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21 October 2021

Ms. Angela Calvino
Clerk of the Board of Supervisors
City and County of San Francisco
via email: BOS.Legislation@sfgov.org
BoardofSupervisors@sfgov.org

Subject: *CEQA Appeal of Environmental Impact Report Certification
Supplemental Brief*
469 Stevenson Street Project
2017-014833ENV
Certification Date 29 July 2021

Dear Ms. Calvino:

I submit this supplemental brief for the Board of Supervisors on behalf of the Yerba Buena Neighborhood Consortium.

Planning Commission Split Vote. The Planning Commission approval was split both as to the EIR adequacy and as to the project approval. Commissioners Young and Imperial voted no as to both. At the approval hearing in July Commissioner Fung announced that his vote to approve the project was “reluctant.” He said that the project was the most dense he’d ever seen, via maximizing state ordinances, and was also the “bulkiest” out of all projects he’s seen. He pointed out that the Planning Commissioners had made comments during the early project presentations, but “obviously, comments weren’t listened to at all.” He did not think the project conformed with all requirements of the conditional use process. Before the vote, Commissioner Fung said that if he votes yes it will not be that he is happy with the project; he feels the legal constraints of the density bonus legislation.

Conditional Use Authorization Findings Cannot Be Made. The Conditional Use Findings (Planning Commission Motion 20963) recite:

Planning Code Section 303(c). The Planning Code establishes criteria for the Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

A. The Proposed use or feature, at the size and intensity contemplated, and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

There is much evidence provided during the Planning Commission hearing including from Commissioner [architect] Kathrin Moore, David Wu of the Filipino Cultural Heritage District, and Architectural historian Katherine Petrin representing the Boards of San Francisco Heritage and Friends of Mint Plaza, that the EIR failed to adequately assess project impacts to the historic district, the likely displacement and gentrification of the area based on hundreds of units of market rate housing, the transportation impacts on alleys Jessie and Stevenson, analysis of the project's environmental setting, and substantial adverse changes caused to adjacent historic resources. Concerns were also raised as to the project applicant's failure to determine what type of foundation would be used for the project. The architect explained that until the building design is decided, it would be too early to consider, for example, if piles are to be needed. Commissioner Moore pointed out that just such a foundation issue had been brought to the Commission that same morning. While the project architect then assured the Commission that it should "have no fear!" because he would make sure the building is safe, CEQA requires more. Please see attached letter from John Elberling on this subject.

We ask that the Board of Supervisors on de novo review rely on such information to find that the EIR is inadequate, as there is plenty of factual basis, or alternatively decline to make the Conditional Use Authorization Finding "A" due to incompatibility of the project with the neighborhood — and declare the project exempt from CEQA for purposes of denial.

The same issues apply to the required Conditional Use Finding B:

B. The proposed project will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety, or convenience of those residing or working the area.

The Board of Supervisors surely should act within its authorized land use discretion to require that the EIR analyze the project's consistency with the Conditional Use requirements discussed above, including Planning Code Compliance 101.1(b) and eight priority planning policies.

The EIR is Inadequate. For the reasons stated above, the EIR analysis is inadequate. As long as there is fact-based evidence of the inadequacies pointed out by the Commissioners and the concerned public, the Board of Supervisors' determination of EIR inadequacy will be supported.

CEQA Compliance re Import of Increased Shadow on Mint Plaza. The only “unavoidable significant environmental impact” that the EIR concedes and the Planning Commission accepts in its findings is the project’s increased shadow on Mint Plaza. While it is not quantified as a large percentage of increase, the significant impact triggers CEQA’s legal mandates. The City must adopt feasible mitigation measures and project alternatives to avoid the significant project impact.

Mint Plaza is an important City asset. The EIR considered a reduced-size Planning Code-compliant project alternative with 346 units (instead of 495) that would fully avoid the shadow impact on Mint Plaza. The Commission made a finding – which the BOS can change — that the reduced-size alternative would be infeasible “because it would reduce the development program of the project.” (Findings at 22, 23.) That makes no sense. The Board of Supervisors could find that the general listed project objectives could be met by a reduced project. (See Objectives, Findings at 7.) By definition, a reduced size project would be smaller and achieve less benefit; that is not encompassed by CEQA’s definition of infeasible. Yet that is the basis for findings of infeasibility. (Findings at 28.) We ask that the Board of Supervisors decline to approve the project as proposed because there is a feasible alternative.

There is an additional finding that a reduced 346-unit project would be economically infeasible. However, the finding admits at the same time that the project itself is also economically infeasible! (Findings at 27.) It pronounces that the applicant’s expert thinks that economic conditions will likely change enough in the future to make the project feasible, but that the reduced-size project is not expected to become economically feasible. That is speculative. Also: there was an additional project alternative that was rejected for analysis in the EIR, one story taller than the reduced-size alternative — that also would have no shadow impacts. It appears the economic feasibility of that alternative was not studied, so that its rejection is insupportable.

Please grant the appeal.

Sincerely yours,



Susan Brandt-Hawley
Attorney for YBNC

cc: Lisa Gibson, Environmental Review Officer, lisa.gibson@sfgov.org

The Yerba Buena Neighborhood Consortium

c/o 230 Fourth St. San Francisco, CA 94103

San Francisco Board of Supervisors
City Hall
San Francisco CA 94102

October 20, 2021

RE: 469 Stevenson FEIR Project Appeal
2017-014833ENV

Supervisors:

One of several significant issues that are the basis for our appeal of the certification of this project's FEIR is its failure to fully evaluate potential seismic issues for this project. In fact, there was NO evaluation of the project's seismic risks in the FEIR at all! That is because the project's Initial Study concluded incorrectly that there could be no potential significant impact, and thus the D/FEIR did not address the issue at all.

E.15 Geology and Soils

Topic:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
15. GEOLOGY AND SOILS. Would the project:					
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The building department would review the project's final structural and foundation plans (construction documents) to ensure the proposed project conforms with the measures recommended in the site-specific geotechnical reports and the recommendations made by the engineering design review team as required by Information Sheet 5-18, Administrative Bulletin-082, and Administrative Bulletin-083. Therefore, the proposed project would not increase risks associated with ground shaking in the event of an earthquake, and impacts would be less than significant. No mitigation measures are required. This topic will not be discussed in the EIR.

This is absurd on its face. The South of Market is indisputably one of the most seismically vulnerable areas in the City. The project site is located on the edges of the former Mission Bay marshes that covered much of SOMA before post-Gold Rush landfills. The Initial Study itself described the situation:

The following discussions are based on the information and findings provided in the *preliminary geotechnical investigation* completed by Langan Engineering and Environmental Services, Inc on August 18, 2017.¹¹⁰ The preliminary geotechnical investigation relied on available subsurface information in the site vicinity to develop preliminary conclusions and recommendations. Pursuant to the geotechnical report, the specific geologic units beneath the project site are as follows (from shallowest to deepest):

- *Sandy Fill*: Sandy fill depths across the project site range from approximately 5 to 10 feet thick and 35 to 40 feet bgs.
- *Native Sand*: Native sand under the project site is medium dense and is approximately 20 feet thick and 35 to 40 feet bgs.
- *Marsh Deposit*: Marsh deposits on the site range from 5 to 15 feet thick and 35 to 40 feet bgs.
- *Sand*: The dense to very dense sand below the marsh deposit is of the Colma formation and is approximately 40 feet thick and 80 feet bgs.
- *Old Bay Clay*: The old bay clay on the site consists of stiff to hard sandy clay and is approximately 5 to 15 feet thick. The top of the old bay clay layer is located at approximately 80 to 90 feet bgs.
- *Bedrock*: Bedrock is likely located at approximately 200 feet bgs.

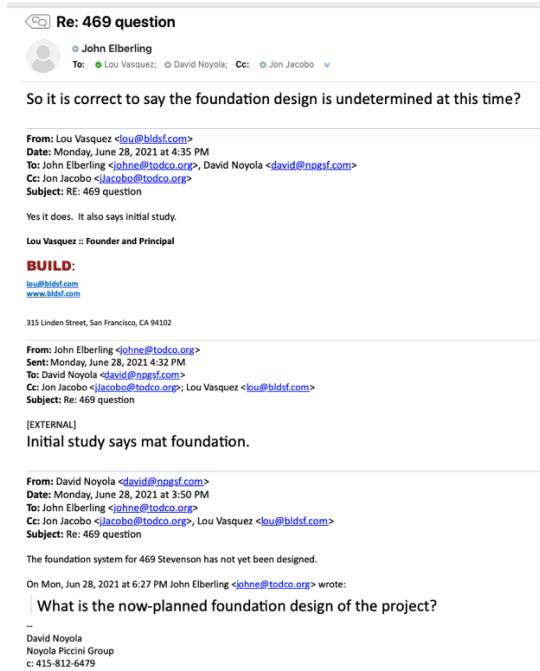
Seismic Ground Shaking

The project site is located within a 30-mile radius of several major active faults, including the San Andreas (7.5 miles), Hayward (10.6 miles), and San Gregorio (11.2 miles) faults. According to the U.S. Geologic Survey (USGS), the overall probability of a magnitude 6.7 or greater earthquake to occur in the San Francisco Bay Area in the next thirty years is 72 percent.¹¹³ The Preliminary Geotechnical Report estimated strong to very strong shaking is expected to occur during the project's lifetime. The proposed project would be required to comply with the provisions of the San Francisco Building, California Building Code, and the recommendations of the design-level geotechnical study in accordance with section 1803 of the San Francisco Building Code to address impacts from seismic ground shaking.

According to the preliminary geotechnical report, the loose to medium dense sandy fill, native sand, and marsh deposit, that likely extend 35 to 40 feet bgs, are not suitable for supporting the proposed project. Therefore, the proposed building and three-level below-grade parking structure may be supported on a mat foundation provided the soil beneath the mat is improved to the top of the dense to very dense sand. Ground improvement may include soil-cement-columns or drilled displaced columns extending at least 10 feet into the dense sand below the marsh deposit. Alternatively, the structure may be supported on deep foundations gaining support in dense to very dense sand beneath the marsh deposit. A mat or a structurally supported slab can be used with deep foundations.¹¹¹ As such, to construct the three-level below-grade parking structure, and a 10-foot thick mat, it is anticipated a 55-foot excavation is required for the proposed project.

But this Initial Study “evaluation” is not even based on any actual geotechnical data for the project site itself! It is just a summary of other soil test information for other nearby locations for other projects in the past. Given the known hazards of SOMA soils, this failure to fully evaluate the site based on actual tests of the site’s soils is by itself a fatal flaw for the adequacy of the project’s environmental review process. How could they know? They can’t. They don’t.

Moreover, the project’s foundation design used by the Initial Study for this “evaluation” is no longer the foundation design of the approved project! There will no longer be a three-story garage under the building – it cost too much! So when the project and its FEIR were approved by the Planning Commission no one actually knew what the foundation design would be! Including the developer!!



Here is just some of what should have been considered in an adequate CEQA project evaluation. First, the project site is located on the edge of the pre-Gold Rush Mission Bay marshlands. Second, the project site is less than 400 feet away from TODCO’s Bayanihan House SRO property at Sixth and Mission Streets, for which we have a complete 2001 geotechnical soil test/analysis:



What we learned in 2001 is that the subsurface marsh-edge soil conditions in this area are particularly problematic for building foundation design, because the load-bearing capacity of these soils changes rapidly horizontally across even a single lot. Half of Bayanihan House’s below-grade soils were relatively firm, but the other half nearer the marsh were softer. This presented a grave risk to the existing building above – possible Differential Settlement during an earthquake!! One part of the building might sink a foot or more than the other, which could lead to major structural failures and even building collapse as occurred during the 1906 earthquake to multiple buildings on Sixth Street. So to deal with that, we in fact installed a new pile foundation beneath the existing building as part of its 2004 substantial rehabilitation.

There is no way that a similarly-situated 469 Stevenson project can possibly be constructed safely except on a deep pile foundation too – especially a mammoth 25 story tower! But the Planning Commission did not have any of this geotechnical information before it when it approved the project’s FEIR and development – because the entire topic was omitted from the project’s EIR to start with! Thus no requirements were included in the project’s Conditions of Approval, except the boilerplate requirement for a building permit based on some future study. And the public also had no way to address this issue, lacking an actual geotechnical analysis for the site at that time. This is clearly legally inadequate CEQA project review.

There is another South of Market project in San Francisco whose D/FEIR likewise failed to consider the potential for differential settlement on the project site, and thus was not required to install a pile foundation to firm soil deep below grade when it was approved by the Planning Commission – the Millenium Tower. So today it is San Francisco’s “Leaning Tower of Transbay.”

Our community and city do not want another Leaning Tower of Sixth Street too!

Please uphold our Appeal of the 469 Stevenson Final Environmental Impact Report and make them do it right!

John Elberling
Manager

Cc: Susan Brandt-Hawley