



DELANO & DELANO

June 6, 2016

VIA E-MAIL

Honorable Mayor and City Council
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Re: Proposed Modifications to Design Review Permit for City Hall/Town Hall Project

Dear Honorable Mayor and City Council:

This letter is submitted on behalf of Steven Mack in connection with the proposed amendments to the permit for the City Hall/Town Hall project ("Project"). As my prior correspondence has noted, the Final EIR for the Project was lacking in several respects. Additionally, the Project is inconsistent with the Design Review Ordinance and the Land Use Plan. Copies of my prior correspondence are enclosed for your convenience.

Nothing in the proposed modifications addresses these deficiencies. Accordingly, the Council should reject the proposed modifications.

Thank you for your consideration of the above concerns.

Sincerely,

Everett DeLano

Encs.

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DELANO & DELANO

October 26, 2015

VIA E-MAIL & U.S. MAIL

Planning and Community Development
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Re: City Hall/Town Hall Civic Plaza Draft EIR

Dear City of Del Mar:

This letter is submitted on behalf of Steven Mack in connection with the proposed City Hall/Town Hall project ("Project") and related Draft Environmental Impact Report ("DEIR").

The California Environmental Quality Act ("CEQA"), Pub. Res. Code §§ 21000 – 21177, must be interpreted "so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors*, 8 Cal. App. 3d 247, 259 (1972). If an EIR fails to provide agency decision-makers and the public with all relevant information regarding a project that is necessary for informed decision-making and informed public participation, the EIR is legally deficient and the agency's decision must be set aside. *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 712 (1990). An EIR is "aptly described as the 'heart of CEQA'"; its purpose is to inform the public and its responsible officials of the environmental consequences before they are made. *Laurel Heights Improvement Assoc. v. University of California*, 47 Cal.3d 376, 392 (1988). Here, the DEIR is inadequate.

The DEIR's discussion of the Project is vague. It states that the "outdoor plaza is designed to be an open area with flexible space to support uses including but not limited to, performances, art exhibits, [and] community gatherings" DEIR at 3-8. It notes that such uses "may utilize amplified sound systems and lighting" *Id.* The DEIR also states that a "future expansion area" is "not defined for specific use" These statements leave open a wide variety of possibilities. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. The DEIR fails to provide an adequate description, thereby leaving open a wide variety of possible construction and uses at the site.

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The DEIR's discussion of aesthetics, community character, and land use impacts is insufficient.

- The DEIR acknowledges that impacts to views of the ocean are unavoidable. DEIR at 4.1-9 *see also id.* at 4.2-2. Indeed, the municipal code includes protection of private residential views. It is therefore unclear how the DEIR can conclude such impacts are less than significant.
- Additionally, there is no acknowledgement that the Project would change the residential neighborhood. The DEIR claims the Project is "appropriately scaled to the village corridor" (DEIR at 4.2-29), but there is no consideration of impacts to the residential neighborhood on the west side.
- In fact, the Project is inconsistent with existing Plan restrictions. For example, the City's Land Use Plan calls for the protection of public views to the ocean. Land Use Plan at 10. It also discusses protecting public views and vantage points, and specifically discusses scenic view easements from Camino del Mar. *Id.* at 77 – 78.
- The Project is also inconsistent with existing Municipal Code restrictions. For example, the code prohibits blocking significant public coastal views, prohibits projects that are out of scale with the neighborhood, and prohibits a project that "unreasonably encroaches upon primary scenic views of neighboring property." Muni. Code § 23.08.077.
- Furthermore, the mere fact that construction impacts may be temporary does not make them insignificant.

The EIR's discussion of traffic, air quality and greenhouse gas emissions impacts is insufficient.

- The DEIR's claim that the Project will not generate additional City Hall trips avoids the additional trips associated with other aspects of the Project. DEIR at 4.4-10. There is no analysis of special events and performances.
- The DEIR also fails to analyze the air quality impacts associated with special events and performances. DEIR at 4.5-14.

The EIR's discussion of noise impacts is insufficient.

- The DEIR fails to discuss impacts associated with special events and performances. DEIR at 4.7-11.

The Project is likely to lead to water supply impacts.

- There is an inadequate showing of water supply for the Project. The California Supreme Court recently identified three "principles for analytical adequacy under CEQA": (1) "CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to a problem of supplying water to a proposed land use project"; (2) "an adequate

environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years"; and (3) "the future water supplies identified and analyzed must bear a likelihood of actually proving available An EIR for a land use project must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430 – 32 (emphasis in original) (citations omitted). The DEIR fails to comply with these mandates. The DEIR mentions the availability of water infrastructure, but there is inadequate discussion of drought or possible shortages of future water supplies for the Project and the area.

CEQA requires that an EIR "produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned." *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750 – 51. "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines § 15126.6(b). "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process." *Laurel Heights Improvement Assoc. v. University of California* (1988) 47 Cal.3d 376, 404.

CEQA contains a "substantive mandate" that agencies refrain from approving a project with significant environmental effects if "there are feasible alternatives or mitigation measures" that can substantially lessen or avoid those effects. *Mountain Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th 105, 134; Pub. Res. Code § 21002. It "requires public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects." *Sierra Club v. Gilroy* (1990) 222 Cal.App.3d 30, 41. The DEIR is required to consider and the City is required to adopt feasible mitigation and alternatives that can lessen or avoid the significant Project impacts. *City of Marina v. Board of Trustees of the California State Univ.* (2006) 2006 39 Cal.4th 341, 360; *see also* CEQA Guidelines § 15126.6(b). Furthermore, the Project and its objectives are defined too narrowly, thereby resulting in a narrowing of the consideration of alternatives to the Project. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1455.

The EIR is sufficiently lacking that the only way to fix these issues is to revise it and recirculate an adequate report.

City of Del Mar
October 26, 2015
Page 4 of 4

Thank you for your consideration of the above comments. If you have a question or need additional information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'E DeLano', written in a cursive style.

Everett DeLano



DELANO & DELANO

December 16, 2015

VIA E-MAIL

Design Review Board
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Re: City Hall/Town Hall Project

Dear Design Review Board:

This letter is submitted on behalf of Steven Mack in connection with the proposed City Hall/Town Hall project ("Project").

In an October 26, 2015 letter to the City, I noted several problems with the Project's draft Environmental Impact Report ("EIR"). To date, I have received no response. The staff report indicates that the final EIR regarding the Project will be issued just before Christmas and that a hearing regarding the EIR will be held on January 4th. The California Environmental Quality Act ("CEQA") is premised in part on "a belief that citizens can make important contributions to environmental protection and ... notions of democratic decision-making ..." *Concerned Citizens of Costa Mesa, Inc. v. 32nd Agricultural Assoc.* (1986) 42 Cal.3d 929, 936. "Environmental review derives its vitality from public participation." *Ocean View Estates Homeowners Assn. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 400. The staff report notes that "the City Council directed staff to proceed with a community input process that would function as an 'expanded CPP' due to the magnitude of the project and its importance to the community." Yet the approach of holding the final EIR until just before the holidays, then rushing to a hearing just after the holidays, makes a mockery of public participation. The City cannot expect meaningful participation with such a schedule.

The staff report recommends this "Board review the project's consistency with the applicable provisions ... and forward any related recommendations on the requested permits to the City Council for their consideration." However, the Design Review Ordinance ("DRO") makes it very clear that this Board's role is to, "by majority vote, approve, disapprove ..., conditionally approve or continue the application." Muni. Code § 23.08.060(E).

The staff report asserts that the Project is consistent with the DRO. However, the DRO prohibits blocking significant public coastal views, prohibits projects that are

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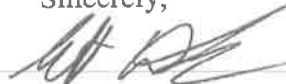
out of scale with the neighborhood, and prohibits a project that “unreasonably encroaches upon primary scenic views of neighboring property.” Muni. Code § 23.08.077. The Project is inconsistent with all of these mandates. Indeed, the Project’s setback to 10th Street is less than four feet and its setback to 11th Street is less than three feet. Whether or not this is technically consistent with the setback requirements in the Public Facilities zone, the Project is surrounded on three sides by a residential community with residential zoning. Such siting is not “harmonious with or ... functionally compatible with the surrounding neighborhood.” Muni. Code § 23.08.077(D).

Additionally, the Project is inconsistent with DRO Section 23.08.072. For example, the City’s Land Use Plan calls for the protection of public views to the ocean. Land Use Plan at 10. It also discusses protecting public views and vantage points, and specifically discusses scenic view easements from Camino del Mar. *Id.* at 77 – 78. Yet the Project will negatively impact these views, in violation of DRO Section 23.08.072(A). The Project will “cause the surrounding neighborhood to depreciate materially in appearance or value.” Muni. Code § 23.08.072(E). And, as City staff has acknowledged, the Project “will create an unreasonable invasion of the privacy of neighboring properties.” Muni. Code § 23.08.072(D).

Furthermore, the Project will create traffic, parking and pedestrian circulation impacts in violation of DRO Section 23.08.074. For example, the Project’s ingress and egress “will have an adverse effect on traffic conditions on abutting streets,” particularly in this residential neighborhood. Muni. Code § 23.08.074(B). And since many of the streets do not have sidewalks, and therefore residents and visitors routinely walk in the streets, the Project “will cause conflicts among vehicular, bicycle, [and] pedestrian traffic.” Muni. Code § 23.08.074(F). These problems will be particularly acute as a result of the planned special events, where substantial traffic volumes can be expected in a short amount of time.

For these and other reasons, this Board should vote to disapprove the Project as proposed. Thank you for your consideration of these concerns.

Sincerely,



Everett DeLano



DELANO & DELANO

December 23, 2015

VIA E-MAIL

Honorable Mayor and City Council
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Re: City Hall/Town Hall Civic Plaza Project and Final EIR

Dear Honorable Mayor and City Council:

This letter is submitted on behalf of Steven Mack in connection with the proposed City Hall/Town Hall project ("Project") and related Final Environmental Impact Report ("FEIR"). This Council should reject the Project and FEIR as currently proposed. In addition, the Council should require certain specific limits on the uses of the site.

The Process is Lacking

The FEIR was issued just before the holidays and this council's hearing is scheduled for the first day of business immediately following the holidays. The California Environmental Quality Act ("CEQA") is premised in part on "a belief that citizens can make important contributions to environmental protection and ... notions of democratic decision-making ..." *Concerned Citizens of Costa Mesa, Inc. v. 32nd Agricultural Assoc.* (1986) 42 Cal.3d 929, 936. "Environmental review derives its vitality from public participation." *Ocean View Estates Homeowners Assn. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 400. The schedule makes a mockery of public participation; the City cannot expect meaningful participation with such a schedule.

Furthermore, City staff recommended that the Design Review "Board review the project's consistency with the applicable provisions ... and forward any related recommendations on the requested permits to the City Council for their consideration." However, the Design Review Ordinance ("DRO") makes it very clear that the Board's role is to, "by majority vote, approve, disapprove ..., conditionally approve or continue the application." Muni. Code § 23.08.060(E). The City has approached the Board's role improperly.

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The Potential Uses of the Site are Inadequately Discussed

In an October 26, 2015 letter, I noted that the Draft EIR's discussion of the Project is vague. In response, the FEIR claims it "provides adequate information on the proposed development and uses, which are limited to those consistent with the City's Public Facilities land use designation and zone. A conceptual site plan was included" FEIR at RTC-39. This response is insufficient for several reasons. For one thing, a site plan is insufficient to identify uses. Additionally, there are a variety of uses allowed within the Public Facilities zone. The FEIR needs to do much more to describe specifically which types of uses allowed within such a zone will actually occur at the site. The FEIR vaguely states that the "outdoor plaza is designed to be an open area with flexible space to support uses including but not limited to, performances, art exhibits, [and] community gatherings" FEIR at 3-8. The FEIR states that 250 people could be accommodated in the 3,200-square-foot Town Hall meeting room and a breezeway, but it fails to discuss how many more people might utilize the approximately 15,000-square-foot outdoor public plaza, the Town Hall Overlook, and the Town Hall Terrace. FEIR at S-2. This hardly qualifies as an adequate description of potential or anticipated uses.

If anything, the changes made to the FEIR only make the ambiguities worse. For example, the FEIR now says that certain areas "may be redesigned" and "may be partially removed." FEIR at S-2 – 3. And the FEIR notes that such uses "may utilize amplified sound systems and lighting" FEIR at 3-8. It also states that a "future expansion area" is "not defined for specific use" These statements leave open a wide variety of possibilities. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. The FEIR fails to provide an adequate description, thereby leaving open a wide variety of possible construction and uses at the site.

This vagueness carries through the entire FEIR. By failing to adequately discuss potential uses, particularly the types of special events anticipated by the Project, the FEIR fails to analyze the impacts associated with such events, including the potential noise, lighting, traffic and other impacts. Enclosed is a letter from RK Engineering identifying traffic and parking concerns associated with the Project.

The Project is Inconsistent with Applicable Requirements

My December 16, 2015 letter to the Design Review Board noted several ways in which the Project is inconsistent with the Design Review Ordinance and the Land Use Plan. A copy of my letter is enclosed for your convenience. At a fundamental level, the Project does not enhance the "small-town village atmosphere" as called for by Policy IV-27.

The City Should Commit to Certain Limits on Use

The City should commit to specific limits on the type and manner of uses of the site. These should include the following specific limits:

1. Uses for the entire site would be limited to no more than 250 people (FEIR at S-2).
2. Uses for events other than City meetings (e.g., City Council, Design Review Board), such as “performances, art exhibits, community gatherings, and farmers’ market” (FEIR at S-2), would be limited to 8 a.m. to 8 p.m.
3. Uses for events other than City meetings (e.g., City Council, Design Review Board), such as “performances, art exhibits, community gatherings, and farmers’ market” (FEIR at S-2), would be required to submit in advance adequate traffic control and noise control plans to address the anticipated event, and would be required to implement such plans.
4. Uses for all events, including City meetings (e.g., City Council, Design Review Board), would be limited to using the Town Hall and outdoor public plaza north of the Town Hall. No such events may utilize the Town Hall Overlook or Town Hall Terrace.
5. Lighting on the site would be limited to low standards and directed away from residential areas.

Thank you for your consideration of the above concerns.

Sincerely,



Everett DeLano

Encs.



DELANO & DELANO

January 15, 2016

VIA E-MAIL

Honorable Mayor and City Council
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Re: City Hall/Town Hall Civic Plaza Project and Final EIR

Dear Honorable Mayor and City Council:

This letter is submitted on behalf of Steven Mack in connection with the proposed City Hall/Town Hall project ("Project") and related Final Environmental Impact Report ("FEIR"). As we noted previously, the City's discussion of the Project has been insufficient. By failing to adequately discuss potential uses, particularly the types of special events anticipated by the Project, the City has failed to analyze the impacts associated with such events. Enclosed is a letter from Eilar Associates identifying noise impacts associated with the Project.

As we also noted previously, the City should commit to specific limits on the type and manner of uses of the site. The staff report claims that Municipal Code Section 6.52 "requires a Large Assemblage Permit for events on public or private property with more than 50 attendees." This is misleading, if not simply incorrect. Section 6.52.030 provides that the City Manager is the "issuing authority for Operations Permit." Section 6.52.010 provides that these provisions apply to "any person." However, Section 6.02.020(D) defines "person" to mean "an individual, associate, partnership, or corporation." In other words, the requirements for a permit for "Large Assemblage" do not apply to the city, which makes sense since it is the City Manager that issues such permits in the first place.

The staff report discusses certain recommended parameters for a special events plan. However, the proposed resolution does not contain these parameters. And the staff report goes on to describe any "Special Events Plan" as something the "City Council will voluntarily establish." This is insufficient to ensure that the Project will not substantially impact the community. As we noted previously, the resolution of approval must include specific conditions to ensure appropriate operation of the site. Mere "voluntary" compliance is inadequate.

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City of Del Mar
January 15, 2016
Page 2 of 2

Thank you for your consideration of the above concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Everett DeLano', with a stylized flourish extending to the right.

Everett DeLano

Enc.