

## MEMORANDUM

**TO:** ARA MIHRANIAN, COMMUNITY DEVELOPMENT DEPARTMENT  
**FROM:** SO KIM, SENIOR PLANNER *SK*  
**DATE:** OCTOBER 6, 2016  
**SUBJECT:** SITE PLAN REVIEW (CASE NO. ZON2016-00332) FOR PROPERTY LOCATED AT GREEN HILLS MEMORIAL PARK (APPLICANT/OWNER – GREEN HILLS MEMORIAL PARK).

### RECOMMENDATION

Approve Site Plan Review (Case No. ZON2016-00332), subject to the conditions in Exhibit “A”, to allow the construction of a combination wall up to 14.9’ in height to accommodate an additional burial area and niches in the eastern edge of Vista Del Ponte; a water feature; a stairway that will provide access to the upper existing burial area at Vista Del Ponte and the upper area of Inspiration Slope; and 793yd<sup>3</sup> of grading to support the proposed improvements.

### BACKGROUND

On July 26, 2016, Green Hills Memorial Park submitted a Site Plan Review application to construct a combination wall along the eastern edge of Vista Del Ponte to accommodate additional burial area and niches, a water feature, and a stairway with grading to support the proposed improvements. The application was deemed complete on August 8, 2016 for processing.

On August 8, 2016, a 15-day public notice was provided to all property owners within 500’ radius of the subject site for comments. Staff received two written comments which were forwarded to the applicant for a response as required pursuant to Condition No. 1k of C.C. Resolution No. 2015-102. The applicant responded to both comments in writing, which are attached to this report and discussed in more detail under the ‘Additional Information’ section of this report.

### SITE DESCRIPTION

Green Hills Memorial Park cemetery is located at 27501 Western Avenue in the northeast corner of the City, bordering the City of Lomita, the City of Rolling Hills Estates, and the City of Los Angeles. The cemetery was first established in 1948 and, at the time, was located within an unincorporated area of Los Angeles County. The site became part of the City of Rancho Palos Verdes when the “Eastview” area was annexed in 1984. The property is approximately 121-acres in size, and is a privately owned and operated cemetery facility within the City’s Cemetery (C) Zoning District. The operation of the cemetery is governed by a Conditional Use Permit approved by the City Council on November 17, 2015 under Resolution No. 2015-102. The cemetery operates Monday through Sunday, from sunrise to sunset, and consists of ground and roof-top burials, mausoleum buildings, an office building, mortuary, chapel, flower shop, and a maintenance yard and related buildings. The cemetery is bordered by residential uses to the north and south, a major street to the east

(Western Avenue), Rolling Hills Covenant Church and Palos Verdes Reservoir to the west.

## **PROJECT DESCRIPTION**

The proposed project is a request to:

- Construct a combined free-standing/retaining wall ranging in height from 1' at the southern end of the wall to 11.4' at the northern end of the wall against the excavated slope area with a 3.5' tall guardrail on top of the wall. The exposed surface of the retaining wall facing the street (Long View Drive) will be designed to contain niches to hold cremation urns;
- Construct a cascading 11.4' tall water feature located between the top of the retaining wall and the adjacent street level at the north end of the project area;
- Construct a stairway against the most southerly façade of the Inspiration Slope Mausoleum building that will provide access to the existing upper burial area on Vista Del Ponte and the upper area of Inspiration Slope;
- Conduct 793yd<sup>3</sup> of grading consisting of 778yd<sup>3</sup> of cut and 15yd<sup>3</sup> of fill over an existing slope located at the eastern edge of Vista Del Ponte (South of Inspiration Slope) to support the proposed improvements;

## **DISCUSSION**

### **Site Plan Review**

Pursuant to City Council Resolution No. 2015-102, Condition of Approval No. 1k ("COA 1k"), the Director may conduct an Administrative Review to determine if the proposed project substantially complies with the Council-approved Master Plan. The City's Site Plan Review process, which assesses compliance with the required setbacks and heights of the Cemetery zoning district (RPVDC §17.28) and as conditioned through the property's Conditions of Approval (CC Resolution No. 2015-102) will be the basis for determining substantial compliance with the Master Plan. More specifically, the Council-adopted required setbacks from the east (facing Western Avenue) and north property line (facing residential properties along Peninsula Verde) are 25' and 80', respectively, for above ground structures. The proposed project is over 400' from the east property line and over 330' from the north property line and therefore, is in compliance with the minimum required setbacks. Additionally, the maximum allowed heights for customary cemetery related features is 16' (COA 1k). The proposed 14.9' tall combination wall and 11.4' tall water feature both comply with the maximum 16' height limit.

A total of 793yd<sup>3</sup> of related grading is proposed to support the aforementioned improvements. Pursuant to Condition of Approval No. 1b of City Council Resolution No. 2015-102, a total of 643,259yd<sup>3</sup> of additional grading is allowed for all the various proposed mausoleums and ground burials throughout the cemetery site conducted between 2005 and the life of the Master Plan. As proposed, the applicant is requesting to conduct 793yd<sup>3</sup> of grading consisting of 778yd<sup>3</sup> of cut and 15yd<sup>3</sup> of fill over an existing slope located at the eastern edge of Vista Del Ponte. The proposed grading will be supported by a new 14.9' combination (free-standing/retaining) wall that will accommodate ground burials, a water feature, and a stairway to the Vista del Porte area. Based on the scope and nature of the grading as it relates to the Council-approved Master Plan and the Council-adopted Conditions of Approval, the proposed earth movement is well within the approved maximum grading quantity of 643,259yd<sup>3</sup>. The grading quantities of all improvements dated 2005 and after will continue to be debited and tracked from the 643,259yd<sup>3</sup>. For this reason, the Director has determined that the quantity of grading for the proposed improvements substantially complies with the Council-approved Master Plan.

## **ADDITIONAL INFORMATION**

### **ENVIRONMENTAL ASSESSMENT**

On April 24, 2007, the Planning Commission adopted P.C. Resolution No. 2007-32, thereby adopting a Mitigated Negative Declaration (MND) for an Environmental Assessment for Case No. ZON2003-00086 (Conditional Use Permit No. 55 Revision "D") for the Green Hills Cemetery Master Plan. In adopting the Mitigated Negative Declaration, the Planning Commission found: 1) that there would be no significant adverse environmental impacts resulting from the adoption of the Green Hills Cemetery Master Plan; and 2) that with mitigation measures there would be no significant adverse environmental impacts resulting from the proposed master plan. Subsequently, there were three separate addendums for miscellaneous improvements, which were determined to be within the scope of the previously adopted MND.

On November 17, 2015, the City Council adopted C.C. Resolution No. 2015-102, thereby approving modifications to the conditions of approval as part of the compliance review. No further environmental review was considered necessary as the modifications to the conditions of approval reduces the impacts of those operations on adjacent properties; constitutes minor alterations to existing structures or facilities involving negligible or no expansion of use; and will not have a significant effect on the environment.

The proposed project involving the construction of a combination wall, water feature, and stairway with 793yd<sup>3</sup> of related grading has been determined to be in substantial compliance with the City Council adopted conditions of approval for the Master Plan (C.C. Resolution 2015-102), as evidenced in the discussions under 'Site Plan Review' above. Therefore, the proposed project is within the scope of the previously adopted MND and no further environmental review is necessary.

### **PUBLIC CORRESPONDENCE**

Two separate emails were submitted to the City in response to the public notice for the proposed project. Pursuant to P.C. Resolution 2015-102, Condition 1k, these emails were submitted to Green Hills for follow-up responses. All of these emails/correspondence are attached to this report and described in detail below, followed by Staff's comments (see attachment).

#### **Email from Ms. Bernadette Sabath**

Ms. Sabath describes in her email (attached) that she has no objections to the proposed project with exception of an objection to the stairway that allows access to the upper areas of Vista Del Ponte and Inspiration Slope. She expresses that approving such access will inevitably lead to burial activity on the rooftop of Inspiration Slope Mausoleum and therefore, objects to it until the Planning Commission grants such rooftop burial activity in the future.

Recently, a written waiver was executed between the City and Green Hills allowing the storage of vaults on the rooftop of the Inspirational Slope Mausoleum with the caveat that Green Hills agrees that it does not have the right to perform rooftop burials on the Inspiration Slope Mausoleum building without first obtaining approval from the City through a public hearing process; that it is within the City's police power to require this process; that should the City deny the request for rooftop burials even after the vaults are placed, Green Hills cannot seek damages against the City; that Green Hills has reserved the right to seek to overturn such denial by legal process; and that Green Hills agrees to defend the City against third-party claims. As a result, no rooftop burial activity is allowed unless Green Hills files such request for Planning Commission consideration, and the Planning

Commission approves the request. Additionally, it should be noted that the upper area of Inspiration Slope area is already designed to be accessed from the north via North Terrace Drive and the proposed access will serve as a second access point from the southeast corner. Similarly, the upper areas of Vista Del Ponte can already be accessed from the south end of Long View Drive and the proposed access will provide a convenient second access point from the east end of Long View Drive. Green Hills explains in its follow-up response letter to Ms. Sabath's email that the proposed second access point is intended to allow visitors a shorter path to the burial area located in the upper Inspiration Slope area (not on rooftop).

#### Email from Mr. Noel Weiss

Mr. Weiss' email (attached) raises matters related to compliance with the Green Hills Master Plan, appropriate City application process, deficient public notice, the Community Development Director's role, and his request for an Interpretation Review that was filed separately for the vault storage on the Inspiration Slope Mausoleum rooftop. Mr. Weiss states that his comments are for transmittal to Green Hills for their follow-up responses. Mr. Weiss' email along with Green Hill's follow-up email is attached to this report (see attachment). Additionally, the City Attorney's written response to Mr. Weiss related to the Interpretation Procedure is also attached to this report for reference purposes. Below is a summary of the comments in Mr. Weiss' email followed by Staff's responses.

1. Imprecise project description in the public notice

The public notice (see attachment) identified the quantity of grading, project location, height of the combination wall and water feature and stairway, and the purpose of the proposed project. The public notice also included a link to the City's webpage that provides access to the proposed project plans. To ensure adequate notification was given to interested parties, an announcement of the proposed project was distributed via City's list serve and a public notice was mailed to all appropriate parties as required by C.C. Resolution No. 2015-102, Condition of Approval No. 1k (COA 1k). Staff believes that the project description in the public notice provided adequate and detailed information for the public's benefit.

2. & 5. The project is not consistent with the Green Hills Master Plan and a Conditional Use Permit should be required

As discussed under the 'Site Plan Review' section of this report, Staff believes that the proposed project substantially complies with the City Council-approved Master Plan because the proposed earth movement and associated retaining wall is well within the maximum grading quantity of 643,259yd<sup>3</sup> and the proposed site improvements to accommodate ground burials is also consistent with the Council-approved Master Plan.

3. Public notice is inaccurate as it omits any reference to the limited role of the Director

COA 1k requires that the public notice be issued in accordance with Rancho Palos Verdes Development Code (RPVDC) § 17.80.090. RPVDC §17.80.090 requires that the content of the notice include the date, time and place of hearing; the identity of the hearing body or officer; a general explanation of the matter to be considered; and the address or general location of the project site. The public notice included all the listed requirements. Furthermore, the public notice stated the following:

“the Community Development Director of the City of Rancho Palos Verdes will consider an application for the following project pursuant to Council-adopted Resolution No. 2015-102 Condition No. 1k:”

Based on the above, the public notice is considered accurate.

4. Director shall make a specific finding under §17.28.030(H)

The City's Code §17.28.030 (H) references a Conditional Use Permit. As previously noted, the proposed project is being reviewed under COA1k and has been found to be in substantial compliance with the Council-approved Master Plan as discussed under the 'Site Plan Review' discussion of this report

6. Decision cannot be rendered until the Director acts on his request for Interpretation Review

The City Attorney reviewed Mr. Weiss' Interpretation Review letter and determined on September 2, 2016 that the issues he is requesting to be interpreted overlaps with the issues that he is raising in two separate, but related, lawsuits against the City. As Mr. Weiss has chosen to litigate, the City Attorney opined that it is not appropriate for the City to engage in the "Interpretation Procedure" at this time as these matters will evidently be largely decided by the court. As a result, Mr. Weiss' "Interpretation Procedure" request was administratively withdrawn and the related application fees refunded.

## **CONCLUSION**

Based upon the discussion above, Staff recommends approval of the requested Site Plan Review application, to construct a 14.9' tall combination wall, a new water feature, and stairway with 793yd<sup>3</sup> of grading consisting of 778yd<sup>3</sup> of cut and 15yd<sup>3</sup> of fill over an existing slope located at the eastern edge of Vista Del Ponte, subject to the conditions contained in Exhibit "A" (Case No. ZON2016-00332).

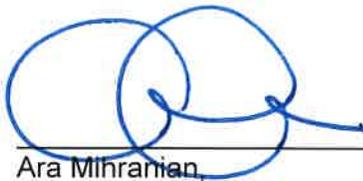
## **ALTERNATIVES**

In addition to Staff's recommendation, the following alternatives are available for the Director's consideration:

1. Identify any issues of concern and direct the applicant to re-design and resubmit the application (Case No. ZON2016-00332); or,
2. Deny, without prejudice, the Site Plan Review (Case No. ZON2016-00332).

## **Approved pursuant to Staff's Recommendation.**

Accepted:



Ara Mihranian,

Community Development Director

Dated

10.7.16

**Exhibit "A"**  
**Conditions of Approval**  
**Green Hills Memorial Park**  
**Site Plan Review (Case No. ZON2016-00332)**

General Conditions:

1. Prior to the submittal of plans into Building and Safety plan check, the applicant and the property owner shall submit to the City a statement, in writing, that they have read, understand, and agree to all conditions of approval contained in this Exhibit "A". Failure to provide said written statement within ninety (90) days following the date of this approval shall render this approval null and void.
2. The Conditions of Approval stated under Resolution No. 2015-102 shall remain in full force and effect along with any additional conditions set forth herein.
3. Prior to conducting any work in the public right of way, such as for curb cuts, dumpsters, temporary improvements and/or permanent improvements, the applicant shall obtain an encroachment permit from the Director of Public Works.
4. Approval of this permit shall not be construed as a waiver of applicable and appropriate zoning regulations, or any Federal, State, County and/or City laws and regulations. Unless otherwise expressly specified, all other requirements of the City of Rancho Palos Verdes Municipal Code shall apply.
5. The Community Development Director is authorized to make minor modifications to the approved plans and any of the conditions of approval if such modifications will achieve substantially the same results as would strict compliance with the approved plans and conditions. Any substantial change to the project shall require approval of a revision by the final body that approved the original project, which may require new and separate environmental review.
6. The project development on the site shall conform to the specific standards contained in these conditions of approval or, if not addressed herein, shall conform to the residential development standards of the City's Municipal Code, conditions of approval, including but not limited to height, setback and lot coverage standards.
7. Failure to comply with and adhere to all of these conditions of approval and the conditions set forth in City Council Resolution No. 2015-102 may be cause to revoke the approval of the project pursuant to the revocation procedures contained in Section 17.86.060 of the City's Municipal Code or administrative citations as described in Section 1.16 of the City's Municipal Code.
8. In the event that any of these conditions conflict with the recommendations and/or requirements of another permitting agency or City department, the stricter standard shall apply.
9. If the applicant has not submitted an application for a building permit for the approved project or not commenced the approved project as described in Section 17.86.070 of the City's Municipal Code within 180-days of the final effective date of this approval, the project shall expire and be of no further effect unless, prior to expiration, a written request for

extension is filed with the Community Development Department and approved by the Director.

10. Unless otherwise designated in these conditions, all construction shall be completed in substantial conformance with the plans stamped APPROVED by the City with the effective date of this Exhibit "A".
11. This approval is only for the items described within these conditions and identified on the stamped APPROVED plans and is not an approval of any existing illegal or legal non-conforming structures on the property, unless the approval of such illegal or legal non-conforming structure is specifically identified within these conditions or on the stamped APPROVED plans.
12. The construction site and adjacent public and private properties and streets shall be kept free of all loose materials resembling trash and debris in excess of that material used for immediate construction purposes. Such excess material may include, but not be limited to: the accumulation of debris, garbage, lumber, scrap metal, concrete asphalt, piles of earth, salvage materials, abandoned or discarded furniture, appliances or other household fixtures.
13. Permitted hours and days for construction activity are 7:00 AM to 6:00 PM, Monday through Friday, 9:00AM to 5:00PM on Saturday, with no construction activity permitted on Sundays or on the legal holidays specified in Section 17.96.920 of the Rancho Palos Verdes Development Code. During demolition, construction and/or grading operations, trucks shall not park, queue and/or idle at the project site or in the adjoining street rights-of-way before 7AM Monday through Friday and before 9AM on Saturday, in accordance with the permitted hours of construction stated in this condition. When feasible to do so, the construction contractor shall provide staging areas on-site to minimize off-site transportation of heavy construction equipment. These areas shall be located to maximize the distance between staging activities and neighboring properties, subject to approval by the building official.
14. All construction sites shall be maintained in a secure, safe, neat and orderly manner, to the satisfaction of the City's Building Official. All construction waste and debris resulting from a construction, alteration or repair project shall be removed on a weekly basis by the contractor or property owner. Existing or temporary portable bathrooms shall be provided during construction. Portable bathrooms shall be placed in a location that will minimize disturbance to the surrounding property owners, to the satisfaction of the City's Building Official.

Project Specific Conditions:

15. This approval is for the following:
  - Construct a combined free-standing/retaining wall ranging in height from 1' at the southern end of the wall to 11.4' at the northern end of the wall against the excavated slope area with a 3.5' tall guardrail on top. The exposed surface of the retaining wall facing the street (Long View Drive) will be designed to contain niches to hold cremation urns;
  - Construct a cascading 11.4' tall water feature located between the top of the retaining wall and the adjacent street level at the north end of the project area;
  - Construct a stairway against the most southerly façade of the Inspiration Slope Mausoleum building that will provide access to the existing upper burial area on Vista Del Ponte and the upper area of Inspiration Slope; and,

- Conduct 793yd<sup>3</sup> of related grading consisting of 778yd<sup>3</sup> of cut and 15yd<sup>3</sup> fill over an existing slope located at the eastern edge of Vista Del Ponte (South of Inspiration Slope) to support the proposed improvements.
16. All grading, landscaping and construction activities shall exercise effective dust control techniques, either through screening and/or watering.
  17. All applicable soils/geotechnical reports, if required by the Building and Safety Division, shall be approved by the City's geologist prior to Grading and/or Building Permit issuance whichever occurs first.

## Public Correspondence

## So Kim

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**From:** ellen.berkowitz@akerman.com  
**Sent:** Tuesday, September 06, 2016 1:41 PM  
**To:** So Kim  
**Cc:** nresich@ghmp.com; TFrew@ghmp.com  
**Subject:** Response to Comment from Noel Weiss

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Dear So:**

**Nick forwarded your email to me.**

**Thank you for the opportunity to respond to the comment below regarding Green Hills' application relative to construction of a retaining wall adjacent to Inspiration Slope. As a general matter, the comment objects to the fact that the "project" "incorporates many different facets which do not comport with the Green Hills' Master Plan." However, the commenter seems to be confused about the nature of the "project" for which the application is sought. Pursuant to City requirements, Green Hills is required to submit an application for construction of the requested retaining wall and the related grading activities. Thus, the "project" includes only construction of a retaining wall and related grading activities.**

**The commenter's specific comments are addressed below.**

**2a. The commenter questions whether the number of interment sites is consistent with the total number of interments allowed under the Master Plan. However, as described above, the "project" involves a request for construction of a retaining wall and related grading activities. The "project" does not involve a request for approval of interments.**

**2b. The commenter questions whether the grading is consistent with the amount of grading depicted in the Master Plan. Without an answer to this question, the commenter erroneously believes that the Planning Commission must approve a modification to the Master Plan. The commenter, however, ignores Condition of Approval 1.k, which – according to its terms – was expressly intended to create a process for "administrative compliance review" of requests for customary cemetery-related features such as the wall proposed here. (Oddly, the commenter references Condition 1.k in his comments under 2c., discussed below, but erroneously states that Condition 1.k is to be used in connection with Green Hills' annual review. That is not consistent with the plain language of Condition 1.k.) Pursuant to the process set forth in Condition 1.k, the Director is permitted to approve requests for improvements that are in substantial compliance with the Master Plan or that involve minor modifications to the approved plans or conditions that would achieve substantially the same results as would strict compliance with said plans or conditions. This is the process the Director is following here. A modification to the Master Plan is not required for a request of this nature.**

**2c. The commenter claims that Green Hills needs to apply for a conditional use permit to allow interments within the triangular area depicted on the plan. However, the "project" for which Green Hills has applied involves the construction of a wall and related grading**

activities, not interments. Moreover, the Conditions of Approval do not require Green Hills to apply for a conditional use permit for ground burials within the triangular area depicted on the plan.

3. The commenter claims the Notice is misleading because it does not reference the limited role of the Director or describe the seven (7) items which the commenter believes the Notice must include. However, the Notice clearly describes the proposed project and references Condition 1.k, which further describes the role of the Director. There is nothing in the City's Code or Master Plan Conditions mandating that the seven (7) items outlined in the comment must be included in a Notice for administrative compliance pursuant to Condition 1.k.

4. The commenter believes the Director must make a specified finding pursuant to Code Section 17.28.030(H) that the "project" is no more intensive than other uses contemplated in the Master Plan. The commenter is misreading the Code. Section 17.28.030 details the uses that may be permitted within a cemetery district pursuant to a conditional use permit, and includes, among other things, a "burial park" (subsection A), a "mortuary" (subsection B), and "churches" (subsection D). Subsection H, quoted by the commenter, refers to "other uses" that the Director deems to be similar to the approved list of uses – i.e., uses other than a burial park or a mortuary or a church. Green Hills has a Master Plan (which includes a conditional use permit) for a burial park as contemplated by subsection A. Thus, because Green Hills' use fits within one of the enumerated uses, there is no need to reference "other uses," and subsection H is inapplicable.

5. The commenter believes that the "project" must include the specified number of earth interments contemplated. However, as explained above, the "project" includes only a request for construction of a retaining wall and related grading activities. Green Hills is not applying for (nor is it required to apply for) interments in this area.

6. The commenter believes that the City cannot make a determination on the retaining wall request until it has acted on the Request for Interpretation Review. Green Hills defers to the City on this issue, but notes that, whether the Green Hills is permitted to construct a retaining wall will not impact the City's ability to render a decision on the Request for Interpretation Review should it chose to do so.

Thank you again for the opportunity to respond to these comments. Please let us know if you have any questions.

Thank you.  
Ellen

**Ellen Berkowitz**  
Partner  
Akerman LLP | 38th Floor | 725 South Figueroa Street | Los Angeles, CA 90017-5438  
Dir: 213.533.5945 | Main: 213.688.9500 | Cell: 310.592.3479 | Fax: 213.627.6342  
[ellen.berkowitz@akerman.com](mailto:ellen.berkowitz@akerman.com)

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**From:** So Kim [mailto:SoK@rpvca.gov]  
**Sent:** Tuesday, August 30, 2016 3:31 PM  
**To:** Nick Resich  
**Cc:** Ara Mihranian  
**Subject:** FW: Comment on Green Hills Request For Retaining Wall, Additional Earth Interment Sites, Construction of Stairway

Hi Nick,

Please see the email below with the attachments from Noel Weiss. According to the adopted conditions of approval 1.k, you have 7-days to respond in writing. Please provide a written response to Staff within 7-days, or by August 6, 2016. After your response is received, the Director will make a written determination of substantial compliance or noncompliance, which may include imposing conditions to assure compliance as part of the notice of decision.

Sincerely,  
So Kim  
Senior Planner  
City of Rancho Palos Verdes  
[www.rpvca.gov](http://www.rpvca.gov)  
(310) 544-5222

**From:** Noel Weiss [mailto:noelweiss@ca.rr.com]  
**Sent:** Tuesday, August 23, 2016 10:40 AM  
**To:** So Kim <SoK@rpvca.gov>  
**Subject:** Comment on Green Hills Request For Retaining Wall, Additional Earth Interment Sites, Construction of Stairway

So:

As per the "Notice" dated August 8, 2016, (attached), related to Green Hills proposed "project" immediately adjacent (to the Southeast) of the Inspiration Slope Mausoleum, here are my comments for your transmittal to Green Hills in anticipation of its follow-up response:

1. The "Notice" describes the "Project" as involving the following components:

a. The grading of 778 cubic yards of "cut" and 15 cubic yards of "fill" of a portion of an existing slope located "to the east of the Vista Del Pointe area" and "south of Inspiration Slope" as identified on page two of the map which accompanies the notice (i.e. the triangular piece identified in red. . . No square footage is identified. . .). The language of the "Notice" is imprecise because of the failure of the "Notice" to specify the Project Location set out on Page Two of the Notice. This imprecision needs to be clarified given that Green Hills in the past has submitted documents to the City which are deceptive, inaccurate, or misleading (as per the City's Investigation Report of RCS Investigations and Consulting dated March 11, 2015 (See page 25 of Report).

b. The permitted use of an undefined number of earth interment sites within the area located within the red triangle adjacent to Long View Drive which is drawn on page two of the "Notice".

c. Construction of a "new" retaining wall with a varying height from an undefined number to 11'4", plus a guardrail of 3'5" for a total height of 14'9".

d. The design of the retaining wall will include a cascading water feature where the water flows from the top of the wall to the bottom "excavated area".

e. A "stairway" to serve as "additional access" to the upper area of Inspiration Slope.

2. The "project" incorporates many different facets which do not comport with the Green Hills Master Plan, either individually or collectively, as follows:

a. It is not clear whether the earth interment sites (neither the number, nor the specific location of which is specified) is consistent with the total number of earth interment sites allowed under the Green Hills Master Plan. Therefore, until this fact has been discovered, disclosed, and evaluated, it is not clear the degree to which the "project" represents a "modification" of the Green Hills Master Plan. Moreover, to the extent the "project" incorporates any earth interments not contemplated under the Green Hills Master Plan, pursuant to Condition No. 2 of the Resolution 2015-102, it represents a modification of the Green Hills Master Plan. As such, the request for any such "modification" must first be submitted to the Planning Commission for approval as an official conditional use permit application, pursuant to which the Planning Commission determines whether the project is in "substantial compliance" with the Green Hills Master Plan, subject to the further appeal to the City Council.

b. It is not clear whether the grading portion of the "project" is consistent with the degree of grading contemplated in Area 2 under the Green Hills Master Plan. Until this fact has been discovered, affirmatively disclosed, or evaluated, it is not clear the degree to which the grading portion of the "project" represents a "modification" of the Green Hills Master Plan. Moreover, to the extent the "project" incorporates any grading not contemplated under the Green Hills Master Plan, pursuant to Condition No. 2 of the Resolution 2015-102, the "project" represents a modification of the Green Hills Master Plan. As such, it must first be submitted to the Planning Commission for approval and a determination as to whether the "project" is in "substantial compliance" with the Green Hills Master Plan, subject to the further appeal to the City Council.

c. Because the current Master Plan does not allow for the interment of human remains in the triangular area identified on page two of the "Notice", Green Hills needs to specifically apply for a conditional use permit allowing for such use as a modification of its Master Plan. The administrative procedure chosen (Condition 1(k) under Resolution No. 2015-102) is part of an "Administrative Substantial Compliance Review" which is to be used in connection with the annual review of whether Green Hills has "substantially complied" with the conditions imposed under the Master Plan and Conditional Use Permit. It should not be used as a substitute for the requirement that Green Hills apply for and procure a conditional use permit for the new uses contemplated under this "project" proposal. Given the fact that what Green Hills is proposing is a new "project" rather than a minor modification of the existing Master Plan, the Director should require Green Hills to submit a conditional use permit application and request to modify its Master Plan.

3. The "Notice" is misleading and therefore inaccurate because it omits any reference to the limited role of the Director in this circumstance. The Director must determine as a threshold "Finding" that the proposed "project" is in "substantial" compliance with the Green Hills Master Plan. The proposed project does not comply with Green Hills Master Plan because (1) the Master Plan does not contemplate earth interments within the boundaries of the triangular area identified on page two of the notice; (2) the Master Plan does not contemplate the construction or use of a "stairway" which would accommodate the ability of Green Hills to inter human remains on the roof-top of the Inspiration Slope Mausoleum (where currently, the City has unlawfully authorized the storage of 600 vaults); (3) the Master Plan does not contemplate the grading which is contemplated under the "project"; (4) the number of proposed "earth interments" is not identified so it is not possible for the Director to even reach a conclusion as to the degree to which the "project", as proposed, complies with the Green Hills Master Plan; (5) the amount of grading contemplated under the proposed "project" is not compared with the amount of grading which has already occurred. Therefore, it is not possible to determine under these facts, whether the amount of grading contemplated is consistent with the amount of grading permitted under the Green Hills Master Plan; (6) the Director is required to make a specific "Finding" on the question of whether the proposed retaining wall represents a "substantial" or "minor" modification of the Green Hills Master Plan since the Master Plan does not contemplate the existence of any such retaining wall or water cascade at the specified location; (7) It is not clear whether the retaining wall height is proper given that the Master Plan limits the height of structures within a given set-back area to 6' rather than 16'. Until these omissions are filled in, the Director is not positioned to conclude that the project "complies" with Green Hills Master Plan, let alone whether the project "substantially" complies.

4. The Director must make a specific "Finding" under Section 17.28.030(H) that all uses contemplated under the "project" are "no more intensive" than the other uses specifically contemplated under the Green Hills Master Plan for the Cemetery in general, and Area 2 in particular.

5. The Green Hills Master Plan contemplates the total earth interment sites allowed as 13,589 (27,178 double depth earth interments), 388 single depth earth interments, 4080 earth interments as part of a total of 408 family estates. (See Paragraph 3 on Page 4 of the Director's Report dated February 27, 2007, to the Planning Commission) (Copy attached to this email). No "Finding" of "substantial compliance" with the Green Hills Master Plan can therefore be made with regard to the number of earth interments contemplated under this "project" because the "Notice" omits any reference to the number of earth interments contemplated under the "project". In addition, in order to make the appropriate "Finding" under Condition 1(k) of Resolution No. 20-15-102, that each component of the "project" is in "substantial compliance" with the Green Hills Master Plan, the Director must also reconcile the number of earth interments with the total number of earth interments allowed under the Green Hills Master Plan, both with regard to Area Two in particular, and the Green Hills Memorial Cemetery in general. Until such a reconciliation is forthcoming, the Director is not positioned to "find" that the "project", as proposed, "substantially" complies with the Green Hills Master Plan.

6. No decision involving "compliance", be it "substantial" or otherwise, can be made until the Director has acted on the Request for Interpretation Review dated July 18, 2016, which was received by the City on July 21, 2016, given that the Interpretation Review Request deals specifically with the question of whether Green Hills can store vaults on the roof of the Inspiration Slope Mausoleum, or whether Green Hills should be required to apply to the Director for either a conditional use permit, or a determination under Section 1(k) of Resolution 2015-102 that the proposed "storage" of vaults on the roof of the Inspiration Slope Mausoleum is in "substantial" compliance with the Green Hills Master Plan, or whether the interment of human remains on the roof-top of the Inspiration Slope Mausoleum is in compliance with the Green Hills Master Plan. This is relevant to the issue of the need for the proposed "stairway" which appears to be the means by which the roof-top interments are to be effectuated. By not disclosing this fact as part of its application for the stairway portion of the proposed "project", Green Hills is practicing the same kind of deceit on the City as it was found to have practiced in the construction and use of the Pacific Terrace Mausoleum, as per the City's Investigative Report dated March 11, 2015, authored by RCS Investigations and Consulting, LLC.

Therefore, in the absence of the recitation of facts reflective of a clear indication of how the proposed "project" "substantially" complies with the Green Hills Master Plan, Green Hills should be required to submit an application for a conditional use permit to modify its Master Plan in accordance with the City's Cemetery Zoning Code (Chapter 17.28).

In short, what is required is that:

1. Green Hills follow the Zoning Code and apply for a conditional use permit specifically allowing for the earth interment sites in Area 2 it seeks to use as such unless Green Hills is able to affirmatively demonstrate and the Director affirmatively determine, backed by factual "Findings" that each and every aspect of the proposed project "substantially" complies with Green Hills Master Plan. The earth interment of human remains in the area identified in the triangular area adjacent to Inspiration Slope on page two of the "Notice" has not been approved, even assuming the number of earth interments has been identified, which it has not. Therefore, insufficient facts exist to support a decision by the Director that Green Hills may inter human remains in the (earth) (triangular) ground area identified on page two of the "Notice". The "Notice" should therefore be withdrawn and a formal application for a conditional use permit be submitted with specifics detailing the number of earth interments contemplated. Moreover, the use of the term "burial plots" should be discontinued because the term "burial" is not used in the RPV Cemetery Zoning Code. The correct terminology to be used is either "earth interments" (Section 17.28.030(A)) or "below-grade interments" (Section 17.28.040(A)).

2. Green Hills apply for a conditional use permit which would allow for the interment of human remains on the roof of the Inspiration Slope Mausoleum which is the only reason for the "stairway" portion of the "project", given that the Green Hills Master Plan does not contemplate or allow the interment of human remains on the roof of the Inspiration Slope Mausoleum. The same applies to state law where the term "burial" is limited to the placement of human remains in a "grave" (Health & Safety Code Section 7013); and the term "grave" is defined as a "space of earth" used for the disposition of human remains (Health & Safety Code Section 7014). In short, nothing in state law specifically contemplates the "interment" of human remains on a mausoleum roof. The same applies with regard to the City's zoning law.

3. Green Hills affirmatively demonstrate that the added earth interment sites contemplated under the "project" do not conflict with the total number of earth interments currently allowed under the Master Plan;

4. Green Hills affirmatively identify that the amount of grading sought in the application is consistent with the total amount of grading contemplated and permitted under the Green Hills Master Plan.

5. Green Hills affirmatively demonstrate how the retaining wall will be no more "intensive" than the uses currently contemplated and authorized under the Green Hills Master Plan (Section 17.28.030 (H)).

6. Green Hills affirmatively demonstrate how the proposed "stairway" will be no more "intensive" than the uses currently contemplated and authorized under the Green Hills Master Plan. (Section 17.28.030(H)).

Thank you So for your consideration and anticipated follow-up.

Noel  
(310) 822-0239



**ALESHIRE &  
WYNDER LLP**  
ATTORNEYS AT LAW

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

David J. Aleshire  
daleshire@awattorneys.com  
(949) 250-5409

18881 Von Karman Avenue,  
Suite 1700  
Irvine, CA 92612  
P (949) 223-1170  
F (949) 223-1180

AWATTORNEYS.COM

September 2, 2016

**VIA E-MAIL AND U.S. MAIL**

Noel Weiss, Esq.  
Law Offices of Noel Weiss  
13700 Marina Pointe Drive #922  
Marina Del Rey, CA 90292

**Via: Electronic Mail and U.S. Mail**

**Re: Request for code interpretation**

Dear Mr. Weiss:

I write in response to your recent request for interpretation in my capacity as City Attorney for the City of Rancho Palos Verdes. In your request under Sections 17.78.050 and 17.90.010 of the Rancho Palos Verdes Municipal Code, you ask that the City Council provide an interpretation of Green Hills' Master Plan and Conditional Use Permit, and the Rancho Palos Verdes Municipal Code, relating to vault storage and rooftop burials at the Inspiration Slope Mausoleum, and the extent of the City Manager's authority to agree to allow storage of burial vaults on the roof of a mausoleum.

Interpretation Request

Specifically, you ask the following:<sup>1</sup>

1. Is the roof of the Inspiration Slope Mausoleum currently permitted under the existing CUP for either vault storage or for the interment of human remains? If yes, what provisions in the RPVMC allow for rooftop burials or vault storage?
2. If no, is Green Hills required to amend its Master Plan or its CUP in order to store vaults or conduct burials on the roof of the Inspiration Slope Mausoleum roof, or to obtain a temporary use permit to allow the roof of the Mausoleum to be used as anything other than a roof?
3. May the City Manager authorize storage of vaults on the rooftop of the Inspiration Slope Mausoleum, or does such storage require an amendment of the Master Plan and CUP?

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<sup>1</sup> I am paraphrasing your questions here.

### Background

Green Hills operates a memorial park and cemetery located in the City. Green Hills' operation and development of the memorial park is governed by the 2007 Master Plan, including all later amendments (the Master Plan), and by City Council Resolution No. 2015-12, revising and amending conditions of approval for Green Hills' Conditional Use Permit (CUP) and amending the Master Plan (the Resolution). The Master Plan contemplates the construction of the Inspiration Slope Mausoleum in Area 2 of the memorial park, and further contemplates the possibility of rooftop burials thereon (Master Plan, p. 2-D). Section 17.60.050(B) provides that CUP conditions supersede zoning regulations.

The CUP's conditions of approval were revised and updated due to the ongoing controversy surrounding rooftop burials at another of Green Hills' mausoleums, the Pacific Terrace/Memorial Terrace Mausoleum in Area 11.

The Resolution amended Green Hills' CUP, which now provides for an administrative substantial compliance review so that, except for improvements consistent with the Master Plan or those subject to the Planning Commission, all improvements must be reviewed by the Director of Community Development to determine if they substantially comply with the Master Plan (Condition 1.k.). Condition 1.k. specifically provides that review of an application for rooftop burials can be performed by the Director. The Director can, at his or her discretion, refer a matter directly to the Planning Commission.

Condition 2 of the CUP provides that the following matters are directly reviewable by the Planning Commission: (i) the construction or modification of a mausoleum or other significant building, (ii) any significant change to the grading, (iii) any development of a future phase of Green Hills where the Master Plan has not designated a development plan or uses, or (iv) any amendment to the Master Plan.

Thus, while rooftop burials at Inspiration Slope are contemplated in the Master Plan, Condition 1.k. of the CUP now provides that Green Hills may not perform such burials prior to obtaining administrative approval from the Director or the Planning Commission, pursuant to the Resolution. This is the City's current position on the matter of rooftop burials, and this is a matter of public record.

### Interpretation Provisions of the RPVMC

Section 17.78.050 provides, in relevant part, that:

In cases of uncertainty or ambiguity as to the meaning or intent of any decision granted in accordance with this title, or to further define or enumerate the conditions of approval of an approved application, an interpretation procedure

shall be followed whereby the body which took the final action in granting the original application shall conduct an interpretation review of the decision in question. ... The interpretation review procedure shall be applied, but not be limited to the following situations: ... 2. Interpretations of conditions of approval...

Section 17.90.010 provides interpretation procedures for, among other things, “cases of uncertainty or ambiguity as to the meaning or intent of any provision of ... Title 17 of this Code, or to further define or enumerate the uses permitted in the various zoning districts. Said interpretations shall be generally applicable to all situations of the same type and shall not be limited or directed to specific parcels or circumstances thereon.”

The interpretation procedures are intended to permit an administrative process to clear up vagueness or ambiguity in conditions or the Municipal Code, in order to diminish the potential for litigation. However, where an interested party has chosen a litigation route, and where the City has already provided its position on the issues, it is inappropriate to permit the litigant to attempt to create an administrative inconsistency to benefit his case.

Issue Overlap with the Litigation

Currently, you represent the plaintiffs in two separate but related lawsuits against the City, regarding Green Hills Memorial Park’s rooftop burials at the Pacific Terrace Mausoleum.<sup>2</sup> Your interpretation request relates to storage of vaults and rooftop burials at Inspiration Slope. While the two matters are distinct, and while vault storage is unique to Inspiration Slope, there is significant overlap in the issues presented by the lawsuits and by your request.

Specifically, you are requesting the City provide an interpretation of whether or not any portion of Inspiration Slope allows for vault storage or interment on the roof of the mausoleum, under the Rancho Palos Verdes Municipal Code, the California Health and Safety Code, and Green Hills’ Master Plan and CUP. The Complaint makes similar allegations, for example, that “[n]othing in the City’s zoning code specifically allows for the interment on the roof of any structure within a cemetery[, and] nothing in state law contemplates the interment of human remains on roof-tops.” (Complaint, at ¶ 21, ll.14-16.) The Writ also complains that Green Hills was never specifically allowed roof-top burials. (Writ, at ¶ 13, ll. 8-12, and fn. 6; ¶ 14, ll. 22-26; ¶ 15, ll. 15-19.) The law that you cite in the Complaint and the Writ is much the same as what you cite in the Request for Interpretation, namely, definitions in the Health & Safety Code and

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<sup>2</sup> *Loveys et al. v. City of Rancho Palos Verdes et al.*, Superior Court Case No. BS160652 (Petition for Writ of Mandate and for Declaratory and Injunctive Relief) (“Writ”); *Loveys et al. v. City of Rancho Palos Verdes et al.*, Superior Court Case No. BC629637 (Complaint for Damages, Public and Private Nuisance Abatement, and Declaratory Relief) (“Complaint”).

Noel Weiss, Esq.  
September 2, 2016  
Page 4

the City's cemetery zoning ordinance. (Complaint, at ¶¶ 7-12; Writ, at p. 12 fn.6; p. 14 fn.7, pp. 18-23).

In short, in your letter you engage in a detailed argument relating to what the Master Plan, CUP, and/or Municipal Code should and should not allow with respect to rooftop burials and vault storage. In the Writ and the Complaint, you also allege, in part, that rooftop burials are not permitted by the Municipal Code, the CUP, or the Master Plan. The issue that you are requesting that the Council decide on anew is the issue that you are litigating. Since you have chosen that forum to have the issues decided, it is not appropriate for the City Council to engage in this administrative process at this time. These questions will evidently be largely decided by the court.

The administrative interpretation procedure has been infrequently used historically, and never in this situation where the City is in litigation over the same issues. The administrative process is intended to create a forum where confusion can be addressed before litigation results, which appears pointless here. Also, we have not used this process defensively to argue that you have failed to exhaust administrative remedies. We would be happy to engage with you and perhaps utilize an administrative process should you discontinue the litigation approach. We also remain willing to pursue mediation should your clients be willing to contribute to the mediation cost.

As always, please feel free to call should you wish to discuss any of the above, or otherwise wish to consider viable alternatives to litigation.

Very truly yours,

ALESHIRE & WYNDER, LLP



David J. Aleshire  
City Attorney

DJA:eqg

cc: Doug Willmore, City Manager  
Ara M. Mihranian, Community Development Director  
Christina Burrows, Assistant City Attorney

## So Kim

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**From:** ellen.berkowitz@akerman.com  
**Sent:** Tuesday, September 06, 2016 10:46 AM  
**To:** So Kim  
**Cc:** nresich@ghmp.com; TFrew@ghmp.com  
**Subject:** Response to Comment from Bernadette Sabath

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Dear So:**

**Nick forwarded your email to me.**

**Thank you for the opportunity to respond to the comment below regarding Green Hills' application relative to the retaining wall adjacent to Inspiration Slope. The comment objects to the inclusion of the proposed stairway because, according to the commenter, the stairway leads to an area that has not been approved for rooftop burials.**

**Please be advised that the stairway is necessary to accommodate visitors seeking access to Vista Del Ponte and also to the Family Estates and Lawn Crypts located above and behind the Inspiration Slope Mausoleum (which are existing and separate from the Mausoleum). Without the stairs, visitors have had to either: (i) climb the hill leading up to that burial area or (ii) park above the area to then walk down the steep hill. The stairs will make these areas more accessible and available to the families visiting those sections of the Park.**

**Please let us know if you have any questions.**

**Thank you.  
Ellen**

**Ellen Berkowitz**  
Partner  
Akerman LLP | 38th Floor | 725 South Figueroa Street | Los Angeles, CA 90017-5438  
Dir: 213.533.5945 | Main: 213.688.9500 | Cell: 310.592.3479 | Fax: 213.627.6342  
[ellen.berkowitz@akerman.com](mailto:ellen.berkowitz@akerman.com)

[vCard](#) | [Bio](#)



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**From:** So Kim [mailto:SoK@rpvca.gov]  
**Sent:** Tuesday, August 30, 2016 3:32 PM  
**To:** Nick Resich  
**Cc:** Ara Mihranian  
**Subject:** FW: Hi So,

Hi Nick,

Here's another comment from Bernadette Sabath. According to the adopted conditions of approval 1.k, you have 7-days to respond in writing. [Please provide a written response to Staff within 7-days, or by August 6, 2016.](#) After your response is received, the Director will make a written determination of substantial compliance or noncompliance, which may include imposing conditions to assure compliance as part of the notice of decision.

Sincerely,  
So Kim  
Senior Planner  
City of Rancho Palos Verdes  
[www.rpvca.gov](http://www.rpvca.gov)  
(310) 544-5222

**From:** Bernadette Sabath [mailto:miminotchew@gmail.com]  
**Sent:** Wednesday, August 17, 2016 9:00 PM  
**To:** So Kim <SoK@rpvca.gov>  
**Subject:** Hi So,

Dear Ms Kim,

Thank you for the opportunity to speak out regarding the Green Hills proposal sent out on August 8th, 2016.

A group of us went to the proposal site and found no objection to the retaining wall or the water feature.

What was troubling was the stairway to an area which has not been approved for rooftop burials.

Approving such an access in my opinion is an indication of the inevitability of the use of the vaults.

Until the planning commission gives their approval of the rooftop burials I am against any construction of stairs leading to the roof.

Let's not go there yet.

Thank you for your time.

bernadette sabath  
*"We make a living by what we get, but we make a life by what we give."*