

Written Portion of Appeal Part 2:

This is additional information for the appeal of PLN17-10080 CUD approval. This is being written to address concerns regarding the new Landscaping plans, as well as to further substantiate the arguments made in the original appeal write-up that was submitted in February of 2021. I apologize for the length of these concerns, but County Staff still have not agreed that the home is on a ridgeline, and the Project Conditions, Reasons for Recommendations, CEQA exemption, and the Preliminary Conditions of Approval all state that no trees are being removed. County Staff must recognize these inaccuracies and update all of these to be factually accurate, and this entire application needs to be re-reviewed in light of the actual facts and an Environmental Impact Report should be done as required in California PRC § 21005. The concerns raised in this addendum to the appeal should be considered along with those in the original appeal document submitted in February of 2018.

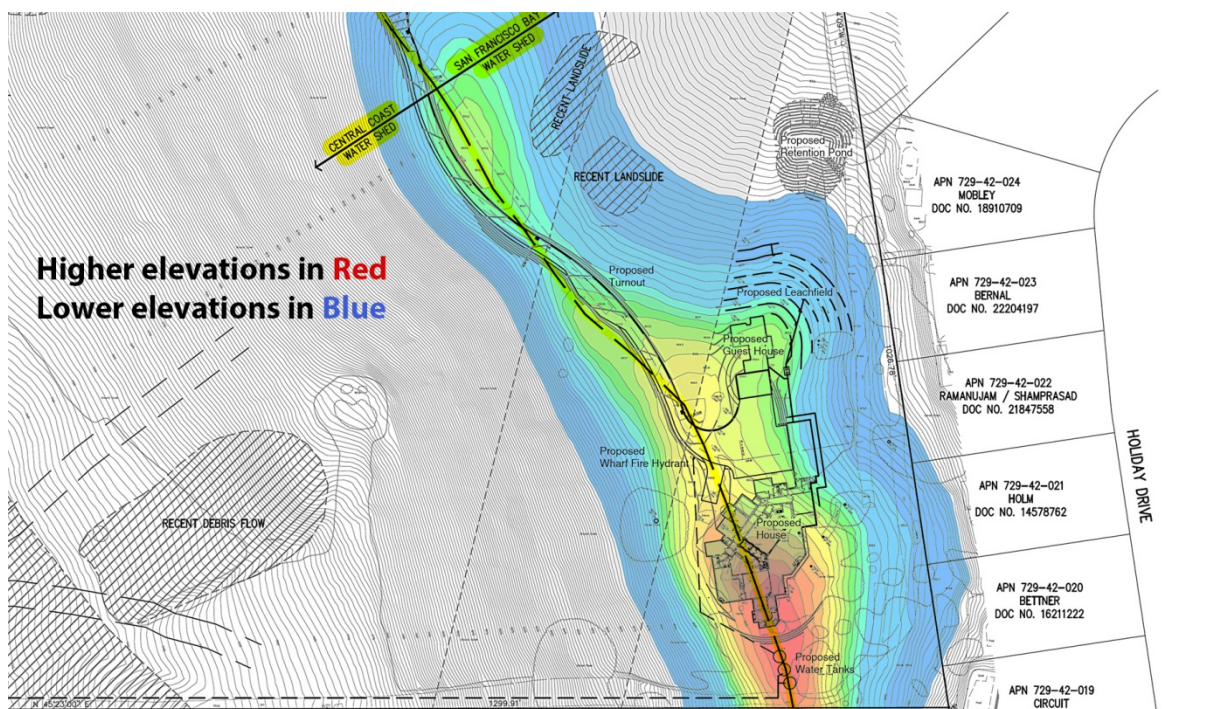
In this addendum, I will first further address the Ridgeline and Viewshed impacts of the project, as County Staff continues to deny that the property is on a ridgeline. Secondly, I will then provide further evidence of the magnitude of the environmental damage that occurred with the prior unpermitted tree removal. Thirdly, I will address the significantly increased impact of the project due to the landscaping plans that were added after the CUD had been approved and appealed. Finally, at the end of this document, I will summarize and list the requested actions for this appeal.

1 – Ridgeline/Viewshed Impacts (additional evidence that the project is on the ridgeline):

The County Staff Memorandum dated February 4th, 2021 says the following in the section 1 titled *Effectively preserves the natural or scenic character of the land*:

The proposed development is not on the ridgeline, but rather, behind the ridgeline in an area that is buffered by a natural knoll to the north of the proposed location.

The assertion that site location is buffered by a natural knoll to the north is inaccurate. There is a knoll to the north of the project site, but the City of Morgan Hill is to the South and West of the project. A knoll to the north (that is at a lower elevation than the proposed home) does nothing to screen the view of home from the valley below in Morgan Hill. Below is a 'colorized' version of the current plans, showing higher elevations in red and lower elevations in blue.



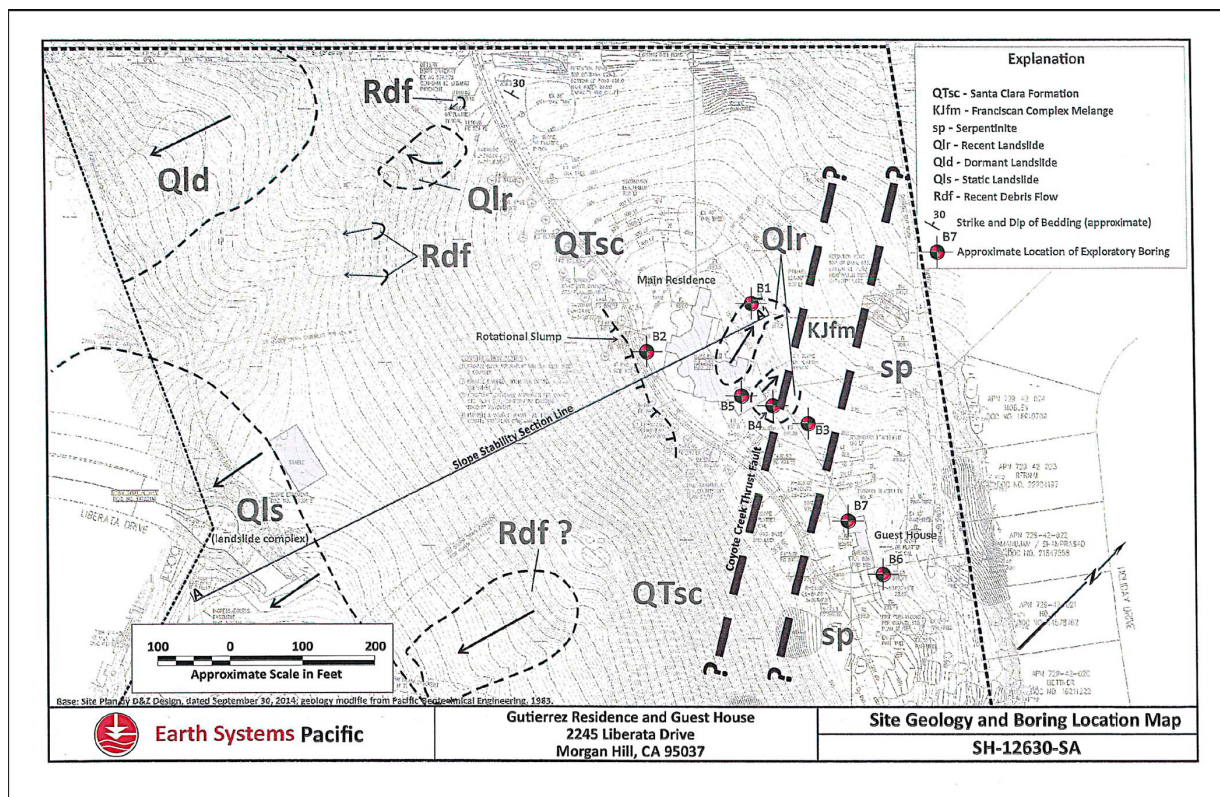
Note that the watershed divide line (black dashed line) perfectly follows the highest elevations, as expected, and the proposed house is directly atop the highest elevations along the ridgeline.

The County Staff report includes a Geotechnical Report by Earth Systems Pacific dated January 30, 2015. In *section 1.0 Introduction – Site Setting* this report specifically says “The site is crossed by a northwest-trending ridgeline with steep south-facing slopes and moderately inclined north-facing slopes.”

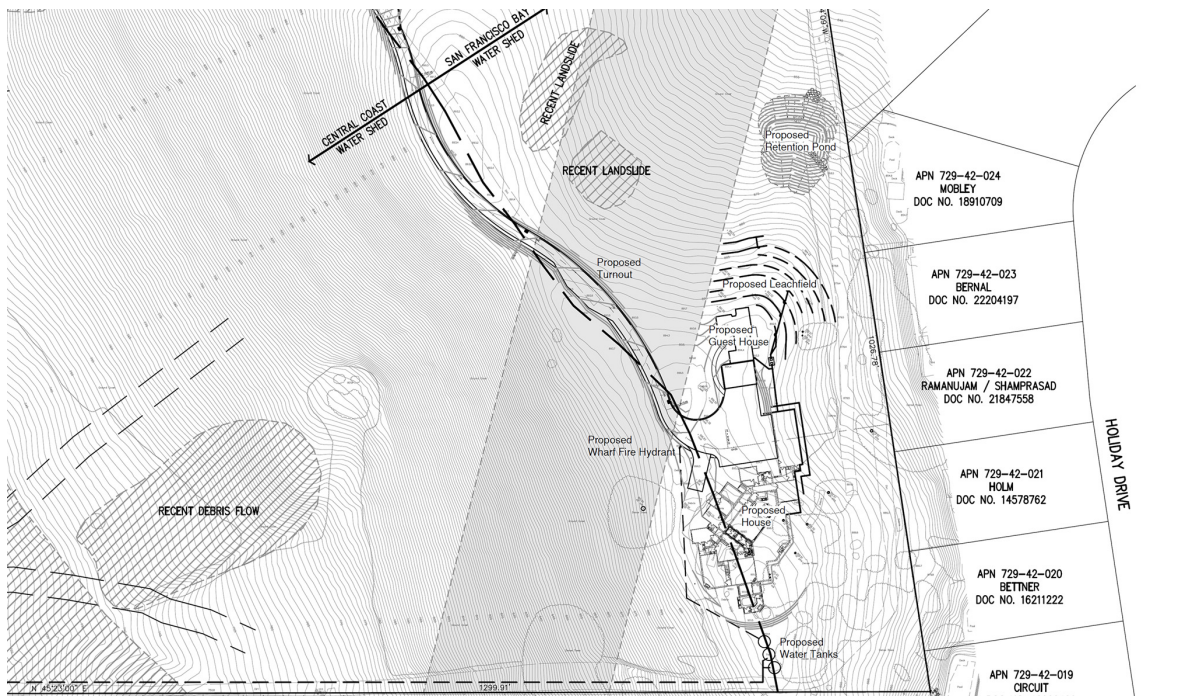
This appears to be concrete evidence that the proposed project is on the ridgeline. **However, this geotechnical report was written before County staff helped the applicants to site the project in a new location.** The Staff Memorandum written February 4th, 2021 after the approval of the CUD, says the following in the *Background* section:

On November 28th, 2017, the owners submitted for a new application of Building Site Approval, Grading Approval, Design Review, and Open Space Easement (OSE) Compatible Use Determination (CUD). The application was deemed incomplete on December 28, 2017. Staff met with the owners’ consultants from Hanna-Brunetti and D&Z Designs in the months following the second incomplete letter to work with the applicant on siting the project and addressing any outstanding issues and concerns.

County staff helped the applicants move the position of the primary house, detached garage, and the Guest House after the geotechnical report was done. Consequently, **the Geotechnical report included in the original staff report shows the primary house in a different position than the current plans do.** Below I include the Site Geology and Boring Location map from the Geotechnical Report:



In the Plans below, the proposed house was moved to the south of its original position to an even narrower portion of the ridgeline:



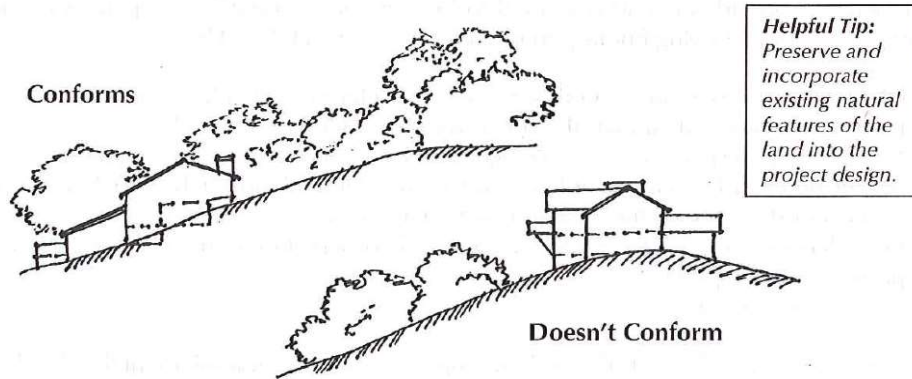
This demonstrates that the Geotechnical Report is inconsistent with the current plans, as the house has been moved to an even narrower portion of the ridgeline. **Consequently, the currently proposed plans are not supported by the current Geotechnical report.** The fact that the home was moved to a narrower portion of the ridgeline will affect the Slope Stability Section Line, the geology reports, and the soil reports, and could similarly impact grading quantities. This movement has made the project even more prominent on the ridgeline. The Serpentinite detected in borings B6 and B7 will now be greatly disturbed (as is discouraged in the Habitat Plan).

County staff's perspective that the home is not on the ridgeline is incorrect. There is overwhelming evidence (including photos from the first written part of the appeal) that this proposed project is directly on the ridgeline. Additionally, the Geotechnical Report included in the staff report evaluates a different location for the project than is currently proposed in the plans.

It should be noted that the Option B grading and drainage plan for the alternate site analysis avoids the ridgeline issues, as well as most other issues raised in this appeal. Option B is not on a ridgeline, would not require tree removal, would not impact endangered plants, and would not require a nearly 1000 foot driveway. The County has argued that Option B is not an option because of the increased grading quantities. While it is true that grading quantities are increased, the grading is much more localized on a lower visibility portion of the hillside. Option B is also near other homes in this lower visibility area. It should be noted that increased grading is allowed and even encouraged in cases like this proposed development on the ridgeline. In the General Plan Policy R-GD 27:

R-GD 27
Grading and excavation to situate a residence or other structure within a hillside to reduce visual impacts is encouraged, in accordance with due consideration of geologic issues, structural integrity, and other pertinent design features and lot characteristics.

Additionally, the Open Space Easement Compatible Use Determination Development Handbook recommends siting structures in the least visually prominent areas:



Siting structures in the least visually prominent locations is especially important on open hillsides where the prominence of construction should be minimized by placing structures so that they will be screened by existing vegetation, depressions in topography, or other natural features.

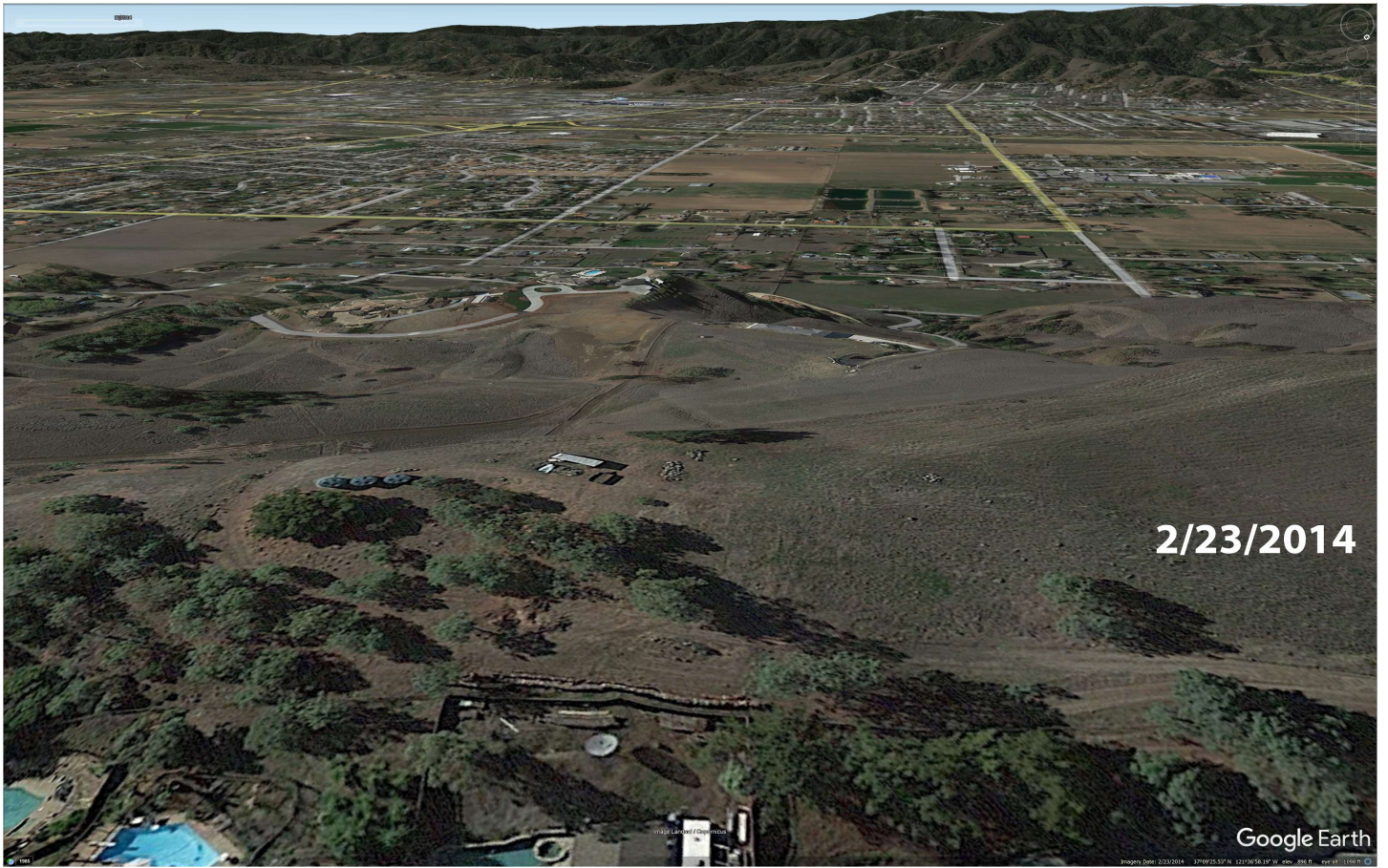
In this case, the placement of this project clearly does not conform.

2 – Prior Removal of Trees

To better demonstrate the environmental impact of the prior unpermitted tree removal, I am including below views of the trees on the parcel at different points in time from Google Earth. There was a fire in 2011, but relatively few trees were impacted as is evidenced from the Google Earth view in 2016 that show a healthy population of trees. Between 9/1/2017 and 5/9/2018, the majority of the trees are removed. The staff report says the following:

On November 28, 2017, the owners returned and submitted for a new application of Building Site Approval, Grading Approval, Design Review, and Open Space Easement (OSE) Compatible Use Determination (CUD). The application was deemed incomplete on December 28, 2017 as staff had numerous comments and issues related to the project, primarily concerning location (siting), proposed grading, Habitat Plan Coverage and any impacts to serpentine soil and/or Bay Checkers Butterfly. The owners did not resubmit until July 23, 2018, where biological geologic reports were provided in addition to plans revisions.

During this timeframe, before the final resubmittal of the project on July 23, 2018, the majority of the trees were removed from the site. Please see the dated pictures of the site below for a visual history of the state of the trees.





The preceding images show that a large number of trees were removed proximate in time to the final project application. It is clearly not accurate to say that no trees are being removed for this project

The Statement of Exemption from CEQA states that no trees are being removed as a justification for exempting this project from further environmental review. The planner who signed this CEQA statement had been informed of the tree removal before signing and submitting it. The email that notified her about the tree removal is included at the bottom of the original staff report, and it gives evidence that the County's aerial surveys show that the trees were removed. In a phone conversation with the Zoning Administrator and me, when asked by the zoning administrator if she had seen stumps at the site during her inspections, the planner stated that she had. Despite having been informed of the tree removal, having seen stumps, and despite the plans themselves stating a tree was to be removed, the factually incorrect CEQA exemption form was still signed and submitted.

California Public Resources code – PRC § 21005 states the following.

§ 21005. INFORMATION DISCLOSURE PROVISIONS; NONCOMPLIANCE; PRESUMPTION; FINDINGS

- (a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.
- (b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.
- (c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.
- 21080@If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:
- (1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.
- (2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.
- (d) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.**
- (e) (1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.
- (2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

Prior to approving the CUD and filing the CEQA Exemption, the planner on the project knew about the prior unpermitted tree removal. This tree removal was not disclosed on the Statement of Exemption from CEQA as appears to be required in subsection (a) above. Additionally, per section (d) above, the prior removal of trees impacted the environment, and thus warrant further Environment Review for this project.

It should be noted that, as a result of the prior unpermitted tree removal, the property is not in compliance with the Open Space Easement that was granted. County Ordinance Code Section C13-40(1), states that

Prior to undertaking any development or use on restricted land, the land owner must apply for and obtain a compatible use determination from the County.

This was not done for the unpermitted tree removal, and thus this code has been violated. The County should consider placing this parcel in non-renewal status, as the Environmental impacts from the tree removal are large, and not easily mitigated.

3 – New Landscape Plans/prior unpermitted tree removal abatement

After the appeal was filed, County staff opened a tree investigation with Code Enforcement. The planner has stated that, as abatement for the unpermitted tree removal, the applicant is required to replant a total of 165 trees. New Landscaping plans were submitted for this abatement, but the landscaping plans themselves are not consistent with the Guidelines for an Open Space Easement Property. The new landscape plans propose over 185 new trees, planted along both sides of the very long driveway along the ridgeline, as well as lines of dense trees along both the northwest and northeast property lines. These lines of trees are not natural in appearance, and may impact neighboring mature oak trees (many of the

proposed trees are even under the canopies of existing mature oaks). It appears the trees will form a “privacy screen” for the parcel.

If these trees are planted, they will block views to the west and shade afternoon sun for the adjoining parcels in Holiday Lake Estates. They will block morning sun and views south for adjoining parcels on Barnard Road. The proposed trees will also shade solar panels on adjacent parcels, as well as blocking the primary view east from an adjacent astronomical observatory. The trees will also be highly visible from the valley floor in Morgan Hill, and the lines of trees will not appear to be natural.

Similar trees were planted on the parcel ~10 years ago, and the County required their removal as they were inconsistent with an Open Space Easement Parcel. The same is true today.

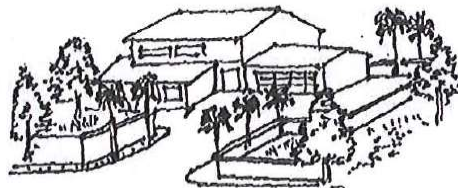
The new Landscaping Plans also propose removal of 11 Ordinance Sized trees. These appear to be for trees that were already removed. The tree violation has still not been mitigated, and adding landscaping plans after the fact that indicate the trees are to be removed should not abate the tree violation.

Open Space Easement Developments are limited to a maximum of 5% total coverage of the parcel. While “Landscaping that is in keeping with the natural setting” is exempted from this 5%, the lines of trees along the property borders and driveway should not be. They are not in keeping with the ‘natural setting.’ Thus even the 5% coverage limit is exceeded making the project is incompatible with an Open Space Easement Property.

The Open Space Easement CUD Development Guidelines says to Group Plants Informally:



Conforms



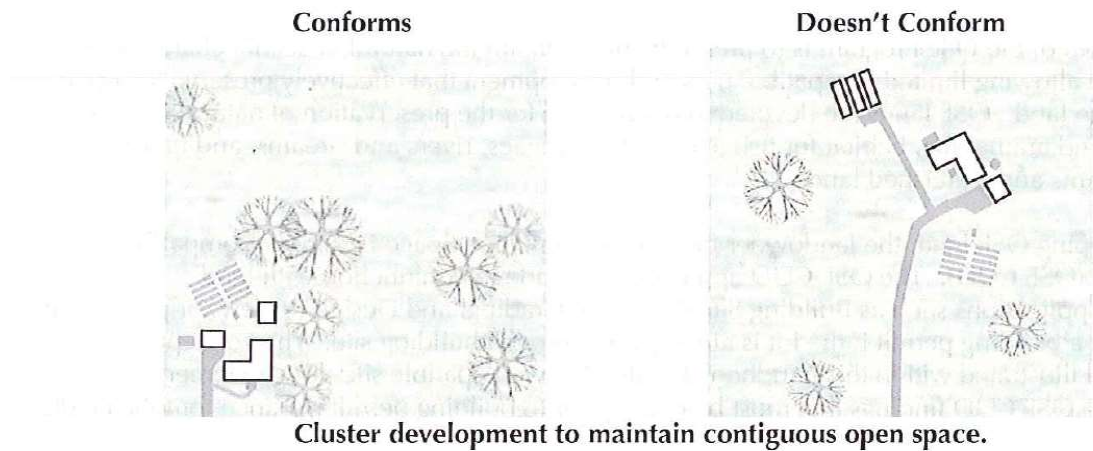
Doesn't Conform

Group plants informally, not in rows, to blend with natural vegetation. Avoid the introduction of extensive areas of exotic plants and sod.

Helpful Tip:
Appendix D provides a reference list of native and adapted non-native plants organized by type, plant name, and plant community. Use this list as a design resource.

The proposed lines of trees do not conform with this guideline.

The Open Space Easement CUD Development Guidelines recommend to “Cluster Development to maintain contiguous open space.”



Lines of trees along property borders do not conform to this guideline and do not maintain the contiguous open space.

The proposed trees along the property line clearly violate many provisions in the Santa Clara County Ordinance Code Division C13 Chapter II Open Space Agreements, including:

C13-39(a)(1) requires that any proposed use or development “effectively preserves for public use or enjoyment the natural or scenic character of the land”. Lines of trees that block views and shade the land do not do so.

C13-39(a)(2) requires “the proposed use or development does not significantly impair the open-space character of the land.” Lines of trees along property lines do significantly impair the open space character, as they block hillside views of the land and views of other areas from adjoining parcels and neighboring Rosendin Park.

The lines of trees are not consistent with the Open Space Easement Development guidelines which say to “Group plants informally, not in rows, to blend with natural vegetation.” The lines of trees along the property borders are not consistent with this guideline, and will not blend with the natural vegetation.

The new lines of trees along the property borders and along both sides of the driveway also violate the following General Plan Policies and implementation:

R-GD16 -Goals and policies of the General Plan recognize the development constraints, issues, and sensitivity of the hillsides of Santa Clara County for new development. The goals of the General Plan, outlined in the Open Space Action Program, are to prevent further urban uses and development outside cities, conserve wildlife habitat, avoid natural hazards, and preserve the generally natural appearance of the hillsides as much as possible.

The lines of trees along the northwest property boundary and along the driveway along the ridgeline do not preserve the generally natural appearance of the hillsides as seen from Morgan Hill or from the adjoining parcels or park.

It should be noted that the northern corner of the parcel being developed abuts Anderson/Rosendin County Park, and the views from this park will be impacted as well.

In Conclusion

As has been established above:

1. The proposed project is perched on the ridgeline above Morgan Hill
 - a. It is in a highly visible area.
 - b. In Section B - Reasons for Recommendations, Compatible Use Determination and Enhanced Design Review Findings for Open Space Easement contracts, it twice falsely states that the proposed development is not on a ridgeline.
 - c. In Section D – Design Review Findings, it falsely states that “The development is also not located on or above any ridgeline.”
 - d. In Section E – Grading Approval, it falsely states that the grading “will not disturb any ridgeline or create any visual scar”.
2. The Geotechnical report’s project siting is different than the current plans project siting.
 - a. The Geotechnical report was written before the project was moved to a new location.
 - b. Consequently, the proposed project site and plans are not supported by the current Geotechnical Report.
3. Significant Environmental damage has been done by the prior unpermitted tree removal. The majority of the trees in a “Foothill Pine – Oak Woodland” were removed without permits.
 - a. The trees were removed immediately prior to the final project application, and after the County assisted the applicants in moving the project site.
 - b. In the Project Description, it falsely states that “The project will not require any removal of trees.”
 - c. In Attachment A, The Statement of Exemption from the California Environmental Quality Act falsely states that “There is no proposal to remove any existing trees on the property.”
 - d. In Section B - Reasons for Recommendations, Compatible Use Determination and Enhanced Design Review Findings for Open Space Easement contracts, it falsely states twice that “the proposed development is not proposing any tree removals.”
 - e. In Section D – Design Review Findings, it falsely states many times that no trees will be removed, and that the existing trees will be protected.
 - f. The Santa Clara Valley Habitat Plan Conditions of Approval have already been violated.
4. The Landscape plans to mitigate the prior unpermitted tree removal are incompatible with an Open Space Easement property
 - a. Lines of Trees are not compatible with Open Space Easement CUD Development Guidelines.
 - i. The majority of the proposed trees are not clustered with the structures.
 - ii. Lines of trees are not ‘Grouped Informally’, as the guidelines require for landscaping.
 - b. The lines of trees are not “in keeping with the natural setting”, and are thus not excluded from the maximum 5% total coverage of the parcel.
 - c. The proposed trees have significant impact on views the neighboring parcels, and the nearby park, as well as the views of the hills from the valley floor below in Morgan Hill
 - d. The proposed trees will impact nearby solar panels and a nearby astronomical observatory.
 - e. Trees were previously planted in a similar way and the County required their removal.
 - f. The lines of trees do not comply with County Code Ordinance sections Sec. C13-39(a)(1) and C13-39(a)(2).
 - g. County Ordinance Code Sec. C13-40(a) has been violated with the unpermitted tree removal.

The appellant requests the following:

1. The Compatible Use Determination should be vacated for the reasons stated in this appeal.
2. The new landscaping plans should be rejected, as they are incompatible with an open space easement and will have major impact on the views from neighboring parcels, the park, and the valley floor.
3. A new Geotechnical Report should be done that evaluates the site reflected in the current plans.

4. County Planning Staff should be directed to take no further action on the application until the unpermitted tree removal violation has been mitigated.
5. The Statement from exemption from CEQA should be corrected to indicate many trees were removed, and an Environmental Impact Report should be done.
6. A determination should be made that the affected ridgeline is a "ridgeline" as considered in the County General Plan and any subsequent application should be reviewed in light of that fact.
7. It should be noted that many of the problems with the development will be resolved if the house is located at alternate site B, where it was originally planned, adjacent to Liberata Drive. While it is true that it is in an identified landslide area, this does not preclude development. To my knowledge, no Geotechnical evaluation has been done at this alternate site. This alternate site should be evaluated before eliminating it as an alternative.