

File No. 101031

Committee Item No. _____

Board Item No. 24

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 09/28/10

Cmte Board

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OTHER (Use back side if additional space is needed)

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| <input type="checkbox"/> | <input type="checkbox"/> | <u>Appeal of Final Environmental Impact Report for 222-2nd Street</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Department's Response to the Appeal Letter</u> |
| | | <u>(Attachments A, D-F)</u> |
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Completed by: Joy Lamug

Date 09/23/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.


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SUE C. HESTOR
Attorney at Law
870 Market Street, Suite 1128 · San Francisco, CA 94102
(415) 362-2778 · FAX (415) 362-8048

RECEIVED
BOARD OF SUPERVISORS
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2010 SEP - 1 PM 3:38
BY 

September 1, 2010

David Chiu, President
Board of Supervisors
City Hall
San Francisco CA 94102

**APPEAL OF EIR - 222 Second Street
2006. 1106E - EIR certified 8/12/10 Motion 18166**

Dear President Chiu:

The 246 Second Street Owners Association hereby appeals the certification of the EIR for the proposed 222 Second Street office project. Members of that Association and many others, commented on the Draft EIR, and also challenged the sufficiency of the Comments and Responses. Among those members are:

Armand Der-Hacobian, Thomas Yamamoto, Penny Eardley, and their attorney, Sue Hestor.

The grounds of the appeal include the following:

The Information on shadows cast by the project is grossly insufficient in that the project violates at least 2 separate standards to protect adjacent areas from shadows.

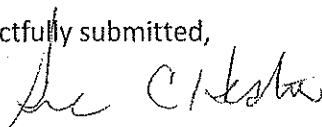
The EIR analyzes alternatives which have been designed by Project Sponsor to deny the Commission with the ability to approve a project that totally complies with the Code requirements and policies governing this site.

Insufficient information and analysis is provided on about the impacts of the project on the adjacent conservation district.

The description on the area ignores the transition - encouraged by City policy - to a mixed use area that includes families with children and understates the impacts of the project on those residents.

This project requires a change in the height limit for part of the site from 150' to 350.'

Respectfully submitted,



Sue C. Hestor
Attorney for 246 Second Street Owners Association

cc: Michael Jacinto, Planning Department
Sarah B. Jones, Planning Department
Andrew Junius, Reuben & Junius
Armand Der- Hacobian
Thomas Yamamoto



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 18166

HEARING DATE: August 12, 2010

Case No.: 2006.1106E
 Project Address: 222 Second Street Office Project
 Zoning: C-3-O (SD) Downtown Office (Special Development) District
 350-S / 150-S Height and Bulk Districts
 Block/Lot: 3735 / 63
 Project Sponsor: Tishman Speyer
 Andrew Junius, Attorney
 One Bush Street, Suite 400
 San Francisco, CA 94104
 (415) 567-9000
 Staff Contact: Michael Jacinto – (415) 575-9033
 michael.jacinto@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED OFFICE PROJECT AT 222 SECOND STREET WITH 430,650 GROSS SQUARE FEET OF OFFICE SPACE, APPROXIMATELY 4,963 SQUARE FEET OF GROUND-FLOOR RETAIL SPACE; AND APPROXIMATELY 27,932 SQUARE FEET OF PARKING AREA LOCATED ON TWO BELOW GROUND PARKING LEVELS, WITH APPROXIMATELY 54 PARKING SPACES, WITH THE CAPACITY FOR 80 VEHICLES WITH VALET PARKING.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2006.1106E, 222 Second Street (hereinafter "Project"), based upon the following findings:

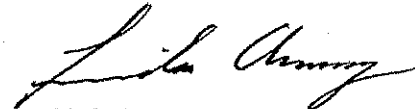
1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
 - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on January 27, 2010.
 - B. On January 27, 2010 the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

Motion No. 18166
Hearing Date: August 12, 2010

CASE NO. 2006.1106E
222 Second Street

- A. Will result in a significant, project-specific impact at the intersection of Harrison/Second Streets, which would contribute to a roughly 16 percent increase in left-turn volumes at this intersection with resultant increases in level of service delays that would constitute a significant and unavoidable impact to traffic; and,
- B. Will make considerable contributions to future 2025 cumulative traffic growth at the intersections of Howard/Third Streets; Howard/New Montgomery Streets; Folsom/Second Streets; Harrison/Second Streets, which is considered a significant and adverse impact.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of August 12, 2010.



Linda Avery
Commission Secretary

AYES: Antonini, Borden, Lee, Miguel, Olague, Sugaya
NOES: Moore
ABSENT:
ADOPTED: August 12, 2010

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, September 28, 2010

Time: 4:00 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

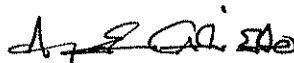
Subject: Hearing of persons interested in or objecting to the decision of the Planning Commission's August 12, 2010, Certification of a Final Environmental Impact Report identified as Planning Case No. 2006.1106E, through its Motion No. 18166, for a proposed office project located at 222-2nd Street with 430,650 gross square feet of office space, approximately 4,963 square feet of ground-floor retail space; and approximately 27,932 square feet of parking area located on two below ground parking levels, with approximately 54 parking spaces, with the capacity for 80 vehicles with valet parking within the C-3-O (SD) Downtown Office (Special Development) District and 350-S/150-S Height and Bulk Districts, Lot No. 063, in Assessor's Block No. 3735. (District 6) (Appellant: Sue C. Hestor, on behalf of 246-2nd Street Owners Association)

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written

mailed - 9/17/10

comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, September 23, 2010.



Angela Calvillo
Clerk of the Board

DATED: September 17, 2010

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

September 3, 2010

Sue C. Hestor, Esq.
Attorney at Law
870 Market Street, Suite 1128
San Francisco, CA 94102

Subject: Appeal of Final Environmental Impact Report - 222 - 2nd Street

Dear Ms. Hestor:

The Office of the Clerk of the Board is in receipt of your appeal filed on September 1, 2010, from the decision of the Planning Commission's August 12, 2010, Certification of a Final Environmental Impact Report identified as Planning Case No. 2006.1106E, through its Motion No. 18166, for a proposed office project located at 222 - 2nd Street.

A hearing date has been scheduled on **Tuesday, September 28, 2010, at 4:00 p.m.**, at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

If you have any questions, please feel free to contact Legislative Deputy Director, Rick Caldeira, at (415) 554-7711 or Legislative Clerk, Joy Lamug, at (415) 554-7712.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

c:

Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
Scott Sanchez, Acting Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department
Nannie Turrell, Planning Department
AnMarie Rodgers, Planning Department
Tara Sullivan, Planning Department
Brett Bollinger, Planning Department
Michael Jacinto, Planning Department
Project Sponsor, Tishman Speyer, c/o Andrew Junius, Esq., Reuben & Junius LLP, One Bush Street, Suite 600, San Francisco, CA 94104

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REUBEN & JUNIUS LLP

File 101031

BOJ-1
CA-2
COB-1

September 20, 2010

Delivered by Hand

Ms. Angela Calvillo
San Francisco Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

BY _____

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BOARD OF SUPERVISORS
SAN FRANCISCO

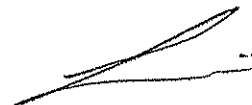
**Re: 222 Second Street
Project Sponsor's Brief in Support of EIR
Board of Supervisors Hearing Date: September 28, 2010
Our File No.: 6250.14**

Dear Ms. Calvillo:

On behalf of Andrew Junius, enclosed please find an original and 17 copies of the brief in opposition to the appeal filed against Planning Commission's certification of EIR for the 222 Second Street project. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

REUBEN & JUNIUS, LLP



Lenore DiPrima
Legal Assistant

Encls.

cc: Andrew Junius
John Kevlin

One Bush Street, Suite 600
San Francisco, CA 94104

tel: 415-567-9000
fax: 415-399-9480

www.reubenlaw.com

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Tuija I. Catalano | David Silverman | Sheryl Reuben¹ | Jay F. Drake
Daniel A. Frattin | Stephen R. Miller | Lindsay M. Petrone | John Kevlin | Alison L. Krumbain | John McInerney III²

¹ Also admitted in New York ² Of Counsel

File 101031

REUBEN & JUNIUS_{LLP}

September 20, 2010

Delivered by Hand

Mr. David Chiu, President
San Francisco Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2009 SEP 20 PM 2:15
BY *MS*

**Re: 222 Second Street
Project Sponsor's Brief in Support of EIR
Board of Supervisors Hearing Date: September 28, 2010
Our File No.: 6250.14**

Dear President Chiu and Supervisors:

This office represents TS 222 Second Street, LLP ("Project Sponsor"), the owner and developer of the site located at the corner of Second and Howard Streets in downtown San Francisco. We respectfully submit this brief in support of the certified EIR and against the appeal that has been filed.

This site represents one of the last premier Class-A office sites in the City. The Project Sponsor has proposed a LEED Gold, 350-foot tall, 430,650 square-foot glass-skinned office tower. The Project will include over 8,600 square feet of indoor public open space at the base of the building fronting on the prominent corner of Second and Howard Streets. This open space will provide a unique and needed public amenity at this important downtown corner.

Appellant has presented no evidence at all that challenges the EIR. For the reasons set forth below, we ask that this Board reject the appeal and affirm the EIR.

Background

The Project Sponsor acquired this site in 2006 and immediately began processing entitlements for an office project. This site currently consists of a surface parking lot that accommodates approximately 64 independently accessible parking spaces. This site has been a parking lot for approximately 20 years. A 290,000 square-foot office building was approved in 1989, but was never constructed.

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Tuija I. Catalano | David Silverman | Sheryl Reuben¹ | Jay F. Drake
Daniel A. Frattin | Stephen R. Miller | Lindsay Petrone | John Kevlin | Alison L. Krumbein | John McInerney²

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www.reubenlaw.com

1. Also admitted in New York 2. Of Counsel

The Draft EIR was published on January 27, 2010. On March 4, 2010, the Planning Commission conducted a hearing to accept public comments on the Draft EIR and for the members of the Commission to comment on the Draft EIR. On August 12, 2010, the Commission held a hearing to consider certification of the EIR. At the hearing, the Planning Commission found that the FEIR was adequate, accurate and objective, and that the Comments and Responses document contained no significant revisions to the Draft EIR. The Commission certified the completion of the FEIR in compliance with CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.

The EIR Satisfies CEQA

The EIR has adequately addressed all CEQA issues. Appellants have provided no evidence, and virtually no argument, that the document is inadequate.

Shadow.

It is not clear what shadow argument Appellant is making. At the Planning Commission, Appellant argued that the EIR did not adequately analyze certain shadows cast on sidewalks. Appellant is attempting to confuse certain requirements related to casting shadow on specific downtown sidewalks as regulated by the Planning Code (specifically Section 146(a))¹, with the EIR's job to determine the effect, if any, of new shadow cast on open space and recreational areas (i.e. parks). The CEQA criterion for significant shadow effects is whether the Project

¹ By way of background, Section 146(a) requires new structures to avoid penetrating a sun access plane defined by an angle sloping away from the street above a stipulated height at the property line as set forth in Table 146. Section 309(a)(3) permits exceptions from the Section 146 shadow requirements. Section 146(a) applies to the west side of Second Street, from Market Street to a point 300 feet south of Folsom Street.

Section 146 requires that a building be within an envelope that slopes away from the street at an angle of 62 degrees beginning at 132 feet above grade. A compliant project would be about 100,000 square feet smaller, and result in an awkward "wedge" shaped building. Such a small building, on such a prime site, would be difficult to finance and would not be the best use of the site.

An exception may be granted if "the shadow created by the penetration of the plane is deemed insignificant because of the limited extent or duration of the shadow or because of the limited public use of the shadowed space." Uncontroverted evidence was presented to the Planning Commission that the new shadow cast by the Project on the sidewalk was insignificant. The portion of Second Street affected by this portion of Section 146 extends from Market Street to 300 feet south of Folsom Street. The increased shading occurs at various times during the year, and at various portions of this stretch of sidewalk. Many existing buildings on the west side of Second Street already shade major portions of this sidewalk throughout the year. Shadow calculations were done using the same methodology used for Prop K park studies. The study determined that the Project causes an increase of only 0.6592% in shadow based on annual available sunlight (AAS). This minor increase in shade on a single sidewalk in the central business district that is already heavily shaded by other buildings was considered insignificant and the exception was granted.

would “substantially affect the usability of other existing publicly accessible open space or outdoor recreation facilities or other public areas” (see Draft EIR p. 136).

The EIR provides exhaustive discussion of all shadow issues, including Section 146 compliance. The EIR correctly states that Section 146 compliance is a Planning Code issue. Exceptions may be granted by the Planning Commission. In this case, the Planning Commission did grant the exception. If Appellants wished to challenge this determination, they needed to appeal the Section 309 determination (that includes the exceptions) to the Board of Appeals. That appeal deadline has passed, and so the exception determination is final.

The EIR adequately addresses the physical environmental effects of the proposed Project with respect to shadow, as is required by CEQA. The EIR confirms there are no shadows cast on Prop K parks, and that the shadows cast on other public open spaces (including Yerba Buena Gardens, and a number of Downtown privately owned public open spaces is less than significant. No evidence has been offered to the contrary.

Alternatives.

Appellant complains that the alternatives in the EIR are insufficient. CEQA requires that alternatives be evaluated that would “avoid or substantially lessen any of the significant effects of the Project,” yet “would feasibly attain most of the basic objectives of the project” (CEQA Guidelines Section 15126.6(a)). The range of alternatives evaluated in the EIR more than satisfies the CEQA requirements. Five separate alternatives were analyzed:

- A. No Project Alternative
- B. Compliance with Planning Code Bulk Limits Alternative
- C. Reduced Project Alternative
- D. Preservation Alternative
- E. No Rezoning Alternative

These alternatives satisfy CEQA, and provide the range of reasonable and logical alternatives.

As the Project requested (and was granted) bulk exceptions, the City required analysis of a bulk-compliant project (Alt. B) that could conceivably lessen the visual impacts of the Project.

A reduced project alternative (Alt. C) would reduce the size of the Project by 25%, lessening certain traffic impacts of the Project.

Even though staff determined the Project did not have a significant effect on historic resources in the vicinity, MEA required a preservation alternative (Alt. D) because of the proposed Project's adjacency both to an individual historical resource and to a conservation district included in Article 11 of the Planning Code, as well as the Project site's proximity to a historic district listed on the National Register of Historic Places.

Because the Project as proposed requires rezoning to increase the height limit on a portion of the Project site, the EIR evaluates an alternative (Alt. E) that would permit development of the same size building as included in the proposed Project but would not require the rezoning.

Preservation.

The EIR includes a detailed evaluation of historical resources (DEIR, Section IV.D, pp. 52 – 75). Analysis included preparation of a Historic Evaluation of the Project by Knapp Architects that specifically analyzed the potential effects of the Project on the adjacent historic building and the adjacent historic districts. This analysis did not identify any significant impacts on adjacent historical buildings, including the adjacent 631 Howard Street (William Volker) building, the Marine Firemen's Union Headquarters building, the New Montgomery–Second Street Conservation District, a historic district listed in Article 11 of the Planning Code, and the Second and Howard Streets National Register District, a historic district listed in the National Register of Historic Places. The Comments and Responses document (pp. C&R-40 – C&R-44) supplemented the evaluation by responding to the specific comments raised, including effects of project construction on the adjacent historic buildings and the compatibility of the proposed Project's scale, massing, and design on the adjacent and nearby historical resources. The Draft EIR also evaluated a preservation alternative, even though the EIR ultimately found no significant effect with respect to historical resources.

There is more than sufficient analysis of preservation issues in the EIR.

Economic and Public Benefits from the Project

In certifying the EIR and approving the Project, the Planning Commission adopted a Statement of Overriding Considerations ("SOC"). That process required the Commission to weigh the relative environmental impacts against identifiable benefits. Under CEQA, if the "specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.'" (CEQA Guidelines Section 15093(a)).

There are two transportation impacts which cannot be unmitigated, one that is project-specific (Harrison and Second intersection), and another non-project-specific impact (long-term contribution to traffic growth at several other intersections in the 2025 cumulative traffic

conditions). While these impacts will marginally increase traffic inconvenience at some point in the future, there are significant economic and social benefits that outweigh those effects.

The Project brings significant economic benefits to the City in the form of significant development fees, new property taxes, and new jobs. The Project is also a sustainable building, and will provide a major on-site public benefit in terms of new open space.

- Fees. The Project will pay significant development fees to fund a variety of City programs including contributions to the Downtown Park Fund, payment of the Transit Impact Development Fee, contributions to the Jobs, Housing Linkage Program, contributions to child care and public schools. In addition, a significant public artwork will be commissioned as part of the Project. **The total value of all of these development fees and exactions exceeds \$15,000,000 in benefits to the City.**
- Construction Jobs. During construction, the Project will provide much needed construction jobs and will employ as many as 300 union laborers per day with an average of 150 laborers per day over the two-year construction period. These will all be union jobs.
- Permanent Jobs. Once completed, the Project will provide space for up to 1,750 jobs, creating needed space for long term future job growth in the City, and providing additional revenues to the City through the payment of City payroll taxes.
- Property Taxes. The Project will generate significant new annual revenues to the City of approximately \$4,500,000 in property taxes paid into the City's General Fund.
- Open Space and Pedestrian Experience. The Project will maximize the quality of the pedestrian experience along both Howard and Second Streets. Currently, the site is occupied by a surface parking lot, a use that does not promote the City's Transit First objectives, and does not contribute to the urban fabric or to the pedestrian environment. The Project will include significant new public open space within the building at this important downtown corner. This space will include food uses open to the public, as well as public artwork, and public seating.
- LEED Gold. The Project will construct one of San Francisco's first major LEED Gold office buildings, thereby reducing the Project's carbon footprint and maximizing energy efficiency of the building.

- Green Infill. The Project promotes regional green policies by focusing significant new development within San Francisco's existing urban core. Such infill developments make use of existing transportation and other infrastructure while lessening the need for expanding the regional urban boundaries through greenfield development.
- Preservation Goals. The Project furthers the City's historic preservation goals by absorbing unused development potential from historic buildings throughout the C-3 District with the use of transferable development rights (TDR). The City's TDR Program promotes and facilitates the preservation of existing Downtown historic buildings by compensating owners of those buildings who are no longer able to develop the air space above their building. This unused development area is transferred from historic buildings into the C-3-O (SD) District and allows for the creation of additional Class A office space.

The Project Furthers the Goals of the Downtown Plan

Appellant claims that the EIR does not adequately address land use issues, or the alleged transition of this area from a commercial district to a mixed-use neighborhood with residents. There are certainly more people living Downtown today than ten years ago. But make no mistake the Downtown core remains the City's, and the Bay Area as a whole, business and commercial center. It is where the City must allow job growth, and where the General Plan and Downtown Plan say that such growth must be fostered and promoted.

The Project will provide significant new Class A office space at this prominent corner site, furthering the Downtown Plan's goals and objectives of concentrating office uses in the Central Business District ("CBD"). The Project is located within the C-3-O (SD) District, which district facilitates expansion of Downtown office space South of Market, and south of the traditional Downtown core, which is mostly built out.

The Project promotes a number of the objectives of the Downtown Plan including the following:

- Objective 1, where the Plan recognizes "The need to create jobs, specifically for San Franciscans, and to continue San Francisco's role as an international center of commerce and services. New jobs enhance these City functions, to expand employment opportunities, and to provide added tax resources, to make downtown growth at a reasonable scale and desirable course for the City."

- Objective 2, which states that “Almost two-thirds of the City’s new permanent jobs in recent years have been located in the Downtown Financial District. This growth, primarily in the finance, insurance, real estate activities, and business services, reflects the City’s strong competitive advantage in this sector. Since the office sector is the City’s major provider of employment opportunities, it is essential that’s its vitality remain at a high level.”

The Downtown CBD remains the primary economic engine of the City. That is where most of the jobs and transit infrastructure are located. The Downtown Plan prioritizes the continued construction of well-designed office buildings in this core district. The Project advances this important goal.

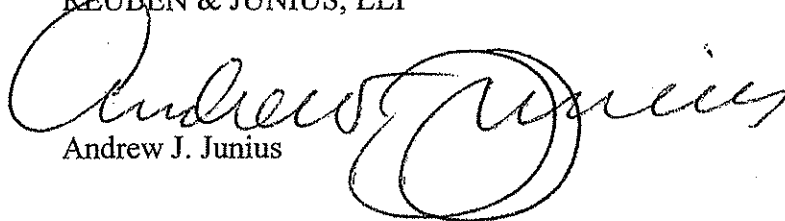
Conclusion

The Project represents a major opportunity for the City to ensure that this prime Downtown site is developed with a superior, Class-A office building that achieves LEED Gold and provides significant public benefits. Tishman Speyer Properties, who will be the prime developer for the Project, has recently achieved extraordinary results with projects at both The Infinity and 555 Mission Street. The Project at 222 Second Street will be no different.

Appellant has provided no evidence that would in any way call into question the sufficiency or adequacy of the EIR. We urge this Board to uphold the Planning Commission’s certification of the EIR.

Very truly yours,

REUBEN & JUNIUS, LLP



Andrew J. Junius

President David Chiu and Supervisors
San Francisco Board of Supervisors
September 20, 2010
Page 8

cc: Supervisor Michela Alioto-Pier
Supervisor John Avalos
Supervisor David Campos
Supervisor Carmen Chu
Supervisor Chris Daly
Supervisor Bevan Dufty
Supervisor Sean Elsbernd
Supervisor Eric Mar
Supervisor Sophie Maxwell
Supervisor Ross Mirkarimi
Angela Calvillo-Clerk of the Board
Michael Jacinto
Bill Wycko
Sarah Jones
Tishman Speyer Properties
Sue Hestor



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Appeal of EIR Certification 222 Second Street

DATE: September 21, 2010
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Bill Wycko, Environmental Review Officer – (415) 558-9048
 Sarah B. Jones, Case Supervisor– Planning Department (415) 575-9034
RE: BOS File No. 101031 [Planning/Building Case No. 2006.1106E]
 Appeal of Certification of an Environmental Impact Report (“EIR”) for
 222 Second Street
HEARING DATE: September 28, 2010
ATTACHMENTS:

- A. Draft Environmental Impact Report (delivered under separate cover)
- B. Comments and Responses Document (delivered under separate cover)
- C. Letter from Appellant Sue C. Hestor to Planning Commission concerning EIR certification (August 9, 2010), with Planning Department Major Environmental Analysis Division (MEA) staff responses included.
- D. Planning Commission Motion 18166 (EIR Certification)
- E. Planning Commission Motion 18167 (General Plan Amendment and CEQA Findings)
- F. Planning Commission Motion 18168 (Section 309)

PROJECT SPONSOR: Andrew Junius, Reuben & Junius LLP, on behalf of TS 222 Second Street LP (“Project Sponsor”)
APPELLANTS: Sue C. Hestor on behalf of the 246 Second Street Owners Association (“Appellants”)

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the “Board”) of the Planning Commission’s (the “Commission”) certification of an Environmental Impact Report pursuant to the California Environmental Quality Act (“CEQA Determination”) for a project at 222 Second Street (the “Project”).

The Planning Department (the “Department”), pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*, presented a final environmental impact report (“FEIR”) for the project at 222 Second Street for certification by the Commission. On August 12, 2010, the Commission certified the EIR, finding that the FEIR was adequate, accurate and fulfilled the City’s requirements pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the

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San Francisco Administrative Code. The Commission also adopted CEQA Findings, including a Statement of Overriding Considerations, prior to approving the project.

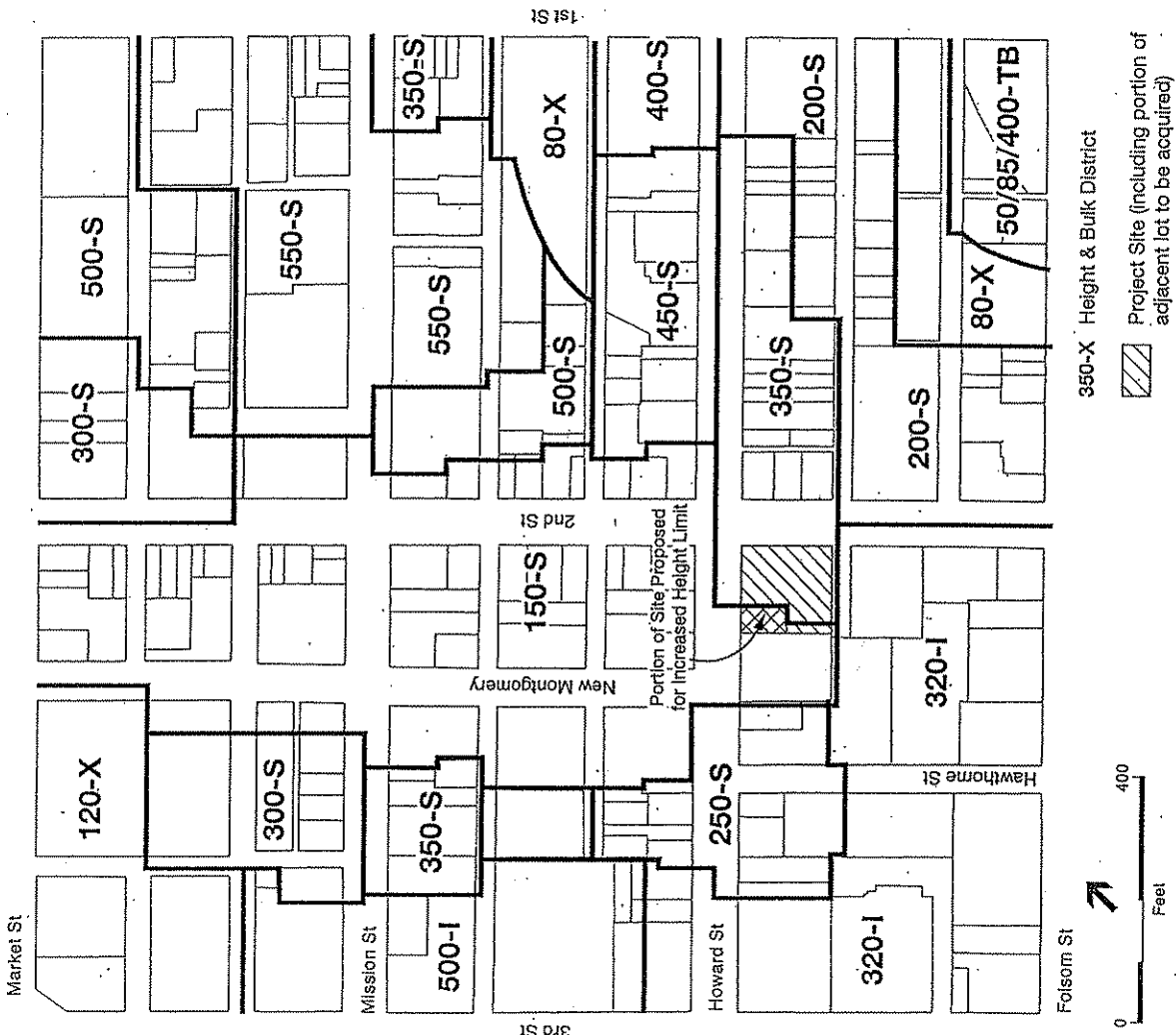
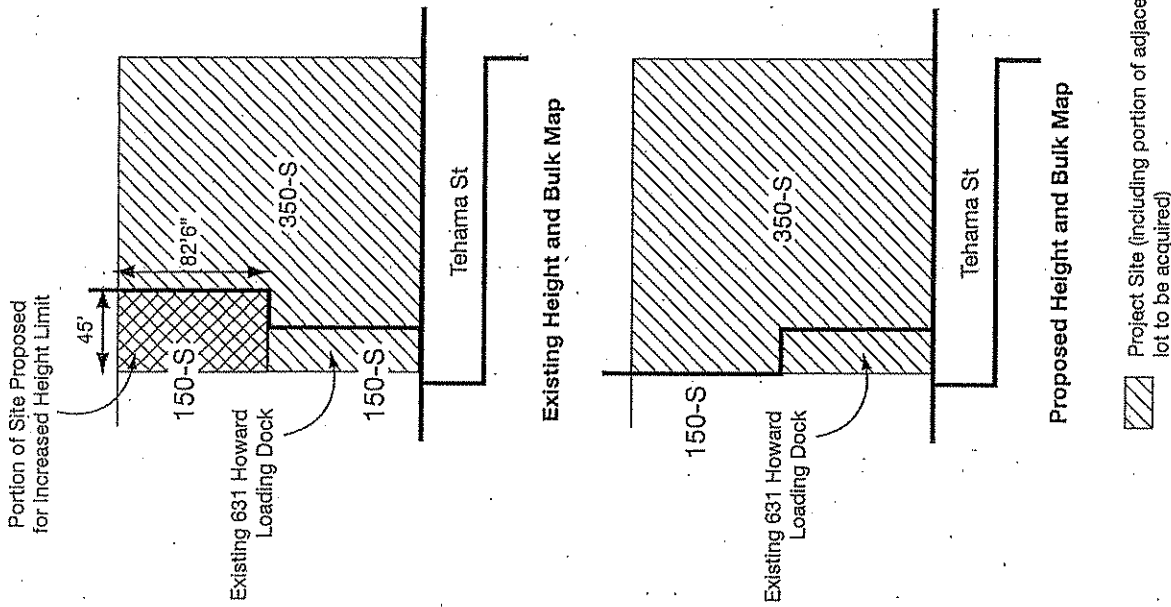
The decision before the Board is whether to uphold the Commission's decision to certify the EIR and deny the appeal, or to overturn the Commission's decision to certify the EIR, and return the project to the Department for staff to conduct additional environmental review.

SITE DESCRIPTION & PRESENT USE

The project site Assessor's Block 3735, Lot 63) is located on the southwest corner of Howard and Second Streets. The 23,925-square-foot project site is generally square, except where the western property line jogs eastward by 20 feet at the southwest corner of the lot. As part of the proposed project, the project sponsor plans to expand the existing site by acquiring this 1,650-square-foot (20 by 82.5 feet) portion of the adjacent property, currently occupied by the loading dock of the neighboring building at 631 Howard Street. The remainder of the site, which has frontages on Second, Howard, and Tehama Streets, is currently occupied by a surface parking lot. There are no other buildings on the project site other than a small parking lot attendant's shed, nor are there any trees or other vegetation on the site, with the exception of low shrubs planted around the perimeter of the parking lot.

The project site (is within the C-3-O (SD) Downtown Office (Special Development) District. Most of the site is within the 350-S height and bulk district (350-foot height limit; bulk limits for base, lower, and upper towers are set forth in *San Francisco Planning Code* Section 270(d), while the northwest corner of the site is within a 150-S height and bulk district (150-foot height limit; bulk limits *Planning Code* per Section 270(d)). As part of the project, the sponsor proposes rezoning of this corner of the site (about 15 percent of the total site including the 1,650 square feet noted above) to increase the height limit to 350 feet across the entire site. Figure 1 from the Comments and Responses document, which illustrates the portion of the project site proposed for acquisition and the portion of the site currently in the 150-S height and bulk district, is included on the next page.

The project site is near the southwestern extent of the C-3-O use district that generally defines the City's financial district. Development in the vicinity consists primarily of office space above ground-floor retail stores, including a 20-story building on the project block at 75 Hawthorne Street. Office towers exist to the north, northwest, and northeast within about one block of the project site, while relatively smaller office buildings are found closer to the site, within an existing conservation (historic) district. Larger office buildings in the project area include a 26-story office building at 101 Second Street (at Mission) that was built in 2000; a 25-story office building at 55 Second Street (2002); a 33 story office building at 555 Mission Street, between First and Second Streets (2008); a 20-story office building at 75 Hawthorne Street (largely occupied by federal government offices); 12-story office buildings at 201 Third Street (Convention Plaza) and 666 Folsom Street; a 10-story building at 55 Hawthorne Street; and the 10-story, block-long Marathon Plaza office complex at 303 Second Street. Most of these buildings also have ground-floor retail and/or restaurant uses.



Case No. 2006.1108E; 222 2nd Street (206937)

Figure 1
Lot Lines and Height & Bulk Districts

SOURCES: ESA; San Francisco Planning Department

Residential (including live-work) uses also exist in the project vicinity and are relatively newly established. These include the nearest residential units, in a 16-story building at 199 New Montgomery Street (approximately 170 units; built in 2004, according to Assessor's data) and a 17-story building at 246 Second Street (90 units; 2000), the latter of which is also on the project block. Also nearby in are a 21-story building at 631 Folsom Street (known as "Blu"; 2009), and live-work projects at 580 Howard Street (14 units; 2000) and 85 Natoma Street (9 units; 2001), all of which are within half a block of the project site. A 24-story residential building was recently completed at One Hawthorne Street, on the project block.¹ Other residential uses within about one block of the project site include approximately 20 units in two buildings on Clementina Street between First and Second Streets, a former office building converted to residential use at 74 New Montgomery Street, and several larger projects within the Yerba Buena Center Redevelopment Area (the residential portion of the St. Regis tower and the 40-story Paramount, both at Third and Mission Streets, and two mid-rise buildings at Third and Folsom Streets, St. Francis Place and Museum Parc). The 26-story Pacific Telephone Building at 140 New Montgomery Street, formerly headquarters of that company, has been approved for conversion to residential use. Yerba Buena Center and the cultural attractions and high-rise hotels in its vicinity are about one block west of the project site. The Transbay Transit Terminal is two blocks northeast of the site, and the elevated Interstate 80 freeway that leads to the Bay Bridge is just over two blocks south. An aerial photo showing the project site is shown on the next page.

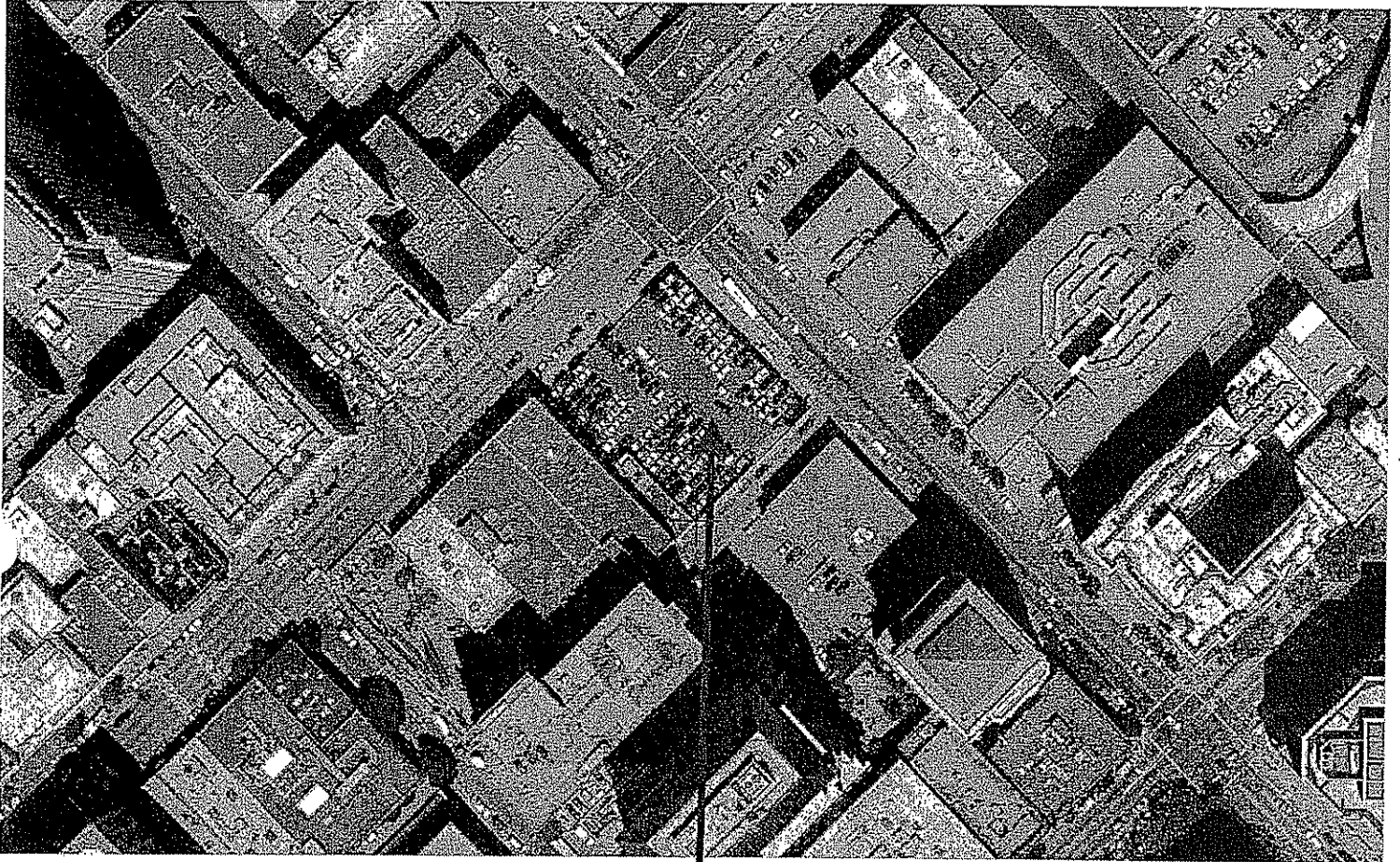
The C-3-O (SD) District permits a base floor area ratio (FAR) of 6:1. In this district, a maximum FAR of 18:1 is permitted with Transfer of Development Rights (TDR), and the project, as proposed, would have a FAR of 18:1. As noted above, the project sponsor proposes rezoning of a portion of the project site to increase the height limit to 350 feet across the entire site.

PROJECT DESCRIPTION

The proposed project would remove the existing parking lot and construct a 26-story building with office uses on floors 2 through 26 and approximately 4,600 square feet of retail space on the ground level. The retail space is proposed for restaurant or retail use (and assumed in the EIR for purposes of a conservative analysis of transportation impacts to be restaurant space). The double-height (24-foot-tall) ground floor would also contain approximately 8,745 square feet of enclosed publicly accessible "indoor park" space (publicly accessible indoor space with seating) to meet the project's *Planning Code* (Section 138) open space requirement. The ground floor would also contain the building lobby, a loading dock with two off-street freight loading spaces and one (smaller) service vehicle space, and building support space, including trash and recycling facilities. Pedestrian entrances to the building lobby would be at the center of the Second Street frontage, along the Howard Street frontage, and on Second Street near Howard Street; these last two locations would also provide access to the interior open space. Pedestrian access to the

¹ This building was not occupied at the time the EIR was completed.

Aerial Photo



PROJECT SITE



Section 309 Determination of Compliance
Case Number 2006.1106BMXZ
222 Second Street

restaurant space would be from Second Street near Tehama Street. Vehicle access to the proposed below-grade parking would be via a two-way ramp from Tehama Street, at the southwest corner of the project site. Freight loading access would also be from Tehama Street, where the loading dock would be located.

About 27,930 square feet of parking would be provided in two basement levels beneath the project site, with access provided via a two-way driveway from Tehama Street at the southwest corner of the project site. The basement levels would include a total of 54 marked parking spaces, with capacity for approximately 80 vehicles with valet parking operation. The basement would also include approximately 46 bicycle parking spaces, which would exceed the requirement of *Planning Code* Section 155.4(d). The proposed floor area devoted to off-street parking would be equal to the maximum permitted 7 percent of building gross floor area pursuant to *Planning Code* Section 151.1.

The proposed project would require Board of Supervisors approval of a *Planning Code* height and bulk map amendment (rezoning) and a *Downtown Plan (General Plan)* amendment of the height map to increase height limit to 350 feet across the site.

The Commission approved the project pursuant to *Planning Code* Section 309 (Permit Review in C-3 Districts), including granting exceptions with regard to building bulk (Section 270), ground-level winds (Section 148), and the required setback to minimize shadow on Second Street (Section 146). The Commission also authorized allocation of office space under *Planning Code* Section 321 (Office Development Annual Limit).

BACKGROUND

The project sponsor filed an application on September 12, 2006, for the environmental evaluation of the proposed 222 Second Street project. On May 19, 2007, the Planning Department sent a Notice of Preparation (NOP) to governmental agencies and organizations and persons interested in the project. The NOP requested agencies and interested parties to comment on environmental issues that should be addressed in the EIR. The Planning Department also conducted a public scoping meeting, on June 6, 2007, to receive oral comments on the scope of the EIR. Comments requested that the EIR analyze: effects on traffic, transit, and parking; compatibility with surrounding development; noise and air quality impacts of construction, including cumulative construction impacts; and seismic safety. These topics were addressed in the Draft EIR.

Draft EIR

On January 27, 2010, the Department published the Draft EIR. The Department provided public notice of the availability of the Draft EIR for public review and comment and of the date of the Commission public hearing on the Draft EIR; this notice was mailed to the Department's list of persons requesting such notice. In addition, Notices of Availability of the Draft EIR and of the date and time of the public hearing were posted near the project site on January 27, 2010, and copies of the Draft EIR were mailed or otherwise delivered to a list of persons requesting it. Notices of Availability were mailed to adjacent property owners and occupants, and to

government agencies. (State agencies received copies of the Draft EIR through the State Clearinghouse). A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on January 27, 2010. The period for acceptance of public comments ended on March 25, 2010; this period included a Commission-approved 10-day extension of the original comment period.

On March 4, 2010, the Commission held a duly advertised public hearing to receive public comments on the Draft EIR.

Issues raised regarding the Draft EIR included the following main topics:

1. Adequacy of public notice of availability of the Draft EIR;
2. Inadequate analysis of the conflict with Downtown Plan policies concerning pedestrian-level winds, building bulk, and shadow, particularly on Second Street, and accompanying exceptions to sections of the *Planning Code* that implement these policies, including cumulative effects thereof;
3. Insufficient analysis of the proposed project's compatibility with nearby residential uses;
4. Visual effects, including loss of privacy of existing residents;
5. Effects on adjacent and nearby historical resources, including historic districts;
6. Pedestrian safety issues resulting from project traffic, including the safety of children at nearby day care centers;
7. Noise and air quality and impacts;
8. New shadow that would be cast by the project, especially on Second Street, which is identified in *Planning Code* Section 146(a) as being protected with respect to shadow;
9. Geotechnical effects related to project excavation;
10. Adequacy of Alternatives analysis; and
11. Cumulative Construction impacts.

Comments and Responses

The Department prepared responses to comments about the Draft EIR, prepared revisions to the text of the Draft EIR in response to comments or based on additional information that became available during the public review period, and corrected errors in the Draft EIR. This material was presented in a Comments and Responses document, which was published on July 8, 2010, distributed to the Commission and all parties who commented on the Draft EIR, and made available to others upon request at Department offices. The Department fully responded to all comments that had been received as of that date.

The Commission hearing to certify the EIR was scheduled for July 22, 2010, but was continued to August 12, 2010.

On August 9, 2010, an additional comment letter from Sue C. Hestor was directed to the Commission and to the Department. The letter largely reiterated, in more detail, comments made in Ms. Hestor's March 25, 2010, letter on the Draft EIR, and comments on the Draft EIR from other Appellants, all of which were responded to in the Comments and Responses document. As

noted above, this letter, including Planning Department MEA staff responses to concerns regarding the EIR that are embedded within the text of the letter, is included here as Attachment C.

The August 9, 2010, letter also raised objections to the then-draft CEQA Findings Motion for consideration by the Planning Commission. However, approval of the project, of which the CEQA Findings is a part, is not before the Board at this time, and therefore the CEQA Findings are not part of this appeal.

Planning Commission Hearings

On August 12, 2010, the Commission held a hearing to consider certification of the EIR. At the hearing, the Commission found that the Final EIR reflected the independent judgment and analysis of the City and County of San Francisco. The Commission found that the FEIR was adequate, accurate and objective, and that the Comments and Responses document contained no significant revisions to the Draft EIR. The Commission certified the completion of the FEIR in compliance with CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*.

Project Impacts

The EIR found that the proposed project would result in a significant and unavoidable environmental effect with respect to traffic at the intersection of Harrison/Second Streets, where the project would contribute substantially to already congested conditions, particularly for the southbound left turn movement. In addition, the proposed project's contribution to future traffic growth at the following intersections, would constitute a significant cumulative impact: Howard/Third Streets, Howard/New Montgomery Streets, Folsom/Second Streets, and Harrison/Second Streets. No feasible mitigation is available for these impacts; the unacceptable traffic levels are primarily the result of heavy traffic flow to the Bay Bridge in the p.m. peak hour.

CEQA Findings and Statement of Overriding Considerations

As described in *CEQA Guidelines* Section 15093, if a proposed project has significant effects that are identified in the FEIR, but which are not avoided or reduced to a less-than-significant level, the City must indicate that any such unavoidable significant effects are acceptable due to overriding financial, technological, social, or other policy considerations. This is known as a Statement of Overriding Considerations. In preparing such a statement, the City must balance the prescribed types of benefits of the proposed project against its unavoidable environmental risks. If the benefits of a project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable (*CEQA Guidelines* Section 15093).

Following certification of the EIR on August 12, 2010, the Commission considered and approved CEQA Findings with a Statement of Overriding Considerations when it approved the project (see Attachment D).

APPELLANTS' ISSUES AND PLANNING DEPARTMENT RESPONSES

Appellants have not raised any substantial new issues. For each point raised in the Appellants' appeal letter and attachments, the Board is directed to the particular pages in the Draft EIR and the Comments and Responses document where the issue was addressed. These documents, Attachments A and B respectively, were provided to the Board of Supervisors under separate cover on September 10, 2010. The issues raised are presented in full below and are followed by the Department's responses.

RESPONSES TO SPECIFIC ISSUES RAISED ON APPEAL

Issue 1: Shadow. "The Information on shadows cast by the project is grossly insufficient in that the project violates at least 2 separate standards to protect adjacent areas from shadows."

Response 1: It is not apparent from the comment what specific issues about the shadow analysis are of concern to the appellant. The comment letter from the appellant submitted to the Planning Commission prior to the August 12 EIR certification hearing raises concerns about the project's compliance with Section 146(a) and 147 of the Planning Code. This letter is included as Attachment C.

The comment appears to conflate *Planning Code* compliance, and particularly the *Code's* provisions for exceptions to the requirements of Section 146(a), with physical effects that are required to be evaluated under CEQA. Physical effects, including effects of shadow on the Second Street sidewalks, are evaluated in the EIR. Compliance with Section 146(a) is not part of the CEQA evaluation, but is part of the consideration of project approval, and was evaluated separately by the Planning Commission prior to Commission approval of a motion to approve the project pursuant to *Planning Code* Section 309, following consideration of a memorandum prepared by Neighborhood Planning staff of the Planning Department (see Attachment D).

CEQA requires analysis of the physical environmental effects of a project. The fact that a project might require one or more exceptions as permitted under the *Planning Code* does not in and of itself constitute a physical effect. Conversely, a project that requires no exceptions could still be found to result in one or more significant impacts. Thus, it does not follow logically that a project that requires one or more exceptions under the *Code* would necessarily result in a significant adverse effect on the environment. While compliance with plans and zoning and required approvals are topics that are discussed in EIRs, they are not part of the evaluation of environmental effects except as they have the potential to result in significant environmental effects, per Appendix G of the CEQA Guidelines. The 222 Second Street EIR adequately analyzes shadow effects of the proposed project (see Draft EIR pp. 134 – 144, including Figures 18 – 21, and pp. C&R-11 – C&R-18 and pp. C&R-55 – C&R-62 in the Comments and Responses document.)

With respect to shadow on Second Street, which is the subject to Section 146(a), as stated on p. C&R-18, "shadow from any individual project, including the proposed 222 Second Street project, would (or does, in the case of existing buildings), cover a relatively small area of

sidewalk, for a relatively short duration." Moreover, because observation of the sidewalks on Second Street indicates that most activity on the sidewalk appears to be routine travel from one place to another that is unlikely to be adversely affected by incremental new shadow. Thus the effect would not appear to "substantially affect the usability of other existing publicly accessible open space or outdoor recreation facilities or other public areas," which is the applicable criterion for a significant effect under CEQA (see Draft EIR p. 136).

The EIR discloses and analyzes potential shadow effects of the proposed project, including specific *Planning Code* standards relevant to the project with respect to shadow. It is presumed that the "separate standards" referred to in the comment are *Planning Code* Section 146(a) and Section 146(c) or 147. Section 146(a), applicable to certain streets in the C-3 zoning districts, requires that buildings and additions fit within an envelope defined by a plane that slopes away from the street at a prescribed angle above a prescribed height "in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical periods of use." Section 146(a) applies to the west side of Second Street, specifying that a building be within an envelope that slopes away from the street at an angle of 62 degrees beginning at 132 feet above grade.

Section 146(c) states that new buildings and building additions shall be shaped "so as to reduce substantial shadow impacts on public sidewalks in the C-3 Districts other than those protected by Subsection (a)," but only if this can be done "without creating an unattractive design and without unduly restricting the development potential of the site in question."

Section 147 requires that projects be shaped to minimize shadow on public plazas or other publicly accessible open spaces (other than parks specifically protected by *Code* Section 295) "in accordance with the guidelines of good design and without unduly restricting the development potential of the property."

It is not accurate to state that the project as proposed "violates" standards with respect to shadows. The *Planning Code*, as part of Section 309 (Permit Review in C-3 Districts) expressly provides for exceptions to the standards of Section 146(a), as discussed at length in the Comments and Responses document on pp. C&R-11 through C&R-18. The required Section 146(a) exception is also discussed in the Draft EIR on pp. 17 - 18, 21, 28, 135, and 142 (as well as p. 173 in the context of a Code-complying bulk alternative). As stated on p. C&R-11, exceptions may be granted pursuant to Section 146(b) if "the shadow created by the penetration of the plane is deemed insignificant because of the limited extent or duration of the shadow or because of the limited public use of the shadowed space."

The Department considers a project that requires a discretionary approval such as an exception, variance, or Conditional Use permit to be in compliance with the *Planning Code* because such approvals are provided for in the *Planning Code*.

Additional shadow attributable to the proposed project's penetration of the shadow plane is appropriately described in the Section 309 motion adopted by the Planning Commission (see p.

15-16 of Attachment E). The discussion notes that the project's shadow on portions of Second Street not already shadowed by existing buildings would occur over small areas and/or brief periods of the day at various times of the year. This new shadow would primarily occur north of the project site, between Howard and Mission Streets, with the exception of a shadow sliver between Howard and Tehama Streets in early- to mid-afternoon during the fall and early winter. Based on the determination that the additional shadow from the project on the west side of Second Street would be of limited area and duration, the Planning Commission granted an exception to the requirements of Section 146(a).

With regard to Section 146(c), as explained in the Comments and Responses document on pp. C&R-17 – C&R-18, this subsection applies more generally throughout the C-3 districts, specifically to those streets not identified in Section 146(a). A determination of compliance with Section 146(c) must be made as part of the project approval process. Concerning Section 147, this section is discussed in the Draft EIR on pp. 125 and 142; p. 142 concludes, "Because project shadow on publicly accessible open spaces would be relatively limited, the project appears to comply with *Planning Code* Section 147."

In summary, the EIR adequately addresses the physical environmental effects of the proposed project with respect to shadow, as is required by CEQA.

Issue 2: Alternatives. "The EIR analyzes alternatives which have been designed by Project Sponsor to deny the Commission with the ability to approve a project that totally complies with the Code requirements and policies governing this site."

Response 2: CEQA requires that alternatives be evaluated in an EIR that would "avoid or substantially lessen any of the significant effects of the project," yet "would feasibly attain most of the basic objectives of the project" (CEQA Guidelines Section 15126.6(a)). The range of alternatives evaluated in the EIR is consistent with CEQA requirements and with the Planning Department's typical practice of evaluating, in addition to the required No Project Alternative, an alternative with a reduced program, compared to the proposed project. For projects involving rezoning, an alternative that does not require rezoning may be considered. The EIR considered three alternatives that would not involve a zoning height map amendment for the northwest corner of the lot: Alternative B: Compliance with Planning Code Bulk Limits; Alternative C: Reduced Project Alternative; and Alternative E: No Rezoning Alternative. Because, as previously discussed, exceptions and other discretionary approvals are provided for under the Planning Code, aspects of a project that require such approvals are considered code-compliant and it is not necessary or required to consider alternatives that eliminate the need for any discretionary approvals.

In making decisions about project approval, the Planning Commission is not required to approve either the proposed project or any of the alternatives presented in the EIR. The EIR must evaluate a range of reasonable alternatives to the project, and the Planning Commission may consider changes to the project as proposed that are within that range. Therefore, the selection of

alternatives in no way prevents or denies the Commission its full approval discretion for the project.

The range of alternatives evaluated and the specific alternatives selected for analysis were determined by Planning Department MEA staff. As a result, the alternatives analyzed in the EIR were neither selected nor "designed" by the project sponsor, except insofar as the project architect provided specific information as needed to describe and illustrate the alternatives, in the same way that the project architect provided information necessary to describe and illustrate the proposed project. For example, the project architect provided illustrations of Alternative B, Compliance with Planning Code Bulk Limits; Alternative D, the Preservation Alternative; and Alternative E, the No Rezoning Alternative. In particular, with respect to the Preservation Alternative, Planning Department preservation staff required the project architect to develop a design for a Preservation Alternative that preservation staff judged to be "more sympathetic in design to the adjacent 631 Howard Street building and to the New Montgomery-Second Street Historic District and the Second and Howard Streets National District" than the project as proposed.

In the case of the 222 Second Street project, although preservation planning staff and MEA, through the EIR, ultimately determined that the project as proposed would not result in a significant effect with respect to historical resources, MEA determined that it was appropriate nevertheless to include a Preservation Alternative in light of the proposed project's adjacency both to an individual historical resource and to a conservation district included in Article 11 of the Planning Code, as well as the project site's proximity to a historic district listed on the National Register of Historic Places. (See additional discussion concerning the project's effects on historical resources below, under Issue 3.) Finally, because the project as proposed requires rezoning to increase the height limit on a portion of the project site, the EIR evaluates an alternative that would permit development of the same program as included in the proposed project but would not require the rezoning to increase the height limit (Alternative E).

As stated on Draft EIR p. 18, in the discussion of approvals required for the project as proposed, the project would necessitate approval by the Board of Supervisors of a *Planning Code* height and bulk map amendment (rezoning) and a Downtown Plan (General Plan) amendment to the height map to increase the height limit on a portion of the site to 350 feet. These actions were recommended for approval by the Planning Commission, and will require approval from the Board of Supervisors at a later date. The proposed project also requires approval pursuant to *Planning Code* Section 309 (Permit Review in C-3 Districts), including granting exceptions with regard to building bulk (Section 270), ground-level winds (Section 148), and the required setback to minimize shadow on Second Street (Section 146). The exceptions were granted by the Planning Commission as part of its approval of the project pursuant to Section 309.

With respect to a potential alternative that "totally complies with the Code requirements and policies governing this site," as described in Draft EIR Chapter VI, Alternatives, Alternative B, Compliance with Planning Code Bulk Limits, would not require the exceptions with regard to

bulk (Section 270), while Alternative E, the No Rezoning Alternative, would not require the *Planning Code* height and bulk map amendment (rezoning) and a Downtown Plan (General Plan) amendment to the height map to increase the height limit on a portion of the site to 350 feet. Concerning the Section 148 exception for ground-level winds, it is not likely to be possible to design a building of substantial size—that is, anything approaching the existing height and bulk limits on this or any other Downtown site—that would comply with Section 148. This is because, as explained in the Comments and Responses document, on pp. C&R-18 – C&R-19, Section 148 requires not only that a new building be designed to avoid new exceedances of the applicable wind speed criteria, but that the building remedy existing exceedances of these criteria.² As a result, the vast majority of projects involving high-rise buildings that have been approved since adoption of the Downtown Plan in 1985 have required, and have been granted, an exception to the *Planning Code* wind requirement. As described on p. C&R-19, “the effects of the proposed project on ground-level winds would be limited, and would occur almost exclusively in locations adjacent or proximate to the building.” Moreover, wind-tunnel testing revealed that the average wind speed would be unchanged at nearly half the 51 test points, that the number of points where wind speed would increase would be offset by a like number of decreases, and that perceptible changes would occur at only five of the 51 test points. And, while six existing exceedances of the pedestrian comfort criterion, both upwind and downwind of the project site, would continue to exceed the criterion with the addition of the project, most of these existing exceedances “would be little affected by the proposed project.” Thus, the Comments and Responses document explained, “in most cases, it cannot be expected that a project can be designed to reduce the ambient wind speeds to meet the requirements’ of *Planning Code* Section 148, and this is why exceptions to these requirements are commonly granted.”

Concerning the exception to the requirement of Section 146(a) for observation of a “sun access plane” that would minimize shadow on the east sidewalk of Second Street, an illustration of the Section 146 sun access plane is provided Figure C&R-8, p. C&R-58 in the Comments and Responses document. (The sun access plane is described further in Response 1, above.) The development envelope illustrated in Figure C&R-8 would allow for approximately 335,000 square feet of office space, or about 22 percent less floor area than the 430,650 square feet proposed with the project. This would be the same amount of office space as would be permitted by Alternative C, the Reduced Project Alternative, and would therefore have similar effects as the Reduced Project Alternative with respect to impacts related to the intensity of development, such as transportation, air quality, and greenhouse gas emissions, as well as noise. However, the design in Figure C&R-8 would require the same exception as the proposed project to the bulk requirements of *Planning Code* Section 270 for the maximum and average floor areas of the lower tower portion of the building, and would also, like the proposed project, require rezoning to increase the height limit of the northwest corner of the project site.

² The applicable criteria are 11 miles per hour on sidewalks and other areas of substantial pedestrian use, and 7 miles per hour in public seating areas.

The design in Figure C&R-8 is not intended to illustrate an alternative to the proposed project, but, as noted on p. C&R-59, "represents one possible response to compliance with the sun access plane requirement of Section 146(a), and would most likely provide the maximum potential floor area while complying with Section 146(a)." It is also intended to illustrate the envelope in which a building that is compliant with the sun access plane provision could be constructed. As noted in the same paragraph, a smaller office project was previously approved at 222 Second Street that would have complied with Section 146(a) while developing a 225-foot-tall building (125 feet shorter than the proposed project) with approximately 220,000 square feet of office space, or nearly 50 percent less than the office floor area of the currently proposed project.

Based on the foregoing, it is clear that it would be difficult, if not impossible, to develop an alternative that "totally complies with the Code requirements and policies governing this site," yet also would "feasibly attain most of the basic objectives of the project," particularly the principal objective, to "Provide the maximum amount of Class A office space at this prominent corner site, furthering the Downtown Plan's goals and objectives of concentrating office uses in the Central Business District; and, in particular with respect to the C-3-O (SD) district, facilitating expansion of downtown office uses to the south of the traditional downtown core while absorbing unused development potential from historic buildings through transfer of development rights" (Draft EIR p. 15).

Issue 3: Historical Resources. "Insufficient information and analysis is provided on about the impacts of the project on the adjacent conservation district."

Response 3: The appellants raise no specific issues with respect to historical resources, stating that the information and analysis on this topic in general is insufficient. On the contrary, the EIR provides a detailed evaluation of historical resources in Section IV.D, Cultural Resources, pp. 52 – 75. This analysis did not identify any significant impacts on adjacent historical buildings, including the 631 Howard Street (William Volker) building, the Marine Firemen's Union Headquarters building, the New Montgomery-Second Street Conservation District, a historic district listed in Article 11 of the *Planning Code*, and the Second and Howard Streets National Register District, a historic district listed in the National Register of Historic Places. In addition, the Comments and Responses document (pp. C&R-40 – C&R-44) amplified the evaluation with respect to specific comments raised, including effects of project construction on the adjacent historic buildings and the compatibility of the proposed project's scale, massing, and design on the adjacent and nearby historical resources. In addition, as described above under Response 2, although the EIR found no significant effect with respect to historical resources the Draft EIR evaluated a Preservation Alternative; as part of a conservative evaluation, MEA determined that it was nevertheless appropriate to include this alternative in light of the proposed project's adjacency both to an individual historical resource and its proximity to two historic districts.

Issue 4: Land Use Compatibility. "The description on the area ignores the transition - encouraged by City policy - to a mixed use area that includes families with children and understates the impacts of the project on those residents."

Response 4: The Comments and Responses document includes a detailed response to comments on this same topic, at pp. C&R-30.– C&R-35 (comments begin on p. C&R-28). In summary, the Comments and Responses document explains that the Draft EIR correctly identified the project site as being within an area designated in the *General Plan* and *Planning Code* for, and dominated by, office use, but also occupied by recently developed residential uses, including the building at 246 Second Street on the project block and the building at 199 New Montgomery Street, across Howard Street from the project site. The Comments and Responses document explains that the Draft EIR acknowledged and accounted for a nearby child care center at 75 Hawthorne Street, and that the EIR analysis accounted for potential effects on nearby residents in areas such as traffic and pedestrian safety, air quality, noise, wind, and shadow, among others, in the applicable topic sections of the Draft EIR's Chapter IV. The EIR describes the project setting at the appropriate level of detail, and that setting is reflected in the analysis of the proposed project's potential impacts.

Concerning City policy regarding land uses in the project area, the Comments and Responses document notes, on pp. C&R-23 – C&R-24, that the Downtown Plan—the area plan within the *San Francisco General Plan* that governs the project site and vicinity—was adopted in 1985 “in response to a period of intense office development in the 1970s and early 1980s, and the Plan's fundamental aim was to manage commercial (office) development in the Downtown so that this development would not result in adverse effects on San Francisco residents and on the City, especially the Downtown itself.” This response also states, with respect to housing and services to support Downtown job growth:

The Plan recognized that the continuing growth of office space would create a need for support structure to enable this office growth to be sustainable. As stated in the Planning Department's most recent Downtown Plan Monitoring Report, “Specific programs were created [in the Downtown Plan] to address needs for additional housing, transit, child care and open space, as were specific targets for new housing production and transportation management.”³ The adopted Plan acknowledges, “Housing close to downtown contributes greatly to downtown vitality, helping to ensure that it remains active after working hours.” However, while the Plan and the zoning that implements the Plan both allow housing in the C-3 (Downtown Commercial) use districts, the Plan's direction was to ensure that adequate housing was developed citywide, not just in the Downtown, to support Downtown office employment, along with other employment such as hotel and retail, without the need for most employees to commute from long distances, particularly by automobile, a scenario in which the Plan contemplated that Downtown traffic would become unmanageable.

³ San Francisco Planning Department, Downtown Plan: Annual Monitoring Report, 2008. January 2010. Available on the internet at: [http://www.sf-planning.org/ftp/files/Citywide/Downtown Annual Report 2008.pdf](http://www.sf-planning.org/ftp/files/Citywide/Downtown%20Annual%20Report%202008.pdf).

The Comments and Responses document also notes (p. C&R-26), that "Downtown Plan Policy 2.1 states, 'Encourage prime downtown office activities to grow as long as undesirable consequences of such growth can be controlled.' The EIR, on pp. 20 – 21, explains that the 'undesirable consequences' referred to include 'impacts related to out-of-scale office development on neighborhood character; loss of historical resources; increased shading of streets and publicly accessible open space; increased pedestrian-level winds; increased traffic and parking demand, pollutant emissions, and energy use; overburdened public transit; increased traffic noise; increased pressure on housing supply resulting from increased employment; and conversion of housing, retail, and service commercial space to office space,' and that physical effects related to each of these issues are analyzed in the EIR. The EIR finds significant, unmitigable effects on the environment, including the residential uses around the project site, only with regard to project traffic; other impacts are found to be less than significant, or less than significant with mitigation.

Issue 5: Height Limit Change (Rezoning). "This project requires a change in the height limit for part of the site from 150' to 350.' "

Response 5: The appellants raise no issue about an alleged inadequacy of the EIR, but merely restates the fact that the project would require a rezoning of part of the project site for height, a fact that is clearly stated and analyzed in the EIR. The Draft EIR states, in the Project Description, under Approvals Required, pp. 16 – 17, "Most of the project site is within the 350-S height and bulk district (350-foot height limit; bulk limits for base, lower, and upper towers per Section 270(d)), although the northwest corner of the site, which measures about 45 feet wide along Howard Street and is 82 feet, 6 inches deep, is within a 150-S height and bulk district, which has a height limit of 150 feet. Because the proposed tower would extend about 25 feet into this portion of the site, the proposed project would not conform to the *Planning Code* height limit, and rezoning of this portion of the site would be required, as well as a change in the Downtown Plan height map within the *General Plan*. The project sponsor is seeking an amendment of the height and bulk map (rezoning) of this portion of the site to a 350-S height and bulk district, consistent with the remainder of the project site. Rezoning and a *General Plan* map amendment, both of which require approval from the Board of Supervisors upon a favorable recommendation from the Planning Commission.

The EIR fully analyzes the physical effect of the project as proposed, including the fact that part of the building would exceed the existing height limit on a portion of the site, and the need for the change to the height limit if the project is to be approved as proposed. As described above under Response 2, because the project would require this height rezoning, the Draft EIR also evaluates an alternative that would permit development of the same program as included in the proposed project but would not require the rezoning to increase the height limit (Alternative E), and also includes two other alternatives that would not involve the proposed rezoning of a portion of the site.

CONCLUSION

Appellants have not raised any new issues relative to CEQA review that were not previously addressed in the Draft EIR and/or in the Comments and Responses document, nor have appellants provided any substantial evidence to refute the conclusions of the Department with respect to the project's physical environmental effects under CEQA.

For the reasons stated above the Commission's certification of the EIR complies with the requirements of CEQA, the CEQA Guidelines and Chapter 31 of the *San Francisco Administrative Code*. The Department, therefore, recommends that the Board uphold the Commission's decision to certify the EIR and deny the appeal.

Attachment C.

Letter from Appellant Sue C. Hestor to Planning Commission concerning EIR certification (August 9, 2010), with Planning Department Major Environmental Analysis Division (MEA) staff responses included.

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Note: Planning (MEA) staff remarks in response to comments on the adequacy of the EIR are embedded in this letter, in boxed *italic* text.

August 9, 2010

President Ron Miguel
Planning Commission
1650 Mission Street 4th fl
San Francisco CA 94103

2006.1106BMXZ 222 Second Street

August 12, 2010 - EIR Certification - **Item 11**

CEQA Findings - **Item ???? Office Allocation - Item 12a General Plan Amendment - Item 12b**

Section 309 Compliance & Exceptions - **Item 12 c Height Increase - Item 12d**

Dear President Miguel:

The 264 Second Street Owners Association, representing RESIDENTIAL HOME OWNERS south of the proposed 222 Second Street project, submits the following opposition to the certification of the EIR, and the various project approvals for 222 Second Street. At the outset they want to state that they want appropriate development of this site. But that development must be of an appropriate scale.

At the core of this proposal is an assumption that the developer and its architects can blow through the Planning Code requirements and standards that govern development on this site. You should disagree.

Second Street is the **ONLY** street south of Market that the Downtown Plan considered important enough to have special protections to manage the amount of sunlight. Protections that acknowledged and sought to protect the low scale of the Second Street area. Protections that have as their EXPLICIT purpose maintaining SUNLIGHT on Second Street sidewalks. The map at **C&R-15** shows the Downtown Plan Sunlight Access Map in the Draft Downtown Plan. When the Downtown Plan was adopted and codified, this was translated into the **Section 146(a)** REQUIREMENT of Sunlight Access to Public Sidewalks in C-3 Districts. Structures on parcels which abut a street listed **shall** be required to avoid penetration of a sun access plane with a specific angle above a certain street wall.

The Sunlight access provision is not the only measure intended to protect this area and Second Street. The text of the Downtown Plan itself discusses the importance of Second Street itself to all of downtown. It remains even now a modestly scaled street with many low buildings - buildings which kept its sidewalks sunny. That low scale building pattern also led to enactment of the New Montgomery-Second Street Conservation District, the boundary of which shows up on the Parcel Map in the staff report. DEIR p. 60 shows existing and proposed landmarks in this area. 222 Second Street

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abuts the existing Category 3 631 Howard Street building across Tehama from the proposed landmark of the Marine Engineers headquarters.

The starting point to evaluate ANY project at Second & Howard must be the City's explicit intention to protect SUN on the Second Street sidewalks, the scale of Second Street, and the Conservation District.

It is disappointing that neither the shadow analysis EIR nor the staff report starts with a thorough discussion of how the Planning Department, the Planning Commission and ultimately the Board of Supervisors CONSCIOUSLY acted to protect sunlight and scale on Second Street.

THE "MAX IT ALL OUT" APPROACH TAKEN BY THIS DEVELOPER

The starting point in the Code and Downtown Plan is that this is a sensitive site. Sunlight and scale are to be protected. The historic context of nearby buildings should also guide new construction. The starting point for this developer seems to be max out every single aspect of the building.

Floor Area Ratio - The maximum FAR on the site is 18:1. This is an 18:1 building.

Building Height - The maximum allowable height is 350' on most of the site, but only 150' on its northwest corner abutting 631 Howard. The proposed building is 350' PLUS the area zoned 150' is proposed to be rezoned to 350.'

Building Volume - The total cubic volume of this building is also out-of-line for an office building. Instead of floor to floor dimensions around 10 feet (standard for most new office buildings), this project has 26 stories, but is 350 feet tall instead of 260-270 feet. It appears that the floor to floor heights actually increase in the upper tower. It is as though the developer is unwilling to give up ANY volume against the sky.

Staff Remarks: *The comment incorrectly characterizes office building floor heights. See discussion below concerning office building floor-to-floor heights.*

Bulk Limit Exception - This is tied to the shadows cast by the excessive mass of the building. The lower tower violates Code limits on diagonal dimension, maximum floor plate and average floor plate. This bulks up leasable space at the cost of sunny sidewalks on Second street.

Shadow Exception - This is the ONLY building that proposes to breach the sunlight protections on Second Street sidewalks. This Commission has only granted exceptions to mandates for sidewalk sunlight for Macy's reconstruction (Geary), Neiman Marcus expansion (Geary), historic DeYoung/Chronicle building addition to (Market), historic Mutual Savings Bank addition (Market) and Trinity Plaza SUD (8th & Market).

The prior office building approved for 222 Second, DID NOT USE ANY EXCEPTION FOR SHADOWS OR BULK. It was a 225' tall office building.

Both the developer and the Department downplay how rapidly this area has transitioned to a **mixed use area with over 1,000 units of new housing**. Housing has been approved across the street at 201 Second. There are new condos two lots south at 264 Second. One Hawthorne opened in June at Hawthorne and Howard. Across Howard at the corner of New Montgomery there is housing at 199 New Montgomery. Because of the low scale commercial buildings in much of the immediate area, it is possible that within 500 feet of this site, total residential square feet approaches the total amount of office square feet.

EIR CERTIFICATION MOTION - Item 11

The EIR should not be certified because of the following deficiencies.

Plans and Policies Discussion - C&R 7-11. Section 146(a) Sunlight on Second Street sidewalk.

Most comments were directed to the immediate Second Street area. The EIR fails to discuss the POLICIES underlying the Downtown Plan intention to protect sunlight on sidewalks as well as the low scale nature of this Conservation District. There is no discussion of **Sec. 146(a)** - a clear POLICY. Instead the C&R jumps off into a theoretical discussion of why there was a 150' height district adjacent to 631 Howard. **"Appears" and "apparent reason" are strewn through the response on C&R-9.** In other words, this is just conjecture. That is inappropriate "analysis" for a sensitive issue in a DEIR.

Staff Remarks: Section 146(a) is discussed extensively in the same Plans & Policies response referenced by the commenter. The discussion of Section 146(a) begins on p. C&R-11 and continues through p. C&R-18.

The first part of this response (pp. C&R-7 to C&R-11) specifically responded to Commissioner Sugaya's request for maps of the existing and proposed height and bulk districts.

Records of the Downtown Plan - including a full set of TRANSCRIPTS for all hearings - should still be in Department files.¹ The heights in the Downtown Plan were the subject of many hearings. This is supposed to be an independent document, not an argument by the developer. The starting point should be the protections EXPLICIT in the rules and policies explicit around 146(a) and the Conservation District.

Staff Remarks: The EIR, as required under CEQA and the state CEQA Guidelines, evaluates physical effects from the proposed project against a baseline of existing conditions as of the time that a Notice of Preparation was filed for the proposed project (May 2007 for the 222 Second Street project). Therefore, for the purposes of CEQA analysis, this is the date that is the "starting point" for the EIR's analysis.

Neighbors appreciate the **C&R-13 table** showing cumulative building exceptions granted for winds, bulk and shadows. However the "Sun" column is a bit misleading. There are **146(a) exceptions** - which pertain to banning shadows on SPECIFIC sidewalks - and **146(c) exceptions** - which pertain to shadows on general C-3 sidewalks not covered by 146(a). The two buildings south of Market Street for which the Planning Commission granted a 146(c) exception - 555 Mission and 301 Mission - do NOT front a street where sunlight is *specifically* protected on the SIDEWALK. The text semi-explains it at C&R-17, 18 but the explanation is obscure and hard to understand for anyone not thoroughly grounded in the

¹ There was a court reporter at all hearings. A complete Administrative Record was prepared for Board of Supervisors review and for possible litigation.

various types of sunlight protection and exceptions. 301 and 555 Mission obtained exceptions from the different, more general, level of sunlight protection. Blocks on specific streets are CALLED OUT for protection from any additional shadow in 146(a).

Staff Remarks: Table C&R-1 states in footnote "a" that an "X" in the column labeled "Sun-§ 146" indicates that a determination of compliance was made with respect to Planning Code Section 146(c), and that other specific footnotes explain exceptions granted to the requirements of Section 146(a). The text on p. C&R-18 acknowledges that neither 555 Mission Street nor the Millennium tower [301 Mission Street] front on a street that is listed in Section 146(a).

There has been NO VIOLATION, NO EXCEPTION of the 146(a) rule EVER south of Market in the C-3-O or the C-3-O (SD). NEVER. There has never been an exception on Second Street - for which the Downtown Plan developed rules to protect sunlight access. NEVER.

Staff Remarks: It is true that this project, if approved as proposed, would represent the first project for which a Section 146(a) exception would have been granted on Second Street. The reason is because this is one of very few mid-rise or high-rise project ever proposed on the west side of Second Street, which is governed by Section 146(a). (The first project proposed was the prior 1989 project at 222 Second Street, which did not require an exception from the requirements of Section 146(a).) As explained in the Comments and Responses document on pp. C&R-16 – 17, the 17-story residential building at 246 Second Street apparently should have been required to obtain a variance^a from the sun access angle requirement of Section 146(a) from the Redevelopment Agency Commission, because when that project was approved, it was within an area of the Yerba Buena Center Redevelopment Plan where the Planning Code was operative. That project did receive variances for a smaller-than-required rear yard setback and setback above the building base to allow for separation of towers, as well as for parking in excess of the permitted amount. However, the Redevelopment Agency Commission design approval resolutions were silent with respect to the sun access plan requirement of Section 146(a). Had this project been approved by the Planning Commission, an exception to the sun access angle requirement of Section 146(a) would have been required, as would be required for the proposed 222 Second Street project. It is noted that the west side of Second north of the project site is within the New Montgomery Second Street Conservation District and has a height limit of 150 feet, reducing the potential for new development and thereby effectively restricting the number of potential sites where a Section 146(a) exception would be required. Likewise, to the south of the project site, other than the 246 Second Street building, there are the Marine Firemen's Union Headquarters and the former Planters Hotel (600 Folsom Street), both identified as historical resources in the survey conducted for proposed Transit Center District Plan, and, south of Folsom Street, a mid-rise telephone company switching station building. All three of these sites are relatively unlikely to be replaced with new buildings that would be subject to Section 146(a). It is also noted that two high-rise office buildings constructed in the 1990s—at 55 Second Street and 101 Second Street—are on the east side of Second Street and are not subject to Section 146(a), even though they also cast some of new shadow, albeit a relatively small amount, on the protected east sidewalk of Second Street.

The map at C&R-15 is from the DRAFT Downtown Plan. It has this specific site SHADED IN and identified as "Potential Conflict between height limit and solar access." The discussion of the Downtown Plan EIR "case study" site (C&R-18 middle of the large paragraph) is irrelevant to THIS EIR. The standard in the Code is a **prohibition** of any shadow on the Second Street SIDEWALK, not the

^a The Redevelopment Agency Commission granted variances, rather than exceptions, for deviance from Planning Code requirements.

lukewarm weighing of sidewalks shadows as being less important than shadows on publicly accessible open space or outdoor recreation facilities or other public areas." The standard here is STRONG protection of sunlight on SIDEWALKS. This entire section starting with "This effect" is totally irrelevant to section 146(c) and should be stricken from the EIR.

Staff Remarks: Information from the Downtown Plan "Proposal for Citizen Review" (draft Plan) was provided for background information concerning the conceptual foundation of sunlight protection on Second Street. The adopted Downtown Plan does not contain a map of streets on which sunlight protection is called for, as this information was incorporated into the Planning Code (Section 146(a)). Objective 14 of the Downtown Plan, "Create and maintain a comfortable pedestrian environment," and Policy 14.1 [numbering from the on-line version of the Plan], "Promote building forms that will maximize the sun access to open spaces and other public areas," were carried verbatim from the draft Plan into the adopted Downtown Plan.

The discussion on p. C&R-18 is relevant in that it demonstrates that the decision-makers, in approving the Downtown Plan, were provided information concerning the relative effects of new shadow from a particular development project, were such a project to be approved. As the entire paragraph on p. C&R-18 makes clear, shadow effects from projects that have been granted exceptions under Section 146(a) [including the Trinity Plaza project, for which a special use district was approved] have, in fact, been relatively limited. Effects of the 222 Second Street project would, likewise, be limited.

C&R-7 distortion of floor heights. This building has floor to floor heights of 13 feet. Is 13' floor to floor the new "norm" for new office construction? Ten feet floor to ceiling PLUS three feet for interstitial spaces?

Staff Remarks: Office buildings are typically built with floor-to-floor heights of approximately 13 feet or more. Of nearly 160 buildings in San Francisco that are more than approximately 120 feet tall (excluding the Transamerica Tower because of its spire), the 90 office buildings have an average floor-to-floor height of about 14.1 feet (which typically includes a ground floor that is 20 feet or more in height). The 35 residential buildings average 10.9 feet in floor-to-floor height. Hotels and mixed-use buildings fall in the middle in terms of average floor height.

The discussion at C&R-59 fails to note that although there was a notation in the **Draft** Downtown Plan text on the need for further study of the Second and Howard site, when the ACTUAL CODE LANGUAGE WAS ADOPTED, the "need for future study" language was not included. There is no citation to such language in a FINAL, ADOPTED DOCUMENT. Developer wants to re-write the ADOPTED Code.

Staff Remarks: As noted by the commenter, the requirement for sunlight access on certain streets was incorporated into Section 146(a) of the Planning Code, which is presumably why the adopted Downtown Plan did not incorporate the draft Plan's language calling for "massing studies of new building proposals." EIR p. 135 and p. C&R-11 of the Comments and Responses document both note that exceptions may be granted under Section 146(b) to the requirements of Section 146(a) if "the shadow created by the penetration of the plane is deemed insignificant because of the limited extent or duration of the shadow or because of the limited public use of the shadowed space." The further study referred to in the draft Plan was most likely intended to require each proposed project to be individually evaluated, which has been the case through staff reports prepared for Planning Commission consideration of each proposal.

There is NOTHING in the EIR which shows that the shadow on Second Street is of limited extent or duration, or that there is limited use of the sidewalk. In fact, the shadow diagrams on DEIR 137-140 are directly opposite. Significant shadows are cast at NOON on March 21 and September 21 on sidewalks on both sides of Second on the block between Howard and Natoma. On December 21 the shadows extend north of Mission at 10am.

Staff Remarks: As stated on p. C&R-18 of the Comments and Responses document, "observation indicates that most of the activity on the sidewalks in question appears to be routine travel from one place to another that is unlikely to be adversely affected by incremental new shadow, as opposed to recreational activity." For this reason, the EIR does conclude that the proposed project would not "substantially affect the usability of other [non-Section 295] existing publicly accessible open space or outdoor recreation facilities or other public areas," which is the applicable significance criterion for shadow impacts on non-Section 295 spaces, including sidewalks, as indicated on EIR p. 136. Accordingly, the EIR found no significant impact. The findings required under Section 146(b) are made as part of the EIR, but would have to be made separately by the Planning Commission as part of its consideration whether to approve the project.

The Shadow analysis is distorted, as though it was written by the developer, and implies on C&R-59 that the Planning Commission can ignore facts that are set out on the renderings in the DEIR.

The crucial Shadow Analysis needs a substantial revision.

Staff Remarks: As demonstrated in the Draft EIR, the Comments and Responses document, and the foregoing responses to comments on the Comments and Responses document, the EIR shadow analysis is accurate and complete for purposes of the CEQA-required analysis of physical effects on the environment.

Section 270 Visual Impacts (C&R 20). Virtually all of the comments on visual impacts (C&R-8) dealt with close-in visual impacts. Right there on that block. The response instead responds on visuals from a substantial distance. This is also a deficiency in "Aesthetics" on C&R-35 - 37.

Staff Remarks: Comments made specifically concerning visual impacts and aesthetics appear on pp. C&R-35 through C&R-40. Comments on p. C&R-8 deal largely with effects related to Planning Code compliance and General Plan consistency, and the figure referenced above (Figure C&R-4, p. C&R-21) was specifically included to illustrate the overall cumulative effect on the urban form of the Downtown from development since adoption of the Downtown Plan, in response to a comment concerning cumulative effects of projects that have received exceptions to specific Planning Code provisions regarding building bulk.

LAND USE - Evolving Residential uses (C&R28-35)

My clients are RESIDENTS of Second Street on the same block. Although a map showing land are in residential use is provided at C&R-32, and a list at DEIR 33 is repeated, the usual measure of HOUSING is not stories in a building but number of residential units. Comment that "office use "is clearly predominant" (C&R-31) is misleading. Where it is factually correct that office use occupies the largest share of land in the vicinity does not take into account is the recent rapid growth of residential properties that have actually been constructed in the map area over the past ten years:

Staff Remarks: As stated on p. C&R-33, within the 1,500-foot radius in which the residential projects below are included, “there are at least 12 high-rise office buildings—on Market (south side), Mission, Howard, Fremont, Second, and Hawthorne Streets—containing 6.4 million square feet of office space, as well as dozens of smaller office buildings. These high-rise buildings alone represent more than 10 percent of the entire financial district office inventory.” In addition to the square footage noted above in only these 12 buildings, the land use map shown in Figure C&R-6 shows that office use is the overwhelmingly predominant use by land area, as well. Assuming 1,500 square feet per dwelling unit, the 1,200 units indicated below would represent about 1.8 million square feet of building area, or less than one-third of the office floor area in the 12 nearby high-rise office buildings:

- 246 2nd Street, **93** residential units, completed in 2000
- 77 Dow, **83** residential units, completed in 2003
- 199 Montgomery, **168** residential units, completed in 2004
- St Regis Residences, **102** residential units, completed in 2005
- 69 Clementina, **18** residential units, completed in 2005
- One Montgomery, **107** residential units, completed in 2007
- The SF Blue, **114** residential units, completed in 2009
- One Hawthorne, **200** residential units, completed in 2010

Approved within the map area are the following projects:

- 201 2nd Street, est. **100** residential units
- PacBell Building, est. **200** residential units

Others were constructed before 2000, including 3 large complexes on 3rd Street in Yerba Buena.

That is nearly **1200** units constructed or approved in the immediate area. With addition of complexes on 3rd Street, 301 Mission, and others like the project recently proposed on Ecker, there are well over 2000 units of new housing in the area between Folsom and Market east of Yerba Buena.

The population of CHILDREN in the area is also downplayed in this section.

There are two preschool facilities

- Bright Horizons Family Solutions @ 2nd Street, 303 2nd Street, capacity of 92 children
- Healthy Environment Child Development Center, a special needs child development facility sponsored by the Easter Seals, capacity of 24 children

Staff Remarks: The second of the two child care centers noted above, located at 75 Hawthorne Street, is discussed in the Draft EIR, and both are discussed in the Comments and Responses document (pp. C&R-33 – 34).

Population surveys indicate that the SOMA area is growing rapidly.

From 2000 Census the population in zip code 94105 contains 2,058 residents.

1.7% of populations is under 9 years of age and 0.9% between 10 – 19 years.

Recent statistics provided by Onboard Infomatics (<http://www.onboardinformatics.com/>) estimate population growth in the SOMA area has increased 24% from 2000 to 2008.

The family population is becoming a greater percentage of the total. Onboard estimates that children now represent 3.3% of the population.

Child population in residential buildings around 222 2nd Street Office Tower:

- 246 2nd Street: population range at any given time 5 – 15 preschool children
- 199 Montgomery: range at any given time 10 – 20 preschool children

The 222 Second site is surrounded by existing housing north, west and south. To the east 201 Second has already been approved. THE SECOND STREET/NEW MONTGOMERY CORRIDOR IS ALREADY A MIXED USE NEIGHBORHOOD IS QUICKLY EVOLVING AWAY FROM BEING AN OFFICE DISTRICT.

The discussion of Land Use needs a substantial overhaul.

Staff Remarks: The Comments and Responses document discusses comments made regarding the Draft EIR's evaluation of land use impacts (pp. C&R-30 – 35). The Comments and Responses document concludes that the EIR's characterization of the land uses in the project vicinity is accurate, in that the EIR accurately describes existing land uses. Physical effects on the environment that could occur as a result of incompatible land uses are discussed under the applicable topic sections of the Comments and Responses document, as well as the Draft EIR.

Transportation (C&R 44)

Comments focused on traffic impacts on pedestrian safety, particularly children. Comments by Armand Der-Hacopian² attached detailed studies on pedestrian-auto conflicts. As there are increasing numbers of people who live with their families in this area, analysis needs to discuss this population. Child care and schools let out during afternoon rush hour when there are the greatest conflicts. No mention is made of measures to calm traffic.

Staff Remarks: The EIR did not identify any significant effects of the project on pedestrian or bicycle circulation. As a result, no mitigation measures were identified.

Shadows (C&R 55-59)

The Response (C&R-57) appears to argue the developer's position that compliance with clear Code sunlight protections is not a good policy, because it would result in a 335,000 sq ft building instead of a maxed out site with 430,650 sq ft.

A properly drafted EIR would have found the project has Significant Land Use Impacts in that it turns the Code requirements to protect the scale and sunlight on Second Street on their ear.

² Comment letters are at the end, on unnumbered pages. His is the 11th page of comments.

The most egregious failure is DEIR assertion that no shadow impacts have been identified. The entire issue of Section 146(a) violation appears to have been punted to the consideration of the 309 exception for shadows.

Particularly troublesome is the assertion on DEIR 136 that significant shadow impacts only occur from shadows on Rec Park parks (Section 295) or on other publicly accessible open space or "other public areas" (Section 147). There is a total disregard of the explicit Section 146(a) protections of Second Street sidewalks.

Staff Remarks: As stated above, the Planning Departments significance criteria for shadow are based on whether a project would create new shadow that would adversely affect the use of public open space or "outdoor recreation facilities or other public areas." The EIR concluded that no significant impact would occur. As also stated above, the findings regarding Planning Code Section 149(a) are made separately by the Planning Commission as part of its consideration of project approval.

THE ENVIRONMENTAL IMPACT REPORT IS NOT ADEQUATE, ACCURATE OR OBJECTIVE. IT MUST BE SENT BACK FOR A REWRITE.

CEQA FINDINGS MOTION

Many deficiencies in the DEIR carry over to the proposed CEQA Findings. In addition to the improper failure to find significant shadow and land use impacts, there are the following errors.

Rejection of any **Reduced Project Alternative** is unwarranted. Developer appears to have manipulated every Alternative to make the design as bulky and unattractive as possible.

Compliance with **Planning Code Bulk Limits Alternative** (p. 11) is rejected basically because the developer doesn't want it. Why is it IMPOSSIBLE to provide ground level open space and retail in THIS alternative? Why couldn't parking be reduced?

Similarly the **Reduced Project Alternative** is unacceptable to the developer because getting a project that is more in line with the Downtown Plan requirements and goals reduces the project by 100,000 sq ft. The City is not responsible if the developer overpaid for this site in the height of the bubble. That is not a reason to undo City policy goals that push for more modest, sculpted buildings that DON'T SHADOW SECOND STREET on this site.

It is not City Policy to maximize every square inch of development on every parcel, ignoring policies that set back a building, that require protecting sunlight, that develop within the height limit (instead of rezoning part of a site). The discussion takes the term "infill development" to an absurd extreme.

WHERE has the City adopted a policy to obliterate height restrictions to avoid expanding regional urban boundaries through greenfield development?

Rejection of the **No Rezoning Alternative** supposedly "limits flexibility." But the mass of the building ALREADY exceeds bulk limits and casts undesired shadows on Second Street. It is extremely hard to detect how the project has a "sympathetic transition of the base" to the adjacent 631 Howard building.

Statement of Overriding Considerations

ALL of the (rejected) alternatives would meet listed "overriding considerations" -

- Provision of Class A office space
- Location in the C-3-O(SD) District
- Improve quality of pedestrian experience (all COULD with appropriate design)
- LEED Gold building
- Focusing development in urban core
- Payment of Fees - this is the LAW, and is not appropriate to be listed here
- Construction employment
- Permanent jobs - all would provide a space for a substantial number of jobs
- Significant property taxes - RESIDENTIAL OWNERS MAY EVEN A GREATER SHARE OF PROPERTY TAXES THAN COMMERCIAL PROPERTIES POST PROP-13.
- Downtown Plan objectives - this ignores the objectives underlying policies on Second Street, particularly the mandate to protect sunlight on Second Street sidewalks.
- TDR acquisition - all would need to buy.

There are NO Overriding Considerations that are UNIQUE to the proposed project. All Alternatives would basically meet the same "overriding considerations."

Section 309 Exceptions - Item 12C

This motion grants exceptions for Wind, Shadow, and Bulk. See extensive discussion regarding shadows above.

The project fails to comply with the 150' height on a portion of this site. See Item 12D.

Bulk Limits - Section 270 (p. 10)

The base and upper tower comply with Section 270 limits (although the upper tower casts shadows that violate Section 146(a). The lower tower EXCEPTIONS of maximum diagonal dimension AND the

maximum and average floor plate limits should not be granted. Diagonal dimension is 208' instead of the 190' maximum. Floor plates are 20,493 sq ft each, exceeding both the 20,000 sq ft MAXIMUM and the 17,000 sq ft AVERAGE.

The general POLICY is to sculpt the building mass to maximize sunlight to the streets. The SPECIFIC MANDATE is to reduce, rearrange, modify that mass to NOT cast additional shadows on Second Street. THAT IS BEING VIOLATED.

Criterion (4) is violated because the totality of the building doesn't reduce the appearance of bulk. It is all too evident in the shadows cast on the sidewalks, as well as the visuals showing this project. (p.11) The page 11 language is pure rationalization, not the thoughtful analysis the public expects from the Department,

Criterion (5) is even more disingenuous. Compatible with the character and development of the surrounding area cannot be met with a building that is so massive that it casts substantial shadows on Second Street sidewalks and looms over 631 Howard. PEDESTRIAN ENVIRONMENT is critical to this criterion. (p. 12)

Ground Level Wind Currents (Section 148)

The Downtown Plan sought to increase pleasant conditions for pedestrians by setting a limit of 11mph for winds for pedestrians and 7mph for sitting areas. Creating 6 new exceedances while eliminating 4 pre-existing ones, should be measured against WHERE those exceedances occur. 5 of the new exceedances are on both the east and west sides of Second at Tehama and Howard. They are on the path of travel for residents in this immediate area heading toward the services, restaurants, food establishments in the area. Mission and Howard Streets. This includes children. The motion just looks at the winds with a fairly mathematical model, ignoring how the new areas of exceedances affect the families in this area and how they move through their neighborhood. (p.13)

On what basis can the Commission conclude that the "Project cannot be shaped or incorporate other wind baffling measures that would reduce the wind at exceedance locations" to comply with the Code? (p. 14) This is not evident in the DEIR.

Shadows on Public Sidewalks (Section 146)

This is discussed extensively above. However, this Motion supposedly applies the shadow place angle in 146(a). (p. 14) In the case of Second Street - again the ONLY STREET SO DESIGNATED south of Market Street - the sloping street angle kicks in at 132' with a sun access angle of 62 degrees. The 216' streetwall grossly exceeds the 132' point where the building is supposed to angle back.

The resolution comes up with calculations that appear NOWHERE ELSE and which seem to be extremely manipulative. For example the sidewalks on the block of Second between Market and Mission appear to be include in these mystery calculations. Although Second Street from Market to Folsom is protected by sec. 146(a), the relevant stretch to be evaluated for amount of sun lost - IF THAT WAS EVEN THE APPROPRIATE METHOD TO EVALUATE IMPACTS - would be the blocks between Mission and Folsom. If Market to Mission is included, calculations are grossly distorted because that block has abundant sunlight, but does not affect the pedestrian experience at HOWARD and Second.

A simply review of DEIR 137-140 shows clearly that the project casts gross shadow impacts on Second in EVERY season. There are mid-day impacts, when people go to lunch, in the spring and fall. Mid morning impacts in the winter. Mid afternoon impacts in the summer.

How were these "calculations" tested? What areas are included in the base? "The Project Sponsor submitted calculations" is NOT the test for making a determination on such a significant issue. The number claimed - 0.6592% of annual available sunlight - does not match the shadows in the DEIR.

The Commission cannot make a "finding" that the impacts are "minor" based on such untested "data." An EIR is at least sent out for public comment. As incomplete as the DEIR may be, it has much more information on the location and nature of shadows than Project Sponsor's "calculations."

Final question - is there, somewhere, a requirement that the ground floor retail space house neighborhood serving businesses and that it be open in the evenings and on weekends?

Based on all the above, it is inappropriate for the Commission to grant any of these Exceptions.

Office Allocation (Section 321/322) - Item 12a

Sponsor seeks an allocation of 430,650 square feet. Because the project has more than maxed out its site, this is too much building for the site. The allocation should be based on a grossly reduced size.

General Plan Amendment - Item 12b

This is amendment is necessary for the increase in height from 150' to 350' adjacent to 831 Howard. St Because the increased height is unwarranted, the General Plan Amendment should be disapproved.

Zoning Map Amendment - Item 12d

A height increase to 350' is not advisable for this project. It should ONLY be considered if the building is redesigned to comply with bulk limits and casts NO SHADOWS on Second Street. The Resolution should be disapproved.

CONCLUSION

The 222 Second Street project must be sent back to the drawing boards. A developer must not be allowed to so thoroughly trash its neighborhood and Code and General Plan policies that aim to protect it. No exceptions, no code changes, to allow a bulked up project should be granted.

The revised project must pay attention to the increasing number of RESIDENTS in this area of Second street and in the broader south of Market. Rincon Hill has substantial new housing. 301 Mission and similar housing projects have been built, or are pending, two blocks east of this site. Residents and their families must be in ANY analysis of how this area should develop. Residents pay taxes at least as much as commercial office developers for similar buildings.

This means that pedestrian, traffic, sunlight, and wind issues need to be transformed into analyses of the needs of both commercial and residential occupants.

Respectfully submitted,

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