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Via Hand Delivery by Doug Loranger
May 30, 2007

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

RE: Appeal of Planning Department Determination of CEQA Categorical Exemption for EarthLink WiFi Proposal, File No. 070077, Case No. 2007.0097E

Dear Supervisors:

This office represents the San Francisco Neighborhood Antenna Free Union (“SNAFU”) regarding San Francisco’s proposal to partner with EarthLink, Inc. in placing WiFi antennas throughout San Francisco. SNAFU is a city-wide coalition of individual residents and neighborhood organizations that focuses on the impacts of wireless technologies in San Francisco.

The conclusion of SNAFU after careful review of the San Francisco Planning Department’s (“Department”) Certificate Of Determination Of Exemption/Exclusion From Environmental Review (“Determination” or “Exh. A”) and other relevant evidence is that the Department’s determination that the installation of 2,200 transmitters and 14 backhaul devices is exempt from CEQA review is legally incorrect. Because placing transmitters of radiofrequency radiation on street poles would be a significant expansion and completely different use of those poles, because the numbers of transmitters proposed to be added are large and not limited, because the proposed transmitters are not accessory to the poles, because the potential cumulative impacts of the radiofrequency radiation that would be emitted by the transmitters may cause a significant environmental impact, and because that radiation per se might cause a significant environmental impact to both humans and to endangered, rare, or threatened species, this proposal is not exempt from review pursuant to the California Environmental Quality Act (“CEQA”). The issuance of the Certificate of Determination of Exemption by the San Francisco Planning Department was thus error and an abuse of discretion by the Department.

A CEQA review would more adequately analyze the potential significant adverse impacts of this proposed project, as well as alternatives and mitigations thereto, and must be prepared. Approval of this project as proposed and without proper CEQA review will undoubtedly result in violations of state and local laws, including CEQA. A thorough

review, such as an initial study or an environmental impact report, would provide more and better analysis of the potential adverse impacts of the project.

Please include this office and that of SNAFU, 1835 Broderick Street, San Francisco, CA 94115, in any further communications to the public by your office regarding the proposed categorical exemption for this project. In particular, please provide us with a copy of your determination.

Sincerely,

Jeff Hoffman

INTRODUCTION

The City and County of San Francisco (“San Francisco”) proposes to authorize EarthLink, Inc. to install “approximately 2,200 transmitters ... and 14 backhaul devices” across the city in order to provide wireless internet access to its residents. (Exh. A, p. 2, ¶ 1.) Both of these devices would transmit as well as receive signals. (*Id.*, ¶ 4.) “The proposed project would entail installation of transmitters on existing public or private street poles....” (*Id.*, p. 3, ¶ 1.)

As fully discussed below, SNAFU strongly opposes this proposal. Knowledge and understanding of potential medical impacts from exposure to the radiofrequency radiation that would be emitted by the proposed transmitters is in its infancy, but the studies to date on the health effects of radiofrequency radiation emitted by similar devices indicate that there is a reasonable chance of significant medical impacts to humans and non-humans exposed to this radiation, even at low levels. Humans who do not wish to expose themselves to this potential danger, along with all non-humans, would nevertheless be exposed if this proposal were to go forward. Exempting it from CEQA does not provide any environmental review, which is certainly not in the interests of humans who do not wish to expose themselves to the potential medical impacts of this technology, nor of the non-humans that will have no knowledge of the emissions and thus no choice but to expose themselves to the radiofrequency radiation emissions should they get close enough to a transmitter.

Moreover, San Francisco’s Precautionary Principle “requires the selection of the alternative that presents the least potential t[h]reat to human health and the City’s natural systems.” (San Francisco Environment Code, Chapter 1, § 101.) An underground fiber optic cable network, such as the one that now exists in San Francisco, would meet the objective of providing universal internet access without the potential threats to human health and wildlife that may be caused by WiFi transmitters. By its own law, San Francisco is thus required to choose the fiber optic cable alternative for this objective. SNAFU therefore urges the Board of Supervisors to require proper environmental review of this proposal.

I. THE PROPOSED PROJECT IS NOT ELIGIBLE FOR A CATEGORICAL EXEMPTION, BECAUSE IT FALLS WITHIN THE EXCEPTION TO EXEMPTIONS DUE TO POTENTIAL CUMULATIVE IMPACTS.

San Francisco claims that this proposal is exempt from CEQA review because it qualifies for Class 1 and Class 3 exemptions. However, “[a]ll exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” (14 CCR, § 15300.2(b) [referring to the classes of exemptions claimed by the Determination].)

The near consensus limit of radiofrequency radiation to which a person may be exposed before serious medical harm occurs is 1 mW/cm² (the level at which thermal effects of the radiation would occur). While the proposal itself would not expose persons to that level of radiation, the background levels in San Francisco have not been measured or calculated according to a study that calculated exposure limits regarding this proposal.

(Exh. B, p. 1, “Executive Summary.”) There are many other projects currently transmitting signals that emit radiofrequency radiation in San Francisco, such as 530 licensed cellular sites with over 2,500 transmitting antennas; hundreds of thousands of cell phones; thousands of unlicensed WiFi hotspots in cafes, bookstores, homes and other locations; police, fire and other emergency transmitting facilities; and 138 AM, FM, broadcast television and other transmitters operating on Sutro Tower. (Exh. B, p. 4, “How Much Exposure,” ¶ 1.) “Absolute” or total exposure would be the exposure to the sum of the background radiation that already exists from these numerous emitters added to the “relative” exposure to radiation that would be emitted by this proposal. (*Ibid.*) Even though, without actual field measurements, it is impossible to determine what the absolute exposure would be, it is certain that persons and animals in San Francisco are already exposed to some level of radiofrequency radiation from these other emitters. With the addition of more and more transmitters emitting radiofrequency radiation to San Francisco’s environment, each new addition could be significant. Therefore, this proposal may very well have a significant cumulative environmental impact, because the background radiation combined with that of this proposal may be above the consensus limit that causes thermal effects and therefore medical impacts. (*Id.* at p. 6, “Conclusion.”) This proposal is thus not exempt from CEQA review, because it clearly fits the exception for cumulative impacts.

II. THE PROPOSED PROJECT IS NOT ENTITLED TO AN EXEMPTION FOR EXISTING USE, BECAUSE THE TRANSMITTERS WOULD BE A SIGNIFICANT EXPANSION OF THAT USE.

San Francisco proposes to install “approximately 2,200 transmitters ... and 14 backhaul devices” across the city in order to provide wireless internet access to its residents. (Exh. A, p. 2, ¶ 1.) Both of these devices would transmit as well as receive signals. (*Id.*, ¶ 4.) “The proposed project would entail installation of transmitters on existing public or private street poles....” (*Id.*, p. 3, ¶ 1.) These street poles do not currently transmit any signals or emit any radiofrequency radiation.

The Department issued the Determination that this proposal is exempt from CEQA review pursuant to three subsections of the CEQA Guidelines. (Exh. A, p. 1, “Exempt Status.”) One exemption provides that a “minor alteration of existing public or private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination” is exempt from CEQA review. (Cal. Code Regs., tit. 14 (“14 CCR”), § 15301.) “Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services” are included in this exemption. (14 CCR, § 15301(b).)

Under this exemption, the Department claims that this proposed project is exempt from CEQA review because “[t]he proposed project would result in a negligible expansion of utility services in the City, in the context of the broader public utility infrastructure system.” (Exh. A, p.3, ¶ 1.) “Negligible” means “so small or unimportant or of so little consequence as to warrant little or no attention.” (Webster’s New Collegiate Dict. (6th ed. 1979), p. 762, col. 2.) In stark contrast to the Department’s claim, the emission of radiofrequency radiation has warranted so much attention from SNAFU that it has, at its own expense, appealed the Department’s Determination. The

proposal calls for 2,200 transmitters. Street poles are generally used to connect wires or support lights. Adding 2,200 transmitters to street poles around San Francisco makes this proposal a large expansion of existing use of those poles, not a small one. Not only is 2,200 a very large number of transmitters, but this would be a completely new use of the poles.

This proposal will add even more radiofrequency radiation to the atmosphere of San Francisco. (Exh. A, p. 5, ¶ 3.) There are already approximately 530 licensed cellular sites with over 2,500 antennas transmitters for hundreds of thousands of cell phones, thousands of unlicensed WiFi hotspots in cafes, bookstores, homes and other locations; police, fire and other emergency transmitting facilities; and 138 AM, FM, broadcast television and other transmitters operating on Sutro Tower (Exh. B, p. 4, “How Much Exposure,” ¶ 1), all of which emit radiofrequency radiation. The additional radiofrequency radiation that would be emitted by this proposal could very well create a significant environmental impact, including a significant cumulative impact. Cumulative impacts are so important that CEQA recognizes them as a reason to prepare an environmental impact report. This could be of great consequence to people and wildlife such as birds that could live, sleep, or perch right next to these transmitters, one of which – the bank swallow – is listed as threatened pursuant to the California Endangered Species Act, as will be fully discussed in a subsequent letter. This proposed expansion of the function of the street poles is neither negligible, unimportant, nor of little consequence and thus does not meet the standards of this claimed exception.

Moreover, the proposal is not for a “negligible expansion,” but instead for an entirely new function of street poles: transmitting, or more accurately, aiding in transmission of, radiofrequency radiation. The street poles upon which the transmitters would be installed do not generally transmit any signals, nor do they emit any radiofrequency radiation. Their current function is generally limited to connecting wires or supporting lights, but under this proposal a significant function would become supporting transmitters of radiofrequency radiation.

The class 1 exemption for “existing use” claimed by San Francisco only applies to negligible expansions of existing uses and does not apply to an entirely new use such as this one. (See, e.g., *Turlock Irrigation Dist. v. Zanker* (2006) 140 Cal.App.4th 1047, 1066 [exemption for water conservation rules for *already operating* water system]; *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793 [exemption for allowance of certain persons to use *already existing* parking spaces free of charge].) Categorical exemptions are to be narrowly construed in order to “afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Id.*) Because supporting devices that emit radiofrequency radiation is not a current use of street poles and because that use would be added to the function of those poles under this proposal, this proposal is neither an existing use pursuant to this claimed Class 1 exemption, nor is it a negligible expansion of existing use. Instead, it is a significant and entirely new use of street poles. The Class 1 exemption claimed is thus not applicable to this proposal.

III. THE PROPOSED PROJECT IS NOT ENTITLED TO AN EXEMPTION FOR LIMITED NUMBERS OF NEW FACILITIES OR STRUCTURES, BECAUSE THE NUMBER OF NEW STRUCTURES IS NOT LIMITED AND BECAUSE THE PROPOSED TRANSMITTERS ARE NOT “ACCESSORY” TO THE STREET POLES.

San Francisco also claims a Class 3 CEQA exemption for this proposal, which applies to “construction and location of *limited numbers* of new, small facilities or structures [and] installation of small new equipment and facilities in small structures.” (14 CCR, § 15303, emphasis added.) “Limited” in the sense used here means “confined within limits.” (Webster’s 6th New Collegiate Dict. (1979) p. 661, col. 2.) The City of San Francisco has placed no limits on the number of transmitters. Instead, the City plans to place 2,200 transmitters throughout San Francisco. Because categorical exemptions must be narrowly construed, 2,200 transmitters cannot be defined as a “limited number.” For this reason, this exemption does not apply to this proposal.

A section of the CEQA Guidelines cited by the Department as an example of the claimed Class 3 exemption is for “[a]ccessory (appurtenant) structures.” (Determination, p.3, ¶ 2; 14 CCR, § 15303(e).) A WiFi transmitter is not accessory to a street pole. Used in this sense, “accessory” means “an object or device ... adding to the ... effectiveness of something else.” (Webster’s New Collegiate Dict. (6th ed. 1979), p.7, col. 1.) The purpose of street poles is not to transmit signals or to support devices that do so, but to connect wires or support lights. The addition of transmitters to the poles does not add to the effectiveness of those poles in connecting wires or supporting lights. Therefore, new transmitters installed on street poles would not be accessories, but would instead add a completely new function to those poles. This exemption, therefore, does not apply to this proposal.

IV. THE PROPOSED PROJECT IS NOT ELIGIBLE FOR A CATEGORICAL EXEMPTION, BECAUSE IT MAY HAVE A SIGNIFICANT ENVIRONMENTAL EFFECT.

“Only those projects having no significant effect on the environment are categorically exempt from CEQA review. [CITATIONS] If a project may have a significant effect on the environment, CEQA review must occur” (*Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102.)

As will be fully discussed in a letter to follow, the radiofrequency emissions *from this proposal alone* may have significant medical impacts on humans and on threatened bank swallows. Under this proposal, those poles might have transmitters emitting radiofrequency radiation.

A report by Dr. Magda Havas, an expert on the health effects and placement of radio frequency antennas, will be attached to the subsequent letter. Basically, Dr. Havas’s report will show that the radiofrequency radiation from this proposal *alone* may cause significant environmental harms due to health effects on both humans and birds, including the threatened bank swallow, because levels of radiofrequency radiation that

are well below the 1 mW/cm^2 needed to cause thermal effects have been shown to cause possible impacts to health.

CONCLUSION

For the foregoing reasons, this proposed project is not eligible for an exemption from CEQA review. There is a reasonable chance that the proposal would cause significant environmental impacts in the form of health effects, which requires an initial study at the very least. A proper course of action would be to prepare an initial study to determine whether this proposal may cause significant health effects on humans or bank swallows. Because the level of background radiofrequency radiation at any location in San Francisco is unknown, an initial study could determine those levels at different locations. Because of the significant health effects that may be caused by the cumulative effects of this proposal, an initial study could determine whether those effects would occur and, if so, whether those effects could be mitigated, and what mitigations would be appropriate and effective.