

## Communication from Public

**Name:** Fred Gaines, Esq.

**Date Submitted:** 10/18/2021 02:21 PM

**Council File No:** 21-0777

**Comments for Public Posting:** Dear Honorable PLUM Committee Members: This law office represents Save Our Canyon. We urge your support for this Motion made by Councilmember Koretz and seconded by Councilmember Blumenfield to rescind the initiation of a General Plan Amendment for The Retreat at Benedict Canyon Project. The Motion is based upon and supported by applicable legal precedent. In *Las Lomas Land Co., LLC v. City of Los Angeles* (Sept. 17, 2009, B213637) 177 Cal. App. 4th 837, the Court upheld the long standing rule that a discretionary application may be terminated, that CEQA does not apply to projects rejected or disapproved by a public agency, and that a public agency may reject a project before completing or considering the EIR. In *Las Lomas*, the Court of Appeals for the Second Appellate District made clear that a city may reject a discretionary application midstream without awaiting the completion of a final EIR. This holding allows the City to avoid wasting time and money on a dead-on-arrival project. In May of 2002, *Las Lomas Land Co., LLC* (“*Las Lomas*”) submitted an Environmental Assessment Form (EAF) for the development of a 555-acre site along the 5 Freeway North of Sylmar, in an area to be annexed into the City’s sphere of influence. The City issued a notice of preparation of an EIR for the project, which included the annexation of the site, approval of a specific plan, zoning and development entitlements. *Las Lomas* submitted a draft specific plan and preliminary draft environmental studies to the City. City Councilmember Greig Smith opposed the project and asked the City to cease its work on it. The City Attorney advised that the City was required to continue processing and completing the EIR. Nonetheless, Councilmember Smith introduced a motion to suspend the review process until the City Council made “a policy decision” to resume the process. The City Council ultimately approved a modified motion which called for the City to cease work on the proposed project. *Las Lomas* filed a combined petition for writ of mandate and complaint, alleging, among other arguments: 1) the City had no rational basis to stop processing the project application; 2) the City had a mandatory duty to complete its environmental review before making a decision on the project; 3) the failure to complete the environmental review denied *Las Lomas* procedural and substantive due process and equal protection; and 4) allowing the

objecting council member to substitute a new motion for his original one without notice denied Los Lomas procedural due process rights. The Court rejected all of Las Lomas' claims. It is clearly legal for the City to stop the processing of the General Plan Amendment for The Retreat given the Council Office's known opposition to the project. We request that the PLUM Committee recommend that the City Council adopt Councilman Koretz' Motion at the earliest possible date. Thanks for your attention to this matter. Fred Gaines, Esq. Gaines & Stacey LLP  
16633 Ventura Blvd., Suite 1220 Encino, CA 91436 Telephone - 818-933-0200 ext. 1201 Fax - 818-933-0222

## Communication from Public

**Name:** Alfred Fraijo Jr.  
**Date Submitted:** 10/18/2021 05:51 PM  
**Council File No:** 21-0777  
**Comments for Public Posting:** Dear Mr. Bencomo, Attached please find a letter addressed to the Planning and Land Use Management Committee regarding Agenda Item No. 2 (CF 21-0777) for consideration at its upcoming meeting on Tuesday, October 19, 2021. Thank you.

October 18, 2021

File Number: 66CS-292260

**Via LACouncilComment.com**

Planning and Land Use Management Committee  
City of Los Angeles  
200 N. Spring Street  
Los Angeles, CA 90012

Re: CF-21-0777, PLUM Agenda Item No. 2

Dear Chairman Harris-Dawson and Honorable Councilmembers:

Our firm represents 9712 Oak Pass Road, LLC (the "Applicant") in connection with The Retreat at Benedict Canyon (the "Project") in the City of Los Angeles (the "City"), Case Nos. CPC-2018-1506-GPA-VZC-SP-SPP-SPR, VTT-74908, ENV-2018-1509-EIR. On July 1, 2021, Councilmember Paul Koretz introduced a motion (the "Motion") that would illegally unwind years' long efforts by the Applicant and City to process entitlements for the Project. The Motion, attached hereto as Exhibit 1, is unlawful, inequitable, and would set the City on a dangerous path as set forth in our prior letter addressed to the City Attorney's Office dated August 19, 2021 and on the grounds that the Motion:

1. Is inaccurate and makes claims that are not supported by the facts;
2. Requests an action by City Council that would violate the City Charter, the Municipal Code and the Applicant's procedural due process rights;
3. Requests an action by the City Council that would violate the common law rule of equitable estoppel;
4. Requests an action by the City Council that would jeopardize the Applicant's vested right to process the Project to completion pursuant to the Vesting Zone Change and Vesting Tentative Tract Map;
5. Requests an action by the City Council that would violate the common law rule of fairness; and
6. And other related actions by Councilmember Koretz have demonstrated his bias and animus towards the Project. This bias constitutes a conflict of interest that requires he recuse himself from deliberation on the Project.

## I. Background

Prior to the Director's signed and approved initiation of the GPA for the Project, the Applicant consulted and met with Director Vince Bertoni and his staff, as well as Council District 5 about the Project and its request for GPA initiation. Councilmember Koretz toured the Project site and expressed his support of the initiation of the GPA. On October 12, 2017, the Director conditionally approved initiation of the GPA, attached hereto as Exhibit 2, so long as "Project Alternatives to be evaluated include but are not limited to: A zoning compliant project; a reduced hotel project; and a 100 percent single-family residential project." On March 16, 2018, the Applicant filed the Project application with the City in reliance on the Director's signed and approved initiation of the GPA. The Project application, which includes a Vesting Zone Change and Vesting Tentative Tract Map, was deemed complete on May 1, 2020 and July 22, 2020, respectively, and the Applicant, in good faith, has pursued the Project in reliance on the Director's authorization to do so and in full compliance with the applicable rules currently in effect. In fact, following the filing of the Project application, in consultation with City Planning and Council District 5 and as a result of initial community feedback, the Applicant agreed to reduce the Project scope from 99 to 59 hotel guest rooms – a substantial 40% reduction in density.

Both prior to and subsequent to the deemed complete date for the Project, the Applicant undertook comprehensive community engagement activities with stakeholders, as well as Council District 5. Such efforts included door-to-door canvassing in early Fall 2019 of neighbors within an approximately one mile radius of the Project site, resulting in hundreds of direct interactions. In addition, the Applicant met extensively with Council District 5 representatives, as well as Councilman Koretz, about the Project.<sup>1</sup> Furthermore, the Applicant initiated scoping for the Draft Environmental Impact Report (the "DEIR") pursuant to the California Environmental Quality Act ("CEQA") on December 2, 2020 with over one hundred individuals in attendance, and continues to engage in scoping activities that exceed CEQA requirements. The City published the Notice of Preparation and Initial Study on November 10, 2020, upon which the Applicant received more than 500 comment letters. In response to concerns raised in the comment letters, the Applicant coordinated with City Planning and the environmental consultant to continue work on the DEIR to extensively address all comments raised.

## II. Arguments

### A. The Motion is Inaccurate and Makes Claims that are Not Supported by the Facts.

The Motion is rife with inaccuracies and is thus defective on its face. The City Council is charged with policy-making based on facts and in reliance on sound judgement. The Motion

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<sup>1</sup> 3/29/19 – Meeting with Council Office Representative; 3/31/19 – Meeting with Council Office Representative; 4/2/19 – Meeting with Council Office Representative; 9/4/19 – Meeting with Councilmember Paul Koretz; 11/5/19 – Meeting with City Council Office Representative; 12/2/19 – Meeting with City Council Office Representative; 2/18/20 – Meeting with City Council Office Representative and Los Angeles Fire Department; 11/10/20 – Project site tour with Council Office Representative.

presented fails this standard of fairness to the public. The Motion includes claims that the Project would cause numerous harms to the environment without evidence.

For instance, the Motion states,

*The proposed six-star hotel will strain infrastructure in a community otherwise planned, and developed for low-density, single-family development. . . The secluded hillside location is isolated from other business, public transportation, public services and other cultural amenities which underscores the unessential nature of the project as it relates to the community, city, and region. Due to the remote hillside location and above mentioned, the project will not enhance the built environment in the surrounding neighborhood or perform a function or provide a service that is essential or beneficial to the community, city, or region.*

These statements are inaccurate and unsubstantiated by the facts for several reasons. First, the DEIR will analyze the Project's impacts to "infrastructure," including public utilities (e.g., sewer, water, wastewater, stormwater, energy, telecommunications facilities), public services (e.g., police, fire, libraries, and schools), and transportation (e.g., circulation system, roadway, and pedestrian facilities). Second, the finding that the Project will not enhance the built environment in the surrounding neighborhood or perform a function or service that is beneficial to the community, city, or region is woefully one-sided and completely fails to acknowledge the broader economic benefits of bringing a world-renowned luxury hospitality brand to the City. Indeed, the Bel Air Hotel and Beverly Hills Hotel boycotts by the City in 2019, revealed the need for other luxury hotels in the region. Furthermore, the Project has been painstakingly designed to spotlight and protect the hillside and natural environment.

The Motion also states,

*[W]hile the hotel facilities would not include any dedicated ballroom event space, the request does include special events associated with gatherings. Such events such as weddings, corporate events, dinners, film screenings are proposed as part of regular hotel operations. The scale of such events would be inconsistent with the typical overall intensity of activity in the surrounding community, degrading the community with additional noise from patrons and amplified music, automobile trips, and impacts commensurate with the service of alcoholic beverages and live entertainment. The unique geography and topography of the location will further challenge the operator to maintain compliance with the Los Angeles Municipal Code Citywide Noise Ordinance and typical noise control measures within the property such as noise barriers, sound absorbers, and buffer zones will be less effective. As such, the project's hillside location, size, height, operations, and other significant features will not be compatible with and will adversely affect or further degrade adjacent properties, the surrounding neighborhood, and public health, welfare, and safety.*

Again, the Motion makes inaccurate assertions and misleads the public about the Project's potential impacts on the environment. These bald assertions that the Project's operational noise would degrade the community and any proposed noise measures would be ineffective

towards compliance with the City's Noise Ordinance are unsupported by hard evidence and grossly speculative. To be clear, the DEIR will analyze the Project's quantitative operational noise impacts on the environment, including the proposed special events, to demonstrate whether operations could result in significant noise impacts on sensitive receptors in the vicinity as well as the efficacy of noise reduction measures.

The Motion makes a conclusory finding that the Project "will not be compatible with and will adversely affect or further degrade adjacent properties, the surrounding neighborhood, and public health, welfare, and safety" without any measured evidence to substantiate the point. Such unfounded statements cannot stand. There are several reasons why the assertion is inaccurate. First, the Project has already been reduced from 99 to 59 hotel guest rooms in response to initial feedback that a less dense development would be more compatible with the surrounding neighborhood. Second, the Project was designed to be compatible with the natural topography of the site and maximize the retention of undisturbed open space. Third, all potentially significant environmental impacts resulting from the Project will be thoroughly analyzed and mitigated to the greatest extent feasible.

Furthermore, the GPA process established by the City requires the City Council to consider recommendations by the Director, City Planning Commission, and Mayor before voting on it. (City Charter Section 555). In other words, the City Council would receive well-vetted recommendations, and complete and accurate information about the Project, including a full CEQA analysis, prior to its vote. Compliance with the City's procedures furthers fully-informed decisionmaking. In stark comparison, a City Council vote on the Motion would be based on inaccurate and incomplete information that heavily suggests Councilmember Koretz's determination was made after hearing only the viewpoint of opponents of the Project.

In addition, Councilmember Koretz knows from his extensive engagement with the Applicant, that the assertions in the Motion are not only inaccurate but also premature, as the EIR required under CEQA will fully study the Project's anticipated effects on the surroundings. Notably, the DEIR as currently proposed will include an analysis of a project alternative that conforms to the adopted General Plan and Zoning—a key request in the Motion. As stated previously, this was already a condition of the Director-initiated GPA. By allowing the City's intended planning process to proceed in full compliance with CEQA, the impacts alleged by Councilmember Koretz will be studied and mitigated if necessary, and his desired residential alternative will be analyzed.

B. The Motion's Requested Action by City Council Would Violate the City Charter, the Municipal Code, and the Applicant's Procedural Due Process Rights.

The GPA was initiated by the Director of Planning, and therefore, the City Council cannot unilaterally rescind the GPA. Pursuant to City Charter Section 555 and Los Angeles Municipal Code ("LAMC") Section 11.5.6, the Director-initiated GPA vested the Applicant's right to process the GPA through completion in compliance with the City's adopted procedural requirements. Specifically, City Charter Section 555 instructs that the "Director of Planning *shall* make a report and recommendation on all proposed amendments" to the General Plan. Further, "[p]rior to Council action, the proposed amendment *shall* be referred to the City Planning Commission for

its recommendation and then to the Mayor for his or her recommendation." LAMC Section 11.5.6.B reinforces the mandatory nature of this process: upon initiation of the GPA, "the Director *shall* prepare the amendment and a report recommending action by the City Planning Commission," and "the Director *shall* transmit the file to the City Planning Commission for its action." In short, the City's adopted procedural requirements clearly mandate the process to be followed once a GPA is initiated, including Director, City Planning Commission, and mayoral recommendation, followed by City Council action. The City's procedures offer no alternative once a GPA has been initiated, and the process cannot simply be cut short by the City Council. Since the Director conditionally approved the initiation of the Applicant's GPA on October 12, 2017, the process must therefore continue per the City's procedural requirements.

Relatedly, the Motion illegally circumvents the Applicant's ability to process the application through completion in violation of its due process rights. While it is true that the Applicant has no right to develop the Project in the absence of an approved GPA and other approvals, the Applicant has a legitimate claim of entitlement to the processing of the GPA request by operation of the October 12, 2017 GPA initiation approved by the Director and the mandatory procedures of the City Charter and LAMC. The City's procedural requirements are intended to operate as a "significant substantive restriction" on the City's consideration of Director-initiated GPAs. (*Parks v. Watson*, 716 F.2d 646, 657 (9th Cir. 1983)). The use of "shall" in City Charter Section 555 and LAMC Section 11.5.6 is the "explicitly mandatory language necessary to create an entitlement." (*Wedges/Ledges of California, Inc. v. City of Phoenix*, 24 F.3d 56, 63 (9th Cir. 1994)). The City Charter and LAMC contain mandatory language that restricts the discretion of the City Council to deny the procedural requirements to an applicant who meets the minimum eligibility requirement of a Director-initiated GPA.

Because the Applicant has a right to process the GPA through completion, any governmental interference with this process violates the Applicant's due process rights if the action is arbitrary or irrational. This is shown through an analysis of "the need for the governmental action in question, the relationship between the need and the action, the extent of harm inflicted, and whether the action was taken in good faith or for the purpose of causing harm." (*Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d 1398, 1409 (9th Cir. 1989) (overruled on other grounds)). Here, the Motion's instruction to the Director to rescind the initiation of the GPA is not needed, as the GPA will ultimately be considered by the Director, City Planning Commission, Mayor, and City Council per the City's procedures; the relationship between the need and the action is imprecise because a study of project alternatives, as instructed by the Motion, will be included as part of the processing of the DEIR; the harm inflicted on the Applicant, through considerable delay and additional expense, is significant; and the Motion was not made in good faith, as there are indications that Councilmember Koretz was reacting prematurely to erroneous claims made by groups opposed to the Project. For all of the above reasons, the Motion's impact on the Project is arbitrary and irrational and thus violates the Applicant's due process rights.



C. The Motion's Requested Action by City Council Would Violate the Common Law Rule of Equitable Estoppel.

The Applicant, in good faith, has pursued the Project in reliance on the Director's authorization to do so and Planning staff's continued processing of the application for over three years, and in full compliance with the applicable rules currently in effect. Councilmember Koretz's sudden attempt to end the GPA process therefore raises equitable estoppel concerns. Though typically, "[a] party 'faces daunting odds in establishing estoppel against a government entity in a land use case'" (*Golden Gate Water Ski Club v. County of Contra Costa*, 165 Cal. App. 4th 249, 259–63 (2008)), estoppel may be properly invoked in "the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow" (*Schafer v. City of Los Angeles*, 237 Cal. App. 4th 1250, 1262-63 (2015)).

Here, the Project cannot proceed in the absence of the GPA. The Applicant has fully complied with the applicable rules established in the City Charter and LAMC in coordination with the Planning Department and has expended considerable amounts of time and resources in justifiable reliance on these rules and Planning staff's continued processing of the application, including publication of the Notice of Preparation and Initial Study. Adopting the Motion would result in substantial economic loss to the Applicant including the costs incurred to comply with established processing and review mandates. Yet the Motion would guarantee termination of the Project and delays, causing the Applicant undue harm with no apparent benefit to any party—a great injustice that justifies the application of equitable estoppel to the Motion. Further, the precedent set by the estoppel is narrow: rather than initiating an untenable change to GPA procedures in the City (i.e., amendment to the City Charter and LAMC), the estoppel would merely confirm that the City's existing procedures will be followed in subsequent GPA actions. (*Id.* at 1263 [Stating that "'the overriding concern is that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits'"]).

D. The Motion's Requested Action by City Council Would Jeopardize the Applicant's Vested Right to Process the Project to Completion Pursuant to the Vesting Zone Change and Vesting Tentative Tract Map Applications.

Because the Applicant filed a Vesting Zone Change and a Vesting Tentative Tract Map for the Project and its application has been deemed complete by City Planning, the Applicant has a vested right to proceed with development under the ordinances, policies, and standards in effect when the City accepted the Vesting Zone Change and Vesting Tentative Tract Map applications as complete. (LAMC Section 12.32.Q; Govt C §§66498.1(b), 66474.2). While the vested right is conferred to the Applicant upon *approval* of the Vesting Zone Change and Vesting Tentative Tract Map (*Id.*), the applicable GPA procedures in effect at the time the applications were deemed complete in 2020 should nonetheless govern because Charter Section 555 and LAMC Section 11.5.6 control and any amendments to such procedures would require legislative approval. Councilmember Koretz cannot unilaterally rewrite the rules for processing Director-initiated GPAs in the City.

E. The Motion's Requested Action by City Council Would Violate the Common Law Rules of Fairness.

The Charter and LAMC set forth a mandatory process for evaluating and deciding a Director-initiated GPA. The rules cannot be unilaterally amended for a single project, to the exclusion of all others; resulting in disproportionate effects on that single applicant. Furthermore, "[n]eedless to say, changing the rules in the middle of the game does not accord with fundamentally fair process." (*Woody's Group, Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1028 (2015)). Indeed, this is as basic a principle in California land use decisions as the principle that "[y]ou cannot be a judge in your own case" (*Id.* at 1016). The idea is straightforward: a sudden change to the procedures, without amendment to the City Charter or LAMC, imposes a unique and inequitable burden on the Applicant as compared to other projects in the City, unfairly harming the Applicant. In addition to being inequitable to the Applicant, as a policy matter, to change the rules in the middle of the game risks generating a chilling effect on development in Los Angeles. Specifically, the City Council's willingness to depart from City procedures in this one instance would raise concerns among other project applicants that they will be the next target, thus increasing the likelihood that they pursue development in other jurisdictions that adhere to their formal procedures instead.

F. The Motion and Other Related Actions by Councilmember Koretz Have Demonstrated His Bias and Animus Towards the Project. This Bias Constitutes a Conflict of Interest that Requires He Recuse Himself from Deliberation on the Project.

Finally, the Motion raises serious conflict of interest issues that impede Councilmember Koretz's ability to balance the facts and merits of the Project as a neutral and impartial decisionmaker once it is considered by Council. Councilmember Koretz must recuse himself from consideration of the Project. "To promote government decisions that are fair and accountable, City officials must avoid participating in actions that affect or appear to affect their private interests, both financial and non-financial." (Ethics Commission, City Officials Handbook 2021, p. 12). Among the justifications for a conflict of interest is the City's appearance standard that states that "it is 'not in the public interest' for you to act on a matter if you do not believe that you could act impartially or if the public might reasonably reach that conclusion. This can be true even when your interest in the matter is not financial. The City Attorney may decide, pursuant to City Charter Section 222, that the public interest prevents you from acting even when you would not be disqualified by state conflict of interest laws." (*Id.* at 13). In this case, the Motion, its bald assertions, and Councilmember Koretz's attempt to circumvent the mandatory procedures of the Charter and LAMC demonstrate that he could not act impartially on the Project. His mind has clearly been made up even before he has reviewed the DEIR and considered City Planning, CPC, and Mayor recommendations.

In addition, the recent decision in *Petrovich v. City of Sacramento*, 48 Cal. App. 5th 963 (2020) governs here. In *Petrovich*, the court held that an applicant for a gas station conditional use permit did not receive a fair hearing by the Sacramento City Council because there were concrete facts showing that a councilmember was biased, and he did not recuse himself from the hearing on the permit. Specifically, while the councilmember's membership in the

neighborhood group that opposed the gas station and his statement that "a gas station does not fit in the development as originally proposed" were insufficient to prove bias, his counting of votes prior to the hearing revealed a "prehearing commitment to achieving th[e] outcome" of a rejection of the permit (*Id.* at 974–76). Furthermore, the councilmember's preparation of "talking points" that were essentially "a presentation against the gas station" had "[t]he only conceivable purpose [of] assist[ing] advocacy in opposition to the gas station" (*Id.* at 975). The fact that the "talking points" were emailed to the mayor and appeared in the letters to other councilmembers from one of the lead opponents of the gas station were additionally concrete enough to establish that the councilman was biased.

Here, the City Council would act in both an adjudicatory and legislative capacity for the Project because the Vesting Tentative Tract Map and CEQA would be appealable to the City Council, while the GPA and Specific Plan recommendations would be acted on by the City Council. That is, the City Council would sit in a role similar to a judge and "judging applications for land use permits is one of those times." (*Woody's Group, Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1021 (2015)). Based on the concrete facts, Councilmember Koretz is not a neutral and unbiased decisionmaker because of the affirmative steps and behind-the-scenes advocacy he has participated in to oppose the Project. The councilmember has been advocating against the Project since November 2018, even during the NOP comment period as noted in the councilmember's NOP opposition letter dated November 25, 2020. In fact, on October 30, 2018, the board members of Save Our Canyon ("SOC") (the leading Project opponent) awarded Councilmember Koretz a green baton inscribed "From Save Our Canyon to Paul Koretz, Champion of the Mountains 2018" to "hail L.A. City Councilman Paul Koretz (5th District) for deciding early in the process that he will not support the [P]roject as proposed." The meeting "was a victory dance for Koretz" and a significant SOC fundraiser as "the pitch for donations was substantial." SOC President Mark Levin "asked the packed house to contribute at least \$1,000 per family." Upon accepting the award, the councilmember said that, "in his entire political career, 'I don't think I've ever gotten support for opposing a project . . . I am truly honored.'" (Beverly Hills Courier, "Funds To Fight Benedict Canyon Hotel Focus Of Meeting To Thank L.A. City Councilman Paul Koretz", pp. 8, 17, <https://issuu.com/bhcourier/docs/bhc110218/18?ff> )

Yet, the Project is not at a point where the City Council is being asked to weigh in on the merits. In fact, Councilmember Koretz has repeatedly made a public value judgement about the environmental impacts of the Project without having received any of the environmental analysis CEQA requires to make an informed determination by the lead agency. His actions are in fact impairing this impartial analysis from taking place and further hindering the Applicant's ability to study the alternatives that are mandated by the GPA initiation. For example, Councilmember Koretz engaged at least in the following improper activities:

- Held substantive ex parte communications with Project opposition relevant to the merits of an adjudicatory proceeding on multiple occasions.
- Corresponded with other members of the City Council to obtain support for the Motion, including Councilmember Bob Blumenfield who seconded the Motion.

While affirmative actions to assist opponents of a project are likely sufficient to prove actual bias, the standard is not so strict. Instead, "there must not be an *unacceptable probability of actual bias* on the part of the municipal decision maker." (*Woody's Group, Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1022 (2015) (internal quotations omitted) (emphasis added)). Taking a position against a project and then proposing an action that overturns an earlier land use decision related to the project is sufficient to establish an unacceptable probability of actual bias. (*Id.* at 1023). For example, in *Woody's Group*, a councilmember made an official request to the city clerk to appeal the planning commission's decision to grant a conditional use permit to a restaurant because he believed the permitted activities were "inconsistent with the existing and expected residential character of the area and the relevant policies of the . . . General Plan." (*Id.* at 1017). This request, in tandem with the councilmember's ultimate introduction of and vote on the appeal, sufficed to prove an unacceptable probability of actual bias. Here, Councilmember Koretz has clearly taken a position against the Project as detailed in the text of the Motion. The Motion is like the appeal in *Woody's Group*: it is Councilmember Koretz's action to overturn the earlier decision by the Director to initiate the GPA for the Project. As such, Councilmember Koretz has an unacceptable probability of actual bias and must recuse himself from consideration of the Motion and the Project.

The same set of rules would mandate that Councilmember Koretz recuse himself from considering the Motion at Council. Because the Motion on its face violates numerous laws, consideration by Council should not come to pass.

In closing, and for the aforementioned reasons, we respectfully request that PLUM deny the Motion. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alfred Fraijo Jr.', with a stylized flourish at the end.

Alfred Fraijo Jr.  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4835-5937-6127.2

cc: Adrienne Khorasanee, [adrienne.khorasanee@lacity.org](mailto:adrienne.khorasanee@lacity.org)  
Terry Kaufman-Macias, [terry.kaufmann-macias@lacity.org](mailto:terry.kaufmann-macias@lacity.org)

EXHIBIT 1

Motion by Councilmember Paul Koretz

## MOTION

At the onset of the environmental review process, the City prepared an Initial Study to determine if *The Retreat at Benedict Canyon Project* ( Case Nos. CPC-2018-1506-GPA-VZC-SP-SPP-SPR and VTT-74908) may have a significant effect on the environment. This Initial Study determined that the proposed *Benedict Canyon Project* may have a significant effect on the environment and that an Environment EIR (Case No. ENV-2018-1509-EIR) is required.

The discretionary entitlements, reviews, permits, and approvals required to implement the Project include the following: General Plan Amendment to change the land use designation to High-Medium Residential; Vesting Zone Change (VZC) to change the site zoning to the Benedict Canyon Specific Plan zone; Specific Plan to establish allowable uses, development standards, and design guidelines for the development of the hotel and residential uses on-site; Vesting Tentative Tract Map for the merger and of the site into nine lots; and, other discretionary and ministerial permits and approvals that may be deemed necessary, including, but not limited to, temporary street closure permits, haul route, grading permits, excavation permits, foundation permits, building permits, and sign permits.

Development of the overall site would also include the removal of existing trees (including protected trees) and vegetation and the installation of new landscaping, pathways, exterior decks, and other outdoor amenities. Preliminary site grading would require approximately 117,230 cubic yards of total grading and result in the off-site export of approximately 950 cubic yards of soil, while the remaining 116,280 cubic yards of cut would be balanced on-site. Maximum excavation depths would be approximately 62 feet below the existing grade. In addition to protected trees, the subject geography is also habitat for threatened species as identified by the California Department of Fish and Wildlife.

The proposed six-star hotel will strain infrastructure in a community otherwise planned, and developed for low-density, single-family development. The City has sufficient lands zoned for hotels with commensurate infrastructure within fully urbanized areas. The secluded hillside location is isolated from other business, public transportation, public services and other cultural amenities which underscores the unessential nature of the project as it relates to the community, city, and region. Due to the remote hillside location and above mentioned, the project will not enhance the built environment in the surrounding neighborhood or perform a function or provide a service that is essential or beneficial to the community, city, or region.

The hotel component would be developed on Lot 9, a 16.13-acre lot on the northern portion of the Project Site. The hotel would consist of a 59-guest room hotel housed within a total of 19 buildings. The main hotel building, located in the northeastern portion of the Project Site, includes five floors of hotel uses, two floors of subterranean parking, and a total of 146,610 square feet of floor area, which would include 18 hotel guest rooms, a 2,000-square-foot lobby/reception area, 7,960 square feet of restaurant and bar floor area (including indoor and outdoor seating, bar, and kitchen areas), 10,900 square feet of spa/fitness facility floor area, as well 11,760 square feet of pool and pool deck area (including main pool and spa pool areas), 260 parking spaces, and other ancillary guest services. In addition, while the hotel facilities would not include any dedicated ballroom event space, the request does include special events associated with gatherings. Such events such as weddings, corporate events, dinners, film

screenings are proposed as part of regular hotel operations. The scale of such events would be inconsistent with the typical overall intensity of activity in the surrounding community, degrading the community with additional noise from patrons and amplified music, automobile trips, and impacts commensurate with the service of alcoholic beverages and live entertainment. The unique geography and topography of the location will further challenge the operator to maintain compliance with the Los Angeles Municipal Code Citywide Noise Ordinance and typical noise control measures within the property such as noise barriers, sound absorbers, and buffer zones will be less effective. As such, the project's hillside location, size, height, operations, and other significant features will not be compatible with and will adversely affect or further degrade adjacent properties, the surrounding neighborhood, and public health, welfare, and safety.

**I THEREFORE MOVE** that the Council instruct the Direct of Planning to rescind the initiation of a General Plan Amendment for the *The Retreat at Benedict Canyon Project*, Case No. CPC-2018-1506-GPA-VZC-SP-SPP-SPR, located at 9704-9712 W. Oak Pass Road, 9800, 9801-9815 W. Wanda Park Drive 2534 N. Hutton Drive, in the Bel Air-Beverly Crest Community Plan Area, inasmuch as the proposed amendment does not reflect the land use patterns, trends, and uses in the immediate area and does not further the intent, purposes, and objectives of the Community Plan.

**I FURTHER MOVE** that the Planning Department continue to process the environmental document, ENV-2018-1509-EIR, to study project alternatives that conform to the adopted General Plan and Zoning.

PRESENTED BY:



PAUL KORETZ  
Councilmember, 5th District

SECONDED BY:



EXHIBIT 2

Executed Request for Initiation of an Amendment to the City's General Plan





# REQUEST FOR INITIATION OF AN AMENDMENT TO THE CITY'S GENERAL PLAN

By law, only the City may initiate an Amendment to the General Plan. Therefore you must request that the City initiate a Plan Amendment by completing the following:

☒ I hereby request that the Director of Planning initiate a General Plan Amendment

from: Minimum Residential, Very Low I and Very Low II Residential

to: Specialized Hospitality and Residential

on property located at: See Exhibit "A"

within the: Council District 5/Bel-Air Beverly Crest

District/Community Plan.

By my signature below, I request the aforementioned General Plan Amendment and affirm my understanding that to ensure a comprehensive review of the request and to avoid the introduction of any "spot" planned land use, staff may recommend initiating additional properties ("added areas") within the immediate area for a similar General Plan Amendment and that, if so, updated application materials, including but not limited to, the radius maps and an expanded notification list, will be required.

*Nancy Burr*  
(Signature) ☐ -Applicant ☒ -Representative

10/11/2017  
Date

## Section Below For Staff Use Only

CASE NUMBER: \_\_\_\_\_

Pursuant to the Los Angeles City Charter and the Municipal code, I hereby:

☒ Approve the initiation of the plan amendment(s) as requested by the Applicant/Representative

☐ Also initiate additional properties ("added areas") as recommended by staff within the immediate area for a similar change of the plan from \_\_\_\_\_

to \_\_\_\_\_  
on the property(ies) located at: \_\_\_\_\_

Vincent P. Bertoni, AICP  
DIRECTOR OF PLANNING

*[Signature]*  
Signature

10-12-17  
Date

CP-7750.1 [10.13.2016]

\* Project Alternatives to be evaluated include but are not limited to: A zoning compliant project; a reduced

hotel project; and a 100 percent single-family residential project.

## Communication from Public

**Name:** David Scott Kadin, President - Benedict Canyon Association

**Date Submitted:** 10/18/2021 12:53 PM

**Council File No:** 21-0777

**Comments for Public Posting:** Members of the PLUM Committee: Thank you for your consideration of the Motion submitted by Council District 5's Councilmember Paul Koretz. As President of the Benedict Canyon Association, I would like to respectfully reiterate our previous vehement opposition to the proposed project previously known as "The Retreat at Benedict Canyon" and now known as "Bulgari Resort Los Angeles": Case No. CPC-2018-1506-GPA-VZC-SP-SPP-SPR, located at 9704-9712 West Oak Pass Road; 9800, 9801-9815 West Wanda Park Drive; and 2534 North Hutton Drive, in the Bel Air-Beverly Crest Community Plan Area . Our Councilmember opposes the project, our community opposes the project and every major environmental organization in the region opposes the project. We urge the committee to stand with our Councilmember and our community and vote to approve the Motion so that the commercial aspect of this project is brought to an end without further use of City and community resources. Thank you.