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June 25, 2024

File No. 5547.000

Mayor David Potter
City of Carmel-by-the-Sea
PO Box CC
Carmel-by-the-Sea 93921

Re: Carmel Legacy Hotel Appeal

Dear Mayor Potter and Members of the City Council,

Our office represents the applicants for the proposed Carmel Legacy Hotel which will replace the existing Hofsas House Hotel. We have reviewed the appeal materials submitted by the Carmel Preservation Association on April 24, 2024, and believe that the appeal provides no evidence to support its conclusion that the categorical exemption prepared by the City is inadequate. We also agree with the materials submitted in response to the appeal by EMC and by Eric Miller Architects. This letter further responds specifically to the appellant's position that there are "unusual circumstances" surrounding the project which necessitate the preparation of an EIR even though the project is otherwise categorically exempt under CEQA, as well as the appellant's assertion that the demolition of the project will result in significant impacts to the environment.

Staff determined that the project was categorically exempt under a Class 32 CEQA exemption for "Infill Development," but other exemptions are also applicable to this project. The State legislature has determined that projects which are "categorically exempt" do not have the potential to create a significant effect on the environment, and therefore are exempt from the preparation of further environmental documentation. A project which would otherwise be categorically exempt from the preparation of an EIR or negative declaration can be required to prepare further environmental documentation due to "unusual circumstances" surrounding the project. The appeal filed by the Carmel Preservation Association appears to claim that there are unusual circumstances associated with this project that would cause such significant effects. Fortunately, the Courts in California have defined what constitutes "unusual circumstances" and there is nothing about this project that is an unusual circumstance mandating the preparation of further environmental analyses.

The defining case in California law regarding the application of the unusual circumstances exception is *Berkeley Hillside Preservation v. City of Berkeley* 60 Cal.4th 1086 (Cal. 2015). That case centered around a proposal by homeowners in the Berkeley Hills to demolish their house, and construct a new, two story, 6,478 square-foot house with an attached 3,394 square foot ten car garage on a steep lot in a heavily wooded area of existing homes that were much smaller. The city found the project to be exempt from CEQA review under the infill exemption and also found that the construction of the home did not involve any “unusual circumstances.”

The Court laid out a two-part test for determining whether the unusual circumstances exception applied. First, the City must determine whether there are “unusual circumstances,” which the court reviews under the “substantial evidence” standard of review. Second, if the City determines that unusual circumstances are present, the City must then consider whether there is a fair argument that the proposed activity may have a significant environmental effect.

The Court described the test as follows:

While evidence of a significant effect may be offered to prove unusual circumstances, circumstances do not become unusual merely because a fair argument can be made that they might have a significant effect. Evidence that a project may have a significant effect is not alone enough to remove it from a class consisting of similar projects that the Secretary has found “do not have a significant effect on the environment.” (§ 21084, subd. (a), italics added; cf. Laurel Heights II, supra, 6 Cal.4th at p. 1134, 26 Cal.Rptr.2d 231, 864 P.2d 502; No Oil, supra, 13 Cal.3d at p. 83, fn. 16, 118 Cal.Rptr. 34, 529 P.2d 66.) Therefore, an agency must weigh the evidence of environmental effects along with all the other evidence relevant to the unusual circumstances determination, and make a finding of fact. Judicial review of such determinations is limited to ascertaining whether they are “supported by substantial evidence.” (§ 21168.5.) Id. at 1115-16 (Cal. 2015) [*emphasis added*]

In short, under the *Berkeley Hillside* test, the City must determine if there are unusual circumstances (something not normally associated with a project of this type and scale) which results in a significant effect on the environment in order to determine that a categorical exemption is inappropriate.

The appeal claims (without citing any evidence) that the project will create parking, traffic, noise, asbestos pollution, glare, and historic resource impacts.

The appellant provides no evidence to support any of the statements, or any justification for why these issues constitute “unusual circumstances” under CEQA.

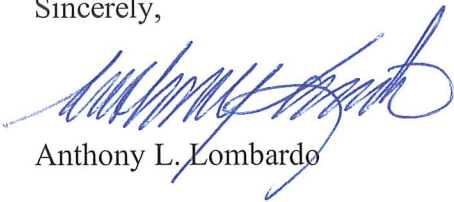
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The appellants cite no evidence to substantiate a claim that these are unusual circumstances which would prevent the adoption of a categorical exemption. Each of the appellant's contentions are items that would be expected to be associated with the demolition and construction of virtually any site in the City of Carmel. Moreover, there is no evidence that any of the issues raised by appellant would actually result in a significant effect on the environment. The City has imposed conditions of approval on the project and the State of California has regulations that must be complied with (such as the proper handling of asbestos, if encountered) which preclude any of these issues from rising to the level of a significant impact.

Based on the foregoing, it is clear that the proposed project is typical of the type of project that was contemplated by the Class 32 infill exemption. There are no unusual circumstances associated with this project that would result in a significant effect on the environment, and all issues raised by the appellant are either non-issues (the project is not historic, and glass is typically used in hotel construction) or have already been resolved through conditions of approval and/or compliance with State law or City code requirements (requirement for a construction management plan, noise ordinance compliance, etc....).

The applicant therefore respectfully requests that the City Council deny the appeal and uphold the Planning Commission's unanimous approval.

Sincerely,



Anthony L. Lombardo

cc: clients
Chip Rerig, City Manager
Brandon Swanson, Community Planning & Building Director
Marnie Waffle, Principal Planner
Peter Prows, Esq.