

Allen Matkins

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Via Electronic Mail

April 20, 2022

David Sinclair, Senior Planner
City of Pasadena
175 North Garfield Avenue
Pasadena CA 91101
dsinclair@cityofpasadena.net

Re: Certificate of Exception No. 397: 3452-3488 E. Foothill Boulevard

Dear Mr. Sinclair:

Allen Matkins is counsel for the Applicant, Mill Creek Development Company LLC (“Applicant” or “Mill Creek”) with respect to the above referenced application (“Application”) for a Certificate of Exception to allow the consolidation of three adjacent parcels of land at 3452 E. Foothill Boulevard, 3472 E. Foothill Boulevard, and 3488 E. Foothill Boulevard into one parcel of land (the “Certificate of Exception”).

Allen Matkins has received and reviewed the correspondence from Mitchell M. Tsai dated April 19, 2022 regarding the Application, and respectfully submits this brief response. As set forth herein, the Applicant’s position is that Mr. Tsai erroneously conflates the Certificate of Exception with the previously approved entitlement for a development project at the same location. The time period for a challenge to that fully-approved entitlement has long since passed. Furthermore, the Certificate of Exception itself does not result in any new construction and is exempt from environmental review under the California Environmental Quality Act (“CEQA”).

A. The Previously Approved Project

On June 8, 2021, the Design Commission, acting under the provisions of Sections 17.61.030 and 17.64.050 of the Pasadena Municipal Code, approved Mill Creek’s application for Major Changes to a previously approved project to change from a 232-unit residential project and exterior remodeling of an existing restaurant and office building to a mixed-use project with 5,350 square feet of commercial space and 234 residential units at 3452-3488 E. Foothill Boulevard, City Case Number DHP2020–10190 (the “Approved Project”).

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In its June 8, 2021 decision, the Design Commission (i) found that the Approved Project is consistent with the General Plan designation, with the General Plan goals and policies for the site, and with the applicable zoning designation and regulations; and that the Approved Project site has no value as habitat for endangered or threatened species, and can be served by utilities and public services; (ii) found that approval of the Approved Project will not result in any significant effects relating to traffic, noise, air quality, water quality or cultural resources; and (iii) concluded, therefore, that the Approved Project is categorically exempt from environmental review under CEQA pursuant to the Class 32 exemption for “in-fill development projects” (14 Cal. Code Regs. §15332) and that there are no features that distinguish the Approved Project from others in the exempt class and that therefore there are no “unusual circumstances”.

The last day to file an appeal of the Approved Project was June 21, 2021. The approval decision therefore became final and effective on June 22, 2021. Mr. Tsai did not file an appeal of the Approved Project prior to June 22, 2021. Indeed he did not make an appearance during the administrative process or challenge the Approved Project at all; the first time Mr. Tsai has raised any concerns regarding the Approved Project is in yesterday’s letter. The exhaustion of administrative remedies doctrine holds that “where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted” through a final agency decision “before the courts will act.” (*Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 454.) Likewise, CEQA provides that “an action or proceeding” shall not be brought or maintained by any person under CEQA “unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person.” (Cal. Pub. Res. Code § 21177.) Simply put, Mr. Tsai failed to exhaust his administrative remedies and the time for him to challenge the Approved Project and the CEQA basis for the Approved Project has long since expired.

B. The Certificate of Exception is Exempt from CEQA

The Certificate of Exception is an action solely to consolidate three lots into a single new parcel. No new construction is proposed or will result from the Certificate of Exception. Approval of the Certificate of Exception will not result in construction of the Approved Project; it simply adjusts the underlying parcel sizes. Accordingly, the Certificate of Exception is exempt from environmental review under the CEQA Class 5 categorical exemption for Minor Alterations in Land Use Limitations. (14 Cal. Code Regs. §15305.) Section 15305 exempts minor lot line adjustments, in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density. The Certificate of Exception will eliminate the interior lot lines between three adjacent parcels with an average slope of less than 20 percent and does not result in any changes in land use or density, and there are no features that distinguish this project from others in the exempt class; therefore, there are no “unusual circumstances”. The proposed lot line adjustment is exempt from environmental review.

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C. Conclusion

Allen Matkins submits that Mr. Tsai's comments are misguided and inapplicable to the instant Application for a Certificate of Exception, and respectfully requests that the Hearing Officer approve the Application as recommended in the Staff Report.

Very truly yours,

/s/ Emily L. Murray

Emily L. Murray

ELM