



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary DETERMINATION OF COMPLIANCE

HEARING DATE: JULY 26, 2012

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Date:* July 18, 2012  
*Case No.:* **2012.0645X**  
*Project Address:* **399 FREMONT STREET**  
*Zoning:* RH DTR (Rincon Hill Downtown Residential Mixed Use) District  
85/400-R Height And Bulk Designation  
*Block/Lot:* 3747/002  
*Project Sponsor:* Fifield Realty Corp.  
425 Market Street, Suite 2229  
San Francisco, CA 94105  
c/o Andrew Junius  
Reuben & Junius, LLP  
1 Bush Street, Suite 600  
San Francisco, CA 94104  
*Staff Contact:* Ben Fu – (415) 558-6318  
[ben.fu@sfgov.org](mailto:ben.fu@sfgov.org)  
*Recommendation:* **Approval with Conditions**

### PROJECT DESCRIPTION

The proposal would extend the approval under Motion No. 18411, which was originally granted on June 15, 2006 for 24 months, for determination of compliance under Planning Code Section 309.1 for an additional 12 months. The approved proposal is a new residential project that would consist of approximately 452 dwelling units, up to 238 off-street parking spaces, and for the granting of exceptions to allow greater than one parking space for every two dwelling units under Planning Code Sections 151.1(d) and 309.1(b)(1)(b), for reduction of the dwelling unit exposure requirements under Planning Code Sections 140 and 309.1(b)(1)(d), and to provide exceptions to the separation of towers requirement under Planning Code Sections 270(e) and 309.1(b)(1)(a). The approval period would be extended to June 15, 2013. Exterior facade changes to the project are proposed with this request.

### SITE DESCRIPTION AND PRESENT USE

The approximately 37,812 square foot project site consists of three parcels that are located along the east side of Fremont Street between Harrison Street and Folsom Street. The Project site is on the north slope of Rincon Hill and slopes up toward Harrison Street and down toward Folsom Street. The site was improved with three structures – 355-375 Fremont, known as the Hjul Building, a two-story, approximately 46,500 square-foot office building constructed in 1929 as an industrial building and subsequently converted to office uses; 385 Fremont, a two-story, approximately 15,000 square-foot building with mezzanine containing an auto repair garage and office space; and 399 Fremont, the Apostleship of the Sea, a three-story plus basement, 35,000 square-foot building used as a social service center, with a chapel and temporary shelter for homeless people. The Hjul Building at 355-375 Fremont Street was listed in four local surveys containing buildings that could be considered historic resources.

When it certified the Final EIR for the Rincon Hill Plan, the Planning Commission found that the benefits of the Plan, including development of the 355-375 Fremont Street site, outweigh its significant impacts, including demolition of the Hjul Building. All buildings on the site were demolished in February of 2008.

## **SURROUNDING PROPERTIES AND NEIGHBORHOOD**

The subject site is surrounded by a mix of older light-industrial buildings and high-density residential buildings. The adjacent property to the north at the corner of Harrison and Beale is Avalon Bay, a residential property with 226 units at 388 Beale Street constructed in 1999. The Rincon Hill area has been transitioning from light industrial to a primarily high density residential neighborhood with residential and retail with some supportive commercial uses.

## **ENVIRONMENTAL REVIEW**

The Commission adopted CEQA findings related to the Rincon EIR in support of its approval of the Rincon Hill Plan and related actions in its Motion No. 17008 and hereby incorporates such findings by reference. The Application to extend the approval period was determined by the San Francisco Planning Department (hereinafter "Department") not to require additional environmental review under the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA").

## **HEARING NOTIFICATION**

<b>TYPE</b>	<b>REQUIRED PERIOD</b>	<b>REQUIRED NOTICE DATE</b>	<b>ACTUAL NOTICE DATE</b>	<b>ACTUAL PERIOD</b>
Classified News Ad	20 days	July 6, 2012	July 6, 2012	20 days
Posted Notice	20 days	July 6, 2012	July 6, 2012	20 days
Mailed Notice	10 days	July 16, 2012	July 16, 2012	10 days

## **PUBLIC COMMENT**

- The Department is not aware of any opposition to the proposal.

## **ISSUES AND OTHER CONSIDERATIONS**

On June 15, 2006, an application was approved under Motion No. 17268 for the demolition of the three existing structures, and the construction a single residential high-rise tower that would include the following features:

- The Project will be 400 feet tall (measured from Harrison Street) with an 85-foot podium and total approximately 528,000 gross square feet.
- The Project will consist of up to 432 dwelling units, including approximately 60 percent one-bedroom and studio units and at least 40 percent two-bedroom and three-bedroom condominium apartments.
- Off-street parking for up to 432 vehicles will be provided in a four-level underground garage.
- 120 bicycle spaces.

Planning Commission Motion No. 17671, granted on August 08, 2008, extended the approval from June 15, 2008 to June 15, 2009, and amended the project by increasing the unit count to 452, reducing the off-street parking spaces to 238, increasing bicycle spaces to 150, and minor design modifications. The parking will include 202 independently accessible spaces and 36 tandem spaces. The tandem spaces will be served by valet. The garage will also include 9 ADA compliant spaces, 2 car share spaces and 150 bicycle storage spaces.

Planning Commission Motion No. 17901 extended the approval from June 15, 2009 to June 15, 2010. Planning Commission Motion No. 18129 again extended the approval from June 15, 2010 to June 15, 2011. Planning Commission Motion No. 18411 again extended the approval from June 15, 2011 to June 15, 2012. The current proposal would extend the approval for an additional 12 months to June 15, 2013. Only façade changes to the project are proposed with this request.

### **REQUIRED COMMISSION ACTION**

In order for the project to proceed, the Commission must grant the request pursuant to Planning Code Section 309.1 to extend the performance period for 12 months for the project approved per Motion No. 18411 to June 15, 2013.

### **BASIS FOR RECOMMENDATION**

- The project complies with the applicable requirements of the Planning Code.
- The project is consistent with the objectives and policies of the General Plan.
- The project is consistent with the Rincon Hill Plan.
- The project complies with the First Source Hiring Program.
- The project design, with its residential steps and stoops, and ample landscaping will provide a rich pedestrian environment and play a key role in the creation of an active neighborhood.
- The project will provide approximately 452 dwelling units to the City's housing stock and contribute to the affordable housing program.

<b>RECOMMENDATION:</b>	<b>Approval with Conditions</b>
------------------------	---------------------------------

Attachment Checklist:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Executive Summary   | <input checked="" type="checkbox"/> Aerial Photo              |
| <input checked="" type="checkbox"/> Draft Motion        | <input checked="" type="checkbox"/> Context Photos            |
| <input checked="" type="checkbox"/> Zoning District Map | <input checked="" type="checkbox"/> Project sponsor submittal |
| <input checked="" type="checkbox"/> Parcel Map          | Drawings: <u>Approved Project</u>                             |
| <input checked="" type="checkbox"/> Sanborn Map         | <input checked="" type="checkbox"/> Check for legibility      |

Exhibits above marked with an "X" are included in this packet

\_\_\_\_\_ BF

Planner's Initials



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

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## Planning Commission Draft Motion No. XXXXX HEARING DATE: JULY 26, 2012

*Date:* July 18, 2012  
*Case No.:* **2012.0645X**  
*Project Address:* **399 FREMONT STREET**  
*Zoning:* RH DTR (Rincon Hill Downtown Residential Mixed Use) District  
 85/400-R Height And Bulk Designation  
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**ADOPTING FINDINGS UNDER PLANNING CODE SECTIONS 309.1, 825, AND 827 TO AUTHORIZE AN EXTENSION IN THE PERFORMANCE PERIOD FOR 12 MONTHS FROM THE PREVIOUS EXTENSION DATE WITHIN THE RH DTR (RINCON HILL DOWNTOWN RESIDENTIAL MIXED USE) DISTRICT WITH A 85/400-R HEIGHT AND BULK DESIGNATION.**

### PREAMBLE

On May 17, 2012, Reuben & Junius, LLP (hereinafter "Project Sponsor") filed Application No. 2012.0645X (hereinafter "Application") with the Planning Department (hereinafter "Department") for the extension of performance period per Planning Code Sections 309.1, 825 and 827 for an additional 12 months from the approval under Motion No. 18411. The proposal was originally approved on June 15, 2006 to construct a new residential project that would consist of approximately 432 dwelling units, up to 432 off-street parking spaces (216 independently accessible and 216 tandem spaces), 120 bicycle spaces, and for the granting of exceptions to allow greater than one parking space for every two dwelling units under Planning Code Sections 151.1(d) and 309.1(b)(1)(b), for reduction of the dwelling unit exposure requirements under Planning Code Sections 140 and 309.1(b)(1)(d), and to provide exceptions to the separation of towers requirement under Planning Code Sections 270(e) and 309.1(b)(1)(a).

Planning Commission Motion No. 17671, granted on August 08, 2008, extended the approval from June 15, 2008 to June 15, 2009, and amended the project by increasing the unit count to 452, reducing the off-street parking spaces to 238, increasing bicycle spaces to 150, and minor design modifications.

Planning Commission Motion No. 17901 extended the approval from June 15, 2009 to June 15, 2010. Planning Commission Motion No. 18129 again extended the approval from June 15, 2010 to June 15, 2011. Planning Commission Motion No. 18411 again extended the approval from June 15, 2011 to June 15, 2012. The current proposal would extend the approval for an additional 12 months to June 15, 2013. Exterior façade changes to the project are proposed with this request.

The environmental effects of the Project were determined by the San Francisco Planning Department (hereinafter "Department") to have been fully reviewed under the Rincon Hill Plan Environmental Impact Report (hereinafter "Rincon EIR"). The Rincon EIR was prepared, circulated for public review and comment, and on May 5, 2005, by Motion No. 17007 certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et. Seq., hereinafter "CEQA"). The Rincon EIR is a Program EIR. On June 15, 2006, the Commission reviewed and considered the Project's final EIR that included analysis of additional project specific preservation issues, and certified the Final EIR through Motion No. 17268 on June 15, 2006.

The Commission adopted CEQA findings related to the Rincon EIR and the Project Final EIR in support of its approval of the Rincon Hill Plan and related actions in its Motion No. 17008 and hereby incorporates such findings by reference. The Application to extend the approval period was determined by the San Francisco Planning Department (hereinafter "Department") not to require additional environmental review under the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA").

The file for this project, including the 2006 Final EIR, the Rincon EIR, and Motions No. 17007 and 17268, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

On July 26, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2012.0645X.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby authorizes the extension of the performance period requested in Application No. 2012.0645X, subject to the previously approved conditions and based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The approximately 37,812 square foot project site consists of three parcels that are located along the east side of Fremont Street between Harrison Street and Folsom Street. The Project site is on the north slope of Rincon Hill and slopes up toward Harrison Street and down toward Folsom Street. The site was improved with three structures – 355-375 Fremont, known as the Hjul Building, a two-story, approximately 46,500 square-foot office building constructed in 1929 as an industrial building and subsequently converted to office uses; 385 Fremont, a two-story, approximately 15,000 square-foot building with mezzanine containing an auto repair garage and office space; and 399 Fremont, the Apostleship of the Sea, a three-story plus basement, 35,000 square-foot building used as a social service center, with a chapel and temporary shelter for homeless people. The Hjul Building at 355-375 Fremont Street was listed in four local surveys containing buildings that could be considered historic resources. When it certified the Final EIR for the Rincon Hill Plan, the Planning Commission found that the benefits of the Plan, including development of the 355-375 Fremont Street site, outweigh its significant impacts, including demolition of the Hjul Building. All buildings on the site were demolished in February of 2008.
3. **Past History and Actions.** On November 28, 2005, an application was approved for the construction of a 250-foot residential tower at 375 Fremont Street (Case No. 2002.0449V). That approval was supported by the 375 Fremont Street Final EIR. In addition, on January 13, 2005, an application was submitted for a 250-foot residential project at 399 Fremont Street (Case No. 2003.0169C). An application for environmental review for the 399 Fremont was submitted on February 20, 2003 and a Preliminary Draft EIR was prepared (Case No. 2003.0169E). The proposed Project would be built in lieu of these two separate projects. When the Rincon Hill Downtown Residential Mixed Use plan was approved, it included both the two 250-foot residential projects and, as the preferred alternative, the single, proposed 400-foot Project on the two sites combined. On May 5, 2005, the Planning Commission certified the final Environmental Impact Report (“EIR”) for the Rincon Hill Downtown Residential Mixed Use plan. The final EIR included analysis of the potential impacts of the proposed Project. In addition, the Planning Department determined that no further environmental review was required as documented in a letter to the file dated May 25, 2006.

On June 15, 2006, an application was approved under Motion No. 17268 for the demolition of the three existing structures, and the construction of a single residential high-rise tower that would include the following features:

- The Project will be 400 feet tall (measured from Harrison Street) with an 85-foot podium and total approximately 528,000 gross square feet.
- The Project will consist of up to 432 dwelling units, including approximately 60 percent one-bedroom and studio units and at least 40 percent two-bedroom and three-bedroom condominium apartments.
- Off-street parking for up to 432 vehicles will be provided in a four-level underground garage.

On August 08, 2008, Planning Commission granted a 12-month extension from the original approval date. The extension expired on June 15, 2009. Motion No. 17671 also amended the project by increasing the unit count to 452, reducing the off-street parking spaces to 238, increasing the bicycle spaces to 150, and minor design modifications. The parking will include 202 independently accessible spaces and 36 tandem spaces. The tandem spaces will be served by valet. The garage will also include 9 ADA compliant spaces, 2 car share spaces and 150 bicycle storage spaces.

On June 11, 2009, Planning Commission granted a 12-month extension from the original approval date. The extension expired on June 15, 2010.

On June 24, 2010, Planning Commission granted a 12-month extension from the original approval date. The extension expired on June 15, 2011.

On July 14, 2011, Planning Commission granted a 12-month extension from the original approval date. The extension expired on June 15, 2012.

4. **Proposal.** The project proposes to extend the performance period for another 12 months, taken from the date of expiration of the previous extension granted per Motion No. 18411.
5. **Public Comment.** The Department has received no opposition to the proposal.
6. **The Rincon Hill Downtown Residential Mixed Use District – Planning Commission Design Review and Determination of Compliance Required.** On July 26, 2005, the Board of Supervisors approved the Rincon Hill Plan Element of the General Plan and associated General Plan Amendments. On August 2, 2005, the Board of Supervisors approved, on a first reading, General Plan amendments, zoning text and map amendments, along with other associated legislation in adopting the new Rincon Hill Plan. The new Rincon Hill Plan further encourages the conversion of the existing Rincon Hill area to a high-density residential neighborhood with significant pedestrian and residential amenities such as parks and open space. The proposed new zoning provides more specific direction in designing new buildings, to assure their bulk and height is appropriate and that their interaction with the pedestrian realm contributes to the creation of a new neighborhood. Among the goals of the new zoning controls is to encourage high-rise development in slender towers amply separated, and to limit the amount of excessive off-street parking. To provide more specific direction to project sponsors and to help assure a more predictable project review process, the controls are designed to be more specific and allow less variability. The new controls utilize a design review process before the Commission, similar to the project review process for Downtown C-3 Districts, rather than utilizing the Conditional Use and Planned Unit Development review processes.
7. **Findings Under the California Environmental Quality Act (CEQA).** After considering the 2006 FEIR and other information in the record, the Commission hereby makes the following findings:
  - A. The Commission has independently reviewed and analyzed the 2006 FEIR, the findings contained in Motion No. 17268, and the other information in the record and has

considered the information contained therein and hereby finds that no additional environmental review is required for the Project for the following reasons:

- (1) No changes have been made to the Project that constitute substantial changes requiring major revisions in the 2006 FEIR due to the involvement of new significant environmental effects or a substantial increase of the severity of previously identified effects;
- (2) Substantial changes have not occurred with respect to the circumstances under which the Project will be undertaken which require major revisions to the 2006 FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- (3) There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2006 FEIR was certified, which shows (a) that the Project will have one or more significant effects not discussed in the 2006 FEIR; (b) that significant effects previously examined will be substantially more severe than shown in the 2006 FEIR; or (c) that mitigation measures or alternatives previously found to be infeasible would in fact be feasible and would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measure or alternative.

Based on the foregoing, the Commission finds that none of the conditions described in Section 15162 or 15164 of the CEQA Guidelines calling for the preparation of a subsequent or supplemental EIR or addendum have occurred and that therefore no further environmental review is required for the Project.

- B. The Commission has reviewed and considered the Final EIR and record as a whole, and finds that the Final EIR is adequate for its use as the decision-making body for the action taken herein and incorporates the CEQA findings contained in Motion No.17268, including the Statement of Overriding Considerations and adoption of a Mitigation Monitoring and Reporting Program, by this reference thereto as though set forth in this Motion.
  - C. **Mitigation Monitoring and Reporting Program.** The Mitigation Monitoring and Reporting Program for the Project, adopted as Exhibit C to Commission Motion No. 17268, continues to apply to the Modified Project.
8. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
  9. The Commission hereby finds that approval of the request for extension would promote the health, safety and welfare of the City.



**DECISION**

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES** Case No. 2012.0645X subject to the following conditions attached hereto as EXHIBIT A (Conditions of Approval) which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this determination of compliance authorization to the Board of Appeals within fifteen (15) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals at (415) 575-6880, 1660 Mission Street, Third Floor, San Francisco, CA 94103.**

I hereby certify that the foregoing Motion was adopted by the Planning Commission on **July 26, 2012**.

---

Linda Avery  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 26, 2012

# Exhibit A

## Conditions of Approval

Whenever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

This approval is pursuant to Sections 309.1 to extend the performance period for another 12 months from June 15, 2012. The approved project is to construct a new residential project that would consist of approximately 452 dwelling units, up to 238 off-street parking spaces, and for the granting of exceptions to allow greater than one parking space for every two dwelling units under Planning Code Sections 151.1(d) and 309.1(b)(1)(b), for reduction of the dwelling unit exposure requirements under Planning Code Sections 140 and 309.1(b)(1)(d), and to provide exceptions to the separation of towers requirement under Planning Code Sections 270(e) and 309.1(b)(1)(a). All previously granted exceptions and Conditions of Approval would remain and are attached as Exhibit C. The amendment extends the approval to June 15, 2013.

### GENERAL CONDITIONS

1. Performance. This authorization is valid for a period of 12 months after the date of expiration of the previous extension granted per Motion No. 18411. Specific procedures regarding the performance requirement follow Planning Code Section 309.1(e).
2. Recordation. Prior to the issuance of any building or site permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.
3. The property shall be kept free of weeds, debris, and blight. The Project Sponsor shall install a fence to prevent vagrant camping, unlawful dumping and to minimize the security threat to the neighborhood. The fence shall be kept free of graffiti and postings.

**Exhibit A**

**Conditions of Approval**

Whenever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

This approval is pursuant to Sections 309.1, for the construction of a residential project that would both be taller than 85-feet and larger than 50,000 gross square feet; and is to grant an exception to the limitation of allowing only one parking space for every two dwelling units under Planning Code Sections 151.1(d) and 309.1(b)(1)(B), to allow reduction in dwelling unit exposure requirement under Planning Code Sections 140 and 309.1(b)(1)(D), and to allow exception to the separation of towers requirements under Planning Code Sections 270(e) and 309.1(b)(1)(A). The project approved under this determination of compliance includes the demolition of the existing buildings and the construction of a new residential project that would include approximately 432 dwelling units, and up to 432 off-street parking spaces in a development that would include one tower-on-podium that would reach 400-feet (exclusive of mechanical penthouses and screening) in height that would border Fremont Street in general conformance with the plans, labeled Exhibit B, dated May 16, 2006.

**GENERAL CONDITIONS**

1. Wind Exception. The final approval of a site or building permit for this project is contingent on the Zoning Administrator's granting of an exception to the limitation on wind exceedances caused by this project as regulated by Planning Code Section 827(f).
2. Variance from Code Section 827(d)(5)(C) requirement. The final approval of a site or building permit for this project is contingent on the Zoning Administrator's granting of a variance for the requirement for ground floor stoops that exceed three feet above grade for the ground floor residential units at the Fremont Street façade.
3. Performance. This authorization is valid for a period of 24 months after the approval by the Planning Commission, or the Board of Permit Appeals. Specific procedures regarding the performance requirement follow Planning Code Section 309.1(e).
4. Recordation. Prior to the issuance of any building or site permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject

to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.

5. Community Liaison. The Project Sponsor shall appoint a community liaison officer to deal with issues of concern to the owners and occupants of nearby properties at all times during Project construction. Prior to the commencement of Project construction, the Project Sponsor shall give the Zoning Administrator and the owners of properties within 300 feet of the Project site boundaries written notice of the name, business address and telephone number of the community liaison.
6. First Source Hiring Program. The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the Project Sponsor shall comply with the requirements of this program.

**MITIGATION MEASURES – Final Environmental Impact Report**

7. The Project Sponsor shall implement the Mitigation Monitoring Program as set forth in Exhibit C. Each mitigation measure is a condition of approval of the Project. The Project Sponsor shall implement the mitigation measures as exactly worded and in the manner set forth in the MMRP.

**DESIGN**

8. Final Design. The project sponsor shall continue to work with Planning Department staff on the details of the design of the project, particularly focusing on the ground floor portions that face the pedestrian path and Harrison Street.
9. Streetscape Improvements. The project sponsor shall make sidewalk improvements pursuant to the proposed Rincon Hill Streetscape Plan, in accordance with Planning Code Section 827(g) and as directed by staff. The project sponsor shall work with staff to ensure the improvements are of good quality, compatible with the neighborhood, and compliant with any applicable requirements of the Public Works Department, the Bureau of Light, Heat and Power of the Public Utilities Commission and the Art Commission. The owners of abutting properties to the improved sidewalk shall hold harmless the City and County of San Francisco, its officers, agents, and employees, from any damage or injury caused by reason of the design, construction or maintenance of the improvements, and shall require the owner or owners or subsequent owner or owners of the respective property to be solely liable for any damage or loss occasioned

by any act or neglect in respect to the design, construction or maintenance of the sidewalk improvements.

10. Pedestrian Path. A pedestrian path shall be provided as shown in Exhibit B and shall meet the specifications for publicly accessible open space and for the Rincon Hill pedestrian path as outlined in Planning Code Sections 827(e)(3)(B), (C) and (D).
11. Street Trees. Street trees shall be installed in accordance with Planning Code Section 143 and 827(g)(2), which provides specific requirements regarding the location of the trees relative to curb, the specifications of the planted street tree, and the planted street tree sidewalk opening, and irrigation.
12. Trash. Trash receptacles and dumpsters shall not be stored on public property or in project common space, and they shall be screened from public view.
13. Mechanical equipment and appurtenances shall be enclosed in such a manner that (a) the enclosure is designed as a logical extension of the building form and an integral part of overall building design and (b) its cladding and detailing is comparable in quality to the rest of the building. Any such enclosures may have openings necessary for proper ventilation of equipment.

#### **AFFORDABLE UNITS**

14. The project shall comply with the inclusionary housing requirements set forth in Planning Code Sections 315 through 315.9 and 827(b)(5).
15. If the Applicant chooses to provide units off-site, the Applicant shall comply with the requirements of Planning Code Section 827(b)(5).
16. If the Applicant chooses to pay a fee in-lieu of providing units, the Applicant shall comply with the requirements of Section 315.6.
17. If BMR units are provided on-site, the BMR units shall be designated on the building plans prior to approval of any building permit. BMR units shall (1) reflect the unit size mix of the market rate units, (2) shall be constructed and marketed concurrently with the construction and sale of the market rate units, and (3) shall be of the same quality and materials as the market rate units in the project. If the BMR units are provided on-site, prior to issuance of the Building Permit, the Project Sponsor shall record a Notice of Special Restriction on the property, which records a copy of this Motion and identifies the BMR units satisfying the requirements of this Motion. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department

and to the Mayor's Office of Housing or its successor (MOH), the monitoring agency for the BMR unit, at 25 Van Ness Avenue, Suite 600, San Francisco, California 94102.

**IMPACT FEES**

18. The project shall comply with the provisions of Planning Code Section 318, including payment of the Rincon Hill Community Infrastructure Impact Fee or execution of a Waiver Agreement with the Planning Department prior to issuance of the first site or building permit, and payment of the SOMA Community Stabilization Fee as required by Planning Code Section 318.

**PARKING AND CIRCULATION**

19. Sale of Parking Space Separate from Sale or Rental of Unit. Residential parking spaces shall be made available to buyers or renters (depending on whether the building is ultimately a condominium or rental development) as a separate "add-on" option for purchase or rent, rather than having the parking space bundled with each unit in accordance with procedures and specification of Planning Code Section 167.
20. Car Share Space. The Project Sponsor shall provide space at no cost one car share space, to be operated by car-share organization (as defined by Planning Code Section 166(a)(2)) in accordance with Planning Code Section 166.

**MONITORING AND VIOLATION**

21. Violation of the conditions noted above or any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Code Section 176.
22. Should implementation of this Project result in complaints from neighborhood residents or business owners and tenants, which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the City Planning Code and/or the specific Conditions of Approval for the Project as set forth in Exhibit A of this motion, the Zoning Administrator shall report such complaints to the City Planning Commission which may thereafter hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3 and 306.4 of the Code to consider revocation of this Design Review Authorization.

**PLANNING COMMISSION**  
**June 15, 2006**

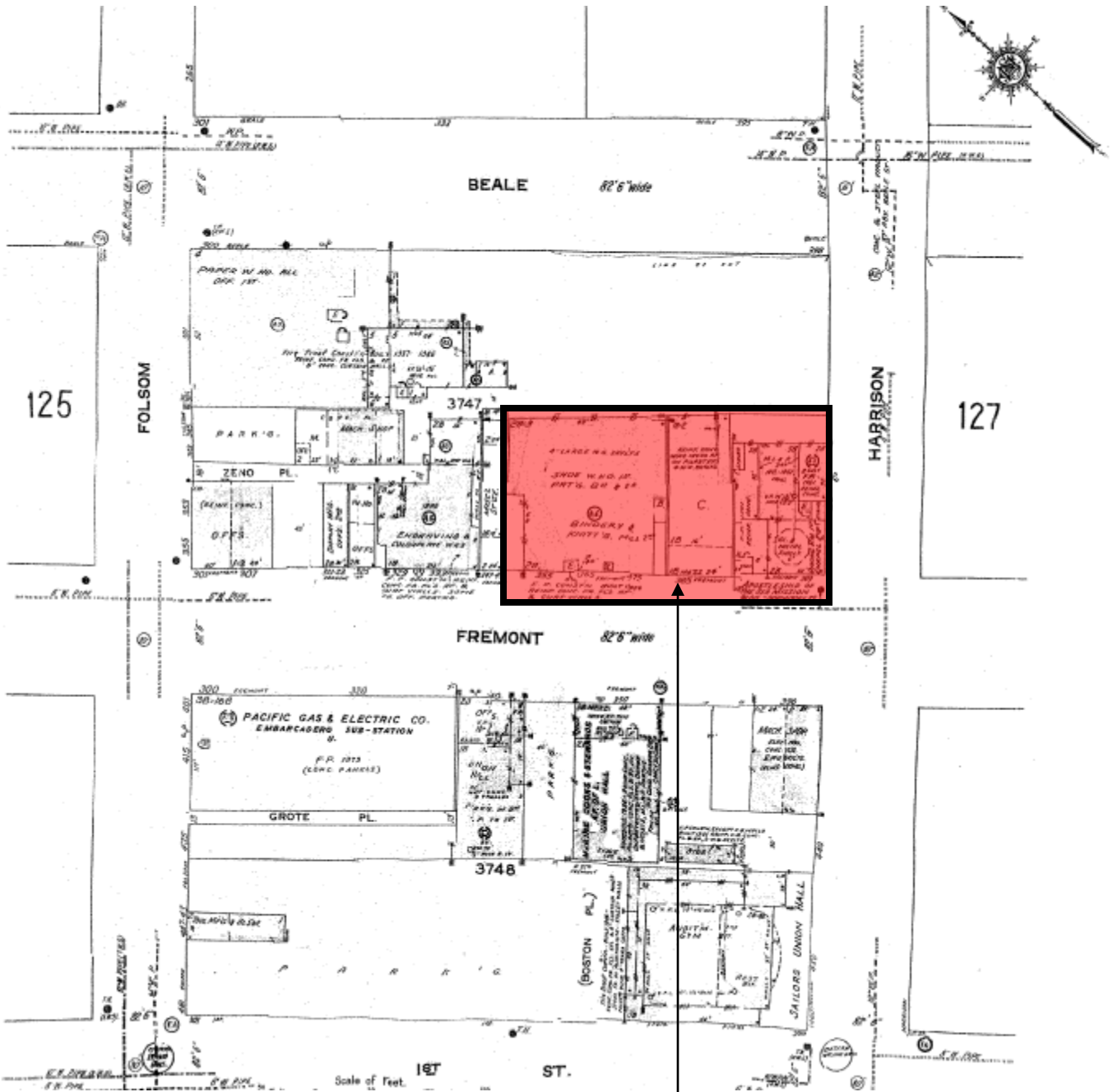
**Case No. 2006.0358X**  
355-399 Fremont St.  
Motion No. 17268  
Assessor's Block 3747, Lots 001E,  
002, and 006  
Page 5

23. Should the monitoring of the conditions of approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(f)(2)





# Sanborn Map\*



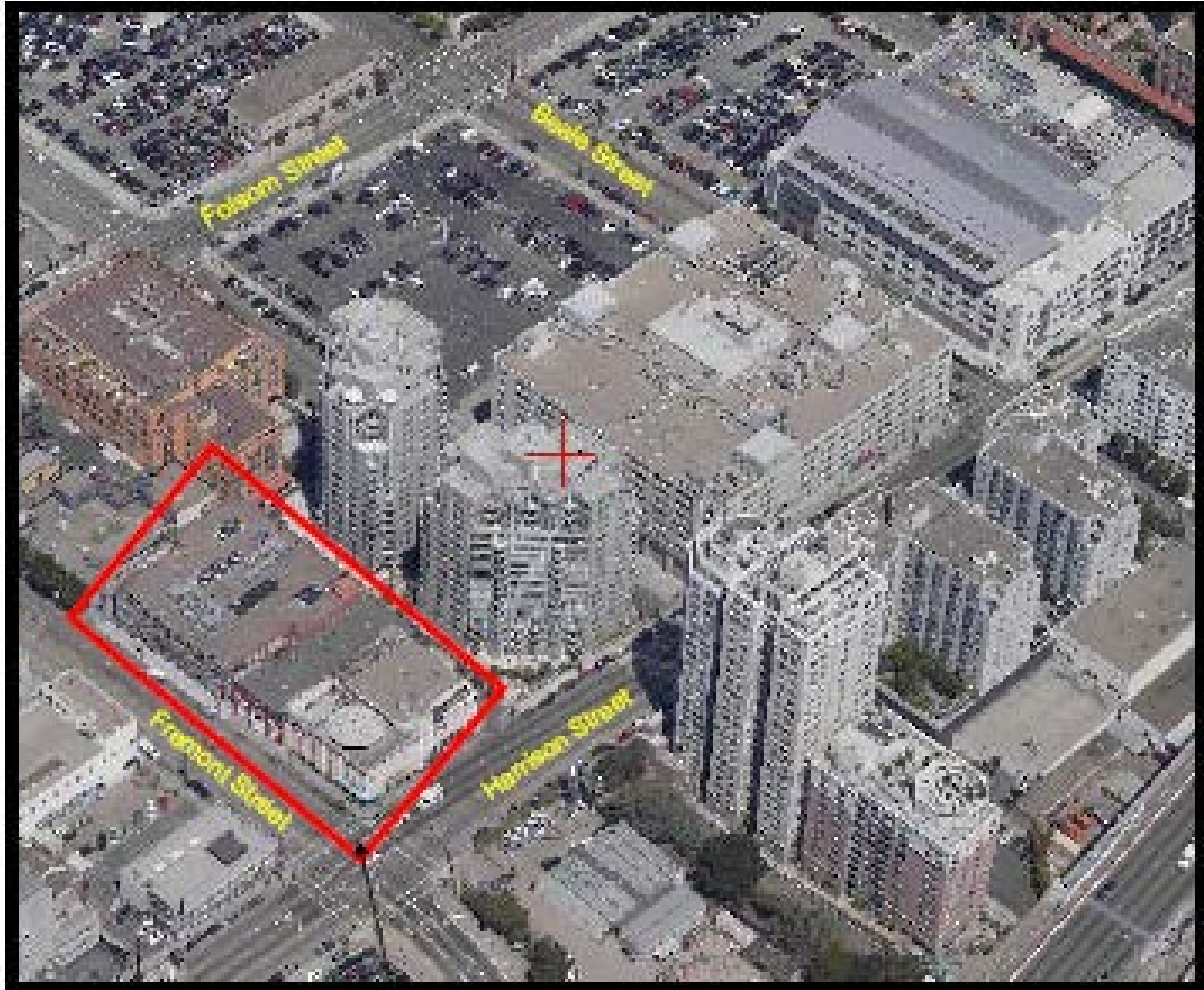
\*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.

**SUBJECT PROPERTY**



Planning Commission Hearing  
 Case Number 2011.0298X  
 399 Fremont Street

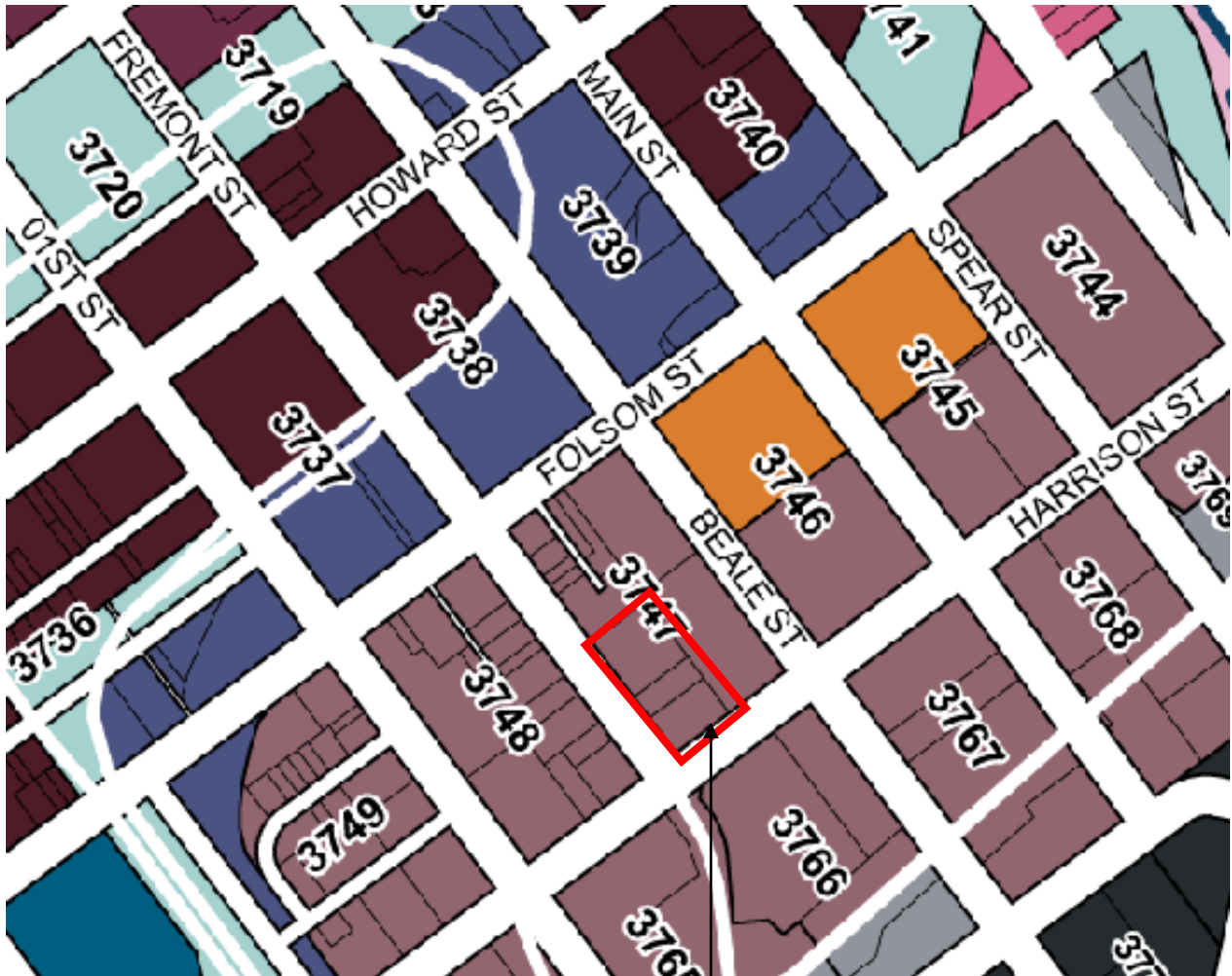
# Aerial Photo



**SUBJECT PROPERTY**



# Zoning Map



SUBJECT PROPERTY

## ZONING USE DISTRICTS

### RESIDENTIAL, HOUSE DISTRICTS

RH-1(D) RH-1 RH-1(S) RH-2 RH-3

### RESIDENTIAL, MIXED (APARTMENTS & HOUSES) DISTRICTS

RM-1 RM-2 RM-3 RM-4

### NEIGHBORHOOD COMMERCIAL DISTRICTS

NC-1 NC-2 NC-3 NCD NC-S

### SOUTH OF MARKET MIXED USE DISTRICTS

SPD RED RSD SLR SLI SSO

### COMMERCIAL DISTRICTS

C-2 C-3-S C-3-G C-3-R C-3-O C-3-O(SD)

### INDUSTRIAL DISTRICTS

C-M M-1 M-2



Planning Commission Hearing  
Case Number 2011.0298X  
399 Fremont Street

# REUBEN & JUNIUS<sup>LLP</sup>

July 16, 2012

## By Hand Delivery

Mr. Rodney Fong, President  
San Francisco Planning Commission  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**Re: Case No. 2012.0645C**  
**Application for Extension of Performance Condition**  
**399 Fremont Street**  
**Our file: 7171.01**

Dear President Fong and Commissioners:

We represent OliverMcMillan, the “Project Sponsor” of an approved residential project located at 399 Fremont Street (the “Project”). We respectfully request your approval of a twelve-month extension of the performance condition of the Project’s original approvals.

The Project consists of the following: a 400-foot tall residential tower with an 85-foot podium and a total of approximately 597,000 gross square feet; up to 452 dwelling units, including approximately 60 percent one-bedroom and studio units and at least 40 percent two- and three-bedroom units; 238 off-street vehicle parking spaces and 13 car share spaces; and 150 bicycle storage spaces. The three existing buildings at the property were demolished in February of 2008.

On August 8, 2008, the San Francisco Planning Commission approved the Project in its current configuration pursuant to Motion No. 17671. Under that Motion, the performance condition was extended to June 15, 2009. Over the next three years, due to the national economic crisis, the Planning Commission granted three one-year extensions of the Project’s performance condition.

In the past year, the Project Sponsor has been successful in arranging financing for the Project and has begun pursuing construction permits. The Project Sponsor nearly has finalized its schematic design and expects to begin construction of the Project by the end of 2012.

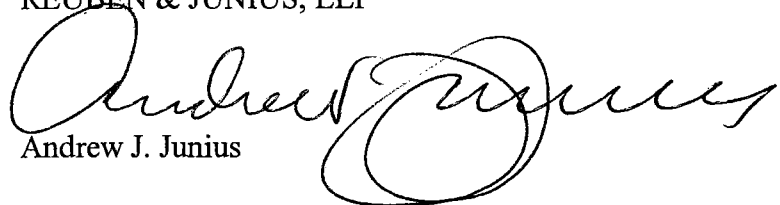
However, due to the expiration of the previous Project entitlement extension on June 15, 2012, the Project Sponsor is now seeking a 12-month extension of the Project approvals.

President Fong and Commissioners  
San Francisco Planning Commission  
July 16, 2012  
Page 2

Thank you for your consideration of this matter.

Very truly yours,

REUBEN & JUNIUS, LLP

  
Andrew J. Junius

Enclosures

cc: Commission Vice-President, Cindy Wu  
Commissioner Michael Antonini  
Commissioner Gwyneth Borden  
Commissioner Ron Miguel  
Commissioner Kathrin Moore  
Commissioner Hisashi Sugaya  
Linda Avery, Commission Secretary  
John Rahaim, Planning Director  
Ben Fu, Planner  
OliverMcMillan

One Bush Street, Suite 600  
San Francisco, CA 94104

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

**REUBEN & JUNIUS**<sup>LLP</sup>

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



# SAN FRANCISCO PLANNING DEPARTMENT

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Subject to: (Select only if applicable)

- |  |  |
|--|--|
| <input type="checkbox"/> Inclusionary Housing (Sec. 315)         | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 313) | <input type="checkbox"/> Child Care Requirement (Sec. 314) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 139)            | <input type="checkbox"/> Other                             |

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

## Planning Commission Motion No. 17671

HEARING DATE: AUGUST 08, 2008

*Date:* July 31, 2008  
*Case No.:* 2008.0711X  
*Project Address:* 399 FREMONT STREET  
*Zoning:* RH DTR (Rincon Hill Downtown Residential Mixed Use) District  
85/400-R Height And Bulk Designation  
*Block/Lot:* 3747/002  
*Project Sponsor:* Fifield Realty Corp.  
425 Market Street, Suite 2229  
San Francisco, CA 94105  
*Staff Contact:* Ben Fu – (415) 558-6318  
[ben.fu@sfgov.org](mailto:ben.fu@sfgov.org)

**ADOPTING FINDINGS UNDER PLANNING CODE SECTIONS 309.1 AND 827 TO AUTHORIZE AN EXTENSION IN THE PERFORMANCE PERIOD FOR ANOTHER 12 MONTHS FROM THE ORIGINAL APPROVAL DATE WITHIN THE RH DTR (RINCON HILL DOWNTOWN RESIDENTIAL MIXED USE) DISTRICT WITH A 85/400-R HEIGHT AND BULK DESIGNATION.**

### PREAMBLE

On May 27, 2008, Fifield Realty Corp. (hereinafter "Project Sponsor") filed Application No. 2008.0711X (hereinafter "Application") with the Planning Department (hereinafter "Department") for the extension of performance period per Planning Code Sections 309.1 and 827 for an additional 12 months from the original approval date. The proposal was approved on June 15, 2006 to construct a new residential project that would consist of approximately 432 dwelling units, up to 432 off-street parking spaces, and for the granting of exceptions to allow greater than one parking space for every two dwelling units under Planning Code Sections 151.1(d) and 309.1(b)(1)(b), for reduction of the dwelling unit exposure requirements under Planning Code Sections 140 and 309.1(b)(1)(d), and to provide exceptions to the separation of towers requirement under Planning Code Sections 270(e) and 309.1(b)(1)(a). Modifications are proposed for unit count and mix, off-street and bicycle parking, and design. The modifications include increasing the number of dwelling units up to 452, reducing off-street parking spaces to 238, increasing bicycle parking spaces from 120 to 150, and minor design improvements. All previously granted exceptions and Conditions of Approval would remain and are attached as Exhibit C. The amendment extends the approval to June 15, 2009.

The environmental effects of the Project were determined by the San Francisco Planning Department (hereinafter "Department") to have been fully reviewed under the Rincon Hill Plan Environmental Impact Report (hereinafter "Rincon EIR"). The Rincon EIR was prepared, circulated for public review and comment, and on May 5, 2005, by Motion No. 17007 certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et. Seq., hereinafter "CEQA"). The Rincon EIR is a Program EIR.

The Commission adopted CEQA findings related to the Rincon EIR in support of its approval of the Rincon Hill Plan and related actions in its Motion No. 17008 and hereby incorporates such findings by reference. The Application to extend the approval period was determined by the San Francisco Planning Department (hereinafter "Department") not to require additional environmental review under the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA").

On August 07, 2008, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2008.0711X.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby authorizes the extension of the performance period requested in Application No. 2008.0711X, subject to the previously approved conditions and based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The approximately 37,812 square foot project site consists of three parcels that are located along the east side of Fremont Street between Harrison Street and Folsom Street. The Project site is on the north slope of Rincon Hill and slopes up toward Harrison Street and down toward Folsom Street. The site was improved with three structures – 355-375 Fremont, known as the Hjul Building, a two-story, approximately 46,500 square-foot office building constructed in 1929 as an industrial building and subsequently converted to office uses; 385 Fremont, a two-story, approximately 15,000 square-foot building with mezzanine containing an auto repair garage and office space; and 399 Fremont, the Apostleship of the Sea, a three-story plus basement, 35,000 square-foot building used as a social service center, with a chapel and temporary shelter for homeless people. The Hjul Building at 355-375 Fremont Street is listed in four local surveys containing buildings that could be considered historic resources. When it certified the Final EIR for the Rincon Hill Plan, the Planning Commission found that the benefits of the Plan, including development of the 355-375 Fremont Street site, outweigh its significant

impacts, including demolition of the Hjul Building. The buildings were demolished in February of 2008.

3. **Past History and Actions.** On November 28, 2005, an application was approved for the construction of a 250-foot residential tower at 375 Fremont Street (Case No. 2002.0449V). That approval was supported by the 375 Fremont Street Final EIR. In addition, on January 13, 2005, an application was submitted for a 250-foot residential project at 399 Fremont Street (Case No. 2003.0169C). An application for environmental review for the 399 Fremont was submitted on February 20, 2003 and a Preliminary Draft EIR was prepared (Case No. 2003.0169E). The proposed Project would be built in lieu of these two separate projects. When the Rincon Hill Downtown Residential Mixed Use plan was approved, it included both the two 250-foot residential projects and, as the preferred alternative, the single, proposed 400-foot Project on the two sites combined. On May 5, 2005, the Planning Commission certified the final Environmental Impact Report ("EIR") for the Rincon Hill Downtown Residential Mixed Use plan. The final EIR included analysis of the potential impacts of the proposed Project. In addition, the Planning Department determined that no further environmental review was required as documented in a letter to the file dated May 25, 2006.

On June 15, 2006, an application was approved for the demolition of the three existing structures, and the construction a single residential high-rise tower that would include the following features:

- The Project will be 400 feet tall (measured from Harrison Street) with an 85-foot podium and total approximately 528,000 gross square feet.
  - The Project will consist of up to 432 dwelling units, including approximately 60 percent one-bedroom and studio units and at least 40 percent two-bedroom and three-bedroom condominium apartments.
  - Off-street parking for up to 432 vehicles will be provided in a four-level underground garage. The parking will include 216 independently accessible spaces and 216 tandem or valet spaces. The tandem spaces will be served by valet. The garage will also include 9 ADA compliant spaces, 2 car share spaces and 120 bicycle storage spaces.
4. **Proposal.** The project proposes to extend the performance period for another 12 months. Modifications are proposed for unit count and mix, off-street and bicycle parking, and design. The Project proposes up to 452 dwelling units and 238 off-street parking spaces.

Unit Mix	Approved	Proposed
Studio	76	66
1-bedroom	183	206
2-bedroom	167	171
3-bedroom	0	5
Townhome	6	4
<b>Total</b>	<b>432</b>	<b>452 (less than 5% increase)</b>
<b>Parking</b>		
Independent	216	202



Indirect	189 Valet / 27 tandem	36 tandem
Total	432	238
<b>Bike Parking</b>	120	150

5. **Public Comment.** The Department has received no opposition to the proposal.
  
6. **The Rincon Hill Downtown Residential Mixed Use District – Planning Commission Design Review and Determination of Compliance Required.** On July 26, 2005, the Board of Supervisors approved the Rincon Hill Plan Element of the General Plan and associated General Plan Amendments. On August 2, 2005, the Board of Supervisors approved, on a first reading, General Plan amendments, zoning text and map amendments, along with other associated legislation in adopting the new Rincon Hill Plan. The new Rincon Hill Plan further encourages the conversion of the existing Rincon Hill area to a high-density residential neighborhood with significant pedestrian and residential amenities such as parks and open space. The proposed new zoning provides more specific direction in designing new buildings, to assure their bulk and height is appropriate and that their interaction with the pedestrian realm contributes to the creation of a new neighborhood. Among the goals of the new zoning controls is to encourage high-rise development in slender towers amply separated, and to limit the amount of excessive off-street parking. To provide more specific direction to project sponsors and to help assure a more predictable project review process, the controls are designed to be more specific and allow less variability. The new controls utilize a design review process before the Commission, similar to the project review process for Downtown C-3 Districts, rather than utilizing the Conditional Use and Planned Unit Development review processes.
  
7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Parking.** The Rincon Hill Plan limits the number of off-street parking spaces for dwelling units to no more than one parking space for every two dwelling units. Exceptions can be granted to allow up to one-to-one through the Design Review process as long as those parking spaces above the initial one-to-two ratio are either provided by mechanical lifts, tandem, valet or are otherwise not independently accessible, and that they meet the criteria provided under Planning Code Section 151.1 (see finding 9 below for a further discussion). The project sponsor previously sought an exception to this limitation and proposed to provide approximately 432 spaces 216 of which would be considered independently accessible and 216 of which would not. The revised project would reduce the parking spaces to 238, 202 of which would be considered independently accessible.
  
  - B. **Bicycle Parking.** Planning Code Section 155.5 requires one Class I bicycle parking space for every four dwelling units over 50-units plus 25 bicycle parking spaces. For the previously approved 432-unit project, 120 Class I bicycle are required and 120 are being provided on-site in the below-grade parking garage. The revised project proposes a total of 150 bicycle spaces for the proposed 452 units.

8. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
9. The Commission hereby finds that approval of the request for extension would promote the health, safety and welfare of the City.

**DECISION**

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES** Case No. 2008.0711X subject to the following conditions attached hereto as EXHIBIT A (Conditions of Approval) which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this determination of compliance authorization to the Board of Appeals within fifteen (15) days after the date of this Motion No. 17671. The effective date of this Motion shall be the date of this Motion if not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals at (415) 575-6880, 1660 Mission Street, Third Floor, San Francisco, CA 94103.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on **August 08, 2008**.

---

Linda Avery  
Commission Secretary

AYES: Commissioners Antonini, Borden, Lee, and Sugaya

NAYS: Commissioners Miguel, Moore, and Olague

ABSENT: None

ADOPTED: August 08, 2008

# Exhibit A

## Conditions of Approval

Whenever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

This approval is pursuant to Sections 309.1 to extend the performance period for another 12 months from the original approval date of June 15, 2006. The original proposal was to construct a new residential project that would consist of approximately 432 dwelling units, up to 432 off-street parking spaces, and for the granting of exceptions to allow greater than one parking space for every two dwelling units under Planning Code Sections 151.1(d) and 309.1(b)(1)(b), for reduction of the dwelling unit exposure requirements under Planning Code Sections 140 and 309.1(b)(1)(d), and to provide exceptions to the separation of towers requirement under Planning Code Sections 270(e) and 309.1(b)(1)(a). Modifications are proposed for unit count and mix, off-street and bicycle parking, and design. The modifications include increasing the number of dwelling units up to 452, reducing off-street parking spaces to 238, increasing bicycle parking spaces from 120 to 150, and minor design improvements. All previously granted exceptions and Conditions of Approval would remain and are attached as Exhibit C. The amendment extends the approval to June 15, 2009.

### GENERAL CONDITIONS

1. Performance. This authorization is valid for a period of 12 months after the approval by the Planning Commission, or the Board of Permit Appeals. Specific procedures regarding the performance requirement follow Planning Code Section 309.1(e).
2. Recordation. Prior to the issuance of any building or site permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.

## PLANNING COMMISSION

Case No. 2006.0358X

355-399 Fremont St.

Assessor's Block 3747, Lot 001E, 002,  
and 006

Subject to:

- Inclusionary Housing
- Childcare Requirement
- Park Fund
- Art Fund
- Public Open Space Fund
- Jobs Housing Linkage Program
- Transit Impact Development Fee
- First Source Hiring
- Other: Rincon Hill Community Infrastructure Fee and the SOMA Stabilization Fee

## SAN FRANCISCO

### PLANNING COMMISSION

#### MOTION NO. 17268

**ADOPTING FINDINGS AUTHORIZING A DETERMINATION OF COMPLIANCE UNDER PLANNING CODE SECTION 309.1 FOR A PROPOSAL TO CONSTRUCT A NEW RESIDENTIAL PROJECT THAT WOULD CONSIST OF APPROXIMATELY 432 DWELLING UNITS AND UP TO 432 OFF-STREET PARKING SPACES THAT WOULD INCLUDE ONE TOWER REACHING 400-FEET IN HEIGHT (EXCLUSIVE OF MECHANICAL PENTHOUSES AND SCREENING) AND FOR THE GRANTING OF EXCEPTIONS TO ALLOW GREATER THAN ONE PARKING SPACE FOR EVERY TWO DWELLING UNITS UNDER PLANNING CODE SECTIONS 151.1(d) AND 309.1(b)(1)(B), FOR REDUCTION OF THE DWELLING UNIT EXPOSURE REQUIREMENTS UNDER PLANNING CODE SECTIONS 140 AND 309.1(b)(1)(D), AND TO PROVIDE EXCEPTIONS TO THE SEPARATION OF TOWERS REQUIREMENT UNDER PLANNING CODE SECTIONS 270(e) AND 309.1(b)(1)(A) WITHIN THE RH DTR (RINCON HILL DOWNTOWN RESIDENTIAL MIXED-USE) DISTRICT AND AN 85 / 400-R HEIGHT AND BULK DISTRICT.**

#### Preamble

On March 7, 2006, Fifield Realty Corporation (hereinafter "Project Sponsor,") made an application (hereinafter "Application") for Project approval under section 309.1 in the Rincon Hill Downtown Residential Use District authorization on the property at 355-399 Fremont Street, Lots 001E, 002, 006 in Assessor's Block 3747 (hereinafter "Property") to allow for the construction of a new large-scale residential project, within the Rincon Hill Downtown Residential District in general conformity with Plans filed with the Application and labeled "Exhibit B" (hereinafter "Project").

On June 1, 2006, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Application No. 2006.0358X. Planning Commission design review is required for any project that is over 85-feet in height, or 50,000 gross square feet. Exceptions are being sought through the design review process from the 115-foot tower separation requirement and from upper tower sculpting

requirements, from the 25-foot residential exposure requirement, and to allow one parking space per residential unit. The Project Sponsor is also seeking a variance from the requirement that residential entries be on average three feet above street level.

The environmental effects of the Project were determined by the San Francisco Planning Department (hereinafter "Department") to have been fully reviewed under the Rincon Hill Plan Environmental Impact Report (hereinafter "Rincon EIR"). The Rincon EIR was prepared, circulated for public review and comment, and on May 5, 2005, by Motion No. 17007 certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et. Seq., hereinafter "CEQA"). The Rincon EIR is a Program EIR.

The Commission adopted CEQA findings related to the Rincon EIR in support of its approval of the Rincon Hill Plan and related actions in its Motion NO. 17008 and hereby incorporates such findings by reference.

The Application was determined by the San Francisco Planning Department (hereinafter "Department") not to require additional environmental review under the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA"). A letter detailing that determination was prepared on June 1, 2006 and is attached as "Exhibit C".

### Findings

Having reviewed all the materials identified in the recitals above, and having heard oral testimony and arguments, this Commission finds, concludes and determines as follows:

1. The above recitals are accurate and also constitute findings of this Commission.
2. **Site Condition.** The approximately 37,812 square foot project site consists of three parcels that are located along the east side of Fremont Street between Harrison Street and Folsom Street. The Project site is on the north slope of Rincon Hill and slopes up toward Harrison Street and down toward Folsom Street. The site is currently improved with three structures – 355-375 Fremont, known as the Hjul Building, a two-story, approximately 46,500 square-foot office building constructed in 1929 as an industrial building and subsequently converted to office uses; 385 Fremont, a two-story, approximately 15,000 square-foot building with mezzanine containing an auto repair garage and office space; and 399 Fremont, the Apostleship of the Sea, a three-story plus basement, 35,000 square-foot building used as a social service center, with a chapel and temporary shelter for homeless people. The Hjul Building at 355-375 Fremont Street is listed in four local surveys containing buildings that could be considered historic resources. When it certified the Final EIR for the Rincon Hill Plan, the Planning Commission found that the benefits of the Plan, including development of the

355-375 Fremont Street site, outweigh its significant impacts, including demolition of the Hjul Building.

3. **Proposal.** The proposal is to demolish the three existing structures, and construct a single residential high-rise tower that would include the following features:
- The Project will be 400 feet tall (measured from Harrison Street) with an 85-foot podium and total approximately 528,000 gross square feet.
  - The Project will consist of up to 432 dwelling units, including approximately 60 percent one-bedroom and studio units and at least 40 percent two-bedroom and three-bedroom condominium apartments.
  - Off-street parking for up to 432 vehicles will be provided in a four-level underground garage. The parking will include 216 independently accessible spaces and 216 tandem or valet spaces. The tandem spaces will be served by valet. The garage will also include 9 ADA compliant spaces, 2 car share spaces and 120 bicycle storage spaces.
  - Altogether, the unit mix meets the Planning Code § 827(b)(3) requirement of 40% 2+ bedroom unit. Other space in the project would include a lobby, management office, a fitness center, a pool and spa, and other residential amenities.
  - The project would feature townhouse units that would face Fremont Street for the podium portions of the project. The project would provide at least one-half of the width of a through-block landscaped pedestrian path on its south side.
4. **Past History And Actions.** On November 28, 2005, an application was approved for the construction of a 250-foot residential tower at 375 Fremont Street (Case No. 2002.0449V). That approval was supported by the 375 Fremont Street Final EIR. In addition, on January 13, 2005, an application was submitted for a 250-foot residential project at 399 Fremont Street (Case No. 2003.0169C). An application for environmental review for the 399 Fremont was submitted on February 20, 2003 and a Preliminary Draft EIR was prepared (Case No. 2003.0169E) The proposed Project would be built in lieu of these two separate projects. When the Rincon Hill Downtown Residential Mixed Use plan was approved, it included both the two 250-foot residential projects and, as the preferred alternative, the single, proposed 400-foot Project on the two sites combined. On May 5, 2005, the Planning Commission certified the final Environmental Impact Report ("EIR") for the Rincon Hill Downtown Residential Mixed Use plan. The final EIR included analysis of the potential impacts of the proposed Project. In addition, the Planning Department determined that no further environmental review was required as

documented in a letter to the planning file dated May 25, 2006, attached hereto as Exhibit B.

5. **Support or opposition to project.** Neighborhood Planning staff has not received one letter regarding the project; the letter voices a desire to see a commercial space, less parking and green space incorporated into the project.
6. **The Rincon Hill Downtown Residential Mixed Use District – Planning Commission Design Review and Determination of Compliance Required.** On July 26, 2005, the Board of Supervisors approved the Rincon Hill Plan element of the General Plan and associated General Plan Amendments. On August 2, 2005, the Board of Supervisors approved, on a first reading, General Plan amendments, zoning text and map amendments, along with other associated legislation in adopting the new Rincon Hill Plan. The new Rincon Hill Plan further encourages the conversion of the existing Rincon Hill area to a high-density residential neighborhood with significant pedestrian and residential amenities such as parks and open space. The proposed new zoning provides more specific direction in designing new buildings, to assure their bulk and height is appropriate and that their interaction with the pedestrian realm contributes to the creation of a new neighborhood. Among the goals of the new zoning controls is to encourage high-rise development in slender towers amply separated, and to limit the amount of excessive off-street parking. To provide more specific direction to project sponsors and to help assure a more predictable project review process, the controls are designed to be more specific and allow less variability. The new controls utilize a design review process before the Commission, similar to the project review process for Downtown C-3 Districts, rather than utilizing the Conditional Use and Planned Unit Development review processes.
7. **Planning Code Compliance.** The Planning Commission finds that the proposed project is compliant with the Planning Code as follows:
  - a. **Height and Tower Spacing.** The height of the proposed tower is 400 feet. This is consistent with the 85 / 400-R Height and Bulk District provisions. The subject project utilizes the exemption provided in Planning Code section 270(e)(3) which excuses the project from the upper tower sculpting requirement and allows the tower to be closer than 115-feet from the nearest tower when certain conditions are met. The Commission finds that these conditions have been met as detailed in finding no. 9 below.
  - b. **Bulk.** Planning Code Section 270(e) limits the plan dimension of towers between 351-feet and 550-feet from having a plan length dimension of 115-feet and a diagonal dimension of 145-feet. The floor plate is limited to 10,000 square feet;



Generally, the top 1/3 of the tower's floor plates are required to be reduced by 10 percent (9,000 square feet). Alternatively, an equal amount of reduced bulk could be taken from the entire tower (9,666 square feet per floor plate on average). The proposed tower would have a maximum plan dimension of 115-feet and a maximum diagonal dimension of 145-feet. The average floor plate would be approximately 10,000 over the entire tower. As discussed above, Section 270(e)(3), excuses the proposed Project from the tower sculpting requirement when certain criteria are met.

- c. Open Space. The Rincon Hill Downtown Residential District controls require 75 square feet of open space per unit, or 32,400 square feet, for the approximately 432 proposed units, with at least 40 percent, or 12,960 square feet, as common open space, and at least 50 percent, or 16,200 square feet, as on-site open space (without an exception being granted).
- d. Setback / Street Frontage Requirements. Planning Code Section 827(d)(5) provides specific dimension requirements for those areas where ground floor units are required and strongly encourages the adherence to the standards where they are provided but not required. These standards are required along Fremont Street and encouraged along Harrison Street. They include a front setback between three and ten feet, stoops that are on average three-feet above grade, front recesses that are at least one-foot deep, and five-feet wide, and at least as tall as the ground story; the front setback area is required to be landscaped for all portions that are not occupied by stoops or by porches. The proposed townhouse dwelling unit frontages will meet all of these requirements save for the three-foot elevation for stoops. The Project Sponsor is seeking a variance from that requirement in order to provide ADA (Americans with Disabilities Act) compliant access from Fremont Street to the townhouse units facing Fremont Street.
- e. Unit Exposure: Planning Code Sections 827(d)(3) and 140(a)(1) require every dwelling unit to face a public street or open space of at least 25 feet in width. Approximately 14 units in the podium portion of the Project face Avalon Bay Towers. The distance between the window of the units and the next building is approximately 45 feet but the distance to the property line is 15 feet. The Project Sponsor is seeking an exception to the 25-foot requirement pursuant to Section 309.1(b)(1)(D).
- f. Parking: The Rincon Hill Plan limits the number of off-street parking spaces for dwelling units to no more than one parking space for every two dwelling units. Exceptions can be granted to allow up to one-to-one through the Design Review

process as long as those parking spaces above the initial one-to-two ratio are either provided by mechanical lifts, tandem, valet or are otherwise not independently accessible, and that they meet the criteria provided under Planning Code Section 151.1 (see finding 9 below for a further discussion). The project sponsor seeks an exception to this limitation and proposes to provide approximately 432 spaces 216 of which would be considered independently accessible and 216 of which would not.

- g. Location of Parking: Planning Code Section 827(d)(8)(A) requires that parking be provided below grade. The proposed project includes four levels of below grade parking. Because of the slope of the project site, some parking is technically above grade but meets the standards of section 827(d)(8) regarding sloping sites.
- h. Loading. Planning Code Section 152.2 allows up to one loading space plus one additional loading space for every 200 units after the initial 100 units. No loading spaces are proposed.
- i. Bicycle Parking. Planning Code Section 155.5 requires one Class I bicycle parking space for every four dwelling units over 50-units plus 25 bicycle parking spaces. For the proposed 432-unit project, 120 Class I bicycle are required and 120 are being provided on-site in the below-grade parking garage.
- j. Maximum Width of Parking and Loading Entries. Planning Code Section 827(d)(8)(B) limits the width of openings for auto ingress and egress to no more than 22-feet and for loading to no more than 15-feet. The proposed project would include one 22-foot parking entrance and exit along Fremont Street.
- k. Wind. Section 827(f) establishes a target maximum equivalent wind speed of 7 miles per hour (mph) in public sitting areas and 11 mph in areas of substantial pedestrian use, known as comfort criteria. New buildings and additions to buildings may not cause ground-level winds to exceed these levels more than 10 percent of the time. According to the Planning Code, if existing wind speeds exceed the criteria, new buildings and additions must be designed to reduce ambient wind speeds to meet these requirements, unless certain requirements are met for an allowable exception.

Pursuant to Planning Code Section 249.1(b)(3), the Zoning Administrator may allow the building or addition of a proposed project to add to the amount of time the comfort level is exceeded by the least practical amount if:

- It can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and
- It is concluded that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

The Project Sponsor has submitted an application to the Zoning Administrator for a wind exception pursuant to Section 249.1(b)(3).

- i. Below Market Rate Affordability Requirement. This approval is conditioned that the project sponsor shall comply with the inclusionary housing requirements set forth in Section 315 through 315.9 of the Planning Code either by providing units on site, off site within the South of Market area, pay an in-lieu fee pursuant to Planning Code Section 315.6, or a combination thereof.
- m. Streetscape Improvements. The project would include improvements to the surrounding streets including Fremont Street and Harrison Street as shown in Exhibit B and as required by Planning Code Section 827(g) and the proposed new Rincon Hill Streetscape Plan.
- n. Mid-block Pedestrian Pathways. Planning Code Section 827(f)(3) provides that the Commission may require a mid-block pedestrian pathway for the entire depth of the property. The project would include a pedestrian pathway between the project site and 333 Fremont with improvements in accordance with Planning Code requirements.
- o. Rincon Hill Infrastructure Impact Fee. Planning Code Section 318 requires a payment of approximately \$11 per square foot for any residential project in the Rincon Hill Plan area. For the proposed 528,000 square foot structure, approximately \$5,808,000 will be charged.
- p. SOMA Stabilization Fund Fee. Planning Code Section 318 requires a payment of approximately \$14 per square foot for any residential tower in the Rincon Hill area. For the proposed 528,000 square foot structure, approximately \$7,392,000 will be charged.

8. **General Compliance with the Rincon Hill Objectives.** Planning Code Section 309.1(a) lists eight aspects of design review in which a project must comply; the Planning Commission finds that the project is compliant with these eight aspects as follows:
- a. Overall building mass and scale. The project is in conformance with the Rincon Hill Plan, as the Plan calls for accentuation of the natural topography of Rincon Hill and for a tower height of 400 feet on the Project site. In addition, the Project would be compatible with the height of development and the increased density envisioned by the Rincon Hill Plan.
  - b. Architectural treatments, façade design and building materials. Prominently located near the top of the historic Rincon Hill of San Francisco, the 399 Fremont building will join the newer towers in development in this part of the City and will be a significant addition to the evolving skyline. With the Bay Bridge to the immediate south and the views of the City to the north, the architectural response has been to evoke a duality in the expression so as to gesture towards the City and the bay beyond with a substantial cantilever at the north end of the top and high parapet walls facing the Bay Bridge on the south side. These walls also serve to screen the mechanical penthouse and cooling towers on the roof from the view of the building from the Bridge. Glistening in white aggregate with clear glass, the tower has a crystalline character that will catch the light in various ways throughout the day. The tower is enhanced with a fine vertical expression from the top to the bottom.
  - c. The design of lower floors, including building setback areas, townhouses, entries and parking and loading access. At the street level the tower engages an 8 level podium and a pedestrian scaled façade that provides a large set back along Fremont and a vista towards a small park south of Harrison. The vertical fins are arranged to engage the base at a larger scale, which in turn is articulated in green granite and precise angled detailing. Along Fremont Street, behind a row of trees and a 15' wide sidewalk, is a series of townhomes that step down the hill in a San Francisco tradition, but with modern materials.
  - d. The provision of required open space, both on- and off-site. The project would provide approximately 39,344 square feet of public, common and private open space for the use of project residents. Common open space would include a landscaped terrace above the podium including a swimming pool and spa. The project's fitness center, swimming pool, and other residential amenities would be located on the same level as the terrace. Private open space would include balconies and patios that would be accessed from individual residences.

The Rincon Hill Downtown Residential District controls require 75 square feet of open space per unit, or 32,400 square feet for the up to 432 proposed units, with at least 40 percent or 12,960 square feet as common open space, and at least 50 percent, or 16,200 square feet, as on-site (without an exception being granted). The project would provide approximately 39,344 square feet of open space. Of this, approximately 28,603 square feet is either common or publicly accessible open space, with approximately 6,445 being private open space.

e. Streetscape and other public improvements, including tree planting, street furniture, and lighting:

The proposed Project will incorporate a substantial amount of ground level public open space and landscaping at the project site. The project would include a pedestrian pathway between the project site and 333 Fremont with improvements in accordance with Planning Code requirements. Widened sidewalks and mature street trees will surround the perimeter of the site, acting as a buffer between the Project complex and the nearby Fremont Street off-ramp. Consistent with the Planning Department's Rincon Hill Streetscape Plan for the area, the Project sponsor will implement tree-lined streets with broad delineated crosswalks to help calm traffic and create a pedestrian-friendly atmosphere around the project site. These Project proposals are in conformance with the Rincon Hill Plan's streetscape requirements, including sidewalk treatments and installation of street trees.

f. Circulation, including streets, alleys and mid-block pedestrian pathways. As noted above, the plan includes extensive improvements to the public right-of-way as part of the proposal. The project also incorporates minimal auto and loading ingress and egress to further assure the quality of the circulation network, especially for pedestrians.

g. Other changes necessary to bring the project into conformance with the Rincon Hill Plan or other elements and area plans of the general plan: No changes to the Project are necessary to bring the Project into conformance with the Rincon Hill Plan or other elements and area plans of the General Plan.

9. **Tower Spacing and Sculpting Exception.** The Project will require an exception under Planning Code Sections 270(e)(3) and 309.1 to the 115-foot tower spacing and the upper tower sculpting requirements set forth in Planning Code Sections 270(e)(2)(F) and (G). Section 270(e)(3) includes such an exception for a project only on Block 3747 on a lot formed by the merger of part or all of Lots 001E, 002 and 006 provided the project

meets the criteria set forth in Planning Code Sections 270(e)(3)(i)-(v). The Project site is all of Block 3747, Lots 001E, 002, and 006 and the Project meets the Section 270(e)(3) criteria:

- a. Applications for environmental review and conditional use related to a building above 85 feet in height on the subject lot have been filed with the Department prior to March 1, 2003 and February 1, 2005, respectively;

*An application for environmental review for a project at 375 Fremont was submitted on April 29, 2002 (Case No. 2002.0449E) and an application for conditional use for that project was submitted on January 9, 2003 (Case No. 2003.0017C). An application for environmental review for a project at 399 Fremont was submitted on February 20, 2003 (Case No. 2003.0169E) and an application for conditional use for that project was submitted on January 13, 2005 (Case No. 2003.0169C).*

- b. Given the 115-foot tower spacing requirement described in (F) above, the existence of an adjacent building greater than 85 feet in height precludes the development of a tower on the subject lot;

*An existing approximately 150-foot tower located at 388 Beale Street, less than 115 feet away, would preclude the development of a tower on the Project site.*

- c. The subject lot has a total area of no less than 35,000 square feet.

*The Project site area is 37,812 square feet.*

- d. The proposed project is primarily residential and has an area of no more than 528,000 gross square feet; and, the proposed project conforms to all other controls described or referenced in Section 827 and any other controls in this Code related to the Rincon Hill DTR District.

*The proposed project conforms to all other controls described or referenced in Section 827 and any other controls in the Planning Code related to the Rincon Hill DTR District.*

10. **Parking Exception.** The Project sponsor is proposing to provide one parking space per residential unit. Therefore, the Project sponsor is requesting an exception to the accessory residential parking ratio of 0.5 off-street car parking spaces per dwelling unit, as allowed for in Planning Code Sections 151.1 and 309.1(b)(1)(B). The Planning

Commission finds that the one-to-one parking ratio is acceptable as it meets the criteria of Planning Code Section 151.1(d) as follows:

- a. All parking in excess of that allowed by right is stored and accessed by mechanical means, valet, or non-independently accessible method that maximizes space efficiency and discourages use of vehicles for commuting or daily errands;

*The parking in excess of that allowed by right will be stored and accessed by mechanical means, valet, or non-independently accessible method.*

- b. Vehicle movement on or around the project site associated with the excess accessory parking does not unduly impact pedestrian spaces or movement, transit service, bicycle movement, or the overall traffic movement in the district;

*The proposed Project will include only one curb cut on Fremont Street to accommodate all vehicles. That driveway is accessed from the right lane of Fremont Street, which is one-way heading northwest from Harrison Street. This curb cut would have no significant impact on pedestrian spaces or movement, transit service, bicycle movement, or the overall traffic movement in the district.*

- c. Accommodating excess accessory parking does not degrade the overall urban design quality of the project proposal;

*Accommodating the excess accessory parking will not degrade the overall urban design quality of the project. Only one curb cut is proposed, and all parking is underground or masked by street-facing active uses.*

- d. All parking in the project is set back from facades facing streets and alleys and lined with active uses, and that the project sponsor is not requesting any exceptions or variances requiring such treatments elsewhere in the Code; and

*The parking contemplated for the proposed Project is set back from facades facing streets and alleys and lined with active uses. The Project sponsor is not requesting any exceptions or variances requiring such treatments elsewhere in the Code.*

- e. Excess accessory parking does not diminish the quality and viability of existing or planned streetscape enhancements.

*The excess accessory parking will not diminish the proposed Project's planned streetscape enhancements and the installation of widened sidewalks and mature street trees to surround the perimeter of the site.*

11. **Exposure Exception.** Planning Code Section 140 requires that at least one room at least 120 square feet in area within a dwelling unit must face directly on an open area that is either (1) a public street or alley that is at least 25 feet in width, or a side yard or rear yard that meets the requirements of the Planning Code, or (2) an open area that is unobstructed and is no less than 25 feet in every horizontal dimension for the floor at which the dwelling unit in question is located and the floor immediately above it, with an increase of five feet in every horizontal dimension at each subsequent floor. Section 309.1(b)(1)(D), authorizes exceptions to the normally applicable requirements of Section 140. A majority of the units comply with Section 140 requirements as they face either onto Fremont Street or the rear open space (which has a depth equal to 30 percent of the lot depth – deep enough to be considered a required rear yard). Approximately 14 units, or 3% of the units, do not comply with the dwelling unit exposure requirement, and require an exception. These units will receive adequate light and air as they will be at least 45-feet away from the residential structure to the east.
12. **General Plan Conformity.** The Project affirmatively promotes the objectives and policies of the General Plan as follows.

#### HOUSING ELEMENT

OBJECTIVE 1      TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT GROWTH.

Encourage housing development, particularly affordable housing, in neighborhood commercial areas without displacing existing jobs, particularly blue-collar jobs or discouraging new employment opportunities.

POLICY 1.7      Encourage and support the construction of quality, new family housing.



- OBJECTIVE 5** INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.
- POLICY 5.2** Support efforts of for-profit and non-profit organizations and other community-based groups and expand their capacity to produce and manage permanently affordable housing.
- The project includes up to 432 residential units with at least 40% being two bedrooms or more. The project will also pay an affordable housing fee in lieu of providing on-site units in accordance with the City Inclusionary Housing Ordinance.*
- OBJECTIVE 8** ENSURE EQUAL ACCESS TO HOUSING OPPORTUNITIES.
- POLICY 8.9** Encourage the provision of new home ownership opportunities through new construction so that increased owner occupancy does not diminish the supply of rental housing.
- OBJECTIVE 11** IN INCREASING THE SUPPLY OF HOUSING, PURSUE PLACE MAKING AND NEIGHBORHOOD BUILDING PRINCIPLES AND PRACTICES TO MAINTAIN SAN FRANCISCO'S DESIRABLE URBAN FABRIC AND ENHANCE LIVABILITY IN ALL NEIGHBORHOODS.
- POLICY 11.1** Use new housing development as a means to enhance neighborhood vitality and diversity.
- This housing project incorporates all of the design aspects outlined in the Rincon Hill Plan in helping create a pedestrian friendly and activated residential neighborhood. The proposed project actively contributes to "place-making".*

#### URBAN DESIGN ELEMENT

- Objective 7                    To achieve an aesthetically pleasing residential community.
- Objective 9 -                To respect the natural topography of the hill.
- Objective 10 -              To preserve views of the bay and the Bay Bridge which are among the most impressive in the region.

*The proposed project implements the Planning Department's preferred option for the Rincon Hill plan. The modern tall tower will be slender in silhouette providing interest to the City skyline, while at the same time, providing a rich pedestrian environment at its base.*

#### RECREATION AND OPEN SPACE ELEMENT

- Objective 16 -              To develop facilities for passive and active recreation serving residents, employees and visitors.

*By improving the immediately adjacent sidewalks and the mid-block pedestrian pathway, the proposed project is assisting in the development of an active pedestrian network that will encourage active recreation in the form of walking or jogging, which will serve residents, employees and visitors.*

#### CIRCULATION

- Objective 21 -              To create safe and pleasant pedestrian networks within the Rincon Hill area, to downtown, and the bay.

*The improvements of the adjacent sidewalk with curb extensions and the improvement of the mid-block pedestrian pathway will create a safer, more inviting pedestrian environment.*

- Objective 24 -              To provide sufficient off-street parking space for residents.

*The project will provide approximately up to 432 parking spaces, on for each unit, which is adequate to serve the residents of the project particularly given the proximity of the building to many forms of City and Regional transit. The project will also provide*

*secure bicycle parking.*

## **RINCON HILL PLAN**

### **LAND USE**

- Objective 1 - Encourage development of a unique dynamic, mixed-use residential neighborhood close to downtown which will contribute significantly to the City's housing supply.
- Objective 1.2 - Maximize housing in Rincon Hill to capitalize on Rincon Hill's central location adjacent to downtown employment and transit service, while still retaining the district's livability.

*The proposed project would result in the construction of an up to 432-unit condominium dwelling in a neighborhood that is transitioning to and currently consists of similarly sized structures, in a location which is extremely close to Downtown.*

### **RESIDENTIAL**

- Policy 1.1 - Allow housing as a principal permitted use throughout the district.
- Policy 1.5 - Require street-facing residential units on the ground-floor on Spear, Main Beale, Fremont, First, Guy and Lansing Streets .

*The project features townhouse units that would face Fremont Street.*

- Policy 1.4 - Require parking to be located primarily underground so that the allowable above-ground building envelope can be used for housing.

*All parking will be below grade except as provided for sloping sites.*

### **HOUSING**

Objective 2.1 - Provide quality housing in a pleasant environment that has adequate access to light, air, open space and neighborhood amenities, and that is buffered from excessive noise.

*The mid-block pedestrian pathways, as well as front stoops and setbacks will create a pleasant, light, open space.*

Objective 2.3 - Encourage new housing production of an adequate size and configuration to serve families.

*The proposed project will contain up to 432 units, at least 40% of which will be two- and three- bedroom units.*

Policy 2.1 - Require all new developments of 10 or more units in the Rincon Hill district to meet the city's affordable housing requirement of at least 12 percent on-site or 17 percent off-site, regardless of whether a Conditional Use permit is required.

*The project applicant will pay an in-lieu fee in compliance with the City's Inclusionary Housing Ordinance. The purpose of the fee is to fund affordable housing units off-site.*

#### URBAN DESIGN

Objective 3.8 - Minimize the visual impacts of residential parking, loading, utilities and services on the neighborhood.

*The parking garage will be entirely below grade except as provided by requirements for sloping sites.*

#### RECREATION, OPEN SPACE, AND COMMUNITY FACILITIES

Objective 4.1 - Create a variety of new open spaces and community facilities for active and passive recreation to meet the needs of a significant new residential population.

*The project would provide approximately 39,344 square feet of common and private open space for the use of project residents. Common open space would include a landscaped terrace above the podium including a swimming pool and spa. The project's fitness center, swimming pool, and other residential amenities*

*would be located on the same level as the terrace. Private open space would include balconies and patios that would be accessed from individual residences. Additional publicly accessible open space would be provided in the mid-block pedestrian pathway between the proposed project and 333 Fremont Street.*

### STREETS AND TRANSPORTATION

Objective 5.5 - Manage parking supply and pricing to encourage travel by foot, public transportation and bicycle.

### PARKING

Policy 5.16 - Require parking for bicycles at a ratio of one space per two units for buildings with 50 units or fewer, and one space per four units for buildings with greater than 50 units.

*The project as proposed will provide one off-street parking space for every dwelling unit but meets the requirements for a parking exception pursuant to section 151.1. It will also provide space for City Car Share and secure 120 bicycle spaces.*

13. **General Plan Findings.** Planning Code Section 101.1 establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. The Project complies with said policies in that:

a. No neighborhood serving retail uses are being displaced or otherwise affected by the proposal.

*No neighborhood serving retail uses currently exist on site. The site is currently improved with three structures – 355-375 Fremont, the Hjul Building, a two-story, approximately 46,500 square-foot office building which was constructed in 1929 as an industrial building and subsequently converted to office uses; 385 Fremont, a two-story, approximately 15,000 square-foot building with mezzanine containing an auto repair garage and office space; and 399 Fremont, Apostleship of the Sea, is a three-story plus basement, 35,000 square-foot building used as a social service center, with a chapel and temporary shelter for homeless people.*

- b. Existing housing and neighborhood character will not be adversely affected by the proposed project.

*The proposed project will not displace any existing housing and will enhance the neighborhood character by developing various pedestrian amenities in the and near the project site and by fulfilling the City's vision for the Rincon Hill area as a high-density, high-rise residential area. The project will preserve the existing character of the neighborhood by increasing the housing stock by approximately 432 units, as similar residential developments are, or planned to be, in close proximity of the project site.*

- c. The Project would have no adverse impact on the City's existing supply of affordable housing.

*The proposed project will enhance the City's supply of affordable housing by providing on in-lieu fee to fund new affordable units pursuant to the inclusionary housing requirements of Sections 315-315.9 of the San Francisco Planning Code.*

- d. That commuter traffic will not impede Muni transit service or overburden our streets or neighborhood parking.

*The proposed project will not include office space or other uses that generate commuter traffic. The project will also not impede Muni transit service or overburden streets. The project site is located in an area served by several modes of public transit, including Muni, BART, SamTrans, Golden Gate Transit, and AC Transit. The project site is located within walking distance of the Transbay Terminal and the Ferry Building, and four blocks from Muni Metro and BART. The proposed project also will not overburden neighborhood parking, streets or neighborhood, as it will provide approximately 432 on-site spaces for residents, or one space for every dwelling unit.*

- e. No industrial or service industry establishment would be displaced by the Project.

*The Project is exclusively residential and does not involve any commercial office development. The Project also would not displace any existing industrial or service sector businesses as the existing buildings on-site are vacant. The construction of a new high-rise residential project on the site is consistent with the vision established by the Rincon Hill Area Plan.*

- f. Earthquake safety requirements will be considered during review of any building permit applications.

*The project will be built to current seismic standards, thereby providing the greatest possible preparedness to protect against injury and loss of life in an earthquake.*

- g. The subject building is not a landmark or located, within an historic district, and is not included on any historic or architectural surveys; the proposal will therefore not effect any historic properties.

*The site is currently improved with three structures – 355-375 Fremont, the Hjul Building, a two-story, approximately 46,500 square-foot office building which was constructed in 1929 as an industrial building and subsequently converted to office uses; 385 Fremont, a two-story, approximately 15,000 square-foot building with mezzanine containing an auto repair garage and office space; and 399 Fremont, Apostleship of the Sea, a three-story plus basement, 35,000 square-foot building used as a social service center, with a chapel and temporary shelter for homeless people. The Hjul Building at 355-375 Fremont Street is listed in four local surveys containing buildings that could be considered historic resources. When it certified the Final EIR for the Rincon Hill Plan, the Planning Commission found that the benefits of the Plan, including development of the 355-375 Fremont Street site, outweigh its significant impacts, including demolition of the Hjul Building. Project specific mitigation measures require a HABS (Historical American Building Society) survey and documentation of this historic building. In addition, the Project will contribute to a larger effort to document the history of the area with regard to its involvement in the maritime industry.*

- h. The Project has no impact on open space or parks or their access to sunlight and vistas.

*The proposed project will have no adverse impact on existing parks, open space, or their access to sunlight or vistas.*

*The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.*

**PLANNING COMMISSION**  
**June 15, 2006**

**Case No. 2006.0358X**  
355-399 Fremont St.  
Motion No. 17268  
Assessor's Block 3747, Lots 001E,  
002, and 006  
Page 20

**DECISION**

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES** Determination of Compliance Case No. 2006.0358X subject to the following conditions attached hereto as EXHIBIT A (Conditions of Approval) which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this determination of compliance authorization to the Board of Appeals within fifteen (15) days after the date of this Motion No. 17268. The effective date of this Motion shall be the date of this Motion if not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals at (415) 575-6880, 1660 Mission Street, Third Floor, San Francisco, CA 94103.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on June 15, 2006.

Linda Avery  
Commission Secretary

AYES: Commissioners Alexander, Antonini, Bell, Hughes, S. Lee, W. Lee, and Olague

NOES: None

ABSENT: None

ADOPTED: June 15, 2006



**Exhibit A**

**Conditions of Approval**

Whenever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

This approval is pursuant to Sections 309.1, for the construction of a residential project that would both be taller than 85-feet and larger than 50,000 gross square feet; and is to grant an exception to the limitation of allowing only one parking space for every two dwelling units under Planning Code Sections 151.1(d) and 309.1(b)(1)(B), to allow reduction in dwelling unit exposure requirement under Planning Code Sections 140 and 309.1(b)(1)(D), and to allow exception to the separation of towers requirements under Planning Code Sections 270(e) and 309.1(b)(1)(A). The project approved under this determination of compliance includes the demolition of the existing buildings and the construction of a new residential project that would include approximately 432 dwelling units, and up to 432 off-street parking spaces in a development that would include one tower-on-podium that would reach 400-feet (exclusive of mechanical penthouses and screening) in height that would border Fremont Street in general conformance with the plans, labeled Exhibit B, dated May 16, 2006.

**GENERAL CONDITIONS**

1. Wind Exception. The final approval of a site or building permit for this project is contingent on the Zoning Administrator's granting of an exception to the limitation on wind exceedances caused by this project as regulated by Planning Code Section 827(f).
2. Variance from Code Section 827(d)(5)(C) requirement. The final approval of a site or building permit for this project is contingent on the Zoning Administrator's granting of a variance for the requirement for ground floor stoops that exceed three feet above grade for the ground floor residential units at the Fremont Street façade.
3. Performance. This authorization is valid for a period of 24 months after the approval by the Planning Commission, or the Board of Permit Appeals. Specific procedures regarding the performance requirement follow Planning Code Section 309.1(e).
4. Recordation. Prior to the issuance of any building or site permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject

to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.

5. Community Liaison. The Project Sponsor shall appoint a community liaison officer to deal with issues of concern to the owners and occupants of nearby properties at all times during Project construction. Prior to the commencement of Project construction, the Project Sponsor shall give the Zoning Administrator and the owners of properties within 300 feet of the Project site boundaries written notice of the name, business address and telephone number of the community liaison.
6. First Source Hiring Program. The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the Project Sponsor shall comply with the requirements of this program.

#### **MITIGATION MEASURES – Final Environmental Impact Report**

7. The Project Sponsor shall implement the Mitigation Monitoring Program as set forth in Exhibit C. Each mitigation measure is a condition of approval of the Project. The Project Sponsor shall implement the mitigation measures as exactly worded and in the manner set forth in the MMRP.

#### **DESIGN**

8. Final Design. The project sponsor shall continue to work with Planning Department staff on the details of the design of the project, particularly focusing on the ground floor portions that face the pedestrian path and Harrison Street.
9. Streetscape Improvements. The project sponsor shall make sidewalk improvements pursuant to the proposed Rincon Hill Streetscape Plan, in accordance with Planning Code Section 827(g) and as directed by staff. The project sponsor shall work with staff to ensure the improvements are of good quality, compatible with the neighborhood, and compliant with any applicable requirements of the Public Works Department, the Bureau of Light, Heat and Power of the Public Utilities Commission and the Art Commission. The owners of abutting properties to the improved sidewalk shall hold harmless the City and County of San Francisco, its officers, agents, and employees, from any damage or injury caused by reason of the design, construction or maintenance of the improvements, and shall require the owner or owners or subsequent owner or owners of the respective property to be solely liable for any damage or loss occasioned

by any act or neglect in respect to the design, construction or maintenance of the sidewalk improvements.

10. Pedestrian Path. A pedestrian path shall be provided as shown in Exhibit B and shall meet the specifications for publicly accessible open space and for the Rincon Hill pedestrian path as outlined in Planning Code Sections 827(e)(3)(B), (C) and (D).
11. Street Trees. Street trees shall be installed in accordance with Planning Code Section 143 and 827(g)(2), which provides specific requirements regarding the location of the trees relative to curb, the specifications of the planted street tree, and the planted street tree sidewalk opening, and irrigation.
12. Trash. Trash receptacles and dumpsters shall not be stored on public property or in project common space, and they shall be screened from public view.
13. Mechanical equipment and appurtenances shall be enclosed in such a manner that (a) the enclosure is designed as a logical extension of the building form and an integral part of overall building design and (b) its cladding and detailing is comparable in quality to the rest of the building. Any such enclosures may have openings necessary for proper ventilation of equipment.

#### **AFFORDABLE UNITS**

14. The project shall comply with the inclusionary housing requirements set forth in Planning Code Sections 315 through 315.9 and 827(b)(5).
15. If the Applicant chooses to provide units off-site, the Applicant shall comply with the requirements of Planning Code Section 827(b)(5).
16. If the Applicant chooses to pay a fee in-lieu of providing units, the Applicant shall comply with the requirements of Section 315.6.
17. If BMR units are provided on-site, the BMR units shall be designated on the building plans prior to approval of any building permit. BMR units shall (1) reflect the unit size mix of the market rate units, (2) shall be constructed and marketed concurrently with the construction and sale of the market rate units, and (3) shall be of the same quality and materials as the market rate units in the project. If the BMR units are provided on-site, prior to issuance of the Building Permit, the Project Sponsor shall record a Notice of Special Restriction on the property, which records a copy of this Motion and identifies the BMR units satisfying the requirements of this Motion. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department

**PLANNING COMMISSION**  
**June 15, 2006**

**Case No. 2006.0358X**  
355-399 Fremont St.  
Motion No. 17268  
Assessor's Block 3747, Lots 001E,  
002, and 006  
Page 4

and to the Mayor's Office of Housing or its successor (MOH), the monitoring agency for the BMR unit, at 25 Van Ness Avenue, Suite 600, San Francisco, California 94102.

**IMPACT FEES**

18. The project shall comply with the provisions of Planning Code Section 318, including payment of the Rincon Hill Community Infrastructure Impact Fee or execution of a Waiver Agreement with the Planning Department prior to issuance of the first site or building permit, and payment of the SOMA Community Stabilization Fee as required by Planning Code Section 318.

**PARKING AND CIRCULATION**

19. Sale of Parking Space Separate from Sale or Rental of Unit. Residential parking spaces shall be made available to buyers or renters (depending on whether the building is ultimately a condominium or rental development) as a separate "add-on" option for purchase or rent, rather than having the parking space bundled with each unit in accordance with procedures and specification of Planning Code Section 167.
20. Car Share Space. The Project Sponsor shall provide space at no cost one car share space, to be operated by car-share organization (as defined by Planning Code Section 166(a)(2)) in accordance with Planning Code Section 166.

**MONITORING AND VIOLATION**

21. Violation of the conditions noted above or any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Code Section 176.
22. Should implementation of this Project result in complaints from neighborhood residents or business owners and tenants, which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the City Planning Code and/or the specific Conditions of Approval for the Project as set forth in Exhibit A of this motion, the Zoning Administrator shall report such complaints to the City Planning Commission which may thereafter hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3 and 306.4 of the Code to consider revocation of this Design Review Authorization.

**PLANNING COMMISSION**  
**June 15, 2006**

**Case No. 2006.0358X**  
355-399 Fremont St.  
Motion No. 17268  
Assessor's Block 3747, Lots 001E,  
002, and 006  
Page 5

23. Should the monitoring of the conditions of approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(f)(2)



Previous Design



Fremont Street Elevation



Previous Design



East Elevation at property boundary





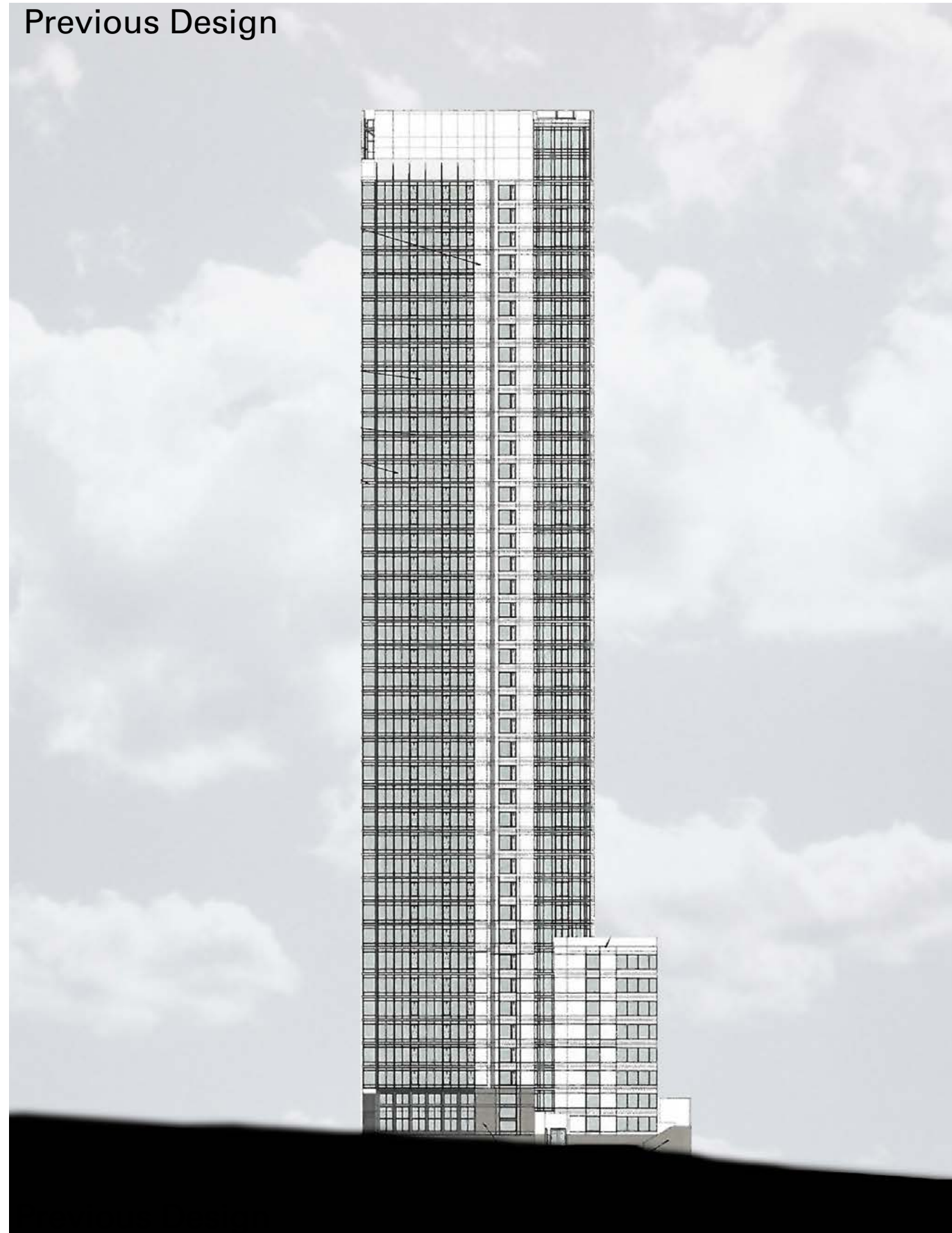
Previous Design



Mid-block Elevation

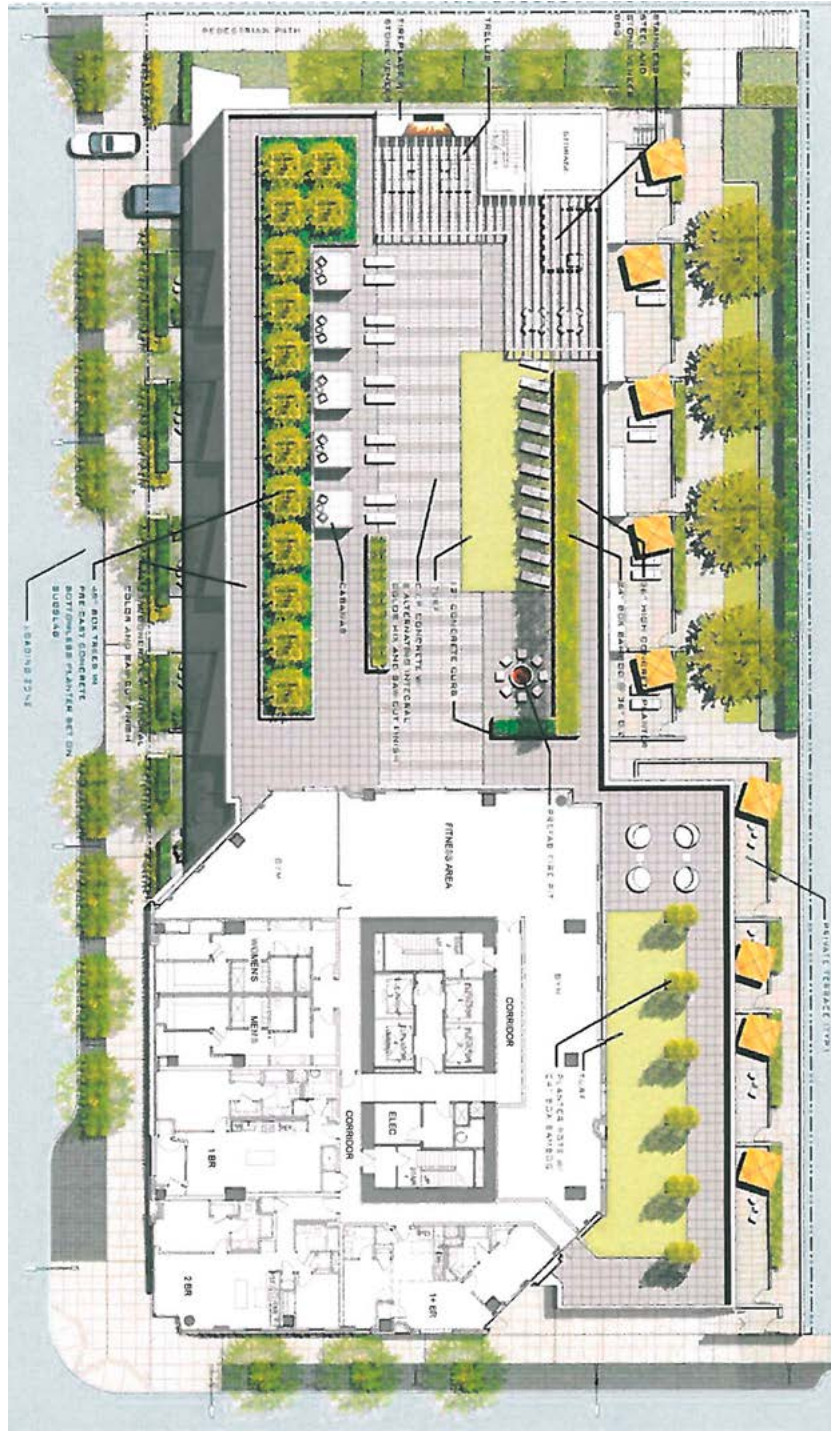


Previous Design



Harrison Street Elevation



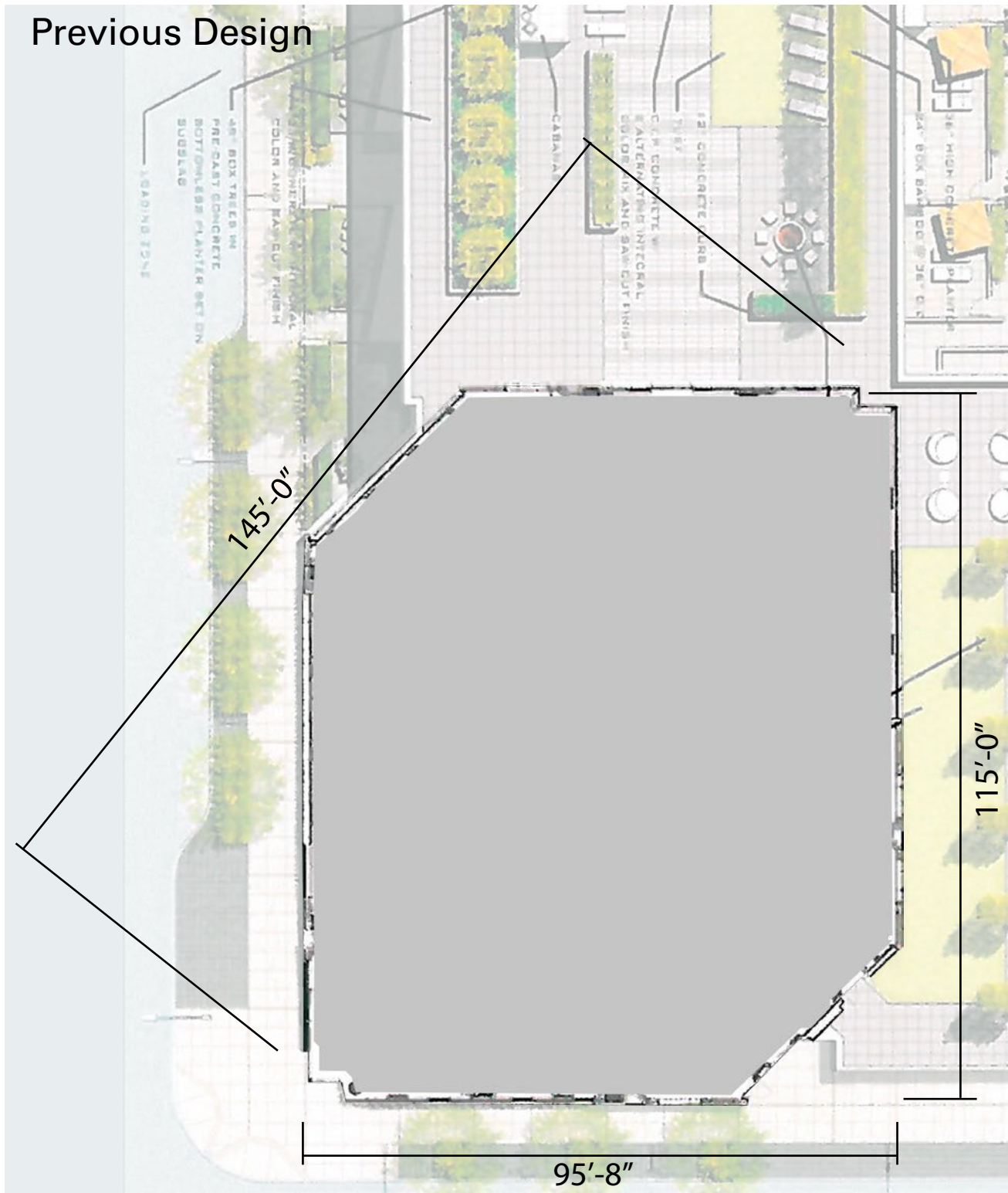


Previous Design

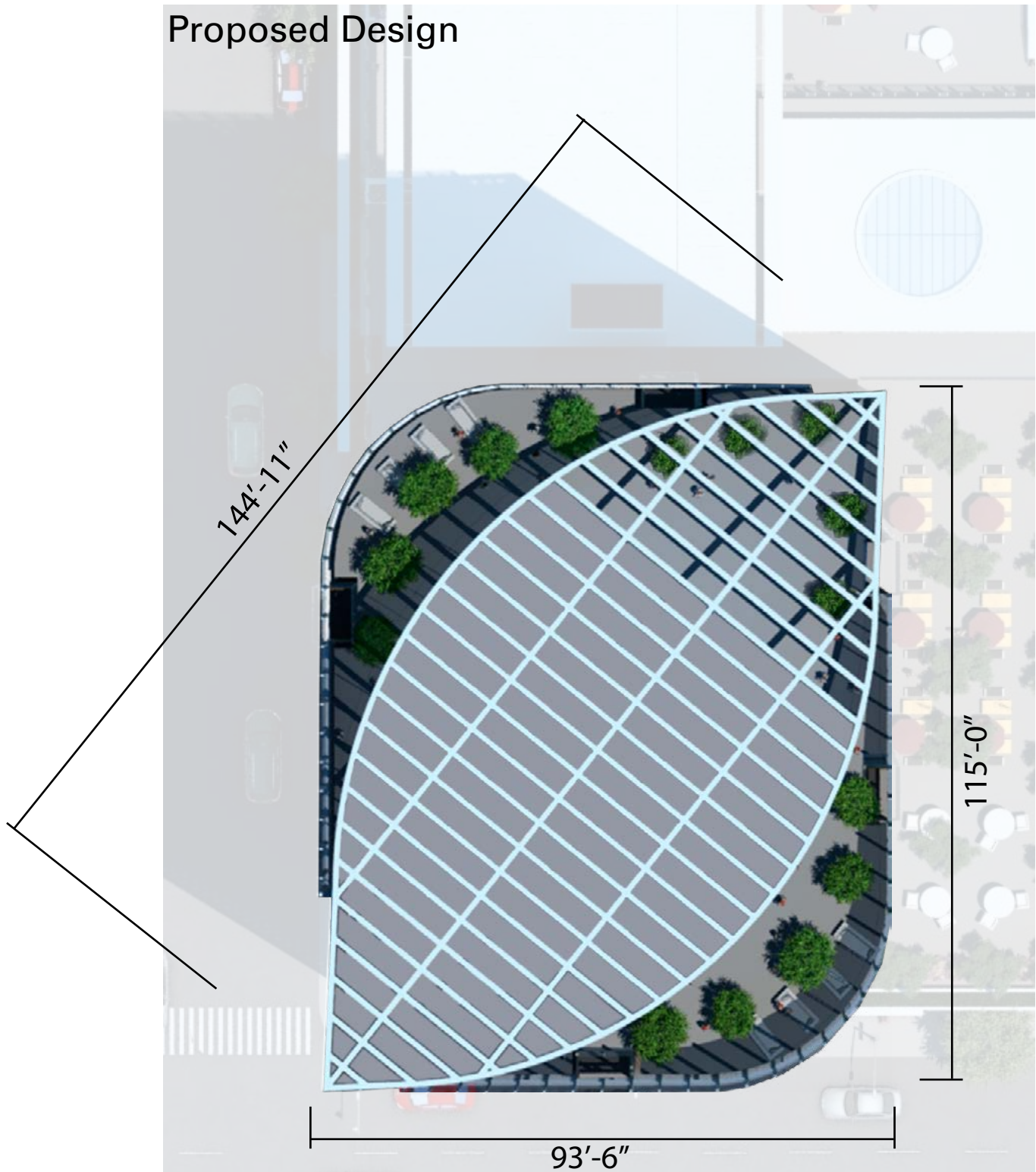


Site Usage Plan

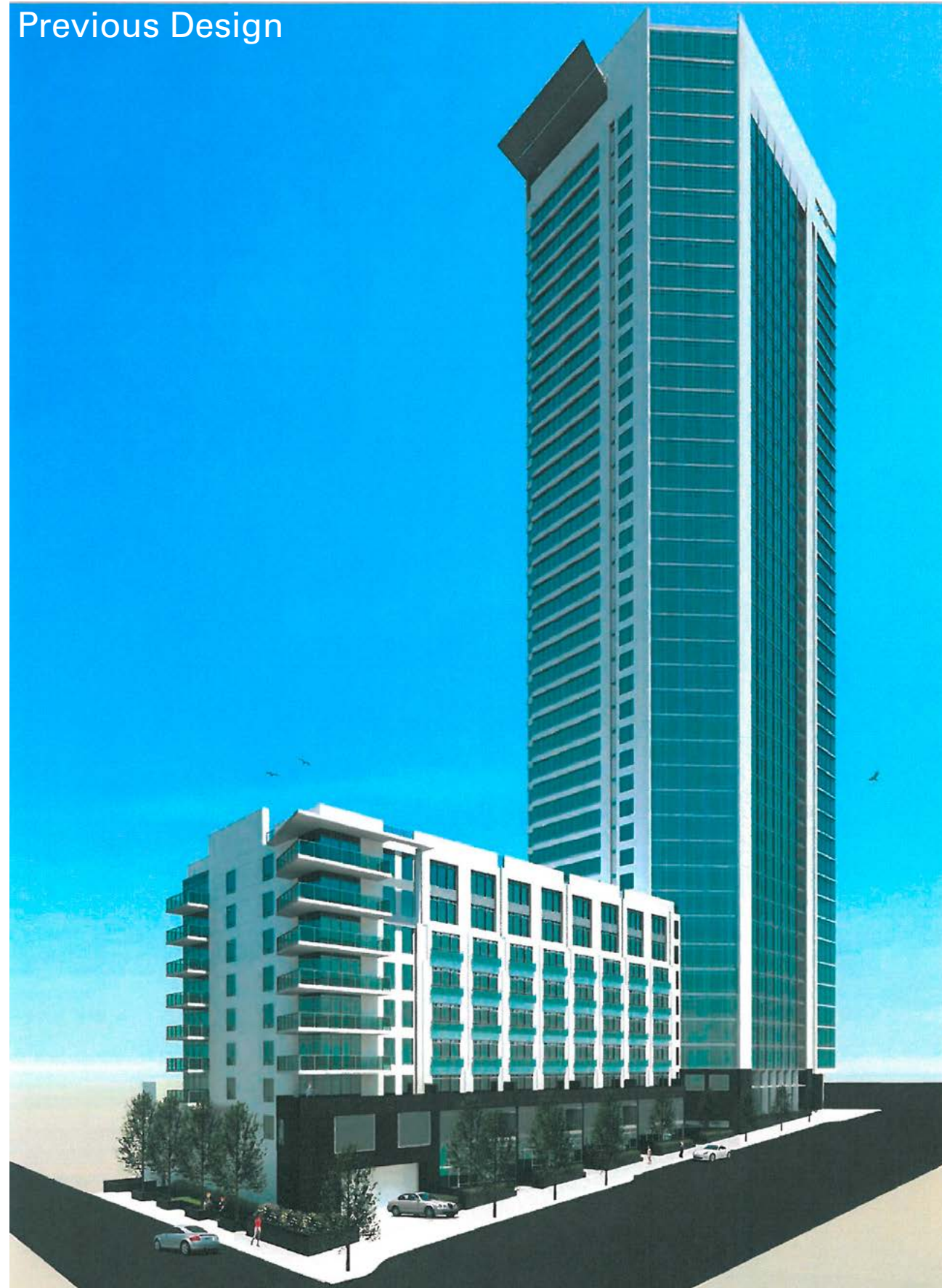
### Previous Design



### Proposed Design



Previous Design



View from First & Folsom



Previous top of building



Top from Fremont and Harrison



Previous building base



Podium facing Fremont Street





## ADDITIONAL VIEWS OF PROPOSED PROJECT



View from West at Fremont



View at Fremont & Harrison







Podium facing Fremont

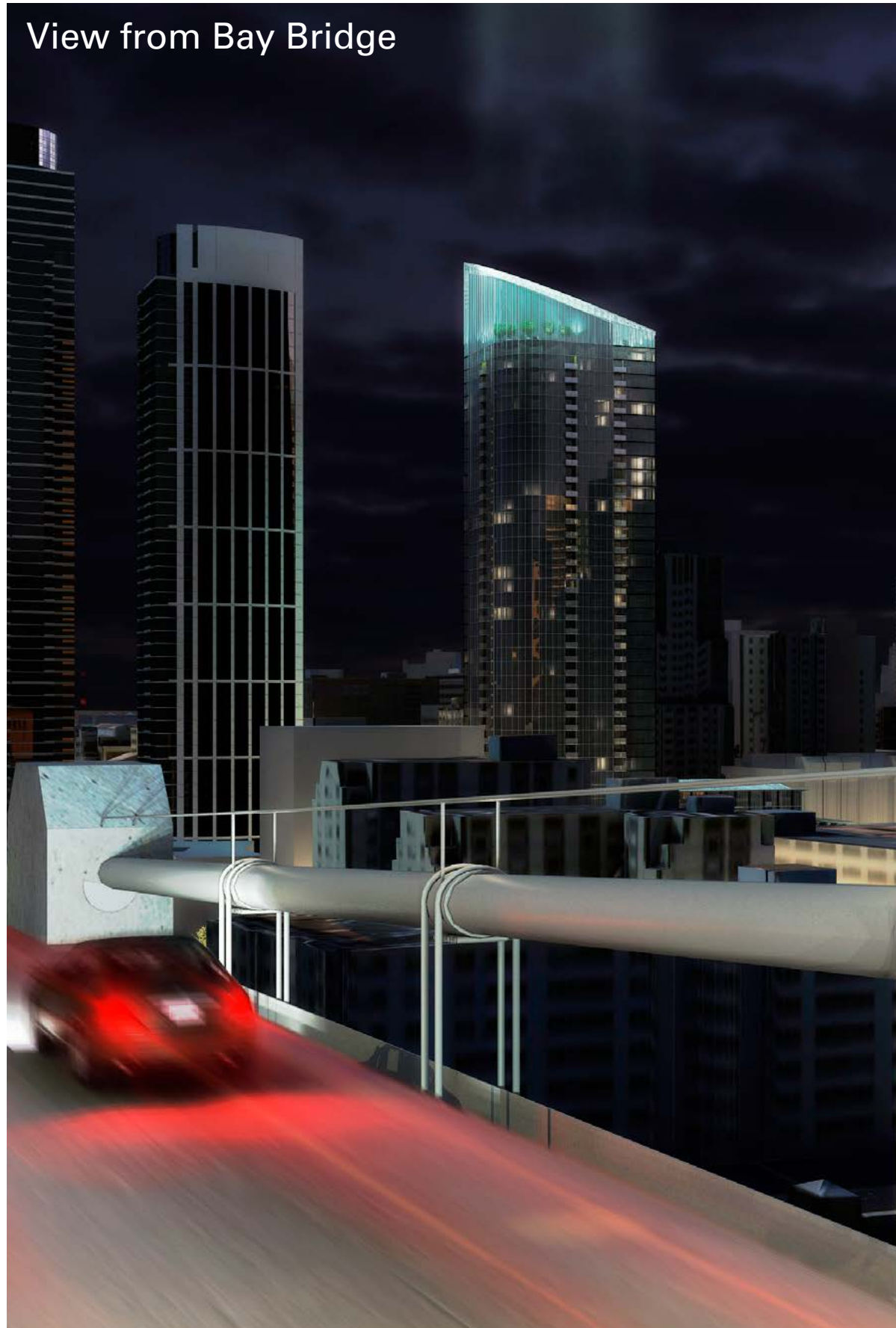




Podium Amenity Terrace



View from Bay Bridge



View from Bay Bridge



View from Financial District



View from First & Folsom

