

Comment Index 30-day Public Review

City of Malibu Formula Retail Ordinance 2013

Summary: During the 30-day public review period (March 13, 2013 to April 11, 2013), 117 comments were received, of which 15 were specific to CEQA.

| | Date rec'd | Commenter | Comments related to |
|----|-------------------|--|----------------------------|
| 1 | 3/18/2013 | David Waite #1, Jeffer Mangels Butcher & Mitchell (JMBM), LLP (representing the group of commercial property owners in the Civic Center) | CEQA |
| 2 | 3/18/2013 | David Waite #2, JMBM | Ordinance |
| 3 | 3/18/2013 | Larry Abbott | Ordinance |
| 4 | 3/27/2013 | Miles Feinberg | CEQA & ordinance |
| 5 | 3/27/2013 | Preserve Malibu #1 | Ordinance |
| 6 | 3/28/2013 | Peter Creech | Ordinance |
| 7 | 3/28/2013 | Dagney Hollander | Ordinance |
| 8 | 3/29/2013 | Norm Haynie | Ordinance |
| 9 | 4/1/2013 | Preserve Malibu #2 | Ordinance |
| 10 | 4/8/2013 | Preserve Malibu #3 | CEQA |
| 11 | 4/8/2013 | Steve Soboroff, Soboroff Partners (Whole Foods in the Park project) | CEQA & ordinance |
| 12 | 4/8/2013 | Carol Hahn | Ordinance |
| 13 | 4/8/2013 | June Louks | Ordinance |
| 14 | 4/8/2013 | Gisela & Dick Guttman | Ordinance |
| 15 | 4/8/2013 | Joyce Ball | Ordinance |
| 16 | 4/8/2013 | Cindy Vandor | Ordinance |
| 17 | 4/9/2013 | Judith Friedman | Ordinance |
| 18 | 4/9/2013 | Louis & Eugenie Spirito | Ordinance |
| 19 | 4/9/2013 | Kimberly Devane | Ordinance |
| 20 | 4/9/2013 | Neil Van Winkle, Glimcher Malibu, LLC (Malibu Lumber Yard) | CEQA |
| 21 | 4/9/2013 | Jeffrey Perelman, Sterling Real Estate Venture II, LLC (Malibu La Paz Ranch) | CEQA & ordinance |
| 22 | 4/9/2013 | Rev. Levanah Shell Bdolak | Ordinance |
| 23 | 4/9/2013 | Michael Koss, Koss Real Estate Investment (Malibu Country Mart) | CEQA & ordinance |
| 24 | 4/9/2013 | Robert Gold, BRP Management, LLC (Crummer subdivision project) | CEQA & ordinance |

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City of Malibu Formula Retail Ordinance 2013

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| 25 | 4/9/2013 | Nicola Jack | Ordinance |
| 26 | 4/9/2013 | Lisa Yuhasz | Ordinance |
| 27 | 4/9/2013 | Eva Wilson | Ordinance |
| 28 | 4/9/2013 | Florence Weinberger | Ordinance |
| 29 | 4/9/2013 | Linda McDonald | Ordinance |
| 30 | 4/9/2013 | Carol Moss | Ordinance |
| 31 | 4/9/2013 | Linda Joslynn | Ordinance |
| 32 | 4/9/2013 | Ken Ravitz | Ordinance |
| 33 | 4/9/2013 | Jason LaBerge | Ordinance |
| 34 | 4/9/2013 | Barbara Ann Quinlan | Ordinance |
| 35 | 4/9/2013 | Philip Richardson | Ordinance |
| 36 | 4/9/2013 | Pamela Conley Ulich | Ordinance |
| 37 | 4/9/2013 | Linda Gould | Ordinance |
| 38 | 4/9/2013 | Sara Gepp | Ordinance |
| 39 | 4/9/2013 | Hamish Patterson | Ordinance |
| 40 | 4/9/2013 | Abbie Jane Baron | Ordinance |
| 41 | 4/9/2013 | Jeff Katz | Ordinance |
| 42 | 4/9/2013 | C.B. | Ordinance |
| 43 | 4/9/2013 | Cori Lowe | Ordinance |
| 44 | 4/9/2013 | California Coastal Commission | CEQA & ordinance |
| 45 | 4/9/2013 | Margarita Jerabek Wuellner | Ordinance |
| 46 | 4/9/2013 | John Kingsbury | Ordinance |
| 47 | 4/9/2013 | Nancy Kearson | Ordinance |
| 48 | 4/9/2013 | Margot Thomas | Ordinance |
| 49 | 4/9/2013 | Hil Covington | Ordinance |
| 50 | 4/9/2013 | Gaby Morgerman | Ordinance |
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| 52 | 4/9/2013 | William Freije | Ordinance |
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| 54 | 4/9/2013 | Bruce Rays | Ordinance |
| 55 | 4/9/2013 | Kimberly Ledoux | Ordinance |
| 56 | 4/9/2013 | Dan & Carole Stark | Ordinance |
| 57 | 4/9/2013 | Cort Day & Jana Whelan | Ordinance |
| 58 | 4/9/2013 | Dabney Day | Ordinance |
| 59 | 4/9/2013 | Kevin Morris | Ordinance |
| 60 | 4/9/2013 | Leslie Goldstein | Ordinance |
| 61 | 4/9/2013 | David Reznick, Malibu Bay Company | CEQA |

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| 62 | 4/9/2013 | Jacky Tomlinson | Ordinance |
| 63 | 4/9/2013 | Karen Blackmore & Joe, Francesca, and Walker Gareri | Ordinance |
| 64 | 4/9/2013 | Jenifer Meissner | Ordinance |
| 65 | 4/9/2013 | Ruth Staub | Ordinance |
| 66 | 4/9/2013 | Bria Little | Ordinance |
| 67 | 4/9/2013 | Nanci Iannone | Ordinance |
| 68 | 4/9/2013 | Ruth Gould-Goodman | Ordinance |
| 69 | 4/9/2013 | Debbi Stone | Ordinance |
| 70 | 4/9/2013 | Susan Stiffelman | Ordinance |
| 71 | 4/9/2013 | Christy Hadzick | Ordinance |
| 72 | 4/9/2013 | Dana Friedman | Ordinance |
| 73 | 4/9/2013 | Chris Benjamin | Ordinance |
| 74 | 4/9/2013 | Taylor Beall | Ordinance |
| 75 | 4/9/2013 | Sally Benjamin | Ordinance |
| 76 | 4/9/2013 | Peri Vincent | Ordinance |
| 77 | 4/10/2013 | Sean Finn | Ordinance |
| 78 | 4/10/2013 | Stephanie Beacham | Ordinance |
| 79 | 4/10/2013 | McKade Levi Marshall | Ordinance |
| 80 | 4/10/2013 | Niels Steffen Kenriksen | Ordinance |
| 81 | 4/10/2013 | David Hayward | Ordinance |
| 82 | 4/10/2013 | Mark Persson, Malibu Chamber of Commerce | CEQA & Ordinance |
| 83 | 4/10/2013 | John Brown | Ordinance |
| 84 | 4/10/2013 | Miriam Pennington | Ordinance |
| 85 | 4/10/2013 | Robert Greene | Ordinance |
| 86 | 4/10/2013 | Betty Lucas | Ordinance |
| 87 | 4/10/2013 | Marie Bathum | Ordinance |
| 88 | 4/10/2013 | Rheta Resnick | Ordinance |
| 89 | 4/10/2013 | Katie | Ordinance |
| 90 | 4/10/2013 | Bill & Rosemary Sampson | Ordinance |
| 91 | 4/10/2013 | Jo Giese | Ordinance |
| 92 | 4/10/2013 | Preserve Malibu #4 | Ordinance |
| 93 | 4/10/2013 | Jefferson Wagner & Candace Brown | Ordinance |
| 94 | 4/10/2013 | Allison Ray | Ordinance |
| 95 | 4/10/2013 | Patt Healy, Malibu Coalition for Slow Growth | Ordinance |
| 96 | 4/10/2013 | Danny Moder | Ordinance |
| 97 | 4/10/2013 | Dru Ann Jacobson | Ordinance |
| 98 | 4/10/2013 | Connie Goetz | Ordinance |

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| 102 | 4/11/2013 | V. Mitchell-Clyde | Ordinance |
| 103 | 4/11/2013 | Nick Rodionoff | Ordinance |
| 104 | 4/11/2013 | Diana Mullen | Ordinance |
| 105 | 4/11/2013 | Mari Stanley | Ordinance |
| 106 | 4/11/2013 | Lynn & John Anfanger | Ordinance |
| 107 | 4/11/2013 | Kathy Sullivan | Ordinance |
| 108 | 4/11/2013 | Howard & Candace Ferguson | Ordinance |
| 109 | 4/11/2013 | J.C. Devin | Ordinance |
| 110 | 4/11/2013 | R. Otto Maly, KW Malibu Colony, L.L.C., KW Partnership, L.P., and KW Two Partnership, L.P. (Malibu Colony Plaza) | CEQA & ordinance |
| 111 | 4/11/2013 | Preserve Malibu #5 | Ordinance |
| 112 | 4/11/2013 | Matt Khoury, KRE Capital LLC (Malibu Village) | CEQA & ordinance |
| 113 | 4/11/2013 | Native American Heritage Commission | CEQA |
| 114 | 4/11/2013 | Preserve Malibu #6 | Ordinance |
| 115 | 4/11/2013 | Preserve Malibu #7 | Ordinance |
| 116 | 4/11/2013 | Charles Skouras | Ordinance |
| 117 | 4/11/2013 | David Waite #3, JMBM | CEQA |

Joseph Smith

RECEIVED

APR 11 2013

PLANNING DEPT.

From: DeGood, Alex <amd@jmbm.com>
Sent: Thursday, April 11, 2013 2:07 PM
To: Joseph Smith
Cc: Waite, David; Evan Gordon
Subject: Formula Retail Ordinance - CEQA comments on Initial Study No. 13-001, Negative Declaration No. 13-001
Attachments: Submission of CEQA comments.PDF; Hoffman - CEQA Response Comments 4-10-2013.PDF; ESA Comment Letter.PDF; Hoffman - Executive Summary of Economic Analysis 4-11-2013.PDF; Hoffman - Retail Market Analysis 10-29-12.PDF; Hoffman - Response to Preserve Malibu Comments 11-9-12.PDF; Hoffman - Transmittal of Retail Inventory 12-26-2012.PDF; Hoffman - Formula Retail Trends 4-11-2013.PDF

Mr. Smith --

I have attached several documents, which shall be considered CEQA comments transmitted pursuant to the public comment period regarding Initial Study No. 13-001 and Negative Declaration No. 13-001 concerning the City's proposed Formula Retail ordinance. You will also receive hand-delivered hard copies of all submissions this afternoon. Please confirm receipt of this email. Thank you.

(1) Letter from JMBM regarding legal requirement to prepare an EIR

<<Submission of CEQA comments.PDF>>

(2) CEQA comments and analysis from Stanley R. Hoffman Associates

<<Hoffman - CEQA Response Comments 4-10-2013.PDF>>

(3) CEQA comments and analysis from Environmental Science Associates (ESA)

<<ESA Comment Letter.PDF>>

(4) Executive Summary of Stanley R. Hoffman Associates analysis

<<Hoffman - Executive Summary of Economic Analysis 4-11-2013.PDF>>

(5) Stanley R. Hoffman Associates Retail Market Analysis (previously submitted)

<<Hoffman - Retail Market Analysis 10-29-12.PDF>>

(6) Stanley R. Hoffman Associates Response to Preserve Malibu (previously submitted)

<<Hoffman - Response to Preserve Malibu Comments 11-9-12.PDF>>

(7) Stanley R. Hoffman Associates Retail Inventory Summary (previously submitted)

<<Hoffman - Transmittal of Retail Inventory 12-26-2012.PDF>>

(8) Formula retail trend analysis from Stanley R. Hoffman Associates

<<Hoffman - Formula Retail Trends 4-11-2013.PDF>>

1.1

Alex DeGood
 JMBM | Jeffer Mangels Butler & Mitchell LLP
 1900 Avenue of the Stars, 7th Floor

Item 1 - Waite, David

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Jeffer Mangels
Butler & Mitchell LLP

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April 11, 2013

VIA EMAIL AND HAND DELIVERY

Joseph Smith, AICP
Senior Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Initial Study No. 13-001, Negative Declaration No. 13-001: Substantial Evidence to Support Preparation of an EIR

Dear Mr. Smith:

This office represents a group of commercial property owners (the "Owners") in the City of Malibu ("City"). Enclosed herewith are formal comments and technical reports on Initial Study No. 13-001 and Negative Declaration No. 13-001 for the City's proposed formula retail ordinance (the "Ordinance" or "Project"). These comments are submitted by Stanley R. Hoffman, Associates, Inc. ("Hoffman") a leading southern California-based urban economics consulting firm, and Environmental Science Associates ("ESA"), one of the largest and most experienced environmental consulting and planning firms in the western United States.

1.2

Taken together, these comments and the factual matters set forth therein constitute substantial evidence of a fair argument that the Ordinance, as currently drafted, will cause one or more significant environmental impacts, and the City must therefore prepare an environmental impact report ("EIR") for the Project.¹ CEQA maintains a strong presumption in favor of the preparation of an EIR. A negative declaration or mitigated negative declaration provide the appropriate vehicle for CEQA review only when "clearly no significant effect on the environment would occur [from a proposed project.]" *San Bernardino Audubon Soc. v. Metropolitan Water Dist.* (1999) 71 Cal. Ap. 4th 382, 390 (emphasis added). Simply put, if a project may cause a significant effect on the environment, the City must prepare an EIR. Public Resources Code § 21151 ["All local agencies shall prepare...an environmental impact report on any project...that may have a significant effect on the environment]. The submitted comments

1.3

¹ The Hoffman and ESA comments are joined by numerous comments from residents and property owners in Malibu that the Ordinance will have a significant impact on the environment.

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and technical reports address specific areas in which the Project's environmental review is substantially deficient, as detailed below.²

1.3

I. URBAN DECAY

The Initial Study improperly dismisses the need for environmental review of the Project's potential impacts on aesthetics and the built urban environment, stating "Given the nature and commercial history of the Civic Center [] it is not anticipated that vacant tenant spaces associated with a proposed formula retail use would...result in blight, deterioration or substantial diminishment of values." As noted by ESA, "these assumptions were not based upon conclusions of a market analysis or technical study." ESA further notes that due to the Ordinance's "substantial new restrictions" on leasing, "the proposed ordinance could result in long-term vacancies and lead to visual deterioration impacts that need to be analyzed."

The Hoffman reports and technical studies extensively document the Ordinance's likely urban decay impacts. Hoffman's attached "CEQA Response Comments" states that the "Ordinance places significant...restrictions on the ability of Civic Center shopping centers to lease tenant space based upon market demands, while also imposing a burdensome and costly CUP requirement on leasing what little space is permitted for formula retail." Hoffman further notes that a loss of formula retail "anchors" in shopping centers would impact non-formula stores, resulting in the potential for a "domino effect" of retail vacancies.

1.4

In short, the only evidence in the record concerning the Ordinance's potential impacts on visual deterioration and urban decay states that the Ordinance will very likely result in negative impacts. Given this evidence, the City must undertake the thorough review of an EIR.

II. TRAFFIC AND TRANSPORTATION

Much as with urban decay and aesthetic impacts, the Initial Study is stunningly conclusory regarding the Ordinance's potential traffic and circulation impacts. The Initial Study, absent citation to any objective analysis, states "'The proposed ordinance is not anticipated to have any impacts on transportation/traffic in the [Civic Center] district or its vicinity.'" The Hoffman and ESA submissions directly contradict this unsubstantiated claim. Hoffman states that "As a result of [a] combination of market realities and land use restrictions, many of the excluded [formula] retailers would simply relocate to other communities", altering traffic

² Of note, in addition to the substantial evidence presented by the Hoffman and ESA reports, the California Coastal Commission, in an April 9, 2013 letter regarding the Ordinance, states that the City cannot adopt the Ordinance absent processing an amendment to the City's certified Local Coastal Plan, which would itself require further environmental review. The Coastal Commission letter also states that the Ordinance's provisions "have the potential to adversely affect the provision of visitor-serving retail uses" and that "This potential impact should be evaluated[.]" Given that the City's land use regulatory authority over property in the Coastal Zone exists subject to Coastal Commission review and approval, it does not appear that the City can continue to process the Ordinance absent addressing the Coastal Commission's CEQA comments and performing additional environmental review.

1.6

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patterns and increasing traffic congestion as Malibu residents "travel to farther locations to shop for goods that would now not generally be available in Malibu."

ESA concurs with Hoffman, stating that the Ordinance "would limit tenant selection and the ability to draw key retailers to the City, and many of the excluded formula retailers (particularly those over 2,500 square feet) would locate in or relocate to other communities." This relocation (or location in other communities in the first instance) will result in "changed traffic patterns, longer traffic trips, and potential traffic impacts" from such retail relocation.

1.4

To the extent the City's unsubstantiated conclusions in the Initial Study and Negative Declaration can be considered expert opinion at all, the informed opinions of Hoffman and ESA constitute a disagreement among experts that also requires the preparation of an EIR. CEQA Guidelines § 15064(g); *Sierra Club v. County of Sonoma* (1992) 6 Cal. App. 4th 1307, 1316-1317.

Given the substantial evidence submitted, the City must prepare an EIR that accurately and fully discloses the potential impacts of the Project and considers Project alternatives to address those significant impacts. Further the EIR must provide evidence in the record to substantiate the myriad unsupported claims that litter the Initial Study and Negative Declaration.

1.5

Sincerely,



DAVID P. WAITE of
Jeffer Mangels Butler & Mitchell LLP

DPW:amd

Enclosures

cc: Alex DeGood, JMBM
Christi Hogin, City Attorney
Brian Abers
Jay Gilberg
Michael Heslov
Matt Khoury
Michael Koss
Cindy McAfee
Jeff Perelman
David Reznick

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April 11, 2013
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Neil Van Winkle



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April 11, 2013

Mr. Joseph Smith, AICP
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Subject: Initial Study for the Proposed Malibu Formula Retail Ordinance

Dear Mr. Smith:

The following comments are provided regarding the City of Malibu's California Environmental Quality Act (CEQA) evaluation of the Draft Initial Study/Negative Declaration (IS/ND) that was prepared by the City for its proposed Formula Retail Ordinance. By way of background, I have been a community planner and CEQA practitioner since 1974 as a public agency planner and a planning consultant. In that time, I have prepared General Plans and implementing ordinances in a number of small town and rural setting, including Calabasas, Ojai, and the Santa Monica Mountains, where I worked with Los Angeles County; cities of Calabasas, Agoura Hills, Hidden Hills, and Westlake Village; National Park Service; Las Virgenes Unified School District; Las Virgenes Municipal Water District; and area residents to define the rural character of the Santa Monica Mountains, and develop policies and programs to protect that rural character. I have also assisted landowners in the town of Truckee protect the small town rural character of that community by reviewing and providing comments on CEQA documentation for proposed development in that community.

Having managed preparation of hundred of CEQA documents over the past 38+ years for ordinances, General Plans, and site specific development projects, I have found that the key strength or weakness of CEQA documents, including both Initial Studies and EIRs, is the extent to which they are based on sound science, reasoned analysis, and thoughtful judgment. Conclusions must not only follow logically from the information presented, but where assumptions are necessary, the validity of those assumptions needs to be examined.

Overall, the City's Draft IS/ND for its proposed formula retail ordinance does not provide a complete or thorough analysis of potentially significant impacts from implementation of the proposed ordinance. While the conclusions of the Draft IS/ND may be follow logically from a single premise, the premise upon which the IS/MND is built – that no economic changes will occur – was not examined by the City, nor does the IS/MND explain why that premise (more accurately described as an assumption) is valid. In fact, studies and analyses prepared by Stan Hoffman, coupled with my independent, professional judgment, bring the City's assumption into question and raise a fair argument that the economic basis for the City's conclusions are not be correct.

Based on Mr. Hoffman's work and my experience in both drafting and reviewing numerous local ordinances and planning efforts that address what the City's ordinance purports to, I believe there is the potential for the economic impacts described in Mr. Hoffman's submissions to result in physical changes to the environment that need further evaluation pursuant to the requirements of CEQA.

1.7



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Aesthetics

The aesthetics discussion provided in the Draft IS/ND concludes that the proposed ordinance would not result in an adverse effect on a scenic vista or substantially damage scenic resources without providing an evaluation of potential impacts. In addition, the discussion of the degradation of the existing visual character of the project area and its surroundings is limited to a reiteration of the project description and that typical processing of a CUP is not anticipated to result in blight, deterioration or substantial diminishment of aesthetic values. While the draft ordinance states that the City desires ongoing preservation of its historic commercial core, the Initial Study does not evaluate how the ordinance will actually protect that historic core or scenic resources, nor does it evaluate the potential indirect impacts to these existing historic and scenic resources that are located within and adjacent to the Civic Center, that could occur from implementation of the ordinance. By relying on future discretionary actions, such as the typical processing of a CUP to avoid blight, deterioration or substantial diminishment of aesthetic values, the IS/MND may be deferring analysis and mitigation of impacts.

1.8

CEQA requires that potentially significant effects on the environment be analyzed, disclosed, and mitigated, if feasible, prior to the approval of a discretionary approval at the earliest possible stage of the planning process. CEQA Guidelines require that both direct and reasonably foreseeable indirect physical changes be evaluated during the environmental review process. A direct physical change is caused by, and is immediately related to, the project, such as construction-related dust, noise, and traffic. An indirect physical change is not immediately related to the project but is caused indirectly by the project. An example of an indirect physical change would be visual degradation of the Civic Center area as a result of vacant storefronts due to an economic change caused by the proposed ordinance. In the context of CEQA, such visual deterioration, often referred to as "urban decay" is considered an indirect physical impact that requires evaluation when substantial evidence (such as Mr. Hoffman's analyses), which consist of relevant information and reasonable analysis, provides a fair argument that a potentially significant impact may occur.

1.9

The Draft IS/ND appears to make the assumption that no visual changes would occur, and concludes aesthetic and urban decay impacts would not occur. However, these assumptions were not based upon conclusions of a market analysis or other technical study. Because the draft ordinance places substantial new restrictions on the ability of Civic Center shopping centers to lease tenant space that are beyond the restrictions of adjacent jurisdictions, the proposed ordinance could result in long-term vacancies and lead to visual deterioration impacts that need to be analyzed.

1.10

The proposed ordinance places restrictions both new and existing uses that could lead to aesthetic degradation of the character of the area. By limiting formula retail stores to a maximum of 2,500 square feet, many retailers would be prohibited from the Civic Center and due to land availability and market conditions would likely be limited to areas outside of the City.



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In addition, the proposed ordinance would require a CUP for an existing formula retail use to relocate, expand by 200 square feet, or increase service area by 50 square feet, which would increase costs to a formula retailer (but not others), and have the effect of discouraging existing formula retailers from improving their properties, renewing their leases, or expanding their space, which may lead to aesthetic degradation of the commercial areas within the Civic Center.

1.11

Based on a review of the ordinance's key provisions, it appears that ordinance requirements would likely deter long-term formula retail tenants from leasing vacant space within the Civic Center and limit the pool of potential commercial uses that might consider Malibu. The combination of market realities and land use restrictions would cause the excluded formula retailers to locate or relocate to other communities outside of the City. As a result, potential impacts related to long-term store vacancies, economic displacement, physical deterioration, aesthetic degradation, and the degree to which there will be market demand to support reuse or redevelopment of the existing formula retail uses within the Civic Center needs to be analyzed.

1.12

Additionally, the IS/ND does not evaluate potential damage to scenic resources within a state scenic highway. The Pacific Coast Highway, which bisects the Civic Center area, is officially designated as an eligible scenic highway by the California Department of Transportation (Caltrans). As a result, the potential indirect aesthetic impacts of the proposed formula retail ordinance described above also need to be evaluated in relation to the state scenic highway as outlined in the CEQA Checklist (CEQA Guidelines Appendix G).

1.13

This submittal, the Stan Hoffman's submittals to the City and comments from property owners and community members, provide relevant information, reasonable analysis, and a fair argument that a potentially significant impacts may occur. Thus, a CEQA evaluation of these potentially significant indirect aesthetic impacts should be prepared.

1.14

Traffic/Air Quality/Greenhouse Gasses

The IS/ND appears to assume that land uses, the interaction between land uses and traffic patterns within the City would not change from implementation of the proposed ordinance based on the assumption that no economic changes will occur. The IS/ND states that "There is no reasonable correlation that implementation of the proposed ordinance in the district would lead to an increase in formula retail establishments in other commercial areas of the City and thus, generating an increase in pedestrian and vehicle traffic in those areas." The IS/ND appears to assume the formula retail establishments could be replaced in-kind by non-formula retail establishments, and provide the same services. While the assumptions in the IS/ND are not supported by any retail technical data, market analysis, or other land use or traffic evidence, ESA and Mr. Hoffman's analyses indicate that such displacement or relocation of formula retailing to other communities, or intensification of use of existing formula retail outlets could, in fact, occur.

1.15



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As described previously, the combination of market realities and the land use restrictions imposed by the proposed ordinance, would limit tenant selection and the ability to draw key retailers into the City, and many of the excluded formula retailers (particularly those over 2,500 square feet) would locate in or relocate to other communities.

1.16

The Draft IS/ND does not consider that existing and potential future successful formula retailers have a loyal customer base, and that residents of Malibu and adjacent areas may, in fact, drive to the locations of displaced formula retailers, and the new formula retailers that are limited to areas outside the City. The long-term change in land uses, and the balance of needed services within the City, could thus result in changed traffic patterns, longer traffic trips, and potential traffic impacts as customers from Malibu and surrounding areas would travel to farther locations to shop at retailers or eat at restaurants that not available in Malibu. This increase in traffic could result in greater roadway congestion, and increased air pollutant and greenhouse emissions, which would be indirect impacts occurring as the result of the proposed ordinance. As described previously, CEQA requires the evaluation of indirect impacts when substantial evidence and a fair argument exists that one or more potentially significant impacts may occur. As a result, the changes in land uses and resulting traffic, air quality emissions and greenhouse gasses that would be generated by implementation of the draft ordinance need to be analyzed.

1.17

Cumulative Impacts

One potential economic effect of the proposed ordinance is the dislocation of formula retail outlets to other communities as the result of significant restriction on formula retail outlets in Malibu that are not replicated in surrounding communities. Because formula retailers would find it much easier to locate adjacent to, but not within Malibu, as evaluated by Stan Hoffman, increased development of formula retail outlets in adjacent communities could result from Malibu's proposed formula retail ordinance. Because it is based on the assumption that no economic impact would occur, the City's Draft IS/ND does not analyze the impacts of such development in adjacent communities. However, since that assumption was not itself analyzed in the Draft IS/ND, and evidence provided indicates that economic impacts will, in fact occur, the physical manifestations of such economic impacts requires analysis prior to approval of the ordinance.

1.18

As described in CEQA Guidelines Section 15065, a lead agency is required to (shall) find if the project has possible cumulatively considerable effects, which is defined as the incremental effects of an individual project when viewed in connection with the effects of past, current, and probable future projects. In addition, CEQA Guidelines Section 15065 states that a lead agency "shall briefly describe the basis for concluding that the incremental effect is not cumulatively considerable."



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Potential cumulative impacts from implementation of the proposed ordinance are described above and include (but are not limited to) potential impacts to aesthetics, air quality, greenhouse gasses, and traffic. As a result, to be compliant with CEQA, the city must engage in an evaluation of cumulative impacts.

} 1.19

Sincerely,

A handwritten signature in black ink that reads 'Lloyd Zola'. The signature is written in a cursive, slightly slanted style.

Lloyd Zola
Senior Vice President

Memorandum

RECEIVED
APR 11 2013
PLANNING DEPT.

To: Joseph Smith, AICP
Associate Planner, City of Malibu

From: Stan Hoffman, President

cc: David Waite, Esq., JMBM
Evan Gordon, Marathon Communications

Date: April 10, 2013

Subject: CEQA Response Comments Regarding Initial Study No. 13-001 and Negative Declaration No. 13-001, City of Malibu

Introduction

Stanley R. Hoffman Associates, Inc. (SRHA) is an urban economics consulting firm in Southern California, incorporated in 1984. As President of SRHA, I have been practicing in the field of urban economics since 1970. I first worked in the public sector for 10 years at both the local and regional planning agency level. Since establishing my economic consulting firm, I have specialized in urban public finance and economic development. I have worked for a number of both public and private clients in preparing economic development strategies and public sector fiscal and financial analyses. Many of our assignments have covered retail developments within master planned communities as well as economic and retail revitalization of older communities and their downtown centers. I have taught courses in Urban Public Finance as an adjunct lecturer in the Graduate Studies at UCLA Department of Urban Planning and was inducted into the College of Fellows of the American Institute of Certified Planners in 2001. I am a current member of the California Planning Roundtable, a non-profit statewide association of urban planners that addresses critical planning and development issues facing communities in California.

1.20

The following comments pertain to an analysis of the proposed City of Malibu formula retail ordinance (the "Ordinance"), with a particular focus on the Ordinance's potential to cause adverse environmental impacts. In short, as drafted, the Ordinance has the potential to create a number of economic and retail market impacts that could in turn create detrimental physical impacts in Malibu and lead to urban decay.

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Economic and Market Observations and Potential Impacts:

A. Retail Vacancies and Urban Decay

The Ordinance places significant (and, as detailed below, entirely arbitrary) restrictions on the ability of Civic Center shopping centers to lease tenant space based upon market demands, while also imposing a burdensome and costly CUP requirement on leasing what little space is permitted for formula retail. If replacement retail stores that are locally based are not available in sufficient numbers, this will result in long-term vacancies and urban decay impacts. Under CEQA, if a measure or action leads to long-term physical impacts, namely what is termed "urban decay" in the legislation, then these impacts must be studied and mitigated if they are determined to be significant.

1.22

Stanley R. Hoffman Associates, Inc.

April 10, 2013

Mr. Joseph Smith, AICP, City of Malibu

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Furthermore, indirect impacts could be felt by adjacent or nearby retailers because the formula retailers potentially impacted are the types of stores that draw both local and visitor customers to shop within the overall area. Formula retailers help in preserving a healthy and vibrant retail environment, because they act as "anchors" that draw customers that these smaller neighborhood stores can also capture. If the City limits the retailers that provide much of the draw, then those "local" retailers will wither from a drop in customers. There are an insufficient number of local merchants to take the place of the formula retailers that would be lost. Thus, in our opinion, the adjacent stores will likely also experience urban decay impacts as the overall customer base declines and vacancies proliferate. This is the potential "domino effect" of retail vacancies. This is particularly true because the Ordinance provides no remedies if a center owner cannot meet the CUP requirements or find adequate local tenants. There is no stipulation that after making a "good faith" effort to find a local tenant that a shopping center owner can fill the space with a formula tenant.

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Additionally, the Ordinance will very likely cause some retailers to view the regulatory requirements in Malibu as onerous and burdensome due to the time and cost necessary to process discretionary commercial lease permits and approvals from the City. This may reduce the number of stores likely to be interested in Malibu as a viable location and will further increase the difficulty of replacing both formula and non-formula stores that leave, thus leading to more urban decay.

1.26

As retailers find it harder and harder to locate in Malibu and long term vacancies start to occur, this will result in reduced taxable retail sales and a reduction in retail sales tax to Malibu's General Fund. This will result in a reduction in public revenues to operate and maintain the city's public services. As services decline this will lead to physical effects from under-maintained public infrastructure.

1.27

B. Movement of Formula Retail and Potential Traffic Impacts

Given the constraints of Malibu's existing land use policies, coupled with the unique setting of the Civic Center, we conclude it is unlikely that many, if any, formula retailers displaced or barred by the Ordinance's restrictions would relocate elsewhere in Malibu. There are reasons of centrality, visibility, accessibility, walkability, land availability and compatible business environment that draw formula retailers to the Civic Center area that generally don't exist in the other areas. For example, the west Malibu area has a small proportion of formula retailers and is more remote from population centers and key road connections to be attractive for many formula retailers; in contrast, the east Malibu area is largely a strip commercial corridor and does not have much available land or vacant commercial space for relocation.

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Further, City policies also reduce the potential for relocation of formula retailers to other centers. As noted in Land Use Policy 4.4.2 of the City's general plan, "The City shall limit commercial uses to neighborhood serving uses in the Las Flores, Point Dume and Trancas commercial areas." Effectively, this means that even if formula retailers of the type that the Ordinance effectively excludes from the Civic Center area wanted to relocate to these other centers, their ability to do so would be limited.

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As a result of this combination of market realities and land use restrictions, many of the excluded retailers would simply relocate to other communities. As successful formula retailers have a loyal customer base, residents of Malibu and immediately adjacent communities would drive to the new locations of displaced formula retailers. This tenant displacement and dispersion will result in changed traffic patterns and the potential for negative traffic impacts as customers from Malibu and surrounding unincorporated areas who would have to travel to farther locations to shop for goods that would now not generally be available in Malibu. This potential increase in traffic congestion and increase in greenhouse gas emissions will likely have a noticeable negative physical effect.

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In addition, the Ordinance's restrictions will cause Malibu to be underserved by some key retailers, resulting in potential traffic and circulation impacts as centers receive more traffic than they can effectively handle. For example, the Ordinance does not exempt formula drug stores, which are generally over 2,500 square feet. Thus if the Malibu market could support an additional drug store but the Ordinance would prohibit one from opening, existing centers with drug stores could generate substantially more traffic than originally envisioned, with attendant traffic and circulation impacts.

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C. Current Market Status

The Ordinance purports to address a so-called problem that does not exist. As detailed in previous submissions (apparently heretofore ignored by the City), contrary to the Ordinance's assertion, there is not a proliferation of formula retail in the Civic Center. As illustrated below in Table 1, only approximately 15% of retail square footage in the Civic Center is currently occupied by formula retail, and about 9% citywide. This table is based on the City's proposed definition of "formula retail" that identifies a retail sales or service establishment that has 7 or more locations and meets at least two of the following features: 1) standardized color scheme; 2) standardized décor; 3) standardized façade; 4) standardized layout; 5) standardized signage, a servicemark, or a trademark; and 6) uniform apparel.

Included in Table 1 as formula retail is the Marmalade Café, in the Civic Center, which has 9 locations in Southern California, a geographic area defined in the ordinance. However, all of the Marmalade Café locations are unique as shown on their website and verified by calling the Malibu location – they do not even have common signage or uniform apparel as each location is designed to fit within the lifestyle of each community where they are located. In Table 1, the café's estimated square footage of 3,600 square feet was included in the percentage calculation. If it was excluded, the percentage of formula retail in the Civic Center area would decline to about 14%.

1.31

In addition, the CVS pharmacy in the Malibu Colony Plaza is a formula retailer that the proposed Ordinance does not exempt, but is excluded from Table 1 because it is primarily a local-serving use and an earlier draft of the Ordinance exempted drug stores. However, if it were included, it would increase the percentage of formula retail in the Civic Center area to about 20% and citywide to about 11%.

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D. 2,500 Square Foot Limitation on Formula Retail Store

The proposed ordinance does not present economic justification, or even community character justification, for a limitation of greater than 2,500 square feet for a formula retail establishment. Based on our inventory of formula retail stores in the Civic Center, there are currently 6 out of 24 [25%] formula retailers that are over 2,500 square feet. If this limitation is enforced, it will limit tenant selection and the ability to draw key retailers to a particular center. Further, a number of centers have leases with co-tenancy rights, so once occupancy drops below a certain level, the other tenants can vacate regardless of their lease terms. If an establishment is local, then no such limitation applies, and this will limit competition in favor of the local tenant, even assuming that there would be enough local tenants meeting these size criteria. Since community or regional serving centers that have only tenants of 2,500 square feet or less in size do not generally exist in the retail environment, what will happen over the long-term is an eventual attrition of tenants from turnover that will leave these centers largely unleaseable and lead to urban decay.

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The 2,500 square foot limitation will also add to vacancy in the Civic Center when existing formula retail stores in excess of 2,500 square feet vacate these larger stores. New formula retail stores are prohibited and few local businesses use stores in excess of 2,500 square feet.

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Since there are no remedies in this ordinance, as mentioned above, if the center owner cannot meet the CUP requirements or find adequate local tenants, then the economic impact of lost rent for the months that the space is unoccupied, not to mention the indirect economic effect if the particular tenant had a large customer base, will lead to more urban decay.

1.34

E. CUP Process Required for Minor Expansions or Increases in Service Area

According to the proposed ordinance, a CUP shall be required for all new formula retail and for existing formula retail establishments located with the Civic Center that may relocate to a new tenant space, expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet. There is no economic justification stated in the proposed ordinance for such small quantities of space triggering a CUP. The cost of meeting these requirements of the ordinance is not factored into the cost of doing business in Malibu by the staff, nor is the deleterious effect on reducing the desirability of its retail market and even limiting the pool of potential tenants that might even consider Malibu. Again, this will lead to long-term urban decay because store owners would tend not to renew or expand their space when faced with significant processing costs and delay from a process that does not have clear criteria nor a certainty of outcome even if the process is followed.

1.35

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F. Definition of Formula Retail

What is the justification for choosing 7 or more stores as being the cutoff for formula retail along with a range of qualitative criteria? Do 7 stores in a region as large as Southern California cause sameness and loss of community character? This is certainly not true of the formula retailers in the civic center that create a retail environment that is vibrant and healthy and contributes to Malibu's unique character. Arguably, the Civic Center is one of the most unique retail centers in Southern California, if not the nation. Again, this arbitrary and restrictive cutoff level will limit the number and type of retail stores that will even consider locating in Malibu, thus making it more difficult to lease new space or release existing space.

1.36

G. Definition of a Shopping Center

"Shopping Center" is defined in the proposed ordinance as having at least 10,000 square feet of gross floor area, and where the center is on multiple parcels, it will be evaluated on a parcel level basis. By regulating centers by parcel, the Ordinance will impose an even greater regulatory burden and economic cost on centers absent a logical relationship to a center's design, accessibility and competitive positioning. For example, a store seeking to relocate within a center may actually be prohibited from doing so if it moves across parcels and causes one parcel within a center to exceed the formula retail cap.

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In addition, the city has not factored in the economic cost to the owner of "micro-managing" this process to such level. Does the city have this economic/retail expertise or will they hire a real estate consultant to administer the ordinance and impose that cost in the permitting process? This level of regulatory interference with the internal operation and management of retail centers is nearly unprecedented.

H. Summary

In summary, over the long run, there is normal turnover among tenants in shopping centers, and sooner or later, the good tenants that cannot meet the arbitrary size limits or withstand the judgmental scrutiny of the qualitative community character or uniqueness tests will fall by the wayside and significant vacancies will occur, thus leading to both urban decay and the loss of effective economic viability of these types of centers in the Malibu Civic Center. This will likely have a significant secondary effect, in that other retailers that capture some of the spillover shopping from the customers that patronize the community and regional level formula stores will also experience declines in their own sales. In addition, the dispersion of existing stores in the Civic Center, coupled with the difficulty faced by new formula stores in locating there, will lead to traffic impacts that must be examined.

1.38

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Table 1
Formula Retail as a Percent of Retail Inventory Square Footages by Subarea ¹
City of Malibu

| | Total Retail Oriented Space | Formula Retail² | Formula Retail % of Total |
|-----------------------------------|------------------------------------|-----------------------------------|----------------------------------|
| EAST MALIBU % of Total | 181,625 23.4% | 13,400 | 7.4% |
| CIVIC CENTER % of Total | 344,808 44.4% | 52,601 | 15.3% |
| WEST MALIBU % of Total | 250,303 32.2% | 2,300 | 0.9% |
| TOTAL MALIBU % of Total | 776,736 100.0% | 68,301 | 8.8% |

1. The Civic Center subarea includes all of the development around the Civic Center, including the Malibu Colony Plaza shopping center. The East Malibu subarea is everything east of the Civic Center, and the West Malibu subarea is everything west of the Civic Center.
2. In the proposed Malibu Ordinance, "Formula Retail" is defined as any type of retail sales activity and/or retail service activity conducted within a retail establishment which, along with 6 or more other existing, operational retail establishments located within Southern California, is required to maintain two or more selected features, as specified in the ordinance.

Source: Stanley R. Hoffman Associates, Inc.
Greg Stoffel & Associates

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APR 11 2013
PLANNING DEPT.

Memorandum

To: Joseph Smith, AICP
Associate Planner, City of Malibu
From: Stan Hoffman, President
cc: David Waite, Esq., JMBM
Evan Gordon, Marathon Communications
Date: April 11, 2013
Subject: Executive Summary of Economic Analysis, City of Malibu

Introduction

In response to the Malibu's proposed formula retail Ordinance, Stanley R. Hoffman Associates, Inc., in association with Gregory Stoffel & Associates, has prepared the following retail analyses and documents, copies of which are attached as Exhibits "1" through "5". This memorandum is being provided as an Executive Summary of Key Points from these studies.

1. **Retail Market Analysis, City of Malibu**, Prepared for: David Waite, Esq., JMBM, October 29, 2012
2. **Response to Preserve Malibu's October 30, 2012 Comments**, Submitted to Joseph Smith, AICP, Associate Planner, City of Malibu, November 9, 2012
3. **Updated Retail Inventory, City of Malibu**, Submitted to Joseph Smith, AICP, Associate Planner, City of Malibu, December 26, 2012
4. **CEQA Response Comments Regarding Initial Study No. 13-001 and Negative Declaration No. 13-001**, Submitted to Joseph Smith, AICP, Associate Planner, City of Malibu, April 10, 2013
5. **Formula Retail Trends in the Malibu Civic Center Area**, Submitted to Joseph Smith, AICP, Associate Planner, City of Malibu, April 10, 2013

1.39

Summary of Key Points

- Under CEQA, if a measure or action has the potential to result in long-term physical impacts, namely what is termed "urban decay" in the legislation, then these impacts must be studied and mitigated if they are determined to be significant. As our submittals show, the potential impacts are judged to be significant and need to be studied through an EIR process.
- The Ordinance purports to address a so-called problem that does not exist. As detailed in our original **Retail Market Analysis**, and then in our **Updated Retail Inventory**, contrary to the Ordinance's assertion, there is not a proliferation of formula retail in the Civic Center. Our estimates show that only approximately 15% of retail square footage in the Civic Center is currently occupied by formula retail, and about 9% citywide. If drug stores, which were originally exempted along with grocery stores, are included, only

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Stanley R. Hoffman Associates, Inc.

April 11, 2013

Mr. Joseph Smith

Executive Summary of Economic Analysis, City of Malibu

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approximately 20% of retail square footage in the Civic Center is currently occupied by formula retail, and about 11% citywide.

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- Trends in formula retail were studied for the following four centers in the Civic Center area over the past 10 years: 1) Malibu Colony Plaza; 2) Malibu Country Mart; 3) Malibu Village at Cross Creek; and 4) Malibu Lumber Yard. In summary, overall formula retail within the Civic Center area has stayed relatively stable even with ongoing turnover and replacement among various tenants within the respective centers.

1.42

- The proposed ordinance does not present an economic justification, or even community character justification, for a limitation of less than 2,500 square feet for a formula retail establishment. Based on our inventory of formula retail stores in the Malibu Civic Center, there are currently 6 out of 24 [25%] formula retailers that are over 2,500 square feet. This limitation will place tremendous hardship on property owners to lease their space and likely result in significant vacancies over the long-term. Few local businesses use store sizes in excess of 2,500 square feet.

1.43

- The Ordinance places significant, and what appears to be entirely arbitrary restrictions on the ability of Civic Center shopping centers to lease tenant space based upon market demands, while also imposing a burdensome and costly discretionary CUP requirement on leasing what little space is permitted for formula retail.

- According to the proposed ordinance, a discretionary CUP shall be required for all new formula retail and for existing formula retail establishments located within the Civic Center that relocate to a new tenant space, expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet. There is no economic justification stated in the proposed ordinance for such small quantities of space triggering a costly discretionary CUP process.

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- Furthermore, indirect impacts could be felt in adjacent or nearby retailers because the formula retailers potentially impacted are the types of stores that draw both local and visitor customers to shop within the overall area.

- Due to the Ordinance's restrictions, many formula retailers will simply relocate to other communities. This tenant displacement and dispersion will result in changed traffic patterns and the potential for negative traffic impacts as customers from Malibu and surrounding unincorporated areas travel to farther locations to shop for goods that would now not generally be available in Malibu.

1.45

- The Ordinance's restrictions will cause Malibu to be underserved by some key retailers, such as drug stores, resulting in potential traffic and circulation impacts as centers receive more traffic than they can effectively handle.

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- What is the justification for choosing 7 or more stores in Southern California as being the cutoff for formula retail along with a range of qualitative criteria? Do 7 stores in a region

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April 11, 2013

Mr. Joseph Smith

Executive Summary of Economic Analysis, City of Malibu

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as large as Southern California cause sameness and loss of community character? This is certainly not true of the formula retailers in the Civic Center that create a retail environment that is vibrant and healthy and contributes to Malibu's unique character. Arguably, the Malibu Civic Center is one of the most unique and diverse retail centers in Southern California, if not the nation.

1.47

- "Shopping Center" is defined in the proposed ordinance as having at least 10,000 square feet of gross floor area, and where the center is on multiple parcels, the percentage of formula retail will be evaluated on a parcel level basis. Since virtually every center in the Civic Center is over 10,000 gross square feet, this has the effect of regulating every center and imposing additional economic costs on smaller centers that may be more financially impacted by this ordinance than the larger centers.
- Since a center is defined by its development in totality, why is it proposed in the ordinance to be micro-scrutinized by going to a parcel level if the center is built on more than one parcel? This stipulation would impose an economic cost that has no logic in relationship to a center's design, accessibility, or competitive positioning nor an economic or community character purpose.

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In summary, over the long run, there is normal turnover among tenants in shopping centers, and sooner or later, the good tenants that cannot meet the arbitrary size thresholds or withstand the discretionary and arbitrary scrutiny of the qualitative community character or uniqueness tests will fall by the wayside and significant vacancies will occur, thus leading to both urban decay and the loss of effective economic viability of these types of centers in the Malibu Civic Center. This will have a significant secondary effect, in that, other retailers that capture some of the spillover shopping from the customers that patronize the community and regional level formula stores will also experience declines in their own sales.

1.49

Memorandum

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To: Joseph Smith, AICP
Associate Planner, City of Malibu

From: Stan Hoffman, President
Stanley R. Hoffman Associates, Inc.

Cc: David Waite, Esq., JMBM
Evan Gordon, Marathon Communications

Date: April 11, 2013

Subject: Formula Retail Trends in the Malibu Civic Center Area

SRHA Job #: 1242

Summary

Tables 1 – 4 summarize the formula tenant information that was provided by the property owners and draws upon our recent inventory information of formula retail in the Civic Center area. The data is for four centers: 1) Malibu Colony Plaza; 2) Malibu Country Mart; 3) Malibu Village at Cross Creek; and 4) Malibu Lumber Yard.

Table 5 summarizes the net change in estimated formula retail square footage from the 2002-2003 period until our current inventory tabulation of April 2013. As shown in Table 5, the overall trend has been an estimated net increase of 6,041 square feet. This represents only about 1.8% of the total estimated 344,808 retail square footage in the Civic Center. However, if the Lumber Yard, which did not have any formula retail in 2002, is excluded then the overall trend was a decrease of 4,417 square feet over this period, or only about 1.3% of the total estimated 344,808 retail square footage in the Civic Center.

In summary, under either scenario, overall formula retail within the Civic Center area has stayed relatively stable even with ongoing turnover and replacement among various tenants within the respective centers.

1.50

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Joseph Smith, AICP, Associate Planner, City of Malibu

Formula Retail Trends in the Malibu Civic Center Area

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Table 1
Malibu Colony Plaza

| Date: August 2003 | | Date: April 2013 | | Difference in SF |
|-------------------------|-----------------|-------------------------|-----------------|---------------------------|
| Store Name | Formula Sq. Ft. | Store Name | Formula Sq. Ft. | Change for Formula Retail |
| Shabby Chic | 1,080 | Clairese Beauty | 0 | -1,080 |
| Diedrich Coffee | 1,345 | Starbuck's Coffee | 1,345 | 0 |
| Mail Boxes Etc | 2,448 | Vacant | 0 | -2,448 |
| Subway | 1,296 | Subway | 1,296 | 0 |
| BlockBuster Video | 4,722 | N/A ¹ | 0 | -4,722 |
| Champagne Bakery | <u>1,017</u> | N/A ¹ | 0 | <u>-1,017</u> |
| Total Formula SF | 11,908 | Total Formula SF | 2,641 | -9,267 |

1. According to the property owner, these spaces were subdivided and are now occupied three tenants: Malibu Pets, Wells Fargo and Kasin.

Table 2
Malibu Village at Cross Creek

| Date: January 2002 | | Date: April 2013 | | Difference in SF |
|-----------------------------|-----------------|------------------|-----------------|---------------------------|
| Formula Retail ¹ | Formula Sq. Ft. | Formula Retail | Formula Sq. Ft. | Change for Formula Retail |
| Wherehouse | 4,500 | Banana Republic | 4,500 | |
| Crown Books | 6,500 | Chipotle | 2,050 | |
| Fast Frame | 1,500 | Marmalade Café | 3,600 | |
| Pizza Hut | 3,750 | RadioShack | 1,700 | |
| Ben & Jerry's | 1,000 | Sephora | 3,831 | |
| LaScala | <u>4,500</u> | True Religion | <u>1,500</u> | |
| Total SF | 21,750 | Total SF | 17,181 | -4,569 |

1. Missoni (600 sq. ft.) and Lanvin (600 sq. ft.) were also considered, but did not meet the proposed ordinance's formula retail criteria in Southern California.

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April 11, 2013

Joseph Smith, AICP, Associate Planner, City of Malibu

Formula Retail Trends in the Malibu Civic Center Area

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Table 3
Malibu Country Mart

Date: January 2002

Date: April 2013

| Formula Retail | Formula Sq. Ft. | Formula Retail | Formula Sq. Ft. | Difference in SF Change for Formula Retail |
|-------------------|-----------------|-------------------------|-----------------|--|
| Coffee Bean | 741 | Coffee Bean | 741 | 0 |
| Starbuck's Coffee | 1,550 | Starbuck's Coffee | 1,550 | 0 |
| | | Juicy Couture | 1,726 | 1,726 |
| | | L'Occitane | 520 | 520 |
| | | M. Fredric | 2,738 | 2,738 |
| | | MAC Cosmetics | 1,385 | 1,385 |
| | | Optical Shop of Aspen | 682 | 682 |
| | | Seven for All Mankind | 1,325 | 1,325 |
| | | Yosemite by James Perse | <u>1,043</u> | <u>1,043</u> |
| Total SF | <u>2,291</u> | Total SF | 11,710 | 9,419 |

Source: Stanley R. Hoffman Associates, Inc.
Malibu Property Owners

Table 4
Malibu Lumber Yard

Date: January 2002

Date: April 2013

| Formula Retail ¹ | Formula Sq. Ft. | Formula Retail | Formula Sq. Ft. | Difference in SF Change for Formula Retail |
|-----------------------------|-----------------|-----------------|-----------------|--|
| N/A | | J.Crew | 2,400 | 2,400 |
| N/A | | James Perse | 3,015 | 3,015 |
| N/A | | Kitson | 1,273 | 1,273 |
| N/A | | Lorna Jane | 800 | 800 |
| N/A | | Quiksilver | 1,770 | 1,770 |
| N/A | | Tory Burch | <u>1,200</u> | <u>1,200</u> |
| Total SF | <u>0</u> | Total SF | 10,458 | 10,458 |

1. Retail did not exist in the Lumber Yard in 2002.

Source: Stanley R. Hoffman Associates, Inc.
Malibu Property Owners

Stanley R. Hoffman Associates, Inc.

April 11, 2013

Joseph Smith, AICP, Associate Planner, City of Malibu

Formula Retail Trends in the Malibu Civic Center Area

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Table 5
Summary of Formula Retail Trend
Selected Locations, City of Malibu

| Name of Center | Formula Retail Sq. Ft. | | |
|-------------------------------|------------------------|--------------------|---------------|
| | Before ¹ | After ² | Difference |
| Malibu Colony Plaza | 11,908 | 2,641 | -9,267 |
| Malibu Village at Cross Creek | 21,750 | 17,181 | -4,569 |
| Malibu Country Mart | 2,291 | 11,710 | 9,419 |
| Malibu Lumber Yard | <u>0</u> | <u>10,458</u> | <u>10,458</u> |
| Total | 35,949 | 41,990 | 6,041 |

1. Data assembled for August 2002, for Malibu Colony Plaza, and January 2002 for the other two centers.
2. Data assembled for April 2013.

Source: Stanley R. Hoffman Associates, Inc.
 Malibu Property Owners

KRE Capital LLC
315 South Beverly Drive, #201
Beverly Hills, CA 90212

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April 11, 2013

Joseph Smith, AICP
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Comments on Initial Study No. 13-001, Negative Declaration No. 13-001

Dear Mr. Smith:

I am the owner of Malibu Village, a shopping center in the Civic Center area in which my company has recently invested substantial sums to modernize and upgrade. I am writing to comment on the City's environmental review of its proposed Formula Retail Ordinance (the "Ordinance") because I believe the Ordinance will cause substantial harm to the City's retail landscape and result in substantial environmental impacts related to urban decay, traffic and aesthetic impacts.

I am troubled that the City's environmental review ignores what shopping center owners know; namely, that placing substantial restrictions on a property owner's ability to lease a center will result in vacancies and the secondary effects of empty storefronts.

Further, the City's effort to squeeze formula retail stores from the Civic Center will only result in these stores locating elsewhere in the immediate Malibu community. Patrons will simply change their shopping patterns and follow the stores they patronize to these new locations, changing traffic patterns in a City that has a very limited street infrastructure and one main road. Property owners choose certain retail tenants because they knew there is a demand for those tenants, and that customers will travel to patronize those tenants. To ignore that customers will drive to patronize formula retail establishments forced out of the Civic Center ignores a basic truth of the retail market.

It is also important to note that non-formula retailers are generally not larger than 1,000 square feet and very rarely larger than 2,500 square feet, due to the extensive cost of building out, maintaining, and paying the operating expenses for the space, especially in a city like Malibu where operating expenses are very high. If formula retail uses are prohibited from leasing space that is 2,500 square feet and larger, those spaces will likely sit vacant, which will detract from the Malibu community. Furthermore, the lack of larger scale retail uses will result in Malibu residents driving to other areas including Santa Monica and Calabasas in order to purchase goods, which will result in unfavorable increased traffic patterns.

The City simply must undertake a more thorough environmental review of the Ordinance and its likely negative impacts.

Sincerely,



Matt Khoury
KRE Capital LLC

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VIA EMAIL

April 11, 2013

Mr. Joseph Smith, AICP
Associate Planner
City of Malibu
23825 Stuart Ranch Rd.
Malibu, CA 90265

Re: Comments on Initial Study No. 13-001, Negative Declaration No. 13-001

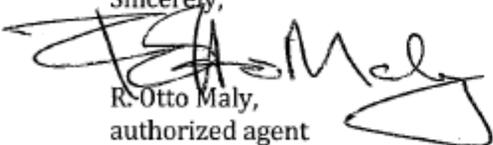
Dear Mr. Smith:

I am the authorized agent of the entities that own Malibu Colony Plaza and the adjacent gas station, urgent care center, and former United States Post Office building in the Civic Center. As authorized agent, I believe the Formula Retail Ordinance (the "Ordinance") the City of Malibu is proposing will have a drastic impact on my ability to lease retail space. I write to ask that the City reevaluate the proposed Ordinance and further consider its potential environmental impacts by completing an environmental impact report.

With my many years of experience in commercial realty, I understand the negative effects of placing restrictions on a property manager's ability to lease retail space in shopping centers. These restrictions cause vacancies hurting the area's retail environment, which can further lead to a multitude of problems that surround vacant property. An environmental impact report would disclose the negative effects of the proposed Ordinance and give the City the proper information to make an informed decision.

I urge the City to further study the Ordinance by completing an environmental impact report and take these potential impacts into consideration.

Sincerely,


R. Otto Maly,
authorized agent

KW Malibu Colony, L.L.C.
KW Partnership, L.P.
KW Two Partnership, L.P.

3.1

Item 4 - Persson, Mark
Page 1 of 1

Joseph Smith, AICP
Senior Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

April 10, 2013



RECEIVED

APR 10 2013

Re: Negative Declaration No. 13-001: Formula Retail Ordinance

PLANNINGDEPT.

Dear Joseph Smith,

The Malibu Chamber of Commerce represents business without prejudice. While the drafted Formula Retail Ordinance does point the finger at Formula or Chain stores, we believe that the Ordinance will have a negative effect on all of Malibu's businesses. Malibu has formula retail stores. Without a doubt, traffic to those stores benefits their neighboring stores. We feel that formula retail stores and non-formula stores can and should operate in harmony.

4.1

At this time, we would like to address our comments to three key areas: Lack of Alternatives and Incentives studied in the Negative Declaration, Anti-Visitor Serving nature of the Ordinance, and Lack of Consistency with Malibu's Local Coastal Plan.

The Malibu Chamber of Commerce has advocated for some time that the City consider developing incentives to achieve their goals. This is an Alternative that needs to be studied in a full Environmental Impact Report. A negative ordinance may have some success in places like Tombstone, AZ or Solvang, CA in protecting the particular "draw" or "character" of a location. What then, is the particular nature of the Civic Center that needs protection?

4.2

The Malibu Chamber of Commerce views the current drafted ordinance as profoundly Anti-Visitor serving and therefore inconsistent with the LCP. Many visitors patronize formula retail stores and discouraging these stores to open in Malibu will reduce the options visitors have to shop. Furthermore, often the most efficient and affordable shopping opportunities are provided by major formula retail outlets. While the Malibu Chamber of Commerce regularly encourages Malibu residents to shop locally, visitors to Malibu come to enjoy all of Malibu's treasures. This includes spending their dollars in numerous locations – formula and non-formula alike.

4.3

The Malibu Chamber of Commerce encourages The City Council to take another look at the drafted ordinance's lack of consistency with the LCP. It is of great concern that the proposed ordinance has not been fully analyzed as required by CEQA. The unintended consequences of the proposed ordinance have not fully been explored. Two examples are increased traffic from Malibu residents traveling to surrounding areas to visit formula retail stores and increased retail vacancy from empty formula retail stores and local shops that depend on the draw from formula retail stores.

4.4

In closing, the Malibu Chamber of Commerce encourages The City Council to fully consider all potential ramifications of the proposal with a comprehensive Environmental Impact Report. As drafted, No. 13-001 is the most aggressive of its kind and it will have unintended consequences. Without considering the above, an ordinance of this magnitude would draw on resources for many years to come.

On behalf of the Malibu Chamber of Commerce Board of Directors,
Mark Persson
Executive Director

23805 Stuart Ranch Road, Suite 105 Malibu, CA 90265
Tel/ 310 456-9025 Fax/ 310 456-0195 website www.Malibu.org

- Chairwoman of the Board**
Beth Pearcey-Neal
- Vice Chair Governmental Affairs**
Don Schmitz
- Vice Chair Finance**
Rea Miller
- Vice Chair Business Development**
Stu McNelis
- Vice Chair Membership**
Christine Hameline
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- Executive Director**
Mark Persson

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APR 09 2013
PLANNING DEPT.

MALIBU BAY COMPANY

April 9, 2013

Joseph Smith, AICP
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Comments on Initial Study No. 13-001, Negative Declaration No. 13-001

Dear Mr. Smith:

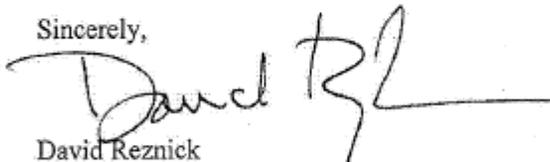
I am the President of Malibu Bay Company, one of the City's largest and longstanding commercial property owners. I have been deeply involved in City affairs for many years, and have worked hard to ensure that Malibu maintains its status as a vibrant, charming seaside community.

I write to strongly encourage the City to rethink its Negative Declaration of the proposed Formula Retail Ordinance (the "Ordinance"). The Ordinance's proposed leasing restrictions will directly impact the ability of centers to effectively lease tenant space. Decades of experience operating dynamic retail centers has taught me that placing substantial restrictions on a property owner's ability to lease a center will result in vacancies and the secondary effects of empty storefronts.

Further, the proposed Ordinance will discourage formula retailers from locating in Malibu forcing its residents to do more shopping in the surrounding communities. This will require residents to do more driving. The resulting increase in traffic has not been studied and needs to be fully evaluated.

I care deeply about Malibu's success and know that successful retail businesses are a vital part of the City's health. The proposed Ordinance threatens Malibu's vibrant retail environment, and I urge the City to properly study its potential negative impacts.

Sincerely,



David Reznick
Malibu Bay Company

5.1

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



RECEIVED
APR 09 2013
PLANNING DEPT.

April 9, 2013

City of Malibu
Planning Department
Attn: Joseph Smith
23825 Stuart Ranch Road
Malibu, CA 90265

Subject: Initial Study No. 13-001 and Negative Declaration No. 13-001

Dear Mr. Smith:

Commission staff has reviewed the subject Initial Study and Negative Declaration regarding the proposed amendment to the City's Municipal Code to conditionally regulate formula retail businesses in the Civic Center commercial district and several other areas. We would like to offer the following preliminary comments.

Land Use and Planning. The draft ordinance could affect the kind, location, intensity, or density of land use allowed in several zone categories within the Coastal Zone. This includes the potential for the City to require a conditional use permit for (or deny) development that is permitted in the applicable zone and otherwise consistent with all policies and provisions of the certified LCP. For the formula retail ordinance to be an applicable standard of review for development subject to a coastal development permit, it must be included in the City's certified Local Coastal Program. We suggest that the City concurrently process an LCP amendment that incorporates the proposed additional regulations.

6.1

One issue raised by the proposed ordinance relates to the priority given by the policies and provisions of the LCP to visitor-serving retail uses, both in the "Commercial Visitor Serving" (CV) zone and the other commercial zones. The proposed additional findings for conditionally permitting formula retail have the potential to adversely affect the provision of visitor-serving retail uses on commercial sites in the City. This potential impact should be evaluated and revisions made to the proposed ordinance, as necessary, to ensure consistency with the policies of the City's certified Land Use Plan.

Thanks for your consideration.

Sincerely,

Deanna Christensen
Coastal Program Analyst

Item 7 - Gold, Robert
Page 1 of 2

Joseph Smith

RECEIVED

From: Robert Gold <rgold@bigrockpartners.com>
Sent: Tuesday, April 09, 2013 11:34 AM
To: Joseph Smith
Cc: Joyce Parker-Bozylinski; Richard Ackerman
Subject: Initial Study No. 13-001 and Negative Declaration No. 13-001 Formula Retail Ordinance

APR 09 2013
PLANNING DEPT.

Dear Mr. Smith:

Thank you for the opportunity to comment on Initial Study No. 13-001 and Negative Declaration 13-001 hereinafter collectively referred to as the "Formula Retail Ordinance".

PCH Project Owner, LLC ("PCH Project Owner") is the owner of the so-called Crummer Site (APNs 4458-018-002, 4458-018-019, and 4458-018-019) and objects to inclusion of the Crummer Site in the proposed Formula Retail Ordinance.

The Initial Study indicates on "The proposed ordinance further encompasses the vacant Crummer development site...in the event the parcels were to include a future commercial component. At present, the Crummer site is only proposed for residential and open space; however, no approvals have been secured from the City establishing such use and the parcel remains under the Planned Development zoning and land use designations."

The City of Malibu's General Plan, its Municipal Code and Malibu's Local Coastal Plan Land Use Zoning Map designate the Crummer Site as Planned Development. Malibu's LIP Chapter 3, Section Q.1 provides "the PD District is intended to provide for a mix of residential and recreation development of the Crummer Trust property...". Commercial use is not a permitted use in the PD zone and such a use would require the City file for a Local Coastal Plan Amendment.

Since the Crummer Site is zoned PD and commercial uses are not permitted in the PD zone, the concern that development of the Crummer Site might "include a future commercial component" is unwarranted and the inclusion of the Crummer Site in the proposed Formula Retail Ordinance unnecessary.

We respectfully request that Section 17.66.130 D of the proposed Formula Retail Ordinance be amended by removing "and the Crummer Site" from the definition of the Civic Center commercial district and that all references to the Crummer Site be removed from the proposed Formula Retail Ordinance.

Thank you.

Respectfully submitted,

Robert Gold

Robert Gold, Vice President
BRP Management, LLC
315 S. Beverly Drive, Suite 211
Beverly Hills, CA 90212
Direct Dial: 310-734-2353

7.1

Item 7 - Gold, Robert

Page 2 of 2

Mobile: 310-880-7155

Please consider the environment before printing.

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KOSS Real Estate
Investments

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APR 09 2013
PLANNING DEPT.

April 8, 2013

Joseph Smith, AICP
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Comments on Initial Study No. 13-001, Negative Declaration No. 13-001

Dear Mr. Smith:

I have been the Managing Partner of the Malibu Country Mart, a major shopping center in the City's Civic Center area, since 1985. I write regarding the City's proposed Formula Retail Ordinance (the "Ordinance"), and specifically to comment on the City's proposed Negative Declaration for the Ordinance.

My experience owning the largest shopping center on Forest Avenue in Laguna Beach since 1986 leads me to a very different conclusion regarding the potential environmental impacts of the Ordinance. In short, Laguna Beach implemented retail restrictions and the resulting restrictions on leasing options has resulted in significant on-going vacancies at my property and many others in the city's main shopping district. Further, almost all the stores at my Laguna Beach center and the surrounding community are lower end stores and stores that cater to tourists.

My experience with retail vacancies in Laguna Beach, coupled with my 30+ years of experience as an owner of and investor in commercial properties throughout southern California, leads to my professional opinion that the Ordinance will have a substantial negative impact on the leasing prospects for centers in the Civic Center area. The City's proposed Negative Declaration, which holds that the Ordinance would not potentially result in substantial retail vacancies, attendant urban decay, and negative aesthetic impacts in the Civic Center, is not grounded in reality. The City must properly study these potential impacts before it rushes headlong into what could be a very damaging change in land use policy.

The Country Mart is a vibrant, diverse commercial center and a longstanding part of the Malibu community. The City must undertake the proper study to ensure it, and other Civic Center shopping destinations, can remain so.

Sincerely,



Michael Koss
General Partner
Malibu Country Mart

8.1

RECEIVED
APR 09 2013
PLANNING DEPT.

STERLING REAL ESTATE PARTNERS, LLC

1033 Skokie Blvd.
Suite 600
Northbrook, IL 60062
(847) 480-4000
(847) 480-0199 Fax

April 9, 2013

Mr. Joseph Smith, AICP
Associate Planner
City of Malibu
23825 Stuart Ranch Rd.

Re: Comments on Initial Study No. 13-001, Negative Declaration. 13-001

Dear Mr. Smith:

I am the manager of the entity that owns the Malibu LaPaz Ranch, LLC development in the Civic Center. As a shopping center owner, I know that the City's proposed Formula Retail Ordinance will dramatically impact my ability, and the ability of other centers in Malibu, to successfully lease retail space. The Ordinance could work dramatic harm on what is currently one of the best retail environments in all of Los Angeles County.

The City's dismissal of any potential effects as a result of the Ordinance is not grounded in an understanding of the City's retail environment or how centers must respond to customer demands and the broader retail market. I believe the City must undertake proper environmental review of the Ordinance so that the public is fully informed about the Ordinance's potential impacts and the City decision makers have the proper information to make an informed decision. The City should ask no less of itself than it does of others.

The City's Initial Study and proposed Negative Declaration dismiss, absent citation to any study or analysis, the prospect that shopping centers in the Civic Center could experience vacancies or urban deterioration, because of the incredible limitations the ordinance would place on leasing to formula retail operators. The City must ground its environmental analysis in objective facts, not conjecture that conveniently fits the policy objectives of some officials.

The City should complete an environmental impact report for the Ordinance so that the Ordinance's true impacts can be disclosed.

Sincerely,



Jeffrey Perelman
Sterling Real Estate Venture II, LLC

9.1

RECEIVED
APR 09 2013
PLANNING DEPT.

April 9, 2013

Joseph Smith, AICP
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Comments on Initial Study No. 13-001, Negative Declaration No. 13-001

Dear Mr. Smith:

I am the Vice President for Legal-Leasing for Glimcher Malibu, LLC ("Glimcher"), the owner of the Malibu Lumber Yard, a major shopping center in the Civic Center area. Glimcher acquired the ground leasehold interest in this shopping center a little less than a year ago, with great expectations. Having observed the recent activities and discussions regarding the adoption by the City of Malibu of a proposed Formula Retail Ordinance, I am moved to comment on the City's environmental review of its proposed Formula Retail Ordinance (the "Ordinance") because I believe the City has not properly studied the potential environmental impacts of the Ordinance.

The City's environmental review makes two erroneous assumptions. First, the City assumes that if the Ordinance forces formula retail operators out of the Civic Center they will not relocate to nearby communities, and thus the Ordinance will not change City traffic patterns as residents drive to the new locations of said retailers. As one with extensive expertise in leasing to retailers of all types, I can state emphatically that many formula retailers have very loyal customers who will seek out their preferred retailers because they satisfy a specific need. These customers will certainly drive if their preferred retailers move.

Second, the City assumes, without any survey of property owners or study of retail realities, that the Ordinance's restrictions on leasing will not result in substantial retail vacancies, beginning a cycle that can eventually lead to general urban decay. Leasing must be able to adapt to changing market realities. Further, successful centers have a balance of local and national retailers, with national retailers often anchoring a center and providing the financial foundation and customer foot traffic necessary to permit leasing to smaller, local merchants.

I urge the City to properly study the potential significant environmental impacts that could arise from the Ordinance.

Sincerely,



Neil Van Winkle
Vice President, Legal-Leasing
Glimcher Malibu, LLC

10.1

Soboroff Partners

RECEIVED
APR 08 2013
PLANNING DEPT.

April 8, 2013

Joseph Smith, AICP
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Comments on Initial Study No. 13-001, Negative Declaration No. 13-001

Dear Mr. Smith:

I am longtime property owner in the Civic Center and friend of Malibu. I believe that an environmental review for a proposed Formula Retail Ordinance (the "Ordinance") is necessary.

The ordinance is discriminatory (to specific property owners) and has unintended consequences. I am interested in the coastal commission comments as well, as this ordinance is basically putting up "entry" gates to the City of Malibu, saying to tourists "you are not welcome".

The ordinance has many obvious potential impacts, and the City would be best served to study them factually, not emotionally from folks who are upset about something that happened in Trancas or Point Dume.

Respectfully,



Steve Soboroff

11.1

Joseph Smith

From: Preserve Malibu <preservemalibu@gmail.com>
Sent: Saturday, April 06, 2013 3:15 PM
To: Joseph Smith; Joyce Parker-Bozylinski
Subject: CEQA COMMENT

RECEIVED
APR 08 2013
PLANNING DEPT.

Dear Joseph,

We wish to include this as a CEQA comment on the legality of Formula Business Ordinances in California.

"A California Appeals Court decision upheld Coronado's formula retail ordinance in June 2003 after several property owners challenged the law. The court ruled that the ordinance does not violate the US Constitution's commerce and equal protection clauses, and is a valid use of municipal authority under California state law.

Most of the decision deals with the property owners' contention that the law discriminates against out-of-state companies and thereby violates the Constitution's dormant commerce clause. The court found that the law does not in fact "impose different regulations on interstate as opposed to intrastate businesses, nor does it distinguish between those businesses that are locally owned and those that are owned by out-of-state interests." The court noted the law focuses on whether the store is contractually required to have standardized features, regardless of whether it is part of a national chain or owned by a California resident.

12.1

The court also ruled that the law did not have a discriminatory purpose. The ordinance's lengthy preamble states that the city seeks to maintain a vibrant and diverse commercial district, and that the unregulated proliferation of formula businesses would frustrate this goal and lessen the commercial district's appeal. The court concludes that this is a legitimate purpose, noting that "the objective of promoting a diversity of retail activity to prevent the city's business district from being taken over exclusively by generic chain stores is not a discriminatory purpose under the commerce clause."

The court also dismissed the equal protection and state law challenges, stating that the ordinance is rationally related to a legitimate public purpose."

Preserve Malibu

Joseph Smith

From: Miles Feinberg <milesfeinberg@gmail.com>
Sent: Wednesday, March 27, 2013 11:04 AM
To: Joseph Smith
Subject: Formula Ordinance

RECEIVED
MAR 27 2013
PLANNING DEPT.

Mr. Smith,

I have written to you in the past about my concerns as a long time resident of Malibu about a "Diversification Ordinance." Now it appears I need to voice my opposition for a "Formula Retail Ordinance." As I stated back in March of 2012, there is NO problem in Malibu with regard to an over-saturation of chain or "formula stores." Your own studies told us this much. Following this over the last year, it seems this mythical issue has been debunked even further. However, here we are discussing similar restrictive regulation—only now with a new name. It's a shame that the city is allowing a small group of locals who predominantly live on one end of town and don't even visit the Civic Center, to help advance this ridiculous policy that makes no sense, and is likely illegal. Has the Coastal Commission weighed in on this? I imagine they would have major concerns.

As far as your Initial Study goes, I can appreciate you checking the "no impact" box over and over again with regards to things like agriculture, fish and wildlife, landslides and minerals. However, I see nothing in the document about major economic consequences. You completely glean over traffic as an impact. Malibu is so limited by its lack of street infrastructure (PCH) that to say traffic will not be significantly impacted is just plain false. If you are so concerned with the Civic Center maintaining its "rural charm and small-town feel," as you say in the CEQA document, then why aren't you pushing for a design review program? Regulating aesthetics seems far less invasive and anti-business then the current proposal.

13.1

In conclusion, you really need to take a more comprehensive look at how this ordinance would affect Malibu in the long run. Specifically, I believe the economic, social and traffic impacts would be considerable.

Thank you for your consideration.

Miles Feinberg

21365 PCH

Malibu, CA 90265

RECEIVED
MAR 18 2013
PLANNING DEPT.



David P. Waite
Direct: (310) 785-5319
Fax: (310) 712-3319
Dwaite@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

March 18, 2013

VIA EMAIL AND OVERNIGHT MAIL

Joseph Smith, AICP
Senior Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Initial Study No. 13-001 and Negative Declaration No. 13-001: Formula Retail Ordinance

Dear Mr. Smith:

This office represents a group of commercial property owners (the "Owners") in the City of Malibu ("City") concerned with the City's proposed formula retail ordinance (the "Ordinance"), a draft of which the City released on March 12, 2013. Based on a review of the scope and requirements of the Ordinance undertaken by this office and leading real estate market research and planning firms retained by JMBM on behalf of the Owners, a fair argument can be made that the Ordinance may have a significant effect on the environment, requiring preparation of an environmental impact report ("EIR"), as detailed below. 14 C.C.R. sec. 15064(f)(1).

14.1

I. TRANSPORTATION AND TRAFFIC IMPACTS

The purpose of the ordinance is to limit the presence of formula retail establishments in the Civic Center area. Limiting such establishments in the Civic Center will result in substantial customer dislocation and dispersion as an established consumer base will be required to find alternative locations for goods and services that are available in the Civic Center. Most customers will identify the opportunity to purchase goods and services at alternative retail locations throughout the region. Formula retailers, in turn, will choose new alternative locations without regulatory barriers to entry, which will impact the distribution of traffic throughout the City, including circulation patterns and intersection levels of service. This seems particularly true given Malibu's limited street infrastructure.

14.2

JMBM retained Stanley R. Hoffman Associates, Inc., ("Hoffman") a leading urban economics and real estate market research firm with deep experience in analyzing the effects of city land use and zoning policies on retail environments, to analyze the likely effects of the Ordinance. Hoffman was aided in its analysis by Stoffel & Associates, a firm with commercial real estate expertise. Among other things, Hoffman's analysis (which will be

Joseph Smith
 March 18, 2013
 Page 2

submitted to the City under separate cover) concludes that (1) the Ordinance would result in a loss of formula retail in the Civic Center area, and (2) due to reasons of "centrality, visibility, accessibility, walkability, land availability and compatible business environment" the Civic Center area is at the confluence of commercial activity in Malibu, and very few formula retailers would relocate in other areas of Malibu. Further, even if formula retailers wanted to relocate elsewhere in the City, the City's existing land use policies, such as Land Use Policy 4.4.2 ("The City shall limit commercial uses to neighborhood-serving uses in the Las Flores, Point Dume and Trancas commercial areas") would effectively prohibit such movement.

Due to these policy and market realities, Hoffman concludes that most excluded formula retailers would likely locate to surrounding communities, which would "increase the traffic flow of local households in Malibu and households in the surrounding unincorporated areas who would have to travel to farther locations to shop for goods that would not generally be available in Malibu." Given this conclusion, at a minimum the City must study the likely traffic and distribution impacts of the Ordinance.

Rather than acknowledge these likely impacts and study them, in Initial Study No. 13-001 ("Initial Study") the City dismisses them, stating "The proposed ordinance is not anticipated to have any impacts on transportation/traffic in the [Civic Center] district or its vicinity." The Initial Study further states that because the Civic Center area maintains more consumer traffic and visibility than other commercial areas in the City, "the proposed ordinance is not expected to result in increased formula retail activity, including pedestrian and vehicle-related traffic, elsewhere in the City." As the Hoffman review explains, this assumption is deeply flawed. Further, the Initial Study misapprehends the central legal issue. The legal test is not whether the Ordinance will result in increased vehicle traffic elsewhere in the City due to the relocation of retail only within the City, but whether it will alter traffic patterns and rates such that it causes significant environmental impacts in the City regardless of the destination of vehicles. In other words, the Ordinance may cause traffic impacts because of a dramatic increase in vehicle trips to retail stores outside of the City.

14.2

Incredibly, the Ordinance itself contradicts the Initial Study and aligns with Hoffman's analysis. In Recital "D", the Ordinance states that "formula retail establishments generally do not offer goods and services that are not readily available at other establishments within a reasonable proximity, especially in the highly-urbanized areas of greater Los Angeles and Southern California[.]" Thus the Ordinance recognizes the obvious -- if formula retailers are unable to locate in the Civic Center, they will locate in areas outside of Malibu, and Malibu residents (and some visitors) will drive to those locations. The Ordinance's environmental review is therefore deficient, as it does not analyze a potential impact identified by the Ordinance itself.

II. ECONOMIC IMPACTS AND PHYSICAL DECAY

Perhaps more troubling than traffic impacts are the Ordinance's likely impacts on the overall economic health and vitality of the Civic Center, and the attendant spillover effects on

14.3

Joseph Smith
March 18, 2013
Page 3

remaining retailers. Because the formula retail targeted by the Ordinance is located in only a few existing retail centers, effects on those centers could be dramatic. The loss of formula retail tenants, due to an Ordinance cap and burdensome permitting requirements, will require property owners to fill retail spaces with local merchants.

Hoffman concludes that a lack of locally-based merchants "could result in long-term vacancies and urban decay impacts." Hoffman notes that such impacts would not be limited to formerly formula retail space, as "the formula retailers potentially impacted are the types of stores that draw both local and visitor customers to shop within the overall area. Thus, in our opinion, the adjacent stores could also experience urban decay impacts as the overall customer base declines." Such decay would in turn result in reduced taxable retail sales and a reduction in tax from sales to Malibu's General Fund, which would directly impact the City's ability to operate and maintain public services and infrastructure.

While economic and social impacts are not by themselves environmental impacts under CEQA, a "lead agency shall consider the secondary or indirect environmental consequences of economic and social changes." *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 170 (1985) [lead agency must "consider physical deterioration of the downtown area to the extent that potential is demonstrated to be an indirect environmental effect of the proposed shopping center."]; *Citizens for Quality Growth v. City of Mt. Shasta* 198 Cal.App.3d 433, 446 (1988) [City must consider the "business closures and physical deterioration of the downtown area" and whether that "potential is demonstrated to be an indirect environmental effect of the proposed project."].

14.3

In the face of expert opinion regarding the likely impacts of the Ordinance on the Civic Center's retail environment, the City must consider and study the potential physical environmental effects of retail degradation and urban decay. This is particularly important given that the LCP recognizes the Civic Center as the center of Malibu's retail environment, noting that the "area contains the largest aggregation of existing and planned commercial uses in the City as well as the regional administrative offices of the County of Los Angeles, courts, library, and the City of Malibu's offices. Uses included in the commercial area are food stores, restaurants, small general clothing and specialty shops, financial institutions, and entertainment establishments." LCP Chapter 5(A).

Further, retail vacancies would "substantially degrade the existing visual character or quality" of the Civic Center area, another widely recognized potential environmental impact. See CEQA Guidelines, Appendix G; see also *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 902 [in CEQA context, key aesthetic consideration is whether a project will impact public views, vistas or view from scenic highways.] The Civic Center area is located directly along Pacific Coast Highway, across from the ocean and adjacent to the Malibu Lagoon. The likely degradation of the Civic Center's visual character and quality due to retail vacancies brought about by the Ordinance's restrictions would be a significant environmental impact.

Joseph Smith
 March 18, 2013
 Page 4

Again, the Initial Study improperly dismisses these concerns, in essence banking on the notion that Malibu is immune from urban decay by stating "Given the nature and commercial history of the Civic Center it is not anticipated that vacant tenant spaces associated with a proposed formula retail use would...result in blight, deterioration or substantial diminishment of values." First, relying on the history of retail in the Civic Center is nonsensical given that the Ordinance would substantially limit and potentially eliminate a large percentage of that very retail. Second, given the substantial limitations the Ordinance places upon the ability to lease to formula retailers (e.g., limiting individual retailers to under 2,500 square feet, while numerous formula retail spaces in the City are currently greater than 2,500 square feet), substantial vacancies and resulting urban delay is most certainly not speculative, as Hoffman reasonably concludes. This is particularly true for larger spaces, such a drug stores, which were built to house specific larger tenants, cannot be rented to local tenants (because local tenants do not exist for such spaces) and do not work economically if they are divided into smaller spaces, due to building design and the requirements of smaller tenants.

14.3

III. LAND USE CONFLICTS

In a remarkable about-face, the City now posits that the Ordinance will not require an amendment to the LCP. City staff previously recognized that the Ordinance conflicts with the LCP, as the LCP does not require discretionary approvals for retail uses in the Civic Center area.¹ Now the Initial Study simply states that "the proposed ordinance is consistent with the Coastal Act and the LCP because it protects, maintains and enhances the overall quality of the coastal zone environment." Again, the City misapprehends the threshold legal question. Consistency with the Coastal Act is the standard of review for any proposed LCP amendment, but the initial determination of whether an LCP amendment is in fact required must be addressed in the first instance.

Even if the City correctly and properly proposed the necessary amendment to the LCP providing for discretionary approvals for retail uses in the Civic Center, such an amendment will not cure overall conflicts with the LCP and the Coastal Act. The Coastal Act mandates that cities not interfere with or create barriers to visitor-serving uses along the coast. *See* Coastal Act section 30213 ["Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided"; *see also* Malibu LCP Policy 2.36]. The Ordinance would limit visitor-serving formula retail establishments even when these establishments provide a range of goods and services at lower costs than Malibu-based businesses, conflicting with the Coastal Act's mandate to protect and encourage lower cost visitor-serving facilities.

14.4

¹ *See, e.g.*, Appendix 1, Table B of the LIP, which is entitled "Permitted Uses" and details the myriad possible land uses in the City by zone, and whether a discretionary approval such as a CUP is required in a zone. Given that the LIP, which implements the LCP, makes no distinction between formula and non-formula retail uses with respect to what land uses are permitted by right or only with discretionary approval, there is a clear conflict between the LCP and the ordinance.

Joseph Smith
March 18, 2013
Page 5

Further, the Coastal Act section 30250 requires the location of new development within or in close proximity to existing development so as to minimize encroachment on undeveloped coastal land. In restricting formula retail development, the Ordinance will create development pressure along the coast as formula retail establishments seek locations unhindered by the Ordinance to serve their local and coastal visitor customers. It is undisputed that one of the foremost goals of section 30250 (and indeed, the entire Coastal Act) is to minimize development impacts along the coast and maintain pristine coastal resources. Conflict with section 30250 will therefore create "conflict with [a]...policy...adopted for the purpose of avoiding or mitigating an environmental effect", necessitating preparation of an EIR. See CEQA Guidelines, Appendix G.

Additionally, by causing what could turn out to be a substantial reduction in the presence of formula retail stores that are visited by millions of visitors to the City annually, the Ordinance may have a significant impact on the presence of visitor-serving uses that cannot be mitigated. Malibu LCP Policy 5.12 states that "Visitor serving retail uses shall be permitted in all commercial zones in the City." While the Ordinance would not prohibit such uses, it would significantly limit their presence if they are formula retail establishments, substantially undercutting Malibu's (and in turn, the Coastal Commission's) land use policy.

On behalf of the Owners, we respectfully request that the City properly study the multiple potential environmental impacts the Ordinance may cause, and prepare an EIR.

Very truly yours,



DAVID P. WAITE of
Jeffer Mangels Butler & Mitchell LLP

DPW:amd

cc: Alex DeGood, JMBM
Christi Hogin, City Attorney
Brian Abers
Jay Gilberg
Michael Heslov
Matt Khoury
Michael Koss
Cindy McAfee
Jeff Perelman
David Reznick
Steve Soberoff
Neil VanWinkle

14.4

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
(916) 657-5390 - FAX

April 9, 2013

RECEIVED

APR 11 2013

PLANNING DEPT.

Mr. Joseph Smith, AICP, Senior Planner

City of Malibu

23825 Stuart Ranch Road
Malibu, CA 90265

RE: SCH# 2013031034 /CEQA Notice of Completion proposed Negative Declaration) for the **Conditionally Regulate Formula Retail Businesses in the Civic Center Commercial District Project**; located in the City of Malibu; Los Angeles County, California.

Dear Mr. Smith:

The Native American Heritage Commission (NAHC) has reviewed the CEQA Notice regarding the above referenced project. In the 1985 Appellate Court decision (170 Cal App 3rd 604), the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources impacted by proposed projects, including archaeological places of religious significance to Native Americans, and to Native American burial sites.

The California Environmental Quality Act (CEQA) states that any project that causes a substantial adverse change in the significance of an historical resources, which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA guidelines 15064(b)). To adequately comply with this provision and mitigate project-related impacts on archaeological resources, the Commission recommends the following actions be required:

Contact the appropriate Information Center for a record search to determine :If a part or all of the area of project effect (APE) has been previously surveyed for cultural places(s), The NAHC recommends that known traditional cultural resources recorded on or adjacent to the APE be listed in the draft Environmental Impact Report.

If an additional archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey. We suggest that this be coordinated with the NAHC, if possible. The final report containing site forms, site significance, and mitigation measurers should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure pursuant to California Government Code Section 6254.10.

Contact has been made to the Native American Heritage Commission for :a Sacred Lands File Check. A list of appropriate Native American Contacts for consultation concerning the project site has been provided and is attached to this letter to determine

15.1

if the proposed active might impinge on any cultural resources. Lack of surface evidence of archeological resources does not preclude their subsurface existence.

Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities. Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans. Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

15.1

Sincerely,



Dave Singleton
Program Analyst
(916) 653-6251

CC: State Clearinghouse

Attachment: Native American Contacts list

| | |
|--|--|
| | |
|--|--|

**Native American Contacts
Los Angeles County
April 9, 2013**

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1931 Shadybrook Drive
Thousand Oaks, CA 91362
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Fernandeño

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(805) 646-6214

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ndnRandy@yahoo.com
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Chumash
Fernandeño
Tataviam
Shoshone Paiute
Yaqui

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(805) 216-1253 Cell

Chumash

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Chumash

San Luis Obispo County Chumash Council
Chief Mark Steven Vigil
1030 Ritchie Road
Grover Beach CA 93433
(805) 481-2461
(805) 474-4729 - Fax

Chumash

Carol A. Pulido
165 Mountainview Street
Oak View, CA 93022
805-649-2743 (Home)

Chumash

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2013031034; CEQA Notice of completion; proposed Negative Declaration for the Conditionally REgulated Formula Retail Businesses in the Civic Center Commercial District; located in the City of Malibu; Los Angeles County, California.

**Native American Contacts
Los Angeles County
April 9, 2013**

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com

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This list is current only as of the date of this document.

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This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2013031034; CEQA Notice of completion; proposed Negative Declaration for the Conditionally REgulated Formula Retail Businesses in the Civic Center Commercial District; located in the City of Malibu; Los Angeles County, California.

Responses to 15 CEQA-Related Comments - City of Malibu Formula Ordinance (2013)

Comment Response

- 1.1 This comment identifies the contents included in a submittal package provided on behalf of commenter David Waite of Jeffer Mangels Butler & Mitchell, LLP. Note as of May 21, 2013, Mr. Waite is with Cox, Castle & Nicholson LLP, 2049 Century Park East, 28th Floor, Los Angeles, California 90067. Note that Items 5 (Retail Market Analysis), 6 (Response to Preserve Malibu Comments), and 7 (Updated Retail Inventory) were previously submitted to the City; summarized responses to these items is included in the Initial Study (IS) / Negative Declaration (ND) response to comments, but the three documents are not itemized below. Items 1, 2, 3, 4, and 8 are itemized and commented upon specifically in the IS/ND response to comments.
- 1.2 This comment contains introductory and general information. The commenter represents a group of commercial property owners in the Civic Center (Civic Center owners). No further response is required.
- 1.3 The comment consists of legal conclusions based upon the opinions expressed by other commenters. Responses to those comments are provided herein.
- 1.4 The commenter concludes that an Environmental Impact Report (EIR) is required to evaluate potential impacts in two criteria: Aesthetics and Traffic/Transportation. The commenter relies entirely on the opinions express in comment letters submitted by ESA and Stanley Hoffman Associates. Responses to those comments letters are set forth herein.

Staff has extensively researched and investigated the experiences of other California cities that have adopted and implemented similar ordinances. Staff's investigation included phone interviews with planners in several of those jurisdictions. Staff questioned planners in each jurisdiction regarding the direct and indirect effects experienced since the adoption and implementation of the formula retail restrictions. None of the jurisdictions reported any adverse physical or economic changes as a result of the ordinance, including Coronado and Laguna Beach which have adopted formula ordinances in similar scope to the project.

Fifteen California cities currently regulate formula uses. These include the following and note the year of adoption: 1) Arcata, 2002; 2) Benicia, 2007; 3) Calistoga, 2000; 4) Carmel-by-the-Sea, mid-1980; 5) Coronado, 2000; 6) Cotati, 2007; 7) Laguna Beach, 1989; 8) Ojai, 2007; 9) Pacific Grove, 1999; 10) Richmond, 2012; 11) San Francisco, 2004; 12) San Juan Bautista, 2007; 13) Sausalito, 2003; 14)

Solvang, 1994 and 2007; and 15) Sonoma, 2012.

- 1.5 The commenter repeats his legal contention that the City is required to prepare an EIR for the project. The commenter also claims that the Initial Study and Negative Declaration are littered with unsupported claims.

All of the following information was relied upon in preparation of the draft ordinance and the IS/ND. All of this information is included in the public record as part of past public hearings before the City Council, Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES), and community meetings on the ordinance.

- 1) Inventories of existing commercial baseline conditions in the Civic Center;
- 2) Potential for future build-out scenarios of the Civic Center based on vacant land area and a minimum 0.15 floor area ratio (FAR);
- 3) Consideration of future commercial square footage related to projects in the Civic Center that are entitled and under review by the Planning Department;
- 4) Extensive public review and input on the concept of regulating formula uses at ten public hearings with the City Council, six ZORACES meetings, and three community meetings related to the proposed ordinance concept since 2006;¹
- 5) Land use controls to promote the aesthetic look and feel of the Civic Center by avoiding the proliferation of visual elements associated with formula establishments that project an overwhelming sense of sameness and familiarity (the proposed ordinance, at its very nature, is intended to control the potential of adverse aesthetic impacts resulting from an accumulation of formula establishments concentrated in the Civic Center);
- 6) Exemptions in the draft ordinance for all existing formula retail establishments, including grocery, gas stations, and banks and financial services;²

¹ This item has an extensive history and the subject of several public hearings since first introduced at the City Council meeting on December 11, 2006. After three years of consideration, the item was tabled by the City Council at the July 27, 2009 meeting. At that meeting, Council considered whether or not the City should prepare the ordinance on the April 2010 ballot. The item was brought back at the May 9, 2011 Council meeting where staff was directed to review the item as part of a package of options with ZORACES. Two ZORACES meetings were held on June 6, 2011 and June 28, 2011. Following, the item was part of the discussion at the October 10, 2011 and March 26, 2012 City Council meetings. At the November 13, 2012 meeting, the City Council directed staff to prepare a formula retail ordinance with community input. Staff held a community meeting on December 13, 2012 to obtain feedback from the public on criteria for use in the ordinance. A series of questions utilizing keypad polling was facilitated by the Davenport Institute at Pepperdine University School of Public Policy at that meeting.

² Since circulation of the draft ordinance and IS/ND, the list of exemptions was increased to include drug stores/pharmacies, real estate, and insurance pursuant to the original direction by the City Council on November 13, 2012; post offices given the necessity of this service to the community; medical uses given the necessity of these

- 7) Malibu Economic Services Study (2007) prepared by Applied Development Economics;
- 8) Alternatives including a Civic Center Specific Plan, design regulations, and modified findings for conditional use permits (CUPs) applicable to formula uses (different from the proposed ordinance);
- 9) Publications on formula retail regulations in concept and in other jurisdictions;
- 10) Evaluation of formula ordinances adopted and in effect at other municipalities in California, Washington, Idaho, Texas, Florida, Rhode Island, Connecticut, New York, Maryland, and Maine.

Cities with similar ordinances include:

a) California:

1. Arcata
2. Benicia
3. Calistoga
4. Carmel-by-the-Sea
5. Coronado, Senior Planner Ann McCaull, (619) 522-2415
6. Cotati
7. Laguna Beach, Planning Manager Ann Larson, (949) 497-0320
8. Ojai, Community Development Director, Rob Mullane, (805) 646-5581
9. Pacific Grove
10. Richmond
11. San Francisco
12. San Juan Bautista
13. Sausalito
14. Solvang
15. Sonoma

b) Washington:

1. Bainbridge Island
2. Port Townsend

c) Idaho:

1. McCall

d) Texas:

1. Fredricksburg

e) Florida:

1. Sanibel

services to the community (e.g., UCLA medical center); and lower-cost overnight accommodations for conformance with the City's LCP, specific to LCP Land Use Policies (LUP) Policies 2.34 to 2.36.

- f) Rhode Island:
 - 1. Bristol
- g) Connecticut:
 - 1. Fairfield
- h) New York:
 - 1. Port Jefferson
- i) Maryland:
 - 1. Chesapeake City
- j) Maine:
 - 1. Ogunquit
 - 2. York

The list of sources in the IS/ND has been updated to account for the information listed above. In addition, the list of exempted formula uses has been expanded to include the following: drug stores/pharmacies, real estate, insurance, post offices, medical, and lower-cost overnight accommodations.

As stated in the IS, the City determined that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to the so-called “common sense” exemption set forth in section 15061(b)(3) of the CEQA Guidelines which applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This exemption has been relied upon by several cities in California that have adopted similar ordinances, including Arcata, Calistoga, Coronado, Cotati, Ojai, San Francisco, San Juan Bautista, Solvang, and Sonoma. However, without waiving its right to rely on the applicable exemption, the City nevertheless undertook the Initial Study to provide meaningful information to the City’s decision-making body and to further its goal of providing the most informed decision-making process practicable. The findings yielded by the Initial Study culminated in the Negative Declaration. The experience of other jurisdictions supports the City’s reliance on the common sense exemption. The City’s investigation has revealed no evidence of any adverse environmental impacts occasioned by similar formula retail regulations in these other jurisdictions. And, no commenter has provided any evidence to suggest that similar ordinances in other California cities have resulted in any adverse environmental impacts. There is no evidence in the record to support the conclusion that Malibu’s proposed formula retail ordinance will result in adverse environmental impacts that have not manifested themselves in any other jurisdiction that has adopted a similar ordinance.

- 1.6 The commenter references a comment letter sent by the California Coastal Commission (CCC). Specific responses to the CCC's letter are provided herein. See Response 6.1.
- 1.7 This comment contains biographical information on the commenter and is noted. The commenter does not state any experience in the preparation or evaluation of formula retail ordinances. The commenter also opines that the draft ordinance may result in adverse physical changes to the environment based on the comments made by Hoffman (responses, *supra*) and the commenter's experience. The specific bases for the commenter's opinion will be addressed in turn.
- 1.8 The commenter opines that the Hoffman analysis provides a fair argument that the draft ordinance could result in potentially significant impacts. The Hoffman comment letters are responded to herein. No additional evidence or facts are cited in support of the commenter's conclusions.
- 1.9 The commenter opines that the draft ordinance places "substantial new restrictions" on leasing that could result in long-term vacancies and urban decay. No evidence or facts are cited in support of the commenter's opinion. Staff notes that restaurants, bars/alcohol sales, convenience stores, service stations, car washes, movie theaters, and new commercial construction involving 500 square feet or more are all uses that presently require a CUP to operate in the Civic Center area and that the CUP requirement has not prevented such uses from coming to, and thriving in, the Civic Center area. Commercial uses are often subject to other entitlement processes including Planning Clearance and tenant improvement permits (Planning Department, Building Safety Department, and Environmental Health Department), CUPs (e.g., restaurants, food/beverage service with seating, movie theaters, live entertainment, alcohol sales, health care facilities, convenience stores, service stations, car washes, galleries, new commercial construction involving 500 square feet or more, etc.), and business licensing. Additional entitlements may also be required by the California State Water Resources Control Board, California Department of Alcoholic Beverage Control, Los Angeles County Fire Department - Divisions of Fire Prevention and Land Development, and the South Coast Air Quality Management District. None of these regulatory processes, whether discretionary or ministerial in nature, has caused vacancies, visual deterioration, or other adverse aesthetic impacts in the Civic Center area.

Staff notes that a finding in the draft ordinance has been removed which considered that "The formula retail establishment will not be incompatible with surrounding uses." The proposed ordinance does not regulate potential secondary effects associated with formula retail establishments, such as an establishment's hours of operation, or parking. Staff notes that the existing CUP findings of Section

17.66.080, would still apply for those uses that currently require a CUP including restaurants, bars/alcohol sales, convenience stores, service stations, car washes, movie theaters, and new commercial construction involving 500 square feet or more. The existing CUP findings consider compatibility with surrounding uses and potential impacts associated with parking, intensity, hours of operation, noise, etc.

- 1.10 The commenter opines that “by limiting retail stores to a maximum of 2,500 square feet, many retailers would be prohibited from the Civic Center and due to land availability and market conditions would likely be limited to areas outside of the City.” No facts or evidence is offered in support of the commenter’s opinion. Furthermore, the statement mischaracterizes the proposed ordinance. First, the proposed ordinance does not prohibit retail stores over 2,500 square feet. It only applies to formula retail businesses as defined. Second, several categories of retail and services are exempted from the proposed ordinance, regardless of size, including: 1) grocery stores; 2) drug stores/pharmacies; 3) gas stations; 4) banks and financial services; 5) real estate offices; 6) insurance offices; 7) post offices; 8) medical uses; and 9) lower-cost overnight accommodations. The commenter does not explain how the exclusion from the Civic Center of certain formula retail businesses over 2,500 square feet would cause aesthetic degradation. Consequently, no further response is required.
- 1.11 The commenter speculates that the CUP requirement “would increase costs to a formula retailer (but not others), and have the effect of discouraging existing formula retailers from improving their properties, renewing their leases, or expanding their space, which may lead to aesthetic degradation of the commercial areas within the Civic Center.” No evidence or facts are cited in support of the commenter’s speculation. As indicated above, several commercial uses are already subject to a conditional use permitting process. In its 22+ year history, no portion of the City has experienced aesthetic degradation as the result of a CUP process. Furthermore, because existing formula retailers would be grandfathered uses, it is unclear why the commenter speculates that those retailers would be discouraged from renewing their leases. Renewing a lease would not subject the existing formula retailer to any discretionary review process.
- 1.12 The commenter opines that the draft ordinance may deter “long-term formula retail” tenants from leasing vacant space within the Civic Center and cause them to “locate or relocate” to other communities outside of the City. The commenter does not opine that the speculated behavior may result in significant adverse environmental impacts, but simply argues that potential impacts should be further analyzed. No further response is required.

- 1.13 The commenter opines that the “potential indirect aesthetic impacts of the proposed formula retail ordinance” on the state scenic highway (Pacific Coast Highway) need to be evaluated. The commenter does not purport to provide any evidence or facts in support of an argument that the proposed ordinance may have significant environmental impacts. Therefore, no further response is required.

Staff notes that a finding in the draft ordinance has been modified to evaluate the sense of familiarity and sameness from main arterial streets in the Civic Center. The revised finding now states, “Use will not impair the City’s unique, small-town community character by promoting a predominant sense of familiarity or sameness in the Civic Center commercial district as viewed from its main arterial streets including Pacific Coast Highway, Cross Creek Road, Civic Center Way, Malibu Road, and Malibu Canyon Road.” Staff notes that this finding considers all formula retailers, as defined, regardless of the uses considered exempt under the proposed ordinance.

- 1.14 The commenter opines that the Hoffman comment letter provide a “fair argument” of potentially significant environmental impacts and requests additional CEQA evaluation of those impacts. Responses to the Hoffman comment letter are provided herein.

- 1.15 The commenter questions conclusions in the IS/ND and opines that the Hoffman letter indicates that displacement or relocation of formula retailing to other communities, or intensification of use of existing formula retail outlets could occur. The commenter does not purport to provide any evidence or facts in support of an argument that the proposed ordinance may have significant environmental impacts. Responses to the Hoffman comment letter are provided separately herein.

- 1.16 The commenter speculates that the draft ordinance would cause formula retailers to locate in, or relocate to, other communities. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no response is warranted.

- 1.17 The commenter opines that “existing and potential future successful formula retailers have a loyal customer base, and that residents of Malibu and adjacent areas may, in fact, drive to the locations of displaced formula retailers, and the new formula retailers that are limited to areas outside the City.” This, according to the commenter, will lead to greater roadway congestion, increased air pollution, and increased greenhouse gas emissions. No facts or evidence is cited in support of the commenter’s speculation. Existing formula retail will not be displaced as a result of the proposed ordinance. Existing formula retailers are grandfathered uses and would not be subject to the CUP requirement unless they

relocate to a new tenant space, seek to expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet or more. See Response 10 regarding new formula retailers. The suggestion that some formula retailers may not locate in Malibu, causing customers in Malibu to drive to locations outside the City does not state a plausible environmental effect of the proposed ordinance. Presumably, Malibu residents regularly travel outside the City to patronize their preferred businesses. The suggestion that such behavior will increase as a result of the proposed ordinance is not supported by any facts or evidence cited by the commenter.

- 1.18 The commenter suggests that as a result of the “significant restriction” on formula retail business under the draft ordinance, there will be increased development of formula retail outlets in adjacent communities. No facts or evidence is cited in support of the speculative conclusion. See Responses 1.9 and 1.17.
- 1.19 The commenter opines that the draft ordinance will result in potential cumulative impacts to aesthetics, air quality, greenhouse gasses, and traffic. No facts or evidence is cited in support of the commenter’s opinion. No further response is necessary. See Responses 1.7 through 1.18.
- 1.20 This comment contains biographical information on the commenter and is noted. The commenter does not state having any experience in the preparation or evaluation of formula retail ordinances.
- 1.21 The comment contains introductory remarks summarizing statements made in the body of the letter. Those statements will be responded to in turn below.
- 1.22 The commenter characterizes the formula retail CUP requirement as “burdensome” and “costly” and speculates that “if replacement retail stores that are locally based are not available in sufficient numbers, this will result in long-term vacancies and urban decay impacts.”³ No facts or evidence is cited by the commenter in support of the speculative conclusion. Staff notes that the CUP requirements will be neither costly nor burdensome. The cost of a CUP application is expected to be in the range of \$1,127 (minor CUP) to \$3,771 (major CUP). The application process itself is not expected to be burdensome. Restaurants, bars/alcohol sales, convenience stores, service stations, car washes, movie theaters, and new commercial construction involving 500 square feet or more are all uses that presently

³ In the CEQA context, urban decay is a phenomenon sometimes associated with the development of large formula-retail-oriented shopping centers and from the development of formula “big box” retailers. The buying power of the large formula retailers can make it virtually impossible for local “mom and pop” shops to compete, forcing them out of business. The decimation of “mom and pop” shops can result in prolonged vacancies and, in extreme cases, neglected and boarded up sections of town that were once home to thriving local retail businesses.

require a CUP to operate in the Civic Center area. The CUP requirement has not prevented such uses from coming to, and thriving in, the Civic Center.

The commenter mistakenly assumes that future tenants must be “locally based.” There is no such requirement in the proposed formula retail ordinance. Prospective tenants will only be subjected to the formula retail CUP requirement if they fall within the definition of “formula retail.” The commenter also appears to assume that the CUP requirement equates to a flat prohibition on formula retail uses. That is not accurate. A CUP requirement is not a prohibition. Rather, it is a discretionary review process designed to ensure that a proposed use is compatible with the surrounding area. As stated above, several uses that are presently operating in the Civic Center are operating pursuant to a CUP. Only new formula retail businesses that exceed 2,500 square feet of gross floor area would be prohibited.

- 1.23 The commenter opines that “indirect impacts could be felt by adjacent or nearby retailers because the formula retailers potentially impacted are the types of stores that draw both local and visitor customers to shop within the overall area.” The commenter also opines that formula retailers act as “anchors” that draw customers to the area and that “local” retailers may suffer a drop in business if formula retail tenants are limited. No evidence or facts are cited in support of the opinion offered by the commenter. Staff notes that the proposed ordinance will not impact existing formula retail tenants. Existing tenants would be grandfathered and would not be subject to the CUP requirement unless they relocate to a new tenant space, seek to expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet or more.
- 1.24 The commenter opines that there are “an insufficient number of local merchants to take the place of the formula retailers that would be lost” and further concludes that “adjacent stores will likely also experience urban decay impacts as the overall customer base declines and vacancies proliferate.” No evidence or factual support is provided in support of the opinion offered by the commenter. Staff notes that the proposed ordinance will not cause existing formula retail tenants to be lost. Existing tenants would be grandfathered and would not be subject to the CUP requirement unless they relocate to a new tenant space, seek to expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet or more. See Response 10 regarding new formula retailers. The commenter also mistakenly assumes that future tenants must be “local merchants.” There is no such requirement in the proposed formula retail ordinance. Prospective tenants will only be subjected to the formula retail CUP requirement if they fall within the definition of “formula retail.” The commenter also appears to assume that the CUP requirement equates to a prohibition on formula retail uses. That is not accurate. A

CUP requirement is not a prohibition. Rather, it is a discretionary review process designed to ensure that a proposed use is compatible with the surrounding area. As stated above, several uses that are presently operating in the Civic Center are operating pursuant to a CUP.

- 1.25 The commenter opines that there may be a “domino effect” of retail vacancies if the proposed formula retail ordinance becomes law because there is no mechanism in the draft ordinance that allows a shopping center owner to fill a space with any formula retail tenant provided a “good faith” effort is first made to find a “local tenant.” No evidence or facts are cited in support of the commenter’s prediction. As stated above, the proposed ordinance does not require shopping center owners to lease to “local tenants.” Rather, it makes “formula retail” business, as defined, a conditionally permitted use in the zone. The proposed ordinance will not affect existing formula retail tenants. Existing tenants would be grandfathered and would not be subject to the CUP requirement unless they relocate to a new tenant space, seek to expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet or more. See Response 10 regarding new formula retailers.
- 1.26 The commenter speculates that the draft ordinance might be viewed as onerous and burdensome by some retailers, causing them to lose interest in Malibu and resulting in urban decay. No evidence or facts are cited in support of the commenter’s speculation. Staff notes that restaurants, bars/alcohol sales, convenience stores, service stations, car washes, movie theaters, and new commercial construction involving 500 square feet or more are all uses that presently require a CUP to operate in the Civic Center area and that the CUP requirement has not prevented such uses from coming to, and thriving in, the Civic Center.
- 1.27 The commenter speculates that the draft ordinance will could lead to long-term vacancies, which in turn result in lower taxable retail sales, thereby lowering the City’s tax receipts. The result, according to the commenter, will be a reduction in maintenance of public services and deteriorating infrastructure. No evidence or facts are cited in support of the commenter’s speculation. The proposed ordinance requires new formula retail businesses, as defined, to obtain a CUP to operate in the Civic Center. As stated above, several types of uses already require a CUP to operate in the Civic Center and many such uses exist and are thriving there. Staff has researched and studied similar regulatory schemes in other jurisdictions (formula retail regulations) and has found no evidence that these types of regulations have the potential to significantly impact the environment.
- 1.28 The commenter opines that it is unlikely that any formula retailers displaced or barred by the draft

ordinance would relocate elsewhere in Malibu. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no response is warranted. Staff notes, however, that the proposed ordinance will not displace any existing formula retail tenant. Existing tenants may continue to operate without interruption.

- 1.29 The commenter opines that the draft ordinance would cause existing retailers to relocate to other communities, leading to potential changes in traffic patterns. No evidence or facts are cited in support of the commenter's opinion. As stated previously, the proposed ordinance will not displace any existing formula retailers. Existing tenants will be grandfathered and may continue operations without interruption.
- 1.30 The commenter suggests that the draft ordinance will cause Malibu to be underserved by "key retailers," resulting in potential traffic and circulation impacts. No evidence or facts are supplied in support of the commenter's opinion and the term "key retailer" is not defined. The commenter goes on to note that the draft ordinance does not exempt formula drug stores and speculates that if the Civic Center could support an additional drug store (it already has two—CVS and Supercare) but one was prevented from opening, existing centers with drug stores could generate more traffic and attendant impacts. Again, no evidence or facts are supplied in support of the commenter's suggestion that the lack of an additional formula retail drug store would generate additional traffic. In any event, since the IS/ND was released for comment, the draft ordinance has been revised to exempt drug stores and pharmacies. Therefore, the proposed ordinance will have no impact on formula drug stores and pharmacies.
- 1.31 The commenter offers generalized opinions on the efficacy of the draft ordinance. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no response is warranted.

Staff notes that the definition of "formula retail" has been revised to "10 or more other existing, operational retail establishments located within the United States" (from six or more in Southern California) and includes one additional criterion "Standardized array of merchandise or menu". The definition now captures the types of formula retail that offer a standardized range of products, such as the same brand of clothing, accessories, or beauty products from one location to another. The definition also captures the types of formula retail that offer standardized menu items from one location to another, such as food or beverage items. This language is typical of other cities that have implemented formula retail ordinances. A sub-definition of "array of merchandise or menu" has been added that provides a 50 percent threshold to quantify the amount of merchandise or menu items that are necessary to be

considered standardized. A sub-definition of “standardized” has been added to clarify this term as both “identical” and “substantially the same” to account for the variability of formula requirements and avoid confusion when applying the proposed ordinance.

Staff notes that additional exemptions have been added to the proposed ordinance including drug stores/pharmacies, real estate, insurance, post offices, medical, and lower-cost overnight accommodations.

The commenter indicates that an “earlier draft of the ordinance exempted drug stores.” Staff notes that there was not an earlier draft of the ordinance. The IS/ND draft was the first and only draft available for public review at the time this comment was made.

- 1.32 The commenter speculates that the draft ordinance’s 2,500 square foot limitation on formula retail uses would eventually leave all of the shopping centers in the Civic Center “largely unleaseable and lead to urban decay.” The commenter also speculates that the limitation will limit the ability to draw “key retailers” to a particular center. The commenter does not define “key retailers” and offers no evidence or facts in support of its opinion. Furthermore, the commenter mistakenly concludes that the proposed ordinance favors “local” retailers. The proposed ordinance defines “formula retail” business and makes them a conditionally permitted use in the Civic Center area. Businesses with more than a localized presence are not automatically defined as formula retail. “Formula retail” in the proposed ordinance is defined as retail establishment that has 10 or more locations within the United States and that is required to maintain at least two of the following features: 1) standardized array of merchandise or menu; 2) standardized color scheme; 3) standardized décor; 4) standardized façade; 5) standardized layout; 6) standardized signage, service mark, or a trademark; and 7) uniform apparel. Only businesses meeting this definition and not otherwise exempted will be subject to the proposed ordinance.

Staff notes that there are at least 30 units within the Civic Center with 2,500 square feet or more. Of the 30 units: 1) six units are occupied by formula retailers, as defined, and not exempt from the proposed ordinance; 2) eight units are occupied by formula retailers, as defined, but are exempt from the proposed ordinance; 3) 12 units are occupied by non-formula retailers; and 4) four units are currently vacant. Staff notes that the proposed ordinance will not impact the six existing formula retailers not exempt from the proposed ordinance. These tenants would be grandfathered and would not be subject to the CUP requirement unless they relocate to a new tenant space, seek to expand by 200 square feet or more of gross floor area, or increase service area by 50 square feet or more.

Table 1: Units in the Civic Center >2,500 square feet

| Business Name | Use Type | Center Name | Unit | Formula | # in | # in | Approx |
|---------------------------------------|-------------------------------|-------------------------------|--|---------|----------|----------|--------|
| | | | | Retail | SoCal | USA | Sq Ft |
| Hollywood Theater | Service - Entertainment | Malibu Village at Cross Creek | 3822 | YES | 1 | 41 | 3,780 |
| Banana Republic | Retail - Apparel, Shoes | Malibu Village at Cross Creek | 3844 | YES | multiple | multiple | 4,500 |
| Salvation | Retail - Apparel, Shoes | Malibu Village at Cross Creek | 3854 | no | 3 | 3 | 3,600 |
| Vacant (former Guido's) | Vacancy | Malibu Village at Cross Creek | 3874 | vacant | vacant | vacant | 4,851 |
| Marmalade Café | Food - Restaurant | Malibu Village at Cross Creek | 3894 | no | 9 | 9 | 3,600 |
| Sephora | Retail - Beauty Supply | Malibu Village at Cross Creek | 3896 | YES | multiple | multiple | 3,831 |
| Wells Fargo | Service - Financial, Banking | Malibu Village at Cross Creek | 23361 | exempt | exempt | exempt | 4,300 |
| M. Fredric | Retail - Apparel, Shoes | Malibu Country Mart | A-1 | YES | 10 | 10 | 2,738 |
| Taverna Tony | Food - Restaurant | Malibu Country Mart | B-1 | no | 1 | 1 | 4,700 |
| UCLA Medical Group | Service - Medical | Malibu Country Mart | E-8 | exempt | multiple | multiple | 4,164 |
| Mr. Chow | Food - Restaurant | Malibu Country Mart | 18 | no | 2 | 5 | 2,538 |
| Planet Blue | Retail - Apparel, Shoes, Home | Malibu Country Mart | 13,14,15,15B | no | 5 | 5 | 2,799 |
| Malibu Kitchen | Food/Retail - Restaurant | Malibu Country Mart | 3 | no | 1 | 1 | 3,695 |
| James Perse | Retail - Apparel, Shoes | Malibu Lumber Yard | E 100 | YES | 13 | 16 | 3,015 |
| Vacant (no former tenant) | vacant | Malibu Lumber Yard | D200 | vacant | vacant | vacant | 3,400 |
| Ralph's | Grocery | Malibu Colony Plaza | 1 | exempt | exempt | exempt | 36,200 |
| CVS Pharmacy | Drug Store | Malibu Colony Plaza | 8 | exempt | exempt | exempt | 22,880 |
| First Bank & Trust | Service - Financial, Banking | Malibu Colony Plaza | 10 | exempt | exempt | exempt | 3,115 |
| Coogie's Beach Café | Food - Restaurant | Malibu Colony Plaza | 14 | no | 1 | 1 | 3,994 |
| Theodore Beach | Retail - Apparel, Shoes | Malibu Colony Plaza | 20 | no | 7 | 7 | 3,500 |
| Vacant (former Granita) | vacant | Malibu Colony Plaza | 21 | vacant | vacant | vacant | 6,767 |
| Bank of America | Service - Financial, Banking | Malibu Colony Plaza | 23 | exempt | exempt | exempt | 5,032 |
| Wells Fargo | Service - Financial, Banking | Malibu Colony Plaza | 25 | exempt | exempt | exempt | 2,769 |
| Urban Outfitters (under construction) | Retail - Apparel, Shoes | Cross Creek Courtyard | A | YES | multiple | multiple | 10,641 |
| Coldwell Banker Real Estate | Service - Real Estate | 23676 Malibu Rd | | exempt | exempt | exempt | 5,226 |
| Pritchett-Rapf Realtors | Service - Real Estate | 23730 Malibu Rd | | no | 2 | 2 | 3,300 |
| Malibu Coast Animal Hospital | Service - Pet Care | 23431 PCH | | no | 1 | 1 | 2,510 |
| Vacant (former USPS bldg) | vacant | 23648 PCH | | vacant | vacant | vacant | 6,300 |
| Malibu Urgent Care Center | Service - Medical | 23656 PCH | | no | 1 | 1 | 4,874 |
| Super Care Drugs | Retail - Drug Store/Pharmacy | 23661 PCH | | no | 1 | 1 | 3,356 |
| | | Total: | 30 units >2,500 sf, 24 of which are located in the five shopping centers | | | | |
| | | Breakdown: | 12 of 30 ARE NOT considered formula retail, as defined | | | | |
| | | | 8 of 30 ARE considered formula retail, as defined, but are EXEMPT | | | | |
| | | | 6 of 30 ARE considered formula retail, as defined, and NOT EXEMPT | | | | |
| | | | 4 of 30 are currently VACANT | | | | |

1.33 See Response 1.32.

1.34 The commenter reiterates speculation about the potential for the draft ordinance to result in urban decay. No evidence or facts are cited in support of the commenter's opinion. See Responses 1.24, 1.25, 1.27, and 1.31.

1.35 The commenter opines that the draft ordinance would lead to "long-term urban decay because store owners would tend not to renew or expand their space when faced with significant processing costs and delay from a process that does not have clear criteria not a certainty of outcome even if the process is followed." No evidence or facts are cited in support of the commenter's opinion. As previously stated, existing formula retail tenants are unaffected by the proposed ordinance. Given that fact, it is unclear why the commenter believes these store owners would "tend not to renew" their leases and no explanation is provided. See also Responses 1.24, 1.25, 1.27, and 1.31.

- 1.36 The commenter questions the rationale behind the criteria chosen to define formula retail businesses in the draft ordinance. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no response is warranted.
- 1.37 The commenter questions the rationale behind the definition of “shopping center” set forth in the draft ordinance. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no response is warranted.
- 1.38 This comment summarizes the opinions and conclusions of the commenter. See previous responses.
- 1.39 This comment summarizes the information prepared by the commenter. Two of the items (Retail Market Analysis and Response to Preserve Malibu) were previously submitted in the record as part of the November 13, 2012 City Council hearing on this item and considered as part of that public review.
- 1.40 See Response 1.22.
- 1.41 The commenter opines that the draft ordinance is designed to “address a so-called problem that does not exist.” The comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no further response is required. Staff notes, however that the Retail Market Analysis and Updated Retail Inventory referred to focus exclusively on the baseline conditions in the Civic Center. Whether or not the commenter agrees that there is an existing or evolving problem that needs to be addressed through legislative is immaterial to the CEQA analysis.
- 1.42 This comment relates to information in the commenter’s Formula Retail Trends report, which intends to demonstrate that formula retail within the Civic Center from 2002 to 2013 has “stayed relatively stable even with ongoing turnover and replacement among various tenants within the respective centers.” The Trends report evaluates changes at Malibu Colony Plaza, Malibu Village, Malibu Country Mart, and Malibu Lumber Yard. The report asserts a 1.8 percent net increase in formula retail in the Civic Center between this timeframe. The report does not indicate why 2002 was used as the baseline for this evaluation period when three of the four centers existed prior to Cityhood in 1991. Further, in the four shopping centers alone, the commenter’s conclusion that the draft ordinance will have an adverse effect on economic conditions (that leads to direct physical change) is not supported by the existing baseline conditions in the Civic Center. In the four shopping centers reviewed, the commenter’s

conclusion that the draft ordinance will have an adverse effect on economic conditions (that leads to direct physical change) is not supported by the existing baseline conditions in the Civic Center.

Under the current version of the proposed ordinance, the majority of shopping centers are well within conformance to the 50 percent limitation required by the proposed ordinance, both in terms of number of units or square footage. As shown in the tables below, Malibu Colony Plaza, both parcels comprising Malibu Village, and the three parcels comprising Malibu Country Mart are in conformance with the proposed ordinance. Further, Floor 2 of Malibu Lumber Yard is in conformance. Only Floor 1 of Malibu Lumber Yard and Cross Creek Courtyard exceed the 50 percent limitation (Floor 1 of Malibu Lumber Yard exceeds the square footage limitation by 73 percent and unit limitation by 71 percent, and Cross Creek Courtyard exceeds the square footage limitation by 72 percent)

Finally, whether data over the last 10 years demonstrates a significant growth in formula retail establishments is immaterial to the CEQA analysis. The proposed ordinance is within the legislative discretion of the City Council.

Table 2: Malibu Colony Plaza, Proposed Ordinance Assessment

| | | | Proposed Ordinance Assessment | |
|-------------------------|--|----------------|-------------------------------|--------------------------|
| Tenant Spaces (total) = | 29 units | Net = 23 units | Tenant Spaces (formula) = | 17% (4 units / 23 units) |
| Square Feet (overall) = | 109,179 | Net = 38,463 | Square Footage (formula) = | 15% (5,847 / 38,463sf) |
| > 2,500 (overall) = | 8 units (Ralph's, CVS Pharmacy, First Bank, Coogies, Theodore Beach, Bank of America, Wells Fargo, vacant Granita) | | > 2,500 (formula) = | 0 units |
| | | | | Conforms |
| | | | | Conforms |
| | | | | None |

Table 3: Malibu Country Mart, Proposed Ordinance Assessment

| Parcel | Address | Proposed Ordinance Assessment | | |
|-------------------------|------------------------------------|-------------------------------|----------------------------|----------------------------|
| Parcel A | 23410 Civic Center Wy | | | |
| Floor 1 | | | | |
| Tenant Spaces (total) = | 15 units | Net = 15 units | Tenant Spaces (formula) = | 27% (4 units / 15 units) |
| Square Feet (overall) = | 22,476 | Net = 22,476 sf | Square Footage (formula) = | 34% (7,538 sf / 22,476 sf) |
| > 2,500 (overall) = | 2 units (M. Fredric; Taverna Tony) | | > 2,500 (formula) = | 1 unit (M. Fredric) |
| | | | | Conforms |
| | | | | Conforms |
| | | | | Grandfathered |
| Floor 2 | | | | |
| Tenant Spaces (total) = | 10 units | Net = 10 units | Tenant Spaces (formula) = | 0% (0 units) |
| Square Feet (overall) = | 14,185 | Net = 14,185 sf | Square Footage (formula) = | 0% (0 sf) |
| > 2,500 (overall) = | 1 unit (UCLA Medical Group) | | > 2,500 (formula) = | 0 |
| | | | | Conforms |
| | | | | Conforms |
| | | | | None |
| Parcel B | 3835 Cross Creek Rd | | | |
| Tenant Spaces (total) = | 31 units | Net = 31 units | Tenant Spaces (formula) = | 19% (6 units / 31 units) |
| Square Feet (overall) = | 29,068 | Net = 29,068 sf | Square Footage (formula) = | 19% (5,552 sf / 29,068) |
| > 2,500 (overall) = | 2 units (Mr. Chow; Planet Blue) | | > 2,500 (formula) = | 0 |
| | | | | Conforms |
| | | | | Conforms |
| | | | | None |
| Parcel C | 3900 Cross Creek Rd | | | |
| Tenant Spaces (total) = | 10 units | Net = 10 units | Tenant Spaces (formula) = | 30% (3 units) |
| Square Feet (overall) = | 13,061 | Net = 13,061 sf | Square Footage (formula) = | 29% (3,796 sf) |
| > 2,500 (overall) = | 1 unit (Malibu Kitchen) | | > 2,500 (formula) = | 0 |
| | | | | Conforms |
| | | | | Conforms |
| | | | | None |

Table 4: Malibu Village, Proposed Ordinance Assessment

| Parcel A | | | 2 buildings north of Guido's hallway | | | Proposed Ordinance Assessment | | |
|-------------------------|--|-----------------|--------------------------------------|---|---------------|-------------------------------|--|--|
| Tenant Spaces (total) = | 14 units | Net = 14 units | Tenant Spaces (formula) = | 36% (5 units / 14 units) | Conforms | | | |
| Square Feet (overall) = | 30,031 | Net = 30,031 sf | Square Footage (formula) = | 44% (13,330 sf / 30,031 sf) | Conforms | | | |
| > 2,500 (overall) = | 4 units (Hollywood Theater; Banana Republic; Salvation; vacant Guidos) | | > 2,500 (formula) = | 2 units (Hollywood Theater; Banana Republic) | Grandfathered | | | |
| Parcel B | | | 1 building south of Guido's hallway | | | Proposed Ordinance Assessment | | |
| Tenant Spaces (total) = | 10 units | Net = 9 units | Tenant Spaces (formula) = | 33% (3 units / 9 units) | Conforms | | | |
| Square Feet (overall) = | 20,548 | Net = 16,248 sf | Square Footage (formula) = | 45% (7,308 sf / 16,248 sf) | Conforms | | | |
| > 2,500 (overall) = | 3 units (Marmelade; Sephora; Wells Fargo) | | > 2,500 (formula) = | 1 unit (Sephora) | Grandfathered | | | |

Table 5: Malibu Lumber Yard, Proposed Ordinance Assessment

| Floor 1 | | | Proposed Ordinance Assessment (Floor 1) | | |
|-------------------------|----------------------|-----------------|---|-----------------------------|---------------|
| Tenant Spaces (total) = | 14 units | Net = 14 units | Tenant Spaces (formula) = | 71% (10 units / 14 units) | Exceeds |
| Square Feet (overall) = | 21,317 | Net = 21,317 sf | Square Footage (formula) = | 73% (15,493 sf / 21,317 sf) | Exceeds |
| > 2,500 (overall) = | 1 unit (James Perse) | | > 2,500 (formula) = | 1 unit (James Perse) | Grandfathered |
| Floor 2 | | | Proposed Ordinance Assessment (Floor 2) | | |
| Tenant Spaces (total) = | 7 units | Net = 7 units | Tenant Spaces (formula) = | 0% (0 units / 7 units) | Conforms |
| Square Feet (overall) = | 9,324 | Net = 9,324 sf | Square Footage (formula) = | 0% (0 sf / 9,324 sf) | Conforms |
| > 2,500 (overall) = | 1 unit (vacant) | | > 2,500 (formula) = | 0 units | None |

- 1.43 The comment speculates that the 2,500 square foot “limitation will place tremendous hardship on property owners to lease their space and likely result in significant vacancies over the long-term.” This comment does not raise a specific environmental issue. Economic impacts are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. In the five primary existing shopping centers alone (i.e., Malibu Colony Plaza, Malibu Village, Malibu Lumber Yard, Malibu Country Mart, Cross Creek Courtyard), only 24 of 146 total units currently exceed 2,500 square feet. Of the 24, six are occupied by formula uses, as defined, and those existing formula retail tenants would be grandfathered uses and their present operations would be unaffected by the proposed ordinance (Banana Republic, Hollywood Theater, Sephora, M. Fredric, James Perse, and Urban Outfitters). The remaining 18 are occupied by either non-formula, formula exempt from the proposed ordinance, or are vacancies. See Response 1.32. There are an additional six units that exceed 2,500 square feet in the Civic Center (30 units total) that are not located in a shopping center. None of these units are occupied by formula retailers. Therefore, the commenter’s speculation has no basis in fact.
- 1.44 See Responses 1.9, 1.11, 1.17, 1.18, and 1.23. The comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Economic impacts are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. No further response is required.
- 1.45 See Responses 1.12 and 1.29.

- 1.46 See Response 1.30.
- 1.47 The commenter questions the rationale behind the criteria chosen to define formula retail businesses in the draft ordinance. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no response is warranted.
- 1.48 The commenter questions the rationale behind the definition of “shopping center” set forth in the draft ordinance. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. Therefore, no response is warranted.

Staff notes that the draft ordinance has been modified to include an exemption for drug stores/pharmacies. Regarding the definition of shopping center, the fourth required CUP finding in the draft ordinance was revised to also consider the concentration of formula uses per floor when a two-floor shopping center is under review. The purpose of this addition is to avoid the appearance of an over-accumulation of formula uses on one floor over the other, such as the ground floor. Only uses subject to the proposed ordinance are considered in this finding. The revised finding now reads: “Approval of use will not result in more than 50 percent of each floor of a shopping center from being occupied by formula. The 50 percent is determined per floor by the percentage of overall square footage or the number of leasable tenant spaces (excluding the exempted uses described above), whichever is greater.”

- 1.49 This comment summarizes the opinions and conclusions of the commenter. See previous responses.
- 1.50 See Response 1.42.
- 2.1 This comment contains introductory and general information. The commenter is the owner of Malibu Village shopping center. Economic impacts are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. See Responses 1.15 through 1.19 and 1.43. No further response is required.

Staff notes that Malibu Village includes seven of 24 units exceeding 2,500 square feet (Hollywood Theater, Banana Republic, Salvation, Marmalade Café, Sephora, Wells Fargo, and the vacant space formerly occupied by Guido’s restaurant). Of the seven, three qualify as formula retailers under the proposed ordinance and would be unaffected/grandfathered (Banana Republic, Hollywood Theater, and Sephora). As defined, Marmalade Café and Salvation are not considered formula and Wells Fargo is

exempt under the proposed ordinance. The vacant Guido's space was formerly occupied by a non-formula retailer. Under the current application of the proposed ordinance, Malibu Village would be evaluated individually under Parcel A (two buildings north of the Guido's hallway) and Parcel B (building south of the Guido's hallway). Staff notes that both Parcels A and B are currently within conformance with the proposed ordinance.

Table 6: Malibu Village, Proposed Ordinance Assessment

| Parcel A | | | Proposed Ordinance Assessment | | |
|-------------------------|--|-----------------|-------------------------------|---|---------------|
| Tenant Spaces (total) = | 14 units | Net = 14 units | Tenant Spaces (formula) = | 36% (5 units / 14 units) | Conforms |
| Square Feet (overall) = | 30,031 | Net = 30,031 sf | Square Footage (formula) = | 44% (13,330 sf / 30,031 sf) | Conforms |
| > 2,500 (overall) = | 4 units (Hollywood Theater; Banana Republic; Salvation; vacant Guidos) | | > 2,500 (formula) = | 2 units (Hollywood Theater; Banana Republic) | Grandfathered |
| Parcel B | | | Proposed Ordinance Assessment | | |
| Tenant Spaces (total) = | 10 units | Net = 9 units | Tenant Spaces (formula) = | 33% (3 units / 9 units) | Conforms |
| Square Feet (overall) = | 20,548 | Net = 16,248 sf | Square Footage (formula) = | 45% (7,308 sf / 16,248 sf) | Conforms |
| > 2,500 (overall) = | 3 units (Marmelade; Sephora; Wells Fargo) | | > 2,500 (formula) = | 1 unit (Sephora) | Grandfathered |

Staff notes in the event that no exemptions were to apply in an alternative ordinance (which would more accurately reflect current baseline conditions in the Civic Center), Parcel A would remain within conformance with the proposed ordinance. Parcel B would exceed the 50 percent square footage limitation with 57 percent being occupied by formula retailers, as defined. The 50 percent unit limitation would increase to 40 percent being occupied by formula retailers, as defined. Additionally, one additional use exceeding 2,500 square feet (four total) would qualify as a formula retailer under an alternative ordinance and would be unaffected/grandfathered (Wells Fargo, in addition to Banana Republic, Hollywood Theater, and Sephora).

Table 7: Malibu Village, "No Exemptions" Alternative Ordinance Assessment

| Parcel A | | | No Exemptions Alternative Ordinance Assessment | | |
|-------------------------|--|--|--|---|---------------|
| Tenant Spaces (total) = | 14 units | | Tenant Spaces (formula) = | 36% (5 units / 14 units) | Conforms |
| Square Feet (overall) = | 30,031 | | Square Footage (formula) = | 44% (13,330 sf / 30,031 sf) | Conforms |
| > 2,500 (overall) = | 4 units (Hollywood Theater; Banana Republic; Salvation; vacant Guidos) | | > 2,500 (formula) = | 2 units (Hollywood Theater; Banana Republic) | Grandfathered |
| Parcel B | | | No Exemptions Alternative Ordinance Assessment | | |
| Tenant Spaces (total) = | 10 units | | Tenant Spaces (formula) = | 40% (4 units / 10 units) | Conforms |
| Square Feet (overall) = | 20,548 | | Square Footage (formula) = | 57% (11,608 sf / 20,548 sf) | Exceeds |
| > 2,500 (overall) = | 3 units (Marmelade; Sephora; Wells Fargo) | | > 2,500 (formula) = | 2 units (Sephora, Wells Fargo) | Grandfathered |

- 3.1 This comment contains introductory and general information. The commenter is the authorized agent of the Malibu Colony Plaza shopping center and adjacent commercial uses including the Chevron gas station, Malibu urgent care center, and former USPS building. This comment does not raise a specific environmental issue. Economic impacts are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. No further response is required.

Staff notes that Malibu Colony Plaza includes eight of 24 units exceeding 2,500 square feet (Ralph's, CVS Pharmacy, First Bank, Coogies, Theodore, Bank of America, Wells Fargo, and the vacant space formerly occupied by Granita restaurant). Of the eight, none qualify as formula retail under the proposed ordinance. As defined, Coogies and Theodore are not considered formula and Ralph's, CVS Pharmacy, First Bank, Bank of America, and Wells Fargo are exempt under the proposed ordinance. The Granita space remains vacant and has been since 2005. Under the current application of the proposed ordinance, staff notes that Malibu Colony Plaza is within conformance.

Table 8: Malibu Colony Plaza, Proposed Ordinance Assessment

| | | | Proposed Ordinance Assessment | | |
|-------------------------|--|----------------|-------------------------------|--------------------------|----------|
| Tenant Spaces (total) = | 29 units | Net = 23 units | Tenant Spaces (formula) = | 17% (4 units / 23 units) | Conforms |
| Square Feet (overall) = | 109,179 | Net = 38,463 | Square Footage (formula) = | 15% (5,847 / 38,463sf) | Conforms |
| > 2,500 (overall) = | 8 units (Ralph's, CVS Pharmacy, First Bank, Coogies, Theodore Beach, Bank of America, Wells Fargo, vacant Granita) | | > 2,500 (formula) = | 0 units | None |

Staff notes in the event that no exemptions were to apply in an alternative ordinance (which would more accurately reflect current baseline conditions in the Civic Center), Malibu Colony Plaza would exceed the 50 percent square footage limitation with 70 percent being occupied by formula retailers, as defined. Additionally, five units exceeding 2,500 square feet would qualify as formula retailers under an alternative ordinance and would be unaffected/grandfathered (Ralph's, CVS Pharmacy, First Bank, Bank of America, and Wells Fargo).

Table 9: Malibu Colony Plaza, "No Exemptions" Alternative Ordinance Assessment

| No Exemptions Alternative Ordinance Assessment | | | No Exemptions Alternative Ordinance Assessment | | |
|--|--|--|--|---|---------------|
| Tenant Spaces (total) = | 29 units | | Tenant Spaces (formula) = | 35% (10 units / 29 units) | Conforms |
| Square Feet (overall) = | 109,179 | | Square Footage (formula) = | 70% (76,563 / 109,179 sf) | Exceeds |
| > 2,500 (overall) = | 8 units (Ralph's, CVS Pharmacy, First Bank, Coogies, Theodore, Bank of America, Wells Fargo, vacant Granita) | | > 2,500 (formula) = | 5 units (Ralph's, CVS Pharmacy, First Bank, Bank of America, Wells Fargo) | Grandfathered |

- 4.1 This comment contains introductory and general information. The commenter is the executive director of the Malibu Chamber of Commerce and submitted comments on behalf of the Chamber Board of Directors. This comment does not raise a specific environmental issue. Economic impacts are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. No further response is required.
- 4.2 See Response 1.5. No further response is required.
- 4.3 See Response 6.1. No further response is required.

- 4.4 See Responses 1.4, 1.5, 1.15 through 1.19, and 1.22 through 1.27. No further response is required.
- 5.1 This comment contains introductory and general information. The commenter is the president of the Malibu Bay Company (MBC). Note that MBC does not operate any existing commercial centers in the Civic Center, but has a pending commercial development application under review with the Planning Department (Sycamore Village). The project is filed under Coastal Development Permit (CDP) No. 12-039 (.20 (20%) floor area ratio (FAR) alternative) and 12-040 (.15 FAR alternative). The .20 FAR alternative proposes 76,000 square feet of retail/restaurant/office space and a 5,000 square foot urgent care facility offered as a public benefit. The .15 FAR alternative proposes 60,000 square feet of retail/restaurant/office space. Economic impacts are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. See Responses 1.4 and 1.15 through 1.19. No further response is required.
- 6.1 The commenter is a coastal program analysis with the CCC. The proposed ordinance includes a maximum limitation of 2,500 square feet on formula uses subject to the proposed ordinance which could prohibit typical lower-cost overnight accommodations from being constructed in the Civic Center and thus, presents a reasonable conflict with the City's LCP as written. Based on this comment, an additional exemption was added to the draft ordinance following circulation of the IS/ND for conformance with the City's LCP, specific to LCP Land Use Policies (LUP) Policies 2.34 to 2.36, which require lower-cost overnight accommodations to be protected and encouraged. The proposed ordinance exempts lower-cost overnight accommodations.

The exemption applies to all lower-cost accommodations which, pursuant to LUP Policy 2.35, applies to "hotel/motels, hostels, RV parks, and campgrounds." Other than overnight accommodations, staff is unaware of any other type of "lower-cost coastal recreational and visitor serving use[s] or opportunit[ies]" that are not otherwise exempt from the proposed ordinance and considered a formula retailer, as defined, with the potential of locating in the Civic Center. The commenter has not provided any evidence or facts demonstrating that formula retailers, as defined, such as those that offer hard and soft goods, services, and food and drinks, are considered anymore visitor serving or lower cost than similar non-formula retailers and/or exempted uses under the proposed ordinance. As discussed in the IS/ND, the City's experience is that its uniqueness, coastal recreation opportunities, and rural environment constitute the primary draw for millions of visitors to the area each year. No evidence or facts are cited in support of the conclusion that the primary draw for visitors to the area are formula retailers.

The proposed ordinance does not authorize a use other than those already designated in the LCP and M.M.C. as a permitted or conditionally permitted use in a commercial zone. The proposed ordinance is consistent with the Coastal Act and the LCP because it protects, maintains, and enhances the overall quality of the coastal zone environment. The proposed ordinance will not alter the utilization or conservation of coastal zone resources, impede public access to and along the coastal zone, or interfere with the priorities established for coastal-dependent or coastal-related development.

The proposed ordinance does not prohibit formula establishments from operating in the Civic Center. The proposed ordinance provides a mechanism for public review and input for certain commercial uses prior to their opening for the main goal of preventing a predominant sense of sameness and familiarity from occurring in the Civic Center. The proposed ordinance allows a reasonable percentage of formula establishments to operate in the Civic Center and includes several exclusions for formula establishments that are considered essential to local and visitor demand, and also constitutes the majority of uses experienced within the types of shopping centers located within the City. Excluded formula uses in the proposed ordinance include: 1) Grocery; 2) Drug stores/pharmacies; 3) Gas stations; 4) Banks and financial services; 5) Real estate; 6) Insurance; 7) Post offices; 8) Medical; and 9) Lower-cost overnight accommodations.

If adopted, staff notes that the City would not be the only jurisdiction within the California coastal zone with a certified LCP and a regulating formula ordinance adopted separately as part of its local Municipal Code (and not a part of its LCP). Other coastal jurisdictions with this similar situation include Carmel-by-the-Sea, San Francisco, and Coronado. Staff also notes that the CCC has certified formula regulations that are part of a jurisdiction's LCP (Laguna Beach Specific Plan), including subsequent amendments thereto.

- 7.1 This comment contains introductory and general information. The commenter is the representative of PCH Project Owner, LLC, owner of the Crummer Site (APNs 4458-018-002, 4458-018-019, and 4458-018-019). In response to this comment, reference to the Crummer site has been removed from the draft ordinance as its inclusion was made in error.

In 2002, when the CCC was drafting the City's LCP, the City, the Crummer Trust, and the Department of State Parks were negotiating the transfer of the baseball fields to the Crummer site and allowing up to eight single-family residences to be built on the project site. As a result, the CCC adopted a policy

(LUP Policy 2.78) that reflected its knowledge of the then-ongoing negotiations. LUP Policy 2.78 states that the project site shall remain CV-2 (Commercial Visitor Serving) while on all LCP Local Implementation Plan (LIP) Land Use and Zoning Maps, as well as in the definitions, designated the property as Planned Development (PD); therefore, an inconsistency was created between the policy and the zoning designation. In 2009, a zoning map amendment and General Plan map amendment were processed to correct the land use designation to PD in order to be consistent with the LCP Land Use Maps. The LCP PD zoning designation “is intended to provide for a mix of residential and recreational development of the Crummer Trust property located east of Malibu Bluffs State Park and south of PCH, and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the City’s LCP in order to specify the permitted type, density, and intensity of development.” Since it is not the City’s intent to relocate the existing athletic fields from Bluffs Park, LUP Policy 2.78 is now obsolete. As a result, an LCP amendment (LCPA) and corollary zoning text amendment (ZTA) have been requested from the City, including language that specifies the type, density and intensity of development permitted in the PD zoning designation. The LCPA (LCPA No. 12-001) and zoning text amendment (ZTA No. 12-001) propose to omit LUP Policy 2.78, amend LUP Chapter 6 Land Use Designations, and incorporate the Planned Development Ordinance in the LCP and the M.M.C. The LCPA will be forwarded to the CCC for certification. No further response is required.

- 8.1 This comment contains introductory and general information. The commenter is the managing partner of the Malibu Country Mart shopping center.

Staff notes that Malibu Country Mart includes six of 66 units exceeding 2,500 square feet (M. Fredric, Taverna Tony, UCLA Medical Group, Mr. Chow, Planet Blue, and Malibu Kitchen). Of the six, one qualifies as a formula retailer under the proposed ordinance and would be unaffected/grandfathered (M. Fredric). As defined, Taverna Tony, Mr. Chow, Planet Blue, and Malibu Kitchen are not considered formula and UCLA Medical Group is exempt under the proposed ordinance. Under the current application of the proposed ordinance, Malibu Country Mart would be evaluated individually under Parcel A (23410 Civic Center Way) with separate consideration for Floors 1 and 2, Parcel B (3835 Cross Creek Road), and Parcel C (3900 Cross Creek Road). Staff notes that Parcels A (Floors 1 and 2), B, and C are currently within conformance with the proposed ordinance.

Table 10: Malibu Country Mart, Proposed Ordinance Assessment

Responses to 15 CEQA-Related Comments
 City of Malibu Formula Ordinance (2013)

| Parcel A | 23410 Civic Center Wy | | Proposed Ordinance Assessment (Floor 1) | | |
|--|------------------------------------|-----------------|---|----------------------------|---------------|
| Floor 1 | | | | | |
| Tenant Spaces (total) = | 15 units | Net = 15 units | Tenant Spaces (formula) = | 27% (4 units / 15 units) | Conforms |
| Square Feet (overall) = | 22,476 | Net = 22,476 sf | Square Footage (formula) = | 34% (7,538 sf / 22,476 sf) | Conforms |
| > 2,500 (overall) = | 2 units (M. Fredric; Taverna Tony) | | > 2,500 (formula) = | 1 unit (M. Fredric) | Grandfathered |
| Floor 2 | | | | | |
| Proposed Ordinance Assessment (Floor 2) | | | | | |
| Tenant Spaces (total) = | 10 units | Net = 10 units | Tenant Spaces (formula) = | 0% (0 units) | Conforms |
| Square Feet (overall) = | 14,185 | Net = 14,185 sf | Square Footage (formula) = | 0% (0 sf) | Conforms |
| > 2,500 (overall) = | 1 unit (UCLA Medical Group) | | > 2,500 (formula) = | 0 | None |
| Parcel B | 3835 Cross Creek Rd | | Proposed Ordinance Assessment | | |
| Tenant Spaces (total) = | 31 units | Net = 31 units | Tenant Spaces (formula) = | 19% (6 units / 31 units) | Conforms |
| Square Feet (overall) = | 29,068 | Net = 29,068 sf | Square Footage (formula) = | 19% (5,552 sf / 29,068) | Conforms |
| > 2,500 (overall) = | 2 units (Mr. Chow; Planet Blue) | | > 2,500 (formula) = | 0 | None |
| Parcel C | 3900 Cross Creek Rd | | Proposed Ordinance Assessment | | |
| Tenant Spaces (total) = | 10 units | Net = 10 units | Tenant Spaces (formula) = | 30% (3 units) | Conforms |
| Square Feet (overall) = | 13,061 | Net = 13,061 sf | Square Footage (formula) = | 29% (3,796 sf) | Conforms |
| > 2,500 (overall) = | 1 unit (Malibu Kitchen) | | > 2,500 (formula) = | 0 | None |

Staff notes In the event that no exemptions were to apply in an alternative ordinance (which would more accurately reflect current baseline conditions in the Civic Center), Parcels A (Floors 1 and 2), B, and C would remain within conformance with the ordinance. Only Floor 2 of Parcel A would be affected with the inclusion of UCLA Medical Group, but still within conformance. Two of the 66 units exceeding 2,500 square feet would qualify as a formula retailer under an alternative ordinance and would be unaffected/grandfathered (UCLA Medical Group and M. Fredric).

Table 11: Malibu Country Mart, “No Exemptions” Alternative Ordinance Assessment

| Parcel A | 23410 Civic Center Wy | | "No Exemptions" Alternative Ordinance Assessment (Floor 1) | | |
|---|------------------------------------|--|--|-----------------------------|---------------|
| Floor 1 | | | | | |
| Tenant Spaces (total) = | 15 units | | Tenant Spaces (formula) = | 27% (4 units / 15 units) | Conforms |
| Square Feet (overall) = | 0 | | Square Footage (formula) = | 34% (7,538 sf / 22,476 sf) | Conforms |
| > 2,500 (overall) = | 2 units (M. Fredric; Taverna Tony) | | > 2,500 (formula) = | 1 unit (M. Fredric) | Grandfathered |
| Floor 2 | | | | | |
| "No Exemptions" Alternative Ordinance Assessment (Floor 2) | | | | | |
| Tenant Spaces (total) = | 10 units | | Tenant Spaces (formula) = | 10% (1 unit / 10 units) | Conforms |
| Square Feet (overall) = | 0 | | Square Footage (formula) = | 29% (4,164 / 14,185 sf) | Conforms |
| > 2,500 (overall) = | 1 unit (UCLA Medical Group) | | > 2,500 (formula) = | 1 unit (UCLA Medical Group) | Grandfathered |
| Parcel B | 3835 Cross Creek Rd | | No Exemptions Alternative Ordinance Assessment | | |
| Tenant Spaces (total) = | 31 units | | Tenant Spaces (formula) = | 19% (6 units / 31 units) | Conforms |
| Square Feet (overall) = | 0 | | Square Footage (formula) = | 19% (5,552 sf / 29,068) | Conforms |
| > 2,500 (overall) = | 2 units (Mr. Chow; Planet Blue) | | > 2,500 (formula) = | 0 | None |
| Parcel C | 3900 Cross Creek Rd | | No Exemptions Alternative Ordinance Assessment | | |
| Tenant Spaces (total) = | 10 units | | Tenant Spaces (formula) = | 30% (3 units) | Conforms |
| Square Feet (overall) = | 0 | | Square Footage (formula) = | 29% (3,796 sf) | Conforms |
| > 2,500 (overall) = | 1 unit (Malibu Kitchen) | | > 2,500 (formula) = | 0 | None |

Regarding the commenter’s description of similar regulations on Laguna Beach, that city had adopted formula regulations as part of its Downtown Specific Plan which was also certified by the CCC in 1989 and been subject to several amendments since. The formula regulations remain in effect as part of the Laguna Beach LCP to-date. The Laguna Beach Specific Plan does not ban formula uses, but includes

policies to avoid an over-saturation of formula uses within its downtown.⁴ The commenter has not provided supporting information that demonstrates the formula regulations in Laguna Beach has created significant environmental effects considered by CEQA, including adverse aesthetic impacts (visual degradation or urban decay) or significant changes in traffic patterns resulting in adverse traffic/transportation impacts. Economic impacts alone are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. No further response is required.

- 9.1 This comment contains introductory and general information. The commenter is the manager of the entity that owns the Malibu LaPaz Ranch, LLC development. The La Paz project involves two contiguous parcels and has active entitlements for development, but construction of the project has not commenced. As approved, the project consists of 112,058 square feet of retail/restaurant uses and an additional 20,000 square feet allocated for municipal use. Economic impacts alone are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. See Responses 1.4, 1.5, and 1.8 through 1.14. No further response is required.
- 10.1 This comment contains introductory and general information. The commenter is the vice president of legal-leasing for Glimcher Malibu, LLC, owner of the Malibu Lumber Yard shopping center. Economic impacts are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. See Responses 1.4, 1.5, 1.8 to 1.14, 1.15 through 1.19, and 1.21 through 1.27. No further response is required.

Staff notes that Malibu Lumber Yard includes two of 21 units exceeding 2,500 square feet (James Perse and a vacant unit on Floor 2). James Perse would qualify as a formula retailer under the proposed ordinance and would be unaffected/grandfathered. Under the current application of the proposed ordinance, Malibu Lumber Yard would be evaluated individually by floor (Floors 1 and 2). Staff notes that Floor 1 exceeds the 50 percent square footage limitation with 73 percent being occupied by formula retailers, as defined. Floor 1 also exceeds the 50 percent unit limitation with 71 percent being occupied by formula retailers, as defined. Floor 2 is within conformance with the proposed ordinance.

⁴ Pg. V-34 defines a formula-based business as a “use or business which offers merchandise and/or services using a formulaic or mass-marketing approach. All business or store locations are identifiable through standardized architecture, storefronts, merchandise and/or services, store layout and décor, signs, uniforms or similar features.” In order for a formula-based business to operate, a CUP is required and the following three special findings must be made (Pg V-33): 1) “The business offers merchandise and/or services that serve the current unmet needs of the resident population;” 2) “Although the formula-based business may have other store locations throughout the country, state or region, the business will enhance the destination quality of the Downtown Specific Plan area and not exhibit a local/regional saturation;” and 3) “Both exterior and interior appearance and presentation of the business is compatible with the existing scale of development, distinctive architecture and pedestrian orientation of the established village character and results in an enhancement of the look and feel (i.e. character) of the downtown.”

Table 12: Malibu Lumber Yard, Proposed Ordinance Assessment

| Floor 1 | | | Proposed Ordinance Assessment (Floor 1) | | |
|-------------------------|----------------------|-----------------|---|-----------------------------|---------------|
| Tenant Spaces (total) = | 14 units | Net = 14 units | Tenant Spaces (formula) = | 71% (10 units / 14 units) | Exceeds |
| Square Feet (overall) = | 21,317 | Net = 21,317 sf | Square Footage (formula) = | 73% (15,493 sf / 21,317 sf) | Exceeds |
| > 2,500 (overall) = | 1 unit (James Perse) | | > 2,500 (formula) = | 1 unit (James Perse) | Grandfathered |
| Floor 2 | | | Proposed Ordinance Assessment (Floor 2) | | |
| Tenant Spaces (total) = | 7 units | Net = 7 units | Tenant Spaces (formula) = | 0% (0 units / 7 units) | Conforms |
| Square Feet (overall) = | 9,324 | Net = 9,324 sf | Square Footage (formula) = | 0% (0 sf / 9,324 sf) | Conforms |
| > 2,500 (overall) = | 1 unit (vacant) | | > 2,500 (formula) = | 0 units | None |

Staff notes in the event that no exemptions were to apply in an alternative ordinance (which would more accurately reflect current baseline conditions in the Civic Center), Floors 1 and 2 would remain unchanged (Floor 1 would continue to exceed both 50 percent limitations and Floor 2 would be in conformance).

Table 13: Malibu Lumber Yard, "No Exemptions" Alternative Ordinance Assessment

| Floor 1 | | | "No Exemptions" Alternative Ordinance Assessment (Floor 1) | | |
|-------------------------|----------------------|--|--|-----------------------------|---------------|
| Tenant Spaces (total) = | 14 units | | Tenant Spaces (formula) = | 71% (10 units / 14 units) | Exceeds |
| Square Feet (overall) = | 0 | | Square Footage (formula) = | 73% (15,493 sf / 21,317 sf) | Exceeds |
| > 2,500 (overall) = | 1 unit (James Perse) | | > 2,500 (formula) = | 1 unit (James Perse) | Grandfathered |
| Floor 2 | | | "No Exemptions" Alternative Ordinance Assessment (Floor 2) | | |
| Tenant Spaces (total) = | 7 units | | Tenant Spaces (formula) = | 0% (0 units / 7 units) | Conforms |
| Square Feet (overall) = | 0 | | Square Footage (formula) = | 0% (0 sf / 9,324 sf) | Conforms |
| > 2,500 (overall) = | 1 unit (vacant) | | > 2,500 (formula) = | 0 units | None |

- 11.1 This comment contains introductory and general information. The commenter does not operate any existing commercial centers in the Civic Center, but has a pending commercial development application under review with the Planning Department (Whole Foods in the Park). The project is filed under CDP No. 10-022 and proposes 38,425 square feet of retail/restaurant space, of which 24,549 square feet is earmarked for a Whole Foods grocery store. Although considered a formula use in general, Whole Foods is exempt from the proposed ordinance (grocery). This comment includes the existence of public controversy over the asserted environmental effects of the proposed ordinance. Public controversy does not constitute substantial evidence. See Response 6.1. No further response is required.
- 12.1 This comment contains introductory and general information. The commenter is a group of residents and interested parties identified as Preserve Malibu. This comment does not raise a specific environmental issue. Coronado's formula ordinance, including applicable CEQA review, was considered in the IS/ND. No further response is required.
- 13.1 This comment contains introductory and general information. The commenter is identified as a resident.

See response to Comments 1.5, 1.6, and 1.15 through 1.19. Economic impacts alone are not considered a significant environmental effect pursuant to CEQA Guidelines Sections 15064(e) and 15382. No further response is required.

- 14.1 This comment contains introductory and general information. The commenter notes that he represents a group of commercial property owners in the City. See Response 1.1.
- 14.2 The commenter speculates that the draft ordinance may result in significant adverse impacts on traffic and transportation. The commenter relies entirely on the opinion provided by Stanley R. Hoffman Associates, which the City has responded to above. See Responses 1.20 through 1.50 (responses to Hoffman comments).
- 14.3 The commenter speculates that the draft ordinance may result in significant adverse economic impacts and physical decay. The commenter relies entirely on the opinion provided by Stanley R. Hoffman Associates, which the City has responded to above. See Responses 1.20 through 1.50 (responses to Hoffman comments). In the final paragraph of Section II of his letter, the commenter opines that the draft ordinance would substantially limit and potentially eliminate a large percentage of retail. No facts are provided in support of that opinion. Staff notes that the proposed ordinance would not affect existing formula business operations in the Civic Center. Therefore, there is no basis upon which to conclude that the proposed ordinance would eliminate any existing retailers.

The commenter goes on to opine that the 2,500 square foot limitation on formula retail businesses would result in urban decay because “larger spaces, such as drug stores, which were built to house specific larger tenants, cannot be rented to local tenants (because local tenants do not exist for such spaces) and do not work economically if they are divided into smaller spaces, due to building design and the requirements of smaller tenants.” No evidence or facts are provided in support of the statement. Staff notes that only 24 of the 146 total units in the five primary existing Civic Center shopping centers exceed 2,500 square feet. Of that 24, only six are occupied by uses that would fall within the proposed ordinance’s definition of formula retail and would not be exempt (Banana Republic, Hollywood Theater, Sephora, M. Fredric, James Perse, and Urban Outfitters). The remaining 18 are either occupied by non-formula retail businesses, formula businesses expressly exempt from the proposed ordinance (e.g., grocery, drug stores, etc.), or are vacant. See Response 1.32. Therefore, the commenter’s opinion is contrary to the facts.

The commenter also erroneously states that the draft ordinance requires “local tenants” to occupy the commercial space in the Civic Center. There is no such requirement in the proposed formula retail ordinance. Prospective tenants will only be subjected to the formula retail CUP requirement if they fall within the definition of “formula retail.”

- 14.4 The commenter opines that the draft ordinance would be in conflict with the City’s certified LCP and the Coastal Act because it would limit lower cost visitor-serving accommodations. No evidence or facts are supplied in support of the statement. Staff also notes that lower-cost overnight visitor accommodations are expressly exempt from the proposed ordinance. Finally, the proposed ordinance is entirely consistent with LUP Policy 5.12 (“Visitor serving retail uses shall be permitted in all commercial zones in the City. Visitor serving retail uses shall fit the character and scale of the surrounding community.”) Visitor-serving retail uses will continue to be permitted in commercial zones. The proposed ordinance will further the goal of LUP Policy 5.12 by protecting and preserving the unique character of the Civic Center and the visitor-serving retail uses therein. See Response 6.1.
- 15.1 The commenter is a program analyst with the Native American Heritage Commission (NAHC). This comment contains introductory and general information. This comment does not state a specific concern or question regarding the adequacy of the analysis in the IS/ND. As discussed in the IS/ND, the proposed ordinance is solely a legislative change that makes formula retailers, as defined, conditional uses in the Civic Center. Implementation of the proposed ordinance will not impact any significant historical, archaeological, or paleontological resources or disturb any human remains.