

# Attachment 22

Appeals of Planning Commission  
Recommendation



November 3, 2016

**VIA EMAIL & U.S. MAIL**

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA 90071-1560  
Attn: Benjamin J. Hanelin

Dear Mr. Hanelin:

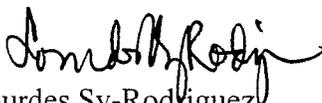
On November 2, 2016, the City of Beverly Hills City Clerk's office received the appeal of the Planning Commission's recommendation regarding the proposed amendment to the 9900 Wilshire Specific Plan, now referred to as the One Beverly Hills project. The appeal was filed on behalf of Oasis West Realty, LLC.

Upon consulting with the City Attorney's office, the determination has been made that the advisory action of the Planning Commission recommending that the City Council certify the Supplemental Impact Report for the project and approve the amendments to the Specific Plan and development agreement is not an appealable action. In light of this determination, we are returning the appeal materials you submitted, including check number 1080 in the amount of \$5,231.00.

Please note that entitlements sought for the One Beverly Hills project require final action by the City Council, and the matter is set for hearings commencing on November 7, 2016. Thus, any concerns you or our client may have regarding the project may be presented to the City Council during the project's hearing process, either during the time allocated for public comment, or in writing.

Should you have any questions, please do not hesitate to contact me, or David Snow, Assistant City Attorney.

Very truly yours,

  
Lourdes Sy-Rodriguez  
Assistant City Clerk

Enclosure(s)

Latham & Watkins LLP  
November 3, 2016  
Page 2

Cc: Ryan Gohlich, Assistant Director of Community Development (w/o encls.)  
Laurence S. Wiener, City Attorney (w/o encls.)  
David M. Snow, Assistant City Attorney (w/o encls.)

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**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN  
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION**

APPEAL TO \_\_\_\_\_ COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

November 1, 2016

Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of the City Planning Commission (Official, Board or Commission involved) rendered on October 19, 2016; which decision consisted of: The grounds submitted for this appeal are as follows: *(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)*

Please see attached letter.

The undersigned discussed the decision being appealed with:

Andre Sahakian, Associate Planner

on November 1, 2016

(Department Head(s) Involved)

Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

Benjamin Hanelin

355 S. Grand Avenue, Los Angeles, CA 90071

Name

Address



Signature of appealing party

355 S. Grand Ave., Los Angeles, CA 90071

Address

(213) 891-8015 / (213) 891-8763

Telephone Number & Fax Number

Fee Paid \$5,231.00

(For City Clerk's use)

DATE RECEIVED

LOG NO. 45x16

Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, \_\_\_\_\_

Orig given to Larry Wiener only,  
no copies circulated per Larry

Involved Department

RECEIVED  
CITY OF BEVERLY HILLS  
2016 NOV - 3 A 9 13  
CITY CLERK'S OFFICE

355 South Grand Avenue  
Los Angeles, California 90071-1560  
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**LATHAM & WATKINS LLP**

November 1, 2016

**VIA EMAIL AND OVERNIGHT DELIVERY**

City Council  
c/o City Clerk's Office  
City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, California 90210  
Email: [bpope@beverlyhills.org](mailto:bpope@beverlyhills.org)

Re: Appeal of the Planning Commission's Determination on the Wanda Group's New Hotel, Destination Restaurants, Retail, and Residential Project

Honorable Mayor and Councilmembers:

In accordance with the appeals procedure authorized by the provisions of the Beverly Hills Municipal Code ("Code") Section 1-4-101, et seq., our client, Oasis West Realty, LLC ("Oasis"), hereby appeals the City Planning Commission's decision rendered on October 19, 2016, which decision consisted of the adoption of a resolution ("Resolution") recommending that the City Council adopt amendments to the 9900 Wilshire Specific Plan (also known as the One Beverly Hills Project ("Project")) and associated development agreement between the City and Wanda Beverly Hills Properties, LLC to allow luxury residential condominiums, a luxury boutique hotel, public gardens, and ancillary commercial uses, at 9900 Wilshire Boulevard and recommending the City Council certify the Final Supplemental EIR ("SEIR") for the Project under CEQA. The grounds submitted for this appeal are set forth below and contained in the attachments enclosed with this letter. Additional basis of error may be provided at a later date and Oasis reserves all rights to do so.

Our firm, Oasis, and its consultants worked tirelessly throughout the Planning Commission's consideration of the Project and its Draft and Final SEIR, appearing at Commission hearings, submitting comment letters, and preparing and delivering reams of data, analyzes, and information, which demonstrated serious issues regarding the impacts of the Project and prove that the findings made by the Commission are fundamentally flawed, lacked sufficient supporting evidence, and were improperly made. Enclosed with this appeal letter as Attachment B are the various comment letters previously submitted by our firm, Oasis, its consultants, and others to the Community Development Department and the Planning Commission regarding the Project and its Final SEIR, which we hereby incorporate in full. In addition, Attachment A contains additional specific comments on the Project in support of this appeal, which must be addressed by the City Council. Collectively, these comment letters, along

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with the testimony before the Planning Commission and the other information previously submitted to the Community Development Department and before the Planning Commission show that the findings for the Final SEIR, Specific Plan amendment, and Development Agreement cannot be made by the Planning Commission or the City Council, as discussed further below:

1. The Final SEIR

The Planning Commission's actions in recommending the certification of the Final SEIR for the Project constitutes a prejudicial abuse of discretion in that it failed to proceed in the manner required by law and failed to support its decisions by substantial evidence. The Final SEIR contains numerous flaws, makes unsubstantiated assumptions and lacks insufficient evidence to support its conclusions regarding the Project's environmental impacts. These deficiencies are noted in detail in the comment letters enclosed with this appeal as well as the comments submitted by government agencies and other third parties to the Planning Commission. The Final SEIR fails to respond adequately to these comment letters as well as the other comments submitted by the public on the SEIR. CEQA requires every lead agency to provide a good faith, reasoned analysis in response to comments received on an EIR, to address recommendations and objections in detail, and to explain why specific comments and suggestions, especially those of experts, were not accepted. The City has failed to adhere to this requirement. Therefore, the Final SEIR is fundamentally flawed and the Commission's findings of adequacy under CEQA were inappropriately made.

2. The Specific Plan Amendment

The Planning Commission's recommendations regarding the Specific Plan Amendment was also in error.

The Planning Commission's Resolution lacks the necessary findings. Specifically, the Planning Commission did not find, as required by Code Section 10-3-3106, that the Specific Plan Amendment will result in a benefit to the public interest, health, safety, morals, peace, comfort, convenience, or general welfare. It was error and abuse of discretion for the Commission to recommend that the City Council approve the Specific Plan amendment without making this required finding.

The Project's proposed Specific Plan Amendment is also wholly inconsistent with the City's General Plan and fails to implement its stated Policies and Objectives. Fundamentally, the findings contained in the Commission's Resolution do not provide sufficient evidence to support the Commission's claims of consistency. The findings simply make conclusions with very limited supporting explanations and without any detail or analysis. For example, the findings state that the amended Specific Plan is consistent with Policies LU 1 (Long-Term Stability) and LU 9.5 (Commercial/Residential Mixed Uses) in that "it would enable development of residences of exceptional quality." How can the Resolution make such a claim without providing further supporting evidence or detail? Contrary to the Resolution's findings, the Project is inconsistent with LU 2.7 (City Gateways) as it does not include any public improvements that enhance the sense and quality of the area as required by the Policy.

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Instead, the proposed Specific Plan amendment directly conflicts with the City's General Plan Policies and Objectives. For example, the Project will cause significant, unmitigated traffic and circulation impacts along Santa Monica Boulevard and Merv Griffin Way. The amended Specific Plan is therefore inconsistent with LU 4.2, which seeks to protect the quality of residential areas by discouraging traffic generation in areas in close proximity to residential neighborhoods. Among various other conflicts and inconsistencies, the amended Specific Plan will create an incompatible and highly-intense new commercial land use directly adjacent to the Beverly Hilton's residential units and create disruptive traffic conditions for its residents, by locating all of the Project's hotel truck and garbage delivery service on Merv Griffin Way and inappropriately placing its loading dock directly across the street from the Beverly Hilton's grand entrance. This will result in a clear conflict with the Policies outlined in LU 5.8 (Encroachment of Incompatible Land Uses) and Policy 12.1 (Functional and Operational Compatibility). The amended Specific Plan also fails to adhere to CIR 6.7, which requires proposed development projects to implement site designs and on-site amenities that support alternative modes of transportation. The Project involves an extreme intensification of land use by adding almost 200,000 square feet of new commercial space in exchange for just 42 condominium units and 16,000 square feet of restaurant and retail space. The findings fail to address this major change and how the Project remains consistent with the General Plan despite such change. These constitute just a sampling of the numerous conflicts between the amended Specific Plan and the Policies and Objectives of the General Plan.

3. The Development Agreement

The Planning Commission recommended the City Council approve the Project's Development Agreement without having the actual agreement before it to review. In fact, an Ad Hoc Committee of the City Council was negotiating a Development Agreement at the same time that the Planning Commission was supposedly reviewing and recommending the Development Agreement. Whatever the Council will be considering is not the document that was before the Planning Commission. How can the Planning Commission recommend approval of the agreement without actually reviewing the Development Agreement that the Council will be considering?

Furthermore, the version of the Development Agreement that was submitted by Wanda at the Planning Commission's October 10, 2016 hearing (which again, has not yet been fully-negotiated) is wholly inconsistent with the City's General Plan. For the same reasons as outlined above regarding the Project's Specific Plan, the draft Development Agreement fails to implement its stated Policies and Objectives.

In addition, the findings employ circular logic, stating that the Development Agreement is consistent with an amended Specific Plan that has not yet been adopted or in effect. The Development Agreement specifically prohibits a hotel land use on the Project site, along with the Project's other intensive commercial land uses. Therefore, the Planning Commission's findings with respect to the Development Agreement are unsupported by any evidence in the record and directly conflict with the Specific Plan.

Finally, we were bewildered by the apparent rush to approve the Project by the Planning Commission, which often made decisions on particular Project features without sufficient time to

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review and consider them. On more than one occasion, the City published and released over a hundred pages of new material, information, and analysis regarding the Project on the Friday night before the Commission's Monday hearing. In addition, the Project's full Specific Plan amendment was submitted only 24 hours prior to the Commission's hearing on the amendment. The City's pattern of releasing documents at the last minute was unfair to the public and to the Commission and prohibited proper level of review.

We are further perplexed by the City Council's decision to schedule its hearing for the Project at the same time the General Election is taking place, when the community will be completely preoccupied with other matters and unable to properly present the City Council with its comments and concerns regarding the Project. We urge the City to reschedule its hearing to a more appropriate date, and respectfully request that the City Council take sufficient time during its review of the Project and its Final SEIR to carefully consider the impacts of the new Project and the new information it raises to ensure it truly is a positive addition to Beverly Hills and does not damage operations at the Beverly Hilton. There should be no need to rush the approval of such an important, character-defining Project forward.

We thank you for the opportunity to provide comments on the Project. We want to make clear that Oasis is not opposed to the new hotel development at the 9900 Wilshire Boulevard Property, but is submitting this appeal because of its serious concerns about the impacts of the Project as proposed, and its desire to ensure that modifications are made in order to ensure that the Project is consistent with the public's desires for new development within the City and that the Project does not create unmitigated detrimental impacts to the community.

We look forward to working with the City Council and staff to resolve these issues. If you would like to discuss any of the issues raised in our comments, please do not hesitate to contact me at 213-891-8015.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Benjamin J. Hanelin', with a long horizontal flourish extending to the right.

Benjamin J. Hanelin  
of LATHAM & WATKINS LLP

Enclosures

Cc: Mr. Ted Kahan, Oasis West Realty, LLC  
George J. Muhlsten, Esq., Latham & Watkins LLP



November 3, 2016

**VIA EMAIL & U.S. MAIL**

Peterson Law Group  
19800 MacArthur Blvd. Suite 290  
Irvine, California 92612-2471  
Attn: John S. Peterson

Dear Mr. Peterson:

On November 2, 2016, the City of Beverly Hills City Clerk's office received the appeal of the Planning Commission's recommendation regarding the proposed amendment to the 9900 Wilshire Specific Plan, now referred to as the One Beverly Hills project. The appeal was filed on behalf of The Belvedere Hotel Partnership.

Upon consulting with the City Attorney's office, the determination has been made that the advisory action of the Planning Commission recommending that the City Council certify the Supplemental Impact Report for the project and approve the amendments to the Specific Plan and development agreement is not an appealable action. In light of this determination, we are returning the appeal materials you submitted, including check number 6482 in the amount of \$5,231.00.

Please note that entitlements sought for the One Beverly Hills project require final action by the City Council, and the matter is set for hearings commencing on November 7, 2016. Thus, any concerns you or our client may have regarding the project may be presented to the City Council during the project's hearing process, either during the time allocated for public comment, or in writing.

Should you have any questions, please do not hesitate to contact me, or David Snow, Assistant City Attorney.

Very truly yours,

Lourdes Sy-Rodriguez  
Assistant City Clerk

Enclosure(s)

Peterson Law Group  
November 3, 2016  
Page 2

Cc: Ryan Gohlich, Assistant Director of Community Development (w/o encls.)  
Laurence S. Wiener, City Attorney (w/o encls.)  
David M. Snow, Assistant City Attorney (w/o encls.)

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**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN  
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION**

APPEAL TO \_\_\_\_\_ COMMISSION OR **CITY COUNCIL**

*PLEASE TYPE OR PRINT CLEARLY IN BLACK INK*

November 1, 2016

Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of Planning Commission (Official, Board or Commission involved) rendered on October 19, 2016; which decision consisted of: The grounds submitted for this appeal are as follows: **(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)**

On October 19, 2016, the Beverly Hills Planning Commission voted to recommend that the Beverly Hills City Council adopt Amendments to the 9900 Wilshire Specific Plan and associated Development Agreement to allow luxury residential condominiums, a luxury boutique hotel, public gardens, and ancillary commercial uses and to make a recommendation under CEQA.

Peterson Law Group, PC, on behalf of The Belvedere Hotel Partnership appeals this recommendation for the reasons stated in Exhibit A, Exhibit B, and Exhibit C attached hereto and incorporated by this reference.

Exhibit A is Peterson Law Group's comment letter to the City Council dated November 1, 2016.

Exhibit B is Peterson Law Group's comment letter to the Planning Commission dated May 31, 2016.

Exhibit C is Peterson Law Group's comment letter to the Planning Commission dated September 19, 2016.

The undersigned discussed the decision being appealed with:

Planning Commission Hearings on 5/12/16; 8/23/16; 9/19/16; 10/19/16

(Department Head(s) Involved)

Date

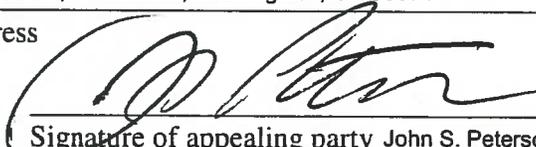
It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to: [jsp@petersonlawgroup.com](mailto:jsp@petersonlawgroup.com); [swt@petersonlawgroup.com](mailto:swt@petersonlawgroup.com)

Peterson Law Group c/o John S. Peterson 655 West 5th Street, Suite 2800, Los Angeles, CA 90071

Name

Address

RECEIVED  
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2016 NOV -2 P 3:43  
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Signature of appealing party John S. Peterson, Attorney for  
The Belvedere Hotel Partnership

655 West 5th Street, Suite 2800, Los Angeles, CA 90071

Address

(213) 236-9720; (213) 236-9724

Telephone Number & Fax Number

Fee Paid \_\_\_\_\_

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Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, \_\_\_\_\_

Involved Department

# PETERSON LAW GROUP

PROFESSIONAL CORPORATION  
SUITE 2800  
633 WEST 5<sup>TH</sup> STREET  
LOS ANGELES, CALIFORNIA 90071

TELEPHONE (213) 236-9720  
FACSIMILE (213) 236-9724

November 1, 2016

Beverly Hills City Council  
City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, CA 90210

**Re: 9900 Wilshire Boulevard (One Beverly Hills) Appeal to City Council**

Dear Councilmembers,

This office represents The Belvedere Hotel Partnership (“Belvedere”) and this letter is submitted on Belvedere’s behalf. Belvedere appeals the recommendation of the Beverly Hills Planning Commission to adopt the Supplemental Environmental Impact Report (“SEIR”) and Amendments to the 9900 Wilshire Specific Plan and associated Development Agreement to allow luxury residential condominiums, a luxury boutique hotel, public gardens, and ancillary commercial uses (the “Amendments”) at 9900 Wilshire Boulevard (the “Property”). Exhibit B and Exhibit C to the Appeal Petition outline Belvedere’s grounds for appeal. The appeal is also based on the following grounds:

Beverly Hills City Council adopted the 9900 Wilshire Project Specific Plan and associated entitlements on April 8, 2009. Pursuant to Beverly Hills Municipal Code (“BHMC”), “the failure to exercise any right granted by the original approval within the time limit provided, or any extension thereof, shall constitute an abandonment of the original approval and all rights conveyed by the approval shall lapse and expire.” BHMC 10-3-207(A). Furthermore, no approval may “be extended beyond five (5) years after the initial action granting the original approval.” BHMC 10-3-207(A). Here, the City approved and entitled the 9900 Wilshire Project more than *seven and a half years ago*. We have not found evidence of further extensions despite our review of the City’s responses to our PRA request for the entire file. The City Council should not approve the Amendments or the SEIR at this time because the 9900 Wilshire Specific Plan and associated Development Agreement have expired. The Environmental Impact Report (“EIR”) for the project is a nullity as it is a document without a project. It is incumbent on the City to have notified the project developer and the public that the project entitlements had expired. The project proponent must file an entirely new plan and obtain a new Environmental Impact Report for its proposed project.

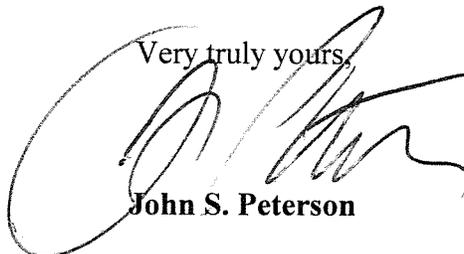
Exhibit A

November 1, 2016

Assuming, for argument's sake, that the City Council determines that the project entitlements have not lapsed, there are additional reasons why the Amendments cannot be approved. In addition to the reasons outlined in Exhibits B and C, the Amendments result in a much more intensive use of water. The extended drought that we now know to exist was not considered in the EIR. The difference in baseline warrants an entirely new analysis. The City claims this will not have a significant impact on the environment. The City has been placing stringent water restrictions and conservation requirements on its residents and business owners. There is a clear disconnect between its treatment of existing residents and business owners and treatment of the applicant in the SEIR. Beverly Hills residents and business owners should not be expected to suffer while the City encourages major development without properly analyzing and mitigating development impacts.

As we have stated throughout this process, the Amendments proposed by the project proponent are for a substantially revamped project that requires a new EIR and all associated environmental studies, including greenhouse gas emissions and utilities. Not only is this a new project under CEQA, but it is a new project under the Beverly Hills Municipal Code - the entitlements for the previously approved project having expired. The current attempt to push this project through is an attempt to circumvent CEQA. The City is doing its citizens a disservice by approving this project without full and complete environmental analysis. The project must be treated as a new project and follow the proper development procedures as required by law. The SEIR should not be approved by the City.

Very truly yours,

A handwritten signature in black ink, appearing to read "John S. Peterson", written over the typed name below.

**John S. Peterson**

JSP:swt