



**Final Initial Study/Mitigated Negative Declaration
Electronic Signs on City-owned Property Project
West Mission Street and Mabury Road Billboards Sites
City of San José, Santa Clara County, California**

State Clearinghouse Number 2025020244

Prepared for:



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Appendix A: Public Comment Letters

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SECTION 1: INTRODUCTION

Although not required by the California Environmental Quality Act (CEQA), the City of San José has prepared the following responses to significant environmental comments received on the proposed Electronic Signs on City-owned Property Project–West Mission Street and Mabury Road Billboards Sites Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND). The Responses to Comments and Errata, which are included in this document, together with the Draft IS/MND, Draft IS/MND appendices, and the Mitigation Monitoring and Reporting Program (MMRP), comprise the Final IS/MND for use by the City of San José in its review and consideration of the Electronic Signs on City-owned Property Project–West Mission Street and Mabury Road Billboards Sites (proposed project). All public comments regarding the Draft IS/MND are included for consideration by the City of San José, Santa Clara County.

This document is organized into three sections:

- **Section 1–Introduction.** Provides an introduction to the Final IS/MND
- **Section 2–Topic Responses.** Provides a single, comprehensive response to similar comments about a particular topic.
- **Section 3–Response to Written Comments.** Provides a list of agencies, organizations, and individuals who commented on the Draft IS/MND. Responses to all letters received regarding the Draft IS/MND are provided in this section, and Copies of all letters received are included in Appendix A.
- **Section 4–Conclusion.** Provides the conclusion of the Final IS/MND.

Copies of all letters received during the public comment period regarding the Draft IS/MND are included in Appendix A. Comments within Appendix A are bracketed, and corresponding responses are provided in this Response to Comments. Please reference Appendix A to find specific responses to those bracketed comments. Note that the City received a request from the California Department of Fish and Wildlife (CDFW) for an extension for providing comment on the Draft IS/MND. The City granted the extension, and the comment letter is included in Appendix B. CEQA does not require that an agency consider or respond to late comments. Public Resources Code § 21091(d)(1); *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 CA5th 941, 972; *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 CA4th 911, 924 n10.

The Final IS/MND includes the following contents:

- Draft IS/MND (provided under separate cover)
- Draft IS/MND appendices (provided under separate cover)
- Topic Responses, Responses to Written Comments, and Conclusion (Sections 2, 3, and 4 of this document)
- Mitigation Monitoring and Reporting Program (provided under separate cover)

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SECTION 2: TOPIC RESPONSES

Topic responses address similar comments made by multiple public agencies, businesses, organizations, or individuals through written comments submitted to the City of San José (City).

2.1 - LIST OF TOPIC RESPONSES

Based on careful and thorough review of comments received, the City determined that several comments raised similar, overlapping concerns and questions on the environmental effects of the project within the same topic areas. Therefore, for clarity and readability and to avoid potential confusion and redundancy associated with numerous responses to individual comments raising similar concerns, responses for each topic area have been prepared. The responses to the common topic areas raised in the comment letters are listed below.

- Topic Response 1: General Comments That Do Not Raise CEQA Concerns
- Topic Response 2: General Opposition from the Public and Local Organizations

2.2 - TOPIC RESPONSES

Topic Response 1—General Comments That Do Not Raise CEQA Concerns

Summary of Comments

Several letters were received by the City which included comments that provide no specific environmental comments under the California Environmental Quality Act (CEQA) or comments related to the IS/MND. These include, but are not limited to, comments that reiterate project information, introduce the commenter (agency, organization, or individual) and their objectives, and provide information of legal requirements or procedures. Comments in this category also include comments that proclaim the inadequacy of the Draft IS/MND or make unsubstantiated claims yet provide no supporting evidence for these claims.

Response

Section 15204(b) of the CEQA Guidelines state that, in reviewing MNDs, persons and public agencies should focus on the sufficiency of the document in identifying significant effects. When responding to comments, lead agencies need only to respond to comments regarding significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made. The letters summarized above do not comment on any of the environmental analyses presented in the Draft IS/MND nor do they identify specific effects, explain why an effect would occur, or explain why an effect would be significant. Because the comments do not focus on the environmental analysis, no further response is required. The letters described above are noted for the record.

Topic Response 2—General Opposition from the Public and Local Organizations

Summary of Relevant Comments

Several letters received include general statements of opposition to the proposed project without specific claims about the inadequacy of the analysis performed to study potential impacts of the proposed project. One comment letter claims that the “majority of the public” does not want electronic billboards in the City; another comment letter stated the people should sue the City. Neither letter identified a significant impact that would result from implementation or operation of the proposed project, nor did either provide substantiated evidence to support their claims. Another letter claimed that the Draft IS/MND neglected to refer to a City survey to which purportedly 2,000 respondents showed “overwhelming opposition” to new digital billboard downtown and along freeways but neglected to provide substantive information about the survey, such as where the results of the survey can be found or how this survey was conducted.

The foregoing comment received in response to the Draft IS/MND is referred to as “opposition from the public and local organizations” and is the focus of this Topic Response.

Response

Opposition from community organizations can occur across a range of topics, regardless of the proposed project. As part of the CEQA review process, publication of the Draft IS/MND for public comment is required for community organizations and members of the public alike to give their input. Comments, including those from community organizations, may range from recommended mitigation measures to outright opposition or appraisal.

The purposes of soliciting public comment on draft negative declarations include:

- Sharing expertise;
- Disclosing agency analyses;
- Checking for accuracy;
- Detecting omissions;
- Discovering public concerns; and
- Soliciting counterproposals (CEQA Guidelines § 15200).

To this end, commenters are directed to focus their comments on the Draft IS/MND’s conclusion that the proposed project would not have a significant impact on the environment (CEQA Guidelines § 15204(b)).

These letters do not advance any of the above purposes. They do not identify any significant effects or provide substantial evidence to challenge any of the conclusions in the Draft IS/MND. These general opposition comments are speculative and do not incorporate facts, and they do not constitute substantial evidence per CEQA Guidelines; thus, no further analysis is required.

SECTION 3: RESPONSES TO WRITTEN COMMENTS

3.1 - LIST OF AUTHORS

A list of public agencies, organizations, and individuals that provided comments on the Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) during the public circulation period is presented below. Each comment has been assigned a code. Individual comments within each communication have been numbered so comments can be cross-referenced with responses. Following this list, the text of the communication is reprinted and followed by the corresponding response.

The California Environmental Quality Act (CEQA) does not require that an agency respond to late comments on an MND (Public Resources Code [PRC] § 21091(d)(1)). Accordingly, CEQA case law holds that given that there is no legal duty to respond to late comments, the claimed inadequacy of responses to late comments cannot be a basis for challenging the legal adequacy of an environmental document. See., e.g., *Gray v. County of Madera* (2008) 167 CA4th 1099, 1111. Without waiving any of its legal rights or defenses, the City has prepared responses to a comment letter from the California Department of Fish and Wildlife (CDFW) received after the close of the public comment period.

Author **Code**

State Agencies

California Department of Transportation (Caltrans) (dated March 12, 2025)..... Letter A
CDFW (dated March 13, 2025) Letter B
CDFW (dated March 20, 2025)Letter C

Organizations

The Amah Mustun Tribal Band of San Juan Bautista and AMTB (dated February 12, 2025) Letter D
Mark Baker, Soft Light Foundations (dated February 12, 2025)..... Letter E
Mark Baker, Soft Light Foundations (dated February 24, 2025).....Letter R
No Digital Billboards in San José (dated March 13, 2025)..... Letter G
Pacific Gas and Electric Company (PG&E) (dated February 14, 2025) Letter H
PG&E (dated March 17, 2025).....Letter I

Individuals

Freda Hofland (dated February 13, 2025) Letter J
Cricket Love (dated March 14, 2025).....Letter K
Willa Scholten (dated February 12, 2025)..... Letter L

3.2 - RESPONSES TO COMMENTS

3.2.1 - Introduction

Although a lead agency is not required to provide written responses to comments on proposed Negative Declarations (NDs) or MNDs under CEQA, the City of San José has evaluated the comments received on the Draft IS/MND for the proposed Electronic Signs on City-owned Property Project West Mission Street and Mabury Road Billboards Sites (proposed project) (State Clearinghouse No. 2025020244) and has elected to provide responses to the following significant environmental comments. None of the comments received results in the need to recirculate the Draft IS/MND or to prepare an Environmental Impact Report (EIR).

3.2.2 - Comment Letters and Responses

The comment letters reproduced in the following pages follow the same organization as used in the List of Authors.

State Agencies

California Department of Transportation (Caltrans) (Letter A)

Response to A-1

The introductory paragraph acknowledges the proposed project and its review by Caltrans.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to A-2

This comment acknowledges the location of the proposed project.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to A-3

The commenter requests that the City or applicant contact Caltrans' Outdoor Advertising Program (ODA Program) for an ODA Preliminary Determination and Permit Applicant forms and requirements for proposed outdoor advertising displays that are intended to operate as revenue generating off-premises displays.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND; the comment is included in the administrative record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to A-4

The concluding paragraph thanks the City for including Caltrans in the environmental review process and provides contact information for review of future projects.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND; the comment is included in the administrative record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

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California Department of Fish and Wildlife (CDFW) (Letter B)

Response to B-1

This comment is a request for extension for CDFW to provide comments on the proposed project.

The City notes that the comment period was extended from March 14, 2025, to March 28, 2025.

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CDFW (Letter C)

Response to C-1

This comment summarizes CDFW's role in submitting comments on the proposed project and relevant regulatory requirements.

Federal, State, and local regulatory requirements for the protection of biological resources are listed on pages 71–76 in Section 4.4 Biological Resources of the Draft IS/MND. The commenter does not raise project-specific environmental comments or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to C-2

This comment is a summary of the proposed project's description, location, and construction timeframe.

The commenter does not provide specific environmental comments or comments related to the Draft IS/MND; the comment is included in the administrative record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to C-3

The commenter states that the environmental setting of each of the 11 billboards to be removed must be provided.

As stated in the Draft IS/MND Section 3.3 Removal of Existing Billboards (pages 10–11), the 11 existing billboards to be removed are located in urban, developed areas. Further, as stated on page 10 of the Draft IS/MND, the existing billboards proposed for removal would each be removed at their bases in one working day and no excavation would be required, and the billboard removals would not result in change to impervious surfaces at the removal sites as no excavation would be performed. Furthermore, on page 79, the Draft IS/MND states that compliance with Mitigation Measure (MM) BIO-1 Impacts to Nesting Birds and MM BIO-3 Impacts to Roosting Bats would be required at all billboard removal locations. Thus, the concerns raised by the commenter are fully addressed in the Draft IS/MND and no further response is required.

Response to C-4

The commenter states that Figure 8b and Figure 9 in the Draft IS/MND (pages 51 and 85, respectively) show that the boundary of night illuminance would reach the Coyote Creek corridor, which has the potential to adversely affect wildlife species and the habitat that support them. The commenter also refers to the upland woodland area on-site between the proposed billboard location and Coyote Creek as having low tree density, which may allow light to enter Coyote Creek. The commenter recommends that the Draft IS/MND analyze feasible relocation or redesign of the proposed billboard to reduce potential impacts to the Coyote Creek riparian corridor and associated wildlife. The commenter further recommends mitigation measures that would (1) assess potential impacts to wildlife species utilizing Isolux Diagrams and ground surveys before and after project implementation; (2) limit nighttime luminance levels facing the Coyote Creek as to not exceed those outlined in Dark-Sky Association Guidance for Electronic Message Centers; and (3) switch off the proposed billboard from 11:00 p.m. to 1 hour before sunrise.

As provided in the Draft IS/MND Section 4.4 Biological Resources on page 79, Figure 9 shows that the light reaching a distance of 200 feet from the proposed Mabury Road billboard would be substantially reduced to between 0.001 and 0.009 foot-candle. Note that the source for IS/MND Figure 9 is a SITELINE Analysis prepared for the proposed Mabury Road billboard, which is included in Appendix C.¹ Furthermore, as described in the Draft IS/MND Section 3.2 Proposed Development on page 10, the proposed billboard would be equipped with the SITELINE system, which includes a baffle system similar to luminaire baffles to eliminate all projection of light from the light-emitting diodes (LEDs) into a “protected region.” These mechanical baffles/louvers (made of matte-finished black polymer) do not have the effect of any optical focusing or re-direction of light and thus do not increase the light emission from the LEDs in any direction. They serve strictly as carefully configured mechanical baffles which absorb the light from the LEDs and prevent its passage in the protected direction.

The SITELINE Analysis concluded that the light intensity reaching the Coyote Creek riparian corridor would be substantially reduced. In addition, nighttime luminance levels are already governed by City Council Policy 6-4. Per City Council Policy 6-4, the proposed billboard would not be allowed to operate from midnight to 6.a.m. In addition, per MM BIO-2, billboard intensity would be reduced from 30 minutes before sunset (far earlier than the time proposed by the commenter) until midnight. These aforementioned requirements would further reduce potential project impacts.

Response to C-5

This comment summarizes requirements for the reporting of special-status species and natural communities and for the payment of environmental document filing fees.

The commenter does not provide specific environmental comments or comments related to the Draft IS/MND; the comment is included in the administrative record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to C-6

Attachment 1 to the comment letter is a list of special-status species and commercially/recreationally important species.

The attachment is not referenced in any of the comments in this letter and does not provide specific environmental comments or comments related to the Draft IS/MND; the comment is included in the administrative record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

¹ As stated on page 10 of the Draft IS/MND, Redia Resources’ SITELINE technology addresses potential concerns where light emission into nearby areas is undesirable. The SITELINE system employs a mechanical baffle system similar to luminaire baffles to eliminate all projection of light from the light-emitting diodes (LEDs) into a “protected region.” As a result, the protection is reliable, permanent, and not dependent on programming or settings.

Organizations

The Amah Mustun Tribal Band of San Juan Bautista and AMTB (Letter D)

Response to D-1

The commenter suggests searches of the Sacred Land Files (SLF), California Historical Resources Information System (CHRIS), and the Native American Heritage Commission (NAHC) be conducted. The letter makes recommendations that (1) all personnel involved in earthmoving be Cultural Sensitivity Trained; (2) a Qualified California Trained Archaeological Monitor be present during any earth movement; and (3) a Qualified Native American Monitor be present during any earth movement. The commenter also includes an offer to provide Native American Cultural Resource Monitoring, Consulting, and/or Sensitivity Training. In addition, the commenter includes a rate sheet for monitoring services, a Certificate of Liability Insurance.

The proposed project involves limited earthmoving activity for the installation of the two proposed billboards. A hole approximately 6 feet in diameter (approximately 28.25 square feet) would be excavated on each site to a depth of approximately 40 feet to facilitate the installation of a billboard on each site.

Removal of the 11 billboards would not include any excavation; each billboard would be removed at its base and no excavation would be required. Accordingly, billboard removal would not result in any change to impervious surfaces at the removal sites.

As described in the Draft IS/MND Section 4.5, the Cultural and Tribal Cultural Resources discussion was based on information provided by the NAHC, Northwest Information Center (NWIC), the current inventories of the National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR), California Historic Landmarks (CHL) list, California Points of Historical Interest (CPHI) list, and the California Built Environment Resource Directory (BERD) for Santa Clara County.

- **West Mission Street Billboard.** As stated on pages 96–97 of the Draft IS/MND, results from the NWIC identified no historic resources on the project site and none were identified during a pedestrian survey at the West Mission Street Billboard project site.
- **Mabury Road Billboard.** As stated on page 97 of the Draft IS/MND, results of the NWIC records search for the Mabury Road billboard site indicated that there is one recorded historic resource—the Mabury Service Yard—located within the project boundary; however, resource P-43-003902, was evaluated in October 2006 and was found to be ineligible for inclusion in the NRHP and CRHR due to lack of architectural significance and association to significant people or events in the City of San José (see Resource P-43-003902 in the revised Appendix D). No historic resources were identified on-site during the pedestrian survey.

Lastly, the comment letter references that if human remains are found and a reburial is not possible, the Tribe would consult with the City of Redwood City. This statement appears to be either part of a generic form letter from this Tribe used as standard response to project reviews or a letter that was intended for a project located in Redwood City.

The Draft IS/MND concluded that no monitoring for the presence of archaeological resources during ground disturbance is needed. However, implementation of the City’s Standard Permit Conditions for Human Remains and Subsurface Cultural Resources would ensure that potential impacts to archaeological resources are less than significant. In the unlikely case that human remains or other buried cultural resources are unearthed during construction, implementation of the Standard Permit Conditions would require certain protocols be followed to protect finds. These conditions are listed in full on pages 99–100 of the Draft IS/MND.

Response to D-2

The comment is a statement by the Tribal Chief of the AMTB of Mission San Juan Bautista, as the formal Most Likely Descendant (MLD), recommending the procedures to be taken on-site in the case that ancestral remains and associated grave regalia are discovered on-site.

On page 98, the Draft IS/MND discusses the potential for the presence of human remains at the project site. The discussion concludes that with adherence to applicable regulations, including, but not limited to, California Public Resources Code Section 5097.9-5097.991, Policy ER-10.2, and Health and Safety Code Section 7050.5, as well as with implementation of the City’s Standard Permit Condition for Human Remains, impacts to human remains would be less than significant. This condition is listed in full on page 100 of the Draft IS/MND.

As detailed on page 99 of the Draft IS/MND, the City conducted outreach to Tribal entities per the requirements of Assembly Bill (AB) 52. A representative of the Indian Canyon Mutsun Band of Costanoan asked the City for consultation but did not respond when the City proposed a meeting and no further consultation proceeded.

Therefore, as described above, the concerns and recommendations raised in this comment letter were fully addressed in the Draft IS/MND, and no further response is needed.

Mark Baker, Soft Light Foundations, February 12, 2025 (Letter E)

Response to E-1

This comment acknowledges the proposed project and claims that it would add light pollution. The commenter does not provide substantiating information to support its claim. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to E-2

This comment states that the Draft IS/MND does not address light pollution or cumulative light pollution impacts from the proposed billboards and must therefore be revised.

As stated on pages 43–44 of the Draft IS/MND, based on results from the project-specific and site-specific Photometric Analysis completed by technical lighting experts (provided in Appendix A of the Draft IS/MND), the proposed project would be compliant with City’s Municipal Code regulations (Title 23, Section 23.02.905), Council Policy 6-4, and Caltrans regulations to minimize adverse lighting effects as a result of the proposed billboards, including the minimization of light pollution. As detailed under Section 3.3 Project Description, page 11 of the Draft IS/MND, and Section 4.1 Aesthetics, page 43 of the Draft IS/MND, the proposed project would avoid illumination between the hours of 12:00 a.m. to 6:00 a.m.; tilt the proposed signs downward by at least 15 degrees and provide a rimmed edge across the top of the sign to reduce light from emanating upward; and use automatic dimming technology to adjust billboard lighting relative to ambient light levels, per the requirements of the Outdoor Advertising Act and City Municipal Code Section 23.02.905.

Thus, the concerns of the commenter regarding light pollution impacts and cumulative light pollution impacts were fully evaluated in the Draft IS/MND in accordance with local and State regulations and policies and no further response is needed.

Response to E-3

The commenter states that the proposed project does not mention the luminance (nits) or radiance level (watts) per steradian meter of the digital display.

As provided in Figure 9 on page 85 of the Draft IS/MND, the proposed project would result in a total luminance at or below 300 nits, which is below the 330 nit maximum for screen output brightness in compliance with Out of Home Advertising Act of America (OAAA) standards. Luminance measurements taken for the project site to study impacts of the proposed project on ambient light levels are provided in pages 7–12 of Appendix A of the Draft IS/MND.

Thus, the proposed project’s potential effects regarding luminance/radiance are fully evaluated in the Draft IS/MND and no further response is required.

Response to E-4

The commenter states that references to illuminance in Figure 9 on page 85 of the Draft IS/MND is invalid for an LED display.

As stated on page 8–9 of the Draft IS/MND, the proposed billboards would be equipped with Media Resources, Inc. (Media Resources) SITELINE technology. Media Resources is a firm specializing in LED technology. A report prepared by Media Resources on the application of their technology at the

proposed Mabury Road project site is included in Appendix C to the Draft IS/MND. Figure 9 on page 85 of the Draft IS/MND was taken from that report. The City may reasonably rely on the testimony or reports by experts supporting a finding that a project's impacts will be insignificant (CEQA Guidelines § 15063(a)(3)). It is a reasonable assumption that a firm specializing in LED technology would provide analysis and figures appropriate for LED technology. The commenter provides no specific facts or evidence to support the assertion that the references are invalid.

Response to E-5

The commenter states that the Draft IS/MND mistakenly treats the LED digital display as a point source as opposed to a Lambertian light source.

A Lambertian light source is a light source from which the emitted radiance is constant, meaning it is the same regardless of the direction of observation. This implies that the light source appears equally bright from all angles.

The proposed signs do not have a Lambertian output pattern but are made up of hundreds of individual diodes with specific optical properties, as stated in the introduction of the Photometric Analysis (included in Appendix A of the Draft IS/MND). In regard to the calculated measurements on the various adjacent area, it would not matter whether the signs were Lambertian or not because illuminance (measured in foot-candles) is the measurement of the amount of light (any light) falling on a surface. As stated in pages 2–3 of the Photometric Analysis, the results of the Photometric Analysis display varying foot-candle measurements across the proposed project's frontage based on the illuminance readings taken at different points across the project site. Thus, the Draft IS/MND referring to the LED digital display as a point source, as opposed to a Lambertian light source, is accurate.

Response to E-6

The commenter states that the Draft IS/MND does not specify maximum lux and provides a link for creating tables demonstrating Maximum and Average Lux.

As stated on page 1 of Appendix A of the Draft IS/MND, the proposed billboards would have a maximum lux output of 330 nits or less, per OAAA requirements, which would be achieved through the use automotive dimming technology, in conformance with the OAAA and the City's Municipal Code. The link provided in the comment presents tables for referencing Maximum and Average Lux, which is not required by OAAA or the City's Municipal Code. No further response is required.

Response to E-7

The commenter states that the Draft IS/MND does not take into account the impacts of LED digital displays on individuals with disabilities and recommends the City establish light sensitivity requirements for these populations.

The Draft IS/MND evaluates the environmental impacts of the proposed project under CEQA Guidelines. "Environment" is defined as the physical conditions that exist within an area affected by a proposed project, including land, air, water, minerals, flora and fauna, noise, and objects of historic or aesthetic significance (PRC § 21060.5; CEQA Guidelines § 15360). Further, the impacts analyzed in an environmental document must be "related to a physical change" (CEQA Guidelines § 15358(b)). A

lead agency must make a finding of significance if a project's impacts may cause substantial adverse effects on human beings (PRC §21083(b)(3); CEQA Guidelines § 15065(a)(4)). A change to the physical environment that might otherwise be minor must be treated as significant if people will be significantly affected; however, this factor relates to adverse changes to the environment of human beings generally, not to effects on particular individuals. See, e.g., *Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.* (2013) 215 Cal.App.4th 1013, 1042; *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal.App.3d 130, 156; *Topanga Beach Renters Ass'n v. Department of Gen. Servs.* (1976) 58 Cal.App.3d 188, 195; *Clews Land & Livestock v. City of San Diego* (2017) 19 CA5th 161, 196; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1021. Because such concern is not an impact of the proposed project on the physical environment or on people generally and is not specifically related to one of the City's environmental thresholds, it is not required to be studied under the City's CEQA thresholds.

To the extent the commenter requests an Americans with Disabilities Act (ADA) accommodation, the comment is unclear and lacks evidence of failure to comply with a specific ADA requirement. The City, however, shares the concern that disabled individuals have an equal opportunity to benefit from public services and facilities. The proposed project would comply with all applicable federal, State, and local laws, including the ADA. However, the comments do not identify any specific provision of the ADA with which the proposed project would not comply, and it is unclear what action is being requested short of outright project denial. While the ADA generally requires that "reasonable accommodations" be provided to ensure equal access for those with disabilities, the comment appears to be opposed to any new artificial sources of lighting in the City, including the proposed project, rather than requesting any particular disability-related accommodation. No further response is required.

Response to E-8

The commenter states that the Draft IS/MND is fatally flawed and would not hold up in the scrutiny of litigation.

The commenter does not refer to any project-specific impacts under CEQA and does not include substantiating support. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to E-9

The commenter reiterates that the Draft IS/MND failed to address light pollution impacts or cumulative light pollution impacts.

Refer to Response to E-2. No further response is required.

Response to E-10

The commenter reiterates the claims of Comment E-5, above.

Refer to Response to E-5. No further response is required.

Response to E-11

The commenter reiterates the claim that the proposed project would result in unlawful discriminatory barrier against individuals with disabilities.

Refer to Response to E-7. No further response is required.

Mark Baker, Soft Light Foundations, February 24, 2025 (Letter F)

Response to F-1

In this comment, the author identifies themselves as an individual with significant adverse reactions to light emitted by LEDs and thus qualifies as a person with disabilities under the ADA.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to F-2

The commenter notes the lack of regulatory policies for LEDs to ensure public health, safety, and civil rights for individuals with disabilities.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to F-3

The commenter claims that the City must afford ADA accommodation to such individuals and requests such accommodation be that the City does not permit the operation of the proposed LED digital billboards at the project site.

Refer to Response to E-7.

To the extent the commenter requests an ADA accommodation, the comment is unclear and lacks evidence to support the claim that ADA accommodation is, in fact, required. The City, however, shares the concern that disabled individuals have an equal opportunity to benefit from public services and facilities. The project will comply with all applicable federal, State, and local laws, including the ADA. However, the comments do not identify any specific provision of the ADA with which the proposed project would not comply, and it is unclear what action is being requested short of outright project denial. While the ADA generally requires that “reasonable accommodations” be provided to ensure equal access for those with disabilities, the commenter appears to be opposed to any new artificial sources of lighting in the City, including the proposed project, rather than requesting any particular disability-related accommodation.

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No Digital Billboards in San Jose (Letter G)

Response to G-1

The commenter provides an overview of No Digital Billboards in San José (NDBSJ) and of City policies for digital billboards.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to G-2

The commenter states that the project sites would be significantly altered by the proposed project and that any conclusion suggesting otherwise “defies” common sense.

In adopting the amendments to General Plan Land Use Policy CD 10.4 and Municipal Code Title 23 and adopting City Council Policy 6-4 to allow new Programmable Electronic Signs and Signs Displaying Off-Site Commercial Speech on identified City-owned parcels, the City established selection criteria for City-owned land on which signs may be allowed and established limitations on the location, number, type, size, and height of signs that may be allowed under this policy. An Initial Study/Negative Declaration (IS/ND) was adopted (File No. PP18-058) by the City in 2018 that evaluated the program-level environmental impacts of the amendments to the General Plan, Municipal Code, and Council Policy that would allow the City Council to consider approving use of designated City-owned sites for electronic signs. For aesthetics impacts, the adopted 2018 IS/ND (File No. PP18-058) concluded that signs on City-owned properties operating pursuant to Municipal Code Title 23, Section 23.02.905 and Council Policy 6-4 would result in less than significant aesthetics impacts.

Response to G-3

The commenter states that the proposed project does not include objective opinions related to aesthetics from stakeholders or experts.

The commenter does not provide specific environmental comments under CEQA or comments related to the proposed project or to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed. Note that the aesthetics-related analysis in the Draft IS/MND was completed per CEQA Guidelines; light experts were consulted and their analysis is provided in Appendix A of the Draft IS/MND.

Response to G-4

The commenter questions why experts in aesthetics were not consulted in preparation of the Draft IS/MND.

See Response to G-3.

Response to G-5

The commenter claimed that the Draft IS/MND neglected to refer to a City survey to which purportedly 2000 respondents showed “overwhelming opposition” to new digital billboard downtown and along freeways.

The commenter neglects to provide information as to where the results of the survey can be found or how the study was conducted. Furthermore, opposition from community members can occur across a range of topics, regardless of the proposed project. As part of the CEQA review process, publication of the Draft IS/MND for public comment is required for community organizations and members of the public alike to give their input. Comments, including those from community organizations, may range from recommended mitigation measures to outright opposition or appraisal.

The purposes of soliciting public comment on draft negative declarations include:

- Sharing expertise;
- Disclosing agency analyses;
- Checking for accuracy;
- Detecting omissions;
- Discovering public concerns; and
- Soliciting counterproposals (CEQA Guidelines § 15200).

To this end, commenters are directed to focus their comments on the Draft IS/MND's conclusion that the proposed project would not have a significant impact on the environment (CEQA Guidelines Section 15204(b)).

These letters do not advance any of the above purposes. They do not identify any significant effects or provide substantial evidence to challenge any of the conclusions in the Draft IS/MND. These general opposition comments are speculative and do not incorporate facts, and they do not constitute substantial evidence. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns and Topic Response 2, General Opposition from the Public and Local Organizations; no further response is needed.

Response to G-6

The commenter states that the dynamic nature of the proposed billboard (changing colors and rotating images) was not considered in the Draft IS/MND. The commenter further claims that omission of this analysis in the Draft IS/MND disqualifies the proposed project from further review.

As stated on page 184 of the Draft IS/MND, the proposed project would not allow the sign face display at either location to change less frequently than every 4 seconds and messages would be static (i.e., not moving or animated). This dwelling time, or lag between transition to the next image, would be compliant with the requirements of the California Business and Professions Code Section 5405(d)(1); the OAAA; and the Federal Highway Administration (FHWA). As such, the concerns raised by the commenter regarding the dynamic nature of the proposed billboards are fully addressed in the Draft IS/MND. Also see Response to G-2. No further response is required.

Response to G-7

To support the claim in Comment G.6, this comment includes summaries of several studies purportedly demonstrating the link between digital billboard installation and the adverse impacts on aesthetics. The referenced studies include studies that were completed in Indonesia and Malaysia. It is inappropriate to apply the summarized findings of the referenced studies to the proposed project

as they do not account for the specifics of the proposed signs (including their design) or their location and context (i.e., existing environmental setting and conditions) in which the project is proposed. Further, as stated above, the City's thresholds and aesthetic analysis focuses mainly on whether a proposed project meets City requirements designed to protect scenic quality, and it is not based on subjective or individual aesthetic judgments, such as whether a person considers a project aesthetically pleasing. City requirements are objective and provide an unbiased basis for decisionmakers to understand impacts. Conversely, personal aesthetic judgments are subjective and variable, and thus the City's thresholds rely more heavily on objective standards. The Draft IS/MND appropriately focuses the aesthetics analysis on City-adopted policies, regulations, and related requirements. Thus, the concerns raised by the commenter are fully addressed in the Draft IS/MND and no further response is required.

Response to G-8

The commenter states that the light and glare analysis in the Draft IS/MND is inadequate and does not examine potential effects of the proposed West Mission Street billboard on residents of the Guadalupe Emergency Interim Housing project.

Potential light and glare impacts of the proposed project were fully analyzed on pages 43–44 of the Draft IS/MND. Specific to this comment, potential impacts of the West Mission Street billboard on the Guadalupe Emergency Interim Housing were provided on page 43 of the IS/MND. The Guadalupe Emergency Interim Housing facility, located at 702 Guadalupe Parkway, is approximately 350 feet southeast of the proposed West Mission Street billboard location, as shown in Figure 2b of the Draft IS/MND (page 15). Potential impacts on residents of this facility were further analyzed in the site-specific Photometric Analysis (included in Appendix A of the Draft IS/MND), whose findings were summarized on page 43 of the Draft IS/MND. As noted in the Draft IS/MND, these housing units are generally south and southwest-facing toward State Route (SR) 87, and are located over 150 feet from the proposed sign. Therefore, the proposed project exceeds requirements for a 150-foot buffer stipulated in City Policy 6-4. Furthermore, as noted in the Photometric Analysis, included in Appendix A of the Draft IS/MND, consistent with the Outdoor Advertisement Act and the City's Municipal Code regulations, the proposed signs would utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time would any of the proposed signs exceed a brightness level of 0.3 foot-candle above ambient light conditions. The brightness level at greater distances would be further reduced, and the brightness at the Interim Housing facility was found to be less than 0.3 foot-candle at a distance of approximately 350 feet from the proposed billboard location. Therefore, concerns raised by the commenter on potential impacts to residents located within the vicinity of the project site are fully addressed in the Draft IS/MND. No further response is required.

Response to G-9

The commenter claims that input from the Lick Observatory was not sought and that the Draft IS/MND does not mention impacts from the proposed project to the Lick Observatory. The commenter provides a link purporting to support the claim that the proposed project would impact the Lick Observatory operations.

The referenced YouTube video was published by the group No Digital Billboards in San José and was not produced by Lick Observatory. As previously mentioned in Section 4.1 Aesthetics of the Draft IS/MND, page 43, the proposed signs would operate pursuant to Municipal Code regulations (Title 23, Section 23.02.905), Council Policy 6-4, and Caltrans regulations to minimize adverse lighting effects. For example, to minimize light-related impacts to the Lick Observatory, the proposed signs would not be illuminated between the hours of 12:00 a.m. and 6:00 a.m., consistent with Council Policy 6-4. Furthermore, the proposed billboards would be tilted downward by at least 15 degrees, with a rimmed edge along the top of the signs, to minimize upward illumination. Finally, the proposed signs would operate according to OAAA and Municipal Code regulations through the use of automatic dimming technology to adjust brightness levels to no greater than 0.3 foot-candles above ambient light conditions. Thus, the proposed project would not result in adverse light impacts within the vicinity of the project site, let alone to the Lick Observatory, located approximately 13 miles across intervening urban development. Notification of the public circulation and review period for this proposed project was provided to contacts at the Lick Observatory, and no commentary was received from the Lick Observatory on adverse impacts to operations resulting from the proposed project. Therefore, the concerns raised by the commenter on potential impacts to the Lick Observatory are fully addressed by the Draft IS/MND. No further response is required.

Given the existing substantial sources of light in the City and the lack of substantial evidence documenting that the proposed project would result in a new significant impact, none of the impacts or conclusions in the Draft IS/MND need to be revised, nor do new analyses need to be completed. None of the comments identified any specific statutory or regulatory standard related to lighting with which the proposed project would not comply. There is not otherwise any substantial evidence supporting a fair argument that significant impacts from lighting would result with implementation of the proposed project.

Response to G-10

The comment notes the lack of reference to Dark Sky initiative, a global effort aimed at preventing light pollution, and suggests that the Draft IS/MND assess the proposed project relative to Dark Skies standards. The commenter provides a link to the Dark Skies website and to a press release unrelated to the proposed project.

The proposed project is evaluated under CEQA requirements for light and glare, which include compliance with existing State and local standards to mitigate lightness and glare (see pages 43–44, Section 4.1 Aesthetics of the Draft IS/MND). See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed. Regardless, light and glare impacts are fully discussed on pages 43–44 of the Draft IS/MND; see Response to F.9.

Response to G-11

The commenter states that the conclusions about biological resource impacts are generalized conclusions from another area and are “bad science.” The commenter also states that the Draft IS/MND should be revised to include site-specific assessments by qualified experts.

The Draft IS/MND includes a detailed analysis of the proposed project's potential impacts on biological resources. Specifically, the following analyses were conducted and included in the Draft IS/MND:

- Photometric Analysis conducted by *exp*, a qualified engineering and architecture firm. This analysis is included in Appendix A of the Draft IS/MND.
- Topical thorough analysis by FirstCarbon Solutions (FCS), a firm with over 42 years of CEQA consulting experience.

Based on the detailed findings, backed by field work, lighting modeling, and thorough analysis, the Draft IS/MND concludes that implementation of the proposed project would not result in adverse lighting impacts to biological resources outside of those lighting impacts generated by existing conditions. Thus, the proposed project would be compliant with City Council Policy 6-34, Riparian Corridor Protection and Bird-Safe Design, and impacts to wildlife would be less than significant. Therefore, the concerns raised by the commenter on potential impacts to biological resources are fully addressed by the Draft IS/MND. No further response is required.

Response to G-12

The commenter claims that the Draft IS/MND analysis on energy consumption is inadequate and that a power consumption table between each proposed billboard and a No-Build Alternative should be provided; the commenter includes an example of such table with a link to its source. The commenter further states that digital billboards waste energy and their operation shows disregard to climate change and counters City climate stewardship policies. The commenter concludes with a statement that the Draft IS/MND is incorrect to conclude that the power consumption would not be significant.

The link the commenter provides references a project in New York. It would be inappropriate to apply the same criteria for a project in New York, amid the absence of site-specific criteria, to the proposed project. Per CEQA requirements for an IS/MND, a project would be required to demonstrate reduction in significant levels resulting from the proposed project to a less than significant level through mitigation. The operational energy demand associated with the proposed programmable signs is disclosed on page 108 of the Draft IS/MND. The analysis assumed operations of 24 hours a day and estimated that, when combined, the two proposed billboards (two faces each), would use approximately 70,343 megawatt hours (kWh) of electricity per year. This estimate exceeds actual project usage as the billboards would not be operating 24 hours a day since the signs would be inoperable between midnight and 6:00 a.m. daily, except for use in emergency situations, as discussed on page 9 of the Draft IS/MND. Additionally, the signs would be required to comply with California's Title 24 requirements for energy efficiency and would be dimmable to reflect ambient conditions. Therefore, although the proposed project would increase energy use compared to existing conditions, this increase would not be considered wasteful or inefficient given the compliance with energy and lighting efficiency standards in Title 24. As such, the energy analysis is adequate and complete, and no further response is needed. Furthermore, as noted in Section 4.8 Greenhouse Gas Emissions, the proposed project would participate in the San José Clean Energy

(SJCE) at the Total Green level (i.e., 100 percent renewable energy sources). Therefore, the energy analysis performed for the proposed project is adequate and impacts would be less than significant.

Finally, energy use calculations are provided in Appendix B of the Draft IS/MND. As discussed in Section 4.6 Energy and Section 4.8 Greenhouse Gas Emissions, the proposed project would be compliant with City energy- and climate-related policies. The proposed project's consistency with the City's Greenhouse Gas (GHG) Reduction Strategy Checklist is shown in Appendix E of the Draft IS/MND.

Response to G-13

The commenter claims that the Draft IS/MND should be revised to include a discussion of the impact of digital billboards on driver and pedestrian safety. The commenter includes a multitude of summaries of purportedly relevant articles and sources to support the claim that the proposed project would result in driver distraction.

None of the studies contain information specific to the project site or the proposed project. Thus, it would be inappropriate to generalize the conclusions of these studies to the project site. Furthermore, the proposed project would comply with applicable State and local requirements, including the California Outdoor Advertising Act, Municipal Code regulations (Title 23, Section 23.02.905), and Council Policy 6-4 (refer to pages 179–182 of the Draft IS/MND). These requirements include limitations on the location, design, and operational criteria for electronic signs. As such, the proposed project would restrict ambient lighting output to less than significant levels during operation in compliance with the California Outdoor Advertising Act and Municipal Code Section 23.02.905, therein reducing impacts to passing drivers and thus mitigating impacts on associated traffic hazards, including driver distraction. The unsubstantiated comments generally claim that the proposed billboards could pose a distraction to drivers, resulting in safety risk to the public. While the commenter included reference to various hyperlinked articles on digital billboard safety generally, it did not include any reference to specific comments on the proposed project itself. Driver safety was evaluated in the Draft IS/MND on page 185.

The proposed project would comply with applicable State and local requirements, including the California Outdoor Advertising Act, Municipal Code regulations (Title 23, Section 23.02.905), and Council Policy 6-4 (refer to pages 179–182 of the Draft IS/MND). These requirements include limitations on the location, design, and operational criteria for electronic signs. As such, the proposed project would restrict ambient lighting output to less than significant levels during operation in compliance with the California Outdoor Advertising Act and Municipal Code Section 23.02.905, therein reducing impacts to passing drivers and thus mitigating impacts on associated traffic hazards, including driver distraction.

The FHWA has analyzed the issue of driver distraction with respect to billboard lighting and has released several reports on the agency's view of the issues and research.^{2,3} The FHWA reports address the basic research question of whether operation of a Commercial Electronic Variable Message Sign (CEVMS) along the roadway is associated with a reduction of driving safety for the public based upon three primary criteria: (1) whether there is an increase in crash rates in the vicinity of a CEVMS, (2) whether there is an increase in near-crashes, sudden braking, sharp swerving, and other such behaviors in the vicinity of a CEVMS, and (3) whether there are excessive eye glances away from the roadway in the vicinity of a CEVMS. The reports confirm that there have been no definitive conclusions about the presence or strength of adverse safety impacts from a CEVMS. One comment letter suggested that with implementation of the proposed project, driving conditions would be exacerbated during rainy or dark conditions. Given the lack of evidence substantiating these claims under normal conditions, it can be concluded that impacts on driver visibility under varying weather conditions would occur irrespective of the proposed project.

A subsequent FHWA report confirmed through a study using an eye-tracking system that the percentage of time that drivers dedicated to the road ahead was not significantly affected by the presence of a CEVMS.⁴ This comment notes the lack of a traffic study analyzing impacts on vehicle queueing as a result of driver distraction. As previously mentioned, there is no federal, State, or local driver distraction regulation with which the proposed project does not comply, including those related to vehicle queueing (wherein effects were already found to be less than significant); thus, a traffic study would not be required for the proposed project.

The issue of driver distraction related to the proposed project is discussed on page 185 of the Draft IS/MND. As noted, driver distraction, while not a CEQA threshold, would be substantially mitigated via compliance with federal and State recommendations, specifically Business and Professions Code Section 5405(d)(1), requiring that “. . . no message center display may include any illumination or message change that is in motion or appears to be in motion or that changes in intensity or exposes its message for less than 4 seconds.” This 4-second dwelling time, recommended by the California Business and Professions Code Section 5405(d)(1), the Outdoor Advertising Act, and the FHWA, would limit the duration of sign face display for the proposed project, thereby reducing impacts on driver distraction as stipulated by State and federal requirements. In compliance with Municipal Code Section 23.02.905, limitations on programmable electronic signs, the proposed project would be required to have an 8 second dwell time.

Additionally, as stated on page 181 of the Draft IS/MND, the proposed project would be compliant with City Council Policy 6-4, requiring design measures to ensure signs do not increase hazards on adjacent roadways, including use of automated dimming technology to adjust the brightness of the

² United States Department of Transportation Federal Highway Administration (FHWA). 2009. The Effects of Commercial Electronic Variable Message Signs (CEVMS) on Driver Attention and Distraction: An Update, Publication no. FHWA-HRT-09 018. February. Website: <https://highways.dot.gov/media/56186>. Accessed May 12, 2025.

³ United States Department of Transportation Federal Highway Administration (FHWA). 2012. Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS), Publication no. FHWA-HEP-16-036. September. Website: https://www.fhwa.dot.gov/real_estate/oac/visual_behavior_report/final/. Accessed May 12, 2025.

⁴ United States Department of Transportation Federal Highway Administration (FHWA). 2012. Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS), Publication no. FHWA-HEP-16-036. September. Website: https://www.fhwa.dot.gov/real_estate/oac/visual_behavior_report/final/. Accessed May 12, 2025.

sign relative to ambient light and that no sign be in operation between the hours of 12:00 a.m. and 6:00 a.m. except to display emergency messages from local, State, and federal governments. As discussed, each programmable sign would be equipped with sensors that modify the brightness of the sign in response to ambient lighting conditions and would be required to avoid displaying animated or flashing images (contrary to claims of one commenter, who suggested that flashing signs generated from the proposed billboards would cause driver distraction).

Further, the proposed project would comply with Caltrans requirements to not include illumination or message changes that are in motion or appear in motion and the sign would not display animated messages. As documented on page 185 of the Draft IS/MND, the proposed sign would be designed to be compliant with the California Outdoor Advertising Act and Municipal Code Section 23.02.905 to ensure driver distraction and minimize driver distraction. Therefore, the Draft IS/MND concluded that the proposed project would not increase hazards along local roadways.

The issue of driver distraction was adequately evaluated in the Draft IS/MND, and the comments referenced above are not substantial evidence supporting a fair argument that the proposed project itself would result adverse impacts to the environment due to driver distraction.

Response to G-14

The commenter asserts that the list of billboards to be removed was compiled without community engagement and provides examples of two billboards to be removed that are already experiencing some level of disrepair.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to G-15

The commenter reiterates the claims of the proposed project's "serious environmental impact" and that the analysis in the Draft IS/MND is deficient.

See Response to G-1 through G-13. No further response is required.

Pacific Gas and Electric Company (PG&E)–February 14, 2025 (Letter H)

Response to H-1

The commenter provides information on the application process for PG&E services. The commenter also states that the comment letter does not constitute PG&E's consent to use any portion of its land rights for any purpose not previously conveyed.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to H-2

This comment, Attachment 1 to the comment letter, provides information on the requirements related to gas facilities.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

Response to H-3

This comment, Attachment 2 to the comment letter, provides information on the application process and requirements related to electric facilities.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

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PG&E–March 17, 2024 (Letter I)

Response to I-1

This letter states that PG&E’s review of the proposed project concluded that the proposed improvements do not appear to directly interfere with existing PG&E facilities or impact PG&E’s easement rights. The letter also offers a reminder to dial 811 a minimum of 2 days prior to commencement of digging or excavation.

The commenter does not provide specific environmental comments under CEQA or comments related to the Draft IS/MND and is noted for the record. See Topic Response 1, General Comments That Do Not Raise CEQA Concerns; no further response is needed.

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Individuals

Freda Hofland (Letter J)

Response to J-1

The commenter asserts that the majority of individuals living in the City do not want a billboard.

The commenter expresses general opposition to the proposed project. The commenter does not identify a significant impact or allege any specific facts related to a specific environmental effect under CEQA and does not provide substantiated evidence to support this comment. See Topic Response 2, General Opposition from the Public and Local Organizations; no further response is required.

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Cricket Love (Letter K)

Response to K-1

The commenter asserts that the Draft IS/MND does not include a light analysis accounting for impacts to biological resources, including wildlife.

Site-specific Photometric Analyses were conducted for the proposed project by *exp*, a reputable engineering and architecture firm. The analyses are included in Appendix A of the Draft IS/MND. Thorough topical analyses were conducted by FCS, a firm with over 42 years of CEQA consulting experience.

Based on the detailed findings, backed by field work, lighting modeling, and thorough analysis, the Draft IS/MND concludes that implementation of the proposed project would not result in adverse lighting impacts to biological resources outside of those lighting impacts generated by existing conditions (see Section 4.4 Biological Resources, pages 77–80 of the Draft IS/MND). The proposed project would adhere to the City’s Standard Permit Condition requiring compliance with the Santa Clara Valley Habitat Plan (SCVHP) to reduce impacts to biological resources by requiring the proposed project proponent to abide by applicable conditions of the SCVHP as well as paying any applicable fees based on the project type and location. Further, the Mitigation Monitoring and Reporting Program (MMRP) prepared for the proposed project requires mitigation measures to reduce potential impacts to biological resources, including biological surveying for nesting birds (MM BIO-1) and bat roosting (MM BIO-3) prior to construction to ensure that project impacts on surrounding wildlife on each project parcel are reduced to a less than significant level. Thus, the proposed project would be compliant with City Council Policy 6-34, Riparian Corridor Protection and Bird-Safe Design, and impacts to wildlife would be less than significant. Therefore, the available evidence supports the conclusions of the Draft IS/MND. Concerns brought up by the aforementioned comment letters are unsubstantiated based on the findings for the proposed project and no further response is required.

Response to K-2

The commenter asserts that MM BIO-3 cannot be considered as a mitigation measure because it allows for removal of bat roosts.

MM BIO-3 only allows for the removal of roosting sites in a manner that avoids impacts to bats; accordingly, it represents effective mitigation. As noted for MM BIO-3, the proposed project would strictly avoid removal of bat roosts during the maternity roosting season. If removing trees and structures during the periods when bats are active is not feasible and active bat roosts being used for maternity or hibernation purposes are found on or in the immediate vicinity of the project area where tree and structure removal is planned, MM BIO-3 requires the establishment of a no-disturbance buffer around the roost site. This would be conducted under the supervision of a qualified Biologist, ensuring that removal of active or potentially active roost sites would be done in accordance with the requirements of the SCVHP and all professional standards. MM BIO-3 represents common practices in the field and is considered as a valid mitigation measure to reduce impacts to bats.

Response to K-3

The commenter states that there is no need to have the northbound facing Mabury Road billboard face north toward Coyote Creek. This comment also states that without analysis of light impacts to wildlife, that the north-facing display should be turned off.

Refer to Response to K-1. Compliance with the proposed project's MMRP would reduce light impacts on wildlife to less than significant levels and would be adequately addressed by MM BIO-1 through MM BIO-3. No further response is required.

Response to K-4

This commenter recommends that the applicant provide bi-monthly reports tracking compliance with lighting standards. Note that the commenter refers to an incorrect applicant, Media Resources; the applicant for the proposed project is Clear Channel Outdoor.

Refer to Response K-1. As proposed and fully analyzed in the Draft IS/MND, the proposed project is compliant with all applicable federal, State, and local laws and regulations. This includes adherence to City Council Policy 6-4, Signs on City-owned Land Including Billboards, Programmable Electronic Signs, and Displaying Off-site Commercial Speech. and City Council Policy 6-34, Riparian Corridor Protection and Bird-Safe Design. No further response is required.

Response to K-5

The commenter provides two measures it claims the proposed project should implement.

As required by MM BIO-2, billboard intensity would be kept below 300 nit from 30 minutes before sunset until midnight, thus implementing the commenter's first measure.

The second measure listed in the comment, monitoring the brightness of the proposed project, is addressed in Response to K-4.

Willa Scholten (Letter L)

Response to L-1

The commenter states that people should sue the City.

The commenter does not identify any significant effects or provide substantial evidence to challenge any of the conclusions in the Draft IS/MND. The comment is speculative and does not incorporate facts. See Topic Response 2, General Opposition from the Public and Local Organizations; no further response is required.

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SECTION 4: CONCLUSION

In the preparation of this document, the City has carefully reviewed each comment letter and considered the concerns raised in each. The City has concluded the comments received on the Draft IS/MND did not raise any new issues about the proposed project's environmental impacts or provide information indicating the proposed project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the Draft IS/MND. No new information or substantial evidence supporting a fair argument of a new or more severe impact were provided in the comments that would change the impact discussions or conclusions of the Draft IS/MND.¹

¹ Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (Public Resources Code [PRC] § 21082.2). It does not include "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment" (PRC § 21082.2).

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