

**Twin Peaks Improvement Association
Midtown Terrace Homeowners Association
in San Francisco, California**
P.O. Box 31022 • San Francisco • California • 94131

BUCKET FILE COPY ORIGINAL

Federal Communications Commission
c/o Secretary of the FCC
1919 M Street N. West
Washington, D.C. 20554

October 27, 1997

M.M. 97-182301997

Re: Notice of Proposed Rule Making ~~97-256~~

Dear Sirs and Madams:

Please be advised that the residents of San Francisco are preserving their rights to appeal the proposed FCC Rule # 97-~~182~~. Several extra-ordinary, compelling and unusual circumstances regarding the placement of transmission towers in San Francisco's urban center, as well as other areas of the country prone to seismic activity, strongly necessitate the need for local planning agencies to retain zoning and regulatory control over the placement of digital transmission towers and other similar structures in their communities.

Please be advised that Sutro Tower, an analog transmission tower is the first transmission tower of its size (977 feet on a 1080 foot base) to be located less than 250 feet from reservoirs containing approximately 55 million gallons of water, 800 residences, two elementary schools, churches, at least one firehouse, and several children's playgrounds. The Sutro Tower is surrounded in a 360 degree radius by these structures.

What is most alarming about the placement of the Sutro Tower in San Francisco is that the owners of the Sutro Tower failed to adequately maintain the Tower structure. The vice-president and general manager of Sutro Tower, Mr. Eugene Zastrow, admits that "the Sutro Tower was neglected for a period of twenty years". Because of the neglect and the fact that Sutro Tower is inundated by corrosive fog, the Sutro Tower had to undergo massive sandblasting to stem the rust damage which impaired the integrity of Sutro Tower's stability.

The legislation in FCC 97-~~182~~ fails to address the fact that many tower operators have not adequately maintained their structures. Broadcasters have forgotten that it is not a right, but rather a privilege to hold an FCC broadcasting license. The FCC must not ignore the fact that Tower operators have not properly tended to the structural stability of their towers. Clearly, the lack of adequate maintenance and repair, can not be ignored when the broadcaster is operating such a massive structure in an urban setting.

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Local zoning agencies and planners, local officials, and local residents are best suited to confront the enormous problems associated with tower maintenance and placement in their communities. The US Constitution specifically provides that the the non-enumerated powers, not specifically delegated to the federal government, shall be controlled by the States. Thus, issues of health, safety, and welfare are Constitutionally protected. This is one such case.

Be advised that San Francisco is currently living in the wake of the 1989 Loma Prieta Earthquake. As a result of this destrucutive earthquake, San Francisco has taken affirmative steps to regulate masonary brick type structures and make proactive changes in an attempt to prevent massive loss of life due to structural failure and collapse. Transmission towers are structures that pose similar problems.

It is imperative that our local agencies retain the ability to determine whether it is appropriate to place a massive steel tower in the middle of San Francisco, in light of all of these considerations, when a comparable site, located outside the city center could equally serve the purposes of the FCC's digital expansion. This cite is located on Mount San Bruno.

Although the structural stability of the Sutro Tower and the effect of its collapse during seismic activity and landslides is of paramount concern to San Francisco's residents, additional local zoning and planning concerns buttress support for allowing local planning agencies to retain control over transmission towers in our community.

This response to proposed FCC Rule 97-~~192~~ includes exerpts and representative samples of over 330 surveys and letters regarding the environmental impact of the Sutro Tower in San Francisco's urban setting.

Additionally, over 500 people have already signed petitions voicing their concern about Sutro Tower in San Francisco.

Please do not pre-empt our Constitutional Rights in an attempt to expedite the transition from analog to digital transmission. The concerns of the residents are grounded in the reality that San Francisco must take adequate, affirmative measures to protect the lives of its citizens. Any objection voiced with respect to an Environmental Impact Report regarding Sutro Tower's planned conversion of its analog tower, is reserved as an objection to proposed FCC Rule 97-296.

Thank you for your attention to this matter.

Nancy Hogan - President TPIA
Steve Nahm - President MTHA

To: Secretary of the Federal Communication **DOCKET FILE COPY ORIGINAL**
From: Twin Peaks Improvement Association
Midtown Terrace Homeowners Association
Re: Notice of Proposed Ruling making FCC 97-~~25~~ 182
MM-

RECEIVED
OCT 30 1997
FEDERAL RESERVE

Dear Secretary and Commissioners:

This letter is in response to the above proposed ruling regarding the placement of DTV antennae.

In the San Francisco Bay Area, the main center for communications is Sutro Tower, a 977 foot structure built over 25 years ago on land owned by ABC Broadcasting, to serve the purposes of transmitting line of sight analog signals for the fourth largest media market in the United States. As you can see from the enclosed comment letters, the owners of Sutro Tower, Inc., who represent the four major broadcasters in the Bay Area, plan to attach their new DTV antennae to the existing tower.

While we welcome the introduction of DTV to the Bay Area, we have serious reservations about the continued operation of such a large transmission tower as Sutro Tower located in the middle of a densely populated urban area. The DTV signal has identical penetration from Mt. San Bruno, an area already containing numerous existing transmission towers on 2000 acres of open space. **The site in San Bruno is ready and willing to take the DTV signal.** A EIR comment statement from their attorney is also attached. In their comments, the project sponsor states that the FCC has "mandated" that DTV be placed on Sutro Tower. Is this correct? If so, it would appear that local input regarding safety is moot, and that the FCC has already overruled local safety concerns. Can this interpretation be correct?

As you are aware, California has experience a series of major seismic events in the past dozen years, each one increasing in intensity. The cost in lives and property damage, and especially the need for FEMA funds, increases with each earthquake. Should the FCC overrule local and state regulations which allow communities to take into account the safety and suitability of locating a towers in the middle of densely populated neighborhoods, the cost could be catastrophic, both to the local community and to the taxpayers of the United States.

I urge you to review the enclosed comments regarding seismic safety and its relevance to the placement of transmission towers in California.

Although we can understand the need to speed up the DTV process, **the Federal Government, and the FCC in particular, should not be used to circumvent local and state safety codes and basic siting guidelines in order to expedite individual private commercial operators at the expense of public safety concerns.**

Nancy Hogan - President TPIA
Steve Nahm - President MTHA
P.O. Box 31022
San Francisco, California 94131

From
DORIS LINNEBACH,
155 - St. Germain Ave

Nature of Proposed Rule Making) SF 94114

M M Docket

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97-182

OCT 30 1997

HDTV. Siting

New FCC rule would ban local controls on emerging tech.

Winding its way almost silently through the federal bureaucracy is a new rule proposed by Federal Communications Commission (FCC) which will preempt state and local zoning and land use ordinances which potentially present obstacles to the placement of equipment for the new digital television (DTV) service.

The new rule was brought before the Commission by the National Association of Broadcasters and the Association of Maximum Service Television.

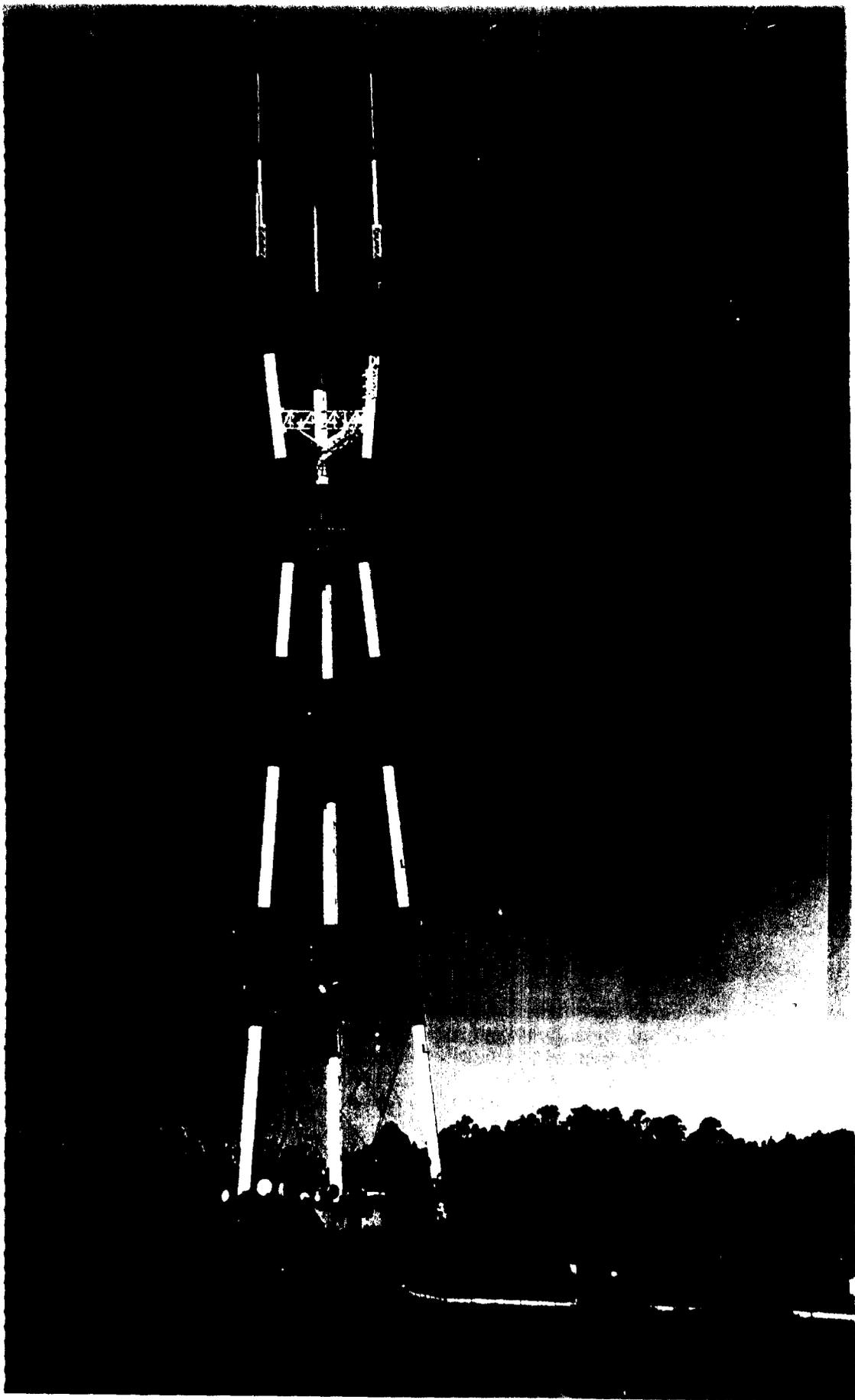
The proposed rule will effectively strip away the few remaining controls available to state and local officials. In effect, if the technology meets the 1992 ANSI standards, and does not conflict with occupational safety standards, local jurisdictions have little to say about where the equipment can be placed. The rule will also speed up the process for the industry by requiring prompt action by local authorities.

"We can put them (antennas) anywhere," said the vice president of a Seattle, Washington television station who asked not to be named. The same executive points out that the new FCC rule will effectively do away with environmental impact reports.

Once the public comment period has run, the FCC will consider any questions and objections raised and then publish any amendments to the rule. There is not a set time by which the FCC will pass the new regulation, with or without modifications.

Public comment on a Notice of Proposed Rule Making, FCC 97-296, opens Oct. 30 and will close Dec. 1. The proposed new rule can be found at the FCC's web site at www.fcc.gov.

-Carol Quamtek



I OPPOSE ANY EXPANSION OF SUTRO TOWER FOR THE FOLLOWING REASONS:

- A suitable site for digital TV antennae already exists on Mt. San Bruno such that Mount Sutro will be obsolete and no longer needed.
- I am concerned about a reduction in property values in adjacent neighborhoods.
- I am concerned about the collapse of the Tower in the event of an earthquake
- I am concerned about the collapse of the Tower in the event of a landslide as well as the weight of the Tower on the hill-side.
- I am concerned about the structural failure of the tower.
- I am concerned about projectiles from the Tower striking my neighborhood. (ie metal siding, bolts, wires, cables, tools, etc.)
- I am concerned about any additional interference with telephones, radios, TV's, etc. which limit the use and enjoyment of my home.
- I am concerned about the unknown health effects of combined analog and digital electromagnetic radiation.
- I oppose continued use or additions to Sutro Tower absent the completion of an independent reliable epidemiological study pertaining to any and all related health effects which Sutro Tower and or its emissions are responsible for introducing into my residential neighborhood.
- I oppose continued use or additions to Sutro Tower absent the completion of a comprehensive disaster preparedness plan by the City and County of San Francisco pursuant to the Master Plan which will examine the potential impacts of the tower on emergency response, upon the lives and health of the residents, and the mitigation plans needed to be put into place to combat the effects of the Sutro Tower on any emergency or evacuation plans.
- I am concerned about the unknown effects of the tower upon emergency disaster plans and upon the structural integrity of neighboring reservoirs.
- Sutro Tower is visually obtrusive and would like to see it phased out.

Name E. L. WEBSTER

Address #53 CLARENDOON AVE - San Francisco, California 94114-2101

Please send me a copy of the Revised EIR prior to approval, such that I may comment upon it. In addition, please add my name to the list of "Interested Parties" regarding any issue pertaining to Sutro Tower, Inc.

Signed: E. L. Webster Date: 9-3-97 (over)

In the past, Sutro Tower has impacted my life and or the lives of the occupants in my residence in the following manner :

On Dwelling ::

1. Electromagnetic ::

- Television Reception Interference
- Radio Reception Interference
- Short Wave Radio Interference
- Taping of Radio Or Cassettes Interference
- VCR Playing Clarity
- VCR Taping Clarity
- Telephone Clarity
- Answering Machine Clarity
- Garage Door Malfunction
- Spontaneous Power Surges
- Car Alarm Malfunction
- Other: _____

On Environment ::

2. Use and Enjoyment ::

- Noise from :
 - Night Repairs
 - Day Repairs
 - Cables blowing, Guy Wires
 - Rust from Tower on property
- Sandblasting Dust/Debris
- Bolts, small objects falling
- Metal siding falling on property
- Metal siding falling near property
- Painting Dripping on House
- Paint Dripping on Car or other
- Other: VISUAL / OFFENSIVE !

Additional Comments, Questions, and Concerns Regarding Sutro Tower::

Mt. Sutro is not the proper site for
A television tower - in the middle of
A beautiful and densely populated city.

I OPPOSE ANY EXPANSION OF SUTRO TOWER FOR THE FOLLOWING REASONS:

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- I am concerned about the unknown effects of the tower upon emergency disaster plans and upon the structural integrity of neighboring reservoirs.

Sutro Tower is visually obtrusive and would like to see it phased out.

Name Ray W. Oakley Jr. (3 people live in our house)
Address 151 Villa Ter. San Francisco, California 94114

Please send me a copy of the Revised EIR prior to approval, such that I may comment upon it. In addition, please add my name to the list of "Interested Parties" regarding any issue pertaining to Sutro Tower, Inc.

Signed: Ray W. Oakley Jr. Date: 9/3/97 (over)

In the past, Sutro Tower has impacted my life and or the lives of the occupants in my residence in the following manner :

On Dwelling ::

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- Ω Spontaneous Power Surges
- Ω Car Alarm Malfunction
- Ω Other: _____

On Environment ::

2. Use and Enjoyment ::

- Ω Noise from :
 - Ω Night Repairs
 - Ω Day Repairs
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- Ω Bolts, small objects falling
- Ω Metal siding falling on property
- Ω Metal siding falling near property
- Ω Painting Dripping on House
- Ω Paint Dripping on Car or other
- Ω Other: _____

Additional Comments, Questions, and Concerns Regarding Sutro Tower::

Without an independently
financed health impact study (P...)
on the effects the tower has
had, + with the proposed changes,
what it will have on the
people who live near the tower,
it seems irresponsible to move
ahead with Sutro Tower proposals.

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- I am concerned about the unknown effects of the tower upon emergency disaster plans and upon the structural integrity of neighboring reservoirs.
- Sutro Tower is visually obtrusive and would like to see it phased out.

Name SUSIE SCURICH

Address 181 Graystone Ter. San Francisco, California 94114

Please send me a copy of the Revised EIR prior to approval, such that I may comment upon it. In addition, please add my name to the list of "Interested Parties" regarding any issue pertaining to Sutro Tower, Inc.

Signed: Susan M. Scurich Date: 9/3/97 (over)

all three residents of our home oppose expansion of Sutro Tower,

I OPPOSE ANY EXPANSION OF SUTRO TOWER FOR THE FOLLOWING REASONS:

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Name Susie Scurich

Address 181 Graystone Ter. San Francisco, California 94 114

Please send me a copy of the Revised EIR prior to approval, such that I may comment upon it. In addition, please add my name to the list of "Interested Parties" regarding any issue pertaining to Sutro Tower, Inc.

Signed: Susan M. Scurich Date: 9/3/97 (over)

All three residents of our home oppose expansion of Sutro Tower,

Over 500 residents of the immediate area surrounding Sutro Tower have signed this petition.

HALT SUTRO TOWER EXPANSION

We, the undersigned residents of San Francisco, have not been adequately informed or advised about the proposed addition of Digital Television to Sutro Tower.

We request that this project be halted until a full, adequate, and independent analysis of the substantial environmental impacts, as well as the alternatives to the project, are made.

Please circulate the revised copy of the Draft EIR dated July 9, 1997 for public review and comment.

Name

Address

Phone

Date Petition Circulated _____

Cluff - San Francisco

Twin Peaks Improvement

Association

P. O. Box 31002

San Francisco, California 94131

October 10, 1997

Hand Delivered

Ms. Joan McQuarrie, Chief Building Inspector
Department of Building Inspection
1660 Mission Street
San Francisco, CA 94103

Dear Mr. McQuarrie:

Re: Sutro Tower Digital TV Antenna Permit - Application 9718925 - 9/25/97

This letter is in reference to the above building permit application, filed on September 25, 1997. Please be advised that the enclosed letter from Lloyd S. Cluff, former Chairman of the California Seismic Safety Commission, raises serious questions regarding the stability of Sutro Tower during a large earthquake, and puts the City on notice that, in his opinion, the addition of DTV antennae to Sutro Tower would be "foolhardy" without a full dynamic analysis conducted by structural engineers fully knowledgeable of the new seismic engineering data from the Loma Prieta, Northridge, and Kobe earthquakes.

Mr. Cluff has spoken with Mr. John Osteraas, Principle Engineer, Failure Analysis Associates, Menlo Park. Mr. Osteraas is willing and able to perform an analysis that we feel would be appropriate for the Sutro Tower.

The only prudent course of action for the City is to conduct such an analysis, inasmuch as the City considers Sutro Tower to be an "essential facility," and it is located within 5 miles of the San Andreas fault, in the midst of a highly populated RH1-D neighborhood, and adjacent to three of the City's main reservoirs, a large elementary school and a fire station.

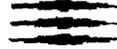
Thank you for your prompt attention to this matter.

Sincerely,

Nancy C. Hogan, President
(415) 621-3341

cc: Robert Passmore, Zoning Administrator
Judith Boyajian, Esq., Office of the City Attorney

Graham & James LLP



September 10, 1997

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SEP 10 1997

VIA MESSENGER

**CITY & COUNTY OF S.F.,
DEPT. OF CITY PLANNING
ADMINISTRATION**

Ms. Hillary E. Gitelman
Environmental Review Officer
San Francisco Planning Department
1660 Mission Street, Fifth Floor
San Francisco, California 94103-2414

**Re: Sutro Tower Digital Television (DTV) Draft Environmental
Impact Report - 96.544E, dated July 9, 1997**

Dear Ms. Gitelman:

This firm represents Watson Communication Systems, Inc. ("Watson"), which is the owner and operator of the telecommunication tower site located on San Bruno Mountain in San Mateo County. We are writing on behalf of Watson to provide comments on the Sutro Tower Digital Television (DTV) Draft Environmental Impact Report - 96.544E, dated July 9, 1997 (the "Draft EIR"), especially to correct the inaccuracies and misleading statements in the record concerning San Bruno Mountain as an alternative to the proposed Sutro Tower project (the "Project").

PRELIMINARY STATEMENT AND SUMMARY

As an initial matter, we must express our grave concern and conclusion that the Draft EIR has substantial deficiencies and consequently fails to comply with the standards of the California Environmental Quality Act, Cal. Pub. Res. Code Sections 21000 *et seq.* ("CEQA"), the CEQA Guidelines and other applicable legal standards. The Draft EIR thus is legally inadequate. The City and County of San Francisco Planning Department and related agencies (the "City") therefore must reject the Project under CEQA, the City's Discretionary Review Policy for Sutro Tower adopted July 14, 1988, Resolution No. 11399 ("Resolution No. 11399"), and other applicable authorities.

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Ms. Hillary E. Gitelman
San Francisco Planning Department
September 10, 1997
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In brief summary, the Draft EIR is legally insufficient for the following reasons, discussed in more detail below:

- **Inadequate and Misleading Project Description:** The Draft EIR fails adequately to describe the full extent of the Project as required by CEQA. The Project description is also inaccurate and misleading. Certain assumptions on which that description are based, particularly concerning Federal Communications Commission ("FCC") mandates, are inaccurate. The City and the public thus cannot fully assess the environmental impacts of the Project.
- **Inadequate and Inaccurate Description of Alternatives, Particularly the San Bruno Mountain Alternative:** The Draft EIR fails to consider the alternatives to the Project fully and adequately. In particular, the description of the San Bruno Mountain Alternative, which is the primary alternative, is inadequate and inaccurately portrayed. San Bruno Mountain is both a viable and an environmentally superior alternative. As explained below, the site is viable because Watson already has one tower at the site which could accommodate DTV broadcasting and has obtained approval from the County of San Mateo for an additional tower which could accommodate DTV broadcasting. Such a tower could be constructed well within the FCC timetable, provided that the FCC timely grants exemptions to the five kilometer rule, discussed below. Moreover, as conceded by the Project sponsor, none of the identified environmental impacts of the Project (including potential health risks, visual quality, noise, transportation, and the like) would be experienced by City residents by installing DTV on San Bruno Mountain instead of on Sutro Tower (DEIR page 6-6). Relying on the cited 1993 Browne report, the Draft EIR acknowledges that "DTV signals from San Bruno Mountain would be able to serve all of San Francisco" (Draft EIR ["DEIR"] page 6-5). Thus the Draft EIR itself establishes that the City could be equally well served by DTV transmissions from the more remote San Bruno Mountain location instead of Sutro Tower, without compromising DTV signal quality for the City.

For these reasons, as further discussed below, the San Bruno Mountain alternative to provide DTV to the City is both a viable and environmentally superior alternative to the proposed Project.

Ms. Hillary E. Gitelman
San Francisco Planning Department
September 10, 1997
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- **Failure to Identify and Address Significant Environmental Impacts and Mitigation Measures:** The Draft EIR is also insufficient for failing to identify any of the several significant impacts which will result from implementation of the Project and for failing to discuss corresponding mitigation measures.

The Draft EIR's failure to analyze the above topics in a legally adequate fashion violates CEQA. CEQA Guidelines, §§ 15120, 15121, 15123, 15126. If significant new information is added to the Final EIR in response to these and other comments to address the deficiencies noted, then the City must re-notice and re-circulate the EIR before certification pursuant to CEQA. Cal. Pub. Res. Code § 21092.1; CEQA Guidelines, § 15088.5. These comments and the anticipated comments of other interested parties, as indicated at the July 24, 1997, hearing, make recirculation appropriate in this case. Id.

SPECIFIC COMMENTS

I. THE DRAFT EIR IS INADEQUATE AND MISLEADING BECAUSE IT FAILS TO ACCURATELY DESCRIBE THE FULL EXTENT OF THE SUTRO TOWER PROJECT FOR DTV, AS REQUIRED BY CEQA.

Under CEQA, the Project must be fully, accurately, and adequately described. CEQA Guidelines §§ 15124, 15147. Notwithstanding this statutory mandate, the Draft EIR does not fully or adequately describe the Project, and is fraught with inaccuracies and misleading statements. Some such statements undercut the premises on which the Project is proposed.

A. The Project Description Is Inaccurate and Misleading Because The FCC Has Not Mandated The DTV Implementation Requirements Asserted In The Draft EIR Or Designated Sutro Tower As The Preferred Location For DTV Transmission

The summary of the Project (Section 1.0) is inaccurate and misleading in describing the purported need for the Project to comply with FCC requirements. Thus substantial doubt is cast on whether the Project sponsor has established a genuine need for the Project.

First, the Project sponsor misleadingly asserts (1) that the Project is being proposed to comply with the FCC mandate that "all television broadcast stations in

Ms. Hillary E. Gitelman
San Francisco Planning Department
September 10, 1997
Page 4

the United States implement DTV signal broadcasting" (DEIR page 1-1, paragraph 2, last sentence; emphasis added) and (2) that the FCC deadline for beginning DTV signal broadcasts in the Bay Area is October 1998 (DEIR page 1-1, paragraph 3). The impression thus given is that the Project is needed to provide DTV transmission for all television stations in the Bay Area by October 1998. This is incorrect. In actuality, the FCC's initial implementation requirement applies only to the affiliates of the four major networks. See Fifth Report and Order, FCC 97-116, April 3, 1997, MM Docket No. 87-208, at ¶ 76. Further, the applicable FCC deadline for major network affiliates in the top thirty markets (including the Bay Area) is May 1, 1999, several months later than the Project sponsor asserts. Id. Other commercial stations need not construct DTV facilities until May 1, 2002, and non-commercial stations have until May 1, 2003 to construct facilities. Id. The October 1998 deadline asserted in the Draft EIR is thus wholly misleading. The only relevance of October 1998 is that it represents a voluntary commitment by three stations which currently transmit NTSC signals from Sutro Tower to implement DTV in order to capitalize on an anticipated, and well-publicized, pre-Christmas television set sale demand. (See attached "Broadcasting & Cable Magazine" article dated July 21, 1997.)

The Draft EIR also is written in such a way as to imply, improperly, that the FCC has required that DTV broadcasts be located at Sutro Tower because DTV broadcasts must be made from a location no greater than five kilometers from the site of the existing NTSC broadcasts (DEIR page 1-1). This is incorrect. The five kilometer radius requirement is intended to give flexibility to broadcasters. In fact, the FCC may grant exemptions to the cited five kilometer requirement. See Sixth Report and Order, FCC 97-115, April 3, 1997, MM Docket No. 87-268 ("Sixth Order"), at ¶ 102.¹

Most disturbing, however, is the grossly misleading and inaccurate statement in the Draft EIR that the FCC has designated Sutro Tower as the "preferred location" for DTV transmission and/or has "required" DTV antenna installation at Sutro

¹ If a station wishes to locate its facilities outside the five kilometer radius, it must apply for approval from the FCC to move the facilities with a Section V-D application form, Appendix D to the Sixth Order, which includes the completion of a series of engineering surveys to determine that no interference occurs with other channels. (See Draft EIR at 6-4, paragraph 2.)

Ms. Hillary E. Gitelman
San Francisco Planning Department
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Tower. See DEIR page 2-1, paragraphs 2 and 3; see also DEIR page 1-3, paragraph 3, first sentence. Contrary to the express statements in the Draft EIR, the FCC has not mandated that DTV be broadcast from Sutro Tower. The FCC has never made – nor is it empowered to make – any determination that “the Sutro Tower location . . . was . . . designated as the prime facility for television broadcasting for San Francisco stations” (DEIR page 2-1, paragraph 2, first sentence). That statement is completely false. Indeed, before Sutro Tower was built, television stations were transmitting their signals from San Bruno Mountain and several continue to do so. Notwithstanding television broadcast coverage from Sutro Tower for NTSC transmission, the Project sponsor itself has acknowledged the DTV signals from San Bruno Mountain can serve all of San Francisco (DEIR page 6-5).

B. The Project Description is Inadequate Because The Physical Description and Discussion of Project Characteristics Are Inaccurate, Incomplete, and Misleading.

The physical description of the Project is deficient in that it suggests that the Project consists merely of the addition of a 125-foot beam which would be added to the tower at Level 6, approximately 755 feet above the base of the tower, with ten DTV antennas attached (DEIR page 1-3, second paragraph; page 2-8). Lacking in the Project description – although required by CEQA – are integral elements of the Project, including physical description of the ten proposed new antennas; auxiliary antennas, which are not presently proposed but which may be installed in the future (DEIR page 2-8); the seismic upgrade to Sutro Tower which recently received a categorical exemption from CEQA by the City but which is integral to the Project; and electrical use and tenant improvements (DEIR page 2-10). This approach results in impermissible segmentation. CEQA does not permit a Project sponsor to segment a Project to avoid full disclosure of the Project's significant impacts as a whole. CEQA Guidelines, §§ 15126, 15165, 15378(a), (c). Each of the inadequacies identified here is discussed briefly below.

First, the Draft EIR is deficient for failing to describe and discuss the impacts of the related antennas. First, there is no description of the size of the ten new DTV

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antennas and their diagrams and other visual depictions are insufficient.² The text's cryptic statement that "no auxiliary antennas are proposed at this time" (emphasis added) suggests that the Project may actually be much larger in scope. To the extent that auxiliary antennas are a fundamental part of the overall DTV system, or are anticipated to be added in a foreseeable time frame, they should be included within the Project description, and the foreseeable impacts they may have must be evaluated under CEQA. CEQA Guidelines, §§ 15126(a), 15165. Because auxiliary antennas are already in use at Sutro Tower for NTSC broadcasting, it is not merely speculative to assume that auxiliary antennas may be installed in the foreseeable future for DTV.

Further, the Draft EIR is misleading and inaccurate by omitting discussion of the related seismic upgrade to Sutro Tower, which the City Planning Commission determined was eligible for a categorical exception under CEQA. (See letter of City and County Planning Department dated June 6, 1997, attached.)³ The

² Figure 4, "DTV Antenna Front View" (DEIR at page 1-9), contains little detail and does not present a clear picture as to how the new 125-foot beam will be viewed by the public. Figures 7 and 9 (DEIR at pages 3-30 and 3-32, respectively) do not provide adequate pictures either. In particular, no side view is presented, to show the full impact of the addition and protrusion of the proposed beam. Also omitted from the photo montages in Figures 7 and 9 is any clear visual depiction of the ten digital antennas which are to be mounted on the 125-foot beam. Further, there is no evidence in the record to support the statement that the proposed "antennas that would be added to accommodate the Sutro Tower DTV project would not be readily noticeable, or create a substantial change in the appearance of the existing tower" (DEIR at page 3-28). In addition, that statement does not account for all visual changes associated with the Project.

Accordingly, the comments related to "Visual Quality Effects" (DEIR at pages 1-6 and 3-27 to 3-28) provide a misleading and incomplete picture of the visual effects of the proposed antennas and the proposed new 125-foot beam. In addition, the pictures do not depict the other "tenant improvements" which will necessarily be part of the new DTV antenna project, and which could have significant visual effects.

³ We understand that the Planning Commission approved of this exemption at a hearing on June 19, 1997.

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Project sponsor applied for this upgrade separately, although it is an integral part of the DTV Project implementation. This approach constitutes impermissible segmentation under CEQA. CEQA Guidelines, §§ 15126, 15165, 15378(a), (c); Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California, 47 Cal. 3d 376 (1988). It also is misleading to the public thus to attempt to minimize the full extent of the Project and thus the full extent of the expected significant impacts.

The Draft EIR also fails in its Project description to adequately address anticipated increased electrical use, installation, and operation. Again without appropriate description or analysis of the potential significant impacts, the Draft EIR cursorily refers to unspecified tenant improvements by stating that the Project may "require additional building and electrical permits to allow Sutro Tower tenants to "make necessary improvements in their leased space to accommodate DTV equipment" (DEIR page 2-10).

As a result of these omissions and/or misstatements in the Project description, the Project sponsor has failed to meet the requirements of CEQA. CEQA Guidelines, §§ 15124, 15127. Further, as noted above, Project segmentation is impermissible under CEQA. CEQA Guidelines, §§ 15126, 15165, 15378(a), (c). The Draft EIR is thus legally inadequate.

C. The "Project Location" Discussion Contains Misleading Statements Concurring Sutro Tower's Feasibility.

Also misleading is the Draft EIR's statement concerning "Project Location" (DEIR page 2-3, paragraphs 2-3, second sentence), that the Mount Sutro site "is the most feasible-site in San Francisco from which radio and television signals can be broadcast without shadowing from other higher locations." Even assuming that this statement is correct that a more suitable site is not available within the City, it ignores San Bruno Mountain as a more desirable alternative physically located outside the City, but which could serve the City. In addition, this discussion is irrelevant because "shadowing" is only an issue with NTSC transmission, not with DTV transmission. Most relevant is the conclusion of the 1993 Browne report, relied upon by the Project sponsor, that for all three stations analyzed, DTV signals from San Bruno Mountain would be able to serve all of San Francisco (DEIR pages 6-4 to 6-5). The Draft EIR thus acknowledges that the fundamental

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purpose of the Project, i.e., DTV transmission, can be accomplished from San Bruno Mountain.

**D. The Draft EIR Falls To Address The Impact Of
Resolution No. 11399.**

CEQA requires a Project description to include all required governmental approvals. CEQA Guidelines, § 15124. CEQA also requires that an EIR discuss any inconsistencies between a proposed project and applicable general or regional plans. CEQA Guidelines, § 15125(b). Although the Draft EIR contains a fleeting reference to the City's Discretionary Review Authority pursuant to Resolution No. 11399 (Section 2.4.2, "Approvals," at DEIR page 2-10, last paragraph), it fails to address its significance and evades the fact that the currently proposed Project is inconsistent with its principles.

Resolution No. 11399 was enacted in 1988 as a response to the City's grave concerns regarding an earlier proposed expansion of the Sutro Tower. That earlier proposal was less extensive than the current proposal in that it involved a building permit application to expand the transmission building at the base of Sutro Tower to accommodate the transmission equipment, including antennas, for two additional television stations.

The City Planning Department determined at that time that such an expansion would be an addition not in general conformity with the plans and exhibits approved as a part of the original 1969 Conditional Use Permit for Sutro Tower (Resolution No. 5967). Thus, on June 16, 1988, the City Planning Commission held a public hearing to determine whether Sutro Tower could be granted conditional use approval for the proposed expansion.

Based on testimony received at the hearing about the potential health impacts associated with the proposed expansion, the Planning Commission was prepared to find (and had drafted a motion so to indicate) that the expansion would not pass the test set forth in City Planning Code Section 303. That section provides that a conditional use may be authorized only after making findings that, among other things, the proposed use will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity and would not adversely affect the City's Master Plan (see Resolution No. 11399, page 2). The Planning Commission's proposed motion indicated that "in the face of testimony

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received regarding the possible health hazards . . . the Commission could not with clear conscience make the required Code Section 303 finding." Id.

Before the written motion could be finalized, however, the project proponent revoked its application. As a result, the Planning Commission adopted Resolution No. 11399 because of its substantial concerns about future proposed expansions and the potential detrimental effects thereof, to ensure that the Commission would have a policy of discretionary review over any and all proposed expansions at Sutro Tower. Id.

Given the significantly more extensive scope of expansion proposed by the current Project (to expand substantially the capacity of at least ten stations), plus new seismic-related construction, the Planning Commission would presumably have similar concerns today about the public safety and the potential inconsistency with the City's Master Plan.

The Draft EIR does not address why the Project, as currently proposed, should be viewed any differently from the consideration given to the earlier proposed expansion. The Draft EIR also does not address the consistency or lack of consistency with the Master Plan.⁴ In short, the Draft EIR is deficient in not addressing these issues.

II. THE DRAFT EIR IS INADEQUATE BECAUSE IT MISCHARACTERIZES AND INACCURATELY PORTRAYS THE ALTERNATIVES TO THE PROJECT, INCLUDING THE SAN BRUNO MOUNTAIN ALTERNATIVE.

Section 6.1, "Introduction," to the "Alternatives" in the Draft EIR improperly states CEQA's requirement for analyzing alternatives and its applicability to the proposed Project. In general, an EIR must describe a range of reasonable alternatives to the Project or Project location that could feasibly attain the basic Project objectives. CEQA Guidelines, § 15126. Further, the EIR should focus on alternatives capable of reducing the proposed Project's significant environmental effects. CEQA Guidelines, § 15126(d). The misstatements on DEIR page 6-1, second

⁴ The conclusory statement in Section 3.3 that "[t]he current project would not obviously or substantially conflict with any such policy" (DEIR page 3-33) is inadequate, particularly in view of the Resolution.

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paragraph, are generally based upon the faulty conclusions that (i) there are no significant impacts from the proposed Project, and (ii) alternatives such as San Bruno Mountain cannot provide DTV service to City residents.

A. The No Project Alternative Section Contains Misleading Statements.

Section 6.2, "No Project Alternative," contains misleading and irrelevant statements which imply, and may erroneously frighten the public into believing, that if DTV is not placed on Sutro Tower, then San Francisco would suffer some undescribed harm as no longer being the "primary city of license" for the television stations (DEIR page 6-3). This statement of opinion by the Project sponsor is simply false and appears designed to obscure from the public the environmental benefits of an off-site location. The FCC rules regarding the city of license guarantee the City coverage rights regardless of facility location. 47 CFR § 73.685(a). Thus, the City's status would be unaffected by the implementation of DTV at a site other than Sutro Tower (such as San Bruno Mountain).

Further, the discussion of the Project sponsor's reasons for rejection of the No Project Alternative mischaracterizes the FCC's requirements in that it suggests that Sutro Tower must provide "concurrent" NTSC and DTV transmission to comply with FCC rules (DEIR page 6-3). The FCC does not have any such requirement. Rather, the FCC requires that certain network affiliates transmit NTSC and DTV concurrently for a specified time period, but those broadcasters are not required to transmit DTV from the exact same location as their NTSC transmissions. See above discussion concerning the five kilometer radius rule and possible exemptions.

B. The Draft EIR Mischaracterizes And Inaccurately Portrays The San Bruno Mountain Alternative, Which Is An Environmentally Superior Alternative.

The Draft EIR, in Section 6.3, "Off-Site Alternatives," contains many factual misstatements and inaccuracies which may negatively influence the EIR decision-making process if not rectified – particularly concerning the most viable, and environmentally superior, alternative, San Bruno Mountain. In attempting to justify the Project sponsor's conclusion that the San Bruno Mountain Alternative is not

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the environmentally superior alternative, the Draft EIR contains statements which are flatly wrong and misleading to the public.

First, the Draft EIR attempts to discredit the San Bruno Mountain location by including an incomplete and misleading excerpt from a statement by Mr. Jay Watson, President of Watson, regarding NTSC transmission. As noted previously, NTSC coverage from Sutro Tower and San Bruno Mountain is not identical, but such service from San Bruno Mountain to the City is certainly not inferior. Second, NTSC coverage is irrelevant to the issue of DTV coverage because of the difference between the two technologies. More importantly, the Draft EIR acknowledges and relies upon the 1993 Browne report which established that for all three station analyzed, "DTV signals from San Bruno would be able to serve all of San Francisco" (DEIR page 6-5).

The Draft EIR also asserts, without references to any study or other factual substantiation, that the maximum RFR levels at San Bruno Mountain would increase 11.7 percent of the FCC 96 Guidelines if DTV were added, as contrasted with a rise of 1.6 percent for Sutro Tower (DEIR page 6-6). Nevertheless, the Draft EIR also acknowledges that impacts related to the Project would not occur with the San Bruno Mountain Alternative (DEIR page 6-6). Thus, the Project sponsor acknowledges that with acceptance of the San Bruno Mountain Alternative, there would be no RFR impact on the City and thus no impact on the residents and workers located near Sutro Tower, compared with the identified impacts resulting from DTV placement at Sutro Tower.

The Draft EIR also suggests that the FCC prefers Sutro Tower, by referring vaguely to the FCC's "finding" in its "initial authorization of the existing Sutro Tower site" (DEIR page 6-7). As stated earlier, there was no such FCC finding and transmission at San Bruno Mountain has been ongoing for many years. The Project sponsor also falsely claims that the alternatives cannot provide adequate facilities for the existing television stations at Sutro Tower. As discussed above, San Bruno Mountain can provide adequate facilities for the television stations required to broadcast DTV on the FCC timetable. Further, contrary to the Project sponsor's assertions, and as established above, there would be no lesser household coverage in San Francisco if DTV is transmitted from San Bruno Mountain.

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Similarly, in an apparent effort to discredit the San Bruno Mountain Alternative, the text states that it is at a lesser elevation than Sutro Tower and would present "greater potential hazards to airspace navigation" (DEIR page 6-7). In fact, the addition of DTV at San Bruno Mountain would pose no threat to aviation. The existing towers at San Bruno Mountain (elevation approximately 1,300 feet) are fully within FAA height requirements. Any new tower which Watson may construct to add additional DTV capacity presumably would be FAA approved so long as it is not higher than Watson's tallest existing tower (325 feet).

The Project proponent has asserted, in rejecting the San Bruno Mountain Alternative, that it is at "lesser relative elevation" (DEIR page 6-7). However, the impact of height differs significantly between NTSC and DTV transmission. The FCC has two distinct sets of rules for each of these methods of transmission. See 47 C.F.R. § 73.684 (NTSC); § 73.623(e) (DTV). Thus, it is inappropriate to base conclusions about DTV coverage on the experience of NTSC.

After eliminating the physical reasons asserted above by the Project sponsor for rejection of the San Bruno Mountain Alternative, the remaining reasons for the sponsor's rejection of the San Bruno Mountain Alternative are, bluntly, economic. The Project sponsor asserts that if DTV is located elsewhere, then Sutro Tower could be rendered useless for its principal function of television broadcasting. In this rapidly changing era of telecommunications, with a constant influx of developments in technology, this assertion is by no means a foregone conclusion. All of the potential uses of DTV cannot currently be predicted with specificity, as broadcasters explore different uses of the new spectrum, including the use of multiple channels within the digital frequency allotment. In any event, the potential for economic loss if the Project is not approved does not compel the conclusion, in the face of factual corrections to the record, that the Sutro Tower Project is environmentally superior to the alternatives presented, including the San Bruno Mountain Alternative.

III. THE DRAFT EIR IS INADEQUATE BECAUSE IT FAILS ADEQUATELY TO DISCUSS SIGNIFICANT ENVIRONMENTAL IMPACTS AND REQUIRED MITIGATION MEASURES, IN CONTRAVENTION OF CEQA.

The Project sponsor has conceded in the Draft EIR that none of the impacts identified if the Project were approved and implemented would occur if the San Bruno Mountain Alternative were adopted instead. Therefore, we do not discuss