

**This form is intended solely for use with listings and sales
of units in the Millennium Tower in San Francisco.**

Two newspaper articles regarding a condominium high-rise building in San Francisco known as the “Millennium Tower” came to the attention of the San Francisco Association of REALTORS® (“SFAR”) on August 1, 2016. The first, entitled “*S.F. tower for rich, famous is sinking*,” was in the San Francisco Chronicle; the second, entitled “*Finger pointing begins in Millennium luxury tower mess*,” was in the San Francisco Business Times. Copies of both of these articles are attached and they can also be accessed presently at the following links: <http://tinyurl.com/MTChronicle080116> and <http://tinyurl.com/MTBusTimes080116>. Other articles or sources of information in this regard may be available.

Buyers are urged to carefully review all such information and conduct their own investigation before the purchase of any unit in the Millennium Tower, preferably during Buyers’ inspection contingency, if any. This includes, without limitation, by (a) contacting all potential sources of relevant information and documents, such as the Millennium HOA (Telephone No. 415/874-4700) and (b) engaging independent qualified experts, such as a structural engineer, an attorney, or an appraiser, to answer any questions, provide advice and otherwise aid in investigating these matters to Buyers’ satisfaction.

Brokers/Agents (and SFAR) have not investigated or verified, and will not be investigating, verifying or updating, any of the information in the above-referenced or any other articles, or the issues they raise. No obligation is undertaken by providing this advisory to provide similar advisories now or in the future regarding the Millennium Tower or any other property.

The undersigned acknowledge receipt of this Advisory and the attached August 1, 2016 articles from the San Francisco Chronicle and the San Francisco Business Times.

Seller _____ **Date** _____

Seller _____ **Date** _____

Buyer _____ **Date** _____

Buyer _____ **Date** _____

**BROKERS/AGENTS CAN ADVISE ON REAL ESTATE TRANSACTIONS ONLY. FOR LEGAL OR
TAX ADVICE, CONSULT A QUALIFIED ATTORNEY OR CPA.**

SF's landmark tower for rich and famous is sinking and tilting

By [Matier & Ross](#)

Updated 10:23 am, Monday, August 1, 2016

The Millennium Tower, a leading symbol of San Francisco's new high-rise and high-end living, is sinking — setting the stage for what could be one of the most contentious and costly real estate legal battles the city has ever seen.

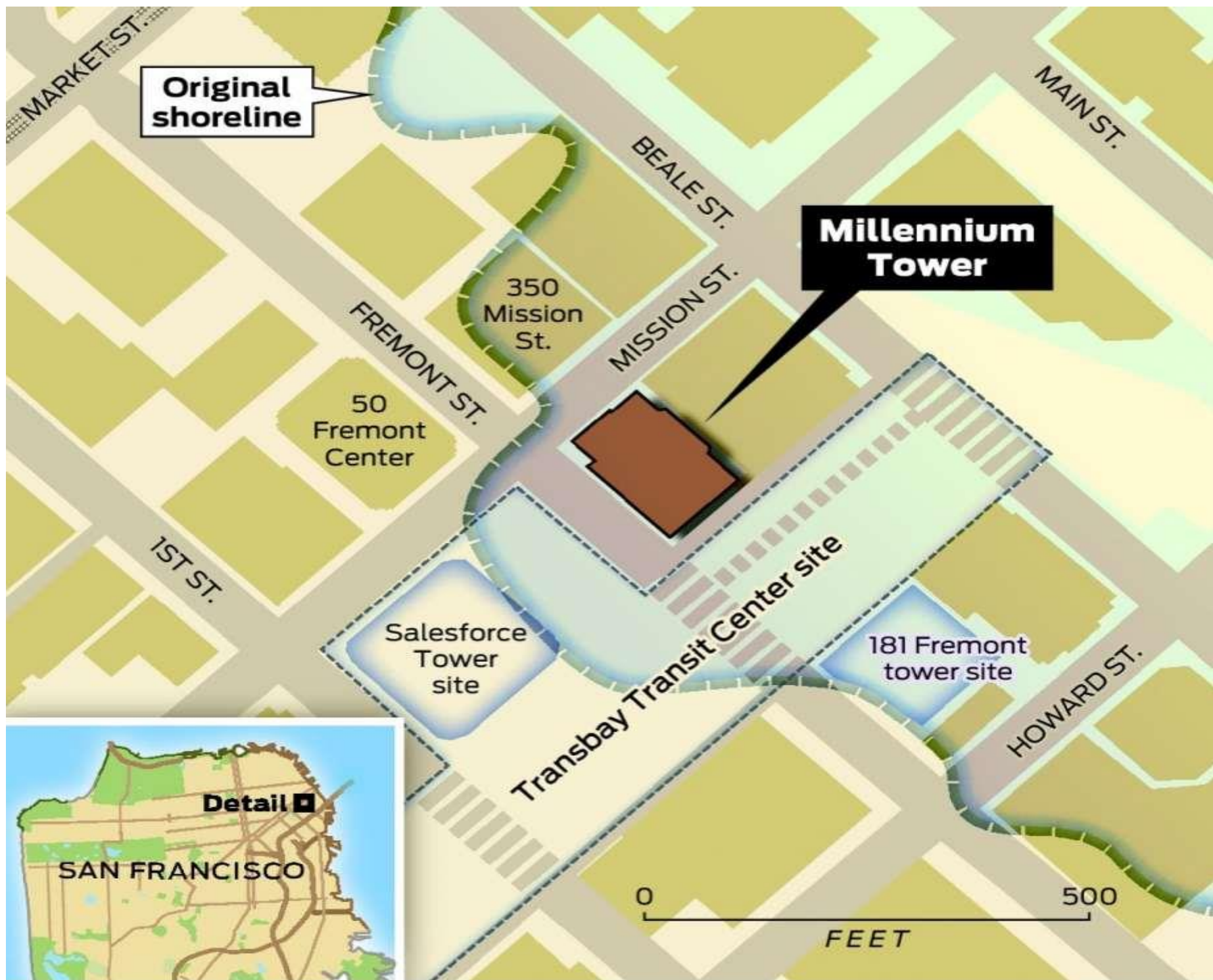
Rated by [Worth magazine](#) as one of the top 10 residential buildings in the world, the Millennium at 301 Mission St. is home to such A-listers as [Joe Montana](#) and [Hunter Pence](#). Until his recent death, it's where venture capitalist [Tom Perkins](#) owned a penthouse. Condos sell for anywhere from \$1.6 million to north of \$10 million.

However, since its completion in 2008, the 58-story building has sunk 16 inches, according to an independent consultant hired to monitor the problem. It has also tilted 2 inches to the northwest.

“That’s significant ... and of concern,” said Professor [Greg Deierlein](#), director of the [John A. Blume Earthquake Engineering Center](#) at [Stanford University](#), who has been called in to evaluate the designs of a couple of San Francisco’s newer downtown high-rises.

Deierlein noted that the 88-story Petronas Twin Towers in Malaysia — which were the world’s tallest buildings when they opened in 1998 — have sunk less than 3 inches. Their tilt, or “differential settlement,” is less than half an inch.

This isn’t just an issue for the Millennium’s owners and wealthy inhabitants: It could be a headache for taxpayers as well. There are potentially big public dollars at stake, with the owners alleging that the massive hole dug next door for the new [Transbay Transit Center](#) is to blame for the building’s issues.



The problem first came to light in 2010 when the [Transbay Joint Powers Authority](#), the public agency constructing the transit center, hired the consulting firm [Arup](#) to gauge how the excavation could affect the tower.

According to the consultant's initial report, by the time excavation began — two years after the \$350 million Millennium was completed — the tower had already settled 10 inches. That was 4 inches more than its builders had predicted for the life of the high-rise.

Since then, “the building has continued to settle vertically, now 16 inches,” representatives of the Transbay Joint Powers Authority said in a statement in response to questions from The Chronicle.

At the same time, geotechnical reports show that since 2009, the settling has been uneven — resulting in the 2-inch tilt.

And while Stanford's Deierlein doesn't consider the sink or tilt a safety issue, he did say, “I would be concerned for my investment.” That's because a shifting building can cause walls to crack, elevators to malfunction and all manner of other annoyances.

[P.J. Johnston](#), spokesman for tower builder [Millennium Partners](#) and its principal owner, [Sean Jeffries](#), said a nine-month, independent structural safety review in 2014 “determined the settlement has not significantly affected the seismic performance of the building, and does not represent a safety risk.”

An attorney for the Millennium homeowners association's board, [John Gill](#), recently sent a confidential letter to some of the more than 400 residents saying the board was “actively engaged in negotiations with Millennium Partners to resolve building settlement issues.” The letter also said the association was “sensitive to the concerns of everyone about any issue which could impact the value of their units.”

In a statement Friday, homeowner representatives said they had “retained a number of engineering consultants to investigate the causes and long-term impact of these settlement conditions” and were evaluating their legal options. They cited any number of parties that could be held “legally accountable” — including the developer, the high-rise's designers, the contractors and the Transbay Joint Powers Authority, which is run by San Francisco, [AC Transit](#), Caltrans and the agency that operates [Caltrain](#).

For his part, Millennium spokesman Johnston wasted no time blaming the transit center authority. He insisted that the tower's settling had been within normal range until excavation began on the bus and rail center next door.

“They built a half-mile tunnel 60 feet underground and next to our building, and they were supposed to (protect the Millennium) — and they didn't,” Johnston said.

The authority also signed an agreement with the Millennium developer in 2008 “to repair, at its own cost and expense ... any damage to the development substantially caused by TJPA's construction activities,” according a copy of the agreement on file at San Francisco City Hall.

Records show the Transbay Joint Powers Authority pumped more than \$58 million into an underground buttressing system to shore up the Millennium before beginning excavation in 2010. That's one of the many reasons for the new transit center's spiraling costs, which are now at \$2.4 billion and counting.

In its statement, the transit center authority said it "bears no responsibility for the tilt and excessive settlement."

Unlike some downtown high-rises, the Millennium isn't steel-framed. Instead, the developer chose a concrete design more common to residential buildings. It relies on huge columns, shear walls and beams, and it's much heavier than steel. What's more, the building is located on unstable mud-fill, just off the bay's original shoreline.

The Millennium's engineers anchored the building over a thick concrete slab with piles driven roughly 80 feet into dense sand. "To cut costs, Millennium did not drill piles to bedrock," or 200 feet down, the transit center authority said in its statement. Had it done so, the agency said, "the tower would not be tilting today."

Johnston countered that "virtually all other buildings in that part of the city have their foundations at the same subterranean level," citing skyscrapers that include the St. Regis and Intercontinental hotels.

He added that the Millennium's design was state of the art for residential buildings and that concrete can be preferable to steel for several reasons, including sound insulation.

"In any case, this was not a cost-saving decision, but the preferred design," Johnston said.

While there have been reports of cracks appearing in the Millennium's underground garage, there's no word of residents complaining about damage to their condos. Instead, the shifting and sinking of the concrete platform beneath the building has necessitated what Johnston called "minor repairs to sidewalks and connections at the ground level."

Experts tell us it's uncertain exactly what, if anything, can be done to fix the problem or straighten the tower. There has been talk of pumping cement underneath the base and drilling new piles — complicated and expensive undertakings.

An assessment, no doubt, that offers little comfort to those living in the building.

San Francisco Chronicle columnists [Phillip Matier](#) and Andrew Ross appear Sundays, Mondays and Wednesdays. Matier can be seen on the KPIX TV morning and evening news. He can also be heard on KCBS radio Monday through Friday at 7:50 a.m. and 5:50 p.m. Got a tip? Call (415) 777-8815, or email matierandross@sfgchronicle.com. Twitter: [@matierandross](#)

From the San Francisco Business Times:

<http://www.bizjournals.com/sanfrancisco/blog/real-estate/2016/08/fingerpointing-begins-millennium-luxury-tower-mess.html>

Finger pointing begins in Millennium luxury tower mess

Aug 1, 2016, 2:53pm PDT

Finger-pointing is in full force over who is to blame for the 60-story Millennium Tower condo building sinking and tilting.

Developer **Millennium Partners** said the sinking at the \$600 million tower is the fault of the **Transbay Joint Powers Authority** for not protecting the condo tower during construction of a subterranean train tunnel as part of the nearby Transbay Terminal project. The tower was completed in 2009.

“301 Mission exists in a location where major underground construction work was subsequently performed by others, who were obligated to monitor and protect existing structures, and to mitigate any impacts of their work,” the developer said in a statement.

Meanwhile, the TJPA, which revealed this afternoon that it has received claims for damages from some Millennium condo owners, deflected responsibility back toward the developer.

“The residents’ claims against the TJPA are misplaced; as demonstrated by data



SPENCER A BROWN

Millennium Tower is now at the center of a dispute over who is at fault for the building's excessive settlement.

collected over more than seven years, full responsibility for the tilting and excessive settlement of the building lies with Millennium Partners, the developer of the Tower,” the TJPA stated. “Millennium Partners’ poor design decision is the cause of the tilt and excessive vertical settlement of the Millennium Tower.”

The building’s homeowners’ association said in a statement that the developer informed the group that the building has settled more than is expected. The group has brought on consultants to determine what repairs the building might need and is also evaluating who could be held legally liable for the building’s condition.

You can read the full statement from the homeowners association [here](#).

According to the homeowners' association, the list of responsible parties could include: “the developer, the original design professionals, the original contractors, and the Transbay Joint Powers Authority (as a result of the construction of the neighboring Transbay Transit Center). The Transbay Joint Powers Authority has acknowledged, in a recorded easement, that its significant construction activities could have negative impacts on surrounding structures and properties.”

The tower is built in an area where the bay was filled in with sand, as is much of the South of Market district. Buildings on infill land are constructed with piles or poles that reach down to bedrock so that the buildings won’t sink into compressible soil.

That type of construction has been used for many decades, said Tom Holzer, a Menlo Park-based research geologist with the earthquake hazards team of U.S. Geological Survey.

“Unless there’s some miscalculation, the building should be really stable,” he said speaking in general about buildings built on infill. “With piles, you shouldn’t have any sinking, not if it’s done properly.”

According to the San Francisco Chronicle, which first reported the story, the building has sunk 16 inches and has tilted 2 inches to one side in less than a decade. It had been expected to sink a maximum of 6 inches over its lifetime.

Millennium Tower was originally built with a concrete slab foundation that is supported by piles that do not reach bedrock. The building’s “foundation is inadequate to prevent settlement of a building with the weight of the Tower. In

contrast, the Salesforce Tower and 181 Fremont Tower, also adjacent to the Transit Center, are supported on piles drilled down to bedrock,” the TJPA said.

The agency also spent \$58 million to add support between the building and the future transit center site, which it called an “extraordinary step.”

“The TJPA completed the buttress and excavation of the Transit Center several years ago, yet the Millennium Tower has continued to settle at a steady rate due to the Tower’s own improper foundation,” the agency stated. “The TJPA’s monitoring of other nearby tower developments confirms that no other neighboring towers are experiencing excessive settlement like the Millennium Tower.”

The building’s homeowners’ association said it is working with engineering consultants to determine how and when the building can be repaired and how much it will cost.

Blanca Torres

Reporter

San Francisco Business Times