

Ms. Hillary E. Gitelman  
San Francisco Planning Department  
September 10, 1997  
Page 13

in detail the shortcomings of the Draft EIR in failing to identify or adequately to discuss significant environmental impacts. Of course, CEQA requires that significant impacts be discussed in an EIR. CEQA Guidelines, §§ 15126, 15130(a). Contrary to CEQA, the Draft EIR cursorily concludes that "[t]he proposed project would not result in any potentially significant effects that could not be avoided if the project is implemented" (at page 5-1). At a minimum, the impacts discussion is incomplete because the Project description is inaccurate and incomplete, as discussed above. Therefore, the EIR must be augmented to discuss further the potential impacts on public health, existing zoning and plans,<sup>5</sup> land uses, transportation, and the like.

Because, based on the Draft EIR, the full scope of the Project has not been and cannot be assessed, its significant impacts have not been discussed as required. Thus, this incomplete analysis has resulted in the erroneous conclusion that no

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<sup>5</sup> For example, the Draft EIR has insufficient discussion of the Project's alleged compatibility with existing zoning and plans, including the City's Master Plan, which provides policies concerning land use and physical environmental issues. First, the "compatibility" of the Project with such plans cannot be fully assessed because of the incomplete Project description. Moreover, the Draft EIR concludes, without any substantive discussion, that the Project "would not obviously or substantially conflict with any such policy [related to physical environmental issues in the City's Master Plan]" (DEIR page 3-33). The record lacks support for such a conclusion. At a minimum, an inference is drawn that there is some conflict with these plans. The City made a previous determination that the 1988 proposed expansion of Sutro Tower would conflict with specific goals contained in the City's Master Plan. Therefore, the Project proponent should be expected thoroughly and specifically to explain why a further proposed expansion of Sutro Tower does not present an inherent conflict with the goals of the City's Master Plan. Finally, under CEQA the presence of any conflict between a project and adopted environmental plans and goals of the community will normally have a significant effect on the environment (CEQA Guidelines, Appendix G, subpart (a)). Conversely, the absence of any conflict will not preclude a finding that a significant environmental effect exists. Thus, the lack of adequate discussion on compatibility with the Master Plan demonstrates but one fundamental conflict with the Project sponsor's determination that no significant impacts are associated with the Project.

Ms. Hillary E. Gitelman  
San Francisco Planning Department  
September 10, 1997  
Page 14

mitigation measures are required. The EIR must provide for adequate mitigation measures for the significant impacts identified in these and other comments.

For the foregoing reasons, Watson urges the City to reject the Draft EIR as legally insufficient under CEQA.

Thank you for your consideration of these comments.

Respectfully submitted,



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of  
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Enclosures

cc: Mr. Jay S. Watson (with enclosures)  
Maureen Bennett, Esq. (with enclosures) ✓

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September 10, 1997

VIA HAND DELIVERY

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Re: Sutro Tower Digital Television (DTV)  
Draft Environmental Impact Report (No. 96.544E)

Dear Ms. Gitelman:

I represent the Twin Peaks Improvement Association (TPIA) and the Midtown Terrace Homeowners Association (MTHOA) with regard to the above-referenced project. This comment letter is submitted on behalf of TPIA and MTHOA to inform the City that the Draft Environmental Impact Report (DEIR) for the proposed Sutro Tower Digital Television (DTV) project (the "Project"), fails to comply with the requirements of the California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA"), and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. and therefore must undergo substantial revision and be recirculated for public comment before it may be legally certified by the City.

As discussed below, the DEIR for the proposed Project, both in process and in product, is wholly inadequate, with the result that decision-makers and the public are deprived of information they require in order to assess the project fairly. CEQA requires an EIR to be an informational document which will inform public agency decision-makers and the public generally of the significant effects of a project, identify possible ways to minimize those effects, and evaluate project alternatives. The DEIR for the DTV Project fails to fulfill any of these fundamental goals. The DEIR provides insufficient detail on the scope of the Project and adverse impacts, incorrectly assumes without evidence that impacts are insignificant, fails to identify effective mitigation measures, and fails to adequately consider alternatives that are capable of mitigating the Project's significant impacts.

Many of the specific deficiencies in the DEIR have been and are being communicated to the City directly by my clients and other parties. This letter is intended to supplement and amplify those comments.

### **EXECUTIVE SUMMARY**

The DTV DEIR suffers from several systemic problems which undermine the accuracy and legitimacy of the entire document. Sutro Tower (the "Tower") was built prior to the enactment of CEQA has thus never before been subjected to environmental review. However, as the Proponent acknowledges, the Tower is a "deteriorated structure" which does not "meet current safety standards." It was designed in accordance with "safety standards applicable in 1969. Thirty years later, after decades of exposure and corrosion, the Tower is no longer at peak structural integrity and seismic safety." (See Exhibit A hereto, and discussion below.) Thus, this proposed DTV Project, which will add significant weight and windload to the Tower, must be evaluated in the context of overall structural and safety concerns for the Tower. But the DEIR does not do so. Instead, it focuses on radiofrequency radiation (RFR), which is a red herring to the extent that RFR deflects attention from the numerous other environmental issues.

The DEIR improperly segments environmental review of the DTV antenna installation from the related structural improvements. The proposed seismic and structural improvements are not categorically exempt from CEQA because, as acknowledged by the City and the Proponent, they will facilitate the DTV installation and may therefore cause significant adverse environmental effects. In addition, DEIR's descriptions of the Project and its environmental setting are inadequate because the project objectives are overly narrow, key elements of the proposal are omitted, and important aspects of the Project's setting are not described. The narrow Project objectives set forth in this DEIR exclude, by definition, any alternative sites. This defeats one of the central purposes of CEQA. In addition, the deteriorated condition of the Tower and the details of the beam and antenna installation process, including auxiliary antennas and transformers, are not discussed in the DEIR. Further, the RFR data is not current, and the DEIR fails to disclose the proximity of the Tower to schools, two reservoirs and a dedicated greenbelt.

The DEIR fails to analyze potentially significant adverse project impacts such as collapse or structural failure of the Tower, conflicts with the Community Safety element of the General Plan and Planning Commission Resolution No. 11399 (which found any expansion of the Tower's facilities would be detrimental to nearby residents). The DEIR also fails to analyze significant and adverse cumulative impacts from the Project including noise, visual impacts and interference with electronic equipment. Because the DEIR's significant impact analysis is fundamentally flawed, the DEIR improperly concludes that no mitigation measures are required.

The DEIR also violates CEQA because it fails to analyze any alternatives which could obtain the objectives of the Project. However, San Bruno Mountain is a feasible, environmentally superior alternative for DTV broadcasts which must be meaningfully analyzed.

For all of these reasons, the DEIR must be substantially revised and recirculated for additional public comment.

## DISCUSSION

### **I. THE DEIR IMPROPERLY SEGMENTS ENVIRONMENTAL REVIEW OF THE DTV ANTENNA INSTALLATION FROM THE RELATED STRUCTURAL IMPROVEMENTS.**

CEQA requires lead agencies to define the project under consideration as "the whole of an action." (CEQA Guidelines § 15378(a).) An EIR must therefore analyze all phases of a project, including reasonably foreseeable future expansion that may result from the initial phase. (CEQA Guidelines § 15126; Laurel Heights Improvement Ass'n. v. Regents of Univ. of Cal. (1988) 47 Cal.3d 376.) This requirement is necessary so "environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." (Bozung v. Local Agency Form. Comm'n of Ventura County, (1975) 13 Cal.3d 263, 283-84; City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1452.) A public agency may not segment a larger project into two or more small projects thereby masking environmental consequences; CEQA prohibits such a "piecemeal" approach. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 720.)

The City is currently processing two related applications submitted by Sutro Tower, Inc. (the "Proponent"). In addition to the DTV antenna installation which is the subject of the DEIR, the Proponent is also seeking a building permit to authorize seismic and structural improvements to the Tower. (See Exhibit A, hereto, containing correspondence between the City and the Proponent regarding the proposed structural improvements.) As the Proponent's attorney acknowledges in her May 9, 1997 letter, the Tower is a "deteriorated structure" which does not "meet current safety standards." (Exhibit A.) The Tower was designed in accordance with "safety standards applicable in 1969. Thirty years later, after decades of exposure and corrosion, the Tower is no longer at peak structural integrity and seismic safety." (Ibid.) The proposed improvements include bolting steel plates and steel angles to the Tower to reinforce its legs and other members. (Exhibit A, 5-14-97 letter from GCA Strategies.)

These structural improvements are not categorically exempt from CEQA because they will facilitate the DTV installation and may therefore cause a significant adverse environmental effect. Indeed, the upgrades are closely related to the DTV proposal. It would strain credulity to maintain that the structural upgrades, which will cost \$500,000 and are proposed at the same time as the antenna project, are coincidental and unrelated to DTV. The seismic and structural work is necessary because the DTV antennas and their massive support beam will add significant weight and windload to the deteriorated Tower.

Indeed, both the City and the Proponent have acknowledged in writing that the two projects are closely related. According to the Proponent's engineering firm, the design studies for

Hillary Gitleman  
September 10, 1997  
Page 4

the upgrades were based on the addition of "future equipment such as an HDTV antenna" and "the structural upgrades ... [will] allow[] for the addition of HDTV antenna in the future." (Exhibit A, 4/22/97 letter from Kline Towers.) Likewise, the City has determined, as stated in its May 24, 1996 letter to the Proponent, that "[t]he structural improvements proposed for Sutro Tower are necessary to permit existing stations to install ATV antenna." (Exhibit A.) There is no evidence or analysis suggesting that the deteriorated Tower could accept the new DTV antenna and beam and be in compliance with applicable regulations without the upgrades. In fact, the opposite is true.

A categorical exemption may not be utilized to evade CEQA compliance when there is any reasonable possibility that the agency's action may have a significant direct or indirect effect on the environment. (CEQA Guidelines § 15300.2(c); Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 206.) Thus, courts find the use of a categorical exemption improper for regulatory actions which may appear to be environmentally protective, if a fair argument can be made that the project may ultimately have a significant environmental effect. (See Dunn-Edwards Corp. v. Bay Area Air Quality Management District (1992) 9 Cal.App.4th 644, 654-55.)

In Dunn-Edwards, a regulatory agency tightened emissions standards for volatile organic compounds (VOCs) in architectural coatings and claimed (as does the Proponent here) that such action was categorically exempt under as an environmentally protective measure. (9 Cal.App.4th 652-655.) The court found the agency's use of a categorical exemption improper because the record contained evidence that the lowered emissions standard might prompt the use of more coats and more frequent applications of the lower quality products, thereby causing an increase in overall VOC emissions. (Id. at p. 657-58.) Because of the potential for adverse environmental effect, environmental review was required, and the agency's action constituted a prejudicial abuse of discretion. (Ibid.)

The situation here is also similar to that in McQueen v. Board of Directors of the Midpeninsula Regional Open Space Dist. (1988) 202 Cal.App.3d 1136, where the agency defined its project too narrowly in its notice of exemption. The Court of Appeal held that the use of the exemption for a land purchase was improper because no mention was made of the agency's simultaneous adoption of a use and management plan for the property. The narrow project definition was an example of "the fallacy of division," which can cause an agency to overlook a project's cumulative impacts "by separately focusing on isolated parts of the whole." (202 Cal.App.3d at p. 1144.)

As in the Dunn-Edwards and McQueen cases, even though the proposed structural upgrades are ostensibly to improve the Tower's safety and might not have adverse impacts if viewed in a vacuum, there is substantial evidence that they may nevertheless have significant adverse environmental effects because they will facilitate the DTV project. Thus, the upgrade activities are not categorically exempt and environmental review in full compliance with CEQA is

required prior to their approval.

Even if the upgrades could be properly described as a separate project, they would still need to be discussed in the DTV EIR in the context of a cumulative impacts analysis as a "closely related past, present, [or] reasonably foreseeable probable future project." (CEQA Guidelines § 15355.)

As a result, the upgrades must be analyzed in the same EIR as the DTV project so that the "whole of the action" is reviewed in a single environmental document. Comprehensive environmental review is necessary so that the effectiveness of the structural work can be properly assessed with regards to the seismic safety and integrity of the Tower, in light of the proposed installation of new DTV equipment.

**II. IN ADDITION, THE PROJECT DESCRIPTION IS INADEQUATE BECAUSE THE PROJECT OBJECTIVES ARE OVERLY NARROW, AND KEY ELEMENTS OF THE PROPOSAL ARE OMITTED.**

CEQA requires that an EIR contain a description of the proposed project including inter alia the project's characteristics and objectives. (Guidelines § 15124.) "An accurate, stable, finite project description is the sine qua non of an informative and legally sufficient EIR." (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193; see also Discussion following CEQA Guidelines § 15124.) Thus where a project description is curtailed, distorted or omits important aspects of the project, the EIRs entire analysis will be fundamentally flawed and the EIR cannot be legally certified under CEQA. (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 727; Santiago County Water District v. County of Orange (1981) 118 Cal.App.3d 818, 829.)

The project description in the DTV EIR is inaccurate, overly narrow, and omits key aspects of the project. To start with, as discussed above, the implementation of the structural and seismic upgrades must be included in the project description and analyzed in the EIR. In addition, the project description is also inadequate as follows:

- The project objectives are drawn overly narrowly. The DEIR states that the fundamental project objective is to enable *Sutro Tower* to provide concurrent DTV and NTSC broadcast signals. This objective is too narrow because it forecloses consideration of feasible alternative sites or projects which is impermissible under CEQA. (See, e.g., Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 735-37; City of Carmel-By-The-Sea v. U.S. D.O.T., (9th Cir. 1996) 95 F.3d 892, 903-08; Save the Niobara River Association, Inc. v. Andrus (D.Neb. 1977) 483 F.Supp. 844, 862.) This issue is further discussed below in Section VII of this letter.

- The DEIR fails to provide the weight or constituent materials of the 125-foot long beam, or to explain how it will be hoisted 755 feet up the Tower. The DEIR also fails to explain how this beam (which is 3 feet wide by 3 feet deep and as tall as a 12-story building) will be attached to the Tower. The DEIR states simply that “[n]o power impact tools are anticipated to be necessary for the installation process.” (DEIR at p. 1-3.) However, no other information is given regarding the installation process or what tools will be used. Will the beam be welded to the Tower? Bolted to the Tower? Tied to the Tower? Will additional moorings, cables or trusses be added? How will the antennas be attached to the beam? What safety precautions, if any, will be taken during the installation process to ensure that construction debris, tools, paint chips, etc do not fall on nearby residents or into the nearby reservoirs? The DEIR is entirely silent on these issues. However, such information is necessary so that reviewers and users of the EIR can assess the safety and adverse impacts of the installation process and the long-term impacts of having this additional 1,125 cubic foot beam plus its new antennas suspended an eighth of a mile above the neighborhood.
- The DEIR is ambiguous as to whether auxiliary DTV antennas will also be installed. The existing NTSC antennas have “stand-by” auxiliary antennas which broadcast when the regular antennas malfunction or are undergoing regular bi-monthly maintenance. (DEIR at p. 2-8.) Thus, it is reasonably foreseeable that the DTV antennas will also require auxiliaries. Installation and operation of auxiliary DTV antennas should be included in this project description. Likewise, the “additional data services” which the EIR states can be accommodated by the DTV antennas should also be described and included in the project description.
- The DEIR also fails to explain the “necessary [tenant] improvements” which it states may require additional building and electrical permits. The project description must describe and analyze the additional facilities, activities and permits necessary for the television station tenants to operate and maintain DTV and NTSC broadcasts simultaneously. In addition, since DTV allows multiple programs to be broadcast on a single channel, the existing stations may “sublet” broadcast capacity to other users. Thus, the possibility of a significant expansion of tenants and tenant activities should be considered. This is particularly important in light of City Planning Commission Resolution No. 11399 which found that expansion of the transmission building at the base of the Tower and the addition of new antennas would require a new conditional use permit and be “detrimental to the health, safety, convenience or general welfare” of nearby residents.
- The DEIR states that two additional on-site electrical transformers would need to be added (one for each 12 kilovolt feeder line) to serve the Tower. However, it fails to describe the installation, operation and maintenance of these transformers.

CEQA requires that that the full scope and objectives of the proposed project be adequately defined at the outset of environmental review and remain consistent throughout the review process. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance." (County of Inyo, 71 Cal.App.3d at pp. 192-193.)

Because the project description is not accurate or complete in light of the current circumstances, the DEIR is legally inadequate and may not be certified. An adequate DEIR would fully and accurately describe the whole of the activities under consideration, not just selected aspects of it.

### **III. THE DEIR'S DESCRIPTION OF THE PROJECT'S ENVIRONMENTAL SETTING IS INCOMPLETE AND RELIES ON STALE DATA.**

"An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and a regional perspective." (CEQA Guidelines § 15125; see also Environmental Planning and Information Council v. County of El Dorado (1982) 131 Cal.App.3d 350, 354.) However, the DTV DEIR's environmental setting discussion is deficient because it fails to adequately discuss existing environmental conditions, especially with regard to the structural integrity and seismic safety of the Tower. As a result, the DEIR is so obviously incomplete as to not meet the minimum requirements for disclosure.

Examples of the deficiencies in the DEIR's environmental setting description are as follows:

- The structural condition and seismic integrity of the Tower are not described. This is a particularly glaring omission in light of the statements of the Proponent's attorney that the Tower is a "deteriorated structure" which "after decades of exposure and corrosion, ... is no longer at peak structural integrity and seismic safety" and does not "meet current safety standards." (Exhibit A.) The DEIR must describe in detail the condition of the Tower in terms of its stability, seismic safety, metal fatigue, rust, corrosion, falling paint chips, and related issues. The currently applicable safety standards, pursuant to the City's Municipal Code, California Building code, Uniform Building Code (UBC), and Electronic Industries Association (EIA) TIA-222-F wind speed standards, at a minimum, should be set forth in

the DEIR. Such regulations are briefly referenced in the letter from the Proponent's engineering firm in Exhibit A hereto, but are not addressed in the DEIR. These and any other applicable standards must be explained, as well as whether the Tower currently complies with them. What earthquake magnitude can the Tower in its present condition withstand without damage? A description of such issues is a necessary part of the environmental baseline discussion so that the incremental Project effects of adding weight and windload to the Tower can be properly assessed.

- The description of adjacent land uses fails to identify two nearby public schools, two reservoirs at the base of the Tower, and the greenbelt, Sutro Forest, to the north and west of the Tower. No surveys for animal species of concern (i.e., endangered, threatened, etc) has been conducted. The City's emergency response and evacuation plans and routes for the area should also be described.
- The existing noise levels in the vicinity of the Tower must be quantified during a range of wind conditions. Simply stating that "[w]ind flowing through Sutro Tower on windy days has been perceived as a loud noise by some residents in the vicinity of Sutro Tower" (DEIR at p. 3-36) is not insufficient.
- The DEIR acknowledges that "[r]esidents in the vicinity of the Tower have complained about interference of the television/radio broadcasts with television and radio reception and with car theft alarm systems." (DEIR at p. 3-37.) However, no mention is made of interference with other equipment, such as computers, garage door openers, cellular phones and beepers.
- The DEIR should reference and describe the City's Planning Commission Resolution No. 11399 (1988) as an "adopted environmental plan[] and goal[] of the community." (CEQA Guidelines Appendix G, subd (a).) In Resolution 11399, the Planning Commission stated (1) that there is "substantial public concern surrounding the issue of electromagnetic radiation" from the Tower; (2) that the Planning Commission "could not, with clear conscience, make the required Code section 303 finding that ... [a proposed expansion of transmission facilities at the Tower] would 'not be detrimental to the health, safety, convenience of general welfare of persons residing or working in the vicinity.'"
- Even though the DEIR states that the main area of controversy involves radiofrequency radiation (RFR), it relies on incomplete, non-current data on the existing levels of RFR levels in the vicinity of the Tower. RFR was measured at a mere ten locations in December 1996 and there is no indication as to whether the regular or auxiliary antennas were operating that day. The bulk of the data relied on in the EIR (480 locations measured in 1988) is 9 years old, and was conducted with equipment that is less sensitive than that used today (i.e., a Holaday HI-3001 meter was used rather than an HI-3004).

(DEIR at p. 3-6.) In addition, there has been an expansion of transmissions from the Tower since 1988, particularly with regard to cellular antennas. The EIR also refers to subsequent measurements taken by Hammett & Edison in 1991 and 1993, but fails to provide the results. In addition, no mention is made of any relay or transmission towers that may exist in local off-site locations. It is crucial to have extensive, accurate and current data of the existing RFR levels on which to base the analysis of additional RFR

Because the DEIR lacks a proper description of the environmental setting, it is inadequate as a matter of law. (See San Joaquin Raptor, supra, 27 Cal.App.4th at p. 729.) Furthermore, the inadequate description of the environmental setting also makes unreliable: (1) the determination of whether all the environmental impacts of the project have been identified and analyzed in the DEIR; (2) all comparisons with alternative sites; and (3) a determination that all environmental impacts have been mitigated to insignificance. (Ibid.) The DEIR's failure to accurately and completely describe the project's environmental setting renders the document uncertifiable.

#### **IV. THE DEIR FAILS TO ANALYZE POTENTIALLY SIGNIFICANT ADVERSE PROJECT IMPACTS.**

An EIR must identify and focus on the significant environmental effects of a proposed project. (Pub. Res. Code §§ 21100(b)(1); 21061; CEQA Guidelines §§15126(a), 15143.) EIRs should be "prepared with a sufficient degree of analysis to provide decision-makers with information which intelligently takes account of environmental consequences." (CEQA Guidelines § 15151.) Identification of a project's significant environmental impacts is a central purpose of an EIR and is necessary to implement CEQA's policy that public agencies should not approve projects if there are feasible mitigation measures of project alternatives available to reduce or avoid the impacts. (Pub. Res. Code §§ 21002, 21002.1(a).)

In judging the legal sufficiency of an EIR, the focus is on "adequacy, completeness and a good faith effort at full disclosure." A number of court decisions have developed criteria for determining what constitutes a "reasonable" effort to analyze a projects' potential impacts. Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692 is particularly instructive on this point. That opinion emphasizes that an EIR must support with rigorous analysis and substantial evidence the conclusion that environmental impacts will be insignificant. (Ibid.) The DEIR for the DTV Project lacks such support for its conclusions.

To begin with the DEIR's analysis of significant environmental effects is fundamentally flawed because, as discussed above, the scope of the project analyzed is inaccurate and unduly narrow, and the baseline environmental setting is not fully and accurately evaluated and described. In addition, the DEIR's analysis is also inadequate in at least the following areas:

- No analysis is conducted as to whether, in light of the Tower's deteriorated condition and lack of structural integrity, the DTV installation project may increase the risk of collapse or failure of the Tower during an earthquake, storm or other adverse climatic event. Such a discussion is necessary and should focus on a range of possibilities from a single acute event such as a major earthquake, as well as the long term chronic stresses of metal fatigue, rust, corrosion, excessive weight on the Tower, and windload.
- The potential of an accident or electrical problem with the Tower to spark a fire in the adjacent greenbelt should be evaluated and discussed.
- The DEIR's conclusory statement that "none of the proposed modifications to the Tower would be expected to change [the] existing noise condition" (DEIR at p. 3-36) is unsupported by facts or analysis in the DEIR because no measurement of existing noise was conducted and no evaluation of changes to windflow through the Tower has been conducted.
- The DEIR incorrectly states that "potential conflicts with the [City's] Master Plan are considered by decision makers independently of the environmental review process." (DEIR at p. 3-33.) However, to the contrary, assessing whether a project will conflict with the local general plan or other adopted plans is a fundamental part of the CEQA process. (See CEQA Guidelines, Appendix G, Subd. (a), (z) [project will normally have a significant effect on the environment if it will conflict with adopted environmental goals of the community or interfere with emergency response or evacuation plans].) In this case, the DTV Project conflicts with:
  - a) Planning Commission Resolution No. 11399 which stated that the expansion of antennas or transmission facilities at the Tower would not meet the applicable standard that it "not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity"; and
  - b) The newly adopted Community Safety element of the San Francisco General Plan, which provides that the City must "[a]ssess the risks presented by ... potentially hazardous structures and reduce the risks to the extent possible." (Policy 2.5.) In addition, the same General Plan element requires the City to "[a]ssure that new construction meets current structural and life safety standards." (Policy 2.1.) The policies are designed to further the objective of "reduc[ing] structural and non-structural hazards to life safety, minimize property damage and resulting social, cultural and economic dislocations resulting from future disasters." (Objective 2.) In that the DEIR fails to analyze seismic and structural issues in any detail, it is impossible to even determine the consistency of the Project with these and other policies and

objectives of the General Plan's Community Safety element.

- The DEIR's analysis of RDR is also flawed in several ways. For one thing, no analysis is made of the consequences of operating main and auxiliary DTSC and DTV antennas, or any combination of them, simultaneously. Some of the auxiliary antennas generate more RF energy than the main antennas and are closer to sensitive receptors.
- The DEIR states that approximately 50% more energy may be necessary to operate the DTV antennas along with the existing transmitters (1,000-1,500 KVA in addition to 3,040 KVA currently used). (DEIR at p. 3-39.) As discussed above, two transformers will be added. The DEIR also states that people near a power line are in its "induction" zone (i.e., within a fraction of a wavelength from the source) and that controversy surrounds reports of the adverse effects on humans from exposure to the electric and magnetic fields present in homes from power lines and appliances. (DEIR at p. 3-4.) However, the DEIR fails to analyze the adverse impacts, related to EMF among other things, of increasing the power use at the site by 50% and two new transformers with homes only 250 feet away.
- The DEIR's conclusion that the existing interference with car alarms caused by AM and FM signals is not expected to change fails to address interference with other electronic equipment which is caused by the transmission of television, radio and other data services from the Tower.

**V. THE DEIR FAILS TO ANALYZE SIGNIFICANT AND ADVERSE CUMULATIVE IMPACTS FROM THE PROJECT.**

An EIR must analyze and discuss significant cumulative impacts of the project. (CEQA Guidelines § 15130; see also Pub. Res. Code § 21083(b).) Cumulative impacts are "two or more individual effects which, when viewed together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines § 15355.) The individual effects may be changes resulting from a single project or a number of separate projects. (CEQA Guidelines § 15355(a).) The cumulative impacts analysis is vital in preventing impacts which are individually minor but cumulatively considerable from overwhelming the environment. An EIR's cumulative impacts analysis must address "the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." (CEQA Guidelines § 15355.) The cumulative impacts analysis must include reasonably anticipated future activities of a project or associated with a project. (Discussion following CEQA Guidelines § 15130.)

As mentioned above, even if the structural and seismic upgrades could be considered a separate project, they would nevertheless need to be discussed and considered in this EIR as a closely related past, present, or reasonably foreseeable probable future project.

In addition, the DEIR must assess whether individual impacts from this project which are not found to be significant alone may become significant when viewed in conjunction with other existing impacts. (See Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 718-21, [holding that an EIR must find cumulative impacts are significant when they make a small contribution to an existing unacceptable environmental condition].) Thus, a proper analysis would require that the DEIR start by quantifying and evaluating the existing situation in the vicinity of the Tower with respect to seismic, structural and windload issues, noise, visual impacts, interference and other concerns. Then the analysis must address whether the Project will add to any of these adverse situations even incrementally. If so, the DEIR must deem the Project to have a significant cumulative environmental impact. And, of course, if the Project's contribution to an impact area changes an acceptable situation into an unacceptable one, then a significant cumulative impact must also be acknowledged.

The DEIR does not contain any analysis of cumulative impacts. Thus, the DEIR must be revised to add such an analysis regarding issues such as, without limitation, the following:

- The DEIR must assess the current structural and seismic stability of the Tower under existing and projected weight and windload conditions. If the integrity of the Tower is insufficient now, then any addition of weight and windload from the DTV antenna will exacerbate this preexisting unacceptable situation and must be considered cumulatively significant.
- The DEIR must likewise assess the current noise levels in the vicinity of the Tower caused by wind through the Tower during a range of conditions. If these noise levels are significant, then any measurable addition to these levels must be also considered significant.
- The DEIR states that the simplicity and design features of the Tower are currently "visually compromised by the busy feel of the unclad orange trusses, which form the antenna's platform, and the number of cables supporting the three antennas." (DEIR at p. 3-27.) It also states that the proposed new set of antennas would be noticeable "upon relatively close inspection, when in proximity to the Tower." (DEIR at p. 3-28.) In that the Tower's appearance is visually compromised now, the addition of new antennas will only increase the "busy feel" of the Tower, as viewed by the neighboring residents who live in close proximity. The visual impact must be considered cumulatively considerable.
- There is also an existing unacceptable environmental situation regarding the Tower's interference with electronic equipment. As discussed above, this interference occurs not only with TV, radio and car alarms, but also with computer and other equipment. To the extent that the proposed DTV transmission would increase the risk of such interference in any way, this too must be considered a cumulative impact of the Project.

**VI. THE DEIR IMPROPERLY CONCLUDES THAT NO MITIGATION MEASURES ARE REQUIRED.**

In addition to assessing the significant impacts of a project, EIRs must also set forth and describe mitigation measures to eliminate or minimize those effects. (Pub. Res. Code § 21002.1(a); 21100(b)(3); CEQA Guidelines § 15126(c).) Mitigation measures must be designed to minimize, reduce, rectify or compensate for the project's significant impacts. (CEQA Guidelines § 15370.) Indeed, this is one of the main functions of an EIR. (Pub. Res. Code § 21002.1(a).)

In this case, the DEIR's conclusion that no mitigation measures are required is fundamentally flawed because, as explained above, (1) there are indeed significant adverse impacts from this Project; and (2) the DEIR lacks adequate analysis to determine whether there are other significant adverse environmental effects. The DEIR must be revised to properly analyze significant impacts and to then set forth and describe feasible mitigation measures for these impacts.

**VII. THE DEIR'S ANALYSIS OF ALTERNATIVES VIOLATES CEQA BECAUSE IT FAILS TO ANALYZE ANY ALTERNATIVES WHICH COULD OBTAIN THE OBJECTIVES OF THE PROJECT, AS THOSE OBJECTIVES ARE CURRENTLY DEFINED, DESPITE THE EXISTENCE OF A FEASIBLE, ENVIRONMENTALLY SUPERIOR ALTERNATIVE FOR DTV BROADCASTS.**

CEQA requires that an EIR describe "a range of reasonable alternatives to the project ... which could feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project", and evaluate the comparative merits of the alternatives. (CEQA Guidelines § 15126(d).)

As discussed above, the DEIR's project objectives are too narrow because the fundamental objective is currently defined to require locating the DTV antennas at Sutro Tower. (DEIR at pp. 2-1, 6-3, 6-7.) As a result, it is impossible for any alternative site to meet the Project's fundamental objective. Such "outcome-forcing" manipulation of objectives in order to disfavor all alternatives to the proposed project is not tolerated by the courts. (See, e.g., Carmel-By-The-Sea, supra, 95 F.3d at 905; Kings County, supra, 221 Cal.App.3d 735-37;; Save the Niobara, supra, 483 F.Supp. at 862.) A project applicant's privately held goals cannot control an agency's decision on the reasonable range of alternatives; reasonable alternatives must be considered "even if they substantially impede the project or are more costly." (San Bernardino Audubon, supra, 155 Cal.App.3d at 750.) Thus, the Project's fundamental objectives must be broadened to a more reasonable scope, such as "To comply with the FCC's DTV mandate" or "To serve all of San Francisco with DTV."

Hillary Gitleman  
September 10, 1997  
Page 14

If logical and feasible alternative sites exist, ignoring them violates CEQA's mandate that projects not be approved if alternatives may lessen or avoid impacts. (See Citizens of Goleta Valley v. Board of Supervisors (1988) 187 Cal.App.3d 1167, 1179-80 ("Goleta I"); San Bernardino Valley Audubon Soc'y v. County of San Bernardino (1984) 155 Cal.App.3d 738, 750; see also Laurel Heights Improvement Association v. Regents of California (1988) 47 Cal.3d 376, 403-04.)

The San Bruno Mountain site is a feasible alternative location. (CEQA Guidelines § 15126(d)(5)(B)(2).) As the DEIR itself states, "DTV signals from San Bruno Mountain would be able to serve all of San Francisco." (DEIR at p. 6-5.) The DEIR, however, obfuscates this fact by making several inaccurate statements about the San Bruno Mountain site. (See comments submitted by Watson Communications Systems, Inc.) As a result, this site cannot be rejected simply because it does not meet the overly narrow objective of locating DTV at Sutro Tower.

Moreover, the San Bruno Mountain alternative is environmentally superior. (CEQA Guidelines § 15126(d)(5)(B)(1).) Because it is in a designated open space area, locating DTV antennas at San Bruno Mountain would not have the significant impacts including seismic, structural, noise, visual, RFR, interference and other adverse effects which result from the Tower's close proximity to residential land uses and other sensitive receptors. It is not acceptable to simply state, as the DEIR does, that "[I]f an off-site alternative was constructed and implemented, impacts identified for the proposed project at Sutro Tower would instead occur at the alternative site location." (DEIR at p. 6-5.) This unsupported statement is ludicrous because the nature and severity environmental impacts are largely dependent on the setting in which a project is implemented. As a result, once the Project's objectives are appropriately broadened to allow for consideration of alternative sites, the DEIR must evaluate and compare the San Bruno Mountain alternative, relative to its own environmental context, in a meaningful way. (CEQA Guidelines § 15126(d)(3).)

#### **VIII. THE DEIR MUST BE SUBSTANTIALLY REVISED AND RECIRCULATED FOR ADDITIONAL PUBLIC COMMENT.**

Where a lead agency adds significant new information to an EIR after public review and prior to final certification, CEQA requires that the agency issue a new notice and recirculate the EIR to the public and public agencies for additional comment and consultation. (Pub. Res. Code § 21092.) The revised environmental document must be subjected to the same critical evaluation that occurs in the draft stage. (Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813, 822.)

In light of the foregoing discussion, there is substantial new information concerning the project, its environmental setting, impacts, mitigation measures and alternatives which must be

Hillary Gitleman  
September 10, 1997  
Page 15

added to the DEIR in order to make it adequate under CEQA. Once this information is added, the revised DEIR must be recirculated to the public and public agencies so that they are not denied "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." (Sutter Sensible Planning, 122 Cal.App.3d at p. 822.)

In addition, recalculation is also necessary because, during the comment period for this DEIR, certain files for the Sutro Tower site which were requested by my clients were apparently missing from the City's file storage and were therefore unavailable. (See Exhibit B, 7/29/97 letter from Planning Department.) The public must have access to background materials so that they can fully comment on the DEIR during the public comment period.

### CONCLUSION

The DEIR is uninformative, inadequate and uncertifiable in its present form. Consequently, Twin Peaks Improvement Association and the Midtown Terrace Homeowners Association respectfully request that the City respond to their comments, substantially revise the Sutro Tower DTV DEIR accordingly, and recirculate the resulting DEIR for additional public comment, as required by CEQA. In addition, please include this comment letter and its attachments in the administrative record for the Project. Thank you for considering my clients' concerns.

Sincerely,



Reed W. Super

Encls: Exhibit A  
Exhibit B

# NEWS

October 29, 1997

## Tower trick

**Residents say Sutro Tower's owners are covering up seismic safety questions.**

By Savannah Blackwell

**WHEN SAN** Francisco's Planning Department sent out a notice in June that Sutro Tower's owners were planning to make the giant television and radio structure more safe in case of an earthquake, neighboring residents were relieved. They thought the consortium owning the tower was finally addressing their long-standing fear that the looming, 977-foot structure needed stabilization. So they didn't bother to turn out for a June 19 public hearing.

They wish they had known then what they know now.

The seismic upgrade, it turns out, wasn't just a safety plan. It appears to be part of a much larger program to add new high-tech digital-TV antennae to the tower. And those new antennae could make the tower unstable.

Sutro Tower Inc. -- a consortium of local broadcasters including KRON, KPIX, KGO, and KTVU -- has been planning for some time to add the new antennae, and the neighbors have been fighting the plans (see "Tower of Power," 11/6/96).

But last spring lobbyists for the tower consortium changed their tack. They appeared to have dropped the heavy new antennae from the immediate agenda, and they put forward a plan for "voluntarily" upgrading the tower's stability. If new antennae were ever added, the lobbyists argued, they would be much lighter and nothing to worry about.

In fact, the notice about the hearing on the seismic upgrade stated that any decision on adding new antennae to the tower would be a separate issue, to be decided at a later date.

Neighbors say they were duped. "We believe now [the hearing] was part of a two-part project," Twin Peaks

Improvement Association (TPIA) member Christine Linnenbach told the Bay Guardian. "Had we known that the plans submitted for this alleged seismic upgrade were directly related to Sutro Tower's expansion into digital television, we would have been out there in full force."

There's no doubt that the sort of equipment Sutro officials were initially discussing -- a 25,000-pound, 125-foot-long digital transmission pole with antennae attached -- would require structural improvements on the tower. According to a 1995 analysis by Kline Towers of Columbia, S.C., if the legs of the tower weren't strengthened, the additional digital television equipment would cause "leg failure."

But Sutro lobbyists say that stabilizing the tower isn't necessary. "As it turned out, the advanced television antennae are much lighter than originally forecast," Sutro Tower lobbyist Robert McCarthy told the Bay Guardian. "We decided it was the wiser course to voluntarily seismically upgrade the tower ..., which I thought would have been pleasing to the neighbors."

But there's more to the story: voluntarily stabilizing the tower would be noncontroversial and wouldn't require the same level of environmental review as would hanging heavy digital-television equipment on the tower. By making the stabilization appear to be a separate project, Sutro officials were able to win City Hall's approval this summer.

And the fact is, the Bay Guardian has learned, the heavy antennae are still part of the project. In an Oct. 27 interview Deborah Stein, one of McCarthy's partners, said the lighter antennae McCarthy mentioned are not what Sutro Tower has in mind. She said Sutro is still planning to hang the heavy pole -- because it will be more durable.

The neighbors, who are furious, feel the Sutro lobbyists tricked them.

"What they're doing is basically making an end run around City Hall," Linnenbach told the Bay Guardian.

### **The blackout**

The handling of the hearing, and what residents see as Sutro's attempts to avoid a complete environmental review, points to an alarming trend in the planning

process, Sutro's critics say. Well-heeled lobbyists are increasingly able to manipulate the system for the benefit of their corporate clients.

Through their lobbying firm, GCA Strategies, Stein and McCarthy have spent \$56,272 since the beginning of 1996 to influence legislation related to the Sutro Tower permits.

Sutro's critics also say the mainstream press has effectively blacked out the issue. Linnenbach said her group has repeatedly asked the San Francisco Chronicle and the San Francisco Examiner to write stories about Sutro's latest plans. To date, the Chronicle has not written anything and the Examiner has run only one short piece. The residents suspect a conflict of interest: the Chronicle owns KRON, a part owner of Sutro Tower, and the Examiner is the Chron's partner in a joint operating agreement.

In September, KGO's Dr. Dean Edell even urged listeners to support Sutro's digital project.

(The mainstream news blackout of Sutro Tower is nothing new. On Sept. 27, 1971, the Bay Guardian ran an article with the headline "It's Taller than Transamerica, as Tall as the Eiffel Tower, Almost as Tall as the Empire State Building, but You'll Never See It on KRON, KPIX, KGO, or KTVU." The story blamed local broadcasters' and dailies' blackout of Sutro's plans to construct the tower as part of the reason the original tower project was approved.)

### **Fair hearing?**

The notice of the hearing posed a problem for residents seeking to assert their rights, Linnenbach told the Bay Guardian.

"Notice needs to be factually accurate and fair such that San Franciscans have a reasonable opportunity to be heard," Linnenbach said. "The June hearing notice does not meet these requirements, because the city's notice clearly stated that the seismic project is completely unrelated to Sutro's digital television project."

Department of Planning zoning administrator Robert Passmore said that Sutro does not yet have approval to proceed with the digital project. Residents say Passmore has told them that if they can prove that digital and the

current analog technology are significantly different, Sutro Tower could face a hearing on the appropriateness of having the tower in a residential area in the first place.

Indeed, residents marked a victory when the Planning Commission decided in July to extend the public comment period of the environmental impact report for the digital project from Aug. 11 to Sept. 11. Planner Paul Maltzer, who is handling the Sutro matter, told the Bay Guardian that if planning officials decide that substantial new evidence and information has been put forward, they may choose to restart the EIR process.

### **Shaky ground**

Residents say that Sutro Tower Inc. should perform a thorough analysis of whether the tower with the added weight of the heavy digital-transmission pole would withstand an earthquake.

In a Sept. 10 letter to the Planning Department, Lloyd Cluff, who lives near Sutro Tower and who is past chair of the California Seismic Safety Commission, urged planners to require Sutro Tower Inc. to conduct a "dynamic analysis" of what would happen to the upgraded tower in the event of an earthquake. The 1995 Kline Towers analysis relied on 1991 Uniform Building Codes, which did not take into account effects of the 1989 Loma Prieta earthquake, the 1994 L.A. earthquake, and a 1995 earthquake in Kobe, Japan, in which many steel-frame structures similar to Sutro Tower collapsed or were severely damaged.

"The failure of modern steel-frame structures during the Northridge [L.A.] and Kobe earthquakes sent a shock wave through the steel industry," Cluff wrote.

Stein told the Bay Guardian that testing or studies other than the radiation and fall zone testing already planned as part of the seismic stabilization would be unnecessary.

"Sutro Tower is one of the most seismically stable structures in the city," she told the Bay Guardian.

"Structural stability is a technical science -- not one that should be affected by public opinion."

But in September 1992, Sutro Tower's vice president and general manager, Eugene Zastrow, admitted that attention had not been paid to the problem of corrosion at the tower for 20 years. "Continued neglect would lead to

even more serious problems in the future," he wrote in a Sept. 24, 1992, letter to neighbors.

California seismic safety commissioner Craig D. Comartin wrote in a May 1997 report that in the Kobe earthquake, most steel structures set in concrete and built before 1971 (as is Sutro Tower) collapsed.

Concerns about the tower's stability have compounded residents' long-standing worries that radiation from the tower is impairing their health.

Ramona Albright, of the Committee to Investigate Electromagnetic Radiation, told the Bay Guardian she believed that the additional digital equipment would add significantly to the amount of radiation emitted by the tower.

"Research indicates that in animal studies, rats avoid digital fields," Albright said. "We have an unusually high cancer rate in San Francisco. We also have [that] telecommunications tower."

[Return to top](#) | [Home](#)

■ ■ ■ ■ ■ ■ ■ ■ City and County of San Francisco  
Planning Department

# SUTRO TOWER DIGITAL TELEVISION (DTV)

DRAFT  
ENVIRONMENTAL IMPACT REPORT

96.544E  
July 9, 1997

Draft EIR Publication Date: July 9, 1997  
Draft EIR Public Hearing Date: July 24, 1997  
Draft EIR Public Comment Period: July 9 to August 11, 1997

Written Comments should be sent to:

Hillary E. Gitelman  
The Environmental Review Officer  
Planning Department  
1660 Mission Street, 5<sup>th</sup> floor  
San Francisco, California 94103-2414

Place  
Postage  
Here

Planning Department  
Office of Environmental Review  
1660 Mission Street  
San Francisco, California 94103-2414

Attention: Paul Maltzer, EIR Coordinator  
96.544E: Sutro Tower DTV EIR

Please cut along dotted line, and fill in  
blanks on the opposite side of this page.

**Return Request Required for  
Final Environmental Impact Report**

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**REQUEST FOR FINAL ENVIRONONMENTAL IMPACT REPORT**

**TO: Planning Department  
Office of Environmental Review**

**Please send me a copy of the Final EIR.**

**Signed:**

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**Please Print Your Name and Address Below**

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