

boundary of the underlying property as well as the presence of the trail required by the settlement agreement and the conditions of approval for the project.

Clustering of lot 19 with lots 18, and 20 through 23 allows the map to retain substantially more open space than would otherwise be available under strict compliance with RC Zoning. The clustering takes lots that were removed from southern and southeastern portions of the property away from the Alessandro Arroyo, and places them in a position that does not impact a potentially environmentally sensitive area. If unable to cluster lots, unnecessary hardship would result from the inability of the map to properly protect sensitive areas of the arroyo and to create contiguous open space areas that are not part of privately owned real property.

Factual Support: The north boundary line of lot 19 is fixed because it is the north boundary line of the underlying property. This boundary is further impacted by the presence of a trail that is required by both the conditions of approval for the project as well as the settlement agreement related thereto. Lot 19 is limited on the western side by the project boundary and presence of the trail easement. Crest Haven Drive cannot be shifted to the east to create more space without jeopardizing the "pan handle" portion of open space lot 31 and without requiring further grading into the main arroyo area. Because the "pan handle" contains the Arroyo Tributary, it is best conserved as an open space lot rather than placed under private ownership, as discussed above.

2. *There are exceptional circumstances or conditions applicable to this property or to the intended use or development of this property which do not apply generally to other property in the same zone or neighborhood.*

In an attempt to avoid the tributary to the Alessandro Arroyo which runs through the center of the map, Crest Haven Drive serves as the backbone for lots 18 through 23 and 14 through 17, which are clustered like vertebrae along a spine. The location of Crest Haven Drive was fixed by the recordation of TM 23027 in 1994 and the development of the first three phases of this project (TM 23027-1 and TM 28728-01, -02) between 1994 and 1998. Lots 19 through 23 are circumscribed by the west boundary of the underlying property and Crest Haven Drive and the trail easement, and Lot 18 is circumscribed by Crest Haven Drive and the north boundary of the underlying property and the trail easement. The approval of TM 31930 will permit the completion of Century Hills Drive, which will connect the dead end at Crest Haven constructed with TM 23027-1 (to the north of the subject property) and the dead end at Century Drive constructed with TM 28728 (to the northeast of the subject property). The completion of Crest Haven will connect two dead ends and facilitate the traffic flow through the entire 165-acre area. The location of the north and west boundaries of the underlying property, in close proximity to the fixed

alignment of Crest Haven Drive are exceptional circumstances which limit the size of lots 18 through 23, and are not generally applicable to other properties in the RC zone or in the neighborhood.

3. *The granting of this request will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located.*

The granting of this variance will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located. The development is the last phase of a Planned Residential Development (PRD) approved in 1994 and developed over the course of the next 10 years. The PRD consists of a total of 85 single family lots and 5 open space lots. All residential lots within the PRD have been developed in a cluster configuration that maximizes open space and minimizes the total overall grading. The reduction in size and related clustering of lot 19 with the surrounding lots conforms with the overall clustering effect of the PRD as a whole.

Lots smaller than the 2-acre minimum in the RC zone are not uncommon in the neighborhood surrounding the proposed TM 31930. A list of lots previously approved with lot size / ANS variances is identified in bold below. For purposes of comparison, the lots which are the subject of the present lot size / ANS variance requests are identified with bullet points and identified next to the approved lots with which they most closely conform.

**TM 31859**, consisting of 12 residential lots on 24.64 acres, and located adjacent to TM 32042 (discussed below), required 9 lot size / ANS variances. Seven of the 9 were approved for lots less than 2 acres with ANS steeper than the subject property variances. These lots include:

**lot 4 at 1.71 acres with an ANS of 19.06%,**

**lot 5 at 1.07 acres with an ANS of 22.37%,**

- similar in size but steeper than lots 39, 43, and 58, at 1.07 acres and ANS 16.38%, and 1.04 acres and ANS 16.95%, and 1.03 acres and ANS 21.10%, respectively;
- steeper and smaller than lots 37, 38, and 60, at 1.11 acres and ANS 18.77%, and 1.17 acres and ANS 20.30%, respectively;
- a bit larger but steeper than lots 38 and 44, at 1.03 acres and ANS 19.85%, and 1.03 acres and ANS 22.27%, respectively;

**lot 6 at 1.26 acres with an ANS of 22.67%,**

**lot 7 at 1.19 acres with an ANS of 18.83%,**

- similar in size but not quite as steep as lot 46, at 1.0 acres and ANS 19.56%;

**lot 9 at 1.31 acres with an ANS of 21.53%,**

- smaller and steeper than lot 54, at 1.49 acres and ANS 20.23%; and
- larger and steeper than lot 77, at 1.28 acres and ANS 20.31%;

**lot 11 at 1.47 acres with an ANS of 18.85%, and**

**lot 12 at 1.76 acres with an ANS of 18.69%.**

- steeper and smaller than lot 51, at 1.78 acres and ANS 18.63%.

**TM 32042**, consisting of 8 residential lots on 16.79 acres, located about 2 miles south of TM 31930 in the RC zone, and approved in February 2004. TM 32042 required the following two lot size / ANS variances:

**lot 7 at 1.38 acres and ANS 17.66%, and**

17.36%;

- larger and steeper than lot 78, at 1.32 acres and ANS

**lot 8 at 1.54 acres and ANS 16.10%**

- a bit larger but steeper than lot 79, at 1.13 acres and ANS 15.88%.

**TM 29606**, consisting of 33 residential lots on 75.56 acres, located directly south of TM 31930 below the Alessandro Arroyo was approved in December, 2000. TM 29606 required the following 9 lot size / ANS variances:

**Lot 6 at 3.93 acres and ANS 31.2%,**

- larger and steeper than lots 48, 50, and 62, at 1.01 acres and ANS 27.73%, 1.25 acres and ANS 28.07%, and 1.11 acres at ANS 16.60%, respectively,
- larger but not as steep as lot 49, at 2.0 acres and ANS 34.57%

**Lot 8 at 1.75 acres and ANS 17.3%,**

16.93%

- larger but steeper than lot 61, at 1.0 acres and ANS

**Lot 13 at 1.39 acres and ANS 25.9%,**

- steeper but a bit larger than lot 45, at 1.19 acres and ANS 26.67%,
- steeper and a bit smaller than lot 47, at 1.49 acres and ANS 28.43%

**Lot 14 at 1.39 acres and ANS 22.9%,**

- a bit smaller but a little bit less steep than lot 59, at 1.05 acres and ANS 22.83%

**Lot 19 at 1.38 acres and ANS 16.3%,**

- smaller and steeper than lot 53, at 1.73 acres and ANS 15.16%

**Lot 21 at 1.93 acres and ANS 19.2%,**

- a bit larger but about the same steepness as lots 55 and 57, at 1.48 acres and ANS 19.06%, and 1.73 acres and 19.60%, respectively.

**Lot 22 at 1.53 acres and ANS 23.0%,**

**Lot 23 at 1.59 acres and ANS 22.1%, and**

**Lot 28 at 1.83 acres and ANS 22.0%.**

4. *The granting of this request will not be contrary to the objectives of the General Plan.*

The granting of this variance is in conformance with the General Plan. The Conservation Element of the General Plan ("Conservation Element") identifies as high priority, "the preservation of significant blocks of various types of natural open space". Lot size / ANS variances enable smaller lots, which in turn provide for the dedication of larger blocks of open space. Lot size / ANS variances for small lots enable subdivisions in the RC zone to implement this important conservation goal (a goal which is also reflected in the RC zone).

General Plan Policy NR 1.4 does not facilitate the conservation goal for large subdivisions in the RC zone. It requires that property with an ANS of 15 - 30% may not be developed with a density that exceeds 0.63 dwelling units per acre (1 unit for each 1-2/3 acres). For TM 31930, compliance with Policy NR 1.4 would conflict with the conservation of large blocks of open space.

TM 31930 does comply with Policy NR 1.1, which states: "The City shall limit the extent and intensity of the uses and development in unstable soil areas, *areas of steep terrain*, flood plains, arroyos, and other critical environmental or hazardous areas" (emphasis added), because TM 31930 proposes small lots on parcels between 15-30% ANS which are clustered to minimize grading.

Because TM 31930 cannot comply with Policy NR 1.4 and conserve open space, it becomes necessary to choose between the policy (NR 1.4) and the goal, the conservation of open space. Because the policy was established to implement the goal, where such implementation would not further the goal, the policy does not serve the purpose for which it was intended, and therefore, the conflict with NR 1.4 should be permitted.

**II. Lots 20 and 23.** To allow lot 20 at 1.42 acres in size with an ANS of 19.35% (formerly lot 56) and lot 23 at 1.12 acres in size with an ANS of 20.23%, to provide less than the 2.0 acres lot size required in the RC Zone. The clustering of these two lots with surrounding lots and the accompanying reduction in size substantially eliminates the necessity of reconfiguring lots elsewhere in the map so as to require additional intrusion of building pads into the main Alessandro Arroyo and allows for the maximization of preserved open space. These findings apply both individually and cumulatively to each lot.

1. *The strict application of the provisions of the Zoning Regulations would result in practical difficulties or unnecessary hardships in the development of this property.*

The strict application of the zoning code would require the addition of .58 acres to lot 20 and .88 acres for lot 23, for a total of 1.46 additional acres that would need to be removed from open space, creating a non-contiguous open space area. The size of lots 20 and 23 is determined by the fixed location of the following: (i) Crest Haven Drive, and (ii) the Alessandro Arroyo tributary in lot 31, and the trail easement along the western border of the property.

Factual Support: The location of Crest Haven Drive cannot be moved to the east to provide additional acreage for lots 20 and 23, without impinging on the Arroyo tributary to the east of lots 13 through 17. The cul-de-sac at the west end of Century was designed to maximize the adjacent open space corridor. The only way to add acreage to lots 20 and 23 would be to rotate the cul-de-sac to the south, however, such a rotation would reduce the width of the open space corridor at the narrowest point. This would create open space islands that would be difficult to manage and which would be inconsistent with the neighboring open space areas of adjacent developments. Furthermore, increase of size for any of the two lots would require that one or more lots be reincorporated at a different location within the tract map that is more likely to have a significant impact on natural resources. The current positioning of lots 20, 21, 22, and 23 allow for maximization of open space with minimum intrusion into the arroyo. To require otherwise would result in an unnecessary hardship.

2. *There are exceptional circumstances or conditions applicable to this property or to the intended use or development of this property which do not apply generally to other property in the same zone or neighborhood.*

In an attempt to avoid the tributary to the Alessandro Arroyo which runs through the center of the map, Crest Haven Drive serves as the backbone for lots 18 through 23 and 14 through 17, which are clustered like vertebrae along a spine. The location of Crest Haven Drive was fixed by the recordation of TM 23027 in 1994 and the development of the first three

phases of this project (TM 23027-1 and TM 28728-01, -02) between 1994 and 1998. Lots 19 through 23 are circumscribed by the west boundary of the underlying property and Crest Haven Drive and the trail easement, and Lot 18 is circumscribed by Crest Haven Drive and the north boundary of the underlying property and the trail easement. The approval of TM 31930 will permit the completion of Century Hills Drive, which will connect the dead end at Crest Haven constructed with TM 23027-1 (to the north of the subject property) and the dead end at Century Drive constructed with TM 28728 (to the northeast of the subject property). The completion of Crest Haven will connect two dead ends and facilitate the traffic flow through the entire 165-acre area. The location of the north and west boundaries of the underlying property, in close proximity to the fixed alignment of Crest Haven Drive are exceptional circumstances which limit the size of lots 18 through 23, and are not generally applicable to other properties in the RC zone or in the neighborhood.

3. *The granting of this request will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located.*

The granting of this variance will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located. The development is the last phase of a Planned Residential Development (PRD) approved in 1994 and developed over the course of the next 10 years. The PRD consists of a total of 85 single family lots and 5 open space lots. All residential lots within the PRD have been developed in a cluster configuration that maximizes open space and minimizes the total overall grading. The reduction in size and related clustering of lots 20 and 23 with surrounding lots conforms with the overall clustering effect of the PRD as a whole.

Lots smaller than the 2-acre minimum in the RC zone are not uncommon in the neighborhood surrounding the proposed TM 31930. A list of lots previously approved with lot size / ANS variances is identified in Section I above requesting a variance for lot size for lot 19.

4. *The granting of this request will not be contrary to the objectives of the General Plan.*

The granting of this variance is in conformance with the General Plan. The Conservation Element of the General Plan ("Conservation Element") identifies as high priority, "the preservation of significant blocks of various types of natural open space". Lot size / ANS variances enable smaller lots, which in turn provide for the dedication of larger blocks of open space. Lot size / ANS variances for small lots enable subdivisions in the

RC zone to implement this important conservation goal (a goal which is also reflected in the RC zone).

General Plan Policy NR 1.4 does not facilitate the conservation goal for large subdivisions in the RC zone. It requires that property with an ANS of 15 - 30% may not be developed with a density that exceeds 0.63 dwelling units per acre (1 unit for each 1-2/3 acres). For TM 31930, compliance with Policy NR 1.4 would conflict with the conservation of large blocks of open space.

TM 31930 does comply with Policy NR 1.1, which states: "The City shall limit the extent and intensity of the uses and development in unstable soil areas, *areas of steep terrain*, flood plains, arroyos, and other critical environmental or hazardous areas" (emphasis added), because TM 31930 proposes small lots on parcels between 15-30% ANS which are clustered to minimize grading.

Because TM 31930 cannot comply with Policy NR 1.4 and conserve open space, it becomes necessary to choose between the policy (NR 1.4) and the goal, the conservation of open space. Because the policy was established to implement the goal, where such implementation would not further the goal, the policy does not serve the purpose for which it was intended, and therefore, the conflict with NR 1.4 should be permitted.

**III. Lot 24.** To allow lot 24 at 1.17 acres in size with an ANS of 18.29% (formerly open space lot 87) to provide less than the 2.0 acres lot size required in the RC Zone. The clustering of this lot with lots 25 through 27 and the accompanying reduction in size substantially eliminates the intrusion of the building pads for each of these lots into the main Alessandro Arroyo and allows for the maximization of preserved open space.

*1. The strict application of the provisions of the Zoning Regulations would result in practical difficulties or unnecessary hardships in the development of this property.*

Strict application of the RC Zone would require the addition of .83 acres to lot 24. Lot 24 is limited in area by several factors, including: the presence of the trail easement directly to the east, which stops any expansion of the lot in that direction; the presence of the flood control access road and private drive for lots 27 and 28 directly to the south, which prohibits expansion of the lot in a southerly direction; and the presence of lot 25 directly to the west; and the northern border and presence of a steep hill directly to the north. In addition, a knoll top marks the western border of lot 24 and reconfiguration of the property would require additional grading

to account for the land form, resulting in less preservation of the natural land forms located on the underlying property. Furthermore, placing of a lot in this location eliminates the need to encroach into the main Arroyo at other locations in the property and provides for the greatest preservation of natural, contiguous open space. Strict compliance with RC Zone would result in a practical difficulty given the related improvements required by the conditions of approval (flood control access road and trail easement), and would result in the potential encroachment into sensitive areas and/or destruction of natural landforms, an unnecessary hardship.

2. *There are exceptional circumstances or conditions applicable to this property or to the intended use or development of this property which do not apply generally to other property in the same zone or neighborhood.*

Lot 24 contains a knoll top and borders a trail easement, flood control access road, and the northern property border of the underlying property. The presence of knoll tops is an exceptional circumstance in the surrounding neighborhood and amongst other RC zoned property. For example, TM 29606 (the closest approved tract map to the subject property, located south of the Alessandro Arroyo), contains one knoll top that is the site of the only clustered lots. Of the 32 residential lots approved in TM 29606, only two (lots 29 and 30) share a knoll top. TM 31852 contains 4 knoll tops (lots 1, 2, 4, and 13) out of 13 lots (or 31.1%). Tm 32042 contains 2 knoll tops (lots 1 and 7) out of 8 lots (or 25%). The presence of the knoll top and other factors create an exceptional circumstance and condition that is not present in other neighboring developments.

3. *The granting of this request will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located.*

The granting of this variance will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located. The development is the last phase of a Planned Residential Development (PRD) approved in 1994 and developed over the course of the next 10 years. The PRD consists of a total of 85 single family lots and 5 open space lots. All residential lots within the PRD have been developed in a cluster configuration that maximizes open space and minimizes the total overall grading. The reduction in size of lot 24 and related clustering of lots 25 through 27 conforms with the overall clustering effect of the PRD as a whole.

Lots smaller than the 2-acre minimum in the RC zone are not uncommon in the neighborhood surrounding the proposed TM 31930. A list of lots



previously approved with lot size / ANS variances is identified in Section I above requesting a variance for lot size for lot 19.

4. *The granting of this request will not be contrary to the objectives of the General Plan.*

The granting of this variance is in conformance with the General Plan. The Conservation Element of the General Plan ("Conservation Element") identifies as high priority, "the preservation of significant blocks of various types of natural open space". Lot size / ANS variances enable smaller lots, which in turn provide for the dedication of larger blocks of open space. Lot size / ANS variances for small lots enable subdivisions in the RC zone to implement this important conservation goal (a goal which is also reflected in the RC zone.

General Plan Policy NR 1.4 does not facilitate the conservation goal for large subdivisions in the RC zone. It requires that property with an ANS of 15 - 30% may not be developed with a density that exceeds 0.63 dwelling units per acre (1 unit for each 1-2/3 acres). For TM 31930, compliance with Policy NR 1.4 would conflict with the conservation of large blocks of open space.

TM 31930 does comply with Policy NR 1.1, which states: "The City shall limit the extent and intensity of the uses and development in unstable soil areas, *areas of steep terrain*, flood plains, arroyos, and other critical environmental or hazardous areas" (emphasis added), because TM 31930 proposes small lots on parcels between 15-30% ANS which are clustered to minimize grading.

Because TM 31930 cannot comply with Policy NR 1.4 and conserve open space, it becomes necessary to choose between the policy (NR 1.4) and the goal, the conservation of open space. Because the policy was established to implement the goal, where such implementation would not further the goal, the policy does not serve the purpose for which it was intended, and therefore, the conflict with NR 1.4 should be permitted.

**IV. Lot 25.** To allow lot 25 at 1.45 acres in size with an ANS of 15.6% (formerly open space lot 53) to provide less than the 2.0 acres lot size required in the RC Zone. The clustering of this lot with lots 24 through 27 and the accompanying reduction in size substantially eliminates the intrusion of the building pads for each of these lots into the main Alessandro Arroyo and allows for the maximization of preserved open space.

1. *The strict application of the provisions of the Zoning Regulations would result in practical difficulties or unnecessary hardships in the development of this property.*

Strict application of the RC Zone would require the addition of .55 acres to lot 25. The addition of .55 acres to lot 25 would result in the shifting of lot 26 and lot 27 to the south and east, reducing the overall amount of open space and requiring greater intrusion into the main Alessandro Arroyo. The open space in this area and the ability to enlarge the lots is further restricted as a result of the Flood Control Access Road, which is required by the Flood Control Department to reach the containment basin offsite. The lot is further bound by the north and west property boundaries. Because the open space lot adjacent to Lot 25 is small and cannot be reduced in the north-south direction, any reduction would affect only the width of the lot (the east-west direction). However, any reduction of the open space in the east-west direction would potentially reduce its effectiveness as a wildlife corridor, an unnecessary hardship.

2. *There are exceptional circumstances or conditions applicable to this property or to the intended use or development of this property which do not apply generally to other property in the same zone or neighborhood.*

25 contains one knoll top. Along with Lots 24, 26 and 27, lot 25 straddles the access road and form a cluster that eliminates a front slope on lot 25 and an eastern slope on lot 26.

Factual Support for Lot 25: The presence of a knoll top is an exceptional circumstance in the surrounding neighborhood and amongst other RC zoned property. For example, TM 29606 (the closest approved tract map to the subject property, located south of the Alessandro Arroyo), contains one knoll top that is the site of the only clustered lots. Of the 32 residential lots approved in TM 29606, only two (lots 29 and 30) share a knoll top. TM 31852 contains 4 knoll tops (lots 1, 2, 4, and 13) out of 13 lots (or 31.1%). Tm 32042 contains 2 knoll tops (lots 1 and 7) out of 8 lots (or 25%).

Furthermore, the proximity of Lot 25 (i) to the west boundary of the underlying property, and (ii) to the existing Riverside County Flood Control ("RCFC") access road, are exceptional circumstances which effect the size and shape of Lot 25 and do not apply generally to other property in the RC zone or in the neighborhood. Although the east lot line for Lot 26 could be extended to the southeast, allowing lot 25 to be increased in size, it would reduce the width of the adjacent open space corridor at the narrowest point.

3. *The granting of this request will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located.*

The granting of this variance will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located. The development is the last phase of a Planned Residential Development (PRD) approved in 1994 and developed over the course of the next 10 years. The PRD consists of a total of 85 single family lots and 5 open space lots. All residential lots within the PRD have been developed in a cluster configuration that maximizes open space and minimizes the total overall grading. The reduction in size of lot 24 and related clustering of lots 25 through 27 conforms with the overall clustering effect of the PRD as a whole.

Lots smaller than the 2-acre minimum in the RC zone are not uncommon in the neighborhood surrounding the proposed TM 31930. A list of lots previously approved with lot size / ANS variances is identified in Section I above requesting a variance for lot size for lot 19.

4. *The granting of this request will not be contrary to the objectives of the General Plan.*

The granting of this variance is in conformance with the General Plan. The Conservation Element of the General Plan ("Conservation Element") identifies as high priority, "the preservation of significant blocks of various types of natural open space". Lot size / ANS variances enable smaller lots, which in turn provide for the dedication of larger blocks of open space. Lot size / ANS variances for small lots enable subdivisions in the RC zone to implement this important conservation goal (a goal which is also reflected in the RC zone).

General Plan Policy NR 1.4 does not facilitate the conservation goal for large subdivisions in the RC zone. It requires that property with an ANS of 15 - 30% may not be developed with a density that exceeds 0.63 dwelling units per acre (1 unit for each 1-2/3 acres). For TM 31930, compliance with Policy NR 1.4 would conflict with the conservation of large blocks of open space.

TM 31930 does comply with Policy NR 1.1, which states: "The City shall limit the extent and intensity of the uses and development in unstable soil areas, *areas of steep terrain*, flood plains, arroyos, and other critical environmental or hazardous areas" (emphasis added), because TM 31930 proposes small lots on parcels between 15-30% ANS which are clustered to minimize grading.

Because TM 31930 cannot comply with Policy NR 1.4 and conserve open space, it becomes necessary to choose between the policy (NR 1.4) and the goal, the conservation of open space. Because the policy was established to implement the goal, where such implementation would not further the goal, the policy does not serve the purpose for which it was intended, and therefore, the conflict with NR 1.4 should be permitted.

**OPEN SPACE PRESERVATION AGREEMENT**  
**("Conservation Easement")**

**THIS OPEN SPACE PRESERVATION AGREEMENT ("Conservation Easement")**, dated October \_\_, 2006, is entered into by Sanda Group, a California Limited Partnership ("Grantor/Owner"), for the purpose of maintenance and preservation such Open Space as described herein below, as follows:

**RECITALS**

- A. Grantor/Owner is the fee simple owner of certain property in the City of Riverside, California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- B. On October 28, 2004, City of Riverside City Counsel approved City Planning Case P03-1451 and P04-0260 and Proposed Tract Map 31930 for the development of the Property into 28 residential lots. Included in the Proposed Tract Map, as modified in the attached Settlement Agreement, is the area of Open Space, as more particularly depicted in Exhibit A attached hereto and incorporated herein by this reference (the Tentative Tract Map 31930).
- C. The purpose of this Conservation Easement is to assure that the Open Space will be perpetually preserved in its predominately natural, scenic and open space condition, and to protect the Open Space's natural resource values, to retain quality habitat for native plants and animals, and to maintain the natural features of the Property.
- D. The preservation of the Open Space is beneficial not only to the community at large, but also to the individual homeowners, themselves, who are or will be obligated by this Conservation Easement. The preservation of Open Space and creation of trails has been shown to increase property values and provide a more stable environment for developing neighborhoods.
- E. Grantor/Owner intends for the covenants and restrictions imposed by this Conservation Easement to run with the Property, and to be binding on all Grantor/Owner's assigns and successors in interest to the Property, or any portion thereof.

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California including, inter alia, Sections 815-816 of the California Civil Code, Grantor/Owner hereby creates a conservation easement in perpetuity over the Open Space of the nature and character and to the extent hereinafter set forth.

1. Recitals: Each recital set forth above is incorporated herein by reference and made a part of this Agreement.

2. Definitions:

- (a) Conservation Values: The value of the natural assets of the Property, including the natural, scenic, open space, and biological value of the Property.
- (b) Home Owners Association (HOA): Home Owners Association (HOA) shall be defined consistent with the Covenants, Codes & Restrictions created for the Project.
- (c) Inspection Report: Report prepared by the Qualified Biologist identifying any changes to or interference with the natural, scenic and open space condition, determining whether such interference is the result of natural phenomenon or man-made, and offering suggestions for the maintenance, repair, or restoration, if necessary, of the Open Space.
- (d) Maintenance Program: Project specific program prepared with assistance from a Qualified Biologist for the purpose of the protection and maintenance of the Open Space.
- (e) Open Space: That area designated on Tract Map 31930, as non-developable area, consisting of approximately 49.67 acres, and subject to open space conservation restrictions for purposes of protection of the natural, scenic, open space and similar values.
- (f) Owner/Grantee: Sanda Group, a California Limited Partnership (of which Handa Development Corporation is the General Partner) and their successors and assigns of any and all rights to and ownership interest in the Property.
- (g) Party (ies): Party (ies) as here used shall include all parties to this agreement or the attached Settlement Agreement, or to their successors or assigns.
- (h) Project: City Planning Case P03-1451 and P04-0260 and Proposed Tract Map 31930, as modified in the attached Settlement Agreement.
- (i) Property: That certain real property consisting of 86.31 acres subdivided into 28 residential lots and Open Space, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- (j) Qualified Biologist: Biologist retained for the purpose of monitoring the Conservation Easement and ensure compliance with the terms and restrictions included herein. A qualified Biologist shall be an individual or firm with applicable credentials and experienced in evaluating environmental conditions in the County of Riverside, and recognized as

such by the City of Riverside, and certified/permitted by the California Department of Fish and Game and United States Fish & Wildlife Service. Example: Michael Brandman Associates (MBA).

3. Purpose: It is the purpose of this Conservation Easement to assure that the Conservation Values of the Property be perpetually preserved and to prevent any use of or activity on the Property that will impair or interfere with these Conservation Values. It is also the further purpose of this Conservation Easement to educate the Homeowner with regard to the conservation and protection of the Open Space area.

4. Rights and Obligations of Grantor/Owner:

- (a) Right to Convey. The Grantor/Owner retains all ownership rights which are not expressly restricted by this Conservation Easement. In particular, the Grantor/Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Conservation Easement and the subsequent Owner(s) will be bound by all obligations in this Agreement.
- (b) Permitted Uses. Grantor/Owner excepts and reserves for itself and its successors and assigns, all rights accruing from its ownership of the Property. Without limiting the generality of the foregoing and subject to the terms of this Conservation Easement, the rights described herein are expressly reserved:
  - i. Activities undertaken to address emergency conditions or situations, including fire management measures and flood and drainage control measures as are reasonably necessary and appropriate under the circumstances and which are required to be performed by an agency with jurisdiction over the Open Space.
  - ii. Maintenance and repair of existing utility lines located in or under the Open Space pursuant to an existing recorded easement, map, or other legal instrument, and the undergrounding of said lines and structures as appropriate.
  - iii. Testing, recovery, and stabilization of archeological, historical and cultural resources and artifacts, and management activities necessary for their protection and interpretation.
  - iv. The lease of a portion of the Property for non-commercial open space, scenic or ecological use, or a voluntary conveyance of fee title to the Property to a governmental entity, or a nonprofit entity for conservation or scenic open space purposes.

- v. Actions not otherwise prohibited under this Conservation Easement and Settlement Agreement taken to carry out applicable federal, state, or local government-mandated measures to protect public health and safety or to protect the environment.
  - vi. Notwithstanding paragraphs i-v. above, no disking of open space areas shall be permitted under any circumstances.
- (c) Prohibited Actions. Any activity on, or use of, the Open Space which is inconsistent with the purpose of this Conservation Easement or which is detrimental to the Conservation Values is expressly prohibited, except as provided in (b) i-v above. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited.
- i. The change, disturbance, alteration or impairment of the natural ecological values of the Open Space, except as provided herein.
  - ii. The change, disturbance, alteration or impairment to the wildlife habitat located on the Open Space, except as provided herein.
  - iii. The planting of trees or crops or the intentional conversion of native vegetation to new exotic species.
  - iv. The deliberate introduction of non-native plant or animal species.
  - v. The placement or construction of any human-made modification, such as, but not limited to, buildings, roads, driveways and parking lots. Fencing shall be permitted outside open space areas along residential lot lines, so long as such fencing does not obstruct view or interfere with the aesthetic appeal of the Open Space.
  - vi. The removal, destruction or cutting of trees or plants, except to the extent provided herein.
  - vii. The use of the Open Space for hunting or trapping of animals.
  - viii. Any exploration or extraction of oil, gas, minerals, soil, sands, gravel, or other material, in, on or beneath the Open Space.
  - ix. Any grading, ditching, draining, filling, excavating, disking, drilling, disposal, removal of topsoil, sand, gravel, rock or



minerals, cutting of vegetation, or the disturbance of the surface or change in the topography, including the placing or dredging of soils, except to the extent strictly related to activities permitted by this Conservation Easement.

- x. The use of biocides or agrichemicals on the Open Space, except for the control of stubborn invasive species with herbicides approved by California Department of Fish and game and under the direction of the Qualified Biologist.
- xi. The dumping of waste, ashes, trash, and unsightly or offensive material.
- xii. The alteration, manipulation or disturbance of natural water courses, such as streams and arroyos.
- xiii. Except to the extent strictly necessary for the management and maintenance of the Property consistent with this Conservation Easement, the use of motor vehicles and/or off-road vehicles is prohibited, such as, but not limited to, dune buggies, all-terrain vehicles, and motorcycles.
- xiv. Signs and other advertising materials on the Property, except the following signs may be displayed to state: (a) the name and address of the property or owner's name; (b) the area is protected by a conservation easement; (c) prohibition of any unauthorized entry or use; (d) designation of trails; and/or (e) an advertisement for the sale or rent of the Property.
- xv. The construction or placement of mobile homes or trailers in the Open Space.
- xvi. Industrial activity on the Open Space.
- xvii. Commercial activity on the Open Space.
- xviii. Disking and grading shall not be permitted for fire protection or any other purpose on the Open Space.
- xix. To the fullest extent possible, fire management shall be in the area adjacent to but not within the Open Space. This restriction is in no way intended to preclude fire management practices mandated by law. Under no circumstances shall disking be allowed.

5. Conveyance of Open Space to Homeowner's Association. Grantor/Owner shall convey all ownership rights in and title to the Open Space lots 29, 30, and 31, as more particularly defined in Exhibit "A" attached hereto and incorporated herein by this reference, to the HOA within 60 days of the formation of the HOA.

6. Maintenance Program: In order to assure that the Open Space will be perpetually preserved in its predominately natural, scenic and open space condition, and to protect the Open Space's natural resource values, to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property, the Grantor/Owner, and the HOA upon its formation, shall be required to preserve and maintain the Open Space under the direction of a Qualified Biologist pursuant to the following terms:

(a) Annual Inspection.

- i. The HOA shall arrange for the annual inspection of the Open Space by a Qualified Biologist to ensure that the Open Space is properly maintained and preserved under the terms of this Conservation Easement. The Owner/Grantor shall enter into a contract with the Qualified Biologist for inspection within six months of the execution of this Conservation Easement.
- ii. The inspection shall occur at approximately the same time every year and shall commence any time during the first year after recordation of the Final Tract Map for the Project. The Qualified Biologist shall be provided a copy of this Conservation Easement prior to inspection.

(b) Reporting Requirements.

- i. Upon inspection, the Qualified Biologist shall prepare an Inspection Report analyzing the current state of the property, identifying any changes to or interference with the natural, scenic and open space condition that are potentially significant, including changes to, or increase in non-native species, and determining whether such interference or increase is the result of natural phenomenon or man-made, and, in either event, make appropriate requests to the HOA for the maintenance, repair, or restoration, as necessary, to the Open Space. The Inspection Report shall also recommend appropriate fuel modification measures for fire prevention purposes, subject to the restrictions stated elsewhere in this agreement.
- ii. The HOA shall be responsible for said maintenance, repair or restoration to the Open Space according to the request by the Qualified Biologist. The Qualified Biologist shall re-inspect the Open Space upon completion of any maintenance or repair by the

HOA, update the inspection report to reflect the maintenance and repairs, and resubmit the updated report.

- iii. The Inspection Report prepared by the Qualified Biologist shall be provided to the HOA and to the City of Riverside Planning Department. The report to the City shall be a public document. Upon request, a copy of the document shall be provided to individual homeowners who are members of the association. The HOA may give permission for a copy of the Inspection Report to be provided to other interested parties.
- iv. The Grantor/Owner, its successors and assigns, and the HOA, shall have the right to perform maintenance, repairs or restoration identified in the Inspection Report of the Open Space, or other maintenance repairs or restoration it deems necessary whether or not such maintenance, repairs or restoration has been identified by the Inspection Report, so long as any such actions taken are consistent with the purpose of this Conservation Easement.

(c) Costs.

- i. The Grantor/Owner, and then the HOA as its successor and assignee, shall be responsible for all reasonable costs associated with the inspection, re-inspection, maintenance, repair, and restoration costs incurred pursuant to the enforcement of this agreement, unless otherwise determined by this or other agreement. The cost for maintenance, repair, or restoration shall be shared equally by the members of the HOA, unless the requirement of such maintenance, repair or restoration can be directly attributed to an individual homeowner's actions, in which case that individual homeowner will be responsible for any such costs.
- ii. Upon formation, the HOA shall collect a fee, in conjunction with and at the time of any other HOA fees are collected, from individual members of the HOA sufficient to cover costs associated with the inspection and maintenance of the Open Space.

8. Remedies.

- (a) Legal Action. Any Party to the Settlement Agreement shall have the right to bring legal action against the HOA for failure to maintain the Open Space pursuant to this Conservation Easement, as identified in the Inspection Reports prepared by the Qualified Biologist, upon 60 days written notice of the intent to bring legal action if the requested correction(s) is not made.

- (b) Attorneys' fees. If any legal action or proceeding is brought for the enforcement or for a declaration of rights and duties under this Conservation Easement or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which such Party may be entitled.
- (c) Acts Beyond Grantor/Owner's Control. No action may be brought against Grantor/Owner or its successors or assigns, including but not limited to the Home Owner's Association, for modification to the Open Space resulting from causes beyond the Owner's control, including, but not limited to, natural disasters such as fires, floods, storms, natural earth movement, pest infestation, or other natural occurrence, or from any reasonable action taken by Grantor/Owner or its successors or assigns (1) to prevent, abate or mitigate significant injury to the Property or improvements thereon resulting from such causes, including but not limited to fire protection measures except as prohibited in this Conservation Easement; (2) as legally required by City Ordinance or other applicable law; (3) as legally required by State or Local Agencies; or (4) to protect the health and safety of the general public. Any such modification does not relieve the HOA of its obligations under this Conservation Easement. The Grantor/Owner has no responsibility under this Conservation Easement for such unintended modifications.

9. Extinguishment or Modification.

- i. This Conservation Easement may be extinguished only upon the recommendation of the Qualified Biologist if one of the following conditions occurs: (1) an unexpected change in condition which causes it to be impossible or impractical to fulfill the Conservation Easement's purpose, or (2) by the exercise of eminent domain.
- ii. This Conservation Easement shall also be included in the Conditions of Approval for the Project and may not be modified by the HOA unless the conditions identified in Section 9(i) above are met.

10. General Provisions.

- (a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.
- (b) Interpretation: Liberal Construction. This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the

Open Space and in accordance with the policy and purpose of the California Conservation Easement Act of 1979 (Cal. Civ. Code §§ 815-816). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- (c) Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- (d) Notices. For purposes of this agreement, notices may be provided to all parties in writing and delivered to the Parties by personal delivery, courier service or Express Mail, or by first class mail at the last known address of the Party.
- (e) Successors. The warranties, representations, covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon all successors and assigns to the Property, and shall continue as covenants and servitudes running in perpetuity with the Property. After recordation of this Easement, Grantor/Owner expects to convey the Property to successors, and upon said conveyance the rights and obligations of Grantor/Owner shall become binding upon and become the rights and obligations of the successors and enforceable against the successors where applicable.
- (f) Termination of Rights and Obligations. Grantor/Owner's rights and obligations under this Easement terminate upon transfer of Grantor's entire real property interest in the Property or upon termination of the Conservation Easement.
- (g) Future Conveyance. Grantor/Owner agrees that reference to this Conservation Easement will be made in any subsequent deed or legal instrument by means of which Grantor/Owner conveys any real property interest in the Property.
- (h) Liens and Encumbrances. Grantor/Owner represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property, and in particular the Open Space, which have not been expressly subordinated to this Conservation Easement and that the Property is not subject to any other conservation easement.

- (i) Recording. Grantor/Owner shall record this instrument in the official records of the County of Riverside, California upon its execution.
- (j) Incorporation into CC&Rs. Grantor/Owner shall incorporate this instrument into the project CC&Rs. Any provision of this Open Space Preservation Agreement or the attached Settlement Agreement recorded and enforced through a Homeowners' Association CC&R's shall not be amended.
- (k) Authority. The signatory to this agreement represents that he has the requisite authority to sign on behalf of Grantor/Owner.

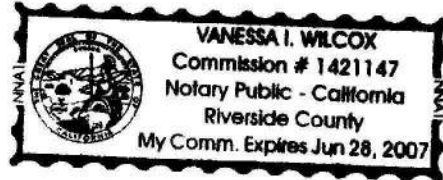
Date 10/13/2006

Yang-Chang Hong  
 Sanda Group, a California Limited Partnership  
 By Yang-Chang Hong  
 President of Handa Development Corporation, General Partner

STATE OF CALIFORNIA )  
 ) S.S.  
 COUNTY OF RIVERSIDE )

On October 13, 2006 before me,  
Vanessa I. Wilcox a Notary Public in  
 and for said County and State, personally appeared **Yang-Chang Hong** personally  
 known to me (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~)  
 whose name(~~s~~) is/are subscribed to the within instrument and acknowledged to me that  
 he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by  
 his/her/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of  
 which the person(~~s~~) acted, executed the instrument.

WITNESS my official seal  
 Signature Vanessa I. Wilcox



**ADDENDUM TO ADOPTED MITIGATED NEGATIVE DECLARATION**

**A. PROJECT INFORMATION**

- 1. Project Title:** Proposed Tract Map 31930 by Gabel, Cook and Becklund, on behalf of Jim Guthrie.
  
- 2. Lead Agency Name and Address:** City of Riverside  
3900 Main Street  
Riverside, CA 92522
  
- 3. Contact Person:** Clara Miramontes  
Deputy Planning Director  
Planning Division  
Community Development Department  
3900 Main Street  
Third Floor  
Riverside, CA 92522  
(951) 828-5277
  
- 4. Project Location:** 86.31 vacant acres, located southerly of terminus of Cresthaven Drive and northerly of the Alessandro Arroyo, consisting of Portions of APN 243-180-003 and all of APNs 243-018-004, 014 & 243-019-002
  
- 5. Description of Project:** Tract Map 31930, a residential development approved by the City in 2004 (the "Project").
  
- 6. Approval:** Approval of proposed Settlement Agreement and adoption of Addendum to Mitigated Negative Declaration previously approved in 2004.

**C. BACKGROUND INFORMATION**

In 1994, TM 23027 was approved allowing the subdivision of 167.5-acres into 85-single family lots and 5 open space lots. In conjunction with this map, a Planned Residential Development PD-00-912) and a Rezoning Case RZ-006-912) was approved. Subsequently, only 20 lots recorded and the remainder of the map expired. In 1998, TM 28728 was approved to implement the formerly approved Planned Residential Development. This map approved the subdivision of the unrecorded 151.8-acres into 65 single family lots over four phases, and phase 1 (23 lots) subsequently recorded. On February 21, 2002 the Planning Commission approved a time extension for phases 2-4 of TM 28728 until July 2003 with no eligibility for additional time extensions. By July

**ATTACHMENT C**

2003, phase 2 (14 lots) had recorded but phases 3 and 4 never recorded in time prior to expiration of the map. As such, 28 lots still remained to be recorded.

In September of 2004, TM 31930 was approved and a Mitigated Negative Declaration adopted allowing development of the remaining 28 lots. On October 28, 2004, Friends of Riverside Hills filed a petition for writ of mandate challenging the approval of TM 31930 and the Mitigated Negative Declaration. On October 11, 2006, Friends of Riverside Hills settled the litigation for minor changes to the Tract Map 31930 that lessened impacts to the Alessandro Arroyo and tributaries to the arroyo and increased the acreage of open space. Pursuant to the Settlement Agreement, Friends of Riverside Hills have agreed to dismiss the lawsuit and stipulate to have the judgment, which is on appeal and therefore not yet final, set aside. Approval by the City of Riverside is necessary in order to finalize the Settlement Agreement and set aside the judgment.

**B. SUMMARY OF PROPOSED CHANGES**

**1. Overview of Changes to TM 31930 Map:**

Although lot numbers from the previously approved TM31930 have been modified for ease of use purposes on the map, the number of lots remains the same. The following chart shows the lot number changes and summarizes the overall modifications to TM 31930:

2007 Lot #	2004 Lot #	Grading Exception- Arroyo (new)	Grading Exception- Arroyo (old)	Variance- Lot size (new)	Variance- Lot size (old)	Improvements
1	79			1.12ac/15.93%	1.13ac/15.88%	Lot unchanged
2	78	Setback	Setback	1.32ac/17.3%	1.34ac/17.28	Lot unchanged
3	77	Setback; small portion of Arroyo	Setback; small portion of Arroyo	1.49ac/23.53%	1.26ac/20.15%	Lot unchanged
	37		Setback; and well into main Arroyo		1.11ac/18.77%	Moved to new location to avoid Arroyo
4	38	Setback	Setback; chunk of main Arroyo		1.03ac/19.85%	No longer intrudes in Arroyo
5	39	Setback	Setback	.94ac/15.45%	1.07ac/16.38%	Lot unchanged
	40		Setback			Moved to shift Grass Valley Way out of Arroyo
6	41		Setback			Shifted east so avoid intrusion into setback



7	42	Setback; small portion of Arroyo				Shifted east and reconfigured into the eliminated lot 40 so as to allow Grass Valley Way to shift and avoid intrusion into main Arroyo
8	43	Setback; small portion of Arroyo	Setback; significant portion of Arroyo	.9ac/17.79%	1.04ac/16.95%	Lot shifted north and east so as to avoid more Arroyo and sensitive riparian area; Arroyo intrusion reduced by 2/3; grading for pad is now daylight line rather than fill slope
9	44	Setback	Setback; Arroyo	1.17ac/17.83%	1.03ac/22.27%	Lot shifted north and east so as to avoid Arroyo and sensitive riparian area; Arroyo intrusion deleted and setback intrusion reduced by 1/2; grading for pad is now daylight line rather than fill slope
10	45	Setback	Setback; Arroyo	.87ac/18.28%	1.19ac/26.67%	Lot shifted east so as to completely avoid the arroyo
11	46	Setback	Setback; Arroyo	.67ac/15.79%	1.00ac/19.56%	Lot shifted east so as to completely avoid the arroyo; intrusion into setback reduced by 2/3
	47		Setback; significant portion of Arroyo		1.49ac/28.43%	Moved to new location to avoid Arroyo

12	48	Setback; significant portion of Arroyo	Setback; significant portion of Arroyo	1.16ac/26.91%	1.03ac/28.07%	Lot shifted to avoid more of arroyo and daylight grading lines used instead of slopes for 3 of 4 sides
	49		All in Arroyo		1.98ac/34.25%	Moved to new location to avoid Arroyo
13	62	Setback	Setback; portion of Arroyo	1.20ac/24.40%	1.11ac/26.60%	shifted east and south so as to avoid any intrusion into Arroyo
14	61			.8ac/16.1%	1.00ac/20.30%	Reconfigured so no longer split pad
15	60	Setback	Setback; small portion of Arroyo	.94ac/18.74%	1.17ac/20.30%	Shifted west so as to completely avoid arroyo; split pad changed to daylight line to avoid excessive grading
16	59	Setback	Setback	.9ac/21.53%	1.05ac/21.10%	Lot unchanged
17	58	Setback; small portion of Arroyo	Setback; small portion of Arroyo	.8ac/20.96%	1.03ac/21.10%	Lot unchanged
18	57	Setback	Setback; small portion of Arroyo	1.43ac/20.04%	1.73ac/19.60%	Shifted northwest so avoid setback area (except driveway) and daylight lines used to avoid slopes into setback
19				1.19ac/17.9%		Replacement for lot removed from Arroyo proper
20	56			1.42ac/19.35%		Lot shifted to accommodate removal of lots from arroyo
21	55			.76ac/20.08%	1.48ac/19.06%	Lot shifted to accommodate removal of lots from arroyo

22	54			.73ac/16.81%	1.49ac/20.23%	Lot shifted north so as to allow a lot moved from the Arroyo to fit directly to the south
23				1.12ac/20.23%		Replacement for lot removed from Arroyo proper
24		Minor setback intrusion		1.17ac/16.32%		Replacement for lot removed from Arroyo proper. Though previously open space, removal of arroyo lots and placement next to already developed areas actually creates approximately 9 more acres of open space; area not biologically sensitive.
25	53			1.45ac/15.60%	1.73ac/15.16%	Pad reduced in size by 5,550 sf
26	50	Setback; small portion of Arroyo	Setback; Arroyo	.89ac/20.10%	1.25ac/28.07%	Lot shifted south which allows use of daylight line for grading instead of slope, reducing Arroyo intrusion by about 2/3
27	51	Setback	Setback	1.71ac/18.29%	1.78ac/18.63%	Lot unchanged
28	52					Lot unchanged
Crest Haven Drive		Setback; Main Arroyo	Setback; Main Arroyo			Grading at northern portion of road revised so as to intrude less into arroyo and setback areas;

Century Hills Drive	Setback; Main Arroyo	Setback; Main Arroyo			Soft bottom culverts at two locations avoid grading in tributaries; roadway narrowed to require less grading;
Grass Valley Way	Setback	Setback; Main Arroyo			Shifted east so as to avoid filling the three tributaries and shifted out of the main Arroyo and a much smaller portion in the setback
Private Driveway	Setback	Setback			fill slope on west side eliminated, alignment slightly shifted to accommodate trail
Flood Control Access Road	Setback; Main Arroyo	Setback; Main Arroyo			Entrance shifted west of knoll so roadway less obvious from Arroyo proper and aligned so as to accommodate trail access as well as flood control access
Sewer Access Road	Setback	Setback; tiny part Main Arroyo			Shifted east to avoid tributaries and bridged where cross over tributary
Water Quality Basin	Setback; Main Arroyo	Setback; Main Arroyo			Shifted to the north side of Century Hills Drive to avoid tributaries and impacts on sensitive habitat

## Summary of Revisions:

- 3 fewer grading exceptions overall
- Previously 21 total intrusions into main arroyo (8 of which were major intrusions), whereas now only 11, and, with the exception of Century Hills Drive, Water Quality Basin, and lot 12, most of these are extremely small areas of intrusion.
- No new slope height exceptions.
- Same number of lot size variances overall.
- The amount of open space increases to 49.67 acres in the new map from 41.86 acres, for a net increase of 7.81 acres.
- Lot density is .32 units/acre, well below the .5 units per acre permitted in RC Zone.
- Tributaries now bridged or soft-bottom culverts used, so water flow is not interrupted.
- Grass Valley Way moved east so as to avoid minor tributaries.
- Flood control access road moved west to backside of knoll so less visible from main arroyo. Also provides trail access.
- Trail incorporated into development.
- Less overall intrusion into arroyo or setback area.
- No more lots over 30% ANS.
- Utilities access road curved to bridge tributary and avoid impacts to water-flow.

## 2. MSHCP:

The City of Riverside (“City”) prepared and adopted a mitigated negative declaration (MND) for the Project, which was approved at a September 28, 2004 City Council meeting. An assessment of the Project’s potential impacts to biological resources was included in the MND and related documents. Certain measures, identified in Conditions of Approval 17, 20, and 31 (“COA 17, 21, and 31”), addressed and mitigated potential impacts to Riversidean Sage Scrub and California Gnatcatcher habitat.

On June 17, 2003, the County of Riverside adopted the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP” or “Plan”). The MSHCP is a regional plan covering all of western Riverside County and was developed as a superior means to mitigate and address infrastructure and development impacts through planning in a coherent, strategic, and more effective manner than the usual piecemeal, project-by-project method. The City adopted the MSHCP on October 7, 2003 and is thus a permittee under the Plan. The state and federal take permits for the MSHCP were issued June 22, 2005. Therefore, the City has take authorization under the Plan, which can be transferred to developers upon compliance with the MSHCP terms and conditions.

The joint Environmental Impact report/Environmental Impact Statement (“EIR/EIS”) prepared for the MSHCP analyzed biological impacts that could result from development. Development within the Plan area such as the Project is considered a

covered activity under the Plan. The EIR/EIS concluded that no unmitigated impacts to biological resources would result from the MSHCP or compliance with the MSHCP, and that MSHCP compliance would fully mitigate impacts to the 146 covered species, including the coastal California gnatcatcher.

Although the Plan was authorized at the time of the 2004 approvals of TM 31930, a Section 7 Permit and other mitigation measures were adopted. Full mitigation of any potential impacts previously addressed by the Section 7 Permit and other measures is obtained by compliance with the MSHCP. So as to ensure that any and all potential biological impacts are fully addressed, Project proponents now seek to substitute full MSHCP compliance for existing COA 17, 20 and 31. In furtherance of this request, a complete Habitat Assessment and MSHCP Consistency Analysis was completed on November 29, 2006, a Burrowing Owl Focused Survey and report was completed on October 20, 2006, the previously prepared Delineation of Jurisdictional Waters and Wetlands was updated on November 2006, and an updated Permit application was completed and submitted to the U.S. Army Corps of Engineers.

In addition, Staff members visited the site to ensure that the revisions to the proposed map would not impact significant landforms on the site, including knolls and hilltops, tributaries, or the main arroyo. The map changes significantly reduce intrusion in the defined tributary and arroyo areas.

### **3. Grading Exceptions:**

The changes to TM 31930 reduce the overall number of grading exceptions necessary for the development of the Project by eliminating the need for grading exceptions for Lots 37, 41 (currently Lot 6), Lot 47, and Lot 49. In addition to the elimination of these four grading exception requirements, the overall number of grading exceptions requiring intrusion into the main arroyo area has been reduced from 21 to 11, with only three of these grading exceptions requiring more than very minor intrusions (as compared to 8 major intrusions previously). Only one new grading exception is necessary for a residential lot for Lot 24, to allow minor encroachment into the arroyo setback area. This lot does not intrude into the main arroyo.

In addition, although grading exceptions have already been approved for the Flood Control Access Road and Water Quality Basin, the realignment of these facilities requires that new findings be made to allow the grading exception necessary for each.

### **4. Variances:**

The changes to TM 31930 do not result in any net addition or reduction to the number of variances necessary for the development of the Project. However, because several lots were reconfigured in order to lessen the Project's impacts on the Alessandro Arroyo and its tributaries, additional variances findings must also be made to approved the reconfigured lots at their modified locations. These variances include:

- Lot 19 at 1.19 acres with an ANS of 17.9% (replacement of lot removed from arroyo for which a lot size variances was previously approved);
- Lot 20 (formerly lot 56) at 1.42 acres with an ANS of 19.35%;
- Lot 23 at 1.12 acres with an ANS of 20.23% (replacement of lot removed from arroyo for which a lot size variances was previously approved);
- Lot 24 at 1.17 acres with an ANS of 16.41% (replacement of lot removed from arroyo for which a lot size variances was previously approved); and
- Lot 25 (formerly lot 53) at 1.45 acres with an ANS of 15.6%.

In addition, the only variance for a lot located on a slope of more than 30% has been completely eliminated.

## **5. Open Space:**

The reconfiguration of several lots within the map so as to avoid intrusion in the main Alessandro Arroyo required that four lots be relocated to the west and northwest border of the Project site. The lots are lots 19, 23, 24, and 25. These lots are no longer located within the Alessandro Arroyo, and the reconfiguration of these lots has created an additional 7.81 acres of Open Space within the Project. This reconfiguration requires the removal of Condition of Approval 10, which preserved lots 24 and 25 (formerly Lot 53 and Lot 87) as Open Space lots. There are no sensitive biological features located within the area of these relocated lots, and there are no natural landforms that will be impacted which have not already been graded or disked by neighboring property owners. The pads for these lots have also been lowered so as to have a minimum impact on any neighboring property owner.

## **C. CEQA REQUIREMENTS FOR SUBSEQUENT REVIEW:**

If changes to a project or its circumstances occur or if new information becomes available after the adoption of a negative declaration, the lead agency may: (1) prepare a subsequent EIR if the criteria of State CEQA Guidelines section 15162(a) are met, (2) prepare a subsequent negative declaration, (3) prepare an addendum, or (4) prepare no further documentation. (State CEQA Guidelines, § 15162(b).)

Pursuant to Section 15162, a subsequent EIR or negative declaration is required only when:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new

significant, environmental effects or a substantial increase in the severity of previously identified significant effects; or

- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

State CEQA Guidelines Section 15162 (b) provides that an addendum to an adopted negative declaration may be prepared if minor technical changes or additions are necessary, or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred. City staff believes that an addendum to the MND is appropriate for the proposed modifications to the Project.

## **D. ANALYSIS AND FINDINGS**

### **I. Overall Project:**

Based upon review of the site plans, site visit, and environmental reports and analysis, the changes to TM 31930 will not result in any new or increased significant impacts. To the contrary, the revised site plan has less impact on landform and biologically sensitive areas because Project's intrusion into the Alessandro Arroyo and its setback area has been substantially reduced. In addition, the amount of Open Space has been increased by more than seven acres overall and a trail system incorporated into the development. Some specific examples of reduced overall impacts to the Project site include: the reconfiguration of the residential lots has lessened the impact on riverside sage scrub; the use of a soft-bottomed culvert system for main arroyo crossing by street



thoroughfares decreases impacts to tributary crossings, the narrowing of streets further reduces the amount of grading required in sensitive arroyo areas, the relocation of lots along the western Project border reduces impacts to the arroyo and does not impact sensitive areas or landform.

## **2. MSHCP Compliance:**

The September 28, 2004 staff report explained that the biological study performed for the Project site found coastal sage scrub habitat, which is potential habitat for the California gnatcatcher. Although a focused gnatcatcher survey did not find any of the species on site, a comment letter submitted noted that a CNAC had been heard with a few miles of the project. COA 17, 20 and 31 were approved to address impacts to the California gnatcatcher, Riversidean Sage Scrub, special status species anticipated to be impacted, and special status plants;

17) Permanent loss of RSS will be mitigated at a greater than 3:1 ratio through the onsite preservation of 20.6 acres of RSS (9.6 acres moderate quality, 11 acres low quality) adjacent to the Alessandro Arroyo.

20) A three year maintenance and monitoring plan is proposed to ensure the successful establishment of the native cover within the mitigation area. Riparian vegetation will be installed within the mitigation site consisting of native grasses.

31) The applicant shall prepare Coastal Sage Scrub and riparian enhancement plan subject to review and approval of the Planning Department prior to grading permit.

The MSHCP is a long-range, regional habitat conservation plan covering more than one million acres. One MSHCP goal is to establish a reserve system ("Conservation Area") of more than 500,000 acres. The Conservation Area will be assembled in large blocks, connected by corridors and linkages. The general areas suitable for inclusion in the Conservation Area are designated as the Criteria Area, which is divided into cells. The MSHCP sets property acquisition goals within cells, i.e., a certain percentage of the property in a particular cell to be acquired for Conservation Area assembly. The Project site is not in the Criteria Area, so it is not subject to acquisition under the Plan.

Properties outside of the Criteria Area may have to perform habitat assessments for particular species or habitats. Pursuant to MSHCP Section 6.3.2 and Appendix E1, the Project site is only subject to a burrowing owl habitat assessment and specifically does not require habitat assessments for amphibian species, Criteria Area species, mammalian species, narrow endemic plant species, or special linkage areas. The Project proponents have performed a burrowing owl habitat assessment, which found that the Project site was not suitable burrowing owl habitat. In an abundance of caution, focused

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<sup>1</sup> The Project proponent still intends to perform the balance of the biological impacts mitigation originally imposed by the MND in 2004.

owl surveys were performed and no burrowing owls or sign from burrowing owls were observed onsite. Thus, the MSHCP requirements for burrowing owls have been met.

As set forth in the MSHCP, its EIR/EIS and approval findings, the MSHCP will mitigate impacts to biological resources that will result from development on the site, specifically including the coastal California gnatcatcher and coastal sage scrub (which includes Riversidean sage scrub) to less-than-significant levels. For coastal sage scrub and Riversidean alluvial fan sage scrub 52 percent and 66 percent of these vegetation communities, respectively, will be included as Conserved Habitat. Impacts to coastal sage scrub and Riversidean alluvial fan sage scrub due to the patchy distribution of these vegetation communities in the MSHCP Plan Area and the relatively large numbers of sensitive species occurring in these vegetation communities, will be reduced to a less than significant level by features incorporated into the MSHCP, including the configuration of conserved lands, as well as adaptive management and monitoring policies which will ensure that the MSHCP achieves the biological goal for each coastal sage scrub Covered Species.

On approving the MSHCP, the City and County of Riverside found that the assembly of an MSHCP Conservation Area that incorporates substantial acreages of suitable habitat and known locations in a configuration that provides live-in and linkage habitat for a number of species. The MSHCP provides that criteria-based reserve assembly would occur in a manner consistent with rough step policies and the Habitat Evaluation and Acquisition Negotiation Strategy, and other implementation strategies as described in Section 6.1.1 of the MSHCP. This process ensures that a coordinated and effective reserve system is established in Western Riverside County (which includes the Project site) to fully mitigate for all current and future development projects that are consistent with the MSHCP. Therefore, the Project proponent's satisfaction of its obligations under the MSHCP will mitigate any relevant biological impacts, including any Project impacts to coastal California Gnatcatchers and Riversidean Sage Scrub vegetation.

More specifically, COA 31 requires a monitoring biologist to ensure that no gnatcatchers or special status species will be directly injured by grading. That mitigation is no longer applicable or necessary because the MSHCP conserves coastal California gnatcatchers by including 77,070 acres of coastal California gnatcatcher habitat and at least 13 core areas and linkages within the MSHCP conservation area, also including use and reproduction success criteria. Because MSHCP requirements do not require an onsite monitoring biologist at the Project site to ensure no coastal California gnatcatchers are directly injured, and because the MSHCP did consider special status species, and found that there were none in the area, COA31 is no longer applicable or necessary. The MSHCP requirements, which include the payment of fees for acquisition of coastal California gnatcatcher and special status species habitat, thus adequately mitigates for any impacts to coastal California gnatcatchers and special status species without the need for a biological monitor onsite during grading. This substitution of one mitigation measure for another does not require major revisions of the previous negative declaration. It does not add new information of more significant effects. Thus, further environmental review such as recirculation or a subsequent or supplemental MND is not required under

CEQA.

COA 17 requires set-aside or protection of specific on-site mitigation lands to compensate for impacts to Riversidean sage scrub. That mitigation is no longer applicable or necessary because the MSHCP conserves Riversidean Sage Scrub by setting aside over 500,000 acres, including 81,720 acres of Coastal Sage Scrub and the specific "Riversidean Sage Scrub" subassociation. Because the MSHCP conserves Riversidean sage scrub without Project-specific land setasides, COA 17 is no longer applicable or necessary. The MSHCP requirements, which include the payment of fees for acquisition of habitat, including Riversidean sage scrub habitat, thus adequately mitigates for any impacts to Riversidean sage scrub without the need for a specific off-site land setaside or protection. This substitution of one mitigation measure for another only does not require major revisions of the previous negative declaration. It is a change in mitigation, not Project circumstances. It does not add new information of more significant effects. Thus, further environmental review such as recirculation or a subsequent or supplemental MND is not required.

COA 20 requires a three year maintenance and monitoring plan. That mitigation is no longer applicable or necessary because the MSHCP conserves Riversidean Sage Scrub by setting aside over 500,000 acres, including 81,720 acres of Coastal Sage Scrub and the specific "Riversidean Sage Scrub" subassociation. Because the MSHCP conserves Riversidean sage scrub without Project-specific land setasides, COA 17 is no longer applicable or necessary. The MSHCP requirements, which include the payment of fees for acquisition of habitat, including Riversidean sage scrub habitat, thus adequately mitigates for any impacts to Riversidean sage scrub without the need for a specific off-site land setaside or protection. This substitution of one mitigation measure for another only does not require major revisions of the previous negative declaration. It is a change in mitigation, not Project circumstances. It does not add new information of more significant effects. Thus, further environmental review such as recirculation or a subsequent or supplemental MND is not required.

The MSHCP requirements, which include the payment of fees for acquisition of habitat and also conserves special status plants, thus adequately mitigates for any impacts to special plant species. This substitution of one mitigation measure for another only does not require major revisions of the previous negative declaration. It is a change in mitigation, not Project circumstances. It does not add new information of more significant effects. Thus, further environmental review such as recirculation or a subsequent or supplemental MND is not required.

Finally, MSHCP compliance for the Project site also includes compliance with land use adjacency guidelines, Best Management Practices, and payment of local developer impact mitigation fees, all required by the City.

The MSHCP does not add "new information to the Project or its circumstances, except that it is a previously unavailable method to mitigate more efficiently and more effectively. Substituting compliance with the MSHCP mitigation for the corresponding pre-MSHCP mitigation measures does not meet any of the criteria requiring preparation

of a subsequent or supplemental negative declaration. This substitution would only change the type of mitigation of certain biological impacts, from that deemed effective before the MSHCP was adopted, to the mitigation now available because the MSHCP has been approved. This substitution is not a substantial change, and does not:

- require major revisions of the previous negative declaration, due to new significant environmental effects or substantial increase in the severity of previously identified significant effects; or
- substantially change the Project circumstances, requiring major revisions of the negative declaration from new significant environmental effects, change the severity of previously identified significant effects; or
- add new information of more significant effects not discussed in the previous negative declaration; or
- add new information that mitigation measures or alternatives previously found infeasible would in fact be feasible and effective, but rejected by the Project proponents.

### **3. Grading Exceptions:**

With respect to Grading Exceptions, no new environmental impacts are anticipated. Instead, the number of grading exceptions overall has decreased, and the number of grading exceptions for intrusion into the main arroyo have decreased significantly.

The only lot to require new grading exception findings is already partially graded as a result of an existing pad overlapping the lot. Although the pad will overlap a small area into the Alessandro Arroyo setback, there are no significant landform features that will be impacted and the area directly below Lot 24, between the proposed lot and main arroyo area, consists of a driveway feature already approved with the 2004 approvals. The relocation of this lot from its previous position within the Alessandro Arroyo lessens potential environmental impacts resulting from development of the Project.

The Flood Control Access Road is a pre-existing roadway that will be realigned so as to have a lessened visual impact from the main arroyo area as well as to conform with the land contours. The previously approved roadway required a variance for intrusion into the main arroyo, similar to the current proposed alignment. No new environmental impacts are anticipated from this grading exception.

The Water Quality Basin was also previously approved as part of the 2004 approvals of TM31930. The Water Quality Basin has been relocated from the south side of Century Hills Drive, immediately adjacent to the main Alessandro Arroyo, to the north side of Century Hills Drive. This relocation avoids prior impacts to tributaries entering the arroyo at that location, while still serving as mitigation for impacts to wetland areas

and providing water quality control for potential site run-off. No new environmental impacts are anticipated from this grading exception, and the relocation of the basin will protect sensitive tributaries otherwise impacted.

#### **4. Variances:**

With respect to the request for variances, no new environmental impacts are anticipated. The requested variances permit lots smaller than otherwise permitted in RC Zoning so as to cluster residential development and maximize open space within the Project site. The variances for lot size further allow residential pads to avoid impacts to the arroyo and its tributaries as well as provide greater control over management and preservation of the open space area. The reconfiguration of the lots further eliminated the need for any variances for lots with an average natural slope of greater than 30% by removing lots from the main arroyo area.

Aesthetic impacts from the variances and Project changes are also less than significant. Nearby residences to the reconfigured lots are shielded from residential homes by a ridgeline between the existing homes and the proposed development, as well as by significant tree growth. While Lot 19 is located at an elevation of 1294 feet, this is consistent with the adjacent, previously approved, Lot 18 which is located directly to the east of Lot 19 and permitted by the Conditions of Approval for that location. Both Lot 18 and Lot 19 are at a lower elevation than the residence located directly to the north. Neighboring properties directly to the west will not have a visual of the proposed residence on Lot 19 because of elevation differences as well as the intervening ridgeline. Because Lot 19 is located directly west of Lot 18, neighbors to the east will not have a greater visual impact than previously approved.

The Project will preserve the existing character of the site and will not affect scenic resources. The reconfiguration of the Project site provides great scenic resources from the arroyo area by removing proposed development from the main arroyo. Land use impacts associated with the Project were thoroughly analyzed and discussed in the MND and no changes to land use will result from the variances.

#### **5. Open Space:**

The removal of COA 10, which formerly reserved Lots 24 and 25 (formerly Lot 53 and Lot 87) as open space will not create a significant or greater impact. The reconfiguration of the map to include more open space along sensitive areas of the arroyo by removing lots from the arroyo and placing them in less sensitive areas does not negatively affect scenic resources, landform, or biological resources. To the contrary, Lots 24 and 25 overlap an existing pad illegally graded and areas disked, both of which were done by a party other than the existing or prior landowner. The Lots will be significantly lower than existing development and will not block any vistas. The removal of the Lots from the arroyo decreases the impacts to landform and biologically sensitive areas and creates an additional 7.81 acres of open space, even with the elimination of COA 10.

Except as addressed above, all applicable mitigation measures identified in the MND will be applied to the Project.

## **E. CONCLUSION**

The changes to the Project included within the settlement agreement lessen the overall impacts from the project by reducing intrusion into the Alessandro Arroyo, using soft-bottomed culverts over tributary crossings to lessen impacts to natural drainage features from the roadways, and placing lots from more sensitive areas into areas where there is less impact to landform and biological features.

Substituting compliance with the MSHCP mitigation for the corresponding pre-MSHCP mitigation measures replaces less-effective, less efficient, piecemeal mitigation with a comprehensive, coherent plan that provides superior conservation benefits. As supported by the analysis and evidence presented above and in the MSHCP, related EIR/EIS and findings, the Burrowing Owl Survey, and the MSHCP Consistency Analysis, all of which are incorporated herein by this reference, this substitution does not require major revisions of the previous negative declaration. The effectiveness of mitigation under the MSHCP has been adequately addressed in this Addendum.

The Grading exceptions are necessary to meet the objectives of clustering the project and avoiding any significant impact into the main arroyo. The overall impact from grading exception is less because fewer grading exceptions are necessary for the Project and significantly fewer grading exceptions are necessary for intrusion into the main arroyo itself. Roadways have also been narrowed, causing a reduction in the overall Project grading and impacts to tributaries and the main arroyo. There has not been any substantial change in circumstances or any discovery of any substantial new information regarding the Project' environmental effects or mitigation measures. Finally, there is no new information that mitigation measures or alternatives previously found infeasible would in fact be feasible and effective.

The variances are necessary to bring the Project into conformance with adjacent projects, to allow clustering of the development to avoid impacts to the Alessandro Arroyo and its tributaries, and to reduce overall lot size and increase the preserved open space within the Project. The Project does not propose an increase in the number of variances. As discussed above, the variances do not present any significant environmental effects or substantial increase in the severity of previously identified impacts. There has not been any substantial change in circumstances or any discovery of any substantial new information regarding the Project' environmental effects or mitigation measures. Finally, there is no new information that mitigation measures or alternatives previously found infeasible would in fact be feasible and effective.

The change in open space and removal of COA 10 does not create any new or additional impacts, and increases the overall amount of open space within the Project site.

The Lots effected are previously disturbed and do not contain sensitive habitat or species. There has not been any substantial change in circumstances or any discovery of any substantial new information regarding the Project' environmental effects or mitigation measures. Finally, there is no new information that mitigation measures or alternatives previously found infeasible would in fact be feasible and effective.

***PRIMARY SOURCES ON FILE WITH THE CITY OF RIVERSIDE PLANNING DEPARTMENT:***

1. Initial Study for Case No. TM 31930
2. Mitigated Negative Declaration for Case No. TM 31930
3. City of Riverside Planning Department Staff Report for the Planning Commission hearing date of August 19, 2004
4. Western Riverside County Multiple Species Habitat Conservation Plan
5. Environmental Impact Report/Environmental Impact Statement for the Western Riverside County Multiple Species Habitat Conservation Plan
6. Findings for the adoption of the Western Riverside County Multiple Species Habitat Conservation Plan
7. Grading Exception Justification Findings
8. Variance Justification Findings
9. Habitat Assessment and MSHCP Consistency Analysis, Tentative Tract Map 31930
10. Delineation of Jurisdictional Waters and Wetlands, Tentative Tract Map 31930
11. Determination of Biological Equivalent or Superior Preservation (DBESP) Analysis, Tentative Tract Map 31930
12. Burrowing Owl Focused Survey, 86.3-Acre Tentative Tract Map 31930
13. U.S. Army Corps of Engineers Nationwide Permit Pre-Construction Notification (PCN) Form



**REVISED CONDITIONS OF APPROVAL:**

17. Project developer must comply with the MSHCP to mitigation impacts to biological resources. Such compliance shall include all required habitat assessment, surveys, compliance with land use adjacency guidelines, Best Management Practices, DBESP requirements, and payment of local developer impact mitigation fees.

**CITY OF RIVERSIDE PLANNING DEPARTMENT**

**VARIANCE JUSTIFICATION FORM FOR TM 31930 AS REVISED 10/24/2006**

Name: Sanda-Guthrie, LLC  
Address: 4225 Garner Road  
Riverside, CA 92501  
Project Name: TM 31930  
APN: Portions of 243-180-003 and all of 243-018-004, 014 & 243-019-002

**Variances:**

**(A) Lot Size / Average Natural Slope (“ANS”):**

- To allow the following additional lots to provide less than the 2.0 acre lot size required in the RC Zone:
  - Lot 19** at 1.19 acres with an ANS of 17.9% (*replacement of lot removed from arroyo for which a lot size variances was previously approved*);
  - Lot 20** (formerly lot 56) at 1.42 acres with an ANS of 19.35%;
  - Lot 23** at 1.12 acres with an ANS of 20.23% (*replacement of lot removed from arroyo for which a lot size variances was previously approved*);
  - Lot 24** at 1.17 acres with an ANS of 16.41% (*replacement of lot removed from arroyo for which a lot size variances was previously approved*); and
  - Lot 25** (formerly lot 53) at 1.45 acres with an ANS of 15.6%.
- Variances and supporting findings have already been made and approved by City Council on September 28, 2004 to provide less than the 2.0 acre lot size required in the RC Zone for the following lots, and therefore no new findings are necessary:
  - Lot 1 (formerly lot 79) at 1.12 acres with an ANS of 15.93%;
  - Lot 2 (formerly lot 78) at 1.32 acres with an ANS of 16.85%;
  - Lot 3 (formerly lot 77) at 1.49 acres with an ANS of 22.81%;
  - Lot 5 (formerly lot 39) at .94 acres with an ANS of 15.45%;
  - Lot 8 (formerly lot 43) at .9 acres with an ANS of 17.79%;
  - Lot 9 (formerly lot 44) at 1.17 acres with an ANS of 17.83%;
  - Lot 10 (formerly lot 45) at .87 acres with an ANS of 18.28%;
  - Lot 11 (formerly lot 46) at .67 acres with an ANS of 15.79%;
  - Lot 12 (formerly lot 48) at 1.16 acres with an ANS of 26.91%;
  - Lot 13 (formerly lot 62) at 1.2 acres with an ANS of 24.4%;
  - Lot 14 (formerly lot 61) at .8 acres with an ANS of 16.1%;
  - Lot 15 (formerly lot 60) at .94 acres with an ANS of 18.74%;

**ATTACHMENT D**

Lot 16 (formerly lot 59) at .9 acres with an ANS of 21.53%;  
Lot 17 (formerly lot 58) at .8 acres with an ANS of 20.96%;  
Lot 18 (formerly lot 57) at 1.43 acres with an ANS of 20.04%;  
Lot 21 (formerly lot 55) at .76 acres with an ANS of 20.08%;  
Lot 22 (formerly lot 54) at .73 acres with an ANS of 16.81%;  
Lot 26 (formerly lot 50) at .89 acres with an ANS of 20.1%;  
and;  
Lot 27 (formerly lot 51) at 1.71 acres with an ANS of 18.29%.

- As a result of the map reconfiguration, the following lot size variances approved by City Council on September 28, 2004 to provide less than the 2.0 acre lot size required in the RC Zone are no longer necessary and therefore eliminated:

Lot 37, at 1.11 acres in size and an ANS of 18.77%;  
Lot 38 (currently lot 4), at 1.03 acres in size and an ANS of 19.85%; and  
Lot 47, at 1.49 acres in size and an ANS of 28.43%.

- As a result of the map reconfiguration, the following lot size variances approved by City Council on September 28, 2004 to provide less than the 5.0 acre lot size required in the RC Zone for ANS over 30% is no longer necessary and therefore eliminated:

Lot 49, at 2.0 acres in size and an ANS of 34.57%.

#### **(B) Lot Width:**

No new lot width findings are necessary or required.

#### **(C) Land Locked Parcels:**

Each lot is located along a private street and originally required a land locked parcel variances. Because this variance has not changed, no new findings are required. In addition, this requirement was eliminated by the adoption of the updated General Plan and revised zoning code on March 7, 2006.

### **Variance A- Lot Size / Average Natural Slope (“ANS”)**

#### **Findings applicable to all lots:**

1. The map is based upon a Planned Residential Development (PRD) previously approved in 1994, and of which has been approximately three

fourths completed. The completed phases utilized calculations that included the present proposed Tract Map 31930 for determination of density and open space. It was determined that because the intent of RC Zoning and of Measure R and Measure C is to preserve unique land forms and limit intrusion of development into arroyo areas, the map would be designed in such a fashion as to limit any intrusion into the Alessandro Arroyo to the fullest extent possible.

2. The proposed revisions to the TM 31930 substantially conforms to the originally approved PRD by limiting the number of lots to 28 and limiting development within the Alessandro Arroyo to the fullest extent possible. The revised map provide for an additional approximately 8 acres of preserved open space which would not be possible without lot size variances for each of the proposed lots.

3. The proposed revisions to the TM 31930 also provides for bridging of arroyo crossings and revises the location of the flood control access road and utilities access road to less sensitive areas. Without variances for lot size, the relocation to less sensitive areas of these two access roads would not be possible.

4. In addition, Grass Valley Way is shifted to the east from its original location under the PRD so as to avoid arroyo tributaries. This shift also protects significantly more sensitive habitat near and in the arroyo. Again, without a reduction in lot size to accommodate these tributaries and sensitive habitat, this shift would not be possible.

5. A total of 4 lots are removed from the arroyo or arroyo setback area and shifted to more north westerly locations on the map, outside of the arroyo boundaries. Each of these lots previously required a lot size variance and the total number of variances now requested is the same as previously requested before City Council on September 8, 2004.

**I. Lot 19.** To allow lot 19 at 1.19 acres in size with an ANS of 17.9% to provide less than the 2.0 acres lot size required in the RC Zone. The clustering of lot 19 with lot 18, and the accompanying reduction in size substantially eliminates the intrusion of the building pads for each of these lots into the main Alessandro Arroyo and allows for the maximization of preserved open space. These findings apply both individually and cumulatively to each lot.

*1. The strict application of the provisions of the Zoning Regulations would result in practical difficulties or unnecessary hardships in the development of this property.*

The size of lot 19 would need to be enlarged by .81 acres so as to comply with RC zoning. Lot 19, however, is limited in size by the northern and western