



SAN FRANCISCO PLANNING DEPARTMENT

Reissued Letter of Determination

CORRECTED INTEREST CALCULATION

July 26, 2016

Enda Keane
2458 Polk Street #2
San Francisco, CA 94109

Site Address:	3520 20 th Street
Assessor's Block/Lot:	3596/127
Zoning District:	Mission Street Neighborhood Commercial Transit (NCT) District
Staff Contact:	Kate Conner, (415) 575-6914 or kate.conner@sfgov.org
Record No.:	2015-002238ZAD

Dear Mr. Keane:

This letter is in response to your request for a Letter of Determination regarding the property at 3520 20th Street ("Project") and supersedes a previous determination issued on July 12, 2016. This parcel is located in the Mission Street Neighborhood Commercial Transit (NCT) Zoning District and 55-X Height and Bulk District. The Letter of Determination request is to resolve whether a previously approved 14-unit project may change the previously selected method of compliance with the Inclusionary Affordable Housing Program ("Program") after issuance of the first construction document and first Certificate of Occupancy.

The Project was approved by the Planning Department on May 5, 2006 (Building Permit Application Number (BPA) 200411229899) to construct a new four-story building with 14 dwelling units. The Project received its first construction document on September 5, 2006. The Letter of Determination request states that the first construction document was issued on May 12, 2006; however, this statement is incorrect. Rather, the site permit was issued on this date, which does not constitute a first construction document.¹

On November 30, 2006, the Project Sponsor recorded an NSR on the Property containing the restrictions imposed on the Property under the Inclusionary Housing Program ("Program") and indicating that, if the applicant chose to comply with Program requirements by providing on-site units, the applicant shall provide one Below Market Rate unit, Unit 5, which is a 2 bedroom unit. The NSR also provided that the applicant could comply through the off-site or in lieu fee option as provided in the Code.

¹ Pursuant to Section 107A.13.1 of the San Francisco Building Code, "First construction document" shall mean the first building permit issued for a development project or, in the case of a site permit, the first building permit addendum issued or other document that authorizes construction of the development project. Construction document shall not include permits or addenda for demolition, grading, shoring, pile driving, or site preparation work.

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

The Mayor's Office of Housing and Community Development has informed the Zoning Administrator that it pursued compliance efforts with the Project Sponsor from October 2010 to the present. In those discussions, the project sponsor indicated that it had elected to provide an on-site unit, but failed to comply with that requirement despite numerous attempts by MOHCD to gain compliance. As of 2011, the project sponsor represented to MOHCD that it would offer the units for sale. MOHCD staff referred the case to Planning staff in March 2011 and continued to work with the project sponsor to achieve compliance.

In March 2014, the Project Sponsor contacted the Planning Department about renting the affordable unit. Planning Department staff informed the Project Sponsor that the Project could only rent the affordable unit it first qualified for and entered into to a Costa Hawkins Exception Agreement with the City. This agreement would state that the Project's affordable unit is not subject to the Costa-Hawkins Rental Housing Act based upon a received bonus or other concessions (as defined in California Government Code Section 65915 et seq.) received by the Project from the City.

The owners then contacted the Planning Department to request a determination of the Project's eligibility to enter into a Costa-Hawkins Exception Agreement. Upon review, the Planning Department determined that the Project does not qualify for a Costa Hawkins Agreement because the Project did not receive a density bonus, concession, or incentive for the production of on-site inclusionary units. The Project complied with the Planning Code in all other respects.

As stated in the Letter of Determination request, on May 4, 2014, the Project Sponsor contacted the Department to pursue payment of the Affordable Housing Fee as an alternative to providing the affordable units on-site because the project sponsor now represented that the Project was a rental project. In past Letters of Determination, the Zoning Administrator has looked to Planning Code Section 415.5(g)(3) when a project changes from an ownership project to a rental project but does not qualify for an exception to Costa Hawkins and thus becomes ineligible for the Alternative of providing on-site units. Section 415.5(g)(3) states, in relevant part:

If a project sponsor fails to choose an Alternative before project approval by the Planning Commission or Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section 415.5² shall apply.

Thus, if a project is no longer eligible for the on-site alternative, the Code states that the fee provisions of Section 415.5 shall apply. In this case, the Zoning Administrator has determined that that the Project located at 480 14th Street is ineligible for the On-Site Alternative because it is a rental project that cannot qualify for a Costa Hawkins agreement. As such, the project is no longer eligible to provide units on-site and therefore must pay the Fee. Payment of the fee is due prior to the issuance of first construction document, or in this particular case: May 12, 2006. Therefore, payment of the Fee is late. Planning Code Section 415.5(d) addresses recourse for late payment, including lien proceedings. Planning Code Section 415.5(d) states:

² Planning Code Section 415.5 refers to payment of the Affordable Housing Fee ("Fee").

If, for any reason, the Affordable Housing Fee imposed pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of Occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien against all parcels used for the development project in accordance with Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code

The Letter of Determination request for this Property serves as written acknowledgement of the intent to pay the Fee. Interest on the Fee began accruing after the issuance of the first construction document, on May 12, 2006. Accrual ceased on May 4, 2014, when the Project Sponsor filed the Letter of Determination, formally requesting to pay the Affordable Housing Fee as an alternative to providing an on-site affordable unit. The

The applicable Interest Rate is adjusted monthly and is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office. The Interest Rate used is the Earned Income Yield. The Earned Income Yield is divided by the number of days in a given month to determine the daily interest rate. The interest rate applicable to this project is 0.002% per day.

MOHCD determines the Affordable Housing Fee and issued a Fee Determination Letter on January 28, 2014 stating that the Affordable Housing Fee for the Project is \$469,135. The first construction document for the Project was issued on May 12, 2006 and interest accrual ceased on May 4, 2014, resulting in 2,914 days of interest accrual. The interest total is: \$30,337. The table below includes the necessary payment due to MOHCD.

Affordable Housing Fee	\$469,135
Interest 0.002%/day for 2914 days	\$30,337
Total Affordable Housing Fee + Interest due to MOHCD: \$499,472	

Planning Code Section 415.9 addresses enforcement procedures for projects that fail to meet Program requirements after issuance of first Certificate of Occupancy. Planning Code Section 415.9 states:

If, after issuance of the first Certificate of Occupancy, the Commission or Department determines that a project sponsor has failed to comply with any requirement in Section 415.1et seq. or any reporting requirements detailed in the Procedures Manual, or has violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the violation is cured, (a) revoke the Certificate of Occupancy for the principal project or required affordable units, (b) impose a penalty on the project pursuant to Section 176(c) of this Code, and/or (c) the Zoning Administrator may enforce the provisions of Section 415.1et seq. through any means provided for in Section 176 of this Code.

Penalties may be assessed after the issuance of first Certificate of Occupancy under Section 176 of the Planning Code at a maximum rate of \$250 per day. As admitted and detailed in the Request for

Determination, the Project has failed to comply with the Program. As such, penalties began accrual on May 8, 2008 and ceased on May 4, 2014, resulting in 2,187 days of penalty accrual.

The Zoning Administrator has considered this balance due and determined that the amount is excessive under the circumstances. Balancing the extended period of admitted noncompliance, and the significant amount of accrued interest, the Zoning Administrator has determined that \$50.00/day is an appropriate penalty. The table below includes the necessary payment due to MOHCD.

Number of Days (from 5/8/08 to 5/4/14)	Amount of Penalty
2187	\$109,350
Total Penalty due to Planning Department: \$109,350	

The Fee, interest, and penalty must be paid within one month of the issuance of this letter, or June 24, 2016. If the payment is late, interest and penalty will continue accrual from May 14, 2014 until payment is received at the same rate as stated in this letter, which is equal to \$140.74/day for the interest and \$50.00/day for the penalties. The table below includes the necessary payment due to the Planning Department.

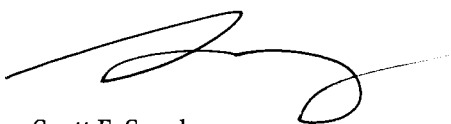
Total Affordable Housing Fee and Interest due to MOHCD: \$499,472	Total Penalty due to Planning: \$109,350	Total: : \$608,822
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In summary, based on the information provided, in order for the Project to pay the Affordable Housing Fee after issuance of the first construction document as an alternative to providing an on-site affordable unit, the Project must pay the Affordable Housing Fee plus interest and penalties as listed above. A new Notice of Special Restrictions must be recorded on the property, to document this modification.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

If the City has not previously given notice under Government Code Section 66020 of an earlier discretionary approval of the project involving a fee or exaction as defined by Government Code Section 66020, the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not recommence the 90-day approval period.

Sincerely,



Scott F. Sanchez
Zoning Administrator

Enda Keane
2458 Polk Street #2
San Francisco, CA 94109

July 21, 2016
Letter of Determination
3520 20th Street

Enclosures:

Affordable Housing Fee Letter issued by MOHCD on April 20, 2015
DBI print out of permit information for subject permit 200411229899 including site permit and first construction permit information.
Interest Calculation

cc: Kate Conner, Planner
Daniel A. Frattin, Reuben, Junius & Rose, LLP, One Bush Street, Suite 600, San Francisco, CA 94104
Olson Lee, Director of San Francisco Mayor's Office of Housing and Community Development
Property Owner
Neighborhood Groups
Block Book Notifications

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



**EDWIN M. LEE
MAYOR**

**OLSON LEE
DIRECTOR**

April 29, 2015

Enda Keene
Developer and Owner
3520 20th Street

Denis McMahon
Developer and Owner
3520 20th Street

c/o Daniel Frattin
Reuben, Junius & Rose, LLC
One Bush Street, Suite 600
San Francisco, CA 94104
dfrattin@reubenlaw.com

Re: San Francisco Planning Code Section 415 ("Inclusionary Housing Program")
Affordable Housing Fee Determination for 3520 20th Street

Dear Enda Keene and Denis McMahon:

In response to your letter received 3/30/2015 regarding the above referenced project at 3520 20th Street, we are providing the following fee calculations:

1. The fee which is applicable per Planning Code Section 415.5; and,
2. The total number and size distribution of affordable housing units that are required by Planning Code Section 415.7 if the units are provided off-site in lieu of a fee payment.

Based on the project application date of 11/22/2004, the Planning Code specifies that the project sponsor shall pay a fee that is equivalent to the provision of 15% of the market rate units as off-site affordable housing units. (See the table below.) Using the off-site calculation, you would be required to provide 15% of the 14 new dwelling units in the primary project to meet the off-site requirement, or a total of 2.1 units. As for the unit size, the Planning Code requires that the off-site housing be comparable to the unit size (by number of bedrooms) reflected in the market rate units of the principal project.

According to your plans, the principal project will have a total of 0 studio unit(s); 0 one-bedroom unit(s); 13 two-bedroom unit(s); 1 three-bedroom unit(s); and 0 four-bedroom unit(s). Using that ratio, the off-site and fee allocation results in 0 studio unit(s); 0 one-bedroom unit(s); 1.95 two-bedroom unit(s); .15 three-bedroom unit(s); and 0 four-bedroom unit(s), as shown in the following chart.

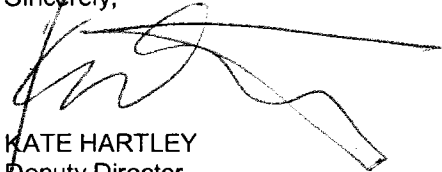
Inclusionary Housing Program Affordable Housing Fee Determination					
Address: 3520 20th Street					
Unit Size	Market Rate Total	15% Off-site Requirement	Off-Site Unit Requirement	Fee By Unit Size*	Fee Payable
Studio	0	15%	0.00	\$100,280	\$0
1 bedroom	0	15%	0.00	\$150,062	\$0
2 bedroom	13	15%	1.95	\$216,851	\$422,859
3 bedroom	1	15%	0.15	\$308,501	\$46,275
Totals:	14		2.10		\$469,135
*January 1, 2006 Fee Schedule					

Inclusionary fees must be paid before the issuance of a project's first construction document. However, in the case of your project, the project received its first construction document on May 12, 2006. Therefore, this letter reflects the fee schedule that was in place when your project received its first construction document. This letter will be shared with the Planning Department, who will add applicable interest and penalties to the fee amount due in order to determine the final amount due. The Planning Department must also grant you permission to make this payment and guide you in the payment process.

If the City has not previously given notice under Government Code Section 66020 of an earlier discretionary approval of the project involving imposition of a fee or exaction as defined by Government Code Section 66020, the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day period has begun for the subject development, then this document does not recommence the 90-day protest period.

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

Sincerely,



KATE HARTLEY
Deputy Director

Attachment: Inclusionary Fee Notice January 1, 2006

cc: Kate Conner, Planner, San Francisco Planning Department
Julian Banales, Southeast Team Manager, San Francisco Planning Department
Taras Madison, San Francisco Department of Building Inspection
John Blackshear, San Francisco Department of Building Inspection
Sophie Hayward, San Francisco Mayor's Office of Housing and Community Development
Teresa Yanga, San Francisco Mayor's Office of Housing and Community Development

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



**GAVIN NEWSOM,
MAYOR**

**Matthew O. Franklin
DIRECTOR**

**NOTICE OF ANNUAL ADJUSTED INCLUSIONARY HOUSING FEES UNDER
PLANNING CODE SECTION 315.6 EFFECTIVE JANUARY 1, 2006**

As adopted by the Board of Supervisors, the Inclusionary Affordable Housing Program ("Inclusionary Ordinance") provides that a developer of a residential project may pay a fee in-lieu of constructing and providing on- or off-site below-market rate units (San Francisco Planning Code § 315.6). The option to pay an in lieu fee applies to all projects subject to the Ordinance. In lieu fees are based on the number and bedroom size of below-market rate units which a developer would be required to provide if the units are developed off-site (that is, 15% of the total number of units in a project requiring 10% below-market rate units on-site, and 17% for projects requiring 12% below-market rate units on-site).

The Inclusionary Ordinance requires the Mayor's Office of Housing to establish the fee as the amount of the affordability gap identified pursuant to criteria set forth in Section 315.6(b) of the Planning Code. The Inclusionary Ordinance provides for adjustments to reflect annual changes in the average area purchase price of a newly constructed home in the San Francisco Primary Metropolitan Statistical Area (PMSA).

Adjusted fees, based on data reflecting the annual change in the San Francisco PMSA average area purchase prices from calendar year 2003 to calendar year 2004, will go into effect for all requests received beginning January 1, 2006. The adjusted fees represent an 11.26% increase over current fees.

The following fees are the new fees based on 2004 purchase price data per unit at specified unit sizes. For any given project, the fee will be multiplied by the number of off-site units required by the Inclusionary Ordinance, taking into account the unit sizes of the market-rate project.

Unit Size:	Studio	1 bedroom	2 bedroom	3 bedroom
Fee:	\$100,280	\$150,062	\$216,851	\$308,501

Effective Jan. 1, 2006, the above fees are applicable to all developments that are subject to the Ordinance, and must be paid prior to issuance of the first site or building permit. The next fee schedule will be published in mid-2006 based on 2005 purchase price data. For more information please contact Martha Brown at (415) 252-3101 or email her at Martha.Brown@sfgov.org.

Welcome to our Permit / Complaint Tracking System!

Permit Addenda Details Report

Report Date: 9/8/2015 11:56:19 AM

Application Number: 200411229899

Form Number: 2

Address(es): 3596/1120/14 3520 20TH ST

Description: TO ERECT 4 STORIES OF 14 DWELLING UNITS / RETAIL.

Cost: \$3,186,829.00

Occupancy Code: R-1,M

Building Use: 24 - APARTMENTS

Disposition / Stage:

Action Date	Stage	Comments
9/5/2006	Issued	
1/8/2007	Issued	GR#205936; \$640.00

Contact Details:

Contractor Details:

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

Addenda Details:

Description: 1.architectural & structural								
Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	PAD-MAJ	6/20/06	7/17/06			7/19/06	CHUN ROBERT	to mechanical
2	PAD-MECH	7/20/06	7/21/06	7/21/06		7/24/06	CAYABYAB MERLIN	
3	SFFD	8/7/06	8/13/06	8/24/06	8/30/06	8/30/06	DEBELLA AL	
4	ONE-STOP	9/1/06	9/1/06			9/1/06	WONG IRENE	
4	DPW-BSM	8/30/06	8/31/06			8/31/06	MINIANO DANNY	
5	COUNTER	9/1/06	9/5/06			9/5/06	GIANG VINH	ISSUED

Description: MECHANICAL (mechanical back check fee due is \$640.00)								
Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	PAD-MAJ	8/15/06	9/5/06			9/5/06	CHUN ROBERT	
2	PAD-MECH	9/12/06	9/12/06	9/21/06		12/6/06	CAYABYAB MERLIN	
3	ONE-STOP	12/6/06	12/6/06			12/6/06	TJOE MAOE	
4	COUNTER	12/6/06	1/8/07			1/8/07	BARTHOLOMEW IRENE	ISSUED 1/8/07 (paid \$640.00; GR#205936)

Station Code Descriptions and Phone Numbers

[Online Permit and Complaint Tracking home page.](#)

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Welcome to our Permit / Complaint Tracking System!

Permit Details Report

Report Date: 9/8/2015 11:55:51 AM

Application Number: 200411229899
 Form Number: 2
 Address(es): 3596/120/4 3520 20TH ST
 Description: TO ERECT 4 STORIES OF 14 DWELLING UNITS / RETAIL.
 Cost: \$3,186,829.00
 Occupancy Code: R-1,M
 Building Use: 24 - APARTMENTS

Disposition / Stage:

Action Date	Stage	Comments
11/22/2004	TRIALGE	
11/22/2004	FILING	
11/22/2004	FILED	
5/12/2006	PLANCHECK	
5/12/2006	APPROVED	
5/12/2006	ISSUED	
5/8/2008	COMPLETE	CFC Issued

Contact Details:

Contractor Details:

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

Addenda Details:

Description:

1.architectural & structural-BSM 2.mechanical 3. fire alarm system,fire sprinkler system &final-BSM

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	11/22/04	11/22/04			11/22/04	LEE ANITA	
2	CP-ZOC	11/24/04	2/17/06			2/17/06	SIDER DAN	approved per R4 plans and application / NSR 2006124350 / GRE/CatEx issued 11/2/05
3	CP-NP	12/15/05	2/17/06			2/17/06	SIDER DAN	mailed 12/15/2005 expire 01/14/2005
4	PAD-MAJ	2/22/06	3/14/06			3/14/06	CHUN ROBERT	to mechanical
5	PAD-MECH	3/16/06	3/20/06			3/21/06	CAYABYAB MERLIN	No work. Site only.
6	SFFD	3/22/06	3/23/06	3/24/06		4/14/06	WONG MICHE	
7	PAD-MAJ	4/25/06	4/25/06			4/25/06	CHUN ROBERT	to city planning for revision. to bsm next
8	CP-ZOC	4/25/06	5/5/06			5/5/06	BANALES JULIAN	
9	DPW-BSM	5/9/06	5/10/06			5/11/06	MINIANO DANNY	DPW/BSM sign off on job card required (061E-0166) PRIOR TO DBI FINAL. AS NOTED ON PLANS.
10	ONE-STOP	5/12/06	5/12/06			5/12/06	LAI JEFF	
11	CPB	5/12/06	5/12/06			5/12/06	CHAN AMARIS	APPROV BY AMARIS

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

Appointments:

Appointment Date|Appointment AM/PM|Appointment Code|Appointment Type|Description|Time Slots

Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
5/8/2008	Brett Howard	CFC ISSUED	CFC ISSUED
5/6/2008	Brett Howard	PRE-FINAL	PRE-FINAL
4/10/2008	Brett Howard	PRE-FINAL	PRE-FINAL

1 2 3 4 5 6 7

Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
1	4/22/2008	Neil Friedman	1	CONCRETE (PLACEMENT & SAMPLING)	
1	4/22/2008	Neil Friedman	2	BOLTS INSTALLED IN CONCRETE	
1	4/22/2008	Neil Friedman	4	REINFORCING STEEL AND PRESTRESSING TENDONS	steel and tendons
1	4/22/2008	Neil Friedman	21C	OTHERS	Tiebacks (not used per geo tech engineer; cantilevered shoring instead)
1	4/22/2008	Neil Friedman	6	HIGH-STRENGTH BOLTING	
1	4/22/2008	Neil Friedman	19	SHEAR WALLS AND FLOOR SYSTEMS USED AS SHEAR DIAPHRAGMS	
1	4/22/2008	Neil Friedman	20	HOLDOWNS	
1	4/22/2008	Neil Friedman	5A1	SINGLE PASS FILLET WELDS < 5/16"	

For information, or to schedule an inspection, call 558-6570 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

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**San Francisco Planning Department
Interest Calculation**

Property Address: 3520 20th st BPA 200411229899
Block: 3596
Lot: 127-143 (17 lots)

	Date	Rate/Day	Number of Days	Interest	Per Day
Issuance Date of 1st Construction Document	5/12/2006	0.03%	2914	\$410,118	\$140.74
Applicable Affordable Housing Fee				\$469,135	
Date notified Planning want to pay fee	5/4/2014				

Planning Code Section 415.5(g)(4)

The interest rate is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office.

<http://www.sftreasurer.org/index.aspx?page=16>

The Interest Rate to use is the Earned Income Yield

Take the Earned Income Yield and divide it by the number of days in that given month to determine the daily interest rate

Penalty Calculation	Date	Rate/Day	Number of Days	Penalty
Issuance Date of 1st Certificate of Occupancy	5/8/2008	\$250.00	2187	\$546,750.00
Date notified Planning want to pay fee	5/4/2014			

Total Penalty, Interest, Fee Owed	\$1,426,003
Affordable Housing Fee (Paid to MOHCD)	\$469,135
Interest (Paid to MOHCD)	\$410,118
Penalties (Paid to Planning)	\$546,750.00

Important Notes

Enda Keane

2458 Polk St, #2 San Francisco, CA 94109

ID # 11872 (SE) J BANALES
CR # 2195 \$ 615. -

Scott Sanchez, Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, Ca. 94103

Request For Letter Of Determination
For 3520 20th Street, Block 3596 Lot 0120 127

May 4th 2014

Dear Mr Sanchez,

I am writing to you about a mixed use fourteen residential unit with commercial building at 3520 - 20th Street. The project was required to provide one on-site below market rate unit. The associated building permit number is 200411229899 and the CFC was issued on May 8th, 2008.

I respectfully request a letter of determination so that the project may switch its method of compliance with the Inclusionary Affordable Housing Program through payment of the affordable housing fee rather than provide an on-site unit.

Please accept this letter of determination request and I would like to reserve the right to amend or supplement my letter with additional information.

Sincerely,



Enda Keane

REUBEN, JUNIUS & ROSE, LLP

March 17, 2015

By Email

Scott Sanchez, Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

**Re: Affordable Housing Fee Penalty
480 14th Street, Block 3533, Lot 176
3520 20th Street, Block 3596, Lot 127
Our File No.: 7760.02**

Dear Mr. Sanchez:

Our office represents Enda Keane and Denis McMahon, owners (“Owners”) of residential buildings (“Projects”) located at 480 14th Street and 3520 20th Street in San Francisco (the “Properties”). The Owners are seeking to comply with the Inclusionary Affordable Housing Program (“Program”) through payment of the Inclusionary Affordable Housing Fee (“Fee”). Accordingly, this letter requests your confirmation of amount of the Fee now due. In calculating the applicable Fee, we ask that you consider the following facts and principles:

- (1) The Projects were built subject to a requirement to provide on-site inclusionary units. In 2009, the *Palmer*¹ decision held that such requirements generally violate state law where applied to rental projects that have not received financial assistance from the government or a density bonus. The Projects received neither.
- (2) The City did not amend the Planning Code to comply with state law and the *Palmer* decision until January 22, 2011. Under the amended Program, all projects are required to pay the Fee unless they are able to demonstrate eligibility for an alternative method of compliance. The City is to notify project sponsors of the Fee amount prior to the first site permit for a project. The Fee is collected at first construction document. Where a “court action...materially affects the development fee requirements imposed” on a project, the Planning Code places responsibility on the Planning Department to notify the Development Fee Collection Unit (“DFCU”) of

¹ *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009).

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin | John Kevlin
Jay F. Drake | Lindsay M. Petrone | Sheryl Reuben¹ | Tuija I. Catalano | Thomas Tunny | David Silverman
Melinda A. Sarjapur | Mark H. Loper | Jody Knight | Stephanie L. Haughey | Jared Eigerman^{2,3} | John McInerney III²

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

One Bush Street, Suite 600
San Francisco, CA 94104

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

www.reubenlaw.com

the change. (Plan. Code Sec. 402(c).) The DFCU, in turn, is responsible for notifying the sponsor.

- (3) The Owners have been in contact with the Mayor's Office of Housing since 2009, shortly after the Projects were built. The City has never issued a Notice of Violation for the Properties – a prerequisite for assessing penalties under Planning Code Sections 176 and 176.1. The DFCU has not been provided a Fee estimate that accounts for the *Palmer* decision, nor has the Owner been given clear, timely direction as to the amount of the Fee or how to pay it.
- (4) The Owners cannot be penalized for failing to provide on-site rental units when the City's requirement to provide such a unit was itself a violation of state law. At the earliest, interest and penalties on Fees for the Projects should not accrue until after all of the following have occurred: (a) the Planning Code was amended to require payment of the Fee on January 22, 2011; (b) the Planning Department and/or DFCU provided the Sponsor specific notice of the Fee amount and method for paying it; and (c) the Sponsor failed to timely pay the Fee.

Based on the above, the City is not within its rights to assess penalties and interest on the Projects. However, even were it so authorized, it has never imposed a \$250/day fine on similarly situated owners that have come forward to pay the Fee for projects that cannot legally be provided on site under *Palmer*. In the most most directly comparable case – 248 Ocean Avenue, where only one inclusionary unit was “required”– the Owner was required to pay only \$50 per day of active violation.

I. BACKGROUND

480 14th Street is a 12-unit residential building that was issued a first construction document on November 6, 2006 pursuant to building permit application no. 200412232054 (attached as Exhibit A), and received a certificate of final completion by the City's Department of Building Inspections (“DBI”) on January 29, 2009.

3520 20th Street is a mixed-use 14-unit building that was issued first construction document on May 12, 2006 pursuant to building permit application no. 200411229899 (attached as Exhibit B), and received a certificate of final completion by DBI on May 8, 2008.

When the Properties were constructed, each building was required to provide one (1) one-site BMR unit which the Owners intended to offer for sale. However, construction was completed at the beginning of the recent recession. Despite diligent marketing efforts, the Owners were unable to sell the units. Instead, the Owners rented the Properties, leaving the BMR rental units vacant.

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San Francisco, CA 94104

tel: 415-567-9000
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Mr. Scott Sanchez, Zoning Administrator
San Francisco Planning Department
March 17, 2015
Page 3

On approximately May 9, 2009, Chandra Egan of the Mayor's Office of Housing contacted the Owners to request information on the required BMRs. The Owners subsequently met with Ms. Egan to explain the current market conditions and their resulting inability to sell the units. Following this meeting, Ms. Egan informed the Owners that the Mayor's Office of Housing would continue to monitor the situation, and would be in future contact regarding Program compliance. However, no notice of violation was issued.

On July 22, 2009, the *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009) ("*Palmer*") decision held that the state Costa Hawkins Rental Housing Act² preempted a Los Angeles requirement mandating, as a condition of development, that a portion of newly-constructed housing units be rented at low-income rents. In effect, the *Palmer* decision revealed that the City's previous requirement that rental projects provide on-site inclusionary units was in violation of state law where applied to projects that have not received financial assistance from the government from the density bonus. The Projects received neither.

The City did not amend the Planning Code to comply with state law and the *Palmer* decision for approximately 18 months. On January 22, 2011, the City's revised Program requirements took effect, requiring that all projects must pay an Affordable Housing Fee (the "Fee"), unless they are able to demonstrate eligibility to provide on or off-site units. To demonstrate such eligibility, projects must enter into an agreement with the City demonstrating that applicable inclusionary units are not subject to the Costa-Hawkins Rental Housing Act. Generally, only projects receiving a density bonus or direct financial contribution from the government are eligible to provide on-site rental units.

Later in 2011, the Owners received a phone message from Ms. Egan, requesting another meeting to discuss Program compliance at the Properties. In response, the Owners met with Ms. Egan and explained that all units at the Properties had been rented, with the exception of the required BMR units, which had remained vacant pending further direction from the Mayor's Office of Housing. Ms. Egan again informed the Owners that the Mayor's Office of Housing would continue to monitor the situation, and would be in contact regarding Program compliance. No clear direction was provided to bring the Property into compliance, no notice of violation was issued, and no further communication was received from the Mayor's Office of Housing until late 2013.

On August 12, 2013, the Owners received an email from Ms. Egan (attached in Exhibit C), stating that the Properties contained units that were not in compliance with the Program and that the Mayor's Office of Housing would be "*working with the San Francisco Planning Department to pursue violation notices and penalties for projects that are not bought into compliance.*" In response, the Owners again met with Ms. Egan. During this

² California Civil Code Section 1954.50-1954.535.

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Page 4

meeting, Ms. Egan informed the Owners that the Properties would require a Costa-Hawkins Agreement in order to provide the required on-site rental BMRs under the revised Program requirements. The Owners were told to contact Kate Conner in the Planning Department to discuss methods to bring the Properties into compliance with the Program. Again, no notice of violation was issued.

In March 2014, the Owners contacted Kate Conner to discuss the Properties. At this time, they were informed that the Properties would be ineligible for a Costa-Hawkins Agreement. Instead, a letter of determination would be required to the Properties to switch to Fee4 payment in lieu of providing the two "required" rental BMRs. In addition, the Owners were informed the revised Program required Fee payment at the time of issuance of a first construction document, and that interest and penalties may apply to the Properties stemming from that date.

On May 4, 2014, Enda Keane submitted letters to the Zoning Administrator, requesting a letter of determination and stating the Owners' intent to pay the Fee in lieu of providing on-site rental BMR units (attached as Exhibit D).

To date, the Owners have never received a written notice from the City of revised Program requirements since construction of the Properties, or of any violation in connection with the Program.

II. LEGAL ARGUMENT

a. Penalty and Interest Accrual Should Begin After Proper Notice of Revised Program Requirements and Violation.

Planning Code Section 415.4 requires that projects electing to satisfy the Program through Fee payment must pay the Fee before issuance of a first construction document. Recently, the Planning Department has assessed penalties and interest on the Fee due for projects that elected to switch their method of Program compliance after receiving a first construction document. (*see* Letters of Determination, attached as Exhibit E, issued for projects at 1461 Pine Street; 246 Ritch Street; 248 Ocean Avenue; and 333 Fremont Street). This included (i) accrual of interests on the Fee beginning at issuance of the Project's first construction document and continuing until the date that the project sponsor communicated its intent to pay the Fee to the Planning Department; and (ii) a per-day penalty beginning on the date that a project received its first certificate of occupancy (prior to providing on-site BMR units) and continuing until the date that the project sponsor communicated its intent to pay the Fee to the Planning Department.

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Mr. Scott Sanchez, Zoning Administrator
San Francisco Planning Department
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Page 5

However, these previous determinations concerned projects that had their first construction documents post-*Palmer*, and after the revised Program requirements took effect. The Projects should not be penalized for failing to provide on-site rental units when the City's requirement to provide such a units was itself a violation of state law. At the earliest, interest and penalties on the Fee for the Projects should not accrue until after all of the following have occurred: (a) the Planning Code was amended to require payment of a Fee on January 22, 2011; (b) the Planning Department and/or DFCU provided the sponsor specific notice of the Fee amount and the method for paying it; and (c) the sponsor failed to timely pay the Fee.

As discussed above, in January 2011 (approximately 2 years after the Projects were constructed) the City revised the Planning Code in response to the *Palmer* decision, which held that its previous requirement for housing developments to provide on-site inclusionary rental units violated state law when applied to projects that had not received financial assistance from the government or a density bonus.

Planning Code Section 402(c) provides that, where a "court action...materially affects the development fee requirements imposed" on a project, the Planning Department is responsible for notifying the Development Fee Collection Unit ("DFCU") of the change. The DFCU, in turn, is then responsible for notifying the sponsor. However, the Owners have never received notice from DFCU or Planning Department that the Code had been amended in post-*Palmer* decision in a manner that could affect their compliance with the Program.

Further, Planning Code Section 176 provides that all violations of the Planning Code are unlawful and a public nuisance, and empowers the Zoning Administrator to enforce the Code, including the assessment of a daily administrative penalty. (Plan. Code § 176(a).) Section 176 provides for supplemental enforcement procedures that mirror the procedures of Section 176. Together, Sections 176 and 176.1 comprise the exclusive provisions for enforcement of an alleged Planning Code violation.

Before assessing an administrative penalty, the Zoning Administrator must provide written notice of any alleged violation to the owner of the real property. (Plan. Code § 176(b).) The notice must describe the nature and extent of the alleged violation, and provide the property owner an opportunity to request a hearing to show cause why the notice and any assessed penalties are in error and should be rescinded. (Plan. Code § 176(c)(1).) Any decision of the Zoning Administrator or his/her representative may be appealed to the Board of Appeals. (*Id.*) Penalties do not accrue during the time the matter is pending before the Zoning Administrator or Board of Appeals. (*Id.*)

Moreover, Section 176(c)(1) provides that the Zoning Administrator may assess an administrative penalty "for each day the violation continues unabated." However, the Code specifically provides that such penalty may be assessed only after notice of the alleged

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Mr. Scott Sanchez, Zoning Administrator
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provision is provided. This prohibits the City from imposing a retroactive penalty, and is consistent with state law permitting administrative penalties only after notice of a nuisance in violation of a local land use regulation is provided to the property owner. (*See* Gov. Code §§ 38770 *et seq.*)

The City has not complied with the procedural requirements of Sections 402(c) or Section 176. The Owners never received written notice from the City that Program requirements had changed, or that further approval would be required to provide on-site rental BMRs within the Projects. In addition, neither the Zoning Administrator, nor any other City official, has provided the Owners with notice of an alleged violation of the Planning Code, has described the nature of the violation, or has provided the Owners with an opportunity to be heard.

The Planning Department's files associated with Program compliance and enforcement at the site are attached as Exhibit F. These materials are limited to (i) correspondence between Ms. Egan of the Mayor's Office of Housing, planner Mark Luellen, and Zoning Administrator Scott Sanchez in January 2011, identifying the Properties as potentially non-compliant with the Program and eligible for enforcement action; and (ii) an enforcement record indicating that inter-departmental discussions had occurred in 2011 and 2012 between the Mayor's Office of Housing and Planning Department regarding Program compliance at the Properties. However, these materials do not indicate that the Owners were provided with notice of violation as required by Section 176.

Because the Owners have never received notice of modified Program requirements or the alleged violation from the Planning Department or DFCU, any attempt by the City to impose a penalty without proceeding as required by Sections 401(c) and 176 is a violation of the Code and the Owner's constitutional rights of procedural due process. (U.S. Const., amends. V, XIV; Cal. Const. art. 1 §7; *see also Horn v. Ventura County*, 24 Cal.3d 605(1979).)

However, in the interest of bringing the Projects into prompt compliance with current Program requirements, the Owners are willing to (i) now pay the applicable Fee in lieu of providing the two required on-site BMR units, and (ii) applicable penalties and interest accruing as of January 22, 2011 – the date on which the City's revised Program requirements became effective, and continuing until May 4th, 2014 – the date on which the Owners notified the Planning Department in writing of their intent to switch to Fee payment (letters attached as Exhibit D).

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b. The Amount of Per-Day Penalty Should Be Limited, Commensurate to the Scope of Violation

Planning Code Section 176(c)(1) provides that the Zoning Administrator may assess a maximum administrative penalty of \$250 “for each day the violation continues unabated.” However, the Code does not require that this maximum fine be imposed in every situation, and previous letters of determination for similar projects that have switched their method of Program compliance from on-site BMRs to Fee payment after issuance of a first certificate of occupancy indicate that the Department assesses penalty amounts commensurate with the number of BMR units found to be in violation per project.

For example: a 5-unit project at 248 Ocean Avenue that was required to provide 1 on-site BMRs was assessed a penalty of \$50 per day, while a 35-unit project at project at 1461 Pine Street that was required to provide 5 on-site BMRs was assessed a penalty of \$250 per day (approximately \$50 per required unit). Letters of Determination discussing these projects and imposition of penalties are attached as Exhibit E.

At the time of construction, each of the Properties was required to provide one on-site BMR unit. Accordingly, even if the City were authorized to fine the Projects – and it is not – in no case should the Projects be required to pay more than \$50 per day per required BMR unit, which is commensurate with penalties assessed on other projects in a similar position.

III. CONCLUSION

For all of the foregoing reasons, we request confirmation that the Properties (1) are now permitted to satisfy Program requirements to Fee payment; (2) that any associated penalties should not exceed a rate of \$50 per day, per unit in violation; and (3) that the applicable period of accrual of associated Fee interest and penalties should begin no earlier than January 22, 2011, and should cease no later than May 4, 2014.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Daniel A. Frattin

Enclosures

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Mr. Scott Sanchez, Zoning Administrator
San Francisco Planning Department
March 17, 2015
Page 8

cc: Kate Conner, Planning Department
Chaundra Egan, MOH
Tony Kim, Town Consulting
Enda Keane
Denis McMahon

(All with Enclosures)

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Exhibit A

Welcome to our Permit / Complaint Tracking System!

Permit Details Report

Report Date: 3/9/2015 11:08:34 AM

Application Number: 200412232054
Form Number: 2
Address(es): 3533 / 024 / 0 480 14TH ST
Description: ERECT A NEW FOUR STORY TWELVE UNIT DWELLING
Cost: \$3,000,000.00
Occupancy Code: R-1,S-3
Building Use: 24 - APARTMENTS

Disposition / Stage:

Action Date	Stage	Comments
12/23/2004	TRIAGE	
12/23/2004	FILING	
12/23/2004	FILED	
11/6/2006	APPROVED	
11/6/2006	ISSUED	
1/29/2009	COMPLETE	CFC Issued

Contact Details:

Contractor Details:

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

Addenda Details:

Description:
 SITE PERMIT

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	12/23/04	12/23/04			12/23/04	SAN MIGUEL ROXANNE	
2	CP-ZOC	4/16/06	6/29/06			6/29/06	OROPEZA EDGAR	approved for a new 4 story, 12 unit dwelling with 12 off-stret parking spaces provided, roof decks and one Below Market rate unit as indicated on plans, revision 4. This building permit is subject to the first source hiring code of San Francisco.
3	CP-NP	5/30/06	5/30/06	5/30/06		6/29/06	OROPEZA EDGAR	Sec 311 mailed 5/30/06 exp 6/29/06
4	PAD-MECH	8/10/06	8/14/06			8/14/06	SHAIKH MOHSIN	To hold-bin; NO WORK DONE
4	PAD-MAJ	7/5/06	8/7/06	9/15/06		10/5/06	CHEN JOHN	Route to Fire, BSM & DCP
5	SFFD	10/5/06	10/16/06	10/16/06		10/26/06	DEBELLA AL	
6	DPW-BSM	10/26/06	10/30/06			10/30/06	TANG ELEANOR	Approved site permit only! Street Improvement (SI) Permit is required. Future construction addenda will be place on hold until SI permit is obtained.
7	ONE-STOP	10/31/06	10/31/06			10/31/06	TJOE MAOE	BACK TO CP-ZOC & PAD MAJOR REVISION 9 SUBMITTED AFTYER YOUR APPROVAL
8	CP-ZOC	10/31/06	10/31/06			10/31/06	OROPEZA EDGAR	Approved, 12 foot garage door, change to window on the ground floor.
9	PAD-MAJ	11/1/06	11/1/06			11/1/06	CHEN JOHN	No work done, reapproval due to revision request from Fire Dept.
10	ONE-STOP	11/2/06	11/2/06			11/2/06	TJOE MAOE	

11	SFPUC	11/2/06	11/2/06		11/2/06	SZU-WHITNEY MONICA	/to CPB
12	CPB	11/6/06	11/6/06		11/6/06	BAZILE TARA	APPROV BY TJB

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
1/29/2009	Dermott Sullivan	FINAL INSPECT/APPRVD	CFC ISSUED
1/22/2009	Dermott Sullivan	PRE-FINAL	PRE-FINAL
11/20/2008	Dermott Sullivan	LATH, EXTERIOR	LATH, EXTERIOR

1 2 3 4

Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
1	1/12/2009	RHALLORA	24C	CONCRETE CONSTRUCTION	
1	1/12/2009	RHALLORA	24B	STEEL FRAMING	
1	1/12/2009	RHALLORA	24E	WOOD FRAMING	
1	12/11/2008	ATLAU	2	BOLTS INSTALLED IN CONCRETE	
1	12/11/2008	ATLAU	20	HOLDOWNS	
1	12/11/2008	ATLAU	19	SHEAR WALLS AND FLOOR SYSTEMS USED AS SHEAR DIAPHRAGMS	
1	12/2/2008	RHALLORA	24A	FOUNDATIONS	
1	12/2/2008	RHALLORA	6	HIGH-STRENGTH BOLTING	
1	12/2/2008	RHALLORA	5B5	MOMENT-RESISTING FRAMES	
1	12/2/2008	RHALLORA	5A1	SINGLE PASS FILLET WELDS < 5/16"	

1 2

For information, or to schedule an inspection, call 558-6570 between 8:30 am and 3:00 pm.

Station Code Descriptions and Phone Numbers

Online Permit and Complaint Tracking home page.

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Exhibit B

Welcome to our Permit / Complaint Tracking System!

Permit Details Report

Report Date: 3/9/2015 11:05:56 AM

Application Number: 200411229899
 Form Number: 2
 Address(es): 3596/120/4 3520 20TH ST
 Description: TO ERECT 4 STORIES OF 14 DWELLING UNITS / RETAIL
 Cost: \$3,186,829.00
 Occupancy Code: R-1,M
 Building Use: 24 - APARTMENTS

Disposition / Stage:

Action Date	Stage	Comments
11/22/2004	TRIAGE	
11/22/2004	FILING	
11/22/2004	FILED	
5/12/2006	PLANCHECK	
5/12/2006	APPROVED	
5/12/2006	ISSUED	
5/8/2008	COMPLETE	CFC Issued

Contact Details:

Contractor Details:

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

Addenda Details:

Description:

1.architectural & structural-BSM 2.mechanical 3. fire alarm system,fire sprinkler system &final-BSM

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	11/22/04	11/22/04			11/22/04	LEE ANITA	
2	CP-ZOC	11/24/04	2/17/06			2/17/06	SIDER DAN	approved per R4 plans and application / NSR 20061124350 / GRE/CatEx issued 11/2/05
3	CP-NP	12/15/05	2/17/06			2/17/06	SIDER DAN	mailed 12/15/2005 expire 01/14/2005
4	PAD-MAJ	2/22/06	3/14/06			3/14/06	CHUN ROBERT	to mechanical
5	PAD-MECH	3/16/06	3/20/06			3/21/06	CAYABYAB MERLIN	No work. Site only.
6	SFFD	3/22/06	3/23/06	3/24/06		4/14/06	WONG MICHIE	
7	PAD-MAJ	4/25/06	4/25/06			4/25/06	CHUN ROBERT	to city planning for revision. to bsm next
8	CP-ZOC	4/25/06	5/5/06			5/5/06	BANALES JULIAN	
9	DPW-BSM	5/9/06	5/10/06			5/11/06	MINIANO DANNY	DPW/BSM sign off on job card required (061E-0166) PRIOR TO DBI FINAL. AS NOTED ON PLANS.
10	ONE-STOP	5/12/06	5/12/06			5/12/06	LAI JEFF	
11	CPB	5/12/06	5/12/06			5/12/06	CHAN AMARIS	APPROV BY AMARIS

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
5/8/2008	Brett Howard	CFC ISSUED	CFC ISSUED
5/6/2008	Brett Howard	PRE-FINAL	PRE-FINAL
4/10/2008	Brett Howard	PRE-FINAL	PRE-FINAL

1 2 3 4 5 6 7

Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
1	4/22/2008	Neil Friedman	1	CONCRETE (PLACEMENT & SAMPLING)	
1	4/22/2008	Neil Friedman	2	BOLTS INSTALLED IN CONCRETE	
1	4/22/2008	Neil Friedman	4	REINFORCING STEEL AND PRETRESSING TENDONS	steel and tendons
1	4/22/2008	Neil Friedman	21C	OTHERS	Tiebacks (not used per geo tech engineer; cantilevered shoring instead)
1	4/22/2008	Neil Friedman	6	HIGH-STRENGTH BOLTING	
1	4/22/2008	Neil Friedman	19	SHEAR WALLS AND FLOOR SYSTEMS USED AS SHEAR DIAPHRAGMS	
1	4/22/2008	Neil Friedman	20	HOLDOWNS	
1	4/22/2008	Neil Friedman	5A1	SINGLE PASS FILLET WELDS < 5/16"	

For information, or to schedule an inspection, call 558-6570 between 8:30 am and 3:00 pm.

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Exhibit C

Melinda A. Sarjapur

From: Enda Keane [endaankeane@gmail.com]
Sent: Friday, March 06, 2015 10:12 AM
To: Daniel Frattin
Cc: Melinda A. Sarjapur; Denis McMahon
Subject: Re: Inclusionary Housing Program Non-compliance: 480 14th Street & 3520 20th Street

Follow Up Flag: Follow up
Flag Status: Completed

On Mar 5, 2015, at 5:17 PM, Denis Mc Mahon <conole1917@gmail.com> wrote:

Sent from my iPad

Begin forwarded message:

From: John McInerney <anasazi1839@earthlink.net>
Date: August 23, 2013 at 3:35:30 PM PDT
To: Denis McMahon <conole1917@gmail.com>
Subject: Fwd: Inclusionary Housing Program Non-compliance: 480 14th Street & 3520 20th Street

Left her a follow up message

Sent from my iPhone

Begin forwarded message:

From: "Egan, Chandra" <chandra.egan@sfgov.org>
Date: August 12, 2013, 2:39:31 PM PDT
To: "anasazi1839@earthlink.net" <anasazi1839@earthlink.net>
Cc: "Egan, Chandra" <chandra.egan@sfgov.org>
Subject: Inclusionary Housing Program Non-compliance: 480 14th Street & 3520 20th Street

Dear Enda Keane and John McInerney,

(Note: We do not have an email for Enda Keane.)

We are contacting you because your building has one or more affordable units that are governed by the Inclusionary Affordable Housing Program that are out of compliance. We have contacted you in the past and request that you respond to this email with your intent regarding the units. We will be working with the San Francisco Planning Department to pursue violation notices and penalties for projects that are not brought into compliance. I can serve as your contact on this matter.

If you are not the correct contact person for the units in question, please pass this email onto the owner or owner's legal agent and please send me a response with such notification.

Thank you.

Chandra Egan
Senior Community Development Specialist
San Francisco Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
(415) 701-5546
chandra.egan@sfgov.org

Exhibit D

Enda Keane

2458 Polk St, #2 San Francisco, CA 94109

ID # 11872 (SE) J BANALES

OK # 2195 \$ 615. -

Scott Sanchez, Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco. Ca. 94103

Request For Letter Of Determination
For 3520 20th Street, Block 3596 Lot 0120 127

May 4th 2014

Dear Mr Sanchez,

I am writing to you about a mixed use fourteen residential unit with commercial building at 3520 - 20th Street. The project was required to provide one on-site below market rate unit. The associated building permit number is 200411229899 and the CFC was issued on May 8th, 2008.

I respectfully request a letter of determination so that the project may switch its method of compliance with the Inclusionary Affordable Housing Program through payment of the affordable housing fee rather than provide an on-site unit.

Please accept this letter of determination request and I would like to reserve the right to amend or supplement my letter with additional information.

Sincerely,



Enda Keane

Enda Keane

2458 Polk St, #2 San Francisco, CA 94109

ID # 11873 (SE) J BANALLS
CR # 2196 \$ 615. -

Scott Sanchez, Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco. Ca. 94103

Request For Letter Of Determination
For 480 14th Street, Block 3533 Lot ~~0254~~ 176

May 4th 2014

Dear Mr Sanchez,

I am writing to you about a twelve unit wholly residential building at 480 - 14th Street. The project was required to provide one on-site below market rate unit. The associated building permit number is 200412232054 and the CFC was issued on January 29, 2009.

I respectfully request a letter of determination so that the project may switch its method of compliance with the Inclusionary Affordable Housing Program through payment of the affordable housing fee rather than provide an on-site unit.

Please accept this letter of determination request and I would like to reserve the right to amend or supplement my letter with additional information.

Sincerely,



Enda Keane

Exhibit E



SAN FRANCISCO PLANNING DEPARTMENT

Reissued Letter of Determination

June 25, 2014

Daniel Frattin
One Bush Street, Suite 600
San Francisco, CA 94104

Site Address:	1461 Pine Street
Assessor's Block/Lot:	0668/ 012&013 (now lot 083)
Zoning District:	Polk NCD – (Polk Street Neighborhood Commercial) District
Staff Contact:	Kate Conner, (415) 575-6914 or kate.conner@sfgov.org

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Dear Mr. Frattin:

This letter is in response to your request for a Letter of Determination regarding the property at 1461 Pine Street ("Project"). This parcel is located in the Polk NCD (Polk Street Neighborhood Commercial District) and 65-A Height and Bulk District. The Letter of Determination request is to resolve whether a previously approved 35-unit project may switch the method of compliance with the Inclusionary Affordable Housing Program ("Program") after issuance of the first construction document and first Certificate of Occupancy. This Letter of Determination was reissued due to a modification in timing for when the penalties cease accrual.

The Project is to construct 35 dwelling units, ground floor retail, and basement parking for 35 automobiles and was approved in association with a Variance (Case No. 2003.1234EKV). Although the Variance hearing was held on July 26, 2006, a Variance Decision Letter was not issued until May 12, 2010. A Notice of Special Restrictions ("NSR")¹ was recorded to document the Variance decision; however there was no NSR recorded against the property that addressed compliance with the Program. As stated in the Letter of Determination Request, the Project Sponsor elected to provide on-site inclusionary affordable units in 2005. The Project received its first construction document on August 24, 2011 and its first certificate of occupancy on March 14, 2013.

As stated in the Letter of Determination request, on May 10, 2013, the Project Sponsor contacted the Planning Department to pursue payment of the Affordable Housing Fee as an alternative to providing the affordable units on-site because it was a rental project. There is no mechanism within the Planning Code to allow for payment of the Affordable Housing Fee after the issuance of the first construction document. Planning Code Section 415.5(g)(3) states:

¹ NSR 20101967694 Recorded on May 17, 2010 Reel K144 Image 0236

Daniel Frattin
One Bush Street, Suite 600
San Francisco, CA 94104

June 25, 2014
Letter of Determination
1461 Pine Street

If a project sponsor fails to choose an Alternative before project approval by the Planning Commission or Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section 415.5² shall apply.

In this case, the Zoning Administrator has determined that that the Project located at 1461 Pine Street is ineligible for the On-Site Alternative because it is a rental project that did not procure a Costa Hawkins agreement as currently required by Planning Code Section 415³. As such, the Project is no longer eligible to provide units on-site and must pay the Fee per Section 415.5(g)(3). Payment of the fee was due prior to the issuance of first construction document or in this particular case: August 24, 2011; therefore, payment of the Fee is late. Planning Code Section 408(a) addresses recourse for late payment, including lien proceedings. Planning Code Section 408(a) states:

Except in the case of a project for which MTA is responsible for the determination and collection of the TIDF under Section 411.9(d) of this Article, if a first construction document or first certificate of occupancy, whichever applies, is inadvertently or mistakenly issued prior to the project sponsor paying all development fees due and owing, or prior to the sponsor satisfying any development impact requirement, DBI shall institute lien proceedings to recover the development fee or fees, plus interest and any Development Fee Deferral Surcharge, under Section 107A.13.15 of the San Francisco Building Code.

The Project Sponsor contacted the Department on May 10, 2013 inquiring about switching the method of compliance with the Program to the Affordable Housing Fee. Department staff provided a preliminary interest and penalty calculation, which the Project Sponsor contested in a Memorandum submitted on September 11, 2013. After further discussion, the Department adopted a revised policy regarding the interest and penalty calculation. Your request suggests that interest and penalties should cease accrual on May 10, 2013, when the Project Sponsor first contacted the Planning Department. It has been determined that the Memorandum serves as a formal commitment to pay the Affordable Housing Fee; thus that date of Memorandum, September 11, 2013, will serve as the date when interest will cease accrual. The penalties will cease accrual on May 10, 2013, as requested.

Interest on the Fee commenced accrual after the issuance of the First Construction Document on August 24, 2011. The Interest Rate is adjusted monthly and is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office. The Interest Rate used is the Earned Income Yield which represents the annualized rate based on one month of earnings. The interest rate applicable to this project is 0.002% per day.

The Mayor's Office of Housing and Community Development (MOHCD) determines the Affordable Housing Fee and issued a Fee Determination Letter on May 6, 2014 stating that the Affordable Housing Fee for the Project is \$1,354,863. The first construction document for the Project was issued on August 24, 2011 and interest accrual ceased on September 11, 2013 (when the Project Sponsor filed the Memorandum

² Planning Code Section 415.5 refers to payment of the Affordable Housing Fee ("Fee").

³ A Costa Hawkins exception agreement may be pursued by the Project Sponsor to provide units on-site.

Daniel Frattin
 One Bush Street, Suite 600
 San Francisco, CA 94104

June 25, 2014
 Letter of Determination
 1461 Pine Street

request formally requesting switching to payment of the Affordable Housing Fee), resulting in 749 days subject to interest accrual. The interest total is: \$20,574. The table below includes the necessary payment due to MOHCD.

Affordable Housing Fee	\$1,354,863
Interest 0.002%/day for 749 days	\$20,574
Total due to MOHCD:\$1,375,437	

Planning Code Section 415.9 addresses enforcement procedures for projects that fail to meet Program requirements after issuance of first Certificate of Occupancy. The Project received its first Certificate of Occupancy on March 14, 2013. Planning Code Section 415.9 states:

If, after issuance of the first Certificate of Occupancy, the Commission or Department determines that a project sponsor has failed to comply with any requirement in Section 415.1et seq. or any reporting requirements detailed in the Procedures Manual, or has violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the violation is cured, (a) revoke the Certificate of Occupancy for the principal project or required affordable units, (b) impose a penalty on the project pursuant to Section 176(c) of this Code, and/or (c) the Zoning Administrator may enforce the provisions of Section 415.1et seq. through any means provided for in Section 176 of this Code.

Penalties may be assessed after the issuance of first Certificate of Occupancy under Section 176 of the Planning Code at a maximum rate of \$250.00 per day. The Project has failed to comply with the Program. As such, penalties began accrual on March 14, 2013 and ceased on May 10, 2013, resulting in 64 days subject penalty accrual.

Number of Days (from 3/14/2013 to 5/10/2013)	Amount of Penalty
64	\$16,000
Total due to Planning Department:\$16,000	

The Fee, interest, and penalty must be paid within one month of the issuance of this letter, or July 25, 2014. If the payment is late, interest and penalty will continue accrual from September 11, 2013 until payment is received at the same rate as stated in this letter, which is equal to \$27.47/day for the interest and \$250.00/day for the penalties.

Total Affordable Housing Fee and Interest due to MOHCD: \$1,375,437	Total Penalty due to Planning: \$16,000	Total: \$1,391,437
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In summary, based on the information provided, in order for the Project to pay the Affordable Housing Fee after issuance of the first construction document, the Project must pay the Affordable Housing Fee plus interest and penalties as listed above. A Notice of Special Restrictions must be recorded on the property, to document this modification.

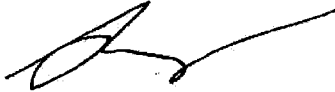
Daniel Frattin
One Bush Street, Suite 600
San Francisco, CA 94104

June 25, 2014
Letter of Determination
1461 Pine Street

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

If the City has not previously given notice under Government Code Section 66020 of an earlier discretionary approval of the project involving a fee or exaction as defined by Government Code Section 66020, the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not recommence the 90-day approval period.

Sincerely,



Scott F. Sanchez
Zoning Administrator

Attachments:

- Spreadsheet with Interest and Penalty Calculations
- Affordable Housing Fee Determination Letter from San Francisco Mayor's Office of Housing and Community Development dated May 6, 2014

cc: Kate Conner, Planner
Olson Lee, Director of San Francisco Mayor's Office of Housing and Community Development
Property Owner
Neighborhood Groups
Block Book Notifications



SAN FRANCISCO PLANNING DEPARTMENT

Reissued Letter of Determination

CORRECTED INTERESTED CALCULATION

March 19, 2014

Sean Keighran
251 Rhode Island, Suite 111
San Francisco, CA 94107

Site Address:	248 Ocean Avenue
Assessor's Block/Lot:	3211/009
Zoning District:	NC-1 (Neighborhood Commercial, Cluster) District
Staff Contact:	Kate Conner, (415) 575-6914 or kate.conner@sfgov.org

Dear Mr. Keighran:

This letter is in response to your request for a Letter of Determination regarding the property at 248 Ocean Avenue ("Project"). This parcel is located in the NC-1 (Neighborhood Commercial, Cluster) Zoning District and 40-X Height and Bulk District. The Letter of Determination request is to resolve whether a previously approved five unit project may switch the method of compliance with the Inclusionary Affordable Housing Program ("Program") after issuance of the first construction document and first Certificate of Occupancy.

The Project was approved by the Planning Commission on May 15, 2008 (Case No. 2007.1470D - new construction and Case No. 2007.1417D - demolition) to demolish the existing two-story, single-family dwelling and construct a new four-story, mixed-use building with ground floor commercial and five dwelling units. A Notice of Special Restrictions ("NSR")¹ was recorded October 14, 2008 and included a condition which stated: "the project shall require an on-site affordable unit as the inclusionary requirement provided under Planning Code Section 315. To meet the inclusionary requirement, the two-bedroom unit #202 will be reserved as affordable." The Project received its first construction document on October 5, 2011.

In May, 2012, the Project Sponsor contacted the Planning Department about renting the affordable unit. Planning Department staff informed the Project Sponsor that the Project would have to enter in to an agreement with the City to allow the affordable unit to be rented. This agreement ("Costa Hawkins Agreement") would state that the Project's affordable unit is not subject to the Costa-Hawkins Rental Housing Act based upon a received density bonus or concessions (as defined in California Government Code Section 65915 et seq.).

¹ NSR 20081665407 Recorded on October 14, 2008 Reel J746 Image 0484

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Sean Keighran
251 Rhode Island, Suite 111
San Francisco, CA 94107

March 19, 2014
Letter of Determination
248 Ocean Avenue

The owners contacted the Planning Department in June 2012 to request a determination of the Project's eligibility to enter into a Costa-Hawkins Agreement. The Planning Department determined that the Project did not qualify for a Costa Hawkins Agreement because the Project did not receive a density bonus, concession, or incentive for the production of on-site inclusionary units. The Discretionary Review Application was mandatory to allow for the demolition and new construction. The Project complied with the Planning Code in all other respects. The Planning Commission did not grant a separate density bonus or any other significant concessions or incentives.

It should also be noted that the Letter of Determination request indicates that the Program threshold was raised to 10 units as part of Proposition C. Although part of the conversation regarding Proposition C, this particular change was made by Board of Supervisors Ordinance No. 219-12. This ordinance did not specifically apply to this project because it only applied to projects that had not received a first construction document prior to January 15, 2013.

As stated in the Letter of Determination request, on July 26, 2012, the Project Sponsor contacted the Mayor's Office of Housing and Community Development ("MOHCD") to pursue payment of the Affordable Housing Fee as an alternative to providing the affordable units on-site because it was a rental project. There is no mechanism within the Planning Code to allow for payment of the Affordable Housing Fee after the issuance of the first construction document. Planning Code Section 415.5(g)(3) states:

If a project sponsor fails to choose an Alternative before project approval by the Planning Commission or Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section 415.5² shall apply.

In this case, the Zoning Administrator has determined that that the Project located at 248 Ocean Avenue is ineligible for the On-Site Alternative because it is a rental project that cannot qualify for a Costa Hawkins agreement. As such, the project is no longer eligible to provide units on-site and therefore must pay the Fee. Payment of the Fee is due prior to the issuance of first construction document or in this particular case: October 5, 2011; therefore, payment of the Fee is late. Planning Code Section 415.5(d) addresses recourse for late payment, including lien proceedings. Planning Code Section 415.5(d) states:

If, for any reason, the Affordable Housing Fee imposed pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of Occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien against all parcels used for the development project in accordance with Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code

This Letter of Determination request serves as written acknowledgement of the intent to pay the Fee. Interest on the Fee would begin accruing after the issuance of the first construction document, on October 5, 2011. Accrual would cease on November 18, 2013, when the Project Sponsor filed the Letter of

² Planning Code Section 415.5 refers to payment of the Affordable Housing Fee ("Fee").

Sean Keighran
251 Rhode Island, Suite 111
San Francisco, CA 94107

March 19, 2014
Letter of Determination
248 Ocean Avenue

Determination, formally requesting switching to payment of the Affordable Housing Fee. The Letter of Determination request suggests that interest and penalties should cease accrual on July 26, 2012, when the Project Sponsor contacted the Mayor's Office of Housing and Community Development (MOHCD). The Letter of Determination request serves as a formal commitment to pay the Affordable Housing Fee; thus that date of Letter of Determination request, November 18, 2013, will serve as the date when interest and penalty will cease accrual.

The Interest Rate is adjusted monthly and is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office. The Interest Rate used is the Earned Income Yield which represents the annualized rate based on one month of earnings. The interest rate applicable to this project is 0.002% per day.

MOHCD determines the Affordable Housing Fee and issued a Fee Determination Letter on January 28, 2014 stating that the Affordable Housing Fee for the Project is \$358,618. The first construction document for the Project was issued on October 5, 2011 and interest accrual ceased on November 18, 2013 (when the Project Sponsor filed the Letter of Determination request formally requesting switching to payment of the Affordable Housing Fee), resulting in 775 days subject to interest accrual. The interest total is: \$6,092. The table below includes the necessary payment due to MOHCD.

Affordable Housing Fee	\$358,618
Interest 0.002%/day for 775 days	\$6,092
Total due to MOHCD:\$364,710	

Planning Code Section 415.9 addresses enforcement procedures for projects that fail to meet Program requirements after issuance of first Certificate of Occupancy. The Project received its first Certificate of Occupancy on July 25, 2012. Planning Code Section 415.9 states:

If, after issuance of the first Certificate of Occupancy, the Commission or Department determines that a project sponsor has failed to comply with any requirement in Section 415.1et seq. or any reporting requirements detailed in the Procedures Manual, or has violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the violation is cured, (a) revoke the Certificate of Occupancy for the principal project or required affordable units, (b) impose a penalty on the project pursuant to Section 176(c) of this Code, and/or (c) the Zoning Administrator may enforce the provisions of Section 415.1et seq. through any means provided for in Section 176 of this Code.

Penalties may be assessed after the issuance of first Certificate of Occupancy under Section 176 of the Planning Code at a maximum rate of \$250.00 per day. The Project has failed to comply with the Program. As such, penalties began accrual on July 25, 2012 and ceased on November 18, 2013 (when the Project Sponsor filed the Letter of Determination request formally requesting switching to payment of the Affordable Housing Fee), resulting in 481 days subject penalty accrual. The Zoning Administrator and Director of Planning have determined that penalties should accrue at a reduced rate of \$50.00 per day for this violation. The reduced penalty rate is due to the size of the project. This Project would not be subject

Sean Keighran
251 Rhode Island, Suite 111
San Francisco, CA 94107

March 19, 2014
Letter of Determination
248 Ocean Avenue

to the current Program given the change in threshold from five to ten units which took place in January, 2013.

Number of Days (from 7/25/2012 to 11/18/2013)	Amount of Penalty
481	\$24,050
Total due to Planning Department:\$24,050	

The Fee, interest, and penalty must be paid within one month of the issuance of this letter, or April 19, 2014. If the payment is late, interest and penalty will continue accrual from November 18, 2013 until payment is received at the same rate as stated in this letter, which is equal to \$7.86/day for the interest and \$50.00/day for the penalties.

Total Affordable Housing Fee and Interest due to MOHCD: \$364,710	Total Penalty due to Planning: \$24,050	Total: :\$388,760
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In summary, based on the information provided, in order for the Project to pay the Affordable Housing Fee after issuance of the first construction document, the Project must pay the Affordable Housing Fee plus interest and penalties as listed above. A Notice of Special Restrictions must be recorded on the property, to document this modification.

Sean Keighran
251 Rhode Island, Suite 111
San Francisco, CA 94107

March 19, 2014
Letter of Determination
248 Ocean Avenue

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

If the City has not previously given notice under Government Code Section 66020 of an earlier discretionary approval of the project involving a fee or exaction as defined by Government Code Section 66020, the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not recommence the 90-day approval period.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Kate Conner, Planner
Olson Lee, Director of San Francisco Mayor's Office of Housing and Community Development
Property Owner
Neighborhood Groups
Block Book Notifications

**San Francisco Planning Department
Interest Calculation**

Property Address: 248 Ocean Avenue
 Block: 3211
 Lot: 9

	Date	Earned Income Yield	Rate/Day	Number of Days	Interest	Interest Per Day
Issuance Date of 1st Construction Document	10/5/2011	0.80%	0.002%	775	\$6,092	\$7.86
Applicable Affordable Housing Fee	\$358,618					
Date notified Planning want to pay fee	1/17/8/2013					

Planning Code Section 415.5(g)(4)

The interest rate is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office.
<http://www.sftreasurer.org/index.aspx?page=16>

The Interest Rate to use is the Earned Income Yield (represents annualized rate based on one month of earnings)
 Take the Earned Income Yield and divide it by 365 days to determine the daily interest rate

Penalty Calculation

Issuance Date of 1st Certificate of Occupancy: 7/25/2012
 Date notified Planning want to pay fee: 1/17/8/2013

Date	Rate/Day	Number of Days	Penalty
7/25/2012	\$50.00	481	\$24,050.00
1/17/8/2013			

Total Penalty, Interest, Fee Owed

Affordable Housing Fee (Paid to MOHCD) \$388,760
 Interest (Paid to MOHCD) \$358,618
 Penalties (Paid to Planning) \$6,092
 Total \$24,050.00

Important Notes

Interest and Affordable Housing Fee subject to change because the fee amount is based on a figure provided by sponsor.
 A formal fee letter must be secured from MOHCD.



SAN FRANCISCO PLANNING DEPARTMENT

Reissued Letter of Determination

CORRECTED INTEREST CALCULATION

March 19, 2014

Melinda Anne Sarjapur
Reuben, Junius & Rose
One Bush Street, Suite 600
San Francisco, CA 94104

Site Address:	246 Ritch Street
Assessor's Block/Lot:	3776/092
Zoning District:	SLI (Service Light Industrial) District
Staff Contact:	Kate Conner, (415) 575-6914 or kate.conner@sfgov.org

Dear Ms. Sarjapur:

This letter is in response to your request for a Letter of Determination regarding the property at 246 Ritch Street ("Project"). This parcel is located in the SLI (Service Light Industrial) Zoning District and 55-X Height and Bulk District. The Letter of Determination request is to resolve whether a previously approved Single Room Occupancy (SRO) Project may switch the method of compliance with the Inclusionary Affordable Housing Program ("Program") after issuance of the first construction document.

The Project was approved by the Planning Commission on June 17, 2010 (Case No. 2006.1348EKC – Motion No. 18108) to demolish the existing 4,130 square-foot building and to construct a five-story, 50-foot tall building with 19 market-rate SRO residential units. Conditions of Approval Nos. 6-11 of Motion 18108 address compliance with the Program and mandate that three of the SRO units be provided as on-site affordable units. Motion 18108 stated that the units are ownership-only unless the Project Sponsor enters in an agreement with the City in order to provide rental units. This agreement ("Costa Hawkins Agreement") would state that the Project is not subject to the Costa-Hawkins Rental Housing Act based upon a received density bonus or concessions (as defined in California Government Code Section 65915 et seq.) The Project received its first construction document on August 14, 2012.

As stated in the Letter of Determination Request, the owners contacted the Planning Department on August 13, 2013 to request a determination of the Project's eligibility to enter into a Costa-Hawkins Agreement. On August 21, 2013 the Planning Department determined that the Project did not qualify for a Costa Hawkins Agreement because the Project did not receive a density bonus, concession, or incentive for the production of on-site inclusionary units. The Conditional Use Application was to allow for a type of housing (SRO units) to be constructed within the SLI Zoning District. The Project complied with the Planning Code in all other respects. The Planning Commission did not grant a separate density bonus because SRO's are permitted by the Planning Code to have a higher density and the Planning Commission did not grant any other significant concessions or incentives.

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Melinda Anne Sarjapur
Reuben, Junius & Rose
One Bush Street, Suite 600
San Francisco, CA 94104

March 19, 2014
Letter of Determination
246 Ritch Street

Subsequent to this decision, the Project Sponsor contacted the Planning Department to pursue payment of the Affordable Housing Fee as an alternative to providing the affordable units on-site because it was a rental project. There is no mechanism within the Planning Code to allow for payment of the Affordable Housing Fee after the issuance of the first construction document. Planning Code Section 415.5(g)(3) states:

If a project sponsor fails to choose an Alternative before project approval by the Planning Commission or Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section 415.5 shall apply.

Planning Code Section 415.5 refers to payment of the Affordable Housing Fee ("Fee"): The Zoning Administrator has determined that that the Project located at 246 Ritch Street is ineligible for the On-Site Alternative because it is a rental project that cannot qualify for a Costa Hawkins agreement. The project is no longer eligible to provide units on-site and therefore must pay the Fee. Payment of the fee is due prior to the issuance of first construction document or in this particular case: August 14, 2012.¹ Payment of the Fee is late. Planning Code Section 415.5(d) addresses recourse for late payment, including lien proceedings. Planning Code Section 415.5(d) states:

If, for any reason, the Affordable Housing Fee imposed pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of Occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien against all parcels used for the development project in accordance with Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code

Although the Project has not received its first Certificate of Occupancy, this Letter of Determination request serves as written acknowledgement of the intent to pay the Fee. Interest on the Fee would begin accruing after the issuance of the first construction document, on August 14, 2012. Accrual would cease on September 23, 2013, when the Project Sponsor filed the Letter of Determination, formally requesting switching to payment of the Affordable Housing Fee.

The Interest Rate is adjusted monthly and is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office. The Interest Rate used is the Earned Income Yield which represents the annualized rate based on one month of earnings. The interest rate applicable to this project is 0.002% per day.

The Mayor's Office of Housing and Community Development (MOHCD) determines the Affordable Housing Fee and issued a Fee Determination Letter on August 1, 2013 stating that the Affordable Housing Fee for the Project is \$ 683,818.00. The first construction document for the Project was issued on

¹ Building Permit Application No. 2007.01.05.1074 received its first construction document on August 14, 2012. This fee cannot be deferred. In order to defer payment of the Affordable Housing Fee, the Project Sponsor would have had to submit a deferral request to the Department of Building Inspection. The deferral option expired on July 1, 2013.

Melinda Anne Sarjapur
Reuben, Junius & Rose
One Bush Street, Suite 600
San Francisco, CA 94104

March 19, 2014
Letter of Determination
246 Ritch Street

August 14, 2012 and interest accrual ceased on September 23, 2013, resulting in 405 days subject to interest and penalty accrual. The interest total is: \$5,615. The table below includes the necessary payment due to MOHCD.

Affordable Housing Fee	\$683,818
Interest 0.002%/day for 405 days	\$5,615
Total due to MOHCD: \$689,433	

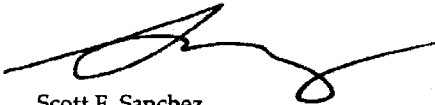
The Fee and interest must be paid within one month of the issuance of this letter, or April 19, 2014. If the payment is late, interest will continue accrual from September 23, 2013 until payment is received at the same rate as stated in this letter, which is equal to \$13.86/day.

In summary, based on the information provided, in order for the Project to pay the Affordable Housing Fee after issuance of the first construction document, the Project must pay the Affordable Housing Fee plus interest as listed above. A Notice of Special Restrictions must be recorded on the property, to document this modification.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

If the City has not previously given notice under Government Code Section 66020 of an earlier discretionary approval of the project involving a fee or exaction as defined by Government Code Section 66020, the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not recommence the 90-day approval period.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Kate Conner, Planner
Olson Lee, Director of San Francisco Mayor's Office of Housing and Community Development
Property Owner
Neighborhood Groups
Block Book Notifications

**San Francisco Planning Department
Interest Calculation**

Property Address:

Block:

Lot:

246 Ritch Street
3776
92

	Date	Earned Income Yield	Rate/Day	Number of Days	Interest	Interest Per Day
Issuance Date of 1st Construction Document	3/7/2012	0.72%	0.002%	405	\$5,615	\$13.86
Applicable Affordable Housing Fee	\$683,818					
Date notified Planning want to pay fee	9/23/2013					

Planning Code Section 415.5(g)(4)

The interest rate is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office.
<http://www.sftreasurer.org/index.aspx?page=16>

The Interest Rate to use is the Earned Income Yield (represents annualized rate based on one month of earnings)
Take the Earned Income Yield and divide it by 365 days to determine the daily interest rate

Total Penalty, Interest, Fee Owed **\$689,433**
 Affordable Housing Fee (Paid to MOHCD) \$683,818
 Interest (Paid to MOHCD) \$5,615
 Penalties (Paid to Planning) \$0.00

Important Notes

Interest and Affordable Housing Fee subject to change because the fee amount is based on a figure provided by sponsor.
A formal fee letter must be secured from MOHCD.



SAN FRANCISCO PLANNING DEPARTMENT

Reissued Letter of Determination

CORRECTED INTEREST CALCULATION

March 21, 2014

David Levy
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068

Site Address:	333 Fremont Street
Assessor's Block/Lot:	3747/019
Zoning District:	RH-DTR (Rincon Hill Downtown Residential) District
Staff Contact:	Kate Conner, (415) 575-6914 or kate.conner@sfgov.org

Dear Mr. Levy:

This letter is in response to your request for a Letter of Determination regarding the property at 333 Fremont Street ("Project"). This parcel is located in the RH-DTR (Rincon Hill Downtown Residential) Zoning District and 85/250-R Height and Bulk District. The Letter of Determination ("LOD") request is to resolve whether a previously approved Project with 83 dwelling units may switch the method of compliance with the Inclusionary Affordable Housing Program ("Program") after issuance of the first construction document. In addition, there is a request to release the two existing NSR's on the property and record a new NSR documenting the change in method of compliance with the Affordable Housing Program and correcting unit count errors found in the previous NSR's.

The Project was approved by the Planning Commission on June 16, 2005 (Case No. 2002.1263CV – Motion No. 17044) to demolish two warehouse structures and construct a new 85-foot tall residential structure. The proposed project would consist of an approximately 147,500-square-foot building with up to 88 dwelling units and 88 parking spaces, plus 8,194 square-feet of useable open space. Under Planning Department procedures of the time, the motion did not specify the method of compliance with the Affordable Housing Program; it simply stated that the project must comply with the Program and that BMR units shall be designated on the building plans prior to approval of any building permit and that prior to issuance of the building permit, the Project sponsor shall record an Notice of Special Restrictions ("NSR") which identifies the BMR units.

On August 10, 2005 an NSR¹ was recorded stating that there were 82 total dwelling units and that 10 units would be provided as affordable, which was 12% of the total units. The NSR identified specific unit numbers and included conditions of approval for providing affordable units on-site. The Department of

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

¹ Exhibit B submitted with the LOD request: Doc 2005100704300 recorded on August 10, 2005, Reel I950 Image 0693

David Levy
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068

March 21, 2014
Letter of Determination
333 Fremont Street

Building Inspection issued the site permit (Building Permit Application No. 2005.06.24.6051) on September 9, 2005. Both the entitlement and Building Permit Application received extensions in 2009. The Project received its first construction document on July 2, 2012. The Project Sponsor contacted the Planning Department to pursue payment of the Affordable Housing Fee as an alternative to providing the affordable units on-site in January 2013.

Issue #1: Early Election Requirement

The LOD request states that the Planning Code in effect at the time did not include specific requirements regarding early election of the method of compliance with the Program. Exhibit D, attached to the LOD Request, is the Planning Code in effect at the time of site permit issuance (September 9, 2005) and includes amendments from Ordinance File No. 37-02 which was signed by the Mayor on April 5, 2002. Exhibit C, attached to the LOD Request, includes amendments from Ordinance File No. 219-06 which was signed on August 10, 2006. Exhibit C was included to indicate that the specific early election requirement was added after the issuance of the first site permit. Exhibit C and Planning Code Section 315.3 (b) ¹² stated:

The amendments to the off-site requirements in Section 315.5 (c) and (d) relating to location and type of off-site housing, and Section 315.4 (e) relating to when a developer shall declare whether it will choose an alternative to the on-site requirement shall apply only to projects that receive their Planning Commission or Department approval on or after the effective date of this legislation.

The LOD request asserts that because this section was specifically added subsequent to Planning Department approval, there was not an early election requirement. That is not the case. Exhibit D and Planning Code Section 315.6 (c)³ in effect at the time of the site permit issuance stated that:

Prior to the issuance by the Director of Building Inspection of the first site or building permit for the project applicant, the project applicant must notify the Director of Planning and the Director of the Mayor's Office of Housing in writing that it has paid in full the sum required to the Controller.

The Zoning Administrator interprets this Planning Code Section, by implication, to require that the fee must be paid prior to the issuance of the first site or building permit. The first site and building permit were issued on September 9, 2005. The ordinance didn't allow for a change to the fee after issuance of first site or building permit. Thus, the choice to pay the fee technically expired on September 9, 2005.

Issue #2: Imposition of Penalties

The LOD request asserts that penalties may not be imposed because penalty language is only included in Planning Code Sections regarding on and off-site methods of compliance. Penalties may not be imposed

²Exhibit C submitted with the LOD Request includes amendments from Ordinance File No. 219-06 which was signed by the Mayor on August 10, 2006

³Exhibit D submitted with the LOD Request includes amendments from Ordinance File No. 37-02 which was signed by the Mayor on April 5, 2002: Ordinance in effect at the time of Planning Department approval.

David Levy
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068

March 21, 2014
Letter of Determination
333 Fremont Street

for failure to pay the fee. A first Certificate of Occupancy has not been issued for the Project; therefore, there is no violation under Planning Code Section 315.8⁴. On-site units must be provided prior to the first Certificate of Occupancy and considering that a first Certificate of Occupancy has not been issued, the on-site units are not required at this time.

Issue #3: Payment of Affordable Housing Fee

Condition #13 in the Conditional Use Authorization Motion No. 17044 states that "If the Applicant chooses to pay a fee in-lieu of providing units, the Applicant shall comply with the requirements of Section 315.6." This section of the Planning Code refers to the In-Lieu Fee and requires that payment is made prior to issuance of first site or building permit. Instead of paying the required amount, the Project Sponsor elected to provide the units on-site and recorded a NSR stating their intent to provide units on-site. By recording a NSR and missing the deadline to pay the fee, the Project would therefore be required to provide the units on-site under the terms of Section 315 in effect at the time of Project approval. However, Planning Code Section 415.5(g)(3) currently states:

If a project sponsor fails to choose an Alternative before project approval by the Planning Commission or Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section 415.5⁵ shall apply.

In this case, the Zoning Administrator has determined that that the Project located at 333 Fremont Street is ineligible for the On-Site Alternative because it is a rental project that did not procure a Costa Hawkins agreement as currently required by Planning Code Section 415⁶. As such, the Project is no longer eligible to provide units on-site and must pay the Fee per Section 415.5(g)(3). Payment of the fee was due prior to the issuance of first construction document or in this particular case: July 2, 2012; therefore, payment of the Fee is late. Planning Code Section 408(a) addresses recourse for late payment, including lien proceedings. Planning Code Section 408(a) states:

Except in the case of a project for which MTA is responsible for the determination and collection of the TIDF under Section 411.9(d) of this Article, if a first construction document or first certificate of occupancy, whichever applies, is inadvertently or mistakenly issued prior to the project sponsor paying all development fees due and owing, or prior to the sponsor satisfying any development impact requirement, DBI shall institute lien proceedings to recover the development fee or fees, plus interest and any Development Fee Deferral Surcharge, under Section 107A.13.15 of the San Francisco Building Code.

Although the Project has not received its first Certificate of Occupancy, this Letter of Determination request serves as written acknowledgement of the intent to pay the Fee. Interest on the Fee would begin accruing after the issuance of the first construction document, on July 2, 2012. Accrual would cease on

⁴ Exhibit D: attached to the LOD Request includes amendments from Ordinance File No. 37-02 which was signed by the Mayor on April 5, 2002: Ordinance in effect at the time of Planning Department approval.

⁵ Planning Code Section 415.5 refers to payment of the Affordable Housing Fee ("Fee").

⁶ A Costa Hawkins exception agreement may be pursued by the Project Sponsor to provide units on-site.

David Levy
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068

March 21, 2014
Letter of Determination
333 Fremont Street

October 15, 2013, when the Project Sponsor filed the Letter of Determination, formally requesting switching to payment of the Affordable Housing Fee.

The Interest Rate is adjusted monthly and is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office. The Interest Rate used is the Earned Income Yield. The Earned Income Yield represents the annualized rate based on one month of earnings. The interest rate applicable to this project is 0.002% per day.

The Mayor's Office of Housing and Community Development (MOHCD) determines the Affordable Housing Fee and issued a revised Fee Determination Letter on March 19, 2014 stating that the Affordable Housing Fee for the Project is \$3,824,885. The first construction document for the Project was issued on July 2, 2012 and interest accrual ceased on October 15, 2013, resulting in 470 days subject to interest accrual. The interest total is: \$33,984. The table below includes the necessary payment due to MOHCD.

Affordable Housing Fee	\$3,824,885.00
Interest 0.002%/day for 470 days	\$33,984.00
Total due to MOHCD: \$3,858,869	

The Fee and interest must be paid within one month of the issuance of this letter, or April 21, 2014. If the payment is late, interest will continue to accrue from October 15, 2013 until payment is received at the same rate as stated in this letter, which is equal to \$72.31/day.

In summary, based on the information provided, in order for the Project to pay the Affordable Housing Fee after issuance of the first construction document, the Project must pay the Affordable Housing Fee plus interest as listed above. An NSR must be recorded on the property, to document this modification. This NSR will supersede Exhibit B submitted with the LOD request: NSR Doc 2005I00704300 recorded on August 10, 2005, Reel I950 Image 0693. This NSR will also reflect the correct unit count.

David Levy
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068

March 21, 2014
Letter of Determination
333 Fremont Street

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

If the City has not previously given notice under Government Code Section 66020 of an earlier discretionary approval of the project involving a fee or exaction as defined by Government Code Section 66020, the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not recommence the 90-day approval period.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Kate Conner, Planner
Olson Lee, Director of San Francisco Mayor's Office of Housing and Community Development
Property Owner
Neighborhood Groups
Block Book Notifications

**San Francisco Planning Department
Interest Calculation**

Property Address: 333 Fremont Street
 Block: 3747
 Lot: 19

	Date	Earned Income Yield	Rate/Day	Number of Days	Interest	Interest Per Day
Issuance Date of 1st Construction Document	7/2/2012	0.69%	0.002%	470	\$33,984	\$72.31
Applicable Affordable Housing Fee	\$3,824,885					
Date notified Planning want to pay fee	10/15/2013					

Planning Code Section 415.5(g)(4)

The interest rate is based on the most current Pooled Fund Portfolio Statistic Report issued by the Treasurer/Tax Collector's Office.
<http://www.sftreasurer.org/index.aspx?page=16>

The Interest Rate to use is the Earned Income Yield (represents annualized rate based on one month of earnings)
 Take the Earned Income Yield and divide it by 365 days to determine the daily interest rate

Total Penalty, Interest, Fee Owed **\$3,858,869**
 Affordable Housing Fee (Paid to MOHCD) \$3,824,885
 Interest (Paid to MOHCD) \$33,984
 Penalties (Paid to Planning) \$0.00

Important Notes

Interest and Affordable Housing Fee subject to change because the fee amount is based on a figure provided by sponsor.
 A formal fee letter must be secured from MOHCD.

Exhibit F

PLANNING ENFORCEMENT TRACKING

25 February 2015

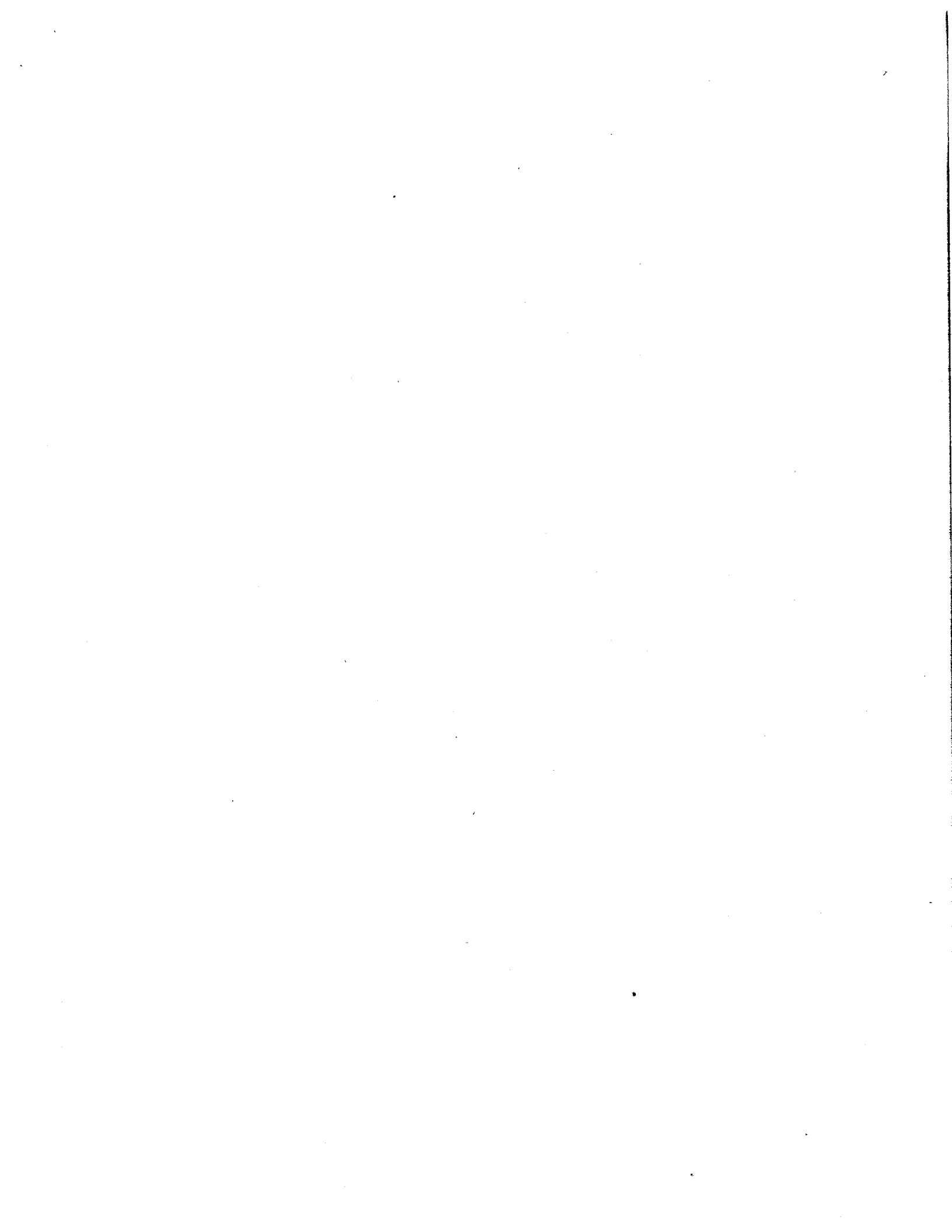
Complaint ID	11094	Address	3520 20TH ST	Parcel Number	3596/127	
<u>Dates</u>		Quadrant	SOUTHEAST	Planner	RACHNA	
Filed	01/07/2011	Source	REFERRAL	<u>Owner Information</u>		
Assignment	03/16/2011	Type	Violation of Approval Conditions	ATHLONE DEVELOPMENT		
Visit Date		Priority		2458 POLK ST #2		
Notice of Alleged Violation		Issue	Plan/design non-	SAN FRAANCISCO CA		
Notice of Violation		Impact	Significant number of	Zip Code	94109	
Appeal Hearing		<u>Case and Permit Information</u>			Phone	0.00
City Atty Referral		Case No.		Account No.	20110080	
Closed		Permit Appl. No.				
		DBI Notice				
		Parcel Event ID	0.00			

DESCRIPTION

Inclusionary Housing Project - out of compliance

FACTS

4/4/12 Discussed with MOH. MOH will provide status report shortly. A notice may be sent accordingly.
 3/30/12 Review case. Follow up with MOH on update on compliance status and if immediate enforcement action needed.
 3/16/11 Check with MOH if a notice should be issued at this time. On hold till further direction from MOH.
 Original lot 120 subdivided into lots 127-143



PLANNING ENFORCEMENT TRACKING

3520 - 20th St.

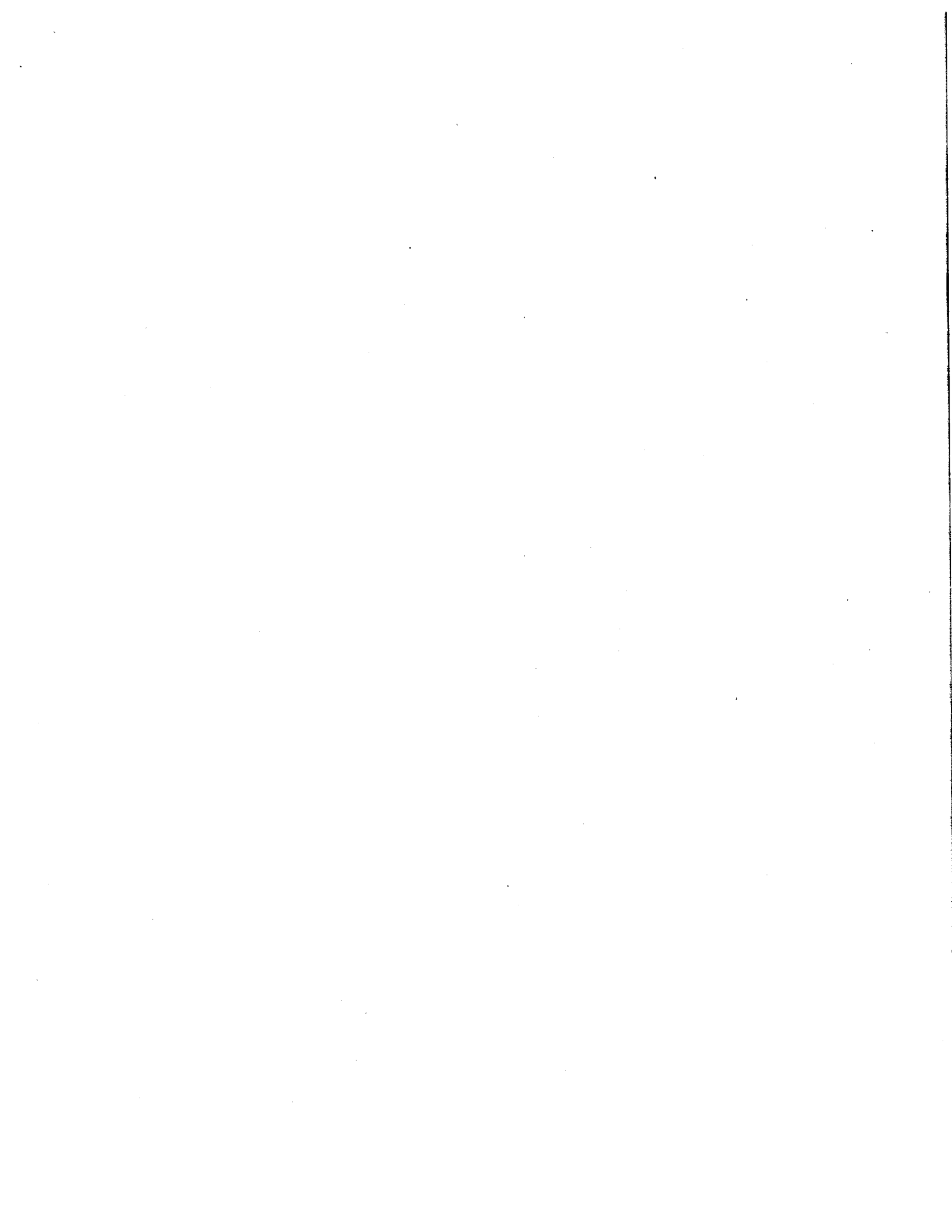
19 January 2011

Complaint ID	11113	Address	0 Lots 127-143	Parcel Number	3596/120
<u>Dates</u>		<u>Quadrant</u>		<u>Planner</u>	KIMBERLY DURANDET
	Filed 01/19/2011	<u>Source</u>	REFERRAL		
<u>Assignment</u>		<u>Type</u>	Violation of Approval Conditions	<u>Owner Information</u>	
<u>Visit Date</u>		<u>Priority</u>			
<u>Notice of Alleged Violation</u>		<u>Issue</u>	Plan/design non-		
<u>Notice of Violation</u>		<u>Impact</u>	Moderate impact	<u>Zip Code</u>	
<u>Appeal Hearing</u>		<u>Case and Permit Information</u>		<u>Phone</u>	0.00
<u>City Atty Referral</u>		<u>Case No.</u>		<u>Account No.</u>	20110165
<u>Closed</u>		<u>Permit Appl. No.</u>			
		<u>DBI Notice</u>			
		<u>Parcel Event ID</u>	0.00		

DESCRIPTION

FACTS

MOH - Inclusionary Housing Project - out of compliance
 (3520 - 20th Street, Block 3596, Lot 120)



San Francisco Planning Department
Office of Analysis and Information Systems
PROPERTY INFORMATION REPORT

Block 3596 Lot 120 Census Tract Census Block

Site Address: Lots 127-143

Site Zip Code:

OWNER

PROPERTY VALUES

Land	Sales Date
Structure	Price
Fixture	
Other	

PHYSICAL CHARACTERISTICS

Lot Frontage	Year Built
Lot Depth	Stories
Lot Area	Assessor Units
Lot Shape	Bedrooms
Building Sq.Ft.	Bathrooms
Basement Sq.Ft.	Rooms
	Assessor Use

Authorized Use UNKNOWN & COMMERCIAL

Original Use UNKNOWN

PLANNING INFORMATION

Zoning	Planning District
Height Limit	SUD
Quadrant	SSD
Leg. Setback	Redevelopment Area

Notices of Special Restrictions: For the new construction of a new four-story building over a below grade garage containing

Non-Conforming Uses:

Comments:

Physical characteristics information is not guaranteed accurate or complete

APPLICABLE REGULATIONS (Special Zones)

Type	Value	Description
PC Section 261.1(b)1		Height Limits for Narrow Streets and Alleys in RTO and NCT Districts
Impact Fee Area	Sec. 327, Eastern Neighborhoods	Impact Fee Area
PC Section 423.3	1	Eastern Neighborhoods Impact Fee Tier (Sec. 423.3, formerly 327.3)
Stormwater Management Ordinance		Projects that disturb 5,000 square feet or more of the ground surface must comply with the Stormwater Design Guidelines and submit a Stormwater Control Plan to the SFPUC for review. To view the Guidelines and download instructions for preparing a Stormwater Control Plan, go to http://stormwater.sfwater.org/ . Applicants may contact stormwaterreview@sfwater.org for assistance.
Seismic Hazard Zone		Any new construction is subject to a mandatory

PROPERTY INFORMATION REPORT

*San Francisco Planning Department
Office of Analysis and Information Systems*

Block 3596 Lot 120 Census Tract Census Block

Interdepartmental Project Review.
Historic Preservation Commission review is required for
certain types of projects. Review the procedures
document.

Eastern Neighborhoods Interim
Permit Review

PARCEL EVENTS (Special Instructions, Determination Letters, Project Reviews)

Date	Type	Description
02/19/1997	Instruction	Mission Alcoholic Beverage RUSD-No establishment of or expansion of a business selling alcoholic beverages except restaurants
06/27/2001	Instruction	parcel formerly subject to 2001 Mission District Interim Controls (expired 07/07/03)
10/13/2004	Project Review	3520 - 20th Street. Discuss various issues related to Planning Code.
02/04/2009	Instruction	No new Fringe Financial Services permitted per Section 249.35

San Francisco Planning Department
Office of Analysis and Information Systems

PROPERTY INFORMATION REPORT

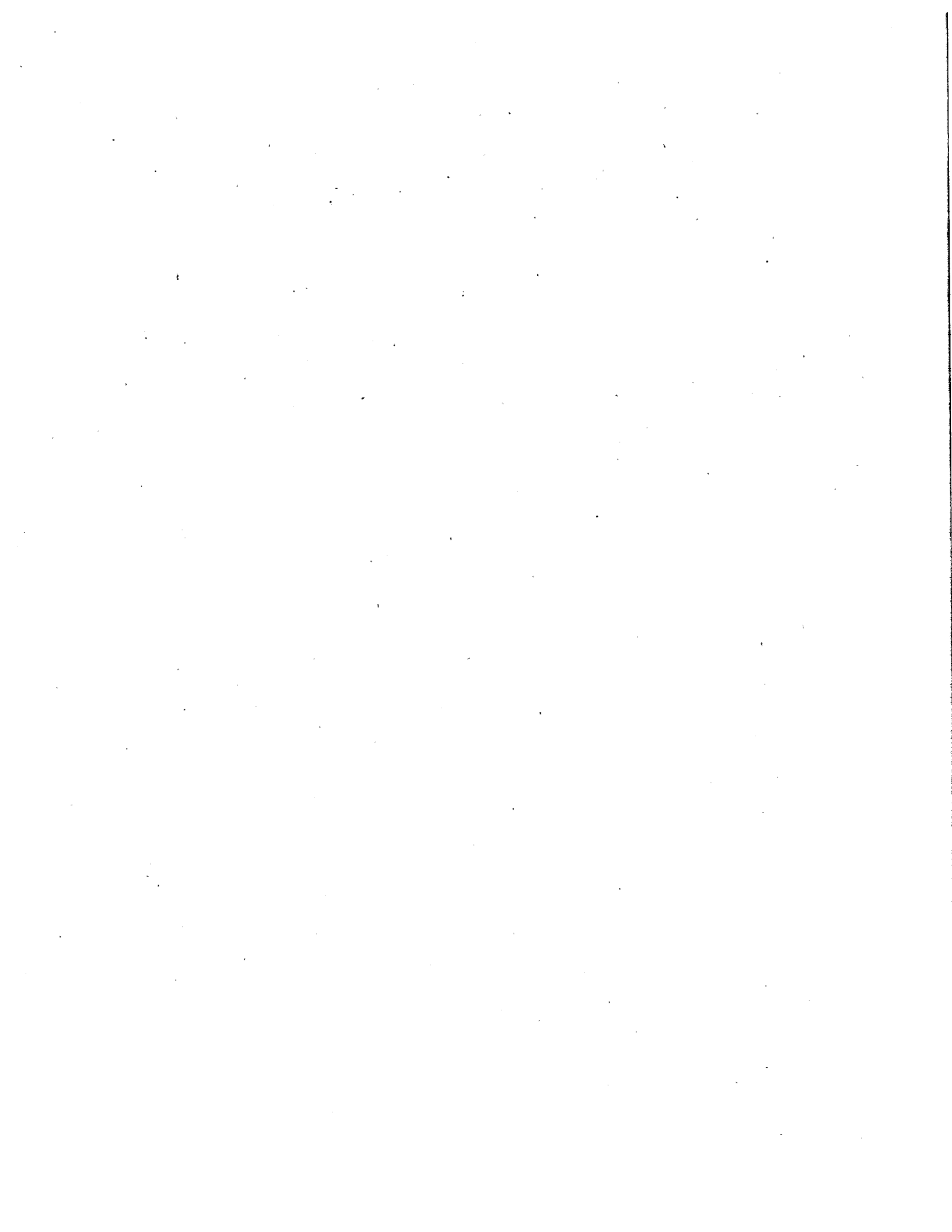
Block 3596 Lot 120 Census Tract Census Block

BUILDING PERMIT APPLICATIONS

Appl. No.	Act Date	Status	Description
200903043369	03/05/2009	FINAL INSPECTO	OBTAIN FINAL INSPECTION FOR WORK APPROVED UNDER PA#200612089467. ALL WORK HAS BEEN COMPLETED.
200902273099	02/27/2009	ISSUED	TO OBTAIN FINAL INSPECTION FOR WORK APPROVED UNDER PA#200702166510. ALL WORK HAS BEEN COMPLETED.
200808139034	01/05/2009	FINAL INSPECTENANT	IMPROVEMENT-REFRAME AND ADD NEW NON STRUCTURAL WALLS, PONY WALLS, COUNTERS, CABINETS & SHELVES. INSTALL EQUIPMENT
200805303276	06/11/2008	FINAL INSPEC	GROUND FLOOR RETAIL - TI FOR THE RETAIL SPACE ON THE GROUND FLOOR. NEW NONSTRUCTURAL WALLS FOR DRESSING ROOM AND STORAGE ROOM. INSTALL NEW LIGHT FIXTURES. ALL WORK DONE AT GROUND FLOOR RETAIL.
200703166510	02/24/2009	EXPIRE	INSTALLATION OF NEW FIRE ALARM SYSTEM WITH FIRE SPRINKLER MONITORING.
200612089467	02/11/2009	EXPIRE	INSTALLATION OF FIRE SPRINKLER SYSTEM THROUGHOUT THE BUILDING NPA 13 AND STAND PIPE.
200610195548	12/27/2007	CANCELLED	REVISION TO APPROVED BUILDING PERMIT APP #200411229899. CHANGE BMR UNIT FROM UNIT #4 TO UNIT #5 FOR RECORD PURPOSE
200605232256	01/29/2007	ROUGH FRAM	TEMP. SHORING FOR WORK RELATED TO PA# 200411229899.
200411229899	05/08/2008	CFC ISSUED	TO ERECT 4 STORIES OF 14 DWELLING UNITS / RETAIL.
200404302764	12/09/2004	FINAL INSPEC	DEMOLISH 2 STORIES, OFFICE/RESIDENTIAL BUILDING.
9404169	07/25/1994	EXPIRED	CLEAR ORDER/ABATEMENT--164405,6,.7,8
9217991	03/13/1993	EXPIRED	REPAIR OF WATER & SMOKE DAMAGED DRYWALL & ELECTRICAL WIRING

PERMIT APPEALS

Appeal No.	Appl. No.	Case No.	Hearing	Nature of Appeal	Hearing Result
------------	-----------	----------	---------	------------------	----------------



Chandra
Egan/OCDHH/MAYOR/SFGO
V
01/19/2011 10:57 AM

To Agnes Lau/CTYPLN/SFGOV@SFGOV
cc Christine Haw/CTYPLN/SFGOV@SFGOV, Scott
Sanchez/CTYPLN/SFGOV@SFGOV
bcc
Subject Re: BMR Units Out of Compliance

Sorry for the delay, and thank you. This is what I have so far. I'll send the 480 14th when I have it.

- 480 14 Street - pending
- 638 19th Street - Block 4044 Lot 30 #1112
- 3520 20th Street - Block 3596 Lot 120 #1115
- 1452 Bush Street - Block 0667 Lot 008 #1116
- 459 9th Avenue - Please remove from list. Appears to be a church w/no Section 315/415 requirements.

Thank you,
Chandra

Chandra Egan
Inclusionary Housing Program Manager
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
phone: (415) 701-5546
fax: (415) 701-5501
chandra.egan@sfgov.org
BMR Webpage: <http://sf-moh.org/index.aspx?page=263>

Agnes Lau--01/14/2011 03:00:25 PM--Chandra: We have received your list of Inclusionary Housing Pro...

Agnes Lau/CTYPLN/SFGOV
01/14/2011 03:00 PM

To Chandra.Egan@sfgov.org
cc Christine Haw/CTYPLN/SFGOV@SFGOV, Scott
Sanchez/CTYPLN/SFGOV@SFGOV
Subject BMR Units Out of Compliance

Chandra:

We have received your list of Inclusionary Housing Projects that are out of compliance. As we have to add them as enforcement cases in our Parcel Information Database to ensure that permits are not issued to these properties and/or units until they come into compliance, we need to identify the SPECIFIC UNITS/LOTS that are out of compliance. This is because many of the listed Parcels have multi lots/units because of condo subdivisions.

It would be helpful if you would let us know the specific unit numbers (if known) for each of the listed non-complying properties and in particular for the following properties/parcels:

- 480 14 Street

- 638 19th Street

- 3520 20th Street

- 1452 Bush Street

- 459 9th Avenue

If you have any questions regarding our request, please email me at Agnes.Lau@sfgov.org

Thank you,
Agnes Lau
Planning Department

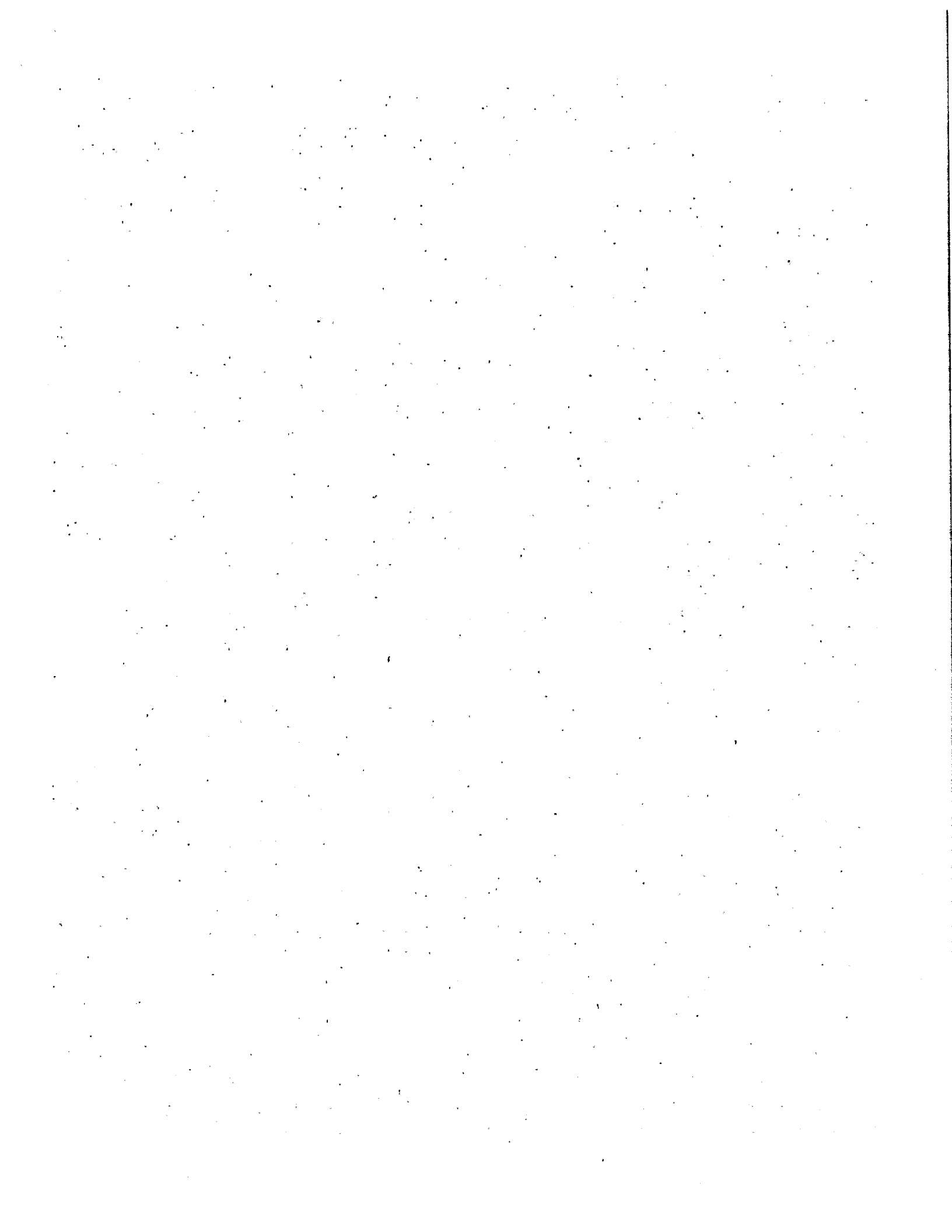
San Francisco Mayor's Office of Housing Inclusionary Housing Program Projects Database
 Buildings Out of Compliance with Section 315415 as of 1/8/11
 INTERNAL DOCUMENT

STATUS OF PROJECT - REPAIRED	APPROXIMATE NUMBER	DATE PROJECT	SECTIONING ADDRESS (PER SECTIONING APPROVAL)	ADDRESS	STREET	ZIP	TOTAL UNITS	TYPE OWNERSHIP (AS OF 1/8/11)	TOTAL UNITS AT THIS SITE IF UNITS HAD BEEN PROVIDED FOR OWNERSHIP
Out of Compliance (vacant unit - sales office? Owner met with unit in 2010 to ask for more time bc bldg might be sold. Not sure who owns it now.)	2004-1223-2054		480 14th Street	480	14th Street	94103	12	Ownership	1
Out of Compliance? (Already selling MR units. Marketing commissions budget; might have to return to PC to sell instead of rent)			638 18th Street	638	18th Street	94107	21	Ownership	2
Out of Compliance (vacant, report that owner is living in unit - when it lower)	0000-0000-2004		3320 20th Street	3320	20th Street	94110	54	Rental	7
Out of Compliance (unapproved renters in place, working toward compliance since 10/2009 but owner is ignoring most requests)	2003-118-0520	2004-0972	2880 Harrison (aka 3000 23rd Street)	3000	23rd Street	94110	64	Rental	7
Out of Compliance (unapproved renters in place; have never break into owner)	2003-0810-6726	2003-0386	77 Blumaine Street	77	Blumaine	94107	102	Ownership	10
Out of Compliance (five never spoken to owner)	2001-0105-8321		Thel Madtown	1452	Blush Street	94108	22	Ownership	2
Out of Compliance (unapproved renters in place; working toward compliance)	0000-0007-1380	97235	3445 Geary (PMA Name adds Geary)	3425	Geary Blvd (aka 3445 Geary)	94118	33	Rental	3
Out of Compliance (unapproved renters in place; building taken over by bank; working toward compliance)	2003-0105-4573		1828 Geneva	1828	Geneva Avenue (1828-001)	94134	48	Rental	6
Out of Compliance (vacant units, just learned that building may have been taken back by bank)	2004-0505-9248	2004-1009	1688 Hyde Street (BPAC0061107058)	168	Hyde	94102	31	Ownership	3
Out of Compliance (vacant unit? Owner's rep contacted us in 2009 so we know about 315415 obligations)	2003-0804-8302	2003-0889	8 Madras Court	8	Madras Court	94103	102	Rental	3
Out of Compliance (Fis never paid but building completed and sold out. Compliance either sent to owner 1/5/11)	2004-0355-8570		1158 Sutter	1158	Sutter	94108	14	Ownership	1
Out of Compliance (fis never spoken to owner)	2003-1107-9711	2003-0277	1728 Washington Street	1725	Washington	94109	16	Ownership	3

Out of Compliance

#11098

#11098



Hi Scott,

I'm attaching a list of our what I think is our universe of noncompliant buildings. Thank you for denying any permits until we can attest that they are in compliance:

I'd like to prioritize one building for corrective action: 2690 Harrison/3000 23rd Street. I'll send a follow-up email about this request so that the email is easy to pass on.

Thank you,
Chandra

Chandra Egan
Inclusionary Housing Program Manager
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
phone: (415) 701-5546
fax: (415) 701-5501
chandra.egan@sfgov.org
BMR Webpage: <http://sf-moh.org/index.aspx?page=263>



IH Projects Database - Projects out of compliance as of 010611.pdf

Scott Sanchez--01/05/2011 05:56:06 PM---Hi Chandra, is this the complete list of projects that are out of...



Scott
Sanchez/CTYPLN/SFGOV
01/05/2011 05:56 PM

To Chandra Egan/OCDHH/MAYOR/SFGOV@SFGOV
cc Rick Crawford/CTYPLN/SFGOV@SFGOV, Christine
Haw/CTYPLN/SFGOV@SFGOV, Jonas
Ionin/CTYPLN/SFGOV@SFGOV, Kelley
Amdur/CTYPLN/SFGOV@SFGOV, Mark
Luellen/CTYPLN/SFGOV@SFGOV
Subject Re: Need NSR's for Compliance Problems

Hi Chandra,

Is this the complete list of projects that are out of compliance? If not, could you please send the list to us? I would like to add them as enforcement cases in our Parcel Information Database (this would ensure that we don't process any permits for these properties until they come into compliance).

Thank you.

Cheers,
Scott F. Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103



Christine
Haw/CTYPLN/SFGOV
01/10/2011 04:29 PM

To Agnes Lau/CTYPLN/SFGOV@SFGOV
cc
bcc
Subject Fw: Section 315/415: Compliance Issues as of January 6,
2011

let's open up cases !

----- Forwarded by Christine Haw/CTYPLN/SFGOV on 01/10/2011 04:29 PM -----



Scott
Sanchez/CTYPLN/SFGOV
01/07/2011 11:16 AM

To Chandra Egan/OCDHH/MAYOR/SFGOV@SFGOV
cc Christine Haw/CTYPLN/SFGOV@SFGOV, Douglas
Shoemaker/OCDHH/MAYOR/SFGOV@SFGOV, Jonas
Ionin/CTYPLN/SFGOV@SFGOV, Kelley
Amdur/CTYPLN/SFGOV@SFGOV, Mark
Luellen/CTYPLN/SFGOV@SFGOV, Rick
Crawford/CTYPLN/SFGOV@SFGOV, Susan
Cleveland-Knowles/CTYATT@CTYATT
Subject Re: Section 315/415: Compliance Issues as of January 6,
2011

Thank you, Chandra.

Chris, can you please open enforcement cases for these properties?

Thank you!

Cheers,
Scott F. Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Tel: 415.558.6350
Fax: 415.558.6409

E-mail: scott.sanchez@sfgov.org
Webpage: <http://www.sfplanning.org>
UPN Project: <http://upn.sfplanning.org>
Chandra Egan/OCDHH/MAYOR/SFGOV

Chandra
Egan/OCDHH/MAYOR/SFGOV
V
01/07/2011 10:48 AM

To Scott Sanchez/CTYPLN/SFGOV@SFGOV
cc Christine Haw/CTYPLN/SFGOV@SFGOV, Jonas
Ionin/CTYPLN/SFGOV@SFGOV, Kelley
Amdur/CTYPLN/SFGOV@SFGOV, Mark
Luellen/CTYPLN/SFGOV@SFGOV, Rick
Crawford/CTYPLN/SFGOV@SFGOV, Douglas
Shoemaker/OCDHH/MAYOR/SFGOV@SFGOV, Susan
Cleveland-Knowles/CTYATT@CTYATT
Subject Section 315/415: Compliance Issues as of January 6, 2011

San Francisco, CA 94103
phone: (415) 701-5546
fax: (415) 701-5501
chandra.egan@sfgov.org
BMR Webpage: <http://sf-moh.org/index.aspx?page=263>

ADDRESSES	STREET	ZIP
480	14th Street	94103 /
638	19th Street	94110 ?
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168	Hyde	94102
1725	Washington	94109 /
459-49 5	09th Avenue	
3425	Geary Blvd. (aka 3445 Geary)	94118 /

7/13

11/10/01

Tel: 415.558.6350
Fax: 415.558.6409

E-mail: scott.sanchez@sfgov.org
Webpage: <http://www.sfplanning.org>
UPN Project: <http://upn.sfplanning.org>
Mark Luellen/CTYPLN/SFGOV

Mark
Luellen/CTYPLN/SFGOV
01/05/2011 02:40 PM

To Chandra Egan/OCDHH/MAYOR/SFGOV@SFGOV
cc Scott Sanchez/CTYPLN/SFGOV@SFGOV, Rick
Crawford/CTYPLN/SFGOV@SFGOV
Subject Re: Need NSR's for Compliance Problems

Chandra,

We will get them to you by the end of the week. I am asked Rick Crawford to assist me with this. Thank you

Mark Luellen
Northeast Team Manager
San Francisco Planning Department
1650 Mission Street, San Francisco, CA 94103
415 558 6478

Chandra Egan/OCDHH/MAYOR/SFGOV

Chandra
Egan/OCDHH/MAYOR/SFG
OV
01/05/2011 08:52 AM

To David Lindsay/CTYPLN/SFGOV@SFGOV, Delvin
Washington/CTYPLN/SFGOV@SFGOV, Julian
Banales/CTYPLN/SFGOV@SFGOV, Mark
Luellen/CTYPLN/SFGOV@SFGOV
cc

Subject Need NSR's for Compliance Problems

Hi Julian, Mark, Delvin and David,

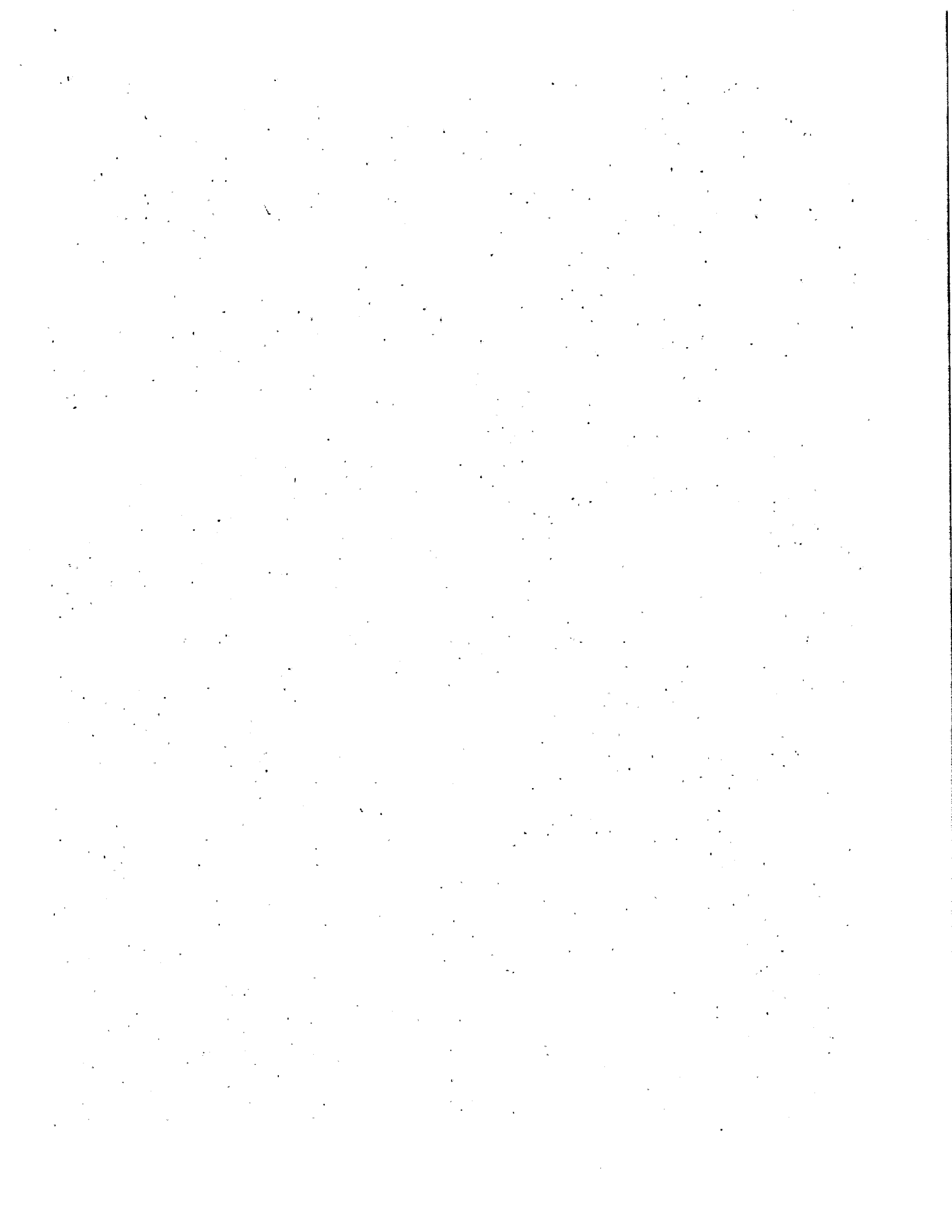
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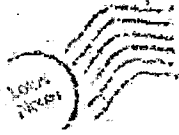
Thank you.
Chandra

Chandra Egan
Inclusionary Housing Program Manager
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor

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#1000





Luellen/CTYPLN/SFGOV@SFGOV
Subject Re: Need NSR's for Compliance Problems

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San Francisco, CA 94103

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Mark Luellen/CTYPLN/SFGOV

Mark
Luellen/CTYPLN/SFGOV
01/05/2011 02:40 PM

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Chandra
Egan/OCDHH/MAYOR/SFGOV
OV

To David Lindsay/CTYPLN/SFGOV@SFGOV, Delvin
Washington/CTYPLN/SFGOV@SFGOV, Julian

01/05/2011 08:52 AM

Banales/CTYPLN/SFGOV@SFGOV, Mark
Luellen/CTYPLN/SFGOV@SFGOV

cc

Subject: Need NSR's for Compliance Problems

Hi Julian, Mark, Delvin and David,

I'm struggling to gather the NSR's for the following Inclusionary Housing projects that are out of compliance. May I ask you to assist me in gathering them?

Thank you.
Chandra

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3000	23rd Street	94110

8	McLea Court	94103
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Chandra
Egan/OCDHH/MAYOR/SFGO
V

01/19/2011 10:57 AM

To Agnes Lau/CTYPLN/SFGOV@SFGOV
cc Christine Haw/CTYPLN/SFGOV@SFGOV, Scott
Sanchez/CTYPLN/SFGOV@SFGOV

bcc

Subject Re: BMR Units Out of Compliance

Sorry for the delay, and thank you. This is what I have so far. I'll send the 480 14th when I have it.

- 480 14 Street - pending

- 638 19th Street - Block 4044 Lot 30 #1112

- 3520 20th Street - Block 3596 Lot 120 #1113

- 1452 Bush Street - Block 0667 Lot 008 #1116

- 459 9th Avenue - Please remove from list. Appears to be a church w/no Section 315/415 requirements.

Thank you,
Chandra

Chandra Egan
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San Francisco, CA 94103
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chandra.egan@sfgov.org
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Agnes Lau--01/14/2011 03:00:25 PM--Chandra: We have received your list of Inclusionary Housing Pro...

Agnes Lau/CTYPLN/SFGOV

01/14/2011 03:00 PM

To Chandra.Egan@sfgov.org

cc Christine Haw/CTYPLN/SFGOV@SFGOV, Scott
Sanchez/CTYPLN/SFGOV@SFGOV

Subject BMR Units Out of Compliance

Chandra:

We have received your list of Inclusionary Housing Projects that are out of compliance. As we have to add them as enforcement cases in our Parcel Information Database to ensure that permits are not issued to these properties and/or units until they come into compliance, we need to identify the SPECIFIC UNITS/LOTS that are out of compliance. This is because many of the listed Parcels have multi lots/units because of condo subdivisions.

It would be helpful if you would let us know the specific unit numbers (if known) for each of the listed non-complying properties and in particular for the following properties/parcels:

- 480 14 Street

- 638 19th Street

- 3520 20th Street

- 1452 Bush Street

- 459 9th Avenue

If you have any questions regarding our request, please email me at Agnes.Lau@sfgov.org

Thank you,
Agnes Lau
Planning Department

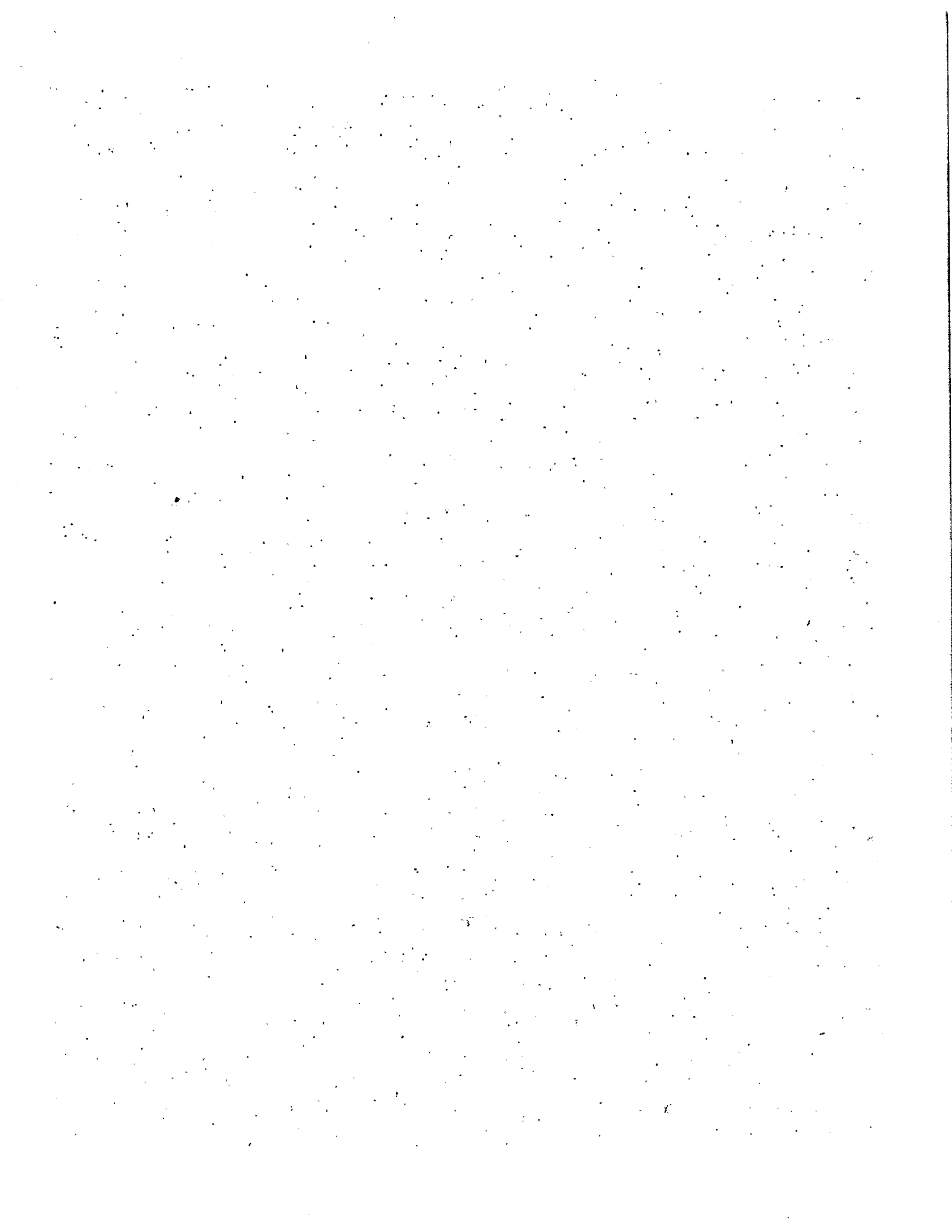
San Francisco Mayor's Office of Housing Inclusionary Housing Program Projects Database
 Buildings Out of Compliance with Section 316215 as of 1/6/11
 INTERNAL DOCUMENT

STATUS OF PROJECT - REMARKS	APPROXIMATE SQUARE FEET	CASE NUMBER	ADDRESS	STREET	CITY	ZIP	TOTAL UNITS	TYPE OF UNIT	TOTAL UNITS AT THIS SITE
Out of Compliance (Vacant unit - sales office? Owner met with us in 2010 to ask for more time bc bid might be sold, but sure who owns it now.)	2004-1223-2054		480 14th Street	14th Street	San Francisco	94103	12	Ownership	1
Out of Compliance? (Already selling MR unless Marketing conversations begun; might have to return to PC to sell instead of rent)			638 19th Street	19th Street	San Francisco	94110	21	Ownership	2
Out of Compliance (owner report that owner is living in unit when in town)	0000-0000-2004		320 20th Street	20th Street	San Francisco	94110	14	Ownership	1
Out of Compliance (unapproved renters in place; working toward compliance since 10/2008 but owner is ignoring most requests)	2003-1118-0820	2004-0872	2880 Harrison (aka 3000 2nd Street)	2nd Street	San Francisco	94110	54	Rental	7
Out of Compliance (unapproved renters in place; have never spoken to owner)	2003-0810-5728	2003-0988	77 Bluxome Street	Bluxome Street	San Francisco	94107	102	Ownership	10
Out of Compliance (unapproved renters in place; working toward compliance)	2001-0705-8821		The Mallory	Bush Street	San Francisco	94109	22	Ownership	2
Out of Compliance (unapproved renters in place; building taken over by owner; working toward compliance)	0000-0097-1380	97298	3445 Geary (aka 3445 Geary)	Geary Blvd (aka 3445 Geary)	San Francisco	94118	33	Rental	3
Out of Compliance (Vacant units; just learned that building may have been taken back by owner)	2003-0108-4573		1423 Geneva	Geneva Avenue (aka 14th St)	San Francisco	94134	48	Rental	6
Out of Compliance (Vacant units; Owner's rep contacted us in 2008 or so and knows about 316215 obligation)	2004-0808-3248	2004-1008	168 Hyde Street (BPA20081107758)	Hyde	San Francisco	94102	31	Ownership	3
Out of Compliance (fine never paid but building completed and sold out; Compliance letter sent to owner 7/31/10)	2003-0804-8302	2003-0888	8 Madras Court	Madras Court	San Francisco	94103	102	Rental	3
Out of Compliance (letter sent to owner 7/31/10)	2004-0558-8302		1188 Sutter	Sutter	San Francisco	94108	14	Ownership	1
Out of Compliance (letter never spoken to owner)	2005-1107-8711	2003-0277	1725 Washington Street	Washington	San Francisco	94109	16	Ownership	3

Out of Compliance - Case # 11104

#11104

459-9th Street 94118



Hi Scott,

I'm attaching a list of our what I think is our universe of noncompliant buildings. Thank you for denying any permits until we can attest that they are in compliance.

I'd like to prioritize one building for corrective action: 2690 Harrison/3000 23rd Street. I'll send a follow-up email about this request so that the email is easy to pass on.

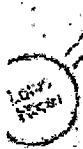
Thank you,
Chandra

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IHProjects Database - Projects out of compliance as of 010611.pdf

Scott Sanchez---01/05/2011 05:56:06 PM---Hi Chandra, Is this the complete list of projects that are out of...



Scott
Sanchez/CTYPLN/SFGOV
01/05/2011 05:56 PM

To Chandra Egan/OCDHH/MAYOR/SFGOV@SFGOV
cc Rick Crawford/CTYPLN/SFGOV@SFGOV, Christine
Haw/CTYPLN/SFGOV@SFGOV, Jonas
Ionin/CTYPLN/SFGOV@SFGOV, Kelley
Amdur/CTYPLN/SFGOV@SFGOV, Mark
Luellen/CTYPLN/SFGOV@SFGOV
Subject Re: Need NSR's for Compliance Problems

Hi Chandra,

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Cheers,
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Zoning Administrator
San Francisco Planning Department
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San Francisco, CA 94103

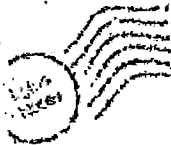


Christine
Haw/CTYPLN/SFGOV
01/10/2011 04:29 PM

To Agnes Lau/CTYPLN/SFGOV@SFGOV
cc
bcc
Subject Fw: Section 315/415: Compliance Issues as of January 6, 2011

let's open up cases!

--- Forwarded by Christine Haw/CTYPLN/SFGOV on 01/10/2011 04:29 PM ---



Scott
Sanchez/CTYPLN/SFGOV
01/07/2011 11:16 AM

To Chandra Egan/OCDHH/MAYOR/SFGOV@SFGOV
cc Christine Haw/CTYPLN/SFGOV@SFGOV, Douglas Shoemaker/OCDHH/MAYOR/SFGOV@SFGOV, Jonas Ionin/CTYPLN/SFGOV@SFGOV, Kelley Amdur/CTYPLN/SFGOV@SFGOV, Mark Luellen/CTYPLN/SFGOV@SFGOV, Rick Crawford/CTYPLN/SFGOV@SFGOV, Susan Cleveland-Knowles/CTYATT@CTYATT
Subject Re: Section 315/415: Compliance Issues as of January 6, 2011

Thank you, Chandra.

Chris, can you please open enforcement cases for these properties?

Thank you!

Cheers,
Scott F. Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Tel: 415.558.6350
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01/07/2011 10:48 AM

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#11101

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Mark
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01/05/2011 02:40 PM

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Chandra
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01/05/2011 08:52 AM

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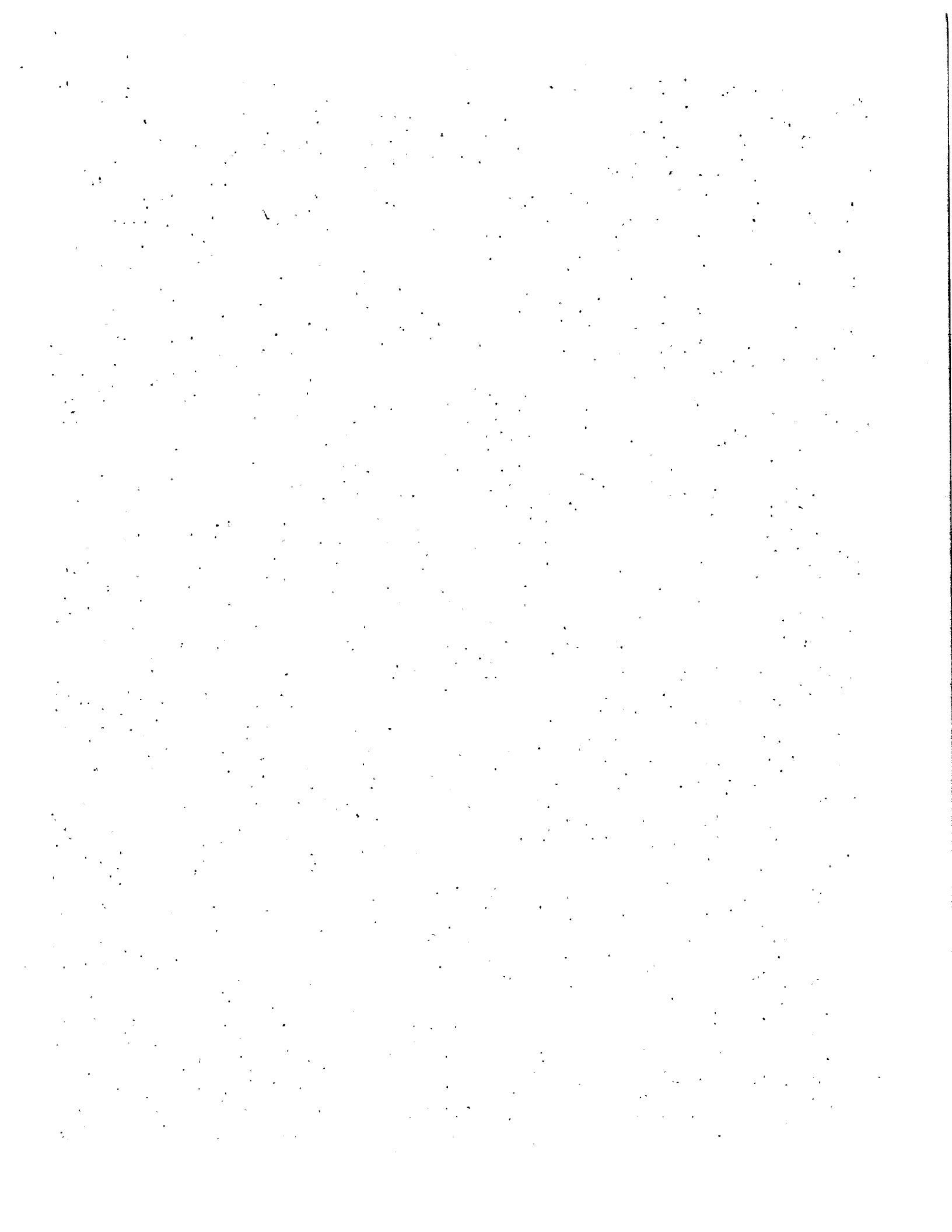
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#11098





Luellen/CTYPLN/SFGOV@SFGOV
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01/05/2011 08:52 AM

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