

**From:** [Kathy Angus](#)  
**To:** [BOS Legislation. \(BOS\)](#); [Beinart, Amy \(BOS\)](#); [Ronen, Hillary](#)  
**Cc:** [Ryan Patterson](#); [Steve Viani](#); [Marilyn Waterman](#); [Herb Felsenfeld](#)  
**Subject:** Fwd: BOS File No. 200800, 3516 and 3526 Folsom Street, Inconsistent Usage of "Project Site" definition  
**Date:** Tuesday, September 15, 2020 1:52:32 PM  
**Attachments:** [SLOPE 33 and 27 pct. CPC Appeal - Response Memo - 3516-26 Folsom RFMND\\_060320.pdf](#)  
[SLOPE 34-36.22 pct Proj Sponsor 3500 Folsom Civil 9-21-16 Franco.pdf](#)  
[SLOPE 40.3 pct. Appellant 3500 Folsom Slope per Karp 2017-09-12.pdf](#)

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Please include this document and its attachments in File #200800.

Thanks.

Kathy Angus

----- Forwarded message -----

**From:** **barbara underberg** <[bjunderberg@yahoo.com](mailto:bjunderberg@yahoo.com)>

**Date:** Tue, Sep 15, 2020 at 1:45 PM

**Subject:** BOS File No. 200800, 3516 and 3526 Folsom Street, Inconsistent Usage of 'Project Site' definition

**To:** Kathy Angus <[kathyangus@gmail.com](mailto:kathyangus@gmail.com)>

Re: Appeal of Revised Final Mitigated Negative Declaration (RFMND) for 3516 and 3526 Folsom Street, BOS File No. 200800

Dear President Yee and Honorable Members of the Board,

**Please deny this RFMND and replace it with an EIR.**

Please deny this RFMND and replace it with an Environmental Impact Report that fully and comprehensively analyzes and addresses the entire project site (defined to include the two lots and the Folsom Street extension), especially with regard to PG&E Gas Transmission Pipeline No. 109, and potential impacts. Additionally, please require that the Emergency Response and Evacuation Plan addresses public awareness issues and logistics as they affect the neighborhood.

**Inconsistent Usage of 'Project Site' Definition:**

In exploring our continuing disagreement with the Planning Department about the slope of the project site (33% vs. 40%), the reason has become clear: the Planning Department has been applying the definition of project site inconsistently. This has infected the entire review process. This leads to confusion and inaccurate conclusions.

**Brief History of 'Project Site' Definition as Used in the Environmental Determinations:**

Originally, during two CatExes (3/24/14 and 7/8/16) and one PMND (4/27/17), the project **site** was defined as only two lots, 3516 and 3526 Folsom Street. The project itself, however, was described as involving "the construction of the connecting segment of Folsom Street to provide vehicle and pedestrian access **to the project site**."

The next environmental determinations, FMND (7/11/17) and RFMND (3/25/20), include the Folsom

Street extension in their definitions of Project Site, but only in Section A of the Initial Study. It defines the project site as an "approximately 6,500 square-foot project site (two lots at 1,750 sf (25 feet by 70 feet) each and an approximately 2,000 sf street improvement)." However, no other sections of the Initial Study or FMND were updated to take into account the revised definition. Three examples of this discrepancy stand out:

(1) Within the same FMND, the definitions of project site do not agree. In the Project Description section that precedes the Initial Study, the definition excludes the Folsom Street extension and is defined as described originally above. The definition in Section A includes it.

(2) Although, as written, Section A includes the street extension in its project site definition, in practice, the old definition (that excludes the extension) is used. To wit, the same Section A states: "The project site is at a slope of approximately 33%." In defending its calculation of 33%, the Planning Department in its 8/3/20 response to our appeal clearly illustrates (in Figure 1) that they define the project site to be the sum of two lots having a total width of 50 ft., without regard to the street extension. (See the Slope Calculation section below for more details.)

(3) Without recognizing that the street extension is part of the project site, the conclusions of Section H, Evaluation of Environmental Effects, are not necessarily valid.

As one example, the answer to Section H.14(e), "Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?" should be "Potentially Significant Impact" when taking the street extension into account. The project will add in excess of 5,000 sq. ft. of impervious surfaces (most of which are from the proposed street extension) requiring it to comply with the SFPUC's Stormwater Management Ordinance. Just because the project is required to comply does not mean it will be possible to comply. Approximately 60% of the currently hilly unimproved street extension will be replaced with impervious surfaces. Due to the presence of the pipeline, PG&E restrictions will limit the number and location of stormwater drains and the ability to use landscaping for stormwater retention.

#### **Slope Calculation Details for the Folsom Street Extension:**

The Planning Department and the Project Sponsor use multiple slope values: 33%, 27%, 28%, 34%, 34.8% or 36%. When the Planning Department says the project site has a slope of 33%, they are not talking about the street, they are only talking about the two lots, which is a horizontal change of 50 feet in their slope calculation. When they say the street has a slope of 27% (see appeal response memo) or 28% (see FMND), they are referring to a value they have calculated based on a horizontal change of 200 feet for a two-block stretch of Folsom Street from the top of the proposed extension down to Powhattan Avenue (which, of course, is irrelevant -- the block between Chapman and Powhattan is not part of the project site). [See attached document, SLOPE 33 and 27 pct., which are pages 5-7 from the Planning Department appeal response memo.]

Finally, drawings prepared by the project sponsor's civil engineer, David Franco, shows the finished street grade with three different slope values depending on the segment of the extension: 34%, 34.8% or 36.22%. [See attached document, SLOPE 34-36.22 pct.]

By contrast, the appellant's geotechnical engineer, Lawrence Karp, calculated a slope value of 40.3% for the ungraded slope within the Folsom Street right-of-way. This slope value is based on a horizontal change of 92.83 feet beginning at an elevation of 302.3 feet, which is the same approximate elevation used by the Planning Department, and extending downhill within the boundaries of the project site, only if the project site is defined to include the Folsom Street right-of-way. [See attached document, SLOPE 40.3 pct.]

**Please deny this RFMND and replace it with an EIR.**

Please deny this RFMND and replace it with an Environmental Impact Report that fully and comprehensively analyzes and addresses the entire project site (defined to include the two lots and the

Folsom Street extension), especially with regard to PG&E Gas Transmission Pipeline No. 109, and potential impacts. Additionally (as discussed in other appellant submissions), please require that the Emergency Response and Evacuation Plan addresses public awareness issues and logistics as they affect the neighborhood.

Thank you for your time and consideration of this matter.

Respectfully submitted,  
Barbara Underberg

--

Kathy Angus

## 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.

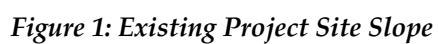


Figure 2, below, shows the slope of Folsom Street north of Powhattan Avenue with the extension of Folsom Street, which would be approximately 27 percent.

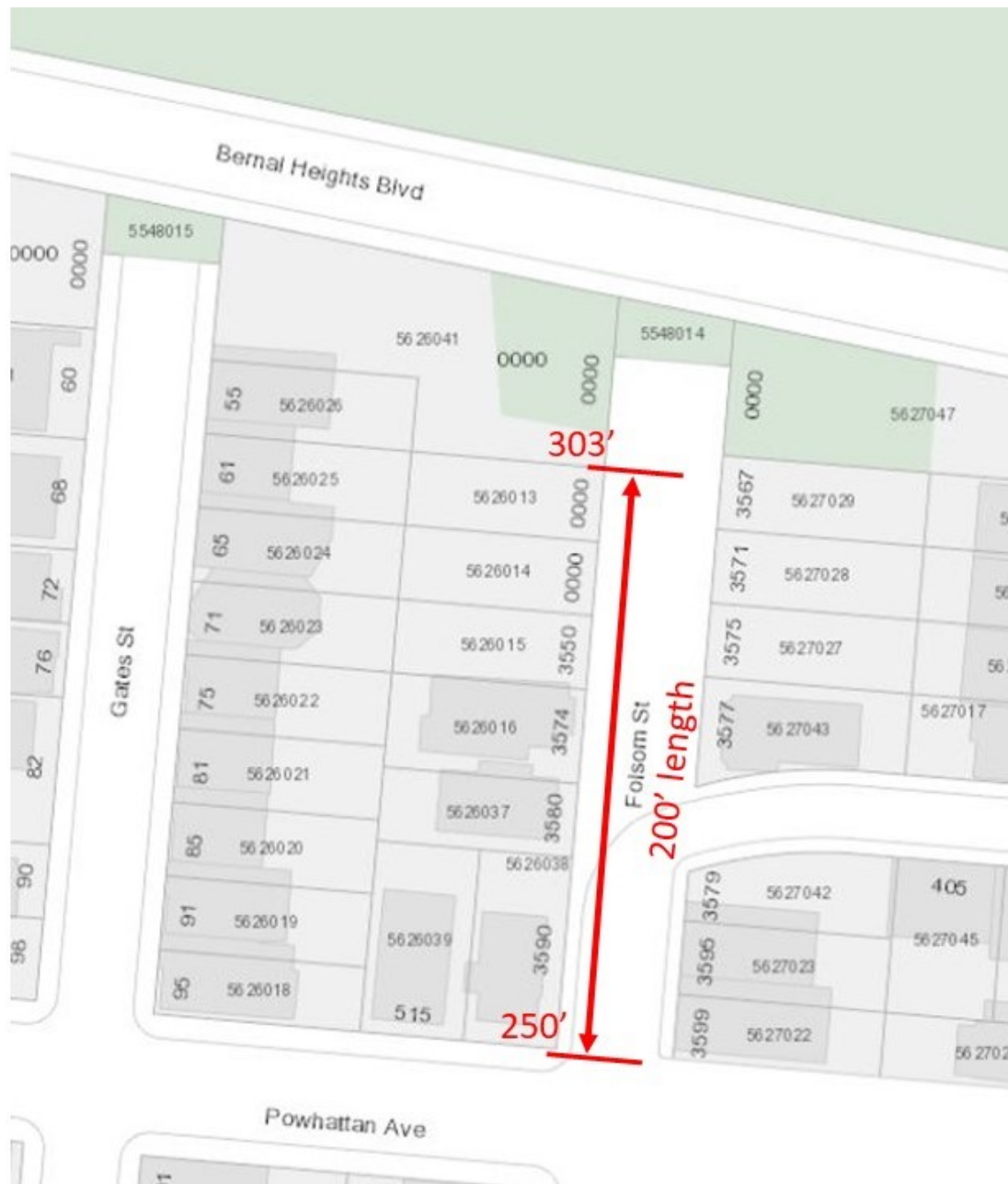
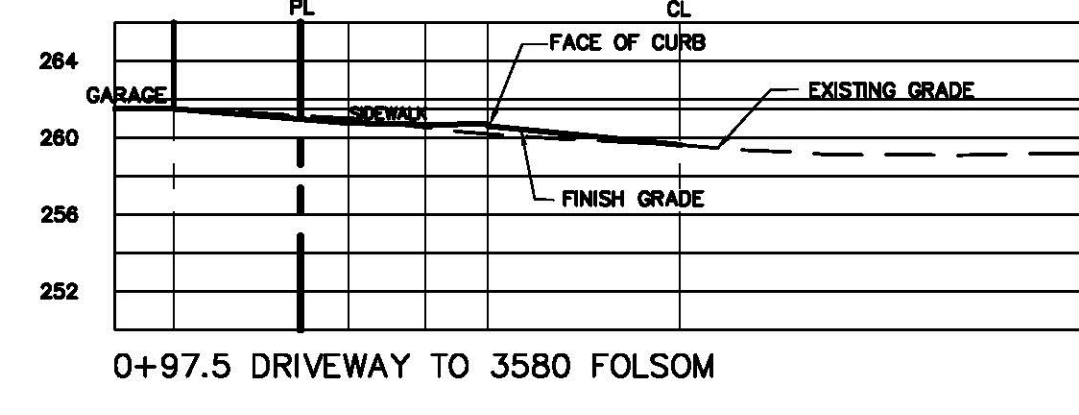
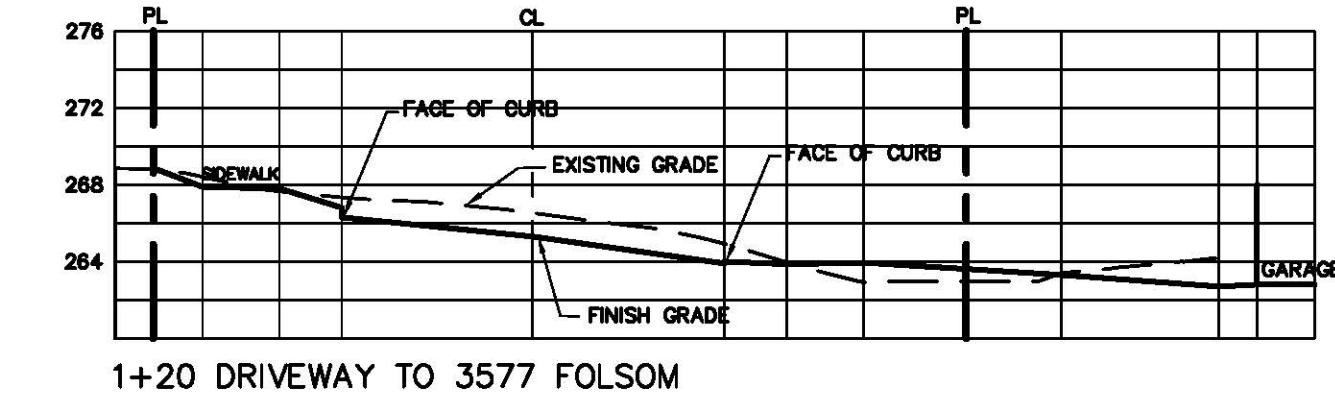
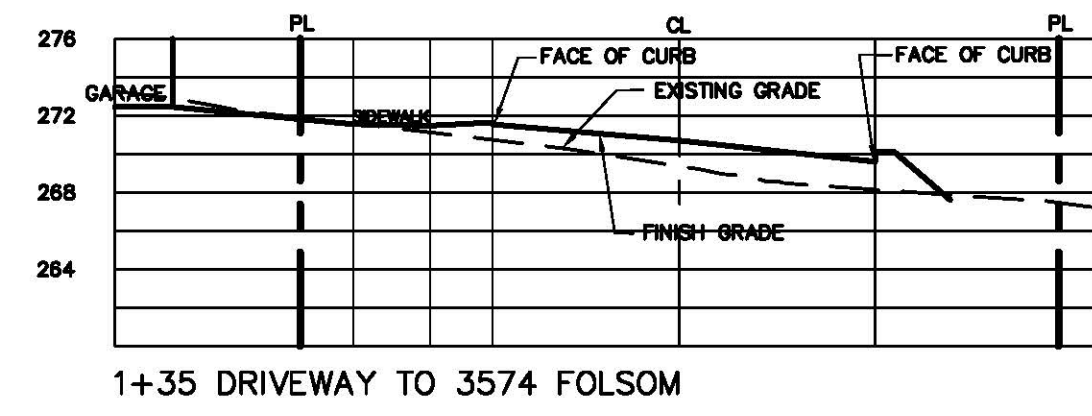
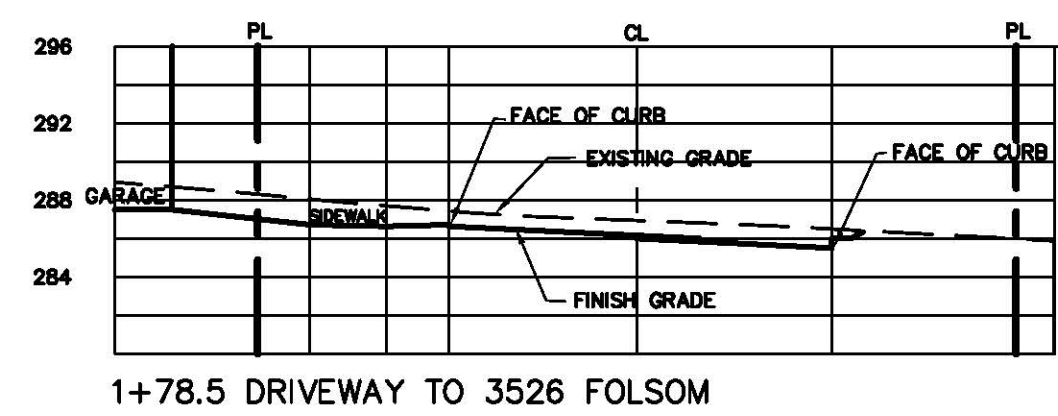
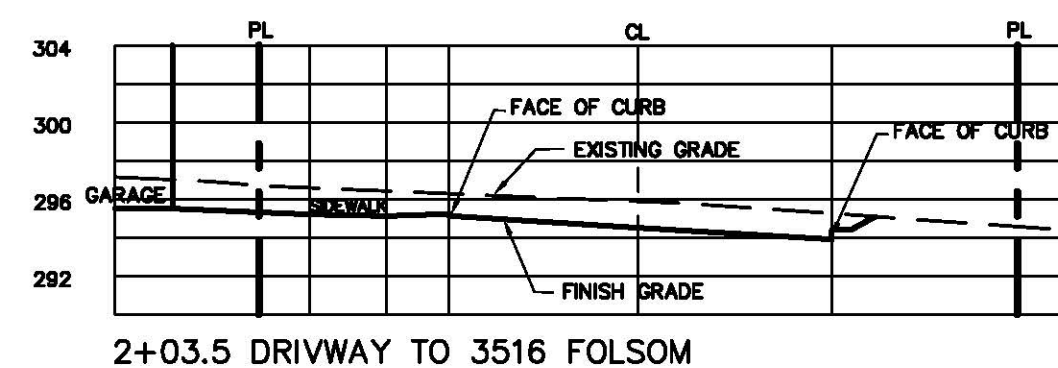
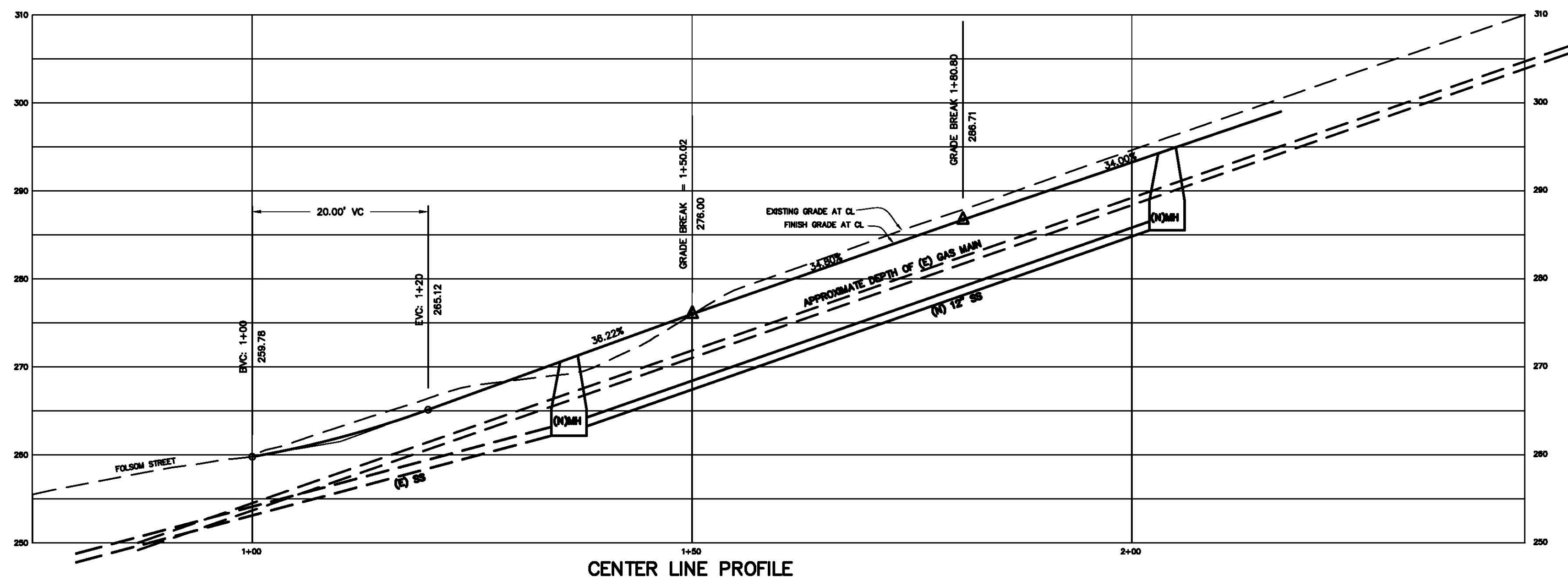


Figure 2: Slope of Folsom Street North of Powhattan Avenue with Project Implementation

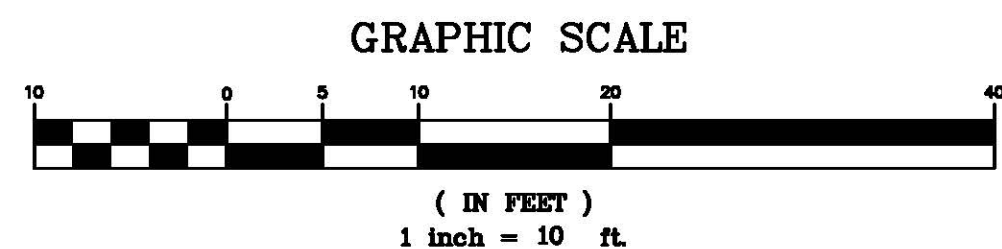




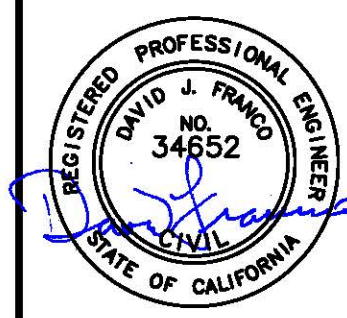
STREET CROSS SECTION  
THROUGH EXISTING & PROPOSED DRIVEWAYS



- LEGEND
- BO BLOW OFF
  - BVC BEGIN VERTICAL CURVE
  - CL CENTER LINE
  - CO CLEAN OUT
  - ELEV ELEVATION
  - EVC END VERTICAL CURVE
  - FL FLOW LINE
  - G GAS
  - GV GAS VALVE
  - INV INVERT
  - JT JOINT SERVICE TRENCH
  - MH MAN HOLE
  - PL PROPERTY LINE
  - STA STATION
  - SS SEWER SANITARY & STORM
  - TC TOP OF CURB
  - VC VERTICAL CURVE
  - W WATER
  - WM WATER METER
  - WV WATER VALVE



DAVID J. FRANCO  
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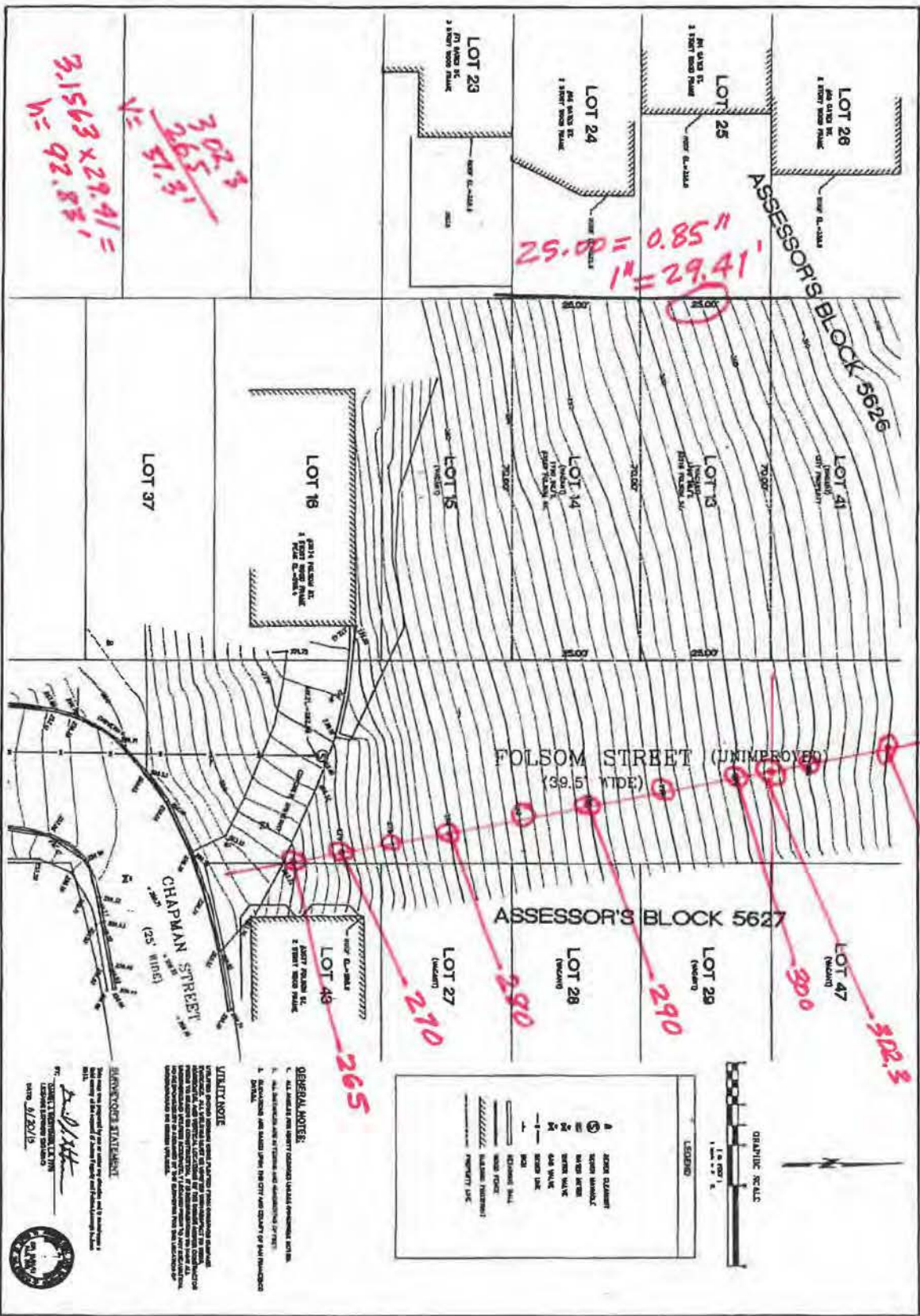
3516 & 3526 FOLSOM STREET  
STREET AND UTILITY IMPROVEMENT PLAN  
SAN FRANCISCO, CALIFORNIA

PROFIE  
& CROSS  
SECTIONS  
PLAN

DRAWING	FOLSOMCIVIL
F.B. NO.	NA
SCALE	1" = 10'
DATE	AUGUST 2016
REVISIONS	
SHEET NO.	3 OF 4
JOB NO.	F14-373

C1.0





$$\frac{37.3}{92.83} = 40.3\%$$

$$\tan^{-1} 0.4026 = 22.0^\circ$$

	<b>SITE SURVEY</b> 3618 AND 3626 FOLSOM STREET LOTS 11 AND 12 OF ASSASSOR'S BLOCK 5626 SAN FRANCISCO, CALIFORNIA	SURVEY DATE: 6/20/2017 DRAWN BY: D.A.V. CHECKED BY: D.A.V. SCALE: P.S.	NO. DATE COMMENTS 150251	JOB NO. 150251	
	THIS DOCUMENT IS THE PROPERTY OF W&S SURVEYORS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF W&S SURVEYORS.				



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [BOS Legislation, \(BOS\)](#)  
**Subject:** FW: BOS File No. 200800 - Planning Dept Case No. 2013.1383ENV  
**Date:** Tuesday, September 15, 2020 11:27:34 AM  
**Attachments:** [2020.09.14 RP Summary Letter to BOS.pdf](#)  
[2020.09.14 Viani LTR.pdf](#)

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**From:** Chandni Mistry <chandni@zfplaw.com>  
**Sent:** Tuesday, September 15, 2020 10:59 AM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Cc:** Yee, Norman (BOS) <norman.yee@sfgov.org>; Ryan Patterson <ryan@zfplaw.com>  
**Subject:** BOS File No. 200800 - Planning Dept Case No. 2013.1383ENV

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Good morning,

Please find attached two letters regarding the above-referenced file for 3516-3526 Folsom Street.

Kind regards,

Chandni Mistry  
Administrative Assistant  
Zacks, Freedman & Patterson, PC  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Telephone: (415) 956-8100  
Facsimile: (415) 288-9755  
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September 14, 2020

**VIA U.S. MAIL AND EMAIL**

President Norman Yee  
San Francisco Board of Supervisors  
% Angela Calvillo, Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102  
[Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org)

Re: Appeal of CEQA Revised Final Mitigated Negative Declaration  
BOS File No. 200800 - Planning Dept. Case No. 2013.1383ENV  
3516 and 3526 Folsom Street

**Summary: Unresolved Issues and Unmitigated Environmental Impacts**

Dear President Yee and Supervisors:

Our office represents Marilyn Waterman, one of the neighbors opposing the above-captioned project due to its unmitigated risk of serious environmental/public safety impacts. Given the large number of expert reports we have filed to date, we would like to present a short summary of open issues for your convenience.<sup>1</sup>

**I. SUMMARY OF OUTSTANDING ISSUES**

**A. PG&E's new response relies on old, defective reports, and carries the reports' deficiencies forward without fixing them.**

1. The reports are not site-specific and fail to consider the unique risk factors affecting Line 109 at this location, including the steep slope, 90-degree angle, and 30' pine tree that grew atop the pipeline at the project site.
2. The reports analyzed an incomplete project description, omitting particularly significant vibrational risk factors associated with the proposed street construction.<sup>2</sup>

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<sup>1</sup> This list presents a few important issues and is not exhaustive.

<sup>2</sup> An "accurate, stable and finite project description is the sine qua non of an informative and legally sufficient" CEQA document. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) By contrast, an "unstable project description draws a red herring across the path of public input." (*Id.* at pp. 197–198.)

3. In addition to PG&E relying on these defective reports, the RFMND *itself* is based on the reports.

B. Mitigation measures are improperly deferred – to be created *after* the Project is approved.

1. PG&E admits that its analysis omits consideration of vibration from the tracked heavy equipment required for street construction. PG&E states that it will evaluate this risk later – meaning that its analysis is materially incomplete.
2. SFFD’s recent letter likewise improperly defers mitigation measures. It states that SFFD will conduct review meetings after the Project is approved. But the purpose of these meetings is to implement the RFMND, not to correct its deficiencies. These deficiencies must be corrected *now* as part of the environmental review process.

C. PG&E’s new response relies on analyses that are not included in the Administrative Record as evidence.

1. PG&E bases its safety determination on analyses that are not in the record, and it refuses to provide these analyses for review and verification. This means the Appellant’s experts cannot verify PG&E’s unsubstantiated claims – and neither can the City.
2. PG&E, the Planning Department, and the project sponsors have repeatedly failed to acknowledge and mitigate serious Project risks. They are not entitled to a presumption that all risks have been mitigated, especially given that the Project’s environmental approvals have already been invalidated three times.

D. The RFMND does not comply with the clear requirements of BOS Motion No. M17-152.

1. The Planning Department failed to “enlist an independent qualified expert to . . . prepare a Vibration Management Plan.” Instead, Planning allowed the project sponsors to hire their own consultant to prepare the plan. This is not a new, independent expert hired by Planning as required by the Board’s Motion; it is the project sponsors’ same consulting firm that wrote the previous (revoked) FMND.
2. The RFMND’s Emergency Evaluation and Evacuation Plan is patently dangerous. It was created by the project sponsor himself, rather than by a qualified professional. The 300’ radius is incorrect (it should be at least 547’), and it directs evacuees into harm’s way.

## II. LEGAL STANDARD

This year, the California Court of Appeal upheld the revocation of an MND and required an EIR, *inter alia*, because mitigation measures were improperly deferred. The legal standard is clear:

If there [is] substantial evidence that the proposed project *might* have a significant environmental impact, **evidence to the contrary is not sufficient** to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it [can] be “fairly argued” that the project might have a significant environmental impact. . . . The fair argument standard thus creates a **low threshold for requiring an EIR**, reflecting the legislative preference for resolving doubts in favor of environmental review.

(Save the Agoura Cornell Knoll v. City of Agoura Hills (2020) 46 Cal.App.5th 665, 675–676, reh'g denied (Apr. 10, 2020), review denied (June 24, 2020); internal citations and quotations omitted; emph. added.)

In other words, the Board of Supervisors’ task is *not* to weigh the two sides’ evidence and decide who has the better argument. Rather, the RFMND “cannot be upheld if there is *any* substantial evidence in record from which it can fairly be argued that [the] project *might* have significant environmental impact, **notwithstanding that there is also evidence to [the] contrary.**” (Mitigated Negative Declaration, 8 Cal. Real Est. § 26:12 (Miller & Starr CA Real Estate 4th ed.) at fn. 3; italics original; bold added.)

The project sponsors’ attorneys agree: “[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.**” (Project Sponsor’s Brief, July 31, 2020, p. 2, quoting Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1601-02, emph. added.)

Their attorneys also cite Public Resources Code § 21064.5: a mitigated negative declaration is only allowed if mitigation measures “would avoid the effects or mitigate the effects **to a point where clearly no significant effect on the environment would occur**, and (2) **there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.**” (Pub. Res. Code § 21064.5, cited in Project Sponsor’s Brief, July 31, 2020, p. 2.)

The Appellant has clearly met its legal burden, and an EIR is clearly required.



### III. CONCLUSION

The record contains voluminous substantial evidence – including numerous reports from qualified independent experts covering multiple disciplines – demonstrating an unacceptable likelihood of catastrophic pipeline failure. This evidence raises a “fair argument” necessitating the preparation of an EIR. As a matter of law, the project sponsor’s evidence cannot refute the requirement for an EIR. (Save the Agoura Cornell Knoll v. City of Agoura Hills, *supra*.)

At best, the RFMND “improperly defers”<sup>3</sup> the formulation of mitigation measures to some future date *after* project approval – when it is too late. At worst, the RFMND creates invalid pipeline vibration thresholds and emergency measures that threaten many, many lives. The RFMND must be revoked.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



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Ryan J. Patterson

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<sup>3</sup> Save the Agoura Cornell Knoll v. City of Agoura Hills (2020) 46 Cal.App.5th 665, 701, reh'g denied (Apr. 10, 2020), review denied (June 24, 2020).

SP VIANI P.E.  
2014 Equestrian Way  
Pilot Hill, CA 95664  
Phone: 916-952-8503  
spviani@aol.com

## SP VIANI P.E.

**September 14, 2020**

**Wes Crail, P.E.  
Pacific Gas & Electric Company  
6030 West Oaks | Rocklin, CA | 95765**

**Subject: San Francisco City and County (CCSF) Planning Case No. 2013.1383ENV Building Permit Application Nos. 2013.12.16.4318 and 2013.12.16.4322 3516 and 3526 Folsom Street- Appeal of CEQA Revised Final Mitigated Negative Declaration**

**Dear Mr. Crail:**

Thank you for your response dated September 11, 2020 to my earlier correspondence. The San Francisco City and County Board of Supervisors had granted a continuance to the proceedings to determine if PG&E has remediated problems with previous analyses they had performed or were merely “kicking the can down the road.” In particular, we have been asked to review the new documents provided, and the volume of material, 315 pages, sent last week, was enlightening. We have taken this time to seriously study that information, information in your September 11, 2020 response and information in the administrative file related to the presence and impacts of PG&E pipeline L109. We are grateful for this pause and the ability to confirm our concerns are valid. However, we are disappointed that PG&E has not taken this nearly one month opportunity to re-evaluate their position that based on the “...requirements, construction method and engineering review special considerations were not triggered in regards to ground movement.” If evaluated correctly, this conclusion would be different.

Based on our review, there are still serious problems associated with the pipeline and PG&E has not properly evaluated them. A more detailed analysis is presented below. It is not meant to represent a point by point rebuttal, rather it is meant to show that defects in previous analyses have been carried forward and there is insufficient material in the record to demonstrate that a thorough analysis was performed. Moreover, we are concerned the CEQA process has not been allowed to flesh out the entire body of project details, rather it has been subverted to provide piecemeal information in a haphazard manner.

PG&E indicated their analyses show the Takeuchi TB175 excavator and Bobcat excavator, both tracked equipment and not wheeled, are specifically excluded from the table showing allowable loads to be safe using an external analysis; however,

this analyses was not provided, and no justification showing that the table is appropriate for tracked equipment was given. The vibratory equipment needed for the work was not evaluated at all by PG&E during its internal and external reviews despite being listed as a potential piece of equipment and provided as documentation. These experts did not evaluate this vibratory equipment and as such, the analyses is defective. The very real possibility exists for vibration levels from a vibratory compactor to exceed 2 in/sec and reach as high as 44 in/sec based on our calculations using the protocols provided by PG&E and Planning's experts. The documents provided show this has been ignored by PG&E and never evaluated, thereby constituting a defective analyses. No evidence of the tracked equipment being proven acceptable on a steep, 40% slope, by analyses was found. The Table referenced would apply to loads on level soil only.

The documents show information provided to your structural expert, Mr. Eidinger PE/SE, was not site-specific or pipeline-specific, and was incomplete. For example, the pipe diameter is 26" not 24", has a 90-degree bend, is sloped at a 35° angle and the pipe is API 5L-Grade B steel pipe, not X42 as Mr. Eidinger was provided and evaluated. The earthquake acceleration (PGA) he used was 0.30, while a site specific PGA of 0.744 g needed to be evaluated. However, it is unknown if even the 0.30 PGA had been used for evaluation purposes as no calculations were provided. PG&E has referenced having internal reports but has not made them available for review and independent verification, stating instead that "the CPUC has oversight responsibility." No information indicating a geotechnical review has been performed was in the file documents provided. Given the high seismic activity in the San Francisco Bay Area, that would have been necessary and prudent, to say the least.

Some potential improvements are located within 10 feet of the pipeline, such as proposed trees, stairs and streetlights. PG&E could not have conducted an engineering review of the proposed street, road, improvements and driveways because no engineered plans exist for them. So how can PG&E approve the current plans when a subsequent engineering review of completed drawings could deny them or significantly alter them?

PG&E indicated they have reviewed previous patrol, leak survey, cathodic protection, and integrity assessments, all of which reflect that the pipeline is operating normally with no issues. But it then refused to provide these records for independent review, claiming the CPUC has oversight responsibility of maintenance activities. This statement has never before appeared in this administrative record for the MND and is contrary to public policy, as none of this information can be considered a trade secret.

The condition, depth and location of the pipeline can affect the design of roads and driveways. According to PIPA Report, Appendix D, "Guidance in Determining if Proposed Land Use of the Right-of-Way is Acceptable," "Additional cover, concrete, or other forms of mechanical protection may be required to ensure the transmission pipeline does not incur damage as a result of this use and traffic loads." Based on our analysis, road construction will likely adversely impact the 2

ft. protective radius around the pipeline with excessively high vibrations. How will this be addressed? The design will need to be revised.

As an engineer and contractor, we fully support the “call before you dig-811” program and have participated in the program you identified in California Government Code 4216. However, given the severity of a calamitous event associated with a 26 inch diameter high pressure pipeline, “call before you dig” is insufficient here, and a large monopolistic utility must be more than merely aligned with it; it must be proactive with safety as its primary concern. Using the 811 process only provides a general location and cannot be relied upon to be completely accurate despite PG&E using maps, electronic pipeline locating equipment, and pothole data to determine the line location. At best, the location data is approximate in all directions, X, Y and Z (depth), and any design produced using this data is preliminary and should be considered unmitigated until verified.

Despite all the above, special considerations were not triggered regarding ground movement from either equipment vibration or seismic activity. According to PG&E, special considerations have consistently not been triggered throughout this project. PG&E never disclosed that potential vibration damage from equipment, with disastrous consequences, could occur. Our independent experts found this to be the case from the same data set provided by PG&E.

More evaluation is needed and PG&E should have used their time to review all information and verify their assumptions were indeed valid. In summary, given the nature and location of the pipeline, we are concerned that PG&E has not properly evaluated the project nor issued requirements commensurate with the level of risk the project presents. They have not refuted our expert’s conclusions and have not shown us evidence to support their contentions. Since PG&E is still on probation for felony actions related to San Bruno, verification (not assumptions) via a proper, full and complete evaluation, must be performed; we do not see that in the record.

If you need further information, please call me at 916-952-8503.

Sincerely,



Steven P. Viani P.E.  
Civil Engineer C30965 exp. 3/31/22





**From:** [Beinart, Amy \(BOS\)](#)  
**To:** [Pollak, Josh \(CPC\): BOS Legislation \(BOS\)](#)  
**Subject:** 3516 Folsom Additional Information  
**Date:** Tuesday, September 15, 2020 9:58:21 AM

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For the file...

<<<<<>>>>>

Amy Beinart | Legislative Aide/Chief of Staff

Office of Supervisor Hillary Ronen

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<https://sfbos.org/supervisor-ronen-district-9>

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**From:** Kathy Angus <[kathyangus@gmail.com](mailto:kathyangus@gmail.com)>  
**Sent:** Tuesday, September 15, 2020 8:08:38 AM  
**To:** Beinart, Amy (BOS) <[amy.beinart@sfgov.org](mailto:amy.beinart@sfgov.org)>  
**Subject:** Additional Information

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Here's information I thought might be of interest:

**From the NTSB Accident Report on the San Bruno Pipeline Explosion:**

PG&E's pipeline integrity management program, which should have ensured the safety of the system, was deficient and ineffective because it—

- Was based on incomplete and inaccurate pipeline information.
- Did not consider the design and materials contribution to the risk of a pipeline failure.
- Failed to consider the presence of previously identified welded seam cracks as part of its risk assessment.
- Resulted in the selection of an examination method that could not detect welded seam defects.
- Led to internal assessments of the program that were superficial and resulted in no improvements.

<https://www.aga.org/sites/default/files/legacy-assets/our-issues/safety/pipeline/safety/Technicalreports/Documents/Final%20Report%20of%20NTSB%20San%20Bruno%20Accident%20Investigation.pdf>

The attached article refers to the problems of a 3 hour response time.

Kathy

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Kathy Angus

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Kathy Angus

**From:** [Lisa Garrigues](#)  
**To:** [Ronen, Hillary](#)  
**Cc:** [Board of Supervisors, \(BOS\)](#); [kathyangus@gmail.com](mailto:kathyangus@gmail.com)  
**Subject:** File No. 200800, 3516/3526 Folsom St. Hearing  
**Date:** Monday, September 14, 2020 11:18:13 AM

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Dear Hilary Rosen and Board of Supervisors,

I am asking you to deny the RFMND and replace it with a full Environmental Impact Report because the risks of a possible PG&E accident are deadly and the current plan lacks site-specific access, evacuation plan and protocols in the event of an accident. It has also not been reviewed by an 'independent and qualified expert' as required.

Please protect our neighborhood.

Thank you,

Lisa Garrigues  
242 Prentiss St.  
San Francisco, CA 94110

**From:** [Gail Newman](#)  
**To:** [Ronen, Hillary](#)  
**Cc:** [Board of Supervisors, \(BOS\)](#); [kathyangus@gmail.com](mailto:kathyangus@gmail.com)  
**Subject:** RE: FILE No. 200800, 3516 and 3526 Folsom St. Hearing 9/1/2020  
**Date:** Monday, September 14, 2020 3:25:42 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

The Honorable Hillary Ronen, Supervisor District 9  
Board of Supervisors  
City Hall  
San Francisco, CA 94102

Dear Supervisor Ronen;

Thank you for your leadership in demanding that Public Safety be put at the forefront of the proposed development at 3516 and 3526 Folsom Street. I have lived at 3574 Folsom Street for 39 years, and with my husband for 36 years. We are 25 feet away from the proposed development

I have reviewed the documents. Neither the Project Sponsor, nor the Planning Department, nor the Fire Department have met their obligation to insure Public Safety. This is really scary.

For example, the Evacuation Plan is not site-specific. It has us walking into and next to poisonous gas. This makes no sense. It is potentially hazardous. The Vibration Management Plan is similarly inadequate, flawed and misleading.

For these reasons, I urge you to reject the Final Mitigated Negative Declaration. Please vote with the overwhelming majority of the neighbors. Please vote for a full and complete Environmental Impact Report.

Thank you for your time, your attention, and your strong support of neighborhood issues.

Gail Newman

**From:** [carleton Hoffman](#)  
**To:** [Board of Supervisors, \(BOS\)](#); [kathyangus@gmail.com](mailto:kathyangus@gmail.com)  
**Subject:** 3516 and 3526 Folsom  
**Date:** Monday, September 14, 2020 9:05:52 PM

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hello,  
as a resident of Bernal Heights since 1972 i am concerned about the proposed construction in this area over a high-pressure PG&E pipeline.  
please see to it that this project is postponed until a full environmental impact study can be made.  
thank you,

Carleton Hoffman,

Peralta Ave.



**From:** [Kathy Angus](#)  
**To:** [Board of Supervisors, \(BOS\)](#); [Beinart, Amy \(BOS\)](#); [Ronen, Hillary](#)  
**Subject:** Appellant Materials for File #200800  
**Date:** Tuesday, September 15, 2020 7:16:58 AM  
**Attachments:** [spv9-14lettertowacrail-1.pdf](#)  
[RP Summary Letter to BOS - executed 9.14.20.pdf](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Attached find letters from Ryan Patterson and Steve Viani regarding the project at 3516 and 3526 Folsom Street.

Please include these in the file.

Best regards,

Kathy Angus

South Slope Organization

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Kathy Angus

SP VIANI P.E.  
2014 Equestrian Way  
Pilot Hill, CA 95664  
Phone: 916-952-8503  
spviani@aol.com

## SP VIANI P.E.

**September 14, 2020**

**Wes Crail, P.E.  
Pacific Gas & Electric Company  
6030 West Oaks | Rocklin, CA | 95765**

**Subject: San Francisco City and County (CCSF) Planning Case No. 2013.1383ENV Building Permit Application Nos. 2013.12.16.4318 and 2013.12.16.4322 3516 and 3526 Folsom Street- Appeal of CEQA Revised Final Mitigated Negative Declaration**

**Dear Mr. Crail:**

Thank you for your response dated September 11, 2020 to my earlier correspondence. The San Francisco City and County Board of Supervisors had granted a continuance to the proceedings to determine if PG&E has remediated problems with previous analyses they had performed or were merely “kicking the can down the road.” In particular, we have been asked to review the new documents provided, and the volume of material, 315 pages, sent last week, was enlightening. We have taken this time to seriously study that information, information in your September 11, 2020 response and information in the administrative file related to the presence and impacts of PG&E pipeline L109. We are grateful for this pause and the ability to confirm our concerns are valid. However, we are disappointed that PG&E has not taken this nearly one month opportunity to re-evaluate their position that based on the “...requirements, construction method and engineering review special considerations were not triggered in regards to ground movement.” If evaluated correctly, this conclusion would be different.

Based on our review, there are still serious problems associated with the pipeline and PG&E has not properly evaluated them. A more detailed analysis is presented below. It is not meant to represent a point by point rebuttal, rather it is meant to show that defects in previous analyses have been carried forward and there is insufficient material in the record to demonstrate that a thorough analysis was performed. Moreover, we are concerned the CEQA process has not been allowed to flesh out the entire body of project details, rather it has been subverted to provide piecemeal information in a haphazard manner.

PG&E indicated their analyses show the Takeuchi TB175 excavator and Bobcat excavator, both tracked equipment and not wheeled, are specifically excluded from the table showing allowable loads to be safe using an external analysis; however,

this analyses was not provided, and no justification showing that the table is appropriate for tracked equipment was given. The vibratory equipment needed for the work was not evaluated at all by PG&E during its internal and external reviews despite being listed as a potential piece of equipment and provided as documentation. These experts did not evaluate this vibratory equipment and as such, the analyses is defective. The very real possibility exists for vibration levels from a vibratory compactor to exceed 2 in/sec and reach as high as 44 in/sec based on our calculations using the protocols provided by PG&E and Planning's experts. The documents provided show this has been ignored by PG&E and never evaluated, thereby constituting a defective analyses. No evidence of the tracked equipment being proven acceptable on a steep, 40% slope, by analyses was found. The Table referenced would apply to loads on level soil only.

The documents show information provided to your structural expert, Mr. Eidinger PE/SE, was not site-specific or pipeline-specific, and was incomplete. For example, the pipe diameter is 26" not 24", has a 90-degree bend, is sloped at a 35° angle and the pipe is API 5L-Grade B steel pipe, not X42 as Mr. Eidinger was provided and evaluated. The earthquake acceleration (PGA) he used was 0.30, while a site specific PGA of 0.744 g needed to be evaluated. However, it is unknown if even the 0.30 PGA had been used for evaluation purposes as no calculations were provided. PG&E has referenced having internal reports but has not made them available for review and independent verification, stating instead that "the CPUC has oversight responsibility." No information indicating a geotechnical review has been performed was in the file documents provided. Given the high seismic activity in the San Francisco Bay Area, that would have been necessary and prudent, to say the least.

Some potential improvements are located within 10 feet of the pipeline, such as proposed trees, stairs and streetlights. PG&E could not have conducted an engineering review of the proposed street, road, improvements and driveways because no engineered plans exist for them. So how can PG&E approve the current plans when a subsequent engineering review of completed drawings could deny them or significantly alter them?

PG&E indicated they have reviewed previous patrol, leak survey, cathodic protection, and integrity assessments, all of which reflect that the pipeline is operating normally with no issues. But it then refused to provide these records for independent review, claiming the CPUC has oversight responsibility of maintenance activities. This statement has never before appeared in this administrative record for the MND and is contrary to public policy, as none of this information can be considered a trade secret.

The condition, depth and location of the pipeline can affect the design of roads and driveways. According to PIPA Report, Appendix D, "Guidance in Determining if Proposed Land Use of the Right-of-Way is Acceptable," "Additional cover, concrete, or other forms of mechanical protection may be required to ensure the transmission pipeline does not incur damage as a result of this use and traffic loads." Based on our analysis, road construction will likely adversely impact the 2

ft. protective radius around the pipeline with excessively high vibrations. How will this be addressed? The design will need to be revised.

As an engineer and contractor, we fully support the “call before you dig-811” program and have participated in the program you identified in California Government Code 4216. However, given the severity of a calamitous event associated with a 26 inch diameter high pressure pipeline, “call before you dig” is insufficient here, and a large monopolistic utility must be more than merely aligned with it; it must be proactive with safety as its primary concern. Using the 811 process only provides a general location and cannot be relied upon to be completely accurate despite PG&E using maps, electronic pipeline locating equipment, and pothole data to determine the line location. At best, the location data is approximate in all directions, X, Y and Z (depth), and any design produced using this data is preliminary and should be considered unmitigated until verified.

Despite all the above, special considerations were not triggered regarding ground movement from either equipment vibration or seismic activity. According to PG&E, special considerations have consistently not been triggered throughout this project. PG&E never disclosed that potential vibration damage from equipment, with disastrous consequences, could occur. Our independent experts found this to be the case from the same data set provided by PG&E.

More evaluation is needed and PG&E should have used their time to review all information and verify their assumptions were indeed valid. In summary, given the nature and location of the pipeline, we are concerned that PG&E has not properly evaluated the project nor issued requirements commensurate with the level of risk the project presents. They have not refuted our expert’s conclusions and have not shown us evidence to support their contentions. Since PG&E is still on probation for felony actions related to San Bruno, verification (not assumptions) via a proper, full and complete evaluation, must be performed; we do not see that in the record.

If you need further information, please call me at 916-952-8503.

Sincerely,



Steven P. Viani P.E.  
Civil Engineer C30965 exp. 3/31/22





September 14, 2020

**VIA U.S. MAIL AND EMAIL**

President Norman Yee  
San Francisco Board of Supervisors  
% Angela Calvillo, Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102  
[Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org)

Re: Appeal of CEQA Revised Final Mitigated Negative Declaration  
BOS File No. 200800 - Planning Dept. Case No. 2013.1383ENV  
3516 and 3526 Folsom Street

**Summary: Unresolved Issues and Unmitigated Environmental Impacts**

Dear President Yee and Supervisors:

Our office represents Marilyn Waterman, one of the neighbors opposing the above-captioned project due to its unmitigated risk of serious environmental/public safety impacts. Given the large number of expert reports we have filed to date, we would like to present a short summary of open issues for your convenience.<sup>1</sup>

**I. SUMMARY OF OUTSTANDING ISSUES**

**A. PG&E's new response relies on old, defective reports, and carries the reports' deficiencies forward without fixing them.**

1. The reports are not site-specific and fail to consider the unique risk factors affecting Line 109 at this location, including the steep slope, 90-degree angle, and 30' pine tree that grew atop the pipeline at the project site.
2. The reports analyzed an incomplete project description, omitting particularly significant vibrational risk factors associated with the proposed street construction.<sup>2</sup>

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<sup>1</sup> This list presents a few important issues and is not exhaustive.

<sup>2</sup> An "accurate, stable and finite project description is the sine qua non of an informative and legally sufficient" CEQA document. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) By contrast, an "unstable project description draws a red herring across the path of public input." (*Id.* at pp. 197–198.)

3. In addition to PG&E relying on these defective reports, the RFMND *itself* is based on the reports.

B. Mitigation measures are improperly deferred – to be created *after* the Project is approved.

1. PG&E admits that its analysis omits consideration of vibration from the tracked heavy equipment required for street construction. PG&E states that it will evaluate this risk later – meaning that its analysis is materially incomplete.
2. SFFD’s recent letter likewise improperly defers mitigation measures. It states that SFFD will conduct review meetings after the Project is approved. But the purpose of these meetings is to implement the RFMND, not to correct its deficiencies. These deficiencies must be corrected *now* as part of the environmental review process.

C. PG&E’s new response relies on analyses that are not included in the Administrative Record as evidence.

1. PG&E bases its safety determination on analyses that are not in the record, and it refuses to provide these analyses for review and verification. This means the Appellant’s experts cannot verify PG&E’s unsubstantiated claims – and neither can the City.
2. PG&E, the Planning Department, and the project sponsors have repeatedly failed to acknowledge and mitigate serious Project risks. They are not entitled to a presumption that all risks have been mitigated, especially given that the Project’s environmental approvals have already been invalidated three times.

D. The RFMND does not comply with the clear requirements of BOS Motion No. M17-152.

1. The Planning Department failed to “enlist an independent qualified expert to . . . prepare a Vibration Management Plan.” Instead, Planning allowed the project sponsors to hire their own consultant to prepare the plan. This is not a new, independent expert hired by Planning as required by the Board’s Motion; it is the project sponsors’ same consulting firm that wrote the previous (revoked) FMND.
2. The RFMND’s Emergency Evaluation and Evacuation Plan is patently dangerous. It was created by the project sponsor himself, rather than by a qualified professional. The 300’ radius is incorrect (it should be at least 547’), and it directs evacuees into harm’s way.

## II. LEGAL STANDARD

This year, the California Court of Appeal upheld the revocation of an MND and required an EIR, *inter alia*, because mitigation measures were improperly deferred. The legal standard is clear:

If there [is] substantial evidence that the proposed project *might* have a significant environmental impact, **evidence to the contrary is not sufficient** to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it [can] be “fairly argued” that the project might have a significant environmental impact. . . . The fair argument standard thus creates a **low threshold for requiring an EIR**, reflecting the legislative preference for resolving doubts in favor of environmental review.

(Save the Agoura Cornell Knoll v. City of Agoura Hills (2020) 46 Cal.App.5th 665, 675–676, reh'g denied (Apr. 10, 2020), review denied (June 24, 2020); internal citations and quotations omitted; emph. added.)

In other words, the Board of Supervisors’ task is *not* to weigh the two sides’ evidence and decide who has the better argument. Rather, the RFMND “cannot be upheld if there is *any* substantial evidence in record from which it can fairly be argued that [the] project *might* have significant environmental impact, **notwithstanding that there is also evidence to [the] contrary.**” (Mitigated Negative Declaration, 8 Cal. Real Est. § 26:12 (Miller & Starr CA Real Estate 4th ed.) at fn. 3; italics original; bold added.)

The project sponsors’ attorneys agree: “[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.**” (Project Sponsor’s Brief, July 31, 2020, p. 2, quoting Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1601-02, emph. added.)

Their attorneys also cite Public Resources Code § 21064.5: a mitigated negative declaration is only allowed if mitigation measures “would avoid the effects or mitigate the effects **to a point where clearly no significant effect on the environment would occur**, and (2) **there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.**” (Pub. Res. Code § 21064.5, cited in Project Sponsor’s Brief, July 31, 2020, p. 2.)

The Appellant has clearly met its legal burden, and an EIR is clearly required.

### III. CONCLUSION

The record contains voluminous substantial evidence – including numerous reports from qualified independent experts covering multiple disciplines – demonstrating an unacceptable likelihood of catastrophic pipeline failure. This evidence raises a “fair argument” necessitating the preparation of an EIR. As a matter of law, the project sponsor’s evidence cannot refute the requirement for an EIR. (Save the Agoura Cornell Knoll v. City of Agoura Hills, *supra*.)

At best, the RFMND “improperly defers”<sup>3</sup> the formulation of mitigation measures to some future date *after* project approval – when it is too late. At worst, the RFMND creates invalid pipeline vibration thresholds and emergency measures that threaten many, many lives. The RFMND must be revoked.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



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Ryan J. Patterson

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<sup>3</sup> Save the Agoura Cornell Knoll v. City of Agoura Hills (2020) 46 Cal.App.5th 665, 701, reh'g denied (Apr. 10, 2020), review denied (June 24, 2020).