P.O. Box 151486
San Diego, CA 92175-1486
(619) 335-5737
scenicsandiego@gmail.com
July 2, 2013

Kevin Ham
Economic Development Director
City of Vista
200 Civic Center Drive
Vista, CA 92084
Fax: (760) 643-2879

Re: Public Comment on Vista Digital Message Boards Draft IS/MND

Dear Mr. Ham,

This letter presents public comment of Scenic San Diego on the Draft Initial Study/Mitigated Negative Declaration ("MND") regarding the proposed Digital Message Boards for the City of Vista. Scenic San Diego presents these comments on behalf of numerous residents of Vista and other communities in San Diego County who will be directly impacted if the Digital Billboards ("DBBs"), as they are commonly referred to, are installed. This includes residents living near the DBBs as well as citizens who use State Route 78.

Specifically this comment letter addresses (1) the sufficiency of the MND in identifying and analyzing the possible impacts on the environment, and (2) ways in which the project's significant effects might be avoided or mitigated.

After thoroughly reviewing the MND, Scenic San Diego contends this project is not eligible for an MND and a complete Environmental Impact Report is required. The MND is so lacking in specifics that it does not support the findings stated. Only after preparation of a complete EIR will it be possible to determine whether the significant impacts of the proposed project can be mitigated. The comments provided herein identify additional mitigation measures or project revisions that must be added to make even a facial argument that project impacts are reduced to insignificance. As such, the comments meet the "substantial revision" test and the document must be revised and recirculated for public review. CEQA Section 15073.5 requires recirculation of a negative declaration when the document must be substantially revised after public notice of its availability has previously been given, but prior to its adoption.

Comments Discussion

Section 3.2, Purpose and Need: This section is erroneous, misleading and directly contradicted by other City pronouncements when it states: "The purpose of the proposed project is to communicate city messages for benefit of the community. Messages will include public safety announcements, community events and amenities."[1]

[1] MND p. 5.

Because under typical conditions the signs are slated to display commercial advertising 85% of the time, and the City would be able to display "Pubic Service Messages" a maximum of 15% of the time, it is clear the purpose of the proposed project is for commercial advertising benefitting to a lesser extent City coffers, and to a greater extent, the outdoor advertiser granted the right to use the DBBs. It is patently false, and indeed an intentional misrepresentation of prior City findings, to claim the purpose or the need for the DBBs is "for the benefit of the community." The City Council's own report on the DBBs for the March 12, 2013 council meeting explicitly stated the purpose of the DBBs was to advance the City's goals to generate more revenues.[2]

Section 4.0: Environmental Initial Study Checklist:[3]

This checklist is inadequate, incomplete, and misleading as specified in the discussion below of several specific environmental impact factors. Consequently, its conclusion that ". . . although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent,"[4] is unsupported and actually contradicted by credible, scientifically valid evidence.

5.0 Discussion of Environmental Impacts

5.1 Aesthetics: Would the project: a) Have a substantial adverse effect on a scenic vista?

The MND inaccurately assesses this factor. The analysis does not specify the exact height of each sign above grade; consequently visual impacts are not assessed precisely. The report cannot accurately conclude the "digital message board[5] on the University Drive Alternative 2 Site would *partially block* a small portion of the San Marcos Mountain ridgelines[6]" if the exact height of the blockage is not assessed. The finding of less than significant impact is not supported by evidence.

The MND reveals existing trees will be trimmed to avoid blocking the DBB and suggests this would "unblock" view of the San Marcos Mountain ridgelines.[7] Trees are natural components of the environment while DBBs are built structures. Common sense dictates that adding built structures that will require the removal or diminishment of natural trees, cannot be deemed to lessen the environmental impact of the project. Furthermore, documented cases establish that outdoor advertising companies have improperly trimmed, removed or even poisoned trees to unblock views to DBBs.[8] If anyone will be entitled to trim trees to unblock the DBBs, this entitlement should be spelled out in detail and included as an impact of the project. The finding of less than significant impact is contradicted by the evidence.

---

[2] City Council Meeting Agenda Report on Digital Message Boards, March 12, 2013, Agenda Item D2, pps. 1-2/5.
[3] MND pps 17-32.
[4] MND p. 20.
[5] The devices the City of Vista has called "digital message boards" are referenced herein by their commonly used name, digital billboards or DBBs.
[6] MND p. 33.
[7] MND p. 33.
[8] *Chronicle of the Billboard Wars*, DVD, www.blightfighters.org.

The MND only assesses the impact of the DBBs on the scenic vistas from State Route 78. However, the DBBs will be visible from many other locations throughout the City and beyond. Research by Jerry Wachtel and his colleagues observed that DBBs, even when dimmed for nighttime use and not on-axis with the viewer, are highly visible from substantial distances - *six miles or greater*, and appear as the brightest objects in the environment.[9] The MND is inadequate due to its failure to assess impacts on scenic vistas from all locations from which the DBBs will be visible. The finding of less than significant impact is not supported by reasonably complete evidence.

Would the project: b) Substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?

The study reveals the DBBs will entail damage to trees to unblock views of the DBBs, but omits any assessment of this impact.[10] The finding of no impact fails to address this impact.

Would the project: c) Substantially degrade the existing visual character or quality of the site and its surroundings?

The MND concludes ". . .the project . . . would not result in the substantial degradation of the *site* or its *surroundings*."[11]

The MNB adopts an artificially small definition of the "site," stating "the proposed message board would have a footprint of approximately 8-feet by 8-feet" (apparently this is the approximate size of the base of the sign support column), "the message board would result in a change of character to a small portion of the site" and "would not result in a substantial degradation of the site or its surroundings. [12] It appears the MND addresses only the physical impact to an 8-foot by 8-foot footprint and its associated minor visual impact, and ignores the enormous visual and aesthetic degradation of the site caused by placing a 672 sq. ft. billboard, 40-70 feet above a hillside that is currently covered completely with vegetation. This is a stunning misrepresentation of the aesthetic impact of the project, rendering the associated assessment utterly inadequate and downright misleading.

Furthermore, the *surroundings* of the DBBs include all locations from which they will be visible, which at night is at least six miles. The impacts on these locations are not addressed, apparently only the impact on drivers on Route 78 and immediately adjacent uses. The finding of less than significant impact fails to address the impact on all affected areas.

In addition, there is no reference to the height limit applicable to commercial development on the proposed sites, nor the exact height of the DBBs, making the fact the sites are zoned commercial inadequate to conclude the DBBs have "no significant impact." It cannot even be determined from the MND whether the DBBs will be taller than the height of commercial structures permitted under current zoning. Furthermore, references to existing zoning do not constitute evidence of a lack of environmental impacts.[13] CEQA requires a consideration of the project's impacts in relation to *existing on-the-ground*

[9] Veridian Group/Wachtel comment letter on MND, July 2, 2013.
[10] MND p. 33.
[11] MND p. 34.
[12] MND pps. 33-34.
[13] MND p. 34.

conditions. In *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal App 4th 310, 322, the court described an analysis that used the maximum permitted operational levels as a baseline as "'illusory' comparisons that 'can only *mislead the public* as to the reality of the impacts and subvert the full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent."[14] In fact, the impact is significant, and cannot be mitigated, because it is the DBBs that are the sole cause of the impact.

The MND concludes "the digital message boards would be oriented to highway traffic and would not be obtrusive to adjacent uses."[15] That the DBBs are oriented toward highway traffic does not mean they will only be visible from the highway. Nor is the term "adjacent uses" defined so it cannot be determined at what distance from the DBBs the impact on adjacent uses was assessed. There is no evidence in the record to support the conclusion that the DBBs will not be obtrusive to adjacent uses.

For purposes of assessing the DBBs' aesthetic impact on the site and its surroundings, several variables cited in support of the finding of no significant impact are nonsensical. The identity of the property owners, or the fact vegetation is native or not, is irrelevant to this variable. What will be negatively impacted is a motorist's view of an existing, planted hillside. Similarly, the MND completely omits an analysis of the impact to residents of the "high density residential uses to the west" of site Alternate 1. A 672 sq. ft. billboard, changing its image, and hence its colors and contrast, as often as every eight seconds or less, will likely be perceived as a significant adverse aesthetic impact to those whose windows look out on the billboard, as well as to motorists, pedestrians and bicyclists in the area.

Would the project: d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

The MND includes no actual assessment of these factors and instead relies on assurances that existing codes and trade industry guidelines will result in "less than significant impact." Perhaps the most shocking fact about the light impacts of the project is that **"each display would . . .would operate 24 hours per day**."[16] Citations to codes and guidelines do not constitute adequate environmental assessment of project impacts.[17] In addition, the MND omits reference to appropriate metrics to evaluate light and glare created by DBBs. The finding of less than significant impact is based on incomplete evidence.

The MND states "The resulting controls, however, effectively regulate light and glare to ensure that the operation of any digital message board does not create a substantial new source of light or glare."[18] This pronouncement is unsupported by any evidence or data. Conclusory citations to standards do not constitute adequate assessment of environmental impacts under CEQA.

---

[14] *Emphasis added.*
[15] MND p. 34.
[16] MND p. 6, Appendix A, p.1.
[17] *Communities for a Better Environment* (2010) 48 Cal App 4th 310, 322,
[18] MND p. 35.

LED stands for Light Emitting Diode (aka LED) boards.[19] LEDs produce more light (in lumens per watt) than incandescent bulbs, and their efficiency is not affected by shape and size, unlike traditional fluorescent light bulbs or tubes.[20] Traditional, static signage is illuminated by two or three lamps at nighttime, while digital signs are comprised of hundreds, if not thousands, of LED bulbs, each using between 2-10 watts, often lit twenty-four hours a day. A 14'x48' LED billboard can have between 900 and 10,000 diodes.[21] Researchers have cited "important issues of light trespass and light pollution," associated with DBBs, "which cause distraction, obscure stars in the night sky, and, like any other form of pollution, disrupt ecosystems and cause adverse health effects for humans and wildlife alike."[22] These impacts are inadequately assessed in the MND.

The MND states the DBBs would comply with guidelines of the Outdoor Advertising Association of America (OAAA) which provide that "lighting levels on the digital message boards would not exceed 0.3 foot candles over ambient levels, as measured using a foot candle meter at a pre-set distance (250 feet) based on the size of the sign."[23] However, OAAA guidelines are voluntary, not mandatory, and may change at any time. Citation to nonbinding guidelines of a trade association composed of members with huge financial interests in DBBs is inappropriate when unbiased scientific guidelines are available. Nor do citations to OAAA guidlines constitute evidence of the actual light that will be emitted by the specific DDBs addressed in the MND. The MND lacks any precise data on the actual light to be emitted by the DBBs and hence lacks evidence to conclude there will be a less than significant impact.

The MND states "Digital message boards are equipped with sensors that modify the brightness of the sign in response to ambient lighting conditions, thus ensuring that the brightness of the display in evening, nighttime or dawn conditions does not present a traffic hazard."[24] There is no data in the MND to support the conclusion that the DBBs will not cause a traffic hazard merely because they have light modifying sensors. This is a tautological argument, not evidence. Because the MND lacks any precise data on the actual light to be emitted by the DBBs at differing times and conditions, it lacks evidence to conclude there will be no traffic hazard and a less than significant impact on light and glare.

The MND's claim that "The (OAAA) guidelines are based on previous outdoor lighting research that established criteria for message board luminance (glare) limits based on message board-to-viewer distances to ensure the amount of light arriving at a person's eyes are not offensive or potentially dangerous" [25] is completely unsubstantiated. As noted, the OAAA represents a multi-billion dollar industry composed of companies whose financial interests are benefitted by owning and operating DBBs. OAAA does not represent nor futher the interests of the public. Many people find digital

---

[19] *Illuminating the Issues, Digital Signage and Philadelphia's Green Future*, Gregory Young, p 2 www.publicvoiceforpublicspace.org, hereinafter "*Illuminating*."
[20] *Illuminating*, p. 2, citing U.S. Department of Energy. (2008, October 27). *Comparing LEDs to traditional light sources*. Washington, DC: U.S. Government Printing Office. Retrieved from http://www1.eere.energy.gov/buildings/ssl/comparing.html
[21] *Illuminating*, p. 2
[22] *Illuminating*, p. 6
[23] MND p. 35.
[24] MND p. 35.

[25] MND p. 35.

billboards offensive, as evidenced by the fact numerous jurisdictions have banned them or declined to permit them at all.[26] Several studies have concluded DBBs are potentially dangerous to drivers. [27] None of this evidence is addressed in the MND. This lack of evidence leaves the conclusion unsupported by credible data.

Light trespass is measured in two ways: luminance or illuminance. *Luminance* (measured in nits) quantifies surface brightness, or the amount of light an object gives off. *Illuminance* (measured in foot candles) quantifies that amount of light which falls onto an object.[28] There are two corresponding basic methods for measuring "brightness" of a digital display. The first, used in this MND, and recommended by the Outdoor Advertising Association of America (OAAA) is known as illuminance. The second, ***recommended by scientific experts***[29], [30], [31], [32], [33], and governments around the world [34], [35], is known as luminance. Despite their similar names, they utilize different measurement methods, equipment, and techniques. The method proposed in the MND is the one recommended by the outdoor advertising industry, and is inappropriate. The appropriate procedures for measuring billboard luminance have been discussed extensively in the aforecited references and are the scientifically accepted procedures that should be used in the MND. Currently, the MND omits any reference to nits - the amount of light the DBBs will give off. Because DBBs, unlike conventional billboards, emit light rather than just reflecting light that shines on them, a crucial metric for light and glare from DBBs is measured in nits, not just foot candles. Yet the MND makes no reference to nits emanating from the DBBs.

Furthermore, to capture drivers' attention, digital signs are often set to very high luminance levels, as during the day they are competing with the sun, which has a luminance level of 6,500 nits.[36] While illumination power is typically lowered at night, DBBs are still much brighter than traditionally floodlit static billboards, which rarely exceed 100 nits at night. The OAAA has deemed 300-350 nits an

---

[26] Cities that have banned DBBs include Denver, St. Louis, San Francisco, Knoxville and most recently Ann Arbor, on June 13, 2013. See www.scenic.org

[27] Federal Highway Administration study cites 5:1 ratio of studies finding some driver safety effects due to traditional and digital billboards. 2009. FHWA, p. 15.*The Effects of Commercial Electronic Variable Message Signs on Driver Attention and Distraction: An Update.* Publication No. FHWA-HRT-09-018. February 2009. ("*FHWA 2009"*) Available at http://www.fhwa.dot.gov/real_estate/cevms.pdf

[28] *Illuminating*, p. 6., footnotes omitted.

[29] Wachtel, J. (2009). *Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs.* NCHRP Report No. 20-7 (256), pg. 156-8, Washington, DC: Transportation Research Board. ("*NCHRP 2009*")

[30] Lighting Research Center, Rensselaer Polytechnic Institute (RPI) (2008). *Technical Memorandum: Evaluation of Billboard Sign Luminances. Prepared for New York State Department of Transportation.*

[31] Bullough, *JD,* & Skinner, NP. (2011). *Luminance Criteria and Measurement Considerations for Light-Emitting Diode Billboards.* Paper presented at the 90th Annual Meeting of the Transportation Research Board.

[32] Luginbuhl, CB, Israel, H., Scowen, P., Polakis, J., & Polakis, T. (2010). *Digital LED Billboard Luminance Recommendations – How Bright is Bright Enough?* Flagstaff, Arizona: U.S. Naval Observatory Flagstaff Station. Draft Report.

[33] Illinois Coalition for Responsible Outdoor Lighting. (2010). *Digital Billboards: New Regulations for New Technology.* Accessed from the web at: http://www.illinoislighting.org/billboards.html

[34] *Guide to the Management of Roadside Advertising.* (2002). Edition 1.0. TERS Product No. 80.500. Brisbane, Queensland, Australia: Queensland Government, Department of Main Roads.

[35] *Repeal of Certain Regulations and Making of Regulations on Advertising on or Visible from National Roads.* (2000). The South African National Roads Agency Limited.

[36] *Illuminating*, p. 6.

acceptable level of night brightness.[37] But this is only a voluntary guideline subject to change without notice and does not constitute evidence of the actual glare to be generated by the DBBs at issue. Furthermore, scientifically supported brightness levels should be considered, not those developed by a financially interested trade association. Studies have shown existing illuminated on-premise signs, as well as conventional floodlit billboards are easily readable at night by approaching drivers, and do not cause such high levels of glare.[38] These studies suggest there is no reason why digital billboards should not be held to the same luminance levels as conventionally lit signs.

The MND notes that "There are residential uses within the vicinity of the project site that would be sensitive to light. . . Due to the homes being *orientated away* from the project site and the message boards *not directly placed at a 90-deagree angle to the homes*, the glare from the message boards *would not affect these residences*."[39] This is truly a stunning string of misrepresentations. What does "orientated away from the project site" mean? Houses have four sides and hence four vertical surface orientations, typically most if not all containing windows. Does the study contend light from the signs won't trespass on *any side* of any of these houses, nor their yards? That seems impossible. The study asserts "the glare from a message board in these locations *would not affect nearby residences*" because such homes are at least *250 feet* from the DBBs? There is no data in the MND stating light from the DBBs will extend no farther than 250 feet. Indeed, the 250 foot criteria is taken directly from a study *funded by and prepared* for the OAAA.[40] Both conclusions are completely unsubstantiated. The revised study should include concrete data on how far light extends from the DBBs and at what strengths, and then re-assess the impact on nearby homes based on actual metrics.

The MND cites statistics on conventional billboard to draw conclusions about DBBs, which is like comparing the light and glare from a photograph to that from a television set or movie screen. This is apples and oranges. The study admits it lacks ". . . an estimate of the actual percentage of sky glow attributable to billboards," without even noting that billboards and DBBs are completely different in their impacts. The MND gives no data on the skyglow from the proposed DBBs, which emanate much more light than conventional billboards, and consequently must be revised to include this evidence and recirculated.

The MND concludes: ". . .digital billboards operating at the regulated luminance levels (not to exceed 0.3 foot candles over ambient levels) produce *much fewer lumens into the night sky than conventional bottom mountedlighting system*."[41] This conclusion relies on the aforementioned industry funded study, which itself rejects government and engineering association accepted measures of glare and substitutes one of its own creation.[42] But because we know DBBs are lighted three to 110 times

---

[37] *Illuminating*, p. 7.
[38] See, fns.
[39] MND p. 35.
[40] MND p. 36, citing Lighting Sciences, Inc (*LSI 2006*). 2006. *Digital Billboard Recommendations and Comparisons to Conventional Billboards.* November 29, 2006. Available at http://www.polcouncil.org/polc2/DigitalBillboardsIanLewin.pdf. (LSI 2006.) Page three of this report states "This report has been prepared for the Outdoor Advertising Association of America (OAAA) under the contract issued to Lighting Sciences Inc."
[41] MND p. 35.
[42] MND p. 36, citing *LSI 2006*, which states on pps. 4-6 that LSI opted to ignore recommended limits to the amount of glare that can be produced by vehicle headlights (from the U.S. Department of Transportation) and by roadway lighting (from the American National Standards Institute and the Illuminating Engineering Society of North America –IESNA.). LSI instead adopted a metric it admits was not developed to assess light from digital billboards.

more brightly than conventional billboards,[43] the skyglow from DBBs must be much greater than that of conventional billboards.

Similarly, the study's contention that "light in upward directions is reduced in comparison to light sent below the horizontal plane in the direction of viewers"[44] allows DBBs to have less impact on night skies than conventional billboards, is directly contrary to established science.[45] Studies have found horizontal light emitted between 0° and roughly ±20°, like that from DBBs, *contributes more to skyglow* than light emitted at higher angles like that of conventionally lit static billboards .[46] The lower-angle lighting used on DBBs is visible over a much broader area, typically six miles, not a smaller area.[47] The study lacks any actual data on the skyglow impacts of the project and cites industry claims that are directly contradicted by scientific studies. The revised study must reassess impacts associated with new sources of light and glare based on actual data, not outdoor industry funded inventions unrelated to applicable scientific standards, to determine the actual level of impact significance.

5.3 Air Quality, subsections a-d

The MND's discussion of air quality impacts is so deficient as to be impossible to critique on a point by point basis. The MND acknowledges that the Project will require over 525,000 kilowatts of electricity per year.[48] Yet it fails to address the air quality impacts associated with this electricity generation anywhere in the discussion of air quality.[49] Nor does the analysis address existing air quality conditions. Case law provides that assumed compliance with air emission requirements does not ensure impacts will not be significant.[50] The MND lacks hard data to support an adequate analysis of air quality impacts, and should be revised.

5.4 Biological Resources: subsection a: Would the project**:** Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

The analysis concludes there would be less than significant impact with mitigation incorporated on special-status species known to occur historically in the vicinity of one or both sites: Coronado Island skink (*Plestiodon skiltonianus interparietalis*), coastal California gnatcatcher (*Polioptila californica californica*), San Diego pocket mouse (*Chaetodipus fallax fallax*), San Diego desert woodrat (*Neotoma lepida*), and Stephens' kangaroo rat (*Dipodomys stephensi*).[51] Also impacted would be foraging and

[43] *Illuminating*, p. 7.
[44] MND p. 35-36.
[45] LSI 2006 p. 6 states it used metrics not developed for DBBs.
[46] *Illuminating*, p. 8, citing Luginbuhl, C.B. (2009). *Lighting and astronomy*. Walker, C.E., and Wainscoat, R.J., Physics Today; and Carhart, D. (2010, May). *Digital billboards: New regulations for new technology*. Illinois Coalition for Responsible Outdoor Lighting. Retrieved from http://www.illinoislighting.org/billboards.html 62:32.
[47] *Illuminating*, p. 8.
[48] MND p. 53.
[49] MND pp. 41-42.
[50] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.
[51] MND pp.37- 41.

nesting habitat for common bird species covered by the Migratory Bird Treaty Act (MBTA).[52] The bird breeding season of such these species is defined as January 15 to September 15.[53] This season is *nine and one-half months of the year*, or almost 80 percent of each calendar year. Studies show introduction of *new illumination* can have a statistically significant negative influence on breeding habitat quality of species in which it was studied.[54] Yet the MND makes no mention whatsoever of light impacts on biological resources, only addressing impacts associated with project construction and site choices.

It is well established most species depend on light and dark for some portion of their daily or seasonal life cycle and that increased night lighting associated with human civilization disrupts important behaviors and physiological processes with significant ecological consequences.[55] Probably the best-known effect of artificial night lighting is the fact many species are attracted to, and disoriented by, sources of artificial light, a phenomenon called positive phototaxis. Birds that migrate during the night are especially affected.[56] This may cause direct mortality, or may have indirect negative effects through the depletion of their energy reserves. One study concluded all evidence evaluated indicates the increasing use of artificial light at night is having an adverse effect on populations of birds, particularly those that typically migrate at night.[57] Many seabirds are nocturnal and move between land and sea at dusk or at night and as such are particularly vulnerable to artificial lighting. Once disoriented, they are at risk of colliding with built structures.[58] The revised study must assess impacts associated with new sources of light on these biological resources to reach any credible conclusions on the project's environmental impacts.

5.4 Biological Resources: subsections b and d-f:

These sections of the MND mischaracterize relevant facts and thereby reach unsupported conclusions. The description of the project site as limited to 64-square feet[59] is inaccurate because it ignores light impacts over a much broader area, as discussed above. Because the MND acknowledges the project sites encompass habitat for special-status species and common bird species covered by the MBTA, it is inaccurate to claim that no wildlife movement occurs within the proposed project sites,[60] or that the proposed project does not impact native vegetation, sensitive natural communities or special-status plant and wildlife species.[61] Hence, the conclusions of no impact on these variables are internally inconsistent with other evidence in the MND, are therefore unsupported, and must be reassessed.

---

[52] MND p. 42.
[53] MND p. 42.
[54] *Road illumination and black-tailed godwit*, Johannes G. de Molenaar, Dick A. Jonkers and Marlies E. Sanders, presented at 2002 conference on *Ecological Consequences of Artificial Night Lighting* hosted by The Urban Wildlands Group and UCLA Institute of the Environment, available at http://www.urbanwildlands.org/conference.html. (UCLA 2002).
[55] *Ecological Consequences of Artificial Night Lighting*, Catherine Rich and Travis Longcore, 2005.
[56] *Green light for nocturnally migrating birds.* Poot, H., B. J. Ens, H. de Vries, M. A. H. Donners, M. R. Wernand, and J. M. Marquenie. 2008. Ecology and Society 13(2): 47, Introduction. [online] URL: http://www.ecologyandsociety.org/vol13/iss2/art47/ (*Green Light*)
[57] *Green Light*, Introduction.
[58] *Artificial lighting and the decline of seabirds*, Richard Podolsky, 2002, Avian Systems, Camden, Maine 04843, presented at UCLA 2002.
[59] MND p. 47.
[60] MND p. 47.
[61] MND p. 48.

Furthermore, the project is in direct conflict with various goals and policies stated in Vista's General Plan Update 2030 in multiple respects including those discussed herein. The update section on Biological Resources includes the following goal and implementing policy: RCS Goal 5: "Preserve and protect, to the extent practicable, the range of natural biological communities and species native to the City and region; and conserve viable populations of endangered, threatened, and key sensitive species and their habitats."[62] This goal is to be advanced by adherence to RCS Policy 5.2, which states: "In areas that are adjacent to sensitive vegetation and/or wildlife communities, continue to require development, uses, and activities to be designed and managed to ensure minimal impacts to those resources. Examples include, but are not limited to the following: (e) *ensure that sensitive species are protected from night lighting from nearby development*." [63] The project has the opposite effect – it adds a new source of night lighting in an area identified as habitat for sensitive species. This must be addressed in the revised MND.

5.4 Cultural Resources: Subsection a: Would the project cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5? Subsection b: Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

The MND concludes the project would have a no impact on a historical barn structure[64] located next to the West Vista Way site and on a prehistoric archeological site[65] located 700 feet from it. There is no data sited for these conclusions. Indeed, as to the barn no measurement of the distance from the barn to the project is even included. Nor is there any citation to authority that a DBB located 700 feet from a prehistoric archeological site has no effect upon it. As noted, DBBs tower over adjacent uses, shine bright light as much as 24 hours per day, and impact a much wider geographic area than the simple footprint of the DBBs support structure. The conclusion there will be *no impact* on these cultural resources is internally inconsistent with other evidence in the MND and must be reassessed.

5.7 Greenhouse Gas Emissions:

Subsection a: Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Subsection b: Would the project conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

The MND cites a County of San Diego report as having determined that a project that emits more than 2,500 MT CO2e annually during construction or operation would result in a potentially significant cumulative impact.[66] The MND goes on to state that electricity demand for the project would be approximately 525,960 kilowatts per year for both DBBs and that the corresponding greenhouse gas emissions (GHG) resulting from this electricity demand would be approximately 374 metric tons

[62] General Plan Update 2030, p. 4-8.
[63] General Plan Update 2030, p. 4-8.
[64] MND p. 48.
[65] MND p. 49.
[66] MND p. 53.

CO2e.[67] On this basis the MND concludes that annual GHG emissions would not exceed the 2,500 MT CO2e "threshold" during operation and therefore, impacts due to construction-related GHG emissions would be less than significant.[68]

This string of assertions leading to a conclusion of less than significant impact is flawed in multiple ways. No data is provided to explain how either the kilowatt figure or the GHG figure were calculated, not in the MND nor Appendix A. As noted, the light intensity of the LEDs will vary depending on time of day or night and ambient conditions, yet the study claims the DBBs will consume 15 kw per hour,[69] suggesting power usage over time does not vary. Also, there are no specifics on how many LEDs each of the four DBB faces will contain,[70] nor figures on how many kilowatts the unspecified number of LEDs will actually use at different times of day and night. In addition to LEDs, DBBs use electricity to run other functions including the player, cooling fans, light sensors, in some case a video extender, and possibly other features.[71] The energy use of these components is not specified.

Because there is no data to back up the MND's claim its GHG emissions will be no more than 374 metric tons CO2e per year, the report must be revised to include data supporting this claim. The four LED DBB faces are slated to each be 48 feet wide by 14 feet tall.[72] Studies have reported that LED DBBs of this size consume approximately 160,000 kwh per year,[73] which multiplied by the four DBB faces would total at least 640,000 kwh per year or approximately 20 percent more than the MND estimates. Given this huge discrepancy much more data is required in the revised MND to accurately peg the project's energy usage. Similarly, it is unclear how the study calculated the GHG associated with this electricity usage. Electricity is produced from many sources, some of which generate a much greater amount of GHGs than others. The revised environmental study must reveal how the GHG measure is calculated so it can be scrutinized for accuracy.

5.10 Land Use and Planning: Subsection b: Would the project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

We contend the project is in direct conflict with City land use plans, policies and regulations, and that this conflict was initiated when the City changed its sign ordinance in 2011 in a way it now contends allows DBBs. This contention is directly contrary to the complete absence of any mention of DBBs in the official records, environmental review documents, or public hearings related to the ordinance change.

On 24, May 2011 the City of Vista enacted ordinance changes regarding signs on City property, some of which it now seems may have been surreptitiously designed to allow DBBs in the City of Vista

[67] MND p. 54.
[68] MND p. 54.
[69] MND p. 6.
[70] MND p. 6 states there will be three LEDs per pixel but does not state how many pixels each DDB will contain.
[71] *Illuminating*, p. 1.
[72] MND p. 6.
[73] *Illuminating*, p. 2.

for the first time, but only on City property.[74] The ordinance change made no mention of DBBs, but allowed any type of sign approved by the City Council." [75] Because the statute never mentioned DBBs, the public was deprived of any opportunity to comment on the adequacy of the Negative Declaration ("ND") or the potential impacts of DBBs. The minutes of the April 19, 2011 meeting of the City Planning Commission hearing on the ordinance change reveal that a then sitting planning commissioner specifically asked for clarity as to whether the ordinance change would allow any new types of signage. The response of city staff was, in hindsight, possibly evasive.[76] It is absolutely clear from the public record that it was never revealed or anticipated, or publicly aired, that the "split role" ordinance change would permit DBBs.

Subsequent to the above-cited hearing, a ND was approved on this ordinance change, a document that it is now apparent contained multiple false representations. Had accurate answers been made to the checklist questions, it would have been apparent that a ND was inappropriate for the ordinance change, and a IS/MND or EIR was required.

The **Agenda Report**[77] on this ordinance change was factually false in multiple ways. The significance of this cannot be underestimated. The official record demonstrates that either:

(1) The plan to erect DBBs in the City of Vista was based on patently false statements which were knowingly endorsed by City Staff and members of the City Council at the time of the 2011 ordinance change, or,

(2) The ordinance change does not permit DBBs and the current project is in direct conflict with multiple City laws, policies and plans.

The City cannot have it both ways. Either the ordinance change was based multiple on false statements intended to deceive the public as to the true impact of the change, or the ordinance change does not permit DBBs.

In particular:

Agenda Report page 2/76 states:

"The proposed changes to the sign ordinance include:
a) Electronic Signs: The City Council requested the allowance of electronic signs as window signs within commercial districts based on a request by the Vista Chamber of Commerce to allow scrolling message boards or television/computer monitors in windows for the purpose of commercial advertising Staff recommends the allowance of electronic signs within windows in commercially zoned areas not to exceed a size of six square feet."

[74] Vista Municipal Code section 12.20.130-150.
[75] Vista Municipal Code section 12.20.130-150.
[76] Planning Commission Minutes, April 19, 2001, p. 7, state in part "Chmn Martin stated that he had questions on the split code regarding signs. Ms Chow stated that the proposed amendment was to create a separate chapter dealing with signs on City property. Chmn Martin expressed the opinion that there needed to be some clarity as to what signs would be covered by this ordinance. Ms Chow stated that the intent was to cover parks public facilities and the public right of way."
[77] Agenda Report, Item PH2 for the May 24, 2011 Vista City Council meeting ("Agenda Report").

Comment: The Agenda Report specifically identified a change in the City's sign law allowing electronic signs, yet implied by omission that these would be limited in size to six square feet. If the ordinance permitted DBBs, this would have had to have been addressed under this heading in the Agenda Report.

Agenda Report page 2/76 states:

"d) Split Code: Staff is proposing to split the Sign Ordinance into separate chapters regulating private signage and signage located on city property This proposed modification would create clarity and ease of use without *substantive changes* to the code."

Comment: The Agenda Report falsely claimed that creating a "split code" separately regulating signage on private and public property … would create clarity and ease of use without substantive changes to the code." It is now apparent that creation of the split code, which the City now contends allows DBBs on City property, *constituted an enormous substantive change in the City's sign ordinance*, which as of May 24, 2011 prohibited DBBs anywhere in Vista and also prohibited addition of any new conventional billboards.

Agenda Report page 3/76 states:

"FISCAL IMPACT: There is no direct fiscal impact associated with the staff recommendation."

Comment: The Agenda Report falsely claimed there is no direct fiscal impact associated with the recommendation. It is now apparent that either: (1) DBBs are not permitted by the ordinance change, or (2) The true, yet hidden motivation for the ordinance change was to create a new source of revenue to the City. Indeed, this is the key justification for the DBBs repeatedly cited by Councilmembers who favor it. This statement in the Agenda Report was knowingly false when made, or DBBs are not permitted under the ordinance change.

In support of the ordinance change, the City Council approved a Negative Declaration claiming the ordinance change would have a significant effect on the environment.

The Resolution approving the Negative Declaration found at **Agenda Report** page 5/76 states:

"Based upon the Initial Study and the reports comments and recommendations received the City Council finds and determines that there is no substantial evidence in the record before it that the Ordinance may have a significant effect on the environment."

Comment: Either this statement was false when made, and the true purpose of the ordinance change was to allow a major change in allowed uses within the City of Vista, to permit DBBs on City land, , or DBBs are not permitted under the ordinance change.

The **2011 Negative Declaration** itself is also filled with false statements:

Page 2 of the Negative Declaration[78] states:

"B. Compatibility with Zoning and Applicable Plans

General Plan

The proposed amendment to the sign ordinance would not impact the General Plan. The proposed amendment would not induce any changes in land use, stimulate new development, or result in other physical changes.

Zoning Code and Specific Plan Regulations

The main objectives of the amendment are to clarify requirements and implement new standards addressing signs on public property. The proposed amendment would not induce changes in land use, stimulate new development, or result in other physical changes; therefore, the project would not result in adverse effects to the Zoning Code.

Comment: If the ordinance change allowed DBBs, these statements are provably false. Either the ordinance change was intended to and did result in a drastic change in land use, namely allowing for the first time DBBs, or DBBs are not permitted under the ordinance change. Either it was known at the time, but hidden from the public, that the ordinance would result in adverse effects to the Zoning Code, or DBBs are not permitted under the ordinance change.

C. Identification of Environmental Impacts

The ND stated: "The following Initial Study indicates that the project *will not result in* ***potential environmental impacts***.[79] Please refer to the Environmental Checklist (Section E) and Discussion (Section F) for a detailed analysis of potential impacts."

Comment: As Sections E and F demonstrate, if the ordinance change allowed DBBs,then this statement was false when made. It has also been proven false in fact because the MND identified numerous environmental impacts of the DBBs. The Negative Declaration's claim the ordinance change would not even result in *potential environmental impacts* was based on multiple false statements including:

"Checklist Section 1. Land Use and Planning: *Would the proposal:*

b. Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project including but not limited to the general plan, specific plan, local coastal program or zoning ordinance adopted for the purpose of avoiding or mitigating an environmental effect?"

(Box marked) "No Impact."

[78] P. 7/76 of the Agenda Report.
[79] Emphasis added.

6. TRANSPORTATION/TRAFFIC: Would the project"

c. Result in a change in air traffic patterns including either an increase in traffic levels or a change in location that results in substantial safety risks?

(Box marked) "No Impact."

d. Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?

(Box marked) "No Impact."

13. AESTHETICS. *Would the project:*

a. Have a substantial adverse effect on a scenic vista?

(Box marked) "No Impact."

b. Substantially degrade scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

(Box marked) "No Impact."

c. Substantially degrade the existing visual character or quality of the site and its surroundings?

(Box marked) "No Impact."

d. Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?

(Box marked) "No Impact."

Comment: These and multiple other misstatements in the ND are revealed by simply comparing the checklist for the May 24, 2011 ND with the Checklist for the MND. Where the ND found "No Impact" for *every* factor addressed,[80] the MND shows "Less than Significant Impact" or "Less Than Significant with Mitigation Incorporated" **on a total of 34 factors**. This demonstrates that either: the ND was a complete misrepresentation of the ordinance's likely impacts; or, the ordinance change was not intended to and does not allow DBBs in the City of Vista.

Prior to the ordinance change, DBBs were not permitted anywhere in Vista and would have been in direct violation of applicable regulations of the City of Vista. Even now, the Development Code explicitly prohibits DBBs anywhere in Vista, other than on City property. The Development Code provides that "The City completely prohibits the construction erection use or conversion to digital or electronic display of any billboards as defined in this chapter other than the maintenance of billboards

[80] Initial Study Checklist, ND pps. 3-15, Agenda Report pps. 7/76- 20/76

which were lawfully in existence in the city on the date on which the city first adopted an ordinance prohibiting billboards…"[81]

The important public policy interests advanced by the City's ban on DBBs include community aesthetics, traffic and pedestrian safety, the promotion of tourism and commerce and the overall quality of life as affected by signs.[82] Yet the MND claims DBBs can be erected on City owned land without impacting these important public interests, or conflicting with land use plans, policies and regulations that in every other instance ban new conventional or digital billboards.[83] The MND's conclusion the project does not conflict with land use policies adopted to avoid or mitigate environmental effects is meritless on its face. It appears an ND filled with false statements was passed in 2011 to lay the groundwork so the City of Vista could later claim in a MND that the DBBs don't conflict with existing law. But the change the City now contends allows DBBs was enacted without any reference to DBBs or any environmental assessment of them.

As such the finding of no impact on Land Use and Planning factors is premised on a prior invalid document. The City of Vista cannot make a viable argument why DBBs on private property conflict with established land use policies but DBBS on City property do not. The City cannot explain why a ND for the ordinance change promised no potential environmental impacts yet the MND identifies at least 34 environmental impacts from the DBBs. If the City contends the 2011 ordinance change permitted DBBs, the entire process is exposed as a two-year scheme to mislead Vista citizens. The MND must be revised to specifically assess the conflict between the project and existing City endorsed land use policies and regulations prohibiting such signs due to their adverse impacts on aesthetic, traffic safety and the other public interests noted.

The Project Is in Direct Conflict with the General Plan Update 2030

Furthermore, the project is in direct conflict with policies and goals stated in the General Plan Update 2030, adopted by the City Council in December 2011, regarding Community Character, Identity and Design Quality.[84] The update identifies Opportunity No. 9: "Enhance Community Identity and Character" and states that "Community identity articulates the character of the community as a whole so that future development or redevelopment is in *keeping with that character*. Community identity is associated with more than the built environment—it is largely determined by urban design, layout, social fabric, and local and regional history. Throughout the workshops discussed above, residents stressed the importance of preserving and enhancing Vista's multi-cultural history, agricultural heritage, and its semi-rural development pattern, which contributes to its unique community character as articulated in the vision."[85] This impact is not addressed in the MND.

The DBBs, typical of densely built urban spaces such as Las Vegas and Times Square are completely out of character with Vista's self-professed identity as a community with an agricultural heritage with a semi-rural development pattern.

---

[81] Vista Development Code section 18.52.40 E.
[82] Vista Development Code section 18.52.30.
[83] Vista Development Code section 18.52.40 E.
[84] General Plan Update 2030, p. 2-3.
[85] General Plan Update 2030, p. 1-17.

This conflict is also apparent by reference to explicit goals and policies adopted by the City in the General Plan Update, including LUCI Goal 1, to "Increase the level of design quality and preserve and enhance Vista's identity and image."[86] This goal is to be implemented by policies including: LUCI Policy 1.1: "*Require the application of the City of Vista Design Guidelines,* including site design, architecture, *lighting, and signage,* when reviewing and approving new development and redevelopment."[87]

Adding enormous, garish DBBs which have never been permitted in all of Vista's history is directly in conflict with this goal and the associated policy. The City has ignored rules applicable to all other developers and effectively claims it is exempt from a multitude of city polices, ordinances, goals and guidelines. This conflict must be addressed in a revised environmental document.

The project is in direct conflict with LUCI Goal 2: "Preserve and enhance the characteristics and features of neighborhoods that share common development patterns, topography, major streets, and zoning patterns."[88] This goal is to be implemented by adhering to policies including the following: LUCI Policy 2.11: "Preserve immediate ridges and hilltops in a natural state to the maximum extent possible. Intermediate ridges are those with visible land behind them that creates a backdrop to the ridge as viewed from the valley floor. *Development should be sited such that buildings do not project above the natural landform.* Development applications shall be designed so that site plans concentrate development in the subordinate or hidden locations, and grading plans minimize disruption of the natural landform and vegetation."[89]

The DBBs are in direct conflict with this policy. The fact this policy references "buildings," not billboards, does not render it inapplicable. The General Plan Update makes no mention of billboards or digital billboards because when the Update was drafted, no new conventional billboards, and certainly no DBBs, were allowed under Vista's laws.

The project is in direct conflict with LUCI Goal 3: "Preserve and protect existing residential neighborhoods from actions, activities, or land uses that may have an *adverse impact upon the enjoyment of the residential living environment*."[90] This goal is to be implemented by adhering to policies including the following: LUCI Policy 3.1: "Require all new development to be designed to *minimize impacts on adjoining residential neighborhoods*." LUCI Policy 3.2: *Mitigate unacceptable levels of* noise, odors, pollution, dust, *light, and glare upon residential areas* and other sensitive receptors, such as schools and day care centers. LUCI Policy 3.3: *Require visual and acoustic buffering between non-residential and residential land uses* and other sensitive receptors by employing techniques such as landscaping, setbacks, soundwalls, and sensitive siting of buildings (see illustration to the right)."[91]

---

[86] General Plan Update 2030, p. 2-3.
[87] General Plan Update 2030, p. 2-3.
[88] General Plan Update 2030, p. 2-4.
[89] General Plan Update 2030, p. 2-5.
[90] General Plan Update 2030, p. 2-6.
[91] General Plan Update 2030, p. 2-6, emphasis added.

Comment: The project directly violates this policy. The MND claim of no significant impact is incorrect and must be revised.

5.16 Transportation/Traffic: Would the project:

b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?[92]

"No Impact."[93]

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?[94]

"Less Than Significant Impact with Mitigation Incorporated."[95]

Comment: These conclusions are unsupported by the evidence and contradicted by known scientific research. Changeable message signs (CMS) visible to drivers on roadways are known to adversely impact the movement of traffic as drivers slow to observe and read the messages. This is true for both CMS for official highway use and traffic control, as well as for commercial advertising signs addressed in the MND.[96] Thus, there will be an adverse affect on traffic flow in the vicinity of the signs, and it is necessary to determine how this will affect the roadway Level of Service.

Other inadequacies in the MND's assessment of transportation and traffic impacts include:

1) Imprecision as to how often the DBB messages will change, stated as between 4 and 10 seconds.[97]

2) Design in conflict with federal-state agreement: Figure 9 shows a two-lane, high-speed traffic merge directly adjacent to the proposed sign, and is thus in violation of the FHWA Federal-State Agreement (FSA) with the State of California.[98] The MND states[99] that the FHWA, as part of its agreement with various states pursuant to the Highway Beautification Act, "has confirmed that … signs may not be installed in such a manner as to … obstruct or physically interfere with the vision of drivers in approaching, merging, or intersection traffic." The MND further states that FHWA's agreement with the State of California also requires Caltrans to enforce these provisions. And "the proposed project would be in compliance with the above measures by not … placing (a) message board near an (sic) approaching, merging, or intersecting traffic." Yet, review of Figure 9, which depicts westbound traffic at the University Drive Alternative 2 site, shows that the MND in incorrect. This Figure clearly shows a

[92] MND p. 63.
[93] MND p. 64.
[94] MND p. 64.
[95] MND p. 64.
[96] Dudek, CL. (2008). *Changeable Message Sign Displays During Non-Incident, Non-Roadwork Periods.* NCHRP Synthesis No. 383. Washington, DC: Transportation Research Board.
[97] MND p. 65.
[98] MND p. 16 in order, although page is unnumbered.
[99] MND p. 64.

two-lane, high-speed traffic merge directly adjacent to the proposed sign, and is thus in violation of the FHWA Federal-State Agreement (FSA) with the State of California.

3) Miscites and mischaracterizes the findings in an FHWA study of DBBs and driver distraction.[100]

4) Omits any reference to extensive research conducted, peer-reviewed, and published subsequent to the FHWA and NCHRP[101] documents. Since 2008, some 12 research studies have been completed in countries including: USA,[102] Canada,[103] Sweden,[104] Norway,[105] Australia,[106] England,[107] and Israel.[108] *Without exception*, these studies have found convincing evidence that roadside billboards (both static and video) distract drivers' attention to a degree that results in: poorer lane keeping, poorer speed control, failure to see imminent hazards, and delayed response to sudden, unexpected movements by other drivers.

5) Omits any discussion of roadside clutter, which has been identified in several scientific studies as a cause of increased highway safety risks.[109]

---

[100] *FHWA 2009*, p. 2, miscited in MND as p. 14 and selectively cited to result in mischaracterization of the report's findings.
[101] *NCHRP 2009*.
[102] Chan, E., Pradhan, AK, Knodler, MA, Jr., Pollatsek, A. & Fisher, DL. (2008). "*Empirical Evaluation on a Driving Simulator of the Effect of Distractions Inside and Outside the Vehicle on Drivers' Eye Behaviors*," Washington, DC: 87th Annual Meeting of the Transportation Research Board of the National Academies; Divekar, G., Pradhan, AK, Pollatsek, A., & Fisher, DL. (2013). "*External Distractions": Evaluations of their effect on younger novice and experienced drivers' behavior and vehicle control.*" Transportation Research Record, Journal of the Transportation Research Board No. 2321. Washington, DC: Transportation Research Board of the National Academies.
[103] Milloy, SL, and Caird, JK. (2011). "*External Driver Distractions: The Effects of Video Billboards and Wind Farms on Driver Performance.*" Published in: Handbook of Driving Simulation for Engineering, Medicine and Psychology. Edited by: D.L. Fisher, M. Rizzo, J.K. Caird, & J.D. Lee. Boca Raton: CRC Press.
[104] Dukic, T., Ahlstrom, C., Patten, C., Kettwich, C., & Kircher, K. (2012). Swedish National Road and Transport Research Institute, and Karlsruhe Institute of Technology Journal of Traffic Injury Prevention.
[105] Backer-Grøndahl, A., & Sagberg, F. (2009). "*Relative crash involvement risk associated with different sources of driver distraction.*" Presented at the First international Conference on Driver Distraction and Inattention. Gothenburg, Sweden: Chalmers University.
[106] Roberts, P., Boddington, K., & Rodwell, L. (2013). *Impact of Roadside Advertising on Road Safety*. Austroads Road Research Report: Publication No. AP-R420-13. City: Australia, ARRB Group.
[107] Chattington, M., Reed, N., Basacik, D., Flint, A., & Parkes, A. (2009). "Investigating Driver Distraction: The Effects of Video and Static Advertising." Report No. RPN256. United Kingdom: Transport Research Laboratory; Young, MS, Mahfoud, JM, Stanton, N. Salmon, PM, Jenkins, DP & Walker, GH. (2009). "*Conflicts of Interest: The implications of roadside advertising for driver attention*." Transportation Research Part F: Traffic Psychology and Behaviour, Vol. 12(5), 381-388.
[108] Gitelman, V., Zaidel, D., & Doveh, E. (2012). "*Influence of Billboards on Driving Behavior and Road Safety*," Presented at: Fifth International Conference on Traffic and Transportation Psychology. Groningen, The Netherlands: University of Groningen.
[109] Martens, M. (2009). *Conceptual Guidelines for Roadside Distractions. Presentation to the Human Factors Workshop on Visual Clutter in the Road Environment*. Washington, DC: Transportation Research Board 88th Annual Meeting; Edquist, J., Horberry, T., Hosking, S. & Johnston, I. (2011). "*Advertising billboards impair change detection in road scenes*." Paper presented at the 2011 Australasian Road Safety Research, Education & Policing Conference; Horberry, T., Regan, MA, & Edquist, J. (2009). *Driver Distraction from Roadside Advertising: The clash of road safety evidence, highway authority guidelines, and commercial advertising pressure*. Downloaded from the web at: https://document.chalmers.se/download?docid=653291678

6) Misleading and inadequate discussion of impacts and significance of interactive signs that are capable of communicating with vehicles or passengers.[110] The MND treats this technology as if it does not yet exist. In fact, it does.[111] This type of sign was discussed at length in the NCHRP report cited above, written four years ago.[112] If it is anticipated or *even possible* the DBBs will utilize this or other technologies, the impacts of these technologies must be addressed in the MND.

7) Omits any reference to the fact that the Federal Highway Administration (FHWA), as part of its agreement with various states including California, pursuant to the Highway Beautification Act, prohibit off-premise, as opposed to point-of-sale, advertising signs with "flashing," "intermittent," or "moving" light or lights near federal highways, including commercial electronic variable-message signs ("CEVMS" or "digital billboards"). In 2011, a unanimous Arizona appellate court held that a dwell time of eight seconds, as proposed herein, constitutes *intermittent light,* something expressly prohibited by the Highway Beautification Act.[113] This issue is now being litigated at the federal level.[114] Vista cannot contend DBBs comply with federal law because this issue is currently the matter of an active legal dispute. Nor does the MND address the environmental impacts of removing the DBBs should they be declared illegal.

In summary, the mitigation[115] of these impacts discussed in the MND is based on incomplete data and analysis and hence is completely inadequate and must be revised.

5.17 Utilities and Service Systems: Would the project: f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?[116]

"No Impact."[117]

The claim the DBBs will only produce minimal construction waste completely ignores the life-cycle of key components of DBBs, which has been estimated at about 11 years,[118] and the waste generated if the DBBs are required to be removed due to subsequent court decisions. This inevitable and contingent waste must be addressed in the MND.

5.18 Mandatory Findings of Significance:
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a

---

[110] MND p. 66.
[111] San Francisco Business Times, June 21, 2013, "*Billboards, signs watch you as you watch them*." Retrievable at: http://www.bizjournals.com/sanfrancisco/blog/2013/06/billboards-signs-will-watch-you.html?ana=RSS&s=article_search&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+bizj_sanfrancisco+%28San+Francisco+Business+Times%29
[112] *NCHRP 2009*, pps. 173-175.
[113] *Scenic Arizona v. City of Phoenix Board of Adjustment*, No. 1 CA–CV 09–0489, November 17, 2011.
[114] *Scenic Arizona v.DOT*, U.S. District Court for the District of Columbia, Case 1:13-cv-00093, Filed 1/23/13.
[115] MND pps. 66-67.
[116] MND p. 68.
[117] MND p. 68.
[118] *Illuminating*, p. 9.

rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?[119]

"Less Than Significant Impact with Mitigation Incorporated."[120]

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?[121]

"Less Than Significant Impact with Mitigation Incorporated."[122]

Due to the inadequacies, misrepresentations and omissions in the MND, the conclusion of "Less Than Significant Impact with Mitigation Incorporated" as to these factors is without supporting evidence and must be reevaluated after these flaws are addressed.

Conclusion

For all the reasons and evidence stated above, and those we expect will be raised by other commenters, Scenic San Diego contends this project is not eligible for an MND, and therefore a complete Environmental Impact Report is required. The MND is so lacking in specifics that it does not support the findings stated. Only if a complete EIR is prepared, will it be possible to determine whether the significant impacts of the proposed project can be mitigated. The comments provided above identify additional mitigation measures or project revisions that must be added in order to reduce project impacts to insignificance. As such, the comments meet the "substantial revision" test and the document must be revised and recirculated for public review. CEQA Section 15073.5 requires recirculation of a negative declaration when the document must be substantially revised after public notice of its availability has previously been given, but prior to its adoption.

The City's contention this project does not conflict with existing law is premised on an ordinance change in 2011 which itself was premised on what this MND reveals was a patently false and misleading Negative Declaration. This makes the need for a valid Environmental Impact Report all the more compelling. It is now apparent from official City records that either: (1) This project is the result of multiple misrepresentations and outright falsifications in official City documents,[123] or, (2) DBBs are not allowed under City laws, whether on public or private property.

[119] MND p. 69.
[120] MND p. 69.
[121] MND p. 69.
[122] MND p. 69.
[123] For example, the ND contended the 2011 ordinance change would not result in even *potential* environmental impacts, whereas the MND for the DBBs, which could not even be contemplated but for the ordinance change, identifies at least 34 environmental impacts, and that is a woeful undercount.

Apart from the potential for serious environmental impacts, this course of conduct is cause for grave concern regarding whether certain City officials failed to conduct City business in an open and transparent manner.

Sincerely,

Pamela L. Wilson
Scenic San Diego