



City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: March 6, 2007

FROM: COMMUNITY DEVELOPMENT DEPARTMENT ITEM NO: 5
PLANNING DIVISION WARD: 4

SUBJECT: PLANNING CASE P03-1451 - REQUEST OF JIM GUTHRIE FOR APPROVAL OF A REVISED MAP TM 31930 IN CONJUNCTION WITH THE APPROVAL OF A SETTLEMENT AGREEMENT WITH THE FRIENDS OF RIVERSIDE'S HILLS, (RIVERSIDE SUPERIOR COURT CASE NO. RIC 420517 AND FOURTH APPELLATE DISTRICT, DIVISION 2, CASE NO. E0400591) AND TO ELIMINATE PREVIOUSLY APPROVED CONDITION NO. 6 RELATED TO LOTS 53 AND 87 (NOW KNOWN AS LOTS 25 AND 24, RESPECTIVELY) AND CONDITION NO. 11 RELATED TO A WATER EASEMENT. THE PROJECT IS GENERALLY LOCATED SOUTHERLY OF CRESTHAVEN DRIVE TERMINUS AND NORTHERLY OF THE ALESSANDRO ARROYO IN THE RC – RESIDENTIAL CONSERVATION AND O-OFFICIAL ZONES

ISSUE:

The applicant is requesting approval of a revised map Tract Map 31930 in conjunction with a settlement agreement with the Friends of Riverside's Hills and to eliminate previously approved condition no. 6 related to lots 53 and 87 and condition no. 11 related to a water easement. Previously approved Lots 53 and 87 are now known as lots 25 and 24, respectively.

RECOMMENDATIONS:

That the City Council:

1. Adopt the attached Findings and Addendum to the Mitigated Negative Declaration for Tract Map 31930 (Exhibit C);
2. Approve the revised Tentative Tract Map 31930, with the recommended conditions of approval;
3. Approve the attached settlement agreement between the Friends of Riverside's Hills and the City of Riverside City Council (Superior Court Case No. RIC 420517 and Fourth Appellate District, Division 2, Case No. E04005691); and
4. Approve the revised variances and grading exceptions, per the applicant prepared variance justifications and grading exceptions (Exhibit D).

BACKGROUND:

On September 28, 2004 the City Council approved Tract Map 31930, a 28-lot single family residential subdivision along with a rezoning case (see Exhibit I for staff report and Exhibit J for approved conditions and minutes). Development of this site was the subject of extensive public controversy and review. During this process, the project was modified and conditioned to address the outstanding concerns, and it was ultimately approved with the support of City staff and the immediately affected neighborhood.

Approval of Tract Map 31930 was challenged in court by the Friends of Riverside's Hills (FRH). The FRH and the applicant, Jim Guthrie, have reached a settlement of the lawsuit(s), which is now subject to approval by the City Council. Under the settlement, the number of proposed lots remains unchanged, although the lots have been somewhat rearranged to mitigate environmental impacts. As a result of the changes in the map layout, the applicant is requesting approval of one additional lot size variance and modified grading exceptions. In fact, due to the revised map, three grading exceptions have been eliminated overall.

Staff has no objection to the revised map due to the fact that prominent ridgelines are not being impacted by the redesign of the map. Furthermore, staff has no objection to the deletion of condition no. 6 for the reasons below. The revised map layout is similar to the originally approved map in 2004 with the exception of the inclusion of new lots - 19, 24 and 25. Staff has the following more detailed observations in regards to the revised map:

Lots 24 and 25 (Deletion of Condition No. 6)

Lots 24 and 25 were previously known as 87 and 53, respectively. Due to extensive public controversy, all previous approved maps dating back to 1994 required that lot 53 be eliminated and be combined with open space lot 87 to create one larger open space lot. Such condition was agreed to by the original developer in the spirit of compromise with the neighbors up until 2004. Due to the expiration of this portion of the map, the current developer regained approval of the map in 2004. At that time, the developer unsuccessfully requested deletion of condition no. 6 to combine Lots 24 and 25 as an open space lot. The neighbors requested that this condition remain as it had resulted from a great deal of neighborhood controversy dating back to the original approval in 1994. At the time, staff felt that such condition should remain due to the location of lot 53 on what appeared to be a ridgeline. The same developer is now requesting again that this condition be eliminated to allow for the inclusion two residential lots. As a result of the lawsuit with the FRH, the applicant was required to eliminate lots in other more sensitive areas near the Alessandro Arroyo. The overall number of lots remains unchanged under the proposed revised map.

More recently, staff conducted a site visit and determined that the proposed pads on lots 24 and 25 are not on or near a ridgeline, but are rather tucked behind a knoll that precludes any residences on these lots from being any more visible than an existing residence on the adjacent lot to the north (see photographs on Exhibit G). The applicant has provided cross-sections of the proposed pads (see Exhibit M). The pad elevation for pad 24 is 1250 and the adjacent existing pad to the north is at approximately 1260. The pad elevation for lot 25 is 1225 which is much lower in elevation than the existing residence. Additionally, the adjacent properties to the north will not see these pads, except along the driveway, due to the amount of vegetation separating the proposed pads and the existing residence to the north.

Lots 19 to 23

Two additional lots have been added in an area below a major ridgeline at the northwest property line, resulting in a total of 5 lots in this general area (lots 19 - 23). As explained before, the applicant has added two additional lots in this area in order to make up for the loss of lots in the southeasterly portions of the map. This area previously contained three lots with the highest elevation being 1280 along the westerly property line. Additionally, the previously approved map did not include a pad where Lot 19 is now proposed at the northwestern-most corner of the property. Lots 19 through 23 abut the westerly property line adjacent to a major ridgeline. These pads range in elevations from 1245 (lot 23) up to 1294 (lot 19) due to the topography of the site. This results in lot 19 now having a higher elevation of 1294 than the previously approved elevation of 1280. However, lots 20 - 23 remain no higher than 1280 in elevation as previously approved. Also, lot 18 located just easterly of lot 19 has an elevation of 1292, whereas it was previously approved with a pad elevation of 1290.

Past approvals have allowed for a maximum pad elevation of 1280 along this ridgeline and 1290 for lot 18. Given that two additional lots have been added along this segment of the map, the pads now step up to an elevation of 1294 on lot 19. The adjacent neighbor to the west has raised concerns pertaining to the visibility of a residence adjacent to the ridgeline. The ridgeline is at an elevation of about 1304. As such, staff is recommending that the highest pad elevation not exceed 1286 for any lots adjacent to the ridgeline, including lot 18. The applicant provided a cross section of the proposed elevation with a one-story, 20-foot high residence in comparison to the adjacent ridgeline and property to the west (see Exhibits F and M for cross sections). Additionally, there is mature native vegetation on the adjacent properties to the west that would not allow for new residences on these lots to be visible from the ridgeline or from Hawarden Drive, Victoria Avenue or Arlington Avenue (See Exhibit G for photographs).

Upon a site visit by staff, the proposed pads will be no higher than the ridgeline as seen from the adjacent property directly to the west, Victoria Avenue, Arlington Avenue or Hawarden Drive (see photos in Exhibit G). Furthermore, the adjacent existing property owners will not be able to see these pads due to vast vegetation existing and difference in elevations.

Furthermore, as a part of the settlement with the FRH the applicant is proposing to install a trail along this ridgeline with an elevation reaching up to approximately 1306. Lots 19 through 23 will abut the trail but will not be situated on the ridgeline itself.

Deletion of Condition No. 11

The applicant is also requesting that condition no. 11 be removed. This condition requires that the project provide water easement rights and connections in order to allow two off-site parcels lying northerly of lot 25 to connect to the project's water system. The applicant does not believe there is a nexus between this project and requiring such condition. However, according to Public Utilities staff there is a benefit in requiring such water easement and connection in that the water pressure would be improved to such adjacent properties. The City is committed to providing adequate water pressure and such condition would improve water pressure to these adjacent lots. Staff is recommending that this condition remain unchanged given that the current water pressure in the area to the west is relatively lower than the subject property.

Public Comment

Seven letters in opposition to the requested changes pertaining to the deletion of conditions no. 6 and 11 and the addition of lot 19 have been received by staff (see Exhibit H). The primary reasons of concern relate to the protection of the ridgeline and open space leading up to Tiburon Knoll. As mentioned above, none of the proposed pads under the revised map sit on the ridgeline or obstruct any designated trails under the City's Master Trails Plan. As a matter of fact, a trail is being created as a result of the settlement with the FRH which would allow connection up to Tiburon Knoll from the Flood Control Dam up through Cresthaven Drive. Furthermore, due to existing vegetation the existing property owner to the north will not see these pads and the view will not be obstructed to Tiburon Knoll or any other ridgeline.

Finally, it should be noted that the applicant submitted a biological report which found the revised map to be consistent with the Multi-Species Habitat Conservation Plan for the revised map. These reports are on file with the Planning Department.

FISCAL IMPACT:

All project costs are borne by the applicant.

Prepared by:	Ken Gutierrez, Planning Director
Certified as to availability of funds:	Paul Sundeen, Assistant City Manager/CFO/Treasurer
Approved by:	Michael J. Beck, Assistant City Manager for Bradley J. Hudson, City Manager
Approved as to form:	Gregory P. Priamos, City Attorney

Attachments:

- A. Revised Recommended Conditions of Approval
- B. Settlement Agreement
- C. Addendum to the Mitigated Negative Declaration
- D. Applicant Prepared Variance Justifications and Grading Exceptions
- E. Chart of Proposed Changes
- F. Cross Section for Lot 19
- G. Photographs
- H. Correspondence Received by Staff
- I. City Council Report Dated September 28, 2004
- J. Approved Minutes and Conditions of City Council Meeting September 28, 2004
- K. Previously Approved Map in 2004
- L. Revised Proposed Map
- M. Cross Sections for Lots 19, 24 and 25
- N. Updated Biological Reports – On File with the Planning Department

REVISED RECOMMENDED CONDITIONS

P03-1451 (TM 31930)

City Council Meeting Date: March 6, 2007

All mitigation measures are noted by an asterisk ().*

Case Specific

● Planning

1. The City Council makes the necessary findings in the applicant's favor to grant the following variances. As justification, the applicant's written justifications are referenced:
 - a. parcels less than two acres in size on lots with an average natural slope (ANS) greater than 15% (lots 1-3, 5, 8-19, 20-23 and 26-27);
 - b. landlocked parcels located along private streets.
2. The City Council makes the necessary findings in the applicant's favor to grant the following grading exceptions. As justification, the applicant's written justifications are referenced:
 - a. to permit lots 2-18, 26-28, Grass Valley Way, Cresthaven Drive, Century Hills Drive, a Flood Control access road, a water quality basin, private road and a sewer line to encroach within the limits and 50-foot development setback of the Alessandro Arroyo as defined in the Grading Ordinance; and
 - b. to permit slopes in excess of twenty-feet for portions of Cresthaven and Century Hills Drives.

Prior to Map Recordation

3. Within 30 days of the approval of the tentative map by the City the developer/subdivider shall execute an agreement, approved by the City Attorney's Office to defend, indemnify, including reimbursement, and hold harmless the City of Riverside, its agents, officers and employees from any claim, action, or proceeding against the City of Riverside, its agents, officers, or employees to attack, set aside, void, or annul, an approval by the City's advisory agency, appeal board, or legislative body concerning this subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code. The City will promptly notify the Developer/subdivider of any such claim, action or proceeding and the City will cooperate in the defense of the proceeding.
4. The applicant shall obtain final authorization from the Riverside County Flood Control District or the applicant shall have acquired such property.
5. An open space easement shall be recorded for all areas within the boundaries of the 100 year flood plain and all non-graded areas and for each lot all areas not proposed for grading under

ATTACHMENT A

this review subject to the approval of the Planning Department and City Attorney's Office. The easement should clearly specify that these areas are intended for open space purposes only and that no grading, construction or fencing is permitted. The open space areas within the open space easement are to be maintained by a non-profit conservation organization such as the Riverside Land Conservancy subject to the approval of the Planning Department and City Attorney's Office. The property shall be transferred either in fee title or an easement established to facilitate maintenance/stewardship by such an organization.

6. * ~~_____ Lots 24 and 25 shall be eliminated and be put in an open space lot.~~
7. * The pad elevation for lots 18 and 19 shall be revised so as to not exceed 1286.
8. * The applicant shall prepare and record Covenants, Conditions, and Restrictions (CC&Rs) and other documents as necessary subject to approval of the Planning Department and City Attorney's Office. The CC&Rs shall contain the following conditions and restrictions:
 - *a. prohibiting any additional grading beyond the Arroyo setback and 50-foot development setback;
 - *b. establishing a Homeowner's Association;
 - *c. the keeping of livestock is prohibited;
 - *d. prohibiting further subdivision of any lots within this map.
9. * The unused portion of right-of-way from the existing cul-de-sac bulb of Cresthaven Drive shall be vacated. A separate submittal and filing fee is required.
10. * Lots 88 and 89 should be split at the phasing line to create two new, numbered open space lots.
11. *Planning Cases P04-0260 and P03-1548 shall be finalized.
12. A 10 ft wide private waterline easement along the northerly line of Lot 21 shall be recorded as necessary to provide for connection to the project water system of two off-site parcels lying westerly of Lots 20-23. Two water service connections will be installed between the proposed water main in Crest Haven Drive and the westerly line of Crest Haven Drive. No water meters on the two service lines shall be installed. The property owners of these two off-site parcels shall be responsible to pay all City water connection, facility, zone elevations and miscellaneous fees required to provide water to their parcels. Said property owners shall install the required services across Lot 21 in said easement as necessary to provide water to their parcels.

Prior to Grading Permit Issuance

13. *The proposed project affects waters of the United States and waters of the State, which fall under the jurisdiction of the United States Army Corps of Engineers (USACE) and the California Department of Fish and Game (CDFG), respectively. As such, the following agencies

have jurisdiction over this project, as necessary: the California Department of Fish and Game; the Army Corps of Engineers; the U.S. Fish and Wildlife Service; and the California Regional Water Control Board. These agencies' approval will be required prior to grading permit issuance and the applicant is responsible for compliance with all requirements and conditions of these agencies.

14. *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.
15. *The permanent loss of jurisdictional waters will be offset by the expansion of the unnamed drainage feature at a 1:1 ratio. The mitigation site will be located immediate downstream of the road crossing and adjacent to the proposed upland water quality bio-swale. It is anticipated that the bio-swale will provide sufficient hydrology to support riparian vegetation.
16. *A water quality bio-swale will be installed immediate downstream of the road crossing. The bio-swale will be installed in an upland location to provide pretreatment of urban runoff prior to discharge into the drainage feature. The HOA will provide long term maintenance, consisting of installation of native grasses, and sediment removal as needed.
17. *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.
18. ~~*The project site is located within the Riverside County SKR Habitat Conservation Plan Fee Assessment Area, and therefore subject to current fee requirements as administered by the City of Riverside.~~ The developer must comply with the MSHCP to mitigate 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.
19. *The grading plan shall be revised, subject to Planning Department review and approval, to:
 - *a. clearly indicate all pad and lot drainage, subject to review and approval by the Planning and Public Works Departments. Cross lot drainage covenants, if necessary, shall be subject to Public Works and City Attorney's office Departments' review and approval.
 - *b. Indicate that all rip-rap will be natural rock (not blasted) and all visible drainage features will be color treated to blend in with the natural surroundings.
 - *c. Indicate an interim erosion control program to be certified by the project engineer subject to Public Works Department review and approval.
 - *d. Reflect City adopted contour grading policies. Prior to issuance of a building permit, the applicant's engineer shall submit a letter certifying the contouring of such required slopes in accordance with City adopted standards.

- *e. Indicate that grading operations will be restricted to 7:00 a.m. to 7:00 p.m. weekdays, and 8:00 a.m. to 5:00 p.m. Saturdays. No construction noise is permitted on Sundays or federal holidays.
 - *f. Indicate the 100 year flood limits of the blue line stream to the satisfaction of the Public Works Department.
20. *Prepare a detailed grading plan at 1"=40' scale for lot 45 showing protection of the existing rock outcroppings, subject to Planning Department approval.
 21. *Final driveway grades and configurations will be subject to review and approval of the Fire Department.
 22. Tract Map 31930 shall be recorded.
 23. *Provide a trail across the subject property, between the Alessandro Arroyo and the northerly boundary of the subject property for eventual connection to Tiburon Knoll, subject to approval of the Planning Department.
 24. *Landscaping and irrigation plans for all manufactured slopes in excess of five feet in vertical height shall be submitted to and approved by the Planning Department. The applicant's engineer or landscape architect shall submit a letter certifying to the installation of such required landscaping and irrigation facilities prior to the release of utilities.
 25. *In the event that joint access driveways are proposed, covenants shall be prepared subject to the satisfaction of the City's Attorney Office and Public Works Departments.
 26. *The grading plan shall be revised to reflect all design changes recommended in this City Planning Commission report.
 27. *Adjacent property owner's approval shall be obtained for all off-site grading. Also, slope maintenance agreements for all slopes crossing property lines shall be recorded subject to approval of the Planning and Public Works Departments and City Attorney's Office
 28. *The applicant shall prepare a Coastal Sage Scrub and riparian enhancement plan subject to review and approval of the Planning Department prior to grading permit.
 29. *Manufactured slope ratios shall not exceed a maximum of 2:1.
 30. *The applicant shall be responsible for erosion and dust control during both the grading and construction phases of the project.
 31. *Grading activity shall be in substantial compliance with the grading plan on file with this application.

32. *Advisory: The Regional Water Quality Control Board requires the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP).
33. *Compliance with SCAQMD Rules 402 and 403 shall be followed in order to minimize air pollutant construction emissions. Additionally, the applicant will implement the following:
 - a. Regular watering, at least 3-times a day, of the construction site, including all unpaved parking or staging areas or unpaved road surfaces, shall be utilized in order to reduce the fugitive dust generated during grading and construction operations;
 - b. Replace groundcover in disturbed areas as quickly as possible; and
 - c. Appoint a construction relations officer to act as a community liaison concerning on-site construction activity, including resolution of issues related to PM 10 generation.
34. *Advisory: Any disturbance of the “blue line streams” will require permits and approval from the State Department of Fish and Game and U.S. Army Corps of Engineers.
35. *The applicant shall comply with the long term Stephen’s Kangaroo Rat (SKR) Habitat Conservation Plan (HCP) and the City’s policies for implementing the HCP.

Prior to Building Permit Issuance

36. *The applicant is advised that the project is in an area impacted by a CNEL noise level between 60 and 70 dBA. Dwelling units constructed within the noise impacts areas will have to be sound insulated to the specifications of the Building Division.
37. *Submit documentation of approval by the Riverside County Airport Land Use Commission (ALUC) shall be submitted to the Planning Department. All Conditions imposed by the ALUC shall be met to its satisfaction prior to map recordation. In the event the ALUC finds this map to be inconsistent with the Airport Land Use Plan, the case shall be considered by the City Council at a public hearing concurrently with the ALUC appeal.
38. *The applicant shall convey an avigation easement to the March Air Reserve Base (MARB) and the March Inland Port (MIP) to the satisfaction of the City Attorney’s Office and MARB/MIP. The applicant shall obtain approval of the Riverside County Airport Land Use Commission and submit documentation to Planning Department staff.
39. *Any lighting other than normally associated with a residential use, such as tennis court lighting, will be reviewed by the Planning Department in the Design Review process. Any tennis court lighting is required to be hooded and directed downward. In addition, the design shall avoid off-site light spillage.
40. For purposes of measuring the front yard building setback line the private street will be considered a public street. All homes placed on these lots will have a front yard setback of 30-

feet from the private street property line and 25-feet from the side and rear property lines. All other applicable standards of the underlying RC — Residential Conservation Zone shall be met.

41. If any of the mitigation measures contained herein conflict with the measures required by any of the resource agencies with jurisdiction over this project, the applicant shall comply with mitigation measures imposed by the resource agency.

Standard Conditions

● **Planning**

- ~~42.~~ *There is a thirty month time limit in which to satisfy the conditions and record this map. Five subsequent one-year time extensions may be granted by the City Planning Commission upon request by the applicant. Application for a one-year time extension must be made prior to the expiration date of the map. No time extension may be granted for applications received after the expiration date of the map.
43. *In approving this case, it has been determined that the project has the potential for adverse effect on wildlife resources and the payment of fees pursuant to Section 711.4 of the Fish and Game Code is required.

● **Public Works**

44. A "FINAL MAP" shall be processed with the Public Works Department and recorded with the County Recorder. The "FINAL MAP" shall be prepared by a Land Surveyor or Civil Engineer authorized to practice Land Surveying I the State of California and shall comply with the State Subdivision Map Act and Title 18 of the Riverside Municipal Code. All applicable checking and recording fees are the responsibility of the applicant.
45. Full improvement of interior streets based on private residential street standards.
46. Storm Drain construction will be contingent on engineer's drainage study as accepted by the Public Works Department.
47. Off-site improvement plans to be approved by Public Works prior to recordation of this map.
48. The proposed private streets are to be designed and fully improved per the standards governing private streets, Resolutions 12006 and 15531.
49. A surety prepared by Public Works to be posted to guarantee the required off-site improvements prior to recordation of this map.
50. Off-site improvement plans to be approved by Public Works and a surety posted to guarantee the required off-site improvements prior to recordation of this map.
51. Size, number and location of driveways to Public Works specifications.

52. All security gates or facilities proposed now or in the future will be located on-site and adequate stacking space and vehicle turn-around area will have to be provided to Public Works specifications. Security gates shall be keypad activated to provide access to the project for trash collection service.
53. *Minimum design speed for residential streets should not be less than 25 miles per hour with a 150 foot minimum sight distance.
54. *Installation of sewers and sewer laterals to serve this project to Public Works specifications. However, septic tanks will be allowed for lots that cannot reasonably be served by a gravity sewer.
55. *Onsite disposal system (septic tank) acceptability shall be obtained for each lot of this map not served by sewer, to the satisfaction of the County Department of Environmental Health, prior to this map recording.
56. *Removal and/or relocation of irrigation facilities, as required.
57. *All property subject to flooding from a 100-year storm shall be placed in the WC (or other appropriate Zone) prior to or concurrently with recordation of this map.
58. *Ownership of property to be undivided prior to this map recording.
59. *Trash collection service will not be provided on the common drive serving Lots 50-53. An area shall be provided along Century Hills Drive to accommodate the placement of containers for automated collection. This requirement shall be incorporated in the CC&R's for this project.

● **Fire Department**

60. *Requirements for construction shall follow the Uniform Building Code with the State of California Amendments as adopted by the City of Riverside.
61. *Construction plans shall be submitted and permitted prior to construction.
62. *Any required fire hydrants shall be installed and operational prior to Fire Department release of permit.
63. *Fire Department access is required to be maintained during all phases of construction.
64. *Prior to map recordation the Fire Department recommends the following conditions be included in a recorded covenant to the satisfaction of the City Attorney's Office and Fire Departments to ensure that future buyers are informed of these requirements:
 - a. On- and off-site fire protection facilities shall be provided to the specifications of the Fire Department.
 - b. The Building Division and Fire Department shall inspect and approve the property

and structure for the intended use and all standards and regulations shall be met.

- c. Residential fire sprinklers shall be installed per City Ordinance #6019.
 - d. A public water system shall be provided and maintained.
 - e. Streets and fire apparatus access roads shall meet public street standards.
65. *Appropriate provisions shall be made and approved by the City resolution or agreement to insure streets are maintained and repaired when necessary in the event a homeowners association fails to do so.
66. *Cul-de-sacs, where islands are provided, shall be a minimum of 106-feet in diameter, curb-to-curb, with a maximum fifty-foot diameter island.
67. *Entry gate(s) shall meet Fire Department requirements for access and be equipped with key box (Knox) devices.
68. *All dead-ends, caused by recordation of individual phases of the map, in excess of 150-feet will be required to provide a temporary turnaround to the Fire Department's approval.

● **Public Utilities**

69. *All utilities shall be satisfactorily relocated, protected and/or replaced to the specifications of the affected departments and agencies, and easements for such facilities retained as necessary.
70. *The provision of utility easements, water, street lights and electrical underground and/or overhead facilities and fees in accordance with the rules and regulations of the appropriate purveyor.
71. *Consideration for acceptance of a City maintained water system within private developments requires the following:
- a. Easements will be provided as required by the Water Utility. This will include the entire width of private streets (minimum 50-feet wide) and a graded strip (minimum 30-feet wide) elsewhere as needed.
 - b. Easements shall be kept clear of structures, trees and all other deep rooted plants which could interfere with the operation, maintenance and/or replacement of City water facilities. This includes medians.
 - c. The City Water Utility shall review and approve all construction and landscaping plans within the easement areas.
 - d. Private streets shall be constructed to Public Works specifications, including standard 6-inch curb and gutter to provide adequate drainage for flushing and flow testing fire hydrants.

- e. City water mains in private streets shall be ductile iron and shall be constructed beneath all transverse storm drain facilities.
 - f. Compliance with any other special requirements of the Water Utility.
72. *Applicable Water Utility fees and charges, will be required prior to recordation.
 73. *Since the Public Utilities Department signs the record map only when all of our conditions have been satisfied, Water Utility approved modifications can be made without further City Planning Commission review.
 74. Advisory: The provision of faithful performance bonds in accordance with the City of Riverside Water Rules.
 75. Advisory: Special requirements are applicable for acceptance of public water system facilities within private streets.

● **Park and Recreation**

76. *The removal, relocation, replacement or protection of existing street trees to the specifications of the Park and Recreation, Public Works and Planning Departments.
77. *The installation of new street trees in accordance with the specifications of the Park and Recreation Department. Street tree installation work may be deferred until issuance of building permit on each individual parcel. No Street Trees are required for private streets. All street trees shall be automatically irrigated and installed prior to occupancy.
78. *Payment of all applicable park development fees (local and regional/reserve) as mitigation for impact to park development and open space needs as generated by the project (Note: Regional/Reserve Park fees not applicable to Open Space Lot acreages; However, all other lots including street lots are subject to Regional/Reserve Park fees).
79. *All reverse frontage and public landscape plans shall be subject to review and approval of the Park and Recreation, Planning and Public Works Departments.
80. *Installation of full reverse frontage and public landscape improvements, walls and hardscape for all public landscape areas as may be required by the Planning Department, in accordance with the specifications of the Park and Recreation, Planning and Public Works Departments.
81. *Irrigation systems serving public landscape areas shall be metered, controlled and valved separately from any private landscape areas for both electrical and water services, as well as for irrigation valve control.
82. *All public landscape areas and private open space areas and parkways shall be maintained through a Homeowner's Association.

83. *Provide landscape and wall easements, subject to the approval of the Park and Recreation and Public Works Departments and City Attorney's Office, for all reverse frontage and public landscape improvements that extend beyond the public right of way.
84. *A multi-purpose recreational trail easement shall be granted to the City along an alignment within the Alessandro Arroyo as approved by the Planning, Park and Recreation and Public Works Departments, and the Recreational Trails Steering Committee. It is anticipated the trail alignment will remain within the 100 year flood plain.
85. *Trail signage shall be placed along the trail prior to recordation, or shall be incorporated into the performance/labor material bonds executed for construction of the trail.
86. *A Covenant and Agreement for the maintenance of the landscaped parkways, reverse frontage and public landscape areas and medians, approved as to form by the City Attorney, must be executed by the developer. The agreement shall outline the responsibilities and liabilities being assumed by the Home Owners Association (HOA), upon acceptance of these landscape areas for private maintenance by the HOA.

SETTLEMENT AGREEMENT

Friends of Riverside's Hills v. City of Riverside and City of Riverside City Council **(Jim Guthrie, Real Party in Interest)**

Riverside Superior Court Case No. RIC 420517
Fourth Appellate District, Division 2, Case No. E0400591

This Mutual Settlement and General Release Agreement ("Agreement") is by and between Petitioner, Friends of Riverside's Hills ("Petitioner"); Respondent, City of Riverside and City of Riverside City Council ("Respondents"); and Real Party in Interest, Jim Guthrie ("Real Party") (collectively "the Parties"). The following terms have been agreed upon by the Parties and will be performed during the engineering, design and construction phase of the project described below.

RECITALS

- A. On or about October 28, 2004, Petitioner filed a Petition for Writ of Mandate against the City entitled Friends of Riverside's Hills v. The City of Riverside; The City of Riverside City Council, Riverside Superior Court Case No. 420517 (the "Action"). Jim Guthrie, the Riverside County Flood Control And Water Conservation District and Yang-Chang Hong were named in the Action as Real Parties in Interest. The Riverside County Flood Control And Water Conservation District and Yang-Chang Hong were subsequently dismissed by stipulation from the Action.
- B. In the Action, Petitioner challenged the City's approval of City Planning Cases P03-1451 and P04-0260, including the approval of the Proposed Tract Map 31930, variances, grading exceptions, and the adoption of a Mitigated Negative Declaration (the "Project"). The project, consisting of

the development of approximately 86.31 vacant acres into twenty-eight residential lots, was approved by the City on September 28, 2004.

- C. In the Action, the Petitioner alleges that the City's actions and approvals of the project violated provisions of the California Environmental Quality Act ("CEQA", Public Resource Code Section 21000, *et seq.* and California Code of Regulations, Title 14, Sections 1,500, *et seq.*), and are inconsistent with the City General Plan and Development Code. The City and Real Party dispute all of the Petitioner's contentions.
- D. On or about March 24, 2006, the Trial Court granted Petitioner's request for Writ of Mandate and required all Project approvals be set aside and the Notice of Entry of Judgment was filed on March 29, 2006.
- E. On or about May 26, 2006, Real Party filed an Appeal with the Fourth District, Division Two, Court of Appeals, appealing the determination of the trial court in its entirety.
- F. The purpose of this Agreement is to make certain provisions for the final settlement of this matter between the parties.

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein, the Parties agree as follows:

AGREEMENT AND RELEASE

- 1. Incorporation of Recitals. Each recital set forth above is incorporated herein by reference and made a part of this Agreement.
- 2. Terms of Settlement.

- a. Revisions of Building Pads and Graded Slopes: Real Party agrees to modify the development on Tentative Tract Map 31390 in substantial compliance with Exhibit A, as agreed upon between the parties and as referenced herein and incorporated hereto as the Tentative Tract Map No. 31390, dated September 2006 ("TTM 31390"). These revisions are intended to provide increased protection of the natural features of Project area, including, but not limited to, the Alessandro Arroyo. In addition, these revisions reduce the total number of grading exceptions and variances necessary for approval of the map.

These revisions, as indicated by TTM 31390 attached hereto as Exhibit A, are more specifically stated as follows:

- i. Lots 1, 2, and 3 (previously identified as Lots 79, 78, and 77): shall remain substantially the same as previously approved.
- ii. Lot 4 (previously identified as Lot 38): shall be increased in size from 1.03 to 1.25 acres, and the pad has been reconfigured so as to eliminate all grading in the Alessandro Arroyo. The southerly lot line shall be moved to the north so as to follow the contours of the arroyo. In order to accommodate the reconfiguration of Lot 4 and eliminate grading within the main arroyo, Lot 37 is removed from this area.

- iii. Lot 5 (previously identified as Lot 39): the southerly lot line shall be moved to the north so as to follow the contours of the arroyo and increase open space.
- iv. Lots 6 and 7 (previously identified as Lots 40, 41, and 42): Lot 40 is removed from this area and the easterly boundary lines for Lots 6 and 7 (previously identified as Lot 41 and 42) shall be extended to the east. The southerly boundary of Lot 7 is moved north. These changes significantly lessen intrusion into the main arroyo and reduce the overall slope ratio for Lot 6 from 5:1 to 4:1.
- v. Lot 8 (previously identified as Lot 43): shall be shifted to the north and reduced in size from 1.04 acres to .90 acres, significantly reducing grading in the arroyo as well as intrusion into sensitive biological areas.
- vi. Lot 9 (previously identified as Lot 44): shall be shifted to the north, significantly reducing slope areas and almost completely eliminating grading into the arroyo and sensitive areas.
- vii. Lot 10 (previously identified as Lot 45): shall be reduced in size by shifting the westerly border so as to follow the contours of the arroyo, and the pad size and location is modified so as to avoid all grading with the main arroyo.

- viii. Lot 11 (previously identified as Lot 46): shall be reduced in size by shifting the westerly border so as to follow the contours of the arroyo, and the pad size and location is modified so as to avoid all grading with the main arroyo and nearly all grading within the setback area. In addition, the pad is changed to a cut slope so as to reduce the overall grading required.
- ix. Lot 12 (previously identified as Lot 48): shall be shifted to the east and the pad size and location is modified so as to reduce grading with the main arroyo. In addition, the pad is changed to a cut slope so as to reduce the overall grading required. So as to avoid additional intrusion and impacts on the arroyo and sensitive areas, Lots 47 and 49 have been removed from this area.
- x. Lots 13 and 14 (previously identified as Lots 62 and 61): Lot 13 shall be reduced in size and is shifted to the south so as to any grading in the main arroyo. Lot 14 shall be slightly reduce in size so as to accommodate the reconfiguration of Lot 13 and avoid impacts to the main arroyo area.
- xi. Lots 15, 16, and 17 (previously identified as Lots 60, 59 and 58): The pads for each of these Lots shall be modified so as to avoid nearly all intrusion into the designated

arroyo area. In addition, the pads for Lots 15 and 16 are changed to a cut slope so as to reduce the overall grading required. Lot 17 has always been designed as a cut slope pad. The easterly border of each of these Lots shall be shifted to the west so as to follow the contour of the designated arroyo area.

- xii. Lots 18, 19, 20, 21, 22, and 23 (previously identified as Lots 57, 56, 55, and 54): the original Lots shall be reconfigured to include two the of the Lots moved from the south-easterly portion of the map along the Alessandro Arroyo. In addition, the westerly border of each of these Lots shall be moved to the east so as to accommodate a trail and trail easement along the western border of the Project site. This area is not considered biologically sensitive and none of the Lots shall intrude in the designated arroyo. Only a very small portion of the pad on Lot 18 shall intrude into the arroyo setback area, as indicated by TTM 31390 attached hereto as Exhibit A.
- xiii. Lots 24 and 25 (previously identified as Lots 87 and 53): these Lots shall be redesignated from open space to residential Lots (pursuant to Section 2.b. of this agreement), and include two of the Lots moved from the south-easterly portion of the map along the Alessandro

Arroyo. This area is not considered biologically sensitive and neither of the Lots are located within any portion of the main arroyo.

xiv. Lots 26 and 27 (previously identified as Lots 50 and 51): shall remain substantially the same, with the exception that the eastern boundary of Lot 26 and a portion of the eastern boundary of Lot 27 is shifted to the west so as to significantly avoid the main arroyo and to increase the open space area.

xv. Lot 28 (previously identified as Lot 52): shall remain substantially the same.

b. Revisions of Conditions of Approval Related to Open Space: The Parties agree to eliminate Condition of Approval No. 6 from City Planning Cases P03-1451 and P04-0260, which previously preserved Lots 53 and 87 (Lots 24 and 25 of the current TTM 31390 attached hereto as Exhibit A and previously incorporated into this agreement), as one open space lot. The purpose of eliminating this Condition of Approval is to allow adjustment of lot configurations so as to further protect the arroyo and other sensitive areas. These Lots are not considered biologically sensitive and are not within the boundaries of the Alessandro Arroyo. Eliminating this Condition of Approval and the accompanying reconfiguration of TTM 31390 increases the total

overall area of open to 49.67 acres, a net increase of 7.81 acres. All other Conditions of Approval shall remain in effect.

c. Streets and Access Roads:

- i. Crest Haven Drive: Grading shall be reduced along the northeastern portion of Crest Haven Drive so as to lessen the slope from a 20:1 and 4:1 ratio to a 2:1 ratio, as indicated by TTM 31390 attached hereto as Exhibit A.
- ii. Century Hills Drive: Starting from the intersection of Crest Haven Drive and Century Hills Drive and traveling east, Real Party shall: reduce the roadway width, eliminating the center divider; utilize a soft-bottom culvert at the first tributary crossing (of approximately 10' x 20'); utilize a soft-bottom culvert for the second tributary crossing (of approximately 8' x 20'); and shift roadway south at the intersection of Century Hills Drive and Grass Valley Way so as to avoid additional tributaries, as indicated by TTM 31390 attached hereto as Exhibit A.. This shall reduce the amount of grading necessary and avoid sensitive areas and tributaries.
- iii. Grass Valley Way: Grass Valley Way shall be shifted to the east and shortened so as to avoid tributaries and other sensitive areas, as indicated by TTM 31390 attached hereto as Exhibit A.

- iv. Sewer Access Road: The entrance from Century Hills Drive shall be shifted to the east so as to avoid tributaries and bridged at the single tributary crossing directly to the north of Century Hills Drive, as indicated by TTM 31390 attached hereto as Exhibit A.
 - v. Flood Control Access Road: The Flood Control Access road shall be shifted to the west so as to be less visible from the Alessandro Arroyo, as indicated by TTM 31390 attached hereto as Exhibit A.
- d. Trail Easement: Real Party shall incorporate the location and alignment of the trail easement within the Project area to be constructed at the time of final grading, as referenced herein and incorporated hereto as the revised Tentative Tract Map No. 31930- attached as Exhibit "A". The trail shall include signs designating trail entrances from roadway improvements and three benches located along the southerly portion of the trail.
- e. Improvements: Two story homes shall be prohibited. In accordance with the Zoning Code, Title 19 of the Riverside Municipal Code, the maximum allowable building height on Tentative Tract Map 31930 is one-story, 20-feet. A variance to exceed the maximum allowable building height may only be applied for and is subject to the approval of, the City of Riverside. Any such variance shall not exceed 20 feet in height except that each residence may exceed the 20 foot height

limit for up to 20% of the footprint of the residence, including the garage, to a maximum of 25 feet in height as measured from the top of the building slab to the highest point of the roof. Construction below the slab will not be considered in this height restriction. Petitioner agrees not to challenge, administratively or legally, any of these variances, or support in any way, any challenge to these variances.

- f. Water Basin: The water basin shall be shifted to the north of Century Hills Drive so as to avoid potential disturbance of wetlands and riparian areas and shall be contoured and landscaped so as to blend in with the surrounding area.
- g. Findings: All necessary findings for each grading exception and variance as indicated by TTM 31390 (attached hereto as Exhibit A), are attached hereto as Exhibit B (Grading Exceptions) and Exhibit C (Variance Findings), and incorporated herein by this reference.
- h. Protection of Open Space Easement. The Open Space Easement, delineated on the Tentative and Final Tract Map as an easement encumbering each of the individual lots, shall be protected by the Conditions of Approval and other protective measures incorporated into the project which prohibit any significant alternation to the open space by grading, improvements, non-native landscaping, and the maintenance of natural landform. In furtherance of the protection of the Open Space, Real Party shall enter into an Open Space Preservation Agreement as agreed to separately, a copy of which is

attached hereto as Exhibit D. Said agreement shall be incorporated into the Conditions of Approval for the Project. To the fullest extent possible, fire management shall be in the setback area adjacent to but not within the Open Space. This restriction is in no way intended to preclude best fire management practices.

- i. MSHCP Compliance: TTM 31390 shall comply, or has complied, with the Multi-Species Habitat Conservation Plan for Western Riverside County ("MSHCP"), including D-BEST, focused burrowing owl surveys as required by the MSHCP, and other related requirements. TTM 31390 is not within a criteria cell as defined by the MSHCP.
- j. Attorneys Fees: Real Party will pay the legal fees of Johnson & Sedlack incurred in the representation of Petitioner in the Action in the amount of Sixty Two Thousand Dollars (\$62,000.00). Said payment shall represent the entire obligation with regard to such fees of Real Party and Respondent. The Parties will individually bear all other fees and costs incurred in the Action.
- k. Consideration: In exchange for the commitments set forth above, Petitioner and its representatives, employees, officers, agents, attorneys and designees agree to dismiss the "Action" with prejudice and refrain from protesting, litigating, opposing, making any complaints to administrative agencies, discussing, challenging administrative agencies determination or taking any other action that

might negatively impact, delay, postpone, damage or stop the development, construction and/or sale of the Project, so long as the final approved tract map does not exceed the limits presented in Exhibit A.

3. Claims Released. Petitioner, on the one hand, and the City and Real Party in Interest on the other hand, hereby release and forever discharge the other and their predecessors, successors, agents, officers, directors, shareholders, attorneys, and any person claiming by or through any of them from any and all claims, demands, liabilities, obligations, causes of action, damages, judgments, payments, attorneys' fees and costs, both known and unknown, that the releasing Party may now have or might hereinafter have against the Party subject to the release which arose out of, relate to or are the subject of the Action. With regard to the matters being released herein, the Parties waive the provisions of Section 1542 of the California Civil Code, and any other similar statute, rule or case law. The Parties have read and understood Section 1542, and have consulted with counsel regarding its terms. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING A RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

4. Dismissal. Parties shall enter into a stipulation to vacate the judgment and dismiss with prejudice the underlying litigation based upon the settlement agreement to be attached to the stipulation and filed with and approved by the Court. Real Party shall

direct and cause its attorney of record to file a request for dismissal with prejudice of the Appeal in its entirety and as to all parties within seven (7) calendar days of the date by which this Agreement becomes fully executed.

5. Approval by City Council: Though the Parties acknowledge and agree that execution of this document requires the approval of City Council for the City of Riverside, the agreement shall remain binding between Petitioner and Real Party regardless of City Council's action.

6. Attorneys' Fees. If any legal action or proceeding is brought for the enforcement or for a declaration of rights and duties under this Agreement 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.

7. No Admissions or Representations Except as Expressly Stated. Nothing in this Agreement shall be construed as an admission of any type by any Party. Each party in executing the Agreement does not rely upon any inducements, promises or representations made by any other Party except as set forth herein.

8. Consultation with Legal Counsel. Each of the Parties affirmatively represents that it has been represented throughout by counsel of its own choosing. Each Party has read the Agreement and has had its terms and consequences explained by its counsel. The Agreement is freely and voluntarily executed and given by each Party after having been apprized of all relevant information and data furnished by its attorneys of choice.

9. Successors and Assigns. This Agreement shall be binding upon and for the benefit of the Parties and their respective successors, representatives, assigns, officers, directors and agents wherever the context allows.

10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties for the settlement and release of all claims identified herein. This Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a duly executed writing.

11. Applicable Law. This Agreement shall be interpreted and enforced under the laws of the State of California.

12. Severability of a Provision. Should any term of this Agreement be deemed unlawful, that provision shall be severed and the remaining terms shall continue to be valid and fully enforceable.

13. Construction of Agreement. Each Party has cooperated in the drafting and preparation of this agreement. The Agreement shall not be construed against any Party on the basis that such Party drafted the Agreement or any provision thereof.


13. Authority to Bind. Each of the undersigned signing on the behalf of a party warrants that he or she is authorized to sign for such party.

14. Non-Retaliation: Real Party, and its members, shall not engage in, or assist in, any acts of retaliation against Petitioner or its members as a result of Petitioner's commencement and maintenance of the Actions.

SIGNATURES ON FOLLOWING PAGE:

PETITIONER:

11 Oct 2006
Date


Friends of Riverside's Hills
By Len Nunney

RESPONDENTS:

Date

City of Riverside
By: _____
City Manager

ATTESTED TO:

Date

City Clerk

REAL PARTY IN INTEREST:

Date

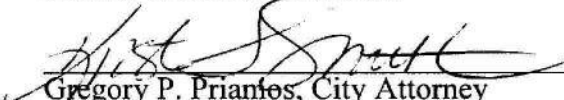
Jim Guthrie

APPROVED AS TO FORM AND CONTENT:

Date

Raymond Johnson
Attorney for Petitioner
Friends of Riverside's Hills

Date



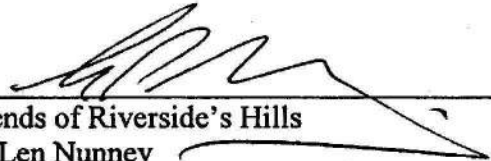
Gregory P. Prianfos, City Attorney
Kristi J. Smith, Deputy City Attorney
Attorneys for Respondents
City of Riverside and
City of Riverside City Council

Date

Jennifer M. Guenther
Attorney for Real Party in Interest
Jim Guthrie

PETITIONER:

11 Oct 2006
Date


Friends of Riverside's Hills
By Len Nunney

RESPONDENTS:

Date

City of Riverside
By: _____
City Manager

ATTESTED TO:

Date

City Clerk

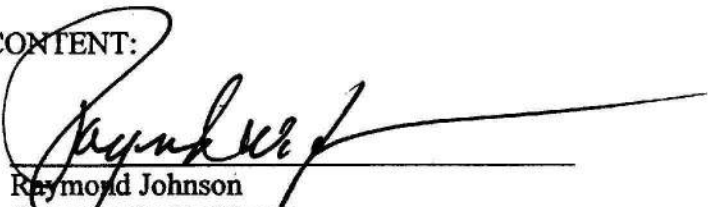
REAL PARTY IN INTEREST:

Date

Jim Guthrie

APPROVED AS TO FORM AND CONTENT:

OCT 11, 2006
Date


Raymond Johnson
Attorney for Petitioner
Friends of Riverside's Hills

Date

Gregory P. Priamos, City Attorney
Kristi J. Smith, Deputy City Attorney
Attorneys for Respondents
City of Riverside and
City of Riverside City Council

Date

Jennifer M. Guenther
Attorney for Real Party in Interest
Jim Guthrie

PETITIONER:

Date

Friends of Riverside's Hills
By Len Nunny

RESPONDENTS:

Date

City of Riverside
By: _____
City Manager

ATTESTED TO:

Date

City Clerk

REAL PARTY IN INTEREST:

9-28-06
Date



Jim Guthrie

APPROVED AS TO FORM AND CONTENT:

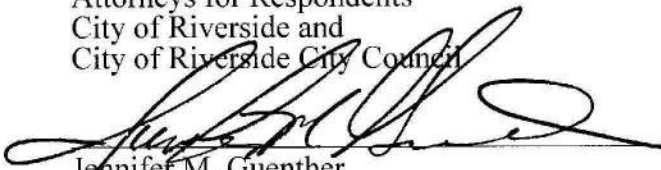
Date

Raymond Johnson
Attorney for Petitioner
Friends of Riverside's Hills

Date

Gregory P. Priamos, City Attorney
Kristi J. Smith, Deputy City Attorney
Attorneys for Respondents
City of Riverside and
City of Riverside City Council

10-24-06
Date



Jennifer M. Guenther
Attorney for Real Party in Interest
Jim Guthrie

Grading Exceptions as revised 11/21/06

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

CASE NUMBER:

HEARING DATE: December 19, 2006

APPLICANT PROVIDED GRADING EXCEPTION FINDINGS:

A) Encroachment within limits of Alessandro Arroyo and setback: to allow the following additional grading exceptions to encroach within the limits of the Alessandro Arroyo and the 50-foot development setback of the Alessandro Arroyo as defined in the Grading Ordinance:

- I. Lot 24, to allow minor encroachment into setback area;
- II. Flood Control Access Road;¹ and
- III. Water Quality Basin.²

- Grading exceptions and supporting findings have already been made and approved by City Council on September 28, 2004 to allow intrusion into the setback or arroyo for the following lots, and therefore no new findings are necessary:

Lots: Lot 2 (formerly lot 78);
Lot 3 (formerly lot 77);
Lot 4 (formerly lot 38);
Lot 5 (formerly lot 39);
Lot 7 (formerly lot 40 and 42);
Lot 8 (formerly lot 43);
Lot 9 (formerly lot 44);
Lot 10 (formerly lot 45);
Lot 11 (formerly lot 46);
Lot 12 (formerly lot 48);
Lot 13 (formerly lot 62);
Lot 15 (formerly lot 60);

¹ Although City Council previously approved a grading exception and related findings for this roadway, the location has been shifted so as to require additional findings and approvals.

² Although the City Council previously approved grading exceptions and related findings for the Water Quality Basin, the location of the Basin has shifted to the north of Century Hills Drive, requiring additional findings and approvals.

Lot 16 (formerly lot 59);
Lot 17 (formerly lot 58);
Lot 18 (formerly lot 57);
Lot 26 (formerly lot 50);
Lot 27 (formerly lot 51); and
Lot 28 (formerly lot 52).

Streets and utilities:

Cresthaven Drive;
Century Hills Drive;
Grass Valley Way;
Private drive; and
Sewer Access Road.

- As a result of the map reconfiguration, the following grading exceptions for intrusion into the setback or main arroyo approved by City Council on September 28, 2004, are no longer necessary and therefore eliminated:

Lot 37;
Lot 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). No new findings are required for the lessened degree of intrusion into the arroyo.

B) Slope Height Exception:

- The City Council previously approved grading exceptions and related findings to allow slopes in excess of twenty-feet for portions of Crest Haven and Century Hills Drives on September 28, 2004. As the configuration of these streets has not changed, no additional findings are required.

Relevant Standards from the City of Riverside Grading Ordinance

Arroyo and Tributary Grading Prohibitions in the City of Riverside Grading Ordinance: Grading in the Alessandro Arroyo and within the 50' setback to the Alessandro Arroyo is prohibited by the Arroyo Grading section of the Grading Ordinance, as follows "[n]o development or grading or any kind shall be permitted within 50 feet of the limits of the Mockingbird Canyon, Woodcrest, Prenda, Alessandro, Tequesquite, or Springbrook Arroyos and associated tributaries as shown on Exhibits "A-F". (Grading Ordinance, § 17.28.020(14)(a).)

Administrative Procedure to Allow Grading Within Designated Arroyo Tributaries: "The Zoning Administrator shall have the authority to administratively allow grading within designated arroyo tributaries depending on the sensitivity of the area. Sensitivity shall be determined by such factors as the presence of riparian vegetation, habitat for rare or endangered species, significant rock outcroppings or other unique topographic features on the property proposed to be graded or in nearby segments of the same tributary." (Grading Ordinance, § 17.28.020(A)(14)(a).)

Grading exception application requirements: "Application for the waiver of any requirement of this chapter shall be filed with the Planning Department prior to approval of the grading plan. The application shall be signed by the property owner or owner's representative using forms supplied by the Planning Department. The application shall contain information which demonstrates that there are exceptional or special circumstances that apply to the property that would prevent compliance with this title. The application shall substantiate the existence of exceptional or special circumstances by making the following findings:

A. That the strict application of the provisions of this Title would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of this Title;

B. That there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood;

C. That the granting of a waiver will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located .

The Zoning Administrator may require additional information if it is necessary to make a determination regarding the waiver request. The application shall be accompanied by a fee established by resolution of the City Council. A separate application shall be filed for each or grading project. (Grading Ordinance, § 17.32.020)

Considerations for exceptions: In determining whether to grant or deny the application for exception to the requirements of this title, the Zoning Administrator or Planning Commission shall consider the property characteristics, comments received from surrounding property owners, the community, or other persons, hardships on the applicant, and any other adverse impacts imposed by

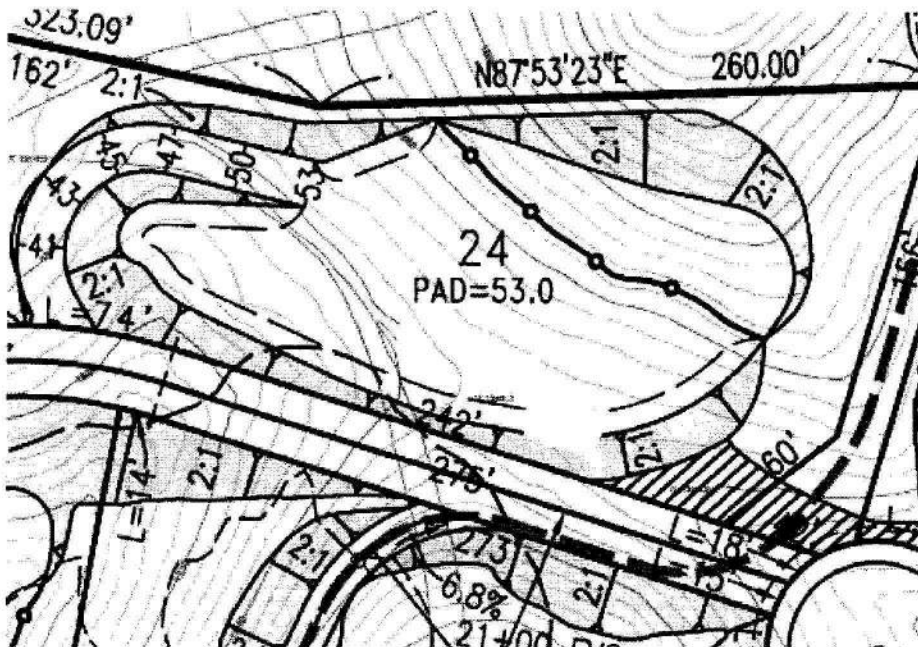
the regulations contained in this title in its determination of findings of fact to support its decision concerning the request for exception. (Grading Ordinance, § 17.32.050)

Definitions:

1. The Alessandro Arroyo is defined in the Grading Ordinance as follows: "the limits of the arroyos shall include all that land within the water course area, the adjacent slopes having an average natural slope of 30% or greater, **and** all other areas within the boundaries shown on Exhibits "A-F" (emphasis added.) (Id., at § 17.28.020(14)(b).) Exhibits "A-F" are maps attached to the Grading Ordinance that identify the Arroyos and tributaries. Exhibit "D" is attached below.

2. Alessandro Arroyo Study definition of Arroyo. The direction of the water flow in the Arroyo that occurs during periods of heavy rain is from east to west.

I. **Lot 24.** Lot 24 requires a grading exception for a minor intrusion into the 50 foot setback area surrounding the Alessandro Arroyo. This lot is a replacement for lot 49, which was removed from the Alessandro Arroyo. Lot 49 previously required a grading exception for complete intrusion of the entire pad into the main Alessandro Arroyo.



Findings:

1. ***The strict application of the provisions of this Title would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of Title 17.***

The location of lot 24 is dependent upon the access driveway for lots 25-28, as well as the location of the flood control access road. The lot is further limited to the north by the northern boundary line of the project and pre-existing development , and backs into a hillside.

This lot is a replacement lot for lot 49, which was located entirely within the Alessandro Arroyo. By removing the lot from the arroyo and placing it in its current location, the map further meets the requirements for preservation of open space and unique landforms stated in Measure R and Measure C.

To require that the developer abide by the previous approvals of grading exceptions for lot 49, rather than allow the developer to remove the lot from its intrusion into the main arroyo to a less sensitive and visible area would create a practical difficulty and unnecessary hardship in meeting the objectives of Measure R and Measure C, as well as the RC zoning, and substantially more mitigation would be required so as to best preserve the natural landscape.

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

TM 31930 was first approved in 1994, as a part of TM 23027. Later, it was approved as part of TM 28728, in 1998, before the Grading Ordinance was adopted in November, 1998. For the approval of TM 23027 and 28728, the City utilized the definition of the Alessandro Arroyo contained in the Alessandro Arroyo Study that identified the limits of the Alessandro Arroyo as consistent with the 100-year flood plain and the setback as 100' or 50' from the Arroyo limit. TM 23027 also prepared a hydrology study, and relied on the 100-year flood plain limits to identify the limit of the Arroyo on the map.

The Grading Ordinance contains a written definition of Arroyo, that can only be applied based on a site specific analysis, and provided

a map, Exhibit "D", which is intended for "Illustration Only". See Exhibit "D" attached to this document on page 2.

Because TM 23027, and later TM 28728, established the design of TM 31930 using the previous definition of Arroyo, TM 31930 identifies the Arroyo limits as the 100-year flood plain, and establishes a variable width (50 –100' depending on the ANS) accordingly (the Red Line). The change in the limits of the Arroyo, and the resulting change in the setback ribbon, represents an exceptional circumstance that justifies the approval of the subject grading exceptions. The exceptional circumstance for each lot and street requiring a grading exception is described below and identified on the attached map.

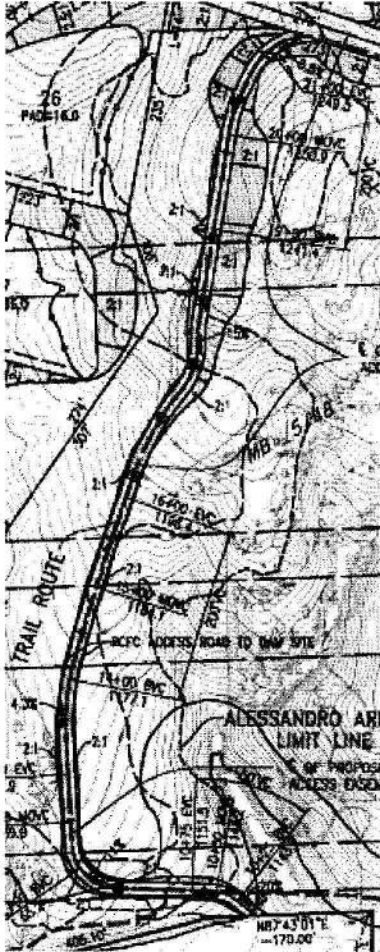
3. ***The granting of a waiver will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located.***

The grading exceptions for lots, streets, and the Crossing, requested herein will not cause a material detriment to the public welfare or injure the subject property, because the City has imposed conditions of approval which require: (i) grading activities to be in substantial compliance with the approved grading plan, and (ii) the grading plan to conform to contour grading policies prior to the issuance of a building permit. (COA Nos. 16(d) and 29).

The subject grading exceptions will not injure improvements in the RC zone or in the surrounding neighborhood because the neighboring residences include lots approved with the same grading exceptions, such as those tract maps south of TM 31930, including: TM 29606, TM 29515, and TM 32042/31859. The tracts that did not utilize clustering, and therefore did not require grading exceptions for encroachments into the setback and tributary limits dedicated less open space (i.e. TM 32042/31859).

Furthermore, all major tributary crossings for TM 31930 are bridged by either soft-bottom culverts, or other forms of bridging so as to avoid any impact to such sensitive areas and so as to lessen the amount of grating to the greatest extent possible. It is not clear whether water quality basins for the above-referenced projects required grading exceptions. However, even if they did not, because water quality basins are currently required to filter first flush nuisance runoff, they are a beneficial improvement and would not be detrimental or harmful to the property in the RC zone and in the neighborhood.

II. Flood Control Access Road.



Findings:

1. ***The strict application of the provisions of this Title would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of Title 17.***

Alessandro Dam Access Road: TM 31930 is proposing to improve the existing access road to the Alessandro Dam. The road has been in existence for centuries, in an unpaved state, leading from the intersection of Crest Haven Drive and Century Hills Drive, south through the headwaters of the westerly tributary, and exiting

Tm 31930 near the southwest corner of the site. The access road is used by the County Flood Control to maintain the dam at the west end of the Arroyo.

Under the revised TM 31930, the road is slightly shifted to the west so as to follow the backside contour of a knoll that will be less visible and intrusion into the main Alessandro Arroyo.

Years ago, when the access road was created, encroachments into the setback ribbon and into the tributary occurred. At this time, the applicant is proposing to improve the road to County Flood Control specifications. The improvements will include areas of cut and fill. The placement of new fill will create new slopes, which may extend the Encroachment Area beyond what occurred when the road was constructed (the "New Encroachment Area"). The New Encroachment Areas to the setback ribbon are highlighted in orange, and to the tributary, are highlighted in purple, on the map below.

The creation of New Encroachment Areas is appropriate because they are located in areas that are not sensitive.

New Encroachment Areas are not Sensitive:

- (i) The New Encroachment Areas do not contain riparian vegetation. (See Michael Brandman Associates, Jurisdictional Delineation, March 2003, Vegetation Map, see attachment A.)
- (ii) The New Encroachment Areas contain low quality (disturbed) RSS. (Ibid.) However, all RSS that will be removed by the development of TM 31930 (disturbed and relatively undisturbed) will be mitigated on-site. About 2.6 acres of disturbed RSS will be lost to development (R.B.Riggan, Biological Assessment, pg. 17.) Mitigation at the required ratio of 3:1 would require the preservation of 7.8 acres. TM 31930 is proposing to preserve 11 acres of RSS, or 3.2 acres more than is required. The preservation of RSS on-site mitigates the loss of RSS within the New Encroachment Area.

No rock outcroppings are located within the New Encroachment Areas.

- (iii) The Biological Assessment for TM 31930 did not identify any other unique features in the area of the New Encroachments or in nearby segments of the tributary.

For the reasons discussed above, this grading exception for the New Encroachment Areas is appropriate because the area is not sensitive.

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

There are currently 2 roads that provide Riverside County Flood Control with access to the dam. The access road in TM 31930 is the shorter road. The other road snakes through a variety of privately owned property and is much longer than the subject road. Also, the County may not have access to the longer road in perpetuity because we understand that several of the property owners intend to develop the land, which would close certain portions of the longer road.

Both roads are unpaved. Traveling on an unpaved road generates dust (PM10). Therefore, the use of the shorter road would reduce the dust generated by the regular maintenance of the dam.

Also, because Flood Control will be able to use the shorter road in perpetuity, the shorter road is preferable to the longer for that reason also.

The ability to access the dam using the shortest route, and reduce PM10, combined with the ability to secure the right to use the shorter road in perpetuity, are exceptional circumstances which do not apply generally to other property in the RC zone or in the neighborhood. These reasons suggest that the grant of this grading exception is appropriate.

3. ***The granting of a waiver will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located.***

Approval of this grading exception for the access road will be beneficial to the public for two reasons: (i) it will provide County Flood Control with a perpetual access route which is required to maintain the dam, and (ii) the use of the shorter unpaved road would reduce dust compared to the use of the longer road. The reduction in dust generation will benefit air quality in the neighborhood, which in turn will benefit residents in the surrounding RC zone and neighborhood.

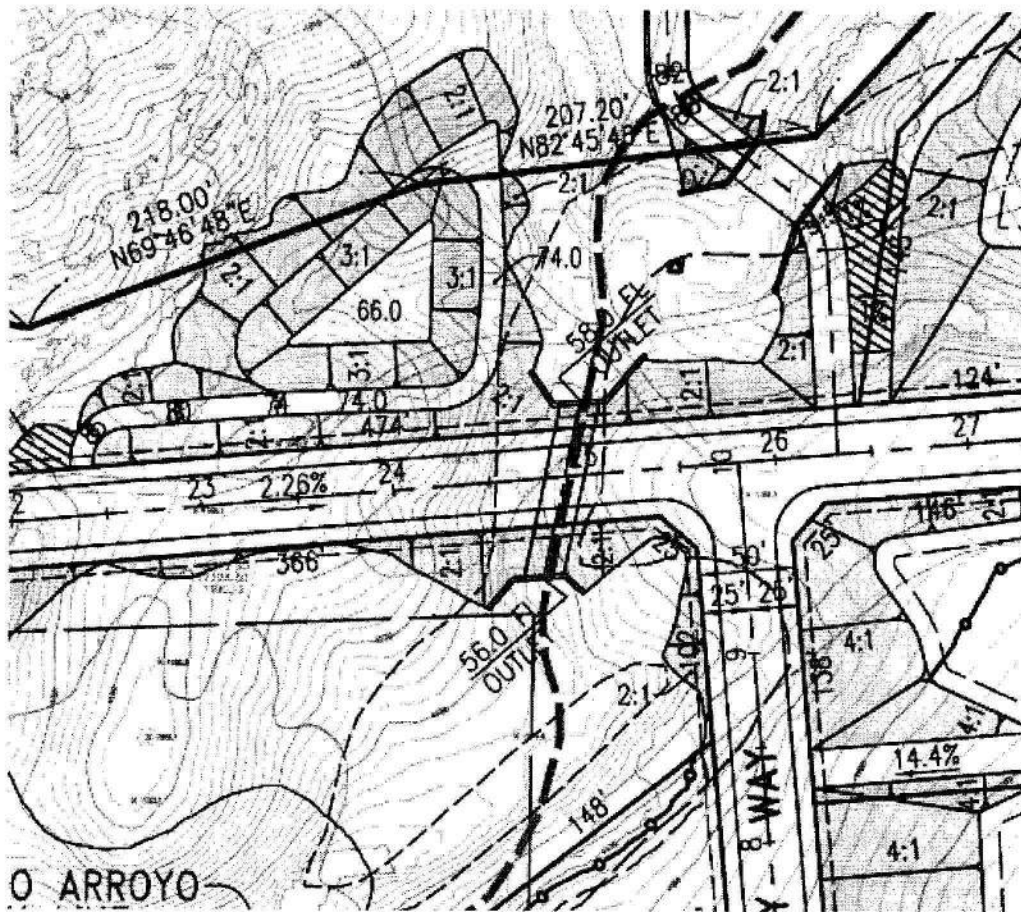
The access road will not injure property or improvements in the RC zone or in the surrounding neighborhood.

The grading exceptions for lots, streets, and the Crossing, requested herein will not cause a material detriment to the public welfare or injure the subject property, because the City has imposed conditions of approval which require: (i) grading activities to be in substantial compliance with the approved grading plan, and (ii) the grading plan to conform to contour grading policies prior to the issuance of a building permit. (COA Nos. 16(d) and 29).

The subject grading exceptions will not injure improvements in the RC zone or in the surrounding neighborhood because the neighboring residences include lots approved with the same grading exceptions, such as those tract maps south of TM 31930, including: TM 29606, TM 29515, and TM 32042/31859. The tracts that did not utilize clustering, and therefore did not require grading exceptions for encroachments into the setback and tributary limits dedicated less open space (i.e. TM 32042/31859).

Furthermore, all major tributary crossings for TM 31930 are bridged by either soft-bottom culverts, or other forms of bridging so as to avoid any impact to such sensitive areas and so as to lessen the amount of grating to the greatest extent possible. It is not clear whether water quality basins for the above-referenced projects required grading exceptions. However, even if they did not, because water quality basins are currently required to filter first flush nuisance runoff, they are a beneficial improvement and would not be detrimental or harmful to the property in the RC zone and in the neighborhood.

III. Water Quality Control Basin.



Findings:

- 1. The strict application of the provisions of this Title would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of Title 17.***

Northwest of the intersection of Century Hills Drive and Grass Valley Way a water quality basin is proposed. The basin will have a containment volume of 7,900 cubic feet, and will encroach into designated tributaries of the Alessandro Arroyo. The location of the basin is intended to avoid disturbance of water flow through the tributaries and is placed so as to avoid any sensitive habitat. The location of the water quality basin has further been determined by the California Regional Water Quality Control Board, and its construction is required as a mitigation measure for the Clean Water Act Section 401 Water Quality Standards Certification for TM 28728, dated July 14, 2003.

The City Council previously approved a grading exception for the Water Quality Control Basin on September 28, 2004. The change in location of the basin under the revised TM 31930 to the northwest side of Century Hills Drive requires that these findings be made once again.

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

Because of its proximity to the Alessandro arroyo, the project requires certain mitigation measures for any potential impacts on blueline streams as defined by the Clean Water Act or other water pathways identified by Federal, State, and Local agencies. Such mitigation measures are not required for other projects unless a wetland area is determined to exist within the project site. In this case, the revised map has been modified so as to further limit any impacts on defined waterways or wetlands areas, but is still required to meet the requirements of the Section 401 permit.

3. ***The granting of a waiver will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located.***

The grading exceptions for lots, streets, and the Crossing, requested herein will not cause a material detriment to the public welfare or injure the subject property, because the City has imposed conditions of approval which require: (i) grading activities to be in substantial compliance with the approved grading plan, and (ii) the grading plan to conform to contour grading policies prior to the issuance of a building permit. (COA Nos. 16(d) and 29).

The subject grading exceptions will not injure improvements in the RC zone or in the surrounding neighborhood because the neighboring residences include lots approved with the same grading exceptions, such as those tract maps south of TM 31930, including: TM 29606, TM 29515, and TM 32042/31859. The tracts that did not utilize clustering, and therefore did not require grading exceptions for encroachments into the setback and tributary limits dedicated less open space (i.e. TM 32042/31859).

Furthermore, all major tributary crossings for TM 31930 are bridged by either soft-bottom culverts, or other forms of bridging so as to avoid any impact to such sensitive areas and so as to lessen the

amount of grating to the greatest extent possible. It is not clear whether water quality basins for the above-referenced projects required grading exceptions. However, even if they did not, because water quality basins are currently required to filter first flush nuisance runoff, they are a beneficial improvement and would not be detrimental or harmful to the property in the RC zone and in the neighborhood.

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%;

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