



## AGENDA REPORT

**Meeting Date:** June 6, 2016

**Item Number:** F-3

**To:** Honorable Mayor & City Council

**From:** Ryan Gohlich, AICP, Assistant Director of Community Development

**Subject:** A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A CONDITIONAL USE PERMIT TO ALLOW A DINING FACILITY IN A NONCONFORMING HOTEL TO BE OPEN TO THE PUBLIC, A DEVELOPMENT PLAN REVIEW TO ALLOW THE ESTABLISHMENT OF AN OPEN AIR DINING AREA THAT WOULD BE SERVED BY EXISTING PARKING SUPPLY AND VALET OPERATIONS, AND AN EXTENDED HOURS PERMIT TO ALLOW A NONCONFORMING HOTEL RESTAURANT, OPEN AIR DINING AREA, AND ROOFTOP USE TO OPERATE DURING EXTENDED HOURS AT 9291 BURTON WAY (L'ERMITAGE HOTEL), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

**Attachments:**

1. Required Findings
2. Public Notice
3. Planning Commission Resolution No. 1772
4. May 2, 2016 Planning Commission Staff Report (without attachments)
5. All Correspondence Received from the Public
6. Police Reports
7. All Past Resolutions
8. Violation Determinations
9. Rooftop Event Information and Code Enforcement Report
10. City Council Resolution
11. Certificate of Occupancy
12. Architectural Plans

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### **RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution conditionally approving a Conditional Use Permit, Development Plan Review, and Extended Hours Permit for hotel dining,

outdoor dining, and rooftop operations at 9291 Burton Way (L'Ermitage Hotel).

**BACKGROUND**

At a special meeting on May 2, 2016, the Planning Commission unanimously approved a new Conditional Use permit to allow a hotel restaurant to be open to the public; a Development Plan Review to allow an open air dining area in a legally nonconforming hotel; and an Extended Hours Permit to allow the hotel restaurant, open air dining area, and rooftop event area to operate during extended hours at the L'Ermitage Hotel located at 9291 Burton Way. At its meeting on May 17, 2016, the City Council voted to call up the Planning Commission's decision for a de novo hearing. This report provides a summary of the project's entitlement history, the operational regulations that were included as part of the Planning Commission's conditional approval of the project, and any enforcement activities that have taken place since the Planning Commission approval on May 2, 2016. The Planning Commission Staff Report provided in Attachment 4 provides a more comprehensive analysis of the project.

The hotel was originally permitted in 1973, with construction completed in 1976. At the time, a hotel was a permitted use in R-4 zones, and the certificate of occupancy issued in 1976 describes the use as an apartment hotel, consisting of 97 guest rooms and 21 apartments (see Attachment 11). Subsequent to its construction, the hotel became nonconforming as code changes were made over the years, and a number of entitlements have been granted since then for various aspects of the hotel in light of its nonconforming status. Below is an overall timeline and summary of entitlements related to the property:

<b>Year</b>	<b>Document Number</b>	<b>Summary</b>	<b>Status</b>
<b>1975</b>	75-R-5307	Approval for Jacuzzi sundeck to exceed maximum allowed building height.	Conditions Superseded
<b>1980</b>	267	Approval of variance to reduce the number of required parking spaces (requires 133 parking spaces).	Conditions Superseded
<b>1980</b>	294	Approval of variance to reduce the number of required parking spaces (requires 132 parking spaces).	Conditions Superseded
	83-R-6759	Approval of variance for an elevator/stairwell to exceed building height, and allowing additional aisle parking.	Conditions Superseded
<b>1987</b>	493	Approval of variance to allow sculptures in the front yard setback.	Conditions Superseded
<b>1994</b>	890	Approval of variance related to setback encroachments, rooftop configuration, and parking.	Conditions Superseded
<b>1999</b>	1094	Approval of CUP and DPR for restaurant, open air dining, and imposing new conditions on rooftop.	Appealed to City Council (Superseded)
<b>1999</b>	99-R-10211	Approval of CUP and DPR for restaurant, open air dining, and imposing new conditions on rooftop.	Expired

<b>2000</b>	1138	CUP and DPR renewed by Planning Commission.	Expired
<b>2001</b>	1191	CUP and DPR renewed by Planning Commission.	Expired
<b>2002-2009</b>	N/A	Administrative renewals of CUP and DPR granted.	Expired
<b>2016</b>	1772	Approval of new CUP, DPR, and Extended Hours Permit for restaurant, open air dining, and imposing conditions on rooftop.	Valid

**ANALYSIS**

**May 2, 2016 Planning Commission Hearing.** At the Planning Commission hearing held on May 2, 2016, the Planning Commission, staff, and members of the public conducted a walking tour of the L'Ermitage Hotel, where Staff identified the areas that were subject to the application, including the old and new open air dining areas, the alley to the rear, the hotel restaurant, and the rooftop event space. Upon returning to City Hall, Staff provided a report on the L'Ermitage Hotel, covering the entitlement history of the property, the proposed changes to the dining areas, a summary of resident complaints and police activity related to the hotel, the hotel rooftop area and canopy, and a comparison of the past operations of the hotel with the proposed operations and conditions of approval. Staff recommended approval of the relocated open air dining area. Staff also recommended allowing the ability for the hotel to request an additional event within a single week and the ability to request for events to be scheduled with less than 48 hours' notice, on the basis that these requests would be subject to the review and approval of the Director of Community Development.

Previous approvals most recently in effect had no established hours of operation for the rooftop area, and the applicant had asked for the ability to request for one rooftop event per year to operate until 1:00am. Staff did not recommend in favor of this request, and instead recommended establishing operating hours that would limit evening events of the rooftop to 10:00pm on weeknights and 11:00pm on weekends, with all patrons required to have vacated the rooftop within an hour of the end of rooftop events. Additionally, staff recommended an escalating penalty schedule for violations of any conditions of approval within a calendar year.

During the hearing, over 20 members of the public, including the applicant team, provided comments regarding the project. Some spoke in favor of the hotel's application, including members of the Beverly Hills Chamber of Commerce; however the majority of comments were related to concerns about the hotel's operations and the resulting impacts on nearby residences. Specifically, concerns related to the following:

- Excessive noise from the open air dining area, rooftop events and patrons arriving and leaving these events, especially when waiting for valet or rideshare pickups.
- Noise from delivery trucks in the alley during early morning hours and late at night.
- Delivery trucks blocking the alley and access to neighboring properties' driveways
- Limousines parking on nearby residential streets and leaving debris.
- Food trucks parking near residences and causing noise.
- Requests to install dual-glazed windows to help attenuate noise.

The Planning Commission discussed and modified various conditions of approval, including further limiting hours of operation for the roof to 10:00pm with all patrons vacating by 11:00pm,

seven days per week; further limiting delivery times; requiring 24-hour CCTV monitoring of the alley; adjusting the penalty schedule to bring the entitlements back after a lesser number of violations; and requiring a 3<sup>rd</sup> party monitor to be present at each rooftop event to ensure timely ending of events and vacating of the rooftop. Further discussion of conditions of approval is provided below, and the full list of conditions is provided in Attachments 3 and 10 to this report. After a site visit, public hearing, and deliberation lasting approximately six hours, the Planning Commission voted unanimously to approve the CUP, DPR, and Extended Hours Permit with conditions.

**Conditions of Approval.** In addition to maintaining and modifying most of the Conditions of Approval that were included in past approvals, the Planning Commission imposed additional conditions at its May 2, 2016 meeting that further regulate the hotel restaurant, open air dining, and rooftop operations. An abridged summary of all the conditions of approval imposed by the Planning Commission is provided below, and the entirety of the conditions is included in Attachment 3:

1. Maximum of 7 tables and 20 chairs in the open air dining area.
2. Open Air Dining area not permitted to encroach into public right-of-way.
3. No live entertainment or amplified sound in the open air dining area at any time.
4. No banquets or private receptions allowed in the hotel restaurant.
5. No patrons seated in the restaurant before 6:30am or after 11:00pm daily. Open Air Dining area cannot operate earlier than 8:00am, no patrons shall be seated after 9:00pm, and all patrons shall have exited the open air dining area no later than 10:30pm.
6. Hotel employees prohibited from congregating outside the hotel and prohibited from eating, drinking, or smoking on the sidewalk in the vicinity of the hotel. Lunch trucks shall be directed to park only in the loading zone immediately adjacent to the hotel on Burton Way, and hotel employees prohibited from patronizing food trucks on residential streets.
7. Hotel shall inform patrons about free valet parking at time of reservation and patrons to be encouraged to use valet parking.
8. Off-street parking shall be provided free of charge to employees. Valet parking shall be provided free of charge to patrons of the hotel restaurant.
9. Exterior doors to the restaurant, including doors closest to adjacent residences to the west, shall only be used for emergency ingress and egress. Doors adjacent to the open air dining area may be used by patrons, however the doors cannot be held, propped, or otherwise kept open. All food service must occur from doors immediately adjacent to the open air dining area.<sup>1</sup>

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<sup>1</sup> While not a part of this specific condition, the Planning Commission reviewed and approved the new, exterior restaurant access stairs adjacent to the main hotel entrance.

10. A 7-foot high wall along entire western perimeter of the open air dining area and a 6-foot high wall along a portion of the eastern perimeter of the open air dining area to be constructed to shield the area from stairway access located at the hotel's main entrance. Landscape buffer also required between the open air dining area and Burton Way to reduce light and noise impacts onto Burton way. Outdoor space adjacent to the hotel's ground floor rotunda room to remain unoccupied or converted into a landscape buffer that shall remain off-limits to guest, employees, and patrons except for emergency egress and parking access by hotel employees.<sup>2</sup>
11. No queuing allowed outside for hotel restaurant or outdoor dining area.
12. Deliveries only allowed from 9:00am – 6:00pm Monday through Friday; 10:00am – 5:00pm on Saturday; 10:00am – 3:00pm on Sunday.
13. Hotel loading zone along the alley to remain free of all obstructions at all times. Delivery trucks prohibited from blocking the alley and neighboring properties' parking garages or garbage bin storage areas, and from stopping or parking anywhere on Foothill Road or Maple Drive. Hotel to install and maintain CCTV cameras to monitor all loading activities in the alley 24/7. Photos and videos of violations shall constitute evidence for penalties. Video footage to be retained for minimum period of 30 days and provided to City staff upon request.
14. Hotel to instruct limousine companies to direct drivers to park on Burton Way immediately adjacent to the hotel or on Civic Center Drive and not on any other street in the vicinity of the hotel. Hotel staff to walk the north side of Burton Way between Foothill Road and Maple Drive once per day to clean trash or debris.
15. Hotel shall maintain all restaurant areas and public right-of-way in a clean and sanitary condition at all times.
16. Maximum of 52 rooftop evening events with more than 25 attendees.
17. Maximum of 2 evening events per week on the rooftop. Applicant may request to have 3 events in one week during January through March, subject to Director's approval.
18. Hotel to submit traffic and parking plan for evening functions to the Director for approval.
19. Hotel to submit a written schedule of dates for evening functions on the rooftop at the end of each month for the following month. Amendments to the schedule require 48 hours' notice before the event, however applicant may request to amend schedule with less than 48 hours' notice.
20. All rooftop events, including live entertainment and amplified sound, to conclude no later than 10:00pm, and all rooftop attendees to vacate the rooftop by 11:00pm every day of the week. Attendees may call for valet from the rooftop to facilitate faster departures and limit waiting at the sidewalk. Hotel shall pay full

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<sup>2</sup> The walls and landscape buffer referenced in this condition are already in place as a result of prior approvals, and no new construction is required in order to comply with this condition.

cost of hiring a site monitor to be present at each rooftop event until at least 11:00pm to ensure timely conclusion of events.

21. Deliveries, setup, and/or event breakdown for rooftop functions shall not occur except from 9:00am – 6:00pm Monday through Friday, 10:00am – 5:00pm Saturday, and 10:00am – 3:00pm Sunday.
22. Hotel shall operate in compliance with City's noise ordinance at all times.
23. Hotel shall submit a \$20,000 deposit from which to draw financial penalties for violations of conditions. Fund must be replenished back to \$20,000 once the balance reaches \$10,000 or less.
24. Escalating penalty schedule for each violation within a calendar year. Upon 5 or more violations, in addition to the financial penalty, the entitlements automatically return to the Planning Commission for review and possible revocation. All costs borne by the hotel.
25. In addition to penalty schedule, City may undertake any and all other enforcement actions within its authority, and shall not be obligated to exhaust penalty schedule.
26. Hotel to submit \$10,000 cash deposit to offset costs of Code Enforcement associated with the project.
27. Covenant shall be recorded against the property including the resolution and conditions.
28. Approval runs with the land.
29. Entitlements expire 12 months from date of approval. Applicant must file a renewal at least 30 days prior to expiration. Renewal subject to approval by the Planning Commission. All costs borne by the hotel.

The following penalty schedule was established for the hotel, which would apply to violations of any of the conditions of approval:

<b>1<sup>st</sup> Violation</b>	<b>2<sup>nd</sup> Violation</b>	<b>3<sup>rd</sup> Violation</b>	<b>4<sup>th</sup> Violation</b>	<b>5<sup>th</sup> Violation</b>
\$1,000	\$2,500	\$5,000	\$10,000	\$10,000 and automatically return to Planning Commission for review and possible revocation. All application fees would be required in addition to the assessed penalty.

It should be noted that this penalty schedule does not preclude the City from utilizing any other enforcement approach that may be available, including scheduling the CUP for consideration of revocation or formal prosecution.

To administer the penalties quickly and efficiently, staff recommended that an account be established with an initial cash deposit of \$20,000 paid by the applicant. When violations are reported, verified, and documented, penalties will be drawn automatically from the account, and once the account is depleted by 50%, the applicant would be required to replenish the account back to \$20,000. In addition, staff proposes that a \$10,000 deposit be paid by the applicant to cover the costs of Code Enforcement responding to and documenting violations, and administering the penalties.

**Violations and Enforcement.** The Planning Commission adopted Resolution 1772 (provided as Attachment 3 to this report) on May 3, 2016 at approximately 1:00 a.m. This resolution included 29 conditions of approval, as described in this report.

The first violation of these conditions was reported to have occurred at 6:14 a.m. on May 3, 2016, consisting of a delivery being conducted in the alley outside of the approved hours. Upon review of the evidence provided and review of security camera footage, Staff determined that this was in fact a violation, and a \$1,000 penalty was assessed in accordance with the penalty schedule outlined in Resolution 1772 (see Attachment 8 for violation determination).

A second violation was reported to have occurred on May 3, 2016. It was reported that a delivery truck using the alley had blocked garage access at the adjacent residential property located at 9297 Burton Way. Evidence was provided in the form of an email and photographs. Upon review of the submitted evidence as well as security camera footage, it was determined that the delivery truck arrived at 1:33pm, and began positioning itself in a manner that would obstruct the alley and the garage entrance to the adjacent residential property. At 1:39pm, a hotel staff member approached the delivery truck, refused delivery, and directed the truck to reposition itself. The truck driver complied with the directions given by hotel staff, and the alley and garage obstruction was fully cleared by 1:43pm. Since the delivery was not accepted until the truck was positioned in an appropriate location that did not obstruct the alley or the adjacent property's garage, no violation had occurred and a penalty was not assessed for this occurrence (see Attachment 8 for violation determination).

A third violation was reported to have occurred on May 8, 2016. It was reported that a delivery truck arrived prior to 10:00 AM, which is the authorized start time for loading activities on Sundays. The security camera footage from the incident shows a truck arriving at 9:45 AM, and backing up to the hotel's loading area. Upon stopping, four furniture dollies are removed from the back of the truck and placed outside the hotel's loading dock. The truck is present in the alley for approximately three minutes and then departs at approximately 9:48 AM. In speaking with the L'Ermitage, City staff was informed that the furniture dollies were associated with repair work being performed on several pieces of the hotel's exercise equipment, and that the dollies were planned to be used later in the day to move the equipment within the hotel. While the dropping off of furniture dollies associated with exercise equipment maintenance does not appear to be a traditional hotel delivery (e.g. produce, linens, etc.), the applicable condition does not provide guidance on maintenance-type deliveries; therefore, all deliveries have been treated equally, regardless of the purpose. Furthermore, no hotel staff were present to reject the delivery. Based on these findings, a second violation was assessed against the hotel, resulting in a \$2,500 penalty (see Attachment 8 for violation determination). Should the City Council wish to define loading activities more narrowly, or create different categories of loading activities, staff seeks direction as appropriate.

**Rooftop Events.** Subsequent to the Planning Commission's approval of Resolution No. 1772, one rooftop event has been held in accordance with the new conditions of approval. Specifically, the conditions of approval require City staff presence during rooftop events to ensure compliance with conditions, with the full cost of staffing to be paid for by the hotel. The one event held thus far consisted of approximately 150 guests, and took place from 6:00 PM to 8:00 PM. A Senior Code Enforcement Officer was present at the hotel from 5:00 PM until approximately 8:30 PM, and monitored the event for noise and compliance with the conditions of approval. In summary, noise monitored by the Senior Code Enforcement Office was generally not audible at all beyond the hotel's property lines, and in any case where it was audible, it did not exceed 5 decibels above ambient. In addition, no violations of the conditions of approval were observed. The Officer's summary of the event is provided as Attachment 9 for reference. Despite the City's findings concerning noise at the event, one complaint was received in regard to the event. The complaint did not assert a specific violation of the conditions of approval, but highlighted overall concerns regarding rooftop events and is included in the public correspondence for reference.

**Burton Way Stairs.** During the course of the review of the entitlements associated with the L'Ermitage, questions have been raised about the new access stairs constructed along Burton Way that serve the restaurant. The stairs were permitted in 2015, and at the time permits were issued the stairs were determined to be consistent with past approvals, as they are immediately adjacent to the main hotel entrance and provide access in a location equivalent to the main hotel entrance. The prior conditions of approval in the CUP and DPR did not prohibit stair access to the restaurant; however, a portion of the findings in the prior CUP and DPR relied on access to the restaurant being taken from within the hotel to avoid noise impacts. Accordingly, the stair access was included in the materials presented to the Planning Commission, and the Planning Commission's approval specifically authorizes the new stairs given their location immediately adjacent to the hotel's main entrance. Architectural Review for the new stairs was processed administratively, as the appearance change was limited and did not consist of a full façade remodel.

**Number of Rooftop Events.** Questions have been raised about the number of rooftop events allowed, and whether the number has been increased over the years. The number of rooftop events was not restricted until 1999, at which point City Council Resolution No. 99-R-10211 restricted the number of events to a maximum of 52 per year (previously there was no limit). The approval granted by the Planning Commission did not change the total number of rooftop events, and Resolution No. 1772 continues to allow 52 rooftop events per year.

**Loading Dock.** Questions have been raised about whether the hotel has a loading dock, and whether use of a loading dock would help prevent loading impacts. The hotel does in fact have a loading dock at the rear of the building that is accessed from the alley. Unfortunately, due to the size of the loading dock and its configuration (perpendicular to the alley), the loading dock cannot be feasibly used in many cases, and trucks must park in the alley adjacent to the loading dock. An additional concern is the backup alarms (beeping) associated with deliveries. Staff has worked with the hotel to develop loading procedures that now require most trucks to pull into the alley head first, and continue through the alley head first upon exit, in order to limit the beeping associated with backing maneuvers. While this strategy does not completely eliminate the need for backing, it does cut down on the amount of beeping associated with loading activities. There have been several complaints about trucks continuing to back down the alley after loading, and upon investigation staff determined that the backing occurred due to an alley obstruction caused by construction at an adjacent property, causing the alley to be temporarily

impassable. With limited exceptions, delivery trucks should now be pulling head first through the alley in order to keep noise to a minimum.

**Parking.** Parking for the hotel's guests and employees is provided within a subterranean, 129-space parking garage<sup>3</sup>. Under normal hotel operations, the parking is sufficient to accommodate all hotel guests and employees, as many guests typically do not arrive with a personal vehicle, and instead use taxis or car services. During large evening events where additional parking is required, the hotel moves its employees' vehicles to the City's Rexford or 3<sup>rd</sup> Street municipal parking facilities in order to free up on-site parking spaces. At this time, staff is not aware of any instances where sufficient parking has not been available to accommodate the hotel's uses.

**Rooftop Music.** Questions have been raised regarding the allowance of rooftop music, and whether rooftop music was previously allowed at the hotel. The allowance for rooftop music was first regulated in 1994 (Planning Commission Resolution No. 890), although it is believed that rooftop music occurred at the hotel prior to 1994, and simply was not regulated at that time. The conditions imposed in 1994 required amplified music to be turned off at 10:00 PM. The specific condition regarding amplified music was not carried forward as a part of subsequent CUPs; however, the newest approval by the Planning Commission includes a 10:00 PM cutoff for rooftop music.

**Public Notice.** Notice of this hearing has been provided in the *Beverly Hills Courier* and *Beverly Hills Weekly*. In addition, mailed notice was sent to all property owners and residential occupants within 500 feet (plus block-face) of the project site, and a notice was posted on the property.

## **ENVIRONMENTAL ASSESSMENT**

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines<sup>4</sup>, and the environmental regulations of the City. Staff's initial determination is that the project is eligible for a categorical exemption pursuant to Sections 15301 (Class 1), 15302 (Class 2), and 15332 (Class 32) of the Guidelines, as follows:

A Class 1 Categorical Exemption consists of permitting or minor alteration of existing structures involving negligible or no expansion of use. Examples include interior or exterior alterations and additions to existing structures provided that the additions do not result in an increase of more than 10,000 square feet. The proposed project consists of granting entitlements that would govern the operations of a commercial hotel including restaurant and rooftop area, and allowing alterations to the front patio to establish an open air dining area of the same capacity as was previously existing and approved. The use of the hotel, restaurant, open air dining area, and rooftop area would remain substantially the same as what was previously approved and has been in operation for approximately the last 16 years, with additional conditions of approval to address compatibility with neighboring uses.

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<sup>3</sup> Prior approvals require 132 parking spaces to be provided on site. In recent years, the number of on-site parking spaces was reduced to 129 spaces in order to accommodate code-required ADA parking spaces. Pursuant to BHMC §10-3-203 F., on-site parking may be reduced in order to accommodate the code-required disabled access.

<sup>4</sup> The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

A Class 2 Categorical Exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The proposed project includes replacement/re-approval of a previously approved open air dining area on the same site, with the same capacity and function as was previously existing and approved. The hotel restaurant and rooftop structures will remain substantially the same as what was previously approved and has existed for approximately the last 16 years, with additional conditions of approval to address compatibility with neighboring uses.

A Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting the following conditions:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.
  - The proposed project is a legally nonconforming commercial hotel use located in an R-4 multi-family residential zone. Although hotels are no longer a permitted use within an R-4 Zone if constructed new, the City's Zoning Ordinance allows for legally nonconforming uses to be continued without alteration or expansion, and includes specific provisions for the operation of nonconforming hotels in an R-4 Zone. The Zoning Ordinance also allows for restaurants to be operated within a nonconforming hotel located in an R-4 Zone, including the ability to be open to the general public provided that a Conditional Use Permit is first obtained. Additionally, the Zoning Ordinance allows outdoor dining to be established in nonconforming hotels in an R-4 Zone pursuant to the issuance of a Development Plan Review. The proposed project consists of a hotel restaurant, open air dining, and rooftop uses operated in substantially the same manner as when the hotel use was established, and as amended over time by the City Council and Planning Commission. In addition, the project complies with numerous General Plan policies, including Policies LU 9.1, LU 15.2, and ES 1.4, which relate to retaining existing industries such as luxury hotels, as well as Policies N 1.3, and N 1.4.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
  - The project site is located in the City of Beverly Hills and consists of 31,200 square feet (approximately 0.72 acres), and is surrounded by urban uses, such as multi-family residential buildings, government buildings, single-family residences, and commercial offices, all of which are typical of an urban environment.
- c) The project site has no value as habitat for endangered, rare, or threatened species.
  - The project site has been developed with the current structure since 1976, and is located in a developed urban area. There are no known habitats for endangered, rare, or threatened species on the project site.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

- Restaurant / Outdoor Dining. This commercial hotel has been operating with a restaurant open to the public and an open air dining area for approximately 16 years. The proposed project would operate in substantially the same manner as previously approved. The hotel restaurant faces Burton Way and is completely enclosed. As conditioned, banquets or similar private receptions or parties are also prohibited in the restaurant. The open air dining area has been relocated to an area that is approximately 120 feet from the neighboring residential building to the west, which is approximately 50 feet further away than the previously approved open air dining area, and as conditioned, operation of the open air dining area will cease at 10:30 p.m. The project will maintain the same number of tables and chairs in the relocated open air dining area as previously approved. Neither live entertainment nor amplified music will be allowed at any time in the open air dining area. The new stairway access to the open air dining area is located on private property directly adjacent to the main hotel entrance, and conditions have been recommended that would prohibit patrons from queuing outside.
  - Rooftop Uses. Proposed conditions would limit evening functions on the rooftop to twice per week unless authorized by the Director of Community Development, and such functions are limited to a total of 52 per calendar year. Proposed conditions would also require all rooftop functions to cease by 10:00 p.m. and all patrons to vacate the rooftop by 11:00pm every day of the week. As conditioned, no additional events on the rooftop are allowed per calendar year beyond what was previously approved. Thus, approval of the project would not constitute any intensification of the past uses of the restaurant or rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate the traffic flow for the continued use of the hotel restaurant and rooftop area, thus the proposed project would not create any other significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.
  - Hotel Restaurant. The restaurant kitchen is located inside the hotel, and cooking will not be performed outdoors. Approval of the project will not alter the current venting of the kitchen and the City has received no evidence that the restaurant or rooftop currently create any odors or noxious fumes. Continuation of the previous uses would not result in any significant change to air quality in the vicinity of the project, or the region. The proposed continuation of uses would not result in any water quality issues in that no significant changes to the overall project site would occur, and all restaurant activities would continue to comply with applicable regulations to avoid any impact to water quality.
  - For the foregoing reasons, approval of the project, with the proposed conditions of approval, will not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.
- The site is currently served by all required utilities and public services, and no new utilities or public services will be necessary for the proposed project.

Based on the foregoing, staff recommends that the City Council find the project exempt from further review under the California Environmental Quality Act.

**FISCAL IMPACT**

Costs will be incurred in monitoring and responding to any reports of violations, as well as the annual review of the CUP. However, the project's conditions of approval require that the applicant off-set the City's future enforcement costs.

**RECOMMENDED ACTION**

Staff recommends that the City Council adopt the attached resolution approving a Conditional Use Permit to allow the hotel restaurant to be open to the public, a Development Plan Review to allow an open air dining area, and Extended Hours Permit to allow the hotel restaurant, open air dining area, and rooftop event space to operate during extended hours at the L'Ermitage Hotel located at 9291 Burton Way.

Susan Healy Keene, AICP  
Director of Community Development

  
Approved By