

File No. 211278

Committee Item No. \_\_\_\_\_

Board Item No. 44

## COMMITTEE/BOARD OF SUPERVISORS

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Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: December 14, 2021

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Prepared by: Lisa Lew

Date: December 10, 2021

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Findings Reversing the Final Environmental Impact Report Certification - 469 Stevenson  
2 Street Project]

3 **Motion adopting findings to reverse the Planning Commission’s certification of the**  
4 **Final Environmental Impact Report prepared for the proposed 469 Stevenson Street**  
5 **project.**

6 WHEREAS, The site of the proposed project at 469 Stevenson Street (Assessor’s  
7 Block 3704, Lot 45) is a through lot located in the South of Market neighborhood, within the  
8 boundaries of the C-3-G (Downtown General Commercial) Zoning District and the Downtown  
9 Plan Area in a 160-F Height and Bulk District; the average height of buildings in the immediate  
10 area ranges from one to seven stories; it is approximately 28,790 square feet (0.66-acre) in  
11 size and currently developed as a public surface parking lot with 176 parking spaces with no  
12 existing onsite structures; and

13 WHEREAS, The proposed project at 469 Street would demolish the existing surface  
14 parking lot and construct a new 27-story mixed-use building that is approximately 274 feet tall  
15 (with an additional 10 feet for rooftop mechanical equipment), totaling approximately 535,000  
16 gross square feet and including 495 rental dwelling units with a dwelling mix of approximately  
17 192 studios, 149 one-bedroom units, 96 two-bedroom units, 50 three-bedroom units, and 8  
18 five-bedroom units; approximately 4,000 square feet of commercial retail use on the ground  
19 floor; and approximately 25,000 square feet of private and common open space (“Project”);  
20 and

21 WHEREAS, The Project would provide three below-grade parking levels with 166  
22 vehicular parking spaces; 200 class 1 bicycle spaces; two service delivery loading spaces;  
23 one on-site freight loading space located on the ground floor; and twenty-seven class 2  
24 bicycle parking spaces placed along Jessie Street; and  
25

1           WHEREAS, The Project would require 55,850 cubic yards of excavation and Project  
2 construction would span approximately 36 months; and

3           WHEREAS, The Project would use the State Density Bonus Program and provide 73  
4 affordable housing units onsite; and

5           WHEREAS, Under the State Density Bonus Law, a housing development that includes  
6 on-site affordable housing is entitled to additional density, concessions and incentives, and  
7 waivers from development standards that might otherwise preclude the construction of the  
8 project. Specifically, the Project sought a density bonus of 42.5% and invoked an  
9 incentive/concession from Height (Section 250 of the Planning Code), and waivers of the  
10 following development standards of the Code: 1) Maximum Floor Area Ratio (Section 123); 2)  
11 Rear Yard (Section 134); 3) Common Useable Open Space (Section 135); 4) Dwelling Unit  
12 Exposure (Section 140); 5) Ground-Level Wind Current (Section 148); and 6) Bulk (Section  
13 270); and

14           WHEREAS, The Planning Department prepared an Initial Study, released on October  
15 2, 2019, that concluded that the Project could result in potentially significant environmental  
16 impacts related to air quality, wind, and shadow and that only those three topics would be  
17 discussed further in an Environmental Impact Report (hereinafter "EIR") as required by the  
18 California Environmental Quality Act ("CEQA"), Public Resources Code, Section 21000 et  
19 seq., the CEQA Guidelines, 14 California Code of Regulations, Section 15000 et seq., and  
20 San Francisco Administrative Code, Chapter 31; with respect to other topics, such as land use  
21 and planning, population and housing, cultural resources, tribal cultural resources,  
22 transportation and circulation, noise, greenhouse gas emissions, recreation, utilities and  
23 service systems, public services, biological resources, geology and soils, hydrology and water  
24 quality, hazards and hazardous materials, mineral resources, energy resources, agriculture  
25 and forestry resources, and wildfire, the Initial Study determined the potential individual and

1 cumulative environmental effects would be less than significant, or reduced to less than  
2 significant with mitigation measures, and therefore the EIR did not study these issues beyond  
3 the initial review undertaken in the Initial Study; and

4 WHEREAS, The Draft EIR was published on March 11, 2020, and circulated to  
5 governmental agencies and to interested organizations and individuals for a 60-day public  
6 review period that began March 12, 2020, and concluded on May 11, 2020; and

7 WHEREAS, The Planning Commission held a virtual public hearing on the Draft EIR on  
8 April 16, 2020; during their deliberations, Commissioners expressed concern about the size of  
9 the Project and its potential impacts on historic resources and gentrification and displacement;  
10 and

11 WHEREAS, The Planning Department prepared a Responses to Comments document  
12 (“RTC”) to respond to environmental issues raised in written comments received during the  
13 public comment period and in writing or presented orally at the public hearing for the Draft  
14 EIR, and published the RTC on May 26, 2021; and

15 WHEREAS, On July 29, 2021, the Planning Commission held a virtual public hearing to  
16 consider the adequacy of the Final Environmental Impact Report (“Final EIR”); among other  
17 issues, commenters noted the project’s displacement impacts and significant adverse impacts  
18 on adjacent historic resources such as the Mint Conservation District and the Filipino  
19 Conservation District, not sufficiently acknowledged by the Final EIR; commissioners noted  
20 that the RTC did not adequately address some of their previous questions, particularly about  
21 the potentially incompatible scale of the proposed tower in a setting that is comprised of not  
22 just simply one, but a number of historic districts; another issue discussed at the Commission  
23 hearing was the failure of the Final EIR project description to describe the proposed Project  
24 foundation; the Project sponsor testified that he did not know whether piers would be required,  
25 that that decision would be made with the design of the foundation, which had not been

1 completed to date. He added that the Project would either use piers or a mat, depending on  
2 what is appropriate for the building; and

3 WHEREAS, By Motion No. 20963, on July 29, 2021, the Planning Commission certified  
4 a Final Environmental Impact Report (“Final EIR”) for the proposed Project, by a vote of 4-2;  
5 and

6 WHEREAS, By letter to the Clerk of the Board, dated August 27, 2021, the Brandt-  
7 Hawley Law Group, on behalf of the Yerba Buena Neighborhood Consortium (“Appellant”),  
8 appealed the Final EIR certification; and

9 WHEREAS, The Planning Department’s Environmental Review Officer, by  
10 memorandum to the Clerk of the Board dated September 2, 2021, determined that the appeal  
11 had been timely filed; and

12 WHEREAS, On October 26, 2021, this Board held a duly noticed public hearing to  
13 consider the appeal of the Final EIR certification filed by Appellant; and,

14 WHEREAS, At the hearing, Appellant and members of the public presented evidence  
15 and testimony that the Project may have significant impacts that were not adequately studied  
16 in the Initial Study, the Draft EIR, or the Final EIR; these included the Project’s potential  
17 impacts on adjacent historical resources; geotechnical impacts of the Project foundation; and  
18 physical impacts resulting from likely gentrification of the Project area and resulting  
19 displacement of current residents; and

20 WHEREAS, At the hearing, during the public comment and this Board’s questions to  
21 the Appellant, the Project sponsor, and Planning Department staff, a majority of members of  
22 this Board found that the EIR had treated these impact areas in a conclusory manner;  
23 specifically, the Final EIR had concluded that there will be no significant impacts (therefore  
24 failing to analyze the impacts or identify feasible mitigation measures and alternatives to those  
25

1 impacts) but failed to provide substantial evidence or a reasoned explanation as to why that  
2 conclusion was reached; and

3 WHEREAS, At the hearing, individual members of the Board of Supervisors:

- 4 • Explained that despite evidence of potentially significant impacts identified by  
5 qualified experts, some areas of potentially significant environmental impact were  
6 addressed only in the Initial Study, and were not further analyzed in the EIR, and  
7 were not mitigated as required by CEQA, including: (1) impacts relating to adjacent  
8 historical resources and districts, despite the recognition of the Planning  
9 Department that the Project may have an impact on the setting for those districts;  
10 (2) geotechnical impacts that should have received further EIR analysis for the  
11 benefit of decisionmakers; and (3) physical impacts resulting from potential  
12 gentrification of the Project area and displacement of current residents, and an  
13 inadequate range of reasonably feasible mitigation measures and alternatives to  
14 avoid or reduce those impacts; and
- 15 • Provided detailed comments objecting to the lack of objective analysis in the EIR of  
16 gentrification and displacement that would result from the large number of market-  
17 rate units proposed in the Project, noting concerns with the credibility of the  
18 research provided in a report relied upon by the Planning Department in the  
19 absence of further analysis in the EIR, and explained that the EIR's lack of analysis  
20 to determine whether the Project would result in gentrification and displacement  
21 prevented adequate analysis of the significance of foreseeable physical impacts  
22 resulting from those socio-economic impacts; and
- 23 • Expressed the opinion that the analysis of housing impacts based on displacement  
24 was inadequate; and

- 1 • Expressed the opinion that the Planning Department’s approach to cumulative  
2 impacts of gentrification was fundamentally flawed, and that gentrification and  
3 displacement impacts should be considered in a holistic, thorough manner; and
- 4 • Stated there is no question that the Project will cause significant displacement on  
5 the 6th Street corridor, Filipino community, and the broader low-income community;  
6 and
- 7 • Stated that surrounding taller buildings do impact historic districts; and

8 WHEREAS, With regards to historic resources, the Initial Study acknowledged that the  
9 Project would include the construction of a building that is directly adjacent to the National  
10 Register-eligible Market Street Theatre and Loft Historic District, National and California-  
11 Register eligible Sixth Street Lodging House Historic District, and the Mint-Mission article 11  
12 Conservation District, and a property within the Pacific Gas and Electric (PG&E) City Beautiful  
13 Substations Discontinuous Thematic Historic District; however, the EIR included no further  
14 analysis of the impacts of the 27-story Project on adjacent historic districts as required by  
15 CEQA, in light of substantial record evidence of potentially significant impacts; absent that  
16 analysis, the Final EIR’s conclusions that the Project’s setbacks would avoid significant  
17 impacts on adjacent districts were premature and were inadequately supported by evidence;  
18 and

19 WHEREAS, In the area of geotechnical impacts, the EIR did not conduct adequate  
20 analysis, as the Initial Study concluded that the Project would not result in any impacts to  
21 geology and soils and relied on future compliance with the California and San Francisco  
22 Building Codes as a basis to reach its conclusion; CEQA requires that the EIR analyze and  
23 determine whether the Project would have significant geotechnical impacts, beyond those  
24 conclusory statements; and

1           WHEREAS, The Project’s physical effects relating to gentrification of the surrounding  
2 area and displacement of current residents were not studied in the EIR; the Final EIR (in the  
3 RTC) acknowledged that these socio-economic effects, in themselves, are not considered  
4 environmental impacts under CEQA, absent a related physical change in the environment.  
5 The Final EIR noted that “some displacement may occur,” but without benefit of study or  
6 explanation, concluded that “the proposed project is not likely to result in residential  
7 displacement and gentrification” and therefore improperly dismissed any potential physical  
8 environmental impacts that may result from gentrification or displacement; and

9           WHEREAS, In reviewing the appeal of the Final EIR certification, this Board reviewed  
10 and considered the Final EIR, including the Draft EIR and the RTC, the appeal letter, the  
11 responses to the appeal documents that the Planning Department prepared, the other written  
12 records before the Board of Supervisors and the Planning Commission and all of the public  
13 testimony made in support of and opposed to the Project and the appeal; and

14           WHEREAS, The purpose of CEQA is to inform the public and decision-makers of the  
15 environmental consequences of projects, before those projects are approved; and

16           WHEREAS, Following the public hearing, in Motion No. M21-146 (File No. 210921), the  
17 Board of Supervisors conditionally reversed the Final EIR certification, subject to the adoption  
18 of written findings in support of such determination based on the written record before the  
19 Board of Supervisors as well as all of the testimony at the public hearing in support of and  
20 opposed to the appeal; and

21           WHEREAS, The written record and oral testimony in support of and opposed to the  
22 appeal and deliberation of the oral and written testimony at the public hearing before the  
23 Board of Supervisors by all parties and the public in support of and opposed to the appeal is  
24 in the Clerk of the Board of Supervisors File No. 210919 and is incorporated in this motion as  
25 though set forth in its entirety; now, therefore, be it



1           MOVED, That this Board of Supervisors finds that the Final EIR contains inadequate  
2 analysis and information regarding potential impacts to historic resources; potential  
3 geotechnical impacts resulting from construction of the Project; potential physical impacts  
4 resulting from gentrification and displacement of local residents; and potentially feasible  
5 mitigation measures and alternatives to address significant impacts in those impact areas, all  
6 of which were either improperly and prematurely scoped out of the EIR and studied only in the  
7 Initial Study, or studied in the EIR with insufficient analysis and evidence; and, be it

8           FURTHER MOVED, That based on the above findings this Board finds that the Final  
9 EIR does not comply with CEQA, because it is not sufficient as an informational document;  
10 and be it

11           FURTHER MOVED, That this Board reverses the EIR Certification by the Planning  
12 Commission; and, be it

13           FURTHER MOVED, That this Board finds that as to all other topics studied in the final  
14 EIR, that document complies with CEQA; is adequate, accurate and objective; is sufficient as  
15 an informational document; its conclusions are correct; and it reflects the independent  
16 judgment of the City; and, be it

17           FURTHER MOVED, That this Board remands the Final EIR to the Planning  
18 Department to undertake further environmental review of the Project consistent with this  
19 Motion, before further consideration of EIR Certification and any Project approvals.

20  
21 n:\land\as2021\1900434\01569592.docx

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date \_\_\_\_\_

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor  inquires"
- 5. City Attorney request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

**Subject:**

**The text is listed below or attached:**

Signature of Sponsoring Supervisor: \_\_\_\_\_

For Clerk's Use Only: