

Date: 1-16-24
Item No.: 10

From: Richard Block <rblock31@charter.net>
Sent: Monday, January 15, 2024 9:45 PM
To: CityClerkMbx <City_Clerk@riversideca.gov>
Subject: [EXTERNAL] Jan. 16 City Council Agenda Item 10 Case PR-2022-001293, 3:00 pm Public Hearing

City Clerk's office: Here below is a letter from Friends of Riverside's Hills about the Jan. 16, 2024 City Council 3:00 pm Public Hearing Agenda Item 10 Case PR-2022-001293. Please confirm by email that this is being distributed to the Councilmembers and made part of the record. Thanks, Richard Block for Friends of Riverside's Hills

Jan. 15, 2024

To: City of Riverside Honorable Mayor and Councilmembers
From: Friends of Riverside's Hills
Re: Jan. 16 City Council Agenda Item 10 Case PR-2022-001293, 3:00 pm Public Hearing

Alert: This case is about usurpation by the CEDD of the City Council's sole right to amend the City's Municipal Code, which can only be done by enacting an ordinance.

Whatever merits this case's project may or may not have, **City staff, relying on the opinion of the applicants' biologist, is attempting to change the clear statement of the Grading Code as to what constitutes the City's named Arroyos.**

Specifically, the CEDD Director Report (Attachment 1A) repeatedly claims that the "real" or "actual" location of the Prenda Arroyo (or just "the Prenda Arroyo") as it relates to the project site is not as stated in the Grading Code. For example,

"The project Biologist determined that the Prenda Arroyo boundaries, and the 50-foot setback, are smaller than what is mapped in Title 17 – Grading Code of the Riverside Municipal Code."

thus in effect **claiming to amend Title 17 –Grading Code.**

Yes, there can be other definitions of what constitutes the Arroyo, but until changed by ordinance, the one in effect in Riverside is that in the Grading Code.

The site is already developed, with an old house and outbuildings at its western end, so any hardship imposed on the owner by restricting development of the rest of it is just a restriction on profit. The applicants may have been ill-advised in acquiring the property in a gamble for profit that was dependent on questionable City action favorable to the proposed development, but **the remedy does not lie in City officials disregarding or misinterpreting the Grading Code restrictions.**

Here is the Code's definition of the Arroyo and related Grading Code provisions:

"17.08.010 - Definitions. For the purposes of this title, the following definitions shall be applied:

17.08.011 - Arroyo. "Arroyo" shall mean those areas shown within the limits of the Mockingbird Canyon, Woodcrest, Prenda, Alessandro, Tequesquite, or Springbrook Arroyos and associated tributaries as shown on Exhibits A-F of this title. The limits of these arroyos and arroyo tributaries **shall include** all the land within the water course area, the adjacent slopes having an average natural slope of 30 percent or greater, **and all other areas within the boundaries shown on Exhibits A-F of this title.** [See exhibits on following page.]"

The aerial photo map at said Exhibit C shows the boundaries of the Prenda Arroyo as defined by the Municipal Code.

And

"17.28.020 A 14.

a.No development or grading of any kind shall be permitted within 50 feet the limits of the Mockingbird Canyon, Woodcrest, Prenda, Alessandro, Tequesquite, or Springbrook Arroyos and associated tributaries as shown on Exhibits A-F. The Community & Economic Development Director shall have the authority to administratively allow grading within designated arroyo tributaries depending on the sensitively of the area. ...

b. The limits of these arroyos shall include all that land within the watercourse area, the adjacent slopes having an average natural slope of 30 percent or greater, and all other areas within the boundaries shown on Exhibits A-F. ...

Regarding the "designated arroyo tributaries" provision, the only tributary mentioned that touches the project site is described in the Initial Study as

"An ephemeral drainage that is tributary to Prenda Creek crosses the southeast portion of the project site from east to west."

The area proposed to be developed is not in the said southeast portion but rather in the northern and more westerly portion. Also, as the Revised Biological Resources Assessment [Bio Report], Appendix A to Initial Study, shows in its Figure 12b (p.58), "Mapped extent of arroyo (per Grading Code)", the entire proposed developed area is outside any arroyo tributary,

designated or not, specifically outside the tributary coming from the northeast, so that the “sensitivity” criteria listed “to administratively allow grading” there are irrelevant, and **there is no pertinent CEDD Director authority to administratively allow grading on the site.**

Instead, the project must rely on a Grading Exception, with required findings per the Grading Code that must have legally adequate justifications.

Here are relevant Grading Code sections that they might have used for a legitimate Grading Exception:

“17.32.010 - Conditional exceptions. Generally. Conditional exceptions to the regulations contained in this chapter shall be permitted upon a finding by the Community & Economic Development Director that exceptional or special circumstances apply to the property. Such exceptional or special circumstances shall include such characteristics as unusual lot size, shape, or topography, drainage problems, or the impracticability of employing a conforming grading plan, by reason of prior existing recorded subdivisions or other characteristics of contiguous properties.”

Project proponents are making no case for special circumstances regarding unusual lot size, shape, or topography -- in fact their claim is that the topography is not steep, so not unusual – or drainage problems, or prior recorded subdivisions or characteristics of contiguous properties.

The first required Grading Exception Finding is

“That the strict application of the provisions of this title would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of this title.”

Regarding the Finding’s required showing of inconsistency, the CEDD Report’s Justification says

‘Allowing this grading exception, which does not impact the Prenda Arroyo, Is consistent with the purpose and intent of Title 17, as found in Section 17.04.010 A, B, C, D, G, H, and I, and not inconsistent with E, F, and J.’

So they claim that allowing the grading exception would be consistent with seven of the said lettered provisions and not inconsistent with the remaining three, whereas the Finding requires a showing of practical difficulties or hardship inconsistent with such provisions. Thus the Justification, as worded, **confuses consistency with the need to show inconsistency, and therefore fails.**

The Justification also claims

“The adopted Prenda arroyo boundaries, identified in Section 17.080.011 of the Grading Code, were mapped using aerial photography, rather than site specific assessments. A Biological Resources Study was prepared for the project, which included a detailed site assessment and associated mapping of the actual boundaries of the Prenda Arroyo and the 50-foot setback, by means of a site walk and review of all available literature. The project Biologist determined that the boundaries of the Prenda Arroyo and the 50-foot Setback are smaller than what is mapped in Title 17 – Grading Code of the Riverside Municipal Code.”

It turns out that that is **false**. As far as shown in the Bio Report, its only source of data on the site’s actual slopes was not any available literature (much less a site walk, since the biologists claim no expertise in measurement of slopes and make no claim of a slope ground survey) but instead an analysis, apparently of recent aerial photos, by a Corona architectural firm (Ackerman Associates 2000, Inc., Bio Report p. 66), which at most would show some average **existing** slopes and not average **natural** slopes, determined from before recent and decades earlier grading.

The Justification for Finding 1 goes on to claim

“Had the Arroyo boundaries been delineated more accurately by ground survey, instead of aerial estimation, this exception would not be necessary.”

Calling one a “survey” and the other an “estimation” is wrong. Googling the aerial survey vs ground survey of slopes, one finds that the main difference is in the contour spacing – often limited to several feet in aerial survey, so not limited enough to be significant in mapping of the Arroyos. And there is no evidence given in the staff report or the Bio Report or any of the rest of the Environmental Review for any ground survey done of the site’s slope, and if one had been done, it would at best have only determined average existing slopes, which in view of recent and decades earlier grading would not be the relevant figure of average natural slopes. Indeed, the damage done by recent years’ grading and removal of native vegetation appear to be CEQA issues and not addressed in the Initial Study, the Bio Report or the staff report or grading exceptions.

Thus, again, the Justification for Grading Exception 1 fails.

For Grading Exception 3,

“That the granting of a waiver will not be materially detrimental to the public welfare ...”,

the Justification given is essentially verbatim the same as that for Grading Exception 1, and thus invalid for the same reasons, with the Exception 3’s Justification’s addition that

“all areas outside of the graded pad will be included in an Open Space Easement, which will ensure that the land is kept in its natural state.”

But of course the graded pad areas will not be kept in their natural state, and thus an area of the City along a City street and thus open to public view, an area that is protected from development by the Municipal Code, will lose that protection and be developed, which, with its visual, light and noise impacts, even if relatively modest, is clearly detrimental to the public welfare.

Evidence of the proposal's negative impacts on the neighborhood is provided in the impressive letter from nearby residents Ron and Meri DiDonato (not associated with FRH) (Agenda Attachment 6 – Public Comment Letter) which letter notes in particular the project's negative impact on "the current peace of our neighborhood and movement of the wildlife ... will cause less open space for the established wildlife to thrive", issues that the IS/MND failed to consider.

While the DiDonato letter was included in the Public Comment Letter attachment, the CEDD Report unfairly did not include FRH's several letters there, but rather buried them near the end of the unlabeled Agenda Attachment 1h. For use by Councilmembers and the public, all public letters should be in one such appropriately labeled attachment, with the other attachments also appropriately labeled instead of having their contents obscured.

Our previous letters led to revised language in the IS/MND answer to Question 11b (as to whether the project would cause a significant impact due to conflict with an environmentally-purposed law), including the newly added language

"A Grading Exception is needed to allow grading within the extent of the mapped Prenda Arroyo (as identified in the Riverside Municipal Code (RMC), Title 17 Grading, Exhibits A-F). ... Therefore, the project will not conflict with the provisions of RMC Title 17 Grading."

But it is precisely because the project WILL conflict the provisions of RMC Title 17 Grading that a Grading Exception is needed, and such a Grading Exception, even if it were valid, by allowing undeveloped acreage otherwise required to be preserved from development to be developed and thus taking away open space, does cause a significant impact. Therefore the new answer to Question 11b should have been "Potentially significant impact", and the project may require an EIR instead of an MND.

See also Prof. Nunney's new letter with his expert comments regarding environmental impacts especially on biological resources.

If, as shown above, the proposed grading exception in its present form is illegal, then it would make no sense to approve the parcel map with its creation of lots that could not be developed.

Thus we urge you to reject both the Grading Exception and the Parcel Map.

Thank you for your consideration of these issues.

Friends of Riverside's Hills, by Richard Block, its Legal Liaison Officer

For the record, Friends of Riverside's Hills (FRH) is a public benefit non-profit corporation based in the City of Riverside, with members who are residents of the City of Riverside. With its entirely volunteer efforts, FRH seeks to protect the environment and natural resources of the Riverside area, in particular its hillsides and arroyos. City approval of this project will adversely affect the recreational, aesthetic, scientific, environmental, and economic interests of FRH and its members and the general public.

Sent from [Mail](#) for Windows

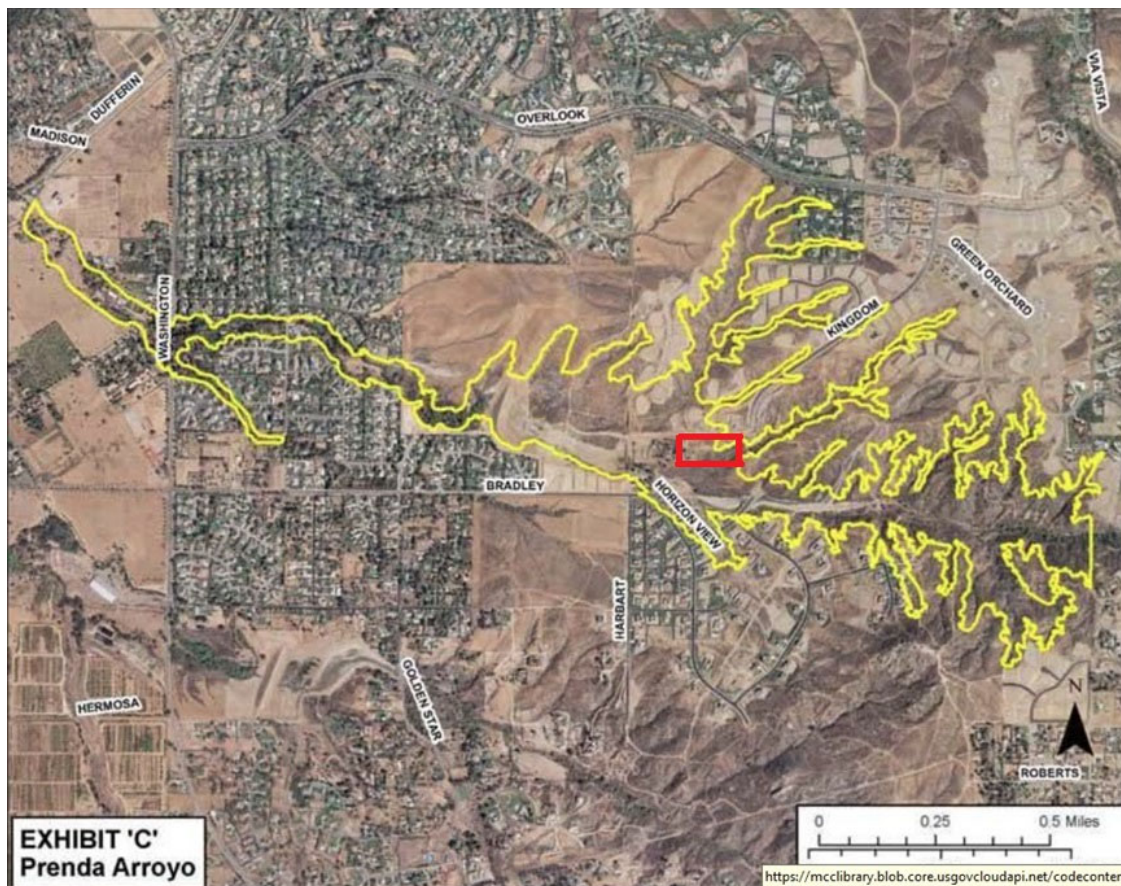
cc Mayor
City Council
City Manager
City Attorney
ACMs
CEDD Director

To: City of Riverside Honorable Mayor and Councilmembers Jan. 15, 2024
From: Len Nunney, for Friends of Riverside's Hills (email: Watkinshill@juno.com)
Re: Jan. 16 CC Agenda Item 10 Case PR-2022-001293

I am writing on behalf of Friends of Riverside's Hills (FRH), which is a 501(c)(3) non-profit public interest group dedicated to maintaining and enhancing the quality of life in the greater Riverside area by maximizing the preservation of the region's scenic hills, ridgelines, arroyos, and wildlife areas. I should also add that I am a biologist and Professor at UC Riverside who served on the scientific advisory committee of the Western Riverside County Multiple Species Habitat Conservation Plan.

Several letters from FRH have been submitted that outline in detail our concerns regarding this project, so I will be brief and focus on three points.

First, the staff presentation provided with the Agenda Materials shows a single figure under the heading "Grading Exception" without showing the full context of the arroyo boundaries. Below is the Prenda Arroyo as mapped in the Grading Ordinance of the City Code, with the red rectangle marking the project site.



The City's grading ordinance incorporates broad goals, including, among other things, to "Ensure that significant natural characteristics such as land form, vegetation, wildlife communities, scenic qualities, and open space can substantially be maintained" (17.04.010A). The arroyo boundaries, including those of the Prenda, have significantly helped in achieving the City's goal of maintaining areas of natural open space. As noted in the City's General Plan preservation of the open space within the defined arroyo boundaries is of critical importance: "Past development practices have substantially reduced habitat for

wildlife species and severed connections to larger habitat areas. Development has also deteriorated the quality of the water in the arroyos and caused erosion of the stream banks. As a result, valuable biological resources are mostly limited to major open spaces within and adjacent to the City limits, including Santa Ana River Regional Park, Box Springs Mountain Reserve, the Alessandro Hills, the Woodcrest and Prenda Arroyos and Mockingbird Canyon.” (General Plan 2025, Amended Nov. 2012, OS-18). The arroyo boundaries were drawn in 1998 to achieve the landscape-level goals embedded in the past and present General Plans, and these maps have been incorporated in all subsequent revisions of the grading ordinance.

It is important to note that the statement in defense of the Biological Assessment made by the Vice President/ Director of Environmental Services of Ruth Villalobos & Associates (RVA), Inc (p14-21, Attachment 1H of the CEDD Director Report Exhibits) are patently false. For example, “Although the project site is within the mapped Prenda Arroyo per RMC Title 17 Exhibit C, it is not within the actual Prenda Arroyo, which is based on in-person assessment of the site” fails to recognize that the arroyo boundaries were never based on the presence of riparian vegetation but on the landform bordering the arroyo. To imagine that a developer-employed biologist can redefine a 25-year-old City Ordinance by using an inappropriate definition of Riverside’s Arroyos is extremely concerning. This error is repeated with the statement that “documentation of the current conditions of the site by an experienced biologist the project does not conflict with the provisions of RMC Title 17 Grading, 14. a-d”, making it clear that they have the arrogance to attempt to rewrite the City Ordinance. It is important to note that none of the City-defined arroyo boundaries are based on the definition of the presence of riparian vegetation that the biologist is using.

Second, the property historically supported high quality native vegetation; however, the vegetation has been progressively removed over the last 20 years. If left undisturbed the high-quality native vegetation could return. The Google Earth photo from May 2002 (below), shows that the majority of the parcel was relatively undisturbed, similar to its condition in 1967 (Fig 13A Biological Report). The red rectangle marks the location of the property:



The condition of the native vegetation on the property was only marginally reduced by April 2011:



However, grading within the boundary of the arroyo over the next 9 years resulted in extensive vegetation removal, as shown in the Google Earth map from April 2020:



Grading within the boundary of the Prenda arroyo is not permitted and has dramatically reduced the potential for native species found in the region to be found on-site. However, the graded areas could be restored – I have personally observed successful recovery of similar sites. On a related point, the developer’s biologist claims that brittlebush dominated habitat in the south east of the property is “relatively undisturbed” while that on the central slope is “disturbed” (see figure 7b, p19 Attachment 1H; Figure 8b in the original Biological Assessment) are self-serving, they are best described as “undisturbed” and “relatively undisturbed” respectively, since their definition of “disturbed” precludes the presence of native shrubs (p40 Biological Assessment). Correctly identifying the vegetation shows that the project (including the fuel modification zone) will remove substantial additional Riversidian sage scrub (an important habitat type identified in the figure as “brittlebush shrubland”) beyond that already destroyed by the grading within the arroyo boundary.

Third, it is noted in the Staff Report that “After publication of the CEDD Director staff report, staff received an additional comment letter”; however, there is no reference in that report to the other letters received. The Council Members are urged to look beyond the file labelled “Public Comment Letter” which contains only the single letter opposing the project, dated 25th September. The detailed letters from Richard Block, on behalf of FRH, that were submitted (via email) on the 14th and 22nd September, and another from Arlee Montalvo on the 4th October, outlining the recommendations of the County/City Arroyo Watershed Committee (CCAC) that were adopted by the City to protect the arroyos, are buried deep in the documentation, specifically Attachment 1H (pages 26-38). Furthermore, the CCAC documents provided by Dr. Montalvo do not appear to be among the exhibits provided to the council, but should be part of the record submitted in the case. It is of great concern that these additional letters were not mentioned anywhere in the staff report, with the result that Council Members could easily miss this important information.

In summary, it is clear that this is a misguided project that contravenes the basic underpinning of arroyo preservation within the City and should not be allowed to proceed in its current form.

cc Mayor
City Council
City Manager
City Attorney
ACMs
CEDD Director

Ron and Meri DiDonato
7771 Solitude Court
Riverside, CA 92506
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APN: 243560025

RECEIVED

September 25, 2023

Candice Assadzadeh, Senior Planner
City of Riverside Community & Economic Development Dept.
Planning Division
3900 Main Street
Riverside, Ca 92522

OCT - 6 - 2023

Community & Economic
Development Department

Re: Case Number PR-2022-001293
841 Alpine Meadows Lane, Jerardo Reyes and Ryan Willams

Dear Ms. Assadzadeh,

We are not in favor of the plan proposal regarding the case number above. We believe the plan calls for too many houses (4) on such a small parcel of land, it is not in sync with the surrounding area and will impact the pristine open space that has been preserved for many years.

The proposal is not consistent with the surrounding residential area where the lots are much larger for each house. We live on two acres of land adjacent to the open space and our neighborhood has the same design. The proposed square footage and elevations of the housing plan is not harmonious with the neighborhoods design and Stellan Ridge HOA standards.

We believe the condensed housing proposal will significantly impact the value of our home and surrounding neighborhood. Houses in our area are priced over \$1,500,000.00, with a few over \$1,600,000.00. The proposed homes do not reflect the value of the surrounding area.

Additionally, the traffic and noise will affect the current peace of our neighborhood and movement of the wildlife. Taking this space and concentrating dense housing in this pocket of land doesn't make sense in this area.

Even though the proposal has passed an environmental study the condensed housing will still cause less open space for the established wildlife to thrive.

We have resided in this neighborhood for more than thirteen years and have watched as the City has allowed more and more open space to be built upon. We choose this area because of the pristine open space. We do not want to be driven out by bad proposals to over build on any vacant lot available. This area already had it's share of impact to the south and west by large subdivisions that have displaced many which once called this area home.

We do not agree with the plan as proposed and recommend it is rejected.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron & Meri DiDonato", is written over a horizontal line.

Ron and Meri DiDonato