



Date Filed:

BOARD OF APPEALS

JUN 18 2014

APPEAL #

JR

FILE

City & County of San Francisco  
BOARD OF APPEALS

# JURISDICTION REQUEST

Date of request: June 18, 2014.

399 Fremont LLC, (requestor(s)) hereby seeks a new appeal period for the following departmental action: **ISSUANCE of PROJECT DEVELOPMENT FEE REPORT regarding BPA No. 2006/05/16/1774 by Department of Building Inspection**, for property at **399 Fremont Street**, that was issued or became effective on **June 13, 2013**, and for which the appeal period ended at close of business on **June 28, 2013**.

Your **Jurisdiction Request** will be considered by the Board of Appeals on Wednesday, **July 16, 2014 at 5:00 p.m. City Hall, Room 416**, One Dr. Carlton B. Goodlett Place.

Pursuant to Article V, § 10 of the Board Rules, the **RESPONSE** to the written request for jurisdiction must be submitted by the permit, variance, or determination holder(s) and/or department(s) no later than **10 days from the date of filing, on or before June 30, 2014**, and must not exceed 6 pages in length (double-spaced), with unlimited exhibits. An original and 10 copies shall be submitted to the Board office with additional copies delivered to the opposing parties the same day.

You or your representative **MUST** be present at the hearing. It is the general practice of the Board that only up to three minutes of testimony from the requestor, the permit holder, and the department(s) will be allowed. Your testimony should focus on the reason(s) you did not file on time, and why the Board should allow a late filing in your situation.

Based upon the evidence submitted and the testimony, the Board will make a decision to either grant or deny your Jurisdiction Request. Four votes are necessary to grant jurisdiction. If your request is denied, an appeal may not be filed and the decision of the department(s) is final. If your request is granted, **a new five (5) day appeal period shall be created which ends on the following Monday**, and an appeal may be filed during this time.

Please Print:

Name: Stephanie Haughey

Signature of Requestor or Agent

# REUBEN, JUNIUS & ROSE, LLP

June 18, 2014

**FILE**

Board of Appeals  
1650 Mission, Room 304  
San Francisco, California 94103

BOARD OF APPEALS

JUN 18 2014

APPEAL #

**Re: 399 Fremont – Jurisdiction Request**  
**Our File No.: 7601.04**

Dear Board of Appeals:

We represent 399 Fremont LLC, developer of the high-rise residential project at 399 Fremont Street, San Francisco (the “Project”). We respectfully request the Board of Appeals take jurisdiction over a development impact fee dispute concerning the Project pursuant to Building Code Section 107A.13.9. Jurisdiction is warranted because this dispute is of a kind the City has not addressed before, and there is disagreement over the appeal deadlines.

Notwithstanding our legal position that the Board of Appeals should take jurisdiction over this matter, we are participating in this appeal process only in the event we are required to do so to exhaust our administrative remedies for litigation purposes. The substance of this dispute is not one that Building Code Section 107A.13.9, or any other San Francisco Municipal Code Section, authorizes the Board to resolve.

## I. BACKGROUND

The San Francisco Planning Commission originally approved the Project on March 16, 2006, pursuant to Planning Commission Motion No. 17268. In 2008, the Project received its first one-year entitlement extension, and at the same time was modified to increase the number of dwelling units to 452, reduce the off-street parking spaces to 238, and

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Sheryl Reuben<sup>1</sup> | David Silverman | Thomas Tunny | Jay F. Drake | John Kevlin  
Lindsay M. Petrone | Melinda A. Sarjapur | Kenda H. McIntosh | Jared Eigerman<sup>2,3</sup> | John McInerney III<sup>2</sup>

1. Also admitted in New York 2. Of Counsel 3. Also admitted in Massachusetts

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increase the bicycle parking from 120 spaces to 150 spaces, along with a series of minor design improvements. Following the 2008 extension, the Planning Commission granted a series of additional one-year extensions, which extended the entitlements to June 15, 2013. The performance condition of the final extension, which required the issuance of a site permit prior to June 15, 2013, was satisfied when the Project team pulled site permit number 200605161774S (the "Site Permit") on June 14, 2013.

On April 19, 2013, the City issued a Development Impact Fee Report for the Project. The City subsequently issued Development Impact Fee Reports for the Project on April 19, 2013, June 14, 2013, and January 27, 2014. The Mayor's Office of Housing issued its Affordable Housing In-Lieu Fee Determination Letter for the Project on June 11, 2013.

The Project sponsor notified the City of its election to defer the payment of development impact fees, in accordance with Planning Code Section 403(a) (and Building Code Section 107A.13.3.2), on June 14, 2013. (See **Exhibit A**.)

On February 10, 2014, the Department of Building Inspection ("DBI") issued the Project's first Site Permit Addendum. (See **Exhibit B**.) At the same time, as required by the City's Fee Deferral Program, the Project sponsor paid the 20 percent development fee prepayment, in the amount of \$6,929,650.40. (See *Id.*) The amount of the 20 percent prepayment was based on the City's impact fee amounts from the January 27, 2014 Development Impact Fee Report. However, the legally proper fee amounts should have been those amounts provided in the April 19, 2013 Development Impact Fee Report.

On March 26, 2014, we filed a Notice of Protest with DBI and the Planning Department, explaining why the impact fee amounts were unlawful. We received no response to that Notice until early May 2014. At that time, we learned that the City disagreed with our position, and that a dispute existed concerning the lawful fee amounts. We filed our request for a resolution of the dispute with DBI's Development Fee Collection Unit ("FCU"), pursuant to Building Code Section 107A.13.9, on May 9, 2014. (See **Exhibit C.**)

## **II. THE REQUEST FOR DISPUTE RESOLUTION WAS FILED TIMELY**

Building Code Section 107A.13.9 governs the resolution of development impact fee disputes, and provides in relevant part as follows:

If a dispute or question arises concerning the accuracy of the final Project Development Fee Report, including the mathematical calculation of any development fee listed thereon, the Development Fee Collection Unit shall attempt to resolve it in consultation with the department or agency affected by the disputed fee and the project sponsor. A person protesting the accuracy of the Report must submit the issue or issues in writing to the Unit with a copy to the department or agency whose development fee is in dispute.

By its terms, Section 107A.13.9 provides that a person seeking resolution of a fee dispute must submit the issue or issues to the FCU when the dispute or question arises. In

this case, we were not aware of a dispute over the fee until the City contacted us in early May 2014. We submitted our request for resolution of the dispute on May 9, 2014.

On May 21, 2014, DBI responded to our May 9 request, concluding that our request was filed too late. (See **Exhibit D.**) DBI's position was that the appeal was required to be filed within 15 days of the issuance of the Site Permit. DBI took this position even though Section 107A.13.9 sets no such deadline. Nor does any other Section of the Building Code set such a deadline concerning a dispute over lawful fee amounts.

Not only does the Building Code not set such a deadline, but we could not have filed our request for resolution of the dispute within 15 days of the Site Permit, because no dispute existed at that time. We were not aware that the FCU would impose the increased fee amounts until at the earliest February 10, 2014. No dispute existed until the City informed us in early May 2014 that it disagreed with us as to the fee amounts. We filed our request for resolution of the dispute on May 9, 2014.

On May 30, 2014, we requested DBI reconsider its decision. (See **Exhibit E.**) On June 4, 2014, DBI reiterated its denial of our request for resolution of the dispute. (See **Exhibit F.**) On June 5, 2014, the Board of Appeals Executive Director informed us that the Board would not accept our appeal of DBI's decision, and that our only alternative was to file this Request for Jurisdiction.

**III. NEITHER THE FCU NOR THE BOARD OF APPEALS  
HAS AUTHORITY TO RESOLVE THIS DISPUTE**

We are requesting the Board of Appeals take jurisdiction over this matter, even though in our view, neither the FCU nor the Board has authority under Building Code Section 107A.13.9 or elsewhere in the Municipal Code to resolve this dispute. As stated above, the dispute resolution procedures of Building Code Section 107A.13.9 apply to disputes over "the accuracy of the final Project Development Fee Report, including the mathematical calculation of any development fee listed thereon." Planning Code Section 404(b) further provides that under Section 107A.13.9,

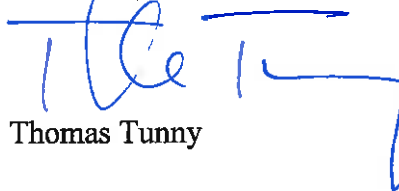
The jurisdiction of the Board shall be strictly limited to determining the accuracy of the [Project Development Fee] Report and the mathematical calculation of the development fee or scope of the physical or "in-kind" requirement. The Board has no jurisdiction to: (i) review the scope or amount of the development fee or requirement established by the Code [or] ... (iii) reduce or waive the development fee or requirement based on ... any other issue related to fairness or equity.

Here, the nature of the dispute before the Board is a matter of equity and an interpretation of the Code concerning the deferral of fees and applicable amounts. The dispute does not involve the mathematical calculation of the fees. Therefore, the dispute resolution procedures of Section 107A.13.9 do not apply.

For all of the foregoing reasons, we respectfully request that Board of Appeals take jurisdiction over this dispute. Thank you for your consideration.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Thomas Tunny

Enclosures

cc: Tom C. Hui, Department of Building Inspection (w/o exhibits)  
John Rahaim, Planning Department (w/o exhibits)  
Daniel Sider, Planning Department (w/o exhibits)  
Susan Cleveland-Knowles, Deputy City Attorney (w/o exhibits)

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# REUBEN, JUNIUS & ROSE, LLP

March 26, 2014

John Rahaim  
Director  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**Re: Notice of Protest of Development Impact Fees  
Our File No.: 7601.01**

Dear Mr. Rahaim:

We represent 399 Fremont LLC, developer of the high-rise residential project at 399 Fremont Street, San Francisco (the "Project"). Pursuant to Government Code Sections 66000 *et seq.* (the "Mitigation Fee Act"), in particular Section 66020, this letter constitutes UDR's "Notice of Protest" regarding the City and County of San Francisco's (the "City") imposition of unlawfully excessive development impact fees on the Project. The City violated controlling law by imposing February 10, 2014 development impact fee amounts on the Project. The applicable fee amounts should have been those in effect as of June 14, 2013 because UDR and its predecessor-in-interest elected to defer the payment of impact fees at that time as authorized by the City's Planning Code.

This Notice is delivered to the City within 90 days of the City's imposition of the unlawful fees, and provides: (1) the factual and legal reasons forming the basis of UDR's Protest; and (2) acknowledgment that the required payment of fees has been or will be tendered when due.

## I. PROJECT AND IMPACT FEE BACKGROUND

The San Francisco Planning Commission originally approved the Project on March 16, 2006 pursuant to Planning Commission Motion No. 17268. The Project at that time consisted of the construction of a 400-foot tower that included 432 dwelling units and 432 off-street parking spaces. A variance pursuant to Planning Code Section 305 also was issued by the Zoning Administrator at that time.

In 2008, the Project received its first one-year entitlement extension, and at the same time was modified to increase the number of dwelling units to 452, reduce the off-street parking spaces to 238, and increase the bicycle parking from 120 spaces to 150 spaces, along with a series of minor design improvements. Following the 2008 extension, the Planning Commission granted a series of additional one-year extensions as follows:

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Sheryl Reuben<sup>1</sup> | David Silverman | Thomas Tunny | Jay F. Drake | John Kevin  
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- June 11, 2009 (pursuant to Planning Commission Motion No. 17901)
- July 1, 2010 (pursuant to Planning Commission Motion No. 18129)
- July 14, 2011 (pursuant to Planning Commission Motion No. 18411)
- July 26, 2012 (pursuant to Planning Commission Motion No. 18676)

The final extension, granted by the Planning Commission on July 26, 2012, extended the entitlements to June 15, 2013. The performance condition of the final extension, which required the issuance of a site permit prior to June 15, 2013, was satisfied when the Project team pulled site permit number 200605161774S (the "Site Permit") on June 14, 2013.

On April 19, 2013, the City issued a Development Impact Fee Report for the Project. The City subsequently issued Development Impact Fee Reports for the Project on April 19, 2013, June 14, 2013, and January 27, 2014. The Mayor's Office of Housing issued its Affordable Housing In-Lieu Fee Determination Letter for the Project on June 11, 2013. (The Fee Determination Letter and the Development Impact Fee Reports are attached as EXHIBIT A.)

The Project sponsor notified the City of its election to defer the payment of development impact fees, in accordance with Planning Code Section 403(a) (and Building Code Section 107A.13.3.2), on June 14, 2013. (See EXHIBIT B.)

On February 10, 2014, the Department of Building Inspection ("DBI") issued the Project's first Site Permit Addendum. (See EXHIBIT C.) At the same time, as required by the City's Fee Deferral Program, the Project sponsor paid the 20 percent development fee pre-payment, in the amount of \$6,929,650.40. (See *Id.*) The amount of the 20 percent pre-payment was based on the City's impact fee amounts from the January 27, 2014 Development Impact Fee Report. However, the legally proper fee amounts should have been those amounts provided in the April 19, 2013 Development Impact Fee Report.

## II. THE MITIGATION FEE ACT AND THE CITY'S FEE DEFERRAL PROGRAM

The Mitigation Fee Act sets forth the rules applicable to cities regarding the justification, formulation, adoption, imposition and accounting of impact fees. In short, the Act requires local governmental agencies to justify and account for developer fees that they enact, increase or impose for purposes of financing public facilities. For example, Section 66001(a) of the Act requires local agencies to:

- Identify the purpose of the fee;
- Identify the use to which the fee is to be put;

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- Determine how there is a reasonable relationship between the fee's use and the type of development project on which it is imposed; and
- Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

Additionally, the City must ensure that there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion thereof attributable to the specific development project on which the fee is imposed. (Gov. Code § 66001(b)).

Substantive limitations on developer fees separate and apart from the Mitigation Fee Act are imposed by case law under which the fees must not exceed the reasonable cost of mitigating the impact of the development projects on which they are imposed. California courts consistently have held that "the basis for determining the amount of the fee allocated to the developer must bear a fair and reasonable relation to the developer's benefit from the fee." (*Bixel Associates v. City of Los Angeles*, 216 Cal.App.3d 1208, 1218 (1989); accord, *Shapell Industries, Inc. v. Governing Board of the Milpitas Unified School District*, 1 Cal.App.4th 218, 235 (1991).)

The Mitigation Fee Act also controls legal challenges of development impact fees. Under Section 66020 of the Act, a project sponsor must first pay the charged fees and then file a Notice of Protest stating the reasons why the fee is invalid. This Notice can be submitted either at the time of project approval, or within 90 days following the imposition of the challenged fee. (Gov. Code § 66020(d)(1).) A legal challenge must be brought within 180 days following the delivery of the Notice of Protest.

In this case, the Project sponsor has complied with the Mitigation Fee Act's procedural requirements by filing this Notice of Protest within 90 days of the City's imposition of the challenged fees, which occurred on February 10, 2014. The Project sponsor also complied with the Fee Deferral Program's procedural requirements by submitting its deferral request to DBI on June 14, 2013, which included the Project sponsor's agreement to pay the Development Fee Deferral Surcharge.

The City's Development Impact Fee Report form has standard language providing in relevant part as follows:

The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project.

### III. THE CITY'S CHOSEN DATE FOR THE CALCULATION OF FEES IS UNLAWFUL

DBI issued the first Site Permit Addendum for the Project on February 10, 2014. At that time, the Project sponsor paid the 20 percent development fee pre-payment, in the amount of \$6,929,650.40. The amount of the development fee pre-payment was determined by using the impact fee amounts in effect as of February 10, 2014, as provided in the Project's January 27, 2014 Development Impact Fee Report.

The Planning Code does not expressly provide for a particular date upon which the amount of deferred impact fees is to be calculated; nor does the Building Code. Here, the City chose February 10, 2014 as the applicable date, rather than an earlier date. This later date significantly benefits the City of course, because the impact fee amounts increased over time, as one would expect.

However, the lawful date for calculating fees should have been June 14, 2013, the date upon which the Project sponsor elected to defer payment of the fees. The applicable fee amounts at that time were set forth in the June 14, 2013 Development Impact Fee Report and the Mayor's Office of Housing's June 11, 2013 Fee Determination Letter. Building Code Section 107A.13.3.2 allows the City to begin the accrual of the Development Fee Deferral Surcharge on the date a project sponsor elects to defer its payment of impact fees. It naturally follows that this would be the operative date for the calculation of the impact fees.

The City's decision to choose February 10, 2014 as the applicable for the fee amounts is not authorized by the City's own Codes. This decision has no legal support. The only rationale for the City's selection of this date is that it entitles the City to higher fee amounts. This is not a lawful rationale. As such, the decision is arbitrary and capricious, and violates controlling law. (C.C.P. § 1085; *see also DeCuir v. County of Los Angeles* (1998) 64 Cal.App.4<sup>th</sup> 75, 81.)

The City may point to the standard language of its Development Impact Fee Report, which, as quoted above, allows for the application of fee amounts in effect as of the date of payment, regardless of the date of permit filing or issuance of the preliminary fee assessment rate. However, this provision is applicable only to projects that are not part of the City's Fee Deferral Program. The application of this provision to projects that are part of the Fee Deferral Program is inconsistent with the Planning Code and Building Code, which freeze fee amounts (subject only to inflationary increases) as of the date a project sponsor elects to defer payment of the fees.

In addition, allowing the imposition of later-in-time fees in higher amounts violates the fundamental purpose of the Fee Deferral Program. In adopting the Fee Deferral Program in 2010, the Board of Supervisors' stated purpose was to ease the financial burden of impact

John Rahaim  
March 26, 2014  
Page 5

fees on project sponsors to encourage economic growth. (Ord. 108-10, § 1.F.) The Board's intention to ease the financial burden of impact fees with the Fee Deferral Program is completely undermined if the City's administrative agencies impose impact fees that have increased significantly from the time the project sponsor elected to defer the fees.

Under controlling law, a departmental regulation is unlawful if it is inconsistent with the authorizing ordinance. (*Slocum v. State Bd. of Equalization* (2005) 134 Cal.App.4th 969, 974 ["[A]gencies do not have discretion to promulgate regulations that are inconsistent with the governing statute, or that alter or amend the statute or enlarge its scope."]; see also (*County of Santa Cruz v. State Bd. of Forestry* (1998) 64 Cal.App.4th 826, 837 ["[E]ven under the broadest of statutory mandates, an administrative agency may not use its authority to alter, enlarge, subvert, or impair the act being administered."]))

The City's applicable date for the calculation of impact fees for the Project violates controlling law because it is inconsistent with the Planning Code and Building Code, and undermines the purpose of the Fee Deferral Program.

For all of these reasons, this letter constitutes UDR's "Notice of Protest" regarding the City's imposition of unlawfully excessive development impact fees on the Project.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

  
Thomas Tunny

Enclosures

cc: Kate Stacy, Deputy City Attorney  
Scott Sanchez, Planning Department  
399 Fremont LLC  
Andrew J. Junius

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**EXHIBIT A**



# Department of Building Inspection

Development Fee Collection Unit

City & County of San Francisco  
1650 Mission Street, San Francisco, CA 94105-2414



## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 01/27/2014

PERMIT APPLICATION: 200605161774

DATE REVIEW OF ESTIMATE COMPLETED BY DEVELOPMENT FEE COLLECTION UNIT: 01/27/2014

PROJECT DESCRIPTION:

ERECT 42-STORY, 3 BASEMENTS, 452 DWELLING RESIDENTIAL WITH PARKING BLDG.  
OM/UDR SF LLC, 1745 SHEA CENTER DRIVE, STE 200, HIGHLAND RANCH, CO 80129 (720) 348-7605

PROJECT SPONSOR:

SITE PERMIT:

FIRST PAYMENT OF IMPACT FEES DUE AT 1ST CONSTRUCTION DOCUMENT ISSUANCE

JOB ADDRESS: BLOCK 3747 LOT 320 399 FREMONT ST

Controlling Entity	Applicable (Y/N)	Impact Fee	Compliance Options (example = payment in lieu of development)	Official Order or Calculation (example = \$4,500 x 1.5 = \$6,750)	ES (M) or Amount	Payment Name	Payment Number
Planning Department	YES	Rincon Hill Community Infrastructure Impact Fee (Planning Code Section 418.7)	Payment	597,000 gsf x \$9.51 = \$5,677,470.00	\$5,677,470.00	BEN FU	(415) 558-6613
Planning Department	YES	Rincon Hill Community Infrastructure Impact Fee (Planning Code Section 418.7)	Payment			BEN FU	(415) 558-6613
Planning Department and Mayor's Office of Economic Development	YES	Rincon Hill: South of Market Area (SOMA) Community Stabilization Fee (Planning Code Section 418)	Payment			BEN FU	(415) 558-6613
Planning Department and Mayor's Office of Economic Development	YES	Rincon Hill: South of Market Area (SOMA) Community Stabilization Fee (Planning Code Section 418)	Payment	597,000 gsf x \$12.11 = \$7,228,670.00	\$7,228,670.00	BEN FU	(415) 558-6613
Planning Department and Mayor's Office of Housing	YES	Affordable Housing Program (Planning Code Section 415)	Payment			CHANDRA EGAN	(415) 701-5546
Planning Department and Mayor's Office of Housing	YES	Affordable Housing Program (Planning Code Section 415)	Payment	see MOH determination letter dated 6.11.13.	\$19,595,594.00	CHANDRA EGAN	(415) 701-5546
SF Public Utilities Commission	YES	Wastewater Capacity Charge (PUC Resolution No. 07-0100)	Payment	Contact SFPUC	\$325,411.76	TOM BILL or MONICA SZL- WHITNEY	(415) 575-6941
SF Public Utilities Commission	YES	Water Capacity Charge (PUC Resolution No. 07-0089)	Payment	Contact SFPUC	\$33,367.75	TOM BILL or MONICA SZL- WHITNEY	(415) 575-6941

\* Not subject to Deferral Program. Fees collected separately from other impact fees.

MOH: Chandra.Egan@SFGov.org

415/701-5546



# Department of Building Inspection

Development Fee Collection Unit  
 City & County of San Francisco  
 1600 Mission Street, San Francisco, CA 94103-2414



## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY  
 AS OF 06/14/2013

PERMIT APPLICATION: 200605161774

DATE REVIEW OF ESTIMATE COMPLETED BY DEVELOPMENT FEE COLLECTION UNIT: 06/14/2013

PROJECT DESCRIPTION: ERECT 41 STORIES 432 DWELLING RESIDENTIAL/PARKING BLDG.  
 PROJECT SPONSOR: FIFIELD COMPANIES, 2010 MAIN ST. #610, CA 92614, (949) 752-8700

SITE PERMIT: Y

FIRST PAYMENT OF IMPACT FEES DUE AT 1ST CONSTRUCTION DOCUMENT ISSUANCE  
 JOB ADDRESS: BLOCK 3747 LOT 001E 398 FREMONT ST

Controlling Entity	Applicable (Year/No)	Impact Fee	Compliance Options (example = payment in lieu, development)	Criteria Used in Calculation (example = # square feet X \$)	Estimated Amount	Reviewer's Name	Reviewer's Phone Number
Planning Department	YES	Rincon Hill Community Infrastructure Impact Fee	Payment	597,000 sqft x \$9.51 = \$5,677,470.00	\$5,677,470.00	BEN FU	(415) 558-6673
Planning Department and Mayor's Office of Economic Development	YES	Planning Code Section 418.7 (Rincon Hill, South of Market Area (SOMA) Community Stabilization Fee	Payment	597,000 sqft x \$12.11 = \$7,229,670.00	\$7,229,670.00	BEN FU	(415) 558-6673
Planning Department and Mayor's Office of Housing	YES	Planning Code Section 418 (Affordable Housing Program (Planning Code Section 415))	Payment	see MOH determination letter dated 6.11.13.	\$19,599,884.00	CHANDRA EGAN	(702) *
SF Public Utilities Commission *	YES	Wastewater Capacity Charge (PUC Resolution No. 07-0100)	Payment	Contact SFPUC	\$326,411.76	TOM BILL or MONICA SZU- WHITNEY	(415) 575-6841
SF Public Utilities Commission *	YES	Water Capacity Charge (PUC Resolution No. 07-0099)	Payment	Contact SFPUC	\$33,267.76	TOM BILL or MONICA SZU- WHITNEY	(415) 575-6841

\* Not subject to Deferral Program. Fees collected separately from other impact fees.



# Department of Building Inspection

Development Fee Collection Unit  
City & County of San Francisco  
1650 Mission Street, San Francisco, CA 94103-2414



## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 06/14/2013

PERMIT APPLICATION: 200606161774

JOB ADDRESS: 399 FREMONT ST

Note: Per San Francisco Admin Code Section 83.4, a First Source Hiring Agreement (FSHA) is required on a permit for 25,000 square feet of commercial space or ten (10) or more new residential units. The proposed development is to erect 41 stories 432 dwelling residential/parking bldg, and is subject to First Source Hiring Agreement (FSHA). Notify the CityBuild at [www.oewd.org/CityBuild](http://www.oewd.org/CityBuild) for questions.

Based on San Francisco Building Code Section 107A.13, if fees are deferred, the following schedule will be applicable:

Fees due at issuance of first construction document:	\$6,500,544.80
Fees eligible for deferral at issuance of the first certificate of occupancy:	<u>\$26,002,179.20</u>
<b>TOTAL Development Impact Fees:</b>	<b><u>\$32,502,724.00</u></b>

In addition to Deferral Fee Surcharge, an administrative fee based on San Francisco Building Code (SFBC) Section 107A.13.14 will be applied for the services provided by the Development Impact Fee Collection Unit.

The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCEI) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. The new fee schedule will be posted December 1st each year and effective on January 1st. To obtain a list of the fees and their adjusted rates, go to the Planning website ([www.sfplanning.org](http://www.sfplanning.org)). Fees associated with other departments also may be adjusted annually on this same schedule, effective July 1 of each year, or adjusted at other times in accordance with applicable legislation. The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project.





# Department of Building Inspection

Development Fee Collection Unit  
City & County of San Francisco  
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## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 01/27/2014

PERMIT APPLICATION: 200605161774

JOB ADDRESS: 399 FREMONT ST

Note: Per San Francisco Admin Code Section 83.4, a First Source Hiring Agreement (FSHA) is required on a permit for 25,000 square feet of commercial space or ten (10) or more new residential units. The proposed development is to erect 42-story, 3 basements, 452 dwelling residential with parking bldg. and is subject to First Source Hiring Agreement (FSHA). Notify the CityBuild at [www.cewd.org/CityBuild](http://www.cewd.org/CityBuild) for questions.

Based on San Francisco Building Code Section 107A.13, if fees are deferred, the following schedule will be applicable:

Fees due at issuance of first construction document:	\$6,793,069.32
Fees eligible for deferral at issuance of the first certificate of occupancy:	<u>\$27,172,277.26</u>
<b>TOTAL Development Impact Fees:</b>	<b><u>\$33,965,346.58</u></b>

In addition to Deferral Fee Surcharge, an administrative fee based on San Francisco Building Code (SFBC) Section 107A.13.14 will be applied for the services provided by the Development Impact Fee Collection Unit.

The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCIE) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. The new fee schedule will be posted December 1st each year and effective on January 1st. To obtain a list of the fees and their adjusted rates, go to the Planning website ([www.sfplanning.org](http://www.sfplanning.org)). Fees associated with other departments also may be adjusted annually on this same schedule, effective July 1 of each year, or adjusted at other times in accordance with applicable legislation. The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project.



# Department of Building Inspection

Development Fee Collection Unit  
 City & County of San Francisco  
 1660 Mission Street, San Francisco, CA 94103-2414



## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 04/19/2013

PERMIT APPLICATION: 200605161774

DATE REVIEW OF ESTIMATE COMPLETED BY DEVELOPMENT FEE COLLECTION UNIT: 04/19/2013

PROJECT DESCRIPTION: ERECT 41 STORIES 432 DWELLING RESIDENTIAL/PARKING BLDG.  
 PROJECT SPONSOR: FIFIELD COMPANIES, 2010 MAIN ST. #610, CA 92614, (949) 752-8700

SITE PERMIT: Y

FIRST PAYMENT OF IMPACT FEES DUE AT 1ST CONSTRUCTION DOCUMENT ISSUANCE

JOB ADDRESS: BLOCK 3747 LOT 001E 399 FREMONT ST

Controlling Entity	Applicable (Yes/No)	Impact Fee	Commutation Options (example = payment in lieu of development)	Calculation (example = # square feet x \$)	Estimated Amount	Reviewer's Name	Reviewer's Phone Number
Planning Department	YES	Rincón Hill Community Infrastructure Impact Fee (Planning Code Section 418.7)	Payment	597,000 gsf x \$9.51 = \$5,677,470.00	\$5,677,470.00	BEN FU	(415) 558-6613
Planning Department and Mayor's Office of Economic Development	YES	Rincón Hill: South of Market Area (SOMA) Community Stabilization Fee (Planning Code Section 418)	Payment	597,000 gsf x \$12.11 = \$7,229,670.00	\$7,229,670.00	BEN FU	(415) 558-6613

\* Not subject to Deferral Program. Fees collected separately from other impact fees.



# Department of Building Inspection

Development Fee Collection Unit  
City & County of San Francisco  
1660 Mission Street, San Francisco, CA 94103-2414



## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 04/19/2013

PERMIT APPLICATION: 200605161774

JOB ADDRESS: 399 FREMONT ST

Note: Per San Francisco Admin Code Section 83.4, a First Source Hiring Agreement (FSHA) is required on a permit for 25,000 square feet of commercial space or ten (10) or more new residential units. The proposed development is to erect 41 stories 432 dwelling residential/parking bldg. and is subject to First Source Hiring Agreement (FSHA). Notify the CityBuild at [www.oewd.org/CityBuild](http://www.oewd.org/CityBuild) for questions.

Based on San Francisco Building Code Section 107A.13, if fees are deferred, the following schedule will be applicable:

Fees due at issuance of first construction document:	\$2,581,428.00
Fees eligible for deferral at issuance of the first certificate of occupancy:	<u>\$10,325,712.00</u>
<b>TOTAL Development Impact Fees:</b>	<u><b>\$12,907,140.00</b></u>

In addition to Deferral Fee Surcharge, an administrative fee based on San Francisco Building Code (SFBC) Section 107A.13.14 will be applied for the services provided by the Development Impact Fee Collection Unit.

The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate (AICIE) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. The new fee schedule will be posted December 1st each year and effective on January 1st. To obtain a list of the fees and their adjusted rates, go to the Planning website ([www.sfpplanning.org](http://www.sfpplanning.org)). Fees associated with other departments also may be adjusted annually on this same schedule, effective July 1 of each year, or adjusted at other times in accordance with applicable legislation. The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project.

**MAYOR'S OFFICE OF HOUSING  
CITY AND COUNTY OF SAN FRANCISCO**



**EDWIN M. LEE  
MAYOR**

**OLSON LEE  
DIRECTOR**

June 11, 2013

OMD/UDR SF, LLC  
Don Mackenzie  
1745 Shea Center Drive, Suite 200  
Littleton, CO 80129

c/o Kenda McIntosh  
Reuben, Junius and Rose  
One Bush Street, Suite 600  
San Francisco, CA 94104

Re: San Francisco Planning Code Section 415 ("Inclusionary Housing Program")  
Affordable Housing Fee Determination for 355-399 Fremont Street

Dear Kenda McIntosh,

In response to your letter submitted 5/31/13 regarding the above referenced project at 355-399 Fremont Street, we are providing the following fee calculations:

1. The total number and size distribution of affordable housing units that would be required by Planning Code Section 415.7 if the units are provided off-site.
2. The fee which would be payable per Planning Code Section 415.5.

The Planning Code specifies that the project sponsor shall pay a fee that is equivalent to the provision of 17% of the market rate units as off-site affordable housing units. Using the off-site calculation, you would be required to provide 17% of the 452 new dwelling units in the primary project to meet the off-site requirement, or a total of 76.8 units. As for the unit size, the Planning Code requires that the off-site housing be comparable to the unit size (by number of bedrooms) reflected in the market rate units of the principal project.

According to your plans, the principal project will have a total of 131 studio unit(s); 140 one-bedroom unit(s); 167 two-bedroom unit(s); 14 three-bedroom unit(s); and 0 four-bedroom unit(s). Using that ratio, the off-site and fee allocation results in 22.27 studio unit(s); 23.80 one-bedroom unit(s); 28.39 two-bedroom unit(s); 2.38 three-bedroom unit(s); and 0 four-bedroom unit(s) as shown in the following chart.

Inclusionary Housing Fee Determination					
Address: 355-399 Fremont Street					
Unit Size	Market Rate Total	17% Off-site Requirement	Off-Site Unit Requirement	Fee By Unit Size*	Fee Payable
Studio	131.00	17%	22.27	\$ 171,568	\$3,820,597
1 bedroom	140.00	17%	23.80	\$ 236,545	\$5,629,771
2 bedroom	167.00	17%	28.39	\$ 326,086	\$9,257,582
3 bedroom	14.00	17%	2.38	\$ 372,956	\$887,635
4 bedroom	0	17%	0.00	\$ 372,956	\$0
<b>Totals:</b>	<b>452</b>		<b>76.8</b>		<b>\$19,595,584</b>
*2013 Fee Schedule in effect					

The Department of Building Inspection (DBI) is responsible for issuing a report outlining preliminary estimates of all development impact and in-lieu fees owed for a development project. Prior to issuance of the first building permit or, in the case where a site permit is issued, the first addendum authorizing construction of the project, a final report will be issued and project sponsors must commit to either paying the full amount of development impact and in-lieu fees or, if eligible, deferring a portion of all development impact and in-lieu fees owed based on the formula in San Francisco Building Code Section 107A.13. A surcharge on the amount deferred will be due prior to issuance of the first certificate of occupancy. The Development Deferral Surcharge Rate is posted on the DBI website at <http://www.sfdbi.org/> and it will be updated monthly.

Payments for development impact and in-lieu fees must be made at the Permit Center, DBI, 1660 Mission, 6th floor, San Francisco, CA 94103. Questions should be directed to 558-6131. **Please contact DBI before paying the fee. DBI must issue you a report on all fees owed before you can pay this fee.**

Please feel free to contact Chandra Egan of the Mayor's Office of Housing at (415) 701-5546 or [chandra.egan@sfgov.org](mailto:chandra.egan@sfgov.org) if you have any questions about this letter.

Sincerely,



**OLSON LEE**  
Director

cc: Ben Fu, Planner, San Francisco Planning Department  
 Julian Banales, Southeast Team Manager, San Francisco Planning Department  
 Kate Conner, San Francisco Planning Department  
 Pamela Levin, Deputy Director, San Francisco Department of Building Inspection  
 John Blackshear, San Francisco Department of Building Inspection  
 Daniel Adams, San Francisco Mayor's Office of Housing  
 Teresa Yanga, San Francisco Mayor's Office of Housing  
 Gigi Whitley, San Francisco Mayor's Office of Housing  
 Benjamin McCloskey, San Francisco Mayor's Office of Housing  
 Flor Bugarin, San Francisco Mayor's Office of Housing

**EXHIBIT B**



# Department of Building Inspection

Development Fee Collection Unit  
City & County of San Francisco  
1650 Mission Street, San Francisco, CA 94103-2414



## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY  
AS OF 06/14/2013

PERMIT APPLICATION: 200605161774  
JOB ADDRESS 399 FREMONT ST

I, the Project Sponsor, hereby request deferral of all eligible fees per Ordinance 107-10.

Yes

No

Name:

Justin D. WALKER

Signature:

[Handwritten Signature]

Date:

6/19/13

**EXHIBIT C**



City and County of San Francisco  
DEPARTMENT OF BUILDING INSPECTION

J O B C A R D



OFFICE HOURS: THE BUILDING INSPECTION IS OPEN DAILY, MONDAY THRU FRIDAY,  
FROM 8:00 a.m. TO 5:00 p.m. DISTRICT BUILDING INSPECTORS KEEP OFFICE HOURS DAILY,  
MONDAY THRU FRIDAY, FROM 8:00 a.m. TO 8:30 a.m. AND FROM 3:00 p.m. TO 4:00 p.m.

REQUESTS FOR INSPECTIONS ARE TAKEN 24 HOURS A DAY/7 DAYS A WEEK  
BY CALLING (415) 575-6955

APPLICATION NO. 2006.0516.17743-1 ISSUED \_\_\_\_\_  
JOB ADDRESS: 388 FRENCH ST. BLOCK: \_\_\_\_\_ LOT: \_\_\_\_\_  
NATURE OF WORK: ADDITION

WORK PERMITTED UNDER AUTHORITY OF THIS BUILDING PERMIT NUMBER MUST BE COMPLETED  
PRIOR TO EXPIRATION DATE OF \_\_\_\_\_

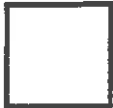
EXTENSION OF TIME TO COMPLETE WORK UNDER THIS BUILDING PERMIT NUMBER MAY BE GRANTED UPON  
WRITTEN REQUEST PRIOR TO THE DATES NOTED ABOVE.

For information on the Permit Process, Building Plans Review, Access Issues, etc., please see page 4 of this  
JOB CARD for useful and appropriate telephone numbers.

**\* ELECTRICAL & PLUMBING WORK MUST HAVE PERMITS SEPARATE FROM A BUILDING PERMIT. \***

**KEEP THIS CARD POSTED IN A CONSPICUOUS PLACE ON THE JOB SITE AT ALL TIMES.  
PLANS AND PERMIT DOCUMENTS SHALL BE ON THE JOB SITE  
AT ALL TIMES WHEN WORK IS IN PROGRESS.  
AFTER COMPLETION OF WORK, RETAIN THIS CARD FOR YOUR RECORDS.**

FORM



City and County of San Francisco  
DEPARTMENT OF BUILDING INSPECTION  
**INSPECTION RECORD**



APPLICATION NO. 2006.0516.774 E1 ISSUED \_\_\_\_\_  
 JOB ADDRESS: 389 Fremont St BLOCK: \_\_\_\_\_ LOT: \_\_\_\_\_  
 NATURE OF WORK: ADDITION

Do Not Pour CONCRETE until the following are signed			
INSPECTIONS	Dates	Inspectors	
Foundation Forms			
Foundation Steel			
Grounding Electrode			
O.K. TO POUR			

Do Not CONCRETE SLAB until the following are signed			
INSPECTIONS	Dates	Inspectors	
Plumbing Underground			
Electrical Underground			
Fire Service Underground			

Do Not COVER until the following are signed			
INSPECTIONS	Dates	Inspectors	
Rough Plumbing			
Shower Pan			
Flu, Vents & Ducts (PLBG)			
Heating Hydrostatic Test			
Rough Sprinklers (PLBG)			
Rough Electrical			
Rough Sprinklers (FIRE)			
Hydrostatic (FIRE)			
Sound Transmission			
Rough Framing			
Insulation			
Environmental Air, Vents, Ducts (BLDG)			
Lath			
O.K. TO COVER			

ADDITIONAL WORK REQUIRING APPROVALS			
INSPECTIONS	Dates	Inspectors	
Special			
Special			
Special			
Fire Alarm			
Energy Ordinance			

FINAL INSPECTION REQUIRED			
INSPECTIONS	Dates	Inspectors	
Disabled Access			
Sprinklers (PLBG)			
Mechanical			
Plumbing			
Electrical			
Street Use & Mapping			
Urban Forestry			
Fire Department			
Health Department			
Building			
CERTIFICATE OF FINAL COMPLETION			

**WARNING: THE PROVISIONS OF YOUR BUILDING INSPECTION PERMIT WILL BE NULLIFIED UNLESS ALL FINAL INSPECTIONS ARE SIGNED OFF ABOVE BY THE APPROPRIATE INSPECTORS.**

**ADDENDUM TO SITE PERMIT**

Job Address... 399 Fremont

Application No. 2006 0516 1774  
(OF SITE PERMIT)

~~FEB 05 2014~~  
Date Addendum Filed DEC 13 2013

**For Permission To Construct**

- GRADING
- FOUNDATION
- STEEL FRAME
- SUPERSTRUCTURE
- TITLE 24 ENERGY, MECHANICAL, ELECTRICAL
- DRILLED PIERS @ Tower only
- FINAL PLANS

**Addenda Previously Applied For**

- GRADING ISSUED
- FOUNDATION ISSUED
- STEEL FRAME ISSUED
- ISSUED
- ISSUED
- ISSUED
- ISSUED

AGREE TO COMPLY WITH ALL CONDITIONS OR STIPULATION OF THE VARIOUS BUREAUS OR DEPARTMENTS NOTED ON THIS ADDENDUM.

Dee Burnett

OWNER'S / AUTHORIZED AGENT

**APPROVED**  
Dept. of Building Insp.

FEB 10 2014

Tom C. Hui  
TOM C. HUI, S.E.  
DIRECTOR  
DEPT. OF BUILDING INSPECTION

DIRECTOR, DEPARTMENT OF BUILDING INSPECTION

Plan Checker To Check Agency to Which Addendum Is To Be Routed

Approved: [Signature]  
HOWARD ZEE, DBI  
JAN 31 2014  
Plan Checker, Department of Building Inspection

Approved: [Signature]  
HOWARD ZEE, DBI  
JAN 31 2014  
SPECIAL INSPECTIONS AND TESTS ARE REQUIRED AS PER BUILDING CODE SECTION 1.701  
Civil Engineer, Department of Building Inspection

Approved: [Signature]  
Mechanical Engineer, Department of Building Inspection

Approved: [Signature]  
Bureau of Fire Prevention and Public Safety

~~APPROVED~~  
BPSM SIGN OFF ON JOB CARD REQUIRED PRIOR TO DBI FINAL CALL 554-7149 TO SCHEDULE.  
REF: 131E-0925  
13MBE-801  
[Signature]  
Clinton Choy, OPW/BSA  
Bureau of Street-Use and Mapping

Approved: [Signature]  
Department of City Planning

Approved: [Signature]

White: Office Copy

Yellow: Applicant's Copy



Department of Building Inspection

City & County of San Francisco  
1650 Mission Street, San Francisco, CA 94103-2414



Receipt for Pre/Postissue Fees Paid

Receipt No: 14021568

Application Number      Address

200605161774      399 FREMONT ST

SITE PERMIT

Pre/Postissue Fees based on Cost:		\$ 114050000.00
Fee Code	Description	Fee Amount
APPLX2-P	Application Extension 2 (DBI)	42,637.63
TECH SUR-P	Technology Surcharge (P)	852.76
APPLX3-P	Application Extension 3 (DBI)	48,573.76
TECH SUR-P	Technology Surcharge (P)	971.48
APPLX-P	Application Extension (DBI)	42,637.63
SEEDRCON-P	Seed Fund Rincon Hill (P)	5,932,956.15
TECH SUR-P	Technology Surcharge (P)	1.08
DCP-SOMA-P	South of Market Area (SOMA) Community Stabilization Impact Fee (P)	231,808.97
REC RET-P	Records Retention Fee(POSTISSUE)	64.00
DCP-INCL-P	DCP Affordable Housing Fee (P)	628,304.20
TECH SUR-P	Technology Surcharge (P)	852.75
<b>Total Pre/Postissue Fees</b>		<b>6,929,650.40</b>

Payments						
Payment Stage	Type	Paid By	Pay Date	Receipt #	Rec By	Payment Amount
PREISSUE	CHECK	FIELD ECHELON INVESTORS, LLC 949-752-8700 222 S. RIVERSIDE PZ CHIACGO IL 60606	04/06/2011	11042279	SIMPSONGAR LAND	43,490.38
PREISSUE	CHECK	Oliver McMillan, LLC. 733 8TH AV SAN DIEGO CA 92101	01/03/2012	12017397	SIMPSONGAR LAND	43,490.38
PREISSUE	CHECK	MATTHEW N CONCANNON 415-840-5119 1070 FILBERT ST SAN FRANCISCO CA 94133	06/14/2013	13061672	AYU	49,545.24
POSTISSUE	CHECK	399 FREMONT JV 510-508-70 399 FREMONT STREET SAN FRANCISCO CA 94105	02/10/2014	14021568	WFCHEUNG	6,793,124.40
<b>Total Payments</b>						<b>6,829,650.40</b>

Name / Date / Div.

*SUPPLEMENTAL II*

The County and City of Francisco  
DBI

Reference Number: 2014038004-86  
Date/Time: 02/19/2014 11:28 AM

Permit or Reference Numbr Payment  
2014038004-86-1

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: Bids Tech Surcharg (P)  
Amount: \$1.08

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: DPP Affordable Hou (P)  
Amount: \$628,394.70

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: Records Re (noreserve)  
Amount: \$54.00

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: SEED FUND RCON HILL P  
Amount: \$5,932,958.15

Line Item  
Permit or Referen 200805161774-P  
Comment: 399 FREMONT ST  
Fee Desc: SOMR IMPACT FEE P  
Amount: \$231,808.97

Total: \$6,793,124.40

1 ITEM TOTAL: \$6,793,124.40

TOTAL: \$6,793,124.40

\*\*\* DUPLICATE RECEIPT 2/10/2 \*\*\*

ICT Check \$6,793,124.40  
Total Received: \$6,793,124.40

Safe Building!

**EXHIBIT A**



# Department of Building Inspection

Development Fee Collection Unit

City & County of San Francisco  
1650 Mission Street, San Francisco, CA 94103-2414



## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 06/14/2013

PERMIT APPLICATION: 200605161774

JOB ADDRESS 399 FREMONT ST

I, the Project Sponsor, hereby request deferral of all eligible fees per Ordinance 107-10.

Yes  No

Name: DAVID R. WATKINS Signature: [Signature]

Date: 6/14/13

**EXHIBIT B**



City and County of San Francisco  
DEPARTMENT OF BUILDING INSPECTION  
**J O B C A R D**



OFFICE HOURS: THE BUILDING INSPECTION IS OPEN DAILY, MONDAY THRU FRIDAY,  
FROM 8:00 a.m. TO 5:00 p.m. DISTRICT BUILDING INSPECTORS KEEP OFFICE HOURS DAILY,  
MONDAY THRU FRIDAY, FROM 8:00 a.m. TO 8:30 a.m. AND FROM 3:00 p.m. TO 4:00 p.m.

REQUESTS FOR INSPECTIONS ARE TAKEN 24 HOURS A DAY/7 DAYS A WEEK  
BY CALLING (415) 575-6955

APPLICATION NO. 2006.0516.177421 ISSUED \_\_\_\_\_  
JOB ADDRESS: 389 Fremont St. BLOCK: \_\_\_\_\_ LOT: \_\_\_\_\_  
NATURE OF WORK: ADDITION 1

WORK PERMITTED UNDER AUTHORITY OF THIS BUILDING PERMIT NUMBER MUST BE COMPLETED  
PRIOR TO EXPIRATION DATE OF \_\_\_\_\_

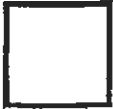
EXTENSION OF TIME TO COMPLETE WORK UNDER THIS BUILDING PERMIT NUMBER MAY BE GRANTED UPON  
WRITTEN REQUEST PRIOR TO THE DATES NOTED ABOVE.

For information on the Permit Process, Building Plans Review, Access Issues, etc., please see page 4 of this  
JOB CARD for useful and appropriate telephone numbers.

**\* ELECTRICAL & PLUMBING WORK MUST HAVE PERMITS SEPARATE FROM A BUILDING PERMIT. \***

**KEEP THIS CARD POSTED IN A CONSPICUOUS PLACE ON THE JOB SITE AT ALL TIMES.  
PLANS AND PERMIT DOCUMENTS SHALL BE ON THE JOB SITE  
AT ALL TIMES WHEN WORK IS IN PROGRESS.  
AFTER COMPLETION OF WORK, RETAIN THIS CARD FOR YOUR RECORDS.**

FORM



City and County of San Francisco  
 DEPARTMENT OF BUILDING INSPECTION  
**INSPECTION RECORD**



APPLICATION NO. 2006.0516.774 E1 ISSUED \_\_\_\_\_  
 JOB ADDRESS: 389 Fremont St BLOCK: \_\_\_\_\_ LOT: \_\_\_\_\_  
 NATURE OF WORK: ADDITIONAL

Do Not Pour CONCRETE until the following are signed			
INSPECTIONS	Dates	Inspectors	
Foundation Forms			
Foundation Steel			
Grounding Electrode			
O.K. TO POUR			
Do Not CONCRETE SLAB until the following are signed			
INSPECTIONS	Dates	Inspectors	
Plumbing Underground			
Electrical Underground			
Fire Service Underground			
Do Not COVER until the following are signed			
INSPECTIONS	Dates	Inspectors	
Rough Plumbing			
Shower Pan			
Flu, Vents & Ducts (PLBG)			
Heating Hydrostatic Test			
Rough Sprinklers (PLBG)			
Rough Electrical			
Rough Sprinklers (FIRE)			
Hydrostatic (FIRE)			
Sound Transmission			
Rough Framing			
Insulation			
Environmental Air, Vents, Ducts (BLDG)			
Lath			
O.K. TO COVER			

ADDITIONAL WORK REQUIRING APPROVALS			
INSPECTIONS	Dates	Inspectors	
Special			
Special			
Special			
Fire Alarm			
Energy Ordinance			
FINAL INSPECTION REQUIRED			
INSPECTIONS	Dates	Inspectors	
Disabled Access			
Sprinklers (PLBG)			
Mechanical			
Plumbing			
Electrical			
Street Use & Mapping			
Urban Forestry			
Fire Department			
Health Department			
Building			
CERTIFICATE OF FINAL COMPLETION			

**WARNING: THE PROVISIONS OF YOUR BUILDING INSPECTION PERMIT WILL BE NULLIFIED UNLESS ALL FINAL INSPECTIONS ARE SIGNED OFF ABOVE BY THE APPROPRIATE INSPECTORS.**

# ADDENDUM TO SITE PERMIT

Job Address... 399 Fremont

Application No. 2006 0516 1774  
(OF SITE PERMIT)

~~FEB 05 2014~~  
Date Addendum Filed DEC 13 2013

### For Permission To Construct

- GRADING
- FOUNDATION
- STEEL FRAME
- SUPERSTRUCTURE
- TITLE 24 ENERGY, MECHANICAL, ELECTRICAL
- DRILLED PIERS @ Tower ONLY
- 
- FINAL PLANS

### Addenda Previously Applied For

- |                          |             |        |
|--------------------------|-------------|--------|
| <input type="checkbox"/> | GRADING     | ISSUED |
| <input type="checkbox"/> | FOUNDATION  | ISSUED |
| <input type="checkbox"/> | STEEL FRAME | ISSUED |
| <input type="checkbox"/> |             | ISSUED |
| <input type="checkbox"/> |             | ISSUED |
| <input type="checkbox"/> |             | ISSUED |
| <input type="checkbox"/> |             | ISSUED |

I AGREE TO COMPLY WITH ALL CONDITIONS OR STIPULATION OF THE VARIOUS BUREAUS OR DEPARTMENTS NOTED ON THIS ADDENDUM.

De Wunett

OWNER'S / AUTHORIZED AGENT

**APPROVED**  
Dept. of Building Insp.

FEB 10 2014

Tom C. Hui  
TOM C. HUI, S.E.  
DIRECTOR  
DEPT. OF BUILDING INSPECTION

DIRECTOR, DEPARTMENT OF BUILDING INSPECTION

Plan Checker To Check Agency to Which Addendum Is To Be Routed

Approved: Howe  
HOWARD ZEE, DBI  
JAN 31 2014  
Plan Checker, Department of Building Inspection

Approved: Howe  
HOWARD ZEE, DBI  
JAN 31 2014  
SPECIAL INSPECTIONS AND TESTS ARE REQUIRED AS PER BUILDING CODE SECTION 1701  
Civil Engineer, Department of Building Inspection

Approved: [Signature]  
Mechanical Engineer, Department of Building Inspection

Approved: [Signature]  
Bureau of Fire Prevention and Public Safety

**DPW/BSM SIGN OFF ON JOB CARD REQUIRED PRIOR TO DBI FINAL CALL 554-7149 TO SCHEDULE.**  
REF: 131E-023  
131ME-0501  
SW LEG.  
By Clinton Choy DPW/BSM  
Bureau of Street-Use and Mapping

Approved: [Signature]  
Department of City Planning

Approved: [Signature]



Department of Building Inspection

City & County of San Francisco  
1650 Mission Street, San Francisco, CA 94103-2414



Receipt for Pre/Postissue Fees Paid

Receipt No: 14021568

Application Number      Address

200605161774      399 FREMONT ST

SITE PERMIT

Fee Code	Description	Fee Amount
Pre/Postissue Fees based on Cost: \$ 114050000.00		
APPLX2-P	Application Extension 2 (DBI)	42,637.63
TECH SUR-P	Technology Surcharge (P)	852.75
APPLX3-P	Application Extension 3 (DBI)	48,573.76
TECH SUR-P	Technology Surcharge (P)	971.46
APPLX-P	Application Extension (DBI)	42,637.63
SEEDRCON-P	Seed Fund Rincon Hill (P)	5,932,956.15
TECH SUR-P	Technology Surcharge (P)	1.08
DCP-SOMA-P	South of Market Area (SOMA) Community Stabilization Impact Fee (P)	231,808.97
REC RET-P	Records Retention Fee(POSTISSUE)	54.00
DCP-INCL-P	DCP Affordable Housing Fee (P)	628,304.20
TECH SUR-P	Technology Surcharge (P)	852.75

Total Pre/Postissue Fees      6,929,650.40

Payment Stage	Type	Paid By	Pay Date	Receipt #	Rec By	Payment Amount
PREISSUE	CHECK	FIELD ECHELON INVESTORS, LLC 949-752-8700 222 S. RIVERSIDE PZ CHIACGO IL 60606	04/06/2011	11042279	SIMPSONGAR LAND	43,490.38
PREISSUE	CHECK	Oliver McMillan, LLC. 733 8TH AV SAN DIEGO CA 92101	01/03/2012	12017397	SIMPSONGAR LAND	43,490.38
PREISSUE	CHECK	MATTHEW N. CONCANNON 415-840-5119 1070 FILBERT ST SAN FRANCISCO CA 94133	06/14/2013	13061672	AYU	49,545.24
POSTISSUE	CHECK	399 FREMONT JV 510-508-70 399 FREMONT STREET SAN FRANCISCO CA 94105	02/10/2014	14021568	WFCHEUNG	6,793,124.40

Total Payments      6,929,650.40

Name / Date / Div.

**SUPPLEMENTAL II**

The County and City of Francisco  
DBI

Reference Number: 2014038064-86  
Date/Time: 02/10/2014 11:28 AM

Permit or Reference Numb Payment  
2014038064-86-1

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: Bldg Tech Surchara (P)  
Amount: \$1.68

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: DCP Affordable Hou (P)  
Amount: \$628,384.20

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: Records Re (pos/issue)  
Amount: \$54.00

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: SEED FUND RCDN HILL P  
Amount: \$5,972,956.15

Line Item  
Permit or Referen 200605161774-P  
Comment: 399 FREMONT ST  
Fee Desc: SONR IMPACT FEE P  
Amount: \$231,808.97

Total: \$6,793,124.40

1 ITEM TOTAL: \$6,793,124.40

TOTAL: \$6,793,124.40

\*\*\* DUPLICATE RECEIPT 2/10/2 \*\*\*

ICI Check \$6,793,124.40  
Total Received: \$6,793,124.40

Safe Building!

**EXHIBIT C**

# REUBEN, JUNIUS & ROSE, LLP

May 9, 2014

John Blackshear  
Development Fee Collection Unit  
Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

**Re: Development Impact Fee Dispute**  
**Our File No.: 7601.01**

Dear Mr. Blackshear:

We represent 399 Fremont LLC ("399 Fremont"), developer of a residential project located at 399 Fremont Street. On February 10, 2014, 399 Fremont paid certain development impact fees in connection with the issuance of the project's first Site Permit Addendum.

We have been in contact with City officials concerning these impact fees, and a dispute has arisen concerning the applicability of certain amounts of the impact fees paid by 399 Fremont. Pursuant to Building Code Section 107A.13.9.1, we hereby request a meeting with the Development Fee Collection Unit to attempt to resolve this dispute. We request this meeting even though this is not a fee "accuracy" or "calculation" issue as contemplated by Section 107A.13.9.1, and it is not clear that the dispute resolution procedures of Sections 107A.13.9.1 and 107A.13.9.2 apply. Our participation in this dispute resolution process is in no way an admission of the applicability of Sections 107A.13.9.1 and 107A.13.9.2 to this dispute.

The factual background of this dispute and our legal position concerning the dispute is set forth in greater detail in the attached. I look forward to hearing from you and scheduling a meeting at your earliest convenience.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

  
Thomas Tunny

Enclosures

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin  
Sheryl Reuben<sup>1</sup> | David Silverman | Thomas Tunny | Jay F. Drake | John Kevin  
Lindsay M. Petrone | Melinda A. Sarjapur | Kenda H. McIntosh | Jared Eigerman<sup>2,3</sup> | John McInerney III<sup>2</sup>

1. Also admitted in New York. 2. Of Counsel. 3. Also admitted in Massachusetts

One Bush Street, Suite 600  
San Francisco, CA 94104

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

[www.reubenlaw.com](http://www.reubenlaw.com)

John Blackshear

May 9, 2014

Page 2

cc: Tom C. Hui, Department of Building Inspection  
Judy Boyajian, City Attorney  
Daniel Sider, Planning Department

One Bush Street, Suite 600  
San Francisco, CA 94104

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

**REUBEN, JUNIUS & ROSE, LLP**

[www.reubenlaw.com](http://www.reubenlaw.com)



**EXHIBIT D**



May 21, 2014

Mr. Thomas Tunny, Esq.  
Reuben, Junius & Rose  
One Bush Street, Suite 600  
San Francisco, California 94104

MAY 23 2014

**Re: Development Impact Fee Dispute - 399 Fremont Street**

Dear Mr. Tunny:

This is in response to your May 9, 2014 letter to me, in which you request a meeting with the Development Fee Collection Unit at the Department of Building Inspection ("Unit") under Section 107A.13.9.1 of the San Francisco Building Code. You have requested this meeting in order to try to resolve a dispute over the amount of the development impact fees assessed by the City for a project at 399 Fremont Street in San Francisco. In your letter, you also question whether this dispute is a fee "accuracy" or "calculation" issue within the scope of the dispute resolution process established in Section 107A.13.9.

As we understand the arguments set forth in your letter and its attachments, you allege that the City improperly calculated the development impact fees by using the fee schedule in effect on February 10, 2014 (the date the first addendum of the Site Permit was issued and payment of 20 percent of the fees was due) rather than the schedule which was in effect on June 14, 2013 (the date the project sponsor elected to defer payment of the full amount of the fee). The position of the Department of Building Inspection is that the appropriate fee schedule to use is "a dispute or question [that has arisen] concerning the accuracy of the final Project Development Fee Report" and therefore is within the scope of Section 107A.13.9.

However, in any event, your request for dispute resolution under Section 107A.13.9 is untimely. Building Code Section 107A.13.9 requires your client to appeal an issue concerning the Project Development Fee report to the Board of Appeals within 15 days of the issuance the building or site permit. Here, the site permit issued on June 14, 2013. Thus, the window for an administrative appeal has closed. A required prerequisite to an appeal to the Board of Appeals is the dispute resolution process set forth in Section 107A.13.9. But, the window for this process has also closed because the Code plainly contemplates that any such dispute would be raised when the first Preliminary Project Development Fee Reports are issued in order that the process at the Unit would be completed in time to appeal the matter to the Board of Appeals within 15 days of the issuance of the building or site permit. Here, the Unit issued Preliminary Development Impact Fee Reports for the project on April 19 and June 14, 2013. Both of these reports clearly informed the project sponsor that (1) the fee is due at issuance of first

**OFFICE OF THE DIRECTOR**  
1660 Mission Street – San Francisco CA 94103  
Office (415) 558-6131 – FAX (415) 558-6225  
Email: Tom.Hui@sfgov.org

construction document; (2) the City's Development Impact Fees are adjusted annually – posted on December 1st and effective on January 1st of each year; and (3) that the adjusted fee rates would be applied to development impact fees paid on or after the effective date of the fee adjustment. The dispute over which fee schedule was applicable should have been raised prior to the issuance of the site permit and thus your request is no longer timely.

Very truly yours,



Tom C. Hui, S.E., C.B.O.  
Director

cc: Gayle Revels, DBI Acting Chief Financial Officer  
John Rahaim, Planning Director  
Dan Sider, Planning Department  
Susan Cleveland-Knowles, Deputy City Attorney  
Judith A. Boyajian, Deputy City Attorney

**EXHIBIT E**

# REUBEN, JUNIUS & ROSE, LLP

May 30, 2014

Tom. C. Hui, S.E., C.B.O., Director  
Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

**Re: Development Impact Fee Dispute  
Request for Reconsideration  
399 Fremont Street, San Francisco  
Our File No.: 7601.01**

Dear Mr. Hui:

Thank you for your May 21, 2014 letter responding to our request for a resolution of our impact fee dispute concerning Fremont Street. In your letter, you state that we filed our request for a resolution untimely because it was due within 15 days of the issuance of the project's site permit on June 14, 2013. We respectfully disagree and request a reconsideration of your decision.

Our request for a resolution of our dispute was not untimely. We could not have filed our request within 15 days of the issuance of the project's site permit because no dispute existed at that time. We did not know the City would impose the February 10, 2014 fee amounts until it did so on that date. On March 26, 2014, we filed a Notice of Protest, and received no response to that Notice until May 2014.

Upon receiving the response to our Notice of Protest from City officials, we became aware that a dispute existed as to the applicable fee amounts. We filed our request for a resolution of the dispute with your office on May 9, 2014. Our request was timely because it was filed when the dispute arose. (S.F. Building Code § 107A.13.9.1.)

We request this reconsideration of your decision even though, as stated in our May 9<sup>th</sup> request, this is not a fee "accuracy" or "calculation" issue as contemplated by Section 107A.13.9.1. The dispute resolution procedures of Section 107A.13.9 do not apply. Planning Code Section 404(b)(iii) expressly provides that DBI and the Board of Appeals have no jurisdiction to "reduce or waive the development fee or requirement based on housing affordability, duplication of fees, or any other issue related to fairness or equity." Our participation in this dispute resolution process is in no way an admission of the applicability of Section 107A.13.9 to this dispute.

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin  
Sheryl Reuben<sup>1</sup> | David Silverman | Thomas Tunny | Jay F. Drake | John Kevin  
Lindsay M. Petrone | Melinda A. Sarjapur | Kenda H. McIntosh | Jared Eigerman<sup>2,3</sup> | John McInerney III<sup>2</sup>

1. Also admitted in New York 2. Of Counsel 3. Also admitted in Massachusetts

One Bush Street, Suite 600  
San Francisco, CA 94104

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

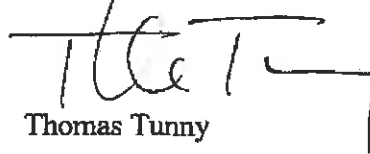
[www.reubenlaw.com](http://www.reubenlaw.com)

Tom. C. Hui, S.E., C.B.O.  
May 30, 2014  
Page 2

Thank you for your consideration.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Thomas Tunny

cc: Gayle Revels, DBI Acting Chief Financial Officer  
John Rahaim, Planning Director  
Daniel Sider, Planning Department  
Judith A. Boyajian, Deputy City Attorney  
Susan Cleveland-Knowles, Deputy City Attorney

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San Francisco, CA 94104

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

[www.reubenlaw.com](http://www.reubenlaw.com)

**EXHIBIT F**



June 4, 2014

Thomas Tunny, Esq.  
Reuben, Junius & Rose  
One Bush Street, Suite 600  
San Francisco, California 94104

JUN 06 2014

**Re: Development Impact Fee Dispute - 399 Fremont Street**

Dear Mr. Tunny:

This is in response to your May 30, 2014 letter to me in which you have asked me to reconsider the decision in my May 21st letter. In my May 21st letter, I determined that your disagreement with the decision to use the fee schedule in effect at the time your client paid the fee rather than the fee schedule in effect when your client elected to defer the fee was a matter properly within the scope of the dispute resolution process in Section 107A.13.9.1 of the San Francisco Building Code but that your request for a meeting to resolve the dispute was untimely for the reasons stated in my letter.

I have considered the points raised in your May 30 letter and the decision in my May 21st letter stands. My interpretation of Section 107A.13.9.1 is that a decision about which fee schedule to use is a fee "accuracy" issue within the scope of the Section. Further, as I pointed out in my May 21st letter, the Department gave your client notice of which fee schedule would apply prior to and at the time of site permit issuance, and well before the fee was paid under protest on February 10, 2014. Both of the Preliminary Development Impact Fee Reports for the project issued by the Department on April 19 and June 14, 2013 have the following statement in bold type at the bottom of the first page:

**"The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCIE) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. The new fee schedule will be posted December 1st each year and effective on January 1st. . . . The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary assessment rate as shown on DBI's Citywide Development Fee Register for the particular project."**



Your client received notice of which fee schedule would apply prior to issuance of the site permit and should have requested a fee dispute resolution meeting at that time.

Very truly yours,

A handwritten signature in black ink that reads "Tom C. Hui". The signature is written in a cursive, slightly slanted style.

Tom C. Hui, S.E., C.B.O.  
Director

cc: Gayle Revels, DBI Acting Chief Financial Officer  
John Rahaim, Planning Director  
Daniel Sider, Planning Department  
Susan Cleveland-Knowles, Deputy City Attorney  
Judith A. Boyajian, Deputy City Attorney

### Permits, Complaints and Boiler PTO Inquiry

**Permit Details Report**

**Report Date:** 6/18/2014 9:59:17 AM

**Application Number:** 200605161774  
**Form Number:** 1  
**Address(es):** 3747 / 320 / 0 399 FREMONT ST  
**Description:** ERECT 42-STORY, 3 BASEMENTS, 452 DWELLING RESIDENTIAL WITH PARKING BLDG.  
**Cost:** \$114,050,000.00  
**Occupancy Code:** R-2,S-3,A-3,M,S-2,B  
**Building Use:** 24 - APARTMENTS

**Disposition / Stage:**

Action Date	Stage	Comments
5/16/2006	TRIAGE	
5/16/2006	FILING	
5/16/2006	FILED	
6/14/2013	PLANCHECK	
6/14/2013	APPROVED	
6/14/2013	ISSUED	

**Contact Details:**

**Contractor Details:**

**License Number:** UNDECIDED  
**Name:** UNDECIDED UNDECIDED  
**Company Name:** UNDECIDED  
**Address:** UNDECIDED \* UNDECIDED CA 00000-0000  
**Phone:**

**Addenda Details:**

**Description:**

SITE

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	5/16/06	5/16/06			5/16/06	CHUNG JANCE	
2	CP-ZOC	5/19/06	7/13/06			12/16/08	FU BEN	route back to DCP for confirmation of compliance of BMR requirements prior to issuance of permit.
3	PAD-STR	10/9/07	10/9/07			1/20/09	ZEE HOWARD	NO WORK DONE; dwgs revised went back to cp-zoc
3	BLDG	1/20/09	1/23/09	10/7/09		8/14/12	ZEE HOWARD	plan check on hold awaiting go-ahead from architect. Ended. No work done.
3	PAD-MAJ	6/29/06	6/29/06			1/6/09	LUI RAYMOND	no work done; reassignment of project
3	ADMIN	3/24/11	4/6/11			4/7/11	YU ANNE	03/24/11: NTC ISSUED. CANCEL DATE: 04/14/11.gjs 04/06/11: Extension of Time Fee paid. New Cancel date:01/05/12.gjs 04/06/11: Route to ppc.gjs 01/03/12: EXTENSION OF TIME FEE PAID IN FULL. CANCEL ON 12/30/2012.GJS 7/9/12: Emailed Ben Fu to leave application with receptionist so that I can attach domestic return receipts and letter to appl.ay 7/23/12: Emailed Ben Fu to leave application with receptionist.ay 7/24/12: Attach the domestic return receipts and Receipt of Payment letter to application.ay
								route back to DCP for confirmation



# SAN FRANCISCO PLANNING DEPARTMENT

## Board of Appeals Brief

*Date:* June 30, 2014  
*Hearing Date:* July 16, 2014  
*Appeal No.:* Jurisdiction Request  
*Project Address:* 399 Fremont Street  
*Block/Lot:* 3706/093, 276, portions of 277  
*Zoning:* RH-DTR (Rincon Hill Downtown Residential)  
 85400-R Height and Bulk District  
*Staff Contact:* Planning Department - Scott Sanchez – (415) 558-6350  
[scott.sanchez@sfgov.org](mailto:scott.sanchez@sfgov.org)  
 Department of Building Inspection – Gayle Revels – (415) 558-6213  
[gayle.revels@sfgov.org](mailto:gayle.revels@sfgov.org)

BOARD OF APPEALS

JUN 30 2014

APPEAL J.R.

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

The Planning Department and Department of Building Inspection (collectively, the “Departments”) submit this joint response to a request by 399 Fremont LLC (“399 Fremont”), the developer of a high-rise residential project (the “Project”) that the Board of Appeals take late jurisdiction over 399 Fremont’s development impact fee dispute with the Departments. The Departments respectfully request the Board to deny the request for jurisdiction on several grounds, which are discussed in more detail below.

### I. Introduction

Article 4 of the Planning Code establishes a number of impact fees to be imposed upon development projects as a condition of approval (“Development Impact Fees” or “Fees”). Planning Code Section 409<sup>1</sup> requires the Controller to adjust all Development Impact Fees annually for inflation. The new Fees go into effect on January 1 of each year. The Planning Department and the Development Fee Collection Unit at the Department of Building Inspection (“DBI”) must give notice of the fee adjustments on each Department website and to every person requesting notice at least 30 days in advance of the January 1 effective date.

Both Article 4 of the Planning Code and Section 107A.13 of the Building Code establish a process for the Development Fee Collection Unit at DBI to: (1) prepare and provide a Project Development Fee Report (“Fee Report”) prior to issuance of the building or site

<sup>1</sup> A copy of the Code sections cited in this letter brief are attached as Exhibit A.

**Board of Appeals Brief  
Jurisdiction Request  
399 Fremont Street  
Hearing Date: July 16, 2014**

permit for a project subject to Development Impact Fees so that a project sponsor and members of the general public have notice of the types of Development Impact Fees imposed, the amount of Fees due, and other relevant information concerning the Fees, (2) collect the Fees or portion thereof when due, and (3) resolve any question or disputes that may arise concerning calculation of the Fees.

Building Code Section 107A.13.9 establishes the fee dispute resolution process, which provides for an appeal to the Board of Appeals. Contrary to 399 Fremont's contention, Section 107A.13.9(a) expressly requires an appeal to the Board to be filed "within 15 days of the issuance of the building or site permit." Subsection (c) requires a project sponsor to submit evidence to the Board that it had attempted to resolve the dispute or question through this process before the Board can accept the appeal.

**II. Factual Background**

Following are the facts relevant to 399 Fremont's request for jurisdiction.

The Development Fee Collection Unit issued three Fee Reports for the Project: the first on April 19, 2013, another on June 14, 2013 when the site permit issued, and the third on January 27, 2014, prior to issuance of the first addendum to the site permit on February 10, 2014 and the date a portion of the Fees was due to be paid. (Copies of these Fee Reports are attached as Exhibit B.) Each of the Fee Reports contain the following statement at the bottom of the page:

*The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate . . . . The new fee schedule will be posted December 1st each year and effective on January 1st. . . . The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project. [Emphasis added.]*

Under the dispute resolution process mentioned above and described more fully in Section IIIA below, the window of time during which 399 Fremont (or any member of the public) could have appealed the calculation of Fees listed in the Fee Report closed 15 days from issuance

**Board of Appeals Brief  
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399 Fremont Street  
Hearing Date: July 16, 2014**

of the site permit on June 14, 2013, but since June 29th was a Saturday, the appeal could have been filed as late as Monday, July 1, 2013.

As 399 Fremont concedes on page 4 of its request for late jurisdiction, it did not file its Notice of Protest with the Planning Department under the State's Fee Mitigation Act until March 26, 2014 and did not submit a request to DBI for dispute resolution under Building Code Section 107A.13.9.1 until May 9, 2014 – almost one year after the site permit issued. On May 12, 2014, 399 Fremont filed a lawsuit in the San Francisco Superior Court challenging the amount of the Development Impact Fees imposed by the City on the grounds that the Departments should have used the Fee schedule in effect on June 14, 2013 (when the site permit issued) and not the Fee schedule in effect on February 10, 2014 (when 399 Fremont actually paid the portion of the Fees that were due). 399 Fremont filed its request for late jurisdiction on June 18, 2014.

**III. Argument**

**A. 399 Fremont did not follow the dispute resolution process provided under the Planning and Building Codes and thus did not timely begin the dispute resolution process contemplated in the Code or timely appeal to this Board.**

The Planning and Building Codes anticipate that disputes may arise from time to time between project sponsors and the City over Development Impact Fees. Planning Code Section 404(b) provides that any such dispute shall be resolved or appealed to the Board of Appeals in accordance with Section 107A.13.9 of the Building Code, which provides in relevant part:

**Section 107A.13.9.1 Procedure for resolution by Development Fee Collection Unit.** If a dispute or question arises concerning the accuracy of the final Project Development Fee Report, including the mathematical calculation of any development fee listed thereon, the Development Fee Collection Unit shall attempt to resolve it in consultation with the department or agency affected by the disputed fee and the project sponsor. A person protesting the accuracy of the Report must submit the issue or issues in writing to the Unit with a copy to the department or agency whose development fee is in dispute. Any public notice of the issuance of the building or site permit shall notify the public of the right to request a copy of the Project Development Fee Report and of the right of appeal to the Board of Appeals under Section 107A.13.9.2.

**Board of Appeals Brief  
Jurisdiction Request  
399 Fremont Street  
Hearing Date: July 16, 2014**

**Section 107A.13.9.2. Appeal to the Board of Appeals.**

(a) If the Development Fee Collection Unit is unable to resolve the dispute or question, the project sponsor or a member of the public may appeal the Project Development Fee Report to the Board of Appeals within 15 days of the issuance of the site or building permit under Article 8 et seq. of the San Francisco Business & Tax Regulations Code.

\* \* \*

(c) In order to appeal to the Board of Appeals under this Section, a project sponsor appellant must first have attempted to resolve the dispute or question by following the procedure in Section 107A.13.9.1. Evidence of this prior attempt must be submitted to the Board of Appeals in order for the Board to accept the appeal. Members of the public may file an appeal under this Section without providing such evidence.

Thus, Section 107A. 13.9(a) expressly (1) states that an appeal to the Board of a dispute over Development Impact Fees must be filed within 15 days of the issuance of the building or site permit and (2) requires that a project sponsor appellant submit evidence to the Board that it tried to resolve the dispute through the Departmental process before the Board can accept an appeal. In this case, the Development Fee Collection Unit issued Fee Reports for 399 Fremont's Project on April 19 and June 14, 2013 – in time for 399 Fremont to have initiated the fee dispute resolution process with the Departments and timely file an appeal with the Board of Appeals. Both of the Fee Reports clearly informed the project sponsor that (1) the Fee is due at issuance of first construction document, in this case the first addendum to the site permit; (2) the City's Development Impact Fees are adjusted annually – posted on December 1st and effective on January 1st of each year; and (3) that the adjusted Fee rates would be applied to Fees paid on or after the effective date of the Fee adjustment.

The Departments submit that 399 Fremont did not timely take advantage of the dispute resolution process and did not timely file an appeal to this Board. Even assuming the relevant date is the issuance of the first addendum to the site permit (not the building or site permit as provided in the Code), the first addendum issued on February 10, 2014. The dispute resolution and appeal process contemplated by the Planning and Building Codes was not even filed within 15 days of that issuance.

**Board of Appeals Brief  
Jurisdiction Request  
399 Fremont Street  
Hearing Date: July 16, 2014**

While 399 Fremont alleges that this dispute is not the type of dispute covered by the Planning and Building Codes, the Departments disagree. Planning Code Section 404(b) provides, in relevant part:

The jurisdiction of the Board shall be strictly limited to determining the accuracy of the Report and the mathematical calculation of the development fee or scope of the physical or "in-kind" requirement. The Board has no jurisdiction to: (i) review the scope or amount of the development fee or requirement established by the Code, (ii) reduce, adjust, or waive a development fee or requirement on the ground that there is no reasonable relationship or nexus between the impact of development and either the amount of the fee charged or the physical requirement, (iii) reduce or waive the development fee or requirement based on housing affordability, duplication of fees, or any other issue related to fairness or equity, or (iv) review the nexus studies that support the development fee or requirement and the City's legal authority to impose it.

Building Code Section 107A.13.9.2(e) similarly provides that the Board's jurisdiction is limited to determining whether the mathematical calculation of the Development Impact Fee or physical improvement is accurate and resolving any "technical disputes" over the use, occupancy, floor area, unit count and mix, or other objective criteria that calculation of the challenged Fee or requirement is based upon. The Departments submit that had an appeal been timely filed, a dispute over which Fee rates apply – those in effect in 2013 or the ones in effect in 2014 – is a dispute over a "calculation" because the ministerial application by the Controller of the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator's Capital Planning Group is a factor in a Fee "calculation."

**B. 399 Fremont has not met the threshold requirement in the Rules of the Board of Appeals for filing a request for late jurisdiction.**

As noted in the Board's Special Instructions for Parties, the Board's Rules provide that in order for the Board to grant late jurisdiction "the Board must find that the City intentionally or inadvertently caused the requestor to be late in filing the appeal." 399 Fremont cannot satisfy this threshold requirement because there is no evidence – and indeed no allegation by 399 Fremont – that the Departments intentionally or inadvertently caused 399 Fremont to be almost one year late in filing its appeal.

**Board of Appeals Brief  
Jurisdiction Request  
399 Fremont Street  
Hearing Date: July 16, 2014**

399 Fremont makes two conflicting arguments for why this Board should grant the request for late jurisdiction over this Fee dispute. First, it argues (on the last page of its letter brief) that it was unaware the City would impose the increased Development Impact Fee amounts until February 10, 2014 when it paid the portion of the Fees that were then due. Second, it argues that it did not know it even had a dispute with the City over the Fee amounts until early May 2014 when the City informed 399 Fremont that it disagreed with it as to the amounts. But as the Departments have demonstrated above, 399 Fremont did have adequate notice – both a couple of months prior to issuance of the site permit and at issuance of the site permit – that the Development Impact Fees would increase on January 1, 2014, that it would apply to Fees paid on or after January 1, 2014, and what the amount of those Fees would be. Thus there was sufficient advance notice and time for 399 Fremont to have initiated the dispute resolution process and filed a timely appeal with the Board of Appeals if the dispute was unresolved.

**IV. CONCLUSION**

The Departments respectfully request the Board of Appeals to deny 399 Fremont's request for late jurisdiction over this fee dispute. 399 Fremont failed to follow the Planning and Building Codes' dispute resolution process, failed to file a timely appeal to the Board of Appeals on a matter within the Board's jurisdiction, and cannot prevail on the merits of their appeal because the Departments properly imposed the Development Impact Fees in effect at the time a portion of the Fees were paid. As 399 Fremont admits in its brief, this request for late jurisdiction is only an attempt by 399 Fremont to exhaust its administrative remedies after a lawsuit has already been filed even though, as it states, it does not believe the Board actually has the jurisdiction to hear the appeal. The Board should deny the request for late jurisdiction for all of the reasons argued above.

**Cc:**

Thomas Tunny – Reuben, Junius & Rose, LLP - Jurisdiction Requestor

**Attachments:**

Exhibit A – Citations from Building and Planning Codes

Exhibit B – Development Fee Impact Reports



## EXHIBIT A

### SAN FRANCISCO BUILDING CODE

#### 107A.13.9 Development fee dispute resolution; appeal to Board of Appeals.

**107A.13.9.1 Procedure for resolution by Development Fee Collection Unit.** If a dispute or question arises concerning the accuracy of the final Project Development Fee Report, including the mathematical calculation of any development fee listed thereon, the Development Fee Collection Unit shall attempt to resolve it in consultation with the department or agency affected by the disputed fee and the project sponsor. A person protesting the accuracy of the Report must submit the issue or issues in writing to the Unit with a copy to the department or agency whose development fee is in dispute. Any public notice of the issuance of the building or site permit shall notify the public of the right to request a copy of the Project Development Fee Report and of/he right of appeal to the Board of Appeals under Section 107A.13.9.2.

#### 107A.13.9.2 Appeal to Board of Appeals.

(a) If the Development Fee Collection Unit is unable to resolve the dispute or question, the project sponsor or a member of the public may appeal the Project Development Fee Report to the Board of Appeals within 15 days of the issuance of the building or site permit under Article 8et seq. of the San Francisco Business & Tax Regulations Code.

(b) In cases where a project sponsor is not using the site permit process and is required to pay a development fee or fees prior to issuance of the development project's building permit, and chooses not to defer payment under Section 107A.13.3.1, the sponsor may pay a disputed fee under protest and file an appeal within 15 days of the issuance of the permit.

(c) In order to appeal to the Board of Appeals under this Section, a project sponsor appellant must first have attempted to resolve the dispute or question by following the procedure in Section 107A.13.9.1. Evidence of this prior attempt must be submitted to the Board of Appeals in order for the Board to accept the appeal. Members of the public may file an appeal under this Section without providing such evidence.

(d) Promptly after an appeal has been filed, the Board of Appeals shall notify the department or agency whose development fee or development impact requirement is at issue of the fact that an appeal has been filed and the date scheduled for hearing. A representative of the Department of Building Inspection and of the department or agency whose development fee or development impact requirement is in dispute must be present at the appeal hearing.

(e) In hearing any appeal of the Project Development Fee Report, the Board's jurisdiction is strictly limited to determining whether the mathematical calculation of the development fee or the scope of a development impact requirement is accurate and resolving any technical disputes over the use, occupancy, floor area, unit count and mix, or other objective criteria that calculation of the challenged development fee or development impact requirement is based upon.

(f) If a decision by the Board of Appeals requires a refund of all or any portion of the disputed development fee, the refund shall be processed promptly by the Development Fee Collection Unit under Section 107A.13.11. If a decision requires a new determination regarding the scope of a development impact requirement, such new determination shall be made by the relevant City agency or department prior to issuance of the first certificate of occupancy. Where the Board determines that an additional amount of the fee or fees is due and owing, the additional amount shall be paid prior to issuance of the first certificate of occupancy for the development project.

## EXHIBIT A

### SAN FRANCISCO PLANNING CODE

#### **SEC. 404. PROJECT DEVELOPMENT FEE REPORT; RESOLUTION OF DEVELOPMENT FEE DISPUTE; APPEAL TO BOARD OF APPEALS; PUBLIC NOTICE.**

- (a) **Project Development Fee Report.** Under Section 107A.13.7 of the San Francisco Building Code, prior to issuance of the building or site permit for a development project subject to any development fees or development impact requirements, the Development Fee Collection Unit at DBI shall prepare and provide to the project sponsor, or any member of the public upon request, a Project Development Fee Report that (i) identifies the development project, (ii) lists the specific development fees or development impact requirements that are applicable, (iii) lists the dollar amount of any development fees or the scope of any development impact requirement, (iii) states when the development fees are due and payable and the status of payment, and (iv) provides any other relevant information concerning the development fees or development impact requirements.
- (b) **Resolution of Development Fee or Development Impact Requirement Dispute; Appeal to Board of Appeals.** If a dispute or question arises concerning the accuracy of the final Project Development Fee Report, including the calculation of any development fee listed thereon, the dispute shall be resolved or appealed to the Board of Appeals in accordance with Section 107A.13.9 of the San Francisco Building Code. The jurisdiction of the Board shall be strictly limited to determining the accuracy of the Report and the mathematical calculation of the development fee or scope of the physical or "in-kind" requirement. The Board has no jurisdiction to: (i) review the scope or amount of the development fee or requirement established by the Code, (ii) reduce, adjust, or waive a development fee or requirement on the ground that there is no reasonable relationship or nexus between the impact of development and either the amount of the fee charged or the physical requirement, (iii) reduce or waive the development fee or requirement based on housing affordability, duplication of fees, or any other issue related to fairness or equity, or (iv) review the nexus studies that support the development fee or requirement and the City's legal authority to impose it.
- (c) **Public Notice of the Project Development Fee Report.** Any public notice issued by the Department of an approval action on a development project that is subject to a development fee or a development requirement under this Article shall notify the public of a right to request a copy of the Project Development Fee Report from the Development Fee Collection Unit at DBI. In addition to this notice, DBI shall provide final notice of the availability of the Project Development Fee Report as part of its standard notice of the issuance of a building or site permit for any project and of the right to appeal the accuracy of the Project Development Fee Report to the Board of Appeals as part of the underlying building or site permit in accordance with Section 107A.13.9 of the San Francisco Building Code.



**Department of Building Inspection**  
 Development Fee Collection Unit  
 City & County of San Francisco  
 1660 Mission Street, San Francisco, CA 94103-2414

**EXHIBIT B**

**DEVELOPMENT IMPACT FEE REPORT**

PRELIMINARY

AS OF 04/19/2013



PERMIT APPLICATION: 200605161774

DATE REVIEW OF ESTIMATE COMPLETED BY DEVELOPMENT FEE COLLECTION UNIT: 04/19/2013

PROJECT DESCRIPTION:

ERECT 41 STORIES 432 DWELLING RESIDENTIAL/PARKING BLDG.

PROJECT SPONSOR:

FIELD COMPANIES, 2010 MAIN ST. #610, CA 92614, (949) 752-8700

SITE PERMIT:

Y

FIRST PAYMENT OF IMPACT FEES DUE AT 1ST CONSTRUCTION DOCUMENT ISSUANCE

JOB ADDRESS: BLOCK 3747 LOT 001E 399 FREMONT ST

Controlling Entity	Applicable (Yes/No)	Impact Fee	Compliance Options (example = payment in lieu of development)	Criteria Used in Calculation (example = # square feet X \$)	Estimated Amount	Reviewer's Name	Reviewer's Phone Number
Planning Department	YES	Rincon Hill Community Infrastructure Impact Fee	(Planning Code Section 418.7)	$687,000 \text{ sqft} \times \$9.51 = \$6,877,470.00$	\$6,877,470.00	BEN FU	(415) 569-6613
Planning Department and Mayor's Office of Economic Development	YES	Rincon Hill: South of Market Area (SOMA) Community Stabilization Fee (Planning Code Section 418)		$597,000 \text{ sqft} \times \$12.11 = \$7,229,670.00$	\$7,229,670.00	BEN FU	(415) 569-6613

\* Not subject to Deferral Program. Fees collected separately from other impact fees.



# EXHIBIT B Department of Building Inspection

Development Fee Collection Unit  
City & County of San Francisco  
1650 Mission Street, San Francisco, CA 94103-2414

## DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 04/19/2013

PERMIT APPLICATION: 200605161774  
JOB ADDRESS: 399 FREMONT ST

Note: Per San Francisco Admin Code Section 83.4, a First Source Hiring Agreement (FSHA) is required on a permit for 25,000 square feet of commercial space or ten (10) or more new residential units. The proposed development is to erect 41 stories 432 dwelling residential/parking bldg. and is subject to First Source Hiring Agreement (FSHA). Notify the CityBuild at [www.oewd.org/CityBuild](http://www.oewd.org/CityBuild) for questions.

Based on San Francisco Building Code Section 107A.13, if fees are deferred, the following schedule will be applicable:

Fees due at issuance of first construction document:	<b>\$2,581,428.00</b>
Fees eligible for deferral at issuance of the first certificate of occupancy:	<b><u>\$10,325,712.00</u></b>
TOTAL Development Impact Fees:	<b><u>\$12,907,140.00</u></b>

In addition to Deferral Fee Surcharge, an administrative fee based on San Francisco Building Code (SFBC) Section 107A.13.14 will be applied for the services provided by the Development Impact Fee Collection Unit.

The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCIE) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. The new fee schedule will be posted December 1st each year and effective on January 1st. To obtain a list of the fees and their adjusted rates, go to the Planning website ([www.sfplanning.org](http://www.sfplanning.org)). Fees associated with other departments also may be adjusted annually on this same schedule, effective July 1 of each year, or adjusted at other times in accordance with applicable legislation. The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project.



# EXHIBIT B



## Department of Building Inspection

Development Fee Collection Unit

City & County of San Francisco  
1660 Mission Street, San Francisco, CA 94103-2414

### DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY  
AS OF 04/19/2013



PERMIT APPLICATION: 200605161774  
JOB ADDRESS 389 FREMONT ST

I, the Project Sponsor, hereby request deferral of all eligible fees per Ordinance 107-10.

Yes

No

Name: DAVID D. MCKENZIE

Signature:

*David McKenzie*

Date: 6/14/13

# EXHIBIT B



## Department of Building Inspection

Development Fee Collection Unit  
 City & County of San Francisco  
 1180 Market Street, San Francisco, CA 94102-3916

### DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY  
 AS OF 06/14/2013



PERMIT APPLICATION: 200605161774

DATE REVIEW OF ESTIMATE COMPLETED BY DEVELOPMENT FEE COLLECTION UNIT: 06/14/2013

PROJECT DESCRIPTION: ERECT 41 STORES 492 DWELLING RESIDENTIAL/PARKING BLDG.

PROJECT SPONSOR: FIFIELD COMPANIES, 2010 MAIN ST. #610, CA 92614, (949) 752-8700

SITE PERMIT: Y

FIRST PAYMENT OF IMPACT FEES DUE AT 1ST CONSTRUCTION DOCUMENT ISSUANCE

JOB ADDRESS: BLOCK 3747 LOT 001E 309 FREMONT ST

Controlling Entity	Applicable (Yes/No)	Impact Fee	Compliance Options (example = payment in lieu of development)	Offense Used in Calculation (example = \$ square feet X \$)	Estimated Amount	Reviewer's Name	Reviewer's Phone Number
Planning Department	YES	Planning Code Section 418.17 Ransom Hill Community Infrastructure Impact Fee	Payment	697,000 sq ft x \$9.51 = \$5,977,470.00	\$5,977,470.00	SEN FU	(415) 555-8513
Planning Department and Mayor's Office of Economic Development	YES	Planning Code Section 418.18 Community Stabilization Fee	Payment	597,000 sq ft x \$12.11 = \$7,229,870.00	\$7,229,870.00	SEN FU	(415) 555-8513
Planning Department and Mayor's Office of Housing	YES	Adaptable Housing Program (Planning Code Section 415)	Payment	see WORK discontinuation letter dated 6.11.12.	\$19,955,684.00	CHANDRA EGAN	(415) 555-8513
SF Public Utilities Commission	YES	Wastewater Capacity Charge (PUC Resolution No. 07-0100)	Payment	Contact SF-PUC	\$228,411.76	YOUNG BILL or MONICA SZL.	(415) 573-6941
SF Public Utilities Commission	YES	Water Capacity Charge (PUC Resolution No. 07-0098)	Payment	Contact SF-PUC	\$33,267.75	YOUNG BILL or MONICA SZL. WHITNEY	(415) 573-6941

\* Not subject to Deferral Program. Fees collected separately from other impact fees.

# EXHIBIT B



## Department of Building Inspection

Development Fee Collection Unit  
City & County of San Francisco  
450 Market Street, San Francisco, CA 94102-3414

### DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY

AS OF 06/14/2013



PERMIT APPLICATION: 200605161774

JOB ADDRESS: 399 FREMONT ST

Note: Per San Francisco Admin Code Section 83.4, 3 First Source Hiring Agreement (FSHA) is required on a permit for 25,000 square feet of commercial space or ten (10) or more new residential units. The proposed development is to erect 41 stories 432 dwelling residential/aparting bldg. and is subject to First Source Hiring Agreement (FSHA). Notify the CN/BUILD at [www.cowd.org/CityBuild](http://www.cowd.org/CityBuild) for questions.

Based on San Francisco Building Code Section 107A.13, if fees are deferred, the following schedule will be applicable:

Fees due at issuance of first construction document:	\$8,500,544.80
Fees eligible for deferral at issuance of the first certificate of occupancy:	\$26,102,179.20
TOTAL Development Impact Fees:	\$32,602,724.00

In addition to Deferral Fee Surcharge, an administrative fee based on San Francisco Building Code (SFB/C) Section 107A.13.14 will be applied for the services provided by the Development Impact Fee Collection Unit.

The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCE) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. The new fee schedule will be posted December 1st each year and effective on January 1st. To obtain a list of the fees and their adjusted rates, go to the Planning website ([www.sfdph.org](http://www.sfdph.org)). Fees associated with other departments also may be adjusted annually on the same schedule, effective July 1 of each year, or adjusted at other times in accordance with applicable legislation. The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project.

EXHIBIT B



Department of Building Inspection  
Development Fee Collection Unit  
CITY & COUNTY OF SAN FRANCISCO  
1650 Market Street, San Francisco, CA 94102-2614

DEVELOPMENT IMPACT FEE REPORT

PRELIMINARY  
AS OF 06/14/2013



PERMIT APPLICATION: 200605051774  
JOB ADDRESS 399 FRENCH ST

I, the Project Sponsor, hereby request deferral of all eligible fees per Ordinance 107-10.

Yes

No

Name: David D. Winkler

Signature: David D. Winkler

Date: 6/14/13





**Department of Building Inspection**  
 Development Fee Collection Unit  
 City & County of San Francisco  
 1650 Mission Street, San Francisco, CA 94103-2414

**DEVELOPMENT IMPACT FEE REPORT**  
 PRELIMINARY  
 AS OF 01/27/2014



PERMIT APPLICATION: 200605161774

DATE REVIEW OF ESTIMATE COMPLETED BY DEVELOPMENT FEE COLLECTION UNIT: 01/27/2014

PROJECT DESCRIPTION: ERECT 42-STORY, 3 BASEMENTS, 452 DWELLING RESIDENTIAL WITH PARKING BLDG.  
 PROJECT SPONSOR: OM/UDR SF LLC, 1745 SHEA CENTER DRIVE, STE 200, HIGHLAND RANCH, CO 80129 (720) 348-7605

SITE PERMIT: Y

FIRST PAYMENT OF IMPACT FEES DUE AT 1ST CONSTRUCTION DOCUMENT ISSUANCE

JOB ADDRESS: BLOCK 3747 LOT 320 399 FREMONT ST

Controlling Entity	Applicable (Yes/No)	Impact Fee	Compliance Options (example = payment in lieu of development)	Criteria Used in Calculation (example # square feet X \$)	Estimated Amount	Reviewer's Name	Reviewer's Phone Number
Planning Department	YES	Rincon Hill Community Infrastructure Impact Fee	Payment	4.5% 2014 INDEX ADJUSTMENT	\$255,486.15	BEN FU	(415) 558-6613
Planning Department	YES	(Planning Code Section 418.7) Rincon Hill Community Infrastructure Impact Fee	Payment	4.5% 2014 INDEX ADJUSTMENT	\$5,677,470.00	BEN FU	(415) 558-6613
Planning Department and Mayor's Office of Economic Development	YES	Rincon Hill: South of Market Area (SOMA) Community Stabilization Fee (Planning Code Section 418)	Payment	4.5% 2014 INDEX ADJUSTMENT	\$325,335.15	BEN FU	(415) 558-6613
Planning Department and Mayor's Office of Economic Development	YES	Rincon Hill: South of Market Area (SOMA) Community Stabilization Fee (Planning Code Section 418)	Payment	597,000 sqft x \$12.11 = \$7,229,670.00	\$7,229,670.00	BEN FU	(415) 558-6613
Planning Department and Mayor's Office of Housing	YES	Affordable Housing Program (Planning Code Section 415)	Payment	4.5% 2014 INDEX ADJUSTMENT	\$681,801.28	CHANDRA EGAN	(415) 701-5546
Planning Department and Mayor's Office of Housing	YES	Affordable Housing Program (Planning Code Section 415)	Payment	see MOH determination letter dated 6.11.13.	\$19,595,584.00	CHANDRA EGAN	(415) 701-5546
SF Public Utilities Commission *	YES	Wastewater Capacity Charge (PUC Resolution No. 07-0100)	Payment	Contact: SFPUC	\$325,411.76	TOM BILL or MONICA SZU-WHITNEY	(415) 575-6941
SF Public Utilities Commission *	YES	Water Capacity Charge (PUC Resolution No. 07-0099)	Payment	Contact: SFPUC	\$33,367.75	TOM BILL or MONICA SZU-WHITNEY	(415) 575-6941

\* Not subject to Deferral Program. Fees collected separately from other impact fees.



**Department of Building Inspection**  
 Development Fee Collection Unit  
 City & County of San Francisco  
 1660 Mission Street, San Francisco, CA 94103-2444

**EXHIBIT B**

**DEVELOPMENT IMPACT FEE REPORT**

PRELIMINARY

AS OF 01/27/2014



PERMIT APPLICATION: 200605161774  
 JOB ADDRESS: 399 FREMONT ST

Note: Per San Francisco Admin Code Section 83.4, a First Source Hiring Agreement (FSHA) is required on a permit for 25,000 square feet of commercial space or ten (10) or more new residential units. The proposed development is to erect 42-story, 3 basements, 452 dwelling residential with parking bldg. and is subject to First Source Hiring Agreement (FSHA). Notify the City/Build at [www.oewd.org/CityBuild](http://www.oewd.org/CityBuild) for questions.

Based on San Francisco Building Code Section 107A.13, if fees are deferred, the following schedule will be applicable:

Fees due at issuance of first construction document:	<b>\$6,793,069.32</b>
Fees eligible for deferral at issuance of the first certificate of occupancy:	<u>\$27,172,277.26</u>
TOTAL Development Impact Fees:	<u>\$33,965,346.58</u>

In addition to Deferral Fee Surcharge, an administrative fee based on San Francisco Building Code (SFBC) Section 107A.13.14 will be applied for the services provided by the Development Impact Fee Collection Unit.

The City's Development Impact Fees will be adjusted annually in accordance with San Francisco Planning Code Article 4, Section 409(b) based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCE) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. The new fee schedule will be posted December 1st each year and effective on January 1st. To obtain a list of the fees and their adjusted rates, go to the Planning website ([www.sfpplanning.org](http://www.sfpplanning.org)). Fees associated with other departments also may be adjusted annually on this same schedule, effective July 1 of each year, or adjusted at other times in accordance with applicable legislation. The adjusted fee rates apply to development impact fees paid on or after the effective date of any such fee adjustments, regardless of the date of permit filing or issuance of the preliminary fee assessment rate as shown on DBI's Citywide Development Fee Register for the particular project.

# EXHIBIT B



**Department of Building Inspection**  
Development Fee Collection Unit  
City & County of San Francisco  
1660 Mission Street, San Francisco, CA 94103-2414



## FEE DEFERRAL REQUEST FORM

PERMIT APPLICATION : 2006 0516 1774  
JOB ADDRESS: 399 Fremont Street

On July 1, 2013, the option to defer development fees created in Section 107A.13.3 of the San Francisco Building Code will expire.

Projects remain eligible for the Fee Deferral Program (Program) if they are either already in the Program, or if prior to July 1, 2013 a complete application package has been submitted for a building or site permit AND a signed fee deferral request form is on file with Department of Building Inspection. Beginning 7/1/2013, all development impact and in-lieu fees will be due in full prior to issuance of the first construction document if this fee deferral request form is not on file by that date.

I, the Project Sponsor, hereby request deferral of all eligible fees per the San Francisco Building Code Section 107A.13.3.

Yes  No

Name: DAVID S. MACKERIE

Signature: [Handwritten Signature]

Date: 6/19/13

