

**SANTA MONICA MOUNTAINS CONSERVANCY**

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**REVISED**

February 27, 2017

Adrian Fernandez, Senior Planner  
City of Malibu  
Planning Department  
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**Malibu Memorial Park, Initial Study No. 16-002, Mitigated Negative Declaration No. 16-001, Coastal Development Permit No. 15-028, and Other Associated Requested Approvals, 4000 Malibu Canyon Road, Winter Canyon Watershed**

Dear Mr. Fernandez:

The Santa Monica Mountains Conservancy (Conservancy) has been following closely the different development proposals on the subject property over the years. The Conservancy has sent several comment letters on the Rancho Malibu Hotel, previously proposed on the property (November 4, 2013; May 21, 2012; October 6, 1997; August 19, 1996; and June 19, 1995). According to the Initial Study (IS)/Mitigated Negative Declaration (MND), the current proposal for the Malibu Memorial Park consists (in part) of the following: a chapel, 176 parking spaces, 47 freestanding mausoleum structures, approximately 28,265 in-ground burial plots spaces<sup>1</sup>, 3,644 interments in above-grade crypt structures, and approximately 65,036 square feet of walking trails on approximately 21.0 acres of the 27.8-acre site. The project includes a site plan review for additional height for the chapel (over 18 feet but less than 28 feet), variance for non-exempt grading to cap the archaeological site (16,985 cubic yards in excess of maximum allowed), and a minor modification for reduced required front yard setback for mausoleums. The project is located in the Commercial Visitor Serving-2 zoning district.

In summary, the Conservancy opposes the project for several reasons explained in more detail below in this letter. These include the following: inadequate IS/MND; inadequate

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<sup>1</sup>This figure includes single, tandem, pet, and factional burial crypts. IS/MND, p. 2

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mitigation for loss of Commercial Visitor Serving uses and associated inconsistency with the Local Coastal Program (LCP); and inadequate protection of, and mitigation for, impacts to biological resources, including environmentally sensitive habitat area (ESHA).

As background, the Conservancy currently owns the approximately 84-acre Malibu Bluffs Open Space, located south of the project site and west of the City's Malibu Bluffs Park. The Malibu Bluffs Open Space supports rare coastal bluff habitat and provides visitor-serving trails.

### **Unmitigated Significant, Adverse Impacts to Land Use**

We respectfully disagree with the assertion that there would be a less than significant impact to land use. The project would conflict with the LCP, specifically with respect to its inconsistency with the existing LCP zoning and land use designation of Commercial Visitor Serving-2. In addition, the IS/MND does not address the inconsistency of the project with numerous Land Use Plan (LUP) policies, which emphasize the importance of providing visitor-serving uses and recreational opportunities (see Attachment A).

There was a previous application to the City for a hotel use on this site, a use that is allowed in this zone with a conditional use permit (according to Table 1 of the Local Implementation Plan [LIP]). Developers have been attempting to permit a hotel at the project site for many years.<sup>2</sup> The California Coastal Commission approved (in June 1986) a 300-room hotel and other associated development. The City Council approved a 146-room hotel design in 1998. A new Draft Environmental Impact Report was prepared for a 146-room hotel in October 2013. The LIP specifically identifies a hotel as an identified use. According to the LIP Section 3.3 K.1.:

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.

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<sup>2</sup> Rancho Malibu Hotel Project, Public Draft Environmental Impact Report State Clearinghouse No. 2012051035, Prepared by City of Malibu, Prepared with the assistance of AMEC, October 2013.

To reiterate, some form of a hotel has been considered onsite since 1986, and up to 2013. Commercial visitor-serving uses, which include hotels, were contemplated on this site when the Malibu LCP was certified in 2002.

A cemetery is not an allowed use in this zone. According to the City's staff report and minutes, the City Planning Commission (September 21, 2015 hearing) made a determination that a cemetery or memorial park is similar to, and not more objectionable than, the permitted or conditionally permitted uses in the Commercial Visitor Serving-2 zoning district. The City compared the proposed use of a cemetery/memorial park to potentially similar CV-2 uses of a park, as well as churches, temples and other places of worship. The Planning Commission determined that a cemetery/memorial park with assembly structure is a permitted use in this zoning district, subject to obtaining a conditional use permit.

In fact, the City's staff report raises plenty of questions as to whether this determination is appropriate. The staff report (p. 5) states that this is the largest vacant CV parcel in Malibu and that zone CV-2 is the only zone for hotel use.<sup>3</sup> The staff report (p. 5) asks "May not be accessible to general public?" and states (pp. 4-5) that a cemetery/memorial park is "[N]ot highly visitor-serving, unless grounds are available as open space, chapel is available for public worship, or celebrity graves become a tourist attraction."

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.

The IS/MND is deficient for not addressing the inconsistency of the project with numerous LUP policies, which emphasize the importance of providing visitor-serving uses and recreational opportunities, and particularly low-cost visitor-serving opportunities (see Attachment A). The project would have an adverse effect on priority visitor-serving opportunities in the area. It would reduce the potential for visitor-serving and affordable overnight accommodation use in this area and result in a lower priority land use. This site is in an opportune location for visitor-serving uses, being near the Civic Center and

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<sup>3</sup>City of Malibu Planning Commission Agenda Report, September 8, 2015, Item 5.F.  
Request for Determination of Use - Cemetery/Memorial Park with Assembly Structure in  
Commercial Visitor Service-Two Zone

downtown Malibu, Pepperdine University, Malibu Bluffs Park, Malibu Bluffs Open Space, Pacific Coast Highway (PCH), public bus stops, and beach accessways along Malibu Road. A cemetery is not an allowed use in this zone. The cemetery/memorial park was not contemplated when the 2002 Malibu LCP was certified. A memorial park primarily geared to visitors of the graves, crypts, and mausoleums is not providing an equivalent visitor-serving use as a hotel would. 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 area (visitors from local areas, throughout the region, from the State, from the United States, and potentially from other countries). This project approval would mean that land once designated for commercial visitor-serving uses would primarily benefit clients of the cemetery/memorial park. An undetermined, speculative number of public visitors to a cemetery/memorial park is not comparable to the enormous visitor-serving benefits associated with a hotel.

A LCP amendment is needed to accommodate the proposed memorial park use. There must be adequate mitigation to offset the inconsistency with the LCP zoning, land use designation, and policies, as well as the severe reduction in visitor-serving uses. The applicant must offer, and the City must condition the project, to pay an in-lieu fee to a agency acceptable to the City of Malibu and California Coastal Commission for use in developing low-cost visitor accommodations. There is an excellent example of how a similar situation was handled by the California Coastal Commission for the Crummer project across the street (Malibu Coast Estate/Crummer Trust Property Planning Development LCP Amendment No. LCP-4-MAL-14-0408-1). The Malibu Memorial Park project will adversely impact visitor-serving uses at least as much as would the Crummer project. The Crummer project involved a change from Commercial Visitor Serving-2 to Residential/Recreational (Planned Development; consisting of five single-family residences and one lot to expand the City of Malibu Bluffs Park for active recreational use). An agreement was reached whereby the property owner would enter into an agreement to pay an in-lieu mitigation fee for use in developing low-cost visitor-serving overnight accommodations.

### **Biological Significance of Project Site**

The subject site represents one of two remaining habitat linkages between the main body of the Santa Monica Mountains and Malibu Bluffs. The other connection is via Puerco Canyon to the west. As part of the approval for the Crummer project, just south of the subject site, a conservation easement was required. In addition, a land use restriction was required on the open space on the Towing site, just east of the Crummer site. The subject

project site contains a critical portion of the habitat linkage with the greatest long-term viability between the Conservancy's Malibu Bluffs Open Space and the nearest large block of habitat located just northeast of the Malibu Canyon Road entrance of Pepperdine University. The project site supports sensitive habitats and plant communities including intact coastal sage scrub and foothill needlegrass patches.<sup>2</sup>

The Conservancy is interested in ensuring an adequate habitat linkage through the property and maximizing both the retention and unit integrity of the contiguous block of high quality coastal sage scrub habitat onsite. The Conservancy's Malibu Bluffs Open Space immediately southwest of the project site, on the opposite side of PCH, represents a regionally significant block of highly accessible, intact, coastal habitat. The Malibu Bluffs contain a unique assemblage of coastal sage scrub, chaparral, and coastal bluff vegetation elements that is rare in the Santa Monica Mountains. Without question, virtually all mammal, and selected bird populations, will experience an ongoing decline in vigor if this habitat block becomes isolated from the main body of the Santa Monica Mountains.

The project proposes to transform a primarily undeveloped open space site in a regionally significant area to an urban use. Given the project location, the biological resources onsite, and the scale of the proposed development, the currently proposed project does not adequately protect, or mitigate the loss, of this ESHA and habitat linkage on the project site.

### **Inadequate Identification and Analysis of Impacts to Biological Resources**

The IS/MND is inadequate in the identification of, analysis of, and mitigation for impacts to biological resources. We strongly disagree with the statement from the IS/MND (p. 59): "[T]he property is considered functionally isolated from the Santa Monica Mountains and Malibu Bluffs Park." We also disagree with the statement that "...the habitats on the property are not considered ESHA because the property lacks connectivity to other nearby large native habitat blocks." In addition, the discussion in the IS/MND (Section [d], p. 59) regarding impacts to movement of native wildlife species is grossly deficient.

While it is well known that roads can fragment habitat and diminish the quality, we also know that there is still habitat connectivity in this area, even with the presence of Malibu Canyon Road and PCH. Our staff has seen a coyote trotting by Malibu Bluffs along PCH, a white-tailed kite in trees on Malibu Bluffs, deer on the lawn on Malibu Canyon Road, and ducks stopping traffic on Malibu Canyon Road. Birds can easily fly over roads and mammals can make successful road crossings, particularly at low traffic levels (e.g., in the

late night and early morning hours). Early morning (1:30 a.m. to 4:30 a.m.) traffic volumes on PCH and Malibu Canyon Road likely permit successful wildlife crossings of these roadways by mammals, bird species sensitive to human presence, and possibly even reptiles.

Looking at aerial photos, the native habitat by Pepperdine is clearly connected to and through the project site, to the Crummer site south of PCH (including the conservation easement), then through to the Conservancy-owned Malibu Bluffs Open Space.

Also, the IS/MND does not even include a quantification of the permanent impacts to sensitive native plant communities such as coastal sage scrub and foothill needlegrass grassland. The IS/MND is deficient for not identifying on a figure what is the open space to remain, including acres of plant communities, that would not be impacted by direct development of the project, non-native landscaping, fuel modification, or other permanent disturbance.

Specifically, the IS/MND is deficient for not providing a clear figure depicting the areas of required fuel modification on the site. How could decision makers know how much coastal sage scrub will be permanently disturbed and thus type converted? The discussion of fire hazards is cursory (Section [h], p. 94 of IS/MND). For example, the IS/MND states simply: “All project construction would be in compliance with the....codes of the Los Angeles County Fire Department...” For example, what is the width of the required fuel modification zone for the crypts and mausoleums? We recommend that the Fuel Modification Plan require only native vegetation in the fuel modification zones in the open space to remain along the eastern and southern borders of the property in order to maximize the per-acre habitat value of the remaining corridor area. If there is fuel modification required in the remaining open space, we recommend that the project designers strive to maintain at least a 30-foot-wide continuous undisturbed swath along the eastern property boundary (outside of the landscaped area pursuant to the landscape plan approved by the City).

The IS/MND (p. 7) states that “[T]he unstable slopes to the north, east and south (approximately seven acres) would be maintained in their natural condition.” A figure should be provided clearly delineating the area to be undisturbed and the mechanism to protect the open space in perpetuity should be included in the project conditions. See Need for a Conservation Easement, below.

### **Need for a Conservation Easement**

In order to partially offset the anticipated impacts to wildlife movement and sensitive habitats, the proposed project should include a voluntary offer of a conservation easement over the undeveloped portions of the property. The conservation easement should include the open space currently shown on the site plan where no improvements are proposed. This conservation easement should also include an additional narrow stretch (30-foot-wide) along the northeastern stretch of the property where landscaping is currently proposed (see attached proposed conservation easement area). In this narrow stretch in the northeastern portion of the property, the proposed perimeter hedge should be removed from the landscape plan in order to allow optimal, low-impedance wildlife movement conditions. In this area, with respect to trees, only native trees should be allowed to be planted. This conservation easement would serve to maintain the habitat linkage from the natural habitat to the north by Pepperdine University, through the subject site, through the Crummer site (south of PCH), to the native habitat on Malibu Bluffs Open Space.

This offer of a conservation easement should be included in the project description and the project conditions of approval. Such offer could be made to the Mountains Recreation and Conservation Authority. To provide adequate permanent mitigation, this conservation easement must be recorded with a certificate of acceptance signed by the accepting agency prior to the issuance of any and all permits, vegetation removal, grading, or construction. The conservation easement should prohibit all development and other uses, including fencing, post-project grading, lighting, accessory structures, impenetrable hedges, planting of vegetation that impedes movement of large mammals, concrete or other hard sculptures, and signage. There would be an allowance for the one pathway shown connecting to Civic Center Way. Planting of non-native plant species should be prohibited, except along the northerly 600 linear feet, in accordance with a landscape plan approved by the City of Malibu. Planting of non-native trees should be prohibited throughout the entire area of the conservation easement. The project should be conditioned to avoid light spillover into the conservation easement. Existing utilities would be permitted.

Some of the required restoration for impacts to sensitive habitats could be implemented in this northerly area, within the conservation easement. The IS/MND (p. 60) states that habitat restoration is one of the options to mitigate the impacts to the dense, intact coastal sage scrub, foothill needlegrass patches, and successional coastal sage scrub with ornamentals.

### **Visual Impacts**

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The Conservancy recommends that the project be designed to avoid significant, adverse views of structures (including the chapel [height over 18 feet but less than 28 feet; IS/MND, p. 10], mausoleum [12 to 14 feet in height and width; IS/MND, p. 26], and crypts) from scenic roads including PCH and Malibu Canyon Road.

According to the IS/MND (p. 36), the standards of the LIP would be added to the project as standard conditions. These standards require that exterior lights be minimized, restricted to low intensity features, shielded, and concealed to the maximum extent feasible. In order to protect wildlife movement along the northeastern border of the site and to adhere with dark sky purposes, the project should be conditioned to require the following for a pedestrian walking down Civic Center Way from Malibu Canyon Road: (1) no night lighting elements are visible, and (2) light spillage does not exceed 2/100 of a foot-candle, or the equivalent of two full moons. (One full moon is approximately equivalent to 1/100 of a foot-candle.)

Thank you for your consideration. Should you have any questions, please contact Paul Edelman, Deputy Director for Natural Resources and Planning phone at (310) 589-3200, ext. 128 or by email at [edelman@smmc.ca.gov](mailto:edelman@smmc.ca.gov).

Sincerely,

Irma Muñoz  
Chairperson



**Attachment A**  
**Some Local Coastal Program Elements Not Addressed in Initial Study/Mitigated**  
**Negative Declaration for Malibu Memorial Park**

Land Use Plan Policies:

2.33 Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

2.36 Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

2.37 Priority shall be given to the development of visitor-serving commercial and/or recreational uses that complement public recreation areas or supply recreational opportunities not currently available in public parks or beaches. Visitor-serving commercial and/or recreational uses may be located near public park and recreation areas only if the scale and intensity of the visitor-serving commercial recreational uses is compatible with the character of the nearby parkland and all applicable provisions of the LCP.

C.2. COMMERCIAL VISITOR SERVING (CV): The CV designation provides for visitor serving uses such as hotels and restaurants that are designed to be consistent with the rural character and natural environmental setting, as well as public open space and recreation uses.

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Local Implementation Program Excerpt:

Section 3.3 K.1.: 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.