



CITY COUNCIL AGENDA PACKET

CITY COUNCIL CHAMBERS, CITY HALL
7351 ROSANNA STREET, GILROY, CA
95020

REGULAR MEETING | 6:00 PM
MONDAY, MARCH 20, 2023

MAYOR
Marie Blankley

COUNCIL MEMBERS
Rebeca Armendariz
Dion Bracco
Tom Cline
Zach Hilton
Carol Marques
Fred Tovar

CITY COUNCIL PACKET MATERIALS ARE AVAILABLE ONLINE AT www.cityofgilroy.org
AGENDA CLOSING TIME IS 5:00 P.M. THE TUESDAY PRIOR TO THE MEETING

Due to COVID-19, it is possible that the planned in-person meeting may have to change to a virtual meeting at any time and possibly on short notice. Please check the City of Gilroy website www.cityofgilroy.org for any updates to meeting information.

COMMENTS BY THE PUBLIC WILL BE TAKEN ON AGENDA ITEMS BEFORE ACTION IS TAKEN BY THE CITY COUNCIL. Public testimony is subject to reasonable regulations, including but not limited to time restrictions for each individual speaker. [Please limit your comments to 3 minutes.](#) The amount of time allowed per speaker may vary at the Mayor's discretion depending on the number of speakers and length of the agenda.

Written comments on any agenda item may be emailed to the City Clerk's Office at cityclerk@cityofgilroy.org or mailed to the Gilroy City Clerk's Office at City Hall, 7351 Rosanna Street, Gilroy, CA 95020. Comments received by the City Clerk's Office by 1 p.m. on the day of a Council meeting will be distributed to the City Council prior to or at the meeting and available for public inspection with the agenda packet located in the lobby of Administration at City Hall, 7351 Rosanna Street prior to the meeting. Any correspondence received will be incorporated into the meeting record. Items received after the 1 p.m. deadline will be provided to the City Council as soon as practicable. Written comments are also available on the City's Public Records Portal at bit.ly/3NuS1IN.



In compliance with the Americans with Disabilities Act, the City will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Clerk's Office at least 72 hours prior to the meeting at (408) 846-0204 or cityclerk@cityofgilroy.org to help ensure that reasonable arrangements can be made.



If you challenge any planning or land use decision made at this meeting in court, you may be limited to raising only those issues you or someone else raised at the public hearing held at this meeting, or in written correspondence delivered to the City Council at, or prior to, the public hearing. Please take notice that the time within which to seek judicial review of any final administrative determination reached at this meeting is governed by Section 1094.6 of the California Code of Civil Procedure.

A Closed Session may be called during this meeting pursuant to Government Code Section 54956.9 (d)(2) if a point has been reached where, in the opinion of the legislative body of the City on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City.

Materials related to an item on this agenda submitted to the City Council after distribution of the agenda packet are available with the agenda packet on the City website at www.cityofgilroy.org subject to the Staff's ability to post the documents before the meeting.

KNOW YOUR RIGHTS UNDER THE GILROY OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, task forces, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE, TO RECEIVE A FREE COPY OF THE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION STAFF AT (408) 846-0204.

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Si necesita un intérprete durante la junta y gustaría dar un comentario público, comuníquese con el Secretario de la Ciudad un mínimo de 72 horas antes de la junta al 408-846-0204 o envíe un correo electrónico a la Oficina del Secretario de la Ciudad a cityclerk@cityofgilroy.org.



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The agenda for this regular meeting is as follows:

1. **OPENING**
 - 1.1. **Call to Order**
 - 1.2. **Pledge of Allegiance**
 - 1.3. **Invocation**
 - 1.4. **City Clerk's Report on Posting the Agenda**
 - 1.5. **Roll Call**
 - 1.6. **Orders of the Day**
 - 1.7. **Employee Introductions**

2. **CEREMONIAL ITEMS - Proclamations and Awards**

2.1. **Proclamation – Proclaiming April 2023 as Fair Housing Month**

3. **PRESENTATIONS TO THE COUNCIL**

3.1. **PUBLIC COMMENT BY MEMBERS OF THE PUBLIC ON ITEMS NOT ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL**

This portion of the meeting is reserved for persons desiring to address the Council on matters within the Gilroy City Council's jurisdiction but not on the agenda. Persons wishing to address the Council are requested to complete a Speaker's Card located at the entrances and handed to the City Clerk. Speakers are limited to 1 to 3 minutes each, varying at the Mayor's discretion depending on the number of speakers and length of the agenda. The law does not permit Council action or extended discussion of any item not on the agenda except under special circumstances. If Council action is requested, the Council may place the matter on a future agenda.

Written comments to address the Council on matters not on this agenda may be e-mailed to the City Clerk's Office at cityclerk@cityofgilroy.org or mailed to the Gilroy City Clerk's Office at City Hall, 7351 Rosanna Street, Gilroy, CA 95020. Comments received by the City Clerk's Office by 1:00pm on the day of a Council meeting will be distributed to the City Council prior to or at the meeting and available for public inspection with the agenda packet located in the lobby of Administration at City Hall, 7351 Rosanna Street, prior to the meeting. Any correspondence received will be incorporated into the meeting record. Items received after the 1:00pm deadline will be provided to the City Council as soon as practicable. Written material provided by public members under this section of the agenda will be limited to 10 pages in hard copy. An unlimited amount of material may be provided electronically.

4. **REPORTS OF COUNCIL MEMBERS**

Council Member Bracco – Cities Association Santa Clara County Board of Directors (*alternate*), Santa Clara County Library Joint Powers Authority, Santa Clara Valley Water Commission, Santa Clara Valley Water Joint Water Resources Commission, SCRWA

Council Member Armendariz – Santa Clara County Library Joint Powers Authority, Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, Silicon Valley Clean Energy Authority JPA Board (*alternate*), South County United for Health

Council Member Marques – ABAG, Gilroy Gardens Board of Directors, Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, SCRWA (*alternate*)

Council Member Hilton – CalTrain Policy Group (*alternate*), Silicon Valley Clean Energy Authority JPA Board, South County United for Health (*alternate*), VTA Policy Advisory Committee

Council Member Cline – Gilroy Economic Development Partnership (*alternate*), Gilroy Sister Cities Association, Gilroy Youth Task Force, Silicon Valley Regional Interoperability Authority Board, VTA Policy Advisory Committee (*alternate*), Visit Gilroy California Welcome Center Board

Council Member Tovar – Gilroy Youth Task Force (*alternate*), Santa Clara County Expressway Plan 2040 Advisory Board, Santa Clara Valley Water Commission, SCRWA, South County Youth Task Force Policy Team, VTA Mobility Partnership

Mayor Blankley – ABAG (*alternate*), CalTrain Policy Group, Cities Association Santa Clara County Board of Directors, Gilroy Economic Development Partnership, Gilroy Sister Cities Association (*alternate*), Gilroy Youth Task Force, Santa Clara Valley Water Joint Water Resources Commission, SCRWA, South County Youth Task Force Policy Team, VTA Board of Directors, VTA Mobility Partnership

5. COUNCIL CORRESPONDENCE

- 5.1. **Letter of Support for SB 48 (Behavioral Health) and SB 363 (Mental Health/Substance Abuse Facilities)**

6. FUTURE COUNCIL INITIATED AGENDA ITEMS

7. BOARD AND COMMISSION INTERVIEWS

- 7.1. **Interviews for Open Seats on Boards, Commissions, and Committees with Terms Expired or Vacant as of March 20, 2023, for Future Appointment Scheduled for April 3, 2023**
1. Staff Report: Thai Nam Pham, City Clerk
 2. Possible Action:
 1. Accept one application for open seats on the Parks and Recreation Commission that was received after the March 10, 2023 application deadline; and
 2. Interview candidates for open seats on City Boards, Commissions, and Committees vacant as of March 20, 2023.

8. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered by the City Council to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a request is made by a member of the City Council or a member of the public. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar prior to the time the Council votes to approve. If removed, the item will be discussed in the order in which it appears.

- 8.1. **Approval of the Action Minutes of the March 6, 2023 City Council Regular Meeting**
- 8.2. **Approval of the Action Minutes of the March 13, 2023 City Council Goal / Priority Setting Workshop**
- 8.3. **Acceptance of the City Fiscal Year 2021-22 Federal Single Audit**
- 8.4. **Accept and File Quarterly Cash and Investment Report as of December 31, 2022**
- 8.5. **Approval of Parcel Map and Property Improvement Agreement No. 2023-01 for Plaza Allium (Evergreen) 10th & Chestnut Commercial Development, APN's 841-66-036, 037, 038, 039**

- 8.6. **Award of Contract to Kimley-Horn for the Update of the Traffic Circulation Master Plan and Transportation Impact Fee Program in the Amount of \$360,590 with a 10% Contingency for a Total of \$396,649**
- 8.7. **Award a Contract to J.J.R. Construction, Inc. for the FY23 Annual Citywide Curb Ramp Project No. 23-PW-280 for a Total Project Expenditure of \$174,565**
- 8.8. **Adopt a Resolution of the City Council of the City of Gilroy Approving the City of Gilroy (Applicant) to Apply for Grant Funds Under the Safe, Clean Water and Natural Flood Protection Program**

9. BIDS AND PROPOSALS

10. PUBLIC HEARINGS

- 10.1. **Appeal of Planning Commission Decision to Deny an Application Proposing Changes to City Code to Allow Up to Two Electronic Billboards in the City of Gilroy [This is a De Novo Hearing at Which the Council Will Decide if the Environmental Review is Adequate, and if so, Whether or not to Introduce the Ordinance.]**

- 1. Disclosure of Ex-Parte Communications
- 2. Staff Report: Sharon Goei, Community Development Director
- 3. Open Public Hearing
- 4. Close Public Hearing
- 5. Possible Action:

[First Action] Staff recommends that the City Council, based on its independent analysis and substantial evidence in the record, find that: the Final IS/MND was completed in compliance with the California Environmental Quality Act (CEQA); there is no substantial evidence that the project will have a significant effect on the environment due to mitigations agreed to by the applicant; and the Final IS/MND reflects the City's independent judgment and analysis;

[Second Action] Staff recommends that the City Council decide whether or not to move forward with this ordinance. If it desires to move forward, then the Council should follow option (b) below. If not, then the Council should follow option (a) below:

- a) Deny the appeal and uphold the Planning Commission's decision to deny a Zoning Amendment application (Z 18-04) to amend the Gilroy City Code Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards).

OR

- b) Uphold the appeal and motion to read the ordinance by title only and waive further reading of the ordinance; and

Introduce an Ordinance (Z 18-04) amending the Gilroy City Code Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards), with

modifications: Include additional content-based restrictive language in the Ordinance and any Electronic Billboard Development Agreement. Other modifications as the Council deems necessary.

11. UNFINISHED BUSINESS

12. INTRODUCTION OF NEW BUSINESS

12.1. 2022 General Plan and Housing Element Annual Progress Report

1. Staff Report: Sharon Goei, Community Development Director
2. Public Comment
3. Possible Action:

Accept the report and direct staff to submit the 2022 Annual Progress Report to the California Department of Housing and Community Development and the Governor's Office of Planning and Research.

12.2. Unhoused Camping Ban Near Schools and Critical Infrastructure

1. Staff Report: Bryce Atkins, Assistant to the City Administrator
2. Public Comment
3. Possible Action:

Council provide direction.

13. CITY ADMINISTRATOR'S REPORTS

14. CITY ATTORNEY'S REPORTS

15. CLOSED SESSION

15.1. Conference with Negotiator – Pursuant to Government Code Section 54957.6, Gilroy City Code Section 17A.11 (4)

City Employee: Jimmy Forbis, City Administrator;

City Negotiator: Marie Blankley, Mayor;

Anticipated Issue(s) Under Negotiation: Employment Contract Between City of Gilroy & Jimmy Forbis

1. Receive Public Comment

16. ADJOURN TO OPEN SESSION

Report of any action taken in Closed Session and vote or abstention of each Council Member if required by Government Code Section 54957.1 and GCC Section 17A.13 (a); Public Report of the vote to continue in closed session if required under GCC Section 17A.11 (e).

17. ADJOURNMENT

FUTURE MEETING DATES

April 2023

- 3 Regular Meeting - 6:00 p.m
- 17 Regular Meeting - 6:00 p.m

May 2023

- 1 Regular Meeting - 6:00 p.m
- 3 Capital Improvement Plan Workshop - 6:00 p.m – 8:00 p.m.
- 15 Regular Meeting - 6:00 p.m
- 22 Recommend Operating Budget Workshop - 6:00 p.m – 8:00 p.m.

June 2023

- 5 Regular Meeting - 6:00 p.m
- 19 Regular Meeting - 6:00 p.m

Meetings are webstreamed on the City of Gilroy's website at gilroy.city/meetings.

City of Gilroy Proclamation



LET IT BE KNOWN TO ALL PERSONS, the City of Gilroy joins the United States Department of Housing and Urban Development (HUD), the California Department of Fair Employment and Housing (DFEH), and other housing agencies in the celebration of the 54th anniversary of the passage of the Fair Housing Act of 1968, which enunciates a national policy of fair housing for all who live in the United States; and

WHEREAS, the Act, including the Fair Housing Amendments Act of 1988, prohibits discrimination based on race, color, religion, sex, handicap, familial status, and national origin; and

WHEREAS, the State of California additionally prohibits discrimination because of sexual orientation, marital status, ancestry, source of income, disability, medical condition, and age; and

WHEREAS, the City of Gilroy supports fair housing efforts to eliminate discrimination in housing and recognizes the benefits of Project Sentinel to educate home seekers, apartment managers, and apartment owners on federal and state housing laws, and to investigate complaints of illegal housing discrimination in Gilroy; and

WHEREAS, the City of Gilroy pledges its commitment to improve housing options and celebrates the value of harmonious and diverse communities by promoting Fair Housing Law.

NOW, THEREFORE, I, Marie Blankley, Mayor of the City of Gilroy, on this 20th day of March 2023, along with my colleagues on the City Council, do hereby proclaim the month of April 2023 as

FAIR HOUSING MONTH

and confirm that the City of Gilroy, as an inclusive community, is committed to fair housing that promotes positive activities by private and public entities to provide or advocate for equal housing opportunities for all residents and prospective residents of the City of Gilroy.

Attested to by:

Marie Blankley
Marie Blankley
MAYOR



Thai Nam Pham
Thai Nam Pham
City Clerk



SENATE BILL**No. 363**

Introduced by Senator EggmanFebruary 8, 2023

An act to add Article 7.1 (commencing with Section 1323.2) to Chapter 2 of Division 2 of the Health and Safety Code, relating to health and care facilities, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 363, as introduced, Eggman. Facilities for inpatient and residential mental health and substance use disorder: database.

Existing law generally requires the State Department of Public Health to license, inspect, and regulate health facilities, defined to include, among other types of health facilities, an acute psychiatric hospital. Existing law generally requires the State Department of Social Services to license, inspect, and regulate various types of care facilities, including, among others, a community crisis home. Existing law requires the State Department of Health Care Services to license and regulate facilities that provide residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

This bill would require, by January 1, 2025, the State Department of Health Care Services, in consultation with the State Department of Public Health and the State Department of Social Services, and by conferring with specified stakeholders, to develop a real-time, internet-based database to collect, aggregate, and display information about beds in specified types of facilities, such as chemical dependency recovery hospitals, acute psychiatric hospitals, and mental health rehabilitation centers, among others, to identify the availability of inpatient and residential mental health or substance use disorder

treatment. The bill would require the database to include a minimum of specific information, including the contact information for a facility's designated employee, the types of diagnoses or treatments for which the bed is appropriate, and the target populations served at the facility, and have the capacity to, among other things, enable searches to identify beds that are appropriate for individuals in need of inpatient or residential mental health or substance use disorder treatment.

This bill would authorize the department to impose a plan of correction or assess penalties against a facility that fails to submit data accurately, timely, or as otherwise required and would establish a process for facilities to appeal these penalties. The bill would create the Available Care for Inpatient and Residential Mental Health or Substance Use Disorder Treatment Database Maintenance and Oversight Fund for the receipt of any penalties. Because the bill would continuously appropriate moneys in the fund for administrative costs of implementing the database, it would create an appropriation.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.1 (commencing with Section 1323.2)
2 is added to Chapter 2 of Division 2 of the Health and Safety Code,
3 to read:

4
5 Article 7.1. Availability of Inpatient and Residential Mental
6 Health and Substance Use Disorder Treatment Beds
7

8 1323.2. (a) (1) The State Department of Health Care Services,
9 in consultation with the State Department of Public Health and the
10 State Department of Social Services, shall develop a real-time,
11 internet-based database to collect, aggregate, and display
12 information about beds in all of the following facilities to identify
13 the availability of inpatient and residential mental health or
14 substance use disorder treatment:

15 (A) General acute care hospitals designated as part of
16 supplemental psychiatric unit or chemical dependency service.

17 (B) Chemical dependency recovery hospitals.

1 (C) Acute psychiatric hospitals and licensed long-term care
2 facilities with a mental health program approval or certification
3 from the State Department of Health Care Services.

4 (D) Psychiatric health facilities.

5 (E) Mental health rehabilitation centers.

6 (F) Inpatient psychiatric facilities.

7 (G) Crisis stabilization units.

8 (H) Licensed community care facilities with a mental health
9 program approval or certification from the State Department of
10 Health Care Services.

11 (I) Licensed residential alcoholism or drug abuse recovery or
12 treatment facilities.

13 (2) The facilities specified in paragraph (1) shall submit accurate
14 and timely data to the database in a form and manner prescribed
15 by the State Department of Health Care Services in consultation
16 with the State Department of Public Health and the State
17 Department of Social Services.

18 (3) The database shall be operational by January 1, 2025.

19 (b) (1) Except as described in paragraph (3), the database
20 created pursuant to subdivision (a) shall include, at a minimum,
21 all of the following:

22 (A) The contact information for the facility's designated
23 employee.

24 (B) The facility's license type.

25 (C) Whether the facility provides substance use disorder
26 treatment, mental health treatment, medical treatment, or any
27 combination of those treatments.

28 (D) Whether the bed is secure for the treatment of a person who,
29 as a result of a mental health disorder, is a danger to others or to
30 themselves or gravely disabled, pursuant to Part 1 (commencing
31 with Section 5000) of Division 5 of the Welfare and Institutions
32 Code.

33 (E) The types of diagnoses or treatments for which the bed is
34 appropriate.

35 (F) The age ranges for which the bed is appropriate.

36 (G) Whether the bed is available.

37 (H) Whether the bed is available for children subject to a
38 petition, and those adjudicated a dependent, pursuant to Section
39 300 of the Welfare and Institutions Code, nonminor dependents
40 as defined in subdivision (v) of Section 11400 of the Welfare and

1 Institutions Code, or minors subject to a petition, and those
2 adjudicated a ward, pursuant to Section 601 or 602 of the Welfare
3 and Institutions Code.

4 (I) For perinatal residential alcoholism or drug abuse recovery
5 or treatment facilities, whether the bed is available for a minor
6 child of individuals receiving treatment at the facility.

7 (J) The target populations served at the facility.

8 (K) The levels of care provided at the facility, including, but
9 not limited to, medically or clinically managed detoxification.

10 (L) Specific services available, by bed, to assist with determining
11 appropriate placement for treatment, including, but not limited to,
12 medications for addiction treatment.

13 (M) Type of payment accepted at the facility.

14 (2) The database created pursuant to subdivision (a) shall have
15 the following capabilities, at minimum:

16 (A) To collect data.

17 (B) To enable searches to identify beds that are appropriate for
18 individuals in need of inpatient or residential mental health or
19 substance use disorder treatment.

20 (3) The database shall not include any information relating to
21 state hospitals under the jurisdiction of the State Department of
22 State Hospitals.

23 (4) The database and the information contained therein shall be
24 maintained in a manner that complies with all applicable state and
25 federal confidentiality laws. The database and the information
26 contained therein shall not be publicly available, and the State
27 Department of Health Care Services may limit access to entities
28 authorized by the department in a manner that is consistent with
29 state and federal confidentiality laws.

30 (c) (1) The State Department of Health Care Services shall have
31 the authority to impose a plan of correction or assess civil money
32 penalties pursuant to paragraph (2), or both, against a facility
33 specified in subdivision (a) that fails to submit data accurately,
34 timely, or as required pursuant to this section.

35 (2) The department may determine a reasonable length of time
36 for completion of a plan of correction. The department may issue
37 a notice of imposition of civil money penalties if the facility fails
38 to complete a plan of correction by the time specified. The
39 department may assess penalties against a facility in the amount

1 of one hundred dollars (\$100) per day from the date of notice of
2 imposition of penalties.

3 (3) A facility may submit a written appeal to the department
4 within 15 working days of the issuance of the notice specified in
5 paragraph (2). The facility shall include any supporting
6 documentation and explain any mitigating circumstances. The
7 department shall make a determination on the appeal within 30
8 calendar days of receipt of a complete appeal.

9 (4) A facility may request a formal hearing within 30 calendar
10 days of the department's determination on the appeal pursuant to
11 paragraph (3). Except for licensed residential alcoholism or drug
12 abuse recovery or treatment facilities, hearings to review the
13 imposition of civil money penalties shall be conducted pursuant
14 to the requirements set forth in Section 100171. Civil money
15 penalties against a facility shall continue to accrue until the
16 effective date of the final decision of the department.

17 (5) Notwithstanding Section 100171, hearings to review the
18 imposition of civil money penalties against licensed residential
19 alcoholism or drug abuse recovery or treatment facilities shall be
20 conducted pursuant to the requirements set forth in Section
21 11834.37.

22 (6) The State Department of Health Care Services may obtain
23 a court order to recover unpaid civil money penalties against a
24 facility identified in subdivision (a).

25 (d) The Available Care for Inpatient and Residential Mental
26 Health or Substance Use Disorder Treatment Database Maintenance
27 and Oversight Fund is hereby created in the State Treasury, to be
28 administered and overseen by the State Department of Health Care
29 Services. Civil money penalties assessed and collected pursuant
30 to this section shall be deposited into this fund. Notwithstanding
31 Section 13340 of the Government Code, the funds deposited in
32 this fund shall be continuously appropriated, without regard to
33 fiscal year, to the State Department of Health Care Services for
34 purposes of funding its administrative costs associated with
35 implementing this section.

36 (e) The department shall confer with stakeholders to inform the
37 development of the database. Stakeholders represented in this
38 process shall include, but are not limited to, the State Department
39 of Public Health, the State Department of Social Services, the
40 County Behavioral Health Directors Association of California, the

1 California Hospital Association, organizations representing
2 providers, consumers, and family members, organizations that
3 have experience providing inpatient psychiatric level of care or
4 services in a general acute care hospital, chemical dependency
5 recovery hospital or an acute psychiatric hospital, licensed
6 long-term care facilities with a mental health program approval or
7 certification from the State Department of Health Care Services,
8 organizations that have experience providing psychiatric crisis
9 stabilization, organizations that have experience providing services
10 in community care facilities with a State Department of Health
11 Care Services mental health program approval or certification,
12 psychiatric health facilities and mental health rehabilitation centers,
13 and organizations that have experience providing residential
14 alcoholism or drug abuse recovery or treatment services. The
15 department and stakeholders shall consider strategies for facility
16 use of the database.

17 (f) (1) The State Department of Health Care Services and the
18 State Department of Social Services may enter into exclusive or
19 nonexclusive contracts, or amend existing contracts, on a bid or
20 negotiated basis for purposes of administering or implementing
21 the requirements of this section.

22 (2) Contracts entered into or amended pursuant to this section
23 shall be exempt from Chapter 6 (commencing with Section 14825)
24 of Part 5.5 of Division 3 of Title 2 of the Government Code,
25 Section 19130 of the Government Code, and Part 2 (commencing
26 with Section 10100) of Division 2 of the Public Contract Code,
27 and shall be exempt from the review or approval of any division
28 of the Department of General Services.

29 (g) Notwithstanding Chapter 3.5 (commencing with Section
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
31 the State Department of Health Care Services may implement,
32 interpret, or make specific this section, in whole or in part, by
33 means of information notices, provider bulletins, or other similar
34 instructions, without further regulatory action.

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California

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SB 43

Introduced in
Senate

Dec 05, 2022

Senate

Assembly

Governor

California Senate Bill • 2023-2024 Regular Session

Behavioral health.

[View Latest Bill Text \(https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB43&version=20230SB4398AMD\)](https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB43&version=20230SB4398AMD)[Sign In to Follow \(/accounts/signup/?next=/ca/bills/20232024/SB43/\)](#)

BILL SUBJECTS

[Behavioral Health.](#)

ABSTRACT

Existing law, the Lanterman-Petris-Short Act, provides for the involuntary commitment and treatment of a person who is a danger to themselves or others or who is gravely disabled. Existing law, for purposes of involuntary commitment, defines "gravely disabled" as either a condition in which a person, as a result of a mental health disorder, is unable to provide for their basic personal needs for food, clothing, or shelter or has been found mentally incompetent, as specified.

This bill expands the definition of "gravely disabled" to also include a condition that will result in substantial risk of serious harm to the physical or mental health of a person due to a mental health disorder or a substance use disorder. The bill defines "serious harm" for purposes of these provisions to mean significant deterioration, debilitation, or illness due to a person's inability to carry out specified tasks, including, among other things, attend to needed personal or medical care and attend to self-protection or personal safety. The bill specifies circumstances under which substantial risk of serious harm may be evidenced, as specified. The bill would make conforming changes. To the extent that this change increases the level of service required of county mental health departments, the bill would impose a state-mandated local program.

Existing law also authorizes the appointment of a conservator, in the County of Los Angeles, the County of San Diego, or the City and County of San Francisco, for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder. Existing law establishes the hearsay rule, under which evidence of a statement is generally inadmissible if it was made other than by a witness while testifying at a hearing and is offered to prove the truth of the matter stated. Existing law sets forth exceptions to the hearsay rule to permit the admission of specified kinds of evidence.

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Under this bill, for purposes of an expert witness in any proceeding relating to the appointment or reappointment of a

conservator pursuant to the above-described provisions, the statements of specified health practitioners or a licensed clinical social worker included in the medical record would not be hearsay. The bill would authorize the court to grant a reasonable continuance if an expert witness in a proceeding relied on the medical record and the medical record has not been provided to the parties or their counsel.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

BILL SPONSORS (14)



Susan Talamantes Eggman

Democratic • Senator

- District 5

AUTHOR

(/person/susan-talamantes-eggman-3h4UXRp0CZFe8uExE5oOcE/)



Laura Friedman

Democratic

- Assemblymember
- District 44

COAUTHOR

(/person/laura-friedman-6y6HzZQTtCCTAcPSJMcqNh/)

Niello

PRINCIPAL COAUTHOR



Scott D. Wiener

Democratic • Senator

- District 11

PRINCIPAL COAUTHOR

(/person/scott-d-wiener-6lsgrCgvjfspYcr3jpsa5e/)



Miguel Santiago

Democratic

- Assemblymember
- District 54

PRINCIPAL COAUTHOR

(/person/miguel-santiago-1P5pr8SnISN1uzFOdVjl6U/)



Bill Dodd

Democratic • Senator

- District 3

COAUTHOR

(/person/bill-dodd-3rGprZWvmHWWn2pBSKFtv3/)



Caroline Menjivar

Democratic • Senator

- District 20

COAUTHOR

(/person/caroline-menjivar-5P8wHnJzr2HVN2bDJGeYep/)



Richard D. Roth

Democratic • Senator

- District 31

COAUTHOR

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Rubio

COAUTHOR



Henry I. Stern

Democratic • Senator

- District 27

COAUTHOR

(/person/henry-i-stern-37riwFn37s8mamsuhR7oTN/)



Phillip Chen

Republican

- Assemblymember
- District 59

COAUTHOR

(/person/phillip-chen-3H8gT9EkN35vhhhZHBnhmj/)



James Gallagher

Republican

- Assemblymember
- District 3

COAUTHOR

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(/person/james-gallagher-2qZkm1AUAk0Zw72tZqoz93/)



Sharon Quirk-Silva

- Democratic
- Assemblymember
 - District 67

COAUTHOR



Buffy Wicks

- Democratic
- Assemblymember
 - District 14

COAUTHOR

[\(/person/sharon-quirk-silva-419qEyN2B8ManVh0v6Fevb/\)](/person/sharon-quirk-silva-419qEyN2B8ManVh0v6Fevb/)

[\(/person/buffy-wicks-3xfCBPBFmuZG8N34eFwG28/\)](/person/buffy-wicks-3xfCBPBFmuZG8N34eFwG28/)

Votes

No votes to display

Actions

MAR 08, 2023

SENATE

Re-referred to Coms. on HEALTH and JUD.

Referral-Committee

Coms. on HEALTH and JUD.

FEB 28, 2023

SENATE

From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

- Amendment-Passage • Committee-Passage • Reading-1 • Reading-2
- Referral-Committee

Com. on RLS.

JAN 18, 2023

SENATE

Referred to Com. on RLS.

Referral-Committee

Com. on RLS.

DEC 06, 2022

SENATE

From printer. May be acted upon on or after January 5.

DEC 05, 2022

SENATE

Introduced. Read first time. To Com. on RLS. for assignment. To print.

Bill Text

BILL TEXT VERSIONS**FORMAT**

SB43

[HTML \(http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB43\)](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB43)

12/05/22 - Introduced

[PDF \(https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB43&version=20230SB4399INT\)](https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB43&version=20230SB4399INT)02/28/23 - Amended
Senate[PDF \(https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB43&version=20230SB4398AMD\)](https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB43&version=20230SB4398AMD)

Related Documents

DOCUMENT**FORMAT**

No related documents.

Sources

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- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB43
(http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB43).

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(<https://github.com/openstates/issues/issues/new/choose>)
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March 1, 2023

Senate Rules Committee
California State Senate
State Capitol, Room 400
Sacramento, CA 95814

RE: SB 43 / 363 (Eggman) Conservatorship Reform and Behavioral Health Bed Database – SUPPORT

Dear Senators,

As Mayors of XX cities in Santa Clara County we are writing in strong support of SB 43, Conservatorship Reform, and SB 363, Behavioral Health Bed Database, which will strengthen and reform our conservatorship system while also establishing a statewide database for behavioral health resources.

California faces a startling dearth of behavioral health services across the state. The abusive approach of past psychiatric institutions was rightfully phased out in California decades ago. While well-intentioned, the elimination of these facilities created major gaps in beds and services for those with a serious mental illness (SMI) or substance use disorder (SUD). Last century, [our country hit a peak](#) of 337 psychiatric beds per 100,000 individuals. In 2016, that number plummeted to 12 beds per 100,000 people. Without a robust healthcare infrastructure and the ability to compel treatment, thousands of Californians have been left without critical assistance in managing and recovering from behavioral health issues.

According to the California Health Care Foundation, [one in 26 Californians suffer from a serious mental illness](#) that impairs their daily activities. [One in three jailed Californians suffer from a mental health issue](#). Estimates for the frequency of behavioral health issues among our unhoused population ranges from [one in three](#) to [as high as two in three](#). As public servants, we must identify and promote the most effective, evidence-based care suited to each individuals' needs across the behavioral health continuum. The outcomes we effectuate now for our most vulnerable residents will be a profound measurement of our success to future generations.

We thank Senator Eggman for introducing SB 43 and SB 363 as essential steps towards our collective goal of expanding access to treatment. SB 43 will modernize the Lanterman–Petris–Short Act to consider individuals with the most acute conditions for conservatorship. Individuals who experience SMI, SUD, homelessness, or all three are far more unlikely to recognize the severity of their condition, let alone the need for treatment. Family members, medical providers, first responders and community members are often desperate to get someone into treatment, but face extraordinary difficulty in doing so under current law. People with severe mental health challenges also tax our vital health and safety systems, impact neighborhoods and small businesses, and cycle in and out of emergency departments and jail. These are often the most expensive, least effective ways to provide them the services they need.

Conservatorships are a last-resort attempt to care for an individual who has become “gravely disabled,” which is currently defined as not being able to provide ones’ self with food, clothing and shelter. SB 43 would enhance the definition of “gravely disabled” to a renewed focus on those who are unable to prevent serious physical or mental harm to themselves or others due to an inability to provide for their own basic needs. In addition to families, the Public Guardian can petition for conservatorship, allowing local governments to redirect individuals away from the criminal justice system and emergency departments and link them to effective care. Expanding our use of conservatorships is a practical and moral imperative. [Governor Newsom has led valuable reforms in this area](#), such as the expansion of Laura’s Law, CARE Court, and advocating for additional utilization of public conservatorships.

Additionally, SB 43 addresses the inability for medical experts to present documented medical analysis from healthcare providers in the adjudication process. Due to the 2016 California Supreme Court Case, *People v. Sanchez*, out-of-court statements not presented by the commentator are labeled hearsay, and therefore inadmissible. Experts on the stand often rely on the analysis of medical professionals to argue as to why someone may need to be placed under conservatorship. Their clinical evaluation can provide critical context for why an individual should be considered for conservatorship. Under SB 43, courts will receive a more holistic medical background regarding the potential conservatee, ensuring juries are further equipped to determine whether conservatorship is justifiable.

We also applaud SB 363, a long-overdue creation of a state-run virtual dashboard for behavioral health beds. Some counties, [including ours](#), independently operate dashboards displaying available bedcount of county-owned and contracted facilities specializing in treatments across the behavioral health continuum. Generally, these dashboards are updated daily rather than in real-time, meaning there is no standardized sharing of data between facilities when hours, minutes, or seconds count towards getting someone into treatment. SB 363 would direct the State Department of Health Care Services to create a database of behavioral health facilities and share bed capacity as it is changing in real-time. A comprehensive repository of specialized services such as chemical dependency recovery hospitals, acute psychiatric hospitals, and mental health rehabilitation centers will provide breathing room for overwhelmed emergency departments and link individuals to condition-specific resources.

SB 43 and 363 jointly confront our behavioral health crisis with valuable tools and will provide meaningful, measurable outcomes for our shared goal of aiding vulnerable Californians and reducing the community impacts of serious behavioral health issues.

Thank you for your leadership on this important issue.

Sincerely,

[MUST INCLUDE SIGNATURE]

[NAME]

[POSITION]

[ORGANIZATION]



City of Gilroy

STAFF REPORT

Agenda Item Title: Interviews for Open Seats on Boards, Commissions, and Committees with Terms Expired or Vacant as of March 20, 2023, for Future Appointment Scheduled for April 3, 2023

Meeting Date: March 20, 2023
 From: Jimmy Forbis, City Administrator
 Department: City Clerk
 Submitted By: Thai Nam Pham, City Clerk
 Prepared By: Thai Nam Pham, City Clerk

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

1. Accept one application for open seats on the Parks and Recreation Commission that was received after the March 10, 2023 application deadline; and
2. Interview candidates for open seats on City Boards, Commissions, and Committees vacant as of March 20, 2023.

BACKGROUND

The City Council opened the annual recruitment period ending December 30, 2022, to fill seats on Boards, Commissions, and Committees with member terms vacant or expiring as of December 31, 2022. At the January 9 and January 23, 2023 City Council Regular Meetings, Council appointed members to the various boards and committees; however, vacancies remained for the following:

- Arts and Culture Commission – One (1) seat with term expiring 12/31/2024
- Library Commission – One (1) seat with a term expiring 12/31/2026
- Personnel Commission – Two (2) seats with terms expiring 12/31/2026
- Physically Challenged Board of Appeals – Two (2) seats with terms expiring 12/31/2025 and One (1) seat with a term expiring 12/31/2026

In addition to these vacancies, on February 28, 2023, staff received a letter of resignation from former Commissioner Angela Reinert from Parks & Recreation Commission, vacating her seat starting March 1, 2023.

Staff has made every effort to notify the public about the open vacancies via the City's website and social media platforms. In addition, staff has contacted previous applicants of the Parks and Recreation Commission from the annual 2022 recruitment to inquire if they would be interested in serving on the Parks and Recreation Commission.

At the close of the application deadline, March 10, 2023, at 5 p.m., staff received no new applications for any of the above-referenced commissions. However, former applicants **Vincent Saso** and **Terence Fugazzi**¹ (currently serving as Open Government Commissioner) did respond to staff inquiry and have expressed interest in serving on the Parks and Recreation Commission.

It should be noted that the City has previously adhered to a practice that did not allow an individual board/commission/committee member to serve simultaneously as a member of two different boards/commissions/committees. This was incorporated to allow as many residents as possible to participate in advisory roles. Currently, there are numerous commission vacancies and Mr. Fugazzi has shown an interest in serving on two commissions at the same time. As there are no legal hurdles (and no apparent conflicts of interest) to Mr. Fugazzi serving on two separate commissions at the same time, Council should consider his appointment to a second commission should he be deemed a suitable appointee.

CONCLUSION

For those seats without sufficient applications, recruitment remains open. Interviews have been scheduled with the City Council at this evening's meeting, and appointments are scheduled at the April 3, 2023 City Council Regular Meeting.

Attachments:

1. Parks and Recreation Application – Vincent Saso
2. Parks and Recreation Application – Terence Fugazzi

¹ Applicant Terence Fugazzi's notice of interest was received on March 13, 2023, at 9:30 AM.



City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:

Name: Vincent Saso

**Phone
number(s):**

**email
address*:**

Are you a registered voter within the City limits?

Yes

**Physical
Address*:**

**Driver's License
or
ID No.:**

**Date of
Birth*:**

**Last 4 of
SSN:**

List your qualifications for this appointment:

I worked for the State of California for 35 years and was a manager at the EDD office in Campbell. I dealt with various types of people and challenging problems that they faced. I delegated duties to the staff and always wanted to see the final outcome to see if it was handled properly for the clients. I was able to recognize the needs of others and deal with it in a professional manner. I dealt with Unemployment, Disability and Employment problems and had high positive outcomes.

List any service to the community including any prior appointments:

I am President of the Senior Advisory Board and have been for many years. Received many awards from city officials and the mayors of Gilroy for continued outstanding service and contributions to our community. Received awards from Parks and Rec., The Gilroy Chamber, YMCA, Senior Volunteer of the Year, Supervisor Wasserman, Gilroy Exchange Club, St. Louise Hospital, California Chamber of Comm. Congressional Recognition from Zoe Lofgren and Jimmy Panetta. I go out daily to various businesses to collect food and other donations to distribute to the people in need in our community, such as Wheeler Manor, Gilroy Senior Center, Salvation Army and The VFW. I have been doing this for many years and hopefully able to continue for more years to come.

What are your goals while serving on this Board/Commission/Committee?

I am extremely involved in the Gilroy Senior Center and have been for many years. I listen to their needs and take the initiative in getting results and solving problems. I am able to deal with the supervisor of the center or YMCA and in the past, Catholic Charities for improvement. I also want to keep up with the growth of the city and families moving in to the community. I recognize the needs of others and always had that experience with EDD. for many years. The community always want to be able to have something nice not only for them but their families and and the city needs to recognize and keep up with their expectations whenever possible. We need to keep are parks maintained, clean and safe for everyone to enjoy.

Why are you the most qualified to serve on this Board/Commission/Committee?

My family came to this valley 100 years ago to farm and start businesses. I had what a lot of others did not and feel very great full for that. I want to give back to the community what ever way possible and by being on the Parks and Recreation Commission will help with my hopes and goals. I see some of my friends on various commissions and I respect them for what they do and the results. When we get older, we look back and say did I do enough for the community. I want to yes I did and be very happy about it..

✓	By clicking on this box, I declare under penalty of perjury that I am currently a registered voter within the City limits of the City of Gilroy. Furthermore, I understand that this application and any attachments are subject to disclosure under the Public Records Act and must complete mandatory Open Government Ordinance Training. I further understand that members of the Planning Commission, Building Boards of Appeals, and Physically Challenged Board of Appeals are also subject to filing the Fair Political Practice Commission's Statement of Economic Interest Form 700 relating to financial disclosures.
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City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:

Name: Terence Fugazzi

Phone number(s): [REDACTED] 2

email address*: [REDACTED]

Are you a registered voter within the City limits? Yes

Physical Address*: [REDACTED]

Driver's License or ID No.: [REDACTED] 4

Date of Birth*:

Last 4 of SSN: [REDACTED]

List your qualifications for this appointment:

9-year resident of Gilroy - native Californian born in Torrance, CA. Active in staying abreast of city issues and getting involved when I feel it necessary. Our family is active and enjoys the outdoors, especially the dog parks and trails. My personal qualifications are 25 years in executive management in the area of marketing technology products. I keep abreast of the latest happenings in technology and have a strong understanding of data systems, networking, social media, video production, podcasting, and current-times communication strategies. I also have a BS in Computer Science from California State University, Northridge.

List any service to the community including any prior appointments:

Helped in recent years in many ways as a parent to a Christopher High School Student. Until now (semi-retired), I have not had the time to really give back. Now that I have the time - it's time!

What are your goals while serving on this Board/Commission/Committee?

I am very interested in helping elevate our city for all citizens and help improve our quality of life. My areas of interest really surround properly managed growth, downtown, parks and outdoor services that meet the varied needs of our citizenry, and overall just using my skills and knowledge to give back to my city in the best way possible.

Why are you the most qualified to serve on this Board/Commission/Committee?

This question would require me to be a bit presumptive. Not knowing the other candidates I cannot make such a claim that I would be the "most qualified". What I can say is that my knowledge, attitude, passion, success in business, and my commitment to my family for the quality of our lives makes me an excellent choice as someone to help steer Gilroy toward a better future.

✓

By clicking on this box, I declare under penalty of perjury that I am currently a registered voter within the City limits of the City of Gilroy. Furthermore, I understand that this application and any attachments are subject to disclosure under the Public Records Act and must complete mandatory Open Government Ordinance Training. I further understand that members of the Planning Commission, Building Boards of Appeals, and Physically Challenged Board of Appeals are also subject to filing the Fair Political Practice Commission's Statement of Economic Interest Form 700 relating to financial disclosures.

City of Gilroy
City Council Regular Meeting Minutes
Monday, March 6, 2023 | 6:00 PM

1. OPENING

1.1 Call to Order

Meeting was called to order by Mayor Blankley at 6:00 PM.

1.2. Pledge of Allegiance

Council Member Marques led the Pledge of Allegiance.

1.3. Invocation

There were none.

1.4. City Clerk's Report on Posting the Agenda

City Clerk Pham reported on the posting of the Agenda.

1.5. Roll Call

Attendance	Attendee Name
Present	Rebeca Armendariz, Council Member Dion Bracco, Mayor Pro Tempore Tom Cline, Council Member Zach Hilton, Council Member Carol Marques, Council Member Fred Tovar, Council Member Marie Blankley, Mayor
Absent	None

1.6. Orders of the Day

There were none.

1.7. Employee Introductions

Police Chief Espinoza introduced Police Officer Alyxis Guerra to the Council.

2. CEREMONIAL ITEMS

2.1. Proclamation – Proclaiming March 2023 as American Red Cross Month

Mayor Blankley read aloud the proclamation and presented it to Camille McCormack.

3. PRESENTATIONS TO THE COUNCIL

3.1. Presentation from Community Agency for Resources, Advocacy and Services (CARAS) - Gilroy Youth Center

CARAS Members Hazel Quintero and Xavier Garcia provided a presentation to Council.

3.2. PUBLIC COMMENT BY MEMBERS OF THE PUBLIC ON ITEMS NOT ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL

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Mayor Blankley opened Public Comment.

The following members spoke on items that were non on the agenda.

Marty Estrada requested Council to fast-track the Youth Center to the voters with a bond measure.

Araceli Vaquera spoke on the status of Las Animas Veteran's Park situation and thanked the Council and staff for their hard work.

Eugene Bradley, CEO of the Silicon Valley Transit Users, suggested that a VTA bus stop be in front of the potential youth center and expressed his willingness to work with the Mayor and Council Member Hilton to help bring more public transit into the City.

There being no further speakers, Mayor Blankley closed Public Comment.

4. **REPORTS OF COUNCIL MEMBERS**

Council Member Bracco had nothing to report.

Council Member Armendariz recognized March as International Women's History Month and she will be hosting a panel discussion on modern struggles of women at the Gilroy Library on Saturday, March 11, 2023 at 11:00 AM.

Council Member Marques corrected the information she provided from the last meeting City Council Regular Meeting about Gilroy Gardens.

Council Member Hilton reported on Silicon Valley Clean Energy Authority JPA Board.

Council Member Cline had nothing to report.

Council Member Tovar had nothing to report.

Mayor Blankley reported on CalTrain Policy Group and VTA Board of Directors. She also shared the news that Digital Nest and Youth Alliance applied for a grant to help them purchase a building downtown to operate a youth center.

5. **COUNCIL CORRESPONDENCE**

5.1. **City Council Member Meeting Attendance**

Council acknowledged receipt of the correspondence.

5.2. **Support for the City of Gilroy's 2023 RAISE Application – 10th Street Bridge**

Council acknowledged receipt of the correspondence. She also notified that California Senator Padilla wrote a letter expressing support for the City of Gilroy's 2023 RAISE Application to the 10th Street Bridge.

6. **FUTURE COUNCIL INITIATED AGENDA ITEMS**

Council Member Hilton requested Council to adopt a resolution proclaiming the month of April as "Arts, Culture, and Creativity Month" in a future agenda item. The item received majority support.

Council Member Hilton requested Council to adopt a resolution to proclaim the last two weeks of April as "High School Voter Education Week". The item did not receive majority

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support.

7. **CONSENT CALENDAR**

Mayor Blankley requested Agenda Item No. 7.2 be pulled out of the Consent Calendar and Council take no action on the item as the applicant withdrew their application. There was no objection to the request.

Motion: Approve the Consent Calendar except for Consent Calendar Item No. 7.2.

RESULT: Pass

MOVER: Dion Bracco, Mayor Pro Tempore

SECONDER: Fred Tovar, Council Member

AYES: Council Member Armendariz, Mayor Pro Tempore Bracco, Council Member Cline, Council Member Hilton, Council Member Marques, Council Member Tovar, Mayor Blankley

7.1. **Approval of the Action Minutes of the February 27, 2023 City Council Regular Meeting**

A motion was made to approve the minutes

7.2. **Time Extension Request No. 4 for Tentative Map and Architectural and Site Review Permit Approvals for Development of 202 Townhouse Units at the Southeast Corner of Santa Teresa Boulevard and First Street, APNs 808-01-21, 808-01-22 and 808-01-23; filed by Eagle Garden, LLC (TM 13-11 & AS 18-20)**

No action was taken.

8. **BIDS AND PROPOSALS**

8.1. **Award a Contract to McKim Corporation for the FY23 Annual CDBG Sidewalk/Curb Ramp Project No. 23-PW-279 and Approve a Project Expenditure of \$271,205**

Public Works Director Jordan provided staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Motion: Award a contract to McKim Corporation in the amount of \$246,550 for the construction of the FY23 Annual CDBG Sidewalk/Curb Ramp Project No. 23-PW-279 and authorize the City Administrator to execute the contract and associated documents; and approve a contingency amount of \$24,655 to be expended only with approved change orders for a maximum project expenditure of \$271,205.

RESULT: Pass

MOVER: Fred Tovar, Council Member

SECONDER: Rebeca Armendariz, Council Member

AYES: Council Member Armendariz, Mayor Pro Tempore Bracco, Council Member Cline, Council Member Hilton, Council Member Marques, Council Member Tovar, Mayor Blankley

9. **PUBLIC HEARING**

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9.1. **Architectural and Site Review Permit to amend the Plaza Allium sign program, located on property at the northeast corner of Tenth Street and Chestnut Street, Application No. AS 22-24**

Mayor Blankley asked Council Members to disclose any ex-parte communications. None were disclosed.

Senior Planner Tambornini provided staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Hearing at 6:49 PM. There being no speakers, Mayor Blankley closed Public Hearing at 6:49 PM.

Motion: Determine pursuant to CEQA Guidelines Section 15162, that the proposed amendment to the approved sign program is adequately assessed by the Mitigated Negative Declaration (MND) (SCH # 2021060521) adopted for the commercial development project on September 20, 2021, and that no subsequent environmental review shall be required, based on its independent analysis; and adopt a resolution to approve the proposed sign program amendment AS 22-24.

RESULT: Pass

MOVER: Dion Bracco, Mayor Pro Tempore

SECONDER: Carol Marques, Council Member

AYES: Council Member Armendariz, Mayor Pro Tempore Bracco, Council Member Cline, Council Member Hilton, Council Member Marques, Council Member Tovar, Mayor Blankley

Enactment No.: Resolution No. 2023-12

10. **UNFINISHED BUSINESS**

There were none.

11. **INTRODUCTION OF NEW BUSINESS**

11.1. **Approval of the Updated City of Gilroy Purchasing Policy**

Finance Director Sangha provided staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed public Comment.

Motion: Accept the staff report on the updated City of Gilroy Purchasing Policy with the additional verbiage about wage theft in the policy.

RESULT: Pass

MOVER: Zach Hilton, Council Member

SECONDER: Tom Cline, Council Member

AYES: Council Member Armendariz, Mayor Pro Tempore Bracco, Council Member Cline, Council Member Hilton, Council Member Marques, Council Member Tovar

NAYS: Mayor Blankley

11.2. **Update on the Status of Council and Departmental Workplans**

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City Administrator Forbis, Police Chief Espinoza, Fire Chief Wyatt, Community Development Director Goei, Public Works Director Jordan, Human Resources and Administrative Services Director McPhillips, Finance Director Sangha, and Assistant to City Administrator Atkins provided staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment.

Ron Kirkish thanked staff for creating the work plan matrix.

Maria Aguiar brought forth concerns about the other small businesses downtown and that Council should look at businesses all the way from 1st Street through 10th Street.

There being no further speakers, Mayor Blankley closed Public Comment.

12. **CITY ADMINISTRATOR'S REPORTS**

There was none.

13. **CITY ATTORNEY'S REPORTS**

There was none.

14. **CLOSED SESSION**

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

The Mayor recessed the City Council at 8:16 PM.

The Mayor reconvened the Council to Closed Session at 8:26 PM. The motion to stay in Closed Session was unanimous.

14.1. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION Pursuant to Government Code Section 54957 and Gilroy City Code Section 17A.11 (2);
Employee Name/Title: Jimmy Forbis, City Administrator**

No reportable action.

15. **ADJOURN TO OPEN SESSION**

Mayor Blankley reported out of Closed Session as shown above.

16. **ADJOURNMENT**

The meeting was adjourned by Mayor Blankley at 9:08 PM.

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the City Council of the City of Gilroy.

/s/Thai Nam Pham, CMC, CPMC
City Clerk

City of Gilroy
City Council Special Meeting Minutes
Monday, March 13, 2023 | 6:00 PM

1. OPENING

1.1. Call to Order

Meeting was called to order by Mayor Blankley at 6:00 PM.

1.2. Roll Call

Attendance	Attendee Name
Present	Rebeca Armendariz, Council Member Dion Bracco, Mayor Pro Tempore Tom Cline, Council Member Zach Hilton, Council Member Carol Marques, Council Member Fred Tovar, Council Member Marie Blankley, Mayor
Absent	None

2. MAYOR'S OPENING REMARKS

Mayor Blankley provided brief opening remarks.

3. FISCAL YEAR 24 AND FISCAL YEAR 25 BUDGET PRIORITY WORKSHOP

City Administrator Jimmy Forbis and City Staff provided staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment.

Terence Fugazzi requested Council to give the City Administrator additional resources to enforce the city's municipal code.

Ann Marie McCauley requested Council to work with non-profits to apply for grants from Destination Home to deal with homelessness within the City.

Ron Kirkish stated that Council should stay with the original program with regard to the lighting program for Downtown.

Angelica Bonifacio requested Council to add lighting to Downtown.

There being no further speakers, Mayor Blankley closed Public Comment.

4. ADJOURNMENT

The meeting was adjourned at 7:52 PM by Mayor Blankley.

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the City Council of the City of Gilroy.

Thai Nam Pham, CMC, CPMC
City Clerk



City of Gilroy

STAFF REPORT

Agenda Item Title: Acceptance of the City Fiscal Year 2021-22 Federal Single Audit

Meeting Date: March 20, 2023

From: Jimmy Forbis, City Administrator

Department: Finance

Submitted By: Harjot Sangha, Finance Director

Prepared By: Harjot Sangha, Finance Director

STRATEGIC PLAN GOALS

Develop a Financially Resilient Organization

RECOMMENDATION

Accept and file the City's Fiscal Year 2021-22 (FY22) Federal Single Audit report.

EXECUTIVE SUMMARY

The Single Audit has been completed and the independent auditors have indicated that the City of Gilroy has complied in all the material respects with the types of compliance requirements that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2022.

ANALYSIS

The federal Office of Management and Budget (OMB) has established uniform administrative requirements, cost principles, and audit requirements (commonly known as OMG Uniform Guidance) for Federal awards to non-Federal entities. It requires an audit (Single Audit) of an entity that expends \$750,000 or more in federal grants or assistance annually. In addition to auditing financial data, the Single Audit focuses on compliance with grant requirements.

The City's financial records are audited annually by the City's external auditors and the scope includes Single Audits. The Pun Group performed the FY22 financial audit and the Federal Single Audit. The Single Audit has been completed and the independent

auditors have indicated that the City of Gilroy has complied in all the material respects with the types of compliance requirements that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2022. There were no findings or questioned costs in the FY22 Single Audit.

FISCAL IMPACT/FUNDING SOURCE

There are no direct fiscal impacts to receiving and filing the FY22 Federal Single Audit report. Audits and preparation of related reports are an annual workplan item for the Finance Department.

Attachments:

1. Single Audit Report for FY22.

City of Gilroy

Gilroy, California

Single Audit and Independent Auditors' Reports

For the Year Ended June 30, 2022

City of Gilroy

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200 E. Sandpointe Avenue, Suite 600
Santa Ana, California 92707

www.pungroup.cpa

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Independent Auditors' Report

To the Honorable Mayor and Members of City Council
of the City of Gilroy
Gilroy, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the City of Gilroy, California (the "City"), as of and for the year ended June 30, 2022, and the related notes to the basic financial statements, which collectively comprise the City's basic financial statements, and have issued our report thereon dated February 16, 2023.

Report on Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements, on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

To the Honorable Mayor and Members of City Council
of the City of Gilroy
Gilroy, California
Page 2

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City's basic financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in black ink that reads "The PwC Group, LLP". The signature is written in a cursive, flowing style.

Santa Ana, California
February 16, 2023



200 E. Sandpointe Avenue, Suite 600
Santa Ana, California 92707

www.pungroup.cpa



REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE, AND REPORT ON THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY THE UNIFORM GUIDANCE

Independent Auditors' Report

To the Honorable Mayor and Members of City Council
of the City of Gilroy
Gilroy, California

Report on Compliance for Each Major Federal Program

Opinion on Each Major Federal Program

We have audited the City of Gilroy, California's (the "City") compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of the City's major federal programs for the year ended June 30, 2022. The City's major federal program is identified in the summary of the auditors' results section of the accompanying schedule of findings and questioned costs.

In our opinion, the City complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2022.

Basis for Opinion on Each Major Federal Program

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the "Uniform Guidance"). Our responsibilities under those standards and the Uniform Guidance are further described in the Auditors' Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the City and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on compliance for each major federal program. Our audit does not provide a legal determination of the City's compliance with the compliance requirements referred to above.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the City's federal programs.

To the Honorable Mayor and Members of City Council
of the City of Gilroy
Gilroy, California
Page 2

Auditors' Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the City's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the City's compliance with the requirements of each major federal program as a whole.

In performing an audit in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards*, and the Uniform Guidance, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the City's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of the City's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

Report on Internal Control Over Compliance

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditors' Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

To the Honorable Mayor and Members of City Council
of the City of Gilroy
Gilroy, California
Page 3

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

Schedule of Expenditures of Federal Awards

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City as of and for the year ended June 30, 2022, and the related notes to the financial statements, which collectively comprise the City's basic financial statements. We issued our report thereon dated February 16, 2023 which contained unmodified opinion on those financial statements. Our audit was conducted for the purpose of forming our opinion on the City's Basic Financial Statements. The accompanying Schedule of Expenditures of Federal Awards, as required by the Uniform Guidance, is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain other procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Schedule of Expenditures of Federal Awards is fairly stated in all material respects in relation to the basic financial statements as a whole.

The PwC Group, LLP

Santa Ana, California

March 10, 2023, except for the Schedule of Expenditures of Federal Awards, which is as of February 16, 2023

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City of Gilroy
Schedule of Expenditures of Federal Awards
For the Year Ended June 30, 2022

Federal Grantor/Pass-Through Grantor Program Title	Assistance Listing Number	Grant Award Number	Federal Expenditures	Amount Provided to Subrecipients
U.S. Department of Housing and Urban Development				
<i>Direct Program:</i>				
CDBG - Entitlement Grants Cluster:				
Community Development block Grants/Entitlement Grants	14.218	B-21-MC-06-0048	\$ 316,236	\$ 167,419
Community Development block Grants/Entitlement Grants	14.218	B-20-MW-06-0048	62,548	-
Total U.S. Department of Housing and Urban Development			<u>378,784</u>	<u>167,419</u>
U.S. Department of Justice				
<i>Direct Program:</i>				
Bulletproof Vest Partnership Program	16.607	N/A	7,125	-
Total U.S. Department of Justice			<u>7,125</u>	<u>-</u>
U.S. Department of Transportation				
<i>Passed through the State of California Office of Traffic and Safety</i>				
Highway Safety Cluster				
Selective Traffic Enforcement Program	20.600/20.608	PT22178	48,513	-
Selective Traffic Enforcement Program	20.600/20.608	PT21160	42,235	-
Total Selective Traffic Enforcement Program			<u>90,748</u>	<u>-</u>
Total U.S. Department of Transportation			<u>90,748</u>	<u>-</u>
U.S. Department of Health and Human Services				
<i>Passed through California Department of Community Services and Development (CSD)</i>				
Low Income Household Water Assistance Program	93.568	N/A	9,364	-
Total U.S. Department of Justice			<u>9,364</u>	<u>-</u>
U.S. Department of Treasury				
<i>Direct Program:</i>				
Coronavirus Relief Fund	21.027	N/A	10,301,521	-
<i>Passed-Through State Water Resources Control Board:</i>				
California Water Arrearage Payment Program	21.027	21.027	156,922	-
California Wastewater Arrearage Program	21.027	21.027	258,030	-
Total U.S. Department of Treasury			<u>10,716,473</u>	<u>-</u>
Total Expenditures of Federal Awards			<u>\$ 11,202,494</u>	<u>\$ 167,419</u>

City of Gilroy
Notes to the Schedule of Expenditures of Federal Awards
For the Year Ended June 30, 2022

Note 1 – Reporting Entity

The financial reporting entity consists of the primary government, City of Gilroy (the “City”), organizations for which the primary government is financially accountable, and other organizations for which the nature and significance of their relationship with the primary government are such that exclusion would cause the reporting entity’s financial statements to be misleading or incomplete.

The City Council acts as the governing body and is able to impose its will on the following organization, establishing financial accountability:

- Gilroy Public Facilities Financing Authority

Note 2 – Basis of Accounting

Funds received under the various grant programs have been recorded within the special revenue and capital projects funds of the City. The City utilizes the modified accrual basis of accounting for the special revenue and capital projects funds. The accompanying Schedule of Expenditures of Federal Awards (the “Schedule”) is presented in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations (CFR) Part 2, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the “Uniform Guidance”). Therefore, some amounts presented in the Schedule may differ from amounts presented in, or used in, the preparation of City’s basic financial statements.

Note 3 – Schedule of Expenditures of Federal Awards

The accompanying Schedule presents the activity of all federal financial assistance programs of the City. Federal financial assistance received directly from federal agencies, as well as federal financial assistance passed through the State of California, is included in the Schedule. The Schedule was prepared only from the accounts of various grant programs and, therefore, does not present the financial position or results of operations of the City.

Note 4 – Indirect Cost Rate

The City has not elected to use the 10-percent de minimis indirect rate as allowed under Uniform Guidance.

Note 5 - Subrecipients

During the year ended June 30, 2022, the City provided federal funds to the following subrecipients:

Assistance Listing Number(s)	Program Name / Subrecipient Names	Amount Provided to Subrecipients
14.218	Community Development Block Grants / Entitlement Grants	
	Rebuilding Together Silicon Valley	\$ 140,000
	Health trust Meals on Wheels	8,643
	Live Oak Adult Day Services	8,560
	Bay Area Community Health	10,216
	Total Community Development Block Grants / Entitlement Grants	167,419
	Total Amount Provided to Subrecipients	<u>\$ 167,419</u>

City of Gilroy
Schedule of Findings and Questioned Costs
For the Year Ended June 30, 2022

Section I – Summary of Auditor’s Results

Financial Statements

Types of report the auditors issued on whether the financial statements audited were prepared in accordance with GAAP: Unmodified

Internal control over financial reporting:

- Material weakness(es) identified? No
- Significant deficiency(ies) identified? None noted

Noncompliance material to financial statements noted? No

Federal Awards

Internal control over major federal programs:

- Material weakness(es) identified? No
- Significant deficiency(ies) identified? None noted

Type of auditor’s report issued on compliance for major federal programs: Unmodified

Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)? No

Identification of major federal programs:

Name of Federal Program or Cluster	Federal Assistance Listing Number(s)	Expenditures
Coronavirus State and Local Fiscal Recovery Funds	21.027	\$ 10,716,473
Total Expenditures of All Major Federal Programs		\$ 10,716,473
Total Expenditures of Federal Awards		\$ 11,202,494
Percentage of Total Expenditures of Federal Awards		95.66%

Dollar threshold used to distinguish between type A and type B programs: \$750,000

Auditee qualified as low-risk auditee under 2 CFR 500.520? Yes

City of Gilroy
Schedule of Findings and Questioned Costs (Continued)
For the Year Ended June 30, 2022

Section II – Financial Statements Findings

A. Current Year Findings – Financial Statement Findings

No current year financial statement findings were noted.

B. Prior Year Findings – Financial Statement Findings

No prior year financial statement findings were noted.

Section III – Federal Awards Finding and Questioned Costs

A. Current Year Findings and Questioned Costs – Major Federal Award Program Audit

No findings or questioned costs were noted on the City's major federal programs for the year ended June 30, 2022.

B. Prior Year Findings and Questioned Costs – Major Federal Award Program Audit

No findings or questioned costs were noted on the City's major federal programs for the year ended June 30, 2021.



City of Gilroy

STAFF REPORT

Agenda Item Title: **Accept and File Quarterly Cash and Investment Report as of December 31, 2022**

Meeting Date: March 20, 2023

From: Jimmy Forbis, City Administrator

Department: Finance

Submitted By: Harjot Sangha, Finance Director

Prepared By: Harjot Sangha, Finance Director

STRATEGIC PLAN GOALS

Develop a Financially Resilient Organization

RECOMMENDATION

Accept and file the quarterly cash and investment report as of December 31, 2022.

EXECUTIVE SUMMARY

Council is requested to accept and file the quarterly investment report as of December 31, 2022.

BACKGROUND

The quarterly investment reports are prepared pursuant to the City's investment policy to keep the City Council apprised of the City's investment activities.

ANALYSIS

At December 31, 2022, the City's cash and investments totaled \$171.5 million, of which \$94.2 million is invested with the Local Agency Investment Fund (LAIF), and \$60.3 million is invested in US Treasuries. The fiscal year-to-date interest earnings are \$1.5 million.

In addition, approximately \$50.3 million is held by Fiscal Agents in the Trustee capacity for various bond issues as bond proceeds, debt service reserves, bond payments, escrows, and for post-employment benefits related to pension. The majority of this

balance (\$31.4 million) consists of the City of Gilroy's share of the Acquisition and Construction Funds for the SCRWA Plant Expansion Project.

FISCAL IMPACT/FUNDING SOURCE

There are no direct fiscal impacts to receiving and filing the quarterly cash and investment report. This is an activity included in the Finance Department's annual workplan.

Attachments:

1. Cash and Investment Report as of December 31, 2022

CITY OF GILROY
INVESTMENT REPORT
DECEMBER 2022



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City of Gilroy
Portfolio Management
Portfolio Summary
December 31, 2022

City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020
(408)846-0225

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
LAI	94,199,200.69	94,199,200.69	94,199,200.69	60.98	1	1	2,259	2,290
Treasury Notes Securities	54,011,000.00	52,152,223.87	52,257,386.23	33.83	450	389	4,424	4,485
Treasury Bill - Amortizing	8,042,000.00	8,017,391.48	8,015,322.05	5.19	91	30	4,077	4,134
Investments	156,252,200.69	154,368,816.04	154,471,908.97	100.00%	158	134	3,085	3,128

Cash								
Passbook/Checking (not included in yield calculations)	17,003,265.18	17,003,265.18	17,003,265.18		1	1	0.000	0.000
Total Cash and Investments	173,255,465.87	171,372,081.22	171,475,174.15		158	134	3,085	3,128

Total Earnings	December 31	Month Ending	Fiscal Year To Date	
Current Year		387,400.33	1,521,751.99	
Average Daily Balance		173,138,583.09	172,554,572.33	
Effective Rate of Return		2.63%	1.75%	
6 Month T-Bill Benchmark:		4.12%		
NOTES:				
1. In addition to the above, the City of Gilroy also holds the following investments in the capacity of a trustee - Deferred Compensation Plans - ICMA, National Deferred, PERS, & The Standard.				
2. See "Monies Held by Fiscal Agents" for additional amounts held in the capacity of a trustee.				
3. The Maturity Aging Factor of the City's Portfolio = 4.46 months.				
4. The unrealized gain resulting from an increase in Market Values obtained from U.S. Bank of all Securities (excluding LAIF) = \$254,671.28				
5. The LAIF balance shown includes \$5,276,804.29 in bond proceeds from the Gilroy Library 2010 Bonds that can be used exclusively for the construction of the library.				
6. The City of Gilroy invested \$8M on Cash & Equivalents and \$52M on U.S. Government Issues from the City LAIF.				
7. The City LAIF total balance is \$94,199,200.69.				
This is to certify that this schedule of investments is in compliance with the City of Gilroy's investment policy and that there are adequate funds available to meet the City's budgeted and actual expenses for the next six months.				

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Harjot Sangha, Finance Director

2/17/2023

Reporting period 12/01/2022-12/31/2022

Run Date: 02/14/2023 - 15:30

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City of Gilroy
Portfolio Management
Portfolio Details - Investments
December 31, 2022

Page 1

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	YTM 360	YTM 365	Days to Maturity	Maturity Date
LAIF												
SYSLAIF01	LAIF01	LAIF - City of Gilroy			14,877,210.79	14,877,210.79	14,877,210.79	2.290	2.259	2.290	1	
SYSLAIF03	LAIF03	LAIF - Industrial Dev. Auth.			74,045,185.61	74,045,185.61	74,045,185.61	2.290	2.259	2.290	1	
LAIF05	LAIF05	LAIF LIBRARY			5,276,804.29	5,276,804.29	5,276,804.29	2.290	2.259	2.290	1	
	Subtotal and Average		94,199,200.69		94,199,200.69	94,199,200.69	94,199,200.69		2.259	2.290	1	
Treasury Notes Securities												
91282CBX8	USB-2	U. S. TREASURY NOTES		11/01/2022	7,913,000.00	7,804,196.25	7,805,545.47	0.125	4.286	4.345	119	04/30/2023
91282CCN9	USB-3	U. S. TREASURY NOTES		11/01/2022	7,882,000.00	7,674,466.94	7,686,867.94	0.125	4.454	4.516	211	07/31/2023
91282CDD0	USB-4	U. S. TREASURY NOTES		11/01/2022	7,771,000.00	7,493,886.14	7,514,003.43	0.375	4.432	4.493	303	10/31/2023
91282CDV0	USB-5	U. S. TREASURY NOTES		11/01/2022	7,720,000.00	7,407,262.80	7,423,154.68	0.875	4.513	4.576	395	01/31/2024
91282CYM6	USB-6	U. S. TREASURY NOTES		11/01/2022	7,527,000.00	7,131,531.42	7,154,134.64	1.500	4.296	4.355	669	10/31/2024
912828X70	USB-7	U. S. TREASURY NOTES		11/01/2022	7,612,000.00	7,344,362.08	7,361,908.75	2.000	4.521	4.584	485	04/30/2024
912828ZN9	USB-8	U. S. TREASURY NOTES		11/01/2022	7,586,000.00	7,296,518.24	7,311,771.32	2.125	4.466	4.528	577	07/31/2024
	Subtotal and Average		52,182,750.40		54,011,000.00	52,152,223.87	52,257,386.23		4.424	4.485	389	
Treasury Bill -Amortizing												
912796ZM4	USB-1	U.S. TREASURY BILL		11/01/2022	8,042,000.00	8,017,391.48	8,015,322.05	3.981	4.077	4.134	30	01/31/2023
	Subtotal and Average		8,001,983.08		8,042,000.00	8,017,391.48	8,015,322.05		4.077	4.134	30	
	Total and Average		173,138,583.09		156,252,200.69	154,368,816.04	154,471,908.97		3.085	3.128	134	

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Report Ver: 7.3.11

City of Gilroy
Portfolio Management
Portfolio Details - Cash
December 31, 2022

Page 2

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	YTM 360	YTM 365	Days to Maturity
Wells Fargo Checking											
SYSWFB	WELLS FARGO	WELLS FARGO			16,891,269.29	16,891,269.29	16,891,269.29		0.000	0.000	1
Other Banks-Misc.Account-Petty Cash											
SYSUNDERCOV	UNDERCOV	CHASE BANK		07/01/2022	698.30	698.30	698.30		0.000	0.000	1
SYS/MUFG	MUFG	MUFG / UNION BANK		07/01/2022	0.00	0.00	0.00		0.000	0.000	1
SYS/PETTY	PETTY	PETTY CASH		07/01/2022	2,661.56	2,661.56	2,661.56		0.000	0.000	1
SYS/USBANK	USB-CASH	U. S. BANK		10/01/2022	22,041.03	22,041.03	22,041.03		0.000	0.000	1
SYS/BAIL	BAIL	WELLS FARGO		07/01/2022	0.00	0.00	0.00		0.000	0.000	1
SYS/DISCOVERY	DISCOVERY	WELLS FARGO		07/01/2022	15,000.00	15,000.00	15,000.00		0.000	0.000	1
SYS/ICS	ICS	WELLS FARGO		07/01/2022	70,000.00	70,000.00	70,000.00		0.000	0.000	1
SYS/WORKING	WORKING	WORKING CASH		07/01/2022	1,595.00	1,595.00	1,595.00		0.000	0.000	1
Average Balance			0.00								1
Total Cash and Investments			173,138,583.09		173,255,465.87	171,372,081.22	171,475,174.15		3.085	3.128	134



City of Gilroy
Investments by Issuer
Active Investments
Grouped by Type - Sorted by Type
December 31, 2022

City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020
(408)846-0225

CUSIP	Investment #	Security Type	Investment Class	Remaining Cost	Current Rate	Market Value	Market Date	YTM 365	Redemption Date	Call Date	Collateral
Type: CHECKING ACCOUNTS											
CHASE BANK											
SYSUNDERCOV	UNDERCOV	Other Banks-Misc.Account-Petty Cash	Fair	698.30		698.30	12/31/2022			1	
		Subtotal and Average		698.30		698.30				1	
LAIF - City of Gilroy											
SYSLAIF01	LAIF01	LAIF	Fair	14,877,210.79	2.290	14,877,210.79	12/31/2022	2.290		1	
		Subtotal and Average		14,877,210.79		14,877,210.79		2.290		1	
LAIF - Industrial Dev. Auth.											
SYSLAIF03	LAIF03	LAIF	Fair	74,045,185.61	2.290	74,045,185.61	12/31/2022	2.290		1	
		Subtotal and Average		74,045,185.61		74,045,185.61		2.290		1	
LAIF LIBRARY											
LAIF05	LAIF05	LAIF	Fair	5,276,804.29	2.290	5,276,804.29	12/31/2022	2.290		1	
		Subtotal and Average		5,276,804.29		5,276,804.29		2.290		1	
MUG / UNION BANK											
SYSMUG	MUG	Other Banks-Misc.Account-Petty Cash	Fair	0.00		0.00				1	
		Subtotal and Average		0.00		0.00					
PETTY CASH											
SYSPETTY	PETTY	Other Banks-Misc.Account-Petty Cash	Fair	2,661.56		2,661.56	12/31/2022			1	
		Subtotal and Average		2,661.56		2,661.56				1	
WELLS FARGO											
SYSWFB	WELLS FARGO	Wells Fargo Checking	Fair	16,891,269.29		16,891,269.29	12/31/2022			1	
SYSBAIL	BAIL	Other Banks-Misc.Account-Petty Cash	Fair	0.00		0.00				1	
SYSDISCOVERY	DISCOVERY	Other Banks-Misc.Account-Petty Cash	Fair	15,000.00		15,000.00	09/30/2022			1	
SYSICS	ICS	Other Banks-Misc.Account-Petty Cash	Fair	70,000.00		70,000.00	09/30/2022			1	

55 of 647

City of Gilroy
Investments by Issuer
Grouped by Type - Sorted by Type

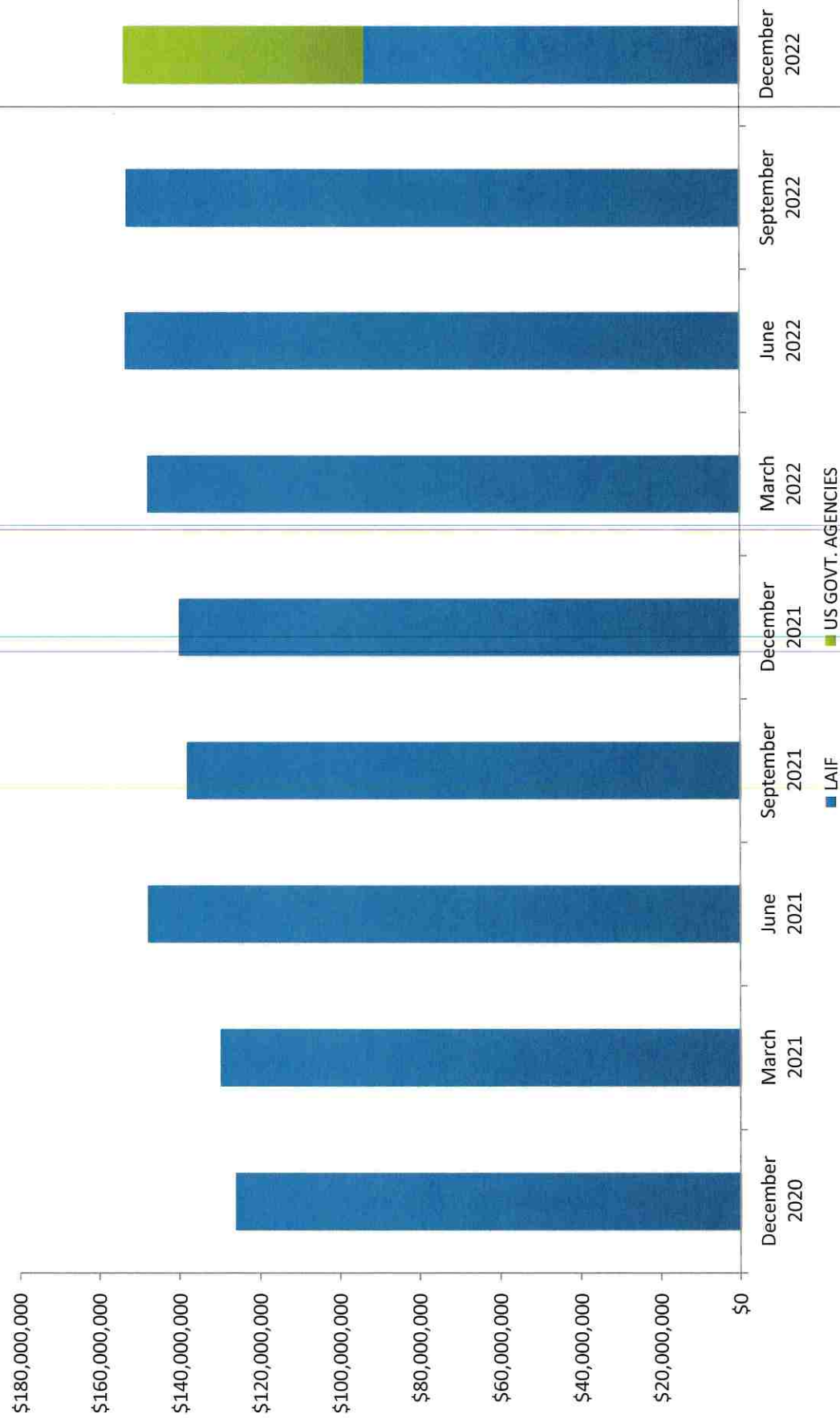
CUSIP	Investment #	Security Type	Investment Class	Remaining Cost	Current Rate	Market Value	Market Date	YTM 365	Redemption Date	Call Date	Collateral
WORKING CASH				Subtotal and Average		16,976,269.29				1	
SYSWORKING	WORKING	Other Banks-Misc.Account-Petty Cash	Fair	1,595.00		1,595.00	09/30/2022			1	
Subtotal and Average				1,595.00		1,595.00				1	
Type: NOT CALLABLE											
U. S. BANK											
SYS/USBANK	USB-CASH	Other Banks-Misc.Account-Petty Cash	Amort	22,041.03		22,041.03				1	
Subtotal and Average				22,041.03		22,041.03				1	
U.S. TREASURY BILL											
912796ZM4	USB-1	Treasury Bill -Amortizing	Fair	7,961,076.89	3.981	8,017,391.48	12/31/2022	4.134	01/31/2023	30	
Subtotal and Average				7,961,076.89		8,017,391.48		4.162		30	
U. S. TREASURY NOTES											
91282CBX8	USB-2	Treasury Notes Securities	Fair	7,750,463.74	0.125	7,804,195.25	12/31/2022	4.345	04/30/2023	119	
91282CCN9	USB-3	Treasury Notes Securities	Fair	7,630,455.35	0.125	7,674,465.94	12/31/2022	4.516	07/31/2023	211	
91282CDD0	USB-4	Treasury Notes Securities	Fair	7,462,264.85	0.375	7,493,886.14	12/31/2022	4.493	10/31/2023	303	
91282CDV0	USB-5	Treasury Notes Securities	Fair	7,377,312.75	0.875	7,407,262.80	12/31/2022	4.576	01/31/2024	395	
91282YM6	USB-6	Treasury Notes Securities	Fair	7,120,136.45	1.500	7,131,531.42	12/31/2022	4.355	10/31/2024	669	
91282X70	USB-7	Treasury Notes Securities	Fair	7,330,453.97	2.000	7,344,362.08	12/31/2022	4.584	04/30/2024	485	
9128282N9	USB-8	Treasury Notes Securities	Fair	7,282,780.07	2.125	7,296,518.24	12/31/2022	4.528	07/31/2024	577	
Subtotal and Average				51,953,867.18		52,152,223.87		4.511		391	
Total and Average				171,117,409.94		171,372,081.22		2.824		120	

Quarterly Movement over the Last Twelve Months

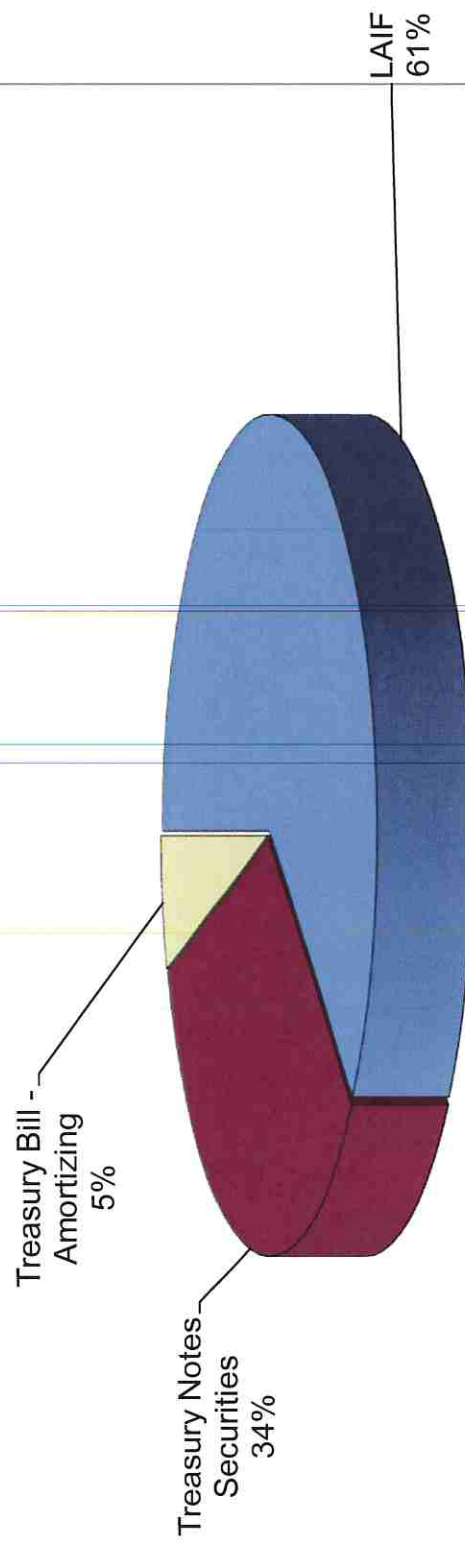
DESCRIPTION	DEC 2021	MAR 2022	JUN 2022	SEPT 2022	DEC 2022	% of Total DEC
LAIF:						
CITY OF GILROY	64,444,173	72,280,573	74,983,010	74,622,908	14,877,211	9.63%
GILROY INDUSTRIAL DEV AGENCY	70,710,782	70,751,490	73,657,244	73,794,091	74,045,186	47.93%
LIBRARY	5,241,932	5,244,950	5,249,083	5,258,910	5,276,804	3.42%
SUB TOTAL	140,396,887	148,277,013	153,889,337	153,675,909	94,199,201	60.98%
CERTIFICATE OF DEPOSITS						
US GOVERNMENTAL AGENCIES:						
TREASURY NOTES SECURITIES					52,257,386	33.83%
TRASURE BILL-AMORTIZING					8,015,322	5.19%
FEDERAL NATIONAL MORTGAGE AGCY						
FEDERAL AGRICULTURAL MORTGAGE AGCY						
FEDERAL HOME LOAN BANK						
FEDERAL HOME LOAN MORTGAGE CORP						
FEDERAL FARM CREDIT BANK						
SUB TOTAL	0	0	0		60,272,708	39.02%
GRAND TOTAL (Book Value)	140,396,887	148,277,013	153,889,337	153,675,909	154,471,909	100.00%

Note: The LAIF balance shown for Dec 2022, includes \$5,276,804.29 in bond proceeds from the Gilroy Library 2010 Bonds that can be used exclusively for the construction of the library.

City of Gilroy Investments From 12/31/2020 to 12/31/2022

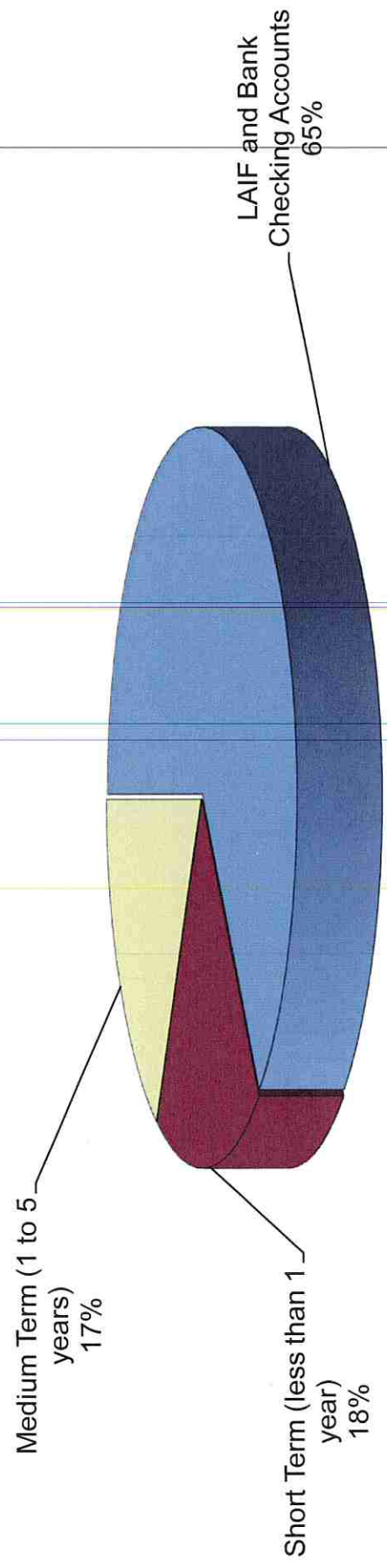


Book Value by Investment Type As of 12/31/22



Value of Portfolio: \$154,471,909

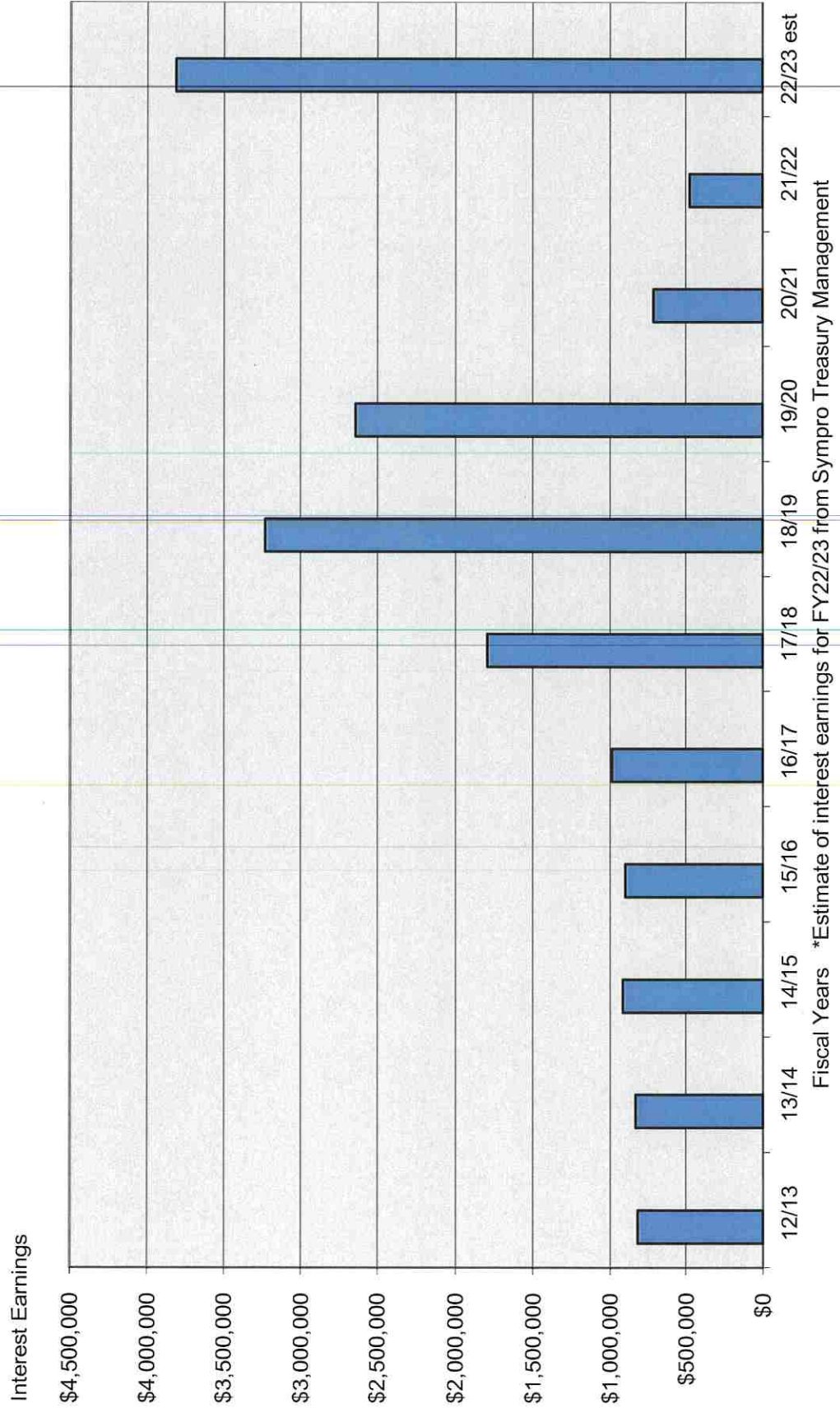
Portfolio by Asset Class As of 12/31/22



Value of Portfolio: \$171,475,174.15

City of Gilroy

Interest Earnings 2013 - 2023



**CITY OF GILROY
MONIES HELD BY FISCAL AGENTS**

DESCRIPTION	VALUE ** AS OF 12/31/22
<u>HIGHWAY 152 SPECIAL TAX BONDS SERIES 2018</u>	
<u>SPECIAL TAX FUND - Bond REVENUE - HELD BY U.S. BANK - GL Acct 810-10435</u>	
GOLDMAN SACHS MONEY MARKET FUND #466, CUSIP #3814W26S	621.59
<u>RESERVE FUND - HELD BY U.S. BANK - GL Acct 810-10430</u>	
GOLDMAN SACHS MONEY MARKET FUND #466, CUSIP #3814W26S	293,051.65
<u>SPECIAL TAX FUND - INTEREST ACCOUNT - HELD BY U.S. BANK - GL Acct 810-10550</u>	
GOLDMAN SACHS MONEY MARKET FUND #466, CUSIP #3814W26S	10.46
<u>SPECIAL TAX FUND - PRINCIPAL ACCOUNT - HELD BY U.S. BANK - GL Acct 810-10445</u>	
GOLDMAN SACHS MONEY MARKET FUND #466, CUSIP #3814W26S	73.75
<u>GPFFA REFUNDING LEASE REV BONDS 2013 CONVERTED TO GILROY PUBLIC FACILITIES FINANCING AUTHORITY REFUNDING LEASE REV BONDS 2022A</u>	
<u>COST OF ISSUANCE-CASH HELD BY U.S. BANK - GL Acct 510-10420</u>	
PRINCIPAL CASH	1,041.40
<u>ESCROW- HELD BY U.S. BANK - GL Acct 510-10520</u>	
U.S. TREASURY STATE & LOCAL, COI, CUSIP #SLG9E0RP9	389,856.00
<u>ESCROW- HELD BY U.S. BANK - GL Acct 510-10420</u>	
U.S. TREASURY STATE & LOCAL, COI, CUSIP #SLG9E0RQ7	14,959,454.00
<u>ESCROW-CASH - HELD BY U.S. BANK - GL Acct 510-10420</u>	
PRINCIPAL CASH	0.77
<u>GILROY PUBLIC FACILITIES FINANCING AUTHORITY REFUNDING LEASE REV BONDS 2020A</u>	
<u>REVENUE FUND - HELD BY U.S. BANK - GL Acct 520-10435</u>	
GOLDMAN SACHS FINANCIAL SQUARE MMKT #466, CUSIP #38141W265	492.88
<u>INTEREST ACCOUNT - HELD BY U.S. BANK - GL Acct 520-10440</u>	
GOLDMAN SACHS FINANCIAL SQUARE MMKT #466, CUSIP #38141W265	0.00
<u>GILROY PUBLIC FACILITIES FINANCING AUTHORITY WASTEWATER REV BONDS 2021A</u>	
<u>BOND PAYMENT FUND - HELD BY U.S. BANK - GL ACCT 700-10428</u>	
FIRST AM.GOV'T OB FD CL D, CUSIP #31846V401, U.S. TREASURY BILL #912796C31, U.S. TREASURY NOTES 91282CAC5, AND 91282CBG5	1,879.49 766,175.01
<u>ACQUISITION AND CONSTRUCTION FUND - HELD BY U.S. BANK - GL Acct 700-10426</u>	
FIRST AM.GOV'T OB FD CL D, CUSIP #31846V401, LAIF MONEY MARKET FUND	31,368,011.82
GILROY POST - EMPLOYMENT BENEFITS TRUST HELD BY PARS (U.S. BANK)	2,501,603.50
TOTAL	50,282,272.32

** Market Values reported by U.S. Bank



City of Gilroy

STAFF REPORT

Agenda Item Title: **Approval of Parcel Map and Property Improvement Agreement No. 2023-01 for Plaza Allium (Evergreen) 10th & Chestnut Commercial Development, APN's 841-66-036, 037, 038, 039**

Meeting Date: March 20, 2023

From: Jimmy Forbis, City Administrator

Department: Public Works

Submitted By: Daryl Jordan, Public Works Director

Prepared By: Jorge Duran, Development Engineer

STRATEGIC PLAN GOALS

Promote Economic Development Activities

RECOMMENDATION

Approve Parcel Map and Property Improvement Agreement No. 2023-01 for Plaza Allium (Evergreen) 10th & Chestnut Commercial Development, APN's 841-66-036, 037, 038, 039.

BACKGROUND

On May 6, 2021, Evergreen Development Company, Inc., (Developer) with the consent of the property owner Donald J. Triolo, Trustee for "The Triolo Revocable Living Trust" (Owner) submitted an application requesting a tentative map to re-subdivide 6.8 acres of property into six commercial lots.

On September 2, 2021, the City of Gilroy's (City) Planning Commission considered TM 20-03 in accordance with the Gilroy Zoning Code and other applicable standards and regulations and found that it conformed to the City's General Plan and recommend TM 20-03 for City Council approval.

On September 20, 2021, Evergreen Development Company, Inc. received Tentative Map Approval (TM 20-03) to re-subdivide 6.8 acres of property into six commercial lots, as part of a planned commercial shopping center and hotel development. The subject

property is located at 401 and 411 East Tenth Street and 450 East Ninth Street, between Chestnut Street and Highway 101 Offramp. [Reference: Resolution No. 2021-52 and TM 20-03].

DISCUSSION

The Developer is requesting City Council approval of the Parcel Map and to enter into a Property Improvement Agreement (PIA 2023-01) with the City for the project's Public Improvements. These improvements include new street grading, paving, curb, gutter, sidewalk, landscape, lighting, storm drain, water, sewer, and necessary utility extension and connection to serve the development. Specific improvements include widening of frontage to accommodate an additional westbound lane of traffic, re-pavement of the intersection, Chestnut, and Ninth Streets, and new sidewalk curb and gutter around the entire project perimeter. As part of the Property Improvement Agreement, the Developer is required to provide Faithful Performance and Payment Bonds of \$3,295,114 (Three Million Two Hundred Ninety-Five Thousand One Hundred Fourteen Dollars), each for 100% of the estimated construction cost of the improvements.

The Parcel Map and Property Improvement Agreement 2023-01 are ready for Recording with Santa Clara County with approval by Council.

ALTERNATIVES

Council could deny the request to approve the Parcel Map and Property Improvement Agreement (PIA 2023-01). Staff does not recommend this option as it will impose unnecessary delay for the development of the site.

FISCAL IMPACT/FUNDING SOURCE

Plan check and inspection fees have been collected to cover the costs associated with this action. The Developer has submitted bonding and insurance for the above-referenced Property Improvement Agreement and Parcel Map. All the required improvements are part of the Developer's responsibility, and there are no reimbursements required for this project.

Attachments:

1. Vicinity Map
2. Parcel Map
3. Grant of Easements
4. Landscape Maintenance Easement
5. Property Improvement Agreement

VICINITY MAP



OWNER'S STATEMENT:

THE UNDERSIGNED, DOES HEREBY STATE THAT WE ARE THE OWNERS OF ALL THE LAND DELINEATED AND EMBRACED WITHIN THE DISTINCTIVE BORDER OF THE HEREIN EMBODIED PARCEL MAP ENTITLED "PLAZA ALLIUM CENTER PARCEL MAP" OF SANTA CLARA COUNTY, CONSISTING OF 2 SHEETS, THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD AND CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP, THAT SAID MAP PARTICULARLY SETS FORTH AND DESCRIBES ALL THE LOTS INTENDED FOR SALE BY NUMBER WITH THEIR PRECISE LENGTH AND WIDTH; THAT THE MAP PARTICULARLY SETS FORTH AND DESCRIBES THE PARCELS OF LAND RESERVED FOR PUBLIC OR PRIVATE PURPOSES BY THEIR BOUNDARIES, COURSES AND EXTENT.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES:

1. THE PARCEL OF LAND, DESIGNATED AS EAST 10TH STREET RIGHT OF WAY DEDICATION FOR PUBLIC STREET PURPOSES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

1. EASEMENTS FOR ANY AND ALL PUBLIC SERVICE PURPOSES INCLUDING, BUT NOT LIMITED TO, THE CONSTRUCTION AND MAINTENANCE OF POLES, WIRES, AND CONDUITS FOR STORM DRAINS, SANITARY SEWERS, WATER LINES, GAS LINES, ELECTRIC LINES, TELEPHONE LINES, TELEVISION AND TRAFFIC SIGNAL FACILITIES, SIDEWALKS, PUBLIC UTILITIES, AND APPURTENANCES TO ALL THE ABOVE, OVER, UNDER, OR ACROSS THOSE CERTAIN AREAS DESIGNATED AS "PUBLIC UTILITY EASEMENT" (PUE). THE ABOVE-MENTIONED EASEMENTS SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES AND THEIR APPURTENANCES, EXCEPT IRRIGATION SYSTEMS AND THEIR APPURTENANCES, LAWFUL FENCES, WALKWAYS, AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS.
2. THE AREAS DESIGNATED AS EMERGENCY VEHICLE ACCESS EASEMENT (EVAE), AS DELINEATED AND EMBRACED WITHIN THE BOUNDARIES OF THE HEREIN EMBODIED MAP, FOR THE PURPOSE OF INGRESS AND EGRESS OF PUBLIC SAFETY VEHICLES AND EMERGENCY EQUIPMENT.

SUBDIVIDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, PLANNING COMMISSION, AGENTS, OFFICERS AND EMPLOYEES FROM ANY CLAIM, ACTION OR PROCEEDING AGAINST THE CITY OF ITS CITY COUNCIL, PLANNING COMMISSION, AGENTS, OFFICERS OR EMPLOYEES, TO ATTACK, SET ASIDE, VOID OR ANNUL AN APPROVAL OF THE CITY, CITY COUNCIL, PLANNING COMMISSION, OR OTHER BOARD, ADVISORY AGENCY OR LEGISLATIVE BODY CONCERNING THIS SUBDIVISION, CITY WILL PROMPTLY NOTIFY THE SUBDIVIDER OF ANY CLAIM, ACTION OR PROCEEDING AGAINST IT AND WILL COOPERATE FULLY IN THE DEFENSE, THE CONDITION IS IMPOSED PURSUANT CALIFORNIA GOVERNMENT CODE SECTION 66474.9

THIS MAP SHOWS ALL EASEMENTS OF RECORD ON THE PREMISES.

OWNER: EVERGREEN-10TH & CHESTNUT, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY

BY: EVERGREEN DEVELOPMENT COMPANY-2019, L.L.C.,
AN ARIZONA LIMITED LIABILITY COMPANY
ITS: MANAGER

BY: EVERGREEN DEVCO, INC.,
A CALIFORNIA CORPORATION
ITS: MANAGER

PRINTED NAME: DOUG LEVENTHAL
SIGNATURE: [Signature]
TITLE: COO
DATE: 1-11-23

OWNER'S ACKNOWLEDGMENT:

STATE OF ARIZONA
COUNTY OF Maricopa

ON THIS 11th DAY OF January, 2023, BEFORE ME PERSONALLY APPEARED Doug Leventhal WAS PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THIS DOCUMENT, AND WHO ACKNOWLEDGED THAT HE/SHE SIGNED THE ABOVE/ATTACHED DOCUMENT.

Peggy Doane
NOTARY PUBLIC

PEGGY DOANE
Notary Public - Arizona
Maricopa County
Commission # 628440
My Comm. Expires Jun 6, 2026

PLAZA ALLIUM
PARCEL MAP

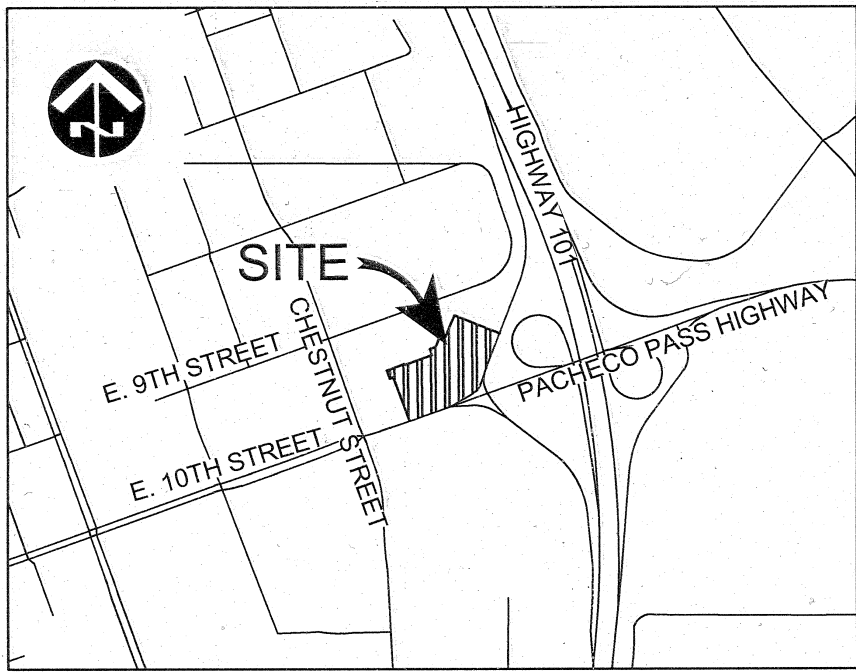
A SUBDIVISION OF RESULTANT PARCELS 1 AND 2 AS DESCRIBED
IN DOCUMENT No. 25245225, SANTA CLARA COUNTY RECORDS

CITY OF GILROY
SANTA CLARA COUNTY, CALIFORNIA

Mackay & Sotms
ENGINEERS PLANNERS SURVEYORS

5142B FRANKLIN DR, SUITE B
PLEASANTON, CA 94588 (925)225-0690

APRIL 2022



VICINITY MAP
NOT TO SCALE

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY MADE IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF EVERGREEN-10TH & CHESTNUT, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY IN JANUARY, 2020. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE DECEMBER 2023 SUBJECT TO THE COMPLETION OF IMPROVEMENTS, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED VESTING TENTATIVE MAP.

DATE: 1/10/23



[Signature]
IAN BRUCE MACDONALD
LS NO. 8817

CITY ADMINISTRATOR'S STATEMENT

BY AUTHORITY GRANTED TO ME BY RESOLUTION NO. 97-62 OF THE CITY COUNCIL OF THE CITY OF GILROY, I, AS CITY ADMINISTRATOR, DO HEREBY ACCEPT ON BEHALF OF THE CITY OF GILROY, THE DEDICATION OF EAST 10TH STREET AND THE PUBLIC UTILITY EASEMENT FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION, AS SHOWN ON THIS MAP.

DATE: _____

[Signature]
JIMMY FORBIS
CITY ADMINISTRATOR

CITY SURVEYOR'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS PARCEL MAP DESIGNATED AS "GARLIC CENTER PARCEL MAP", AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

DATE: 2-17-2023



[Signature]
DAVID L. RUBCIC, PE, PLS
ACTING CITY SURVEYOR
CSG CONSULTANTS
PLS 7994

CITY ENGINEER STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS PARCEL MAP DESIGNATED AS "GARLIC CENTER PARCEL MAP", AND THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

DATE: _____

[Signature]
GARY HEAP
CITY ENGINEER
CITY OF GILROY, CALIFORNIA
RCE NO. 52355

CERIFICATE OF DEDICATION

THE CITY OF GILROY SHALL RECONVEY THE AREA DESIGNATED AS EAST 10TH STREET RIGHT OF WAY DEDICATION TO THE BELOW NAMED OWNER, OR SUCCESSOR IN INTEREST, IF THE CITY DETERMINES PURSUANT TO GOVERNMENT CODE SECTION 66477.5 OF THE SUBDIVISION MAP ACT, THAT THE SAME PUBLIC PURPOSE FOR WHICH PROPERTY WAS DEDICATED DOES NOT EXIST, OF THE PROPERTY OF ANY PORTIONS THEREOF IS NOT NEEDED FOR PUBLIC UTILITIES, AS SPECIFIED IN SUBDIVISION (c) OF SAID 66477.5.

OWNER: EVERGREEN-10TH & CHESTNUT, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY

ADDRESS: 2390 EAST CAMELBACK ROAD, SUITE 410

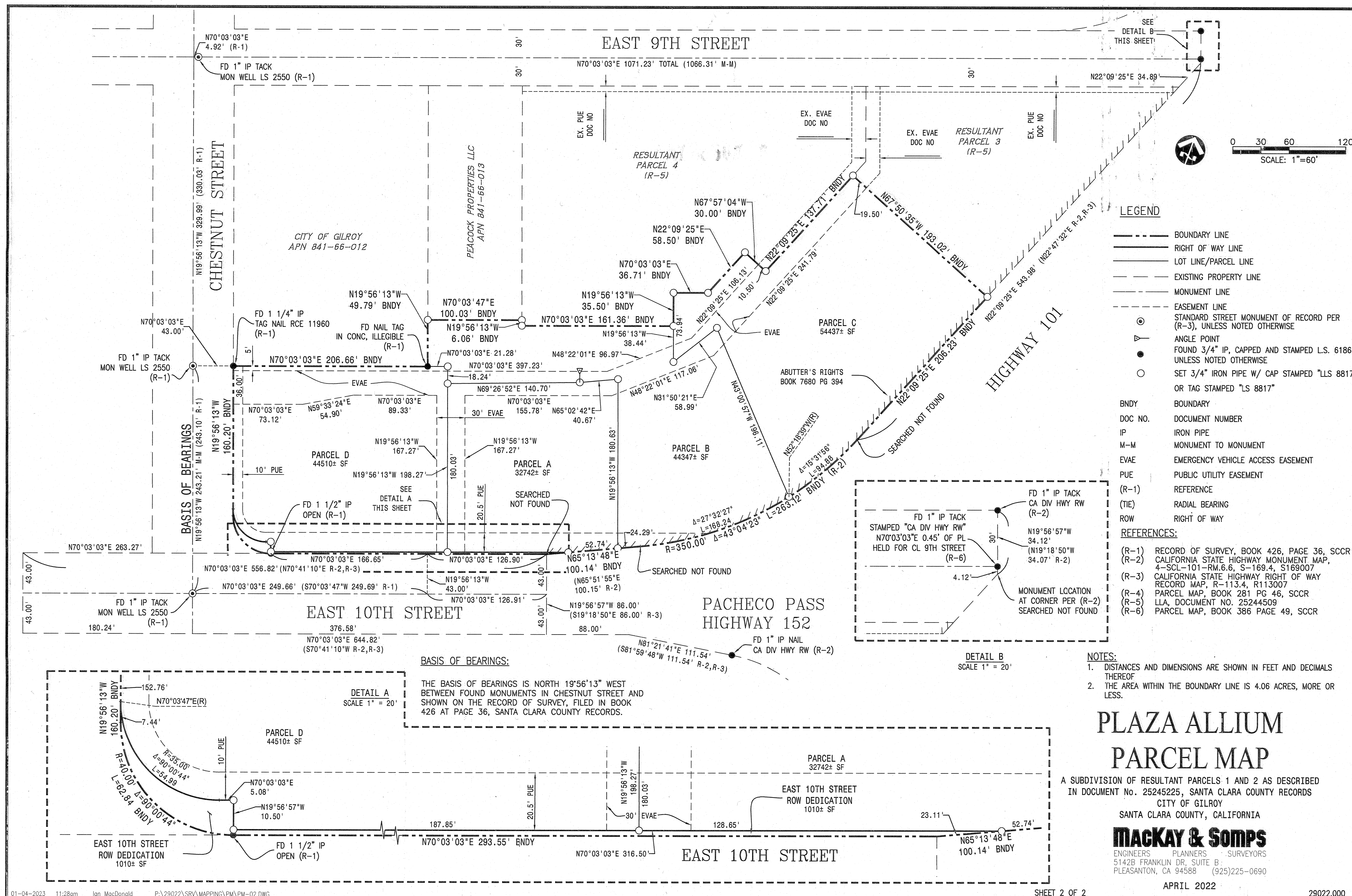
CITY/STATE: PHOENIX, ARIZONA

COUNTY RECORDER'S STATEMENT:

FILE NO. _____ FEE \$ _____ PAID. ACCEPTED FOR RECORD AND FILED IN BOOK _____ OF MAPS
AT PAGES _____, SANTA CLARA COUNTY RECORDS, THIS _____ DAY OF _____, 20____ AT _____ M., AT THE
REQUEST OF FIRST AMERICAN TITLE INSURANCE COMPANY.

REGINA ALCOMENDRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA

BY: _____
DEPUTY



PLAZA ALLIUM PARCEL MAP

A SUBDIVISION OF RESULTANT PARCELS 1 AND 2 AS DESCRIBED
IN DOCUMENT No. 25245225, SANTA CLARA COUNTY RECORDS
CITY OF GILROY
SANTA CLARA COUNTY, CALIFORNIA

MACKAY & SOMPS

ENGINEERS PLANNERS SURVEYORS
5142B FRANKLIN DR, SUITE B
PLEASANTON, CA 94588 (925)225-0690

RECORDING REQUESTED BY:

City of Gilroy

AND WHEN RECORDED MAIL TO:

City of Gilroy
Department of Public Works
7351 Rosanna Street
Gilroy, CA 95020

(THIS SPACE FOR RECORDER'S USE ONLY)

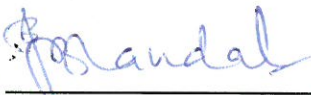
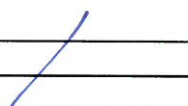
**GRANT DEED
PUBLIC UTILITY EASEMENT**

NO DOCUMENT TAX DUE
R & T CODE 11922

NO FEE FOR GOVT. AGENCY
GOVERNMENT CODE 27383

For valuable consideration, receipt of which is hereby acknowledged, Garlic City Partners, LLC, a California limited liability company, HEREBY GRANT(S) AND CONVEY(S) to the City of Gilroy, a municipal corporation, in Santa Clara County, State of California, for valuable consideration, receipt of which is hereby acknowledged, certain real property located in the City of Gilroy, Santa Clara County, State of California, described and depicted in Exhibit A, attached hereto, is incorporated herein by this reference, for public utility purposes.

Garlic City Partners, LLC, a California limited liability company

By: Its: MemberDate: 11/20/2023By: Its: Date:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }

}SS

COUNTY OF FRESNO }

ON 20th January 2023 BEFORE ME, SHEETAL BHARATBHAI PARMAR,
A NOTARY PUBLIC, PERSONALLY APPEARED JAGRUP SINGH BHANDAL

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

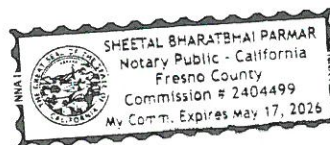
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

SEAL

SIGNATURE:

Sheetal B Parmar



CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORD:**GRANTEE:**

This is to certify that the interest in real property conveyed by the deed or grant dated: _____ from Garlic City Partners, LLC, A California Limited Liability Company, Grantors, to the City of Gilroy, a political subdivision of the state of California, is hereby accepted by order of the Gilroy City Council on _____ pursuant to authority conferred by resolution of the board of supervisors, Resolution No. _____ adopted on _____, and the grantee consents to recordation thereof by its duly authorized officer.

ACCEPTED:

City of Gilroy City Council

By: _____

Date: _____

APPROVED AS TO LEGAL FORM:

City of Gilroy City Attorney's Office

By: _____

Date: _____

EXHIBIT "A"
DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF GILROY, SANTA CLARA COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF RESULTANT PARCEL 4 AS DESCRIBED IN DOCUMENT NUMBER 25244509, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

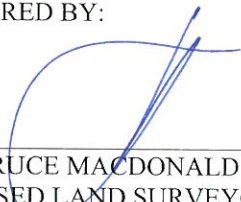
THE NORTHWESTERLY SIX (6) FEET OF SAID RESULTANT PARCEL 4
CONTAINING 2,193 SQUARE FEET, MORE OR LESS.

SEE PLAT "EXHIBIT A" SHEET 2 OF 2 HERETO BEING MADE A PART OF THIS DESCRIPTION
HEREOF.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION ARE BASED ON SAID DOCUMENT
NUMBER 25244509.

END OF DESCRIPTION

PREPARED BY:


IAN BRUCE MACDONALD
LICENSED LAND SURVEYOR NO. 8817
STATE OF CALIFORNIA



1/4/23

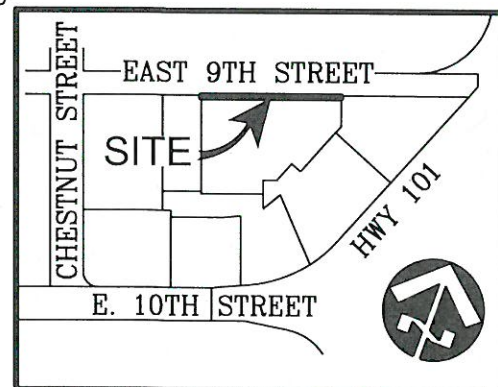
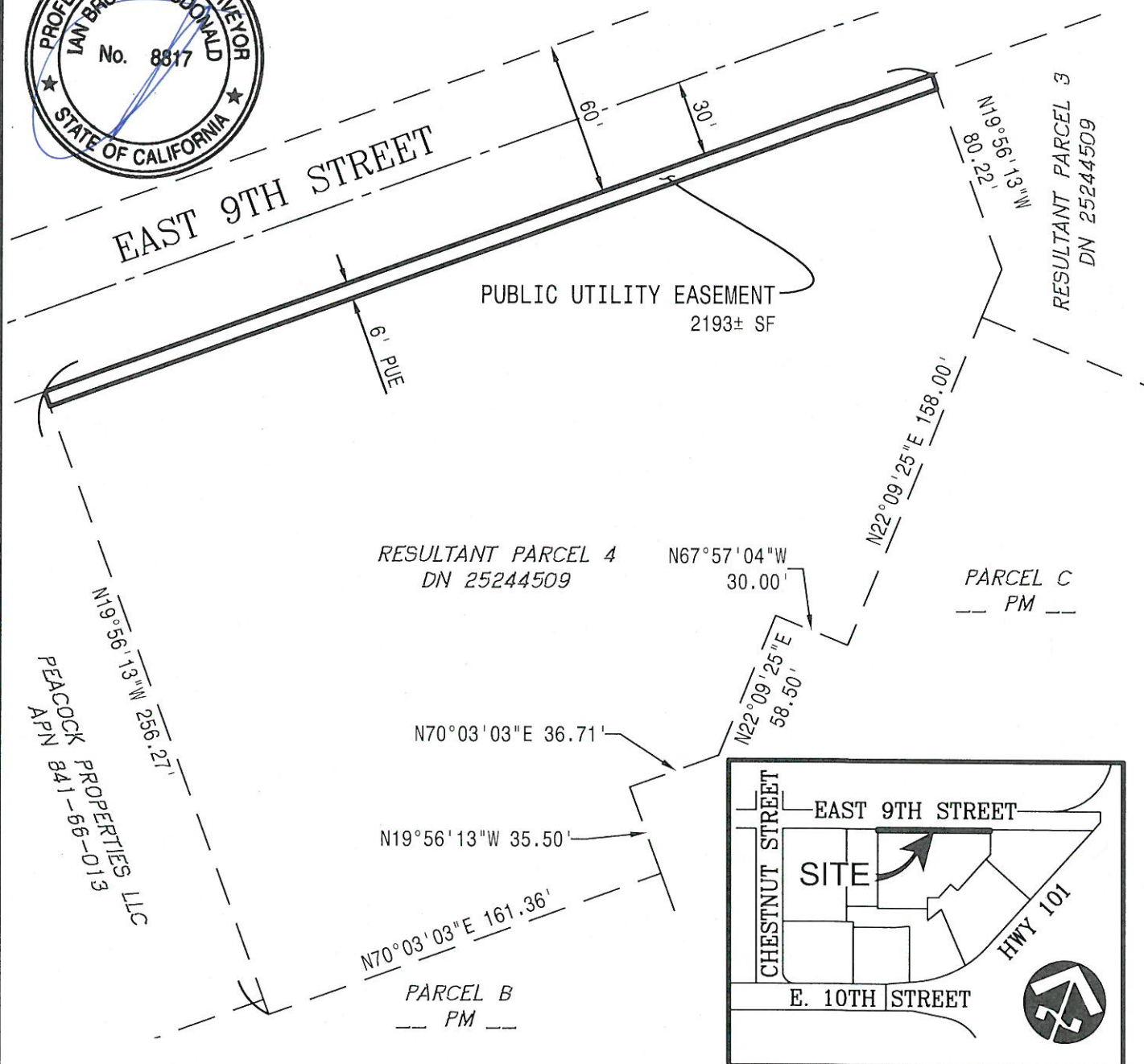
DATE

Mackay & Somps
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING
5142 Franklin Drive Suite B, Pleasanton, CA. 94588-3355
(925) 225-0690



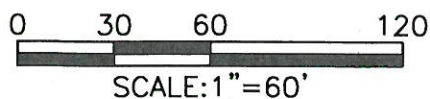
EXHIBIT "A"

PAGE 2 OF 2



LEGEND

- BOUNDARY OF DESCRIPTION
 - - - EXISTING PARCEL
 - - - CENTERLINE
 DN DOCUMENT NUMBER
 PUE PUBLIC UTILITY EASEMENT



PLAT TO ACCOMPANY DESCRIPTION

PUBLIC UTILITY EASEMENT

CITY OF GILROY

CALIFORNIA

MACKAY & SOMPS

ENGINEERS PLANNERS SURVEYORS
 5142B FRANKLIN DR, PLEASANTON, CA 94588 (925)225-0690

DRAWN	DATE	p. 75 of 947	JOB NO.
JZL	AUGUST 2022	1"=60'	29022.010.D

RECORDING REQUESTED BY:

City of Gilroy

AND WHEN RECORDED MAIL TO:

City of Gilroy
Department of Public Works
7351 Rosanna Street
Gilroy, CA 95020

(THIS SPACE FOR RECORDER'S USE ONLY)

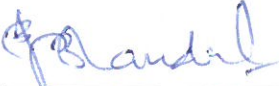
**GRANT DEED
 EMERGENCY VEHICLE ACCESS EASEMENT**

NO DOCUMENT TAX DUE
 R & T CODE 11922

NO FEE FOR GOVT. AGENCY
 GOVERNMENT CODE 27383

For valuable consideration, receipt of which is hereby acknowledged, Garlic City Partners, LLC, a California limited liability company, HEREBY GRANT(S) AND CONVEY(S) to the City of Gilroy, a municipal corporation, in Santa Clara County, State of California, for valuable consideration, receipt of which is hereby acknowledged, certain real property located in the City of Gilroy, Santa Clara County, State of California, described and depicted in Exhibit A, attached hereto, is incorporated herein by this reference, for emergency vehicle access purposes.

Garlic City Partners, LLC, a California limited liability company

By: 
 Its: Mayor
 Date: 11/20/2023

By: _____
 Its: _____
 Date: _____

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULLNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }

}SS

COUNTY OF FRESNO }

ON 20th January 2023 BEFORE ME,
A NOTARY PUBLIC, PERSONALLY APPEARED

SHEETAL BHARATBHAI PARMAR,
JAGRUP SINGH BHANDAL

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF

CALIFORNIA

, THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

SEAL

SIGNATURE:

Sheetal B Parmar



CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORD:**GRANTEE:**

This is to certify that the interest in real property conveyed by the deed or grant dated: _____ from Garlic City Partners, LLC, a California Limited Liability Company, Grantors, to the City of Gilroy, a political subdivision of the state of California, is hereby accepted by order of the Gilroy City Council on _____ pursuant to authority conferred by resolution of the board of supervisors, Resolution No. _____ adopted on _____, and the grantee consents to recordation thereof by its duly authorized officer.

ACCEPTED:

City of Gilroy City Council

By: _____

Date: _____

APPROVED AS TO LEGAL FORM:

City of Gilroy City Attorney's Office

By: _____

Date: _____

EXHIBIT "A"
DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF GILROY, SANTA CLARA COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF RESULTANT PARCEL 4 AS DESCRIBED IN DOCUMENT NUMBER 25244509, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID RESULTANT PARCEL 4, SAID CORNER BEING A POINT OF THE SOUTHERLY RIGHT OF WAY LINE OF EAST 9TH STREET, THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 70°03'03" WEST, 15.00 FEET;

THENCE LEAVING SAID RIGHT OF WAY LINE AND ENTERING SAID RESULTANT PARCEL 4 THE FOLLOWING TWO (2) COURSES:

1. SOUTH 19°56'13" EAST, 81.16 FEET;
2. THENCE SOUTH 22°09'25" WEST, 147.27 FEET, TO THE EASTERLY LINE OF SAID RESULTANT PARCEL 4;

THENCE ALONG SAID EASTERLY LINE THE FOLLOWING THREE (3) COURSES:

1. SOUTH 67°57'04" EAST, 10.50 FEET;
2. NORTH 22°09'25" EAST, 158.00 FEET;
3. THENCE NORTH 19°56'13" WEST, 80.22 FEET, TO THE **POINT OF BEGINNING**.

CONTAINING 2,813 SQUARE FEET, MORE OR LESS.

SEE PLAT "EXHIBIT A" SHEET 2 OF 2 HERETO BEING MADE A PART OF THIS DESCRIPTION HEREOF.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION ARE BASED ON SAID DOCUMENT NUMBER 25244509.

END OF DESCRIPTION

PREPARED BY:

IAN BRUCE MACDONALD
LICENSED LAND SURVEYOR NO. 8817
STATE OF CALIFORNIA



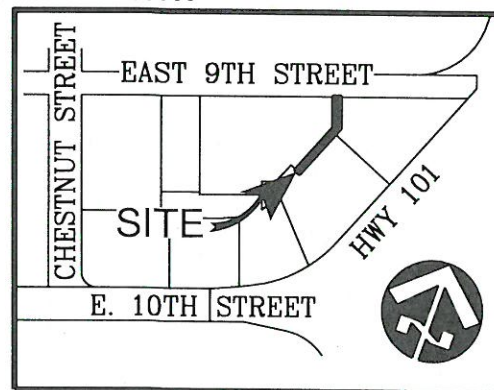
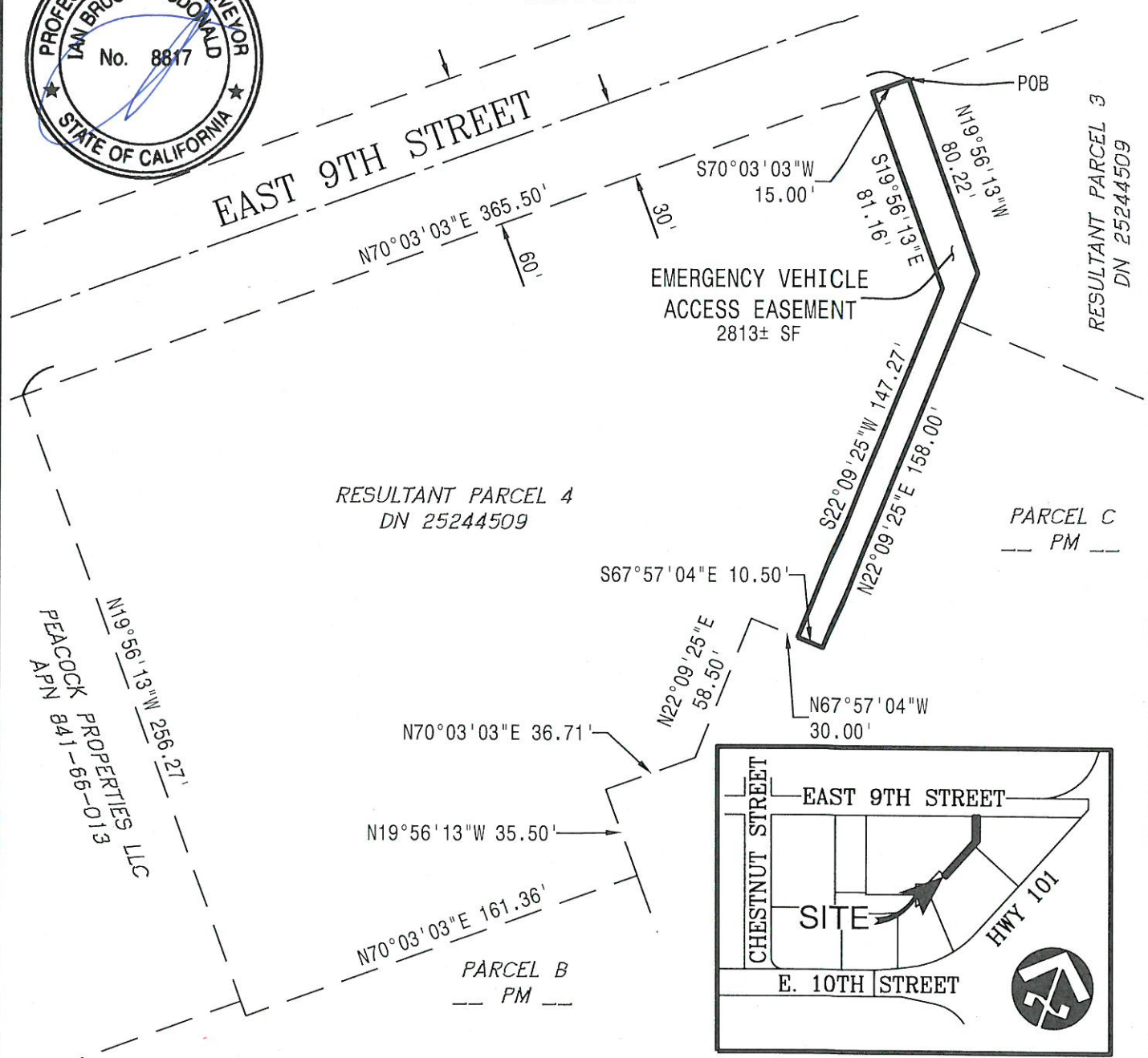
1/4/23

DATE

MACKEY & SOMPS
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5142 Franklin Drive Suite B, Pleasanton, CA. 94588-3355
(925) 225-0690



EXHIBIT "A"
PAGE 2 OF 2



LEGEND

- BOUNDARY OF DESCRIPTION
- - - EXISTING PARCEL
- - - CENTERLINE
- DN DOCUMENT NUMBER
- POB POINT OF BEGINNING

0 30 60 120
SCALE: 1"=60'



PLAT TO ACCOMPANY DESCRIPTION

EMERGENCY VEHICLE ACCESS
EASEMENT

CITY OF GILROY

CALIFORNIA

MACKAY & SOMPS

ENGINEERS PLANNERS SURVEYORS
5142B FRANKLIN DR, PLEASANTON, CA 94588 (925) 225-0690

DRAWN	DATE	SCALE	JOB NO.
JZL	AUGUST 2022	1"=60'	29022.010.D

p. 80 of 947

RECORDING REQUESTED BY:

City of Gilroy

AND WHEN RECORDED MAIL TO:

City of Gilroy
Department of Public Works
7351 Rosanna Street
Gilroy, CA 95020

(THIS SPACE FOR RECORDER'S USE ONLY)

**GRANT DEED
PUBLIC UTILITY EASEMENT**

NO DOCUMENT TAX DUE
R & T CODE 11922

NO FEE FOR GOVT. AGENCY
GOVERNMENT CODE 27383

For valuable consideration, receipt of which is hereby acknowledged, BLUEWAVE EXPRESS DEVELOPMENT II LLC, a Delaware limited liability company, HEREBY GRANT(S) AND CONVEY(S) to the City of Gilroy, a municipal corporation, in Santa Clara County, State of California, for valuable consideration, receipt of which is hereby acknowledged, certain real property located in the City of Gilroy, Santa Clara County, State of California, described and depicted in Exhibit A, attached hereto, is incorporated herein by this reference, for public utility purposes.

BLUEWAVE EXPRESS DEVELOPMENT II
LLC, a Delaware limited liability

By: *Stratton Polansky*

Its: Executive Vice President

Dated: 1/11/23

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULLNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF Texas }
 COUNTY OF Harris }SS

ON 01/11/2023 BEFORE ME, Sheelah Janae Taylor,
 A NOTARY PUBLIC, PERSONALLY APPEARED
Stratton Poland, Vice President, BlueWave Express Development II, LLC

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

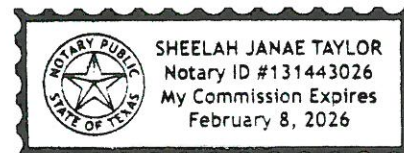
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
Texas, THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

SEAL

SIGNATURE:

Sheelah Janae Taylor



CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORD:**GRANTEE:**

This is to certify that the interest in real property conveyed by the deed or grant dated: _____ from Bluewave Express Development II LLC, a Delaware Limited Liability Company, Grantors, to the City of Gilroy, a political subdivision of the state of California, is hereby accepted by order of the Gilroy City Council on _____ pursuant to authority conferred by resolution of the board of supervisors, Resolution No. _____ adopted on _____, and the grantee consents to recordation thereof by its duly authorized officer.

ACCEPTED:

City of Gilroy City Council

By: _____

Date: _____

APPROVED AS TO LEGAL FORM:

City of Gilroy City Attorney's Office

By: _____

Date: _____

EXHIBIT "A"
DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF GILROY, SANTA CLARA COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF RESULTANT PARCEL 3 AS DESCRIBED IN DOCUMENT NUMBER 25244509, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTHWESTERLY SIX (6) FEET OF SAID RESULTANT PARCEL 3

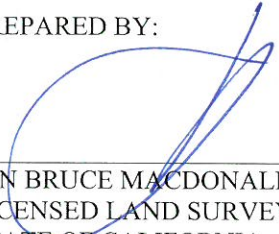
CONTAINING 1,980 SQUARE FEET, MORE OR LESS.

SEE PLAT "EXHIBIT A" SHEET 2 OF 2 HERETO BEING MADE A PART OF THIS DESCRIPTION HEREOF.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION ARE BASED ON SAID DOCUMENT NUMBER 25244509.

END OF DESCRIPTION

PREPARED BY:



IAN BRUCE MACDONALD
LICENSED LAND SURVEYOR NO. 8817
STATE OF CALIFORNIA



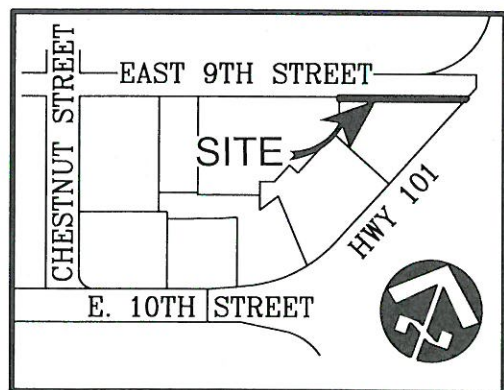
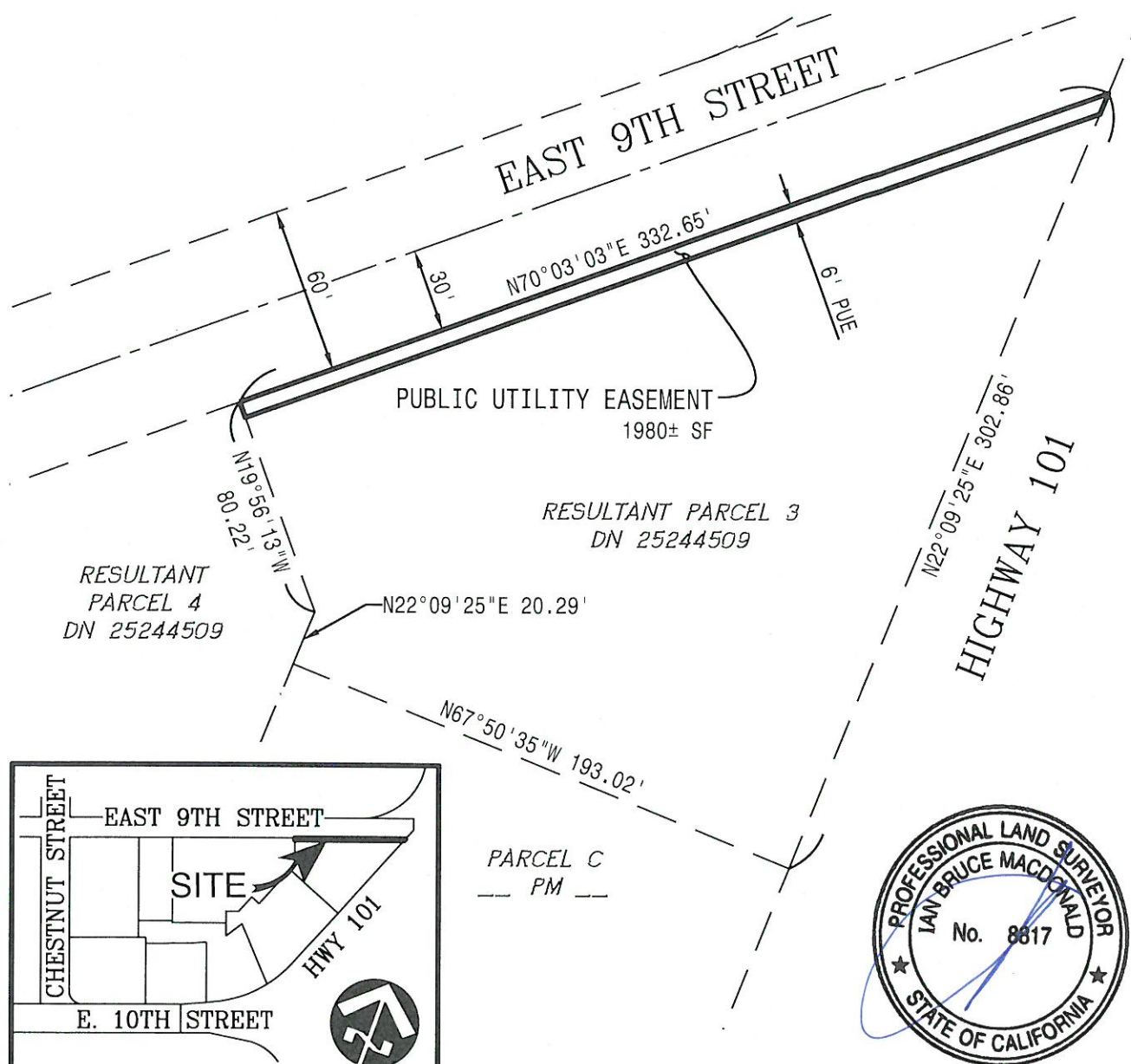
1/4/23
DATE

MACKEY & SOMPS

CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING
5142 Franklin Drive Suite B, Pleasanton, CA. 94588-3355
(925) 225-0690

EXHIBIT "A"

PAGE 2 OF 2



0 30 60 120
SCALE: 1"=60'

LEGEND

— BOUNDARY OF DESCRIPTION
 --- EXISTING PARCEL
 - - - CENTERLINE
 DN DOCUMENT NUMBER
 PUE PUBLIC UTILITY EASEMENT

PLAT TO ACCOMPANY DESCRIPTION

PUBLIC UTILITY EASEMENT

CITY OF GILROY

CALIFORNIA

Mackay & Somps

ENGINEERS PLANNERS SURVEYORS
 5142B FRANKLIN DR, PLEASANTON, CA 94588 (925)225-0690

DRAWN	DATE	p. 85 of 947	JOB NO.
JZL	AUGUST 2022	1"=60'	29022.010.D

RECORDING REQUESTED BY:

City of Gilroy

AND WHEN RECORDED MAIL TO:

City of Gilroy
Department of Public Works
7351 Rosanna Street
Gilroy, CA 95020

(THIS SPACE FOR RECORDER'S USE ONLY)

GRANT DEED EMERGENCY VEHICLE ACCESS EASEMENT

NO DOCUMENT TAX DUE
 R & T CODE 11922

NO FEE FOR GOVT. AGENCY
 GOVERNMENT CODE 27383

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BLUEWAVE EXPRESS DEVELOPMENT II
 LLC, a Delaware limited liability

By: *Stratton Poland*

Its: *Executive Vice President*

Dated: *1/11/23*

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF Texas }
 COUNTY OF Harris }SS

ON 01/11/2023 BEFORE ME, Sheelah Janae Taylor,

A NOTARY PUBLIC, PERSONALLY APPEARED

Stratton Poland, Vice President, BlueWave Express Development II, LLC

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

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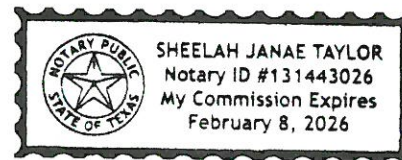
, THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

SEAL

SIGNATURE:

Sheelah Janae Taylor



CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORD:

GRANTEE:

This is to certify that the interest in real property conveyed by the deed or grant dated: _____ from Bluewave Express Development II LLC, a Delaware Limited Liability Company, Grantors, to the City of Gilroy, a political subdivision of the state of California, is hereby accepted by order of the Gilroy City Council on _____ pursuant to authority conferred by resolution of the board of supervisors, Resolution No. _____ adopted on _____, and the grantee consents to recordation thereof by its duly authorized officer.

ACCEPTED:

City of Gilroy City Council

By: _____

Date: _____

APPROVED AS TO LEGAL FORM:

City of Gilroy City Attorney's Office

By: _____

Date: _____

EXHIBIT "A"
DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF GILROY, SANTA CLARA COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF RESULTANT PARCEL 3 AS DESCRIBED IN DOCUMENT NUMBER 25244509, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF RESULTANT PARCEL 2 AS DESCRIBED IN SAID DOCUMENT NUMBER 25244509, SANTA CLARA COUNTY RECORDS, THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 3, COMMON TO THE EASTERLY LINE OF RESULTANT PARCEL 4 AS DESCRIBED IN DOCUMENT NUMBER 25244509, THE FOLLOWING TWO (2) COURSES:

1. NORTH 22°09'25" EAST, 20.29 FEET;
2. THENCE NORTH 19°56'13" WEST, 80.22 FEET TO THE NORTHWESTERLY CORNER OF SAID RESULTANT PARCEL 3, SAID CORNER BEING A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF EAST 9TH STREET;

THENCE ALONG SAID RIGHT OF WAY LINE OF SAID RESULTANT PARCEL 3 NORTH 70°03'03" EAST, 15.00 FEET;

THENCE LEAVING SAID NORTHERLY LINE AND ENTERING SAID RESULTANT PARCEL 3 THE FOLLOWING TWO (2) COURSES:

1. SOUTH 19°56'13" EAST, 92.71 FEET;
2. THENCE SOUTH 22°09'25" WEST, 21.08 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID RESULTANT PARCEL 3;

THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 67°50'35" WEST, 19.50 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,700 SQUARE FEET, MORE OR LESS.

SEE PLAT "EXHIBIT A" SHEET 3 OF 3 HERETO BEING MADE A PART OF THIS DESCRIPTION HEREOF.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION ARE BASED ON SAID DOCUMENT NUMBER 25244509.

END OF DESCRIPTION

PREPARED BY:

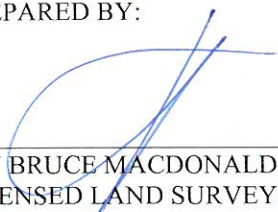
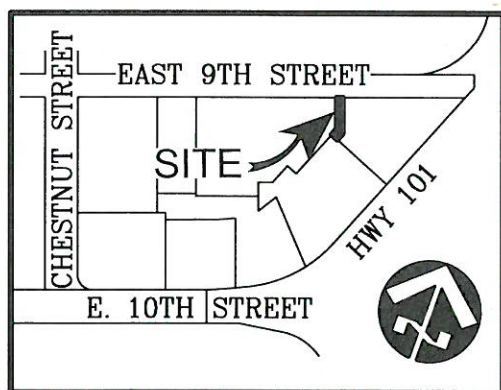
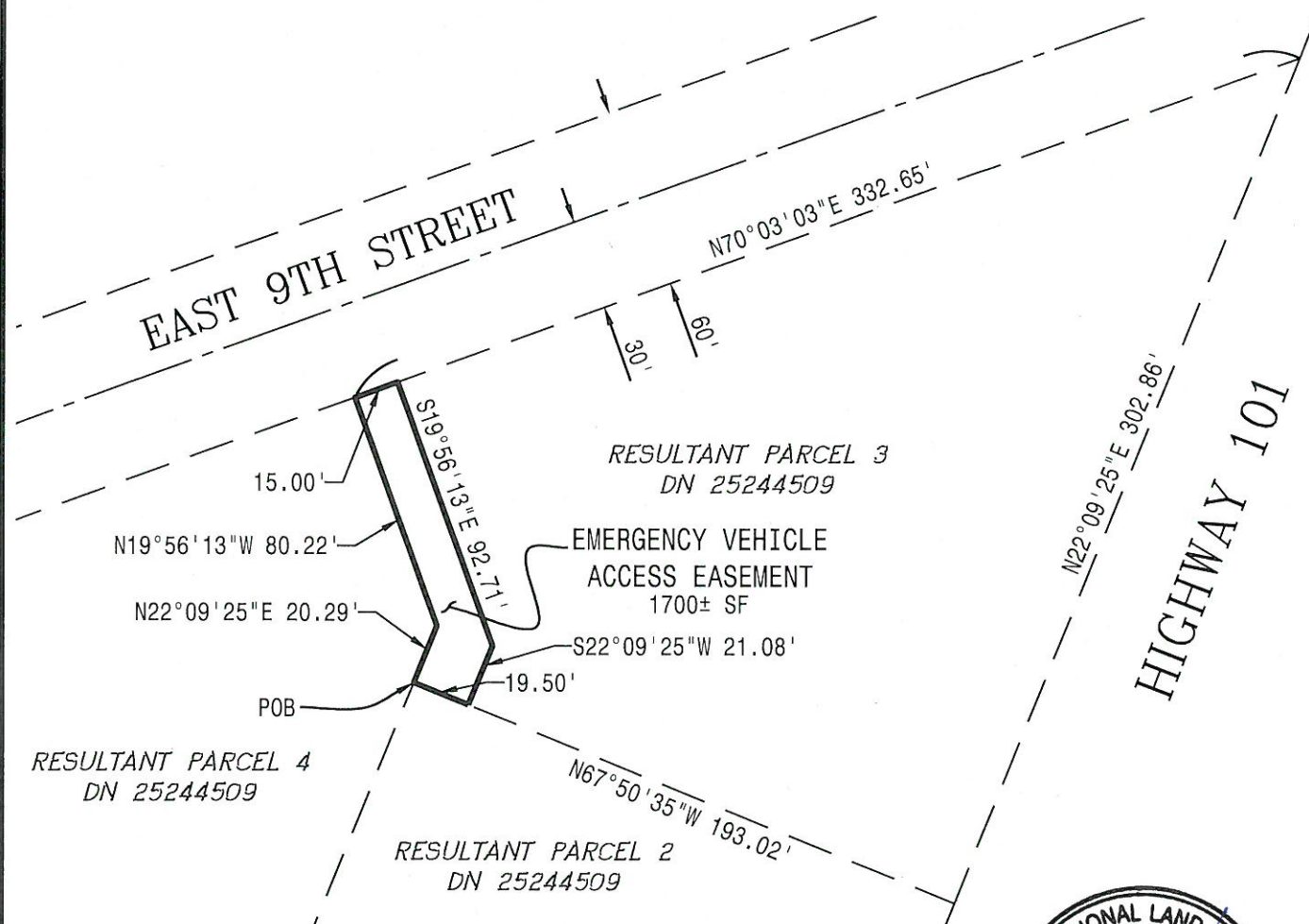

IAN BRUCE MACDONALD
LICENSED LAND SURVEYOR NO. 8817
STATE OF CALIFORNIA1/13/23
DATE**MacKay & Somps**
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING
5142 Franklin Drive Suite B, Pleasanton, CA. 94588-3355
(925) 225-0690

EXHIBIT "A"

PAGE 3 OF 3

VICINITY MAP
NOT TO SCALE

0 30 60 120
SCALE: 1"=60'

LEGEND

—	BOUNDARY OF DESCRIPTION
- - -	EXISTING PARCEL
- - -	CENTERLINE
DN	DOCUMENT NUMBER
POB	POINT OF BEGINNING

PLAT TO ACCOMPANY DESCRIPTION

EMERGENCY VEHICLE ACCESS
EASEMENT

CITY OF GILROY

CALIFORNIA

Mackay & Somps

ENGINEERS PLANNERS SURVEYORS
5142B FRANKLIN DR, PLEASANTON, CA 94588 (925)225-0690

DRAWN	DATE	p. 91 of 947	JOB NO.
JZL	AUGUST 2022	1"=60'	29022.010.D

LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT
Plaza Allium Commercial Center – Parcel Map (Evergreen) Plaza Allium
Evergreen-10th & Chestnut, L.L.C.

By and Between

The City of Gilroy

And

Evergreen-10th & Chestnut,
L.L.C.

LANDSCAPING INSTALLATION AND MAINTENANCE AGREEMENT
 Plaza Allium Commercial Center – Parcel Map (Evergreen) Plaza Allium
 Evergreen-10th & Chestnut, L.L.C.

This Landscaping Installation and Maintenance Agreement (“Agreement”) is made as of _____, 2023 between EVERGREEN-10TH & CHESTNUT, L.L.C., an Arizona Limited Liability Company (“Developer”) and the CITY OF GILROY, a municipal corporation (“City”) with reference to the following facts:

WHEREAS, Developer is developing all of that real property in the City of Gilroy, County of Santa Clara, State of California, known as and called: Plaza Allium Commercial Center, Parcel Map Plaza Allium described in the project improvement plans entitled Plaza Allium Off-Site Improvements, and project more particularly described on Exhibit A attached hereto and made a part hereof (the “Property”); and,

WHEREAS, City adopted Resolution No. 2020-53 (the “TM Approval”), approving TM 20-03, a Tentative Parcel Map to (develop 6.8 acres into commercial center comprised of six parcels with shared access, parking and landscape improvements on the Property, subject to the Tentative Map Conditions (the “TM Conditions”) and other requirements described therein; and,

WHEREAS, City adopted Resolution No. 2020-12 (the “A/S Approval”), approving A/S 20-14, an application for architectural and site approval to develop 6.8 acres into a commercial center comprised of six parcels with shared access, parking and landscape improvements which is the subject of the TM Approval, subject to conditions of approval and other requirements described therein (the subdivision and project to be built thereon being the “Project”); and,

WHEREAS, Before recordation of the final map for the Property, Developer must establish funding for the maintenance of the road side landscaping on 9th Street, Chestnut Street, 10th Street, Caltrans Right of Way frontage, and hardscape Plaza entry at intersection between 10th Street/Chestnut Street, said landscaping areas (the “Frontage Landscape Areas”) to include all areas located outside of the Property which are within the public right of way as shown on Exhibit B attached hereto; and

WHEREAS, this Agreement is entered into to address the Developer’s obligations with respect to the Frontage Landscape Area, to establish covenants, conditions, obligations and restrictions which run with the land and which bind all persons and entities now or hereafter owning a fee interest in all or any portion of the Property.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE RECEIPT OF

WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to insure the timely and proper construction and installation of the Landscape Improvements (defined in Section 2 below) on the Frontage Landscape Areas identified on Exhibit B attached hereto in accordance with the Approved Landscape Plans (defined in Section 2 below), and the proper and diligent maintenance of the Landscape Improvements in perpetuity.
2. Landscape Improvements and Approved Landscape Plans. The Landscape Improvements consist of those described in the landscaping plans and specifications identified on Exhibit C attached hereto and made a part hereof (the "Approved Landscape Plans"). Copies of the Approved Landscape Plans are on file with the City in the office of Community Development Department, 7351 Rosanna Street, Gilroy, California 95020.
3. Duty to Construct and Install Landscape Improvements. Developer shall cause all Landscape Improvements to be constructed and installed in a good and workmanlike manner, in accordance with the Approved Landscape Plans, the TM Approval, the A/S Approval and all other applicable federal, state, county, city and other governmental statutes, laws, rules, orders, regulations and ordinances (collectively, "Laws"), at Developer's sole cost and expense. Construction and installation of the Landscape Improvements shall be completed no later than twelve (18) months after this Agreement has been signed by Developer and City. Prior to commencing work, Developer shall obtain all permits required by law for the construction and installation of the Landscape Improvements. All fees for such permits shall be those in effect as of the date of application for such permits.
4. Developer's Duty to Maintain Landscape Improvements. Until Developer assigns its maintenance obligations hereunder to the "Manager" under the "COREA" as expressly provided below, Developer shall, at its sole cost and expense, diligently maintain and care for, and repair and replace as necessary, the Landscape Improvements. Developer's obligations pursuant to this Section 4 shall include, without limitation, the following: (i) providing sufficient water, fertilizer and other nutrients to the turf and other plants to maintain them in a healthy and thriving condition; (ii) keeping plants trimmed by removing dead wood from trees and shrubs, trimming back foliage which has exceeded the landscape boundaries and shaping plants as necessary, and keeping turf mowed to a height of between two (2) and three (3) inches and trimmed back from edges of hardscape; (iii) pruning and trimming trees and shrubs, as necessary, in such a manner as to prevent interference with sight clearance for pedestrian, bicycle and vehicle traffic on adjacent roadways, walkways and rights of way; (iv) maintaining, repairing and replacing, as needed, the irrigation system serving the landscaping, and obtaining all legally required permits with respect to such work; (v) causing all weeds, trash and debris to be regularly removed from the Frontage Landscape Area; (vi) replacing plants which have died back or become unsightly on no less than a monthly basis; and, (vii) paying all costs and expenses for the water and electricity used to irrigate and light the landscaping and Frontage Landscape Area. Without limiting the generality of the foregoing, diligent maintenance and care includes persistent upkeep which employs the standard of care necessary to meet all requirements of applicable local ordinances and regulations and is

in accordance with the generally accepted standards for maintenance and care observed by comparable uses located within the City. Developer reserves the right to assign all of its rights and obligations under this Agreement to the "Manager" under that certain Common Operation and Reciprocal Easement Agreement dated February 15, 2022 and recorded February 23, 2022 as Document No. 25245387 in the Official Records of Santa Clara County, California (the "COREA"). Following such assignment, and the acceptance and assumption by the Manager of all such rights and obligations, Developer is relieved of all liability thereafter accruing hereunder, and the City will thereafter look to the Manager under the COREA, and the Owners as hereinafter provided, for performance of this Agreement. If and when Developer assigns its obligations hereunder to the Manager's, the Manager under the COREA assumption of Developer's obligations shall be perpetual.

5. Insurance; Contractors; Encroachment Permit; Compliance with Laws. Developer shall maintain at all times during the term of this Agreement, and Developer shall require all contractors engaged to perform any work pursuant to this Agreement to maintain at all time during the performance of the work pursuant to this Agreement, policies of insurance in form and amount acceptable to City, including without limitation, (a) commercial general liability insurance, (b) automobile liability insurance, (c) employer's liability insurance, (d) business automobile liability insurance, and (e) worker's compensation insurance. Developer has received a copy of City's current required insurance schedule, which has been approved by Developer and City, and shall be complied with by Developer and the Association, when applicable, at all times. All work required of Developer pursuant to this Agreement shall be performed on behalf of Developer by licensed California contractors reasonably acceptable to City. At all times during the performance of work by Developer pursuant to this Agreement of work within the public right of way, Developer shall obtain from the City and maintain in effect, at Developer's sole cost, an encroachment permit upon terms and conditions reasonably acceptable to the City, to enable Developer to perform the work required within the public right of way. Developer shall, at its sole cost and expense, comply with all applicable Laws in the performance of its obligations pursuant to this Agreement. Thirty (30) days advance written notice must be given to City prior to termination, cancellation or modification of any such insurance policies. The insurance specified above shall name City as an additional insured. Developer hereby waives all rights to recover against City for any loss or damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement or actually carried by Developer in connection with the work described in this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an occurrence basis and not on a claims made basis and shall be issued by insurance companies acceptable to City. Prior to commencing any work pursuant to this Agreement, Developer shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained.
6. Licenses and Permits. Developer warrants to City that, except for the encroachment permit, it has all applicable licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Developer to accomplish its obligations under this Agreement. Developer represents and warrants to the City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any applicable licenses, permits, and approvals which are legally required for Developer to accomplish

its obligations.

7. Indemnity. To the fullest extent allowed by law, Developer shall indemnify, defend, and hold harmless City, its elected and appointed officials, officers, agents and employees from and against any and all claims, demands, causes of action, liabilities, losses, costs, expense, injuries, damages, judgments, findings, awards, suits and proceedings (including without limitation costs for staff time, copying costs, court costs and attorneys' fees) (collectively, "Claims and Liabilities") arising out of, or in connection with:
- (a) the design, construction or installation of the Landscape Improvements occurring prior to completion of such installation, the performance of Developer's obligations under this Agreement by Developer or their respective agents, employees, contractors or sub-contractors, and/or any breach of any obligation of Developer under this Agreement; and/or
 - (b) any violation or claim of violation of any current law, rule or regulation applicable to any portion or aspect of the Landscape Improvements by Developer or its agents, employees, contractors, or sub-contractors;

excepting only Claims and Liabilities caused by the sole negligence or willful misconduct of City, its elected and appointed officials, officers, agents and employees in the performance of their obligations as the elected and appointed officials, agents and employees of City. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the City, its elected and appointed officials, officers, agents and employees.

8. City's Right to Cure Developer's Default.

- (a) If Developer breaches any of its obligations under Sections 3, 4, 5, 6 or 7, and any breach of each and every material term and condition contained herein the breach is not cured within ten (10) days (or such longer period as may be specified in the Notice of Breach in City's sole and absolute discretion) after the City gives written notice ("Notice of Breach") to the Developer of the failure to perform, City shall have the right (but not the obligation), in addition to all other rights available to City under this Agreement, by law, or in equity, to enter upon the Frontage Landscape Area and perform all or any portion of Developer's obligation at Developer's sole cost, and all costs incurred by City shall be reimbursed by Developer to City not later than ten (10) days after written demand for payment is delivered to Developer. Any costs so incurred by City in performing Developer's obligations under Section 3, 4, 5, 6 or 7, which are not paid by Developer when due, shall bear interest from the date due until fully paid at the rate of ten percent (10%) per annum.
- (b) Delay by City in giving a Notice of Breach shall not constitute a waiver of any breach or default. Any failures or delays by City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, nor deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.(c) The City shall not perform such

maintenance activities upon breach of Developer's duties under this Agreement if the default cannot reasonably be cured within the 10-day cure period. In that event, Developer shall have such additional reasonable time as may be necessary to cure the default provided Developer commences the cure within the 10-day period and diligently prosecutes such cure to completion.

- (d) Developer hereby grants permission to the City, its elected and appointed officials, officers, agents, employees, contractors and other representatives to enter the Frontage Landscape Area at reasonable times to inspect the Frontage Landscape Area and Landscape Improvements to determine if Developer is complying with its obligations under this Agreement and, in the event of a continuing default of its obligations under this Section 8, Developer hereby grants permission to the City, its elected and appointed officials, officers, agents, employees, contractors and other representatives to enter the Frontage Landscape Area at reasonable times to perform Developer's obligations pursuant to this Section 8. Nothing in this Section shall be construed to limit any access or other rights City may have as it relates to the portion of the Frontage Landscape Area within the public right of way, it being acknowledged and agreed by Developer that City's rights with respect to the public right of way shall not be diminished by this Agreement and that Developer's consent is not required as it relates to any portion of the public right of way.
 - (e) To the fullest extent allowed by law, Developer hereby waives any and all claims it may now or hereafter have against City, its elected and appointed officials, officers, employees, agents, contractors and other representatives as a result of entry onto the Frontage Landscape Area by City, its elected and appointed officials, officers, employees, agents, contractors and other representatives pursuant to this Section 8, including without limitation claims for personal injury, death and damage to property except to the extent resulting from the negligence or willful misconduct of City, its elected and appointed officials, officers, employees, agents, contractors or other representatives.
9. Developer not Agent of City. Neither Developer nor any of its agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.
 10. Notices. Notices required or permitted to be given under the terms of this Agreement shall be served personally, or sent by pre-paid United States certified mail, return receipt requested, or by overnight courier, addressed as follows:

CITY: City of Gilroy
 7351 Rosanna Street
 Gilroy, CA 95020
 ATTN: Director of Public Works/City Engineer

With copies to: City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020
ATTN: City Manager

Proof of insurance to be filed with:

CITY: City of Gilroy
7351 Rosanna St.
Gilroy, California 95020
ATTN: Director of Public Works/City Engineer

DEVELOPER, or MANAGER:
Evergreen-10th & Chestnut, L.L.C.
2390 East Camelback Rd, #410
Phoenix, AZ, 85016
Attn: Alex Gonzalez

and, in the event that Developer hereafter conveys the fee interest in the Property or any portion thereof, to each successive Owner as shown on the tax rolls for Santa Clara County, California as to which City is given written notice of transfer. Notices shall be effective upon delivery to the required address, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is prevented because the intended recipient has failed to provide a reasonable means for accomplishing delivery. Any party may change its address for notice purposes from time to time by giving written notice by authorized means to all other parties.

11. Recordation: Term; Covenant Running With the Land. Upon execution of this Agreement by all parties hereto, the City shall have the right to record this Agreement with the Santa Clara County Recorder's Office in the Official Records of Santa Clara County, California ("Official Records"). The term of this Agreement shall commence on the date that it is signed by Developer and City, and shall continue thereafter in perpetuity unless and until terminated in writing signed by City and all persons and entities then being an Owner of all or any portion of the Property and recorded in the Official Records. This Agreement pertains to and runs with the Property and every part thereof and shall be deemed to run with the land. Developer, on behalf of itself and all subsequent fee owners of all or any portion of the Property, hereby subjects the Property to all terms and conditions set forth in this Agreement. This Agreement shall bind each Owner now owning a fee interest in all or any portion of the Property, and all successors in interest of all or any portion of the fee interest in and to the Property, and all of their respective successors and assigns, each for the entire duration of its fee ownership of the Property, subject to this paragraph below. All obligations which accrue under this Agreement are the joint and several obligations of all Owners then having a fee ownership in all or any portion of the Property at the time of such accrual and at any time that such obligation has not been fully performed; provided however, that notwithstanding any other provision in this Agreement, in no event shall any obligation of any Owner be binding on the City, nor shall City be responsible for complying with

the obligations of any Owner under this Agreement, notwithstanding that all or any portion of the Property or any portion of the Frontage Landscape Area, is owned by City or has been conveyed, granted or transferred to City unless agreed to in writing by the City (determined in the City's sole and absolute discretion). In addition to this Agreement running with the land, all terms and conditions set forth in this Agreement shall inure to the benefit of City and any successor governmental entity of City whether or not City or such successor governmental entity is an owner of any interest in real property. As used in this Agreement, "Owner" shall mean any and all persons, firms, corporations or other legal entities which own fee title to all or any portion of the Property. The term "Owner" shall not include a mortgagee or beneficiary under a deed of trust holding a security interest in the Property unless such mortgagee or beneficiary has entered into actual physical possession of the Property or becomes a fee owner of any portion of the Property. Nothing herein shall be construed to prohibit a transfer of any portion of the Property by an Owner to subsequent Owners. Notwithstanding the foregoing to the contrary, if this Agreement is assigned to and assumed by the Manager under the COREA, the City shall look first to the Manager for performance of this Agreement and agrees to accept such performance by the Manager as if performed by Developer or the Owners. However, no such assignment relieves the Owners from joint and several liability for the performance of all obligations set forth in this Agreement to the extent not performed by the Manager.

12. Property Transfer. Nothing herein shall be construed to prohibit a transfer by the Developer to subsequent owners and assigns, including but not limited to the Association.
13. Breach of Agreement. Any breach by Developer of the terms and conditions of this Agreement continuing uncured after notice and expiration of applicable grace period, shall be deemed a violation of the TM Approval and the A/S Approval. In addition to any other remedy available to City under this Agreement, by law or in equity, the City may bring an action against Developer to enforce the terms and conditions of the TM Approval, the A/S Approval and this Agreement.
14. Attorneys' Fees. If any party to this Agreement resorts to a legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief to which it may be entitled.
15. Miscellaneous Terms and Provisions:
 - (a) If any provision of this Agreement is adjudged invalid, unenforceable or void, the remaining provisions of this Agreement shall not be affected thereby and shall remain in force and effect.
 - (b) The waiver of any party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.
 - (c) Except as set forth in this Agreement, no party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and

of no effect. Notwithstanding the foregoing, Developer is entitled to hire a general contractor and subcontract such portions of the work to be performed under this Agreement and Developer shall have the right to assign its rights and obligations under this Agreement to the Manager under the COREA, in which event, Developer shall be fully released from its obligation hereunder.

- (d) Notwithstanding any provisions of this Agreement, the City does not undertake any responsibility or liability for any claim, demand, cause of action, damage, cost, expense, loss, or liability, in law or in equity, of any kind and nature whatsoever, that in any way arises from or is in any way connected to the execution of this Agreement and/or to the performance of any and all of the work or obligation under this Agreement except as otherwise provided herein.
- (e) Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assignees.
- (f) This Agreement contains the entire agreement between the parties relating to Developer's obligations with respect to the installation and maintenance of landscaping within the Frontage Landscape Area, and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.
- (g) The parties specifically acknowledge that the Project is a private development, that no party is acting as the agent of the others in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties, or the affairs of City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.
- (h) This Agreement shall be interpreted and construed reasonably and not against any party, regardless of the degree to which any party participated in its drafting. Each of the parties has received the advice of legal counsel prior to signing this Agreement. Each party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever a reference is made herein to a particular provision of this Agreement, it means and includes all paragraphs, subparagraphs and subparts thereof, and, whenever a reference is made herein to a particular paragraph or subparagraph, it shall include all subparagraphs and subparts thereof.
- (i) All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically

provided.

- (j) All references to days herein are to calendar days, including Saturdays, Sundays and holidays, except as otherwise specifically provided. Unless otherwise required by a specific provision of this Agreement, time hereunder is to be computed excluding the first day and including the last day.
- (k) This Agreement may not be modified or amended in any respect except in writing signed by the parties.
- (l) Each of the Exhibits identified is attached hereto and incorporated herein and made a part hereof by this reference.
- (m) This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state and venue shall be in Santa Clara County, California.
- (n) The section headings or captions of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the scope or intent of any of the provisions of this Agreement. No modification or amendment of this Agreement shall be valid unless the same is in writing and signed by City and all persons and entities that are then the Owners of the Property. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[signatures begin on the following page]

IN WITNESS WHEREOF, the parties have executed this Landscape Installation and Maintenance Agreement to be effective on the day and year set forth above.

Evergreen-10th & Chestnut, L.L.C., an Arizona limited liability company

By: Evergreen Development Company-2019, L.L.C.,
An Arizona limited liability company
Its: Manager

By: Evergreen Devco, Inc.,
a California corporation
Its: Manager

By: _____

Its: _____

Date: _____

CITY:

CITY OF GILROY,
a municipal corporation

By: _____

Name: Jimmy Forbis

Title: City Administrator

Date: _____

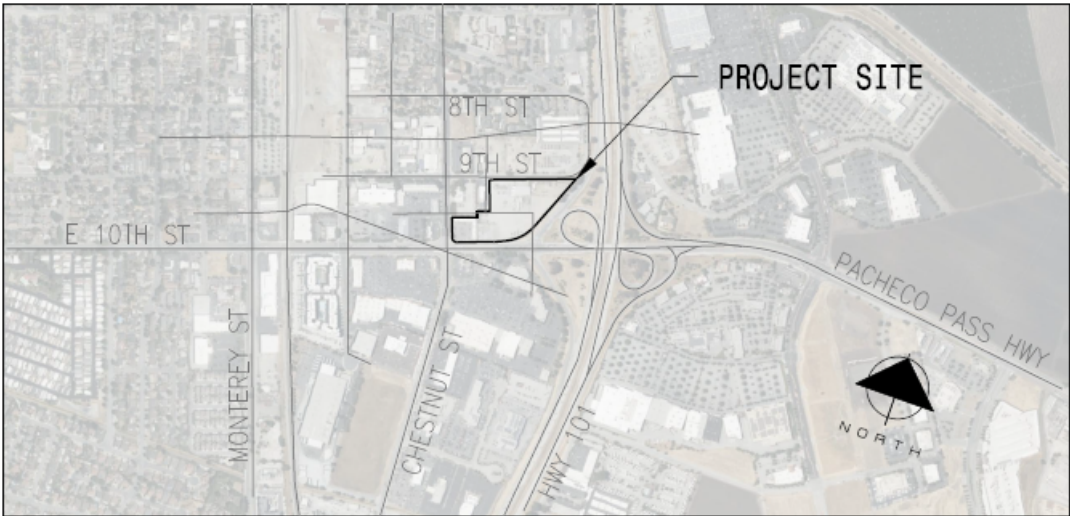
ATTEST:

APPROVED AS TO FORM:

By: _____
Thai Pham, City Clerk

Andrew Faber, City Attorney

VICINITY MAP



VICINITY MAP
NTS

PLAZA ALLIUM

VICINITY MAP

GILROYCALIFORNIA

MACKay & Somps

ENGINEERS
5142B FRANKLIN DR, PLEASANTON, CA 94588

PLANNERS
(925)225-0690

SURVEYORS

DRAWN	DATE	SCALE	JOB NO.
JRR	1/9/2023	N.T.S.	29022.010.ON

EXHIBIT A

Real property in the City of Gilroy, County of Santa Clara, State of California, described as follows: PARCEL ONE :

BEGINNING AT THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM LEWIS J. SACULLO, ETUX, TO BELL AND GRIFFIN, A CALIFORNIA CORPORATION RECORDED JULY 16, 1968 IN BOOK 8193, PAGE 31, OFFICIAL RECORDS OF SAID COUNTY, RUNNING THENCE ALONG THE SOUTHWESTERLY LINE OF SAID BELL AND GRIFFIN PARCEL NORTH 19° 18' 50" WEST 250.00 FEET TO THE NORTH LINE OF SAID BELL AND GRIFFIN PARCEL, THENCE ALONG SAID NORTH LINE NORTH 70° 41' 10" EAST 60.00 FEET, THENCE LEAVING SAID NORTH LINE SOUTH 61° 18' 00" EAST 134.54 FEET, THENCE SOUTH 19° 18' 50" EAST 148.08 FEET TO THE NORTH LINE OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 31, 1967 IN BOOK 7680 AT PAGE 394 OF THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, THENCE ALONG SAID NORTH LINE SOUTH 65° 51' 55" WEST 23.32 FEET TO THE NORTH LINE OF 10TH STREET (86 FEET WIDE), THENCE ALONG SAID NORTH LINE OF 10TH STREET SOUTH 70° 41' 10" WEST 126.76 FEET TO THE POINT OF BEGINNING.

SAID PARCEL IS ALSO KNOWN AS PARCEL ONE AS SHOWN ON PARCEL MAP RECORDED AS ON APRIL 20, 1971 AS BOOK 281, PAGE 46 OF PARCEL MAPS OF SANTA CLARA COUNTY, OFFICIAL RECORDS.

PARCEL TWO :

COMMENCING AT A POINT IN THE CENTERLINE OF NINTH STREET WHICH BEARS NORTH 70° 03'

47" EAST 150.31 FEET AND SOUTH 19° 56' 13" EAST 30 FEET FROM THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO RUDOLPH W. YOUNG, A MARRIED MAN, RECORDED JULY 03, 1968 IN BOOK 8178 OF OFFICIAL RECORDS, PAGE 679, SANTA CLARA COUNTY RECORDS, SAID POINT BEING AT THE CENTER LINE INTERSECTION OF NINTH STREET WITH THE CENTER LINE OF THE PROPOSED CHESTNUT STREET EXTENSION AS SAID POINT IS SHOWN ON THAT CERTAIN MAP ENTITLED, "OFFICIAL PLAN LINES FOR CHESTNUT STREET", AS SAID MAP WAS RECORDED IN BOOK 6 OF PLAN LINE MAPS, AT PAGES 63 AND 64, SANTA CLARA COUNTY RECORDS; THENCE ALONG THE PROPOSED CENTER LINE OF CHESTNUT STREET SOUTH 19° 56' 13" EAST 330.00 FEET TO A POINT IN THE CENTER LINE THEREOF; THENCE LEAVING SAID POINT NORTH 70° 03' 47" EAST 43.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING POINT OF BEGINNING NORTH 70° 03' 47" EAST 206.69 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL DESCRIBED IN SAID DEED TO RUDOLPH W. YOUNG, A MARRIED MAN; THENCE SOUTH 19° 56' 13" EAST ALONG SAID NORTHEASTERLY LINE 200 FEET TO THE SOUTHEASTERLY CORNER OF THE SAID PARCEL DESCRIBED IN THE DEED TO YOUNG, ALSO BEING A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE PROPOSED NEW TENTH STREET EXTENSION; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL DEEDED TO YOUNG AND THE NORTHERLY LINE OF SAID PROPOSED NEW TENTH STREET EXTENSION SOUTH 70° 03' 47" WEST 166.69 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" SECONDS WITH A RADIUS OF 40 FEET, AN ARC DISTANCE OF 62.83 FEET TO A POINT ON THE MOST EASTERLY RIGHT OF WAY LINE OF THE SAID NOW PROPOSED NEW CHESTNUT STREET; THENCE ALONG SAID EASTERLY LINE OF CHESTNUT STREET NORTH 19° 56' 13" WEST 160 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL THREE :

BEING A PORTION OF SUB LOT XXI AS SHOWN ON MAP NO. 8 ACCOMPANYING THE FINAL REPORT OF THE REFEREES IN THE LAS ANIMAS RANCHO PARTITION SUIT, ACTION NO. 5536 HAD IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE IN THE SOUTHEASTERLY LINE OF NINTH STREET AS DESCRIBED IN THE DEED FROM M.E THOMAS, ET AL., TO THE COUNTY OF SANTA CLARA, AND THE CITY OF GILROY, DATED AUGUST 10, 1928 AND RECORDED DECEMBER 13, 1928 IN BOOK 441 OF OFFICIAL RECORDS, PAGE 99 SANTA CLARA COUNTY RECORDS, DISTANT THEREON N. 70° E. 530.00 FEET FROM THE INTERSECTION THEREOF WITH THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM BERNIS C. STEIDLEY, ET AL., TO B.M. KLINK, ET UX, DATED JUNE 4, 1952 AND RECORDED JUNE 4, 1952 IN BOOK 2429 OF OFFICIAL RECORDS, PAGE 480, AND RUNNING THENCE ALONG THE SOUTHEASTERLY LINE OF NINTH STREET, N. 70° E. 161.36 FEET, THENCE S. 20° E. 500.00 FEET; THENCE S. 70° W. 201.36 FEET THENCE N. 20° W. 250.00 FEET; THENCE N. 70° E. 40.00 FEET AND N. 20° W. 250.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE LYING WITHIN THE FOLLOWING:

BEGINNING AT THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM LEWIS J. SACULO, ET UX, TO BELL AND GRIFFIN, A CALIFORNIA CORPORATION RECORDED JULY 16, 1968 IN BOOK 8193, PAGE 31, OFFICIAL RECORDS OF SAID COUNTY, RUNNING THENCE ALONG THE SOUTHWESTERLY LINE OF SAID BELL AND GRIFFIN PARCEL NORTH 19° 18' 50" WEST 250.00 FEET TO THE NORTH LINE OF SAID BELL AND GRIFFIN PARCEL, THENCE ALONG SAID NORTH LINE NORTH 70° 41' 10" EAST 60.00 FEET, THENCE LEAVING SAID NORTH LINE SOUTH 61° 18' 00" EAST 134.54 FEET, THENCE SOUTH 19° 18' 50" EAST 148.08 FEET TO THE NORTH LINE OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 31, 1967 IN BOOK 7680 AT PAGE 394 OF THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, THENCE ALONG SAID NORTH LINE SOUTH 65° 51' 55" WEST 23.32 FEET TO THE NORTH LINE OF 10TH STREET (86 FEET WIDE), THENCE ALONG SAID NORTH LINE OF 10TH STREET SOUTH 70° 41' 10" WEST 126.76 FEET TO THE POINT OF BEGINNING.

SAID PARCEL IS ALSO KNOWN AS PARCEL TWO AS SHOWN ON PARCEL MAP RECORDED AS ON APRIL 20, 1971 AS BOOK 281, PAGE 46 OF PARCEL MAPS OF SANTA CLARA COUNTY, OFFICIAL RECORDS.

PARCEL FOUR :

BEING A PORTION OF SUB LOT XXI AS SHOWN ON MAP NO. 8, ACCOMPANYING THE FINAL REPORT OF THE REFEREES IN THE LAS ANIMAS RANCHO PARTITION SUIT, ACTION NO.

5536 HAD IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERNMOST CORNER OF THAT 2.1 ACRE TRACT OF LAND AS DESCRIBED IN DEED TO BELL AND GRIFFIN CO., A CALIFORNIA CORPORATION, RECORDED FEBRUARY 18, 1965 IN BOOK 6854 OF OFFICIAL RECORDS, PAGE 51, SANTA CLARA COUNTY RECORDS, IN THE SOUTHEASTERLY LINE OF NINTH STREET AS DESCRIBED IN THE DEED FROM M.E. THOMAS, ET AL., TO THE COUNTY OF SANTA CLARA, AND THE CITY OF GILROY, DATED AUGUST 10, 1928 AND RECORDED DECEMBER 13, 1928 IN BOOK 441 OF OFFICIAL RECORDS, PAGE 99, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 20° EAST ALONG THE NORTHEASTERLY LINE OF SAID 2.1 ACRE TRACT OF LAND 486.88 FEET TO A POINT IN THE NORTHWESTERLY LINE OF THAT TRACT OF LAND DESCRIBED AS PARCEL 1A IN THAT FINAL ORDER OF CONDEMNATION IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SANTA CLARA, CASE NO. 191007 DATED MARCH 28, 1968, RECORDED APRIL 5, 1968 IN BOOK 8081 OF OFFICIAL RECORDS, PAGE 42, SANTA CLARA COUNTY RECORDS; THENCE ALONG SAID NORTHWESTERLY LINE OF SAID FINAL ORDER OF CONDEMNATION FOR THE FOLLOWING TWO COURSES AND DISTANCES: ALONG A CURVE NORTHEASTERLY TO THE LEFT FROM A TANGENT THAT BEARS NORTH 60° 06' 14" EAST, WITH A RADIUS OF 350.00 FEET, THROUGH AN ANGLE OF 37° 19' 12", AN ARC LENGTH OF 227.98 FEET AND NORTH 22° 47' 32" EAST 509.22 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SAID NINTH STREET; THENCE SOUTH 79° WEST ALONG SAID SOUTHEASTERLY LINE OF NINTH STREET FOR A DISTANCE OF 536.21 FEET TO THE POINT OF BEGINNING.

EXHIBIT B - Landscape Frontage Areas in the Public Right of Way to be Maintained by Developer Under this Agreement

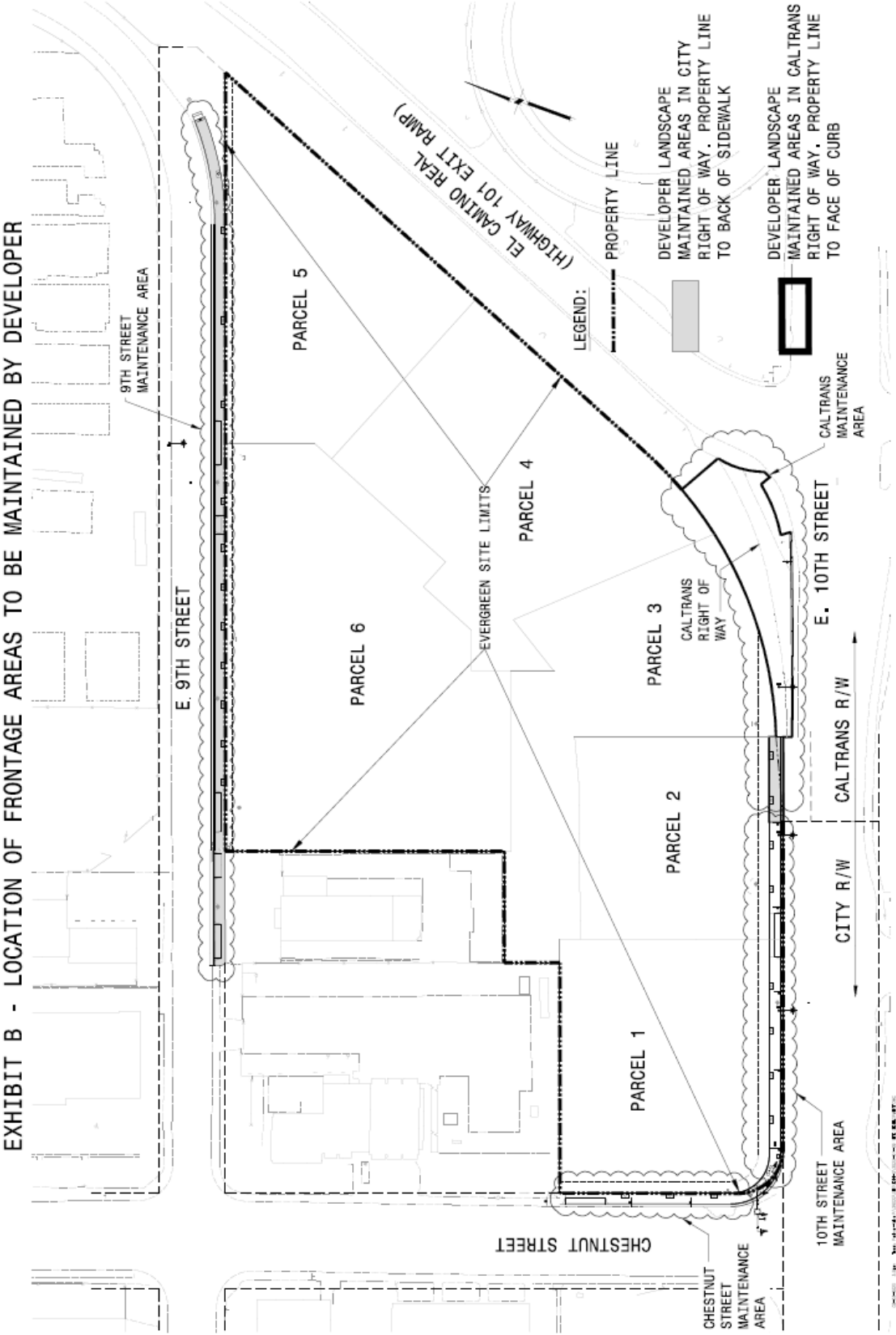
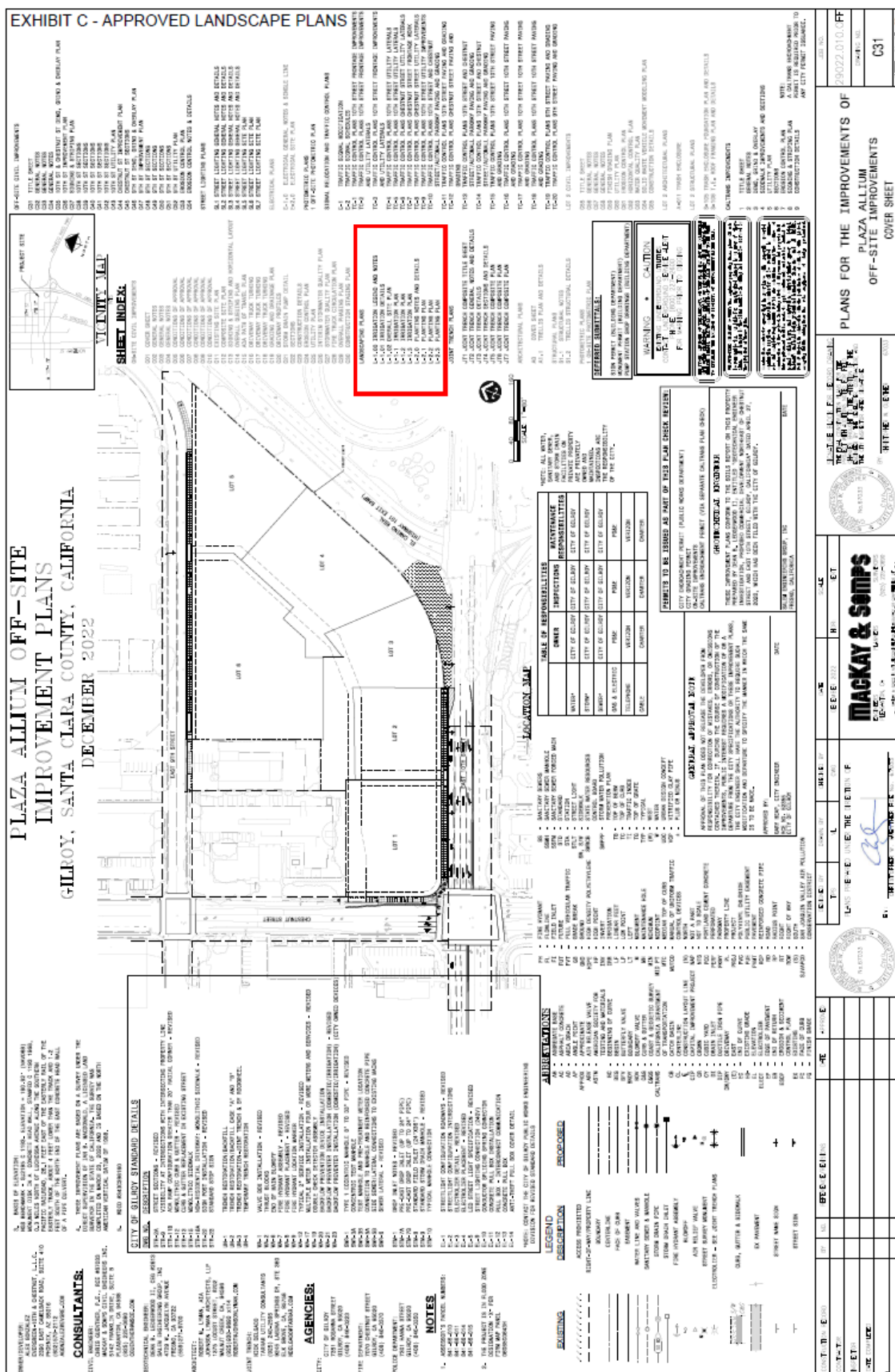


EXHIBIT B - LOCATION OF FRONTAGE AREAS TO BE MAINTAINED BY DEVELOPER

EXHIBIT C - Approved Landscape Plans



RECORDING REQUESTED BY:

City of Gilroy

WHEN RECORDED, MAIL TO:

Thai Pham
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Property Improvement Agreement No. 2023-01
PROJECT TITLE – Plaza Allium Commercial Center (Evergreen 10th &
Chestnut)

APN's: 841-66-036, 841-66-037, 841-66-038, & 841-66-039

Evergreen-10th & Chestnut, L.L.C., an Arizona Limited Liability Company

**PROPERTY IMPROVEMENT AGREEMENT
COMMERCIAL**

**AGREEMENT FOR IMPROVEMENT OF STREETS, INSTALLATION OF UTILITIES,
ELECTRICAL, LANDSCAPE, AND OTHER PUBLIC WORKS FACILITIES**
Property Improvement Agreement No. 2023-01

This Property Improvement Agreement (“Agreement”) is made and entered into this ____ day of _____, 2023, by and between the City of Gilroy, a municipal corporation, herein called the “City,” and Evergreen-10th & Chestnut, L.L.C., an Arizona Limited Liability Company, herein called the “Developer”.

WHEREAS, a parcel map of subdivision, record of survey or building permit (Site Clearance) application has now been submitted to the City for approval and acceptance, covering certain real estate and property improvements known as and called: Plaza Allium (Evergreen 10th and Chestnut), a legal description of which is attached hereto and incorporated herein as Exhibit “A” (the “Property”), and as described in the project improvement plans entitled Plaza Allium On-Site Improvement Plans, herein shown as Exhibit “B”, Plaza Allium Off-Site Improvement Plans, herein shown as Exhibit “C”, and Caltrans improvement plans entitled East 10th Street and Highway 101 Exit Ramp, herein shown as Exhibit “D”.

WHEREAS, the Developer is the fee owner of the Property and requires certain utilities and public works facilities in order to service the Property under the minimum standards established by the City and,

WHEREAS, the City, by and through its City Council, has enacted certain Codes, Ordinances and Resolutions and certain Rules and Regulations have been promulgated concerning the subject matter of this Agreement and,

WHEREAS, the City has certain responsibilities for maintenance and operation of such utilities and public service facilities after acceptance by City, and for providing the necessary connecting system, general plant and appurtenances, and the City is agreeing to discharge those responsibilities, provided that Developer has faithfully and fully complied with all of the terms, covenants, conditions to be performed by Developer pursuant to this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and in order to carry on the intent and purpose of said Codes, Ordinances, Resolutions and Regulations and established policies of the City and the laws of the State of California and the United States of America it is agreed by and between the parties as follows:

SECTION 1

That all Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America concerning the subject matter of this Agreement are hereby referred to and incorporated herein to the same effect as if they were set out at length herein. Said Codes, Ordinances, Resolutions, Rule and Regulations include, but are not limited to, the following: the Code of the City of Gilroy, the current Zoning Ordinance, and the currently adopted Uniform Building Code.

SECTION 2

The Developer agrees:

- a. To perform each and every provision required by the City to be performed by the Developer in each and every one of said Codes, Ordinances, Resolution, Rules and other Regulations and established policies of the City and the laws of the State of California and the United States of America, including without limitation, the California Labor Code and California Public Contract Code. Developer further agrees and acknowledges that it is its obligation to determine whether, and to what extent, the work performed under this Agreement is subject to any Codes, Ordinances, Resolutions, Rules and other Regulations and established policies of the City and the laws of the State of California, the United States of America, the California Labor Code and Public Contract Code relating to public contracting and prevailing wage laws.
- b. To grant to the City without charge, free and clear of encumbrances, any and all easements and rights of way in and to the Property necessary for the City in order that its water, electricity, and/or sewer lines in or to said Property may be extended in locations reasonably acceptable to Developer.
- c. To indemnify, defend with counsel of City's choice and hold the City free and harmless from all suits, fees, claims, demands, causes of action, costs, losses, damages, liabilities and expenses (including without limitation attorneys' fees) incurred by City in connection with (i) any damage done to any utility, public facility or other material or installation of the City on said Property which the Developer or any contractor or subcontractor of the Developer, or any employee of the foregoing, shall do in grading or working upon said Property; or (ii) arising or resulting directly or indirectly from any act or omission of Developer or Developer's contractors, or subcontractors, or any employee of the foregoing occurring during and in connection with the work performed by them in connection with this Agreement, including without limitation all claims relating to injury or death of any person or damage to any property.
- d. To construct and improve all public works facilities and other improvements described in this Agreement substantially in accordance with the improvement plans submitted to the City of Gilroy in furtherance of this Agreement on file with the City of Gilroy. All construction and improvements shall be completed in accordance with all standards established in the Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America and this agreement, and in accordance with the grades, plans, substantially in accordance with specifications approved by the City Engineer. Developer shall furnish two good and sufficient bonds, a Payment Bond on a form provided by the City and a Faithful Performance Bond, both of which shall be secured from a surety company admitted to do business in California. Each bond shall set forth a time period for performance by the contractor of its obligations and the terms and conditions on which the City may obtain the proceeds of the bond.

The Faithful Performance Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the improvements described in this Agreement, and shall secure payment to City and the Developer of any loss due to the default of the contractor or its inability or refusal to perform its contract. The performance bond shall by its terms remain in full force and effect for a period of not less than one year after completion of the improvements by Developer and acceptance of the improvements by City, to guarantee the repair and replacement of defective material and faulty workmanship. Upon completion of the improvements by Developer and acceptance of the improvements by City, Developer may substitute for the performance bond securing maintenance described above, a separate maintenance bond issued by an admitted surety in

the amount of ten percent (10%) of the total contract price of the improvements (provided that the amount of said bond shall not be less than One Thousand Dollars (\$1,000) to cover the one-year maintenance period).

The Payment Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Developer may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the contractor or subcontractor in performing the work, or taxes or amounts to be withheld thereon. The Payment Bond shall provide that the surety will pay the following amounts should the Contractor or a Subcontractor fail to pay the same, plus reasonable attorneys' fees to be fixed by the court if suit is brought upon the bond: (1) amounts due to any of the persons named in California Civil Code Section 9100; (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed for the improvements described in this Agreement; and (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor. The Payment Bond shall, by its terms, inure to the benefit of any of the persons named in Civil Code Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

Simultaneously with the submission of its building permit application (Site Clearance), the Developer shall submit the following for both the surety that furnishes the Payment Bond and the surety that furnishes the Faithful Performance Bond: (1) a current printout from California Department of Insurance's website (www.insurance.ca.gov) showing that the surety is admitted to do business in the State; or (2) a certificate from the Clerk of the County of Santa Clara that the surety's certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended or in the event that it has, that renewed authority has been granted.

- e. Except as otherwise expressly provided in this Agreement, all plan check and inspection fees which are payable by Developer pursuant to the attached comprehensive fee schedule are due and payable to the City prior to Council approval of the final map of the subdivision. Upon approval of the record of survey or the building permit covering the real estate to be improved and before any work is done therein, the Developer shall pay to the City all other sums payable by Developer pursuant to the attached comprehensive fee schedule.
- f. At all times during the term of this Agreement and until the improvements constructed by Developer are accepted by City, Developer shall, at no cost to City obtain and maintain (a) a policy of general liability and property damage insurance in the minimum amount of One Million Dollars (\$1,000,000), combined single limit for both bodily injury and property damage; (b) workers' compensation insurance as required by law; and (c) broad form "Builder's Risk" property damage insurance with limits of not less than 100% of the estimated value of the improvements to be constructed by Developer pursuant to this Agreement.

All such policies shall provide that thirty (30) days written notice must be given in advance to City prior to termination, cancellation or modification. The insurance specified in (a) above shall name City as an additional insured and the insurance specified in (c) shall name City as a loss payee, and shall provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the acts or omissions of Developer or Developer's contractors or subcontractors or their respective employees. Developer hereby waives, and Developer shall cause each of its contractors and subcontractors to waive, all rights to recover against City for any loss or

damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement or actually carried by Developer in connection with the work described in this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an occurrence basis and not on a claims made basis and shall be issued by insurance companies acceptable to City. Prior to commencing any work pursuant to this Agreement, Developer shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained.

SECTION 3

That all the provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be completed to City's satisfaction within (18) eighteen months from and after the date and year of this Agreement first above written. Developer shall maintain such public works facilities and other improvements described in this Agreement at Developer's sole cost and expense at all times prior to acceptance by City in a manner which will preclude any hazard to life or health or damage to property.

SECTION 4

That the faithful and prompt performance by the Developer of each and every term and condition contained herein is made an express condition precedent to the duty of the City to perform any act in connection with this transaction, and the failure, neglect or refusal of the Developer to so perform, or to pay any monies due hereunder when due shall release the City from any and all obligations hereunder and the City, at its election, may enforce the performance of any provision herein, or any right accruing to the City or may pursue any remedy whatsoever it may have under applicable laws or the Codes, Ordinances, Resolutions, Rules and Regulations of the City, in the event of any such default by Developer.

SECTION 5

SECTION 6 That this Agreement, including without limitation the general stipulations outlined in Section 6 below, is an instrument affecting the title or possession of the real property and runs with the land. Except as expressly provided in the second sentence of Item 9 of the general stipulations set forth in Section 6 below (relating to the payment of reimbursement to the original Developer named in this Agreement), all the terms, covenants and conditions herein imposed shall be binding upon and inure to the benefit of City, Developer, the successors in interest of Developer, their respective successors and permitted assigns and all subsequent fee owners of the Property. The obligations of the Developer under this Agreement shall be the joint and several obligations of each and all of the parties comprising Developer, if Developer consists of more than one individual and/or entity. Upon the sale or division of the Property, the terms of this Agreement shall apply separately to each parcel and the fee owners of each parcel shall succeed to the obligations imposed on Developer by this Agreement

1. That the following general stipulations shall be completed subject to the approval of the Public Works Director/City Engineer.
2. The Project shall comply with all Tentative Map conditions and applicable mitigation measures as contained in City Council Resolution 2021-52 (TM 20-03 approval).
3. All work within the public right-of-way shall be subject to the approval of the City Engineer.

4. The Developer shall perform all work in compliance with the City of Gilroy Specifications Standards Design Criteria, and is subject to all laws of this community by reference. Street improvements and the design of all storm drainage, sewer lines, and all street sections shall be in accordance with City Standards and shall follow the most current City Master plan for streets and each utility.
5. The developer shall defend, indemnify, and hold harmless the City, its City Council, Planning Commission, agents, officers, and employees from any claim, action, or proceeding against the City or its City Council, Planning Commission, agents, officer, and employees to attack, set aside, void, or annul an approval of the City, City Council, Planning Commission, or other board, advisory agency, or legislative claim, action, or proceeding against it, and will cooperate fully in the defense. This condition is imposed pursuant to California Government Code Section 66474.9.
6. No building permit shall be issued in connection with this project if the Owner or Developer of such development (i) is not in compliance with the City's Residential Development Ordinance (City Zoning Ordinance Sections 50.60 et seq.) referred to as the RDO, any conditions of approval issued in connection with such development or other City requirements applicable to such development; or (ii) is in default continuing uncured after 10 days written notice under any agreement entered into with the City in connection with such development pursuant to the RDO. The project must also comply with any condition of exemption granted from the RDO, including but not limited to time limits in obtaining City approvals and completion of construction of the dwelling units.
7. The City shall be notified at least two (2) working days prior to the start of any construction work and at that time the contractor shall provide a project schedule and a 24-hour emergency telephone number list.
8. At least one week prior to commencement of work, the developer shall post the site and mail to owners of property within (500') five hundred feet of the exterior boundary of the project site, to the homeowner associations of nearby residential projects and to the Engineering Division, a notice that construction work will commence on or around the stated date. The notice shall include a list of contact persons with name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall be current at all times and shall consist of persons with authority to initiate corrective action in their area of responsibility. The names of individuals responsible for dust, noise and litter control shall be expressly identified in the notice.
9. If the developer proposes to phase construction with building occupancy, the developer shall create, for City Engineer approval prior to first occupancy, a construction staging plan that addresses the ingress and egress location for all construction vehicles, parking and material storage area separate from occupied residential units.
10. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities. NOTE: The capping of any well will require inspection by the Santa Clara Valley Water District.
11. Schedule the construction of improvements along existing public roads so that the work affecting vehicular traffic is completed with a minimum interruption to traffic.
12. All work shall be coordinated so that the existing residents on all adjacent streets have access to their properties.

13. Before construction utilizing combustible materials may proceed, an all-weather access must be provided to within 150 feet of the building site; and at least one in service fire hydrant must be available within 150 feet of each portion of the site wherein this construction is to take place. Location of the fire hydrants will be determined by the Fire Chief.
14. A complete construction schedule, which shall include a detailed phasing plan (including traffic control for each proposed phase), shall be submitted and approved by the City Engineer prior to start of construction. Any deviation from the approved construction schedule and phasing plan shall be coordinated with the City Engineer. Deviating from the approved construction schedule and phasing plan without prior coordination with the City Engineer may prolong issuance of further building permits.
 - (a) Upon request by the City Engineer, the developer shall provide information for public outreach purposes, which may include maps and schedules for each phase of construction.
15. One hard copy and electronic copy of the approved/stamped PG&E Joint Trench Composite Plans shall be submitted to the Engineering Division. Should there be a delay in obtaining the PG&E-approved joint trench plans, the Developer will be allowed to commence joint trench work "at-risk". The Developer assumes responsibility for any required redesign, and all costs associated with the redesign and additional city review resulting from the at-risk work completed without PG&E-approved joint trench plans. Design revisions and ultimate joint trench construction shall be completed to the satisfaction of the City Engineer.
16. The developer shall obtain the required Habitat Conservation Plan (HCP) Permit and pay the applicable fees prior to the issuance of a grading permit or improvement plan approval.
17. Site preparation and fill construction shall be conducted under the observation of, and tested by, a licensed soils or geotechnical engineer. A report shall be filed with the City of Gilroy stating that all site preparation and fill construction meets the requirements of the geotechnical investigation. This shall be subject to review and approval by the Building Division. [CBC]
18. All grading operations and soil compaction activities shall be per the approved soils report and shall meet with the approval of the City Engineer.
19. New and existing utility lines, appurtenances, and associated equipment, including but not limited to electrical transmission, street lighting, and cable television shall be required to be placed underground. [Municipal Code Section 21, Article V]
20. Construction activity shall be restricted to the period between 7:00 a.m. to 7:00 p.m. Mondays through Fridays, Saturday 9:00 a.m. to 7:00 p.m. No work shall be done on Sundays and City Holidays. The City Engineer will apply additional construction period restrictions, as necessary, to accommodate standard commute traffic along arterial roadways and along school commute routes.
21. Any damage resulting from project construction operations to existing city infrastructure on or adjacent to the subject property shall be repaired to the satisfaction of the City Engineer, at the full expense of the developer/contractor. This shall include slurry seal, overlay, street reconstruction, and repair to curb, gutter and sidewalk, driveway approach if reasonably deemed warranted by the City Engineer.

22. This project is subject to post-construction stormwater quality requirements per Section 27D of the Gilroy Municipal Code.

23. Storm water BMP Operation and Maintenance Agreement

- (a) Prior to the issuance of any building permit requiring stormwater management BMPs or as otherwise determined by the City Engineer, the owner(s) of the site shall enter into a formal written Stormwater BMP Operation and Maintenance Agreement with the City. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs. The City-standard Stormwater BMP Operation and Maintenance Agreement will be provided by Public Works Engineering.
- (b) This Agreement shall require that the BMPs not be modified and BMP maintenance activities not alter the designed function of the facility from its original design unless approved by the City prior to the commencement of the proposed modification or maintenance activity.
- (c) This Agreement shall also provide that in the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.
- (d) All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' or homeowners' association or other legal entity approved by the City.
- (e) Any repairs or restoration/replacement and maintenance shall be in accordance with City-approved plans.
- (f) The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved Stormwater Runoff Management Plan.

24. Stormwater BMP Inspections will be required for this project and shall adhere to the following:

- (a) The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a knowledgeable third party.
- (b) Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year, once in Fall, in preparation for the wet season, and once in Winter. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - 1. Site address;
 - 2. Date and time of inspection;
 - 3. Name of the person conducting the inspection;
 - 4. List of stormwater facilities inspected;
 - 5. Condition of each stormwater facility inspected;
 - 6. Description of any needed maintenance or repairs; and
 - 7. As applicable, the need for site re-inspection.

25. Upon completion of each inspection, an inspection report shall be submitted to Public Works Engineering no later than October 1st for the Fall report, and no later than March 15th of the following year for the Winter report.
26. A minimum of one exterior monument shall be set. Additional monuments can be required by the City Engineer or City Surveyor as deemed necessary. Location of monuments shall be tied out prior to work.
27. In accordance with the California Professional Land Surveyors' Act (Business and Professions Code) Chapter 15 Sections 8771 and 8725, California Penal Code 605, and California Government Code 27581, the developer, their employees, subcontractors, and/or any person performing construction activities that will or may disturb an existing roadway/ street monument, corner stake, or any other permanent surveyed monument shall show all current monuments on the plans and shall ensure that a Corner Record and/or Record of Survey are filed with the County Surveyor Office prior to disturbing said monuments. All disturbed or destroyed monuments shall be reset and filed in compliance with Section 8771 at the developer's sole expense.
28. Bonding as required by section 2.d of this agreement will be accepted for the proposed improvements for an amount of \$3,295,114 (three million two hundred ninety five thousand one hundred fourteen dollars) as shown on the attached Cost Estimate spreadsheet.
29. If there are any reimbursements payable to the Developer, they must be specifically identified in this Agreement. Any such reimbursements shall be payable to the original Developer named in this Agreement above, and shall not inure to the benefit of any subsequent owners of all or any portion of the Property. All reimbursements payable to Developer shall be subject to the City's reimbursement policies and ordinances in effect from time to time, including without limitation any expiration dates identified in such policies and ordinances. Such reimbursement shall be solely contingent upon the availability of the City's Traffic Impact Fee Funds and in no case shall the reimbursement be paid beyond ten (10) years after the execution of the Agreement. In addition to any other conditions, requirements and limitations set forth in the City's reimbursement policies and ordinances from time to time, (i) in no event shall any reimbursements be payable to Developer if City determines in its sole and absolute discretion from time to time that there are not sufficient reserves then on hand in the specific reimbursement fund from which Developer's reimbursement is payable, over and above any amounts anticipated to be required to be expended from such reimbursement fund, which reserves, at a minimum, are equal to at least half of the remaining average yearly anticipated expenditures of such reimbursement fund as determined by City from time to time; (ii) City may, in its sole and absolute discretion, make partial reimbursement payments to Developer in yearly increments, as determined by City; and (iii) City may defer payments in any given year if projects deemed by City to be of high importance are determined by City, in its sole and absolute discretion, to be warranted or necessary, and the funds in such reimbursement fund are designated by the City for use on such projects of high importance.

SECTION 7

That the attached Development Cost Schedule enumerates all fees and their extensions.

TOTAL AMOUNT DUE CITY \$667,453.78

CITY OF GILROY

By: _____

Jimmy Forbis
City Administrator

Date:_____

ATTEST:

Thai Pham, City Clerk

APPROVED AS TO FORM:

Andrew L. Faber, City Attorney

DEVELOPER:

Evergreen-10th & Chestnut, L.L.C.,
an Arizona limited liability company

By: Evergreen Development Company-2019, L.L.C.,
An Arizona limited liability company
Its: Manager

By: Evergreen Devco, Inc.,
A California corporation
Its: Manager

By: _____
(signature)

(print name)

Title: _____

Date: _____

NOTE: If Developer is a corporation, the complete legal name and corporate seal of the corporation and the corporate titles of the persons signing for the corporation shall appear above.

Exhibit "A"

Legal Description

Real property in the City of Gilroy, County of Santa Clara, State of California, described as follows:

TENTATIVE PARCEL MAP NO. (TO FOLLOW), BEING A SUBDIVISION OF THE FOLLOWING:

PARCEL ONE: (APN: 841-66-011 AND A PORTION OF 841-66-010)

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF GILROY, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING ALL OF THE LANDS OF CHESTNUT SQUARE LLC DESCRIBED IN DOCUMENT NO. 19138334, AND A PORTION OF THE LANDS OF TRIOLO TRUST & 450 EAST LLC DESCRIBED IN DOCUMENT NO. 20067348, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LANDS OF CHESTNUT SQUARE LLC, THENCE ALONG THE NORTHERLY LINE OF SAID LANDS OF CHESTNUT SQUARE LLC, AND ENTERING SAID LANDS OF TRIOLO TRUST & 450 EAST LLC NORTH 70° 03' 03" EAST, 227.94 FEET;

THENCE SOUTH 19° 56' 13" EAST, 200.21 FEET TO THE SOUTHERLY LINE OF SAID LANDS OF TRIOLO TRUST & 450 EAST LLC;

THENCE ALONG SAID SOUTHERLY LINE OF SAID LANDS OF TRIOLO TRUST & 450 EAST LLC, AND SAID LANDS OF CHESTNUT SQUARE LLC SOUTH 70° 03' 03" WEST, 187.93 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID LANDS OF CHESTNUT SQUARE LLC THE FOLLOWING TWO (2) COURSES;

1. ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 40.00 FEET, HAVING A CENTRAL ANGLE OF 90° 00' 43", AND AN ARC LENGTH OF 62.84 FEET;
2. THENCE NORTH 19° 56' 13" WEST, 160.20 FEET TO THE POINT OF BEGINNING.

SAID PARCEL IS SHOWN AS RESULTANT PARCEL 1 IN THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 2021-05 (LOT LINE ADJUSTMENT) FILED FOR RECORD FEBRUARY 22, 2022 AS INSTRUMENT NO. 25244509, SANTA CLARA RECORDS.

PARCEL TWO: (APN: PORTIONS OF 841-66-010, 841-66-014 & 841-66-015)

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF GILROY, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS OF TRIOLO TRUST & 450 EAST LLC DESCRIBED IN DOCUMENT NO. 20067348, AND A PORTION OF PARCELS 1 & 2 OF THE LANDS OF 450 EAST LLC DESCRIBED IN DOCUMENT NO. 20067349, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THE LANDS OF CHESTNUT SQUARE LLC, DESCRIBED IN DOC. NO. 19138334, COMMON TO THE WESTERLY LINE OF THE SAID LANDS OF TRIOLO TRUST AND 450 EAST LLC, THENCE

ALONG SAID WESTERLY LINE NORTH 19° 56' 13" WEST, 49.79 FEET TO THE NORTHEASTERLY CORNER OF SAID LANDS OF TRIOLO TRUST AND 450 EAST LLC;

THENCE ALONG THE NORTHERLY LINE OF SAID LANDS OF TRIOLO TRUST AND 450 EAST LLC, NORTH 70° 03' 47" EAST, 60.03 FEET TO THE WESTERLY LINE OF SAID PARCEL 1 OF THE LANDS OF 450 EAST LLC;

THENCE ALONG SAID WESTERLY LINE NORTH 70° 03' 47" EAST, 40.01 FEET;

THENCE ENTERING SAID PARCEL 1, THE FOLLOWING TWO (2) COURSES:

1. SOUTH 19° 56' 13" EAST, 6.06 FEET;
2. THENCE NORTH 70° 03' 03" EAST, 161.36 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 1, COMMON TO THE WESTERLY LINE OF SAID PARCEL 2 OF THE LANDS OF 450 EAST LLC;

THENCE ALONG SAID COMMON LINE, NORTH 19° 56' 13" WEST, 35.50 FEET;

THENCE ENTERING SAID PARCEL 2 THE FOLLOWING FIVE (5) COURSES:

1. NORTH 70° 03' 03" EAST; 36.71 FEET;
2. NORTH 22° 09' 25" EAST, 58.50 FEET;
3. SOUTH 67° 57' 04" EAST, 30.00 FEET;
4. NORTH 22° 09' 25" EAST, 137.71 FEET;
5. THENCE SOUTH 67° 50' 35" EAST, 193.02 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, SAID PARCEL 1, AND SAID LANDS OF TRIOLO TRUST AND 450 EAST LLC THE FOLLOWING FOUR (4) COURSES:

1. SOUTH 22° 09' 25" WEST, 206.23 FEET;
2. ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 350.00 FEET, HAVING A CENTRAL ANGLE OF 43° 04' 23", AND AN ARC LENGTH OF 263.12 FEET;
3. SOUTH 65° 13' 48" WEST, 100.14 FEET;
4. THENCE SOUTH 70° 03' 03" WEST, 105.63 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LANDS OF TRIOLO TRUST & 450 EAST LLC;

THENCE ENTERING SAID LANDS OF TRIOLO TRUST & 450 EAST LLC THE FOLLOWING TWO (2) COURSES:

1. NORTH 19° 56' 13" WEST, 200.21 FEET;
2. THENCE SOUTH 70° 03' 03" WEST, 21.28 FEET TO THE POINT OF BEGINNING.

SAID PARCEL IS SHOWN AS RESULTANT PARCEL 2 IN THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. 2021-05 (LOT LINE ADJUSTMENT) FILED FOR RECORD FEBRUARY 22, 2022 AS INSTRUMENT NO. 25244509, SANTA CLARA RECORDS.

APN: 841-66-010 and 841-66-011 and 841-66-014 and 841-66-015

8.5

DRAWING NO.
C01



EXHIBIT E – FEES

**CITY OF GILROY
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
COST ESTIMATE
EFFECTIVE 7/1/2022**

ENCOMPASS NO: E1 **21110014** Revised:
DATE: **2/3/2023** Revision Number:
NUMBER: Revision By:
PROJECT LOCATION: **9th Street, 10th Street and Chestnut Street**
PARCEL NUMBER: **841-66-011, 841-66-010, 841-66-014, 841-66-015**
OWNER/DEVELOPER: **Evergreen / Alex Gonzalez**
MAILING ADDRESS: **2390 East Camelback Road, Suite 410, Phoenix, Arizona 85016**
TELEPHONE NO: **(602) 567-7171**
PREPARED BY: **W. Hill**

Account No.	Key Code	Fee:	Credits:	Amount Due:	Account Description	Paid on Invoice #
100-2601-0000-3625	4904	\$38,000.00		* \$38,000.00	Special Public Works Serv	
100-2601-0000-3605	4702	\$283,089.58	\$20,000.00	* \$263,089.58	Eng Plan Check & Insp	1/21/22 #341189647
420-2600-0000-3660	4501	\$0.00	**	\$0.00	Storm Development Fee	
432-2600-0000-3660	3301	\$4,563.20		* \$4,563.20	Str Tree Development Fee	
433-2600-0000-3660	4905	\$0.00	**	\$0.00	Traffic Impact Fee	
433-2600-0000-3660	4905	\$168,400.00		* \$168,400.00	Off-Site Mitigation	
433-2600-0000-3660	4905	\$190,500.00		* \$190,500.00	Fair Share Amount	
435-2600-0000-3660	4509	\$0.00	**	\$0.00	Sewer Development Fee	
436-2600-0000-3660	4510	\$0.00	**	\$0.00	Water Development Fee	
440-2600-0000-3660	4515	\$0.00	**	\$0.00	Public Facility Fee	
422-2600-0000-3660		\$2,901.00		* \$2,901.00	Stormwater Management Fee	
422-2600-0000-3859		\$0.00		\$0.00	Stormwater Trash Amendment Compliance Fee	
720-0433-0000-3620	2202	\$0.00		\$0.00	Const Water Use Fee	
801-2601-PWD0-3899	4703	\$0.00		\$0.00	Reimbursements	
801-2601-PWD0-3899	4703	\$0.00		\$0.00	Other Reimbursements	
Fee Total		\$687,453.78	Total	\$667,453.78		

Payment Bond Amount for all improvements \$3,295,114
Performance Bond Amount for all improvements \$3,295,114

* Master Developer to make payment for these items, \$667,453.78, due prior to City Council Approval.
** Fees to be calculated and invoiced during the building permit phase by each Parcel Developer. Fees shall be paid prior to building permit.

**CITY OF GILROY
COMMUNITY DEVELOPMENT DEPARTMENT
ENGINEERING DIVISION
COST ESTIMATE**

ENCOMPASS NO: E1 **21110014**
 DATE: **3-Feb-2023**
 NUMBER: _____
 PROJECT LOCATION: **9th Street, 10th Street and Chestnut Street**
 PARCEL NUMBER: **841-66-011, 841-66-010, 841-66-014, 841-66-015**
 OWNER/DEVELOPER: **Evergreen / Alex Gonzalez**
 MAILING ADDRESS: **2390 East Camelback Road, Suite 410, Phoenix, Arizona 85016**
 TELEPHONE NO: **(602) 567-7171**
 PREPARED BY: **W. Hill**

COST SCHEDULE TYPE: _____ FINAL ENGINEERING
 COST ESTIMATE ? ☒ y PLAN CHECK ? ☐ INCENTIVE AGREEMENT ONLY ? ☐ N
 DEFER PUBLIC FACILITY FEE ? ☐ TO PERMIT ? ☐ N TO FINAL ? ☐ N
 DEFER SEWER, WATER, TRAFFIC FEES ? ☐ TO PERMIT ? ☐ N TO FINAL ? ☐ N

NOTE: This Preliminary Cost Schedule is an estimate and will be adjusted to the rates in effect at the time permits are issued.

Site Information:	Gross Acres:	Lots/Parcels:	Units:	Sq Ft:
Residential-Low ?	0.000	0	0	
Residential-High ?	0.000	0	0	
Commercial-Low ?	0.000	0		0
Commercial-High ?	6.913	6		0
Industrial-General ?	0.000	0		0
Industrial-Warehouse ?	0.000	0		0
Assembly Hall?	0.000	0		0
Common Area?	0.000			0

of Stormwater Management BMP

Commercial/Industrial Allocations: Sewer GPD: Water GPD:

Reimbursements and credits:

Front Footage/Square Footage Charges	Street Tree FF:	Water FF:	Sewer FF:	Storm FF:	Const Water Acres to be Developed:
	1,240.0	0.0	0.0	0.0	0.000
	Pavement SF:	Median SF:	Sidewalk SF:	Curb/Gutter FF:	Construction Water FF:
	0.0	0.0	0.0	0.0	0.0

SPECIAL PUBLIC WORKS SERVICES 100-2601-0000-3625 \$38,000.00

Maps:

Final Map	\$8,000.00	(First two reviews)	☐ N	\$0.00	Fee ID N0-FINALM
Parcel Map	\$5,000.00	(First two reviews)	☐ Y	\$5,000.00	Fee ID N0-PARCELM
Re-assessment Map (Assessment District Parcels)	\$5,000.00	(First two reviews)	☐ N	\$0.00	Fee ID N-ASSESM

Administration Fees:

(Cost Schedules, Agreements, R/W Reviews, Additional Map Reviews, and Other Misc. Services)

hr Misc Services \$220.00 / hr. ☐ Y \$33,000.00 Fee ID N-MISC

Special Staff Analysis

hr Special Analysis \$150.19 / hr. ☐ N \$0.00

ENGINEERING PLAN CHECK & INSPECTION

100-2601-0000-3605	COST ESTIMATE	\$283,089.58
ACTUAL COST OF PUBLIC IMPROVEMENTS FINAL ENGINEERING PLAN CHECK		<u>\$0.00</u>

At time of Improvement Plan/Final Map submittal 50% of fee is due for Plan Check. Remainder 50% due prior to submittal of Final Map for Council approval

Additional Plan Review After First Three Submittals or Review of Changes, Additions or Revisions to Approved Plans

0 hr Additional Plan Review \$150.19 / hr. N \$0.00 Fee ID N0-GRADINS
(2 Hour Minimum)

Re-Inspection Fee
0 hr Re-Inspection \$162.00 / hr. N \$0.00 Fee ID N0-GRADINS

Inspections outside of normal business hours
0 hr Inspection \$435.00 / hr. N \$0.00 Fee ID N0-GRADINS

		COST ESTIMATE		ACTUAL COST		DIFFERENCE	
(Based on total cost of improvements)		\$3,295,114		\$0			<u>(\$283,089.58)</u>
Estimated Cost of Improvements						Fee ID N0-PCKINSP	
12.6%	\$0	\$100,000	<u>Y</u>	\$12,600.00	<u>Y</u>		\$0.00
10.5%	\$100,000	\$200,000	<u>Y</u>	\$10,500.00	<u>Y</u>		\$0.00
8.4%	over	\$200,000	<u>Y</u>	\$259,989.58	<u>Y</u>		\$0.00
Payment Bond Amount for all improvements		\$3,295,114					
Performance Bond Amount for all improvements		<u>\$3,295,114</u>					

IMPACT FEES

Storm Drain Impact Fee 420-2600-0000-3660 \$0.00

a. Residential-Low	\$598.00 / acre	<u>N</u>	\$0.00	Fee ID N0-SD-LD
b. Residential-High	\$940.00 / acre	<u>N</u>	\$0.00	Fee ID N0-SD-HD
c. Commercial	\$1,621.00 / acre	<u>N</u>	\$0.00	Fee ID N0-SD-C
d. Industrial	\$1,197.00 / acre	<u>N</u>	\$0.00	Fee ID N0-SD-I
e. Assembly Hall	\$598.00 / acre	<u>N</u>	\$0.00	Fee ID N0-SD-AH

Street Tree Fee 432-2600-0000-3660 \$4,563.20

a. City Inspection and Replacement	\$3.68 / f.f. x	<u>Y</u>	1,240.0	=	\$4,563.20	Fee ID N0-TREEPLT
b. Inspection and Replacement	\$0.00 / f.f. x	<u>N</u>	0.0	=	\$0.00	Fee ID N0-TREEINS

Traffic Impact Fee 433-2600-0000-3660 \$0.00

a. Residential-Low	\$13,012.00 / unit	<u>N</u>	\$0.00	Fee ID N1-TRAF-LD
b. Residential-High	\$10,548.00 / unit	<u>Y</u>	\$0.00	Fee ID N2-TRAF-HD
c. Commercial-Low Traffic (< 10.75 trips/1000 sf)	\$14,397.00 / k.s.f.	<u>N</u>	\$0.00	Fee ID N3-TRAF-CL
d. Commercial-High Traffic (≥ 10.75 trips/1000 sf)	\$29,082.00 / k.s.f.	<u>N</u>	\$0.00	Fee ID N3-TRAF-CH
e. Industrial-General	\$5,705.00 / k.s.f.	<u>N</u>	\$0.00	Fee ID N4-TRAF-IG
f. Industrial-Warehouse	\$4,135.00 / k.s.f.	<u>N</u>	\$0.00	Fee ID N4-TRAF-IW

Sewer Impact Fee				435-2600-0000-3660			<u>\$0.00</u>
a. Residential-Low		\$13,262.00	/ unit	N	\$0.00	Fee ID N1-SS-LD	
b. Residential-High		\$7,176.00	/ unit	Y	\$0.00	Fee ID N2-SS-HD	
c. Commercial/Industrial		\$4,197.00	/ cgp	N	\$0.00	Fee ID N5-SS-C/I	
Water Impact Fee				436-2600-0000-3660			<u>\$0.00</u>
a. Residential-Low		\$4,556.00	/ unit	N	\$0.00	Fee ID N1-WATR-LD	
b. Residential-High		\$1,843.00	/ unit	Y	\$0.00	Fee ID N2-WATR-HD	
c. Commercial/Industrial		\$7,141.00	/ kgpd	N	\$0.00	Fee ID N5-WTR-C/I	
Public Facilities Impact Fee				440-2600-0000-3660			<u>\$0.00</u>
a. Residential-Low		\$22,617.00	/ unit	N	\$0.00	Fee ID N1-PF-LD	
b. Residential-High		\$19,028.00	/ unit	Y	\$0.00	Fee ID N2-PF-HD	
c. Commercial		\$3,408.00	/ k.s.f.	N	\$0.00	Fee ID N3-PF-C	
d. Industrial		\$1,510.00	/ k.s.f.	N	\$0.00	Fee ID N4-PF-I	
Stormwater Management Fee							<u>\$2,901.00</u>
a. Post-Construction BMP initial setup fee	\$504.00 + 1st BMP	\$100.00	/ additional BMP	Y	\$1,104.00	Fee ID SWBMP-IN	
b. Post-Construction BMP annual administration and monitoring fee	\$413.00 + 1st BMP	\$31.00	/ additional BMP	Y	\$1,797.00	Fee ID SWBMP-MF	
c. Post-Construction BMP annual administration and monitoring delinquent fee	\$58.00	/ month of delinquency		N		Fee ID SWBMP-DF	
Water User Fee (Construction)				720-0433-0000-3620		Y	<u>\$0.00</u>
		\$3.00	/ f.f.		\$0.00	Fee ID N0-CONWTFF	
		\$182.73	/ plus a.c.		\$0.00	Fee ID N0-CONWTAC	

FRONT FOOT CHARGES

(Used to charge and reimburse fees for existing infrastructure)

The Half Pipe schedule is used to determine the front footage reimbursement to former developers for infrastructure previously installed along the front footage of the development.

The Full Pipe schedule is used to determine the oversizing reimbursement to the developer for installing water, sewer, and storm main extensions to sizes required by each master plan that are greater than the sizes required by the development. The oversized portion is the difference between the master planned size for the main and the greater of the main size required by the development or the developer's minimum responsibility for each main.

Water				801-2601-PWD0-3899			<u>\$0.00</u>
Water Mains - including fire hydrants, valves, valve boxes and other pertinences.							
Developer responsibility is up to and including 12" mains							
		<u>Half Pipe</u>		<u>Lineal Footage</u>			
6 inch	Main	\$39.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR06-1/2
8 inch	Main	\$41.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR08-1/2
10 inch	Main	\$47.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR10-1/2
12 inch	Main	\$52.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR12-1/2
14 inch	Main	\$57.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR14-1/2
16 inch	Main	\$62.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR16-1/2
18 inch	Main	\$68.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR18-1/2
20 inch	Main	\$76.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR18-1/2
24 inch	Main	\$82.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR24-1/2
30 inch	Main	\$91.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR30-1/2
36 inch	Main	\$106.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-WR36-1/2

Front Foot Charges Continued

(Used to charge and reimburse fees for existing infrastructure)

Sewer

801-2601-PWD0-3899

\$0.00

Sewer Mains - including manhole and other pertinences.
Developer responsibility is up to and including 12" mains.

6 inch	Main	<u>Half Pipe</u> \$73.00	/	LF x	N	<u>Lineal Footage</u> 0.0	=	<u>\$0.00</u>	Fee ID N-SS06-1/2
8 inch	Main	\$75.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS08-1/2
10 inch	Main	\$81.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS10-1/2
12 inch	Main	\$83.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS12-1/2
15 inch	Main	\$87.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS15-1/2
18 inch	Main	\$93.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS18-1/2
21 inch	Main	\$102.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS21-1/2
24 inch	Main	\$106.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS24-1/2
27 inch	Main	\$122.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS27-1/2
30 inch	Main	\$144.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS30-1/2
33 inch	Main	\$158.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS33-1/2
36 inch	Main	\$178.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS36-1/2
39 inch	Main	\$212.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS39-1/2
42 inch	Main	\$265.00	/	LF x	N	0.0	=	<u>\$0.00</u>	Fee ID N-SS42-1/2

Street Improvements

801-2601-PWD0-3899

\$0.00Pavement, Sidewalks & Medians

AC/Bike path: base	\$2.55	/	SF x	N	0.0	=	\$0.00	Fee ID N-STR-ACB
AC/Bike path: pvmt	\$2.50	/	SF x	N	0.0	=	\$0.00	Fee ID N-STR-ACP
Sidewalk: new	\$9.75	/	SF x	N	0.0	=	\$0.00	Fee ID N-STR-S/W
Sidewalk: replace	\$13.25	/	SF x	N	0.0	=	\$0.00	Fee ID N-STR-S/WR
Resurfacing	\$2.55	/	SF x	N	0.0	=	\$0.00	Fee ID N-STR-RESU
Landscaped Median	\$20.35	/	SF x	N	0.0	=	\$0.00	Fee ID N-STR-LANM
Hardscaped Median	\$11.63	/	SF x	N	0.0	=	\$0.00	Fee ID N-STR-HARD

Traffic Signals (equipment only)

Traffic Signal-3 leg	\$130,200.00	/	LS x	N	0%	=	\$0.00	Fee ID N-STR-TS3L
Traffic Signal-4 leg	\$158,500.00	/	LS x	N	0%	=	\$0.00	Fee ID N-STR-TS4L

Curb and Gutter

Curb/Gutter: new	\$25.85	/	LF x	N	0.0	=	\$0.00	Fee ID N-STR-C/G
Curb/Gutter: replace	\$33.40	/	LF x	N	0.0	=	\$0.00	Fee ID N-STR-C/GR
Curb Ramps	\$1,057.63	/	LF x	N	0.0	=	\$0.00	Fee ID N-STR-CR

Front Foot Charges Continued

(Used to charge and reimburse fees for existing infrastructure)

Storm Drain

801-2601-PWD0-3899

\$0.00

Storm Mains - including manholes, catch basins and other pertinences.
Developer responsibility is up to and including 24" mains.

		<u>Half Pipe</u>		<u>Lineal Footage</u>			
18 inch	Main	\$63.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD18-1/2
21 inch	Main	\$69.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD21-1/2
24 inch	Main	\$70.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD24-1/2
27 inch	Main	\$82.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD27-1/2
30 inch	Main	\$89.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD30-1/2
33 inch	Main	\$91.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD33-1/2
36 inch	Main	\$95.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD36-1/2
42 inch	Main	\$99.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD42-1/2
48 inch	Main	\$117.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD48-1/2
54 inch	Main	\$137.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD54-1/2
60 inch	Main	\$158.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD60-1/2
66 inch	Main	\$179.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD66-1/2
72 inch	Main	\$200.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD72-1/2
78 inch	Main	\$216.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD78-1/2
84 inch	Main	\$231.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD84-1/2
90 inch	Main	\$246.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD90-1/2
96 inch	Main	\$261.00	/ LF x	N 0.0	=	\$0.00	Fee ID N-SD96-1/2

NOTE: All deferred and/or estimated fees will be adjusted to the rates in effect at the time fees are paid.

The undersigned agrees to provide actual construction costs for recalculation of fees and pay any underestimated fees prior to final acceptance. If the recalculated fees are less than the estimate, the City of Gilroy will refund the difference.
Additional plan review required by changes, additions or revisions to approved plans, reinspections and inspections outside of normal business hours will be billed as shown in the City of Gilroy's most current comprehensive fee schedule at the hourly rates in effect at the time of inspection.

Accepted by: _____

Print Name: _____

Date: _____

OVERSIZING SCHEDULE

(Used to reimburse oversized infrastructure)

Total Oversized Water, Sewer and Storm Drain Main Reimbursement\$0.00**Total Oversized Water Main Reimbursement**

(Developer is responsible for up to and including 12" mains)

\$0.00

			Oversized Full Pipe \$/foot		Minimum 12" main Full Pipe \$/foot		Oversized Footage		Oversized Reimbursement	
14 inch	Main		\$114.00	-	\$104.00	x	0.0	=	\$0.00	N
16 inch	Main		\$124.00	-	\$104.00	x	0.0	=	\$0.00	N
18 inch	Main		\$135.00	-	\$104.00	x	0.0	=	\$0.00	N
20 inch	Main		\$151.00	-	\$104.00	x	0.0	=	\$0.00	N
24 inch	Main		\$164.00	-	\$104.00	x	0.0	=	\$0.00	N
30 inch	Main		\$182.00	-	\$104.00	x	0.0	=	\$0.00	N
36 inch	Main		\$211.00	-	\$104.00	x	0.0	=	\$0.00	N

Total Oversized Sewer Main Reimbursement

(Developer is responsible for up to and including 12" mains)

\$0.00

			Oversized Full Pipe \$/foot		Minimum 12" main Full Pipe \$/foot		Oversized Footage		Oversized Reimbursement	
15 inch	Main		\$174.00	-	\$166.00	x	0.0	=	\$0.00	N
18 inch	Main		\$186.00	-	\$166.00	x	0.0	=	\$0.00	N
21 inch	Main		\$204.00	-	\$166.00	x	0.0	=	\$0.00	N
24 inch	Main		\$211.00	-	\$166.00	x	0.0	=	\$0.00	N
27 inch	Main		\$244.00	-	\$166.00	x	0.0	=	\$0.00	N
30 inch	Main		\$287.00	-	\$166.00	x	0.0	=	\$0.00	N
33 inch	Main		\$315.00	-	\$166.00	x	0.0	=	\$0.00	N
36 inch	Main		\$356.00	-	\$166.00	x	0.0	=	\$0.00	N
39 inch	Main		\$423.00	-	\$166.00	x	0.0	=	\$0.00	N
42 inch	Main		\$529.00	-	\$166.00	x	0.0	=	\$0.00	N

Total Oversized Storm Drain Main Reimbursement

(Developer is responsible for up to and including 24" mains)

\$0.00

			Oversized Full Pipe \$/foot		Minimum 24" main Full Pipe \$/foot		Oversized Footage		Oversized Reimbursement	
27 inch	Main		\$164.00	-	\$140.00	x	0.0	=	\$0.00	N
30 inch	Main		\$177.00	-	\$140.00	x	0.0	=	\$0.00	N
33 inch	Main		\$182.00	-	\$140.00	x	0.0	=	\$0.00	N
36 inch	Main		\$189.00	-	\$140.00	x	0.0	=	\$0.00	N
42 inch	Main		\$197.00	-	\$140.00	x	0.0	=	\$0.00	N
48 inch	Main		\$233.00	-	\$140.00	x	0.0	=	\$0.00	N
54 inch	Main		\$273.00	-	\$140.00	x	0.0	=	\$0.00	N
60 inch	Main		\$315.00	-	\$140.00	x	0.0	=	\$0.00	N

Oversizing Schedule Continued

(Used to reimburse oversized infrastructure)

Oversized Storm Drain Main Reimbmnt Continued

		<u>Oversized Full Pipe \$/foot</u>	-	<u>Minimum 24" main Full Pipe \$/foot</u>		<u>Oversized Footage</u>	=	<u>Oversized Reimbursement</u>	
66 inch	Main	\$357.00	-	\$140.00	x	0.0	=	\$0.00	N
72 inch	Main	\$399.00	-	\$140.00	x	0.0	=	\$0.00	N
78 inch	Main	\$431.00	-	\$140.00	x	0.0	=	\$0.00	N
84 inch	Main	\$461.00	-	\$140.00	x	0.0	=	\$0.00	N
90 inch	Main	\$492.00	-	\$140.00	x	0.0	=	\$0.00	N
96 inch	Main	\$522.00	-	\$140.00	x	0.0	=	\$0.00	N



City of Gilroy

STAFF REPORT

Agenda Item Title: Award of Contract to Kimley-Horn for the Update of the Traffic Circulation Master Plan and Transportation Impact Fee Program in the Amount of \$360,590 with a 10% Contingency for a Total of \$396,649

Meeting Date: March 20, 2023

From: Jimmy Forbis, City Administrator

Department: Public Works

Submitted By: Daryl Jordan, Public Works Director

Prepared By: Gary Heap, City Engineer

STRATEGIC PLAN GOALS

Maintain and Improve City Infrastructure

RECOMMENDATION

1. Award of Contract to Kimley-Horn for the Update of the Traffic Circulation Master Plan and Transportation Impact Fee Program (23-RFP-PW-479) in the Amount of \$360,590 with a 10% contingency for a total of \$396,649 and authorize the City Administrator to execute the contract and associated documents.
2. Adopt a resolution of the City Council of the City of Gilroy amending the budget for the City of Gilroy for Fiscal Year 2023-2024 and appropriating proposed expenditure amendments in the Traffic Impact Fee Program Fund.

EXECUTIVE SUMMARY

The City's current Traffic Circulation Master Plan has not been updated since 2004. The Traffic Circulation Master Plan will be updated to correspond to the City's recently adopted 2040 General Plan and recently updated 2040 Travel Demand Model. Through an RFP process, staff is recommending that the City select Kimley Horn to perform this work. Staff recommends awarding a contract to Kimley-Horn in the amount of \$360,590 with a 10% contingency for a total project cost of \$396,649. This project will be funded out of the Traffic Impact Fee funds (Fund 425).

BACKGROUND

The City's Traffic Circulation Master Plan (TCMP) has not been fully updated since 2004. With the recent update to the 2040 General Plan and travel demand model forecasts, the document needs revision for consistency. The update will evaluate all new or updated traffic segments, intersections, and bridges that are needed to support the 2040 General Plan growth expectations.

ANALYSIS

The TCMP update will include an evaluation of recommended transportation improvement projects based on the City of Gilroy 2040 General Plan and 2040 Travel Demand Model. The TCMP will identify all intersections that currently do not or are projected to not meet the City's adopted Level of Service (LOS) standards and will determine the level of improvements needed to bring levels of service into compliance. The traffic analysis will include a review of intersection operations, opportunities for needed improvements, and sufficient conceptual design to identify project challenges, project right-of-way needs, and preliminary cost estimates.

The project also includes the preparation of a Traffic Impact Fee (TIF) Study to develop an updated Traffic Impact Fee Program that complies with California Government Code Section 66000 et seq. (i.e., the Mitigation Fee Act), also known as AB 1600. This will require a review of current practices and a comparison of best practices from other surrounding communities of similar size in the San Francisco Bay Area. Additional improvements to be considered for funding in the updated TIF policy may include bicycle, pedestrian, and traffic calming improvements, and the cost for future model updates.

The TIF study and program update will include a Nexus Study to demonstrate that a reasonable relationship exists between the proposed transportation improvements and development projects. The Nexus Study will serve as the basis for requiring development impact fees under AB 1600 as required by California Code Government Section 66000 et seq.

The study will also identify the purpose of the fee and how the collected fees will be used, show that a reasonable relationship exists between the fee's use and the type of development on which the fee is imposed, and identify a reasonable relationship between the amount of the fee and the cost of the public improvements that are attributable to the development on which the fee is imposed.

A Request for Proposals (RFP) was advertised in the San Jose Mercury News on September 30, 2022. Proposals were due November 4, 2022. The City received two proposals, one from Kimley-Horn and a second from Hexagon Transportation Consultants, Inc. Both firms are bay area companies. After reviewing the proposals and conducting interviews with the two firms, staff selected Kimley-Horn as the firm to best perform the project work based on their qualifications and experience in similar projects. Additional discussion was conducted with Kimley-Horn to fine-tune the project scope

8.6

Award of Contract to Kimley-Horn for the Update of the Traffic Circulation Master Plan and Transportation Impact Fee Program in the Amount of \$360,590 with a 10% Contingency for a Total of \$396,649

(Attachment #1) and associated project cost (Attachment #2). A project schedule was also submitted which estimates the project to be completed in approximately nine months (Attachment #3).

Based on staff's review of qualifications, experiences, and cost proposal, staff recommends that the City Council award the contract to Kimley-Horn in the amount of \$360,590 plus a 10% contingency of \$36,059, for a total amount of \$396,649.

ALTERNATIVES

Council can decide not to approve the contract with Kimley-Horn. If not approved, the City would continue to use the outdated Traffic Circulation Master Plan document and outdated Traffic Impact Fee program. This will make it increasingly difficult to continue to plan for the future needs of the City's travel network, given the expected growth indicated by the 2040 General Plan, and may limit our ability to collect sufficient developer traffic impact fees to support those future improvements.

FISCAL IMPACT/FUNDING SOURCE

The total proposal cost from Kimley-Horn is \$360,590. Staff recommends including a 10% contingency of \$36,059, to address any unforeseen issues that may arise during the plan development process, for a total design allocation of \$396,649. This project will be funded out of the Traffic Impact Fee program (Fund 425). A budget amendment resolution is included and recommended for adoption to appropriate the expenditure. Sufficient funds are available in the Traffic Impact Fee program fund for this project.

Attachments:

1. Traffic Circulation Master Plan Update Scope
2. Traffic Circulation Master Plan Cost
3. Traffic Circulation Master Plan Schedule
4. Draft Resolution

City of Gilroy
Traffic Circulation Master Plan and Traffic Impact Fee Program Updates

Category/Title Billing Rate		Kimley-Horn and Associates, Inc.							Total Hours	Total Cost
		Sr. Professional II	Sr. Professional I	Professional II	Professional I	Analyst II	Analyst I	Support Staff		
		\$385.00	\$330.00	\$240.00	\$215.00	\$190.00	\$165.00	\$105.00		
Task 1	Project Management	22	26			26	12	18	104	\$ 25,860.00
1.1	Project Management	12	12			12	12	12	60	\$ 14,100.00
1.2	Project Kick-Off	2	4			4			10	\$ 2,850.00
1.3	Work Plan Finalization	2	4			4			10	\$ 2,850.00
1.4	Progress Review Meetings	6	6			6		6	24	\$ 6,060.00
Task 2	Traffic Circulation Master Plan Update	18	56	4	192	136	106		512	\$ 110,980.00
2.1	Review Current Traffic Circulation Master Plan	4	4	4	4	12			28	\$ 6,960.00
2.2	Travel Demand Modeling (Hexagon)									
2.2.1	Update Base Year Model									
2.2.2	Identify Road Network Check Against 2004 TMP Improvements									
2.2.3	Review/Update 2040 Land Use Assumptions									
2.2.4	Model Output Data									
2.2.5	Modeling									
2.3	Update Future Land Use Data to 2050 (Optional)									
2.4	Evaluation of Recommended Transportation Improvements	4	4						8	\$ 2,860.00
2.5	Recommended Transportation Improvements					100			100	\$ 19,000.00
2.3.1	Conceptual Design Drawings	4	24		140		26		194	\$ 43,850.00
2.3.2	Preliminary Cost Estimates	2	12		40		24		78	\$ 17,290.00
2.3.3	Additional Improvements for TIF Policy	2	4				32		38	\$ 7,370.00
2.6	Draft and Final Plan Development	2	8		8	24	24		66	\$ 13,650.00
Task 3	Traffic Impact Fee (TIF) Study and TIF Program Update	16	48	80	20	160			324	\$ 75,900.00
3.1	TIF Program Approach	4	24	40					68	\$ 19,060.00
3.2	Transportation Improvements	8	16			160			184	\$ 38,760.00
3.3	Fee Revenue Estimation	2	4	20					26	\$ 6,890.00
3.4	Nexus Study Development	2	4	20	20				46	\$ 11,190.00
Task 4	Draft and Final Nexus Study Reports	12	14	36	0	72			134	\$ 31,560.00
4.1	Administrative Draft	8	8	24		60			100	\$ 22,880.00
4.2	Draft	2	4	8		8			22	\$ 5,530.00
4.3	Final	2	2	4		4			12	\$ 3,150.00
Task 5	Public Engagement Plan	10	10	0	8	24			52	\$ 13,430.00
5.1	Public Engagement Plan	2	2						4	\$ 1,430.00
5.2	Community Meetings and Workshops	4	4		8	16			32	\$ 7,620.00
5.3	City Council Meetings	4	4			8			16	\$ 4,380.00
Task 6	SB 743 Policy and TREDLite VMT Tool Development	8	22	52	0	16			98	\$ 25,860.00
6.1	Coordination Meetings	4	4	4					12	\$ 3,820.00
6.2	Technical Analysis		4	10		8			22	\$ 5,240.00
6.3	Screening Maps		2	8		8			18	\$ 4,100.00
6.4	Travel Demand Management and Mitigation	4	4	6					14	\$ 4,300.00
6.5	Documentation		4	16					20	\$ 5,160.00
6.6	VMT Analysis Tool (TREDLite)		4	8					12	\$ 3,240.00
TOTAL HOURS		86	176	172	220	434	118	18	1224	
Subtotal Labor:		\$ 33,110.00	\$ 58,080.00	\$ 41,280.00	\$ 47,300.00	\$ 82,460.00	\$ 19,470.00	\$ 1,890.00		\$ 283,590.00
Other Direct Costs										\$ 73,580.00
TREDLite License										\$ 15,000.00
Hexagon Tasks (2.2.1-2.2.5)										\$ 58,580.00
TOTAL COST WITHOUT OPTIONAL TASKS:										\$ 357,170.00
Update Future Land Use Data to 2050 (Option 2.3) - Hexagon										\$ 3,420.00
TOTAL COST WITH OPTIONAL TASKS:										\$ 360,590.00



Project Timeline

Project Timeline		Apr 23					May 23				Jun 23					Jul 23				Aug 23					Sep 23				Oct 23				Nov 23				Dec 23					
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	
Task 1	Project Management																																									
1.1	Project Management																																									
1.2	Project Kick-Off	✓																																								
1.3	Work Plan Finalization	✓																																								
1.4	Progress Review Meetings				*				*					*						*				*			*				*											
Task 2	Traffic Circulation Master Plan Update																																									
2.1	Review Current Traffic Circulation Master Plan																																									
2.2	Travel Demand Modeling																																									
2.3	Future 2050 modeling (Optional)																																									
2.4	Evaluation of recommended improvements																																									
2.5	Recommended Transportation Improvements																																									
2.3.1	Conceptual Design Drawings																																									
2.3.2	Preliminary Cost Estimates																																									
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Task 5	Public Engagement Plan																																									
5.1	Public Engagement Plan																																									
5.2	City Council Meetings																																									

Scope of Services

The Scope of Services provided by Kimley-Horn closely follows the City's Scope of Services. Additions have been made to fully complement our services relevant to the legal requirements (AB1600, AB 602, SB 743).

Task 1: Project Management, Project Kick-off, and Work Plan Finalization

Kimley-Horn will meet with City staff to develop a final scope of work that fully encompasses the legal requirements, schedule, and budget. We will include additional tasks identified in the approach above and the scope below. Our scope includes one kick-off meeting and up to six progress review meetings (in-person and virtual).

Deliverables

- Refined scope of work, additional task, and budget
- Detailed schedule identifying key milestones and deliverables
- Progress review meetings (including agendas and meeting minutes)

Task 2: Traffic Circulation Master Plan Update

2.1. Review Current Traffic Circulation Master Plan

Kimley-Horn is very familiar with the previous master plan and the many projects that have been implemented. The project map and matrix will be updated to reflect the changes and compared to the previous Traffic Circulation Master Plan for compliance. Any recommended changes will be discussed and reviewed with City staff. It is anticipated that some corridors may not require extensive widening, i.e., portions of Santa Teresa Boulevard due to Measure H.

2.2. Travel Demand Modeling (Hexagon)

2.2.1 Update Base Year Model

The current base year of the Gilroy model is 2017. The base year model will be updated and validated to reflect 2019 or 2023 traffic conditions.

2.2.1.1 Update Land Use for the Base Year

The 2017 land use data file will be updated to the new base year. For the TAZs outside the City of Gilroy, the land use data for the base year will be interpolated between 2017 and 2040. For the TAZs within Gilroy, housing and employment-based development projects constructed and occupied between 2017 and the new base year, to be provided by City staff or Kimley-Horn, will be added to the 2017 land use database.

2.2.1.2 Review/Update Roadway Network

The 2017 roadway network in the greater Gilroy area will be reviewed and updated to include roadway improvements constructed between 2017 and the new base year.

2.2.2 Model Validation

The Gilroy model will be validated against base year AM, PM, and Daily traffic counts. The model validation effort does not include changing trip generation, distribution, or mode choice models. Model validation will focus on adjusting the peak-hour trip tables and the traffic assignment process, including updating peak-hour factors, relocating centroid connectors, and updating facility type characteristics, where needed. Hexagon will provide Kimley-Horn with traffic we have collected over the years. Kimley-

Horn will review and factor the traffic counts, if necessary, to represent the new base year conditions. Hexagon will validate the model based on generally accepted model validation criteria:

- The volumes on all roadway links for which counts are available should be within 10 percent of the counts.
- The model-wide coefficient of determination (R^2) should be greater than 0.77.
- The correlation coefficient between the actual ground counts and the estimated traffic volumes should be greater than 88 percent.
- The Root Mean Square Error (RMSE) should not exceed 40 percent.
- All screenline volumes should be within the maximum desirable deviation, ranging from 15 to 70 percent, depending on the total screen line volume.

Hexagon will prepare a technical memorandum documenting the input assumptions and results of the model validation. The validation results will be presented in tabular form and in graphics, comparing base year modeled volumes and traffic counts.

2.2.2 Identify road network check against 2004 TMP improvements

Kimley-Horn will provide a list of transportation improvements from the 2004 Traffic Circulation Master Plan. In addition, Kimley-Horn will provide a list of regional transportation improvements to include in the 2040 modeled network. Hexagon will review and update the 2040 network and include these local and regional transportation improvements. Hexagon will provide plots of the final 2004 TMP network to Kimley-Horn.

2.2.3 Review/Update 2040 Land Use Assumptions

Hexagon will provide Kimley-Horn an excel file with the base year and 2040 General Plan land use assumptions for the TAZs in Gilroy. In addition, Hexagon will provide GIS-based maps that show 2040 future growth in jobs and households for the TAZs in Gilroy. Kimley Horn will review and update the 2040 land use assumptions if necessary.

2.2.3.1 Develop 2040 Forecasts

Hexagon will run the Gilroy Forecasting model for the year 2040 for the following alternatives:

- Base year network with base year land use data
- Base year network with future year land use data
- Future year network with future year land use data
- Future year land use with up to three network alternatives

Kimley-Horn will provide the transportation improvements to be included in the network alternatives.

2.2.3.2 Model Output Data

Hexagon will provide Kimley-Horn with the following model outputs for each of the model runs listed in Task 4:

- AM and PM peak-hour and daily volume plots
- AM and PM peak hour select link plots for transportation improvements for all alternatives
- Summary of base year and 2040 land use data by TAZ in Excel format

- VMT data in Excel format:
 - Home-Based VMT/Resident for Gilroy and the County
 - Home-Based Work VMT/Job for Gilroy and the County
 - Daily VMT (includes all trip purposes) generated by Gilroy Land Uses

2.2.4. Modeling Coordination Meetings

Hexagon will attend six virtual meetings with the project team. Attendance at virtual public meetings will be charged at our hourly staff rates.

2.3 (Optional). Update Future Land Use Data to 2050

The VTA is in the process of developing 2050 land use and demographic data at the VTA's TAZ level. If the 2050 data becomes available when we start developing future year forecasts, the 2040 data will be updated to the year 2050. Land use data for 2050 within the City of Gilroy will be updated and provided at the TAZ level by Kimley-Horn or City staff. Land use data for 2050 for the TAZs outside the City of Gilroy will be processed by Hexagon.

2.4. Evaluation of Recommended Transportation Improvements

Kimley-Horn will use the output of the modeling analysis carried out during Task 2.2 and 2.3 to evaluate the need for transportation improvements. The new plan will be updated based on the recently adopted 2040 General Plan and Measure H. The improvements should include needed intersections, roadway segments, and bridges to support the 2040 General Plan build-out condition. The improvements should also take into consideration the City's General Plan Boundary as well as the City's Urban Growth Boundary restrictions, otherwise known as Measure H, that was approved by the Gilroy voters in November 2016. Improvements in the plan are separated into:

- Roadway Segments
- Intersections
- Bridges

It is recommended to add Class 4 and Class 1 bicycle facilities and key pedestrian facilities (i.e., High-Intensity Activated crosswalk beacons [HAWKS] and Rectangular Rapid-Flashing Beacons [RRFBs]) be added to the project list. (Note that some TIF dollars could be used as a local match for grant funding). These projects will alternatively be studied for incorporation into a VMT Mitigation Fee program.

2.5. Recommended Transportation Improvements

Projects that are recommended for inclusion in the updated Traffic Circulation Master Plan will include:

2.5.1. Conceptual Design Drawings

The conceptual design drawings will show the ultimate build-out of the improvements, and include cross-sections, lane configurations, dimensions, striping improvements, and any needed right-of-way acquisition. The drawings will be prepared on an aerial photography background. Kimley-Horn will also recommend alternative layouts, i.e., protected intersections or roundabouts as alternative control measures. Caltrans prefers roundabouts where an ICE analysis warrants such a measure (they recently installed the roundabout on SR 152 [Hecker Pass], where a signal would have caused additional safety concerns). Additional pedestrian crossing facilities, i.e., RRFB or HAWK facilities will be reviewed, similarly to those on First Street and Church Street (Highway 152).

2.5.2. Preliminary Cost Estimates

Each recommended improvement requires a project specific cost estimate. The current plan has a cost estimate template. Kimley-Horn will work with the City to update the cost estimates for proper funding of both project hard costs, soft costs, and any long-term maintenance. The cost estimates should consider City cost contributions and any contributions from other agencies or private developers. Costs will be updated to reflect 2021/2022 construction dollars based on recent bid information for projects within the City.

2.5.3. Additional Improvements for TIF Policy

As the City grows and roads become more congested, diversion is expected to occur onto neighborhood streets and speeding becomes a safety concern. The implementation of traffic calming measures, which meet AB1600 requirements, i.e., Nexus can be demonstrated, will be included in the TCMP. The exercise will require a build and no build volumes plot of the travel demand model on existing neighborhood/collector streets. No traffic calming measures are recommended on arterial roadways or major collectors. Additional improvements to be considered for funding in the updated TIF policy include bicycle, pedestrian, traffic calming, and future model updates.

2.6. Draft and Final Plan Development

The draft and final Traffic Circulation Master Plan documents will identify potential action items and be prioritized for near term (0-5 years), mid-term (5-10 years), and long-term (10-20 years) improvements and include relevant maps, tables, and exhibits. This task will be completed in close collaboration with the City's Planning Department and will be based on anticipated land use growth and the pace of City buildout per the 2040 General Plan. This exercise will result in a phased approach to arterials, i.e., build the first two lanes of a future 4-lane facility. The City travel demand model and/or engineering judgements will be used for this task. It should be noted that 0-5 years is a short time frame to plan, design, and construct major roadway facilities. It is anticipated that the short term may be limited to smaller improvements that add capacity to the system. The timing of anticipated grant funding cycles may push out schedules even further.

Deliverables

- Draft and final Traffic Circulation Master Plan documents
- Project lists
- Conceptual design drawings
- Preliminary cost estimates
- Street cross-sections

Task 3: Traffic Impact Fee (TIF) Study and TIF Program Update

3.1. TIF Program Approach

Kimley-Horn will provide recommendations on up to four approaches for the updated TIF Program. The approaches could include fees based on LOS (trips generated) based traffic impacts, VMT-based fees (trips generated and the distance travelled), a combination of LOS-based and VMT-based fees, or a new approach. Kimley-Horn will also provide recommendations for TIF reimbursement policies and procedures including potential developer reimbursements for constructed TIF projects.

As part of this task, Kimley-Horn will complete a review of current best practices in Transportation Impact Fees throughout the state of California and document them in a white paper as mentioned in our approach.

3.2. Transportation Improvements

Kimley-Horn will identify the improvements needed to serve growth and meet City standards. The costs will come from the estimates prepared for each project in the TCMP. Preliminary Engineering Conceptual Cost estimates of the proposed improvements and proposed criteria for selecting the capital projects used to develop the TIF program will be provided. The criteria will be based on the anticipated pace of land use development and the need for travel imposed by the development.

3.3. Fee Revenue Estimation

Kimley-Horn will provide alternatives and recommendations for calculating traffic impact fees. The alternatives will be based on input received from City staff and stakeholders, if appropriate. This task will also include an estimate of the overall fee revenues based on the list of projects and growth forecasts in the City of Gilroy General Plan 2040. Grant funding for especially regional facilities will be an important component to reduce the fees but should not be overestimated. Kimley-Horn will collaborate with VTA regarding fundings sources for regional roadway infrastructure facilities. The current balance of the TIF program needs to be incorporated into this calculation. Similar to task 2.4, revenue will be estimate for the three major time frames considered under the plan, including near term (0-5 years), mid-term (5-10 years), and long-term (10-20 years).

3.4. Nexus Study Development

Kimley-Horn will identify the project costs that must be allocated to existing deficiencies (if applicable) and to future growth. The allocated project costs will be used to develop a fee schedule by land use type. Kimley-Horn will provide recommendations on various strategies for assessing the fees between residential, commercial, and industrial development.

Deliverables

- Memorandum summarizing up to four TIF Program Approaches and recommendations on the preferred approach
- Memorandum summarizing the preliminary list of projects under consideration, including maps, conceptual cost estimates, and proposed timing of improvements
- Fee calculation alternatives and estimate of fee revenues
- Report documenting the methods used in the Nexus study, identifying the Nexus and associated burden, proposed traffic impact fee schedule, and an evaluation of the economic burden on residential, commercial, and industrial development

Task 4: Draft and Final Nexus Study Reports

Based on the findings and deliverables in prior tasks, Kimley-Horn will prepare a memorandum that details the development of the TIF. The memorandum, at a minimum, will include:

- Future facilities eligible for TIF funding per the Nexus study results
- A methodology of the fee and fee structure by applicable land use category
- Up to two rounds of staff review

Kimley-Horn will submit a draft Nexus study report that complies with AB 1600 and AB 602 requirements. The report will provide background information, methodologies, findings, recommendations, and appropriate tables and graphics. The report will explain the purpose of the TIF and provide the information and findings used to calculate appropriate impact fees necessary to fund proposed infrastructure improvements required to support future growth as identified in the updated Traffic Circulation Master Plan and City of Gilroy 2040 General Plan. City staff comments on the draft Nexus study report will be incorporated into a final Nexus study report.

In addition, Kimley-Horn will develop an interactive TIF calculation tool. This tool will have the capability to estimate fees for new developments based on trips or VMT depending on the selected methodology.

Deliverables

- Memorandum on the traffic impact fee
- Interactive fee calculation tool
- Final traffic impact fee ordinance

Task 5: Public Engagement Plan

Kimley-Horn will develop a public engagement plan detailing the proposed methods for conducting public outreach to both the City Council and necessary stakeholders. The plan may include one (1) public meetings or workshops, one (1) planning commission meeting, and one (1) City Council meeting.

Deliverables

- Outreach strategy
- PowerPoint presentations
- One public meeting
- One planning commission meeting
- One City Council meeting

Task 6: SB 743 Policy and TREDLite VMT Tool Development

Task 6.1 Project Management and Coordination

Kimley-Horn will attend up to four (4) meetings, assumed to be virtual, to review the needs of the City pertaining to VMT analysis, provide progress updates, and review the findings of the project analysis. The meetings will also ensure the City will be compliant with SB 743 based on the efforts included in the subsequent tasks.

Task 6.2 Technical Analysis

Kimley-Horn will develop average VMT/Capita (Residential) and Work VMT/Employee for the City. In addition, Kimley-Horn will use the Replica platform to compute develop average VMT/Capita (Residential) and Work VMT/Employee for the City. Kimley-Horn will meet with the City to provide results of the two analyses and guidance as to the benefits of proceedings with using each methodology to set thresholds for the City. A decision will be made by the City at this meeting to determine which methodology to use for the remaining efforts included in the subsequent tasks, as well as to choose which boundary to use to set thresholds. Once a methodology has been chosen, Kimley-Horn will also develop estimates for regional VMT totals for use of “net change” analyses.

Kimley-Horn will use the average VMT/Capita, average VMT/Employee, and regional VMT totals to determine thresholds in cooperation with the City staff. Thresholds can be set at a specific percentage below the averages calculated based on the needs of the City. Typically, thresholds are set at 15-percent below the citywide/countywide/regionwide average as this is consistent with state guidance.

Task 6.3 Screening Maps

Kimley-Horn will develop thematic screening maps showing relative VMT/Capita and VMT/Employee (employee-based land uses only) to facilitate project screening and/or, as appropriate, making project determinations regarding VMT. It is expected that these maps will be used as an informational tool for jurisdictions when discussing VMT with potential project applicants and the public. The maps will identify areas that are below the thresholds established above, those within 15-percent of the threshold (assumed to be able to be feasibly mitigated), and those that are more than 15-percent above the threshold.

Task 6.4 Travel Demand Management and Mitigation

Kimley-Horn will develop a VMT reduction and mitigation strategy that evaluates specific Travel Demand Measures (TDMs) and their relative efficacy with reducing VMT within the City. These TDM measures will be based primarily on CAPCOA's *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity* published in January 2022. This document provides the most recent analysis on VMT reduction methodologies and provides guidance on the amount of VMT reduced by each measure. The strategy developed by Kimley-Horn would outline the analysis required to be completed for projects with VMT impacts and provide the examples obtained from the CAPCOA document.

Task 6.5 Documentation

Kimley-Horn will document the methods and results of the analyses performed in Tasks 2-4 in a brief technical memorandum format with graphics as deemed appropriate by Kimley-Horn. Kimley-Horn will prepare and submit an electronic (PDF) copy of the memorandum to the City. Kimley-Horn will address and respond to one set of non-conflicting comments from the City and submit a final copy of the memorandum to the City.

In addition, Kimley-Horn will develop a VMT Analysis Guidelines document to provide guidance on performing VMT analyses for the City. The Guidelines will include the following major topics:

- Background
- Land Use Projects
 - Evaluating Land Use Types (including Mixed Use and Redevelopment guidance)
 - Screening for Non-Significance (criteria and methodologies including maps)
 - Significance Thresholds and Analysis Methodologies
 - Development of Analysis Scope
- Transportation Projects
 - Screening for Non-Significance (criteria and methodologies)
 - Significance Thresholds and Analysis Methodologies
- Recommendations for mitigations/TDMs and their relative efficacy in reducing VMT

Kimley-Horn will prepare and submit an electronic (PDF) copy of the VMT Analysis Guidelines the City for review. Kimley-Horn will address and respond to one set of non-conflicting comments from the City and submit a final copy of the VMT Analysis Guidelines to the City.

Task 6.6 VMT Analysis Tool (TREDLite)

Kimley-Horn will develop a VMT analysis tool using Kimley-Horn's online platform, TREDLite. We will develop a specific version of TREDLite for the City to allow the user to perform VMT estimation and mitigation based on the analyses carried out during prior tasks. TREDLite requires land use characteristics of the proposed project, such as the number of residential units or square footage of a project and the project's physical address. The City's version of TREDLite will use the associated TAZ or Census Block Group VMT characteristics (depending on the methodology chosen in Task 2) to estimate the VMT of the proposed project and compare it to the thresholds developed during Task 2. It will then determine if the project will result in a significant impact related to VMT and offer some potential mitigation measures that may reduce the project's VMT impact to less than significant.

The City's version of TREDLite will also be developed to provide project-level GHG impacts for mobile and non-mobile sources. Mitigations and VMT reduction strategies chosen to reduce a project's VMT will also be analyzed to show their GHG reductions as well.

Kimley-Horn will test up to two (2) different project types the City for the purpose of demonstrating how TREDLite should be applied. The results will be presented and discussed during a virtual meeting with City staff.

RESOLUTION NO. 2023-XX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY AMENDING THE BUDGET FOR THE CITY OF GILROY FOR 2022-2023 AND APPROPRIATING PROPOSED EXPENDITURE AMENDMENTS**

WHEREAS, the City completed an update to the 2040 General Plan and the 2040 Travel Demand Model; and

WHEREAS, the Traffic Circulation Master Plan identifies all intersections that currently do not or are projected to not meet the City's adopted Level of Service (LOS) Standard and will determine the level of improvements needed to bring levels of service into compliance; and

WHEREAS, this project includes the preparation of a Traffic Impact Fee (TIF) Study to develop an updated Traffic Impact Fee Program that complies with California Government Code Section 66000 et seq. (i.e., the Mitigation Fee Act), also known as AB 1600; and

WHEREAS, Public Works is recommending the City Council award a contract to Kimley-Horn to update the Traffic Circulation Master Plan and Traffic Impact Fee Program; and

WHEREAS, City Staff has prepared and submitted to the City Council proposed amendments to said budget for Fiscal Year 2022-23 for the City of Gilroy in the staff report dated March 20, 2023 for the Traffic Circulation Master Plan Update, City Project No. 23-RFP-PW-479.

NOW, THEREFORE, BE IT RESOLVED THAT the appropriations for Fiscal Year 2022-23 from the Traffic Impact Fee Program Fund be provided in the amount of \$396,649.

PASSED AND ADOPTED this 20th day of March, 2023 by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Marie Blankley, Mayor

ATTEST:

Thai Nam Pham, City Clerk



City of Gilroy

STAFF REPORT

Agenda Item Title: Award a Contract to J.J.R. Construction, Inc. for the FY23 Annual Citywide Curb Ramp Project No. 23-PW-280 for a Total Project Expenditure of \$174,565

Meeting Date: March 20, 2023

From: Jimmy Forbis, City Administrator

Department: Public Works

Submitted By: Daryl Jordan, Public Works Director

Prepared By: Julie Oates, Engineer II

STRATEGIC PLAN GOALS

Maintain and Improve City Infrastructure

RECOMMENDATION

- a) Award a contract to J.J.R. Construction, Inc. in the amount of \$158,695 for the construction of the FY23 Annual Citywide Curb Ramp Project No. 23-PW-280 and authorize the City Administrator to execute the contract and associated documents; and
- b) Approve a contingency amount of \$15,870 to be expended only with approved change orders for a maximum project expenditure of \$174,565.

EXECUTIVE SUMMARY

The Annual Citywide Curb Ramp Project is included in the City's 5-year Capital Improvement Program. The purpose of the Project is to upgrade existing and install new pedestrian curb ramps to be compliant with the Americans with Disabilities Act (ADA). The Public Works Department advertised the FY23 Annual Citywide Curb Ramp Project (the Project) in the San Jose Mercury News and on the City's website on February 10, 2023, and received five bids. Staff recommends awarding a contract to the lowest bidder, J.J.R. Construction, Inc., with a maximum project expenditure of \$174,565 (which includes a base bid amount of \$158,695 and a project contingency of \$15,870) to construct the Project. The Project consists of constructing 28 curb ramps to be compliant with the Americans with Disabilities Act (ADA). The Project will be funded with Gas Tax.

BACKGROUND

The purpose of the Annual Citywide Curb Ramp Project, which is included in the City's 5-year Capital Improvement Program, is to upgrade existing and install new pedestrian curb ramps to be compliant with the Americans with Disabilities Act (ADA).

ANALYSIS

Title II of the ADA requires state and local governments to provide ADA-compliant curb ramps along pedestrian routes in the public right-of-way whenever streets are altered. Alterations include reconstruction, rehabilitation, resurfacing, and widening.

Based on Title II of the ADA, the City's upcoming FY23 Annual Citywide Pavement Rehabilitation Project will result in the need to construct approximately 100 curb ramps. If all of these curb ramps are constructed as part of the paving project, then some of the funds allocated for the citywide paving program will need to be used to construct curb ramps. This would reduce the amount of funds that could be used for actual paving.

Including some of these curb ramps in the FY23 Annual Citywide Curb Ramp Project will allow more funds from the citywide paving project to go towards paving the City's streets. Staff identified the deficient curb ramps that are located along the streets scheduled for resurfacing and rehabilitation as part of the FY23 Annual Citywide Pavement Maintenance Project and selected a total of 28 curb ramps for this project. These locations are clustered together to reduce the mobilization and overall construction costs. Only 28 were selected for this project because, based on the Engineer's Estimate, it was anticipated that there would only be enough funding to construct 28 curb ramps. Additional deficient curb ramps will be constructed as part of the FY23 Annual Citywide Pavement Rehabilitation Project and the FY23 Annual CDBG Sidewalk/Curb Ramp Project.

The 28 curb ramps are located along portions of Wren Avenue, Church Street, Princevalle Street, and Old Gilroy Street.

Staff advertised the Project in the San Jose Mercury News and on the City's website on February 10, 2023, with a bid opening date of March 2, 2023. Staff received 5 bids. A summary of the bid results is shown below:

RANK	COMPANY NAME	TOTAL BID AMOUNT
1	J. J. R. Construction, Inc.	\$158,695.00
2	ASG Builders	\$179,190.00
3	FBD Vanguard Construction, Inc.	\$281,685.00
4	McKim Corporation	\$287,899.80
5	Clean Cut Landscape, Inc.	\$457,025.00

The lowest responsive bidder was J.J.R. Construction Inc. with a total bid of \$158,695. The Engineer's Estimate was \$217,370. The lowest bid is 37% lower than the Engineer's Estimate. Staff recommends awarding the construction contract to J.J.R. Construction, Inc.

ALTERNATIVES

The alternative to the staff recommendations is to reject all bids. Staff does not recommend this option as this would delay the project.

FISCAL IMPACT/FUNDING SOURCE

The Project will be funded with Gas Taxes Fund (Fund 205). The fund has sufficient budgetary appropriations to accommodate this project.

PUBLIC OUTREACH

Outreach material will be provided via the City's social media channels and Email Express to ensure the public is aware of the Project. The contractor will also be notifying nearby residents twice; both two weeks and 48 hours in advance of construction.

NEXT STEPS

Upon the Council's approval of this contract, the contract will be executed, and Staff will work with the contractor to develop a final construction schedule. Construction is expected to begin in April 2023 and be completed in June 2023.

Attachments:

1. J.J.R. Construction Inc. - Agreement
2. 23-PW-280 Plans

SECTION 00500 AGREEMENT

FY23 ANNUAL CITYWIDE CURB RAMP PROJECT NO. 23-PW-280

THIS AGREEMENT, made this 20th day of March, 2023, by and between the City of Gilroy, hereinafter called the "City," and JSR Construction, Inc. hereinafter called the "Contractor."

WITNESSETH:

WHEREAS, the City has caused the Contract Documents to be prepared comprised of bidding and contract requirements and technical specifications and drawings for the construction of the FY23 Annual Citywide Curb Ramp Project No. 23-PW-280, as described therein, and

WHEREAS, the Contractor has offered to perform the proposed work in accordance with the terms of the Contract Documents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the City and Contractor agree as follows:

Article 1. Work.

Contractor shall complete the Work as specified or indicated in the Contract Documents.

Article 2. Contract Time.

The Work shall be completed by the Contractor in accordance with the Contract Documents within the time period required by Paragraph 00810-2.0, Time Allowed for Completion, subject to extension as expressly provided in the Contract Documents.

Article 3. Liquidated Damages.

The city and the contractor recognize that the city will suffer substantial damages and significant financial loss as a result of the contractor's delays in performance of the work described in the contract documents. The city and the contractor hereby acknowledge and agree that the damages and financial loss sustained as

a result of any such delays in performance will be extremely difficult and impractical to ascertain. Therefore, the city and contractor hereby agree that in the event of such delays in performance, the city shall be entitled to compensation by way of liquidated damages (and not penalty) for the detriment resulting therefrom in accordance with paragraph 00700-6.5, liquidated damages, of the contract documents. The city and the contractor further agree that the amounts designated as liquidated damages are a reasonable estimate of the city's damages and financial loss in the event of any such delays in performance considering all of the circumstances existing as of the date of this agreement, including the relationship of such amounts to the range of harm to the city which reasonably could be anticipated as of the date of this agreement and the expectation that proof of actual damages would be extremely difficult and impractical.

By initialing this paragraph below, the parties hereto signify their approval and consent to the terms of this article 3.

City's Initials

CB JJR Construction, Inc
Contractors Initials

Article 4. Contract Price.

In consideration of the Contractors performance of the Work in accordance with the Contract Documents, the City shall pay the Contract Price set forth in the Contract Documents.

Article 5. Contract Documents.

The Contract Documents which comprise the entire agreement between City and Contractor concerning the Work consist of this Agreement (Section 00500 of the Contract Documents) and the following, all of which are hereby incorporated into this Agreement by reference with the same force and effect as if set forth in full.

- Invitation to Bid
- Instructions to Bidders
- Bid Documents
- Designation of Subcontractors
- Bid Guaranty Bond
- Agreement
- Acknowledgements
- Performance Bond
- Payment Bond
- General Conditions
- Supplementary Conditions

General Requirements
 Standard Specifications (Caltrans)
 Technical Specifications
 Drawings
 Addenda, if any
 Executed Change Orders, if any
 Maintenance Bond
 Notice of Award
 Notice to Proceed

Article 6. Miscellaneous.

Capitalized terms used in this Agreement which are defined in Section 01090, References, of the Contract Documents will have the meanings set forth in Section 01090, References.

Contractor shall not assign any rights, obligations, duties or responsibilities under or interest in the Contract Documents without the prior written consent of the City, which consent may be withheld by the City in its sole discretion. No assignment by the Contractor of any rights, obligations, duties or responsibilities under or interests in the Contract Documents will be binding on the City without the prior written consent of the City (which consent may be withheld in City's sole discretion); and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, executed by the City, no assignment will release or discharge the assignor from any liability, duty, obligation, or responsibility under the Contract Documents.

Subject to the foregoing, the Contract Documents shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing contained in the Contract Documents shall in any way constitute a personal obligation of or impose any personal liability on any employees, officers, directors, agents or representatives of the City or its successor and assigns.

In accordance with California Business and Professions Code Section 7030, the Contractor is required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against Contractors if a complaint regarding a latent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning the Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

IN WITNESS WHEREOF, this agreement has been executed on this
day of _____, _____.

Carlos Raposo
JTR CONSTRUCTION, Inc

Name of Contractor

Signature of City

Carlos Raposo

Signature of Contractor

City Administrator
Title of Signator

President

Title of Signator

Approved as to form by
City Attorney

ATTEST:

[Signature]
Signature

ATTEST:

Signature

Vice President

Title of Signator

Title of Signator

END OF SECTION

J.J.R. CONSTRUCTION, INC.**SECRETARY'S CERTIFICATE**
(Contracts)

I, CARLOS RAPOSO, hereby certify that I am the Secretary of J.J.R. CONSTRUCTION, INC., a California corporation (the "Corporation"), and that attached hereto as Exhibit A is a copy of certain resolutions duly adopted by written consent of the sole Director of the Corporation as of January 1, 2017, which resolutions have not been rescinded or modified and are still in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of February, 2017.


CARLOS RAPOSO, Secretary

EXHIBIT A

RESOLVED, that each of the following officers of this corporation, either of them acting alone or acting together, is hereby authorized to bid on and to contract for any and all jobs for this corporation:

CARLOS RAPOSO - President, Secretary & Treasurer
ANGELICA RAPOSO - Vice President, Assistant Secretary
and Assistant Treasurer

RESOLVED FURTHER, that each of CARLOS RAPOSO and ANGELICA RAPOSO, either of them acting alone or acting together, is further authorized and directed to execute and deliver on behalf of this corporation any and all documents necessary to carry out the intent of the foregoing resolution, including without limitation any and all bidding documents and contracts.

FY23 ANNUAL CITYWIDE CURB RAMP PROJECT

NO. 23-PW-280

DRAWING INDEX		
Sheet	Sheet Description	Sheet Title
1	TITLE SHEET	T-1
2	GENERAL NOTES	GN-1
3	LAYOUT 1	L-1
4	LAYOUT 2	L-2

ACCEPTANCE OF PLANS

THE CITY OF GILROY HEREBY ACCEPTS THESE PLANS FOR CONSTRUCTION, AS BEING IN GENERAL COMPLIANCE WITH PLANS PREPARATION REQUIREMENTS OF THIS GOVERNMENT. RESPONSIBILITY FOR THE COMPLETENESS AND ACCURACY OF THE PLANS AND RELATED DESIGN RESIDES WITH THE ENGINEER.

APPROVED FOR BIDDING:

GARY HEAP, CITY ENGINEER

DATE



2/7/23

THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING SIZES, DEPTHS, AND LOCATIONS OF ALL UTILITIES PRIOR TO PROCEEDING WITH ANY WORK. ANY CHANGES TO THESE PLANS AND SPECIFICATIONS SHALL BE APPROVED BY THE ENGINEER.

CONTRACTOR SHALL NOTIFY USA (UNDERGROUND SERVICE ALERT) AT 811 OR 1-800-642-2444, A MINIMUM OF 48 HOURS BEFORE BEGINNING ANY EXCAVATIONS.



USA NORTH 811
Call 811 Before You Dig
USA North 811
811 or 800-642-2444

No.	DATE	BY	REVISIONS	No.	DATE	BY	CITY APPROVALS
							JULIE DATES, PROJECT ENGINEER
							GARY HEAP, CITY ENGINEER



CITY OF GILROY
DEPARTMENT OF PUBLIC WORKS
7351 ROSANNA STREET
GILROY, CALIFORNIA 95020
MAIN (408) 846-0223

DRAWN BY:

JD

DATE

2/7/2023

DESIGNED BY:

JD

REVIEWED BY:

GH

Scale

NTS

PROJECT No.

23-PW-280

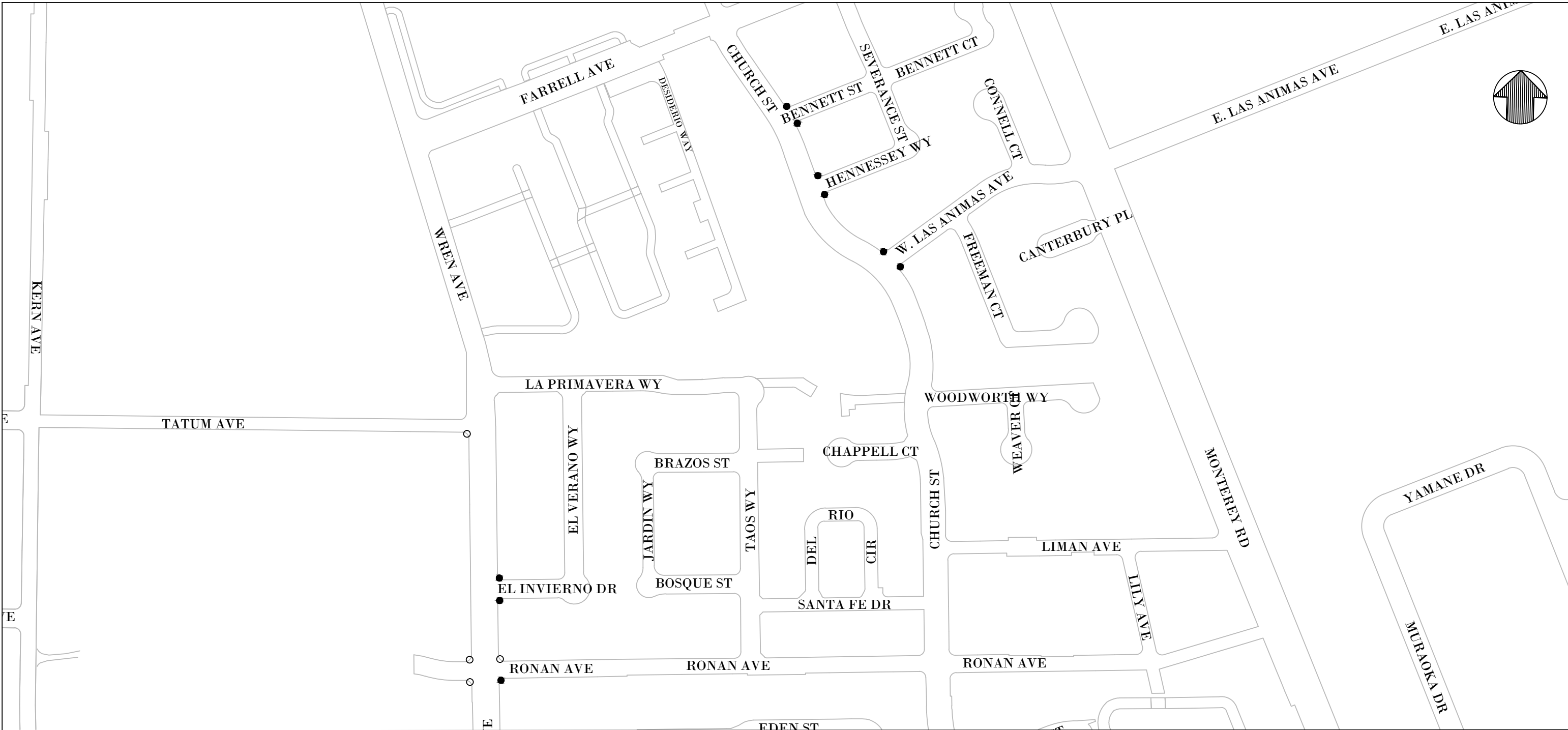
FY23 ANNUAL CITYWIDE CURB RAMP PROJECT

TITLE SHEET

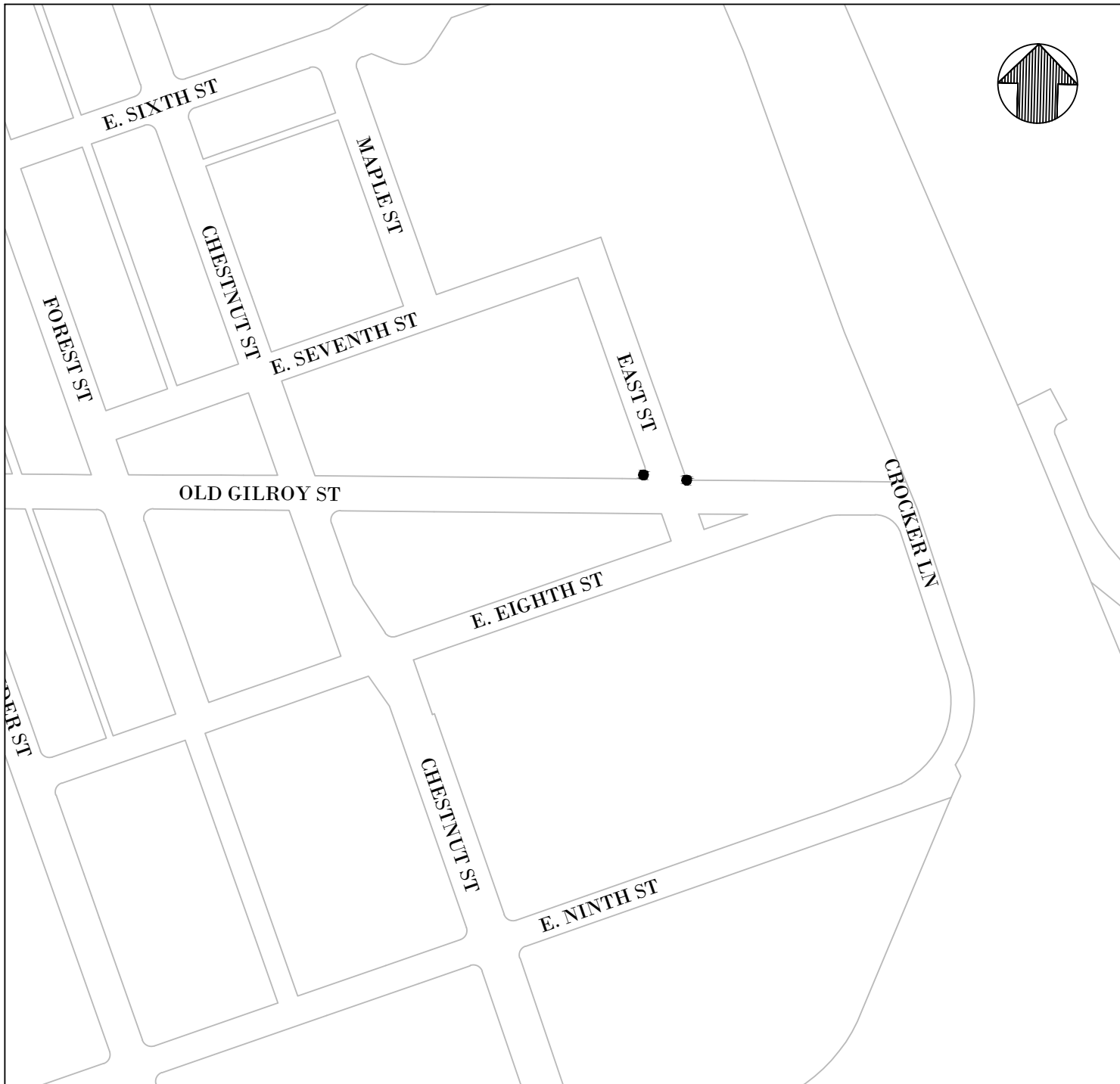
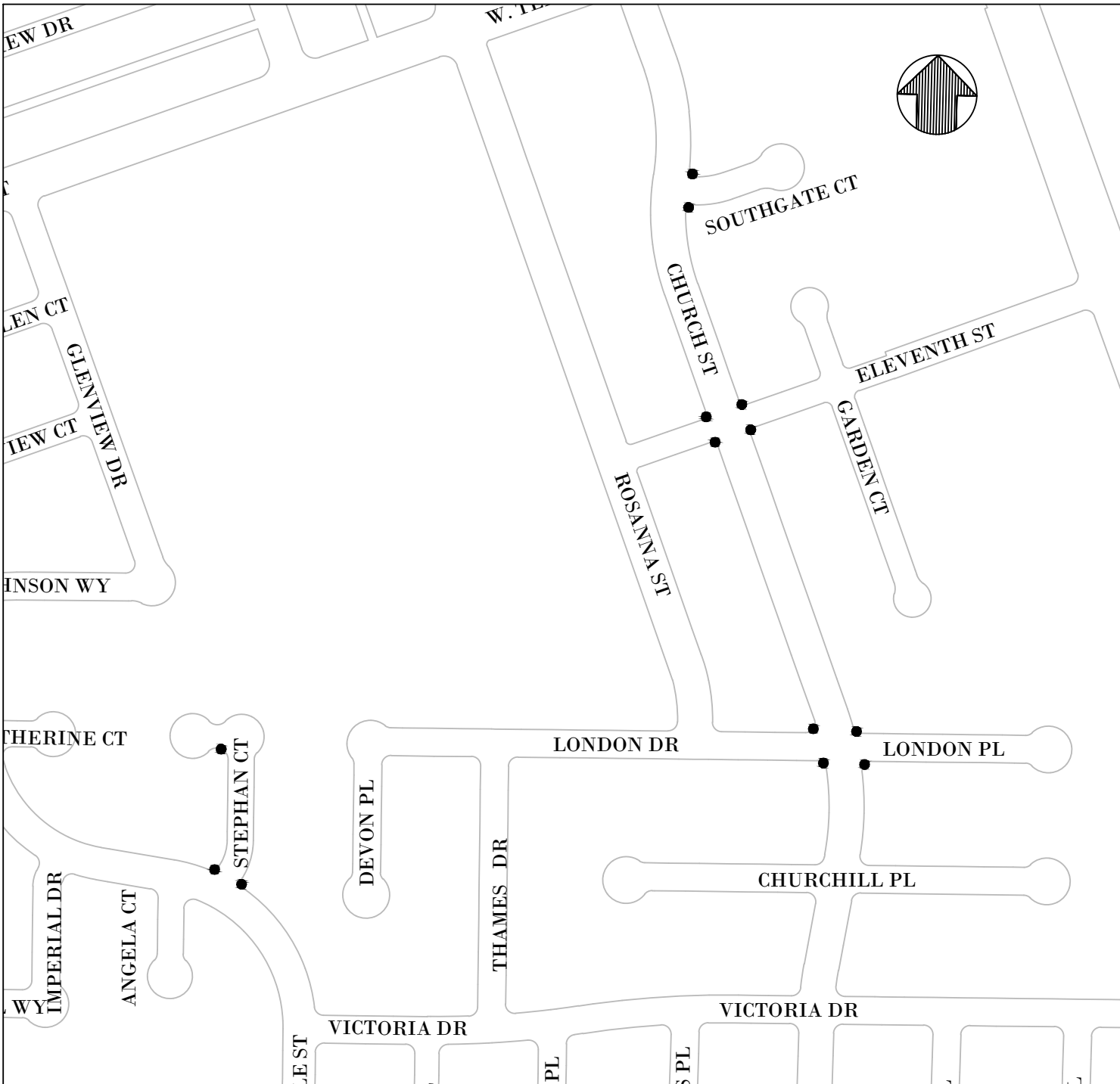
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SHEET 1 OF 4

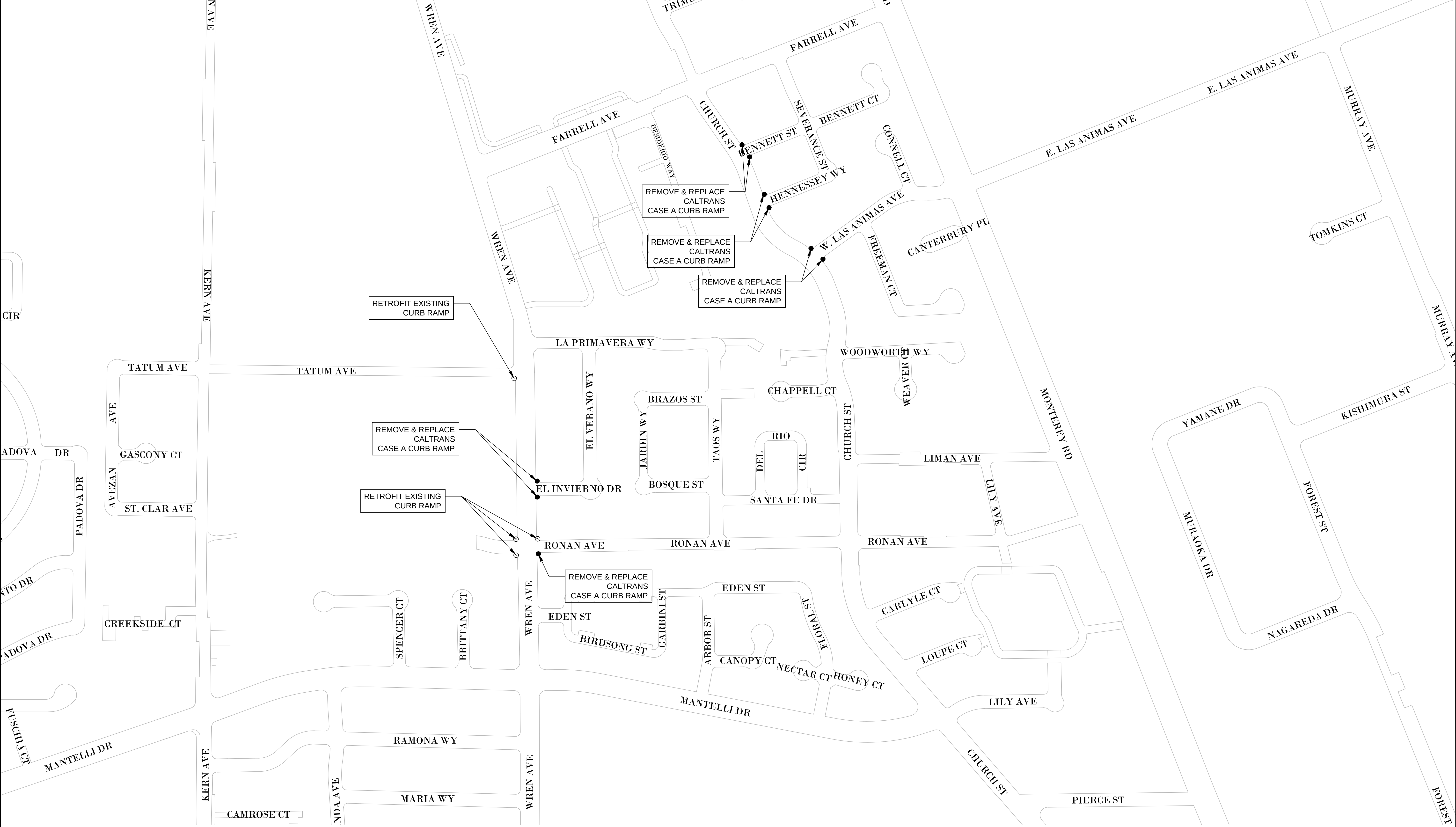


CURB RAMP LOCATIONS

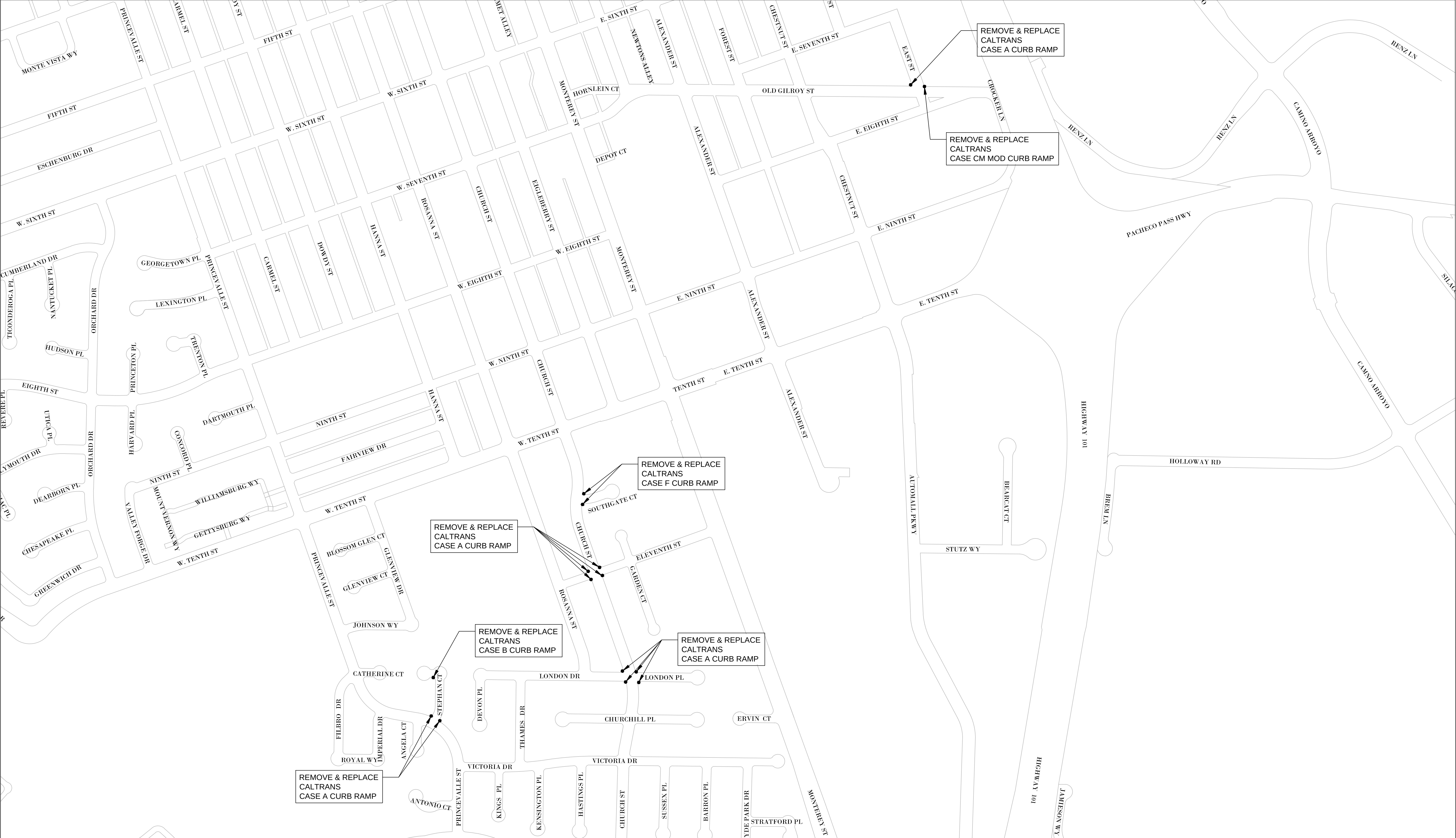


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General Notes			CALTRANS, AND AS REQUIRED IN THE PROJECT SPECIFICATIONS.			SHALL PROVIDE NATURE OF IMPACT AND ESTIMATED NUMBER OF WORKING DAYS. CONTRACTOR MAY BE REQUIRED TO CONSTRUCT TEMPORARY IMPROVEMENTS TO ACCOMMODATE RELOCATING THE BUS STOPS.													
1.	THE ENGINEER ASSUMES NO RESPONSIBILITY BEYOND ADEQUACY OF THE DESIGN CONTAINED HEREIN.		12.	THE CONTRACTOR SHALL SUBMIT A PROPOSED HAUL ROUTE AND SHALL NOT BEGIN HAULING UNTIL RECEIVING WRITTEN APPROVAL OF THE PROPOSED HAUL ROUTE FROM THE CITY.		<u>GARBAGE COLLECTION ROUTES</u>													
2.	CONTRACTOR AGREES TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS AND THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPT FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR ENGINEER.		13.	PROPOSED IMPROVEMENTS IDENTIFIED HEREIN SHALL BE SUPPLEMENTED BY THE CITY STANDARD PLANS AND SPECIFICATIONS AND THE LATEST EDITION OF THE CALTRANS STANDARD PLANS AND SPECIFICATIONS.		23.	FOR ANY WORK ON OR ADJACENT TO GARBAGE AND RECYCLING COLLECTION ROUTES, THE CONTRACTOR SHALL ALLOW GARBAGE TRUCKS TO SAFELY PASS THROUGH THE CONTRACTOR'S SITE AT ALL TIMES, UNLESS AN EXCEPTION IS GRANTED BY THE ENGINEER. CONTRACTOR SHALL NOTIFY RECOLOGY (408-842-3358) PRIOR TO COMMENCING CONSTRUCTION OF WORK WITHIN THE COLLECTION SITE.												
3.	IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN PERMITS NECESSARY TO PERFORM THE IMPROVEMENTS IN THESE PLANS FROM THE APPROPRIATE AGENCIES AND TO COMPLY WITH THE CITY'S REQUIREMENTS. THE CONTRACTOR MUST COMPLY WITH ALL LOCAL, STATE, AND FEDERAL LAWS.		14.	DUST CONTROL - THE CONTRACTOR SHALL CONTROL DUST TO THE MAXIMUM EXTENT PRACTICABLE. MEETING OR EXCEEDING REQUIREMENTS ESTABLISHED BY THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT, AND AS REQUIRED IN THE PROJECT SPECIFICATIONS.		<u>DRIVEWAY ACCESS</u>													
4.	THE CONTRACTOR SHALL PROVIDE ALL LIGHTS, SIGNS, BARRICADES, FLAGGERS, OR OTHER DEVICES NECESSARY TO PROVIDE FOR PUBLIC SAFETY AND WORKER SAFETY IN ACCORDANCE WITH LATEST CALTRANS, CA MUTCD, AND CAL-OSHA SPECIFICATIONS.		15.	SAFETY MEASURES - AT ALL TIMES, INCLUDING NON-WORKING HOURS, THE CONTRACTOR SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR CONDITIONS OF THE JOB SITE, CONTRACTOR'S OPERATIONS AND/OR MATERIALS AND EQUIPMENT STORED IN THE STAGING AREAS, INCLUDING SAFETY OF PERSONS AND PROPERTY, AND FOR ALL NECESSARY INDEPENDENT ENGINEERING REVIEW OF THE CONDITIONS. THE ENGINEER'S JOB SITE REVIEW IS NOT INTENDED TO INCLUDE REVIEW OF THE ADEQUACY OF THE CONTRACTOR'S SAFETY MEASURES.		24.	THE CONTRACTOR SHALL MAINTAIN INGRESS AND EGRESS OF PRIVATE PROPERTY ADJACENT TO THE WORK THROUGHOUT THE PERIOD OF CONSTRUCTION.												
5.	IF ANY CULTURAL FEATURES OR ARCHAEOLOGICAL MATERIALS ARE UNCOVERED DURING GRADING, TRENCHING, OR OTHER EXCAVATION WORK, ALL WORK WITHIN ONE HUNDRED (100) FEET OF THESE MATERIALS SHALL BE STOPPED UNTIL A PROFESSIONAL ARCHAEOLOGIST CERTIFIED BY THE REGISTER OF PROFESSIONAL ARCHAEOLOGISTS (RPA) AND/OR SOCIETY FOR CALIFORNIA ARCHAEOLOGY (SCA) HAS HAD AN OPPORTUNITY TO EVALUATE THE SIGNIFICANCE OF THE FIND AND APPROPRIATE MITIGATION MEASURES ARE DETERMINED AND IMPLEMENTED.		16.	CONTRACTOR SHALL BE RESPONSIBLE FOR PREPARING A WPCP FOR APPROVAL BY THE ENGINEER. CONTRACTOR SHALL IMPLEMENT THE WPCP THROUGHOUT THE DURATION OF THE PROJECT, AND AS REQUIRED IN THE PROJECT SPECIFICATIONS.		<u>MAIL SERVICE</u>													
6.	THE CONTRACTOR IS RESPONSIBLE FOR HAVING A COMPLETE AND CURRENT COPY OF THE APPROVED PLAN ON THE JOB SITE AT ALL TIMES.		17.	ALL EXISTING CURBS, GUTTERS, SIDEWALKS, AND DRIVEWAYS THAT ARE TO BE RECONSTRUCTED SHALL BE REPLACED WITHIN FIVE (5) CALENDAR DAYS AFTER THEIR REMOVAL, UNLESS OTHERWISE APPROVED BY THE ENGINEER.		25.	THE CONTRACTOR SHALL CONTACT USPS AT (408-842-1354) TO COORDINATE IMPACTS TO MAIL SERVICE.												
7.	THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR ANY FIELD CHANGES MADE WITHOUT WRITTEN AUTHORIZATION FROM THE CITY.		18.	WHERE PRACTICABLE AS DETERMINED BY THE CITY, THE CONTRACTOR SHALL MAINTAIN PEDESTRIAN ACCESS ALONG WALKWAYS, INCLUDING PUBLIC SIDEWALKS, AT ALL TIMES. THE CITY'S PUBLIC WORKS INSPECTOR MUST APPROVE SIDEWALK CLOSURES IN ADVANCE. WALKWAYS SHALL BE REOPENED AT THE END OF EACH WORKING DAY. WELL COMPACTED BASE ROCK MAY BE USED AS A TEMPORARY WALKING SURFACE.		<u>SITE RESTORATION</u>													
8.	THE CONTRACTOR IS RESPONSIBLE FOR MATCHING EXISTING STREETS, SURROUNDING LANDSCAPE, AND ALL OTHER EXISTING CONDITIONS WITH A SMOOTH TRANSITION IN PAVING, CURBS, GUTTERS, SIDEWALKS, GRADING, ETC., AND TO AVOID ANY ABRUPT OR APPARENT CHANGES IN GRADES OR CROSS SLOPES, LOW SPOTS, AND HAZARDOUS CONDITIONS.		19.	THE CITY MUST APPROVE CONCRETE FORMS BEFORE THE POURING OF CONCRETE. CONCRETE POURED PRIOR TO APPROVAL IS SUBJECT TO REJECTION AND REMOVAL.		26.	EXISTING LANDSCAPING WITHIN THE AREA OF WORK SHALL BE CAREFULLY REMOVED AND REPLACED IN KIND WITH MINIMAL DAMAGE. LANDSCAPE SOIL SHALL BE REPLACED WHEN DIRECTED BY THE ENGINEER WITH BACKFILL MIX PER THE STATED STANDARD SPECIFICATIONS UNLESS OTHERWISE DIRECTED BY THE ENGINEER.												
9.	THE CONTRACTOR SHALL BE RESPONSIBLE TO IDENTIFY THE EXACT LOCATION OF SURFACE UTILITIES. THIS IDENTIFICATION SHALL BE VERIFIED AND COORDINATED BY THE CONTRACTOR WITH THE APPROPRIATE UTILITY COMPANY AS REQUIRED. CALL U.S.A (UNDERGROUND SERVICE ALERT) FOR UTILITY LOCATION QUESTIONS AT LEAST 48 HOURS BEFORE DIGGING. PHONE 1-800-642-2444 (OR DIAL 811).		20.	CURB RAMPS SHALL BE REPLACED BY SAWCUTTING ALONG SCORE MARKS, THEN REMOVING AND REPLACING THE ENTIRE WIDTH OF THE SIDEWALK OVER 4" AGGREGATE BASE AND INSTALLING NO. 4 DOWELS (6" MINIMUM AND 9" MAXIMUM LENGTH) AT 3' ON CENTER, PER THE STANDARD PROVISIONS. THE DOWELS ARE TO BE DRILLED 3" INTO THE EXISTING CURB AND REMAINING SIDEWALK AND EPOXIED INTO PLACE.		27.	THE CONTRACTOR SHALL RETURN THE PRIVATE YARDS, SIDEWALKS, PLANTERS, IRRIGATION SYSTEMS, AND OTHER FACILITIES, PUBLIC OR PRIVATE, DISTURBED BY THE WORK TO THE SAME OR BETTER CONDITION THAT EXISTED PRIOR TO COMMENCEMENT OF THE WORK AND SHALL MAKE A REASONABLE EFFORT TO RESTORE EACH PRIVATE YARD DISTURBED BY THE WORK WITHIN ONE WEEK AFTER THE WORK IS COMPLETE ON THE SAME YARD EXCEPT WHERE THE CITY'S INSPECTOR AGREES THAT FOR CONSTRUCTION REASONS, THE ONE WEEK REQUIREMENT MAY BE EXTENDED.DAMAGED IRRIGATION SHALL BE REPAIRED WITHIN ONE WEEK OF DAMAGE.												
10.	CONTRACTOR SHALL PROVIDE A TWO (2) WEEK ADVANCE NOTICE AND 48-HOUR ADVANCE NOTICE TO PROPERTY OWNERS AND RESIDENTS PRIOR TO COMMENCING CONSTRUCTION WORK. NOTIFICATION TO BE BY LETTER AND SHALL BE APPROVED BY THE ENGINEER.		21.	IF THERE ARE TREE ROOTS PRESENT AT LOCATIONS WHERE CONCRETE REPAIRS ARE SPECIFIED, CONTRACTOR SHALL OBTAIN APPROVAL FROM THE ENGINEER PRIOR TO CUTTING, PRUNING, OR REMOVING TREE ROOTS WHILE PERFORMING CONCRETE REPAIRS. CONTRACTOR SHALL APPLY ROOT CONTROL BARRIERS PRIOR TO PLACING NEW CONCRETE. CONTRACTOR IS RESPONSIBLE FOR OBTAINING RECOMMENDATIONS FROM A CERTIFIED ARBORIST, IF NECESSARY, AT NO COST TO THE CITY.		28.	PAVEMENT STRIPING DAMAGED AS A RESULT OF THE CONTRACTOR'S OPERATIONS SHALL BE REPLACED IN KIND BY THE CONTRACTOR, UNLESS OTHERWISE INDICATED ON THE PLANS OR DIRECTED BY THE ENGINEER.												
11.	TRAFFIC CONTROL SHALL BE PERFORMED IN ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST "CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" PUBLISHED BY		<u>BUS STOPS</u>																
			22.	CONTRACTOR SHALL CONTACT THE VTA GENERAL BUS STOP HOTLINE AT (408) 321-5800 OR VIA EMAIL AT BUS.STOP@VTA.ORG TO COORDINATE IMPACTS TO VTA BUS STOPS. CONTRACTOR															
No.	DATE	BY	REVISIONS			No.	DATE	BY	CITY APPROVALS				CITY OF GILROY DEPARTMENT OF PUBLIC WORKS 7351 ROSANNA STREET GILROY, CALIFORNIA 95020 MAIN (408) 846-0223	DRAWN BY:	JQ	DATE	Scale	FY23 ANNUAL CITYWIDE CURB RAMP PROJECT	Sheet No.
									JULIE DATES, PROJECT ENGINEER					DESIGNED BY:	JQ	2/7/2023	NTS		GN-1
									GARY HEAP, CITY ENGINEER					REVIEWED BY:	GH		PROJECT No.		
														23-PW-280			GENERAL NOTES	SHEET 2 OF 4	



REVISIONS				CITY APPROVALS				CITY OF GILROY DEPARTMENT OF PUBLIC WORKS 7351 ROSANNA STREET GILROY, CALIFORNIA 95020 MAIN (408) 846-0223		DRAWN BY: JO DESIGNED BY: JO REVIEWED BY: GH	DATE 2/7/2023	Scale NTS PROJECT No. 23-PW-280	FY23 ANNUAL CITYWIDE CURB RAMP PROJECT LAYOUT 1	Sheet No. L-1 SHEET 3 OF 4
No.	DATE	BY		No.	DATE	BY								



REVISIONS				CITY APPROVALS					DRAWN BY:		DATE	Scale	FY23 ANNUAL CITYWIDE CURB RAMP PROJECT	Sheet No.
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												PROJECT No.		SHEET 4 OF 4
												23-PW-280		



City of Gilroy

STAFF REPORT

Agenda Item Title: Adopt a Resolution of the City Council of the City of Gilroy Approving the City of Gilroy (Applicant) to Apply for Grant Funds Under the Safe, Clean Water and Natural Flood Protection Program

Meeting Date: March 20, 2023

From: Jimmy Forbis, City Administrator

Department: Administration

Submitted By: Bryce Atkins, Assistant to the City Administrator

Prepared By: Bryce Atkins, Assistant to the City Administrator

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Council adopt the resolution.

ANALYSIS

Staff has submitted a grant application to the Santa Clara Valley Water District (Valley Water) for their 2023 Standard Grant. The grant application is for funding to augment the federal Congressional Grant award for the Lions Creek trail project, to close the gap and enhance the project through additional funding. Even though the City Administrator and their designees are able to apply and sign for grants, Valley Water requires as part of their application process that a resolution of the applicant's governing board be adopted to authorize the application.

The resolution uses language from Valley Water's grant guidelines.

ALTERNATIVES

Council may reject the resolution. If rejected, the City would not be able to meet all the requirements of the grant application and would not be eligible for a grant award.

FISCAL IMPACT/FUNDING SOURCE

None. The resolution does not authorize an expenditure or revenue. If awarded, staff will return to Council with appropriate budget actions and financial analysis for its consideration.

PUBLIC OUTREACH

This item was included in the publicly posted agenda for this meeting.

NEXT STEPS

If approved, staff will relay the signed resolution to Valley Water for inclusion in our grant application.

Attachments:

1. Draft Resolution for the Valley Water District's 2023 Standard Grant application.

RESOLUTION NO. 2023-XX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY
APPROVING THE CITY OF GILROY (APPLICANT) TO APPLY FOR
GRANT FUNDS UNDER THE SAFE, CLEAN WATER AND NATURAL
FLOOD PROTECTION PROGRAM**

WHEREAS, the Santa Clara Valley Water District has enacted the FY2023 Safe Clean Water Grant Program, which provides funds for Water Conservation Research Grants, Pollution Prevention Grants, Support Volunteer Cleanup Efforts and Education Grants, Wildlife Habitat Restoration Grants, and Access to Trails and Open Space Grants; and

WHEREAS, the Santa Clara Valley Water District's Office of Civic Engagement has been delegated the responsibility for the administration of the grant program, and establishing necessary procedures; and

WHEREAS, said procedures established by the Santa Clara Valley Water District require Applicant's Governing Body to certify by resolution Applicant's approval to apply for and accept grant program funds; and

WHEREAS, Applicant will enter into a Grant Agreement with the Santa Clara Valley Water District.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Gilroy hereby:

1. Approves the submission of an Application for grant funds from the Safe, Clean Water and Natural Flood Protection Program;
2. Approves the acceptance of grant funds from the Safe, Clean Water and Natural Flood Protection Program, upon approval of grant funding for the Project by appropriate authorities;
3. Certifies that Applicant has or will have sufficient funds to operate and maintain the Project(s);
4. Certifies that Applicant will review and agree to all terms and conditions stated in the Agreement including the Special Provisions, General Provisions, Financial Provisions and Insurance Requirements contained in the Agreement; and
5. Appoints the City Administrator, or their designee, as its authorized agent to conduct all negotiations, execute and submit all documents and reports including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the performance and completion of the Project.

PASSED AND ADOPTED this 20th day of March 2023, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Marie Blankley, Mayor

ATTEST:

Thai Nam Pham, City Clerk



City of Gilroy

STAFF REPORT

Agenda Item Title: **Appeal of Planning Commission Decision to Deny an Application Proposing Changes to City Code to Allow Up to Two Electronic Billboards in the City of Gilroy [This is a De Novo Hearing at Which the Council Will Decide if the Environmental Review is Adequate, and if so, Whether or not to Introduce the Ordinance.]**

Meeting Date: March 20, 2023

From: Jimmy Forbis, City Administrator

Department: Community Development

Submitted By: Sharon Goei, Community Development Director

Prepared By: Cindy McCormick, Customer Service Manager

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

[First Action] Staff recommends that the City Council, based on its independent analysis and substantial evidence in the record, find that: the Final IS/MND was completed in compliance with the California Environmental Quality Act (CEQA); there is no substantial evidence that the project will have a significant effect on the environment due to mitigations agreed to by the applicant; and the Final IS/MND reflects the City's independent judgment and analysis;

[Second Action] Staff recommends that the City Council decide whether or not to move forward with this ordinance. If it desires to move forward, then the Council should follow option (b) below. If not, then the Council should follow option (a) below:

- a) Deny the appeal and uphold the Planning Commission's decision to deny a Zoning Amendment application (Z 18-04) to amend the Gilroy City Code Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards).

OR

- b) Uphold the appeal and motion to read the ordinance by title only and waive further reading of the ordinance; and

Introduce an Ordinance (Z 18-04) amending the Gilroy City Code Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards), with modifications: Include additional content-based restrictive language in the Ordinance and any Electronic Billboard Development Agreement. Other modifications as the Council deems necessary.

EXECUTIVE SUMMARY

On February 2, 2023, the Planning Commission denied a proposal, and the associated CEQA documents, to amend the City Code. The proposed Project would have modified the City Code to allow the construction and operation of up to two (2) electronic billboard(s) within the Gilroy city limits. To allow such signage, the Project requested amendment of Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) of the Gilroy Municipal Code and adoption of a new Zoning Code Ordinance (Article LV, Electronic Billboards) as described in the attached January 19, 2023 Planning Commission staff report.

Pursuant to Gilroy City Code Section 30.52.42, the action of the Planning Commission denying the zone change application would be final and conclusive if not appealed. However, an appeal was filed on February 21, 2023 and therefore the action by the City Council on the subject application shall be final and conclusive, pursuant to Section 30.52.62.

BACKGROUND

In 2018, an application was submitted to modify the City's Zoning Ordinance to allow an 80-foot tall, 1,200-square-foot area electronic billboard sign on Automall Parkway. In September 2019, following 18 months of communications between the applicant and City staff / executive management, the application was put on hold until September 14, 2020, when the Gilroy City Council held a public meeting to review the proposal and provide preliminary feedback to City staff on whether to consider the proposal. On March 15, 2021, the Council discussed various aspects of what an ordinance might include, as provided in the attached staff report. In June 2021, the City hired a third-party consultant, with experience analyzing environmental impacts associated with electronic billboard projects, to prepare an initial study and associated CEQA documents for the project.

Environmental Assessment: In accordance with Section 15070 of the California Code of Regulations, the City of Gilroy Planning Division prepared an Initial Study for the project and determined that although the proposed project could have a significant

effect on the environment, there will be less than a significant effect in this case because revisions in the project have been made by, or agreed to by, the applicant. Therefore, the City has prepared a Mitigated Negative Declaration (MND) for the project in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, and the Thresholds of Significance adopted May 3, 2004, by the City of Gilroy. The public review period began on August 5, 2022, and ended on September 5, 2022. The City has prepared a Final MND with response to public comments. The Draft MND and Final MND with a response to public comments are attached to this staff report. If approved, the MND would apply to both the proposed ordinance and the proposed billboard proposed to be located at 6460 Automall Parkway. Approval of the MND does not constitute approval of the proposed billboard.

Planning Commission Review: On January 19, 2023 the Planning Commission held a public hearing to discuss the application and accept public testimony on the proposal, including testimony from the applicant. Given the high volume of technical data on the proposal and the multiple comments received from the public, the Commission voted to continue the item to allow more time to review the materials. A summary of the hearing is provided under the analysis section of this staff report.

On February 2, 2023, the Planning Commission continued the discussion of the application and accepted additional public testimony, both for and against the proposal. A motion to recommend approval of the CEQA document failed (3 to 4). Therefore, the City Attorney advised the Commission that in light of the motion not to adopt the IS/MND, the only course of action open to the Commission was to deny the application. A motion was then passed to deny the proposed Ordinance (4 to 3). A summary of the hearing is provided under the analysis section of this staff report.

On February 21, 2023, an appeal was jointly filed by the applicant Mike Conrotto and Outfront Media who have an interest in owning and operating an electronic billboard in the City of Gilroy if the proposed Ordinance is approved.

Additional background information is attached (e.g., City Council and Planning Commission staff reports). A copy of all public correspondence received as of March 9, 2023 is attached and summarized under the public outreach section of this staff report.

ANALYSIS

Existing City Code: The Gilroy Sign Ordinance does not currently allow off-site signage (other than real-estate signs) and has general restrictions for freeway-oriented signs and commercial signage (e.g., height and size limits). The Sign Ordinance also prohibits signs that utilize scrolling or moving text or images (i.e., electronic billboards). Allowance of such signs would require an amendment to City Code Sections 30.37.30 (Prohibited Signs), 30.37.50 (Commercial and Industrial districts), and 30.37.51 (Freeway Oriented Signs).

On January 19, 2023, and February 2, 2023, the Planning Commission discussed the application and accepted public testimony on the proposal prior to rendering a decision.

January 19, 2023 Public Hearing: Following staff's presentation and answers to questions from the Commission, the applicant made a presentation and also answered questions from the Commission.

The applicant, Mike Conrotto, provided background information on the need for the application, including the beneficial ability for Gilroy auto dealers to advertise. A representative from Outfront Media discussed the ability for Amber Alerts and public messaging from the City, the potential revenue for the City, the availability of a sales staff that would be focused on local businesses, the number of advertising spots available, the variable cost of advertising dependent on space availability, and how an advertiser secures space on the sign. Outfront Media also provided answers to several technical questions from the Commission regarding energy usage, illumination visibility, and sign brightness controls.

During the January 19th hearing, three (3) members of the public spoke for and against the project. Public comments are summarized below:

- In addition to direct light impacts, LEDs pollute in the blue part of the spectrum. Blue light is more scattered than other sources of light. Light pollution continues to increase and has negative impacts on human beings and astronomical pursuits.
- Allowing electronic billboards is a big change in Gilroy.
- Billboard lights are distracting.
- Billboard will change Gilroy's rural image.
- Revenue is not worth the impacts, CEQA doesn't take economics into account.
- Signs will be used for illicit advertising.
- National ads will compete with local businesses.
- Ads could bring new customers to Gilroy.

In addition to considering the staff report, project materials, all written and oral public testimony, and all evidence received on the application, the following comments and concerns were discussed by the Planning Commission during the January 19th public hearing prior to continuing the hearing for further analysis:

- The zoning ordinance currently prohibits electronic billboards and there is insufficient reason to change the existing City Code.
- The City may need to pay a billboard owner money to take down the sign.
- The City doesn't know what the potential negative impacts are of a future billboard.
- Signs are designed to grab attention and are therefore distracting to drivers.
- An applicant could ask to change the ordinance to allow more than two signs.
- There is no guarantee that local businesses would pay to advertise on the sign.
- There will likely be a high percentage of national (non-local) advertisements.
- Small mom-and-pop businesses will likely not be able to afford to advertise.

- There has been very little interest expressed from local businesses such as restaurants and the Outlets, or local organizations such as Visit Gilroy, the Chamber of Commerce, and the Downtown Business Association.
- The City's logo on top of the sign might act as an endorsement of whatever is being advertised.
- The electronic billboard is blight and will have negative visual impacts on the City, including Highway 101 which is a gateway to our community
- The City received letters from the Lick Observatory, Sierra Club, Audubon Society, and others who provided information on potential impacts, including energy consumption, greenhouse gas emissions, light pollution, and light impacts on wildlife (e.g., birds, fish) and human circadian rhythms, driver safety, and impacts on astronomical pursuits.
- Several members of the community oppose the sign, with more opposed than in favor.
- The economic benefits don't outweigh the negative social impacts.
- The proposal conflicts with the Gilroy 2040 General Plan Goal LU 8, and Policies LU 8.2, 8.7, 8.11, and 8.13.

February 2, 2023 Public Hearing: Following staff's presentation and answers to questions from the Commission, the City's CEQA consultant provided a presentation and also answered questions of the Commission.

The CEQA consultant explained that they are an independent contractor hired by the City to analyze a series of environmental questions outlined in the CEQA Guidelines (prepared by the State) as well as the thresholds of significance prepared by the City of Gilroy. The consultant then explained how they determine the appropriate CEQA document based on the findings from the analysis (Initial Study). The consultant explained that although an initial scope of work may anticipate the preparation of an MND, the consultant would recommend an Environmental Impact Report in a case where a project could not be mitigated to a less-than-significant level. However, in the subject case, a Mitigated Negative Declaration (MND) was prepared because potential impacts from the project can be reduced to a less than significant level through design features, existing regulations, conditions of approval, and mitigations. Those mitigated impacts include aesthetics (e.g., lighting), air quality, biological resources, cultural resources, and tribal resources.

The CEQA consultant also explained that concerns regarding brightness and driver distraction are valid but may also be subjective. CEQA requires an objective analysis that can be accomplished by analyzing the baseline conditions. In this case, there are already existing light sources from surrounding uses and vehicles on the highway. The analysis also considers regulatory thresholds designed to safeguard human health and safety. If the project is compliant with those regulations and standards, then the effects are determined to be less than significant. Future billboards would then be analyzed against established thresholds and the limitations of the Ordinance. Other objective sources used by the consultant in their analysis included for example a study by the US

Department of Transportation on driver visual behaviors in the presence of electronic billboards.

The Consultant also discussed the public disclosure and noticing procedures for the project. The Consultant concluded their presentation by stating that none of the comments received from the public required the preparation of an Environmental Impact Report, including comments received before and after the Final MND was prepared.

In answering a question of the Commission on when an EIR would be required, the consultant gave an example, explaining that if the project proposed a minimum dwell time (i.e., read time) of less than four seconds, then an EIR would be necessary. However, in this case, the proposed Ordinance requires a minimum dwell time of 8 seconds which is more restrictive than the four-second minimum threshold established by the California Business and Professions Code.

In answering a Commissioner's concern regarding one of the consultants' sources of information, the consultant explained that there may be differences of opinion, however, the consultant relies on governmental sources that are viewed as more objective than sources that may or may not be biased. Furthermore, some of the information provided by other sources may be based on project areas that are vastly different from the subject property (e.g., in the middle of a dark field).

In answering a Commissioner's concern that the CEQA document was prepared towards a predetermined outcome, the consultant explained that the document is prepared whether there are impacts or not. If significant impacts are found that cannot be mitigated, an EIR would be prepared. The City Attorney also explained that the CEQA document doesn't approve a project, rather it is drafted to analyze potentially significant environmental impacts resulting from the project.

The City Attorney also reiterated that a preliminary assumption that an MND may be the appropriate document does not indicate bias because the City still has the ability to shift from an anticipated MND to an EIR if the analysis indicates there are significant impacts that can't be mitigated. There are examples from the past where the City has shifted from an MND to an EIR after the analysis for a particular project was completed.

In answering a Commissioner's question about cultural resources, the consultant indicated that no cultural resources were found on-site and further explained it is unlikely that cultural resources would exist underground due to existing conditions and use of the property. However, mitigations are still included in the document should cultural resources be discovered during construction.

In answering a Commissioner's question about who paid for the CEQA work, the consultant explained that the applicant reimburses the City for hiring the consultant under direct contract with the City. The consultant works for the City, not the applicant. Following public comment, the applicant Mr. Conrotto answered questions from the Commission, including this history of how he became involved with the effort and eventually applied for the Ordinance changes. Mr. Conrotto also opined that allowing an

off-site sign on his property adjacent to the freeway allows outside businesses and organizations to advertise on a sign that is not limited to their own property. He also discussed the benefit of advertising public events on the sign and the potential revenue increases for businesses like auto dealers. He opined that this sign could minimize the need for other large signs along the freeway in Gilroy.

Outfront Media then spoke, stating that approximately 64% of billboard advertisements in the Bay Area are local and that increased sales from advertising could range from 5% to 20% for all businesses including local businesses. Furthermore, in addition to the indirect benefits from increased sales tax revenue, the City would receive a portion of the advertising revenues. Outfront Media also indicated they want to accommodate local businesses and are flexible on the advertising rate when space is available.

In response to a Commissioner's question, Outfront Media stated that there is not a set price for advertisements, as the pricing structure varies based on the time of year, the availability of space, and the person they are working with.

During the February 2nd hearing, 10 members of the public spoke for and against the project as summarized below:

- Local businesses can't afford to advertise. Mostly out of area or national businesses will benefit.
- CEQA mitigations don't address city-wide effects.
- Other cities don't allow these signs or are trying to phase them out. It's easier not to allow them in the first place.
- CEQA law, in general, was not written to address the types of light pollution impacts resulting from electronic billboards.
- Electronic billboard lighting can be seen from at least 17 miles away.
- Billboards detract from the natural landscape and are a blight.
- Billboards cause driver distraction.
- Gilroy residents already know about local businesses.
- A large majority of commenters oppose billboard applications.
- Artificial light disturbs circadian rhythms.
- Billboards do not preserve rural character.
- An electronic billboard will benefit the City and generate traffic for mom-and-pop/small businesses.
- The GDBA board was polled with 60/40 in favor. Additional businesses have indicated that they are also in favor of the electronic billboard. The GDBA will consider taking a position at a future board meeting.
- An electronic billboard will still bring business to those who can't afford advertisements.
- An electronic billboard can provide social and emergency messaging.
- An electronic billboard will dominate the landscape.
- Visitors will see Gilroy as any other city.

- A billboard will negatively impact Gilroy's quality of life.
- CEQA is not a valid tool to measure social, economic, and legal impacts.
- Cities have been subject to lawsuits from the billboard industry (e.g., Outfront).
- More billboards will want to come to Gilroy.
- Highway beautification is good for the City of Gilroy.
- Electronic billboards consume massive amounts of energy.
- As a small business, I'm always looking for new marketing opportunities
- New electronic billboards have newer technology.

In addition to considering the staff report, project materials, all written and oral public testimony, and all evidence received on the application, the following comments and concerns were discussed by the Planning Commission during the February 2nd public hearing prior to rendering their decision:

- The CEQA document relies on a source that has been criticized by other entities.
- The CEQA document was written in a manner that would support project approval.
- Immoral is an outdated term, Ordinance needs to be more specific on content control.
- The billboard could bring in business to City's smaller businesses.
- Gilroy's high-rise buildings already affect its small-town rural character.
- Digital media is a cheaper and more efficient way of doing business.
- Most advertisements will not be local.
- Small businesses can't afford to advertise.
- Emergency messages are already sent out on mobile devices.
- The majority of commenters are opposed to billboards.
- Light pollution, visual blight, and impact on wildlife are all reasons to deny.
- The City banned billboards in the past for a reason.
- The revenue potential does not outweigh the negative impacts.
- Many of the concerns brought up can be addressed in the Development Agreement applied to a specific project.
- Electronic billboards have glare and scattered light impacts that aren't being measured correctly.
- The CEQA document is not comprehensive.
- The Ordinance doesn't include a requirement for non-illumination.
- The height allowance is too tall.
- More than two signs could be proposed.
- The City could be sued as other cities have.
- The Ordinance conflicts with the Gilroy 2040 General Plan Vision Statement, Guiding Principles 2 and 3, LU Goals LU 4 and LU 8, Land Use Policies LU 4.2, LU 5.1, LU 8.2, LU 8.3, LU 8.7 LU 8.11, and Mobility Policy M 5.9.
- The Ordinance conflicts with the City's Interim climate action guidelines regarding lighting and greenhouse gas emissions.

Appeal: On February 21, 2023, an appeal was jointly filed by the applicant Mike Conrotto and Outfront Media who have an interest in owning and operating an electronic billboard in the City of Gilroy if the proposed Ordinance is approved. The appeal letter opines on the following issues brought up during the public hearings:

- Concerns that the Billboard will include obscene content/advertisements:
 - Appellant opines that content would be controlled through state and federal law, the Ordinance, the Development Agreement, and the lease agreement with the property owner
 - Appellant offered additional content restriction language that could be added to the Ordinance to address this concern
- Concerns that Billboard companies are litigious and that litigations would be consuming of staff time and burdensome on the City's budget:
 - Appellant provided examples of their operations, partnerships, and interactions with other cities
 - Appellant opines on certain lawsuits referenced by the public and Planning Commission
- Concerns that lights from billboards cause cancer and cognitive impairment:
 - Appellant opines on brightness level visibility
 - Appellant opines on the *Artificial Light at Night and Cancer: Global Study* article that was criticized by a Planning Commissioner
 - Appellant opines on concerns about astronomical pursuits at the Lick Observatory
 - Appellant opines on concerns about cancer and other diseases
- Concerns that billboards help big national companies at the expense of small businesses and local communities:
 - Appellant provides statistics on small and local business advertising
- Concerns that the Proposed Ordinance does not adequately address prohibitive advertising, requirements for illumination, and height restriction:
 - Appellant opines that the Ordinance does address these issues and provides references to support their assertion
 - Appellant provides examples from other cities with similar regulations regarding prohibitive content, brightness level, and height limits
- Concerns that allowing two billboards would open the floodgates to more billboards:
 - Appellant opines on the City's police power
 - Appellant opines on equal protection should another sign company sue the city on the basis of discrimination
- Concerns that allowing billboards in the City would defeat several General Plan goals, including (a) maintaining the City's culturally rich and small-town quality, (b) revitalization of the City's Downtown, and (3) protecting productive agricultural lands and sensitive wildlife habitats:
 - Appellant opines that the Ordinance addresses these issues and provides references to support their assertion
 - Appellant describes the contextual setting of the proposed location for a billboard on the property of the applicant
 - Appellant references case law to support their assertion that:

- “perfect conformity with each particular policy is neither achievable nor required”
- “to be consistent a project need only be ‘in agreement or harmony’ with the applicable plan”
- “city has broad discretion to construe its own policies”
- “courts do not afford deference to a city’s unreasonable or unlawful interpretation of its policies”
- Appellant provides compatibility language for guiding principles and several goals of the Gilroy 2040 General Plan
- Concerns that the Billboard project goes against the City’s Climate Action Plan of reducing energy, reducing light emissions, lights-out policy at night, and reducing light and emissions:
 - Appellant opines that Outfront Media shares a similar climate pledge and references several steps they have taken to support their assertion
 - Appellant opines that future billboards would be installed pursuant to current electrical codes, including Title 24 of the State Building Code
 - Appellant references energy consumption usage of billboards and opines that future billboard(s) would adopt the latest digital technology
 - Appellant references findings from the IS/MND regarding greenhouse gases and electronic waste
- Appellant opines on the economic impacts of billboards including increased advertising opportunities for small and large businesses, increased sales and tax revenue, and promotion of local events
- Appellant estimates potential revenues to support their assertion

As discussed in the fiscal impacts section of this staff report, the City of Gilroy has not verified the sales tax and economic claims made by the appellant. The City of Gilroy would need to hire a third party to evaluate economic impacts.

On March 3, 2023, the appellant submitted the attached proposed changes to Section 30.55.50(g)(8) of the Draft Ordinance. In summary, the appellant’s proposed changes clarify the role of the Community Development Director and remove the Planning Commission from the review process for compliance hearings. As proposed by the appellant, compliance hearings would only be held by the City Council.

On March 9, 2023, the appellant submitted eight (8) letters of support along with a petition signed by 82 business owners and residents in support of the project.

ALTERNATIVES

The City Council may approve, modify, or disapprove a proposed ordinance amendment. The City Council may, because of a desire for additional information, or due to the submission of significant new material or evidence, refer the proposed ordinance amendment back to the Planning Commission for further study and report. Pursuant to Gilroy City Code section 30.52.60 (City Council findings), the Planning Commission shall not be required to hold a public hearing under these circumstances. Furthermore, failure of the Planning Commission to report within forty (40) days after the

reference, or such longer period as may be designated by the City Council, shall be deemed to be a recommendation to the City Council to approve the proposed modification. The action by the City Council on the application for a Zoning Ordinance shall be final and conclusive.

Pursuant to City Code section 30.52.6 (Notice of decision), the ordinance or resolution shall recite, among other things, the facts and reasons that, in the opinion of the City Council, make the approval, modification, denial, or denial without prejudice of the Zoning Ordinance amendment necessary to carry out the general purposes of the Zoning Code and the General Plan.

Should the Council decide to approve the appeal, a draft Ordinance has been prepared for consideration. Changes proposed by the appellant have not been included in the draft Ordinance since the information is new and has not been considered by the Planning Commission.

FISCAL IMPACT/FUNDING SOURCE

The applicant has paid the standard application review fees, costs associated with the CEQA review including all consultant costs, and costs associated with the City Attorney's review of the application. Consultant contracts and payment for invoicing are managed by the City. The applicant has no control over the consultant's budget, scope of work, or which consultant is hired.

The appellant has submitted a letter opining on potential economic benefits, including enhanced commercial sales and increased sales tax and other tax revenues. However, the City of Gilroy has not verified the sales tax and economic claims made by the appellant. The City of Gilroy would need to hire a third party to evaluate economic impacts.

Questions regarding potential revenues to the City were brought up during the Planning Commission hearing on the project. As indicated in that meeting, potential revenues associated with a future application from Outfront Media would only be considered at a future meeting if the proposed ordinance was approved. However, staff understands that potential revenue is still a topic of interest. While a development agreement is not being considered at this time, staff is including one potential revenue-sharing provision that could be negotiated with an electronic billboard operator. For example, a future development agreement could include a revenue sharing provision for five (5) percent of Net Receipts for a period of 20 years, where net receipts include revenue received from Billboard advertisements, minus operator commissions not to exceed sixteen and two-thirds percent of the gross sales amount (16.66 %), calculated on a semi-annual basis.

As mentioned, potential revenues associated with a future electronic billboard application would only be considered at a future meeting if the proposed ordinance was

approved. The item for Council consideration currently is the environmental document and the proposed ordinance.

PUBLIC OUTREACH

Public Notice: A notice of intent to adopt a Mitigated Negative Declaration was publicized in the August 5, 2022 Gilroy Dispatch (no less than 30 days prior to a decision on the MND). Individual property owners within 500 feet of the subject property where an electronic billboard is proposed were mailed copies of the notice of intent on August 1, 2022.

A community meeting to discuss the project was held on October 25, 2022. Individual property owners within 1,600 feet of the subject property where an electronic billboard is proposed were mailed copies of the notice for the community meeting on October 13, 2022. The community meeting was advertised in the October 21, 2022 Gilroy Dispatch.

A notice of the January 19, 2023 Planning Commission meeting was publicized in the January 6, 2023 Gilroy Dispatch (no less than 10 days prior to the meeting). Individual property owners within 500 feet of the subject property where the electronic billboard is proposed were mailed copies of the notice on January 5, 2023. No additional noticing was required for the February 2nd meeting since this meeting was continued to a date certain; however, staff sent an email regarding the continuance to all individuals and organizations who had previously commented on this agenda item.

Following receipt of the appeal letter, staff sent an email with a link to the appeal letter to all individuals and organizations who had sent comment letters to staff on this item.

The March 20, 2023 City Council public hearing was publicized in the March 10, 2023 Gilroy Dispatch. Staff also sent an email regarding the appeal to all individuals and organizations who had sent comment letters to staff on this agenda item.

The City Council and Planning Commission public hearing packets are also available through the City's webpage. All comments received after the packet was published were posted to the public comment portal by the City Clerk.

Public Comments: As of March 9, 2023, the City received a large volume of comments on the proposed billboard ordinance, including several individuals opposing the project as well as a petition with several businesses supporting the project as described below.

Approximately 10 individuals attended the virtual community meeting on October 25, 2022. Dr. Paul Lynam referred to his previous correspondence regarding dark sky recommendations. Other commenters noted that billboards change community character and therefore many communities ban billboards, that the City could be sued, that once signs go up they are legally difficult to remove, and that signs are distracting to drivers.

As of March 9, 2023, the City received written comments via email from 60 individuals/organizations (not inclusive of commenters who submitted multiple emails/letters or those who commented during the public hearing or community workshop). Of the 60, five (5) individuals support the draft Ordinance, citing the ability to advertise local, regional, and national businesses, as well as local events and emergency communications. The remaining 55 individuals/organizations oppose the draft Ordinance, citing concerns related to aesthetics, astronomical pursuits, the billboard industry in general, the potential for litigation, driver safety, energy consumption, greenhouse gas emissions, light pollution, and light impacts on wildlife (e.g., birds) and human circadian rhythms. CEQA-related comments were addressed in the attached Draft Initial Study and Mitigated Negative Declaration (IS/MND). CEQA-related comments received after the release of the Draft MND were subsequently addressed in the attached Final MND. The Final MND includes a response to CEQA-related comment letters from John Bauters (8-24-22), Shani Kleinhaus/Audubon Society (9-6-22), and Dr. Paul D. Lynam/Lick Observatory (9-5-22). As a result of these letters, the Final MND amended Section 2.4, Biological Resources (page 41), mitigation measure BIO-7 (page 45), and Section 2.17, Transportation (page 98). These minor amendments and clarifications do not change the significance of any of the environmental conclusions within the Draft IS/MND, nor do they require changes to the draft Ordinance. CEQA-related comments received after the publication of the Final IS/MND were also reviewed by the CEQA consultant who noted that the Final IS/MND adequately addressed those subsequent comments.

In addition, Outfront Media submitted the attached response to comments as they relate to the MND (dated September 29, 2022) and general concerns regarding light impacts and driver safety impacts (March 21, 2021). On December 8, 2022, applicant Mike Conrotto submitted a list of benefits for the proposed billboard.

On March 9, 2023 (following the Commission's decision on the project and after the appeal was received), the appellant submitted a petition signed by 82 business owners and residents in support of the electronic billboard. The appellant also submitted letters from eight (8) Gilroy businesses in support of the project.

A copy of the petition and supporting letters as well as all public comments received as of March 9, 2023, when the staff report was completed is attached.

NEXT STEPS

If the appeal is denied by the Council and the Planning Commission's denial (with prejudice) is upheld, the applicant cannot reapply for the proposed Ordinance amendment for one year from the Planning Commission's February 2, 2023 decision (February 2, 2024). However, the City Council could waive the one (1) year waiting period if the Council determines that significant new material or facts are present which justify reconsideration of a zone change through refiling of the application.

If the appeal is approved by the Council and the Planning Commission's denial is overruled, the Council should make two motions; 1) to adopt the MND and 2) to

introduce the zoning ordinance amendments. The proposed Ordinance would come back to the City Council for a second reading, approximately two to four weeks following the first reading. If the Ordinance is subsequently approved by the City Council, the Ordinance would take effect 30 days following the second reading of the Ordinance. The applicant, or any other applicant, could then submit a proposal for an electronic billboard in conformance with the adopted Ordinance.

Attachments:

1. Draft Resolution adopting the Final IS/MND
2. Draft Ordinance
3. 23-2-21 Appeal letter from Mike Conrotto
4. 23-2-21 Appeal letter from Outfront Media
5. 23-2-22 Appellant letter regarding potential benefits
6. 23-3-3 Appellant recommended amendments to Draft Ordinance
7. 23-3-9 Petition and letters of support for the project, as submitted by appellant
8. 23-2-2 Planning Commission Resolution of Denial
9. 23-1-19 Planning Commission Staff Report
10. 23-2-2 Planning Commission Staff Report
11. 22-11-16 Final IS/MND with response to public comments
12. 22-8-4 Draft Initial Study / Mitigated Negative Declaration (IS/MND)
13. 22-12-8 Applicant's comments regarding project benefits
14. 22-9-29 Applicant's response to CEQA comments
15. 21-3-21 Applicant comments regarding Brightness and Road Safety
16. 21-3-15 Council Staff Report
17. Public Comments through 3-9-23
18. Organizational comments from Audubon Society, Sierra Club, Lick Observatory, Green Foothills, through 3-9-23
19. Link to public comments received after 3-9-23

RESOLUTION NO. 2023-XX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
GILROY ADOPTING THE FINAL INITIAL STUDY /
MITIGATED NEGATIVE DECLARATION (FINAL IS/MND)
FOR THE ELECTRONIC BILLBOARD ORDINANCE
PROJECT**

WHEREAS, the Gilroy City Code Chapter 30 (Zoning), Article XXXVII (Sign Regulations) currently prohibits electronic billboards within the city; and

WHEREAS, on May 4, 2018, an application was submitted by Mike Conrotto/Emsee Properties proposing an amendment to City Code Sections 30.37.30 (Prohibited Signs) and 30.37.51 (Freeway Oriented Signs) and other entitlements as needed to allow such signage ("Electronic Billboard Ordinance Project"); and

WHEREAS, the purpose of the Draft and Final Initial Study / Mitigated Negative Declaration (IS/MND) is to identify any potential environmental impacts that would result from the implementation of the Electronic Billboard Ordinance Project in the City of Gilroy, California; and

WHEREAS, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15367, the City of Gilroy has discretionary authority over the proposed project and is the Lead Agency in the preparation of the Draft and Final IS/MND and any additional environmental documentation required for the proposed project; and

WHEREAS, the intended use of the Final IS/MND document is to determine the level of environmental analysis required to adequately analyze the project pursuant to the requirements of CEQA and to provide the basis for input from public agencies, organizations, and interested members of the public; and

WHEREAS, in accordance with Section 15070 of the California Code of Regulations, the City of Gilroy Planning Division prepared an Initial Study for the project and determined 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. Therefore, the City has prepared a Mitigated Negative Declaration (MND) for the project in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, and the Thresholds of Significance adopted May 3, 2004, by the City of Gilroy; and

WHEREAS, a Notice of Intent to adopt a Mitigated Negative Declaration was advertised in The Gilroy Dispatch on Friday, August 5, 2022 (no less than 30 days prior to a decision on the IS/MND), and **WHEREAS** individual property owners within 500 feet of the subject property where the electronic billboard is proposed were mailed copies of the Notice of Intent on August 1, 2022; and

WHEREAS, the public review period for the Draft IS/MND began on August 5, 2022, and ended on September 5, 2022; and

WHEREAS, the City of Gilroy received several comments on the Electronic Billboard Ordinance Project, including comments regarding potentially significant environmental impacts and other concerns that will be considered by the City of Gilroy but are not considered significant environmental impacts pursuant to CEQA; and

WHEREAS, although not required by CEQA, the City of Gilroy prepared responses to significant environmental comments received on the Electronic Billboard Ordinance Project Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND); and

WHEREAS, revisions were made to the Draft IS/MND for the Electronic Billboard Ordinance Project in response to public comments regarding potentially significant environmental impacts; and

WHEREAS, these revisions are minor modifications and clarifications to the document, and do not change the significance of any of the environmental issue conclusions within the Draft IS/MND; and

WHEREAS, the Draft Initial Study/Mitigated Negative Declaration (IS/MND), Draft IS/MND appendices, Responses to Comments, Errata, and the Mitigation Monitoring and Reporting Program (MMRP), comprise the “Final IS/MND” for use by the City of Gilroy in its review and consideration of the Electronic Billboard Ordinance Project; and

WHEREAS; the Final IS/MND reflects the City’s independent judgment and analysis and the City has determined that although the proposed project could have a significant effect on the environment, there will be less than a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent (e.g., mitigations from the MND) that reduce potentially significant impacts to a less than significant impact; and

WHEREAS, approval of the Final IS/MND does not constitute approval of the Electronic Billboard Ordinance Project (Z 18-04, SP 21-08); and

WHEREAS, the Planning Commission considered the Final Initial Study/Mitigated Negative Declaration (IS/MND) for the Electronic Billboard Ordinance Project (Z 18-04, SP 21-08) at a special meeting on January 19, 2023, and at a regular meeting on February 2, 2023, and approved a motion to not recommend adoption of the Final IS/MND; and

WHEREAS, an appeal of the Planning Commission recommendation was filed on February 21, 2023; and

WHEREAS, on March 20, 2023, the City Council held a duly noticed public meeting, at which time the City Council received and considered the staff report as well as all evidence received including written and oral public testimony related to the Final Initial Study/Mitigated Negative Declaration (IS/MND) for the Electronic Billboard Ordinance Project (Z 18-04); and

WHEREAS, based on the City Council's independent analysis and substantial evidence in the record, the City Council found that: the Final IS/MND was completed in compliance with the California Environmental Quality Act (CEQA); there is no substantial evidence that the project will have a significant effect on the environment due to mitigations agreed to by the applicant; and the Final IS/MND reflects the City's independent judgment and analysis; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Gilroy hereby adopts the Final Initial Study / Mitigated Negative Declaration (Final IS/MND) for the Electronic Billboard Ordinance Project.

PASSED AND ADOPTED this 20th day of March 2023 by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Marie Blankley, Mayor

ATTEST:

Thai Nam Pham, City Clerk

ORDINANCE NO. 2023-XX**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GILROY APPROVING AMENDMENTS TO THE GILROY CITY CODE, CHAPTER 30 (ZONING) SECTION 30.37.30 (PROHIBITED SIGNS), SECTION 30.37.50 (COMMERCIAL AND INDUSTRIAL DISTRICTS), AND SECTION 30.37.51 (FREEWAY-ORIENTED SIGNS) AND CREATING ARTICLE LV (ELECTRONIC BILLBOARDS)**

WHEREAS, the Gilroy City Code Chapter 30 (Zoning), Article XXXVII (Sign Regulations) currently prohibits electronic billboards within the city; and

WHEREAS, on May 4, 2018, an application was submitted by Mike Conrotto/Emsee Properties proposing an amendment to City Code Sections 30.37.30 (Prohibited Signs) and 30.37.51 (Freeway Oriented Signs) ("Project"); and

WHEREAS, the project would also require an amendment to City Code Section 30.37.50 (Commercial and Industrial Districts) and the creation of new City Code requirements for the establishment and operation of an electronic billboard (Article LV, Electronic Billboards); and

WHEREAS, On September 14, 2020, the Gilroy City Council held a public meeting to review the proposal and provide preliminary feedback to City staff in the evaluation of the proposal; and

WHEREAS, On March 15, 2021, the Gilroy City Council held a public meeting to review draft policy recommendations to regulate electronic billboards in the City of Gilroy and provide preliminary feedback to City staff in the continued evaluation of the proposal; and

WHEREAS, in accordance with Section 15070 of the California Code of Regulations, the City of Gilroy Planning Division prepared an Initial Study for the project and determined 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. Therefore, the City has prepared a Mitigated Negative Declaration (MND) for the project in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, and the Thresholds of Significance adopted May 3, 2004, by the City of Gilroy; and

WHEREAS, the public review period for the Draft MND began on August 5, 2022, and ended on September 5, 2022, and **WHEREAS** the City prepared a Final MND with response to public comments; and

WHEREAS, on October 25, 2022, the City of Gilroy held an informational community meeting to provide an overview of the project and provide the public with an opportunity to ask questions on the project; and

WHEREAS, on January 19, 2023 the Planning Commission held a duly noticed public meeting, at which time the Planning Commission received and considered the staff report as well as all evidence received including written and oral public testimony related to the proposed Zoning Amendment (Z 18-04), and continued the public hearing to February 2, 2023; and

WHEREAS, on February 2, 2023 the Planning Commission held a duly noticed public meeting, at which time the Planning Commission received and considered the staff report as well as all evidence received including written and oral public testimony related to the proposed Zoning Amendment (Z 18-04) and determined that the proposed Zoning Ordinance text amendment is not necessary to carry out the general purpose of the Zoning Ordinance; and

WHEREAS, on March 20, 2023 the City Council held a duly noticed public meeting, at which time the Planning Commission received and considered the staff report as well as all evidence received including written and oral public testimony related to the proposed Zoning Amendment (Z 18-04) and determined that the proposed Zoning Ordinance text amendment is necessary to carry out the general purpose of the Zoning Ordinance; and

WHEREAS, the location and custodian of the documents or other materials which constitute the record of proceedings upon which the project approval is based is the City Clerk's office of the City of Gilroy.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GILROY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I

Gilroy City Code, Chapter 30, Zoning, Section 30.37.30 is hereby modified as follows:

Section 30.37.30 Regulations in all districts.

(a) Prohibited Signs. Except as otherwise provided in this chapter, the following signs shall be prohibited throughout the City of Gilroy:

- (1) Signs on or above the roof or projecting above the roof eave (other than a gable or mansard type roof) or canopy of a structure.
- (2) Signs projecting more than thirty-six (36) inches above the lowest edge of the eave of a gable or mansard type roof. A sign may be permitted on a vertical surface specifically designed to accommodate a sign, which is lower than the crest of the roof, if such sign area is approved by the planning director.
- (3) Flags, pennants, balloons, streamers, and objects designed to move with the wind, except for flags of the United States of America and the State of California on a flagpole for which a building permit has been issued and as exempted in

sections 30.37.20(d)(20) (feather banner exemption) and 30.37.20(d)(19) (new vehicle sales exemption).

- (4) Lighted signs that flash on and off (except time and weather signs that change less than six (6) times per minute) and signs that utilize scrolling or moving text or images, **except as regulated under Article LV Electronic Billboards.**
- (5) Any sign feature which moves or is designed to move, except for signs which rotate at less than six (6) revolutions per minute.
- (6) Lighted signs whose surface brightness is a detriment to surrounding property, prevents the peaceful enjoyment of life or presents a conflict with safe traffic movement; or advertising displays which emit audible sound, odor, or visible matter, **except as regulated under Article LV Electronic Billboards.**
- (7) Any sign which because of flashing lights, brilliant lighting, motion or apparent motion, shape, design, color or reflected light is a detriment to surrounding property or prevents the peaceful enjoyment of residential uses or presents a conflict with the traffic regulations or traffic safety, **except as regulated under Article LV Electronic Billboards.**
- (8) Any sign which has a design or lighting such that it might be mistaken for a traffic light or signal.
- (9) Signs located in such a manner as to obstruct free and clear vision or the view of any authorized traffic sign, signal or device.
- (10) Any sign which because of its location would prevent free and safe ingress to or egress from any door, window, fire escape, driveway, sidewalk, parking space or bike path, or would obstruct an outward view from any living area.
- (11) Any signs attached to a standpipe or fire escape.
- (12) Signs projecting into a public street, alley or identifiable pedestrian way more than twelve (12) inches excluding signs allowed on awnings.
- (13) Signs projecting into a public right-of-way having less than eight (8) feet clearance between the lowest edge of the sign and the sidewalk grade.
- (14) Signs projecting into a public street area that have less than fifteen (15) feet clearance between the lowest edge of the sign and the adjacent driveway or street grade.
- (15) New signs painted or existing signs repainted directly on any building or structure unless conforming to the requirements of this chapter.
- (16) Any off-site advertising sign, including billboards, in any district except as exempted in section 30.37.90 **and permitted in Article LV Electronic Billboards.**

SECTION II

Gilroy City Code, Chapter 30, Zoning, Section 30.37.50 is hereby modified as follows:

30.37.50 Signs in commercial and industrial districts.

Only signs meeting the following standards will be permitted in commercial or industrial districts, provided that all other applicable provisions of this chapter are also complied with:

(a) Signs shall be located and erected only upon the premises occupied by the person or business to be identified or advertised by such signs, **except as permitted in Article LV Electronic Billboards**. The location of all signs shall be in compliance with the building, electrical and fire prevention codes of the city as amended.

(b) The maximum permissible total sign area for all signs including freestanding signs (but excluding **electronic billboards**, master shopping center **signs**, and freeway signs), for all commercial or industrial districts shall not exceed the maximum total sign area for each business, according to the following table:

	COLUMN 1	COLUMN 2
	Maximum total sign area permitted (in square feet) for each lineal foot of building frontage	Maximum total sign area permitted (in square feet) regardless of building frontage (except as provided in subsection (f) of this section)
PO and CCA districts	N/A	35
C1, TD and CD districts	1 1/2	75
DHD and DED districts	2	75
C3, HC, CM and GD districts	1 1/2	150
M1 and M2 districts	1	350

The permitted sign area may be mounted on a freestanding sign and on any side of a building, except no sign shall be mounted on the side of a building abutting and facing a freeway. The lineal footage of a building frontage shall be that distance of building facing a public street. The maximum sign area for buildings which front on more than one (1) street shall be calculated by using the longest of any one (1) such frontage. In a commercial or industrial complex where there are three (3) or more tenants, the maximum sign for each tenant may be calculated by using the greater of (1) the building

elevation fronting a street or (2) the building elevation fronting directly on the parking lot for the commercial or industrial complex.

(c) The maximum number of freestanding signs shall be one (1) per business, building, or parcel, whichever is most restrictive. An individual business shall not be permitted to have a freestanding sign where there is a master shopping center or group sign. The area of the freestanding sign shall be included in the maximum area allowed. The maximum height for any freestanding sign shall be seven (7) feet, except for freeway-oriented signs, master shopping center signs, and specific subdivision and real estate signs regulated under this chapter. **Electronic billboards are not considered a freestanding sign for the purposes of this Article.**

SECTION III

Gilroy City Code, Chapter 30, Zoning, Section 30.37.51 is hereby modified as follows:

30.37.51 Freeway-oriented signs.

In certain instances, one (1) on-site freeway-oriented sign may be permitted in addition to one (1) monument sign. **Electronic billboards are not considered a freestanding sign for the purposes of this Article. However, no freeway-oriented sign shall be allowed on property that already contains an electronic billboard.** The freeway-oriented sign shall not exceed sixty (60) feet in height and shall not exceed one hundred (100) square feet of sign area. The parcel on which the freeway sign is to be located must meet all of the following criteria:

- (a) The parcel exceeds twenty thousand (20,000) square feet in land area.
- (b) The parcel is within six hundred sixty (660) feet of an off-ramp from U.S. 101.
- (c) The parcel is occupied by a use which is a permitted use in an HC highway commercial district.

Up to one hundred fifty (150) square feet of sign area for the freeway sign is permitted where additional freestanding signage is limited to one (1) monument sign not exceeding thirty-six (36) square feet in area.

SECTION IV

Gilroy City Code, Chapter 30, Zoning, Article LV Electronic Billboards is hereby proposed as follows:

Article LV (Electronic Billboards)

Section 30.55.10 Purpose and Intent

The purpose of this Article is to provide adequate signage for commercial businesses that have a regional customer base, establish procedures for the review and approval of electronic billboard(s), and specify development criteria to ensure that the permitting of electronic billboard(s) does not create visual clutter

or create other operational impacts on surrounding uses, or the public health, safety or general welfare of the City.

Section 30.55.20 General Requirements

(a) Consistency with Local, State and Federal Law. The owner and operator of the electronic billboard shall comply with all applicable federal, state, or local laws when constructing, operating, improving, maintaining, repairing, and removing the electronic billboard(s), including the Highway Beautification Act of 1965 (23 U.S.C. § 131), the Outdoor Advertising Act (Cal. Bus. & Prof. Code § 5200 *et seq.*), and the regulations promulgated to implement the Outdoor Advertising Act (4 Cal. Code Regs. § 2242(c) *et seq.*).

(b) Property Owner Consent. No electronic billboard(s) shall be approved for any site without proof of legal or equitable interest in the site, and the written consent of the property owner, demonstrating the right to install and operate the electronic billboard(s) on the subject property.

(c) City Agreement. The owner/operator shall enter into a development agreement, operating agreement, lease agreement, contract, license or other accord in form acceptable to the City Attorney with the City ("City Agreement"), setting forth any required fees, revenues, terms, off-site advertisement criteria, content control standards, community service message provisions, community outreach requirements, maintenance standards, conditions that trigger billboard removal, and other covenants or restrictions needed to offset or mitigate the impacts of a proposed electronic billboard(s).

1) The City Administrator shall make recommendations to the city council regarding the type and content of the City Agreement. The city council shall have final City Agreement approval authority.

2) Nothing contained in this Article shall require the City to negotiate and/or approve a City Agreement on terms that are unacceptable to the City or the City Attorney in their sole and absolute discretion.

3) The City Agreement shall include requirements that applicants obtain all additional federal, state, and local permits and approvals necessary for installation.

4) The City Agreement may include provisions requiring removal or replacement of other billboards owned by the owner/operator.

(d) Relocation. Any electronic billboard(s) erected in accordance with this ordinance may be subsequently relocated to another location in accordance with this Article.

(e) Maximum Number. A maximum of two (2) electronic billboard(s) may be

permitted in the City of Gilroy.

(f) **Minimum Distance Between Electronic Billboard(s).** The minimum distance between electronic billboard(s) shall be 1.5 miles. All distances shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.

(g) **Additional Standards and Provisions.** Based on new or updated information or studies, the city council may amend the standards and other provisions set forth in this Article to mitigate effects on the visual environment or on residential properties or other sensitive receptors; to reduce driver distractions or other hazards to traffic; or to otherwise protect and promote the public health, safety, and welfare.

Section 30.55.30 Development Standards

(a) **Location.**

1) **Electronic billboards may be located on-site or off-site on private or public property, designated on the General Plan Land Use Diagram as General Services Commercial or City Gateway District.**

2) **Electronic billboard(s) shall not be allowed in any area designated as "Landscaped Freeway" as defined under California Business & Professions Code Section 5216, unless otherwise permitted by State law.**

3) **No part of any electronic billboard(s) shall cross onto an adjacent private or public property.**

(b) **Distance from Highway 101.** The electronic billboard(s) shall be located within 660 feet of Highway 101.

(c) **Distance to and Visibility from Residential and Hotel Uses.** Electronic billboard(s) shall be placed at least 500 feet from any residential zone or residential use. The measurement shall be from the closest edge of the billboard to the closest edge of the residential zone or closest property line on which a residential use is located. To the extent possible, the electronic billboard(s) shall be located and oriented in a manner that avoids or minimizes the direct exposure of the display as viewed from adjacent or nearby residential or hotel uses.

(d) **Vehicular Safety.** No electronic billboard(s) shall be placed, constructed or maintained on any property in the City of Gilroy if its location, size, nature, or type constitutes or tends to constitute a hazard to the safe and efficient operation of vehicles. Electronic billboard(s) operating in accordance with this Article, the Outdoor Advertising Act, the California Vehicle Code, and the City Agreement shall be deemed to be in compliance with this subsection.

(e) Maximum Height. The maximum height of any electronic billboard(s) including any architectural design elements shall be 75 feet as measured from grade at the base of the sign to the highest point of the sign structure, provided that the measured grade does not include fill or berms.

(f) Maximum Digital Display Surface Area. The maximum total digital display surface shall be less than or equal to six hundred seventy-two (672) square feet per sign face, with no more than two sign faces per electronic billboard(s).

(g) City Branding. Unless otherwise approved by the city council, the electronic billboard(s) shall include the words "City of Gilroy" and/or the City insignia permanently affixed above the digital display area. This branding shall not be included in the maximum digital display surface area, but shall be included in the overall height.

Section 30.55.40 Operational Standards

(a) Electronic billboard(s) shall conform to the requirements of the City Agreement and approved electronic billboard(s) permit.

(b) Public Service Announcements. The City of Gilroy shall be permitted to use a minimum number or percentage of advertising spots for City events, public information, emergency alerts, and other similar public service announcements, in accordance with the City Agreement approved for the electronic billboard(s).

(c) Emergency Alerts. Electronic billboard(s) shall be connected to the National Emergency Network and provide emergency information, including child abduction alerts (*i.e.*, "Amber Alerts"), in accordance with local and regional first responder protocols.

(d) Content limitations. No electronic billboard(s) shall display any statements or words of an obscene, indecent or immoral character, or any picture or illustration of any human figure in such detail as to offend public morals or decency, or any other matter or thing of an obscene, indecent or immoral character, pursuant to Business and Professions Code Section 5402 and judicial decisions interpreting the same.

(e) Vehicular Safety. Electronic billboard(s) shall not be operated in such a fashion as to constitute a hazard to safe and efficient operation of vehicles on streets or freeways and shall comply with all applicable local, state, and federal laws and regulations. Electronic billboard(s) operating in accordance with this Article, the Outdoor Advertising Act, the California Vehicle Code, and the City Agreement shall be deemed to be in compliance with this subsection.

(f) Electronic billboard(s) shall not simulate or imitate any directional, warning, danger, or information sign, or any other display likely to be mistaken for any

permitted sign intended or likely to be construed as giving warning to traffic, for example using such words or phrases as "stop" or "slow down."

(g) Electronic billboard(s) shall not incorporate or involve any red or blinking or intermittent lighting that may be mistaken for warning or danger signals nor shall its illumination impair the vision of travelers on the adjacent freeway and for roadways.

(h) Message Standards.

1) Static image/messages. Electronic billboard(s) shall display only still or static images or messages.

i. Static image/message(s) shall not include the varying of light intensity.

ii. Static image/message(s) shall not move or present the appearance of motion and shall not use flashing, scintillating, blinking, or traveling lights or any other means not providing constant illumination.

2) Minimum display time. Each image or message on the sign shall be displayed for a minimum of eight (8) seconds.

3) Maximum transition time. Transition or blank screen time between still images may not exceed one (1) second.

(i) Illumination Standards.

1) Light intensity. The intensity of each lighting element or lamp within the visual display or the electronic billboard(s) structure shall not impair the vision of drivers or travelers. Illumination shall be considered vision impairing when its brilliance exceeds the values set forth in section 21466.5 of the California Vehicle Code, or any successor statute or California Department of Transportation regulations.

2) Auto-off. The electronic billboard(s) shall be designed and operated with systems and monitoring in place to either turn the display off or show full black screen in the event of a malfunction.

3) Automatic dimming device. Electronic billboard(s) shall have a light sensing device that will automatically adjust the brightness as ambient light conditions change.

4) Illumination orientation. The electronic billboard(s) shall aim, focus and shield any illumination sufficiently to prevent glare or overcast of illumination into adjacent residential or hotel vantage points.

5) Brightness. The maximum intensity of light output produced by

electronic billboard(s) display shall not exceed 0.3 foot-candles above the ambient light level at any time, as measured using a foot-candle meter at a distance of 250 feet, and shall otherwise comply with section 5403(g) of the Outdoor Advertising Act and section 21466.5 of the California Vehicle Code.

Section 30.55.50 Application Review procedures

- (a) Electronic Billboard(s) Permit. An electronic billboard(s) permit and associated environmental review shall be required for the establishment and operation of electronic billboard(s).
- (b) Application. Applications for establishment and operation of electronic billboard(s) shall be filed with the planning department on a form prescribed for this purpose by the City of Gilroy. A site development plan and architectural design drawings shall accompany the application. Such other pertinent information shall be included as may be required by the application filing requirements and deemed necessary to evaluate the application.
- (c) Permit Fees. Fees shall be charged on a time and materials basis and shall include payment for project review and preparation of documents, legal fees, CEQA fees, noticing fees, and any other fees deemed reasonably necessary to establish compliance with the requirements of this Article.
- (d) Planning Commission Public Hearing. The planning commission shall conduct a duly advertised public hearing to consider the application, pursuant to the provisions of Article LI. The planning commission shall announce its decision to recommend approval, or to deny or deny without prejudice the requested electronic billboard(s) application. In the case of a recommendation of approval, the planning commission shall adopt a resolution and make findings demonstrating that the application is necessary to carry out the general purpose of this Article and applicable general plan goals and policies. In the case of a recommendation of approval, the application will be scheduled for a city council hearing. The action of the planning commission denying the application shall be final and conclusive unless within twenty (20) days following the adoption of the resolution by the planning commission, an appeal in writing is filed with the clerk of the city council by the applicant or an interested party.
- (e) City Council Public Hearing. If the planning commission adopts a resolution recommending approval or if a denial is appealed, the city council shall conduct a duly advertised public hearing pursuant to the provisions of Article LI. The city council may approve, modify or deny a proposed electronic billboard(s) application.

(f) Necessary Findings. To grant electronic billboard(s) approval, the council must make the following findings:

- 1) The location, design, and operation of the proposed electronic billboard(s) is consistent with the goals, objectives, purposes and provisions of the General Plan, the City Code, this Article, and any applicable policies, master plans, or specific plans;**
- 2) The proposed electronic billboard(s) will promote both economic development and public benefits that would not otherwise accrue to the public in the absence of its installation;**
- 3) The proposed electronic billboard(s) is architecturally compatible with the uses and structures on the site and in the surrounding area;**
- 4) The proposed electronic billboard(s) will not create a hazard to vehicular or pedestrian traffic; and**
- 5) The proposed electronic billboard(s) will not result in a threat to the general health, safety and welfare of City residents.**

(g) Conditions. The granting of approval for electronic billboard(s) may include such conditions as the planning commission or city council deems reasonable and necessary under the circumstances to carry out the requirements of the General Plan, City Code, and the intent of this Article. The following conditions shall be standard on all electronic billboard(s) approvals, where applicable:

- 1) City Agreement. The owner/operator shall enter into a City Agreement with the City, as provided in Section 30.55.20(c) of this Article. The Permit shall not take effect until a City Agreement is executed by the owner/operator and the City.**
- 2) Caltrans Off-Site Advertising Permit. The owner/operator shall obtain any required permit from the California Department of Transportation ("Caltrans") for any proposed electronic billboard(s). The electronic billboard(s) permit shall be conditioned to require the owner/operator to provide the City with a copy of the approved Caltrans permit prior to issuance of a building permit for construction of the electronic billboard(s).**
- 3) Federal, State, and Local Laws. The owner/operator shall comply with all applicable federal, state, and local laws when constructing, operating, improving, maintaining, repairing, and removing the electronic billboard(s), including any applicable provisions of the Highway Beautification Act of 1965 (23 U.S.C. § 131), the Outdoor Advertising Act (Cal. Bus. & Prof. Code, § 5200 *et seq.*), and the regulations promulgated to implement the Outdoor Advertising Act (4 Cal. Code Regs. § 2242(c) *et seq.*).**

- 4) **Operational Impacts.** Operation of the electronic billboard shall not create significant adverse impacts on surrounding uses, or the public health, safety or general welfare of the City. Electronic billboards operating in accordance with this Ordinance and in compliance with the City Agreement shall be deemed to be in compliance with this subsection.
- 5) **Maintenance:** The owner/operator shall ensure that the electronic billboard(s) and support structures do not provide an attractive nuisance and shall be continually maintained free from graffiti. The owner/operator shall ensure that maintenance service is available by telephone and able to respond to a repair call “24/7” in the event electronic billboard(s) becomes damaged or is malfunctioning.
- 6) **Noise reduction.** To the extent necessary, electronic billboard(s) shall incorporate noise reduction and attenuation remedies sufficient to limit any exterior intermittent noise level effects (intensity and frequency) in accordance with the standards of the City’s City Code and General Plan.
- 7) **Time Limits.** If any application for which electronic billboard(s) approval has been granted has not obtained building permits within one (1) year from the date of notification of approval, the approval shall be deemed automatically revoked. Upon application, an extension of time may be granted by the city council.
- 8) **Compliance Hearings.** A minimum of three initial compliance hearings before the City planning commission and/or city council shall be required as follows: (a) six months from the date of final building permit issuance; (b) six months from the date of the first compliance hearing; and (c) 12 months from the date of the second compliance hearing. Upon a finding of substantial compliance, the Community Development Director may waive the second and/or third hearing. Following the initial compliance hearing(s), the owner/operator, and/or property lease holder shall be subject to subsequent compliance hearings before the City upon request, due to non-compliance.
- 9) **City Agreement / Permit Violations.** Upon finding that the electronic billboard(s) is not being operated in compliance with the City Agreement and/or all conditions of approval, the Community Development Director shall forward a copy of the findings of such violation to the planning commission for hearing. The applicant shall also be sent notice at least ten (10) days prior to the date of such hearing. If the planning commission finds that a violation has occurred, the electronic billboard(s) owner, operator, and/or property lease holder shall abate or remove the violation.

SECTION V

If any section, subsection, subdivision, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise void or invalid by any court of competent jurisdiction, the validity of the remaining portion of this Ordinance shall not be affected thereby.

SECTION VI

Pursuant to section 608 of the Charter of the City of Gilroy, this Ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

INTRODUCED ON the 20th day of March 2023, **PASSED AND ADOPTED** this ____ day of _____ 2023 by the following roll call vote:

AYES: **COUNCIL MEMBERS:**

NOES: **COUNCIL MEMBERS:**

ABSTAIN: **COUNCIL MEMBERS:**

ABSENT: **COUNCIL MEMBERS:**

APPROVED:

Marie Blankley, Mayor

ATTEST:

Thai Nam Pham, City Clerk

February 10, 2023

Marie Blankley, Mayor of the City of Gilroy
Members of the Gilroy City Council
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Re: Appeal Planning Commission's Denial of Ordinance
Assessor Parcel Number: 841-15-069; Located at 6460 Automall Parkway
Appeal Hearing Scheduled before Gilroy City Council

Dear Mayor Blankley and Honorable Members of the City Council:

I am writing to memorialize and confirm that I will join, as a co-appellant, Outfront Media's appeal of the City Planning Commission's February 2, 2023 decision to deny my request for an ordinance change that would allow limited electronic billboards in the City.

The denial of my request for a zoning amendment has a significant impact on my property and the local business community, and jeopardizes job growth and millions of dollars in revenue for all local businesses. A lot of misinformation was presented in advance of, and during, the Planning Commission's hearing, and I ask that the City Council continue its practice of considering only established facts, supported by evidence.

I also ask that the City Council consider that any future sign, per the terms of the proposed ordinance, will be limited to two sign locations that are (1) situated only along highways; (2) located on properties that are urbanized, support industrial and commercial uses, and are already saturated with light; and (3) located more than 500 feet away from residential zones and residential uses. These details matter, as light from any approved billboards will be carefully controlled such that it will generally not register on light meters after a distance of 250 feet. The applicable standard, based on scientific metrics, will be a legal requirement under the proposed ordinance.

If you require any additional information or have any questions, please do not hesitate to contact me.

Thank you for your time and consideration.

Sincerely,



Mike Conrotto

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February 17, 2023

VIA ELECTRONIC MAIL

Marie Blankley, Mayor of the City of Gilroy
 Members of the Gilroy City Council
 City of Gilroy
 7351 Rosanna Street
 Gilroy, CA 95020

Re: Appeal of Planning Commission's February 2, 2023 Denial of Ordinance Change
 (Project Number: Z 18-04)

Dear Mayor Blankley and Honorable Members of the City Council:

Outfront Media, Inc. is an outdoor media company that provides digital advertising services for businesses so they can reach their target audiences. Although Outfront provides advertising services to businesses of all sizes, the majority of Outfront's users are small and local businesses.

By this letter, Outfront appeals the City Planning Commission's split decision on February 2, 2023 to deny a proposal to change the City's sign ordinances ("Proposed Ordinance").

Almost five years ago, on May 4, 2018, local business owner Mike Conrotto submitted an application for an ordinance change that would permit a maximum of two electronic billboards within the City. On January 19, 2023, the Planning Commission reviewed the application but continued the hearing for further discussion. On February 2, 2023 the Planning Commission resumed the Public Hearing and, on a close vote of four to three, decided to deny the application.

At the Planning Commission meetings, members of the local community and out-of-town members of a San Jose group called "No Digital Billboards in San Jose" spoke against the ordinance change. Meanwhile, members of the Gilroy business community spoke out in favor of the zoning amendment. The debate was spirited and, listening to both sides, one came away with the sense that the City had to choose between preservation of its small-town feel, on the one hand, and a significant influx of money to local businesses and the City, on the other. In this day and age, we are accustomed to binary debates — things are one thing or the other, and there is no in between.

The truth is, the City of Gilroy can have both.

A change to the City's sign ordinance could enhance commercial sales in City businesses by as much as \$16.7 million and City tax revenues by \$3.1 million. Local businesses would benefit most, according to studies and statistics. Meanwhile, the ordinance change would allow just two digital billboards in the entire City, and these billboards would be located in urbanized areas

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adjacent to the highway — areas of the City that already are lit up at night with illuminated business signs, parking lights, and continuous highway traffic. The first sign for consideration, which Mr. Conrotto has proposed,¹ would sit in a heavily used parking lot next to a Tesla dealership with modern, illuminated signage (see photos below). This site would not be visible to homes because the nearest home would sit almost two thousand feet away and on the far side of buildings and trees.



In the debate before the Planning Commission, one would believe, in the absence of fact-checking, that digital signs cause disease and other maladies. It is a tactic — and an effective

¹ The City would consider this application separately, at a later date, the Proposed Ordinance changes are adopted.

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one — for advocates of any cause to sensationalize claims. Unfortunately, this often comes at the expense of truth.

The City Council has a tradition of making fact-based decisions, and we request the Council continue this tradition and take a hard look at all claims and evidence in this matter. In this case, we note that the City hired an independent expert to examine the environmental impacts of the ordinance change, and would encourage the City to rely on the science-based analysis in the administrative record.

In this vein, Outfront would like to address certain misconceptions that have arisen in the course of these proceedings in the hopes of reassuring the City that digital signage is safe, and that Outfront has been a respectful neighbor in other jurisdictions — as well as a great partner with other local governments. Please consider, for instance, the following four misconceptions that have arisen, and the actual facts that matter:

1. **Misconception:** Billboards somehow will be allowed to showcase obscene images in the name of free speech, and the City will not be able to intervene.
 - **Fact 1:** Obscene materials cannot legally be displayed on a billboard and, as correctly explained by the City Attorney during the February 2, 2023 Planning Commission meeting, “the City will be fully protected” because the Proposed Ordinance incorporates a variety of protective mechanisms that would allow the City adequate control over the content of billboards. These mechanisms include: (i) the requirement for compliance with a Development Agreement with the City (which would be a result of an elaborate negotiation process between the City and the billboard company, and which would go through a comprehensive review process by the City’s Planning Commission, the City Council, and the public); (ii) the requirement for the billboards to comply with federal, state, and local laws which also, and already, prohibit obscenity; and (iii) the existing regulation provisions within the Proposed Ordinance. (February 2, 2023 Archive Meeting at 1:24:21.) Specifically, Section 30.55.40(a) of the Proposed Ordinance requires billboards to comply with all applicable federal, state, and local laws; Section 30.55.20(c) requires billboard owners and operators to work out a development agreement with the City; and Section 30.55.40 incorporates standard language prohibiting obscene, indecent, or immoral character as specified in the California Business and Professions Code Section 5402.
 - **Fact 2:** Furthermore, under the market participant doctrine, when a government is acting as a market participant, rather than a regulator, it is treated like any other private entity in the market place without being subject to certain constitutional restrictions that would normally apply to public actors. (See *Trojan Technologies, Inv. v. Com. of Pennsylvania*, 916 F.2d 903 (3rd Cir. 1990 [a state or state subdivision is not subject to Commerce Clause restraints where it acts as a market participant rather than a market regulator].) Since a development agreement between the City and a billboard company would be a private contract resulting from the parties’ negotiation and discussions, it would be enforceable and not subject to free speech challenges. Accordingly, and to reiterate the City Attorney’s correct statements, the City, through a development agreement, would

be able to prohibit content such as political speech, cannabis, and any other types of objectionable content.

- **Fact 3:** Insofar as Outfront is able to construct a sign on Mike Conrotto's property, Outfront and Mr. Conrotto have already agreed to content prohibitions on the sign. The relevant lease provision provides: "Lessee shall not display, or allow the display, on the Sign Structure or anywhere on the Leased Premises of (i) any political signage, (ii) any advertisement that promotes the sale or use of tobacco products, alternatives to tobacco products, cannabis or other illegal substances, or (iii) contains sexually oriented content." Outfront and Mr. Conrotto's can attest that their sensitivities are similar to the City's.
- **Fact 4:** Outfront would be more than willing to add content-based restrictions to any development agreement that it ultimately negotiates with the City. By that token, to the extent any specific billboard project moves forward, Outfront proposes to include the following language regarding content restrictions in the Proposed Ordinance:

Billboards may not display any message on the digital billboard that: (a) promotes the sale of use of firearms or tobacco products, whether directly or indirectly; (b) contains advertising for cannabis or cannabis-related products; (c) promotes adult entertainment, products, conventions, events, or websites; (d) contains "obscene matter," as that term is defined in local, California or federal law, including but not limited to any statements or words of an obscene, indecent or immoral character, or any picture or illustration of any human figure in such detail as to offend public morals or decency or any other matter or thing of an obscene, indecent or immoral character; (e) contains any "political advertising," which means advertising that promotes or opposes any candidate for public office or promotes or opposes a ballot measure, referendum, bond issue, or any federal, state or local legislation, regulation, or other discretionary action; or (f) contains language that presents a clear-and-present danger of causing riot, disorder, or other imminent threat to public safety, peace, or order.

Outfront is open to considering additional terms.

2. **Misconception:** Billboard companies are litigious.

- **Facts:** Outfront has had good, successful partnerships with dozens of cities and counties throughout California, including without limitation, the City of Santa Clara, the City of Millbrae, Alameda County, the City of South San Francisco, the City of San Pablo, the City of Fairfield, the City of El Monte, the City of Bell Gardens, City of Buena Park, and the City of Hawthorne. Never has any of these public agency partners in California ever found Outfront's digital signs to be in non-compliance with a local ordinance, and never has Outfront sued one of these public agency partners. The lawsuits that billboard opponents have referenced are either those brought by activist groups (not billboard companies), or rare, out-

of-state lawsuits initiated by Outfront to protect its rights against overreaching governments. Please consider, too, that:

- Outfront operates approximately 500,000 billboards across North America, and the existence of a few lawsuits does not mean Outfront is litigious.
- Governmental entities, which include hundreds of thousands of federal, state, and local agencies across the country, do not always act in accordance with the law.

At least one other local, California jurisdiction has reached out to the City to share its experience with Outfront, and we invite the City to talk with that agency — or any others — with whom Outfront has a partnership.

3. **Misconception**: Lights from billboards cause cancer and cognitive impairment.

- **Facts**: There is no evidence that billboards cause any health issues. Here, the City has surgically designed the Proposed Ordinance such that brightness levels of digital signs will effectively disappear after 250 feet. The sign operates, essentially, at the same brightness as a laptop screen and, while it will be visible beyond a distance of 250 feet, it will not cast light on the ground beyond that point. Members of the public, including scientists, have claimed that "scattered light" will cause deleterious effects, but they have misused existing studies to reach their conclusions. They have let advocacy cloud their scientific judgment.

The only study that was cited to for these purposes was the article entitled "Artificial Light at Night and Cancer: Global Study" article by Al-Naggar, A., Anil, S. However, this single article is not substantial evidence because:

- (a) the article focuses on the addition of light sources in *untouched, natural habitat* (e.g., forests) rather than urban areas, and is therefore irrelevant;
- (b) the article shows a limited *correlation* between light and disease, which is not the same thing as causation,² and the study acknowledges that other factors, such as *population size, electricity consumption, air pollution, forest coverage* also could be the culprit. Other unaccounted-for factors also include *water contamination, alcohol use, smoking, and obesity*; and
- (c) the article omits proof of its findings (the p-value of the correlation between exposure to ALAN and cancer rate) and therefore fails to substantiate its conclusion.

What people fear are the effects on their own interests. The astronomy community, for instance, is concerned about effects on the Lick Observatory, and yet this facility sits 25 miles away from the City of Gilroy. To indulge in the idea

² It is a fallacy of logic to indulge in the idea that correlation even implies causation. The fallacy is recognized by the scientific community and even has its own Latin phrase, *cum hoc ergo propter hoc*.

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that two digital billboards would have any impact would require ignoring the reality that two digital signs, within a 25-mile radius of the observatory, are two points of light among the billions of lights that shine in this area from the millions of homes, businesses, and cars that bustle through the greater San Jose area. The real fear, perhaps, is that two signs here will lead to more signs, but the City has full authority to draw the line at a single pair of signs, and its decision would be legally unassailable.

The claim that a digital billboard will cause cancer and other disease is an irresponsible claim.

4. **Misconception**: Billboards help big national companies at the expense of small businesses and local communities.
 - **Facts**: Outdoor advertising is an industry that is geared towards small and local businesses. Nationally, small businesses make up 70% of outdoor advertising revenue, and, in the Bay Area, 64%.³ In fact, small and local businesses, including travel-related businesses such as hotels, restaurants, gas stations, and businesses related to entertainment and tourism, are more reliant on billboards than other types of businesses due to the need to direct motorists to their location. Furthermore, billboards provide a much more affordable advertising platform than other conventional and modern platforms.⁴

Section I of this letter discusses and responds to the reasoning upon which the Planning Commission based their denial. For summary, Outfront would like to preliminarily address three main bases upon which a slim majority of the Planning Commission made their denial, as follows:

1. **Planning Commission assertion**: The Proposed Ordinance change does not cover concerns that other cities have addressed, such as prohibitive advertising, requirement for illumination, and height restriction.
 - **Facts**: The Proposed Ordinance change addresses all of the above points. The City, in drafting the Proposed Ordinance, has made sure that the language in the Ordinance reflects what has been adopted by other cities and are legally sufficient and valid. Specifically:

³ FLORIDA TAX WATCH, THE ECONOMIC IMPACT OF FLORIDA'S OUTDOOR ADVERTISING INDUSTRY FROM A PRE- AND POST-SEPTEMBER 11, 2001 PERSPECTIVE at 3 (data from national surveys).

⁴ On average, it costs \$7.50 to reach 1,000 people with digital place-based media. Compared to other media sources, it costs approximately \$6.75 for radio, \$23.33 for podcasts, \$13.24 for magazines, \$46.82 for newspaper, \$20 for broadcasting TV, \$12 for cable TV, and \$2.21 - \$10.47 for online advertising per 1,000 people. Soloman Partners, Media CPM Comparisons (January 2022); Outfront Media data.

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- Regarding prohibitive advertising, proposed Section 30.55.40(c) provides that “No electronic billboard(s) shall display any statement or words of an obscene, indecent, or immoral character, pursuant to Business and Professions Code Section 5402 and judicial decisions in interpreting the same.” This content control mirrors the restrictions adopted by many other California cities, and what exists in state law.
 - Regarding controls on illumination, Section 30.55.40(i)(2) provides “Electronic billboard(s) shall be designed and operated with systems and monitoring in place to either turn the display off or show full black screen in the event of a malfunction.” Section 30.55.40(i)(5) also requires that the signs' brightness never exceed 0.3 foot-candles at 250 feet, which is a brightness level that matches 30 percent of light one would see from a candle on a table. Beyond 250 feet, brightness levels generally would not register on a light meter.
 - Regarding the height restriction, Section 30.55.30(e) provides “The maximum height of any electronic billboard(s) including any architectural design element shall be 75 feet as measured from grade at the base of the sign to the highest point of the sign structure, provided that the measured grade does not include fill or berms.” The City Council should be aware that taller signs are not preferred by sign companies, and generally taller heights are adopted only where there is an elevated freeway. Outfront prefers signs to be closer to the horizon, which make them easier for motorists to see.
2. **Planning Commission assertion:** Allowing two billboards would open the floodgates to more billboards
- **Facts and law:** The City would have the police power to enact and enforce its limitation on the number of billboards in the City, and any billboard companies that want to erect a third billboard within the City would have no legal basis to challenge the City's ordinance or the City's authority to enforce it. The idea that no public agency can put a limit on billboards is a fallacy; even state law puts a "freeze" on the number of billboards in certain parts of the state. (See, e.g., Cal. Bus. & Prof. Code § 5443).
3. **Planning Commission assertion:** Allowing billboards in the City would defeat several General Plan goals, including (a) maintaining the City's culturally rich and small-town quality, (b) revitalization of the City's Downtown, and (3) protecting productive agricultural lands and sensitive wildlife habitats.
- **Facts and law:** New billboards would not compromise the City's culture and small-town quality. As currently provided by the Proposed Ordinance, only two signs would only be permitted in the entire City, and they would have to be located in commercial and industrial areas near highways. (See Proposed Ordinance §§ 30.55.20(e), 3.055.30(a)(1) [allowing new signs only in General Services Commercial or City Gateway District].) These two signs would also

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have to be located more than 1.5 miles away from one another. (Proposed Ordinance §§ 30.55.20(f), 33.55.30(b).) To put things into perspective, these two billboards would be located in already urbanized areas and subject to the City's individual approvals and development agreements. Additionally, the light footprint of the billboards would be no more than 250 feet from each of the billboards and, if one compares the area within this radius of light from each facing and compares it to the remainder of the City's area of 460.5 million square feet, it would be the case that areas lit by billboard facings would amount to 0.0000042 percent of area within the City's limits. To illustrate the types of locations where these signs could be placed, the sign contemplated by Mr. Conrotto (which is not part of the instant ordinance proposal, but would be considered separately and at a later date) would sit amid a major highway, a Tesla dealership, Buick GMC dealership, auto repair businesses, fueling stations, and similar uses, as well as amid numerous, similar illuminated signs and freestanding lights. The billboard would help revitalize the City by helping the City advertise its municipal and civic events, increasing foot traffic within the City and expanding the City's exposure to its current and prospective residents. The billboard would not have negative impacts on agricultural lands or sensitive wildlife habitats, and this fact has been substantiated by the Mitigated Negative Declaration prepared by a third party environmental consultant retained by the City.

Section II explains the benefits that billboards can bring to small and local businesses and the contributions that billboards can make to Gilroy's economy. Specifically, the City's economy is well-positioned to benefit from outdoor advertising. The City generates most of its sales tax revenue from industries that typically use billboards, such as outlet centers, auto dealers, service stations, and the hospitality industry. Together, these businesses contribute \$15.2 million to the City's annual sales tax revenue of \$18.3 million, and approximately \$1.35 million in transient occupancy taxes annually.⁵ Since businesses estimate that outdoor advertising contributes up to 20% of their sales, outdoor advertising could add as much as \$16.7 million in commercial sales in City's businesses and \$3.1 million in additional City's sales tax per year, in addition to increases in transient occupancy taxes.

By this letter, Outfront appeals the Planning Commission's denial of the Proposed Ordinance change and, in doing so, hopes to clarify the misconceptions that punctuated and sidetracked the earlier discussions pertaining to the proposal.

I. Planning Commission's Bases for Denying Ordinance Change Request

a. Assertion 1: The Proposed Ordinance change does not cover concerns that other cities have addressed in their ordinances such as prohibitive advertising, requirement for non-illumination, sufficient height restriction.

The Proposed Ordinance change addresses and sets relevant standards for all of the above points. The City, in drafting the Proposed Ordinance, appears to have made reference to and

⁵ CITY OF GILROY, ADOPTED BIENNIAL BUDGET 254 (adopted June 7, 2021), <https://www.cityofgilroy.org/DocumentCenter/View/12223/Fiscal-Year-2022-and-2023-Adopted-Budget>

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incorporated provisions and controls from other existing and valid ordinances that California cities have adopted, as detailed in the table below.

To reiterate, Section 30.55.40(c) governs content prohibition, Sections 30.55.40 sets forth comprehensive and specific standards for illumination, and Section 30.55.40(c) provides legally adequate and legible height limitation. Furthermore, the Proposed Ordinance being considered by the City Council specifically conditions the construction of a billboard on the findings of consistence with the City's General Plan, compatibility with the surrounding area, safety to vehicular and pedestrian traffic, and compliance with the general health, safety and welfare of City residents. (Section 30.55.50(f).) Additionally, section 30.55.20 requires any billboard projects to be consistent with local, state and federal law (which include the Highway Beautification Act of 1965 and the Outdoor Advertising Act), and be constructed with property owner consent and pursuant to the City's agreement.

What follows is a list of cities and counties that have adopted similar billboard ordinances and, for convenience, we have identified the content, illumination, and height requirements in each of these local ordinances.

Table 1

Agency	Ordinance
City of El Monte	El Monte Municipal Code section 17.82.040 Prohibitive Content: “No digital billboard shall display any statement or words of an ‘obscene, indecent, or immoral character,’ as that phrase is used in Business and Professions Code Section 5402 and judicial decisions interpreting the same.” Brightness Level: “Digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter [at a preset distance of] 250 feet [for face size of 14 feet x 48 feet].” Height Limit: “No billboard, inclusive of supporting structures, shall exceed 75 feet in height, measured from the finished grade of the freeway travel lane closest to the sign to the uppermost.”

City of Bell Gardens	<u>Municipal Code section 9.40.065</u> Prohibitive Content: “No electronic billboard shall display any statement or words of an obscene, indecent, or immoral character, as that phrase is used in Business and Professions Code Section 5402 and judicial decisions interpreting the same.” Brightness Level: “Electronic billboards shall not operate at brightness levels of more than 0.3 foot-candles above ambient light, as measured using a foot-candle meter, at a preset distance [of] 250’ [for face size of 14’ x 48’].” Height Limit: “The maximum height of any electronic billboard, including nondigital sign faces, shall be 65 feet as measured from the bottom of the billboard supports to the highest point of the sign face.”
City of Buena Park	<u>Buena Park Municipal Code section 19.912.090</u> Prohibitive Content: “No billboard shall display any statement or words of an “obscene, indecent, or immoral character,” as that phrase is used in Business and Professions Code Section 5402 and judicial decisions interpreting the same.” “No billboard shall display any advertising of any drugs, including, but not limited to, marijuana or tobacco products; adult-type uses, including, but not limited to, nude or topless bars or nightclubs, or establishments that feature nude or topless dancing or mud wrestling, or businesses featuring the sales of adult novelty items, books, magazines, videos, DVDs or tapes.” Brightness Level: “Digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance [of] 250’ [for face size of 14’ x 48’].” Height Limit: No height limit

City of Hawthorne	<u>Hawthorne Municipal Code section 17.88.30</u> Prohibitive Content: “No billboard shall display any statement or words of an “obscene, indecent, or immoral character,” as that phrase is used in Business and Professions Code Section 5402 and judicial decisions interpreting the same.” Brightness Level: “Digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance [of] 250’ [for face size of 14’ x 48’].” Height Limit: Variable. The ordinance provides: “The maximum height of billboards has not been set to account for the grade differences of the freeways and to allow billboards to be designed to ensure freeway visibility. Height will be controlled through the billboard agreement and will be based upon the maximum necessary to ensure reasonable freeway visibility and minimize view and glare impacts on surrounding residential properties. If requested, the city will secure the services of a licensed engineer or architect to perform a viewshed analysis. The viewshed analysis will be funded by the applicant and will show the optimum height for visibility as well as address view impacts to adjacent residential uses.”
City of Pico Rivera	<u>Pico Rivera Municipal Code section 18.46.060</u> Prohibitive Content: “No digital billboard shall display any statement or words of an obscene, indecent, or immoral character, as that phrase is used in Business and Professions Code Section 5402 and judicial decisions interpreting the same.” Brightness Level: “Digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter, at a pre-set distance [of] 250’ [for face size of 14’ x 48’].” Height Limit:

	“The maximum height of any digital billboard including non-digital sign faces shall be seventy-five feet as measured from the bottom of the billboard supports to the highest point of the sign face.”
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b. Assertion 2: Allowing two signs would open the floodgates to more signs

The California Constitution confers the police power to local government to protect public health, safety, and welfare, stating that “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal Const art XI, §7.)

The City of Gilroy has both the power to enact the statutory cap on the number of billboards in the City and the power to enforce such cap. This power is well-established, broad, and evolving, and court have routinely upheld cities’ exercise of their police power. (See, e.g., *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 881-82 [aesthetic reasons alone can justify the exercise of the police power]; *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579 [protection of a city’s “character,” “stability,” and “soul” is valid basis for invocation of the police power].)

As long as the City shows that the two-billboard cap is based on the City’s exercise of its police power to protect the aesthetics and welfare of the City of Gilroy, the cap will be legally valid and cannot be challenged by any billboard company.

- During Planning Commission hearings, some concern arose over other constitutionality issues, such as equal protection. Specifically, the concern surfaced that, if the City allowed only two signs, other sign companies could sue the City based on discrimination. Such claim would fail.

Equal Protection requires that persons similarly situated with respect to the legitimate purpose of the law receive like treatment. (*College Area Renters & Landlord Ass’n v. City of San Diego* (1996) 43 Cal.App.4th 677, 686.) Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a “clear showing of arbitrariness and irrationality.” (*Kawaoka v. City of Arroyo Granda* (1994) 17 F.3d 1227, 1234.) Here, billboard companies are not a suspect class because they do not involve race, religion, national origin, or alienage, so the two-billboard cap would be presumed valid. The City’s law would fail only if it was arbitrary and irrational, and billboard companies wanting to erect a third billboard in Gilroy would not be able to make this showing. Fundamental land use considerations provide a solid foundation for an ordinance seeking to place a hard cap on the number of signs within its jurisdictional limits.

Accordingly, many jurisdictions, including the state, have limits on the number of billboards. (See, e.g., City of Modesto Municipal Code § 10-6.108(f)(3)(ii)(a)(4.5) [maximum of seven digital displays]; Cal. Bus. & Profs. Code 5443 [no increase in signs along landscaped freeway segments allowed].)

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c. Assertion 3: Billboard companies are litigious, and litigations by billboard companies would be consuming of staff time and burdensome on City's budget

Outfront has had good, successful partnerships with dozens of cities and counties throughout California in operating digital billboards, including the City of Santa Clara, the City of Millbrae, Alameda County, the City of South San Francisco the City of Fairfield, the City of El Monte, the City of Bell Gardens, the City of Buena Park, the City of Hawthorne, the City of Carson, the City of Fountain Valley, the City of Lemon Grove, the City of Oakland, the City of Pico Rivera, and many more. This concern that approval of the digital billboard will result in billboard companies bringing litigation in the City is not substantiated by evidence. Never — not once — has Outfront sued one of these public partners in California, and never has a local government found one of Outfront's signs to fall out of compliance with the law.

During Planning Commission hearings, references to a handful of lawsuits was made. These included two lawsuits in San Jose and a lawsuit in Royal Oak.

With respect to the first lawsuit in San Jose, it was a private property owner — not a sign company — that illegally constructed a sign near the interchange of Highways 101 and 80 in San Jose and that sued the City. (See Attachment A to the September 29, 2022 Response to Comments on MND for Outdoor Advertising Display 6490 Auto Mall Parkway [a March 17, 2021 article from the San Jose Spotlight that reports on the lawsuit].) Outfront adamantly opposed the illegal construction of this sign in the City of San Jose, and in January 2019 notified the California Department of Transportation about its construction and encouraged the State to investigate and take appropriate action to discourage this activity. (See January 8, 2019 Letter from Outfront to James Arbis from State of California Department of Transportation regarding Illegal Digital Sign in San Jose.)

A member of the public also pointed to the current lawsuit between Outfront and the City of San Jose as an example of Outfront's tendency to sue. Outfront is in a lawsuit with the City, but the context is important. This lawsuit asserts the City of San Jose circumvented its own laws by making a back-room deal with another sign company, without following the City's request for proposal ("RFP") process. Outfront has, on occasion, sued to enforce due process and other constitutional rights but, again, never has sued one of its partners.

A Planning Commissioner also brought up a lawsuit between Outfront and the City of Royal Oak, Michigan. To provide context, in 2013, Outfront and this city in Michigan reached an agreement that allowed Outfront to construct a billboard on a commercial property in exchange for ten weeks of free advertising and messaging space for the city. Outfront fulfilled its end of the bargain by offering the City free advertising space on its billboards. However, the City of Royal Oak breached its promise by causing Outfront's billboards to be removed from the commercial property and denying Outfront's subsequent request for a variance. The Circuit Court determined that the City of Royal Oak failed to fulfill its contractual obligations.

In conclusion, given Outfront's operation of 500,000 billboards across North America, lawsuits are inevitable. The existence of three lawsuits, which are based on circumstances that are not involved here, does not show Outfront is a bad partner. There are dozens of California cities and counties that would attest to this statement.

d. Assertion 4: Allowing billboards goes against several General Plan's goals

Some of the Planning Commissioners expressed a concern that allowing billboards in the City would be inconsistent with several of the City's General Plan's goals, including (a) maintaining the City's culturally rich and small-town quality, (b) revitalization of the City's Downtown, and (3) protecting productive agricultural lands and sensitive wildlife habitats.

An action, program or project is consistent with the general plan if, considering all of its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (Governor's Office of Planning and Research, *General Plan Guidelines* (2003).) Courts are also in agreement that land use plans must be functional from a practical perspective, and that perfect conformity with each particular policy is neither achievable nor required. (*Corona-Norco Unified Sch. Dist. v. City of Corona* (1993) 13 Cal.App.4th 1580; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817 [to be consistent a project need only be "in agreement or harmony" with the applicable plan].)

Here, viewed in light of the correct analytical framework, the Proposed Ordinance is consistent with the General Plan policies. Nothing about the Proposed Ordinance frustrates or is incompatible with the goals and policies of the General Plan. In fact, the Proposed Ordinance conforms with and supports all of the General Plan policies mentioned by the Planning Commission; and the City Council, having unique competence to interpret the laws and policies it adopts (such as the General Plan), can make these findings.

Table 2

General Plan Policy	Proposed Billboard's Compatibility
Guiding Principle 2: Cultivate a Downtown Renaissance. Restore Downtown to a vibrant destination with unique retail, entertainment, arts, and dining options. Support and attract businesses. Provide the infrastructure and amenities needed for the growth of Downtown. Preserve the historic character while supporting new development, including commercial, housing, and mixed-use projects.	The Proposed Ordinance is compatible with and supportive of this General Plan goal. Allowing billboard projects would help revitalize Gilroy's Downtown by attracting residents and nonresidents to local and small businesses that are located Downtown, thereby increasing foot traffic within the City and expanding the City's exposure to its current and prospective residents. Two new digital billboards could generate substantial revenue for local businesses, including business located in the City's Downtown area. Additionally, while it is not under consideration now before the City Council, Outfront's proposed billboard project, on Mr. Conrotto's property, would not compromise the City's historic character and small-town feel. First, this project site is not even located in or near the Downtown area.

	Second, the billboard would not be located in a historic district, and there are no historic resources on the property according to the MND. The nearest recorded historical building, meanwhile, is almost a mile away (the Gilroy Free Library), which is not within view of the project site, per the California Historical Resources List. This sign, which the City Council would consider separately, if it adopts the ordinance amendment, would be constructed in a parking lot where vehicle are stored, adjacent to automobile-related businesses (including a Tesla dealership, Buick GMC dealership, auto repair business, fueling stations, and similar uses, as well as amid numerous, similar illuminated signs and freestanding lights; see next section for further discussion of baseline conditions). The billboard site would be a non-sensitive, commercial portion of the City that is compatible with the proposed structure. As a result, the likelihood of the Project having an adverse effect on historic resources is low.
• LU-4 Goal: Encourage the growth and development of retail, office, service, and entertainment uses in Gilroy to provide jobs, support City services, and make Gilroy an attractive place to live.	The Proposed Ordinance is compatible with and supportive of this General Plan goal. For local businesses, billboards have the following benefits in that they: (i) help to communicate with and attract new customers; (ii) allow efficient targeting of consumers in a given trade area; and (iii) are cost-effective compared to other traditional media. Furthermore, the size and placement flexibility of billboards allow them to serve a function that is different from a business' on premise signage.⁶ Small and local businesses, including travel-related businesses such as hotels, restaurants, gas stations, and other businesses related to entertainment and tourism, are more reliant

⁶ Charles R. Taylor, Business Perceptions of the Role of Billboards in the U.S. Economy, JOURNAL OF ADVERTISING RESEARCH at 152-53; see, e.g., FLORIDA TAXWATCH, THE ECONOMIC IMPACT OF FLORIDA'S OUTDOOR ADVERTISING INDUSTRY FROM A PRE- AND POST-SEPTEMBER 11, 2001 PERSPECTIVE at 3-4 & fns. 3-5 (February 2002) (showing similar data from multiple national surveys).

	on billboards than other types of businesses due to the need to direct motorists to their location. With respect to the City of Gilroy, outdoor advertising could increase revenue for local retail stores and the hospitality industry within the City, which in turn are important to the vitality of the City's economic health. Hotels, restaurants, gas stations, and businesses related to entertainment and tourism are prime beneficiaries of outdoor advertising, which could boost sales by up to 20%. In the City of Gilroy, there are at least 17 hotels, 89 restaurants, 19 gas stations, and many other hospitality business. We understand these businesses especially thrive during City events such as the Garlic City Car Show and Gilroy Farmers' Market.
• LU-4.2: High Quality Design. Encourage distinctive and high quality commercial architecture that respects the character of Gilroy and discourages the use of "franchise architecture."	The Proposed Ordinance is compatible with and supportive of this General Plan goal. Areas within the City of Gilroy's Urban Growth Boundary, and only within commercial and industrial areas, are the only places in the City where electronic billboards would be allowed. Specifically, the Proposed Ordinance would allow no more than two billboards within the City, which would only be permitted on property designated as General Services Commercial or City Gateway District and within 660 feet of US—101 or SR-152. Although not considered at this time, Outfront's proposed billboard would be located in a parking lot where vehicles are stored, adjacent to automobile-related businesses (including a Tesla dealership, Buick GMC dealership, auto repair business, fueling stations, and similar uses, as well as amid numerous, similar illuminated signs and freestanding lights). The project site is a non-sensitive, commercial portion of the City that is compatible with the proposed structure.
• LU-5.1: Industrial Design Standards. Ensure that new industrial developments	The Proposed Ordinance is compatible with and supportive of this General Plan goal.

contribute to the overall attractiveness of the community through appropriate site design, architectural design, and landscaping.	Billboard designs would be reviewed and approved by the City under the Proposed Ordinance, at which time their compatibility with adjacent commercial and industrial uses could be evaluated. Again, the Proposed Ordinance would limit signs to very discrete areas. With respect to Outfront's potential sign on Mr. Conrotto's property, the aesthetic is that of a modern design that complements adjacent uses, including the Tesla store and other automobile dealerships.
• LU-8 Goal: Support growth and development that preserves and strengthens the City's historic, small-town character; provides and maintains safe, livable, and affordable neighborhoods; and creates beautiful places.	The Proposed Ordinance is compatible with and supportive of this General Plan goal. As demonstrated in the project's compatibility with LU-4.2 and LU 5.1, the Proposed Ordinance would allow up to two billboards in the City, which will help expand the City's exposure to both residents and nonresidents, support growth and development through increased foot-traffic within the City. All of such benefits from billboards would not compromise the City's historic, small-town character because any billboards would be located in already urbanized parts of the town and would be capped at two billboards.
• LU 8.2: Community Gateway. Require new developments at "gateways" to the city (i.e., including Monterey Road, Pacheco Pass, Hecker Pass, and U.S. 101 interchanges) to incorporate high-quality, site and architectural design, distinctive landscaping, public art and/or other improvements that enhance the visual integrity of such areas.	The Proposed Ordinance is compatible with and supportive of this General Plan goal. The Proposed Ordinance and Sign Ordinance amendments would allow up to two billboards within the City, which would only be permitted on property designated as General Services Commercial or City Gateway District and within 660 feet of US-101 or SR-152. Signs would have modern designs and include City of Gilroy signage under negotiated development agreements, which would serve a "place-making" function for passing motorists.
• LU-8.7: Signs and Billboards. Require the location of signs and billboards to respect the surrounding context in order to minimize any negative impact on the visual environment. Enforce sign regulations and design standards to	The Proposed Ordinance is compatible with and supportive of this General Plan goal. As established in Section 30.55.20, subdivisions c & e, the Ordinance would only allow up to two billboards that will be located in urbanized areas, and the individual billboards

reduce sign clutter and illegal signage along corridors.	would be subject to the comprehensive review by the City and the public, and must be in constructed and designed in accordance with development agreements that the billboard companies would have with the City. Development Agreements would ensure that the two billboards to be constructed within the City would be constructed to the satisfaction of the City with respect to its design and scope. Furthermore, the existence of two signs in the City would not pose any issues of sign clutter or illegal signage along corridors given spacing requirements — a minimum of 1.5 miles between the signs — that are encoded in the Proposed Ordinance.
• LU-8.11: Historic Preservation and Restoration. Encourage new restorative maintenance to deteriorated buildings, particularly in Downtown and restrict the demolition of historically and/or architecturally significant buildings to accommodate new development. Encourage adaptive re-use of historic structures to maintain their historic character while supporting economic development.	The Proposed Ordinance is compatible with this General Plan goal because the Ordinance would only allow construction of billboards in already urbanized areas, and each billboard would have to go through the comprehensive CEQA process in order to ensure that it will not interfere or re-appropriate any historic resources. For example, Outfront's proposed billboard, which would be considered by the City Council if the Proposed Ordinance passes, had to go through a comprehensive CEQA review conducted by a third party environmental consultant for the City, subject to extensive scrutiny by the City and the public. The MND for the billboard project finds that there are only two recorded historic cultural resources within the 0.5-mile search radius, and none of which are located within the project site. (MND at 47.)
• LU-8.3: Landscaping along U.S. 101. Coordinate with Caltrans and the County to enhance the landscaping along U.S. 101, and encourage new developments facing U.S. 101 to provide landscape screening and to protect and enhance views of farmland and the surrounding hills.	The Proposed Ordinance is compatible with and supportive of this General Plan goal. The Proposed Ordinance would make sure that any billboards to be erected within the City of Gilroy will comply with the California Highway Beautification Act and the Outdoor Advertising Act. Specifically, section 30.55.20(a) requires that "The owner and operator of the electronic billboard shall

	comply with all applicable federal, state, or local laws when constructing, operating, improving, maintaining, repairing, and removing the electronic billboard(s), including the Highway Beautification Act of 1965 (23 U.S.C. § 131), the Outdoor Advertising Act (Cal. Bus. & Prof. Code § 5200 <i>et seq.</i>), and the regulations promulgated to implement the Outdoor Advertising Act (4 Cal. Code Regs. § 2242(c) <i>et seq.</i>).” Moreover, consistent with federal and state law, any new signs would be located in industrial or commercial areas. (Cal. Bus. & Prof. Code §§ 5205, 5405, 5408.) According to the MND prepared by the City’s environmental consultant, “the Proposed Ordinance would allow up to two electronic billboards, which would only be permitted on property designated as General Services Commercial or City Gateway District and within US-101 or SR-152. The nearest scenic vistas are located over a mile west of US-101 or over 4 miles southeast of the US-101.” Additionally, the US-101 segment that goes through the City is not a State Scenic Highway. (Project MND at p. 18.) No significant aesthetic impacts were found.
• LU 8.13: Limit Light Pollution Encourage measures to limit light pollution from outdoor sources, and direct outdoor lighting downward and away from sensitive receptors.	The Proposed Ordinance is compatible with and supportive of this General Plan goal. The MND concluded that future electronic billboards would not create a substantial change in illumination levels due to baseline light source. To bring the illumination requirements home, Outfront’s proposed billboard project would commit to a maximum ambient light output level of 0.3 foot-candles at 250 feet above ambient levels from the billboard. This means that at 250 feet, light from the sign would be generally not perceptible, and would not register on a light meter. Please see Letter From Project Applicant re Outdoor Advertising Display 6490 Auto Mall Parkway (March 21, 2021) and Attachment A thereto, incorporated herein. Accordingly, the light

	contribution from the proposed display would not cumulate with other sources to produce a significant impact. The billboard also would reduce light pollution and glare by angling each of the individual LEDs downwards towards motorists, in contrast to a traditionally illuminated display that would create more significant sky glow and illuminate copy by reflecting light off display facings at a brightness level of 31 to 312 times greater than the brightness of LED displays. Letter From Project Proponent re Outdoor Advertising Display 6490 Auto Mall Parkway (March 21, 2021), p. 2.
• M-5.9: U.S. 101 Landscaping and View Protection. Coordinate with Caltrans and Santa Clara County to provide additional landscaping along the U.S. 101 right-of-way to enhance its attractiveness, recognizing that it is the primary “visitor-serving” traffic artery in the Planning Area. Also, encourage new developments facing U.S. 101 to provide landscape screening and to protect and enhance existing views of farmland and surrounding hills.	As demonstrated above in the Proposed Ordinance’ compatibility with LU-8.3, the Proposed Ordinance will not cause the existence of any billboards that would interfere with the City’s and Caltrans’ ability to landscape along the U.S. 101 right-of-way. According to the MND, “[a]reas within the City of Gilroy’s Urban Growth Boundary are the only places in the City where electronic billboards would be allowed. The proposed electronic billboard’s location would not affect scenic views because of its distance from scenic highways and scenic resources.” Moreover, we wish to clarify that Outfront’s proposed sign, which might be considered later by the City Council, is not located in any landscaped freeway area. Furthermore, because (1) installation of billboards would not be allowed in non-urbanized areas; (2) the proposed billboard would comply with design standards set forth in the proposed Electronic Billboard Ordinance; and (3) the proposed billboard would be one-sixth as bright as allowable state brightness maximums set forth in illumination intensity standards found in state law, impacts would be less than significant. Please see the March 21, 2021 Letter from the applicant re Outdoor Advertising Display 6490 Auto Mall Parkway, which addresses brightness standards, as well as its

	attachments, all of which are incorporated herein by this reference. Substantial evidence shows that digital billboards are in fact less obtrusive than traditional displays, as digital billboards have superior technology that directs light at limited audiences (here, motorists). By contrast, traditional displays are illuminated by reflecting light sources of the display's facings, at levels that are 31 to 212 brighter than LED bulbs. Additionally, with adoption of mitigation measure AES-1, which requires the City Community Development Department to review and approve the signs' operational lighting parameters to ensure a driver would not be adversely affected or impacts by trespass glare, the Project would have a less than significant impact.
Guiding Principle 3: Balance Growth and Open Space. Focus growth in areas that are already serviced by roads, sewers, and infrastructure. Support a balanced growth management strategy that protects productive agricultural lands and sensitive wildlife habitats while allowing for new economic opportunities. Ensure Gilroy retains its "small-town feel."	The Proposed Ordinance is compatible with and supportive of this General Plan goal. The Biological Resources section of the MND reviewed the impacts of the light from the digital billboard on wildlife and related habitat and determined that, with mitigation incorporated, there would be no significant impact. Under the CEQA thresholds of significance, a substantial adverse effect on a species protected by the California Department of Wildlife or United States Fish and Wildlife Service amounts to a significant impact. Only one special status species has the potential to occur within the project site, the white-tailed kite. Per the MND, there is marginal nesting habitat near the proposed display and potential foraging habitat located more than 800 feet to the northeast. Further, birds have co-existed with the existing urban landscape, including the myriad of illuminated signs, parking lot lights, vehicle headlights (which move at variable rates of speed), and other sources of illumination for a very long time in the project vicinity. Per the City's environmental report, the addition of a digital sign would not affect the status quo, and, in fact, digital billboards are <i>less impactful</i> than static light sources for the following reasons:

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	Studies show that birds are attracted to fixed lights, and the billboard would not constitute a fixed light, but would change its messaging every 8 seconds. message (and thus varying its light profile). Steady-burning red lights that result in the greatest impacts to bird species, and the outdoor advertising display would have a wide diversity of copy and it would never be the cast that the display would broadcast uninterrupted light of any hue.
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Unlike compliance with constitutional provisions, the City has discretion in the interpretation of its own policies – which is entitled to great deference unless it results in an unreasonable or unlawful interpretation. (See *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563 [city has broad discretion to construe its own policies]. But see *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 217-20 [courts do not afford deference to a city's unreasonable or unlawful interpretation of its policies].)

Approval of the project would help the City achieve its 2040 General Plan goals by providing the City with free advertising that would give the City exposure to both residents and nonresidents, streamlining the City's community outreach efforts, and encouraging public engagement with the City's civic and municipal activities. Moreover, the increased foot traffic that the billboard would bring to its users will have a spillover effect to other areas of the City and thereby showcasing the bucolic and small-town feel of the City. The City has discretion to and is advised to interpret the Proposed Ordinance as compatible and supportive of the City's General Plan policies. All the while, the Proposed Ordinance would not negatively affect the City's small town feel and its agricultural and wildlife resources.

In conclusion, the Proposed Ordinance will allow no more than two billboards that would be located in already urbanized areas and subject to the City's individual approvals and development agreements. Additionally, the light footprint of a billboard would be no more than 250 feet from the billboard,⁷ and this minimal footprint covers an infinitesimal fraction of the City's area.

e. Assertion 5: Billboard project goes against City's Climate Action Plan of reducing energy reducing light emission, light out policy at night, and reducing light projects and emission.

Outfront shares a similar climate pledge with the City and seeks to reduce its carbon footprint. In its efforts towards its climate pledge, Outfront has taken the following steps:

⁷ For example, Outfront's proposed billboard commits to a maximum ambient light output level of a 0.3 foot-candle at 250 feet from the billboard, meaning at 250 feet, light from the sign is generally not perceptible, and does not register on a light meter. See 2022/09/29 Response to Comments, Responses to Comments A9, G2, and I2.

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- Outfront's billboard vinyl is repurposed via Outfront's partnerships with Rareform and Sky Group
- Nearly all of Outfront's billboards, digital and static, have been converted to more energy efficient LED illumination. Compared to digital signage from years ago, Outfront has reduced its signs' energy consumption by 76.79% from pre-conversion levels.
- All of Outfront's markets can accept PE Ecoflexx recyclable paper for standard billboards that are 14' x 48' or smaller.
- Outfront is the largest operator of transit system advertising in the U.S and the revenue shares Outfront pays to the various municipalities help fund this important public resource that enables millions of commuters to reach their destinations without using private vehicles – eliminating significant GHG emissions.
- Outfront's first EVs went into service late last year and early this year, and Outfront hopes to electrify as much of our fleet as practical.

Additionally, future billboards would be installed pursuant to current electrical codes, including Title 24 of the State Building Code, and adopt the latest digital technology. These standards would ensure that electrical energy would be used efficiently. The Greenhouse Gas Section of the MND finds that the Project would have a less than significant impact. Operation of the Project is expected to emit only 6 MT CO₂e per year. This is far below the 660 MT CO₂e per year threshold of significance. In the Hazards and Hazardous Materials section, the MND explains that the Project will not generate any electronic waste. Accordingly, substantial evidence supports a determination the proposed display would not have a significant impact with respect to energy consumption.

The exponential growth of technology has helped accelerate Outfront's energy reduction goals. The amount of energy used today by Outfront's billboards is four times less than a few years ago and, even since the MND was prepared, Outfront's most recent technology has reduced energy consumption even further. Specifically, the MND for Outfront's proposed billboard assessed the billboard's energy consumption to be approximately 52,400 kwh/year. More recently, energy usage was reduced to 40,000-48,000 kwh/year, and after reviewing the latest technologies, annual energy draw per sign facing could be as low as 18,160 kwh (or approximately 37,000 kwh per billboard structure). (See the September 29, 2022 Response to Comments on MND for Outdoor Advertising Display 6490 Auto Mall Parkway, Responses A12 & F10.) Outfront's technology is quickly getting better, and Outfront is as motivated as the City to use as little power as possible. (*Id.*)

II. Economic Impact of Billboards

As an advertising tool for businesses of all sizes, billboards provide a significant contribution to the economic health of local governments. Billboards do so by increasing the visibility of mom-and-pop businesses; increasing sales for larger formula retail stores; and promoting local involvement (i.e., advertising civic and municipal events to attract people to the City to spend money on local businesses). Billboards thereby increase profits for local businesses and sales tax revenue for local governments.

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For the City of Gilroy, a modest allowance for digital, outdoor advertising would offer the following potential economic benefits:

- An enhancement of commercial sales in City businesses, including without limitation its retail shopping outlets, Newman Development, Regency Center, and Downtown Core, by \$4.1 million to \$16.7 million (representing a conservative range of 5 to 20%).⁸
- An increase in City sales and other tax revenues by \$760,000 and \$3.1 million (representing a conservative range of 5 to 20%), which could fund a variety of public programs, such as salary increases for police, fire, and other city workers, or improvements in public infrastructure and equipment.

In conclusion, this letter of appeal aims to correct any misunderstandings that interfered with the Planning Commission's evaluation of the proposed project and asks that the City Council continue its practice of considering only established facts, supported by evidence.⁹ This evidence shows the City will be able to have the additional revenue from billboards without compromising its culture or its agricultural resources. Again, access to billboards would generate up to \$16.7 million in additional business revenue for small businesses and up to \$3.1 million in the City's additional sales tax revenue.

Very truly yours,



Sean R. Marciniak
Partner



Huong (Jenny) Dao
Associate

cc: Clients
Mike Conrotto
Sharon Goei, Community Development Director, City of Gilroy
Cindy McCormick, Senior Planner, City of Gilroy
Andrew Faber, Esq., City Attorney, City of Gilroy
Natalie Kirkish, Esq., Hanson Bridgett

⁸ The potential upside is a 25% increase in sales, although we chose to present a more conservative figure of 20% increase.

⁹ This letter further incorporates by reference all of the materials in the City's administrative records.

February 2, 2023

VIA ELECTRONIC MAIL

City of Gilroy Planning Commission

Sharon Goei, Community Development Director
Cindy McCormick, Senior Planner
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Re: Potential Benefits of Digital Billboards to the City of Gilroy's Economy

Dear Ms. Goei and Ms. McCormick,

During the Planning Commission's January 19, 2023 public hearing on a proposed electronic billboard ordinance, members of the Planning Commission and the public inquired about the benefits of allowing digital billboards in the City. More simply, people asked, "Why should the City consider doing this?"

By this letter, we would like to answer this question.

Individual billboards would be subject to a development agreement between the City and a sign owner, which is a contractual arrangement that would provide the City with certain direct benefits, such as free municipal advertising time and a revenue share. However, there are more significant, indirect benefits that the City and its business community would experience from allowing digital signage.

Billboards have been a fixture of the advertising landscape for decades, providing businesses with a cost-effective way to reach a wide audience. As an advertising tool for businesses of all sizes, billboards provide a significant contribution to the economic health of local governments. Billboards do so by increasing the visibility of mom-and-pop businesses; increasing sales for larger, formula retail stores; and promoting local involvement (i.e., advertising civic and municipal events to attract people to the City to spend money on local businesses). Outdoor advertising thereby increases profits for local businesses and sales tax revenue for local governments.

For the City of Gilroy, a modest allowance for digital, outdoor advertising would offer the following potential economic benefits:

- An enhancement of commercial sales in City businesses, including without limitation its retail shopping outlets, Newman Development, Regency Center, and Downtown Core, by \$4.1 million to \$16.7 million (representing a conservative range of 5 to 20%).¹
- An increase in City sales and other tax revenues by \$760,000 and \$3.1 million (representing a conservative range of 5 to 20%), which could fund a variety of public

¹ The potential upside is a 25% increase in sales, although we chose to present a more conservative figure of 20% increase.

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programs, such as salary increases for police, fire, and other city workers, or improvements in public infrastructure and equipment.

The availability of outdoor advertising would support Gilroy's local businesses. While it is uncertain what percentage of advertising sign would be utilized by local businesses, nationwide statistics have shown that local business represent approximately 70% of advertising industry revenues.² In the San Francisco Bay Area Market, local businesses have accounted for 64% of the total billboard advertising market.

Meanwhile, the City's economy is well-positioned to benefit from outdoor advertising, even in a limited amount. The City generates most of its sales tax revenue from industries that typically use billboards, such as outlet centers, auto dealers, service stations, and the hospitality industry.³ Together, these businesses contribute \$15.2 million to the City's annual sales tax revenue of \$18.3 million, and approximately \$1.35 million in transient occupancy taxes annually.⁴ Since businesses estimate that outdoor advertising contributes up to 20% of the their sales, outdoor advertising could add as much as \$3.1 million in additional City's sales tax per year, in addition to increases in transient occupancy taxes.⁵

This letter analyzes the ways in which outdoor advertising supports local businesses and formula retail businesses (e.g., stores populating outlets) by expanding their customer base and revenues. This letter also evaluates the significance of outdoor advertising's contribution to local economies, including the City's economic well-being.

I. Outdoor Advertising is beneficial to small and local businesses

For local businesses, billboards have the following benefits in that they:

- help to communicate with and attract new customers;
- allow efficient targeting of consumers in a given trade area; and
- are cost-effective compared to other traditional media.

Furthermore, the size and placement flexibility of billboards allow them to serve a function that is different from a business' on premise signage. Small and local businesses, travel-related businesses such as hotels, restaurants, gas stations, and businesses related to entertainment and tourism are more reliant on billboards than other types of businesses due to the need to

² FLORIDA TAX WATCH, THE ECONOMIC IMPACT OF FLORIDA'S OUTDOOR ADVERTISING INDUSTRY FROM A PRE- AND POST-SEPTEMBER 11, 2001 PERSPECTIVE at 3 (data from national surveys).

³ CITY OF GILROY, ADOPTED BIENNIAL BUDGET 254 (adopted June 7, 2021), <https://www.cityofgilroy.org/DocumentCenter/View/12223/Fiscal-Year-2022-and-2023-Adopted-Budget>.

⁴ *Id.*

⁵ *Id.*; Charles R. Taylor, *Business Perceptions of the Role of Billboards in the U.S. Economy*, JOURNAL OF ADVERTISING RESEARCH 150, 150 & 159.

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direct motorists to their location or convince them of the benefits of the business as they pass by.⁶

Given this pattern, businesses do not generally see other media as cost-effective substitutes for billboards. Flyers can be locally targeted but have limited potential for effective reach.⁷ Other local media, such as newspapers, radio, and television, involve both higher cost per thousand exposures and waste circulation.⁸ Additionally, production costs associated with developing billboards are generally substantially lower than traditional media such as magazines, radio, and television.⁹ Online and email advertisements can be effective, but often end up in spam folders.

On average, it costs \$7.50 to reach 1,000 people with digital place-based media.¹⁰ Compared to other media sources, it costs approximately \$6.75 for radio, \$23.33 for podcasts, \$13.24 for magazines, \$46.82 for newspaper, \$20 for broadcasting TV, \$12 for cable TV, and \$2.21 - \$10.47 for online advertising per 1,000 people.¹¹

Across industries, local and small businesses represent about 77% of advertisers, and 92% of them (about 70% of all billboard advertisers) have less than 50 employees.¹² Local businesses, meanwhile, represent approximately 70% of outdoor advertising industry revenues.¹³ Data also confirms that businesses electing to use outdoor advertising are repeat customers, finding value in this median. For instance, the median user has been in business for between 11 and 25 years and has been using billboards within the same 11-25 year range.¹⁴ In fact, historical evidence shows that states banning billboards lag behind other states in new business formations and in tourism spending.¹⁵

With respect to the City of Gilroy, outdoor advertising could increase revenue for local retail stores and the hospitality industry within the City, which in turn are important to the vitality of the City's economic health. As noted above, hotels, restaurants, gas stations, and businesses

⁶ Charles R. Taylor, *Business Perceptions of the Role of Billboards in the U.S. Economy*, JOURNAL OF ADVERTISING RESEARCH at 152-53; see, e.g., FLORIDA TAXWATCH, THE ECONOMIC IMPACT OF FLORIDA'S OUTDOOR ADVERTISING INDUSTRY FROM A PRE- AND POST-SEPTEMBER 11, 2001 PERSPECTIVE at 3-4 & fns. 3-5 (February 2002) (showing similar data from multiple national surveys).

⁷ Charles R. Taylor, *Business Perceptions of the Role of Billboards in the U.S. Economy*, JOURNAL OF ADVERTISING RESEARCH at 159.

⁸ *Id.* at 159.

⁹ *Id.*

¹⁰ Soloman Partners, *Media CPM Comparisons* (January 2022); Outfront Media data.

¹¹ Soloman Partners, *Media CPM Comparisons* (January 2022); Outfront Media data.

¹² FLORIDA TAXWATCH, THE ECONOMIC IMPACT OF FLORIDA'S OUTDOOR ADVERTISING INDUSTRY FROM A PRE- AND POST-SEPTEMBER 11, 2001 PERSPECTIVE at 3 (data from national surveys).

¹³ *Id.*

¹⁴ Charles R. Taylor, *Business Perceptions of the Role of Billboards in the U.S. Economy*, JOURNAL OF ADVERTISING RESEARCH at 154.

¹⁵ WILLIAM LILLEY III, LAURENCE J. DEFranco, AND CLARENCE W. BUFFALO, AN ANALYTICAL INQUIRY: DO STATES THAT BAN BILLBOARDS HAVE INCREASED TOURISM AND IMPROVED ECONOMIES?, IMAP DATA INC. 3 (September 2001).

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related to entertainment and tourism are prime beneficiaries of outdoor advertising, which could boost sales by up to 20%.¹⁶ In the City of Gilroy, there are at least 17 hotels, 89 restaurants, and 19 gas stations, and many other hospitality business. We understand these businesses especially thrive during City events such as the Gilroy Garlic festival, Garlic City Car Show, and Gilroy Farmers' Market.¹⁷

II. Outdoor advertising could result in millions of dollars in increased profits for Gilroy businesses

Outdoor advertising has a positive impact on all businesses — not only local, mom-and-pop stores, but formula retail outlet stores and automotive dealerships.¹⁸

By way of example, in 2019, Outfront Media commissioned a study on the effect of outdoor advertising on the automotive industry. This study found that use of outdoor advertising can boost sales in the automotive industry, with exposure to outdoor ads resulting in a 17% increase in the likelihood of purchasing a new vehicle.¹⁹ Outdoor advertising can also indirectly drive consumer action. Among those consumers viewing an automotive advertisement on an outdoor advertising display, 43% engaged with the ad by ways of subsequently visiting a website, conducting research online, or sharing information by words of mouth. Approximately 20% followed the dealer or brand on social media.²⁰

In other industries, it is estimated that outdoor advertising can increase a businesses' total sales by as much as 20%.²¹

For Gilroy, businesses within the City could potentially see increased sales as follows:

- Auto sales, which currently generate approximately \$36.2 million in revenue per year, could see an increase of \$1.8 million to \$7.2 million (representing a conservative range of 5 to 20%).
- Other City businesses, which currently generate approximately \$47.4 million in revenues per year, could see an increase of \$2.3 million to \$9.5 million (representing a conservative range of 5 to 20%).

¹⁶ *Id.* at 150 & 159.

¹⁷ For more information, visit <https://visitgilroy.com/restaurants/>.

¹⁸ WILLIAM LILLEY III, LAURENCE J. DEFranco, AND CLARENCE W. BUFFALO, AN ANALYTICAL INQUIRY: DO STATES THAT BAN BILLBOARDS HAVE INCREASED TOURISM AND IMPROVED ECONOMIES?, IMAP DATA INC. 2-8 (September 2001); see also TASTY AD, *Top 20 Businesses That Use Billboards* (June 22, 2018), <https://www.tastyad.com/top-businesses-that-use-billboards/>.

¹⁹ OUTFRONT COMMISSIONED STUDY WITH NINTH DECIMAL, POLK AUDIENCE MEASUREMENT SOLUTIONS BY HIS MARKIT 2019.

²⁰ *Id.*

²¹ Charles R. Taylor, *Business Perceptions of the Role of Billboards in the U.S. Economy*, J. ADVERTISING RESEARCH 150, 150 & 159.

Mr. Andrew Faber
 Ms. Jolie Houston
 February 2, 2023
 Page 5

Outdoor advertising continues to be an economic catalyst for businesses and, with respect to the business community in Gilroy, could result in millions of additional revenue, supporting more jobs and higher wages.

III. Billboards support local economy through generation of sales tax revenue, payment of billboard lease, and free advertising for city activities

For the City of Gilroy, the economic impact of outdoor advertising could be significant.

Sales tax represents the largest single source of General Fund revenue that the City receives, representing 37% of the General Fund based on projections for the fiscal year 2023.²² The City collected an average of \$18.3 million in sales tax per year over the period of 2016-2020. Of this, approximately \$6.4 million came from general retailers (outlet center, Newman Development, Regency Center, and Downtown Core), \$3.3 million from automotive dealers, and \$1.2 million from service stations. In this same period, the City also collected transient occupancy tax (an average of \$1.35 million annually in the period of 2019-2021) and motor vehicle tax (an average of approximately \$34,000 annually).²³

The outlet center, auto dealers, and service stations are leading contributors to the City's sales tax revenues.²⁴ As noted above, these businesses are also frequent billboard users due to their reliance on directional and localized advertising and target audience of nonresident consumers.²⁵

In the previous section of this letter, we noted that local businesses could see increased sales by as much as 20%. Improvements in the health of local businesses translates into direct dollars for the City. For instance, a 20% increase in local business revenue could result in the following annual benefits:

- An increase of up to \$1.28 million in the City's sales tax revenue from retail stores;
- An increase of up to \$658,000 in the City's sales tax revenue from automotive dealerships;
- An increase of up to \$235,000 in the City's sales tax revenue from service stations;
- An increase of up to \$269,000 in the City's collected transient occupancy tax;
- An increase of up to \$6,800 in the City's collected motor vehicle tax; and

²² CITY OF GILROY, ADOPTED BIENNIAL BUDGET at 37.

²³ *Id.* at 47.

²⁴ *Id.* at 254.

²⁵ Charles R. Taylor, *Business Perceptions of the Role of Billboards in the U.S. Economy*, JOURNAL OF ADVERTISING RESEARCH at 152-53; see, e.g., FLORIDA TAXWATCH, THE ECONOMIC IMPACT OF FLORIDA'S OUTDOOR ADVERTISING INDUSTRY FROM A PRE- AND POST-SEPTEMBER 11, 2001 PERSPECTIVE at 3-4.

Mr. Andrew Faber
 Ms. Jolie Houston
 February 2, 2023
 Page 6

- Overall, an increase in sales tax of \$3.1 million (from all types of businesses in the City, based on historical collections of \$15.2 million in sales tax annually²⁶).

Even if outdoor advertising only increased revenue by 5%, City sales tax and other revenues could, collectively, increase by \$760,000. Such funds would be available for use in whatever manner the City deemed appropriate, and could help finance public servant salaries, equipment, or infrastructure.

CONCLUSION

Outdoor advertising plays a significant role in supporting local economies. By providing an efficient and affordable platform for businesses to promote their products and services, outdoor advertising drives consumer spending and stimulates economic growth. It is also an effective way for local governments and organizations to communicate important messages and information to the public, promoting community engagement and involvement.

Very truly yours,



Jeff McCuen

Very truly yours,



Sean Marciniak
 Hanson Bridgett LLP

CC
 City of Gilroy Planning Commission
 Andy Faber, City of Gilroy City Attorney

²⁶ CITY OF GILROY, ADOPTED BIENNIAL BUDGET at 254 (This calculation excludes County and State allocated tax revenue.)

Cindy McCormick

From: Sean Marciniak <SMarciniak@hansonbridgett.com>
Sent: Friday, March 3, 2023 5:58 PM
To: Sharon Goei; Cindy McCormick
Cc: Jolie Houston; Andy Faber; McCuen, Jeff; Fox, Tim F
Subject: EXTERNAL - Proposed billboard ordinance
Attachments: Draft electronic billboard Ordinance (compliance review refinement).DOC

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Sharon and Cindy,

We respectfully request that the City Council, in hearing Outfront Media's appeal on March 20, 2023, also consider the attached refinements to the proposed billboard ordinance. These changes would clarify and streamline the compliance review process.

As the language stands today, there would be a compliance review process involving the Planning Commission *or* City Council — it's not clear which — and the remedies for non-compliance aren't as crisp as they should be. Under the clarifications proposed in the attachment, there would still be a robust compliance review process but, given community interest in this matter, we're suggesting that compliance issues be heard by the City Council after an initial review by City planning staff, and that the City Council be expressly authorized to order abatement or removal of any non-compliances. I believe these changes serve the intent of the parties, but do so in a way that is clearer and resolves ambiguities.

Finally, I wanted to check with you in presentation logistics. We would like to make a PowerPoint presentation, and I wondered who we should send our presentation to, and by what date.

Many thanks,
 Sean

Sean Marciniak

Partner

Hanson Bridgett LLP
 (925) 746-8471 Direct
 (925) 746-8498 Fax
 SMarciniak@hansonbridgett.com



425 Market Street, 26th Floor
 San Francisco, CA 94105

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Click on the below link to access information on COVID-19



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The foregoing applies even if this notice is embedded in a message that is forwarded or attached.

DRAFT

Article LV (Electronic Billboards)

Section 30.55.50 Application Review procedures.

(g) **Conditions.** The granting of approval for electronic billboard(s) may include such conditions as the planning commission or city council deems reasonable and necessary under the circumstances to carry out the requirements of the General Plan, City Code, and the intent of this Article. The following conditions shall be standard on all electronic billboard(s) approvals, where applicable:

8) **Compliance Hearings.** The Community Development Director shall undertake a minimum of three initial compliance reviews~~hearings before the City planning commission and/or city council shall be required~~ as follows: (a) six months from the date of final building permit issuance, at which time the Community Development Director shall also set a compliance hearing before the city council; (b) six months from the date of the ~~first~~ compliance hearing; and (c) 12 months from the date of the second compliance review~~hearing~~. Upon a finding of substantial non-compliance, the Community Development Director ~~may waive the~~ shall schedule a second and/or third hearing before the city council. Following the initial compliance hearing(s), the owner/operator, and/or property lease holder shall be subject to subsequent compliance hearings before the City upon request, due to non-compliance.

9) **City Agreement / Permit Violations.** Upon finding that the electronic billboard(s) is not being operated in compliance with the City Agreement and/or all conditions of approval, the community development director, prior to a scheduled city council compliance hearing, shall forward a copy of the findings of such violation to the city council~~planning commission for hearing~~. The applicant shall also be sent notice at least ten (10) days prior to the date of such hearing. If the planning commission~~city council~~ finds that a violation has occurred, the electronic billboard(s) owner, operator, and/or property lease holder shall abate or remove the violation.

From: Jeff McCuen
Sent: Thursday, March 9, 2023 3:02 PM
To: City Clerk; Mayor Marie Blankley; Council Member Rebeca Armendariz; Council Member Dion Bracco; Council Member Tom Cline; Council Member Zachary Hilton; Council Member Carol Marques; Council Member Fred Tovar
Cc: conrothtomike@gmail.com; Andy Faber; Cindy McCormick; Thai Pham; Tim F Fox; Christina Ruiz; Sharon Goei; Jolie Houston
Subject: EXTERNAL - Billboard Ordinance and Sign Ordinance Amendment

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Mayor Blankley and Honorable Members of the City Council:

Please click on the link below for pdf of support letters and petitions signed by local Gilroy businesses to be included in the staff report.

<https://spaces.hightail.com/receive/9N5Z1MkMOy>

In addition we would like to request that our item be placed early in the agenda as we anticipate many of the local businesses will be in attendance to speak.

Thanks for your consideration.

Jeff McCuen
Director of Real Estate

T 510.559.1135
Jeff.mccuen@OUTFRONT.com
1695 Eastshore Hwy, Berkeley, CA, 94710

OUTFRONT



8 Letters from Gilroy Business Owners

Samuel Moreira, 408 Tax and Accounting
 David Caldwell, Caldwell's Comics
 Karina Andrade, El Charrito Market
 Maria Barragan, El Rancho Western Wear
 Vilma Peraza, Fiesta Depot
 Peter Lai, Ling's Chinese Bistro
 Marleen Vieira, Quinceanera Couture
 Job Camarena, Wes's Shoe Repair

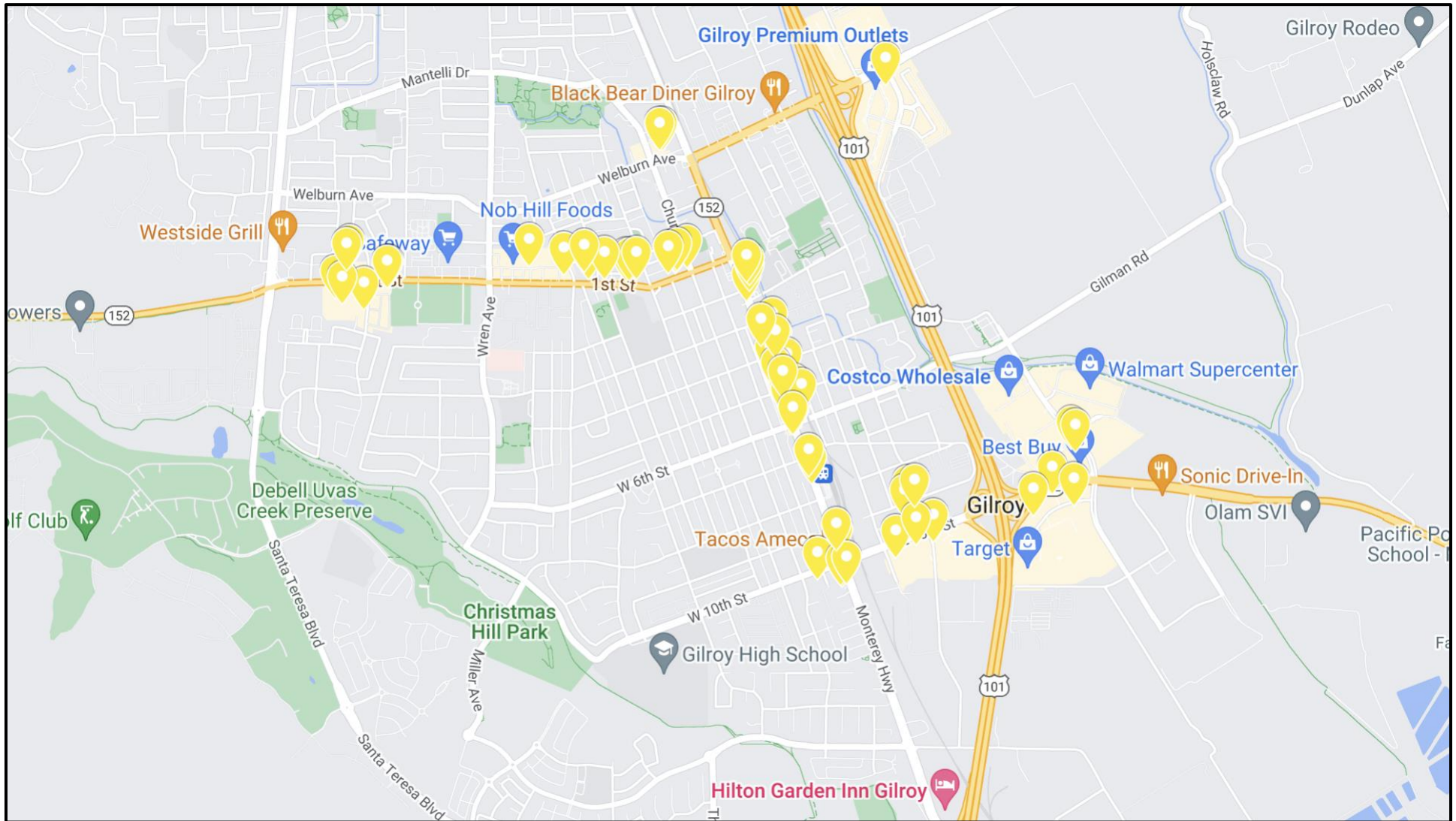
82 Petitions of Support from Gilroy Business Owners and Residents

408 Tax & Accounting
 A-Jays Cheesesteaks
 A&K Perfumeria
 All Natural Paeteria Y Neveria
 AMES Taping Tools
 Ashford's Heirlooms – **Downtown Business Assn. Member**
 Bike Center
 Blazin Bagelz
 Botanica San Benito
 Cadwell's Comics
 Campbell Auto Sales
 Chama Nativa Brazilian Steakhouse
 Charlies Liquor – **Gilroy Chamber of Commerce Member**
 Del Sol Bakery
 Dicar Insurance Marketing
 El Charrito Market
 El Indito
 El Rancho Foods
 El Rancho Western Wear
 Elay's Oriental Market
 European Wax Center
 Fiesta Depot
 Fit 4 Life
 Floreria 12 De Abril
 Franks Barber Shop
 Friends Food & Liquor
 Fun Party
 Gaeta's Taqueria
 Garbo's Antiques

Garlic City Café – **Gilroy Chamber of Commerce Member**
 Garlic City Embroidery Studio – **Gilroy Chamber of Commerce Member**
 Gilroy Barber Lounge
 Gilroy Donut House
 Gilroy Nails
 Gilroy Soccer
 Good Vibes Studio
 Hair & Nails Experts
 Imprenta Morales
 Indras Hair Cuts
 Indras Salon
 Joyeria Torres Inc
 La Placita
 Lapels Dry Cleaning
 Las Americas Bakery
 Ling's Chinese Bistro
 Los Costenitos Restaurant
 Los Pericos Taqueria – **Gilroy Chamber of Commerce Member**
 Mely's Hair Cut Salon
 Miliias Restaurant
 Milo's Meat Shop
 Mr. Travel
 Nutricion Y Energia
 Panaderia Negrete
 Pho Thanh An
 Pound4Pound Sports Fitness
 Princess Boutique
 Pronto Dollars
 Quinceanera Couture

Rise Fitness – **Gilroy Chamber of Commerce Member**
 Robot Shark
 Saddles & Treasures – **Gilroy Chamber of Commerce Member**
 Saigon 2 Siam Bistro
 SM Mexican Import
 Super Burger
 Super Taqueria
 Sushi Omakase – **Gilroy Chamber of Commerce Member**
 Tacos El Grullense Jal
 Taqueria Y Mariscos Chapala
 Taverna Bar Inc.
 Tax Systems
 TeaLeaf – **Gilroy Chamber of Commerce Member**
 The Oasis
 The Rock Zone Smoke Shop & Tattoo
 Tristan's Cookies and Cream – **Gilroy Chamber of Commerce Member**
 Vasquez Barber Shop n Styling
 Viva Con Nutricion Club
 WaterMart
 Wes' Shoe Repair – **Gilroy Chamber of Commerce Member**
 Westside Market & Liquor
 Xios Strength & Conditioning
 Xpro Nails
 Zacks Place

 Map of Coalition Members in Support of Gilroy's Modern Sign Ordinance



SUPPORT A MODERN SIGN ORDINANCE FOR GILROY

Problem: Gilroy needs new tax revenue to support city services, but residents don't want to see tax increases in challenging economic times. As a result, Gilroy's businesses and tourism industry need support to help grow the city's economy and expand its tax base.

Solution: Increase opportunities for city events and local businesses to attract visitors by modernizing the city code to allow for the placement of up to two electronic billboards. One of the billboards is proposed along the 101 freeway behind a property on Automall Parkway. There are no current plans for the second billboard.

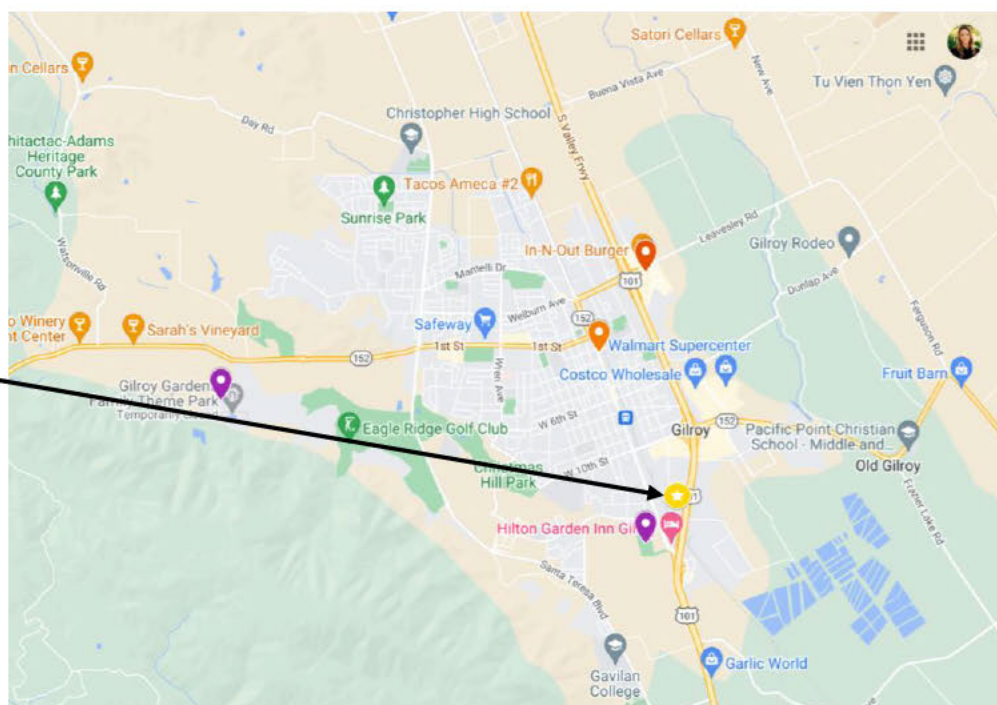
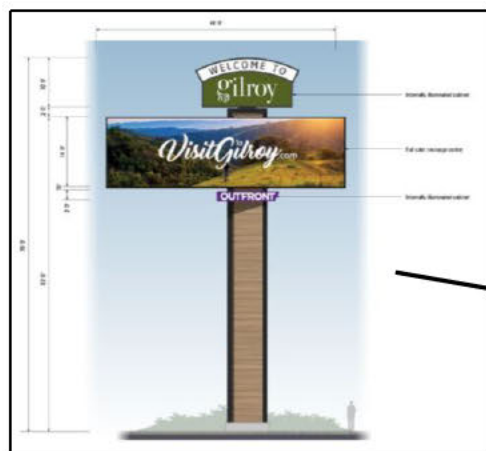
Modern signs can accommodate multiple advertisements that highlight Gilroy businesses and events across the city. Even businesses that don't advertise will benefit from the increased influx of visitors that advertisements bring.

Another benefit to the community is the availability of space for nonprofits, public service announcements, and city-generated announcements or ads that can be programmed extremely quickly. And of course, the bump in commerce will correspond to a jump in city revenues to support priorities from our first responders to park improvements to city maintenance to any number of other public services.

Ask: Our coalition of Gilroy businesses and residents is asking the City Council to adopt the Mitigated Negative Declaration (MND) and California Environmental Quality Act (CEQA) report that demonstrates no significant impact on the environment and adopt an ordinance (Z 18-04), approving changes to the city's municipal code to allow for limited electronic signage.

Proposed Electronic Billboard Rendering & Location

(specific sign to be considered separately by the City Council if the billboard ordinance is adopted)



Facts:***Ordinance Details:***

- A maximum of just two (2) Electronic Billboard Signs may be allowed in the City of Gilroy.
- The sign shall be located on property designated as General Services Commercial or City Gateway District.
- The electronic billboard shall be located within 660 feet of Highway 101.
- No Electronic Billboard sign shall be placed within 1.5 miles from another Electronic Billboard sign.
- To the extent possible, the Electronic Billboard sign shall be located and oriented in a manner that avoids and minimizes the direct exposure of the display to view from adjacent or nearby residential or hotel uses.
- The overall height of the sign shall not exceed seventy-five (75) feet.
- The maximum sign area of the digital display shall not exceed 672 square feet.
- The City of Gilroy shall be guaranteed a minimum of one (1) advertising spot per week for City events, public information, emergency alerts, and other similar public service announcements.

Economic Impact:

- 64-70% of ad time on electronic billboards is from local business.
- Studies show a 5-20% increase in sales for businesses that advertise on billboards.
- Zero cost to the City of Gilroy to build or operate the sign.

Community Impact | Digital Billboards will help Gilroy:

- Thrive by displaying advertisements featuring local businesses and showing them multiple times per day.
- Support jobs and increased economic activity within city limits.
- Utilize electric signage to advertise health and public safety messaging to residents.
- Regulate signage to ensure that they are safe and environmentally friendly.
- Catch up to neighboring cities with successful digital sign programs, including Santa Clara, Milpitas, San Carlos, Belmont, Millbrae, South San Francisco, Oakland, Hayward, Martinez, Fairfield, Berkeley, San Pablo, Dublin, Benicia, and Alameda County.
- Ensure traffic and pedestrian safety since extensive private and government research has demonstrated that electric signage does not distract drivers or pose any threat to the general public.

Environmental Impact:

- Proposed electronic billboard creates no substantial change in illumination levels.
- Brightness would be consistent with illumination intensity standards already outlined in the state's Caltrans Outdoor Advertising Act.
- Lighting intensity would actually be more conservative for billboards of similar size when compared with state standards.
- Project site is in a highly urbanized area and is surrounded by well-lit adjacent businesses, including the auto dealerships, highway lighting and infrastructure to avoid any disruptive or out-of-place lighting.
- Nearest residences are located approximately 1,795 feet west of the project boundary. Because of distance and intervening topography, the proposed electronic billboard would not be visible from these locations.
- Any future billboards under the proposed Ordinance would be subject to rigorous environmental review prior to approval.

March 8, 2023

Subject: Modern sign ordinance will be a boon for local economy

Dear Gilroy City Council Members,

I am writing to urge you to vote yes on the proposed modern sign ordinance, specifically the installation of a new electronic billboard on a busy stretch of the 101 near the car dealerships. As a local small business owner, I understand the importance of effective advertising and the impact it can have on the success of our businesses.

I strongly believe that any opportunity to bring new visitors and tourists to experience Gilroy should be welcomed with open arms. Our city has so much to offer, from recreational activities like hiking, the skating rink and Gilroy Gardens, to wineries, dining, and lodging, as well as annual events that are fun for the whole family. However, many potential visitors may not be aware of all that Gilroy has to offer. That's where modern signage comes in.

The proposed electronic billboard would provide an excellent opportunity to reach new visitors who might not know about the diverse range of activities in and around the city. It would also help to put Gilroy as a destination on the map and attract new visitors from outside of the area.

As a small business owner, I know firsthand how important tourism is for our local economy. By attracting new visitors, we can create new revenue streams for local businesses and merchants, helping to ensure the long-term viability of our city. Additionally, a modern sign ordinance would help us stay competitive with neighboring cities and towns that have already embraced modern signage.

I urge you to vote yes on the proposed modern sign ordinance and allow for the installation of the new electronic billboard on the 101. This is a great opportunity for our city to showcase all that Gilroy has to offer and attract new visitors to our community. Thank you for your time and consideration.

Sincerely,



Samuel Moreira

408 Tax and Accounting

February 23, 2023

SUPPORT a Modern Sign Ordinance and Digital Billboard for Gilroy

Dear Gilroy City Council Members,

I am writing to express my strong support for the proposed digital billboard ordinance that will bring multiple benefits to small businesses in Gilroy. As a local business owner myself, I believe that this initiative will bring much-needed attention to our city and attract new customers to our businesses.

The use of digital billboards will allow multiple businesses and events to be advertised across the city, increasing exposure and ultimately driving sales. Even businesses that do not advertise directly will benefit from the increased influx of visitors to the city. This is why I strongly believe that this ordinance is essential for the economic growth of Gilroy.

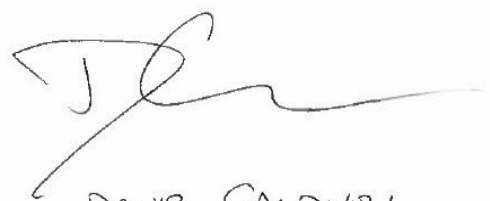
The proposed location of the first billboard on the freeway is strategic and will bring new visitors to our retailers, merchants, and city events without changing the character of the city. This billboard will not only attract new visitors but also inform them of the many wonderful businesses and events that are available in Gilroy.

Moreover, electronic billboards are vital for sharing time-sensitive health and safety information, as well as important community notifications for residents and travelers. This makes them an essential tool for the city in times of emergency.

I want to emphasize that the location, size, and design of the billboard have been carefully considered to minimize any negative impact on residents and the environment. All of the benefits that this ordinance will bring to our city come at zero cost to the City of Gilroy's taxpayers to build or operate the sign.

In conclusion, I urge you to approve the proposed digital billboard ordinance. As a small business owner in Gilroy, I believe that this initiative is essential for the economic growth and prosperity of our community. Thank you for your consideration.

Sincerely,



DAVID CALDWELL

[Redacted signature block]

March 6, 2023

Subject: Support local businesses; vote yes on updated sign ordinance for Gilroy

Dear Gilroy City Council Members,

I am writing to ask you to approve an updated sign ordinance for the city that would allow for an electronic billboard on the highway. I understand that there may be some concerns about the impact that such a sign could have on the character of our city. However, I believe that the location of the proposed billboard on the busy 101 by the brightly lit car dealerships means that it will not change the character of the city in any significant way.

On the other hand, the positives that such a sign could bring far outweigh any perceived negatives. As a business owner in Gilroy, I know that our city has so much to offer, from our wonderful wineries to our excellent restaurants and shops. However, we need to find new and innovative ways to bring visitors to town as we recover from the pandemic and look to reinvigorate our community.

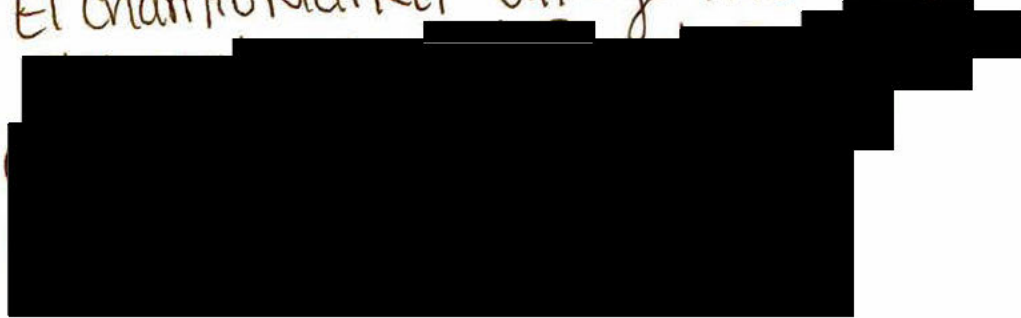
An electronic billboard on the highway would be an excellent way to do this. It would provide an eye-catching and attention-grabbing advertisement for our city to the thousands of people who drive by on the 101 every day. This, in turn, would help support the many businesses in Gilroy and create new revenue streams that could benefit the entire community.

Furthermore, since the sign comes at no cost to the city, I would ask that you listen to the needs of the business community and consider how this kind of innovation could help bring new visitors to Gilroy. We need to be creative and forward-thinking if we want to succeed in a post-pandemic world, and I believe that an updated sign ordinance that allows for an electronic billboard on the highway is a step in the right direction.

I urge you to approve the updated sign ordinance and allow for an electronic billboard on the highway. This is a great opportunity for our city to showcase all that we have to offer and attract new visitors to our community. Thank you for your time and consideration.

Sincerely,

Karina Andrade
El Charrito Market Gilroy INC.



February 22, 2023

Subject: Support for Electronic Billboard Ordinance

Dear Gilroy City Council Members,

I am writing to express my support for the proposed electronic billboard ordinance that would allow for a new digital billboard along the 101 freeway. As a small business owner in Gilroy, I believe that this ordinance would have a positive impact on the local economy and tourism industry.

Although I personally do not advertise, I am certain that the billboard will put Gilroy on the map for new visitors as larger businesses and events bring tourists to town. I believe that the new digital billboard will help to promote the unique character and culture of our community, and attract visitors to our town who might otherwise overlook us.

Studies show up to a 20% increase in revenue for local businesses from billboards. In addition, billboards are an effective way to attract new visitors to a community, as drivers often make stops based on information about dining, lodging, events, activities, shopping or something else they saw on a billboard.

Finally, a new digital billboard would enhance an otherwise nondescript part of the 101 freeway and serve as a landmark for our community. It would not only benefit businesses like mine, but also contribute to the overall economic growth and prosperity of our community.

I urge you to support the electronic billboard ordinance and to consider the many benefits that it would bring to our community. Thank you for your attention to this matter.

Sincerely,

Maria Barragan

Maria Barragan
Owner, El Rancho Western Wear

February 23, 2023

Subject: Strong Support for Electronic Billboard in Gilroy

Dear Mayor Blankley and Gilroy City Council Members,

As the owner of Fiesta Depot in Gilroy, I am writing to express my strong support for the proposed modern sign ordinance for our city. Specifically, I would like to express my enthusiasm for the proposed electronic billboard, which I believe would be a tremendous asset to our community.

I understand that there are concerns about the impact that a digital billboard might have on the small town feel of Gilroy. However, I believe that the proposed location of the billboard on the freeway, away from the downtown and residential areas, addresses these concerns. This will allow us to reach a wider audience and attract new visitors and tourists to our community.

What is particularly exciting about this proposal is that it comes at zero cost to the city and its residents. Rather, it is our community that stands to gain from the increased revenue that advertising will bring to city events and businesses. As a small business owner, I know firsthand how important advertising is to the success of our local economy. By allowing businesses to promote themselves in new and innovative ways, the proposed modern sign ordinance will help to boost the local economy and create new opportunities for growth.

In addition, I believe that the proposed electronic billboard will create a memorable landmark for our community. It will serve as a powerful symbol of the energy and vitality of Gilroy, and help us to attract new visitors and residents for years to come.

In light of these benefits, I urge you to support the proposed modern sign ordinance, including the proposed electronic billboard. I believe that this is an important step forward for our community, and one that we can all be proud of.

Thank you for your time and attention to this important matter.

Sincerely,



Vilma Peraza
Owner, Fiesta Depot



March 8, 2023

Subject: Support for a Modern Sign Ordinance in Gilroy

Dear Gilroy City Council Members,

I am writing to express my support for the passage of a new ordinance allowing digital billboards in Gilroy, provided they undergo rigorous environmental review and approval. As a local business owner, I believe that modernizing our city's sign ordinance is crucial to attract new visitors and patrons, thereby providing new revenue for city services and resident priorities.

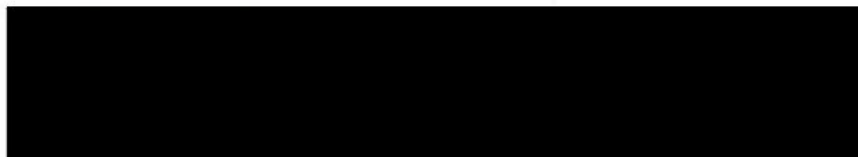
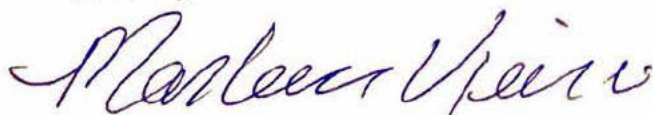
In today's highly competitive business world, it's essential to have effective advertising that captures the attention of potential customers. Digital billboards offer an efficient and eye-catching way to communicate messages and promotions that will help drive sales for local businesses. By allowing these modern signs, we can make Gilroy a more attractive destination for tourists and day-trippers, which in turn will help support our local economy.

Furthermore, the revenue generated by these digital billboards can benefit the city and its residents by providing additional funding for priorities that make our town more livable. It's no secret that our city has faced challenges in recent years, especially decreased sales revenue during the pandemic, and we need to take advantage of every opportunity to generate new revenue and create a vibrant, thriving community for our citizens.

I understand that some may have concerns about the potential impact of digital billboards on our environment. However, I believe that with rigorous environmental review and approval, we can ensure that any potential negative impacts are mitigated. Additionally, modern digital billboards are more energy-efficient than traditional signs and can even help reduce light pollution.

In conclusion, I urge you to consider the benefits that a modern sign ordinance allowing digital billboards can bring to our community. I believe that this change can make a significant positive impact on the local economy, city services, and the quality of life for our residents. Thank you for your time and consideration.

Sincerely,



Quinccanera Couture

February 23, 2023

Subject: **SUPPORT for Digital Billboard Ordinance**

Dear Gilroy City Council Members,

I am writing to express my enthusiastic support for the proposed modern sign ordinance that allows for up to two digital billboards in the city. I believe that a modern sign ordinance will not only bring in new visitors and customers to local businesses but also increase city revenue to support much-needed city services and improvements.

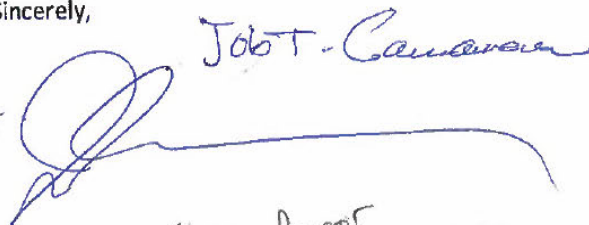
Digital billboards have become a popular form of advertising in many nearby cities, and Gilroy should not be left behind. By allowing up to two digital billboards, the city can tap into the power of modern technology to promote local businesses and events. The use of digital billboards will not only enhance the city's economic development but also put us on the map for commuters and tourists taking the 101 freeway past our city.

Moreover, the new revenue generated from an uptick in sales will support needed city services and improvements. As a result, the city can allocate more resources to improve infrastructure, expand public facilities, and provide better services to the residents of Gilroy. This additional revenue will also help attract new businesses to the city, creating jobs and further contributing to the economic growth of the area.

I believe that the proposed sign ordinance strikes an appropriate balance between promoting local businesses and maintaining the charm and character of the city. By allowing only two digital billboards, the city can ensure that they are strategically placed and do not overwhelm the city's small-town charm and character.

In conclusion, I urge you to approve the proposed modern sign ordinance that allows for up to two digital billboards in the city of Gilroy. The benefits to the local economy, city services, and infrastructure improvements are substantial and cannot be ignored. I appreciate your attention to this matter and hope that you will make the right decision for the future of Gilroy.

Sincerely,

Job T. Cameron



Wes' Shoe Repair



✓ VOTE YES!

10.1



The Gilroy City Council on March 20th will consider the adoption of a modern sign ordinance that would allow up to two electronic billboards in close proximity to Hwy 101. Electronic billboards are proven to increase business and will boost local revenue to fund needed city services.

Tell the City Council you support a modern sign ordinance for Gilroy!

- ☒ Modern signs can accommodate multiple advertisements that highlight Gilroy businesses and events across the city. Even businesses that don't advertise will benefit from the increased influx of visitors that advertisements bring.
- ☒ Studies show a 5-20% increase in sales for businesses that advertise on billboards.
- ☒ Proposed billboard is located on the freeway to bring new visitors to the city's retailers, merchants and city events without changing the character of the city.
- ☒ Electronic billboards are vital to share time-sensitive health and safety information, as well as important community notifications for residents and travelers.
- ☒ Location, size and design minimizes negative impact on residents and the environment.
- ☒ Zero cost to City of Gilroy to build or operate the sign.

YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Gaeta

Ro

Bike Center

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

N/A

p. 244 of 947

[Signature]

✓ VOTE YES!

10.1



The Gilroy City Council on March 20th will consider the adoption of a modern sign ordinance that would allow up to two electronic billboards in close proximity to Hwy 101. Electronic billboards are proven to increase business and will boost local revenue to fund needed city services.

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

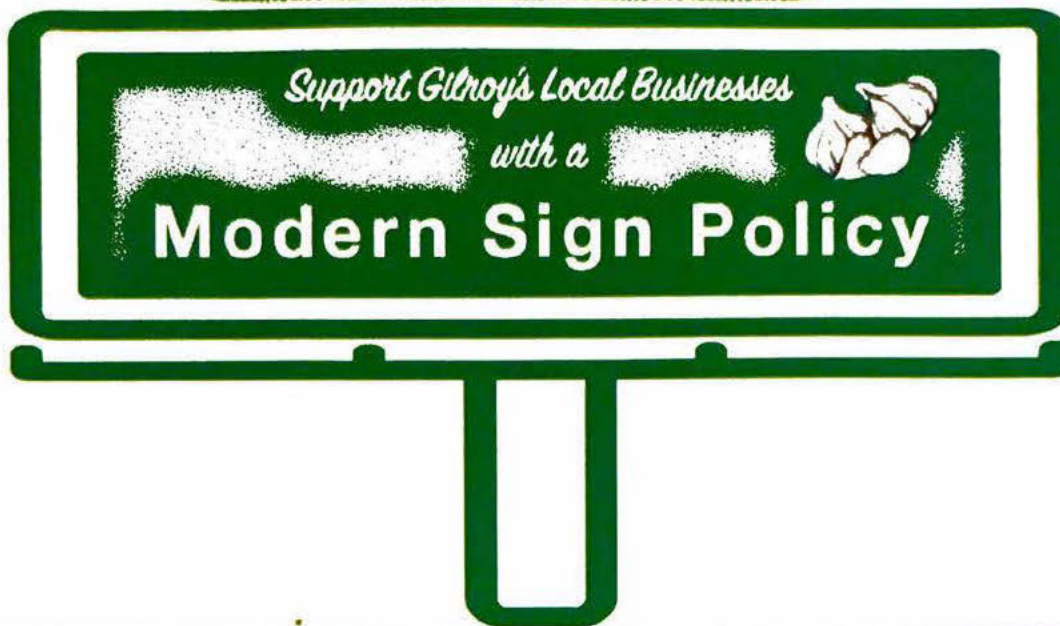
EMAIL

SIGNATURE

p. 245 of 947

✓ VOTE YES!

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<u>Norma</u>	<u>Heredia</u>	<u>Frances Barker Shop</u>
FIRST NAME	LAST NAME	BUSINESS NAME
<u>[REDACTED]</u>		
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
<u>[REDACTED]</u>		
<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[Signature]</u>
PHONE	EMAIL	SIGNATURE

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Adam
FIRST NAME

Sanchez
LAST NAME

Milias Restaurant
BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

p. 247 of 947

SIGNATURE

✓ VOTE YES!

10.1



Interested in attending meeting
Chamber member

The Gilroy City Council on March 20th will consider the adoption of a modern sign ordinance that would allow up to two electronic billboards in close proximity to Hwy 101. Electronic billboards are proven to increase business and will boost local revenue to fund needed city services.

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Amy
FIRST NAME

Boucher
LAST NAME

Saddles & Treasures
BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED]
PHONE

[REDACTED]
EMAIL

[REDACTED]
SIGNATURE

✓ VOTE YES!



chamber member

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Tina

Harwood

Tea leaf

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

p. 249 of 947

PHONE

EMAIL

SIGNATURE

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

PHUONG

PHAM

HAIR / Nails Experts

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

p. 250 of 947

✓ VOTA SÍ

10.1

Apoyar a las empresas locales de Gilroy
con un
Política de letreros modernos



El Concejo Municipal de Gilroy el 20 de marzo considerará la adopción de una ordenanza de letreros modernos que permitiría hasta dos vallas publicitarias electrónicas en las proximidades de la autopista 101. Se ha comprobado que letreros modernos electrónicos aumentan los negocios y aumentarán los ingresos locales para financiar los servicios necesarios de la ciudad.

¡Dígale al Concejo Municipal que apoye una ordenanza de letreros modernos para Gilroy!

- ☒ Letreros modernos pueden acomodar múltiples anuncios que destacan los negocios y eventos de Gilroy en toda la ciudad. Incluso las empresas que no publicitan se beneficiarán de la mayor afluencia de visitantes que traen los anuncios.
- ☒ Estudios muestran un aumento del 5 al 20 % en ventas de empresas que se anuncian en vallas publicitarias.
- ☒ El letrero propuesto estará ubicado en la autopista para traer nuevos visitantes a los minoristas, comerciantes y eventos de la ciudad sin cambiar el carácter de la ciudad.
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- ☒ Cero costo para la ciudad de Gilroy para construir y operar el letrero.

¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Lorena Ayala Indras Salon
NOMBRE APELLIDO NOMBRE DEL NEGOCIO
[Redacted]
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)
[Redacted]
TELÉFONO EMAIL FIRMA
Lorena



VOTA SÍ

10.1

Apoyar a las empresas locales de Gilroy
con un



Política de letreros modernos

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Cecilia

NOMBRE

Esobar

APELLIDO

Fit 4 life

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA

p. 252 of 947

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Duc
FIRST NAME

Tkan
LAST NAME

SPRO Nails
BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED]
PHONE

EMAIL

p. 253 of 947
[Signature]
SIGNATURE



VOTA SÍ

10.1

Apoyar a las empresas locales de Gilroy
con un



Política de letreros modernos

Signad letter
Interest in attending Meeting

El Concejo Municipal de Gilroy el 20 de marzo considerará la adopción de una ordenanza de letreros modernos que permitiría hasta dos vallas publicitarias electrónicas en las proximidades de la autopista 101. Se ha comprobado que letreros modernos electrónicos aumentan los negocios y aumentarán los ingresos locales para financiar los servicios necesarios de la ciudad.

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Laura

Gonzalez

El Charrito Market Gilroy INC

NOMBRE

APELLIDO

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA

✓ VOTA SÍ

10.1

Apoyar a las empresas locales de Gilroy
con un
Política de letreros modernos

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Carlos

Gutiérrez

SM Mexican Import

NOMBRE

APELLIDO

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

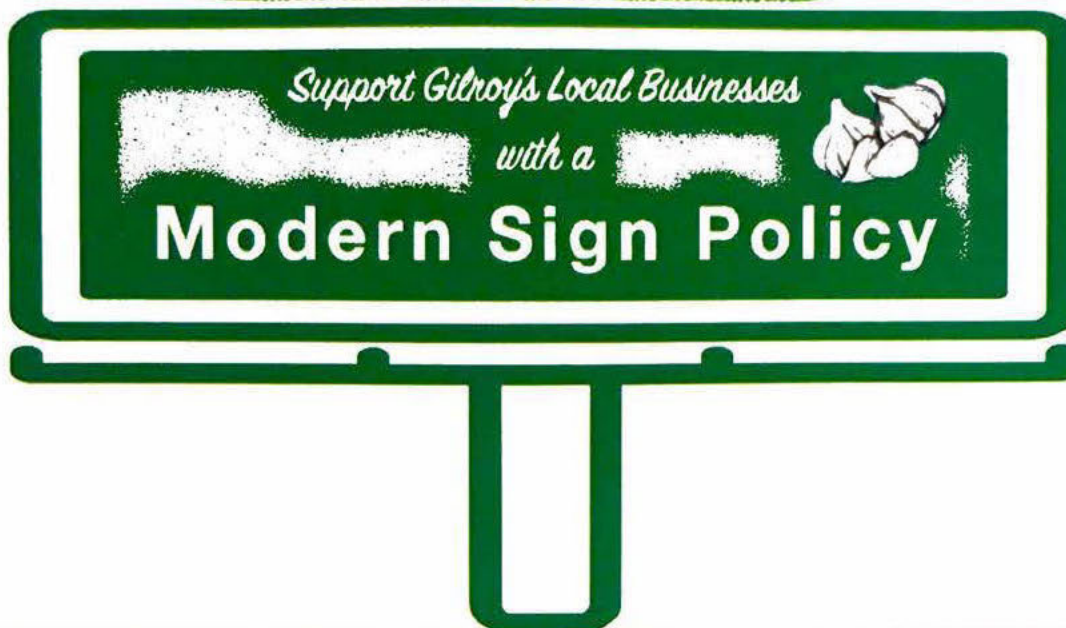
EMAIL

FIRMA

p. 255 of 947

✓ VOTE YES!

10.1



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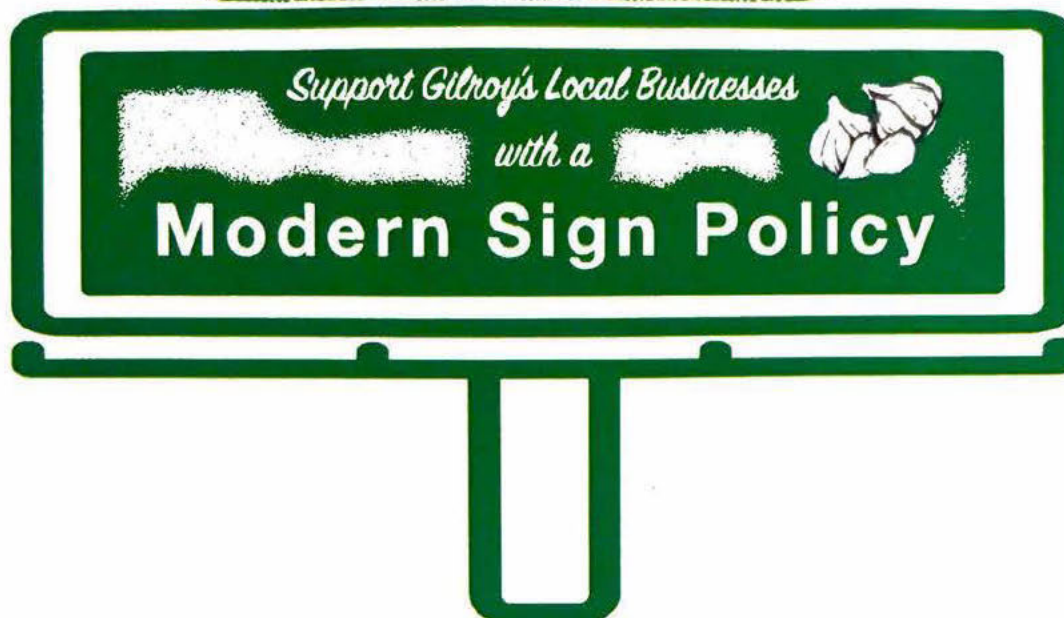
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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Bunton Horz Gilroy Donzha
FIRST NAME LAST NAME BUSINESS NAME
[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)
[REDACTED] [REDACTED] [REDACTED]
PHONE EMAIL SIGNATURE

p. 256 of 947

✓ VOTE YES!



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Grinity
FIRST NAME

Gonzales
LAST NAME

Lapels
BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

Grinity Gonzales
p. 257 of 947

✓ VOTE YES!

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Robert
FIRST NAME

Santos
LAST NAME

Rock Zone
BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED]
PHONE

[REDACTED]
EMAIL

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[Signature]
SIGNATURE

✓ VOTE YES!

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

MADEIRA

FIRST NAME

HABIB

LAST NAME

A-JAY'S CHEESE STEAKS

BUSINESS NAME

[Redacted Address Line]

BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted Address Line]

[Redacted Address Line]

of 947

PHONE

EMAIL

SIGNATURE

[Handwritten Signature]

✓ VOTE YES!

10.1



bring invite

The Gilroy City Council on March 20th will consider the adoption of a modern sign ordinance that would allow up to two electronic billboards in close proximity to Hwy 101. Electronic billboards are proven to increase business and will boost local revenue to fund needed city services.

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Stevan

Quezada

EL Indito

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

p. 260 of 947

PHONE

EMAIL

SIGNATURE

✓ VOTE YES!

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Francisco

FIRST NAME

Kassan

LAST NAME

El Rancho Foods

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

p. 261 of 947

SIGNATURE

✓ VOTA SÍ

10.1

Apoyar a las empresas locales de Gilroy
con un
Política de letreros modernos



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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Gema

NOMBRE

Torres

APELLIDO

Joyeria Torres inc

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA

p. 262 of 947

Gema Torres

✓ VOTE YES!

10.1



Will do letter

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- ☒ Zero cost to City of Gilroy to build or operate the sign.

YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Samuel

Moraisa

408 Tax & Accounting

FIRST NAME

LAST NAME

BUSINESS NAME

[Redacted]

BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted]

PHONE

[Redacted]

EMAIL

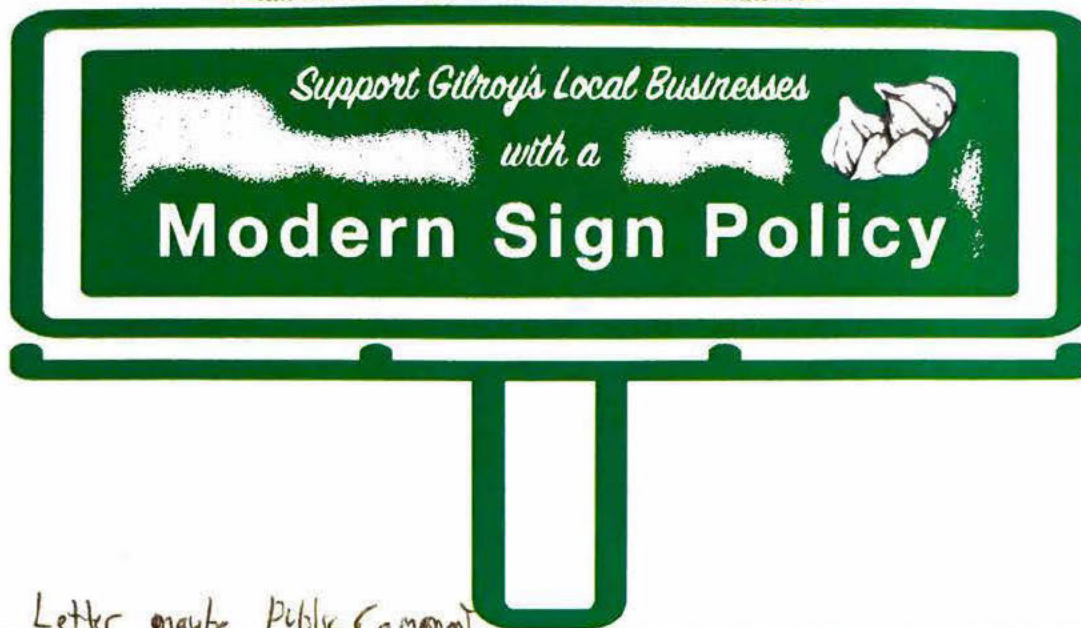
[Signature]

SIGNATURE

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✓ VOTE YES!

10.1



Letter maybe Public Comment

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Marleen

Vieira

Quinceanera Courtne

FIRST NAME

LAST NAME

BUSINESS NAME

[Redacted]

BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted]

PHONE

[Redacted]

EMAIL

[Signature]

SIGNATURE



VOTA SÍ

10.1



Don can attend
Interest in dinner

El Concejo Municipal de Gilroy el 20 de marzo considerará la adopción de una ordenanza de letreros modernos que permitiría hasta dos vallas publicitarias electrónicas en las proximidades de la autopista 101. Se ha comprobado que letreros modernos electrónicos aumentan los negocios y aumentarán los ingresos locales para financiar los servicios necesarios de la ciudad.

¡Dígale al Concejo Municipal que apoye una ordenanza de letreros modernos para Gilroy!

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Eduardo Martinez

NOMBRE

APELLIDO

Los Costenitos, Inc.

NOMBRE DEL NEGOCIO

[Redacted]
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

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[Redacted]
TELÉFONO

[Redacted]
EMAIL

[Redacted]
FIRMA

Eduardo Martinez

✓ VOTE YES!

10.1



Spanish speaker
Interested in meeting

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Luis Vasquez Vasquez Vasquez Barber Shop n stylor
FIRST NAME LAST NAME BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED] [REDACTED] p. 266 of 947
PHONE EMAIL SIGNATURE

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Anna
FIRST NAME

Reiner
LAST NAME

Goodvibes studio
BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED]
PHONE

[REDACTED]
EMAIL

[REDACTED]
SIGNATURE

p. 267 of 947

✓ VOTE YES!



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

SALVADOR
FIRST NAME

CHAVARRIN
LAST NAME

TRISTAR'S COOKIES AND CREAM
BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Steve

FIRST NAME

Aguiar

LAST NAME

Ames Taper Tools

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

p. 269 of 947

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

FRIENES FOOD & LIQUOR
FIRST NAME LAST NAME

Rajal Patel
BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

p. 270 of 947

Rimulak
SIGNATURE

✓ VOTA SÍ

10.1



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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Gupllexming Acosta Water Mart
NOMBRE APELLIDO NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA

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✓ VOTA SÍ

10.1

Apoyar a las empresas locales de Gilroy
con un
Política de letreros modernos

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

NOMBRE

APELLIDO

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA

p. 272 of 947

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

RUD

OSORIO

ELAY'S ORIENTAL STORE

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

p. 278 of 947

SIGNATURE

✓ VOTE YES!

10.1



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Monif

Abdullah

Super Burger

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

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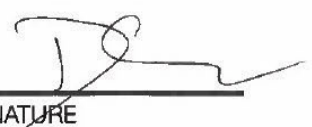


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DAVID	CALDWELL	CALDWELL'S COMICS
FIRST NAME	LAST NAME	BUSINESS NAME
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
		
PHONE	EMAIL	SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Rubén Guerrero Pound 4 Pound
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted] [Signature]
PHONE EMAIL SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<u>Gumit</u>	<u>Sims</u>	<u>West Side Market</u>
FIRST NAME	LAST NAME	BUSINESS NAME
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
<u></u>	<u></u>	<u>Cand L</u>
PHONE	EMAIL	SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Tared Thong Saigon 2 siam bistr
FIRST NAME LAST NAME BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED] [REDACTED] [Signature]
PHONE EMAIL SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Jennifer Probert Tacos El Arrolense Jal
FIRST NAME LAST NAME BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED] [REDACTED] [Signature]
PHONE EMAIL SIGNATURE



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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

<u>Jose</u>	<u>Batista</u>	<u>Del Sol Bakery</u>
NOMBRE	APELLIDO	NOMBRE DEL NEGOCIO
<u>[Redacted]</u>		
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)		
<u>[Redacted]</u>	<u>[Redacted]</u>	<u>José B.</u>
TELÉFONO	EMAIL	FIRMA

✓ VOTA SÍ

Apoyar a las empresas locales de Gilroy
con un



Política de letreros modernos

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Zoylo

NOMBRE

Perez

APELLIDO

ALLNATURAL

NOMBRE DEL NEGOCIO

PALETERIA Y NEVERA

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

MISAEL SALDANA ^{Gilroy} BARBERSHOP Lounge

FIRST NAME

LAST NAME

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Dinesh Alcala Pronto Dollars
FIRST NAME LAST NAME BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED] [REDACTED] [Signature]
PHONE EMAIL SIGNATURE

✓ VOTA SÍ

*Apoyar a las empresas locales de Gilroy
con un*



Política de letreros modernos

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

MaPalms

NOMBRE

Weynt

APELLIDO

Paradise Weynt

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Claudia Marchnado Fun party
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted]
PHONE

[Redacted] [Signature]
EMAIL



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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Dora Rivera La placita
NOMBRE APELLIDO NOMBRE DEL NEGOCIO

[Redacted]
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

[Redacted]
TELÉFONO

[Redacted]
EMAIL

Dora Rivera
FIRMA



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Emmanuel DeLaTorre Goeta's Tagueria
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted] [Redacted] [Signature]
PHONE EMAIL SIGNATURE

✓ VOTA SÍ

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Romelia

Barriga

The Oasis

NOMBRE

APELLIDO

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA

Romelia Barriga



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Amelio Martínez Mely's Hair Cut Salon
 NOMRE APELLIDO NOMBRE DEL NEGOCIO

[Redacted]

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

[Redacted] [Redacted] [Signature]
 TELÉFONO EMAIL FIRMA



Interested in meeting

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Job Camarena Wes Shoe Repair
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted] [Redacted] [Signature]
PHONE EMAIL SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Socrates Dringo Gaulin City Cafe
FIRST NAME LAST NAME BUSINESS NAME

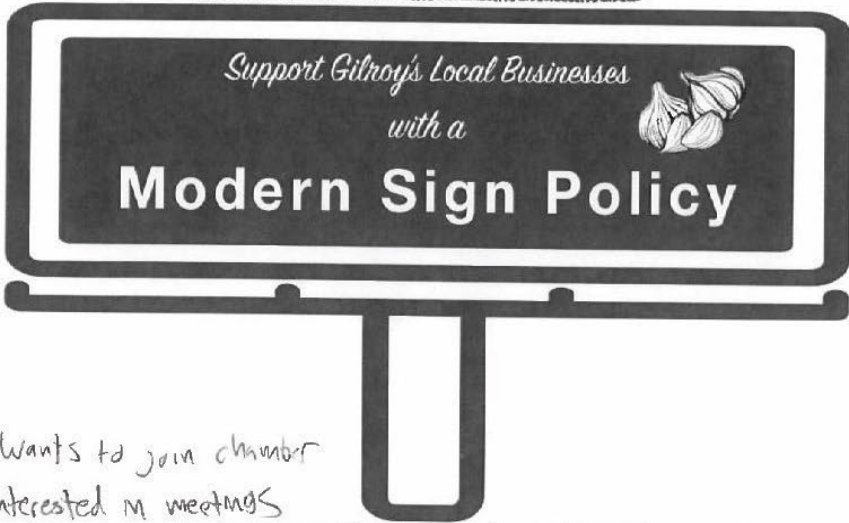
[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED]
PHONE

EMAIL

[Signature]
SIGNATURE

✓ VOTE YES!



Wants to join chamber
Interested in meetings

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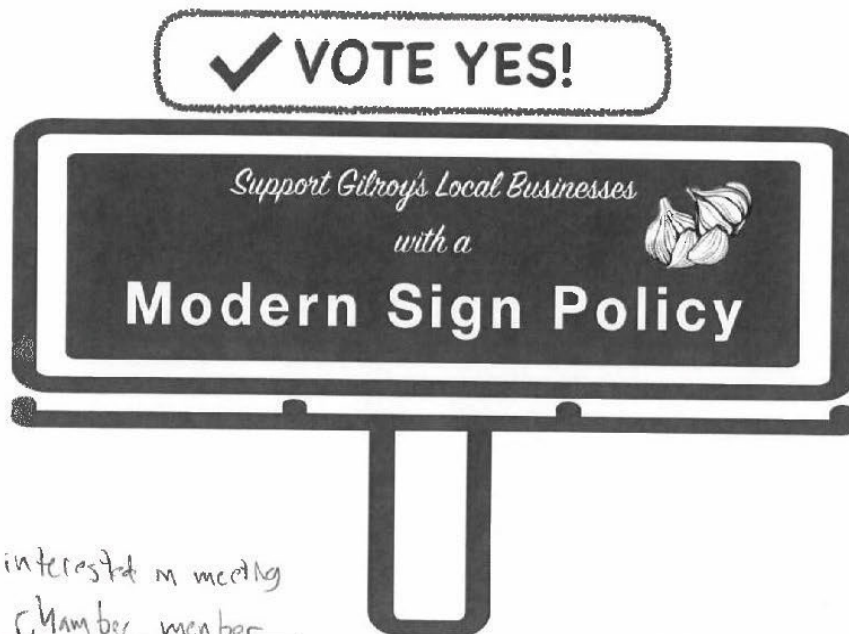
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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

FIDEI AGUERO LAS AMERICAS BAKERY
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted] [Redacted]
PHONE EMAIL SIGNATURE



interested in meeting
Chamber member

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<u>Akua Floyd</u>	<u>Rise Fitness</u>	
FIRST NAME	LAST NAME	BUSINESS NAME
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
		<u>[Signature]</u>
PHONE	EMAIL	SIGNATURE



Wash DC interest in meeting

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

<i>Rosano</i>	<i>Gonzalez</i>	<i>Viva Can Nutrition Club</i>
NOMBRE	APELLIDO	NOMBRE DEL NEGOCIO
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)		
		<i>Rosario Gonzalez</i>
TELÉFONO	EMAIL	FIRMA



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Zack

FIRST NAME

Snyder

LAST NAME

Zack's Place

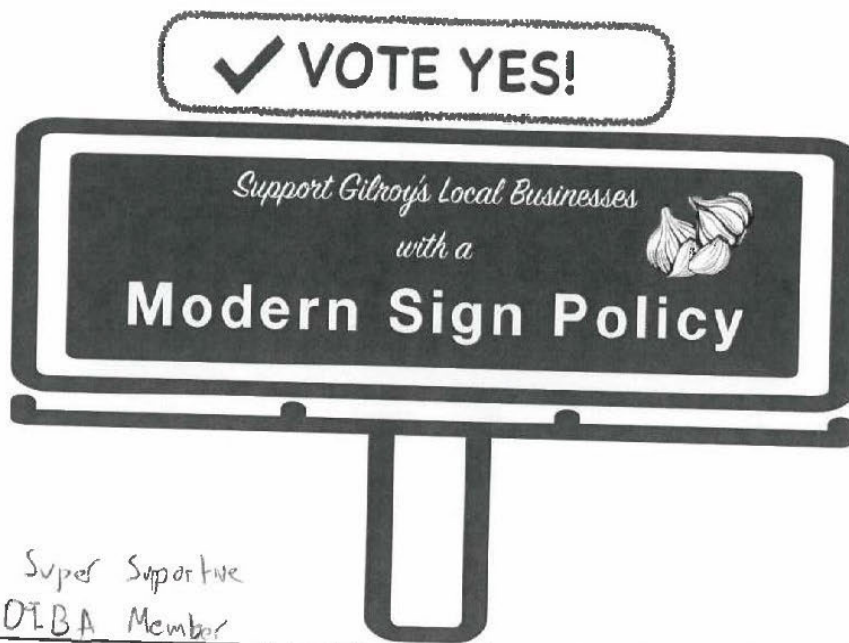
BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

[Signature]
SIGNATURE



Super Supportive
DLBA Member

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Wanda Ashford Ashford Hair Care
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted] [Redacted] Wanda Ashford
PHONE EMAIL SIGNATURE

[Redacted]

✓ VOTA SÍ

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Política de letreros modernos

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JAVIER LEON MR. TRAVEI
NOMBRE APELLIDO NOMBRE DEL NEGOCIO

[Redacted]
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

[Redacted]
TELÉFONO

[Redacted]
EMAIL

[Redacted] *Travei*
FIRMA



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DAVID

FIRST NAME

DOSHACK

LAST NAME

GARCIA'S ANTIQUES

BUSINESS NAME

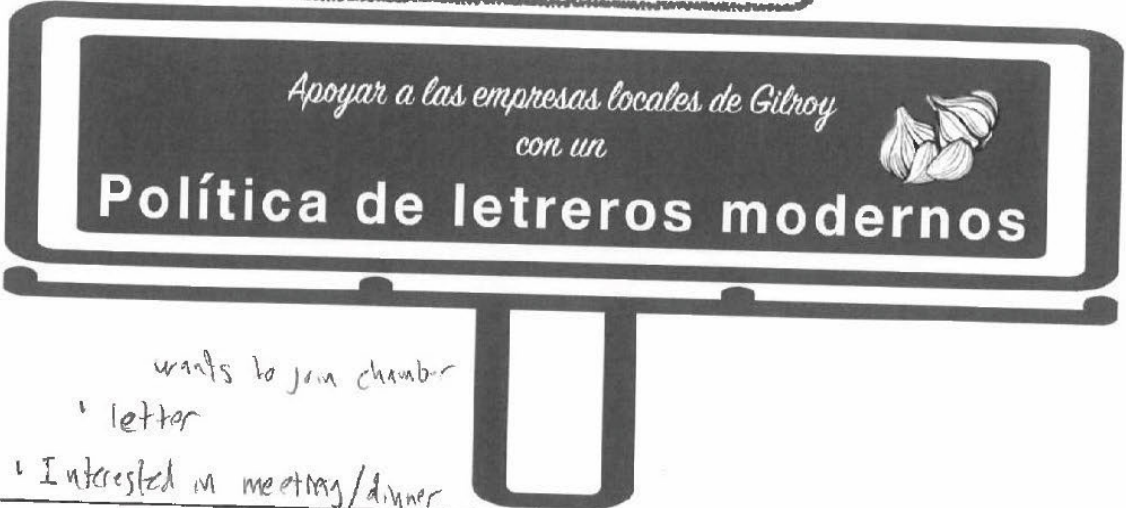
BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

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Vikma Peraza Fiesta Dept
NOMBRE APELLIDO NOMBRE DEL NEGOCIO

[Redacted Address Line]
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

[Redacted Phone] [Redacted Email] LP
TELÉFONO EMAIL FIRMA



Chamber member

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Carol Gutierrez

FIRST NAME

LAST NAME

Garlic City Embroidery Studio

BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE

Carol Gutierrez



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- ☒ Zero cost to City of Gilroy to build or operate the sign.

YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Andrew

FIRST NAME

Deh Cruz

LAST NAME

XIOS Strength & Conditioning

BUSINESS NAME

[Redacted address line]

BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted phone number]

PHONE

[Redacted email address]

EMAIL

[Handwritten signature]

SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Miguel Rojas Botanica San Benito
FIRST NAME LAST NAME BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED]
PHONE

[REDACTED]
EMAIL

[Signature]
SIGNATURE

✓ VOTA SÍ

Apoyar a las empresas locales de Gilroy
con un



Política de letreros modernos

El Concejo Municipal de Gilroy el 20 de marzo considerará la adopción de una ordenanza de letreros modernos que permitiría hasta dos vallas publicitarias electrónicas en las proximidades de la autopista 101. Se ha comprobado que letreros modernos electrónicos aumentan los negocios y aumentarán los ingresos locales para financiar los servicios necesarios de la ciudad.

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Olivia

NOMBRE

Brito

APELLIDO

A & K Perfumeria

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

Olivia Brito

FIRMA



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Jennifer Garcia Taverna Bar Inc.
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted]
PHONE

[Redacted]
EMAIL

[Signature]
SIGNATURE

✓ VOTA SÍ

*Apoyar a las empresas locales de Gilroy
con un*



Política de letreros modernos

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Carmen

NOMBRE

Anteaga

APELLIDO

Indras Hair Cuts

NOMBRE DEL NEGOCIO

[Redacted]
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

[Redacted]
TELÉFONO

EMAIL

Carmen anteaga

FIRMA



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<u>TEODORA</u>	<u>RODRIGUEZ</u>	<u>Nutrición & Energía A</u>
NOMBRE	APELLIDO	NOMBRE DEL NEGOCIO
<u>[Redacted]</u>		
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Círcule Uno)		
<u>[Redacted]</u>	<u>[Redacted]</u>	<u>[Signature]</u>
TELÉFONO	EMAIL	FIRMA

✓ VOTA SÍ

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Maria Luisa Luna Imprenta Morales
NOMBRE APELLIDO NOMBRE DEL NEGOCIO

[Redacted]
DIRECCION DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

[Redacted]
TELEFONO

[Redacted]
EMAIL

[Redacted]
FIRMA

Maria Luisa



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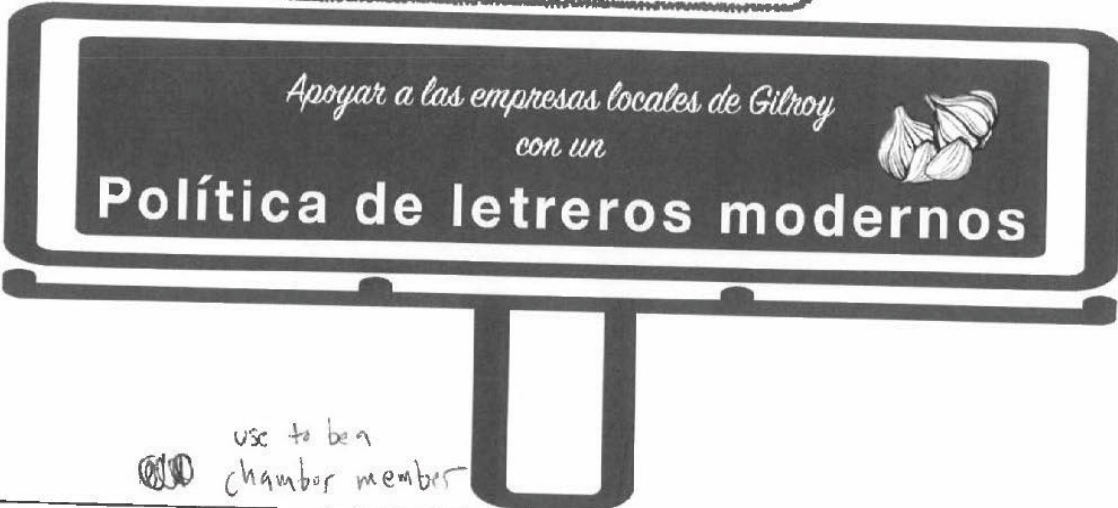
¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Daisy Rufino Floreria 12 De Abril
NOMBRE APELLIDO NOMBRE DEL NEGOCIO

[Redacted]
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

[Redacted] [Redacted] [Signature]
TELÉFONO EMAIL FIRMA

✓ VOTA SÍ



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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

NOMBRE	Apellido	Princess Boutique
DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)		
TELÉFONO	EMAIL	FIRMA



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- ☒ Zero cost to City of Gilroy to build or operate the sign.

YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<u>Jessica</u>	<u>Sam</u>	<u>Blazin Bagels</u>	<u>Owner</u>
FIRST NAME	LAST NAME	BUSINESS NAME	
BUSINESS / HOME ADDRESS (CIRCLE ONE)			
			
PHONE	EMAIL	SIGNATURE	



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<u>Victoria</u>	<u>ORDZCO</u>	<u>European Wax Center</u>
FIRST NAME	LAST NAME	BUSINESS NAME
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
		<u>V. L. W. D.</u>
PHONE	EMAIL	SIGNATURE



Mayra

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¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Abisra Candian

Super Taguerin

NOMBRE

APELLIDO

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA



Interested in Dinner
Chamber Member

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<i>Meissa</i>	<i>Kato</i>	<i>Soni Omafase</i>
FIRST NAME	LAST NAME	BUSINESS NAME
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
PHONE	EMAIL	<i>[Signature]</i> SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Danene Auguer Dicar Insurance
FIRST NAME LAST NAME BUSINESS NAME Markette

[Redacted Address]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted Phone] [Redacted Email] [Signature]
PHONE EMAIL SIGNATURE

✓ VOTE YES!

Support Gilroy's Local Businesses
with a
Modern Sign Policy



high end Rest
looking to join chamber soon
Interested in pre meeting dinner

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

CLAIR

FIRST NAME

Bray

LAST NAME

Chama NATIVA INC

BUSINESS NAME

(BUSINESS / HOME ADDRESS (CIRCLE ONE))

PHONE

EMAIL

SIGNATURE

CLAIR



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<u>Bayer</u>	<u>Zamora</u>	<u>Chapala</u>
FIRST NAME	LAST NAME	BUSINESS NAME
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
		<u>[Signature]</u>
PHONE	EMAIL	SIGNATURE



might be interested in dinner

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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Peter Lai Ling Chinese Bistro
FIRST NAME LAST NAME BUSINESS NAME

[Redacted Address Line]

BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted Phone Number]

PHONE

EMAIL

[Handwritten Signature]

SIGNATURE



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<u>Thach</u>	<u>Nguyen</u>	<u>Gilroy Mail</u>
FIRST NAME	LAST NAME	BUSINESS NAME
<u>[REDACTED]</u>		
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
<u>[REDACTED]</u>		<u>[Signature]</u>
PHONE	EMAIL	SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Ismael Torres MILO'S MEAT SHOP
FIRST NAME LAST NAME BUSINESS NAME

[Redacted Address Line]

BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted Phone and Email Area]

PHONE

EMAIL

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SIGNATURE

✓ VOTA SÍ

Apoyar a las empresas locales de Gilroy
con un



Política de letreros modernos

Interest in Meritas

El Concejo Municipal de Gilroy el 20 de marzo considerará la adopción de una ordenanza de letreros modernos que permitiría hasta dos vallas publicitarias electrónicas en las proximidades de la autopista 101. Se ha comprobado que letreros modernos electrónicos aumentan los negocios y aumentarán los ingresos locales para financiar los servicios necesarios de la ciudad.

¡Dígale al Concejo Municipal que apoye una ordenanza de letreros modernos para Gilroy!

- ☒ Letreros modernos pueden acomodar múltiples anuncios que destacan los negocios y eventos de Gilroy en toda la ciudad. Incluso las empresas que no publicitan se beneficiarán de la mayor afluencia de visitantes que traen los anuncios.
- ☒ Estudios muestran un aumento del 5 al 20 % en ventas de empresas que se anuncian en vallas publicitarias.
- ☒ El letrero propuesto estará ubicado en la autopista para traer nuevos visitantes a los minoristas, comerciantes y eventos de la ciudad sin cambiar el carácter de la ciudad.
- ☒ Las vallas publicitarias electrónicas son vitales para compartir información urgente sobre salud y seguridad, así como notificaciones comunitarias importantes para residentes y viajeros.
- ☒ La ubicación, el tamaño y el diseño minimizan el impacto negativo en los residentes y el medio ambiente.
- ☒ Cero costo para la ciudad de Gilroy para construir y operar el letrero.

¡SÍ! APOYO UNA ORDENANZA DE LETREROS MODERNOS PARA GILROY.

Maria

Barragan

El Rancho Western Wear

NOMBRE

APELLIDO

NOMBRE DEL NEGOCIO

DIRECCIÓN DEL NEGOCIO/DOMICILIO DE CASA (Circule Uno)

TELÉFONO

EMAIL

FIRMA

Maria Barragan



Chamber member

The Gilroy City Council on March 20th will consider the adoption of a modern sign ordinance that would allow up to two electronic billboards in close proximity to Hwy 101. Electronic billboards are proven to increase business and will boost local revenue to fund needed city services.

Tell the City Council you support a modern sign ordinance for Gilroy!

- ☒ Modern signs can accommodate multiple advertisements that highlight Gilroy businesses and events across the city. Even businesses that don't advertise will benefit from the increased influx of visitors that advertisements bring.
- ☒ Studies show a 5-20% increase in sales for businesses that advertise on billboards.
- ☒ Proposed billboard is located on the freeway to bring new visitors to the city's retailers, merchants and city events without changing the character of the city.
- ☒ Electronic billboards are vital to share time-sensitive health and safety information, as well as important community notifications for residents and travelers.
- ☒ Location, size and design minimizes negative impact on residents and the environment.
- ☒ Zero cost to City of Gilroy to build or operate the sign.

YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

JAMODAR

FIRST NAME

GNAWALI

LAST NAME

Charlie's Lawns, Inc.

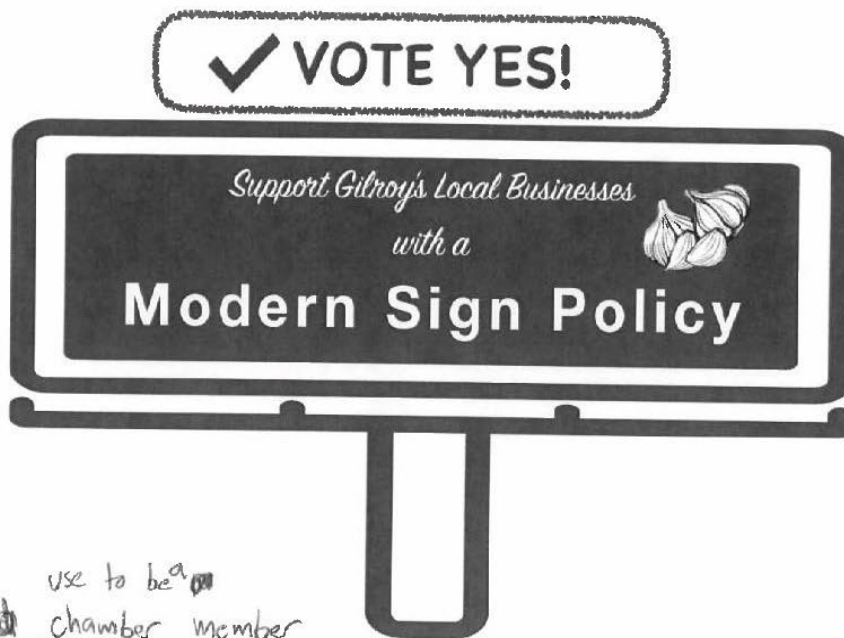
BUSINESS NAME

BUSINESS / HOME ADDRESS (CIRCLE ONE)

PHONE

EMAIL

SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

LUIS R PACHECO TAXSYSTEMS
FIRST NAME LAST NAME BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED] RR
PHONE EMAIL SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Ali YASIN Campbell Auto Sales
FIRST NAME LAST NAME BUSINESS NAME

[REDACTED]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[REDACTED] [REDACTED] [Signature]
PHONE EMAIL SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

Jose Rubledo Los Penas Taqrena
FIRST NAME LAST NAME BUSINESS NAME

[Redacted]
BUSINESS / HOME ADDRESS (CIRCLE ONE)

[Redacted] [Signature]
PHONE EMAIL SIGNATURE



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YES! I SUPPORT A MODERN SIGN ORDINANCE FOR GILROY.

<u>Har</u>	<u>NGUYEN</u>	<u>pho Thanh An</u>
FIRST NAME	LAST NAME	BUSINESS NAME
BUSINESS / HOME ADDRESS (CIRCLE ONE)		
	<u></u>	<u></u>
PHONE	EMAIL	SIGNATURE

RESOLUTION NO. 2023-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GILROY DENYING A ZONING AMENDMENT APPLICATION (Z 18-04) TO AMEND THE GILROY CITY CODE, CHAPTER 30 (ZONING) SECTION 30.37.30 (PROHIBITED SIGNS), SECTION 30.37.50 (COMMERCIAL AND INDUSTRIAL DISTRICTS), AND SECTION 30.37.51 (FREEWAY ORIENTED SIGNS) AND CREATING ARTICLE LV (ELECTRONIC BILLBOARDS)

WHEREAS, the Gilroy City Code Chapter 30 (Zoning), Article XXXVII (Sign Regulations) currently prohibits electronic billboards within the city; and

WHEREAS, on May 4, 2018 an application was submitted by Mike Conrotto/Emsee Properties proposing an amendment to City Code Sections 30.37.30 (Prohibited Signs) and 30.37.51 (Freeway Oriented Signs) (“Project”); and

WHEREAS, the project would also require an amendment to City Code Section 30.37.50 (Commercial and Industrial Districts) and the creation of new City Code requirements for the establishment and operation of an electronic billboard (Article LV, Electronic Billboards); and

WHEREAS, On September 14, 2020 the Gilroy City Council held a public meeting to review the proposal and provide preliminary feedback to City staff in the evaluation of the proposal; and

WHEREAS, On March 15, 2021 the Gilroy City Council held a public meeting to review draft policy recommendations to regulate electronic billboards in the City of Gilroy and provide preliminary feedback to City staff in the continued evaluation of the proposal; and

WHEREAS, in accordance with Section 15070 of the California Code of Regulations, the City of Gilroy Planning Division prepared an Initial Study for the project and determined that although the proposed project could have a significant effect on the environment, there will be less than a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. Therefore, the City has prepared a Mitigated Negative Declaration (MND) for the project in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, and the Thresholds of Significance adopted May 3, 2004 by the City of Gilroy; and

WHEREAS, the public review period for the Draft MND began on August 5, 2022 and ended on September 5, 2022 and whereas the City prepared a Final MND with response to public comments; and

WHEREAS, on October 25, 2022 the City of Gilroy held an informational community meeting to provide an overview of the project and provide the public with an opportunity to ask questions on the project; and

WHEREAS, on January 19, 2023 the Planning Commission held a duly noticed public meeting, at which time the Planning Commission received and considered the staff report as well as all evidence received including written and oral public testimony related to the proposed Zoning Amendment (Z 18-04); and

Ordinance No. 2023-03

Page 2

WHEREAS, on January 19, 2023 the Planning Commission continued the public hearing to February 2, 2023; and

WHEREAS, on February 2, 2023 the Planning Commission held a duly noticed public meeting, at which time the Planning Commission received and considered the staff report as well as all evidence received including written and oral public testimony related to the Final Mitigated Negative Declaration (MND) and proposed Zoning Amendment (Z 18-04); and

WHEREAS, the Planning Commission of the City of Gilroy voted to not recommend that the City Council adopt the Mitigated Negative Declaration (MND); and

WHEREAS, the Planning Commission of the City of Gilroy voted to deny a Zoning Amendment application (Z 18-04) to amend the Gilroy City Code Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards); and

WHEREAS, the location and custodian of the documents or other materials which constitute the record of proceedings upon which the project approval is based is the Community Development Department, Planning Division.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Gilroy hereby denies application Z 18-04 for a Zoning Amendment amending City Code Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards).

PASSED AND ADOPTED this 2nd day of February, 2023 by the following roll call vote:

AYES: Commissioners Elle, Leongardt, Ramirez, and Vice Chair Kushner

NOES: Commissioners Lewis, Montez, and Chair Bhandal

ABSENT: None

ABSTAIN: None

DocuSigned by:

Sharon Goei

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Sharon Goei,
Community Development Director

DocuSigned by:

Manny Bhandal

12B09BE03D88436...

Manny Bhandal,
Chairperson



Community Development Department

Sharon Goei
DIRECTOR

7351 Rosanna Street, Gilroy, CA 95020-6197
Telephone: (408) 846-0451 | Fax: (408) 846-0429
cityofgilroy.org | planningdivision@cityofgilroy.org

DATE: February 2, 2023
TO: Planning Commission
FROM: Cindy McCormick, Customer Service Manager
SUBJECT: Electronic Billboard Ordinance and IS/MND (Z 18-04)

RECOMMENDATION:

Staff has analyzed the proposed project, and recommends that the Planning Commission:

- a) Recommend that the City Council, based on its independent analysis, adopt the Mitigated Negative Declaration (MND) and find that: the MND was completed in compliance with the California Environmental Quality Act (CEQA); there is no substantial evidence that the project will have a significant effect on the environment; and the MND reflects the City's independent judgment and analysis; and
- b) Adopt a resolution recommending that the City Council adopt an ordinance (Z 18-04), approving changes to Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards).

PROJECT DESCRIPTION:

The proposed Project requests approval to construct and operate a 75-foot tall electronic billboard with a 672 square foot display area, within the Gilroy city limits. In order to allow such signage, the Project also requests amendment of Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) of the Gilroy Municipal Code to allow such signage which is currently prohibited. The Project also proposes a new Zoning Code Ordinance (Article LV, Electronic Billboards) which would permit a maximum of two electronic billboards within the City on property with a General Plan designation of General Services Commercial or City Gateway District, located within 660 feet of U.S. Highway 101 (US-101). In accordance with the Draft Ordinance (if adopted), the Project would also require a City Agreement (i.e., Development Agreement) setting forth any required fees, revenues, terms, off-site advertisement criteria, content control standards, community service message provisions, etc.

DISCUSSION AND ANALYSIS:

This item was continued from the January 19, 2023 Planning Commission public hearing. The staff report and attachments from that meeting are attached to this staff report, along with new public comments received following the original posting of the January 19, 2023 Planning Commission packet. The draft Resolution has also been updated in accordance with the continuance.

PUBLIC NOTICING:

On January 19, 2023, this item was continued to February 2, 2023. A notice of the January 19, 2023 Planning Commission meeting was advertised in The Gilroy Dispatch on Friday, January 6, 2023 (no less than 10 days prior to the meeting). No additional noticing is required since this meeting was continued to a date certain; however, staff sent an email regarding the continuance to all individuals and organizations who had previously commented on this agenda item.

Public comments: Approximately three dozen individuals or organizations have submitted comments on the proposed project. Approximately 90% of the commenters oppose the project, citing concerns related to aesthetics/visual blight, astronomical pursuits, the billboard industry in general, driver safety, energy consumption, greenhouse gas emissions, light pollution, and light impacts on wildlife (e.g., birds, fish) and human circadian rhythms. Comments in support of the project cite the ability to advertise local, regional, and national businesses, as well as local events and emergency communications.

APPEAL PROCEDURE:

In accordance with Section 30.51.50 of the Gilroy City Code, the Planning Commission's decision may be appealed, in writing, to the City Council within 20 days of adoption of the resolution. Appeal forms may be obtained from the City Clerk and must be submitted with the appropriate fee before the end of the appeal period.

ATTACHMENTS:

1. 1-19-23 Planning Commission Staff Report
2. Draft Planning Commission Resolution
3. Draft Initial Study / Mitigated Negative Declaration (IS/MND)
4. Final IS/MND with response to comments
5. Council Staff Report, 3-15-21
6. Applicant comments regarding Brightness and Road Safety, 3-21-21
7. Applicant response to CEQA comments, 9-29-22
8. Applicant comments regarding project benefits, 12-8-22
9. Public Comments 2021 to 2022
10. Public Comments 2023 (through 1-26-23, 6:00 pm)
11. Public Comments, attachments Audubon, Sierra Club



Community Development Department

Sharon Goei
DIRECTOR

7351 Rosanna Street, Gilroy, CA 95020-6197
Telephone: (408) 846-0451 | Fax: (408) 846-0429
cityofgilroy.org | planningdivision@cityofgilroy.org

DATE: January 19, 2023
TO: Planning Commission
FROM: Cindy McCormick, Customer Service Manager
SUBJECT: Electronic Billboard Ordinance and IS/MND (Z 18-04)

RECOMMENDATION:

Staff has analyzed the proposed project, and recommends that the Planning Commission:

- a) Recommend that the City Council adopt the Mitigated Negative Declaration (MND) and find that: the MND was completed in compliance with the California Environmental Quality Act (CEQA); there is no substantial evidence that the project will have a significant effect on the environment; and the MND reflects the City's independent judgment and analysis; and
- b) Adopt a resolution recommending that the City Council adopt an ordinance (Z 18-04), approving changes to Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards).

BACKGROUND:

In 2018, an application was submitted to modify the City's Zoning Ordinance to allow an 80-foot tall, 1,200 square foot area electronic billboard sign on Automall Parkway. In September 2019, following 18-months of communications between the applicant and City staff/management, the application was tabled by the (former) City Administrator. The application remained on hold until September 14, 2020, when the Gilroy City Council held a public meeting to review the proposal and provide preliminary feedback to City staff in the evaluation of the proposal. The Council was generally receptive to this possibility; but had concerns about the total number allowed in the City, the height of the sign, and the location(s) where they would be permitted. The Council also wanted to ensure that such signage, if allowed, would benefit local City businesses, particularly regional-serving and high revenue generating businesses, such as auto dealerships and/or regional shopping centers including the Gilroy Outlets.

On March 15, 2021, staff presented several policy discussion points, including sign quantity, location, distance between signs, sign area, sign height, and whether such signage should be allowed off-site¹. The Council was also advised that the businesses who use the sign for advertisement would be out of the City's control since the sign would

¹ An example of an "on-site" sign would be an electronic billboard located on the Automall property and where the only advertisements displayed are for the dealerships located on the Automall property.

be owned and operated by a third party and it would be up to local businesses to pay for any advertisement space.

Existing City Code: The Gilroy Sign Ordinance does not currently allow off-site signage (other than real-estate signs) and has general restrictions for freeway-oriented signs and commercial signage (e.g., height and size limits). The Sign Ordinance also prohibits signs that utilize scrolling or moving text or images (i.e., electronic billboards). Allowance of such signs would require an amendment to City Code Sections 30.37.30 (Prohibited Signs), 30.37.50 (Commercial and Industrial districts), and 30.37.51 (Freeway Oriented Signs).

2040 General Plan: The Gilroy 2040 General Plan was adopted in November 2020 and has the following policies related to billboards and freeway signage. While the policies do not directly address digital media, the policies do permit freeway signage and billboards, so long as such signage has minimal negative impact on the visual environment.

Land Use Policy LU 4.11 Freeway Signage - Work with Caltrans to explore ways to increase directional signage to freeway commercial uses at U.S. 101 interchanges.

Land Use Policy LU 8.7 Signs and Billboards - Require the location of signs and billboards to respect the surrounding context in order to minimize any negative impact on the visual environment. Enforce sign regulations and design standards to reduce sign clutter and illegal signage along corridors.

A discussion of General Plan goals and policies is included in the analysis section of this staff report.

Environmental Assessment: In accordance with Section 15070 of the California Code of Regulations, the City of Gilroy Planning Division prepared an Initial Study for the project and determined 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 (e.g., mitigations from the MND). Therefore, the City has prepared a Mitigated Negative Declaration (MND) for the project in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, and the Thresholds of Significance adopted May 3, 2004 by the City of Gilroy. The public review period began on August 5, 2022 and ended on September 5, 2022. The City has prepared a Final MND with response to public comments. The Draft MND and Final MND with a response to public comments is attached to this staff report. If approved, the MND would apply to both the proposed ordinance and the proposed billboard proposed to be located at 6460 Automall Parkway. Approval of the MND does not constitute approval of the proposed billboard.

Process: The application for a proposed electronic billboard to be located at 6460 Automall Parkway (SP 21-08) will be processed as a separate application if the proposed Ordinance (Z 18-04) is approved. If approved by the City Council (following a recommendation by the Planning Commission), the Ordinance would take effect 30 days following the second reading of the Ordinance, which would be scheduled approximately two to four weeks following the initial public hearing with the City Council.

DISCUSSION AND ANALYSIS:

The Draft Ordinance being presented to the Planning Commission and City Council is based on feedback received from the Council in March 2021, as well as best practices in other cities. The March 15, 2021 Council staff report, which includes a summary of discussion points, is attached.

The following table provides a summary of the proposed Zoning Ordinance Article LV (Electronic Billboards). The complete draft, including proposed changes to City Code Sections 30.37.30, 30.37.50, and 30.37.51 is attached as Exhibit A to the Planning Commission resolution.

Draft Ordinance Summary	
Consistency with Local, State and Federal Law	
The owner and operator of the electronic billboard shall comply with all applicable federal, state, or local laws when constructing, operating, improving, maintaining, repairing, and removing the electronic billboard(s).	
City Agreement Requirements	
The owner/operator shall enter into a development agreement, operating agreement, lease agreement, contract, license or other accord in form acceptable to the City Attorney with the City ("City Agreement"), setting forth any required fees, revenues, terms, off-site advertisement criteria, content control standards, community service message provisions, community outreach requirements, maintenance standards, conditions that trigger billboard removal, and other covenants or restrictions needed to offset or mitigate the impacts of a proposed electronic billboard(s).	
Relocation	
Any electronic billboard(s) erected in accordance with this ordinance may be subsequently relocated to another location in accordance with the ordinance.	
Maximum Number	
A maximum of two (2) electronic billboard(s) may be permitted in the City of Gilroy.	
Minimum Distance Between Electronic Billboard(s)	
The minimum distance between electronic billboard(s) shall be 1.5 miles. All distances shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.	
Location	
Electronic billboards may be located on-site or off-site on private or public property, designated on the General Plan Land Use Diagram as General Services Commercial or City Gateway District. Electronic billboard(s) shall not be allowed in any area	

designated as "Landscaped Freeway", unless otherwise permitted by State law. No part of any electronic billboard(s) shall cross onto an adjacent private or public property.
Distance from Highway 101
The electronic billboard(s) shall be located within 660 feet of Highway 101.
Distance to and Visibility from residential and hotel uses
Electronic billboard(s) shall be placed at least 500 feet from any residential zone or residential use. To the extent possible, the electronic billboard(s) shall be located and oriented in a manner that avoids or minimizes the direct exposure of the display as viewed from adjacent or nearby residential or hotel uses.
Vehicular Safety
No electronic billboard(s) shall be placed, constructed or maintained on any property in the City of Gilroy if its location, size, nature, or type constitutes or tends to constitute a hazard to the safe and efficient operation of vehicles.
Maximum Height
The maximum height of any electronic billboard(s) including any architectural design elements shall be 75 feet as measured from grade at the base of the sign to the highest point of the sign structure, provided that the measured grade does not include fill or berms.
Maximum Digital Display Surface Area
The maximum total digital display surface shall be less than or equal to six hundred seventy-two (672) square feet per sign face, with no more than two sign faces per electronic billboard(s).
City Branding
Unless otherwise approved by the City Council, the electronic billboard(s) shall include the words "City of Gilroy" and/or the City insignia permanently affixed above the digital display area. This branding shall not be included in the maximum digital display surface area, but shall be included in the overall height.
Public Service Announcements
The City of Gilroy shall be permitted to use a minimum number or percentage of total unsold advertising spots for City events, public information, emergency alerts, and other similar public service announcements, in accordance with the City Agreement approved for the electronic billboard(s).

Emergency Alerts
Electronic billboard(s) shall be connected to the National Emergency Network and provide emergency information, including child abduction alerts (<i>i.e.</i> , "Amber Alerts"), in accordance with local and regional first responder protocols.
Content limitations
No electronic billboard(s) shall display any statements or words of an obscene, indecent or immoral character, or any picture or illustration of any human figure in such detail as to offend public morals or decency, or any other matter or thing of an obscene, indecent or immoral character, pursuant to Business and Professions Code Section 5402 and judicial decisions interpreting the same.
Message Standards
The Ordinance allows only still or static images or messages, requires a minimum display time of eight (8) seconds, and a maximum transition/blank screen time between still images of one (1) second.
Illumination Standards
The Ordinance includes illumination standards related to light intensity, auto-shut-off/black screen in case of malfunction, automatic dimming adjusted to ambient light conditions, orientation requirements, and brightness limitations based on best practices in other cities, the Outdoor Advertising Act, and the California Vehicle Code.
Permit Requirements
An electronic billboard permit and associated environmental review shall be required for the establishment and operation of an electronic billboard. The Ordinance includes required findings for approval and standard conditions of approval.
Public Hearings
The application shall require review by the Planning Commission. If recommended for approval, the application will be scheduled for a public hearing with the City Council, who has final authority on whether to approve the application. Alternatively, the Commission may also deny the application upon making substantial findings for denial through the public hearing process. If denied, the Planning Commission decision is final unless an appeal is filed by the applicant or an interested party. If appealed within twenty (20) days of the Planning commission decision, the City Council will review the application and may either approve, approve with modifications, or deny the application, upon making substantial findings for denial through the public hearing process.
Compliance Hearings
A minimum of three initial compliance hearings before the City Planning Commission and/or City Council shall be required as follows: (a) six months from the date of final

building permit issuance; (b) six months from the date of the first compliance hearing; and (c) 12 months from the date of the second compliance hearing. Upon a finding of substantial compliance, the Community Development Director may waive the second and/or third hearing. Following the initial compliance hearing(s), the owner/operator, and/or property lease holder shall be subject to subsequent compliance hearings before the City upon request, due to non-compliance.

City Agreement / Permit Violations

Upon finding that the electronic billboard(s) is not being operated in compliance with the City Agreement and/or all conditions of approval, the Community Development Director shall forward a copy of the findings of such violation to the Planning Commission for hearing. The applicant shall also be sent notice at least ten (10) days prior to the date of such hearing. If the Planning Commission finds that a violation has occurred, the electronic billboard(s) owner, operator, and/or property lease holder shall abate or remove the violation.

The proposed Zoning Text Amendment requires approval by the City Council upon recommendation of the Planning Commission. The following staff analysis demonstrates that the amendment carries out the general purpose of the Zoning Ordinance and applicable General Plan goals and policies. As such, the draft Planning Commission resolution includes a recommendation for approval.

General Plan Consistency: The proposed project is consistent with the following General Plan goals and policies:

<u>General Plan Goal / Policy</u>	<u>Consistency Analysis</u>
Land Use Goal LU 4: Encourage the growth and development of retail, office, service, and entertainment uses in Gilroy to provide jobs, support City services, and make Gilroy an attractive place to live.	The proposed electronic billboard ordinance provides existing and future retail, office, service, and entertainment uses in the City an opportunity to advertise and potentially grow their business. The draft ordinance includes a requirement that the City be permitted a minimum number or percentage of total unsold advertising spots for City events, public information, emergency alerts, and other similar public service announcements. A maximum of two (2) electronic billboards may be permitted in the City of Gilroy, with a minimum distance of 1.5 miles between the two electronic billboards. Electronic billboards shall also be placed at least 500 feet from any residential zone or residential use. Furthermore, to the extent possible, the electronic billboard(s) shall be located and oriented in a manner that avoids or minimizes the direct exposure of the display as viewed from adjacent or nearby residential or hotel uses.

Policy LU 4.11 Freeway Signage: Work with Caltrans to explore ways to increase directional signage to freeway commercial uses at U.S. 101 interchanges.	City staff coordinated with the California Department of Transportation (“Caltrans”) on the development of the draft ordinance and also provided Caltrans with a copy of the Draft Mitigated Negative Declaration for their review and comment. Per the draft Ordinance, the owner/operator of an electronic billboard shall obtain a permit from Caltrans and shall comply with all applicable federal, state, and local laws when constructing, operating, improving, maintaining, repairing, and removing the electronic billboard(s). Furthermore, electronic billboard(s) shall not be operated in such a fashion as to constitute a hazard to safe and efficient operation of vehicles on streets or freeways.
Land Use Goal LU 8: Support growth and development that preserves and strengthens the City’s historic, small-town character; provides and maintains safe, livable, and affordable neighborhoods; and creates beautiful places.	Electronic billboards will not be allowed in non-urbanized areas. There are no scenic resources that would be obstructed from permitted locations in the proposed Ordinance. With compliance to size, height, and location regulations, electronic billboard(s) would not substantially degrade the visual character or quality of public views. A maximum of two (2) electronic billboards may be permitted in the City of Gilroy, with a minimum distance of 1.5 miles between the two electronic billboards. Electronic billboards shall also be placed at least 500 feet from any residential zone or residential use. Furthermore, to the extent possible, the electronic billboard(s) shall be located and oriented in a manner that avoids or minimizes the direct exposure of the display as viewed from adjacent or nearby residential or hotel uses.
Policy LU 8.7 Signs and Billboards: Require the location of signs and billboards to respect the surrounding context in order to minimize any negative impact on the visual environment. Enforce sign regulations and design standards to reduce sign clutter and illegal signage along corridors.	The proposed Ordinance restricts the location of electronic billboard(s) to property with a General Services Commercial or City Gateway District land use designation and only allows up to two (2) signs in the entire City. The proposed Ordinance includes a finding requiring that electronic billboard(s) be architecturally compatible with the uses and structures on the site and in the surrounding area. The allowed height under the proposed Ordinance is consistent with the height approved for the Gilroy Crossing (Regency Center) pylon sign and the Pacheco Pass pylon sign. The proposed height allowance is also consistent with the recently approved Plaza Allium pylon sign. The total display area allowance (672 square feet) is less than the approved tenant sign area (864 square feet) for the Plaza Allium pylon sign.

Economic Prosperity Goal EP 3: Maintain a supportive business climate that increases the City's ability to support expansion of existing businesses and attraction of new businesses.	The proposed electronic billboard ordinance provides existing and future businesses in the City an opportunity to advertise and potentially expand their business. The ordinance provides Gilroy businesses an opportunity to advertise their goods and services to visitors and the local workforce, who may not reside in Gilroy but drive to Gilroy for employment at local businesses including retail establishments, restaurants, and offices, as well as schools and service organizations.
Policy EP 3.1 Promote Gilroy: Promote Gilroy as a place for business and industry, capitalizing on the City's location and numerous amenities, to encourage new businesses to locate here and to retain existing businesses.	The proposed electronic billboard ordinance provides Gilroy businesses and organizations such as Visit Gilroy, the Chamber of Commerce, and the Downtown Business Association an opportunity to advertise the City's numerous amenities including the future Ice Center at Gilroy Sports Park, Gilroy Gardens, the Recreation Gateway Area, Gourmet Alley, wineries, and golf courses. Similarly, the proposed Ordinance also supports Policy EP 6.1 Tourism Promotion, Policy EP 6.5 Wine Tourism, and Policy EP 6.7 Outdoor Recreation.
Policy EP 5.5 Outlet Mall: Promote the Gilroy Premium Outlets and other regional retail destinations.	The proposed electronic billboard ordinance provides the Gilroy Premium Outlets and other major regional retailers such as Gilroy Crossings and the Pacheco Pass Center an opportunity to advertise their goods and services to visitors and travelers.
Goal EP 6: Attract visitors and provide them with the amenities and services to make their stay enjoyable.	The proposed electronic billboard ordinance provides Gilroy businesses and organizations such as Visit Gilroy an opportunity to advertise the City's numerous amenities and services including hotels, the city's wineries and restaurants, and recreational amenities.
Policy EP 6.4 Events: Promote existing and new signature events that add to Gilroy's quality of life, enhance the City's image, and stimulate economic activity.	The City of Gilroy shall be permitted to use a minimum number or percentage of advertising spots for City events, public information, emergency alerts, and other similar public service announcements. The proposed electronic billboard ordinance also provides Gilroy businesses and organizations such as Visit Gilroy, the Chamber of Commerce, and the Downtown Business Association an opportunity to advertise events to the general public.

Zoning Ordinance Purpose: The Zoning Ordinance is the primary tool by which the city implements the policies of the General Plan. The Zoning Ordinance is, among other purposes, intended to protect and improve the established character and the social and economic stability of the City. The City's sign regulations (Article XXXVII) are, among other purposes, intended to provide minimum standards to safeguard life, health, property and the public welfare by regulating and controlling the location, placement, size, numbers, surface area, illumination, materials, and maintenance of signs and sign structures.

The existing Gilroy Sign Ordinance does not currently allow off-site advertising signs (other than real-estate signs) and has general restrictions for freeway-oriented signs and commercial signage (e.g., height and size limits). The Sign Ordinance also prohibits signs that utilize scrolling or moving text or images (i.e., electronic billboards). Therefore, the project requires an amendment to City Code Sections 30.37.30 (Prohibited Signs), 30.37.50 (Commercial and Industrial districts), and 30.37.51 (Freeway Oriented Signs).

Zoning Text Amendment Review: Pursuant to City Code Section 30.52.40, the Planning commission may recommend approval, or deny or deny without prejudice the requested ordinance amendment. If recommended for approval, the Planning Commission shall make findings demonstrating that the amendment is necessary to carry out the general purpose of the Zoning Ordinance and applicable General Plan goals and policies. If the Planning Commission denies the requested amendment, the applicant may appeal the decision to the City Council. In either case, the City Council shall conduct a public hearing within thirty (30) days of receipt of the Commission recommendation or written appeal or as soon thereafter as is practical. Pursuant to Section 30.52.60, the City Council may approve, modify or disapprove a proposed ordinance amendment. The approving ordinance or resolution of denial shall recite, among other things, the facts and reasons that, in the opinion of the City Council, make the approval, denial or denial without prejudice of the Ordinance amendment necessary to carry out the general purposes of the Zoning Ordinance and the General Plan. The action by the City Council shall be final and conclusive.

As discussed in the analysis section of this staff report, the attached draft resolution recommending approval demonstrates that the proposed text amendment carries out the general purpose of the Zoning Ordinance and applicable General Plan goals and policies.

PUBLIC NOTICING:

As required by law, a notice of intent to adopt a Mitigated Negative Declaration was advertised in The Gilroy Dispatch on Friday, August 5, 2022 (no less than 30 days prior to a decision on the MND). Individual property owners within 500 feet of the subject property where the electronic billboard is proposed were mailed copies of the notice of intent on August 1, 2022.

A community meeting to discuss the project was held on October 25, 2022. Individual

property owners within 1,600 feet of the subject property where the electronic billboard is proposed were mailed copies of the notice for the community meeting on October 13, 2022. The community meeting was advertised in The Gilroy Dispatch on Friday, October 21, 2022.

A notice of the January 19, 2023 Planning Commission meeting was advertised in The Gilroy Dispatch on Friday, January 6, 2023 (no less than 10 days prior to the meeting). Individual property owners within 500 feet of the subject property where the electronic billboard is proposed were mailed copies of the notice for the Public Hearing notice on January 5, 2023. The Planning Commission public hearing packets are available through the City's webpage.

Public Comments: The City received comment letters from 14 individuals/organizations (one commenter submitted comment letters on three separate dates). Three (3) individuals support the draft Ordinance, citing the ability to advertise local, regional, and national businesses, as well as local events and emergency communications. The remaining 11 individuals/organizations oppose the draft Ordinance, citing concerns related to aesthetics, astronomical pursuits, the billboard industry in general, driver safety, energy consumption, greenhouse gas emissions, light pollution, and light impacts on wildlife (e.g., birds) and human circadian rhythms. Many of the comments were addressed in the attached Draft Initial Study and Mitigated Negative Declaration (IS/MND). CEQA related comments received after the release of the Draft MND were subsequently addressed in the attached Final MND. The Final MND includes a response to CEQA related comment letters from John Bauters (8-24-22), Shani Kleinhaus/Audubon Society (9-6-22) and Dr. Paul D. Lynam/Lick Observatory (9-5-22). As a result of these letters, the Final MND amended Section 2.4, Biological Resources (page 41), mitigation measure BIO-7 (page 45) and Section 2.17, Transportation (page 98). These minor amendments and clarifications do not change the significance of any of the environmental issue conclusions within the Draft IS/MND, nor do they require changes to the draft Ordinance. In addition, the project applicant has submitted the attached response to comments as they relate to the MND (dated 9-29-22) and general concerns regarding light impacts and driver safety impacts (3-21-21). On 12-8-22, the applicant also submitted a list of benefits for the proposed billboard. A copy of all public comments received as of 1-3-22 is attached, including the three (3) comment letters related to CEQA as noted above.

CONCLUSION AND NEXT STEPS:

Staff recommends that the Planning Commission recommend approval of the draft changes to City Code, including a new Zoning Ordinance (Article LV, Electronic Billboards), as supported by the analysis in this staff report.

Alternatively, the Planning Commission can deny the application or recommend modifications to the Ordinance. If the Planning Commission recommends denial, the Commission shall recite the specific facts and evidential reasons why the Ordinance and text amendments do not carry out the general purposes of the Zoning Ordinance and the General Plan. If recommended for denial, the applicant can appeal the decision to the City Council who has final decision-making authority.

The recommendation of the Planning Commission shall be forwarded to the City Council. A Council hearing date is tentatively scheduled for February 20, 2023. If denied by the Council, the decision would be final. If approved by the Council, the Ordinance would take effect 30 days following the second reading of the Ordinance. If the Ordinance is approved, the application for a proposed electronic billboard at 6460 Automall Parkway (SP 21-08) would potentially be presented to the Planning Commission in March 2023 and the City Council in April 2023. The project would also be subject to a Development Agreement that would have to be approved by the City Council.

APPEAL PROCEDURE:

In accordance with Section 30.51.50 of the Gilroy City Code, the Planning Commission's decision may be appealed, in writing, to the City Council within 20 days of adoption of the resolution. Appeal forms may be obtained from the City Clerk and must be submitted with the appropriate fee before the end of the appeal period.

ATTACHMENTS:

1. Draft Planning Commission Resolution
2. Draft Initial Study / Mitigated Negative Declaration (IS/MND)
3. Final IS/MND with response to comments
4. Council Staff Report, 3-15-21
5. Applicant comments regarding Brightness and Road Safety, 3-21-21
6. Public Comments
7. Applicant response to CEQA comments, 9-29-22
8. Applicant comments regarding project benefits, 12-8-22

**Final Initial Study/Mitigated Negative Declaration
Electronic Billboard Ordinance Project
City of Gilroy, Santa Clara County, California
State Clearinghouse Number 2022080141**

Prepared for:

City of Gilroy

7351 Rosanna Street

Gilroy, CA 95020

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Contact: Cindy McCormick, Senior Planner

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Contact: Mary Bean, Project Director

Tsui Li, Project Manager

Date: November 16, 2022

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SECTION 1: INTRODUCTION

Although not required by the California Environmental Quality Act (CEQA), the City of Gilroy has prepared the following responses to significant environmental comments received on the Electronic Billboard Ordinance Project 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 Gilroy in its review and consideration of the Electronic Billboard Ordinance Project. All public comments regarding the Draft IS/MND are included for consideration by the City of Gilroy.

This document is organized into three sections:

- **Section 1—Introduction.**
- **Section 2—Responses to Written Comments:** Provides a list of the agencies, organizations, and individuals who commented on the Draft IS/MND. Copies of all of the letters received regarding the Draft IS/MND and responses thereto are included in this section.
- **Section 3—Errata:** Includes an addendum listing refinements and clarifications on the Draft IS/MND, which have been incorporated.

The Final IS/MND includes the following contents:

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

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SECTION 2: RESPONSES TO WRITTEN COMMENTS

2.1 - 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) 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.

Author	Author Code
Organizations	
Sierra Club Loma Prieta Chapter/Santa Clara Valley Audubon Society	SC-SCVAS
University of California Lick Observatory	UCO-LICK
Individuals	
John Bauters	BAUTERS

2.2 - Responses to Comments

2.2.1 - Introduction

Although a lead agency is not required to provide written responses to comments on proposed Negative Declarations (NDs) or Mitigated Negative Declarations (MNDs) under the California Environmental Quality Act (CEQA), the City of Gilroy has evaluated the comments received on the proposed Electronic Billboard Ordinance Project (State Clearinghouse No. 2022080141) (proposed project) Draft IS/MND 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).

2.2.2 - Comment Letters and Responses

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

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September 6, 2022

Cindy McCormick

planningdivision@cityofgilroy.org

Re: [Initial Study/ Draft Mitigated Negative Declaration - Electronic Billboard](#)

Dear Ms. McCormick,

Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter submit the following comments and responses to highlight the shortcomings of the Initial Study/Draft Mitigated Negative Declaration and the environmental impacts that would result from implementation of the Electronic Billboard Ordinance Project in the City of Gilroy. The comments with attached references provide unequivocal scientific evidence to establish the significant and unavoidable harm that Artificial Light At Night (ALAN) in general, and electronic billboards specifically, impose on human health and on ecosystems. The IS/DMND does not adequately address these issues.

In March 2021, Sierra Club National adopted a new light pollution policy: *“Sierra Club recognizes that while artificial light provides desirable benefits to society, such as extended hours of social space at night, its excessive, inappropriate and poorly controlled use also leads to significant harm. Sierra Club defines light pollution as artificial light that adversely affects ecosystems and any living organism. Sierra Club includes in this definition anthropogenic light that is wasteful, or misdirected; has negative ecological impacts; is used as a form of aggression; is harmful to health, safety, or other human rights; or disrupts our view of the natural night sky, disconnecting us from our cosmic environment, including the Milky Way Galaxy where we live. Therefore, light pollution imposes natural resources, economic, biological, political, psychological, and cultural burdens.”* In addition, the Sierra Club retained a 60-year policy which *“opposes billboard development along highways and supports measures to restrict these billboards.”*

The Sierra club policy is supported by a comprehensive compilation of resources pointing to the significant impacts of ALAN, please see “Attachment Resources-References-LightPollutionPolicy_20210307,” attached, and the recently published “Artificial Light at Night: State of the Science 2022”¹. The information and scientific studies referenced in this

¹ International Dark-Sky Association

attachment point to the devastating impact of lighting on ecosystems and organisms that comprise our biological resources and our health. The Santa Clara Valley Audubon Society (SCVAS) is similarly concerned with the proliferation of ALAN and its pervasive harm to organisms, species, ecological food webs, and human health and safety. SCVAS is one of the largest National Audubon Society chapters in California, and its mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation.

2
CONT

Our organizations and our thousands of members in the region are working to protect our common natural resources, and we are greatly concerned with detrimental impacts of electronic billboards and signs to biological resources, the night sky, the aesthetic character of our City of Gilroy and region, and the health and quality of life of our region's residents. We are opposed to allowing electronic billboards and encourage the City of Gilroy to tighten regulation and reduce, rather than increase their prevalence and impacts. We believe that electronic billboards anywhere, including at the proposed location, will cause significant and irreversible harm to the biological and aesthetic environment resources. We encourage the City of Gilroy to amend its sign ordinance to prohibit highway-facing and major-road facing electronic billboards.

3

1. Aesthetic Resources

Electronic signs are, by design, intended to be viewed from a distance. By design, electronic billboards offend aesthetics and visual character, and produce day and nighttime illumination, light and glare. The public abhors them. A 2021 survey conducted by the City of San Jose revealed that over 95% of over 2200 respondents are strongly opposed to electronic billboards on freeways (presentation attached). The concerns over aesthetics were one of the primary reasons provided by the opposing respondents. Highway 101 in this area is not, by designation, a scenic highway. But the public and the drivers clearly consider electronic advertisement "a form of aggression" which assaults our senses and health, and imperils drivers as it diverts their attention and puts them at an increased risk of collision.

4

- The entire portion of US-101 that passes through the City of Gilroy is a County-designated scenic route, and is only approximately 660 feet east of the proposed billboard site. The Project clearly intends the advertisements to be highly visible from US-101 which traverses a relatively rural landscape in Gilroy and its vicinity, a rural landscape that travelers value. The Project will disrupt the visual character of the 101 corridor, despoil scenic elements, and offend landscape characteristics that contribute to the rural character of the Bay Area south of San Jose and to the well being of travelers.

5

- The finding that aesthetic impacts of Light and Glare are less than significant relies on Mitigation Measure MM AES-1 "The signs' operational lighting parameters shall be provided to the City of Gilroy Community Development Department for review and approval prior to the regular operation of the light-emitting diode (LED) billboards, and

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shall be implemented by the project proponent to ensure a driver would not be adversely affected or impacted by trespass glare lighting.”

- Since drivers overwhelmingly and unequivocally find that electronic billboards affect them, there is no feasible way to “ensure a driver would not be adversely affected or impacted by trespass glare lighting”.

6
CONT

There is no doubt that impact on Aesthetic Resources is significant and unavoidable, and should be recognized as such in an Environmental Impact Report and a Statement of Overriding considerations.

7

2. Biological Resources:

The Biological Report underestimates the potential impact to ecosystems including those non-special status species that may make use of the adjacent Princeville drainage that benefit from its water and relative cover and including those that may transit it between the larger habitats of Uvas Creek and Llagas Creek.

8

Recent scientific studies highlight the pervasive, *cumulative*, and harmful impacts of ALAN to terrestrial and aquatic organisms, species, and ecosystems. The impacts, including effects on circadian rhythms, metabolism and behavior in fish, birds, insects, and other taxa, have been summarized in several recent publications in major scientific journals. It seems that CEQA guidelines have not caught up and are inadequate to measure the impact to biological resources. Science shows that ALAN is harmful to all biological resources that see or otherwise perceive it - including both plants and animals. The many studies cited in this and the attached document show that biological impacts are not limited to the area illuminated but can extend to a large distance.

The mechanism by which light impacts organisms is explored in a November 2020 study titled, “Exposure to Artificial Light at Night and the Consequences for Flora, Fauna, and Ecosystems”². This study shows that dozens of behavioral activities in all biological taxa display daily and annual rhythms, and are thus impacted by ALAN. This includes locomotor activity and sleep, schooling behavior (fish), vertical (fish) and horizontal (all vertebrates) migration, behavioral thermoregulation (fish), vocalization (fish, birds), foraging and food intake, mating and reproduction.

9

Contemporary scientific evidence shows that attraction to light is having a devastating and direct impact on insect numbers and diversity, and indirect effects to entire ecosystems.

Impacts to biological resources can be lessened by limiting operation hours, and turning the billboards off between the hours of 11PM and 8AM.

² <https://www.frontiersin.org/articles/10.3389/fnins.2020.602796/full>

Recent studies also implicate ALAN as one of the primary drivers of the global decline in insect numbers and diversity (the insect apocalypse)³. The loss of insects and the loss of ecological services they provide (for example, pollination, and as food for fish and birds) should be considered a significant, unavoidable impact for 24/7 light sources as proposed for this Project.

9
CONT

2.1 Migratory birds

The IS/DNMD acknowledges that *“migrating birds can be affected by human-built structures because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather”*. The IS/DNMD provides two reasons why the “proposed electronic billboard would not have a significant impact on the movement of migrating birds” (IS/DNMD p. 41). These reasons and the findings are not supported by evidence:

10

- Illuminations levels – The IS/DNMD implies that the “proposed electronic billboard would not create a substantial change in illumination levels' ' from the baseline light sources in the area” (IS/DNMD p. 41). This is a subjective opinion. To substantiate this statement, a photometric study and a study of glare and light spillage must be provided, and light levels and the spectrum of the LED lights should be analyzed within a biological-impact context.
- Billboard sign face display – The IS/DNMD states that the proposed billboard sign face would not be allowed to change “more than every 8 seconds, and messages would be static (i.e., not moving, or animated) resulting in changing color patters [sic] rather than a fixed unchanging light which may be more attractive to birds” (IS/DNMD p. 41). There is no research to indicate what is an effective length of time a billboard image should be displayed to reduce the attraction to birds. The proposed 8 second interval is arbitrary. Therefore, the IS/DNMD does not show that there is a less than significant impact on wildlife, and mitigation measures to safeguard migratory birds should be implemented.

11

2.2 Connectivity for wildlife

Open storm drains, irrigation channels and other flood management infrastructure features often connect habitat patches and provide pathways for animals to traverse an urban landscape⁴. This connectivity for wildlife is important to preserve biodiversity, and is easily

12

³

<https://www.sciencemag.org/news/2021/05/can-scientists-help-insects-survive-their-fatal-attraction-light-night>, and

<https://www.smithsonianmag.com/smart-news/light-pollution-contributes-insect-apocalypse-180973642>.

⁴ Ecological connectivity research in urban areas,

<https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/1365-2435.12489>

disrupted by lighting⁵. The Project is adjacent to the Princevalle Channel, which is currently a wildlife connectivity corridor and allows permeability between Uvas and Llagas creeks (Figure 1). The DMND provides no analysis of wildlife movement in the channel, dismissing impact to wildlife movement. ife

PDF p. 49 "The project site is bounded by a chain link fencing to the north, east, and south. These factors along with existing urban developments within the general project vicinity limit wildlife movement through the project site. Additionally, the project site is not part of or within a wildlife movement corridor"

PDF p. 48 provides, "The Princevalle Channel is located approximately 50 feet north of the project site and is a tributary to Llagas Creek, which flows into the Pajaro River, which empties into Monterey Bay, a traditional navigable water of the United States. While the project site does not contain State or federally protected wetlands, construction of the proposed electronic billboards has the potential for indirect (temporary) adverse impacts to the aquatic habitat of the Channel. Potential temporary indirect impacts (during construction) include pollutant loading, increased erosion and sedimentation, and debris dispersal into the Channel. Implementation of MM BIO-5 and MM BIO-6 would reduce potential indirect adverse impacts to the aquatic habitat of the Channel to less than significant levels through avoidance and minimization measures."

- Please provide wetland delineation for the channel's aquatic habitat, and discuss application of requirements by the State Water Board and the Habitat Agency
- MM BIO-5 and BIO-6 mitigate the impacts to Princevalle Channel during the construction phase. Without a study of terrestrial animal movement within the Princevalle Channel, the finding that the Project will not interfere substantially with the movement of native wildlife species or with established native resident or migratory wildlife corridors cannot be made.

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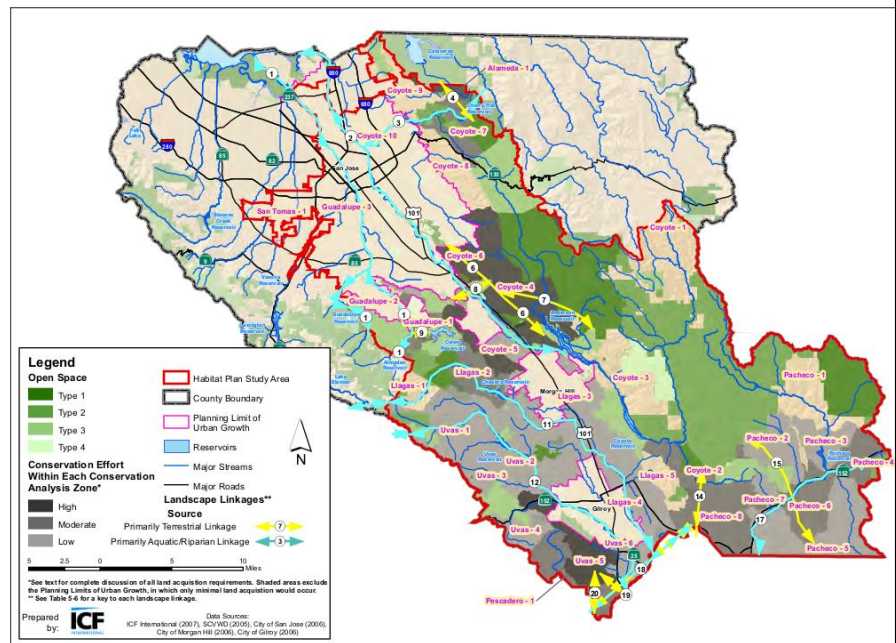
13

14

⁵ Effects of Artificial Night Lighting on Terrestrial Mammals.

Ecological Consequences of Artificial Night Lighting. Catherine Rich & Travis Longcore (eds). 2006. Island Press. Covelo, California. Pages 15-42, "lighting can be very disorienting for animals that are trying to move at night. So wildlife corridors can be compromised by even a single light and so prevent animals from moving to crucial landscapes."

Figure 1: Figure 5-8 of the Santa Clara Valley Habitat Plan denotes Uvas Creek and Llagas Creeks as important wildlife corridors.



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Figure 5-8
Land Acquisition Strategy with Applicable Landscape Linkages

2.3 Conflict with the Valley Habitat Plan

The finds that “Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan” is less than significant with mitigation. The proposed mitigation, MM BIO-7, provides, “The project applicant shall submit a Santa Clara Valley Habitat Plan (SCVHP) Coverage Screening Form to the Planning Department for review and shall complete subsequent forms, reports, and/or studies as needed.”

- For Mitigated Negative Declarations, CEQA does not allow mitigation measures to depend on future disclosure of impacts and actual mitigation measures. Please specify any studies that will be needed and discuss the potential impacts and how these will be addressed.

3. Driver Safety The IS/DMND acknowledges that the project undermines driver safety but the impact and of this hazard understated by the IS/DMND⁶. As expressed above, driver Safety was a great concern to the responders to the San Jose survey. The risk to drivers is evident, and supported in a plethora of studies (See attachments)
 - Please analyze current vehicle collision data for the target stretch of US-101 and consider the potential of additional collisions due to drivers' attention being diverted.
4. Energy consumption, brightness, greenhouse gas emissions
 In his study of energy use and other environmental impacts of electronic billboards⁷ (attached), Mr. George Young discusses energy consumption for lighting and cooling of LED billboards, as well as brightness of the billboards, materiality and recyclability. Ceqa requires the analysis of all direct and indirect impacts on a project, and we believe that all these environmental burdens are significant. The possibilities of mitigation are limited and therefore, the environmental impacts are generally unavoidable. Mr. Young makes many technical recommendations which we incorporate into this letter by reference. We ask for an Environmental Impact report to consider these mitigation, and analyze the project compliance with them.
- While the IS/DMND lists the estimated 52,400 kilowatts/year of electricity and 6.6 megatons of CO2/year expected to be released into the atmosphere with the energy required for the billboards, the IS/DMND only states that it meets standards and does not prescribe mitigation for the greenhouse gas emissions in our current climate emergency.
5. The City of San Jose has recently approved billboards at the airport, and included several feasible structural and operational requirements and mitigation measures that should be incorporated into the requirements for Gilroy's ordinance and the billboards project. Table 1 highlights some of these requirements:

⁶

• Colored light from LED displays outdoors in urban zones affects traffic safety.

<https://www.sciencedirect.com/science/article/abs/pii/S0360132320308155>

(January 2021)

• Luminance of roadside LED Billboards in Poland shows that advertising billboards often exceeded safe luminance levels for driving.

<https://www.tandfonline.com/doi/full/10.1080/15502724.2020.1803752>

(October 2020)

• April 2021 National Highway Traffic Safety Administration published data from 2019 on distracted-driver accident stats (electronic billboards included "Distracted by Outside Person, Object, or Event")

<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813111>

⁷ Illuminating the Issues: Digital Signage and Philadelphia's Green Future by Gregory Young

https://www.scenic.org/wp-content/uploads/2019/09/Digital_Signage_Final_Dec_14_20101.pdf

⁶Appendix A - Lighting Analysis Report from City of San Jose US 101 Airport Electronic Signs Addendum

<https://www.sanjoseca.gov/home/showpublisheddocument/75593/637629018659330000>, p.4

Table 1. Comparison of proposed Gilroy billboards with existing billboards near San Jose Airport

	SJ Airport	Gilroy
Shielding the night sky	"customizable horizontal light shields, and a vertical alignment of LED RGB modules to eliminate light into specific zones" Vertical light is controlled by LED angles restricted to "65 degrees, with limited intensity above 18 degrees and below 47 degrees."	none
Brightness	0.3 candlefoot except on northface of the South Site which has 0.1 candlelight and "backlighted" LED display facing the riparian zone because of creek and riparian zone. Max is 0.3 candlefoot. Compare with full moon which is max of 0.1 candlefoot.⁶ Brightness changes with the amount of ambient light picked up by the sensors.	Max 0.3 candlefoot at 250ft from billboard. Compare with full moon which is max of 0.1 candlefoot.⁶ Brightness changes with the amount of ambient light picked up by the sensors.
Studies on photometrics	Study done by Ronald Zeiger, President of Zeiger Engineers, Inc.	none
hours	Off from midnight to 6 am	No limits
Time to change screen	change every 8 seconds, except the north face on South Side will be a fixed image, totally static	Change every 8 seconds

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CONT

On brightness, the EIR provides,

- PDF p. 21: "The proposed project commits to a maximum ambient light output level of a 0.3 foot-candle at 250 feet from the billboard, which is a more conservative lighting intensity standard for electronic billboards of this proposed size when compared to State standards. For a frame of reference, 0.3 foot-candle is comparable in brightness to the light emanating from a computer monitor, and the light levels emitted from the proposed billboards would be programmed to adjust based upon ambient light conditions at any given time (i.e., nighttime versus daytime). Therefore, impacts would be less than significant"
- PDF p. 27: "proposed Ordinance would require billboard projects to commit to a maximum ambient light output level of 0.3 foot-candle at 250 feet from the billboards,

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which is a more conservative lighting intensity standard for billboards of this proposed size when compared to State standards"

However, the standards seem to address visual and aesthetic impacts, and ignore the biological impacts of lighting that is 3 times the brightness of the moon, and the hazard this brightness imposes on migratory birds and on insects. The brightness, 0.3 foot-candle, remains a significant unmitigated environmental impact to species and the ecosystem.

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CONT

We ask the City of Gilroy not to approve highway or road-facing electronic billboards. Instead, the city should develop an ordinance prohibiting such billboards city-wide. If the city persists in moving forward with this project, an EIR must be prepared.

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Thank you

Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society

Gladwyn D'Souza
Conservation Committee Chair
Sierra Club Loma Prieta Chapter

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Organizations

Sierra Club Loma Prieta Chapter/Santa Clara Valley Audubon Society (SC-SCVAS)

Response to SC-SCVAS-1

This comment consists of introductory information and summarizes the commenter's concerns about potential impacts resulting from the proposed project. The concerns pertaining to environmental impacts are addressed in the following responses.

Response to SC-SCVAS-2

The comment provides the Sierra Club's light pollution policy, which states that Artificial Light At Night (ALAN) affects ecosystems and living organisms, and provides background information about the Sierra Club policy.

Specific comments pertaining to ALAN and its impact to biological resources are addressed in the responses below.

Response to SC-SCVAS-3

The commenter states that the proposed project would have significant impact to biological and aesthetic environmental resources and opposes the proposed project.

Comments related to biological and aesthetic impacts are discussed below. This comment will be provided to the City decision-makers for their review and consideration of the proposed project as a whole.

Response to SC-SCVAS-4

The commenter claims that the proposed billboards would have aesthetic and visual character impacts and refers to a 2021 San José survey in which 95 percent of respondents opposed to electronic billboards.

The proposed project's lighting would be adjustable based on ambient light conditions at any given time (i.e., nighttime versus daytime). To avoid impacts to the visual character of the area, billboards would not be allowed in non-urbanized areas and would be restricted to the Urban Growth Boundary of the City. More specifically, as described in the Draft IS/MND Project Description, permitted locations for electronic billboards would be limited to property designated General Services Commercial or City Gateway District, located within 660 feet of U.S. Highway 101 (US-101) and State Route (SR) 152.

Public opinion surveys are beyond the purview of CEQA; however, this comment will be provided to the City decision-makers for their review. No additional analysis is required.

Response to SC-SCVAS-5

The commenter states that the proposed Ordinance would impact the visual character of US-101, which is a County-designated scenic route.

As discussed in Draft IS/MND Section 2.1, Aesthetics, the US-101 segment that traverses the City of Gilroy is not a designated State Scenic Highway. County-designated scenic routes are beyond the purview of CEQA. In addition, permitted locations for billboards would be limited to properties

designated General Services Commercial or City Gateway District, located within 660 feet of US-101 and SR-152. Therefore, billboards would not be permitted in rural parts of Gilroy. No additional analysis is required.

Response to SC-SCVAS-6

The commenter claims that drivers find that electronic billboards affect them, and that the glare impact is considered to be significant and cannot be mitigated.

Driver distraction related to glare was analyzed in Draft IS/MND Section 2.1, Aesthetics,. Applicable federal and State regulations require a minimum of four second dwell time before the display may transition to the next image to reduce driver distraction. The proposed Ordinance would not allow the sign face display to change more often than every 8 seconds and the messages would be static (i.e., not moving or animated). Therefore, the proposed Ordinance would be more conservative than what is required by federal and State regulations. Accordingly, impacts were determined to be less than significant.

Public opinion surveys are beyond the purview of CEQA; however, this comment will be provided to the City decision-makers for their review.

Response to SC-SCVAS-7

The claim that aesthetic resource impacts are significant and unavoidable is not supported by any new information that would change the conclusion of the Draft IS/MND. Therefore, no further analysis is warranted.

Response to SC-SCVAS-8

The commenter claims that the proposed billboard would have significant cumulative light and glare impacts on species that make use of the Princevalle drainage.

As demonstrated in Draft IS/MND Section 2.4, Biological Resources, the habitat of the Princevalle drainage is of low quality. The drainage is an urbanized man-made feature that lacks matures trees, dense understory vegetation, perennial water, or a suitable substate that provide habitat and cover for wildlife species. The fragmentation of the drainage from existing roads, US-101, and bridges further reduces its habitat quality. The drainage experiences a baseline level of artificial lighting from adjacent residential and industrial developments and lighting associated with US-101 that would not be substantially increased by the light from the proposed billboard, which is limited to a maximum ambient light output level of 0.3 foot-candle at a distance of 250 feet from the billboard. CEQA requires an evaluation of impacts relative to baseline conditions, not relative to hypothetical habitat conditions that are not present within the project site. The proposed billboard Ordinance would only permit locations for billboards in urbanized areas, within properties designated General Services Commercial or City Gateway District and within 660 feet of US-101 and SR-152. In addition, subsequent billboards would be required to undergo a separate CEQA review.

Response to SC-SCVAS-9

The commenter claims that wildlife and their ecosystem are affected by artificial light and suggests that the billboard be turned off between the hours of 11:00 p.m. to 8:00 a.m.

The proposed project's lighting would be adjustable based on ambient light conditions at any given time (i.e., nighttime versus daytime). It tethers lighting levels to ambient conditions through the use of a photocell that measures ambient light. For example, cloudy days will register a lower ambient light level than sunny days on the photocell, and dusk and dawn lighting levels are also traceable. These values read back to the display, and light output is adjusted automatically and accordingly. In addition to this function, the applicant maintains a "watchdog" program that update the dusk and dawn times each day based on the display's longitude and latitude. After dusk, the watchdog records and fixes the light output at the nighttime level and, if the sensor on the display attempts to communicate bright ambient conditions (e.g., a nighttime event with other illumination sources occurs in the parking lot), the display will ignore the high feedback from the sensor.

The study cited by the commenter identifies general categories of wildlife species that could be impacted by exposure to ALAN, but does not provide an analysis of species required to be reviewed under CEQA standards (i.e. special-status species). The study does not address the specific impacts of billboards; rather, it discusses the impacts of light-emitting diodes (LEDs) in general, though acknowledges much of the supporting data "necessarily comes from older lighting technology." The generalized study cited by the commenter does not amount to substantial evidence of a significant impact on biological resource on the fauna found in the City of Gilroy.

Furthermore, because Mitigation Measure (MM) BIO-1 through MM BIO-6 would reduce impacts on sensitive species and their habitat to less than significant levels, no further mitigation is required.

Response to SC-SCVAS-10

This comment relates to the proposed billboard's illumination levels and potential impacts on migratory birds.

The Draft IS/MND's conclusion that the proposed billboard would not create a substantial change in the illumination levels from baseline light sources is not subjective. Substantial evidence in the administrative record demonstrates that the proposed project would be consistent with illumination intensity standards outlined in the California Department of Transportation (Caltrans) Outdoor Advertising Act; and moreover, the lighting intensity is designed to be more conservative for billboards of similar size when compared with State standards. Additionally, the project site is located in a highly urbanized area and is surrounded by development that results in a baseline of light sources. Adjacent light sources include signs and lights from the adjacent auto dealership, highway lighting and infrastructure, additional billboards adjacent to US-101 in the greater vicinity of the project site, and continuous highway traffic. For these reasons, the proposed billboard would not create a substantial change in illumination levels. The Draft IS/MND adequately analyzed impacts to migratory birds. No additional analysis is needed.

Response to SC-SCVAS-11

The commenter claims that the proposed 8-second image dwell time is arbitrary and would not reduce attraction to birds.

As explained in the Draft IS/MND Project Description, applicable federal and State regulations require a minimum 4 second dwell time before the display may transition to the next image to

reduce driver distraction. The proposed Ordinance would not allow the sign face display to change more often than every 8 seconds and the messages would be static (i.e., not moving or animated). The proposed Ordinance would therefore be more conservative than what is required by federal and State regulations. In addition, the proposed billboard sign face sign messaging timing would result in changing color patterns rather than a fixed unchanging light. As such, birds flying near the proposed billboard would not perceive the light as a fixed, unchanging light which has shown to be the most attractive to birds.^{1,2,3} Therefore, impacts to migratory birds are less than significant and no additional mitigation measures are required.

Response to SC-SCVAS-12

This comment is related to the Princevalle Channel and its function as a wildlife connectivity corridor.

The proposed project would not have any impact on any sensitive habitats. The project site is composed of an active truck storage lot that is fully developed. Developed habitats are widespread, particularly within the immediate vicinity of the project site. Based on the field survey previously conducted, there are multiple sources of existing lighting that illuminate the adjacent drainage (see responses above). Furthermore, the identified reach of the drainage is of poor quality for wildlife species. The drainage is an urbanized man-made feature that lacks mature trees, dense understory vegetation, perennial water, or a suitable substrate that facilitate significant wildlife movement. Species that do utilize the drainage have been acclimated to the highly urbanized environment and are accustomed to the numerous lighting sources currently present within the reach of the drainage.

According to information provided by the applicant, the north-facing display of the proposed billboard would be 60 feet high and, as demonstrated in the administrative record of proceedings, the vertical light footprint of displays does not cast light on the ground within the first 100 to 150 feet or so. The Princevalle Channel is located 50 feet north of the proposed display, and below the grade of the proposed billboard site. Even if the study demonstrated that the Princevalle Channel contained protected species, it was demonstrated Draft IS/MND that the operation of the proposed billboard would not create a substantial change in illumination levels due to the physical dimensions of the light footprint and the existing topography. As previously articulated, these considerations do not account for the fact that the auto dealership to the north has parking lot lights located directly adjacent to the channel, such that the baseline lighting levels already illuminate the channel.

Response to SC-SCVAS-13

The proposed project would not have any direct or indirect impacts to the drainage's aquatic habitat and as such does not require a wetland delineation. Project construction would be limited to areas already highly disturbed (urban land cover) and, to the extent there is any potential for construction debris, materials, or runoff to reach the channel, MM BIO-5 and BIO-6 would prevent such from occurring. CEQA does not, per established case law, require the preparation of every last test and, here, a wetland delineation would not provide any meaningful environmental information.

¹ Jones, J., and C.M. Francis. 2003. The effects of light characteristics on avian mortality at lighthouses. *Journal of Avian Biology*.

² Gauthreaux, S.A., and C.G. Belser. 2006. Effects of artificial night lighting on migrating birds. Rich, C., and T. Longcore, Editors. *Ecological Consequences of Artificial Night Lighting*. Covelo, CA: Island Press.

³ Gehring, J., P. Kerlinger, and A. Manville II. 2009. Communication towers, lights, and birds: Successful methods of reducing the frequency of avian collisions. *Ecological Applications*.

Response to SC-SCVAS-14

Impacts to wildlife movement have been addressed in the Response to SC-SCVAS-12.

Response to SC-SCVAS-15

The commenter claims that MM BIO-7, which requires submittal of a Santa Clara Valley Habitat Plan (SCVHP) Coverage Screening Form, is a deferred mitigation measure. As explained on Page 43 of the Draft IS/MND, the proposed billboard is located within the SCVHP. MM BIO-7 does not rely on future disclosure of impacts. The proposed project would be consistent with the SCVHP, because project site is within the “Urban-Suburban” land cover as defined by the SCVHP and is not located in any special-status plant and wildlife survey areas, or fee zone. Additionally, coverage under the SCVHP is only needed if the project or activity has a reasonable potential or likelihood to take a covered species. A highly unlikely or speculative take does not meet this criterion. Because the proposed billboard would not result in a take of a covered species, no additional studies under the SCVHP would be required. MM BIO-7 merely contemplates confirming standard paperwork must be filed to document the foregoing conditions with administrators of the SCVHP and therefore is not a “deferred mitigation.” This requirement is included as MM BIO-7 to provide more specific information including timing and lead agency responsibility. For clarification purposes, MM BIO-7 is slightly edited to include timing of the mitigation measure. See Section 3, Errata, of this document. Future billboards under the proposed Ordinance would undergo a separate review and could also be subject to this requirement.

Response to SC-SCVAS-16

This comment is related to driver safety.

As discussed in Response to SC-SCVAS-6, applicable federal and State regulations require a minimum 4 second dwell time before the display may transition to the next image to reduce driver distraction. The proposed Ordinance would not allow the sign face display to change more often than every 8 seconds and the messages would be static (i.e., not moving or animated). The proposed Ordinance would therefore be more conservative than what is required by federal and State regulations.

In addition, the *Commercial Electronic Variable Message Signs and Driver Visual Behavior Study* was prepared and issued by the United States Department of Transportation (USDOT) Federal Highway Administration (FHWA) in September 2012,⁴ to investigate the effects of electronic billboards on driver visual behavior in roadway driving environments, in which driver participants’ eye movements were tracked while driving on roads containing standard billboards and electronic billboards. The study found that the percentage of time that drivers dedicated to the road ahead was not significantly affected by the presence of electronic billboards. Long glances at off-premises advertising were not evident. The amount of time drivers spent glancing at the electronic billboard was typically under 1 second and the longest glance at an electronic billboard was less than 1.3 seconds.

⁴ United States Department of Transportation (USDOT). Federal Highway Administration (FHWA). 2012. Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs. September. Website: https://www.fhwa.dot.gov/real_estate/oac/visual_behavior_report/final/fhwahep16036.pdf. Accessed September 28, 2022.

Furthermore, the proposed project would not increase roadway hazards due to a geometric design feature. The proposed billboard is sited adjacent to a section of US-101 that is straight and is located distant from freeway exits to ensure that driver attention would not be diverted in a way that would create a dangerous roadway hazard.

Given that the proposed billboard's image transition time would be more conservative than applicable federal and State requirements, and that drivers would only glance at the proposed billboard for a very brief period of time, and that the proposed billboard is appropriately sited such that the nominal dwell time on the billboard would not contribute to a roadway hazard, impacts to driver safety and distraction would be less than significant.

For future billboards under the proposed Ordinance, electronic billboards would have a required minimum distance of 1.5 miles between billboard construction sites to reduce roadway hazards. A separate environmental review would be required to ensure future billboards would have less than significant impacts on driver distraction and safety.

Response to SC-SCVAS-17

The comment provides general statements about energy consumption and CEQA and states that a "study of energy use and other environmental impacts of electronic billboards" was provided as an attachment to the public comment letter. The study provided as an attachment, prepared by Gregory Young, provides an overview of digital signage and addresses topics such as energy consumption, sign brightness, recyclability, future technological innovation, and economic feasibility. The study concludes by making policy recommendations related to the City of Philadelphia, Pennsylvania, and its zoning regulations regarding digital signage.

The comment does not demonstrate any correlation between the findings or recommendations of the attached study and the purported significance of the proposed project's energy or greenhouse gas (GHG) emissions-related impacts, which are determined to be less than significant by the Draft IS/MND. Moreover, the comment does not demonstrate how or why the proposed project would result in significant energy and GHG-related impacts under CEQA and the adopted thresholds of significance. As there is no evidence that the proposed project would result in significant energy and GHG-related impacts, neither an EIR nor mitigation measures are required.

Response to SC-SCVAS-18

This comment states that the Draft IS/MND discloses energy consumption but does not provide mitigation measures.

The proposed project's energy and GHG-related impacts were determined to be less than significant by the Draft IS/MND. The comment does not demonstrate how or why the proposed project would result in significant energy and GHG-related impacts under CEQA and the adopted thresholds of significance. As there is no evidence that the proposed project would result in significant energy and GHG-related impacts, neither an EIR nor mitigation measures are required.

Response to SC-SCVAS-19

The commenter provides a comparison of the proposed project to City of San José requirements for billboards at the airport.

The San José International Airport requires specific regulations regarding development surrounding the airport, in accordance with the Federal Aviation Administration (FAA), the San José Airport Land Use Plan, and the City of San José. Accordingly, control of unwanted light (trespass or spill light) toward nearby Airport ground operations, Airport air traffic control tower, and to pilots in approach is fundamental to the project design and the City of San José took these unique requirements into consideration when approving billboards at the Airport. The unique circumstances that are present in the billboard project cited by commenter due to the proximity of the airport are not present in the proposed project. For example, for billboards in the City of San José, signs would have custom side-shielding of the LED modules to eliminate light spill towards nearby airport ground operations, as well as the airport tower. The proposed project is not located near an airport or an airport tower, would not be visible from airport ground operations is not subject to any Airport Land Use Plan, and is not located within the City of San José and is therefore subject to a different set of regulations than the San José Airport Billboards Project. Therefore, requirements designed specifically for billboards near airports in the City of San José, are not applicable to, or necessary for, the proposed project approximately 5 miles from the nearest airport, in the City of Gilroy. The proposed project would comply with all applicable regulations. CEQA recognizes that a lead agency may also decline to adopt a mitigation measure that it concludes will not be effective in mitigating an impact or that will not provide substantial additional mitigation beyond the measures that it does adopt. *Citizens for Open Gov't v City of Lodi* (2012) 205 CA4th 296, 323; *A Local & Reg'l Monitor (ALARM) v City of Los Angeles* (1993) 12 CA4th 1773. As discussed in the Draft IS/MND, all project impacts would be reduced to less than significant levels with the proposed mitigation measures. Commenter has not submitted any evidence to demonstrate that the additional suggestions would provide substantial additional mitigation. Therefore, no additional mitigation measure is necessary.

The concerns raised in this comment do not raise any additional environmental issues that were not previously considered during the preparation of the Draft IS/MND. However, this comment will be provided to the City decision-makers for their review and consideration.

Response to SC-SCVAS-20

This comment incorrectly states that an EIR was prepared. The comment provides quotes from the Draft IS/MND pertaining to aesthetic impacts.

The analysis provided in the IS/MND analyzed aesthetic impacts related to light and glare, and applicable zoning and regulations. Biological impacts are discussed in Draft IS/MND Section 2.4, Biological Resources, and comments related to biological impacts are discussed above in Response to SC-SCVAS-8 through SC-SCVAS-15. No further analysis is required.

Response to SC-SCVAS-21

The comment asks the City not to approve the proposed project, or to prepare an EIR.

This comment will be provided to the City decision-makers for their review and consideration.

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UNIVERSITY OF CALIFORNIA, SANTA CRUZ

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SANTA BARBARA • SANTA CRUZ

UNIVERSITY OF CALIFORNIA OBSERVATORIES/LICK OBSERVATORY MT HAMILTON, CALIFORNIA 95140

DATE: 5 September 2022

Dear Cindy McCormick,

PROPOSED ELECTRONIC BILLBOARD(S)

The University of California Observatories' Lick Observatory (UCO/Lick) - the world's first high altitude astronomical observatory - hosts 10 telescopes, plus multiple cutting-edge research instruments atop Mount Hamilton, 25 miles north of Gilroy. Named in classic literature and from Apollo 11's Tranquility Base, the observatory routinely opens new vistas on the universe, discovers new worlds, develops new technology, educates science and "tech-savvy" students and inspires all comers. Lick Observatory leads the world, setting standards on astronomical matters. Annually, the observatory serves hundreds of faculty (including Nobel laureates) and students of the University of California, in addition to 35,000 visitors. This cannot be achieved without a fruitful relationship between the observatory and neighboring settlements.

As outlined in written (26 April 2021) and spoken (15 August 2022) contributions to Gilroy City Council, I reiterate that the proposed Electronic Billboard Ordinance and Sign Permit proposal (described in the 4 August 2022 Initial Study) shall render a disproportionate and deleterious impact on astronomical pursuits, fauna, flora and public health. From an astronomical perspective, it would be ideal to have no illuminating sources at all. However, UCO/Lick has no wish to crusade in pursuit of this ideal. A higher aspiration is to sustain the rapport and understanding between neighboring communities and observatory that has endured since the 1870s. Responsibly installed billboards may confer benefits to the community. Distressingly, however, the Initial Study is unbalanced in its failure to consider negative effects of electronic billboards on astronomy. For example, the International Dark-Sky Association's (2019) Guidance for Electronic Message Centers (repeatedly advocated for in previous contributions) continues to be neglected. As a result of such omissions, the Initial Study cannot be considered to be representative of best practice. Experience regarding proposed electronic billboards elsewhere in Santa Clara County shows that the needs of Lick Observatory align with public opinion: a (2021) survey conducted by the City of San Jose Planning Department revealed 93% opposition. Expert advisors (e.g. Norman Y. Mineta San Jose international Airport Commission) repeatedly recommended against billboards. The City of San Jose is now subject to litigation from competing outdoor advertising interests. Quite apart from astronomers' niche concerns, the most commonly cited objection to billboards (electronic and conventional) is visual blight. Billboards are notorious for intrusive, poorly-maintained, malfunctioning, decrepit and unsightly structures – often imposed on under-served neighborhoods. The outdoor advertising industry is noted (even *celebrated*) for wasteful practices. Outdoor advertising typically constitutes a minor fraction of overall advertising budgets. As on-line media continues to grow, revenues derived from outdoor advertising are projected to decline.

Regardless of whether one favors or opposes electronic billboards, it must be acknowledged that the Initial Study has failed to allay concerns. Thus, a full-and-proper Environmental Impact Report should ultimately be undertaken. However, in order to avoid embarking on such a costly endeavor unnecessarily, the City of Gilroy is first urged to proactively canvass the community in an effort to gain insight into the public attitude and reception to electronic billboards.

Yours sincerely,

Paul David Lynam

Dr Paul D. Lynam FRAS

Astronomer

University of California Observatories/Lick Observatory

University of California Lick Observatory (UCO-LICK)

Response to UCO-LICK-1

This comment provides background information about the Lick Observatory. This comment is noted.

Response to UCO-LICK-2

Astronomical pursuits are beyond the purview of CEQA; however, the proposed billboard is located 24.46 miles from the Lick Observatory. At this distance, the proposed project would not interfere with operations at the Lick Observatory. The Lick Observatory is approximately 20 miles north of the northern boundary of the City of Gilroy. Therefore, subsequent billboards permitted under the proposed Ordinance also would not interfere with the operations at the Lick Observatory. Furthermore, the City of Gilroy's Sign Ordinance does not currently address electronic billboards. The proposed project would establish height limits and density limits for electronic billboards, which would ensure that billboards are responsibly designed and installed. Furthermore, the proposed Ordinance would be in accordance with the Outdoor Advertising Act and Regulations, California Business and Professions Code Section 5200 *et seq.*, and other State and federal statutes. Therefore, no further analysis is warranted.

Impacts regarding flora and fauna were analyzed in Draft IS/MND Section 2.4, Biological Resources. The Draft IS/MND determined that impacts on flora and fauna would be less than significant with mitigation incorporated. This comment does not identify any new environmental issues related to Biological Resources. Therefore, no further analysis is warranted.

Impacts regarding public health were analyzed in Draft IS/MND Section 2.3, Air Quality, and Section 2.8, Greenhouse Gas Emissions. The Draft IS/MND determined that impacts related to Air Quality would be less than significant with mitigation incorporated, and impacts related to GHGs would be less than significant. This comment does not identify any new environmental issues related to Air Quality or GHGs. Therefore, no further analysis is warranted.

Response to UCO-LICK-3

The International Dark-Sky Association (IDA) Guidance for Electronic Messaging Centers (EMCs) provides recommendations for nighttime maximum luminance and Best Management Practices (BMPs). Implementation of these recommendations and BMPs is not required by CEQA and would be considered a voluntary measure. According to the Draft IS/MND, the maximum ambient light output level allowed by the proposed Ordinance would be 0.3 foot-candle at 250 feet from the billboards, as recommended by the Outdoor Advertising Association of America (OAAA), and brightness would be adjustable based on ambient light conditions. Furthermore, the proposed project would be consistent with the Caltrans Outdoor Advertising Act and Regulations 2011 Edition (Outdoor Advertising Act), which states that displays may not interfere with traffic signs, signals, or devices, and may not impair the vision of any driver or motor vehicle operation. Additionally, the proposed project would comply with the Business and Professions Code Section 5403(g), which defines brightness standards. Implementation of the IDA guidance is not required; therefore, no further analysis is warranted under CEQA.

Response to UCO-LICK-4

Public opinion surveys are beyond the purview of CEQA. This comment does not raise any environmental issues related to the proposed project and is therefore outside the purview of CEQA. Therefore, no further action is required.

Response to UCO-LICK-5

The visual impact of the proposed Ordinance and proposed billboard were analyzed in Draft IS/MND Section 2.1, Aesthetics. As discussed in Section 2.1, the proposed project would have a less than significant impact with regard to the visual character or quality of public views of the site and its surroundings, and would not conflict with applicable zoning and regulations regarding scenic quality. As discussed in Section 2.1, under the proposed Ordinance, electronic billboards would not be allowed in non-urbanized areas and would be restricted to the Urban Growth Boundary. More specifically, as described in the Draft IS/MND Project Description, permitted locations for electronic billboards would only be property designated as General Services Commercial or City Gateway District and located within 660 feet of US-101 and SR-152. The proposed Ordinance would also establish design standards for billboards, which would prevent visual blight. Furthermore, impacts regarding the wasteful use of energy were determined to be less than significant, as discussed in Draft IS/MND Section 2.6, Energy. Therefore, the proposed project would not contribute to wasteful energy practices. This comment does not identify any additional issues that were not analyzed in the Draft IS/MND. Therefore, no further analysis is warranted.

Response to UCO-LICK-6

The preceding comments do not provide substantial evidence that there were additional environmental issues that were not analyzed in the Draft IS/MND. As discussed above, impacts to Aesthetics, Air Quality, Biological Resources, Energy, and GHGs would either be less than significant or less than significant with mitigation incorporated. Canvassing is beyond the purview of CEQA; however, this comment will be provided to the City decision-makers for their review. No additional analysis is required.

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From: John Bauters <jbauters@gmail.com>
Sent: Wednesday, August 24, 2022 3:03 PM
To: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Attn: Cindy McCormick / RE: Proposed Electronic Billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear City of Gilroy Planning Commissioners, Councilmembers, and Staff:

Thank you for considering this public comment with respect to the proposed Mitigated Negative Declaration for an electronic billboard along Hwy 101 in Gilroy.

My comments are specific to two sets of findings/conclusions that I do not believe are adequately researched or discussed in the document, and leave significant environmental impacts unmitigated.

(1) The discussion of Biological Resources correctly identifies impacts on birds and other wildlife as an issue to review, but includes an inappropriately abridged scope of review that jeopardizes endangered birds, including migratory species, that live in this area and migrate through this area.

The discussion in Section 2.4 and then again in 2.20 is overly-focused on the construction site -- a small parcel along Hwy 101. The lack of nests by migratory or endangered birds is cited as a reason for lower concern and the proposed mitigation is how to handle construction in the event a nest is discovered. While this is good, it is insufficient. Birds are dramatically impacted by large, elevated LED signs. There are extensive reports and studies on how LED signs confuse migratory birds, disorienting them at night; how they impair their reproductive functions; and how night predators lose the ability to hunt effectively as these billboards make their ability to find food difficult. Bright spaces like this can have impacts for a multiple mile radius from a high-rise sign, which can eliminate spaces where both migratory and non-migratory birds can nest. The white-tailed kite, cited in Section 2.4, may not have a known sighting within a couple miles of the project site, but the addition of such a sign in one of the only zones in the United States where the species is known to exist further harms it's population and puts the species at risk. There is no discussion of any of the significant research being conducted into how LED signs impact migration patterns, reproductive patterns, hunting/food sourcing, or nesting. The data points provided in the report fail to address these issues adequately and the scope of review is limited almost exclusively to the parcel itself, which does not adequately address the reality of a larger geographic impact this kind of light has on birds.

(2) Section 2.20 of the report states that there are some impacts on humans but that all of those can or will be mitigated, as discussed throughout the document. There is no discussion about how these types of bright lights impact circadian rhythm (sleep), especially in children. Bright lights can and do impact and are harmful to the development of children. Sleep is one of the most important components of healthy child development, which is necessary for proper brain development, educational attainment, and is also linked to attention/focus, and mood. Bright LED lights on billboards create light pollution much greater than the ambient levels of street lights and other night-time lights which are often much closer to the ground. The UV levels in these lights will create lighter sleep levels, disrupt sleep, and negatively impact human health and growth. There are significant residential communities proximate to the proposed billboard site which will experience the impacts of the proposed billboard sign. The report does not demonstrate adequate study or review of how the location of this sign and the reach of the

projected LED lights will change the light pollution baselines in residential areas near the sign, and what that could mean for human health - especially developing children. <https://ncceh.ca/documents/field-inquiry/health-effects-large-led-screens-local-residents>

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Finally, a sign like this is not necessary. The City of Gilroy has had a good ordinance that prohibits these types of signs for a long time - and for a good reason. Drivers do not need additional distractions on the roadways. At night, bright lights will only further impair driver abilities on the road, putting all road users at greater risk as a result.

These bright signs are little more than a proverbial "tramp stamp" in the sky - letting people from miles away know that the city is so cheap that it has to resort to bright light commercial ads as it's community identify. Gilroy can and should be a place people are proud to be from - one that doesn't need additional light pollution that will harm children's development or impair our local environmental wildlife resources. I hope that planning commission will give careful consideration to both the *adequacy* of this report as well as the *necessity* of this sign. Bright signs originated years ago to tell motorists where there was safe lodging at night, where there was food or fuel to continue their journey, or where a local medical center was if help was needed. Today, we allow any commercial advertisement to be put up along a roadway. Making them electronic undermines the original purpose behind electronic roadway signs, diminishes the character of our community, and harms our greatest assets: our environment and our children.

5

Please vote against accepting this proposed Mitigated Negative Declaration.

Thanks for your time and consideration.

Sincerely,

John Bauters

--

The strength of a nation is measured by the least of its people.

Individuals

John Bauters (BAUTERS)

Response to BAUTERS-1

This comment consists of introductory information and summarizes the commenter's concerns about potential impacts resulting from the proposed project. The concerns pertaining to environmental impacts are addressed in the following responses.

Response to BAUTERS-2

The commenter claims that the Draft IS/MND did not adequately analyze impacts on birds and other wildlife.

Draft IS/MND Section 2.4, Biological Resources, provides an analysis of all special-status species with documented occurrences within the *Chittenden, California* USGS 7.5-minute Topographic Quadrangle Map and eight surrounding quadrangles. This methodology is derived from the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB), which is an industry standard for analyzing potential impacts to biological resources.⁵ Furthermore, the first paragraph on page 41 of the Draft IS/MND provides an analysis of the proposed electronic billboard on migratory birds, and Responses to SC-SCVAS-10 and SC-SCVAS-11 offers additional responses regarding migratory birds.

Response to BAUTERS-3

This comment is related to the proposed billboard's impacts on migratory birds. The first paragraph on page 41 of the Draft IS/MND provides an analysis of the proposed electronic billboard on migratory birds. The proposed electronic billboard would not have a significant impact on migratory birds because it would not create a substantial change in illumination levels; would be consistent with illumination intensity standards outlined in the Caltrans Outdoor Advertising Act; and moreover, the lighting intensity is designed to be more conservative for billboards of similar size when compared with State standards.

Additionally, the project site is located in a highly urbanized area and is surrounded by development that results in a baseline of light sources. Adjacent light sources include signs and lights from the adjacent auto dealership, highway lighting and infrastructure, additional billboards adjacent to US-101 in the greater vicinity of the project site, and continuous highway traffic. Moreover, Responses to SC-SCVAS-10 and SC-SCVAS-11 provide additional details regarding migratory birds. Future billboards to be constructed under the proposed Ordinance would be subject to environmental review prior to approval.

Response to BAUTERS-4

The commenter states that lights from electronic billboards would have significant impacts on humans and their circadian rhythms.

The proposed Ordinance would not permit electronic billboards in residential areas. More specifically, as described in the Draft IS/MND Project Description, permitted locations for electronic

⁵ California Natural Diversity Database(CNDDDB) Data Use Guidelines. Website: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=27285&inline>. Accessed August 19, 2021.

billboards would only be property designated as General Services Commercial or City Gateway District and located within 660 feet of US-101 and SR-152.

As discussed in page 87 of the Draft IS/MND, the nearest residences are located approximately 1,795 feet west of the project boundary. Because of distance and intervening topography, the proposed electronic billboard would not be visible from these locations. Future billboards to be constructed under the proposed Ordinance would be subject to environmental review prior to approval. Therefore, the proposed Ordinance's impacts related to electronic billboard lights on humans' circadian rhythm would be less than significant.

Response to BAUTERS-5

The commenter opposes the proposed project. No additional analysis is required. However, this comment will be provided to the City decision-makers for their review.

SECTION 3: ERRATA

The following are revisions to the Draft IS/MND for the Electronic Billboard Ordinance Project.

These revisions are minor modifications and clarifications to the document, and do not change the significance of any of the environmental issue conclusions within the Draft IS/MND. The revisions are listed by page number. All additions to the text are underlined (underlined) and all deletions from the text are stricken (~~stricken~~).

3.1 - Changes in Response to Specific Comments

Section 2.4, Biological Resources

Page 41

Migrating birds can be affected by human-built structures because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather. The proposed electronic billboard would not create a substantial change in illumination levels as described above in Section 2.1 above. Baseline light sources in the project area include local street lighting, parking lot lighting, other illuminated billboards at nearby auto dealerships, headlights from automobile traffic, and highway lighting structures. The proposed electronic billboard would be consistent with the illumination intensity standards in the Caltrans Outdoor Advertising Act. The proposed electronic billboard would be limited to a maximum ambient light output level of 0.3 foot-candle at 250 feet from the billboard, which is a more conservative lighting intensity standard for electronic billboards of this proposed size when compared to State standards. ~~Additionally, the proposed electronic billboard would not be allowed to change the sign face display more than every 8 seconds, and messages would be static (i.e., not moving, or animated) resulting in changing color patterns rather than a fixed unchanging light which may be more attractive to birds.~~ In addition, the proposed billboard sign face sign messaging timing would result in changing color patterns rather than a fixed unchanging light. As such, birds flying near the proposed billboard would not perceive the light as a fixed, unchanging light which has shown to be the most attractive to birds.^{1,2,3}

Page 45

MM BIO-7

Prior to issuance of grading permits, ~~t~~The project applicant shall submit a Santa Clara Valley Habitat Plan (SCVHP) Coverage Screening Form to the Planning Department for review and shall complete subsequent forms, reports, and/or studies as needed.

¹ Jones, J., and C. M. Francis. 2003. The effects of light characteristics on avian mortality at lighthouses. *Journal of Avian Biology*.

² Gauthreaux, S.A., and C.G. Belser. 2006. Effects of artificial night lighting on migrating birds. Rich, C., and T. Longcore, Editors. *Ecological Consequences of Artificial Night Lighting*. Covelo, CA: Island Press.

³ Gehring, J., P. Kerlinger, and A. Manville II. 2009. Communication towers, lights, and birds: Successful methods of reducing the frequency of avian collisions. *Ecological Applications*.

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Section 2.17, Transportation**Page 98**

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

Proposed Electronic Billboard

The proposed project would not require the alteration or construction of roadways, and no impact related to sharp curves or dangerous intersections would occur. The proposed electronic billboard would be required to adhere to Caltrans Outdoor Advertising Act requirements and OAAA recommendations that govern illumination so as not to interfere with drivers' visibility. Furthermore, in accordance with the Ordinance, electronic billboards would have a required minimum distance of 1.5 miles between billboard construction sites.

In addition, the *Commercial Electronic Variable Message Signs and Driver Visual Behavior Study* was prepared and issued by the United States Department of Transportation (USDOT) Federal Highway Administration (FHWA) in September 2012,⁴ to investigate the effects of electronic billboards on driver visual behavior in roadway driving environments, in which driver participants' eye movements were tracked while driving on roads containing standard billboards and electronic billboards. The study found that the percentage of time that drivers dedicated to the road ahead was not significantly affected by the presence of electronic billboards. Long glances at off-premises advertising were not evident. The amount of time drivers spent glancing at the electronic billboard was typically under 1 second and the longest glance at an electronic billboard was less than 1.3 seconds.

Furthermore, the proposed project would not increase roadway hazards due to a geometric design feature. The proposed billboard is sited adjacent to a section of US-101 that is straight and is located distant from freeway exits to ensure that driver attention would not be diverted in a way that would create a dangerous roadway hazard.

These requirements are designed to reduce hazards from electronic billboards to the drivers on the surrounding roadways at the project site. Thus, the impacts would be less than significant.

⁴ United States Department of Transportation (USDOT). Federal Highway Administration (FHWA). 2012. Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs. September. Website: https://www.fhwa.dot.gov/real_estate/oac/visual_behavior_report/final/fhwahep16036.pdf. Accessed September 28, 2022.

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**Electronic Billboard Ordinance Project
Initial Study/Mitigated Negative Declaration
City of Gilroy, Santa Clara County, California**

Prepared for:

City of Gilroy

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ACRONYMS AND ABBREVIATIONS

AB	Assembly Bill
AQP	Air Quality Plan
ARB	California Air Resources Board
ATCM	Airborne Toxics Control Measure
BAAQMD	Bay Area Air Quality Management District
BERD	Built Environmental Research Directory
BMP	Best Management Practice
CalEEMod	California Emissions Estimator Model
CAL FIRE	California Department of Forestry and Fire Protection
Caltrans	California Department of Transportation
CBC	California Building Standards Code
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CNDDDB	California Natural Diversity Database
CNEL	Community Noise Equivalent Level
CNPS	California Native Plant Society
CNPSEI	California Native Plant Society Electronic Inventory
CO	Carbon Monoxide
CRHR	California Register of Historical Resources
dB	decibel
dBA	A-weighted decibel scale
DPM	diesel particulate matter
DTSC	Department of Toxic Substances Control
FCS	FirstCarbon Solutions
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map
FMMP	Farmland Mapping and Monitoring Program
FTA	Federal Transit Administration
GFD	Gilroy Fire Department
GHG	greenhouse gas
IEA	International Energy Agency
IPaC	Information for Planning and Consultation
IS/MND	Initial Study/Mitigated Negative Declaration
kWh	kilowatt-hours

Acronyms and Abbreviations

L _{dn}	day/night sound level
L _{eq}	equivalent continuous sound level
L _{max}	maximum instantaneous noise level
LED	light-emitting diode
LRA	Local Responsibility Area
MBTA	Migratory Bird Treaty Act
MM	Mitigation Measure
MT CO ₂ e	metric tons carbon dioxide equivalent
NAAQS	National Ambient Air Quality Standards
NAHC	California Native American Heritage Commission
NO _x	nitrogen oxide
NRHP	National Register of Historic Places
NWIC	Northwest Information Center
OAAA	Outdoor Advertising Association of America
OHP	California Office of Historic Preservation
PG&E	Pacific Gas and Electric Company
PM _{2.5}	particulate matter, including dust, 2.5 micrometers or less in diameter
PM ₁₀	particulate matter, including dust, 10 micrometers or less in diameter
PPV	peak particle velocity
ROG	reactive organic gases
RPS	renewable portfolio standard
SB	Senate Bill
SCRWA	South County Regional Wastewater Authority
SCVHP	Santa Clara Valley Habitat Plan
SR	State Route
TAC	toxic air contaminants
TCR	Tribal Cultural Resource
US-101	U.S. Highway 101
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
UST	underground storage tank
VHFHSZ	Very High Fire Hazard Severity Zone
VMT	Vehicle Miles Traveled

SECTION 1: INTRODUCTION

1.1 - Purpose

The purpose of this Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) is to identify any potential environmental impacts that would result from implementation of the Electronic Billboard Ordinance Project (proposed project) in the City of Gilroy, California. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15367, the City of Gilroy has discretionary authority over the proposed project and is the Lead Agency in the preparation of this Draft IS/MND and any additional environmental documentation required for the proposed project. The intended use of this document is to determine the level of environmental analysis required to adequately analyze the project pursuant to the requirements of CEQA and to provide the basis for input from public agencies, organizations, and interested members of the public.

The remainder of this section provides a brief description of the project location and the primary project characteristics. Section 2 includes an environmental checklist that provides an overview of the potential impacts that may result from project implementation, elaborates on the information contained in the environmental checklist, and provides justification for each checklist response. Section 3 contains the List of Preparers.

1.2 - Overview

Outfront Media (applicant) proposes to amend Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) of the Gilroy Municipal Code to allow up to two electronic billboards within specific areas of the City of Gilroy (City). The project would also create a new Zoning Code Ordinance (Article LV) related to electronic billboards which would permit up to two electronic billboards on property with a General Plan designation of General Services Commercial or City Gateway District, located within 660 feet of U.S. Highway 101 (US-101) or State Route (SR) 152.

In addition to the proposed Ordinance, the project includes an application for an electronic billboard within the Gilroy city limits. Exhibit 1 illustrates the proposed location for the electronic billboard, and Exhibit 2 depicts the General Plan land use map.

1.3 - Project Description

1.3.1 - Background

The City received an application for the construction of an electronic billboard on Automall Parkway and a code amendment request to allow for such billboard. At present, Article 37, the Gilroy Sign Ordinance (Sign Ordinance) does not allow off-site advertising signs (other than real estate signs) and has general restrictions for freeway-oriented signs and automobile dealership signs (e.g., height and size limits). The Sign Ordinance also prohibits electronic signs that utilize scrolling or moving text or images (e.g., changeable message signs). The Sign Ordinance does not currently address electronic billboards.

1.3.2 - Proposed Electronic Billboard Ordinance and Sign Ordinance Amendment

The project includes a new Electronic Billboard Ordinance (Article LV) and amendments to the City's existing Sign Ordinance Sections 30.37.30 (Prohibited Signs), 30.37.50 (Commercial and Industrial Districts), and 30.37.51 (Freeway Oriented Signs). At this time, only one electronic billboard application has been submitted, which would be processed under the new Ordinance as described in Section 1.3.3, below. Subsequent applications for an electronic billboard would require separate environmental review.

Under the draft Electronic Billboard Ordinance (proposed Ordinance), up to two electronic billboards would be allowed in the City. Permitted locations for electronic billboards would be property designated as General Services Commercial or City Gateway District and located within 660 feet of US-101 and SR-152. An Outdoor Advertising Permit would be required from the California Department of Transportation (Caltrans). As discussed below, the Sign Ordinance amendments would formalize height limits for such billboards and would also dictate the minimum distance between electronic billboards.

Per the proposed Ordinance, the electronic billboards shall not exceed a maximum height of 75 feet above freeway grade and shall have a maximum electronic billboard area of 672 square feet per side. The sign face display would not be allowed to change more often than every 8 seconds, and messages would be static (i.e., not moving or animated). The minimum permitted distance between the billboards shall be 1.5 miles.

In addition to the other requirements set forth in the proposed Ordinance, electronic billboard signs would comply with the requirements of the Outdoor Advertising Act and Regulations, California Business and Professions Code Section 5200 *et seq.*, and other State and federal statutes. Federal and State law would prevail in the case of any conflict between those laws and the ordinance.

The complete proposed text of the proposed Ordinance (Article LV) and the Sign Ordinance amendments is included in Appendix A.

1.3.3 - Proposed Electronic Billboard

As part of the implementation of the proposed Ordinance, the applicant proposes to construct one double-sided electronic billboard in the northwestern corner of an irregularly shaped parcel located at the 6400 block of Automall Parkway.¹ The 6-acre project parcel abuts US-101 to the east, the Princeville Channel and Auto Mall to the north, Automall Parkway and industrial uses to the west, and industrial uses to the south (Exhibit 3). The project parcel has a General Plan land use designation of General Services Commercial and is currently used for truck trailer parking across the majority of the site, with auto repair businesses in the southern portion of the site and a gas station in the northeastern corner of the site.

The proposed electronic billboard structure would be 75 feet in height (Exhibit 4). The electronic billboard would be V-shaped, with north- and south-facing light-emitting diode (LED) displays that

¹ There are multiple addresses associated with the subject property (Assessor's Parcel Number [APN]: 841-15-069).

would be visible to vehicles traveling on US-101. The displays on the billboard would be mounted on a supporting column that would be approximately 65 feet tall. The billboard frames would be 14 feet high and 48 feet wide (672 square feet in area). Galvanized steel platforms would be installed at the back of each face to provide access to the displays for maintenance purposes. An illuminated “Welcome to Gilroy” sign would be installed at the top of the column above the billboard.

1.3.4 - Relevant Lighting Regulations and Standards

The Caltrans Outdoor Advertising Act and Regulations 2011 Edition (Outdoor Advertising Act) addresses illumination generated by advertising displays by stating that displays may not “interfere with the effectiveness of, or obscure any official traffic sign, device, or signal . . . nor shall any advertising display cause beams or rays of light to be directed at the traveled ways if the light is of an intensity or brilliance as to cause glare or to impair the vision of any driver, or to interfere with any driver’s operation of a motor vehicle.” Caltrans regulations prohibit images on signs from changing more than once every four seconds.²

With respect to the brightness of signs, Business and Professions Code Section 5403(g) defines the brightness standard for changeable electronic variable message billboards in relation to Vehicle Code Section 21466.5, which provides:

No person shall place or maintain or display, upon or in view of any highway, any light of any color of such brilliance as to impair the vision of drivers upon the highway. A light source shall be considered vision impairing when its brilliance exceeds the values listed below.

The brightness reading of an objectionable light source shall be measured with a 1½-degree photoelectric brightness meter placed at the driver’s point of view. The maximum measured brightness of the light source within 10 degrees from the driver’s normal line of sight shall not be more than 1,000 times the minimum measured brightness in the driver’s field of view, except that when the minimum measured brightness in the field of view is 10 foot-lamberts or less, the measured brightness of the light source in foot-lambert shall not exceed 500 plus 100 times the angle, in degrees, between the driver’s line of sight and the light source.

The Outdoor Advertising Association of America (OAAA), however, recommends more conservative lighting intensity standards for billboards of the proposed size. The proposed Ordinance will require that electronic billboards be restricted to a maximum ambient light output level of 0.3 foot-candle, at a distance of 250 feet from the billboards, as recommended by the OAAA. The proposed Ordinance will also require that light levels emitted from the billboards would be set to adjust based upon ambient light conditions at any given time (i.e., nighttime versus daytime).

² California Department of Transportation (Caltrans). 2011. Outdoor Advertising Act and Regulations 2011 Edition. California Business Professional Code Sections 5200—5486.

1.4 - Required Discretionary and Ministerial Approvals

As mentioned previously, the City of Gilroy has discretionary authority over the proposed project and is the CEQA Lead Agency for the preparation of this Draft IS/MND. In order to implement the project, the applicant would need to secure the following permits/approvals:

- Adoption of the IS/MND
- Adoption of new Electronic Billboard Ordinance and Zoning Amendment
- Encroachment Permit (if public right-of-way is used)
- Outdoor Advertising Permit approval by Caltrans
- City Agreement (e.g., development agreement, operating agreement, lease agreement, contract, license, or other accord in form acceptable to the City of Gilroy City Attorney)
- Electronic Billboard Permit for the proposed electronic billboard
- Ministerial approvals, including building permits

Subsequent activities would be examined in light of the adopted Draft IS/MND to determine whether additional CEQA documentation would be required pursuant to Section 15162 of the CEQA Guidelines for subsequent approvals by the City and Caltrans, including the permits/approvals listed above.

1.5 - Intended Uses of this Document

This Draft IS/MND has been prepared to determine the appropriate scope and level of detail required in completing the environmental analysis for the proposed project. This document will also serve as a basis for soliciting comments and input from members of the public and public agencies regarding the proposed project. The Draft IS/MND will be circulated for a minimum of 30 days, during which comments concerning the analysis contained in the Draft IS/MND should be sent to:

Cindy McCormick, Senior Planner
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020
Phone: 408.846.0253
Email: cindy.mccormick@cityofgilroy.org

Exhibit 1: Regional Location Map

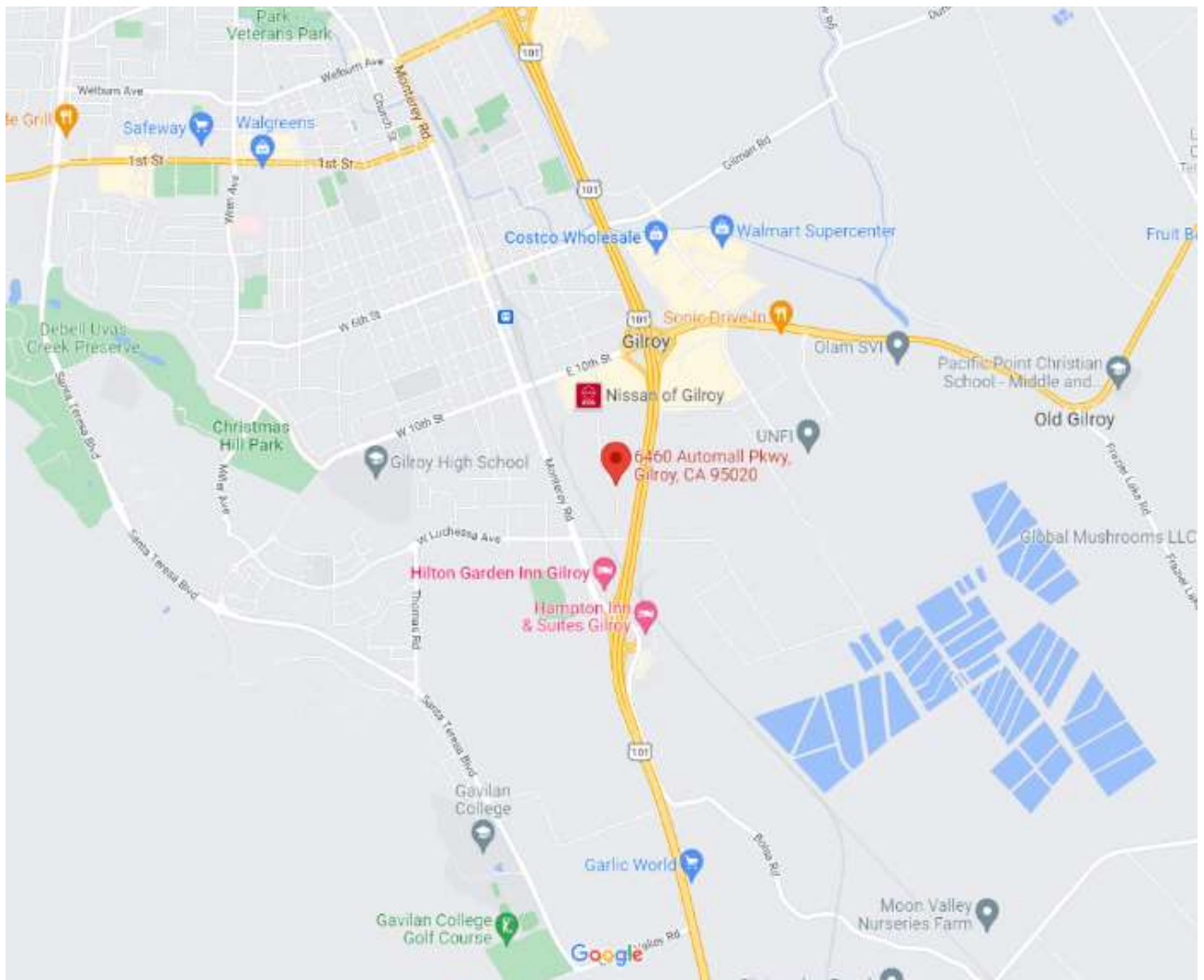


Exhibit 2: General Plan Land Use Map

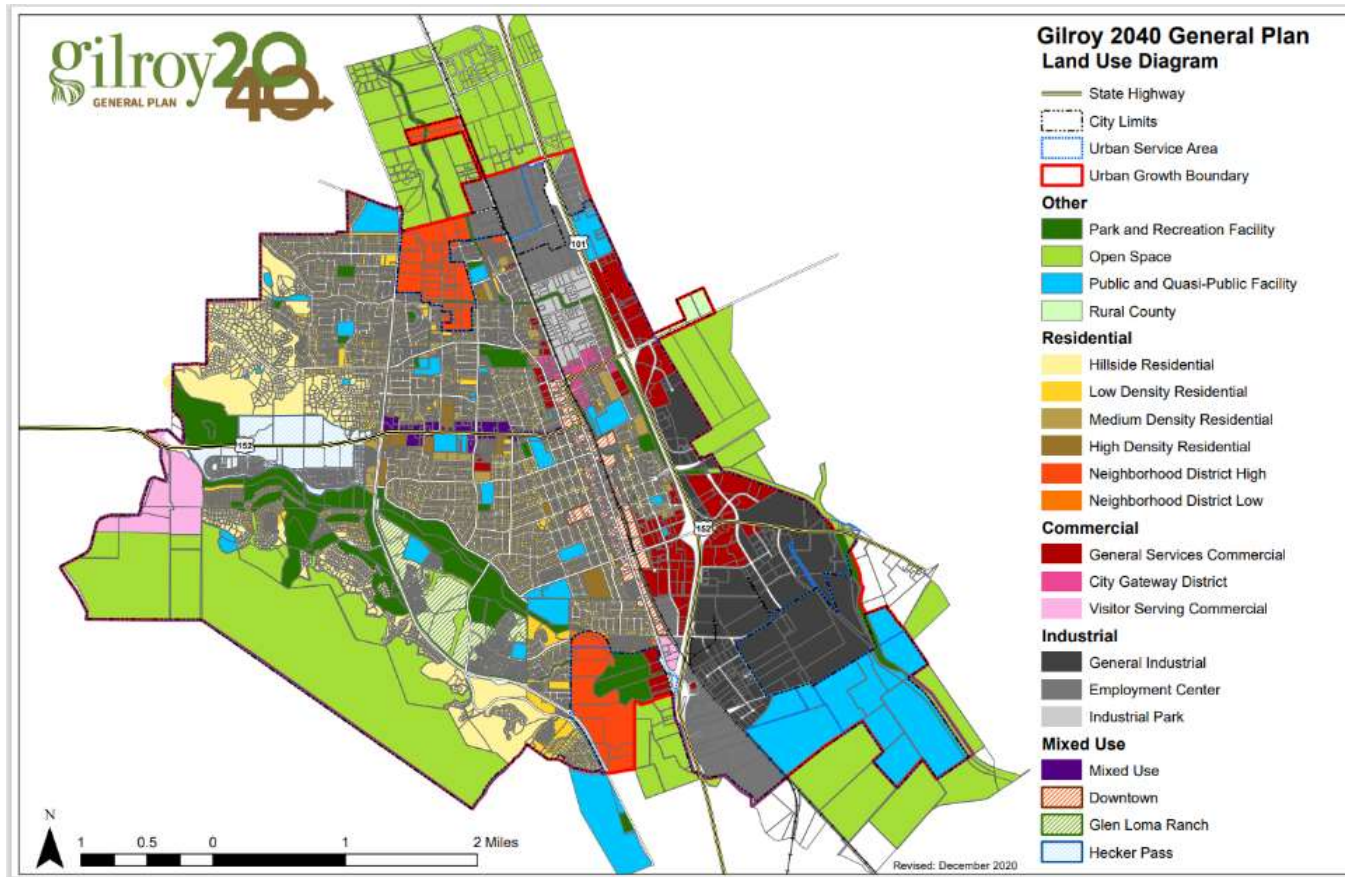


Exhibit 2a: Focused General Plan Land Use Map



[illegible]

Exhibit 3a: Proposed Billboard Location

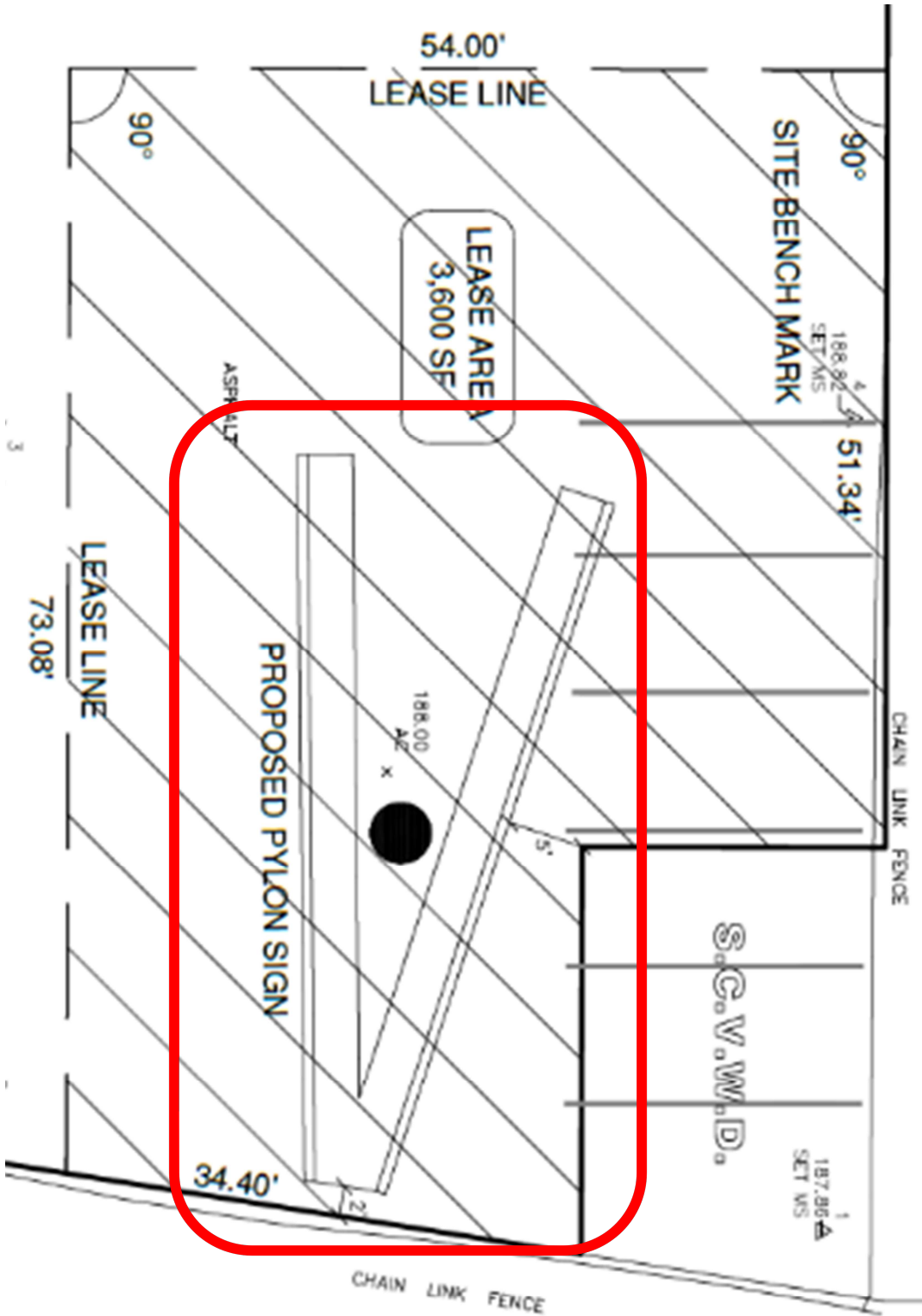


Exhibit 4: Proposed Billboard Height and Dimensions



SECTION 2: ENVIRONMENTAL CHECKLIST AND ENVIRONMENTAL EVALUATION

Environmental Factors Potentially Affected			
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.			
☒ Aesthetics	☐ Agriculture and Forestry Resources	☒ Air Quality	
☒ Biological Resources	☒ Cultural Resources	☐ Energy	
☐ Geology/Soils	☐ Greenhouse Gas Emissions	☐ Hazards/Hazardous Materials	
☐ Hydrology/Water Quality	☐ Land Use/Planning	☐ Mineral Resources	
☐ Noise	☐ Population/Housing	☐ Public Services	
☐ Recreation	☐ Transportation	☒ Tribal Cultural Resources	
☐ Utilities/Services Systems	☐ Wildfire	☒ Mandatory Findings of Significance	
Environmental Determination			

On the basis of this initial evaluation:

- ☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find 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. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measure based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Date: 08-05-2022

Signed: Cynthia McCormick

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.1 Aesthetics <i>Except as provided in Public Resources Code Section 21099, would the project:</i>				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☒	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic building within a State Scenic Highway?	☐	☐	☒	☐
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☐	☐	☒	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☒	☐	☐

Environmental Evaluation

Setting

The City of Gilroy is located in a valley bordered by the Diablo Mountains to the east and the Santa Cruz Mountains to the west. Visual character and scenic resources in the City are linked to the region's natural topography. Scenic resources in the City of Gilroy include Uvas Creek, Llagas Creek, vegetated portions of the Santa Cruz Mountains, and natural features along Miller Avenue and Hecker Pass Highway.³ Other scenic resources within the Sphere of Influence include farmland, hillsides, areas viewed from Hecker Pass Highway, Uvas Park Drive, and the City's principal gateway areas. Hecker Pass serves as the City's western gateway.

While there are no State Scenic Highways located in the City of Gilroy, there are three County-designated scenic routes—US-101, portions of SR-152 east and west of Gilroy, and Santa Teresa Boulevard—as identified by the City of Gilroy 2040 General Plan Final EIR.⁴ These routes, and Santa Teresa Boulevard, are described in the Santa Clara County Regional Parks and Scenic Highways Map⁵ as follows:

³ City of Gilroy. 2020. City of Gilroy 2040 General Plan. Page NCR-7-8.

⁴ City of Gilroy. 2020. City of Gilroy 2040 General Plan Final EIR. Page 3-5.

⁵ County of Santa Clara. 2008. Regional Parks and Scenic Highways Map Element of the Santa Clara County General Plan. Website: https://www.sccgov.org/sites/dpd/DocsForms/Documents/GP_Parks_ScenicRoads.pdf. Accessed September 16, 2021.

US-101: South Valley Freeway, countywide. This segment of US-101 passes through lands that remain primarily in agricultural and rural residential uses within the County, as well as through the City of Gilroy.

SR-152 (east): Pacheco Pass Highway, east from Ferguson Road. This highway is one of the most dramatically scenic gateways into south Santa Clara County; and

SR-152 (west): Hecker Pass Highway, from Santa Teresa Boulevard west to Mount Madonna Park and the Santa Cruz County line; and

Santa Teresa Boulevard: from US-101 south of Gilroy to Morgan Hill.

Areas within the City of Gilroy's Urban Growth Boundary are the only places in the City where electronic billboards would be allowed. The proposed electronic billboard's location would not affect scenic views because of its distance from scenic highways and scenic resources. The entire portion of US-101 that passes through the City of Gilroy is a County-designated scenic route, and is located within 660 feet of the proposed billboard site. The Pacheco Pass Highway SR-152 segment is located approximately 0.57-mile northeast of the proposed billboard site. The Hecker Pass Highway SR-152 segment is located approximately 2.63 miles northwest of the project site. Santa Teresa Boulevard is approximately 2.16 west of the proposed billboard site.

The analysis in this section is based, in part, on the Caltrans Outdoor Advertising Act and the Business and Professions Code Section 5403(g) for construction of electronic, LED billboards.

Would the project:

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

Less than significant impact.

Proposed Electronic Billboard Ordinance

As stated in the Project Description, the proposed Ordinance would allow up to two electronic billboards within the City, which would only be permitted on property designated as General Services Commercial or City Gateway District and within 660 feet of US-101 or SR-152. The nearest scenic vistas are located over a mile west of US-101 or over 4 miles southeast of the US-101. At the City's northern gateway (the US-101 entering the City of Gilroy), the nearest scenic vistas are the vegetated areas of the Santa Cruz Mountains, which begin approximately 2 miles north of the northern gateway. Because of the location requirements set forth in the proposed Ordinance, placement of any permitted electronic billboard under the proposed Ordinance would not have a substantial adverse effect on any scenic vista within city limits due to their distances from a scenic vista. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

The project site is located in an urbanized area surrounded by industrial uses and the US-101. Scenic vistas are not visible from the project location. Therefore, impacts would be less than significant.

- b) **Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic building within a State Scenic Highway?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

As stated in the Project Description, the proposed Ordinance and Sign Ordinance amendments would allow up to two billboards within the City, which would only be permitted on property designated as General Services Commercial or City Gateway District and within 660 feet of US-101 or SR-152. As stated in the setting subsection above, the US-101 segment that goes through the City of Gilroy is not a State Scenic Highway. At the City's northern gateway (US-101 entering the City of Gilroy), the nearest scenic resources are views adjacent to the US-101 that are associated with vegetated areas of the Santa Cruz Mountains. The vegetated areas visible from US-101 begin approximately 2 miles north of the northern gateway. Because of the requirements set forth in the proposed Ordinance, placement of any electronic billboard would not substantially damage scenic resources due to their distance from scenic resources or a State Scenic Highway. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

There are neither rock outcroppings nor historic buildings located within the vicinity of the project site. The proposed electronic billboard would be located 200 feet west of US-101, outside of a State Scenic Highway. The proposed electronic billboard would not obstruct any views of US-101 as the proposed billboard site is located within an industrial area and there are no scenic resources that would be obstructed. Therefore, with compliance to size and height regulations, as well as the permitted locations set forth in the proposed Ordinance, the proposed electronic billboard would not obstruct any views surrounding the project area. Additionally, the proposed project would not involve the removal of any trees. As such, impacts would be less than significant.

- c) **In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The installation of electronic billboards would not be allowed in non-urbanized areas. Permitted locations are within the Urban Growth Boundary of the City. Additionally, the proposed Ordinance would be consistent with policies set forth in the Gilroy 2040 General Plan to reduce impacts on scenic resources within the City. Policies NCR 2.1—NCR 2.3 are specific to preserving views of the City of Gilroy's scenic assets, as viewed from designated scenic routes.⁶ Permitted locations set forth by the proposed Ordinance would not conflict with these policies.

Additionally, there are no scenic resources that would be obstructed from permitted locations in the proposed Ordinance. As previously mentioned, the nearest scenic resources are views adjacent to

⁶ City of Gilroy. 2020. City of Gilroy 2040 General Plan Final EIR. Page 3-16.

the US-101 that are associated with vegetated areas of the Santa Cruz Mountains. With compliance to size and height regulations, as well as the permitted locations set forth in the proposed Ordinance, the proposed project would not substantially degrade the visual character or quality of public views. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

The project site is located in an urbanized area where the existing visual setting of the site consists of industrial uses adjacent to US-101, a heavily traveled roadway.

The proposed electronic billboard would comply with all design standards set forth in the proposed Electronic Billboard Ordinance. The proposed electronic billboard would also be consistent with the illumination intensity standards in the Caltrans Outdoor Advertising Act. The proposed project commits to a maximum ambient light output level of a 0.3 foot-candle at 250 feet from the billboard, which is a more conservative lighting intensity standard for electronic billboards of this proposed size when compared to State standards. For a frame of reference, 0.3 foot-candle is comparable in brightness to the light emanating from a computer monitor, and the light levels emitted from the proposed billboards would be programmed to adjust based upon ambient light conditions at any given time (i.e., nighttime versus daytime). Therefore, impacts would be less than significant.

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

Less than significant impact with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance and Sign Ordinance amendments would allow up to two electronic billboards to be constructed within city limits. This would create a new source of substantial light or glare. However, all electronic billboards approved under the proposed Ordinance would be subject to federal, State, and local lighting regulations, including the illumination intensity standards in the Caltrans Outdoor Advertising Act. Additionally, the proposed Ordinance would require billboard projects to commit to a maximum ambient light output level of 0.3 foot-candle at 250 feet from the billboards, which is a more conservative lighting intensity standard for billboards of this proposed size when compared to State standards. In addition, it would require that the sign face display would not be allowed to change more often than every 8 seconds, and messages would be static (i.e., not moving or animated). As a result, impacts related to new sources of substantial light or glare would be less than significant.

Proposed Electronic Billboard

The nearest sensitive receptors to the project site are residential units at Monterey Gateway Apartments, located approximately 1,372 feet west of the site. There is also a gas station at the northwest corner of the project site. Nighttime light sources in this area include local street lighting, parking lot lighting at nearby auto dealerships, headlights from automobile traffic, highway lighting, and internal building lights.

As previously mentioned, the proposed project commits to a maximum ambient light output level of 0.3 foot-candle at 250 feet from the billboards, which is a more conservative lighting intensity standard for billboards of this proposed size when compared to State standards. At a distance of 1,372 feet, the apartment complex would not be adversely affected by the proposed electronic billboard.

The project would comply with the proposed Ordinance, which requires all electronic billboards to include an operating mechanism that turns off the display or turns it all black in the event of a malfunction. To ensure that the proposed billboard would not have a significant impact on the nearby sensitive uses, the proposed project would also implement Mitigation Measure (MM) AES-1, which requires that the electronic billboards' operational parameters are provided to the City for review and approval prior to initial operation.

Analysis of Driver Distraction

Driver distraction could occur due to the changing of electronic messages on the proposed LED billboards. Several federal and State regulations apply to the operation of electronic billboards, as discussed below. This data is provided for information purposes; it is not a CEQA threshold.

- California law allows LED billboards to operate at a minimum dwell time of no less than four seconds before the display may transition to the next image. This requirement is set forth in Business and Professions Code Section 5405(d)(1), which provides, in pertinent part, “. . . 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.”
- The OAAA likewise recommends that billboards display a message for no less than 4 seconds.
- The Federal Highway Administration (FHWA), meanwhile, has approved of a similar dwell time standard. According to a FHWA memorandum, the acceptable range for the “[d]uration of each display is generally between 4 and 10 seconds—8 seconds is recommended.”

The proposed Ordinance would not allow the sign face display to change more often than every 8 seconds and messages would be static (i.e., not moving or animated). The proposed Ordinance would therefore ensure that construction of electronic billboards pursuant to the Ordinance would not exceed the relevant State and federal requirements and would therefore avoid any significant distraction on drivers. Thus, impacts would be less than significant with mitigation incorporated.

Mitigation Measures

- MM AES-1** The signs' operational lighting parameters shall be provided to the City of Gilroy Community Development Department for review and approval prior to the regular operation of the light-emitting diode (LED) billboards, and shall be implemented by the project proponent to ensure a driver would not be adversely affected or impacted by trespass glare lighting.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.2 Agriculture and Forestry Resources <i>In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the State's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:</i>				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to nonagricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?	☐	☐	☐	☒
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to nonagricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☒

Environmental Evaluation

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the State's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board (ARB).

Setting

The Farmland Mapping and Monitoring Program (FMMP) produces maps that display farmland in California. The Department of Conservation Inventory Map confirms that the parcels along US-101 and SR-152 that are designated General Services Commercial or City Gateway District are all classified as Urban and Built-Up Land.⁷ The nearest Prime Farmland is approximately 1,000 feet east of US-101.

Would the project:

- a) **Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to nonagricultural use?**

No impact.

Proposed Electronic Billboard Ordinance

As stated in the Project Description, the two billboards that would potentially be allowed would only be permitted on property designated as General Services Commercial or City Gateway District. The proposed electronic billboard would not be located on a parcel that is designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. Therefore, no impact would occur.

Proposed Electronic Billboard

As discussed above, the project site is designated as “Urban and Built-Up Land.” Therefore, development of the proposed project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to nonagricultural use. No impact would occur.

- b) **Conflict with existing zoning for agricultural use, or a Williamson Act contract?**

No impact.

Proposed Electronic Billboard Ordinance

Within the City, there are currently no active Williamson Act contracts; all properties under Williamson Act contracts are located outside of the Urban Growth Boundary.⁸ Therefore, project implementation would not conflict with existing zoning for agricultural use, nor would it conflict with any active Williamson Act contracts. No impact would occur.

Proposed Electronic Billboard

The General Plan land use designation for the project site is General Services Commercial and is not zoned for agricultural use.⁹ As discussed above, the project site is not encumbered by a Williamson Act contract. Thus, no impact would occur.

⁷ Department of Conservation. 2016. California Important Farmland Finder. Website: <https://maps.conservation.ca.gov/DLRP/CIFF/>. Accessed June 28, 2021.

⁸ County of Santa Clara. 2021. Williamson Act Properties. Website: <https://sccplanning.maps.arcgis.com/apps/webappviewer/index.html?id=1f39e32b4c0644b0915354c3e59778ce>. Accessed July 14, 2021.

⁹ City of Gilroy. 2020. Gilroy 2040 General Plan, Land Use Diagram.

- c) **Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?**

and

- d) **Result in the loss of forest land or conversion of forest land to non-forest use?**

No impact.

Proposed Electronic Billboard Ordinance

According to the California Public Resources Code, “forest land” is land that can support 10 percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources, including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits.¹⁰ Potential electronic billboards would only be permitted on properties designated as General Services Commercial or City Gateway District. None of the properties designated as General Services Commercial or City Gateway District along US-101 and SR-152 contain forest land. Therefore, the proposed Ordinance would not conflict with existing zoning or cause rezoning of any forest land. No impact would occur.

Proposed Electronic Billboard

The project site is designated as General Services Commercial and is not within a forest land zoning district. This condition precludes the possibility of a conflict with a forest zoning designation. The project site is developed with industrial uses and does not contain forest land. No impact related to conflict with forest land zoning or loss of forest land would occur.

- e) **Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to nonagricultural use or conversion of forest land to non-forest use?**

No impact.

Proposed Electronic Billboard Ordinance

As discussed previously, potential electronic billboards would only be permitted on properties designated as General Services Commercial or City Gateway District. In addition, potential electronic billboards would be located in developed areas along US-101 and SR-152 and would not be sited on farmlands or forest land. Therefore, the proposed project would not result in the conversion of Farmland to nonagricultural use or conversion of forest land to non-forest use. No impact would occur.

¹⁰ Thomson Reuters Westlaw. 2019. California Code, Public Resources Code–12220.

Proposed Electronic Billboard

The proposed project involves construction of one electronic billboard in an industrial area. No impact related to conversion of farmland and forestland would occur.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.3 Air Quality <i>Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations.</i> <i>Would the project:</i>				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☒	☐	☐
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or State ambient air quality standard?	☐	☒	☐	☐
c) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
d) Result in other emissions (such as those leading to odors or) adversely affecting a substantial number of people?	☐	☐	☒	☐

Environmental Evaluation

Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations.

Setting

The proposed project is located within the San Francisco Bay Area Air Basin (Air Basin), which consists of the entirety of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara counties; the western portion of Solano County; and the southern portion of Sonoma County. The Air Basin is characterized by complex terrain consisting of coastal mountain ranges, inland valleys, and bays. The regional climate of the Air Basin is characterized by mildly dry summers and moderately wet winters. The region experiences moderate humidity with wind patterns consisting of mild onshore breezes during the day. The location of a strong subtropical high-pressure cell located in the Pacific Ocean induces foggy mornings and moderate temperatures during the summer, as well as occasional rainstorms during the winter.

The air pollutants for which national and State standards have been promulgated and that are most relevant to air quality planning and regulation in the Bay Area include ozone, nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter, including dust, 10 micrometers or less in diameter (PM₁₀), and particulate matter, including dust, 2.5 micrometers or less in diameter (PM_{2.5}). In addition, toxic air contaminants (TACs) are of concern in the Bay Area. Each of these pollutants is briefly described below. Other pollutants that are regulated but not considered an issue in the project area are sulfur

dioxide, vinyl chloride, sulfates, hydrogen sulfide, and lead; the proposed project would not emit substantial quantities of those pollutants, so they are not discussed further in this section.

- Ozone is a gas that is formed when reactive organic gases (ROG) and NO_x—both byproducts of internal combustion engine exhaust—undergo slow photochemical reactions in the presence of sunlight. Ozone concentrations are generally highest during the summer months when direct sunlight, light wind, and warm temperature conditions are conducive to its formation. Its effects can include the following: irritate respiratory system; reduce lung function; cause breathing pattern changes; reduce breathing capacity; inflame and damage cells that line the lungs; make lungs more susceptible to infection; aggravate asthma; aggravate other chronic lung diseases; cause permanent lung damage; cause some immunological changes; increase mortality risk; and cause vegetation and property damage.
- CO is a colorless, odorless gas produced by the incomplete combustion of fuels. CO concentrations tend to be the highest during winter mornings, with little to no wind, when surface-based inversions trap the pollutant at ground levels. Because CO is emitted directly from internal combustion engines—unlike ozone—and motor vehicles operating at slow speeds are the primary source of CO in the Bay Area, the highest ambient CO concentrations are generally found near congested transportation corridors and intersections. Potential health effects from CO ranges depending on exposure: slight headaches; nausea; aggravation of angina pectoris (chest pain) and other aspects of coronary heart disease; decreased exercise tolerance in persons with peripheral vascular disease and lung disease; impairment of central nervous system functions; possible increased risk to fetuses; and death.
- PM₁₀ and PM_{2.5} consist of extremely small, suspended particles or droplets 10 microns and 2.5 microns or smaller in diameter, respectively. Some sources of particulate matter, like pollen and windstorms, are naturally occurring. However, in populated areas, most particulate matter is caused by road dust, diesel soot, combustion products, abrasion of tires and brakes, and construction activities. Health effects from short-term exposure (hours per days) can include the following: irritation of the eyes, nose, throat; coughing; phlegm; chest tightness; shortness of breath; aggravation of existing lung disease causing asthma attacks and acute bronchitis; those affected with heart disease can suffer heart attacks and arrhythmias. Health effects from long-term exposure can include the following: reduced lung function; chronic bronchitis; changes in lung morphology; and death.
- TACs refer to a diverse group of air pollutants that can affect human health but have not had ambient air quality standards established for them. Diesel particulate matter (DPM) is a toxic air contaminant that is emitted from construction equipment and diesel-fueled vehicles and trucks. Some short-term (acute) effects of DPM exposure include eye, nose, throat, and lung irritation, coughs, headaches, light-headedness, and nausea. Studies have linked elevated particle levels in the air to increased hospital admissions, emergency room visits, asthma attacks, and premature deaths among those suffering from respiratory problems. Human studies on the carcinogenicity of DPM demonstrate an increased risk of lung cancer, although the increased risk cannot be clearly attributed to diesel exhaust exposure.

Construction and operation of the proposed project would be subject to applicable Bay Area Air Quality Management District (BAAQMD) rules and requirements. The BAAQMD CEQA Guidelines were developed to assist local jurisdictions and lead agencies in complying with the requirements of CEQA regarding potentially adverse impacts to air quality.¹¹

Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?

Less than significant impact with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The updated text would not involve changes in the existing environment. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The 2017 Clean Air Plan is the currently applicable regional Air Quality Plan (AQP) for the Air Basin. The primary goals of the 2017 Clean Air Plan are to protect public health and protect the climate. The 2017 Clean Air Plan acknowledges that the BAAQMD's two stated goals of protection are closely related. As such, the 2017 Clean Air Plan identifies a wide range of control measures intended to decrease both criteria pollutants¹² and greenhouse gas (GHG) emissions.¹³ Because the proposed project does not involve population or employment growth, determining consistency with the 2017 Clean Air Plan involves assessing whether applicable control measures contained in the 2017 Clean Air Plan are implemented and whether implementation of the proposed project would disrupt or hinder implementation of AQP control measures. The control measures are organized into five categories: stationary and area source control measures, mobile source measures, transportation control measures, land use and local impact measures, and energy and climate measures. The control measures are geared toward traditional land uses (e.g., residential, commercial, and industrial uses) and buildings. None of the control measures contained in the 2017 Clean Air Plan are applicable to the operation of electronic billboards; however, all projects within BAAQMD's jurisdiction are required to implement the BAAQMD Best Management Practices (BMPs) during construction activities. As discussed in Impact 2.3(b), the proposed project would implement all BMPs for construction activities and would be consistent with the assumptions in the AQP after implementation of MM AIR-1. Furthermore, the proposed project would not include any special features that would disrupt or hinder implementation of the AQP control measures. Therefore, the proposed project would not conflict with or obstruct implementation of the 2017 Clean Air Plan. This impact would be less than significant after mitigation.

¹¹ Bay Area Air Quality Management District (BAAQMD). 2017. CEQA Guidelines. May. Website:

http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en. Accessed June 16, 2021.

¹² The EPA has established National Ambient Air Quality Standards (NAAQS) for six of the most common air pollutants—carbon monoxide, lead, ground-level ozone, particulate matter, nitrogen dioxide, and sulfur dioxide—known as “criteria” air pollutants (or simply “criteria pollutants”).

¹³ Bay Area Air Quality Management District (BAAQMD). 2017. Final 2017 Clean Air Plan. Website:

http://www.baaqmd.gov/~media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-proposed-final-cap-vol-1-pdf.pdf?la=en. Accessed June 16, 2021.

- b) **Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or State ambient air quality standard?**

Less than significant impact with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The updated text would not involve changes in the existing environment. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The BAAQMD's thresholds of significance represent the allowable amount of emissions a project can generate without generating a cumulatively considerable contribution to regional air quality impacts. Therefore, a project that would not exceed the BAAQMD thresholds of significance on a project-level also would not be considered to result in a cumulatively considerable contribution to these regional air quality impacts. The region is non-attainment for the federal and State ozone standards, State PM₁₀ standards, and federal and State PM_{2.5} standards. Impacts related to construction and operations of the proposed project are addressed separately below.

Construction Emissions

Emissions from construction-related activities are generally short-term in duration but may still cause adverse air quality impacts. The proposed project would generate emissions from construction equipment exhaust, worker travel, and fugitive dust. These construction emissions include criteria air pollutants and precursors from the operation of heavy construction equipment. As discussed below, the proposed project's construction emissions would not exceed any significance threshold adopted for this project. Therefore, the proposed project would have a less than significant contribution to cumulative impacts during construction.

Construction Fugitive Dust

For all proposed projects, the BAAQMD requires the implementation of BMPs to ensure that construction-related fugitive dust emissions are considered less than significant. As such, the proposed project would be required to implement MM AIR-1 to ensure construction emission impacts are less than significant, which would apply the following BAAQMD BMPs during construction activities at the proposed new electronic billboard site:

- Exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered with non-potable water two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All roadways, driveways, and sidewalks shall be paved as soon as possible.

- Idling times shall be minimized either by shutting equipment off when not in use or by reducing the maximum idling time to 5 minutes (as required by the California Airborne Toxics Control Measure Title 13, § 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- A publicly visible sign shall be posted with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours of a complaint or issue notification. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

Construction: ROG, NO_x, PM₁₀ (exhaust), and PM_{2.5} (exhaust)

Construction emissions were estimated for the activities associated with the installation of the proposed new electronic billboard. Based on applicant-provided information, it is expected that construction activities associated with the proposed project would last 2 to 4 weeks. The construction schedule used to estimate emissions is shown in Table 1. The off-road construction equipment list is shown by construction activity in Table 2. The exhaust emissions generated by construction equipment are based on the hours of operation, horsepower, and load factors of the equipment. The duration of construction activity and associated equipment represent a reasonable approximation of the expected construction fleet as required by CEQA Guidelines. The number of off-site trips assumed to occur during construction of the proposed project is shown in Table 3. Additional trips were included to account for the transport of construction material and equipment.

Table 1: Combined Construction Schedule

Phase	Total Number of Working Days
Proposed New Electronic Billboard Site	
Grading	2
Building Construction (Installation of Billboard)	19
Paving	2
Source: California Emissions Estimator Model (CalEEMod) Output (see Appendix B). ¹	
¹ The construction schedule in the CalEEMod Output is based on the anticipated schedule provided by the applicant. Because vehicle fuel use becomes more efficient through time in compliance with federal and State regulations, these dates support a conservative evaluation of potential impacts.	

Table 2: Construction Equipment Assumptions

Activity	Equipment	Amount	Hours per Day	Horsepower	Load Factor
Proposed New Electronic Billboard Site					
Grading	Bore/Drill Rigs	1	8	221	0.50
	Concrete/Industrial Saws	1	2	81	0.73
	Tractors/Loaders/Backhoes	1	3	97	0.37
Building Construction (Installation of Billboard)	Cranes	1	4	231	0.29
	Forklifts	1	6	89	0.20
Paving	Cement and Mortar Mixers	1	2	9	0.56
Source: California Emissions Estimator Model (CalEEMod) Output (see Appendix B).					

Table 3: Combined Construction Off-site Vehicle Trips

Construction Phase	Construction Vehicle Trips		
	Worker Trips per Day	Vendor Trips per Day	Total Haul Trips
Proposed New Electronic Billboard Site			
Grading	8	2	8
Building Construction (Installation of the Billboard)	8	2	0
Paving	8	2	0
Source: Source: California Emissions Estimator Model (CalEEMod) Output (see Appendix B).			

Annual project construction emissions prior to the application of mitigation are shown in Table 4. Average daily construction emissions are compared with the significance thresholds in Table 5.

Table 4: Annual Construction Emissions

Construction Phase	Tons/Year			
	ROG	NO _x	PM ₁₀ (Exhaust)	PM _{2.5} (Exhaust)
Proposed New Electronic Billboard Site				
Grading	<0.1	<0.1	<0.1	<0.1
Building Construction (Installation of Billboard)	<0.1	<0.1	<0.1	<0.1
Paving	<0.1	<0.1	<0.1	<0.1
Total Construction Emissions	<0.1	<0.1	<0.1	<0.1

Construction Phase	Tons/Year			
	ROG	NO _x	PM ₁₀ (Exhaust)	PM _{2.5} (Exhaust)
Notes: NO _x = oxides of nitrogen PM ₁₀ = particulate matter, including dust, 10 micrometers or less in diameter PM _{2.5} = particulate matter, including dust, 2.5 micrometers or less in diameter ROG = reactive organic gases Sums were calculated using unrounded numbers from the California Emissions Estimator Model (CalEEMod) Output. Source: CalEEMod Output (see Appendix B).				

Table 5: Average Daily Construction Emissions

Parameter	Air Pollutants			
	ROG	NO _x	PM ₁₀ ¹	PM _{2.5} ¹
Total Emissions (tons/year)	<0.1	<0.1	<0.1	<0.1
Total Emissions (lbs/year)	11.88	106.92	11.86	10.96
Average Daily Emissions (lbs/day) ²	0.03	0.23	0.03	0.02
Significance Threshold (lbs/day)	54	54	82	54
Exceeds Significance Threshold?	No	No	No	No
Notes: lbs = pounds NO _x = oxides of nitrogen PM ₁₀ = particulate matter, including dust, 10 micrometers or less in diameter PM _{2.5} = particulate matter, including dust, 2.5 micrometers or less in diameter ROG = reactive organic gases ¹ Exhaust only ² Calculated by dividing the total lbs by the total 23 working days of construction for the duration of construction. Calculations use unrounded totals. Source: California Emissions Estimator Model (CalEEMod) Output (see Appendix B).				

As shown in Table 5, the combined construction emissions from all components of the proposed project are well below the recommended thresholds of significance. Therefore, project construction would have a less than significant impact.

Operational Emissions

The proposed project would generate operational emissions principally from vehicle traffic due to maintenance vehicles accessing the site. The following analysis relates to localized and regional criteria pollutant impacts. Emissions resulting from various aspects of the proposed project are discussed separately below.

Operations: ROG, NO_x, PM₁₀, and PM_{2.5}

The BAAQMD has developed screening criteria whereby an agency can quickly determine whether a given development project has the potential to exceed adopted significance thresholds. If all

screening criteria are met by a proposed project, then the Lead Agency or applicant would not need to perform a detailed air quality assessment of their project's air pollutant emissions. Although the screening criteria do not include a category for billboards, a comparison to the land uses in that screening table can be used to inform the operational analysis. For comparison, the BAAQMD has determined that a multi-family apartment development would need to construct greater than 451 units to violate emission significance thresholds during project operation. During operation, the proposed project would operate a new electronic billboard, which would require minimal and irregular maintenance vehicle trips which would occur only as needed (less than once per month and likely only one vehicle). Additionally, project operations would not include other sources of emissions as the proposed project would be limited to the operation of an electronic billboard and would not include other land uses, such as an industrial processing facility or a gas station. As such, operation of the proposed project would entail significantly less activity than operation of a 451-unit apartment building. Accordingly, operational criteria pollutant emissions would not be anticipated to exceed the recommended thresholds of significance. Therefore, the proposed project's long-term operational impacts would be less than significant.

Operational CO Hotspots

CO emissions from project-related traffic would be the pollutant of greatest concern at the local level because congested intersections with large volumes of traffic have the greatest potential to cause high, localized concentrations of CO.

The BAAQMD recommends a screening analysis to determine whether a project has the potential to contribute to a CO hotspot. The screening criteria identify when subsequent site-specific CO dispersion modeling is necessary.

The BAAQMD considers a project's local CO emissions to be less than significant if one of the following screening criteria is met:

- The project is consistent with an applicable congestion management program established by the County congestion management agency for designated roads or highways, regional transportation plan, and local congestion management agency plans.
- The project traffic would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour.
- The project traffic would not increase traffic volumes at affected intersections to more than 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited (e.g., tunnel, parking garage, bridge underpass, natural or urban street canyon, or below-grade roadway).

Billboards require occasional upkeep and maintenance activities, which generate vehicle trips. The long-term operation of the proposed electronic billboard would include vehicle trips with minimal and irregular maintenance activities, occurring only as needed (less than once per month and likely only one vehicle). The expected increase in traffic would not substantially increase traffic volumes at any affected intersection. Therefore, the proposed project would not exceed the CO screening criteria. Furthermore, the adjacent roadways are not located in an area where vertical or horizontal

mixing is substantially limited. Therefore, based on the above criteria, the proposed project would have a less than significant impact related to CO hotspots.

c) Expose sensitive receptors to substantial pollutant concentrations?

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The updated text would not involve changes in the existing environment. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The BAAQMD considers a sensitive receptor to be any facility or land use that includes members of the population who are particularly sensitive to the effects of air pollutants, such as children, the elderly, and people with illnesses. If a project is likely to be a place where people live, play, or convalesce, it should be considered a receptor. It should also be considered a receptor if sensitive individuals are likely to spend a significant amount of time there. Examples of receptors include residences, schools and school yards, parks and playgrounds, daycare centers, nursing homes, and medical facilities. Playgrounds could be play areas associated with parks or community centers. The proposed new electronic billboard site is located in the vicinity of sensitive receptors, including single-family homes. The closest sensitive receptors are existing homes located more than 1,180 feet to the west from where project components would be placed.

The following analysis evaluates whether the proposed project would result in construction or operational-period impacts to sensitive receptors. The following three criteria were applied to determine whether project emissions would result in less than significant impacts to sensitive receptors:

- **Criterion 1:** Construction of the project would not result in localized emissions that, if when combined with background emissions, would result in exceedance of any health-based air quality standard.
- **Criterion 2:** Operation of the project would not result in localized emissions that, if when combined with background emissions, would result in exceedance of any health-based air quality standard.
- **Criterion 3:** Construction of the project would not result in an exceedance of asbestos exposure.

Criterion 1: Project Construction Toxic Air Pollutants

The project would generate TACs, such as DPM, during construction due to the use of off-road construction equipment. DPM is represented as exhaust emissions of PM_{2.5} and PM₁₀. As shown in Table 5, project construction would emit at most 0.03 and 0.02 pounds per day of PM_{2.5} and PM₁₀. As discussed in Impact 2.3(b), emissions during construction would not exceed the BAAQMD's

significance thresholds for PM_{2.5} and PM₁₀ and would not be expected to result in concentrations that could exceed ambient air quality standards or contribute substantially to an existing exceedance of an ambient air quality standard. Therefore, construction of the proposed project would not result in significant emissions of TACs. Impacts relating to Criterion 1 would be less than significant.

Criterion 2: Project Operation Localized Emissions

The proposed project would entail the operation of an electronic billboard, which is not a land use which would result in substantial localized emissions. Maintenance would involve irregular trips to the sites, usually involving only one light vehicle. Furthermore, as discussed in Impact 2.3(b), the proposed project's operational vehicle trips would not result in an increase in traffic volumes such that a CO hotspot would occur. Therefore, the proposed project would not expose sensitive receptors to substantial criteria air pollutant concentrations during operation or result in localized emissions that, when combined with background emissions, would result in exceedance of any health-based air quality standard. Impacts relating to Criterion 2 would be less than significant.

Criterion 3: Asbestos from Demolition

As discussed in Section 8, Hazards and Hazardous Materials, there is no potential for asbestos-containing materials to be present within the project area because no structures currently exist in the project site. No impacts relating to Criterion 3 would occur.

- d) Result in other emission (such as those leading to odors) adversely affecting a substantial number of people?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The updated text would not involve changes in the existing environment. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The proposed electronic billboard would not be a source of other emissions, such as those leading to odors, during operations because an electronic billboard would not result in emissions of odors. For example, the project would not include sanitary sewer processing plants or coffee roasting facilities that generate significant odors. During construction, a limited number of diesel engines would be operated on the project site for limited durations. Diesel exhaust and ROGs from these diesel engines would be emitted during construction of the proposed project, which are objectionable to some; however, project construction is expected to be short-term (2 to 4 weeks), emissions would disperse rapidly from the project site, and diesel exhaust odors would be consistent with existing vehicle odors in the area. Considering this information, construction and operation of the proposed project would not create other emissions or odors adversely affecting a substantial number of people; impacts would be less than significant.

Mitigation Measures

MM AIR-1 In order to comply with the Bay Area Air Quality Management District (BAAQMD) Best Management Practices (BMPs) during construction, prior to issuance of grading and construction permits, the project applicant and construction contractor shall:

- Exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered with non-potable water two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All roadways, driveways, and sidewalks shall be paved as soon as possible.
- Idling times shall be minimized either by shutting equipment off when not in use or by reducing the maximum idling time to 5 minutes (as required by the California Airborne Toxics Control Measure [ATCM] Title 13, § 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- A publicly visible sign shall be posted with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours of a complaint or issue notification. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.4 Biological Resources <i>Would the project:</i>				
a) 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 Wildlife or United States Fish and Wildlife Service?	☐	☒	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☒	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of wildlife nursery sites?	☐	☐	☒	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?	☐	☒	☐	☐

Environmental Evaluation

Setting

This section evaluates potential effects on biological resources that may result from the construction of one, 60-foot-high billboard within the northwestern corner of the project site. This section does not include a biological analysis of any other potential billboard projects permitted under the proposed Ordinance. Subsequent electronic billboards would be subject to environmental review prior to their approval. Prior to the field survey, an FCS Biologist reviewed the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB), a special-status species

and plant community account database; the United States Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) system; and the California Native Plant Society (CNPS) Electronic Inventory (CNPSEI) of Rare and Endangered Vascular Plants of California database for the *Chittenden, California*, United States Geological Survey (USGS) 7.5-minute Topographic Quadrangle Map and the eight surrounding quadrangles (Appendix C). An on-site assessment of biological resources was completed by qualified FCS Biologist, Robert Carroll, on August 13, 2021.

The habitat present within the 6-acre project site can be categorized as Urban/Developed. This habitat is classified as areas that have been constructed upon or otherwise physically altered to an extent that native vegetation is no longer supported and retains no soil substrate. Developed land is characterized by permanent or semi-permanent structures, pavement, or hardscape, and landscaped areas that often require irrigation.

The project site is situated in a highly developed area and is currently used for truck trailer parking across the majority of the site, with auto repair businesses in the southern portion of the site and a gas station in the northeastern corner of the site.

The project site abuts US-101 to the east, the Princeville Channel and an Auto Mall to the north, Automall Parkway/Chestnut Street and industrial uses to the west, and industrial uses to the south (Exhibit 3). An approximate 6-foot-high chain link fence divides the Princeville Channel from the project site. The Princeville Channel provides drainage for the south and central portions of the City and is a tributary to Llagas Creek.¹⁴ The western edge of the project site, adjacent to Automall Parkway/Chestnut Street, contains various ornamental trees and planters commonly found in business parks. Vegetation observed within this area included spineless yucca (*Yucca elephantipesis*), willow (*Salix sp.*), and Mediterranean cypress (*Cupressus sempervirens*). Additionally, a row of olive trees (*Olea europaea*) is located off-site between US-101 and the project site. Outside of the western edge of the project site, the remaining areas are covered in hardscape and devoid of any vegetation.

Impact Analysis

Would the project:

- a) **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 Wildlife or United States Fish and Wildlife Service?**

Less than significant with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards

¹⁴ City of Gilroy Storm Drain System Master Plan. 2004. p.4-6

would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

Special-status Plant Species Potentially Occurring within the Project Site

The potential for plant species to occur on the project site was evaluated based on the presence of suitable habitats, soil types, and occurrences recorded by the CNPS and CNDDDB listings in the generally vicinity of the site, as well as a site survey conducted by a qualified Biologist. The Special-status Plant Species Table (Table 1; Appendix C) provides a summary of the listing status, habitat requirements, and the potential for occurrence of other sensitive plant species that have been documented within the *Chittenden, California*, USGS 7.5-minute Topographic Quadrangle Map and the eight surrounding quadrangles. A total of eight special-status plant species were evaluated for their potential to occur within the project site.

The species evaluated in the Special-status Plant Species Evaluation Table require specific habitat conditions (e.g., vernal pools, riparian woodland, chaparral, serpentine outcrops, or valley and foothill grasslands) that are not present within the project site. Because of previous development, no special-status plant species have potential to occur within the project site; therefore, no special-status plant species would be impacted by the proposed electronic billboard.

Special-status Wildlife Species Potentially Occurring within the Project Site

The potential for wildlife species to occur on the project site was evaluated based on the presence of suitable habitats, and occurrences recorded by the CNDDDB in the generally vicinity of the site, as well as a site survey conducted by a qualified Biologist. The Special-status Wildlife Species Evaluation Table (Table 2; Appendix C) provides a summary of the listing status, habitat requirements, and the potential for occurrence of other sensitive wildlife species that have been documented within the *Chittenden, California*, USGS 7.5-minute Topographic Quadrangle Map and the eight surrounding quadrangles. A total of 11 special-status wildlife species were evaluated for their potential to occur within the project site. Of the 11 species evaluated, one species, white-tailed kite (*Elanus leucurus*) has the potential to occur within the project site. This species is discussed in further detail below.

White-tailed kite and other nesting birds

The white-tailed kite is listed by the State of California as a “fully protected.” This species’ preferred habitat includes rolling foothills and valley margins with scattered oaks and river bottomlands or marshes next to deciduous woodland. This species typically forages in open grasslands, meadows, or marshes. Often found perching and nesting in isolated, dense-topped trees. The project site and the adjacent vicinity contain planted trees that provide marginal nesting habitat. The general vicinity of the project site, specifically the vacant parcel to the east of Automall Parkway and north of the Princevalle Channel (approximately 850 feet northeast of the project site), contains undeveloped grassland habitat suitable for foraging. No white-tailed kite or other raptor nests were observed during the August 2021 field survey. The nearest recorded occurrence is 2.6 miles northeast of the project site.¹⁵

¹⁵ California Department of Fish and Wildlife (CDFW). 2021. CNDDDB RareFind 5 California Natural Diversity Database Query for Special-Status Species. Website: <https://map.dfg.ca.gov/rarefind/view/RareFind.aspx>. Accessed August 19, 2021.

Migrating birds can be affected by human-built structures because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather. The proposed electronic billboard would not create a substantial change in illumination levels as described above in Section 2.1 above. Baseline light sources in the project area include local street lighting, parking lot lighting, other illuminated billboards at nearby auto dealerships, headlights from automobile traffic, and highway lighting structures. The proposed electronic billboard would be consistent with the illumination intensity standards in the Caltrans Outdoor Advertising Act. The proposed electronic billboard would be limited to a maximum ambient light output level of 0.3 foot-candle at 250 feet from the billboard, which is a more conservative lighting intensity standard for electronic billboards of this proposed size when compared to State standards. Additionally, the proposed electronic billboard would not be allowed to change the sign face display more than every 8 seconds, and messages would be static (i.e., not moving, or animated) resulting in changing color patterns rather than a fixed unchanging light which may be more attractive to birds. For these reasons the proposed electronic billboard would not have a significant impact on the movement of migrating birds.

The trees present on the project site may provide suitable habitat for a variety of species of nesting birds. Construction activities that occur during the avian nesting season (generally February 1 to August 31) could disturb nesting sites for bird species including special-status species such as the white-tailed kite as well as birds protected under the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code. Given the potential for these species to occur on or near the project site, implementation of MM BIO-1 through MM BIO-4 would reduce potential impacts to white-tailed kite and other nesting birds to less than significant by requiring pre-construction surveys and implementation of nest protection buffers to avoid disturbance of any active nests.

- b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service?**

No Impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent electronic billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The project site is developed and contains urban/developed land cover. However, the Princevalle Channel is located approximately 50 feet north of the project site. The man-made Channel has been excavated within upland habitat for the purpose of storm drainage for the City. The Channel is not applicable to this resource category and is discussed in further detail in Checklist Question C below.

The project site does not contain riparian habitat or other sensitive natural communities identified in local or regional plans, policies, and regulations or by the CDFW or USFWS and no impacts would occur from the proposed electronic billboard.

- c) **Have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

Less than significant with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent electronic billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The Princevalle Channel is located approximately 50 feet north of the project site and is a tributary to Llagas Creek, which flows into the Pajaro River, which empties into Monterey Bay, a traditional navigable water of the United States. While the project site does not contain State or federally protected wetlands, construction of the proposed electronic billboard has the potential for indirect (temporary) adverse impacts to the aquatic habitat of the Channel. Potential temporary indirect impacts (during construction) include pollutant loading, increased erosion and sedimentation, and debris dispersal into the Channel. Implementation of MM BIO-5 and MM BIO-6 would reduce potential indirect adverse impacts to the aquatic habitat of the Channel to less than significant levels through avoidance and minimization measures.

- d) **Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of wildlife nursery sites?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

US-101 borders the project site to the east and Automall Parkway/Chestnut Street borders the project site to the west. The project site is bounded by a chain link fencing to the north, east, and south. These factors along with existing urban developments within the general project vicinity limit wildlife movement through the project site. Additionally, the project site is not part of or within a

wildlife movement corridor. As such, the proposed electronic billboard would not substantially interfere with the movement of wildlife, and impacts would be less than significant.

- e) **Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?**

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The proposed electronic billboard would be erected in the northeastern corner of the project site, in an area which is already fully developed with hardscaping. No trees or vegetation would be removed because of project construction. As such, the proposed electronic billboard would not conflict with any local policies or ordinances protecting biological resources. No impacts would occur.

- f) **Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?**

Less than significant with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The project site is located within the Santa Clara Valley Habitat Plan (SCVHP). The project site is within the "Urban-Suburban" land cover as defined by the SCVHP and is not located in any special-status plant and wildlife survey areas, or fee zone. With implementation of MM BIO-7, the proposed electronic billboard would not conflict with any policies of the SCVHP. The land cover type and the absence of plant and wildlife survey areas has been confirmed on the ground through the survey conducted by a qualified Biologist, as required by the SCVHP. Therefore, with implementation of MM BIO-7, potential impacts regarding adopted conservation plans would be reduced to a less than significant level.

Mitigation Measures

- MM BIO-1** If possible, to prevent impacts to the Fish and Game Code and/or Migratory Bird Treaty Act (MBTA)-protected birds, including nesting raptors, and their nests, construction work should occur outside the nesting season (generally between

February 1 and August 31). If construction (including tree and vegetation removal) cannot be conducted outside the nesting season, pre-construction surveys shall be conducted no more than 5 days before the start of work to verify the absence of active nests.

- MM BIO-2** If an active nest of a special-status bird species is located during pre-construction surveys, the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW) (as appropriate) shall be notified regarding the status of the nest.
- MM BIO-3** For nests of all species protected under Fish and Game Code and/or Migratory Bird Treaty Act (MBTA), construction activities shall be restricted as necessary to avoid disturbance of the nest until the young have left the nest, or the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW) (as appropriate) deem disturbance potential to be minimal. Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 100 feet around an active raptor nest and an appropriate radius around an active protected bird nest depending on the species and disturbance level as determined by a qualified Biologist) or alteration of the construction schedule.
- MM BIO-4** A qualified Biologist shall provide appropriate protection buffer sizes and locations, and the applicant shall physically mark the protection buffers using signs, environmentally sensitive area fencing, pin flags, and/or flagging tape. The buffer zone shall be maintained around the active nest site(s) until the young have fledged and are foraging independently.
- MM BIO-5** No substances toxic to fish and wildlife shall be discharged or allowed to leach into Princevalle Channel. Reasonable precautions to protect aquatic habitats of Princevalle Channel from pollution with harmful materials (e.g., fuels, oils, lubricants, and solvents) shall be implemented. Specifically, all potentially hazardous materials shall be controlled, cleaned up, and properly disposed of in accordance with the project's water quality control permits and plans. Materials deleterious or toxic to fish and wildlife including, but not limited to, asphalt, tires, concrete, construction materials, treated wood, and creosote containing materials shall not be stockpiled within 100 feet of the Princevalle Channel. Refueling and maintenance areas for equipment shall be limited to areas 100 feet from the Princevalle Channel.
- MM BIO-6** At no time shall silt-laden runoff be allowed to enter the Princevalle Channel. Erosion control measures shall be utilized throughout all phases of construction where sediment runoff from the project may enter Princevalle Channel. Best Management Practices (BMPs) to avoid erosion and uncontrolled stormwater runoff shall be implemented. BMPs typically include silt fencing, coir rolls, and/or straw bale dikes.

- MM BIO-7** The project applicant shall submit a Santa Clara Valley Habitat Plan (SCVHP) Coverage Screening Form to the Planning Department for review and shall complete subsequent forms, reports, and/or studies as needed.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.5 Cultural Resources and Tribal Cultural Resources				
<i>Would the project:</i>				
a) Cause a substantial adverse change in the significance of a historical resource as pursuant to Section 15064.5?	☐	☒	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?	☐	☒	☐	☐
c) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☒	☐	☐
<i>Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:</i>				
d) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or	☐	☒	☐	☐
e) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	☐	☒	☐	☐

Environmental Evaluation

Setting

This section describes the existing cultural resources setting and potential effects from project implementation on the project site and its surrounding area. This section does not include a cultural analysis of any other potential billboard projects permitted under the proposed Ordinance.

Subsequent billboards would be subject to environmental review prior to their approval.

Descriptions and analysis in this section are based on information provided by the California Native American Heritage Commission (NAHC), Northwest Information Center (NWIC), National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR), California Historic Landmarks list, California Points of Historical Interest list, Built Environmental Research Directory (BERD), and the California Historical Resources Inventory. Non-confidential records search results and other correspondence are included in Appendix D.

Northwest Information Center

A records search and literature review were conducted on August 18, 2021, at the NWIC located at Sonoma State University located in Rohnert Park, California for the project site and a 0.5-mile radius surrounding it. The purpose of this review was to access existing cultural resource survey reports, archaeological site records, historic aerial photographs, and historic maps and evaluate whether any previously documented prehistoric or historic archaeological sites, architectural resources, cultural landscapes, or other resources exist within or near the project site.

The results of the records search indicate that there are two recorded historic cultural resources within the 0.5-mile search radius, none of which are located within the project site. In addition, 25 area-specific survey reports are on file with the NWIC for the 0.5-mile search radius, but none within the project site itself, suggesting that the project site has not been previously surveyed for cultural resources. A records search map identifying the project boundaries and a 0.5-mile search radius along with relevant non-confidential records search results can be found in Appendix D.

Pedestrian Survey and Site Visit

On August 26, 2021, FCS conducted a pedestrian survey to determine the presence of any unrecorded cultural resources within the project site. During the pedestrian survey, all areas of the exposed ground surface were examined for prehistoric artifacts (e.g., fire-affected rock, milling tools, flaked stone tools, tool-making debris, ceramics), soil discoloration and depressions that might indicate the presence of a cultural midden, faunal and human osteological remains, and features indicative of the former presence of structures or buildings (e.g., postholes, standing exterior walls, foundations) or historic debris (e.g., glass, metal, ceramics). All areas of proposed development were inspected for culturally modified soils or other indicators of potential historic or prehistoric resources.

The project site was surveyed using east/west transects spaced at 15-meter intervals. Survey conditions were documented using digital photographs and field notes. The majority of the site consisted of garages and automobile repair facilities. The existing ground cover was completely hardscaped, and visibility of native soil was almost non-existent. The developed nature of the project site suggests that it has been previously excavated. No historic or prehistoric artifacts, cultural resources, or raw materials commonly used in the manufacture of tools (e.g., obsidian, Franciscan chert, etc.) were found within the project site. Pedestrian survey photos for the project site can be found in Appendix D.

Native American Heritage Commission

On August 20, 2021, FCS contacted the NAHC to determine whether any sacred sites were located within the project site or its vicinity. A response was received on September 9, 2021, indicating that the Sacred Lands File search produced a positive result for Native American cultural resources in the project area. The NAHC included a list of nine tribal representatives available for consultation. To ensure that all Native American knowledge and concerns over potential Tribal Cultural Resources (TCRs) that may be affected by the proposed project are addressed, a letter containing project information was sent to each tribal representative on September 14, 2021. FCS received a response

on September 14, 2021, from the Tamien Nation deferring to other tribes in the area regarding potential TCRs that may be affected by the project. No additional responses have been received to date. NAHC correspondence and copies of the NAHC letters can be found in Appendix D.

Assembly Bill 52

Assembly Bill (AB) 52 was signed into law on September 25, 2014, and provides that any public or private “project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” TCRs include “[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are eligible for inclusion in the CRHR or included in a local register of historical resources.” Under prior law, TCRs were typically addressed under the umbrella of “cultural resources,” as discussed above. AB 52 formally added the category of “tribal cultural resources” to CEQA and extends the consultation and confidentiality requirements to all projects, rather than just projects subject to Senate Bill (SB) 18.

The parties must consult in good faith, and consultation is deemed concluded when either: (1) the parties agree to measures to mitigate or avoid a significant impact on a TCR (if such a significant impact exists); or (2) when a party concludes that mutual agreement cannot be reached. Mitigation measures agreed upon during consultation must be recommended for inclusion in the environmental document. AB 52 also identifies mitigation measures that may be considered to avoid significant impacts if there is no agreement on appropriate mitigation. Recommended measures include:

- Preservation in place
- Protecting the cultural character and integrity of the resource
- Protecting the traditional use of the resource
- Protecting the confidentiality of the resource
- Permanent conservation easements with culturally appropriate management criteria

In compliance with AB 52, the City distributed letters to Native American tribes that have previously requested notification for AB 52 consultation, notifying each tribe of the opportunity to consult with the City regarding the proposed project. Consultation letters were mailed on November 23, 2021. The tribes have 30 days from receipt of the letter to respond to the City’s consultation invitation. At the time of this publication, no response has been received.

Cultural Resources

Would the project:

- a) **Cause a substantial adverse change in the significance of a historical resource as pursuant to Section 15064.5?**

Less than significant impact with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards

would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

CEQA Guidelines Section 15064.5 defines “historical resources” as resources listed in the CRHR, a local register, determined significant by the Lead Agency, or determined to be eligible by the California Historical Resources Commission for listing in the CRHR. The criteria for eligibility are generally set by the National Historic Preservation Act of 1966, which established the NRHP, and which recognizes properties that are significant at the federal, State, and local levels. To be eligible for listing in the NRHP and CRHR, a district, site, building, structure, or object must possess integrity of location, design, setting, materials, workmanship, feeling, and association relative to American history, architecture, archaeology, engineering, or culture. In addition, unless the property possesses exceptional significance, it must be at least 50 years old to be eligible.

The results of the NWIC record search indicated that there are two recorded historical resources within a 0.5-mile radius of the project area, none of which are located in the project site itself. No additional unrecorded historical resources were found during the pedestrian survey of the project site. FCS therefore considers the potential for the proposed project to have an adverse effect on historical resources to be low.

While unlikely, subsurface construction activities always have the potential to destroy or damage previously undiscovered historical resources. Historic resources can include wood, stone, foundations, and other structural remains; debris-filled wells or privies; and deposits of wood, glass, ceramics, and other refuse. Accordingly, implementation of MM CUL-1 would reduce potential impacts to historic resources that may be discovered during project construction to a less than significant level.

- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?**

Less than significant impact with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

Section 15064.5 of the CEQA Guidelines defines significant archaeological resources as resources that meet the criteria for historical resources, as discussed above, or resources that constitute unique archaeological resources. A project-related significant adverse effect could occur if a project were to affect archaeological resources that fall under either of these categories.

The proposed billboard construction would require subsurface construction activities. The NWIC record search results indicate that there are no known archaeological resources within the project site or the 0.5-mile radius of the project area and the pedestrian survey did not find any evidence of potential undiscovered archaeological resources. However, the project site's proximity to a creek increases the potential for the inadvertent discovery of archaeological resources during subsurface construction. Such resources could consist of but are not limited to stone, bone, wood, or shell artifacts or features, including hearths and structural elements. While FCS considers the potential for encountering archaeological resources during subsurface construction to be low, implementation of MM CUL-1 would ensure that the potential impact to resources is reduced to a less than significant level.

c) Disturb any human remains, including those interred outside of formal cemeteries?

Less than significant impact with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

The proposed project would require subsurface construction activities. While it is highly unlikely that human remains exist within or near the project site, there is always a possibility that subsurface construction activities associated with the proposed project, such as grading or trenching, could potentially damage or destroy previously undiscovered human remains. In the event of the accidental discovery or recognition of any human remains, CEQA Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code Sections 5097.94 and 5097.98 must be followed. MM CUL-2 further specifies the procedures to follow in the event human remains are uncovered. Along with compliance with required guidelines and statutes, implementation of MM CUL-2 would reduce potential impacts on human remains to a less than significant level.

Tribal Cultural Resources

Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

d) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or

Less than significant impact with mitigation incorporated.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

A review of the CRHR, local registers of historic resources, and NWIC record search results failed to identify any previously listed TCRs that may be adversely affected by the proposed project. However, the NAHC Sacred Lands File did produce a positive result for TCRs within the project area. The NAHC included a list of nine tribal representatives available for consultation. To ensure that all Native American knowledge and concerns over potential TCRs that may be affected by the proposed project are addressed, a letter containing project information was sent to each tribal representative on September 14, 2021. FCS received a response from the Tamien Nation deferring to other tribes in the area regarding potential TCRs that may be affected by the project. Should any undiscovered TCRs be encountered during project construction, implementation of MM CUL-1 and MM CUL-2, which address cultural resources monitoring and inadvertent discovery of human remains, would reduce potential impacts on TCRs to a less than significant level.

- e) **A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.**

Less than significant impact with mitigation incorporated. In compliance with AB 52, the City distributed letters to Native American tribes that have previously requested notification for AB 52 consultation, notifying each tribe of the opportunity to consult with the City regarding the proposed project. Consultation letters were mailed on November 23, 2021. The tribes have 30 days from receipt of the letter to respond to the City's consultation invitation. As of the date of this document, no responses had been received. Should any undiscovered TCRs be encountered during project construction, implementation of MM CUL-1 and MM CUL-2, which address cultural resources monitoring and inadvertent discovery of human remains, would reduce potential impacts on TCRs to a less than significant level.

Mitigation Measures

- MM CUL-1** An Archaeologist who meets the Secretary of the Interior's Professional Qualification Standards for archaeology should be present to monitor initial phases of ground disturbance. This may be followed by regular periodic or "spot-check" archaeological monitoring as determined by the Archaeologist. In the event a potentially significant cultural resource is encountered during subsurface earthwork activities, all construction activities within a 100-foot radius of the find shall cease and workers should avoid altering the materials until an Archaeologist who meets the Secretary

of Interior's Professional Qualification Standards for archaeology has evaluated the find. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement.

The qualified Archaeologist shall make recommendations to the Lead Agency on the measures that shall be implemented to protect the discovered resources, including but not limited to excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Potentially significant cultural resources include, but are not limited to, stone, bone, glass, wood, or shell artifacts or features, including hearths, structural remains, or historic dumpsites. Any previously undiscovered resources found during construction within the project site shall be recorded on appropriate California Department of Parks and Recreation (DPR) 523 forms and will be submitted to the City of Gilroy, the Northwest Information Center (NWIC), and the California Office of Historic Preservation (OHP), as required.

MM CUL-2

In the event of an accidental discovery or recognition of any human remains, Public Resource Code Section 5097.98 must be followed. In this instance, once project-related earthmoving begins and if there is accidental discovery or recognition of any human remains, the following steps shall be taken:

There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the Santa Clara County Coroner is contacted to determine whether the remains are Native American and if an investigation of the cause of death is required. If the Coroner determines the remains to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the "most likely descendant" of the deceased Native American. The most likely descendant may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resource Code Section 5097.98, or

Where the following conditions occur, the landowner or his/her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the most likely descendant or on the project area in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a most likely descendant or the most likely descendant failed to make a recommendation within 48 hours after being notified by the NAHC;
- The descendant identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.6 Energy <i>Would the project:</i>				
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	☐	☐	☒	☐
b) Conflict with or obstruct a State or local plan for renewable energy or energy efficiency?	☐	☐	☒	☐

Environmental Evaluation

Setting

Energy Basics

Energy use, especially through fossil fuel consumption and combustion, relates directly to environmental quality since it can adversely affect air quality and generate GHG emissions that contribute to climate change. Electrical power is generated through a variety of sources, including fossil fuel combustion, hydropower, wind, solar, biofuels, and others. Natural gas is widely used to heat buildings, prepare food in restaurants and residences, and fuel vehicles, among other uses. Fuel use for transportation is related to the fuel efficiency of cars, trucks, and public transportation; choice of different travel modes such as auto, carpool, and public transit; and miles traveled by these modes, and generally based on petroleum-based fuels such as diesel and gasoline. Electric vehicles may not have any direct emissions but do have indirect emissions via the source of electricity generated to power the vehicle. Construction and routine operation and maintenance of transportation infrastructure also consume energy.

Would the project:

- a) **Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

A discussion of the proposed project's energy use is presented below. Energy use consumed by the proposed project is primarily based on comparison with similar electronic billboard development projects and empirical studies which are publicly available. For the purpose of this energy analysis, the anticipated operational electricity consumption relies on information provided by the applicant. Energy calculations and supporting information are included as part of Appendix B of this Draft IS/MND.

Construction

During construction, the proposed project would result in energy consumption through the combustion of fossil fuels in construction vehicles, worker commute vehicles, and construction equipment, and the use of electricity for temporary buildings, lighting, and other sources. No natural gas would be utilized as part of construction. Fossil fuels used for construction vehicles and other energy-consuming equipment would be used during grading, paving, and building construction activities. The types of equipment could include gasoline- and diesel-powered construction and transportation equipment, including trucks, bulldozers, frontend loaders, forklifts, and cranes. Other equipment could include electrically driven equipment such as pumps and other tools.

Based on the California Emissions Estimator Model (CalEEMod) estimates for the proposed project, (see modeling output files in Appendix B), construction-related worker vehicle trips would consume an estimated 103 gallons of diesel and gasoline, combined, and construction-related equipment would consume an estimated 739 gallons of diesel and gasoline, combined, during project construction. Additionally, single-wide mobile office trailers, generally ranging in size from 160 square feet to 720 square feet, are commonly used in construction staging areas. The use of a 720-square-foot construction trailer would consume approximately 779 kilowatt-hours (kWh) during the 23-day construction schedule (see Appendix B for calculations).

Limitations on idling of vehicles and equipment and requirements that equipment be properly maintained would result in fuel savings. California Code of Regulations Title 13, Sections 2449(d)(3) and 2485 limit idling from both on-road and off-road diesel-powered equipment and are enforced by the ARB. In addition, given the cost of fuel, contractors and owners have a strong financial incentive to avoid wasteful, inefficient, and unnecessary consumption of energy during construction.

Because of the temporary nature of construction and the financial incentives for developers and contractors to implement energy-efficient practices, project construction activities would not result in wasteful, inefficient, and unnecessary consumption of energy. Therefore, the construction-related impact related to fuel and electricity consumption would be less than significant.

Operation**Electricity and Natural Gas**

Building operations for the proposed project would involve energy consumption for lighting and cooling fans. Based on applicant-provided information, the proposed two-sided LED billboard would be operated 24 hours per day, 365 days per year, which would result in an estimated 52,400 kWh. The proposed project is not anticipated to result in wasteful, inefficient, or unnecessary electricity

consumption as the electronic billboard would require electricity to operate and would not facilitate greater electricity consumption beyond that required for their passive operative design. Moreover, the electronic billboard would not consume natural gas and would rely on increasingly renewable energy sources consistent with SB 100. Therefore, the operational impact related to building electricity and natural gas consumption would be less than significant.

Fuel

Long-term operational energy consumption related to fuel consumption would be very minimal because the only vehicle trips would be from irregular and infrequent maintenance vehicle trips. Maintenance vehicle trips associated with the proposed project are anticipated to occur once every 1 to 2 months at most and would not result in wasteful, inefficient, or significant energy use. This impact would be less than significant.

b) Conflict with or obstruct a State or local plan for renewable energy or energy efficiency?

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

A discussion of the proposed project's potential to conflict with or obstruct a State or local plan for renewable energy or energy efficiency is presented below.

Construction

As described above, construction activities would involve energy consumption in various forms and would be limited by California regulations such as California Code of Regulations Title 13, Sections 2449(d)(3) and 2485 which limit idling from both on-road and off-road diesel-powered equipment and are enforced by the ARB. The proposed project would be required to comply with these regulations. There are no renewable energy standards applicable to construction activities for the proposed project.

Thus, it is anticipated that construction of the proposed project would not conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing energy use or increasing the use of renewable energy. Therefore, impacts would be less than significant.

Operation

Additionally, the proposed project would consume electricity delivered by a California utility during operation. According to SB 100, California's renewable portfolio standard (RPS) requires that 100 percent of electricity retail sales in California be sourced with renewable energy sources by 2045.

Pacific Gas and Electric Company (PG&E) would provide the delivery of electricity to the proposed project through the existing grid. SB 32 mandates a Statewide GHG emissions reduction goal to 40 percent below 1990 levels by the year 2030. Further, Executive Order B-55-18 establishes a new Statewide goal to achieve carbon neutrality by 2045 at the latest and maintain net negative emissions after 2045.¹⁶ Therefore, the proposed project would receive electricity from a utility company that meets California's RPS requirements as well as the State requirements through 2045.

In addition, the proposed project would be designed and constructed in accordance with the applicable State's Title 24 energy efficiency standards. Part 11, Chapter 4 and 5 of the State Title 24 energy efficiency standards establishes mandatory measures for nonresidential buildings, including material conservation and resource efficiency. The proposed project would be required to comply with these mandatory measures and would be constructed in accordance with City standards. Thus, the proposed project would not conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing energy use or increasing the use of renewable energy. This impact would be less than significant.

Mitigation Measures

None required.

¹⁶ State of California. Governor Edmund G. Brown. September 10, 2018. <https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf>. Accessed September 13, 2021.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.7 Geology and Soils <i>Would the project:</i>				
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☒	☐
ii) Strong seismic ground shaking?	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☒	☐
iv) Landslides?	☐	☐	☒	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☒	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☒	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?	☐	☐	☒	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☒

Environmental Evaluation

Setting

According to the Gilroy General Plan, the three major active faults that cross the County of Santa Clara include the San Andreas, Calaveras, and Hayward Faults.

The Calaveras Fault is approximately 4.1 miles east of the project site and the San Andreas Fault is approximately 7.2 miles southwest of the project site. The Hayward Fault is over 30 miles north of the project site. The Carnadero Fault runs through the City. It has not been defined as active by the USGS, but the County of Santa Clara has mapped Fault Rupture Zones along the Fault.¹⁷

The project site is located within a seismically active region and strong ground shaking would be expected during the lifetime of the project, which could damage future improvements on the site and expose people to injury. Since the City of Gilroy lies primarily within a seismically active zone, the three major nearby earthquake faults have produced earthquakes throughout recorded history (approximately 200 years) in the City.¹⁸ Although the City of Gilroy's risk associated with these faults is minor to moderate, the California Building Standards Code (CBC) contains special standards and regulations to ensure construction will be designed to withstand seismic activity. The City is located within Seismic Zone D, which is expected to experience significant effects from earthquakes, and which requires stringent standards for seismic design.¹⁹

Seismic-related ground failure most commonly occurs in areas underlain by loose, unconsolidated (e.g., sandy soils) and high groundwater levels. According to City of Gilroy 2040 General Plan EIR, the project site is not located within a State-designated Liquefaction Hazard Zone; however, the nearest liquefaction zone is approximately 900 feet east of the project site.²⁰ The liquefaction hazard areas in the City are along Uvas Creek and Llagas Creek. There are small landslide hazard areas in the northwestern and southwestern areas of the City.²¹

Would the project:

- a) **Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury or death involving:**
 - i) **Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance includes regulations for height, sign area, and permitted locations of electronic billboards.

The closest active faults to the City are the San Andreas, Calaveras, and Hayward Faults. Both the San Andreas and Calaveras Faults are defined as "active" by the State Department of Conservation. The Carnadero Fault runs through the City. It has not been defined as active by the USGS, but the County

¹⁷ City of Gilroy. 2020. Gilroy 2040 General Plan EIR. 3.6 Geologic Hazards. Website:

<https://www.cityofgilroy.org/DocumentCenter/View/11308/Draft-EIR-Gilroy-2040-General-Plan-?bidId=>. Accessed September 22, 2021.

¹⁸ City of Gilroy. 2020. City of Gilroy 2040 General Plan, Potential Hazards Element. Page PH-6.

¹⁹ City of Gilroy. 2020. City of Gilroy 2040 General Plan Draft EIR. Page 3-188.

²⁰ City of Gilroy. 2020. City of Gilroy 2040 General Plan Draft EIR. Page 3-185.

²¹ City of Gilroy. 2020. Gilroy 2040 General Plan, Potential Hazards. Page PH-6.

of Santa Clara has mapped Fault Rupture Zones along the Fault.²² However, proposed locations of electronic billboards are not located within the Fault Rupture Zone.²³ Furthermore, all electronic billboards approved under the proposed Ordinance would be required to adhere to the the most recently adopted California Building Code and would be subject to environmental review prior to approval. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

The project site would not be located within the Fault Rupture Zone.²⁴ To ensure the installation of the billboard is conducted safely, construction and design would be undertaken using standard engineering and seismic safety design techniques in accordance with the the most recently adopted California Building Code. As such, impacts would be less than significant.

ii) Strong seismic ground shaking?

Less than significant impact.

Proposed Electronic Billboard Ordinance

As previously described in Impact 2.7(a)(i), the entirety of the City of Gilroy is near three major active faults. All billboards approved under the proposed Ordinance would be required to adhere to the most recently adopted California Building Code. As such, impacts regarding strong seismic ground shaking would be less than significant.

Proposed Electronic Billboard

As described in the setting subsection above, the project site is located within a seismically active region and strong ground shaking would be expected during the lifetime of the proposed project. To avoid or minimize potential damage from seismic shaking, the proposed project shall be subject to standard engineering and seismic safety design techniques set forth in the most recently adopted California Building Code. Therefore, the impacts would be less than significant.

iii) Seismic-related ground failure, including liquefaction?

Less than significant impact.

Proposed Electronic Billboard Ordinance

As described above, the proposed Ordinance would include regulations for height, sign area, and permitted locations of electronic billboards. Electronic billboards approved under the proposed Ordinance would be subject to regulations set forth in the most recently adopted California Building Code and would be subject to environmental review prior to approval. Impacts regarding seismic-related ground failure, including liquefaction, is concluded to be less than significant.

²² City of Gilroy. 2020. Gilroy 2040 General Plan EIR. 3.6 Geologic Hazards. Website: <https://www.cityofgilroy.org/DocumentCenter/View/11308/Draft-EIR-Gilroy-2040-General-Plan-?bidId=>. Accessed September 22, 2021.

²³ County of Santa Clara Department of Planning and Development. 2020. Geological Maps and Data. Fault Rupture Hazard Zones. Website: <https://www.sccgov.org/sites/dpd/OrdinancesCodes/GeoHazards/Pages/GeoMaps.aspx>. Accessed September 22, 2021.

²⁴ Ibid.

Proposed Electronic Billboard

Liquefaction is the result of seismic activity and is characterized as the transformation of loosely water-saturated soils from a solid state to a liquid state after ground shaking. Variables that contribute to liquefaction include age of the soil, soil type, soil cohesion, soil density, and groundwater level. Soils most susceptible to liquefaction are loose, uniformly graded, fine-grained sands. As mentioned in the setting, the City of Gilroy has liquefaction hazard areas along Uvas Creek and Llagas Creek—these areas are not located within the project site. The Llagas Creek Liquefaction Hazard Zone is approximately 900 feet east of the project site. The proposed project is subject to the most recently adopted California Building Code to ensure the proposed billboard would be designed to withstand seismic activity. This impact is concluded to be less than significant.

iv) Landslides?

Less than significant impact.

Proposed Electronic Billboard Ordinance

As described above, the proposed Ordinance would include regulations for height, sign area, and permitted locations of electronic billboards. As described above, there are small landslide hazard areas in the northwestern and southwestern parts of the City.²⁵ However, most of the area along US-101 and SR-152 is not located in a landslide hazard. All electronic billboards approved under the proposed Ordinance would be subject to regulations set forth in the most recently adopted California Building Code. Impacts are concluded to be less than significant.

Proposed Electronic Billboard

Small landslide hazard areas in the steep, hilly terrain occur in the northwestern and southwestern areas of the City. Potential landslide hazard areas do not occur in the vicinity of the project site. The project site is relatively flat and surrounded by development. Thus, landslide-related impacts would be less than significant.

b) Result in substantial soil erosion or the loss of topsoil?

Less than significant impact.

Proposed Electronic Billboard Ordinance

General Plan Policy PH 2.6 requires that all new development proposals include a site plan detailing appropriate methods of erosion and deposition control during site development and subsequent use.²⁶ Standard construction practices would be followed to minimize soil erosion during construction. Impacts would be less than significant.

Proposed Electronic Billboard

Construction of the electronic billboard would include limited excavation for the installation of the electronic billboard structure. The amount of ground disturbance is estimated to be approximately

²⁵ City of Gilroy. 2020. Gilroy 2040 General Plan, Potential Hazards. Page PH-6.

²⁶ City of Gilroy. 2020. Gilroy 2040 General Plan, Potential Hazards. Page PH-7.

25 square feet. Standard construction practices would be followed to minimize soil erosion during construction. As stated above, General Plan Policy PH 2.6 requires that all new development proposals include erosion and deposition control actions during site development and subsequent use. Standard construction practices would be followed to minimize soil erosion during construction. Impacts would be less than significant.

- c) **Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

Refer to subsections 2.7a through 2.7c.

Proposed Electronic Billboard

Refer to subsections 2.7a through 2.7c.

- d) **Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

According to the City of Gilroy 2040 General Plan EIR, most soils within the Urban Growth Boundary of the City are characterized as having a moderate or high shrink-swell potential. The City's Municipal Code requires a soils investigation as part of proposed development applications. All electronic billboards approved under the proposed Ordinance would be required to adhere to the the most recently adopted California Building Code regulations. As such, no impacts would occur regarding expansive soil creating substantial direct or indirect risks to life or property.

Proposed Electronic Billboard

The proposed project would involve the construction of a new electronic billboard along US-101. The proposed project would not be intended for human occupancy, which precludes substantial risks to life or property as a result of expansive soils. According to the Web Soil Survey by the United States Department of Agriculture, the project site is not located on expansive soil.²⁷ The proposed project would be compliant with all applicable State and local requirements. Therefore, the impact associated with expansive soils would be less than significant.

²⁷ United States Department of Agriculture. Web Soil Survey. Website: <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>. Accessed July 19, 2021.

- e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

No impact.

Proposed Electronic Billboard Ordinance

New electronic billboards resulting from the Ordinance would not utilize septic tanks or alternative wastewater disposal systems. As such, no impacts would occur.

Proposed Electronic Billboard

The proposed project does not propose to use septic tanks or alternative wastewater disposal systems. Construction of the electronic billboard would include limited excavation for the installation and foundation of the billboard structure. As a result, no impact would occur.

- f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

No impact.

Proposed Electronic Billboard Ordinance

No known paleontological resources have been discovered in the City of Gilroy.²⁸ All electronic billboard projects would undergo separate environmental review including paleontological investigation. As such, there would be no impacts.

Proposed Electronic Billboard

The proposed project would require limited excavation for the installation of a new electronic billboard structure. According to the paleontological records search result for the proposed project (Appendix E), no significant paleontological resources or geologic features are expected to be encountered during the project's construction phase due to the disturbed nature of the site and the limited amount of excavation that would be required to implement the project. Therefore, no impact would occur.

Mitigation Measures

None required.

²⁸ City of Gilroy. 2020. City of Gilroy 2040 General Plan DEIR. Page 3-151.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.8 Greenhouse Gas Emissions <i>Would the project:</i>				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐
b) Conflict with any applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☒	☐

Environmental Evaluation

Would the project:

- a) **Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The updated text would not involve changes in the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed billboard is discussed below.

Proposed Electronic Billboard

The proposed project is located in the San Francisco Bay Area Air Basin, which is regulated by the BAAQMD. Projects generate GHG emissions during construction and operation (e.g., mobile emissions, emissions from generation of electricity for operations, and emissions of from the manufacturing and transport of building materials). The BAAQMD's project-level significance thresholds for operational GHG emissions were deemed appropriate to use when determining the proposed project's potential GHG impacts. The thresholds suggested by the BAAQMD for project-level operational GHG generation are as follows:

- Compliance with a qualified GHG Reduction Strategy,
- 1,100 metric tons carbon dioxide equivalent (MT CO₂e) per year, or
- 4.6 MT CO₂e per service population (residents plus employees) per year.

The BAAQMD's recommended thresholds of significance listed above were established based on meeting the 2020 GHG reduction targets set forth in the AB 32 Scoping Plan.²⁹ AB 32 requires that Statewide GHG emissions be reduced to 1990 levels by 2020; however, in 2016, SB 32 extended California's GHG reduction programs beyond 2020. SB 32 contains language to authorize the ARB to achieve a Statewide GHG emission reduction of at least 40 percent below 1990 levels by no later than December 31, 2030. ARB approved the 2017 California's Climate Change Scoping Plan update,³⁰ which outlines the proposed framework of action for achieving the 2030 GHG target of 40 percent reduction in GHG emissions relative to 1990 levels.

Because the proposed project would be constructed after 2020, the BAAQMD quantitative thresholds of significance listed above was adjusted to a "substantial progress" threshold that was calculated based on the SB 32 target of 40 percent below 1990 levels (i.e., 60 percent of 1990 levels). Therefore, the mass emission threshold of significance applied in this analysis is 660 MT CO₂e per year ($1,100 \times 0.60 = 660$). If operation of the proposed project would generate GHG emissions that exceed this significance threshold, the proposed project would be considered to have a significant impact related to GHG emissions.

Lastly, the BAAQMD does not have a recommended threshold of significance for construction-related GHG emissions, which are short-term emissions and therefore would not significantly contribute to the long-term cumulative GHG emissions impacts of the proposed project. To account for construction-related GHG emissions, construction emissions are converted to an average annual emissions amount by amortizing them over the anticipated service life of a building. For buildings in general, it is reasonable to look at a 30-year time frame, since this is a typical interval before a new building requires the first major renovation.³¹

In general, this analysis is restricted to GHGs identified by AB 32, which include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Construction and operation of the proposed project are addressed separately below.

Construction GHG Emissions

During project construction, GHGs would be generated by construction activities such as site clearing, operation of heavy-duty construction vehicles, materials and debris hauling, paving, and construction worker vehicle trips. These emissions would be considered short-term in duration. The BAAQMD does not have an adopted threshold of significance for construction-related GHG emissions; however, the BAAQMD does recommend that lead agencies quantify, disclose, and provide a significance determination for construction-related GHG emissions. Therefore, the construction emissions presented herein are averaged over a 30-year anticipated lifetime for the project and added to the proposed project's operational GHG emissions.

²⁹ California Air Resources Board (ARB). 2008. Climate Change Scoping Plan. December. Website: https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/document/adopted_scoping_plan.pdf. Accessed September 13, 2021.

³⁰ California Air Resources Board (ARB). 2017. California's 2017 Climate Change Scoping Plan. Website: https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf. Accessed March 18, 2021.

³¹ International Energy Agency (IEA). 2008, July. Energy Efficiency Requirements in Building Codes, Energy Efficiency Policies for New Buildings.

Construction emissions were estimated using CalEEMod (Version 2020.4.0). Construction assumptions used to estimate GHG emissions are consistent with those used to estimate air pollutant emissions, as described under Impact 2.3(b). Table 6 shows that GHG emissions generated by project construction were estimated to be approximately 6 MT CO₂e, which is equal to less than 1 MT CO₂e per year for the 30-year anticipated lifetime of the proposed project.

Table 6: Construction GHG Emissions

Construction Phase	Total MT CO ₂ e/year
Proposed New Electronic Billboard Site	
Grading	1
Building Construction (Installation of Billboard)	4
Paving	<1
Total Construction Emissions	6
Amortized over 30 Years	<1
Notes: Because of rounding, total MT CO ₂ e may be marginally different from California Emissions Estimator Model (CalEEMod) Output. MT CO ₂ e = metric tons of carbon dioxide equivalents Source: CalEEMod Output (Appendix B).	

Operational GHG Emissions

Operational or long-term GHG emissions occur over the life of the proposed project. Sources for operational emissions include:

- **Motor Vehicles:** These emissions refer to tailpipe exhaust from the cars and trucks that would travel to and from the project site.
- **Indirect Electricity:** These emissions refer to those generated by off-site power plants to supply electricity required for the proposed project.
- **Water Transport:** These emissions refer to those generated by the electricity required to transport and treat the water to be used on the project site.
- **Waste:** These emissions refer to the GHG emissions produced by decomposing waste generated by the proposed project.

Motor vehicle, water, and waste sources of GHG emissions would be negligible during operation. LED electronic billboards (programmable electronic signs) are subject to energy efficiency requirements under Title 24 of the California Code of Regulations. The billboard is required to be dimmable, which would reduce energy use and GHG emissions associated with the generation of electricity. The proposed new electronic billboard would be illuminated 24 hours per day, 365 days per year. The light levels emitted from the billboard would be set to adjust based on ambient light conditions at any given time (i.e., nighttime versus daytime). According to applicant-provided information, a typical Outfront Media billboard would result in an estimated annual electricity demand of 26,200

kWh/year per LED facing. Therefore, it is assumed that the billboard, which consists of two facings, would use up to a total of 52,400 kWh, or 52.4 megawatt-hours (MWh) per year. PG&E would supply the electricity needed to illuminate the billboard.

Billboards require occasional upkeep and maintenance activities, which generate vehicle trips and resulting GHG emissions. These mobile source GHG emissions are difficult to quantify as no data is available at the time of this analysis to accurately represent these maintenance trips. As calculated and contained in Appendix B, electricity consumption resulting from operation of the proposed project would result in approximately 5 MT/year of CO₂e. By incorporating the amortized annual GHG emissions to account for construction emissions, the proposed project would generate up to 6 MT CO₂e per year. Additionally, the energy consumption calculations shown in Appendix B demonstrate that the project would not result in a substantial increase in electricity demand and resulting GHG emissions. The project's expected net annual GHG emissions of approximately 6 MT CO₂e/year would not exceed the 660 MT CO₂e/year threshold, and therefore GHG impacts related to the operation of the proposed project would be less than significant.

b) Conflict with any applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The updated text would not involve changes in the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed billboard is discussed below.

Proposed Electronic Billboard

The City of Gilroy has not adopted a qualified GHG reduction plan, but the City's 2040 General Plan contains the Natural and Cultural Resources Element, which contains goals and policies to reduce energy consumption and GHG emissions. There are several policies related to energy, most of which relate to energy use in commercial or residential buildings. None of the policies would be directly applicable to operation of the proposed new electronic billboard. The 2017 Clean Air Plan is also applicable to the project because the project site is located within the BAAQMD planning area. As described in Impact 2.3(a), none of the control measures contained in the 2017 Clean Air Plan are applicable to the operation of electronic billboards. As discussed in Impact 2.3(b), the proposed project would implement all BMPs for construction activities and would be consistent with the assumptions in the AQP after implementation of MM AIR-1. Furthermore, the proposed project would not include any special features that would disrupt or hinder implementation of the AQP control measures.

The proposed project would not conflict with the policies, regulations, or guidelines in the City's General Plan, Bay Area Clean Air Plan, or any other applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. Furthermore, as discussed in Impact 2.7(a), the proposed

project would not generate substantial GHG emissions during construction or operation. Therefore, this impact would be less than significant.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.9 Hazards and Hazardous Materials <i>Would the project:</i>				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☒	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☒	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☒	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?	☐	☐	☐	☒
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☒	☐
g) Expose people or structures, either directly or indirectly to a significant risk of loss, injury or death involving wildland fires?	☐	☐	☒	☐

Environmental Evaluation

Setting

Permitted locations for the proposed electronic billboards would be property designated as General Services Commercial or City Gateway District, and located within 660 feet of US-101 and SR-152. These areas contain commercial and industrial land uses. Vehicles could transport hazardous materials along US-101, SR-152, and adjacent roadways.

According to the Hazardous Waste and Substances Site List from the Department of Toxic Substances Control (DTSC), there are no known Cortese List (§ 65962.5(a)), sites located in the City of Gilroy.³² The Cortese List contains hazardous waste and substance sites including public drinking water wells with detectable levels of contamination, sites with known underground storage tanks (USTs) having a reportable release, solid waste disposal facilities from which there is a known migration, hazardous substance sites selected for remedial action, historic Cortese sites, and sites with known toxic material identified through the abandoned site assessment program.

Specific to the proposed billboard site, the nearest potential hazardous site is the Garden Valley Foods cleanup site (T0608500013) located approximately 0.5-mile northwest of the site at 7050 Monterey Street. Its cleanup status is complete as of 2013.³³ The closest airport to the project site is Frazier Lake Airport, located approximately 5.5 miles southeast of the project site.

Would the project:

- a) **Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. All electronic billboards approved under the proposed Ordinance would be required to conform to Title 49 of the Code of Federal Regulations as well as United States Department of Transportation (USDOT), State of California, and local laws, ordinances, and procedures. As such, the proposed Ordinance would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. No impact would occur.

Proposed Electronic Billboard

Construction of the proposed electronic billboard may involve the use, transport, and disposal of hazardous materials such as gasoline, diesel fuel, lubricating oil, hydraulic oil, lubricating grease, automatic transmission fluid, paints, solvents, glues, and other substances typically used during construction. Construction of the electronic billboard would also require the use of gasoline- and diesel-powered heavy equipment such as bulldozers, backhoes, water pumps, and air compressors.

³² EnviroStor. 2021. DTSC Hazardous Waste and Substances Site List. Website: https://www.envirostor.dtsc.ca.gov/public/search.asp?page=1&cmd=search&business_name=&main_street_name=&city=&zip=&county=&status=ACT%2CBKLG%2CCOM&branch=&site_type=CSITES%2COPEN%2CFUDS%2CCLOSE&npl=&funding=&reporttitle=HAZARDOUS+WASTE+AND+SUBSTANCES+SITE+LIST&reporttype=CORTESE&federal_superfund=&state_response=&voluntary_cleanup=&school_cleanup=&operating=&post_closure=&non_operating=&corrective_action=&tiered_permit=&evaluation=&spec_prog=&national_priority_list=&senate=&congress=&assembly=&critical_pol=&business_type=&case_type=&searchtype=&hwmp_site_type=&cleanup_type=&ocierp=&hwmp=False&permitted=&pc_permitted=&inspections=&complaints=&censustrack=&cesdecile=&scho ol_district=&orderby=upper%28business%5Fname%29. Accessed July 20, 2021.

³³ California State Water Resources Control Board (State Water Board). 2021. GeoTracker—Garden Valley Foods (T0608500013). Website: https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0608500013. Accessed July 20, 2021.

If not appropriately managed, accidental spills of these hazardous materials could result in a significant impact.

Any handling of hazardous materials would be limited in both quantity and concentrations. Furthermore, project implementation would be required to conform to Title 49 of the Code of Federal Regulations, USDOT, State of California, and local laws, ordinances, and procedures.

Operation of the project would require sporadic maintenance, but this maintenance would not involve the use of any hazardous materials with the potential to significantly impact the public. Therefore, impacts would be less than significant.

- b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. All electronic billboards approved under the proposed Ordinance would be required to conform to Title 49 of the Code of Federal Regulations as well as USDOT, State of California, and local laws, ordinances, and procedures. As such, the proposed Ordinance would not create hazards to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. No impact would occur.

Proposed Electronic Billboard

As described above, construction activities would require the use and transport of potentially hazardous materials including oils and combustible fuels, but would not be stored in large quantities on-site. The applicant and its contractors would be required to comply with all relevant local, State, and federal regulations related to the handling, transport, and storage of hazardous materials.

Disturbance of on-site soils at the project site would be limited to soil removal in the immediate area required to install a foundation for the electronic billboard. Operation of the proposed project, which entails the changing of messages on electronic billboard faces and sporadic maintenance by a de minimis number of workers and trucks, would not involve the use of any hazardous materials with the potential to significantly impact the public. Thus, impacts associated with the release of hazardous materials into the environment through reasonably foreseeable upset and accident conditions would be less than significant.

- c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

All electronic billboards approved under the proposed Ordinance would be required to conform to Title 49 of the Code of Federal Regulations, USDOT, State of California, and local laws, ordinances, and procedures. While the construction of electronic billboards may involve the use of hazardous substances, conformance with these regulations would reduce the impacts of these hazardous substances. In addition, electronic billboards would only be permitted on properties designated as General Services Commercial or City Gateway District and would not be sited on school properties. As such, the proposed Ordinance would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste near an existing or proposed school. Impacts would be less than significant.

Proposed Electronic Billboard

As described above, construction of the proposed project would involve the use of some hazardous materials. However, there are no schools within one-quarter mile of the project site. The nearest school to the project site is Eliot Elementary School located approximately 0.75 mile north of the site. The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substance, or waste within 0.25 mile of an existing or proposed school. Thus, impacts would be less than significant.

- d) **Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?**

No impact.

Proposed Electronic Billboard Ordinance

Government Code Section 65962.5 refers to the Hazardous Waste and Substances Site List, commonly known as the Cortese List, maintained by the DTSC. As discussed in the setting subsection above, the results of the database search determined there are currently no Cortese sites located on or in the City of Gilroy. Subsequent billboards would also undergo environmental review which would analyze impacts related to hazardous material sites. No impact would occur.

Proposed Electronic Billboard

As discussed above, there are no Cortese sites located on or in the vicinity of the project site. The EnviroStor database indicated that there are no known Cortese sites located within the City.³⁴ As a result, no impact would occur.

³⁴ EnviroStor. 2021. DTSC Hazardous Waste and Substances Site List. Website: https://www.envirostor.dtsc.ca.gov/public/search.asp?page=1&cmd=search&business_name=&main_street_name=&city=&zip=&county=&status=ACT%2CBKLG%2CCOM&branch=&site_type=CSITES%2COPEN%2CFUDS%2CCLOSE&npl=&funding=&reporttitle=HAZARDOUS+WASTE+AND+SUBSTANCES+SITE+LIST&reporttype=CORTESE&federal_superfund=&state_response=&voluntary_cleanup=&school_cleanup=&operating=&post_closure=&non_operating=&corrective_action=&tiered_permit=&evaluation=&spec_prog=&national_priority_list=&senate=&congress=&assembly=&critical_pol=&business_type=&case_type=&searchtype=&hwmp_site_type=&cleanup_type=&ocierp=&hwmp=False&permitted=&pc_permitted=&inspections=&complaints=&censustract=&cesdecile=&school_district=&orderby=upper%28business%5Fname%29. Accessed July 20, 2021.

- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

No impact.

Proposed Electronic Billboard Ordinance

As stated previously, electronic billboards would only be permitted on properties designated as General Commercial Services and Gateway District, which are more than 2 miles from Frazier Lake Airport. Therefore, no impact would occur.

Proposed Electronic Billboard

As previously discussed, the project site is located further than 2 miles from the closest airport. Therefore, no impact would occur.

- f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

Less than significant impact.

Proposed Electronic Billboard Ordinance

The City actively participates in maintenance protocols outlined in the 2017 Santa Clara County Operational Area Hazard Mitigation Plan which the City of Gilroy adopted in 2018.³⁵

The 2017 Santa Clara County's Operational Area Hazard Mitigation Plan does not include evacuation routes, however, US-101 would serve as an evacuation route in case of emergency. All billboards approved under the proposed Ordinance would be required to conform to Title 49 of the Code of Federal Regulations, USDOT, State of California, and local laws, ordinances, and procedures. Additionally, the City of Gilroy 2040 General Plan EIR determined that jurisdictions within the County would adhere to the adopted Santa Clara County Operational Area Emergency Operations Plan which outlines response protocols for emergencies. The proposed Ordinance itself would not impede an emergency response plan. The construction of electronic billboards resulting from the proposed Ordinance may have the potential to physically interfere with an emergency response or evacuation plan. However, each proposed electronic billboard would undergo environmental review prior to approval to ensure impacts related to emergency response are properly analyzed and mitigated. As such, impacts would be less than significant.

Proposed Electronic Billboard

The proposed project would not interfere with any adopted emergency response plan or emergency evacuation plan. Though project plans for construction are unknown at this time, it is anticipated that the potential electronic billboard could, as a worst-case scenario, involve a temporary roadway closure at the project site location on Automall Parkway. As a result, impacts would be less than significant.

³⁵ Santa Clara County. Santa Clara County Operational Area Hazard Mitigation Plan – Volume I. 2017.

- g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would allow up to two billboards to be constructed within 660 feet of US-101 and SR-152. All possible locations for electronic billboards are within an urbanized area and therefore not located near or in the vicinity of wildlands. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

There are no wildlands located within or near the project site. Therefore, the proposed project would not expose people or structures either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires. The project site has an extensive history of development with minimal landscaping. Therefore, no impacts would be less than significant.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.10 Hydrology and Water Quality <i>Would the project:</i>				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?	☐	☐	☒	☐
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	☐	☐	☒	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:	☐	☐	☒	☐
(i) result in substantial erosion or siltation on- or off-site;	☐	☐	☒	☐
(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;	☐	☐	☒	☐
(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	☐	☐	☒	☐
(iv) impede or redirect flood flows?	☐	☐	☐	☒
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☒	☐
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☐	☐	☒	☐

Environmental Evaluation

Setting

The project area is urbanized and is primarily covered with impervious surfaces in the form of buildings, paved roadways, and paved lots. Within the City of Gilroy, annual average rainfall is approximately 20 inches.³⁶ The existing local stormwater network collects precipitation and provides

³⁶ City of Gilroy. n.d. Community Profile. Website: <https://www.cityofgilroy.org/355/About-Gilroy#:~:text=Nestled%20at%20the%20southern%20end%20of%20the%20Santa,with%20an%20average%20rainfall%20of%20about%2020%20inches>. Accessed July 21, 2021.

drainage within the project area. The only surface bodies of water that exists in the surrounding project area is the Llagas Creek, located approximately 1.23 miles to the northeast. No surface bodies of water traverse the project site. The project site is paved and therefore impervious.

Would the project:

- a) **Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The proposed amendment would not involve changes to the existing environment. All electronic billboards approved under the proposed Ordinance would be required to conform to the Gilroy Municipal Code and the Water Conservation Ordinance³⁷, as well as federal, State, and local laws, ordinances, and procedures. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

Construction of the proposed electronic billboard would involve minimal ground disturbance at the project site. Construction activities could allow surface water to carry small quantities of pollutants (e.g., oil or fuel used in construction equipment) off-site, thereby potentially affecting local waterways by degrading water quality, however, the proposed project would involve construction activities for short durations and would not substantially affect water quality standards. Excavated soils would be hauled to a landfill and no exposed soils would remain on-site. As such, a limited amount of soil would be exposed during the brief construction period associated with excavation activities. Construction of the proposed project would result in less than significant impacts related to water quality standards.

Once the proposed electronic billboard is constructed, the site would be repaved, and the impervious surface area would be consistent with current conditions. Once constructed, the proposed project would not affect water quality or result in a violation of waste discharge requirements. Proper operation and maintenance of the electronic billboards would continue to ensure that such structures do not contribute pollutants to stormwater runoff. Therefore, impacts would be less than significant.

- b) **Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?**

Less than significant impact.

³⁷ City of Gilroy. 2016. Water Conservation Ordinance (Ordinance No. 2016-15). Website: <https://www.cityofgilroy.org/DocumentCenter/View/6145/Ordinance-2016-15?bidId=>. Accessed November 29, 2021.

Proposed Electronic Billboard Ordinance

All electronic billboards approved under the proposed Ordinance would be required to conform to the Gilroy Municipal Code and the Water Conservation Ordinance³⁸, as well as federal, State, and local laws, ordinances, and procedures. Furthermore, operation of electronic billboards typically does not involve the use of water or groundwater sources. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

The proposed project would not utilize groundwater sources, and there would not be a need to drill wells to supply water. The installation of a new electronic billboard would not add to existing impervious surface conditions since it would be located in an existing paved area. Operation of the proposed project would not impact groundwater supplies or interfere with groundwater recharge. Therefore, no impact would occur.

- c) **Substantially alter the existing drainage pattern of area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:**
 - (i) **result in substantial erosion or siltation on- or off-site;**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not cause substantial erosion or siltation. Typically, the construction of electronic billboards does not involve a significant amount of ground disturbance. Furthermore, General Plan Policy PH 2.6 requires that all new development proposals include a site plan detailing appropriate methods of erosion and deposition control during site development and subsequent use.³⁹ Thus, impacts would be less than significant.

Proposed Electronic Billboard

The project site is currently paved and consists of impervious surfaces. Construction of the billboard's foundation structure would result in a limited footprint area, which would not result in substantial erosion or siltation on- or off-site. Therefore, the impact would be less than significant.

- (ii) **substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;**

Less than significant impact.

Proposed Electronic Billboard Ordinance

As previously stated, the proposed Ordinance would allow for the construction of up to two electronic billboards in the City of Gilroy, which would not substantially increase the amount of

³⁸ Ibid.

³⁹ City of Gilroy. 2020. Gilroy 2040 General Plan, Potential Hazards. Page PH-7.

surface runoff. In addition, subsequent billboards would require environmental review which would analyze and mitigate any potential surface runoff. Impacts would be less than significant.

Proposed Electronic Billboard

As previously stated, the electronic billboard's foundation structure would have a limited construction footprint area. Construction of the electronic billboard would not substantially impact the amount of runoff from the site nor increase the impervious surface area compared to existing conditions. Therefore, project implementation would not substantially increase the rate of runoff water that would result in flooding on- or off-site. Impacts would be less than significant.

- (iii) **create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff;**
or

Less than significant impact.

Proposed Electronic Billboard Ordinance

All electronic billboards approved under the proposed Ordinance would be required to conform to the Gilroy Municipal Code and the Water Conservation Ordinance,⁴⁰ as well as federal, State, and local laws, ordinances, and procedures. Additionally, this amendment would allow for the construction of up to two electronic billboards in the City of Gilroy, which would not create a substantial amount of runoff water. Subsequent billboards would require environmental review which would analyze and mitigate any potential surface runoff. Impacts would be less than significant.

Proposed Electronic Billboard

As previously stated, the project site is currently paved, and the electronic billboard foundation would have a limited construction footprint area, which would not substantially impact the amount of runoff from the site nor increase the impervious surface area, compared to existing conditions. Therefore, project implementation would not substantially contribute to runoff water, which would exceed the capacity of existing drainage systems or provide sources of polluted runoff. Impacts would be less than significant.

- (iv) **impede or redirect flood flows?**

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not impact on flood flows. The Urban Growth Boundary of the City includes areas located within the 100-year Federal Emergency Management Agency (FEMA) floodplains. The following areas within the Urban Growth Boundary are located within the 100-year floodplain: Open Space in proximity to Uvas Creek and Llagas Creek, General Industrial, Employment

⁴⁰ City of Gilroy. 2016. Water Conservation Ordinance (Ordinance No. 2016-15). Website: <https://www.cityofgilroy.org/DocumentCenter/View/6145/Ordinance-2016-15?bidId=>. Accessed November 29, 2021.

Center and Public/Quasi-Public facilities that are east of US-101, and park and recreation facilities south of Luchessa Avenue. The permitted locations in the proposed Ordinance only allows for billboards to be constructed in the General Services Commercial or City Gateway District. All electronic billboards approved under the proposed Ordinance would also be required to conform to the Gilroy Municipal Code Chapter 27E, Floodplain Management Ordinance. As a result, no impact would occur.

Proposed Electronic Billboard

The FEMA flood maps identify areas that are prone to flooding. The project site corresponds to Flood Insurance Rate Map (FIRM) 06085C0756H,⁴¹ and is designated as Flood Zone AH (1 percent annual chance of shallow flooding where average depths are between one and three feet). Although the project site is located within a flood hazard zone, the proposed project would not change the amount of impervious surfaces compared with current conditions. The project would have a small footprint and would not have an impact on flows. Therefore, impacts would be less than significant.

d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?

Less than significant impact.

Proposed Electronic Billboard Ordinance

Tsunami inundation would not occur because the project site and the City is over 15 miles east of the Pacific Ocean. A seiche is a seismically or wind-induced wave on an enclosed body of water such as a lake or reservoir. There are no lakes within the City. Therefore, impacts related to the release of pollutants due to project inundation would be less than significant.

Proposed Electronic Billboard

As discussed above, although the project site is located within Flood Zone AH, the proposed project would include minimal ground disturbance during the construction period and would be repaved post-construction. Therefore, impacts related to the release of pollutants due to project inundation would be less than significant.

e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

Less than significant impact.

Proposed Electronic Billboard Ordinance

All electronic billboards approved under the proposed Ordinance would be required to conform to the City of Gilroy's 2040 General Plan policies and the Gilroy Municipal Code, as well as State of California, and local laws, ordinances, and procedures. The proposed billboard ordinance would not conflict with an existing water quality control plan or sustainable groundwater management plan. As a result, no impact would occur.

⁴¹ Federal Emergency Management Agency (FEMA). 2020. FEMA Flood Map Service Center. Website: <https://msc.fema.gov/portal/search#searchresultsanchor>. Accessed July 21, 2021.

Proposed Electronic Billboard

The proposed project would result in minimal ground disturbance at the project site. Development of the project site would not substantially change the amount of impervious surface area and there would be no change in impervious surface area at the site, which is already paved. Furthermore, the electronic billboard would not utilize any materials or equipment that could lead to surface water pollution. Therefore, the proposed project would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. Impacts would be less than significant.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.11 Land Use and Planning <i>Would the project:</i>				
a) Physically divide an established community?	☐	☐	☐	☒
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☒	☐

Environmental Evaluation

Setting

Under the proposed Ordinance, up to two electronic billboards would be allowed in the City. Permitted locations for the proposed billboards would be property designated as General Services Commercial or City Gateway District, and located within 660 feet of US-101 and SR-152. These locations are within an established urban community that has a history of development. The proposed electronic billboard site is currently developed and located on Automall Parkway, adjacent to US-101.

Would the project:

a) **Physically divide an established community?**

No impact.

Proposed Electronic Billboard Ordinance

The physical division of an established community typically refers to the construction of a physical feature, such as an interstate highway or railroad tracks, or removal of a means of access, such as a local road or bridge, that would impair mobility within an existing community or between a community and outlying area. The electronic billboards would only be allowed on properties designated as General Services Commercial or City Gateway District and would be located within 660 feet of US-101 and SR-152. It is the intent of the proposed Ordinance to facilitate the development of electronic billboards and to allow them only in areas that would complement or serve the existing commercial area within the City. Thus, electronic billboards would not be permitted in areas where they would create a division in an established community. No impact would occur.

Proposed Electronic Billboard

The proposed electronic billboard would be located on a parcel designated General Services Commercial and is surrounding by industrial uses. The proposed billboard would not physically divide an established community, nor would it impair mobility within an existing community.

Therefore, installation of the electronic billboard would not result in the division of an established community. No impact would occur.

- b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The City of Gilroy's Sign Ordinance does not currently address electronic billboards and no electronic billboards exist within the city limits. The proposed project would create a new Ordinance and revise existing City Code Sections 30.37.30 (Prohibited Signs), 30.37.50 (Commercial and Industrial districts), and 30.37.51 (Freeway Oriented Signs) to allow electronic billboards. The proposed Ordinance would allow up to two electronic billboards within city limits. The proposed amendments to the Sign Ordinance would ensure conformity with the proposed Ordinance. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

The proposed electronic billboard would be subject to additional stipulations including height and size of sign face. Per the proposed Ordinance, the electronic billboards shall not exceed a maximum height of 75 feet above grade and shall have a maximum electronic billboard area of 672 square feet per side. The sign face display would not be allowed to change more often than every 8 seconds, and messages would be static (i.e., not moving or animated). The minimum permitted distance between electronic billboards shall be 1.5 miles.

The proposed billboard structure would be 60 feet in height. The displays on the billboard would be mounted on a supporting column that would be approximately 51 feet tall. The billboard frame would be 14 feet high and 48 feet wide. These measurements would be in conformance with the proposed Ordinance. In addition, the proposed project would be subject to the Caltrans Outdoor Advertising Act and Section 5403(g) of the Business and Professions Code. The project's compatibility with these standards would minimize impacts that could potentially affect policies or regulations that were adopted to avoid or mitigate environmental effects. Thus, impacts would be less than significant.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.12 Mineral Resources <i>Would the project:</i>				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

Environmental Evaluation

Setting

The City of Gilroy 2040 General Plan does not identify any mineral deposits or resources. Therefore, the project area does not support mineral extraction activities and the project site does not contain nor is it adjacent to any mineral deposits.

Would the project:

- a) **Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?**

No impact.

Proposed Electronic Billboard Ordinance

As previously stated, the Gilroy 2040 General Plan does not identify any mineral resources or deposits. With no mineral deposits located in the City, the proposed Ordinance would not result in the loss of a known mineral resource that would be of value to the region and the residents of the State. No impact would occur.

Proposed Electronic Billboard

The project site does not support mineral extraction activities and no known mineral deposits exist within the project site. Therefore, implementation of the proposed project would not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State. No impact would occur.

- b) **Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?**

No impact.

Proposed Electronic Billboard Ordinance

As previously discussed in Impact 12(a), the Gilroy 2040 General Plan does not identify any mineral resources or deposits in the City. Therefore, the proposed Ordinance would not result in the loss of availability of a locally important mineral resource recovery site delineated on a general plan or other land use plan. No impact would occur.

Proposed Electronic Billboard

The project site does not support any mineral extraction activities, and no known mineral deposits exist within the project site. Therefore, implementation of the proposed project would not result in the loss of availability of a locally important mineral recovery site delineated in a local general plan, specific plan, or other land use plan. No impact would occur.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.13 Noise <i>Would the project result in:</i>				
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☒	☐
b) Generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☒	☐
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

Environmental Evaluation

Setting

The proposed new electronic billboard site is located adjacent to US-101, which is a major highway. The consistent use of this roadway by vehicles results in steady ambient noise levels.

Characteristics of Noise

Noise is defined as unwanted sound. Sound levels are usually measured and expressed in decibels (dB), with 0 dB corresponding roughly to the threshold of hearing. Most of the sounds that we hear in the environment do not consist of a single frequency, but rather a broad band of frequencies, with each frequency differing in sound level. The intensities of each frequency add together to generate a sound. Noise is typically generated by transportation, specific land uses, and ongoing human activity.

The standard unit of measurement of the loudness of sound is the dB. The 0 point on the dB scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Changes of 3 dB or less are only perceptible in laboratory environments. A change of 3 dB is the lowest change that can be perceptible to the human ear in outdoor environments. While a change of 5 dBA is considered to be the minimum readily perceptible change to the human ear in outdoor environments.

Since the human ear is not equally sensitive to sound at all frequencies, the A-weighted decibel scale (dBA) was derived to relate noise to the sensitivity of humans, it gives greater weight to the frequencies of sound to which the human ear is most sensitive. The A-weighted sound level is the basis for a number of various sound level metrics, including the day/night sound level (L_{dn}) and the

Community Noise Equivalent Level (CNEL), both of which represent how humans are more sensitive to sound at night. In addition, the equivalent continuous sound level (L_{eq}) is the average sound energy of time-varying noise over a sample period and L_{max} is the maximum instantaneous noise level occurring over a sample period.

Regulatory Framework

The proposed billboard site is located within the City of Gilroy. The City of Gilroy addresses noise in the Potential Hazards Element of the General Plan⁴² and in the City Municipal Code.⁴³

City of Gilroy 2040 General Plan

The Potential Hazards Element includes standards to provide compatible noise environments for new development or redevelopment projects and to control excessive noise exposure of existing developments. Noise-related goals, policies, actions, and standards provided in the Potential Hazards Element provide the basis for decision-making on determining land use compatibility with noise sources associated with the proposed project, as well as mitigation requirements.

The Potential Hazards Element policies that address noise include Policy PH 6.4, which requires that mitigation measures shall be required for new development projects that exceed the following criteria:

- Cause the L_{dn} of a residential area to exceed 60 dBA⁴⁴ outdoors or 45 dBA indoors.
- Cause the L_{dn} of a commercial area to exceed 65 dBA outdoors or 61 dBA indoors.
- Cause the L_{dn} of an industrial area to exceed 76 dBA outdoors. For indoors industrial areas, a noise level of 65 dBA is not to be exceeded more than 10 percent of the time, while a noise level of 60 dBA is not to be exceeded more than 50 percent of the time.

Furthermore, General Plan Policy PH 6.10 requires that proposed development projects assess potential construction noise impacts on nearby sensitive uses and to minimize impacts on those uses, to the extent feasible. General Plan Policy 6.12 requires that mitigation measures be implemented to ensure that no vibration-related damage or disturbance to structures of sensitive receptors would occur. It also requires that proposed residential and commercial projects located within 200 feet of existing major freeways conduct a ground vibration noise evaluation consistent with City-approved methodologies.

General Plan Policy 6.11 requires that all construction be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and 9:00 a.m. to 7:00 p.m. on Saturdays.

⁴² City of Gilroy. 2020. City of Gilroy 2040 General Plan. Website: <https://www.cityofgilroy.org/DocumentCenter/View/11309/Gilroy-2040-General-Plan-39-MB?bidId=>. Accessed August 6, 2021.

⁴³ City of Gilroy. 2021. Gilroy City Code. Website: <https://www.codepublishing.com/CA/Gilroy/>. Accessed August 6, 2021.

⁴⁴ The Outdoor sound levels for residential properties shall be held to 60-dBA LDN, or a maximum of 70-dBA if all of the following findings can be made: (1) That feasible sound attenuation measures have been incorporated in the project design; (2) That potential noise levels are part of the developer's disclosure to future residents; (3) That interior noise limits established by the General Plan are strictly maintained; and (4) Potential noise levels will not jeopardize the health, safety, and general welfare of the public.

Gilroy City Code

Zoning Ordinance Section 30.41.31 also outlines Maximum Outdoor Noise Levels for residential, commercial, and industrial land uses. The City Code states that for commercial and industrial noise impacting residentially zone properties, noise is limited to a maximum of 70 dBA (L_{10}) measured at the residential property line.

Section 16.38 of the City Code states that construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and 9:00 a.m. to 7:00 p.m. on Saturday. Construction activities shall not occur on Sundays or City holidays.

Would the project result in:

- a) **Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

Short-term Construction Noise Impacts. For purposes of this analysis, a significant impact would occur if construction activities would result in a substantial temporary increase in ambient noise levels outside of the permissible hours for construction (7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 7:00 p.m. on Saturdays) that would result in annoyance or sleep disturbance of nearby sensitive receptors.

The proposed electronic billboard would be located at the northwestern corner of the 6400 block of Automall Parkway. This location does not currently contain an existing billboard, so as part of the project a new sign would be constructed which would result in ground disturbance within the project boundaries.

The site preparation phase, which includes excavation and foundation construction activities, would generate the highest noise levels, because that is the phase in which the noisiest construction equipment would operate at the site. The heaviest types of construction equipment expected to be used in construction of this project include an auger drill rig, a backhoe, and a crane. The use of impact equipment, such as pile drivers, is not expected to be used during construction of the project. According to the FHWA Highway Construction Noise Handbook, the typical maximum noise level generated by an auger drill rig is assumed to be 85 dBA L_{max} at 50 feet from this equipment. Each backhoe would generate 80 dBA L_{max} at 50 feet. The maximum noise level generated by cranes is approximately 85 dBA L_{max} at 50 feet.

Because of the size of the construction footprint and the methods for installation, it is expected that only one of these heaviest pieces of construction would operate at a single time during the construction process (i.e., simultaneous operation of multiple pieces of these pieces of construction equipment would not occur). Therefore, a reasonable worst-case noise level during construction would be 85 dBA L_{max} at a distance of 50 feet from the construction footprint.

The nearest residential receptors to the proposed construction boundaries are the single-family residences located approximately 1,795 feet west of the project boundary. At this distance, reasonable worst-case construction noise levels from operation of the crane as measured at the nearest residential property line would attenuate to below 54 dBA L_{max} intermittently when the crane equipment is operating at maximum power. These noise levels would not result in annoyance or sleep disturbance of these residential sensitive receptors.

All of these reasonable worst-case construction noise levels would be intermittent as the equipment would typically only operate at full power for 2- to 3-minutes at a time. These noise levels would not be considered substantial and would not be expected to result in any perceptible increase in the ambient noise levels as measured at this nearest sensitive receptor. Furthermore, the proposed project shall comply with Noise Ordinance Section 16.38, which states that construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and 9:00 a.m. to 7:00 p.m. on Saturday and that construction activities shall not occur on Sundays or City holidays. Therefore, the effect of construction activity on hourly or daily ambient noise levels, as measured at the nearest sensitive receptors, would not result in a substantial increase in ambient noise levels in excess of established standards, and impacts would be less than significant.

Long-term Operational Noise Impacts The proposed new electronic billboards are not designed to emit any sound, and the proposed project would not generate any regular vehicle trips. Therefore, the proposed project would not generate a substantial permanent increase in ambient noise levels in the vicinity of the project. No impact would occur.

b) Generation of excessive groundborne vibration or groundborne noise levels?

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent electronic billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

A significant impact would occur if the proposed project would generate groundborne vibration or groundborne noise levels in excess of applicable standards. Policy 6.12 of the General Plan requires a vibration impact assessment for proposed development projects in which heavy-duty construction equipment would be used within 200 feet of an existing structure or sensitive receptor. Policy 6.13 of

the General Plan requires that proposed residential and commercial projects located within 200 feet of existing major freeways and railroad lines to conduct a ground vibration and vibration noise evaluation consistent with City-approved methodologies. The project is within 200 feet of an existing structure and within 660 feet of US-101. However, the City of Gilroy has not adopted specific threshold criteria for construction or operational groundborne vibration impacts. Therefore, for purposes of this analysis, the Federal Transit Administration's (FTA's) construction vibration impact criteria are utilized.⁴⁵ For operational impacts, a significant impact would occur if proposed project ongoing activities would produce groundborne vibrations that are perceptible without instruments by a reasonable person at the property lines of the site.

Short-term Construction Vibration Impacts.

For purposes of this analysis, a significant impact would occur if the proposed project would generate groundborne vibration or groundborne noise levels in excess of the FTA impact assessment criteria for construction (0.2 in/sec peak particle velocity [PPV] for non-engineer timber and masonry buildings).

Of the variety of equipment that would be used during construction, cranes would produce the greatest groundborne vibration levels. Cranes can produce groundborne vibration levels ranging up to 0.051 in/sec PPV at 25 feet from the operating equipment.⁴⁶ Impact equipment (e.g., pile drivers) is not expected to be used during construction of the proposed project.

The project location does not currently contain an existing sign, so, as part of the project, a new sign would be constructed which would result in ground disturbance within the project boundaries.

The crane used to install the new billboard could operate as close as 145 feet from the nearest façade of any existing structure within or adjacent to the project boundaries. At this distance, groundborne vibration levels from operation of the crane would attenuate to approximately 0.07 in/sec PPV. This is well below the FTA's damage threshold criteria of 0.2 in/sec PPV for adjacent structures, buildings of non-engineered timber and masonry construction. Therefore, impacts resulting from construction-related groundborne vibration levels would be less than significant.

Operational Vibration Impacts.

Implementation of the project would not include any permanent sources of vibration that would expose persons in the project vicinity to groundborne vibration levels that could be perceptible without instruments at any existing sensitive land use in the vicinity of the project site. Therefore, operational groundborne vibration impacts would be less than significant.

- c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?**

No impact.

⁴⁵ Federal Transit Administration (FTA). 2018. Transit Noise and Vibration Impact Assessment Manual. September.

⁴⁶ Federal Highway Administration (FHWA). 2006. Highway Construction Noise Handbook. August.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent billboards would be subject to environmental review prior to approval. Analysis specific to the construction of the proposed electronic billboard is discussed below.

Proposed Electronic Billboard

A significant impact would occur if the proposed project would expose people residing or working in the project area to excessive noise levels for a project located in the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport.

The project site is not located within the vicinity of a private airstrip. The closest airport to the project site is Frazier Lake Airport, located approximately 5.5 miles southeast of the project site. The project sites are also not located within the 65 dBA CNEL airport noise contours of any public or public use airport. As such, operation of the project would not expose people working at the project site to excessive noise levels associated with public airport or public use airport noise. Therefore, no impact related to exposure of persons residing or working at the project site to excessive noise levels associated with airport activity would occur.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.14 Population and Housing <i>Would the project:</i>				
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

Environmental Evaluation

Setting

According to the California Department of Finance, the City of Gilroy's estimated population for 2021 is 56,599.⁴⁷

Would the project:

- a) **Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?**

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not involve construction of homes or the extension of infrastructure. Therefore, the updated Ordinance would not induce population growth directly or indirectly. Therefore, no impact would occur.

Proposed Electronic Billboard

The construction of an electronic billboard would not involve construction of homes or the extension of infrastructure. Therefore, the proposed project would not induce population growth directly or indirectly. No impact would occur.

- b) **Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?**

No impact.

⁴⁷ Department of Finance. 2021. E-1 Population Estimates for Cities, Counties, and the State—January 1, 2020, and 2021. <https://dof.ca.gov/Forecasting/Demographics/Estimates/e-1/>. Accessed July 6, 2021.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere, and no impact would occur.

Proposed Electronic Billboard

The proposed electronic billboard would be located on a parcel designated as General Services Commercial. The parcel is currently used for truck trailer parking, auto repair businesses, and a gas station. No housing units exist on-site. Therefore, project implementation would not displace any existing housing or people or necessitate the construction of replacement housing elsewhere. No impact would occur.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.15 Public Services <i>Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:</i>				
a) Fire protection?	☐	☐	☒	☐
b) Police protection?	☐	☐	☒	☐
c) Schools?	☐	☐	☐	☒
d) Parks?	☐	☐	☐	☒
e) Other public facilities?	☐	☐	☐	☒

Environmental Evaluation

Setting

Fire services in the City of Gilroy are provided by the Gilroy Fire Department (GFD). Law enforcement services are provided by the City of Gilroy Police Department.⁴⁸ The project site is located within the Gilroy Unified School District. There are no fire, police, schools, or other public facilities located on the proposed electronic billboard project site.

Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

a) Fire protection?

Less than significant impact.

Proposed Electronic Billboard Ordinance

All electronic billboards approved under the proposed Ordinance would be constructed in conformance with the CBC, the California Electrical Code, and the California Fire Code in order to reduce potential fire hazards. The proposed Ordinance would not increase demand for fire protection and would not result in the need for new or physically altered facilities. Therefore, impacts would be less than significant.

⁴⁸ City of Gilroy. 2020. City of Gilroy General Plan—Public Facilities and Services. Page PFS-14-15.

Proposed Electronic Billboard

The GFD is located at 7070 Chestnut Street, approximately 1.2 miles north of the project site. Electronic billboards present a potential fire hazard due to thermal heat that accumulates in the screen system. Therefore, the proposed project may increase demand for fire protection at the project site. However, the proposed electronic billboard would be constructed in conformance with the most recently adopted California Building Code, California Electrical Code, and the California Fire Code, which would reduce potential fire hazards. As such, the proposed electronic billboard would not adversely impact service ratios, response times, or other GFD performance standards and thus, would not result in the need for new or expanded fire protection facilities. Impacts would be less than significant.

b) Police protection?

Less than significant impact.

Proposed Electronic Billboard Ordinance

As stated previously, the proposed Ordinance would not result in an increase in population and therefore, would not increase the demand for police protection. No impact would occur.

Proposed Electronic Billboard

The Gilroy Police Department is located approximately 1.6 miles northwest of the project site at 7301 Hanna Street. The proposed project would not result in an increase in population. Although the new electronic billboard could create a potential site for graffiti and a limited incremental increase in need for police services, impacts would be less than significant.

c) Schools?

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not directly or indirectly increase the population and, thus, would not increase demand for school facilities. Therefore, no impact would occur.

Proposed Electronic Billboard

The proposed project is served by the Gilroy Unified School District. The proposed project would not result in an increase in population, and thus would not result in an increased demand for school facilities. No impact would occur.

d) Parks?

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not directly or indirectly increase the population and thus, would not increase demand for parks or recreational facilities. No impact would occur.

Proposed Electronic Billboard

The proposed project would not result in an increase in population, and thus would not result in an increased demand for existing park facilities. Therefore, this project would not necessitate the construction of new parks facilities. No impact would occur.

e) Other public facilities?

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not directly or indirectly increase the population and, thus, would not increase demand for other public facilities. No impact would occur.

Proposed Electronic Billboard

The proposed project would not result in an increase in population, and thus would not result in an increased demand for other public facilities. Therefore, this project would not necessitate the construction of new public facilities. No impact would occur.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.16 Recreation				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?	☐	☐	☐	☒

Environmental Evaluation

Setting

The project site is located in an urbanized, developed environment that is adjacent to US-101. The closest park or recreational facility is Gilroy Sports Park, located approximately 0.6 mile from the project site.

- a) **Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?**

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not lead to an increase in population or long-term employment, and, therefore, the proposed project would not increase the use of existing neighborhood and regional parks or other recreational facilities. No impact would occur.

Proposed Electronic Billboard

The proposed project involves the construction of an electronic billboard in an industrial area. The proposed electronic billboard would not generate new residents that could increase the demand and use of nearby parks or recreational facilities. Thus, no impact would occur.

- b) **Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?**

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not result in any housing development and would not result in any long-term employment opportunities that would potentially increase the demand for recreational facilities and services. Therefore, the proposed project would not include recreational facilities or require the construction or expansion of recreational facilities. No impact would occur.

Proposed Electronic Billboard

As discussed above in Impact 2.16(a), the proposed project that would construct an electronic billboard in an industrial area. It would not generate new residents or create long-term employment opportunities that could increase the demand and use of nearby parks. Therefore, construction or expansion of recreational facilities would not be required. No impact would occur.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.17 Transportation <i>Would the project:</i>				
a) Conflict with a program plan, ordinance or policy of the circulation system, including transit, roadway, bicycle and pedestrian facilities?	☐	☐	☒	☐
b) Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?	☐	☐	☐	☒
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☒	☐
d) Result in inadequate emergency access?	☐	☐	☒	☐

Environmental Evaluation

Setting

The project site is between Automall Parkway and US-101 in the City of Gilroy.

Would the project:

- a) **Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The updated text would not involve changes in the existing environment. Analysis specific to the construction of the proposed billboard is discussed below.

Proposed Electronic Billboard

Construction-related traffic, including truck and construction worker trips, would be minimal and would not substantially affect traffic conditions during the short duration of project construction. A crane used for the construction of the proposed electronic billboard and other construction activities would be staged on the project site and would not affect the public right-of-way. Because the electronic billboard would not require manual change of images comparably to static billboards, it is anticipated that maintenance trips would be less frequent and of shorter duration. These trips would occur only as needed (less than once per month and likely only one vehicle). Therefore, the proposed project would not increase traffic congestion on the surrounding roadways or freeways or

affect level of service standards at nearby intersections and would not conflict with a program plan, ordinance or policy addressing the circulation system. Thus, impacts would be less than significant.

b) Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance (Article LV) would include new regulations related to electronic billboards while amendments to Code Sections 30.37.30 (Prohibited Signs), 30.37.50 (Commercial and Industrial Districts), and 30.37.51 (Freeway Oriented Signs) would allow electronic billboards in accordance with the new Ordinance. The proposed Ordinance would allow up to two electronic billboards within city limits. The proposed Ordinance would not directly or indirectly have an impact on transportation guidelines set forth in CEQA Section 15064.3, subdivision (b).

Proposed Electronic Billboard

According to CEQA Guidelines Section 15064.3, subdivision (b)(1), Vehicle Miles Traveled (VMT) exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within 0.5-mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease VMT in the project area compared to existing conditions should be considered to have a less than significant transportation impact. Because of the nature of the proposed project, there would be a negligible change in the traffic distribution over existing conditions. CEQA Guidelines Section 15064.3 subdivision (b)(2) focuses on impacts that result from certain transportation projects. The proposed project is not a transportation project. Therefore, no impact would occur.

CEQA Guidelines Section 15064.3 subdivision (b)(3) and (b)(4) focuses on the evaluation of a project's VMT. The only vehicle trips that would be generated would be those during construction of the new electronic billboard, which would involve negligible traffic, generated largely during off-peak hours. In terms of project operation, periodic maintenance would be required at the project site, which would also generate negligible traffic. As a result, the proposed project would not result in a conflict or be inconsistent with Section 15064.3 subdivision (b) of the CEQA Guidelines No impact would occur.

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

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not require the alternation or construction of existing roadways or driveways and, thus, would not have impact related to sharp curves or dangerous intersections. Therefore, impacts would be less than significant.

Proposed Electronic Billboard

The proposed project would not require the alteration or construction of roadways, and no impact related to sharp curves or dangerous intersections would occur. The proposed electronic billboard would be required to adhere to Caltrans Outdoor Advertising Act requirements and OAAA recommendations that govern illumination so as not to interfere with drivers' visibility. Furthermore, in accordance with the Ordinance, electronic billboards would have a required minimum distance of 1.5 miles between billboard construction sites. These requirements are designed to reduce hazards from electronic billboards to the drivers on the surrounding roadways at the project site. Thus, the impacts would be less than significant.

d) Result in inadequate emergency access?

Less than significant impact.

Proposed Electronic Billboard Ordinance

With adherence to procedures in the 2017 Santa Clara County Operational Area Hazard Mitigation Plan adopted by the City of Gilroy, the proposed project would not conflict with the General Plan safety policies. Therefore, impacts that would result in inadequate emergency access would be less than significant.

Proposed Electronic Billboard

The proposed electronic billboard would not block or interfere with emergency access. A crane used for the construction of the new electronic billboard would be staged on the project site and would not occur within public right-of-way. Additionally, with adherence to procedures in the 2017 Santa Clara County Operational Area Hazard Mitigation Plan, the proposed project would not conflict with the General Plan safety policies. Once the electronic billboard is operational, due to the nature of the project, the proposed electronic billboard would not have impacts related to emergency access. Therefore, no impacts would occur.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.18 Utilities and Service Systems <i>Would the project:</i>				
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	☐	☐	☐	☒
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	☐	☐	☒	☐
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	☐	☐	☒	☐
e) Comply with federal, State, and local management and reduction statutes and regulations related to solid waste?	☐	☐	☒	☐

Environmental Evaluation

Setting

The City of Gilroy provides water for residential, commercial, industrial, governmental, and fire suppression uses. The City owns, operates, and maintains its own water distribution system and relies solely on groundwater for its current supply.

The City of Gilroy also owns and operates the wastewater collection system that serves the City and discharges wastewater flows to the South County Regional Wastewater Authority (SCRWA) treatment plant located in the unincorporated area adjacent to the southerly city limits of the City.⁴⁹ In addition, the City owns and operates a single retention basin for its stormwater drainage system that serves the City.

⁴⁹ City of Gilroy. 2020. City of Gilroy 2040 General Plan—Public Facilities and Services. Page PFS-8.

For solid waste and recycling collection, material is briefly held at the San Martin transfer station until it is transported to a landfill or a material recovery facility.

Would the project:

- a) **Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?**

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not construct habitable structures, nor would it include the generation of solid waste or wastewater. The proposed Ordinance does not involve the generation or demand for a water supply. Therefore, no impact would occur.

Proposed Electronic Billboard

Stormwater runoff sheet flows to the street where it is collected by the local storm drain system. Construction and operation of the proposed electronic billboard would require minimal demand on water, wastewater, stormwater, and other facilities due to the nature of the project, short-term duration of construction activities, small area of the project site, and unchanged permeable surface area. Therefore, relocation or construction of these facilities would not be required.

The proposed electronic billboard would use electrical power service that is provided by PG&E. The proposed project would not involve the construction of habitable structures in which occupants would generate a demand water and electricity or generate wastewater.

Furthermore, the proposed project is located on a developed site that already has electrical lines along Automall Parkway/Chestnut Street. Therefore, electrical lines and connections would not be constructed off-site. The proposed electronic billboard would be installed pursuant to current electrical codes, including Title 24 of the State Building Code. These standards would ensure that electrical energy would be used efficiently. No new or expanded electrical, natural gas, or telecommunications facilities would be required as a result of the proposed project. Thus, no impact would occur.

- b) **Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not generate demand for water. Therefore, no impact would occur.

Proposed Electronic Billboard

The proposed project would not create a demand for water during its operation. As previously mentioned, the proposed project would not construct habitable structures in which occupants would use water supplies. Construction and operation of the proposed project would not result in existing water systems exceeding capacity during normal, dry, or multiple dry years or require the construction of new facilities or expansion of existing facilities. Impacts would be less than significant.

- c) **Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?**

No impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not generate demand for wastewater services and would not require the construction of or the expansion of new wastewater treatment facilities. Therefore, no impact would occur.

Proposed Electronic Billboard

The proposed project would not generate wastewater during its construction or operation. Therefore, the proposed project would not generate demand for wastewater services and would not require the construction of new wastewater treatment facilities or expansion of existing facilities. Thus, no impact would occur.

- d) **Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would not generate excess solid waste or impair the attainment of solid waste reduction goals. Therefore, no impact would occur.

Proposed Electronic Billboard

The proposed project would generate construction debris. The San Martin transfer station accepts construction debris. Minimal solid waste would be generated during operation at the project site. AB 939, the Integrated Waste Management Act, requires a 50 percent of diversion of solid waste from landfills. The Santa Clara Integrated Waste Management Plan is consistent with AB 939 with the countywide goal to be reduced by 50 percent. Additionally, Recology South Valley collects and then transfers solid waste and recyclables to the San Martin transfer station. The transfer station would have sufficient capacity to receive solid waste materials that are diverted for resource recovery. Total capacity for the John Smith Road Landfill in the City is 9.3 million cubic yards, as of 2018, the remaining capacity was 3.5 million cubic yards. The maximum permitted tonnage per day at the landfill is 1,000 tons. Therefore, through compliance of AB 939, the proposed project would not

generate excess solid waste or impair the attainment of solid waste reduction goals during construction and operation. Impacts would be less than significant.

- e) **Comply with federal, State, and local management and reduction statutes and regulations related to solid waste?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

The proposed Ordinance would be consistent with policies and actions stated in the Gilroy 2040 General Plan Public Facilities and Services Element. Therefore, impacts related to compliance with federal, State, and local management and reduction statutes and regulations would be less than significant.

Proposed Electronic Billboard

Solid waste disposal would follow the requirements of the franchised waste hauler (Recology South Valley), which must adhere to federal, State, and local statutes and regulations related to the collection of solid waste. As discussed above, the proposed project would comply with all State and local waste diversion requirements such as AB 939, AB 341, and SB 1016. The proposed project would also be consistent with policies and actions stated in the Gilroy 2040 General Plan Public Facilities and Services Element and the Gilroy Municipal Code regarding solid waste collection and disposal. As such, impacts would be less than significant.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.19 Wildfire <i>If located in or near State Responsibility Areas or lands classified as very high fire hazard severity zones, would the project:</i>				
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	☐	☐	☒	☐
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	☐	☐	☒	☐
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	☐	☐	☒	☐
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	☐	☐	☐	☒

Environmental Evaluation

Setting

According to the California Department of Forestry and Fire Protection (CAL FIRE), the City of Gilroy is not identified as a Very High Fire Hazard Severity Zone (VHFHSZ).⁵⁰ The City of Gilroy is identified as a Local Responsibility Area (LRA) and a Non-VHFHSZ.

The City of Gilroy 2040 General Plan discusses that the City is susceptible to wildfires in the “wildland-urban interface” areas of Gilroy and could lead to heavy smoke conditions that may require emergency management.⁵¹ The City actively participates in maintenance protocols outlined in the 2017 Santa Clara County Operational Area Hazard Mitigation Plan.⁵²

Would the project:

⁵⁰ California Department of Forestry and Fire Protection (CAL FIRE). 2007. Santa Clara County–Fire Hazard Severity Zones in SRA. Website: https://osfm.fire.ca.gov/media/6766/fhszs_map43.pdf. Accessed July 7, 2021.

⁵¹ City of Gilroy. 2020. Gilroy 2040 General Plan, Potential Hazards. Page PH-8-9.

⁵² Santa Clara County. Santa Clara County Operational Area Hazard Mitigation Plan. 2017.

a) Substantially impair an adopted emergency response plan or emergency evacuation plan?**Less than significant impact.****Proposed Electronic Billboard Ordinance**

The proposed Ordinance would include electronic billboard regulations for height, sign area, and permitted locations. The proposed amendment would not substantially impair an adopted emergency response plan or emergency evacuation plan. Thus, no impact would occur.

Proposed Electronic Billboard

According to CAL FIRE's Fire Hazard Severity Zones map, the proposed electronic billboard would be located in an LRA. During construction, it is expected that construction equipment and vehicles would be accessing and leaving the project site, which could potentially impede evacuation or emergency vehicle access. The Gilroy 2040 General Plan does not identify any wildfire evacuation plans. US-101 would also serve as an evacuation route in case of emergency. Given there are several alternate routes that provide access to US-101, construction of the proposed project would not impede the evacuation route.

With adherence to procedures in the 2017 Santa Clara County Operational Area Hazard Mitigation Plan, the proposed project would not conflict with the Gilroy 2040 General Plan safety policies. During operation, the proposed electronic billboard would not impair an adopted emergency response plan or emergency evacuation plan. Therefore, impacts related to emergency response and evacuation would be less than significant.

b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?**Less than significant impact.****Proposed Electronic Billboard Ordinance**

Regulations resulting from the proposed Ordinance would not exacerbate wildfire risks and, therefore, no impact would occur.

Proposed Electronic Billboard

The project site is not located in or near any a State Responsibility Area or a VHFHSZ. The area surrounding the project site is mostly industrial. The project site is surrounded by urban development and is relatively flat. The project site does not have steep terrain or any unmanaged open space area that would be prone to wildfires.

The 2017 Santa Clara County Operational Area Hazard Mitigation Plan indicates the western hillside area of the City is subject to special development controls that would help reduce potential loss of life and property in the event of a wildfire. However, the proposed electronic billboard would be

located in the eastern portion of the City, which is less susceptible to wildfires, and would not be required to adhere to these development controls.

In addition, the project site has not previously experienced wildfire. Given that the project site is not located in or near an area of steep terrain, the project site would not be prone to greater wildfire risk. Therefore, impacts would be less than significant.

- c) **Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?**

Less than significant impact.

Proposed Electronic Billboard Ordinance

Regulations resulting from the proposed Ordinance would not require the installation or maintenance of associated infrastructure that may exacerbate fire risk or result in temporary or ongoing environmental impacts. Therefore, no impact would occur.

Proposed Electronic Billboard

The proposed project would not involve the installation of new roads or power lines. The proposed electronic billboards could include the installation of new utility lines such as electric. These utility lines would be located below ground surface on-site, which would reduce fire risk. Thus, impacts would be less than significant.

- d) **Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?**

No impact.

Proposed Electronic Billboard Ordinance

Regulations resulting from the proposed Ordinance would not expose people or structures to significant risks, including flooding or landslides. Therefore, no impact would occur from the proposed Ordinance.

Proposed Electronic Billboard

The project site is located within a flat, urbanized area and is not susceptible to landslides or flooding. The project site is located in Flood Zone AH—which according to FEMA, refers to areas subject to inundation by 1 percent annual chance shallow flooding where average depths are between one and three feet.⁵³ Therefore, the proposed project would not expose people or structures to significant risks as a result of runoff, post-fire slope instability, or drainage changes. No impact would occur.

⁵³ Federal Emergency Management Agency (FEMA). 2020. National Flood Hazard Layer FIRMette—06085C0756H. Website: https://msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl_print/mscprintb_gpserver/jc95f026426cf4460928a50ad24e1e9bf/scratc/FIRMETTE_b1949961-55dc-48d7-9452-5b67a8332148.pdf. Accessed August 11, 2021.

Mitigation Measures

None required.

Environmental Issues	Potentially Significant Impact	Less than Significant Impact with Mitigation Incorporated	Less than Significant Impact	No Impact
2.20 Mandatory Findings of Significance				
a) Does the project have the potential to substantially 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, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	☐	☒	☐	☐
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)?	☐	☒	☐	☐
c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☒	☐	☐

Environmental Evaluation

- a) **Does the project have the potential to substantially 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, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?**

Less than significant impact with mitigation incorporated. The proposed Ordinance would only relate to new electronic billboard requirements and regulations. The Ordinance would not involve changes to the existing environment and subsequent electronic billboards would be subject to environmental review prior to approval. As related to the proposed electronic billboard, as described in Section 2.4, Biological Resources, the proposed project would not result in significant environmental impacts to wildlife or plant species. There are no known special-status species on the billboard construction site, though this analysis provides for mitigation in the event any nests are encountered and to avoid impacts on the Princeville Channel. The proposed project would be compliant with the SCVHP and required mitigation.

In addition, the proposed project would not adversely affect geology/soils or hydrology/water quality in any significant matter. The project includes mitigation and avoidance measures to reduce construction-related impacts related to historical and archaeological resources. Therefore, with

implementation of mitigation measures referenced the proposed project would not substantially degrade the quality of the environment at a project- or cumulative-level in terms of biological resources, geology/soils, hydrology/water quality, or cultural resources.

- 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)?**

Less than significant impact with mitigation incorporated. The combined effects of past, current, and future projects in the project area in combination with the proposed project—proposed Ordinance and installation of a new electronic billboard in an urban area of the City—would not result in significant cumulative impacts.

Operation of the proposed project would involve the display of messages on a two-sided electronic billboard near US-101. Operation entails no noise production, minimal maintenance traffic, and no emissions. The project’s lighting would have the potential to cumulate with other reasonably foreseeable projects, but the proposed project’s lighting specifications (limiting operation to a maximum of 0.3 foot-candle at 250 feet) takes account of existing ambient lighting. Moreover, the brightness of the LED sign faces would be dimmable to reflect ambient light conditions. Separately, there are no reasonably foreseeable development projects in the immediate vicinities of the project site that would have lighting impacts that could cumulate with the proposed project’s lighting.

With respect to electricity usage, the LED lighting used in the proposed billboard would meet Title 24 requirements for energy efficiency. While the signs electricity usage is associated with off-site emissions where power is generated, the Draft IS/MNDs analysis of greenhouse gases demonstrate the proposed project falls well below applicable BAAQMD thresholds, which account for cumulative impacts of climate change. Therefore, the proposed project, because of its size and utilization of energy-efficient lighting, would not make a cumulatively considerable contribution to cumulative GHG emissions or result in an overall impact to local and regional levels of GHG emissions.

With respect to construction, the construction activities necessary to construct the electronic billboard, would require very little equipment and would have a construction timeframe of four weeks. However, as detailed in this Draft IS/MND, equipment related to construction would result in dust, noise, risks related to the handling of hazardous materials, and potential impacts to cultural resources. Accordingly, the proposed project includes BAAQMD-recommended mitigation and avoidance measures (MM AIR-1) to reduce temporary, construction-related impacts related to air quality. This measure ensures not only that the proposed project, individually, would not have a significant impact, but that it would not make a considerable contribution to any cumulative impact. The proposed project does not contemplate activities within close proximity of any reasonably foreseeable construction projects (i.e., at least 1,000 feet), and so the potential for cumulative impacts to occur is low to non-existent. Therefore, with implementation of the foregoing mitigation measures, the proposed project would not result in adverse impacts at a project- or cumulative-level in terms of air quality or GHG emissions.

- c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?

Less than significant impact with mitigation incorporated.

As detailed throughout this Draft IS/MND, most environmental impacts were determined to be less than significant. Some mitigation measures were identified in order to bring direct and indirect impacts to human beings to less than significant levels. In addition to MM AIR-1 discussed above which would reduce construction impacts related to air quality, the proposed project would include MM AES-1 to minimize light and glare and traffic hazards for vehicle drivers along US-101. With the incorporation of mitigation measures, the proposed project would not make sizable contributions to aesthetics, air quality, biological resources, or cultural resources. In addition, the proposed project would not affect geology/soils, hydrology, noise, greenhouse gas emissions, land use, transportation, public services, utilities, wildfire, recreation, hazards and hazardous materials, mineral resources, agriculture/forestry resources, or population/housing balance. The proposed project would not cause direct or indirect substantial adverse effects on human beings at a project- or cumulative-level in terms of any of the listed environmental checklist items evaluated in this Draft IS/MND.

Mitigation Measures

Refer to mitigation identified for Aesthetics, Air Quality, Biological Resources, and Cultural Resources.

SECTION 3: LIST OF PREPARERS

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Appendix A: Proposed Electronic Billboard Ordinance

Appendix B: Air Quality, Greenhouse Gas Emissions, and Energy Analysis Supporting Information

Appendix C: Biological Resources Analysis Supporting Information

Appendix D: Cultural Resources Analysis Supporting Information

Appendix E: Paleontological Resources Analysis Supporting Information

Sharon Goei

From: Mike Conrotto <conrottomike@gmail.com>
Sent: Thursday, December 8, 2022 3:33 PM
To: Sharon Goei
Cc: Cindy McCormick
Subject: EXTERNAL - Electronic Billboard Project
Attachments: Electronic Billboard Project PROS.pdf

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello Sharon,

Would you please forward a copy of the attached document (Pros for Electronic Billboard Ordinance Project) to each of the 7 Planning Commissioners?

Thank you so much,

Mike Conrotto
408-691-7775

PROS for Electronic Billboard Ordinance Project

1. Electronic billboards are proven to generate more sales for businesses who advertise on them.
2. It will provide an opportunity for local businesses to advertise in a professional way to a wider, more diverse audience. When local businesses (ie. car dealers) do well, it benefits the entire community, as sales tax goes right back to the city... thriving businesses = a better community for us all.
3. This electronic billboard will be a cleaner, more professional design than the many traditional billboards and haphazard notices posted around the region.
4. The modern design will include the name of the City of Gilroy, bringing recognition and pride of identity to the community.
5. NO cost to the City of Gilroy to build or operate the sign.
6. City of Gilroy will receive free advertising on the sign, and will actually generate revenue from the sign (% of gross sales).
7. Arguments against the sign stating that only the billboard company will gain are FALSE! The City of Gilroy, multiple local businesses and event organizers will benefit.
8. Special Events (ie. fairs, festivals, rodeos etc.) will be better advertised than by traditional methods (ie. small posters/paper flyers).
9. One electronic billboard is better for the environment than hundreds or thousands of paper ads that get thrown away becoming litter and/or landfill.
10. Sign can be utilized for state and regional **Amber Alerts and Emergency Messaging**.
11. It will NOT contribute to light pollution as opponents claim. Located along the highway, in a commercial zone, light emitted will be adaptive based on time of day, and will not affect any residential areas adversely.
12. Environmental study concluded there will be NO negative effects on local ecosystems or wildlife.
13. Opponents have argued an electronic billboard would change the architectural integrity, historic character and natural environment... The requested location of the sign would make the community look more modern and relevant, while drawing the eye away from the degradation caused by a roaming transient population and paper/plastic trash.
14. The following cities in the Bay Area have successful digital sign programs: Santa Clara, Milpitas, San Carlos, Belmont, Millbrae, South San Francisco, Oakland, Hayward, Martinez, Fairfield, Berkeley, San Pablo, Dublin, Benicia, and Alameda County.
15. Many of the opponents of the sign are not residents of Gilroy or the surrounding area.

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September 29, 2022

VIA ELECTRONIC MAIL

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Re: Response to Comments on MND for Outdoor Advertising Display 6490 Auto Mall Parkway

Dear Mr. Faber and Ms. Houston:

We have prepared, with the assistance of lighting and other experts on the applicant team, the following responses to the comments submitted on the Mitigated Negative Declaration for the Electronic Billboard Ordinance Project:

	Comment	Response
	A. John Miller (March 30, 2021)	
1	My name is John Miller. I am a member of the Steering Committee of No Digital Billboards in San Jose, a grass roots organization opposing the erection of digital billboards in that city.	The comment does not question the content or conclusions of the Electronic Billboard Ordinance Project ("Project") Initial Study/Mitigated Negative Declaration ("MND"), so no response is warranted. As explained in detail below, Project MND fully complies with all applicable requirements of the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.).
2	I'm emailing you as an individual after being informed that Gilroy is considering negating its prohibition on off-premise advertising to allow for the erection of digital billboards.	The comment does not question the content or conclusions of the MND, so no response is warranted.

Mr. Andrew Faber
 Ms. Jolie Houston
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3	While I fully understand the decision to allow digital billboards in Gilroy should be decided by the proper authorities in Gilroy, I believe you will benefit from the information No Digital Billboards in San Jose has made public after an exhaustive review of the proposal to bring digital billboards to San Jose. Accordingly, with your approval, I will be happy to forward documents relevant to this issue.	The comment does not question the content or conclusions of the MND, so no response is warranted.
4	In the meantime, it is important to understand that the erection of digitals never comes from citizens but always from the billboard lobby because digital billboards return a much greater profit to billboard companies than do conventional paper billboards. This is all about money. Billboard company money.	The comment does not question the content or conclusions of the MND, so no response is warranted.
5	Digital billboards are much more intrusive and unavoidable than conventional billboards. They can't be ignored and even a few will change the aesthetics of the community.	The Aesthetics chapter of the MND analyzed the impact of the digital billboard on scenic vistas, scenic resources, and day or nighttime views due to a new source of substantial light. Under the thresholds of significance related to aesthetics, only in non-urbanized areas does a project have a significant aesthetic impact if it would substantially degrade the existing visual character area. If the project is in an urban area, it does not have a significant impact if the project is consistent with applicable zoning and other regulations governing scenic quality. Because (1) installation of billboards would not be allowed in non-urbanized areas; (2) the proposed billboard would comply with design standards set forth in the proposed Electronic Billboard Ordinance; and (3) the proposed billboard would be one-sixth as bright as allowable state brightness maximums set forth in illumination intensity standards found in state law, impacts would be less than significant. Please see the March 21, 2021 Letter from the applicant re Outdoor Advertising Display 6490 Auto Mall Parkway, which addresses brightness standards, as well as its attachments, all of which are incorporated herein by this reference. Substantial evidence shows that digital billboards are in fact less obtrusive than traditional displays, as digital billboards have superior technology that directs light at limited audiences (here, motorists). By contrast, traditional displays are illuminated by reflecting

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		light sources of the display's facings, at levels that are 31 to 212 brighter than LED bulbs. Additionally, with adoption of mitigation measure AES-1, which requires the City Community Development Department to review and approve the signs' operational lighting parameters to ensure a driver would not be adversely affected or impacts by trespass glare, the Project would have a less than significant impact.
6	Digital billboards increase profits for billboard companies but on private property they produce no revenue for city government. The city would be lucky if annual permit fees covered the cost of administering digital billboards.	Economic impacts are not significant environmental impacts under CEQA. 14 Cal. Code Regs. §15131.
7	Digital billboards primarily help big national companies like CitiBank and Verizon not local businesses who have to compete with these national advertisers which are preferred customers of the billboard companies.	The comment does not question the content or conclusions of the MND, so no response is warranted.
8	But even if local auto dealers obtained advertising on digital billboards how is that a benefit to the people of Gilroy, who as a result, will experience a degradation of the city's architectural integrity, historic character and natural environment?	As discussed in Response A5 above, the MND determined that, with mitigation, the Project would not have a significant aesthetic impact. Additionally, the Cultural Resources and Tribal Cultural Resources section of the MND determined that the Project will not have a significant impact on historic resources, including architecturally significant structures. The billboards would not be located in a historic district, and there are only two recorded historical resources within a 0.5-mile radius of the project area. Rather, the sign would be constructed in a parking lot where vehicle are stored, adjacent to automobile-related businesses (including a Tesla dealership, Buick GMC dealership, auto repair business, fueling stations, and similar uses, as well as amid numerous, similar illuminated signs and freestanding lights; see next section for further discussion of baseline conditions). The Project site is a non-sensitive, commercial portion of the City that is compatible with the proposed structure. As a result, the likelihood of the Project to have an adverse effect on historic resources is low.

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9	The light from digital billboards harms wildlife,	The Biological Resources section of the MND reviewed the impacts of the light from the digital billboard on wildlife and determined that, with mitigation incorporated, there would be no significant impact. Under the CEQA thresholds of significance, a substantial adverse effect on a species protected by the California Department of Wildlife or United States Fish and Wildlife Service amounts to a significant impact. Only one special status species has the potential to occur within the project site, the white-tailed kite. Per the MND, there is marginal nesting habitat near the proposed display and potential foraging habitat located more than 800 feet to the northeast. During an August 2021 field survey, the nearest recorded occurrence of the white-tailed kite to the project site was 2.6 miles away. While it is true that migrating birds can be affected by artificial light, the MND determined that the proposed electronic billboard would not create a substantial change in illumination levels due to baseline light sources. The baseline light sources in the project area, which sits adjacent to an interstate highway, are numerous, including local street lighting, parking lot lighting, interior lights, other illuminated billboards at nearby auto dealerships and other commercial businesses, headlights from automobile traffic, and highway lighting structures. CEQA requires an evaluation of impacts relative to baseline conditions, not relative to a hypothetical dark, undegraded condition that does not exist at the project site. 14 Cal. Code Regs. §15125(a). In addition, the billboard would be operated at one-sixth the illumination intensity standards in the California Outdoor Advertising Act and Vehicle Code. Specifically, the display would be limited to a maximum light output level of 0.3 foot-candle¹ at 250 feet from the billboard above
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¹ Foot candle is the amount of light a single candle makes at a distance of 1 foot (see Attachment E), and so a 0.3 change in foot candle would be 30 percent of the light one would experience at 1 foot away from a candle. To apply this in a real-world example, if a person in the dark cabin of an airplane, sitting four rows in front of you in an aisle seat, opened

		ambient conditions,² which is equivalent to 300 nits, a significantly more conservative lighting intensity standard for electronic billboards of than the State maximum of 1,713 nits. (Please see the MND and the applicant's March 21, 2021 letter to the City). At this lighting level, light cast beyond 250 feet would not register on a light meter, ensuring the proposed display does not make a considerable contribution to any lighting impact. Please note further that birds have co-existed with the existing urban landscape, including the myriad of illuminated signs, parking lot lights, vehicle headlights (which move at variable rates of speed), and other sources of illumination for a very long time in the project vicinity. The addition of a digital sign would not affect the status quo, and, in fact, digital billboards are <i>less impactful</i> than static light sources for the following reasons: • Studies show that birds are attracted to fixed lights, and the billboard would not constitute a fixed light, but would change its messaging every 8 seconds. message (and thus varying its light profile). Steady-burning red lights that result in the greatest impacts to bird species, and the outdoor advertising display would have a wide diversity of copy and it would never be the case that the display would broadcast uninterrupted light of any hue.³
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a Word document on a 17" laptop, you would experience a 0.3 foot candle increase in light.

² The project's technology is able to tether lighting levels to ambient conditions through the use of a photocell that measures ambient light. Simply, cloudy days will register a lower ambient light level than sunny days on the photocell, and dusk and dawn lighting levels are also traceable. These values read back to the display, and light output is adjusted automatically and accordingly. In addition to this function, the applicant maintains a "watchdog" program that update the dusk and dawn times each day based on the display's longitude and latitude. After dusk, the watchdog records and fixes the light output at the nighttime level and, if the sensor on the display attempts to communicate bright ambient conditions (e.g., a nighttime event with other illumination sources occurs in the parking lot), the display will ignore the high feedback from the sensor.

³ See Jones, J., and C. M. Francis. 2003. The effects of light characteristics on avian mortality at lighthouses. *Journal of Avian Biology* 34(4): 328-333; Gauthreaux, S. A., and C. G. Belser.

		The applicant's lighting expert has evaluated the project and can confirm the sign will lose luminance and visibility above 14 degrees and, coupled with the horizontal viewing angle of approximately 40 degrees, the viewing angle of the sign will be narrow enough to preclude attracting birds on clear nights, when they fly high enough to be outside the viewing angle of the sign. Even at 250 feet nearer to the ground, where light levels would not exceed 0.3 foot candles, the billboard would produce a peak value of 27 cd/sq. ft. By comparison, a full moon at its brightest generates about 232 cd/sq. ft. All of this assumes the display would broadcast a solid white background, where in practice advertisements contain a variety of colors. It is important to appreciate that this analysis is conservative. To the extent studies have been conducted with respect to lighting impacts on avian species, they appear to have contemplated environments with little ambient light other than the source studied (e.g., lighthouses along unlit shorelines, towers in rural areas, towers with lights 116-305 meters above the ground). A critical difference is that the location of the project here is in an area with dozens of light sources on the same scale, including without limitation dozens of parking lot lights, an existing illuminated Caltrans sign, illuminated signage from surrounding businesses, and a fairly constant stream of vehicle headlights on the adjacent highway.
10	keeps light-sensitive people from driving and causes traffic accidents for those who do.	Please see response to Response A9, incorporated herein. Furthermore, the transportation section of the MND evaluated the Project's impacts on traffic hazards and determined there would be a less than

2006. Effects of artificial night lighting on migrating birds. Pages 67-93 in Rich, C., and T. Longcore, editors. Ecological Consequences of Artificial Night Lighting. Covelo, CA: Island Press; and Gehring, J., P. Kerlinger, and A. Manville II. 2009. Communication towers, lights, and birds: Successful methods of reducing the frequency of avian collisions. Ecological Applications 19(2): 505-514.

		significant impact. Under the thresholds of significance for traffic hazard, a project only causes a significant impact if it would conflict with a program plan, ordinance or policy addressing the circulation system, be inconsistent with CEQA's transportation guidelines, substantially increase hazards due to a geometric design feature or incompatible uses, or result in inadequate emergency access. The Project does not exceed these thresholds. The electronic billboard would not interfere with drivers' visibility because it would be required to adhere to California Outdoor Advertising Act requirements and the Outdoor Advertising Association of America ("OAAA") recommendations that govern illumination. California law. The OAAA allow LED billboards to operate at a minimum dwell time of four seconds. Studies from the Federal Highway Administration ("FHWA") and other experts have determined that a dwell time of eight seconds does not adversely impact road safety. Please see Letter From Project Applicant re Outdoor Advertising Display 6490 Auto Mall Parkway (March 21, 2021), pp. 5-6 and attached materials, incorporated herein by this reference. Furthermore, the proposed electronic billboard would have a required minimum distance of 1.5 miles from other billboards consistent with local ordinance, reducing hazards from electronic billboards to the drivers on the surrounding roadways at the project site. Please note that State law only requires there exist 1,000 feet between electronic displays. Substantial evidence demonstrates that the proposed electronic display would not have significant impacts on safety.
11	They brighten the night sky and interfere with the work of Lick Observatory on Mt. Hamilton.	The Project's impact on Lick Observatory is not an environmental impact under CEQA. Additionally, the MND concluded that the proposed electronic billboard would not create a substantial change in illumination levels due to baseline light source. The Project commits to a maximum ambient light output level of a 0.3 foot-candle at 250 feet from the billboard, meaning at 250 feet, light from the sign is generally not perceptible, and does not register on a light meter. Please see Letter From Project

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		Applicant re Outdoor Advertising Display 6490 Auto Mall Parkway (March 21, 2021) and Attachment A thereto, incorporated herein. Accordingly, the light contribution from the proposed display would not cumulate with other sources to produce a significant impact. Additionally the perceptible vertical light footprint rises to a height of about 85 feet. At a distance of 25 miles from the city of Gilroy, the Lick Observatory operations will not be impacted by the Project. The billboard also reduces light pollution and glare by angling each of the individual LEDs downwards towards motorists, in contrast to a traditionally illuminated display that creates more significant sky glow and illuminates copy by reflecting light off display facings at a brightness level of 31 to 312 times greater than the brightness of LED displays. Letter From Project Proponent re Outdoor Advertising Display 6490 Auto Mall Parkway (March 21, 2021), p. 2.
12	Digital billboards use tremendous amounts of energy, cause greenhouse gases and generate e waste.	The Utilities and Service Systems section of the MND determined that the Project would have no significant impact related to use of electrical power because the Project would not require the relocation or construction of new electrical power facilities. The billboard would be installed pursuant to current electrical codes, including Title 24 of the State Building Code. These standards would ensure that electrical energy would be used efficiently. The Greenhouse Gas Section of the MND finds that the Project would have a less than significant impact. Operation of the Project is expected to emit only 6 MT CO₂e per year. This is far below the 660 MT CO₂e per year threshold of significance. In the Hazards and Hazardous Materials section, the MND explains that the Project will not generate any electronic waste. A digital billboard with two displays consumes approximately 40,000 to 48,000 kilowatt hours (kWh) per year, whereas the average United States home conserves approximately 11,000 kWh annually (the 52,400 kWh usage cited in the MND is based on older technology). Accordingly, substantial evidence supports a determination the proposed display would not have a significant impact with respect to energy consumption.

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13	Digital billboards lower property values and invite litter and graffiti.	There is no evidence that digital displays invite blight, and the Project site is located on a fenced, maintained commercial business. Moreover, social and economic impacts are not significant environmental impacts under CEQA. 14 Cal. Code Regs. §15131. Any impact to property values, litter, or graffiti fall within the category of social and economic impacts that do not require consideration under CEQA. "Argument, speculation, unsubstantiated opinion or narrative, ... does not constitute substantial evidence" of a significant impact under CEQA. 14 Cal. Code Regs. § 15384. The commenter's opinion that the Project may cause lower property values, litter, and graffiti is highly speculative, and does not require CEQA consideration on that basis as well.
14	Digital billboards are a parasite on the roads and highways taxpayers pay for and they don't. Unlike other highway users, billboard companies do not pay a user fee to maintain the public right of way without which billboards have no value. On the roads the public pays for, will the Gilroy City Council turn its constituents into a captive audience forced to see advertisements they can't ignore? It's like forcing them to pay for only one cable channel that shows only commercials but no programs.	The comment does not question the content or conclusions of the MND, so no response is warranted.
15	Once billboards are erected they are almost impossible to take down thanks to a state law requiring their removal be "compensated" by cash payments to the billboard company for future lost earnings. Put up digital billboards today and they will remain in place for decades...City leaders should think about that, for if they allow digitals, it will constitute their legacy.	The comment does not question the content or conclusions of the MND, so no response is warranted.
16	Why should the city of Gilroy cater to the desire of the billboard industry to erect profitable digital billboards while externalizing all costs to the taxpayer?	Economic impacts are not significant impacts under CEQA. 14 Cal. Code Regs. §15131. As a result, comments related to the taxpayer cost of the Project do not require a response. Regardless, the proposed Project affords the community benefits through the negotiated development agreement between the City and the applicant, including free public messaging space and financial benefits. There are no costs

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		to taxpayers, as the applicant is responsible for maintaining the display through the term of its operation.
17	Think you can allow only a few digital billboards? Once in the door, billboard companies will litigate against restrictions as a cost of doing business. Los Angeles is a good example. Here is a link https://www.latimes.com/opinion/editorials/la-ed-billboard-ordinance-20170605-story.html . In San Jose, the erection of illegal billboards has already tied up the city in costly court battles that a billboard companies knows it can't win but pursues to generate revenue during protracted litigation. Here's a link https://sanjosespotlight.com/battle-over-billboards-san-jose-faces-lawsuit-pushback-on-proposed-changes/ And in San Mateo, the city attorney predicts billboard-sponsored litigation may be in the cards if the city pursues its hastily concocted plan to allow digitals only on public property. https://www.smdailyjournal.com/news/local/san-mateo-considers-ads-on-city-buildings-and-billboards/article_bb9b96c4-2aef-11eb-a5f1-476100872817.html	The applicant has worked collaboratively with City staff in proposing the Project. This comment's claims that approval of the digital billboard will result in billboard companies bringing litigation in the City are not substantiated by evidence, and such claims are based on unrelated circumstances. "Argument, speculation, unsubstantiated opinion or narrative, ... does not constitute substantial evidence" of a significant impact under CEQA. 14 Cal. Code Regs. § 15384. It bears mention that the commenter has not faithfully communicated the facts of the San Jose matter. It was a private property owner that illegally constructed a sign near the interchange of Highways 101 and 80 in San Jose — not a sign company — and that sued the City. (See Attachment A, a March 17, 2021 article from the San Jose Spotlight that reports on the lawsuit.) Outfront adamantly opposed the illegal construction of this sign in the City of San Jose, and in January 2019 notified the California Department of Transportation about its construction and encouraged the State to investigate and take appropriate action to discourage this activity (see Attachment B, hereto.) The comment does not question the content or conclusions of the MND, so no response is warranted.

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18	In my view, there are no compelling reasons for ending the current restrictions on billboards in Gilroy. Doing so does not provide substantial benefits to the citizens and taxpayers of your community. Clearly, this proposal is a violation of best practices in city governance, urban planning and responsiveness to preservation and environmental values overwhelmingly subscribed to by the majority of the public. The only beneficiaries of this proposal will be the billboard companies themselves. So the question is why even consider spending staff time to prepare for the erection of digital billboards without alerting the community in advance and seeking the voters' opinion? In San Jose, voters were most upset that city council members and city staff met with billboard lobbyists over 50 times and as a result spent hundreds of thousands of taxpayer dollars greasing the skids to allow digital billboards in San Jose before informing the public. Better to actively seek constituent input before making such a commitment. Need less to say, if I can provide you with the information I mentioned previously, or answer any questions, do not hesitate to contact me. Thank you for your attention.	The allegations that the City has not sought public input is incorrect. Through the MND process, the City has sought comments and input from members of the public and public agencies. Additionally, the City will hold a public hearing where it will listen to constituent input before making a final decision on the Project. Insofar as the commenter alleges the Project is contrary to best urban planning processes, the Project site is located in an automobile row where there exist many lights and signage, and it is important that cities concentrate such activities in this manner and not, for instance, locate them in residential areas. The Project therefore implements good urban planning practices, and the MND confirms less-than-significant land use impacts would result. With respect to community benefits, there are significant community benefits, including public messaging time and financial benefits, set forth in the Project Development Agreement. On the whole, the comment does not question the content or conclusions of the MND, so no additional response is warranted.
	B. John Miller (April 2, 2021)	
1	The San Jose Planning Department has just posted a survey of over 2,000 people regarding their position on digital billboards. You can find the results here https://www.sanjoseca.gov/home/showpublisheddocument?id=70836 I copied below some of the most impressive findings.	Opinions from anonymous residents of the City of San Jose related to their opposition to billboards is not relevant in the determination if a digital billboard in Gilroy will have a significant environmental effect. Speculative lay testimony that is not based in fact is not substantial evidence of a significant impact on the environment. 14 Cal. Code Regs. § 15384. It is also relevant that the City of San Jose considered the results of this survey and still approved two outdoor advertising digital billboards on Norman Y. Mineta San Jose International Airport premises.
	C. Dan Graeber (August 12, 2022)	
1	Please do not vote for the electronic bill board they will be a major eye sore sucking up valuable electricity. Our city is not in Las Vegas and does not need the bright lights.	For a discussion of the Project's energy use, see Response A12. For a discussion of the Project's impacts on aesthetics, see Response A5.

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2	Plus with the bright lights it will be tough for the homeless to sleep at night.	The MND determined that the proposed electronic billboard would not create a substantial change in illumination levels because of the preexisting baseline light source. As a result, the billboard would not have an impact on the area's homeless population. The Project site is a fenced, maintained business, and substantial evidence demonstrates that light emitted from the display would not register on a light meter at a distance of more than 250 feet. For further discussion of the Project's impacts on aesthetics, see Response A9.
	D. Michelle Maquinalez (August 15, 2022)	
1	Hello I'm writing about the proposed billboards. I don't believe they are worth our hard earned money just like the other Starbucks that is being built. Why not bring in something new/different instead of another Starbucks. Also the curb by the new Starbucks on first street at the station that continues to damage numerous tires and rims because of poor planning/construction needs to be repaired.	The comment does not question the content or conclusions of the MND, so no response is warranted.
	E. John Miller (August 14, 2022)	
1	I am writing in opposition to the proposal to revoke the ban on off-premise advertising and allow the construction of electronic billboards in Gilroy. This is an incredibly shortsighted and just plain bad idea that the city will end up regretting. Let us review the reasons why:	This comment contains general statements which do not warrant a response.
2	There is no public outcry in favor of revoking the existing ban. The only proponents of this scheme are some auto dealers and billboard companies. The only people who will make a sizable amount of money will be the billboard companies. Why is the City Council so intent to look after the interests of billboard companies? Is there nothing else they ought to be doing on behalf of their actual constituents?	The comment does not question the content or conclusions of the MND, so no response is warranted.

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3	Nothing changes the architectural integrity, historic character and natural environment of a community more than in-your-face off-premise advertising mostly promoting products and services not available at the location of the sign. I would be surprised if even one member of the City Council wants to contend such billboards have no significant aesthetic impact as was advocated by the billboard-friendly consultancy that justified declaring a negative declaration. Just how much did they charge and who paid them?	For a discussion of the impact of the Project on the architectural integrity and historic character of the community, see Response A8.
4	Electronic billboards emit light that interferes with wildlife and human sleep patterns as well as triggers individuals with light sensitivity not to mention distracts drivers and contributes to traffic accidents	For a discussion of the impact of the Project on wildlife, see Response A9. For a discussion of the Project's impact on traffic hazards, see Response A10. The Project would not impact human sleep patterns or trigger individuals with light sensitivity because the proposed electronic billboard would not create a substantial change in illumination levels due to baseline light source and the proposed displays limited light footprint.
5	Electronic billboards use a lot of energy (requiring cooling systems during most days), energy that contributes to greenhouse gas emissions and that ought to be used for a more legitimate purpose than subjecting residents to advertising messages.	For a discussion of the Project's energy use and greenhouse gas emissions see Response A12.
6	Off-premise advertising has no value if it is not visible from the publicly financed right of way whose maintenance is not contributed to by billboard companies in the way of a user fee. Why does the City Council believe it has the right to force tax-paying residents to be a captive audience to unwanted commercial messages for which there is no off switch on streets they paid for? The city may have a legal right to do so but it does not have an ethical or moral right. And would you pay for a cable TV channel that only televised commercials and no programming? Why is the City Council asking their constituents to tolerate the equivalent?	The City has the legal discretion to approve the proposed Project, and has carefully architected a zoning ordinance that responsibly imposes controls on the operation and location of billboards. The comment does not question the content or conclusions of the MND, but merely states an opinion based on personal preferences. No additional response is warranted.

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7	What's the limiting principle at play here? If x number of off-premise electronic billboards are "good" then would not y number be even better? At what point are there too many in-your-face advertising signs and who determines that using what standard?	The comment does not question the content or conclusions of the MND, so no response is warranted. We note the Outdoor Advertising Act and local ordinance determine what number billboards are allowed on City highways. Here, the City has elected a minimum spacing requirement of 1.5 miles between billboards.
8	Do note that once the city of San Jose amended its sign ordinance to allow electronic billboards on city property it was only a short time until a major billboard company illegally erected two billboards violating the still existing ban on new billboards on private property. The city spent an undisclosed amount of money over several years defending its ban in court while the signs remained standing and generating revenue. While the court decided in favor of the city, the city attorney's office has yet to tell us how many staff hours were spent defending the ban. Now, Outfront Media is currently suing the city of San Jose for allegedly unfairly granting the right to construct electronic billboards at the San Jose Airport to Clear Channel in violation of city provisions calling for competitive bidding. On top of that, an article in a billboard industry publication predicted that if San Jose persisted in allowing new billboards on city property while banning them on private property the industry would sue the city for restraint of trade and denial of due process. The moral of this story is, don't let even one off-premise billboard company set foot in your city or the city will be spending a lot of costly time in court.	For a discussion of the relationship between the Project potential litigation, see Response A17. The commenter has misrepresented the facts in its comment. Notwithstanding the above, the comment does not question the content or conclusions of the MND, so no additional response is warranted.
9	So, proponents of this scheme. Tell us one more time what's in it for Gilroy to allow the first of many off-premise billboards to take root? Money for the city? An improved local economy? Off-premise sign-induced "urban vibrancy"? Please enlighten us.	The commenter is invited to review the Project Development Agreement, incorporated herein by reference, for details on the Project's public benefits.

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10	Some 1,500 communities around the nation including the states of Alaska, Hawaii, Maine and Vermont prohibit new offpremise advertising signs both electronic and conventional. I am happy to report that residents there are not starving on the highways for lack of information on where the nearest restaurant might be nor are the economies of those places harmed by not having the alleged advantages provided by off-premise advertising. Case in point is the San Jose metro area. For 50 years San Jose banned billboards on public property and for 37 years have done so on private property. None the less San Jose is second in the nation in terms of per capita domestic product, achieved without the "benefit" of new billboards. Beautification (not billboards) is good for the local economy.	The comment does not question the content or conclusions of the MND, so no response is warranted. We note that many, many thousands of jurisdictions do allow electronic billboards, and Outfront Media has had many longstanding, cooperative partnerships with California cities and counties.
11	To sum up, the proposal before you provides no public benefit while resulting in many negative externalities which would be borne by the public. And once an off-premise billboard goes up, it is almost impossible to remove, thanks to your friends in the billboard industry having lobbied the state legislature to require cash compensation be paid for the removal of an existing billboard. How much compensation? Ask the city of St. Paul, Minnesota whose state law required them to pay \$4 million to remove just one existing digital billboard.	The comment does not question the content or conclusions of the MND, so no response is warranted.
F. Mark Deger (August 22, 2022)		
1	I am writing you to communicate my disdain over the proposal to erect electronic billboards in Gilroy. I've listed a number of my reasons below.	The comment introduces the letter and does not question the content or conclusions of the MND, so no response is warranted.
2	I think that the aesthetics would be offensive and make us look like a low-class commercial community. These items are usually dumped on poorer communities who do not have the power or influence to prevent it from happening.	For a discussion of the Project's impacts on aesthetics, see Response A5. Please also see Responses A18 and E6 regarding the Project's implementation of important land use planning policies.
3	The light emitted from the billboards would add to light pollution that is not productive. This harms people with light sensitivity more adversely.	For a discussion of the impact of the Project on people with light sensitivity, see Response E4. Please also see Response A18 for an explanation of the brightness standards under which the proposed display will be operated.
4	They will distract drivers traveling on freeway 101.	For a discussion of the Project's impact on traffic hazards, see Response A10.

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5	They would probably interfere with the nocturnal population of beneficial insects and vertebrates to agriculture.	For a discussion of the Project's impacts on biological resources, see Response A9.
6	Electronic billboards are expensive so mostly large corporations would afford them, shutting out local businesses.	Economic impacts are not significant environmental impacts under CEQA. 14 Cal. Code Regs. §15131. As a result, the comment's allegations that local businesses will not be able to afford advertising on the electronic billboards is not a significant impact under CEQA and does not warrant a response.
7	People should be free to move about public spaces without being exposed to advertising.	This comment does not address environmental impacts under CEQA, therefore no response is warranted.
8	The billboards add to materialism, making people feel unhappy and unsuccessful if they can't afford the items advertised. They exploit and deepen inequality.	This comment does not address environmental impacts under CEQA, therefore no response is warranted.
9	They promote unsustainable consumption during a period of adverse climate changes	Please see Response A12.
10	Electronic billboards consume 10 times the energy of a single-family home.	For a discussion of the Project's energy use, see Response A12. This comment is inaccurate. Operation of the Project would result in an estimated use of 40,000 to 48,000 kWh per year (the MND's 52,400 kWh estimate is based on outdated technology) while an average U.S. household consumes about 11,000 kWh per year (according to the U.S. Energy Information Administration.) Thus, the Project utilizes approximately 3.6 to 4.4 times the energy of a single family home.
11	Adding an ordinance to allow this project opens the door for more billboards in the future. We have smaller monstrosities along Masten/Fitzgerald/Santa Teresa. We don't need monstrous electronic versions.	An MND is only required to analyze the impacts from the Project's reasonably foreseeable direct and indirect physical impacts on the environment and cumulative impacts with other reasonably foreseeable projects. It is speculative whether additional billboards will be constructed in the future, and therefore they are outside of the scope of the MND. There are no other pending applications for electronic billboards in the City, and it is important to recognize the City's proposed ordinance imposes stringent controls on new digital displays, including size restrictions and a 1.5-mile minimum spacing requirement would apply. Please see Responses A9 and A10.

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12	I would like to see the content of the appendices that have been omitted from the report used to rubber-stamp this project.	The appendices to the EIR are publicly available in a manner consistent with the, including on the City's web site at https://www.cityofgilroy.org/298/Development-Activity-Projects .
13	I will be deeply disappointed if Gilroy adds these monstrosities to our community. Gilroy has been a pleasant break from the commercialism and materialism of the Bay area.	The comment does not question the content or conclusions of the MND, so no response is warranted.
G. John Bauters (August 24, 2022)		
1	Thank you for considering this public comment with respect to the proposed Mitigated Negative Declaration for an electronic billboard along Hwy 101 in Gilroy. My comments are specific to two sets of findings/conclusions that I do not believe are adequately researched or discussed in the document, and leave significant environmental impacts unmitigated.	As explained in detail below, Project MND fully complies with all applicable requirements CEQA and adequately analyzes and mitigates all potentially significant impacts.
2	The discussion of Biological Resources correctly identifies impacts on birds and other wildlife as an issue to review, but includes an inappropriately abridged scope of review that jeopardizes endangered birds, including migratory species, that live in this area and migrate through this area. The discussion in Section 2.4 and then again in 2.20 is overly-focused on the construction site -- a small parcel along Hwy 101. The lack of nests by migratory or endangered birds is cited as a reason for lower concern and the proposed mitigation is how to handle construction in the event a nest is discovered. While this is good, it is insufficient. Birds are dramatically impacted by large, elevated LED signs. There are extensive reports and studies on how LED signs confuse migratory birds, disorienting them at night; how they impair their reproductive functions; and how night predators lose the ability to hunt effectively as these billboards make their ability to find food difficult. Bright spaces like this can have impacts for a multiple mile radius from a high-rise sign, which can eliminate spaces where both migratory and non-migratory birds can nest. The white-tailed kite, cited in Section 2.4, may not have a known sighting within a couple miles of the project site, but the addition of such a sign in one of the only	The Project is a 60-foot, single-sided display located in an urban parking lot adjacent to a highway and other urban uses, including automobile dealerships and other light-intensive uses. The proposed display, meanwhile, will emit light that will abide by a standard of 0.3 foot candles at 250 feet, and light beyond that perimeter is generally indiscernible and does not register on a light meter. As discussed in the MND, there were no white-tailed kite nests or other migratory bird nests observed near the Project site, and the closest potential foraging site is a vacant parcel to the east of Automall Parkway and north of the Princevalle Channel, located approximately 850 feet to the northeast of the proposed display location. Contrary to the commenters assertions, while the white-tailed kite is a protected species, the City of Gilroy is not one of the only zones in the United Space where the species is known to exist, maps published by the California Department of Fish and Wildlife, the species' habitat ranges along the entire California Coast and Central Valley (see Attachment C, hereto). The white-tailed kite also hunts by day and is not, per the California Department of Fish and Wildlife, a migratory bird (see Attachment D, attached hereto). The commenter's claim that the species would be disoriented at night and has a limited

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zones in the United States where the species is known to exist further harms it's population and puts the species at risk. There is no discussion of any of the significant research being conducted into how LED signs impact migration patterns, reproductive patterns, hunting/food sourcing, or nesting. The data points provided in the report fail to address these issues adequately and the scope of review is limited almost exclusively to the parcel itself, which does not adequately address the reality of a larger geographic impact this kind of light has on birds.	range that would be disrupted is contradicted by reliable evidence prepared by the State agency tasked with protecting the species. For further discussion of the Project's impacts on biological resources, see Response A9. The MND <i>does</i> address the potential impact of artificial light on migratory birds. Substantial evidence supports the MND's conclusion that the Project will not have a significant impact on migration patterns, reproductive patterns, hunting/food sourcing, or nesting because it would not create a substantial change in illumination levels as described in Section 2.1 of the MND. In other words, the illumination would not be significant by itself, and especially when compared to the existing light sources in the project area including local street lighting, parking lot lighting, other illuminated billboards at nearby auto dealerships, headlights from automobile traffic, and highway lighting structures. The commenter is not an expert in biological resources, and his lay opinion regarding the impacts of the Project on the white-tailed kite does not amount to substantial evidence. <i>Newtown Preservation Society v. County of El Dorado</i> (2021) 65 Cal.App.5th 771, 790-791. Additionally, the studies that the commenter references, but does not provide, are general studies that are not specific to the Project, and therefore cannot be used to demonstrate a significant environmental impact under CEQA.
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3	Section 2.20 of the report states that there are some impacts on humans but that all of those can or will be mitigated, as discussed throughout the document. There is no discussion about how these types of bright lights impact circadian rhythm (sleep), especially in children. Bright lights can and do impact and are harmful to the development of children. Sleep is one of the most important components of healthy child development, which is necessary for proper brain development, educational attainment, and is also linked to attention/focus, and mood. Bright LED lights on billboards create light pollution much greater than the ambient levels of street lights and other night-time lights which are often much closer to the ground. The UV levels in these lights will create lighter sleep levels, disrupt sleep, and negatively impact human health and growth. There are significant residential communities proximate to the proposed billboard site which will experience the impacts of the proposed billboard sign. The report does not demonstrate adequate study or review of how the location of this sign and the reach of the projected LED lights will change the light pollution baselines in residential areas near the sign, and what that could mean for human health - especially developing children. https://ncceh.ca/documents/fieldinquiry/health-effects-large-led-screens-local-residents	The Project would not impact human sleep patterns or trigger individuals with light sensitivity because the proposed electronic billboard would not create a substantial change in illumination levels due to baseline light source. As discussed in Response A9, LED displays do not cast light farther than 250 feet from the sign's facing. Moreover, there are no nearby sensitive receptors located near the proposed display's location. Per the MND, the nearest sensitive receptors are residents of the Monterey Gateway Apartments, which are located approximately 1,372 feet west of the site and on the far side of multiple roadways and intervening structures. Moreover, the sign will be oriented toward the highway, and will not face west. The comment cites to a 2013 Canadian case study, that was not peer reviewed, about the potential for LED screens for a sports stadium to cause potential health effects such as photosensitive epilepsy. This study does not identify the distance the residents were located from the screens, and it concludes that the screen would likely avoid retinal damage. Additionally, it acknowledges that further information was needed in order to conduct a thorough assessment. This cannot be relied upon as evidence that the Project will have significant health impacts.
4	Finally, a sign like this is not necessary. The City of Gilroy has had a good ordinance that prohibits these types of signs for a long time - and for a good reason. Drivers do not need additional distractions on the roadways. At night, bright lights will only further impair driver abilities on the road, putting all road users at greater risk as a result.	For a discussion of the Project's impact on traffic hazards, see Response A10.

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5	These bright signs are little more than a proverbial "tramp stamp" in the sky - letting people from miles away know that the city is so cheap that it has to resort to bright light commercial ads as it's community identify. Gilroy can and should be a place people are proud to be from - one that doesn't need additional light pollution that will harm children's development or impair our local environmental wildlife resources. I hope that planning commission will give careful consideration to both the adequacy of this report as well as the necessity of this sign. Bright signs originated years ago to tell motorists where there was safe lodging at night, where there was food or fuel to continue their journey, or where a local medical center was if help was needed. Today, we allow any commercial advertisement to be put up along a roadway. Making them electronic undermines the original purpose behind electronic roadway signs, diminishes the character of our community, and harms our greatest assets: our environment and our children. Please vote against accepting this proposed Mitigated Negative Declaration. Thanks for your time and consideration	This comment summarizes prior comments that have been addressed in the responses above.
	H Maria Aguilar (August 28, 2022)	
1	I am writing in opposition of amending ordinance 30.37.30 prohibited signs within 660 feet off highway 101.	The comment does not question the content or conclusions of the MND, so no response is warranted.
2	I believe this to be a distraction for drivers, this is an area where traffic becomes congested and this could cause accidents.	For a discussion of the Project's impact on traffic hazards, see Response A10.
3	These signs are large and unsightly, if the ordinance gets changed it opens the door for other signs to be erected.	The MND is not required to evaluate the impacts of future billboard projects, for a discussion on this topic see Responses A18 and F11
	I Dr. Paul D. Lynam, Lick Observatory (April 26, 2021)	
1	For almost 140 years, the people of the Valley of Heart's Delight and the University of California's Lick Observatory have enjoyed a fruitful relationship. The city fathers of the Bay Area have consistently supported the observatory's ability to stay at the forefront of astronomy and technological innovation. Strategically located atop Mount Hamilton since	This comment provides an introduction and background on Lick Observatory. The comment does not question the content or conclusions of the MND, so no response is warranted.

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	the 1880s, the observatory's threshold is crossed by some 35,000 visitors annually. Thousands more enjoy its scenic approaches and hinterland for recreation. New worlds continue to be discovered from within sight of the City of Gilroy. Lick Observatory maintains a global reputation as an authority on astronomical matters. For decades, the observatory has advised local authorities on lighting ordinances, including (in the 1960s and 1970s) the deployment of sodium lighting, subsequent upgrades to light emitting diode (LED) technologies and, most recently, the deployment of electronic billboards.	
2	Naturally, from a purely astronomical perspective, it would be best to have no electronic billboards at all. However, guidelines to minimize damage to dark skies by electronic billboards, developed by the International Dark-Sky Association, inform Lick Observatory's recommendations to reduce negative impacts. They include: limits on brightness, a curfew for turning off signs at 11 p.m. or midnight, constraints on sign size and density, use of lower-temperature (less blue light) LEDs, tilting electronic billboards downwards by 15 degrees and ensuring mechanical shielding is installed to reduce light being scattered upwards. Light pollution, in large part, is a consequence of the physics of ever-present aerosols (e.g. water vapor, particles, etc.), which preferentially redirect light. Hence, mechanical design of responsible lighting fixtures seeks to minimize wasted light. In contrast, billboards intentionally project light laterally. Thus, billboards disproportionately compound already-vexatious light pollution via two mechanisms. First, billboards add to pollution intensity. The efficiency of electronic illumination represents a manyfold increase in wasted light, compared with former illumination methods. Second, the nature of LED technology (i.e. combining emission from multiple intensity peaks) contaminates the entire visible spectrum, whereas incandescent or discharge (e.g. sodium) lighting consists of isolated spectral peaks, with adjacent spectral regions free from contamination. In sum, proliferation of electronic	For a discussion of the Project's impact on Lick Observatory, see Response A11. Please also see Response A5. Substantial evidence shows that digital billboards are in fact less obtrusive than traditional displays, as digital billboards have superior technology that directs light at limited audiences (here, motorists). By contrast, traditional displays are illuminated by reflecting light sources of the display's facings, at levels that are 31 to 212 brighter than LED bulbs. Ultimately, the LED displays proposed here will direct light downward at the nearby highway, as set forth in greater detail below. The billboards will also abide by brightness standards that ensure the sign will cast 0.3 foot candles at 250 feet (see Attachment E, hereto.) While the sign is visible beyond that distance, lighting levels beyond 250 feet will generally not register on a light meter. We note the proposed display is 25 miles away from the observatory, and there is no evidence the display will affect, individual or cumulatively observatory operations. Notwithstanding the above, impacts on such operations are not cognizable under CEQA. The commenter's observations on LED lights in comparison to traditional sign illumination are incorrect; in fact, there is significantly greater sky glow associated with older technologies. To reach an audience, the illumination of traditional billboards is imprecise; the billboard face is blasted with light at a level

billboards along the State highway 101 corridor (including in-and-around the City of Gilroy) would render a deleterious impact upon Lick Observatory.	ranging from 31 to 312 times the brightness of an LED bulb (where brightness depends on color), and light reflects off the sign's vinyl surface in all different directions. As such, the target audience is reached along with a host of others, and this is why receptors see, for instance, sky glow from traditional, illuminated signs. The Project adopts new technology that reduces horizon light and skyglow. The billboards utilize a combination of (a) long and short louvers, (b) internally lensed diodes with outputs of 25° down and 20° up and finally (c) the mounting of the diodes at a 6° downward angle. With reference to horizon, this results in an overall output of 31° below and 14° above. This reduces skyglow by 60% as compared to an ordinary output of 35° above (see Attachment E). The comment assumes that the billboard creates white light the same way as LED street lights, this is not so. LED light output is across a broad spectrum, and blue is strong and wide nearing the ultra violet spectrum. The Project uses three primary colors of narrow band light to create light. As a result, the spectral radiance is far lower than an LED street light (see Attachment F for a comparison of the spectral radiance of LEDs versus a billboard). The comment refers to the International Dark-Sky Association's (2019) Guidance for Electronic Message Centers and suggests that the Project has not incorporated best practices. Guidance from non-regulatory agencies and extraterritorial jurisdictions is not binding on the City of Gilroy. Additionally, the Project does in fact comply with many of the best management practices identified in this document, and would emit light at one-sixth the brightness level allowed by State law. The Project also complies with the best management practices and standards related to sensitive area setbacks, size limits, and density limits.
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3	Typically, local authorities engage public opinion when considering changes to ordinances. Experience shows that the overwhelming majority of contributors perceive the most compelling arguments against electronic billboards to be the well-established detrimental consequences on human health and safety, the similarly well-established impacts on wildlife habits and habitats, and aesthetic visual blight. For the most part, the needs of observatories are well-aligned with majority public opinion. The University of California's Lick Observatory encourages the City of Gilroy to perform due diligence during deliberations regarding the proposed deployment of electronic billboards (e.g. by canvassing a fair, balanced representation of community/stakeholder opinion and undertaking a full and proper environmental impact assessment). The observatory remains available to advise on these matters, while continuing to foster the fruitful relationship that has persisted for well over a century.	Through the MND process, the City is engaging public opinion by receiving and responding to comments and holding public hearings. For a discussion of the Project's impact on human health, see Response G3. For a discussion of the Project's impacts on wildlife, see Response A9. For a discussion of the Project's impact on aesthetics, see Responses A5, A9, A10, and A13.
	J Dr. Paul D. Lynam, Lick Observatory (September 5, 2022)	
1	The University of California Observatories' Lick Observatory (UCO/Lick) - the world's first high altitude astronomical observatory - hosts 10 telescopes, plus multiple cutting-edge research instruments atop Mount Hamilton, 25 miles north of Gilroy. Named in classic literature and from Apollo 11's Tranquility Base, the observatory routinely opens new vistas on the universe, discovers new worlds, develops new technology, educates science and "tech-savvy" students and inspires all comers. Lick Observatory leads the world, setting standards on astronomical matters. Annually, the observatory serves hundreds of faculty (including Nobel laureates) and students of the University of California, in addition to 35,000 visitors. This cannot be achieved without a fruitful relationship between the observatory and neighboring settlements.	This comment provides an introduction and background on Lick Observatory. The comment does not question the content or conclusions of the MND, so no response is warranted.
2	As outlined in written (26 April 2021) and spoken (15 August 2022) contributions to Gilroy City Council, I reiterate that the proposed Electronic Billboard Ordinance and Sign Permit	For a discussion of the Project's impact on Lick Observatory, see Response A11 and Responses I-1 to I-3. Please note that impacts on astronomical study are not environmental

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	proposal (described in the 4 August 2022 Initial Study) shall render a disproportionate and deleterious impact on astronomical pursuits, fauna, flora and public health. From an astronomical perspective, it would be ideal to have no illuminating sources at all. However, UCO/Lick has no wish to crusade in pursuit of this ideal. A higher aspiration is to sustain the rapport and understanding between neighboring communities and observatory that has endured since the 1870s. Responsibly installed billboards may confer benefits to the community. Distressingly, however, the Initial Study is unbalanced in its failure to consider negative effects of electronic billboards on astronomy. For example, the International Dark-Sky Association's (2019) Guidance for Electronic Message Centers (repeatedly advocated for in previous contributions) continues to be neglected. As a result of such omissions, the Initial Study cannot be considered to be representative of best practice.	impacts under CEQA. Notwithstanding the above, please note also there is no evidence the proposed display, which abides by restrictive light standards, will have any cognizable individual or cumulative impact on the Lick Observatory's operations.
3	Experience regarding proposed electronic billboards elsewhere in Santa Clara County shows that the needs of Lick Observatory align with public opinion: a (2021) survey conducted by the City of San Jose Planning Department revealed 93% opposition. Expert advisors (e.g. Norman Y. Mineta San Jose international Airport Commission) repeatedly recommended against billboards. The City of San Jose is now subject to litigation from competing outdoor advertising interests.	For a discussion of why this survey of San Jose residents is not relevant to the determination of whether the Project will have a significant impact under CEQA, see Response B1. For a discussion of why litigation in other jurisdiction is not relevant to the determination of whether the Project will have a significant impact under CEQA, see Response A17.
4	Quite apart from astronomers' niche concerns, the most commonly cited objection to billboards (electronic and conventional) is visual blight. Billboards are notorious for intrusive, poorly-maintained, malfunctioning, decrepit and unsightly structures – often imposed on under-served neighborhoods	For a discussion of the Project's impacts on aesthetics and blight, see Responses A5 and A13.
5	The outdoor advertising industry is noted (even celebrated) for wasteful practices.	The comment does not question the content or conclusions of the MND, so no response is warranted.
6	Outdoor advertising typically constitutes a minor fraction of overall advertising budgets. As	The comment does not question the content or conclusions of the MND, so no response is warranted.

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	on-line media continues to grow, revenues derived from outdoor advertising are projected to decline.	
7	Regardless of whether one favors or opposes electronic billboards, it must be acknowledged that the Initial Study has failed to allay concerns. Thus, a full-and-proper Environmental Impact Report should ultimately be undertaken. However, in order to avoid embarking on such a costly endeavor unnecessarily, the City of Gilroy is first urged to proactively canvass the community in an effort to gain insight into the public attitude and reception to electronic billboards.	The MND adequately discusses and mitigates all potential significant impacts to the environment, and therefore, an Environmental Impact Report ("EIR") is not required under CEQA.
	K Shani Kleinhaus, Santa Clara Valley Audubon Society and Gladwyn D'Souza Conservation Committee Chair Sierra Club Loma Prieta Chapter (September 6, 2022)	
1	Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter submit the following comments and responses to highlight the shortcomings of the Initial Study/Draft Mitigated Negative Declaration and the environmental impacts that would result from implementation of the Electronic Billboard Ordinance Project in the City of Gilroy. The comments with attached references provide unequivocal scientific evidence to establish the significant and unavoidable harm that Artificial Light At Night (ALAN) in general, and electronic billboards specifically, impose on human health and on ecosystems. The IS/DMND does not adequately address these issues.	This comment introduces the issues raised in the letter, the responses below explain in detail that the MND adequately addressed the impacts of the electronic billboard on human health and biological resources.
2	In March 2021, Sierra Club National adopted a new light pollution policy: "Sierra Club recognizes that while artificial light provides desirable benefits to society, such as extended hours of social space at night, its excessive, inappropriate and poorly controlled use also leads to significant harm. Sierra Club defines light pollution as artificial light that adversely affects ecosystems and any living organism. Sierra Club includes in this definition anthropogenic light that is wasteful, or misdirected; has negative ecological impacts; is used as a form of aggression; is harmful to health, safety, or other human rights; or disrupts our view of the natural night sky, disconnecting	While the Sierra Club's policy statement sets forth the organization's goals and objectives with regard to ALAN, the policy does not include comments on the adequacy of the analysis in the MND for this specific project and, therefore, does not require a direct response under CEQA. The design and operational characteristics of the proposed electronic signs are specifically intended to address the adverse effects of ALAN and are consistent with the objectives of the Sierra Club's policy. For a discussion of the Project's impact on biological resources, see Response A9.

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	us from our cosmic environment, including the Milky Way Galaxy where we live. Therefore, light pollution imposes natural resources, economic, biological, political, psychological, and cultural burdens.” In addition, the Sierra Club retained a 60-year policy which “opposes billboard development along highways and supports measures to restrict these billboards.” The Sierra club policy is supported by a comprehensive compilation of resources pointing to the significant impacts of ALAN, please see “Attachment Resources-References-LightPollutionPolicy_20210307,” attached, and the recently published “Artificial Light at Night: State of the Science 2022”¹. The information and scientific studies referenced in this attachment point to the devastating impact of lighting on ecosystems and organisms that comprise our biological resources and our health. The Santa Clara Valley Audubon Society (SCVAS) is similarly concerned with the proliferation of ALAN and its pervasive harm to organisms, species, ecological food webs, and human health and safety. SCVAS is one of the largest National Audubon Society chapters in California, and its mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation.	
3	Our organizations and our thousands of members in the region are working to protect our common natural resources, and we are greatly concerned with detrimental impacts of electronic billboards and signs to biological resources, the night sky, the aesthetic character of our City of Gilroy and region, and the health and quality of life of our region’s residents. We are opposed to allowing electronic billboards and encourage the City of Gilroy to tighten regulation and reduce, rather than increase their prevalence and impacts. We believe that electronic billboards anywhere, including at the proposed location, will cause significant and irreversible harm to the biological and aesthetic environment resources. We encourage the City of Gilroy to amend its sign ordinance to prohibit highway-facing and major-road facing electronic billboards.	This comment expresses the purpose of the Sierra Club and the Audubon Society and their opposition to electronic billboards. The comment does not question the content or conclusions of the MND, so no response is warranted. Please see Responses A5, A9, A10, and A13 for information concerning the proposed display's lighting and aesthetic impacts. Please note the City's sign ordinance allows limited digital displays under very restrictive conditions, and has minimum spacing requirements of 1.5 miles.

4	Aesthetic Resources Electronic signs are, by design, intended to be viewed from a distance. By design, electronic billboards offend aesthetics and visual character, and produce day and nighttime illumination, light and glare. The public abhors them. A 2021 survey conducted by the City of San Jose revealed that over 95% of over 2200 respondents are strongly opposed to electronic billboards on freeways (presentation attached). The concerns over aesthetics were one of the primary reasons provided by the opposing respondents. Highway 101 in this area is not, by designation, a scenic highway. But the public and the drivers clearly consider electronic advertisement “a form of aggression” which assaults our senses and health, and imperils drivers as it diverts their attention and puts them at an increased risk of collision. • The entire portion of US-101 that passes through the City of Gilroy is a County-designated scenic route, and is only approximately 660 feet east of the proposed billboard site. The Project clearly intends the advertisements to be highly visible from US-101 which traverses a relatively rural landscape in Gilroy and its vicinity, a rural landscape that travelers value. The Project will disrupt the visual character of the 101 corridor, despoil scenic elements, and offend landscape characteristics that contribute to the rural character of the Bay Area south of San Jose and to the well being of travelers.	For a discussion of the Project's impacts on aesthetics, see Responses A5, A9, A10, and A13. For a discussion of why this survey of the opinions San Jose residents is not relevant to the determination of whether the Project will have a significant impact under CEQA, see Response B1. Notably, the City of San Jose considered the public's input and still proceeded to approve electronic billboards. The MND fully evaluated light levels. First, light levels from the electronic billboard would only be perceptible up to 250 feet away (see Response A9), and will not cast light on scenic resource located outside that perimeter. Signage is readable beyond 250 feet, but it is important to note that, here, the proposed display is located in an urbanized area, surrounding by a parking lot and structures on the western side of the adjacent highway and by structures on the east side of the highway. As detailed in Response A9, the existing urban environment is replete with other sources of light and signage, as well as commercial and industrial uses. Vegetated, rural highway segments begin well more than 1/2 mile south of the proposed display location and many miles north of the proposed display location and, due to intervening highway geometry and topography, the proposed sign would not be visible from more rural highway segments. Nor would the proposed display, as detailed in the MND, substantially obstruct any views of scenic resources. Consistent with Appendix G of the CEQA Guidelines, the MND evaluates impacts on scenic resources within a State Scenic Highway. To the extent zoning regulations address scenic resources, as noted in the City's General Plan, the purpose of scenic routes is to protect ‘high quality vistas’ and ‘important scenic qualities’ (see General Plan Natural and Cultural Resources, Goal NCR, Policies NCR 2.1 & 2.3.) The Project would not have a substantial adverse effect on a scenic vista or damage scenic resources because it will be located in an urban infill site, characterized by numerous existing signs,
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		lights, parking lots, industrial building (including automobile dealerships), and other elements of the urban landscape (see Attachment G, hereto). While portions of Gilroy constitute a rural setting, the location of the project site is within the context of the City's auto-row, with multiple dealerships and other commercial venues, including a Tesla dealership, Chevrolet dealership, automobile repair shops, gas stations, recycling centers, and other commercial and industrial buildings. Additionally, the MND analyzes the Project's potential impact on traffic hazards and determined that the impact would be less than significant. For a discussion of the Project's impact on traffic hazards, see Response A10.
5	● The finding that aesthetic impacts of Light and Glare are less than significant relies on Mitigation Measure MM AES-1 "The signs' operational lighting parameters shall be provided to the City of Gilroy Community Development Department for review and approval prior to the regular operation of the light-emitting diode (LED) billboards, and shall be implemented by the project proponent to ensure a driver would not be adversely affected or impacted by trespass glare lighting." ○ Since drivers overwhelmingly and unequivocally find that electronic billboards affect them, there is no feasible way to "ensure a driver would not be adversely affected or impacted by trespass glare lighting". There is no doubt that impact on Aesthetic Resources is significant and unavoidable, and should be recognized as such in an Environmental Impact Report and a Statement of Overriding considerations.	The Project's operational parameters are self-mitigating and Mitigation Measure AES-1 in the MND merely provides the City with confirmation that these operational parameters are followed. Specifically, Mitigation Measure AES-1 requires City review and confirmation that the sign complies with the following operational standards: (1) the frequency at which electronic advertisements will change, referred to as "dwell time," will not occur more frequently than eight seconds; and (2) the brightness at which Outfront will broadcast the proposed electronic messaging will not exceed 0.3 foot candles at 250 feet. See Letter From Project Proponent re Outdoor Advertising Display 6490 Auto Mall Parkway (March 21, 2021), p. 1. The MND determined that these parameters would reduce any impact to a less than significant level, and therefore, no EIR or Statement of Overriding Considerations is required. The MND defers no analysis and, to clarify, Measure AES-1 is merely a mitigation meant to assure the display is operating as proposed. Regarding driver distraction, please see Response A10. All evidence demonstrates that electronic billboards do not have a safety impact with respect to drivers.
6	Biological Resources:	For a discussion of the Project's impact on biological resources, see Response A9. The

The Biological Report underestimates the potential impact to ecosystems including those non-special status species that may make use of the adjacent Princevalle drainage that benefit from its water and relative cover and including those that may transit it between the larger habitats of Uvas Creek and Llagas Creek. Recent scientific studies highlight the pervasive, cumulative, and harmful impacts of ALAN to terrestrial and aquatic organisms, species, and ecosystems. The impacts, including effects on circadian rhythms, metabolism and behavior in fish, birds, insects, and other taxa, have been summarized in several recent publications in major scientific journals. It seems that CEQA guidelines have not caught up and are inadequate to measure the impact to biological resources. Science shows that ALAN is harmful to all biological resources that see or otherwise perceive it - including both plants and animals. The many studies cited in this and the attached document show that biological impacts are not limited to the area illuminated but can extend to a large distance. The mechanism by which light impacts organisms is explored in a November 2020 study titled "Exposure to Artificial Light at Night and the Consequences for Flora, Fauna, and Ecosystems." This study shows that dozens of behavioral activities in all biological taxa display daily and annual rhythms, and are thus impacted by ALAN. This includes locomotor activity and sleep, schooling behavior (fish), vertical (fish) and horizontal (all vertebrates) migration, behavioral thermoregulation (fish), vocalization (fish, birds), foraging and food intake, mating and reproduction. Contemporary scientific evidence shows that attraction to light is having a devastating and direct impact on insect numbers and diversity, and indirect effects to entire ecosystems. Impacts to biological resources can be lessened by limiting operation hours, and turning the billboards off between the hours of 11PM and 8AM.	MND contains considerable discussion of the reasons why impacts of increased lighting would not result in significant impacts on biological resources. The MND concluded that the minor increases in lighting levels would be less than significant due to baseline lighting conditions. CEQA requires an evaluation of impacts relative to baseline conditions, not relative to a hypothetical, undegraded condition that does not exist at the project site. This comment acknowledges that it is concerned about the Project's impact on non-special status species that utilize the Princevalle drainage. Under the CEQA thresholds of significance, only impacts to 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 Wildlife or United States Fish and Wildlife Service are considered significant. A qualified biologist conducted a site survey (Appendix C) and determined that the white-tailed kite was the only special status species with potential to occur in the vicinity. In undertaking this analysis, the MND's supporting biological report evaluated the potential for species potentially associated with aquatic habitat to occur in the Princevalle Channel specifically, and determined it does not contain suitable habitat to support the California tiger salamander, California red-legged frog, tri-colored blackbird, white-tailed kite, least Bell's vireo, Monterey hitch, steelhead, or western pond turtle. The channel, located approximately 50 feet north of the proposed display, is a man-made channel constructed for stormwater drainage purposes that does not contain State or federally protected wetlands. Conservatively, the MND determined that only construction impacts could indirectly occur, and prescribed appropriate mitigation. All evidence demonstrates there are no protected species in the storm drainage ditch at issue, and therefore Project lighting impacts would not have the potential to occur.
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	Recent studies also implicate ALAN as one of the primary drivers of the global decline in insect numbers and diversity (the insect apocalypse) The loss of insects and the loss of ecological services they provide (for example, pollination, and as food for fish and birds) should be considered a significant, unavoidable impact for 24/7 light sources as proposed for this Project.	The comment identifies very general categories of animals that could be impacted by exposure to artificial light at night, but has not identified any special status species that may be impacted. It relies on a 2020 French study titled, "Exposure to Artificial Light at Night and the Consequences for Flora, Fauna, and Ecosystems." This study does not address the specific impacts of billboards; rather, it just discusses the impacts of LEDs in general, though acknowledges much of the supporting data "necessarily comes from older lighting technology." It acknowledges that "the avian responses to ALAN are complex, depending very much on the species, sex and age, geographical area as well as on the experimental conditions." It does not discuss white-tailed kite or any kind of raptor. Moreover, the study presupposes the proximity of various fauna whereas, with respect to the Project site, there is no evidence that any protected species or habitat exists in its vicinity other than a remote change the white-tailed kite will nest or forage nearby. An overriding consideration here is that the Project site is located amid a highly urbanized, highway-adjacent location that is replete with lights and illuminated signage. The Project itself has a very small light footprint, and there is no evidence the proposed display's light would impact, individually or cumulatively, any protected species. This generalized study cited by the commenter does not amount to substantial evidence of a significant impact on biological resource on the fauna found in Gilroy. The commenter also includes an uncurated list of other reports, but does not utilize them for the purpose of supporting any specific argument, and specifically acknowledges that "this list should <i>not</i> be construed as an endorsement by Sierra Club."
7	Migratory birds The IS/DNMD acknowledges that "migrating birds can be affected by human-built structures	For a discussion of the Project's impact on migratory birds, see Response G2.

	because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather". The IS/DMND provides two reasons why the "proposed electronic billboard would not have a significant impact on the movement of migrating birds" (IS/DNMD p. 41). These reasons and the findings are not supported by evidence: • Illuminations levels – The IS/DMND implies that the "proposed electronic billboard would not create a substantial change in illumination levels" from the baseline light sources in the area" (IS/DNMD p. 41). This is a subjective opinion. To substantiate this statement, a photometric study and a study of glare and light spillage must be provided, and light levels and the spectrum of the LED lights should be analyzed within a biological-impact context. • Billboard sign face display – The IS/DMND states that the proposed billboard sign face would not be allowed to change "more than every 8 seconds, and messages would be static (i.e., not moving, or animated) resulting in changing color patterns [sic] rather than a fixed unchanging light which may be more attractive to birds" (IS/DNMD p. 41). There is no research to indicate what is an effective length of time a billboard image should be displayed to reduce the attraction to birds. The proposed 8 second interval is arbitrary. Therefore, the IS/DNMD does not show that there is a less than significant impact on wildlife, and mitigation measures to safeguard migratory birds should be implemented.	The MND's conclusion that the billboard would not create a substantial change in the illumination levels from baseline light sources is not subjective. Substantial evidence in the administrative record demonstrates that the Project would not produce brightness levels that exceed 0.3 foot candles at 250 feet above ambient levels, and the City has imposed mitigation, discussed above, to confirm that the Project will operate within these parameters. These are objective standards based on objective evidence. For a discussion of the lighting effects on avian species, please see Response A9. The display would change copy every eight seconds and result in a frequently changing set of colors and patterns, and in the setting of an urban setting. Evidence shows it is unchanging, static white and red light sources that significantly impact bird species, and in environments without other significant light sources. There is no evidence the display, in this context, would have any significant impacts on avian species.
8	2.2 Connectivity for wildlife Open storm drains, irrigation channels and other flood management infrastructure features	As discussed in Response K6, incorporated herein, a biologist conducted a detailed evaluation of the Project site and its surrounding area, including the Princevalle

often connect habitat patches and provide pathways for animals to traverse an urban landscape. This connectivity for wildlife is important to preserve biodiversity, and is easily disrupted by lighting. The Project is adjacent to the Princeville Channel, which is currently a wildlife connectivity corridor and allows permeability between Uvas and Llagas creeks (Figure 1). The DMND provides no analysis of wildlife movement in the channel, dismissing impact to wildlife movement. PDF p. 49 “The project site is bounded by a chain link fencing to the north, east, and south. These factors along with existing urban developments within the general project vicinity limit wildlife movement through the project site. Additionally, the project site is not part of or within a wildlife movement corridor” PDF p. 48 provides, “The Princeville Channel is located approximately 50 feet north of the project site and is a tributary to Llagas Creek, which flows into the Pajaro River, which empties into Monterey Bay, a traditional navigable water of the United States. While the project site does not contain State or federally protected wetlands, construction of the proposed electronic billboards has the potential for indirect (temporary) adverse impacts to the aquatic habitat of the Channel. Potential temporary indirect impacts (during construction) include pollutant loading, increased erosion and sedimentation, and debris dispersal into the Channel. Implementation of MM BIO-5 and MM BIO-6 would reduce potential indirect adverse impacts to the aquatic habitat of the Channel to less than significant levels through avoidance and minimization measures.” • Please provide wetland delineation for the channel’s aquatic habitat, and discuss application of requirements by the State Water Board and the Habitat Agency • MM BIO-5 and BIO-6 mitigate the impacts to Princeville Channel during the construction phase. Without a study of terrestrial animal movement within the Princeville Channel, the	Channel, and determined there was no potential habitat for protected species. It bears mention too that the north-facing display will be 60 feet high and, as demonstrated in the administrative record of proceedings, the vertical light footprint of displays does not cast light on the ground within the first 100 to 150 feet or so. Please see March 21, 2021 Letter from the Project Applicant re Outdoor Advertising Display 6490 Auto Mall Parkway. The Princeville Channel is located 50 feet north of the proposed display, and below the grade of the Project site. Even if the study demonstrated that the Princeville Channel contained protected species, the MND clearly demonstrates that the Project operations would not create a substantial change in illumination levels due to the physical dimensions of the light footprint and the existing topography. These considerations further do not account for the fact that the Tesla facility to the north has parking lot lights located directly adjacent to the channel, such that the baseline lighting levels already illuminate the channel. A wetland delineation is unnecessary for the Project for a number of reasons. The Project is clearly not located within the wetland because the billboard will be installed on a paved parcel adjacent to the highway, which is currently used for truck trailer parking. While the proposed display is located 50 feet from the Princeville Channel, Project construction will be limited to close proximity of the Project Site and, to the extent there is any potential for construction debris, materials, or runoff to reach the channel, Mitigations Measures BIO-5 and BIO-6 would prevent such from occurring. CEQA does not, per established case law, require the preparation of every last test and, here, a wetland delineation would not provide any meaningful environmental information.
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	finding that the Project will not interfere substantially with the movement of native wildlife species or with established native resident or migratory wildlife corridors cannot be made.	
9	2.3 Conflict with the Valley Habitat Plan The finds that "Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan" is less than significant with mitigation. The proposed mitigation, MM BIO-7, provides, "The project applicant shall submit a Santa Clara Valley Habitat Plan (SCVHP) Coverage Screening Form to the Planning Department for review and shall complete subsequent forms, reports, and/or studies as needed." • For Mitigated Negative Declarations, CEQA does not allow mitigation measures to depend on future disclosure of impacts and actual mitigation measures. Please specify any studies that will be needed and discuss the potential impacts and how these will be addressed	MM BIO-7 does not rely on future disclosure of impacts. The MND explains that the Project will be consistent with the Valley Habitat Plan, because project site is within the "Urban-Suburban" land cover as defined by the SCVHP and is not located in any special status plant and wildlife survey areas, or fee zone. Additionally, coverage under the SCVHP is only needed if the project or activity has a reasonable potential or likelihood to <i>take</i> a covered species. A highly unlikely or speculative take does not meet this criterion. Because the Project would not result in a take of a covered species, no additional studies under the SCHVHP will be required. Mitigation Measure BIO-7 merely contemplates confirming standard paperwork must be filed to document the foregoing conditions with administrators of the SCVHP.
	3. Driver Safety The IS/DMND acknowledges that the project undermines driver safety but the impact and of this hazard understated by the IS/DMND. As expressed above, driver Safety was a great concern to the responders to the San Jose survey. The risk to drivers is evident, and supported in a plethora of studies (See attachments) • Please analyze current vehicle collision data for the target stretch of US-101 and consider the potential of additional collisions due to drivers' attention being diverted.	For a discussion of the Project's impact on traffic hazards, see Response A10. This analysis sufficiently satisfies applicable legal requirements, and the analysis requested would provide no meaningful information with respect to CEQA impacts.
10	4. Energy consumption, brightness, greenhouse gas emissions In his study of energy use and other environmental impacts of electronic billboards (attached), Mr. George Young discusses energy consumption for lighting and cooling of LED billboards, as well as brightness of the billboards, materiality and recyclability. Ceqa requires the analysis of all direct and indirect impacts on a project, and we believe that all these environmental burdens are significant. The possibilities of mitigation are	For a discussion of the Project's impact on energy use, see Response A12. The commenter's note on greenhouse gases is factual incorrect. The project is estimated, very conservatively, to produce 5 metric tons of carbon dioxide equivalent and, amortizing construction emissions, 6 metric tons (mega tons, as expressed by the commenter, is not an applicable metric, and it appears the commenter is aggrandizing the impact). The applicable threshold of significance is 660

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	limited and therefore, the environmental impacts are generally unavoidable. Mr. Young makes many technical recommendations which we incorporate into this letter by reference. We ask for an Environmental Impact report to consider these mitigation, and analyze the project compliance with them. While the IS/DMND lists the estimated 52,400 kilowatts/year of electricity and 6.6 megatons of CO₂/year expected to be released into the atmosphere with the energy required for the billboards, the IS/DMND only states that it meets standards and does not prescribe mitigation for the greenhouse gas emissions in our current climate emergency.	metric tons per year, and therefore the Project is below the applicable threshold by two orders of magnitude, as detailed in the MND.
11	5. The City of San Jose has recently approved billboards at the airport, and included several feasible structural and operational requirements and mitigation measures that should be incorporated into the requirements for Gilroy's ordinance and the billboards project. Table 1 highlights some of these requirements: [chart omitted]	The chart cited in the comment demonstrates that the Project adopts several of the same structural and operational requirements as the City of San Jose. The chart inaccurately states that the Project includes no measures to shield the night sky. In fact, each of the individual LEDs on the sign's display facing are angled downwards.
12	On brightness, the EIR provides, ○ PDF p. 21: "The proposed project commits to a maximum ambient light output level of a 0.3 foot-candle at 250 feet from the billboard, which is a more conservative lighting intensity standard for electronic billboards of this proposed size when compared to State standards. For a frame of reference, 0.3 foot-candle is comparable in brightness to the light emanating from a computer monitor, and the light levels emitted from the proposed billboards would be programmed to adjust based upon ambient light conditions at any given time (i.e., nighttime versus daytime). Therefore, impacts would be less than significant" ○ PDF p. 27: "proposed Ordinance would require billboard projects to commit to a maximum ambient light output level of 0.3 foot-candle at 250 feet from the billboards, which is a more conservative lighting intensity standard for billboards of this proposed size when compared to State standards"	Pages 40-41 of the MND address the impacts of the Project's brightness on white-tailed kite and other nesting birds. It determined that the proposed electronic billboard would not create a substantial change in illumination levels due to baseline light sources in the project area including local street lighting, parking lot lighting, other illuminated billboards at nearby auto dealerships, headlights from automobile traffic, and highway lighting structures. Based on this analysis, the impact to migratory birds is less than significant. Please also see Responses K6 and K7; there is no evidence of protected species or habitat being subject to any discernable increase in brightness levels.

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	However, the standards seem to address visual and aesthetic impacts, and ignore the biological impacts of lighting that is 3 times the brightness of the moon, and the hazard this brightness imposes on migratory birds and on insects. The brightness, 0.3 foot-candle, remains a significant unmitigated environmental impact to species and the ecosystem.	
13	We ask the City of Gilroy not to approve highway or road-facing electronic billboards. Instead, the city should develop an ordinance prohibiting such billboards city-wide. If the city persists in moving forward with this project, an EIR must be prepared.	This comment concludes the comment letter, as discussed above, this Project does not require an EIR because there are no unmitigated significant impacts on the environment.

Very truly yours,



Natalie C. Kirkish
 Associate

NCK:NCK

CC:

Cindy McCormick
 City of Gilroy Customer Services Manager
 7351 Rosanna Street
 Gilroy, California 95020
 Email: cindy.mccormick@cityofgilroy.org

Encls.

ATTACHMENT A

9/20/22, 8:26 PM

Battle over billboards: San Jose faces lawsuit, pushback on proposed changes - San José Spotlight

Battle over billboards: San Jose faces lawsuit, pushback on proposed changes



An illegal billboard in San Jose. Photo courtesy of Jen Staats.

San Jose faces allegations that its billboard ban—and proposed changes to its [billboard policy](#)—violate property owners' constitutional rights.

In a lawsuit, a group called Citizens for Free Speech and Equal Justice claims San Jose violates residents' free-speech and equal protection rights through a decades-old ban on new billboards. The suit comes just as the City Council reconsiders that ban, pushing forward with a proposal that would allow new billboards on city-owned property where San Jose can generate revenue.

Jeff Herson, a member of the group suing the city, said San Jose needs to give residents the same opportunity the city

<https://sanjosespotlight.com/battle-over-billboards-san-jose-faces-lawsuit-pushback-on-proposed-changes/>

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could get to display billboards—and earn money.

“The city is giving themselves a special deal and is excluding everyone else,” Herson told San José Spotlight.

Citizens for Free Speech and Equal Justice illegally erected a digital billboard near Highways 880 and 101 to sell advertising. They say the billboard is legal and the city’s policy unconstitutional.

The suit was filed last year, with a first trial date scheduled for November 2022, according to City Attorney Nora Frimann. She said the city could not comment on pending litigation.

A question of free speech or equal protection

David Snyder, executive director of the First Amendment Coalition, said the question of whether it is unlawful for the city to allow new billboards on its own land but prohibit the billboards of private citizens really depends on the situation. And, he said, banning billboards may not be a First Amendment violation.

“The city may have violated the First Amendment in the way it prohibited private speech,” Snyder said. “But the distinction at issue—between city billboards being allowed and others not being allowed—isn’t a First Amendment issue, exactly.”

He said there might be a violation of some other law, such as the constitution’s equal-protection clause, since the city makes a distinction between its own speech and private speech.

Are billboards back?

It was 1985 when San Jose banned new billboards while allowing existing ones to remain. But in 2017, the San Jose City Council reopened the issue. It voted to explore a two-part plan to make it easier for electronic billboards to pop up citywide. Officials championed digital billboards, saying the signs would make downtown more vibrant. The new policy

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also requires existing, non-digital billboards to come down, which supporters say will make San Jose more attractive.

In 2018, the city gave the green light to 22 electronic billboards on 17 city-owned sites across San Jose. Eight of those sites are reserved for freeway-facing billboards. No signs are up yet.

A second part of the plan, currently under environmental review, would let the city build signs on public buildings downtown and approve up to 75 electronic billboards on private property along freeways. There's a hitch, though. To get approval for a new electronic billboard along a freeway, a company would have to find four traditional billboards to take down.

John Miller, a co-founder of the grassroots organization [No Digital Billboards](#), said even though the city's plans would allow for more billboards, the plans are inaccessible to most individuals if they are not part of a billboard company. Outdoor advertising firms own most existing billboards, so individual property owners wouldn't be able to make that swap, Miller said.

Miller has been a vocal opponent of digital billboards in San Jose. No Digital Billboards recently sent a letter to the San Jose City Council urging city leaders to halt all billboard contract negotiations.

Les Levitt, another billboard opponent, said the lawsuit is a prime example of why the city should drop its electronic billboard plans. He said lawsuits surrounding billboards would cost taxpayers money.

"We are concerned that the city may have made some decisions without assessing the legal risks or unintended consequences," Levitt said. "We know that in Los Angeles, they've had year after year of [litigation around billboards](#). These disputes just never seem to end."

Challenging power

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While they may be on different teams, Miller and Levitt, the anti-billboard advocates, and Herson, the pro-billboard individual, say San Jose is wrongly catering to billboard companies such as Clear Channel Outdoor and Outfront Media.

At a recent meeting, city leaders [abruptly paused](#) the plan to put digital billboards on private property following months of [aggressive pushback](#) from residents.

Since San Jose recently announced its intentions to move forward with the other aspects of Phase 2 plans to add more billboards downtown, Herson said the group is looking to amend their complaint and sue for damages. The government needs to follow the same rules as everyone else, he said.

Contact Carly Wipf at carly@sanjosespotlight.com or follow @CarlyChristineW on Twitter.

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ATTACHMENT B

OUTFRONT
media

January 8, 2019

James Arbis
State of California Department of Transportation
Division Traffic Operations
Office of ODA
P.O Box 942874, MS-36
Sacramento, CA 94274-0001

RE: Illegal Digital sign in San Jose

I'm sure you are aware of an illegally erected digital sign in the city of San Jose @ 1548 Old Bayshore Hwy (101 & I-880 interchange). The sign was erected back in March or April 2018. There are two digital displays on the property erected without local or state permits and are displaying general advertising. The city of San Jose currently prohibits general advertising digital signage. This along with the illegal sign in Alameda County on I-580 are damaging the industry. We encourage the state to investigate and take appropriate action to discourage this activity from growing across the state.

I've included photos of the new digital sign. Please feel free to contact me with any questions or comments you may have. My direct telephone number is (510) 559-1135.

Sincerely,



Jeff McCuen
Northern California Real Estate Manager

Cc Ken Parmelee

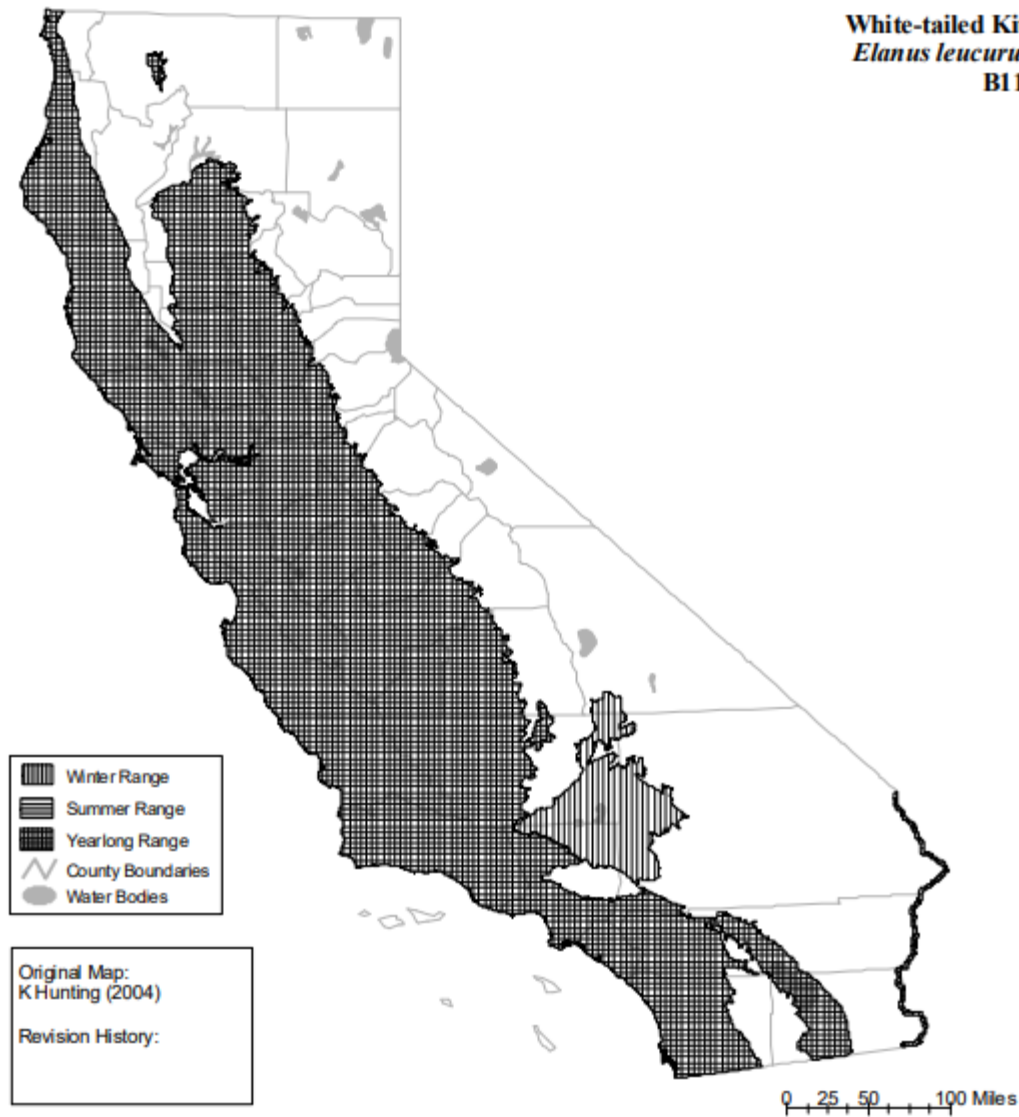
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ATTACHMENT C

California Wildlife Habitat Relationships System

California Department of Fish and Wildlife
 California Interagency Wildlife Task Group

White-tailed Kite
Elanus leucurus
B111



Range maps are based on available occurrence data and professional knowledge. They represent current, but not historic or potential, range. Unless otherwise noted above, maps were originally published in Zeiner, D.C., W.F. Laudenslayer, Jr., K.E. Mayer, and M. White, eds. 1988-1990. California's Wildlife. Vol. I-III. California Depart. of Fish and Game, Sacramento, California. Updates are noted in maps that have been added or edited since original publication.

ATTACHMENT D

California Wildlife Habitat Relationships System California Department of Fish and Wildlife California Interagency Wildlife Task Group

WHITE-TAILED KITE

Elanus leucurus

Family: ACCIPITRIDAE
 B111

Order: FALCONIFORMES

Class: AVES

Written by: C. Polite

Reviewed by: S. Bailey

Edited by: S. Bailey, P. Bloom

Updated by: CWHR Program Staff, February 2005

DISTRIBUTION, ABUNDANCE, AND SEASONALITY

Common to uncommon, yearlong resident in coastal and valley lowlands; rarely found away from agricultural areas. Inhabits herbaceous and open stages of most habitats mostly in cismontane California. Has extended range and increased numbers in recent decades.

SPECIFIC HABITAT REQUIREMENTS

Feeding: Preys mostly on voles and other small, diurnal mammals, occasionally on birds, insects, reptiles, and amphibians. Forages in undisturbed, open grasslands, meadows, farmlands and emergent wetlands. Soars, glides, and hovers less than 30 m (100 ft) above ground in search of prey. Slowly descends vertically upon prey with wings held high, and legs extended; rarely dives into tall cover (Thompson 1975).

Cover: Uses trees with dense canopies for cover. In southern California, also roosts in saltgrass and Bermudagrass.

Reproduction: Makes a nest of loosely piled sticks and twigs and lined with grass, straw, or rootlets. Nest placed near top of dense oak, willow, or other tree stand; usually 6-20 m (20-100 ft) above ground (Dixon et al. 1957). Nest located near open foraging area.

Water: Probably meets water requirements from prey.

Pattern: Uses herbaceous lowlands with variable tree growth and dense population of voles (Waian and Stendell 1970). Substantial groves of dense, broad-leaved deciduous trees used for nesting and roosting.

SPECIES LIFE HISTORY

Activity Patterns: Yearlong diurnal, and crepuscular activity.

Seasonal Movements/Migration: Apparently not migratory, but Binford (1979) found some movements in coastal California. May become nomadic in response to prey abundance (Dunk and Cooper 1994).

Home Range: Forages from a central perch over areas as large as 3 sq km (1.9 sq mi) (Warner and Rudd 1975). Seldom hunts more than 0.8 km (0.5 mi) from nest when breeding (Hawbecker 1942). Henry (1983) found mean breeding home range to be 0.57 sq km (0.2 mi).

Territory: Generally not territorial, but nest site may be defended against crows, other hawks, and eagles (Pickwell 1930, Dixon et al. 1957). Defended foraging territories of about 0.10 sq km (.04 sq mi) in winter from red-tailed hawks and northern harriers (Bammann 1975).

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Communal roost used in nonbreeding seasons (Waian and Stendell 1970). Territory size a function of prey and competitor abundance (Dunk and Cooper 1994).

Reproduction: Monogamous; breeds from February to October, with peak from May to August. Average clutch 4-5 eggs, range 3-6. Female only incubates, for about 28 days. Young fledge in 35-40 days. During incubation and nestling period, male feeds female, and supplies her with food to feed the young. Usually single brooded; occasionally 2 broods.

Niche: Preys on rodents that may be harmful to agricultural crops. Nest may be robbed by jays, crows yellow-billed magpies, raccoons, and opossums. Great horned owls may prey on adults and young.

REFERENCES

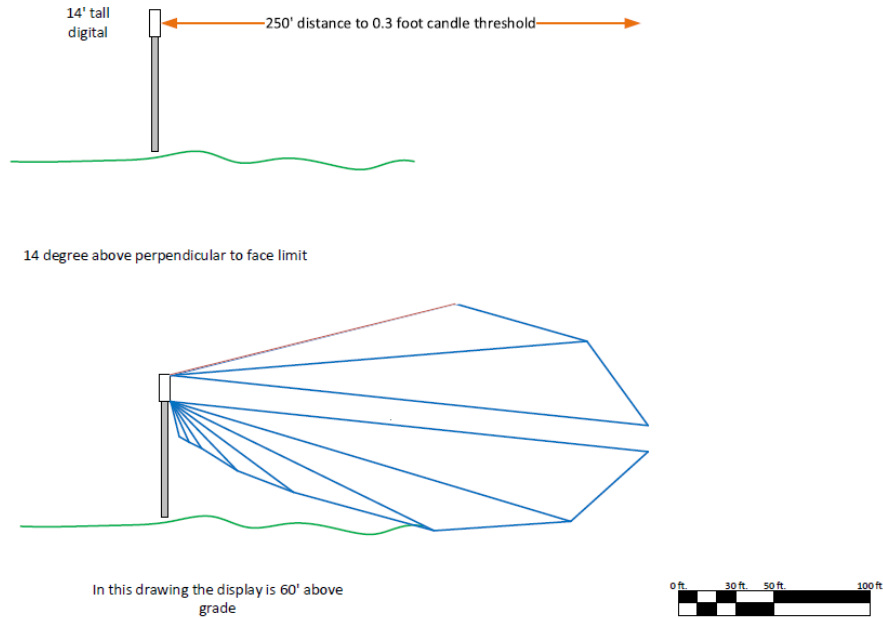
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B111

Life history accounts for species in the California Wildlife Habitat Relationships (CWHHR) System were originally published in: Zeiner, D.C., W.F.Laudenslayer, Jr., K.E. Mayer, and M. White, eds. 1988-1990. California's Wildlife. Vol. I-III. California Department of Fish and Game, Sacramento, California. Updates are noted in accounts that have been added or edited since original publication.

ATTACHMENT E

14 x 48 Vertical Dispersion (Side Elevation View) Updated to show down pitched diodes

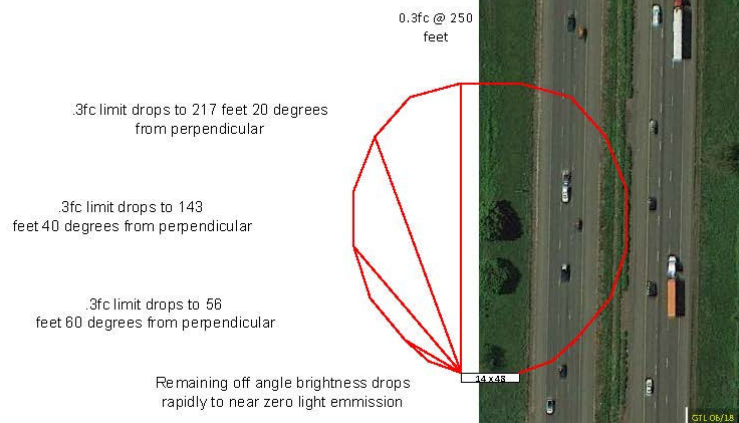


Per OAAA Lighting Guidelines, a 14 x 48 digital display will not increase the ambient lighting by more than 0.3 foot candles at 250 feet.

In order to increase the ambient light the full .3fc, the display would need to emit a full white frame (copy) at night time brightness settings.

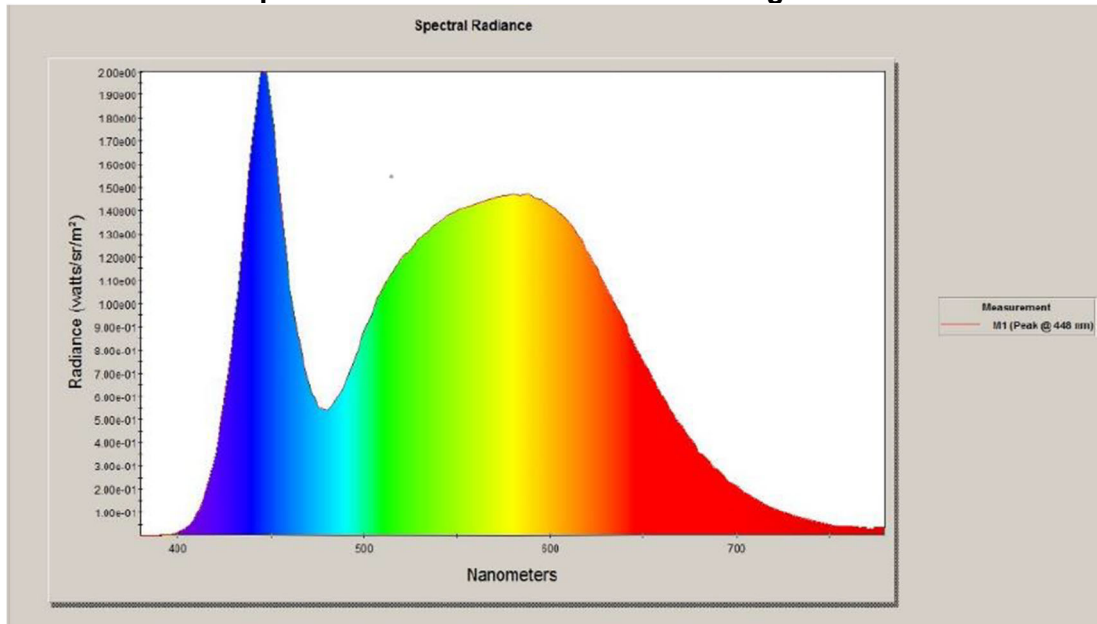
The LEDs are most intense directly perpendicular to their mounted position

The RED boundary shows the distance that the .3fc measurement would be obtained with full white copy.

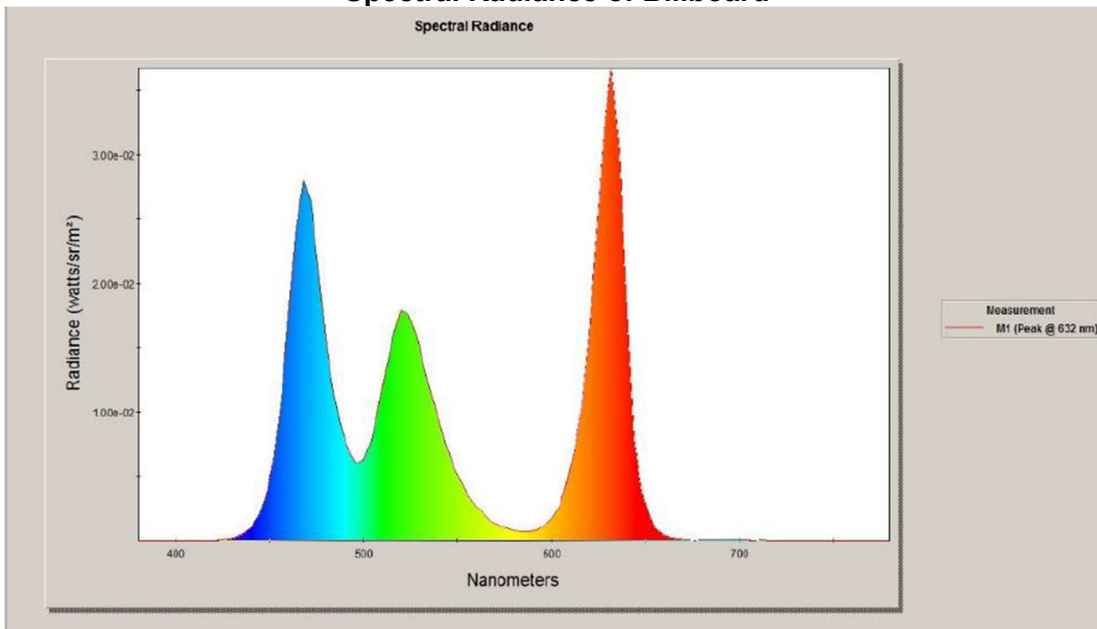


ATTACHMENT F

Spectral Radiance of Standard LED Lightbulb



Spectral Radiance of Billboard



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ATTACHMENT G



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March 21, 2021

VIA ELECTRONIC MAIL ONLY

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Re: Outdoor Advertising Display 6490 Auto Mall Parkway

Dear Mr. Faber and Ms. Houston:

As you are aware, our client OUTFRONT Media LLC ("Outfront") intends to negotiate a development agreement or other instrument with the City of Gilroy ("City") for construction and operation of an outdoor advertising display on property located at 6490 Auto Mall Parkway (the "Sign") in the City of Gilroy ("City"). We understand a zoning amendment also might be necessary, and look forward to partnering with the City in determining a land use entitlement pathway.

In response to your request, we submit this letter explaining how Outfront intends to operate the Sign, particularly with respect to (1) the frequency at which electronic advertisements will change, referred to as "dwell time"; and (2) the brightness at which Outfront will broadcast the proposed electronic messaging. These operational parameters have a bearing on the Sign's potential light-related or traffic safety impacts (or lack thereof).

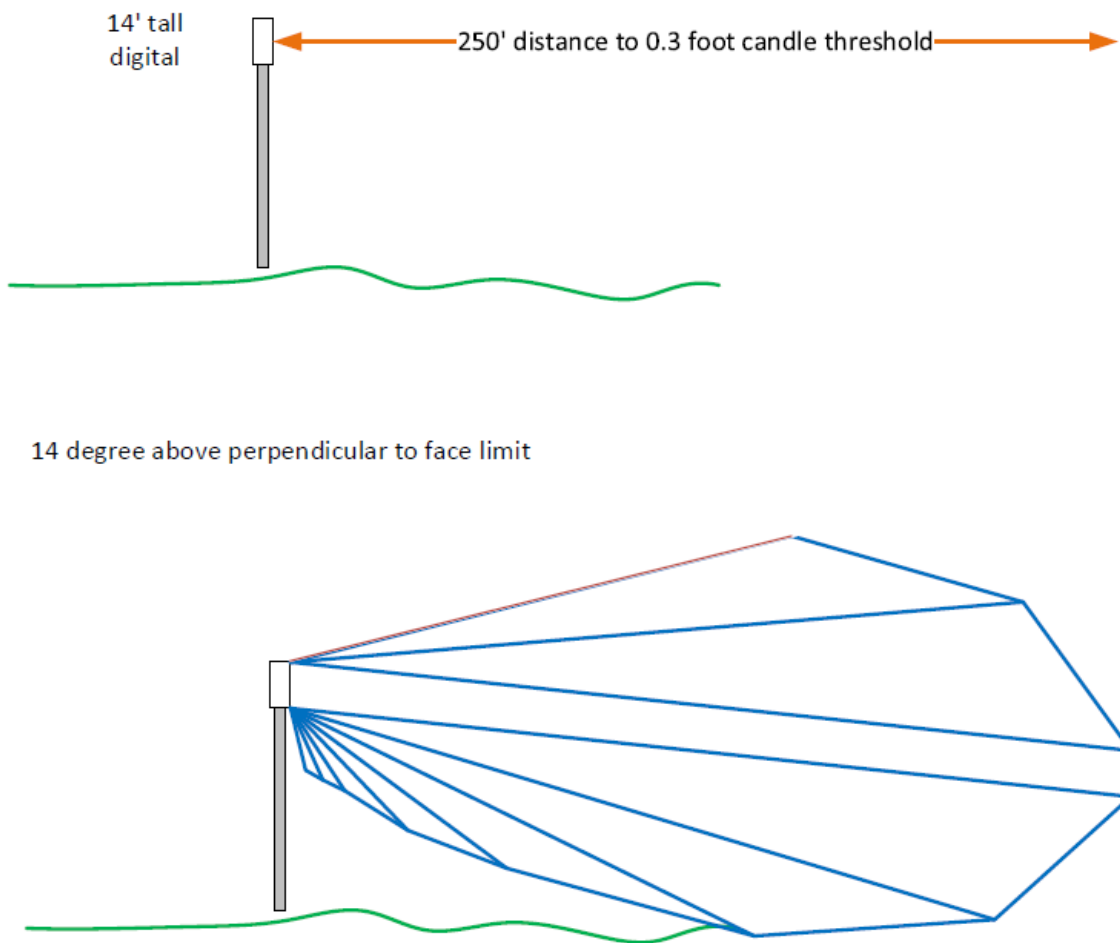
We understand you have expressed an interest in understanding the Sign's brightness levels and the possibility that the Sign's operation might distract drivers and pose a safety risk. Below, we have compiled information and materials that explain how Outfront plans to operate the Sign, particularly with respect to (1) the brightness at which Outfront will broadcast the proposed electronic messaging; and (2) the frequency at which electronic advertisements will change — again, known as the "dwell time" — which informs the risk of distraction. Outfront's operational parameters are consistent with federal, state, and local standards, and in fact are more protective of the public than applicable regulations.

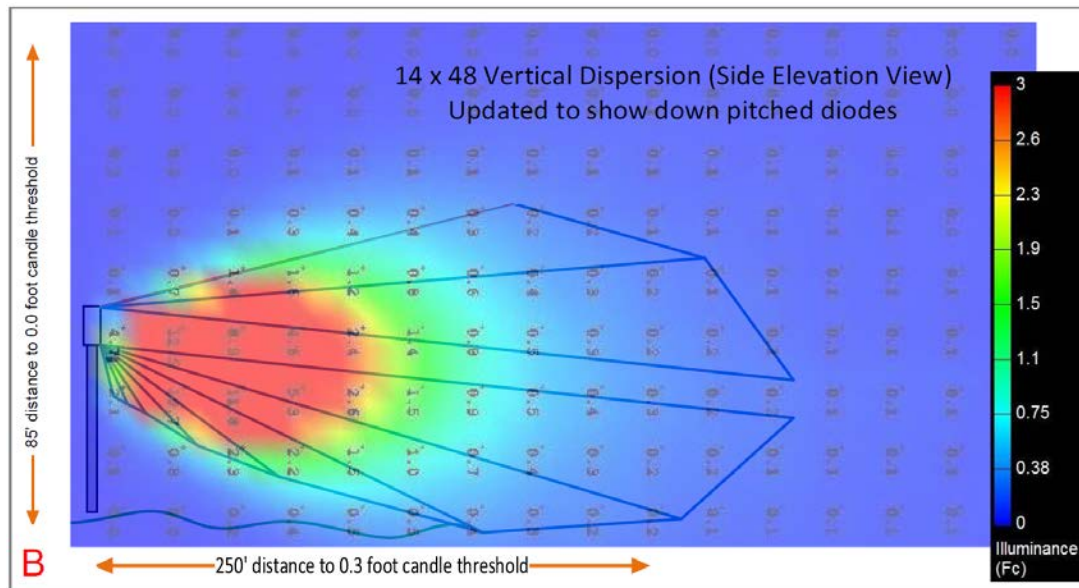
1. General Overview of Light "Footprints"

Digital billboards are designed with more thought than most realize. A sign's brightness automatically adjusts in response to ambient conditions, as measured by on-site sensors, and ensures the sign operates at a luminosity that is only slightly greater than background conditions. This difference is a maximum of 0.3 foot candles measured at 250 feet, which is roughly the brightness one would experience when looking at a candle through a dark filter, and

this measurement is equivalent to 300 nits and 87.7 foot Lamberts. (The concept of foot candles and brightness are discussed in greater detail, below, in Sections 2 and 3.) Each of the individual light emitting diodes (“LEDs”) on the sign’s display facings, meanwhile, is angled downward toward motorists, thereby reducing light pollution and glare when compared to traditionally illuminated signs. In fact, at 250 feet, light from an Outfront sign generally does not register on a light meter.

As a consequence, a sign’s light “footprint” is fairly minimal. For instance, the vertical footprint of a 60- to 65-foot-high sign with display panels measuring 14 feet by 48 feet is depicted as follows:





The above diagram illustrates typical differences in signage-related brightness through the use of colors, with blue representing smaller differences (i.e., differences of 0.1 to 0.3 foot candles), green representing 1 to 1.5 foot candles, and warmer colors (e.g., red, orange, and red) showing greater brightness differences. The perceptible, vertical light footprint of a 60- to 65-foot sign therefore rises to a height of about 85 feet and extends laterally to about 250 feet; beyond this footprint, changes in brightness are minimal, and generally do not register on a light meter. Please note this illustration conservatively depicts brightness levels, and many site-specific analysis show brightness levels are in fact slightly lower than depicted here.

Meanwhile, a sign's horizontal footprint is similarly limited in scope, as follows:



While digital billboards are clearer than traditionally illuminated signs, they are not brighter. More information about these design characteristics are addressed in the FAQs in Attachment A.

2. Dwell Time Standards

A. California and Federal Standards

California law allows LED billboards, a type of commercial electronic variable message sign ("CEVM"), to operate at a minimum dwell time of no less than four seconds before the display may transition to the next image. This requirement is set forth in Business and Professions Code section 5405(d)(1), which provides, in relevant part, "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 four seconds." The Outdoor Advertising Association of America ("OAAA") likewise recommends that billboards display a message for no less than four seconds. (Cal. Dept. of Transportation, Caltrans Division of Research and Innovation, Effects of Outdoor Advertising Displays on Driver Safety, (Oct. 11, 2012) p. 9, attached hereto and referred to herein as Appendix 1.)

The Federal Highway Administration ("FHWA"), meanwhile, has approved of a similar dwell time standard. According to an FHWA memorandum, the acceptable range for the "[d]uration of each display is generally between 4 and 10 seconds – 8 seconds is recommended." (U.S. Dept. of Transportation, Fed. Highway Admin., Guidance on Off-Premise Changeable Message Signs (Sept. 25, 2007), p. 2, attached hereto and referred to herein as Appendix 2.)

B. Dwell Times in Other Jurisdictions

A Caltrans Preliminary Investigation, published on October 12, 2012, noted that 43 states in the country have set dwell times ranging from four to 10 seconds, with dwell times of six and eight seconds being the most common. (Appendix 1, App., A, pp. 13-16; see also Menelaos Triantafillou, Alan C. Weinstein, National Signage Research and Education Conference, The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs (2010) p. 6 ["the most common regulatory provisions applicable to digital on-premise signs ... [r]equire that the sign display remain static for a minimum of 5-8 seconds"], attached hereto and referred to herein as Appendix 3.) Specifically, Caltrans noted the following minimum dwell times:

4 seconds – CA, CO, IA, VA

5 seconds – NM, PA

6 seconds (average) – AL, AZ, CT, FL, GA, IA, MI, MN, NV, NY, SD, WI, RI

8 seconds – AR, ID, IN, KS, LA, MO, MS, NJ, NC, OH, OK, OR, SC, TN, UT, WV, WA

Other/State-Company Discretion – KY, MA, MT

(Appendix 1, pp. 14-15.)

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 Jolie Houston
 March 21, 2021
 Page 5

Moreover, a recent federal court further noted that FHWA identified certain "'acceptable criteria' based on certain ranges of acceptability that have been adopted in those States that do allow CEVMS ... recommending, among other things, that each display generally remain static for between four and ten seconds, and transition to a new display in one to four seconds[.]" (*Scenic America, Inc. v. United States Dept. of Transportation* (D.C. Cir. 2016) 836 F.3d 42, 46-47, attached hereto and referred to herein as Appendix 4.)

C. Dwell Time of Eight Seconds Does Not Adversely Impact Road Safety

An OAAA Digital Technology Brief dated February 2015, attached hereto and referred to herein as Appendix 5, notes that "digital billboards" display static images that typically transition every six or eight seconds. Of particular significance, the report also noted the following:

Effective January 1, 2015, New York State switched from 24-hour to 8-second display time on digital billboards. New York's analysis of crash data "suggests there is no change in crash patterns in the vicinity of the off-premise CEVMS billboards," and continue monitoring is warranted.

(Appendix 5, p. 4, emphasis added.)

Further, FHWA conducted two studies on driver visual behavior with regard to electronic billboards, and released a report documenting its findings entitled "Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS)." (William A. Perez et al., U.S. Dept. of Transportation, Fed. Highway Admin., (Sept. 2012), Report No., FHWA-HEP-16-036 attached hereto and referred to herein as Appendix 6.) The report explained that the studies were "conducted to provide the FHWA with data to determine if CEVMS capture visual attention differently than standard off-premise advertising billboards." (*Id.* at 5.) The studies were initiated in response to a safety concern raised by Scenic America, a nonprofit organization seeking to preserve the scenic qualities of America's roadways. (*Id.*) Specifically, the FHWA report noted:

[T]he current Federal Highway Administration (FHWA) guidance recommends that CEVMS should not change content more frequently than once every 8 seconds. However, according to Scenic America, [CEVMS present a safety concern in that] the "distinguishing trait" of a CEVMS "is that it can vary while a driver watches it, in a setting in which that variation is likely to attract the drivers' attention away from the roadway."

(*Id.*)

Drivers in Richmond, VA and Reading, PA participated in the FHWA studies on driver distraction. (*Id.* at 6.) The billboards in the study "changed content approximately every 8 to 10 seconds." (*Id.* at 2.) The FHWA report noted that the presence of CEVMS did not correlate to a decrease in looking toward the road head. (*Id.*) Moreover, the report found that glance duration toward digital billboards averaged 0.379 seconds, while glances at static billboards were at 0.335 seconds at both test sites — a difference of about four hundredths of a second. The result did not provide evidence indicating that CEVMS, as deployed and tested in the two selected cities, were associated with unacceptably long glances away from the road. (*Id.* at 54.) In fact, the report noted that "the average fixation durations to CEVMS and standard billboards were

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 Jolie Houston
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similar to the average fixation durations to CEVMS and standard billboards were similar to the average fixation duration to the road ahead." (*Id.* at 2.)

FHWA concluded:

The present data suggest that the drivers in this study directed the majority of their visual attention to areas of the roadway that were relevant to the task at hand (e.g., the driving task). Furthermore, it is possible, and likely, that in the time that the drivers looked away from the forward roadway, they may have elected to glance at other objects in the surrounding environment (in the absence of billboards) that were not relevant to the driving task. When billboards were present, the drivers in this study sometimes looked at them, but not such that overall attention to the forward roadway decreased.

(*Id.* at 4; see also Darrin Friskney, Federal Highway Administration study confirms safety of digital billboards and signs, published June 16, 2014, attached hereto and referred to herein as Appendix 7.)

Finally, a study conducted by experts at the University of Utah found that in-vehicle information systems (e.g., gadgets, buttons, etc. inside the vehicle) create "moderate to high level cognitive workload for drivers," and that after drivers interact with these information systems, it takes about 27 seconds to return to normal levels on performance. (Ken Klein, *The Hunt for Distractions Leads to Inside the Vehicle* (May 4, 2016) Billboard Insider, <http://billboardinsider.com/the-hunt-for-distractions-leads-to-insider-the-vehicle/> [as of Dec. 5, 2016], attached hereto and referred to herein as Appendix 8.) This study suggests that in-vehicle information systems pose significantly greater risks than CEVMS.

3. Brightness Standards

A. California Standard

Business and Professions Code section 5403(g) defines that brightness standard for CEVMS in relation to Vehicle Code section 21466.5, which provides:

No person shall place or maintain or display, upon or in view of any highway, any light of any color of such brilliance as to impair the vision of drivers upon the highway. A light source shall be considered vision impairing when its brilliance exceeds the values listed below.

The brightness reading of an objectionable light source shall be measured with a 1.5-degree photoelectric brightness meter placed at the driver's point of view. The maximum measured brightness of the light source within 10 degrees from the driver's normal line of sight shall not be more than 1,000 times the minimum measured brightness in the driver's field of view, except that when the minimum measured brightness in the field of view is 10 foot-lamberts or less, the measured brightness of the light source in foot-lambert shall not exceed 500 plus 100 times the angle, in degrees, between the driver's line of sight and the light source.

The provisions of this section shall not apply to railroads as defined in Section 229 of the Public Utilities Code.

Under the foregoing, the most conservative brightness limit with which the Sign would have to comply is 500 foot-lamberts above ambient levels,¹ which is equivalent to 1713 nits above ambient levels. Outfront proposes to operate the Sign's night-time limit at about 300 nits above ambient levels (which equates to 0.3 foot candles at 250 feet),² meaning the Sign's brightness would always be about one-sixth of the maximum brightness level allowed under California state law.

For a frame of reference, 0.3 foot candles is comparable to the light emanating from a computer monitor. Outfront has no interest in operating its Sign at greater brightness levels, which would make the display look "washed out" and difficult to read.

B. Brightness Standards in Other Jurisdictions

As discussed above, Outfront currently proposes to operate the Sign at issue at a night-time brightness level of approximately 300 nits above ambient levels, which is equal to or less than the standards adopted by the great majority of states. A 2010 report entitled "The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs" found that a recent survey of numerous jurisdictions showed that the most common regulatory provisions applicable to digital on-premise signs limit brightness changes to 500 or more nits at night. (Appendix 3, p. 6; Appendix 1, p. 3.) For instance, CEVMs in San Antonio, Texas must comply with a maximum brightness level of 2,500 nits at night, while CEVMs in Oakdale, Minnesota have a maximum brightness of 500 nits at night. (Appendix 1, p. 2.) Meanwhile, Washington state prohibits brightness from exceeding 1,000 nits or equivalent candelas between dusk and dawn (Wash. Admin. Code, § 468-66-050(3)(g)(v), attached hereto and referred to herein as Appendix 9; Appendix 1, pp. 10-11), whereas Arizona allows CEVMs to operate at 342 nits at night. (OAAA, Issue Brief, Outdoor Lighting and Dark Skies, (Nov. 2016) p. 2, attached hereto and referred to herein as Appendix 10). The regulations in these jurisdictions thus allow CEVMs to operate at significantly higher brightness levels than Outfront's proposed operation of the Sign at 300 nits.

Only nine jurisdictions have adopted the more conservative standard (i.e., 300 nits or 0.3 foot candles) with which Outfront proposes to comply, including Colorado, Massachusetts, Michigan, Missouri, New Mexico, Oregon, Tennessee, Wyoming, and Puerto Rico. (See *id.*, pp. 1-2; Or. Admin. R. no. 734-060-0007(3)(a)(C), attached hereto and referred to herein as Appendix 11; Appendix 1, p. 7-8; Appendix 5, p. 3.)

¹ This calculation assumes a minimum measured brightness in the field of view of less than 10 foot-lamberts, and a view angle of zero degrees (i.e., directly in front of the driver).

² Setting a standard in foot candles is a more appropriate metric by which to judge impacts on sensitive receptors, as a foot candela measures light intensity experienced at the receptor, whereas measurement in candela/square meters or nits reveals only the intensity of light at its source.

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4. Conclusion

Outfront's signs are operated at approximately one-sixth of the maximum brightness levels allowed by California state law. Moreover, as shown herein, the Sign's contributions to ambient brightness levels generally do not register on light meters beyond 250 feet. The information and sources cited herein support that digital outdoor advertising displays, as designed and operated by Outfront, do not result in significant light-related or traffic safety impacts. Operation of the Sign will comply with dwell time and brightness standards espoused by the California legislature, Caltrans, and FHWA, where these standards are supported by scientific analysis and constitute substantial evidence. In fact, as explained above, the Sign would comply with much more conservative standards than required by law. We understand that site-specific light studies might prove necessary insofar as the City of Gilroy considers Outfront's sign project, and offer this evidence as background information that we hope will help the City make an informed decision on this matter.

Please let us know if you or the City have any further questions.

Very truly yours,



Sean Marciniak
Partner



Christina L. Berglund
Senior Counsel

CLB

Attachment A: Frequently Asked Questions
Attachment B: Appendices

cc: Jeff McCuen, Outfront Media, LLC (jeff.mccuen@outfrontmedia.com)
Bryan Scott, Outfront Media, LLC (bryan.scott@outfrontmedia.com)

Attachment A

FREQUENTLY ASKED QUESTIONS

Over the years, Outfront has received a number of questions from city and county decisionmakers, as well as the public, related to how its signs are operated and what impacts they may have on a community. Below, we've included frequently asked questions along with answers. These answers are based on the materials attached to this letter, and the input of industry lighting experts.

Question 1: Which is brighter, an LED sign or a traditional, vinyl billboard illuminated by flood lights.

Short Answer: On the highway where motorists will see any given sign, LED signs are very slightly brighter; outside this targeted area, such as in neighborhoods, the brightness of LED signs are equal or less than the brightness of traditional billboards.

Longer Answer: To best understand the answer to this question, it first is necessary to understand how traditional, static billboards are illuminated. To reach an audience, the illumination of traditional billboards is imprecise; the billboard face is blasted with light at a level ranging from 31 to 312 times the brightness of an LED bulb (where brightness depends on color), and light reflects off the sign's vinyl surface in all different directions. As such, the target audience is reached along with a host of others, and this is why receptors see, for instance, sky glow from traditional, illuminated signs.

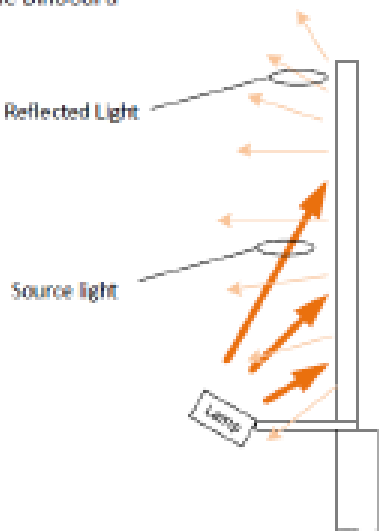
By contrast, LED billboards are very precise, in that they are focused on and directed at a specific target audience, and receptors in the periphery are affected at a much lesser level. The graphics below illustrate this "targeting" principle and the difference between LEDs and static billboards.



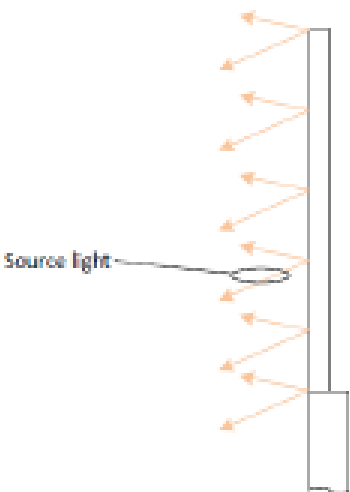
[Graphics continued on next page]

Efficiency of Static vs Digital Billboards

Static Billboard



Digital Billboard



Description	Static	Digital	Comment
Technical description of light	Illumination	Lamination	
Light source	4 each Metal Halide Floods	LED surface	
Light angles at light source	Directed through glass lens	Specific to diodes and louvers	Flood lamps are set to 30 degree apex for cokes
Light pattern from sign face	Scattered	Specific to diodes and louvers	
Number of fixtures	4	N/A, surface light only	
Candelas per fixture	31300	Surface output is variable	
Total candelas	584789	Surface output is variable	
Light to specific target	Random	Mathematically determinable	Variations of lens, reflectivity of copy, etc effect flood light scatter
Source light output for full white copy in candelas	584789	18729	Static is 31 times more candelas at light source (Fig.A)
Source light output for full green copy in candelas	584789	11267	Static is 52 times more candelas at light source (Fig.B)
Source light output for full red copy in candelas	584789	5618	Static is 104 times more candelas at light source (Fig.C)
Source light output for full blue copy in candelas	584789	1875	Static is 312 times more candelas at light source (Fig.D)
Source light output for typical copy without white background	584789	6000	Static is 97 times more candelas at light source (Fig.E)



Fig A

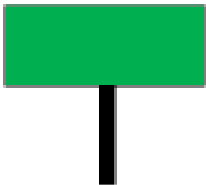


Fig B

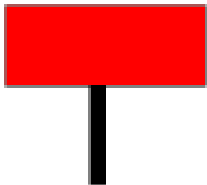


Fig C



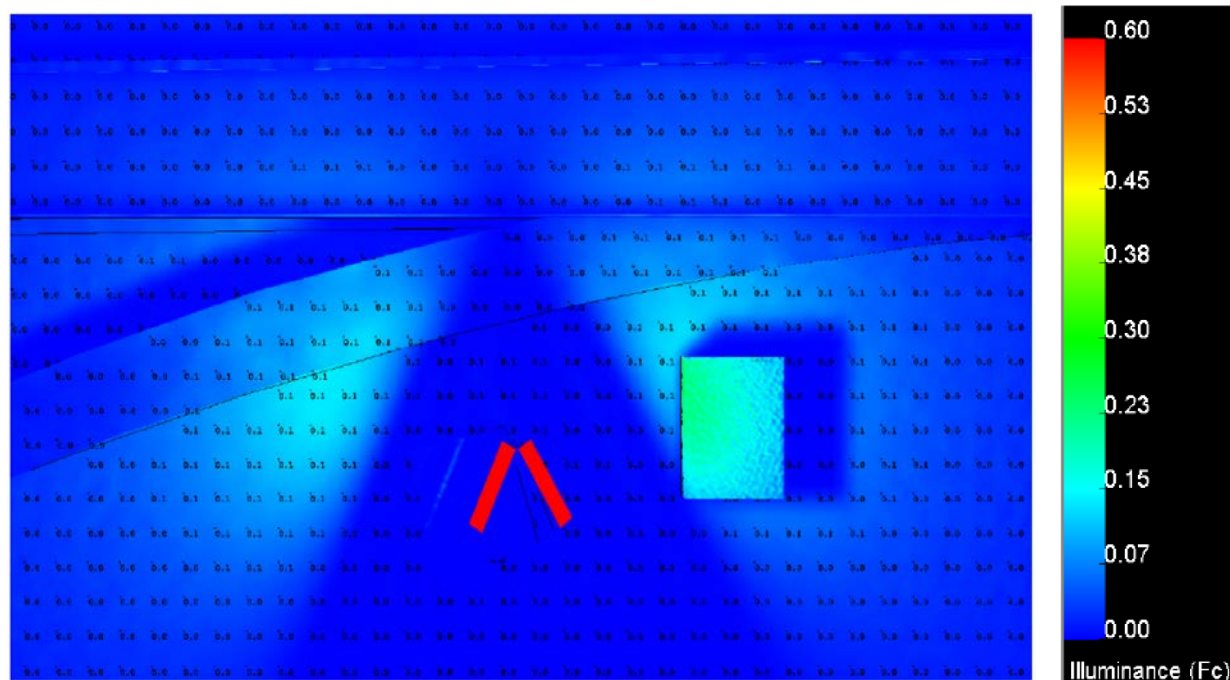
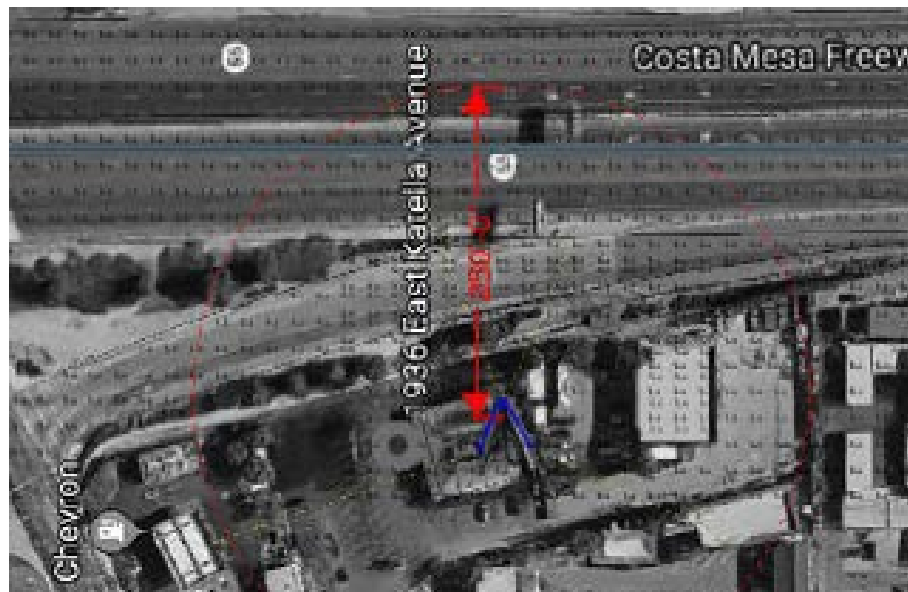
Fig D



Fig E

So is illuminated static display brighter? Any difference in brightness between a static and an LED billboard is negligible beyond 250 feet, and likely would not even register on a light meter. We know this because, when one looks at typical light studies for a digital billboard, one sees that, beyond 250 feet, the change in light is less than 0.1 foot candles, and often close to 0.0 foot candles.

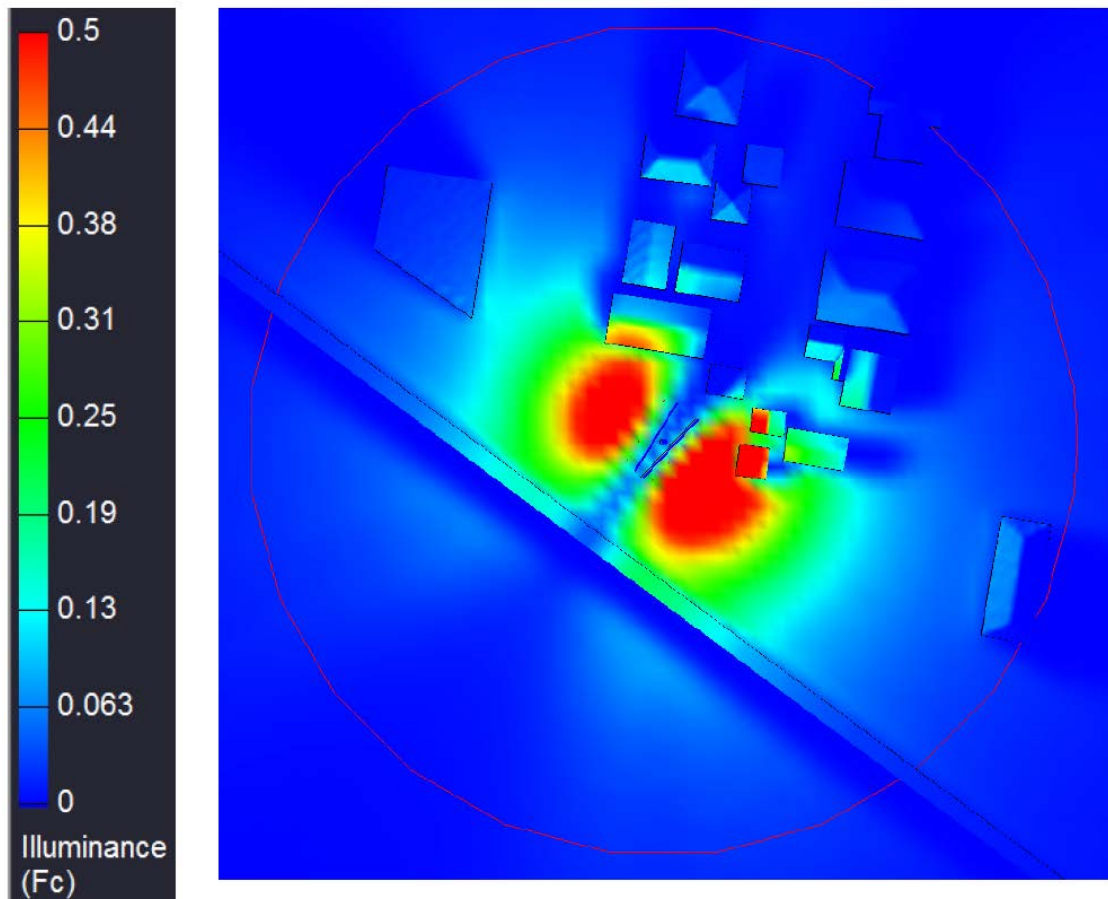
To the right and below are excerpts from a site-specific light study prepared for an Outfront LED display in Southern California, showing the brightness "footprint" of a sign when operated at 0.3 foot candles above ambient levels. Please note, Outfront provides the local agency with a similar light study for each sign it proposes, taking into account the specificities of the sign's design and the project site.



This overhead diagram illustrates differences in brightness through the use of colors, with blue representing smaller differences (i.e., differences of less than 0.1 foot candles), green showing a difference of 0.3 foot candles, and warmer colors (e.g., red, orange, and yellow) showing

greater brightness differences. The study shows that, beyond 250 feet, the brightness difference rounds out to 0.0 foot candles, and therefore is unlikely to be detected on light meters.³

The footprint of a traditional illuminated billboard, by contrast, is depicted below:



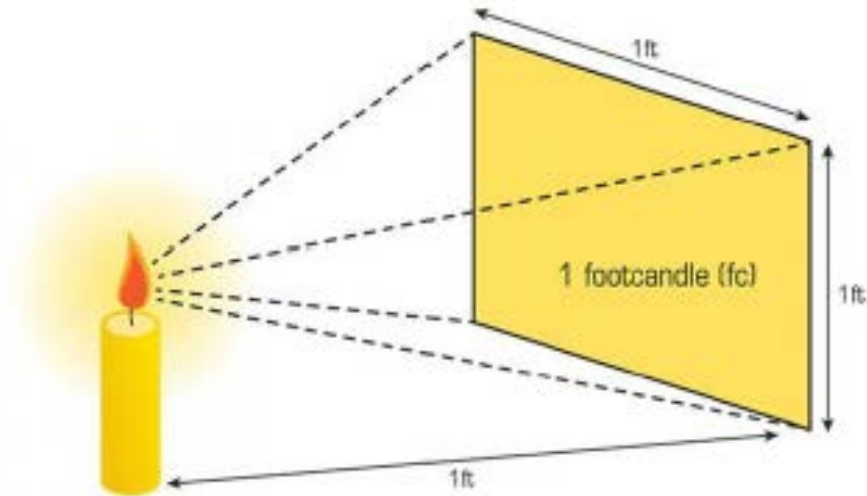
Accordingly, an LED billboard produces about the same amount of light directly in front of the billboard, and less light at ground-level and other peripheral locations. In no case does brightness increase to any measurable extent beyond 250 feet.

Finally, it should be mentioned that digital signs incorporate technology that takes account of existing ambient lighting, and ensures light from the sign never exceeds 0.3 foot candles at 250 feet above ambient conditions. A traditional illuminated sign has "one-speed," and emits light at the same brightness regardless of ambient conditions. Under some ambient light conditions, then, a traditional sign will in fact create more light pollution than an LED sign.

Question 2: What is a foot candle, in lay terms?

Answer: A foot candle is the amount of light a single candle makes at a distance of 1 foot (see illustration below), and so a 0.3 change in foot candle would be 30 percent of the light one would experience at 1 foot away from a candle. To apply this in a real-world example, if a person in the dark cabin of an airplane, sitting four rows in front of you in an aisle seat, opened a Word document on a 17" laptop, you would experience a 0.3 foot candle increase in light.

³ Note, at 250 feet, light generally is less than 0.3 foot candles at ground level because the sign facings are generally located significantly above grade.



Question 3: If all the above is true, why do digital billboards appear more noticeable?

Answer: Terms like "noticeable" do not have a scientific underpinning. Many who ask this question are responding to the fact that digital signs can appear *clearer* than traditional signs. But enhanced clarity is not the same as increased brightness. For example, when one replaces an older television, incorporating a cathode-ray tube, with a newer 4k screen, the picture appears crisper and more engaging. The brightness, however, does not change.

Attachment B

Excerpts from:

Preliminary Investigation

Caltrans Division of Research and Innovation

Produced by CTC & Associates LLC

Effects of Outdoor Advertising Displays on Driver Safety

Requested by

Suzy Namba, Caltrans Division of Design

October 11, 2012

The Caltrans Division of Research and Innovation (DRI) receives and evaluates numerous research problem statements for funding every year. DRI conducts Preliminary Investigations on these problem statements to better scope and prioritize the proposed research in light of existing credible work on the topics nationally and internationally. Online and print sources for Preliminary Investigations include the National Cooperative Highway Research Program (NCHRP) and other Transportation Research Board (TRB) programs, the American Association of State Highway and Transportation Officials (AASHTO), the research and practices of other transportation agencies, and related academic and industry research. The views and conclusions in cited works, while generally peer reviewed or published by authoritative sources, may not be accepted without qualification by all experts in the field.

- The message change interval should not exceed 2 s.
- The displayed image should remain static from the moment it first appears until the moment it is changed.
- No animation, flashing or moving lights should be allowed.
- No message or image that could be mistaken for a traffic control signal should be displayed.
- Messages should be simple and concise.

United States

New York State

Regulations proposed in 2008 include:

- Minimum message duration of 62 seconds, so that no motorist would be able to see more than one message change as he or she approached any particular changeable electronic variable message sign.
- Message transition time should be instantaneous to minimize distraction.
- Minimum spacing between changeable electronic variable message sign is 5,000 feet.
- Maximum changeable electronic variable message sign brightness of 5,000 cd/m² in daylight and 280 cd/m² at night.
- Prohibited locations:
 - On interstate and controlled access highways: Within 1,100 feet of an interchange, at-grade intersection, toll plaza, signed curve or lane merge/weave area; within 5,000 feet of another changeable electronic variable message sign or official traffic device that has changeable messages.
 - On primary highways: Within 1,100 feet of an entrance or exit from a controlled access highway, a signed curve or a lane/merge area; within 5,000 feet of another changeable electronic variable message sign or official traffic control device with changeable messages.

Revised criteria made these requirements less restrictive, reducing message duration from 62 to 6 seconds and changing spacing requirements and prohibited locations. The requirements for instantaneous message transition and maximum brightness did not change.

San Antonio, TX

Regulations for a trial evaluation of 15 off-premise digital signs included a message duration time of 10 seconds; change intervals of one second or less; brightness less than or equal to 7,000 nits during the day and 2,500 nits at night; and various other regulations. (One nit = one candela per square meter.)

Flowery Branch, GA

Regulations in this community begin on page 138 of the report and include:

- Minimum message duration: to the amount of time that would result in one message per mile at the highest speed limit posted within the 5000 feet approaching the sign for the road from which the sign is to be viewed.
- Transition time: less than one-tenth of a second, with no animated transitions.
- Illumination and brightness: not greater than 12 foot-candles from the nearest point of the road.
- Freezing of the display on malfunction.
- Prohibition of message sequencing.

Oakdale, MN

Brightness is limited to 2,500 nits during the day and 500 nits at night, with adjustments for ambient light conditions and a minimum display duration of 60 seconds.

State Regulations

State and Local Regulation Summaries

State Changeable Message Chart, Outdoor Advertising Association of America, undated.

http://www.superliciousdesign.com/ledmedia/State_Changeable_Message.pdf (or see [Appendix A](#)).

This chart summarizes changeable message advertising sign regulations for 46 states:

- Three states (New Hampshire, North Dakota and Wyoming) do not allow these signs.
- Five states (Maryland, Massachusetts, Oregon, Texas and Washington) allow tri-action signs only.
- Thirty-eight states allow changeable message signs. Of these, 19 states (California, Colorado, Connecticut, Delaware, Florida, Georgia, Indiana, Kansas, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oklahoma, Tennessee, Utah, Virginia and Wisconsin) have statutes; 10 states (Arkansas, Idaho, Illinois, Iowa, Louisiana, Nebraska, Nevada, North Carolina, South Carolina and West Virginia) have regulations; seven states (Alaska, Arizona, Kentucky, Montana, New Mexico, Rhode Island and South Dakota) have interpretations of the federal/state agreement; and two states (Mississippi and Pennsylvania) have policy memoranda.

The document categorizes each of these states by regulations for minimum message duration (“dwell time”—generally from 4 to 10 seconds, with 6 or 8 seconds most common); maximum interval between messages (typically from 1 to 4 seconds), and spacing (500 feet is most common). It is unclear how up-to-date these regulations are; we were unable to determine the date for this chart or obtain the latest information from the OAAA, which requires paid registration for access.

The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs, Menelaos Triantafillou, Alan C. Weinstein, National Signage Research and Education Conference, 2010.

<http://www.thesignagefoundation.org/LinkClick.aspx?fileticket=3inv%2fYrpFk%3d&tabid=59&mid=468>

From the report: Based on a recent survey of numerous jurisdictions by one of the authors, the most common regulatory provisions applicable to digital on-premise signs appear below:

- Require that the sign display remain static for a minimum of 5-8 seconds and require “instantaneous” change of the display; i.e., no “fading” in/out of the message.
- Prohibit scrolling and animation outside of unique—and mostly pedestrian-oriented—locations.
- Limit brightness to 5,000 nits during daylight and 500 nits at night.
- Require automatic brightness control keyed to ambient light levels.
- Require display to go dark if there is a malfunction.
- Specify distancing requirements from areas zoned for residential use and/or prohibit orientation of sign face towards an area zoned for residential use.

See also Appendices B and C in Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction in **Related Research** for an overview of state regulations and practices as of 2001.

Survey of Current State Regulations

We found digital display regulations for 12 states. These regulations are summarized in the following table and then detailed by state.

State	Duration ≥	Inter- val ≤	Brightness/ Illumination	Font Size	Visual Effects	Sequencing	Spacing	Locations	Billboard Size
DE	10s	1s	Must appropriately adjust display brightness as ambient light levels change.	Size not specified. A sign that attempts or appears to attempt to direct the movement of traffic or which contains wording, color, shapes, or likenesses of official traffic control devices is prohibited.	May not contain or display any lights, effects, or messages that flash, move, appear to be animated or to move, scroll, or change in intensity during the fixed display period	Prohibited.	>2,500ft from another VMS >500ft from a static sign	Permitted within 660ft of the edge of the right-of-way of any interstate or federal-aid primary highway. > 1,000ft from an interchange, interstate junction of merging or diverging traffic, or an at-grade intersection. May not be placed along designated Delaware byways.	Not specified.
FL	6s	2s	Lighting which causes glare or impairs the vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle is prohibited. A sign may not be illuminated so that it interferes with the effectiveness of, or obscures, an official traffic sign, signal or device. Lighting may not be added to or increased on a nonconforming sign.	Not specified.	Flashing, intermittent, rotating, or moving lights are prohibited. Instantaneous transition for entire sign face required.	Not specified.	Not specified.	Not specified.	Not specified.

State	Duration ≥	Inter- val ≤	Brightness/ Illumination	Font Size	Visual Effects	Sequencing	Spacing	Locations	Billboard Size
GA	10s	3s	Must be effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way, which beams or rays are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with the operation of a motor vehicle. Must not obscure or interfere with the effectiveness of an official traffic sign, device, or signal.	Not specified.	May not contain flashing, intermittent, or moving light or lights except those giving public service information such as time, date, temperature, weather.	Not specified.	>5,000ft from another multiple message sign.	Not specified.	Not specified.
IA	8s	1s	The intensity of the illumination may not cause glare or impair the vision of the driver of any motor vehicle or otherwise interferes with any driver's operation of a motor vehicle.	Not specified.	No traveling messages (e.g., moving messages, animated messages, full-motion video, or scrolling text messages) or segmented messages are allowed.	No segmented messages allowed.	>500ft from another LED display facing the same way in cities. >1000ft in rural areas.	Not specified.	Not specified.
KS	8s	2s	Must be effectively shielded so as to prevent beams or rays of light from being directed at any portion	Not specified.	Cannot contain or display flashing, intermittent or moving lights, including	Not specified.	>1000ft from another CMS.	Not specified.	Not specified.

State	Duration ≥	Inter- val ≤	Brightness/ Illumination	Font Size	Visual Effects	Sequencing	Spacing	Locations	Billboard Size
			of the traveled way of any interstate or primary highway and are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle. Must not be so illuminated that they obscure any official traffic sign, device or signal, or imitate or may be confused with any official traffic sign, device or signal.		animated or scrolling advertising.				
MA	10s	0s	Must automatically adjust the intensity of its display according to natural ambient light conditions. May not cause beams or rays of light from being directed at any portion of the traveled way, which beams or rays are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or otherwise interfere with the operation of a motor	Not specified.	May not contain flashing, intermittent, or moving lights; or display animated, moving video, scrolling advertising; or consist of a static image projected upon a stationary object. May not display illumination that moves, appears to move or changes in intensity during	Not specified.	>500ft from any sign. >2000ft from another off premise electronic sign on the same side of the highway. >1000ft from another off premise electronic sign on the opposite side of the	Not specified.	Not specified.

State	Duration ≥	Inter- val ≤	Brightness/ Illumination	Font Size	Visual Effects	Sequencing	Spacing	Locations	Billboard Size
			vehicle. May not obscure or interfere with the effectiveness of an official traffic sign, device or signal, or cause an undue distraction to the traveling public		the static display period. This does not include changes to a display for time, date and temperature.		highway.		
NY	6s	3s	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.
OH	8s	3s	Not specified.	Not specified.	A multiple message or variable message advertising device shall not be illuminated by flashing, intermittent, or moving lights. No multiple message or variable message advertising device may include any illumination which is flashing, intermittent, or moving when the sign face is in a fixed position.	Not specified.	>1000ft from another MMS.	Not specified.	Not specified.
OR	8s	2s	Must operate at an intensity level of not more than 0.3 foot-candles over ambient light as measured by the distance to the sign	Not specified.	No flashing or varying intensity light; cannot create the appearance of movement.	Not specified.	Not specified.	Not specified.	Not specified.

State	Duration ≥	Inter- val ≤	Brightness/ Illumination	Font Size	Visual Effects	Sequencing	Spacing	Locations	Billboard Size
			depending upon its size (150 feet if the display surface of the sign is 12 feet by 25 feet, 200 feet if the display surface is 10.5 by 36 feet, and 250 feet if the display surface is 14 by 48 feet).						
TN	8s	2s	Not specified.	Not specified.	Video, animation, and continuous scrolling messages are prohibited.	Not specified.	>2000ft from another CMS.	Not specified.	Not specified.
WS	A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within ten seconds.	4s	No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted as directed by the department.	Not specified.	Displays may travel horizontally or scroll vertically onto electronic signboards, but must hold in a static position for two seconds after completing the travel or scroll. Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer,	Not specified.	Not specified.	Not specified.	Not specified.

State	Duration ≥	Inter- val ≤	Brightness/ Illumination	Font Size	Visual Effects	Sequencing	Spacing	Locations	Billboard Size
	A one-segment message may remain static on the signboard with no duration limit.				expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.				
WI	6s	1s	No variable message sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility.	Not specified.	No flashing, intermittent or moving light. Traveling messages prohibited.	Not specified.	Not specified.	Not specified.	Not specified.

- (B) 200 feet for 10.5'x 36'.
- (C) 250 feet for 14'x 48'.

Tennessee

Control of Outdoor Advertising, Chapter 1680-2-3, Rules of Tennessee Department of Transportation Maintenance Division, Tennessee Department of Transportation, February 2003.

Current regulations do not include electronic billboards:

<http://www.tdot.state.tn.us/environment/beautification/pdf/1680-02-03.pdf>.

However, proposed revisions are under review that include guidance on digital displays:

<http://www.tdot.state.tn.us/environment/beautification/docs/Revised-ODA-Rules-Redline.pdf>.

From the web site:

1680-10-01-.03 CRITERIA FOR THE CONTROL OF OUTDOOR ADVERTISING DEVICES.

4. Spacing

(i) (IV) The minimum spacing for changeable message signs with a digital display is two thousand (2,000) feet, except as follows:

- I. An outdoor advertising device that uses a digital display which does not exceed one hundred (100) square feet in total area to give public information such as time, date, temperature, or weather, or to provide the price of a product, the amount of a lottery prize or similar numerical information supplementing the content of a message otherwise displayed on the sign face shall not be subject to the two thousand (2,000) feet minimum spacing requirement in this item (IV).

5. Changeable Message Signs

Changeable message signs are permissible, subject to the following restrictions: (i) The message display time shall remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds. (ii) Video, animation, and continuous scrolling messages are prohibited. (iii) Non-conforming devices shall not be converted to a changeable message sign. (iv) The changeable message sign shall contain a default design that will freeze the sign face to one position if a malfunction occurs. (v) The structure for a changeable message sign may contain sign faces that are in a double-faced, back-to-back, or V-type configuration. (vi) The minimum spacing for changeable message signs with a digital display is as provided in Rule 1680-10-.03(1)(a)4.(i)(IV).

Washington

Highway Advertising Control, M22-95, Washington State Department of Transportation, March 2011.

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M22-95/HighwayAdvertisingControl.pdf>

From the report:

468-66-050 Sign classifications and specific provisions

(3) Type 3 – On-premise signs.

(b) Type 3(b) – Business complex on-premise sign. A Type 3(b) business complex on-premise sign may display the name of a shopping center, mall, or business combination.

- (i) Where a business complex erects a Type 3(b) on-premise sign, the sign structure may display additional individual business signs identifying each of the businesses conducted on the premises. A Type 3(b) on-premise sign structure may also have attached a display area, such as a manually changeable copy panel, reader board, or electronically changeable message center, for advertising on-premise activities and/or presenting public service information.

- (g) Electronic signs may be used only as Type 3 on-premise signs and/or to present public service information, as follows:
 - (i) Advertising messages on electronic signboards may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within ten seconds. A one-segment message may remain static on the signboard with no duration limit.
 - (ii) Displays may travel horizontally or scroll vertically onto electronic signboards, but must hold in a static position for two seconds after completing the travel or scroll.
 - (iii) Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.
 - (iv) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.
 - (v) No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted as directed by the department.
- (h) The act does not regulate Type 3(a), 3(b), 3(c), and 3(d) on-premise signs located along primary system highways inside an incorporated city or town or a commercial or industrial area.

Wisconsin

Control of Outdoor Advertising Along and Visible from Highways on the Interstate and Federal-Aid Primary Systems, Chapter Trans 201, Wisconsin Administrative Code, February 2005.

http://docs.legis.wisconsin.gov/code/admin_code/trans/201.pdf

From the web site:

Trans 201.15 – Electronic signs

- (3) Variable Message Signs.
 - (c) No message may be displayed for less than one-half second.
 - (d) No message may be repeated at intervals of less than 2 seconds.
 - (e) No segmented message may last longer than 10 seconds.
 - (f) No traveling message may travel at a rate slower than 16 light columns per second or faster than 32 columns per second.
 - (g) No variable message sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility.
- (4) Multiple Message Signs.
 - (a) The louver rotation time to change a message shall be one second or less.
 - (b) The time a message remains in a fixed position shall be 6 seconds or more.

84.30 Regulation of Outdoor Advertising, Wisconsin Legislative Documents, 2012.

<http://docs.legis.wisconsin.gov/statutes/statutes/84/30>

From the web site:

- (3)(c)(1) Signs that contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited, except electronic signs permitted by rule of the department.

(4)(bm) Signs may contain multiple or variable messages, including messages on louvers that are rotated and messages formed solely by use of lights or other electronic or digital displays, that may be changed by any electronic process, subject to all of the following restrictions:

1. Each change of message shall be accomplished in one second or less.
2. Each message shall remain in a fixed position for at least 6 seconds.
3. The use of traveling messages or segmented messages is prohibited.
4. The department, by rule, may prohibit or establish restrictions on the illumination of messages to a degree of brightness that is greater than necessary for adequate visibility.

State Changeable Message Chart (Source: OAAA State Statute Matrix)

No changeable message signs allowed:	Tri- action Only	Changeable Message /Digital Technology
(3 STATES) ND, NH, WY	(5 STATES) MD, MA, OR, TX, WA,	(38 STATES) AL, AR, AZ, CA, CO, CT DE, FL, GA, ID, IL, IA, IN, KS, KY, LA, MI, MN, MO, MS, MT, NE, NV, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, UT, VA, WV, WI

State-by-state breakdown of the 38 states allowing Changeable Message/Digital technology

- States which have statutes (19):

CA, CO, CT, DE, FL
GA, IN, KS, MI, MO
MN, NJ, NY, OH
OK, UT, TN, VA, WI

- Regulations (10):

AR, ID, IL, IA*, LA, NE,
NV, NC, SC, WV

- States with interpretations of the federal/state agreement (7):

AL, AZ, KY, MT,
NM, RI, SD

- Policy memoranda (2):

MS approved a policy DOT memorandum
PA approved the technology through an internal PENNDOT memorandum (2002)
IA* regulations are undergoing a comment period

OAAA Changeable Message Criteria Dwell Time Sequence – By State

<u>Dwell Time (Static Message)</u>	<u>State</u>
<u>4 seconds</u>	CA, CO, IA, VA
<u>5 seconds</u>	NM, PA
<u>6 seconds</u>	AL, AZ, CT, FL, GA, IA, MI, MN, NV, NY, SD, WI, RI (average)
<u>8 seconds</u>	AR, ID, IN, KS, LA, MO, MS, NJ, NC, OH, OK, OR, SC, TN, UT, WV, WA
<u>10 seconds</u>	DE, IL, NE, MD, TX
<u>Other/State-Company Discretion</u>	KY, MA, MT

Dwell and Twirl Times for message changes and spacing criteria

States Allowing Changeable Message/Digital Technology

<u>State</u>	<u>Dwell time</u>	<u>Twirl time</u>	<u>Spacing</u> *traditional 500 ft
AL	6 seconds		
AR	8 seconds or more	2 seconds or less	1500 feet
AZ	6 seconds	1 second	*
CA	4 seconds	4 seconds	1000 feet
CO	4 seconds	1 second	1000 feet
CT	6 seconds	3 seconds	*
DE	10 seconds	1 second	2500 feet
FL	6 seconds	2 seconds	1000 to 1500 feet
GA	10 seconds	2 seconds	5000 feet

Dwell and Twirl Times for message changes and spacing criteria (cont'd)

States Allowing Changeable Message Including Electronics

<u>State</u>	<u>Dwell time</u>	<u>Twirl time</u>	<u>Spacing</u>
ID	8 seconds	2 seconds	*
IL	10 seconds	3 seconds	*
IN	8 seconds	2 seconds	*
IA	6 seconds	1 second	*
KS	8 seconds	2 seconds	1000 feet
KY <u>At discretion of state DOT</u>			
LA	8 seconds	4 seconds	*
MI	6 seconds	1 second	*
MN	6 seconds	none	*
MS	8 seconds	instantaneous	*
MO	8 seconds	2 seconds	1400 feet
MT <u>At discretion of state DOT</u>			
NE	10 seconds	2 seconds	5000 feet
NV	6 seconds	3 seconds	*
*NJ <u>(regulatory change pending)</u>	8 seconds	1 second	3000 feet
NM <u>Company discretion</u>	5 seconds	1-2 seconds	*
NY	6 seconds	3 seconds	*
NC	8 seconds	2 seconds	1000 feet
OH	8 seconds	3 seconds	1000 feet
OK	8 seconds	4 seconds	*

Dwell and Twirl Times for message changes and spacing criteria (cont'd)

States Allowing Changeable Message Including Electronics

<u>State</u>	<u>Dwell time</u>	<u>Twirl time</u>	<u>Spacing</u>
PA	5 seconds	1 second	*
RI	5-7 seconds	2-3 seconds	*
Company discretion			
SD	6 seconds	none	*
SC	8 seconds	2-3 seconds	*
TN	8 seconds	2 seconds	2000 feet
UT	8 seconds	3 seconds	*
VA	4 seconds	none	*
WV	8 seconds	2 seconds	1500 feet
WI	6 seconds	1 second	*

States Allowing Changeable Message Including Electronics**Tri-action Only**

<u>State</u>	<u>Dwell time</u>	<u>Twirl time</u>	<u>Spacing</u>
MD	10 seconds	4 seconds	*
MA	none	none	*
OR	8 seconds	4 seconds	1000 feet
TX	10 seconds	2 seconds	*
Rural Roads Only			
WA	8 seconds	4 seconds	*



Laws, Regs and Policy Guidance

Guidance On Off-Premise Changeable Message Signs

 U.S. Department of Transportation Federal Highway Administration	Memorandum
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Subject:	INFORMATION: Guidance On Off-Premise Changeable Message Signs	Date:	September 25, 2007
	ORIGINAL SIGNED BY: Gloria M. Shepherd		
From:	Gloria M. Shepherd Associate Administrator for Planning, Environment, and Realty	Reply to	HEPR-20
To:	Division Administrators ATTN: Division Realty Professionals		

Purpose

The purpose of this memorandum is to provide guidance to Division Realty Professionals concerning off-premises changeable message signs adjacent to routes subject to requirements for effective control under the Highway Beautification Act (HBA) codified at 23 U.S.C. 131. It clarifies the application of the Federal Highway Administration (FHWA) July 17, 1996, memorandum on this subject. This office may provide further guidance in the future as a result of additional information received through safety research, stakeholder input, and other sources.

Pursuant to 23 CFR 750.705, a State DOT is required to obtain the FHWA Division approval of any changes to its laws, regulations, and procedures to implement the requirements of its outdoor advertising control program. A State DOT should request and the Division offices should provide a determination as to whether the State should allow off-premises changeable Electronic Variable Message Signs (CEVMS) adjacent to controlled routes, as required by our delegation of responsibilities under 23 CFR 750.705(j). The Divisions that already have formally approved CEVMS use on HBA controlled routes, as well as, those that have not yet issued a decision, should re-evaluate their position in light of the following considerations. The decision of the Division should be based upon a review and approval of a State's affirmation and policy that: (1) is consistent with the existing Federal/State Agreement (FSA) for the particular State, and (2) includes but is not limited to consideration of requirements associated with the duration of message, transition time, brightness, spacing, and location, submitted for the FHWA approval, that evidence reasonable and safe standards to regulate such signs are in place for the protection of the motoring public. **Proposed laws, regulations, and procedures that would allow permitting CEVMS subject to acceptable criteria (as described below) do not violate a prohibition against "intermittent" or "flashing" or "moving" lights as those terms are used in the various FSAs that have been entered into during the 1960s and 1970s.**

This guidance is applicable to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with the requirements of 23 CFR 750.707(d) (5). As noted below, all of the requirements in the HBA and its implementing regulations, and the specific provisions of the FSAs, continue to apply.

Background

The HBA requires States to maintain *effective control* of outdoor advertising adjacent to certain controlled routes. The reasonable, orderly and effective display of outdoor advertising is permitted in zoned or unzoned commercial or industrial areas. Signs displays and devices whose *size, lighting and spacing are consistent with customary use determined by agreement between the several States and the Secretary*, may be erected and maintained in these areas (23 U.S.C. § 131(d)). Most of these agreements between the States and the Secretary that determined the size, lighting and spacing of conforming signs were signed in the late 1960's and the early 1970's.

On July 17, 1996, the Office of Real Estate Services issued a memorandum to Regional Administrators to provide guidance on off-premise changeable message signs and confirmed that the FHWA has *"always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual FSAs."* It was expressly noted that *"in the twenty-odd years since the agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and the FHWA to interpret the agreements with those changes in mind."* The July 17, 1996, memorandum primarily addressed tri-vision signs, which were the leading technology at the time, but it specifically noted that changeable message signs *"regardless of the type of technology used"* are permitted if the interpretation of the FSA allowed them. Further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the FSAs were entered into, require the FHWA to confirm and expand on the principles set forth in the July 17, 1996, memorandum.

The policy espoused in the July 17, 1996, memorandum was premised upon the concept that changeable messages that were fixed for a reasonable time period do not constitute a moving sign. If the State set a reasonable time period, the agreed-upon prohibition against moving signs is not violated. Electronic signs that have stationary messages for a reasonably fixed time merit the same considerations.

Discussion

Changeable message signs, including Digital/LED Display CEVMS, are acceptable for conforming off-premise signs, if found to be consistent with the FSA and with acceptable and approved State regulations, policies and procedures.

This guidance does not prohibit States from adopting more restrictive requirements for permitting CEVMS to the extent those requirements are not inconsistent with the HBA, Federal regulations, and existing FSAs. Similarly, Divisions are not required to concur with State proposed regulations, policies, and procedures if the Division review determines, based upon all relevant information, that the proposed regulations, policies and procedures are not consistent with the FSA or do not include adequate standards to address the safety of the motoring public. If the Division Office has any question that the FSA is being fully complied with, this should be discussed with the State and a process to change the FSA may be considered and completed before such CEVMS may be allowed on HBA controlled routes. The Office of Real Estate Services is available to discuss this process with the Division, if requested.

If the Division accepts the State's assertions that their FSA permits CEVMS, in reviewing State-proposed regulations, policy and procedures for acceptability, the Divisions should consider all relevant information, including, but not limited to duration of message, transition time, brightness, spacing, and location, to ensure that they are consistent with their FSA and that there are adequate standards to address safety for the motoring public. The Divisions should also confirm that the State provided for appropriate public input, consistent with applicable State law and requirements, in its interpretation of the terms of their FSA as allowing CEVMS in accordance with their proposed regulations, policies, and procedures.

Based upon contacts with all Divisions, we have identified certain ranges of acceptability that have been adopted in those States that do allow CEVMS that will be useful in reviewing State proposals on this topic. Available information indicates that State regulations, policy and procedures that have been approved by the Divisions to date, contain some or all of the following standards:

- Duration of Message
 - Duration of each display is generally between 4 and 10 seconds - 8 seconds is recommended.
- Transition Time
 - Transition between messages is generally between 1 and 4 seconds - 1-2 seconds is recommended.
- Brightness

- Adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.
- Spacing
 - Spacing between such signs not less than minimum spacing requirements for signs under the FSA, or greater if determined appropriate to ensure the safety of the motoring public.
- Locations
 - Locations where allowed for signs under the FSA except such locations where determined inappropriate to ensure safety of the motoring public.

Other standards that the States have found helpful to ensure driver safety include a default designed to freeze a display in one still position if a malfunction occurs; a process for modifying displays and lighting levels where directed by the State DOT to assure safety of the motoring public; and requirements that a display contain static messages without movement such as animation, flashing, scrolling, intermittent or full-motion video.

Conclusion

This guidance is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in FSAs, State law, and State regulations, policies and procedures. It is not intended to amend applicable legal requirements. Divisions are strongly encouraged to work with their State in its review of their existing FSAs and, if appropriate, assist in pursuing amendments to address proposed changes relating to CEVMS or other matters. In this regard, the Office of Realty Estate Services is currently reviewing the process for amending FSAs, as established in 1980, to determine appropriate revisions to streamline requirements while continuing to ensure there is adequate opportunity for public involvement.

For further information on guidance on *Off-Premise Changeable Message Signs*, you may contact the Office of Real Estate Services' "Point of Contact" serving your Division or the contact on this page.

The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs

Menelaos Triantafillou – University of Cincinnati

Alan C. Weinstein – Cleveland State University

Introduction

Advancements in technology and their application to signage have been a constant in the evolution of signs, their design, and their role in defining physical places. Parallel to this, with each successive application of new technology to new signs – internal/external lighting, backlit awnings, and currently digital sign technology or electronic message centers -- local governments have found themselves unable to understand the new sign technology or the specifics of how to regulate the new types of signs it allowed. Eventually, during the first phase of the use of new technologies, sign regulations are amended to impose various restrictions on the new type of signs. During subsequent phases, a more balanced picture emerges because more knowledge about the new technology becomes available, the sign industry provides more options and technical specifications to address community concerns and meet statutory standards, and local governments gain experience with regulating these new signs,.

Perhaps there are no better places that illustrate the evolution in sign design, specifically lighting and graphics, and the integration of new sign technology in a concentrated district than Times Square in New York City and “The Strip” in Las Vegas. Even though these districts do not resemble the typical American commercial strip, their current visual character is the result of the evolution of new technology in the design of signage and its use in a very defined space.

In the 1890’s, the introduction of incandescent light bulbs made the electrification of Broadway possible and began to give a new aesthetic to New York’s theater district and Times Square. The first electrically-illuminated sign appeared in Times Square 1892 and was an advertisement for a Coney Island resort. Signs illuminated with light bulbs replaced the previous hand painted wooden billboards that

were primarily textual in nature, similar to signs that are the average preference for Main Street-type historic places. Times Square became known as “The Great White Way” due to its saturation of electric billboards and signs in theater marquees, restaurants, and shops. There were many negative reactions to the use of this new technology that added colorful lighting displays to the content of building signs and billboards. The concentration of specific land uses, the theaters, and the location of the square were driving the continuous need for exciting signs. New advances in technology fed the need for inventing new creative graphics. Gradually, the current character of Times Square emerged, but each time technology made it possible to invent a new sign, opposition by New Yorkers resulted in regulatory responses. Finally, in 1987, a comprehensive signage ordinance was enacted to regulate billboards on buildings.

Today, Times Square and the Las Vegas “Strip” contain some of the world’s largest signs and the new technology of Electronic Message Centers is defining a new era of exciting graphics, messaging, and place definition making these two districts unlike any other place in the world. With the collaboration of the sign industry, the businesses, the regulators and the elected officials, both Times Square and “The Strip” have evolved into unique districts with a distinctive character.

But how much of this new sign technology can – or should be – adapted to the rest of the country -- to “Mainstreet USA”? And, what are the appropriate regulatory options for local governments to consider when businesses and sign companies seek to introduce this technology in their communities? These questions are the focus of this session.

New Technology

Currently, the concern with the applications and regulation of on-premise digital sign technology is in its initial phase, marked by confusion among the planning and zoning community both as to how these signs work and how they can and should be regulated. Further adding to the confusion is the fact that the technology is evolving rapidly, offering exciting possibilities for new types of sign displays in exterior and interior environments. For example, during the opening ceremonies of the 2008

Beijing Olympics, the floor of the stadium was equipped with a 3000 sq m video digital screen that used very similar type LED technology.

Technically, digital signs are a more complex and graphically versatile technology than what planners are used to: internally or externally illuminated signs that present a fixed message. Rather than using incandescent lamps or fluorescent tubes as a light source, digital signs use light-emitting diodes (LEDs), a semiconductor-based light source. LEDs transmit across the visible, ultraviolet and infrared wavelengths, and can generate very bright colors. According to Wikipedia, when a light-emitting diode is forward biased (switched on), electrons are able to recombine with holes within the device, releasing energy in the form of photons. This effect is called electroluminescence and the color of the light (corresponding to the energy of the photon) is determined by the energy gap of the semiconductor. An LED is usually small in area (less than 1 mm²), and integrated optical components are used to shape its radiation pattern and assist in reflection.

Key Issues with LED Signage

Digital sign manufacturers operate at the national level and that makes it difficult for local planners to have direct access to the technology before an application for a sign permit is made through a local sign company. In addition, there are no national standards for the production of digital signs; however, the sign industry, through the International Sign Association, is working with various states to develop such standards. In short, digital signs present planners with the question of how to regulate a type of sign that uses a new technology and is dynamic, rather than the static signs to which they are accustomed ... and there is little guidance to answer that question. Thus, local government is asked to issue a permit for something it does not understand.

Assuming the local government does not have any regulations that are specific for digital sign technology, what does it do? Usually it will copy another community's requirements. But how were those regulations developed? Most local governments have limited experience with LED signs, mainly from electronic billboards on highways, a small number of electronic message centers signs in commercial areas, and signs embedded in the monument signs of houses of worship and administration

buildings. In fact, most of the reaction to digital signs from APA and other groups is focused on the off-premise digital billboards with many studies looking at the issue of driver's safety when reading the bright and changeable billboard messages. Research by the Federal Highway Administration and the Transportation Research Board has been examining digital signs along highways. In addition, APA has reviewed a few communities that have enacted amendments to their sign codes to address digital signs, mainly focusing on digital billboards. These studies do not directly help the local planner and zoning regulator with the enactment of local regulations to manage on-premise LED-based signs. Specific knowledge from research of commercial environments at the local level where digital signs will need to be incorporated into the existing signs and visual character is not yet available. That said, the International Sign Association has been funding research to address key aspects of digital signs and is working with the States to develop standards.

Electronic Message Center Sign Luminance

An important question is: What level of digital sign brightness is acceptable at night? Many local sign ordinances include standards and guidelines for commercial signs that employ a variety of light source types (fluorescent, neon, incandescent and high intensity discharge such as mercury, metal halide or high pressure sodium). These signs have a fixed message. The lamps inside the sign illuminate letters or symbols that do not have the ability to change what is displayed on the sign: a graphic that was approved by the building/zoning department. In these signs, the only change possible is through switching on or off or dimming certain parts of the sign.

Digital signs, on the other hand, use LEDs and the sign face consists of a multitude of closely spaced dots of pixels or light elements similar to a television screen. These signs are controlled by a computer and their message can change and be displayed as a colored image on the sign's face. As a result, the brightness of the displayed image changes according to the program that drives it and the sign can produce varying levels of luminance. Consequently, the regulation of lighting limits will depend on the signage graphic display program, its location within an environmental zone (*i.e.* dense urban areas where there is much electric light as opposed to 'darker'

suburban and exurban areas), the size of the sign, and the distance from which it is seen.

At present, most communities that regulate the luminance of on-premise digital signs have merely copied the standards that have been previously applied to digital billboards. Typically, these currently call for a maximum luminance of 5000 nits during daylight hours and 500 nits at night; however, the daylight luminance will likely be increasing to 7,500 nits based on discussions between the off-premise industry and the federal government.

Methodologies are being developed that will allow to compute new maximum levels of luminance depending on the factors explained, and their placement and proximity to residential areas.

Changing Display Message and/or Image

The programmable change of messages and/or images in a combination with vivid colors and graphics makes digital signs unique. Digital signs have the ability to accommodate any changing display pattern through the computer program that drives them and turn on and off color and brightness to compose new images. Static signs do not change their message and/or image. Most sign ordinances do not permit flashing signs or 'light movement' on the sign. A key question with digital signs is: Should the number of changes in the display be regulated? If yes, how do we establish a practical and defensible number? What should the time interval (in seconds) be between each successive display frame? Currently, there are no unified standards among the local sign ordinances that have been amended to accommodate digital signs. Of the ordinances sampled/referenced, most have considered the research done for billboards and have focused on driver distraction from changing messages. Approaches range from a complete ban on digitally changing graphics to the use of arbitrary guidelines and standards. Currently, many communities have adopted an 8 second static image requirement derived from an interim guidance recommendation issued by the federal government that governs off premise advertising signs/ billboards.

. However, as was pointed out, local commercial areas where on-premise signs are installed and are regulated are different than highways where off-premise billboards are located.

Digital Display Sign Size, Height, and Placement

Sign size and height have been key considerations of sign regulations. Almost all existing sign regulations have provisions for sign size that arbitrarily set total sign area without considering driving speeds, the driver's cone of vision, the sight distance needed to read a sign, or reaction time after the sign is read to make a decision to turn. The United States Sign Council has conducted considerable research on these issues and has developed standards and guidelines to address them effectively. In addition the Council has developed guidelines to be used to determine size of lettering so that it can be detected by the driver. On-premise digital signs need to be regulated on the basis of the standards and guidelines developed by the United States Sign Council and we will provide recommendations on how to address these and other issues with regard to the regulation of on-premise digital signs discussed during this session.

Current Practice

Based on a recent survey of numerous jurisdictions by one of the authors, the most common regulatory provisions applicable to digital on-premise signs appear below:

- Require that the sign display remain static for a minimum of 5- 8 seconds and require “instantaneous” change of the display; *i.e.*, no “fading” in/out of the message.
- Prohibit scrolling and animation outside of unique – and mostly pedestrian-oriented – locations.
- Limit brightness to 5,000 nits during daylight and 500 nits at night.
- Require automatic brightness control keyed to ambient light levels.
- Require display to go dark if there is a malfunction.
- Specify distancing requirements from areas zoned for residential use and/or prohibit orientation of s sign face towards an area zoned for residential use.

Opportunities for the Use of LED On-Premise Signage in the Local Commercial District

At the local commercial district or arterial strip the character of the environment and the driving speed are different than the highway where billboards are mostly located. The regulation of billboards at the local commercial districts varies from State to State and it is not really relevant to the regulation of on-premise signs. A typical commercial area already has many signs dispersed throughout a very loose mix of mostly freestanding buildings, parking lots, and utility poles and wires. Its character, including signage, evolved over a long period of time. The focus on the new technology and signs cannot ignore the existing spatial arrangements and the relationship with existing signs. Regulations will need to be applied in concert with the total environment, not by isolating these new signs. If planners were to apply a comprehensive approach to the management of signage, regulations for on-premise digital signs will be more effective and can also provide a way to ‘visually decongest’ existing strip commercial areas from ill-placed and ineffective signs.

Planners also need to consider differing approaches to digital signs for different types of zoning districts. What may be appropriate in a regional commercial district may well be “too little” signage for a downtown entertainment or sports arena district and “too much” for a neighborhood commercial district. In this regard, planners may want to consider using the “character areas” approach of the SFI Model Sign Code as a guide to the development of digital sign regulations that are tailored to specific zoning districts, as suggested below.

Character Area	Motion Limitation	Size Limitation		Could Apply to Part of Character Area
		EMCs as a Maximum % of the Total Sign Area Permitted on the Site	EMCs as a Maximum % of a Single Sign	
Downtown	8 seconds to Unlimited	30% to 100%	100%	Yes
Small Commercial - Suburban	8 seconds	30% to 50%	67%	No
General Commercial	8 seconds to Unlimited	30 % to 50%	80%	Yes
Highway Commercial (1)	8 seconds	30 % to 50%	80% to 100%	No
Mixed Use	8 seconds to 1 second	15% to 30%	50% to 80%	No
Offices	8 seconds to 1 second	15% to 30%	50% to 67%	No (2)
Industrial	8 seconds to Unlimited	30% to 50%	50% to 80%	No (2)

(1) Assumes that Highway Commercial is a relatively small geographic area focused at a highway interchange

(2) Harder to make distinctions among various locations in the office and industrial zone.

836 F.3d 42

United States Court of Appeals,
District of Columbia Circuit.

Scenic America, Inc., Appellant,

v.

United States Department of
Transportation, et al., Appellees.

No. 14-5195

|

Argued September 25, 2015

|

Decided September 6, 2016

Synopsis

Background: Non-profit organization brought action pursuant to Administrative Procedure Act (APA) against Department of Transportation and its Secretary, as well as Federal Highway Administration (FHWA) and its Administrator, challenging guidance memorandum issued by FHWA, which interpreted Highway Beautification Act's (HBA) prohibition on “flashing, intermittent or moving” lights on billboards to permit state approval of those digital billboards that met certain timing and brightness requirements. After defendants' motion to dismiss for lack of standing was denied, 983 F.Supp.2d 170, the United States District Court for the District of Columbia, James E. Boasberg, J., 49 F.Supp.3d 53, granted defendants' motion for summary judgment. Organization appealed.

Holdings: The Court of Appeals, Wilkins, Circuit Judge, held that:

[1] organization's alleged organizational injury was not redressable through vacatur of guidance memorandum;

[2] organization presented sufficient evidence that it had suffered representational injury-in-fact;

[3] organization's representational injury was redressable through repudiation of FHWA's interpretation;

[4] guidance memorandum was final agency action; and

[5] guidance memorandum was not promulgated contrary to law.

Affirmed in part; vacated and remanded in part.

West Headnotes (19)

[1] **Federal Courts**

🔑 Limited jurisdiction;jurisdiction as dependent on constitution or statutes

170B Federal Courts

170BII Jurisdiction, Powers, and Authority in General

170BII(A) In General

170Bk2012 Judicial Power of United States; Power of Congress

170Bk2015 Limited jurisdiction;jurisdiction as dependent on constitution or statutes

Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto. U.S. Const. art. 3.

Cases that cite this headnote

[2] **Constitutional Law**

🔑 Separation of Powers

Constitutional Law

🔑 Nature and scope in general

Federal Civil Procedure

🔑 In general;injury or interest

92 Constitutional Law

92XX Separation of Powers

92XX(A) In General

92k2330 In general

92 Constitutional Law

92XX Separation of Powers

92XX(C) Judicial Powers and Functions

92XX(C)1 In General

92k2450 Nature and scope in general

170A Federal Civil Procedure

170AII Parties

170AII(A) In General

170Ak103.1 Standing in General

170Ak103.2 In general;injury or interest

The standing requirements of Article III are grounded in respect for the separation of powers tenets that are the foundation of the nation's system of government, and they help prevent the judicial process from being used to usurp the powers of the political branches. U.S. Const. art. 3.

[Cases that cite this headnote](#)

[3] **Federal Courts**

 [Determination of question of jurisdiction](#)

[170B](#) Federal Courts

[170BXVII](#) Courts of Appeals

[170BXVII\(B\)](#) Appellate Jurisdiction and Procedure in General

[170Bk3252](#) Determination of question of jurisdiction

Observing the federal court's Article III limitations is always important, and particularly so in a case where the Court of Appeals is asked to invalidate an action of the Executive branch. U.S. Const. art. 3.

[1 Cases that cite this headnote](#)

[4] **Federal Civil Procedure**

 [In general;injury or interest](#)

Federal Civil Procedure

 [Causation;redressability](#)

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(A\)](#) In General

[170Ak103.1](#) Standing in General

[170Ak103.2](#) In general;injury or interest

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(A\)](#) In General

[170Ak103.1](#) Standing in General

[170Ak103.3](#) Causation;redressability

The irreducible constitutional minimum of standing requires that a plaintiff demonstrate three elements: (1) injury in fact; (2) causation; and (3) redressability. U.S. Const. art. 3.

[1 Cases that cite this headnote](#)

[5] **Federal Civil Procedure**

 [In general;injury or interest](#)

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(A\)](#) In General

[170Ak103.1](#) Standing in General

[170Ak103.2](#) In general;injury or interest

The party invoking federal jurisdiction bears the burden of establishing the elements of Article III standing; each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation. U.S. Const. art. 3.

[Cases that cite this headnote](#)

[6] **Federal Civil Procedure**

 [Pleading](#)

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(A\)](#) In General

[170Ak103.1](#) Standing in General

[170Ak103.5](#) Pleading

At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice to establish Article III standing. U.S. Const. art. 3.

[Cases that cite this headnote](#)

[7] **Federal Civil Procedure**

 [In general;injury or interest](#)

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(A\)](#) In General

[170Ak103.1](#) Standing in General

[170Ak103.2](#) In general;injury or interest

A court's determination that a plaintiff has established Article III standing at the motion to dismiss stage by alleging sufficient facts in her pleadings is only the first step, because that finding does not obviate the court's responsibility to ensure that the plaintiff can actually prove those allegations when one or both parties seek summary judgment. U.S. Const. art. 3.

[Cases that cite this headnote](#)

[8] Federal Civil Procedure

🔑 [In general;injury or interest](#)

[170A Federal Civil Procedure](#)

[170AII Parties](#)

[170AII\(A\) In General](#)

[170Ak103.1 Standing in General](#)

[170Ak103.2 In general;injury or interest](#)

Even where the court denies a motion to dismiss based on lack of Article III standing, in response to a summary judgment motion, the plaintiff can no longer rest on mere allegations, but must set forth by affidavit or other evidence specific facts establishing standing; if, upon review of the evidence, the court determines that the plaintiff has not introduced sufficient evidence into the record to at least raise a disputed issue of fact as to each element of standing, the court has no power to proceed and must dismiss the case. U.S. Const. art. 3.

[3 Cases that cite this headnote](#)

[9] Federal Courts

🔑 [Determination of question of jurisdiction](#)

[170B Federal Courts](#)

[170BXVII Courts of Appeals](#)

[170BXVII\(B\) Appellate Jurisdiction and Procedure in General](#)

[170Bk3252 Determination of question of jurisdiction](#)

Every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.

[Cases that cite this headnote](#)

[10] Federal Courts

🔑 [Determination of question of jurisdiction](#)

[170B Federal Courts](#)

[170BXVII Courts of Appeals](#)

[170BXVII\(B\) Appellate Jurisdiction and Procedure in General](#)

[170Bk3252 Determination of question of jurisdiction](#)

If the Court of Appeals determines that the district court was without jurisdiction, then the Court of Appeals has jurisdiction on

appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.

[Cases that cite this headnote](#)

[11] Federal Courts

🔑 [Standing](#)

[170B Federal Courts](#)

[170BXVII Courts of Appeals](#)

[170BXVII\(K\) Scope and Extent of Review](#)

[170BXVII\(K\)2 Standard of Review](#)

[170Bk3576 Procedural Matters](#)

[170Bk3585 Parties](#)

[170Bk3585\(2\) Standing](#)

The Court of Appeals reviews a district court's decision as to Article III standing de novo. U.S. Const. art. 3.

[Cases that cite this headnote](#)

[12] Federal Civil Procedure

🔑 [In general;injury or interest](#)

[170A Federal Civil Procedure](#)

[170AII Parties](#)

[170AII\(A\) In General](#)

[170Ak103.1 Standing in General](#)

[170Ak103.2 In general;injury or interest](#)

When the existence of one or more of the essential elements of Article III standing depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict, it becomes substantially more difficult to establish standing. U.S. Const. art. 3.

[1 Cases that cite this headnote](#)

[13] Federal Civil Procedure

🔑 [Causation;redressability](#)

[170A Federal Civil Procedure](#)

[170AII Parties](#)

[170AII\(A\) In General](#)

[170Ak103.1 Standing in General](#)

[170Ak103.3 Causation;redressability](#)

Mere unadorned speculation as to the existence of a relationship between the

challenged government action and the third-party conduct will not suffice to invoke the federal judicial power under the redressability element of Article III standing. U.S. Const. art. 3.

[Cases that cite this headnote](#)

[14] Associations

🔑 [Actions by or Against Associations](#)

41 Associations

41k20 Actions by or Against Associations

41k20(1) In general

Non-profit organization lacked Article III standing to challenge, through Administrative Procedure Act (APA) notice-and-comment claim, Federal Highway Administration (FHWA) guidance memorandum which interpreted Highway Beautification Act's (HBA) prohibition on "flashing, intermittent or moving" lights on billboards to permit state approval of digital billboards that met certain timing and brightness requirements; organization's alleged injury, that it was forced to expend greater resources opposing digital billboards, was not redressable through vacatur of the memorandum, since state officials could find such billboards permissible for reasons other than those stated in the memorandum. U.S. Const. art. 3.; [5 U.S.C.A. § 551 et seq.](#); [23 U.S.C.A. § 131](#).

[Cases that cite this headnote](#)

[15] Associations

🔑 [Actions by or Against Associations](#)

41 Associations

41k20 Actions by or Against Associations

41k20(1) In general

Non-profit organization presented sufficient evidence that it had suffered representational injury-in-fact, stemming from Federal Highway Administration's (FHWA) promulgation of guidance memorandum that interpreted Highway Beautification Act's (HBA) prohibition on "flashing, intermittent or moving" lights on billboards to permit state approval of those digital billboards that met certain timing

and brightness requirements, as required for organization to have Article III standing to bring an arbitrary and capricious challenge to the memorandum; one of organization's members alleged that digital billboard near her home generated bright flash, and that billboard marred view from her home and negatively affected value of her property. U.S. Const. art. 3.; [5 U.S.C.A. § 551 et seq.](#); [23 U.S.C.A. § 131](#).

[Cases that cite this headnote](#)

[16] Associations

🔑 [Actions by or Against Associations](#)

41 Associations

41k20 Actions by or Against Associations

41k20(1) In general

Alleged representational injury of non-profit organization stemming from Federal Highway Administration's (FHWA) promulgation of guidance memorandum that interpreted Highway Beautification Act's (HBA) prohibition on "flashing, intermittent or moving" lights on billboards to permit state approval of digital billboards that met certain timing and brightness requirements, was redressable through judicial repudiation of FHWA's interpretation, as required for organization to have Article III standing to bring an arbitrary and capricious challenged to the memorandum; repudiation would prohibit FHWA from relying on that interpretation in future rulemaking and require FHWA to subject extant billboards to either removal or an order requiring their operation consistent with flashing light restrictions. U.S. Const. art. 3.; [5 U.S.C.A. § 551 et seq.](#); [23 U.S.C.A. § 131](#).

[Cases that cite this headnote](#)

[17] Administrative Law and Procedure

🔑 [Finality;ripeness](#)

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(B) Decisions and Acts Reviewable

15Ak704 Finality;ripeness

An agency action will be deemed final, and therefore reviewable under the Administrative Procedure Act (APA), if it marks the consummation of the agency's decisionmaking process and is an action by which rights or obligations have been determined, or from which legal consequences will flow; the most important factor in determining whether an agency action is one from which legal consequences will flow concerns the actual legal effect, or lack thereof, of the agency action in question on regulated entities. [5 U.S.C.A. § 551 et seq.](#)

Cases that cite this headnote

[18] Highways

Billboards and highway beautification in general

[200](#) Highways

[200IX](#) Regulation and Use for Travel

[200IX\(A\)](#) Obstructions and Encroachments

[200k153.5](#) Billboards and highway beautification in general

Federal Highway Administration's (FHWA) promulgation of guidance memorandum, which interpreted Highway Beautification Act's (HBA) prohibition on “flashing, intermittent or moving” lights on billboards to permit state approval of those digital billboards that met certain timing and brightness requirements, was final agency action that was subject to review under Administrative Procedure Act (APA); memorandum came to definitive conclusion in interpreting HBA, and memorandum withdrew some of the discretion concerning billboard permitting that states previously held. [5 U.S.C.A. § 551 et seq.](#); [23 U.S.C.A. § 131](#).

Cases that cite this headnote

[19] Highways

Billboards and highway beautification in general

[200](#) Highways

[200IX](#) Regulation and Use for Travel

[200IX\(A\)](#) Obstructions and Encroachments

[200k153.5](#) Billboards and highway beautification in general

Federal Highway Administration's (FHWA) guidance memorandum, which interpreted Highway Beautification Act's (HBA) prohibition on “flashing, intermittent or moving” lights on billboards to permit state approval of digital billboards that met certain timing and brightness requirements, was not promulgated contrary to law in violation of the Administrative Procedure Act (APA); HBA required lighting standards in federal-state agreements to be “consistent with customary use,” and guidance memorandum did not change lighting standards to such extent that those standards were no longer consistent with customary use. [5 U.S.C.A. § 551 et seq.](#); [23 U.S.C.A. § 131](#).

Cases that cite this headnote

***45** Appeal from the United States District Court for the District of Columbia, (No. 1:13-cv-00093)

Attorneys and Law Firms

[Daniel H. Lutz](#), Orrville, OH, argued the cause for appellant. With him on the briefs was [Hope M. Babcock](#). Thomas M. Gremillion entered an appearance.

[William D. Brinton](#), Jacksonville, FL, was on the brief for amici curiae The American Planning Association, et al. in support of petitioner.

[Jeffrey E. Sandberg](#), Attorney, U.S. Department of Justice, argued the cause for federal appellees. With him on the brief were [Ronald C. Machen Jr.](#), U.S. Attorney at the time the brief was filed, and [Mark R. Freeman](#), Attorney.

[Kannon K. Shanmugam](#) argued the cause for intervenor-appellee Outdoor Advertising Association of America, Inc. With him on the brief was [Allison B. Jones](#), Washington, DC.

Before: Pillard and Wilkins, Circuit Judges, and Ginsburg, Senior Circuit Judge.

Opinion

Wilkins, Circuit Judge:

The Highway Beautification Act (“HBA”), 23 U.S.C. § 131, requires the Federal Highway Administration (“FHWA”) and each state to develop and implement individual federal-state agreements (“FSAs”), detailing, among other things, “size, lighting and spacing” standards for the billboards now found towering over many of our country's interstate highways. One of those adopted standards, included in most states' FSAs, prohibits those states from erecting any billboard with “flashing, intermittent or moving” lights (the “FSA lighting standards”).

Plaintiff-Appellant Scenic America is a non-profit organization which “seeks to preserve and improve the visual character of America's communities and countryside.” Compl. ¶ 7, J.A. 10. It challenges a guidance memorandum issued by the FHWA in 2007, which interpreted that prohibition on “flashing, intermittent or moving” lights to permit state approval of those digital billboards that met certain timing and brightness requirements. Scenic argues that the guidance memorandum must be invalidated because it (1) was not promulgated using notice-and-comment procedures, and (2) violates the HBA, and was therefore promulgated “contrary to law” in violation of § 706 of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551 *et seq.*

We hold that we lack jurisdiction to hear Scenic's notice-and-comment claim because Scenic has failed to demonstrate that it has standing to bring that challenge, and deny its § 706 claim on the merits.

I.

A.

In 1965, Congress enacted the Highway Beautification Act to control “the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System ... in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve

natural beauty.” 23 U.S.C. § 131(a). The HBA penalizes those states that fail to maintain “effective control” over their advertising signs by permitting the Secretary of Transportation to reduce their federal highway funds by ten percent. *Id.* § 131(b).

To maintain effective control, each state is required to, among other things, negotiate *46 an FSA with the Secretary that establishes standards for the “size, lighting and spacing” of billboards that come within 660 feet of the Interstate. *Id.* § 131(d). The HBA requires that those standards be “consistent with customary use.” *Id.* All fifty states entered into such FSAs, most of which were written in the 1960s and 1970s. *See Scenic Am., Inc. v. U.S. Dep't of Transp. (Scenic II)*, 49 F.Supp.3d 53, 57 (D.D.C. 2014). FHWA regulations, promulgated under the HBA, require that states “[d]evelop laws, regulations, and procedures” that implement the standards contained in each state's FSA. 23 C.F.R. § 750.705(h). States must submit these laws, regulations, and procedures to the FHWA's regional offices, known as Division Offices, for approval. *Id.* § 750.705(j). The FHWA has one Division Office located in each state.

Although each of the FSAs was individually negotiated, most contain similar terms. Nearly all of the FSAs contain a prohibition against “flashing,” “intermittent,” and “moving” lights. *See, e.g.*, J.A. 120 (New York FSA); J.A. 131 (Colorado FSA); J.A. 139 (North Carolina FSA).

As billboard technology changed, states began considering or passing laws that permitted digital billboards to be displayed along the Interstate. *See, e.g.*, J.A. 422-23 (letter from Indiana Department of Transportation to Indiana FHWA Division Office informing the Division Office that Indiana had passed a law permitting certain digital billboards); J.A. 424 (letter from the Indiana FHWA Division Office to the Indiana Department of Transportation acknowledging the letter and agreeing that the digital billboards discussed in Indiana's previous letter “do[] not constitute flashing, intermittent or moving lights”); J.A. 437 (letter from Arkansas Highway Commission to Arkansas FHWA Division Office noting new regulations permitting digital billboards); J.A. 183 (United States Department of Transportation memorandum discussing digital billboard in Nebraska). These billboards, sometimes referred to as “commercial electronic variable message signs” (“CEVMS”), typically use LED lights to display

a static advertisement that remains on the screen for a specified period of time before quickly transitioning to a different static advertisement. Advertisements typically remain visible for around ten seconds, and usually take approximately two seconds to transition to the next ad.

The FHWA's Division Offices differed on whether digital billboards complied with the FSA lighting standards. *Compare, e.g.*, J.A. 424 (Indiana Division Office agreeing that digital billboards “do[] not constitute flashing, intermittent or moving lights”), *with, e.g.*, J.A. 263 (Texas Division Office stating that “[w]hile the technology for LED displays did not exist at the time of the [FSA], the wording in the [FSA] clearly prohibits such signs”). In 2007, the national FHWA office weighed in. It issued to its Division Offices a memorandum entitled “Guidance on Off-Premise Changeable Message Signs” (the “Guidance” or “2007 Guidance”), a portion of which stated as follows:

Proposed laws, regulations, and procedures that would allow permitting CEVMS subject to acceptable criteria (as described below) do not violate a prohibition against “intermittent” or “flashing” or “moving” lights as those terms are used in the various FSAs that have been entered into during the 1960s and 1970s.

J.A. 535. The FHWA went on to identify those “acceptable criteria” based on “certain ranges of acceptability that have been adopted in those States that do allow CEVMS.” J.A. 534, 537 (recommending, among other things, that each display generally remain static for between four and *47 ten seconds, and transition to a new display in one to four seconds).

According to a survey the FHWA distributed to states shortly before issuing the 2007 Guidance, many states with FSAs that included a ban on intermittent, flashing, or moving lights permitted digital billboards before the FHWA issued the Guidance. J.A. 531-32. The Division Office for at least two states, Texas and Kentucky, did not permit digital billboards prior to the 2007 Guidance. *See Scenic Am., Inc. v. U.S. Dep’t of Transp. (Scenic I)*, 983 F.Supp.2d 170, 179–80 (D.D.C. 2013). After the Guidance, Texas began to permit the use of digital billboards. Lloyd Decl. ¶9, J.A. 41.

B.

Scenic brought this suit against the United States Department of Transportation, the federal executive department responsible for implementation of the HBA; the FHWA, which promulgated the 2007 Guidance; Ray LaHood, the Secretary of Transportation at the time; and Victor Mendez, the Administrator of FHWA at the time. Scenic did not include any of the FHWA's Division Offices in this suit. Outdoor Advertising Association of America, Inc. (“OAAA”) intervened as a defendant shortly after Scenic brought suit.

Scenic's suit alleges two claims relevant to this appeal: (1) the 2007 Guidance constitutes a legislative, not interpretive rule, thus violating § 553 of the APA, because it was not promulgated using notice-and-comment procedures; and (2) the Guidance violates § 706 of the APA because it creates a new lighting standard that is not “consistent with customary use,” as required by the HBA. ¹ Compl. ¶¶ 48-53, 57-62, J.A. 17-19.

¹ Scenic abandoned a third claim on appeal—that the Guidance improperly creates new lighting standards, in contravention of the procedures for creating new standards set forth in the HBA. *See* Br. for Defendants-Appellees [hereinafter “FHWA Br.”], *Scenic Am., Inc. v. U.S. Dep’t of Transp.*, No. 14-5195 (D.C. Cir. Feb. 20, 2015), Doc. No. 1538780, at 16 & n.7.

The FHWA and the OAAA (collectively “Defendants”) moved to dismiss, contending that Scenic lacked standing, and that the court lacked jurisdiction over the Guidance because it did not constitute final agency action under the APA. *Scenic I*, 983 F.Supp.2d at 172–73. The District Court denied Defendants' motion as to both claims. *Id.*

Relevant to our decision here, the District Court held, at the motion to dismiss stage, that Scenic's requested relief would redress its harm because “vacating the Guidance would return the FHWA to agnosticism on the question [of permitting digital billboards], leaving Division Offices free to draw their own conclusions.” *Id.* at 181. According to the District Court, this would prevent Scenic from “hav[ing] to police as intensively new digital-billboard construction around the country.” *Id.*

Defendants later moved for summary judgment, and the District Court granted the motions, finding that the Guidance was not subject to notice-and-comment requirements because it was an interpretive, not legislative rule, and that it did not violate the “consistent with customary use” provision of the HBA. *Scenic II*, 49 F.Supp.3d at 59–71. Defendants, in their summary judgment briefing below, did not again challenge Scenic's standing, and the District Court did not discuss Scenic's standing in its written Opinion granting Defendants' summary judgment motions.

II.

We begin, as we must, by addressing our jurisdiction to review Scenic's appeal. Because Scenic must demonstrate its *48 standing separately as to each of the two claims it brings on appeal, *see Catholic Soc. Serv. v. Shalala*, 12 F.3d 1123, 1125 (D.C. Cir. 1994), we find that, although Scenic has standing to bring its claim concerning FHWA's alleged § 706 violation, Scenic has failed to demonstrate it has standing to bring its notice-and-comment claim.

A.

[1] [2] [3] As has been expressed time and time again, “[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.” *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986). As Chief Justice Marshall observed, “[i]f the judicial power extended to every question under the constitution it would involve almost every subject proper for legislative discussion and decision [and] if to every question under the laws and treaties of the United States it would involve almost every subject on which the executive could act.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006) (quoting 4 PAPERS OF JOHN MARSHALL 95 (C. Cullen ed. 1984)) (emphases omitted). Thus, without studious adherence to the metes and bounds of our jurisdiction as imposed by Article III, Chief Justice Marshall warned that “the other departments [of the government] would be swallowed up by the judiciary.” *Id.* The standing requirements of Article III are therefore grounded in respect for the separation of powers tenets that are the

foundation of our system of government, *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471–74, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982), and they help “prevent the judicial process from being used to usurp the powers of the political branches,” *Clapper v. Amnesty Int'l USA*, — U.S. —, 133 S.Ct. 1138, 1146, 185 L.Ed.2d 264 (2013). Observing our Article III limitations is therefore always important, and particularly so in a case such as this, where we are asked to invalidate an action of the Executive branch.

[4] [5] The “irreducible constitutional minimum of standing” requires that a plaintiff demonstrate three elements: (1) injury in fact; (2) causation; and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). “The party invoking federal jurisdiction bears the burden of establishing these elements”; “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Id.* at 561, 112 S.Ct. 2130.

[6] [7] [8] Thus, the plaintiff must meet this burden at the outset of *each* phase. “At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice....” *Id.* And a court's determination that a plaintiff has established standing at the motion to dismiss stage by *alleging* sufficient facts in her pleadings is only the first step, because that finding does not obviate the court's responsibility to ensure that the plaintiff can actually *prove* those allegations when one or both parties seek summary judgment. So even where the court denies a motion to dismiss based on lack of standing, “[i]n response to a summary judgment motion, ... the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts [establishing standing].” *Id.* (internal quotation marks omitted).² If, upon review *49 of the evidence, the court determines that the plaintiff has not introduced sufficient evidence into the record to at least raise a disputed issue of fact as to each element of standing, the court has no power to proceed and must dismiss the case. *See, e.g., Clapper*, 133 S.Ct. at 1148–49 (dismissing case where plaintiff did not raise an issue of fact as to standing at summary judgment).

² Our treatment of standing in cases that come to us directly on administrative review is instructive. Because these petitions for administrative review

bypass the district court and come to us directly, we treat them as a district court would in deciding a motion for summary judgment. See *Sierra Club v. EPA*, 292 F.3d 895, 899 (D.C. Cir. 2002). In *Sierra Club*, we held, “mindful of our independent obligation to be sure of our jurisdiction,” that the petitioner there had failed to establish its burden as to standing. *Id.* at 898, 902. We explained that “[t]he petitioner’s burden of production in the court of appeals is ... the same as that of a plaintiff moving for summary judgment in the district court: it must support each element of its claim to standing ‘by affidavit or other evidence.’” *Id.* at 899 (quoting *Defs. of Wildlife*, 504 U.S. at 561, 112 S.Ct. 2130).

Just as we must ensure our jurisdiction over petitions brought to us directly, so too must the district court assure itself of its jurisdiction before assessing a summary judgment motion on the merits.

[9] [10] In addition, “every federal appellate court has a special obligation to ‘satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.’” *Bender*, 475 U.S. at 541, 106 S.Ct. 1326 (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S.Ct. 162, 79 L.Ed. 338 (1934)). If we determine that the District Court was without jurisdiction, then “we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 73, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997)).

[11] We review the District Court’s decision (or lack thereof) as to standing *de novo*, *Info. Handling Servs., Inc. v. Def. Automated Printing Servs.*, 338 F.3d 1024, 1029 (D.C. Cir. 2003), and hold that Scenic has not met its burden of establishing its standing to bring its notice-and-comment claim.³

³ The FHWA challenged Scenic America’s standing at the motion to dismiss stage, and though the District Court held in favor of Scenic, it noted that the issue “presents difficult and close questions.” *Scenic I*, 983 F.Supp.2d at 172. When the FHWA later moved for summary judgment, therefore, Scenic was already on notice that its standing might be questioned on appeal, at which time the record would be closed. Scenic therefore cannot claim to have been deprived of a fair and “full opportunity to make a record of [its] standing in the district court.” *Swanson Grp.*

Mfg. LLC v. Jewell, 790 F.3d 235, 241 (D.C. Cir. 2015). Scenic should have accompanied its summary judgment materials with evidence of its standing. See *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 897, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990) (“[A] litigant’s failure to buttress its position because of confidence in the strength of that position is always indulged in at the litigant’s own risk.”).

Because the plaintiff has the burden to establish the evidentiary basis for its standing at the summary judgment stage *in every case*, just as it has the burden to plead sufficient facts at the motion to dismiss stage *in every case*, the District Court may wish to consider amending its local rules to provide that the plaintiff include its evidentiary basis for standing in the statement of material facts that every party is required to file either in support of, or in opposition to, a motion for summary judgment. See Civil Local Rule 7(h)(1). Such a rule would ensure that the plaintiff is on notice of its obligation to present such evidence, make the District Court’s job much easier (as well as ours), and function similarly to our Circuit Rule 28(a)(7), which we adopted after our ruling in *Sierra Club*.

*50 B.

1.

Scenic’s notice-and-comment claim turns on the redressability prong of Article III standing. Scenic asserts that the 2007 Guidance forced certain FHWA Division Offices to reinterpret the FSA lighting standards—that billboards may not contain “flashing, intermittent or moving” lights—so that those offices would thereafter find the FSA language to permit, rather than bar, digital billboards. Scenic claims that this alleged change of position made it easier for states to erect digital billboards, because they no longer had to worry about being prevented from doing so by the Division Offices. As a result, Scenic allegedly has to work harder, and thus spend greater resources, to fight these billboards—its injury in fact. Scenic claims that vacating the Guidance will redress that injury.

[12] [13] In this way, Scenic asserts injuries that stem not directly from the FHWA’s issuance of the 2007 Guidance, but from third parties not directly before the court—the Division Offices and the states. When “[t]he existence of one or more of the essential elements of standing”—

in this case redressability—“ ‘depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict,’ ” it becomes “ ‘substantially more difficult’ to establish” standing. *Defs. of Wildlife*, 504 U.S. at 562, 112 S.Ct. 2130 (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989); *Allen v. Wright*, 468 U.S. 737, 758, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)); accord *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 938 (D.C. Cir. 2004). “[M]ere ‘unadorned speculation’ as to the existence of a relationship between the challenged government action and the third-party conduct ‘will not suffice to invoke the federal judicial power.’ ” *Nat'l Wrestling*, 366 F.3d at 938 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 44, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)).

Scenic's complaint makes only two arguments concerning the redressability of its notice-and-comment claim. First, it argues that if we vacate the 2007 Guidance, “Scenic America and its affiliate members would spend fewer resources combating new digital billboards.” Compl. ¶ 21, J.A. 12. This speaks to Scenic's alleged organizational standing. See *PETA v. U.S. Dep't of Agric.*, 797 F.3d 1087, 1093 (D.C. Cir. 2015) (organizational standing “requires [an organizational plaintiff], like an individual plaintiff, to show actual or threatened injury in fact that is fairly traceable to the alleged illegal action and likely to be redressed by a favorable court decision” (internal quotation marks omitted)). Second, Scenic contends that if we vacate the 2007 Guidance, “digital billboards that injure Scenic America members would be subject to removal or an order to cease operating in a manner that violates the regulatory prohibition against intermittent lighting in billboard advertisements.” Compl. ¶ 21, J.A. 12. This speaks to Scenic's representational standing. See *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977) (recognizing “that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit”).

2.

a.

[14] Scenic has failed to demonstrate that our vacatur of the Guidance would *51 redress its alleged organizational injury—that it is forced to expend greater resources fighting digital billboards because the 2007 Guidance makes it easier for states to erect such billboards.

States are required to seek permission from the FHWA Division Offices before they permit the use of digital billboards. See 23 C.F.R. § 750.705(j). Prior to the FHWA's issuance of the Guidance, those Offices could, and often did, authorize that use, finding that it accorded with a given state's FSA. Scenic has introduced no evidence into the record—as it must at summary judgment—establishing that if we were to vacate the Guidance, any Division Office would respond by preventing the state it oversees from erecting digital billboards; nor has Scenic submitted evidence establishing that states would successfully erect, or even seek to erect, fewer billboards. Without providing any indication that our vacatur of the Guidance will diminish the number of billboards Scenic has to fight, Scenic has failed to demonstrate that its requested remedy would prevent Scenic from having to expend the same amount of resources fighting these billboards.

A brief look at some of our previous decisions in this area reinforces the point. In *National Wrestling*, we assessed the standing of several associations representing men's wrestling teams, some of whom had been cut from college athletic programs. 366 F.3d at 933. Department of Education regulations, promulgated under Title IX, required college athletic programs to ensure that they provided equal athletic opportunities to both sexes, based in part on the resources that are devoted to various programs. *Id.* at 934–35. Plaintiffs did not challenge those regulations. Instead, plaintiffs challenged a Department of Education interpretation of those regulations, which they claimed caused several athletic programs to eliminate their wrestling teams. *Id.* We held that plaintiffs lacked standing because they were unable to show that a favorable decision would redress their injuries. *Id.* at 938.

We noted that the “direct causes of appellants’ asserted injuries—loss of collegiate-level wrestling opportunities for male student-athletes—are the independent decisions of educational institutions.” *Id.* at 936–37. Even if we vacated the Department of Education’s interpretation, there was no indication that it would alter those institutions’ independent decisions to eliminate their wrestling teams. *Id.* at 939. Nothing in the Department’s interpretation required schools to eliminate their wrestling teams; schools did so in an attempt to ensure that they were distributing athletic resources equally—a requirement of Title IX more generally, irrespective of the interpretation that plaintiffs challenged. *See id.* at 939–40 (asserting that “nothing but speculation suggest[ed] that schools would act any differently” if the court vacated the interpretation). We noted that plaintiffs would only meet standing requirements if they “took the position that gender-conscious elimination of men’s sports teams would be illegal in the absence of the challenged” interpretation, but that plaintiffs made no such claim. *Id.* at 941. Finally, we explained that the “possibility” that wrestling teams would have “better odds” if we vacated the Department’s interpretation “falls far short of the mark.” *Id.* at 942 (emphasis omitted).

We held similarly in *Renal Physicians Ass’n v. United States Department of Health and Human Services*, 489 F.3d 1267 (D.C. Cir. 2007). That case involved the Stark Law, which limited the ability of a physician to refer a Medicare patient to clinical laboratories with which the physician had a “financial relationship,” but permitted *52 referrals where the physician’s only financial interest was the receipt of compensation at “fair market value.” *Id.* at 1269. The Department of Health and Human Services, which was authorized to promulgate regulations under the Law, created a “safe harbor” provision, describing two methods for demonstrating that a physician’s hourly rate was at fair market value. *Id.* at 1270. The Department also noted, however, that the safe harbor was voluntary, and that health care providers could continue to establish fair market value through other methods. *Id.* at 1269–71.

After a physicians’ association challenged the safe harbor provision under the APA, we held that plaintiff lacked standing because it failed to show that vacating the safe harbor provision would redress its members’ alleged injuries—namely that the safe harbor provision caused them to be paid less for their services than would otherwise be the case. *Id.* at 1276–78. Because the safe harbor

was merely one way that hospitals could determine “fair market value,” we noted that “it is ‘speculative,’ rather than ‘likely,’ that invalidating the safe harbor will somehow cause these facilities to pay more,” and that “[t]he effect (if any) of the safe harbor cannot be simply undone.” *Id.* at 1277.

As in *Renal Physicians*, the FHWA created what is, in essence, a safe harbor provision regarding digital billboards. The 2007 Guidance made it clear that state laws and regulations regarding digital billboards meeting the specifications listed in the Guidance would not be rejected for violating the FSA lighting standards. Yet even after the Guidance, Division Offices can still approve state laws and regulations permitting billboards that fall outside those specifications, and they can still reject laws and regulations allowing billboards that meet those specifications, but that violate state FSAs for other reasons. The safe harbor created by the Guidance is voluntary in the same way as the safe harbor in *Renal Physicians*; Division Offices can rely on it to find certain billboards permissible, but those Offices can find those billboards permissible for other reasons as well. It is “speculative,” rather than “likely,” that invalidating the Guidance would stop any particular billboard from being constructed. Indeed, many states with FSAs that included a ban on intermittent, flashing, or moving lights permitted digital billboards prior to the 2007 Guidance.

In sum, we cannot assume, without more, that vacating the Guidance would eliminate or lessen the construction of digital billboards.

Scenic contends that because the Texas Division Office barred Texas from constructing digital billboards prior to the Guidance, vacating the Guidance would redress Scenic’s injuries, at least with respect to Texas. However, Scenic has introduced no evidence suggesting that Texas, or the Texas Division Office, would behave any differently in the absence of the 2007 Guidance. Scenic simply assumes, without any proof, that Texas will revert to its pre-Guidance position as soon as the Guidance is invalidated.

Scenic’s assumption is nothing more than “unadorned speculation.” *Simon*, 426 U.S. at 44, 96 S.Ct. 1917. Several other possibilities seem just as likely, were we to vacate the 2007 Guidance. The Guidance may have focused the Texas Division Office on the fact that a majority of states

had already determined that the FSA lighting standards permitted digital billboards. Knowing as much, Texas's Division Office might be more inclined to “jump on the bandwagon” and permit such billboards going forward, even absent the 2007 Guidance. Or the Division Office might be persuaded to continue allowing digital billboards now that Texas has already *53 issued permits for at least 150 of them, Lloyd Decl. ¶ 9, J.A. 41. See *Renal Physicians*, 489 F.3d at 1278 (“[T]he word is already out, and therefore it is too late to reverse course.... [T]he undoing of the governmental action will not undo the harm, because the new status quo is held in place by other forces.”).

Scenic has introduced no evidence that would make any one of these possibilities more likely than another. Particularly given the difficulty of establishing standing based on the actions of third parties not before the Court, see *Defs. of Wildlife*, 504 U.S. at 562, 112 S.Ct. 2130, Scenic's lack of any evidentiary basis for its redressability contentions requires us to reject its standing as to its notice-and-comment claim.

As a final argument, Scenic relies on *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), and contends that vacating the 2007 Guidance would remove one of several barriers to Scenic's anti-digital billboard efforts, and that this is sufficient for redressability purposes. However, *Arlington Heights* is inapposite here.

As an initial matter, *Arlington Heights* involved a party directly harmed by the challenged action, not one harmed by the actions of a third party not before the Court. See *id.* at 254, 97 S.Ct. 555. Moreover, *Arlington Heights* involved a developer's challenge to a zoning ordinance that prevented it from building low-income housing. *Id.* at 255–58, 97 S.Ct. 555. The Supreme Court characterized the zoning ordinance as an “absolute barrier.” *Id.* at 261, 97 S.Ct. 555. Although the developer still needed to secure financing and qualify for federal subsidies, the challenged zoning ordinance ensured that the developer could not proceed with its goal of constructing low-income housing. *Id.* at 261–62, 97 S.Ct. 555. A court decision to remove that barrier would redress the developer's injury because a major impediment to the developer's efforts would be eliminated.

Scenic has introduced no evidence showing that vacating the 2007 Guidance would remove an “absolute barrier”

to its efforts. As we have already stated above, absent the 2007 Guidance, states remain free to pursue digital billboard construction, and Division Offices remain free to permit such construction. Thus, Scenic has not established that invalidating the Guidance would improve or ease Scenic's efforts in any way.⁴

⁴ Scenic did not argue that the FHWA's failure to undertake notice and comment before promulgating the Guidance constitutes a procedural injury, and we express no opinion on such an argument. Although a party cannot forfeit a claim that we lack jurisdiction, it can forfeit a claim that we possess jurisdiction. See *Huron v. Cobert*, 809 F.3d 1274, 1279–80 (D.C. Cir. 2016).

b.

Scenic's representational standing claim fares no better. Scenic argues that vacating the 2007 Guidance will redress its members' injuries because it will cause the digital billboards allegedly injuring those members to be removed. Compl. ¶ 21, J.A. 12. Scenic came dangerously close to forfeiting this argument. See *Huron v. Cobert*, 809 F.3d 1274, 1279–80 (D.C. Cir. 2016).

Presumably because the District Court had upheld Scenic's standing at the motion to dismiss stage, and Defendants had not contested Scenic's standing before the District Court at the summary judgment stage, Scenic did not address its standing in its opening brief on appeal. In their responding brief, however, the FHWA challenged anew Scenic's standing. The FHWA contended that Scenic had offered “no basis for expecting that vacating the *54 Guidance would cause any existing digital billboards to be dismantled.” See FHWA Br. 29. In reply, Scenic appeared to abandon the allegation. It repeated the FHWA's contention and responded that “Plaintiff need only show that vacatur would reduce Plaintiff's continuing injury of diverting limited resources to counteract billboard approvals.” Reply Br. for Appellant 10.

Nonetheless, Scenic appears to have preserved its representational standing argument by painting it in a somewhat different light. It argues that the alleged injuries of one of its members—Nikki Laliberte—are “traceable to the Guidance” because the Guidance prohibits the Division Office in Minnesota, where Laliberte lives, from considering whether digital billboards violate the

FSA lighting standards. *See* Reply Br. for Appellant 12. Scenic's implication seems to be that vacating the Guidance might cause Minnesota's Division Office to remove some digital billboards. Although Scenic's argument is couched in terms of causation, "causation and redressability are closely related, and can be viewed as two facets of a single requirement." *Newdow v. Roberts*, 603 F.3d 1002, 1012 n.6 (D.C. Cir. 2010) (internal quotation marks omitted). Thus, Scenic's assertion is sufficient to preserve its representational standing claim.

As we noted above, however, Scenic has introduced no evidence demonstrating that our vacatur of the Guidance would cause Division Offices or states to prohibit the construction of new digital billboards. *See supra* Part II.B.2.a. It is even less plausible, given Scenic's complete lack of any evidentiary showing on the matter, that Division Offices or states would require extant billboards to be dismantled.

By neglecting to "set forth by affidavit or other evidence specific facts" establishing its representational standing, *Defs. of Wildlife*, 504 U.S. at 561, 112 S.Ct. 2130 (internal quotation marks omitted), Scenic has failed to meet its burden to demonstrate its representational standing to bring its notice-and-comment claim.

3.

Scenic does fare better, however—at least as to standing—on its claim that the Guidance violated § 706, although barely.

a.

In its complaint, Scenic alleges that FHWA's actions, in promulgating the Guidance, are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the APA." Compl. ¶ 62, J.A. 19. That language appears to be taken from § 706(2)(A) of the APA, which sets forth the well-known "arbitrary and capricious" standard, and which would likely provide an effective cause of action for Scenic to challenge the FHWA's alleged failure to comport with the HBA. Confusingly, however, Scenic does not cite § 706 as part of its second claim, but rather cites § 553, the provision

that concerns notice-and-comment rulemaking. *See id.* ¶¶ 57-62, J.A. 18-19.

Construing the complaint liberally, as is sometimes appropriate, *but cf. Settles v. U.S. Parole Comm'n*, 429 F.3d 1098, 1104, 1106 (D.C. Cir. 2005) (explaining that although "the complaint—particularly a complaint filed by a pro se prisoner—should be construed liberally," "the rule of liberal construction of complaints applies to factual allegations," and refusing to liberally construe a counseled plaintiff's complaint so as to include new defendants (quoting *Fletcher v. District of Columbia*, 370 F.3d 1223, 1227 n.* (D.C. Cir. 2004))), it might be possible to construe Scenic's complaint as having relied upon § 706 rather than, or in addition to, § 553. At oral argument, however, counsel for Scenic was specifically asked whether its second *55 claim included a § 706 challenge to FHWA's promulgation of the guidance, and Scenic's counsel replied "no, we did not present that." Counsel went on to state that to the extent it brought anything resembling an arbitrary-and-capricious challenge it did it through the "backdoor" of its notice-and-comment claim, specifically highlighting its argument that that the Guidance is a legislative rule because it is 180 degrees counter to the FSA text it alleged to be interpreting. Thus, it appears that Scenic disclaimed any arbitrary-and-capricious challenge to FHWA's alleged failure to comport with the HBA.

Nonetheless, during that same colloquy at oral argument, Scenic did state, with respect to its § 706 claim, that it "focused solely on the customary use provision, finding that it was contrary to law." Giving Scenic the benefit of the doubt, Scenic's papers and statements at oral argument are sufficient for us to eke out a § 706 claim.

b.

[15] Scenic has standing to bring such a § 706 claim. First, Scenic has offered sufficient evidence that it has suffered a representational injury in fact. The record at summary judgment demonstrates that at least one of its members, Nikki Laliberte, has suffered a concrete injury because a digital billboard near her home "generates a bright flash when its display transitions from one advertisement to another." Laliberte Decl. ¶ 4, J.A. 52. She asserts that the billboard "has marred the view from [her] home[]," and that she is "concerned that the billboard has negatively

affected the value of [her] property.” *Id.* ¶¶ 6, 9, J.A. 52-53. This sort of harm to an individual's property is sufficient to constitute a concrete injury in fact. *See Idaho, By & Through Idaho Pub. Utils. Comm'n v. ICC*, 35 F.3d 585, 591 (D.C. Cir. 1994) (noting that a private landowner “suffers concrete injury if [her] property is despoiled”).

[16] The causation and redressability prongs of our standing analysis are equally clear here. Scenic's § 706 claim is that the Guidance runs afoul of the statute's “customary use” requirement as that requirement has been interpreted in the FSAs. If we were to find for Scenic on the merits of its claim, a point we must assume for standing purposes, *see LaRoque v. Holder*, 650 F.3d 777, 785 (D.C. Cir. 2011), we could only do so by effectively repudiating the FHWA's interpretation of the FSAs. Repudiation would provide much more robust relief than vacatur. Not only would it prohibit the agency from relying on that interpretation in any future rulemakings, it would also require the agency to subject extant billboards to either removal or an order requiring those billboards to operate in a manner that does not violate the FSAs, for instance by keeping the image displayed by the billboard constant and unchanging. Scenic's injury, clearly caused by the Guidance, is therefore redressable. *See Renal Physicians*, 489 F.3d at 1278 (holding that “the only way to prevent” a finding that redressability is lacking in the third-party context is “for a court not only to invalidate [the contested agency action] but also to repudiate” it).

III.

FHWA argues that the Guidance is not a final agency action and is therefore not reviewable under the APA. We disagree.

[17] An agency action will be deemed final if it “mark[s] the consummation of the agency's decisionmaking process” and is an action “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997) (internal quotation *56 marks omitted). “The most important factor” in determining whether an agency action is one “from which legal consequences will flow” “concerns the actual legal effect (or lack thereof) of the agency action in question on regulated entities.” *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 252 (D.C. Cir. 2014).

[18] The Guidance marks the consummation of FHWA's decision-making process. It comes to a definitive conclusion: the FSA's prohibition on “flashing, intermittent or moving” lights does not prevent states from permitting digital billboards, so long as they meet certain prescribed requirements. Although the Guidance does state that the FHWA “may provide further guidance in the future as a result of additional information” FHWA might receive, J.A. 535, such a statement is fairly read as a “boilerplate” indication that the agency may issue further interpretations in the future. *See Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1022–23 (D.C. Cir. 2000). The fact that a regulation might be interpreted again at some point in the indeterminate future cannot, by itself, prevent the initial interpretation from being final.

The Guidance is also an action “from which legal consequences will flow.” It creates a safe harbor such that Division Offices and states may not deny a digital billboard permit for violating the FSA lighting standards where that billboard meets the timing and other requirements set forth in the Guidance. In this way, the Guidance withdraws some of the discretion concerning billboard permitting the Division Offices and states previously held. *See NRDC v. EPA*, 643 F.3d 311, 320 (D.C. Cir. 2011) (concluding that where agency action withdraws an entity's previously-held discretion, that action “alter[s] the legal regime,” “binds” the entity, “and thus qualifies as final agency action”). That safe harbor has a clear legal effect on the regulated entities here—the Division Offices and the states—and the Guidance is therefore a final agency action.

IV.

Having concluded that Scenic has standing to bring its § 706 claim, and that the Guidance constitutes final agency action, we now review the merits of the claim *de novo*, *see Khan v. Parsons Glob. Servs., Ltd.*, 428 F.3d 1079, 1082 (D.C. Cir. 2005), and find them lacking.

Scenic argues that the Guidance is invalid because it fails to comport with the HBA's “customary use” provision. That provision states that “signs, displays, and devices whose size, lighting and spacing, *consistent with customary use* is to be determined by agreement between the several States and the Secretary, may be erected” within 660 feet

of the Interstate. 23 U.S.C. § 131(d) (emphasis added). Scenic contends that the FHWA, in issuing the Guidance, changed the FSA lighting standards to such an extent that those standards are no longer “consistent with customary use.” According to Scenic “[a]nything outside the scope of what an FSA meant at the time it was created cannot be ‘customary use.’” Opening Br. for Appellant 36.

In *Cajun Electric Power Cooperative, Inc. v. FERC*, we clarified that

[a]ny agreement that must be filed and approved by an agency loses its status as a strictly private contract and takes on a public interest gloss. That means that when the agency reconciles ambiguity in such a contract it is expected to do so by drawing upon its view of the public interest. And, therefore, the agency to which Congress entrusted the protection and discharge of the public interest is entitled to just as much benefit of the doubt in interpreting such an agreement as it would in interpreting its own orders, *57 its regulations, or its authorizing statute.

924 F.2d 1132, 1135 (D.C. Cir. 1991) (internal citations omitted); see also *Nat'l Fuel Gas Supply Corp. v. FERC*, 811 F.2d 1563, 1569–71 (D.C. Cir. 1987) (treating an agency interpretation of a settlement agreement as entitled to deference similar to that owed under *Chevron* where the settlement agreement had to be approved by the agency). The FSAs, as agreements between the FHWA and individual states, see 23 U.S.C. § 131(d), were thus approved by the FHWA as described in *Cajun Electric*.

Further, as the District Court explained, “[b]oth Defendants and Scenic America recognize ... that all FSA lighting provisions were established consistent with customary use.” *Scenic II*, 49 F.Supp.3d at 71 (quoting or citing both parties' briefing) (internal quotation marks omitted); see also Opening Br. for Appellant 36; FHWA Br. 51-52. Thus, so long as the FHWA has merely

interpreted in a reasonable fashion, rather than amended, those lighting standards, that interpretation must itself be “consistent with customary use,” whether or not it is precisely the interpretation that would have been given to the standards at the time the FHWA and states first agreed upon them. Cf. *Ass'n of Am. R.Rs. v. Surface Transp. Bd.*, 162 F.3d 101, 107 (D.C. Cir. 1998) (“Our deference to an agency's reasonable interpretation of its governing statute ‘is a product both of an awareness of the practical expertise which an agency normally develops, and of a willingness to accord some measure of flexibility to such an agency as it encounters new and unforeseen problems over time.’” (quoting *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 566 n.20, 99 S.Ct. 790, 58 L.Ed.2d 808 (1979))).

[19] We agree with the District Court's conclusion that the FHWA's interpretation of the FSA lighting standards is not one that “ ‘runs 180 degrees counter to the plain meaning of the’ FSAs,” and that it therefore “construes, rather than contradicts” the FSAs. *Scenic II*, 49 F.Supp.3d at 62–63, 70 (quoting *Nat'l Family Planning & Reprod. Health Ass'n v. Sullivan*, 979 F.2d 227, 235 (D.C. Cir. 1992)). Although it might be possible to read the FSA lighting standards to prohibit digital billboards, those standards do not foreclose other interpretations, including the FHWA's here. Because the FHWA's interpretation of the FSA lighting provision was reasonable, the interpretation cannot be “contrary to customary use.” Accordingly, Scenic's claim that the Guidance violates § 706 must fail.

For the foregoing reasons, we affirm the District Court's grant of summary judgment as to Scenic's § 706 claim, vacate its judgment as to Scenic's notice-and-comment claim, and remand with instructions to dismiss Scenic's notice-and-comment claim.

So ordered.

All Citations

836 F.3d 42

OAAA Digital Technology Brief

Digital Billboards

Message Points

- Digital billboards serve businesses and communities by communicating information that can be quickly changed
- Digital billboards are accepted by government and the public
- Digital billboards are regulated by government and self-regulation by the industry
- Digital billboards are not distracting to drivers, according to government research
- Government relies of digital billboards on behalf of public safety
- Digital billboards support jobs



Government-sponsored anti-distraction message on digital billboard in Connecticut

Digital Billboards

High-tech communication for advertisers and communities

Digital technology is a non-manual way to change billboard “copy,” via computer. Digital billboards do not flash or scroll; they display static images that rotate typically every six or eight seconds.

Advertisers can change their messages quickly, without the time and expense of printing or posting. Other media are major buyers of digital billboards, featuring news, sports, weather, programming, and personalities.

Likewise, communities use digital billboards to deliver information to the public.



Other media are major buyers of digital billboards

Digital billboards are accepted/regulated

“Digital billboards are right in line with the whole cityscape. They communicate that we are a city that embraces technology. We actually have some of the newest state-of-the art cutting edge advertising,” said Joe Cimperman, a long-time city councilman in Cleveland, OH.

Keeping pace with technology, government has regulated and authorized digital billboards. The federal government says states can allow digital billboards as long as they do not flash, scroll, or feature full motion. Nearly all states with billboards allow digital billboards, which operate in nearly 1,000 communities.

Anti-billboard Scenic America attacked the federal guidelines in court; in 2014 a federal judge dismissed the case, with prejudice.

Industry practices conform to federal guidance, such as display times and lighting. Federal guidelines, issued in 2007, say digital billboards should “adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.” Digital billboards are equipped with light sensors that adjust brightness to surrounding light conditions, to avoid glare.

The out of home advertising industry has established standards that lighting levels should not exceed 0.3 foot candles above the level of surrounding light conditions. State and local governments have incorporated this standard into regulations.

The OAAA *Code of Industry Principles* commits to providing effective and safe digital billboards:

- We are committed to ensuring that the commercial and noncommercial messages disseminated on standard-size digital billboards will be static messages and the content shall not include animated, flashing, scrolling, intermittent or full-motion video elements (outside established entertainment areas).
- We are committed to ensuring that the ambient light conditions associated with standard-size digital billboards are monitored by a light sensing device at all times and that display brightness will be appropriately adjusted as ambient light levels change.

The respected media research firm Arbitron has studied public opinion (Los Angeles County, 2009, and the metro area of Cleveland, OH, 2008). With similar findings in each study, Arbitron says most commuters feel that digital billboards are a cool way to advertise and also provide important community information.

Traffic Safety

On December 30, 2013, the Federal Highway Administration (FHWA) released the findings of its multi-year research on drivers' behavior in proximity to digital billboards.

"DOT study finds digital billboards don't distract drivers," said the headline in *The Hill* newspaper in Washington, DC (January 7, 2014).

The government's findings tracked the outcome of industry-sponsored research, which found no connections to accidents.

FHWA's sister agency the National Highway Traffic Safety Administration (NHTSA) said in 2006: “Short, brief glances away from the forward roadway for the purpose of scanning the driving environment are safe and actually decrease near-crash/crash risk.”

This 2006 NHTSA study (“100-Car Naturalistic Driving Study”) said glances totaling more than 2 seconds increase crash risk. FHWA’s later research on digital billboards, released December 30, 2013, said the longest glances toward digital billboards were less than 1.3 seconds.

State review of crash data

Meanwhile, states have reviewed crash data. Effective January 1, 2015, New York State switched from 24-hour to 8-second display time on digital billboards. New York’s analysis of crash data “suggests there is no change in the crash patterns in the vicinity of the off-premise CEVMS billboards,” and continued monitoring is warranted.

Massachusetts DOT also looked at crash data: “The traffic engineers preparing the reports found no detrimental safety impacts” of the digital billboards.

A media report in 2015 summarized state regulatory acceptance of digital billboards, including New York State and Massachusetts.

Digital billboards help public safety



Emergency message after the Boston Marathon bombing

Government relies on digital billboards to communicate with the public.

Since 2008, the National Center for Missing & Exploited Children has transmitted more than 1,000 AMBER Alerts to digital billboards. The Center points out that time is of the essence after child abductions, and, therefore, quick posting on digital billboards is an important part of the AMBER Alert network.

The FBI says it has apprehended 53 fugitives as a direct result of tips from the public prompted by information on digital billboards.

The FBI calls digital billboards a "force multiplier." On March 16, 2012, FBI Director Robert S. Mueller presented the Director's Community Leadership Award to Ken Klein of the Outdoor Advertising Association of America in recognition of the industry's partnership to help law enforcement via digital billboards.



FBI Director Robert S. Mueller presents award to Ken Klein (OAAA)

At the local level, Albuquerque, NM, used digital billboards to urge conservation during a winter-time natural gas shortage. Police in Janesville, WI, post a variety of messages. "An elderly female suffering from Alzheimer's disease wandered away from family in a local shopping mall and was found by a citizen using the digital billboard information. When spring floods along the Rock River posed significant danger to the public, billboards were used to post warnings about the danger," wrote Chief of Police Neil Mahan (retired) in *The Police Chief* magazine.



FEMA message on digital billboard after storms hit Tuscaloosa, AL

Digital billboards support jobs

Billboard advertising supports jobs in local communities, typically more than two dozen jobs per advertiser. The digital sign industry also supports thousands of manufacturing jobs, incubates new ideas, and produces exports.

In 2001, Time-O-Matic, known for time-and-temperature signs, added Watchfire to its name to represent new products such as LED signs. "Watchfire is a living, thriving example for communities across America" that small business development is an engine of the overall economy, says Vicki Haugen of the economic development arm of Danville, IL, and surrounding Vermillion County.

U.S. Senator John Thune, R-SD, echoes that point. "Daktronics is the type of company that communities dream of having," said Thune, calling the company an "integral" part of the community of Brookings, SD. Daktronics designs and builds digital displays, electronic scoreboards, and programmable display systems. Each day in nearly 100 countries, millions of people depend on displays and scoring systems made by Daktronics, which is competing globally from small-town America.

In 1920, an immigrant from England named Tom Young went into the sign business with \$300. Today, Young Electric Sign Company – based in Salt Lake City, UT -- manufactures on-premise and off-premise signs including high-tech LED boards in Logan, UT.

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**DRIVER VISUAL BEHAVIOR IN THE PRESENCE OF COMMERCIAL
ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS)**

SEPTEMBER 2012



FHWA-HEP-16-036

FOREWORD

The advent of electronic billboard technologies, in particular the digital Light-Emitting Diode (LED) billboard, has necessitated a reevaluation of current legislation and regulation for controlling outdoor advertising. In this case, one of the concerns is possible driver distraction. In the context of the present report, outdoor advertising signs employing this new advertising technology are referred to as Commercial Electronic Variable Message Signs (CEVMS). They are also commonly referred to as Digital Billboards and Electronic Billboards.

The present report documents the results of a study conducted to investigate the effects of CEVMS used for outdoor advertising on driver visual behavior in a roadway driving environment. The report consists of a brief review of the relevant published literature related to billboards and visual distraction, the rationale for the Federal Highway Administration research study, the methods by which the study was conducted, and the results of the study, which used an eye tracking system to measure driver glances while driving on roadways in the presence of CEVMS, standard billboards, and other roadside elements. The report should be of interest to highway engineers, traffic engineers, highway safety specialists, the outdoor advertising industry, environmental advocates, Federal policymakers, and State and local regulators of outdoor advertising.

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16. Abstract This study was conducted to investigate the effect of CEVMS on driver visual behavior in a roadway driving environment. An instrumented vehicle with an eye tracking system was used. Roads containing CEVMS, standard billboards, and control areas with no off-premise advertising were selected. Data were collected on arterials and freeways in the day and nighttime. Field studies were conducted in two cities where the same methodology was used but there were differences in the roadway visual environment. The gazes to the road ahead were high across the conditions; however, the CEVMS and billboard conditions resulted in a lower probability of gazes as compared to the control conditions (roadways not containing off-premise advertising) with the exception of arterials in Richmond where none of the conditions differed from each other. Examination of where drivers gazed in the CEVMS and standard billboard conditions showed that gazes away from the road ahead were not primarily to the billboards. Average and maximum fixations to CEVMS and standard billboards were similar across all conditions. However, four long dwell times were found (sequential and multiple fixations) that were greater than 2,000 ms. One was to a CEVMS on a freeway in the day time, two were to the same standard billboard on a freeway once in the day and once at night; and one was to a standard billboard on an arterial at night. In Richmond, the results showed that drivers gazed more at CEVMS than at standard billboards at night; however, in Reading the drivers were equally likely to gaze towards CEVMS or standard billboards in day and night. The results of the study are consistent with research and theory on the control of gaze behavior in natural environments. The demands of the driving task tend to affect the driver's self-regulation of gaze behavior.			
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APPROXIMATE CONVERSIONS TO SI UNITS				
Symbol	When You Know	Multiply By	To Find	Symbol
LENGTH				
in	inches	25.4	millimeters	mm
ft	feet	0.305	meters	m
yd	yards	0.914	meters	m
mi	miles	1.61	kilometers	km
AREA				
in ²	square inches	645.2	square millimeters	mm ²
ft ²	square feet	0.093	square meters	m ²
yd ²	square yard	0.836	square meters	m ²
ac	acres	0.405	hectares	ha
mi ²	square miles	2.59	square kilometers	km ²
VOLUME				
fl oz	fluid ounces	29.57	milliliters	mL
gal	gallons	3.785	liters	L
ft ³	cubic feet	0.028	cubic meters	m ³
yd ³	cubic yards	0.765	cubic meters	m ³
NOTE: volumes greater than 1000 L shall be shown in m ³				
MASS				
oz	ounces	28.35	grams	g
lb	pounds	0.454	kilograms	kg
T	short tons (2000 lb)	0.907	megagrams (or "metric ton")	Mg (or "t")
TEMPERATURE (exact degrees)				
°F	Fahrenheit	5 (F-32)/9 or (F-32)/1.8	Celsius	°C
ILLUMINATION				
fc	foot-candles	10.76	lux	lx
fl	foot-Lamberts	3.426	candela/m ²	cd/m ²
FORCE and PRESSURE or STRESS				
lbf	poundforce	4.45	newtons	N
lbf/in ²	poundforce per square inch	6.89	kilopascals	kPa
APPROXIMATE CONVERSIONS FROM SI UNITS				
Symbol	When You Know	Multiply By	To Find	Symbol
LENGTH				
mm	millimeters	0.039	inches	in
m	meters	3.28	feet	ft
m	meters	1.09	yards	yd
km	kilometers	0.621	miles	mi
AREA				
mm ²	square millimeters	0.0016	square inches	in ²
m ²	square meters	10.764	square feet	ft ²
m ²	square meters	1.195	square yards	yd ²
ha	hectares	2.47	acres	ac
km ²	square kilometers	0.386	square miles	mi ²
VOLUME				
mL	milliliters	0.034	fluid ounces	fl oz
L	liters	0.264	gallons	gal
m ³	cubic meters	35.314	cubic feet	ft ³
m ³	cubic meters	1.307	cubic yards	yd ³
MASS				
g	grams	0.035	ounces	oz
kg	kilograms	2.202	pounds	lb
Mg (or "t")	megagrams (or "metric ton")	1.103	short tons (2000 lb)	T
TEMPERATURE (exact degrees)				
°C	Celsius	1.8C+32	Fahrenheit	°F
ILLUMINATION				
lx	lux	0.0929	foot-candles	fc
cd/m ²	candela/m ²	0.2919	foot-Lamberts	fl
FORCE and PRESSURE or STRESS				
N	newtons	0.225	poundforce	lbf
kPa	kilopascals	0.145	poundforce per square inch	lbf/in ²

*SI is the symbol for the International System of Units. Appropriate rounding should be made to comply with Section 4 of ASTM E380.
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LIST OF ACRONYMS AND SYMBOLS

CEVMS	Commercial Electronic Variable Message Sign
EB	Empirical Bayes
DCZ	Data Collection Zone
ROI	Region of Interest
LED	Light-Emitting Diode
IR	Infra-Red
CCD	Charge-Coupled Device
MAPPS	Multiple-Analysis of Psychophysical and Performance Signals
GEE	Generalized Estimating Equations
FHWA	Federal Highway Administration
DOT	Department of Transportation

EXECUTIVE SUMMARY

This study examines where drivers look when driving past commercial electronic variable message signs (CEVMS), standard billboards, or no off-premise advertising. The results and conclusions are presented in response to the three research questions listed below:

1. Do CEVMS attract drivers' attention away from the forward roadway and other driving-relevant stimuli?
2. Do glances to CEVMS occur that would suggest a decrease in safety?
3. Do drivers look at CEVMS more than at standard billboards?

This study follows a Federal Highway Administration (FHWA) review of the literature on the possible distracting and safety effects of off-premise advertising and CEVMS in particular. The review considered laboratory studies, driving simulator studies, field research vehicle studies, and crash studies. The published literature indicated that there was no consistent evidence showing a safety or distraction effect due to off-premise advertising. However, the review also enumerated potential limitations in the previous research that may have resulted in the finding of no distraction effects for off-premise advertising. The study team recommended that additional research be conducted using instrumented vehicle research methods with eye tracking technology.

The eyes are constantly moving and they fixate (focus on a specific object or area), perform saccades (eye movements to change the point of fixation), and engage in pursuit movements (track moving objects). It is during fixations that we take in detailed information about the environment. Eye tracking allows one to determine to what degree off-premise advertising may divert attention away from the forward roadway. A finding that areas containing CEVMS result in significantly more gazes to the billboards at a cost of not gazing toward the forward roadway would suggest a potential safety risk. In addition to measuring the degree to which CEVMS may distract from the forward roadway, an eye tracking device would allow an examination of the duration of fixations and dwell times (multiple sequential fixations) to CEVMS and standard billboards. Previous research conducted by the National Highway Traffic Safety Administration (NHTSA) led to the conclusion that taking your eyes off the road for 2 seconds or more presents a safety risk. Measuring fixations and dwell times to CEVMS and standard billboards would also allow a determination as to the degree to which these advertising signs lead to potentially unsafe gaze behavior.

Most of the literature concerning eye gaze behavior in dynamic environments suggests that task demands tend to override visual salience (an object that stands out because of its physical properties) in determining attention allocation. When extended to driving, it would be expected that visual attention will be directed toward task-relevant areas and objects (e.g., the roadway, other vehicles, speed limit signs) and that other salient objects, such as billboards, would not necessarily capture attention. However, driving is a somewhat automatic process and conditions generally do not require constant, undivided attention. As a result, salient stimuli, such as CEVMS, might capture driver attention and produce an unwanted increase in driver distraction. The present study addresses this concern.

This study used an instrumented vehicle with an eye tracking system to measure where drivers were looking when driving past CEVMS and standard billboards. The CEVMS and standard billboards were measured with respect to luminance, location, size, and other relevant variables to characterize these visual stimuli extensively. Unlike previous studies on digital billboards, the present study examined CEVMS as deployed in two United States cities. These billboards did not contain dynamic video or other dynamic elements, but changed content approximately every 8 to 10 seconds. The eye tracking system had nearly a 2-degree level of resolution that provided significantly more accuracy in determining what objects the drivers were looking at compared to an earlier naturalistic driving study. This study assessed two data collection efforts that employed the same methodology in two cities.

In each city, the study examined eye glance behavior to four CEVMS, two on arterials and two on freeways. There were an equal number of signs on the left and right side of the road for arterials and freeways. The standard billboards were selected for comparison with CEVMS such that one standard billboard environment matched as closely as possible that of each of the CEVMS. Two control locations were selected that did not contain off-premise advertising, one on an arterial and the other on a freeway. This resulted in 10 data collection zones in each city that were approximately 1,000 feet in length (the distance from the start of the data collection zone to the point that the CEVMS or standard billboard disappeared from the data collection video).

In Reading, Pennsylvania, 14 participants drove at night and 17 drove during the day. In Richmond, Virginia, 10 participants drove at night and 14 drove during the day. Calibration of the eye tracking system, practice drive, and the data collection drive took approximately 2 hours per participant to accomplish.

The following is a summary of the study results and conclusions presented in reference to the three research questions the study aimed to address.

Do CEVMS attract drivers' attention away from the forward roadway and other driving relevant stimuli?

- On average, the drivers in this study devoted between 73 and 85 percent of their visual attention to the road ahead for both CEVMS and standard billboards. This range is consistent with earlier field research studies. In the present study, the presence of CEVMS did not appear to be related to a decrease in looking toward the road ahead.

Do glances to CEVMS occur that would suggest a decrease in safety?

- The average fixation duration to CEVMS was 379 ms and to standard billboards it was 335 ms across the two cities. The average fixation durations to CEVMS and standard billboards were similar to the average fixation duration to the road ahead.
- The longest fixation to a CEVMS was 1,335 ms and to a standard billboard it was 1,284 ms. The current widely accepted threshold for durations of glances away from the road ahead that result in higher crash risk is 2,000 ms. This value comes from a NHTSA

naturalistic driving study that showed a significant increase in crash odds when glances away from the road ahead were 2,000 ms or longer.

- Four dwell times (aggregate of consecutive fixations to the same object) greater than 2,000 ms were observed across the two studies. Three were to standard billboards and one was to a CEVMS. The long dwell time to the CEVMS occurred in the daytime to a billboard viewable from a freeway. Review of the video data for these four long dwell times showed that the signs were not far from the forward view while participant's gaze dwelled on them. Therefore, the drivers still had access to information about what was in front of them through peripheral vision.
- The results did not provide evidence indicating that CEVMS, as deployed and tested in the two selected cities, were associated with unacceptably long glances away from the road. When dwell times longer than the currently accepted threshold of 2,000 ms occurred, the road ahead was still in the driver's field of view. This was the case for both CEVMS and standard billboards.

Do drivers look at CEVMS more than at standard billboards?

- When comparing the probability of a gaze at a CEVMS versus a standard billboard, the drivers in this study were generally more likely to gaze at CEVMS than at standard billboards. However, some variability occurred between the two locations and between the types of roadway (arterial or freeway).
- In Reading, when considering the proportion of time spent looking at billboards, the participants looked more often at CEVMS than at standard billboards when on arterials (63 percent to CEVMS and 37 percent to a standard billboard), whereas they looked more often at standard billboards when on freeways (33 percent to CEVMS and 67 percent to a standard billboard). In Richmond, the drivers looked at CEVMS more than standard billboards no matter the type of road they were on, but as in Reading, the preference for gazing at CEVMS was greater on arterials (68 percent to CEVMS and 32 percent to standard billboards) than on freeways (55 percent to CEVMS and 45 percent to standard billboards). When a gaze was to an off-premise advertising sign, the drivers were generally more likely to gaze at a CEVMS than at a standard billboard.
- In Richmond, the drivers showed a preference for gazing at CEVMS versus standard billboards at night, but in Reading the time of day did not affect gaze behavior. In Richmond, drivers gazed at CEVMS 71 percent and at standard billboards 29 percent at night. On the other hand, in the day the drivers gazed at CEVMS 52 percent and at standard billboards 48 percent.
- In Reading, the average gaze dwell time for CEVMS was 981 ms and for standard billboards it was 1,386 ms. The difference in these average dwell times was not statistically significant. In contrast, the average dwell times to CEVMS and standard billboards were significantly different in Richmond (1,096 ms and 674 ms, respectively).

The present data suggest that the drivers in this study directed the majority of their visual attention to areas of the roadway that were relevant to the task at hand (e.g., the driving task). Furthermore, it is possible, and likely, that in the time that the drivers looked away from the forward roadway, they may have elected to glance at other objects in the surrounding environment (in the absence of billboards) that were not relevant to the driving task. When billboards were present, the drivers in this study sometimes looked at them, but not such that overall attention to the forward roadway decreased.

It also should be noted that, like other studies in the available literature, this study adds to the knowledge base on the issues examined, but does not present definitive answers to the research questions investigated.

INTRODUCTION

“The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Drivers should resist engaging in any activity that takes their eyes and attention off of the road for more than a couple of seconds. In some circumstances even a second or two can make all the difference in a driver being able to avoid a crash.” – US Department of Transportation⁽¹⁾

The advent of electronic billboard technologies, in particular the digital Light-Emitting Diode (LED) billboard, has prompted a reevaluation of regulations for controlling outdoor advertising. An attractive quality of these LED billboards, which are hereafter referred to as Commercial Electronic Variable Message Signs (CEVMS), is that advertisements can change almost instantly. Furthermore, outdoor advertising companies can make these changes from a central remote office. Of concern is whether or not CEVMS may attract drivers’ attention away from the primary task (driving) in a way that compromises safety.

The current Federal Highway Administration (FHWA) guidance recommends that CEVMS should not change content more frequently than once every 8 seconds.⁽²⁾ However, according to Scenic America, the basis of the safety concern is that the “...distinguishing trait...” of a CEVMS “... is that it can vary while a driver watches it, in a setting in which that variation is likely to attract the drivers’ attention away from the roadway.”⁽³⁾ This study was conducted to provide the FHWA with data to determine if CEVMS capture visual attention differently than standard off-premise advertising billboards.

BACKGROUND

A 2009 review of the literature by Molino et al. for the FHWA failed to find convincing empirical evidence that CEVMS, as currently implemented, constitutes a safety risk greater than that of conventional vinyl billboards.⁽⁴⁾ A great deal of work has been focused in this area, but the findings of these studies have been mixed.^(4,5) A summary of the key past findings is presented here, but the reader is referred to Molino et al. for a comprehensive review of studies prior to 2008.⁽⁴⁾

Post-Hoc Crash Studies

Post-hoc crash studies use reviews of police traffic collision reports or statistical summaries of such reports in an effort to understand the causes of crashes that have taken place in the vicinity of some change to the roadside environment. In the present case, the change of concern is the introduction of CEVMS to the roadside or the replacement of conventional billboards with CEVMS.

The literature review conducted by Molino et al. did not find compelling evidence for a distraction effect attributable to CEVMS.⁽⁴⁾ The authors concluded that all post-hoc crash studies are subject to certain weaknesses, most of which are difficult to overcome. For example, the vast majority of crashes are never reported to police; thus, such studies are likely to underreport crashes. Also, when crashes are caused by factors such as driver distraction or inattention, the involved driver may be unwilling or unable to report these factors to a police investigator.

Another weakness is that police, under time pressure, are rarely able to investigate the true root causes of crashes unless they involve serious injury, death, or extensive property damage. Furthermore, to have confidence in the results, such studies need to collect comparable data before and after the change, and, in the after phase, at equivalent but unaffected roadway sections. Since crashes are infrequent events, data collection needs to span extended periods of time both before and after introduction of the change. Few studies are able to obtain such extensive data.

Two recent studies by Tantala and Tantala examined the relationship between the presence of CEVMS and crash statistics in Richmond, Virginia, and Reading, Pennsylvania.^(6,7) For the Richmond area, 7 years of crash data at 10 locations with CEVMS were included in the analyses. The study used a before-after methodology where most sites originally contained vinyl billboards (before) that were converted to CEVMS (after). The quantity of crash data was not the same for all locations and ranged from 1 year before/after to 3 years before/after. The study employed the Empirical Bayes (EB) method to analyze the data.⁽⁸⁾ The results indicated that the total number of crashes observed was consistent with what would be statistically expected with or without the introduction of CEVMS. The analysis approach for Reading locations was much the same as for Richmond other than there were 20 rather than 10 CEVMS and 8 years of crash statistics. The EB method showed results for Reading that were very similar to those of Richmond.

The studies by Tantala and Tantala appear to address many of the concerns from Molino et al. regarding the weaknesses and issues associated with crash studies.^(4,6,7) For example, they include crash comparisons for locations within multiple distances of each CEVMS to address concerns about the visual range used in previous analyses. They used EB analysis techniques to correct for regression-to-mean bias. Also, the EB method would better reflect crash rate changes due to changes in average daily traffic and the interactions of these with the roadway features that were coded in the model. The studies followed approaches that are commonly used in post-hoc crash studies, though the results would have been strengthened by including before-after results for non-CEVMS locations as a control group.

Field Investigations

Field investigations include unobtrusive observation, naturalistic driving studies, on-road instrumented vehicle investigations, test track experiments, driver interviews, surveys, and questionnaires. The following focuses on relevant studies that employed naturalistic driving and on-road instrumented vehicle research methods.

Lee, McElheny, and Gibbons undertook an on-road instrumented vehicle study on Interstate and local roads near Cleveland, Ohio.⁽⁹⁾ The study looked at driver glance behavior in the vicinity of digital billboards, conventional billboards, comparison sites (sites with buildings and other signs, including digital signs), and control sites (those without similar signage). The results showed that there were no differences in the overall glance patterns (percent eyes-on-road and overall number of glances) between the different sites. Drivers also did not glance more frequently in the direction of digital billboards than in the direction of other event types (conventional billboards, comparison events, and baseline events) but drivers did take longer glances in the direction of digital billboards and comparison sites than in the direction of conventional billboards and baseline sites. However, the mean glance length toward the digital billboards was less than

1,000 ms. It is important to note that this study employed a video-based approach for examining drivers' visual behavior, which has an accuracy of no better than 20 degrees.⁽¹⁰⁾ While this technique is likely to be effective in assessing gross eye movements and looks that are away from the road ahead, it may not have sufficient resolution to discriminate what specific object the driver is looking at outside of the vehicle.

Beijer, Smiley, and Eizenman evaluated driver glances toward four different types of roadside advertising signs on roads in the Toronto, Canada, area.⁽¹¹⁾ The four types of signs were: (a) billboard signs with static advertisements; (b) billboard advertisements placed on vertical rollers that could rotate to show one of three advertisements in succession; (c) scrolling text signs with a minor active component, which usually consisted of a small strip of lights that formed words scrolling across the screen or, in some cases, a larger area capable of displaying text but not video; and (d) signs with video images that had a color screen capable of displaying both moving text and moving images. The study employed an on-road instrumented vehicle with a head-mounted eye tracking device. The researchers found no significant differences in average glance duration or the maximum glance duration for the various sign types; however, the number of glances was significantly lower for billboard signs than for the roller bar, scrolling text, and video signs.

Smiley, Smahel, and Eizenman conducted a field driving study that employed an eye tracking system that recorded drivers' eye movements as participants drove past video signs located at three downtown intersections and along an urban expressway.⁽¹²⁾ The study route included static billboards and video advertising. The results of the study showed that on average 76 percent of glances were to the road ahead. Glances at advertising, including static billboards and video signs, constituted 1.2 percent of total glances. The mean glance durations for advertising signs were between 500 ms and 750 ms, although there were a few glances of about 1,400 ms in duration. Video signs were not more likely than static commercial signs to be looked at when headways were short; in fact, the reverse was the case. Furthermore, the number of glances per individual video sign was small, and statistically significant differences in looking behavior were not found.

Kettwich, Kartsen, Klinger, and Lemmer conducted a field study where drivers' gaze behavior was measured with an eye tracking system.⁽¹³⁾ Sixteen participants drove an 11.5 mile (18.5 km) route comprised of highways, arterial roads, main roads, and one-way streets in Karlsruhe, Germany. The route contained advertising pillars, event posters, company logos, and video screens. Mean gaze duration for the four types of advertising was computed for periods when the vehicle was in motion and when it was stopped. Gaze duration while driving for all types of advertisements was under 1,000 ms. On the other hand, while the vehicle was stopped, the mean gaze duration for video screen advertisements was 2,750 ms. The study showed a significant difference between gaze duration while driving and while stationary: gaze duration was affected by the task at hand. That is, drivers tended to gaze longer while the car was stopped and there were few driving task demands.

The previously mentioned studies estimated the duration of glances to advertising and computed mean values of less than 1,000 ms. Klauer et al., in his analysis of the 100-Car Naturalistic Driving Study, concluded that glances away from the roadway for any purpose lasting more than 2,000 ms increase near-crash/crash risk by at least two times that of normal, baseline driving.⁽¹⁴⁾

Klauer et al. also indicated that short, brief glances away from the forward roadway for the purpose of scanning the driving environment are safe and actually decrease near-crash/crash risk.⁽¹⁴⁾ Using devices in a vehicle that draw visual attention away from the forward roadway for more than 2,000 ms (e.g., texting) is incompatible with safe driving. However, for external stimuli, especially those near the roadway, the evaluation of eye glances with respect to safety is less clear since peripheral vision would allow the driver to still have visual access to the forward roadway.

Laboratory Studies

Laboratory investigations related to roadway safety can be classified into several categories: driving simulations, non-driving-simulator laboratory testing, and focus groups. The review of relevant laboratory studies by Molino et al. did not show conclusive evidence regarding the distracting effects of CEVMS.⁽⁴⁾ Moreover, the authors concluded that present driving simulators do not have sufficient visual dynamic range, image resolution, and contrast ratio capability to produce the compelling visual effect of a bright, photo-realistic LED-based CEVMS against a natural background scene. The following is a discussion of a driving simulator study conducted after the publication of Molino et al.⁽⁴⁾ The study focused on the effects of advertising on driver visual behavior.

Chattington, Reed, Basacik, Flint, and Parkes conducted a driving simulator study in the United Kingdom (UK) to evaluate the effects of static and video advertising on driver glance behavior.⁽¹⁵⁾ The researchers examined the effects of advertisement position relative to the road (left, right, center on an overhead gantry, and in all three locations simultaneously), type of advertisement (static or video), and exposure duration of the advertisement. (The paper does not provide these durations in terms of time or distance. The exposure duration had to do with the amount of time or distance that the sign would be visible to the driver.) For the advertisements presented on the left side of the road (recall that drivers travel in the left lane in the UK), mean glance durations for static and video advertisements were significantly longer (approximately 650 to 750 ms) when drivers experienced long advertisement exposure as opposed to medium and short exposures. Drivers looked more at video advertisements (about 2 percent on average of the total duration recorded) than at static advertisements (about 0.75 percent on average). In addition, the location of the advertisements had an effect on glance behavior. When advertisements were located in the center of the road or in all three positions simultaneously, the glance durations were about 1,000 ms and were significantly longer than for signs placed on the right or left side of the road. For advertisements placed on the left side of the road, there was a significant difference in glance duration between static (about 400 ms) and video (about 800 ms). Advertisement position also had an effect on the proportion of time that a driver spent looking at an advertisement. The percentage of time looking at advertisements was greatest when signs were placed in all three locations, followed by center location signs, then the left location signs, and finally the right location signs. Drivers looked more at the video advertisements relative to the static advertisements when they were placed in all three locations, placed on the left, and placed on the right side of the road. The center placement did not show a significant difference in percent of time spent looking between static and video.

Summary

The results from these key studies offer some insight into whether CEVMS pose a visual distraction threat. However, these same studies also reveal some inconsistent findings and potential methodological issues that are addressed in the current study. The studies conducted by Smiley et al. showed drivers glanced forward at the roadway about 76 percent of the time in the presence of video and dynamic signs where a few long glances of approximately 1,400 ms were observed.⁽¹²⁾ However, the video and dynamic signs used in these studies portray moving objects that are not present in CEVMS as deployed in the United States. In another field study employing eye tracking, Kettwich et al. found that gaze duration while driving for all types of advertisements that they evaluated was less than 1,000 ms; however, when the vehicle was stopped, mean gaze duration for advertising was as high as 2,750 ms.⁽¹⁶⁾ Collectively, these studies did not demonstrate that the advertising signs detracted from drivers' glances forward at the roadway in a substantive manner while the vehicle was moving.

In contrast, the simulator study by Chattington et al. demonstrated that dynamic signs showing moving video or other dynamic elements may draw attention away from the roadway.⁽¹⁵⁾ Furthermore, the location of the advertising sign on the road is an important factor in drawing drivers' visual attention. Advertisements with moving video placed in the center of the roadway on an overhead gantry or in all three positions (right, left, and in the center) simultaneously are very likely to draw glances from drivers.

Finally, in a study that examined CEVMS as deployed in the United States, Lee et al. did not show any significant effects of CEVMS on driver glance behavior.⁽⁹⁾ However, the methodology that was used likely did not employ sufficient sensitivity to determine at what specific object in the environment a driver was looking.

None of these studies combined all necessary factors to address the current CEVMS situation in the United States. Those studies that used eye tracking on real roads had animated and video-based signs, which are not reflective of current off-premise CEVMS practice in the United States.

STUDY APPROACH

Based on an extensive review of the literature, Molino et al. concluded that the most effective method to use in an evaluation of the effects of CEVMS on driver visual behavior was the instrumented field vehicle method that incorporated an eye tracking system.⁽⁴⁾ The present study employed such an instrumented field vehicle with an eye tracking system and examined the degree to which CEVMS attract drivers' attention away from the forward roadway.

The following presents a brief overview and discussion of studies using eye tracking methodology with complex visual stimuli, especially in natural environments (walking, driving, etc.). The review by Molino et al. recommended the use of this type of technology and method; however, a discussion laying out technical and theoretical issues underlying the use of eye tracking methods was not presented.⁽⁴⁾ This background is important for the interpretation of the results of the studies conducted here.

Standard and digital billboards are often salient stimuli in the driving environment, which may make them conspicuous. Cole and Hughes define attention conspicuity as the extent to which a stimulus is sufficiently prominent in the driving environment to capture attention. Further, Cole and Hughes state that attention conspicuity is a function of size, color, brightness, contrast relative to surroundings, and dynamic components such as movement and change.⁽¹⁷⁾ It is clear that under certain circumstances image salience or conspicuity can provide a good explanation of how humans orient their attention.

At any given moment a large number of stimuli reach our senses, but only a limited number of them are selected for further processing. In general, attention can be focused on a stimulus because it is important for achieving some goal, or because the properties of the stimulus can attract the attention of the observer independent of their intentions (e.g., a car horn may elicit an orienting response). When the focus of attention is goal directed, it is referred to as top-down. When the focus of attention is principally a function of stimulus attributes, it is referred to as bottom-up.⁽¹⁸⁾

In general, billboards (either standard or CEVMS) are not relevant to the driving task but are presumably designed to be salient stimuli in the environment where they may draw a driver's attention. The question is to what degree CEVMS draw a driver's attention away from driving-relevant stimuli (e.g., road ahead, mirrors, and speedometer) and is this different from a standard billboard? In his review of the literature Wachtel leads one to consider CEVMS as stimuli in the environment where attention to them would be drawn in a bottom-up manner; that is, the salience of the billboards would make them stand out relative to other stimuli in the environment and drivers would reflexively look at these signs.⁽¹⁹⁾ Wachtel's conclusions were in reference to research by Theeuwes who employed simple letter stimulus arrays in a laboratory task.⁽²⁰⁾ Research using simple visual stimuli in a laboratory environment are very useful for testing different theories of perception, but often lack direct application to tasks such as driving. The following discusses research using complex visual stimuli and tasks that are more relevant to natural vision as experienced in the driving task.

A recent review of stimulus salience and eye guidance by Tatler et al. shows that most of the evidence for the capture of attention by the conspicuity of stimuli comes from research in which the stimulus is a simple visual search array or in which the target is uniquely defined by simple visual features.⁽²¹⁾ In other words, these are laboratory studies that use letters, arrays of letters, or simple geometric patterns as the stimuli. Pure salience-based models are capable of predicting eye movement endpoint in simple displays, but are less successful for more complex scenes that contain task-relevant and task-irrelevant salient areas.^(22,23)

Research by Henderson et al. using photographs of actual scenes showed that subjects looked at non-salient scene regions containing a search target and rarely looked at salient non-task-relevant regions of the scenes.⁽²⁴⁾ Salience of the stimulus alone was not a good predictor of where participants looked. Additional research by Henderson using photographs of real world scenes also showed that subjects fixated on regions of the pictures that provided task-relevant information rather than visually salient regions with no task-relevant information. However, Henderson acknowledges that static pictures have many shortcomings when used as surrogates for real environments.⁽²⁵⁾

Land's review of eye movements in dynamic environments concluded that the eyes are proactive and typically seek out information required in the second before each new activity commences.⁽²⁶⁾ Specific tasks (e.g., driving) have characteristic but flexible patterns of eye movement that accompany them, and these patterns are similar between individuals. Land concluded that the eyes rarely visit objects that are irrelevant to the task, and the conspicuity of objects is less important than the objects' roles in the task. In a subsequent review of eye movement and natural behavior, Land concluded that in a task that requires fixation on a sequence of specific objects, the capture of gaze by irrelevant salient objects would, in general, be an obtrusive nuisance.⁽²²⁾

The literature examining gaze control under natural behavior suggests that it is principally top-down driven, or intentional.^(24,25,26,22,21,27) However, top-down processing does not explain all gaze control or eye movements. For example, imagine driving down a two-lane country road and a deer jumps into the road. It is most likely that you will attend and react to this deer. Unplanned or unexpected stimuli capture our attention as we engage in complex natural tasks. Research by Jovancevic-Misic and Hayhoe showed that human gaze patterns are sensitive to the probabilistic nature of the environment.⁽²⁸⁾ In this study, participants' eye movement behavior was observed while walking among other pedestrians. The other pedestrians were confederates and were either safe, risky, or rogue pedestrians. When the study began, the risky pedestrian took a collision course with the participant 50 percent of the time, and the rogue pedestrian always assumed a collision course as he approached the participant, whereas the safe pedestrian never took a collision course. Midway through the study the rogue and safe pedestrians exchanged roles but the risky pedestrian role remained the same. The participants were not informed about the behavior of the other pedestrians. Participants were asked to follow a circular path for several laps and to avoid other pedestrians. The study showed that the participants modified their gaze behavior in response to the change in the other pedestrians' behavior. Jovancevic-Misic concluded that participants learned new priorities for gaze allocation within a few encounters and looked both sooner and longer at potentially dangerous pedestrians.⁽²⁸⁾

Gaze behavior in natural environments is affected by expectations that are derived through long-term learning. Using a virtual driving environment, Shinoda et al. asked participants to look for stop signs while driving an urban route.⁽²⁹⁾ Approximately 45 percent of the fixations fell in the general area of intersections during the simulated drive, and participants were more likely to detect stop signs placed near intersections than those placed in the middle of a block. Over time, drivers have learned that stop signs are more likely to appear near intersections and, as a result, drivers prioritize their allocation of gazes to these areas of the roadway.

The Tatler et al. review of the literature concludes that in natural vision, a consistent set of principles underlies eye guidance. These principles include relevance or reward potential, uncertainty about the state of the environment, and learned models of the environment.⁽²¹⁾ Salience of environmental stimuli alone typically does not explain most eye gaze behavior in naturalistic environments.

In sum, most of the literature concerning eye gaze behavior in dynamic environments suggests that task demands tend to override visual salience in determining attention allocation. When extended to driving, it would be expected that visual attention will be directed toward task-relevant areas and objects (e.g., the roadway, other vehicles, speed limit signs, etc.) and other

salient objects, such as billboards, will not necessarily capture attention. However, driving is a somewhat automatic process and conditions generally do not require constant undivided attention. As a result, salient stimuli, such as CEVMS, might capture driver attention and provide an unwarranted increase in driver distraction. The present study addresses this concern.

Research Questions

The present research evaluated the effects of CEVMS on driver visual behavior under actual roadway conditions in the daytime and at night. Roads containing CEVMS, standard billboards, and areas not containing off-premise advertising were selected. The CEVMS and standard billboards were measured with respect to luminance, location, size, and other relevant visual characteristics. The present study examined CEVMS as deployed in two United States cities. Unlike previous studies, the signs did not contain dynamic video or other dynamic elements. In addition, the eye tracking system used in this study has approximately a 2-degree level of resolution. This provided significantly more accuracy in determining what objects the drivers were looking at than in previous on-road studies examining looking behavior (recall that Lee et al. used video recordings of drivers' faces that, at best, examined gross eye movements).⁽⁹⁾

Two studies are reported. Each study was conducted in a different city. The two studies employed the same methodology. The studies' primary research questions were:

1. Do CEVMS attract drivers' attention away from the forward roadway and other driving relevant stimuli?
2. Do glances to CEVMS occur that would suggest a decrease in safety?
3. Do drivers look at CEVMS more than at standard billboards?

EXPERIMENTAL APPROACH

The study used a field research vehicle equipped with a non-intrusive eye tracking system. The vehicle was a 2007 Jeep® Grand Cherokee Sport Utility Vehicle. The eye tracking system used (SmartEye® vehicle-mounted infrared (IR) eye-movement measuring system) is shown in figure 1.⁽³⁰⁾ The system consists of two IR light sources and three face cameras mounted on the dashboard of the vehicle. The cameras and light sources are small in size, and are not attached to the driver in any manner. The face cameras are synchronized to the IR light sources and are used to determine the head position and gaze direction of the driver.



Figure 1. Eye tracking system camera placement.

As a part of this eye tracking system, the vehicle was outfitted with a three-camera panoramic scene monitoring system for capturing the forward driving scene. The scene cameras were mounted on the roof of the vehicle directly above the driver's head position. The three cameras together provided an 80-degree wide by 40-degree high field of forward view. The scene cameras captured the forward view area available to the driver through the left side of the windshield and a portion of the right side of the windshield. The area visible to the driver through the rightmost area of the windshield was not captured by the scene cameras.

The vehicle was also outfitted with equipment to record GPS position, vehicle speed, and vehicle acceleration. The equipment also recorded events entered by an experimenter and synchronized those events with the eye tracking and vehicle data. The research vehicle is pictured in figure 2.



Figure 2. FHWA's field research vehicle.

EXPERIMENTAL DESIGN OVERVIEW

The approach entailed the use of the instrumented vehicle in which drivers navigated routes in cities that presented CEVMS and standard billboards as well as areas without off-premise advertising. The participants were instructed to drive the routes as they normally would. The drivers were not informed that the study was about outdoor advertising, but rather that it was about examining drivers' glance behavior as they followed route guidance directions.

Site Selection

More than 40 cities were evaluated in the selection of the test sites. Locations with CEVMS displays were identified using a variety of resources that included State department of transportation contacts, advertising company Web sites, and a popular geographic information system. A matrix was developed that listed the number of CEVMS in each city. For each site, the number of CEVMS along limited access and arterial roadways was determined.

One criterion for site selection was whether the location had practical routes that pass by a number of CEVMS as well as standard off-premise billboards and could be driven in about 30 minutes. Other considerations included access to vehicle maintenance personnel/facilities, proximity to research facilities, and ease of participant recruitment. Two cities were selected: Reading, and Richmond.

Table 1 presents the 16 cities that were included on the final list of potential study sites.

Table 1. Distribution of CEVMS by roadway classification for various cities.

<i>State</i>	<i>Area</i>	<i>Limited Access</i>	<i>Arterial</i>	<i>Other ⁽¹⁾</i>	<i>Total</i>
VA	Richmond	4	7	0	11
PA	Reading	7	11	0	18
VA	Roanoke	0	11	0	11
PA	Pittsburgh	0	0	15	15
TX	San Antonio	7	2	6	15
WI	Milwaukee	14	2	0	16
AZ	Phoenix	10	6	0	16
MN	St. Paul/Minneapolis	8	5	3	16
TN	Nashville	7	10	0	17
FL	Tampa-St. Petersburg	7	11	0	18
NM	Albuquerque	0	19	1	20
PA	Scranton-Wilkes Barre	7	14	1	22
OH	Columbus	1	22	0	23
GA	Atlanta	13	11	0	24
IL	Chicago	22	2	1	25
CA	Los Angeles	3	71	4	78

(1) Other includes roadways classified as both limited access and arterial or instances where the road classification was unknown. *Source:* www.lamar.com and www.clearchannel.com

In both test cities, the following independent variables were evaluated:

- **The type of advertising.** This included CEVMS, standard billboards, and no off-premise advertising. (It should be noted that in areas with no off-premise advertising, it was still possible to encounter on-premise advertising; e.g., for gas stations, restaurants, and other miscellaneous stores and shops.)
- **Time of day.** This included driving in the daytime and at night.
- **The functional class of roadways in which off-premise advertising signs were located.** Roads were classified as either freeway or arterial. It was observed that the different road classes were correlated with the presence of other visual information that could affect the driver's glance behavior. For example, the visual environment on arterials may be more complex or cluttered than on freeways because of the close proximity of buildings, driveways, and on-premise advertising, etc.

READING

The first on-road study was conducted in Reading. This study examined the type of advertising (CEVMS, standard billboard, or no off-premise advertising), time of day (day or night) and road type (freeway or arterial) as independent variables. Eye tracking was used to assess where participants gazed and for how long while driving. The luminance and contrast of the advertising signs were measured to characterize the billboards in the current study.

METHOD

Selection of Data Collection Zone Limits

Data collection zones (DCZ) were defined on the routes that participants drove where detailed analyses of the eye tracking data were planned. The DCZ were identified that contained a CEVMS, a standard billboard, or no off-premise advertising.

The rationale for selecting the DCZ limits took into account the geometry of the roadway (e.g., road curvature or obstructions that blocked view of billboards) and the capabilities of the eye tracking system (2 degrees of resolution). At a distance of 960 ft (292.61 m), the average billboard in Reading was 12.8 ft (3.90 m) by 36.9 ft (11.25 m) and would subtend a horizontal visual angle of 2.20 degrees and a vertical visual angle of 0.76 degrees, and thus glances to the billboard would just be resolvable by an eye tracking system with 2 degrees of accuracy. Therefore 960 ft was chosen as the maximum distance from billboards at which a DCZ would begin. If the target billboard was not visible from 960 ft (292.61 m) due to roadway geometry or other visual obstructions, such as trees or an overpass, the DCZ was shortened to a distance that prevented these objects from interfering with the driver's vision of the billboard. In DCZs with target off-premise billboards, the end of the DCZ was marked when the target billboard left the view of the scene camera. If the area contained no off-premise advertising, the end of the DCZ was defined by a physical landmark leaving the view of the eye tracking systems' scene camera.

Table 2 shows the data collection zone limits used in this study.

Advertising Conditions

The type of advertising present in DCZs was examined as an independent variable. DCZs fell into one of the following categories, which are listed in the second column of table 2:

- **CEVMS.** These were DCZs that contained one target CEVMS. Two CEVMS DCZs were located on freeways and two were located on arterials. Figure 3 and figure 4 show examples of CEVMS DCZs with the CEVMS highlighted in the pictures.
- **Standard billboard.** These were DCZs that contained one target standard billboard. Two standard billboard DCZs were located on freeways and two were located on arterials. Figure 5 and figure 6 show examples of standard billboard DCZs; the standard billboards are highlighted in the pictures.

- **No off-premise advertising conditions.** These DCZs contained no off-premise advertising. One of these DCZs was on a freeway (see figure 7) and the other was on an arterial (see figure 8).

Table 2. Inventory of target billboards with relevant parameters.

<i>DCZ</i>	<i>Advertising Type</i>	<i>Copy Dimensions (ft)</i>	<i>Side of Road</i>	<i>Setback from Road (ft)</i>	<i>Other Standard Billboards</i>	<i>Approach Length (ft)</i>	<i>Type of Roadway</i>
1	CONTROL	N/A	N/A	N/A	N/A	786	Freeway
6	CONTROL	N/A	N/A	N/A	N/A	308	Arterial
3	CEVMS	10'6" x 22'9"	L	12	0	375	Arterial
5	CEVMS	14'0" x 48'0"	L	133	1	853	Freeway
9	CEVMS	10'6" x 22'9"	R	43	0	537	Arterial
10	CEVMS	14'0" x 48'0"	R	133	1	991	Freeway
2	Standard	14'0" x 48'0"	L	20	0	644	Arterial
7	Standard	14'0" x 48'0"	R	35	1	774	Freeway
8	Standard	10'6" x 22'9"	R	40	1	833	Arterial
4	Standard	14'0" x 48'0"	L	10	0	770	Freeway

**N/A indicates that there were no off-premise advertising in these areas and these values are undefined.*



Figure 3. DCZ with a target CEVMS on a freeway.



Figure 4. DCZ with a target CEVMS on an arterial.



Figure 5. DCZ with a target standard billboard on a freeway.



Figure 6. DCZ with a target standard billboard on an arterial.



Figure 7. DCZ for the control condition on a freeway.



Figure 8. DCZ for the control condition on an arterial.

Photometric Measurement of Signs

Two primary metrics were used to describe the photometric characteristics of a sample of the CEVMS and standard billboards present at each location: luminance (cd/m^2) and contrast (Weber contrast ratio).

Photometric Equipment

Luminance was measured with a Radiant Imaging ProMetric 1600 Charge-Coupled Device (CCD) photometer with both a 50 mm and a 300 mm lenses. The CCD photometer provided a method of capturing the luminance of an entire scene at one time.

The photometric sensors were mounted in a vehicle of similar size to the eye tracking research vehicle. The photometer was located in the experimental vehicle as close to the driver's position as possible and was connected to a laptop computer that stored data as the images were acquired.

Measurement Methodology

Images of the billboards were acquired using the photometer manufacturer's software. The software provided the mean luminance of each billboard message. To prevent overexposure of

images in daylight, neutral density filters were manually affixed to the photometer lens and the luminance values were scaled appropriately. Standard billboards were typically measured only once; however, for CEVMS multiple measures were taken to account for changing content.

Photometric measurements were taken during day and night. Measurements were taken by centering the billboard in the photometer's field of view with approximately the equivalent of the width of the billboard on each side and the equivalent of the billboard height above and below the sign. The areas outside of the billboards were included to enable contrast calculations.

Standard billboards were assessed at a mean distance of 284 ft (ranging from 570 ft to 43 ft). The CEVMS were assessed at a mean distance of 479 ft (ranging from 972 ft to 220 ft). To include the background regions of appropriate size, the close measurement distances required the use of the 50 mm lens whereas measurements made from longer distances required the 300 mm lens. A significant determinant of the measurement locations was the availability of accessible and safe places from which to measure.

The Weber contrast ratio was used because it characterizes a billboard as having negative or positive contrast when compared to its background area.⁽³¹⁾ A negative contrast indicates the background areas have a higher mean luminance than the target billboard. A positive contrast indicates the target billboard has a higher mean luminance than the background. Overall, the absolute value of a contrast ratio simply indicates a difference in luminance between an item and its background. From a perceptual perspective luminance and contrast are directly related to the perception of brightness. For example, two signs with equal luminance may be perceived differently with respect to brightness because of differences in contrast.

Visual Complexity

Regan, Young, Lee and Gordon presented a taxonomic description of the various sources of driver distraction.⁽³²⁾ Potential sources of distraction were discussed in terms of: things brought into the vehicle; vehicle systems; vehicle occupants; moving objects or animals in the vehicle; internalized activity; and external objects, events, or activities. The external objects may include buildings, construction zones, billboards, road signs, vehicles, and so on. Focusing on the potential for information outside the vehicle to attract (or distract) the driver's attention, Horberry and Edquist developed a taxonomy for out-of-the-vehicle visual information. This suggested taxonomy includes four groupings of visual information: built roadway, situational entities, natural environment, and built environment.⁽³³⁾ These two taxonomies provide an organizational structure for conducting research; however, they do not currently provide a systematic or quantitative way of classifying the level of clutter or visual complexity present in a visual scene.

The method proposed by Rozenholtz, Li, and Nakano provides quantitative and perhaps reliable measures of visual clutter.⁽³⁴⁾ Their approach measures the feature congestion in a visual image. The implementation of the feature congestion measure involves four stages: (1) compute local feature covariance at multiple scales and compute the volume of the local covariance ellipsoid, (2) combine clutter across scale, (3) combine clutter across feature types, and (4) pool over space to get a single measure of clutter for each input image. The implementation that was used employed color, orientation and luminance contrast as features. Presumably, less cluttered

images can be visually coded more efficiently than cluttered images. For example, visual clutter can cause decreased recognition performance and greater difficulty in performing visual search.⁽³⁵⁾

Participants

In the present study participants were recruited at public libraries in the Reading area. A table was set up so that recruiters could discuss the requirements of the experiment with candidates. Individuals who expressed interest in participating were asked to complete a pre-screening form, a record of informed consent, and a department of motor vehicles form consenting to release of their driving record.

All participants were between 18 and 64 years of age and held a valid driver's license. The driving record for each volunteer was evaluated to eliminate drivers with excessive violations. The criteria for excluding drivers were as follows: (a) more than one violation in the preceding year; (b) more than three recorded violations; and (c) any driving while intoxicated violation.

Forty-three individuals were recruited to participate. Of these, five did not complete the drive because the eye tracker could not be calibrated to track their eye movements accurately. Data from an additional seven participants were excluded as the result of equipment failures (e.g., loose camera). In the end, usable data was collected from 31 participants (12 males, $M = 46$ years; 19 females, $M = 47$ years). Fourteen participants drove at night and 17 drove during the day.

Procedures

Data were collected from two participants per day (beginning at approximately 12:45 p.m. and 7:00 p.m.). Data collection began on September 18, 2009, and was completed on October 26, 2009.

Pre-Data Collection Activities

Participants were greeted by two researchers and asked to complete a fitness to drive questionnaire. This questionnaire focused on drivers' self-reports of alertness and use of substances that might impair driving (e.g., alcohol). All volunteers appeared fit.

Next, the participant and both researchers moved to the eye tracking calibration location and the test vehicle. The calibration procedure took approximately 20 minutes. Calibration of the eye tracking system entailed development of a profile for each participant. This was accomplished by taking multiple photographs of the participant's face as they slowly rotate their head from side to side. The saved photographs include points on the face for subsequent real-time head and eye tracking. Marked coordinates on the face photographs were edited by the experimenter as needed to improve the real-time face tracking. The procedure also included gaze calibration in which participants gazed at nine points on a wall. These points had been carefully plotted on the wall and correspond to the points in the eye tracking system's world model. Gaze calibration relates the individual participant's gaze vectors to known points in the real world. The eye tracking system uses two pulsating infrared sources mounted on the dashboard to create two corneal glints that are used to calculate gaze direction vectors. The glints were captured at 60 Hz. A second set

of cameras (scene cameras), fixed on top of the car close to the driver's viewpoint, were used to produce a video scene of the area ahead. The scene cameras recorded at 25 Hz. A parallax correction algorithm compensated for the distance between the driver's viewpoint and the scene cameras so that later processing could use the gaze vectors to show where in the forward scene the driver was gazing.

If it was not possible to calibrate the eye tracking system to a participant, the participant was dismissed and paid for their time. Causes of calibration failure included reflections from eye glasses, participant height (which put their eyes outside the range of the system), and eyelids that obscure a portion of the pupil.

Practice

After eye-tracker calibration, a short practice drive was made. Participants were shown a map of the route and written turn-by-turn directions prior to beginning the practice drive. Throughout the drive, verbal directions were provided by a GPS device.

During the practice drive, a researcher in the rear seat of the vehicle monitored the accuracy of eye tracking. If the system was tracking poorly, additional calibration was performed. If the calibration could not be improved, the participant was paid for their time and dismissed.

Data Collection

Participants drove two test routes (referred to as route A and B). Each route required 25 to 30 minutes to complete and included both freeway and arterial segments. Route A was 13 miles long and contained 6 DCZs. Route B was 16 miles long and contained 4 DCZs. Combined, participants drove in a total of 10 DCZs. Similar to the practice drive, participants were shown a map of the route and written turn-by-turn directions. A GPS device provided turn-by-turn guidance during the drive. Roughly one half of the participants drove route A first and the remaining participants began with route B. A 5 minute break followed the completion of the first route.

During the drives, a researcher in the front passenger seat assisted the driver when additional route guidance was required. The researcher was also tasked with recording near misses and driver errors if these occurred. The researcher in the rear seat monitored the performance of the eye tracker. If the eye tracker performance became unacceptable (i.e., loss of calibration), then the researcher in the rear asked the participant to park in a safe location so that the eye tracker could be recalibrated. This recalibration typically took a minute or two to accomplish.

Debriefing

After driving both routes, the participants provided comments regarding their drives. The comments were in reference to the use of a navigation system. No questions were asked about billboards. The participants were given \$120.00 in cash for their participation.

DATA REDUCTION

Eye Tracking Measures

The Multiple-Analysis of Psychophysical and Performance Signals (MAPPST[™]) software was used to reduce the eye tracking data.⁽³⁶⁾ The software integrates the video output from the scene cameras with the output from the eye tracking software (e.g., gaze vectors). The analysis software provides an interface in which the gaze vectors determined by the eye tracker can be related to areas or objects in the scene camera view of the world. Analysts can indicate regions of interest (ROIs) in the scene camera views and the analysis software then assigns gaze vectors to the ROIs.

Figure 9 shows a screen capture from the analysis software in which static ROIs have been identified. These static ROIs slice up the scene camera views into six areas. The software also allows for the construction of dynamic ROIs. These are ROIs that move in the video because of own-vehicle movement (e.g., a sign changes position on the display as it is approached by the driver) or because the object moves over time independent of own-vehicle movement (e.g., pedestrian walking along the road, vehicle entering or exiting the road).

Static ROIs need only be entered once for the scenario being analyzed whereas dynamic ROIs need to be entered several times for a given DCZ depending on how the object moves along the video scene; however, not every frame needs to be coded with a dynamic ROI since the software interpolates across frames using the 60-Hz data to compute eye movement statistics.

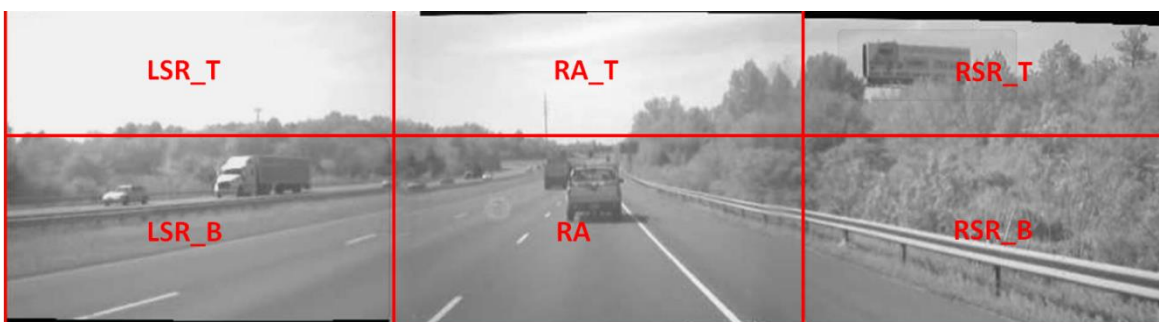


Figure 9. Screen capture showing static ROIs on a scene video output.

The following ROIs were defined with the analysis software:

Static ROIs

These ROIs were entered once into the software for each participant. The static ROIs for the windshield were divided into top and bottom to have more resolution during the coding process. The subsequent analyses in the report combines the top and bottom portion of these ROIs since it appeared that this additional level of resolution was not needed in order to address research questions:

- Road ahead: bottom portion (approximately 2/3) of the area of the forward roadway (center camera).

- Road ahead top: top portion (approximately 1/3) of the area of the forward roadway (center camera).
- Right side of road bottom: bottom portion (approximately 2/3) of the area to the right of the forward roadway (right camera).
- Right side of road top: top portion (approximately 1/3) of the area to the right of the forward roadway (right camera).
- Left side of road bottom (LSR_B): bottom portion (approximately 2/3) of the area to the left of the forward roadway (left camera).
- Left side of road bottom (LSR_T): top portion (approximately 1/3) of the area to the left of the forward roadway (left camera).
- Inside vehicle: below the panoramic video scene (outside of the view of the cameras, but eye tracking is still possible).
- Top: above the panoramic video scene (outside of the view of the cameras, but eye tracking is still possible).

Dynamic ROIs

These ROIs are created multiple times within a DCZ for stimuli that move relative to the driver:

- Driving-related safety risk: vehicle which posed a potential safety risk to the driver, defined as a car that is/may turn into the driver's direction of travel at a non-signalized or non-stop-controlled intersection (e.g., a car making a U-turn, a car waiting to turn right, or a car waiting to turn left). These vehicles were actively turning or entering the roadway or appeared to be in a position to enter the roadway.
- Target standard billboard: target standard billboard that defines the start and end of the DCZ.
- Other standard billboard: standard billboard(s) located in the DCZ, other than the target standard billboard or the target digital billboard.
- CEVMS: target digital billboard that defines the start and end of the DCZ.

The software determines the gaze intersection for each 60 Hz frame and assigns it to an ROI. In subsequent analyses and discussion, gaze intersections are referred to as gazes. Since ROIs may overlap, the software allows for the specification of priority for each ROI such that the ROI with the highest priority gets the gaze vector intersection assigned to it. For example, an ROI for a CEVMS may also be in the static ROI for the road ahead.

The 60 Hz temporal resolution of the eye tracking software does not provide sufficient information to make detailed analysis of saccade characteristics,¹ such as latency or speed. The analysis software uses three parameters in the determination of a fixation: a fixation radius, fixation duration, and a time out. The determination begins with a single-gaze vector intersection. Any subsequent intersection within a specified radius will be considered part of a fixation if the minimum fixation duration criterion is met. The radius parameter used in this study was 2 degrees and the minimum duration was 100 ms. The 2-degree selection was based on the estimated accuracy of the eye tracking system, as recommended by Recarte and Nunes.⁽³⁷⁾ The 100 ms minimum duration is consistent with many other published studies; however, some investigators use minimums of as little as 60 ms.^(37,38) Because of mini-saccades and noise in the eye tracking system, it is possible to have brief excursions outside the 2 degree window for a fixation. In this study, an excursion time outside the 2-degree radius of less than 90 ms was ignored. Once the gaze intersection fell outside the 2-degree radius of a fixation for more than 90 ms, the process of identifying a fixation began anew.

Other Measures

Driving Behavior Measures

During data collection, the front-seat researcher observed the driver's behavior and the driving environment. The researcher used the following subjective categories in observing the participant's driving behavior:

- **Driver Error:** signified any error on behalf of the driver in which the researcher felt slightly uncomfortable, but not to a significant degree (e.g., driving on an exit ramp too quickly, turning too quickly).
- **Near Miss:** signified any event in which the researcher felt uncomfortable due to driver response to external sources (e.g., slamming on brakes, swerving). A near miss is the extreme case of a driver error.
- **Incident:** signified any event in the roadway which may have had a potential impact on the attention of the driver and/or the flow of traffic (e.g., crash, emergency vehicle, animal, construction, train).

These observations were entered into a notebook computer linked to the research vehicle data collection system.

Level of Service Estimates

For each participant and each DCZ the analyst estimated the level of service of the road as they reviewed the scene camera video. One location per DCZ was selected (approximately halfway through the DCZ) where the number of vehicles in front of the research vehicle was counted. The procedure entailed (1) counting the number of travel lanes visible in the video, (2) using the

¹ During visual scanning, the point of gaze alternates between brief pauses (ocular fixations) and rapid shifts (saccades).

skip lines on the road to estimate the approximate distance in front of the vehicle that constituted the analysis zone, and (3) counting the number of vehicles present within the analysis zone. Vehicle density was calculated with the formula:

$$\text{Vehicle Density} = [(\text{Number of Vehicles in Analysis Zone})/(\text{Distance of Analysis Zone in ft}/5280)]/\text{Number of Lanes}.$$

Vehicle density is the number of vehicles per mile per lane.

Vehicle Speed

The speed of the research vehicle was recorded with GPS and a distance measurement instrument. Vehicle speed was used principally to ensure that the eye tracking data was recorded while the vehicle was in motion.

RESULTS

Results are presented with respect to the photometric measures of signs, the visual complexity of the DCZs, and the eye tracking measures. Photometric measurements were taken and analyzed to characterize the billboards in the study based on their luminance and contrasts, which are related to how bright the signs are perceived to be by drivers.

Photometric Measurements

Luminance

The mean daytime luminance of both the standard billboards and CEVMS was greater than at night. Nighttime luminance measurements reflect the fact that CEVMS use illuminating LED components while standard billboards are often illuminated from below by metal halide lamps. At night, CEVMS have a greater average luminance than standard billboards. Table 3 presents summary statistics for luminance as a function of time of day for the CEVMS and standard billboards.

Contrast

The daytime and nighttime Weber contrast ratios for both types of billboards are shown in table 3. Both CEVMS and standard billboards had contrast ratios that were close to zero (the surroundings were about equal in brightness to the signs) during the daytime. On the other hand, at night the CEVMS and standard billboards had positive contrast ratios (the signs were brighter than the surrounding), with the CEVMS having higher contrast than the standard billboards.

Table 3. Summary of luminance (cd/m^2) and contrast (Weber ratio) measurements.

<i>Day</i>	<i>Luminance (cd/m^2)</i>		<i>Contrast</i>	
	<i>Mean</i>	<i>St. Dev.</i>	<i>Mean</i>	<i>St. Dev.</i>
CEVMS	2126	798.81	-0.10	0.54
Standard Billboard	2993	2787.22	-0.27	0.84
<i>Night</i>				
CEVMS	56.00	23.16	73.72	56.92
Standard Billboard	17.80	17.11	36.01	30.93

Visual Complexity

The DCZs were characterized by their overall visual complexity or clutter. For each DCZ, five pictures were taken from the driver's viewpoint at various locations within the DCZ. In Reading, the pictures were taken from 2:00 p.m. to 4:00 p.m. In Richmond, one route was photographed from 11:00 a.m. to noon and the other from 2:30 p.m. to 3:30 p.m. The pictures were taken at the start of the DCZ, quarter of the way through, half of the way through, three quarters of the way through, and at the end of the DCZ. The photographs were analyzed with MATLAB® routines that computed a measure of feature congestion for each image. Figure 10 shows the mean feature congestion measures for each of the DCZ environments. The arterial control condition was shown to have the highest level of clutter as measured by feature congestion. An analysis of variance was performed on the feature congestion measure to determine if the conditions differed significantly from each other. The four conditions with off-premise advertising did not differ significantly with respect to feature congestion; $F(3,36) = 1.25, p > 0.05$. Based on the feature congestion measure, the results indicate that the four conditions with off-premise advertising were equated with respect to the overall visual complexity of the driving scenes.

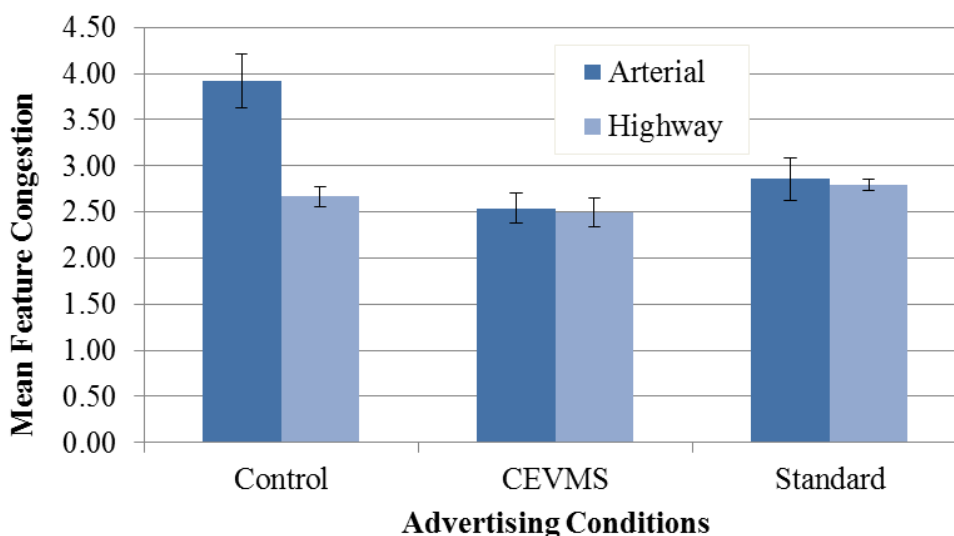


Figure 10. Mean feature congestion as a function of advertising condition and road type (standard errors for the mean are included in the graph).

Effects of Billboards on Gazes to the Road Ahead

For each 60 Hz frame, a determination was made as to the direction of the gaze vector. Previous research has shown that gazes do not need to be separated into saccades and fixations before calculating such measures as percent of time or the probability of looking to the road ahead.⁽³⁹⁾ This analysis examines the degree to which drivers gaze toward the road ahead across the different advertising conditions as a function of road type and time of day. Gazing toward the road ahead is critical for driving, and so the analysis examines the degree to which gazes toward this area are affected by the independent variables (advertising type, type of road, and time of day) and their interactions.

Generalized estimating equations (GEE) were used to analyze the probability of a participant gazing at driving-related information.^(40,41) The data for these analyses were not normally distributed and included repeated measures. The GEE model is appropriate for these types of data and analyses. Note that for all results included in this report, Wald statistics were the chosen alternative to likelihood ratio statistics because GEE uses quasi-likelihood instead of maximum likelihood.⁽⁴²⁾ For this analysis, road ahead included the following ROIs (as previously described and displayed in figure 9): road ahead, road ahead top, and driving-related risks. A logistic regression model for repeated measures was generated by using a binomial response distribution and Logit (i.e., log odds) link function. Only two possible outcomes are allowed when selecting a binomial response distribution. Thus, a variable (RoadAhead) was created to classify a participant's gaze behavior. If the participant gazed toward the road ahead, road ahead top, or driving-related risks, then the value of RoadAhead was set to one. If the participant gazed at any other object in the panoramic scene, then the value of RoadAhead was set to zero. Logistic regression typically models the probability of a success. In the current analysis, a success would be a gaze to road ahead information (RoadAhead = 1) and a failure would be a gaze toward non-road ahead information (RoadAhead = 0). The resultant value was the probability of a participant gazing at road-ahead information.

Time of day (day or night), road type (freeway or arterial), advertising condition (CEVMS, standard billboard, or control), and all corresponding second-order interactions were explanatory variables in the logistic regression model. The interaction of advertising condition by road type was statistically significant, $\chi^2(2) = 6.3, p = 0.043$. Table 4 shows the corresponding probabilities for gazing at the road ahead as a function of advertising condition and road type.

Table 4. The probability of gazing at the road ahead as a function of advertising condition and road type.

<i>Advertising Condition</i>	<i>Arterial</i>	<i>Freeway</i>
Control	0.92	0.86
CEVMS	0.82	0.73
Standard	0.80	0.77

Follow-up analyses for the interaction used Tukey-Kramer adjustments with an alpha level of 0.05. The arterial control condition had the greatest probability of looking at the road ahead ($M = 0.92$). This probability differed significantly from the remaining five probabilities. On

arterials, the probability of gazing at the road ahead did not differ between the CEVMS ($M = 0.82$) and the standard billboard ($M = 0.80$) DCZs. In contrast, there was a significant difference in this probability on freeways, where standard billboard DCZs yielded a higher probability ($M = 0.77$) than CEVMS DCZs ($M = 0.73$). The probability of gazing at the road ahead was also significantly higher in the freeway control DCZ ($M = 0.86$) than in either of the corresponding freeway off-premise advertising DCZs. The probability of gazing at road-ahead information in arterial CEVMS DCZs was not statistically different from the same probability in the freeway control DCZ.

Additional descriptive statistics were computed to determine the probability of gazing at the various ROIs that were defined in the panoramic scene. Some of the ROIs depicted in figure 9 were combined in the following fashion for ease of analysis:

- Road ahead, road ahead top, and driving-related risks combined to form *road ahead*.
- Left side of road bottom and left side of road top combined to form *left side of vehicle*.
- Right side of road bottom and right side of road top combined to form *right side of vehicle*.
- Inside vehicle and top combined to form *participant vehicle*.

Table 5 presents the probability of gazing at the different ROIs.

Table 5. Probability of gazing at ROIs for the three advertising conditions on arterials and freeways.

<i>Road Type</i>	<i>ROI</i>	<i>CEVMS</i>	<i>Standard Billboard</i>	<i>Control</i>
<i>Arterial</i>	<i>CEVMS</i>	0.07	N/A	N/A
	<i>Left Side of Vehicle</i>	0.06	0.06	0.02
	<i>Road ahead</i>	0.82	0.80	0.92
	<i>Right Side of Vehicle</i>	0.03	0.06	0.04
	<i>Standard Billboard</i>	N/A	0.03	N/A
	<i>Participant Vehicle</i>	0.03	0.05	0.02
<i>Freeway</i>	<i>CEVMS</i>	0.05	N/A	N/A
	<i>Left Side of Vehicle</i>	0.08	0.07	0.04
	<i>Road ahead</i>	0.73	0.77	0.86
	<i>Right Side of Vehicle</i>	0.09	0.02	0.05
	<i>Standard Billboard</i>	0.02*	0.09	N/A
	<i>Participant Vehicle</i>	0.04	0.05	0.05

* The CEVMS DCZs on freeways each contained one visible standard billboard.

The probability of gazing away from the forward roadway ranged from 0.08 to 0.27. In particular, the probability of gazing toward a CEVMS was greater on arterials ($M = 0.07$) than on freeways ($M = 0.05$). In contrast, the probability of gazing toward a target standard billboard was greater on freeways ($M = 0.09$) than on arterials ($M = 0.03$).

Fixations to CEVMS and Standard Billboards

About 2.4 percent of the fixations were to CEVMS. The mean fixation duration to a CEVMS was 388 ms and the maximum duration was 1,251 ms. Figure 11 shows the distribution of fixation durations to CEVMS during the day and night. In the daytime, the mean fixation duration to a CEVMS was 389 ms and at night it was 387 ms. Figure 12 shows the distribution of fixation durations to standard billboards. Approximately 2.4 percent of fixations were to standard billboards. The mean fixation duration to standard billboards was 341 ms during the daytime and 370 ms at night. The maximum fixation duration to standard billboards was 1,284 ms (which occurred at night). For comparison purposes, figure 13 shows the distribution of fixation durations to the road ahead (i.e., top and bottom road ahead ROIs) during the day and night. In the daytime, the mean fixation duration to the road ahead was 365 ms and at night it was 390 ms.

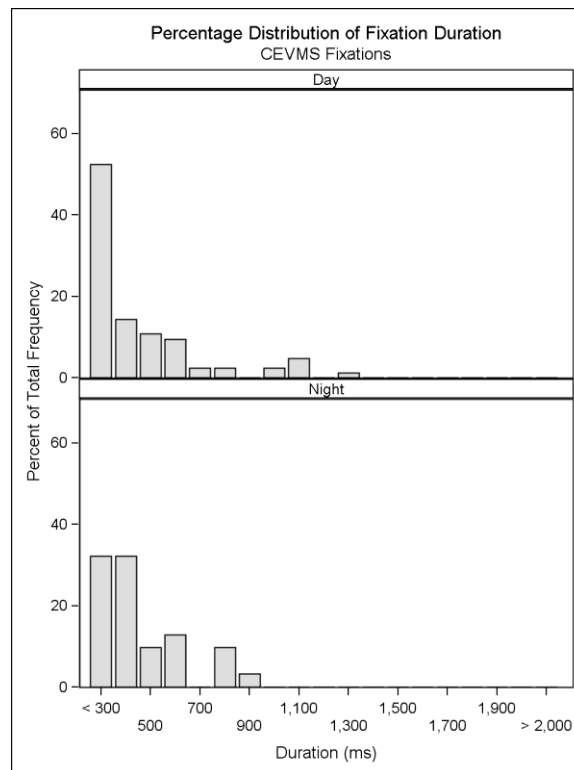


Figure 11. Distribution of fixation duration for CEVMS in the daytime and nighttime.

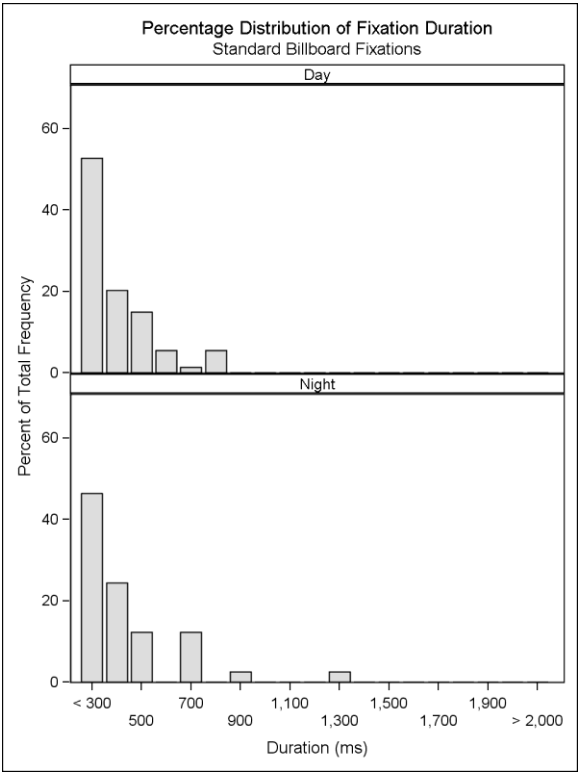


Figure 12. Distribution of fixation duration for standard billboards in the daytime and nighttime.

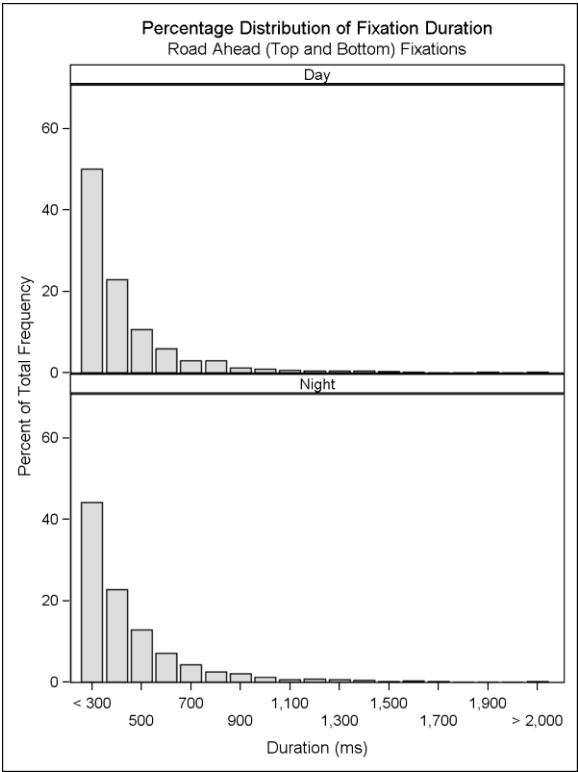


Figure 13. Distribution of fixation duration for road ahead (i.e., top and bottom road ahead ROIs) in the daytime and nighttime.

Dwell times on CEVMS and standard billboards were also examined. Dwell time is the duration of back-to-back fixations to the same ROI.^(43,44) The dwell times represent the cumulative time for the back-to-back fixations. Whereas there may be no long, single fixation to a billboard, there might still be multiple fixations that yield long dwell times. There were a total of 25 separate instances of multiple fixations to CEVMS with a mean of 2.4 fixations (minimum of 2 and maximum of 5). The 25 dwell times came from 15 different participants distributed across four different CEVMS. The mean duration of these dwell times was 994 ms (minimum of 418 ms and maximum of 1,467 ms).

For standard billboards, there were a total of 17 separate dwell times with a mean of 3.47 sequential fixations (minimum of 2 fixations and maximum of 8 fixations). The 17 dwell times came from 11 different participants distributed across 4 different standard billboards. The mean duration of these multiple fixations was 1,172 ms (minimum of 418 ms and maximum of 3,319 ms). There were three dwell-time durations that were greater than 2,000 ms. These are described in more detail below.

In some cases several dwell times came from the same participant. In order to compute a statistic on the difference between dwell times for CEVMS and standard billboards, average dwell times were computed per participant for the CEVMS and standard billboard conditions. These average values were used in a t-test assuming unequal variances. The difference in average dwell time between CEVMS ($M = 981$ ms) and standard billboards ($M = 1,386$ ms) was not statistically significant, $t(12) = -1.40$, $p > .05$.

Figure 14 through figure 23 show heat maps for the dwell-time durations to the standard billboards that were greater than 2,000 ms. These heat maps are snapshots from the DCZ and attempt to convey in two dimensions the pattern of gazes that took place in a three dimensional world. The heat maps are set to look back approximately one to two seconds and integrate over time where the participant was gazing in the scene camera video. The green color in the heat map indicates the concentration of gaze over the past one to two seconds. The blue line indicates the gaze trail over the past one to two seconds.

Figure 14 through figure 16 are for a DCZ on an arterial at night. The standard billboard was on the right side of the road (indicated by a pink rectangle). There were eight fixations to this billboard, and the single fixations were between 200 to 384 ms in duration. The dwell time for this billboard was 2,019 ms. At the start of the DCZ (see figure 14), the driver was directing his/her gaze to the forward roadway. Approaching the standard billboard, the driver began to fixate on the billboard. However, the billboard was still relatively close to the road ahead ROI.

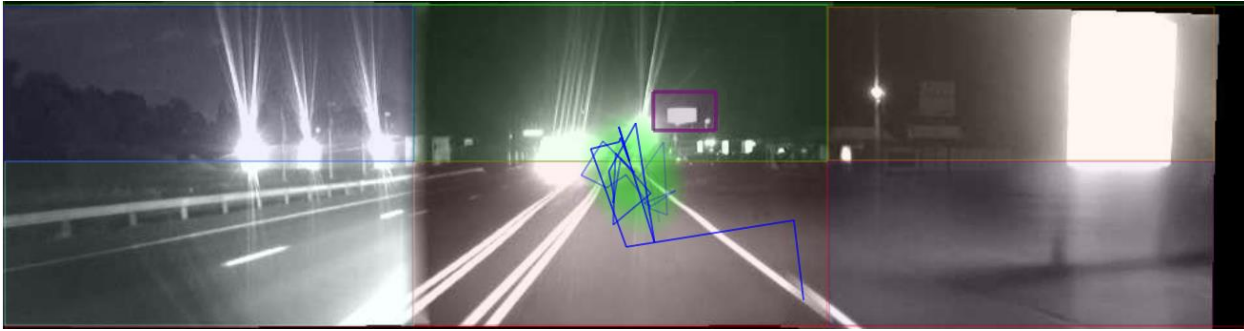


Figure 14. Heat map for the start of a DCZ for a standard billboard at night on an arterial.

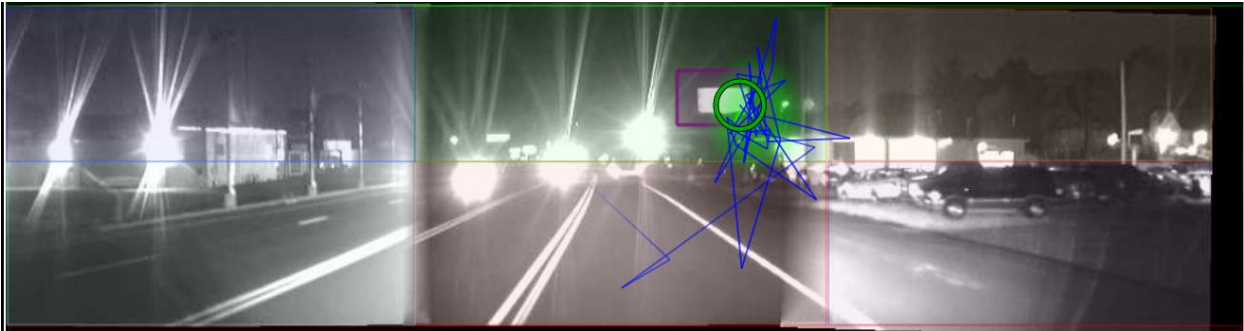


Figure 15. Heat map for the middle of a DCZ for a standard billboard at night on an arterial.



Figure 16. Heat map near the end of a DCZ for a standard billboard at night on an arterial.

Figure 17 through figure 19 are for a DCZ on a freeway at night. The standard billboard was on the right side of the road (indicated by a green rectangle). There were six consecutive fixations to this billboard, and the single fixations were between 200 and 801 ms in duration. The dwell time for this billboard was 2,753 ms. At the start of the DCZ (see figure 17), the driver was directing his/her gaze to a freeway guide sign in the road ahead and the standard billboard was to the left of the freeway guide sign. As the driver approached the standard billboard, his/her gaze was directed toward the billboard. The billboard was relatively close to the top and bottom road ahead ROIs. Near the end of the DCZ (see figure 19), the billboard was accurately portrayed as being on the right side of the road.

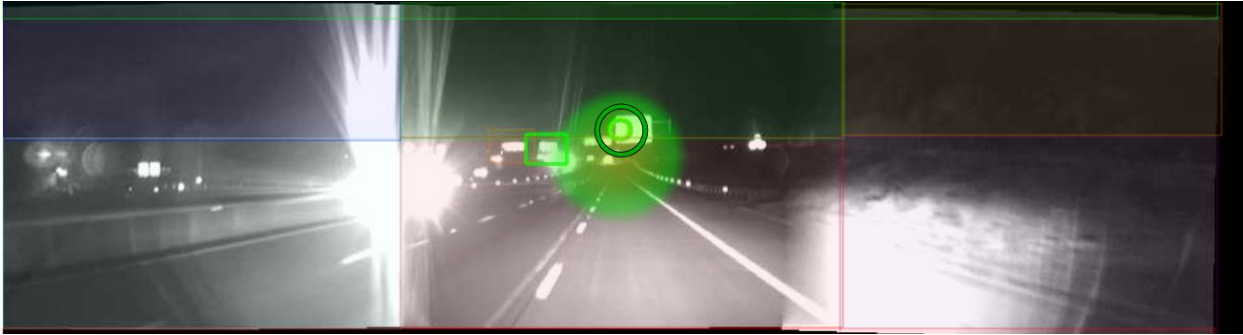


Figure 17. Heat map for start of a DCZ for a standard billboard at night on a freeway.

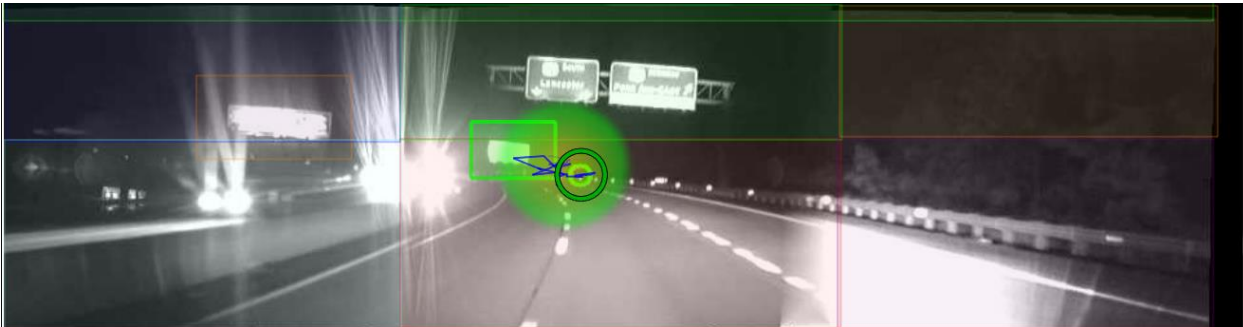


Figure 18. Heat map for middle of a DCZ for a standard billboard at night on a freeway.

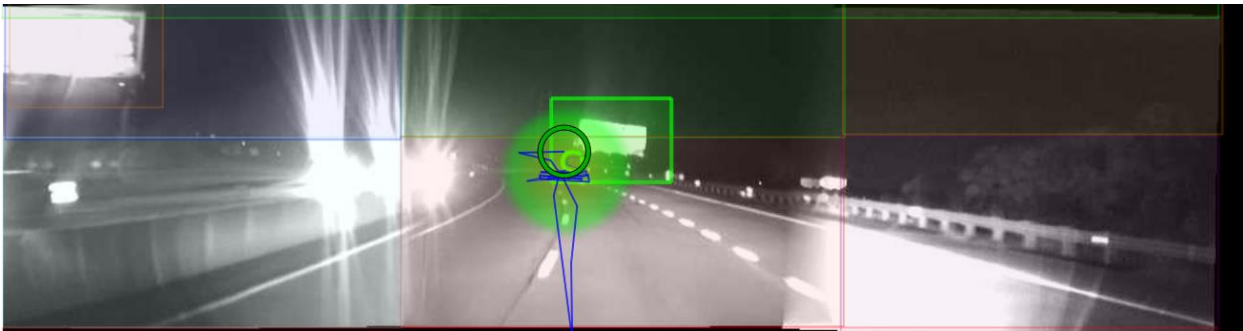


Figure 19. Heat map near the end of a DCZ for a standard billboard at night on a freeway.

Figure 20 through figure 23 are for a DCZ on a freeway during the day. The standard billboard was on the right side of the road (indicated by a pink rectangle). This is the same DCZ that was discussed in figure 17 through figure 19. There were six consecutive fixations to this billboard, and the single fixations were between 217 and 767 ms in duration. The dwell time for this billboard was 3,319 ms. At the start of the DCZ (see figure 20), the driver was principally directing his/her gaze to the road ahead. Figure 21 and figure 22 show the location along the DCZ where gaze was directed toward the standard billboard. The billboard was relatively close to the top and bottom road-ahead ROIs. As the driver passed the standard billboard, his/her gaze returned to the road ahead (see figure 23).

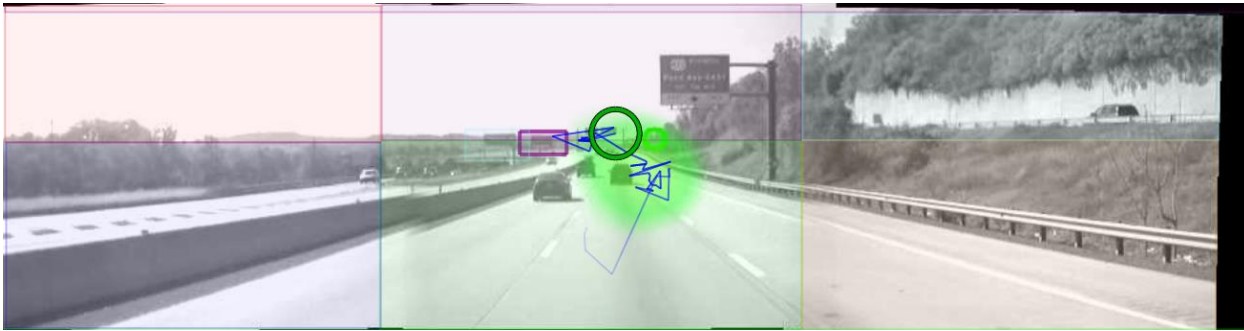


Figure 20. Heat map for the start of a DCZ for a standard billboard in the daytime on a freeway.

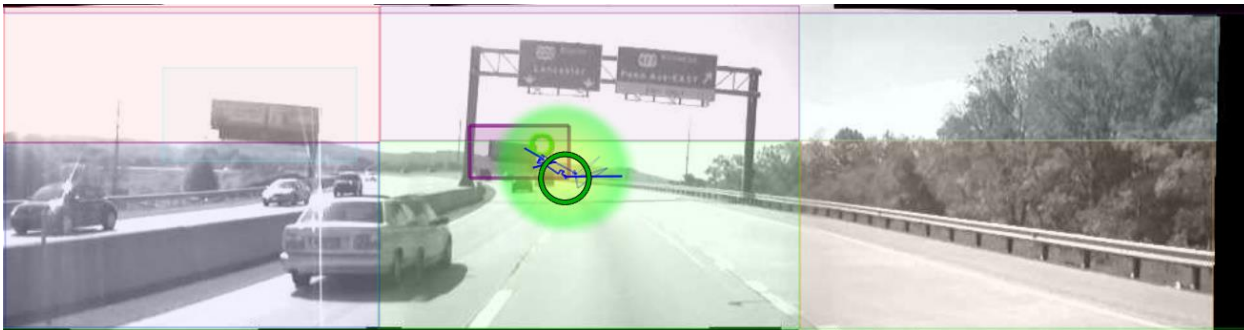


Figure 21. Heat map near the middle of a DCZ for a standard billboard in the daytime on a freeway.

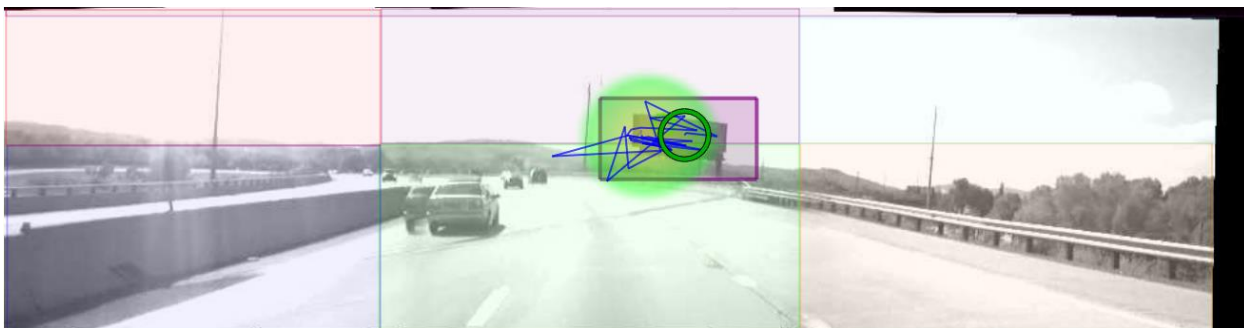


Figure 22. Heat map near the end of DCZ for standard billboard in the daytime on a freeway.

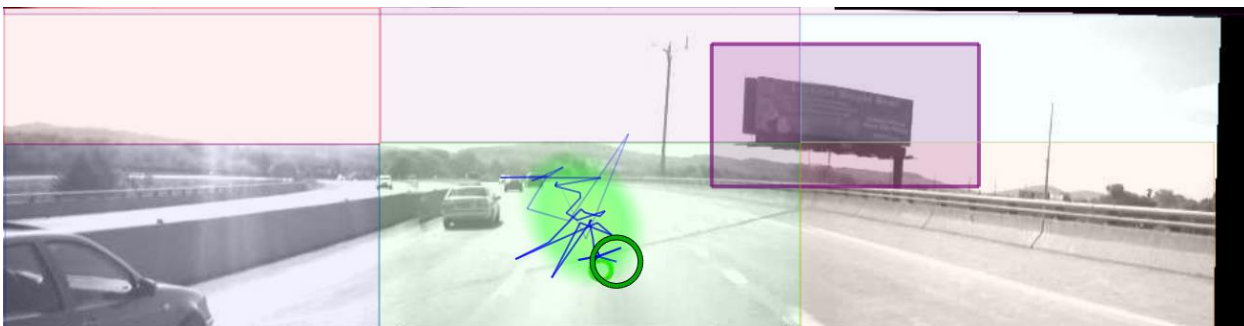


Figure 23. Heat map at the end of DCZ for standard billboard in the daytime on a freeway.

Comparison of Gazes to CEVMS and Standard Billboards

The GEE were used to analyze whether a participant gazed more toward CEVMS than toward standard billboards, given that the participant was gazing at off-premise advertising. With this analysis method, a logistic regression model for repeated measures was generated by using a binomial response distribution and Logit link function. First, the data was partitioned to include only those instances when a participant was gazing toward off-premise advertising (either to a CEVMS or to a standard billboard); all other gaze behavior was excluded from the input data set. Only two possible outcomes are allowed when selecting a binomial response distribution. Thus, a variable (SBB_CEVMS) was created to classify a participant's gaze behavior. If the participant gazed toward a CEVMS, the value of SBB_CEVMS was set to one. If the participant gazed toward a standard billboard, then the value of SBB_CEVMS was set to zero.

Logistic regression typically models the probability of a success. In the current analysis, a success would be a gaze to a CEVMS (SBB_CEVMS = 1) and a failure would be a gaze to a standard billboard (SBB_CEVMS = 0).² A success probability greater than 0.5 indicates there were more successes than failures in the sample. Therefore, if the sample probability of the response variable (i.e., SBB_CEVMS) was greater than 0.5, this would show that participants gazed more toward CEVMS than toward standard billboards when the participants gazed at off-premise advertising. In contrast, if the sample probability of the response variable was less than 0.5, then participants showed a preference to gaze more toward standard billboards than toward CEVMS when directing gazes to off-premise advertising.

Time of day (i.e., day or night), road type (i.e., freeway or arterial), and the corresponding interaction were explanatory variables in the logistic regression model. Road type was the only predictor to have a significant effect, $\chi^2(1) = 13.17, p < 0.001$. On arterials, participants gazed more toward CEVMS than toward standard billboards ($M = 0.63$). In contrast, participants gazed more toward standard billboards than toward CEVMS when driving on freeways ($M = 0.33$).

Observation of Driver Behavior

No near misses or driver errors were observed in Reading.

Level of Service

The mean vehicle densities were converted to level of service as shown in table 6.⁽⁴⁵⁾ As expected, less congestion occurred at night than in the day. In general, there was traffic during the data collection runs. Review of the scene camera data verified that all eye tracking data within the DCZs were recorded while the vehicle was in motion.

² Success and failure are not used to reflect the merits of either type of sign, but only for statistical purposes.

Table 6. Level of service as a function of advertising type, road type, and time of day.

	<i>Arterial</i>		<i>Freeway</i>	
	Day	Night	Day	Night
Control	B	A	C	B
CEVMS	C	A	B	A
Standard	A	A	B	A

DISCUSSION OF READING RESULTS

Overall the probability of gazing at the road ahead was high and similar in magnitude to what has been found in other field studies addressing billboards.^(11,9,12) For the DCZs on freeways, CEVMS showed a lower proportion of gazes to the road ahead than the standard billboard condition, and both off-premise advertising conditions had lower probability of gazes to the road ahead than the control. On the other hand, on the arterials, the CEVMS and standard billboard conditions did not differ from each other but were significantly different from their respective control condition. Though the CEVMS condition on the freeway had the lowest proportion of gazes to the road ahead, in this condition there was a lower proportion of gazes to CEVMS as compared to the arterials (see table 5 for the trade-off of gazes to the different ROIs). A greater proportion of gazes to other ROIs (left side of the road, right side of the road, and participant vehicle) contributed to the decrease in proportion of gazes to the road ahead. Also, for the CEVMS on freeways, there were a few gazes to a standard billboard located in the same DCZ and there were more gazes distributed to the left and right side of the road than in standard billboard and control conditions. The gazes to ROIs other than CEVMS contributed to the lower probability of gazes to the road ahead in this condition.

The control condition on the arterial had buildings along the sides of the road and generally presented a visually cluttered area. As was presented earlier, the feature congestion measure computed on a series of photographs from each DCZ showed a significantly higher feature congestion score for the control condition on arterials as compared to all of the other DCZs. Nevertheless, the highest probability for gazing at the road ahead was seen in the control condition on the arterial.

The area with the highest feature congestion, especially on the sides of the road, had the highest probability for drivers looking at the road ahead. Bottom-up or stimulus driven measures of salience or visual clutter have been useful in predicting visual search and the effects of visual salience in laboratory tasks.^(34,46) These measures of salience basically consider the stimulus characteristics (e.g., size, color, brightness) independent of the requirements of the task or plans that an individual may have. Models of visual salience may predict that buildings and other prominent features on the side of the road may be visually salient objects and thus would attract a driver's attention.⁽⁴⁷⁾ Figure 24 shows an example of a roadway photograph that was analyzed with the Saliency Toolbox based on the Itti et al. implementation of a saliency based model of bottom-up attention.^(48,49) The numbered circles in figure 24 are the first through fifth salient areas selected by the software. Based on this software, the most salient areas in the photographs are the buildings on the sides of the road where the road ahead (and a car) is the fifth selected salient area.

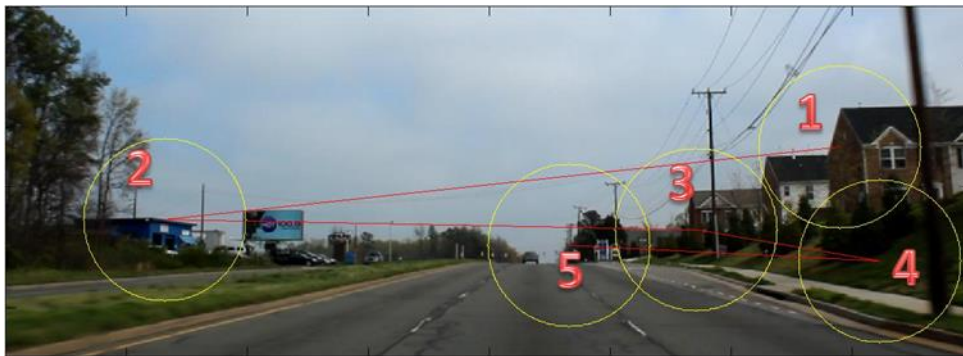


Figure 24. Example of identified salient areas in a road scene based on bottom-up analysis.

It appears that in the present study participants principally kept their eyes on the road even in the presence of visual clutter on the sides of the road, which supports the hypothesis that drivers tend to look toward information relevant to the task at hand.^(50,26,22) In the case of the driving task, visual clutter may be more of an issue with respect to crowding that may affect the driver's ability to detect visual information in the periphery.⁽⁵¹⁾ Crowding is generally defined as the negative effect of nearby objects or features on visual discrimination of a target.⁽⁵²⁾ Crowding impairs the ability to recognize objects in clutter and principally affects perception in peripheral vision. However, crowding effects were not analyzed in the present study.

Stimulus salience, clutter, and the nature of the task at hand interact in visual perception. For tasks such as driving, the task demands tend to outweigh stimulus salience when it comes to gaze control. Clutter may be more of an issue with the detection and recognition of objects in peripheral vision (e.g., detecting a sign on the side of the road) that are surrounded by other stimuli that result in a crowding effect.

The mean fixation durations to CEVMS, standard billboards, and the road ahead were found to be very similar. Also, there were no long fixations (greater than 2,000 ms) to CEVMS or standard billboards. The examination of multiple sequential fixations to CEVMS yielded average dwell times that were less than 1,000 ms. However, when examining the tails of the distribution, there were three dwell times to standard billboards that were in excess of 2,000 ms (the three dwell times came from three different participants to two different billboards). These three standard billboards were dwelled upon when they were near the road ahead area but drivers quit gazing at the signs as they neared them and the signs were no longer near the forward field of view. Though there were three dwell times for standard billboards greater than 2,000 ms, the difference in average dwell times for CEVMS and standard billboards was not significant.

Using a gaze duration of 2,000 ms away from the road ahead as a criterion indicative of increased risk has been developed principally as it relates to looking inside the vehicle to in-vehicle information systems and other devices (e.g., for texting) where the driver is indeed looking completely away from the road ahead.^(14,53,54) The fixations to the standard billboards in the present case showed a long dwell time for a billboard. However, unlike gazing or fixating inside the vehicle, the driver's gaze was within the forward roadway where peripheral vision could be used to monitor for hazards and for vehicle control. Peripheral vision has been shown to be important for lane keeping, visual search orienting, and monitoring of surrounding objects.^(55,56)

The results showed that drivers were more likely to gaze at CEVMS on arterials and at standard billboards on freeways. Though every attempt was made to select CEVMS and standard billboard DCZs that were equated on important parameters (e.g., which side of the road the sign was located on, type of road, level of visual clutter), the CEVMS DCZs on freeways had a greater setback from the road (133 ft for both CEVMS) than the standard billboards (10 and 35 ft). Signs with greater setback from the road would in a sense move out of the forward view (road ahead) more quickly than signs that are closer to the road. The CEVMS and standard billboards on the arterials were more closely matched with respect to setback from the road (12 and 43 ft for CEVMS and 20 and 40 ft for standard billboards).

The differences in setback from the road for CEVMS and standard billboards may also account for differences in dwell times to these two types of billboards. However, on arterials where the CEVMS and standard billboards were more closely matched there was only one long dwell time (greater than 2,000 ms) and it was to a standard billboard at night.

RICHMOND

The objectives of the second study were the same as those in the first study, and the design of the Richmond data collection effort was very similar to that employed in Reading. This study was conducted to replicate as closely as possible the design of Reading in a different driving environment. The independent variables included the type of DCZ (CEVMS, standard billboard, or no off-premise advertising), time of day (day or night) and road type (freeway or arterial). As with Reading, the time of day was a between-subjects variable and the other variables were within subjects.

METHOD

Selection of DCZ Limits

Selection of the DCZ limits procedure was the same as that employed in Reading.

Advertising Type

Three DCZ types (similar to those used in Reading) were used in Richmond:

- **CEVMS.** DCZs contained one target CEVMS.
- **Standard billboard.** DCZs contained one target standard billboard.
- **Control conditions.** DCZs did not contain any off-premise advertising.

There were an equal number of CEVMS and standard billboard DCZs on freeways and arterials. Also, there two DCZ that did not contain off-premise advertising with one located on a freeway and the other on an arterial.

Table 7 is an inventory of the target employed in this second study.

Table 7. Inventory of target billboards in Richmond with relevant parameters.

<i>DCZ</i>	<i>Advertising Type</i>	<i>Copy Dimensions (ft)</i>	<i>Side of Road</i>	<i>Setback from Road (ft)</i>	<i>Other Standard Billboards</i>	<i>Approach Length (ft)</i>	<i>Roadway Type</i>
5	CONTROL	N/A	N/A	N/A	N/A	710	Arterial
3	CONTROL	N/A	N/A	N/A	N/A	845	Freeway
9	CEVMS	14'0" x 28'0"	L	37	0	696	Arterial
13	CEVMS	14'0" x 28'0"	R	37	0	602	Arterial
2	CEVMS	12'5" x 40'0"	R	91	0	297	Freeway
8	CEVMS	11'0" x 23'0"	L	71	0	321	Freeway
10	Standard	14'0" x 48'0"	L	79	1	857	Arterial
12	Standard	10'6" x 45'3"	R	79	2	651	Arterial
1	Standard	14'0" x 48'0"	L	87	0	997	Freeway
7	Standard	14'0" x 48'0"	R	88	0	816	Freeway

* *N/A* indicates that there were no off-premise advertising in these areas and these values are undefined.

Figure 25 through figure 30 below represent various pairings of DCZ type and road type. Target off-premise billboards are indicated by red rectangles.



Figure 25. Example of a CEVMS DCZ on a freeway.



Figure 26. Example of CEVMS DCZ an arterial.



Figure 27. Example of a standard billboard DCZ on a freeway.

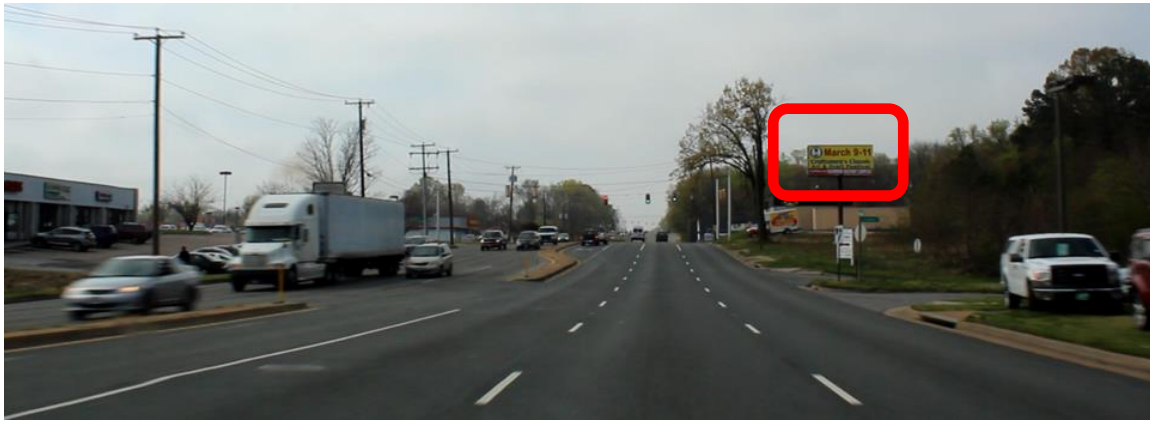


Figure 28. Example of a standard billboard DCZ on an arterial.

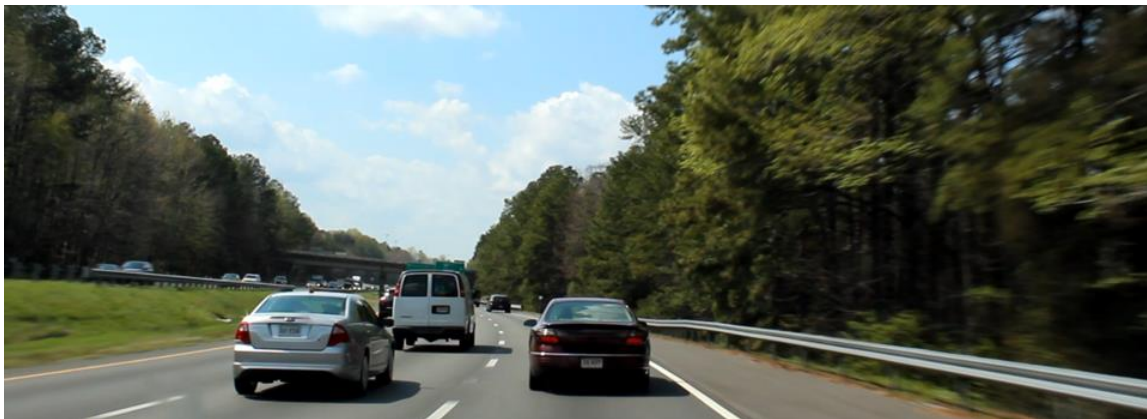


Figure 29. Example of a control DCZ on a freeway.



Figure 30. Example of a control DCZ on an arterial.

Photometric Measurement of Signs

The methods and procedures for the photometric measures were the same as for Reading.

Visual Complexity

The methods and procedures for visual complexity measurement were the same as for Reading.

Participants

A total of 41 participants were recruited for the study. Of these, 6 participants did not complete data collection because of an inability to properly calibrate with the eye tracking system, and 11 were excluded because of equipment failures. A total of 24 participants (13 male, $M = 28$ years; 11 female, $M = 25$ years) successfully completed the drive. Fourteen people participated during the day and 10 participated at night.

Procedures

Research participants were recruited locally by means of visits to public libraries, student unions, community centers, etc. A large number of the participants were recruited from a nearby university, resulting in a lower mean participant age than in Reading.

Participant Testing

Two people participated each day. One person participated during the day beginning at approximately 12:45 p.m. The second participated at night beginning at around 7:00 p.m. Data collection ran from November 20, 2009, through April 23, 2010. There were several long gaps in the data collection schedule due to holidays and inclement weather.

Pre-Data Collection Activities

This was the same as in Reading.

Practice Drive

Except for location, this was the same as in Reading.

Data Collection

The procedure was much the same as in Reading. On average, each test route required approximately 30 to 35 minutes to complete. As in Reading, the routes included a variety of freeway and arterial driving segments. One route was 15 miles long and contained two target CEVMS, two target standard billboards, and two DCZs with no off-premise advertising. The second route was 20 miles long and had two target CEVMS and two target standard billboards.

The data collection drives in this second study were longer than those in Reading. The eye tracking system had problems dealing with the large files that resulted. To mitigate this technical difficulty, participants were asked to pull over in a safe location during the middle of each data collection drive so that new data files could be initiated.

Upon completion of the data collection, the participant was instructed to return to the designated meeting location for debriefing.

Debriefing

This was the same as in Reading.

DATA REDUCTION

Eye Tracking Measures

The approach and procedures were the same as used in Reading.

Other Measures

The approach and procedures were the same as used in Reading.

RESULTS

Photometric Measurement of Signs

The photometric measurements were performed using the same equipment and procedures that were employed in Reading with a few minor changes. Photometric measurements were taken during the day and at night. Measurements of the standard billboards were taken at an average distance of 284 ft, with maximum and minimum distances of 570 ft and 43 ft, respectively. The average distance of measurements for the CEVMS was 479 ft, with maximum and minimum distances of 972 ft and 220 ft, respectively. Again, the distances employed were significantly affected by the requirement to find a safe location on the road from which to take the measurements.

Luminance

The mean luminance of CEVMS and standard billboards, during daytime and nighttime are shown below in table 8. The results here are similar to those for Reading.

Contrast

The daytime and nighttime Weber contrast ratios for both types of billboards are shown in table 8. During the day, the contrast ratios of both CEVMS and standard billboards were close to zero (the surroundings were about equal in brightness to the signs). At night, the CEVMS and standard billboards had positive contrast ratios. Similar to Reading, the CEVMS showed a higher contrast ratio than the standard billboards at night.

Table 8. Summary of luminance (cd/m^2) and contrast (Weber ratio) measurements.

	<i>Luminance (cd/m^2)</i>		<i>Contrast</i>	
	Mean	St. Dev.	Mean	St. Dev.
<i>Day</i>				
CEVMS	2134	798.70	-0.20	0.53
Standard Billboard	3063	2730.92	0.03	0.32
<i>Night</i>				
CEVMS	56.44	16.61	69.70	59.18
Standard Billboard	8.00	5.10	6.56	3.99

Visual Complexity

As with Reading, the feature congestion measure was used to estimate the level of visual complexity/clutter in the DCZs. The analysis procedures were the same as for Reading.

Figure 31 shows the mean feature congestion measures for each of the advertising types (standard errors are included in the figure). Unlike the results for Reading, the selected off-premise advertising DCZs for Richmond differed in terms of mean feature congestion; $F(3, 36) = 3.95$, $p = 0.016$. Follow up t-tests with an alpha of 0.05 showed that the CEVMS DCZs on arterials had significantly lower feature congestion than all of the other off-premise advertising conditions. None of the remaining DCZs with off-premise advertising differed from each other. The selection of DCZs for the conditions with off-premise advertising took into account the type of road, the side of the road the target billboard was placed, and the perceived level of visual clutter. Based on the feature congestion measure, these results indicated that the conditions with off-premise advertising were not equated with respect to level of visual clutter.

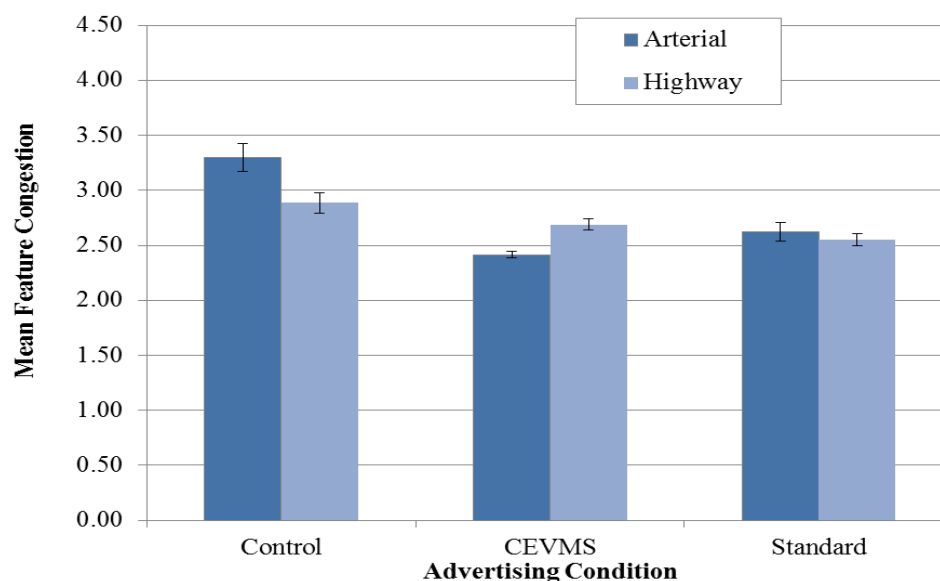


Figure 31. Mean feature congestion as a function of advertising condition and road type.

Effects of Billboards on Gazes to the Road Ahead

As was done for the data from Reading, GEE were used to analyze the probability of a participant gazing at the road ahead. A logistic regression model for repeated measures was generated by using a binomial response distribution and Logit link function. The resultant value was the probability of a participant gazing at the road ahead (as previously defined).

Time of day (day or night), road type (freeway or arterial), advertising type (CEVMS, standard billboard, or control), and all corresponding second-order interactions were explanatory variables in the logistic regression model. The interaction of advertising type by road type was statistically significant, $\chi^2(2) = 14.19$, $p < 0.001$. Table 9 shows the corresponding probability of gazing at the road ahead as a function of advertising condition and road type.

Table 9. The probability of gazing at the road ahead as a function of advertising condition and road type.

<i>Advertising Condition</i>	<i>Arterial</i>	<i>Freeway</i>
Control	0.78	0.92
CEVMS	0.76	0.82
Standard	0.81	0.85

Follow-up analyses for the interaction used Tukey-Kramer adjustments with an alpha level of 0.05. The freeway control had the greatest probability of gazing at the road ahead ($M = 0.92$). This probability differed significantly from the remaining five probabilities. On arterials, there were no significant differences among the probabilities of gazing at the road ahead among the three advertising conditions. On freeways, there was no significant difference between the probability associated with CEVMS DCZs and the probability associated with standard billboard DCZs.

Additional descriptive statistics were computed for the three advertising types to determine the probability of gazing at the ROIs that were defined in the panoramic scene. As was done with the data from Reading, some of the ROIs were combined for ease of analysis. Table 10 presents the probability of gazing at the different ROIs.

Table 10. Probability of gazing at ROIs for the three advertising conditions on arterials and freeways.

<i>Road Type</i>	<i>ROI</i>	<i>CEVMS</i>	<i>Standard Billboard</i>	<i>Control</i>
<i>Arterial</i>	<i>CEVMS</i>	0.06	N/A	N/A
	<i>Left Side of Vehicle</i>	0.03	0.05	0.04
	<i>Road ahead</i>	0.76	0.81	0.78
	<i>Right Side of Vehicle</i>	0.07	0.06	0.09
	<i>Standard Billboard</i>	N/A	0.02	N/A
	<i>Participant Vehicle</i>	0.07	0.06	0.09
<i>Freeway</i>	<i>CEVMS</i>	0.05	N/A	N/A
	<i>Left Side of Vehicle</i>	0.03	0.01	0.01
	<i>Road ahead</i>	0.82	0.85	0.92
	<i>Right Side of Vehicle</i>	0.04	0.04	0.03
	<i>Standard Billboard</i>	N/A	0.04	N/A
	<i>Participant Vehicle</i>	0.06	0.06	0.05

The probability of gazing away from the forward roadway ranged from 0.08 to 0.24. In particular, the probability of gazing toward a CEVMS was slightly greater on arterials ($M = 0.06$) than on freeways ($M = 0.05$). In contrast, the probability of gazing toward a standard billboard was greater on freeways ($M = 0.04$) than on arterials ($M = 0.02$). In both situations, the probability of gazing at the road ahead was greatest on freeways.

Fixations to CEVMS and Standard Billboards

About 2.5 percent of the fixations were to CEVMS. The mean fixation duration to a CEVMS was 371 ms and the maximum fixation duration was 1,335 ms. Figure 32 shows the distribution of fixation durations to CEVMS during the day and at night. In the daytime, the mean fixation duration to a CEVMS was 440 ms and at night it was 333 ms. Approximately 1.5 percent of the fixations were to standard billboards. The mean fixation duration to standard billboards was 318 ms and the maximum fixation duration was 801 ms. Figure 33 shows the distribution of fixation durations for standard billboards. The mean fixation duration to a standard billboard was 313 ms and 325 ms during the day and night, respectively. For comparison purposes, figure 34 shows the distribution of fixation durations to the road ahead during the day and night. In the daytime, the mean fixation duration to the road ahead was 378 ms and at night it was 358 ms.

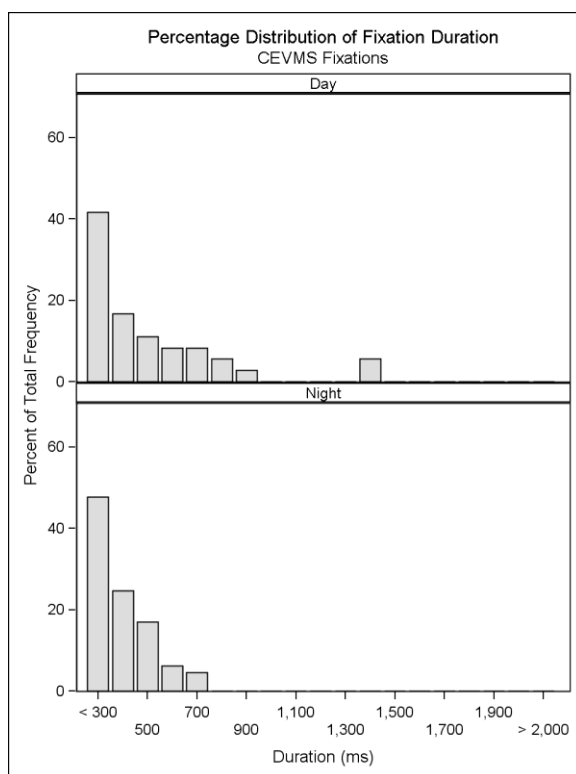


Figure 32. Fixation duration for CEVMS in the day and at night.

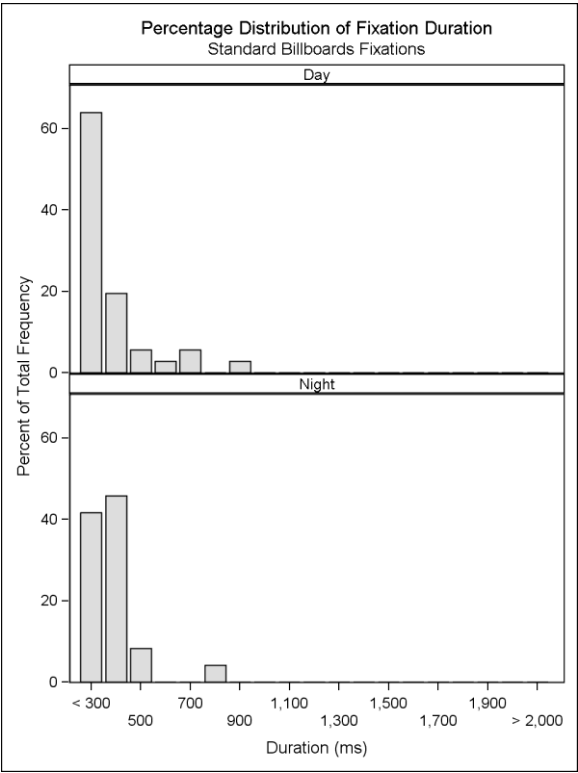


Figure 33. Fixation duration for standard billboards in the day and at night.

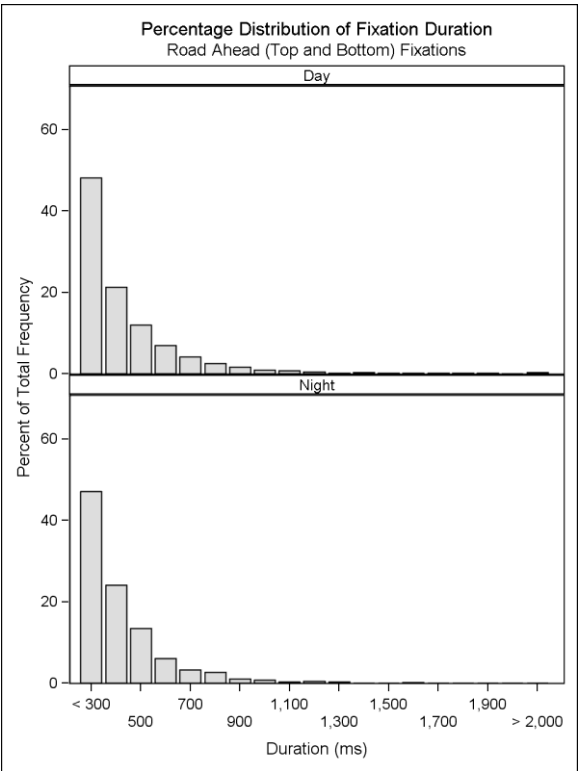


Figure 34. Fixation duration for the road ahead in the day and at night.

As was done with the data for Reading, the record of fixations was examined to determine dwell times to CEVMS and standard billboards. There were a total of 21 separate dwell times to CEVMS with a mean of 2.86 sequential fixations (minimum of 2 fixations and maximum of 6 fixations). The 21 dwell times came from 12 different participants and four different CEVMS. The mean dwell time duration to the CEVMS was 1,039 ms (minimum of 500 ms and maximum of 2,720 ms). There was one dwell time greater than 2,000 ms to CEVMS. To the standard billboards there were 13 separate dwell times with a mean of 2.31 sequential fixations (minimum of 2 fixations and maximum of 3 fixations). The 13 dwell times came from 11 different participants and four different standard billboards. The mean dwell time duration to the standard billboards was 687 ms (minimum of 450 ms and maximum of 1,152 ms). There were no dwell times greater than 2,000 ms to standard billboards.

In some cases several dwell times came from the same participant. To compute a statistic on the difference between dwell times for CEVMS and standard billboards, average dwell times were computed per participant for the CEVMS and standard billboard conditions. These average values were used in a *t*-test assuming unequal variances. The difference in average dwell time between CEVMS ($M = 1,096$ ms) and standard billboards ($M = 674$ ms) was statistically significant, $t(14) = 2.23$, $p = .043$.

Figure 35 through figure 37 show heat maps for the dwell-time durations to the CEVMS that were greater than 2,000 ms. The DCZ was on a freeway during the daytime. The CEVMS is located on the left side of the road (indicated by an orange rectangle). There were three fixations to this billboard, and the single fixations were between 651 ms and 1,335 ms. The dwell time for this billboard was 2,270 ms. Figure 35 shows the first fixation toward the CEVMS. There are no vehicles near the participant in his/her respective travel lane or adjacent lanes. In this situation, the billboard is relatively close to the road ahead ROI. Figure 36 shows a heat map later in the DCZ where the driver continues to look at the CEVMS. The heat map does not overlay the CEVMS in the picture since the heat map has integrated over time where the driver was gazing. The CEVMS has moved out of the area because of the vehicle moving down the road. However, visual inspection of the video and eye tracking statistics showed that the driver was fixating on the CEVMS. Figure 37 shows the end of the sequential fixations to the CEVMS. The driver returns to gaze directly in front of the vehicle. Once the CEVMS was out of the forward field of view, the driver quit looking at the billboard.

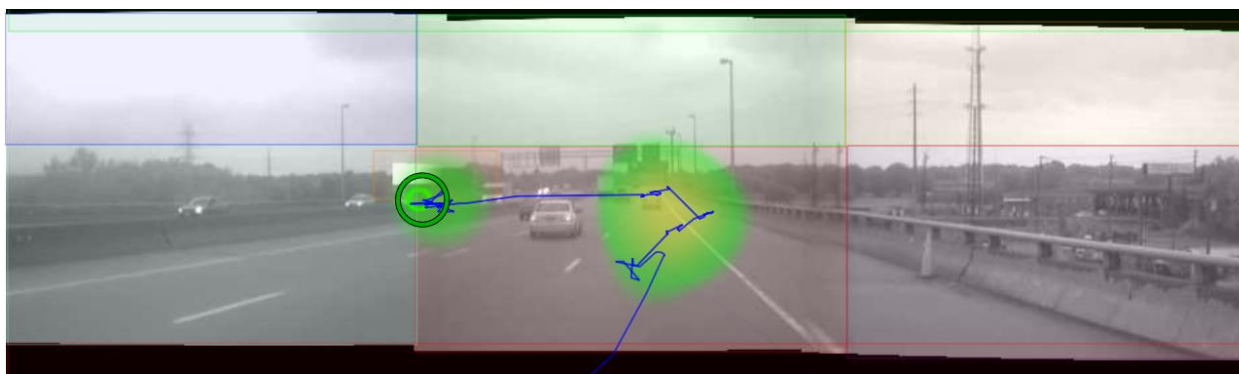


Figure 35. Heat map for first fixation to CEVMS with long dwell time.

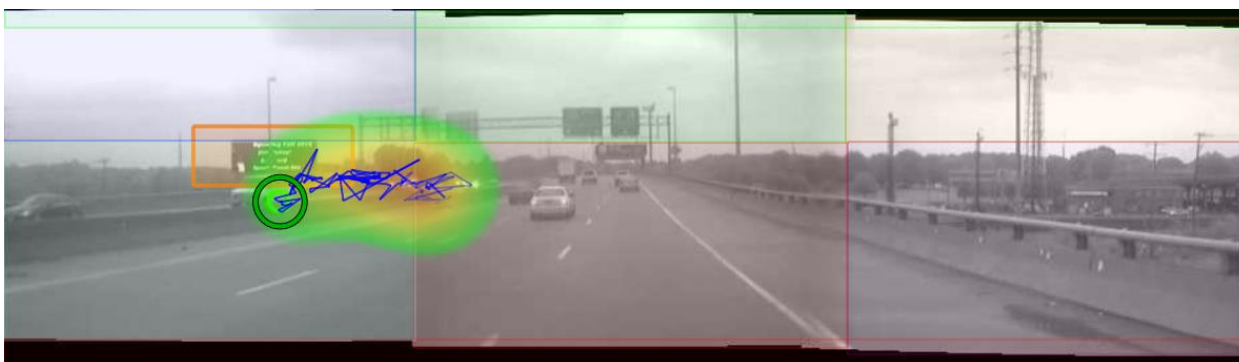


Figure 36. Heat map for later fixations to CEVMS with long dwell time.

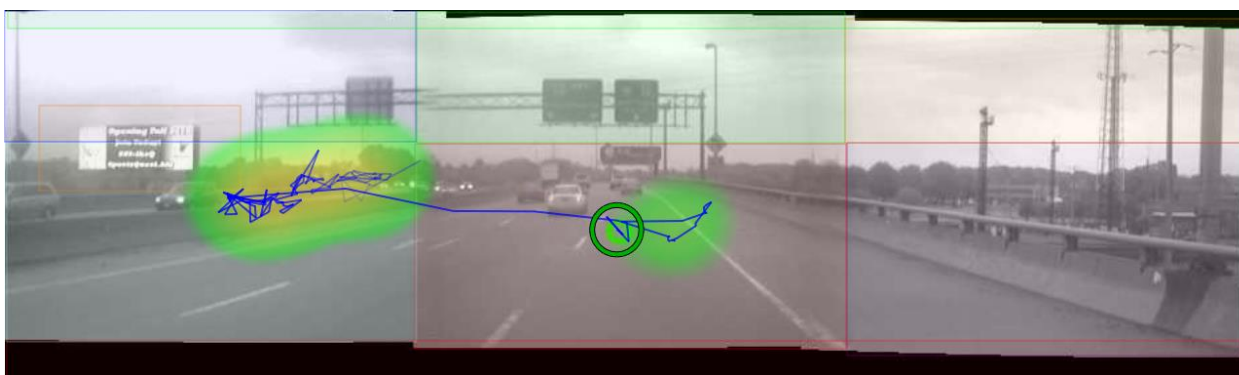


Figure 37. Heat map at end of fixations to CEVMS with long dwell time.

Comparison of Gazes to CEVMS and Standard Billboards

As was done for the data from Reading, GEE were used to analyze whether a participant gazed more toward CEVMS than toward standard billboards, given that the participant was looking at off-premise advertising. Recall that a sample probability greater than 0.5 indicated that participants gazed more toward CEVMS than standard billboards when the participants gazed at off-premise advertising. In contrast, if the sample probability was less than 0.5, participants showed a preference to gaze more toward standard billboards than CEVMS when directing visual attention to off-premise advertising.

Time of day (i.e., day or night), road type (i.e., freeway or arterial), and the corresponding interaction were explanatory variables in the logistic regression model. Time of day had a significant effect on participant gazes toward off-premise advertising, $\chi^2(1) = 4.46, p = 0.035$. Participants showed a preference to gaze more toward CEVMS than toward standard billboards during both times of day. During the day the preference was only slight ($M = 0.52$), but at night the preference was more pronounced ($M = 0.71$). Road type was also a significant predictor of where participants directed their gazes at off-premise advertising, $\chi^2(1) = 3.96, p = 0.047$. Participants gazed more toward CEVMS than toward standard billboards while driving on both types of roadways. However, driving on freeways yielded a slight preference for CEVMS over standard billboards ($M = 0.55$), but driving on arterials resulted in a larger preference in favor of CEVMS ($M = 0.68$).

Observation of Driver Behavior

No near misses or driver errors occurred.

Level of Service

Table 11 shows the level of service as a function of advertising type, type of road, and time of day. As expected, there was less congestion during the nighttime runs than in the daytime. In general, there was traffic during the data collection runs; however, the eye tracking data were recorded while the vehicles were in motion.

Table 11. Estimated level of service as a function of advertising condition, road type, and time of day.

	Arterial		Freeway	
	Day	Night	Day	Night
Control	B	A	C	B
CEVMS	B	A	B	A
Standard	C	A	C	C

DISCUSSION OF RICHMOND RESULTS

Overall the probability of looking at the forward roadway was high across all conditions and consistent with the findings from Reading and previous related research.^(11,9,12) In this second study the CEVMS and standard billboard conditions did not differ from each other. For the DCZs on arterials there were no significant differences among the control, CEVMS, and standard billboard conditions. On the other hand, while the CEVMS and standard billboard conditions on the freeways did not differ from each other, they were significantly different from their respective control conditions. The control condition on the freeway principally had trees along the sides of the road and the signs that were present were freeway signs located in the road ahead ROI.

Measures such as feature congestion rated the three DCZs on freeways as not being statistically different from each other. These types of measures have been useful in predicting visual search and the effects of visual salience in laboratory tasks.⁽³⁴⁾ Models of visual salience may predict that, at least during the daytime, trees on the side of the road may be visually salient objects that would attract a driver's attention.⁽⁴⁷⁾ However, it appears that in the present study, participants principally kept their eyes on the road ahead.

The mean fixations to CEVMS, standard billboards, and the road ahead were found to be similar in magnitude with no long fixations. Examination of dwell times showed that there was one long dwell time for a CEVMS greater than 2,000 ms and it occurred in the daytime on a sign located on the left side of the road on a freeway DCZ. Furthermore, when averaging among participants the mean dwell time for CEVMS was significantly longer than to standard billboards, but still under 2,000 ms. For the dwell time greater than 2,000 ms, examination of the scene camera video and eye tracking heat maps showed that the driver was initially looking toward the forward roadway and made a first fixation to the sign. Three fixations were made to the sign and then the

driver started looking back to the road ahead as the sign moved out of the forward field of view. On the video there were no vehicles near the subject driver's own lane or in adjacent lanes.

Only the central 2 degrees of vision, foveal vision, provide resolution sharp enough for reading or recognizing fine detail.⁽⁵⁷⁾ However, useful information for reading can be extracted from parafoveal vision, which encompasses the central 10 degrees of vision.⁽⁵⁷⁾ More recent research on scene gist recognition³ has shown that peripheral vision (beyond parafoveal vision) is more useful than central vision for recognizing the gist of a scene.⁽⁵⁸⁾ Scene gist recognition is a critically important early stage of scene perception, and influences more complex cognitive processes such as directing attention within a scene and facilitating object recognition, both of which are important in obtaining information while driving.

The results of this study do show one duration of eyes off the forward roadway greater than 2,000 ms, the duration at which Klauer et al. observed near-crash/crash risk at more than twice those of normal, baseline driving.^(14,53) When looking at the tails of the fixation distributions, few fixations were greater than 1,000 ms, with the longest fixation being equal to 1,335 ms.^(53,54) The one long dwell time on a CEVMS that was observed was a rare event in this study, and review of the video and eye tracking data suggests that the driver was effectively managing acquisition of visual information while driving and fixated on the advertising. However, additional work needs to be done to derive criteria for gazing or fixating away from the forward road view where the road scene is still visible in peripheral vision.

The results showed that drivers are more likely to look at CEVMS than standard billboards during the nighttime across the conditions tested (at night the average probability of gazing at CEVMS was $M = 0.71$). CEVMS do have greater luminance than standard billboards at night and also have higher contrast. The CEVMS have the capability of being lit up so that they would appear as very bright signs to drivers (for example, up to about $10,000 \text{ cd/m}^2$ for a white square on the sign.). However, our measurements of these signs showed an average luminance of about 56 cd/m^2 . These signs would be conspicuous in a nighttime driving environment but significantly less so than other light sources such as vehicle headlights. Drivers were also more likely to look at CEVMS than standard billboards on both arterials and freeways, with a higher probability of gazes on arterials.

In this second study, CEVMS and standard billboards were more nearly equated with respect to setback from the road. Gazes to the road ahead were not significantly different between CEVMS and standard billboard DCZs across conditions and the proportion of gazes to the road ahead were consistent with previous research. One long dwell time for a CEVMS was observed in this study; however, it occurred in the daytime where the luminance and contrast (affecting the perceived brightness) of these signs are similar to those for standard billboards.

³ "Scene gist recognition" refers to the element of human cognition that enables us to determine the meaning of a scene and categorize it by type (e.g., a beach, an office) almost immediately upon seeing it.

GENERAL DISCUSSION

This study was conducted to investigate the effect of CEVMS on driver visual behavior in a roadway driving environment. An instrumented vehicle with an eye tracking system was used. Roads containing CEVMS, standard billboards, and control areas with no off-premise advertising were selected. The CEVMS and standard billboards were measured with respect to luminance, location, size, and other relevant variables to characterize these visual stimuli. Unlike previous studies on digital billboards, the present study examined CEVMS as deployed in two United States cities and did not contain dynamic video or other dynamic elements. The CEVMS changed content approximately every 8 to 10 seconds, consistent within the limits provided by FHWA guidance.⁽²⁾ In addition, the eye tracking system used had nearly a 2-degree level of resolution that provided significantly more accuracy in determining what objects the drivers were gazing or fixating on as compared to some previous field studies examining CEVMS.

CONCLUSIONS

Do CEVMS attract drivers' attention away from the forward roadway and other driving relevant stimuli?

Overall, the probability of looking at the road ahead was high across all conditions. In Reading, the CEVMS condition had a lower proportion of gazes to the road ahead than the standard billboard condition on the freeways. Both of the off-premise advertising conditions had a lower proportion of gazes to the road ahead than the control condition on the freeway. The lower proportion of gazes to the road ahead can be attributed to the overall distribution of gazes away from the road ahead and not just to the CEVMS. On the other hand, for the arterials the CEVMS and standard billboard conditions did not differ from each other, but both had a lower proportion of gazes to the road ahead compared to the control. In Richmond there were no differences among the three advertising conditions on the arterials. However, for the freeways the CEVMS and standard billboard conditions did not differ from each other but had a lower proportion of gazes to the road ahead than the control.

The control conditions differed across studies. In Reading, the control condition on arterials showed 92 percent for gazing at the road ahead while on the freeway it was 86 percent. On the other hand, in Richmond the control condition for arterials was 78 percent and for the freeway it was 92 percent. The control conditions on the freeway differed across the two studies. In Reading there were businesses off to the side of the road; whereas in Richmond the sides of the road were mostly covered with trees. The control conditions on the arterials also differed across cities in that both contained businesses and on-premise advertising; however, in Reading arterials had four lanes and in Richmond arterials had six lanes. The reason for these differences across cities was that these control conditions were selected to match the other conditions (CEVMS and standard billboards) that the drivers would experience in the two respective cities. Also, the selection of DCZs was obviously constrained by what was available on the ground in these cities.

The results for the off-premise advertising conditions are consistent with Lee et al., who observed that 76 percent of drivers' time was spent looking at the road ahead in the CEVMS scenario and 75 percent in the standard billboard scenario.⁽⁹⁾ However, it should be kept in mind

that drivers did gaze away from the road ahead even when no off-premise advertising was present and that the presence of clutter or salient visual stimuli did not necessarily control where drivers gazed.

Do glances to CEVMS occur that would suggest a decrease in safety?

In DCZs containing CEVMS, about 2.5 percent of the fixations were to CEVMS (about 2.4 percent to standard billboards). The results for fixations are similar to those reported in other field data collection efforts that included advertising signs.^(12,11,9,13) Fixations greater than 2,000 ms were not observed for CEVMS or standards billboards.

However, an analysis of dwell times to CEVMS showed a mean dwell time of 994 ms (maximum of 1,467 ms) for Reading and a mean of 1,039 ms (maximum of 2,270 ms) for Richmond. Statistical comparisons of average dwell times between CEVMS and standard billboards were not significant in Reading; however, in Richmond the average dwell times to CEVMS were significantly longer than to standard billboards, though below 2,000 ms. There was one dwell time greater than 2,000 ms to a CEVMS across the two cities. On the other hand, for standard billboards there were three long dwell times in Reading; there were no long dwell times to these billboards in Richmond. Review of the video data for these four long dwell times showed that the signs were not far from the forward view when participants were fixating. Therefore, the drivers still had access to information about what was in front of them through peripheral vision.

As the analyses of gazes to the road ahead showed, drivers distributed their gazes away from the road ahead even when there were no off-premise billboards present. Also, drivers gazed and fixated on off-premise signs even though they were generally irrelevant to the driving task. However, the results did not provide evidence indicating that CEVMS were associated with long glances away from the road that may reflect an increase in risk. When long dwell times occurred to CEVMS or standard billboards, the road ahead was still in the driver's field of view.

Do drivers look at CEVMS more than at standard billboards?

The drivers were generally more likely to gaze at CEVMS than at standard billboards. However, there was some variability between the two locations and between type of roadway (arterial or freeway). In Reading, the participants looked more often at CEVMS when on arterials, whereas they looked more often at standard billboards when on freeways. In Richmond, the drivers looked at CEVMS more than standard billboards no matter the type of road they were on, but as in Reading the preference for gazing at CEVMS was greater on arterials (68 percent on arterials and 55 percent on freeways). The slower speed on arterials and sign placement may present drivers with more opportunities to gaze at the signs.

In Richmond, the results showed that drivers gazed more at CEVMS than standard billboards at night; however, for Reading no effect for time of day was found. CEVMS do have higher luminance and contrast than standard billboards at night. The results showed mean luminance of about 56 cd/m² in the two cities where testing was conducted. These signs would appear clearly visible but not overly bright.

SUMMARY

The results of these studies are consistent with a wealth of research that has been conducted on vision in natural environments.^(26,22,21) In the driving environment, gaze allocation is principally controlled by the requirements of the task. Consistent results were shown for the proportion of gazes to the road ahead for off-premise advertising conditions across the two cities. Average fixations were similar to CEVMS and standard billboards with no long single fixations evident for either condition. Across the two cities, four long dwell times were observed: one to a CEVMS on a freeway in the day, two to the same standard billboard on a freeway (once at night and once in the daytime), and one to a standard billboard on an arterial at night. Examination of the scene video and eye tracking data indicated that these long dwell times occurred when the billboards were close to the forward field of view where peripheral vision could still be used to gather visual information on the forward roadway.

The present data suggest that the drivers in this study directed the majority of their visual attention to areas of the roadway that were relevant to the task at hand (i.e., the driving task). Furthermore, it is possible, and likely, that in the time that the drivers looked away from the forward roadway, they may have elected to glance at other objects in the surrounding environment (in the absence of billboards) that were not relevant to the driving task. When billboards were present, the drivers in this study sometimes looked at them, but not such that overall attention to the forward roadway decreased.

LIMITATIONS OF THE RESEARCH

In this study the participants drove a research vehicle with two experimenters on board. The participants were provided with audio turn-by-turn directions and consequently did not have a taxing navigation task to perform. The participants were instructed to drive as they normally would. However, the presence of researchers in the vehicle and the nature of the driving task do limit the degree to which one may generalize the current results to other driving situations. This is a general limitation of instrumented vehicle research.

The two cities employed in the study appeared to follow common practices with respect to the content change frequency (every 8 to 10 seconds) and the brightness of the CEVMS. The current results would not generalize to situations where these guidelines are not being followed.

Participant recruiting was done through libraries, community centers and at a university. This recruiting procedure resulted in a participant demographic distribution that may not be representative of the general driving population.

The study employed a head-free eye tracking device to increase the realism of the driving situation (no head-mounted gear). However, the eye tracker had a sampling rate of 60 Hz, which made determining saccades problematic. The eye tracker and analyses software employed in this effort represents a significant improvement in technology over previous similar efforts in this area.

The study focused on objects that were 1,000 feet or less from the drivers. This was dictated by the accuracy of the eye tracking system and the ability to resolve objects for data reduction. In addition, the geometry of the roadway precluded the consideration of objects at great distances.

The study was performed on actual roadways, and this limited the control of the visual scenes except via the route selection process. In an ideal case, one would have had roadways with CEVMS, standard billboards, and no off-premise advertising and in which the context surrounding digital and standard billboards did not differ. This was not the case in this study, although such an exclusive environment would be inconsistent with the experience of most drivers. This presents issues with the interpretation of the specific contributions made by billboards and the environment to the driver's behavior.

Sign content was not investigated (or controlled) in the present study, but may be an important factor to consider in future studies that investigate the distraction potential of advertising signs. Investigations about the effect of content could potentially be performed in driving simulators where this variable could be systematically controlled and manipulated.

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Federal Highway Administration study confirms safety of digital billboards and signs



The U.S. Department of Transportation Federal Highway Administration has released a landmark study declaring that digital billboards do not pose a safety risk to passing motorists. For those within the industry, the results of this study come as no surprise. Numerous traffic studies and analyses performed in the last couple of decades have come to a similar conclusion.

The report, actually divided into two studies, is officially titled "Driver Visual Behavior In The Presence of Commercial Electronic Variable Message Signs." For the purposes of the studies, the FHA refers to digital billboards as Commercial Electronic Variable Message Signs. The studies sought to address three specific questions:

1. Do CEVMS attract drivers' attention away from the forward roadway and other driving-relevant stimuli?
2. Do glances to CEVMS occur that would suggest a decrease in safety?
3. Do drivers look at CEVMS more than at standard billboards?

To conduct the study, the FHA tracked participant's eye movements with an eye-tracking camera device mounted in the vehicle. This device was able to track the driver's eyeball movement and determine if the driver was looking ahead at the roadway or off to the side of the roadway at a static billboard or CEVMS.

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Drivers in Richmond, Va., and Reading, Pa., participated in the study, and the research concluded that drivers do indeed look at digital billboards longer than they do at static billboards. Glance duration toward digital billboards averaged 0.379 seconds, while glances at static billboards were at 0.335 seconds at both test sites. Both of these measurements fall far below the two-second benchmark, which would constitute a hazard, according to the National Highway Traffic Safety Administration.

In conclusion, the study states, "The results did not provide evidence indicating that CEVMS, as deployed and tested in the two selected cities, were associated with unacceptably long glances away from the road. When dwell times longer than the currently accepted threshold of 2,000 ms [milliseconds] occurred, the road ahead was still in the driver's field of view. This was the case for both CEVMS and standard billboards."

This peer-reviewed study should help put to rest concerns that digital billboards, and other outdoor digital signs, pose a hazard to passing motorists. The study will also help pave the way for communities to bring this powerful outdoor advertising medium to their communities, benefiting not just local operators and advertisers but the entire local economy as well.

Topics: Advertising, Digital Billboards, DOOH Advertising, LED Signs, Trends / Statistics



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The Hunt For Distractions Leads To Inside The Vehicle

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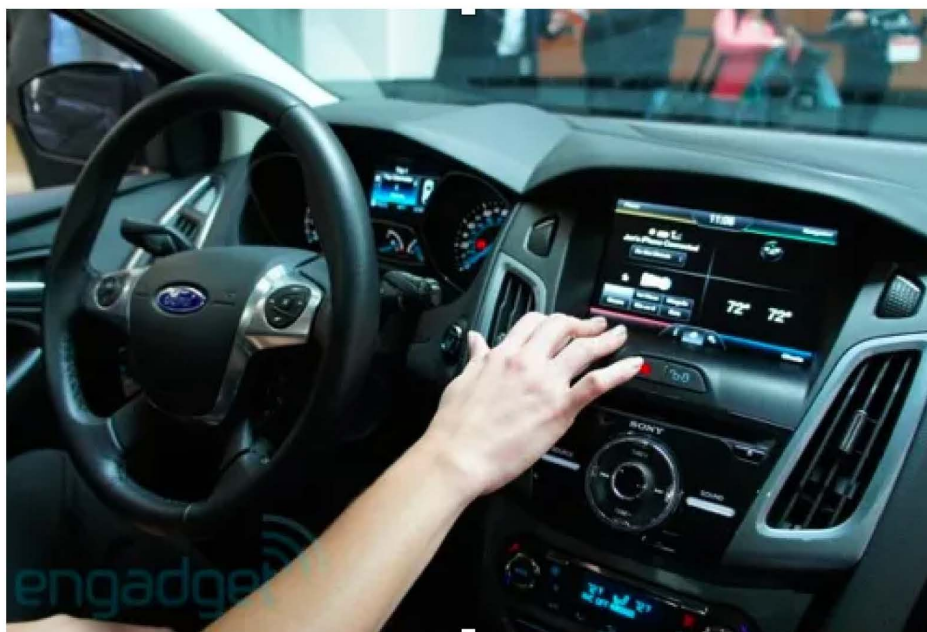


By [Ken Klein](#), EVP-Government Affairs, [OAAA](#).

I ran into a policy analyst (April 27) for the huge AAA auto club based in southern California. She said two things of note:

- A California lawmaker had invited AAA to join his effort to restrict digital billboards based on safety, but AAA declined because the science didn't show a problem
- I should read AAA's latest distraction report from its Foundation for Traffic Safety (based in Washington, DC)

I did. It's not about signs. The latest AAA report is about distraction *inside the vehicle*.



In-vehicle information systems (IVIS) create “moderate to high level cognitive workload” for drivers, said this research, conducted by experts at University of Utah. Further:

- Practice does not eliminate interference caused by in-car info systems
- Older drivers have more trouble figuring out in-car gadgets compared to younger drivers
- After drivers interact with in-car info systems, it takes 27 seconds to return to normal levels of performance. “At 25 MPH, drivers would have traveled more than three football fields in this interval.”

Thank you, AAA policy analyst.

The AAA safety study reminded me what Peter said about distraction a few days ago: *Billboards aren't the problem.*



Peter is Congressman Peter DeFazio (D-OR), the top Democrat on the House Transportation & Infrastructure Committee.

Like the AAA motor club, the congressman is worried about information overload inside the vehicle, with more gizmos on the way.

DeFazio's home-state DOT (Oregon Department of Transportation) wants to "change cultural norms when it comes to distracted driving."

When Oregon's Transportation Director Matt Garrett says "cultural norms," he means driver behavior inside the vehicle.

Oregon commissioned new research that says:

- Three of four Oregon drivers admitted to driving while distracted, "mostly by using a cell phone."
- As passengers, more than eight of 10 feel uncomfortable riding with a driver who is distracted. But nearly half of those surveyed (by Oregon State University) "admitted to driving while distracted with passengers in the vehicle."
- A distracted-driver crash occurred every 2.5 hours, according to state data.

Driving into Portland (OR), I saw another example of government *using billboards on behalf of safety*.



The kids-buckle-up message – on a digital bulletin — was posted by the National Highway Traffic Safety Administration (NHTSA).

When we hear terms like “distraction” and “changing cultural norms,” remember these basics:

- Billboards helped change culture norms, for safety, by increasing seatbelt usage and making impaired driving un-cool
- Serious, respected safety advocates like the AAA’s Foundation for Traffic Safety are focused on distraction inside the vehicle
- State and federal research shows that digital billboards are not distracting



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Author: [billboardinsider](#) Dave Westburg started billboard insider in September 2015 to provide a source of daily news and analysis for the outdoor business. He writes about what interests him as an outdoor advertising owner, lender and investor. You can reach Dave at billboardinsider@gmail.com or 206-910-1283.

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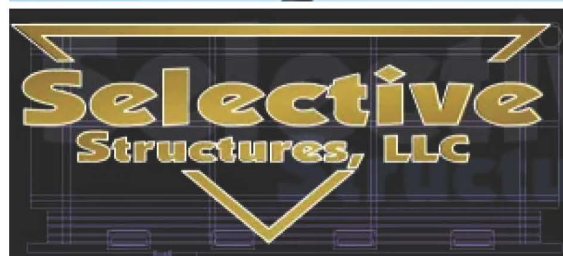
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WAC 468-66-050**Sign classifications and specific provisions.**

Signs shall be classified and restricted to the provisions following:

(1) Type 1 - Directional or other official signs and notices. Directional or other official signs and notices may be erected and maintained on private property or public property, other than state highway right of way, for the purposes of carrying out an official duty or responsibility. The signs may only be installed by public offices or public agencies within their territorial or zoning jurisdiction and shall follow federal, state, or local law.

(a) Type 1(a) - Directional sign. A directional sign may only be installed in accordance with the provisions following:

(i) Publicly or privately owned places - Directional signs for publicly or privately owned places that feature natural phenomena; historical, cultural, scientific, or educational opportunities; areas of scenic beauty, or outdoor recreation areas:

- Publicly owned places - Directional signs for public places owned or operated by federal, state, or local government, or their agencies;
- Privately owned places - Directional signs for nonprofit privately owned places that feature scenic attractions. The attractions must be nationally or regionally known, or of outstanding interest to travelers.

(ii) A sign message shall be limited to identification of the activity or attraction and directional information. Directional information is limited to that which helps the motorist locate the activity, such as providing mileage to the activity, highway route or exit numbers.

(iii) Descriptive words, phrases, and photographic or pictorial representations of the activity or attraction are prohibited.

(iv) Type 1(a) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(v) The department must approve the proposed installation location.

(vi) Along the interstate system and other limited access highways having grade separations (interchanges), a sign shall not be located within two thousand feet of an interchange or rest area, measured from the ramp physical gore, or within two thousand feet of a parkland or scenic area.

(vii) Type 1(a) signs shall not be spaced closer than one mile apart.

(viii) Visible to a state route approaching an activity or attraction, a maximum of three signs per direction of travel are allowed for each activity or attraction.

(ix) Type 1(a) signs located along the interstate system shall be within seventy-five air miles of the activity or attraction.

(x) Type 1(a) signs located along the primary and scenic systems shall be within fifty air miles of the activity or attraction.

(b) Type 1(b) - Official sign. An official sign may be installed subject to the provisions following:

(i) Type 1(b) signs may only be erected and maintained by public offices or public agencies.

(ii) Type 1(b) signs may only be located within the governing jurisdiction of the public office or public agency.

(iii) Type 1(b) signs shall follow federal, state, or local law.

(iv) Type 1(b) sign message content is limited to providing information that furthers an official duty or responsibility.

(v) Type 1(b) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(vi) Type 1(b) signs may be historical markers authorized by federal, state, and local law.

(vii) Type 1(b) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(c) Type 1(c) - Service activity sign. A service activity sign may be installed subject to the provisions following:

(i) Type 1(c) signs shall contain only the name of a nonprofit organization, its address, and the time of its meeting or service.

(ii) Type 1(c) signs shall not exceed eight square feet in area.

(iii) Type 1(c) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(2) Type 2 - For sale or lease sign. A Type 2 sign may only advertise the sale or lease of the parcel of real property upon which the sign is located. The name of the owner of the property offered for sale or lease, or the owner's agent and phone number shall not be displayed more conspicuously than the words "for sale" or "for lease." No other message may be displayed on the sign.

(a) Type 2 signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(b) Not more than one Type 2 sign may be installed that is visible to traffic proceeding in any one direction on an interstate, primary, or scenic system highway.

(c) The act does not regulate Type 2 signs with regard to zoning requirements or spacing.

(3) Type 3 - On-premise signs.

(a) Type 3(a) - On-premise sign. A Type 3(a) on-premise sign may only advertise an activity conducted on the property upon which the sign is located.

(i) A Type 3(a) on-premise sign shall be limited to advertising the business or the owner, or the products or services offered on the property. A sign consisting mainly of a brand name, trade name, product or service incidental to the main products or services offered on the property, or a sign bringing rental income to the property, is not an on-premise sign.

(ii) A Type 3(a) on-premise sign more than fifty feet from the advertised activity may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports. The act does not regulate the size of Type 3(a) on-premise signs located within fifty feet of the advertised activity.

(iii) A Type 3(a) on-premise sign located at a shopping center, mall, or business combination is not authorized more than fifty feet from the individual activity it advertises, unless it is installed together with a Type 3(b) business complex on-premise sign as described in (b)(i) of this subsection.

(b) Type 3(b) - Business complex on-premise sign. A Type 3(b) business complex on-premise sign may display the name of a shopping center, mall, or business combination.

(i) Where a business complex erects a Type 3(b) on-premise sign, the sign structure may display additional individual business signs identifying each of the businesses conducted on the premises. A Type 3(b) on-premise sign structure may also have attached a display area, such as a manually changeable copy panel, reader board, or electronically changeable message center, for advertising on-premise activities and/or presenting public service information.

(ii) Type 3(b) on-premise signs are not regulated by the act with regard to size. Any Type 3(a) on-premise sign and any display area, installed together with a Type 3(b) on-premise sign, may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim.

(c) Type 3(c) - Future site on-premise sign. A Type 3(c) future site on-premise sign may only display the name of a business activity, or other activity of interest to motorists, planned for the property upon which the sign is located and the anticipated opening date of such activity.

(i) The owner, or owner's representative, shall by letter notify the department at least thirty days prior to the installation of the proposed Type 3(c) future site on-premise sign. Said notice shall include the location, sign message, and installation date.

(ii) Type 3(c) future site on-premise signs may remain until the business activity is operational, but shall not exceed one year from the planned installation date. The sign must be removed at the end of one year after the planned installation date if the business activity is not yet operational.

(iii) Type 3(c) future site on-premise signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area.

(d) Type 3(d) - Temporary political campaign sign. A Type 3(d) temporary political campaign sign may express a property owner's endorsement of a political candidate or ballot issue.

(i) Type 3(d) temporary political campaign signs are limited to a maximum size of thirty-two square feet.

(ii) Type 3(d) temporary political campaign signs must be removed within ten days after an election.

After primary elections, temporary political campaign signs endorsing a successful candidate may remain up to ten days after the succeeding general election.

(e) Not more than one Type 3(a) or 3(b) sign, visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway, may be permitted more than fifty feet from the advertised activity. Not more than one Type 3(c) sign may be installed visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway. The act does not regulate Type 3(d) signs with regard to the number of signs installed, visibility from highways, zoning requirements, or spacing.

(i) For Type 3(a) on-premise signs, the fifty-foot distance from the advertised activity shall be measured from the sign to the nearest portion of that building, storage, or other structure or processing area, which is the most regularly used and essential to the conduct of the advertised activity as determined solely by the department.

(ii) For Type 3(b) on-premise signs, the fifty-foot distance from the advertised activity may be measured in the same manner as for Type 3(a) on-premise signs, or may be measured fifty feet from the nearest portion of a combined parking area.

(f) A Type 3(a) or 3(b) on-premise sign more than fifty feet from the advertised activity shall not be erected or maintained at a greater distance from the advertised activity than one of the options following, as applicable, selected by the owner of the business being advertised:

(i) One hundred fifty feet measured along the edge of the protected highway from the nearest edge of the main entrance to the activity advertised;

(ii) One hundred fifty feet from any outside wall of the main building of the advertised activity; or

(iii) Fifty feet from any outside edge of a regularly used parking lot maintained by, and contiguous to, the advertised activity.

(g) Electronic signs may be used only as Type 3 on-premise signs and/or to present public service information, as follows:

(i) Advertising messages on electronic signboards may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within ten seconds. A one-segment message may remain static on the signboard with no duration limit.

(ii) Displays may travel horizontally or scroll vertically onto electronic signboards, but must hold in a static position for two seconds after completing the travel or scroll.

(iii) Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.

(iv) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

(v) No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted as directed by the department.

(h) The act does not regulate Type 3(a), 3(b), 3(c), and 3(d) on-premise signs located along primary system highways inside an incorporated city or town or a commercial or industrial area.

(4) Type 4 - Off-premise signs; and

(5) Type 5 - Off-premise signs. Type 4 off-premise signs are distinguishable from Type 5 off-premise signs only by message content. Type 4 off-premise sign messages are those that do not qualify as Type 5 sign messages described in (b) of this subsection.

(a) A Type 4 sign shall be located within twelve air miles of the advertised activity. A Type 4 sign that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than twelve air miles from such sign shall not be permitted unless the name of the advertised activity, which is within twelve air miles of such sign, is displayed as conspicuously as such trade name.

(b) A Type 5 sign displays a message of specific interest to the traveling public. On Type 5 signs, only information about public places operated by federal, state, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or outdoor recreation, and places for lodging, camping, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. A trade name is authorized on a Type 5 sign only if it identifies or represents a place of specific interest to the traveling public; or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such place. The display of any other trade name is not permitted on Type 5 signs.

(c) Type 4 and Type 5 signs are restricted in size to the following:

(i) Visible to interstate highways, signs may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area including border and trim but excluding supports.

(ii) Visible to primary highways, the maximum area for any one sign, except as provided in (c)(iii) of this subsection, shall be six hundred seventy-two square feet with a twenty-five-foot maximum height and a fifty-foot maximum length, including the border and trim but excluding the base or apron, supports, and structural members. Cut-outs and extensions may add up to twenty percent of additional sign area.

(iii) Each sign face of a double-faced (flanking and side-by-side) sign may not exceed three hundred twenty-five square feet.

(d) The spacing of Type 4 and Type 5 signs along interstate highways and visible to traffic traveling in one direction shall be restricted as follows:

(i) Type 4 and Type 5 signs visible to traffic approaching an intersection of the main-traveled way of an interstate highway and an exit roadway may not exceed the number following:

Distance from intersection	Number of signs
0 - 2 miles. . . .	0
2 - 5 miles. . . .	6
More than 5 miles. . . .	Average of one sign per mile

The specified distances shall be measured to the nearest point of intersection of the traveled way of the exit roadway and the main-traveled way of the interstate highway.

(ii) Not more than two such signs may be permitted within any mile distance and no such signs may be permitted less than one thousand feet apart.

(iii) Type 1, 2, and 3 signs shall not be considered in determining compliance with the above spacing requirements.

(iv) Type 4 and Type 5 signs may not be permitted adjacent to interstate highway right of way within the limits of an interchange, including its entrance or exit roadways.

(v) Type 4 and Type 5 signs visible to interstate highway traffic, which has passed an entrance roadway, may not be permitted within one thousand feet of the point where the entrance roadway intersects with the interstate highway. The distance shall be measured from the intersection point farthest from the preceding interchange.

(vi) Not more than one Type 4 or Type 5 sign, advertising activities conducted as a single enterprise or giving information about a single place, may be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one interstate highway.

(e) The spacing of Type 4 and Type 5 signs visible to primary highways shall be restricted as follows:

(i) On limited access highways, no two signs may be spaced less than one thousand feet apart, and no sign may be located within three thousand feet of the center of a grade separated interchange, a safety rest area, or an information center, or within one thousand feet of an at-grade intersection. Not more than

a total of five sign structures may be permitted per mile, including both sides of the highway. Double-faced (flanking or side-by-side) signs are prohibited.

(ii) On nonlimited access highways inside the boundaries of incorporated cities or towns, not more than a total of four sign structures, including both sides of the highway, may be permitted within a space of six hundred sixty feet or between platted intersecting streets or highways. There shall also be a minimum of one hundred feet between sign structures, including both sides of the highway.

(iii) On nonlimited access highways outside the boundaries of incorporated cities or towns, the minimum spacing between sign structures on each side of the highway shall be five hundred feet.

(iv) Back-to-back signs and V-type signs shall be considered one sign structure.

(f) The minimum space between sign structures located on the same side of the highway shall be measured between two points along the nearest edge of pavement. The measurement points are established at the origin of lines extending perpendicular from the edge of pavement to the apparent centers of the sign structures.

(g) The minimum space between sign structures located on opposite sides of the highway shall be measured in the applicable manner following:

(i) Along tangent sections, sign spacing is measured between two points along the edge of pavement in the increasing milepost direction of travel. One measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the increasing direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the decreasing direction of travel.

(ii) Along horizontal curve sections, sign spacing is measured between two points on the edge of pavement along the arc on the inside of the curve. One measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located along the highway in the increasing milepost direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located along the highway in the decreasing milepost direction of travel.

(h) Type 1, 2, 3, 7, and 8 signs shall not be considered in determining compliance with the above spacing requirements.

(i) Type 4 and Type 5 signs may be permitted within commercial and industrial areas adjacent to interstate and primary highways, provided that spacing is available as specified in (d) and (e) of this subsection.

(j) Type 4 and Type 5 signs are not permitted visible to the scenic system.

(k) Pursuant to the 1991 Intermodal Surface Transportation Efficiency Act, a National Scenic Byway Demonstration Project is established on State Route 101, from the Astoria/Megler Bridge to Fowler Street in Raymond and from the junction with State Route 109 near Queets to the junction with State Route 5 near Olympia. No new Type 4 or Type 5 signs may be permitted within the limits of this project. Type 4 or Type 5 signs installed prior to July 25, 1993, may remain as nonconforming signs.

(6) Type 6 - Landmark signs.

(a) Type 6 signs shall have been lawfully in existence on October 22, 1965, and have historic or artistic significance, including signs on farm structures or natural surfaces.

(b) Historic or artistic significance shall be determined by the department and approved by the Federal Highway Administration.

(c) Within the limits of the National Scenic Byway Demonstration Project identified in (5)(h) of this subsection, Type 6 signs may remain as nonconforming signs.

(7) Type 7 - Public service signs located on school bus stop shelters. Type 7 signs may display safety slogans or messages, and identify the donor, sponsor, or contributor of a school bus stop shelter. No other message(s) may be displayed.

(a) Safety slogans or messages must occupy at least sixty percent of the sign area, and appear more predominant than the name of the donor, sponsor, or contributor.

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(b) Type 7 signs may be located on school bus stop shelters only as authorized or approved by state law or regulation, or city or county ordinance or resolution, and may be installed visible to primary and scenic system highways.

(c) Type 7 signs may not exceed thirty-two square feet. A sign shall not protrude above the roofline or beyond the sides of the school bus stop shelter.

(d) Not more than one sign on each shelter may face in any one direction.

(e) The act does not regulate Type 7 signs with regard to zoning requirements or spacing between Type 7 signs and other types of signs.

(8) Type 8 - Temporary agricultural directional signs. Type 8 signs provide directional information to places of business having seasonal agricultural products for sale.

(a) Type 8 signs may display the business name, product(s) for sale, travel direction, and travel distance to the nearest mile from the state highway to the business.

(b) Type 8 signs may not exceed thirty-two square feet.

(c) There shall be at least three hundred feet spacing between Type 8 signs.

(d) Not more than two signs advertising a place of temporary agricultural business may be installed visible to traffic proceeding in one direction of travel on any one state route.

(e) Premises on which the seasonal agricultural products are sold must be within fifteen air miles of the state highway.

(f) Type 8 signs may be posted only during the period of time the seasonal agricultural product(s) is being sold.

(g) Any necessary supplemental follow-through signs along city streets or county roads must be installed before the Type 8 signs may be installed visible to the state highway.

(h) The signs may be installed visible to primary system highways outside incorporated cities or towns, and scenic system highways.

(i) Type 8 signs may not be installed visible to interstate highways, including interstate highways that are also part of the scenic system, or visible to primary system highways within incorporated cities or towns.

(j) The act does not regulate Type 8 signs with regard to zoning requirements or spacing between Type 8 signs and other types of signs.

[Statutory Authority: RCW **47.42.120**. WSR 14-22-055, § 468-66-050, filed 10/30/14, effective 11/30/14. Statutory Authority: Chapter **47.42** RCW and Title 23 Code of Federal Regulations part 750. WSR 06-03-005, § 468-66-050, filed 1/4/06, effective 2/4/06. Statutory Authority: Chapter **34.05** RCW and RCW **47.42.060**. WSR 99-24-083 (Order 195), § 468-66-050, filed 11/30/99, effective 12/31/99. Statutory Authority: Chapter **47.42** RCW and RCW **47.01.101**(5). WSR 94-12-049 (Order 144), § 468-66-050, filed 5/27/94, effective 6/27/94. Statutory Authority: RCW **47.42.060**. WSR 88-22-002 (Order 116), § 468-66-050, filed 10/20/88. Statutory Authority: Chapter **47.42** RCW. WSR 85-17-012 (Order 96), § 468-66-050, filed 8/12/85. Statutory Authority: RCW **47.42.060**. WSR 80-05-055 (Order 55), § 468-66-050, filed 4/18/80. Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-66-050, filed 12/20/78. Formerly WAC 252-40-040.]



Outdoor Advertising Association of America

Issue Briefs

Outdoor Lighting and Dark Skies

Message Points

- Illumination is fundamental to effective outdoor advertising, a round-the-clock mass communication medium
- Unreasonable limits on lighting hurt the traveling public, advertisers and public safety
- Billboard lighting is a tiny fraction of the overall ambient light level

In a mobile society, outdoor lighting is an essential part of commerce and security. Anti-lighting proponents seek to damage the effectiveness of illuminated outdoor advertising by placing arbitrary lighting limits. Restrictions on lighting undermine the business of outdoor advertising by requiring costly retro-fitting of sign structures or elimination of lighting fixtures.

Lighting on outdoor advertising structures is a tiny fraction of the overall ambient light level. A previous report by Lighting Sciences, Inc. concludes that most sky glow – some 96 percent – is produced by sources other than billboards. A summary of this report is enclosed as a reference.

Plus, a new generation of halogen lights is more efficient, requiring only two fixtures to illuminate a standard bulletin (14-by-48 foot billboard) rather than three or four fixtures. These new fixtures also direct the light more evenly onto the face of the bulletins, reducing ambient light spillage around a bulletin edges and also cutting energy consumption.

Digital Billboards

Based on a March, 2008, report by Lighting Sciences, Inc, Phoenix, AZ, the OAAA has recommended brightness criteria for digital billboards, suggesting that light produced by digital billboard structures should not exceed 0.3 footcandles over ambient light levels. Eight states have adopted this standard. Using the industry standard of 0.3 footcandles over ambient light levels, provides reasonable, objective method to achieve a site specific lighting requirement for digital billboards.

States with 0.3 foot candle criteria include:

- Colorado: 0.3 foot candles over ambient lighting levels*
- Massachusetts: 0.3 foot candles over ambient lighting levels
- Michigan: 0.3 foot candles over ambient lighting levels
- New Mexico: 0.3 foot candles over ambient lighting levels
- Oregon: 0.3 foot candles over ambient lighting levels
- Puerto Rico: 0.3 foot candles over ambient lighting levels
- Tennessee: 0.3 foot candles over ambient lighting levels
- Wyoming: 0.3 foot candles over ambient lighting levels

*(includes a back-up measurement of 300 Nits at night)

States with Candelas/Square meter (Nits) criteria or have proposed criteria include:

- West Virginia: candelas per square foot (note, not a nit), as follows:

Candelas/Sq Ft	Day	Night
Red	300	100
Green	600	200
Amber	450	150
Blue	800	350
White	550	50
All Color	650	250

- Arizona: 342 nits at night
- Missouri: 300 nits at night

States with Custom Criteria:

- Delaware: no maximum brightness level, but sign must adjust to ambient light changes
- Illinois: No brightness standards, but a letter from the manufacturer discussing the malfunction mechanism and hold time is required
- Mississippi: Sign must have “capability to adjust its intensity in response to ambient lighting conditions”

Light equals security

Illumination enhances public safety and security. Lack of adequate lighting can compromise safety, promote criminal activity, damage consumer confidence, and depress nighttime commerce.

State legislatures have rejected lighting restrictions

Numerous law-making bodies have considered, but rejected these proposals. (Michigan, Montana, Oregon, Washington, and Wyoming).

In 1999, New Mexico enacted the Night Sky Protection Act, which sought to strike a balance of preserving and enhancing the state's dark sky while promoting safety, security, and conserving energy. The Act exempts outdoor lighting fixtures on advertisement signs on interstates and federal-aid primary highways, as well as other lighting such as navigational lighting systems at airports.

References

OAAA Recommended Brightness Guidelines, based on a report from Dr. Ian Lewin, Principle, Lighting Sciences Incorporated, Scottsdale, AZ, March, 2008

“General Outdoor Advertising Lighting Guidelines,” Illuminating Engineering Society of North America (IESNA), 2003

“A Preliminary Estimation of the Impact of Billboard Lighting on Sky Glow,” *Executive Summary*, Ian Lewin, Ph.D, FIES, L.C., Lighting Sciences Inc., Phoenix, AZ

New Mexico Night Sky Protection Act, 1999

OAAA Recommended Brightness Guidelines

A. OAAA Guidelines: The OAAA recommended brightness criteria for digital billboards is as follows:

- Light produced by a digital billboard should not exceed 0.3 Footcandles over ambient light levels.
- Measurement should be taken utilizing a Footcandle meter from the following distances (perpendicular to the face of the digital billboard):
 - ☐ Posters: 150 feet ☐ 10'6x36 Bulletins: 200 feet
 - ☐ 14x48 Bulletins: 250 feet ☐ 20x60 Bulletins: 350 feet

The measurement distances are based on the average minimum viewing distances for each type of billboard.

- Digital billboards must have automatic dimming capability.

B. Basis for the Guidelines. These guidelines are based on recommendations by Dr. Ian Lewin of Lighting Sciences Inc. (Scottsdale, AZ) in a March, 2008 report to the OAAA. Dr. Lewin developed brightness criteria to meet the following general guidelines:

- Appropriately Legible Copy. Digital advertising copy is appropriately legible and not overly bright.
- Simplicity. Provide a guideline that can be easily implemented and enforced. Measurement of the ambient light level of the sign on and off is conducted by a footcandle meter. If the difference in measurements is less than 0.3 footcandles, the digital billboard is in compliance.
- Established Guidelines. The criteria is based on established scientific methodology and established industry standards from the Illuminating Engineering Society of North America (IESNA) publication TM-11-00 "light trespass" theory which is an accepted standard in the lighting industry.
- Flexibility. Ensure proper brightness levels in a variety of lighting environments.

C. Additional Issues/Clarification

- **Automatic Dimming Capability.** A digital billboard must be able to automatically adjust as ambient light levels change. An automatic light sensing device (such as photocell or similar technology) should be utilized for adjusting the digital billboard's brightness. Sunset-sunrise tables and manual methods of controlling brightness are not acceptable as a primary means of controlling brightness.
- **Brightness Measurement Methodology.** The brightness standard requires the use of a Footcandle meter (also known as a "Lux meter"; ~\$100-1000). A Footcandle meter measures the amount of light arriving at the meter (illuminance), as opposed to an absolute measurement of the amount of light emanating from a light source or light sources (luminance). A Footcandle is a measure of lumens (light rays) that fall on one square foot area; Lux is the metric equivalent of a Footcandle.

- In contrast, a Candela Meter / NIT Gun (~\$3,000) measures the amount of light emanating from a specific light source (luminance). A NIT gun measures candelas (a measure of luminance or brightness) per meter squared (also known as “NITS”), which is a measure of the brightness emanating from a specific light source. It excludes ambient light (which may include light from many sources) from the measurement. Standard NIT levels and/or utilization of a NIT gun are not a part of the OAAA recommended brightness guideline.

General Outdoor Advertising Lighting Guidelines referenced by the Illuminating Engineering Society of North America (IESNA)

A billboard can be illuminated either by fixtures located in front of the sign (front lit), from behind the sign (back lit) or from fixtures mounted away from the sign (remote). Each mounting location will present different issues:

Front lit / Top Mount

- May increase installation cost due to need for additional structure elements.
- Orientation of the fixture may create veiling glare and direct glare to the viewer.
- May possibly reduce the sky glow.
- Increased maintenance cost.
- Location interferes with changing of the sign message.
- Interferes with use of embellishments or cutouts.
- Daytime shadowing will detract from the readability of the sign.

Front lit / Bottom Mount

- Ability to mount fixtures to catwalks eases maintenance.
- Properly designed optical system will minimize sky glow.
- Does not interfere with changing of the sign message.
- Does not interfere with the use of embellishments.
- No daytime shadowing.
- Light source less likely to create veiling glare.

Remote

- Light source able to cover larger sign surface.
- Maintenance may be easier when mounted on the ground.
- May require additional wiring and installation cost.
- May contribute to sky glow.

Back lit

- Requires significantly more luminaires to illuminate the sign.
- Depends on the transmittance characteristics of the vinyl.
- Increase maintenance and installation cost.

- Cost to produce the translucent vinyl media for backlight signs may be more expensive than traditional methods.
- Lamp sources used are typically less efficient and consume more energy.
- Sign face brightness depends on the transmittance characteristics of the vinyl or other face material.

The vast majority of outdoor advertising signs use a front-lit configuration. The proper position of the luminaire (either top or bottom) is greatly determined by the associated costs of owning and operating the billboard. The current standard light fixture for a billboard needs to be mounted 4 to 6 feet out and 1 to 3 feet above or below the display face and is designed to be mounted on 1-1/4" rigid conduit. (The differences in distance have to do with the size of the display area.) The use of catwalks to provide safety to the crew responsible to perform placement and removal of advertisements affords the billboard company a secure structural mounting location. These catwalks are, by need, 3 to 4 feet wide. The fixture is mounted just below the catwalk so that it does not interfere with the worker's movement in front of the billboard. This arrangement also serves to further support and brace the luminaires to hold them in proper positioning. All electrical gear is integral to the fixture thereby providing for ease of installation and maintenance.

The following points explain further the pros/cons of mounting of fixtures on signs.

The current design of the billboard structure does not provide a similar mounting method if the fixtures were to be mounted on top of the billboard. When the fixtures are placed on top of the display area a new set of engineering issues are created. Since there is no catwalk above the sign the light fixtures must be supported by another means. However the conduit is mounted to the structure it must be able to support the weight of the fixture on an arm that is long enough to position the fixture in its proper location (above and in front of the sign face). In this application the amount of weight placed on the base of the conduit would run from 192 lbs to 288 lbs. The inherent vibration of the structure from any wind movement will increase substantially the deflection of the fixture creating a "live load." This will multiply the load on the conduit by a factor of 50%. This increase in weight and stress will accelerate the metal fatigue and may more frequently result in failure.

Another issue that must be taken into consideration when placing luminaires is the use of embellishments. The embellishment, or cutout, most always used at the top of the billboard, may extend the graphic surface up to an additional 4 to 5 feet. The use of top mounted lights will be in direct conflict whenever trying to use embellishments.

The location of the luminaires will also impact the ability of the outdoor company to change the messages on the sign. Traditionally, the sign message is "rolled" across the sign face. The ability of the installers to

perform this task quickly and safely (on signs that could be up to 150' in the air) will be hindered if fixtures and/or additional hardware are positioned at the top of the sign.

The presence of overhead lighting will also create a shadow on the sign during daylight hours. This shadowing will detract from the message and therefore diminish the economic value the sign offers to the customer.

A top mounted fixture will also increase costs of operation due to servicing issues. The fixture can either be installed on a retractable arm or installed on a permanent basis. The first method increases installation costs substantially while the second suffers from the challenges mentioned in the switching of the message and the proper support of the luminaires. In some instances, such as a remote location that does not provide access, a bucket truck may not be able to gain access to the permanent top mount fixture. Changing any of the components becomes a safety issue. The traditional location of the fixture allows for maintenance to be performed without increase risk to the installer as well as no additional costs in equipment by the owner. Any other method will increase operating costs and therefore cost to the consumer.

Types of luminaires

When choosing the type of fixture to use for billboard lighting it is important to understand the performance features of the type of fixtures available. The ability to control light is accomplished by the types of reflectors and refractors used.

A Preliminary Estimation of the Impact of Billboard Lighting on Sky Glow

(Executive Summary), Lighting Sciences Inc., Phoenix, AZ

By Ian Lewin, Ph.D, FIES L.C.

Sky glow is caused by lighting at night entering the atmosphere and being scattered by airborne particles. Sky glow may result from the use of lighting fixtures that emit light above a horizontal plane so that it enters the atmosphere directly. The effect also is caused by light reflecting from lighted objects, such as road surface or a billboard.

This study has evaluated the amount of light entering the atmosphere from a variety of lighting installations. Measured in “sky lumens,” the results allow a comparison to be made of different lighting systems relative to sky glow. Specifically, calculations have been made to compare the sky lumens produced by a typical billboard lighting system to the sky lumens caused by roadway and parking lot lighting.

Various scenarios have been used for the roadway lighting, combining residential and major highway lighting in a typical neighborhood. Areas have been considered that consist only of roadway lighting, as well as areas that contain both roadway and parking lot lighting.

The results of the study support a conclusion that the vast majority of sky glow is a product of urban development. Even where full cut-off fixtures are used on all roadway and parking lot fixtures, and if there is an average of one billboard per square mile, over 96% of the sky glow produced per urban square mile is from those sources and not billboard lighting, for the conditions examined. For the examples considered, a single three fixture billboard lighting systems produces approximately 2 to 3 % of the sky lumens caused by roadway/parking area lighting in a typical one square mile area. For a four fixture billboard lighting system, the range becomes roughly 2.5 to 4 %. These figures can be prorated. For example, if there are two such billboards per square mile, the percentages are doubled; if there is one such billboard per two square miles, the percentages will be halved.

The exact percentages of sky glow are affected by the density of roadways/parking areas, the type of lighting fixtures used and the lighting level provided, among other factors. However, it is apparent that for the scenarios considered, the contribution of billboard lighting to sky glow is small in comparison to that from other sources of lighting. The other sources produce 96 to 98% of sky glow, compared to the 2 to 4 % produced per billboard in the example urban square mile.

Highlights of the New Mexico Night Sky Protection Act

Enacted by the 1999 Legislature and signed into law by Governor Gary Johnson on April 6, 1999, the Night Sky Protection Act regulates outdoor night lighting fixtures to preserve and enhance the state's dark sky while promoting safety, conserving energy and preserving the environment for astronomy. Outdoor lighting fixtures includes permanent or portable outdoor artificial illuminating devices such as searchlights, spot and floodlights, architectural and landscape lighting, parking lot, billboard, and street lighting. In addition to the specific provisions outlined below, the Act specifically prohibits the sale and installation of mercury vapor outdoor lighting fixtures after January 1, 2000.

Provisions of the Night Sky Protection Act will impact night lighting as follows:

MERCURY VAPOR LIGHTING FIXTURES

No new mercury vapor outdoor lighting fixtures shall be sold or installed after January 1, 2000.

SHIELDING OF OUTDOOR LIGHT FIXTURES

All outdoor lighting fixtures installed after January 1, 2000, shall be shielded, except incandescent fixtures of one hundred fifty watts or less and other sources of seventy watts or less.

A shielded light fixture is shielded such that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

NONCONFORMING LIGHT FIXTURES

In addition to other exemptions provided in the Night Sky Protection Act, an outdoor lighting fixture not meeting these provisions shall be allowed if the fixture is extinguished by an automatic shutoff device from 11:00 p.m. to sunrise.

No outdoor recreational facility, whether public or private, shall be illuminated after 11:00 p.m. except for a national or international tournament or to conclude any recreational or sporting event or other activity conducted, which is in progress prior to 11:00 p.m. at a ballpark, outdoor amphitheater, arena or similar facility.

EXEMPTIONS

The following are exempt from the requirements of the Night Sky Protection Act:

1. An outdoor lighting fixture on advertisement signs on interstates and federal primary highways.
2. Outdoor lighting fixtures existing and legally installed prior to the effective date of the Night Sky Protection Act. However, when the existing lighting fixtures become unrepairable, their replacements are subject to all provisions of the Night Sky Protection Act.

3. Navigational lighting systems at airports and other lighting necessary for aircraft safety.

4. Outdoor lighting fixtures are necessary for worker safety at farms, ranches, dairies, feedlots or industrial, mining or oil and gas facilities.

The provisions of the Night Sky Protection Act are cumulative and supplemental and shall not apply within any county or municipality that, by ordinance or resolution, has adopted provisions restricting light pollution that are equal to or more stringent than the provisions of the Night Sky Protection Act.

► **The Oregon Administrative Rules contain OARs filed through November 15, 2016** ◄

QUESTIONS ABOUT THE CONTENT OR MEANING OF THIS AGENCY'S RULES?
CLICK HERE TO ACCESS RULES COORDINATOR CONTACT INFORMATION

DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION

DIVISION 60

SIGNS

734-060-0000

Outdoor Advertising Sign Application Process

(1) Application forms. An application for a sign permit under the Oregon Motorist Information Act (OMIA) is made by completing and submitting the appropriate form, attaching to the form all documents necessary to show the application meets the requirements of the law, and submitting the correct fee to the Outdoor Advertising Sign Program of the Oregon Department of Transportation. Application forms are available from the Outdoor Advertising Sign Program. There are three different Outdoor Advertising Sign application forms: "Standard Outdoor Advertising Sign Permit Application" for new permits for outdoor advertising signs that preexisted the law change on May 30, 2007, relocations and reconstructions of such permitted signs; "Digital Billboard Outdoor Advertising Sign Application" for digital permits newly issued under ORS 377.710, or relocation and reconstruction of such permitted signs and "Application for Transit Bench or Shelter Sign" for signs on bus/transit benches and bus/transit shelters. The Department may deny a permit application if the applicant does not use the correct form.

(2) Copies of sign laws. The Department will make available copies of all state sign statutes, administrative rules, federal statutes, federal regulations, and federal-state agreements in effect. The Department may charge for the copies at the rate established by law for public records requests, and may require prepayment. The Department may also provide these documents by e-mail, web site, or in other forms for the convenience of the public and the Department.

(3) Summary of regulations. To assist potential permit applicants and the general public, the Department will make available a summary of sign permit regulations. The summary does not bind the Department to the items listed or waive its right and duty to enforce all requirements under the law.

(4) Contents of applications for Standard Outdoor Advertising Signs and Digital Billboard Outdoor Advertising Signs. To be complete the application must include the following.

(a) Application form Part 1: Applicant Information, Sign Specifications. Information must be complete and accurate for applicant, sign builder, purpose of application, description, township/range/section/tax lot, highway route number or name and side of highway, how site is marked, name and address of property owner, and why the sign will be an "outdoor advertising sign." The location boxes should be completed to the best of applicant's ability to enable the Department to find the site.

(b) Application form Part 2: Certification of Applicant. The application form must be signed and dated by the applicant, certifying the information provided by applicant is accurate and has not been changed after the local government certification (see section (c) below). If the applicant is a corporate or other business entity the individual signing must include their title so as to indicate the authority to sign for the applicant.

(c) Application form Part 3: Certification of Local Jurisdiction. After completing Part 1, applicant must submit the complete application to the local jurisdiction for zoning and local compliance information. The local official must complete Part 3 and, if relevant, attach a letter of explanation of local code compliance. The local official must sign and date Part 3. This section does not apply to transit signs.

(d) Fee. The fee is based on square footage as described in OAR 734-059-0100. To be complete applicant must submit the correct application fee. The Sign Program does not accept cash, debit or credit cards; checks must be made out to Oregon Department of Transportation.

(e) Written proof of landowner consent. All applications, except transit sign applications, must include written proof that the landowner consents to have applicant maintain the proposed sign. The document must be signed by the landowner and the application filed during the base term of the agreement, or during a renewal term that is automatic or at applicant's election. If during a renewal period applicant must certify that the renewal was exercised and continues in effect. Examples of acceptable documents are the land lease, land lease plus applicant's certification as described above, land lease plus owner's written confirmation that an extension is being exercised, or a current memo signed and dated by land owner stating that applicant has

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permission to put the sign at the specified location. Payment information need not be included unless it is the evidence that compensation is exchanged making it an outdoor advertising sign.

(f) Business License. The applicant and the sign builder must have a current outdoor advertising sign business license as required under ORS 377.730. It is the responsibility of the Business License holder who erects or maintains an outdoor advertising sign to ensure that the outdoor advertising sign, visible to a state highway, is in compliance with the OMA. Compliance includes ensuring signs have an active state sign permit prior to placing or maintaining any message on the sign, and ensuring that the sign stays in compliance during the time that the licensee operates or maintains the sign. Violations may result in suspension or revocation of the licensee's business license as allowed under ORS 377.730.

(g) Relocation permit application. For a relocation application, if the zoning was first commercial or industrial after 1/1/1973, or if the local jurisdiction cannot determine the date, the applicant must submit a sketch or other document showing the site is within 750 feet of a commercial or industrial area to comply with ORS 377.767(3).

(h) Pre-existing sign permit application. For an application for a new pre-existing sign under ORS 377.712 the following additional items are required:

(A) Complete the application form "Supplement for Pre-existing Sign Permit" and sign it before a notary public;

(B) Submit documents demonstrating each of your claims, such as a lease showing the sign was posted for compensation; and

(C) Pursuant to ORS 377.712(1), include documentation demonstrating how applicant was ignorant of the permit requirement for outdoor advertising signs as of May 30, 2007.

(5) Digital Billboard applications must also include the following information:

(a) When being reconstructed or relocated for the first time as a digital billboard the applicant must provide the eligible permit(s) or relocation credit(s) being retired pursuant 377.700 to 377.840 and OAR 734-060-0007.

(b) Whether the proposed sign is a "Poster," "Bulletin," or other sign as described in OAR 734-060-0007(2).

(c) Emergency malfunction contact information including name, phone number along with proposed response procedure to possible malfunction.

(d) Whether or not a renewable energy resource is available and being utilized. If none, then the applicant must complete the affidavit attesting that no renewable resource is available.

(6) Transit Bench or Shelter Application. A transit shelter or bus bench application must provide documentation demonstrating that the site is at an official bus or transit stop on a city or urban transit system route.

(7) Complete Applications.

(a) The Outdoor Advertising Sign Program's mailing address is: Oregon Department of Transportation, Right of Way Section — Sign Program, 4040 Fairview Industrial Drive SE, MS #2, Salem OR 97302. The Sign Program receives hand deliveries at 4040 Fairview Industrial Drive SE, Salem Oregon. The Sign Program receives facsimiles at 503-986-3625. The Sign Program receives electronic mail at OutdoorAdvertising@odot.state.or.us.

(b) The Department requires original signatures and original initials to any changes on the application form. Therefore the Department will not accept the application form by electronic transmission (including facsimile). The Department may accept other documents by electronic transmission. The Department will not accept any changes made verbally; all changes must be in writing.

(c) The Department will indicate on each application document the date and time received. Application materials received by mail will be treated as received at the time a representative of the sign program physically receives the program's mail for that day. Application materials received in person, by fax, or by electronic transmission will be treated as received when a representative of the sign program physically receives those materials.

(d) The Department will only process applications that are complete. An application is complete when the Outdoor Advertising Sign program receives the signed application form including all necessary information, all documents necessary for issuance of a permit, and the correct application fee.

(A) Within 15 calendar days of receiving an application the Department will provide to the applicant written notice whether the application is complete. If the Department determines the application is complete, the notice will state the application's priority among all pending, complete applications.

(B) If the Department determines any information provided is incorrect, the application is not complete. The Department may rescind a notice of completeness and priority date if it later

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determines that information provided by applicant is not correct.

(e) If an application is not complete, within 15 calendar days of receiving the application the Department will return the entire application with written instructions on what is needed to complete it. The applicant must initial any subsequent changes and, if the changes are substantive to the local jurisdiction, must obtain a new certification from the local jurisdiction.

(A) If an application form is complete but the application is considered incomplete due to insufficient supporting documents or failure to submit the fee, the Department may return the entire application with written instructions on how to complete it or the Department may hold the application and notify the applicant in writing of what is needed and when it must be provided.

(B) Within 15 days of receiving the corrected form or additional materials the Department will provide the applicant written notification whether the application is complete and, if complete, the priority among all pending, complete applications.

(C) If the applicant makes any change to the application after it is deemed complete, the Department will change the priority date to the date of that change.

(D) If the Department has held an incomplete application for 60 days from the date of initial receipt, the application is deemed withdrawn by the applicant. The Department will return a copy of the application and may refund any eligible deposited fee. The Department will retain the original application for our records.

(8) Processing of complete permit application.

(a) The Department will approve or deny a permit within 60 days of the complete application's priority date as determined under section (7)(d) or (e) of this rule if the application clearly does not conflict with another complete application.

(b) An application for a permit that conflicts with the location of an expired or canceled permit will not be processed until the time for any hearing or appeal on the latter permit has passed, unless the permit is being canceled as a condition for issuance of the new permit.

(c) When a complete application might conflict with another complete application due to spacing or any other reason, the application with the earliest priority date and time takes precedence over later applications. Subject to all other requirements of the OMIA, the Department will issue the permit to the earlier applicant.

(d) If multiple complete applications have the same priority date and time, and are determined by the Department to compete for the same spot, the Department shall notify the applicants of the circumstances within seven days of the Department's determination. If an affected applicant requests a contested case hearing, the matter will be determined by a single contested case hearing under Oregon's Administrative Procedures Act. The Department shall refer the matter to the Office of Administrative Hearings within seven days of an applicant's written hearing request.

(e) If the Department does not approve or deny a permit application within the time allowed under section (8)(a) of this rule, such actions do not require the Department to issue a permit or require any remedy except as provided otherwise in law.

(9) Field checks; applicant requirements and Department method.

(a) When the Department determines an application is complete, the Department will perform a field check to determine the milepoint and all other information necessary to process the application.

(b) The applicant must place a marking at the site to show the proposed location for the sign permit. The applicant may use a stake, ribbon, paint, or any method or material that will allow the Department to easily locate the site and attribute it to the applicant. If the marked site is other than that represented to the local authority in obtaining its signature on the application form, or is other than where the applicant actually builds the sign, the Department may consider that a violation of ORS 377.725(10).

(c) If the Department cannot locate the site it will notify the applicant pursuant to (5)(e) above that the application is incomplete due to incorrect information and may request reasonable action by the applicant to identify the site.

(d) The Department will conduct a field check by traveling to the proposed site and calculating the milepoint to the one-hundredth of a mile or, when necessary, to the one-thousandth of a mile. The Department may also determine the engineering station. The Department may also make any other determination regarding the site that is relevant to the application, such as proximity to the right of way and to a commercial or industrial area. Once a field check has been conducted the application fee is non-refundable.

(e) The Department may use intersections, highway structures, or other highway feature and its corresponding milepoint or engineering station, to measure and calculate the milepoint of the proposed site. Milepost markers are for the convenience of motorists and are not precise indications of the milepoint, therefore the Department will not use milepost markers for these calculations without other indication of accuracy.

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(10) Denied Permit Applications. If the Department denies an application, it will consider that site as conflicting with other applications:

- (a) Until the time to request a hearing elapses without a hearing request from the applicant; or
- (b) If a hearing is requested, until the time to request an appeal on the final order has elapsed or until the final appellate court enters a judgment on the matter, whichever is later.
- (c) The Department will keep the original application and any accompanying documents and return a copy after an application is denied.

(11) Issued Permits.

(a) The permit will specify the 180th day by which the sign must be constructed.

(b) Within 190 days of permit issuance, the permittee must notify the Department in writing if the action described in the permit has been completed, and include at least one photograph demonstrating that completion. For a reconstruction permit or a relocation permit based on a relocation credit, the notice must state that the new sign has been constructed. For a direct relocation the notice must state that the new sign has been constructed and the former sign on which the permit was based has been removed. If the Department has not received the notification within 180 days the Department will alert the permittee about the upcoming 190-day deadline. If the permittee fails to submit the written notice and photograph within the time allowed, the Department will cancel the permit to relocate or reconstruct, and the permit will revert to its prior status. No fees will be refunded.

(c) "Constructed" means that the structure and all sign faces are permanently in place and the permit plate is attached. "Removed" means the taking down, removing, or eliminating all sign structure elements that are visible from the state right of way

Stat. Auth.: ORS 184.616, 184.619, 377.715, 377.725

Stats. Implemented: ORS 377.715, 377.725

Hist.: HWD 2-2009, f. 3-20-09, cert. ef. 3-23-09; HWD 9-2011(Temp), f. 8-24-11, cert. ef. 9-29-11 thru 3-26-12; HWD 6-2012, f. & cert. ef. 3-26-12; HWD 11-2014, f. & cert. ef. 12-19-14

734-060-0007

Digital Billboard Procedures

(1) This rule describes the process for applying for a permit for a digital billboard.

(2) Definitions for the purposes of this rule:

(a) "Sign" means the sign structure, the display surfaces of the sign, and all other component parts of the sign.

(b) "Retire" means to use a relocation credit such that it no longer exists or to remove an existing sign to become a relocation permit or credit for use.

(c) "Bulletin" means an outdoor advertising sign with a display surface that is 14 feet by 48 feet.

(d) "Poster" means an outdoor advertising sign with a display surface that is 12 feet by 25 feet.

(e) "Digital Billboard" means an outdoor advertising sign that is static and changes messages by any electronic process or remote control, provided that the change from one message to another message is no more frequent than once every eight seconds and the actual change process is accomplished in two seconds or less.

(3) Qualifications for receiving a digital billboard state sign permit:

(a) The proposed site and digital billboard must meet all requirements of the OMIA including, but not limited to, the following:

(A) The digital billboard is not illuminated by a flashing or varying intensity light.

(B) The display surface of the digital billboard does not create the appearance of movement.

(C) The digital billboard must operate at an intensity level of not more than 0.3 foot-candles over ambient light as measured by the distance to the sign depending upon its size.

(D) The distance measurement for ambient light is: 150 feet if the display surface of the sign is 12 feet by 25 feet, 200 feet if the display surface is 10.5 by 36 feet, and 250 feet if the display surface is 14 by 48 feet.

(b) Applicant must submit a completed application for a digital billboard state sign permit using the approved form that may be obtained by one of the following methods:

(A) Requesting from Sign Program Staff by phone at 503-986-3650;

(B) Email: OutdoorAdvertising@odot.state.or.us;

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(C) Website: <http://www.oregon.gov/ODOT/HWY/SIGNPROGRAM/pages/index.aspx>.

(c) The Department shall confirm that any existing permitted Outdoor Advertising Sign or relocation credit being retired for the purpose of receiving a new digital billboard state sign permit has been removed within the 180 days allowed to construct the new permitted sign. The Department will not charge a Banking Permit Fee for the cancellation of state sign permits retired for the purpose of receiving a new digital billboard permit.

(4) This section sets forth the criteria for determining the required relocation credits or existing permitted signs that an applicant shall retire to receive one new digital billboard state sign permit:

(a) Applicants who own 10% or less of all active relocation credits at the time the application is submitted shall either remove one existing state permitted outdoor advertising sign with a display area of at least 250 square feet or provide one active relocation credit of at least 250 square feet and retire that permit. Applicants meeting these criteria are not limited to either "Bulletin" or "Poster" billboards.

(b) Applicants who own more than 10% of all active relocations credits shall apply for a new digital billboard state sign permit as follows:

(A) For a digital billboard that is intended to be a bulletin, the applicant has three options:

(i) Remove two existing bulletins, retire the permits for those signs, and retire three relocation credits; or

(ii) Remove one existing bulletin and two existing posters, retire those permits and retire three active relocation credits; or

(iii) Remove four existing posters, retire the permits for those signs, and retire three relocation credits.

(B) For a digital billboard that is intended to be a poster, the applicant has two options:

(i) Remove two existing posters, retire the permits for those signs, and retire three relocation credits;

(ii) Remove one existing bulletin, retire the permit for that sign, and retire three relocation credits.

(c) For an active relocation credit to be eligible it must be at least 250 square feet. All permits and relocation credits submitted under these procedures will be permanently cancelled and are not eligible for renewal.

(d) Any state sign permits submitted for retirement must include the written statement notifying the Department that the "lease has been lost or cancelled."

(5) The Department will determine the percentage of relocation credits owned by an applicant by dividing the total number of unused relocation credits by the total number of unused relocation credits owned by the applicant on the day the application is received.

(6) Two digital billboard state sign permits are required for any back to back or V-type digital sign. A separate application is required for each digital sign face.

(7) The first time a digital billboard is permitted it is not subject to the 100-mile rule in ORS 377.767(4). The site of the newly permitted billboard will become the established location for future reference.

(8) Relocation of permitted digital billboards. The Department will issue one digital relocation credit for each permitted digital sign that is removed. The digital relocation credit issued will be for the same square footage as the permitted digital sign that was removed. A digital relocation credit can only be used to relocate a digital billboard. A permitted digital sign can only be reconstructed as a digital billboard.

(9) Use of renewable energy resource. The applicant must provide a statement with the application that clarifies what, if any, renewable energy resources are available at the site and are being utilized. If none, then a notarized statement to that effect must be included with the application.

(10) All permitted digital billboards must have the capacity to either freeze in a static position or display a black screen in the event of a malfunction.

(a) The applicant must provide emergency contact information that has the ability and authority to make modifications to the display and lighting levels in the event of emergencies or a malfunction.

(b) The Department will notify the sign owner of a malfunction that has been confirmed by ODOT in the following instances:

(A) The light impairs the vision of a driver of any motor vehicle; or

(B) The message is in violation of ORS 377.710(6) or 377.720(3)(d).

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(11) All digital billboard signs must comply with the light intensity and sensor requirements of ORS 377.720(3)(d).

(a) The Department will take measurements of the permitted digital billboard when notified that the sign has been constructed and the permit plate has been installed.

(b) The Department will use an approved luminance meter designed for use in measuring the amount of light emitted from digital billboards using the industry standard for size and distance as follows:

(A) 150 feet for 12'x 25'.

(B) 200 feet for 10.5'x 36'.

(C) 250 feet for 14'x 48'.

Stat. Auth.: ORS 184.616, 184.619, 377.710, 377.729, 377.753

Stats. Implemented: ORS 377.710, 377.720, 377.750, 377.767

Hist.: HWD 9-2011(Temp), f. 8-24-11, cert. ef. 9-29-11 thru 3-26-12; HWD 6-2012, f. & cert. ef. 3-26-12; HWD 11-2014, f. & cert. ef. 12-19-14

734-060-0010

Criteria for Issuance of New Permits for Benches Utilized as Outdoor Advertising Signs

(1) New permits may be issued for a bus or transit bench utilized for an outdoor advertising sign (bench signs) and such signs may only be erected after a permit has been obtained from the Department of Transportation. These rules do not authorize the placement of any new bench, only the addition of an outdoor advertising sign to an already existing bench structure.

(a) Bench signs are prohibited where the sign would be visible to:

(A) An interstate highway;

(B) A full control access highway;

(C) Any state highway where the area adjacent to the highway is a designated scenic area under ORS 377.505 to 377.540; or

(D) Any state highway designated as a scenic byway, unless the sign was legally in place before the byway designation.

(b) Size. The maximum allowable size for a bench sign is 16 square feet and the sign shall not exceed two feet in height or eight feet in length excluding supports.

(c) Height. The maximum allowable height is four feet including supports.

(d) Special Requirements:

(A) Bench signs may only be located in a commercial or industrial zone or, if located in unzoned city street right of way, only where such right of way is adjacent to a commercial or industrial zone;

(B) Bench signs may only be located inside incorporated city limits or within an urban growth boundary;

(C) Bench signs may only be located at a bus or transit stop on an official city or urban transit system route. The applicant must provide official documentation, such as a route map produced by the transit system, showing that the site meets this requirement;

(D) Bench signs shall not be located on state highway right of way.

(f) These rules do not apply to any bench sign for which a preexisting outdoor advertising sign permit has already been issued under ORS 377.725.

(2) All signs subject to these regulations are also subject to the provisions of ORS 377.700 to 377.840 and 377.992 and to all applicable federal laws, regulations and agreements entered into by the Transportation Commission and the Federal Highway Administration.

(3) All signs erected under these regulations are also subject to any city or county ordinance or regulation.

(4) All bench signs granted permits under these rules are subject to removal in accordance with ORS 377.775.

Stat. Auth.: ORS 184.616, 184.619, 377.753

Stats. Implemented: ORS 377.753

Hist.: 1 OTC 17-1979(Temp), f. & ef. 7-19-79; 1 OTC 26-1979, f. & ef. 10-30-79; HWY 5-1993(Temp), f. & cert. ef. 7-23-93; HWY 6-1993, f. & cert. ef. 10-21-93; HWD 1-2009, f. & cert. ef. 2-20-09; HWD 6-2012, f. & cert. ef. 3-26-12

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Portable Signs on Right of Way**734-060-0060****Portable Signs and Repeated Violations of ORS 377.650**

Any sign as defined by ORS 377.710, which is portable in nature and which has been deposited, left or displayed on a state highway in violation of 377.650 may be removed and disposed of in the following manner:

(1) Five days after written notice of the violation of ORS 377.650 is mailed or 24 hours after notice is delivered in person to the person owning or controlling the portable sign, the District Manager (DM) or Assistant District Manager (Asst. DM) may have the sign removed and may charge the owner for the cost of removal and storage. The sign shall be stored for 30 days and if the sign is not claimed within 30 days, it may be sold, destroyed or otherwise disposed of.

(2) If the portable sign is determined by the DM or Asst. DM to create a traffic hazard, (e.g., signs on the paved portion of a highway or gravel shoulder, or signs placed upon state highway signs or appurtenances), the five day advance written notice need not be made but notice is to be made within 24 hours after removal.

(3) If the owner of the portable sign or person in control of the sign is not readily identified, by the sign itself or by contacting adjacent property owners, the sign may be removed immediately without notice. However, notice should be made upon subsequent identification of the sign owner.

Stat. Auth.: ORS 184 & ORS 377

Stats. Implemented: ORS 377.650

Hist.: 2HD 4-1985, f. & ef. 11-22-85

734-060-0065**Notice to a Portable Sign Owner**

Notice to a portable sign owner shall include at least the following:

- (1) Statement that the sign is in violation of ORS 377.650.
- (2) The approximate location of the sign and a description of the sign.
- (3) Date the sign will be removed, or date on which the sign was removed.
- (4) Statement that the removal and storage costs are the responsibility of the owner.
- (5) Statement that sign shall be disposed of after 30 days of storage.
- (6) The cost of removal and storage.
- (7) A location of where the sign will be stored, or a person to contact concerning the storage.
- (8) A statement that the owner may remove the sign at the owner's expense prior to date of removal by the Department.
- (9) A statement that further violation will result in immediate removal without prior notification.

Stat. Auth.: ORS 184 & ORS 377

Stats. Implemented: ORS 377.650

Hist.: 2HD 4-1985, f. & ef. 11-22-85

734-060-0070**Previous Notice**

If a previous notice has been given that a portable sign or other personal property violates ORS 377.650, and that sign, (a change of legend or message does not constitute a different sign), or property is again placed on a state highway, such items may be removed without further notice and stored for 30 days before further disposal. In such event notice shall be given subsequent to removal and the owner shall be given an opportunity for a hearing before the DM or Asst. DM to contest the violation and removal. The request for a hearing must be made within three working days after removal and the hearing must be held within five working days after such removal. The scope of this hearing shall be limited to whether proper prior notice was given, whether there was a subsequent violation and whether the sign or property was placed on a state highway. A written decision shall be made concerning the violation and removal procedure.

Stat. Auth.: ORS 184 & ORS 377

Stats. Implemented: ORS 377.650

Hist.: 2HD 4-1985, f. & ef. 11-22-85

734-060-0075**Removal Provisions**

http://arcweb.sos.state.or.us/pages/rules/oars_700/oar_734/734_060.html

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Signs subject to OAR 734-027-0005 through 734-027-0050 are subject to the removal provisions of those rules and ORS 377.775.

Stat. Auth.: ORS 184 & ORS 377
 Stats. Implemented: ORS 377.650
 Hist.: 2HD 4-1985, f. & ef. 11-22-85

Exempt Sign Rules

734-060-0105

Signs of a Governmental Unit

(1) In order to qualify for a permit exemption under ORS 377.735(1)(a) as a sign of a governmental unit the following criteria must be satisfied:

- (a) The sign must be within the territorial or zoning jurisdiction of the governmental unit;
 - (b) The governmental unit must have the authority to declare, expound, administer, or apply the law within the area;
 - (c) The governmental unit may only erect the sign, or allow it to be erected, for the purpose of carrying out an official duty or responsibility directed or authorized by law.
- (2) Location. Signs permitted by this rule are prohibited on state highway right of way.
- (3) Size. Maximum area allowed is 200 square feet; maximum height or length allowed is 20 feet.
- (4) Number. A governmental unit may have two such permit exemptions. If the limitation on number of signs will cause undue hardship, a waiver for additional signing may be granted by the Director, or authorized representative, upon application by the sign owner.
- (5) The entire message must be contained on one sign. Fragmentation of messages on separate sign panels is prohibited.
- (6) Signs erected under this rule are subject to the provisions of ORS 377.720 and to applicable federal requirements. Nothing in this rule is intended to permit a sign that is otherwise prohibited by a local government.
- (7) No person may receive compensation for displaying the sign.
- (8) This rule is not intended to regulate official traffic control signs or devices.
- (9) To apply for the permit exemption an official of the governmental unit must submit a completed certification form, and an image of the proposed sign showing dimensions and copy, to the Outdoor Advertising Sign Program office.

Stat. Auth.: ORS 184.616, 184.619 & 377.735
 Stats. Implemented: ORS 377.735
 Hist.: HWY 1-1989, f. & cert. ef. 5-2-89; TO 7-2001, f. & cert. ef. 12-13-01; HWD 1-2009, f. & cert. ef. 2-20-09

734-060-0175

Temporary Signs

- (1) This rule is enacted pursuant to ORS 377.735 regarding the permit exemption for temporary signs and in furtherance of the Oregon Motorist Information Act (OMIA, 377.700 through 377.840 and 377.992).
- (2) Location generally. A temporary sign may be erected outside of state highway right of way, within view of a state highway, subject to the requirements of the local jurisdiction and the OMIA. A sign that complies with all the provisions of ORS 377.735(1)(b) may be erected without prior approval of the Department. A sign that requires a variance to comply must obtain that variance before erecting the sign. The Department may, at its discretion, retroactively grant a variance.
- (3) The entire message must be contained on one sign. Fragmentation of messages on separate sign panels is prohibited.
- (4) Changes in copy or location. For the sake of the time limits described in ORS 377.735(1)(b), the following will be considered one sign:
- (a) The same sign structure, regardless of copy, moved less than 600 feet from a former site; or
 - (b) A different sign structure, regardless of copy, in approximately the same location as another sign that was removed.
- (5) Variance Procedure.

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- (a) A variance request must be in writing on a form provided by the Department. The request must be sent to the Outdoor Advertising Sign Program. There is no fee for a variance.
 - (b) A variance request must describe the specific location including:
 - (A) Name or number of highway;
 - (B) Side of highway; and
 - (C) Approximate milepoint, distance from a known highway feature (e.g. an intersection), or physical address.
 - (c) A variance request must describe the reason that constitutes good cause to grant the variance. If a reason is the amount of copy itself, requester must include the proposed copy. The Department may consider the amount, not the substance, of the copy.
 - (d) The request must include the name and mailing address of the requester. If the requester wants the Department to be able to make contact in any other way, such as to obtain supplemental information to process the request, requester may also include that contact information. The requester will be considered a sign owner for the sake of violation of sign laws.
 - (e) The request must include the date the sign will be posted and the date it will be removed so as to comply with the time limits to qualify for the exemption.
 - (f) Requester must certify that he or she:
 - (A) Has permission from the person in control of the property to post the sign;
 - (B) Will comply with all requirements of the local jurisdiction;
 - (C) Will not pay or receive any form of compensation for posting the sign; and
 - (D) Will comply with all requirements of the OMIA.
 - (g) The Department must grant or deny the request within 14 days after the Outdoor Advertising Sign Program receives it. The Department may deny applicant's variance request due to lack of required information; the applicant may re-submit the request. If the Department denies a request, fails to make a decision within 14 days, or grants and later revokes a variance, the requester may request a contested case hearing. Failure of the Department to meet the time limits required by this rule does not require that the variance be granted.
 - (h) If the Department determines a requester provided false information, including a false certification under (3)(f), it may deny the request and revoke any variance already granted to that person or the organization the applicant represents.
 - (i) Variances for both size and time will not be granted to the same sign or location. The Department will not grant more than 10 variances to one requester or organization for the same period of time.
- (6) Specific Variance Criteria.
- (a) Variance for size. The Department may grant a variance for size up to 32 square feet per side of a back-to-back sign. Good cause to grant a size variance may include, but is not limited to the following:
 - (A) Due to highway speed, width of right of way, topography, or other similar reasons beyond the applicant's control, the sign copy will not be legible to motorists if the sign is 12 square feet or less;
 - (B) Due to the amount of copy on the sign, the copy will not be legible to motorists if the sign is 12 square feet or less; or
 - (C) The sign was manufactured before the 12/13/2001 change in administrative rules regarding exempt signs, and the sign continues to comply with those former rules.
 - (b) Variance for time. The Department may grant a variance for time up to a total of 90 continuous days in a calendar year. The Department may grant the variance for good cause shown. Good cause may include, but is not limited to, a showing that:
 - (A) The applicant is attempting to obtain an outdoor advertising sign permit for the sign but will be unable to complete the application process within 60 days;
 - (B) Due to conditions of the land, weather, or similar reasons beyond requester's control, requester will be unable to remove the sign within 60 days.
- (7) Prohibitions and penalties.
- (a) Other than official traffic control devices, signs are prohibited in state highway right of way. Accessing a sign or sign site by crossing access-controlled right of way is prohibited. Violations of this rule are subject to ORS 377.725(9) and any other removal or penalty provision under law.

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Signs in or overhanging state highway right of way may be removed pursuant to ORS 377.650 and OAR 734-060-0060 to 734-060-0070.

(b) Signs outside of right of way are subject to the removal procedures of ORS 377.775, and the penalty provisions of ORS 377.992 as well as any other penalty provision under law.

(c) If the sign or site has been accessed from access-controlled right of way, or the sign has been placed in or overhanging right of way, the Department may revoke any variance for that sign, by that requester, or by the represented organization. The Department may deny any subsequent variance request for that sign, by that requester, or by that organization at any location. If the Department discovers multiple violations of (a) above, it may file for an injunction under ORS 374.415.

(8) Signs erected under this rule are subject to the provisions of ORS 377.720 and to all applicable state and federal requirements.

Stat. Auth.: ORS 184.616, 184.619 & 377.735

Stats. Implemented: ORS 377.735

Hist.: HWY 1-1989, f. & cert. ef. 5-2-89; TO 7-2001, f. & cert. ef. 12-13-01; HWD 1-2009, f. & cert. ef. 2-20-09; HWD 11-2014, f. & cert. ef. 12-19-14

734-060-0185

Public Convenience and Safety Signs

(1) Location. Public convenience or safety signs are allowed on private property visible to a state highway, under the exemption in ORS 377.735, except as prohibited by these rules. Public convenience or safety signs are prohibited on state highway right of way unless approved in writing by the Deputy Director of the Department of Transportation. Public convenience signs must be within one mile of the convenience covered by the sign.

(2) Size. The maximum permissible size for public convenience or safety signs is six square feet.

(3) Spacing and Form. Minimum spacing between two public convenience or safety signs on the same side of the highway is 100 feet. The entire message must be contained on one sign. Fragmentation of messages on separate sign panels is prohibited.

(4) Qualification. Public safety signs are those necessary for the safety of the public such as, but not limited to, signs with legal notices or warnings, or signs warning of danger to the public. Public convenience signs are those necessary for guiding the public in the use of the state transportation system such as, but not limited to, signs identifying transit stops, freight entrances, train stations, ports, airports, or signs identifying public rest rooms.

(5) Signs erected under this rule are subject to ORS 377.720 and to applicable federal requirements.

(6) Removal. Signs erected under this rule are subject to the removal procedures as provided in ORS 377.775.

(7) No person or organization may receive compensation for the act of displaying a public convenience or safety sign.

(8) This rule is not intended to regulate, prohibit or limit official highway traffic control signs or devices.

Stat. Auth.: ORS 184.616, 184.619 & 377.735

Stats. Implemented: ORS 377.735

Hist.: TO 7-2001, f. & cert. ef. 12-13-01; HWD 1-2009, f. & cert. ef. 2-20-09

734-060-0190

Illuminated, Digital, or LED Signs Other than Outdoor Advertising Signs

(1) By statute, all signs visible to state highways are subject to state sign prohibited sign and safety regulations. No signs visible to a state highway, other than official traffic control signals or devices, may include moving or rotating parts or lights. Signs may not be made to resemble an official traffic signal or device and they may not have lights that project onto the roadway or impede the sight of traveling motorist.

(2) In interpreting ORS 377.715 and 377.720, signs visible to a state highway, other than official traffic control signals or devices, may not:

(a) Be illuminated by flashing lights or a light that varies in intensity;

(b) Have a display surface that creates the appearance of movement;

(c) May not operate at a brightness level of more than 0.3 foot-candles over ambient light, nor intensity greater than the luminance indicated in the table 1, as measured perpendicular to the face of the billboard at the indicated measurement distance for a designated sign dimension: [Table not included. See ED. NOTE.]

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(3) Newly constructed signs visible to a state highway, other than official traffic control signals or devices, must be:

(a) Equipped with a light sensor that automatically adjusts the intensity of the sign illumination according to the amount of ambient light, and;

(b) Designed to freeze the display in one static position, display a full black screen or turn off in the event of a malfunction.

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of table\(s\).](#)]]

Stat. Auth.: ORS 184.616, 184.619, 377.710 & 377.720

Stats. Implemented: ORS 377.720

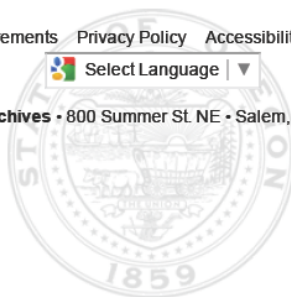
Hist.: HWD 11-2014, f. & cert. ef. 12-19-14

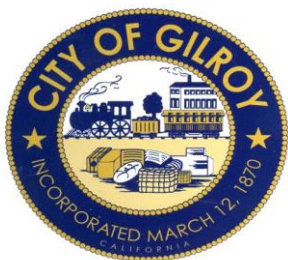
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City of Gilroy

STAFF REPORT

Agenda Item Title: Introduce Draft Policy Recommendations to Regulate Electronic Billboards in the City of Gilroy

Meeting Date: March 15, 2021

From: Jimmy Forbis, City Administrator

Department: Community Development Department

Submitted By: Karen Garner

Prepared By: Karen Garner
Cindy McCormick



☐ Fiscal Stability



☐ Downtown Revitalization



☒ Economic Development

Strategic Plan Goals



☐ Neighborhood Services



☐ Enhanced Public Safety



☐ Workforce Stability



☐ Public Engagement

RECOMMENDATION

Review recommendations and provide staff with direction regarding allowance and regulation of Electronic Billboards in the City of Gilroy.

EXECUTIVE SUMMARY

Although consideration of allowing electronic billboards in the City was prompted by a formal application, staff recommends a more holistic view given the significance of such a change in policy direction. Therefore, the policy recommendations prepared by staff are based on feedback received from the Council in September and best practices from other cities, rather than the applicant's specific proposal. If the Council wants to move forward with allowing electronic billboard(s) in the City, the recommended policies could

inform a future amendment to the City's Sign Ordinance. Once the Council has weighed in on the requested policy direction, staff will proceed with drafting the necessary zoning amendment(s) and scheduling the corresponding public hearings with the Planning Commission and the City Council.

Following formal adoption of a zoning amendment, staff could then proceed with processing any application that complies with the standards set forth in the new Ordinance. Once Council identifies the general thresholds for allowing electronic billboard signs in the City, the current applicant will have a better understanding of Council expectations, and can then modify their proposal, if necessary.

Some of the major policy considerations before the Council include whether such signage would be allowed off-site and under what circumstances, how many electronic billboard signs should be allowed in the City and where, and the maximum height and sign area that would be permitted. The Council will also need to consider that most of the advertisements on the electronic billboard would likely be for businesses that are not actually located in Gilroy. With some exceptions that could be memorialized in an operating agreement, content control will largely be out of the Council's hands since the sign would be owned and operated by a third party.

BACKGROUND

On September 14, 2020, the City Council discussed the potential for allowing electronic billboard sign(s) in Gilroy. The Council was generally receptive to this possibility; but had concerns about the total number allowed in the City, the height of the sign, and the location(s) where they would be permitted. The Council also wanted to ensure that such signage, if allowed, would benefit City businesses, particularly regional-serving and high revenue generating businesses, such as auto dealerships and/or regional shopping centers including the Gilroy Outlets. The Council had several questions that are addressed in the discussion below, including the potential costs and benefits of the sign.

It was also requested that the sign company be invited to a Council meeting for further discussion of Council's goals, concerns, and questions. Outfront Media will be available during the virtual meeting to answer any questions the City Council may have. Outfront Media leases out advertising space on electronic billboards such as the one proposed by the applicant.

Existing City Code: The Gilroy Sign Ordinance does not currently allow off-site advertising signs (other than real-estate signs) and has general restrictions for freeway-oriented signs and automobile dealership signs (e.g., height and size limits). The Sign Ordinance also prohibits signs that utilize scrolling or moving text or images (i.e., electronic billboards). Allowance of such signs would require an amendment to City Code Sections 30.37.30 (Prohibited Signs), 30.37.50 (Commercial and Industrial districts), and 30.37.51 (Freeway Oriented Signs).

General Plan: The Gilroy 2040 General Plan was adopted in November 2020 and has the following policies related to billboards and freeway signage. While the policies do not directly address digital media, the policies do encourage signage for freeway commercial uses (such as auto dealerships), so long as such signage has minimal negative impact on the visual environment. Staff will ensure that a future zoning amendment would have sufficient design standards to minimize such impacts.

LU 4.11 Freeway Signage - Work with Caltrans to explore ways to increase directional signage to freeway commercial uses at U.S. 101 interchanges.

LU 8.7 Signs and Billboards - Require the location of signs and billboards to respect the surrounding context to minimize any negative impact on the visual environment. Enforce sign regulations and design standards to reduce sign clutter and illegal signage along corridors.

DISCUSSION

Although this policy discussion was initially prompted by an active application before the City, staff recommends taking a holistic view of allowing electronic billboard(s) in the City. The application, as currently proposed, does not conform to current City sign requirements and therefore, could not be approved without modifications to several sections of the zoning code. The policy recommendations prepared by staff are based on feedback received from the Council in September and best practices in other cities, rather than the applicant's specific proposal. Furthermore, based on questions and discussion at the last Council meeting, staff reached out to the applicant with a list of specific questions. The questions and answers have been provided as **Attachment 1**. Some questions were more general in nature, whereas others were more specific to the applicant's proposal. The provided answers should facilitate City Council's understanding of how an electronic billboard might operate in the City of Gilroy.

Benefit to Auto Dealerships: An important consideration identified by the Council in September, was the potential costs and benefits to the City's auto dealerships. While the intent of allowing off-site signage in the City would be to primarily benefit the auto dealerships, the attached questionnaire estimates that approximately six of eight advertisement spots would be sold to non-auto dealers. In terms of cost, an auto dealership could be expected to pay approximately \$2,500 for a four (4) week-long / 8-second advertising spot, while national advertisers would likely pay between \$3,000 and \$3,500 per four (4) weeks. The attached letter from the applicant includes signatures from four (4) dealerships expressing their support for the electronic billboard and their intention to advertise on the sign (**Attachment 2**).

Policy Recommendations: While staff would continue to research best practices in terms of illumination (e.g., light sensing/adjustment device, maximum foot candles) and message standards (e.g., minimum display time), staff has made some specific

recommendations for Council consideration regarding quantity, location, distance between signs, sign area and sign height, as illustrated in the following table. Furthermore, two of the major policy considerations before the Council include whether such signage should be allowed off-site and under what circumstances and how many electronic billboard signs should be allowed in the City. The Council will also need to consider that most of the advertisements on the electronic billboard would likely be for businesses that are not actually located in Gilroy. With some exceptions that could be memorialized in an operating agreement, content control will largely be out of the Council's hands since the sign would be owned and operated by a third party.

Following is a table summarizing policy considerations, followed by additional information discussing the rationale behind the recommendations.

City Council Decision Points	
ON Site Electronic Billboards	
<u>Recommended Policy:</u> <i>Allow on-site on private property</i>	<u>Alternative Policy:</u> <i>Prohibit all Electronic Billboards on-site and/or off-site (Status Quo)</i>
OFF Site Electronic Billboards	
<u>Recommended Policy:</u> <i>Allow off-site on both private and public property</i>	<u>Alternative Policies:</u> • <i>Only allow off-site on public property</i> • <i>Prohibit off-site signs</i>
City Agreement Requirements	
<u>Recommended Policy:</u> <i>Prior to scheduling an Electronic Billboard Sign application for review by the Planning Commission, the owner/operator shall enter into a development agreement, operating agreement, lease agreement, contract, license or other accord in form acceptable to the City Attorney ("City Agreement") with the City, setting forth any required fees, terms, off-site advertisement criteria, content control standards, community service message provisions, community outreach requirements, maintenance standards, conditions that trigger sign removal, and other covenants or restrictions needed to offset or mitigate the impacts of a proposed Electronic Billboard Sign.</i>	
<u>Alternative Policy:</u> No specific alternative is recommended.	
Permit Requirements	

Recommended Policy:

- ☒ *Conditional Use Permit & CEQA*
- ☒ *Architectural & Site Review*
- ☒ *Caltrans Off-Site Advertising Permit*

Alternative Policy: No specific alternative is recommended.

Conformance Hearings**Recommended Policy:**

Require minimum of three (3) compliance hearings before the City Planning Commission and/or City Council, as follows:

- 1. Six (6) months from the date of final building permit issuance,*
- 2. Six (6) months from the date of the first compliance hearing, and*
- 3. Twelve (12) months from the date of the second compliance hearing.*

Following the three initial compliance hearings, the owner, operator, and/or property lease holder shall be subject to periodic compliance hearings before the City upon request, due to non-compliance.

Alternative Policy:

Require only two (2) compliance hearings; one at six (6) months from final building permit issuance, and another one year from the date of the first compliance hearing.

City Branding**Recommended Policy:**

Unless otherwise approved by the City Council, the Electronic Billboard sign shall include the words "City of Gilroy" and/or the City insignia permanently affixed somewhere on the sign structure.

Alternative Policy:

Do not require such branding.

Maximum number of Electronic Billboards allowed in City**Recommended Policy:**

A maximum of two (2) Electronic Billboard Signs may be allowed in the City of Gilroy.

Alternative Policy:

Allow up to three (3) electronic billboards (e.g., on Highway 152, east of Highway 101)

Permitted Locations

Recommended Policy:

The sign shall be located on property designated as General Services Commercial or City Gateway District.

Alternative Policy: No specific alternative is recommended.

Maximum Distance to Freeway**Recommended Policy:**

The electronic billboard shall be located within 660 feet of Highway 101.

Alternative Policy: No specific alternative is recommended.

Minimum Distance between Signs**Recommended Policy:**

No Electronic Billboard sign shall be placed within 1.5 miles from another Electronic Billboard sign.

Alternative Policy:

If three (3) signs are permitted in Gilroy, the minimum recommended distance is 1,000 feet.

Angle to Freeway**Recommended Policy:**

To the extent possible, the Electronic Billboard sign shall be located and oriented in a manner that avoids or minimizes the direct exposure of the display to view from adjacent or nearby residential or hotel uses.

Alternative Policy: No specific alternative is recommended.

Maximum Height**Recommended Policy:**

The overall height of the sign shall not exceed seventy-five (75) feet.

Alternative Policy:

Allow a maximum height of eighty (80) feet

Maximum Sign Area**Recommended Policy:**

The maximum sign area of the digital display shall not exceed 672 square feet.

Alternative Policy: No specific alternative is recommended.

Public Service / City Announcements

Recommended Policy: *The City of Gilroy shall be guaranteed a minimum of one (1) advertising spot per week for City events, public information, emergency alerts, and other similar public service announcements.*

Alternative Policy: No specific alternative is recommended.

Policy Discussion: The following discussion is intended to provide the Council with staff's rationale for its recommendations, while also encouraging Council discussion of alternative standards.

Off-Site versus On-site Signage. One of the major policy considerations before the Council is whether to require that electronic billboard signs be located on-site (e.g., auto mall property) or allow them off-site (e.g., a property adjacent to the auto mall). If off-site, the Council would need to decide whether to allow off-site electronic billboard on private property, or to limit off-site signs to City owned property. The primary benefit of allowing off-site signs on private property is the potential for locating the sign where it has the most visibility and where a driver can safely exit the freeway to access the advertised businesses. The primary benefit of limiting off-site signage to public property is more control by the City, and the ability to get proposals (via a competitive RFP) from multiple sign companies who may be more willing to agree to the terms of a development agreement that is in the best interest of Gilroy. For example, the development agreement could disallow advertisements for cannabis, which is currently prohibited in the City even though it is legal in the state.

City Agreement: In addition to the typical conditional use permit and design review permits that the City utilizes to minimize potential impacts, staff is recommending that the owner/operator of an electronic billboard sign be required to enter into an agreement with the City (e.g., Development Agreement or Operating Agreement) setting forth any required fees, terms, standards, provisions, etcetera needed to offset or mitigate the impacts of an electronic billboard sign. The Agreement could also include language requiring removal or replacement of other billboards owned by the owner/operator, if applicable.

The type of Agreement will depend on whether the sign is on private property or public property and whether there is a relocation requirement.

For example, in the City of Rocklin, the owner/operator of an electronic billboard on private property has an Operating Agreement with the City and pays the City a monthly fee of \$2,000 in year 1-6, with increases of 2% for every year thereafter.

The City of Rohnert Park has a Master Lease Agreement with a company who would install, operate, and maintain a new electronic billboard on public property. The company will pay Rohnert Park a one-time fee of \$50,000 in addition to permit fees. The City also receives a guaranteed monthly rent of \$15,000 in years 1 to 5, and variations on the lease rates for the remaining years of the 20-year term. Rohnert Park is also

guaranteed exclusive use of 10% of the total advertising time on the electronic billboard sign.

Likewise, in Milpitas where the electronic billboard will be on public property, the City will collect an initial fee and payments will be made to the City on either a quarterly or annual basis. The City of Milpitas will also ask for a certain number of City postings per day. The fees and details of the Agreement have not been worked out yet.

Compliance Hearings: Staff is recommending initial compliance hearings before the City to review the owner/operator's compliance with the City Agreement (e.g., content standards, message frequency, etc.). The Ordinance and City Agreement would also be structured to allow the City to request subsequent compliance hearings, as needed, if the City receives a verifiable complaint of non-compliance with the City Agreement and/or City standards.

Maximum Number of Electronic Billboards: Staff recommends a maximum two (2) electronic billboard signs in the City of Gilroy since these types of signs are generally located adjacent to the freeway and there is a limited distance between the major gateways to the city. Alternatively, the Council could authorize up to three (3) signs, given that many drivers will be coming into Gilroy from Highway 152, east of 101.

Sign Location: Staff recommends that electronic billboards be located within 660 feet of Highway 101, since this distance will require an Outdoor Advertising Permit from Caltrans. Furthermore, if off-site signage is allowed on private property, staff recommends that these signs be limited to properties designated as General Services Commercial or City Gateway District. These two designations are primarily comprised of regional-serving commercial uses and are also adjacent to the freeway.

Distance between Signs: Staff recommends a minimum distance of 1.5 miles between signs, as this is the approximate distance between the Leavesley Road exit and the 10th Street exit off Highway 101. This is also a reasonable distance between signs, if only two (2) signs are permitted in the City. However, if three (3) electronic billboards were permitted in the City, a shorter distance is recommended. For example, if a third sign were desired in the vicinity of Highway 152 and Highway 101, the minimum distance would need to be reduced to something closer to 1,000 feet.

Sign Height and Sign Area: Another major policy decision before the Council is the allowable sign height and sign area. Staff¹ is recommending a maximum height of 75-feet above freeway grade based on the current allowance for the Gilroy Crossings sign. Staff is also recommending a maximum digital sign area of 672 square feet per side, based on the industry billboard standard of 48-feet wide by 14-feet tall. This 672 square foot allowance per side is consistent with other city codes, including Concord, Rocklin, and South San Francisco.

¹ The applicant requested zoning amendments that would allow a maximum sign height of 80-feet above freeway grade and a maximum sign area of 1,200 square feet.

FISCAL IMPACT/FUNDING SOURCE

There are no fiscal impacts associated with conducting this policy discussion.

NEXT STEPS

Following Council direction on these policy recommendations, staff will draft a zoning amendment and schedule the item for public hearings with the Planning Commission (advisory) and City Council. The zoning amendment will also require environmental review (paid for by the applicant) prior to approval, given the potential significant impacts of allowing such signage. If the applicant chooses to move forward with an application that conforms to the new ordinance, staff will also prepare a draft City Agreement for Council consideration.

Attachments:

1. Outfront Media answers to questionnaire
2. Autodealer's letter of support

Emsee Properties, Inc.

6490 Automall Parkway, Gilroy, CA 95020
P.O. Box 638 • Gilroy, CA 95021-0638 • (408) 847-2233 • FAX (408) 847-0292

02/22/2021

Dear City of Gilroy Planning Department:

The auto dealers whose signatures appear below, have verbally pledged their support and intention to advertise on a 3rd party digital freeway sign to be constructed on the NE corner of the Automall Parkway property owned by Emsee Properties, Inc. in Gilroy. The advertising portion of the sign would be 48' wide by 14' high, with an overall sign height of approximately 65'.

Sincerely,



Mike Conrotto, Owner & President
Emsee Properties, Inc.
conrotoemike@gmail.com
(408) 691-7775

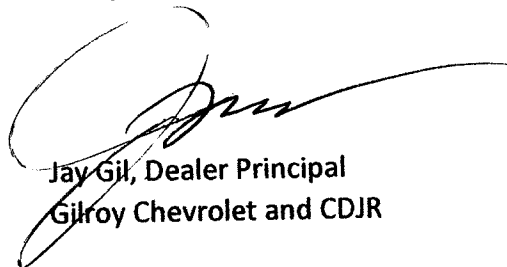
Michael Winding, Dealer Principal
Gilroy Buick, GMC and Hyundai



Brian Verdin, General Manager
Nissan of Gilroy



Frank Bolea, Dealer Principal
Gilroy Toyota



Jay Gil, Dealer Principal
Gilroy Chevrolet and CDJR

Cindy McCormick

From: John Miller <miller@johnmillerpr.com>
Sent: Tuesday, March 30, 2021 11:21 AM
To: Mayor Marie Blankley; Council Member Fred Tovar; Council Member Rebeca Armendariz; Council Member Dion Bracco; Council Member Zachary Hilton; Council Member Peter Leroe-Munoz; Council Member Carol Marques
Cc: Jimmy Forbis; Karen Garner; Cindy McCormick
Subject: EXTERNAL - Digital Billboards in Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Mayor Marie Blankley
 Mayor Pro Tempore Fred Tovar
 Council Member Rebeca Armendariz
 Council Member Dion Bracco
 Council Member Zach Hilton
 Council Member Peter Leroe-Munoz
 Council Member Carol Marques

cc: Jimmy Forbis, City Administrator
 Karen Garner & Cindy McCormick, Community Development Department

Dear Mayor Blankley and Council Members,

My name is John Miller. I am a member of the Steering Committee of No Digital Billboards in San Jose, a grass roots organization opposing the erection of digital billboards in that city. I'm emailing you as an individual after being informed that Gilroy is considering negating its prohibition on off-premise advertising to allow for the erection of digital billboards.

While I fully understand the decision to allow digital billboards in Gilroy should be decided by the proper authorities in Gilroy, I believe you will benefit from the information No Digital Billboards in San Jose has made public after an exhaustive review of the proposal to bring digital billboards to San Jose. Accordingly, with your approval, I will be happy to forward documents relevant to this issue. In the meantime, it is important to understand that the erection of digitals never comes from citizens but always from the billboard lobby because digital billboards return a much greater profit to billboard companies than do conventional paper billboards. This is all about money. Billboard company money.

Here are significant reasons to oppose the erection of digital billboards in Gilroy.

1. Digital billboards are much more intrusive and unavoidable than conventional billboards. They can't be ignored and even a few will change the aesthetics of the community.
2. Digital billboards increase profits for billboard companies but on private property they produce no revenue for city government. The city would be lucky if annual permit fees covered the cost of administering digital billboards.
3. Digital billboards primarily help big national companies like CitiBank and Verizon not local businesses who have to compete with these national advertisers which are preferred customers of the billboard companies.
4. But even if local auto dealers obtained advertising on digital billboards how is that a benefit to the people of Gilroy,

Cindy McCormick

From: John Miller <miller@johnmillerpr.com>
Sent: Friday, April 2, 2021 8:04 AM
To: Mayor Marie Blankley; Council Member Fred Tovar; Council Member Rebeca Armendariz; Council Member Dion Bracco; Council Member Zachary Hilton; Council Member Peter Leroe-Munoz; Council Member Carol Marques
Cc: Jimmy Forbis; Karen Garner; Cindy McCormick
Subject: EXTERNAL - Digital Billboards in Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Mayor Marie Blankley
 Mayor Pro Tempore Fred Tovar
 Council Member Rebeca Armendariz
 Council Member Dion Bracco
 Council Member Zach Hilton
 Council Member Peter Leroe-Munoz
 Council Member Carol Marques

cc: Jimmy Forbis, City Administrator
 Karen Garner & Cindy McCormick, Community Development Department

Dear Mayor Blankley and Council Members,

The San Jose Planning Department has just posted a survey of over 2,000 people regarding their position on digital billboards. You can find the results here <https://www.sanjoseca.gov/home/showpublisheddocument?id=70836>

I copied below some of the most impressive findings.

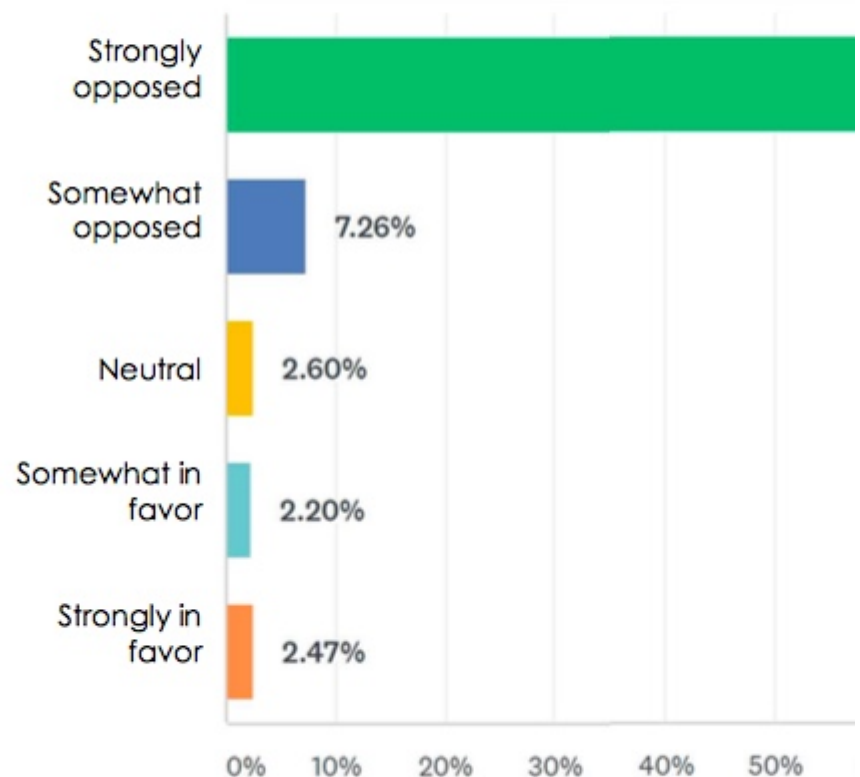
Thank you for your attention.

Sincerely,

John Miller
 928 Oak Ridge Rd.
 Los Gatos, CA 95033
 408 354-2400

City of San José Survey: Dig

Item 3: In general, how do you feel about allowing more housing to be built along freeways in San José?

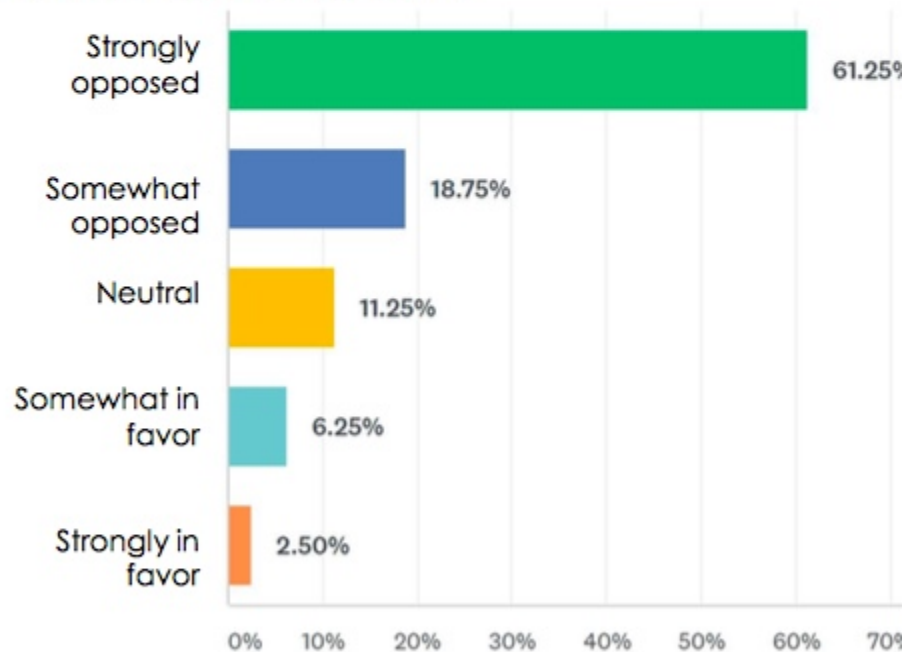


Responses: 2230

Skipped: 4

City of San José Survey: Dig

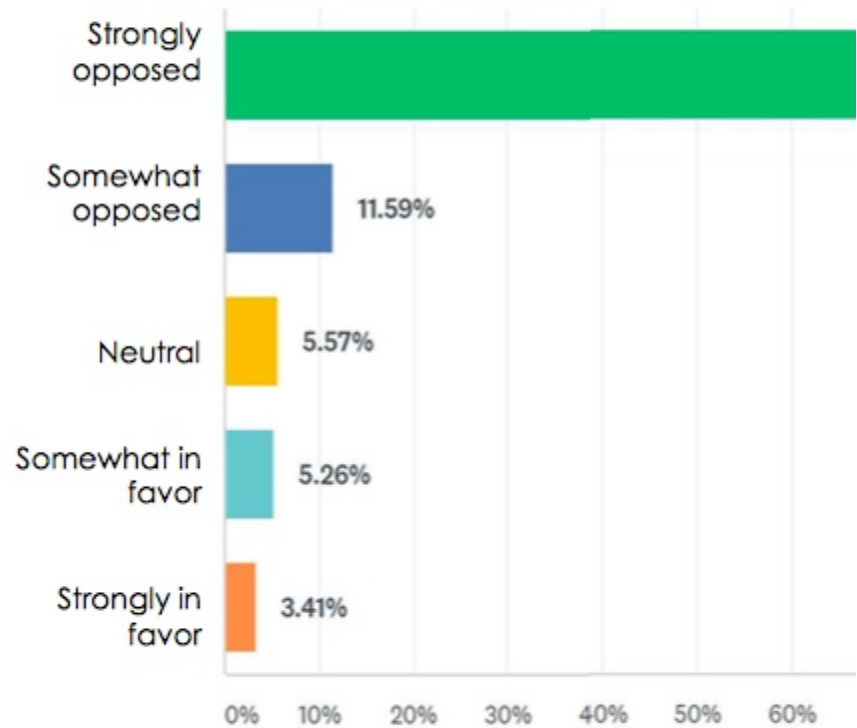
Item 11: In addition to free-standing digital billboard, the City is considering allowing both digital and static advertisements on buildings within the Downtown. How do you feel about allowing digital and static advertisements on buildings in Downtown San José?



Responses: 2203
Skipped: 31

City of San José Survey: Dig

Item 4: How do you feel about allowing new digital freeways in San José in exchange for removing old freeways in the city?



Responses: 2226

Skipped: 8



who as a result, will experience a degradation of the city's architectural integrity, historic character and natural environment?

5. The light from digital billboards harms wildlife, keeps light-sensitive people from driving and causes traffic accidents for those who do. They brighten the night sky and interfere with the work of Lick Observatory on Mt. Hamilton.

5. Digital billboards use tremendous amounts of energy, cause greenhouse gases and generate e waste.

6. Digital billboards lower property values and invite litter and graffiti.

7. Digital billboards are a parasite on the roads and highways taxpayers pay for and they don't. Unlike other highway users, billboard companies do not pay a user fee to maintain the public right of way without which billboards have no value. On the roads the public pays for, will the Gilroy City Council turn its constituents into a captive audience forced to see advertisements they can't ignore? It's like forcing them to pay for only one cable channel that shows only commercials but no programs.

8. Once billboards are erected they are almost impossible to take down thanks to a state law requiring their removal be "compensated" by cash payments to the billboard company for future lost earnings. Put up digital billboards today and they will remain in place for decades...City leaders should think about that, for if they allow digitals, it will constitute their legacy.

9. Why should the city of Gilroy cater to the desire of the billboard industry to erect profitable digital billboards while externalizing all costs to the taxpayer?

10. Think you can allow only a few digital billboards? Once in the door, billboard companies will litigate against restrictions as a cost of doing business.

Los Angeles is a good example. Here is a link <https://www.latimes.com/opinion/editorials/la-ed-billboard-ordinance-20170605-story.html>

In San Jose, the erection of illegal billboards has already tied up the city in costly court battles that a billboard companies knows it can't win but pursues to generate revenue during protracted litigation. Here's a link

<https://sanjosespotlight.com/battle-over-billboards-san-jose-faces-lawsuit-pushback-on-proposed-changes/>

And in San Mateo, the city attorney predicts billboard-sponsored litigation may be in the cards if the city pursues its hastily concocted plan to allow digitals only on public property. https://www.smdailyjournal.com/news/local/san-mateo-considers-ads-on-city-buildings-and-billboards/article_bb9b96c4-2aef-11eb-a5f1-476100872817.html

In my view, there are no compelling reasons for ending the current restrictions on billboards in Gilroy. Doing so does not provide substantial benefits to the citizens and taxpayers of your community. Clearly, this proposal is a violation of best practices in city governance, urban planning and responsiveness to preservation and environmental values overwhelmingly subscribed to by the majority of the public. The only beneficiaries of this proposal will be the billboard companies themselves.

So the question is why even consider spending staff time to prepare for the erection of digital billboards without alerting the community in advance and seeking the voters' opinion? In San Jose, voters were most upset that city council members and city staff met with billboard lobbyists over 50 times and as a result spent hundreds of thousands of taxpayer dollars greasing the skids to allow digital billboards in San Jose before informing the public. Better to actively seek constituent input before making such a commitment.

Need less to say, if I can provide you with the information I mentioned previously, or answer any questions, do not hesitate to contact me.

Thank you for your attention.

Sincerely,

John Miller
928 Oak Ridge Rd.
Los Gatos, CA 95033
408 354-2400

Cindy McCormick

From: Cindy McCormick
Sent: Friday, August 12, 2022 2:22 PM
To: Dan Graeber
Subject: No on the electronic billboards

Good afternoon Dan Graeber,

Thank you for your comment. I will add it to the public record and include it in the packet going to the Planning Commission. The hearing date is not yet set, but would likely occur on either September 15th or October 6th. A separate notice will be sent prior to the public hearing.

Respectfully,

CINDY MCCORMICK

CUSTOMER SERVICE MANAGER

Direct 408.846.0253 | Cindy.McCormick@cityofgilroy.org Main 408.846.0440 | www.cityofgilroy.org/planning
 7351 Rosanna Street | Gilroy | CA 95020

-----Original Message-----

From: Dan Graeber <d_graeber@hotmail.com>
 Sent: Friday, August 12, 2022 1:02 PM
 To: Planning Division (Public) <planningdivision@cityofgilroy.org>
 Subject: EXTERNAL - No on the electronic billboards

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Please do not vote for the electronic bill board they will be a major eye sore sucking up valuable electricity . Our city is not in Las Vegas and does not need the bright lights .

Plus with the bright lights it will be tough for the homeless to sleep at night .

Sent from my iPhone

Cindy McCormick

From: Cindy McCormick
Sent: Monday, August 15, 2022 8:28 AM
To: Michelle Maquinalez
Subject: - Billboard

Good Morning Michelle -

Thank you for your comments. I will add it to the public record and include it in the packet going to the Planning Commission. The hearing date is not yet set, but would likely occur on either September 15th or October 6th. A separate notice will be sent prior to the public hearing.

Respectfully,

CINDY MCCORMICK

CUSTOMER SERVICE MANAGER

Direct 408.846.0253 | Cindy.McCormick@cityofgilroy.org Main 408.846.0440 | www.cityofgilroy.org/planning
 7351 Rosanna Street | Gilroy | CA 95020

-----Original Message-----

From: Michelle Maquinalez <michellemaq@mac.com>
 Sent: Sunday, August 14, 2022 9:39 AM
 To: Planning Division (Public) <planningdivision@cityofgilroy.org>
 Subject: EXTERNAL - Billboard

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello I'm writing about the proposed billboards. I don't believe they are worth our hard earned money just like the other Starbucks that is being built. Why not bring in something new/different instead of another Starbucks. Also the curb by the new Starbucks on first street at the station that continues to damage numerous tires and rims because of poor planning/construction needs to be repaired.

Thanks, Michelle

Cindy McCormick

From: Cindy McCormick
Sent: Monday, August 15, 2022 8:33 AM
To: John Miller
Subject: Public Comment on Electronic Billboard Ordinance

Good morning Mr. Miller -

Thank you for your comments. I will add your email to the public record and include it in the packet going to the Planning Commission. The hearing date is not yet set, but would likely occur on either September 15th or October 6th. A separate notice will be sent prior to the public hearing.

Respectfully,

CINDY MCCORMICK
 CUSTOMER SERVICE MANAGER
 Direct 408.846.0253 | Cindy.McCormick@cityofgilroy.org Main 408.846.0440 | www.cityofgilroy.org/planning
 7351 Rosanna Street | Gilroy | CA 95020

-----Original Message-----

From: John Miller <miller@johnmillerpr.com>
 Sent: Sunday, August 14, 2022 11:53 AM
 To: Planning Division (Public) <planningdivision@cityofgilroy.org>
 Subject: EXTERNAL - Public Comment on Electronic Billboard Ordinance

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

To: Ms. Cindy McCormick
 Planning Division
 City of Gilroy
 Submission to Public Comments
 Project Number: Z 18-04, AS 18-09, SP 21-08 Project Title: Electronic Billboard Ordinance and Sign Permit

Dear Ms. McCormick,

I am writing in opposition to the proposal to revoke the ban on off-premise advertising and allow the construction of electronic billboards in Gilroy. This is an incredibly shortsighted and just plain bad idea that the city will end up regretting. Let us review the reasons why:

- There is no public outcry in favor of revoking the existing ban. The only proponents of this scheme are some auto dealers and billboard companies. The only people who will make a sizable amount of money will be the billboard companies. Why is the City Council so intent to look after the interests of billboard companies? Is there nothing else they ought to be doing on behalf of their actual constituents?

- Nothing changes the architectural integrity, historic character and natural environment of a community more than in-your-face off-premise advertising mostly promoting products and services not available at the location of the sign. I would be surprised if even one member of the City Council wants to contend such billboards have no significant aesthetic impact as was advocated by the billboard-friendly consultancy that justified declaring a negative declaration. Just how much did they charge and who paid them?
- Electronic billboards emit light that interferes with wildlife and human sleep patterns as well as triggers individuals with light sensitivity not to mention distracts drivers and contributes to traffic accidents.
- Electronic billboards use a lot of energy (requiring cooling systems during most days), energy that contributes to greenhouse gas emissions and that ought to be used for a more legitimate purpose than subjecting residents to advertising messages.
- Off-premise advertising has no value if it is not visible from the publicly financed right of way whose maintenance is not contributed to by billboard companies in the way of a user fee. Why does the City Council believe it has the right to force tax-paying residents to be a captive audience to unwanted commercial messages for which there is no off switch on streets they paid for? The city may have a legal right to do so but it does not have an ethical or moral right. And would you pay for a cable TV channel that only televised commercials and no programming? Why is the City Council asking their constituents to tolerate the equivalent?
- What's the limiting principle at play here? If x number of off-premise electronic billboards are "good" then would not y number be even better? At what point are there too many in-your-face advertising signs and who determines that using what standard?
- Do note that once the city of San Jose amended its sign ordinance to allow electronic billboards on city property it was only a short time until a major billboard company illegally erected two billboards violating the still existing ban on new billboards on private property. The city spent an undisclosed amount of money over several years defending its ban in court while the signs remained standing and generating revenue. While the court decided in favor of the city, the city attorney's office has yet to tell us how many staff hours were spent defending the ban. Now, Outfront Media is currently suing the city of San Jose for allegedly unfairly granting the right to construct electronic billboards at the San Jose Airport to Clear Channel in violation of city provisions calling for competitive bidding. On top of that, an article in a billboard industry publication predicted that if San Jose persisted in allowing new billboards on city property while banning them on private property the industry would sue the city for restraint of trade and denial of due process. The moral of this story is, don't let even one off-premise billboard company set foot in your city or the city will be spending a lot of costly time in court.

So, proponents of this scheme. Tell us one more time what's in it for Gilroy to allow the first of many off-premise billboards to take root? Money for the city? An improved local economy? Off-premise sign-induced "urban vibrancy"? Please enlighten us.

Some 1,500 communities around the nation including the states of Alaska, Hawaii, Maine and Vermont prohibit new off-premise advertising signs both electronic and conventional. I am happy to report that residents there are not starving on the highways for lack of information on where the nearest restaurant might be nor are the economies of those places harmed by not having the alleged advantages provided by off-premise advertising. Case in point is the San Jose metro area. For 50 years San Jose banned billboards on public property and for 37 years have done so on private property. None the less San Jose is second in the nation in terms of per capita domestic product, achieved without the "benefit" of new billboards. Beautification (not billboards) is good for the local economy.

To sum up, the proposal before you provides no public benefit while resulting in many negative externalities which would be borne by the public. And once an off-premise billboard goes up, it is almost impossible to remove, thanks to your friends in the billboard industry having lobbied the state legislature to require cash compensation be paid for the

removal of an existing billboard. How much compensation? Ask the city of St. Paul, Minnesota whose state law required them to pay \$4 million to remove just one existing digital billboard.

Should you be interested, I would be happy to answer any questions about embarking on this benighted proposal.

Sincerely,

John Miller
Los Gatos

Cindy McCormick

From: Cindy McCormick
Sent: Monday, August 22, 2022 3:29 PM
To: Mark Deger
Subject: RE: EXTERNAL - Electronic Billboard Ordinance Project

Good afternoon Mr. Deger,

Thank you for your comments. I will add them to the public record and include them in the packet going to the Planning Commission and City Council. The hearing date is not yet set, but would likely occur on either September 15th or October 6th. A separate notice will be sent prior to the public hearing. Please accept my apologies for you not being able to locate the appendices. They had been previously uploaded to the website but the links had not been imbedded on the actual page.

Please let me know if you are now able to open them. [Development Activity Projects | Gilroy, CA - Official Website \(cityofgilroy.org\)](https://www.cityofgilroy.org/development-activity-projects)

Respectfully,

CINDY MCCORMICK
 CUSTOMER SERVICE MANAGER
 Direct 408.846.0253 | Cindy.McCormick@cityofgilroy.org
 Main 408.846.0440 | www.cityofgilroy.org/planning
 7351 Rosanna Street | Gilroy | CA 95020



From: Mark Deger [mailto:mdeger@ridefox.com]
Sent: Monday, August 22, 2022 2:03 PM
To: Cindy McCormick <Cindy.McCormick@ci.gilroy.ca.us>
Subject: EXTERNAL - Electronic Billboard Ordinance Project

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Ms. McCormick,

I am writing you to communicate my disdain over the proposal to erect electronic billboards in Gilroy. I've listed a number of my reasons below.

1. I think that the aesthetics would be offensive and make us look like a low-class commercial community. These items are usually dumped on poorer communities who do not have the power or influence to prevent it from happening.
2. The light emitted from the billboards would add to light pollution that is not productive. This harms people with light sensitivity more adversely.
3. They will distract drivers traveling on freeway 101.
4. They would probably interfere with the nocturnal population of beneficial insects and vegetation agriculture.

5. Electronic billboards are expensive so mostly large corporations would afford them, shutting out local businesses.
6. People should be free to move about public spaces without being exposed to advertising.
7. The billboards add to materialism, making people feel unhappy and unsuccessful if they can't afford the items advertised. They exploit and deepen inequality.
8. They promote unsustainable consumption during a period of adverse climate changes.
9. Electronic billboards consume 10 times the energy of a single-family home.
10. Adding an ordinance to allow this project opens the door for more billboards in the future. We have smaller monstrosities along Masten/Fitzgerald/Santa Teresa. We don't need monstrous electronic versions.

I would like to see the content of the appendices that have been omitted from the report used to rubber-stamp this project. I will be deeply disappointed if Gilroy adds these monstrosities to our community. Gilroy has been a pleasant break from the commercialism and materialism of the Bay area.

Respectfully,
Mark Deger

This e-mail message is intended only for individual(s) to whom it is addressed and may contain information that is privileged, confidential, proprietary, or otherwise exempt from disclosure under applicable law. If you believe you have received this message in error, please advise the sender by return e-mail and delete it from your mailbox.

Cindy McCormick

From: Cindy McCormick
Sent: Wednesday, August 24, 2022 3:35 PM
To: John Bauters; Planning Division (Public)
Subject: Attn: Cindy McCormick / RE: Proposed Electronic Billboard

Good afternoon Mr. Bauters

Thank you for your comments. I will share them with the CEQA consultant and also add them to the public record. We have not yet scheduled the public hearing for this item; however a notice will go out when we do schedule the public meeting.

Cindy

From: John Bauters <jbauters@gmail.com>
Sent: Wednesday, August 24, 2022 3:03 PM
To: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Attn: Cindy McCormick / RE: Proposed Electronic Billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear City of Gilroy Planning Commissioners, Councilmembers, and Staff:

Thank you for considering this public comment with respect to the proposed Mitigated Negative Declaration for an electronic billboard along Hwy 101 in Gilroy.

My comments are specific to two sets of findings/conclusions that I do not believe are adequately researched or discussed in the document, and leave significant environmental impacts unmitigated.

(1) The discussion of Biological Resources correctly identifies impacts on birds and other wildlife as an issue to review, but includes an inappropriately abridged scope of review that jeopardizes endangered birds, including migratory species, that live in this area and migrate through this area.

The discussion in Section 2.4 and then again in 2.20 is overly-focused on the construction site -- a small parcel along Hwy 101. The lack of nests by migratory or endangered birds is cited as a reason for lower concern and the proposed mitigation is how to handle construction in the event a nest is discovered. While this is good, it is insufficient. Birds are dramatically impacted by large, elevated LED signs. There are extensive reports and studies on how LED signs confuse migratory birds, disorienting them at night; how they impair their reproductive functions; and how night predators lose the ability to hunt effectively as these billboards make their ability to find food difficult. Bright spaces like this can have impacts for a multiple mile radius from a high-rise sign, which can eliminate spaces where both migratory and non-migratory birds can nest. The white-tailed kite, cited in Section 2.4, may not have a known sighting within a couple miles of the project site, but the addition of such a sign in one of the only zones in the United States where the species is known to exist further harms its population and puts the species at risk. There is no discussion of any of the significant research being conducted into how LED signs impact migration patterns, reproductive patterns, hunting/food sourcing, or nesting. The data points provided in the report fail to address these issues adequately and the scope of review is limited almost exclusively to the parcel itself, which does not adequately address the reality of a larger geographic impact this kind of light has on birds.

(2) Section 2.20 of the report states that there are some impacts on humans but that all of those can or will be mitigated, as discussed throughout the document. There is no discussion about how these types of bright lights impact circadian rhythm (sleep), especially in children. Bright lights can and do impact and are harmful to the development of children. Sleep is one of the most important components of healthy child development, which is necessary for proper brain development, educational attainment, and is also linked to attention/focus, and mood. Bright LED lights on billboards create light pollution much greater than the ambient levels of street lights and other night-time lights which are often much closer to the ground. The UV levels in these lights will create lighter sleep levels, disrupt sleep, and negatively impact human health and growth. There are significant residential communities proximate to the proposed billboard site which will experience the impacts of the proposed billboard sign. The report does not demonstrate adequate study or review of how the location of this sign and the reach of the projected LED lights will change the light pollution baselines in residential areas near the sign, and what that could mean for human health - especially developing children. <https://ncceh.ca/documents/field-inquiry/health-effects-large-led-screens-local-residents>

Finally, a sign like this is not necessary. The City of Gilroy has had a good ordinance that prohibits these types of signs for a long time - and for a good reason. Drivers do not need additional distractions on the roadways. At night, bright lights will only further impair driver abilities on the road, putting all road users at greater risk as a result.

These bright signs are little more than a proverbial "tramp stamp" in the sky - letting people from miles away know that the city is so cheap that it has to resort to bright light commercial ads as it's community identify. Gilroy can and should be a place people are proud to be from - one that doesn't need additional light pollution that will harm children's development or impair our local environmental wildlife resources. I hope that planning commission will give careful consideration to both the *adequacy* of this report as well as the *necessity* of this sign. Bright signs originated years ago to tell motorists where there was safe lodging at night, where there was food or fuel to continue their journey, or where a local medical center was if help was needed. Today, we allow any commercial advertisement to be put up along a roadway. Making them electronic undermines the original purpose behind electronic roadway signs, diminishes the character of our community, and harms our greatest assets: our environment and our children.

Please vote against accepting this proposed Mitigated Negative Declaration.

Thanks for your time and consideration.

Sincerely,

John Bauters

--

The strength of a nation is measured by the least of its people.

Cindy McCormick

From: Cindy McCormick
Sent: Monday, August 29, 2022 10:05 AM
To: Maria Aguilar; Planning Division (Public)
Subject: RE: - 75' foot tall electronic billboard

Good morning Ms. Aguilar

Thank you for your comments. I will add them to the public record. We have not yet scheduled the public hearing for this item; however a notice will go out when we do schedule the public meeting.

Cindy

From: Maria Aguilar <md12aguilar@yahoo.com>
Sent: Sunday, August 28, 2022 4:19 PM
To: Planning Division (Public) <planningdivision@cityofgilroy.org>; Cindy McCormick <Cindy.McCormick@ci.gilroy.ca.us>
Subject: EXTERNAL - 75' foot tall electronic billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

I am writing in opposition of amending ordinance 30.37.30 prohibited signs within 660 feet off highway 101. I believe this to be a distraction for drivers, this is an area where traffic becomes congested and this could cause accidents. These signs are large and unsightly, if the ordinance gets changed it opens the door for other signs to be erected.

Thank you
Maria Aguilar

[Sent from Yahoo Mail on Android](#)

Cindy McCormick

From: Cindy McCormick
Sent: Wednesday, September 7, 2022 5:11 PM
To: Gregory Bumb
Subject: - Digital Sign Project

Good afternoon Mr. Bumb –

Thank you for your comments. I will add them to the public record. We have not yet scheduled the public hearing for this item; however a newspaper notice will go out when we do schedule the public meeting.

Cindy

From: Gregory Bumb <gregorybumb@gmail.com>
Sent: Wednesday, August 31, 2022 12:22 PM
To: Cindy McCormick <Cindy.McCormick@ci.gilroy.ca.us>; Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Digital Sign Project

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Ms McCormick,

My name is Greg Bumb. I am the owner and General Manager of Gilroy Motorcycle Center - an establishment that has been doing business in Gilroy for 50 years.

I am writing to communicate my support for the new digital sign project in Gilroy. I believe the proposed design, with the city logo, is sleek and professional which will make a beautiful display for visitors. Furthermore, the sign would provide much needed opportunities for local businesses to promote their local goods and services: something currently not available in Gilroy. Additionally, I understand that these signs will be available to the city for local events providing an invaluable tool for local awareness and support. More importantly, these signs would provide an incredibly vital tool for emergency communications e.g. Amber Alerts, and essential announcements that need to reach a last a large amount of people, as quickly as possible: something only a sign of this caliber can achieve. Moreover, this project will come at a zero cost to the city and its residents, meaning there is no downside to the city - and I strongly encourage you to approve this program.

Sincerely,

Greg Bumb

Owner & General Manager
 Gilroy Motorcycle Center

303 E. 10th Street
 Gilroy, CA 95020
 Office: (408) 842-9955 ext 102

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Cindy McCormick

From: Cindy McCormick
Sent: Wednesday, August 31, 2022 8:05 AM
To: Michael Ramirez
Subject: RE: EXTERNAL - Support for expanding advertising opportunities

Mr. Ramirez –

Thank you for your comments. They have been added to the public record.

Cindy

From: Michael Ramirez <mramirez@handlpartners.com>
Sent: Wednesday, August 31, 2022 7:20 AM
To: Cindy McCormick <Cindy.McCormick@ci.gilroy.ca.us>
Subject: EXTERNAL - Support for expanding advertising opportunities

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello Cindy,

Please excuse my reaching out with much context. I'm Michael Ramore, a partner at local advertising agency H&L Partners based in Oakland, CA. I am sending my support for the potential expansion of advertising opportunities around Gilroy. We represent local McDonald's and Toyota franchise owners around Northern California. Our out-of-home advertising plays a strong role in driving these local businesses. Thanks for your time and consideration. We have had long partnerships with local providers for out-of-home and would be thrilled for new opportunities in Gilroy.

Best regards,

--

Michael Ramirez
 Senior VP, Media Director
mramirez@handlpartners.com
 w: (415) 544-4160

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to, this email transmission is strictly prohibited. If you have received this transmission in error, please notify us and delete the message and any/all attachments from your computer.

Cindy McCormick

From: Chrys Diskowski <c.diskowski@yahoo.com>
Sent: Thursday, October 27, 2022 12:54 PM
To: Cindy McCormick
Subject: EXTERNAL - Comments: Please Vote NO on electronic billboard proposal

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Mayor Blankley, City Council and Planning Commission members,

Thank you for the opportunity to comment on the proposal. I hope you will agree, that electronic billboards are an eye-sore and a nuisance. We will be shooting ourselves in the foot, including economically, if we approve the proposal for an electronic billboard in Gilroy.

Not only do these particular billboards disrupt the view shed of our greenbelt, they also contribute to light pollution at night. Light pollution shrouds the beautiful view of Gilroy's starry night sky, a potential attraction for our tourists*, and also disrupts human circadian rhythms and wildlife who rely on darkness to survive. If you have a subscription to *National Geographic*, you can read about light pollution at the link below.

Even though this billboard could potentially grab visitors' eyes to contribute to sales tax / TOT revenue, we need to consider the first impressions our visitors might have entering Gilroy (101 is a gateway), along with our objectives of becoming an agritourism, cycling, and family recreation destination.

Does an electronic billboard reflect Gilroy as a place where agritourists, cyclists, and families want to spend time in our great outdoors? Electronic billboards do not give a good first impression consistent with what many visitors will be looking for. If we are wanting to set ourselves up for success as an agritourism, cycling, and family-friendly recreation destination, these billboards are not "on brand", to use a marketing term. They *are*, "on-brand", for places like Las Vegas. In Gilroy, we need to attract tourists that partake in the outdoor attractions that we offer, that value and want to bolster our natural beauty and greenbelt. And that which bolsters our natural beauty and greenbelt, attracts tourist spending, and also bolsters the health and happiness of our residents.

Please give our burgeoning Downtown, Gilroy Gardens, Adventure Park / Cycling Paths, Fruit Stands, Agritourism, Local Wineries, Ice Rink, Retail, and Car Dealerships a chance to succeed with other, less obnoxious, forms of advertising. Advertising on websites, social media, podcasts, and "good ole" radio and newsprint is far less obtrusive than electronic billboards. There are also press-releases that can bring sales tax and TOT dollars to Gilroy. Press releases often lead to written news articles, such as the one from the *San Jose Mercury*, linked below, promoting our downtown pubs.

Let the electronic billboards in Vegas, stay in Vegas, please. Our tourists and visitors will eventually return to their homes, but for the people who call Gilroy home, we would have to endure both the shadow and constant glare of a hideous 2-sided, 75-foot-tall (6+ story) electronic billboard that blocks our starlight and defaces our natural beauty. Please vote NO on the electronic billboard proposal.

Thank you kindly for your consideration, and your service to the well-being of our Gilroy environment, visitors, and residents alike.

Sincerely,

Chrys Diskowski

24-year Gilroy resident

* Dark sky parks are becoming a tourist draw in many rural areas.

Light Pollution Article: <https://www.nationalgeographic.com/science/article/nights-are-getting-brighter-earth-paying-the-price-light-pollution-dark-skies>

Gilroy Downtown / Brewery Article: <https://www.mercurynews.com/2022/09/28/brewery-day-trip-gilroy-adventures-for-craft-beer-lovers/>

Cindy McCormick

From: james rogers <jrogers@garlic.com>
Sent: Tuesday, October 25, 2022 7:56 PM
To: Cindy McCormick
Cc: Carolyn Tognetti; Carol Marques; Chrys Diskowski
Subject: EXTERNAL - Electronic Billboard ordinance

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello Again Cindy,

I tried to tune in to the community meeting on this topic tonight, but was late at 6:30 PM. I was unable to find the meeting, so am submitting these public comments.

I am very much against electronic billboards of all types and in all locations. I have been following the “NO Digital Billboards” site in San Jose and agree with most of their positions. I believe they are garish and potentially distractions for drivers on the adjacent highway. They do not project the peaceful, bucolic image of Gilroy I believe in.

Will these two billboards provide any benefit for the citizens of Gilroy? Possibly increased sales tax from auto sales, which ARE important to the City. Has there been any analysis on this question?

Thank you.

Connie Rogers
 7690 Santa Theresa Drive
 Gilroy, CA 95020
jrogers@garlic.com
 408-842-8494

Borrowing from the No On Digital billboards effort from San Jose, these are my reasons for opposition:

- **Litigation threats** - Billboard companies are already threatening to sue the City and each other over these billboards. This risk of endless litigation does not appear to be factored into the cost/benefit here.
- **Insignificant revenue** - Any proceeds from these billboards would be a tiny fraction of 1% of the City's annual revenue; is it worth the tradeoff for more visual blight and an assault on our quality of life?
- **Driver distraction** - Digital billboards threaten driver safety and runs counter to the city's Vision Zero policy to eliminate traffic fatalities.

- **Energy hogs** - Although LEDs by themselves may be energy efficient, these large energy intensive billboards require constant cooling and computer systems, and would be giant symbols of disregard for the City's Climate Smart and Carbon Neutral 2030 policies.
- **Wildlife disruption** - Digital billboards are opposed by the Audubon Society and the Sierra Club.
- **Light pollution** - Lick Observatory would be negatively impacted due to light pollution, similar to the already intrusive Levi's stadium Jumbotron.

Local businesses do not benefit - Digital billboards typically advertise national consumer products.

- **No takedown requirement** - Several of the proposed downtown sites do not have a requirement to take down existing conventional billboards.

Cindy McCormick

From: jhemp@mac.com
Sent: Sunday, October 30, 2022 8:02 PM
To: Cindy McCormick
Subject: EXTERNAL - Gilroy billboards, why they're a bad idea

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Hi Cindy,

Thanks for giving the public an opportunity to speak at your Planning meeting regarding the proposed digital billboard(s) along 101 freeway.

Curious, when I posed a question about the restrictions from the California Outdoor Advertising Act protecting billboards once they go up, who was the gentleman that responded? I didn't get a chance to comment after, but wanted to relay a concern that once a sign goes up along major corridors, such as freeways, the Act imposes a restriction on local municipalities. Thanks to billboard lobbyists, towns are required to pay sign owners for future loss of revenue, should local officials want or need to take the sign down. A similar state law in Minnesota resulted in St. Paul being required paying \$4 million to take down one sign in order to expand a bridge.

Aside from the State law, there are several other reasons why such a project is detrimental to our local community, especially when you consider that media companies have been actively pursuing digital billboards in multiple cities along the peninsula (ie, Santa Clara, San Jose, Redwood City, Belmont, etc). When you consider one or two going up in a town, it may not seem that significant. However, when you consider the cumulative effect of these billboards, it becomes a greater concern. For example, commuters that are driving along 101 it becomes yet another distraction (compared to driving along 280 billboard free). A Lick Observatory representative has spoken multiple times at San Jose Council and Committee meetings, describing the negative impact to night sky viewing with the cumulation of light pollution from multiple sources - including digital billboards, even from miles away.

Should the City of Gilroy decide to pursue new billboards, you may want to be mindful that the process is fair and allows alternative vendors to bid or participate, lest you invite litigation - which is common practice in the billboard industry. San Jose just got hit with a lawsuit from OutFront Media due to awarding a no-bid contract to ClearChannel (see article below).

The group I'm affiliated with, No Digital Billboards in San Jose, has a list of multiple references and reasons why digital billboards are a bad idea. You can view them on our website, along with multiple articles and op-eds on the topic here: <https://www.billboardsno.org/know-the-issue>

Some articles that may interest you:

South Bay astronomers fear proposed airport billboards would threaten night viewing
https://drive.google.com/drive/folders/1_G4SJ5Vf8ydJoTBR75tr-s2bHO5bftGD

San Jose gets sued for ignoring it's billboard rules
<https://sanjosespotlight.com/san-jose-gets-sued-for-ignoring-its-billboard-rules/>

Why we voted against San Jose airport digital billboard plans (by San Jose Airport Commissioners)
https://drive.google.com/drive/folders/1_G4SJ5Vf8ydJoTBR75tr-s2bHO5bftGD

Let me know if you have any questions or when I might get to hear when the Planning Commission plans to review this project again.

Regards,
Jason Hemp
San Jose Resident

Cindy McCormick

From: Laurel Lindner <laurelclindner@gmail.com>
Sent: Monday, January 16, 2023 1:07 PM
To: Planning Division (Public)
Subject: EXTERNAL - Electronic sign

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A giant electronic sign along one01 in Gilroy is a terrible idea and will be an eyesore. It's not something we need, and hope you will definitely reconsider!

Laurel Lindner
408 823-2090

Sent from my iPhone

Cindy McCormick

From: Genevieve Corbin <rickgeniepolar@icloud.com>
Sent: Sunday, January 15, 2023 8:05 PM
To: Planning Division (Public)
Subject: EXTERNAL - No to electronic sign

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Do we really need something so obtrusive in our country atmosphere

Sent from my iPhone

Cindy McCormick

From: Jenniferthomson <jenniferthomson65@gmail.com>
Sent: Monday, January 16, 2023 6:56 PM
To: Planning Division (Public)
Subject: EXTERNAL - Proposed Giant Billboard in Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

To the Planning Dept -

As a member of the Gilroy community, I am asking you NOT to consider or allow a giant lighted billboard.

I think street lights should be considered as our town is too dark at night, making addresses harder to read.

Gilroy is not the place for giant lighted billboards. I think it is a bad idea, it would look tacky and they are much too bright. The smaller ones they have in San Jose are too bright - whoever came up with this idea, it is absurd. Please strick down this idea. I do not want to see this type of advertisement looming over our town. I say NO to a giant billboard!!

Thank you
Jennifer Thomson
7571 Alexander Ave., Gilroy

Jen T.
Smile, smile, smile

Cindy McCormick

From: Judith Ames <judithames@me.com>
Sent: Monday, January 16, 2023 12:43 PM
To: Planning Division (Public)
Subject: EXTERNAL - Big Billboards

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Please do not allow billboards to be put up in Gilroy. We already have a poor reputation for visitors, let's not make it worse.
VOTE NO

Cindy McCormick

From: ldgolding@aol.com
Sent: Monday, January 16, 2023 2:58 PM
To: Planning Division (Public)
Subject: EXTERNAL - Fwd: Giant Electronic Billboard in Gilroy?

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Is this a joke? A sign like this has no place in Gilroy. Bad enough we have the 3 story apartment building, Alexander Pl. right next to the train tracks reflecting noise. We don't need this kind of light pollution. If you want this, put it in your yard facing into your bedroom window.

-----Original Message-----

From: Your Hidden Glen neighbors <reply@rs.email.nextdoor.com>
To: ldgolding@aol.com
Sent: Mon, Jan 16, 2023 1:31 pm
Subject: Giant Electronic Billboard in Gilroy?

With 2 blazing screens (each the size of a small apartment at 672 square feet), looming 7-stories (75 ft) in the air, off of...

nextdoor

Giant Electronic Billboard in Gilroy? With 2 blazing screens (each the size... [See more](#)

 [Chrys D.](#)



26



7



Share



Ann Marie McCauley & 25 others
replied

[View post](#)

This message is intended for ldgolding@aol.com. [Unsubscribe here](#). Nextdoor, 420 Taylor Street, San Francisco, CA 94102

Cindy McCormick

From: Salazar, Salvador <Salvador.Salazar@hhs.sccgov.org>
Sent: Monday, January 16, 2023 10:30 AM
To: Planning Division (Public)
Cc: Mayor Marie Blankley; Council Member Rebeca Armendariz; Council Member Dion Bracco; Council Member Tom Cline; Council Member Zachary Hilton; Council Member Carol Marques; Council Member Fred Tovar
Subject: EXTERNAL - Re: Billboard

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Morning

To whom It may concern, but I am against a "Giant Electronic Billboard in Gilroy" This just takes away from its community. Does Los Gatos, Willow Glen, Morgan Hill have one that looks appealing?... NO. What it does need is Downtown Gilroy upgraded, but also keep original.

And if revenue is the issue, start by having a traffic unit for commuters cutting through town and locals speeding and not following traffic signs.

Thanks!

S.SALAZAR

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Cindy McCormick

From: Tess Reed <tess.n.reed@gmail.com>
Sent: Monday, January 16, 2023 8:54 AM
To: Planning Division (Public)
Subject: EXTERNAL - Vote No against Billboard

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Hello,
From a pleading homeowner, this will be a site for sore eyes in our city. Please vote No!
Thanks,
Tess
Sent from my iPhone

Cindy McCormick

From: Jack Nogosek <jackn@directmtgfunding.com>
Sent: Tuesday, January 17, 2023 10:23 AM
To: Planning Division (Public); All Planning Commissioners
Cc: Mayor Marie Blankley; Council Member Rebeca Armendariz; Council Member Dion Bracco; Council Member Tom Cline; Council Member Zachary Hilton; Council Member Fred Tovar; Council Member Carol Marques
Subject: EXTERNAL - Giant Electronic Billboard(s) in Gilroy

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Hello, and good morning!

I am a resident of Gilroy, and I just learned about a proposal for consideration to install/erect an extremely large, digital/electronic advertising billboard somewhere off Highway 101. Or if that is not the case, the consideration of changing zoning and/or ordinance laws to allow for such signs.

I respectfully request that the City of Gilroy votes NO, on these electronic billboards and/or any changes to allow for such signs.

Thank you,
 Jack

John (Jack) A. Nogosek
Branch Manager
 Direct Mortgage Funding, Inc.
 Office: 408-559-0600, ext. 115
 Cell: 408-529-5482
 Fax: 408-558-4474
 3190 S. Bascom Ave. # 100
 San Jose, CA 95124
jackn@directmtgfunding.com

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NMLS 227765 / 150052
 Equal Housing Lender

Cindy McCormick

From: John Franzen <john@pdmwebsite.com>
Sent: Tuesday, January 17, 2023 11:16 AM
To: Planning Division (Public)
Subject: EXTERNAL - Proposed Electronic billboard

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I've seen
signs like

this on 101. I find them distracting. They change before I can digest what the message it. I've made it habit to note their presence and then ignore them.

Please do not change our current sign laws to allow this to be built.

John

John Franzen

Practical Data Management

Helping you 'tame' your computer

john@pdmwebsite.com

510-903-2074 Work

408-799-3635 Cell

408-427-9391 Fax

Cindy McCormick

From: Lisa Pickrel <lisapickrel@hotmail.com>
Sent: Wednesday, January 18, 2023 9:44 AM
To: Planning Division (Public)
Subject: EXTERNAL - 7 story sign

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To Whom It May Concern,

I am a long time resident of over 40 years. I have seen some good improvements to Gilroy with shopping options like Target, the Outlets and the Eagle Ridge community which compliments the existing landscape. Additionally there were improvements to Gilroy with the addition of grocery options like Costco, Safeway and NobHill.

However, I think the new proposal of a 7 story electronic sign in a scenic, bedroom community, is a VERY poor choice and takes away from the beauty and small town atmosphere you are selling to people who look to move here. That type of sign belongs in industrial and large cities not rural areas.

Please reconsider this project and reject the income opportunity that so often takes precedence in your office at the expense of residents. Examples of this would include large transition housing developments (adding to crime and the already higher than average homeless population), putting up large low income apartments on 1 street instead of shopping and restaurant options which would have improved residents lives. Now with the other high density housing planned for prime real estate on first street, when will it end? Are you guys trying to ruin this town?

This sign will be just one more thing to make Gilroy feel ghetto, which is how this town is now being described, by those who have lived here long enough to know the difference. I urge you to start caring about the people who live here and not just the bottom line.

Respectfully,

Lisa Pickrel

Sent from my iPhone

Cindy McCormick

From: Steph LeMieux <jadensmomma@hotmail.com>
Sent: Wednesday, January 18, 2023 1:45 PM
To: Planning Division (Public)
Subject: EXTERNAL - New Billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Planning Commission,

My name is Stephanie LeMieux, and live at 2140 Hollyhock Lane, Gilroy. I vote NO on the new LED billboard. Having lived in San Jose most of my life, I've seen billboards like this on my commute. They represent the worst of urban blight. People don't live in Gilroy because they want "big city" life. They live here because the pace is slower, and the presence of farmland is refreshing and peaceful. While growth is inevitable, it doesn't need to look exactly like other large cities. We can choose to be different. We can choose to be better. Don't ruin the landscape of our city.

Thank you,

Stephanie LeMieux

Cindy McCormick

From: c.diskowski@yahoo.com
Sent: Thursday, January 19, 2023 12:05 PM
To: Planning Division (Public)
Cc: Mayor Marie Blankley; Council Member Rebeca Armendariz; Council Member Dion Bracco; Council Member Tom Cline; Council Member Zachary Hilton; Council Member Carol Marques; Council Member Fred Tovar; Cindy McCormick
Subject: EXTERNAL - HUGE Electronic Billboards are NOT a good look for Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Members of the Gilroy Planning Commission,

I am heartily in favor of our car dealerships thriving. But not at the expense and assault on our eyeballs and view shed that behemoth electronic billboards would bring: with faces as big as a small apartment, flashing and looming 7-stories high in the sky, they would likely be the most prominent structures in all of south county, visible possibly from across town, in addition to northbound and southbound travelers on 101; AND, **a terrible first impression of Gilroy.**

One nice advantage to the more modern internet media for advertising, is the electronic glare is blissfully limited to the pixel size of our smartphones and digital screens in our private homes. I would encourage businesses who would advertise on the billboards to thoroughly explore internet options, as a favor to the residents and smaller businesses of Gilroy, who they share an environment with.

Gilroy is also blossoming as an agritourism, cycling and family recreation destination. Car dealerships are not the only gig here. Let's not disturb that momentum by allowing digital billboards that will make many potential visitors say, 'no thank you'.

Blighting our major gateway at the highways, when we are working to beautify other gateways such as the Monterey / Leavesley, makes absolutely no sense at all.

We want visitors to stay awhile, explore all we have to offer (which is improving continuously) fill up local lodging—collect that 11.5% TOT—not just leave for home after buying a car.

Many of the people who live here enjoy the quiet small-town appeal, surrounded by a beautiful greenbelt of our natural and agricultural lands.

Electronic billboards are not “on-brand” for Gilroy. They do not harmonize with our small town and pastoral charm. Gilroy is not poised to become like Las Vegas. Adding digital billboards to our environment is glaringly worse than pairing wingtip shoes with shorts, and will confuse the target audience of visitors we are trying to lure to stay a while.

Are digital billboards a first impression of Gilroy, we really want travelers to have of us?

Do we as a community really want to live in both the glare and shadow 24/7/365, subjected to the business dealings of a massive NYC corporation who would build and own the billboard, and also book the ads?

Let's stick with the sensible sign ordinance Gilroy currently has, and say “no thank you” to Outfront Media and their proposal to mess with our town's codes, General Plan and aesthetic.

Beautiful small towns that people flock to, like Monterey, Carmel, San Luis Obispo, do not have these monsters.

Thank you for your attention and consideration of this important planning decision. Your community is counting on you.

Sincerely,
 Chrys Diskowski, 24-year Gilroy resident and voter

Cindy McCormick

From: Ed Merrell <edcmerrell@gmail.com>
Sent: Thursday, January 19, 2023 10:46 AM
To: Planning Division (Public)
Subject: EXTERNAL - Do not modify Gilroy's sign ordinance

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Good day,

I do not support any modifications to Gilroy's sign ordinance that would permit the proposed 80-foot high, 30-by-22.5-foot LED billboard sign. This type of sign will have a significant effect on Gilroy. It will distract drivers and it will impact the beautiful views of our surrounding hills.

Please vote no on any modifications of Gilroy's sign ordinance.

Thank you, Ed Merrell
Gilroy resident

Cindy McCormick

From: Ann Marie McCauley <lazysuzandesigns@hotmail.com>
Sent: Sunday, January 15, 2023 7:54 PM
To: Mayor Marie Blankley; Council Member Rebeca Armendariz; Council Member Dion Bracco; Council Member Tom Cline; Council Member Zachary Hilton; Council Member Carol Marques; Council Member Fred Tovar; Planning Division (Public)
Subject: EXTERNAL - Electronic Billboard

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Dear City Officials,

While I am not directly opposed to this sign, I would like to know how you will deal with the other business owners who, in the past, were denied larger and taller signs. Approving this will set a new precedent for signs in Gilroy. Would it require changing the existing regulations for all signs? Will the business owners rejected in the past now be allowed to increase their sign size?

Thank you for your consideration,
Ann Marie McCauley

Cindy McCormick

From: Planning Commissioner Kelly Ramirez
Sent: Wednesday, January 18, 2023 2:30 PM
To: Cindy McCormick
Subject: Fw: EXTERNAL - Proposed Off Premise Billboards

Hello Ms. McCormick,

Thank you for forwarding the various emails received opposing the billboards. I also received this one and, since I did not see it with the others you sent, thought I should forward so that it could be shared with all the commissioners.

Thanks,

Kelly

From: John Miller <miller@johnmillerpr.com>
Sent: Sunday, January 15, 2023 11:08 AM
To: All Planning Commissioners <AllPlanningCommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - Proposed Off Premise Billboards
 CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Commissioners,

I am emailing to express my opposition to the proposal to allow off premise billboards in Gilroy.

The General Plan 2040 specifically prohibits off premise advertising so what is the justification for not following the General Plan? Can one applicant advocate for a proposal such as allowing digital billboards and on the basis of that advocacy convince the city to simply ignore its own General Plan? What then was the point of establishing a General Plan if it is so easy to ignore it?

Secondly, no members of the public have undertaken an effort to allow this. Something as intrusive as digital billboards cannot be justified in the absence of clear community support.

The applicant behind this scheme is a landowner who is looking for a revenue stream from Outfront Media, a billboard company which will generate revenue by selling advertising of products and services not available at the location of the sign. This is the very definition of off premise advertising currently prohibited. Understand that the majority of off premise advertising is for national consumer product and service companies such as McDonalds, Verizon, Citibank, etc. not for local businesses.

Furthermore the city has relied on a CEQA environmental review of the proposed billboards and then declared a Mitigated Negative Declaration and uses that as an excuse to dismiss any and all comments expressing opposition to this scheme. CEQA environmental reviews, which seem to be designed to evaluate ecological impacts of proposed development, do not adequately address the issues raised by off premise advertising which include aesthetic degradation and the deterioration of the community's architectural integrity, by among other impacts, subjecting tax payers to unsolicited commercial advertising for which there is no off switch. Nor does CEQA address the fact that the value of off premise advertising is a function of that advertising's exposure to the publicly financed right of way the maintenance of which is not supported by user fees paid by either the billboard company or property owner leasing land

to the billboard company. Using an inadequate CEQA tool and then claiming the city has adequately analyzed this proposal is misleading and does not serve the best interest of the people of Gilroy.

In addition, a 500 plus page "information packet" (with inadequate page numbering and table of contents) compiled by the city to evaluate a proposal to allow two digital billboards is not helpful to achieving public understanding. Rather, the city is burying the truth of the matter in needless verbiage, drowning the public in irrelevant material to discourage people from easily grasping the reality of the situation. And what is the dollar amount of staff and consultants' time spent on preparing such extensive but needless documentation? Has the city staff nothing else to do?

The question is simple. Why is the city spending staff time greasing the skids for a scheme to introduce off premise advertising into a community that has historically and repeatedly opposed doing so? I look forward to a response.

John Miller
Los Gatos, CA

Cindy McCormick

From: Anne-Marie Hamilton <rnannmari@icloud.com>
Sent: Monday, January 16, 2023 9:48 PM
To: Planning Division (Public)
Subject: EXTERNAL - Proposed billboards

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Gilroy Planning Division,

I'm writing to let the Planning Division know that as a Gilroy resident and homeowner I am against the two large billboards proposed for downtown Gilroy. I feel they would be not only be ugly and garish but also a dangerous distraction for passing motorists. If you have any questions or concerns please do not hesitate to let me know. Thank you very much.

Best regards,

Anne-Marie Hamilton
8266 Gaunt Ave, Unit G3
Gilroy, CA 95020
408-420-0569

Sent from my iPhone

Cindy McCormick

From: Debbie Wilkey <debbiemwilkey@aol.com>
Sent: Monday, January 16, 2023 7:14 PM
To: Planning Division (Public)
Subject: EXTERNAL - Ginormous Sign on 101

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

NO

Please No

Debbie Wilkey
7151 Pitlochry Dr

[Sent from the all new AOL app for Android](#)

Cindy McCormick

From: Lspieller@gmail.com
Sent: Monday, January 16, 2023 9:37 AM
To: Planning Division (Public)
Subject: EXTERNAL - Giant ad screens

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

I want it noted that I am against the proposal of installing giant screens for advertising in Gilroy as a resident.

Sincerely, Lee C. Spieller
Sent from my iPad

Cindy McCormick

From: sandyhanes@ymail.com
Sent: Monday, January 16, 2023 11:54 AM
To: Planning Division (Public)
Subject: EXTERNAL - No electronic billboards

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Please do not approve electronic billboards in our city

Sandy Hanes

Cindy McCormick

From: Alexis Arredondo <alexis_arredondo@att.net>
Sent: Wednesday, January 18, 2023 2:21 PM
To: Planning Division (Public)
Subject: EXTERNAL - no on the billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Please consider saying no to the proposed billboard off of 101. It doesn't fit with our city vibes. I am originally from Texas and there are billboards all along the highway and it looks cheap and destroys the natural landscape. They are a distraction to already distracted drivers and that endangers everyone who drives on the 101. I know we need revenue, but please find something other than this.

Thank you
Alexis Arredondo

Cindy McCormick

From: Gene Phillips <erphillips20@gmail.com>
Sent: Wednesday, January 18, 2023 4:34 PM
To: Planning Division (Public)
Subject: EXTERNAL - Billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

As a resident of Gilroy since 1983, I vehemently oppose even the idea of allowing an electronic billboard being installed anywhere within the city. I move here to raise my family with a small town atmosphere in mind, much like the city of Milpitas in the 50's, 60's and 70's.

With the advent of an electronic billboard, the visual pollution must out weigh any monetary benefit to the city. Are we that desperate?? NO!!

GENE PHILLIPS

Cindy McCormick

From: John Miller <miller@johnmillerpr.com>
Sent: Wednesday, January 18, 2023 6:13 PM
To: All Planning Commissioners
Cc: Cindy McCormick
Subject: EXTERNAL - Correction regarding Proposed Off Premise Billboards

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Commissioners,

I am submitting a correction to my email of January 15 opposing the proposal to allow off premise billboards in Gilroy.

The General Plan does not specifically prohibit off premise advertising. But In the GP under Land Use 8.7 Signs & Billboards, it says among other things, "enforce sign regulations." I assume that is a reference to ARTICLE XXXVII. SIGN REGULATIONS. In Section 30.37.30 number 16 prohibits: Any off-site advertising sign, including billboards, in any district except as exempted in section 30.37.90." Section 30.37.90 exempts temporary real estate and A frame sidewalk signs from those signs prohibited under Section 30.37.3.

I think it is safe to say that the General Plan implies, that to achieve the Plan's stated objectives, enforcement of the existing Sign Regulations is necessary and proper.

Thank you.

John Miller
Los Gatos, CA

Cindy McCormick

From: Shirley Willard
Sent: Thursday, January 19, 2023 12:48 PM
To: Planning Division (Public); Mayor Marie Blankley; Council Member Rebeca Armendariz; dion.bracco@cityofgilroy.org; Council Member Tom Cline; Council Member Zachary Hilton; Council Member Carol Marques; Council Member Fred Tovar
Cc: Shirley Willard
Subject: EXTERNAL - New Billboards-Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Planning Division and Gilroy City Council Members,

Please vote NO on this proposal for 2 new billboards for Gilroy, CA. This is not what we are about or need to be about. Absolutely ridiculous! I feel that the billboard project would appear to be so cheap looking, though so very expensive, not classy or just plain vulgar for our community. They are too big, too tall, too bright, not wanted, and a very poor representation of Gilroy.

Thank you for your thoughtful consideration and your time.

Shirley Willard
caring, involved resident of Gilroy

Cindy McCormick

From: Sharon Goei
Sent: Sunday, January 22, 2023 11:19 PM
To: Robert Weaver
Cc: Planning Commissioner Adriana Leongardt; Planning Commissioner Annedore Kushner; Planning Commissioner Joan Lewis; Planning Commissioner Kelly Ramirez; Planning Commissioner Manny Bhandal; Planning Commissioner Michelle Montez; Planning Commissioner Stefanie Elle; Cindy McCormick
Subject: RE: Electric Sign Ordinance

Hello Bob,

Thank you for your comments. They will be added to the public record.

Sincerely,
 Sharon



Sharon Goei, P.E., CBO, LEED AP
 Community Development Director
 (408) 846-0467 | sharon.goei@cityofgilroy.org
 7351 Rosanna Street | Gilroy | CA 95020
www.cityofgilroy.org

From: Robert Weaver <bob@weaverphotography.com>
Sent: Sunday, January 22, 2023 9:01 PM
To: Sharon Goei <Sharon.Goei@ci.gilroy.ca.us>
Subject: EXTERNAL - Electric Sign Ordinance

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Sharon, Please share with Planning Commission.

Paula and I attended the most recent Planning commission meeting to give new Commissioner Kelly Ramirez a welcoming audience. The topic of the sign ordinance was not our motivation. The discussion of the topic however, prompted me to these comments.

1. While LED lighting can appear as different colors, its inherent basic underlying color is blue. Blue light is stimulating to our brains, and should be thought of as "visual caffeine". While this is of little concern to the passing motorist with a brief exposure, it is of great concern to people in its visual proximity who are exposed for long periods of time. Why does the X-ray technician go behind a lead wall while you get X-rayed; short term, no problem, all day, a cumulative issue. Refer to footnote 1.
 Refer to footnote 2.

2. Growing up in Stockton, I would watch the sun set behind Mt. Diablo, which appeared as a big mountain relative to the rest of the range. In fact, Mt. Diablo is not that big, and only stands out because it is so much taller than the surrounding hills, and has only flat farm land between Stockton and itself. This sign ordinance, as proposed, would allow an electric sign to be 75 feet above grade, the height of a 7 story building. Gilroy is mostly flat farm land and a 7 story

electric sign would loom mightily, and could possibly even be seen in Hollister. In Gilroy, those who live on hillsides with a valley view, will be getting an eyeful.

3. A major concern for astronomers is light pollution and sky glow. When Lick Observatory was established, these things were not an issue. Today, the sky glow from the south bay is an issue. Certain frequencies of light also interfere with their work.

Refer to footnote 3.

Refer to footnote 4.

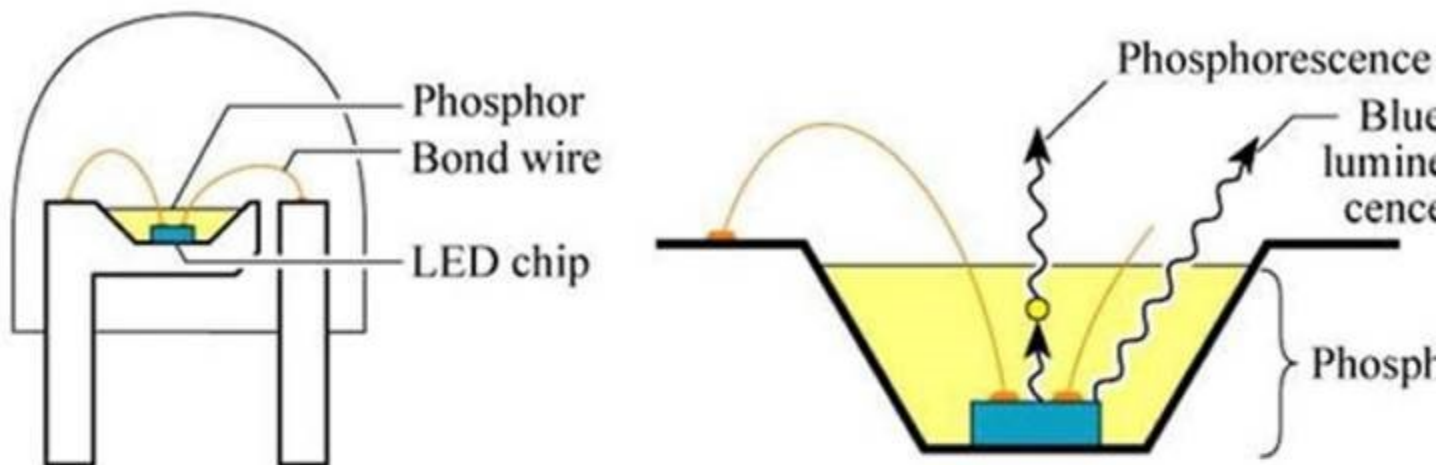
4. This ordinance change request has caused a focus on the current proponent. Any change to the current ordinance is a gateway for whatever signage that comes along in the future. If we change this ordinance, it will be difficult to deny future signs that comply. We are Gilroy, we know who we are and what we are. We have a sense of place that keeps us here, and for some, is the very reason why we are here. Signage as proposed in the ordinance change, will not harmonize with our bucolic and rural nature. To approve this ordinance change, will allow the camels nose under the tent.

Sincerely,
Bob Weaver
706 Gage Ct.

Footnote

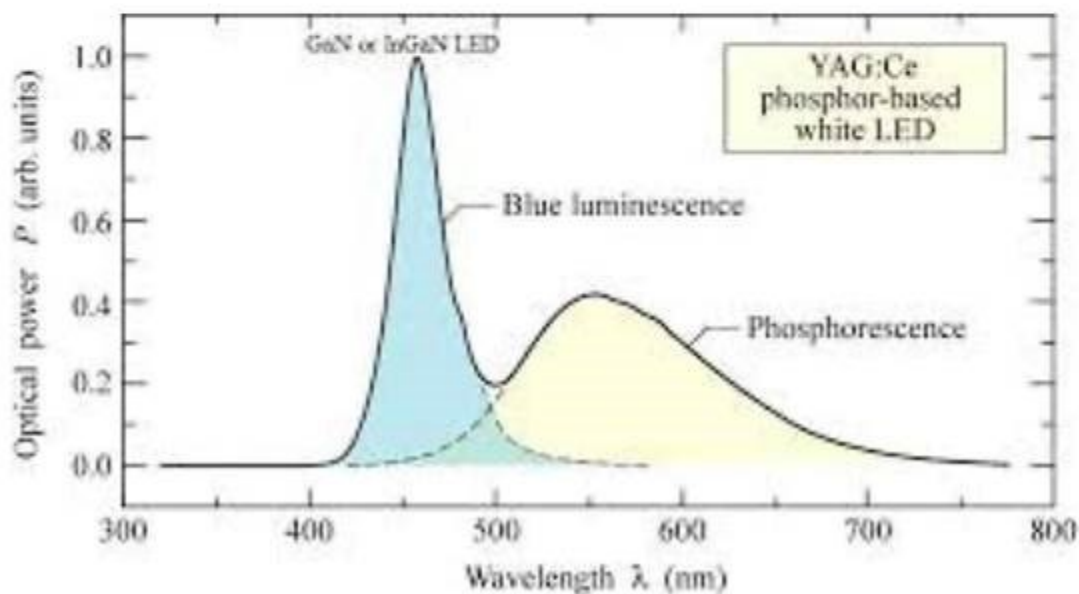
1

This is the way they are constructed.



They are really blue LEDs with phosphor to convert some of the blue light to green and red. These are usually designed to mimic daylight or tungsten bulbs, or something in between.

The daylight ones will have a spectrum that looks a bit like this:



Footnote 2.

https://en.wikipedia.org/wiki/Biological_effects_of_high-energy_visible_light

Footnote 3.

https://en.wikipedia.org/wiki/Lick_Observatory

Footnote 4.

With the growth of San Jose, and the rest of Silicon Valley, [light pollution](#) became a problem for the observatory. In the 1970s, a site in the [Santa Lucia Mountains](#) at [Junípero Serra Peak](#), southeast of [Monterey](#), was evaluated for possible relocation of many of the telescopes.^{[\[citation needed\]](#)} However, funding for the move was not available, and in 1980 San Jose began a program to reduce the effects of lighting, most notably replacing all streetlamps with [low pressure sodium lamps](#). The result is that the Mount Hamilton site remains a viable location for a major working

Cindy McCormick

From: LISA DICKNSON <xoxolisadxoxo@aol.com>
Sent: Thursday, January 26, 2023 8:09 AM
To: Planning Division (Public)
Subject: EXTERNAL - Vote no

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

We Don't Need these big city flashy huge signs telling people to stop in Gilroy. Our small town appeal is what people appreciate about our sweet town. Let it be. vote NO on the huge flashing sign.

Sent from my iPhone

Cindy McCormick

From: Sharon Goei
Sent: Friday, January 27, 2023 9:22 PM
To: Robert Weaver
Cc: Planning Commissioner Adriana Leongardt; Planning Commissioner Annedore Kushner; Planning Commissioner Joan Lewis; Planning Commissioner Kelly Ramirez; Planning Commissioner Manny Bhandal; Planning Commissioner Michelle Montez; Planning Commissioner Stefanie Elle; Cindy McCormick
Subject: RE: Electric Sign Ordinance letter #2 Cui Bono

Hello Bob,

Thank you for your comments. They will be added to the public record.

Sincerely,
 Sharon



Sharon Goei, P.E., CBO, LEED AP
 Community Development Director
 (408) 846-0467 | sharon.goei@cityofgilroy.org
 7351 Rosanna Street | Gilroy | CA 95020
www.cityofgilroy.org

From: Robert Weaver <bob@weaverphotography.com>
Sent: Friday, January 27, 2023 11:05 AM
To: Sharon Goei <Sharon.Goei@ci.gilroy.ca.us>
Subject: EXTERNAL - Electric Sign Ordinance letter #2 Cui Bono

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Sharon, Would you see that this is sent out to all Planning Commissioners today. Thank You.

Planning Commissioners,

By design, a community's General Plan is just that, general. It is not overly specific, but stating its future goals in generalities. The General Plan is a community's "dream sheet" for its future development. Many goals are included, but because of its general wording, those goals are often in conflict, as we find with the proposed Electric Sign Ordinance.

When a proposal such as the Electric Sign Ordinance contains conflicting General Plan goals, it should be treated in a fair and sensitive manner. Appearances are, that without sufficient public discourse, some General Plan goals and objectives have been discounted in favor of others. I base this observation on the number of public comments opposing this measure versus those supporting, and it is not just about the numbers of comments, but the who. By the wording of the Electric Sign Ordinance staff report, staff has become an advocate in this matter.

p. 797 of 947

While it has been over two decades since I sat on the Mountain View Planning Commission, and perhaps things have changed since then, I cannot recall ever being put in the position of having to pass a proposal under duress(1). Regarding the proposed changes in Gilroy's Electronic Sign Ordinance, the staff's wording demands that you delineate cause to justify a denial on this proposal. The burden has always been on the proponent, to bring forth an acceptable proposal for consideration. To place the burden on the Planning Commission, to justify a denial, runs contrary to accepted practice. Staff reports should not be authoritarian, dictatorial or biased, but present the issue fairly without fear or favor. (2)

Staff's due diligence on this Electronic Sign ordinance clearly shows to me that their threshold of compliance with the directives of the City of Gilroy's 2040 General Plan, while well intended, are selective and not in line with, and set to a different level than, those of the general public in this matter. There were several parts of the 2040 General Plan mentioned in the Negative Declaration that were downplayed, and several that were favored. This was done, seemingly in the effort to justify this new Electronic Sign Ordinance. As is the nature of a broad document, several of the goals of the 2040 General Plan are conflicting. Staff has apparently exercised great prerogative in weighing the 2040 General Plan's elements when considering this ordinance for approval.

At the prior meeting, when one commissioner asked environmental questions regarding the sign's brightness, she was beset with technical obfuscation (6). Another commissioner asked if the average Gilroy small business would be able to afford space on the electric sign, there was no clear answer regarding affordability, which equates to opportunity(3). Many members of the public, spoke or wrote about their environmental concerns regarding this electronic sign ordinance (7). All of these concerns are part of the 2040 General Plan directives. The proponents are being very vague on important key issues, and it is not clear to what extent small businesses could avail themselves of the signage. That uncertainty in itself, should arouse suspicion, and give the commission sufficient grounds for denial, or denial without prejudice (2).

By far, the most important and overriding question the Planning Commission should be considering in this matter is: **Cui Bono**, Latin for who benefits. Ask yourself, does it appear that the small businesses in Gilroy will directly benefit? Does it appear that the general population of Gilroy will see any benefit? Will this kind of sign fit in with the general spirit and feel of Gilroy?(4)(5) Has this proposal been fairly evaluated by staff for 2040 compliance?

It appears to me that the big economic winners in this matter will not be the many small businesses and people of Gilroy, but the proponents of this proposal. Shakespeare once penned: "What is a city if not the people?" For this ordinance, let us not adopt in haste, and repent at leisure.

Sincerely,
Bob Weaver
706 Gage Ct.

Footnotes.

1.

If the Planning Commission recommends denial, the Commission **shall recite the specific facts and evidential reasons why** the Ordinance and text amendments do not carry out the general purposes of the Zoning Ordinance and the General Plan.

2.

Pursuant to City Code Section 30.52.40, the Planning commission may **recommend approval, or deny or deny without prejudice the requested ordinance amendment.**

3.

Economic Prosperity

Goal EP 3: Maintain a supportive business climate that increases the City's ability to support expansion of existing businesses and attraction of new businesses.

The proposed electronic billboard ordinance **provides existing and future businesses in the City an opportunity to advertise** and potentially expand their business. The ordinance provides Gilroy businesses an opportunity to advertise their goods and services to visitors and the local workforce, who may not reside in Gilroy but drive to Gilroy for employment at local businesses including retail establishments, restaurants, and offices, as well as schools and service organizations.

4.

Land Use Goal LU 8: Support growth and development that **preserves and strengthens the City's historic, small-town character**; provides and maintains safe, livable, and affordable neighborhoods; and creates beautiful places

5,

Encourage the growth and development of retail, office, service, and entertainment uses in Gilroy to provide jobs, support City services, and **make Gilroy an attractive place to live.**

6.

2040 General Plan: The Gilroy 2040 General Plan was adopted in November 2020 and has the following policies related to billboards and freeway signage. While the policies do not directly address digital media, the policies do permit freeway signage and billboards, **so long as such signage has minimal negative impact on the visual environment**

7.

RECOMMENDATION:

Staff has analyzed the proposed project, and recommends that the Planning Commission:

- a) Recommend that the City Council adopt the Mitigated Negative Declaration (MND) and find that: the MND was completed in compliance with the California Environmental Quality Act (CEQA); **there is no substantial evidence that the project will have a significant effect on the environment**; and the MND reflects the City's independent judgment and analysis; and
- b) Adopt a resolution recommending that the City Council adopt an ordinance (Z 18-04), approving changes to Section 30.37.30 (Prohibited Signs), Section 30.37.50 (Commercial and Industrial Districts), and Section 30.37.51 (Freeway Oriented Signs) and creating a new Zoning Ordinance Article LV (Electronic Billboards).

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Saturday, January 28, 2023 10:13 PM
To: Sharon Goei
Subject: Fwd: EXTERNAL - Proposed Billboard Signage

Begin forwarded message:

From: Linda Clark <lac1024.lc@gmail.com>
Date: Jan 27, 2023 at 7:19 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - Proposed Billboard Signage

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Commissioners:

I am writing with the hope that you will consider denying the Mitigated Negative Declaration with regard to changes in the ordinance which would allow an electronic billboard to be erected in Gilroy.

As you know, Gilroy is a special place and adding a billboard to its environment would only allow it to become like any other big city. I have lived in Gilroy for ten years and have come to love this community. I love the agricultural fields that surround us, giving our town the country feel that most of its residents have come to enjoy and most visitors comment on.

Driving past Auto Row is not one of my favorite places to pass, but by erecting a billboard in its vicinity will only make it that much more undesirable. Flashing lights that advertise cars, food, or whatever is not my idea of giving people any idea of the kind of city that Gilroy has become over the years.. As it is, Gilroy is growing in leaps and bounds. Ask yourself, what real benefit would a huge electronic billboard really add to Gilroy's attraction? Billboards wouldn't contribute to our tourism. It's Gilroy Gardens, the wineries, the hiking trails, and so much more.

Please do not support changing the ordinance which would allow this type of signage. It adds nothing to the beauty of our town, and that is what we should be protecting.

Sincerely,
Linda Clark

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Saturday, January 28, 2023 10:12 PM
To: Sharon Goei
Subject: Fwd: EXTERNAL - Electronic Billboard

Begin forwarded message:

From: Kelly Larsen <kslarsen1@yahoo.com>
Date: Jan 28, 2023 at 9:14 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - Electronic Billboard

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Hello,

I have been a resident of Gilroy for 15 years now. I moved here to get away from the city (San Jose). I just wanted to state my opinion that I think allowing electronic billboards, like the one being suggested near 10th street is a bad idea. Gilroy is not an urban center with skyscrapers. They are distracting, especially at night, in cities that have them. I don't think they fit with the esthetic that the city of Gilroy is going for.

Thank you,

Kelly Larsen

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Saturday, January 28, 2023 10:13 PM
To: Sharon Goei
Subject: Fwd: EXTERNAL - Electronic Billboards!

Begin forwarded message:

From: Lizanne Davey <lizanne_davey@yahoo.com>
Date: Jan 28, 2023 at 4:53 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - Electronic Billboards!

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Please NO Electronic Billboards for Gilroy!!!

We are not Las Vegas, nor do I want it to turn into anything like them!

Lizanne Davey
Gilroy resident
408-846-3807

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Saturday, January 28, 2023 10:12 PM
To: Sharon Goei
Subject: Fwd: EXTERNAL - Sign

Begin forwarded message:

From: s gamm <sgamm@icloud.com>
Date: Jan 28, 2023 at 7:44 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - Sign

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Please do not. Hangs the sign ordinance.

Susan Gamm

Sent from my iPhone

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Monday, January 30, 2023 7:15 AM
To: Sharon Goei
Subject: Fwd: EXTERNAL - letter re MND and electronic billboard application

Begin forwarded message:

From: james rogers <jrogers@garlic.com>
Date: Jan 29, 2023 at 10:53 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Cc: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>
Subject: EXTERNAL - letter re MND and electronic billboard application

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Commissioners,

I'm writing to urge you to NOT APPROVE the Mitigated Negative Declaration for the Initial Study regarding changes in our sign ordinance. I urge this because I believe that the effects of changing our ordinance WILL be significant and cannot be mitigated to a level of insignificance. Here are my reasons:

Aesthetics - A sign of 75 or 80 feet tall and 30' x 22.5' in area will definitely be visible from our southern gateway at quite a distance. It may only be legible at 250' but the brightness will certainly be visible for miles in all directions. You were not given any data about the distance from which this light is visible, but Professor Lynam has told me he can see the San Jose signs from Lick Observatory.

Although the sign will be near its primary beneficiaries, the auto dealers, it is also near and will be visible from our hills and agricultural fields. The sign may be located in an urbanized area, but it is very close to our non-urbanized countryside. You should consider the effect beyond the site where it is erected. 101 has been designated as a scenic highway by Santa Clara County. The sign will also be visible from Pacheco Pass and probably Hecker Pass highways.

Biological Resources: The lack of special status species on the site cannot be construed as saying this very tall, bright light will not affect all species within a few miles, including humans. It has the potential to alter animal pathways and flight patterns and will certainly be more stressful for humans.

Cultural Resources: The Amah Mutsun Tribe considers the Sargent Ranch and a large area south of Gilroy to be part of their spiritual heritage. They believe in caring for Mother Earth and living in harmony with nature. Since the light will be visible from quite a distance it will affect views to and from their heritage land.

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Energy - The 52,400 kWh needed to operate this sign annually is only compared to similar signs. There should be a comparison to other forms of energy consumption.

Land use and planning - Compatibility with CalTrans Outdoor Advertising Act does not insure that the sign won't affect drivers or our natural environment. Chapter 8 of our General Plan 2040 - Natural and Cultural Resources - begins with the following:

“Gilroy’s location in the southern Santa Clara Valley, surrounded by hills, streams, and agriculture, is one of the many reasons that residents love living here. Gilroy has a proud, multi-cultural heritage that spans centuries. These sensitive natural and cultural resources are critical to Gilroy’s vibrancy and prosperity, and therefore deserve protection.”

This sign does not protect our natural and cultural resources, it damages them.

Transportation - I believe it could cause distracted driving. Signs, by their nature, are designed to attract attention.

Mandatory Findings of significance - This section claims that the mandatory findings can be mitigated. I disagree for the above reasons.

The data in this staff report were all geared to promote your approval of these drastic changes to our current sign ordinance. The information provided is lengthy, detailed and bureaucratic, hoping you will forget to use your common sense and our community values. Maybe Outfront Media thinks we are naive or not equipped to analyze this proposal. Despite 500 pages in your packet I don't believe you have been given the balanced information you need to determine whether it is important to change our current sign ordinance. Please vote NO.

Sincerely,

Connie Rogers

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Sunday, January 29, 2023 6:25 PM
To: Sharon Goei
Subject: Fwd: EXTERNAL - Digital billboard

Begin forwarded message:

From: Libba Basile <libbamary@gmail.com>
Date: Jan 29, 2023 at 6:23 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - Digital billboard

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I vote a big no on the digital billboard. I'd rather they bring back the Casa de Fruta billboard with the man flipping the cup before that horrible digital billboard, and that's probably aging me for people that haven't lived here for 40 years. I just don't think we need that billboard.
Sent from my iPad

Cindy McCormick

From: John Miller <miller@johnmillerpr.com>
Sent: Monday, January 30, 2023 4:07 PM
To: All Planning Commissioners
Cc: Planning Commissioner Manny Bhandal; Planning Commissioner Stefanie Elle; Planning Commissioner Annedore Kushner; Planning Commissioner Adriana Leongardt; Planning Commissioner Joan Lewis; Planning Commissioner Michelle Montez; Planning Commissioner Kelly Ramirez; Cindy McCormick
Subject: EXTERNAL - Letter Regarding Electronic Billboards
Attachments: LETTER TO GILROY PLANNING COMMISSIONERS JAN. 30, 2023.pdf

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Planning Commissioners,

Please see the attached letter to you regarding the proposed digital billboards in Gilroy.
Thank you.

John Miller
Los Gatos, CA

Dear Commissioners,

I watched the video of your January 19th meeting in which you discussed the proposal to change the city Sign Ordinance to allow for off premise digital billboard advertising in Gilroy.

The decision-making process regarding the proposed billboards while supposedly depending on a “scientific” evaluation via CEQA is first and foremost an exercise in political judgment and community values. Since 2018 there has been only one official applicant seeking the Sign Ordinance be changed to satisfy his financial interests and that of some car dealers. Would not Politics 101 call indulging that applicant an example of catering to special interests over the interest of the broader community?

Commissioners ought to be asking why one single applicant desiring to negate an existing ordinance is sufficient to put in motion the time and energy of staff in various city departments over a period of months if not years to pursue changing the ordinance? Obviously it is to further the interest of the applicant and his associates. Contending that somehow some of the money generated by a giant intrusive digital billboard dominating the town’s appearance will trickle down to the community is certainly not an inference to be drawn from the Mitigated Negative Declaration but rather a combination of an urban legend and billboard industry talking points.

In that regard the position of city staff including the city attorney, instead of being honest brokers and presenting to the Commission an even-handed presentation regarding the pros and the cons of the proposal being considered, behave as if employed by Outfront Media. As far as I could tell, staff is 100% behind the proposal and very much relying on the Mitigated Negative Declaration as the reason why.

The Initial Study upon which this Mitigated Negative Declaration is based concludes (and I quote), that the proposed project, **though having "a significant effect on the environment..."** 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..." So we are expected to believe that whatever concerns the MND identified can be easily mitigated.

However, that conclusion is very much debatable. That’s because there are several assumptions inherent in this Mitigated Negative Declaration that are not acknowledged. Prominent among them is that the CEQA

process has been designed to evaluate typical ecological and biological impacts of a proposed development and an MND is not the proper tool by itself to comprehensively evaluate the determinative aesthetic and economic dimensions unique to the impact of digital billboards.

Examples of these types of impacts include:

- billboards causing residential property values to decrease;
- the problem of commercial properties sustaining business in tourist destinations experiencing a proliferation of off-premise advertising;
- billboards associated with an increase in litter and graffiti;



- and very significantly how many of the cities with the greatest number of billboards have the lowest per capital gross domestic product while many of those who prohibit them score higher on that measure.

None of this information was in the MND and the applicant's apologists went so far as to comment that "Economic impacts are not significant environmental impacts under CEQA. 14 Cal. Code Regs. §15131." Precisely my point, which reinforces the view that CEQA is not

necessarily the best instrument to accurately measure significant impacts associated with billboards which is why the proponents of this scheme are so enamored of it. What other method of evaluation can so easily dismiss citizen concerns by claiming they are not relevant to what is being considered by the method of analysis employed?

If I were a Commissioner, I would want to fully understand why those significant impacts on the environment in the examples I just identified and those that were referenced in the Initial Study, should not have been thoroughly addressed in a more comprehensive Environmental Impact Review. Somebody on the city staff made a decision not to conduct an EIR and instead called for an applicant-friendly MND, but the public and the Commissioners have not been told why other than the brief and self justifying reasons listed in the MND document itself.

That's not surprising considering the Initial Study and decision to declare an MND were undertaken behind closed doors and off the public's radar. That should prompt Commissioners to ask, does the City Council, stating it is open to considering this proposal, therefore approve (and by inference authorize) a blank check to pay for staff time and a consultant to conclude that a Mitigated Negative Declaration justifies the proposed billboards?

Or, as asserted by Cindy McCormick in an email to me, "the applicant pays for staff time, attorney time, and consultant time." If the latter, as one long-time observer of the CEQA process told me, "when the applicant pays for the CEQA document the applicant generally gets the results they pay for." Can city staff inform the Planning Commission just how many dollars have been spent on greasing the skids for this proposal prior to the project having even been presented to you Commissioners for consideration?

Perhaps that lack of transparency explains why city attorney and planning department staff time was authorized for work on this proposal prior to the Planning Commission having even preliminary answers to basic questions about the alleged need to change the sign ordinance prohibiting off premise advertising. Questions about the history and current community prohibition of off premise advertising in the majority of municipalities in Santa Clara County should have been answered early in the process instead of being left out as they have been.

One need only quote from the city of Santa Clara's Sign Code, 18.80.220 which states "It had been determined that billboards, by

their very nature, wherever located and however constructed, constitute visual clutter and blight to the appearance of the City. It has also been determined that billboards impede traffic safety by unduly distracting motorists and pedestrians, creating traffic hazards, and reducing the effectiveness of signs needed to direct the public. It is the express intent of the City Council to permit no further billboards within the city and to reduce their number...”

Such an omission, seriously questions staff’s contention that the billboard policy “best practices” of neighboring communities to Gilroy have been accurately related as part of staff’s due diligence. They have not.

Gilroy Planning Commissioners should know that Commissioners in other communities have voted no on proposed billboards in part because information relevant to their making an informed decision was not provided by their staff. Here is a link to an op ed in the Mercury News written by 3 of San Jose’s Airport Commissioners explaining why a majority of their body recommended to the City Council that it reject the proposed digital billboards at the San Jose airport. <https://www.mercurynews.com/2021/11/29/opinion-why-we-voted-against-san-jose-airport-digital-billboard-plans/>

Gilroy Commissioners should also know that CEQA protocol cautions about engaging in what is called “pre-commitment,” a process whereby a proposed project, needing approval of a commission or city council, has become the recipient of significant staff time and outside consultant input over several months. The impact of such a process makes it much more difficult for a planning commission or city council to just say “no” when a final decision must be made to approve a project. Not only does this diminish the role and purpose of your commission it will set up the city of Gilroy for a lawsuit alleging CEQA rule violations. For more on pre-commitment see this article in California Environmental Law Reporter, http://www.cbcearthlaw.com/uploads/1/1/8/8/11883175/timing_is_everything.pdf

Process often determines outcomes. In this case, the process that put this matter before the Planning Commission is the equivalent of a thumbs-on-the-scale, stacked-deck approach on the part of city staff. Clearly, staff seems more interested in supporting the objectives of the proposed project applicant than in staff’s responsibility to you and to the taxpayers who expect decisions to be made by designated decision

makers not by out of view city staff and costly consultants seduced by special interests and dismissive of the community they serve.

I mentioned that values play a role in your decision-making process. In that regard, please find below a link to perhaps the best presentation on how off premise advertising can destroy a community's sense of place and self identity. It is a TED talk by Ed McMahon who holds the Charles E. Fraser Chair on Sustainable Development at the Urban Land Institute in Washington, DC. Well worth watching as a reminder that cities are first and foremost communities and not revenue-generating enterprises catering to special interests, <https://www.tedxjacksonville.com/talks/ed-mcmahon/>

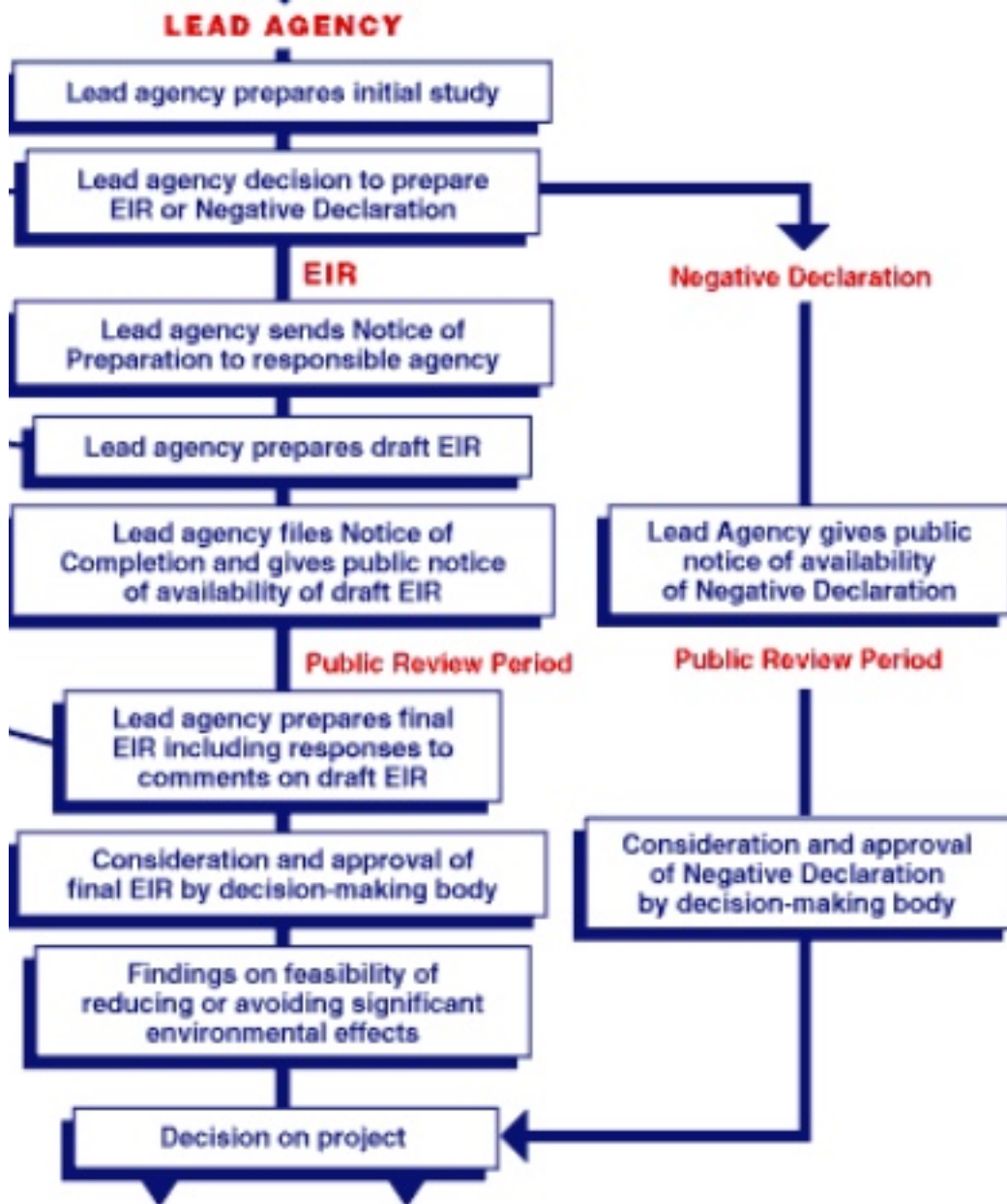
For a group with the right values closer to home follow No Digital Billboards in San Jose on Twitter here, <https://twitter.com/BillboardsNo>

And one more thing. You as Commissioners are not legally or ethically bound to accept the conclusions presented in the Mitigated Negative Declaration. Decision making bodies are free to accept or reject such off-the-shelf, one-size-fits-all substitutions for serious and comprehensive analysis.

If you have problems with how this proposal has been presented to you by staff; if you need more time to review the material; if you need to hear from those who oppose turning communities like Gilroy into venues for outdoor digital advertising then you have the right and responsibility to take control of the process before you reach a decision on this very important matter. Thank you for your attention.

John Miller
Los Gatos

Here is a graphic of the path to an MND



Cindy McCormick

From: Planning Division (Public)
Sent: Monday, January 30, 2023 12:54 PM
To: Cindy McCormick
Subject: FW: EXTERNAL - no electronic billboards in Gilroy please

Hi Cindy,

Please see public comment below regarding Public Hearing Item 6.1.

Kind regards,
 Ariana

From: Penny Noel <penny.noel@gmail.com>
Sent: Monday, January 30, 2023 12:21 PM
To: Planning Commissioner Manny Bhandal <Manny.Bhandal@ci.gilroy.ca.us>; Planning Commissioner Annedore Kushner <Annedore.Kushner@ci.gilroy.ca.us>; Planning Commissioner Stefanie Elle <Stefanie.Elle@ci.gilroy.ca.us>; Planning Commissioner Adriana Leongardt <Adriana.Leongardt@ci.gilroy.ca.us>; Planning Commissioner Joan Lewis <Joan.Lewis@ci.gilroy.ca.us>; Planning Commissioner Kelly Ramirez <Kelly.Ramirez@ci.gilroy.ca.us>; Planning Commissioner Michelle Montez <Michelle.Montez@ci.gilroy.ca.us>
Subject: EXTERNAL - no electronic billboards in Gilroy please

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

PLEASE , no electronic billboards in Gilroy.

They distract already distracted drivers and they harm wildlife and people with disabilities

Thank you
 Penny Noel

--

Penny Noel
Web Design | Photo Compilation | Graphic Design
www.studio1070.com
 408.634.5182

Cindy McCormick

From: james rogers <jrogers@garlic.com>
Sent: Tuesday, January 31, 2023 2:36 PM
To: All Planning Commissioners
Cc: Cindy McCormick
Subject: EXTERNAL - Fwd: 🌲 Billboards, Byways... and the Beatles?

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Commissioners,

There are 2 articles about billboards in this email. I hope you will read them and learn that many jurisdictions either prohibit billboards, especially electronic ones, or are trying to phase them out.

Thank you.

Connie Rogers

Begin forwarded message:

From: "Mark Falzone, Scenic America" <scenic@scenic.org>
Subject: 🌲 Billboards, Byways... and the Beatles?
Date: January 31, 2023 at 2:02:04 PM PST
To: Connie Rogers <jrogers@garlic.com>
Reply-To: scenic@scenic.org

Having trouble viewing this email? [View it in your web browser](#)



January News from Scenic America

The new year is off to a strong start at Scenic America as we celebrate a big victory against the billboard industry in the courts and as we cheer Congress' decision to allocate \$20 million for byways in the FY 23 appropriations act. Like many of you, we eagerly await the Federal Highway Administration's announcement of the FY 21 and 22 byways grant awards. Read on for more news and updates, and we look forward to your support and partnership in 2023.



Wisconsin Court Upholds Digital Billboard Ban in Madison

A Wisconsin district court affirmed the City of Madison's ban on digital billboards in a decision announced earlier this month, citing *Austin v. Reagan*.

[LEARN MORE](#)



Congress Funds Byways in FY 23 Appropriations Act

The FY 23 appropriations act signed into law late last year includes \$20 million for scenic byways, the highest figure since Scenic America led the push for the program's revival.

[LEARN MORE](#)

Scenic America President Appointed to Route 66 Commission

Scenic America's Mark Falzone was appointed by President Joe Biden to the Route 66 Centennial Commission, which will develop plans to commemorate the iconic roadway's 100th anniversary in 2026.

[LEARN MORE](#)



Undergrounding Grant Applications Process Underway

The Department of Energy has released updated information about grants being awarded as part of the \$5 billion Grid Infrastructure and Resiliency Program. Information and application guidelines are now available via the link below. The application deadline is March 31, 2023.

[LEARN MORE](#)

Byways to Explore for Black History Month

Our scenic byways tell the powerful stories of sacrifice, service, tragedy, and triumph of notable figures from Harriet Tubman to Martin Luther King, Jr. With Black History Month just around the corner, here are a few routes to explore.

[LEARN MORE](#)



Scenic Heroes: Lady Bird Johnson

The First Lady's commitment to scenic beauty prompted the passage of the Highway Beautification Act, and her legacy continues to inspire scenic conservation efforts today.

[LEARN MORE](#)

Placemaking Spotlight: Main Street Success Stories

Main Street America highlights successful community revitalization efforts in five communities: Washington, DC; Laramie, WY; Livermore, CA; Natchitoches, LA; and Washington, MO.

[LEARN MORE](#)



Community Building through Highway Removal

In this post from Transportation for America explores Milwaukee's fascinating plan to remove sections of its highway system to rebuild and restore communities-- and its interest in doing more of this in the future.

[READ THE ARTICLE](#)

Scenic Beauty...with a little help from the Beatles

Mark Falzone shared his "Fab Four" picks inspired by Scenic America's mission with Sirius XM's The Beatles Channel in a special segment that aired in December.

[SEE MARK'S PICKS](#)



Take Action Against Billboards

If you'd like to see fewer billboards for safer and more scenic communities, take a moment to sign our petition to stay up to date on more opportunities for action.

[TAKE ACTION](#)

Remembering Geoffrey Clark

Scenic America mourns the loss of Geoffrey Clark, who passed away on January 8. An accomplished physician and entrepreneur, Jeff was the husband of Martha Fuller Clark, a longtime Scenic America board member and the daughter of one of the organization's co-founders, Marion Fuller Brown.

[READ MORE](#)



Help Us Fight the Blight

As the only national organization focused on scenic conservation, Scenic America has a big agenda and a critical job, and we can't do take on this work without your help. Every gift makes an impact.

[GIVE NOW](#)

Scenic America

727 15th Street NW Suite 1100, | Washington, District of Columbia 20005-6029
202.792.1300 | scenic@scenic.org

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[Unsubscribe](#) or [Manage Your Preferences](#)

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Tuesday, January 31, 2023 8:44 PM
To: Sharon Goei; Cindy McCormick
Subject: Fwd: EXTERNAL - Bill board

Begin forwarded message:

From: Linda Ford <lindamberti@hotmail.com>
Date: Jan 31, 2023 at 8:33 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - Bill board

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

I am a resident of Gilroy, and I am opposed to putting up such a huge billboard. It does not represent our city. It will be an eyesore.

Sincerely
Linda Berti

Cindy McCormick

From: John Miller <miller@johnmillerpr.com>
Sent: Tuesday, January 31, 2023 6:38 AM
To: All Planning Commissioners
Cc: Planning Commissioner Adriana Leongardt; Cindy McCormick; Planning Commissioner Kelly Ramirez; Planning Commissioner Annedore Kushner; Planning Commissioner Joan Lewis; Planning Commissioner Manny Bhandal; Planning Commissioner Michelle Montez; Planning Commissioner Stefanie Elle
Subject: EXTERNAL - Letter Regarding Electronic Billboards
Attachments: PastedGraphic-1.pdf; PastedGraphic-2.pdf

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Planning Commissioners,

It has come to my attention that my email to you yesterday contained links that were not functioning. Therefore please find below a version in which hopefully the links function properly. If not, please copy and paste.

Thank you.

John Miller
 Los Gatos, CA

Dear Commissioners,

I watched the video of your January 19th meeting in which you discussed the proposal to change the city Sign Ordinance to allow for off premise digital billboard advertising in Gilroy.

The decision-making process regarding the proposed billboards while supposedly depending on a “scientific” evaluation via CEQA is first and foremost an exercise in political judgment and community values. Since 2018 there has been only one official applicant seeking the Sign Ordinance be changed to satisfy his financial interests and that of some car dealers. Would not Politics 101 call indulging that applicant an example of catering to special interests over the interest of the broader community?

Commissioners ought to be asking why one single applicant desiring to negate an existing ordinance is sufficient to put in motion the time and energy of staff in various city departments over a period of months if not years to pursue changing the ordinance? Obviously it is to further the interest of the applicant and his associates. Contending that somehow some of the money generated by a giant intrusive digital billboard dominating the town’s appearance will trickle down to the community is certainly not an inference to be drawn from the Mitigated Negative Declaration but rather a combination of an urban legend and billboard industry talking points.

In that regard the position of city staff including the city attorney, instead of being honest brokers and presenting to the Commission an even-handed presentation regarding the pros and the cons of the proposal being considered, behave as if employed by Outfront Media. As far as I could tell, staff is 100% behind the proposal and very much relying on the Mitigated Negative Declaration as the reason why.

The Initial Study upon which this Mitigated Negative Declaration is based concludes (and I quote), that the proposed

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project, though having "a significant effect on the environment...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..." So we are expected to believe that whatever concerns the MND identified can be easily mitigated.

However, that conclusion is very much debatable. That's because there are several assumptions inherent in this Mitigated Negative Declaration that are not acknowledged. Prominent among them is that the CEQA process has been designed to evaluate typical ecological and biological impacts of a proposed development and an MND is not the proper tool by itself to comprehensively evaluate the determinative aesthetic and economic dimensions unique to the impact of digital billboards.

Examples of these types of impacts include:

- billboards causing residential property values to decrease;
- the problem of commercial properties sustaining business in tourist destinations experiencing a proliferation of off-premise advertising;
- billboards associated with an increase in litter and graffiti;
- and very significantly how many of the cities with the greatest number of billboards have the lowest per capital gross domestic product while many of those who prohibit them score higher on that measure.

None of this information was in the MND and the applicant's apologists went so far as to comment that "Economic impacts are not significant environmental impacts under CEQA. 14 Cal. Code Regs. §15131." Precisely my point, which reinforces the view that CEQA is not necessarily the best instrument to accurately measure significant impacts associated with billboards which is why the proponents of this scheme are so enamored of it. What other method of evaluation can so easily dismiss citizen concerns by claiming they are not relevant to what is being considered by the method of analysis employed?

If I were a Commissioner, I would want to fully understand why those significant impacts on the environment in the examples I just identified and those that were referenced in the Initial Study, should not have been thoroughly addressed in a more comprehensive Environmental Impact Review. Somebody on the city staff made a decision not to conduct an EIR and instead called for an applicant-friendly MND, but the public and the Commissioners have not been told why other than the brief and self justifying reasons listed in the MND document itself.

That's not surprising considering the Initial Study and decision to declare an MND were undertaken behind closed doors and off the public's radar. That should prompt Commissioners to ask, does the City Council, stating it is open to considering this proposal, therefore approve (and by inference authorize) a blank check to pay for staff time and a consultant to conclude that a Mitigated Negative Declaration justifies the proposed billboards?

Or, as asserted by Cindy McCormick in an email to me, "the applicant pays for staff time, attorney time, and consultant time." If the latter, as one long-time observer of the CEQA process told me, "when the applicant pays for the CEQA document the applicant generally gets the results they pay for." Can city staff inform the Planning Commission just how many dollars have been spent on greasing the skids for this proposal prior to the project having even been presented to you Commissioners for consideration?

Perhaps that lack of transparency explains why city attorney and planning department staff time was authorized for work on this proposal prior to the Planning Commission having even preliminary answers to basic questions about the alleged need to change the sign ordinance prohibiting off premise advertising. Questions about the history and current community prohibition of off premise advertising in the majority of municipalities in Santa Clara County should have been answered early in the process instead of being left out as they have been.

One need only quote from the city of Santa Clara's Sign Code, 18.80.220 which states "It had been determined that billboards, by their very nature, wherever located and however constructed, constitute visual clutter and blight to the appearance of the City. It has also been determined that billboards impede traffic safety by unduly distracting motorists and pedestrians, creating traffic hazards, and reducing the effectiveness of signs needed to direct the public. It is the express intent of the City Council to permit no further billboards within the city and to reduce their number..."

Such an omission, seriously questions staff's contention that the billboard policy "best practices" of neighboring communities to Gilroy have been accurately related as part of staff's due diligence. They have not.

Gilroy Planning Commissioners should know that Commissioners in other communities have voted no on proposed billboards in part because information relevant to their making an informed decision was not provided by their staff. Here is a link to an op ed in the Mercury News written by 3 of San Jose's Airport Commissioners explaining why a majority of their body recommended to the City Council that it reject the proposed digital billboards at the San Jose airport. <https://www.mercurynews.com/2021/11/29/opinion-why-we-voted-against-san-jose-airport-digital-billboard-plans/>

Gilroy Commissioners should also know that CEQA protocol cautions about engaging in what is called "pre-commitment," a process whereby a proposed project, needing approval of a commission or city council, has become the recipient of significant staff time and outside consultant input over several months. The impact of such a process makes it much more difficult for a planning commission or city council to just say "no" when a final decision must be made to approve a project. Not only does this diminish the role and purpose of your commission it will set up the city of Gilroy for a lawsuit alleging CEQA rule violations. For more on pre-commitment see this article in California Environmental Law Reporter, http://www.cbcearthlaw.com/uploads/1/1/8/8/11883175/timing_is_everything.pdf

Process often determines outcomes. In this case, the process that put this matter before the Planning Commission is the equivalent of a thumbs-on-the-scale, stacked-deck approach on the part of city staff. Clearly, staff seems more interested in supporting the objectives of the proposed project applicant than in staff's responsibility to you and to the taxpayers who expect decisions to be made by designated decision makers not by out of view city staff and costly consultants seduced by special interests and dismissive of the community they serve.

I mentioned that values play a role in your decision-making process. In that regard, please find below a link to perhaps the best presentation on how off premise advertising can destroy a community's sense of place and self identity. It is a TED talk by Ed McMahon who holds the Charles E. Fraser Chair on Sustainable Development at the Urban Land Institute in Washington, DC. Well worth watching as a reminder that cities are first and foremost communities and not revenue-generating enterprises catering to special interests, <https://www.tedxjacksonville.com/talks/ed-mcmahon/>

For a group with the right values closer to home follow No Digital Billboards in San Jose on Twitter here, <https://twitter.com/BillboardsNo>

And one more thing. You as Commissioners are not legally or ethically bound to accept the conclusions presented in the Mitigated Negative Declaration. Decision making bodies are free to accept or reject such off-the-shelf, one-size-fits-all substitutions for serious and comprehensive analysis.

If you have problems with how this proposal has been presented to you by staff; if you need more time to review the material; if you need to hear from those who oppose turning communities like Gilroy into venues for outdoor digital advertising then you have the right and responsibility to take control of the process before you reach a decision on this very important matter. Thank you for your attention.

John Miller
Los Gatos

Here is a graphic of the path to an MND

LEAD AGENCY

10.1





Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Wednesday, February 1, 2023 7:25 PM
To: Sharon Goei; Cindy McCormick
Subject: Fwd: EXTERNAL - Please vote down increased allowance for digital billboards in Gilroy

Begin forwarded message:

From: Bruce England <bkengland@gmail.com>
Date: Feb 1, 2023 at 7:14 PM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Please vote down increased allowance for digital billboards in Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Planning Commission members:

As a South Bay Area resident with grave concerns about overlighting in our region, I'm very troubled about any plans to change the zoning rules for increases in billboard lighting allowances, and I urge you to vote this down and to be strong in your opposition during deliberations.

Note that we in your neighboring city of Mountain View are preparing to tighten lighting rules this year through ordinance updates and with guidance from the International Dark-Sky Association and other related advisory bodies.

The background that I'm aware of:

The City of Gilroy is in the process of changing the City's zoning code to allow digital billboards and approve a 75-foot, 2-sided electronic billboard aimed at motorists on Highway 101 to advertise (mostly) car dealerships to motorists. The plan has drawn opposition from the residents, environmental organizations (including Loma Prieta Chapter) and the Lick Observatory, suggesting that the billboards despoil the rural nature of the town, introduce harmful light pollution to the environment, and add to the light clutter that constrains the work of the Lick observatory on Mt. Hamilton. This is despite the City's environmental review that concluded that electronic billboards will not have a significant impact on the environment.

Electronic Billboards purposely distract drivers. Some studies show that more accidents occur on highways near billboards. Light pollution permeates our environment, harming ecosystems, wildlife, and people, as well as research by astronomers. Electronic billboards create visual clutter that increases stress and degrades quality of life for all. Unlike other issues in the public realm, where opinions differ and compromises are feasible, the pervasive and unavoidable

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impacts of electronic billboards are impossible to reconcile.

The project is coming to a second discussion at the Thursday, February February 2, 2023, Planning Commission Meeting. The meeting starts at 6PM, and this item will be discussed after some process issues and general public comments.

Thanks for your consideration,
Bruce England
328 Whisman Station Drive
Mountain View, CA 94043

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Wednesday, February 1, 2023 7:25 PM
To: Cindy McCormick; Sharon Goei
Subject: Fwd: EXTERNAL - Electronic signage

Begin forwarded message:

From: Genevieve Corbin <rickgeniepolar@gmail.com>
Date: Feb 1, 2023 at 7:10 PM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>
Subject: EXTERNAL - Electronic signage

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

I am so totally against this type of distractions being imposed upon us.
I SAY NO!!!!!!

Sent from my iPhone

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Wednesday, February 1, 2023 7:56 PM
To: Sharon Goei; Cindy McCormick
Subject: Fwd: EXTERNAL - Opposition to electronic billboards in Gilroy

Begin forwarded message:

From: rmloui <rmloui@gmail.com>
Date: Feb 1, 2023 at 7:48 PM
To: Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Opposition to electronic billboards in Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello,

I recently learned that the City of Gilroy is in the process of changing the City's zoning code to allow digital billboards and approve a 75-foot, 2-sided electronic billboard aimed at motorists on Hwy 101 to advertise.

I strongly oppose that electronic billboards be allowed, for several reasons.

The addition of billboards is first, quite unsightly to look at, spoiling the rural feel of the town. When visiting or driving through Gilroy, I enjoy viewing the natural environment and the farms with its trees, crops, and animals. The last thing I want to see are ugly signs advertising products that I am not interested in and distracting me from driving safely. Secondly, the light pollution generated from the digital billboards will be disruptive to the environment (plants and animals), as well as the Lick Observatory.

There are already plenty of avenues for car dealerships to advertise. The last thing we need is unnecessary "development" with these hideous billboards, marring the peaceful natural beauty that Gilroy is right now. If ppl want to buy a car, they know where to go already.

No to digital billboards.

Thank you for your consideration.

Sincerely,
Rachel Loui
Mountain View, CA

Cindy McCormick

From: Ronnie Burttram <RonnieBurttram@outlook.com>
Sent: Wednesday, February 1, 2023 10:15 PM
To: Cindy McCormick; Planning Division (Public)
Subject: EXTERNAL - Electronic Billboard Ordinance

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear City of Gilroy,

I am writing to show support for the Electronic Billboard Project. I live and have family in Gilroy. I believe that Gilroy and the businesses in Gilroy would benefit greatly from allowing electronic billboards along the freeway. It would bring Gilroy more relevance in the Bay Area, as many other cities already have these signs. It would also increase sales for Gilroy's local businesses.

Sincerely,
Ronald G. Burttram, Jr.

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Wednesday, February 1, 2023 7:57 PM
To: Sharon Goei; Cindy McCormick
Subject: Fwd: EXTERNAL - Please reject electronic billboards in Gilroy

Begin forwarded message:

From: Ronit Bryant <ronit.bryant@gmail.com>
Date: Feb 1, 2023 at 7:52 PM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Please reject electronic billboards in Gilroy

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Gilroy Planning Commissioners,

Please listen to your residents and reject the proposed zoning changes that will allow electronic billboards along the freeways in your town. I am not a Gilroy resident. I live in the Bay Area and work to help preserve what is left us of nature and beauty. Please help.

These billboards will cause light pollution, distract (and therefore endanger) drivers, and contribute nothing to the beauty and atmosphere of your city.

Sincerely,
 Ronit Bryant

Cindy McCormick

From: ggjr@garlic.com
Sent: Wednesday, February 1, 2023 10:16 AM
To: Planning Division (Public)
Subject: EXTERNAL - Electronic Billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

To members of the Gilroy Planning Commission and City of Gilroy:

We are puzzled by why the city of Gilroy would even consider installing an electronic billboard. What is this billboard supposed to accomplish? At present, drivers and their passengers on Hwy. 101 know of our automobile malls and outlets, as they can see them from the freeway. An electronic billboard is not needed to encourage people who *live in* Gilroy to go downtown or support local eateries. If the people who live in Gilroy are not already providing that support a huge, lit up billboard is not going to change their minds. In fact, for some of us, it might do the opposite because of our dislike for the added and unnecessary light pollution. What type of advertisement is going to be allowed to light up our night skies? Will it just be for the city/businesses from Gilroy or will ads from other nearby towns, such as Morgan Hill and /or undesirable (think JUUL / Vaping) ads be displayed? Who will determine the billboards' content, a for profit, non-local, multi media company?

There are many cities in the Bay Area that have recently considered and **deemed undesirable** these types of signs. They not only contribute to light pollution of our night skies, they distract drivers and confuse wildlife, especially birds that fly at night. At a time when many people are trying to get back in touch with nature and encourage wildlife conservation, how can we consider an unnecessary polluter of our natural environment? Gilroy has much to be proud of and showcase; our shared rural ambiance, our hiking/biking trails, our parks, our pride in and support of our local businesses, and much more. We would encourage you to consider not only how little an electronic billboard would do to improve on these areas but also how much it would harm them.

Georgia Stern

Joseph Stern

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Wednesday, February 1, 2023 6:36 PM
To: Cindy McCormick; Sharon Goei
Subject: Fwd: EXTERNAL - ELECTRONIC BILLBOARDS

Begin forwarded message:

From: Theresia Hypes <tkhypes@gmail.com>
Date: Feb 1, 2023 at 6:23 PM
To: All Planning Commissioners <allplanningcommissioners@ci.gilroy.ca.us>
Subject: EXTERNAL - ELECTRONIC BILLBOARDS

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Commissioners:

I am strongly opposed to allowing electronic billboards in Gilroy. They will ruin our country feel and be distracting to drivers on Hwy 101.

Additionally, all the environmental reasons against it.

Thank you,

Theresia Konrad-Hypes~resident since 1987

Cindy McCormick

From: David Marancik <ddm2005@sbcglobal.net>
Sent: Thursday, February 2, 2023 8:23 AM
To: Planning Division (Public)
Subject: EXTERNAL - Billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

No giant digital billboards !! They are ugly and distracting.

[Sent from AT&T Yahoo Mail on Android](#)

Cindy McCormick

From: George L. Renz <george@renzrenz.com>
Sent: Thursday, February 2, 2023 11:39 AM
To: Cindy McCormick
Cc: Planning Division (Public)
Subject: EXTERNAL - Electric billboard project
Attachments: City of Gilroy Planning Dept. Letter.pdf

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hi Cindy,
See attached a support letter for the electric billboard project.
Please confirm receipt.

Thank you,
George

George L. Renz, CCIM, SIOR, ALC
DRE# 00854816: September 1983

Renz & Renz – Investment & Commercial Brokerage

7500 Arroyo Circle, Ste 170 Gilroy, CA 95020

O: (408)846-1031 F: (408)846-1042

E: George@RenzRenz.com W: RenzRenz.com



January 30, 2023

To: Gilroy City Planning Department
7351 Rosanna St.
Gilroy, CA 95020
Ph: 408-846-0440

Regarding: Electric Billboard Project

Dear City Planning Team,

I am writing to show support for the Electric Billboard Project.

As a Gilroy business owner and operator I see great value in utilizing our Hwy 101 frontage for advertising what our town has to offer in the form of Electronic Billboards.

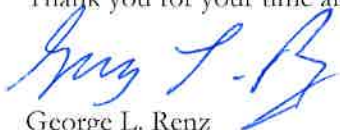
Benefits of electronic billboards along Hwy 101 could include:

- Use for emergency traffic, weather, and other local emergency messages.
- Advertising local businesses.
- Bringing commuter attention to what Gilroy has to offer.
- Advertising local events.
- Sell more cars and local products to bring more sales tax to the City.

As a local business owner I know how perfectly placed Gilroy is with Hwy 101 running through to bring attention to what we have to offer to both locals and commuters and I see Hwy corridor

Electronic Billboards as an opportunity to highlight those things.

Thank you for your time and consideration.



George L. Renz
Renz & Renz
7500 Arroyo Circle Suite 170
Gilroy, CA 95020

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Thursday, February 2, 2023 7:26 AM
To: Sharon Goei; Cindy McCormick
Subject: Fwd: EXTERNAL - No Billboard changes to Zoning Code

Begin forwarded message:

From: Giselle Verbera <gise72657@gmail.com>
Date: Feb 2, 2023 at 7:23 AM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - No Billboard changes to Zoning Code

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello,

I recently learned about the proposed changes to the City of Gilroy's zoning code that would allow a 75ft electronic billboard to be installed near 101. As a proud resident of Gilroy, I am voicing my opposition and concern for allowing this change to occur.

Many Gilroy residents commute daily and rely on 101 to do so. I myself am a commuter and frequently travel during the early hours of the morning. Allowing for a large electronic billboard that would be visible along 101 is concerning to me. I have travelled other major highways with electronic billboards and they are jarring and quite frankly pose a hazard when driving during the evening or early mornings. These billboards are bright enough that they cause drivers to squint to avoid such jarring light. I am concerned an electronic billboard would create unnecessary light pollution and distract fellow commuters in Gilroy.

Gilroy is a wonderful city, one that I am proud to call home. One of the many appeals Gilroy has, and a large reason why I chose to move to this great city, is the minimal amount of billboards (especially electronic ones). Along 101 you are able to see stars at night. Not many places within the Bay Area/Santa Clara County can boast that. Please consider keeping the zoning code the way it is and maintaining the City's star-filled, electronic-billboard-free section of 101 and surrounding areas.

Thank you,

Giselle Agdeppa-Verbera
 Proud Gilroy Resident

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Thursday, February 2, 2023 6:10 AM
To: Sharon Goei; Cindy McCormick
Subject: Fwd: EXTERNAL - Billboards along 101 in Gilroy

Begin forwarded message:

From: Ines Deschamps <idescham100@gmail.com>
Date: Feb 2, 2023 at 1:07 AM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Billboards along 101 in Gilroy

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Dear Planning Commission

Re: Feb 2 Planning Commission meeting at 6PM

I hereby would like to inform you that I am voting against the City of Gilroy zoning code change to allow digital billboards.

The installation of large billboards interferes with driving safety & causes environmental distractions.

Thank you for keeping our rural city's uncluttered & safe!

Kind regards,

Ines Deschamps

Sent from my iPhone

Cindy McCormick

From: Planning Division (Public)
Sent: Thursday, February 2, 2023 9:35 AM
To: Cindy McCormick
Subject: FW: EXTERNAL - Please Deny Electronic Billboards

Hi Cindy,

Please see email below.

Kind regards,
 Ariana

From: tomerc@comcast.net <tomerc@comcast.net>
Sent: Thursday, February 2, 2023 9:17 AM
To: Planning Commissioner Manny Bhandal <Manny.Bhandal@ci.gilroy.ca.us>; Planning Commissioner Annedore Kushner <Annedore.Kushner@ci.gilroy.ca.us>; Planning Commissioner Stefanie Elle <Stefanie.Elle@ci.gilroy.ca.us>; Planning Commissioner Adriana Leongardt <Adriana.Leongardt@ci.gilroy.ca.us>; Planning Commissioner Joan Lewis <Joan.Lewis@ci.gilroy.ca.us>; Planning Commissioner Kelly Ramirez <Kelly.Ramirez@ci.gilroy.ca.us>; Planning Commissioner Michelle Montez <Michelle.Montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Please Deny Electronic Billboards

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Council and Commission of Gilroy,

Please do not approve the electronic billboard application before you. Our city of Belmont was bribed to accept one of these by what they thought to be an enormous windfall. In hindsight it was not worth it. Residents are horrified by it's intrusion and offence to wildlife and commercial blight. The glare reflects all night to residents at the adjacent hotels and is visible even from the hilltop homes ½ mile away. Light pollution is an increasing problem and, despite claims, these fully illuminated billboards contribute a lot to the environmental problems caused by too much nighttime light. Not to mention the offensive commercialization of our roads.

The Gilroy area is blessed to have retained a lot of surrounding natural space where wildlife take sanctuary from our urban development. Don't be bribed. Vote NO to highway blight and intrusive nighttime light.

Kristin Mercer
 Belmont

"It actually doesn't take much to be considered a difficult woman. That's why there are so many of us." – Jane Goodall

This email has been checked for viruses by Avast antivirus software.

www.avast.com

p. 844 of 947

Cindy McCormick

From: Leslie Friedman <livelyfoundation@sbcglobal.net>
Sent: Thursday, February 2, 2023 11:19 AM
To: Planning Commissioner Annedore Kushner; Planning Commissioner Stefanie Elle; Planning Commissioner Adriana Leongardt; Planning Commissioner Joan Lewis; Planning Commissioner Kelly Ramirez; Planning Commissioner Michelle Montez; Planning Division (Public)
Subject: EXTERNAL - Electronic Billboard

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello,

I am writing to voice my opposition to the plan to place a double sided electronic billboard alongside of hwy.101.

This will be a serious danger to drivers and wildlife. Research shows that there are more accidents when billboards are near highways. The electronic billboard will be large and bright. It is meant to distract drivers from driving and watching a road. That's the whole purpose of this kind of advertising. Will the city of Gilroy accept responsibility for the accidents?

Wildllife, animals and birds will be disoriented by the lights. Animals live by schedules even more so than humans. They will fly into the billboard or into traffic. The bodies of dead animals on the highway will create more traffic hazards.

The lights will brighten the night sky. This will damage opportunities for astronomers and for all of us who can benefit from their research. It will lessen opportunities for learning about our world.

If the city of Gilroy thinks this will give it a more modern identity, please do not buy that hogwash. The day when doing and building things which are damaging to our environment are gone. The things that would make Gilroy more up to date would be to deny this billboard and let it be know that Gilroy is a leader in protecting life.

I live in Mountain View and frequently drive into Gilroy to shop and for services available there.

Thank you for your attention.
 Leslie Friedman

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Thursday, February 2, 2023 11:56 AM
To: Cindy McCormick; Sharon Goei
Subject: Fwd: EXTERNAL - Electric billboards

Begin forwarded message:

From: Yoga with Lupe <yogalupe1@gmail.com>
Date: Feb 2, 2023 at 11:45 AM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>
Subject: EXTERNAL - Electric billboards

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

The research is in and these distract drivers who are already distracted and it makes no sense for the environment either, pls say no!
Sent from my iPhone

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Thursday, February 2, 2023 6:10 AM
To: Cindy McCormick; Sharon Goei
Subject: Fwd: EXTERNAL - Billboard opinion

Begin forwarded message:

From: Matthew Andres Calzetta <rapanui820@gmail.com>
Date: Feb 2, 2023 at 6:03 AM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Billboard opinion

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hello Planning Division,

I have lived in Gilroy since 2017.

I just want to voice my opinion against the electronic billboards. They do not fit the spirit of our small town. They are unsightly. I think it will convey ultimately the wrong sentiments to our people and visitors, which is not worth the potential benefits. Also, billboards whether electronic or otherwise, are not endearing or add positively to the environment. Often times they are a eyesore and annoyance.

Please do not amend the code to permit their placement. Let's not be that south county city that has billboards.

Thanks for your attention and work.

Matt Calzetta, MD
 Kaiser Permanente Gilroy

Sent from my iPhone

Cindy McCormick

From: Planning Commissioner Manny Bhandal
Sent: Thursday, February 2, 2023 8:44 AM
To: Cindy McCormick; Sharon Goei
Subject: Fwd: EXTERNAL - Electronic Billboard Ordinance

Begin forwarded message:

From: scott macdonald <scottmacdonald00@gmail.com>
Date: Feb 2, 2023 at 8:42 AM
To: Planning Commissioner Manny Bhandal <manny.bhandal@ci.gilroy.ca.us>, Planning Commissioner Annedore Kushner <annedore.kushner@ci.gilroy.ca.us>, Planning Commissioner Stefanie Elle <stefanie.elle@ci.gilroy.ca.us>, Planning Commissioner Adriana Leongardt <adriana.leongardt@ci.gilroy.ca.us>, Planning Commissioner Joan Lewis <joan.lewis@ci.gilroy.ca.us>, Planning Commissioner Kelly Ramirez <kelly.ramirez@ci.gilroy.ca.us>, Planning Commissioner Michelle Montez <michelle.montez@ci.gilroy.ca.us>
Cc: Planning Division (Public) <planningdivision@cityofgilroy.org>
Subject: EXTERNAL - Electronic Billboard Ordinance

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Members of the Gilroy Planning Commission,

As someone who drives Highway 101 frequently, I urge you to oppose the proposed changes to the sign ordinance and not allow electronic billboards.

Electronic billboards are distracting, intrusive, despoil the rural nature of the Gilroy area, and generally contribute to a lower quality of life for those living with them. Please do not allow them in your city.

Sincerely,
 -Scott MacDonald
 San Jose, CA

Cindy McCormick

From: Cindy McCormick
Sent: Wednesday, September 7, 2022 9:23 AM
To: Shani Kleinhaus; Planning Division (Public)
Cc: James Eggers; Gladwyn D'Souza; Rani Fischer; Environmental Assistant
Subject: RE: EXTERNAL - Comments on Electronic Billboards

Good morning Ms. Kleinhaus,

Thank you for your comments. I will add them to the public record. We have not yet scheduled the public hearing for this item; however a newspaper notice will go out when we do schedule the public meeting.

Cindy

From: Shani Kleinhaus <shani@scvas.org>
Sent: Tuesday, September 6, 2022 3:33 PM
To: Planning Division (Public) <planningdivision@cityofgilroy.org>
Cc: James Eggers <james.eggers@sierraclub.org>; Gladwyn D'Souza <godsouza@mac.com>; Rani Fischer <ranif@scvas.org>; Environmental Assistant <eac@scvas.org>
Subject: EXTERNAL - Comments on Electronic Billboards

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Ms. McCormick,

Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter submit the attached comment letter and attachments on Gilroy's Initial Study/ Draft Mitigated Negative Declaration - Electronic Billboard. Our comments highlight the shortcomings of the Initial Study/Draft Mitigated Negative Declaration and the environmental impacts that would result from implementation of the Electronic Billboard Ordinance Project in the City of Gilroy. The comments with attached references provide unequivocal scientific evidence to establish the significant and unavoidable harm that Artificial Light At Night (ALAN) in general, and electronic billboards specifically, impose on human health and on ecosystems. The IS/DMND does not adequately address these issues.

Thank you,

Shani Kleinhaus, Ph.D.
 Environmental Advocate
 Santa Clara Valley Audubon Society
 22221 McClellan Rd.
 Cupertino, CA 95014
 650-868-2114
advocate@scvas.org



September 6, 2022

Cindy McCormick

planningdivision@cityofgilroy.org

Re: [Initial Study/ Draft Mitigated Negative Declaration - Electronic Billboard](#)

Dear Ms. McCormick,

Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter submit the following comments and responses to highlight the shortcomings of the Initial Study/Draft Mitigated Negative Declaration and the environmental impacts that would result from implementation of the Electronic Billboard Ordinance Project in the City of Gilroy. The comments with attached references provide unequivocal scientific evidence to establish the significant and unavoidable harm that Artificial Light At Night (ALAN) in general, and electronic billboards specifically, impose on human health and on ecosystems. The IS/DMND does not adequately address these issues.

In March 2021, Sierra Club National adopted a new light pollution policy: "Sierra Club recognizes that while artificial light provides desirable benefits to society, such as extended hours of social space at night, its excessive, inappropriate and poorly controlled use also leads to significant harm. Sierra Club defines light pollution as artificial light that adversely affects ecosystems and any living organism. Sierra Club includes in this definition anthropogenic light that is wasteful, or misdirected; has negative ecological impacts; is used as a form of aggression; is harmful to health, safety, or other human rights; or disrupts our view of the natural night sky, disconnecting us from our cosmic environment, including the Milky Way Galaxy where we live. Therefore, light pollution imposes natural resources, economic, biological, political, psychological, and cultural burdens." In addition, the Sierra Club retained a 60-year policy which "opposes billboard development along highways and supports measures to restrict these billboards."

The Sierra club policy is supported by a comprehensive compilation of resources pointing to the significant impacts of ALAN, please see "Attachment Resources-References-LightPollutionPolicy_20210307," attached, and the recently published "Artificial Light at Night: State of the Science 2022"¹. The information and scientific studies referenced in this

¹ International Dark-Sky Association

attachment point to the devastating impact of lighting on ecosystems and organisms that comprise our biological resources and our health. The Santa Clara Valley Audubon Society (SCVAS) is similarly concerned with the proliferation of ALAN and its pervasive harm to organisms, species, ecological food webs, and human health and safety. SCVAS is one of the largest National Audubon Society chapters in California, and its mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation.

Our organizations and our thousands of members in the region are working to protect our common natural resources, and we are greatly concerned with detrimental impacts of electronic billboards and signs to biological resources, the night sky, the aesthetic character of our City of Gilroy and region, and the health and quality of life of our region's residents. We are opposed to allowing electronic billboards and encourage the City of Gilroy to tighten regulation and reduce, rather than increase their prevalence and impacts. We believe that electronic billboards anywhere, including at the proposed location, will cause significant and irreversible harm to the biological and aesthetic environment resources. We encourage the City of Gilroy to amend its sign ordinance to prohibit highway-facing and major-road facing electronic billboards.

1. Aesthetic Resources

Electronic signs are, by design, intended to be viewed from a distance. By design, electronic billboards offend aesthetics and visual character, and produce day and nighttime illumination, light and glare. The public abhors them. A 2021 survey conducted by the City of San Jose revealed that over 95% of over 2200 respondents are strongly opposed to electronic billboards on freeways (presentation attached). The concerns over aesthetics were one of the primary reasons provided by the opposing respondents. Highway 101 in this area is not, by designation, a scenic highway. But the public and the drivers clearly consider electronic advertisement "a form of aggression" which assaults our senses and health, and imperils drivers as it diverts their attention and puts them at an increased risk of collision.

- The entire portion of US-101 that passes through the City of Gilroy is a County-designated scenic route, and is only approximately 660 feet east of the proposed billboard site. The Project clearly intends the advertisements to be highly visible from US-101 which traverses a relatively rural landscape in Gilroy and its vicinity, a rural landscape that travelers value. The Project will disrupt the visual character of the 101 corridor, despoil scenic elements, and offend landscape characteristics that contribute to the rural character of the Bay Area south of San Jose and to the well being of travelers.
- The finding that aesthetic impacts of Light and Glare are less than significant relies on Mitigation Measure MM AES-1 "The signs' operational lighting parameters shall be provided to the City of Gilroy Community Development Department for review and approval prior to the regular operation of the light-emitting diode (LED) billboards, and

shall be implemented by the project proponent to ensure a driver would not be adversely affected or impacted by trespass glare lighting.”

- Since drivers overwhelmingly and unequivocally find that electronic billboards affect them, there is no feasible way to “ensure a driver would not be adversely affected or impacted by trespass glare lighting”.

There is no doubt that impact on Aesthetic Resources is significant and unavoidable, and should be recognized as such in an Environmental Impact Report and a Statement of Overriding considerations.

2. Biological Resources:

The Biological Report underestimates the potential impact to ecosystems including those non-special status species that may make use of the adjacent Princeville drainage that benefit from its water and relative cover and including those that may transit it between the larger habitats of Uvas Creek and Llagas Creek.

Recent scientific studies highlight the pervasive, *cumulative*, and harmful impacts of ALAN to terrestrial and aquatic organisms, species, and ecosystems. The impacts, including effects on circadian rhythms, metabolism and behavior in fish, birds, insects, and other taxa, have been summarized in several recent publications in major scientific journals. It seems that CEQA guidelines have not caught up and are inadequate to measure the impact to biological resources. Science shows that ALAN is harmful to all biological resources that see or otherwise perceive it - including both plants and animals. The many studies cited in this and the attached document show that biological impacts are not limited to the area illuminated but can extend to a large distance.

The mechanism by which light impacts organisms is explored in a November 2020 study titled, “Exposure to Artificial Light at Night and the Consequences for Flora, Fauna, and Ecosystems”². This study shows that dozens of behavioral activities in all biological taxa display daily and annual rhythms, and are thus impacted by ALAN. This includes locomotor activity and sleep, schooling behavior (fish), vertical (fish) and horizontal (all vertebrates) migration, behavioral thermoregulation (fish), vocalization (fish, birds), foraging and food intake, mating and reproduction.

Contemporary scientific evidence shows that attraction to light is having a devastating and direct impact on insect numbers and diversity, and indirect effects to entire ecosystems.

Impacts to biological resources can be lessened by limiting operation hours, and turning the billboards off between the hours of 11PM and 8AM.

² <https://www.frontiersin.org/articles/10.3389/fnins.2020.602796/full>

Recent studies also implicate ALAN as one of the primary drivers of the global decline in insect numbers and diversity (the insect apocalypse)³. The loss of insects and the loss of ecological services they provide (for example, pollination, and as food for fish and birds) should be considered a significant, unavoidable impact for 24/7 light sources as proposed for this Project.

2.1 Migratory birds

The IS/DNMD acknowledges that *“migrating birds can be affected by human-built structures because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather”*. The IS/DNMD provides two reasons why the “proposed electronic billboard would not have a significant impact on the movement of migrating birds” (IS/DNMD p. 41). These reasons and the findings are not supported by evidence:

- Illuminations levels – The IS/DNMD implies that the “proposed electronic billboard would not create a substantial change in illumination levels' ' from the baseline light sources in the area” (IS/DNMD p. 41). This is a subjective opinion. To substantiate this statement, a photometric study and a study of glare and light spillage must be provided, and light levels and the spectrum of the LED lights should be analyzed within a biological-impact context.
- Billboard sign face display – The IS/DNMD states that the proposed billboard sign face would not be allowed to change “more than every 8 seconds, and messages would be static (i.e., not moving, or animated) resulting in changing color patters [sic] rather than a fixed unchanging light which may be more attractive to birds” (IS/DNMD p. 41). There is no research to indicate what is an effective length of time a billboard image should be displayed to reduce the attraction to birds. The proposed 8 second interval is arbitrary. Therefore, the IS/DNMD does not show that there is a less than significant impact on wildlife, and mitigation measures to safeguard migratory birds should be implemented.

2.2 Connectivity for wildlife

Open storm drains, irrigation channels and other flood management infrastructure features often connect habitat patches and provide pathways for animals to traverse an urban landscape⁴. This connectivity for wildlife is important to preserve biodiversity, and is easily

3

<https://www.sciencemag.org/news/2021/05/can-scientists-help-insects-survive-their-fatal-attraction-light-night>, and

<https://www.smithsonianmag.com/smart-news/light-pollution-contributes-insect-apocalypse-180973642>.

⁴ Ecological connectivity research in urban areas,

<https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/1365-2435.12489>

disrupted by lighting⁵. The Project is adjacent to the Princevalle Channel, which is currently a wildlife connectivity corridor and allows permeability between Uvas and Llagas creeks (Figure 1). The DMND provides no analysis of wildlife movement in the channel, dismissing impact to wildlife movement. ife

PDF p. 49 “The project site is bounded by a chain link fencing to the north, east, and south. These factors along with existing urban developments within the general project vicinity limit wildlife movement through the project site. Additionally, the project site is not part of or within a wildlife movement corridor”

PDF p. 48 provides, “The Princevalle Channel is located approximately 50 feet north of the project site and is a tributary to Llagas Creek, which flows into the Pajaro River, which empties into Monterey Bay, a traditional navigable water of the United States. While the project site does not contain State or federally protected wetlands, construction of the proposed electronic billboards has the potential for indirect (temporary) adverse impacts to the aquatic habitat of the Channel. Potential temporary indirect impacts (during construction) include pollutant loading, increased erosion and sedimentation, and debris dispersal into the Channel. Implementation of MM BIO-5 and MM BIO-6 would reduce potential indirect adverse impacts to the aquatic habitat of the Channel to less than significant levels through avoidance and minimization measures.”

- Please provide wetland delineation for the channel’s aquatic habitat, and discuss application of requirements by the State Water Board and the Habitat Agency
- MM BIO-5 and BIO-6 mitigate the impacts to Princevalle Channel during the construction phase. Without a study of terrestrial animal movement within the Princevalle Channel, the finding that the Project will not interfere substantially with the movement of native wildlife species or with established native resident or migratory wildlife corridors cannot be made.

⁵ Effects of Artificial Night Lighting on Terrestrial Mammals.

Ecological Consequences of Artificial Night Lighting. Catherine Rich & Travis Longcore (eds). 2006. Island Press. Covelo, California. Pages 15-42, “lighting can be very disorienting for animals that are trying to move at night. So wildlife corridors can be compromised by even a single light and so prevent animals from moving to crucial landscapes.”

Figure 1: Figure 5-8 of the Santa Clara Valley Habitat Plan denotes Uvas Creek and Llagas Creeks as important wildlife corridors.

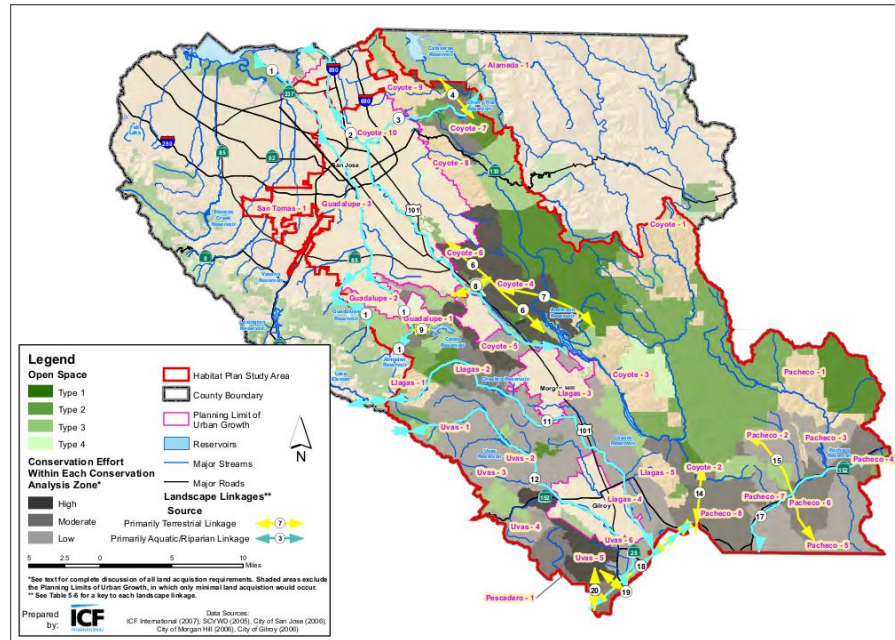


Figure 5-8
Land Acquisition Strategy with Applicable Landscape Linkages

2.3 Conflict with the Valley Habitat Plan

The finds that “Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan” is less than significant with mitigation. The proposed mitigation, MM BIO-7, provides, “The project applicant shall submit a Santa Clara Valley Habitat Plan (SCVHP) Coverage Screening Form to the Planning Department for review and shall complete subsequent forms, reports, and/or studies as needed.”

- For Mitigated Negative Declarations, CEQA does not allow mitigation measures to depend on future disclosure of impacts and actual mitigation measures. Please specify any studies that will be needed and discuss the potential impacts and how these will be addressed.

3. Driver Safety The IS/DMND acknowledges that the project undermines driver safety but the impact and of this hazard understated by the IS/DMND⁶. As expressed above, driver Safety was a great concern to the responders to the San Jose survey. The risk to drivers is evident, and supported in a plethora of studies (See attachments)

- Please analyze current vehicle collision data for the target stretch of US-101 and consider the potential of additional collisions due to drivers' attention being diverted.

4. Energy consumption, brightness, greenhouse gas emissions

In his study of energy use and other environmental impacts of electronic billboards⁷ (attached), Mr. George Young discusses energy consumption for lighting and cooling of LED billboards, as well as brightness of the billboards, materiality and recyclability. Ceqa requires the analysis of all direct and indirect impacts on a project, and we believe that all these environmental burdens are significant. The possibilities of mitigation are limited and therefore, the environmental impacts are generally unavoidable. Mr. Young makes many technical recommendations which we incorporate into this letter by reference. We ask for an Environmental Impact report to consider these mitigation, and analyze the project compliance with them.

While the IS/DMND lists the estimated 52,400 kilowatts/year of electricity and 6.6 megatons of CO₂/year expected to be released into the atmosphere with the energy required for the billboards, the IS/DMND only states that it meets standards and does not prescribe mitigation for the greenhouse gas emissions in our current climate emergency.

5. The City of San Jose has recently approved billboards at the airport, and included several feasible structural and operational requirements and mitigation measures that should be incorporated into the requirements for Gilroy's ordinance and the billboards project. Table 1 highlights some of these requirements:

6

- Colored light from LED displays outdoors in urban zones affects traffic safety.

<https://www.sciencedirect.com/science/article/abs/pii/S0360132320308155>

(January 2021)

- Luminance of roadside LED Billboards in Poland shows that advertising billboards often exceeded safe luminance levels for driving.

<https://www.tandfonline.com/doi/full/10.1080/15502724.2020.1803752>

(October 2020)

- April 2021 National Highway Traffic Safety Administration published data from 2019 on distracted-driver accident stats (electronic billboards included "Distracted by Outside Person, Object, or Event")

<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813111>

⁷ Illuminating the Issues: Digital Signage and Philadelphia's Green Future by Gregory Young

https://www.scenic.org/wp-content/uploads/2019/09/Digital_Signage_Final_Dec_14_20101.pdf

⁶Appendix A - Lighting Analysis Report from City of San Jose US 101 Airport Electronic Signs Addendum

<https://www.sanjoseca.gov/home/showpublisheddocument/75593/637629018659330000>, p.4

Table 1. Comparison of proposed Gilroy billboards with existing billboards near San Jose Airport

	SJ Airport	Gilroy
Shielding the night sky	“customizable horizontal light shields, and a vertical alignment of LED RGB modules to eliminate light into specific zones” Vertical light is controlled by LED angles restricted to “65 degrees, with limited intensity above 18 degrees and below 47 degrees.”	none
Brightness	0.3 candlefoot except on northface of the South Site which has 0.1 candlelight and “backlighted” LED display facing the riparian zone because of creek and riparian zone. Max is 0.3 candlefoot. Compare with full moon which is max of 0.1 candlefoot.⁶ Brightness changes with the amount of ambient light picked up by the sensors.	Max 0.3 candlefoot at 250ft from billboard. Compare with full moon which is max of 0.1 candlefoot.⁶ Brightness changes with the amount of ambient light picked up by the sensors.
Studies on photometrics	Study done by Ronald Zeiger, President of Zeiger Engineers, Inc.	none
hours	Off from midnight to 6 am	No limits
Time to change screen	change every 8 seconds, except the north face on South Side will be a fixed image, totally static	Change every 8 seconds

On brightness, the EIR provides,

- PDF p. 21: "The proposed project commits to a maximum ambient light output level of a 0.3 foot-candle at 250 feet from the billboard, which is a more conservative lighting intensity standard for electronic billboards of this proposed size when compared to State standards. For a frame of reference, 0.3 foot-candle is comparable in brightness to the light emanating from a computer monitor, and the light levels emitted from the proposed billboards would be programmed to adjust based upon ambient light conditions at any given time (i.e., nighttime versus daytime). Therefore, impacts would be less than significant"
- PDF p. 27: "proposed Ordinance would require billboard projects to commit to a maximum ambient light output level of 0.3 foot-candle at 250 feet from the billboards,

which is a more conservative lighting intensity standard for billboards of this proposed size when compared to State standards"

However, the standards seem to address visual and aesthetic impacts, and ignore the biological impacts of lighting that is 3 times the brightness of the moon, and the hazard this brightness imposes on migratory birds and on insects. The brightness, 0.3 foot-candle, remains a significant unmitigated environmental impact to species and the ecosystem.

We ask the City of Gilroy not to approve highway or road-facing electronic billboards. Instead, the city should develop an ordinance prohibiting such billboards city-wide. If the city persists in moving forward with this project, an EIR must be prepared.

Thank you

Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society

Gladwyn D'Souza
Conservation Committee Chair
Sierra Club Loma Prieta Chapter

Resources and References that helped inform Sierra Club's Light Pollution Policy Update

(Last updated 3/7/2021)

Over 70 resources and references (including websites, articles, publications, and reports) were reviewed during Sierra Club's March 2021 update to its light pollution national policy. The list is only provided to document resources used during policy development. Inclusion of any given resource in this list should *not* be construed as an endorsement by Sierra Club. The main resources consulted are listed below, organized by a relevant category. Several resources cover multiple issues, but each is only listed once.

Sierra Club Advocacy

Sierra Club AddUp Petition to City Mayors: Protect the Night Against Light Pollution (started in Feb 2018)

<https://addup.sierraclub.org/campaigns/protect-the-night>

Sierra Club Articles

On the Hunt for Stars: In Search of a Truly Dark Night Sky. Heather Smith, Feb 27, 2018. SIERRA magazine, March/April 2018 edition. <https://www.sierraclub.org/sierra/2018-2-march-april/feature/hunt-for-stars-dark-skies-preserves-and-parks>

Reclaiming the Night. SIERRA magazine. Katie O'Reilly. <https://www.sierraclub.org/sierra/slideshow/reclaiming-night>

General Educational Resources

National Park Service Night Skies, www.nps.gov/subjects/nightskies

Light pollution - a global discussion. Schulte-Römer, N., Dannemann, E., Meier, J. (2018): Helmholtz Centre for Environmental Research - UFZ, Leipzig, 248 pp.

<http://www.lightpollutiondiscussion.net>

The Right to Dark Skies, 2016, United Nations Educational, Scientific and Cultural Organization (UNESCO Mexico)

<https://unesdoc.unesco.org/ark:/48223/pf0000246131>

Our nights are getting brighter, and Earth is paying the price, by Nadia Drake, National Geographic, published April 3, 2019

<https://www.nationalgeographic.com/science/2019/04/nights-are-getting-brighter-earth-paying-the-price-light-pollution-dark-skies/>

Treat artificial light like other forms of pollution, say scientists. Jonathan Watts, The Guardian. Nov 2, 2020.

<https://www.theguardian.com/environment/2020/nov/02/treat-artificial-light-form-pollution-environment>

Excerpt: "What stands out is how pervasive the effects are. The effects were found everywhere – microbes, invertebrates, animals and plants," said the lead author, Kevin Gaston, a professor at the university's Environment and Sustainability Institute. "We need to start thinking about lighting in the way we think of other big systemic pressures like climate change."

Light pollution – extent, effects and approaches. TAB-Fokus no. 25, Jun 2020, Office of Technology Assessment at the German Bundestag. Christoph Schröter-Schlaack, et al.

<http://www.tab-beim-bundestag.de/en/news/20200828.html>

Summary: In addition to the intended effects, the increasing use of artificial outdoor lighting also entails a number of undesirable side effects referred to as light pollution. Artificial lighting can disturb the circadian rhythms of humans and animals, which are controlled by the change of day and night, and is suspected of being involved in the development of various diseases. Moreover, the increasing illumination of the night influences the natural behaviour of animals. Besides habitat changes, the consequences are ranging from changes in hunting or reproductive behaviour to the deadly attraction effect of light sources, e. g. for insects. However, the longterm consequences of these changes for entire populations, communities or landscapes are still poorly understood. Options for reducing light pollution exist both technologically and in terms of regulation and approval of lighting installations.

Light Pollution Is Taking Away Our Night Skies. Here's Why That Matters. 11/13/2019. HuffPost. By Kyla Mandel

https://www.huffpost.com/entry/city-light-pollution-night-sky-star-protection_n_5dc9d1fee4b00927b2381233

Some cities and states are trying to protect our night sky "for the health and wellbeing for all living things."

Light Pollution Trends

Artificially lit surface of Earth at night increasing in radiance and extent, by Christopher C. M. Kyba, Theres Kuester, Alejandro Sánchez de Miguel, Kimberly Baugh, Andreas Jechow, Franz Hölker, Jonathan Bennie, Christopher D. Elvidge, Kevin J. Gaston, and Luis Guanter. Science Advances 22 Nov 2017: Vol. 3, no. 11, e1701528, DOI: 10.1126/sciadv.1701528 <http://advances.sciencemag.org/content/3/11/e1701528>

Abstract: A central aim of the “lighting revolution” (the transition to solid-state lighting technology) is decreased energy consumption. This could be undermined by a rebound effect of increased use in response to lowered cost of light. We use the first-ever calibrated satellite radiometer designed for night lights to show that from 2012 to 2016, Earth’s artificially lit outdoor area grew by 2.2% per year, with a total radiance growth of 1.8% per year. Continuously lit areas brightened at a rate of 2.2% per year. Large differences in national growth rates were observed, with lighting remaining stable or decreasing in only a few countries. These data are not consistent with global scale energy reductions but rather indicate increased light pollution, with corresponding negative consequences for flora, fauna, and human well-being.

The new world atlas of artificial night sky brightness. Falchi, F., Cinzano, P., Duriscoe, D., Kyba, C.C.M., Elvidge, C.D., Baugh, K., Portnow, B.A., Rybnikova, N.A., & Furgoni, R. (2016). Science Advances, 2:e1600377. <https://advances.sciencemag.org/content/2/6/e1600377>

Abstract: Artificial lights raise night sky luminance, creating the most visible effect of light pollution—artificial skyglow. Despite the increasing interest among scientists in fields such as ecology, astronomy, health care, and land-use planning, light pollution lacks a current quantification of its magnitude on a global scale. To overcome this, we present the world atlas of artificial sky luminance, computed with our light pollution propagation software using new high-resolution satellite data and new precision sky brightness measurements. This atlas shows that more than 80% of the world and more than 99% of the U.S. and European populations live under light-polluted skies. The Milky Way is hidden from more than one-third of humanity, including 60% of Europeans and nearly 80% of North Americans. Moreover, 23% of the world’s land surfaces between 75°N and 60°S, 88% of Europe, and almost half of the United States experience light-polluted nights.

Light pollution in USA and Europe: The good, the bad and the ugly. F. Falchi, R. Furgoni, T.A. Gallaway, N.A. Rybnikova, B.A. Portnov, K. Baugh, P. Cinzano, C.D. Elvidge, Elsevier Journal of Environmental Management, Volume 248, 2019, 109227, 15 October 2019 <http://www.sciencedirect.com/science/article/pii/S0301479719309296>

Abstract: Light pollution is a worldwide problem that has a range of adverse effects on human health and natural ecosystems. Using data from the New World Atlas of Artificial Night Sky Brightness, VIIRS-recorded radiance and Gross Domestic Product (GDP) data, we compared light pollution levels, and the light flux to the population size and GDP at the State and County levels in the USA and at Regional (NUTS2) and Province (NUTS3) levels in Europe. We found 6800-fold differences between the most and least polluted regions in Europe, 120-fold differences in their light flux per capita, and 267-fold differences in flux per GDP unit. Yet, we found even greater differences between US counties: 200,000-fold differences in sky pollution, 16,000-fold differences in light flux per capita, and 40,000-fold differences in light flux per GDP unit. These findings may inform policy-makers, helping to reduce energy waste and adverse environmental, cultural and health consequences associated with light pollution.

Global Trends in Exposure to Light Pollution in Natural Terrestrial Ecosystems. Bennie, J.; Duffy, J.P.; Davies, T.W.; Correa-Cano, M.E.; Gaston, K.J. Remote Sens. 2015, 7, 2715-2730. <https://www.mdpi.com/2072-4292/7/3/2715>

Abstract: The rapid growth in electric light usage across the globe has led to increasing presence of artificial light in natural and semi-natural ecosystems at night. This occurs both due to direct illumination and skyglow - scattered light in the atmosphere. There is increasing concern about the effects of artificial light on biological processes, biodiversity and the functioning of ecosystems. We combine intercalibrated Defense Meteorological Satellite Program’s Operational Linescan System (DMSP/OLS) images of stable night-time lights for the period 1992 to 2012 with a remotely sensed landcover product (GLC2000) to assess recent changes in exposure to artificial light at night in 43 global ecosystem types. We find that Mediterranean-climate ecosystems have experienced the greatest increases in exposure, followed by temperate ecosystems. Boreal, Arctic and montane systems experienced the lowest increases. In tropical and subtropical regions, the greatest increases are in mangroves and subtropical needleleaf and mixed forests, and in arid regions increases are mainly in forest and agricultural areas. The global ecosystems experiencing the greatest increase in exposure to artificial light are already localized and fragmented, and often of particular conservation importance due to high levels of diversity, endemism and rarity. Night time remote sensing can play a key role in identifying the extent to which natural ecosystems are exposed to light pollution.

Direct measurement of the contribution of street lighting to satellite observations of nighttime light emissions from urban areas. Kyba, C, et al. Lighting Research & Technology. October 2020. <https://doi.org/10.1177/1477153520958463>

Abstract: Nighttime light emissions are increasing in most countries worldwide, but which types of lighting are responsible for the increase remains unknown. Also unknown is what fraction of outdoor light emissions and associated energy use are due to

public light sources (i.e. streetlights) or various types of private light sources (e.g. advertising). Here we show that it is possible to measure the contribution of street lighting to nighttime satellite imagery using ‘smart city’ lighting infrastructure. The city of Tucson, USA, intentionally altered its streetlight output over 10 days, and we examined the change in emissions observed by satellite. We find that streetlights operated by the city are responsible for only 13% of the total radiance (in the 500–900 nm band) observed from Tucson from space after midnight (95% confidence interval 10–16%). If Tucson did not dim their streetlights after midnight, the contribution would be 18% (95% confidence interval 15–23%). When streetlights operated by other actors are included, the best estimates rise to 16% and 21%, respectively. Existing energy and lighting policy related to the sustainability of outdoor light use has mainly focused on street lighting. These results suggest an urgent need for consideration of other types of light sources in outdoor lighting policy.

Anthropogenic Light Disrupts Natural Light Cycles in Critical Conservation Areas, Seymoure, B, et al. (August 19, 2019).

<https://ssrn.com/abstract=3439670>

Abstract: Anthropogenic lighting drastically alters nocturnal environments, threatening a wide range of species by disrupting light regimes that regulate fundamental biological processes such as reproduction, foraging, and predator defense. We translate satellite measures of anthropogenic light radiating from the earth to a biologically relevant measurement – the amount of light scattered back to the earth (horizontal illuminance). Anthropogenic light exceeding the natural level produced by stars, galactic light, and airglow on a clear moonless night (i.e., new moon conditions) affects 22.9% of the Earth’s terrestrial surface, as well as 51.0% of Key Biodiversity Area units, 77.1% of Global Protected Area units, and approximately 20% of the most biodiverse areas for mammals, birds, and amphibians. Thus, due to anthropogenic sources, these environments experience at least double the levels of natural illuminance during half of the night hours in a year. To facilitate biological interpretation of these levels of anthropogenic illuminance observed globally, we undertook a systematic literature review of animal responses to changing nocturnal light levels. Known biological effects from the current anthropogenic illuminance levels range from behavioral and physiological alterations to increased mortality, which have been documented in 117 species from 23 orders and 8 classes. These findings provide a biological perspective on global light pollution, and they identify regions where reductions in anthropogenic illuminance would yield the greatest benefits for conserving biodiversity.

Effects of the COVID-19 Lockdown on Urban Light Emissions: Ground and Satellite Comparison. Bustamante-Calabria, M, Sánchez de Miguel, A, et al. Remote Sensing. Jan 2021, Vol 13, Issue 2, 258.

<https://www.mdpi.com/2072-4292/13/2/258>

Abstract Excerpt: ‘Lockdown’ periods in response to COVID-19 have provided a unique opportunity to study the impacts of economic activity on environmental pollution (e.g., NO₂, aerosols, noise, light)... Here, to analyze the effect of lockdown on urban light emissions, we use ground and satellite data for Granada, Spain, during the COVID-19 induced confinement of the city’s population from 14 March until 31 May 2020. We find a clear decrease in light pollution due both to a decrease in light emissions from the city and to a decrease in anthropogenic aerosol content in the atmosphere which resulted in less light being scattered. A clear correlation between the abundance of PM₁₀ particles and sky brightness is observed, such that the more polluted the atmosphere the brighter the urban night sky.

Environmental and Social Justice

Light pollution inequities in the continental United States: A distributive environmental justice analysis. Nadybal S.M., Collins T.W., Grineski S.E.. Environmental Research, Vol 189, 2020, 109959.

<http://www.sciencedirect.com/science/article/pii/S0013935120308549>

Abstract: Excessive exposure to ambient light at night is a well-documented hazard to human health, yet analysts have not examined it from an environmental justice (EJ) perspective. We conducted the first EJ study of exposure to light pollution by testing for socially disparate patterns across the continental United States (US)... We found evidence of disparities in exposures to light pollution based on racial/ethnic minority and low-to-mid socioeconomic statuses. Americans of Asian, Hispanic or Black race/ethnicity had population-weighted mean exposures to light pollution in their neighborhoods that were approximately two times that of White Americans... neighborhoods composed of higher proportions of Blacks, Hispanics, Asians, or renter-occupants experienced greater exposures to ambient light at night. Stratified analyses indicated that those patterns of inequity did not substantially vary based on urban-rural context. Findings have implications for understanding environmental influences on health disparities, raise concerns about the potential for a multiple environmental jeopardy situation, and highlight the need for policy actions to address light pollution.

An incandescent truth: Disparities in energy-efficient lighting availability and prices in an urban U.S. county. Reames, Tony G., Michael A. Reiner, and M. Ben Stacey. (2018) Applied Energy 218:95-103.

<https://www.sciencedirect.com/science/article/abs/pii/S0306261918302769>

Abstract Excerpt: In the U.S. lighting represents about 9% of the average household's primary energy consumption and 20% of the average household's energy bill. Lighting in U.S. homes is in a state of transition with steady growth in the adoption of more energy-efficient lighting technology, such as, compact florescent lamps (CFL) and light-emitting diodes (LEDs). However, the adoption of energy-efficient lighting is not equitably distributed across socioeconomic groups, with poorer households less likely to adopt than higher-income households... We found that (1) energy-efficient bulbs were less available in high-poverty areas and

smaller stores; (2) energy-efficient bulbs were more expensive in high-poverty areas and smaller stores; (3) upgrade costs from incandescent and halogen lamps (IHLs) to CFLs or LEDs were higher in high poverty areas; and (4) both poverty and store type were significant predictors of LED availability, while store type was the most significant predictor of LED price variability. We suggest several ways that the development and implementation of energy efficiency policies and programs may consider these disparities that affect access and affordability, in order to achieve a more just energy-efficient transition.

Up in smoke: Characterizing the population exposed to flaring from unconventional oil and gas development in the contiguous US. Cushing Lara J, et al. Feb 2021. Environmental Research Letters. Vol. 16, No 3.

<https://iopscience.iop.org/article/10.1088/1748-9326/abd3d4>

Abstract Excerpt: The disposal of waste gas via intentional combustion (flaring) from unconventional oil and gas (UOG) development has also been on the rise, and may expose nearby residents to toxic air pollutants, light pollution and noise... We found that three basins accounted for over 83% of all UOG flaring activity in the contiguous US over the 8 year study period. We estimated that over half a million people in these basins reside within 5 km of a flare, and 39% of them lived near more than 100 nightly flares. Black, indigenous, and people of color were disproportionately exposed to flaring.

Light Pollution in San Antonio, TX: An Environmental Justice Issue. Alvarez, V, et al. May 2020. Environmental Studies Student Works. Trinity University.

https://digitalcommons.trinity.edu/env_studocs/2

Abstract Excerpt: the environmental justice movement often overlooks the issue of light pollution, even though light pollution is higher in urban low-income areas. There is a lack of studies examining how light pollution varies between communities on a regional, state, or municipal scale... The mid-income neighborhoods had the greatest median and maximum light pollution levels, while high-income neighborhoods had the lowest median illuminance. These results indicate that mid-income neighborhoods are subject to the greatest amount of light pollution by area and intensity.

Ecological, Wildlife and Human Impacts

Ecological light pollution. Longcore, T. and Rich, C. (2004), *Frontiers in Ecology and the Environment*, 2: 191-198.

<https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1890/1540-9295%282004%29002%5B0191%3AELP%5D2.0.CO%3B2>

Abstract: Ecologists have long studied the critical role of natural light in regulating species interactions, but, with limited exceptions, have not investigated the consequences of artificial night lighting. In the past century, the extent and intensity of artificial night lighting has increased such that it has substantial effects on the biology and ecology of species in the wild. We distinguish “astronomical light pollution”, which obscures the view of the night sky, from “ecological light pollution”, which alters natural light regimes in terrestrial and aquatic ecosystems. Some of the catastrophic consequences of light for certain taxonomic groups are well known, such as the deaths of migratory birds around tall lighted structures, and those of hatchling sea turtles disoriented by lights on their natal beaches. The more subtle influences of artificial night lighting on the behavior and community ecology of species are less well recognized, and constitute a new focus for research in ecology and a pressing conservation challenge.

Ecological consequences of artificial night lighting. Rich, C. and T. Longcore. (eds.). 2006. Island Press, Washington, D.C.

<https://www.urbanwildlands.org/ecanlbook.html>

The first book to consider the environmental effects of the intentional illumination of the night. It brings together leading scientists from around the world to review the state of knowledge on the subject and to describe specific effects that have been observed across a full range of taxonomic groups, including mammals, birds, reptiles and amphibians, fishes, invertebrates, and plants... provides a scientific basis to begin addressing the challenge of conserving the nighttime environment. It cogently demonstrates the vital importance of this until-now neglected topic and is an essential new work for conservation planners, researchers, and anyone concerned with human impacts on the natural world.

Light Pollution Is a Driver of Insect Declines, by Owens, A, et al. (April 26, 2019)

<https://ssrn.com/abstract=3378835>

Abstract: Insects around the world are rapidly declining. Concerns over what this loss means for food security and ecological communities have compelled a growing number of researchers to search for the key drivers behind the decline. Habitat loss, pesticide use, invasive species, and climate change all have likely played a role, but we posit here that artificial light at night (ALAN) is another important — but often overlooked — bringer of the insect apocalypse. We first discuss the history and extent of ALAN, and then present evidence that ALAN has led to insect declines through its interference with the development, movement, foraging, and reproductive success of diverse insect species, as well as its positive effect on insectivore predation. We conclude with a discussion of how artificial lights can be tuned to reduce their impacts on vulnerable populations. ALAN is unique among anthropogenic habitat disturbances in that it is fairly easy to ameliorate, and leaves behind no residual effects. Greater recognition of the ways in which ALAN impacts insects can help conservationists reduce or eliminate one of the major drivers of insect declines.

A meta-analysis of biological impacts of artificial light at night. Nature Ecology & Evolution (2020), Dirk Sanders, Enric Frago, Rachel Kehoe, Christophe Patterson & Kevin J. Gaston

<https://doi.org/10.1038/s41559-020-01322-x>

<https://datadryad.org/stash/dataset/doi:10.5061/dryad.wpzgmsbjn>

Abstract: Natural light cycles are being eroded over large areas of the globe by the direct emissions and sky brightening that result from sources of artificial night-time light. This is predicted to affect wild organisms, particularly because of the central role that light regimes play in determining the timing of biological activity. Although many empirical studies have reported such effects, these have focused on particular species or local communities and have thus been unable to provide a general evaluation of the overall frequency and strength of these impacts. Using a new database of published studies, we show that exposure to artificial light at night induces strong responses for physiological measures, daily activity patterns and life history traits. We found particularly strong responses with regards to hormone levels, the onset of daily activity in diurnal species and life history traits, such as the number of offspring, predation, cognition and seafinding (in turtles). So far, few studies have focused on the impact of artificial light at night on ecosystem functions. The breadth and often strength of biological impacts we reveal highlight the need for outdoor artificial night-time lighting to be limited to the places and forms—such as timing, intensity and spectrum—where it is genuinely required by the people using it to minimize ecological impacts.

Longer photoperiods through range shifts and artificial light lead to a destabilizing increase in host–parasitoid interaction strength. Kehoe, R, Sanders, D, Cruse, D, et al. Journal of Animal Ecology. 2020; 89: 2508–2516.

<https://doi.org/10.1111/1365-2656.13328>

Excerpts: Many organisms are experiencing changing daily light regimes due to latitudinal range shifts driven by climate change and increased artificial light at night (ALAN). Activity patterns are often driven by light cycles, which will have important consequences for species interactions... Here we demonstrate that ALAN impact interacts with daylength and temperature by changing the interaction strength between a common day-active consumer species and its host in a predictable way. Our results further suggest that range expansion or ALAN-induced changes in light regimes experienced by insects and their natural enemies will result in unstable dynamics beyond key tipping points in daylength... Finally, the strong response of a diurnal host–parasitoid system reported here also emphasizes the importance of focussing on the impact of ALAN not just on nocturnal species but also on those that are chiefly diurnal, on which the effects of ALAN may be just as profound, if not as intuitive.

Artificial nightlight alters the predator–prey dynamics of an apex carnivore. Ditmer, MA, et al. (2020). Ecography

<https://doi.org/10.1111/ecog.05251>

Abstract Excerpts: Our results indicate that deer used the anthropogenic environments to access forage and were more active at night than their wildland conspecifics. Despite higher nightlight levels, cougars killed deer at the wildland–urban interface, but hunted them in the relatively darkest locations. Light had the greatest effect of all covariates on where cougars killed deer at the wildland–urban interface. Both species exhibited functional responses to light pollution at fine scales; individual cougars and deer with less light exposure increasingly avoided illuminated areas when exposed to greater radiance, whereas deer living in the wildland–urban interface selected elevated light levels. We conclude that integrating estimates of light pollution into ecological studies provides crucial insights into how the dynamic human footprint can alter animal behavior and ecosystem function across spatial scales.

Coral Gametogenesis Collapse under Artificial Light Pollution. Ayalon et al. Current Biology. Nov 2020

<https://doi.org/10.1016/j.cub.2020.10.039>

Excerpts: Marine organisms, including coral reefs in particular, rely on the natural light cycles of sunlight and moonlight to regulate various physiological, biological, and behavioral processes. Here, we demonstrate that light pollution caused delayed gametogenesis and unsynchronized gamete release in two coral species, *Acropora millepora* and *Acropora digitifera*, from the Indo-Pacific Ocean... With the global transition toward LED lighting, which tends to have higher emissions in the blue spectrum, more coral reefs could be affected by artificial light, as blue light penetrates deeper into the water column. This spectral shift is expected to be amplified by the current rapid population growth in coastal regions... Our experimental results are corroborated by *in situ* observations, which have shown disruption of gametogenesis and loss of spawning synchrony in corals occurring at sites that are heavily polluted by artificial lights. These results demonstrate that artificial light must be considered in conservation plans for coral reefs near areas of human activity.

Sensory pollutants alter bird phenology and fitness across a continent. Senzaki, M., Barber, J.R., Phillips, J.N. et al. Nature 587, 605–609 (2020)

<https://doi.org/10.1038/s41586-020-2903-7>

Abstract: Expansion of anthropogenic noise and night lighting across our planet is of increasing conservation concern. Despite growing knowledge of physiological and behavioural responses to these stimuli from single-species and local-scale studies, whether these pollutants affect fitness is less clear, as is how and why species vary in their sensitivity to these anthropic stressors. Here we leverage a large citizen science dataset paired with high-resolution noise and light data from across the contiguous United States to assess how these stimuli affect reproductive success in 142 bird species. We find responses to both sensory pollutants linked to the functional traits and habitat affiliations of species. For example, overall nest success was negatively correlated with noise among birds in closed environments. Species-specific changes in reproductive timing and hatching success

in response to noise exposure were explained by vocalization frequency, nesting location and diet. Additionally, increased light-gathering ability of species' eyes was associated with stronger advancements in reproductive timing in response to light exposure, potentially creating phenological mismatches. Unexpectedly, better light-gathering ability was linked to reduced clutch failure and increased overall nest success in response to light exposure, raising important questions about how responses to sensory pollutants counteract or exacerbate responses to other aspects of global change, such as climate warming. These findings demonstrate that anthropogenic noise and light can substantially affect breeding bird phenology and fitness, and underscore the need to consider sensory pollutants alongside traditional dimensions of the environment that typically inform biodiversity conservation.

Bright lights in the big cities: migratory birds' exposure to artificial light. Horton, KG., Nilsson, C., et al, 2019. *Frontiers in Ecology and the Environment*, April 2019.

<https://doi.org/10.1002/FEE.2029>

<https://www.youtube.com/watch?v=gXSN2GmI8M>

Abstract: Many species of migratory birds have evolved the ability to migrate at night, and the recent and rapid expansion of artificial light at night has markedly altered the nighttime sky through which they travel. Migrating birds regularly pass through heavily illuminated landscapes, and bright lights affect avian orientation. But risks to migrating birds from artificial light are not spatially or temporally uniform, representing a challenge for mitigating potential hazards and developing action plans to catalog risks at continental scales. We leveraged over two decades of remote-sensing data collected by weather surveillance radar and satellite-based sensors to identify locations and times of year when the highest numbers of migrating birds are exposed to light pollution in the contiguous US. Our continental-scale quantification of light exposure provides a novel opportunity for dynamic and targeted conservation strategies to address the hazards posed by light pollution to nocturnally migrating birds.

High-intensity urban light installation dramatically alters nocturnal bird migration. Van Doren BM, Horton KG, et al. *Proceedings of the National Academy of Sciences*, Oct 2017, 114 (42) 11175-11180

<https://www.pnas.org/content/114/42/11175>

Abstract Excerpt: Billions of nocturnally migrating birds move through increasingly photopolluted skies, relying on cues for navigation and orientation that artificial light at night (ALAN) can impair... We studied effects of ALAN on migrating birds by monitoring the beams of the National September 11 Memorial & Museum's "Tribute in Light" in New York, quantifying behavioral responses with radar and acoustic sensors and modeling disorientation and attraction with simulations... When the installation was illuminated, birds aggregated in high densities, decreased flight speeds, followed circular flight paths, and vocalized frequently... However, behavioral disruptions disappeared when lights were extinguished, suggesting that selective removal of light during nights with substantial bird migration is a viable strategy for minimizing potentially fatal interactions among ALAN, structmelures, and birds. Our results also highlight the value of additional studies describing behavioral patterns of nocturnally migrating birds in powerful lights in urban areas as well as conservation implications for such lighting installations.

The ecological impacts of nighttime light pollution: a mechanistic appraisal. Gaston, K. J., Bennie, J., Davies, T. W. and Hopkins, J., *Biological Reviews*, Vol 88, Issue 4, 2013, Cambridge Philosophical Society

<https://onlinelibrary.wiley.com/doi/full/10.1111/brv.12036>

Abstract: The ecological impacts of nighttime light pollution have been a longstanding source of concern, accentuated by realized and projected growth in electrical lighting. As human communities and lighting technologies develop, artificial light increasingly modifies natural light regimes by encroaching on dark refuges in space, in time, and across wavelengths. A wide variety of ecological implications of artificial light have been identified. However, the primary research to date is largely focused on the disruptive influence of nighttime light on higher vertebrates, and while comprehensive reviews have been compiled along taxonomic lines and within specific research domains, the subject is in need of synthesis within a common mechanistic framework. Here we propose such a framework that focuses on the cross-factoring of the ways in which artificial lighting alters natural light regimes (spatially, temporally, and spectrally), and the ways in which light influences biological systems, particularly the distinction between light as a resource and light as an information source. We review the evidence for each of the combinations of this cross-factoring. As artificial lighting alters natural patterns of light in space, time and across wavelengths, natural patterns of resource use and information flows may be disrupted, with downstream effects to the structure and function of ecosystems. This review highlights: (i) the potential influence of nighttime lighting at all levels of biological organisation (from cell to ecosystem); (ii) the significant impact that even low levels of nighttime light pollution can have; and (iii) the existence of major research gaps, particularly in terms of the impacts of light at population and ecosystem levels, identification of intensity thresholds, and the spatial extent of impacts in the vicinity of artificial lights.

Light Pollution, Circadian Photoreception, and Melatonin in Vertebrates. Grubisic M, Haim A, Bhusal P, Dominoni DM, Gabriel KMA, Jechow A, Kupprat F, Lerner A, Marchant P, Riley W, Stebelova K, van Grunsven RHA, Zeman M, Zubidat AE, Hölker F. *Sustainability*. 2019; 11(22):6400.

<https://www.mdpi.com/2071-1050/11/22/6400>

Abstract: Artificial light at night (ALAN) is increasing exponentially worldwide, accelerated by the transition to new efficient lighting technologies. However, ALAN and resulting light pollution can cause unintended physiological consequences. In vertebrates, production of melatonin—the “hormone of darkness” and a key player in circadian regulation—can be suppressed by

ALAN. In this paper, we provide an overview of research on melatonin and ALAN in vertebrates. We discuss how ALAN disrupts natural photic environments, its effect on melatonin and circadian rhythms, and different photoreceptor systems across vertebrate taxa. We then present the results of a systematic review in which we identified studies on melatonin under typical light-polluted conditions in fishes, amphibians, reptiles, birds, and mammals, including humans. Melatonin is suppressed by extremely low light intensities in many vertebrates, ranging from 0.01–0.03 lx for fishes and rodents to 6 lx for sensitive humans. Even lower, wavelength-dependent intensities are implied by some studies and require rigorous testing in ecological contexts. In many studies, melatonin suppression occurs at the minimum light levels tested, and, in better-studied groups, melatonin suppression is reported to occur at lower light levels. We identify major research gaps and conclude that, for most groups, crucial information is lacking. No studies were identified for amphibians and reptiles and long-term impacts of low-level ALAN exposure are unknown. Given the high sensitivity of vertebrate melatonin production to ALAN and the paucity of available information, it is crucial to research impacts of ALAN further in order to inform effective mitigation strategies for human health and the wellbeing and fitness of vertebrates in natural ecosystems.

Melatonin: a possible link between the presence of artificial light at night and reductions in biological fitness. Jones TM, Durrant J, Michaelides EB, Green MP. 2015, Phil. Trans. R. Soc. B 370: 20140122.
<https://royalsocietypublishing.org/doi/10.1098/rstb.2014.0122>

Abstract: The mechanisms underpinning the ecological impacts of the presence of artificial night lighting remain elusive. One suspected underlying cause is that the presence of light at night (LAN) suppresses nocturnal production of melatonin, a key driver of biological rhythm and a potent antioxidant with a proposed role in immune function. Here, we briefly review the evidence for melatonin as the link between LAN and changes in behaviour and physiology. We then present preliminary data supporting the potential for melatonin to act as a recovery agent mitigating the negative effects of LAN in an invertebrate. Adult crickets (*Teleogryllus commodus*), exposed to constant illumination, were provided with dietary melatonin (concentrations: 0, 10 or 100 µg ml⁻¹) in their drinking water. We then compared survival, lifetime fecundity and, over a 4-week period, immune function (haemocyte concentration, lysozyme-like and phenoloxidase (PO) activity). Melatonin supplementation was able only partially to mitigate the detrimental effects of LAN: it did not improve survival or fecundity or PO activity, but it had a largely dose-dependent positive effect on haemocyte concentration and lysozyme-like activity. We discuss the implications of these relationships, as well as the usefulness of invertebrates as model species for future studies that explore the effects of LAN.

Waters under Artificial Lights: Does Light Pollution Matter for Aquatic Primary Producers? Grubisic, M. (2018), Limnology and Oceanography Bulletin, 27: 76-81.
<https://aslopubs.onlinelibrary.wiley.com/doi/abs/10.1002/lob.10254>

Abstract: Bright night lights have become a symbol of development and prosperity in the modern world. But have you ever wondered how artificial light at night (ALAN) may be affecting living beings in our cities, and how it may be affecting us? As artificial illumination is transforming nocturnal environments around the world, light pollution associated with its use is becoming a topic of increasing interest in the scientific and public communities. Light pollution disrupts natural light regimes in many regions of the world, raising concerns about ecological and health impacts of this novel anthropogenic pressure. Most obviously, ALAN can influence night-active animals in urban and suburban areas, and most research in this growing field focuses on terrestrial organisms such as bats, birds, and insects. Effects on aquatic ecosystems are much less known. In particular, aquatic primary producers, such as microalgae, cyanobacteria, and plants, have rarely been studied despite their critical positioning in the base of aquatic food webs and the fundamental role that light plays in their ecology. For primary producers, light is a key source of both energy and environmental information; it influences their growth, production, and community structure. ALAN has therefore a large potential to influence their communities and induce bottom-up changes to aquatic ecosystems and ecosystem functions.

Global climate change and invariable photoperiods: A mismatch that jeopardizes animal fitness. Walker, WH, Meléndez-Fernández, OH, Nelson, RJ, Reiter, RJ. Ecol Evol. 2019; 9: 10044–10054.
<https://onlinelibrary.wiley.com/doi/full/10.1002/ece3.5537>

Abstract: The Earth's surface temperature is rising, and precipitation patterns throughout the Earth are changing; the source of these shifts is likely anthropogenic in nature. Alterations in temperature and precipitation have obvious direct and indirect effects on both plants and animals. Notably, changes in temperature and precipitation alone can have both advantageous and detrimental consequences depending on the species. Typically, production of offspring is timed to coincide with optimal food availability; thus, individuals of many species display annual rhythms of reproductive function. Because it requires substantial time to establish or re-establish reproductive function, individuals cannot depend on the arrival of seasonal food availability to begin breeding; thus, mechanisms have evolved in many plants and animals to monitor and respond to day length in order to anticipate seasonal changes in the environment. Over evolutionary time, there has been precise fine-tuning of critical photoperiod and onset/offset of seasonal adaptations. Climate change has provoked changes in the availability of insects and plants which shifts the timing of optimal reproduction. However, adaptations to the stable photoperiod may be insufficiently plastic to allow a shift in the seasonal timing of bird and mammal breeding. Coupled with the effects of light pollution which prevents these species from determining day length, climate change presents extreme evolutionary pressure that can result in severe deleterious consequences for individual species reproduction and survival. This review describes the effects of climate change on plants and animals,

defines photoperiod and the physiological events it regulates, and addresses the consequences of global climate change and a stable photoperiod.

Effects of street lighting technologies on the success and quality of pollination in a nocturnally pollinated plant. Macgregor, C. J., M. J. O. Pocock, R. Fox, and D. M. Evans. 2019. *Ecosphere* 10(1):e02550
<https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1002/ecs2.2550>

Abstract: Artificial light at night (ALAN) is an increasingly important driver of global change. Lighting directly affects plants, but few studies have investigated indirect effects mediated by interacting organisms. Nocturnal Lepidoptera are globally important pollinators, and pollen transport by moths is disrupted by lighting. Many street lighting systems are being replaced with novel, energy-efficient lighting, with unknown ecological consequences. Using the wildflower *Silene latifolia*, we compared pollination success and quality at experimentally lit and unlit plots, testing two major changes to street lighting technology: in lamp type, from high-pressure sodium lamps to light-emitting diodes, and in lighting regime, from full-night (FN) to part-night (PN) lighting. We predicted that lighting would reduce pollination. *S. latifolia* was pollinated both diurnally and nocturnally. Contrary to our predictions, flowers under FN lighting had higher pollination success than flowers under either PN lighting or unlit controls, which did not significantly differ from each other. Lamp type, lighting regime, and distance from the light all significantly affected aspects of pollination quality. These results confirm that street lighting could affect plant reproduction through indirect effects mediated by nocturnal insects, and further highlight the possibility for novel lighting technologies to mitigate the effects of ALAN on ecosystems.

Cascading effects of artificial light at night: resource-mediated control of herbivores in a grassland ecosystem. Bennie J, Davies TW, Cruse D, Inger R, Gaston KJ. 2015. *Phil. Trans. R. Soc. B* 370: 20140131.
<https://royalsocietypublishing.org/doi/10.1098/rstb.2014.0131>

Abstract: Artificial light at night has a wide range of biological effects on both plants and animals. Here, we review mechanisms by which artificial light at night may restructure ecological communities by modifying the interactions between species. Such mechanisms may be top-down (predator, parasite or grazer controlled), bottom-up (resource-controlled) or involve non-trophic processes, such as pollination, seed dispersal or competition. We present results from an experiment investigating both top-down and bottom-up effects of artificial light at night on the population density of pea aphids *Acyrtosiphon pisum* in a diverse artificial grassland community in the presence and absence of predators and under low-level light of different spectral composition. We found no evidence for top-down control of *A. pisum* in this system, but did find evidence for bottom-up effects mediated through the impact of light on flower head density in a leguminous food plant. These results suggest that physiological effects of light on a plant species within a diverse plant community can have detectable demographic effects on a specialist herbivore.

Artificial night light alters ecosystem services provided by biotic components. Singhal, R.K., Chauhan, J., Jatav, H.S. et al. *Biologia Futura* (2021).
<https://doi.org/10.1007/s42977-020-00065-x>

Abstract Excerpt: This review highlights the impact of ALAN on the ecosystem and its living and non-living components, emphasizing to the terrestrial and aquatic ecosystem. Further, we summarize the means of minimizing strategies of ALAN in the environment, which are very crucial to reduce the further spread of night light contamination in the environment and can be useful to minimize the drastic impacts on the ecosystem.

City lights and urban air. Stark, H., Brown, S., Wong, K. et al. *Nature Geoscience*, Vol 4, Nov 2011.
<https://doi.org/10.1038/ngeo1300>
https://s3.amazonaws.com/wbez-assets/curiouscity/ngeo_1300_NOV11_auproof2.pdf
<https://cires.colorado.edu/news/bright-city-lights-affect-air-pollution>

Here we show that city lights can also alter the concentration of nitrate radicals, an important atmospheric oxidant. These alterations have potential — albeit small — consequences for pollution levels the following day... We converted satellite data on light intensity into nitrate radical loss, using our aircraft measurements, and show that the influence of city lights on nitrate radical loss can be large in regions outside Los Angeles... We also find that satellite-derived estimates of light levels tend to correlate positively with independent satellite-derived estimates of nitrogen dioxide. We therefore suggest that city lights are likely to influence nitrogen dynamics in other regions of the globe.

Nighttime photochemistry: nitrate radical destruction by anthropogenic light sources. Stark, H, et al. CIRES, NOAA. 2010.
https://www.academia.edu/23527679/Nighttime_photochemistry_nitrate_radical_destruction_by_anthropogenic_light_sources
 Abstract extract: show airborne and ground measurements of absolute light intensities from anthropogenic and natural light sources (e.g. industrial and street lighting, full moon) as a newly discovered NO₃ loss process. This loss process has implications for nighttime pollutant levels and next-day ozone production.

Light Flicker from LED Lighting Systems-An Urgent Problem to Solve. GIES, T.H. (2016).

https://www.led-professional.com/resources-1/articles/lighting-flicker-from-led-lighting-systems/LpR53_p50-p59.pdf

Recent research has shown that fluctuations of short wavelength emissions are perceived to a higher extent and light flicker may have a huge influence on the well-being of end users.

Blue light excited retinal intercepts cellular signaling. Ratnayake, K., Payton, J.L., Lakmal, O.H. et al. Scientific Reports 8, 10207 (2018).

<https://doi.org/10.1038/s41598-018-28254-8>

Photoreceptor chromophore, 11-cis retinal (11CR) and the photoproduct, all-trans retinal (ATR), are present in the retina at higher concentrations and interact with the visual cells. Non-visual cells in the body are also exposed to retinal that enters the circulation. ... we uncovered that blue light-excited ATR and 11CR irreversibly change/distort plasma membrane (PM) bound phospholipid; phosphatidylinositol 4,5 biphosphate (PIP2) and disrupt its function. ... The change in PIP2 was followed by an increase in the cytosolic calcium, excessive cell shape change, and cell death... These findings suggest that retinal exerts light sensitivity to both photoreceptor and non-photoreceptor cells, and intercepts crucial signaling events, altering the cellular fate.

Blue light from phone screens accelerates blindness, study finds. The Guardian. 8/9/2018

<https://www.theguardian.com/society/2018/aug/09/blue-light-from-phone-screens-accelerates-blindness-study-finds>

Research... has revealed that prolonged exposure to blue light triggers poisonous molecules to be generated in the eye's light-sensitive cells that can cause macular degeneration – an incurable condition that affects the middle part of vision. Blue light, which has a shorter wavelength and more energy compared with other colours, can gradually cause damage to the eyes.

How the marvel of electric light became a global blight to health. Dr. Richard G 'Bugs' Stevens. Aeon. August 3, 2018.

<https://aeon.co/ideas/how-the-marvel-of-electric-light-became-a-global-blight-to-health>

Excerpts: Light at night constitutes a massive assault on the ecology of the planet, including us... The electric light bulb is touted as one of the most significant technological advancements of human beings... But as with any new and spectacular technology, there are invariably unintended consequences... The current 'lightmare' traces back to the 1950s, when a road-building frenzy, including construction of the Interstate Highway System, aimed to solve the problem of congestion in the United States. But the roads turned out to increase congestion and pollution, including light pollution, too... More efficient energy-production and use, without concerted public education on reduction of use, can make the pollution problem worse... The hyper-aggressive marketing of bright, white LED street lighting to cities and towns has advanced to a breathtaking level. The US Department of Energy (DoE) and a group of international partners have launched an effort called 'Rise and Shine: Lighting the World with 10 Billion LED Bulbs' in 'a race to deploy 10 billion high-efficiency, high-quality and affordable lighting fixtures and bulbs (like LEDs) as quickly as possible'... In response to this relentless attack on night, the American Medical Association (AMA) stepped up and adopted an official policy statement in 2016... The reaction from the DoE and the Illuminating Engineering Society of North America (IES) was swift and highly critical of the AMA's audacity, asserting that the AMA was not qualified to make any statements on lighting. But this reaction was disingenuous because without the AMA statement, the nationwide retrofit would have continued unabated without regard to the environment or human health. Electric light can be a great benefit to people when used wisely. To get to the 'used wisely' part requires all the science happening now. But there must also be a desire for effective use of electric lighting on the part of government and the public... few people will leave the faucet running much longer than necessary. Yet some people think nothing of using more electricity than they actually need... In the life of the planet, destruction of night is as important an issue as the poisoning of water and air.

Artificial Light at Night (ALAN): A Potential Anthropogenic Component for the COVID-19 and HCoV's Outbreak. Khan ZA, Yumnamcha T, Mondal G, et al. Frontiers in endocrinology. 2020;11:622. Published 2020 Sep 10.

<https://www.frontiersin.org/articles/10.3389/fendo.2020.00622/full>

Abstract Excerpt: In this article, we tried to focus on the possible influence of this anthropogenic factor in human coronavirus (HCoV) outbreak. The relationship between the occurrences of coronavirus and the ascending curve of the night-light has also been delivered. The ALAN influences the physiology and behavior of bat, a known nocturnal natural reservoir of many Coronaviridae. The "threatened" and "endangered" status of the majority of bat species is mainly because of the destruction of their proper habit and habitat predominantly through artificial illumination. The stress exerted by ALAN leads to the impaired body functions, especially endocrine, immune, genomic integration, and overall rhythm features of different physiological variables and behaviors in nocturnal animals. Night-light disturbs "virus-host" synchronization and may lead to mutation in the genomic part of the virus and excessive virus shedding. We also proposed some future strategies to mitigate the repercussions of ALAN and for the protection of the living system in the earth as well.

Light pollution linked to preterm birth increase. Jan 25, 2021. Lehigh University. Science Daily.

<https://www.sciencedaily.com/releases/2021/01/210125191821.htm>

Scientists conducted the first study to examine the fetal health impact of light pollution based on a direct measure of skyglow, an important aspect of light pollution. Using an empirical regularity discovered in physics, called Walker's Law, a team found evidence of reduced birth weight, shortened gestational length and preterm births.

Association of Outdoor Artificial Light at Night With Mental Disorders and Sleep Patterns Among US Adolescents. Paksarian D, Rudolph KE, Stapp EK, et al. JAMA Psychiatry. 2020;77(12):1266–1275.
<https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2767698>
<https://edition.cnn.com/2020/07/08/health/night-light-pollution-disrupt-sleep-wellness/index.html>

In this study, area-level outdoor ALAN was associated with less favorable sleep patterns and mood and anxiety disorder in adolescents. Future studies should elucidate whether interventions to reduce exposure to ALAN may positively affect mental and sleep health.

Astronomy Impacts

Light Pollution In California And Arizona. Walker, Merle F. *Publications of The Astronomical Society of The Pacific*, Vol. 85, No. 507, 1973, pp. 508–519. Jstor
<http://www.jstor.org/stable/40675430>

The present and future effect of artificial illumination on ground-based optical astronomical observations in California and Arizona is discussed. It is concluded that the effectiveness of all major observatories in these states is presently or potentially limited by light pollution. Consequently, it is essential that immediate efforts be undertaken to: (1) Control outdoor illumination to lengthen the useful life of existing observatory sites, and (2) Identify and protect the best remaining sites both within and outside the United States. The characteristics and probable locations of the best sites for ground-based optical astronomical observations are discussed.

Light Pollution: Outdoor lighting is a growing threat to astronomy. Riegel, Kurt W. *Science*, Vol. 179, No. 4080, Mar 1973, pp. 1285–1291.

<https://pubmed.ncbi.nlm.nih.gov/17835929/>

Abstract Excerpt: The level of skylight caused by outdoor lighting systems is growing at a very high rate, about 20 percent per year nationwide. In addition, the spectral distribution of man-made light pollution may change in the next decade from one containing a few mercury lines to one containing dozens of lines and a significantly increased continuum level. Light pollution is presently damaging to some astronomical programs, and it is likely to become a major factor limiting progress in the next decade... Some is due to promotional campaigns, in which questionable arguments involving public safety are presented. There are protective measures which might be adopted by the government; these would significantly aid observational astronomy, without compromising the legitimate outdoor lighting needs of society.

Flagstaff's Battle for Dark Skies. Portree D.S.F. Oct 2002, Griffith Observer, Vol 66 No 10

<http://www2.lowell.edu/users/wes/GriffithObserver1crop.pdf>

<http://www.flagstaffdarksbies.org/international-dark-sky-city/flagstaffs-battle-for-dark-skies/>

Public Safety

Blinded by the Lights: Levi's Stadium Lights May Be Airport Safety Hazard. By Stephen Stock, Michael Bott and Jeremy Carroll. NBC Bay Area. Sept 22, 2015

<https://www.nbcbayarea.com/news/local/blinded-by-the-lights-levi-stadium-lights-may-be-airport-safety-hazard/102234/>

Some pilots say powerful lights above and around the new Levi's Stadium can cause safety hazards for flights in and out of San Jose Mineta International Airport.

Why Lighting Claims Might Well Be Wrong, Paul Marchant, *International Journal of Sustainable Lighting*: Vol. 19 No. 1 (2017)

<http://lightingjournal.org/index.php/path/article/view/71/79>

This paper gives some background to claims of benefit from road lighting and why large beneficial claims may be suspect.

Feeling Safe in the Dark: Examining the Effect of Entrapment, Lighting Levels, and Gender on Feelings of Safety and Lighting Policy Acceptability. Boomsma C, et al. *Environmental and Behavior*, Vol 46 Issue 2, pp 193-212. Sept 2012.

<https://journals.sagepub.com/doi/10.1177/0013916512453838>

Importantly, as hypothesized, perceived safety mediated the effect of lighting on acceptability levels, suggesting that people can accept lower lighting levels when social safety is not threatened.

The effect of reduced street lighting on road casualties and crime in England and Wales: controlled interrupted time series analysis. Steinbach R, Perkins C, Tompson L, et al, *J Epidemiol Community Health* 2015;69:1118-1124.

<https://jech.bmj.com/content/69/11/1118>

Conclusions: This study found little evidence of harmful effects of switch off, part-night lighting, dimming, or changes to white light/LEDs on road collisions or crime in England and Wales.

Light Pollution Mitigation

National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds, Commonwealth of Australia, Jan 2020

<https://www.environment.gov.au/biodiversity/publications/national-light-pollution-guidelines-wildlife>

Audubon's Lights Out program

<https://www.audubon.org/conservation/project/lights-out>

LoNNe, Loss of the Night Network

<http://www.cost-lonne.eu/recommendations/>

Human and Environmental Effects of Light Emitting Diode (LED) Community Lighting, 2016, American Medical Association, CSAPH Report 2-A-16, Policy H-135.927

<https://policysearch.ama-assn.org/policyfinder/detail/H-135.927?uri=%2FAMADoc%2FHOD-135.927.xml>

<https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/about-ama/councils/Council%20Reports/council-on-science-public-health/a16-csaph2.pdf>

supports the proper conversion to community-based Light Emitting Diode (LED) lighting, which reduces energy consumption and decreases the use of fossil fuels.. encourages minimizing and controlling blue-rich environmental lighting by using the lowest emission of blue light possible to reduce glare... should be properly shielded to minimize glare and detrimental human and environmental effects, and... utilize the ability of LED lighting to be dimmed for off-peak time periods.

Advocating and Support for Light Pollution Control Efforts and Glare Reduction for Both Public Safety and Energy Savings, 2012, Policy H-135.937

<https://policysearch.ama-assn.org/policyfinder/detail/light%20pollution?uri=%2FAMADoc%2FHOD.xml-0-308.xml>

Our AMA: (1) will advocate that all future outdoor lighting be of energy efficient designs to reduce waste of energy and production of greenhouse gasses that result from this wasted energy use; (2) supports light pollution reduction efforts and glare reduction efforts at both the national and state levels; and (3) supports efforts to ensure all future streetlights be of a fully shielded design or similar non-glare design to improve the safety of our roadways for all, but especially vision impaired and older drivers.

International Dark-Sky Association, <https://darksky.org>, <https://darksky.org/light-pollution>

IDA Guidance for Electronic Message Centers (EMCs) – Digital billboards

<https://www.darksky.org/wp-content/uploads/2019/10/EMC-Guidelines-IDA2019-1.1.pdf>

IDA Criteria for Community-Friendly Outdoor Sports Lighting

<https://www.darksky.org/wp-content/uploads/2018/03/IDA-Criteria-for-Community-Friendly-Outdoor-Sports-Lighting.pdf>

Model Lighting Ordinances – Dark Sky Impacts, Flagstaff Dark Skies Coalition

<http://www.flagstaffdarksdies.org/model-lighting-ordinances-dark-sky-impacts/>

Led Lighting And Dark Skies: Are LEDs good for dark skies? Flagstaff Dark Skies Coalition.

<http://www.flagstaffdarksdies.org/led-lighting-dark-skies/>

Light Pollution and Lighting Codes: An Analysis of the Light Pollution Control Effectiveness of the IDA-IES Model Lighting Ordinance and the IDA Pattern Outdoor Lighting Code, Christian B. Luginbuhl, U.S. Naval Observatory Flagstaff Station, 15 January 2013

<http://www.flagstaffdarksdies.org/wp-content/uploads/2013/02/Lighting-Codes-and-LP-Luginbuhl-130115.pdf>

Excerpts: Under MLO standards, outside of MLO Lighting Zones 0 and 1, the total lumen allowances, direct uplight allowances, and amount of sky glow are notably greater than expected under POLC standards; in MLO Lighting Zones 3 and 4 they are dramatically greater. These lighting amounts and sky glow impacts are greater than what can be expected even when lighting is unregulated. The MLO Performance Method Option B provides notably poor control of direct uplight and therefore sky glow. Under the MLO Performance Method Option B there are no effective limitations on glare. MLO does not address lamp spectrum, and thus leaves this crucial aspect of light pollution unaddressed. Finally, the analysis shows that the MLO Prescriptive Hardscape Area and Performance Methods do not provide similar results in terms of total lumen amounts, uplight amounts, glare, or “offsite” impacts, an undesirable characteristic of a model regulation purporting to control light pollution. The Performance Method particularly allows for the most egregious forms of polluting lighting fixtures and designs. We find no evidence that communities adopting MLO can expect reduction in light pollution over that produced by typical unregulated lighting, despite the claims of MLO to be a method to “drastically reduce” light pollution.

Model Lighting Ordinance: Is the BUG rating method effective at limiting light trespass?, April/May 2012 issue of LEDs Magazine

<https://www.ledsmagazine.com/architectural-lighting/outdoor-lighting/article/16698628/model-lighting-ordinance-is-the-bug-rating-method-effective-at-limiting-light-trespass-magazine>

Excerpts: The MLO allows for the use of BUG ratings along with the performance method as long as there is no upright used. This scenario would not only allow for more lumens on the site as compared to the prescriptive method, but also would allow for a greater amount of light spilling from the site than would be seen from sites that restrict the spill by using the calculation method. As proven from the studies done for this article, the BUG rating method cannot effectively control these extra lumens of spill light.

Hazard or Hope? LEDs and Wildlife. Longcore, Travis. (2018). LED Professional Review. 70. 52-57.

<https://www.led-professional.com/resources-1/articles/hazard-or-hope-leds-and-wildlife>

Conclusions: The efficiency benefits of LEDs and the resulting economic incentives will drive further conversion of outdoor and indoor lighting to the technology. If the tendency to light more when light is cheaper can be overcome, the other attributes of LEDs hold significant promise for reducing environmental effects. Realizing that promise requires designers and manufacturers to learn about and embrace the guidance that wildlife scientists can provide. In some instances it will be challenging - resisting the desire to up-light, using no more light than necessary, and educating clients on the benefits of spectral choices that do not look like daylight. In other contexts, environmental regulations are likely to dictate lighting choices and offer an opportunity if the industry is prepared to seize it. On each of the mitigation approaches - duration, direction, intensity, and spectrum - LEDs will inherently or can be designed to perform well. Whether they do in practice will be up to the LED professional.

Artificial Night Lighting and Protected Lands: Ecological Effects and Management Approaches (Revised August 2017).

Longcore, T., and C. Rich. Natural Resource Report NPS/NRSS/NSNS/NRR—2017/1493. National Park Service, Fort Collins, Colorado.

<https://irma.nps.gov/DataStore/DownloadFile/582058>

Artificial night lighting represents a growing challenge for managers of parks and protected lands. The disruption of natural patterns of light and dark, which have been more or less reliable for millions of years, has a range of adverse consequences for wildlife across taxonomic groups and landscape types. This document reviews effects of artificial night lighting by habitat type and discusses the approaches available to land managers to mitigate and avoid certain adverse effects of artificial night lighting.

Rapid assessment of lamp spectrum to quantify ecological effects of light at night. Longcore, T., A. Rodríguez, B.

Witherington, J. F. Penniman, L. Herf, and M. Herf. 2018. Journal of Experimental Zoology A 329:511-521.

<https://onlinelibrary.wiley.com/doi/abs/10.1002/jez.2184>

Abstract: For many decades, the spectral composition of lighting was determined by the type of lamp, which also influenced potential effects of outdoor lights on species and ecosystems. Light-emitting diode (LED) lamps have dramatically increased the range of spectral profiles of light that is economically viable for outdoor lighting. Because of the array of choices, it is necessary to develop methods to predict the effects of different spectral profiles without conducting field studies, especially because older lighting systems are being replaced rapidly. We describe an approach to predict responses of exemplar organisms and groups to lamps of different spectral output by calculating an index based on action spectra from behavioral or visual characteristics of organisms and lamp spectral irradiance. We calculate relative response indices for a range of lamp types and light sources and develop an index that identifies lamps that minimize predicted effects as measured by ecological, physiological, and astronomical indices. Using these assessment metrics, filtered yellow-green and amber LEDs are predicted to have lower effects on wildlife than high pressure sodium lamps, while blue-rich lighting (e.g., $K \geq 2200$) would have greater effects. The approach can be updated with new information about behavioral or visual responses of organisms and used to test new lighting products based on spectrum. Together with control of intensity, direction, and duration, the approach can be used to predict and then minimize the adverse effects of lighting and can be tailored to individual species or taxonomic groups.

The LED Paradox: How Light Pollution Challenges Experts to Reconsider Sustainable Lighting. Schulte-Römer, N.; Meier, J.;

Söding, M.; Dannemann, E.; Sustainability 2019, 11, 6160.

<https://www.mdpi.com/2071-1050/11/21/6160>

Abstract: In the 21st century, the notion of “sustainable lighting” is closely associated with LED technology. In the past ten years, municipalities and private light users worldwide have installed light-emitting diodes in urban spaces and public streets to save energy. Yet an increasing body of interdisciplinary research suggests that supposedly sustainable LED installations are in fact unsustainable, because they increase light pollution. Paradoxically, blue-rich cool-white LED lighting, which is the most energy-efficient, also appears to be the most ecologically unfriendly. Biologists, physicians and ecologists warn that blue-rich LED light disturbs the circadian day-and-night rhythm of living organisms, including humans, with potential negative health effects on individual species and whole ecosystems. Can the paradox be solved? This paper explores this question based on our transdisciplinary research project Light Pollution—A Global Discussion. It reveals how light pollution experts and lighting professionals see the challenges and potential of LED lighting from their different viewpoints. This expert feedback shows that “sustainable LED lighting” goes far beyond energy efficiency as it raises complex design issues that imply stakeholder negotiation. It also suggests that the LED paradox may be solved in context, but hardly in principle.

Tuning the white light spectrum of light emitting diode lamps to reduce attraction of nocturnal arthropods. Longcore Travis, Aldern Hannah L., Eggers John F., Flores Steve, Franco Lesly, Hirshfield-Yamanishi Eric, Petrinec Laina N., Yan Wilson A. and Barroso André M. 2015, Phil. Trans. R. Soc. B37020140125
<https://royalsocietypublishing.org/doi/abs/10.1098/rstb.2014.0125>

Abstract: Artificial lighting allows humans to be active at night, but has many unintended consequences, including interference with ecological processes, disruption of circadian rhythms and increased exposure to insect vectors of diseases. Although ultraviolet and blue light are usually most attractive to arthropods, degree of attraction varies among orders. With a focus on future indoor lighting applications, we manipulated the spectrum of white lamps to investigate the influence of spectral composition on number of arthropods attracted. We compared numbers of arthropods captured at three customizable light-emitting diode (LED) lamps (3510, 2704 and 2728 K), two commercial LED lamps (2700 K), two commercial compact fluorescent lamps (CFLs; 2700 K) and a control. We configured the three custom LEDs to minimize invertebrate attraction based on published attraction curves for honeybees and moths. Lamps were placed with pan traps at an urban and two rural study sites in Los Angeles, California. For all invertebrate orders combined, our custom LED configurations were less attractive than the commercial LED lamps or CFLs of similar colour temperatures. Thus, adjusting spectral composition of white light to minimize attracting nocturnal arthropods is feasible; not all lights with the same colour temperature are equally attractive to arthropods.

Evaluating Potential Spectral Impacts of Various Artificial Lights on Melatonin Suppression, Photosynthesis, and Star Visibility. Aubé M, Roby J, Kocifaj M (2013). PLOS ONE 8(7): e67798.

<https://doi.org/10.1371/journal.pone.0067798>

Abstract Excerpt: Artificial light at night can be harmful to the environment, and interferes with fauna and flora, star visibility, and human health. To estimate the relative impact of a lighting device, its radiant power, angular photometry and detailed spectral power distribution have to be considered. In this paper we focus on the spectral power distribution... In this paper we propose three new indices to characterize lamp spectra. These indices have been designed to allow a quick estimation of the potential impact of a lamp spectrum on melatonin suppression, photosynthesis, and star visibility. We used these new indices to compare various lighting technologies objectively. We also considered the transformation of such indices according to the propagation of light into the atmosphere as a function of distance to the observer. Among other results, we found that low pressure sodium, phosphor-converted amber light emitting diodes (LED) and LED 2700 K lamps filtered with the new Ledtech's Equilib filter showed a lower or equivalent potential impact on melatonin suppression and star visibility in comparison to high pressure sodium lamps. Low pressure sodium, LED 5000 K-filtered and LED 2700 K-filtered lamps had a lower impact on photosynthesis than did high pressure sodium lamps. Finally, we propose these indices as new standards for the lighting industry to be used in characterizing their lighting technologies.

Solid-State Roadway Lighting Design Guide: Volume 1: Guidance. National Academies of Sciences, Engineering, and Medicine. 2020. <https://doi.org/10.17226/25678>

Solid-State Roadway Lighting Design Guide: Volume 2: Research Overview. National Academies of Sciences, Engineering, and Medicine. 2020. <https://doi.org/10.17226/25679>

Assessment of Citizens' Actions against Light Pollution with Guidelines for Future Initiatives. Zielińska-Dabkowska, K.M.; Xavia, K.; Bobkowska, K. Sustainability. June 2020, 12, 4997.

<https://doi.org/10.3390/su12124997>

Abstract excerpt: This paper therefore investigates the various actions taken by citizens, as well as the challenges, methods, and tools involved, regarding good practices initiated by grass roots activism on how to reduce existing and potential light pollution. The results of a comparative analysis of 262 international case studies (lawsuits and online petitions) reveal that, since the 1990s, there has been an increase in the number of legal cases related to light pollution due to the rise in public awareness, the availability of scientific knowledge via the Internet, and the ability to take accurate lighting measurements and perform lighting simulations. Also, in the last decade a new tool for digital participation in the form of online petitions has established a new movement of citizen action to mitigate the effects of light pollution. Based on this information, a seven-step framework involving recommendations for citizen action has been developed. It is expected that this new knowledge will benefit those citizens planning future efforts involving the development, implementation, and monitoring processes of outdoor lighting. Additionally, it might support the evolution of planning and policy approaches that are sustainable and necessary to improve the application and installation of ecologically/biologically responsible illumination for towns, cities, and natural habitats.

Nevada Senate passes bill to form 'dark sky places' program. Feb 22, 2021. By Sam Metz, AP News
<https://apnews.com/article/legislature-nevada-light-pollution-coronavirus-pandemic-kate-marshall-e0f69ee3c5895b1f7dd4d89b1ea3ebc>

Nevada's state Senate took a step toward ensuring stargazers will continue to enjoy picture-perfect constellations on Monday, passing a bill to recognize "dark sky places" with unobstructed views of galaxies hundreds of thousands of light years away.

Urban Lighting Research Transdisciplinary Framework—A Collaborative Process with Lighting Professionals. Pérez Vega, C.; Zielinska-Dabkowska, K.M.; Hölker, F. *Int. J. Environ. Res. Public Health*. 2021, 18, 624.

<https://doi.org/10.3390/ijerph18020624>

Abstract Excerpt: Over the past decades, lighting professionals have influenced the experience of the night by brightly illuminating streets, buildings, skylines, and landscapes 24/7... a dual perspective on night-time was shaped and the visual enjoyment of visitors after dusk was prioritized over natural nightscapes (nocturnal landscapes). During this time, researchers of artificial light at night (ALAN) observed and reported a gradual increase in unnatural brightness and a shift in color of the night-time environment. As a consequence, ALAN has been identified as a relevant pollutant of aquatic and terrestrial habitats, and an environmental stressor, which may adversely affect a wide range of organisms, from micro-organisms to humans... This paper presents a framework to help reduce the existing gap of knowledge, because appropriate lighting applications depend upon it. Access to less light polluted nightscapes in urban environments is just as important as access to unpolluted water, food, and air.

On-line Workshop “Dark and Quiet Skies for Science and Society”, Report and Recommendations, Dec 2020, coordinated by the United Nations Office for Outer Space Affairs

https://unoosa.org/oosa/en/ourwork/psa/schedule/2020/2020_dark_skies.html

to propose to COPUOS [United Nations Committee on the Peaceful Uses of Outer Space]... recommendations, to be acted upon either by local governments or agreed to at an international level... This report analyses all artificial interference that can have a negative impact on the visibility of the night sky. These interferences can be logically grouped into three categories... effect caused by the artificial emission of visible light during the night,... impact that the very large number of communication satellites in Low Earth Orbit... to the interference that radio broadcasting... have on observations by radio telescopes.

Grasping darkness: the dark ecological network as a social-ecological framework to limit the impacts of light pollution on biodiversity. Challéat, S., et al. 2021. *Ecology and Society* 26(1):15.

<https://doi.org/10.5751/ES-12156-260115>

Abstract excerpt: Artificial light at night (ALAN)... is increasingly recognized as a major threat to global biodiversity, which ultimately alters the amount, the quality, and the connectivity of available habitats for taxa... Here we present the concept of “dark ecological network.” We show this concept is able to grasp the effects of ALAN in terms of habitat disturbances and integrates temporal dimensions of ecological processes into biodiversity conservation planning... we propose a course of action that consists of building an interdisciplinary repertoire of contextualized knowledge (e.g., impacts on wildlife, human/lightscape relationship, existing legal tools, etc.), in order to deduce from it a number of practical supports for the governance of the dark ecological network in response to societal and ecological issues.

Illuminating the Issues

Digital Signage and Philadelphia's Green Future

by Gregory Young



In the world of outdoor advertising, successive technological and stylistic advancements have prompted cities and states to rethink their signage regulation and policy. There has been much controversy regarding the potential safety hazard posed by digital signage. Many studies show that such signage can lead to driver distraction and traffic delays (Wachtel, 2009). This research, and the resultant outcry from activists and concerned citizens, has led some policymakers to regulate distracting, electronic signage displays. There has been relatively little research, however, regarding the environmental and energy-consumption issues raised by this new technology.

The Basics of Digital Signage and Energy Consumption

First, *what exactly is digital signage?* Digital signage packages consist of three key pieces: player, extender(s), and display. The player is essentially a computer, equipped with software to generate the displayed content. Players are typically mounted behind the screen, and must be kept cool (via internal or accessory fan) and must be easily accessible for repairs or rebooting. These player/fan arrangements typically consume between 200 and 300 Watts¹ while running, slightly more than a home dishwasher. Depending on the relative location of the player to the screen, there may be a need for a video extender, essentially a cable which connects the player to the screen. This brings us to the most important component of any digital sign: the screen, or, in industry parlance, “the display.” There are three main categories of digital display: LCD, plasma, and LED.

¹ **Watt**—a unit of power which measures the rate of energy conversion. It is defined as one joule per second. The kilowatt (kW) is equal to one thousand watts. For a sense of perspective, one kilowatt of power is approximately equal to 1.34 horsepower. A small electric heater with one heating element can use 1.0 kilowatt. If that heater is used for one hour, it will have used one kilowatt hour.

LED is the name used for Light Emitting Diode (aka LED) boards, commonly used in small to medium sized on-premise electronic advertising². They are the overwhelming preference for large off-premise³ digital billboards; designed for long-distance impact, they are often up to 1200 sq. ft. in size (20'x60'). According to the U.S. Department of Energy, 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. Proponents of digital signage tout the “greenness” of LEDs; lower wattage and greater luminance⁴ than the more traditional fluorescent, incandescent, or halogen bulbs.



State Rd. & Academy Rd., Philadelphia
Off-premise LED sign

These claims overlook one key bit of common sense: whereas traditional, static signage is illuminated by two or three “inefficient” lamps at nighttime, digital signs are comprised of hundreds, if not thousands, of “green” LED bulbs, each using between 2-10 watts, lit twenty-four hours a day. For instance, a 14'x48' LED billboard can have between 900 and 10,000 diodes.



3051 Front St., Philadelphia
Off-premise LED sign

Considering this simple fact, intrinsic to digital billboard design, it is no surprise that overall energy consumption of digital signage exceeds that of static signage, and makes bulb-to-bulb comparisons irrelevant in this context.

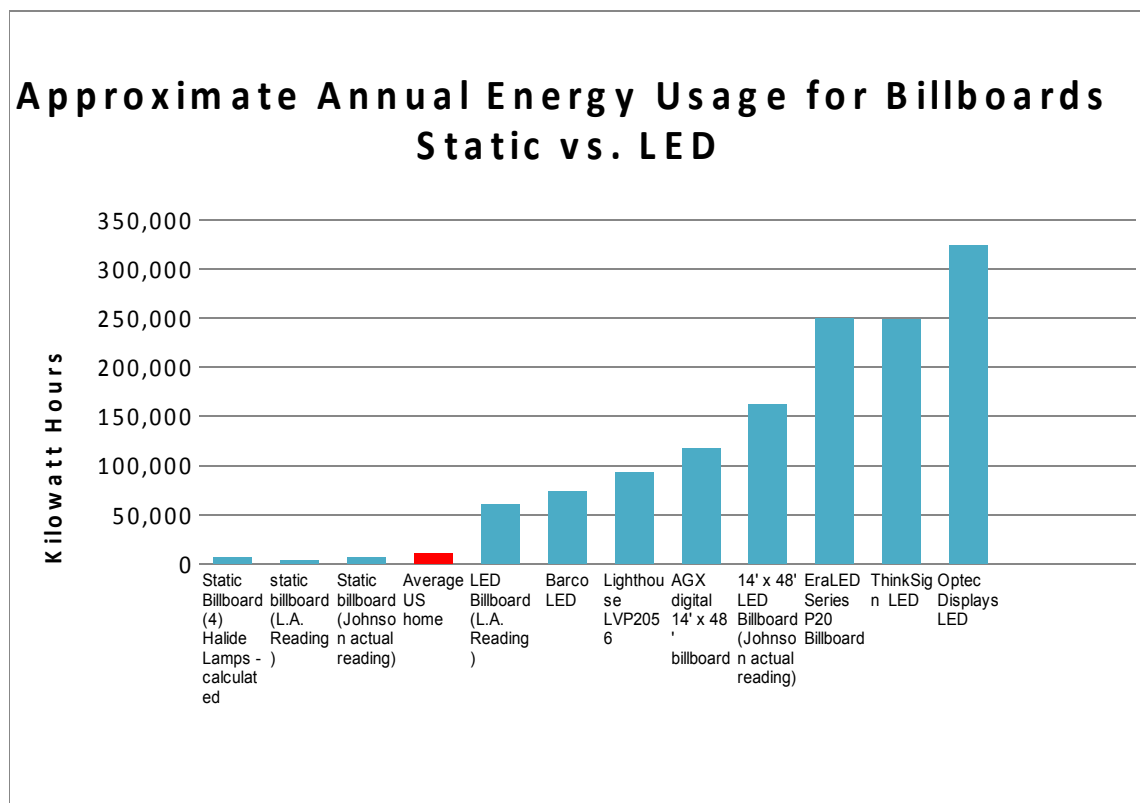
Additionally, with all digital display types, the players which control the changeable images and the fans required to cool them must be taken into account, as they too increase energy consumption. Adding auxiliary equipment, such as extenders, further increases the power demand.

² **On-premise** or **accessory** signage is defined as a business establishment’s on-site advertisements.

³ **Off-premise** or **non-accessory** billboards/signs are those which advertise a business or product not sold at the signs’ location. Roadside billboards are a popular form of off-premise advertising.

⁴ **Luminance** is a measure of the perceived brightness of a light-emitting surface, such as a digital sign. Its unit of measure is candela per square meter (c/m²), informally referred to as “nits.”

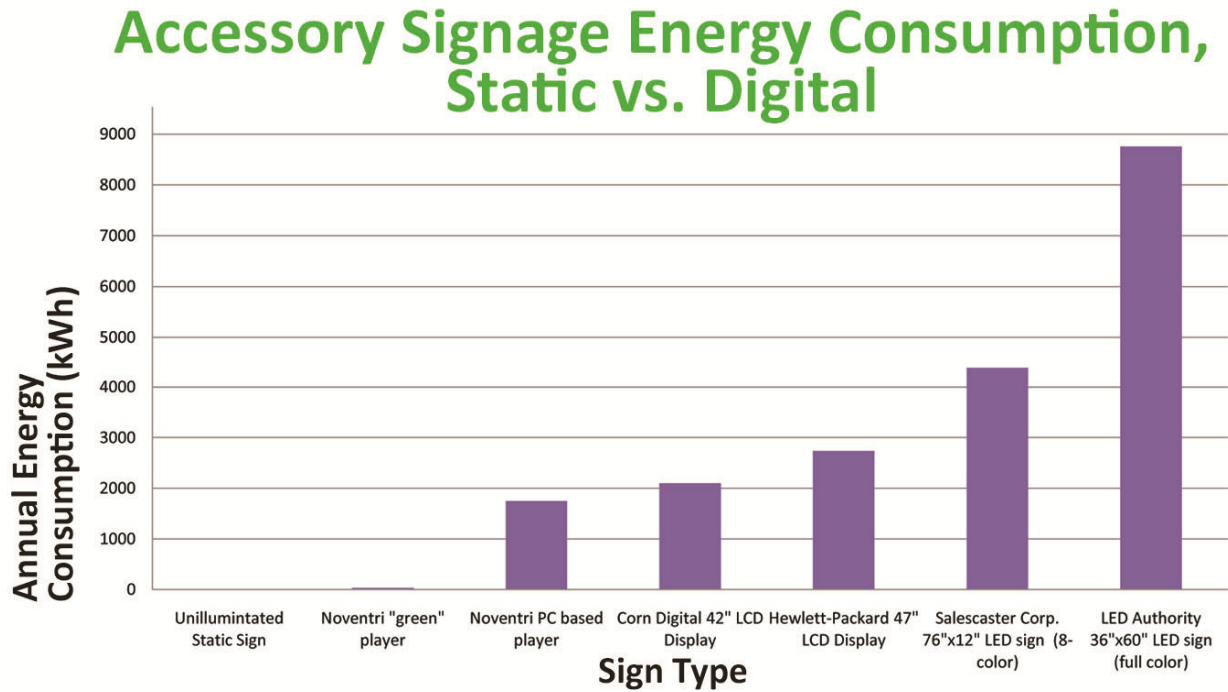
Determining the exact power consumption for a digital billboard is difficult; usage is dependent upon many variables, including size, resolution (how close pixels are spaced, aka diode density), how many LEDs are in each pixel, the color capabilities of the board (tri-color or full color), the image being displayed and time of day (daytime operation requires more power than nighttime operation, as the lit image must compete with the brightness of the sun). Despite these difficulties, we have compiled an objective chart of consumption rates. Our information was provided by a variety of sources, ranging from manufacturers, fellow researchers, advocacy groups, and independent meter readings.



LED units generate heat, and cannot function well in heat which reduces the unit's life expectancy. As a result of the tremendous amount of heat generated in LEDs, and the additional impact of hot weather on the signs, an air conditioning unit is incorporated to cool the components. The energy drawn from the grid is highest during the summer months when the heat from the sun coupled with the heat generated by the higher brightness of the LED unit requires increased demand on the air conditioning system installed for cooling the LED unit. This energy use corresponds directly with maximum peak demands from businesses and residences. Utility companies now provide a discount for homeowners if they can disconnect their air conditioners from the grid during the peak load demands. There is no discussion or plan that we are aware of to disconnect LED air conditioners or darken signs during periods of high demand. If traditional billboards continue to be replaced by LED signs, the growing draw of energy during peak hours could negate the efforts of Utility companies to reduce demand during peak times.

Rates of Energy Consumption		
Product type	Annual Usage, kWh*	Annual cost**
Unilluminated Static Sign	0	\$0
Noventri "green" player	35	\$4.80
Noventri PC based player	1,752	\$240
Corn Digital 42" LCD Display	2,103	\$288
Hewlett-Packard 47" LCD Display	2,737	\$375
Salescaster Corp. 76"x12" LED sign (8-color)	4,380	\$600
Static Billboard (4) Halide Lamps - calculated	7,008	\$960
LED Authority 36"x60" LED sign (full color)	8,760	\$1,200
Average US home	11,040	\$1,512
LED Billboard (L.A. Reading)	61,032	\$8,361
Barco LED	73,584	\$10,081
Lighthouse LVP2056	92,715	\$12,792
AGX digital 14' x 48' billboard	117,866	\$16,148
14' x 48' LED Billboard (Florida actual reading)	162,902	\$22,318
EraLED Series P20 Billboard	249,690	\$34,208
ThinkSign LED	248,993	\$34,112
Optec Displays LED	323,773	\$44,357
* Energy Usage $((24)(365))/1000$		
** Average costs per kWh=\$.137 (Metro Area)		

In many applications---such as television/computer display, general lighting, and small electronics---LCD, plasma screen, and LED technological advancements have proven more energy efficient than their predecessors, but research indicates that out-of-home advertising is simply not an appropriate or responsible application for digital technology.

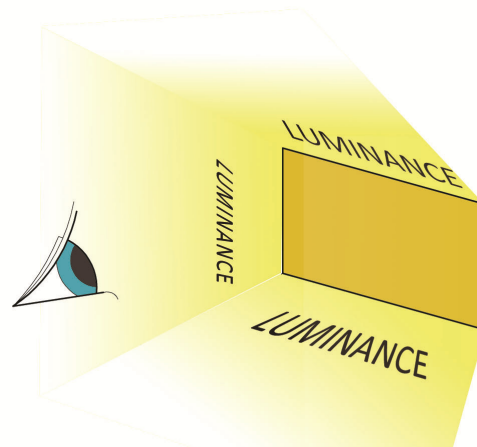


Sign Brightness

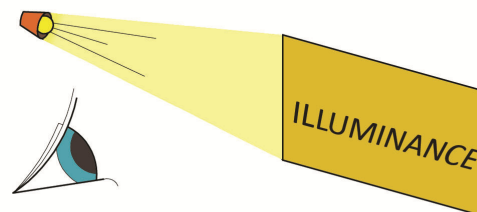
Measuring Sign Brightness

Apart from energy consumption, there are the important issues of light trespass and light pollution, 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. Light trespass⁵ is measured in two ways: luminance or illuminance. *Luminance* (measured in nits⁶) quantifies surface brightness, or the amount of light an object gives off. *Illuminance* (measured in footcandles⁷) quantifies that amount of light which falls onto an object.

By either measure, digital signage can create significant problems. “During daylight, an unlit static billboard will have a brightness which “fits in” with its surroundings; it will not cause excessive distraction because of excessive luminance” (Carhart, 2010, p.4). But, to capture drivers’ attention, digital signs must be set to very high luminance levels, as they are essentially competing with the sun, which has a luminance level of 6,500 nits. If this extreme brightness is not modulated to fit nighttime conditions, we face issues including very high energy consumption during the day, light pollution in the evening, and potential driver distraction at all times. The OAAA (Outdoor Advertising Association of America) has guidelines to address brightness limits, but they are not mandated.



This sign (above) gives off light. Its **Luminance** is measured in **nits**.



This sign (above) is being lit by a light source. Its **Illuminance** is measured in **footcandles**.

⁵ **Light trespass** occurs when unwanted light enters one's property, for instance, by shining over a neighbor's fence. A common light trespass problem occurs when a strong light enters the window of one's home from the outside

⁶ **Nit**—term used to describe a metric unit of luminance. It is defined as candela per square meter (cd/m²). The unit is based on the candela, the modern metric unit of luminous intensity; and the square meter.

⁷ **Footcandle** – Unit of light density incident on a plane (assumed to be horizontal unless otherwise specified), and measurable with an illuminance meter, a.k.a. light meter.

Information Source	Product type	Luminance (surface brightness)
(C.Luginbuhl study)	Typical Ambient Roadway Illumination	1 Nit
(C. Luginbuhl study)	Typical Floodlit Billboard	approximately 100 Nits
Digital Billboards: New Regulations for New Technology by Drew Carhart	Traditionally lit static billboards	98% were under 150 Nits, 83% were under 100 Nits (Arizona Study); 124 Nits average (New York Study)
IESNA recommendations	Recommendations for Digital Billboard Luminance	250 Nits (day), 125 Nits (night)
Outdoor Advertising Association of America (Ian Lewin Study)	Recommendations for Digital Billboard Luminance	300-350 Nits suggested (study based on light trespass readings)
Hewlett-Packard (Specifications)	47" LCD Digital Signage Display	500 Nits
Corn Digital (Specifications)	32" & 42" LCD Posters	500 Nits (32") 700 Nits (42")
Carhart study	Daytime sky (sunny)	5,000-7,000 Nits
Virginia Tech Transportation Inst.	The Sun	6,500 Nits
Senzen Top Technology Co., Ltd (specifications)	seires PH12 (14'x48' full-color LED billboard	8,000+ Nits
EraLED (Specifications)	Series P20 full-color LED billboard (assorted sizes)	8,500 Nits
ProVIDEO Billboard Panels (specifications)	Series 1515-4, 14'x48' full-color LED billboard	11,000+ Nits
Optec Displays (specifications)	model 1248, 14'x48' full-color LED billboard	11,000+ Nits
Optec Displays (specifications)	model 2040-5, 14'x48' full-color LED billboard	11,000+ Nits

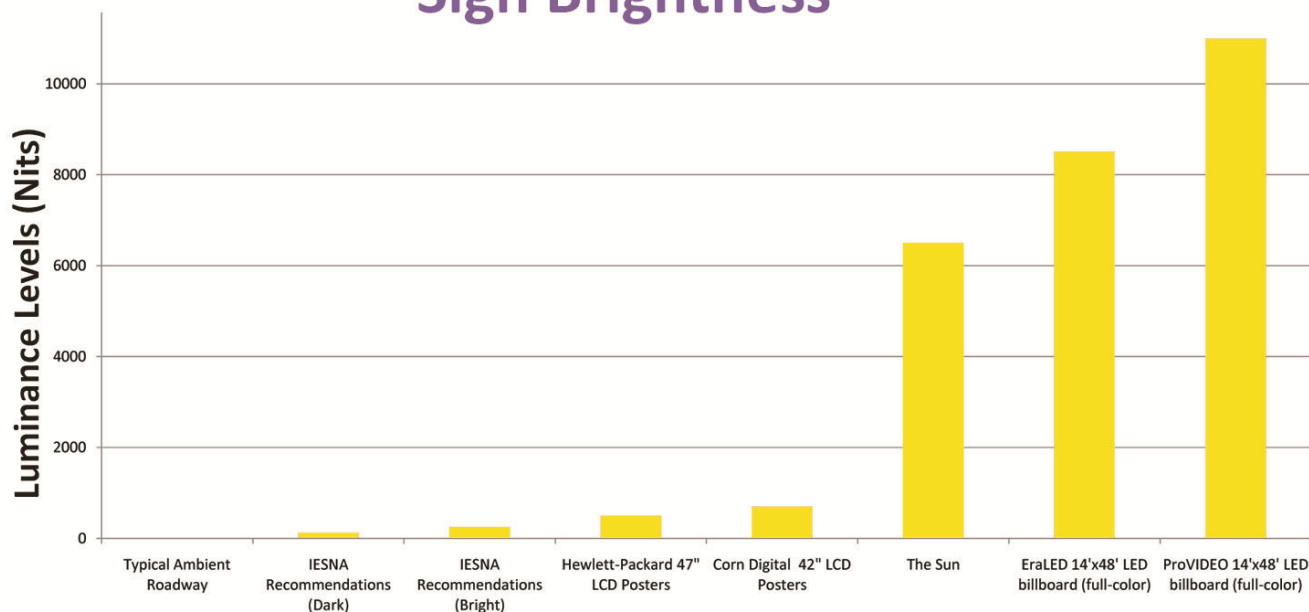
Limiting Sign Brightness

Proposed limits on sign brightness have caused much debate. Research provided by the Illuminating Engineering Society of North America (IESNA) states that drivers should be subjected to points of brightness no greater than 40 times the average brightness level of their general surroundings; this proportion is known as the contrast ratio. "As roadway lighting and automobile headlights provide ambient nighttime lighting levels of about one nit, this implies signage should appear no brighter than about 40 nits" (Luginbuhl, 2010, p.1). Surprisingly, the IESNA's own recommendations for signage luminance suggest limits between 250-1400 nits---greatly exceeding their stated maximum contrast ratio of 40:1.

The OAAA, has deemed 300-350 nits an acceptable level of night brightness. However, their guidance is based on the use of the IEEE standard for light trespass (IESNA-TM-11-00), when, for reasons of traffic safety and glare in drivers' eyes, it should have been based on IEEE's standard for roadway sign lighting (IESNA RP-19-01).

Traditionally floodlit static billboards rarely exceed 100 nits; experts on both driver distraction and light pollution recommended that, as a means of compromise, the new technologies should not exceed this value. In many areas, including Philadelphia, brightness levels are currently unregulated, and many manufacturers publicize their signs' capabilities to reach up to 11,000 nits.

Sign Brightness



Digital signage advocates mention the horizontal louvers⁸ included in many billboards as an effective measure to prevent light pollution. In reality, these louver systems were designed primarily to shade each diode from sunlight (thus increasing their prominence), not to limit nighttime glow.⁹ As Luginbuhl states in "Lighting and Astronomy," horizontal light (that which is emitted between 0° and roughly ±20°, and not restricted by horizontal louvers) contributes even more to skyglow than light emitted at higher angles. The effects of lower-angle lighting----such as that used to captivate approaching drivers-- - are visible over a much broader area (Carhart, 2010).

A better option is to simply operate signs at less than maximum brightness. Not surprisingly, sign brightness and energy usage are directly related; beyond reducing light pollution and distraction, lowering luminance reduces total power consumption. One manufacturer experimented with running their digital displays at half-brightness; they were able to reduce power usage by nearly 40%, while maintaining full sign readability (Noventri, see in chart). Another option for reducing unnecessary brightness (and thus power usage) is to equip signs with sensors which automatically lower light output in accordance with atmospheric conditions. For example, sign brightness would mechanically be dimmed during dusk, early morning hours, or during cloudy or overcast weather. Again, OAAA does have guidelines for dimming, but they are not mandatory.

⁸ A **louver** is a slat that is angled to keep out rain, direct sunshine, etc. The angle of the slats may be adjustable or fixed.

⁹Retrieved from <http://www.optec.com>

Materiality and Recyclability

Life Span

Light Emitting Diodes have a lifespan of 100,000 hours. According to Bryant, this equates to roughly eleven years for LED billboards, compared to the fifteen years for traditional static billboards. At that point, the diodes will be operating at 50% of their prime brightness. Of course, considering the return on investment that the sign owner has received by that time, he or she will likely not hesitate to replace the sign quickly (Bryant, 2008). As these large digital displays and their associated digital players increase in popularity, will we soon face an abundance of difficult to recycle, discarded technology?

Techno-Waste

Obsolete technology is a valuable source for secondary raw materials, if treated properly; if not treated properly, it can be a source of toxins and carcinogens. Rapid industrial advancement, decreasing initial cost, and even planned obsolescence could result in a fast-growing surplus of “techno-waste” (Morgan, 2006). LED’s, plasma and LCD screens, and digital players and extenders *are* recyclable, but their de-manufacturing and reuse is not always mandated or monitored.

In the US, the main federal law governing solid waste is the Resource Conservation and Recovery Act of 1976; as far as electronics are concerned, it covers only cathode ray tubes (televisions and computer monitors popular before LCDs, plasma and LEDs), though state regulations may differ, according to the U.S. Environmental Protection Agency. Volumetrically, digital signage does generate more waste to be recycled than the paper, vinyl sheets, and plywood or canvas facing of static billboards, but lacks the potentially toxic adhesives.



Technological Graveyard: A massive collection of now-obsolete Cathode Ray Tube televisions. Could digital signage one day face a similar fate?

Future Technological Innovation

Digital display types have become increasingly energy efficient since their inception, a trend that will likely continue. While early generations of LED lamps could produce only 20 lumens per watt (compared to about 15 lumens/watt for incandescent), current models can achieve over 100 lumens/watt (Klipstein, 2009). More energy efficient players are also in development, including a model that uses only 4 watts of electricity, the equivalent of a single small light bulb. As technology continues to progress, there is hope that digital signage may one day be a truly green option, but we are not there today.

Solar Power

Solar power is one promising advancement recently used in the installation of a 6,000 sq. ft. digital billboard in Times Square which is fully powered by solar panels and photovoltaic solar modules, and illuminated by floodlights. It consumes no additional electricity. According to Cooley's Commercial Graphics, manufacturer of the solar sign, "These lightweight systems could be installed on some portion of the 450,000 billboards currently in the United States. Each of these billboards would generate clean renewable energy to either power the billboard lighting system or would be sold back to local utility companies through net metering or feed in tariffs programs" (Connor 2010).

A similar program has been implemented in San Francisco, and successfully generates up to 3.4 kilowatts of excess energy, distributed to local utility customers.¹⁰ Some are skeptical, however; an industry insider states, "illuminating signage via solar power poses a significant hurdle, because harvesting and processing solar energy is relatively inefficient," and estimates that approximately only 20% of energy collected could be retransmitted as sign illumination (Aust, 2007). While these green advancements are laudable, they are climate-dependent, and their high initial costs make them unlikely for mainstream usage without government mandates or incentives.

Carbon Footprint						
	Average 2008 Air Travel (Total US Commercial air travel for 2008 / Census Estimate of total US population)	Average 2008 travel by passenger car: calculated for small car	Average 2008 travel by passenger car: calculated for SUV	Average Home	Digital Billboard (L.A. Reading)	Optec Displays LED
Total annual emissions (tons)	0.93	2.48	6.59	8.28	45.77	242.82
No. of trees to offset per year	4.66	12.38	32.96	41.4	228.87	1,214.10

¹⁰ (2007, December 3). Retrieved from <http://www.environmentalleader.com/2007/12/03/pges-green-campaign-gets-solar-powered-billboard/>

Economic Feasibility and Return on Investment



Off-Premise, Non-Accessory Billboards

In addition to their environmental impacts, we looked into the profitability of digital billboards, and received mixed results. Although LEDs are expensive, manufacturers frequently claim that cost is recouped over time and in reduced energy usage and maintenance costs. For off-premise advertising, the initial investment in a digital sign is large---\$250,000-\$500,000 (Goldstein, 2008)---but future overhead for the advertising company is low, as graphics can be remotely changed and replaced. Often, they are also able to rent out the advertising space for a higher premium than on static billboards.

Space on a digital billboard rents at the same rate, or higher, as a comparably sized static billboard, even though each ad will be featured only intermittently, sharing space with up to eight other advertisements in the rotating lineup. This means huge profit increases for the outdoor advertising companies, and a quick return on investment. Digital billboards provide operators with an average of \$14,000 per month in rent (typically from multiple advertisers), compared with \$1,000 to \$2,000 per month for traditional billboards, which serve only one advertiser (Goldstein, 2008).¹¹ Total revenue from the outdoor digital signage equipment market in the United States, including hardware, software, installation, and maintenance, grew by about 33% in 2009, a trend that is expected to continue. The Federal Highway Administration estimates that in 1996 there were over 400,000 billboards on federally controlled roads, which generated revenues in excess of \$1.96 billion (Schueller, n.d.).

On-Premise, Accessory Signs

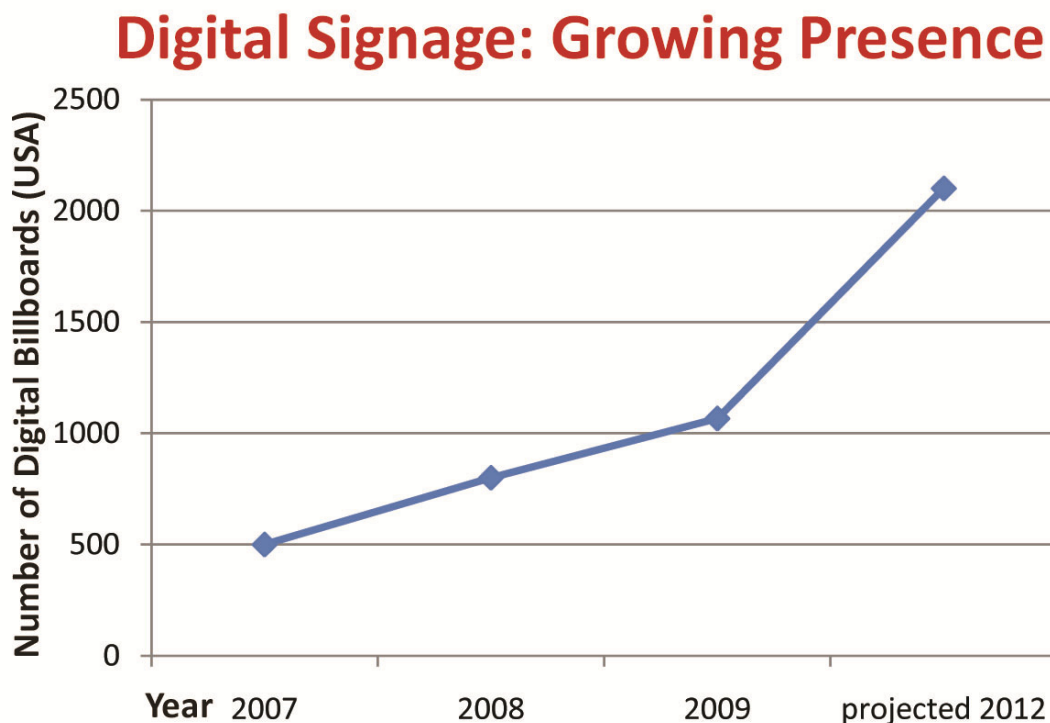
On-premise advertising appears to be less cost-effective. The initial cost of installing a digital signage network has not been recouped by many of the operators interviewed, to say nothing of the dramatic increase in energy expenditures when compared to static signage (Noventri, 2010). Additionally, the burden of providing frequently-changing content falls on the operator; many small businesses simply do not have the creative staff or technical knowledge to create changeable graphic displays.

Despite uncertain profitability for on-premise signs, market statistics and lay observation point to the growing popularity of digital signage, both off-premise and on-premise. In the absence of guaranteed profits, their chief selling point is their uniqueness---the fact that they “stand out.” However, as this type of advertising becomes more mainstream, and the market becomes saturated, how long can simple novelty justify its high financial and environmental costs?

¹¹ Sales prices reflect market averages in Bangor, PA. Rates may vary with location.

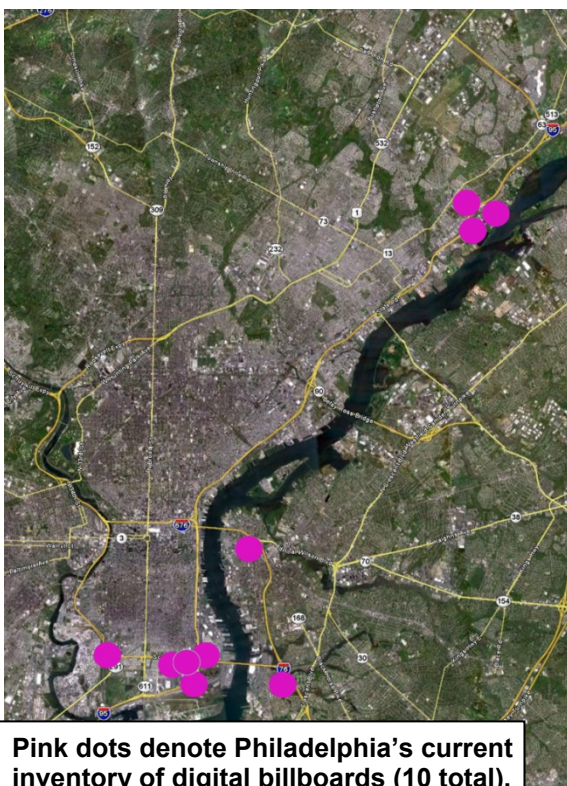
Current Trends

How big of a problem do unregulated energy consumption and luminance levels pose? Right now, only a small fraction of American outdoor advertising is digital. This number is growing, however, and the trend shows no sign of slowing. Rapidly-dropping prices for large LED screens have led to a growing increase in the number of digital signage installations. Today, there are nearly 800 of these digital billboards in the U.S. It's a small number compared with 450,000 traditional billboards across the country, but it's growing fast. The Outdoor Advertising Association of America, an industry trade group, projects that the number of digital billboards in the U.S. will expand at a rate of several hundred per year (Goldstein, 2008). Clear Channel Outdoor Holdings, an industry powerhouse, says it is expanding its digital billboard business in markets such as Los Angeles, Chicago and Philadelphia (Hau, 2007). Philadelphia is home to an estimated 1,800 billboards, including a handful of digital signs---the effects of widespread conversion from static to digital would raise significant safety and environmental issues.



Rapid Growth: The number of digital billboards is increasing at an increasing rate in the US, as evidenced by the above graph. On-premise digital signage has shown an even more dramatic increase in popularity (Urazbaev, 2009).

How Does Philadelphia's Current Zoning Code Regulate Electronic Signage?



Pink dots denote Philadelphia's current inventory of digital billboards (10 total), concentrated along I-95 and the Schuylkill Expressway



Simply put, it doesn't address the technology. Signage regulation within the Philadelphia zoning code (Section 14-1604) was passed in the early 1990s and does not specifically address electronic outdoor advertising. The code for on-premise signage (storefront signage) is equally devoid of controls on electronic signage, opening an opportunity for these kinds of signs in all commercial districts.

A leader in the outdoor advertising industry, Clear Channel, has embraced the digital trend. The company has revamped several of its existing static billboards to LED format along the I-95 corridor in Philadelphia. In order to proceed with the conversions, Clear Channel sought the approval of Philadelphia's Department of Licenses and Inspections (L&I), which granted permission for the conversions to take place with few requirements. This interpretation was made in spite of clear language in the code prohibiting an outdoor advertising sign from carrying more than two messages at one location. Under L&I's current interpretation of the code, any billboard that is 500 feet or more away from residentially zoned property may be converted to electronic as of right. If this interpretation remains in place, this could translate to hundreds of converted electronic billboards – the only factor moderating conversions right now is the (continually decreasing) expense involved.

Examples from Other Cities

To date, no known city has passed limits on sign energy usage, but about one quarter of states in the U.S. prohibits moving or animated signs, and roughly one third have specifications for dwell time ranging from four seconds to several minutes. Most states prohibit flashing red lights and anything that causes a glare or vision impairment.

Pittsburgh, Pennsylvania

A proposed amendment to Pittsburgh's zoning code states that no electronic sign may exceed .3 foot candles illumination above ambient light level to prevent distraction and interference with traffic signals. As discussed earlier in this paper, OAAA recommends foot candles in its guidelines but the usefulness of this measurement has been questioned and nits is the preferred measurement for detecting brightness and glare emitted from digital signs). Additionally, Pittsburgh's amendment sets a dwell time of at least ten seconds, and prohibits animation of any kind.¹²

Concord, New Hampshire

Some cities and states have banned electronic message boards outright, including Concord, New Hampshire. There, the ban on electronic message centers was upheld on appeal to the First Circuit Court, on grounds that the ban promoted both traffic safety and community aesthetics (Carpentier, 2009).¹³

Panama City Beach, Florida

In the absence of a cohesive state or federal policy, residents and policy makers in Panama City Beach, Florida decided they could not allow digital signage to continue to proliferate unfettered. They drafted a set of restrictions on sign size, placement and brightness which have been incorporated into the City Code. "The specifications make regulation seem like an exact science, when it's really just public and private actors negotiating acceptable limits," voices one critic. While imperfect, it sets a valuable precedent for regulation because the proposed ordinance limits the amount of light digital signs can emit, their illumination must be measured and monitored by an instrument widely available and specially designed for this purpose.

Tulsa, Oklahoma

The study "Digital Billboard Recommendations and Comparisons to Conventional Billboards" recommends billboard brightness of 342 nits for an average sized (10'6" x 36') billboard under average ambient lighting conditions (Lewin, 2008).¹⁴ In response to these recommendations, the Planning Commission of Tulsa, Oklahoma recommended a limit of 300 nits for all signage, but this was raised to 500 nits before becoming law, due to pressure from the outdoor advertising industry.

¹² The Pittsburgh Code, Title Nine, Zoning Code, Article VI, Chapter 919, Signs.

¹³ Naser Jewelers, Inc. v. City of Concord, 2008. WL 162521 (C.A. 1 N.H. 1/18/2008)

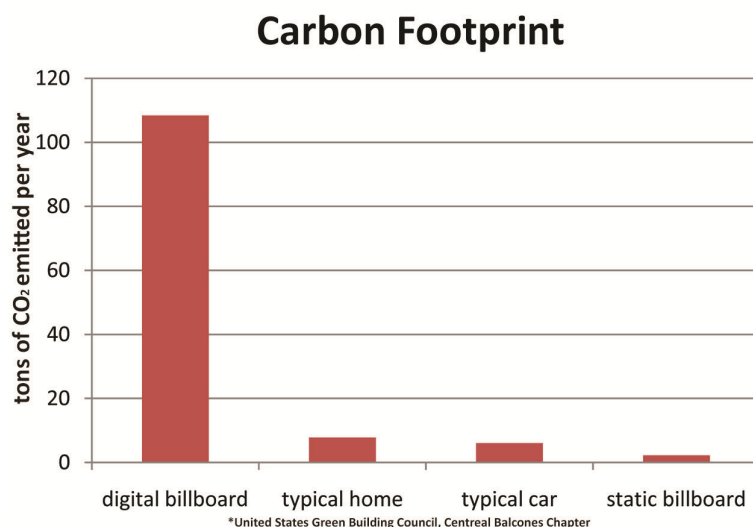
¹⁴ n.b. This study was funded by the Outdoor Advertising Association of America.

Municipalities that ban or limit digital billboards

STATE	CITY/COUNTY	ACTION TAKEN
Alaska	(state)	Ban
Arizona	Gilbert	Ban
Arizona	Pima County	Moratorium
California	Los Angeles	Moratorium
California	San Francisco	Ban
Colorado	Denver	Ban
Florida	Largo	Ban
Florida	Pinellas County	Moratorium
Florida	St. Petersburg	Ban
Georgia	Atlanta	Moratorium
Hawaii	(state)	Ban
Maine	(state)	Ban
Michigan	(state)	Considering Moratorium
Minnesota	Minnetonka	Moratorium
Minnesota	Oakdale	Moratorium
Minnesota	(state)	Considering Moratorium
Missouri	Lake St. Louis	Ban
Missouri	St. Louis	Moratorium
Montana	(state)	Ban
North Carolina	Durham	Ban
Rhode Island	(state)	Moratorium
Tennessee	Knoxville	Ban
Texas	Amarillo	Ban
Texas	Austin	Ban
Texas	Dallas	Ban
Texas	El Paso	Moratorium
Texas	Ft. Worth	Ban
Texas	Galveston	Ban
Texas	Houston	Ban
Texas	San Antonio	Moratorium
Vermont	(state)	Ban

Policy Recommendations: Electronic Signage and Philadelphia's Future

Philadelphia is currently in the process of a complete overhaul of its zoning code and comprehensive plan, bringing the city into the present and preparing for its future. A recently released draft of the updated code does aim to control digital advertising, but more (and better) regulation is needed; the draft focuses on off-premise advertising, and is particularly relaxed regarding on-premise electronic message boards.



For the purposes of controlling light pollution and energy consumption, the distinction between on-premise and off-premise signage is of little relevance; as such, we offer similarly cautionary restrictions for both sign types, from a traffic safety perspective, on-premise signs may be worse. They can be bigger, closer to the roadway, have motion and animation (Wachtel, 2009).

Our first issue with the draft is one of semantics: currently, the draft specifically regulates any sign with action or motion, animation, rotation, scrolling, flashing or color changes, or upon which illumination is not maintained at a constant stationary intensity and/or color, as a means (we assume) of regulating digital signage in general. We anticipate that this language could create the opportunity for misinterpretation; electronic and digital message boards are not necessarily flashing/animated/intermittent, as they are capable of the display of static, yet still excessively bright, imagery. Advertising companies often specifically describe their digital signage as “static,” as a way to circumvent inexplicit regulation such as this.

We suggest revising the zoning language to include any and all digital signage, defined as any sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means,¹⁵ **not** just those that are animated, flashing, or intermittent, which can be subjective descriptions.

¹⁵ From Oklahoma City Municipal Code, 2007, Chapter 3, Article V, Section 3-82.

The current draft states that off-premise digital billboards are not to be located within 500 feet of an entrance or exit ramp to any major highway, or within 200 feet of any intersection of the street or highway on which it is intended to advertise to. For off-premise signage, the proposed code prohibits flashing signs, signs with intermittent illumination, or signs with mechanically or electronically changing messages within 500 ft. of any residential district. It also prohibits them from facing any residential district within 1,000 ft. For on-premise digital signage, these distances are lowered to 150 ft. and 300 ft., respectively.

We recommend that this regulation be expanded and increased; best practices from the Australian states of Queensland, Victoria and New South Wales, South Africa and The Netherlands illustrate the rigor with which the situation of electronic advertising must be assessed before it can be deemed safe for motorists and other road users. Among the considerations these governments require in assessment of the placement of outdoor advertising are: traffic speed on the adjacent roadway, sign content, legend height, vicinity of official traffic control devices, type of street or interchange, sign brightness, hold time, sign content, the potential that an advertisement will be mistaken for a traffic control device, the amount of information communicated, the concision and legibility of the advertising message, and an advertising structure's obstruction of key sightlines. These best practices are detailed in the attached Appendix D, Excerpt from *2009 AASHTO Report*. (Wachtel)



16th & Washington, Philadelphia
On-premise LED sign

According to the present draft, signs may be illuminated, but the illumination shall be focused upon the sign itself, so as to prevent glare upon the surrounding areas, and digital billboards must have a luminance level appropriate to the ambient environment in keeping with the standards set forth by the Illuminating Engineering Society of North America (IESNA). These regulations are too vague; we propose specific limits to prevent light trespass and light pollution. As such, the illumination projected from any use shall at no time exceed 0.1 footcandle onto a residential use, and 1.0 footcandle onto a non-residential use. This should apply to light emitted from any form of signage, on-premise or off-premise. We also propose specific luminance limits of 100 nits for nighttime conditions, applicable to all digital signage. (Lebenbuhl)

Additionally, there must be prescribed methods for determining compliance with the aforementioned illuminance and luminance limits. Again, *illuminance* measures the amount of light which falls onto an object; *luminance* measures the amount of light an object gives off. To gauge light trespass on neighboring properties, illumination shall be measured (in footcandles) at any time and from any point on the receiving property line using an illuminance light meter. While an illuminance meter is a practical device with which to measure light trespass, inherent sign brightness is best measured using a luminance meter, which is capable of directly measuring the surface brightness of signs. Luminance meters are quite costly; sign owners should be financially responsible, by means of permit fees, for any and all equipment/operational costs needed to ensure that their luminance levels remain in compliance with aforementioned limits.

Luminance limits between the full sunlight limit and the nighttime limit may also be specified for overcast or foggy days. Regulations should require an automated control of sign luminance based on current ambient lighting conditions. To further control light pollution, off-premises digital signs shall be extinguished automatically no later than 11:00pm each evening until dawn. Signs for establishments that operate or remain open past 11:00 p.m. may remain on no later than one half hour past the close of the establishment.

Where new digital signage construction or digital conversions *are* permitted, there should be a “trade-off” policy, based on power consumption. For every square footage of digital signage an outdoor advertising company installs, via new construction or conversion, they must remove a specified amount of square footage of their existing static signage, in order to maintain or reduce their carbon footprint. Such a policy has been implemented in many cities and states. Finally, obsolete or otherwise discarded digital signage, and all accessory components, must be fully recycled at the expense of the manufacturer.

Conclusion

Our research and the resultant policy recommendations could not come at a better time, as digital signage figures prominently on several hot-button issues regarding Philadelphia urban development. For example, the Market East corridor of Philadelphia is in great need of renewal and rethinking; the look and feel of the “new” Market East is a very controversial topic. Councilman Frank DiCicco's Outdoor Advertising Bill 100013 takes away the city's ability to regulate signage and will allow massive outdoor advertising signs including LED digitals and rooftop billboards along Market Street between 7th and 13th Streets, transforming Market East into a garish thoroughfare reminiscent of the Las Vegas Strip.

Paul Levy, president and CEO of the Center City District and a key player in the revitalization of Market East, is amenable to the sorts of eye-catching wraps, digital and LED signs, though he says the city must make sure they stimulate development.

“Building owners shouldn't get to throw up a giant ad on a tiny decrepit storefront. They should only be able to profit from these signs --- and thus generate tax revenue for the city --- if they renovate their properties in line with city standards and fill them with people” (Rubin 2010).

Over the past ten years, many studies of digital signage have focused on the issue of driver distraction and road safety. These studies have been conducted in many countries (e.g. U.S., U.K., Australia, South Africa, The Netherlands, Norway, and others) and they have used a variety of research methods, including simulator and laboratory investigations, opinion surveys and focus groups, on-road studies in instrumented vehicles, and longitudinal analysis of summaries of traffic collision reports. With only two exceptions, those recent studies performed by government agencies, universities, and non-profit traffic safety organizations, have found a detrimental effect on driver distraction (or other measures of traffic safety) in the presence of billboards. The only studies that have reported no adverse safety impact of digital billboards have been those sponsored by the outdoor advertising industry.

And we use the word "reported" advisedly. That is because, in one case, despite the study authors reporting no distraction from digital billboards, the actual data collected clearly showed such an adverse impact. And, in the other case, despite the study authors reporting that the presence of digital billboards had no effect on traffic crashes, the authors have been challenged by experts, both in peer review and in public forums, for using improper statistical methods - with the results that their reported conclusions are unjustified and should be retracted.

The Federal Highway Administration is nearing completion of its own on-road research study looking at levels of driver distraction as measured by eye movements in the presence and absence of digital billboards. This report is expected to be available in the first quarter of 2011.

Higher electricity consumption, increased light pollution, and recyclability issues should make us pause and question the growing popularity of digital signage. As America at last embraces sustainability and Philadelphia strives to become the “greenest city in America,” is a proliferation of digital signs along our highways and storefronts sending the right message?

About the Author:

Gregory Young, LEED AP is an architectural designer and urban planner active in Philadelphia, Pennsylvania. A recent graduate of the University of Pennsylvania (School of Design), his research was generously supported by a grant from the Samuel F. Fels Fund. Policy recommendations were made in collaboration with SCRUB: Public Voice for Public Space. SCRUB is a Philadelphia-based non-profit, founded in 1990 with the mission to promote healthy, vibrant and beautiful public spaces throughout all of Philadelphia using advocacy, public awareness, community mobilization and legal action.

Visit <http://www.publicvoiceforpublicspace.org/> for more information.

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City of San Jose Survey: Digital Billboards

Phase 2: Sign Code Changes for Off-Site Advertising, Electronic Billboards and signs displaying off-site commercial speech on non-City-owned sites

March 2021



CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

*Planning, Building and
Code Enforcement*

City of San Jose Survey: Digital Billboards



Survey Link:
<https://bit.ly/SignOrdinanceUpdate>

Survey Start date: **February 8, 2021**

Survey End Date: **March 12, 2021**

Data retrieved: **March 17, 2021**

Current Responses: 2234 (English)

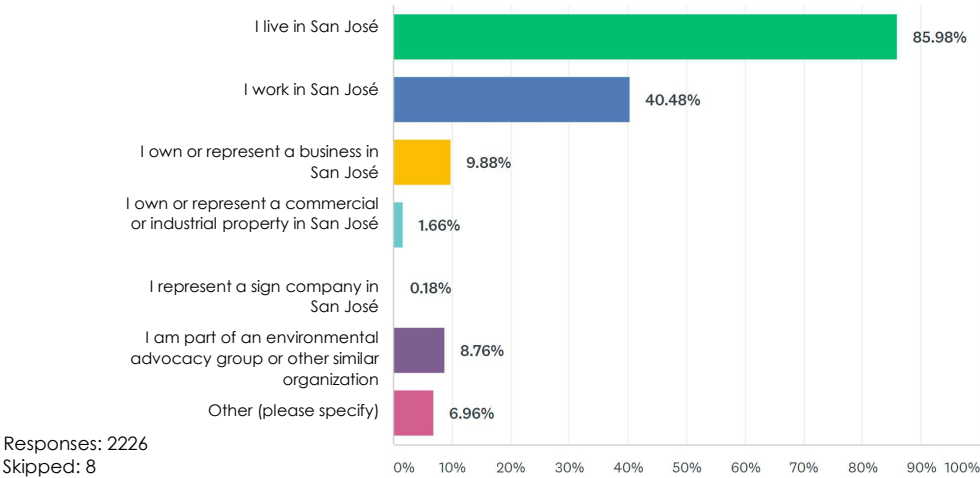
4 (Spanish)

0 (Vietnamese)

2

City of San José Survey: Digital Billboards

Item 1: Tell us about yourself (check all that apply): *Required



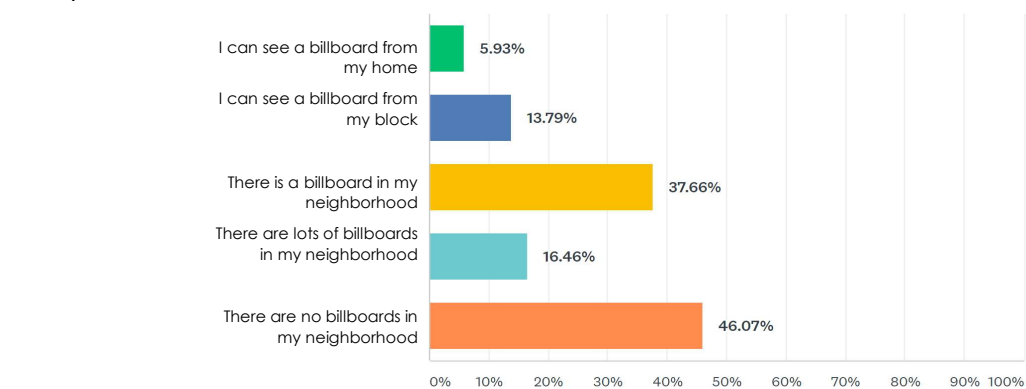
3



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City of San José Survey: Digital Billboards

Item 2: Let us know how close you live to a billboard (check all that apply): *Required



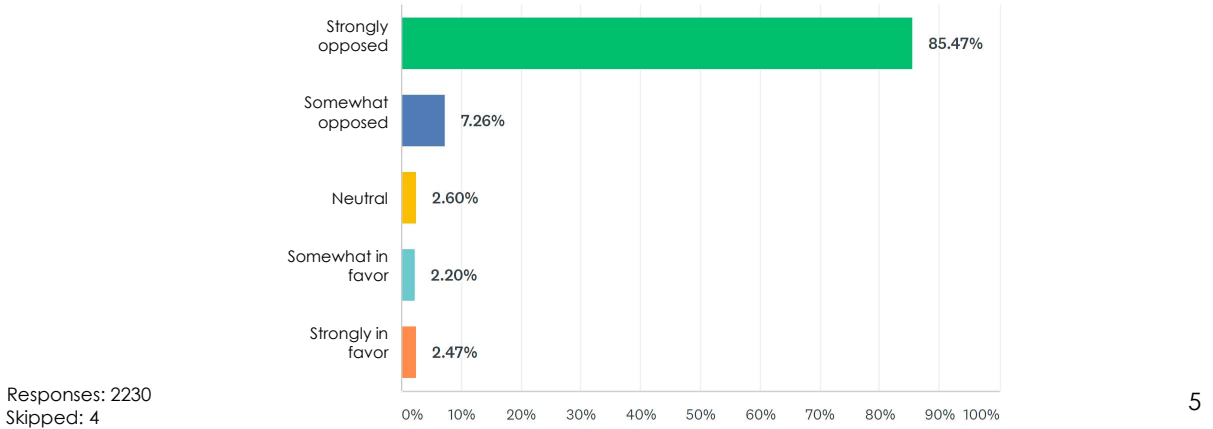
4



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City of San José Survey: Digital Billboards

Item 3: In general, how do you feel about allowing new digital billboards to be built along freeways in San José?



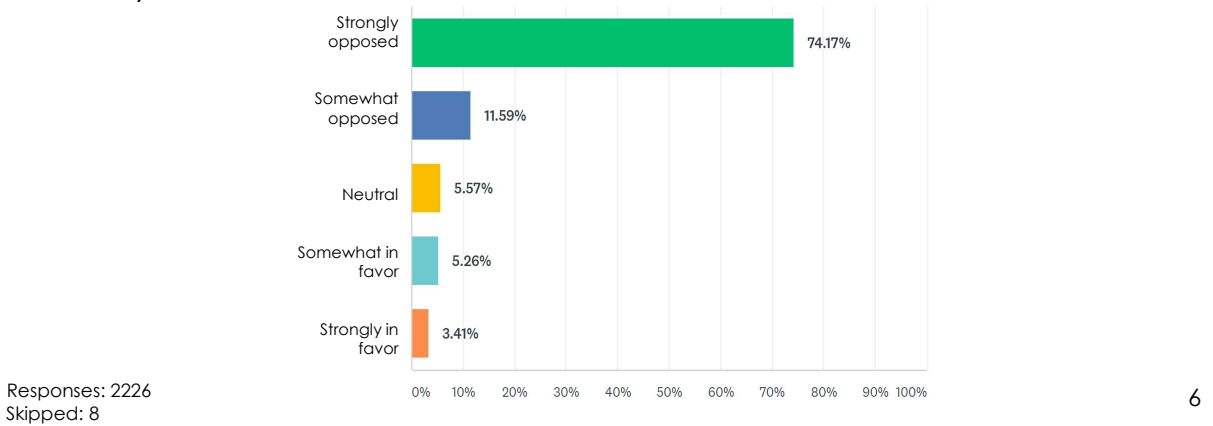
5



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City of San José Survey: Digital Billboards

Item 4: How do you feel about allowing new digital billboards to be built along freeways in San José in exchange for removing old billboards from elsewhere in the city?



6



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City of San José Survey: Digital Billboards

Item 5: In addition to removing old billboards, is there anything that you would like to see the City require in order for a property owner to be allowed to install a new digital billboard?

- Driving distraction related to light and motion
- Brightness concerns and visual pollution
- Not recommended near freeways
- Not recommended near residences
- No political advertising
- Community messaging allowed atleast 25% of the time

Responses: 1372
Skipped: 862

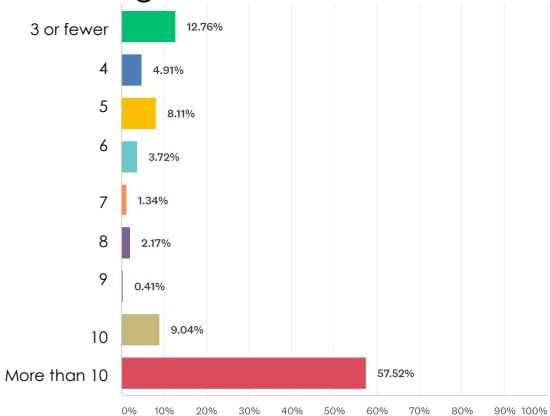
7



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City of San José Survey: Digital Billboards

Item 6: If new digital billboards are allowed in exchange for removing old billboards, how many old billboards do you think should have to be removed in exchange for one new digital billboard?



Responses: 1935
Skipped: 299

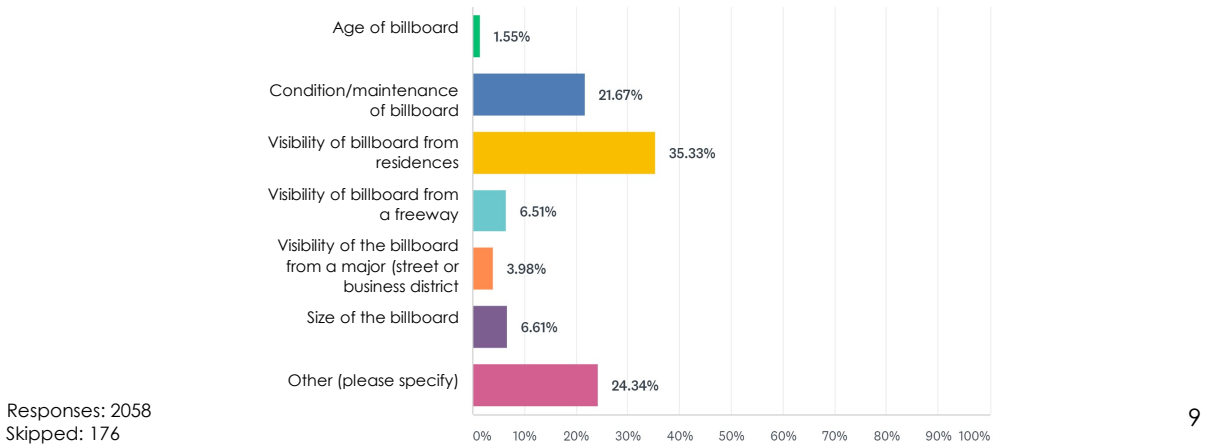
8



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City of San José Survey: Digital Billboards

Item 7: In your opinion, what is the most important factor when evaluating which billboards should be removed in exchange for allowing new ones?



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City of San José Survey: Digital Billboards

Item 8: The most common concerns we have heard about potentially allowing new digital billboards and signs are: 1) light pollution, 2) impacts to wildlife, 3) traffic and pedestrian safety, 4) aesthetics/visual clutter. Do you have other concerns you want us to know about?

- Distraction to motorists
- Brightness and other impacts to residents
- Quality of life and health concerns
- Commercialism over community image

Responses: 1235
Skipped: 999



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City of San José Survey: Digital Billboards

Item 9: The proposal under consideration is to allow digital billboards on properties that front freeways. Are there any freeway segments where you think new digital billboards are MOST appropriate? Please be as descriptive as possible (for example, Highway 101 between McKee Road and Interstate 880):

- Brightness and light pollution impacts
- Safety hazard and driver distraction
- 80% of the comments opposed to freeway-facing billboards
- Siting along industrial properties and storage facilities

Responses: 1187
Skipped: 1047

11



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City of San José Survey: Digital Billboards

Item 10: Are there any freeway segments where you think new digital billboards are LEAST appropriate? Please be as descriptive as possible:

- Not appropriate or desired for any location
- Not near freeway interchanges, ramps and junctions
- Not near traffic corridors or zones of high fatality
- No billboard closer than 20 miles from another billboard
- No impacts to green spaces or residents

Responses: 1323
Skipped: 911

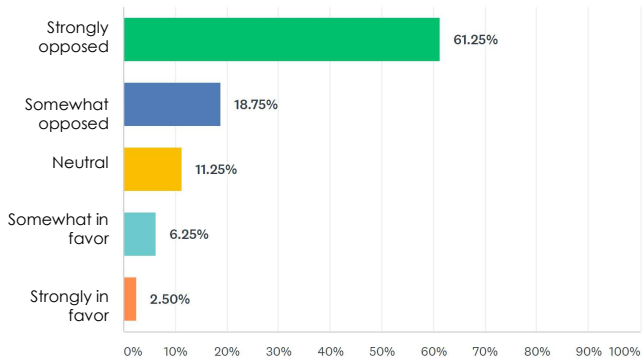
12



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City of San José Survey: Digital Billboards

Item 11: In addition to free-standing digital billboards along freeways, the City is considering allowing both digital and static advertising signs attached to buildings within the Downtown. How do you feel such signs being attached to buildings in Downtown San José?



Responses: 2203
Skipped: 31

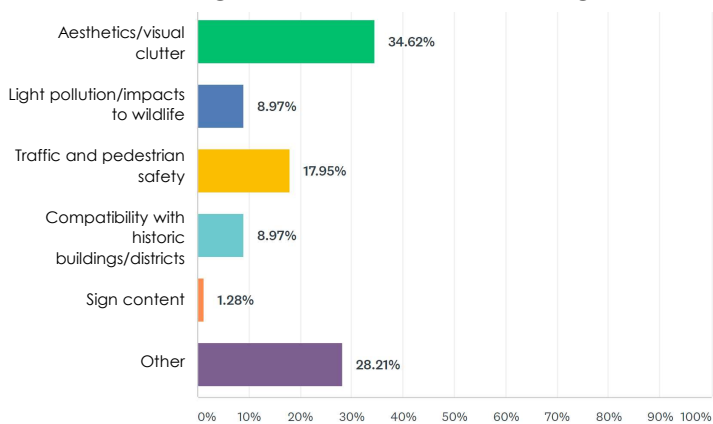
13



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City of San José Survey: Digital Billboards

Item 12: To help us evaluate this proposal, do you have any specific concerns about digital and static signs attached to buildings?



Responses: 2184
Skipped: 50

14



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City of San José Survey: Digital Billboards

Item 13: Is there anything else you'd like to tell us?

- 80% of the comments opposed to all forms of billboards
- Traffic safety, wildlife impacts, aesthetics and brightness concerns
- New static or digital billboards not recommended
- Maintain San Jose's clean and green character
- Keep freeways free of digital distraction, reduce visual clutter and support Vision Zero

Responses: 1181
Skipped: 1053

15



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Cindy McCormick

From: Barbara Kelsey <barbara.kelsey@sierraclub.org>
Sent: Wednesday, January 18, 2023 1:14 PM
To: Planning Commissioner Manny Bhandal; Planning Commissioner Annedore Kushner; Planning Commissioner Stefanie Elle; Planning Commissioner Joan Lewis; Planning Commissioner Adriana Leongardt; Planning Commissioner Michelle Montez; Planning Commissioner Kelly Ramirez; Planning Division (Public)
Cc: shani kleinhaus; Gladwyn d'Souza; James Eggers; Mike Ferreira
Subject: EXTERNAL - Joint Letter re: Gilroy Electronic Billboards
Attachments: Gilroy Plannning Commission_ Joint Letter opposing billboards 1.18.23.pdf; Attachment Resources-References-LightPollutionPolicy_20210307.pdf; SC-SCVAS Comments- Gilroy Billboard Ordinance 09062022.pdf; Phase II Digital Billboard.pdf; Digital_Signage_Final_Dec_14_20101.pdf

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

January 18, 2023

Gilroy Planning Commission
 7351 Rosanna St.
 Gilroy, CA 95020

Re: Electronic Billboards

Dear Chair Bhandal and Gilroy Planning Commissioners,

Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter expressed serious concerns about the electronic billboard project and provided comments on the environmental report. Our joint comment letter is a brief summary of the substantiated concerns. Please also see attached our joint letter of September 2022 and documents referencing the relevant studies.

Respectfully,

Gladwyn d'Souza
 Conservation Committee Chair
 Sierra Club Loma Prieta Chapter

Shani Kleinhaus
 Environmental Advocate
 Santa Clara Valley Audubon Society

sent by:

Barbara Kelsey

she/her/hers

Chapter Coordinator

Sierra Club, Loma Prieta Chapter

3921 E. Bayshore Rd, Suite 204

Palo Alto, CA 94303

barbara.kelsey@sierraclub.org





SIERRA CLUB
LOMA PRIETA CHAPTER

January 18, 2023

Gilroy Planning Commission
7351 Rosanna St.
Gilroy, CA 95020

Via email to: Manny.bhandal@cityofgilroy.org
planningdivision@cityofgilroy.org

Re: Electronic Billboards

Dear Chair Bhandal and Gilroy Planning Commissioners,

Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter expressed serious concerns about the electronic billboard project and provided comments on the environmental report. Please see the attached letter and documents referencing the relevant studies. The following is only a brief summary of the substantiated concerns.

- Electronic signs are, by design, intended to be viewed from a distance. By design, electronic billboards disrupt aesthetics and visual character, and produce day and nighttime illumination, light and glare.
- The Biological Report underestimates the potential impact to ecosystems. Recent scientific studies highlight the pervasive, cumulative, and harmful impacts of Artificial Light At Night (ALAN) to terrestrial and aquatic organisms, species, and ecosystems. The impacts, including effects on circadian rhythms, metabolism and behavior in fish, birds, insects, and other taxa, have been summarized in several recent publications in major scientific journals.
- Recent studies also implicate ALAN as one of the primary drivers of the global decline in insect numbers and diversity (the insect apocalypse).
- The IS/DNMD acknowledges that “migrating birds can be affected by human-built structures because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather”. The IS/DNMD provides two reasons why the “proposed electronic billboard would not have a significant impact on the movement of migrating birds” (IS/DNMD p. 41). These reasons and the findings are not supported by evidence.
- Open storm drains, irrigation channels and other flood management infrastructure features often connect habitat patches and provide pathways for animals to traverse an urban landscape.

This connectivity for wildlife is important to preserve biodiversity, and is easily disrupted by lighting. The Project is adjacent to the Princeville Channel, which is currently a wildlife connectivity corridor and allows permeability between Uvas and Llagas creeks. The DMND provides no analysis of wildlife movement in the channel, dismissing impact to wildlife movement.

- “Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan” (IS/DNMD) cannot be mitigated because CEQA does not allow mitigation measures to depend on future disclosure of impacts and actual mitigation measures for NMD.
- The IS/DMND acknowledges that the project undermines driver safety but the impact and of this hazard is understated by the IS/DMND.
- While the IS/DMND lists the estimated 52,400 kilowatts/year of electricity and 6.6 megatons of CO₂/year expected to be released into the atmosphere with the energy required for the billboards, the IS/DMND only states that it meets standards and does not prescribe mitigation for the greenhouse gas emissions in our current climate emergency.

We ask the City of Gilroy not to approve highway or road-facing electronic billboards. Instead, the city should develop an ordinance prohibiting such billboards city-wide. If the city persists in moving forward with this project, an EIR must be prepared.

Respectfully,



Gladwyn d'Souza
Conservation Committee Chair
Sierra Club Loma Prieta Chapter



Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society

Cindy McCormick

From: Dashiell Leeds <dashiell.leeds@sierraclub.org>
Sent: Thursday, January 19, 2023 12:47 PM
To: Planning Division (Public)
Cc: City Clerk; Shani Kleinhaus
Subject: EXTERNAL - Public Comment on item 7.2 of September 19th Planning Commission Meeting
Attachments: Gilroy Plannning Commission_ Joint Letter opposing billboards 1.18.23.pdf; SC-SCVAS Comments- Gilroy Billboard Ordinance 09062022.pdf

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Chair Bhandal and Gilroy Planning Commissioners,

My name is Dashiell Leeds and I'm the Conservation Organizer for the Sierra Club Loma Prieta Chapter, representing both the Sierra Club and the Santa Clara Valley Audubon Society in this comment.

Both of our organizations expressed serious concerns about the electronic billboard project and provided comments on the initial draft study/MND. Our previous letters are attached.

Please do not increase light pollution in our community and ecosystems. We ask the Planning Commission to recommend that the City Council should not adopt the MND. We also ask the Commission not to adopt the resolution outlined in the staff report.

We would like to highlight that the Biological Report underestimates the potential impact to ecosystems including those non-special status species that may make use of the adjacent Princevalle drainage that benefit from its water and relative cover and including those that may transit it between the larger habitats of Uvas Creek and Llagas Creek. Recent scientific studies highlight the pervasive, cumulative, and harmful impacts of artificial light at night to terrestrial and aquatic organisms, species, and ecosystems. The impacts, including effects on circadian rhythms, metabolism and behavior in fish, birds, insects, and other taxa, have been summarized in several recent publications in major scientific journals. Humans also suffer from hormone disruption and increased rates of cancer when their circadian rhythms are disrupted.

Thank you for your time and consideration,

Dashiell Leeds
 Conservation Organizer, Sierra Club Loma Prieta Chapter

Shani Kleinhaus
 Environmental Advocate, Santa Clara Valley Audubon Society

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UNIVERSITY OF CALIFORNIA OBSERVATORIES/LICK OBSERVATORY MT HAMILTON, CALIFORNIA 95140

26 April 2021

Honorable Mayor and City Council,

Sign Policy Recommendations to Regulate Electronic Billboards in the City of Gilroy.

For almost 140 years, the people of the Valley of Heart's Delight and the University of California's Lick Observatory have enjoyed a fruitful relationship. The city fathers of the Bay Area have consistently supported the observatory's ability to stay at the forefront of astronomy and technological innovation. Strategically located atop Mount Hamilton since the 1880s, the observatory's threshold is crossed by some 35,000 visitors annually. Thousands more enjoy its scenic approaches and hinterland for recreation. New worlds continue to be discovered from within sight of the City of Gilroy. Lick Observatory maintains a global reputation as an authority on astronomical matters. For decades, the observatory has advised local authorities on lighting ordinances, including (in the 1960s and 1970s) the deployment of sodium lighting, subsequent upgrades to light emitting diode (LED) technologies and, most recently, the deployment of electronic billboards.

Naturally, from a purely astronomical perspective, it would be best to have no electronic billboards at all. However, guidelines to minimize damage to dark skies by electronic billboards, developed by the International Dark-Sky Association, inform Lick Observatory's recommendations to reduce negative impacts. They include: limits on brightness, a curfew for turning off signs at 11 p.m. or midnight, constraints on sign size and density, use of lower-temperature (less blue light) LEDs, tilting electronic billboards downwards by 15 degrees and ensuring mechanical shielding is installed to reduce light being scattered upwards. Light pollution, in large part, is a consequence of the physics of ever-present aerosols (e.g. water vapor, particles, etc.), which preferentially redirect light. Hence, mechanical design of responsible lighting fixtures seeks to minimize wasted light. In contrast, billboards *intentionally* project light laterally. Thus, billboards disproportionately compound already-vexatious light pollution via two mechanisms. First, billboards add to pollution *intensity*. The efficiency of electronic illumination represents a manyfold increase in wasted light, compared with former illumination methods. Second, the *nature* of LED technology (i.e. combining emission from multiple intensity peaks) contaminates the entire visible spectrum, whereas incandescent or discharge (e.g. sodium) lighting consists of isolated spectral peaks, with adjacent spectral regions free from contamination. In sum, proliferation of electronic billboards along the State highway 101 corridor (including in-and-around the City of Gilroy) would render a deleterious impact upon Lick Observatory.

Typically, local authorities engage public opinion when considering changes to ordinances. Experience shows that the overwhelming majority of contributors perceive the most compelling arguments against electronic billboards to be the well-established detrimental consequences on human health and safety, the similarly well-established impacts on wildlife habits and habitats, and aesthetic visual blight. For the most part, the needs of observatories are well-aligned with majority public opinion. The University of California's Lick Observatory encourages the City of Gilroy to perform due diligence during deliberations regarding the proposed deployment of electronic billboards (e.g. by canvassing a fair, balanced representation of community/stakeholder opinion and undertaking a full and proper environmental impact assessment). The observatory remains available to advise on these matters, while continuing to foster the fruitful relationship that has persisted for well over a century.

Yours sincerely,

Dr Paul D. Lynam FRAS
Astronomer
University of California Observatories/Lick Observatory

Cindy McCormick

From: Cindy McCormick
Sent: Tuesday, September 6, 2022 8:15 AM
To: plynam; Planning Division (Public)
Subject: ATTN: Cindy McCormick RE: Proposed Electronic Billboard (Project: Z 18-04, AS 18-09, SP 21-08)

Good morning Mr. Lynam,

Thank you for your comments. I will add them to the public record. We have not yet scheduled the public hearing for this item; however a newspaper notice will go out when we do schedule the public meeting.

Cindy

-----Original Message-----

From: plynam <plynam@ucolick.org>
 Sent: Monday, September 5, 2022 9:08 PM
 To: Planning Division (Public) <planningdivision@cityofgilroy.org>
 Cc: Plynam <plynam@ucolick.org>
 Subject: EXTERNAL - ATTN: Cindy McCormick RE: Proposed Electronic Billboard (Project: Z 18-04, AS 18-09, SP 21-08)

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Cindy McCormick,

Further to my (15 August 2022) spoken contribution to Gilroy City Council, please find attached a (5 September 2022) written comment regarding the proposed electronic billboard project. Since it is referred to in my most recent contributions, for completeness, please also find attached my written contribution to Council of 26 April 2021.

I look forward to your acknowledgement of receipt of these submissions.

Yours sincerely,

Dr Paul D. Lynam FRAS
 Astronomer
 University of California Observatories/Lick Observatory

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UNIVERSITY OF CALIFORNIA OBSERVATORIES/LICK OBSERVATORY MT HAMILTON, CALIFORNIA 95140

DATE: 5 September 2022

Dear Cindy McCormick,

PROPOSED ELECTRONIC BILLBOARD(S)

The University of California Observatories' Lick Observatory (UCO/Lick) - the world's first high altitude astronomical observatory - hosts 10 telescopes, plus multiple cutting-edge research instruments atop Mount Hamilton, 25 miles north of Gilroy. Named in classic literature and from Apollo 11's Tranquility Base, the observatory routinely opens new vistas on the universe, discovers new worlds, develops new technology, educates science and "tech-savvy" students and inspires all comers. Lick Observatory leads the world, setting standards on astronomical matters. Annually, the observatory serves hundreds of faculty (including Nobel laureates) and students of the University of California, in addition to 35,000 visitors. This cannot be achieved without a fruitful relationship between the observatory and neighboring settlements.

As outlined in written (26 April 2021) and spoken (15 August 2022) contributions to Gilroy City Council, I reiterate that the proposed Electronic Billboard Ordinance and Sign Permit proposal (described in the 4 August 2022 Initial Study) shall render a disproportionate and deleterious impact on astronomical pursuits, fauna, flora and public health. From an astronomical perspective, it would be ideal to have no illuminating sources at all. However, UCO/Lick has no wish to crusade in pursuit of this ideal. A higher aspiration is to sustain the rapport and understanding between neighboring communities and observatory that has endured since the 1870s. Responsibly installed billboards may confer benefits to the community. Distressingly, however, the Initial Study is unbalanced in its failure to consider negative effects of electronic billboards on astronomy. For example, the International Dark-Sky Association's (2019) Guidance for Electronic Message Centers (repeatedly advocated for in previous contributions) continues to be neglected. As a result of such omissions, the Initial Study cannot be considered to be representative of best practice. Experience regarding proposed electronic billboards elsewhere in Santa Clara County shows that the needs of Lick Observatory align with public opinion: a (2021) survey conducted by the City of San Jose Planning Department revealed 93% opposition. Expert advisors (e.g. Norman Y. Mineta San Jose International Airport Commission) repeatedly recommended against billboards. The City of San Jose is now subject to litigation from competing outdoor advertising interests. Quite apart from astronomers' niche concerns, the most commonly cited objection to billboards (electronic and conventional) is visual blight. Billboards are notorious for intrusive, poorly-maintained, malfunctioning, decrepit and unsightly structures – often imposed on under-served neighborhoods. The outdoor advertising industry is noted (even *celebrated*) for wasteful practices. Outdoor advertising typically constitutes a minor fraction of overall advertising budgets. As on-line media continues to grow, revenues derived from outdoor advertising are projected to decline.

Regardless of whether one favors or opposes electronic billboards, it must be acknowledged that the Initial Study has failed to allay concerns. Thus, a full-and-proper Environmental Impact Report should ultimately be undertaken. However, in order to avoid embarking on such a costly endeavor unnecessarily, the City of Gilroy is first urged to proactively canvass the community in an effort to gain insight into the public attitude and reception to electronic billboards.

Yours sincerely,

Dr Paul D. Lynam FRAS

Astronomer

University of California Observatories/Lick Observatory

Cindy McCormick

From: plynam <plynam@ucolick.org>
Sent: Wednesday, January 18, 2023 8:09 PM
To: Planning Division (Public)
Subject: EXTERNAL - Special Planning Commission Meeting Th, Jan 19, 2023, 18:00
Attachments: Gilroy_Planning_Comm--PLynam_2023-01-18.pdf

CAUTION: This email originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

To whom it may concern,

In advance of the Special Planning Commission Meeting on Thursday, Jan 19, 2023, 18:00 at Gilroy City Hall, I respectfully submit the attached letter and accompanying pages (4 pages in total) and request that these documents be furnished to the Planning Commissioners for their consideration.

Yours faithfully,

Dr Paul D. Lynam FRAS
Astronomer
University of California Observatories/Lick Observatory

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UNIVERSITY OF CALIFORNIA OBSERVATORIES/LICK OBSERVATORY MT HAMILTON, CALIFORNIA 95140
18 January 2023

Dear Planning Commissioners,

**Agenda Item 7.2: Electronic Billboard Ordinance & Initial Study/Mitigated Negative Declaration
(IS/MND) (Z 18-04).**

The University of California's Lick Observatory is a scientific, technological and historical marvel. Since its first (1882) contribution to humankind's understanding of the universe, Lick has continuously innovated novel technologies and techniques, training and serving generations of scientists, including Nobel laureates. Since before the 1970s, the accelerating growth of light pollution (alternatively referred to as Anthropogenic/Artificial Light At Night, ALAN) has increasingly negatively impacted the observatory's operation, mission and probably (since the United Nations cites ALAN as a probable carcinogen) public health. In visible light, ALAN chiefly results from the physics of photon *scattering* by atmospheric aerosol particles – a process not accounted for in the Mitigated Negative Declaration (MND). Scattering is responsible for twilights, renders clear daytime skies as blue and cloudy skies as gray.

In responding to MND comments, the applicant team repeat statements of the form “the proposed project's impact on Lick Observatory is not an environmental impact under CEQA” (the California Environmental Quality Act). Thus, the applicants implicitly concede that there *is* an impact on Lick Observatory, that the impact is indeed *environmental*, but is not required by CEQA. By not considering light pollution as an environmental phenomenon, dark sky advocates maintain that CEQA is deficient. Hence, an Environmental Impact Report (EIR) is preferred.

Does the City value a red sunset? Does the City consider dusk, dawn and blue skies to be environmental phenomena?

If yes, then the phenomenon of light pollution (arising from identical physics) is also environmental and CEQA alone (and, by extrapolation, the MND) is inadequate. Hence, the proposal should be subject to an EIR.

If no, then the Commission should attend to misapprehensions (see accompanying pages) contained in the MND before acceptance. Further, if accepting the MND, the City should remain mindful of the conditions of approval outlined in the (25 October 2022) informational meeting; if billboard(s) are not in compliance, approval shall be void within one year. The October meeting (and the MND) asserted “the billboard light is only going to be able to be perceived [up to] 250 feet from the location of the billboard”. Therefore, if it is subsequently demonstrated (by any entity) that billboard light is perceptible from a distance greater than 250 feet, then the billboard(s) shall be deemed in violation and approval shall be void within one year.

Lick Observatory is in its 141st unbroken year of deploying ever more sensitive light-detecting apparatus, keeping an eye on the sky. On innumerable occasions, the eyes of the scientific world have focused on the astronomical discoveries made from Santa Clara County's highest peak. Many Californians justifiably treasure the observatory, its legacy and ongoing mission. In the event of a precedent-setting decision, contravening the laudable existing moratorium on billboards, one hopes that the people of Gilroy may equivalently cherish the proliferation of electronic message centers – and concomitant incidence of cancer among its citizenry - 50 and 140 years hence.

Yours sincerely,

Dr Paul D. Lynam FRAS
Astronomer
University of California Observatories/Lick Observatory

Misapprehension 1: PROS for Electronic Billboard Ordinance Project (p 528 of packet)

“11. It will NOT contribute to light pollution as opponents claim.”

Rationale:

Regrettably, this statement is incorrect. Regardless of the technology and originating fixture, any light source which interacts with the atmosphere contributes an additive effect to the phenomenon of light pollution/ALAN, elevating the intensity of the sky background. For an accessible summary, including public health implications, see Bogard (2013) and scholarly references therein.

ALAN is significantly correlated for all forms of cancer including lung, breast, colorectal, and prostate cancer. Immediate measures should be taken to reduce artificial light at night in the main cities around the world (Al-Nagger & Anil 2016).

Misapprehension 2: Response to comments on MND: I2 (pp 501-502 of packet) and J2 (pp 503-504 of packet)

"The proposed display is 25 miles away from the observatory, and there is no evidence the display will affect, individual or cumulatively observatory operations."

Rationale:

Applying the physics of aerosol scattering to model sky brightness arising from lighting use can be enormously complex. As far as can be determined, the assessments described in the MND are arrived at empirically, using light-meters viewing *directly* along lines-of-sight to billboard surfaces and *take no account of atmospheric scattering*. A physical model describing light pollution via interaction of artificial light with the atmosphere was developed by Garstang throughout the 1980s. Garstang (1989a) includes some simplifying assumptions and is the most widely-adopted description. Using Garstang's model, Duriscoe et al. (2018) quantify the effects of metropolitan light impacting astronomical sites *up to 200-300 km* away.

In 1989, of 17 major (exclusively US-based) observatories, Lick was ranked among the top 3 most heavily light polluted astronomical sites (Garstang 1989b) at visible wavelengths. Estimates suggest that light emissions are increasing at a faster rate than that of population growth (Gaston & Sanchez de Miguel 2022). In 2022, in a list of 23 major observatories worldwide, Lick was cited as *the most affected astronomical site* (Green et al. 2022) in the visible regime. Lamentably, this highlights Lick and surrounding communities (including Gilroy) as optimal sites for the deeper study of the established correlation between ALAN and public health. Every major disease is associated to some extent with short sleep/long light. Sleep disorders are now arguably the most prevalent health concern in the industrialized world.

Misapprehension 3: Response to comments on MND: I2 (p 501 and p 525 of packet)

On the applicant team's contention that the following (6 April 2021) comment is incorrect:

"The efficiency of electronic illumination represents a manyfold increase in wasted light, compared with former illumination methods. Second, the nature of LED technology (i.e. combining emission from multiple intensity peaks) contaminates the entire visible spectrum, whereas incandescent or discharge (e.g. sodium) lighting consists of isolated spectral peaks, with adjacent spectral regions free from contamination."

Rationale:

The deployment of ever more (and more efficient) sources of artificial light, regardless of the technology (e.g. LED versus chemical discharge versus incandescent) and regardless of the originating fixture (electronic billboards versus luminaires) is concerning: all contribute - although some, like electronic billboards, disproportionately so, because direction matters (Luginbuhl et al. 2009) - to the phenomenon of ALAN. In large part, ALAN is a consequence of the physics of ever-present aerosols (e.g. water vapor, particles, etc.), which redirect or *scatter* light. Billboards intentionally project light laterally. Additionally, the distance (or path length) the photons travel from the source plays a role, such that billboards mounted higher above the ground contaminate more. Furthermore, one of the more dominant scattering processes, *Rayleigh scattering*, exhibits not simply an additive or multiplicative dependence, but a *power law* dependence such that shorter (blue) wavelengths are more strongly scattered than longer (red) wavelengths. Compared with former incandescent illumination, LEDs *of any vintage* emit a *preponderance of blue light*, as illustrated in by the applicant team in attachment F. However, note that attachment F compares 2 types of *LED* only and *excludes* any illustration of incandescent lighting which would exhibit a vastly suppressed - or even non-existent blue component.

The transition to solid-state LED technology has increased emissions at visible wavelengths. Estimation of this component suggests that the true overall increase in radiance in the visible spectrum may be as high as 270% globally and 400% in some regions (Sanchez de Miguel et al. 2021) e.g. predominantly in conurbations of the industrialized world, such as the San Francisco Bay Area.

Misapprehension 4: Response to comments on MND: I2 (p 502 and p 491 of packet)

"The project does comply with many of the best management practices identified in [the International Dark Sky Association's, IDA (2019) Guidance for Electronic Message Centers] document."

Rationale:

The full set of guidelines are designed to work *in concert* to mitigate the acceleration of light pollution. Omitting one recommendation hampers the efficacy of the others on a selective basis. For example, in the present case, the project omits the curfew guideline for turning off signs during low-traffic periods throughout the small hours of the morning. The applicant team offer no justification for the omission of this guideline. Elsewhere in their responses, the applicant team elect to dismiss the experience of opposition to billboards in the City of San Jose as "irrelevant". However, this discounts a valuable informative, educative – and relevant - data set, since the City of San Jose experience remains the most comparable example to the present project (temporally, demographically and geographically). It would be foolhardy for any community in the hinterland of San Jose to ignore its lessons.

In revising the City's of San Jose (2018) billboard ordinance the curfew guideline was adopted (and readily accepted by outdoor advertising industry representatives) without hesitation. Subsequent activity by both Clear Channel Outdoor and Out Front Media in response to the San Jose revision is evidence enough that the adoption of the full set of IDA guidelines has not deterred outdoor advertisers from competing for access to electronic billboards.

It is of great concern that the City of Gilroy and applicant team appear to be in accord on this issue. At the very least, it is suggestive of a lack of understanding and is suggestive of a *laissez-faire* - or even permissive – planning culture.

References:

Al-Naggar, A., Anil, S. (2016)

“Artificial Light at Night and cancer: Global Study”
in Asian Pacific Journal of Cancer Prevention, 17 (10), 4661.

Bogard, P. (2013)

“The end of night: Searching for natural darkness in the age of artificial light”
Back Bay Books / Little, Brown and Company
ISBN 978-0-316-18290-4 (hc) / 978-0-316-18291-1 (pb).

Duriscoe, D. M., Anderson, S. J., Luginbuhl, C. B., Baugh, K. E. (2018)

“A simplified model of all-sky artificial sky glow derived from VIIRS Day/Night band data”
In Journal of Quantitative Spectroscopy and Radiative Transfer, 214, 133-145, May 2018.

Garstang, R.H. (1989a)

“Night-sky brightness at observatories and sites”
in Publications of the Astronomical Society of the Pacific, 101, 306-329, March 1989.

Garstang, R.H. (1989b)

“The status and prospects for ground-based observatory sites”
in Annual Reviews of Astronomy and Astrophysics, 27, 19-40.

Gaston, K. J., Sanchez de Miguel, A (2022)

“Environmental Impacts of Artificial Light at Night”
in Annual Review of Environment and Resources, 47, 373-398.

Green, R. F., Luginbuhl, C. B., Wainscoat, R. J. Duriscoe, D. (2022)

“The growing threat of light pollution to ground-based observatories”
in The Astronomy and Astrophysics Review, 30, 1.

Luginbuhl, C. B., Walker, C. E., Wainscoat, R. J. (2009)

“Lighting and astronomy”
in Physics Today, 62, 12, 32.

Sanchez de Miguel, A., Bennie, J., Rosenfeld, E., Dzurjak, S., Gaston, K. J. (2021)

“First estimation of global trends in nocturnal power emissions reveal acceleration of light pollution”
in Remote Sensing, 13 (16), 3311.

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Cindy McCormick

From: Juan Estrada <juan@greenfoothills.org>
Sent: Thursday, February 2, 2023 11:50 AM
To: Planning Commissioner Manny Bhandal; Planning Commissioner Annedore Kushner; Planning Commissioner Stefanie Elle; Planning Commissioner Adriana Leongardt; Planning Commissioner Joan Lewis; Planning Commissioner Kelly Ramirez; Planning Commissioner Michelle Montez; Planning Division (Public)
Cc: Alice Kaufman; Brian Schmidt; Lennie Roberts
Subject: EXTERNAL - Electronic billboards
Attachments: 20230202 Letter from Green Foothills regarding Digital Billboards.pdf

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Chair Bhandal and Gilroy Planning Commissioners,

I have attached a letter noting our opposition to the electronic billboard project. I have copied and pasted the body of the letter below for easy reference.

Green Foothills would like to echo the summary of serious and substantiated concerns expressed by the Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter about the electronic billboard project. A couple of highlights:

- **Wildlife connectivity impact:** Open storm drains, irrigation channels and other flood management infrastructure features often connect habitat patches and provide pathways for animals to traverse an urban landscape. This connectivity for wildlife is important to preserve biodiversity, and is easily disrupted by lighting. The Project is adjacent to the Princeville Channel, which is currently a wildlife connectivity corridor and allows permeability between Uvas and Llagas creeks. The DMND provides no analysis of wildlife movement in the channel, dismissing impact to wildlife movement.
- **Impact to ecosystems:** The Biological Report underestimates the potential impact to ecosystems. The IS/DMND acknowledges that “migrating birds can be affected by human-built structures because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather”. Recent scientific studies highlight the pervasive, cumulative, and harmful impacts of Artificial Light At Night (ALAN) to terrestrial and aquatic organisms, species, and ecosystems. The impacts, including effects on circadian rhythms, metabolism and behavior in fish, birds, insects, and other taxa, have been summarized in several recent publications in major scientific journals. Recent studies also implicate ALAN as one of the primary drivers of the global decline in insect numbers and diversity (the insect apocalypse).

We ask the City of Gilroy not to approve highway or road-facing electronic billboards. Additionally, the city should develop a Dark Sky ordinance to guide future light pollution decisions. Approving this project without a Dark Sky ordinance fails to consider its overall impact and the proper management of light pollution in Gilroy. The City of Cupertino has such an ordinance, and Gilroy residents deserve the same level of protection of their sky. If the City of Gilroy wishes to continue considering this project, it should develop and enact a Dark Sky ordinance first, and then consider whether the project complies with it. And if the city persists in moving forward with this project, an EIR must be prepared.

Sincerely,
 Juan Estrada

Advocacy Associate and Organizer

**Juan Estrada**

Advocacy Associate and Organizer

Green Foothills | (650) 968-7243 x351 | greenfoothills.org*Join the movement for local nature. [Sign up for alerts.](#)*



February 2, 2023

Gilroy Planning Commission
7351 Rosanna St.
Gilroy, CA 95020

Via email to: manny.bhandal@cityofgilroy.org, annedore.kushner@cityofgilroy.org, stefanie.elle@cityofgilroy.org, adriana.leongardt@cityofgilroy.org, joan.lewis@cityofgilroy.org, kelly.ramirez@cityofgilroy.org, michelle.montez@cityofgilroy.org, planningdivision@cityofgilroy.org

Re: Electronic Billboards

Dear Chair Bhandal and Gilroy Planning Commissioners,

Green Foothills would like to echo the summary of serious and substantiated concerns expressed by the Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter about the electronic billboard project. A couple of highlights:

- **Wildlife connectivity impact:** Open storm drains, irrigation channels and other flood management infrastructure features often connect habitat patches and provide pathways for animals to traverse an urban landscape. This connectivity for wildlife is important to preserve biodiversity, and is easily disrupted by lighting. The Project is adjacent to the Princevalle Channel, which is currently a wildlife connectivity corridor and allows permeability between Uvas and Llagas creeks. The DMND provides no analysis of wildlife movement in the channel, dismissing impact to wildlife movement.
- **Impact to ecosystems:** The Biological Report underestimates the potential impact to ecosystems. The IS/DMND acknowledges that “migrating birds can be affected by human-built structures because of their propensity to migrate at night, their low flight altitudes, and their tendency to be disoriented by artificial light, which makes them vulnerable to collision with obstructions that could potentially lead to injury or mortality. In addition, birds migrating at night can be strongly attracted to sources of artificial light, particularly during periods of inclement weather”. Recent scientific studies highlight the pervasive, cumulative, and harmful impacts of Artificial Light At Night (ALAN) to terrestrial and aquatic organisms, species, and ecosystems. The impacts, including effects on circadian rhythms, metabolism and behavior in fish, birds, insects, and other taxa, have been summarized in several recent publications in major scientific journals. Recent studies also implicate ALAN as one of the primary drivers of the global decline in insect numbers and diversity (the insect apocalypse).

We ask the City of Gilroy not to approve highway or road-facing electronic billboards. Additionally, the city should develop a Dark Sky ordinance to guide future light pollution decisions. Approving this project without a Dark Sky ordinance fails to consider its overall impact and the proper management of light pollution in Gilroy. The City of Cupertino has such an ordinance, and Gilroy residents deserve the same level of protection of their sky. If the City of Gilroy wishes to continue considering this project, it should develop and enact a Dark Sky ordinance first, and then consider whether the project complies with it. And if the city persists in moving forward with this project, an EIR must be prepared.

Sincerely,
Juan Estrada
Advocacy Associate and Organizer

PUBLIC COMMENTS

Public comments received on or before March 9, 2023, were included in the City Council agenda packet. Public comments received after March 9, 2023, are posted to the City's public comment portal.

The public comment portal can be accessed through the City's Public Records Portal page: bit.ly/3lhcNSo

If you are unable to access the public comment portal, please contact the City Clerk at cityclerk@cityofgilroy.org.



City of Gilroy

STAFF REPORT

Agenda Item Title:	2022 General Plan and Housing Element Annual Progress Report
Meeting Date:	March 20, 2023
From:	Jimmy Forbis, City Administrator
Department:	Community Development
Submitted By:	Sharon Goei, Community Development Director
Prepared By:	Cindy McCormick, Customer Service Manager

STRATEGIC PLAN GOALS

Promote Safe Affordable Housing for All

RECOMMENDATION

Accept the report and direct staff to submit the 2022 Annual Progress Report to the California Department of Housing and Community Development and the Governor's Office of Planning and Research.

EXECUTIVE SUMMARY

The General Plan Annual Report fulfills the requirements of Section 65400 of the California Government Code, which requires all jurisdictions to prepare an annual report addressing two primary topics: 1) a summary of calendar year activities that show progress towards implementation of a jurisdiction's General Plan; and 2) progress in meeting the jurisdiction's share of regional housing needs and efforts to remove governmental constraints to the maintenance, improvement, and development of housing. The Annual Report for the 2022 calendar year must be forwarded to the Governor's Office of Planning and Research (OPR) and the California Department of Housing and Community Development (HCD), by April 1, 2023 due date.

DISCUSSION

2040 General Plan Notable Activities 2022

The attached Annual Report describes notable activities in the 2022 calendar year that made progress toward implementing the 2040 General Plan. Each year the City will

report on subsequent activities that show additional progress. A complete list of implementation programs is included at the end of each General Plan Element chapter¹. The Annual Report summarizes the following General Plan activities in 2022, listed in the order presented in the various chapters of the General Plan.

- ☒ Zoning Ordinance
- ☒ Vacant and Underutilized Sites
- ☒ Impact Fees
- ☒ Police Explorers
- ☒ Meetings with Educational Organizations
- ☒ Maximize Bicycle Separation
- ☒ Translation / Interpretation Services
- ☒ Community Engagement Program
- ☒ Maintain List of Meeting Facilities

2015-2023 HOUSING ELEMENT

2022 Annual Progress Report. The second section of the Annual Report includes a summary of Gilroy's progress in 2022 toward implementing the 2015-2023 Housing Element and the corresponding Regional Housing Needs Allocation (RHNA).

What is RHNA? Since 1969, the State of California has required that all local governments (cities, towns, and counties) adequately plan to meet the housing needs of everyone in our communities. The Regional Housing Needs Allocation (RHNA) process is used to determine how many new homes, and the affordability of those homes, each local government must plan for in its Housing Element. The current eight-year RHNA cycle runs from January 31, 2015 – January 31, 2023 (2015-2023).

In 2022, the Area Median Income (AMI) for a four-person household in Santa Clara County was \$168,500, as defined by the California Department of Housing and Community Development (HCD). Based on the County AMI, the income limits for a family of four (4) within each income category are represented below:

Extremely Low Income:	\$50,550 (30% AMI)
Very Low Income:	\$84,250 (50% AMI)
Low Income:	\$131,750 (80% AMI)
Moderate Income:	\$202,200 (120% AMI)

As illustrated in the following table, the City's total RHNA during the 2015-2023 planning cycle is 1,088 units. The City has exceeded the RHNA for the low-income and above-moderate (market rate) income categories. The remaining very-low income allocation is

¹ <http://www.cityofgilroy.org/274/2040-General-Plan>

75 units and the remaining moderate-income allocation is 117 units. However, these remaining RHNA units shouldn't detract from the fact that Gilroy permitted 785 low-income units from 2015 through 2022. This equates to 625 more low-income units than the 160 units allocated by HCD and ABAG, nearly five times Gilroy's allotment (491%).

Regional Housing Needs Allocation Progress (2015 – 2022)					
Income Level	<u>RHNA Unit Allocation</u>	<u>2015–2021 Units</u>	<u>2022 Units</u>	<u>Total Units Permitted</u>	<u>RHNA Units Remaining</u>
*Very Low (31 – 50% AMI)	236	156	5	161	75
Low (51 – 80% AMI)	160	686	99	785	0
Moderate (81 – 120% AMI)	217	90	10	100	117
Above Moderate (Above 120% AMI)	475	1,435	124	1,559	0
Total Units:	1,088	2,367	238	2,605	Remaining Units = 192

*The category “extremely low-income households” is a subset of “very low-income households,” and is defined as 30 percent or less (0 – 30%) of the area median income.

FISCAL IMPACT/FUNDING SOURCE

No fiscal impact has been identified in conjunction with this project.

PUBLIC OUTREACH

Staff posted a notice of this meeting on social media. The City Council meeting packet is also available through the City's webpage.

NEXT STEPS

After acceptance of the report by the City Council, staff will transmit it to the Governor's Office of Planning and Research (OPR) and the California Department of Housing and Community Development (HCD).

Attachments:

1. 2022 General Plan & Housing Element Annual Report
2. 2015-2023 Housing Element Program Progress Table



Gilroy 2040 General Plan 2022 Annual Report

Purpose of the General Plan Annual Report

The General Plan Annual Report fulfills the requirements of Section 65400 of the California Government Code, which requires all jurisdictions to prepare an annual report addressing two primary topics:

- I. **General Plan Implementation Activities** describes notable activities in 2022 that made progress towards implementing the goals, policies and implementation programs identified in the City's new *2040 General Plan* (adopted November 2020). This section also includes a discussion of high-priority programs that can be adjusted as the list is implemented or reprioritized based on current challenges facing the City.
- II. **Housing Element Annual Progress Report** provides a summary of the City's progress towards meeting Gilroy's Regional Housing Needs Allocation (RHNA) and efforts to remove governmental constraints to the maintenance, improvement and development of housing identified in the *2015-2023 Housing Element*.

The General Plan Annual report is presented to the Gilroy City Council and then sent to the Governor's Office of Planning and Research (OPR) and the State Department of Housing and Community Development (HCD) on or before April 1st of each year.

Background of the General Plan

Every city and county in California must have a General Plan, which is the local government's long-term framework or "constitution" for future growth and development. The General Plan represents the community's view of its future and expresses the community's development goals. The General Plan consists of policy text which contains goals, policies and implementation programs, and a land use diagram which illustrates the planned future land uses and pattern of development. All land use decisions by City staff, the Planning Commission, and the City Council must be consistent with the adopted General Plan. Typically, a General Plan is designed to address the issues facing a jurisdiction for the next 15-20 years. Under California law, the City is required to address eight (8) issue areas or "elements" in the General Plan: air quality, circulation, conservation, environmental justice¹, housing, land use, noise, open space, and safety. The State allows considerable flexibility in how these elements are organized and encourages the inclusion of additional "elements" to ensure that plans are truly comprehensive and effective in addressing local issues.

The 2040 General Plan was adopted in November 2020, approximately 18 years after the City adopted the 2020 General Plan. The 2040 General Plan includes an Introduction chapter, an Implementation chapter, and nine (9) elements: Land Use; Mobility; Economic Prosperity; Housing; Public Facilities and Services; Parks and Recreation; Natural and Cultural Resources; Potential Hazards; and Environmental Justice.

¹ Cities and counties that have identified disadvantaged communities must include an environmental justice element in their general plans.

I. 2040 GENERAL PLAN IMPLEMENTATION ACTIVITIES

For the City's General Plan to serve its purpose effectively, it must be reviewed, maintained, modified as necessary, and implemented in a systematic and consistent manner. The General Plan contains a Vision Statement and Guiding Principles to ensure that the goals, policies, and implementation programs in the General Plan reflect the community's shared vision for Gilroy. Gilroy implements the General Plan through the City's ordinances and regulations, policy decisions, and actions and is responsible for tracking, reporting and evaluating its progress in implementing the General Plan. A complete list of implementation programs are listed at the end of each General Plan element and are available on the City's website².

Government Code Section 65400 requires the City to report annually on "the status of the plan and progress in its implementation". This annual review helps to ensure the City is moving forward to achieve the General Plan's vision.

2022 NOTABLE IMPLEMENTATION PROGRAM PROGRESS

The subsections below describe notable activities in 2022 that made progress towards implementing 2040 General Plan implementation programs. Additional implementation programs for the 2040 General Plan will be reported on in subsequent years. The list below does not generally include activities that are considered "on-going" or "annual" (e.g., increasing fees by 3% each year) unless the activity was notable or unique compared to a typical calendar year (e.g., updating the comprehensive fee schedule beyond the standard 3% increase).

LAND USE

The Land Use Element plans for future growth and change while preserving and enhancing the qualities that make Gilroy a great place to live and work. The goals, policies, and programs of the Land Use Element are designed to enhance Gilroy's neighborhoods and districts with an attractive mix of uses and amenities that expand the local economy, protect environmental resources, and improve the overall quality of life of residents. The Land Use Element also contains a map of land uses within the City and a description of the land use designations.

Land Use Program LU-1 Zoning Ordinance: *Review and update the Gilroy Zoning Ordinance and Zoning Map to be consistent with the Land Use Diagram and related policies of the General Plan. Consider rezoning areas inconsistent with the Land Use Diagram, as appropriate, and update the zoning district descriptions to reflect the updated land use designation descriptions.*

LU-1 Status: In collaboration with the City Attorney, staff have worked on the update to the zoning ordinance throughout the 2022 calendar year. The City is on track to complete the update of the Zoning Ordinance by the end of 2023.

² <http://www.cityofgilroy.org/274/2040-General-Plan>

LU-4 Vacant and Underutilized Sites: *Develop and maintain a citywide database of vacant and underutilized sites to monitor the city's growth and change. Prepare an annual report to the Planning Commission and City Council on the number of vacant sites and underutilized sites that were developed during the previous year.*

LU-4 Status: The most recent residential vacant land inventory was updated in October 2022 as part of the Wren/Hewell Urban Service Area amendment application to LAFCO. The inventory is available on the City's website³. In 2022 and 2023, the City also reviewed and inventoried underutilized sites as potential opportunity for affordable housing development, as part of the 2023-2031 Housing Element update process.

Additional implementation programs for the 2040 General Plan will be reported on in subsequent annual progress reports.

PUBLIC FACILITIES AND SERVICES

The City of Gilroy maintains a variety of public facilities and provides many public services (e.g., Police and Fire) to meet the needs of the community. Gilroy residents, businesses, workers, and visitors rely on public facilities and services to keep them safe; provide water, energy, and communication services; and remove wastewater, stormwater and solid waste. The Public Facilities and Services Element establishes goals and policies to guide the overall provision of municipal and educational facilities and services in Gilroy.

PFS-2 Impact Fees. *Review and update the water, wastewater, stormwater, traffic, and public facilities nexus studies and impact fee schedules when master plans are updated, to ensure that public facilities and services required by new development are paid for by those developments.*

PFS-2 Status: In 2022, the Public Works Department participated in the City-wide comprehensive fee schedule update, which included a variety of impact fees including water, sewer, stormwater, traffic, and public facilities.

PFS-11 Police Explorers. *Offer opportunities for youth ranging in age from 14 to 20 years to gain the information and experience necessary to determine if a career in law enforcement is right for them. Activities include ride-a-longs with officers and assistance in records, crime analysis, communications, and other areas of the department.*

PFS-11 Status: In 2022, 35 youth participated in the youth police academy.

PF-12 Meetings with Educational Organizations: *Facilitate an annual meeting with representatives from the Gilroy Unified School District, Gavilan College, Santa Clara County, and other educational organizations as necessary to achieve the goals and policies of the General Plan.*

PFS-12 Status: In 2022, the City developed an MOU between GUSD and GPD to assign two officers to the School Resource Officer (SRO) program.

³ <http://www.cityofgilroy.org/932/Vacant-and-Underutilized-Sites-Inventory>

Additional implementation programs for the 2040 General Plan will be reported on in subsequent annual progress reports.

NATURAL AND CULTURAL RESOURCES

Gilroy's proximity to hills, streams, open space, and agriculture is one of the many reasons that residents love living here. Gilroy also has a proud, multi-cultural heritage that spans centuries and includes historic or other culturally significant resources. The Natural and Cultural Resources Element establishes goals, policies, and programs to preserve and enhance these natural areas and cultural resources.

Climate Action Plan CAP 15. Maximize Bicycle Separation. *Review Complete Streets street cross sections and development specifications to encourage bicycling by maximizing bike lane widths or establishing physical separation between vehicle travel lanes and bicycle lanes on high-volume roadways, to the extent feasible.*

CAP 15 Status: In 2022, the City upgraded the existing Class II bike lanes on Rancho Hills Dr between Valley Oaks Dr and Carriage Dr to two stripes instead of the existing one stripe. While not completed during the 2022 calendar year, the FY22 Citywide Paving Project is installing the following bike improvements. These improvements are in various stages of either temporary striping or partially completed final striping, and will continue to make progress in 2023:

- Installing new buffered Class II bike lanes on Renz Lane west of Camino Arroyo and green bike lane striping at the Renz Ln/Camino Arroyo intersection.
- Upgrading the existing Class II bike lanes on Rancho Hills Dr between Valley Oaks Dr and Carriage Dr to two stripes instead of the existing one stripe.
- Upgrading the existing Class II bike lanes on Mantelli Dr between Zinnia St and Hirasaki Ave to two stripes instead of the existing one stripe.
- Extending the existing Class II bike lane to the intersection and adding green bike lane striping on SB Wren Ave at the Wren Ave/Welburn Ave intersection.
- Shifting the existing Class II bike lane to the left of the right-turn lane and adding green bike lane striping on WB Tenth St at the Tenth St/Princevalle St intersection.
- Adding green bike lane striping to the existing Class II bike lane on WB Tenth St at the Tenth St/Rosanna St intersection.

ENVIRONMENTAL JUSTICE

Environmental justice is "...the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Environmental justice objectives and policies seek to reduce the unique or compounded health risks in disadvantaged communities through strategies such as: reducing pollution exposure, improving air quality, and promoting public facilities, food access, safe and sanitary homes, and physical activity; promoting civil

engagement in the public decision-making process; and prioritizing improvements and programs that address the needs of disadvantaged communities⁴.

EJ-1 Translation. *Develop a program of phased implementation of Spanish translation of public meeting notices and translation provided at public meetings.*

EJ-1 Status: In 2022, the City included translation and interpretation services at several in-person and virtual community meetings, including but not limited to meetings on the Housing Element update. The Police Department also held a Spanish language Community Police Academy.

EJ-2 Community Engagement Program. *Provide opportunities for City Council, Planning Commission, and City staff and residents to communicate and engage throughout the year. Examples of such events include “coffee with city leaders” and community forums and meetings.*

EJ-2 Status: The Mayor provides a monthly “Spotlight with the Mayor” message in the City’s newsletter, which highlights a specific City department and some of the activities the department is working on. In 2022, the Mayor highlighted the Sharks Sports & Entertainment at the Gilroy Sports Park, City street maintenance, and the City’s Boards and Commissions. The Mayor also provides a monthly “Conversation and Coffee” event on various topics of interest. In 2022, topics included wastewater treatment and water recycling, the Surplus Lands Act, Ballot Measure to amend the 1960 City Charter, and the Egleberry & 7th Street parking lot. The City Administrator also provides regular town hall meetings, 2-to-4 times per year depending upon the needs of the community. In 2022 the City held virtual town hall meetings on fentanyl and the user fee study. In 2022, the Police Department hosted a variety of community events, including National Night Out, Party in the Park, Coffee with a Cop, and Shop with a Cop.

EJ-3 Maintain List of Meeting Facilities. *Create and periodically update the City’s website to maintain a current list of meeting facilities located throughout Gilroy.*

EJ-3 Status: Meeting facilities are regularly updated and listed on the City’s website at <https://www.cityofgilroy.org/538/Park-Facility-Rentals>.

Additional implementation programs for the 2040 General Plan will be reported on in subsequent annual progress reports.

⁴ “Disadvantaged communities” refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease.

//. Housing Element Annual Progress Report

The Housing Element is part of Gilroy's General Plan and identifies policies and programs to meet the housing needs of the city's current and future residents. State law (Government Code Sections 65580-65589.8) requires that every city and county in California adopt a Housing Element, approximately every eight years. In addition, HCD reviews and certifies Housing Elements to ensure they meet all requirements of the law. In 2022, the City entered its eighth (8th) and final year of the 2015-2023 Housing Element's eight (8) year planning cycle.

RHNA Progress Report

Since 1969, the state has mandated that all California jurisdictions must plan for our resident's housing needs—regardless of income. This state mandate is called the Regional Housing Needs Allocation (RHNA). As part of RHNA, the California Department of Housing and Community Development (HCD), determines the total number new homes and affordability level of those homes that the Bay Area needs to build. The Association of Bay Area Governments (ABAG) then distributes a share of the region's housing need to each jurisdiction in the region.

As illustrated in the following table, the City's total RHNA during the 2015-2023 planning cycle is 1,088 units. The City has exceeded the RHNA for the low-income and above-moderate (market rate) income categories. The remaining very-low income allocation is 75 units and the remaining moderate-income allocation is 117 units. However, these remaining RHNA units shouldn't detract from the fact that Gilroy permitted 785 low-income units from 2015 through 2022. This equates to 625 more low-income units than the 160 units allocated by HCD and ABAG, nearly 5 times Gilroy's allotment (491%).

Regional Housing Needs Allocation Progress (2015 – 2022)					
Income Level	<u>RHNA Unit Allocation</u>	<u>2015–2021 Units</u>	<u>2022 Units</u>	<u>Total Units Permitted</u>	<u>RHNA Units Remaining</u>
*Very Low (31 – 50% AMI)	236	156	5	161	75
Low (51 – 80% AMI)	160	686	99	785	0
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Total Units:	1,088	2,367	238	2,605	Remaining Units = 192

*The category "extremely low-income households" is a subset of "very low-income households," and is defined as 30 percent or less (0 – 30%) of the area median income.

Activities to Remove Governmental Constraints

The second component of the Housing Element Annual Progress Report includes the city's progress towards implementing Housing Element programs and other activities intended to remove governmental constraints to the maintenance, improvement, and development of housing. Governmental constraints are policies, standards, requirements, and actions imposed by the local government that may have a negative impact on the development and provision of housing for a variety of income levels. These constraints may include building codes, land use controls, growth management measures, development fees, processing and permit procedures, and site improvement costs.

Efforts in 2022 to reduce governmental constraints included, but are certainly not limited to the following:

The City of Gilroy regularly communicates with residents, business owners, and development stakeholders via phone, email, and in-person meetings to hear concerns about potential development constraints including processing procedures, fees, development standards, and other City policies and requirements. Staff can then make informed decisions or recommendations to City officials (e.g., Planning Commission and City Council) on ways to reduce governmental constraints to development such as permit requirements, processing procedures, and land use controls.

In 2022, the City continued its comprehensive update of the City's Zoning Ordinance. City staff will be recommending changes to the zoning ordinance that help streamline the permit process, including but not limited to creating an administrative use permit process (currently all use permits require a public hearing before the Planning Commission). City staff is also recommending a more transparent and streamlined process for reviewing and approving applications involving a historic resource.

The attached housing program matrix summarizes the City's progress towards achieving the programs in the City's 2015 – 2023 Housing Element. Programs that were not completed in this planning period will be carried over to the 2023 – 2031 Housing Element.

In 2022, the City included programs in its Draft 2023 – 2031 Housing Element that are intended to remove governmental constraints related to processing planning entitlements.

Program A-9 (Monitor Permit Requirements, Processing Procedures and Land Use Controls). This program is intended to increase the percentage of permits that are processed online through the EnerGov permit system which will be more efficient and transparent than the current permitting system. The City will hold an outreach meeting to educate users on how to utilize the new permitting system. To assess the effectiveness of the new system, the City will survey users 6 months after its launch. The City will also create metrics that track time to process permits. These metrics can be compared year-to-year to determine if process and procedural changes are successful or need tweaking. As a part of the City's annual developer's roundtable meetings, the City shall consult builders and other parties engaged in housing development activities to identify potential constraints in the

City's permit requirements, processing procedures and land use controls, and analyze potential streamlining where feasible.

Program A-10 (Facilitate Missing Middle / Middle Income Housing). This program will create a streamlining process to approve duplexes, triplexes, and fourplexes so long as the project complies with objective design standards. These types of units are generally more affordable by design due to their smaller unit size. Construction costs may also be less than a typical single-family home since these unit types are attached to each other.

Program B-2 (Zoning and General Plan Densities). This program directs the City to amend the Zoning Ordinance to ensure that the city's regulations do not impede development from achieving the allowable densities in the General Plan. This program implements the requirements of the California Housing Accountability Act (AB 3194).

Program B-4 (Public Fees, Standards, and Plans Online). Pursuant to AB 1483, the City will compile all development standards, plans, fees, and nexus studies in an easily accessible online location. The City will continue to provide a high-quality, parcel-specific zoning map and general plan map online.

Program B-8 (Entitlement Roadmap Webpage). To provide clear and simple information about the City's permitting process, the City will create an Entitlement Roadmap webpage that clearly spells out the City's permitting process for residential development. Specifically, the webpage will include application forms, a flow chart outlining the development process, FAQs, and live links to other necessary pages and resources. The webpage will advertise the City's streamlined process for most single-family homes and administrative approval process for many other types of residential development that meet objective development standards.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-1.A	Publicize Residential Sites Inventory	The City shall make the residential sites inventory available to developers by publicizing it on the City website and providing copies of the sites to developers. The City shall update the list of sites annually, or as projects are approved on the sites.	In addition to the 2015 – 2023, Housing Element sites inventory, the most recent Residential Vacant Land Inventory was completed in October 2022 and is available on the City's website. The City also completed an initial assessment of underutilized and vacant land as part of the 2023 – 2031 Housing Element update.
H-1.B	Residential Development Ordinance	The City shall review and revise, as appropriate, the Residential Development Ordinance to ensure that it does not pose a constraint on the maintenance, improvement and development of housing; and provides capacity to meet the City's RHNA need. Furthermore, the City will encourage the development of housing that is affordable to a variety of income groups through the Residential Development Ordinance by comparing its features with the Neighborhood District Ordinance and making any changes to ensure the two policies are compatible.	Senate Bill 330, signed by the governor in 2019, prohibits a jurisdiction from implementing any provision that limits the number of approvals or permits or puts a cap on the number housing units that can be approved or constructed, or limits population. As a result, the Residential Development Ordinance is now null and void and will be repealed as part of the City's comprehensive zoning update in 2023.
H-1.C	Variety of Housing in Neighborhood Districts	The City shall review and revise, as appropriate, the Neighborhood District Policy to ensure that it encourages the development of housing that is affordable to a variety of income groups by comparing its features with the Residential Development Ordinance and making any changes to ensure the two policies are compatible and designed to reach the same goals.	The Residential Development Ordinance is no longer in effect. The 2040 General Plan includes a new higher density Neighborhood District designation, allowing a greater range of housing types from single family detached dwellings (0-7 du/ac) to higher density multi-family dwellings (16-30du/ac).
H-1.D	Facilitate Infill Development	The City shall coordinate efforts with private and non-profit developers, and other housing related groups to encourage the construction of residential development through a menu of regulatory incentives (e.g., streamlined review and other methods that will effectively encourage infill development). The City shall monitor infill development on a biannual basis to ensure the effectiveness of programs to encourage housing development. If, based on its biannual review, the City finds that additional programs are needed to facilitate	Between January 1, 2015 and December 31, 2022, the City permitted 2,605 new residential units. The City's residential development standards are generally very permissive. For example, single-family and multi-family residential projects that comply with objective development and design standards can generally be approved through a ministerial or administrative review process, without the need for public hearings. Furthermore, multi-family development is typically built with moderate to high densities, with higher densities allowed through the State Density Bonus law.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
		infill development, the City shall revise programs as appropriate.	
H-1.E	Monitor Permit Requirements, Processing Procedures and Land Use Controls	To ensure permit requirements and processing procedures do not constrain residential development, the City shall evaluate current requirements and procedures on a biannual basis. The City shall consult builders and other parties engaged in housing development activities to identify concerns. If permitting requirements are determined to be a constraint to residential development the City shall modify permitting requirements and/or procedures to address constraints, as feasible.	In 2020, the City awarded the contract for the purchase and implementation of a Land Management System to Tyler Technologies for the implementation of EnerGov to manage and track land development applications, business and professional licenses, special event permits, code enforcement cases, and fire prevention/pre-treatment/ hazardous materials management. The City and Tyler teams kicked off the project in September of 2020 with an anticipated "go-live" in 2023. Applicants will be able to check the status of their permit online and staff will have greater control over the workflow. The City also continues to hold development stakeholder roundtable meetings (virtual in 2020) to maintain a dialog with the Development Community. Topics included bicycle parking, objective design standards, and a potential update to the City's Downtown Specific Plan.
H-1.F	Zoning to Encourage and Facilitate Single-Room Occupancy Units	The City shall revise the Zoning Ordinance to establish explicit definitions for and regulatory standards addressing single-room occupancy units.	Not completed. The City will include a definition for and regulatory standards addressing single-room occupancy units as part of the 2023 Zoning Update.
H-1.G	Study Micro-Units	The City shall conduct a study of the appropriateness of “micro-units” in Gilroy and the existing barriers in the Zoning Ordinance to the provision of micro-units. Based on the findings of the study, the City will make a determination of the appropriateness of micro-units in Gilroy and, if determined appropriate, identify methods for eliminating barriers, and establish appropriate development standards.	Not completed. The City will define “micro-units” in Gilroy as part of the 2023 Zoning ordinance update. The draft 2023 – 2031 Housing Element includes a program to develop incentives for micro-units which help contribute to the City’s affordable by design housing stock.
H.2.A	Develop Affordable Housing Incentives	The City shall review and revise, as appropriate, current incentives and regulatory concessions available to developers for the development of affordable housing throughout the city, and especially within the Downtown	The City continues to monitor development in the Neighborhood District areas (e.g., Glen Loma) and the Downtown Specific Plan area and provide technical assistance to potential developers.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
		Gilroy Specific Plan area and Neighborhood District. Incentives and regulatory concessions may include, but are not limited to parking reductions, and reduced setbacks. The City shall also provide technical assistance, as feasible; information on State and Federal funding opportunities; and marketing to potential developers. The City shall continue to monitor development within the City's Downtown area on a biannual basis to ensure the implementation of the Specific Plan's policy on encouraging the development of a mix of retail, office and higher density residential uses. The City shall encourage the development of uses within the area to closely follow the recommended land use assumptions contained in the Specific Plan. If, based on its biannual review, the City finds that the proportion of residential uses to non-residential uses are not being developed as assumed in the Specific Plan, the City shall investigate additional incentives, concessions or assistance and revise programs as appropriate.	The draft 2023-2031 Housing Element includes a program to adopt an Affordable Housing Policy. The draft 2023-2031 Housing Element also anticipates new development in the downtown area including affordable housing units. The City continues to seek grant funding to update the Downtown Specific Plan to ensure that the City's vision for the downtown is implemented.
H-2.B	Pursue Funding for Affordable Housing	The City shall pursue funding from State, Federal, and regional sources and support applications for funding to help increase the supply of affordable housing. Funding programs may include but are not limited to: • One Bay Area Grants awarded by the Association of Bay Area Governments; • HCD Local Housing Trust Fund Program; • HUD Section 811 funding for supportive housing for extremely low-income residents; • The state Infill Infrastructure Grant program, sponsored by the Department of Housing and Community Development (HCD); and The State Multifamily Housing Program (MHP), sponsored by HCD.	The City evaluates funding opportunities as they arise and apply as appropriate. The City also facilitates public hearings on behalf of private developers who wish to seek tax credit financing for an affordable housing project.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-2.C	Community Development Block Grant Program	The City shall continue to administer the Community Development Block Grant Program for all eligible activities, including acquisition, rehabilitation, home buyer assistance, economic development, homeless assistance, public services, and public improvements. The City shall continue to inform non-profit organizations of funding availability through the City's website and informational packets at City Hall.	The City continues to administer the CDBG program and funds eligible activities as funding allows. One such activity is a housing rehabilitation program that helps low income individuals with accessibility improvements. The city has provided a grant to Rebuilding Together Silicon Valley to operate and expand the Home Repair, Rehabilitation and Modification program in Gilroy. This program provides a wide range of home repair, accessibility, mobility and rehabilitation improvements for low income homeowners.
H-2.D	Housing Trust Fund	The City shall continue to administer the City's Housing Trust Fund for all eligible activities, including new construction, acquisition, rehabilitation, home buyer assistance, homeless assistance, public services related to housing, and preservation of affordable housing. The City shall continue to inform non-profit organizations of funding availability through the City's website and informational packets at City Hall.	During most of the 5 th cycle planning period, the City allocated Housing Trust funds towards housing-related activities. These activities include fair housing services, tenant landlord counseling services, and homeless prevention services. In 2022, the City replaced the HTF with the Permanent Housing Allocation (PLHA) Fund, making more funds available for public service addressing homeless basic need programs as well as programs that focus on homelessness prevention.
H-2.E	Funding Sources to Assist Homeownership	The City shall pursue potential sources of additional funding for homeownership assistance, including the availability of State HCD, CalHFA funds, HOME, and County funds. The City shall improve public outreach activities through the compilation of resources for down payment assistance, silent second mortgages, and other means of acquiring a home.	The City has posted on its website links to organizations who offer homebuyer assistance, including the Housing Trust of Silicon Valley, an organization that helps first-time homebuyers secure Below Market Rate (BMR) down payment assistance. On December 6 and December 8, 2022, the City co-hosted Spanish and English Webinars (respectively) to educate the public on the Santa Clara County Empower Homebuyers Down Payment Assistance Program. The webinar was co-hosted with the City of Morgan Hill and the Housing Trust of Silicon Valley.
H-2.F	Section 8 Referrals	The City shall continue to provide Section 8 referral services and information to City residents. The City shall make information on the Section 8 voucher program available on the City website.	The City has posted on its website a link to the Housing Authority of Santa Clara County website. Here individuals can learn more about Housing Choice voucher eligibility and determine if the current waiting list is accepting any additional households.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-2.G	Development of Housing for Extremely Low-Income Households	The City shall review and incorporate appropriate regulatory incentives, financial incentives, and other policies that encourage the development of housing units for extremely low-income households. The City shall encourage and support the development of housing for extremely low-income households within future affordable housing projects through various strategies and programs that may include assistance with entitlement processing; and modifying development standards and granting concessions and incentives for projects that provide housing for lower income families.	The City continues to encourage developers to include extremely low-income units in their housing projects. Staff are available to meet with developers and discuss various incentives and concessions, consistent with State density bonus law.
H-2.H	Water and Sewer Service Priority	The City shall review and update every five years, as necessary, the Water and Sewer Service Priority Policy to ensure future affordable projects will receive service priority.	The Gilroy collection system includes about 140 miles of sewer mains. Policies in the new 2040 General Plan provide for reliable sewer service for all residents and businesses through a cooperative effort between the City and SCRWA. The General Plan also includes policies to ensure the provision of healthy, safe water for all users in Gilroy through facilities, policies, programs, and regulations.
H-3.A	Housing Rehabilitation	To enhance the quality of existing neighborhoods, the City shall continue to implement the City's Housing Rehabilitation Program. The City will continue using Community Development Block Grant (CDBG) funds to assist in the improvement of substandard housing.	The City currently funds a housing rehabilitation program that provides accessibility improvements to very low income households. The City has provided a grant to Rebuilding Together Silicon Valley to operate and expand the Home Repair, Rehabilitation and Accessibility Modification program in Gilroy. This program will provide a wide range of home repair, accessibility, mobility and limited rehabilitation improvements for low income homeowners.
H-3.B	Code Enforcement Program	To ensure continued maintenance of housing quality, condition, and use, the City shall continue to enforce building codes to address existing exterior and interior code violations. Within current staffing limits, the City shall contact owners of units identified as substandard, offering inspection services and providing information on the City's Rehabilitation Loan Program and landlord/tenant information and mediation services.	The City continues to enforce building codes to address code violations. Code enforcement officers work with owners of units identified as substandard, offering inspection services and providing information on the City's programs and services.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-3.C	Monitoring of Units At-Risk of Converting to Market Rate	The City shall provide for regular monitoring of deed-restricted units that have the potential of converting to market rate. In order to proactively address units at-risk of conversion, the City shall develop a program to partner with non-profit housing providers and develop a preservation strategy. This strategy will at least include biennial contact with property owners of affordable units, identification of funds to purchase and preserve affordable units, noticing of tenants and technical assistance with applications for funds.	To date, no known multi-family affordable housing units have converted to market rate or are at-risk of conversion. Many of the complexes have undergone significant rehabilitation to update and prolong the longevity of the units. The city has contracted with HouseKeys to serve as Program Administrator of the city's BMR home ownership and rental property program including contacting homeowners and property managers to evaluate compliance. HouseKeys will continue to evaluate the city's current multi-family affordable housing stock to determine if any developments are at-risk of conversion.
H-3.D	Resale Control on Owner-Occupied Below Market Rate Units	The City shall continue to implement resale controls on owner-occupied Below Market Rate (BMR) units to ensure that affordable units provided through public assistance or public action are retained for 30 years or more as affordable housing stock.	The City has contracted with HouseKeys to serve as Program Administrator of the city's BMR home ownership and rental property program.
H-3.A	Rent and Income Restrictions on Rental Below-Market Rate Units	The City shall continue to implement rent and income restrictions on rental Below Market Rate (BMR) units to ensure that affordable units provided through public assistance or public action are retained for 30 years or more as affordable housing stock.	The City has contracted with HouseKeys to serve as Program Administrator of the city's BMR home ownership and rental property program to help ensure that the homeowners and property owners are complying with affordable housing requirements.
H-4.A	Housing for Large Families	The City shall review and revise the Zoning Ordinance, as appropriate, to incorporate appropriate regulatory incentives, and other policies that encourage the development of rental housing units with three or more bedrooms to accommodate the needs of large families. The City shall encourage and support the development of rental housing for large families within future affordable housing projects through various strategies and programs that may include assistance with site identification and entitlement processing; and modifying development standards and granting concessions and incentives.	Not completed. The 2023 – 2031 Housing Element includes a program to develop incentives to encourage the development of housing to accommodate the needs of large families in Gilroy.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-4.B	Development of Housing for Seniors	The City shall consider areas for new senior housing development, including residential care facilities, that are convenient to public transit and within walking distance to shopping and restaurants, and incorporate appropriate regulatory incentives, financial incentives, and other policies that encourage the development of housing for seniors. The City shall continue to accept Senior only and Affordable Senior Housing projects through the RDO Exemption program to encourage the development of these projects.	Not completed. The City will consider areas for new senior housing development, including residential care facilities, as part of the 2023 Zoning Update. As noted above, the Residential Development Ordinance is no longer in effect.
H-4.C	Reduced Parking Standards for Senior Housing	The City shall conduct a study to determine if reduced parking standards for senior housing is appropriate in Gilroy. Based on the findings of the study, the City may revise the Zoning Ordinance, as necessary, to reduce parking standards for senior housing.	Not completed. The 2023 – 2031 Housing Element includes a program to consider reduced parking standards for senior housing.
H-4.D	Development and Conservation of Housing for Farmworkers	The City shall continue to partner with the Housing Authority of Santa Clara County and various non-profit organizations to explore and implement ways of providing affordable farmworker housing. The City shall assist with requests by developers for State and Federal funding for development of multi-family housing within city limits.	The City maintains communication with Santa Clara County and other organizations regarding the need for farmworker housing and the potential for expanding farmworker housing in Gilroy. There is currently farm worker housing in Gilroy, including three apartment buildings (managed by Eden Housing). The Ochoa Migrant Camp (managed by EAH Housing) is just outside of city boundaries. The Ochoa Migrant camp is seasonal, following the surrounding harvest season. During the off season, it is used to accommodate un-housed families.
H-4.E	Consistency with the Employee Housing Act	The City shall update the Zoning Ordinance to be consistent with the Employee Housing Act (Health and Safety Code 17021), which generally requires employee housing to be permitted by-right, without a CUP, in single-family zones for less than six persons, and in all zones that allow agricultural uses with no more than 12 units or 36 beds.	Not completed. The City will update the Zoning Ordinance in 2023 to be consistent with the Employee Housing Act (Health and Safety Code 17021).

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-4.F	Support Homeless Service Providers	The City shall continue to support the efforts of agencies providing emergency shelter for homeless residents, including providing funding when feasible and appropriate.	The City provides funding to homeless service providers through both its CDBG and HTF/PLHA programs. Services include referrals to the Santa Clara County Continuum of Care program, case management, homelessness prevention and provision of basic need items. The City hosts monthly meetings with Unhoused Service Providers. The goal of USP Network is to increase collaboration and partnership among the service providers and the City of Gilroy to connect the unhoused with services.
H-4.G	Home Access Grants	The City shall continue to administer Home Access Program to provide very low-income disabled residents with help in safely entering and exiting their homes and accessing essential areas within their homes.	This program was eliminated from the consolidated plan. The City continues to look at programs that can help its very-low income disabled residents, including the Home Access Program.
H-4.H	Coordinate with the San Andreas Regional Center	The City shall work with the San Andreas Regional Center to implement an outreach program informing residents of the housing and services available for persons with developmental disabilities. The City shall make information available on the City website.	The San Andreas Regional provides services to residents at Villa Esperanza in Gilroy.
H-4.I	Zoning Ordinance Amendments for Transitional and Supportive Housing	The City shall update the Zoning Ordinance to be fully compliant with State law and allow transitional and supportive housing in all zones that allow residential uses, subject to the same restrictions that apply to other residential uses of the same type in the same zone.	The Zoning Ordinance allows transitional and supportive housing in all residential zoning districts, subject to the same restrictions that apply to other residential uses of the same type in the same zone.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-5.A	Fair Housing Counseling	The City shall continue to provide funds to and contract with a non-profit agency to provide fair housing assistance including landlord/tenant counseling, homebuyer assistance, and improvement or removal of identified impediments. The City shall disseminate information about fair housing assistance through pamphlets in City-owned buildings and other public locations (e.g., City Hall, Library, post office, other community facilities) and by posting information on the City website.	The City funds fair housing counseling services through its Housing Trust/PLHA Fund program. It also publishes the availability of both tenant/landlord counseling and fair housing services via its website.
H-6.A	Interagency Collaboration for Lower Cost Housing	The City shall continue participation in Countywide housing assistance programs, and collaborate with other public agencies and non-profit housing sponsors in the use of available programs to provide lower-cost housing in Gilroy.	Abode Services provides a direct subsidy to one individual at the Cherry Blossom Apartments, owned by the City, through a partnership with the City and Community Solutions. The City also facilitates TEFRA hearings, as needed, to allow for the development and rehabilitation of affordable housing units throughout the City.
H-6.B	Collaboration with Development Community	The City shall continue to establish relationships with and provide technical assistance to both for-profit and non-profit development companies working in the area of affordable housing, facilitating innovative partnerships and collaborative approaches to affordable housing development. The City will especially utilize the Housing Advisory Committee to address housing issues and provide outreach to the development community.	The City continues to establish collaborative relationships with for-profit and non-profit development companies to find innovative approaches to affordable housing development in Gilroy. While the Housing Advisory Committee was consolidated with the Planning Commission, the City still actively addresses housing issues and provide outreach to the development community.

2015 – 2023 Housing Element Accomplishments			
Program Number	Program Name	Objective	Accomplishments
H-6.C	Community Access to Housing Information	To ensure the Gilroy community is provided the highest level of access to information, the City shall evaluate the effectiveness of existing outreach and community education efforts and develop a comprehensive outreach strategy for the delivery of housing information. The outreach strategy will consider various methods of delivery, including print media, mailers, web-based information, and other methods that consider economic and cultural considerations unique to the City of Gilroy.	The City's 2040 General Plan, adopted in November 2020, includes goals, policies, and implementation actions regarding outreach and community education efforts including various methods of delivery, such as print media, mailers, web-based information, and other methods that consider economic and cultural considerations unique to the City of Gilroy. The City of Gilroy, along with the City of Morgan Hill, the California Housing Finance Agency (CalHFA), and program lender Guild Mortgage, hosted an ADU Grant Webinar on September 29, 2022. Community members expressed appreciation for the informative webinar, which may lead to more grants for ADUs, and thus more ADU production, in Gilroy.
H-6.D	Annual Review of Housing Element	Pursuant to HCD Requirements, the City shall conduct an annual implementation review of the Housing Element. The review will include the following information: a log of new residential development permits and completion reports; inventory of units built in the Extremely Low-, Very Low- and Low-Income categories, an update or inventory of approved projects; an annual estimate of population from the State Department of Finance; and available vacant land and zoning survey.	The City has submitted Annual Progress Reports from 2015 through 2021 and will submit the 2022 annual report to HCD in March 2023.



City of Gilroy

STAFF REPORT

Agenda Item Title:	Unhoused Camping Ban Near Schools and Critical Infrastructure
Meeting Date:	March 20, 2023
From:	Jimmy Forbis, City Administrator
Department:	Administration
Submitted By:	Bryce Atkins, Assistant to the City Administrator
Prepared By:	Bryce Atkins, Assistant to the City Administrator

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Council provide direction.

BACKGROUND

At the July 5, 2022 City Council Regular Meeting, staff presented a report to the Council regarding the challenges and issues relating to the enforcement of no-camping ordinances. In the report, the legal challenges presented by the 2019 *Boise* decision was discussed, which restricted the ability of local agencies to enforce ordinances against camping on public property.

The key issue that was presented is the court decision explaining that a municipality cannot criminalize sitting, sleeping, or lying in public “when no sleeping place is practically available in any shelter.” However, there was language that scaled back the breadth, as well as other courts elaborating on the limits, such as:

Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. *Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in*

particular locations might well be constitutionally permissible [emphasis added]. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the "universal and unavoidable consequences of being human" in the way the ordinance prescribes. (Id. at 1136.)

Current Policy Restated

At the July 5, 2022 meeting, Council authorized the Gilroy Police Department ("GPD") to enforce no-camping ordinances on public property if it offers space at a homeless shelter to individuals beforehand and ensures that the particular shelter that it is offering to connect the individual with could accommodate their needs pursuant to The Americans with Disabilities Act ("ADA"). Additionally, Council authorized City personnel to clean and clear encampments in public parks and other public lands in compliance with a written protocol – GPD Police Policy 411 – that provides a number of safeguards required by the Courts, including outreach and notice to occupants, provision of social services, photographic documentation, safeguarding of occupants' personal property, and the making available of shelter space for displaced occupants.

The City had a meeting on September 12, 2022 where the discussions of the Los Angeles ordinance were conducted. The ordinance, which sought to establish a no-camping ban surrounding daycares and parks, was adopted by the City of Los Angeles but had not yet taken force. At the conclusion of this meeting, staff received direction to bring back key points for a potential ordinance that would prohibit unhoused camping in certain locations:

- Within 500 feet of schools, parks, daycares, playgrounds, and other locations where children are expected.
- In areas with critical infrastructure.
- In locations that would restrict access to public safety or public infrastructure locations.

Additionally, research would be needed concerning the possibility of prohibiting camping in or around creeks, as well as establishing a definition for camping that can be used in crafting the policy.

ANALYSIS

Policy for Consideration

Staff is proposing, as a foundation the following policy language for consideration. The specific final language and how it interacts with other portions of Gilroy City Code and other policies will vary, but the policy points would still be the target. Staff is seeking Council direction on the key provisions, and then staff will complete the analysis, then craft the draft ordinance to bring back to Council for introduction.

Draft Key Policy Points

Below are the identified key policy components for Council consideration, using a blending of the direction issued by the City Council augmented by the Los Angeles ordinance on minor parts of the policy that were not a component of the direction given. Staff is asking Council to review these key policy points and provide direction of any changes. Such changes will be incorporated into the draft ordinance for Council introduction at a later meeting. There will also be legal review of the ordinance language which may require further modifications.

No person shall obstruct by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property on a street, sidewalk, or other public right-of-way:

- (1) In a manner that impedes passage, as provided by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time;
- (2) Within five hundred (500) feet of any school, daycare facility, park, or playground. This prohibition applies all year, overnight, on any weekends and weekdays, even when such facilities may be generally considered closed.

In consultation with the City Attorney's Office (CAO), the original direction of adding "other locations where children are expected" was not included. The CAO believes that the language is too broad to survive a legal challenge and may result in the final ordinance being struck down if included. Additionally, if it were to be re-added, then some limiting language to the application would help to reduce the risk, such as locations where children are expected to congregate, though it is still at risk of losing a legal challenge.

- (3) Within one hundred (100) feet of critical infrastructure or emergency and urgent health and safety resources, including water wells, pump stations, sewer lift stations, water tanks, storm drain inlets and outfalls, police and fire stations, ambulance stations, hospitals and medical clinics, railways, bridges and under- and over-passes.
- (4) Within ten (10) feet of any operational or utilizable building entrance, exit, driveway or loading dock.
- (5) Within five (5) feet of any fire hydrant, fire plug, or other fire department connection.
- (6) Within the public right-of-way in a manner that obstructs or unreasonably interferes with the use of the right-of-way for any activity for which the City has issued a permit.

- (7) In a manner that obstructs any portion of any street or other public right-of-way open to use by motor vehicles, including any portion thereof marked as a bike lane.

Violations of this policy involving a person who willfully resists, delays, or obstructs a City employee from enforcing this section or who willfully refuses to comply after being requested to do so by an authorized City employee would be subject to the penalties set forth in the Gilroy City code, and will be listed in detail in the upcoming proposed ordinance.

Definition of Camping

Staff commenced the development of a definition of camping, based on common definitions present in municipal codes in various cities. However, the term is not used in the draft policy terms due to concerns raised by the COA that the term “Camp” or “Camping” has been litigated and has repeatedly been deemed too broad or not defined well enough to be upheld in courts. As such, only the physical description of “sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property” is used to lessen the likelihood of the ordinance being struck down. This is language similar to the recent Los Angeles ordinance. This physical description is still under review and may be revised in the final version.

Continued Development

The proposed policy/ordinance continues to be analyzed and adjusted as the work and analysis proceeds, leading eventually to an ordinance for Council introduction. With any input received by Council of the proposed policy points, staff will then analyze and map the locations of these sites and the prohibited distances, as well as identify the interactions of this proposed ordinance with other parts of the Gilroy City Code, to ensure that the eventual ordinance meets the best intents of this endeavor and is likely to survive challenge based on current litigation in this area of law. As was mentioned at the September 12, 2022 Council meeting, this process is a marathon and not a sprint, though we are making good progress towards a final ordinance.

ALTERNATIVES

Council may provide direction modifying the broad terms of the unhoused camping ordinance. Any such changes will be analyzed for incorporation into the final ordinance.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact for this agenda item. Once direction is received, staff will prepare an ordinance, the cost of which will be absorbed within existing appropriations. The fiscal impact of the final ordinance, if any, will be analyzed and reported as part of that staff report.

PUBLIC OUTREACH

This topic was discussed at Council meetings on July 5, 2022 and September 12, 2022.

This item was included on the publicly posted agenda for tonight's meeting.

NEXT STEPS

Staff will take any direction from Council to incorporate into an ordinance for introduction at a following Council meeting.