To: Chair Jennings and Members of the Planning Commission

Prepared by: Adrian Fernandez, Principal Planner

Approved by: Bonnie Blue, Planning Director

Date prepared: May 21, 2020 Meeting date: June 1, 2020

Subject: Extension of Coastal Development Permit No. 15-028, Variance No. 16-016, Site Plan Review No. 16-009, Minor Modification No. 16-010, Conditional Use Permit No. 15-011, and Lot Merger No. 16-001

Location: 4000 Malibu Canyon Road
APNs: 4458-028-015, 4458-028-019, and 4458-030-007
Owner: Green Acres, LLC

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 20-45 (Attachment 1) granting a two-year extension of Coastal Development Permit (CDP) No. 15-028 to allow the construction of a new memorial park, including a new 6,000 square foot chapel with 673 square feet of ancillary spaces, 8,002 square foot subterranean parking lot and 1,346 square foot basement, 47 mausoleum structures with a maximum area of 200 square feet each for a total maximum of 9,400 square feet, approximately 28,265 in-ground burial plot spaces intermittently located throughout the property, 3,644 interments in above grade wall crypt structures, a circular driveway, parking lot, entry gates, grading, landscaping and exterior lighting, including Variance (VAR) No. 16-016 for non-exempt grading, Site Plan Review (SPR) No. 16-009 for height over 18 feet but less than 28 feet for the sloped roof of the chapel, Minor Modification (MM) No. 16-010 for mausoleums not to exceed a 50 percent front yard setback reduction, Conditional Use Permit (CUP) No. 15-011 for the proposed memorial park and chapel in the subject zoning district, and Lot Merger (LM) No. 16-001 for consolidation of the three existing legal lots into one legal lot located in the Commercial Visitor Serving-Two (CV-2) zoning district at 4000 Malibu Canyon Road (Green Acres, LLC).

DISCUSSION: On June 5, 2017, the Planning Commission adopted Resolution No. 17-17, approving the subject application. Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.21, Condition of Approval No. 7 in Planning Commission Resolution No. 17-17 states that CDP 15-028 and associated requests
expire if the project has not commenced construction within three years after final City action. Extension of the permit may be granted by the approving authority for due cause. The item before the Commission is an extension request by the applicant. A complete project chronology of the project, including scope of work and approvals, can be found in Supplemental Commission Agenda Report prepared for the May 1, 2017 Planning Commission meeting and in Planning Commission Resolution No. 17-17 adopted on June 5, 2017.

Per LCP Policy No. 5 (Coastal Development Permit Extensions), the aggregate life of a CDP shall not exceed five years absent extraordinary circumstances. A two-year extension to June 5, 2022 would be consistent with this policy. The subject coastal development permit is set to expire on June 5, 2020. On January 27, 2020, the applicant submitted an extension request to ensure a valid CDP remains in effect while the applicant secures project financing, resolves a design exception with the California, Department of Transportation (Caltrans) to comply with conditions related to road improvement to Pacific Coast Highway and meets requirements to connect to the Civic Center Wastewater Treatment Facility. The applicant’s basis for due cause is included as Attachment 2.

Staff confirmed with the Public Works Department that the timeline outlined in the time extension request seems correct. Staff also contacted the applicant for an update regarding the status of financing and Caltrans approval. The applicant submitted modifications to the City Public Works Department for Malibu Canyon Road improvements. The improvements to Pacific Coast Highway are still pending review and approval from Caltrans. The applicant is also still working to secure financing for the project, which according to the applicant is contingent on this time extension.

CONCLUSION: The project conditions, and the zoning ordinance under which the approval was issued, have not significantly changed. Upon the Planning Commission’s approval of the time extension request, the approval set forth in Planning Commission Resolution No. 17-17 shall remain valid for an additional two-year term. The expiration date of this approval would then be June 5, 2022. All conditions of approval in Planning Commission Resolution No. 17-17 will remain in effect.

ATTACHMENTS:

1. Planning Commission Resolution No. 20-45
2. Time Extension Request
3. LCP Policy No. 5 (CDP Extensions)
4. Public Hearing Notice

All referenced Planning Commission records are available for review at http://www.malibucity.org/onbase.
A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU GRANTING A TWO-YEAR EXTENSION OF COASTAL DEVELOPMENT PERMIT NO. 15-028 TO ALLOW THE CONSTRUCTION OF A NEW MEMORIAL PARK, INCLUDING A NEW 6,000 SQUARE FOOT CHAPEL WITH 673 SQUARE FEET OF ANCILLARY SPACES, 8,002 SQUARE FOOT SUBTERRANEAN PARKING LOT AND 1,346 SQUARE FOOT BASEMENT, 47 MAUSOLEUM STRUCTURES WITH A MAXIMUM AREA OF 200 SQUARE FEET EACH FOR A TOTAL MAXIMUM OF 9,400 SQUARE FEET, APPROXIMATELY 28,265 IN-GROUND BURIAL PLOT SPACES INTERMITTENTLY LOCATED THROUGHOUT THE PROPERTY, 3,644 INTERMENTS IN ABOVE GRADE WALL CRYPT STRUCTURES, A CIRCULAR DRIVEWAY, PARKING LOT, ENTRY GATES, GRADING, LANDSCAPING AND EXTERIOR LIGHTING, INCLUDING VARIANCE NO. 16-016 FOR NON-EXEMPT GRADING, SITE PLAN REVIEW NO. 16-009 FOR HEIGHT OVER 18 FEET BUT LESS THAN 28 FEET FOR THE SLOPED ROOF OF THE CHAPEL, MINOR MODIFICATION NO. 16-010 FOR MAUSOLEUMS NOT TO EXCEED A 50 PERCENT FRONT YARD SETBACK REDUCTION, CONDITIONAL USE PERMIT NO. 15-011 FOR THE PROPOSED MEMORIAL PARK AND CHAPEL IN THE SUBJECT ZONING DISTRICT, AND LOT MERGER NO. 16-001 FOR CONSOLIDATION OF THE THREE EXISTING LEGAL LOTS INTO ONE LEGAL LOT LOCATED IN THE COMMERCIAL VISITOR SERVING-TWO ZONING DISTRICT AT 4000 MALIBU CANYON ROAD (GREEN ACRES, LLC)

The Planning Commission of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On June 5, 2020, the Planning Commission adopted Planning Commission Resolution No. 17-17, approving Coastal Development Permit (CDP) No. 15-028 and other discretionary requests for the construction and operation of a memorial park, chapel and other associated development.

B. On January 27, 2020, the applicant submitted a first time extension request.

C. On May 7, 2020, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

D. On June 1, 2020, the Planning Commission held a duly noticed public hearing on the request, reviewed and considered the agenda report, reviewed and considered written correspondence, public testimony, and other information in the record.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has previously analyzed the proposal as described above. Initial Study No. 16-002 and Mitigated Negative Declaration No. 16-001 were previously

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prepared and adopted for CDP No. 15-028, pursuant to CEQA Guidelines Section 15070, and adopted with the approval of the project.

SECTION 3. Findings of Fact.

Pursuant to Local Coastal Program Local Implementation Plan Section 13.21, the Planning Commission, having considered the staff report, all written correspondence and oral testimony presented at the public hearing, hereby finds that the applicant has demonstrated due cause for the necessity of a time extension of the approval of the coastal development permit and associated requests.


A. The approvals set forth in Planning Commission Resolution No. 17-17 are hereby extended for an additional two-year term. The approval is now set to expire on June 5, 2022.

B. No other changes to the conditions contained in Planning Commission Resolution No. 17-17 are made and all other findings, terms and/or conditions contained in Planning Commission Resolution No. 17-17 shall remain in full force and effect.

SECTION 5. The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 1st day of June, 2020.

_______________________________
JEFFREY JENNINGS, Planning Commission Chair

ATTEST:

_______________________________
KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.
I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-45 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 1st day of June, 2020, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

______________________
KATHLEEN STECKO, Recording Secretary
January 21, 2020

ORIGINAL BY MAIL

VIA EMAIL afernandez@malibucity.org

Adrian Fernandez
Senior Planner
City of Malibu Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Time Extension Request - Malibu Memorial Park

Dear Mr. Fernandez:

This law office represents Green Acres, LLC, the property owner of the above-referenced project (the “Malibu Memorial Park” or “Project”). The City of Malibu (the “City”) adopted Resolution No. 17-17 on June 5, 2017 approving the Project. Since that time, Green Acres has worked diligently in an effort to obtain permits but does not anticipate issuance of such permits prior to the expiration of entitlements on June 5, 2020. The purpose of this correspondence is to request an extension of time for issuance of the associated Coastal Development Permit (“CDP”) due to extraordinary circumstances beyond the applicant’s control.

Condition of Approval No. 7 of Resolution No. 17-17 states:

This CDP shall expire if the project has not commenced within three (3) years after issuance of the permit. Recordation of the Lot Merger shall not constitute commencement of development for purposes of CDP expiration. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request.

Despite its diligent efforts, Green Acres does not anticipate commencing development by June 5, 2020. There are extraordinary circumstances beyond the applicant’s control that continue to prevent commencement of development, including the inability to obtain a construction loan and necessary agency approvals.
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First, Green Acres has worked continually on seeking and securing Project financing since the City’s approval. The atypical nature of the proposed use, coupled with the complexity of the required financing, has posed numerous challenges and limited lending options significantly. After negotiating with a particular lender for the better part of a year, it was not until the last quarter of 2019 that Green Acres finally received a Letter of Intent executed by all parties. The parties anticipated closing on the loan by the end of 2019, however, before and during the holidays the lender made substantive changes to the business terms. Those issues were resolved, and terms agreed to by the parties in the first week of January 2020. Closing on financing is now expected in the first quarter of 2020 and will enable Green Acres to move forward. Its lack of financing has prevented Green Acres from complying with conditions of Project approval, such as certain improvements to Pacific Coast Highway, Malibu Canyon Road (see Condition of Approval No. 88), and Webb Way (see Condition of Approval No. 89) that require permitting by CalTrans. Green Acres has expended in excess of $1.5 million of its own funds in pre-development costs in moving the Project forward while working to secure financing.

In addition, the Project is complicated by issues related to sewer connection and intersection improvements, both of which have impacted timing of permit issuance. Much effort, time, and expense has been invested in studying, preparing, submitting, and processing Pacific Coast Highway and Malibu Canyon Road intersection improvement plans pursuant to the City’s approval. Since 2017, significant work was invested in planning and engineering these improvements, working continuously with CalTrans during this time. Completion of this aspect of the Project is a prerequisite to moving forward and finalizing other aspects of the Project. In addition, significant work has been devoted to planning for future sewer connection and working out the details of the same with the City (costs, logistics, timing), including multiple meetings with the City Manager and Public Works staff. Details of Green Acres’ efforts are described below.

Shortly after Project approval, in October 2017 Green Acres met with Reva Feldman, City Manager, regarding sewer assessment, tie-in timing, logistics and costs so that Project engineers could plan accordingly. That month and thereafter there was follow up coordination with the City Manager and Public Works Director regarding sewer assessment costs and logistics, as well as wintertime water storage requirements for the Wastewater Treatment Plan occasioned by the Project. Meetings continued during this time and through January 2018 with Reva Feldman, Bob Brager, and Rob Duboux with respect to sewer assessment and logistics, agreement on which is necessary for issuance of Project permits.

In 2018, architectural plans with the cemetery designer were largely completed. That said, significant and complex survey and engineering work is also required in order to achieve compliance with City conditions and as a prerequisite for permit issuance. To that end, in 2018, Green Acres worked consistently with John Kular, Traffic Engineer, to review the length of turning lanes and turn pocket, adjusting the right turn lane to account for a bike lane, developing options for the right turn lane, left turn lane into the Project, and addressing misalignment of
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lanes crossing Malibu Canyon Road intersection. Between August and October 2019, additional meetings with the Traffic Engineer were required to make further plan revisions to address drainage, catch basins, stormwater detention, truck-turning clearance, and grading plans.

In November 2019, Green Acres was in a position to meet with CalTrans to review the draft engineering plans for the intersection improvements. The meeting with CalTrans occurred on November 27, 2019 at which time specific design options were discussed. On December 11, 2019, Green Acres met with Rob Duboux to review City proposed infrastructure improvement projects in the area of the Project and on December 12, 2019 John Kular, the Traffic Engineer, was tasked with collecting traffic accident information for intersections and to complete the design.

On December 12, 2019, Green Acres selected one of the options discussed during the November meeting with CalTrans. The selected option would result in 11’ lanes, triggering a design exception. Taking into consideration the various factors contributing to the feasibility of the proposal, including construction costs, make this option viable and preferred. Green Acres expects this exception to be fast-tracked and, overall, to be a faster approval process than the other options discussed with CalTrans. Green Acres has also retained John Kular to prepare drawings to be ready for submittal to the City well before June 2020. Despite expediting these drawings and a quicker approval of the intersection improvements than originally anticipated, Green Acres will still not be in a position to pull permits for the Project by June 2020.

In sum, the anticipated timing of Project financing, together with the scope of the CalTrans and sewer connection requirements, are extraordinary circumstances beyond the applicant’s control that make commencement of Project construction by June 5, 2020 an impossibility.

Please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY LLP

By Fred Gaines
FRED GAINES

cc: Bonnie Blue, Planning Director (Via Email)
November 13, 2017

**LCP Policy 5: Coastal Development Permit Extensions**

LIP Section 13.21 provides:  
Unless the permit states otherwise, a coastal development permit shall expire two years from its date of approval if the development has not commenced during that time. The approving authority may grant a reasonable extension of time for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the two-year period.

Due cause shall generally not exist unless the applicant has demonstrated the following:

- There are extraordinary circumstances beyond the applicant's control that have prevented the applicant from commencing the development, such as financial hardship due to extreme economic conditions or job loss, inability to obtain a construction loan, personal reason, such as illness, divorce or death, restricted access to the property because of an existing lease or a necessary agency approval has not been obtained despite diligent efforts. Change of project ownership or architect and elective project redesigns do not by themselves constitute due cause; and
- The applicant has exercised due diligence in its efforts to commence the project, such as contracting for and completing necessary studies, reports, drawings and plans to pursue and complete the plan check process.

Absent extraordinary circumstances, the aggregate life of the permit shall not exceed five years.
Notice of Public Hearing

The Malibu Planning Commission will hold a public hearing on Monday, June 1, 2020, at 6:30 p.m. on the project identified below via teleconference only in order to reduce the risk of spreading COVID-19, pursuant to the Governor’s Executive Orders N-25-20 and N-29-20 and the County of Los Angeles Public Health Officer’s Safer at Home Order.


LOCATION: 4000 Malibu Canyon Road, located at the northeast corner of the intersection of Pacific Coast Highway and Malibu Canyon Road

APNs: 4452-028-015, 4458-028-019, and 4458-030-007

ZONING: Commercial Visitor-Serving-Two (CV-2)

APPLICANT / OWNER: Jake Jesson / Green Acres, LLC

APPEALABLE TO: City Council

ENVIRONMENTAL REVIEW: Initial Study No. 16-002 and Mitigated Negative Declaration No. 16-001 (SCH No. 201611054) CEQA Guidelines Section 15071

EXTENSION FILED: January 27, 2020

CASE PLANNER: Adrian Fernandez, Principal Planner, afernandez@malibucity.org (310) 456-2489, ext. 482

A written staff report will be available at or before the hearing for the project, typically 10 days before the hearing in the Agenda Center http://www.malibucity.org/agendacenter. Related documents are available for review by contacting the Case Planner. You will have an opportunity to testify at the public hearing; written comments, which shall be considered public record, may be submitted any time prior to the beginning of the public hearing. If the City’s action is challenged in court, testimony may be limited to issues raised before or at the public hearing. To view or sign up to speak during the meeting, visit malibucity.org/virtualmeeting.

Extension requests will be presented on consent calendar based on staff’s recommendation but any person wishing to be heard may request at the beginning of the meeting to have the application addressed separately. Please contact the recording secretary before start of the meeting to have an item removed from consent calendar.

LOCAL APPEAL - A decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within ten days following the date of action (15 days for tentative maps) for which the appeal is made and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Payment must be received within 10 days of the appeal deadline. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal via email, please contact Patricia Salazar by calling (310) 456-2489 ext. 245 at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

BONNIE BLUE, Planning Director

Date: May 7, 2020

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