



Revised Final Mitigated Negative Declaration Appeal

3516-3526 Folsom Street

DATE: August 3, 2020

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Lisa Gibson, Environmental Review Officer – lisa.gibson@sfgov.org
Joy Navarrete, Principal Planner – joy.navarrete@sfgov.org
Josh Pollak, Senior Planner – josh.pollak@sfgov.org

RE: Planning Case No. 2013.1383ENV – Appeal of the Revised Final Mitigated Negative Declaration for 3516-3526 Folsom Street Project

HEARING DATE: August 11, 2020

ATTACHMENT: A – Board of Supervisors adopted Motion No. M17-152

PROJECT SPONSOR: Fabien Lannoye, Bluorange Designs, 415-626-8868

APPELLANT: Kathy Angus, Bernal Heights South Slope Organization

INTRODUCTION:

This memorandum and the attached documents are a response to the letter of appeal to the board of supervisors (the board) regarding the issuance of a revised final mitigated negative declaration (RFMND) under the California Environmental Quality Act (CEQA) for 3516-3526 Folsom Street (the proposed project). On June 15, 2017, the planning department (department) issued the final mitigated negative declaration (FMND) for the proposed project. On July 17, 2017, Ryan Patterson of 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 filed a letter appealing the final mitigated negative declaration, which was heard by the board on September 12, 2017. The board adopted Motion No. M17-152 on September 12, 2017, which directed the department to undertake further analysis with respect to the specific issue of the potential vibration impacts of project construction (see Attachment A). On March 25, 2020, the department issued the RFMND to respond to the board's motion. On April 24, 2020, Kathy Angus, on behalf of the Bernal Heights South Slope Organization (appellant), filed an appeal of the RFMND. The RFMND was provided to the clerk of the board on March 25, 2020.

Pursuant to Section 31.16(d)(5)(A) of the San Francisco Administrative Code, the board's subsequent review of a revised negative declaration shall be limited to the portions of the document that are revised. In other words, only the portions of the RFMND that are additions to, or deletions from, the version

previously certified on June 15, 2017 can be grounds for an appeal. These revisions are in ~~striketrough~~ for deletions and double underline for additions.

The decision before the board is whether to uphold the RFMND as meeting the requirements of Motion No. M17-152 or to return the project to the department for additional analysis to meet the requirements of Motion No. M17-152.

SITE DESCRIPTION AND 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 33 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 (Residential, Single-Family) (to the south of the project site) or P (Public) (to the north of the project site). There is a Pacific Gas and Electric (PG&E) gas transmission pipeline (PG&E Pipeline 109) beneath Folsom Street that extends from Bernal Heights Boulevard to Alemany Boulevard.

PROJECT DESCRIPTION

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. The Folsom Street extension and stairway would be subject to approval by San Francisco Public Works (Public Works). Each single-family home would be 27 feet tall, two stories over-garage with one off-street vehicle parking spaces accessed from a twelve-foot-wide garage door.

The 3516 Folsom Street building would be approximately 2,551 square feet of gross living space in size with a side yard along its north property line. The 3526 Folsom Street building would be approximately 2,384 square feet of gross living space in size with a side yard along its south property line. The proposed buildings would include roof decks and a full fire protection sprinkler system. The proposed buildings would be supported by a shallow building foundation using a mat slab with spread footings.

BACKGROUND

On September 25, 2013, Fabien Lannoye of Bluorange Designs (project sponsor) filed an application with the department for CEQA determination for the project described above.

On July 8, 2016, the department determined the project was categorically exempt under CEQA Class 3 New Construction and Conversion of Small Structures (CEQA Guidelines Section 15303(a)), and that no further environmental review was required.

On October 13, 2016, the planning commission reviewed discretionary review requests (building permit application nos. 2013.12.16.4318 and 2013.12.16.4322) at the planning commission hearing. The planning commission approved the proposed project by not taking discretionary review and approving the project as proposed and in accordance with Chapter 31 of the San Francisco Administrative Code.

On November 14, 2016, Ryan Patterson, on behalf of Bernal Heights South Slope Organization, Bernal Safe & Livable, Neighbors Against the Upper Folsom Street Extension, Gail Newman and Marilyn Waterman (appellants) filed an appeal of the Categorical Exemption determination. The appeal letter was dated November 14, 2016 and filed with the Clerk of the Board on the same day. The appeal letter contained attached letters in support of the appeal from the Sierra Club San Francisco Group and the Bernal Heights Democratic Club, as well as copies of petitions from residents in support of the Discretionary Review Application noted above.

On November 18, 2016, the department determined that the appeal of the CEQA determination was timely filed and advised the Clerk of the Board to schedule the CEQA appeal hearing in compliance with Section 31.16(b)(4) of the San Francisco Administrative Code. Subsequently, on December 5, 2016, the department rescinded the Categorical Exemption determination so that further environmental analysis could be prepared.

On April 26, 2017, the department issued a preliminary mitigated negative declaration (PMND) for the proposed project at 3516-3526 Folsom Street. An appeal was filed by Kathy Angus on behalf of the Bernal Heights South Slope Organization on May 16, 2017. On June 15, 2017, the Planning Commission affirmed the PMND on appeal.

On June 15, 2017, the department issued the FMND. On July 17, 2017, Ryan Patterson of 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 filed a letter appealing the FMND, which was heard by the board on September 12, 2017.

The Board of Supervisors adopted Motion No. M17-152 (herein after “board motion”) on September 12, 2017, which directed the department to undertake further analysis with respect to the specific issue of potential vibration impacts from project construction. The concern articulated in the board motion is that construction of the two homes and associated improvements adjacent to and over PG&E Pipeline 109 could create a risk to public safety, specifically, that ground-borne vibrations reach a certain level, they may compromise the integrity of the pipeline.

As detailed on pages 1 through 6 of the RFMND, in response to the direction of the board motion, the RFMND includes:

- additional information about the location, depth, and condition of the pipeline. The pipeline was daylighted and inspected at the project site on December 2017 with a permit from Public Works to demonstrate it is in good condition;
- a Vibration Monitoring and Management Plan, which was reviewed and approved by the planning department and PG&E; and
- a site-specific Emergency Response and Evacuation Plan, which was reviewed and approved by the planning department, San Francisco Fire Department, and PG&E.

The RFMND incorporates all recommendations from both plans as a mitigation measure.

The Vibration Monitoring and Management Plan uses safety-protective assumptions to establish a vibration threshold of 2 inches per second (in/sec)¹ to prevent impacts to the pipeline during construction. The vibration threshold is safety-protective because it includes a factor of safety of 6. The plan establishes that vibration levels of 12 in/sec could cause damage to the buried pipeline. Since 12 in/sec is the criteria that could cause damage to the pipeline, and the threshold used by the project is 2 in/sec, the factor of safety is 6 (i.e., 2 in/sec multiplied by 6 results in a vibration level of 12 in/sec).

A highly qualified independent engineer reviewed and confirmed the plan was technically accurate, consistent with common engineering practice, and included a factor of safety of 6. Critically, no substantial evidence² has been presented by the appellants that demonstrates that the vibration threshold that would be used during project construction is not appropriate and does not include safety-protective assumptions.

During construction of the proposed project, vibration monitors would be buried to the depth of the pipeline, approximately 6 inches away from the pipeline itself. The Vibration Management Plan and Emergency Response and Evacuation Plan establish that if vibration levels exceed the threshold of 2 in/sec, warning lights and an alert would be transmitted, and construction would immediately stop, which would prevent impacts to the integrity of the pipeline.

On March 25, 2020, the department issued the RFMND, which includes the items described above, to respond to the board motion.

On April 25, 2020, Kathy Angus, on behalf of the Bernal Heights South Slope Organization filed an appeal of the RFMND. On July 27, 2020, the department determined that the appeal of the CEQA determination was timely filed and advised the Clerk of the Board to schedule the CEQA appeal hearing in compliance with Section 31.16(b)(4) of the San Francisco Administrative Code.

As described on page i of the RFMND, the board motion found that, with the exception of the additional analysis requested, “[a]s to all other issues, the Board finds the FMND conforms to the requirements of CEQA and is adequate, accurate and objective.” The motion also states, with respect to the prior FMND 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 stated above under “Introduction,” pursuant to Section 31.16(d)(5)(A) of the San Francisco Administrative Code, grounds for an appeal of the RFMND shall be limited to the portions of the document that are additions to, or deletions from, the version previously certified on June 15, 2017. These portions of the document are in ~~strike through~~ for deletions and double underline for additions.

¹ Inches per second peak particle velocity, or PPV. This is a measure of maximum ground movement as an indicator of damage potential.

² In determining the significance of environmental effects caused by a project, CEQA State 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. CEQA State Guidelines 15064(f)(5) offers the following guidance: “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 assumptions predicated upon facts, and expert opinion supported by facts.”

PLANNING DEPARTMENT RESPONSES

The concerns raised in the appeal letter are addressed in the responses below.

Concern 1: The appellant claims that the steep slope of the project site, which should be listed as 40 percent, and the project site's location adjacent to a buried PG&E Pipeline 109, are an unusual and potentially dangerous situation, which was not adequately considered in environmental review in the RFMND.

Response 1: The RFMND appropriately considers the slope of the project site and vicinity, which was accurately calculated for purposes of environmental review. The Vibration Management Plan and Emergency Evacuation and Response Plan were designed specifically for the project site, including the slope and location with respect to the pipeline. An independent review of the Vibration Management Plan by a qualified expert determined that the plan was technically accurate, consistent with common engineering practice, and based on conservative assumptions. The RFMND incorporates all recommendations from the plans as a mitigation measure, which would reduce any potential impacts associated with the slope of the project site and the pipeline to a less-than-significant level.

The RFMND describes the slope of the project site as 33 percent on pages ii, 7, and 111, and shows the slope graphically on pages 11, 12, 13, 16, 17 and 20. Generally, the slope of a project site may be calculated from multiple directions, providing different values. The 33 percent slope is an approximation of the slope closest to the eastern edge of the project site, which parallels the slope of the underground PG&E Pipeline 109 and also parallels the proposed extension of Folsom Street.

Figure 1, below, shows how the approximately 33 percent slope of the project site was determined. The project site, which includes the two lots at 3516 and 3526 Folsom Street, has an elevation of approximately 303 feet at the northeastern corner. The elevation at the southeastern corner is approximately 286.5 feet. The width of the project site is 50 feet. Slope is calculated as the ratio of vertical change over horizontal change. As such, 303 feet minus 286.5 feet is 16.5 feet difference in elevation (vertical change), which, when divided by the 50-foot width of the project site (horizontal change) is 0.33, or 33 percent.

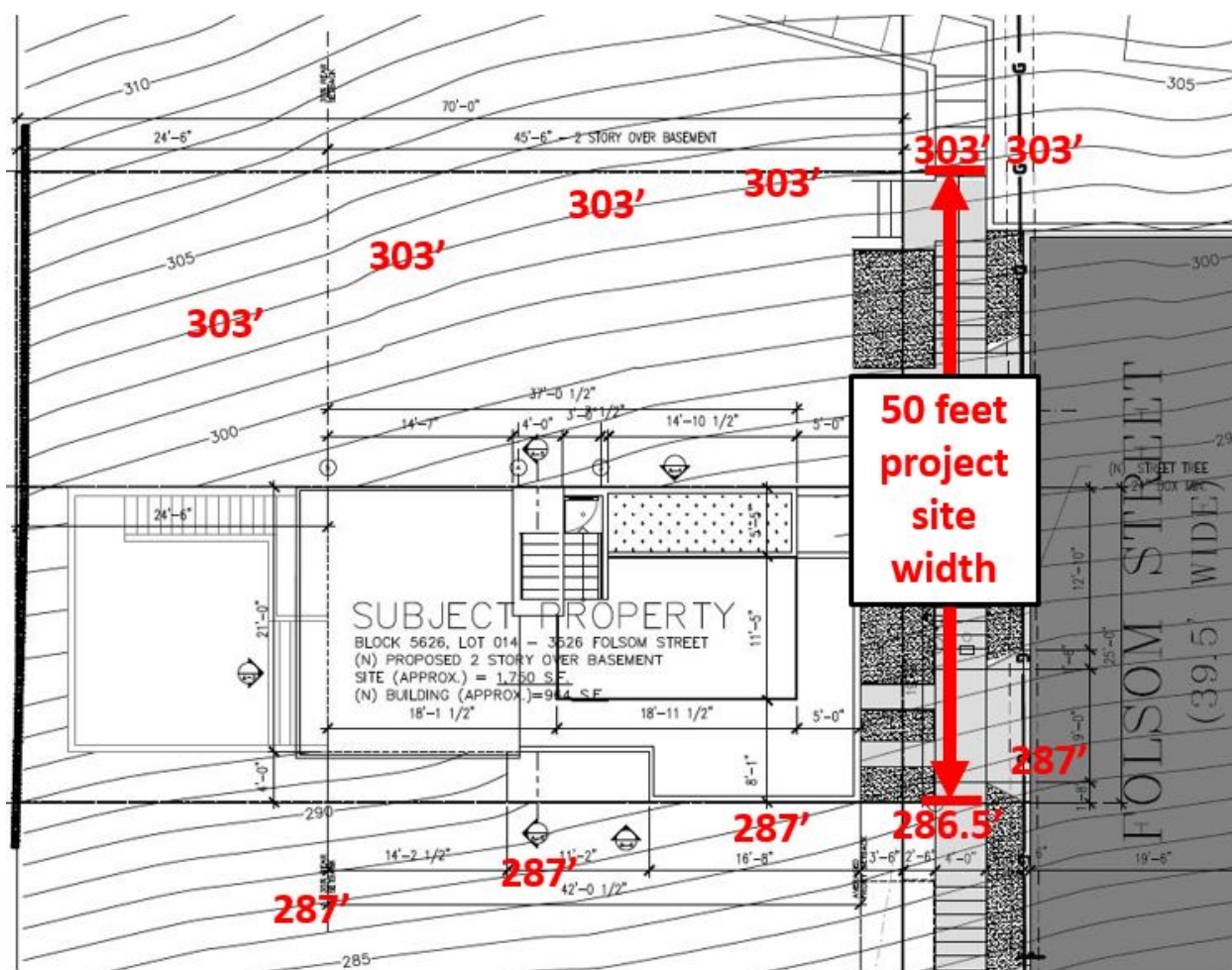


Figure 1: Existing Project Site Slope

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and adequately considers the project site's slope and location with respect to the pipeline, which occurs in multiple areas throughout San Francisco.

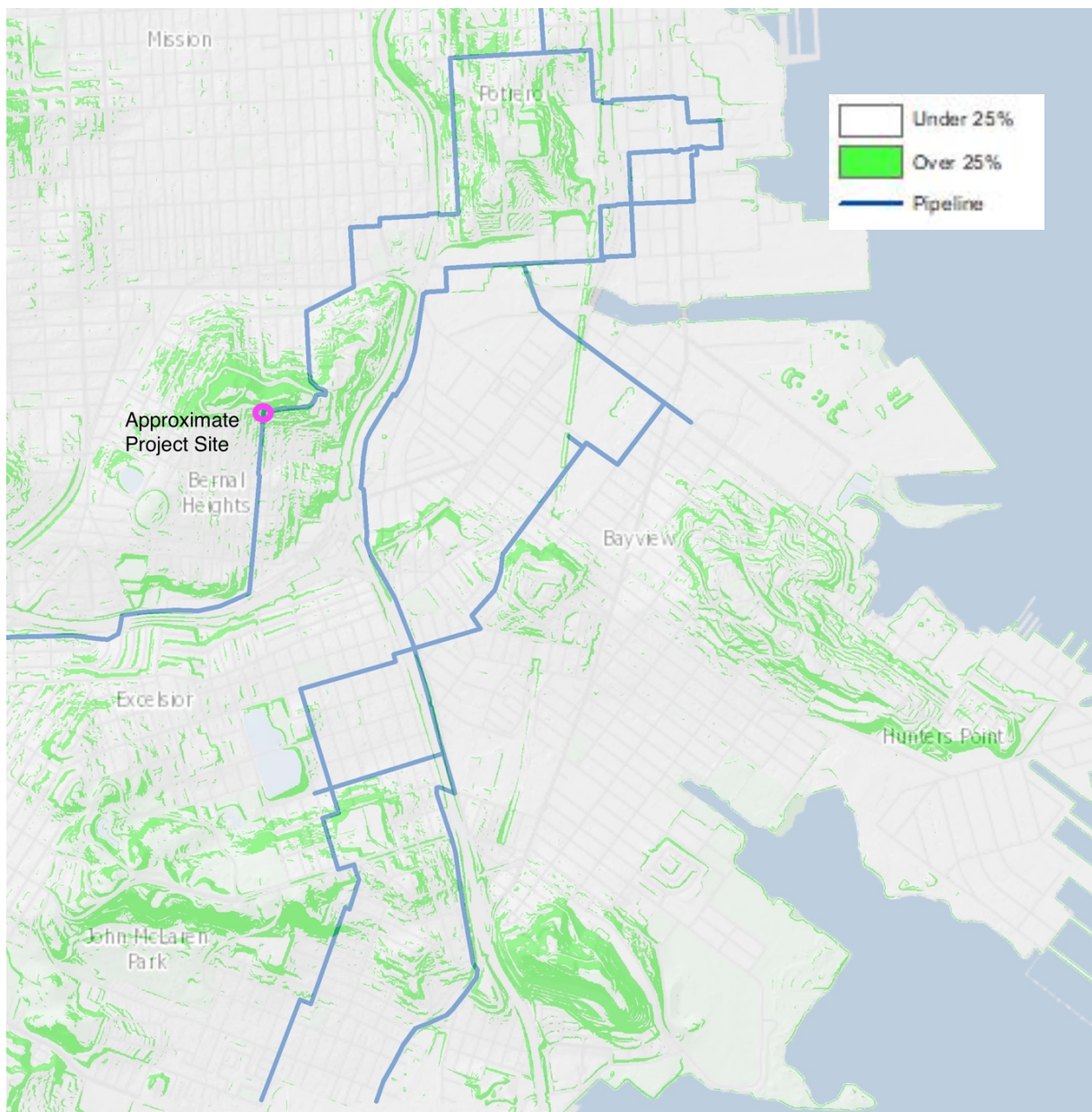


Figure 3: PG&E Distribution Pipeline and Greater Than 25 Percent Slope

Concern 2: The appellant asserts that the RFMND includes numerical inaccuracies, including inaccuracies in Table 5 (which lists estimates of peak particle velocity and damage potential of project construction equipment), inaccuracies in elevations related to the pipeline that would require the pipeline to be relocated, and a reference to the incorrect gas pipeline in a table listing wheel weight limits in a memo from PG&E, which the appellant claims affects the adequacy of the RFMND.

Response 2: The concerns regarding Table 5 of the RFMND have previously been raised and rejected by the board. As such, they cannot now be reconsidered.

A majority of the issues raised by the appellant have previously been raised and rejected by the board. As such, they cannot now be reconsidered. As stated above, pursuant to Section 31.16(d)(5)(A) of the San Francisco Administrative Code, grounds for an appeal of the RFMND are limited to the portions of the document that are additions to, or deletions from, the version previously certified. No changes were made to Table 5 of the RFMND from the version that was previously certified, and no changes were required to be made to Table 5. The appellant has not provided any substantial evidence that the values in Table 5 would be required to be updated in order to satisfy the board motion; therefore, that concern will not be addressed further.

With respect to concerns about the elevations, Response 1 above documents the approximate slope of the project site. No relocation of the gas line is proposed as part of the project. The location and condition of PG&E Pipeline 109 was confirmed in a document “Location, Depth and Condition of Pipeline No. 109,” which is in the project record.

The memo from PG&E staff sent March 6, 2018⁴ describes PG&E’s comprehensive inspection and monitoring program used to ensure the safety of the natural gas transmission pipeline system. The memo contains PG&E’s general safety requirements for work within pipeline easements. The table that refers to line 132 rather than 109 is not an error, since it is a list of general requirements, as stated on pages 1 and 3 of the memo (“general PG&E safety requirements,” and “general safety precautions”). The appellant has not provided any evidence that purported numerical inaccuracies would affect the analysis or conclusions in the RFMND, or the adequacy of the mitigation measures included in the RFMND.

Concern 3: The appellant asserts that Vibration Management is inadequate because it does not include specified content. The appellant also claims that the professionals who prepared/reviewed the vibration analyses in the RFMND were not independent, may not be the best qualified to prepare/review vibration analyses, and did not consider site-specific factors in preparing/reviewing the vibration analysis.

Response 3: The Vibration Monitoring and Management Plan included in the RFMND satisfies the requirements of the board motion.

⁴ Memo from PG&E Gas Transmission Pipeline Services—Integrity Management, November 13, 2018.

The board motion states that the Vibration Management Plan shall specify:

- what types of construction equipment may be used at the project 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;

Pages 3 through 6 of the RFMND described how the Vibration Management Plan meets these requirements.

None of the purported outstanding elements of the Vibration Management Plan listed by the appellant are required items pursuant to the board motion. There is no requirement to include engineered plans as part of the RFMND. Full engineered plans for proposed projects are required by the Department of Building Inspection after the planning process is completed (including environmental review). Neither the integrity of the pipeline elbow, the location of utilities crossing the pipeline, nor construction equipment falling over are discussed in the board motion. The board motion only addresses impacts from project construction, not project operation; therefore, no monitoring after construction needs to occur. Therefore, these concerns are not grounds for an appeal and do not need to be addressed further by the planning department.

As the lead agency for public and private projects in San Francisco undergoing environmental review, the planning department regularly relies upon consultants to prepare CEQA documents, including technical reports. The department identifies consultants that the department deems well-qualified and selects consultants to provide services in support of the department's role as a lead agency. The City requires project sponsors to pay the fees of consultants. The use of consultants is critical to the department's ability to conduct CEQA review in an efficient and effective manner. Pursuant to state and local requirements, the department reviews and analyzes consultant-prepared materials to ensure that they reflect the independent judgment of the department. The department developed a list of specific protocols in order to provide formal department practices aimed at eliminating the potential for bias on the part of consultants, and ensuring the environmental reports consider all relevant analyses and findings. The protocols include a written agreement for the project sponsor and consultant(s) to be implemented when requested by the planning department environmental coordinator.⁵

For the RFMND, including the items added in response to the board motion, the department fulfilled its obligation as an objective lead agency in preparing the RFMND. The department reviewed and approved the scope of work for the qualified professionals who prepared the vibration analyses for the RFMND and reviewed and approved the analysis and documents themselves.

In May 2019, the department met with the appellants, the project sponsor and board staff. At the direction of board staff, in order to address concerns raised at the meeting, the department directed that an

⁵ Lisa Gibson, Environmental Review Office, *Memo: Protocols to Ensure Objectivity in Consultant-Prepared Materials*, February 11, 2019.

independent review of the Vibration Management Plan be prepared by a qualified engineer. The department reviewed and approved a scope of work for the independent review of the Vibration Management Plan by a qualified engineer.⁶ The independent review of the Vibration Management Plan was reviewed and approved by the department. The independent reviewer and the project sponsor signed an agreement to implement the protocols to ensure objectivity in environmental review documents, which is part of the project record.⁷ The independent review of the Vibration Management Plan determined that the plan was technically accurate, consistent with common engineering practice, and based on conservative assumptions. Response 1 describes in detail how the analysis in the RFMND is site specific.

In summary, the Vibration Management Plan meets all of the requirements specified by the board. Not only was it prepared by an independent consultant under direction of the department, but the plan additionally underwent independent review supervised by the department, which reaffirmed the technical validity of the plan and responded to the appellant's expressed concerns.

Concern 4: The Emergency Response and Evacuation Plan included as part of the RFMND is inadequate in meeting the requirements of the board motion because it is not site specific, it doesn't offer adequate communication to residents, it doesn't address visitors to Bernal Park, does not ensure adequate access for emergency response, doesn't respond to *Pipeline Association for Public Awareness Pipeline Emergency Response Guidelines*, and offers an inadequate 3-hour response time in case of pipeline leaks.

Response 4: The Emergency Response and Evacuation Plan included as part of the RFMND meets the requirements of the board motion.

The board motion states that:

- "...a site-specific Emergency Response and Evacuation Plan be prepared to ensure adequate access for emergency response and the ability for a safe and timely evacuation; and
- ...the Emergency Response and Evacuation Plan shall be reviewed and approved by the Fire Department, Planning Department, and PG&E, prior to issuance of the revised environmental review document."

The Emergency Response and Evacuation Plan is site specific. The plan shows the project site, with evacuation routes leading to four separate safe gathering areas. The plan describes the actions that would

⁶ Among numerous other qualifications, the independent reviewer was one of the primary authors of Caltrans' 2013 *Transportation and Construction Vibration Guidance Manual*, considered an authoritative source on construction vibration analysis, and referenced in hundreds of CEQA documents on construction vibration.

⁷ See: "Agreement to Protocols to Ensure Objectivity in Environmental Review Documents: 3516-3526 Folsom Street." This document and the others referenced for the project are available for public review as part of case file no. 2013.1383ENV on the San Francisco Property Information Map, which can be accessed at <https://sfplanninggis.org/PIM/>. Individual files can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental case number (2013.1383ENV) and then clicking on the "Related Documents" link.

occur during project construction, which includes pre-construction, during construction within 10 feet of PG&E Pipeline 109, and during construction beyond 10 feet of PG&E Pipeline 109. During construction within 10 feet of the pipeline, if vibration levels exceed the 2 in/sec threshold, construction would immediately stop, and the PG&E Pipeline Engineer would be contacted. If a leak were to occur, the project manager would contact PG&E's Gas Control hotline, which would communicate with the Fire Department and other first responders as needed. The plan ensures adequate access for emergency response through the requirements outlined in the plan, which include posting emergency route sites within 300 feet of the project site and identifying areas where residents and workers can gather in event of an emergency. As stated in on page 120 of the RFMND, the proposed project would not impair access for emergency response. As stated on page 6 of the RFMND, the Emergency Response and Evacuation Plan was approved by the Fire Department, PG&E, and the planning department. As such, the plan meets the requirements of the board motion.

Bernal Park does not contain residents, and there is no specific requirement to address Bernal Park in the board's motion. The board motion contains no direction regarding pipeline awareness guidelines, which were prepared by a nonprofit corporation, not a regulatory agency, and contain no binding requirements. As such, these items are not required to be addressed in the RFMND and are not discussed further.

With respect to response time, the Emergency Evacuation Plan requires a PG&E Inspector to be on standby during all work within 10 feet of the pipeline. If the vibration levels exceed 2 in/sec, all construction activities would cease, and the PG&E Pipeline Engineer would be contacted. If a gas leak were detected, then Gas Control would be contacted, which would provide an immediate response from first responders, not a 3-hour response time as inaccurately stated by the appellants. To verify that damage has not occurred, PG&E would deploy Leak Survey personnel to survey the pipeline in the immediate vicinity of the vibration within 2-3 hours, following PG&E regulations. The RFMND cannot require a specific response time to leaks by PG&E, as PG&E's regulations are approved by and subject to the authority of the California Public Utilities Commission.

In summary, the Emergency Evacuation Response Plan meets the requirements of the board motion because it ensures adequate access for emergency response and the ability for a safe and timely evacuation, and was approved by the Fire Department, planning department, and PG&E.

Concern 5: Other professionals disagree with the conclusions cited in the RFMND based on documents prepared in 2017, which the appellant claims provides evidence the proposed project may harm public safety due to risk of accidental rupture of PG&E Pipeline 109 during construction and operation of the proposed project.

Response 5: The professional concerns cited have previously been raised and rejected by the board. As such, they cannot now be reconsidered.

The appellant references a number of documents prepared by various professionals in 2017 related to the project. The board motion describes that all written and oral testimony in support of and opposed to the appeal were considered in developing the requirements of the motion. No novel evidence has been

presented by professionals on behalf of the appellant addressing the RFMND and associated materials. As the board already reviewed the information and unsubstantiated opinion provided by these professionals in 2017, and no new material has been provided by professionals addressing the information in the RFMND, the appellant has provided no substantial evidence to support the need for further analysis with regard to the RFMND.

Concern 6: The RFMND does not specify responsibility, accountability, or supervision by city and other agencies, such as the Department of Building Inspection, the San Francisco Public Utility Commission, Board of Supervisors, Department of Public Works, San Francisco Fire Department, and the Department of Emergency Management. The appellant claims that the lack of the accountability compounds the risk of accidental impacts to PG&E Pipeline 109.

Response 6: The RFMND includes specific agency roles as directed by the board motion for the following agencies: PG&E, the planning department, the San Francisco Fire Department, Department of Building Inspection, and the Department of Public Works. The motion does not provide any direction with respect to, nor were any changes made referring to following agencies: San Francisco Public Utility Commission, Board of Supervisors, and Department of Emergency Management. Therefore, these concerns are not grounds for an appeal.

As stated in the RFMND, the Vibration Management Plan was reviewed and approved by PG&E and the planning department; the Emergency Response and Evacuation Plan was reviewed and approved by the San Francisco Fire Department, planning department, and PG&E. Both of those plans directly lay out the roles of each of the agencies for implementation, including the Department of Building Inspection and Department of Public Works, at specific times during the project construction, which includes pre-construction, during construction within 10 feet of PG&E Pipeline 109, and during construction beyond 10 feet of PG&E Pipeline 109. The RFMND states the responsibilities of the project sponsor and PG&E should the vibration levels exceed the conservative threshold of 2 in/sec or should gas-related emergencies occur. The analysis of the physical environmental impacts of any other scenario beyond those described in the RFMND would be speculative. Pursuant to CEQA Guidelines 15145, if a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

The RFMND was prepared according to the requirements of CEQA, which requires lead agencies to disclose and mitigate impacts to the greatest extent feasible, which the department has done in the RFMND and through the preparation and approvals of the Vibration Management Plan and the Emergency Response and Evacuation Plan. CEQA does not require the lead agency to assign legal liability in speculative scenarios. As such, there is no requirement to include this information in the RFMND, and there is no need to address the topic further.

Concern 7: The appellant asserts that an environmental impact report (EIR) should be prepared for the project due to the concerns articulated above.

Response 7: The appellant fails to meet the legal burden to provide substantial evidence to demonstrate that RFMND does not satisfy the requirements of the board motion. In addition, as established by the board motion, the record does not include substantial evidence that the project may have a significant effect on the environment that would warrant preparation of an EIR.

The RFMND was prepared to respond to the items in the board motion, which required the department to provide specific additional environmental analysis in the RFMND. The department has responded to the requirements of the board motion as detailed in the RFMND and this document. The board motion states that “[a]s to all other issues, the Board finds the FMND conforms to the requirements of CEQA and is adequate, accurate and objective.” The board motion also states, with respect to the 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.” The board motion is clear that there is no substantial evidence in the record that supports that further analysis is required to remedy any significant effects on the environment and the appellant has cited to no such evidence in this appeal. Therefore, an EIR should not be prepared for this project.

CONCLUSION

For all of the reasons provided in this appeal response, department staff respectfully recommends that the board uphold the planning department’s adoption of the RFMND and deny the appeal. Most of the appellant’s concerns have been previously raised, considered, and rejected by the board. In all other cases, the appellant fails to provide substantial evidence supporting a fair argument that the RFMND has not satisfied the requirements of the board motion. In addition, as established by the board motion, the record does not include substantial evidence that the project may have a significant effect on the environment that would warrant preparation of an EIR.

ATTACHMENT A

1 [Adopting Findings Reversing the Final Mitigated Negative Declaration - 3516 and 3526
2 Folsom Street]

3 **Motion adopting findings reversing the approval by the Planning Commission of a final**
4 **mitigated negative declaration under the California Environmental Quality Act for a**
5 **proposed project at 3516 and 3526 Folsom Street.**

6
7 WHEREAS, The Planning Commission approved a final mitigated negative declaration
8 under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and
9 Administrative Code, Chapter 31 for a proposed project located at 3516 and 3526 Folsom
10 Street ("Project"); and

11 WHEREAS, The proposed Project involves the construction of two single-family
12 residences on two vacant lots along the west side of the unimproved portion of Folsom Street,
13 the construction of the connecting segment of Folsom Street to provide vehicle and pedestrian
14 access to the Project site, and the construction of a stairway between Folsom Street and
15 Bernal Heights Boulevard; and

16 WHEREAS, Each single-family home would be 27 feet tall, two stories over-garage
17 with two off-street vehicle parking spaces accessed from a twelve-foot-wide garage door; and

18 WHEREAS, The Planning Department published a Preliminary Mitigated Negative
19 Declaration ("PMND") for the proposed Project on April 26, 2017; and

20 WHEREAS, On May 16, 2017, Kathy Angus, for the Bernal Heights South Slope
21 Organization filed an appeal of the Planning Department's decision to issue the PMND; and

22 WHEREAS, On June 15, 2017, the Planning Commission held a publically-noticed
23 hearing on the PMND, denied the appeal, and finalized the PMND ("FMND") by Motion
24 No. 19945; and
25

1 WHEREAS, On June 15, 2017, the Planning Commission declined to take
2 discretionary review of the proposed project, and approved the Project as proposed; and

3 WHEREAS, On July 17, 2017, Ryan Patterson of Zacks, Freeman and Patterson, on
4 behalf of Bernal Heights South Slope Organization, Bernal Safe & Livable, Neighbors Against
5 the Upper Folsom Street Extension, Gail Newman and Ann Lockett ("Appellants") filed a letter
6 appealing the FMND; and

7 WHEREAS, The Planning Department's Environmental Review Officer, by
8 memorandum to the Clerk of the Board dated July 24, 2017, determined that the appeal was
9 timely; and

10 WHEREAS, On September 12, 2017, this Board held a duly noticed public hearing to
11 consider the appeal of the FMND filed by Appellants and, following the public hearing,
12 conditionally reversed the Planning Commission's approval of the FMND subject to the
13 adoption of written findings in support of such determination, and requested additional
14 information and analysis be provided; and

15 WHEREAS, In reviewing the appeal of the FMND, this Board reviewed and considered
16 the FMND, the appeal letter and supporting documents, the responses to concerns document
17 that the Planning Department prepared, the other written records before the Board of
18 Supervisors and all of the public testimony made in support of and opposed to the FMND
19 appeal; and

20 WHEREAS, The Board finds that the letters and public comment presented in support
21 of and against the appeal, including comment letters presented to the Board on September 11
22 and 12, 2017, raise important questions regarding how project construction activities could
23 create vibration impacts on PG&E Pipeline No. 109; and
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25

1 WHEREAS, In light of this new information, the Board has requested that the Planning
2 Department undertake further analysis with respect to the specific issue of the potential
3 vibration impacts of project construction on PG&E Pipeline 109; and

4 WHEREAS, This Board considered these issues, heard testimony, and shared
5 concerns that further information and analysis was required regarding whether the proposed
6 project would cause construction impacts to PG&E Pipeline No. 109; and

7 WHEREAS, The written record and oral testimony in support of and opposed to the
8 appeal and deliberation of the oral and written testimony at the public hearing before the
9 Board of Supervisors by all parties and the public in support of and opposed to the appeal of
10 the FMND is in the Clerk of the Board of Supervisors File No. 170851 and is incorporated in
11 this motion as though set forth in its entirety; now, therefore, be it

12 MOVED, That this Board of Supervisors directs the Planning Department to provide
13 additional information and analysis regarding whether the proposed project construction would
14 result in vibration impacts on PG&E Pipeline No. 109 that could create a risk to public safety;
15 and, be it

16 FURTHER MOVED, In conducting any such additional environmental analysis, the
17 Planning Department shall enlist an independent qualified expert to use all appropriate
18 methods to determine the location, depth and condition of Pipeline No. 109 in the project area
19 and prepare a Vibration Management Plan for the project prior to the issuance of the revised
20 environmental review document; and, be it

21 FURTHER MOVED, That the Vibration Management Plan shall specify what types of
22 construction equipment may be used at the project and any limitations on the use or storage
23 of such equipment in the project vicinity, the specific roles of the Planning Department,
24 Department of Building Inspection, PG&E and any other necessary party in monitoring and
25 enforcing the recommendations of the Vibration Monitoring Plan, and any appropriate safety

1 protocols that must be employed during project construction, including communications
2 between the contractors and PG&E, to reduce the risk of damage to the pipeline; and, be it

3 FURTHER MOVED, That a site-specific Emergency Response and Evacuation Plan be
4 prepared to ensure adequate access for emergency response and the ability for a safe and
5 timely evacuation; and, be it

6 FURTHER MOVED, That the Vibration Management Plan shall be reviewed and
7 approved by the Planning Department and PG&E, and the Emergency Response and
8 Evacuation Plan shall be reviewed and approved by the Fire Department, Planning
9 Department, and PG&E, prior to issuance of the revised environmental review document; and,
10 be it

11 FURTHER MOVED, That the Planning Department shall incorporate any
12 recommendations of the approved Vibration Management Plan into the mitigation included in
13 the revised environmental review document; and, be it

14 FURTHER MOVED, As to all other issues, the Board finds the FMND conforms to the
15 requirements of CEQA and is adequate, accurate, and objective, the record does not include
16 substantial evidence to support a fair argument that the project may have a significant effect
17 on the environment, and no further analysis is required.

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City and County of San Francisco

Tails

Motion: M17-152

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 171022

Date Passed: September 26, 2017

Motion adopting findings reversing the approval by the Planning Commission of a final mitigated negative declaration under the California Environmental Quality Act for a proposed project at 3516 and 3526 Folsom Street.

September 26, 2017 Board of Supervisors - AMENDED, AN AMENDMENT OF THE
WHOLE BEARING SAME TITLE

Ayes: 10 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Sheehy, Tang and
Yee

Excused: 1 - Safai

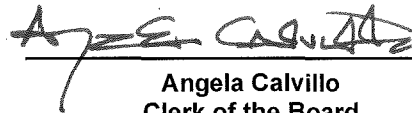
September 26, 2017 Board of Supervisors - APPROVED AS AMENDED

Ayes: 10 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Sheehy, Tang and
Yee

Excused: 1 - Safai

File No. 171022

I hereby certify that the foregoing Motion
was **APPROVED AS AMENDED** on
9/26/2017 by the Board of Supervisors of
the City and County of San Francisco.


Angela Calvillo
Clerk of the Board