



# DELANO & DELANO

June 28, 2013

VIA FACSIMILE AND U.S. MAIL

Kevin Ham  
Economic Development Director  
City of Vista  
200 Civic Center Drive  
Vista, CA 92084

Re: City of Vista Digital Message Boards; Draft Initial Study and Mitigated Negative Declaration

Dear City of Vista:

This letter is submitted on behalf of South Vista Communities in connection with the proposed construction and operation of digital message boards ("Project") and related Mitigated Negative Declaration ("MND").

The California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*, requires the preparation of an Environmental Impact Report ("EIR") whenever substantial evidence in the record supports a "fair argument" that significant environmental impacts may occur. Pub. Res. Code § 21080(d); *No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68. If there is "substantial evidence that the project might have [a significant impact on the environment], but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed in a 'manner required by law.'" *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.

The MND is overly vague in describing the Project. The MND states that Project construction "would include, but not be limited to," a whole host of activities. MND at 10 (emphasis added). There is no limit on the types of construction activities that might occur. The MND also "assumes" the amount of material to be excavated. *Id.* "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 197 – 98.

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Here, the City should prepare an EIR before proceeding; the Project is likely to lead to several significant impacts. These include the following impacts.

The Project will lead to significant impacts to community character and aesthetics.

- The MND acknowledges that the West Vista Way message board “would partially block a small portion of the San Marcos Mountain ridgeline.” MND at 33. It also acknowledges that “the project would result in a change in the character of a small portion of the site.” *Id.* at 34. Yet there is no explanation for how these significant impacts will be mitigated. CEQA’s “substantive mandate” requires agencies to refrain from approving projects with significant effects where there are feasible mitigation measures or alternatives that can lessen or avoid those effects. *Mountain Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4<sup>th</sup> 105, 134.
- The MND improperly compares the Project to how the site is zoned. MND at 34. CEQA requires a consideration of the Project’s impacts in relation to existing on-the-ground conditions. *See Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4<sup>th</sup> 310, 322 (describing 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”).
- The MND acknowledges residential uses within the vicinity of the West Vista Way site and acknowledges that the Project will increase light and glare by as much as four percent. MND at 35. Yet again the MND fails to acknowledge significant environmental impacts.

The Project will lead to significant impacts to cultural resources.

- The MND inappropriately defers analysis and mitigation. MND at 49. CEQA requires an agency to prepare adequate analysis and mitigation prior to approval of a project. In *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, the court observed: “Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.” *Id.* at 92 (citations omitted).

The Project will lead to significant impacts to traffic and transportation.

- The MND acknowledges that “the issue has been raised as to whether digital message boards themselves, regardless of compliance with ... operating

requirements, present a distraction to drivers and thereby create conditions that could lead to accidents.” MND at 66. This acknowledgement, in and of itself, is substantial evidence of a fair argument of a significant environmental impact. Furthermore, the enclosed studies provide further evidence of the effects of the significant effects of distracted driving.<sup>1</sup> Note, for example, that the FHWA study cited in the MND observes that a “literature review does reveal a preponderance in the number of studies (5:1) which show some driver safety effects due to traditional billboards and [Commercial Electronic Variable Message Signs] in comparison with the number of studies that show no driver safety effects at all due to these stimuli.” See Ex. 1 at 15.

- Furthermore, the MND acknowledges a further potential effect, if the Project develops “interactive signs that would be capable of communicating with vehicles or passengers.” MND at 66. Since the Project does not prohibit such capability, this is even further evidence of a fair argument of a significant effect.

The Project will lead to significant impacts to air quality.

- The MND elsewhere acknowledges that the Project will require over 525,000 kilowatts per year. MND at 53. Yet it fails to account for the air quality impacts associated with this electricity generation. *Id.* at 38 – 41.
- The analysis also does not account for the existing air quality conditions. Assumed compliance with air emission requirements does not ensure that impacts will not be significant. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.

The Project will lead to significant impacts to climate change.

- The MND fails to discuss the impacts of both construction and operational impacts on Greenhouse Gas Emissions. MND at 53 – 54.

The Project will lead to significant impacts to public services.

- The MND acknowledges the substantial electricity needs of the Project. MND at 53. And studies from other jurisdictions have noted such demands. See “Illuminating the Issues” (enclosed herein as Ex. 5). Yet the MND fails to analyze the impacts associated with such power or whether such power is even available in light of the significant existing power generation issues in the region. MND at 62.


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<sup>1</sup> It should be obvious that accidents could lead to impacts beyond traffic, including potential fire and other emergency impacts, as well as potential impacts associated with hazardous spills.

Accordingly, South Vista Communities requests that the City reject the Project and MND.

Thank you for your consideration of these comments. If you have questions or need additional information, please contact me.

Sincerely,



Everett DeLano

Enclosures:

1. "The Effects of Commercial Electronic Variable Message Signs (CEVMS) on Driver Attention and Distraction: An Update"
2. "Effects of Electronic Billboards on Driver Distraction"
3. "Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction"
4. "Recent Billboard Safety Research"
5. "Illuminating the Issues"