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January 2, 2008

Elaine Lister, AICP
City of Mission Viejo
200 Civic Center
Mission Viejo, CA 92691

RE: Negative Declaration for City of Mission Viejo General Plan Comprehensive Update

TRANSMITTED BY FACSIMILE AND U.S. MAIL

Dear Ms. Lister:

The Attorney General of the State of California submits the following comments regarding the adequacy of the Negative Declaration for the City of Mission Viejo General Plan Comprehensive Update ("General Plan Update").¹ As set forth below, because there is a fair argument that the project may have significant impacts on the environment, a Negative Declaration is not appropriate under the California Environmental Quality Act ("CEQA") and an Environmental Impact Report ("EIR") is required.

As set forth in the Negative Declaration:

The project consists of an amendment to the City's General Plan to provide a comprehensive update to elements in compliance with State law. Five (5) of the seven (7) mandatory elements of the City's General Plan require updating.... The elements that are proposed to be updated include: Land Use, Conservation/Open Space, Circulation and Public Safety.

¹The Attorney General provides these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office. While these comments focus on some of the global warming and land use issues raised by the Negative Declaration, they are not an exhaustive discussion of all issues.

(Negative Declaration (“ND”) at 1.)²

The General Plan Update is no small project. Mission Viejo covers 17.4 square miles in Orange County with a population that is projected to grow from its current level of 98,483 to 106,176 by 2035.³ The updated General Plan will guide the City’s “future growth and development.” (ND at 1). The General Plan is the City’s fundamental land use regulation, and all zoning and land use decisions must conform to the plan, as amended. (See e.g., *Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.)

A negative declaration is appropriate only where there is no fair argument that a project may have a significant effect on the environment. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123.) If a project may cause a significant effect on the environment, the lead agency must prepare an EIR. (Pub. Res. Code, §§ 21100, 21151; 14 Cal. Code Regs., §§ 15064(a)(1), (f)(1).) "Significant effect upon the environment" is defined as "a substantial *or potentially substantial* adverse change in the environment." (Pub. Res. Code, § 21068; 14 Cal.Code Regs., § 15382 [emphasis added].)

Common sense suggests that an EIR is generally appropriate for a comprehensive general plan update and, in fact, a search of the CEQAnet database⁴ establishes that it is standard practice. There is nothing in the Negative Declaration or Initial Study that supports departing from this practice. The cursory 25-page Negative Declaration offers little more than conclusory statements that the project will have no impact on the environment and lacks any substantive discussion of the basis for its findings. The Initial Study does not remedy these deficiencies as it contains no supporting discussion, documentation or references to information relied upon by the City to reach its determination that a Negative Declaration is appropriate for this General Plan Update. (ND at Appendix A.)

An examination of a number of the potential impacts establishes that the General Plan Update may have a significant impact on the environment. While Mission Viejo’s Negative Declaration acknowledges the Global Warming Solutions Act of 2006 (AB 32) and lists “a few examples that help reduce greenhouse gas emissions linked to Global Warming,” the document does not quantify the emissions from the proposed project or adopt any of the listed actions as mitigation measures. (ND at 7.)

²The Housing Element is not part of the current update; it will be updated under a separate process.

³City of Mission Viejo Demographics, available at <http://cityofmissionviejo.org/depts/cd/demographics.pdf>, last visited December 22, 2007.

⁴See <http://www.ceqanet.ca.gov>.

Global warming is perhaps the most serious environmental threat currently facing California and the world. The recent Bali accord recognized that we must cut greenhouse gas emissions from 25 to 40% *below* 1990 levels by 2020 to avoid the most catastrophic impacts of climate change, which is even more aggressive than the reductions required in California under AB 32. And we have a limited time to take decisive action. In the words of Rajendra Pachauri, a scientist and economist who heads the Intergovernmental Panel on Climate Change, “What we do in the next two to three years will determine our future. This is the defining moment.” In light of the importance and urgency of addressing climate change, the City must provide full environmental disclosure of the effects on greenhouse gas emissions that the General Plan Update will cause, and adopt mitigation measures for those effects and emissions. (We have attached a sheet setting forth examples of global warming mitigation measures that may be appropriate to consider and adopt, and suggest further that you visit the Attorney General’s website addressing CEQA and global warming at <http://ag.ca.gov/globalwarming/ceqa.php>.)

The Negative Declaration’s cumulative impacts analysis is also more generally flawed. Under CEQA, an EIR is required when the possible effects of a project are individually limited but cumulatively considerable. (Pub. Res. Code, §21083(b)(2).) “[C]umulatively considerable” means that the incremental effects of an individual 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.” (*Id.*)

The Negative Declaration states in part, “The project will not result in environmental effects which are cumulatively considerable since the proposal pertains to updating the City’s General Plan and does not propose any specific project and/or development of land.” (ND at 24.) However, the General Plan Update need not propose a specific project or land development to have cumulative impacts. In fact, the Land Use Element that is part of the Update has more potential to cause cumulatively considerable impacts than would an individual development project. As the Negative Declaration recognizes, “The Land Use Element contains policies on the location and character of land uses necessary for orderly growth and development. This element contains the City’s land use objectives, policies, and land use patterns. The element represents the City’s desire for long-range changes and enhancements of land uses.” (ND at 16.) In a city the size of Mission Viejo, there is a fair argument that the policies set forth in the Land Use Element update will have a cumulatively considerable impact on the environment.

In sum, the General Plan Update will become part of a document that serves as the blueprint for future growth and development in the City. CEQA requires that the City fully disclose, both to decision makers and the public, the environmental impacts that may result from this blueprint. The Negative Declaration prepared for the General Plan Update fails to clearly disclose or evaluate these impacts, much less to mitigate them. We urge the City to withdraw the Negative Declaration and to prepare an EIR for this project in compliance with CEQA.

Elaine Lister
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Thank you for the opportunity to offer these comments. Any questions may be directed to the undersigned.

Sincerely,

/S/

MEGAN H. ACEVEDO
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

MHA:

cc: William Curley, Esq., Richards Watson & Gershon