
From: Richard Block <rblock31@charter.net>

Sent: Thursday, September 29, 2022 10:37 PM

To: Edwards, Erin <EEwards@riversideca.gov>

Subject: [External] Request for referral to Council of a project approved by the DRC on 9/21/22 PR-2021-000932 (MCUP, DR, VR, GR)

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To: Riverside City Councilmember Erin Edwards

From: Richard Block for Friends of Riverside's Hills (FRH)

Re: Request for Referral to City Council of Development Review Committee's Final Approval of PR-2021-000932 (MCUP, DR, VR, GR)

Hello.

As you know, when certain planning cases in the City receive Final Approval from the City's Development Review Committee, that decision becomes final unless during following the ten day period there is either be an Appeal of the case to the Planning Commission filed along with a \$2,529 fee or the Mayor or a Councilmember makes a Referral of the case to the City Council. The ten-day period in the present case ends this coming Monday, Oct. 3.

This is a request for you to make such a Referral in regard to the following case of warehouses in your ward:

PR-2021-000932 (MCUP, DR, VR, GR) David Stapley and Deanna Magnon 900, 960, 980 Marlborough Avenue 951-684-0860 dstapley@magnoncompanies.com Proposal by David Stapley and Deanna Magnon of the Magnon Companies to consider the following entitlements: 1) Minor Conditional Use Permit to permit two non-refrigerated warehouse buildings totaling 99,950 square feet; 2) Design Review of project plans; 3) Variance to allow for a reduced front yard setback; and 4) Grading Exception to allow retaining walls higher than allowed by the Grading Code. The 5.58-acre vacant site consists of three contiguous parcels, located at 900, 960, 980 Marlborough Avenue, situated on the south side of Marlborough Avenue, between

Northgate Street and Rustin Avenue, in the BMP-SP – Business and Manufacturing Park and Specific Plan (Hunter Business Park) Overlay Zones, in Ward 1. Contact Planner: Alyssa Berlino, Associate Planner, 951-826-5628, aberlino@riversideca.gov.

This case (the Project) was belatedly added to the DRC 9/21/22 agenda only a few days before that meeting, and received DRC final approval at that meeting. Thus the case becomes final unless either Referred or Appealed by this coming Monday, Oct. 3.

Sorry for the rush, but if this isn't referred by Monday, then FRH will have to formulate its appeal letter and I will write the \$2,529 check on Monday, with perhaps unintended consequences as mentioned below.

Your ward is bounded by two of Riverside's outstanding physical features – the Santa Ana River on the west, and the Box Springs Mountains on the east. You have played a major role in helping with impacts to the Santa Ana River on the west, and now we are asking for your help in reducing impacts to the Box Springs Mountains on the east, including biological impacts and impacts on those who will be using the in-progress improvement of the two mile segment of Gage Canal Multipurpose Trail between Palmyrita and Blaine (the Trail), which the Project is adjacent to and for which City Parks got a \$3.7 million grant from the State.

There are several issues that we believe that the DRC approval ignores and need to be addressed, hopefully without a lawsuit. As the City Parks Department \$3.7 million grant application to the State said, "This proposed project will create a Class I paved asphalt trail with a parallel decomposed granite trail, providing a route for both recreational users and commuters using active transportation modes such as bicycles, skates, and scooters." The Trail is thus both a park and a right-of-way and thus subject to the restrictions on warehouses, in particular adequate screening, of the City's Zoning Code's Good Neighbor Policy (Section 19.435.030 – "Site location, operation and development standards") for warehouses, which the DRC consideration essentially ignores.

One of the essential criteria for obtaining the \$3.7 million grant from the State was that the project be located within a disadvantaged or low-income community, and as the grant application shows, the community surrounding the project site meets both those criteria. The impacts of the warehouse project on the Trail users is thus an environmental justice issue that the CEQA analysis failed to address. We applaud your expressed firm support for adequate consideration of such issues.

Then there are the biological issues. In regard to the Project, there is expert testimony in the public record identifying deep flaws in the Project biological analysis. For example, the developers' biologists found only 3 vertebrate species present at the site but an outside wildlife expert in just a couple of hours found 19 such species.

“Dr. Smallwood identified numerous areas of concern, including deep methodological flaws underlying the conclusions of the Biological Resources report and likely impacts to biological resources which the IS/MND failed to consider or appropriately mitigate. Alarmingly, Dr. Smallwood also found that if developed as currently proposed, the Project—which is located within the Western Riverside Multiple Species Habitat Conservation Plan (“MSHCP”) area, a plan specifically designed to protect special-status species living in and around the neighboring Box Springs Mountain Reserve—would conflict with previously adopted provisions of the MSHCP. ... Where a local or regional policy of general applicability, such as the MSHCP, is adopted to avoid or mitigate environmental effects, a conflict with that policy constitutes a potentially significant impact on the environment. ... Dr. Smallwood identified additional likely impacts to wildlife, including habitat loss, interference with movement, traffic impacts, and cumulative impacts. ... Finally, Dr. Smallwood proposed a comprehensive series of wildlife mitigation measures to minimize the Project’s likely impacts on biological resources.” (Staff Report, pp. 37-86)

But no such mitigation measures were adopted. Indeed, even the mild improvements in the biological Mitigation Measure recommended by the state CDFW were not adopted. So there are some serious issues that now need to be addressed, which is ample reason for a referral or appeal.

Your referral would in no way obligate you to not support or not vote in favor of the Project at the Council. Even if you vote to approve the project, with or without any changes, we will certainly appreciate your having done the referral.

The present system of having DRC approvals of major projects, like this one, be final unless appealed, a system instituted a few years ago as part of a “streamlining process”, has unintended bad consequences:

First, **it is unfair**: a project neighbor or non-profit group is cut off from having their concerns fully addressed unless they pay, first \$2,529 to appeal to the Planning Commission which (as in one at least one past case that we know of) might well be in accord with the DRC approval even if there ought to be further environmental analysis, and then another \$2,529 to appeal that to the Council. That’s \$5,058, a lot of money and a huge imposition on ordinary citizens and small non-profit do-gooder groups like FRH.

And if someone or a group like FRH feels they have a valid case and even after spending that kind of money the project still gets approved, they are very probably going to sue the City and developer as the only way to get their money back, either through a settlement or a court order. So the large double fee system has the unintended consequence of encouraging lawsuits. And even if the developer covers some of the City’s costs in such a suit, with City

attorney and staff time, it will end up costing the City far more than the \$5,058 in appeal fees they will have collected.

It is our understanding that the project applicant is supposed to pay the cost of the project's CEQA analyses, but if, as a result of evidence presented by the project opponent(s), further analyses are required or the Commission or Council decides that the project needs an EIR instead of a mitigated neg dec, will the City or applicant reimburse the opponent for the \$2,529 or \$5,058 appeal fees they were forced to spend to get the CEQA law enforced? There is no mechanism in the code for that, so again as a matter of basic fairness, such large fees should not be charged to local residents or non-profits in the first place, and the way to achieve that is, upon such request, to have the matter referred to the Council instead of appealed.

We hope that you will feel that a referral to the Council is appropriate. We would greatly appreciate your doing that referral regarding all of the several DRC approvals of the Project. **Please let us know as soon as possible whether and when you will do that, as otherwise we will have to scramble to get the appeal check and letter prepared and delivered within the very short time period remaining.**

Thank you for your help on this.

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Riverside, CA 92507 951-683-8762

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