

From: [Fariba Jafary](#)
To: [Norton, Brian](#)
Cc: [Lilley, Jennifer](#); [Tinio, Maribeth](#); [Richard Block](#)
Subject: [EXTERNAL] Opposition to Case Number- PR-2021-00119- Grading Exception
Date: Friday, February 9, 2024 8:01:44 AM

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Dear Mr. Norton,

My husband, Mark Nickson, and I reside at 6869 Wyndham Hill Drive. As adjacent property owners and owners of the property which the ingress egress easement is provided to 6500 Hawarden, we are submitting our opposition to the above referenced grading exception and all construction in its entirety as follows:

1. Prior to the purchase of our property we contacted The Planning Division in order to find out the exact type of construction that could take place on the property noted as 6500 Hawarden. We were advised that based on the Arroyo setbacks and property lines that the pad was approximately 8500 sq ft and no more than an approximately 2500 sq ft home would be permitted to be built on that property. The Planning Division advised us that a grading ordinance under Title 17 was adopted by the City and in effect as it applied to the property in question. The ordinance and environmental restrictions to date, remain the same. We subsequently followed up with the Planning Division on multiple occasions to reconfirm what was initially represented to us and each time we were told of the setbacks and ordinance restrictions. Fast forward, Jiim Guthrie purchases the property and contacts us to let us know he was also aware of the setbacks and restrictions, but that he will simply request a grading exception and build a large home. Guthrie knowingly purchased the property with the intent to disregard the setbacks and ordinances. Clearly as a builder he knew what type of property he was purchasing. Because of the shape of the property and the limitations of square footage of what could be built he was able to obtain the land for a very reasonable price. Now Guthrie wants to disregard the setbacks and ordinances to build a 5800+ sq foot and increase the lot size to 26,000+ sq feet. We take issue with the said representation in so far as:

A. The Planning Division either misrepresented or provided inaccurate information to myself and my husband which we used as a factor to determine the purchase and reasonable price of our home.

B. The Planning Division is intentionally disregarding the exact setbacks and ordinances they advised us to accommodate Guthrie.

C. Guthrie purchased the property with the knowledge of the build restrictions and with the intent to request grading exceptions to develop a pad in excess of 3x its current state. He knew of the odd shape of the property and size. He was neither gifted nor did he inherit the property and therefore, this is an attempt to increase the value of a property he purchased knowing the limitations of what could be built. In his circumstance, no hardships have arisen from the zoning and ordinance since he was aware of the size of the home he would be able to build prior to purchasing the property and the fact that he can still build an approximately 2500 sq ft home on the property.

2. Pursuant to Berkeley Hillside Preservation vs. City Of Berkeley, the California Supreme Court states, "A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that

distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.”

The unusual circumstances in this project is both the extensive grading to build into the Alessandro Arroyo and the exporting of an exorbitant amount of soil discussed below.

3. To date we have not been provided with a completed **Grading Standards Exception**

Justification. If in fact one has been provided, we request a copy of it for review. The Grading Exception will be detrimental to the public welfare and adjacent properties in so far as the grading plans show Earthwork Quantity Estimates of 10,500 CY cut and 1,500 CY fill which would equate to approximately 800 15 ton dump trucks going back and forth on the easement on our property, shared driveway and immediately next to our home. In addition, our neighborhood and Overlook would be subjected to 1600 trips of dump trucks going back and forth for one single family home. Furthermore, we take exception to Guthrie's grading of the easement based on the current plans he's submitted as he is pushing into our property line for various portions of the grading and build. There will be physical and environmental damage to the easement from both the 800 dump trucks going back and forth and the extensive grading and pad that's noted. We do NOT give permission for any grading that will impact the easement and our property. Nor will we permit a silt fence to be added to the easement and create not only an eyesore, but prevent movement of wildlife. The Planning Division does not have the authority to permit grading and or construction on an easement without confirmation/documentation to ensure the requested project is within the contractual agreement between the land owner and land user. We request confirmation that Guthrie has provided the appropriate documentation and that we be provided with a copy of the documentation for review.

4. The Request for Public Comment was prematurely issued to the adjacent property owners and a new time period should be provided once additional requested information has been provided to the public. As we discussed, you indicated that even though a categorical exemption was applied an environmental report will be required. We requested a copy of an environmental review with no response. As I have not received a copy of the environmental review, I assume one has not been provided to the Planning Division? We have also to date not been provided with a copy of the Grading Standards Exception Justification. Additionally, you indicated that you had requested some information from Guthrie, but did not indicate what was requested. Please advise what information is pending and/ or documents have been provided to the City subsequent to the start of the Public Comment.

We are being asked to respond in two weeks time to a project that's either incomplete in its documentation or the public is not being provided information that has been requested. This creates an undue hardship to provide a response with only partial information and therefore, once the documentation for the project is complete a new Request for Public Comment should be issued.

5. We herein incorporate all comments and objections raised and submitted by the Friends of Riverside's Hills as part of our opposition to the above referenced project and reserve our right to appeal.

Regards,

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