

AP 17-004

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JUN 14 2017

PLANNING DEPT.



# City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861  
Phone (310) 456-2489 · Fax (310) 456-7650 · [www.malibucity.org](http://www.malibucity.org)

## COASTAL DEVELOPMENT PERMIT APPEAL SUBMITTAL

**Actions Subject to Local Appeal:** Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision or any portion of the decision of the Planning Director may be appealed to the Planning Commission by an aggrieved person, and any decision of the Planning Commission may be appealed to the City Council by an aggrieved person.

**Deadline and Fees:** Pursuant to LIP Section 13.20.1, an appeal shall be filed with the City Clerk within 10 days following the date of action for which the appeal is made, as indicated in the decision. If the tenth day falls on a weekend or a City-recognized holiday, the deadline shall extend to the close of business at City Hall on the first business day (whether whole or partial) following the weekend or a City-recognized holiday. Appeals shall be accompanied by the filing fee of \$500 as specified by the City Council.

To perfect an appeal, the form must be completed, together with all the necessary attachments, and must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23525 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Senior Administrative Analyst, at (310) 456-2489, extension 245.

### Part I. Project Information

1. What is the file number of the Coastal Development Permit you are appealing?

CDP No. 15-028

2. On what date was the decision made which you are appealing?

June 5, 2017

3. Who made the decision you are appealing?

Planning Director

Planning Commission

4. What is the address of the project site at issue?

4000 Malibu Canyon Road

### Part II. Appeal Summary

1. Indicate your interest in the decision by checking the appropriate box.

I am the Applicant for the project

I am the neighbor

Other (describe) Mountains Recreation and Conservation Authority, a local public agency established pursuant to

Section 6500 et seq. of the Government Code.



2. If you are not the applicant, please indicate the applicant's name:

Green Acres, LLC

3. Indicate the nature of your appeal.

- a) Are you appealing the  approval or  the denial of the application or  a condition of approval?
- b) Each approval is accompanied by a list of specific conditions. If you are appealing one or more of the conditions of approval, list the condition number and state the grounds for your appeal. (Attach extra sheets if necessary.)

See attached

4. Check the appropriate box(es) to indicate which of the following reasons forms the basis of your appeal:

- The findings or conditions are not supported by the evidence, or the decision is not supported by the findings: or
- There was a lack of fair or impartial hearing: or
- The decision was contrary to law.

You must next provide a specific statement in support of each of the bases for appeal that you have checked above. Appeals that are stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

See attached

Each coastal development permitting decision made by the Planning Director or the Planning Commission is accompanied by written findings. The written findings set forth the basis for the decision. If you have checked the first box in this section as a ground for your appeal, you must indicate the specific finding(s) you disagree with and give specific reasons why you believe the finding(s) is/are not supported by the evidence or why the decision is not supported by the findings. Appeals stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

See attached



### Part III. Appeal Checklist

***ALL of the following must be timely filed to perfect an appeal.***

- ✓ 1.  Completed Appeal Checklist (This form with appellant's signature)
- ✓ 2.  Appeal Fee \$500

The appeal fee must be submitted in the form of a check or money order made payable to the City of Malibu. Cash will not be accepted.

- ✓ 3.  Certified Public Notice Property Owner and Occupant Addresses and Radius Map

Public Notice of an appeal must conform to the manner in which the original notice was given.

- The addresses of the property owners and occupants within the mailing radius shall be provided on a compact disc in a Microsoft Excel spreadsheet. The spreadsheet shall have the following column headers in row one: 1) name, 2) address, 3) city, state & zip code, and 4) parcel (for APN). The owners should be listed first followed by the occupants. The project applicant's mailing address should be added at the end of the list.
- An additional column for "arbitrary number" may be included if the supplied radius map utilizes such numbers for the purpose of correlating the addressee to their map location.
- Printouts of the excel spreadsheet and radius map, certified by the preparer as being accurate, must be provided.
- The radius map (8½" x 11") shall show a 500 foot radius\* from the subject property and must show a minimum of 10 developed properties. A digital copy of the map shall be submitted on the same cd as the mailing addresses.

\*Properties zoned RR-10, RR-20, or RR-40 require a 1,000-foot radius notification.

\*\*Note that updated mailing labels may be requested by the project planner prior to deeming the application complete.



**Part IV. Signature and Appellant Information**

*I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or otherwise deficient, the appeal is ineffective and the filing fee may be returned. IN ORDER TO PERFECT AN APPEAL, ALL APPEAL SUBMITTALS MUST BE COMPLETE BY THE DEADLINE. NO EXTENSIONS WILL BE ALLOWED FOR APPELLANTS WHO ONLY PARTIALLY COMPLY WITH THESE REQUIREMENTS AS OF THE DEADLINE. IF AN APPEAL IS NOT PERFECTED BY THE DEADLINE, THE DECISION BECOMES FINAL.*

Oscar Victoria, MRCA

323-221-9944, ext. 142

PRINT APPELLANT'S NAME

TELEPHONE NUMBER



6/14/17

APPELLANT'S SIGNATURE

DATE

Appellant's mailing address: 570 West Avenue 26, Suite 100, Los Angeles, CA 90065

Appellant's email address: oscar.victoria@mrca.ca.gov

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**OFFICE USE ONLY**

Action Appealed: PC Reso 17-17, approving CDP 15-028 on 6-05-17

Appeal Period: 06-06-17 through 06-15-17

Date Appeal Form and required documents submitted: 06-14-17 Received by: Kathleen Stecko

Appeal Completion Date: 06-14-17 by: Kathleen Stecko, Senior Office Assistant  
(Name, Title)



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**Malibu Memorial Park Basis of the Appeal  
Coastal Development Permit No. 15-028  
and Mitigated Negative Declaration No. 16-001  
Appeal Filed by Mountains Recreation and Conservation Authority  
June 2017**

**The findings or conditions are not supported by the evidence, or the decision is not supported by the findings.**

Finding A. General Coastal Development Permit (LIP Chapter 13)

1...the proposed project, as mitigated and conditioned, conforms to the LCP in that it meets all applicable commercial development standards, inclusive of discretionary requests.

*MRCA response:*

The project is in direct conflict with the zoning of Commercial Visitor-Serving 2 (CV-2). A cemetery is not an allowed use in the zone; therefore the project does not meet the commercial development standard of allowed uses on this CV-2 zone. As discussed below, the project does not conform to the zoning or land use designation (CV-2) of the Local Coastal Program (LCP). The project does not include adequate mitigation for this LCP inconsistency.

Finding A. General Coastal Development Permit (LIP Chapter 13)

2. Evidence in the record demonstrates that as conditioned and with implementation of the mitigation measures, the project will not result in significant adverse impacts on sensitive biological, scenic or cultural resources. There is no evidence that an alternative project would substantially lessen any potential significant adverse impacts of the development on the environment.

*MRCA response:*

The project has the potential to result in significant adverse impacts on sensitive biological resources. The Initial Study/Mitigated Negative Declaration (IS/MND) did not adequately recognize the value of the site as part of a wildlife movement/habitat linkage between the main body of the Santa Monica Mountains and the Malibu Bluffs. The subject site contains a critical portion of the habitat linkage with the greatest long-term viability between the Santa Monica Mountains Conservancy-owned Malibu Bluffs Open Space and the nearest large block of habitat located just northeast of the Malibu Canyon Road entrance of Pepperdine University. As part of the approval for the Crummer project just south of the project site, a conservation easement was required. A land use restriction was required on the open space for the Towing Site, just east of the Crummer site. The cemetery project site supports sensitive habitats and plant communities including intact coastal sage scrub and foothill needlegrass patches.

The IS/MND has not adequately analyzed the potentially significant impacts to biological resources, including impacts to the habitat linkage. The IS/MND does not include the number of acres of impacts to sensitive plant communities onsite. There is no assurance for protection of the remaining open space onsite. Appropriate mitigation, e.g., a conservation easement over the open space to remain onsite, has not been included in the project description or conditions.

The IS/MND is deficient for not adequately addressing potentially significant adverse impacts to visual resources. Malibu Canyon Road at Pacific Coast Highway (PCH) is the gateway to the Santa Monica Mountains. These are two scenic roads, as designated by the LCP. There are world-class views of the mountains and ocean in this area. The site is across the street from existing parkland, including the Santa Monica Mountains Conservancy-owned Malibu Bluffs Open Space. The site is also in a premier visitor-serving location, by its proximity to downtown Malibu and Malibu Lagoon. According to the conditions in the resolution, there would be future administrative plan reviews and installation of story poles for mausoleums with future analyses of the potential for obstructed bluewater views. However, it is unclear to what extent bluewater views would be partially blocked (for example, 75 percent blockage of bluewater views, while not completely obstructed, could still be a perceived significant impact for someone traveling on one of the scenic roads). The IS/MND does not address the cumulative impacts associated with partial intrusion into bluewater views from the 47 mausoleums.

The project includes a Site Plan Review for excess height of the chapel in this visually significant area. The chapel would be visible from several scenic areas. An Environmental Impact Report (EIR) should be prepared that includes alternatives to avoid potentially significant impacts to scenic and visual resources. One project alternative should require zero intrusion of bluewater views. Another project alternative should be included that considers a chapel with no Site Plan Review, i.e., limited to 18-feet in height.

Finding B. Variance Findings for Grading (LIP Section 13.26.5)

4. The analysis presented in the agenda report demonstrates that the variance supports the general purposes and intent of LIP Chapter 13, as well as the goals objectives (sic) and policies of the LCP, the MMC and the General Plan.

*MRCA response:*

The variance for grading does not support the goals, objectives, and policies of the LCP. Granting of the grading variance, in order to implement the project, is in direct violation of the LCP. According to the Local Implementation Plan (LIP) (Section 3.3.K.):

The CV-2 District is intended to provide for visitor serving uses, including hotels serving visitors and residents, that are designed to be consistent with the rural character and natural environmental setting.

A cemetery is not an allowed use in the CV-2 zone and a Local Coastal Program Amendment is required. Clearly the intent of the LCP is that the CV-2 zone is for visitor-serving uses such as a hotel. This is the largest vacant CV parcel in Malibu and the CV-2 zone is the only zone for hotel use. Sporadic use of trails and benches on the site is not a near equivalent visitor-serving use compared with a hotel.

The project has not adequately mitigated for the loss of a real visitor-serving use. There is a long history of hotel approvals on the site, including the approval by Malibu City Council of a hotel for 146 rooms and a separate, earlier approval by California Coastal Commission for 300 rooms, and most recently a 2013 EIR (not certified) proposing a hotel with 146 rooms. The project is deficient in that it does not provide adequate mitigation for this inconsistency of the project with the LCP zoning and land use designation. The project is also inconsistent with numerous policies related to land use in the Land Use Plan (LUP), including, but not limited to: 2.33, 2.34, 2.36, and 2.37, as well as the definition of Commercial Visitor Serving in the LUP.

In addition, the granting of a grading variance and implementation of the project would conflict with numerous other LCP policies and measures in the areas of biological resources and scenic/visual resources. These include biological resource policies 3.1 (ESHA designation), 3.4 (ESHA designation), 3.6 (ESHA protection), 3.8 (uses in ESHA), 3.10 (minimum development in ESHA), 3.11 (ESHA policy consistency), 3.14 (mitigation for ESHA), 3.23 (development adjacent to ESHA), 3.25 (development in ESHA buffer), 3.27 (coastal sage scrub ESHA buffers), 3.28 (variances for ESHA buffers), and 3.31 (conservation easements). The project results in significant adverse impacts to biological resources and a conservation easement should be offered over the remaining open space (as recommended in Mountains Recreation and Conservation Authority's [MRCA's] letter dated March 1, 2017).

Malibu Canyon Road and PCH are scenic roads per the LCP (LUP policies 6.2, 6.3, and 6.4). The project site is located at the gateway to the Santa Monica Mountains. There is the potential for significant adverse impacts to scenic/visual resources. The postponement of a visual analysis on an individual mausoleum basis does not provide assurances to the public that there would be no significant impacts to visual resources. According to the approved resolution, an administrative site plan review would be required for each of the 47 mausoleums. Installation of story poles would be required and the mausoleums must be sited to avoid any obstruction to bluewater views from Malibu Canyon Road. They must also be sited to avoid visibility from motorists traveling on PCH immediately adjacent to the subject property. However, this does not address views from other areas on PCH not immediately adjacent to the project site. This also does not address partial intrusion of bluewater views from Malibu Canyon Road, nor the cumulative visual impact of the 47 mausoleums.

Also, the project includes a Site Plan Review variance for an extra tall chapel. Given the significant value of the visual resources in this area and the prime location as the gateway to the Santa Monica Mountains, an EIR should be prepared that analyzes an alternative

with no Site Plan Review for the excess height of the chapel (i.e., height limited to 18-feet). An alternative with zero intrusion into bluewater views should also be considered.

The project has the potential to conflict with several scenic/visual resource policies in the LUP, including: 6.1 (protect and enhance scenic qualities), 6.5 (minimize adverse impacts on scenic areas), 6.6 (design alternatives are preferred), 6.7 (height of structures shall be limited), 6.27 (minimize removal of natural vegetation), and 6.33 (protect PCH corridor).

Finding B. Variance Findings for Grading (LIP Section 13.26.5)

5. The proposed use of a memorial park and chapel on the site is allowed pursuant to a conditional use permit approved by the Planning Commission, based on its determination in Planning Commission Resolution No. 15-89 made in accordance with MMC 17.04.050, that such use is similar to and not more objectionable than other conditionally permitted uses in the CV-2 zone.

*MRCA response:*

The project, is in direct violation of the LCP. According to the Local Implementation Plan (LIP) (Section 3.3.K.):

The CV-2 District is intended to provide for visitor serving uses, including hotels serving visitors and residents, that are designed to be consistent with the rural character and natural environmental setting.

A cemetery is not an allowed use in the CV-2 zone and a Local Coastal Program Amendment is required. Clearly the intent of the LCP is that the CV-2 zone is for visitor-serving uses such as a hotel. This is the largest vacant CV parcel in Malibu and the CV-2 zone is the only zone for hotel use. Sporadic use of trails on the site is not a near equivalent visitor-serving use compared with a hotel. The project has not adequately mitigated for the loss of a real visitor-serving use. There is a long history of hotel approvals on the site. The project is deficient in that it does not provide adequate mitigation for this inconsistency of the project with the LCP zoning and land use designation. The project is also inconsistent with numerous policies related to land use in the Land Use Plan (LUP), including, but not limited to: 2.33, 2.34, 2.36, and 2.37, as well as the definition of Commercial Visitor Serving in the LUP.

Finding C. Site Plan Review Findings (LIP Section 13.27.5(A))

3. No significant public views will be obstructed by the project. As conditioned and with implementation of the mitigation measures, the project provides maximum feasible protection to significant public views.

*MRCA response:*

The project does *not* provide maximum feasible protection to significant public views. Malibu Canyon Road and PCH are scenic roads per the LCP (LUP policies 6.2, 6.3, and

6.4). The project site is located at the gateway to the Santa Monica Mountains. There are world-class views of the mountains and ocean in this area. The site is across the street from existing parkland, including the Santa Monica Mountains Conservancy-owned Malibu Bluffs Open Space.

According to these findings, the mausoleums will be processed with administrative plan reviews, including installation of story poles to ensure they will not be visible from PCH adjacent to the site or block bluewater views from Malibu Canyon Road. This requirement does not provide any assurance that there would not be significant adverse impacts to views from other areas along PCH (i.e., not immediately adjacent). Such an action is deferred mitigation. The cumulative impacts to visual resources from construction of the 47 mausoleums (that each may partially block a bluewater view) has not been analyzed. An EIR should be prepared that analyzes an alternative with zero-intrusion of bluewater views.

The chapel would be visible from several scenic areas. An EIR is required to look at an alternative with a chapel that does not exceed 18 feet in height. Since an EIR was not prepared, there was no analysis of a less damaging alternative.

Finding C. Site Plan Review Findings (LIP Section 13.27.5(A))

4. The project complies with all applicable requirements of State and local law.

*MRCA response:*

The project has *not* met the finding 13.27.5.A(1) of the LIP. The project is *not* consistent with the policies and provisions of the Malibu LCP, including the areas of land use, land resources (including ESHA), and scenic/visual resources. The project is not consistent with the California Environmental Quality Act (CEQA). The IS/MND is deficient. See discussion below regarding the finding: "The decision was contrary to law."

Finding C. Site Plan Review Findings (LIP Section 13.27.5(A))

5...The project is consistent with the General Plan and LCP.

*MRCA response:*

The project is not consistent with the LCP. A cemetery is not an allowed use in the CV-2 zone and a Local Coastal Program Amendment is required. Clearly the intent of the LCP is that the CV-2 zone is for visitor-serving uses such as a hotel. This is the largest vacant CV parcel in Malibu and the CV-2 zone is the only zone for hotel use. Sporadic use of trails on the site is not a near equivalent visitor-serving use compared with a hotel. The project has not adequately mitigated for the loss of a real visitor-serving use. There is a long history of hotel approvals on the site. The project is deficient in that it does not provide adequate mitigation for this inconsistency of the project with the LCP zoning and land use designation. The project is also inconsistent with numerous policies related to land use in the Land Use Plan (LUP), including, but not limited to: 2.33, 2.34, 2.36, and 2.37, as well as the definition of Commercial Visitor Serving in the LUP.

The project is also *not* consistent with the policies and measures in the LCP related to land resources (including ESHA) and visual/scenic resources.

Finding D. Minor Modification Findings (LIP Section 13.27.5(B))

1. As designed, conditioned and mitigated, the project is consistent with the LCP.

*MRCA response:*

The project is not visitor-serving and is not consistent with the LCP zoning of CV-2. An amendment to the LCP is required. Visitor-serving accommodation is an important need in Malibu. When this opportunity is lost, there is a process to address this significant loss, as was done on the Crummer property across PCH less than 100 feet away (Malibu Coast Estate/Crummer Trust Property Planning Development LCP Amendment No. LCP-4-MAL-14-0408-1). The project is inconsistent with numerous LUP policies (e.g., 2.33, 2.34, 2.36, and 2.37, as well as the land use designation of commercial visitor-serving) and LIP measures (e.g., Section 3.3.K.1).

The project is also *not* consistent with the policies and provisions of the Malibu LCP, including the areas of land resources (including ESHA) and scenic/visual resources.

Section E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

Items 1-5

1. The tallest structure, the chapel, is sited in the interior of the site on the flattest portion of the property where it is least visible from surrounding roads, and the mausoleums along PCH have been set back from the edge of the slope...As designed and conditioned, the project will not have significant adverse scenic or visual impacts.
2. Mitigation measures require that the 47 mausoleums be processed with administrative plan reviews, including installation of story poles to ensure they will not be visible from PCH adjacent to the site or block bluewater views from Malibu Canyon Road. The visual analysis conducted by the IS/MND concluded that with mitigation, the project has less than significant effects on aesthetics.
3. The project, as conditioned, is the least environmentally feasible alternative.
4. There are not feasible alternatives to development that would avoid substantially lessen (sic) any significant adverse impacts on scenic of (sic) visual resources.
5. As conditioned and mitigated, development on the site will not have significant adverse impacts on scenic and visual resources.

*MRCA response:*

Malibu Canyon Road and PCH are scenic roads per the LCP (LUP policies 6.2, 6.3, and 6.4). The project site is located at the gateway to the Santa Monica Mountains. There are world-class views of the mountains and ocean in this area. The site is across the street from existing parkland, including the Santa Monica Mountains Conservancy-owned Malibu Bluffs Open Space.

According to these findings, the mausoleums will be processed with administrative plan reviews, including installation of story poles to ensure they will not be visible from PCH adjacent to the site or block bluewater views from Malibu Canyon Road. This requirement does not provide any assurance that there would not be significant adverse impacts to views from other areas along PCH (i.e., not immediately adjacent). Such an action is deferred mitigation. The cumulative impacts to visual resources from construction of the 47 mausoleums (that each may partially block a bluewater view) has not been analyzed. An EIR should be prepared that analyzes an alternative with zero-intrusion of bluewater views.

The chapel would be visible from several scenic areas. An EIR is required to look at an alternative with a chapel that does not exceed 18 feet in height. Since an EIR was not prepared, there was no analysis of a less damaging alternative.

Finding H. Conditional Use Permit (MMC Section 17.66.080)

2. The cemetery/memorial park is visitor-serving, for both visitors and residents, and also respects the rural character and natural environmental setting of Malibu consistent with MMC Section 17.28.010.

*MRCA response:*

Section 17.28.010 Purpose of the Malibu Municipal Code states:

The CV-2 district is intended to provide for visitor serving uses, including hotels, which serve visitors and residents which respect the rural character and natural environmental setting. (Ord. 151 § 16, 1996; prior code § 92691).

The proposed project is not consistent with the CV-2 district, which is intended to provide for visitor serving uses, including hotels, which serve visitors and residents which respect the rural character and natural environmental setting.

The proposed use is not an allowed use in this zone. On the contrary, the project does not provide an equivalent visitor-serving use. A visitor-serving use that was intended per the LCP for this zone include a hotel. The project provides no guarantee that public access will be consistently allowed and maintained. Members of the public will also likely be deterred to visit the site when there are events, such as large funeral processions. In addition, a memorial park primarily geared to visitors of the graves, crypts, and mausoleums does not provide an equivalent visitor-serving use as a hotel would.

There are currently six existing overnight accommodation facilities in the City of Malibu with a total of 115 rooms<sup>1,2</sup>. The hotel that was previously proposed on the project site would

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<sup>1</sup>California Coastal Commission agenda report for LCP Amendment No. LCP-4-MAL-14-0408-1 dated August 10, 2015. On June 13, 2017, MRCA staff verified that the current supply of rooms remain the same as stated in the agenda report. However, the number of rooms at Casa Lorraine at 22000 PCH

have added 146 rooms, which would have more than doubled the supply of rooms for overnight accommodations in the city. The proposed project would significantly impact the potential for future overnight accommodations as the site is the largest vacant CV-2 parcel in Malibu<sup>3</sup>. The subject site is approximately 27.8 acres. According to the California Coastal Commission staff, under the City of Malibu's LCP, certified by the Commission in 2002, there are approximately 12 parcels, totaling approximately 80 acres, zoned Commercial Visitor-Serving (excluding the subject property that is zoned "Planned Development, i.e., Crummer property).<sup>4</sup> Mitigation for this significant loss of overnight accommodations associated with the proposed cemetery in the CV-2 zone should be implemented, as was done on the Crummer property.

The project does not respect the natural environmental setting. The IS/MND does not adequately identify biological resources on the site, including the value for habitat connectivity and wildlife movement, and the sensitive plant communities onsite. The Public Draft Environmental Impact Report (DEIR) for the Rancho Malibu Hotel Project (Figure 3.4-3 Habitat Connectivity and Cumulative Development) clearly identifies the habitat connectivity and potential wildlife corridors.<sup>5</sup> The DEIR also clearly shows intact coastal sage scrub over the site (Figure 3.4-1 Vegetative Communities at the Project Site); this includes the direct impact area of the cemetery. The IS/MND does not adequately disclose the extent of impacts to biological resources, including the acres of permanent impacts to sensitive native plant communities. The IS/MND does not provide adequate mitigation (e.g., a conservation easement on the site) to offset significant impacts to biological resources.

Finding H. Conditional Use Permit (MMC Section 17.66.080)

3. The subject site is suitable for the proposed use. No development will occur within the riparian ESHA and its associated buffer in the southeasterly corner of the site.

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could not be verified.

<sup>2</sup>This does not include 142 RV sites and 35 tent sites provided by the privately operated Malibu Beach RV Park at 25801 Pacific Coast Highway. The California Coastal Commission did not include these spaces in the supply of overnight accommodations as determined in the agenda report for LCP Amendment No. LCP-4-MAL-14-0408-1 dated August 10, 2015.

<sup>3</sup>City of Malibu Planning Commission agenda report dated September 8, 2015.

<sup>4</sup>July 31, 2015 Staff Report to California Coastal Commissioners and Interested Persons regarding City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development) for Public Hearing and Commission Action at the August 12, 2015 Commission Meeting in Chula Vista.

<sup>5</sup>Draft Environmental Impact Report for Rancho Malibu Hotel Project. Prepared by City of Malibu. Prepared with the assistance of AMEC Environment & Infrastructure, Inc. October 2013. State Clearinghouse No. 2012051035.

*MRCA response:*

The subject site is *not* suitable for the proposed use. The project is in direct violation of the LCP. According to the Local Implementation Plan (LIP) (Section 3.3.K.):

The CV-2 District is intended to provide for visitor serving uses, including hotels serving visitors and residents, that are designed to be consistent with the rural character and natural environmental setting.

A cemetery is not an allowed use in the CV-2 zone and a Local Coastal Program Amendment is required. Clearly the intent of the LCP is that the CV-2 zone is for visitor-serving uses such as a hotel. This is the largest vacant CV parcel in Malibu and the CV-2 zone is the only zone for hotel use. The project has not adequately mitigated for the loss of a real visitor-serving use. There is a long history of hotel approvals on the site. The project does not provide adequate mitigation for this inconsistency of the project with the LCP zoning and land use designation. The project is also inconsistent with numerous policies related to land use in the Land Use Plan (LUP), including, but not limited to: 2.33, 2.34, 2.36, and 2.37, as well as the definition of Commercial Visitor Serving in the LUP.

Additionally, the conclusion that “[n]o development will occur within the riparian ESHA and its associated buffer in the southeasterly corner of the site” is factually incorrect. As is made clear by both the California Coastal Act (section 30106) and the Malibu LIP (section 2.1), any “change in density or intensity of use of land” constitutes development. The determination that no development will occur within the riparian ESHA is based solely on the premise that no structure or solid material will be placed or removed from the buffer zone, and ignores any potential changes in the use of the land that will occur as a result of the project. A cemetery will quite clearly result in a change in the intensity of use of the land, both as a result of the people who choose to be interred there, as well as from people visiting the property to either visit loved ones or to utilize any of the so-called visiting service features of the park. These potential changes in density and intensity of use of the land within the ESHA buffer were never appropriately addressed in either the Initial Study or the Mitigated Negative Declaration.

Finding H. Conditional Use Permit (MMC Section 17.66.080)

5. The proposed memorial park with chapel is similar to other uses allowed in the CV-2 district by right, such as equestrian/hiking trails, amphitheaters, and charitable/philanthropic activities within enclosed buildings, and by a conditional use permit, such as cultural and artistic uses, including performing arts venues, and parks, beaches, and playgrounds. Conditions of approval control traffic circulation and parking, only allow one funeral or burial at a time, and restrict special events to those related to memorial services and interments, with approval of a TUP. The proposed use will be compatible with the existing and future land uses within the zone district and surrounding area.

*MRCA response:*

The proposed use is *not* an allowed use within the CV-2 zone. The project is inconsistent with the zoning and a LCP amendment is required. The project is not compatible with the

existing land uses within the zone district and surrounding area. There are limited CV-2 parcels left in the City. The project site is the largest vacant CV parcel in Malibu and the zone CV-2 is the only zone for hotel use. By eliminating a real visitor-serving use on this site in a zone designated for commercial visitor-serving uses such as a hotel, this severely limits the availability of commercial visitor-serving uses in the City, particularly in this prime location. The traffic conditions and mitigation measures rely on deferring analyses and conditions to the future. This prevents the public from understanding the actual traffic and parking impacts that will result from the project and evaluating whether the conditions to be defined and imposed in the future actually will avoid significant impacts to traffic and parking.

Finding H. Conditional Use Permit (MMC Section 17.66.080)

7. ...As conditioned and mitigated, there would be adequate provisions for public access to serve the project.

*MRCA response:*

There would *not* be adequate provisions for public access to serve the project. The proposed use is *not* an allowed use within the CV-2 zone. The project is inconsistent with the zoning and a LCP amendment is required. The project is not compatible with the existing land uses within the zone district and surrounding area. There are limited CV-2 parcels left in the City. The project site is the largest vacant CV parcel in Malibu and the zone CV-2 is the only zone for hotel use. By eliminating a real visitor-serving use on this site in a zone designated for commercial visitor-serving uses such as a hotel, this severely limits the availability of commercial visitor-serving uses in the City. The traffic conditions and mitigation measures rely on deferring analyses and conditions to the future. This prevents the public from understanding the actual traffic and parking impacts that will result from the project and evaluating whether the conditions to be defined and imposed in the future actually will avoid significant impacts to traffic and parking.

The project provides no guarantee that public access will be consistently allowed and maintained. Members of the public will likely be deterred to visit the site when there are events, such as large funeral processions. Potential visitors may think the Memorial Park is closed to the public, they may not be able to find parking, and/or their visitor experience may be compromised.

Finding H. Conditional Use Permit (MMC Section 17.66.080)

10. As conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare, and will provide a cemetery in the community where none currently exists, while also enhancing community and visitor access to scenic vistas and trails on the property. By State law, the project is required to have an endowment to fund ongoing property maintenance and upkeep.

*MRCA response:*

The proposed use *will* be detrimental to the public interest. The proposed cemetery use is not an allowed use in the CV-2 zone. The project results in the loss of commercial

visitor-serving uses as intended in the LCP on the largest vacant CV parcel in Malibu. CV-2 is the only zone for hotel use and implementation of the project will prevent this site from being used for meaningful commercial visitor-serving uses, as the LCP intended.

Finding H. Conditional Use Permit (MMC Section 17.66.080)

*MRCA response:*

The findings in the staff report described for the Conditional Use Permit (MMC Section 17.66.080) do not adequately address consistency with MMC Section 17.66.080.

Section A: The proposed use is *not* conditionally permitted within the subject zone. A cemetery is not an allowed use in the CV-2 zone.

Section B: The proposed use *would impair* the integrity and character of the zone in which it is to be located. The project site is the largest vacant CV parcel in Malibu and that zone CV-2 is the only zone for hotel use. The subject site is approximately 27.8 acres. According to the California Coastal Commission staff, under the City of Malibu's LCP, certified by the Commission in 2002, there are approximately 12 parcels, totaling approximately 80 acres, zoned Commercial Visitor-Serving (excluding the subject property that is zoned "Planned Development, i.e., Crummer property).<sup>6</sup>

There are currently six existing overnight accommodation facilities in the City of Malibu with a total of 115 rooms. The hotel that was previously proposed on the project site would have added 146 rooms, which would have more than doubled the supply of rooms for overnight accommodations in the City. A memorial park would serve a much narrower range of visitors than another permitted use, such as a hotel, which would serve visitors from a much larger geographic scale (e.g., local, regional, state, national, and international scales). Approving a cemetery on the project site would result in a severe loss of critical commercial visitor-serving use, i.e., a hotel. This reduces access to the recreational opportunities of regional, state, and national importance.

Section D: The proposed use is *not* compatible with the land uses, if any, presently on the subject property and in the surrounding neighborhood. The proposed project would directly and indirectly impact environmentally sensitive habitat and compromise a wildlife movement and habitat connectivity area, without adequate mitigation.

Section E: The proposed use would *not* be compatible with existing and future land uses within the zone and the general area in which the proposed use is to be located. The

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<sup>6</sup>July 31, 2015 Staff Report to California Coastal Commissioners and Interested Persons regarding City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development) for Public Hearing and Commission Action at the August 12, 2015 Commission Meeting in Chula Vista.

project site is the largest vacant CV parcel in Malibu and that zone CV-2 is the only zone for hotel use. The subject site is approximately 27.8 acres. According to the California Coastal Commission staff, under the City of Malibu's LCP, certified by the Commission in 2002, there are approximately 12 parcels, totaling approximately 80 acres, zoned Commercial Visitor-Serving (excluding the subject property that is zoned "Planned Development, i.e., Crummer property).<sup>7</sup>

The City has argued for a novel use in this zone, without adequately accounting for the loss of potential visitor-serving uses, if an actual visitor-serving allowed use (i.e., a hotel) were implemented. There are currently six existing overnight accommodation facilities in the City of Malibu with a total of 115 rooms. The hotel that was previously proposed on the project site would have added 146 rooms, which would have more than doubled the supply of rooms for overnight accommodations in the city. A memorial park would serve a much narrower range of visitors than another permitted use, such as a hotel, which would serve visitors from a much larger geographic scale (e.g., local, regional, state, national, and international scales). Approving a cemetery on the project site would result in a severe loss of critical commercial visitor serving use, i.e., a hotel. This reduces access to the recreational opportunities of regional, state, and national importance.

Section G: There *would not be adequate provisions for public access* to serve the subject proposal. Sporadic, unreliable public access to trails on the site is not comparable to the uses that are actually allowed under the CV-2 zone. Potential visitors may think the Memorial Park is closed (e.g., during large funeral processions) and/or they would not be able to find parking. If a hotel were implemented, visitors to Malibu would have parking and a place to stay overnight. The project represents a severe reduction in commercial visitor-serving uses, compared with an actual visitor-serving use that is permitted in the zone (e.g., a hotel).

Section I: The proposed project does *not* comply with all applicable requirements of state and local law. The project does not comply with the California Coastal Act, nor the City of Malibu LCP. The project does not comply with the zoning in the LCP of CV-2. The project does not comply with the policies of the LUP, including, but not limited to: 2.33, 2.34, 2.36, and 2.37, as well as the definition of Commercial Visitor Serving in the LUP. The project does not comply with LIP Section 3.3.K.1., which states that the CV-2 district is intended to provide for visitor serving uses, including hotels serving visitors and residents, that are designed to be consistent with the rural character and natural environmental setting.

The project is contrary to the California Environmental Quality Act (CEQA). The IS/MND is deficient in numerous areas including land use, biological resources, traffic, and visual resources.

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<sup>7</sup>July 31, 2015 Staff Report to California Coastal Commissioners and Interested Persons regarding City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development) for Public Hearing and Commission Action at the August 12, 2015 Commission Meeting in Chula Vista.

Section J: The proposed use *will be detrimental* to the public interest. The proposed cemetery use is not an allowed use in the CV-2 zone. The project results in the loss of commercial visitor-serving uses as intended in the LCP on the largest vacant CV parcel in Malibu. CV-2 is the only zone for hotel use and implementation of the project will prevent this site from being used for meaningful commercial visitor-serving uses, as the LCP intended.

Section 2. Adoption of Mitigated Negative Declaration

The Planning Commission further finds that through feasible conditions placed on the project, less than significant impacts on the environment are expected.

*MRCA response:*

The IS/MND has not demonstrated that there will be less than significant impacts on the environment. The proposed use of a cemetery conflicts with the LCP zoning of CV-2. The project also conflicts with several policies of the LCP in the area of land use. The project does not include adequate mitigation to offset the significant impacts to land use associated with this zoning conflict, and the resultant loss of commercial visitor-serving use, e.g., a hotel. The proposed project also would result in potentially significant impacts to biological resources, aesthetic resources, and traffic/parking.

**The decision was contrary to law.**

*MRCA response:*

The approval of the project by the City of Malibu Planning Commission is contrary to the California Coastal Act, the Malibu LCP, and CEQA. The project does not comply with the zoning in the LCP of CV-2. A cemetery is not an allowed use in this zone. The project does not comply with the policies of the LUP, including, but not limited to: 2.33, 2.34, 2.36, and 2.37, as well as the definition of Commercial Visitor Serving in the LUP. The project does not comply with LIP Section 3.3.K.1., which states that the CV-2 District is intended to provide for visitor serving uses, including hotels serving visitors and residents, that are designed to be consistent with the rural character and natural environmental setting.

The project does not comply with the California Coastal Act, including, but not limited to, the following sections:

Section 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222: The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The project is contrary to CEQA. The IS/MND is deficient in numerous areas including land use, biological resources, traffic, and visual resources.

The project would result in an unmitigated significant adverse impact to land use. The project is inconsistent with the LCP, specifically with respect to the inconsistency with the existing LCP zoning and land use designation of CV-2. The project is inconsistent with numerous policies of the LCP. There is inadequate mitigation to offset the significant impacts to land use.

The project as proposed would result in a potentially significant impact in several items in the IS checklist related to land use including: (b) conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

The IS/MND is deficient for not adequately identifying the biological resources of the site and analyzing the impacts. Given the project location, the biological resources onsite, and the scale of the development, the IS/MND is deficient due to the inadequate protection, or mitigation for the impacts to the environmentally sensitive habitat area (ESHA) and habitat linkage on the project site. The project as proposed would result in a potentially significant impact in several items in the IS checklist related to biological resources including: (b) have a substantial adverse impact on a sensitive natural community and (d) interfere substantially with the movement of any native resident or migratory wildlife species or with established native resident or migratory wildlife corridors, and (e) conflict with any local policies or ordinances protecting biological resources.

The IS/MND is deficient for not adequately addressing significant impacts to visual resources. Malibu Canyon Road and PCH are scenic roads per the LCP (LUP policies 6.2, 6.3, and 6.4). The project site is located at the gateway to the Santa Monica Mountains. There are world-class views of the mountains and ocean in this area. The site is across the street from existing parkland, including the Santa Monica Mountains Conservancy-owned Malibu Bluffs Open Space. There would be future analyses of the potential for obstructed of bluewater views. However, it is unclear to what extent bluewater views would be partially blocked (for example, 75 percent blockage of bluewater views, while not completely obstructed, could still be a significant impact). The project includes a Site Plan Review for excess height of the chapel in this visually significant area. The chapel would be visible from several scenic areas.

The project as proposed would result in a potentially significant impact in several items in the IS checklist related to aesthetics including: (a) have a substantial adverse effect on a scenic vista, (b) substantially damage scenic resources, and (c) substantially degrade the existing visual character or quality of the site and its surroundings.

The IS/MND is deficient for its analysis of traffic impacts. Our agency is particularly concerned with potentially significant impacts to traffic on weekends and holidays and impacts to public parking. There is a condition (No. 35) in the resolution stating that funeral processions involving more than 12 vehicles may only be scheduled during certain hours (e.g., only 9am to 12 noon during summer weekends, and not allowed on certain holidays). It is unclear if this covers additional funeral attendees that do not drive in the funeral procession. For example, if there is a funeral procession with 11 vehicles but there are also 100 visitors on a summer weekend, how do the project conditions ensure that there would not be a potentially significant impact to traffic and public parking?

The project relies on delaying the analysis and defining the actual mitigation for potentially significant traffic impacts. The resolution includes a condition (No. 36) that a traffic management plan is required for funeral processions of over 100 cars. Future conditions of approval would be specified, with a variety of options. This leaves a vague process to be delayed in the future and prevents the public from fully understanding what the traffic and parking impacts would be, and whether they would actually be mitigated to a less than significant level. In addition, it does not appear that there is a limit on the maximum number of cars. In cases of 100 cars or more, it appears that the parking availability would be extremely restricted onsite, thus restricting public access for trail users. In addition, the approach of relying on a Temporary Use Permit to address potential parking impacts (Condition No. 33) is vague. This delays the evaluation of potentially significant impacts and appropriate mitigation measures.

The IS/MND also does not appear to adequately address the traffic and parking impacts associated with ongoing large numbers of visitors to celebrity grave sites.

The project as proposed would result in a potentially significant impact in several items in the IS checklist related to traffic including: (a) conflict with an applicable plan, ordinance or policy establishing measure of effectiveness for the performance of the circulation system.... and (b) conflict with an applicable congestion management program, including, but not limited to the level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.

The IS/MND does not contain an alternatives analysis to consider alternatives that avoid significant, adverse environmental impacts, e.g., to land use, biological resources, aesthetic resources, and traffic/parking. An EIR should be prepared.