



Los Angeles County Department of Regional Planning

Planning for the Challenges Ahead



Richard J. Bruckner
Director

NOVEMBER 1, 2010

**TO: HEARING OFFICER
MITCH GLASER, AICP**

**FROM: JEANTINE NAZAR
ZONING PERMITS II SECTION**

**SUBJECT: MINOR MODIFICATION TO
CONDITIONAL USE PERMIT NO. 03-084-(3)
APN: 4464-013-035
UNINCORPORATED MALIBU, CALIFORNIA 90265**

The applicant, Ahmad Babeh Khoshkish is requesting a minor modification of condition of approval number 6 of Conditional Use Permit Case No. 03-084 to extend the expiration date of the permit to a period of six years or until October 26, 2014. The original CUP was approved on October 26, 2005, authorizing the construction, of a 3,950 square-foot single-family residence located in a designated Antiquated Subdivision area of the Santa Monica Mountains, North Area Community Standards District ("SMMNACSD") in the A-1-5 (Light Agricultural – Five Acre Minimum lot) Zone. The original permit would have expired on October 26, 2008. The applicant was unable to obtain building permits, prior to the expiration date, as Condition number 22.d in CUP 03-084 indicates that:

"No building permit shall be issued unless the Los Angeles County Department of Public Health certifies that the existing private sewage system can accommodate the additional demand of the proposed single-family residence, or certifies that an approved alternative method of sewage disposal is provided."

Due to ongoing private (HOA) sewage system problems, Public Health has not issued a final approval therefore, the applicant applied for a second time extension. However, the Department of Regional Planning cannot grant multiple extensions, and the applicant subsequently applied for the condition modification.

The subject property is located within the Malibu Highlands Subdivision, which was created in 1930s. There are 23 lots in the subdivision, of which 20 lots are developed with single-family residences. The existing community wastewater disposal system serving the Malibu Highlands Subdivision started to fail in 2002. The Malibu Highlands Homeowners Association (HOA) litigated the contractors responsible for its construction. As a result, an alternative system to repair and upgrade the existing system was proposed. The Department of Regional Planning conceptually approved CUP 200800102 in 2008. This CUP would entitle the Malibu Highlands Maintenance Corporation (MMHC) to repair and upgrade the community sewer system. Currently, the final approval of the replacement sewage treatment system is pending upon the Waste Discharge Permit from the Los Angeles Regional Water Quality Control Board. The final approval is also pending to meet the conditions in CUP 200800102. Staff received a letter and an email from Public Health addressing issues holding up the final approval of the proposed wastewater treatment system (Exhibit no 1 and 2).

In addition to the issues already addressed, the applicant must file for a new oak tree permit in order to meet the timeline requirements.

Staff recommends the following draft findings and conditions:

1. The previous application approved a conditional use permit ("CUP) and an oak tree ("OAK") permit concurrently. The request for a minor modification to extend the expiration date of the permit only covers the CUP portion of the approval as per Code Section 22.56.1600. However, the Title 22 provisions do not allow modifying the oak tree portion of this approval.
2. Title 22 Section 56 Part 11 allows the modification or elimination of conditions of a CUP. Section 22.56.1630 indicates that the Hearing Officer shall approve an application to modify or eliminate any condition(s) of a previously approved conditional use permit only upon a finding by the Hearing Officer that:
 - I. Not more than one protest to the granting of the application is received within the specified protest period.

Staff received two phone calls concerning this project. The concern was the subject property's address and there was no opposition to granting an extension. Staff has not received any written protests to the extension.

- II. That the information submitted by the applicant substantiates the following findings:
 - A. That the burden of proof for the conditional use permit as modified has been satisfied as required by Section 22.56.040 as such:
 1. That the requested use at the location will not:
 - a. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, or
 - b. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, or
 - c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare; and
 2. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this Title 22, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and
 3. That the proposed site is adequately served:
 - a. By highways or streets of sufficient width, and improved as necessary to carry the kind and quantity of traffic such use would generate, and
 - b. By other public or private service facilities as are required.

The proposed modification of condition #6 does not bear any alteration or change in the previously approved plans. There are no modifications in terms of the development standards, and the request is consistent with the previous CUP; therefore, the applicant's burden of proof for a conditional use permit previously submitted is valid.

- B. That approval of the application will not substantially alter or materially deviate from the terms and conditions imposed in the granting of the previously approved conditional use permit.

The previous approval conditioned that no building permit be issued for the single-family residences unless and until the Department of Public Health certifies that a functioning sewage disposal facility is available. The Department of Regional Planning approved CUP200800102 in 2008, which would entitle the Malibu Highlands Maintenance Corporation (MMHC) to repair and upgrade the community system. However, the Regional Water Quality Control Board (RWQCB) has not issued the final authorization to MMHC for the project. Public Health is unaware of the time frame as to when the RWQCB is expected to approve the project.

This project was originally recommended for approval by the Regional Planning Commission for the construction of a single-family residence on October 26, 2005. The permittee was given a two-year period in which to make use of the permit. A one-year extension to this period was granted by a Hearing Officer extending the expiration date to October 26, 2007. Due to lengthy delays during review by the Department of Public Health and continued failure of the private sewage system. Consequently, the applicant filed for a modification of the conditions of approval of CUP 03-084. The review of the application has been pending final status on the sewer system approval.

The approval of this minor modification is consistent with the previous CUP 03-084 approval and addresses condition number 22.d concerning the sewage disposal system.

- C. That the approval of the application is necessary to allow the reasonable operation and use granted in the conditional use permit.

The approval to construct a single-family residence in 2005 indicates that the applicant proposed a hook-up to a private community sewage facility. This community wastewater treatment system that provides wastewater disposal service to the Malibu Highlands Homeowners failed to operate. Subsequently, the Malibu Highlands Homeowners Association litigated the contractors responsible for its construction and proposed the addition of a 25,000-gallon treatment tank and seven new geoflow fields as well as the repair of existing wastewater treatment system components. The Public Health Department issued a conceptual approval based on conditions and contingent upon the following additional conditions:

- a. ***This conceptual approval is intended for the project review process only, it encompasses the requirements applicable to Land Use Program and does not authorize any development until final approval has been issued.***

Public Health has no objection to extending the expiration date for CUP 03-084, which authorizes the construction of a single-family dwelling. The subject property is included in the planned

use of the community wastewater treatment system that was conceptually approved by Public Health.

b. In order to issue a final approval for this project, all conditions of CUP200800102 must be fulfilled and a Waste Discharge Requirement permit must be obtained from Los Angeles Regional Water Quality Control Board.

c. Prior to final approval the applicant shall provide a certified copy of the Covenant and Agreement and Owners Declaration duly notarized and recorded with the County Recorder, and also provide a separate Service Provider Agreement, signed by both parties.

The owner of the subject property has not yet signed/recorded a covenant and agreement and owners declaration.

This minor modification would allow a reasonable timeframe to meet the above requirements and obtain permits from Public Health and the Department of Public Works.

Staff recommends modifying the condition #6 on the expiration date. The currently approved Condition Number 6 read as follows:

“This grant shall expire unless used within 2 years from the date of the approval. A one-year time extension may be requested, in writing with the payment of the applicable fee, at least six months before the expiration date.”

In view of the facts presented above, Staff recommends Approval of the Minor Modification to CUP 03-084 - (3), with the following changes to condition number 6:

This grant shall expire six years after the expiration date or on October 26, 2014.

The permittee shall obtain an oak tree permit approval and the expiration date of the oak tree permit shall coincide with the CUP expiration date of October 26, 2014.

The permittee shall obtain address verification from Public Works.

All other conditions of approval of the original CUP 03-084 - (3) grant remain in effect and unchanged.

MM: JN
11/1/2010

Attachments:
Burden of Proof
Correspondence from Public Health
Draft Findings and Condition