



Sent via Electronic Mail

October 20, 2021

Hon. Shamann Walton
San Francisco Board of Supervisors
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: 469 Stevenson Street (Case No. 2017-014833 File No. 210919)
Response to Appeal of Final Environmental Impact Report**

Dear President Walton and Supervisors:

I am writing on behalf of my client, 469 Stevenson Investment, LLC (Build), the project sponsor for 469 Stevenson Street, a 495-unit mixed-use residential development with approximately 4,000 square feet of ground floor retail space to replace a surface parking lot between 5th and 6th Street in the South of Market Neighborhood (Project). On October 26, 2021, the Board of Supervisors will hear an appeal challenging the certification of the Final Environmental Impact Report (Final EIR) prepared under the California Environmental Quality Act (CEQA) for the Project.

The appeal was filed on August 30, 2021, by Susan Brandt-Hawley of Brandt-Hawley Law Group, on behalf of the Yerba Buena Neighborhood Consortium (YBNC) (Appellants). The appeal asserts that the EIR is inadequate in its analysis of significant impacts, mitigation, and project alternatives citing the Project's environmental setting, shadow, geotechnical, cultural resources and cumulative analysis as areas of concern.¹ The appeal presents no new information or evidence, instead referencing previously submitted comments by YBNC on the Draft EIR and a June 1, 2021, letter from Tenants and Owners Development Corporation (TODCO) to Lou Vasquez of BUILD.

Appellant's claims were considered, responded to, and disagreed with, as part of the review and certification of the Final EIR. The claims were determined, as evidenced by the administrative record, to be incorrect, and either not supported by substantial evidence or outside the scope of CEQA. No new information or evidence has been provided by Appellants in response and no rebuttal to the determination has been provided. As such, Appellant's have not met their administrative burden and have failed to provide any legal basis upon which the Board of Supervisors should find that the Final EIR should not be certified. This is especially true given the clear and substantial evidence throughout the administrative record that the Final EIR prepared for the Project is adequate and complete. Instead, the appeal is simply another example of how CEQA is being abused to delay much needed housing projects.

¹ The appeal also references the Project's density bonus but that is not a topic area under CEQA.



Build has met and worked with Project neighbors and the broader community on the Project over the last four (4) years. As a result of this outreach, the Project includes numerous significant neighborhood and Citywide benefits and has community support including a community benefits agreement with the Mid-Market Coalition, a coalition of community groups including Filipino Community Development Corporation; SOMA Neighborhood Residents Council; Tenderloin People's Congress; Demonstration Gardens; Tenderloin Filipino-American Community Association; SOMA Neighborhood Residents Council; San Francisco People's Organization Working for Equity and Reform; Jessie Alley Street Fair Committee; 6th Street Cleanliness and Activation Project; and Mint Mall Core Leaders. The Project will provide the highest and best use for the site, provide local jobs to construction workers and create significant fee revenue and tax generation to the City. Other community benefits include 4,000 square feet of on-site community space and space for a locally-owned business or non-profit organization, funding for approximately \$600,000 of community programming, targeting a significant portion of the 1% Arts fee towards local neighborhood artists, securing a lease for approximately 3,500 square feet of ground floor space in a nearby building and funding 12 months of lease term as well as a tenant improvement package towards the creation of an Urban Rest and Sleep Center in the space, committing to contributing to the maintenance and activation of Mint Plaza and providing a robust affordable housing package.

The Final EIR prepared for the Project is legally adequate. It meets all applicable legal standards and is supported by substantial evidence. In contrast, the appeal is not supported by substantial evidence, has not met applicable legal requirements and is without merit. For all of these reasons and as discussed in more detail below, we **respectfully request that the Board of Supervisors reject the appeal and uphold the certification of the Final EIR.**

I. Project Background

The Project is a mixed-use residential development of approximately 426,000 square feet of residential gross floor area with 495 residential units located on a 28,790 square foot surface parking lot surrounded by a chain-link fence. The Project design has been shaped by the wind and sun with the structure's bulk, massing and site placement selected after dozens of wind tunnel runs and its height established after a reduction to eliminate any shadow on Planning Code Section 295 (Prop K) parks. The interaction of the building with the street is the direct result of a request by staff to meet the street wall along Stevenson and activate and engage the building along Jessie Street to create an active and vibrant alley from 6th Street to Mint Plaza.

On March 11, 2020, a Draft EIR under CEQA was published for the Project. It identified Project and cumulative significant and unavoidable shadow impact on Mint Plaza due to the size and duration of shadow cast on permanent seating areas. It also analyzed various alternatives to reduce the environmental impact associated with the Project. These alternatives included a Reduced Density Alternative (Planning Code Compliant) and a No Residential Parking, Tower Only Project Alternative. The Appellants submitted comments on the Draft EIR which were responded to in responses to comments on the Draft EIR (RTC), published on May 21, 2021.



On July 29, 2021, the Planning Commission, after reviewing the evidence in the record including comments submitted by the Appellant, certified the Final EIR.² On August 30, 2021, the Appellants filed an appeal, challenging the certification of the Final EIR. No new information, or additional evidence, was included in the appeal.

II. CEQA Appeal

The appeal filed by the Appellants challenges the certification of the Final EIR by vaguely claiming that the EIR is inadequate in its analysis of significant impacts, mitigation, and Project alternatives, citing the Project’s environmental setting, shadow, geotechnical, cultural resources, and cumulative analysis as areas of concern. The appeal references letters and comments previously submitted, none of which meet the applicable legal standard for challenging the City’s determination that the Final EIR was legally inadequate. CEQA Guidelines section 15151, sets forth the standard for evaluating the adequacy of an EIR.

“An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.”

The Project’s Final EIR clearly meets the standard outlined above. Appellants have provided no evidence, let alone, substantial evidence, to establish how the Final EIR is not legally adequate. Additionally, all prior comments raised have been responded to in the RTC and Final EIR.

Comments regarding the potential socio-economic impacts of the Project are outside the scope of CEQA as they may be considered only to the extent there is a link established between anticipated socio-economic effects of a proposed project and adverse physical environmental impacts. A March 2020, ALH Urban & Regional Economics report analyzing the potential gentrification and displacement impacts from the Project and whether they result in a potential physical change in the environment found that **“the evidence indicates that development of the Project is not likely to result in residential displacement and gentrification that will lead to socioeconomic impacts warranting further review under CEQA.”**³

Comments regarding seismic, geotechnical and hazard related issues are incorrect and not supported by substantial evidence. The October 2, 2019 Initial Study for the Project analyzed Geology and Soils in great detail, and seismic related standards in particular, concluding that the Project will comply with all seismic related construction, building code and regulatory standards and under CEQA,

² The Final EIR consists of the Draft EIR, any consultations and comments received during the review process, any additional information that became available, and the RTC.

³ ALH Economics “Socioeconomic Effects of 469 Stevenson Street Market-Rate Development” (October 2020), pg. 3



compliance with such applicable regulatory standards can correctly provide a basis for determining that a project will not have a significant environmental impact.⁴

Comments regarding surrounding historic structures and districts are also incorrect and not supported by substantial evidence. The RTC prepared provides a detailed and thorough response to questions raised, identifying where in the administrative record the historic setting has been discussed and analyzed. The applicable standard for a historic impact under CEQA Guidelines section 15064.5(b) is whether a Project “demolishes or materially alters in an adverse manner those physical characteristics of a historic resource that convey its historic significance.”⁵ Substantial evidence in the record supports a determination that the Project which is not in a historic district and is a surface parking lot does not meet that standard. Moreover, no specific issues related to the adequacy, accuracy or completeness of the analysis has been raised.

Finally, regarding shadow, the Final EIR studied and analyzed the Project’s shadow impacts. It was determined that the Project would have a significant and unavoidable shadow impact on Mint Plaza. No specific concerns regarding the adequacy, accuracy or completeness of that analysis has been provided and the RTC prepared provides a detailed and thorough response to previous comments raised.⁶ Finally, the Appellant’s other claims are either outside the scope of CEQA or are so general a response is not warranted.⁷

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The Final EIR prepare for the Project is legally adequate. It is detailed and thorough and the Appellants have failed to raise any argument or present any evidence to establish that the Planning Commission erred in certifying the Final EIR for the Project. Appellants also have not provided any evidence, let alone substantial evidence, to support their concerns regarding the adequacy, accuracy, or completeness of the analysis in the Final EIR.

We therefore respectfully request that the Board of Supervisors deny the appeal and certify the Final EIR for the Project. Build has worked diligently over the past four years on the Project. It is an excellent example of green, infill development that adds 495 new dwelling units to the City’s housing stock in an area with significant transit.

Very truly yours,

Alexis M. Pelosi

⁴ Initial Study, p. 186-194; *Tracy First v City of Tracy* (2009) 177 CA4th 912.

⁵ RTC, p. 42-45.

⁶ RTC, p. 51-57.

⁷ Examples include “density bonus,” which is not a CEQA issue and “cumulative impacts” which could apply to any topic area under CEQA. The Appellant’s also list “alternatives” as a potential issue but the only comment received relates to the naming of the Reduced Density Alternative.