then all construction will stop, and the PG&E pipeline engineer will be contacted. Gas Control will be contacted as soon as any gas leak is detected, which would provide immediate responses from first responders. PG&E would then deploy Leak Survey personnel to survey the pipeline in the immediate vicinity of the vibration in accordance with PG&E regulations. The Emergency Response and Evacuation Plan more than provides for adequate access for emergency response and the ability for a safe and timely evacuation.

\* \* \* \* \*

The Project Sponsors urge the Board of Supervisors to follow San Francisco Administrative Code Section 31.16(d)(5)(A) and the Planning Department staff's recommendation and reject Appellants' appeal as outside the purview of subsequent review and a rehash of issues previously raised, considered, and rejected by the Planning Department, the Planning Commission, and the Board of Supervisors. As Appellants have utterly failed to meet their legal burden to provide substantial evidence to demonstrate that revisions to the Project described in the RFMND would cause a significant environmental impact, the Project Sponsors respectfully request that the Board of Supervisors uphold the Planning Department's adoption of the RFMND.

July 31, 2020

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It is far past time to allow the Project Sponsors to build two modest homes in a City and region in the midst of a housing crisis. Thank you for your attention.

Very truly yours,



Charles R. Olson

CRO/CJL

cc: Fabien Lannoye and Anna Limkin  
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