The Outlets at San Clemente

Responses to Comments

Supplemental Environmental Impact Report

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Responses to Comments
Supplemental Environmental Impact Report

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1. **Introduction**

This Responses to Comments document has been prepared to respond to public comments received on the Draft Supplemental Environmental Impact Report (Draft SEIR) for the proposed Outlets at San Clemente. The California Environmental Quality Act (CEQA) Guidelines §15105(a) states that the Lead Agency shall provide a public review period of not less than 45 days for a proposed Environmental Impact Report when review by state agencies is required. The Draft SEIR was available for a 53-day public review period commencing on November 13, 2017 and ending on January 5, 2018. Comments from the public were also heard at a public scoping meeting held on April 3, 2017 and a Planning Commission hearing on December 6, 2017 in the City of San Clemente.

Distribution of the Draft SEIR and the Notice of Availability for review and comment included the following agencies and organizations:

- California State Clearinghouse
- U.S. Fish & Wildlife Service
- California Department of Fish & Wildlife
- Native American Heritage Commission
- California Coastal Commission
- Santa Ana Regional Water Quality Control Board
- SCAQMD
- Caltrans, District 12
- Orange County Transportation Authority
- Transportation Corridor Agencies
- Orange County Fire Authority
- Capistrano Unified School District
- City of San Juan Capistrano
- City of Dana Point
- Latham & Watkins
- Craig Realty

The Public Notice of Availability and the Notice of Completion were posted with the County of Orange Clerk-Recorder. Copies of the Draft EIR were made available for public review at the City of San Clemente Community Development Department and posted on the City’s website.

In accordance with CEQA Guidelines §15088, the City, as Lead Agency for the Proposed Project, has reviewed and evaluated written comments submitted during the public review period regarding the Project.
The CEQA Guidelines, §15088, “Evaluation of Response to Comments,” states:

a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

b) The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

c) The written response shall describe the disposition of significant environmental issues raised (e.g. revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency’s position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

d) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

1) Revise the text in the body of the EIR, or
2) Include marginal notes showing that the information is revised in the response to comments.

No significant changes to the data and analysis contained in the Draft SEIR have been required as a result of the comments received during this response process. The responses provided herein clarify, amplify, elaborate, and make minor modifications to the Draft SEIR, including revisions to mitigation measures and additional mitigation measures. The mitigation measures have been expanded or added to further clarify and reduce potential impacts. No new significant information is raised by the submitted comment letters, and no new significant information is provided by this Responses to Comments. The Draft SEIR remains adequate and complete; therefore, recirculation per CEQA §15088.5 is not required. This Responses to Comments document has been prepared as and constitutes a separate section of the Draft SEIR and will be incorporated as part of the Final EIR as presented to the San Clemente City Council for certification.

The City has elected, as appropriate, to revise the Draft SEIR text where necessary to address errata or direct the reader’s attention to information in the Responses to Comments document.

CEQA Guidelines §15088 addresses a Lead Agency’s responsibilities in responding to comments. The Guidelines require, among other things, that the Lead Agency provide a good faith, reasoned analysis in response to significant environmental issues raised, particularly when the Lead Agency’s position is at variance with the objections and recommendations raised by commenters. CEQA Guidelines §15088 does not require an individuated, personalized response to each comment letter, and does not prevent the Lead Agency from
responding to comments by way of a summary or comprehensive response that may apply to several individual remarks in comment letters.

*California Public Resources Code* (PRC) §21091, subdivision(d)(1) requires that the City, as Lead Agency, consider any comments on the proposed SEIR that are received within the public review period. In addition, a public meeting was held on April 3, 2017 where public comments were noted. The comment summary is included in the Draft SEIR on page 4 in Section 1.3. No additional environmental issues were raised at the meeting that had not been addressed in the Draft SEIR. The City received 14 comment letters and/or emails on the Draft SEIR from public agencies, organizations, and individuals during the public review period.

CEQA Guidelines §15204(a) provides that:

In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and need not provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

CEQA Guidelines §15204(c) further advises:

Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts or expert opinion supported by facts in support of the comments. Pursuant to §15064, an effect shall not be considered significant in the absence of substantial evidence.

CEQA Guidelines §15204(d) states:

Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.

CEQA Guidelines §15024(e) states:

This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or the lead agency to reject comments not focused as recommended by this section.
2. **Draft SEIR Errata**

1. On page 43, the reference to “Criteria Sheet MSP – 30” is hereby corrected to read “Criteria Sheet MSP – 3.0”.

2. The captions for the visual simulation depictions of various alternatives in Draft SEIR Chapter 6 incorrectly state that the source is from LLG. The source of the visual simulations was KTU+A, and is hereby corrected.
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3. Responses to Comments

This section provides the comments received in emails and letters with responses.

Each comment received on the Draft SEIR is included in its entirety in this document. Each letter or email containing comments on the Draft SEIR is followed by responses corresponding to comments submitted in the letter or email. Letters submitted as attachments to emails are also included. No new significant environmental impacts are raised by the submitted comment letters.
Comment Letter 1  
State of California  
Department of Transportation  
December 22, 2017

December 22, 2017

Ms. Amy Vazquez  
City of San Clemente  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673

Dear Ms. Vazquez:

Thank you for continuing to include the California Department of Transportation (Caltrans) in the review of the Draft Supplemental Environmental Impact Report for the proposed Outlets at San Clemente. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability.

The project consists of the installation of 36 new signs and an update to the freeway signage program at the Marblehead Coastal development, including at the existing outlet regional shopping center and hotel. The project is located in close proximity to Interstate 5 (I-5). Caltrans is a responsible/commenting agency on this project and upon review, we have the following comments:

Landscape Architecture  
The southeast project identification tower sign is proposed adjacent to an existing freeway tree. Appendix G – “Visual Impact Analysis of Proposed Freeway Signage”, does not address the existing tree and the tower sign together, other than in the photo simulations on pages 35, 36, 87, 88, and 89. The tower sign appears to be partially obscured by the tree from the northbound directions looking west. However, photo simulations on pages 88 and 89 do not include the tree in the simulations. The visual impact assessment, Section 4.0 indicates that scenic resources will not be removed, including trees. If this is the preferred site location where the project identifications tower sign will be constructed, this tree cannot be removed for the tower sign.

Outdoor Advertising  
As previously addressed in Caltrans’ Notice of Preparation comment letter (dated April 26, 2017), the Office of Outdoor Advertising will require a permit for these displays, if they do not operate for on-premise purposes as outlined in Business and Professions Code 5272 and 5274, and California Code of Regulations 2243 and 2246. The displays should refrain from operating in any of the conditions outlined in Business and Professions Code 5403. More information is available at http://www.dot.ca.gov/trafficsigns/oda/
Response to Comment Letter 1
Department of Transportation
December 22, 2017

1-1 The City acknowledges receipt of a letter from Caltrans District 12, which is a responsible/commenting agency for the proposed Project. Caltrans understands that the Project proposes 36 new signs and an updated freeway signage program for The Outlets at San Clemente.

1-2 The City has noted Caltrans’ comment related to the existing tree near the proposed location of the Icon Tower. While not germane to Caltrans’ statutory responsibility per CEQA Guidelines §15204(d), Caltrans expressed that the tree cannot be removed to accommodate the Icon Tower. The subject tree is located on Project property. CEQA Guidelines thresholds for Aesthetics impacts (CEQA Guidelines – Appendix G Checklist) state that an impact would occur if the Project substantially damages scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway. The I-5 is listed by Caltrans as an “Eligible State Scenic Highway, not Currently Officially Designated.” When viewed from the I-5 northbound, the grade differential between the roadway and the Outlet Center prevents views of scenic resources such as the ocean, because the roadway is below grade of the Outlet Center. While every effort will be made to protect existing vegetation, a final determination will have to be made from a safety standpoint so northbound drivers will have an unobstructed view of the signage, which will allow safe egress from the freeway.

1-3 Section 4.7 of the Draft SEIR on page 56 notes that the Project Applicant will be required to coordinate with Caltrans for Project review related to consistency with signage criteria. This will ensure consistency with the Business and Professions Code and the California Code of Regulations sections noted in the comment letter.
Encroachment Permits
As previously addressed in Caltrans’ Notice of Preparation comment letter (dated April 26, 2017), any project work proposed in the vicinity of the State Highway System (SHS) would require an Encroachment Permit and all environmental concerns must be adequately addressed. If the environmental documentation for the project does not meet Caltrans’ requirements, additional documentation would be required before approval of the Encroachment Permit. Please coordinate with Caltrans to meet requirements for any work within or near SHS. All entities other than Caltrans working within State Right of Way must obtain an Encroachment Permit prior to commencement of work. For specific details for Encroachment Permits procedure, please refer to the Caltrans’ Encroachment Permits Manual. The latest edition of the Manual is available on the web site: http://www.dot.ca.gov/hq/traffic/development/permits/

Please continue to keep us informed of this project and any future developments which could potentially impact SHS. If you have any questions, please do not hesitate to contact Joseph Jamoralin, at (657) 328-6276 or Joseph.Jamoralin@dot.ca.gov.

Sincerely,

PATMAN KWAN, AICP
Branch Chief, Regional-IGR-Transit Planning
District 12

“Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability”
The City appreciates Caltrans’ prior comments on the Project Initial Study/Notice of Preparation and understands that an encroachment permit would be required from Caltrans for work within the State Highway System. Page 56 of the Draft SEIR also acknowledges the requirement for coordination with Caltrans related to consistency with signage criteria. The City appreciates the information related to where the latest Encroachment Permits Manual can be found.

The City will continue to inform Caltrans of Project developments and, as directed, will notify Joseph Jamoralin at Caltrans if the City has any questions.
December 5, 2017

VIA EMAIL

Amy Vazquez, Contract Planner
Planning Development Department
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92672
Email: outletspscsan-clemente.org
Tel: (949) 361-6182

Re: Villa San Clemente Comment on Draft Supplemental Environmental Impact Report for Proposed Signage at the Outlets at San Clemente, SCH No. 2017031063

Dear Ms. Vazquez:

Please find attached comments on the Draft Supplemental Environmental Impact for the above-captioned project on behalf of the applicant, Villa San Clemente, LLC (or “VSC”).

 Regards,

/s/ Taiga Takahashi

Taiga Takahashi
of LATHAM & WATKINS LLP

cc: Villa San Clemente, LLC
CAA Planning
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Villa San Clemente Comment on Draft Supplemental Environmental Impact

I. THE DSEIR IS NOT REQUIRED BY CEQA.

The project is subject to an exemption under the CEQA Guidelines, and the City of San Clemente (“City”) has never adequately supported its decision that the project falls outside the scope of the Class 11 exemption for on-premises signs. The Court decision in 2008 did not discuss or opine on the applicability of the Section 15311 exemption, but rather concluded based on the facts and record at issue at that time, the environmental review conducted by the City (which relied on CEQA provisions for EIR addenda) was insufficient under CEQA.

The Guidelines for the Implementation of CEQA provide exemptions for certain classes of projects that require only a limited form of environmental review for certain types of projects. Cal. Code Regs., tit. 14 (“14 C.C.R.”), §§ 1500 et seq. These exemptions are provided on the basis that the projects have already been determined not to have a significant effect on the environment. Berkeley Hillside Preservation v. City of Berkeley (2015) 241 Cal.App.4th 943, 952 (citing 14 C.C.R. § 15300); see also Simons v. City of Los Angeles (1977) 72 Cal.App.3d 924, 937 (“[CEQA] exempts ‘accessory structures’ defined therein as follows: ‘Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to (a) On premise signs; (b) Small parking lots.’”).

CEQA Guidelines Section 15311 provides for limited environmental review and a qualified CEQA exemption for “Accessory Structures” includes “on-premise signs.” Additionally, the San Clemente Municipal Code that was in effect at the time defined “on-site signs” as (City of San Clemente Ordinance No. 1172 Chap. 21 O-2): “A sign which advertises or directs attention to a person, establishment, merchandise, business, service, event or entertainment which is located, sold, produced, manufactured, provided or furnished on the site, parcel and/or lot where the sign is located.” The applicant’s proposed freeway-oriented signs clearly fit within this definition as they are affixed to the building and will display the name of one of the tenants and/or the products sold on the site/lot. As such, the appropriate environmental review for these signs is the CEQA review provided for under Section 15311, not a full-fledged supplemental or subsequent environmental impact report (“SEIR”).

II. REFERENCES TO THE HOTEL SHOULD BE CORRECTED.

The Draft SEIR (“DSEIR”) sometimes refers to hotel as the “proposed hotel.” These references should be globally corrected. As the DSEIR correctly notes, the hotel has been approved but is not yet built. The project is for signage approval for the hotel, not for the hotel itself.

III. REFERENCES TO THE ICON TOWER SHOULD BE CORRECTED.

The DSEIR sometimes refers to the Icon Tower as the “proposed Icon Tower.” These references should be globally corrected. As the DSEIR correctly notes, Amendment to Site Plan Permit 99-16 Marblehead Coastal, Commercial Plaza Plans submittal dated June 2, 2004, identifies, among other elements, … an Icon Tower at the southeast corner of the Project site.”
Response to Comment Letter 2
Latham & Watkins
December 5, 2017

Responses herein include responses found in the Harper & Burns LLP letter attached hereto (beginning on page 121). Latham & Watkins, as commenter, represents the Project Applicant, Villa San Clemente, LLC (VSC). Both Latham & Watkins and Applicant are referenced in the following responses.

2-1 The City determines if an exemption is to be used.

Applicant asserts that a categorical exemption applies to the environmental review for the signs. Applicant is incorrect.

First, it is obvious that this matter has already been before Judge Bauer of the Orange County Superior Court, and he determined that environmental review is required. Applicant defended that action in 2008 and while it is unknown if Applicant raised the issue during that proceeding, it is now disingenuous to say this matter is subject to an exemption and this entire legal proceeding was unnecessary.

Aside from the fact this was not raised in the original proceeding (or was raised and determined to be non-dispositive), Applicant’s assertions are incorrect. There is a categorical exemption for accessory structures for existing commercial facilities (Class 11) set forth at 14 CCR 15311. That section also does mention on-premises signs. But categorical exemptions are subject to exceptions that defeat the exemption. Save the Plastic Bag Coalition v. County of Marin (2013) 218 Cal.App.4th 209,224. The exemptions are narrowly construed. Dehne v. County of Santa Clara (1981) 115 Cal.App.3d 827,842. The three general exceptions to the use of categorical exemptions include significant impacts due to unusual circumstances, significant cumulative impacts, and impacts due to a uniquely sensitive environment. (14 CCR 15300.2(a)-(c)). In this case, there are at least unusual circumstances consisting of noise, glare and traffic impacts that a judge has already identified from the freeway-oriented sign plan as described in the writ and minute order dated May 22, 2008. For the City to now determine that environmental review was not necessary would, at best, fly in the face of Judge Bauer’s ruling, and at worst, be a contempt of court. As Judge Bauer has decreed, the noise, glare, and traffic impacts must be identified and analyzed.

This matter was before Judge Hunt in Dept. 23 of the Orange County Superior Court on February 13, 2018 on a motion to have the exemption determined. Judge Hunt continued the hearing to allow the March 6, 2018 City Council meeting to occur, at which the SEIR should be certified, and the exemption issue would then be made moot.

As noted beginning on page 1 (Section 1.2 – Statutory Authority) of the Draft SEIR, CEQA Guidelines §15162 and §15163 allow agencies to prepare a Subsequent EIR to modify projects in response to changed circumstances and new information without requiring that the environmental review process begin anew. However, because none of the §15162 conditions have occurred requiring preparation of a Subsequent EIR, the City has determined that a Supplemental EIR should be prepared to augment the previously certified EIR. Further, the City
The Outlets at San Clemente has prepared this Supplemental EIR to address the issue of environmental analysis of the sign program as required by a 2008 court decision related to the Project.

2-2 The City agrees that the hotel has been approved but that hotel signage has not. It is the hotel signage that is part of the project (Draft SEIR, Project Description, Chapter 4.3, page 35). As suggested by commenter, the Draft SEIR is hereby modified to remove the term “proposed” hotel because the hotel was previously approved for construction. The currently proposed Project includes signage for the hotel and does not relate to approvals for the construction of a hotel.

2-3 The City agrees that the Icon Tower was approved as a footprint, but that elevations needed to be reviewed (Draft SEIR, Project History & Background, Chapter 3, page 19). The City acknowledges that the Icon Tower is a previously approved component of the total Outlet Center project. This Draft SEIR seeks approval of the addition of four halo-illuminated tenant signs and two project identification signs on the previously approved icon tower.
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As explained in correspondence to the City dated April 26, 2017, the Icon Tower structure was approved in 2004 as part of City Council Resolution 04-61. This resolution approved an amended site plan for the project under SPP 99-16 on July 20, 2004, on a unanimous 5-0 vote. SPP 99-16 was reviewed under CEQA via a fifth addendum to the original 1998 Marblehead EIR and was not challenged. The approved site plan—specifically at pages 10, 15, and 17—depict the Icon Tower as part of the commercial center. Staff acknowledged that both it and the Design Review Subcommittee (“DRSC”) “support the concept of towers or other architectural icons” but that approving a height above 45 feet (the height provided by the Specific Plan) for any non-theater towers would require a Specific Plan Amendment. The approved permit required the construction of at least two relatively large landmark towers—one as part of the theater at 55 feet (architectural projection up to 62 feet) and another as part of the hotel. SPP 99-16 condition 6 provided that if either of the two landmarks associated with the theater and hotel were not built, “alternative architectural landmarks shall be developed.” During the hearing on approval of SPP 99-16, the applicant accepted the 45-foot limitation provided by the Specific Plan for non-theater towers, which resolved the only remaining question regarding these towers and even though it was noted that both the applicant and others desired a taller height. SPP 99-16 notes that signage for the Icon Tower would be subject to a separate approval, but it is clear that the Icon Tower structure—apart from any signage—was approved in 2004. This project is for signage to be placed on the Icon Tower walls, as the Icon Tower has already been approved.

IV. THE ICON TOWER IS NOT “FREESTANDING SIGNAGE” OR A “FREESTANDING MONUMENT STRUCTURE.”

Discussion in the DSEIR of the Icon Tower as “Freestanding Signage,” “Freestanding Monument Structure,” etc. should be deleted. The Icon Tower is not a freestanding sign or freestanding sign monument. As explained above, the Icon Tower structure was approved as part of SPP 99-16, separate from any signage, because it is an architectural element required to be built as part of the Outlets’ design. In addition to fulfilling the required architectural design concept of the Outlets, the Icon Tower also serves a storage function, as depicted on elevation SEP I.4A.

The City’s arbitrary addition of an inapplicable regulatory approval (the arbitrary labeling of the approved Icon Tower as an unapproved freestanding signage structure) is a breach of the Marblehead Development Agreement sections 7.4, 7.5, and 13.11.

V. THE PROPOSED SIGNAGE IS NOT “DOMINANT.”

The DSEIR’s repeated contention that the proposed signage is a “dominant visual feature” is arbitrary and not supported by any substantial evidence. The DSEIR should delete references to the proposed signage as “dominant” and replace with a determination that is supported by the facts and evidence, such as “visible.”

As noted in the DSEIR, even the relatively larger signage (100 square foot) is not particularly legible past approximately 400 meters. The proposed signage is scaled according to the size of the building and at the same proportion (1.5 square feet of signage area per 1 lineal foot of building frontage) with the size of the interior signage. Based on the distance of most viewers, the signage is not particularly legible and blends into the background of the Outlets and the
2-4 The Icon Tower is an architectural feature, and not signage (Draft SEIR, Project History & Background, page 19). See also the Response to Comment 2-3 above.

2-5 The commenter contends that the characterization of the signage as a “dominant visual feature” is arbitrary and not supported by substantial evidence. As stated on page 148 of the Draft SEIR, five tenant signs and two project ID signs would exceed 100 square feet with visibility up to one-quarter mile.

“Substantial evidence” is enough relevant information and reasonable inferences from that information that a fair argument can be made to support a conclusion, even though other conclusions could be reached. 14 CCR (CEQA Guidelines) 15384(a); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376,393. Enough relevant information has been included to make this determination. The fact that Applicant has a different opinion or would have come to a different conclusion, is not determinative. (See, Kostka & Zischke Section 23.34.)
existing environmental condition, which includes the bright, freestanding freeway sign from Denny’s and multiple freeway signs from the adjacent commercial development (Via Pico Plaza). The visual simulations further demonstrate that the proposed signage is not “dominant,” does not “minimize” the Spanish Village architectural theme,” and recedes into the background as the viewer’s distance from the project increases and that legibility of the signs is low starting at around 400 meters. Particularly at distances greater than 400 meters, the architectural elements of the structures (roof, building design, etc.) clearly are dominant over any view of the freeway signage.

The (original) 1998 Marblehead DEIR found that the Outlets’ structures and signage (originally proposed at over 3,000 square feet of signage) would result in a less than significant impact on aesthetics, and this was evaluated against a background of undeveloped conditions. The current project is only for signage on existing and/or approved structures and a surrounding environment that includes multiple freeway signage (including freeway signage on adjacent properties). This further demonstrates that the DSEIR’s conclusion that the proposed signage is “dominant” is arbitrary and not supported by the facts.

VI. THE DISCUSSION REGARDING THE PROPOSED COLOR EXCEPTIONS SHOULD BE CORRECTED.

A. Eliminating the color exceptions is legally infeasible as a violation of the U.S. and/or California Constitutions.

The City’s regulation of color, based on an arbitrary, standardless interpretation of what constitutes consistency with the “Village by the Sea theme,” is a violation of the U.S. and California Constitutions. It is therefore legally infeasible for purposes of CEQA. The DSEIR should recognize that eliminating the proposed, limited color exceptions is legally infeasible as inconsistent with constitutional free speech, equal protection, and due process requirements.

First, the City’s application of the “Village by the Sea theme” is not defined by any standards and is only defined as staff’s subjective belief as to what a “Village by the Sea” should look like. Though the DSEIR attempts to describe “Spanish architecture” and appropriate “building detail,” it fails to provide any meaningful adopted prescriptive guidelines that the project does not meet or other evidence on this issue. The DSEIR correctly notes that the design and material for the signs (high-quality metal, pinned-off, floating letters and forms with subtle backlighting) is “in visual harmony with the existing buildings in context with other design elements found in the immediately adjacent areas” and is “in keeping with the larger scale of the existing buildings.” But the DSEIR fails to note that San Clemente has a number of more brightly colored signs throughout the city, including along the freeways (e.g., the Ocean View Plaza signs, the Valero Sign, the 76 Sign, the Shell sign, and the Via Pico Plaza signage and the Denny’s sign next door to the Outlets). See also Exhibit 1. The proposed color exceptions, in comparison, are muted and have a lower chromatic or color saturation that these others signs, thereby making them more compatible with each of the color variations, especially when compared with other existing samples in the area. The City may not, under constitutional free speech requirements, use vague standards of aesthetics as a pretext for illegal regulation of speech. See, e.g., Desert Outdoor Advertising, Inc. v. City of Moreno Valley, 103 F.3d 814 (9th Cir. 1996); Citizens for Free Speech v. County of Alameda, 114 F. Supp. 3d 952 (N.D. Cal. 2015).
Applicant asserts that the City’s regulation of color is arbitrary and standardless in application of the “Village by the Sea Theme.” This challenge must be analyzed with the multiple challenges that are being made under this heading. The first challenge seems to be that a theme cannot be enforced. But the courts have upheld standards that call for “harmonious design.” See *Bowman v. City of Berkeley* 122 Cal.App.4th 572, 594 (2004). Further, Courts have upheld design themes against vagueness and First Amendment challenges. For example, in *Demarest v. City of Leavenworth* (2012) 876 F.Supp.2d 1186, the Court upheld a city’s “Old World Bavarian Architectural Theme” against First Amendment, Vagueness – and other – challenges.

Applicant next contends that the City may not use color regulation to deny constitutional rights and makes arguments about which colors are brighter. But these are aesthetic judgments that will be upheld as long as supported by substantial evidence, which involves information and inferences from information that are not arbitrary. The fact that Applicant has a different opinion does not carry the day for Applicant.

The City’s actions to protect aesthetics are hardly a pretext for illegal regulation of speech. The regulation was content neutral as regards the colors to be approved. Applicant was going to be provided with signage, it was simply a matter of aesthetics as to what the sign would look like in terms of color and “Spanish Village by the Sea” theme. The City did have standards, and “Spanish style” is a well-known architectural style that can be identified. (See also, City’s Architectural Design guidelines and Henry Lenny Design Guidelines.) See Draft SEIR page 40 – Sign Color & Content, for additional information.

Applicant and the City do have one color complication. They may not alter the colors on a trademark. Lanham Act 15 USC 1121, *Blockbuster Videos, Inc. v. City of Tempe*, 141 F.3d. 1295 (1998). The issue will be clarified in the Project conditions of approval.
Second, the City’s regulation of what colors that a logo may or may not use is a content-based restriction on speech that does not pass constitutional muster. Colors used in the creation and expression of a trademarked brand logo are often central to the message of the brand. Cf. Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503, 508-09 (1969). Even if the City’s regulation of color was content-neutral, the City’s application of its vague, standardless requirements for consistency with a “Village by the Sea theme” is not supported by any substantial evidence or rational basis. There is no rational basis for the City’s discrimination between the Outlets’ interior and freeway signage or between the Outlets’ freeway signage and the freeway signage of other individuals and organizations throughout the City, and the City’s determinations in the DSEIR on this issue are not consistent with constitutional requirements for free speech, equal protection, and substantive due process. See, e.g., Cent. Radio Co., Inc. v. City of Norfolk, 811 F.3d 625, 633 (4th Cir. 2016).

B. Eliminating the color exceptions is legally infeasible as a violation of the Development Agreement and Specific Plan.

The intent behind the Marblehead Development Agreement and Specific Plan was for the creation of a “regional commercial center” to “capture sales tax revenues generated by the sale of goods normally found in regional centers (e.g., general retail stores, outlet stores, smaller specialty stores, restaurants, entertainment uses, visitor-serving uses (including lodging) and single line retail.” Specific Plan at 2-1. Accordingly, nationally recognizable brands and logos need to be faithfully displayed so that visitors recognize the Outlets for what it is supposed to be—a “regional commercial center.” The DSEIR should recognize that eliminating the proposed, limited color exceptions is legally infeasible as inconsistent with the Marblehead Development Agreement and Specific Plan.

One of the functional purposes behind the limited color exceptions is to provide flexibility and variation for tenants in order to further the City’s goal of creating a “village” atmosphere. In order to do so, there must be some variation in the depiction and expression of tenants on the Outlets’ walls, rather than reinforcing a monolithic nature of a single “shopping center” or “strip mall.” This City goal and design objective was a central feature of the approval of this center. Variation among the signs is consistent and required by this important design objective, which the City has previously agreed to as part of the Development Agreement and implemented as part of the Specific Plan. See, e.g., Specific Plan at 3-11 (“The community should have a variety of roof color in order to avoid a monotonous monolithic appearance when viewed from a distance.”), 5-9 (“General Retail uses should be contained within a variety of building sizes and shapes to avoid the appearance of a ‘strip center[,]’ or a monolithic building mass.”). The variation of color does not create a highly contrasting or chaotic arrangement of visual elements that would be considered a significant visual or aesthetic impact. And, as noted, prohibiting any color exceptions imposes a content-based requirement on the applicant and tenants that their business operations must be presented as a monolithic entity, rather than as a series of separate and individual tenants in a “village” atmosphere, as previously approved by the City.

C. Staff’s representation of prior signage approvals are not accurate.

In the November 8, 2017 Planning Commission study session, City staff asserted that the MSP approved in 2007 required that signage be “one uniform color.” This is incorrect. The 2007 MSP
Applicant makes claims that national brands and logos must be faithfully displayed to create a regional commercial shopping center. The City agrees that, if logos are used, those are to be used without alteration (see discussion of Lanham Act above). But Applicant argues that without color variation, the center will appear to be a strip mall or a regular shopping center. It is argued that signs and roofs must be varied to prevent a monolithic mass.

But this is simply Applicant’s opinion and it is not an opinion shared by the City. The City’s decision that the colors not be varied as much is consistent with the City’s interpretation of the Spanish Village by the Sea theme, and is supported by information and inferences from information. It is therefore supported by substantial evidence, even though Applicant would come to a different conclusion.

Commenter states that eliminating color exceptions is legally infeasible as a violation of the Development Agreement and the Specific Plan. There is no dispute in the Draft SEIR that the intent behind the Development Agreement and the Specific Plan is to develop a regional commercial center. Commenter also notes that nationally recognizable brands and logos need to be faithfully displayed. Page 35 of the Draft SEIR states, in Section 2 – Sign Program Description, paragraph 2, that “Sign content would be limited to nationally trademarked logos and names and would not include tag lines.” Sign colors are depicted on Exhibit 4-6 and described on page 40, last paragraph.

It is not clear why the commenter believes that the Draft SEIR does not adequately identify that color exceptions are included as part of the Project Description. No specific text is provided or referenced from the Development Agreement and the Specific Plan in support of further recognition being required beyond what is already included in the Draft SEIR.

The commenter states that eliminating the color exceptions is legally infeasible as a violation of the Development Agreement and the Specific Plan. However, the supporting information provided in the comment relies on quoted sections of the Specific Plan that discuss roof color variations and a variation in building sizes and shapes. Neither of the quoted sections speaks to the question of color exceptions, signage, or concern that control of color schemes results in a “monolithic entity” rather than separate and individual tenants. The Project description and analysis in the Draft SEIR allow for the use of color variations consistent with the proposed color palette.

Here Applicant points out that the reference in the November 8, 2017 study session that signage shall be “one uniform color” is incorrect, and that the MSP actually provided that within each sign all letters would be one uniform color. But Applicant notes, without legal objection, that there was a color palette that was available. Applicant apparently is satisfied that a color palette may be used (despite earlier arguments about constitutionality); it simply argues it wants different colors. The Project-proposed sign colors are found on page 42 of the Draft SEIR, Exhibit 4-6, Materials Board.
provided the letters within each sign would be a uniform color “selected from the color palette.” This condition clearly meant that the letters within a sign should be a uniform color, not that all signs had to be a single color. As depicted in the 2007 MSP at 3.3, the MSP contemplated that signs could be different colors, provided the color came from the approved color palette. The DSEIR should disclose that the City previously approved the exact same proposal for permissible colors for the Outlets’ signage and did not declare any purported inconsistency with the “Village by the Sea theme.”

Because the City approved the exact same color proposal in 2007 without noting any inconsistency with a “Village by the Sea theme,” it now reverses this determination without any supporting facts or evidence. This is further evidence that the City’s determination in the DSEIR regarding the color exceptions is arbitrary and not guided by any legally permissible standard.

VII. THE DSEIR’S DETERMINATION REGARDING CONSISTENCY WITH THE “VILLAGE BY THE SEA” THEME IS ARBITRARY AND VIOLATES CEQA.

The DSEIR concludes that the limited color exceptions would cause an unavoidable significant adverse impact on aesthetics, because of the purported inconsistency with the “Village by the Sea” theme. This determination violates CEQA, because the DSEIR does not apply the appropriate thresholds for significance. See, e.g., Endangered Habitats League v. County of Orange (2005) 131 Cal.App.4th 77. Based on the facts and evidence in the record, the DSEIR should be corrected to reflect that the proposed, limited color exceptions do not have such an impact and do not “[s]ubstantially degrade the existing visual character or quality of the site and its surroundings.”

The DSEIR explains the significance threshold for aesthetics as follows:

The Project would result in a significant impact if it would:

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 buildings within a state scenic highway.

c) Substantially degrade the existing visual character or quality of the site and its surroundings.

d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.

The DSEIR correctly determines that threshold (a) is not satisfied: “The proposed Project will not have a substantial adverse effect on a scenic vista.” DSEIR at 164-66.

The DSEIR correctly determines that threshold (b) is not satisfied: “The Project site is developed with a retail outlet center and accessory uses … and will not result in substantial damage to scenic resources within a state scenic highway because there are no scenic resources within the approved development area and the I-5 Freeway, located easterly of the Project site, is not classified as a state scenic highway. All proposed signs will be located on previously approved buildings within the Project area.” DSEIR at 166.
Applicant claims that the City's application of limited color exceptions caused unavoidable impacts on aesthetics because of inconsistency with the Spanish Village by the Sea theme. Applicant claims that this finding violates CEQA because the Draft SEIR does not apply appropriate thresholds for significance. Applicant finds particular fault with the conclusion that the limited color exceptions will substantially degrade existing visual character or quality of the site and its surroundings. Applicant alleges that the appropriate baseline would have included additional signs throughout the City. It mentions that the previous EIR did not make such a finding, and it mentions that its Visual Impact Analysis expert came to a different conclusion. Applicant also argues that previous approvals, pre-2008, made findings that these colors harmonized and were complementary to the City's image and the architecture.

But the City made its findings based on substantial evidence, and the fact that it believes other evidence is more persuasive is not determinative. As stated on page 8 of the Draft SEIR, Section 1.6, experts can disagree. The City may rely on its expert and other information and inferences. The pre-2008 approvals are invalid related to the subject signage, and the Court found that there was no environmental review of the signs, so any judgments that the signs already passed CEQA muster is without foundation. Finally, Applicant is correct in one aspect: architectural compatibility may not be a purely CEQA matter, but cities have broad authority to regulate in that arena based on local considerations.

The commenter notes that the City Council made affirmative findings that the proposed color palette harmonizes and is complementary to the City's image (SEP 99-18- Res. 99-68). Findings were made again in SEP 06-402, Res. 07-11. Findings were not challenged. A portion of SEP 06-402 was set aside on the grounds that the environmental review was insufficient. No environmental issues related to the current Project were raised in this comment.
The DSEIR correctly determines that threshold (d) is not satisfied: “As shown on the nighttime lighting visual simulation exhibits, the proposed signs will not substantially contribute to nighttime light or glare beyond the existing conditions because the proposed Project would not discernably increase the amount of existing night lighting from adjacent sources such as the I-5 Freeway and other public view locations.” DSEIR at 152.

The DSEIR, however, concludes that the proposed, limited color exceptions will “substantially degrade the existing visual character or quality of the site and its surroundings as the site is approved for retail/commercial use” (threshold (c)). This conclusion is erroneous for several reasons.

The DSEIR fails to evaluate the project against an appropriate baseline and local context, i.e., an existing environment number of more brightly colored signs throughout the city, including along the freeways (e.g., the Ocean View Plaza signs, the Valero Sign, the 76 Sign, the Shell sign, and the Staples sign, Denny’s sign, and others next door to the Outlets).

Similarly, the DSEIR fails to disclose that the approved, interior signage is allowed color exceptions and provides no rational basis for why the color palette for the interior signage should be different from the palette for freeway signage.

The DSEIR fails to reconcile how the City found a less than significant impact to aesthetics in evaluating SEP 97-19 and SEP 99-18 (both of which provided generally for any color pursuant to review and approval by the City, on a case-by-case basis) but now has reversed its position to state that a limited exception for four colors constitutes a unavoidable significant adverse impact to aesthetics.

The DSEIR also fails to note that the Visual Impact Analysis, which was conducted by a subject-matter expert with more than 3 decades of experience in this field, concluded that the proposed, limited color exceptions would not “substantially degrade the existing visual character or quality of the site and its surroundings.”

The DSEIR asserts without any supporting evidence that the color exceptions would provide a “sharp contrast” to the existing buildings, without reconciling the fact that the signage has low legibility starting at 400 meters in the distance and the fact that there is more brightly colored signage on the properties next door to the Outlets. Particularly at distances greater than 400 meters, the architectural elements of the structures (roof, building design, etc.) clearly are dominant over any view of the freeway signage, including their colors. As shown in the visual simulations, the color of the signage is not discernable for most viewers, so even if the colors arguably “degrade” the existing environment this cannot by any reasonable measure be considered a “substantial” degradation because of their lack of dominance over the building forms, colors, design fenestration, or architectural detailing.

In connection with prior signage approvals, the City Council already made affirmative findings that the proposed color palette (which is the same as the palette proposed now) “harmonize with the architectural design of the building and are complimentary to the City’s image” and “provide necessary business identification without creating adverse visual impacts.” The City already made affirmative findings for San Clemente Municipal Code (former) Section 4.280(F) 1
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through 4 and Section 4.280(F)(6) (a) through (d) in SEP 99-18, approved on July 7, 1999, as Resolution 99-68. The City made these findings again for SEP 06-402, approved on February 27, 2007, as Resolution No. 07-11. Although the City was ordered to set aside a portion of its approval of SEP 06-402 by the superior court in May 2008, neither the City’s separate SEP findings nor Discretionary Sign Permit No. 05-176 associated with the Master Sign Program were ever challenged or set aside. The Outlets’ permit for the interior signage, which was part of the same MSP, was neither challenged nor affected by the Court ruling. A portion of SEP 06-402 was set aside on the grounds that the environmental review was insufficient, not that the findings for granting the SEP were inaccurate or that Discretionary Sign Permit No. 05-176 for the Master Sign Program were in any way defective.

There are no circumstances since 2008 that justify changing the findings that the City has made on at least two previous occasions. The sole finding that is relevant to environmental review pursuant to the Court’s order is Section 4.280(5), which related to glare, light, and noise. The very nature of the proposed freeway-oriented signs do not increase noise, and any effect on glare and light would be imperceptible on such an active, streetlamp-lit freeway, as recognized by the DSEIR. The City cannot now arbitrarily reverse those findings based on its spurious application of the “Village by the Sea theme.” See, e.g., Arnel Development Co. v. City of Costa Mesa (1981) 126 Cal.App.3d 330, 334 (finding that a City acted arbitrarily and capriciously by rezoning the location a proposed project that already had a specific plan, a final development plan and a tentative tract map).

Based on these facts and this evidence, the DSEIR’s determination on this issue appears to be a “character-based” conclusion regarding staff’s arbitrary, subjective application of the “Village by the Sea theme” and how they desire the environment to look. Psychological and social impacts such as consistency with a “Village by the Sea theme” are not a CEQA issue. See, e.g., Preserve Poway v. City of Poway (2016) 245 Cal.App.4th 560, 580–81, Cathay Mortuary, Inc. v. San Francisco Planning Com. (1989) 207 Cal.App.3d 275.

As such, the City’s insistence on applying the “Village by the Sea theme” and its subjective interpretation of this theme as applied to the project under CEQA in this manner constitutes a breach of the Marblehead Development Agreement sections 7.4, 7.5, and 13.11.

VIII. ANY IMPACT REGARDING COLOR EXCEPTIONS IS NOT “UNAVOIDABLE.”

The DSEIR is incorrect in stating that the potential impact from any color exceptions constitutes an “unavoidable” adverse impact.

First, the DSEIR claims that the “unlimited flexibility in selecting colored signage … may result in the selection of colors which are inconsistent with the Spanish Village by the Sea architectural style.” The DSEIR fails to disclose, however, that this is the exact same proposal for colors in the Outlets’ signage that was originally evaluated in the 1998 Marblehead EIR (SEP 97-19), approved as part of SEP 99-18, and approved again as part of the 2007 MSP (SEP 06-402). The City’s reversal on this issue now is arbitrary and is evidence of a breach of the Marblehead Development Agreement.
2-10  Distilling this statement from the double-negative, Applicant apparently contends that impacts from color exceptions might be avoidable.

Applicant contends that fears of inconsistency with the Spanish Village by the Sea theme would be unfounded, because these colors were approved in the 1998 Marblehead EIR and in the 2007 MSP (SEP 06-402).

But the Court found that the freeway-oriented signs did not receive environmental review; therefore, the City has prepared this SEIR to address freeway-oriented signage. Any previous EIR for the signs was deemed insufficient.

Applicant next contends that, because a City staff person must also approve a color, this is the needed consistency protection for the City. But the City probably would correctly fear that any exercise of that discretion would be met by challenge by Applicant as arbitrary, as it has already alleged. The Draft SEIR, on page 166, states that because the color exceptions are inconsistent with the Marblehead Coastal Specific Plan, there is a significant impact requiring a Statement of Overriding Considerations.
Second, the DSEIR’s claims on this issue improperly assume that the City will not exercise its discretion in limiting inappropriate colors. As proposed, any color proposed by a tenant must not only be approved by the applicant, but must also be approved by a member of City staff. So it is plainly not true that there is “unlimited flexibility” in what colors may appear on the signage that is ultimately approved. The proposal to have a member of City staff review and approve any final sign to be placed ensures that the signage ultimately erected remains consistent with the project’s design guidelines, and thus this impact is not unavoidable. Nothing in the Specific Plan states that any sign must be (or must not be) any specific color.

Under the DSEIR’s conception that no color exceptions may be allowed, a logo that has 99% permissible colors with 1% color exception would not be permitted, regardless of case-specific circumstances, such as how the color exception may be necessary to the expression of the trademark and its message, the visibility of the color exception, and the actual impact of the color exception on the visual environment. In San Clemente, there are already a variety of colors that currently exist on signage along the freeway. This includes: light blue (San Clemente Inn); red (Denny’s, Hampton Inn, Shell, Ocean View Plaza, Via Pico Plaza); blue (Travelodge, Ocean View Plaza, 76); yellow (Denny’s, Shell, Ocean View Plaza, and Valero); orange (76, Rip Curl); blue-green (Valero); green (Tommy’s Restaurant); bright green (Ocean View Plaza).

IX. THE DSEIR’S DETERMINATION REGARDING POTENTIAL LIGHTING IMPACTS MUST BE CORRECTED.

The DSEIR correctly states that based on the technical, photometric analysis conducted by a subject-matter expert in the field, that “the lighting proposed will not create a substantial new lighting source or potentially degrade public views.” Accordingly, pursuant to CEQA, mitigation is not required. The DSEIR, however, proceeds to recommend mitigation based on the erroneous notion that the purpose of the Outlets is to act as a traffic control structure. The DSEIR should not overemphasize the project’s purpose in providing tenant identification and wayfinding – though the proposed signage does provide wayfinding and traffic benefits – the central purpose of this sign project is to fulfill the Development Agreement’s and Specific Plan’s design for this site as a “regional commercial center,” not to be a traffic control structure for Interstate 5.

Furthermore, the DSEIR fails to recognize that the approved hotel is essentially a 24-hour operation and therefore its signage must remain illuminated at all times, as visitors to the hotel may arrive at the hotel after the close of regular business hours.

The DSEIR should recognize that mitigation is not required because there is no significant impact in terms of lighting, and it should limit exclude any recommended (but not required by CEQA in any case) mitigation measure from applying to the proposed hotel signage. See DSEIR at 68 (acknowledging that the hotel will operate 24 hours a day).

X. CORRECTIONS TO THE ALTERNATIVES DISCUSSION, DSEIR CHAPTER 6

A. Alternative No. 1 – No Project Alternative

The DSEIR should note that due to the analysis of the No Project Alternative, this alternative is legally infeasible due to inconsistency with the Marblehead Development Agreement, Specific
2-11 Applicant approves of the finding that on the technical, photometric analysis, the proposed lighting will not create a new lighting source or potentially degrade public views. However, Applicant contends that the Draft SEIR recommended mitigation measures based on the erroneous notion that the purpose of the Outlets is to act as a traffic control structure. Applicant contends that, while tenant identification and wayfinding are purposes of the signage, the central purpose is to fulfill the Development Agreements and Specific Plan's design for the site as a “regional commercial center,” not a traffic control measure. It also mentions that the hotel is a 24-hour operation and its signage must be kept lit after regular hours.

Mitigation is to reduce or eliminate environmental effects, no matter what the purpose of the project is. Section 5.1, Aesthetics, of the Draft SEIR (page 164) recommends Mitigation Measure MM AE-1 to reduce impacts of illuminated signs due to the fact that having the lights on past the hours of operation would conflict with the objectives of the Marblehead Coastal Specific Plan.

The Draft SEIR analyzes the wall-mounted signage and the Icon Tower signage as a benefit to project identification and wayfinding. Please refer to page 55 of the Draft SEIR, Section 4.6 – Project Objectives, where consistency with the Development Agreement is noted as an objective, along with providing a wayfinding means to ensure safe egress from the I-5 Freeway.

The commenter notes that the Draft SEIR fails to recognize that the approved hotel is a 24-hour operation and signage must remain illuminated at all times. Commenter is referred to pages 40 and 43 in the Project Description of the Draft SEIR, and page 68, which specifies “hotel signs are anticipated to remain illuminated 24 hours,” wherein the last sentence of paragraph 1 states “The hotel and hotel signage will operate 24 hours a day.”

Regarding the commenter's statement that the hotel should be excluded from the proposed Mitigation Measure, the Mitigation Measure clearly states that “Sign lighting shall be turned off at the time of closure of each individual tenant consistent with the Project use permit.” As the hotel has been recognized to operate 24 hours a day, there would be no applicable time of closure that would dictate turning off the hotel signage.

2-12 CEQA requires that an EIR contain a discussion of feasible alternatives or feasible mitigation measures to reduce impacts. These are considered the core of an EIR. Alternatives are presented in Chapter 6 (pages 215-251 of the Draft SEIR).

The Guidelines provide that a reasonable range of alternatives must be discussed that would feasibly attain most of the project’s basic objectives while reducing or eliminating any of its significant effects. The EIR must evaluate the comparative merits of those alternatives. Guidelines §15126.6(a). It should explain how the alternatives were selected and identify alternatives rejected and why. Sufficient information should be included to allow evaluation, analysis and comparison. As detailed in Chapter 6 (starting on page 215) of the Draft SEIR, five alternatives were advanced for the project. The alternatives include 1. No Project Alternative; 2. Reduced Size/Reduced Number Alternative; 3. Project ID Only; 4. No Color Exception Alternative; and 5. DRSC/Applicant Updated Project.

Decision-makers can approve an alternative to the project as proposed because they have the flexibility to implement that portion of a project that satisfies their environmental concerns. *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523,533; Kostka & Zischke, Section 15.2.
As explained on pages 215-217, alternatives must reduce impacts, attain most of the project’s objectives, be feasible, and be reasonable and realistic. 15.6 Alternatives must be environmentally superior in only some respects. *Sierra Club v. City of Orange, supra.*

Applicant states that the Draft SEIR should note that this project is infeasible due to inconsistency with Marblehead Development Agreement. But as detailed in Section 6.5, Project Alternative 1 (page 221), “[t]he Marblehead Development Agreement provides that regulations and codes in existence at the time of approval of the Development Agreement will remain the prevailing regulating documents.” The Development Agreement does not guarantee signs, just the right to signs based on ordinances in existence. That requires an SEP and findings. Just because the Outlets are not to be denied the right to apply for freeway-oriented signs, does not mean that it is entitled to those signs or that it has vested rights to any signs. It merely has a vested right to the sign laws that were in effect when the Development Agreement was approved.

The comment suggests that the No Project Alternative is legally infeasible due to inconsistency with the Marblehead Development Agreement. The balance of the comment is without merit because CEQA Guidelines §15126.6 – Consideration and Discussion of Alternatives to the Proposed Project – states, in subsection (e), that an EIR must specifically include analysis of the “no project” alternative. Therefore, in compliance with CEQA, the No Project Alternative discussion is included in the Draft SEIR as required.
Plan, and constitutional requirements protecting the right to free speech, equal protection, and due process.

Alternative No. 1 also reneges on previous assurances from the City Council that the Outlets would not be deprived of its vested rights to freeway signage. On July 7, 1999, the Council made “assurances . . . that the Applicant will not be precluded from utilizing freeway oriented signs.” San Clemente City Council, City Council Minutes – Regular Meeting 20 (July 7, 1999). Mr. Steve Craig stated at the same City Council meeting “that he [was] willing to accept a Condition that indicates that the freeway-oriented signage (i.e., three freestanding signs as well as wall signage) is not approved and requiring that such signage be approved through an amendment to SEP 99-18.” Id. As shown by the City Council Minutes, the then-Project applicant was induced based on the City Council’s assurances to apply for an SEP, even though such a permit was not required under the Specific Plan, because the City indicated that the Project would “not be precluded from utilizing freeway oriented signs.” Id. The City Council led the then-Project applicant to believe that the City would not prevent the Project from utilizing its right to freeway-oriented signs, and Alternative No. 1 would renge on these assurances.

B. Alternative No. 2 – Reduced Size/Reduced Number of Signs Alternative

The DSEIR should note that the Reduced Size/Reduced Number of Signs Alternative (or “Alternative No. 2”) is legally infeasible, due to inconsistency with the Development Agreement and Specific Plan, as well as due to greater environmental impacts.

Alternative No. 2 would reduce all sizes to no greater than 64 square feet in area, regardless of the massing of the building upon which it is placed. Rather than using a consistent scale to determine maximum sign area, Alternative No. 2’s use of a “one-size-fits-all” size is inconsistent with the Specific Plan’s design guidelines. The Specific Plan at 3-16 states, “Signs should be integrated into the architectural design of the building in a manner consistent with the . . . massing of the project.” The Specific Plan at 5-9 states, “General Retail uses should be contained within a variety of building sizes and shapes to avoid the appearance of a ‘strip center[,]’” or a monolithic building mass.” The Specific Plan at 3-4 states, “Due to the size and proportions of the buildings, appropriate scaled signage may require maximum sign area allowances greater than currently specified in the City’s Sign Ordinance.” And the Development Agreement states, “Developer shall have the vested right to develop the Commercial Area in accordance with the development standards and land uses specified in Sections 502 . . . (Signs) . . . .” Alternative No. 2 violates these guidelines in the Specific Plan and Development Agreement, because a uniform size of 64 square feet would throw the signage out of proportion to the scale of the buildings, out of proportion to the approved signage program for the interior signs, and would make the Outlets appear like a “strip center” or “monolithic building mass.” Similarly, because a uniform one-size-fits-all maximum of 64 square feet would throw the signage into varying proportions of the building mass, it would create a mismatch between the scale of the signage and the massing of the building, which may result in greater traffic impacts than the proposed project.

Further, City staff has previously admitted that the 64 square foot limitation in the Sign Ordinance is arbitrary and is not connected to any supporting rationale: “There is no way to tell for sure how our community settled on 64 square feet as our sign area limit. Talking to other sign professionals, 64 square feet is not a number of significance.” San Clemente Planning
Again, Applicant makes the argument that this alternative is legally infeasible due to inconsistency with the Development Agreement and the Specific Plan. But statements in the Specific Plan that the design guidelines encourage a variety, or need to avoid a “strip mall” appearance, or create a monolithic building mass, are localized statements of design and not CEQA-level environmental concerns. Certainly, subjective goals are to be strived for, but there is no bright-line test for these results.

The same result is mandated under the Development Agreement. The subjective goals and the difference in interpretation between Applicant and City staff are not a violation of vested rights. The right is to signage under the zoning laws that exist. As detailed in Section 6.6, Project Alternative 2 (page 228), "... [t]he Marblehead Development Agreement conveyed a vested right to the developer to develop the outlet center in accordance with standards in place at the time the Development Agreement was approved. This includes freeway-oriented signage and an ability to apply for a Sign Exception Permit." Subjective judgments about appearance and whether a style is within a City-adopted theme, do not violate vested rights.

The fact that staff might not know the origin or purpose of a limitation (64 square feet) is not proof that it is arbitrary. Regulations establish rules so enforcement is not arbitrary, applying the rule does not make it arbitrary. Without legislative history it is not possible to know why laws or regulations are adopted. Even if a rule appears arbitrary, that does not make it unlawful. Laws contain many limits that are not justified by studies.

Applicant’s suggestion that the City should not “overemphasize” the project’s purpose in providing tenant identification and wayfinding (although admitted as providing a benefit) to the detriment of the purpose of fulfilling the design of a “regional commercial shopping center” does not make it legally infeasible and does not create irreconcilable inconsistencies. Blending those purposes is the job of the developer, City staff, the design review committee, the Planning Commission and, ultimately, the City Council.

Also, reducing the number of signs or making judgments about color are matters within a City’s police power discretion. The relative superiority of plans is a matter to be determined in City project objectives and are reasonable.

The comment states that Alternative 2 violates the guidelines in the Development Agreement and the Specific Plan because a uniform size for signage would throw the signage out of proportion to the scale of the buildings and make the Outlets appear like a strip center or monolithic building mass. The comment also takes issue with consideration of consistency with the 2004 Site Plan approval because it was not a signage plan, but merely a depiction of proposed signage.

CEQA §15126.6 – Consideration and Discussion of Alternatives to the Proposed Project – provides that an “EIR shall describe a range of reasonable alternatives to the project ... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project ...” As noted on page 228 of the Draft SEIR, this Alternative is consistent with the Zoning Code in place at the time the Development Agreement was approved. Section 3. – Land Use and Planning – states that “The applicable Zoning Ordinance restricts the sign sizes to a maximum of 64 square feet ...”
Commission, Staff Report Zoning Amendment 15-225, Sign Exception Permit and Sign Ordinance Amendments, at 3 (Nov. 4, 2015).

The DSEIR should not overemphasize the project’s purpose in providing tenant identification and wayfinding – though the proposed signage does provide wayfinding and traffic benefits – the central purpose of the signage is to fulfill the Development Agreement’s and Specific Plan’s design for this site as a “regional commercial center,” not to be a traffic control structure for Interstate 5. Though Alternative No. 2 may provide some benefit to wayfinding and traffic control, due to the increased mismatched appearance of the layout (from assigning maximum sign sizes out of proportion to the scale of the building), its irreconcilable inconsistencies with the Specific Plan and Development Agreement, and legal infeasibility (arbitrarily assigned maximum of 64 square feet per sign), this alternative cannot be said to fulfill the project’s objectives.

In addition, Alternative No. 2 cannot be determined to be the “environmentally superior alternative,” because it has greater impacts to traffic, aesthetics, and land use. “Perception of a beneficial outcome,” which is the explanation provided by the DSEIR for why Alternative No. 2 is “environmentally superior,” is not a basis for making this determination. The facts and evidence, as noted herein, do not support the determination that Alternative No. 2 is “environmentally superior.” The vague notion of a “perceived” beneficial outcome is not an environmental consideration and is improper under CEQA.

Similarly, eliminating the color exceptions is not consistent with the Specific Plan and Development Agreement and is legally infeasible for a variety of reasons as discussed herein. For these additional reasons, Alternative No. 2 is not an “environmentally superior alternative.”

The DSEIR correctly notes that the size and number of proposed signs will not result in a significant impact. It is therefore arbitrary for the City to conclude that reducing the size and/or number of signs will be “environmentally superior,” especially when the City has conceded that the 64 square feet size limit is entirely arbitrary and does not stem from any rational basis or analysis. Because the size and number of proposed signs will not result in a significant impact, there is no requirement under CEQA to adopt this alternative.

Finally, Alternative No. 2 improperly considers “consisten[cy] with the 2004 Site Plan approval” as a relevant factor (see, e.g., DSEIR at 218.) The 2004 Site Plan approval was not a sign plan, but depicted signage in effort to attempt, as much as was possible at the time, a realistic depiction of the Outlets when fully built. The 2004 Site Plan approval did not prohibit color exceptions. The 2004 Site Plan approval did not contemplate a one-size-fits-all maximum sign area of 64 square feet per sign. The 2004 Site Plan approval lacked all these details because it was not a sign plan, and so “consistency with the 2004 Site Plan approval” is irrelevant. It is arbitrary and improper for the City to consider this factor as relevant in assessing the environmental impacts of this alternative.

C. Alternative No. 3 – Project ID Signs Only

Alternative No. 3, which would only permit the four proposed project identification signs, is infeasible for the reasons discussed above. Specifically, the Specific Plan and Development
2-14 It is alleged that if only four identification signs are allowed, this would not achieve the project’s objectives of creating a site that is a “regional commercial center.” But an argument could be made that four site signs could convey a regional commercial center designation, and that individual signs might convey a lesser, strip mall center. The point could be argued either way. Section 6.7, Alternative 3 (beginning on page 230) of the Draft SEIR analyzes impacts and feasibility associated with the Project ID Only Alternative.

The Specific Plan statements that the building size and shape should avoid a monolithic mass and convey a village atmosphere are related to building mass, and not signs. Chapter 3, Project History and Background (page 19), provides an overview of the previously approved regulatory documents for the Outlets at San Clemente.

The comment is made that “one of the functional purposes of the proposed signage program is to provide flexibility and variation for tenants in order to further the City’s goal of creating a ‘village’ atmosphere…” While this is not a stated goal in the Draft SEIR, the comment reflects an interpretation of the City’s goal for the Center without providing supporting source information. Commenter notes that Alternative 3 would not represent the variation in the depiction and expression of tenants on the Outlets’ walls. This comment does not raise a substantive issue on the content of the Draft SEIR. It will be included in the administrative record and will be provided to City decision-makers for consideration.

The commenter provides no supporting information on the claim that Alternative 3 would “result in impractical difficulties and unnecessary hardships and deprive the property of privileges enjoyed by other properties in the vicinity under identical restrictions.”

Contrary to this comment, Alternative 3 does not violate constitutional principles of free speech, because adequate identification and signage for each tenant are provided within the Center, which is not observed by drivers traveling on the I-5 Freeway. Commenter provides no documentation, examples, or evidence to support the validity of this assertion in terms of the Alternative 3 project as proposed.

Because this is an alternative, which may or may not be considered by the City Council as an approvable project consistent with all applicable regulations, the City has not reneged on previous assurances related to vested rights for the Outlets Center. The Draft SEIR concludes that Alternative 3 does not meet the basic project objectives. Nevertheless, this was an alternative advanced during the scoping meeting and warranted analysis as a project alternative.
Agreement’s design for the site is for a “regional commercial center.” This requires identification of tenants, in addition to the identity of the “Outlets” to communicate the fact that the Outlets provides the “sale of goods normally found in regional centers (e.g., general retail stores, outlet stores, smaller specialty stores, restaurants, entertainment uses, visitor-serving uses (including lodging) and single line retail.”

As noted above, one of the functional purposes of the proposed signage program is to provide flexibility and variation for tenants in order further the City’s goal of creating a “village” atmosphere. In order to do so, there must be some variation in the depiction and expression of tenants on the Outlets’ walls, rather than reinforcing a monolithic nature of a single “shopping center,” which is what Alternative No. 3 would do. This City goal and design objective was a central feature of the approval of this center. Variations among the signs is consistent and required by this important design objective, which the City has previously agreed to as part of the Development Agreement and implemented as part of the Specific Plan. See, e.g., Specific Plan at 5-9 (“General Retail uses should be contained within a variety of building sizes and shapes to avoid the appearance of a ‘strip center[,]’ or a monolithic building mass.”).

In addition, the City has previously determined for other properties in the City that depriving individual tenants of an opportunity to display tenant-specific signage “result[ed] in impractical difficulties and unnecessary hardships and deprive the property of privileges enjoyed by other properties in the vicinity under identical restrictions.” E.g., City Council Resolution 93-05 regarding SEP 88-03 and 89-148. Alternative No. 3 would similarly “result in impractical difficulties and unnecessary hardships and deprive the property of privileges enjoyed by other properties in the vicinity under identical restrictions” for the Outlets and is therefore practically and legally infeasible.

Similarly, limiting the Outlets to only project identification signs violates constitutional principles of free speech, because it irrationally discriminates against the applicant and its tenants as compared to other individuals and organizations in the City who have been permitted to have a signage plan that allows each tenant to have its own signage oriented towards the freeway (e.g., Ocean View Plaza, Via Pico Plaza).

Finally, as with Alternative No. 1, Alternative No. 3 reneges on previous assurances from the City Council that the Outlets would not be deprived of its vested rights to freeway signage. Notably, of the various several iterations of signage plans for the Outlets since 1997, there has never been a plan that deprives the individual tenants of opportunities to display signage along the freeway.

D. Alternative No. 4 – No color exceptions

As explained in this comment letter, eliminating the color exceptions is not only inconsistent with the Specific Plan and Development Agreement, but it is also legally infeasible for a variety of other reasons. For these reasons, it is not an “environmentally superior alternative.”

E. Alternative No. 5 – DRSC/Applicant Updated Project

Based on the facts and evidence and the analysis in this letter, Alternative No. 5 is the environmentally superior alternative. This alternative has incorporated comments from the
2-15  No detail is provided for this comment, so it is assumed that the comment and the response to comment is covered by other responses to comments. Section 6.8, Project Alternative 4 (beginning on page 237) of the Draft SEIR, analyzes impacts and feasibility associated with the No Color Exception Alternative.

2-16 Applicant contends that this Alternative is the superior alternative. This alternative reduces the number of signs but preserves scale and color exceptions. It is alleged that it is more in line with the Specific Plan and that this version accommodates free speech and other rights. The applicant’s preference is noted.

The purpose of providing alternatives in an EIR is so that decision-makers have an opportunity to consider variations of the proposed Project which may, or may not, result in minimizing environmental impacts associated with the proposed Project. There are circumstances when an improvement in one area of environmental concern could increase an impact in another area.

The Draft SEIR provides a range of Alternatives that may be approved in whole or in part during the decision-making process. The City recognizes Commenter’s preference for Alternative 5 as the environmentally superior alternative and the City decision-makers will be informed about the commenter’s preference as part of their review of this Responses to Comments document.

Commenter requests that the Summary Matrix of Alternatives be revised in response to the comments provided. The Matrix will not be changed, as no revisions or changes to the Alternatives are warranted as described in Responses to Comments 2-12 through 2-15 above.
DRSC and had reduced and/or eliminated some of the proposed signage based on the specific review and analysis of the DRSC (as opposed to the DSEIR’s arbitrary and generalized analysis regarding aesthetics). The DSEIR’s subjective choice that Alternative No. 2 is “superior” to Alternative No. 5 is not supported by the facts and evidence and is arbitrary.

Alternative No. 5 reduces the number and size of signage in response to DRSC feedback regarding the project, and because Alternative No. 5 preserves, in general, the consistent scaling of the proposed signage to the massing of the building as well as to the approved signage for the interior signs, it presents an improved aesthetic appearance when compared to Alternative No. 2.

Alternative No. 5, unlike Alternative No. 2, preserves an appropriate and consistent scale of the signage based on the proportion of the building, rather than an arbitrary maximum of 64 square feet, which City staff has conceded has no rational basis, and therefore is an improvement from Alternative No. 2 in terms of traffic impacts. For similar reasons, Alternative No. 5 also avoids the worsened traffic impacts connected to Alternative No. 2, because the signage is scaled in proportion to the building, rather than using a one-size-fits-all approach that will result in sizes that are not consistent with the building mass and proportion.

By preserving the proposed color exceptions, Alternative No. 5 appropriately accommodates the applicant’s and its tenants’ rights to free speech, equal protection, and due process, unlike Alternative No. 4.

By allowing for appropriate variations in size and color, Alternative No. 5 is consistent with the Marblehead Specific Plan and Development Agreement, unlike either Alternative No. 2 or Alternative No. 5.

The DSEIR should recognize these facts and analysis and conclude that Alternative No. 5 is the environmentally superior alternative.

### F. Summary Matrix of Alternatives

Table 6-1 should be revised to reflect the relative impacts of the alternatives as follows:

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<th>Land Use/Planning</th>
<th>Transportation/Traffic</th>
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<td>Alternative 2 – Reduced Size/Reduced Number of Signs</td>
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XI. THE ORIGINAL MARBLEHEAD EIR EVALUATED THE STANDARD OF 1.5 SQUARE FEET OF SIGNAGE AREA PER 1 LINEAL FOOT OF BUILDING FRONTAGE.

The DSEIR should incorporate additional discussion of previous environmental review of the project. The (original) 1998 Marblehead EIR already evaluated the standard of 1.5 square feet of signage area per 1 lineal foot of building frontage (the “1.5 Standard”) and found less than significant impacts related to aesthetics. In addition, interior signage for the Outlets also uses the 1.5 Standard. Limiting the freeway signage to a lesser standard would make the interior signage and freeway signage inconsistent and mismatched. The DSEIR should also note that Alternative 5, which VSC has developed in order to attempt to accommodate the City, has further reduced the total area of signage proposed to roughly 2,820 square feet. The DSEIR fails to consider the impacts from non-proportional signage in assessing the project alternatives.

XII. OTHER COMMENTS


2. The captions for the visual simulation depictions of various alternatives in DSEIR chapter 6 incorrectly state that the source is from I.G. The source of the visual simulations was KTU+A, not I.G.

3. The City should include all correspondence (whether mailed or emailed) that the applicant has sent to the City regarding this project since at least November 2015 (and possibly earlier) in the administrative record for the project.

4. The City should include the administrative record for the 2008 litigation (Orange County Superior Court Case No. 07CC01287) in the administrative record for this project.

5. The City should include all records in possession of the City pertaining the approval and development of the Marblehead Coastal site (e.g., the Marblehead Development Agreement, Specific Plan, previous proposed and approved master sign programs, sign exception permits, etc., the 1998 EIR and all subsequent addenda) in the administrative record for this project.
Applicant contends that the original EIR standard should be considered and that the current ratio of interior to exterior signs would make the signage inconsistent. But freeway-oriented signs are subject to greater scrutiny under the code and impact persons outside the center and traveling along the freeway. There is a reason such a distinction would be justified. Chapter 3, Project History and Background (page 25) and Section 6.9, Project Alternative 5 (page 237) of the Draft SEIR discuss the recommendations provided to the applicant during the DRSC process. The Staff Report from the August 2016 DRSC meeting is included as Appendix F of the Draft SEIR.

Applicant also contends that the total signage is reduced in Alternative 5, and that would be considered. Applicant also contends that the City should consider effects of non-proportional signage in assessing project alternatives, but a city is only required to analyze a reasonable range of alternatives, and the City believes it has done so.

The City acknowledges the incorporation of correspondence into the comment letter as detailed on page 15 of the December 5, 2017 letter from Latham & Watkins.

See the Draft SEIR Errata (Section 2, page 5 above) for changes to the Draft SEIR incorporated hereby. Also refer to Section 1.4 of the Draft SEIR, Incorporation by Reference, to indicate which historic documents have already been incorporated.
6. The applicant incorporates the following correspondence into this comment letter:

a. VSC’s Letter to the City dated June 22, 2016, Freeway-Oriented Signs for the Outlets at San Clemente;

b. VSC’s Letter to the City dated April 26, 2017, Comments on Notice of Preparation and Initial Study for Draft Supplemental Environmental Impact Report for Signage at The Outlets at San Clemente;

c. VSC’s Letter to the City dated April 26, 2017, Permitting History of Signage at The Outlets at San Clemente;

d. VSC’s Letter to the City dated May 4, 2017, Applicant Responses – May 4, 2017;

e. VSC’s Letter to the City dated May 25, 2017, Proposed Signage at The Outlets at San Clemente; and Notice of City’s Default under Sections 3.3 and 7.1 of the Marblehead Coastal Development Agreement;

f. VSC’s Letter to the City dated July 11, 2017, The Outlets at San Clemente SEIR – Draft Alternatives;

g. VSC’s Letter to the City dated Sept. 6, 2017, Proposed Signage at The Outlets at San Clemente; and Notice of City’s Default under Sections 3.3, 7.1, 7.4, and 13.11 of the Marblehead Coastal Development Agreement;

h. VSC’s correspondence to the City dated Sept. 11, 2017, RE: PSCasp: Outlets Freeway Signs - Visual Assessment;

i. VSC’s Letter to the City dated Sept. 17, 2017, Comments on Staff Report for September 27, 2017 Meeting of Design Review Subcommittee, Item 2B, San Clemente Freeway Oriented Signs;

j. VSC’s Letter to the City dated Sept. 20, 2017, Proposed Signage at The Outlets at San Clemente; and Notice of City’s Default under Sections 3.3, 7.1, 7.4, and 13.11 of the Marblehead Coastal Development Agreement;
EXHIBIT 1

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February 2018 The Outlets at San Clemente
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IMG_1802, Orange, Avenida Vista Hermosa
IMG_1903, Raspberry, Avenida Vista Hermosa

IMG_/7590, Red, Camino De Estrella
Responses to Comments
Supplemental Environmental Impact Report

February 2018 The Outlets at San Clemente
IMG_1830, Red, Camino De Los Mares

IMG_1833, Red, Camino De Los Mares
Comment Letter 3
Racheal Feinberg
November 21, 2017

Vazquez, Amy

From: Racheal Feinberg <racheal@feinline.com>
Sent: Tuesday, November 21, 2017 7:42 PM
To: Outlet Signs; outletsigns@sanclmenta.org
Subject: outlet signs

All the homes facing the mall will be blinded by lights from the OUTLET mall. We were promised by city council that light signs would not be approved. It will hurt the value of our home’s. The tranquil ambience of San Clemente already has been compromised. Please do not make it any worse.
3-1 The commenter is referred to the lighting analysis in the Draft SEIR (pages 148-149 and Exhibit 5-62 on page 150), which demonstrates that lighting is confined to the site. Timers will regulate hours for night lighting, which will be turned off 1 hour after close of individual tenant businesses. Existing parking lot and site lighting are already present. The commenter is referred to Response to Comment 4-2 herein.
Comment Letter 4
Kody Diaz
November 23, 2017

Dear Ms. Vazquez,

I would like to submit a comment regarding the proposed signage at the San Clemente outlet mall. I have been a homeowner in Marblehead for over five years. It is unbelievable to me that San Clemente has allowed an outlet mall to be built in this city. No other small coastal city in Southern California has permitted the destruction of its character to this extent. San Clemente should be looking at cities such as Laguna Beach, Leucadia, and Encinitas as models of development, as opposed to cities like Huntington Beach and Los Angeles.

To allow the outlet mall to use neon signs, construct tower signs, and permit hotel signs would be a further destruction of the character of the city, the once beautiful view from the Marblehead community and the home values in Marblehead.

My wife and I once contemplated retiring in San Clemente once our children had grown, however, my desire to do so has lessened as the city has shown a willingness to grow in a very negative direction.

Thank you for your time.

Kody Diaz
Response to Comment Letter 4  
Kody Diaz  
November 23, 2017

4-1 The City acknowledges receipt of an email from Kody Diaz dated November 23, 2017, and commenter's statements regarding the presence of an outlet mall in San Clemente.

4-2 Commenter states concerns related to the use of neon signs, tower signs, hotel signs, and the impacts to views and home values. No neon signs are proposed. Signs will include halo lighting as depicted on page 41, Exhibit 4-5 of the Draft SEIR. The Supplemental EIR provides an extensive analysis of aesthetics impacts in Chapter 5.1 – Aesthetics, beginning on page 59. As stated in the Draft SEIR, signs will be installed on building facades, walls, and one tower. Building signs will be pinned off-wall and illuminated with halo back lighting. Sign colors will include muted shades as detailed on Exhibit 4-6 – Materials Board, on page 42 of the Draft SEIR. Hours of illumination for the wall and tower signs will be restricted by the Outlet Center's hours of operation. Only the hotel signage will be permitted to be illuminated 24 hours a day. Nighttime views are portrayed on Exhibits 5-65 through 5-69 on pages 154-158 in the Draft SEIR. As shown, intervening traffic lights from vehicles on the I-5 Freeway and existing street lights are dominant light sources. The photometric analysis in the Draft SEIR demonstrates that the proposed sign lighting will not result in a substantial increase in ambient lighting levels, particularly due to the already built urban environment of the immediate vicinity. The analysis concludes that the addition of Project signage will not degrade the existing visual character or quality of the site and its surroundings.

Commenter's concern about impacts to home values in the Marblehead community is noted. CEQA analysis is not required to include economic or social effects of a project as a significant effect on the environment absent physical changes to the environment.

4-3 The commenter's personal sentiments are acknowledged but do not raise issues under CEQA. The comments will be included in the administrative record and provided to City decision-makers for consideration.
Comment Letter 5
Carla Hogan
November 28, 2017

Vazquez, Amy

From: San Clemente Marine Corps Support Group <SCSupportsUSMC@hotmail.com>
Sent: Tuesday, November 28, 2017 1:39 PM
To: Outlet Signs
Subject: Fw: Outlets at San Clemente Sign Project

Dear Sirs,

I vehemently oppose any signage facing the freeway or exits at the Outlet Center. While they may have no environmental impact they certainly have an aesthetic impact which will negatively affect both my neighbors and myself. As far as I am concerned very little good will come from having halo lighted or any other signs at the mall, and they will produce much harm to our aesthetic environment.

I have never pulled off a freeway to do some bargain shopping, and I’m pretty sure most people feel the same way. The mall concept is dead, and theaters are folding. This isn’t 1960! Nothing is going to save the mall, not signs, not Ferris wheels, not hobby shops, nothing. We all do our shopping online, and we watch movies online. I’m sure Mr. Craig feels that more signs will help, they won’t. Please stop placating the pillaging of San Clemente, it’s 2017 not 1950!

Carla Hogan
2171 Via Teca
San Clemente, CA 92673
Response to Comment Letter 5
Carla Hogan
November 28, 2017

5-1 The commenter states that the proposed signage will have a negative impact on aesthetics. The Supplemental EIR provides an extensive analysis of aesthetics impacts in Chapter 5.1 – Aesthetics, beginning on page 59. As stated in the Draft SEIR, signs will be installed on building facades, walls, and an icon tower. Building signs will be pinned off-wall and illuminated with halo back lighting. Sign colors will include muted shades as detailed on Exhibit 4-6 – Materials Board, on page 42 of the Draft SEIR. Hours of illumination will be restricted for the wall and tower signs by the outlet center’s hours of operation. Only the hotel signage will be permitted to be illuminated 24 hours a day. Nighttime views are portrayed on Exhibits 5-65 through 5-69 on pages 154 through 158 in the Draft SEIR. As shown, intervening traffic lights from vehicles on the I-5 Freeway and existing street lights are dominant light sources. The photometric analysis in the Draft SEIR has demonstrated that the sign lighting will not result in a substantial increase in ambient lighting levels, particularly due to the already built urban environment of the immediate vicinity. The analysis concludes that the addition of Project signage will not degrade the existing visual character or quality of the site and its surroundings.

5-2 The commenter’s personal sentiments are acknowledged but do not raise issues under CEQA. The comments will be included in the administrative record and provided to City decision-makers for consideration.
Comment Letter 6
Lyn Stanley
November 29, 2017

Vazquez, Amy

From: Lyn Stanley [mailto:stanley.lyn@gmail.com]
Sent: Wednesday, November 29, 2017 3:41 PM
To: Vazquez, Amy <VazquezA-TEMP@san-clemente.org>
Subject: Re: Delivery Status Notification (Failure)

Dear Ms. Vazquez:

I am writing to express my concern and disapproval of the outrageous signage proposal of the Outlets of San Clemente. This thorn in our community that has caused all of us a great deal of inconvenience and quality of life in San Clemente due to the placement of their location and the needed changes to accommodate this retail outlet's traffic pattern changes for our city.

I am never surprised by the developers of this project with their unwavering need to continue to disrupt our beautiful setting with their marketing hype. They gave the city a proposal in the beginning of the project that was a subdued effort to keep within the confines of our aesthetic scenery and proactive for the greater benefit of the community merchant relationships. If the Irvine community has done this successfully, we cannot see why our community cannot do the same.

Please do not turn us into a theme park community by allowing disruptive signage. The developer and their merchants and hotels should have known the placement of this outlet would necessitate their own mass media marketing efforts to drive the potential customers to this location as a destination, and not through outrageous signage and excess lights to turn us into a Disneyland.

Freeway signage is used throughout California, without lighting or excessive sizes, that refer to the available hotels, restaurants and the like that are small and visible as a commuter approaches an offramp. This should be the limit in my opinion.

Lyn Stanley
703 Avenida Presidio
San Clemente, CA 92672

Lyn Stanley, International Recording Artist
Internationally Acclaimed Jazz Vocalist
Over 36,000 albums sold- Audiophile reference recordings.
2016-2017 GLOBAL MUSIC AWARD WINNER- Best Female Vocal and Best Album "Interludes"
& The Moonlight Sessions Volume One & Two
Jazz Vocalist Website: lynstanley.com
NEW Project videos:
https://youtu.be/TdL-HMblkEg
https://youtu.be/BA81wCV1o8
#1 Jazz Vocal albums on CDBaby.com --Top Seller list
http://www.cdbaby.com/Artist/LynStanley
Response to Comment Letter 6
Lyn Stanley
November 29, 2017

6-1 The City acknowledges receipt of an email from Lyn Stanley dated November 29, 2017 expressing concern with the proposed Project signage. This message was initially sent on November 26, but the original message was not successfully delivered. The second attempt on November 29 was successful and contained identical comments.

Commenter suggests the proposed signage impacts quality of life due to the location of the signs and changes to traffic patterns. The comments are unsupported, and it is unclear how the location of the signs affects quality of life or results in traffic pattern impacts. No traffic circulation changes are proposed, and the traffic analysis in Chapter 5.4 of the Supplemental EIR, beginning on page 201, concludes that the signs are necessary for wayfinding, and does not suggest or include changes to circulation or access.

6-2 The comment states that the original proposal for the Project was an effort to keep “within the confines of our aesthetic scenery.” While the comment does not provide specific details, commenter is referred to page 186 of the Draft SEIR, Section 2. City of San Clemente Zoning Ordinance. This section identifies the regulations that were in place at the time the Project was approved and in place at the time the Project’s Development Agreement was approved. As detailed on pages 191-193 of the Draft SEIR, under Section 2. Consistency with the San Clemente Zoning Ordinance, the freeway-oriented signage currently proposed is evaluated based on the zoning in place at the time the Development Agreement was approved. The proposed Project is consistent with the regulations that permit a right to apply for an Administrative Sign Permit and a Sign Exception Permit. The proposed Project is the installation of signage on existing/approved buildings.

6-3 Commenter is referred to Chapter 5.1 – Aesthetics – for extensive analyses and visual simulations that depict the daytime and nighttime conditions that will exist with the proposed signage. The additional lighting will not result in a substantial increase in ambient lighting levels. The photometric analysis shows that when combined with night lighting for the existing and unbuilt Project components, the sign lighting will result in a nominal increase in night lighting in this already built urban environment (Draft SEIR, page 167). The comment regarding freeway signage in other areas of California is noted.
Comment Letter 7
Jason Chase
December 1, 2017

From: Jason Chase [mailto:jasonplc@yahoo.com]
Sent: Friday, December 01, 2017 5:41 PM
To: Outlet Signs <outletsigns@san-clemente.org>
Subject: In Favor of Outlet Signs

My name is Jason Chase
I live at 201 E. El Portal
92672
7 years

From several of my windows I have partial views of the outlet center. At night, looking towards the ocean it is
total darkness. There is no view to be lost with any lit signs. I am NOT in opposition to the signs
Response to Comment Letter 7
Jason Chase
December 1, 2017

7-1 The City acknowledges receipt of an email from Jason Chase expressing support for the proposed Outlet Center signage and the observation that no view is lost due to lighted signs.
Comment Letter 8
John and Kitty Carretti
December 4, 2017

From: JOHN CARRETTI [mailto:jcarretti@prodigy.net]
Sent: Monday, December 04, 2017 4:16 PM
To: Outlet Signs <outletsigns@san-clemente.org>
Cc: Kitty Carretti <kcarretti@prodigy.net>
Subject: Outlet signs feedback/comment

Dear San Clemente Planning Dept,

Although it certainly would be nice to not have another source of urban light in our horizon/ocean view, I am also of the opinion that now that the city approved the outlet mall, it is reasonable to assume that such a venture requires signage to succeed and prosper.

As a city resident it is not in my best interest to see such a venture fail. The result will be vacancy, lack of tax revenue, facility disrepair, a likely venue for untoward activity, and ultimately years of malaise while some other purpose would be sought (which would require deep pockets as well).

That said, I believe that a signage and particularly a lighted signage plan should implement technical approaches such that it only be visible from trafficable sight lines (in other words, is there a technical approach such that it be angled (like a glide path indicator lighting system) so it could be not (or minimally visible) from the higher neighborhoods and vistas while yet also being visible from from the roadways (I-5 in particular). Otherwise, limit light (power/brightness) such that it is only that required effective for catching attention from the I-5, and minimize after business hours (may have to keep certain ones on, for the hotel, for example).

There is one matter that I actually communicated early on, but for which I never received comment. My wife and I live on Calle Felicidad, 8 or 9 streets up from the high school on the south east side of Pico. The flashing yellow lights which now flash fairly constant and regular (which light the cross walks) are garish and distracting. My point is, when you approve lighting plans, you need to consider that the matter that captures your attention is something like flashing and movement. One gets somewhat accustomed to constancy, but the flashing lights both consciously and unconsciously draw your attention. The view of the horizon and of the sea is distracted by this constant yellow flashing.

I suggest you resolve that problem in one of two ways: 1) a technical approach to limit angle of light emanation, or 2) plant some trees/landscaping between the light source and the observable light pollution (mask the problem).

Therefore: This input provides:

1) Conditional approval of the signage plan that considers and implements technical approach to limit viewshed to the I-5 market by both angle and time of lighting

2) Request elimination of flashing/movement lights within the outlets (period). Either eliminate them or otherwise mask the light pollution of flashing lights. It’s a significant distractor.

Very Respectfully, John and Kitty Carretti
Response to Comment Letter 8
John and Kitty Carretti
December 4, 2017

8-1 The City acknowledges receipt of an email from John Carretti and the observation that it is reasonable to assume that signage is necessary for an outlet mall.

8-2 The commenter notes the disadvantages to the City and its residents of allowing the outlet mall to fail. The comment does not raise an environmental issue; however, the commenter’s observation is accurate in terms of long-term impacts related to the failure of businesses.

8-3 The commenter suggests alignment of signage and limitation of light power/brightness. The building and wall-mounted signage will be placed on existing facades and cannot be configured to further minimize views from adjacent neighborhoods. The City acknowledges the commenter’s suggestion to orient the tower signage to be visible from traffic sight lines. However, as analyzed in Chapter 5.1 – Aesthetics – the tower signage does not block views, does not contribute substantially to the existing ambient lighting, and will not be significantly visible from the adjoining residences as shown on Exhibits 5-26 through 5-51 (Candidate Key Views and Simulations) in the Draft SEIR.

An Alternative (Alternative 5 – page 239 in the Draft SEIR) has been included for the City’s consideration that responds to the Design Review Subcommittee and public comments related to lighting temperature and light output. In this Alternative, the LED sign lighting temperature would be reduced from 6500 K (cool white) to 4000 K (pure white), and light output has been reduced to 2000 lumens. Hours of lighting will be limited. Signs will automatically turn off 1 hour after close of individual tenants. The hotel signage will operate 24 hours per day.

8-4 The comment is noted regarding flashing yellow lights in the crosswalks, which are a safety feature for pedestrians and drivers. No flashing lights are proposed for the Outlet Center lighting. This comment does not raise a substantive issue on the content of the Supplemental EIR. It will be included in the administrative record and will be provided to City decision-makers for consideration.

8-5 The commenter provides suggestions to reduce impacts stated in the email and discussed in Responses 8-3 and 8-4 above. The City acknowledges the suggestions and will include them in the administrative record for the consideration of City decision-makers.
Comment Letter 9
Debbie McGilligan
January 4, 2018

-----Original Message-----
From: Debbie McGilligan [mailto:irelv2@cox.net]
Sent: Monday, December 04, 2017 9:12 PM
To: Outlet Signs <outletsigns@san-clemente.org>
Subject: Outlet Signs

Hello,

I am an owner and resident of Faire Harbour, located directly across the freeway from the outlet center. I have a large interest in making sure the signage at the center is not obtrusive or unsightly. I have read the latest information on the EIR distributed by the city and I attended the open house at the outlets last week.

I have come to the conclusion the the proposed signage would be acceptable, with the exception of the color issues brought up in the EIR. If the aesthetics can be changed, I encourage you to approve the outlet signage.

Thank you for your time and service to our fair city.

Debbie McGilligan

Thank
Sent from my iPad
Response to Comment Letter 9
Debbie McGilligan
January 4, 2018

9-1 The City acknowledges receipt of an email from Debbie McGilligan noting her review of project-related documents and attendance at the open house at the outlets.

9-2 The commenter encourages approval of the proposed signage with the exception of the colors proposed. Please refer to Alternative 4 – No Color Exceptions – beginning on page 237 of the Draft SEIR. This Alternative considers prohibiting signs using any colors other than the proposed color palette, including metallic and neutral colors consistent with the Spanish design theme required by the Specific Plan. No logo colors for national brand tenants would be permitted. The EIR concludes that color exceptions are inconsistent with the Marblehead Specific Plan. This Alternative will be considered by the City decision-makers during the Draft SEIR approval process.
Comment Letter 10
Vickie McMurchie
December 4, 2017

From: Vickie McMurchie [mailto:vmcmurch@yahoo.com]
Sent: Monday, December 04, 2017 12:20 PM
To: Outlet Signs <outletssigns@san-clemente.org>
Subject: Outlet Signage Feedback

To Whom it May Concern;

I support the Outlets at San Clemente's proposed signage plan and would hope that the Planning
Commission/City Council allow for signage to be placed.

Thank you,
Vickie McMurchie
207 W. Maniposa Unit B
San Clemente, CA 92672
760.224.0518
Response to Comment Letter 10
Vickie McMurchie
December 4, 2017

10-1 The City acknowledges an email from Vickie McMurchie expressing support for the signage program analyzed in the Draft SEIR. No comments raising a substantive issue on the Draft SEIR were made, and no further response is required.
Comment Letter 11
Nancy Hines
December 6, 2017

From: Nancy [mailto:dasling@cox.net]
Sent: Wednesday, December 06, 2017 4:54 PM
To: Planning Mail <Planning@san-clemente.org>
Subject: outlet signage

Planning Commission,

It is my sincere hope that you reconsider and deny excessive freeway signage for the outlet stores!

I am actually surprised that this is even an issue! Please do the right thing for the citizens and of our beautiful city of San Clemente!

Most sincerely,

Nancy Hines
2117 Avenida Oliva

11-1
Response to Comment Letter 11
Nancy Hines
December 6, 2017

11-1 The City acknowledges receipt of an email from Nancy Hines expressing disapproval of the proposed project. The commenter does not raise a substantive issue on the content of the Draft SEIR. The Draft SEIR analyzed the proposed project and several alternatives, including a reduction in the number of signs. The Alternatives can be found in Chapter 6 beginning on page 215. The email will be included in the administrative record and will be provided to City decision-makers for consideration.
Comment Letter 12
Alan & Georgette Korsen
Undated

Alan & Georgette Korsen
245 Calle Familia, San Clemente, CA.

Dear Planning Commissioners,

We are very grateful for your diligence in upholding the city guidelines and restrictions regarding signage in our city and most especially that which faces the freeway.

In my service as Co-Chairman of GPAC, I oversaw the efforts that took years to diligently create a new general plan for San Clemente in an attempt to maintain the aesthetic look and feel of our Spanish Village by the Sea. Allowing many large freeway oriented signs would be a distraction from the ambience GPAC endeavored to preserve.

There are so many issues that San Clemente is facing today and knowing that you, as a governing advisory body, dedicated to protecting our town from the negative and garish effects of excessive signage, is a great comfort.

We live above and look directly at the Outlet Mall. Our entire ocean view is located behind it. Not allowing that view to be cluttered with un-necessary visual distractions is vitally important to us and to all those who now must contend with this problem.

We wish to thank you for your excellent guidance and encourage you to continue to hold strong in your efforts to protect residents’ investments and quality of life.

Appreciatively,

Alan & Georgette Korsen
Response to
Comment Letter 12
Alan & Georgette Korsen
Undated

12-1 The City acknowledges receipt of a letter from Alan and Georgetta Korsen encouraging the City to uphold the guidelines and restrictions regarding signage in San Clemente. Commenters are referred to Chapter 5.3 – Land Use and Planning, beginning at page 196, Subsection 4. Development Agreement for Marblehead Coastal Property. As detailed in that section, the Project site is subject to development standards in place at the time the Development Agreement for the Project was approved. The Zoning Ordinance in existence at that time is the prevailing regulatory document for the proposed signage and will be considered in the City’s decision-making process.

12-2 The commenters note that their residence directly faces the Outlet Center and request that their views not be cluttered with unnecessary visual distractions. The Draft SEIR analyzed different alternatives, including reduction in number of signs and area (size) of signs, and concludes that Alternative 2 – Reduced Size/Reduced Number is the environmentally superior alternative (Draft SEIR page 251, Section 6.10). While the comment does not raise a substantive issue on the content of the Draft SEIR, it will be included in the administrative record and will be provided to City decision-makers for consideration.

12-3 Commenters’ request that the City protect residents’ investments and quality of life is acknowledged.
Comment Letter 13
Pete van Nuys
December 6, 2017

-----Original Message-----
From: Pete van Nuys [mailto:petevannuys@cox.net]
Sent: Wednesday, December 06, 2017 4:34 PM
To: Planning Mail <Planning@san-clemente.org>
Subject: Please deny Craig Realty's request.

Dear Commission Members,

I've followed the long process(es) Craig and his attorneys have imposed on our city over the years. It's clear that they are not interested in "justice," or "fair" treatment, or anything of the kind. They want sign entitlements that will enhance their company's commercial real estate portfolio. That's it. That's really all this is about-- not helping his tenants, not turning the tide of consumer choice toward on-line retail.
Just more profit when and if he decides to bail.

The sooner we provide the stone wall for him to run into, the sooner he will stop this gross waste of San Clemente's time and money.

Please protect the quality of life we've all moved here for, and invested in all these years.

Please Deny, deny, deny.

Thanks for your leadership.

--
Pete van Nuys
Response to Comment Letter 13
Pete van Nuys
December 6, 2017

13-1 The commenter expresses opinions about the Project Applicant and his business motives. The commenter requests denial of the project to protect the quality of life in San Clemente. The comments do not raise a substantive issue on the content of the Draft SEIR. The email will be included in the administrative record and will be provided to City decision-makers for consideration.
Dear Planning Commissioners,

My second email this evening. I've thought about this for many months now, please consider.

1.) I don't wish ill on the tenants in Craig's Mall

2.) I don't even wish Craig's company ill, though I have zero respect for him.

3.) He is a simpleton, but he is a clever one. He knows what has worked for him in the past and he focuses on that.

4.) He has zero imagination. All the promotion he does here and on other properties are old hackneyed methods employed by mall owners since the 1950s.

5.) The Outlet Mall concept has played out. It's dying. When first built the successful ones were well outside metro markets and were true dumping grounds for name brand excess merchandise. The model was interstate highway based. When the model was tried away from freeways it almost always bombed. Hence Craig's fixation on San Clemente.

6.) Our location is by far the most scenic, best sited, high end residential property adjacent-- plus freeway access. San Clemente Outlets is a premium property. And Craig is still trying to put lipstick on this prize winning palomino as if it were a pig. The man has no class and obviously no brand sense.

7.) Smart retailers have known for years that Retail is Entertainment, especially for women.

8.) San Clemente "Outlets" needs new thinking for the 21st Century. It needs marketing as a destination, an activity unlike any other.

9.) His boast of a "ten screen theater" is questionable. We just lost a 4 screen theater in this age of 70" TVs and Netflix, and he thinks he can con some theater chain into bolstering his old-style mall. Don't count on a theater for that destination and activity element.

10.) I think a real marketeer will say he needs to promote the entire mall as the destination. The mall itself. Rather like the Spectrum-- many people go there to find out what to do, not because they already have something to do in mind. Future integration with North Beach when it's entertainment amenities are realized. Enthusiastic integration with the rest of San Clemente "west of the 5." The answer is not obvious-- that's why it will be, has to be, disruptive.

11.) The answer involves positioning "outlets" as San Clemente entertainment center. A "exclusive outlet mall," hard to find but worth the effort is the right direction.

12.) Craig's focus on classless, tacky, obtrusive, and out-of-character-with-San Clemente freeway signage undermines future claims to premium exclusivity.

Thanks for reading.

--

Pete van Nuys
949 492 5737
13-2 The commenter expresses several subjective opinions about the owner of the Outlet Center, the concept of malls, and the marketing of malls and movie theaters. The comments do not raise any substantive issues on the content of the Draft SEIR. The email will be included in the administrative record and will be provided to City decision-makers for consideration.

13-3 The commenter provides an opinion about the proposed freeway signage but does not raise a substantive issue on the content of the Draft SEIR. See response 13-2 above.
Comment Letter 14
Denise Zivolich
December 8, 2017

From: Z. Kid [mailto:zivyden@gmail.com]
Sent: Friday, December 08, 2017 12:02 PM
To: Outlet Signs <outletsigns@san-clemente.org>
Subject: Recent Outlet sign meetings

First of all, please allow me to thank all of you for your hard work and diligence protecting the ambiance of our wonderful City. My husband and I were a bit perplexed at the elderly gentlemen's attack on Donald Brown at the December 6th meeting, and we hope Don was able to set that aside as a rant by a very confused person. We feel you are doing an excellent job with respect to a very contentious issue.

Herein, I make comments such as "they deem North and South," because as you know, due to our diagonal coastline in this location, the literal direction looking at the mall and ocean over the freeway is Southwest, so the freeway wall faces northeast.

My husband and I live in Marblehead, Highland Light Estates, and look over the outlet mall every day. So, you can imagine that this issue is very important to us.

We believe the city regulations certainly succeeded in controlling the mall architecture as it stands currently, and we are pleasantly surprised and relieved by how aesthetically pleasing it turned out. I was aghast, however, when those red temporary signs went up.

I am emailing, because I am concerned about the discrepancies we experienced between the outlet hosted meeting and the city hall meeting on December 6th.

At the outlet hosted meeting, the Craig group supplied very well done renditions of proposed additions and halo lighted lettering. We were told, emphatically, by the same architect who attended the December 6th meeting, that the freeway facing lettering would be variations of bronze colors only. Set apart on the same sample board were four other colors which the architect stated would appear on what he deemed the North and South edges only: the Starbucks green, the Nike red, and I can't remember the other two bright colors. We are perfectly fine with the bronze variations (other than the blue), but we greatly oppose the four bright colors. We are not enjoying looking at the bright red temporary signs, as we feel they look tacky. Of course, we have absolutely no problem with the individual store facade signs internally within the Mall.

As far as logos appearing on what they deem the North and South edges, I agree partly with the woman who spoke regarding how much more visible those edges are to freeway drivers than the freeway facing walls. However, the freeway facing walls are visible to northbound drivers, but...
Response to
Comment Letter 14
Denise Zivolich
December 8, 2017

14-1 The City acknowledges receipt of an email dated December 8, 2017 from Denise Zivolich. The email expressed concern about Project comments presented at the December 6, 2017 meeting. The commenter notes their home overlooks the Outlet Center.

14-2 The commenter offers a positive response to the Outlet mall architecture and the pleasing aesthetics effect while expressing a negative reaction to the temporary signage. No substantive issue on the content of the Draft SEIR was made.

14-3 Commenter notes that there were discrepancies between the applicant-hosted meeting and the City-hosted meeting (December 6). The architect stated that all freeway-facing sign lettering would be a variation of bronze colors only, while the color palette includes four other bright colors. Commenter is opposed to the bright colors facing the freeway, but acknowledges that the colors would be acceptable on tenant signs interior to the mall. As stated on page 40 of the Draft SEIR, Sign Color and Content, “The proposed color palette for the signs include a black, navy blue, brown, grey copper and bronze, with an option for up to four additional colors such as green, grey, red and white at the discretion of the owner in consultation with the Community Development Director.” Therefore, review by the City will ensure that signs will conform with the standards, including colors, that have been approved and are consistent with the sign program. The temporary signs the commenter objects to will be removed as permanent signs are placed. The EIR concludes that the colors are inconsistent with the Specific Plan and, therefore, results in an impact. An Alternative (#4) would prohibit any colors other than the proposed color palette (Draft SEIR page 237 – Section 6.8).

14-4 Comment noted. Please see Response to Comment 14-3 above.

14-5 As noted in the Draft SEIR on page 35, 2. Sign Program Description, paragraph 2, “Sign content would be limited to nationally trademarked logos and names and would not include tag lines.” Therefore, the number of potential logos appearing on freeway facing signs will be restricted and only be permitted with City staff approval for consistency with the sign program. The Project proposes a limited number of total signs; therefore, a concern about too many logos is speculative and subjective. The City cannot regulate content of signs. Names and logos are permitted. Also, as noted on page 71 of the Draft SEIR, first sentence, last paragraph, “Viewing duration for northbound I-5 would be less than 1 minute, considering average speeds of the freeway.”

While CEQA does not regulate private views, regarding commenter’s concerns about neighbors’ views, distance attenuation reduces visibility and prominence of individual signs.
not so much to southbound drivers. I do agree with her, however, that if there are too many logos on that freeway facing wall, it would be very distracting for northbound drivers.

I have no idea what our neighbors who look out over the ocean over those edges would think. While they are much farther away from the mall, it could be an eyesore for them.

My other concerns are as follows:

1) The tower that is not yet built. It is proposed to be higher than a 4-story building. We believe this structure is completely unnecessary and potentially exceeds heights currently allowed within the outlet structure.

2) the four story Hotel. First of all, is there really a need for that many rooms? I live on the second slope level in Highland light Estates. I feel horrible for the residents on the slope level below us on Oliva. Their views of Catalina Island will be completely obliterated by a hotel that high. Their property values are going to plummet. Quite possibly, our first floor view of Catalina will be impeded. In addition, the Craig group plans to plant numerous tall palm trees which will exceed the height of that four story building. If the building doesn’t kill our view, those palm trees certainly will. I discussed this personally with Steven Craig, but I suspect it fell on deaf ears. If that 4-story building is built, I implore the city to disallow palm trees and insist on trees that must be maintained below the hotel's roof line. Our architectural rules in Marblehead dictate that if a neighbor's view is impeded by trees, the trees must be trimmed below our roof line. In our case, we purchased our home with mature palm trees that we had to remove entirely due to this regulation. Palm tree heights cannot be controlled by pruning, as it merely kills them.

3) we also believe that the Craig group is making false and frivolous statements with respect to tenant business increasing by 20% the day those tacky temporary signs went up. I patronize the mall and often inquire of the tenants how they are doing (both before and after the temporary signs). Generally, their comments are along the lines of, and I quote, "we are hanging in there," or, "a little better." To be honest, we would like to see the mall succeed, as we are very concerned what kind of additional construction in that location would occur if it fails. We are incredibly thankful that the city controlled and decreased the number of homes that were allowed to be built there, as many of them have diminished our ocean view. We can only imagine how much worse it would have been.

4) We scoff at the comment that our home values have increased due to the addition of the outlets. Any potential increase has occurred in spite of the mall and is due mainly to the market direction as a whole for the County. And, those increases are very minor, if any. My neighbor’s remodeled home has been on the market for months, as he is mistakenly attempting to sell it at the supposed price increase.

5) we are perplexed that the city does not allow a standard type freeway sign stating that the outlet mall is the next exit. Surely, this would make the Craig group a bit happier and not take away from any homeowner's view.
14-6 As detailed on page 35 of the Draft SEIR, the proposed Project consists of the review of elevations and approval of signage for a previously approved and substantially built Outlet Center mall. The tower referenced in this comment has been previously approved for the footprint and height, and is not a part of the current Project approval.

14-7 Similar to the tower structure, the hotel is a previously approved component of the Outlet Center mall. The comment does not raise a substantive issue on the content of the Draft SEIR which is for the approval of signage for the Outlet Center mall. The comment will be included in the administrative record and will be provided to City decision-makers for consideration.

14-8 Comment noted. Please see Response to Comment 14-7 above.

14-9 Comment noted. The comment does not raise a substantive issue on the content of the Draft SEIR but will be included in the administrative record and provided to City decision-makers for consideration. The commenter's references to comments made by unidentified tenants of the Outlet Center are not supported by evidence related to actual business conditions.

14-10 Comment noted. The comment does not raise a substantive issue on the content of the Draft SEIR but will be included in the administrative record and provided to City decision-makers for consideration.

14-11 As analyzed in the Draft SEIR, the proposed signage program does not “take away from any homeowner’s view,” as the signs will be affixed to existing buildings, the approved but unbuilt hotel, and the approved but unbuilt Icon Tower. No buildings or structures are proposed by the current Project. The signs will not obstruct private views, which CEQA, in any event, does not regulate.
6) We do not have a problem with the halo lights and bronze lettering, even with variations of bronze, as currently proposed with the softer ambient light strength (thank you for that requirement). Provided, however, that the number of tenants’ lettering remain reduced compared to what the Craig group is seeking. I for one, look forward to this time of year, as I enjoy looking at the white holiday lights trimming the mall. I simply feel that the addition of crazy shaped and colored logos on the freeway side of the mall greatly offends the city's attempts at maintaining a classy, Spanish Village By the Sea appearance. In addition, we do request that the haloed lettering be turned off upon business closure for the evening. This was something stated as fact at the outlet meeting, but we were left questioning that promise at the December 6th meeting.

7) We were disturbed by the Craig Group attorney's final attempt at showing how many colorful signs he witnessed around the City's businesses. Not only did sneaking this in at the end prevent anyone else's rebuttal, but he was comparing apples and oranges. When someone drives through a commercial area, one fully expects to see business signs. However, as you know, here we are discussing how many residents will be subjected to seeing this kind of tackiness while attempting to enjoy an ocean view for which we paid a premium on our property.

8) We are greatly concerned that the proposed rooftop restaurants will exceed allowed heights and further impede our ocean view. We were told that they will not exceed the surrounding current rooftop heights. With the potential addition of the unbuilt logo tower, the Craig group can, and most likely will, argue that proposed 42 foot height is the new standard.

Respectfully, we urge the city to eagle eye any future Craig group additions. It is becoming clear that the group is not interested in being a good neighbor and is attempting to reintercept and/or skillfully manipulate the city requirements.

Finally, has anyone inquired of the city of Carlsbad how it deterred signage on its outlets? Or, is it the 1998 agreement that is coming back to bite us at this juncture? That was a rhetorical question, by the way.

Thank you again for all of your efforts and time.

Denise Zivolich
14-12 The commenter’s opinion regarding consistency with the City’s Spanish Village by the Sea theme is noted. Consistency with the City’s General Plan and other applicable regulations is analyzed in Section 5.3 – Land Use and Planning (beginning on page 185). The commenter is referred to that section for analysis related to the General Plan and Zoning Ordinance. In addition, Alternative 4 analyzes a reduction in the number and size of signs.

The commenter is referred to page 68 of the Draft SEIR, 2. Long-Term Impacts, paragraph 1. The text notes that “Signs will automatically shut off one hour after the close of individual tenants and the Icon Tower will be shut off at 10:00 p.m. However, the movie theatre and a select number of restaurants will remain open after 10:00 pm., as will their signage. The hotel and hotel signage will operate 24-hours a day.”

14-13 Interested parties are encouraged to respond to the public review of the Draft SEIR and at any public hearing on the proposed Project. The commenter’s opinion regarding the perceived attempt to avoid rebuttal is noted. However, as stated, the City welcomes comments at any time prior to Project approval hearings. Analysis of market values and private views is not required by CEQA; however, the comment is noted and will be provided to City decision-makers for consideration.

14-14 Comment noted. The buildings and the Icon Tower structure were the subject of previous approvals and are not part of the currently proposed Project (Draft SEIR page 19 – paragraph 2). Although the comment does not raise a substantive issue on the content of the Draft SEIR, it will be included in the administrative record and provided to City decision-makers for consideration.

14-15 The commenter’s statement about future Craig Group projects is not germane to the current Outlet Center project for approval of a signage program. Likewise, Carlsbad Outlets signage is not part of the analysis for the proposed Project. The commenter’s concerns are noted and will be provided to City decision-makers for their review. The comments do not raise a substantive issue on the content of the Draft SEIR but will be included in the administrative record for the Project.
Comment Letter 15
Dr. Cynthia Ingrao
January 5, 2018

January 5, 2018

Amy Vazquez
Contract Planner
City of San Clemente Planning Development Department
910 Calle Negocio, Suite 100
San Clemente, CA 92672

RE: 111 West Avenida Vista Hermosa – Sign Exception Permit 15-423
and Amendment to Discretionary Sign Permit 05-176 (Outlets at San Clemente
Freeway Oriented Signs)

Dear Ms. Vazquez,

I am a 23-year resident of San Clemente and have direct view of the Outlets at San Clemente from
my backyard. I am writing in opposition of the proposed signage design for the project as it is
currently written. After reviewing the Draft Supplemental EIR and the photo simulations, it is
evident that signage during certain times of the day is significantly undesirably impactful and
incompatible with the city’s theme. The photos simulating the appearance of the signs’ color and
soft halo backlighting from dusk through nighttime are tolerable even though it contributes to
additional light pollution for all of the residents within eyesight of this project.

Where I am in opposition is the appearance of the signage during the morning, noon time, and
afternoon. It is very obvious the fonts, colors, and sizes are all different in accordance with each
stores brand, but it makes the property look like a cheap mall. Each store has their branded signage
within the property and therefore, it is unnecessary to have the same style on any of the external
walls of the project. I would like to see the color of every sign on the external walls be a color that
is consistent with the theme of my city so they all appear aesthetically pleasing during the day as
they are proposed to look from dusk to sunrise. This is of course if the photos provided are in fact
accurate and depict a uniform color and lighting scheme. Any changes outside of what is depicted in
the photos provided would be unacceptable.

I am aware that stores depend on their branding to attract consumers, but the owners and
stockholders of these stores do not live in my city and certainly do not have to see this project from
their backyards. If these businesses were led to believe they would get everything they wanted with
their signage, then that is unfortunate for them. The residents of San Clemente, especially those of
us that live in close proximity, have a greater voice than businesses that are not local.

There is an assumption that requesting an amendment and/or an exception to documented
environmental impacts would be acceptable or granted because “the Outlets are bringing in dollars”,
but please stop selling out the quality of life the residents of San Clemente expect. If the Outlets are
an upscale shopping experience as its current design displays, then do not cheapen it and bring
down the value with signage that screams teen mall.

Sincerely,

Dr. Cynthia Ingrao
203 Calle Rica, San Clemente, CA 92672
Response to Comment Letter 15
Dr. Cynthia Ingrao
January 5, 2018

15-1 The City acknowledges receipt of a letter from Cynthia Ingrao and notes her review of the Draft SEIR. The commenter notes that, based on the photo simulations in the Draft SEIR, signage is significantly impactful during certain times of the day and incompatible with the City’s theme. As stated on page 20 of the Draft SEIR, in the last paragraph, “The signage program is intended to meet the goals of the Marblehead Specific Plan, the Marblehead Coastal Development Agreement and the Marblehead Coastal Design Guidelines to provide adequate and appropriate signage for a fully operational center.” The proposed Project has responded to the City’s Design Review Subcommittee comments (beginning on page 25 through page 31 of the Draft SEIR) with respect to how the Project is designed to uphold the City’s Spanish architectural theme to the greatest extent possible. However, the Draft SEIR acknowledges that the proposed color exceptions for use with nationally known brands and/or logos can be considered incompatible with the Marblehead Coastal Specific Plan (Draft SEIR, page 166, #3) requiring a Statement of Overriding Considerations be adopted by the City decision-makers when the Project is approved.

15-2 The commenter states that the Draft SEIR view simulations showing dusk and nighttime views are tolerable, even with the additional light pollution. Commenter is correct because the photometric analysis prepared for the Project demonstrates that the sign lighting will not result in a substantial increase in ambient lighting levels. The sign lighting will result in a nominal increase in night lighting when combined with lighting from existing and previously approved development. Timers will turn off sign lighting 1 hour after close of individual tenant businesses (Draft SEIR page 40 – paragraph 1).

15-3 Commenter states a preference for all freeway facing signage to be of similar color because interior tenant signage includes brands, colors and logos for each tenant. Project Alternative 4 – No Color Exceptions – beginning on page 237 of the Draft SEIR analyzes a Project that prohibits signs using any colors other than the proposed color palette which metallic and neutral colors consistent with the Spanish design theme of the City. No distinctive logo colors would be allowed under this alternative. The City decision-makers will have the option of selecting the proposed project, an Alternative, or a variation of the proposed Project that modifies the color selections.

15-4 The comment does not raise a substantive issue on the content of the Draft SEIR. It will be included in the administrative record and will be provided to City decision-makers for consideration.

15-5 The comment does not raise a substantive issue on the content of the Draft SEIR. It will be included in the administrative record and will be provided to City decision-makers for consideration.
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February 16, 2018

Via Electronic Mail

Cecilia Gallardo-Daly, Community Development Director
City of San Clemente
100 Avenida Presidio
San Clemente, California 92672
Email: Gallardo-DalyC@san-clemente.org

Re: Response to Comments Set Forth in Latham & Watkins December 15, 2017 Letter

Dear Ms. Gallardo-Daly:

These responses to comments are provided to address the points raised in the Latham & Watkins letter dated December 5, 2017 and signed by Taiga Takashiki, Esq.

The City’s duty is to consider criticisms to the EIR’s analysis as stated in comments to the draft EIR. The final EIR is to provide a reasoned response to such comments. If the city adequately addresses the comment with a reasoned analysis in response, a reviewing court will resolve all fact-based disputes in favor of the lead agency. *(Laurel Heights Improvement Assn v. Regents of University of California (1988) 47 Cal.3d 376, 409; Kostka & Zischke, Section 11.43)*

**I. The DSEIR is not Required under CEQA and an Exemption Should Have Applied**

The City determines if an exemption is to be used.

Petitioner asserts that a categorical exemption applies to the environmental review for the signs. Petitioner is incorrect.

First, it is obvious that this matter has already been before Judge Bauer of the Orange County Superior Court and he determined that environmental review is required. Petitioner defended that action in 2008 (See Steve Craig deposition, pages 25-28) and while it is unknown if Petitioner raised the issue during that proceeding, it is now disingenuous to say this matter is subject to an exemption and this entire legal proceeding was unnecessary.

Aside from the fact this was not raised in the original proceeding (or was raised and determined to be non-dispositive), Petitioner’s assertions are incorrect. There is a categorical
exemption for accessory structures for existing commercial facilities (Class 11) set forth at 14 CCR 15311. That section also does mention on-premises signs. But categorical exemptions are subject to exceptions that defeat the exemption. *Save the Plastic Bag Coalition v. County of Marin* (2013) 218 Cal.App.4th 209,224. The exemptions are narrowly construed. *Dahne v. County of Santa Clara* (1981) 115 Cal.App.3d 827,842. The three general exceptions to the use of categorical exemptions include significant impacts due to unusual circumstances, significant cumulative impacts, and impacts due to a uniquely sensitive environment. (14 CCR 15300.2(a)-(c)). In this case, there are at least unusual circumstances consisting of noise, glare and traffic impacts that a judge has already identified from the freeway oriented sign plan as described in the writ and minute order, dated June 24, 2008. For the City to now determine that environmental review was not necessary would, at best, fly in the face of Judge Bauer’s ruling, and at worst, be a contempt of court. As Judge Bauer has decreed, the noise glare and traffic impacts must be identified and analyzed.

This matter was before Judge Hunt in Dept. 23 of the Orange County Superior Court on Feb 13, 2018 on a motion to have the exemption determined. Judge Hunt continued the hearing to allow the March 6, 2018 City Council meeting to occur, at which the SEIR should be certified, and the exemption issue would then be made moot.

II. References to the Hotel Should be Corrected

City agrees that the hotel has been approved but that hotel signage has not. It is the hotel signage that is part of the project.

III. Ikon Tower References Should be Corrected

City agrees that the Ikon Tower was approved as a footprint, but that elevations needed to be reviewed.

IV. The Ikon Tower as Freestanding Signage or Freestanding Monument Structure

The Ikon Tower is an architectural feature and not signage.

V. The Proposed Sign is Not Dominant

The commenter contends that the characterization of the signage as a “dominant visual feature” is arbitrary and not supported by substantial evidence.

“Substantial evidence” is enough relevant information and reasonable inferences from that information that a fair argument can be made to support a conclusion, even though other conclusions could be reached. 14 CCR (CEQA Guidelines) 15384(a); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376,393. Enough relevant information has been included to make this determination. The fact VSC has a different opinion or would have come to a different conclusion, is not determinative. (Sec, Kostka &
VI. Discussion Regarding Color Exceptions Should be Corrected

A. Eliminating color exceptions is a violation of the US and/or Cal Constitutions

VSC asserts that the city’s regulation of color is arbitrary and standardless in application of the “Village by the Sea Theme.” This challenge must be analyzed with the multiple challenges that are being made under this heading. The first challenge seems to be that a theme cannot be enforced. But the courts have upheld standards that call for “harmonious design.” See Bowman v. City of Berkeley 122 Cal.App.4th 572, 594 (2004). Further, Courts have upheld design themes against vagueness and First Amendment challenges. For example, in Demarest v. City of Leavenworth (2012) 876 F.Supp.2d 1186, the Court upheld a city’s “Old World Bavarian Architectural Theme” against First Amendment, Vagueness - and other - challenges.

VSC next contends that the City may not use color regulation to deny constitutional rights and makes arguments about which colors are brighter. But these are aesthetic judgments that will be upheld as long as supported by substantial evidence, which involves information and inferences from information that are not arbitrary. The fact VSC has a different opinion does not carry the day for VSC.

The City’s actions to protect aesthetics are hardly a pretext for illegal regulation of speech. The regulation was content neutral as regards the colors to be approved. VSC was going to be provided with signage, it was simply a matter of aesthetics as to what the sign would look like in terms of color and “Spanish village by the Sea” theme. The City did have standards, and “Spanish style” is a well-known architectural style that can be identified. (See also, City’s Architectural Design guidelines and Henry Lenny Design Guidelines.)

B. Eliminating Color Exceptions as a Violation of the Development Agreement and Specific Plan

VSC makes claims that national brands and logos must be faithfully displayed to create a regional commercial shopping center. City agrees that if logos are used, that those are to be used without alteration. (see discussion of Lanham Act above) But VSC argues that without color variation, that the center will appear to be a strip mall or regular shopping center. It is argued that signs and roofs must be varied to prevent a monolithic mass.

But this is simply VSC’s opinion and it is not an opinion shared by City. The City’s decision that the colors not be varied as much, is consistent with City’s interpretation of the Spanish Village by the Sea theme, and is supported by information and inferences from
information. It is therefore supported by substantial evidence, even though VSC would come to a
different conclusion.

C. Staff’s Representation that prior signage was one uniform color, not correct

Here VSC points out that the reference in the November 8, 2017 study session that
signage shall be “one uniform color” is incorrect, and that the MSP actually provided that within
each sign all letter would be one uniform color. But VSC notes, without legal objection, that
there was a color palette that was available. VSC apparently is satisfied that a color palette may
be used (despite earlier arguments about constitutionality) it simply argues it wants different
colors.

VII. The DSEIR’s Determination Regarding Consistency with the Village by the Sea
theme is arbitrary and violates CEQA

VSC claims that the City’s application of limited color exceptions caused unavoidable
impacts on aesthetics because of inconsistency with the Spanish Village by the Sea theme. VSC
claims that this finding violates CEQA because the DSEIR does not apply appropriate thresholds
for significance. VSC finds particular fault with the conclusion that the limited color exceptions
will substantially degrade existing visual character or quality of the site and its surroundings.
VSC alleges that the appropriate baseline would have included additional signs throughout the
City. It mentions that the previous EIR did not make such a finding and it mentions that its
Visual Impact Analysis expert came to a different conclusion. VSC also argues that previous
approvals, pre-2008, made findings that these colors harmonized and were complimentary to the
City’s image and the architecture.

But the City made its findings based on substantial evidence, and the fact that it believes
other evidence is more persuasive, is not determinative. Experts can disagree. The city may rely
on its expert and other information and inferences. The pre-2008 approvals are invalid, and the
Court found that there was no environmental review of the signs, so any judgments that the signs
already passed CEQA muster is without foundation. Finally, VSC is correct in one aspect:
architectural compatibility may not be a purely CEQA matter, but Cities have broad authority to
regulate in that arena based on local considerations.

VIII. Any Impact Regarding Color Exceptions is Not “Unavoidable”

Distilling this statement from the double-negative, VSC apparently contends that impacts from
color exceptions might be avoidable.

VSC contends that fears of inconsistency with the Spanish Village by the Sea theme
would be unfounded since these colors were approved in the 1998 Marblehead EIR and in the
2007 MSP (SEP 06–402). (Look at colors approval)

But the Court found that the freeway-oriented signs did not receive environmental review.
So any EIR that was done for the signs was insufficient.

VSC next contends that because a City staff person must also approve a color, that this is the needed consistency protection for the city. But City probably would correctly fear that any exercise of that discretion would be met by challenge by VSC as arbitrary, as it has already alleged.

IX. The DSEIR’s Determination re Potential Lighting Impacts Must Be Corrected

VSC approves of the finding that on the technical, photometric analysis, that the proposed lighting will not create a new lighting source or potentially degrade public views. However, VSC contends the DSEIR recommended mitigation measures based on the erroneous notion that the purpose of the Outlets is to act as a traffic control structure. VSC contends that while tenant identification and wayfinding are purposes of the signage, that the central purpose is to fulfill the Development Agreements and Specific Plan’s design for the site as a “regional commercial center”, not a traffic control measure. It also mentions that the Hotel is a 24-hour operation and its signage must be kept lit after regular hours.

But Mitigation is to reduce or eliminate environmental effects, no matter what the purpose of the project is.

X. Corrections to the Alternatives Discussion, Chapter 6

CEQA requires that an EIR contain a discussion of feasible alternatives or feasible mitigation measures to reduce impacts. These are considered the core of an EIR.

The Guidelines provide that a reasonable range of alternatives must be discussed that would feasibly attain most of the project’s basic objectives while reducing or eliminating any of its significant effects. The EIR must evaluate the comparative merits of those alternatives. Guidelines 15126.6(a) It should explain how the alternatives were selected and identify alternatives rejected and why. Sufficient information should be included to allow evaluation, analysis and comparison.

Decision-makers can approve an alternative to the project as proposed because they have the flexibility to implement that portion of a project that satisfies their environmental concerns. Sierra Club v. City of Orange (2008) 163 Cal.App.4th 523, 533; Kostka & Zischke, Section 15.2

Alternatives must reduce impacts, attain most of the projects objective, be feasible, and be reasonable and realistic. 15.6 Alternatives must be environmentally superior in only some respects. Sierra Club v. City of Orange, supra
A. Alt 1- no project

VSC states that the DSEIR should note that this project is infeasible due to inconsistency with Marblehead Development Agreement. But the Development Agreement does not guarantee signs, just the right to signs based on ordinances in existence. That requires an SEP and findings. Just because the Outlets are not to be denied the right to apply for freeway oriented signs, does not mean that it is entitled to those signs or that it has vested rights to any signs. It merely has a vested right to the sign laws that were in effect when the Development Agreement was approved.

B. Alt 2- Reduced size/reduced number of signs alternative

Again, VSC makes the pitch that this alternative is legally infeasible due to inconsistency with the Development Agreement and Specific Plan. But statements in the Specific Plan that the design guidelines encourage a variety, or need to avoid a “strip mall” appearance, or create a monolithic building mass, are localized statements of design and not CEQA-level environmental concerns. Certainly subjective goals are to be strived for, but there is no bright-line test for these results.

The same result is mandated under the Development Agreement. The subjective goals and the difference in interpretation between VSC and City staff are not a violation of vested rights. The right is to signage under the zoning laws that exist. Subjective judgments about appearance and whether a style is within a City-adopted theme, do not violate vested rights.

The fact that staff might not know the origin or purpose of a limitation (64 square feet) is not proof that it is arbitrary. Regulations establish rules so enforcement is not arbitrary, applying the rule does not make it arbitrary. Without legislative history it is not possible to know why laws or regulations are adopted. Even if a rule appears arbitrary, that does not make it unlawful. Laws contain many limits that are not justified by studies.

VSC’s suggestion that City should not “overemphasize” the project’s purpose in providing tenant identification and wayfinding (although admitted as providing a benefit) to the detriment of the purpose of fulfilling the design of a “regional commercial shopping center” does not make it legally infeasible and does not create irreconcilable inconsistencies. Blending those purposes is the job of the developer, City staff, the design review committee, Planning Commission and, ultimately, the City Council.

Also, reducing the number of signs or making judgments about color are matters within a City’s police power discretion. The relative superiority of plans is a matter to be determined in City project objectives and are reasonable.

C. Alternative No 3- Project ID Signs Only

It is alleged that if only four identification signs are allowed, that this would not achieve
the project’s objectives of creating a site that is a “regional commercial center.” But an argument could be made that four site signs could convey a regional commercial center designation, and that individual signs might convey a lesser, strip mall center. The point could be argued either way.

As to the Specific Plan statements that the building size and shape should avoid a monolithic mass and convey a village atmosphere, that is related to building mass, and not signs.

D. Alt No 4- No Color Exceptions

No detail is provided for this comment so it is assumed the comment and the response to comment is covered by other responses to comments.

E. Alt No. 5- DRSC/Applicant Updated Project

VSC contends that this Alternate is the superior alternative. This alternative eliminates signs but preserves scale and color exceptions. It is alleged that it is more in line with the Specific Plan and that this version accommodates free speech and other rights.

XI. The Original Marblehead EIR Evaluated the Standard of 1.5 square feet of Signage for every 1 foot on lineal feet

VSC contends that the original EIR Standard should be considered and that the current ratio of interior to exterior signs would make the signage inconsistent. But freeway-oriented signs are subject to greater scrutiny under the code and impacts persons outside the center and traveling along the freeway. There is a reason why such a distinction would be justified.

VSC also contends that the total signage is reduced in Alternative 5, and that would be considered. VSC also contends City should consider effects of non-proportional signage in assessing project alternatives, but a city is only required to analyze a reasonable range of alternatives, and City believes it has done so.

Sincerely,

HARPER & BURNS LLP

/s/

Alan R. Burns
Special Counsel

ARB:lo