Attachment 1

Response to letter from Mitchell Tsai, dated September 6, 2016

November 10, 2016

Purpose:

The purpose of this attachment is to factually address the misunderstandings exhibited in some comments Mr. Tsai has submitted on behalf of his clients, with inline replies or references to other attachments where claims from several sources are assessed together in greater detail.

Key Issues:

1. Mr. Tsai and his planning consultant appear unfamiliar with the concept of "building segments" in stepped or terraced building designs, and with the separate assessment of height and stories above grade in each segment. See also Attachment 16 for a sampling of the code bodies, expert opinion and other California municipal codes that explain this, and which support the County of Los Angeles planning practice. Note as well that the County of Los Angeles explicitly encourages terraced or split-level designs in its Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8).
2. Mr. Tsai and his planning consultant appear unfamiliar with the prevailing method of measurement of height in hillside planning districts, instead arguing for an interpretation in which "height" is not measured vertically. See also Attachment 16 for a sampling of the code bodies as well as California municipal codes that explain this, and which support the County of Los Angeles planning practice that uses "plumb-line" height, the most accurate, least prescriptive approach there is to measure height.
3. Mr. Tsai and his planning consultant have misunderstood the extent of building segments that the County has classified as a "cellar." Despite explicit dimensions in supporting materials, they also appear to have misunderstood the extent of the home that is below grade. These errors have cascaded to other claims that our project "does not meet the County's minimum habitable space requirements," an interesting assertion for a group seeking to further reduce the already modest size of our project.
4. Mr. Tsai and his planning consultant have not offered substantial evidence that the Title 22 currently in effect requires a cellar to be exempted from gross structural area (gross square footage) calculations. This is not consistent with the International Building Code definition for gross square footage. While the update to Title 22 that is not yet in effect allows that a cellar may be exempted from gross square footage, this is intended to be more permissive of larger development, by reducing the gross square footage to comply with maximum lot coverage requirements. The point is also moot, because even if the portion of our main level in the building segment that includes the loft is classified as a cellar, we still handily meet the minimum square footage requirements.
5. Mr. Tsai and his planning consultant have misinterpreted our front yard setback and ignored the statements in Staff Analysis, in claiming that our front yard setback is ~22'5", less than the 23'1" they claim is the average of all homes along the same side of the street in the same block. 22'5" was what we calculated the *minimum* front yard setback to be using Department of Regional Planning Geographic Information System tools and building outlines. Our planner notes an approximate actual setback from the road of 23 feet in Staff Analysis, included in our Regional Planning Commission Hearing Package. A precise measurement yields a setback of 23'1.4".

6. Mr. Tsai has ascribed applicability of an Oak Woodlands Management Plan ("Plan") process with multiple parts, some of which have not yet been fully implemented. The Plan was adopted into the County of Los Angeles General Plan well after our permit applications were submitted, and after our initial study was completed. Therefore according to the General Plan statement of applicability, any recommendations contained in the Plan have no formal applicability to our project, though the Department of Regional Planning has justly applied its discretion in drafting some conditions in accordance with Plan recommendations. In the absence of any zoning code or permit process with the appropriate level of review, neither are the recommendations in Part II of this Plan applied except at the discretion of the Department of Regional Planning. In Attachment 11, we attribute the lack of support for changes to the decision-making process for our home, even were Part II of the Oak Woodlands Management Plan were to govern it.
7. Mr. Tsai and others have misunderstood the Oak Tree Ordinance statements of applicability and the deference afforded by the Ordinance to the discretion of the Director of Regional Planning and delegated County agencies in determining the sufficiency of an Oak Tree Report and associated documentation.
8. Mr. Tsai and others have mis-attributed the methods by which the Altadena Community Standards are able to enforce their intentions, as well as the authority permitted a Community Standard to deny development, as opposed to prescribing a minor Conditional Use Permit process to ensure adequate review and conditions.

September 6, 2016

Hand Delivered On September 7, 2016
COUNTY OF LOS ANGELES REGIONAL PLANNING COMMISSION
Room 150 Hall of Records
320 West Temple Street
Los Angeles, California 90012

Delivered By U.S. Mail and E-Mail
Maria Masis, AICP, Supervising Regional Planner

LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING (DRP)
320 West Temple Street
Los Angeles, California 90012
Em: mmasis@planning.lacounty.gov

RE: Canyon Crest Conservancy Comment Letter Regarding Agenda Item No. 6 For the County of Los Angeles Regional Planning Commission's September 7, 2016 Meeting Regarding Minor Conditional Use Permit No. R2014 – 02411-(5), Oak Tree Permit No. 201400035, and Environmental Assessment No. 201400194.

Dear Chairwoman Shell, Honorable Commissioners and Ms. Masis,

On behalf of Canyon Crest Conservancy ("Conservancy" or "CCC"), my Office is providing comments

to the County of Los Angeles ("County") regarding Minor Conditional Permit No. R2014 – 02411-(5), Oak Tree Permit No. 201400035, and Environmental Assessment No. 201400014 ("Project").

The Project requests approval for the construction of a 1,699-square-foot single-family residence with a 451-square-foot attached garage on a 1.04-acre parcel in a hillside management area of the Altadena CSD. The proposed residence will take access from Canyon Crest Road to the east with a new driveway leading to the attached two-car garage facing north. Above the garage is a proposed loft space that looks out onto Canyon Crest Road and below the garage is the main residence level containing two bedrooms, two bathrooms, a kitchen, and a living room with a cantilevered deck facing west. There is a lower level below the kitchen and living room where an office is proposed.

CCC is a California nonprofit public benefit corporation dedicated to 1) protecting open space, 2) ensuring that natural preservation areas are protected and enhanced 3) ensuring a high quality of life in the Canyon Crest area by remaining consistent with its natural character, and 4) carrying on other charitable and educational activities associated with this goal as allowed by law.

According to state records, Canyon Crest Conservancy was registered in May of 2016 to the address of the neighbor immediately across the street at 3588 Canyon Crest, who identified himself at our September 7 Regional Planning Commission hearing as the President of the Conservancy. We would reiterate the interest we expressed at our Hearing Officer Hearing on April 5 to learn whether the newly created Conservancy has done any work except to file letters of opposition through an attorney as a part of this hearing process.



rct.doj.ca.gov/Verification/Web/Details.aspx?result=5a319cc5-8a9f-4bce-aafe-16b7ac4dc63a

State *of* California Department *of* Justice
Office *of the* Attorney General

Kamala D. Harris
Attorney General

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You may CLOSE this window to return to the Search Results and choose another registrant.

Registrant Information

Full Name:	CANYON CREST CONSERVANCY	**FEIN:**	
Type:	Public Benefit	**Corporate or Organization Number:**	3905639

Registration Number:			
Record Type:	Charity	**Registration Type:**	Charity Registration
Issue Date:		**Renewal Due Date:**	
Registration Status:	Not Registered	**Date This Status:**	5/23/2016
Date of Last Renewal:			

Address Information
No address Information
Annual Renewal Information
Related Documents
No Related Documents
Prerequisite Information
No Prerequisite Information

Illustration 1: State of California registration for Canyon Crest Conservancy, accessed October 2016

CANYON CREST CONSERVANCY was incorporated on 2016-05-09. This company is now Active, their business is recorded as Domestic Nonprofit. As so far this company has running for 159 days.

California Company Search

Search

Registration Information

Company Number:	C3905639
Company Name:	CANYON CREST CONSERVANCY
Company Type:	Domestic Nonprofit
Active Status:	Active

AdChoices Cloud Drive Documents Google Docs Sync Files

Date of Incorporation:	2016-05-09
Address:	3588 CANYON CREST RD, ALTADENA, CA 91001
Agent For Service Of Process:	MITCHELL M TSAI 1055 E COLORADO BLVD STE 500, PASADENA, CA 91106
Last statement filed on:	
Tag:	canyon crest conservancy
Added:	2016-05-18 02:55

Illustration 2: Canyon Crest Conservancy, additional information, accessed October 2016

CCC requests that the Commission deny the Project entirely, and order that the Project prepare a full environmental impact report, oak woodlands report and apply for a major conditional use permit prior to reconsideration.

We will enumerate the mis-calibration of these requests, inline as these claims are developed.

CCC urges the County of Los Angeles to reject the Project for violating the California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000 et seq. ("CEQA"), the Altadena Community Standards, County Code § 22.44.127 ("Community Standards"), as well as the County's Oak Tree Ordinance, Co. Code 22.56.2050 et seq ("Oak Tree Ordinance").

We will enumerate the ways in which these statements are unsupported, inline as these claims are developed.

My Office has prepared these comments with the assistance of expert land use planner and landscape architect Jared M. Ikeda ("Mr. Ikeda"). Letter from Jared M. Ikeda to Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning (Sep. 6, 2016) RE: Comment Letter Regarding Project No. R2014 –02411-(5), ROAK – Kuhn Residence 3577 Canyon Crest Road. Mr. Ikeda has over forty years of professional experience in preparation of land use planning studies, community planning, environmental studies, landscape development plans, and recreation planning. Mr. Ikeda has directed and been involved in a wide range of studies and projects for both public and private sector clients.

Mr. Ikeda has been a consultant planner for a variety of firms including Terrell Watt Planning Consultants, Tejon Ranch Conservancy, 2M Associates, Shute Mihaly Weinberger, and the California Attorney General's office, among others. Prior to his retirement in 2005, he served as a Senior Administrative Analyst for the Environmental Resource Policy Division within the County Administration Office of Monterey County. His work there involved the preparation of the Environmental Resource Management Element of the Monterey County General Plan Update. After retirement, he served as a consultant for the preparation of the Marin County General Plan reviewing consistency with local city plans. Earlier in his career at EDAW (now part of AECOM), he prepared the environmental impact report for the Chino Hills Specific Plan for the County of San Bernardino, prepared the East Tustin Specific Plan for the Irvine Company, prepared the Hillside Area Plan for the City of La Verne, CA, and prepared the EIR/EIS for the Las Virgenes, Triunfo, Malibu Area Wastewater Treatment Facilities for the US EPA, among many other projects and studies. A special interest and skill has been preparation of digital computer mapping and modeling to simulate and prepare land planning and design studies.

Mr. Ikeda has exhibited some misunderstandings that are directly contra-indicated by guidance from code bodies, expert opinion, and many California municipal codes that provide explicit guidance concerning terraced buildings (see Attachment 16). We will enumerate these errors in our response to Mr. Ikeda and in our aggregation of zoning and planning misunderstandings in opposition commentary (Attachments 8 and 9, respectively). We note that the "Hillside Development Overlay Zone" regulations in the City of La Verne do not otherwise constrain the height or the number of stories above grade, the assessment of which for a terraced building Mr. Ikeda has misunderstood.

We find especially deficient the inaccurate and misleading model Mr. Ikeda submitted. Not only was his model of our home itself grossly inconsistent with the plans reviewed at our Regional Planning Commission hearing on September 7, but the terrain model was flattened using under-resolved, orbitally-derived imagery that is completely inappropriate for this scale, especially when Google Earth has aerial photogrammetry-derived models with much higher fidelity (which we portray in Attachments 8 and 10). For some reason, he excluded any portrayal of the buildings in the immediate vicinity, including those directly across the street which extend to higher average and maximum elevations above street grade, at similar setbacks from the road. For some reason, he also chose to render our home in magenta, despite our portrayal in our renderings of earth tones for cladding. We will contrast these visuals where appropriate in our response to him (Attachment 8), to illustrate their inaccuracy.

My Office also received assistance from expert arborist Rebecca Latta ("Ms. Latta"). Ms. Latta has over 26 years of experience as a consulting arborist, water manager, and horticultural consultant in both the public and private sectors. Ms. Latta has been certified by the International Society of Arboriculture (ISA) since November 1998 while working as the Forestry Supervisor for the City of Pasadena. Ms. Latta is a member of the American Society of Consulting Arborists and a graduate of the Consulting Academy in 2008. Ms. Latta spent 5 years reviewing oak tree permits and landscape plans for the City of Agoura Hills. Additional training includes tree valuation, tree risk assessment, urban wildland interface habitat preservation, nesting bird, invasive weed management, native plant propagation and tree protection and mitigation monitoring. Clients include municipal governments, non-profits, utilities, land resource managers, architects, landscape architects, commercial and residential clients.

Ms. Latta was commissioned at the request of our immediate neighbor at 3589 Canyon Crest, who has been among the most vocal of our project opponents, and to whom she referred in her letter dated April 16 as her "client."

In the attachments we have submitted, we address her claims in detail that goes far beyond oak tree reports for construction of a new single family residence in Los Angeles County (Attachments 20-22), beyond the level of detail of oak tree permits accepted by the City of Agoura Hills from 2002-2007 (Attachments 23-25) when Ms. Latta was sub-contracted to assist in their review, and beyond the level of detail Ms. Latta has herself applied in creating past oak tree reports (Attachments 26-28). Attachment 7 enumerates 11 misunderstandings she has exhibited in her hearing testimony and letters submitted as a part of our hearing process.

We had hired our original oak tree consultant from a list of consultants the county maintains (Attachment 29), after finding Land Design Consultants to be the closest, anticipating an active role for our arborist during early construction. We were pleased to work with an ISA-certified arborist who was also ISA-certified in Tree Risk Assessment. We found the level of detail in our original oak tree report to be consistent with the oak tree reports we've referenced in Attachments 20-28. As the arborist we originally hired through Land Design Consultants has since relocated to a different employer (Carlberg Associates Horticulturists and Registered Consulting Arborists) and is based more than an hour distant from our site, rendering the close supervision of our early construction impractical, we have retained our Arborist of Record (Arsen Margossian) from this list. In addition to being ISA-certified and ISA-certified in Tree Risk Assessment, Arsen is the closest of those remaining arborists the

county has referenced, who along with our original arborist are included in the list for having "produced high quality, accurate oak tree reports for the County of Los Angeles in the past."

This comment letter incorporates by reference all written and oral comments submitted on the Project by any commenting party or agency.

I. PROCEDURAL HISTORY.

On April 5, 2016, the County conducted a public hearing on the Project. At the Hearing, major discrepancies regarding the accuracy of the Project's arborist report were revealed and the County opted to continue the Item until April 19, 2016 for the Project's applicant, Steven Kuhn ("Applicant"), to submit a revised arborist report.

We believe that the Department of Regional Planning has a more factual account of the proceedings at this hearing, per finding 17 of the Regional Planning Commission approval package:

"The Hearing Officer continued the public hearing to April 19, 2016 in order to provide additional time for the applicant to meet with interested members of the community and discuss alternative designs as well as to allow for the applicant's arborist to respond to the concerns raised by Ms. Latta."

It should be noted that Ms. Latta's commentary was submitted on March 17, 2016, two business days before materials for our hearing package were due, and four business days before our Hearing Officer hearing package was posted. This follows a pattern of midnight submittals from our opposition before our hearings, on each occasion using these as partial justification for a request to delay our project by continuation. No attempt was made to address the questions in this commentary to us or to our arborist before the hearing. There was insufficient time for our arborist to respond in the detail he wished, as he noted in his reply dated April 18, in stating that he was responding at his earliest convenience. Our arborist devoted tens of hours to reviewing the existing documentation for our project, Ms. Latta's commentary, the initial study, all applicable regulations, speaking with the county biologist, and preparing the lengthy response. This delay was not indicative of deficiencies in our project.

More specifically, when we asked for precise clarification at our hearing as to what was requested, Hearing Officer Garcia summarized his reasonable concerns and desires, stating that "there's some concerns with regards to additional oak trees that may be impacted, and if you respond to that, there's some concerns with regards to some of the soil that could be impacted, in terms of the ground and the oak trees that are not going to be removed, additional oak trees that might be impacted. So, I'd just like to see a professional response to that. . . . If it's possible to regroup with the neighbors, if they'd like to regroup with you, and discuss the other alternatives that you [sic] have provided. . . . I'd like to see if there is an extra intent, in trying to see if you can regroup and trying to see if you can come up with any other alternatives that might help in this situation. And if it's not possible, then that's fine, too. But the main documentation I would like is a professional response to the comments provided with regards to the initial arborist report." (Unofficial Transcripts of April 5 Hearing Officer

hearing, see also http://lacdrp.granicus.com/MediaPlayer.php?view_id=1&clip_id=414).

As our arborist's response indicates, we had not somehow failed to notice additional trees with protected zones encroached by the footprint of our home, our driveway, or utility laterals. All trees on our lot and many adjacent are mapped in our recorded survey. All affected trees are surveyed in our arborist's report, and all trees on our lot are referenced in the report.

Our arborist notes that we had confirmed with the Forestry Department Environmental Review Unit that we were not expected to include in our report those trees on our lot, the trunks of which are a minimum of 190 feet in absolute distance (sqrt(170^2+(1314-1228)^2)) from our home. The assistant Chief Forester stated that the “Oak Tree Report is accurate and complete as to the location, size, condition and species of the Oak trees on the site.” Of the Los Angeles County oak tree reports we've excerpted in Attachments 20-22, all possess numerous other mature oak trees within 200ft of the footprint of the home or lot (as we ascribe in our discussion of each project in Attachment 19). Adjacent property owners cannot be compelled to make their private (and in many cases fenced) property available to an arborist (PC 602.8 only allows this of surveyors) or to submit to having their trees tagged, nor does the oak tree ordinance require the survey of unaffected trees on adjacent properties, as we attribute later in this attachment at 34.

As we had clarified at our April 5 hearing, there will be no “certified fill” used for our project, either inside or outside our home's footprint, which is to say that unlike many neighbors we have no slab on grade construction of either foundation or driveway requiring compaction to support loads. All loads will be distributed to our piles, all floors analyzed as suspended and self-supported.

The claimed re-grading of one to several feet that would have occurred more than ten years ago by previous owners was discussed at our April 5 hearing, and our arborist addressed this in his response with the following statement: “I would be leery of removing the fill soil at this point, assuming the trees have adapted and developed roots to counter the change in grade.” Our arborist subsequently qualified that non-destructive interrogation with an air-spade is possible, and that if the roots have not infilled, slow, incremental removal may be warranted. We will explore this after construction is complete as part of a general program of care and remediation for our trees.

Hearing Officer Garcia also requested that we meet again with neighbors to discuss potential design alternatives, despite our repeated attempts at engagement over the past year, which included personally addressed mailers to all residents within 1,000ft, and to all residents of the Meadows neighborhood beyond, personally addressed invitations to all neighbors within 300ft to meet with us and with our architect on-site, creation of a website in which we addressed in detail questions and concerns from neighbors, and speaking at three Altadena Town Council meetings over the course of nearly six months, following the conventional Town Council process of an initial review, Land Use Committee and full Town Council votes. Throughout this process, neighbors in opposition continued to argue that our lot was “unbuildable...protected and restricted,” as the President of the CCC claimed at our April 5 Hearing Officer hearing (Unofficial Transcripts of the April 5 Hearing Officer Hearing, see also http://lacdrp.granicus.com/MediaPlayer.php?view_id=1&clip_id=414), without having done the

research to understand what a “taking” is. Even after our initial Hearing Officer approvals, the appellant and the president of the CCC signed their name to a petition requesting “to keep this canyon property in its natural state” i.e. to deny development in any form. It is difficult to have any constructive review process with those who believe such an outcome is reasonable, just or indeed at all possible.

We again sent invitations to all neighbors within a 300ft radius to meet with us on our lot, on April 15, 2016. We also extended this invitation on our website. At that gathering, we enjoyed meeting some of our neighbors for the first time. Some neighbors agreed that our design as presented is already a compromise, reflecting the care we have put into anticipating and addressing potential concerns. Other neighbors requested substantial design modifications, including removal of our loft.

It was suggested that we could excavate into the hillside at the lowest floor level – construction of which does not currently require any excavation – to recover this loft space. We confirmed with our arborist that he would advise against any additional encroachment in the protected zone of oak tree #7. It was also suggested that we could move the loft stairway into the garage as a pull-down, which would allow the ceiling to drop to head-height not at the west edge of the stairwell where it does presently, but several feet farther east at the edge of the loft. This was a plausible suggestion (though given the minimal size of our garage, this would not be practical while our cars were parked in it), and we had already analyzed an approach that would allow us to reduce height by dropping our entryway ceiling with an intermediate landing, to finish with a short eastward flight of stairs into the loft. We further adjusted this to reduce the height of our home as much as is possible, by moving the stairwell to the garage. This has no impact on the footprint of our home or any part of it that is visible, but merely allows us to drop the height of our ceiling further still. While we believe the resulting impacts on the shape of our home degrade its aesthetics – both internally and externally – and while we lost garage space in doing this, we were willing to adopt this approach along with other minor adjustments in acknowledgment of neighbor concerns, allowing us to reduce the height of our NE corner from 31’2.5” - already nearly 4ft below the maximum height of 35' - to 24’11”. This is lower than the same maximum height as a two-story home 30ft wide (the same width we present to the street) with a 4:12 pitch gable roof. It is also lower than 4209 Canyon Crest Road, less than a mile up the road, which has a very similar shed profile roof facing the street (see Attachment 10 supporting visuals).

Our arborist did not submit a revised arborist report, nor was one requested. He submitted a response to Ms. Latta's comments.

On April 19, 2016, the County conducted another public hearing on the Project. At the hearing, the Applicant submitted a revised arborist report. The revised arborist report admitted that the Project’s original arborist report had been based upon a different design and confirmed that the Project would have significant environmental impacts to several oak trees on the Project Site from the Project’s old design.

This is a mischaracterization that directly contra-indicates our arborist's response. As Mr. Tsai has illustrated himself in some of his claims (as at our hearing on April 5, in which he mis-attributed a crawlspace access door as a window, mis-understanding the volumes of our

home), as well as several others in opposition, and as was even apparent in some of our early interactions with Department of Regional Planning Staff, it can be difficult to understand our project when looking at 2D representations of it. What has become clear to us and to our architect who have internalized the design is not necessarily clear to others, and this can be difficult to identify when it occurs. As our project has progressed and other questions have arisen, we made 3D representations like those we showed at our Regional Planning Commission hearing and in Attachments 10 and 15. Our arborist benefitted from seeing these, though the plans he reviewed have not changed except as he noted below, nor did the minimum encroachment distances he derived from those plans change (as would be expected of a "different" design). He began his response with the statement that the "project entryway has changed, and the portion of concrete driveway outside the footprint of the home has been removed. However, these changes did not affect the footprint or elevations for the home, and do not lead to any increased impacts."

Our arborist has never mis-represented as "insignificant" the impacts to our trees. However, he supports the extraordinary extent to which we have tailored our design to save as many of our trees as we could. Mr. Tsai has drawn a false and unsubstantiated equivalency between a not insignificant impact on a minority of the constituent trees of a severely degraded oak woodland and a significant impact on the Environment. We have addressed these claims in Attachment 11, our response to claims of significant impacts of our project on Biological Resources.

Again, our arborist did not submit a revised arborist report. He submitted a response to Ms. Latta's comments.

Moreover, the County admitted that the Project Site was in fact an Oak Woodland subject to the County's Oak Woodlands Conservation Plan, and that the County had not prepared an Oak Woodlands Report as required by the Oak Woodlands Conservation Plan.

The county has made no such admission, nor has Mr. Tsai presented substantial evidence that it has done so. In Attachment 11, we attribute the scope and applicability of the Oak Woodlands Management Plan ("Plan") process to our project, the application and initial study of which predate the adoption of the Plan into the Los Angeles County General Plan. The implementation horizon for the Plan was noted as either 1-2 years (in Chapter 16 of the final 2035 General Plan, see Attachment 14 citation H) or 3-4 years (in the final EIR for the General Plan, see Attachment 14 citation J).

At its just discretion to impose the suitable conditions it sees fit, the Department of Regional Planning may apply elements of the Plan and have in fact done so, without being *compelled* to impose any particular recommendation or create any supplementary report.

Even were our project to be governed by the Plan, the Plan Guide decisional flowchart has several jumping off points for which no report or supplemental process is suggested despite the presence of oak woodland, one of which is satisfied for our project, as we develop in Attachment 11. It should be noted that single family residences are typically exempt from the Plan process, as they are categorically exempt under CEQA 15303. Substantial evidence has not been presented that unusual circumstances are present to deprive us of this exemption.

Nonetheless, the County took the position that the Project's mitigation measures were sufficient to mitigate these previously new unreported environmental impacts and approved the Project.

Again, this is a mis-characterization. Our initial oak tree report expected all encroached trees to survive, and his response to the commentary confirmed this with the statements that, "It is my professional opinion, based on 12 years of experience, training, and judgment, that trees #4 and #7 have a good probability of surviving the described construction impacts," and "I support the applicant's attempts to design the structure to reduce the amount of oaks trees that could have been removed if designed without any regard to the oak trees on the property."

It is also important to distinguish between the numerous "standard permit conditions" that are applied by a lead agency, and a "mitigation measure" to render "less than significant" an effect on the Environment that was analyzed to be "potentially significant." We address this further in Attachment 14.

Subsequently, on May 2, 2016, CCC appealed the County's April 19, 2016 decision to the County's Regional Planning Commission.

II. THE PROJECT'S CONDITIONS OF APPROVAL NEED TO BE REVISED TO TAKE INTO ACCOUNT SIGNIFICANT CHANGES IN THE PROJECT'S DESIGN.

As the Applicant's own consultant noted in disavowing the Project's previous arborist report, which the Applicant's consultant had previously authored:

It is my understanding from reviewing the most recent plans, that the project entryway has changed, and that the portion of concrete driveway outside the footprint of the home has been removed. . . . I was also made aware that the extent of excavation was somewhat different than I had understood from the site plan dated July 14, 2014. As a result, the impacts indicated in the August 2014 report may have underestimated the impacts to trees #4 and 7.

Letter from Scott McAllaster, Land Design Consultants to Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning (Apr. 18, 2016) RE: Oak Tree Permit No. 201400035, APN: 5830-003-016 - Canyon Crest Road LDC Project No. 13038-001.

It is not clarified to what "significant changes" Mr. Tsai is referring. He has ellipsis edited the context out of which the minor changes to our entryway and driveway apron – which only reduce impacts – was taken: "It is my understanding from reviewing the most recent plans, that the project entryway has changed, and that the portion of concrete driveway outside the footprint of the home has been removed. However, these changes did not affect the footprint or elevations for the home, and do not lead to any increased impacts." Such distortionary editing is not characteristic of a fair argument.

When a design is changed to reduce impacts, this does not nullify previous analysis. By inspection, that pre-existing analysis bounds the new. This is formalized in the case of initial studies, as our planner noted in Staff Memo to the Hearing Officer dated March 31:

"Pursuant to Section 15073.5 of the California Environmental Quality Act Guidelines (14 CCR § 15073.5), "a lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability...but prior to its adoption." However, a "substantial revision" for a negative declaration occurs when "a new, avoidable significant effect is identified..." Subsequent to the release of the Initial Study for public review and comment, staff received a clarification from the applicant specifying that the maximum height of the proposed building is 34 feet 10 ½ inches. The Initial Study project description and Aesthetics evaluation identifies the maximum height as 33 feet and 10 inches. The impact of the building height is evaluated in the Aesthetics section of the Initial Study. In this section, it is noted that the project will not exceed the maximum allowed height of 35 feet and therefore, the impacts to the visual character or quality of the site and its surroundings will be less than significant. As the change in maximum height from 33 feet and 10 inches to 34 feet and 10 ½ inches will still be under this threshold, there is no change to the determination that impacts will be less than significant. Therefore, the addition of this new information would not be considered a "substantial revision" and the revisions listed below will make insignificant modifications to the negative declaration. Recirculation of the Initial Study is not required..."

The neighbors Mr. Tsai represents have requested reductions in the scope of our project. Distorting such changes in an attempt to delay us is a potent disincentive to do so.

Similarly, it appears that a number of the Project's conditions of approval, including but not limited to the County of Los Angeles' Conditions of Approval were based upon the old July 14, 2014 design.

Again, as we have clarified with the Department of Regional Planning, a grant for a particular design allows the applicant to build within that volume, provided all design minimums are still met. The modification of our entryway only reduced the volume our home will inhabit.

In particular, the County of Los Angeles' Fire Department conditions of approval for the Project's Oak Tree Permit is based upon the Project's original arborist report, dated August 2, 2014, and not the revised report, prepared on April 18, 2016. Much has changed concerning this project since what the Applicant himself characterizes as "early design phase" and the Project's conditions of approval should be revised to be based upon a review of the Project's current design.

Again, modifications to a design that only reduce impacts do not trigger a re-analysis. Mr. Tsai has not supported his claim that "much has changed," as those changes we have made have only reduced the volume of our home. Again, our arborist did not submit a revised arborist report. He submitted a response to Ms. Latta's comments. Mr. Tsai cannot submit testimony to which we are requested to respond and expect that a response that upholds existing findings should induce the county to begin its process anew.

a. The Project's Condition of Approval No. 17 Should Be Revised To Account For Delays In Project Approval.

The Project's Condition of Approval No. 17 requires that:
The subject property shall be developed and maintained in substantial conformance with the plans

marked Exhibit "A." If changes to any of the plans marked Exhibit "A" are required as a result of instruction given at the public hearing, three (3) copies of a modified Exhibit "A" shall be submitted to Regional Planning by June 5, 2016. (emphasis added). The County should update the date from June 5, 2016 to a date reflective of the current hearing date, September 7, 2016.

This is a procedural point and has already been addressed by Regional Planning staff in their Regional Planning Commission Approval Package for our project. The "delay" in project approval is due to the lawful process of appeal of which the Canyon Crest Conservancy have availed themselves.

III. THE PROJECT VIOLATES THE ALTADENA COMMUNITY STANDARDS.

a. The Project Does Not Comply With The County's Maximum Floor Requirements.
The Altadena Community Standards, Co. Code § 22.44.3127, limits single-family homes to two stories above grade. However, the Project's building plans demonstrate that the project has four stories, easily exceeding the Altadena Community Standards floor limitations. See Floor & Section Plans.

We will enumerate the ways in which we have earlier addressed this very fundamental misunderstanding.

As the County's own analysis notes:

The proposed residence will take access from Canyon Crest Road to the east with a new driveway leading to the attached two-car garage facing north. Above the garage is a proposed loft space that looks out onto Canyon Crest Road and below the garage is the main residence level containing two bedrooms, two bathrooms, a kitchen, and a living room with a cantilevered deck facing west. There is a lower level below the kitchen and living room where an office is proposed.
County of Los Angeles (Apr. 19 2016) FINDINGS OF THE HEARING OFFICER AND ORDER COUNTY OF LOS ANGELES PROJECT NO. R2014-02411(5) MINOR CONDITIONAL USE PERMIT NO. 201400014 OAK TREE PERMIT NO. 201500035.

Only recently has the County changed its position that the Project violated the two-story limit. On June 18, 2015, County planner Troy Evangelho informed the applicant that "your garage loft and lower floor office are both considered an additional story. Therefore, your house is greater than two stories and will need to be redesigned." Letter from Troy Evangelho, AICP, Zoning Permits East County of Los Angeles - Project No. R2014 – 02411-(5), ROAK 201400035, and RMCP 201400014 Section, Los Angeles County Department of Regional Planning to Steven Kuhn RE: Incomplete Application: Request For Additional Information (June 18, 2015).

As we and our planner explained at a previous hearing, this was based on what appears to have been a cursory review of our project and a failure to appreciate its terraced design or the implications of it, as the planner was only assigned to our case for a very short time, something he caveated as pre-ordained in our first conversation with him. This planner had been re-assigned by the time we responded to his requests and was not in a position to agree or disagree with the clarifications. We submitted a rebuttal that addresses the error in this statement, in which Regional Planning staff noted their agreement at our April 19 Hearing Officer hearing. Our project has since received additional review from county planning and

legal staff, and the experienced code enforcer who served as our Hearing Officer stated at our April 5 Hearing Officer hearing that "I believe the right assessment has been made as to the number of stories and the height that is allowed" and at our April 19 Hearing Officer hearing that "the project is well within the confines of the regulations." (Unofficial Transcripts of the April 5 and April 19 Hearing Officer Hearings).

In Attachment 9, we speak to the planning misunderstandings evidenced by Mr. Tsai and Mr. Ikeda, one of which is central to this quotation – the assessment of height and stories in the separate building segments of a terraced or stepped design.

In fact, e-mails between County staff and the Project Applicant appear to paint the choice of designating the Main Living Floor as a "cellar" as a matter of political convenience rather than compliance with the County Code.

Mr. Tsai has exhibited a misunderstanding that we will encounter throughout his text – that the county has designated the entirety of the main level as a cellar. This has never been true, and has long been made visually explicit in Attachment 1 of Staff Analysis. Only the projection of the main level under the garage loft – i.e. the portion of the main level that is in the same building segment as the loft – is classified in this way, and this is in keeping with both the spirit and the letter of the law. Below we enumerate the different instances in which this has been explained:

1. Attachment 1 of Staff Analysis had been made available to our opposition sometime in March of 2016, in response to a Public Records Act request submitted on March 10, 2016. The attachment states:
    1. For each point in the area of the footprint of the house, assess the number of floors intersected by a vertical line drawn at that point through the house.
    2. Where the number of floors is 2 or fewer, we are compliant.
    3. Where the number of floors is equal to 3, create a volume (hereafter cellar volume) between the upper surface of the lowest floor and the [ceiling above].
    4. Intersect this volume with the volume of the existing terrain (hereafter terrain volume).
    5. If >=50% of the cellar volume wall surface area is intersected by the terrain volume, this portion of the lowest floor meets the definition of a cellar, and we are compliant. Note: this may establish a grade line where none exists (i.e. within the footprint of the house); however, this is a logical extension of the discretization of the footprint, and in keeping with the spirit of the rule.
    6. Only one portion of the house has more than 2 floors – the footprint of the loft [on the main level]. [Per volumetric analysis, this area qualifies as a cellar. Note: the volumetric analysis was explicitly dimensioned, and so could in no way be reasonably mistaken as corresponding to the entirety of the main level of our home.]
2. Attachment 1 of Staff Analysis was publicly posted in our project's Hearing Officer package on March 23, 2016.
3. At our hearing on April 19, we said, "The attorney then misunderstood a key definition. It appeared that he believed the entire main level and lowest office level were being classified as a cellar. Attachment number 1 of staff analysis has long provided a crisp

and conservative derivation, in which only a portion of the main level below the projection of the loft is classified in this way. As the exterior perimeter of this projection is almost entirely below grade, this is in keeping with both the spirit and the letter of the definition for cellar, which is any portion of a building floor that is more below grade than above." Mr. Tsai's misunderstanding somehow survived this explicit statement, to become a key error in this letter, dated September 6, 2016.

4. At our hearing on September 7, we provided a visual representation of our home (included immediately below) that clearly showed which areas of our home were being classified as a cellar, the first story above grade, and the second story above grade. We stated, "In text included in Staff Memos dated April 5 and 14, the attorney exhibited a fundamental misunderstanding, stating, quote, "the County claimed that the project has only two stories above grade by classifying the two stories below the garage as a cellar." The visually explicit derivation provided in Attachment 1 of Staff Analysis has long shown that only the portion of the main level projected below the loft is classified in this way, as all other portions of the footprint of the home are no more than two stories above grade. Even using assumptions that are more conservative than regulations allow – the most conservative we could conceive of – this projection qualified as a cellar, which is any portion of a building that is more below grade than above, and this is in keeping with both the spirit and the letter of the law. One exterior wall is completely buried across most of its length under our gravel driveway. The other slopes downward, transitioning from completely buried to partly buried, still denying us an effective window in this space – our master bathroom – though we would have liked one."

It is possible Mr. Tsai's misunderstandings stem in part from grafting connotations onto the terms "cellar" and "basement." These are essentially loan words approximating a definition of volumetric relationships to grade, for building segments – or *portions* – of a building. The county definition of "cellar" means that more of the volume of a single level in a building segment is below the ground than above. The county definition of "basement" means that some part of the volume of a single level in a building segment is below the ground, but more is above the ground than below. A basement qualifies as a story above grade, while a cellar does not. This is an eminently reasonable threshold to apply, and more conservative than the comparatively arbitrary threshold used by the International Building Code (see Attachment 16 at 5), as a point of reference.

A lead agency is not obligated to consider arguments that are not based in fact, or to treat as credible expert evidence based on assertions about the design, rather than the project design as it was actually approved.

"A lead agency need not accept expert testimony that lacks an adequate factual foundation. *Lucas Valley Homeowners Ass'n v County of Marin* (19910 233 CA3d 130, 157 (testimony by real estate agent on potential decline in nearby property values was properly rejected as imprecise opinion without supporting verifiable data, such as comparable sales); *Gentry v City of Murrieta* (1995) 36 CA4th 1359, 1422 (letter from engineering professor about groundwater and erosion impacts was not substantial evidence because it was based on inadequate foundation of specific information about the project); *Citizens Comm. to Save Our Village v City of Claremont* (1995) 37 CA4th 1157, 1170 (no factual foundation for architect's

letter claiming historically significant landscape plan had been implemented on project site)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) §6.41)

"Expert opinion that is not directly relevant to the project's environmental impacts may be disregarded...See also Berkeley Hillside Preservation v City of Berkeley (2015) 60 C4th 1086, 1119 (categorical exemption case holding that expert opinion was insufficient because it was based on project opponent's assertions about design of project rather than project as actually approved)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) §6.41)

As County planner Kristina Kulczycki stated to the Applicant in an e-mail on July 9, 2015, "If you are okay with considering the building to be three stories in height, you can go straight to a CUP to modify this development standard and I can start noticing the CUP and Oak Tree Permit for hearing instead of the MCUP." E-mail from Kristina Kulczycki to Stephen Kuhn (July 9, 2015) FW: R2014-02411. The Applicant rejected the advice of the County and opted to continue to exempt the first and second floors of the four-level structure, stating:

I think I would rather not go the route of getting a CUP [(Major Conditional Use Permit)] to Altadena standards. There seems more discretion on the part of the town council to deny. I would rather frame the project as fitting completely within the bounds of the standards, which I think it does.

E-mail from Stephen Kuhn to Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning (July 9, 2015) Re: FW: R2014-02411.

The County claims that the Project, which has in total four floors, does not exceed the two floor limit. This claim is specious.

Mr. Tsai and Mr. Ikeda appear unfamiliar with the concept of "building segments" in stepped or terraced designs, and with the separate assessment of height and stories above grade in each segment. See also Attachment 16 for a sampling of the code bodies, expert opinion, and California municipal codes that explain this, and which support the County of Los Angeles planning practice.

We believe the City of Brisbane in the northern part of San Mateo County on the hilly lower slopes of San Bruno Mountain has the clearest textual illustration of this in their guidance documentation:

"Height is not necessarily measured from the top of a building to the bottom. While from a distance, for example, a building containing four floors that step up or down a hillside in three two-story segments may look taller than the three-story, single-*segment* building next door, the opposite may be the case. Because height is measured per *segment*, a building map made up of multiple *segments* can have a lower height than one made of a single *segment*" (emphasis in the original) (Attachment 16 at 4).

Los Angeles County Hillside Management Area Ordinance (County Code §22.56.217), Design Guideline Appendix VI.4.2 already explicitly supports and encourages terraced levels: "Utilize terraced (split-level) or "cantilevered" building designs wherever feasible on 25% or

greater slopes." (see Attachment 14, citation S at 8). The extent of "terracing" is extremely limited if only two levels may be present. This is clearly not the assumption or intention of this design guideline.

To interpret in the way Mr. Tsai appears to propose would result in absurd consequences. If we were instead to drop the volume of our home 34feet lower than it is presently, our home would be entirely below the level of the existing ground – the grade. It would still have four levels, all of which would be below ground. It would be absurd to argue that such a design should be limited to two levels by citing regulations that limit the number of stories *above ground*.

Furthermore, the claim that the entirety of a floor level should be classified uniformly as either a cellar, a basement, the first story above grade or the second story above grade is completely inconsistent with the independent assessment of height and stories above grade for each building segment and would result in additional absurdities. If a single floor level is classified uniformly – independent of any division into building segments to account for terraced levels – it would be possible for the lowest floor to be the first story above grade, and to have a floor above that with a much smaller area entirely beneath the ground be classified as a cellar. It is clearly incongruous to have a volume directly below a cellar classified as a story above grade. The part of the lowest level projected below the cellar level above should be assessed as part of a separate building segment, and also determined to be a cellar, with other segments or portions of that level determined to be a story above grade.

We explained at our April 19 Hearing Officer hearing that our planner's suggestion was a logistical one, as our planner had rightfully pointed out that less time would be devoted to the appeal process if we were able to skip the Hearing Officer level of review and begin with the Regional Planning Commission. In part due to honored requests for delay from our opposition, the gap between our April 19 Hearing Officer Hearing and September 7 Regional Planning Commission Hearing was nearly five months, that might have been avoided. As we clarified at that hearing, we did not pursue this route because we had very consciously set out to design a home that complied with all applicable regulations, and we and our experienced architect have always been very clear on what those regulations mean. It did not even occur to us to try to design a home that circumvented the regulations, and to portray it in this way was distasteful to us given our efforts, even if it meant we might have started construction sooner.

We would also pause to note a general pattern exhibited by Mr. Tsai and several other neighbors, in lifting logistical emails with County staff completely out of their proper context, without referencing the remainder of the email, other emails, phone conversations and in-person visits that accompany these communications and give them proper context. In that same email, the very next statement after "...which I think it does" is "The minor CUP is only to satisfy the intent of broader notification that a hillside lot was being built. I'm happy to follow up on that if any part of the logic laid out in the rebuttal is in dispute. I don't know how it could be interpreted otherwise in an internally consistent manner." Mr. Tsai was of course privy to these statements expressing our belief in the just application of the rules, but chose to omit them, as they directly contra-indicate his speculative narrative of "political convenience."

We have had to explain similar occurrences of this elsewhere in the administrative record, particularly in responses to Mr. Baer and Mr. Hickman. This distortion is not characteristic of a fair argument.

As Mr. Ikeda notes:

The proposed residential project purports to meet all conditions by claiming that a portion of the main living area story (1159 sq. total) is a cellar and therefore two additional stories (a garage and a 263 sq. loft) above the main floor story can be allowed. In addition, this project includes a lower level floor for a 277 sq. office below the main living area story. A review of the architectural drawings (see figure below) show a total of 4 stories with windows along all exterior walls.

This interpretation of a cellar and inclusion of 4 stories is a circumvention of the code and violates the goals and intents of code and Los Angeles County and Altadena hillside management plans. If this project is permitted, it sets a precedent that would enable a clever means of enabling large scale cascading residential developments within unincorporated hillsides of the county.
Ikeda at 1 – 2.

Mr. Ikeda appears to be unaware that the Los Angeles county Hillside Management Area ordinance (County Code § 22.56.217), Design Guideline Appendix VI.4.2 already explicitly supports and encourages terraced levels: “Utilize terraced (split-level) or “cantilevered” building designs wherever feasible on 25% or greater slopes.” Without terraced levels, owners of hillside lots may become discriminatorily restricted in the square footage of their development, and incentivized to make use of a far greater extent of grading to effectively notch a flat area below grade for more conventional construction, with the concomitant environmental impacts. This is especially inefficient on down-sloping lots where a stepped design above grade is both practical and far less impactful. While some jurisdictions also limit the change in absolute elevation between the lowest and highest parts of a building, the County of Los Angeles does not. Nearly all of the volume of our home above grade is contained in a 45-ft range of elevations. Those portions that remain are shrouded in oak tree canopy or occluded more than 20ft below street grade.

In Attachment 17, we also show that our home meets the stated criteria of compliance for the currently enacted Los Angeles County Hillside Management Area Design Guidelines, even though this ordinance came into effect well after the permitting process for our home began and so does not govern it. This is another measure of our compliance with the county's assessment of proper design practice.

For reference, we note that in section 12.21.A.17.c.2, part of the city of Los Angeles' Baseline Hillside Ordinance, the city even deems fit to increase the maximum height above grade to 45ft from 36ft where slopes of more than 66% are present, to counter-balance the more destructive tendency when building on slopes to make use of large amounts of excavation, instead allowing for the higher elevations of stepped levels above existing grade, as we have.

The County claims that the Project meets the two floor limit because the Project’s main living space, which features a kitchen, living room, two bedrooms, bathroom, windows and a balcony as a “cellar” (“Main Living Area”).

As Attachment 1 of Staff Analysis has long made both visually and textually explicit, and as is made even more visually explicit in Attachment 16, only the portion of this level projected below our garage loft is classified in this way, as this is a separate building segment.

Enclosed spaces, such as cellars, cannot be used as livable space. Section 22.08.180 specifically excludes cellars from being used as habitable space, defining a "habitable room" as "an enclosing subdivision in a building commonly used for sleeping, living, cooking or dining purposes, excluding closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, unfinished attics, foyers, storage space, cellars, utility rooms, and similar spaces." (emphasis added); see also Co. Code 22.44.127(D)(1)(c)(iii) ("'Bedroom' means any habitable room or space with a closet which is designed to be capable of being used for sleeping purposes, excluding rooms commonly used for living, cooking or dining purposes.") (emphasis added).

The portion of the main level projected under the loft does not in fact contain "habitable rooms", as it is composed primarily of our master and guest bathroom ("bath or toilet rooms"), as well as closet and hall ("connecting corridor") space (see Floor Plans dated 11/2/16, with annotated building segments to address opposing counsel's persistent confusion). However, this is irrelevant. A "habitable room" is distinguished from other spaces in a home due to egress, size and ventilation requirements. County code constraints "gross structural area," not "livable space."

The County's interpretation defies common sense, but also more importantly, the County Code.

As Mr. Ikeda notes:
It is clear from the code that a cellar is largely below grade and not considered a habitable room and should not be part of the total habitable floor area of the residence. Yet, the proposed residence interprets a portion of the main living floor as a cellar where two bedrooms with windows are planned. . . . . The main living floor opens out to a balcony overlooking the canyon. The main living floor extends back into the hillside where two bedrooms, bathrooms and storage are planned. It is difficult to consider this area to be a cellar.
Ikeda at 2 – 3.

Mr. Ikeda appears to state that only habitable rooms should be counted in the total square footage of a residence. However, this is a very fundamental misunderstanding. This method of computing square footage results in what the International Building Code defines as the "floor area, net: The actual occupied area not including unoccupied accessory areas such as corridors, stairways, ramps, toilet rooms, mechanical rooms and closets." (International Building Code 2015, Chapter 2 definitions, see Attachment 14 citation OO). County regulations are expressed in *gross* floor area, not net.

We address this further in Attachment 8 at 10-12.

With a total of four stories cascading down the hillside, with three stories directly on top of each other at one point, it is easily determined that the Project does not meet the County's two-story maximum.

Again, our home is nowhere more than two stories above grade at any point over its footprint,

as the volume of the lowest level over the entire portion of the footprint where three levels are present qualifies as a cellar and is therefore not a story above grade.

b. The Project Does Not Meet The County's Habitable Space Requirements For Single Family Homes.

Moreover, the Project does not meet the County's minimum habitable space requirements. The County improperly excludes the Project's Main Living Floor as a "cellar" for the purposes of the County's maximum story requirements, but includes the Main Living Floor as habitable living space for the purposes of determining that the Project meets the County's minimum living space requirement despite the fact that cellar floor space is expressly excluded from the floor area of a building.

Single-family residences are required to have a floor area of at least 800 square feet. Co. Code §22.20.105(A)(4). Cellar floor space is excluded from "the total floor area within a building." Co. Code § 22.20.300(B).

Yet, the County counts the alleged cellar as habitable floor area in determining that the Project meets the 800 square feet floor area minimum under Co. Code § 22.20.105(A)(4). The County includes the Project's alleged "cellar" (1,159 square feet), loft (263 square feet), and the lower level office (277 square feet) in determining that the Project has 1,699 square feet of habitable floor area. Memorandum from Maria Masis, AICP, Supervising Regional Planner, Zoning Permits East Section to Regional Planning Comm'n (Aug. 25, 2016) at 3.

Mr. Tsai has again exhibited the misunderstanding that he believes the entirety of the main floor area has been classified as a cellar. We have already addressed this. Even if the cellar volume is not counted in the gross square footage, our home easily meets the county's minimum square footage requirement. The version of Title 22 currently in effect does not support the conclusion that that cellar area should be excepted, as it is not excepted from the International Building Code definition of gross floor area.

Without unlawfully including the Main Living Area as habitable floor space, despite declaring the Main Living Area a "cellar," the Project does not meet the 800 square foot floor area minimum. However, without excluding the Main Living Area as a "cellar," the Project exceeds the County's two-story maximum. The Project does not meet the requirements of the County Code.

c. The County's Interpretation Is Absurd As It Would Render It's Maximum Floor Requirements Meaningless.

The County's interpretation would allow hillside developments to build Projects of virtually unlimited size along hillsides, rendering the County's maximum floor area, height, and story requirements virtually meaningless. As Mr. Ikeda notes:

The planning and zoning code and the Altadena Community Standards (Title 22.44.127 - Altadena Community Standards District) were not intended to permit developments to cut into the hillsides creating habitable "cellars" so that cascading residential stories could be built. The height and story limitations and goals were intended to ensure that new and expanded structures were compatible in size and scale with the characteristics of the surrounding residential neighborhoods. The definition of what

may constitute a "cellar" must be strictly limited to non-habitable spaces as cellars are excluded, alongside garages and carports, from maximum floor area requirements. The Altadena Community Standards limits a building's gross structural area, excluding cellars and garages. Co. Code 22.44.127(D)(1)(b) ("The gross structural area (GSA) of a residence includes the total floor area of all enclosed areas, including storage, but excluding cellars and garages or carports designed and used for the storage of automobiles."). If bedrooms, kitchens, and other habitable areas allowed to be classified as "cellars," a hillside project could be virtually unlimited in size.

This is a very fundamental misunderstanding. The mechanisms by which the size of a building is constrained on a flat lot is by limiting the number of stories above grade, setback from property lines, and lot coverage (floor area ratio). *These are the same mechanisms used to constrain the size of a building on a sloped lot.* While some jurisdictions further constrain the change in absolute elevation between the lowest and highest parts of a building, the County of Los Angeles does not. Nearly all of the volume of our home above grade is contained in a 45-ft range of elevations. Those portions that remain are shrouded in oak tree canopy or occluded more than 20ft below street grade.

If the code were to arbitrarily limit a building to a number of levels instead of a number of stories above grade, as slope increased, the available size would discriminatorily decrease, the visual impacts would increase (e.g. large pony walls, greater angular occlusion from taller volumes nearer the road) and the perverse incentive to excavate more (with its own concomitant environmental impacts) to create usable area previously below grade would increase. This is why the County of Los Angeles, the city of Los Angeles and the International Building Code all express their regulations in terms of "stories above grade," with the county of Los Angeles explicitly encouraging stepped levels in its Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8).

To make sloping land flat, it would be tilted. The same stepped stories above grade that are suitable on a down-sloping lot - and which in no place over the footprint number greater than two - when tilted with the flattening grade become two levels. This is the underlying rationality whereby the zoning and building community measures height continuously with respect to grade. A home may step down the hillside an arbitrary number of levels, and so long as the number of stories numbers nowhere greater than two, and the height above this continuous grade nowhere exceeds the limit, the visual impact compared to pre-existing conditions is in family with that of a two level home on a flat lot. This is especially true of a down-sloping lot with no development below, which is characteristic of our home.

d. The Project's Latest Building and Elevation Plans Are Inconsistent With The Project's Cellar Determination.

The Projects most recent building plans, made available to the public prior to this hearing, fail to conform with drawings that the Project Applicant used to claim that the Project's Main Living Space is 50% below grade and therefore constitutes a "cellar." The Project's latest building plans appear to show that the vast majority of the Project's Main Living Space as above grade, whereas the Project Applicant's original drawings showed deep excavation into the hillside to place at least half of the Main Living Space below grade.

Our building plans had not been altered in any way that affected the cellar determination. They did not show a “deep excavation,” but rather the notching of the hillside described in our oak tree report and arborist's response to Ms. Latta's commentary, as well as our site plan, grading plan and sections, in order to place a portion of the main level of our home containing our master and guest bathroom. This volumetric analysis had been included in Attachment 1 of Staff Analysis. In that analysis, the cellar volume was clearly labeled with dimensions that correspond to the projection of the loft and that could in no way be mistaken by shape or magnitude to apply to the entirety of the main level. We clarified in the venues we have already highlighted how this cellar volume was derived.

We have since chosen to further compromise to address the concerns of our neighbors, beyond our initial design efforts and volumetric reduction in restructuring our entryway. This has reduced the ceiling height in the main level and removed a small portion of the loft area to create a landing and several stairs into the loft. This changes the cellar volume analysis. Our original analysis had also chosen the most conservative conceivable interpretation of the cellar volume as a point of illustration, whereas in the analysis included in Attachment 16, we have used the proper interpretation (measuring to the ceiling above per the County Code §22.08 definition of “cellar”, rather than to floor above, as would be done for a story above grade).

Attachment 16 contains the re-visitation of the cellar volume analysis in light of our further reductions in volume, and shows that these changes only increase the area below grade, still qualifying this volume as a cellar.

The Regional Planning Commission should request that the Project Applicant update their cellar determination to reflect the revised building plans.

e. The Project Fails To Conform With Average Setback Requirements.

The Project fails to conform with average setback requirements. The Altadena Community Standards require that a “front yard shall not be less than the average depth of all of the front yards on the same side of the street on the same block.” Co. Code § 22.44.127(D)(1)(a)(ii).
However, survey results of the area surrounding the Project show that the Project’s front yard is significantly less than the depth of front yards in surrounding neighborhoods.

According to Mr.Ikeda:
... A recent survey prepared by Winn-Winn Surveying (see attached) shows that the average depth of structures on the west side of Canyon Crest Road is 23.1 feet. The architectural drawings of the applicant’s proposed structure show a proposed setback of 22 feet 5 inches – 8.2 inches less than the average depth of the neighboring structures. An additional setback of 8.2 inches, although a small difference, may be beneficial in lessening expected damages to the root zone of the large existing oak trees along the front of the parcel from the proposed project. The existing oak trees establish a significant visual quality and character to the neighborhood reflective of natural hillsides of Altadena and beyond. These oak trees will require extensive pruning to enable construction of the proposed residence. Furthermore, earthmoving (15 cubic yards) and construction equipment will most likely damage the root zone of the oak and possibly lessen the life expectancy of these oaks.
Ikeda at 3.

The Project does not meet setback requirements of the Altadena Community Standards.

Mr. Tsai and Mr. Ikeda appear to have misunderstood our plans and ignored the statements in Staff Analysis (see April 5 Hearing Officer Package at 9), as was documented before our first hearing on April 5, regarding the front yard setback for our project. In that Staff Analysis, our planner stated: "The average front yard setback is 22.4 feet and the proposed front yard setback is 23 feet. Therefore, the project is complying with this development standard." In other words, 22.4 feet was what we calculated the average front yard setback to be, not what our actual setback was. 23 feet was an approximation, as we had never provided our front yard setback to the nearest inch, only stating in our communications that it exceeded requirements.

An (overly) precise measurement yields an actual setback of 23'1.4".

IV. THE PROJECT VIOLATES THE COUNTY'S OAK WOODLANDS CONSERVATION PLAN.

The Project fails to comply with the County's Oak Woodlands Conservation Management Plan. County of Los Angeles (2014) Oak Woodlands Conservation Management Plan Guide ("Oak Woodlands Conservation Plan"). The Oak Woodlands Conservation Act, Cal. Fish & Game Code §§ 1360- – 1372, ("Oak Woodlands Conservation Act") requires the development of an oak woodlands conservation plan as a condition to receive grant funding from the State of California Oak Woodlands Conservation Fund. The County's Oak Woodlands Conservation Plan, adopted in 2014, requires that the County "preserve and restore oak woodlands so they are conserved in perpetuity with no net loss existing woodlands." Oak Woodlands Conservation Plan at 2 (emphasis in original).

Upon a determination that a project site has oak woodlands, the County biologist is required to determine whether the proposed project could have a significant impact on oak woodlands. Id. If a project could have a significant impact on oak woodlands, the County's Oak Woodlands Conservation Plan requires the County to prepare an oak woodlands report. Id. Based upon the oak woodlands report, consultation with the County Forester and a CEQA Initial Study, the County will determine if a project would have a significant impact on oak woodland. Id. If the project determines that the project would have a significant impact, then the County is either required to demand a redesign of the Project that would eliminate any significant impacts or require mitigation and the preparation of a full California Environmental Quality Act environmental impact report. Id. The Project will have a significant impact on oak woodlands and therefore requires either a full redesign or mitigation alongside the adoption of a full CEQA environmental impact report.

According to Ms. Latta:
The report, which was the basis of approval for the permit, lacks a complete picture of the tree impacts on site by the admission of the LDC Arborist in the response to my comments. More importantly, this incomplete impact assessment was used to determine that the site did not need an oak woodland report. Therefore, I believe that the decision not to require an oak woodland report needs to be revisited.
The Process overview on the County website asks for a site plan with oak trees and woodlands depicted and labeled. Even though the proposed site is oak woodland, the applicant was allowed to skip that step and the determination was made that the project did not have a significant impact on the woodland.

In my opinion, if all the impacts from the new project arborist report are considered, three more oak trees will require removal. Two additional trees that are below ordinance cutoff size would, but above the size considered by the Oak Woodland Management Plan would be removed. This would constitute a significant impact to the oak woodland.
Latta at 7 – 8.

In Attachment 11, we attribute the scope and applicability of the Oak Woodlands Management Plan ("Plan") process to our project, the application and initial study of which predate the adoption of the Plan into the Los Angeles County General Plan. In that attachment, we also step through the Oak Woodland Management Plan Guide decisional flowchart, illustrating the lack of support for the claim that a significant impact on the Environment would exist, even were our project to be formally governed by this plan.

Ms. Latta has also mis-characterized a response to her comments as constituting "a new project arborist report". The response to her comments upheld the principle finding of our arborist report, which was that all encroached trees have a good chance of surviving. This assessment is based on an accurate description of our construction methods. In Attachment 7, we attribute the misunderstandings Ms. Latta has exhibited, and the factual basis for disputing her quantified assessments, which were not justified with any factual evidence. In Attachment 15, we accurately attribute root and canopy encroachment.

As our arborist noted, "Trees react, adjust, and compensate to physical and environmental impacts in ways we do not fully understand. As such, as arborists we are trained to not speak in certainties, but rather in probabilities and likelihood." While it cannot be said with certainty that any tree will not decline or succumb from even very minor encroachments, neither is it our desire to remove beautiful trees that are likely to survive. Using the judgment Ms. Latta has applied to our trees, she may have requested removal of oak tree #1 due to significant past physical root removals on opposite sides of the tree, at lower ratios of encroachment distance to diameter at breast height than any we propose. We are glad that the tree has remained to receive the highest grade of any surveyed oak, an "A" rating for both health and aesthetics. Many other trees in the immediate vicinity thrive in close proximity to compacted road, driveway or slab-on-grade foundations, even being encroached in the majority or entirety of their protected zone in this way (Attachment 30). Oak tree #1 is such an example, with at least 2/3 of its protected zone encroached by Canyon Crest Road, the paved driveway of 3589 Canyon Crest and the slab-on-grade foundation and patio of 3589 Canyon Crest. In Attachment 31, we include other examples of oak trees with significant encroachments from development, regrading or erosion, selected solely from those we encounter walking into work at the Jet Propulsion Laboratory through El Prieto Canyon and the Arroyo Seco, as well as at JPL.

Moreover, the County failed to do basic fact-finding on this issue, failing to prepare an Oak Woodlands Report as required by the County's Oak Woodlands Conservation Plan. As Ms. Latta notes:

I further believe that an Oak Woodland report should be filed, since the Oak Woodland Report and Oak Tree Report are two separate review processes and the site does, by the admission of the County Biologist and the Arborist of Record, contain oak woodland.
Latta at 15.

The County violated the Oak Woodlands Plan by failing to prepare an Oak Woodland Report and relying upon an arborist report that itself admittedly did not consider the impact on oak woodlands in being prepared.

Our arborist accurately stated in his response to Ms. Latta's commentary that, “It is my understanding of the Oak Woodland Management Plan that the County planner initiates the determination of oak woodlands by communicating with the County biologist and/or Forester. A determination would later be made by the County representatives.”

As noted in the initial study, the presence of an oak woodland was acknowledged by the county with the statement that, “The proposed development is sited at the edge of a disturbed oak woodland community, and would include the removal of one coast live oak (Quercus Agrifolia) tree from the community for the construction of the proposed residence.”

The county biologist also took into account his own site visits and the testimony of neighbors and Ms. Latta, who noted that the grade had been substantially altered and that a large pickup truck (a Ford F-150 Super Crew Triton V-8), listed with a gross empty weight in excess of 5,000lbs had been used for parking for at least 11 years in the protected zones of trees #1, #2, #3, #4, #7, #8 and #9. Mr. Lynch – the owner of this truck – also claimed in his letter dated August 5, 2015 that “the flat area has been in continuous use for storage and off street parking by the occupants of our home and their/our guests for over 65 years”, entailing the entirety or majority of the life of encroached oak trees. This repeated traffic by a large vehicle, by the other vehicles that have used the lot – including for the construction activities conducted in the immediate vicinity of oak tree #1 (Attachment 32) – and by the storage of other heavy materials has already resulted in the compaction of the area we intend to use for staging before our garage floor can be cast. Ms. Latta has not acknowledged these impacts and the resulting existing conditions in any of her statements.

On Staff Analysis (page 6 of 9), it is noted that, “The County biologist was also able to visit the site and indicated that there is an existing riparian forest at the bottom of the canyon containing oak, walnut, bay, sycamore, and alder trees. Based on his site visit, he also indicated that the bottom of the canyon would be an ideal spot to plant the replacement oak trees.”

The County has admitted to violating the Oak Woodlands Conservation Plan but has taken the position that these violations are immaterial. The County Biologist took the position at previous hearings for this Project that the Project could have a significant impact on oak woodlands on the Project Site, but that any impacts would be mitigated by mitigation measures that were adopted under the County’s Oak Tree Ordinance.

Mr. Tsai has not attributed the characterization that the county biologist acknowledged a “significant impact on oak woodlands” with any substantial evidence or quotation. The county biologist explicitly stated at our April 19 Hearing Officer Hearing that “we determined that the overall impact to the woodland would be less than significant.” (Unofficial Transcripts of the April 19 Hearing Officer Hearing, see also http://lacdrp.granicus.com/MediaPlayer.php?view_id=1&clip_id=420).

In Attachment 11, we attribute the lack of substantial evidence for the claim that our project is governed by the recommendations of Part II of the Oak Woodland Management Plan except at the discretion of the Department of Regional Planning. Nonetheless, in that attachment we stepped through this claim as though it might.

The county Biologist acknowledged that the lower threshold of applicability for the Oak Tree Ordinance – which includes projects that are categorically exempt from CEQA (to which designation the prohibitive majority of single-family homes are entitled) – means that its requirements are met first. With its requirements for oak tree replacement met, the higher threshold of applicability of the Oak Woodland Management Plan ("Plan") can be considered. As categorically exempt projects are outside the scope of the Oak Woodland Management Plan process, nor is the presence of oak woodland (2 oak trees >5" in diameter, according to the Plan Guide) typically an unusual circumstance where it can be found, it should not be conventional to request this of single-family residences.

Under the Oak Tree Ordinance, the removal of one tree nearer the road in the single stand of oak woodland is balanced by the addition of two trees in that same single stand of oak woodland in the (more ideally situated) riparian environment of the canyon below, protected such that if any succumbs or is removed, two additional trees must replace it. The outcome of the Oak Tree Ordinance process is pertinent to the assessment of the need for additional requirements under the Plan, which also treats on-site replacement as acceptable compensation. The unavoidable overlap of these processes has yet to be formalized in any zoning code or supplementary permit process, as we discuss further in Attachment 11.

We note that the county has already extended the monitoring period for our trees from the two years required by the Oak Tree Ordinance to the seven years recommended by the Plan. This is one of the only degrees of freedom for which the Plan process could have resulted in any different outcome, given the constraints of our lot and inability to reasonably design a project smaller or more sensitively than we have, and our stated intention to plant many more oaks than the Oak Tree Ordinance requires. The county recognized this and made the reasonable decision to require this longer interval of monitoring.

This reasoning is backwards, as it attempts to merge two separate and distinct review processes with differing criteria. The Oak Woodlands Management Plan requires that an Oak Woodlands Report be prepared if the Project could have a significant impact on oak woodlands without mitigation. The County Biologist made his finding assuming the mitigation measures that had already been adopted.

Moreover, the Project's application materials and Ms. Latta's testimony both agree that the Project will have a significant impact on Oak Woodlands regardless of mitigation.

We have stepped through this process in detail in Attachment 11, demonstrating the lack of support for this conclusion.

V. THE PROJECT VIOLATES THE COUNTY'S OAK TREE PROTECTION ORDINANCE.

The Project application does not adequately address burdens of proof imposed by the County's Oak Tree Ordinance. Co. Code 22.56.2050 et seq ("Oak Tree Ordinance"). The Project does not provide a full and complete Oak Tree Permit application and does not satisfy the burden of proof required for issuance of an oak tree permit under the County's Oak Tree Ordinance.

a. The Project's Application For An Oak Tree Permit Is Incomplete.
The Project fails to provide a complete oak tree permit application. The Oak Tree Ordinance requires that an application for an oak tree permit include:
. . .
B. Evidence that the applicant:
1. Is the owner of the premises involved, or
2. Has written permission of the owner or owners to make such application;
. . .
E. 1. A site plan drawn to a scale satisfactory to, and in the number of copies prescribed by the director, indicating the location and dimension of all of the following existing and proposed features on the subject property:
. . .
h. Proposed construction, excavation, grading and/or landfill. Where a change in grade is proposed, the change in grade within the protected zone of each plotted tree shall be
specified,
i. The location of all oak trees subject to this Part 16 proposed to be removed and/or relocated, or within 200 feet of proposed construction, grading, landfill or other activity. Each tree shall be assigned an identification number on the plan, and a corresponding permanent identifying tag shall be affixed to the north side of each tree in the manner prescribed by Section 22.56.2180. These identifications shall be utilized in the oak tree report and for physical identification on the property where required. The protected zone shall be shown for each plotted tree,
. . . .
Co. Code § 22.56.2090.

The Project's oak tree permit application is incomplete as the Project's application materials do not 1) show that the Project has written permission to encroach upon oak trees owned by other owners, 2) identify all oak trees within 200-feet of the Project's activities or 3) document changes in grade for plotted trees within 200 feet of the Project's activities.

1. The Project's Oak Tree Permit Application Fails To Indicate That The Project Has Written Permission From Owners of Nearby Oak Trees.
The Project's application fails to identify whether the Project's application has received permission to encroach upon oak trees on neighboring properties. The Oak Tree Ordinance requires that an Oak Tree Permit application identify that the Project "[h]as written permission of the owner or owners to make" an oak tree permit application." One of the oak trees encroached upon by the Project, Oak Tree No. 1, actually falls on a neighboring property. As Ms. Latta notes:

This mature coast live oak tree does not belong to the applicant, but instead is located on the adjacent property and therefore is the asset of the neighbor. This tree has a rough estimated assessed value of $103,000.00 using the trunk formula method. The tree was evaluated for condition, species and location using the cost approach (trunk formula method) from the Council of Tree and Landscape Appraisers Guide for Plant Appraisal 9th Edition (2000). The most current Species Classification and

Assignment (2004) was used to determine species classification.

The Altadena Town Council has required that the application stage all materials and equipment in the protected zone of this tree. Therefore, it is likely that significant compaction damage could occur. Compaction damage can occur when materials are delivered to the jobsite during the loading and unloading process. The trucks tilt up and slide the materials out onto the ground or a forklift is used to lift the material out of the trucks. The vehicles that deliver the roll-off containers need minimum vertical clearance that is not available on the site. There may also be damage from exhaust from equipment that can burn foliage. Compaction damage is serious and is not easy to mitigate. It can lead to decline and death of the tree over time.
Latta at 4 – 5.

The Project will have a significant impact on Oak Tree No. 1, an oak tree that is on land not owned by the Project Applicant. The Project's application does not indicate that the Project has received written permission from the owner of Oak Tree No. 1, John Lynch. In fact, the owner of Oak Tree No. 1, John Lynch, in fact has expressly objected to the Project's encroachment upon Oak Tree No. 1. The Project's application materials admit that the Project's activities will encroach upon Oak Tree No. 1, but fail to indicate whether or not the Project Applicant has received written permission from the owner of Oak Tree No. 1.

Mr. Tsai misinterprets a requirement prohibiting hostile and unsolicited oak tree reports on a subject property as essentially requiring the approval of a neighbor with any encroached tree in order to obtain an oak tree permit. Because an oak tree permit is required in order to improve our lot for its zoned purpose, his claim would lead to the absurd consequence that an opposed neighbor possesses veto authority over any adjacent development. Neither do neighbors, nor the Altadena Community Standards, nor the county itself have the right to effect a "taking" in this way. The term "premises" is not defined explicitly by County Code §22.08 Definitions. However, Merriam-Webster defines it as "a building and the area of land that it is on." The statute states that the applicant for an oak tree permit must either be the owner of the building proposed and land upon it, or else the applicant (as e.g. a project manager) must have the written permission of the owner.

As we discuss in Attachment 19 at 16, Ms. Latta has authored an oak tree report for which construction on one property affected a tree belonging to a neighbor to a greater extent than we will encroach on #1 (25% root zone and 15% lower canopy impacts).

For the sake of clarity, we will note that our site plan and the recorded survey on which it is based show that the trunk of oak tree #1 spans 3589 Canyon Crest and the county right of way easement for Canyon Crest Road. Pursuant to Civil Code Section 834, it is the joint property of 3589 Canyon Crest Road and the county. These joint owners have the reasonable expectation that we will do everything we can to minimize our impacts to this tree, which has been severely encroached by the excavation of a 5'x35' seepage pit and sewer lateral (Attachment 32) by a previous owner of 3589 Canyon Crest, and by the compacted slab-on-grade construction of 3589 Canyon Crest, the driveway for 3589 Canyon Crest, and of Canyon Crest Road itself.

These mitigation efforts include building upon the existing layer of mulch and laying down 3/4"

plywood to minimize compaction from heavy equipment. The Alabama Cooperative Extension System's "A Guide to Preventing Soil Compaction During Construction" is a resource that Ms. Latta has acknowledged in previous claims, and it states "Research shows that mulch under ¾-inch-thick plywood is the most effective technique for reducing soil compaction in [Tree Protected Zones]. This technique is optimal for areas where there will be significant movement of equipment." (see Attachment 14, citation HH).

It should also be noted that per our oak tree report exhibit map, approximately 21% of the protected zone of oak tree #1 is coincident with our lot (see attachment 15 at 5-6).

Ms. Latta has speculated that we will employ the most impactful construction methods, though we have repeatedly represented that we will use common methods to reduce our impacts. The dynamics of a slide-off delivery are entirely inappropriate for the protected zone of an oak tree. As she notes, a forklift can remove materials and place them pseudo-statically. She is incorrect that our project site does not have the vertical clearance to accommodate the construction vehicles we require, as we show in Attachment 16. As we have described in a previous response to her, we will have our garage floor cast before the major deliveries for our project commence – including lumber, sheathing, roofing, siding, drywall, flooring, windows, doors – and this will be an area where we will stage many of these serial deliveries.

2. The Project's Oak Tree Permit Application Does Not Identify All Oak Trees Within 200 Feet Of The Project's Activities.

The Project's application materials do not identify all oak trees within 200 feet of the Project's activities. An application for an oak tree permit is required to identify "[t]he location of all oak trees . . . within 200 feet of proposed construction, grading, landfill or other activity." Co. Code § 22.56.2090(E)(1)(h)(i).

The Project's application materials do not identify all oak trees within 200 feet of proposed construction, grading, landfill or other activities. As certified arborist John P. Lynch notes:

There are Several Oaks directly below the proposed S.W corner of the project that will be impacted by falling rocks, debris and a change in hydrology. These Oaks were not included in the Oak tree report. The Lot to the South West where the Oaks are located is unfenced, accessible and has no posted signs to keep out. The Arborist who wrote the report, The County Biologist and Forester all failed to locate these additional trees, possibly because the steep terrain was too intimidating. These unaddressed impacts to additional protected Oaks could severely reduce surrounding property and habitat values. Two 15 Gallon saplings are not adequate mitigation for the loss or decline of any mature Oaks on adjacent properties that are not owned by the applicant. The Oak woodland gives the neighborhood its unique character, and any unmitigated loss would greatly impact the aesthetic and environment. The loss of the large Oak on our property alone will significantly increase our energy costs and decrease our property value greatly. The entire protected zone of our specimen Oak is being proposed as the sole staging area for this project. Plywood and mulch alone cannot protect the root system from major trenching, compaction and drought. These impacts were not mentioned in the original Oak tree report. The Oak tree report is incomplete and does not address all the trees that will be negatively impacted. An Oak woodland management plan should have been required by county staff biologist. An Oak woodland management plan has not been prepared to date. The application is therefore deficient and

should be denied.
Lynch at 3.

We will address these claims in turn.

It was claimed that several oaks “directly below the proposed SW corner of the project [will be] impacted by falling rocks, debris and a change in hydrology.”

As we have noted on our website, “Our slight modification of [the path of the drainage swale] upstream and 10-15ft from the property edge - which will not throttle flow - will have no impact to the drainage across either property or Millard canyon below, nor will it impact the flow under Canyon Crest through the culvert, being ~10ft in elevation below the culvert. In other words, flow will only be affected (slightly) on our own property. Over the footprint of our home, what had been sheet runoff collected by the open swale will become gutter runoff intercepted by a rain garden (per LID requirements, to improve the quality of the runoff) and thereafter routed right back into the same open swale. The drainage pattern downhill of our home is thus left substantially unaltered.”

As our initial study notes, “The project will alter the existing drainage pattern of the site and will also increase the amount of surface runoff with the addition of impermeable surface area. However, all projects must comply with all applicable NPDES requirements and the Low Impact Development (LID) standards for small-scale residential projects which include management of drainage and surface runoff. Therefore, the project is not expected to result in substantial erosion or siltation on or off-site, increase the rate or amount of surface runoff in a manner that would result in flooding on or off site, create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage, or generate construction or post-construction runoff that would violate applicable stormwater NPDES permits or significantly affect surface water or groundwater quality.”

As we noted at our September 7 hearing, “It was asked that we “study” impacts to the drainage of trees as far as 170ft distant from our home despite LID requirements that route our downspouts back into the same open swale that presently intercepts whatever sheet runoff exceeds the capacity of percolation. It was asked that we project damage to trees through debris flow, despite being conditioned to use hand excavation and adhere to erosion and sediment control BMPs that mitigate for this.”

The change in hydrology from rainfall interception by our 1159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in sandy loam), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff cannot be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree.

It was claimed that we “failed to locate these additional trees, possibly because the steep terrain was too intimidating.” Rather, the trees were un-impacted by our construction, not on our property, and according to the Oak Tree Ordinance and guidance from the Forestry Department Environmental Review Unit, they need not be included in our oak tree report.

It was claimed that “The entire protected zone of our specimen Oak is being proposed as the sole staging area for this project.” Our oak tree exhibit map shows that approximately 21% of the protected zone of oak tree #1 is coincident with our lot (Attachment 15 at 5-6). We have supplemented this with a more precise definition of the protected zones of our trees based on a LIDAR scan of their canopies (see Attachment 16). The paved driveway and slab-on-grade construction of 3589 Canyon Crest encroach far more severely on oak tree #1 than will our staging activities, distributed with a thick layer of mulch and plywood.

It was claimed that “plywood and mulch alone cannot protect the root system from major trenching, compaction and drought.” We do not propose “major” trenching, but rather the threading of utility laterals, excavating either by hand or air spade under the direction of our arborist, to the minimal depths permitted by code. Construction of laterals will adhere to oak tree mitigation measure #4, that “all work in the protected zone of the trees approved for encroachment must be done using hand implements only,” and measure #10 that “any major roots (2” or greater in diameter) encountered shall be preserved to the extent possible”. According to IPC section 305.6 and IRC section P2603.6 and P2603.6.1, water and sewer laterals may be buried at 12” below grade. This careful, shallow excavation is consistent with the guidelines laid out in the county Oak Tree: Care and Maintenance guide (included in our Hearing Officer Hearing package) to minimize permanent impacts. Our arborist has also suggested that an air spade (a type of hand tool) may avoid any permanent impacts altogether, consistent with the findings of “Smiley, E.T. 1999. Air excavation, the next arboricultural frontier. Arbor Age, 20,8-10,” as documented in the materials for the Richardson Grove EIR (see Attachment 14 citation KK at 16), which note “virtually no damage” and the long-term experiment documented in Attachment 33. Although the sewer lateral is required to drop deeper where it enters the road right of way, this point was chosen to be more than 15ft distant from any tree.

Plywood and mulch are in fact specified as mitigating for even heavy repeated loads, according to the Alabama Cooperative Extension System's “A Guide to Preventing Soil Compaction During Construction” (see Attachment 14 citation HH). The 5,000+ lb pickup truck that Mr. Lynch has parked in the protected zone of his and our trees unmitigated by even a sufficiently thick layer of mulch is in family with any loads we will transmit through a thick layer of mulch and plywood. As our arborist indicated in his oak tree report, and as we've followed up with our Arborist of Record, our trees will benefit from supplemental irrigation both before, during and after construction, and we will provide this. We want to re-iterate our thanks to Mr. Lynch for providing supplemental irrigation to their and our oak trees during the drought.

It was claimed that “the Oak tree report is incomplete and does not address all the trees that will be negatively impacted.” Again, the oak tree ordinance lays out a criteria for threshold encroachment that is 5ft beyond the dripline of the trees. All trees that were encroached in this zone by the footprint of our home, our deck, our permeable gravel driveway or our utility laterals were included. Nor will any of our construction activities encroach on any additional trees. In his letter dated August 23rd, 2016, John Lynch portrayed a tenuous and un-localized picture of a dead tree that he claimed should have been included in our report. This tree was on the opposite side of Millard Canyon more than 300ft distant from our project footprint. Its trunk is located at the boundary with the adjacent parcel. Given its height above the stream and the extreme drainage of the steep slope on which it is sited, it may not have had feeder

roots that tapped into the moist soil below.

The omission of these trees from the Project's application materials significantly undermines the credibility and accuracy of the Project's environmental documentation. As Ms. Latta notes:

...the applicant was allowed to ignore trees that are within 45 feet of the structure on adjacent property to the SW, even though the properties are without fences or signage prohibiting entry. None of the plans reflect the extent of the oak woodland that will be impacted by the project. … The report, which was the basis of approval for the permit, lacks a complete picture of the tree impacts on site by the admission of the LDC Arborist in the response to my comments. . . .
Latta at 7.

Ms. Latta does not make explicit how trees with protected zones set back tens of feet from the edge of our construction are expected to be impacted. In Attachment 26, she explicitly omits from her oak tree report trees on the subject property that are well within 200ft of the footprint of the home, as we discuss in Attachment 19. We have already addressed the speculation that construction debris will damage these trees, in spite of erosion and sediment control BMPs and the use of hand excavation.

Our arborist did not acknowledge any requirement to document these un-impacted trees, or the trees on our property nearly 200ft distant in the riparian environment of the canyon below. Rather, he stated in his response to Ms. Latta's comments dated April 18, "As explained in the August 2014 report, "There are additional oak trees within 200 feet of the proposed development, but beyond the property boundary. These trees could not be surveyed due to access restrictions by the adjacent property owners and are not proposed to be impacted by the development..." Many un-affected additional trees within 200ft of our home's footprint are in fact behind fences on private property.

Our arborist explicitly referenced the other trees within 200ft on our property, stating that "there are approximately eight (8) additional oak trees that are located onsite approximately 170 feet downslope from the proposed development. The elevation at which these trees are located is more than 80 feet below the elevation where the proposed building is located. These oaks will not be impacted by the proposed development and were therefore not included in the scope of this analysis."

We note that when summing the horizontal and vertical distances, the resultant of these two figures is very nearly 200ft (approximately 190ft), and this is the distance to the nearest of the trees. The majority of the trees in the riparian environment below have an absolute distance from our home in excess of 200ft.

We subsequently investigated analogous oak tree permits previously filed in the county for a single family residence. We note that the vast majority of oak tree permits are not elevated to a hearing (lacking the requisite number of complaints). We have included these as Attachments 20-22. Every one contains examples of oak trees within 200ft on adjacent lots that were however not surveyed, according to the standard practice acknowledged by the Forestry Department Environmental Review Unit, as we attribute in Attachment 19. Again, owners of private property cannot be compelled to make their property available to an

arborist, nor to tag their trees.

Ms. Latta has herself generated oak tree reports for which not only were those unaffected trees within 200ft on adjacent lots not included, but also for which an entire stand of oak woodland on the subject property was not included. As she notes in Attachment 26, the tree report for construction of a new 3,000 square feet single family residence, "…the area above the building pad was recommended for preservation with no impacts. [The project architect] received approval from the City of Monrovia to consider the area as intact oak woodland. Individual trees were not surveyed in the area." As shown in the attachment, these were all less than 200ft distant from the home. Presumably then, Ms. Latta's objection to not including unaffected trees is derived from her perception that they will in fact be affected, based on her claim that they inhabit a drainage for which the footprint of our home is tributary. We have addressed this claim.

The Project's application materials fail to identify all oak trees within a 200 feet vicinity of the Project.

More to the point, Mr. Tsai appears to have misunderstood County Code §22.56.2090. E.1 of that section states that, "A site plan drawn to a scale satisfactory to, and in the number of copies prescribed by the director, indicating the location and dimension of all of the following existing and proposed features *on the subject property*:" (emphasis added). Note the singular case of "property."

Within the umbrella of scope E.1 declares, E.1.i requests for inclusion in that site plan, "The location of all oak trees subject to this Part 16 proposed to be removed and/or relocated, or within 200 feet of proposed construction, grading, landfill or other activity. Each tree shall be assigned an identification number on the plan, and a corresponding permanent identifying tag shall be affixed to the north side of each tree in the manner prescribed by Section 22.56.2180. These identifications shall be utilized in the oak tree report and for physical identification on the property where required. The protected zone shall be shown for each plotted tree." E.1 constrains this requirement to the subject property because adjacent property owners cannot be compelled to make their private property available to an arborist, nor to submit to the tagging of their tree. Many adjacent properties on Canyon Crest are fenced, and we honor the property rights of these owners. Nor are any oak trees on adjacent lots affected, save the boundary oak tree #1, which is surveyed and included in our report.

E.2 then goes on to state that, "Where a concurrent application for a permit, variance, zone change, tentative map for a subdivision, including a minor land division or other approval, is filed providing the information required by this subsection E, the director may waive such site plan where he deems it unnecessary to process the application." In other words, where a concurrent permit is being applied, it is at the sole discretion of the Director [of the Department of Regional Planning] to waive any and all requests stated in E.1. We submitted our oak tree report concurrently with a minor Conditional Use Permit application. We have submitted an oak tree report that conforms to the requests of the County of Los Angeles Fire Department Environmental Review Unit and to the requests of the Department of Regional Planning planners and staff biologist, acting on behalf of the Director according to a standard county process. Therefore in complying with the Director's requests, we are compliant with

the statute.

We also note that F.2 states that, “The requirement for an oak tree report may be waived by the director where a single tree is proposed for removal in conjunction with the use of a single-family residence listed as a permitted use in the zone, and/or such information is deemed unnecessary for processing the applications.” While we are encroaching on several trees, we are removing only a single ordinance-sized tree. A narrow reading of the ordinance allows that the Director has discretion to waive any and all requirements of an oak tree report, at their discretion, where only a single tree is being removed in conjunction with development of a single-family residence.

We also note that under Appendix H of Los Angeles County CEQA guidelines (Attachment 14 citation M at H-2), construction of a non-trunk utility main in the public right of way is ministerial. Per the Department of Regional Planning and the City of Pasadena Water and Power, there are no provisions in the County of Los Angeles of City of Pasadena for tree encroachment permits for individual subsurface utility projects. Also, “CEQA does not apply to any project of less than one mile in length within a public street or highway or for other public right of way for the installation of a new pipeline or for maintenance, repair, restoration, reconditioning, relocation, removal, replacement, or demolition of existing pipelines.” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 5.22)

3. The Project’s Application Does Not Project The Change In Grade Within The Protected Zone Of Each Plotted Tree.

The Project’s application does not identify changes in grade within the plotted oak trees protected zones. The Oak Tree Ordinance requires that an oak tree permit application document “change[s] in grade within the protected zone of each plotted tree.” The Project’s materials fail to analyze the impacts of grade beams on the oak trees within the vicinity of the Project. As Ms. Latta notes:

It is unclear how the grade beams will impact the trees. On the most recent plans, they are shown below grade going between the piers. The arborist report and response to comments does not discuss this impact.
Latta at 21, 22

The Project’s oak tree permit application is incomplete as it does not plot changes in grades within the protected zone of oak trees.

Mr. Tsai appears to have conflated “grade” with “grade beam.” The impact of the grade beams for our home are included in our arborist's estimates of the extent of oak tree encroachment (Attachment 16). The grade beams are entirely within the footprint of our home. We do not propose grading outside the footprint of our home.

b. The Project Does Not Satisfy The Burden Of Proof Required Under the County’s Oak Tree Ordinance.

The Project fails to provide substantial evidence that the Project satisfies its burden of proof required by the Oak Tree Ordinance. In particular, the Oak Tree Ordinance requires that “[i]n addition to the

information required in the application by Section 22.56.2090, the application shall substantiate to the satisfaction of the director the following facts:

1. That the proposed construction of proposed use will be accomplished without endangering the health of the remaining trees subject to this Part 16, if any, on the subject property; and
2. That the removal or relocation of the oak tree(s) proposed will not result in soil erosion through the diversion or increased flow of surface waters which cannot be satisfactorily mitigated; and
3. That in addition to the above facts, at least one of the following findings apply:
a. That the removal or relocation of the oak tree(s) proposed is necessary as continued existence at present location(s) frustrates the planned improvement or proposed use of the subject property to such an extent that:
i. Alternative development plans cannot achieve the same permitted density or that the cost of such alternative would be prohibitive, or
ii. Placement of such tree(s) precludes the reasonable and efficient use of such property for a use otherwise authorized, or
b. That the oak tree(s) proposed for removal or relocation interferes with utility services or streets and highways, either within or outside of the subject property, and no reasonable alternative to such interference exists other than removal of the tree(s), or
c. That the condition of the oak tree(s) proposed for removal with reference to seriously debilitating disease or danger or falling is such that it cannot be remedied through reasonable preservation procedures and practices;
4. That the removal of the oak tree(s) proposed will not be contrary to or be in substantial conflict with the intent and purpose of the oak tree permit procedure;
Co. Code § 22.56.2100(A).

1. The Project Will Endanger The Health Of Additional Trees Protected By The Oak Tree Ordinance.
The Project will endanger the health of additional trees. The Oak Tree Ordinance requires that a Project "be accomplished without endangering the health of the remaining trees." Co. Code § 22.56.2100(A)(1). However, the Project will likely result in the death of three additional protected oak trees, significantly more than the single protected oak tree that the Project's application materials claim will be removed. According to Ms. Latta:

There is a point where if enough roots and canopy are removed, a tree can go into decline and fail to recover. I do not believe that the intent of the ordinance is to leave severely pruned or root-damaged trees standing; it would defeat the purpose of the Los Angeles County Tree Ordinance to allow trees to stand with significant damage from root or canopy pruning. In the purpose statement at the beginning of the ordinance there is a statement:
'The stated objective of the oak tree permit is to preserve and maintain healthy oak trees in the development process'.
It is my opinion that the amount of impacts from the proposed project will cause significant damage to several trees, causing them to go into decline. The arborist Scott McAllaster from LDC conceded in his letter dated April 18, 2016 that "the level of impacts to these trees are significant" (re: #4 and #7) on page 4 of that memo. Cumulative impacts for trees #4, #5 and #7 based on the LDC revised report exceed 50% to either protected roots, canopy, or both. I have included both tables of the original estimates of tree impacts and revised estimates based on the Arborist's memo and my own calculations. These impacts are calculated before taking into consideration any fire clearance required from the roof of the structure and around the deck. In my opinion, it is outside of the intent of the oak tree ordinance

to allow that level of impacts to protected trees. Therefore, I believe that trees #4, #5 and #7 should be considered removals.
Latta at 6.

Ms. Latta has provided no visual evidence in support of her claims of 50% impacts to either protected roots, canopy or both. These figures are directly contra-indicated by the visually explicit evidence documented in Attachment 16, which are validated at the conclusion of that attachment by our ISA- and ASCA- certified arborist, who has the benefit of accurate information regarding construction methods and impacts. More fundamentally, we encounter a limitation in Ms. Latta's assessments of a single unattributed percentage figure of root zone impacts. Root zone impacts may entail physical removal of all roots; interception of rainfall; disruption of oxygen/gas exchange with an impermeable surface; physical removal of feeder roots while preserving lateral roots when trenching; permanent, un-remediated compaction; or temporary, remediated compaction, among others. Each manner of encroachment impacts in varying ways and to varying extents.

In Attachment 28, the “Tree Health Evaluation and Construction Preservation Report” for a 10,911sqft home currently under construction in San Marino, Ms. Latta describes tree #31 as being improperly center-stripped (or lion-tailed) and sustaining 100% [sic] root impacts and 30% canopy impacts, and indicates that the tree may be kept. Several other trees have 100% root zone impacts and 25% canopy impacts. Ms. Latta describes Oak Tree #12 as sustaining 80% root zone impacts and 25% canopy impacts with a 12-14 inch branch cut (larger than the largest 10” scaffold we are removing from any tree), and indicates it may be kept. The type of root encroachment has to factor into this assessment, such that a single percentage figure alone is rendered meaningless. 100% root impacts surely cannot be sustained if these correspond to complete physical removal (though boxing for relocation can completely remove 90-95% of oak tree roots, with studies of transplants indicating a substantial minority of trees surviving this extremely severe process to maintain stability). In Attachment 16, we quantify the amount of encroachment for each type of impact.

Ms. Latta has stated, “It is my opinion that when the total amount of root and canopy encroachments equals more than 50%, then the tree may sustain significant damage and requires removal.” As we show in Attachment 16, no tree will sustain either root removal or canopy removal exceeding 50%. The tree with the largest extent of canopy removal is #5, with ~35-40% canopy removal and 20% root removal. The tree with the largest extent of root encroachment is #7, with ~20% removal and an additional 25% by a vapor-permeable rain-intercepting surface. Her assessments appear to reflect several mistaken assumptions we have attributed in Attachment 7, and are not supported by evidence. Our evidence is derived from LIDAR measurements of the trees and their canopy, and the terrain.

Given Ms. Latta's stated concern about excavating within five times the ratio of the offset of encroachment to diameter at breast height, she may have advocated for the removal of oak tree #1 when a 5'x35' seepage pit was drilled 6' from the trunk of oak tree #1 (a ratio of 2.2), and a water meter and lateral were installed on the *opposite side* of the tree from this earlier encroachment (see Attachment 32) at a 7' offset assuming no over-excavation (a ratio of 2.5). These included substantial excavation at offsets normalized to diameter at breast height that are lower than what we propose for any of our oak trees. Oak tree #1 has continued to thrive

to receive the highest grade of all surveyed oak trees, despite sustaining these encroachments, as well as the encroachment to the north and west for the past *67 years* by our neighbor's impermeable concrete driveway and slab-on-grade home *at no remove whatsoever* from its trunk, the encroachment to the east for at least the same interval by the impermeable asphalt of Canyon Crest Road *at no remove whatsoever* from its trunk, and the encroachment of our neighbor's parking to the south and west (see Attachment 16). It is fortunate that such guidance was not provided to the previous owners of 3589 Canyon Crest, who might otherwise have been deprived of this beautiful oak tree, which Ms. Latta has herself estimated at significant value, albeit with some indefensible error.

There are many other examples of homes in the immediate vicinity with 50% and even as much as 100% of the protected root zone of the trees encroached by impermeable road, driveway or slab pavement (Attachment 30).

Using the same methodology Ms. Latta attributed in her response dated September 5, oak trees #4, #5 and #7 are valued together at a figure of at least $70,000, as we describe below. Her request to remove these trees – which our arborist gives a good probability of surviving – would deprive us of substantial value. Even using a valuation that is more consistent with other arborists operating in the area and citing the same references, these trees still represent a substantial monetary value.

We note that the Trunk Formula Method values a tree as Basic Tree Cost x Species Rating % x Condition Rating % x Location Rating % (see Attachment 14 citation GG). Basic Tree Cost is defined as Replacement Tree Cost + (Base Price x Adjusted Trunk Area, or ATA). Four independent arborists operating on projects in Los Angeles county within the recent past have determined a Replacement Tree Cost for Q. Agrifolia of $600 to $1600 and a Base Price of $54.32/in^2 to $67/in^2 for our region (Attachments 23, 34-36), including one who submitted such an oak tree report to the City of Agoura Hills during the time Ms. Latta was sub-contracted to assist in their review (Attachment 23). The arborist referenced in Attachment 36 cites the same reference and year as Ms. Latta – the International Society of Arboriculture, Council Of Tree & Landscape Appraisers (CTLA) Guide To Plant Appraisal, 9th Edition, 2000. That arborist also attributed the same document as Ms. Latta for purpose of valuation - “The Species Classification and Group Assignment 2004, a regional supplement to the CTLA published by the Western Chapter of the ISA” - using a figure $67/in^2 for Quercus Agrifolia. This arborist also surveyed oak trees that exceeded heritage size designation, assigning a Base Tree Cost of $118,189.75 to oak tree #25B, of diameter 55.5in, nearly three times the trunk area of our project's oak tree #1.

Using the most conservative of these independent arborist figures, this would result in a Basic Tree Cost for oak tree #1 of ($1600 + ($67/in^2 * pi *((33in/2)^2))) = $58,905, based on the measurement of 33”DBH documented in our oak tree report.

In the reports cited in Attachments 23 and 34-36, the species rating for Q. Agrifolia is variably 80%, 95% or 100%. The condition and location ratings are discretionary and can lead to high variability between tree appraisals, but cannot exceed 100%. Even if Ms. Latta assigned a condition and location rating of 100%, she has evidently employed a substantially higher Base Price than other arborists operating in the area in the recent past, quoting the same

references. We believe it is customary when an arborist makes such a claim to show their work, as was done in Attachments 23 and 34-36. For the purposes of translating her valuations to the monetary loss we would experience from unnecessarily removing these trees, we will conservatively assume she assigned 100% for species, condition and location ratings and has used a Base Price of (103000-1600)/(pi*((33/2)^2)) = $118.55/in^2, the lowest possible Base Price she may have used with the Trunk Formula Method.

The Basic Tree Cost for oak tree #4 becomes ($1600 + $118.55/in^2 * pi * ((sqrt(9.5^2+19^2))/2)^2) = $43,615. The Basic Tree Cost for oak tree #7 becomes ($1600 + $118.55/in^2 * pi * (27.5/2)^2) = $72,013. The Basic Tree Cost for oak tree #5 becomes ($1600 + $118.55/in^2 * pi * (14/2)^2) = $19,849.

Using the Base Price established in Attachment 36, we would scale these figures by $67/$118.55 = 0.565.

Location rating is the average of the arborist's assessment of the position, contribution and placement ratings of a tree (see again Attachment 14 citation GG). In the calculations above, we assume conservatively that Ms. Latta has provided a location rating of 100% for oak tree #1. This would attribute a “well-maintained residential area” position component (or perhaps an urban-wildland boundary woodland designation), extensive contributions to site functions, and “outstanding aesthetic value.” The general position rating of oak trees #4, #5 and #7 should be identical to #1. Many site functions of these trees are comparable to #1, but we may conservatively assume a “fair” component of 60%, slightly above the threshold for “poor” at 50%. For aesthetic value, we defer to our arborist's rating, assigning oak tree #4 a figure of 100% based on identical “A” rating to oak tree #1, oak tree #5 a rating of 75% based on a “B” rating, and oak tree #7 a rating of 75% based on a “B” rating. The location rating becomes (1+0.6+1)/3 = 0.866 for oak tree #4. It becomes (1+0.6+0.75)/3 = 0.783 for oak trees #5 and #6.

Condition ratings can be scaled to the letter grades our arborist has provided for health, with an F being 0 and an A being 100%. The condition rating for oak tree #4 becomes 75%, for oak tree #5 becomes 75% and for oak tree #7 becomes 45%.

According to Ms. Latta's methods, the oak tree valuation becomes at least $43,615*1*0.866*0.75=$28,327 for oak tree #4. It becomes $19,849*1*0.783*0.75=$11,656 for oak tree #5. It becomes $72,013*1*0.783*0.45=$25,373 for oak tree #7. Together these would constitute a loss of $65,356, again, applying a Basic Tree Cost that is *at most* as high as Ms. Latta applied to derive a figure of $103,000 for oak tree #1. Using the methodology applied in Attachment 36, we would scale this to at most $36,956, also acknowledging a proper location rating that may be less than 100%.

Even if we scale the value of the tree by the net canopy removal we document in Attachment 16, and even if we use the figures established in Attachment 36, it can be stated that Ms. Latta believes we will experience a substantial loss in value in the tens of thousands of dollars from removal of these trees.

In the unlikely event that one of our remaining trees were to succumb, we are conditioned by

Oak Tree Permit requirement #10 to "provide mitigation trees of the Oak genus at a rate of two to one (2:1) for any [encroached tree] that dies as a result of the approved encroachments." The monitoring for this occurrence has already been extended from the customary two years of the Oak Tree Ordinance (County Code § 22.56.2050) to the seven years recommended by the Oak Woodland Conservation Management Plan. The entirety of our site is suited to the establishment of additional oak trees, as they flourish on our and adjacent lots. Independent of any statute requirements, we intend to plant a large number of oak trees and see them prosper in a favorable environment. Had we treated these trees as removals, we would have been conditioned to plant and monitor additional trees in a 2:1 ratio, as we already intend.

Both the Project Applicant's own materials and Ms. Latta's testimony indicate that the Project will result in additional removals of protected oak trees other than the oak trees already permitted for removal. Therefore, the Project fails to satisfy the burden of proof required by the Oak Tree Ordinance.

According to the cited code, the decision as to whether the burden of proof has been satisfied is reserved for the Director. Mr. Tsai and Ms. Latta have exhibited misunderstandings that discount significant portions of their testimony.

2. The Project Does Not Account For Or Consider Soil Erosion Through The Diversion Or Increased Flow Of Surface Waters.

The Project does not adequately account for its impacts on soil erosion through diversion or increased flow of surface waters. The Oak Tree Ordinance requires that a Project demonstrate that its activities "will not result in soil erosion through the diversion or increased flow of surface waters which cannot be satisfactorily mitigated." Co. Code § 22.56.2100(A)(2).

As Ms. Latta notes:
. . . . The applicant has not demonstrated how they will prevent rocks and debris from rolling down the very steep slope to the drainage.
. . . .
The applicant has not demonstrated how they would avoid downslope impacts. What methods would they use? Their current landscape plans call for disturbance downslope in areas with existing native vegetation. What about the required fire clearances downslope? All the vegetation would have to be cut and canopies raised to 6'. This would be an impact on downslope vegetation and the drainage.
Latta at 11 – 12.

This planning permit process is not an engineering review. It is for the professional engineers at the Department of Public Works – and not the general public – to assess the sufficiency of the documented BMPs for erosion and sediment control, in accordance with standard county process. Ms. Latta does not clarify what "disturbance" is documented in our landscape plans. Our landscape plans portray the establishment of native vegetation recommended for hillside stabilization. All of these plants are suited to the fuel modification zones in which they are sited, per our approved Fuel Modification Plan. The existing sparse native vegetation that is compatible with the fuel modification guidelines will be retained.

The fuel modification requirements for our home are substantially unaltered from those

already present for the adjacent residence at 3589 Canyon Crest, the fuel modification zones of which overlap on our property to a nearly identical extent with our own, extending nearly all of the way to Millard stream below. We had already explicitly requested fuel modification inspectors to assess our lot for suitability as we have maintained it before construction began, and they indicated that no changes needed to be made.

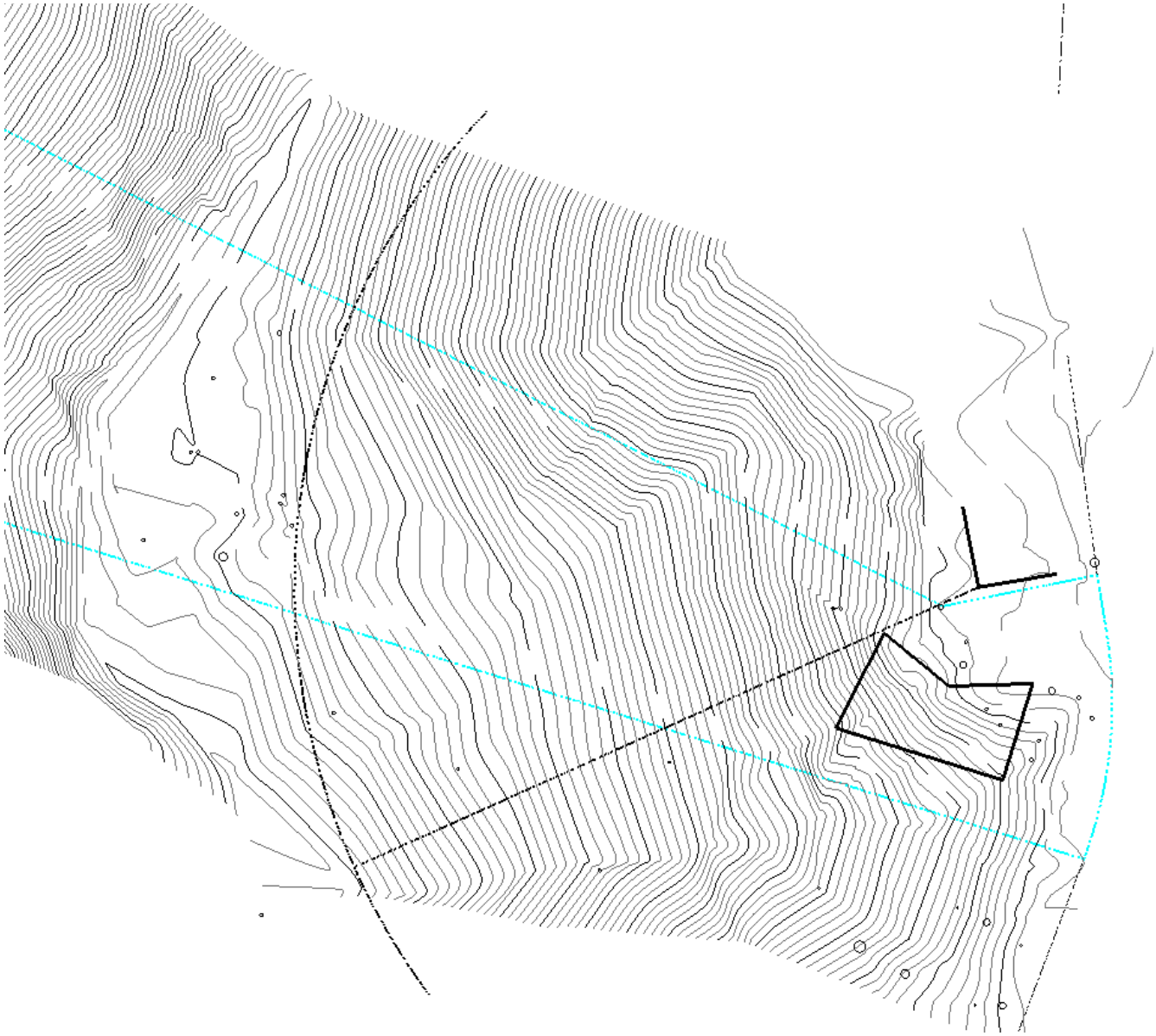


Illustration 3: Fuel Modification Zone B for 3589 Canyon Crest, with radius of 200ft extending to canyon bottom. See also Fuel Modification Guidelines (Attachment 14, Citation BB)

The Project has not provided adequate information regarding soil erosion and diversion of surface waters.

VI. THE PROJECT VIOLATES THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

a. Background On The California Environmental Quality Act.

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report except in very limited circumstances. See, e.g., Cal. Pub. Res. Code § 21100. The EIR is the very heart of CEQA. Dunn-Edwards v. BAAQMD (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." Communities for a Better Environment v. Calif. Resources Agency (2002) 103 Cal. App. 4th 98, 109. CEQA applies to agency projects that may have an adverse environmental impact. Friends of Mammoth v. Board of Supervisors, 8 Cal.3d 247, 259 (1972); Friends of B Street v. City of Hayward, 106 Cal.App.3d 988, 1003 (1980) (project that included removal of trees caused significant effect on environment). CEQA has two broad purposes: 1) avoiding, reducing or preventing environmental damage by requiring alternatives and mitigation measures (14 Cal. Code Regs. § q15002(a)(2)-(3) (hereinafter "CEQA Guidelines")); and 2) providing information to decision makers and the public concerning the environmental effects of the proposed project. CEQA Guidelines § 15002(a)(1).

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. CEQA Guidelines § 15002(k); Comm. to Save the Hollywoodland Specific Plan v. City of Los Angeles (2008) 161 Cal.App.4th 1168, 1185 – 86. First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. Id. Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform a threshold initial study. Id.; CEQA Guidelines § 15063(a). If the study indicates that there is no substantial evidence that the project may cause a significant effect on the environment the agency may issue a negative declaration. Id., CEQA Guidelines §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report ("EIR") is required. Id.

b. Background On Initial Studies And The "Fair Argument" Standard.

As the California Supreme Court very recently held, "If no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." Communities for a Better Environment v. South Coast Air Quality Management Dist. (ConocoPhillips) (2010) 48 Cal. 4Th 310, 319- 320 ("CBE v. SCAQMD"), citing, No Oil, Inc. v. City of Los Angeles, 13 Cal.3d at pp. 75, 88; Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles (1982) 134 Cal. App. 3d 491, 504–505) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."
Communities for a Better Environment v. Calif. Resources Agency (2002) 103 Cal. App. 4Th 98, 109.

An EIR is required 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." Pub. Res. Code §21080(d) (emphasis added); see also Pocket Protectors, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly

indicating that a project will have no significant impact thus requiring no EIR CEQA Guidelines § 15371, only if there is not even a "fair argument" that the project will have a significant environmental effect. Pub. Res. Code §§ 21100, 21064. Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." Citizens of Lake Murray v. San Diego, 129 Cal.App.3d 436, 440 (1989) CEQA contains a "preference for resolving doubts in favor of environmental review." Pocket Protectors, 124 Cal.App.4th at 927 (emphasis in original).

An Initial Study is improper, and an EIR is required, whenever substantial evidence in the record supports a "fair argument" that significant impacts may occur. Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. CEQA Guidelines § 15064(f)(1); Pocket Protectors, 124 Cal.App.4th at 931; Stanislaus Audubon v. Stanislaus (1995) 33 Cal.App.4th 144, 150-151 (1995); Quail Botanical Gardens Found., Inc. v. City of Encinitas (1994) 29 Cal. App. 4th 1597, 1602.)

The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. Pocket Protectors, 124 Cal.App.4th at 928. The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains: This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument. Kostka & Zishcke, Practice Under CEQA, §6.29, pp. 273-274. The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." Pocket Protectors, 124 Cal. App. 4th at 928, emphasis in original.

As a matter of law, "substantial evidence includes . . . expert opinion." Pub. Res. Code § 21080(e)(1); CEQA Guidelines § 15064(f)(5). CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. CEQA Guidelines §15064(f)(5); Pub. Res. Code § 21080(e)(1); Pocket Protectors, 124 Cal. App. 4th at 935. "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code § 21068; see also Guidelines 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 83. In the recent Pocket Protectors case, the court explained how expert opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. Id. In the context of reviewing a Negative Declaration, "neither the lead agency nor a court may 'weigh' conflicting substantial evidence to determine whether an EIR must be prepared in the first instance." Id. Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the Pocket Protectors court explained, "It is the

function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project." Id.

In Christward Ministry v. Superior Court of San Diego County the Court explained the standard of judicial review when a lead agency declines to prepare an EIR: On a claim an EIR rather than a negative declaration should have been prepared, the courts look to see if there was substantial evidence to support the agency's conclusion it could not be "fairly argued" the project would have a significant environmental impact. (Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles (1982) 134 Cal.App.3d 491, 503-504 [184 Cal. Rptr. 664].) If there is no substantial evidence to support the agency's conclusion a fair argument cannot be made that the project will have a significant environmental impact, then the agency's action in adopting a negative declaration amounts to an abuse of discretion by the agency and a failure to proceed in a manner required by law. (Ibid.) Christward Ministry v. Superior Court of San Diego County, 184 Cal.App.3d 180, 187 (1986).

Mr. Tsai appears to argue that because we do not have an Environmental Impact Report, we violate CEQA, a statute that lays out a process that the county has followed.

Mr. Tsai's request for an EIR is mis-calibrated. In the entire 46-year history of CEQA, entailing construction of more than 5 million homes, an EIR has only been performed six times for an individual single-family residence on vacant land, according to the CEQANet database containing the approximately 20,000 EIRs that have ever been created through November 1 of 2016 (Attachment 46). As we attribute in Attachment 18, all were in mapped scenic or historic areas, nearly all were substantially larger than our home, and none have been performed by Los Angeles County Department of Regional Planning.

We respond further in Attachment 14.

c. The Project Will Have Significant Impacts On Oak Woodlands.

The Project will have significant impacts on oak woodlands. CEQA requires that a project as part of its CEQA environmental review determine "whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment." Pub. Res. Code § 21083.4. According to Ms. Latta, the Project will likely have a significant impact on oak woodlands as:

The removal of 5 trees in a woodland supporting a wildlife corridor is a moderate impact. So I consider the impacts to be significant. Here are the main areas of impact:

• Net loss of Oak Woodland Acreage (with the loss of 5 trees, by my estimates).
• Conversion of oak woodland to other uses.
• Net loss of nesting, burrowing, roosting habitat for wildlife.
• Grading and trenching will increase potential for sedimentation and constitute a change in hydrology that could negatively affect existing oak trees.
• It is probable that invasive plants will be introduced into the environment through soil disturbance and weed seed either being mechanically transported on truck tires or blown in from adjacent invasive weed sources. These invasive weeds tend to be more flammable than the native vegetation and are considered 'flashy fuels' by the local firehouses.
• Loss of view-shed for the neighborhood. These trees signify an 'entry' to the Meadows area of

Altadena.
• Loss of ecosystem services which include pollution filtration, rainfall interception and erosion control.
Latta at 8 – 9.

We have responded to these and related claims in attachment 11, our response to claims of significant impacts on biological resources.

The Project's own data indicates that the Project will likely result in a conversion of oak woodlands that will have a significant effect on the environment, and significantly understates the amount of oaks that are likely to be lost as a result of the Project. According to Ms. Latta:
I believe that under-representing the amount of removals/damage to the oaks on the property has created a situation where the actual number of trees to be removed is likely to be 4-6. This constitutes a significant impact to contiguous woodland. Since the original determination was based on only 1 removal, the issue needs to be revisited.
Latta at 12.

Again, Ms. Latta's misunderstandings of construction impacts have elevated her estimates into inaccuracy.

The Project will have a significant impact on oak woodlands.

d. The Project Will Have Significant Impacts On Aesthetics.

The Project will have a significant impact on aesthetics. CEQA requires that a Project analyze its impacts to aesthetics, inquiring as to whether a project may significantly adversely impact a scenic vista, scenic resources, visual character or quality of the site and its surroundings or otherwise create a source of substantial light or glare. CEQA Guidelines Appdx. G.

According to Mr. Ikeda:
The visual screening that is provided and quality of these oaks significantly establish the visual character of the neighborhood. However, the "Environmental Checklist – Initial Study" for this project states that the project will have a less than significant impact to scenic vistas and daytime or nighttime views in the area. This statement is questionable. The existing residential development on the opposite side of the canyon will have their views impacted by the extent and height of the proposed structure along with the removal of an oak tree, and pruning of others required to clear the structure. Over the long term, if the oaks have a shortened life, the views and visual quality of the neighborhood would be even further compromised.
Ikeda at 4.

We have responded to these and related claims in Attachment 10, our response to claims of significant impacts on aesthetics, and in Attachment 8, our response to Mr. Ikeda's letter.

The Project will have a significant impact on aesthetics.

e. The Project Will Have A Significant Impact On Water Quality, Hydrology, and Biological Resources.

The Project will have a substantial impact on hydrology, water quality, and biological resources. The Project proposes to divert a drainage ditch that drains water from the surrounding neighborhood. The drainage ditch flows into a stream at the bottom of the canyon, into the Arroyo Seco river, a tributary to the Los Angeles River, a federally designated Waters Of The United States.

The Project's Initial Study claims that the Project will not cause water discharges into jurisdictional areas. Initial Study at 12. However, the Project's Initial Study later admits that the Project will cause a discharge into a Water of the United States, stating that the Project "is required to comply with the water quality requirements imposed by the Los Angeles Regional Water Quality Control Board . . . [as well as] National Pollutant Discharge Elimination System." Initial Study at 24 –25.

Moreover, the Initial Study notes that the Project will "alter the existing drainage pattern of the site and will increase the amount of surface runoff . . . ." Initial Study at 25.

We have responded to this claim in attachment 12 at 2-4, our response to claims of significant impacts on water quality and hydrology.

f. The Project's Initial Study Is Internally Contradictory Conceding That The Project Will Have Significant Environmental Impacts Without Mitigation.

The Project's Initial Study adopts a negative declaration, claiming that Project "could not" have a significant effect on the environment and does not require any mitigation measures. Initial Study at 4. This is despite the Initial Study adopting numerous mitigation measures for aesthetics, biological resources, and water quality / hydrology.

It need not be a "mitigation" to follow the non-discretionary, ministerial regulations enacted to enforce responsible development. This is required of any and all development. Per the definition of a Mitigated Negative Declaration in Public Resources Code §21064.5, "A Mitigated Negative Declaration (MND) is a Negative Declaration prepared for a project when the initial study has identified potentially significant effects on the environment but the effects now pose no significant effect on the environment *because the project was revised***.** The revisions to the project plans must mitigate the harmful effects to the environment and there must be no substantial evidence supporting that the revised project will have a negative effect on the environment." (emphasis added).

We note that the slight modification to our entryway – which did not change the square footage or footprint of the home – and the slight reduction in height we have agreed to as a further compromise to address the concerns of our neighbors do not constitute mitigations, because impacts were found to be less than significant before these changes were made. The change only reduces the impacts that were already analyzed to be less than significant, and it is clarified in § 15126.4(a)(3) that "Mitigation measures are not required for effects which are not found to be significant."

Mr. Tsai claimed at our April 5 hearing that minor clarifications to our initial study require recirculation for environmental review. He attributed this with the following statements:

1. "In addition, the building plans have changed substantially, even as of today. If you

look at our attached letter, you'll see that their building plans added a window on the bottom level of their...on the one of four stories that are proposed for this project, on the very bottom level." (Unofficial Transcripts of the April 5 Hearing Officer Hearing, see also http://lacdrp.granicus.com/MediaPlayer.php?view_id=1&clip_id=414). However, Mr. Tsai misunderstood the volume of our home and misattributed what is actually a crawl-space access door required by the Department of Public Works. It is the sort of minor modification that is an expected part of the plan check process downstream of Department of Regional Planning review.

2. "The initial study for this project – the CEQA document – was amended a mere five days ago to change the project description, to change this project from being a mere 33 feet and 10 inches in height to 34 inches [sic] and 10 and a half inches in height." (Unofficial Transcripts of the April 5 Hearing Officer Hearing, see also http://lacdrp.granicus.com/MediaPlayer.php?view_id=1&clip_id=414). This addresses a minor discrepancy between our title sheet and the figure that has always appeared on our elevations. This is in fact the lowest absolute roof elevation for our home, some 2-4' above street grade, and not in the protected zone of any tree. We note that in choosing to reduce the height of our home (in spite of the absence of a significant effect on the environment from the existing design), the maximum height of our home above grade was reduced below 33 feet and 10 inches, rendering this point moot. We note that our Initial Study states that our home "will not exceed 34 feet 10 ½ inches in height," and therefore remains accurately descriptive of our project.
3. "...the county staff amended their findings regarding oak tree permits, even as of just today. They amended it just this morning, right before we began this hearing." (Unofficial Transcripts of the April 5 Hearing Officer Hearing, see also http://lacdrp.granicus.com/MediaPlayer.php?view_id=1&clip_id=414). As our planner noted in her Staff Presentation, "On Finding 16, the first sentence has a typo. The word "relate" should be changed to "related." The last sentence in condition #9 should state that the required *inspection* shall be unannounced [in lieu of the plural *inspections*]. Finally, condition #24 should specify that the trunk of oak tree #6 shall not be removed [in lieu of the positive formulation "shall be preserved"]." (Unofficial Transcripts of the April 5 Hearing Officer Hearing, see also http://lacdrp.granicus.com/MediaPlayer.php?view_id=1&clip_id=414). There were no other amendments.

It is self-evident that none of these clarifications alone or together increase the environmental impact of our home, nor did they in fact change any semantic content. They received proper advertisement at our public hearing on April 5. As our planner noted in Staff Memo to the Hearing Officer dated March 31:

"Pursuant to Section 15073.5 of the California Environmental Quality Act Guidelines (14 CCR § 15073.5), "a lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability...but prior to its adoption." However, a "substantial revision" for a negative declaration occurs when "a new, avoidable significant effect is identified..." Subsequent to the release of the Initial Study for public review and comment, staff received a clarification from the applicant specifying that the maximum height of the proposed building is 34 feet 10 ½ inches. The Initial Study project description and Aesthetics evaluation identifies the maximum height as 33 feet and 10 inches. The impact of the building height is evaluated in the Aesthetics section of the Initial Study. In

this section, it is noted that the project will not exceed the maximum allowed height of 35 feet and therefore, the impacts to the visual character or quality of the site and its surroundings will be less than significant. As the change in maximum height from 33 feet and 10 inches to 34 feet and 10 ½ inches will still be under this threshold, there is no change to the determination that impacts will be less than significant. Therefore, the addition of this new information would not be considered a "substantial revision" and the revisions listed below will make insignificant modifications to the negative declaration. Recirculation of the Initial Study is not required..."

As it concerns aesthetics, our initial study notes that our home has been designed to minimize grading, to reduce the square footage far below what is permitted, to preserve as many of the existing oak trees as feasible, to follow the grade of the terrain and to use a cladding color that blends with the canopy. These are properties of good hillside design and adherence to the modern Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8) seeking to minimize aesthetic impacts. These design elements have been present since the beginning of our project review process, and thus do not constitute revisions as mitigations for a significant effect.

As it concerns biological resources, our initial study notes that non-discretionary compliance with state regulations and the Los Angeles County Oak Tree Ordinance is consistent with a less than significant impact. The incorporation of native vegetation to screen a home and stabilize the hillside is also a property of good hillside design, not a supplementary mitigation.

As it concerns water quality/hydrology, non-discretionary compliance with the county Low Impact Development regulations is required of any ministerial building permit and is not a mitigation for a significant environmental effect.

We discuss the difference between *standard permit conditions* and *mitigation measures* to render a significant environmental effect less than significant in Attachment 14.

VII. THE PROJECT MUST BE APPEALABLE TO THE COUNTY BOARD OF SUPERVISORS.

Section 21151(c) of the California Public Resources Code requires that a "nonelected decisionmaking body of a local lead agency . . . approval, or determination may be appealed to the agency's elected decision-making body." See also CEQA Guidelines § 15025(b)(1) ("The decision-making body of a public agency shall not delegate . . . approving a negative declaration . . . ."). Courts have expressly found that agencies cannot exclusively delegate their CEQA decision-making authority to non-elected decision-making bodies such as appointed planning commissions or hearing officers. California Clean Energy Committee v. City of San Jose (2013) 220 Cal. App. 4th 1325, 1338 – 1339. The County must allow for an appeal of the Project to the County Board of Supervisors.

Section 21151(c) of the California Public Resources Code states that, "If a non-elected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any."

Because every project entails an environmental determination of *some* kind (typically being a Class 3 categorical exemption for single-family development under CEQA 15303), *any* sort of environmental determination is permitted to be appealed to the Board of Supervisor by an opposition so inclined and sufficiently litigious. However, Los Angeles County Code explicitly limits the extent to which our project entitlements can be appealed. If the permits themselves may be appealed in addition to the environmental determination, the county codes cited below are ill-conceived and should be amended, to avoid misleading applicants. We believe it could not have been the intention of the creators of these codes to couple the issuance of minor permits and of environmental determination.

As our Regional Planning Commission Hearing Officer package notes:

“Regarding the Minor CUP: County Code subsection E of section 22.56.085 states that "[t]he decision of the hearing officer may be appealed to the commission. All appeals shall be ... subject to all of the other provisions of Part 5 of Chapter 22.60 except that the decision of the commission shall be final and effective on the date of the decision and shall not be subject to further administrative appeal.

. . . .

Regarding the OTP: County Code subsection B of section 22.56.2240 states that "[t]he decision of the commission shall be final and effective on the date of decision. Appeal of an oak tree permit to the board of supervisors is only allowed where an oak tree permit is concurrently considered with a permit, variance, zone change or tentative map for a subdivision, including a minor land division, and such oak tree permit shall be appealable only as a part of an appeal on the concurrent entitlement."

Our permit entails no subdivision, and so neither of our permits are intended to be appealed to the Board of Supervisors. We urge the Board of Supervisors to honor the intent of county code and uphold the Regional Planning Commission approval of our project's permits.

VIII. CONCLUSION.

For the aforementioned reason, CCC urges the County to reject the Project application.

Sincerely,

_____

Mitchell M. Tsai

Attorneys For Canyon Crest Conservancy

We are saddened at the many misunderstandings Mr. Tsai has presented or cited and have attempted to address them as best we could.

Respectfully,

Stephen and Vandana

Attachments:

Letter from Jared M. Ikeda to Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning (Sep. 6, 2016) RE: Comment Letter

Regarding Project No. R2014 –02411-(5), ROAK – Kuhn Residence 3577 Canyon Crest Road (Exhibit A);

Letter from Rebecca Latta to Mitchell M. Tsai (Sep. 5, 2016) Response To Comments Letter to the Los Angeles Regional Planning Commission for Minor Conditional Permit No. R2014-02411-(5), Oak Tree Permit No. 201400035, and Environmental Assessment No. 20140004 – Canyon Crest Road, Altadena (Exhibit B);

Letter from Scott McAllaster, Land Design Consultants to Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning (Apr. 18, 2016) RE: Oak Tree Permit No. 201400035, APN: 5830-003-016 - Canyon Crest Road LDC Project No. 13038-001 (Exhibit C);

Letter from Troy Evangelho, AICP, Zoning Permits East Section, Los Angeles County Department of Regional Planning to Steven Kuhn (June 18, 2015) RE: Incomplete Application: Request For Additional Information (Exhibit D);

E-mail from Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning to Stephen Kuhn (July 9, 2015) FW: R2014-02411 (Exhibit E);

E-mail from Stephen Kuhn to Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning (July 9, 2015) Re: FW: R2014-02411 (Exhibit F);

County of Los Angeles (2014) Oak Woodlands Conservation Management Plan Guide (Exhibit G);

Los Angeles County Department of Regional Planning (2009) Subdivisions and Zoning Interpretations and Procedures Second Edition (Exhibit H).

Attachment 2

Response to letter from Mitchell Tsai, dated April 18, 2016

November 10, 2016

Purpose:

The purpose of this attachment is to factually address some comments Mr. Tsai has submitted on behalf of his clients, with inline replies or references to other attachments where claims from several sources are assessed together in greater detail. We have addressed some but not all of the claims in this letter in Attachment 1. We will not respond to those claims we address elsewhere.

Key Issues:

1. Mr. Tsai has repeatedly mis-characterized a requested response to opposing arborist comments as a "revised arborist report." A response that upholds the principal findings of an arborist report is not a "revised" report. It is quite simply a response to comments, as this attachment is a response.
2. Mr. Tsai has cast doubt on the veracity of renderings defensibly generated by scaling a model to features visible in the terrain, using images that are not remotely comparable, being from a high inclination on the opposite side of the renderings in dispute. In Attachment 10, we incorporate an objective source of truth – LIDAR scan data.

April 18, 2016

Kristina Kulczycki

LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING (DRP)
320 West Temple Street
Los Angeles, California 90012
Em: kkulczycki@planning.lacounty.gov

RE: Canyon Crest Conservancy Comment Letter Regarding Project No. R2014 02411-(5).ROAK 201400035 and RMCP 201400014.

Dear Ms. Kulczycki,

On behalf of Canyon Crest Conservancy ("Conservancy" or "CCC"), my Office is providing comments to the County of Los Angeles ("County') regarding Project No. R2014-02411-(5), ROAK 201400035, and RMCP 201400014 ("Project"). These comments arc intended to supplement comments already provided to the County on March 23, April 5, 2016, and April 11, 2016.

CCC is a California nonprofit public benefit corporation dedicated to 1) protecting open space, 2) ensuring that natural preservation areas are protected and enhanced 3) ensuring a high quality of life in the Canyon Crest area by remaining consistent with its natural character, and 4) carrying on other charitable and educational activities associated with this goal as allowed by law.

On April 5, 2016, the County conducted a public hearing on the Project as Agenda Item No. 10 ("Item"). At the Hearing, the County opted to continue the Item until April 19, 2016 at 9:00a.m. for the Project's applicant, Steven Kuhn ("Applicant"), to submit a revised arborist report.

Our arborist did not submit a revised arborist report, nor was one requested. He submitted a

response to Ms. Latta's comments.

Most recently, on April 11, 2016 CCC requested that the County require the Applicant to submit additional documents by April1 9, 2016 and continue the hearing to give the public time to review the documentation and hear the Project on or about May 10, 2016.

As of April 18, 2016, the Applicant has yet to submit a revised arborist report. CCC requests that County continue tomorrow's hearing, set for April 19, 2016 at 9:00a.m. to a later date and require the Applicant to submit a revised arborist report at least 3 weeks in advance of the hearing to allow the public adequate time to review the Applicant's materials.

Our arborist's response to Ms. Latta's comments was available the afternoon before the hearing. Mr. Tsai has exhibited a pattern of submitting lengthy materials the morning of all three of our hearings. He has requested a lengthy amount of time to review our materials but does not act as though we or the public should have time to review his.

Moreover, the County should request that the applicant erect story poles to demonstrate the impact that the Project will have on surrounding trees and neighborhood views and whether the Project will be able to comply with the conditions of the County Fire Department permit as well as Oak Tree Permit. The Applicant has previously indicated their willingness to install story poles on the Project Site. Email from Stephen Kuhn to Kristina Kulczycki Re: FW: Independent review of Canyon Crest Drive Project (Mar. 22, 2016) ("We had earlier considered staking story poles to portray the footprint of our home, but we have been trying to follow all rules scrupulously and were given pause by the language in the oak tree report .... ").

Mr. Tsai has removed the context of this statement, from our response to Ms. Latta's comments dated March 17. We said, “We had earlier considered staking story poles to portray the footprint of our home, but we have been trying to follow all rules scrupulously and were given pause by the language in the oak tree report, prohibiting "any act causing or tending to cause injury to the root system". Some of our neighbors have put up an array of changing visual aids attempting to portray some dimensions of our home, and where they believed the vertices to be located. Some story poles must have been driven at least a couple feet into the ground in order to stand up.”

In other words, story poles had already been placed by that time. They are visible in Ms. Latta's pictures on pages 193-208 of the Regional Planning Commission Hearing Package, and in our own arborist's pictures in his reply dated April 18 (page 168 of the same package).

Finally, the County should order the Applicant to prepare and submit an Oak Woodlands report to determine whether the Project will not have a significant impact on oak woodlands. Comments from Rebecca Latta, an experienced professional arborist, addresses the Applicant's response to her March 16, 2016 letter and concludes that the Project still underestimates the Project's impact on individual oak trees and endangers the survival of the entirety of the oak woodland on the Project Site. Letter from Rebecca Latta to Kristina Kulczycki RE: Response to comments from SK to Independent Arborist Review for APN 5830-00-016- Canyon Crest Road, Altadena (Apr. 16, 2016).

We address these and similar claims in Attachment 11, our response to claims of significant impacts on biological resources.

Latta also points out a number of key pieces of information have been left out of the Project's arborist report, including documentation of impacts to particular trees as well as the width and depth of the notching for the Project. Finally, Ms. Latta recommends installation of story poles on the Project site under the supervision of a qualified arborist to quantify the Project's impact on oak tree canopy.

We compare the level of detail in the administrative record from our arborist to other analogous oak tree reports in Attachment 19. Ms. Latta has requested information that goes far beyond the prevailing level of detail. Nonetheless, Attachment 15 goes into a greater level of detail than any oak tree report we or our arborist has ever encountered.

Moreover, the Applicant's application materials do not appear to accurately reflect the Project as it will occur on the Project Site. CCC members have erected balloons and various other demonstrative devices that show that the Project's drawings do not accurately reflect the height of the building's interaction with the surrounding oak tree canopy or its visual, aesthetic impact. Compare Applicant's Model to Demonstrative Installations.

When we stand underneath a balloon and look up at it, it is difficult to derive any meaningful comparisons to the canopy adjacent. The visual Mr. Tsai included highlights the ~20ft tall low-voltage wires that are 20-30ft distant horizontally from the balloon, at a lower inclination. In a previous neighbor response, included on page 585 of the Regional Planning Commission Hearing Officer package, a neighbor made a similar claim comparing the power lines and renderings of the home. We explained how perspective would cause the lower but closer wires to appear above the higher but farther roofline of our home.

Our arborist noted in our oak tree report that oak tree #4 is 45ft high and oak tree #1 is 50ft high. When perspective appears to show the balloon “above” these trees, it is not because the balloon is higher.

Mr. Tsai does not make a fair argument when he claims that our wireframe renderings are inaccurate by using visual evidence from an *entirely different* perspective, at an extreme inclination, and from the opposite direction. A more accurate rendering would have portrayed these visual aids from the same vantages that we have. In our wireframe renderings, including that portrayed in his Exhibit C, some story poles erected by neighbors are in fact present, including a 30+-foot pole with a large red tassle at the north-east corner of our footprint. Beyond the first five to ten feet, it is completely obscured by canopy, much of which will remain.

Since these wireframe renderings were created, and although our project was approved by the Regional Planning Commission, we have chosen to further compromise to address the concerns of our neighbors, decreasing the height of the north-east corner of our home by more than 5ft. Visual analysis of our home is explored thoroughly in Attachment 10.

Finally, the Project Site is an oak woodland covered by the County's Oak Woodland Conservation Plan. Latta notes that the Project Site easily meets the definition of an oak woodland under the purposes of the Oak Woodland Conservation Plan. Latta Letter at 2. An oak woodlands report is required under the County's Oak Woodlands Conservation Plan.

We address these and similar claims in Attachment 11, our response to claims of significant

impacts on biological resources.

Respectfully,

Stephen and Vandana

It is a pleasure working with you. Please feel free to contact my Office if you have any questions or concerns.

Sincerely,

Mitchell M. Tsai

Attorneys For Canyon Crest Conservancy

Attachments

Email from Stephen Kuhn to Kristina Kulczycki Re: FW: Independent review of Canyon Crest Drive Project (Mar. 22, 2016) (attached as Exhibit A);

Letter from Rebecca Latta to Kristina Kulczycki RE: Response to comments from SK to Independent Arborist Review for APN 5830-00-016- Canyon Crest Road, Altadena (Apr. 16, 2016) (attached as Exhibit B);

Applicant's Model (attached as Exhibit C); and

Demonstrative Installations (attached as Exhibit D).

Attachment 3

Response to letters from Mitchell Tsai, dated April 4, 2016 and April 11, 2016

November 10, 2016

Purpose:

The purpose of this attachment is to factually address some comments Mr. Tsai has submitted on behalf of his clients, with inline replies or references to other attachments where claims from several sources are assessed together in greater detail. We have addressed some but not all of the claims in this letter in Attachment 1. We will not respond to those claims we address elsewhere.

Key Issues:

1. Mr. Tsai has not provided any evidence to support the claim that minor clarifications of typos or slight revisions of project plans that do not change the square footage and only reduce volume require re-distribution for review or re-analysis of any kind, save their proper advertisement at a hearing.
2. Mr. Tsai appears unfamiliar with the concept of "building segments" in stepped or terraced building designs, and with the separate assessment of height and stories above grade in each segment. See also Attachment 16 for a sampling of the code bodies, expert opinion and other California municipal codes that explain this, and which support the County of Los Angeles planning practice. Note as well that the County of Los Angeles explicitly encourages terraced or split-level designs in its Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8).
3. Mr. Tsai has misunderstood the extent of building segments in our home that the county has classified as a "cellar."
4. Mr. Tsai and his planning consultant appear unfamiliar with the prevailing method of measurement of height in hillside planning districts, instead arguing for an interpretation in which "height" is not measured vertically. See also Attachment 16 for a sampling of the code bodies as well as California municipal codes that explain this, and which support the County of Los Angeles planning practice.
5. Mr. Tsai has ascribed an Oak Woodlands Management Plan ("Plan") process with multiple parts, some of which have not yet been fully implemented. The Plan was adopted into the County of Los Angeles General Plan well after our permit applications were submitted, and after our initial study was completed. Therefore according to the General Plan statement of applicability, any recommendations contained in the Plan have no formal applicability to our project, though the Department of Regional Planning has justly applied its discretion in drafting some conditions in accordance with Plan recommendations. In the absence of any zoning code or permit process with the appropriate level of review, neither are the recommendations in Part II of this Plan applied except at the discretion of the Department of Regional Planning. In Attachment 11, we attribute the lack of support for changes to the decision-making process for our home, even were Part II of the Oak Woodlands Management Plan to govern it.
6. Mr. Tsai has not provided substantial evidence that the footprint of our home and driveway functions as a wildlife corridor. Our driveway is currently used for parking, and the steep hillside (at the rim of other parts of which exist fenced development with driveways, houses and pools) is not favorable to traffic. Neither is the footprint of our home a gateway to anything but the other developed and largely fenced homes of lower Canyon Crest, Florecita Farms and north-west Altadena.
7. Mr. Tsai has not provided substantial evidence that the riparian oak woodland nearly

200ft distant from our development at street level will be significantly affected by our construction. We are subject to all applicable BMPs the Department of Public Works requires to mitigate for debris flow, and are excavating a very small volume compared to typical hillside development (see description of each project in Attachment 19, as well as the development described in Attachment 14 citation NN at 3), by hand.

8. Mr. Tsai and his arborist consultant have misinterpreted project conditions, our plans and construction methods in ways that affect their assessment of our project.

April 4, 2016

Kristina Kulczycki
LOS ANGELES COUNIY DEPARTMENT OF REGIONAL PLANNING (DRP)
320 West Temple Street

Los Angeles, California 90012

Em: kkulczyclci@planning.lncounty.gov

HAND DELIVERED ON APRIL 4, 2015 AT APPROXIMATELY 9:00AM. TO: LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING (DRP)
320 West Temple Street, Room 150
Los Angeles, California 90012

RE: Canyon Crest Comment Lettcr Agcnda Item No. 10 for the County of Los Angeles April 5, 2016 Public Hearing Regarding Project No, R2014-02411-(5), ROAK 201400035, and RMCP 201400014.

Dear Ms. Kulczycki,

On behalf of Canyon Crest Conservancy ("Conservancy" or "CCC"), my Office is providing comments concerning Agenda Item No. 10 for April 5, 2016 County of Los Angeles ("County") Public Hearing Regarding Project No. R2014-02411-(5), ROAK 201400035, and RMCP 201400014 ("Project"). These comments are intended to supplement comment already provided to the County on March 23, 2016.

CCC is a group of concerned Altadena residents who are dedicated to open spaces and quality of life in the Canyon Crest area.

CCC urges the County of Los Angeles to reject the Project for violating the California Environmental Quality Act, Cal. Pub. Res. Code §21000 ct seq. ("CEQA"), the Altadena Community Standards, County Code §22.44.127 ("Altadena Community Standards"), as well as the County's Oak Tree Ordinance, Co. Code 22.56.2050 et seq. ("Oak Tree Ordinance").

At a minimum, CCC urges the County of Los Angeles to continue the hearing and allow for adequate public review of the Project. Numerous last minute changes have been adopted into the Project, including an amendment to the Project Initial Study and Project Description a mere five days before this hearing. This significant new information requires, at minimum, a continuation of this hearing to allow the public to adequately review the Project.

Mr. Tsai has not attributed how any of the corrections of minor typos or minor adjustments of our building plans – which did not change the footprint or square footage and which only reduced our home's volume – require any additional environmental review. We have attributed this in detail in Attachment 1 at 46-47. Mr. Tsai has subjected our plans to a level of scrutiny that is highly atypical. Clarification of minor typos is not unexpected.

1. THE PROJECT VIOLATES ALTADENA COMMUNITY STANDARDS

a. The Project Violates the Altadena Community Standards Floor Limitations.

The Altadena Community Standards, Co. Code: §22.44.3127, limits single-family homes to two stories above grade. However, the Project's building plans demonstrate that the project has four stories above grade, easily exceeding the Altadena Community Standards floor limitations. See Floor & Section Plans. As the County's own analysis notes:

Above the garage is a proposed loft space that looks out onto Canyon Crest Road and below the garage is the main residence level containing two bedrooms, two bathrooms, a kitchen, and a living room with a west-facing cantilevered deck. There is a lower level below the kitchen and living room where an office is proposed. Staff Analysis at 2.

The County claims that the Project has only two stories above grade by classifying the two levels below the garage as a cellar and therefore below grade and classifying the garage and the loft as two stories above grade. Staff Analysis at 5-6, 9 ("Only one portion of the house has more than 2 floors - the footprint of the loft"); see also Co. Code §22.08.190 (defining "Story" as "that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the roof above," excluding "cellars."). The County's classification that the main residence level, composed of “two bedrooms, two bathrooms, a kitchen, and a living room" id. at 2, as well as the bottom level office as a cellar flies in the face of the plain meaning of the County Code.

Mr. Tsai does not appear to understand the concept of a “building segment” in a stepped or terraced building and has misunderstood the extent of building segments in our home that are classified as a cellar, as we discuss in greater detail in Attachments 1 and 8, and which has long been discussed in Attachment 1 of Staff Analysis. We believe the California city of Brisbane in San Mateo county on the hilly lower slopes of San Bruno Mountain has the clearest explanation of this:

“Height is not necessarily measured from the top of a building to the bottom. While from a distance, for example, a building containing four floors that step up or down a hillside in three two-story *segments* may look taller than the three-story, single-*segment* building next door, the opposite may be the case. Because height is measured per *segment*, a building map made up of multiple *segments* can have a lower height than one made of a single *segment*." (emphasis in the original, see Attachment 16 at 4)

The practice of measuring height and the number stories separately for each building segment is founded in the International Building Code, the foundation for codes throughout

the country and the world. We address this further in Attachment 16.

Section 22.08.070 of the County Code defines "Grade" as:

"... the approved grade of a lot or parcel of land at the time such lot or parcel is created, except when excavation is proposed. When excavation occurs after the lot or parcel is created, the grade of the excavated area shall be the grade after the excavation. . . . Grade within the perimeter of a structure shall be considered to transition uniformly from the *lowest to the highest* points of grade *at the perimeter of the structure*." (emphasis added)

Section 22.08.030 of the County Code defines "Cellar" as:

"...that portion of a building between a floor and ceiling which is wholly or partly below grade (as defined in Section 22.08.070) and so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling."

Section 22.08.070 of the County Code measures "Grade" from the *perimeter* of the structure from the *lowest and highest points of grade*. The Project's drawings demonstrate that the main residence floor and the below office are above grade as they are visible from the perimeter of the structure. See Building Model. Cellars arc required to have all their walls buried below ground, i.e. below grade, and not to have any walls visible from the perimeter of the structure. The Project violates the floor restrictions in the Altadena Community Standards.

It is difficult to respond to Mr. Tsai because his logic contains a foundational misunderstanding (that the main and office levels are being classified as a cellar) and appears to further corrupt the very definitions he quotes.

The county definition of grade is somewhat circular in that "grade" is an elemental term, referring to the surface of the ground. Depending on the jurisdiction, this is refined with prescriptive approximations of this variable surface (so that a full topographical survey is not required in order to determine where grade is at any given point in a parcel) into a grade plane or reference datum, and treatments of cut and fill are formalized.

When a building exists and an applicant, say, wishes to add a story, the code clarifies that because the surface of the ground within the perimeter of a house cannot be measured directly by a topographical survey – as is possible for vacant land – it will be assumed to transition linearly i.e. uniformly, from the lowest to highest points of grade along the perimeter. This is the only non-arbitrary approach. The specification of *points* – plural – is required. A planar surface cannot be mathematically defined by two points (the highest and lowest at *any* part of the perimeter) forming a line, and a grade surface is needed over the entire extent of the footprint. So, a surface is constructed from interpolating between grade points around the perimeter using some equitable grid.

This form of approximation is not necessary where no structure is yet present, and so is completely irrelevant to our project, which has a registered topographical survey.

It would indeed be improper to classify our office level or the *entirety* of the main level as a

cellar, and this has never been done. Rather, only that portion of the main level that belongs to the same building segment as the loft must be assessed as a cellar.

Mr. Tsai then incorrectly states that a cellar is required to have all of its walls buried below ground. The definition states that it is a “portion...which is wholly or partly below grade...so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling.” The common word “cellar” is being co-opted to define a geometrical relationship of a portion of a building with respect to grade. If more of the volume between a floor of a building segment and the ceiling above is below grade than above, it qualifies as a cellar, and is therefore not a story above grade. This is the *only* non-arbitrary threshold for this assessment.

The International Building Code uses a similar but somewhat less conservative (and arbitrary) definition of a story above grade:

“STORY ABOVE GRADE PLANE. Any story having its finished floor surface entirely above grade plane, or in which the finished surface of the floor next above is:
More than 6 feet (1829 mm) above grade plane; or
More than 12 feet (3658 mm) above the finished ground level at any point.” (see Attachment 14 citation OO)

As we develop in Attachment 16, in the International Building Code the grade plane is measured separately for each building segment, and is a horizontal “average” of the grade across that building segment. This is a prescriptive approach often derived from elevations at the corners of a building segment. It is consistent with the presumption of a lack of topographical survey, which is uncommon in residential projects in most jurisdictions.

In the building segment that includes the garage loft, in the portion of the main level that qualifies as a cellar, the distance between floor and ceiling is 8ft. The distance between floor and the floor level next above is 8'9.5”. The volumetric analysis confirming this portion of the home as a cellar (floor to ceiling more below grade than above) would place the grade plane for this building segment no less than 4ft above the floor level, resulting in a distance between grade plane to the floor next above that is no greater than 4'9.5”. This is less than 6ft. Likewise, at no point in this building segment does the garage floor rise more than 12ft above the pre-existing ground level. Over nearly the entire extent of this building segment, the ground is less than 8'9.5” below the garage floor.

Independent of any claimed interpretations under Los Angeles County Code, the International Building Code does not treat the portion of the main level of our home in the building segment of the garage loft as a story above grade.

We note that even if no loft floor were to exist for our home, the existing envelope would be permitted under the governing height limitations. We cannot help but build this loft area given the sunken nature of our garage. If it should somehow be treated as “disallowed” contrary to any reasonable interpretation of the code, it will exist nonetheless, and we will build the outline of our home just the same.

b. The Project Violates the Altadena Community Standards Height Limits

The Altadena Community Standards, Co. Code § 22.4..3127, limits the Project to a maximum height of 35 feet. The Project violates the height restriction as the proposed structure has a linear height of 62 feet. See Building Model.

The County claims that the height restriction only applies to the portion of the structure *above grade*. However, even if you adopt the County's interpretation and arbitrarily set the grade of the Project at 49% of the main residence floor and above, the Project *still* exceeds 35 feet as the County's height measurement only includes the garage and loft. See Floor & Section Plans; and Elevation Plans. However, the County misinterprets the grade of the Project, as the County does not account for the exposed perimeter of the structure of the Project, which totals 62 feet in linear height. Supra I.A. The Project violates the maximum height limitations of the Altadena Community Standards.

Mr. Tsai exhibits several misunderstandings that make his line of reasoning difficult to follow. The term “linear height” has no basis in the Los Angeles County Code, or any other code body under that name. Height is measured vertically, and while the current Title 22 governing our project does not make this explicit because it is well-understood, a “Technical Update of Title 22,” awaiting final approval of the Board of Supervisors, intends to help people like Mr. Tsai by stating that height is measured using the “plumb-line” distance from the highest point of the building continuously over the footprint, measured straight down to the grade (see Attachment 14, citation R at 13-14). A plumb-line of course is the line described by a suspended weight (plumb bob) in equilibrium, aligned therefore with gravity i.e. vertically. This is the most accurate and least approximative approach there is to measure height. While some jurisdictions further constrain the change in absolute elevation between the lowest and highest parts of a building, the County of Los Angeles does not. Nearly all of the volume of our home above grade is contained in a 45-ft range of elevations. Those portions that remain are shrouded in oak tree canopy or occluded more than 20ft below street grade.

Mr. Tsai's reference to “49% of the main floor and above” appears to be a misunderstanding of the cellar volumetric assessment for the building segment containing our loft. This analysis did not “set the grade of the Project,” as the grade is quite simply the surface of the ground. That volumetric analysis described a relationship of the building segment containing the loft, stating that the lowest level of that building segment – on the main floor – is more below ground than above, and hence a portion of a building qualifying as a cellar.

II. THE PROJECT VIOLATES THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

a. Background On The California Environmental Quality Act.

[Omitted, and addressed in Attachments 1 and 14]

b. Background On Initial Studies And The "Fair Argument Standard.

[Omitted, and addressed in Attachments 1 and 14]

c. Background on Significant Environmental Impacts.

CEQA sets a low threshold to determine whether n Project will have or may have a significant impact on the environment. Section 15382 of the CEQA Guidelines provides that a Project should be determined to have a significant environmental impact and therefore require an Environmental Impact Report or Mitigated Negative Declaration if a substantial or potentially substantial adverse change in any of the physical conditions in an area affected by the project. Significance is determined upon the change imposed by a proposed project.

This description of the guidance, rules and precedents for determining thresholds of significance is extremely cursory. In Attachment 14, we develop this further.

d. The Initial Study Adopted An Inaccurate Project Description And Must Be Reissued.

The County, a mere five days before the County's hearing set for April 5, 2016, revised the Project's Initial Study and Project Description, amending the maximum height of the Project from 33 feet and 10 inches to 34 feet and 10 and a half inches. Memorandum from Kristina Kulczycki, Zoning Permits North Section to Hearing Officer RE: Project No. R2014-02411-(5).

CEQA requires that the public be given at least 20 days to review a proposed negative declaration, as is in this case. CEQA Guidelines§ 15105(b). The County notified the public of this change and amended the environmental documents a mere 5 days before this hearing.

The County should continue the hearing to allow the public adequate time to review the revised Project. "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal. App. 4Th 1170, 1202 (quoting *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4Th 398, 406, 408.); *see also El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4Th 1591, 1597.

The County claims that reissuance or recirculation is not required because the height increase docs not change the Initial Studies' environmental analysis as to whether the Project will have significant environmental impact. However, that does not apply when the project description that is being analyzed is amended. CEQA Guidelines §§15073, 15073.5.

Mr. Tsai has not provided any attribution from 15073 or 15073.5 that would indicate a project description is exempt from this provision, or what “review” of a 1ft discrepancy between dimensions on the title and elevation sheets of a plan might accomplish. Neither guideline references the project description explicitly. In proper context, 15073.5 explicitly identifies this minor clarification of a discrepancy (not a change, as our elevations have always had the correct height):

“15073.5. Recirculation of a Negative Declaration Prior to Adoption.

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with

Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) *New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.*

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA , which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration." (emphasis added)

"New project revisions" could conceivably change some aspect of the project description, depending on the expansiveness of the description. So long as this doesn't introduce a new significant effect, re-distribution is not required.

However, the point is moot. Although our project has been repeatedly approved, we voluntarily chose to reduce the height of our home to address neighbor concerns – not a significant environmental effect. This has flowed down to a 1ft reduction in the height of the south-west corner, which is the point with the highest plumb-line height in the footprint of our home. This renders the maximum height of the home 33'10." It should be noted that this corner is approximately *at* street grade, and not in the protected zone of any oak tree.

c. The Project Will Have Significant Environmental Impacts.

1. The Project Will Have Significant Impact On Oak Woodlands.

The Project understates the impact that the Project will have on Oak Woodlands. As expert arborist Rebecca Latta notes, the Project's arborists report understates the size of the Project and docs not conform with the Project's site plans as the "walls on the plans arc 24-feet and 18-feet, but the report only discusses one proposed 5-foot retaining wall." Letter from Rebecca Latta, to Kristina Kulczycki, Senior Regional Planning Assistant, LA County Regional Planning (Mar. 30, 2016) at 1.

Moreover, the Project understates the number of protected oaks that will need to be removed as a result of the project. Latta notes that in addition to the one oak tree that the Project's Initial Study and Arborist Report reports that need to be removed, the new site plans will require the removal of an additional 3-4 trees, and at a minimum specifically trees nos. 4, 5, and 7, to be removed, as well as substantial adverse impact on 3 other protected oak trees, trees number 1, 8, and 9.

When no qualification is added, a single dimension describing a wall is commonly understood to refer to height. In this case, five feet is the average height of the retaining wall. We address Ms. Latta's claims and misunderstandings thoroughly in Attachments 5-7 and in Attachment 11.

2. The Project Will Have Significant Aesthetic Impacts.

The Project will have significant aesthetic impacts as it will adversely affect a scenic vista as well as substantially degrade the existing visual character or quality of the site and its surroundings due to the Project's height, bulk, pattern, scale, character, and other feature by obstructing scenic views of the surrounding canyon. The County's admits that the Project Site "is located on a steep hillside with a beautiful view of the canyon." Staff Analysis at 6. The Project's thirty-four foot and 10 and a half-inch maximum height will significantly obstruct scenic views of the surrounding canyon.

The Initial Study incorrectly concludes that the Project will not have an aesthetic impact due to the Project falling below the maximum height permitted in the Altadena Community Standards. Notwithstanding that the Project misstates its maximum height, the Initial Study misconstrues how to evaluate aesthetic impacts under CEQA. CEQA docs not determine aesthetic impacts of a proposed project based upon compliance with local land use codes. Rather, courts look to the context of the Project Site, including personal observations about the aesthetic value of a site, physical changes to a site, and public controversy surrounding a proposed project. See California Environmental Law & Land Use Practice § 21.09; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4Th 903, 939 (Negative Declaration for infill development project overturned because of significant adverse aesthetic impacts); *Ocean View Estates Homeowners Assn. v. Montecito Water Dist.* (2004) 116 Cal. App. 4Th 396, 401 (Negative Declaration for covering reservoir with aluminum roof overturned because of significant aesthetic impacts).

We have responded to these and related claims in Attachment 10, our response to claims of significant impacts on aesthetics. The examples Mr. Tsai cites are all distinguishable.

3. The Project Will Have Significant Impacts on Wildlife

In addition to the concerns that CCC presented concerning the Project's impact on the Project Site as a wildlife crossing in CCC's March 23, 2016 Comment Letter, CCC has uncovered additional evidence of the use of the Project Site as a wildlife crossing and the significant impact that the Project will have on wildlife. The Project Site is located in Lower Millard Canyon, a crucial area for wildlife. Arroyo & Foothills Conservancy, Wildland Hubs and Corridors: San Gabriel Foothills. The County should reject the Project's Initial Study and prepare a full environmental impact report due to the project's potentially significant environmental impacts.

Mr. Tsai has "uncovered" what has freely been advertised in our responses and in the designation of the riparian woodland nearly 200ft from our home as a conceptual Significant Ecological Area; namely, the *canyon bottom* is a wildlife corridor - not the site of our home, at street level amid existing development. Mr. Tsai has provided no substantial evidence that construction of our home will impact the riparian canyon bottom. We are subject to all applicable BMPs the Department of Public Works requires to mitigate for debris flow, and are excavating a very small volume compared to typical hillside development, by hand.

We address this claim further in Attachment 11, our response to claims of significant impacts on biological resources.

III. THE PROJECT MUST BE APPELABLE TO THE COUNTY BOARD OF SUPERVISORS.

[Omitted, and addressed in Attachment 1]

IV. CONCLUSION.

CCC urges the County to reconsider this Project, reject the staff recommendation, and reject the Project. At a minimum, this hearing should be continued to a later date to adequately consider the above mentioned issues.

It is a pleasure working with you. Feel free to contact my Office with any questions or concerns.

Sincerely,

Mitchell M. Tsai
Attorneys For Canyon Crest Conservancy

Attachments:

Floor & Section Plans (attached as Exhibit 1);

Building Model (attached as Exhibit B);

Elevation Plans (attached as Exhibit C);

Letter from Rebecca Latta to Kristina Kulczycki, Senior Regional Planning Assistant, L.A. County Regional Planning (Mar. 30, 2016) (attached as Exhibit D); and

Arroyo & Foothills Conservancy, Wildland Hubs and Corridors: San Gabriel Foothills (attached as Exhibit E).

April 11, 2016

Kristina Kulczycki
LOS ANGELES COUNIT DEPARTMENT OF REGIONAL PLANNING (DRP)
320 West Temple Street
Los Angeles, California 90012

Em: kkulczycki@planning.lacounty.gov

RE: Canyon Crest Conservancy Comment Letter Regarding Project No. R2014-02411-(5). ROAK 201400035 and RMCP 201400014.

Dear Ms. Kulczycki,

On behalf of Canyon Crest Conservancy ("Conservancy" or "CCC"), my Office is providing comments to the County of Los Angeles ("County") regarding Project No. R2014-02411-(5), ROAK 201400035, and RMCP 201400014 ("Project'} These comments are intended to supplement comments already provided to the County on March 23 and April 5, 2016.

CCC is a group of concerned Altadena residents who are dedicated to open spaces and quality of life in the Canyon Crest area.

On April 5, 2016, the County conducted a public hearing on the Project ("Hearing") as Agenda Item No. 10 ("Item"). At the Hearing, the County opted to continue the Item until April 19, 2016 at 9:00 a.m. for the Project's applicant, Steven Kuhn ("Applicant"), to submit additional information regarding the Project's arborist report.

We believe that the Department of Regional Planning has a clearer account of the rationale for continuation, per finding 17 of the Regional Planning Commission approval package:

"The Hearing Officer continued the public hearing to April 19, 2016 in order to provide additional time for the applicant to meet with interested members of the community and discuss alternative designs as well as to allow for the applicant's arborist to respond to the concerns raised by Ms. Latta."

It should be noted that Ms. Latta's commentary was submitted on March 17, 2016, two business days before materials for our hearing package were due, and four business days before our Hearing Officer hearing package was posted. This follows a pattern of midnight submittals from our opposition before our hearings, on each occasion using these as partial justification for a request to delay our project by continuation. No attempt was made to address the questions in this commentary to us or to our arborist before the hearing. There was insufficient time for our arborist to respond in the detail he wished, as he noted in his reply dated April 18, in stating that he was responding at his earliest convenience. Our arborist devoted tens of hours to reviewing the existing documentation for our project, Ms. Latta's commentary, the initial study, all applicable regulations, speaking with the county biologist, and preparing the lengthy response. This delay was not indicative of deficiencies in our project.

We address this further in Attachment 1 at 8-10.

CCC supports the County's decision to continue the Item and give additional consideration to this Project as CCC believes that there are serious factual issues surrounding the Project. However, CCC believes that the April 19, 2016 date is insufficient to allow the County sufficient time to review the factual issues. Instead, CCC requests that the County require the Applicant to submit additional documents by April 19, 2016 and give the public time to review the documentation and hear the Project on or about May 10, 2016.

Mr. Tsai's belief in “factual issues” with our project reflects a broad range of subtle to fundamental misunderstandings on his part, that we aggregate for convenience in Attachment 9.

Moreover, CCC believes that in addition to an amended arborist report, the County should request that the applicant erect story poles to demonstrate that their Project will be able to comply with the conditions of the County Fire Department permit as well as Oak Tree Permit and submit an Oak Woodlands report to demonstrate that the Project will not have a significant impact on oak woodlands.

Mr. Tsai and Ms. Latta have mis-characterized a response to her comments as constituting “a new project arborist report.” The response to her comments upheld the principal finding of our arborist report, which was that all encroached trees have a good chance of surviving. This assessment is based on an accurate description of our construction methods. In Attachment 7, we attribute the misunderstandings Ms. Latta has exhibited, and the factual basis for disputing her quantified assessments, which were not justified with any factual evidence. In Attachment 15, we accurately attribute root and canopy encroachment.

In Attachment 11, we attribute the scope and applicability of the Oak Woodlands Management Plan (“Plan”) process to our project, the application and initial study of which predate the adoption of the Plan into the Los Angeles County General Plan.

The public has raised serious concerns about the factual accuracy and credibility of the Project's application materials. In particular, at the Hearing, the Applicant admitted on the record that the Project's arborist and geotechnical report were based upon outdated building plans.

We have been saddened at the lack of rigor Mr. Tsai has felt is acceptable in characterizing hearing proceedings that are fully documented on video. Our statements directly contra-indicate his characterization: “Our geotech report was created before we had a design for the house. It was part of the feasibility assessment for the lot, and the geotech report notes that it's often used as a template for future design work, so we had a reference design that is in fact very different than this design, but we spoke with our geotechnical engineers, and they confirmed that all of the recommendations in the report still apply, and they submitted a letter recently to the Department of Public Works as part of our plan check review process that speaks to some of the particular points of analysis for our design.” (Unofficial Transcripts of the April 5 Hearing Officer Hearing). We did not address any supposed claim about the oak tree report using a different design because it would be impossible to assume the reference design in the geotechnical report was the same used in our oak tree report. The footprint has

remained identical to our current design throughout our development process dating to early 2014 and is clearly identified in our oak tree report exhibit map.

At our April 19 hearing, we went on to note: “The attorney went on to state that our arborist and geotechnical reports had been based on a different design. We clarified at our last hearing that our geotechnical report had started with a reference design, and the report acknowledges this typical practice with the statements that, “formal plans have not been prepared and await the conclusions and recommendations of this report,” and that “the intent of the report is to assist in the design.” We stated that we had confirmed with our geotechnical engineers that the same general recommendations apply to our project, and that they had submitted a plan check correction letter that speaks to the requests by the DPW that are particular to our design. However, we did *not* state that our arborist’s analysis had been based on a different design. The exhibit map our arborist originally submitted contains a footprint that is identical to that portrayed in our current site plan, and our elevations are also unchanged from those we submitted to our arborist and to the county when this process began, as he notes in his response.” (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

Moreover, testimony and a written report submitted by professional arborist Rebecca Latta demonstrated that there are serious factual inaccuracies and omissions in the Project's arborist report, enough to prompt the County to continue the Hearing to allow for fact-finding on the Item.

Ms. Latta has evidenced a similarly broad range of subtle to fundamental misunderstandings about our project, as we aggregate in Attachment 7. She has “demonstrated” little, instead making several claims that are not supported by substantial evidence. There was no “fact-finding” required or performed; rather, this continuation was a logistical requirement to allow our arborist time to respond to the comments that were newly submitted.

Ms. Latta has asked for information that goes far beyond other oak tree reports for construction of a new single family residence in Los Angeles County (Attachments 20-22), beyond the level of detail of oak tree permits accepted by the City of Agoura Hills from 2002-2007 (Attachments 23-25) when Ms. Latta was sub-contracted to assist in their review, and beyond the level of detail Ms. Latta has herself applied in creating past oak tree reports (Attachments 26-28). We compare the level of detail we have provided to these other examples in Attachment 19.

CCC believes that based upon these concerns, that the County has not adequately evaluated the Project's impact on fire safety, oak woodlands, as well as compliance with local building and zoning codes. CCC believes that the County should reevaluate whether the Project will be able to comply with the County Fire Department's proposed Conditions of Approval and the County's proposed Oak Tree Permit as conflicting conditions between the two proposed permits appear to make compliance impossible, reevaluate the Project's proposed Oak Tree Permit as it appears that the Oak Tree Permit is based upon an inaccurate arborist and geotechnical report, and reevaluate the Project's compliance with the Altadena Community Standards, Co. Code §22.44.3127.

I. THE COUNTY SHOULD REEVALUATE THE COUNTY FIRE DEPARTMENTS CONDITIONS OF APPROVAL.

On February 3, 2015, the County Fire Department imposed a number of conditions of approval on the Project. Fire Prevention Division, County of Los Angeles Fire Department: (2015) Conditions Of Approval ("Fire Conditions"). Condition No. 4 provides that the Project must "[p]rovide a minimum unobstructed width of 20 feet ... and an unobstructed vertical clearance 'clear to sky' Fire Department vehicular access to within 150 feet of all portions of the exterior walls of the first story of the building .. . ,"with the exception of protected tree species which only require a "minimum vertical clearance of 13 feet 7 inches" Fire Conditions at 1.

Professional arborist Rebecca Latta testified at the Hearing that it would be difficult for the Project to comply with these Fire Conditions without either removing significantly more than just 1 oak tree or pruning more than 20% of the oak canopy and branches more than 2 inches in width, all conditions of the Project's proposed oak tree permit. The Project's proposed rooftop comes well within 13 feet of the oak canopy of the Project Site.

Mr. Tsai and Ms. Latta have evidenced two very fundamental misunderstandings. It is difficult for us to understand how they might have interpreted the condition in the way they appear to have.

First, as we stated at our April 19 hearing, "In the attorney's letter included in Staff Memo dated April 19th, the attorney misunderstood another key definition, claiming that we would have to prune our trees everywhere to 13'7" above our roof. The referenced requirement is a fire truck access specification, as the condition notes. It states that a fire truck has to be able to park at some point that would leave a fireman no more than 150ft to access on foot the farthest point around the perimeter of a home, so that the standard 150 feet length of fire hose can be deployed effectively. In order to fit a truck, any roadway - or driveway for any home set back far enough from the road - must have a width of 20ft, and "clear to sky" vertical clearance is desired, but 13'7" is sufficient. 13'6" is the maximum legal height for any truck. Canyon Crest Rd of course fulfills this requirement for our project." (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

We would gently suggest to Mr. Tsai and Ms. Latta that when an interpretation of conditions created by County professionals results in such a nonsensical discrepancy – that we must remove all vegetation within 13'7" of our home for Fire Department Fuel Modification clearance and yet the Fire Department Forestry Division approved an oak tree permit in which the trunks of trees to remain are well within this distance – it would be reasonable to question the interpretation. Doubly so when so many existing residences are constructed in such close proximity to oak trees (see Attachment 30).

Second, our oak tree permit does not contain any condition limiting pruning of any encroached tree to 20% of oak canopy or branches less than 2" in diameter. *This is the threshold of pruning that does not require an oak tree permit.* In other words, if one confines pruning activity to within these bounds, the county believes *by inspection* that the oak tree will remain unharmed, and no arborist analysis is required. Mr. Tsai is referring to oak tree permit requirement #8:

"*In addition to the work expressly allowed by this permit*, remedial pruning intended to

ensure the continued health of a protected Oak tree or to improve its appearance or structure may be performed. Such pruning shall include the removal of deadwood and stubs and medium pruning of branches two-inches in diameter or less in accordance with the guidelines published by the National Arborist Association. Copies of these guidelines are available from the County of Los Angeles Fire Department, Forestry Division. In no case shall more than 20% of the tree canopy of any one tree be removed." (emphasis added)

The condition clarifies that in addition to the permitted encroachments of root and canopy (which may take more than 2" branches and more than 20% of the canopy), encroached or un-encroached trees may undergo remedial pruning within these parameters without submitting to a new oak tree report or any specific analysis.

The County should require the Applicant to demonstrate that they can realistically go forward with this Project without violating either the County Fire Code or Oak Tree Permit. CCC requests in particular that the Applicant be required to place "story poles" on the Project Site to demonstrate where and how the Project will interact and require removal and pruning of the oak canopy and demonstrate that the Project will be: able to comply with the proposed County Fire Code and Oak Tree Permit. Given the serious factual inaccuracies and omissions in the arborist report, the County should not approve this Project without adequate proof that the Project will be able to comply with the conditions of approval.

Prior to the date of Mr. Tsai's letter, story poles had already been placed at the major vertices of our home. They are visible in Ms. Latta's pictures on pages 193-208 of the Regional Planning Commission Hearing Package, and in our own arborist's pictures in his reply dated April 18 (page 168 of the same package).

II. THE COUNTY SHOULD REEVALUATE THE PROJECT'S PROPOSED OAK TREE PERMIT.

The County should reevaluate the Project's proposed oak tree permit as it is based upon an inaccurate arborist and geotechnical report. At the Hearing, the Applicant admitted on the record that the Project's arborist as well as geotechnical were prepared based upon different building plans than is now proposed. The County should request that the Applicant resubmit a new arborist and geotechnical report based upon the current building plans.

We earlier addressed the distortion Mr. Tsai applied to our statements in order to make this claim. Such distortion is not characteristic of a fair argument.

Moreover Ms. Latta's testimony and accompanying report at the Hearing shows that there are a number of significant inaccuracies and omissions in the Project's arborist report. In particular, Ms. Latta noted that the Project's arborist report analyzes a different, much smaller project, fails to analyze all oaks within 200 feet of the construction area, docs not note the location of surface drainage system, does not address proposed changes in grade and their impact on protected oaks, nnd docs not analyze the impact of the Project's fill compaction, pilings, grading, and installation of non-permeable surfaces, including concrete transition slab installation, will have on oak trees. Letter from Rebecca Latta to Kristina Kulczycki, Senior Regional Planning Assistant, LA County Regional Planning (Mar. 30, 2016).

Mr. Tsai and Ms. Latta have indulged in speculation that “our arborist report analyzes a different, much smaller project,” and this was directly contra-indicated by our arborist's statement in his response dated April 18 that, “It is my understanding from reviewing the most recent plans, that the project entryway has changed, and that the portion of concrete driveway outside the footprint of the home has been removed. However, these changes did not affect the footprint or elevations for the home, and do not lead to any increased impacts.”

We address the claims regarding the appropriate level of reference of trees on our lot that are at least 190 feet distant (absolute) in Attachment 1 at 33-35.

Mr. Tsai does not clarify what conceivable “omission” is referenced by “not not[ing] the surface drainage system.” The drainage can be derived by creating orthogonal valley lines for the topographic survey included on our site plan. Though these were available to Ms. Latta, she has claimed incorrectly that the riparian trees on our lot nearly 200ft distant possess a tributary drainage that includes the footprint of our home. We address this further in Attachment 12 at 10, our response to claims of significant impacts on water quality and hydrology.

We explained at our April 5 hearing before this letter was written that we have no conditioned fill: “...She made reference to the wedge of fill, which is the flat area of the pad there and seemed to imply that our geotechnical report required compaction of that fill. That was a misinterpretation of the report. The report stipulates that if we possess any slab-on-grade foundation work that's supported, the fill would have to be conditioned – compacted. We're not in fact using any conditioned fill. All of the loads of our house are supported by the piles. There is no compaction that will take place as it's commonly understood by the Department of Public Works to make a pad suitable for slab-on-grade foundations or for pavement.” (Unofficial Transcripts of the April 5 Hearing Officer Hearing). We are saddened that we have had to explain this and other points repeatedly.

Mr. Tsai appears not to have closely inspected the minor change to our entryway, which removed this concrete apron. We had advertised this change at an Altadena Town Council meeting and on our website, in addition to those plans reviewed at our April 5 hearing, explicitly stating that it removed the concrete driveway transition. There is no impermeable surface outside the footprint of our home.

Ms. Latta concludes that in her opinion the Project docs not meet the burden of proof required by the County's Oak Tree Protection Ordinance, Co. Code § 2256.2050 ("Oak Tree Protection Ordinance" or "Ordinance"). The County should do a thorough reevaluation and verify the accuracy of the Project's arborist report before potentially moving forward with the Project.

In the attachments we have submitted, we address her claims in detail that goes far beyond oak tree reports for construction of a new single family residence in Los Angeles County (Attachments 20-22), beyond the level of detail of oak tree permits accepted by the City of Agoura Hills from 2002-2007 (Attachments 23-25) when Ms. Latta was sub-contracted to assist in their review, and beyond the level of detail Ms. Latta has herself applied in creating past oak tree reports (Attachments 26-28). We compare the level of detail we have provided to these other examples in Attachment 19. Attachment 7 enumerates 11 misunderstandings

she has exhibited in her hearing testimony and letters submitted as a part of our hearing process. We note that the County of Los Angeles has no record of any oak tree report submitted by Ms. Latta.

According to the cited code, the decision as to whether the burden of proof has been satisfied is reserved for the Director of the Department of Regional Planning. Mr. Tsai and Ms. Latta have exhibited misunderstandings that discount significant portions of their testimony.

III. THE COUNTY SHOULD REEVALUATE THE PROJECT UNDER THE COUNTY OAK WOODLANDS CONSERVATION MANAGEMENT PLAN.

The Project's environmental documents and mitigation plans do not evaluate the Project's impact to Oak Woodlands. While the County has considered and proposed an oak tree permit under the County's Oak Tree Protection Ordinance, the Project has not been evaluated for consistency with the County's Oak Woodlands Conservation Management Plan. County of Los Angeles (2014) Oak Woodlands Conservation Management Plan Guide ("Oak Woodlands Conservation Plan" or "Conservation Plan").

In Attachment 11, we attribute the scope and applicability of the Oak Woodlands Management Plan (“Plan”) process to our project, the application and initial study of which predate the adoption of the Plan into the Los Angeles County General Plan.

A Project may be subject to the differing mandates of both the County Oak Tree Ordinance and Conservation Plan at the same time. Conservation Plan at 3. The Oak Woodlands Conservation Plan applies to Projects that will encroach upon two or more oak trees of at least five inches in diameter within an oak woodland. Conservation Plan at 4.

More accurately, it interprets the California state definition of an oak woodland to define two or more oak trees at least five inches in diameter within a normalized distance as an oak woodland.

The Conservation Plan defines an oak woodland at "an oak stand, including its understory, which consists of two or more oak trees of at least five inches in diameter measured at 4.5 feet above mean natural grade with greater than 10 percent canopy cover .. . . "The County admits that the Project Site is on an oak woodland. County of Los Angeles (2016) Staff Analysis 1 ("Staff Analysis"). The staff's conclusion that the Project is proposed within an oak woodland is verified by Ms. Latta's testimony at the Hearing and accompanying report.

However, the Project docs not comply with the Oak Woodlands Conservation Plan process. The Conservation Plan requires that the County prepare an Oak Woodlands Report to determine if the Project will have a significant impact on oak woodland. The Project has no oak woodlands report, merely an oak tree report that does no analysis on the Project's potential impact to oak woodland habitat.

Moreover, Ms. Latta's testimony and report demonstrate that the project will result in a substantial impact on oak woodland, as it will result in both the loss of individual oaks as well as a loss of net acreage of oak woodland, a little more than one acre. The County should reevaluate the Project for consistency with the Oak Woodlands Conservation Plan.

We address these claims more fully in Attachment 11. However, we pause to note the egregious error in Mr. Tsai's claim that our project will result in the net loss of a little more than one acre of oak woodland. As we noted at our April 19 hearing, “Our entire lot is only a little more than one acre, and the footprint of our home is less than 3% of that. We don't understand how the attorney could have arrived at this figure.” (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

IV. THE COUNTY SHOULD REEVALUATE THE PROJECT'S COMPLIANCE WITH THE ALTADENA COMMUNITY STANDARDS.

As CCC's April 4, 2016 letter noted, the Project docs not comply with the Altadena Community Standards maximum height and floor requirements. CCC would simply like to add that County staff up until very recently agreed with this position. On June 18, 2015, County planner Troy Evangelho informed the applicant that "your garage loft and lower floor office are both considered an additional story. Therefore your house is greater than two stories and will need to be redesigned."
Letter from Troy Evangelho, AICP. Zoning Permits East Section, Los Angeles County Department of Regional Planning to Steven Kuhn RE: Incomplete Application: Request For Additional Information June 18. 2015). No significant changes to the Project's design has occurred since June of last year.

E-mail communications from County planner Kristina Kulczycki reflects the fact that current County staff also believes that the Project exceeds the maximum floor and height limits of the Altadena Community Standards. As Ms. Kulczycki stated co the Applicant in an email on July 9, 2015, "If you are okay with considering the building to be three stories in height, you can go straight to a CUP to modify this development standard and I can start noticing the CUP and Oak Tree Permit for fencing instead of the MCUP." E-mail from Kristina Kulczycki to Stephen Kuhn July 9, 2015) FW: R2014-02411. The Applicant rejected the advice of the County and opted to continue to exempt the first and second floors of the four-level structure, for expediency stating:

I think I would rather not go the route of getting a CUP [(Major Conditional Use Permit)) to Altadena standards. There seems more on the part of the town to deny. 1 would rather frame the project as fitting completely within the bounds of the standards, which I think it does.
Email from Stephen Kuhn to Kristina Kulczycki July 9, 2015.

We explained at our April 19 Hearing Officer hearing that our planner's suggestion was a logistical one, as our planner had rightfully pointed out that less time would be devoted to the appeal process if we were able to skip the Hearing Officer level of review and begin with the Regional Planning Commission. In part due to honored requests for delay from our opposition, the gap between our April 19 Hearing Officer Hearing and September 7 Regional Planning Commission Hearing was nearly five months, time that might have been avoided. As we clarified at that hearing, we did not pursue this route because we had very consciously and conscientiously set out to design a home that complied with all applicable regulations, and we and our experienced architect have always been very clear on what those regulations mean. It did not even occur to us to try to design a home that circumvented the regulations, and to portray it in this way was distasteful to us given our efforts, even if it meant we might

have started construction sooner.

We would also note a general pattern exhibited by Mr. Tsai and several other neighbors, in using a Public Records Act request to lift logistical emails with County staff completely out of their proper context, without referencing the remainder of the email, other emails, phone conversations and in-person visits that accompany these communications and give them proper context. In that same email, the very next statement after "...which I think it does" is "The minor CUP is only to satisfy the intent of broader notification that a hillside lot was being built. I'm happy to follow up on that if any part of the logic laid out in the rebuttal is in dispute. I don't know how it could be interpreted otherwise in an internally consistent manner." Mr. Tsai was of course privy to these statements expressing our belief in the just application of the rules, but chose to omit them, as they directly contra-indicate his speculative narrative of "political convenience."

We have had to explain similar occurrences of this elsewhere in the administrative record, particularly in responses to Mr. Behr and Mr. Hickman. This distortion is not characteristic of a fair argument.

The Project easily exceeds the Altadena Community Standard's maximum height and floor requirements by nearly double the amount of each. Approving the Project as a minor conditional usc permit would render the Altadena Community Standards virtually meaningless and allow developments to building a virtually unlimited amount of floors as long as they classify the additional floors as "cellars." The County should not opt to approve the Project as a minor conditional use permit simply to appease the applicant, avoid political scrutiny, and deny the public adequate review of the Project.

Mr. Tsai has exhibited some fundamental misunderstandings, which we address in greater detail in Attachments 1, 9 and 16. However, we would gently suggest to Mr. Tsai that before speculating as to dishonest, inappropriate and incompetent behavior on the part of senior staff in the Department of Regional Planning, who are trained in the code and its application, he first carefully examine the soundness of his own understanding, not being so qualified.

Respectfully,

Stephen and Vandana

V. CONCLUSION.

A number of important and legal issues remain to be resolved with regards to this Project. CCC urges the County to continue the hearing date in order to allow County Staff and the public adequate time to evaluate this Project.

Sincerely,

Mitchell M. Tsai
Attorney For Canyon Crest Conservancy

Attachments

Fire Prevention Division, County of Los Angeles Fire Dcpartmenr: (2015) Conditions Of Approval (Attached as Exhibit A);

Letter from Rebecca Latta to Kristina Kulczycki, Senior Regional Planning Assistant, LA County Rcgional Planning (Mar. 30, 2016) (attached as Exhibit B);

County of Los Angeles (2014) Oak Woodlands Conservation Management Plan Guide (attached as Exhibit C); and

Letter from Troy Evangelho, AICP, Zoning Pennits East Section, Los Angeles County Department of Regional Planning to Steven Kuhn RE: Incomplete Application: Request For Additional Information Qune 18, 2015) (attached as Exhibit D);

Email from Kristina Kulczycki to Stephen Kuhn (July 9, 2015) FW: R2014w0241 1 (attached as Exhibit E); and

Email from Stephen Kuhn to Kristina Kulczycki (July 9, 2015) (attached as Exhibit F).

Attachment 4

Response to letter from Mitchell Tsai, dated March 24, 2016

November 10, 2016

Purpose:

The purpose of this attachment is to factually address some comments Mr. Tsai has submitted on behalf of his clients, with inline replies or references to other attachments where claims from several sources are assessed together in greater detail. We have addressed some but not all of the claims in this letter in Attachment 1. We will not respond to those claims we address elsewhere.

Key Issues:

1. Mr. Tsai has incorrectly termed a “drainage swale” that is “a mere surface drainage” a “drainage stream.” A “stream” is a watercourse, and a drainage swale is not.
2. Mr. Tsai has sought fit to draw conclusions based on neighbor testimony that reflects a clear misunderstanding of the extent of our lot. In Attachment 13, we attribute how the largest of construction vehicles required on our lot may fit in our more than 1,000sqft staging area without encroaching on any oak tree canopy to remain, and without encroaching into the road
3. Mr. Tsai and others have misapplied the county code prohibition on shiny or reflective metal roofing and cladding. Our metal roofing and cladding is not shiny or reflective.
4. Mr. Tsai has endowed a scope and authority to the Altadena Community standards that would authorize it to perpetrate a “taking” that is indistinguishable from that deemed unconstitutional under Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). Neither the Altadena Community Standards, nor any other part of the County Code may be used to justify this.
5. Mr. Tsai has incorrectly attributed applicability of the Significant Ecological Area Burden of Proof to our project. According to County Code §22.56.215, there are four ways in which our project is set outside the stated scope of applicability of an SEA conditional use permit.

March 24, 2016

Kristina Kulczycki
LOS ANGELES COUNIY DEPARTMENT OF REGIONAL PLANNING (DRP)
320 West Temple Street
Los Angeles, California 90012
Em: kkulczycki@planning.lacounty.gov

RE: Canyon Crest Conservancy Comment Letter Regarding Agenda Item No. 10 for the County of Los Angeles April 5, 2016 Public Hearing Regarding Project No. R2014-02411-(5), ROAK 201400035, and RMCP 201400014.

Dear Ms. Kulczycki,

On behalf of Canyon Crest Conservancy ("Conservancy" or "CCC"), my Office is providing comments concerning Agenda Item No. 10 for AprilS, 2016 County of Los Angeles ("County") Public Hearing Regarding Project No. R2014- 02411-(5), ROAK 201400035, and RMCP 201400014 ("Project").

CCC is a group of concerned Altadena residents who arc dedicated to open spaces and quality of life in the Canyon Crest area. CCC urges the County of Los Angeles to reject the Project for violating the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 et seq. ("CEQA"), the Altadena Community Standards, County Code § 22.44.127 ("Community Standards"), as well as the County's Oak Tree Ordinance, Co. Code 22.56.2050 et seq. ("Oak Tree Ordinance").

I. THE PROJECT VIOLATES THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

a. Background On The California Environmental Quality Act.

[Omitted, and addressed in Attachments 1 and 14]

b. Background On Initial Studies And The "Fair Argument Standard.

[Omitted, and addressed in Attachments 1 and 14]

c. The Project Will Have Significant Environmental Impacts

1. The Project Will Have Significant Impacts On Wildlife.

The Project will have significant impacts on wildlife, particularly wildlife crossings in and around the Project Site. CCC members have observed numerous animal species utilizing the Project Site, including mountain lions, bears, foxes, bobcats, deer, and a host of smaller native mammals such as opossums, raccoons, skunks, and three species of squirrel to cross Canyon Crest Road to access wildlife below. Email from Mary Ellen Schoeman to Kristina Kulczycki, County of Los Angeles (Jan 16, 2016) (attached as Exhibit A) (hereinafter "Schoeman Letter"); Letter from Michael and Mindy Hickman (undated) (attached as Exhibit G).

We have responded to these and related claims in attachment 11, our response to claims of significant impacts on biological resources.

Despite the fact that the Project's Initial Study adopts a negative declaration, claiming that Project "could not" have a significant effect on the environment and does not require any mitigation measures, Initial Study at 4, the Initial Study adopts unenforceable mitigation measures to mitigate impacts to wildlife. The Initial Study concedes that habitat "suitable for special-status species" is on the Project Site and may "support nesting and roosting by special-status bird and bat species." The Initial Study proposes to mitigate its impacts by "[c]ompliance with state and federal laws protecting nesting bird and non-game mammal species." Initial Study at 12. The Project will have a potentially significant impact on wildlife.

Mr. Tsai has not provided any substantial evidence to show how compliance with state and federal laws is “unenforceable.” Every law must possess some means of enforcement.

It is also important to distinguish between the numerous “standard permit conditions” that are applied by a lead agency, and a “mitigation measure” to render “less than significant” an effect on the Environment that was analyzed to be “potentially significant.” We address this

further in Attachment 14.

2. The Project Will Have Significant Impacts On Riparian Oak Woodland.

The Project will have significant impacts on Riparian Oak Woodland, a State protected vegetation community. California Public Resources Code Section 21083.4 requires the County to "determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment."

California Public Resources Code Section 21083.4 states:

". . . (b) As part of the determination made pursuant to Section 21080.1, a county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands:

(1) Conserve oak woodlands, through the use of conservation easements.

(2)(A) Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees."

Without acknowledging that a permanent conversion of oak woodlands is possible when the Oak Tree Ordinance (County Code §22.56.2050) requires replacement and protection of removed trees in a 2:1 ratio, the code does not equate *any* conversion of oak woodlands with a significant effect on the environment. It allows that the county shall determine the threshold for which conversion *becomes* a significant effect on the environment. This is dependent on the existing conditions and manner of encroachment, as the Oak Woodland Management Plan Guide formalizes.

We note as well that were our project to be so determined to have a potentially significant effect on the environment due to removal of oak trees, the other "half" of the mitigation under 21083.4 has been fulfilled by other projects in the county by permit conditions that are already present for our project. See Attachment 19 at 3.

The county biologist explicitly stated at our April 19 Hearing Officer Hearing that "we determined that the overall impact to the woodland would be less than significant." (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

The County's Oak Woodlands Conservation Management Plan Guide requires that the County conserves oak woodlands "with no net loss of existing woodlands. Los Angeles County Oak Woodlands Conservation Management Plan Guide (2014) (attached as Exhibit B).

According to Rebecca Latta, a certified arborist, the Project will involve the removal of 3 to 4 oak trees, infringement into the protected zones of numerous other oak trees, and alteration of a drainage stream that could negatively impact oak trees on the property. Letter from Rebecca Latta to Kristina

Kulczycki, County of Los Angeles (Mar. 16, 2016).

Mr. Tsai has confused the definition of “stream,” which is attributed in detail in Attachment 12 at 8-9. In this letter, he subsequently adjusts nomenclature, calling what is properly a “drainage swale” a “drainage ditch.”

We address this claim in Attachment 12 at 9-11, our response to claims of significant impacts of our project on hydrology, and in Attachment 11, our response to claims of significant impacts of our project on biological resources.

The Project will significantly impact riparian oak woodland (attached as Exhibit C) (hereinafter "Latta Letter"); see also Letter from John P. Lynch to Kristina Kulczycki, County of Los Angeles (Mar. 21, 2016) (attached as Exhibit D).

Despite the fact that the Project's Initial Study adopts a negative declaration, claiming that Project "could not" have a significant effect on the environment and docs not require any mitigation measures, Initial Study at 4, the Initial Study adopts unenforceable mitigation measures to mitigate impacts to sensitive natural vegetation communities that could come from the Project. Notably, the Project proposes to plant two oak trees as mitigation for the removal of oak trees on the Project site. Initial Study at 12.

Planting two oak trees to compensate for the removal of one protected oak tree is a part of the non-discretionary Oak Tree Ordinance. We have represented that we intend to plant many oak trees on our property, independent of any statute requirements. As we noted at our September 7 Regional Planning Commission Hearing, “Our opposition has also requested an oak woodland report. While we appreciate the intention of the advocates of this statute to sustain oak woodland communities, our project is already designed to save as many trees as we could, and we intend to implement the accepted mitigation of fostering many new oak trees, not because any statute requires it of us, but because we find them to be beautiful, and because they are well-suited to thrive on our lot.”

Ms. Latta serves as project consultant for a 10,911sqft [sic] single family residence in San Marino situated in an area dense with oak woodland in close proximity to Huntington Gardens. Though the initial study notes the removal of 21 mature coast live oak trees (later revised upward, as we attribute in Attachment 19 at 22-23), the project also received a Negative Declaration, not a Mitigated Negative Declaration. The initial study for this project was drafted in May of 2008 after the passage of SB1334 created Public Resources Code 21083.4, in September of 2004. Despite the scale of the project, the initial study congratulates the applicant for only removing 21 of the 50 trees on site, stating that “It is complimentary to the applicant that they are proposing to preserve the majority of trees on site.” (Attachment 47 at 16). Needless to say, our project is of substantially smaller scale and greater sensitivity.

Moreover, the Initial Study claims that it is not subject to the "provisions of any adopted state, regional, or local habitat conservation plan," Initial Study at 13, despite being required to mitigate the removal of oak trees on the Project Site pursuant to the County's Oak Woodlands Conservation Management Plan and Oak Tree Regulations. County Code § 22.46.2100, el seq.

3. The Project Will Have Significant Impacts On Traffic.

The Project will have significant impacts on traffic in and around the Project Site. The Project Site is located on a narrow, winding mountain road that serves as the only vehicle access in or out of a single-family neighborhood. The Project proposes to contain the entirety of the staging area on a small site currently only able to accommodate 1-2 small vehicles, a near impossibility. Schoeman Letter at p. 1.

Mr. Tsai has cited as evidence neighbor testimony reflecting a clear misunderstanding of the extent of our lot. As we show in Attachment 13 at 3, there is a nearly 30ft wide by more than 30ft deep flat area at street grade that is part of our property but which we have allowed the adjacent neighbors at 3589 Canyon Crest Rd to use for parking and storage. This neighbor appeared unaware that this area was a part of our lot. It can accommodate three full-size parking spaces stacked side-to-side with additional room for materials, or a concrute truck (Attachment 13 at 11-12). As we noted in our response to Ms. Latta's letter dated March 17, “Once our main level and garage is cast, we will have an additional ~1000sf of area to stage building materials off of the unimproved ground in the protected zones of our oak trees. It is after this point that most deliveries – framing lumber, sheathing, drywall, cladding, roofing, windows and doors, etc. - will be made.”

As we've noted on our website, “As the paving repair of utility maintenance excavation trenches along Canyon Crest will attest, as well as our own experience as residents of the Meadows for years, temporary single lane closures occur periodically. Some of you may have observed what this looks like during regularly scheduled cleaning of the sewer siphon that outlets near the edge of our property, which occurs about every 60 days. Our personal experience has been that this is not unduly disruptive to traffic. Cones clearly advertise the activity, and workers with flags ensure safe speeds and the alternation of lanes when needed. Work is generally scheduled as much as possible outside the morning and evening hours when levels of traffic are higher. As no sub-street utility has an infinite lifetime, and every street's utilities are subject to repair and replacement, the DPW Traffic & Lighting Division has a standard process to govern this.”

In other words, single lane closures are a regular occurrence right in front of our property, as we show in Attachment 13 at 5. Throughout the vast majority of our project's construction activities, both lanes will remain open. When connecting to utilities, which is characteristic of any new construction, incursion into the roadway is required. However, a single lane of sufficient width to pass emergency vehicles will remain open at all times. It is also conventional to use steel channel and asphalt to make excavation traffic worthy at the end of work mid-afternoon. This can be performed quickly in the event of a serious emergency to make both lanes available.

Mr. Tsai does not make a fair argument when he cites evidence that is not based on facts. He has not repeated this claim in his letter dated September 5, 2016.

4. The Project Will Have A Significant Impacts On Aesthetics.

The Project will have a significant impact on aesthetics in and around the Project Site. The Project will block scenic vistas visible from Canyon Crest Road as well as for numerous surrounding neighbors.

Project Rendering (attached as Exhibit E); Statement of Opposition from Randall Baer (undated) 1 - 3 (attached as Exhibit F) (hereinafter "Baer Statement"). Moreover, the Project is out of character with the surrounding neighborhood, proposing a peak height, 32 feet, that is nearly 4 times higher than surrounding neighborhood homes. Baer Statement at 2.

We address these and similar claims in Attachment 10, our response to claims of significant impacts on aesthetics.

Despite the fact that the Project's Initial Study adopts a negative declaration, claiming that Project "could not" have a significant effect on the environment and does not require any mitigation measures, Initial Study at 4, the Initial Study adopts unenforceable mitigation measures to mitigate potential glare that could come from the Project. The Initial Study notes that glare from the building will be mitigated by a permit condition prohibiting "reflective, glossy, polished, and/or roll formed type metal siding and roofing."

Mr. Tsai has not clarified how compliance with a Department of Regional Planning condition is “unenforceable.” This condition is taken directly from County Code §22.20.105 Development Standards for Single Family Residences. It is not a mitigation to enumerate a section of code that has always governed our project. The building permit and inspection process ensures that all county development complies with the development standards set forth in the code.

Based on comments at our September 7 Regional Planning Commission Hearing, we believe Mr. Tsai and others have misunderstood the county code. As a local industry professional explains in Attachment 47, the prohibition is against reflective or shiny metal material, and the manufacturing process indicated by the adjective “roll-formed” is apparently a corruption of the surface finish indicated by the adjective “bright-rolled,”, which leaves a shiny surface.



Illustration 1: Bright-rolled surface finish. This metal is unpainted and reflective, not characteristic of the matte painted surface we will use.

Roll-forming is just a method of manufacture, not a property of the product, which regulations may properly control. A large majority of metal roofing and cladding is roll-formed, and the professional notes that such products continue to be installed on commercial and residential projects throughout the county. However, the point is moot. We have elected to use a thicker panel from a different supplier that is manufactured on a brake. As for most roofing and cladding, these are factory-painted as e.g. fiber cement siding would be, yielding a similarly smooth texture and matte finish, that the manufacturer noted is even suitable for use at airports with tight regulation for glare. There is no “mitigation” needed for glare, because glare was never present in our design.

We also refer to numerous other examples in Altadena of standing seam steel roofing, including at the Loma Alta Community Park Community Center, less than a half mile to the east, as well as 3726 Canyon Crest, several hundred feet to the north, among others. As County Code §22.20.105 states “Every single-family residence shall have a roof constructed with wood-shake, shingle, asphalt composition, crushed rock, or other similar *roofing* material in compliance with Title 26 (Building Code) of this code, except that reflective, glossy, polished and/or roll-formed type metal roofing is prohibited” (emphasis added), clearly this

does not mean that pre-manufactured metal roofing panels of standard thickness should be prohibited. The Loma Alta Community Park Community Center was refurbished with its new metal roof as recently as 2009 (see http://www.altadenatowncouncil.org/documents/Altadena_Connection_2010.pdf at 6). The partner of the neighbor who identified himself as president of the Canyon Crest Conservancy markets architectural and interior design services and lists on her website a remodel using standing seam metal roofing. We are saddened that these neighbors would claim that such roofing is prohibited when they have used the roofing on their own projects.



Illustration 2: Standing seam roof – visible over entry – present on a remodel cited as a past project of one of the neighbors in opposition to our project who has claimed that such roofs are prohibited, accessed from https://www.wendywilson.net/ on November 8, 2016, see also https://nebula.wsimg.com/c31c19076dbec8cc92187cce91317613?AccessKeyId=DB3793D016E2BEDFA1EE&disposition=0&alloworigin=1



Illustration 3: Roll-formed standing seam metal roof on Loma Alta Community Park Community Center less than a half mile to the east of the project, installed 2009. Note that a painted metal surface is not shiny.



Illustration 4: Standing seam metal roof on 3726 Canyon Crest Road, less than a quarter mile to the north



Illustration 5: Standing seam metal roof on 3828 Alzada Rd, Altadena

Mr. Tsai does not make a fair argument that our code-compliant choice of roofing and cladding will have a significant impact on the environment.

5. The Project Will Have A Significant Impact On Water Quality, Hydrology, and Biological Resources.

The Project will have a substantial impact on hydrology, water quality, and biological resources. The Project proposes to divert a drainage ditch that drains water from the surrounding neighborhood. The drainage ditch flows into a stream at the bottom of the canyon, into the Arroyo Seco river, a tributary to the Los Angeles River, a federally designated Waters Of The United States. Initial Study at 25.

The Project's Initial Study claims that the Project will not cause water discharges into jurisdictional areas. Initial Study at 12. However, the Project's Initial Study later admits that the Project will cause a discharge into a Water of the United States, stating that the Project "is required to comply with the water quality requirements imposed by the Los Angeles Regional Water Quality Control Board ... [as well as] National Pollutant Discharge Elimination System." Initial Study at 24-25. Moreover, the Initial Study notes that the Project will "alter the existing drainage pattern of the site and will increase the

amount of surface runoff . . .” Initial Study at 25.

We address these and similar claims in Attachment 12, our response to claims of significant impacts on hydrology.

6. The Project's Initial Study Is Internally Contradictory Conceding That The Project Will Have Significant Environmental Impacts Without Mitigation.

The Project's Initial Study adopts a negative declaration, claiming that Project "could not" have a significant effect on the environment and does not require any mitigation measures. Initial Study at 4. This is despite the Initial Study adopting numerous mitigation measures for aesthetics, biological resources, and water quality/hydrology.

We have addressed this misunderstanding in Attachment 1 at 46-48.

II. THE PROJECT VIOLATES THE ALTADENA COMMUNITY STANDARDS.

The Project is subject to and violates the hillside management provisions under the Altadena Community Standards. County Code § 22.44.127.C.2.b. The Project Site is subject to the hillside management provisions as it is a hillside management area. Section 22.08.080 of the County Code defines a "Hillside Management Area as "any portion of a lot or parcel of land which contains terrain with a natural slope gradienf of 25 percent or steeper." The Project is built upon a parcel with a natural slope of 100 percent. Baer Statement at 2.

Mr. Tsai exhibits a very fundamental misunderstanding that we've encountered in the statements of several neighbors in opposition; namely, that we are violating a statute that lays out a process that we are following.

The Altadena Community Standards do not “prohibit” building on a slope of greater than 25%. This would render our lot and several lots on which homes exist incompatible with any reasonable development and constitute a “taking,” as we attribute subsequently. Rather, the Community Standards require a minor Conditional Use Permit in order to build on such a slope. This allows the county to review whether an applicant has been sufficiently sensitive and responsible in their proposal, or whether changes need to be made. The public is able to propose alternative designs or supplemental conditions and are given a venue to express concerns, even those that may not have any constructive aspect. As part of the hearing process, the applicant may respond to this feedback, and either make changes or justify the design as submitted. The presiding body at each level of review weighs this testimony to decide whether a project may be approved or requires further revision.

Unfortunately, we received very little constructive feedback from any neighbor. One of the few neighbors willing to talk with us about our project suggested that we remove a short segment of driveway that had allowed a north-facing entryway and deeper garage. Although it pared our garage to the minimum depth able to fit a full-sized parking spot, it reduced impacts to the oak trees to remain, and we felt it was aesthetically superior. So, we made that change, and it was reflected in the plans we reviewed at our April 5 Hearing Officer hearing. The change only reduced the volume of our home, and so did not affect the pre-existing analysis in our

initial study. Another outcome of this review process was an increase in the monitoring interval for our oak trees from two years to seven years, to address concerns expressed by those opposed to our project, a changed condition that we also found to be perfectly reasonable.

It seems to us that providing a mechanism to generate these sorts of changes is why the minor Conditional Use Permit process exists. We feel that we have a better project because of it.

In contrast, Mr. Baer and his partner spent the time between July of 2015, when we introduced our project and the minor CUP notices were first mailed, and March of 2016, when the Altadena Town Council approved our project, claiming that our project should be *denied*, for any one of four reasons. Though Mr. Baer's partner markets architectural and interior design services and characterized herself to our planner as an architect, no attempt was made to reach out to us in this time with design alternatives. Mr. Baer stated at our April 5 hearing that, “if a minor CUP is all that is needed to build on any hillside other than those few that were mentioned specifically in the ordinance, then the code appears to serve very little purpose other than to bring us to where we all are this morning” (Unofficial Minutes of the April 5 Hearing Officer Hearing). This comment is an indication of the unfortunate failure of most of those opposed to our project to avail themselves of the minor CUP process to propose alternative designs or conditions and see them considered. We don't understand how they might have assumed that a minor CUP “process” could serve any purpose if it always resulted in denial, rather than working together to ensure the design is reasonable.

Our parcel is legally zoned R1-10000 with an unconditional certificate of compliance. The Altadena Community Standard Hillside Management Amendment requiring a minor CUP for construction on slopes greater than 25% came into effect on December 16, 2010 (http://planning.lacounty.gov/view/altadena_community_standards_district_amendment_hillside_management/).

To interpret the Altadena Community Standards as Mr. Baer and Mr. Tsai appear to have done would be to introduce the judgment in Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), the Supreme Court decision that established the "total takings" test for evaluating whether a particular regulatory action constitutes a regulatory taking that requires compensation.

In that decision, the plaintiff purchased legally compliant vacant parcels intending to develop them with single-family residences. Subsequent to this, building regulations were enacted that effectively rendered the lots incompatible with any development.

The majority argued as follows in stating that plaintiff required just compensation for the land: (1) Deprivation of all economically beneficial use is, from the perspective of a property owner, deprivation of the property itself. (2) When all economically beneficial use is restricted, it is difficult to assume that the legislature is simply "adjusting" economical benefits and burdens. (3) Regulations that restrict all economically beneficial use may often be a guise of pressing that land into public service. (4) Lucas's lands have been deprived of all economically beneficial use. (5) There is no way to distinguish regulation that "prevents a harmful use" and

confers benefits on nearby property. (6) Contrary to Respondent South Carolina's assertion, title is not held subject to the limitation that the state may regulate away all the property's economically beneficial use.

In other words, were the County of Los Angeles to deny any development on our lot, they would be forced to purchase the lot for just compensation. However, it has no inducement to do so. As findings of our Regional Planning Commission Approval Package note:

“22. The Commission finds that the Project is consistent with the goals and policies of the Altadena Community Plan (“Community Plan”), a component of the General Plan, based on the following. The Nonurban land use designation is intended for rural residential uses and therefore, the proposed single-family residence is consistent with the allowed uses of the underlying land use category. The Community Plan contains policies to ensure compatibility of development with the surrounding area. The Community Plan seeks to “promote the provision of an adequate supply of housing by location, type and price” (Land Use, Page I-24). The addition of single-family residence within an existing residential community will be compatible with the surrounding uses and will provide additional housing in the area.
23. The Commission finds that the Project is consistent with the R-1-10000 zoning classification because single-family residences are listed as a permitted use in the R-1 zone pursuant to section 22.20.070.

24. The proposed single-family residence is compatible with the surrounding uses as it is located in a developed residential community. The residence will function similarly to other residences in the area and will produce similar levels of utility usage and traffic patterns. Therefore, the Commission finds that the Project will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area.”

Applications for a minor conditional use permit in a hillside management area subject to conditional use permit and significant ecological area requirements. Co. Code§ 22.47.127.C.2.b.ii. The Project fails to meet the burden of proof required for conditional use permits. Section 22.56.090.A.2.b requires that the Project's use will not " [b]e materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site." The Project will significantly undermine the use, enjoyment, and valuation of property of other persons as the Project will block scenic views from Canyon Crest Road and for surrounding neighbors.

We address these and similar claims in Attachment 10, our response to claims of significant impacts on aesthetics.

Moreover, the Project fails to meet the burden of proof required for permits issued in significant ecological areas. Section 22.56.215.E of the County Code requires that applicants demonstrate that proposed projects be "highly compatible with the biotic resources present," "maintain water bodies, watercourses, and their tributaries," and that "wildlife movement corridors (migratory paths) arc left in an undisturbed and natural state." The Project fails to meet any of these burdens as it will have significant impacts on biological resources, water quality, hydrology, and wildlife movement. Supra.

Mr. Tsai does not provide any evidence that our home is in a “Significant Ecological Area” or is governed by requirements relating to SEAs. We address this further in the section on SEAs

in Attachment 14.

III. THE PROJECT VIOLATES THE COUNTY OAK TREE ORDINANCE

The Project application does not adequately address burdens of proof imposed by the County's Oak Tree Ordinance. Co. Code 22.56.2050. The Project docs not show how the Project will not endanger the health of the remaining trees on the Project Site. Co. Code§ 22.56.2100.A.l. Ms. Latta, a certified arborist, notes that the Project will likely require the removal of 3 to 4 trees that are subject to the County's Oak Tree Ordinance. Latta Letter at 2. Moreover, the Project's sewer and water line construction are likely to negatively impacts seven trees on the property and falls within the protected zone of a number of other trees on the Project Site. Id

We address these and similar claims in Attachment 11, our response to claims of significant impacts on biological resources.

The Project's removal and relocation of oak trees and a drainage ditch will result in soil erosion through the diversion of increased flow of surface waters. Co. Code 22.56.2100.A.3. The Project's Initial Study concedes that the Project will increase the amount of surface runoff. Initial Study at 25. The Project application does not address how the Project will mitigate for soil erosion.

As Ms. Latta notes:
How will the project prevent sediment and debris from going down the hill? There are multiple oaks and other trees directly below the building site that are not addressed in the oak tree report. They could be directly impacted by a change in hydrology or drainage. Also the slope is full of large boulders that will require removal to construct the proposed pilings and could roll onto the trees and stream below. Latta Letter at 3.

Mr. Tsai has mis-quoted the version of the letter included in the administrative record, which states “...slope is full of large boulders that *may* require removal...” (emphasis added), though the positive formulation (...*will* require removal...) is perhaps characteristic of a less temperate draft. We have addressed this misunderstanding in Attachment 7, our response to at least 11 misunderstandings evidenced in letters or hearing testimony from Ms. Latta.

We address hydrology and erosion claims in Attachment 12, our response to claims of significant impacts on hydrology.

Respectfully,

Stephen and Vandana

IV. CONCLUSION.

For the aforementioned reason, CCC urges the County to reject the Project application. CCC is only in the initial stages of reviewing the Project and reserves the right to supplement its comments.

Attachment 5

Response to letter from Rebecca Latta, dated September 5, 2016

November 10, 2016

Purpose:

The purpose of this attachment is to address inline the questions and concerns that she has brought up. We believe that she has again asked for details that go beyond the scope of the burden of proof laid out in 22.56.2100.A, beyond the level of detail of Los Angeles County oak tree reports in analogous circumstances (Attachments 20-22), beyond the level of detail of oak tree reports submitted to the City of Agoura Hills when she was sub-contracted to assist in their review (Attachments 23-25), and beyond the level of detail she has herself applied in analogous circumstances to past oak tree reports (Attachments 26-28).

Key Issues:

1. Ms. Latta reiterates many of the misunderstandings we attribute in Attachment 7.
2. Ms. Latta has not acknowledged the existing highly compacted state of our staging area from repeated travel by a 5,000+lb pickup truck, or used this state as a reference for marginal impacts from our construction activities, which are mitigated using the standard approach of placement of mulch and plywood.
3. Ms. Latta has ascribed an Oak Woodlands Management Plan ("Plan") process with multiple parts, some of which have not yet been fully implemented. The Plan was adopted into the County of Los Angeles General Plan well after our permit applications were submitted, and after our initial study was completed. Therefore according to the General Plan statement of applicability, any recommendations contained in the Plan have no formal applicability to our project, though the Department of Regional Planning has justly applied its discretion in drafting some conditions in accordance with Plan recommendations. In the absence of any zoning code or permit process with the appropriate level of review, neither are the recommendations in Part II of this Plan applied except at the discretion of the Department of Regional Planning. In Attachment 11, we attribute the lack of support for changes to the decision-making process for our home, even were Part II of the Oak Woodlands Management Plan were to govern it.

We would like to again thank Rebecca for her work and will consider carefully with our arborist those few of her statements that contain constructive criticism or suggestions. It is unfortunate that she did not attempt to engage with us or our arborist to address her questions, despite the frustration we expressed at both of our April hearings, as it might have avoided some misunderstanding.

Independent Arborist Comments
4381 Canyon Crest Road, Altadena

September 5, 2016

Ms. Latta was commissioned at the request of our immediate neighbor at 3589 Canyon Crest, who has been among the most vocal of our project opponents, and to whom she referred in her letter dated April 16 as her "client." Merriam-Webster defines "client" as "a person who pays a professional person or organization for services." We do not begrudge our neighbors the opinion of their own hired arborist, but neither do we believe that the attributions of her

letter dated September 5 as "*Independent* Arborist Comments" and of her letter dated March 17 as an "*Independent* Arborist Review of Oak Tree Report" are consistent with her relationship as a paid consultant of neighbors opposed to our project. In this letter, Ms. Latta subsequently states that it was prepared for Mitchell Tsai, attorney for those in opposition to our project.

Response To Comments

Letter to the Los Angeles Regional Planning Commission for Minor Conditional Permit NO. R2014-02411-(5), Oak Tree Permit No. 201400035, and Environmental Assessment No. 20140004 – Canyon Crest Road, Altadena

Rebecca Latta Consulting September 5, 2016

ABSTRACT

The following is a response to comments from the Arborist of Record and the County staff following the last hearing, dated April 19, 2016, concerning some of the issues I raised in my previous letter and during the hearing. It is my professional opinion that the Negative Declaration pursuant to CEQA regulations during the initial study was incorrect and that the impacts were originally underestimated and are significant and therefore, an Oak Woodland Report should be required. The reports by LDC have failed to recognize that tree #1 is owned by the adjacent property owner and is his asset. Further, in addition to the necessary removal of the tree designated No. 6, impacts to the protected root zones and canopies of trees number 4, 5 and 7 may alter their consideration from 'Encroached' to 'Requires Removal' based on their likely decline in health in the future.

On the contrary, oak tree #1 is identified in our arborist's exhibit map as a boundary tree jointly owned by 3589 Canyon Crest Road and the county, Pursuant to Civil Code Section 834. In Attachment 7, we have enumerated at least 11 misunderstandings Ms. Latta has evidenced in written text or in statements at our hearing that directly affect her estimates of oak tree impacts. Furthermore, her quantified assessments of encroachments were generated without attributing visual evidence and are directly contra-indicated by the LIDAR scans and building model documented in Attachment 15 and the acknowledgment of our ISA- and ASCA- certified arborist, who has generated assessments using accurate information.

Prepared for:

Mitchell Tsai, Attorney at Law
1055 East Colorado Boulevard, Suite 500
Pasadena, CA 91106

Introduction

Purpose

At your request, I have reviewed the project described as Minor Conditional Use Permit No. R2014-

02411 – (5), Oak tree Permit No. 201400035, and Environmental Assessment No. 201400014 ("Project"). The Project requests approval of a 1,699 square foot single-family residence with a 451 square foot attached garage on a 1.04 acre parcel in the hillside management area of the Altadena CSD. I have reviewed site plans dated April 25, 2016, the response to my Independent Arborist Review dated April 18, 2016, the original arborist report dated August 2, 2014 and the April 19, 2016 letter from Los Angeles Regional Planning.

Qualifications

Over 26 years of experience as a consulting arborist, water manager, and horticultural consultant in both the public and private sectors. Certified by the International Society of Arboriculture (ISA) since November 1998 while working as the Forestry Supervisor for the City of Pasadena. Member of the American Society of Consulting Arborists and graduate of the Consulting Academy in 2008. Spent 5 years reviewing oak tree permits and landscape plans for the City of Agoura Hills. Additional training includes tree valuation, tree risk assessment, urban wildland interface habitat preservation, nesting bird, invasive weed management, native plant propagation and tree protection and mitigation monitoring. Clients include municipal governments, non-profits, utilities, land resource managers, architects, landscape architects, commercial and residential clients.

Reiteration of previous comments

I detailed a number of items of concern in my previous report, primarily the issue of the discrepancy between the magnitude of the encroachments into the protected root zones and canopies of several trees. The building footprint as planned would necessitate the removal of Tree No. Six (#6), but impacts to trees numbered 4, 5 and 7 would go beyond the initial report, by the admission of the Arborist of Record.

Trees #1

This mature coast live oak tree does not belong to the applicant, but instead is located on the adjacent property and therefore is the asset of the neighbor. This tree has a rough estimated assessed value of $103,000.00 using the trunk formula method. The tree was evaluated for condition, species and location using the cost approach (trunk formula method) from the Council of Tree and Landscape Appraisers Guide for Plant Appraisal 9th Edition (2000). The most current Species Classification and Assignment (2004) was used to determine species classification.

The Altadena Town Council has required that the application stage all materials and equipment in the protected zone of this tree. Therefore, it is likely that significant compaction damage could occur. Compaction damage can occur when materials are delivered to the jobsite during the loading and unloading process. The trucks tilt up and slide the materials out onto the ground or a forklift is used to lift the material out of the trucks. The vehicles that deliver the roll-off containers need minimum vertical clearance that is not available on the site. There may also be damage from exhaust from equipment that can burn foliage. Compaction damage is serious and is not easy to mitigate. It can lead to decline and death of the tree over time.

As we have stated, oak tree #1 is identified in our arborist's exhibit map as a boundary tree jointly owned by 3589 Canyon Crest Road and the county, Pursuant to Civil Code Section

834.

Ms. Latta has speculated that we will employ the most impactful construction methods, though we have repeatedly explained that we will use common methods to reduce our impacts. The dynamics of a slide-off delivery are entirely inappropriate for the protected zone of an oak tree. As she notes, a forklift can remove materials and place them pseudo-statically. She is mistaken in the claim that our project site does not have the vertical clearance to accommodate the construction vehicles we require, as we show in Attachment 15. As we have described in a previous response to her, we will have our garage cast before the major deliveries for our project commence – including lumber, sheathing, roofing, siding, drywall, flooring, windows, doors – and this will be an area where we will stage many of these serial deliveries.

Ms. Latta has provided no assessment whatsoever as to the existing compacted state of this parking area. Our neighbor's 5,000+lb Ford F-150 Super Duty V8 pickup truck has parked in the protected zone of our trees for more than a decade, by his own admission. The same neighbor also stated in his letter dated August 5, 2015 that the “flat area has been in continuous use for storage and off street parking by the occupants of our home and their/our guests for over 65 years,” which is the the entirety or majority of the life of many encroached trees. We believe that *marginal* impacts from our construction must be assessed, and that with our mitigation measures, we will not substantially change existing compacted conditions. We are in agreement with our arborist that a program of post-construction rehabilitation for our trees – which have seen substantial impacts and abuse from residents of 3589 Canyon Crest and previous owners – should include vertical aeration using an air spade. The efficacy of this approach is established by the findings of “Smiley, E.T. 1999. Air excavation, the next arboricultural frontier. Arbor Age, 20,8-10,” as documented in the materials for the Richardson Grove EIR (see Attachment 14 citation KK at 16), which note “virtually no damage” and the long-term experiment documented in Attachment 33.

In Attachment 1 at 38-39, we address her valuation of oak tree #1.

Tree #10

The initial report did not quantify any impact to tree #10, however the trunk of the tree is within 15 feet of the foundation pilings and the canopy will likely need to be pruned to provide room for the cantilevered deck. The applicant has since submitted a revised burden of proof adding this encroachment to the tree.

As we stated in our reply to Ms. Latta's letter dated March 17, “The surveyed distance between the trunk of tree #10 and the edge of the NW pile of our home is 15.5ft. Our cantilevered deck does encroach into the protected zone of tree #10, though it does not physically overlap with its existing canopy at that elevation and therefore results in no physical encroachment of either the protected root zone or canopy of tree #10.”

Our LIDAR scans show that no pruning is required.

Sewer and Water Lines

Additional impacts to trees Nos. 1, 2, 3, 4, 5, 6 and 8 due to the proposed sewer and water lines may be significant encroachments to the root zones of the aforementioned trees. Even if dug by hand in protected root zones, damage will still occur. Assessing the cumulative encroachment on these trees reveals that roots would be impacted and most likely need to be cut on both sides of the tree.

Neither our sewer lateral nor our water lateral is close to the trunk of any tree, as our arborist notes with the following statements:

"The sewer line would be located approximately 21 feet from the trunk of tree E1, 15 feet from the trunk of tree #2, 16 feet from the trunk of tree #3, 12 feet from the trunk of tree #4 and 12 feet from the trunk of tree #7. … Arboricultural research discourages root severance within five times the tree's trunk diameter on any one side of the tree. In this instance, we refer to this area as the 'critical root zone.' Any excavation for the placement of the sewer line would take place outside of the critical root zones of these referenced trees and will unlikely result in significant damage to the root systems of the trees. Per the conditions of the Oak Tree Permit, the applicant is required to excavate the trench for the sewer line by hand, with the intention of threading the pipe under those larger roots (greater than 2") that are encountered, if any.
. . .
excavation required for the installation of the water line may result in impacts to the root system of tree #5. The water line would be located approximately 14 feet from the trunk of tree #5."

Furthermore, our arborist has advised that an air spade – a type of hand tool – is the least impactful method of excavation, and we agree that using this method for our laterals appears to be a sensible precaution. However, we note that the Los Angeles County Oak Trees: Care and Maintenance Guide states that, "Trenching can also be accomplished using hand tools or small hand held power equipment to avoid cutting roots." Ms. Latta herself has recommended this approach in Attachment 26.

Ms. Latta has not attributed her statement that damage will occur on both sides of any tree. While that most definitely did occur to oak tree #1 from past encroachments (described in Attachment 32), and while the tree has survived to flourish and receive a grade of "A" acknowledging it as a beautiful tree, our trenching will not result in impacts on opposite sides of any tree.

Construction Traffic and Machinery Impacts

The use of wood mulch and plywood to distribute the impacts of traffic on protected root zones is meant as a temporary fix for very light traffic areas. In the time before the applicant's proposed staging area is complete, significant damage due to compaction may occur in areas in the protected root zones of several trees, even with mitigation from plywood and wood mulch. Further, the flat pad for staging that the applicant has proposed is covered substantially by oak canopy, which will limit the type and usage of heavy machinery staged there. Cranes will not be feasible, and dump trucks would lack the vertical clearance necessary to be useful. Further, exact specifications for the

limited access drill have not been furnished to ascertain their clearance requirements.

Ms. Latta's statement that “use of wood mulch and plywood to distribute the impacts of traffic...is meant as a temporary fix for very light traffic areas” is directly contra-indicated by a reference Ms. Latta has cited. The Guide to Preventing Soil Compaction During Construction (see Attachment 14 citation HH) states that while 3/4” plywood alone is best used for “light foot traffic and single vehicle crossing,” the combination of 3/4” of plywood over 8” of mulch is best used for “areas with regular and heavy traffic”. This area of our lot is covered by a thin layer of mulch that our arborist references in the oak tree report, and we intend and are conditioned to provide an additional buffering layer of mulch beneath the 3/4” plywood we will provide, in accordance with the guide.

Again, Ms. Latta has provided no assessment whatsoever as to the existing compacted state of this parking area, including the visible divots present from our neighbor's 5,000+lb Ford F-150 Super Duty V8 pickup truck, which has parked in the protected zone of our trees for more than a decade, by his own admission. The same neighbor has also stated in his letter dated August 5, 2015 that the “flat area has been in continuous use for storage and off street parking by the occupants of our home and their/our guests for over 65 years.” We believe that *marginal* impacts from our construction must be assessed, and that with our mitigation measures, we will not substantially change existing compacted conditions.

As we explained in Staff Memo to the Regional Planning Commission dated September 7, “As we have stated on our website, which also includes a link to video of its operation, the only piece of heavy equipment required to build our foundation is a limited access drill rig. This is even designed for interior drilling in retrofits i.e. to be re-configured for transport through a door. Our 1,000sqft staging area is more than adequate to stage this piece of equipment for the week or so it will be operating. Our foundation work will not require a crane, as we are using spliced rebar as is common in limited headroom situations. . . . After our foundation is complete, we will have an additional nearly 1,000sqft, including 500sqft at street level and a length of more than 50ft spanning our garage and staging area. This is much longer than any of the trucks that will be delivering building materials. The natural phasing of construction (rebar, lumber, sheathing, roofing/siding, windows/doors, and drywall are incorporated serially) and good planning prevent multiple deliveries from consuming all of this space.” As our arborist noted in his response dated April 18, “dump trucks will not be used and spoil will be removed with standard 5 or 10 yard dumpsters. This means of removal is feasible and should be strictly adhered to.”

Trees Nos. 4, 5 & 7

The initial report filed by the Arborist contained information on the distance that certain encroachments would reach in relation to the trunks and driplines of the protected trees, but did not contain total percentages of root zone and canopy that would be impacted or need to be removed, or fully consider the severity of the encroachments to the trees based on the most recent plans for construction. The pathway for fire access is not considered as an impact, but is located within 2 feet of the trunk of Tree #7.

As we note on our plans, this area is attributed as “mulched” with a decomposed granite

footpath. There is no need to excavate to keep this area free for emergency (as opposed to regular) foot traffic, nor is the grade particularly steep, at no more than 1:2. No excavation will take place. Nor in fact does any other home along lower Canyon Crest or in the Meadows neighborhood beyond appear to honor a 5ft free setback from the edge of the residence for foot traffic. For our site, this request does not result in any tree pruning above what is already required.

Item #1 – Defining what constitutes a removal

Comment on Page 3: One of the speakers was the third-party consultant, Ms. Rebecca Latta, who had concerns with the oak tree report. She questioned when impacts to an oak tree would constitute a removal rather than an encroachment and mentioned that the project had changed since the arborist report. One of her concerns was related to the impact to the oak trees from recompaction of soils. The applicant provided a rebuttal and clarified that no condition fill would be used and no compaction is necessary; this is commonly used for slab-on-grade foundations.

Response: Staff has not addressed the issue of how much encroachment to the roots and canopy constitute a removal. They have discussed a specific impact, fill soil, and not addressed any of the other issues raised with regards to canopy pruning, wall building and other grading and compaction activities.

We and our arborist have addressed these concerns in detail, though Ms. Latta has herself not provided the detail she is requesting in her oak tree reports included in Attachments 26-28. In Attachment 15, we have documented a three dimensional model of the site based on LIDAR scans that includes all building components, all oak tree canopies, and all protected root zones. Various types of encroachments are all quantified individually, for each tree. We believe it unlikely that a model of this detail has ever before been created for any tree report for any single-family residence *anywhere*.

There is a point where if enough roots and canopy are removed, a tree can go into decline and fail to recover. I do not believe that the intent of the ordinance is to leave severely pruned or root-damaged trees standing; it would defeat the purpose of the Los Angeles County Tree Ordinance to allow trees to stand with significant damage from root or canopy pruning. In the purpose statement at the beginning of the ordinance there is a statement:
"The stated objective of the oak tree permit is to preserve and maintain healthy oak trees in the development process."
It is my opinion that the amount of impacts from the proposed project will cause significant damage to several trees, causing them to go into decline. The arborist Scott McAllaster from LDC conceded in his letter dated April 18, 2016 that "the level of impacts to these trees are significant" (re: #4 and #7) on page 4 of that memo.

Ms. Latta has completely removed the context of this statement. In proper context, our arborist states that "The level of impacts to these trees are significant. Trees react, adjust, and compensate to physical and environmental impacts in ways we do not fully understand. As such, as arborists we are trained to not speak in certainties, but rather in probabilities and likelihood. It is my professional opinion, based on 12 years of experience, training, and judgment, that trees #4 and #7 have a good probability of surviving the described construction

impacts."

Our arborist estimates root encroachment impacts for trees #4 and #7 of 25% and 27%, respectively, using accurate assessments of construction impacts. Ms. Latta has provided estimates that are nearly *double* this. Much of this discrepancy is based on misunderstandings of our construction methods and properties of our design, which we attribute along at least 11 different vectors in Attachment 7. Again, we have a very complete representation of impacts in Attachment 15.

Cumulative impacts for trees #4, #5 and #7 based on the LDC revised report exceed 50% to either protected roots, canopy, or both. I have included both tables of the original estimates of tree impacts and revised estimates based on the Arborist's memo and my own calculations. These impacts are calculated before taking into consideration any fire clearance required from the roof of the structure and around the deck.

Ms. Latta has provided no visual derivation of these figures whatsoever. We have also documented substantial misunderstandings as they relate to the fuel modification clearance requirements for our home, in Attachment 7.

In my opinion, it is outside of the intent of the oak tree ordinance to allow that level of impacts to protected trees. Therefore, I believe that trees #4, #5 and #7 should be considered removals. Here is a list of reasons why the damage is significant:

• Foliage removal reduces the surface area of leaves required to provide food for maintenance and growth of the tree. Remove too much foliage and the tree becomes unable to feed itself and goes into decline.

According to the Journal of Arboriculture 24(1), a long term study of trenching impact to an oak species (Attachment 14 citation UU), balanced removals of roots and foliage help mitigate for the loss of foliage. This is also addressed in the Journal of Arboriculture 17(8) (Attachment 14 citation WW). Ms. Latta has over-estimated the amount of foliage required for clearance around our home.

• Large cuts produce dense, unattractive upright branches called watersprouts. Although this growth is vigorous, this regrowth will deplete the stored food reserves and make the tree more susceptible to insect and disease damage. These poorly attached sprouts are more susceptible to breakage and failures than trees that have not been topped (Karlovich et al., 2000).

Maintenance and remediation of pruned trees is an expected part of their upkeep after encroachments are incurred. All of our trees will be properly pruned under an arborist's supervision, and monitored after construction is complete.

• Trees attempt to seal off their wounds, rather than healing them like people. Large wounds in older trees rarely seal completely, leaving open wood that is vulnerable to wood boring insects and fungal decay. The fungus and insect damage can quickly spread into critical structural wood, leading to decline or death of the tree.

In Attachment 28, a Tree Health Evaluation and Construction Preservation Report for an 10,911sqft home currently under construction in San Marino, Ms. Latta noted a 12-14" cut in oak tree #12 (see Attachment 19 at 23) and subsequently indicated that the tree should be kept. Her report did not clarify whether this was a trunk or a scaffold. Nor indeed did she provide most of the assessments she has requested of us, despite substantial encroachments and a history of abusive practices on the site. Our arborist notes that our largest cuts are of a 10" scaffold form oak tree #7, a 9.5" trunk from oak tree #4, and an 8" scaffold from oak tree #5.

• Decay that moves into the stubs can cause trees to be more prone to wind or storm breakage. (DNR Urban and Community Forestry, Tree Link, Summer 2011)

We again refer to the assessment Ms. Latta provided above. It follows that we have not violated some absolute threshold for the acceptable diameter of pruning, above which Ms. Latta believes it is unacceptable to allow a tree to remain.

Item #2 – Oak Woodland Protection

Comment on Page 4: The County Biologist, Joe Decruyenaere, responded to questions from the Hearing Officer including clarifying that the project is located in oak woodland, but that the condition of the oak woodland where the project activity is proposed is highly disturbed; the grade has been altered and it's been used as parking for many years. … If oak trees that are proposed for encroachment do die, they will also be required to be replaced at the 2:1 ratio. … Based on this evaluation, it was determined that the overall impact to the oak woodland would be less than significant and no Oak Woodland Management Plan would be required because the standard conditions of the oak tree permit are sufficient.

There were several problems with the process for this project. First, the applicant was allowed to ignore trees that are within 45 feet of the structure on adjacent property to the SW, even though the properties are without fences or signage prohibiting entry.

None of the plans reflect the extent of the oak woodland that will be impacted by the project.

On the contrary, all trees with protected zones encroached by the footprint of our home, our driveway, or utility laterals are included. Ms. Latta is mistaken that all trees within 200ft of the project site need be included under the Oak Tree Ordinance. The ordinance *requests* for inclusion all trees within 200ft on the *subject property*, but allows that where a concurrent permit application is being filed, it is at the discretion of the Director [of Regional Planning] to waive any and all requirements referenced in the section that specifies this request. No requirement is levied by the statute to assess un-impacted trees on adjacent properties, and owners cannot be compelled to grant an arborist access to do so. We have attributed this in detail in Attachment 1 at 34-35. It is in fact quite reasonable to omit trees that are nearly 200ft distant and *completely unaffected*, not even being downslope of any development. Even for those trees on adjacent lots that are downslope of our home, the change in hydrology from rainfall interception by our 1159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in sandy loam), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff

cannot be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree. Ms. Latta has not clarified what assessment an oak tree report might conceivably provide in this respect.

In her letter dated April 16, Ms. Latta stated “It is my opinion that the downslope trees should have been mapped and discussed in more detail. ... To only look at the oaks at the top of the slope ignores the rest of the trees on the site. ... The trees at the top of the hill are part of the same watershed as the trees on the lower slope.” In other words, she believes that because our home is sited in the tributary drainage of the riparian oak trees on our lot (at an absolute distance of at least 190ft to the nearest of them), the construction may affect them and their hydrology. As we show in Attachment 12 at 10, this is incorrect. The nearest valley (drainage) line downstream of our home is 70ft distant from the nearest riparian oak tree on our property.

Ms. Latta has herself generated oak tree reports for which not only were those unaffected trees within 200ft on adjacent lots not included, but also for which an entire stand of oak woodland on the subject property was not included. As she notes in Attachment 26, the tree report for construction of a new 3,000+ square feet single family residence, “…the area above the building pad was recommended for preservation with no impacts. [The project architect] received approval from the City of Monrovia to consider the area as intact oak woodland. Individual trees were not surveyed in the area.” As shown in the attachment, these were all far less than 200ft distant from the home. Presumably then, Ms. Latta's objection to not including unaffected trees is derived from her perception that they will in fact be affected, based on her claim that they inhabit a drainage for which the footprint of our home is tributary. We have addressed this misunderstanding.

Second, the initial project plans analyzed by the LDC Arborist have changed. Despite what the applicant said in the hearing, the LDC Arborist states in his response to my comments that he had not been contacted in 2-years.

Ms. Latta has not attributed any statement from us that disputes that we had not contacted our arborist since our initial report. We had been engaged since then in the significant and time-consuming process of review to which the county of Los Angeles subjects new development. Our arborist qualified the changes explicitly in his letter dated April 18. We had not informed him of these changes because they did not increase the volume of our home at any point, in fact reducing the volume of disturbance in the vicinity of oak trees #4 and #7. By inspection, this only reduced impacts. Our arborist stated that, “It is my understanding from reviewing the most recent plans, that the project entryway has changed, and that the portion of concrete driveway outside the footprint of the home has been removed. However, these changes did not affect the footprint or elevations for the home, and do not lead to any increased impacts.” There is no reasonable expectation that we might solicit further feedback from our arborist for changes that only reduce the volume of our home.

Ms. Latta's clients have requested reductions in the scope of our project. Attacking us for making changes that reduce the volume of our home is a dis-incentive to do so.

The report, which was the basis of approval for the permit, lacks a complete picture of the tree impacts on site by the admission of the LDC Arborist in the response to my comments. More importantly, this

incomplete impact assessment was used to determine that the site did not need an oak woodland report. Therefore, I believe that the decision not to require an oak woodland report needs to be revisited.

Ms. Latta has not attributed this claim with any citation. Our arborist responded that:

"As I was preparing my report, I spoke to the Forestry Unit with the County of Los Angeles Fire Department and discussed the constraints on the property in regards to inventorying all oak trees within 200 feet of the project development. Since we were not expected to be granted access to all the properties within 200 feet, Forestry agreed that the report could be limited to those oaks within the immediate vicinity of the project footprint and associated infrastructure, while providing a general description of the other oaks. The August 2014 report stated these limitations and described, in general, those outlying trees. Those oak trees at the bottom of the property are approximately 170 feet downslope, are not impacted by project development, and were therefore not included in the scope. I believe that the report was prepared in accordance with the intent of the County Oak Tree Ordinance. Further, the Assistant Chief Forester who reviewed the August 2014 report stated that "The Oak Tree Report is accurate and complete as to the location, size, condition and species of the oak trees on-site.""

The county biologist and planner have made site visits, and the several aerial views of our project that we submitted as a part of this hearing process clearly portray the extent to which oak woodland is common throughout the developed areas of lower Canyon Crest.

Ms. Latta has herself referred to un-catalogued oak trees on a subject property only generally (Attachment 26), though such trees were far nearer development than ours. Her claims of potential impact are also based on a misunderstanding that our home is in the tributary drainage for the riparian oak trees on our lot.

The Process overview on the County website asks for a site plan with oak trees and woodlands depicted and labeled. Even though the proposed site is oak woodland, the applicant was allowed to skip that step and the determination was made that the project did not have a significant impact on the woodland.

All affected oak trees are included on our site plan, and the registered survey we submitted to the county also includes all oak trees on our lot and many on those adjacent.

In my opinion, if all the impacts from the new project arborist report are considered, three more oak trees will require removal. Two additional trees that are below ordinance cutoff size would, but above the size considered by the Oak Woodland Management Plan would be removed. This would constitute a significant impact to the oak woodland.

Our arborist did not submit a revised arborist report, nor was one requested. He submitted a response to Ms. Latta's comments. We will subsequently address her claims of significance.

Estimate of Oak Woodland Impacts and Significance

Here are my thoughts about the project using the table on page 11-14 in the LA County Oak Woodland Guidelines. I have referenced the November 27, 2012 letter from Richard Bruckner to

the Supervisors regarding the implementation of the oak woodlands conservation management plan (referred to herein as the Final Report with signatures)

1. Existing conditions (p.11)

I believe the woodland is moderately degraded. There is fragmented but continuous oak woodland and the project is in the Foothills of the San Gabriel Valley in Altadena near the Angeles Forest. The canyon is a major wildlife corridor in the area. This increases the importance of keeping the woodland intact.

A “Severely Degraded” existing condition is defined as, “Site has been drastically altered from the natural condition to accommodate residential, commercial or industrial uses, and oak woodlands remain in scattered locations. Natural regeneration is not possible. Soil is compacted, contaminated or paved. Wildlife habitat is limited and associated understory vegetation has been replaced by managed non-native landscaping.”

As Ms. Latta acknowledges, the re-grading of as many as several feet that occurred at some time in the past 10-15 years in the protected zones of nearly all encroached trees, along with the use of much of the same area for parking and storage, as well as for Canyon Crest Road, and for the driveway, patio and slab-on-grade construction of 3589 Canyon Crest, has drastically altered the natural condition to accommodate residential uses. Our arborist also references “multiple pruning events” in nearly all trees for roadway, parking or power line clearance and the cabling of large scaffolds for huge planters and a hammock belonging to 3589 Canyon Crest. Our arborist notes that some trees are growing into a concrete drainage device, and an artificial stone-lined drainage swale cuts through the protected zone of many trees. The soil has been compacted by the repeated crossings of the 5,000+lb truck and cars that have used the pad and road-side spaces for parking, as well as by the construction of the road, driveway and home at 3589 Canyon Crest. There is also little to no understory, native or otherwise, and none can exist in an area used for storage and parking by our neighbors at 3589 Canyon Crest. Our initial study notes the existence of “non-native species” in the little understory that does exist. In other words, all of the conditions for a severely degraded woodland are met.

Neither would it be proper to dilute the assessment of the quality of oak woodland beyond those trees that are impacted, at street level. Ms. Latta references the wildlife corridor in the riparian environment below to justify her claim of moderate degradation, but our arborist assessed no impacts to these trees, and Ms. Latta has not provided a factual argument assessing any impacts to these trees from our construction, instead speculating as to physical damage from debris flow and changes to hydrology.

In Attachment 12, we addressed the misunderstanding that our home was in the tributary drainage for any trees on our lot. Even for those trees on adjacent lots that are downslope of our home, the change in hydrology from rainfall interception by our 1159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in sandy loam), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff cannot be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree. Ms. Latta has not

clarified what assessment an oak tree report might conceivably provide in this respect.

While the riparian environment of the canyon is an important wildlife corridor between the San Gabriels and the Arroyo Seco, the footprint of our home connects the riparian canyon environment only to the largely fenced, developed lots and roads of lower Canyon Crest, Florecita Farms and NW Altadena.

Ours is an infill lot sited <25ft from a paved road at the top of a slope, with homes to the north, south, east and west, across the canyon. Of the five existing homes on the west side of the canyon along lower Canyon Crest, three have pools, and these homes choose to fence their lots across the frontage.

The guide recommends the project scale be adjusted to reduce impacts.

The guide asks, “Can project be redesigned to avoid oak woodland impacts?” It also recommends, “Project needs to be reviewed within the context of preventing further ecosystem function losses. This could include reduction of project scale, adjusting project footprint to reduce impacts, identifying opportunities to preserve connectivity, increase groundwater retention, and restore habitat.”

As the county biologist noted at our April 19 hearing, “...frankly, there aren't any resources in the woodland besides the trees themselves.” (Unofficial Transcripts of April 19 Hearing Officer Hearing). The severely degraded oak woodland, sited amid existing development at street level, with little to no native understory, is not providing connectivity that does not already exist. Our project footprint is only 1159sqft of impermeable area, significantly less than adjacent homes (see driveways and parking areas in Attachment 30), with correspondingly little room for improvement of groundwater retention. We intend to rehabilitate the site after construction is complete with vertical aeration using an air spade and installation of an un-irrigated native understory suited to our oak trees.

2. Impact severity (p. 12)

I believe the severity to be moderate because the developed area will expand into previously undeveloped areas and activities could expand the area of exotic or invasive species.

The scale of Ms. Latta's assessment for “undeveloped area” is suspect. The construction of any new home will entail development in previously undeveloped area. However, ours is an infill lot, with homes to the north, south, east and west, across the canyon. It is sited near to the road amid the existing development on the west side of Canyon Crest Road.

Ms. Latta has not supported the claim that our activities could expand the area of exotic or invasive species. We have specified no invasive species in our landscape plan, nor do we intend to allow weeds to propagate. In accordance with Los Angeles County Green Building Code Title 31 §5.304.1, an excess of 75% of the new plants we will establish are California natives. The remainder are non-invasive natives from Mediterranean climates in other parts of the world.

3. Estimated level of significance

Would be significant if we considered the impact severity to be moderate. The removal of 5 trees in a woodland supporting a wildlife corridor is a moderate impact. So I consider the impacts to be significant. Here are the main areas of impact:

Ms. Latta does not attribute how the removal of even 5 trees (more than we propose) from what she claims is a moderately degraded single oak woodlands of hundreds to thousands of trees is significant. Ms. Latta does not attribute how the footprint of our home constitutes a wildlife corridor. The riparian environment and wildlife corridor of the canyon far below will be un-impacted by our construction.

• Net loss of Oak Woodland Acreage (with the loss of 5 trees, by my estimates).

The Oak Tree Ordinance seeks to balance the loss of a single non-heritage tree with the addition (and perpetual protection in like kind regardless of age) of two additional trees. In this way, the long-term maintenance of oak tree population is preserved. As we've noted repeatedly, if any additional trees succumb, we will be required to replace in a 2:1 ratio per condition #10 of our oak tree permit, and the monitoring for this has already been extended to seven years to match the recommendation in the Oak Woodland Management Plan, from the two specified by the Oak Tree Ordinance.

We have earlier addressed that Ms. Latta's misunderstandings of construction impacts have elevated her estimates into substantial inaccuracy.

• Conversion of oak woodland to other uses.

The lot is zoned R1. Its designated use is for residential development. Cutting one mature tree and pruning three others (one only slightly), while replacing with many new trees according to the established intent of the county oak tree ordinance, is not properly a significant impact on the Environment.

• Net loss of nesting, burrowing, roosting habitat for wildlife.

As the long-term quantity of oak woodland is preserved through replacement per oak tree ordinance intent and requirements, this claim cannot reasonably be supported. Nor does this severely degraded oak woodland with extremely limited understory that is used for parking adjacent to a moderately trafficked road support a fully functional ecosystem.

• Grading and trenching will increase potential for sedimentation and constitute a change in hydrology that could negatively affect existing oak trees.

Ms. Latta is not a civil engineer and has offered assumptions for methods of construction that are grossly inconsistent with what we will employ. We have no grading outside the footprint of our home, and must comply with Low Impact Development requirements, as well as the Grading and Drainage design review process. This process is represented by the work of civil engineers who are competent to assess and mitigate these risks with appropriate conditions

and BMPs.

• It is probable that invasive plants will be introduced into the environment through soil disturbance and weed seed either being mechanically transported on truck tires or blown in from adjacent invasive weed sources. These invasive weeds tend to be more flammable than the native vegetation and are considered 'flashy fuels' by the local firehouses.

Ms. Latta appears to claim that we will allow weeds to grow and that these will violate fuel modification requirements, despite being conditioned to mulch the protected zone of our oak trees, despite our stated intention to establish a native understory compatible with our oak trees, despite a landscape plan that shows natives, and despite typical inspection by Fire Department fuel modification inspectors each year. We are saddened that she has continued to speculate that we will act incompetently or irresponsibly, when we have given her no cause to make such assumptions, and when she has never engaged with us to clarify her speculation.

• Loss of view-shed for the neighborhood. These trees signify an 'entry' to the Meadows area of Altadena.

The other homes along the canyon side of lower Canyon Crest all fence their lots across their frontage (see Attachment 30) and employ substantial landscaping and/or orientations that present their major axes to the road (in contrast to our design). In contrast, we do not intend to fence our lot. As we show in Attachment 10, oak tree canopy already obstructs the view across much of the volume our home will inhabit, as seen from the road and from neighboring residences. We explicitly designed our home to slot in as well as possible among the existing trees, and to be clad in a color that blends with the tree canopy.

The "entry" to the Meadows is the culmination of the drive along the scenic ridge where the Meadows neighborhood sign welcomes residents and visitors, more than a half mile up the road (Attachment 30). Other homes along lower Canyon Crest are visible along this drive (Attachment 30). If an earlier "entry" were to be posited, the beginning of Canyon Crest Road is as likely. This area is characterized by dozens of typical residential developments on both sides of the road for more than a quarter mile (Attachment 30).

• Loss of ecosystem services which include pollution filtration, rainfall interception and erosion control.

Again, Ms. Latta is not a civil engineer and has not offered any support for this claim. As we've stated on our website, "Water will not divert onto adjacent properties during a storm, save that the natural path of the drainage channel already leaves our property and enters APN:5830-003-017, before exhausting into the canyon on APN:5830-004-900. Our slight modification of this path upstream and 10-15ft from the property edge - which will not throttle flow - will have no impact to the drainage across either property or Millard canyon below, nor will it impact the flow under Canyon Crest through the culvert, being ~10ft in elevation below the culvert. In other words, flow will only be affected (slightly) on our own property. Over the footprint of our home, what had been sheet runoff collected by the open swale will become gutter runoff intercepted by a rain garden (per LID requirements, to improve the quality of the

runoff) and thereafter routed right back into the same open swale. The drainage pattern downhill of our home is thus left substantially unaltered."

Pollution filtration by the oak tree canopy alone (given the lack of understory) cannot reasonably be expected to be superior to the pollution filtration provided by purposely designed and maintained rain gardens in accordance with Low Impact Development standards to process our downspout discharge, which "filter and settle sediment and pollutants, and [remove] pollutants through nutrient cycling or by sequestering pollutants in the soil or in the plants themselves." (see Attachment 14 citation LL).

"Rainfall interception and erosion control" by the oak tree canopy cannot reasonably be expected to be superior to that provided by the structure of our home.

Item #3 – Cumulative Impacts to Oak Trees on Site

Comment on Page 7: The purpose of the oak tree permit is to recognize oak trees as significant historical, aesthetic and ecological resources, …The oak tree that is being removed was identified in the Oak Tree Report as having major asymmetry, leaning south within the drainage area, and being shaded out. The arborist gave the tree a "C" grade for aesthetics and also indicated that it is not a heritage oak tree. As most of the oak trees on the Project Site will be preserved, the Hearing Officer finds that the removal of the oak tree proposed will not be contrary to or be in substantial conflict with the intent and purpose of the oak tree permit procedure.

This comment does not address the all of the project impacts to oak trees on site. As indicated by Table 1 (Appendix), the impacts to other trees are significant. Los Angeles County does not define the threshold of impacts that constitutes a removal but requires in the burden of proof that any trees to be retained will not be endangered. The LDC response to my comments contains statements that the impacts are significant.

The impacts to a tree need not remain insignificant for the tree to survive. There are numerous trees on lower Canyon Crest and in the surrounding area that bear witness to this, as we show in Attachment 30. Oak tree #1 is such an example (see Attachment 32), with at least 2/3 of its protected zone encroached by Canyon Crest Road, the paved driveway of 3589 Canyon Crest and the slab-on-grade foundation and patio of 3589 Canyon Crest. To compound this encroachment in excess of 50%, the remainder of the protected zone of oak tree #1 has been compacted by continuous use for parking and storage by residents of 3589 Canyon Crest. That same neighbor stated in his letter dated August 5, 2015 that "the flat area has been in continuous use for storage and off street parking by the occupants of our home and their/our guests for over 65 years", entailing the entirety or majority of the life of encroached oak trees."

To compound even this, in Attachment 32 we attribute the roots of oak tree #1 were severely encroached in two separate events over the past 20 years on fully opposite sides of the tree, each time at a ratio of distance to the diameter at breast height that is lower than our development. It is fortunate that guidance to remove the tree was not provided to the previous owners of 3589 Canyon Crest, who might otherwise have been deprived of one of the most beautiful oak trees on lower Canyon Crest, which Ms. Latta has herself estimated at

significant value.

Most jurisdictions have a discretionary review process by qualified consulting arborist (certified arborists) to determine what constitutes a removal. In my experience, some cities such as San Marino, Calabasas, Agoura Hills and Thousand Oaks would consider the proposed level of impacts to tree #4 and #7 enough to consider them as removals.

We have earlier addressed that Ms. Latta's misunderstandings of construction impacts have elevated her estimates into substantial inaccuracy, and that we remain below the threshold she has cited for removal, and the figure of 35% she has allowed on past projects (see Attachment 19 at 22). She has assessed root zone impacts that are far in excess of what our arborists estimated, and which are documented in detail in Attachment 15. The root and canopy removal percentages for all trees are in family with those Ms. Latta has herself accepted in prior oak tree reports (Attachments 26-28), as well as those documented in some oak tree reports accepted by the City of Agoura Hills during the time Ms. Latta was sub-contracted to assist in their review (Attachments 23-25).

For instance, Tree #7 received a health rating of C- in the first arborist report and Mr. McAllaster further states it has an equal chance to decline. If this tree sustains significant root pruning and live canopy removal, the likelihood it will survive the project's construction impacts is low.

Root and canopy removal are balanced and well below what Ms. Latta estimated.

In my opinion, the finding made for H. on page 9 of the Oak Tree Permit is not valid. It states that the proposed construction will be accomplished without endangering the health of the remaining trees. The arborist rebuttal contains information that substantiates our claim that more than trees will sustain significant impacts construct the project. The proposed construction will endanger the health of some of the remaining trees on the property because of the proposed root pruning and canopy pruning activities required to construct the project.

Ms. Latta is referring to condition J of our Regional Planning Commission package, stating, "The proposed construction of proposed use will be accomplished without endangering the health of the remaining trees subject to Part 16 of Chapter 22.56, if any, on the subject property." As our arborist has stated, "trees react, adjust, and compensate to physical and environmental impacts in ways we do not fully understand. As such, as arborists we are trained to not speak in certainties, but rather in probabilities and likelihood." In this sense, any encroachment whatsoever has a non-zero probability of endangering health. It remains for an arborist to assess impacts using accurate information, and employ their judgment to decide whether the tree has a good probability of surviving the impacts.

Ms. Latta has chosen not to address the substantial discrepancy between our arborist's estimate of root impacts and her own, which are based in part on incorrect assumptions we have addressed in Attachment 7.

Response to Arborist Rebuttal (April 18, 2016)

Item #1

Original Question: I believed that tree #10 would have impacts to roots and canopy from the construction of a deck.

Response: The LDC Arborist agreed with me and they revised their burden of proof to include the encroachment on tree #10.

More accurately, we had revised our burden of proof at the request of our planner much earlier in our process. As we noted in our response to her letter dated March 17, "the surveyed distance between the trunk of tree #10 and the edge of the NW pile of our home is 15.5ft. Our cantilevered deck does encroach into the protected zone of tree #10, though it does not physically overlap with its existing canopy at that elevation and therefore results in no physical encroachment of either the protected root zone or canopy of tree #10. To address this marginal encroachment of oak tree #10, we submitted to our planner in July of 2015 a revised burden of proof that states, "The proposed project construction will result in nine (9) encroachments and one (1) removal of the total 10 surveyed oak trees onsite."

In Attachment 15, we show that our LIDAR scan does not support Ms. Latta's claim that any canopy need be removed from oak tree #10.

Item #2

Original Question: Sewer and water line construction impacts are not mentioned.

Response: Arborist agreed with me that there were impacts and stated that the information was not available at the time of the original review. He detailed the distance to impacts from the trees. In my opinion, these impacts should be considered in a cumulative fashion with all the other impacts to these trees. See RLC Impact Assessment in Appendix 'A'.

The cumulative impact has been considered. Furthermore, our arborist has advised that an air spade – a type of hand tool – is the least impactful method of excavation, and we agree that using this method for our laterals appears to be a sensible precaution. The non-destructiveness of this approach is consistent with the findings of "Smiley, E.T. 1999. Air excavation, the next arboricultural frontier. Arbor Age, 20,8-10," as documented in the materials for the Richardson Grove EIR (see Attachment 14 citation KK at 16), which note "virtually no damage" and the long-term experiment documented in Attachment 33. However, we would note that the Los Angeles County Oak Trees: Care and Maintenance Guide states that, "Trenching can also be accomplished using hand tools or small hand held power equipment to avoid cutting roots." Ms. Latta herself has recommended this approach in Attachment 26.

Item #3

Quantification of impacts from retaining wall, pile drilling and fill soil are missing from impact assessment.

Response:

The applicant provided him with the measurements of 24" and he prepared the report based on that information.

The response from LDC does not address the whole question.

Ms. Latta has requested detail far in excess of anything she has herself provided in oak tree reports she has generated. In Attachment 27, she documents 20-30% and 20% root and canopy removals, respectively, without providing any supporting visual evidence or any qualification beyond these percentage estimates, in a tree that was also described as possessing a weeping canker. As we attribute in Attachment 19 at 17-22, these appear to be greater still.

How tall is the limited access drill
rigs?

We have long provided a link on our website to a limited access drill in operation. As we explained in Staff Memo to the Regional Planning Commission dated September 7, "As we have stated on our website, which also includes a link to video of its operation, the only piece of heavy equipment required to build our foundation is a limited access drill rig. This is even designed for interior drilling in retrofits i.e. to be re-configured for transport through a door..." The drill rig has ample clearance to all oak tree branches and canopy to remain, at each of the pile locations.

What is the maximum size of holes?

As we stated, our piles are 24" in diameter and do not need to be shored.

If anchor roots are encountered, can the holes be moved?

As we stated at our April 19 hearing, "In the field, it is common to make minor adjustments to account for obstructions, minimization of impacts as roots are encountered, or to preserve threshold branches. We are prepared to pursue this in the field, as these uncertainties are difficult to project at this point in the process."

What is the impact of the new fill soil?

This was quantified in our arborist's assessment of total permanent root impacts. We also develop this in far greater detail in Attachment 15.

We note that our structural design provisions for a method to remove fill soil from under the SE portion of our home after construction is complete, should either of the three trees encroached to a minor extent at the edge of their protected zone by this fill decline.

What kind of platform will need to be erected for the limited access drill rig to operate on the slope?

No platform is required. We would refer Ms. Latta again to the video we have long posted on our website, demonstrating the drill rig in operation on a steep slope.

The arborist admits that the plywood may not prevent compaction damage to the trees with roots in the flat pad area.

As is documented in Lichter and Lindsay and in the Alabama Cooperative Extension System's "A Guide to Preventing Soil Compaction During Construction", references Ms. Latta has cited, mulch and plywood are intended to reduce but not eliminate compaction. As Lichter and Linday note, compaction is most pronounced near the surface. They noted no statistically significant compaction below 10cm, or approximately 4inches, in an admittedly limited experimental setup. As Ms. Latta has noted, fill soil was deposited over much of this area 10-15 years ago. Ms. Latta stated in her letter dated March 17 that "Fill soil laid down in the recent past should be removed on the flat pad by the oak trees", implying that she does not believe root infill has occurred. Our arborist has indicated that a program of remediation using an air spade to provide vertical aeration and interrogate past changes in grade is recommended, after construction is complete. During construction, the fill may buffer the impacts of compaction, avoiding physical root damage. As the trees have survived this impact for 10-15 years, an additional year with is not a significant marginal impact. It is also possible that the roots have infilled, necessitating a cautious and incremental approach to removal.

In response d. the arborist does not discuss how the project changes the hydrology that may affect the oaks downslope.

As we stated above, even for those trees on adjacent lots that are downslope of our home, the change in hydrology from rainfall interception by our 1159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in sandy loam), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff cannot be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree. Ms. Latta has not clarified what assessment an oak tree report might conceivably provide in this respect.

In my opinion, trees #4,5 and 7 will have highly altered hydrology because of the retaining wall.

Ms. Latta appears to attribute a change to hydrology to the retaining wall, and not to the extent of impermeable surface added in the protected zone of our trees. The retaining wall itself does not alter hydrology, though the addition of impermeable surfaces does. As for any conventional below grade wall, it possesses a sub-drain which does not permit the build-up of hydrostatic pressure or retention/pooling of water.

There are many trees along lower Canyon Crest that survive and thrive with greater extents of encroachment not only to water intake but also to oxygen and gas exchange as well. The roots that reach out as far as two times the drip-line radius, which Ms. Latta references in Attachment 26 at 7, will still collect moisture, as the western half of our home's footprint requires no excavation beyond that of our piles, allowing these roots passage. Those roots under our home are still permitted oxygen and gas exchange to a ventilated crawl-space.

Under e., a statement is made that the trees have a good probability of survival with the described construction impacts. No justification is made for how a tree rated C- can withstand up to 50%

canopy and 45% root disturbance including possible anchor root removal.

Ms. Latta has made incorrect assessments based in part on the misunderstandings we have enumerated in Attachment 7, that are contra-indicated in Attachment 15.

Damaged trees often will stand for several years before going into decline. Two additional trees have excessive damage.

We note that oak tree #1 sustained its substantial encroachments (see Attachment 32) 22 and 11 years ago, most of which are complete *removal*, and not just impacts from remediable compaction, or the introduction of impermeability to water or oxygen/gas exchange.

The arborist has not provided justification for not removing the trees given the extent of proposed impacts. The statement is made – "though this amount of pruning may not be ideal, it will allow the trees to be preserved rather than removed." This approach seems to be tree removal avoidance rather than tree preservation in my opinion. See my response to Staff Comments Item #1.

Again, Ms. Latta has made incorrect assessments based in part on the misunderstandings we have enumerated in Attachment 7, that are contra-indicated in Attachment 15.

By the methods she has acknowledged, the three trees she requests for removal are valued in excess of $70,000. They provide screening between our home and the road and adjacent residences.

Item #4

Original Question: The report did not address impacts to trees on adjacent property to the south and on other adjacent properties.

Response: We asked the Forestry unit to allow us to only survey the development envelope because of rugged terrain.

Ms. Latta has mis-stated our arborist's response. We asked whether these were expected to be in scope and were told no. The nearest of these trees on our property is in fact nearly 190ft distant (170ft horizontal, 80ft vertical), and most are in excess of 200ft, and completely unaffected. *This was eminently reasonable.*

Ms. Latta has herself generated oak tree reports for which not only were those unaffected trees within 200ft on adjacent lots not included, but also for which an entire stand of oak woodland on the subject property was not included. As she notes in Attachment 26, the tree report for construction of a new 3,000+ square feet single family residence, "…the area above the building pad was recommended for preservation with no impacts. [The project architect] received approval from the City of Monrovia to consider the area as intact oak woodland. Individual trees were not surveyed in the area." As shown in the attachment, many were far less than 200ft distant from the home. Presumably then, Ms. Latta's objection to not including unaffected trees is derived from her perception that they will in fact be affected, based on her claim that they inhabit a drainage for which the footprint of our home is tributary. We have

addressed this misunderstanding.

There are oak trees within 45 feet of the development envelope that were not considered. No impediments exist to prevent the trees from being surveyed using Google maps and binoculars.

As we have clarified in Attachment A, Ms. Latta appears to have misunderstood County Code § 22.56.2090. E.1 of that section states that, "A site plan drawn to a scale satisfactory to, and in the number of copies prescribed by the director, indicating the location and dimension of all of the following existing and proposed features *on the subject property*:" (emphasis added). Note the singular case of "property."

E.1.i requests for inclusion in that site plan, "The location of all oak trees subject to this Part 16 proposed to be removed and/or relocated, or within 200 feet of proposed construction, grading, landfill or other activity. Each tree shall be assigned an identification number on the plan, and a corresponding permanent identifying tag shall be affixed to the north side of each tree in the manner prescribed by Section 22.56.2180. These identifications shall be utilized in the oak tree report and for physical identification on the property where required. The protected zone shall be shown for each plotted tree." E.1 constrains this requirement to the subject property because adjacent property owners cannot be compelled to make their private property available to an arborist, nor to submit to the tagging of their tree. Many adjacent properties on Canyon Crest are fenced, and we honor the property rights of these owners. Nor are any oak trees on adjacent lots affected, save the boundary oak tree #1, which is surveyed and included in our report.

Ms. Latta does not clarify what is meant by a "survey" with binoculars or aerial pictures, or what purpose this might serve. Numerous aerial views have been submitted by us as a part of this process, including a photo key that clearly shows the extent of oak tree canopy on adjacent lots. County staff have also made site visits. The context of the site has been established.

The current plans do not represent the site conditions because the oaks in the woodland are not shown.

The site pictures and aerial key we submitted as part of our original oak tree permit application clearly represent site conditions.

The applicant has not demonstrated how they will prevent rocks and debris from rolling down the very steep slope to the drainage.

This planning permit process is not an engineering review. It is for the professional engineers at the Department of Public Works – and not the general public – to assess the sufficiency of the documented BMPs for erosion and sediment control, in accordance with standard county process.

Our initial study notes that, "The Geotechnical Report concludes that "the proposed improvements will not be subject to geologic and geotechnical hazards associated with settlement, slippage, landsliding, expansive soils, liquefaction, and chemical attack. Also, construction of the project will not have an adverse effect on the existing structures or offsite

properties" provided that the recommendations contained in the report are included in the design and are implemented in the field (Source: Geotechnical Report, Page 12). Therefore, the impacts related to landslides are expected to be Less Than Significant, and the project is not expected to result in substantial soil erosion or be located on a geologic unit of soil or expansive soil that is unstable or would become unstable as a result of the project, and these impacts are expected to be Less Than Significant as well."

Item #5

Original Question: The original report does not discuss the fill soil that was from past illegal grading activity and how that might be already impacting tree health.

Response: The LDC Arborist stated that the fill soil had been there for 10 years. He states that the trees impacted by fill soil seem to be in good condition. Then he states that he does not think the fill soil should be removed but goes on to say that the soil should be removed on the downsides of #4, #7 and #8.

Ms. Latta has mischaracterized our arborist's response. He had indicated that the bowl in which our neighbor at 3589 Canyon Crest had dug out the trunk of the tree had the potential to leave the trunk in a pool of water during heavy rainfall, and that this was ill-advised. Small channels of no more than a few feet in length are sufficient to drain this bowl, given the slope. This is a distinct consideration from the possibility of root infill in the large majority of the extent of claimed fill deposition. This must be interrogated after construction is complete with an air spade.

The arborist did not mention any inspection or investigation to his claim that roots were in the fill soil. Even though he states that the trees impacted by fill are in good condition, he rates tree #7 as a C- in his report. This contradicts his statement in the response. I believe that all the trees with fill would benefit from a slow removal of fill soil over a period of 2-3 years.

Ms. Latta has qualified her earlier statement in her letter dated March 17 that "Fill soil laid down in the recent past should be removed on the flat pad by the oak trees..." Our arborist expressed caution that the roots may have infilled. We are inclined to agree with Ms. Latta that non-destructive interrogation with an air spade and gradual, incremental removal after construction is complete appears to be a sensible course of action, in the course of remedial vertical aeration.

The fill soil issue has not been adequately addressed. The Arborist of Record did not dig to determine if there were any roots that had grown up into the fill soil. If the fill soil could be removed, it would improve the health of the trees on the site. It can prevent the penetration of water into the root zones of the trees. This is especially true in a drought. This fill soil could lead to root failures of the trees that have been buried. It will do it slowly and over time.

As the fill soil has existed for more than 10 years, its continued existence for the one additional year of construction is not a significant marginal impact. Removing the soil now would render roots more vulnerable to compaction damage during construction, though our mitigation measures seek to minimize this.

In the hearing package, it states that 15 cubic yards of fill will be balanced on-site. The arborist states in the last report that even small amounts of fill soil can be detrimental to tree health. I believe that the arborist report from LDC underestimates the tree impacts from fill. How will the fill soil be placed on the site without additional fill being placed in the root zones of trees that already have fill soil from previous illegal grading by the previous owner?

Impacts from this fill soil are included in our arborist's assessment of permanent marginal root zone impacts. In Attachment 15, we separately attribute permanent marginal impacts from root removal and from a change in grade.

Item #6

Original Question: Why is the SEA not addressed in the report? Why are the other oaks on the property and adjacent property not addressed?

Response: The site is a part of a Conceptual SEA dated December 10, 2014. The original report was prepared prior to that date. He feels that the drainage will not be affected.

The applicant has not demonstrated how they would avoid downslope impacts. What methods would they use? Their current landscape plans call for disturbance downslope in areas with existing native vegetation. What about the required fire clearances downslope? All the vegetation would have to be cut and canopies raised to 6'. This would be an impact on downslope vegetation and the drainage.

This planning permit process is not an engineering review. It is for the professional engineers at the Department of Public Works – and not the general public – to assess the sufficiency of the documented BMPs for erosion and sediment control, in accordance with standard county process. Ms. Latta does not attribute what "disturbance" is documented in our landscape plans. Our landscape plans portray the establishment of native vegetation recommended for hillside stabilization. All of these plants are suited to the fuel modification zones in which they are sited, per our approved Fuel Modification Plan. The existing sparse native vegetation that is compatible with the fuel modification guidelines will be retained.

The fuel modification requirements for our home are substantially unaltered from those already present for the adjacent residence at 3589 Canyon Crest, the fuel modification zones of which overlap on our property to a nearly identical extent with our own (see Attachment 1 at 41), extending nearly all of the way to the stream bottom below. We had already explicitly requested fuel modification inspectors to assess our lot for suitability as we have maintained it before construction began, and they indicated that no changes needed to be made.

Item #7

Original Question: Why was the project not asked to do an oak woodland report and analysis?

Response: LDC's scope of work did not include a report to address the presence of oak woodland. He believes the removal of 1 oak does not constitute a significant impact to the woodland. I believe that

under-representing the amount of removals/damage to the oaks on the property has created a situation where the actual number of trees to be removed is likely to be 4-6. This constitutes a significant impact to contiguous woodland. Since the original determination was based on only 1 removal, the issue needs to be revisited.

In Attachment 11 at 21-28, we have attributed in detail the decisional flow process for the Oak Woodland Management Plan, though as we attribute elsewhere in that Attachment, this Plan and its Plan Guide are applied only at the discretion of the Department of Regional Planning.

Item #8

Original Question: How much notching will occur for the driveway?

Response: A maximum depth of 8' tapering off as it extends downslope. He quantifies impacts and then states that the impacts are significant and greater than what was documented in his original report. He goes on to say that the applicant wishes to keep the trees. Then he states the impacts that might contribute to the decline of trees from project implementation.
In general, I agree with the comments from LDC. I believe that the applicant wishes to avoid the consequences of removing the trees. I hope the planning commission does not allow the applicant to leave standing damaged trees, which is inconsistent with the intent and purpose of the oak tree ordinance.

Ms. Latta claims that we wish to avoid the *consequences* from removal of trees, not the removal of the trees themselves. We have given Ms. Latta no reason to exhibit this bias, and have designed a home that is far more sensitive than those of many of her past and current clients (Attachments 26-28). Our architect spoke to past projects that went to extraordinary lengths trying to preserve existing trees. We are saddened that Ms. Latta has never engaged with us to understand our project or motivations.

If we were to cut these trees, we would be conditioned to replace them 2:1. However, we are already conditioned to do so if any of these trees succumb within a period of 7 years. There is also ample room to perform this replacement on our lot.

Item #9

Original Question: If the driveway goes on top of existing fill soil in the driveway, how will that impact the trees?

Response: The arborist quantifies the encroachments and discusses compaction issues from current and proposed parking.mThe fill soil issue is not discussed.

As Ms. Latta has noted, the fill soil varies in depth. As the pad has been used for parking for 65+ years, additional fill was not deposited at the edge of the property 10-15 years ago, as there could have been no discontinuity at the edge of the road. Rather, the depth transitions from nil to perhaps 3 feet deep in the vicinity of oak tree #7, approximating a wedge. Most of our driveway spans the narrow side of this wedge. What little fill remains may still be removed over the vast majority of the driveway without impacting access to our garage.

Further Comments

Architect's Claim

In her comments below, Ms. Latta has exhibited perhaps most clearly the misunderstandings that stem from a refusal to engage. In Attachment 48, we provide a letter from our architect relaying the circumstances surrounding the removal of the healthy tree immediately in front of 3931 Cazador St. They had nothing to do with construction impacts. As our architect noted, the building didn't even touch the ground except at the four piles, and marginal physical root zone impacts were therefore minimal (beyond those of the road itself encroaching on half the root zone of the tree). Supplemental irrigation existed below the volume of the home.

Our architect presented other projects that entailed construction in close proximity to trees, which Ms. Latta did not reference. The purpose of his presentation was to demonstrate that it is possible to responsibly design and build around trees, rather than pre-emptively cut them down. In urban environments, trees exist in close proximity to structures and extensive amounts of pavement, and this is especially true on Canyon Crest and the surrounding area, as we show in Attachment 30. The advice to cut trees that have a good probability of surviving deprives an environment of much of its visual quality and character.

During the hearing, the Architect made a claim that in a previous, nearby project; he had successfully built around a number of trees in a similar manner to the proposed plans for the current site. During a visit to that previous project, we found that the trees that he discussed in the hearing and showed in a photograph were gone. This does not support the assertion made by the Arborist of Record that the oak trees (Nos. 4 & 7 in particular) on the current site would thrive after significant encroachments to their root zones and canopy areas.

Ms. Latta has not provided any evidence of an assertion by our Arborist of Record that our oak trees would "thrive" after encroachments. The threshold is a reasonable expectation of survival, with mitigations applied both before, during and after construction.

If the other project is a precedent, trees that sustain significant impact either because of the building footprint or because of construction will most likely go into decline because of both those factors previously mentioned and stress from drought, changes to soil hydrology and sun exposure.

Again, Ms. Latta has chosen to call out only one of several past projects of our architect in which he built in close proximity to trees, and for which we provided an explanation. The circumstances and extent of encroachment, species and condition of tree all affect this. There is no "precedent," as construction in close proximity to trees is in fact widespread throughout the county, and certainly on lower Canyon Crest, as we attribute in Attachment 30.

Additionally, building close to existing trees can be problematic because trees are living organisms that continue to grow and expand. When located over structures, they have the potential to drop branches and damage foundations and hardscape.

While tree roots are capable of damaging thin and especially lightly- or un- reinforced slab-on-

grade pavement, our foundation is composed of grade beams and self-supporting, well-reinforced concrete floors. The piles anchor this structure not only to support the deflecting loads across the span between piles from the downward acting live and dead weight of the structure, but to an equivalent extent the upward force from root expansion, which also acts only to reduce the higher magnitude stresses from the live and dead loads acting in the opposite direction. This is not a concern for our design. Ms. Latta is not qualified to submit evidence that speaks to structural analysis.

Cumulative Impacts

The memo provided by the Arborist of Record still does not completely address the cumulative impacts to each of the protected trees on the property and on adjacent property. It is my professional opinion that in addition to the one tree permitted for removal, two other protected trees would realistically need to be removed due to encroachment to roots and canopy areas.
Certain impacts were not discussed in the report or the comments. For instance, there is a pathway that is shown on the plans within 2 feet of the trunk of Tree #7 and #4 and #5 that is for Fire Department access around the structure. This pathway will require making steps in the steep hillside.

As we note on our plans, this area is attributed as “mulched” with a permeable decomposed granite footpath. There is no need to excavate to keep this area free for emergency (as opposed to regular) foot traffic, nor is the grade particularly steep, at no more than 1:2. Nor in fact does any other home along lower Canyon Crest or in the Meadows neighborhood beyond appear to honor a 5ft free setback from the edge of the residence for foot traffic. For our site, this request does not result in any tree pruning above what is already required.

The main feed for the water line comes into the property right next to Oak #1 and may need to cross the root zone of Oaks #1 and #7 to connect to the new structure. Landscape and irrigation is shown on the plans within the protected zone of oaks and on the slope. These impacts are not mentioned.

As our arborist notes, “excavation required for the installation of the water line may result in impacts to the root system of tree #5. The water line would be located approximately 14 feet from the trunk of tree #5.”

Ms. Latta is mistaken that landscaping and irrigation. The irrigation we do portray is that needed to establish native vegetation with very low water needs, and to sustain that vegetation in times of drought. We do not propose to establish a lawn in the protected zone of our trees, as our neighbors ~100ft to the north at 3617 Canyon Crest Road do in the protected zones of their trees. Irrigation behind the dripline in the less critical zones where feeder roots may be established are actually beneficial to oak trees, replicating their most conducive natural environment set up a distance from a stream bed in riparian environments in which water flows seasonally or all year long.

Canopy impacts were the most neglected in the first arborist report. Canopy to grade measurements were not collected and specific impacts were not discussed. The arborist does not discuss how impacts were determined without those measurements. The response to comments records significant canopy removal (Estimated 45-60%) for trees 4,5 and 7, but still does not discuss percentages or the

significance of the removal of live canopy that exceeds the County's recommended yearly pruning maximum of 25%.

We remain very close to adhering to this recommendation, as we attribute in Attachment 15, the threshold of which is based in part on the assumption that it will skew the root:crown ratio. Our trees see largely balanced removals of root and crown.

Further, encroachment to the remaining trees are significant and per the initial Arborist's report, two oak trees under protected size (No's 11 & 12) will also be removed. In full consideration of these impacts, I believe that the assessment done by the County Biologist needs to be revisited and the CEQA classification revised.

Ms. Latta appears to have drawn an improper connection between the significance of a project on Oak Woodland and the significance of a project on the Environment. If Ms. Latta believes with Mr. Tsai and other project opponents that our project should be the seventh single family residence in the 46-year history of CEQA to require an EIR, we might expect her to similarly object to the granting of the 10,911sqft mansion on which she serves as consultant a Negative Declaration, despite removal of 23 mature coast live oak trees and encroachment of dozens more.

I further believe that an Oak Woodland report should be filed, since the Oak Woodland Report and Oak Tree Report are two separate review processes and the site does, by the admission of the County Biologist and the Arborist of Record, contain oak woodland.

As we've explained in greater detail in Attachment 11, the presence of oak woodland does not necessitate the creation of an oak woodland report. As we attribute elsewhere in that Attachment, this Plan and its Plan Guide are applied only at the discretion of the Department of Regional Planning.

Respectfully,

Stephen and Vandana

Respectfully submitted,

Rebecca Latta
Consulting Arborist, Horticulturalist
ISA Certified Arborist WE4264A
ISA Certified Tree Risk Assessor #1217 (pending recertification)
Member, American Society of Consulting Arborists
Board Member, California Native Plant Society
Board Member, Inland Urban Forest Council

Appendix 'A' – Tree Impact Comparisons

In Attachment 7, we highlight some of the discrepancies in Ms. Latta's assessments. We believe that it is important to accurately describe the type of root impacts and their

permanence. Root zone impacts may entail physical removal of all roots; interception of rainfall; disruption of oxygen/gas exchange with an impermeable surface; physical removal of feeder roots while preserving lateral roots when trenching; permanent, un-remediated compaction; or temporary, remediated compaction, among others. Each manner of encroachment impacts in varying ways and to varying extents. Compaction impacts for our project are temporary because an air spade is able to rehabilitate non-destructively. We believe that this is worth the extra cost, though we again note that the Los Angeles County Oak Trees: Care and Maintenance Guide states that, “Trenching can also be accomplished using hand tools or small hand held power equipment to avoid cutting roots.” Ms. Latta herself has recommended this approach in Attachment 26.

Attachment 6

Response to letter from Rebecca Latta, dated April 16, 2016

November 10, 2016

Purpose:

The purpose of this attachment is to address inline the questions and concerns that she has brought up. We believe that she has again asked for details that go beyond the scope of the burden of proof laid out in 22.56.2100.A, beyond the level of detail of Los Angeles County oak tree reports in analogous circumstances (Attachments 20-22), beyond the level of detail of oak tree reports submitted to the City of Agoura Hills when she was sub-contracted to assist in their review (Attachments 23-25), and beyond the level of detail she has herself applied in analogous circumstances to past oak tree reports (Attachments 26-28).

Key Issues:

1. Ms. Latta reiterates many of the misunderstandings we attribute in Attachment 7.
2. Ms. Latta has not acknowledged the existing highly compacted state of our staging area from repeated travel by a 5,000+lb pickup truck, or used this state as a reference for marginal impacts from our construction activities, which are mitigated using the standard approach of placement of mulch and plywood.
3. Ms. Latta has ascribed an Oak Woodlands Management Plan ("Plan") process with multiple parts, some of which have not yet been fully implemented. The Plan was adopted into the County of Los Angeles General Plan well after our permit applications were submitted, and after our initial study was completed. Therefore according to the General Plan statement of applicability, any recommendations contained in the Plan have no formal applicability to our project, though the Department of Regional Planning has justly applied its discretion in drafting some conditions in accordance with Plan recommendations. In the absence of any zoning code or permit process with the appropriate level of review, neither are the recommendations in Part II of this Plan applied except at the discretion of the Department of Regional Planning. In Attachment 11, we attribute the lack of support for changes to the decision-making process for our home, even were Part II of the Oak Woodlands Management Plan were to govern it.

We would like to again thank Rebecca for her work and will consider carefully with our arborist those few of her statements that contain constructive criticism or suggestions. It is unfortunate that she did not attempt to engage with us or our arborist to address her questions, despite the frustration we expressed at both of our April hearings, as it might have avoided some misunderstanding.

Re: Response to comments from SK to Independent Arborist Review for APN 5830-003 016 - Canyon Crest Road, Altadena

Dear Kristina,

As requested by my client, I have reviewed the comments submitted by the applicant regarding the Independent Arborist Review I submitted before the hearing. I have responded to his comments below:

GENERAL COMMENTS:

During the hearing, the property owner stated that the arborist no longer works for Land Design

Consultants and that he no longer working for them on this project. The hearing officer at the April 5, 2016 hearing specifically requested an arborist's opinion. The property owner is not an arborist, nor are they officially qualified to assess the impacts from his own project on the trees.

We have noted in replies that we have tried to "attribute professional opinion and photographic evidence where possible," and have never claimed ourselves to make a professional opinion about any of our trees. However, we are qualified to answer questions that relate to construction impacts, to point out deficiencies and discrepancies in Ms. Latta's arguments, and to attribute the presentation of speculation instead of facts. The characterization with which Ms. Latta entitled her letter dated March 17 as an "*Independent* Arborist Review of Oak Tree Report" is not consistent with her indication above that her response is at the request of her "client," John Lynch of 3589 Canyon Crest, the neighbor immediately adjacent to the north and among the most vocal of our project opponents.

The property owner believes that the impact on trees beyond the one removal will be minimal.

Ms. Latta has not attributed this statement. We and our arborist acknowledge that the impacts to several of our trees are not insignificant. However, Ms. Latta has continued to misunderstand some properties of our design, resulting in less than rigorous assessments. Her quantified estimates of encroachment are directly contra-indicated by the LIDAR scans we took of our oak tree canopy and the removals required to fit the structure of our home, as we attribute in Attachment 15. Her estimates of the severity of these encroachments are contra-indicated by the vigor of oak tree #1 despite sustaining past encroachments that are in several important ways more significant than what we propose (Attachment 32), as well as a myriad of trees in the area that co-exist with development that severely encroach (Attachment 30) or that have seen substantial modification due to excavation or erosion (Attachment 31).

In my opinion, the report downplays impacts to protected oak trees.

1. The arborist report from Land Design Consultants discusses that there will be root impacts, but states "specific root impacts cannot be determined".

Ms. Latta has offered no recommendation for how to determine specific root impacts prior to construction without violating the Oak Tree Ordinance. While ground-penetrating radar can create a coarse map of differences in density, this is not a reasonable mitigation for a modest single-family residence. We have assumed that any potentially disruptive exploration through careful exposure of roots with hand tools or air spade (as Ms. Latta recommended in Attachment 26 at 10) would be prohibited under the Oak Tree Ordinance without a permit, as potentially causing an "act causing or tending to cause injury to the root system." If we encounter substantial roots at the margins of our existing design, we are prepared to make minor adjustments to preserve threshold roots (and branches), as we stated at our April 19 hearing with the statement that, "In the field, it is common to make minor adjustments to account for obstructions, minimization of impacts as roots are encountered, or to preserve threshold branches. We are prepared to pursue this in the field, as these uncertainties are difficult to project at this point in the process."

Our arborist did provide a quantified estimate of the encroachments into the protected zones of these trees. Ms. Latta has herself provided such estimates without further qualification, in

Attachments 26-28.

2. The report downplays the signi ficance of the retaining wall within 4 feet of the trunk of trees #4 and #5 and fails to mention that anchor and large lateral roots critical for structural support may be located in the impact area.

Our arborist has accurately noted that the retaining wall will impact less than 30% of the root zones of both tree #4 and tree #5. This is supported in greater detail in Attachment 15.

As our arborist expressed to us, critical lateral structural roots on hillsides tend to be located uphill of the trunk of a tree. This is also noted in Attachment 14 citation II, an educational resource from the International Society of Arborists, with the statement that, “root extent does tend to be greater on the uphill side of trees planted on a slope.” Our encroachments are entirely downhill of trees #4 and #5, and mostly downhill of tree #7 (see attachment 15).

The edge of the retaining wall is not the edge of the encroachment because the soil may need to be ‘laid back’ in order to construct the wall on a slope and space will be required to insert the form for the concrete.

Ms. Latta appears to be unfamiliar with blind-side formwork and has instead assumed an enormous 5-foot setback with removal of roots in this area that would be completely inappropriate for the protected zone of our trees. Oak tree #4 is the only tree for which the retaining wall is encountered at any depth. The wall trails off to no depth at the closest encroachments of oak trees #5 and #7.

In Attachment 50, we have provided some educational material on the common construction method of blind-side formwork. This is used when walls need to be built at the property line or against some other constraint. Walls several stories high are commonly built using this technique. As the attachment notes, setbacks of 1-4” are possible, depending on the method. To be safe, we and our contractor provided our arborist with a 10” setback for blind-side formwork. Conservatively, our arborist's minimum encroachment distances assume this 10” will be removed (see Attachment 15). However, per our conditions we are required to preserve to the extent possible any roots in this setback by wrapping them in wet burlap and backfilling by hand.

Additionally, I usually estimate 5-feet of working room will be required next to the retaining wall needed for scaffolding and materials (working room).

There is no scaffolding required to build a retaining wall with a maximum height of 8ft. Materials will be staged on the interior of the wall (i.e. on the side opposite the oak trees).

3. From the site plan dated July 13, 2015, the project appears to underestimate canopy impacts. On the table provided on page 8 of the report in the comments, several trees have a note indicating there will be encroachment within the dripline, but no mention of the amount of canopy or size of branches to be removed to construct the proposed structure. It is my opinion that when the total amount of root and canopy encroachments equals more than 50%, then the tree may sustain signi ficant damage and requires removal. My rough calculations for trees with the most impacts are as follows:

• More than 50% of the canopy of Oak #4 will require pruning including large branches over 2 inches in diameter. The tree would be subject to more than 50% of its total area in root encroachments. Steps

to be installed within 2 feet of the trunk will require excavation not mentioned in report. Combined with the root encroachment from the retaining wall, the compaction from the staging and activity for the pilings and the concrete apron, this tree has enough impacts that it may go into decline. In my opinion, the combination of canopy and aerial impacts could severely damage the tree. (50% root and 50% canopy)

• 25% of the canopy of Oak #5 will require pruning and removal of branches over 2 inches in diameter. The sewer line and retaining wall combined could damage more than 35% of the total root zone. In my opinion, the combination of canopy and aerial impacts could severely damage the tree. (25% root and 35% canopy)

• 45% of the canopy of Oak #7 will require pruning and removal of branches over 2 inches in diameter. The root encroachment is 55% including the access steps around the structure.

We have addressed these erroneous assessments extremely thoroughly in Attachment 15, using LIDAR scans of our oak tree canopy. Ms. Latta has described her calculations as "rough" and provided no visual evidence with which to judge her assessments. She has exhibited several misunderstandings that we describe in greater detail in Attachment 7.

SPECIFIC RESPONSES TO COMMENTS

Burden of Proof:
1.b.i.c The grading plans lack adequate detail to assess oak impacts. The plans should show the exact limits of grading under the canopy of the oak trees.

We believe we have clarified the extent of over-excavation required for blind-side formwork. The annotated retaining wall and topographic lines adequately describe the extent of cut. Our grading plans indicate fill to be balanced under the footprint of the south-east portion of our home.

His comments on my letter:

Paragraph 1:
The project proposes to change surface flow that might affect the oaks downslope. It is my understanding that the house will be built over the current drainage. Small changes in hydrology can impact oak trees if they are accustomed to the water source especially in a drought year. It is my opinion that the downslope trees should have been mapped and discussed in more detail since the property is an oak woodland (greater than 10% canopy - using the oak woodland guidelines). I used Google Earth and rough property map from the County website and determined the number of oak trees. Then I added the sphere of influence and determined that the oaks covered approximately 35% of the whole property. That qualifies the property as an oak woodland per the definition in the oak woodland management plan. See page 5 of the LA County Oak Woodland Conservation Plan. The project information downplays and minimizes the significance of the impacts to the oak trees and to the woodland as a whole.

The County oak tree ordinance requires that trees within 200 feet of construction be addressed. The trees are 170 feet away from the construction, but due to the steepness of the slope may have be impacted. The downslope trees could be impacted specifically by erosion, changes in drainage/hydrology, and runaway construction materials.

We address this in Attachment 12 at 9, our response to claims of significant impacts of our project on water quality and hydrology.

The letter from the County of Los Angeles Fire Department Fire Prevention Division requires a

minimum unobstructed width of 20 feet exclusive of shoulders and an unobstructed vertical clearance (clear to the sky) and Fire Department vehicular access within 150 feet of the exterior walls of the first story of the building. This will require the applicant to remove additional canopy.

Ms. Latta has exhibited a very fundamental misunderstanding. As we stated at our April 19 hearing, “The referenced requirement is a fire truck access specification, as the condition notes. It states that a fire truck has to be able to park at some point that would leave a fireman no more than 150ft to access on foot the farthest point around the perimeter of a home, so that the standard 150 feet length of fire hose can be deployed effectively. In order to fit a truck, any roadway - or driveway for any home set back far enough from the road - must have a width of 20ft, and “clear to sky” vertical clearance is desired, but 13’7” is sufficient. 13'6” is the maximum legal height for any truck. Canyon Crest Road of course fulfills this requirement for our project, without any need for further modification to any tree, as it currently does for the hundreds of homes in the Meadows farther up the road.”

No additional canopy need be removed.

Paragraph 2:
Fill soil, even old fill soil, can be carefully removed a little at a time (over a period of years). The fill soil is currently suffocating roots and creating potential stress on the existing trees. The arborist from LDC did not physically verify if the trees had rooted into the fill. The extent of any new rooting into the fill can be determined with exploratory potholing into the fill. The following excerpt from Matheny and Clark Trees and Development: A Technical Guide to Preservation of Trees During Land Development is provided below to explain my conclusion. "It can take a long time for the damage from fill soil to be evidenced in the tree canopy. Root rot starts slowly and then progresses to a point where the trees die or fail. The fill soil holds moisture around the trunk and alters normal gas exchange. Some trees develop adventitious roots in the fill soil that keep the tree green and alive. Over time, however, disease and decay may develop in the original root crown and buttress roots. The tree becomes structurally unstable and prone to failure.”
Trees with root decay of this nature may fall over before the crowns die back. This is because some nutrients can get to the canopy, but weight of the foliage can no longer be supported by the weakened root system.

Ms. Latta has qualified her remarks from her letter dated March 17, in which she said “Fill soil laid down in the recent past should be removed on the flat pad by the oak trees.” Our arborist has suggested that only slow, incremental removal is advisable, and that care should be taken not to disturb roots that may have infilled. The grade prior to this claimed deposition of fill cannot be known and may have been variable. As the trees would have sustained this impact for more than 10 years, our arborist advised that waiting for the year we devote to construction is advisable, to maintain a buffer during construction.

Summary:
I labeled the site a signi ficant ecological area because I believe that it is a viable biological system regardless of the label used by LA County. The area is adjacent to a national forest, and is part of the proposed wildlife linkages in the 2014 Regional Habitat Linkages plan on the Regional Planning website. The fact that it was a part of a conceptual SEA indicates there are resources there. The home is proposed to be located in a grove of oak trees - an oak woodland - not on the edge of it.

The hourglass shape of our home is quite explicitly constrained to avoid as much of the L-shaped stand of existing oak trees near the road as is possible, in a way that preserves more

oak trees and oak tree canopy than any other design we and our architect could conceive of. Much of the footprint is outside the protected zone of any tree. Ms. Latta has claimed that additional trees need to be cut, but has attributed encroachment figures without any visual evidence, and without understanding some properties of our design or construction methods.

Our home is sited on an infill lot at the canyon rim amid existing development. As Ms. Latta acknowledges, the re-grading of as many as several feet that occurred at some time in the past 10-15 years in the protected zones of nearly all encroached trees, along with the use of much of the same area for parking and storage, as well as for Canyon Crest Road, and for the driveway, patio and slab-on-grade construction of 3589 Canyon Crest, has drastically altered the natural condition to accommodate residential uses. Our arborist also references "multiple pruning events" in nearly all trees for roadway, parking or power line clearance and the cabling of large scaffolds for huge planters and a hammock belonging to 3589 Canyon Crest. Our arborist notes that some trees are growing into a concrete drainage device, and an artificial stone-lined drainage swale cuts through the protected zone of many trees. The soil has been compacted by the repeated crossings of the 5,000+lb truck and cars that have used the pad and road-side spaces for parking, as well as by the construction of the road, driveway and home at 3589 Canyon Crest. There is also little to no understory, native or otherwise, and none can exist in an area used for storage and parking by our neighbors at 3589 Canyon Crest. Our initial study notes the existence of "non-native species" in the little understory that does exist.

The majority of the Meadows neighborhood to the north-west is actually sited within the Los Angeles National Forest – not in proximity to it – as well as much of the La Vina development to the north-east. Proximity to the Los Angeles National Forest is a characteristic of thousands of homes in the foothills of the San Gabriels. The Regional Habitat Linkages map to which Ms. Latta refers is a surrogate for the Los Angeles National Forest and the open space of which it is composed, offering no resolution at the scale of our project. The footprint of our home is not in fact in the conceptual Significant Ecological Area. It is drawn to exclude the existing development at the canyon rim, including Canyon Crest Road. Our home is neither the closest to the canyon vertically nor horizontally of those existing homes along the canyon side of Canyon Crest Road.

Regarding the 4th paragraph:

The owner admits that significant pruning will be required but the impacts are not quantified in the report. The report says, for instance, that the structure will encroach 16-feet into the dripline of oak tree #7, a tree that already has issues and is rated 'C', but does not discuss the significance of the encroachment.
The arborist did not catalog impacts to the trees. He states only whether the trees would have an encroachment or not, and the distance. A thorough impact assessment will identify which branches need to be cut and their sizes. Large pruning cuts wound the trees and open them to insect and disease attacks. Pruning large amounts of canopy over 20% can cause the tree to go into decline because the leaves collect food from photosynthesis that help to keep the tree healthy. Removing too many leaves put the trees on a starvation diet.

Ms. Latta has asked for details that she herself has not applied to past oak tree reports, nor in her assessment dated September 7, in which several encroachment percentages are

provided without any visual evidence. In Attachment 27, an oak tree report for a single-family residence in Glendale, she assesses 20-30% oak canopy removal but provides no indication of which branches must be removed, nor does she echo her assessment above, despite projections in excess of 20%. In Attachment 26, she allows that a tree that has been subjected to 35% canopy removal may remain. We had hoped to be able to space pruning of our trees across two of the July-September intervals recommended by arboricultural research to compound stress and allow the tree to seal over the wound during the time of least pest activity and moisture. The repeated requests of our opposition for delay, as well as their repeated appeals, have made that difficult.

In Attachment 14 citation WW (Journal of Arboriculture 17(8)), it is noted that “root:crown balance is considered as the relationship between water and mineral absorption by the root system, and utilization by the crown. The term 'balance' describes the delicate physiological equilibrium between the root system and the above-ground parts of the plants. . . . Crown reduction has become the standard arboricultural method of compensating for root loss.” In Attachment 14 citation UU (Journal of Arboriculture 24(1)), a long term study of trenching impact to an oak species, it is noted that, “Crown pruning was of greatest benefit when compensating for severe root loss. It affected twig growth measurements more than dbh [Diameter at Breast Height] increase.” Although positive benefit from pre-emptive crown pruning as compared to allowing the tree to choose which branches die back after root removal has been the subject of some debate, it can still be said that a balanced removal of root and crown preserves this important root:crown ratio. As we show in Attachment 15, trees #4, #5 and #7 all have well-balanced root and crown removals.

Attachments 20-28 show similar examples of oak tree reports elevated to public hearing per the county process, entailing removal of canopy with percentages cited, but without documentation of individual branches. Our arborist responded in detail to her questions in his letter dated April 18, 2016, including an identification of those branches to be removed.

Missing from the Arborist report from LDC:

2. On a steep slope, the roots can be found where the water and resources are located. A sewer lateral 12 inches deep can cause signi ficant damage to lateral and anchor roots close to the trunk of the trees.

Neither our sewer lateral nor our water lateral is close to the trunk of any tree, as our arborist notes with the following statements:

“The sewer line would be located approximately 21 feet from the trunk of tree E1, 15 feet from the trunk of tree #2, 16 feet from the trunk of tree #3, 12 feet from the trunk of tree #4 and 12 feet from the trunk of tree #7. … Arboricultural research discourages root severance within five times the tree's trunk diameter on any one side of the tree. In this instance, we refer to this area as the 'critical root zone.' Any excavation for the placement of the sewer line would take place outside of the critical root zones of these referenced trees and will unlikely result in significant damage to the root systems of the trees. Per the conditions of the Oak Tree Permit, the applicant is required to excavate the trench for the sewer line by hand, with the intention of threading the pipe under those larger roots (greater than 2") that are encountered, if any.

. . .
excavation required for the installation of the water line may result in impacts to the root system of tree #5. The water line would be located approximately 14 feet from the trunk of tree #5."

Furthermore, our arborist has advised that an air spade – a type of hand tool – is the least impactful method of excavation, and we agree that using this method for our laterals appears to be a sensible precaution. The non-destructiveness of this approach is consistent with the findings of "Smiley, E.T. 1999. Air excavation, the next arboricultural frontier. Arbor Age, 20,8-10," as documented in the materials for the Richardson Grove EIR (see Attachment 14 citation KK at 16), which note "virtually no damage" and the long-term experiment documented in Attachment 33. However, we would note that the Los Angeles County Oak Trees: Care and Maintenance Guide states that, "Trenching can also be accomplished using hand tools or small hand held power equipment to avoid cutting roots." Ms. Latta herself has recommended this approach in Attachment 26.

3. The amounts of cut and fill within the protected zone of the oak trees is NOT quanti fied. Sections would be required to understand the extent of impacts. For instance, the concrete apron might require the removal of a 20x20 area of soil to a depth of 12 inches deep within the root zone of tree #4.

As we stated at our April 19 hearing, "In the course one such conversation [with a neighbor], we reconsidered the use of a small apron of concrete driveway that had connected our north-facing entryway. We reworked our entryway to face east at the expense of already modest garage area in order to eliminate this apron and reduce the extent of encroachment on oak tree #7, leaving no impervious surfaces outside the small footprint of our home. This change had been made and reflected in the plans dated March 21, reviewed for our first hearing."

We had also advertised this change at an Altadena Town Council meeting in March of 2016, and the Department of Regional Planning annotated these slightly revised plans in our hearing package. We have quite explicitly quantified the extent of cut and fill required for our project, at 15 cubic yards of cut and 15 cubic yards of fill, and we have also provided sections for our project. In Attachment 15, we have documented three dimensional models of the site based on LIDAR scans that includes all building components, all oak tree canopies, and all protected root zones. Root removals, fill and impervious surface encroachments are all quantified. We believe it unlikely that a model of this detail has ever before been created for any tree report for any single-family residence *anywhere*.

c. Plywood does spread the load but it does not prevent compaction. The impacts from this project will be concentrated in a small area that impacts trees #1, 4, 5, 7, 8 . Lichter and Lindsey (Soil Compaction in the Journal of Arboriculture 20(4) July 1994) state that soil compaction is reduced but not eliminated with the use of surface treatments such as plywood. The plywood and mulch break down quickly under the weight of equipment. They go on to say that limiting equipment use under the canopies, avoiding work when the soil is wet and selecting lightweight equipment are all part of a multi-faceted approach to limiting soil compaction.

By their own admission, Lichter and Lindsay's results show changes in soil compaction among their tested configurations that were near the threshold of significance i.e. near the ability of their instrumentation to detect. Not among their characterized configurations was the recommended mulch *and* plywood, which is what we propose. As both showed improvements

over the control, we can assume that the combination would be superior to either alone.

As they described their experimental setup, “The [front-end loader…weighing approximately 13,000 pounds] was driven across the field in a controlled pattern, representing 8 passes of the vehicle over the entire site. . . . Following compaction, bulk density was established…at the 0-10 cm depth. . . . Bulk densities increases below the 10 cm depth were not statistically significant [in the un-protected sample]...These results concur with the general knowledge that vehicular traffic compacts soils most severely near the surface.” From 0-10cm, densities increased from 1.42Mg/m^3 to figures ranging from 1.5-1.55Mg/m^3 with various mitigations, to 1.59Mg/m^3 without mitigations. The increase in bulk density in the unprotected sample was approximately 12%, and in those protected ~6-9%. The compound mitigation of mulch under plywood might have scored 4-6%. The relationship between bulk density and the collapse of pore space is also strongly dependent on the soil type.

The data cited in Lichter and Linday is a limited set on one particular type of soil, which spans a spectrum of sand, silt and clay with very different terra-mechanical properties. The “silt loam” referenced in the report is different than the “silty sand” (also describable as “sandy loam”) of the alluvial terrace (and fill derived from re-grading of the terrace early in the 20th century to build Canyon Crest Road and adjacent residences) referenced in our soils report.

Very little additional experimental evidence appears to exist in the literature to assess the behavior of compaction. However, the data is clear that compaction decreases with depth, as Lindsay and Lichter notice no statistically significant increase below 10cm (or ~4”). Thus, to the extent that fill was dumped on our staging area as deep as 1-3ft and will be interrogated and remediated if needed after construction is complete, many of the impacts of compaction from our construction activities may have no long-term consequence.

According to Lindsay and Lichter, our properly sized gravel driveway will provide similar reduction in compaction to a thick layer of mulch, and we drive compact cars that are substantially lower weight than the 5,000+lb pickup truck our neighbor has used on the lot, without even the mitigation of a layer of mulch of appropriate depth and coarseness.

The proposed project would have sustained impacts in a small area completely covered with tree roots. This can be seen in the photographs from the site looking west from the road. These roots could be damaged and the soil signi ficantly compacted from continuous activity to build the structure. These impacts would not show up in the trees for several years. Even though the applicant proposes to stage materials on the slab once it is constructed, the initial soil compaction can cause stunted roots, limit air and water exchange, destabilize root systems, and reduce drought tolerance. (Taken from a Guide to Preventing Soil Compaction During Construction, Alabama Cooperative Extension System, Publication ANR-1455). It should be noted that the ACES guide states that 3/4 inch plywood can be used for access under trees, but should not be used for repeated crossings. They suggest using plywood for light, irregular traf fic areas.

We were saddened to note that in exhibiting a misunderstanding, Ms. Latta has failed to take a very straightforward opportunity to provide constructive advice. The Guide to Preventing Soil Compaction During Construction (see Attachment 14 citation HH) states that while 3/4” plywood alone is best used for “light foot traffic and single vehicle crossing,” the combination of 3/4” of plywood over 8” of mulch is best used for “areas with regular and heavy traffic”. This

area of our lot is covered by a thin layer of mulch, and we intend and are conditioned to provide an additional buffering layer of mulch beneath the 3/4" plywood we will provide, in accordance with the guide. We might have hoped that Ms. Latta would seek to ensure that we were doing this if she felt we were not already adequately conditioned, rather than omit this guidance. While this may not have advanced the interests of her client in seeking denial of our project to maintain the parking with which we have continued to accommodate him throughout this process, it would have been in the best interest of our trees.

The use of a CDX grade of plywood, and protection with a tarp during any period of rain will prevent substantial degradation of the plywood for the months it needs to remain structurally intact.

Ms. Latta has provided no assessment whatsoever as to the existing compacted state of this parking area, including the visible divots present from our neighbor's 5,000+lb Ford F-150 Super Duty V8 pickup truck, which has parked in the protected zone of our trees for more than a decade, by his own admission. The same neighbor has also stated in his letter dated August 5, 2015 that the "flat area has been in continuous use for storage and off street parking by the occupants of our home and their/our guests for over 65 years."

f. It would be easier to see the actual canopy impacts if the applicant installed story poles. The poles can be installed through the tree canopies with minimal root and canopy impacts if the applicant has the work observed by a qualified arborist.

As our arborist notes, "Unsanctioned story poles were installed by an unknown (to me) party when I made my site visit on April 14, 2016. Although the poles are not exact, they give a clear indication of the extent of pruning that will be required for the placement of the building." These are visible in several of Ms. Latta's pictures.

g. The fire department guidelines determine the clearance limits around the structure. In addition to that, they need to clear native vegetation further downslope because the property is on a steep slope.

Ms. Latta has not provided any attribution, and this is demonstrably false. In Attachment 1 at 41, we show the extent to which the existing 200ft fuel modification zone B for 3589 Canyon Crest already overlaps over the entirety of our property into the riparian environment of the canyon below. In addition, we had already explicitly requested fuel modification inspectors to assess our lot for suitability as we have maintained it before construction began, and they indicated that no changes needed to be made.

Large limbs within 12 inches of a structure are problematic and often are pruned because they bang against structures in the wind or start to abrade the surfaces. It is not advisable to design a building so close to an existing tree.

Ms. Latta appears unfamiliar with the many examples of oak tree limbs existing within 12 inches of a structure along lower Canyon Crest and in the Meadows. In Attachment 30, we provide some examples. We have such an example at our current address at 4381 Canyon Crest Rd and have lived through severe wind storms.

7. The 35% oak woodland figure is derived from looking at the aerial map and determining that the amount of coverage of oaks with the sphere of influence, 10x the canopy area, which is approximately

35%. This information is on page 4 of the Oak Woodland Conservation Plan. The applicant only considered the trees at the top of the slope to achieve his 9% coverage. To only look at the oaks at the top of the slope ignores the rest of the trees on the site. The oak woodland guidelines are not written in that manner. The trees at the top of the hill are part of the same watershed as the trees on the lower slope. The property owner dismisses the proposition that the site contains an oak woodland and separates the trees he's impacting on the upper slope from the ones on the lower property. Using the County's guidelines, the tree canopy is roughly contiguous if you apply the 10x sphere of influence. In my opinion, looking at the County's guidelines, the property is an oak woodland and the two areas of oak trees should not be considered separately.

We have never stated that our property does not contain oak woodland. Using the Oak Woodland Management Plan Guide threshold definition of 2 oak trees with at least 5" diameter at breast height, the question is pre-emptively settled by the observation that ten oak trees are included in our oak tree report. As we noted in our response to her letter dated March 17, "Our property contains two stands of oak woodland – one in the riparian environment of the canyon below and one at street level. Our home is accurately described in the initial study as sited at the "edge of a disturbed oak woodland community."...Our exhibit map depicts and labels all affected oak trees. All of these oak trees are acknowledged to be a part of a stand of degraded oak woodland."

8. The width and depth of the notching is not discussed. There is not enough information to determine the amount of impact.

As our arborist notes, "The excavation required for this below grade wall is to a maximum depth of eight feet, with the depth tapering off as it extends downslope. … It is estimated that approximately 25% of the root system of tree #4 will be impacted by the excavation required for the placement of the wall. . . . It is estimated that approximately 27% of the root system of tree #7 will be impacted by the excavation required for the placement of the wall."

The extent of grading is clearly depicted on our site plan by showing the extent of the below grade wall for our home.

In my opinion, the applicant has not met the Burden of Proof as required in the LA County Oak Tree Ordinance Section 22.56.2100 because they are unable to prove that the construction will not endanger the health of the remaining trees on the subject property.

We have provided detail that goes far beyond the level of detail of Los Angeles County oak tree reports in analogous circumstances (Attachments 20-22), beyond the level of detail of oak tree reports submitted to the City of Agoura Hills when she was sub-contracted to assist in their review (Attachments 23-25), and beyond the level of detail she has herself applied in analogous circumstances to past oak tree reports (Attachments 26-28).

According to the statute, this judgment is reserved for the Director [of Regional Planning], not the paid consultant of neighbors opposed to a project.

Respectfully,

Stephen and Vandana

Please let me know if you have any questions.

Sincerely,
Rebecca Latta

Consulting Arborist, Horticulturalist
ISA Certified Arborist WE4264A
Certified Tree Risk Assessor #1217
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Report e-mailed to Kristina at kkulcczycki@planning.lacounty.gov and John at johnthearborist@gmail.com

Attachment 7

Attribution of misunderstandings in letters from Rebecca Latta dated March 17, April 16 and September 5, and in hearing testimony from April 5 and April 19 Hearing Officer hearings

November 10, 2016

Purpose:

The purpose of this attachment is to enumerate the misunderstandings and errors present in Ms. Latta's letters and hearing testimony on behalf of her client, as well as to attribute the lack of credibility in several quantified assessments she has made.

Key Issues:

1. The first three misunderstandings cited below directly impact the assessments of the amount of root zone encroachments and oak tree canopy removals provided in what she describes as her rough calculations for our project. Ms. Latta has never engaged with us to try to understand the construction impacts for our project, nor has she provided supporting evidence for any of her quantified assessments. They are directly contra-indicated by the detailed model included in Attachment 15.
2. Subsequently, we describe an additional eight misunderstandings, some of which have been quoted by Mr. Tsai as expert testimony. Several of these statements are used as justification for significant impacts to oak trees, if not directly for quantified root and canopy encroachments. Some may have indirectly affected quantified estimates, though Ms. Latta has not substantiated her work with evidence.
3. Finally, we attribute factual discrepancies in the quantified estimates she has provided. For example, it is an objective fact that ~21% of the protected zone of oak tree #1 is coincident with our lot, using the measurements of oak tree canopy extent documented in our oak tree report exhibit map and by our LIDAR scans, and yet Ms. Latta assesses 46% root zone impacts to this tree from our construction activities, by summing root zone area inappropriately. Several other examples indicate large discrepancies that cannot reasonably be the product of slight differences in measurements.

Misunderstandings directly affecting root and canopy encroachment estimates:

1. In her letter dated April 16, Ms. Latta appears to be unfamiliar with blind-side formwork and has instead assumed an enormous and inaccurate 5-foot over-excavation with removal of roots in this area that would be completely inappropriate for the protected zone of our trees:

“The edge of the retaining wall is not the edge of the encroachment because the soil may need to be 'laid back' in order to construct the wall on a slope and space will be required to insert the form for the concrete. Additionally, I usually estimate 5 feet of working room will be required next to the retaining wall needed for scaffolding and materials (working room).”

In Attachment 50, we have provided some background material on the common construction method of blind-side formwork. This is used when walls need to be built at the property line or against some other constraint. Walls several stories high can be built using this technique. As the attachment notes, setbacks of 1-4” are possible, depending on the method. To be safe, we and our contractor provided our arborist with a 10” setback for blind-side formwork. Conservatively, our arborist's minimum encroachment distances assume this 10” will be

removed (see Attachment 15). However, per our conditions we are required to preserve to the extent possible any roots in this setback by wrapping them in wet burlap and backfilling by hand.

We would also clarify that installation of our vertically seamed cladding does not require the use of scaffolding. This is one of the reasons we chose it. From the ground, it is hung from a shallow cleat at the roofline and tacked to furring on the wall. Also, segments of residential walls are commonly built on adjacent horizontal surfaces and lifted into position. They are not built from scaffolding.

Some such over-excavation assumption *must be made* in order to quantitatively estimate the extent of root removal. Ms. Latta does not make a fair argument when she bases her opinions regarding required removals on quantified assessments that contain speculation.

2. In her letters dated April 16 and September 7, respectively, Ms. Latta has incorrectly assumed that the free space and footpath 5ft around the edge of our home will require excavation.

“Steps to be installed within 2 feet of the trunk will require excavation...”

“...there is a pathway that is shown on the plans within 2 feet of the trunk of Tree #7 and #4 and #5 that is for Fire Department access around the structure. This pathway will require making steps in the steep hillside.”

As we note on our plans, this area is attributed as “mulched” with a permeable decomposed granite footpath. There is no requirement to excavate to keep this area free for emergency (as opposed to regular) foot traffic, nor is the grade particularly steep, at no more than 1:2. Nor in fact does any other home along lower Canyon Crest or in the Meadows neighborhood beyond appear to honor a 5ft free setback from the edge of the residence for foot traffic. For our site, this request does not result in any tree pruning above what is already required.

Ms. Latta did not attribute her work visually in a way that invites any sort of review, but appears to have aggregated this free space into generic “root zone impact,” which includes different types of encroachment with differing severity. In Attachment 28, the “Tree Health Evaluation and Construction Preservation Report” for an 10,951sqft mansion currently under construction in San Marino, Ms. Latta provides impacts for tree #31 of 100% [sic] root impacts and 30% canopy impacts, and indicates that the tree should be kept. The type of root encroachment has to factor into this assessment, such that a single percentage figure alone has little value.

3. In her letter dated April 16 and in comments provided at our April 5 hearing, respectively, Ms. Latta has misunderstood the extent of fuel modification setback requirements.

“The letter from the County of Los Angeles Fire Department Fire Prevention Division requires a minimum unobstructed width of 20 feet exclusive of shoulders and an unobstructed vertical clearance (clear to the sky) and Fire Department vehicular access within 150 feet of the exterior walls of the first story of the building. This will require the applicant to remove

additional canopy."

"If I read the fire report correctly, it says that they need 13 feet 7 inches around the structure and 20 feet clear and that would take off some very large limbs..." (Unofficial Transcripts of April 5 Hearing Officer Hearing).

Ms. Latta has completely misunderstood this statement, and we have struggled to understand how anyone might interpret the statement as she appears to have. If we were to remove all vegetation within 13 feet 7 inches of our structure, the trunks of trees that we had explicitly tagged to remain and that the fire department had explicitly assented to remain would have to be removed. We might have expected Ms. Latta to attempt to reach out to determine the proper fuel modification practice in order to estimate canopy removal accurately, as for instance by examining the proximity of oak tree branches and limbs to other homes in the area (Attachment 30) that must comply with the same standards, or speaking with the fuel modification inspectors who visit the area, as we have done.

As we explained at our April 19 hearing, "The referenced requirement is a fire truck access specification, as the condition notes. It states that a fire truck has to be able to park at some point that would leave a fireman no more than 150ft to access on foot the farthest point around the perimeter of a home, so that the standard 150 feet length of fire hose can be deployed effectively. In order to fit a truck, any roadway - or driveway for any home set back far enough from the road - must have a width of 20ft, and "clear to sky" vertical clearance is desired, but 13'7" is sufficient. 13'6" is the maximum legal height for any truck. Canyon Crest Road of course fulfills this requirement for our project, without any need for further modification to any tree, as it currently does for the hundreds of homes in the Meadows farther up the road."

Some such building clearance assumption *must be made* in order to quantitatively estimate the extent of canopy removal.

Ms. Latta does not make a fair argument when she provides testimony ("...and that would take off some very large limbs...") based on incorrect assertions about a design, rather than the design as approved. This testimony is also directly contra-indicated by prevailing site conditions for numerous homes in the vicinity that contain oak tree trunks and limbs that are as close or closer to structures than we propose (Attachment 30).

"Expert opinion that is not directly relevant to the project's environmental impacts may be disregarded...See also Berkeley Hillside Preservation v City of Berkeley (2015) 60 C4th 1086, 1119 (categorical exemption case holding that expert opinion was insufficient because it was based on project opponent's assertions about design of project rather than project as actually approved)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

Misunderstandings affecting impact severity:

4. In comments provided at our April 5 hearing, Ms. Latta has assumed that we will be

mechanically compacting soil.

“There is in the geotechnical report a requirement - or a specification - to remove all the fill soil and re-compact to 90%...That could be a serious and significant impact to every tree around the pad.” (Unofficial Minutes of April 5 Hearing Officer Hearing).

Ms. Latta has mistakenly assumed that a general specification that applied only to any hypothetical slab-on-grade foundation that might have been incorporated into the design actually applies to the fill she claimed was dumped on the site more than 10 years ago. In a general sense, “fill” in our geotechnical report refers to any soil deposited over native alluvial terrace 70 or more years ago when the road and 3589 Canyon Crest came into their present form i.e. any soil that had not been compacted by geologic processes and time scales. It does *not* refer to the one to several feet of soil she has claimed were deposited at least 10 years ago to flatten the area where her client Mr. Lynch parks his car and truck on our property.

More to the point, we have no slab-on-grade foundation, which can be intuited immediately from the presence of piles, since loads cannot be borne by mechanisms with dissimilar settling.

5. In her comments provided at our April 5 hearing and in her letter dated September 5, respectively, Ms. Latta has incorrectly assumed a need for dump trucks, and incorrectly assumed a particular phasing for the use of a crane.

“...any crane or dump truck that needs to come onto the site, if the canopy is at like eight to ten feet, they're going to hit it. There's no way for them to get in and out of there to do that construction work without significantly impacting the tree...” (Unofficial Transcripts of April 5 Hearing Officer Hearing).

“...the flat pad for staging that the applicant has proposed is covered substantially by oak canopy, which will limit the type and usage of heavy machinery staged there. Cranes will not be feasible, and dump trucks would lack the vertical clearance necessary to be useful.”

Ms. Latta has misunderstood the extent of canopy over most of our staging area. As our LIDAR scan shows, a large truck would be able to park on our lot without intersecting canopy (see Attachment 13 at 11-14). However, we have no need for a dump truck, and a concrete truck is likewise able to fit entirely on our lot and out of the road without intersecting existing canopy to remain. As our arborist notes in his response dated April 16, 2016, “As stated by the applicant, dump trunks will not be used and spoil will be removed with standard 5 or 10 yard dumpsters. This means of removal is feasible and should be strictly adhered to.”

Ms. Latta has also assumed that a crane would need to be staged outside the footprint of our home. Using this same scan, we have also portrayed that a crane is capable of being staged on our garage, without interfering with oak tree canopy to remain. We have no need of a crane for any of our concrete work prior to this point, including the installation of pile cages. These will be spliced, a common method where limited headroom is present. Lifts are also a commonly used alternative to a crane, for placement of the few modestly sized roof beams that cannot be installed manually.

Ms. Latta is not a construction professional, and has speculated as to our construction methods. “Expert opinion may also be disregarded if it relates to a subject outside the expert's field. Lucas Valley Homeowners Ass'n v County of Marin, supra (real estate agent not qualified to render expert opinion on project's effect on property values and recited no specific experience with similar projects); Cathay Mortuary, Inc. v San Francisco Planning Comm'n (1989) 207 CA3d 275 (reports by urban planning experts not dispositive on project's cultural impacts).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

6. In her letter dated September 7, 2016, Ms. Latta assumed that we would make use of roll-off deliveries.

“...Therefore, it is likely that significant compaction damage could occur. Compaction damage can occur when materials are delivered to the jobsite during the loading and unloading process. The trucks tilt up and slide the materials out onto the ground.”

This would be an entirely inappropriate method for the protected zone of an oak tree. Even if we intended to use this zone for the bulk of our deliveries – which we do not – deliveries of lumber, sheathing, drywall, roofing and cladding can be off-loaded with a forklift and placed pseudo-statically. We require limited staging of raw materials prior to completion of our garage. The spliced rebar will be off-loaded piece-by-piece manually. The concrete formwork will also be off-loaded piece-by-piece manually, as is conventional for reusable formwork that is not pre-bundled in larger pallets (as e.g. drywall or lumber). Once the east portion of our main level and lower level are cast, we will have ~500sqft in each level to store materials.

7. In her letter dated April 16, Ms. Latta has assumed that water from a steep, stone-lined drainage swale comprises an appreciable percentage of irrigation to oak tree #5.

“It is my understanding that the house will be built over the current drainage. Small changes in hydrology can impact oak trees if they are accustomed to the water source especially in a drought year.”

The riprap-lined drainage swale serves a modest tributary area of 1-2 acres of developed area (see Attachment 12 at 5). It is an example of “water flowing in the hollows or ravines in land, which is the mere surface water from rain or melting snow, and is discharged through them from a higher to a lower level, but which at other times are destitute of water.” The water that flows in this drainage swale does not provide a supply that lasts for more than a brief transient during rain, in contrast to the spring-fed Millard stream, which also drains thousands of acres.

Ms. Latta does not make a fair argument that a significant percentage of the uptake of water by a tree's roots is derived from flow only active during periods of heavy rain, over a small area of the protected zone of that tree, in a channel that is lined to a large extent with rock.

8. In comments provided at our April 19 hearing, Ms. Latta stated that “there is understory underneath these oak trees of native vegetation, so this is not just oak trees – this is oak

trees, it's western fence lizards, it's [inaudible] lizards, woodpeckers, it's owls, it's bats..." (Unofficial Transcripts of April 19 Hearing Officer Hearing)

As the county biologist noted at our April 19 hearing, "...frankly, there aren't any resources in the woodland besides the trees themselves." (Unofficial Transcripts of April 19 Hearing Officer Hearing).

The pictures of the site we submitted as part of our permit application and which are also visible in Attachment 15 discount the claim that an appreciable native understory is present.

9. In comments provided at our April 5 hearing, Ms. Latta misunderstood our oak tree permit conditions.

"There's nowhere to park there without parking under the protected zone of an oak tree."

Finding 32 of our Regional Planning Commission Approval Package states that, "Equipment, materials, and vehicles will not be stored, parked or operated within the protected zone of an oak tree, except on the existing, graded pad that exists on the property." Our conditions prohibit us from encroaching upon "additional" trees beyond those explicitly considered and approved for encroachment in our permit application.

A prohibition against the properly mitigated staging of materials in this parking area would be inconsistent with the use of this area by a 5,000+lb Ford F-150 Super Duty V8 pickup truck belonging to our neighbor at 3589 Canyon Crest for more than a decade, which has variously parked throughout the pad over the entire extent of staging, without the mitigation of a deep layer of mulch or plywood. We have also seen other, larger trucks parked in this area, as well as unsolicited dumping from large vehicles. According to the Alabama Cooperative Extension System's "A Guide to Preventing Soil Compaction During Construction" (Attachment 14 citation HH), a resource Ms. Latta has cited, "It's not the years of traffic, but the first few trips over a site that do the majority of compaction damage." This can be exacerbated when the soil is wet, as it surely has been for some of these crossings.

Our arborist has indicated that a program of remediation using an air spade to provide vertical aeration and interrogate past changes in grade is recommended, after construction is complete.

10. In her letters dated April 16 and September 5, Ms. Latta has stated that our home is in the tributary drainage of the riparian oak trees on our lot and that their hydrology may be impacted, along with the potential for damage from debris flow.

"The trees are 170 feet away from the construction, but due to the steepness of the slope may have be [sic] impacted. The downslope trees could be impacted specifically by erosion, changes in drainage/hydrology, and runaway construction materials."

As we have noted on our website, "Over the footprint of our home, what had been sheet runoff collected by the open swale will become gutter runoff intercepted by a rain garden (per LID requirements, to improve the quality of the runoff) and thereafter routed right back into the

same open swale. The drainage pattern downhill of our home is thus left substantially unaltered."

Even for those trees on adjacent lots that are downslope of our home, the change in hydrology from rainfall interception by our 1159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in the sandy loam analyzed from the samples taken in our geotechnical report), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff cannot reasonably be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree.

As concerns debris flow, Ms. Latta has speculated as to the insufficiency of the Best Management Practices and other conditions required by the Department of Public Works as part of the Drainage and Grading review process. "Expert opinion may also be disregarded if it relates to a subject outside the expert's field. Lucas Valley Homeowners Ass'n v County of Marin, supra (real estate agent not qualified to render expert opinion on project's effect on property values and recited no specific experience with similar projects); Cathay Mortuary, Inc. v San Francisco Planning Comm'n (1989) 207 CA3d 275 (reports by urban planning experts not dispositive on project's cultural impacts)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

11. In her letter dated March 17, Ms. Latta speculated incorrectly that large boulders may need to be removed.

"However, the trunk [of oak tree #10] is within 15 feet of the foundation pilings and adjacent to a large boulder that may need to be removed."

All surface features have been surveyed, and our piles are located free of boulders visible at the surface, including the large boulder that is referenced, which does not need to be removed. The more cobbly layer of alluvial terrace is expected to be 2-4ft deep for most of our piles, with monolithic decomposed granite well-suited to drilling beneath, per the test pits and analysis referenced in our geotechnical report. However, if large sub-surface boulders are encountered, a coring drill may be used temporarily to advance our modest 2' diameter piles beyond the obstruction, permitting the retention in place of the remainder of the boulder.



Illustration 1: Limited access drill rig, of the sort we will use for our project. The rig is designed to be configurable for passage through a front door, for retrofit applications. Boom height is separately configured for depth, and all of our piles are relatively shallow in this equipment's capabilities.

Conclusion:

After enumerating these misunderstandings, we would suggest that the valid, constructive criticism of our project that this hearing review process intends is likely to be more effective with engagement to understand our project, and with a minimum of speculation. Some of Ms. Latta's testimony is also discounted if we accept the very basic premise that a home will be built on this R1-zoned lot, and that this process is about ensuring that reasonable and sufficient mitigations are placed to do the best that is possible under the circumstances. Where Ms. Latta wishes to propose constructive suggestions, we will consider her feedback carefully. We are inclined to agree with her that cautious – and incremental – interrogation and removal of any fill that was claimed to have been deposited more than 10 years ago is appropriate, using non-destructive techniques such as an air spade to determine the appropriate extent, as roots may have infilled. On the advice of our arborist, and given that the claimed deposition of fill would have occurred at least ten years ago and is not therefore in a transient state of higher impact, we would do this only after construction is complete, to avoid rendering the roots more vulnerable to construction impacts in the interim.

Discrepancies in Some Quantified Impact Assessments:

Oak #1:

Ms. Latta assesses 35% compaction in PZ, 6-8% driveway and 5% root zone, summing these figures to create a total estimate of 46% root zone impacts. First, as we show in Attachment 15 at 5-6, only 21% of the protected zone of oak tree #1, as documented in our oak tree report, is coincident with our lot. Our LIDAR scans show good agreement with this. Ms. Latta has inflated this figure to 35%, which is too large to account for minor differences in canopy measurement. Second, she has inappropriately summed figures that overlap. The driveway is in the same area that will see temporary (remediable) compaction impacts from staging. Digging the lateral with an air spade would largely eliminate the impacts to the remaining few percent of encroachment, also in the same area as temporary compaction. It seems difficult to us to understand how an assessment of 46% root zone impacts might be considered plausible when 21% of the protected zone intersects with our lot.

Ms. Latta also provided an estimate for oak tree #1 of $103,000, without showing any work for this estimate. Other arborists working in the Los Angeles area in the recent past and even using the same technical references for valuation have derived far lower estimates of the Basic Tree Cost, even for heritage trees with DBH as high as 55in.

We note that the Trunk Formula Method values a tree as Basic Tree Cost x Species Rating % x Condition Rating % x Location Rating % (see Attachment 14 citation GG). Basic Tree Cost is defined as Replacement Tree Cost + (Base Price x Adjusted Trunk Area, or ATA). Four independent arborists operating on projects in Los Angeles county within the recent past have determined a Replacement Tree Cost for Q. Agrifolia of $600 to $1600 and a Base Price of $54.32/in^2 to $67/in^2 for our region (Attachments 23, 34-36), including one who submitted such an oak tree report to the City of Agoura Hills during the time Ms. Latta was sub-contracted to assist in their review (Attachment 23). The arborist referenced in Attachment 36

cites the same reference and year as Ms. Latta – the International Society of Arboriculture, Council Of Tree & Landscape Appraisers (CTLA) Guide To Plant Appraisal, 9th Edition, 2000. That arborist also attributed the same document as Ms. Latta for purpose of valuation - “The Species Classification and Group Assignment 2004, a regional supplement to the CTLA published by the Western Chapter of the ISA” - using a figure $67/in^2 for Quercus Agrifolia. This arborist also surveyed oak trees that exceeded heritage size designation, assigning a Base Tree Cost of $118,189.75 to oak tree #25B, of diameter 55.5in, nearly three times the trunk area of our project's oak tree #1.

Using the most conservative of these independent arborist figures, this would result in a Basic Tree Cost for oak tree #1 of ($1600 + ($67/in^2 * pi *((33in/2)^2))) = $58,905, based on the measurement of 33”DBH documented in our oak tree report. Using the formula above, this should be the maximum estimate for the value of a tree, as % ratings can at most be equal to 1. Using a figure of 33.7in for the DBH, the figure would only increase to $61,361.

We measured the DBH of this tree in two ways.

The first method uses forestry LIDAR post-processing software (see Attachment 14 citation YY) to compute the DBH using a randomized Hough transformation, a curve fitting algorithm. Based on the varying height of the boundary of the trunk in the mesh, the proper height at which to measure DBH is also approximated using default parameters. The second approach was to mesh the trunk of the tree and slice it right where a tag exists on its north side. The area is then computed.

Using the software, a DBH of 85.6cm = 33.7in was obtained. This compares well to the 33in documented in our oak tree report, and confirms that this tree is below the threshold for heritage size of 36in.

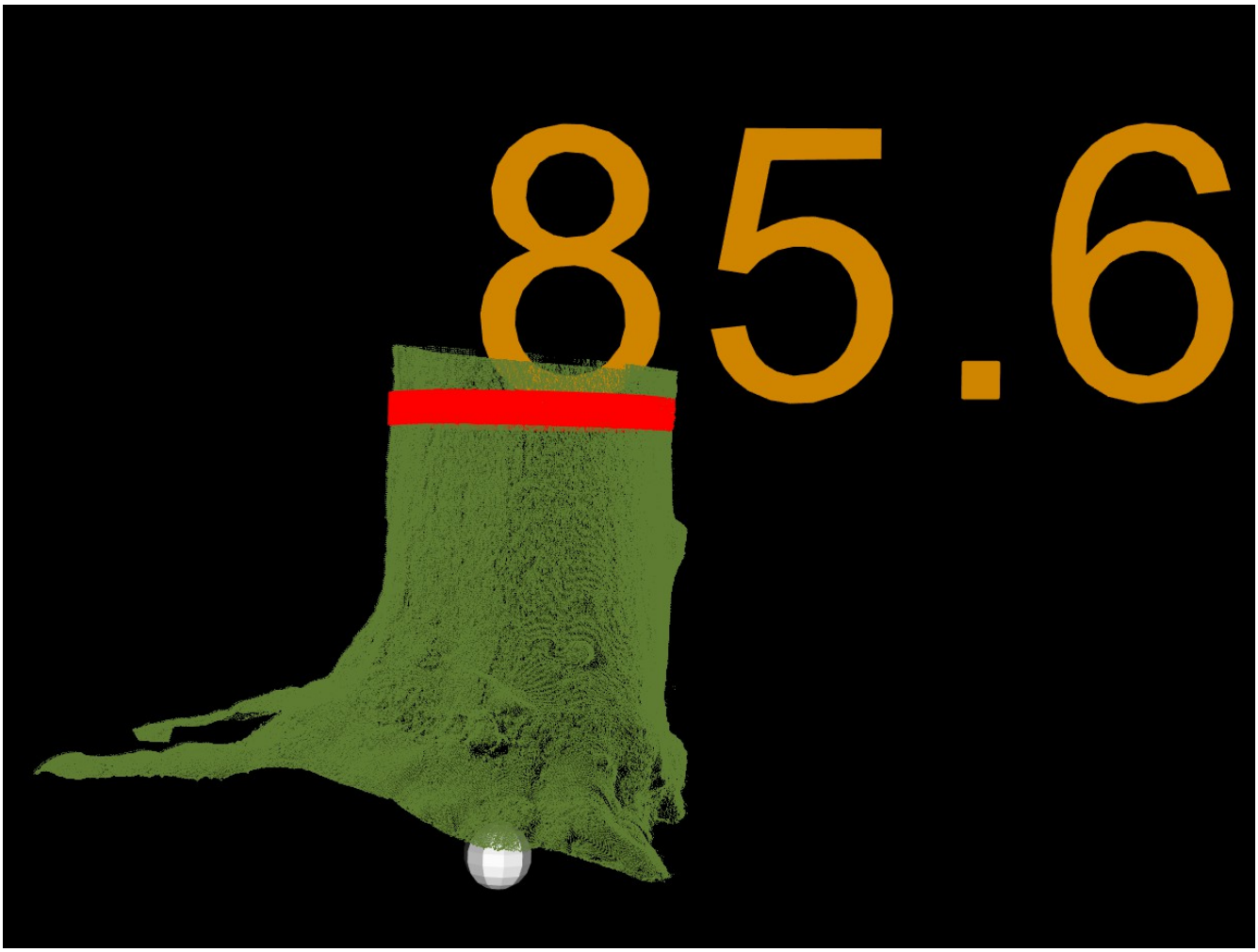


Illustration 2: Diameter at breast height for tree #1, using forestry LIDAR post-processing tool

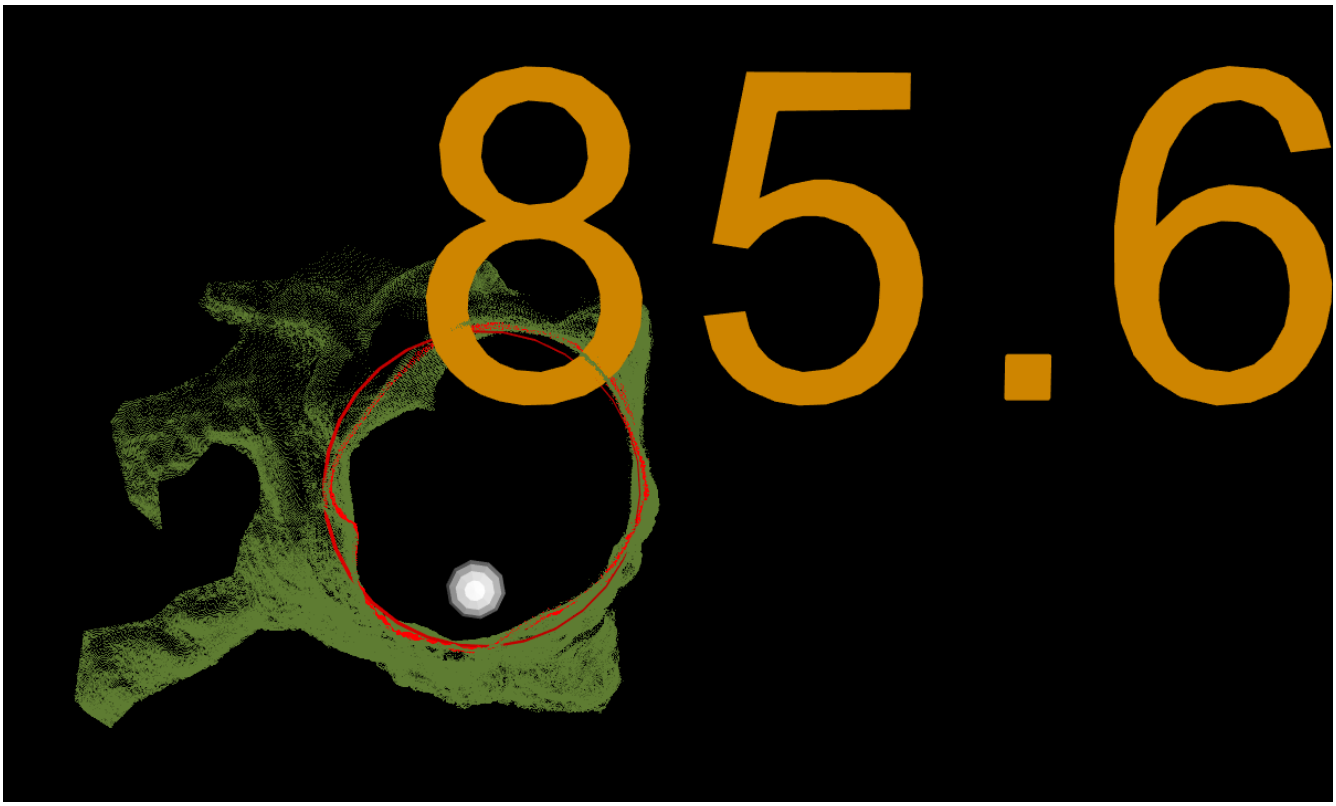


Illustration 3: Overhead view of oak #1



Illustration 4: Close up view of oak #1

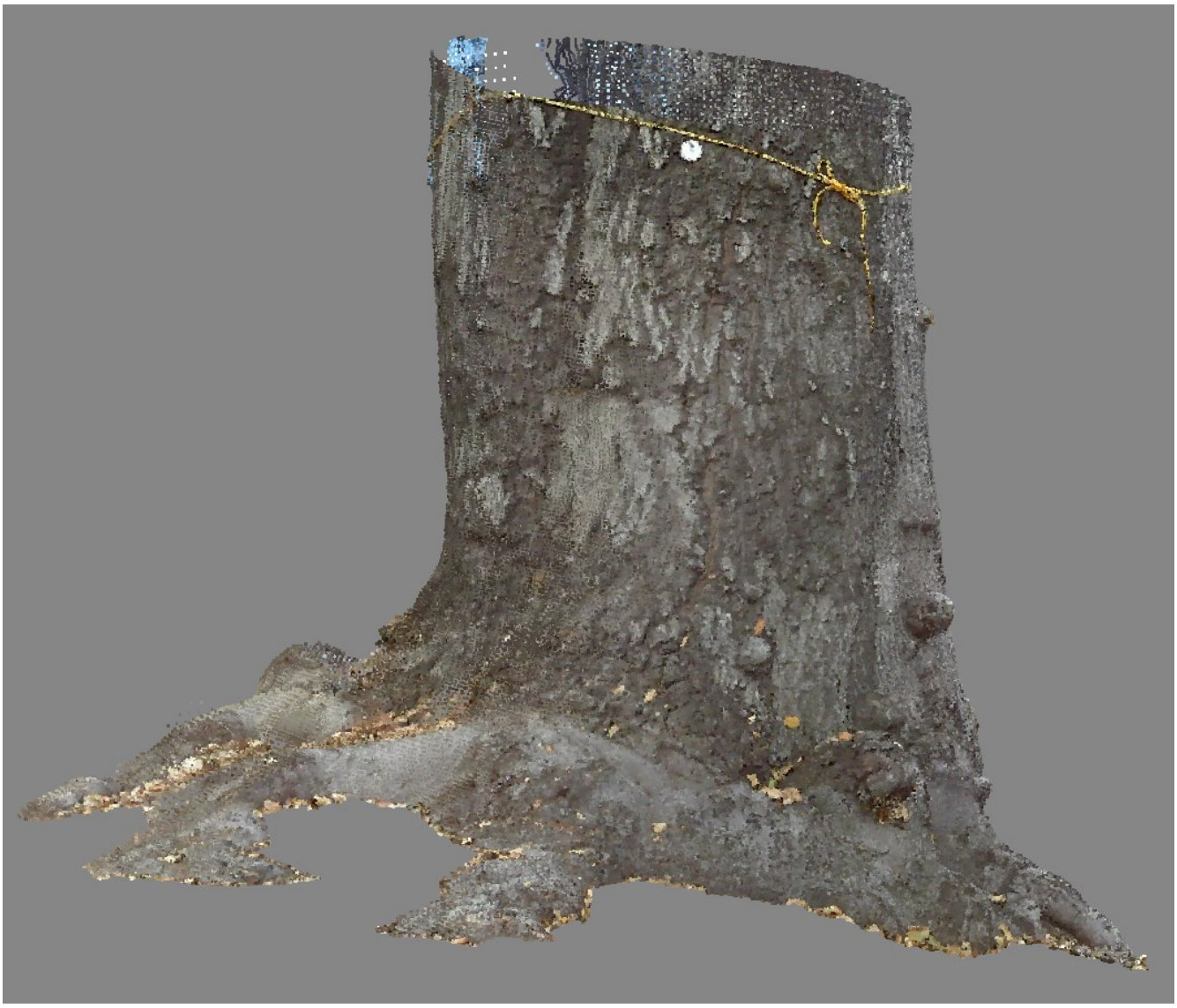


Illustration 5: Oak #1, from north, showing tag placed at DBH.

Using the mesh approach, the area was determined to be 0.5636m^2=6.067ft^2, which corresponds to a DBH of 2(sqrt(6.067/pi))=2.779ft=33.4in, again agreeing very closely with our arborist's report and with the forestry LIDAR post-processing methods.

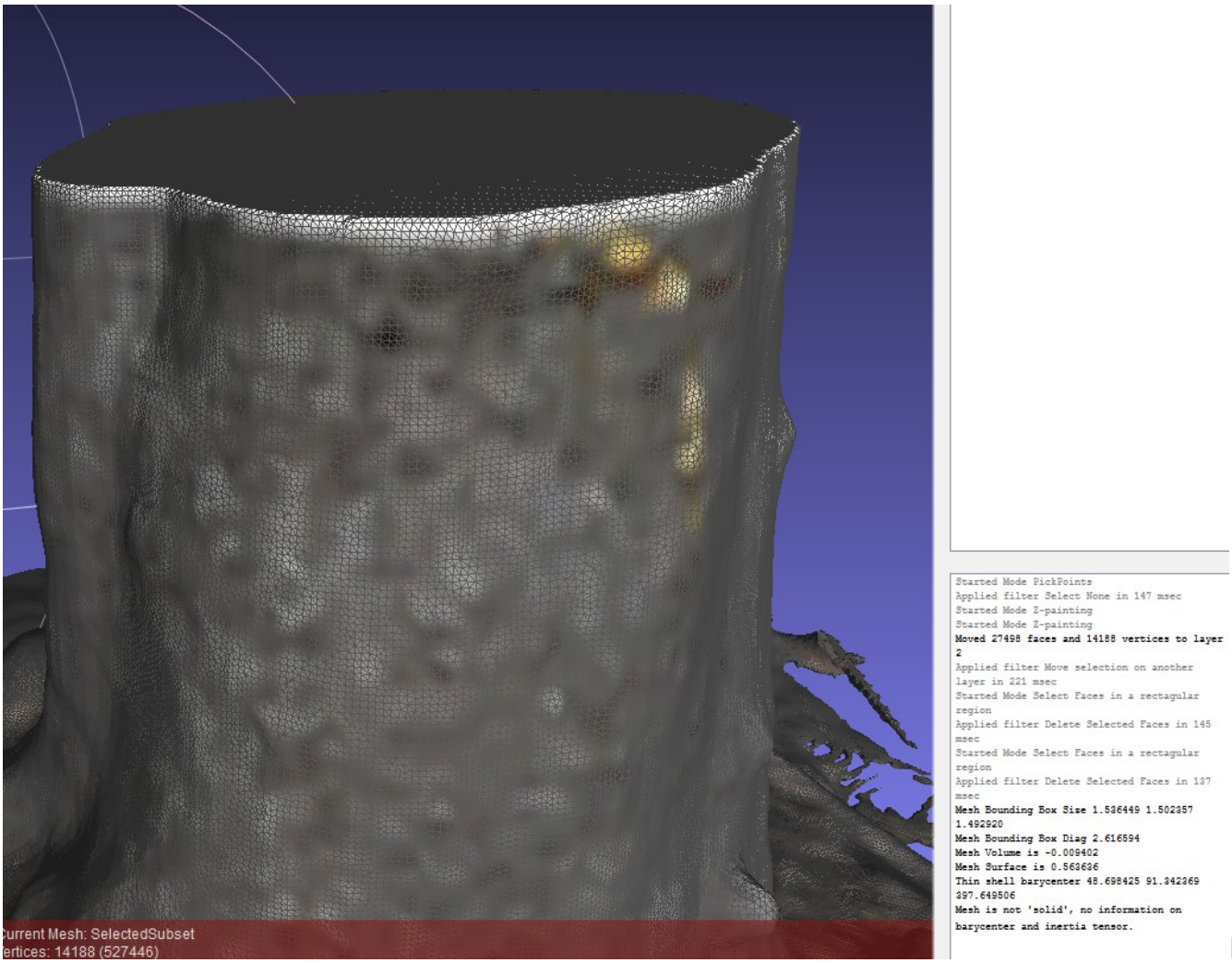


Illustration 6: Oak #1, sliced at location of tag on north of tree.

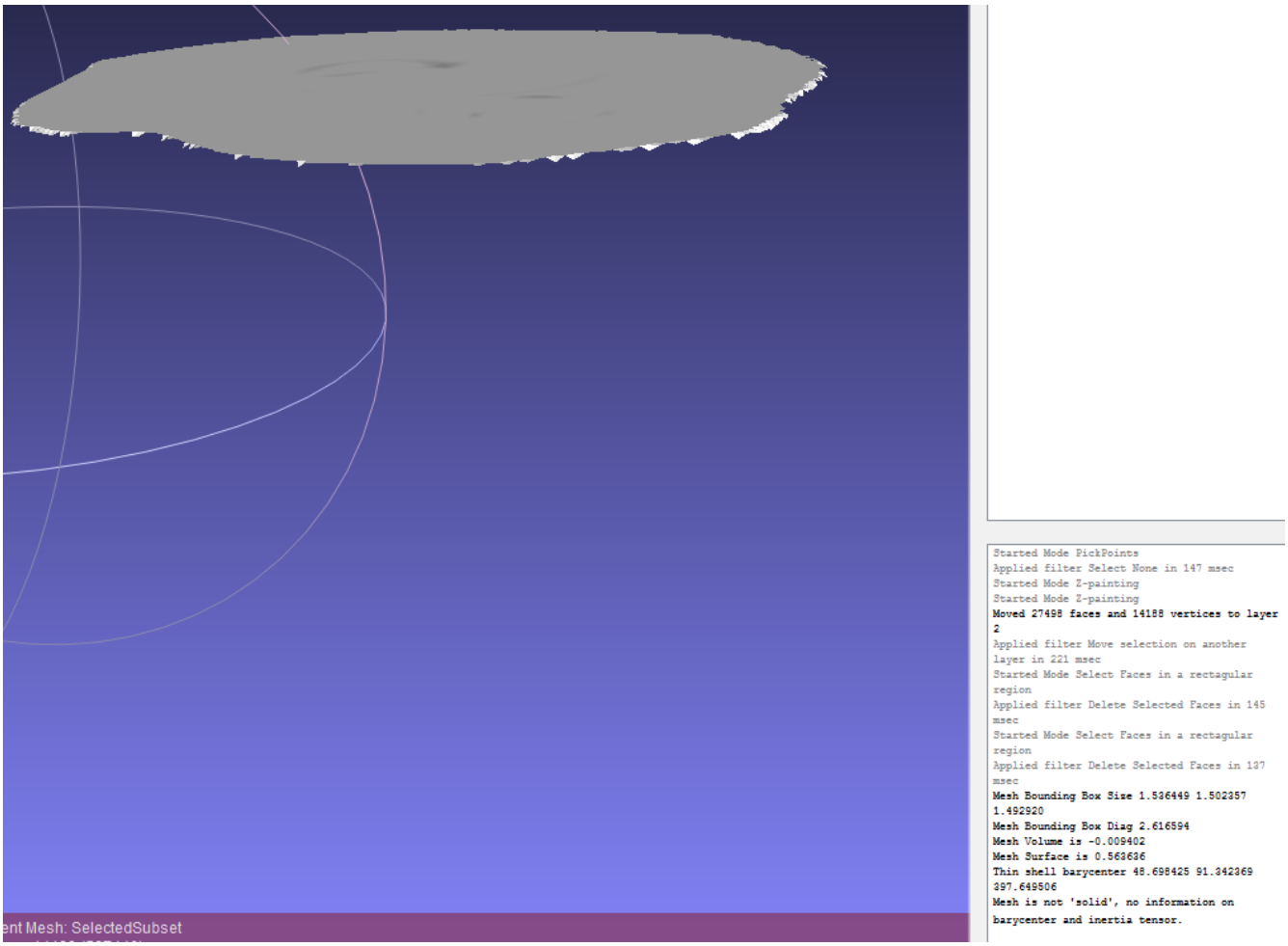


Illustration 7: Sliced area of oak tree #1, measured with a surface area of ~0.5636^2.

Oaks #2 and #3 are impacted only to an extent that is sustainable by inspection, and we won't pause to assess Ms. Latta's impacts.

Oak #4:

Ms. Latta assesses 25% root zone encroachment from the retaining wall, 35% root zone encroachment from our driveway, and 5% from the sewer line, summing these figures to arrive at 65% cumulative impacts. First, 25% is high for our retaining wall. With 10” of over-excavation for blind-side formwork, we arrive at a figure of 19%. Second, a figure of 35% for the driveway is implausibly excessive. Our model arrives at a figure of 24%, roughly consistent with our arborist's estimate of 20%, with the permeable gravel driveway placed beyond the root collar at 3x the DBH. This is an area that has been used for parking by a 5,000+lb truck, and so assessing this as a marginal impact is improper. Third, Ms. Latta again double counts impacts from the sewer line, when these exist in the same area as the driveway. She arrives at an unqualified figure of 65%, when less than 20% of this is marginal impact, and less than 45% is impact of any kind.

Ms. Latta also incorrectly attributes excavation for “steps” around the house. Our site plan portrays a typical shorthand annotation for a footpath, and then attributes this as being decomposed granite. The fire department requires free access around the house but does not specify excavation of steps in the ~1:2 slope, used only in case of emergency.

Ms. Latta is incorrect that our arborist's pictures correspond to 45% canopy removal. Our LIDAR scans support an estimate of 30-35% canopy removal. These may be judged objectively.

Oak #5:

Ms. Latta assesses 35% root removal and claims “retaining wall within 4 feet of trunk to a depth of 8 feet.” However, she has misunderstood the volume of our home. The retaining wall depth trails to nearly nothing at this minimum encroachment distance. We hope to be able to preserve roots extending out radially from the tree at this location, or something close to it. Our model shows 14-28% (depending on extent of conservatism in root removal), with a reasonable estimate near 20%, based on the transition of the bottom of the grade beam above grade level at the SE corner of our home. This may be judged objectively.

Ms. Latta is incorrect that our arborist's pictures correspond to 50% canopy removal. Our LIDAR scans support an estimate of 35-40% canopy removal. These may be judged objectively.

Oak #7:

Ms. Latta assesses an unqualified “65% root” impacts. For oak tree #7, as we attribute in Attachment 15, it is important to distinguish the type of root zone encroachment. Oak tree #7 sees encroachment from root removal over part of the protected zone, and also from interception of rain by the shell of our home, though in a way that preserves gas/vapor exchange to our crawlspace, and that will not result in significant root severance, as the grade beams for the western portion of our home will be formed mostly above grade, to the extent possible. Our model supports ~19% root removal, and an additional 25% encroachment from the shell of our home. This may be judged objectively.

Ms. Latta is incorrect that our arborist's pictures correspond to 45-55% canopy removal. Our LIDAR scans support an estimate of 30-35% canopy removal. These may be judged objectively.

Attachment 8

Response to letter from Jared Ikeda, dated September 6, 2016

November 10, 2016

Purpose:

The purpose of this attachment is to factually address the misunderstandings and inaccuracies exhibited in Mr. Ikeda's submissions.

Key Issues:

1. Mr. Ikeda appears unfamiliar with the concept of “building segments” in stepped or terraced building designs, and with the separate assessment of height and stories above grade in each segment. See also Attachment 16 for a sampling of the code bodies, expert opinion, and California municipal codes that explain this, and which support the County of Los Angeles planning practice. Note as well that the County of Los Angeles explicitly encourages terraced or split-level designs in its Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8).
2. Mr. Ikeda has misunderstood the extent of building segment that the County has classified as a “cellar.”
3. Mr. Ikeda has misinterpreted our front yard setback and ignored the statements in Staff Analysis of the Hearing Officer Package for our April 5 Hearing Officer Hearing, in claiming that our front yard setback is ~22'5”, less than the 23'1” he claims is the average of all homes along the street. 22'5” was what we calculated the *minimum* front yard setback to be using Department of Regional Planning GIS tools and building outlines. Our planner notes an approximate actual setback from the road of 23 feet in Staff Analysis. A precise measurement yields a setback of 23'1.4”.
4. Mr. Ikeda has submitted inaccurate and misleading models attempting to portray our project. Not only was his model of our home itself substantially inconsistent with the plans reviewed at our Regional Planning Commission hearing on September 7, but the terrain model was flattened using under-resolved, orbitally-derived imagery that is completely inappropriate for this scale, especially when Google Earth has aerial photogrammetry-derived models with much higher fidelity (which we portray in Attachment 10). For some reason, he excluded any portrayal of the buildings in the immediate vicinity, including those directly across the street which extend to higher average and maximum elevations above street grade, at similar setbacks from the road. For some reason, he also chose to render our home in magenta, despite the portrayal in our renderings of earth tones for cladding.

Tuesday, September 06, 2016

Kristina Kulczycki
LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING (DRP)
320 West Temple Street
Los Angeles, California 90012

Em: kkulczycki@planning.lacounty.gov
RE: Comment Letter Regarding Project No. R2014 –02411-(5), ROAK – Kuhn Residence 3577 Canyon Crest Road.

Dear Ms. Kulczycki,

I'm writing this in behalf of the Canyon Crest Conservancy. I'm a retired landscape architect/planner retained to review this project. I have over 40 years of professional experience in planning of specific plans, general plans, and environmental impact reports and statements. My past experience has involved detailed planning and study of hillside development projects, environmental studies in Los Angeles, Ventura, Orange and San Bernardino counties as well as elsewhere in the state.

For clarity, we will note that Mr. Ikeda is not claiming to be a licensed architect, ever registered with the California Architects Board (http://www.cab.ca.gov/). A "landscape architect" is licensed under the Landscape Architects Technical Committee. Presumably Mr. Ikeda's name is not found among the current licensee listing (http://www.latc.ca.gov/consumers/licensee_name.pdf) due to his retired status. The requirements and technical knowledge base for a landscape architect are very different from those of an architect.

Also for clarity, neither is the partner of the president of Canyon Crest Conservancy - who described herself to our planner as an "architect" and submitted testimony relating to our project - licensed as an architect with the California Architects Board. Our architect is of course licensed (http://www2.dca.ca.gov/pls/wllpub/WLLQRYNA$LCEV2.QueryView?P_LICENSE_NUMBER=35346&P_LTE_ID=1010). We note that penalties for portraying oneself as an architect without licensure are described in the following document: http://www.cab.ca.gov/docs/misc/unlicensed_practice_penalty.pdf.

The proposed residence is subject to the Altadena Community Standards under Title 22 of the Los Angeles County Planning and Zoning Code. The project, since it is sited on a steep a hillside, is further subject to the hillside management provisions. These development standards apply to projects taking place on steep-sloping parcels in the Altadena Community Standards District. The Altadena Community Standards are intended "… to ensure additional oversight on parcels where new development might pose risks to public safety and negatively impact the visual environmental character of the community of Altadena, and to ensure that new and expanded structures are compatible in size and scale with the characteristics of surrounding residential neighborhoods, protecting the light, air, and privacy of existing single-family residences from negative impacts."

The proposed residential project purports to meet all conditions by claiming that a portion of the main living area story (1159 sq.ft. total) is a cellar and therefore two additional stories (a garage and a 263 sq.ft. loft) above the main floor story can be allowed. In

addition, this project includes a lower level floor for a 277 sq.ft. office below the main living area story. A review of the architectural drawings (see figure below) show a total of 4 stories with windows along all exterior walls.

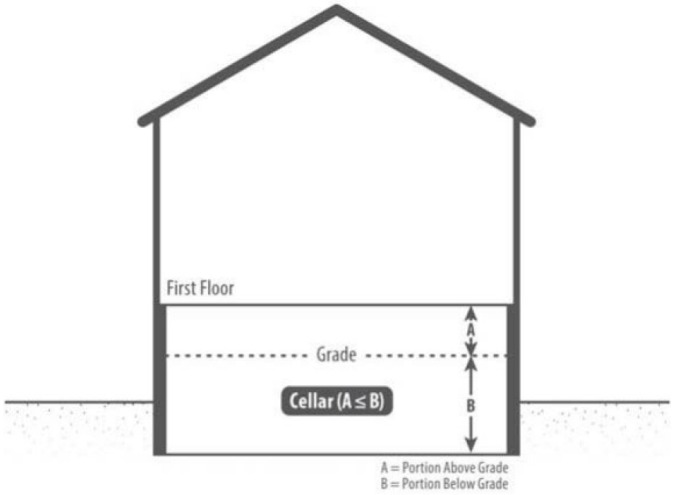
This interpretation of a cellar and inclusion of 4 stories is a circumvention of the code and violates the goals and intents of code and Los Angeles County and Altadena hillside management plans. If this project is permitted, it sets a precedent that would enable a clever means of enabling large scale cascading residential developments within unincorporated hillsides of the county.

This is a very fundamental misunderstanding. The mechanisms by which the size of a building is constrained on a flat lot is by limiting the number of stories above grade, setback from property lines, and lot coverage (floor area ratio). *These are the same mechanisms used to constrain the size of a building on a sloped lot.* While some jurisdictions further constrain the change in absolute elevation between the lowest and highest parts of a building, the County of Los Angeles does not. Nearly all of the volume of our home above grade is contained in a 45-ft range of elevations. Those portions that remain are shrouded in oak tree canopy or occluded more than 20ft below street grade.

If the code were to arbitrarily limit a building to a number of levels instead of a number of stories above grade, as slope increased, the available size would discriminatorily decrease, the visual impacts would increase (e.g. large pony walls, taller obstructing volumes) and the perverse incentive to excavate more (with its own concomitant environmental impacts) to create usable area previously below grade would increase. This is why the County of Los Angeles, the city of Los Angeles and the International Building Code all express regulations in terms of “stories above grade,” with the county of Los Angeles explicitly encouraging stepped levels in its Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8).

The proposed project is placed on a steep twisting slope within an R1 Zone. The zoning code states: “the maximum number of stories above grade shall be two. A “basement” as defined in Section 22.08.020, shall be considered a story above grade, while a “cellar” as defined in Section 22.08.030, shall not be considered a story above grade . . .“Cellar’’ is that portion of a building between floor and ceiling which is wholly or partly below grade (as defined in Section 22.08.070) and so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling.

The following illustration is from Title 22 the LA County Planning and Zoning code (Chapter 22.14 Definitions - FIGURE 22.14-B: CELLAR) and clearly illustrates a cellar as being largely below grade:



Indeed, the portion of the main level that is in the same building segment as the loft is mostly below grade, more below grade than above in fact, which is the Los Angeles County definition for a cellar. Note that the definition of “portion” according to Merriam-Webster is “a part of a larger amount, area, etc.” A part of some area must itself possess some area. A point in a building footprint has no area. It follows that the relationship must be assessed by aggregating the area of the entire portion under consideration, which is the building segment. This is also consistent with International Building Code practice (see Attachment 16 at 6)

It is possible Mr. Ikeda's misunderstandings stem in part from grafting connotations onto the terms “cellar” and “basement.” These are essentially loan words approximating a definition of volumetric relationships to grade, for building segments – or portions – of a building. The county definition of “cellar” means that more of the volume of a single level in a building segment is below the ground than above. The county definition of “basement” means that some part of the volume of a single level in a building segment is below the ground, but more is above the ground than below. A basement qualifies as a story above grade, while a cellar does not. This is an eminently reasonable threshold to apply, and more conservative than the comparatively arbitrary threshold used by the International Building Code (see Attachment 16 at 4), as a point of reference, which explicitly acknowledges potential variability in the grade by clarifying that the floor above a story below grade can nowhere be more than 12' above grade at any point in its area. In other words, according the International Building Code, if we assume the floor spacing in a story is 10', the floor level of a story *below* grade may *at some point* be as much as 2' *above* grade, provided it is below grade over a sufficiently large area and to a sufficient extent elsewhere in the footprint.

Mr. Ikeda has excerpted a figure that is not terraced. The International Building Code has a very similar model indicating the threshold for a “basement” (which is

the terminology in the IBC that indicates that a story is below grade, as a cellar is). However, in a segmented building, each building segment is considered separately.

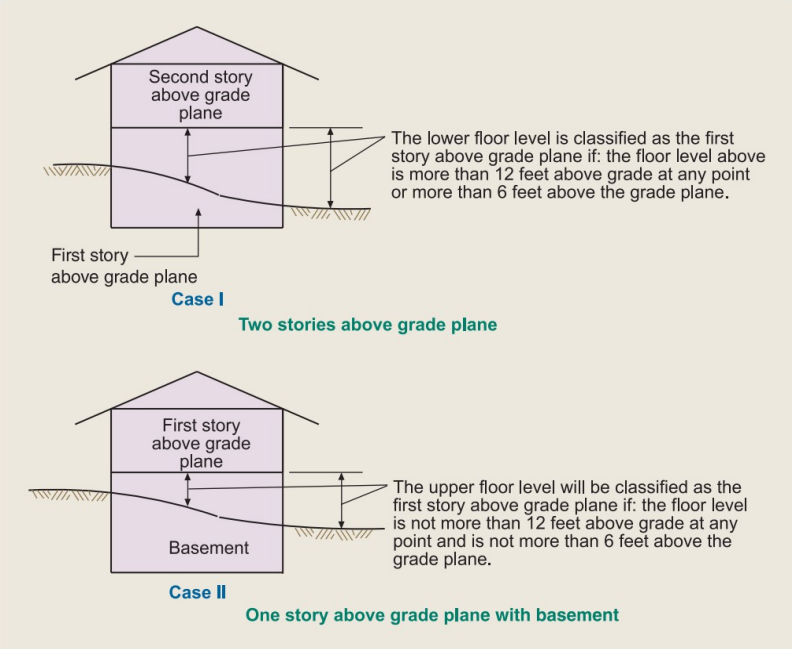


Figure 202-21
Multistory building.

Illustration 1: From the IBC Handbook, 2012, non-terraced story above grade determination.

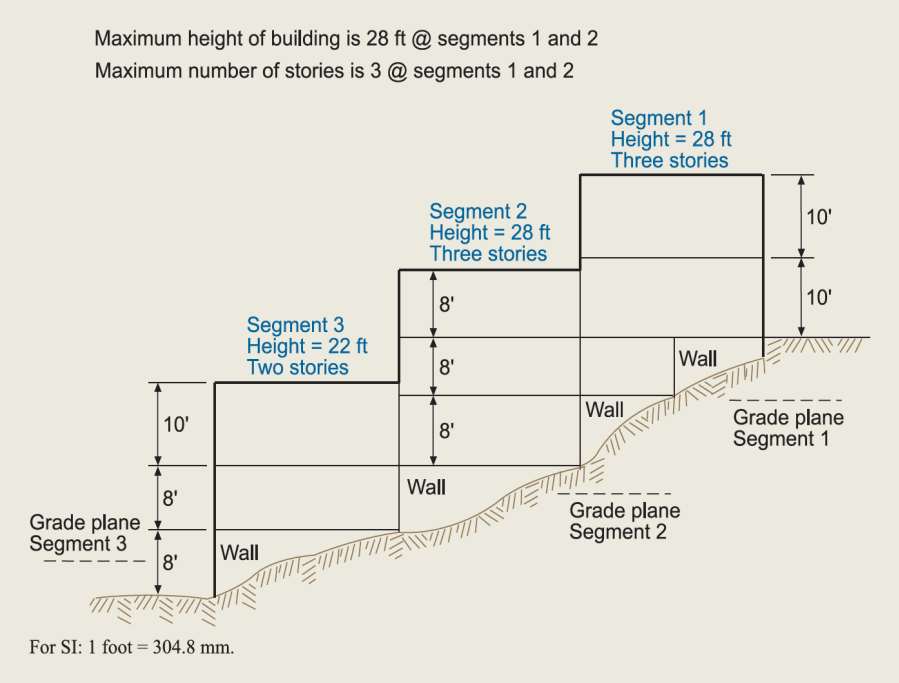


Figure 202-15
Terraced building.

Illustration 2: From the IBC Handbook, 2012, terraced building segments are evaluated separately for each segment.

We also show our home in this simplified sense:

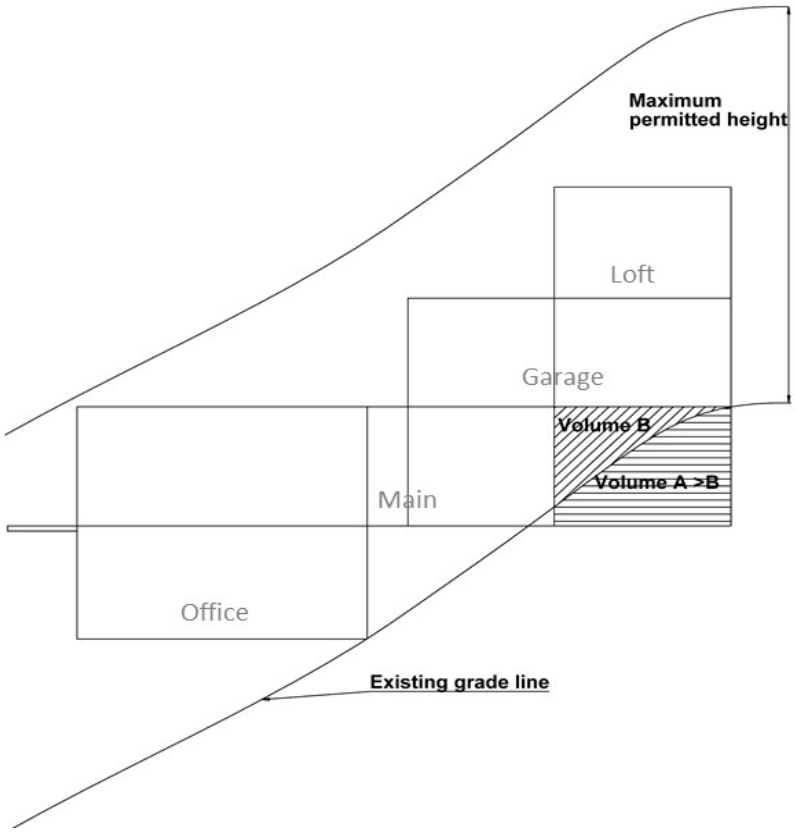


Illustration 3: Analogous representation of 3577 Canyon Crest

One of the authors of the International Building Code Handbook was kind enough to clarify that he believed assessing each building segment separately for height and number of stories above grade was a time-honored approach, in large part owing to the practical consideration that egress/fire access requirements that are distinguishable for basements, first and second stories above grade need to stay referenced to the grade.

A point of clarification is also required. The figure Mr. Ikeda cited is not from the Title 22 in effect when our project was submitted. It is from a draft "Technical Update of Title 22," described here: http://planning.lacounty.gov/tu. According to that page, the Technical Update is awaiting the final approval of the Board of Supervisors, as of November, 2016. The version of Title 22 currently in effect is incorporated by citation (see Attachment 14, citation P). The Technical Update is also incorporated (see Attachment 14, citation R), as it clarifies a point that Mr. Tsai and others have misunderstood – that height is derived using the "plumb-line" distance from the highest point of the building continuously over the footprint, measured straight down to the grade. This is the most accurate and

least approximative approach there is to measure height. Some jurisdictions accept approximations based on prescriptive methods only so that a full topographical survey is not required.

Also, from the County Planning and Zoning Code (Chapter 22.14 Definitions): "Habitable room means any room meeting the requirements of this Division 1 for sleeping, living, cooking or eating purposes, excluding such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces." (Chapter 22.110.060 - Height Limits) "Cellar floor space, parking floor space with necessary interior ramps and driveways thereto, or space within a roof structure or penthouse for the housing of building operative equipment or machinery shall not be considered in determining the total floor area within a building)."

It is clear from the code that a cellar is largely below grade and not considered a habitable room and should not be part of the total habitable floor area of the residence. Yet, the proposed residence interprets a portion of the main living floor as a cellar where two bedrooms with windows are planned. (see below isometric views from architectural drawings of the proposed residence). The main living floor opens out to a balcony overlooking the canyon. The main living floor extends back into the hillside where two bedrooms, bathrooms and storage are planned. It is difficult to consider this area to be a cellar.

Two misunderstandings are exhibited here. First, Mr. Ikeda has misunderstood the extent of our main level that is classified as a "cellar" - that in the same building segment as the loft. This portion is composed primarily of our master and guest bathroom ("bath or toilet rooms"), as well as closet and hall ("connecting corridor") space (see Floor Plans dated 11/2/16). However, this is irrelevant. A "habitable room" is distinguished from other spaces in a home due to egress, size and ventilation requirements.

Second, Mr. Ikeda appears to state that only habitable rooms should be counted in the total square footage of a residence. However, this is a very fundamental misunderstanding. This method of computing square footage results in what the International Building Code defines as the "floor area, net: The actual occupied area not including unoccupied accessory areas such as corridors, stairways, ramps, toilet rooms, mechanical rooms and closets." (International Building Code 2015, Chapter 2 definitions, see Attachment 14, citation OO).

We note that net or gross floor/structural area are not explicitly defined in the current County Code §22.08 definitions in effect for our project. In the absence of any clarification, we may resort to the International Building Code for reference.

The "floor area, gross" is defined by the International Building Code as: "The floor area within the inside perimeter of the exterior walls of the building under

consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts" (Ibid.). Note that basements, cellars, or any portion of a home entirely below grade is "within the inside perimeter of the exterior walls of the building."

When no modifier is present (i.e. the definition of "area, building"), the definition is identical to gross floor area: "The area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above" (Ibid.).

The county of Los Angeles clearly states that gross floor area should be used, as is used by the county assessor and in the marketing of any home. County Code § 22.56.2660 states that "In granting a housing permit, the director or commission shall prescribe the height limit, stories, yards, maximum lot coverage, *gross structural area*, parking, and other development standards for the use approved" (emphasis added). Staff Analysis (page 6 of 9) also references the applicable floor area requirements in terms of "gross structural area" and notes that our gross structural area is 1,699sqft (including the loft space).

It should be noted that the square footage of the cellar in the building segment containing the loft is only 263sqft (i.e. identical to that of our loft). Therefore, even if the cellar area were not to be counted toward the square footage of our home, the gross structural area would be either 1,436sqft or 1,173sqft, depending on whether the garage loft (which shares ventilation with the garage) was counted. Either figure still easily meets the county's minimum square footage requirement of 800sqft.

It should be noted that the Technical Update to Title 22 (see Attachment 14, citation R), not yet in effect, provides the following definition:

"Gross Floor Area. Gross floor area shall be the total gross area of all floors of a building expressed in square feet.
a. Included in Gross Floor Area. Gross floor area shall be the total building area, measured from the exterior of the building walls, of all floors of a building expressed in square feet.
b. Excluded from Gross Floor Area. Gross floor area shall exclude:
i. Parking structures, garages, carports, or other areas designated for parking and loading, or vehicular access to parking and loading spaces, as these

structures shall be counted separately.
ii. Unenclosed exterior balconies, decks, porches, courts, and stairs.
iii. Buildings or structures for housing building operating equipment or machinery.
iv. Cellars.
v. Attics, if not a habitable room as defined by Title 26 (Building Code) of the County Code."

This is more liberal (permissive of larger development sizes) than the International Building Code definition, in excepting cellars from gross floor area. As we note above, whether the cellar is included or not is irrelevant, as our project meets the minimum square footage requirements in either case. The current Title 22 in effect for our project is not incompatible with inclusion of a cellar area in the gross structural area of the home.

Within Zones R-A, R-1, R-2, and R-3, the codes states the maximum height of "Every residence and every other building and structure shall not exceed a height of 35 feet above grade." Although the proposed project stands approximately 32 feet above grade at its highest point, when viewed in total from its lowest point to its highest point the proposed building is approximately 63 feet tall.

Mr. Ikeda has inappropriately used the adjective "tall," which is a referent of height. Height is measured vertically, using the "plumb-line" distance from the highest point of the building continuously over the footprint, measured straight down to the grade. While some jurisdictions further constrain the change in absolute elevation between the lowest and highest parts of a building, the County of Los Angeles does not. Nearly all of the volume of our home above grade is contained in a 45-ft range of elevations. Those portions that remain are shrouded in oak tree canopy or occluded more than 20ft below street grade.

The planning and zoning code and the Altadena Community Standards (Title 22.44.127 – Altadena Community Standards District.) were not intended to permit developments to cut into the hillsides creating habitable "cellars" so that cascading residential stories could be built. The height and story limitations and goals were intended to ensure that new and expanded structures were compatible in size and scale with the characteristics of the surrounding residential neighborhoods.

Mr. Ikeda is speculating as to intent. When speaking of building profiles, a synonym for "cascading" is "terraced." We would refer Mr. Ikeda to Los Angeles County Hillside Management Area Ordinance (County Code §22.56.217), Design Guideline Appendix VI.4.2, which explicitly supports and encourages terraced levels: "Utilize terraced (split-level) or "cantilevered" building designs wherever feasible on 25% or greater slopes." (Attachment 14 citation S at 8). The extent of "terracing" is extremely limited if only two levels may be present. We do not believe this is the assumption or intention of this design guideline.

Terraced design is a common encouragement in hillside areas. If the code were to arbitrarily limit a building to a number of levels instead of a number of stories above grade, as slope increased, the available size would discriminatorily decrease, the visual impacts would increase (e.g. large pony walls, greater angular occlusion from taller volumes nearer the road) and the perverse incentive to excavate more (with its own concomitant environmental impacts) to create usable area previously below grade would increase. This is why the County of Los Angeles, the city of Los Angeles and the International Building Code all express their regulations in terms of "stories above grade."

The Altadena Community Standards also states within an R1 zone: "the front yard shall not be less than the average depth of all of the front yards on the same side of the street on the same block. A vacant lot or parcel shall not be included in the computation for this purpose." A recent survey prepared by Winn-Winn Surveying (see attached) shows that the average depth of structures on the west side of Canyon Crest Road is 23.1 feet. The architectural drawings of the applicant's proposed structure show a proposed setback of 22 feet 5 inches – 8.2 inches less than the average depth of the neighboring structures. An additional setback of 8.2 inches, although a small difference, may be beneficial in lessening expected damages to the root zone of the large existing oak trees along the front of the parcel from the proposed project. The existing oak trees establish a significant visual quality and character to the neighborhood reflective of natural hillsides of Altadena and beyond. These oak trees will require extensive pruning to enable construction of the proposed residence. Furthermore, earthmoving (15 cubic yards) and construction equipment will most likely damage the root zone of the oak and possibly lessen the life expectancy of these oaks.

Mr. Ikeda appears to have misunderstood our plans and ignored the statements in Staff Analysis (page 5 of 9), as was documented before our first hearing on April 5, regarding the front yard setback for our project. In that Staff Analysis, our planner stated: "The average front yard setback is 22.4 feet and the proposed front yard setback is 23 feet. Therefore, the project is complying with this development standard." In other words, 22.4 feet was what we calculated the average front yard setback to be, not what our actual setback was. 23 feet was an approximation, as we had never provided our front yard setback to the nearest inch, only stating in our communications that it exceeded requirements.

A precise measurement yields an actual setback of 23'1.4".

It should be noted that the method we used to calculate the 22.4 feet front yard setback employed the building and parcel boundary outlines available in the Department of Regional Planning's own GIS tools. This is an accepted and defensible method of measurement, as the precision and expense of a survey is not justified or typically employed. This determination is made at the sole discretion of the Department of Regional Planning.

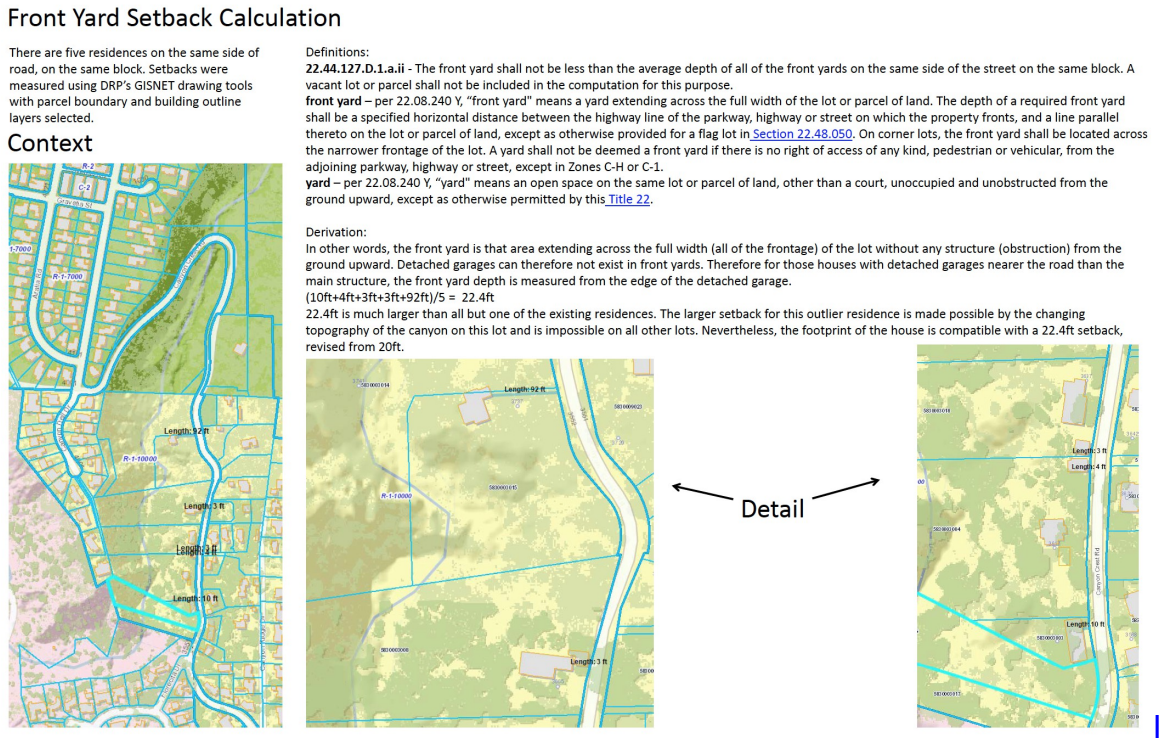


Illustration 4: Front yard setback calculation using DRP GIS tools

At the level of this difference of approximately one inch of resolution, there is also a question as to the native resolution of the surveying equipment and method of determination of wall projections. Measurements were provided with significant figures to 0.1feet, or 1.2inches, implying a precision that is significant with respect to this difference.

Mr. Ikeda also appears not to have read our oak tree permit requirements, which condition us to do all excavation by hand. We will not use any earth-moving equipment for our project. The threshold for a Conditional Use Permit in Altadena is 2,500 cubic yards, nearly 100 times higher than the amount of (balanced) excavation for our home, and far lower than the average hillside home.

As a topical example, the Stevenson Ranch development in a hillside area of Los Angeles county near Santa Clarita, recently approved by the Los Angeles County Regional Planning Commission in September 2016, entails 2,900,000 cubic yards of grading for 102 homes (Attachment 14, citation NN at 3). This is approximately 28,000 cubic yards per home, nearly 1,000 times greater than what we propose.

The visual screening that is provided and quality of these oaks significantly establish the visual character of the neighborhood. However, the "Environmental Checklist – Initial Study" for this project states that the project will have a less than significant impact to

scenic vistas and daytime or nighttime views in the area. This statement is questionable. The existing residential development on the opposite side of the canyon will have their views impacted by the extent and height of the proposed structure along with the removal of an oak tree, and pruning of others required to clear the structure. Over the long term, if the oaks have a shortened life, the views and visual quality of the neighborhood would be even further compromised.

This analysis is based on compliance with the quantified provisions in the Los Angeles County Code and the Altadena Community Standards, which specify this intention, and then go about defining the quantified thresholds that enforce this intent.

Mr. Ikeda is speculating as to a shortened life for the three trees nearest the street that provide a substantial amount of the screening and which are encroached only by our permeable gravel driveway, with no root or canopy removal.

The Altadena community has long been protective of the hillside environment and is reflected within policies and goals of:
• The early 1980 County General Plan and
• subsequent Altadena community plans in 1986,
• the Hillside Management section in 2010,
• the County's Oak Woodland Conservation Plan in 2010,
• the Altadena Community Visioning Process of 2012,
• The County Hillside Management Plan of 2015

All of these planning efforts, their policies and standards, reflect a concern of the Altadena community as well of the larger regional county hillside communities that development within hillside communities should be compatible in size and scale with the characteristics of surrounding residential neighborhoods and minimize the visual and environmental impacts in hillside management areas. This proposed project is significantly different in character from the surrounding residential neighborhood. The neighborhood community has reviewed the project plans and digital 3 dimensional Google Earth simulations that I have prepared and is overwhelmingly opposed to the size, scale, and visual impact of the proposed project.

Mr. Ikeda is admitting that his egregiously inaccurate renderings were used as propaganda to sway the opinion of some neighbors in the area. In speaking with several neighbors, we were told that persons in opposition to our project went door to door, and misinformation resulted in several instances. One neighbor indicated that they believed a "four-plex" apartment complex was being built. This may account for some of the signatories to the second petition to deny all development on our lot, including on pages 44-62 of the Regional Planning Commission Hearing Package.

Mr. Ikeda has not established that there is any unifying architectural style in the neighborhood. In Attachment 30, we attribute the architectural diversity in lower Canyon Crest, the Meadows and Altadena at large, which we enjoy and appreciate.

The planning commissioners may also view these simulations here. (Note: the magenta color used here are for illustrative purposes and do not represent the applicant's project surfaces or color).

Mr. Ikeda acknowledges that his coloration is not representative. He has not clarified how purposeful distortion of the coloration of our home – when he is purporting to use this as evidence of incompatibility – serves any purpose of illustration that is superior to a proper coloration.

Mr. Ikeda incorporated a terrain model derived from under-resolved, orbitally-derived imagery that is completely inappropriate for this scale, especially when Google Earth has aerial photogrammetry-derived models with much higher fidelity. For some reason, he excluded any portrayal of the buildings in the immediate vicinity, including those directly across the street which extend to higher average and maximum elevations above street grade, at similar setbacks from the road, as we attribute in Attachment 17 at 12-20.

Mr. Ikeda does not make a fair argument when he creates and submits building renderings that are grossly inconsistent with our plans as reviewed for our September 7 Regional Planning Commission hearing, when he uses deceptive coloration, and when he omits vegetation and even the volume of neighboring residences with which to derive a scale for compatibility. In fact, he makes a decidedly unfair argument. In Attachment 10, we contrast his images with more skillful renderings incorporating LIDAR scans and the aerial photogrammetry available in Google Earth.

"Expert opinion that is not directly relevant to the project's environmental impacts may be disregarded...See also Berkeley Hillside Preservation v City of Berkeley (2015) 60 C4th 1086, 1119 (categorical exemption case holding that expert opinion was insufficient because it was based on project opponent's assertions about design of project rather than project as actually approved)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41) In other words, a lead agency is not obligated to consider expert testimony when that testimony is based on assertions about the design, rather than the design as actually approved. Mr. Ikeda's modeling does not reflect our design as actually approved. He has portrayed a physical volume for our home that is substantially larger and differently proportioned than that reviewed at our September 7 hearing, the volume of which we've subsequently reduced even further. Furthermore, portraying it in a flattened, denuded landscape is clearly incompatible with an oak tree permit in which nine adjacent oak trees are to

remain. Furthermore, we can assume that the adjacent houses Mr. Ikeda has omitted will also remain in existence after our home is built. By inspection, Mr. Ikeda's renderings are inconsistent with these objective facts and need not be considered credible.

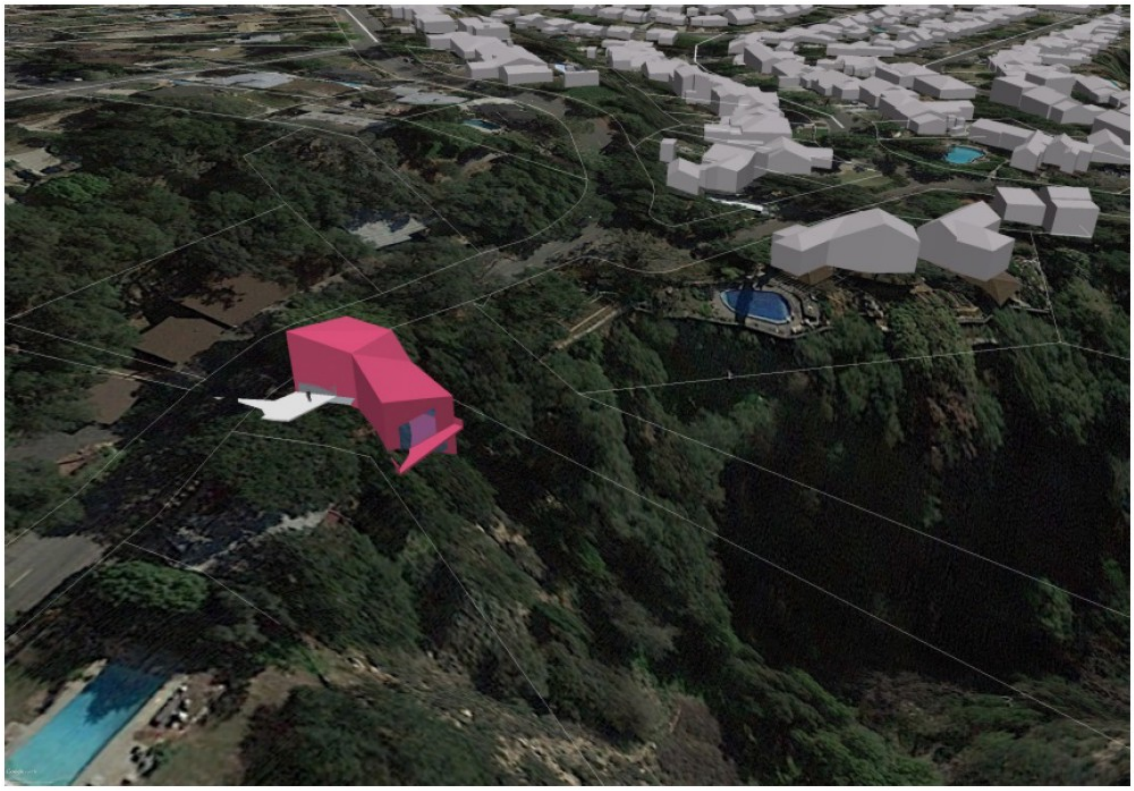


Google Earth - Southside view

Illustration 5: Ikeda rendering, with flattened homes to the east and north (but not to the west, in the background). The proportions of the building outline and windows are inaccurate, as we contrast with the following figures.



Illustration 6: Photogrammetry-derived model of site from same vantage, at a more appropriate resolution. This viewpoint is ill-suited for a comparison to adjacent homes because our home is entirely shrouded in tree canopy from our and adjacent lots. A much better comparison is made in Attachment 10. Note the distinctive three-story home with a large dome, two houses to the east of the subject property.



Google Earth – Northside view

Illustration 7: Ikeda rendering, with flattened homes to the east (but not to the south, in the background). The proportions of the building outline and windows are inaccurate, as we contrast with the following figures.



Illustration 8: The analogous view is still ill-suited, because oak tree #7 shrouds nearly the entirety of the home in canopy.

Some additional views of the canyon help to give a sense of its distinctive homes:


Canyon Ridge Dr
Canyon Crest Rd
Canyon Ridge Dr
Canyon Crest Rd
Canyon Crest Rd
Google


Canyon Ridge Dr
Canyon Crest Rd
Canyon Crest Rd


Canyon Ridge Dr
Canyon Ridge Dr
Canyon Ridge Dr



The project, as currently proposed, is not compatible with the characteristics and qualities of the surrounding residential neighborhoods. It ignores community values. This proposed project is a manipulation of the code and the environmental review process, and its resulting height and impact to the surrounding community are not compatible and should be denied.

An approval of this project establishes a precedent and has implications to hillside developments throughout the county allowing cellars to be crafted in ways to circumvent goals and code requirements and enable large cascading developments within hillsides.

Mr. Ikeda's summation reflects some of the same misunderstandings we have earlier referenced.

Respectfully,

Stephen and Vandana

Best regards,

Jared Ikeda

Attachment 9

Aggregation of opposing counsel misunderstandings and evidence contra-indicating a fair argument

November 10, 2016

Purpose:

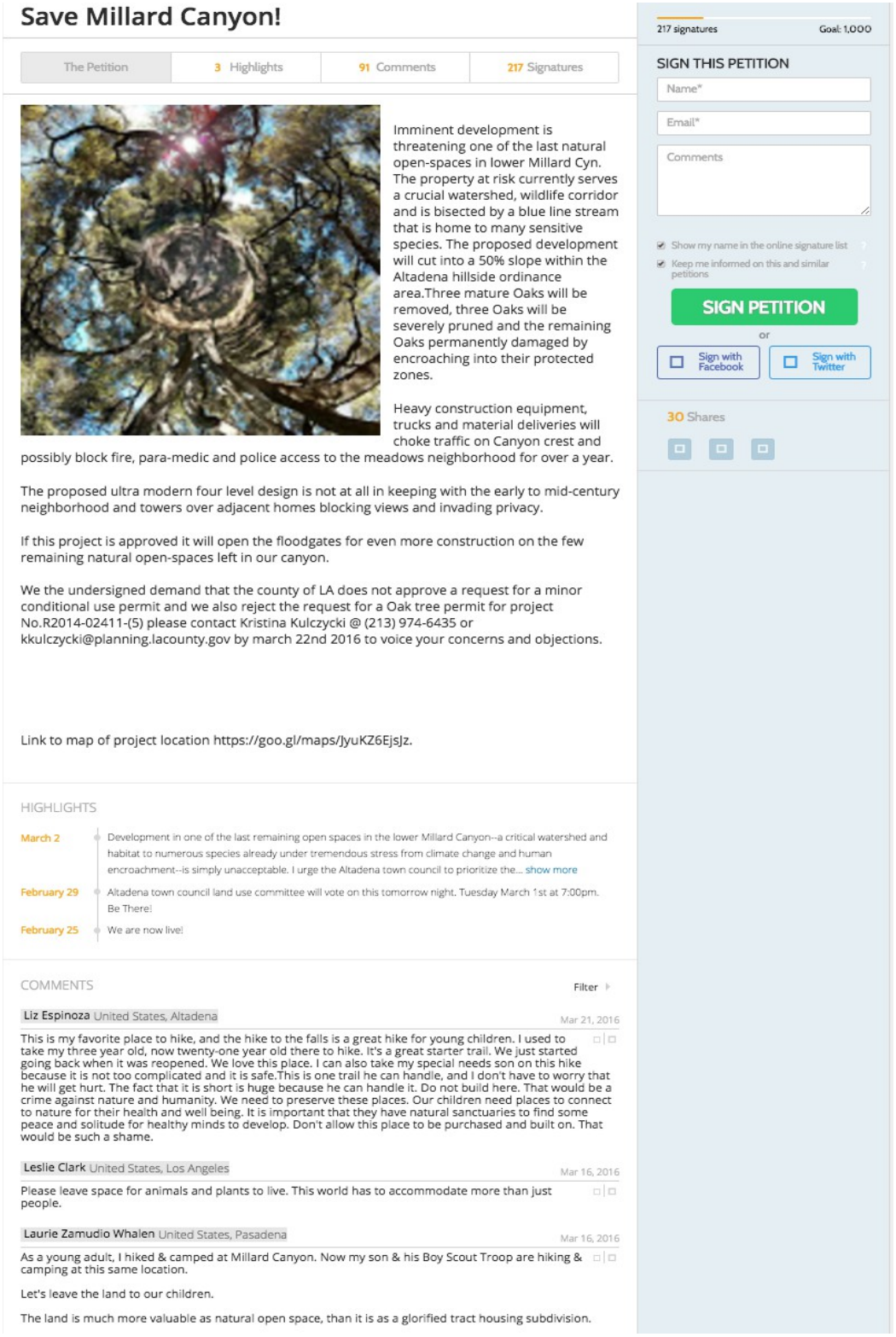
The purpose of this attachment is to aggregate the less nuanced of the misunderstandings exhibited by opposing counsel, and to attribute some of the objectively identifiable instances in which he and his clients have not made fair arguments. While other distorting arguments and misunderstandings are attributed elsewhere in the administrative record, we include those below that are most readily apparent.

Key Issues:

1. Mr. Tsai submitted a set of signatories to an online ipetitions.com petition at our April 5 Hearing Officer Hearing. He did not submit the corresponding content of the petition i.e. what these people were signing. The owner of that petition did not provide any distinguishing information about our project (such as location), instead populating it with brief and incorrect speculation. Some signatories believed we were building near Millard Campground, which is nearly a three-mile drive away. Mr. Tsai submitted a petition for which unflattering comments were deleted. The petition was then deleted from the website. It is not characteristic of a fair argument to "curate" the content of a petition by deleting those entries that highlight the deficiencies of the petition, and omitting the content of the petition itself.
2. Mr. Tsai and others appear unfamiliar with the concept of "building segments" in stepped or terraced building designs, and with the separate assessment of height and stories above grade in each segment, leading to inaccurate claims. See also Attachment 16 for a sampling of the code bodies, expert opinion and other California municipal codes that explain this, and which support the County of Los Angeles planning practice. Note as well that the County of Los Angeles explicitly encourages terraced or split-level designs in its Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8).
3. Mr. Tsai and others have misunderstood the extent of building segments that the County has classified as a "cellar." Despite explicit dimensions in supporting materials, they also appear to have misunderstood the extent of the home that is below grade. These errors have cascaded to other claims that our project "does not meet the County's minimum habitable space requirements," an interesting assertion for a group seeking to further reduce the already modest size of our project.
4. Mr. Tsai and others have misinterpreted our front yard setback and ignored the statements in Staff Analysis, in claiming that our front yard setback is ~22'5", less than the 23'1" they claim is the average of all homes along the same side of the street in the same block. 22'5" was what we calculated the *minimum* front yard setback to be using Department of Regional Planning Geographic Information System tools and building outlines. Our planner notes an approximate actual setback from the road of 23 feet in Staff Analysis, included in our Regional Planning Commission Hearing Package. A precise measurement yields a setback of 23'1.4".
5. Mr. Tsai and others have mischaracterized minor adjustments to building plans that have only everywhere reduced volume or that have not affected volume as "substantial changes" that should trigger varying types of re-analysis.
6. Mr. Tsai has claimed inaccurately that our original arborist report was the only piece of information used to make an oak woodland significance assessment.

7. Mr. Tsai has claimed inaccurately that our geotechnical report and oak tree report (and by extension initial study) no longer apply to our present design.
8. Mr. Tsai has misinterpreted a fire truck access specification to apply to pruning around the edge and over our home.
9. Mr. Tsai has distorted our arborist's response to opposition arborist's comments, claiming that our arborist agreed with Ms. Latta's assessment.
10. Mr. Tsai and others have misunderstood the Oak Tree Ordinance statements of applicability and the deference afforded by the Ordinance to the discretion of the Director of Regional Planning and delegated County agencies in determining the sufficiency of an Oak Tree Report and associated documentation.
11. Mr. Tsai has incorrectly attributed the characterization of our home as two-story to “political convenience” and “expediency.”
12. Mr. Tsai has incorrectly claimed that our project would result in the net loss of an acre of oak woodland, nearly the entire size of our lot, of which the home covers ~3%.
13. Mr. Tsai has incorrectly claimed that neighbors with encroached trees must agree to that encroachment.

1. Mr. Tsai submitted an ipetitions petition into the administrative record at our April 5 hearing that contained only the signatories, not the content of the petition. The petition comments were curated to remove those comments that highlighted deficiencies in the petition content, which provided no identifying information about the project. Such objectively identifiable distortion is not characteristic of a fair argument.



Save Millard Canyon!

The Petition | 3 Highlights | 91 Comments | 217 Signatures

Imminent development is threatening one of the last natural open-spaces in lower Millard Cyn. The property at risk currently serves a crucial watershed, wildlife corridor and is bisected by a blue line stream that is home to many sensitive species. The proposed development will cut into a 50% slope within the Altadena hillside ordinance area.Three mature Oaks will be removed, three Oaks will be severely pruned and the remaining Oaks permanently damaged by encroaching into their protected zones.

Heavy construction equipment, trucks and material deliveries will choke traffic on Canyon crest and possibly block fire, para-medic and police access to the meadows neighborhood for over a year.

The proposed ultra modern four level design is not at all in keeping with the early to mid-century neighborhood and towers over adjacent homes blocking views and invading privacy.

If this project is approved it will open the floodgates for even more construction on the few remaining natural open-spaces left in our canyon.

We the undersigned demand that the county of LA does not approve a request for a minor conditional use permit and we also reject the request for a Oak tree permit for project No.R2014-02411-(5) please contact Kristina Kulczycki @ (213) 974-6435 or kkulczycki@planning.lacounty.gov by march 22nd 2016 to voice your concerns and objections.

Link to map of project location https://goo.gl/maps/JyuKZ6EjsJz.

217 signatures Goal: 1,000

SIGN THIS PETITION

Name*

Email*

Comments

Show my name in the online signature list

Keep me informed on this and similar petitions

SIGN PETITION

or

Sign with Facebook | Sign with Twitter

30 Shares

HIGHLIGHTS

March 2 — Development in one of the last remaining open spaces in the lower Millard Canyon--a critical watershed and habitat to numerous species already under tremendous stress from climate change and human encroachment--is simply unacceptable. I urge the Altadena town council to prioritize the... show more

February 29 — Altadena town council land use committee will vote on this tomorrow night. Tuesday March 1st at 7:00pm. Be There!

February 25 — We are now live!

COMMENTS Filter

Liz Espinoza United States, Altadena — Mar 21, 2016

This is my favorite place to hike, and the hike to the falls is a great hike for young children. I used to take my three year old, now twenty-one year old there to hike. It's a great starter trail. We just started going back when it was reopened. We love this place. I can also take my special needs son on this hike because it is not too complicated and it is safe.This is one trail he can handle, and I don't have to worry that he will get hurt. The fact that it is short is huge because he can handle it. Do not build here. That would be a crime against nature and humanity. We need to preserve these places. Our children need places to connect to nature for their health and well being. It is important that they have natural sanctuaries to find some peace and solitude for healthy minds to develop. Don't allow this place to be purchased and built on. That would be such a shame.

Leslie Clark United States, Los Angeles — Mar 16, 2016

Please leave space for animals and plants to live. This world has to accommodate more than just people.

Laurie Zamudio Whalen United States, Pasadena — Mar 16, 2016

As a young adult, I hiked & camped at Millard Canyon. Now my son & his Boy Scout Troop are hiking & camping at this same location.

Let's leave the land to our children.

The land is much more valuable as natural open space, than it is as a glorified tract housing subdivision.

Illustration 1: Comments from Espinoza and Whalen indicating they have no idea where the house is located. See page 259 of Regional Planning Commission package for Clark comment, indicating Espinoza comment was deleted.

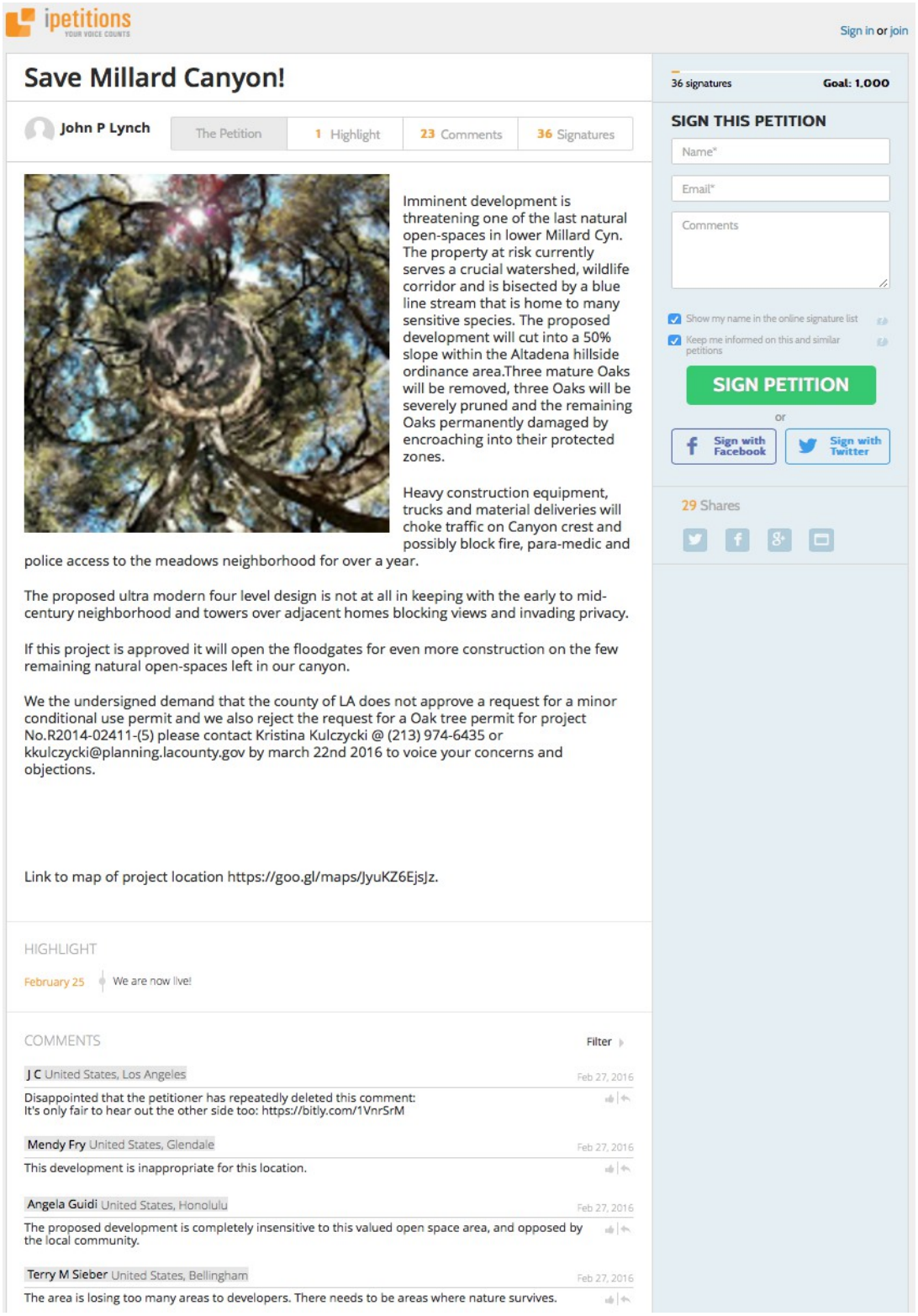


Illustration 2: Other deleted comment.

2. Mr. Tsai appears unfamiliar with the concept of “building segments” in stepped or terraced building designs, and with the separate assessment of height and stories above grade in each segment.

In his letter dated April 11, 2016, Mr. Tsai stated:

“The Project easily exceeds the Altadena Community Standard's maximum height and floor requirements by nearly double the amount of each. Approving the Project as a minor conditional use permit would render the Altadena Community Standards virtually meaningless and allow developments to building a virtually unlimited amount of floors as long as they classify the additional floors as "cellars." The County should not opt to approve the Project as a minor conditional use permit simply to appease the applicant, avoid political scrutiny, and deny the public adequate review of the Project.”

In his letter dated September 6, 2016, Mr. Tsai stated:

“The Altadena Community Standards, Co. Code § 22.4..3127, limits the Project to a maximum height of 35 feet. The Project violates the height restriction as the proposed structure has a linear height of 62 feet. See Building Model.

The County claims that the height restriction only applies to the portion of the structure *above grade*. However, even if you adopt the County's interpretation and arbitrarily set the grade of the Project at 49% of the main residence floor and above, the Project *still* exceeds 35 feet as the County's height measurement only includes the garage and loft. See Floor & Section Plans; and Elevation Plans. However, the County misinterprets the grade of the Project, as the County does not account for the exposed perimeter of the structure of the Project, which totals 62 feet in linear height. Supra I.A. The Project violates the maximum height limitations of the Altadena Community Standards.”

At our April 5 Hearing Officer Hearing, Mr. Tsai stated:

“The project exceeds the community standards height and floor limitation, adopting a very, needless to say, *creative and unprecedented* interpretation of grading, as to what would the grade be of this project [sic]” (Unofficial Transcripts of April 5 Hearing Officer Hearing)

Mr. Tsai exhibits misunderstandings that make his line of reasoning difficult to follow. The term “linear height” has no basis in the Los Angeles County Code, or any other code body under that name. Height is measured vertically, and while the current Title 22 governing our project does not make this explicit because it is well-understood, a “Technical Update of Title 22,” awaiting final approval of the Board of Supervisors, intends to help people like Mr. Tsai by stating that height is measured using the “plumb-line” distance from the highest point of the building continuously over the footprint, measured straight down to the grade (see Attachment 14, citation R at 13-14). A plumb-line of course is the line described by a suspended weight (plumb bob) in equilibrium, aligned therefore with gravity i.e. vertically. This is the most accurate and least approximative approach there is to measure height. While some jurisdictions further constrain the change in absolute elevation between the lowest and highest parts of a building, the County of Los Angeles does not. Nearly all of the volume of our home above grade is contained in a 45-ft range of elevations. Those portions that remain are shrouded in oak tree canopy or occluded more than 20ft below street grade.

Mr. Tsai's reference to “49% of the main floor and above” appears to be a misunderstanding of the cellar volumetric assessment for the building segment containing our loft. This analysis did not “set the grade of the Project,” as the grade is quite simply the surface of the ground, for a project with no cut outside the footprint of the home. That volumetric analysis described a relationship of the building segment containing the loft, stating that the lowest level of that building segment – on the main floor – is more below ground than above, and hence a portion of a building qualifying as a cellar.

3. Mr. Tsai and his planning consultant have misunderstood the extent of building segments that the County has classified as a “cellar.”

In his letter dated April 4, 2016, Mr. Tsai stated:

“The County claims that the Project has only two stories above grade by classifying the two levels below the garage as a cellar and therefore below grade and classifying the garage and the loft as two stories above grade. Staff Analysis at 5-6, 9 ("Only one portion of the house has more than 2 floors - the footprint of the loft"); see also Co. Code §22.08.190 (defining "Story" as "that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the roof above," excluding "cellars."). The County's classification that the main residence level, composed of “two bedrooms, two bathrooms, a kitchen, and a living room" id. at 2, as well as the bottom level office as a cellar flies in the face of the plain meaning of the County Code.”

In his letter dated September 6, 2016 (after we had explained this at our April 19 hearing), Mr. Tsai echoed this misunderstanding, and stated:

“The County claims that the Project meets the two floor limit because the Project’s main living space, which features a kitchen, living room, two bedrooms, bathroom, windows and a balcony as a “cellar” (“Main Living Area”).”

Mr. Tsai does not appear to understand the concept of a “building segment” in a stepped or terraced building and has misunderstood the extent of building segments in our home that are classified as a cellar, as we discuss in greater detail in Attachments 1 and 8, and which has long been discussed in Attachment 1 of Staff Analysis. We believe the California city of Brisbane in San Mateo county on the hilly lower slopes of San Bruno Mountain has the clearest explanation of this:

“Height is not necessarily measured from the top of a building to the bottom. While from a distance, for example, a building containing four floors that step up or down a hillside in three two-story *segments* may look taller than the three-story, single-*segment* building next door, the opposite may be the case. Because height is measured per *segment*, a building map made up of multiple *segments* can have a lower height than one made of a single *segment*." (emphasis in the original, see Attachment 16 at 4)

The practice of measuring height and the number stories separately for each building segment is founded in the International Building Code, the foundation for codes throughout

the country and the world. We address this further in Attachment 16.

We explained this again at our September 7 Hearing, also showing this visual:

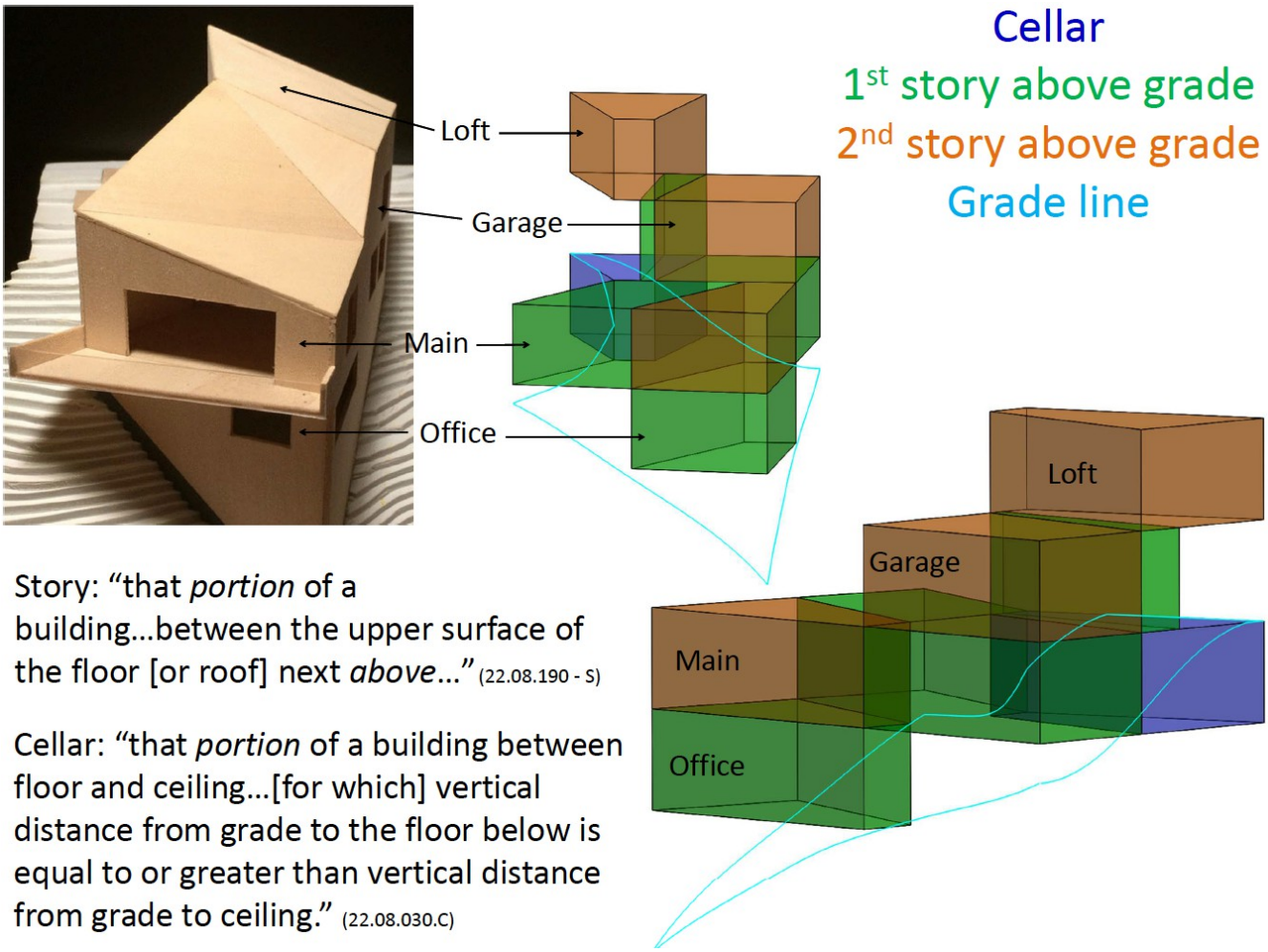


Illustration 3: Visual showed at September 7 Hearing Officer Hearing

As we stated at that hearing, "The visually explicit derivation provided in Attachment 1 of Staff Analysis has long shown that only the portion of the main level projected below the loft is classified in this way, as all other portions of the footprint of the home are no more than two stories above grade. Even using assumptions that are more conservative than regulations allow – the most conservative we could conceive of – this projection qualified as a cellar, which is any portion of a building that is more below grade than above, and this is in keeping with both the spirit and the letter of the law. One exterior wall is completely buried across most of its length under our gravel driveway. The other slopes downward, transitioning from completely buried to partly buried, still denying us an effective window in this space – our master bathroom – though we would have liked one."

In his letter dated September 6, 2016, Mr. Tsai stated:

"The Projects most recent building plans, made available to the public prior to this hearing, fail to conform with drawings that the Project Applicant used to claim that the Project's Main Living Space is 50% below grade and therefore constitutes a "cellar." The Project's latest building plans appear to show that the vast majority of the Project's Main Living Space as above grade, whereas the Project Applicant's original drawings showed deep excavation into the hillside to place at least half of the Main Living Space below grade."

Our building plans had not been altered in any way that affected the cellar determination. They did not show a "deep excavation," but rather the notching of the hillside described in our oak tree report and arborist's response to Ms. Latta's commentary, as well as our site plan, grading plan and sections, in order to place a portion of the main level of our home containing our master and guest bathroom. This volumetric analysis had been included in Attachment 1 of Staff Analysis. In that analysis, the cellar volume was clearly labeled with dimensions that correspond to the projection of the loft and that could in no way be mistaken by shape or magnitude to apply to the entirety of the main level. We clarified in the venues we have already highlighted how this cellar volume was derived.

In his letter dated September 6, 2016, Mr. Tsai stated:

"In fact, e-mails between County staff and the Project Applicant appear to paint the choice of designating the Main Living Floor as a "cellar" as a matter of political convenience rather than compliance with the County Code."

We are saddened that rather than carefully examining the basis for their own misunderstanding, opposition has repeatedly reconciled some incongruity between their beliefs and the reality presented before them by ascribing our project approvals to inappropriate or incompetent behavior on the part of county professionals, even attributing our approvals to unethical favoritism and political convenience. It is unclear to us what political constituency two private citizens acting on their own represent.

4. Mr. Tsai and his planning consultant have misinterpreted our front yard setback and ignored the statements in Staff Analysis, in claiming that our front yard setback is ~22'5", less than the 23'1" they claim is the average of all homes along the same side of the street in the same block.

In his letter dated September 6, 2016, Mr. Tsai stated:

"The Project fails to conform with average setback requirements. The Altadena Community Standards require that a "front yard shall not be less than the average depth of all of the front yards on the same side of the street on the same block." Co. Code § 22.44.127(D)(1)(a)(ii).
However, survey results of the area surrounding the Project show that the Project's front yard is significantly less than the depth of front yards in surrounding neighborhoods."

Mr. Tsai attributes a notional 8.2" as "significant."

In Staff Analysis, our planner stated: "The average front yard setback is 22.4 feet and the proposed front yard setback is 23 feet. Therefore, the project is complying with this

development standard." In other words, 22.4 feet was what we calculated the average front yard setback to be, not what our actual setback was. 23 feet was an approximation, as we had never provided our front yard setback to the nearest inch, only stating in our communications that it exceeded requirements.

An (overly) precise measurement yields an actual setback of 23'1.4".

5. Mr. Tsai and others have mischaracterized minor adjustments to building plans that have only everywhere reduced volume or that have not affected volume as "substantial changes" that should trigger varying types of re-analysis.

In his letter dated September 6, 2016, Mr. Tsai stated:

"As the Applicant's own consultant noted in disavowing the Project's previous arborist report, which the Applicant's consultant had previously authored:

It is my understanding from reviewing the most recent plans, that the project entryway has changed, and that the portion of concrete driveway outside the footprint of the home has been removed. . . . I was also made aware that the extent of excavation was somewhat different than I had understood from the site plan dated July 14, 2014. As a result, the impacts indicated in the August 2014 report may have underestimated the impacts to trees #4 and 7.

Letter from Scott McAllaster, Land Design Consultants to Kristina Kulczycki, Senior Regional Planning Assistant, Los Angeles County Department of Regional Planning (Apr. 18, 2016) RE: Oak Tree Permit No. 201400035, APN: 5830-003-016 - Canyon Crest Road LDC Project No. 13038-001."

At our April 19 Hearing Officer Hearing, Mr. Tsai stated:

"In addition, the building plans have changed substantially, even as of today. If you look at our [sic] attached plans, you'll see that they added a window on the bottom level of their...on the one of four stories that are proposed for this project, on the very bottom level." (Unofficial Transcripts of April 5 Hearing Officer Hearing).

It is not clarified to what "significant changes" Mr. Tsai is referring. He has ellipsis edited the context out of which the minor changes to our entryway and driveway apron – which only reduce impacts – was taken: "It is my understanding from reviewing the most recent plans, that the project entryway has changed, and that the portion of concrete driveway outside the footprint of the home has been removed. However, these changes did not affect the footprint or elevations for the home, and do not lead to any increased impacts." Such distortionary editing is not characteristic of a fair argument.

Mr. Tsai appears to have misunderstood the volume of our home and misattributed what is actually a crawlspace access door required by the Department of Public Works. It is the sort of minor modification that is an expected part of the plan check process downstream of Department of Regional Planning review.

When a design is changed to reduce impacts, this does not nullify previous analysis. By

inspection, that pre-existing analysis bounds the new. This is formalized in the case of initial studies, as our planner noted in Staff Memo to the Hearing Officer dated March 31:

"Pursuant to Section 15073.5 of the California Environmental Quality Act Guidelines (14 CCR § 15073.5), "a lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability...but prior to its adoption." However, a "substantial revision" for a negative declaration occurs when "a new, avoidable significant effect is identified..." Subsequent to the release of the Initial Study for public review and comment, staff received a clarification from the applicant specifying that the maximum height of the proposed building is 34 feet 10 ½ inches. The Initial Study project description and Aesthetics evaluation identifies the maximum height as 33 feet and 10 inches. The impact of the building height is evaluated in the Aesthetics section of the Initial Study. In this section, it is noted that the project will not exceed the maximum allowed height of 35 feet and therefore, the impacts to the visual character or quality of the site and its surroundings will be less than significant. As the change in maximum height from 33 feet and 10 inches to 34 feet and 10 ½ inches will still be under this threshold, there is no change to the determination that impacts will be less than significant. Therefore, the addition of this new information would not be considered a "substantial revision" and the revisions listed below will make insignificant modifications to the negative declaration. Recirculation of the Initial Study is not required..."

The neighbors Mr. Tsai represents have requested reductions in the scope of our project. Distorting such changes in an attempt to delay us is a potent disincentive to do so.

6. Mr. Tsai has claimed inaccurately that our original arborist report was the only piece of information used to make an oak woodland significance assessment.

At our April 19 Hearing Officer Hearing, Mr. Tsai stated:

"Here, the applicant's own expert is admitting that the initial study was based *purely* upon the report that was not prepared for the purposes of determining the presence of oak woodland or the impact that that project will have on oak woodland. County staff's decisions are only as good as the information that is being presented to them." (Unofficial Transcripts of April 19 Hearing Officer Hearing)

The county biologist also took into account his own site visits and the testimony of neighbors and Ms. Latta, who noted that the grade had been substantially altered and that a large pickup truck (a Ford F-150 Super Crew Triton V-8), listed with a gross empty weight in excess of 5,000lbs had been used for parking for at least 11 years in the protected zones of trees #1, #2, #3, #4, #7, #8 and #9. Mr. Lynch – the owner of this truck – also claimed in his letter dated August 5, 2015 that "the flat area has been in continuous use for storage and off street parking by the occupants of our home and their/our guests for over 65 years", entailing the entirety or majority of the life of encroached oak trees. This repeated traffic by a large vehicle, by the other vehicles that have used the lot – including for the construction activities conducted in the immediate vicinity of oak tree #1 (Attachment 32) – and by the storage of other heavy materials has already resulted in the compaction of the area we intend to use for staging before our garage floor can be cast. Ms. Latta has not acknowledged these impacts and the resulting existing conditions in any of her statements.

On Staff Analysis (page 6 of 9), it is noted that, “The County biologist was also able to visit the site and indicated that there is an existing riparian forest at the bottom of the canyon containing oak, walnut, bay, sycamore, and alder trees. Based on his site visit, he also indicated that the bottom of the canyon would be an ideal spot to plant the replacement oak trees.”

7. Mr. Tsai claimed inaccurately that our geotechnical report and oak tree report (and by extension initial study) no longer apply to our present design.

In his letter dated April 11, 2016, Mr. Tsai stated:

“The public has raised serious concerns about the factual accuracy and credibility of the Project's application materials. In particular, at the Hearing, the Applicant admitted on the record that the Project's arborist and geotechnical report were based upon outdated building plans.”

Our statements at our April 5 Hearing Officer Hearing directly contra-indicate his characterization: “Our geotech report was created before we had a design for the house. It was part of the feasibility assessment for the lot, and the geotech report notes that it's often used as a template for future design work, so we had a reference design that is in fact very different than this design, but we spoke with our geotechnical engineers, and they confirmed that all of the recommendations in the report still apply, and they submitted a letter recently to the Department of Public Works as part of our plan check review process that speaks to some of the particular points of analysis for our design.” (Unofficial Transcripts of the April 5 Hearing Officer Hearing). We did not address any supposed claim about the oak tree report using a different design because it would be impossible to assume the reference design in the geotechnical report was the same used in our oak tree report. The footprint has remained identical to our current design throughout our development process dating to early 2014 and is clearly identified in our oak tree report exhibit map. In his response dated April 18, 2016, our arborist notes that our footprint and elevations had not changed.

At our April 19 hearing, we went on to note: “The attorney went on to state that our arborist and geotechnical reports had been based on a different design. We clarified at our last hearing that our geotechnical report had started with a reference design, and the report acknowledges this typical practice with the statements that, “formal plans have not been prepared and await the conclusions and recommendations of this report,” and that “the intent of the report is to assist in the design.” We stated that we had confirmed with our geotechnical engineers that the same general recommendations apply to our project, and that they had submitted a plan check correction letter that speaks to the requests by the DPW that are particular to our design. However, we did *not* state that our arborist’s analysis had been based on a different design. The exhibit map our arborist originally submitted contains a footprint that is identical to that portrayed in our current site plan, and our elevations are also unchanged from those we submitted to our arborist and to the county when this process began, as he notes in his response.” (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

8. Mr. Tsai has egregiously misinterpreted a fire truck access specification to apply to pruning

around the edge and over our home.

“On February 3, 2015, the County Fire Department imposed a number of conditions of approval on the Project. Fire Prevention Division, County of Los Angeles Fire Department: (2015) Conditions Of Approval ("Fire Conditions"). Condition No. 4 provides that the Project must "[p]rovide a minimum unobstructed width of 20 feet ... and an unobstructed vertical clearance 'clear to sky' Fire Department vehicular access to within 150 feet of all portions of the exterior walls of the first story of the building .. . ,"with the exception of protected tree species which only require a "minimum vertical clearance of 13 feet 7 inches” Fire Conditions at 1.

Professional arborist Rebecca Latta testified at the Hearing that it would be difficult for the Project to comply with these Fire Conditions without either removing significantly more than just 1 oak tree or pruning more than 20% of the oak canopy and branches more than 2 inches in width, all conditions of the Project's proposed oak tree permit. The Project's proposed rooftop comes well within 13 feet of the oak canopy of the Project Site.

The County should require the Applicant to demonstrate that they can realistically go forward with this Project without violating either the County Fire Code or Oak Tree Permit.”

Mr. Tsai and Ms. Latta have evidenced two very fundamental misunderstandings. It is difficult for us to understand how they might have interpreted the condition in the way they appear to have.

First, as we stated at our April 19 hearing, “In the attorney’s letter included in Staff Memo dated April 19th, the attorney misunderstood another key definition, claiming that we would have to prune our trees everywhere to 13'7” above our roof. The referenced requirement is a fire truck access specification, as the condition notes. It states that a fire truck has to be able to park at some point that would leave a fireman no more than 150ft to access on foot the farthest point around the perimeter of a home, so that the standard 150 feet length of fire hose can be deployed effectively. In order to fit a truck, any roadway - or driveway for any home set back far enough from the road - must have a width of 20ft, and “clear to sky” vertical clearance is desired, but 13’7” is sufficient. 13'6” is the maximum legal height for any truck. Canyon Crest Rd of course fulfills this requirement for our project.” (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

We would gently suggest to Mr. Tsai and Ms. Latta that when an interpretation of conditions created by County professionals results in such a nonsensical discrepancy – that we must remove all vegetation within 13'7” of our home for Fire Department Fuel Modification clearance and yet the Fire Department Forestry Division approved an oak tree permit in which the trunks of trees to remain are well within this distance – it would be reasonable to question the interpretation. Doubly so when so many existing residences are constructed in such close proximity to oak trees (see Attachment 30).

Second, our oak tree permit does not contain any condition limiting pruning of any encroached tree to 20% of oak canopy or branches less than 2” in diameter. *This is the threshold of pruning that does not require an oak tree permit.* In other words, if one confines pruning activity to within these bounds, the county believes *by inspection* that the oak tree will

remain unharmed, and no arborist analysis is required. Mr. Tsai is referring to oak tree permit requirement #8:

"*In addition to the work expressly allowed by this permit*, remedial pruning intended to ensure the continued health of a protected Oak tree or to improve its appearance or structure may be performed. Such pruning shall include the removal of deadwood and stubs and medium pruning of branches two-inches in diameter or less in accordance with the guidelines published by the National Arborist Association. Copies of these guidelines are available from the County of Los Angeles Fire Department, Forestry Division. In no case shall more than 20% of the tree canopy of any one tree be removed." (emphasis added)

The condition clarifies that in addition to the permitted encroachments of root and canopy (which may take more than 2" branches and more than 20% of the canopy), encroached or un-encroached trees may undergo remedial pruning within these parameters without submitting to a new oak tree report or any specific analysis.

9. Mr. Tsai distorted our arborist's response to opposition arborist's claims.

At our April 19 Hearing Officer Hearing, Mr. Tsai stated:

"In fact, if you look at this revised arborist report, it largely confirms the previous testimony of Rebecca Latta...It admits that the project will result in the loss of more than one oak tree. It admits that the project will have a significant impact on oak trees on the project...I point you to page 8 of the arborist report, where it concludes, 'The level of impacts to these trees are significant. Yes, trees #4 and #7 could be removed as a result of these impacts.'...Most importantly, the arborist's revised report distinctly refutes the findings in the project's CEQA documents, and admits that the CEQA documents were based upon previous designs. … As an experienced CEQA land use attorney, I've never dealt with a project where I don't know what the project looks like, I don't know where the project is, so what's on the project site, I don't even know what kind of environmental impacts the project may have. In this instance there are very basic questions that require additional fact-finding." (Unofficial Transcripts of April 19 Hearing Officer Hearing)

Mr. Tsai exhibits a troubling penchant for making claims ostensibly based on testimony, that however completely contradict that testimony, and which are not attributed in proper context. We will address these claims in turn:

When our arborist states that "It is my professional opinion, based on 12 years of experience, training, and judgment, that trees #4 and #7 have a good probability of surviving the described construction impacts," that does not confirm the testimony of an opposing arborist who thinks that these trees must be cut down, based on inflated impacts assessments, as we attribute in Attachments 7 and 15.

Nor does our arborist admit that more than one protected oak tree must be removed. Mr. Tsai completely stopped at what was essentially a dependent clause preparatory to the thesis of the response. As our arborist notes in proper context, "Yes, trees #4 and 7 could be removed as a result of the impacts. However, the amount of impacts does not guarantee that these trees will decline and die. The applicant is accepting the risk by allowing these trees to remain

and planning and designing around them, as opposed to simply requesting their removal. I support the applicant's desire lo keep these oak trees." (McAllaster letter dated April 18, 2016). In other words, he is stating that it would be possible to remove these trees, but not required, and they have a good probability of surviving. This distortionary editing is not characteristic of a fair argument.

We have addressed the specious claim that our initial study was based on technical analysis that does not apply to our project in its current form, in Item #7.

To address the litany of things Mr. Tsai claims not to know, we can only state that we have provided all of the documentation requested of us, including a site plan, floor plan, elevations and sections, which are the extent of architectural drawings that exist. Mr. Tsai has pointed to minor discrepancies (of 1 foot) between the elevations and our title sheet, that are insubstantial to the environmental or aesthetic analysis for our project, existing at the SW corner of our home, which is roughly at street grade, and not in the protected zone of any tree. With further voluntary reductions in height to address neighbor concerns, the maximum plumb-line height again becomes consistent with the original initial study. The revision to the initial study wisely expressed this plumb-line height as a figure "no greater than," and so remains accurately descriptive of our project.

The proper method of fact-finding under the law is to perform an initial study. Mr. Tsai has not constructed a fair argument that the initial study is deficient, or was misapplied.

10. Mr. Tsai and others have misunderstood the Oak Tree Ordinance statements of applicability and the deference afforded by the Ordinance to the discretion of the Director of Regional Planning and delegated County agencies in determining the sufficiency of an Oak Tree Report and associated documentation.

In his letter dated September 6, 2016, Mr. Tsai stated:

"The Project's application materials do not identify all oak trees within 200 feet of the Project's activities. An application for an oak tree permit is required to identify "[t]he location of all oak trees . . . within 200 feet of proposed construction, grading, landfill or other activity." Co. Code § 22.56.2090(E)(1)(h)(i).

The Project's application materials do not identify all oak trees within 200 feet of proposed construction, grading, landfill or other activities."

In claiming that we should survey all trees within 200ft of the site, Mr. Tsai appears to have misunderstood County Code §22.56.2090. E.1 of that section states that, "A site plan drawn to a scale satisfactory to, and in the number of copies prescribed by the director, indicating the location and dimension of all of the following existing and proposed features *on the subject property*:" (emphasis added). Note the singular case of "property."

Within the umbrella of scope E.1 declares, E.1.i requests for inclusion in that site plan, "The location of all oak trees subject to this Part 16 proposed to be removed and/or relocated, or within 200 feet of proposed construction, grading, landfill or other activity. Each tree shall be

assigned an identification number on the plan, and a corresponding permanent identifying tag shall be affixed to the north side of each tree in the manner prescribed by Section 22.56.2180. These identifications shall be utilized in the oak tree report and for physical identification on the property where required. The protected zone shall be shown for each plotted tree." E.1 constrains this requirement to the subject property because adjacent property owners cannot be compelled to make their private property available to an arborist, nor to submit to the tagging of their tree. Many adjacent properties on Canyon Crest are fenced, and we honor the property rights of these owners. Nor are any oak trees on adjacent lots affected, save the boundary oak tree #1, which is surveyed and included in our report.

E.2 then goes on to state that, "Where a concurrent application for a permit, variance, zone change, tentative map for a subdivision, including a minor land division or other approval, is filed providing the information required by this subsection E, the director may waive such site plan where he deems it unnecessary to process the application." In other words, where a concurrent permit is being applied, it is at the sole discretion of the Director [of the Department of Regional Planning] to waive any and all requests stated in E.1. We submitted our oak tree report concurrently with a minor Conditional Use Permit application. We have submitted an oak tree report that conforms to the requests of the County of Los Angeles Fire Department Environmental Review Unit and to the requests of the Department of Regional Planning planners and staff biologist, acting on behalf of the Director according to a standard county process. Therefore in complying with the Director's requests, we are compliant with the statute.

We also note that F.2 states that, "The requirement for an oak tree report may be waived by the director where a single tree is proposed for removal in conjunction with the use of a single-family residence listed as a permitted use in the zone, and/or such information is deemed unnecessary for processing the applications." While we are encroaching on several trees, we are removing only a single ordinance-sized tree. A narrow reading of the ordinance allows that the Director has discretion to waive any and all requirements of an oak tree report, at their discretion, where only a single tree is being removed in conjunction with development of a single-family residence.

11. Mr. Tsai has incorrectly attributed our the characterization of our home as two-story to "political convenience" and "expediency."

In his letter dated April 11, 2016, Mr. Tsai stated:

E-mail communications from County planner Kristina Kulczycki reflects the fact that current County staff also believes that the Project exceeds the maximum floor and height limits of the Altadena Community Standards. As Ms. Kulczycki stated co the Applicant in an email on July 9, 2015, "If you are okay with considering the building to be three stories in height, you can go straight to a CUP to modify this development standard and I can start noticing the CUP and Oak Tree Permit for fencing instead of the MCUP." E-mail from Kristina Kulczycki to Stephen Kuhn July 9, 2015) FW: R2014-02411. The Applicant rejected the advice of the County and opted to continue to exempt the first and second floors of the four-level structure, for expediency stating:

I think I would rather not go the route of getting a CUP [(Major Conditional Use Permit)) to Altadena

standards. There seems more on the part of the town to deny. 1 would rather frame the project as fitting completely within the bounds of the standards, which I think it does. Email from Stephen Kuhn to Kristina Kulczycki July 9, 2015.

In his letter dated September 6, 2016, Mr. Tsai stated:

In fact, e-mails between County staff and the Project Applicant appear to paint the choice of designating the Main Living Floor as a "cellar" as a matter of political convenience rather than compliance with the County Code.

We explained at our April 19 Hearing Officer hearing that our planner's suggestion was a logistical one, as our planner had rightfully pointed out that less time would be devoted to the appeal process if we were able to skip the Hearing Officer level of review and begin with the Regional Planning Commission. In part due to honored requests for delay from our opposition, the gap between our April 19 Hearing Officer Hearing and September 7 Regional Planning Commission Hearing was nearly five months, time that might have been avoided. This is hardly "expediency." As we clarified at that hearing, we did not pursue this route because we had very consciously and conscientiously set out to design a home that complied with all applicable regulations, and we and our experienced architect have always been very clear on what those regulations mean. It did not even occur to us to try to design a home that circumvented the regulations, and to portray it in this way was distasteful to us given our efforts, even if it meant we might have started construction sooner.

We would also note a general pattern exhibited by Mr. Tsai and several other neighbors, in using a Public Records Act request to lift logistical emails with County staff completely out of their proper context, without referencing the remainder of the email, other emails, phone conversations and in-person visits that accompany these communications and give them proper context. In that same email, the very next statement after "...which I think it does" is "The minor CUP is only to satisfy the intent of broader notification that a hillside lot was being built. I'm happy to follow up on that if any part of the logic laid out in the rebuttal is in dispute. I don't know how it could be interpreted otherwise in an internally consistent manner." Mr. Tsai was of course privy to these statements expressing our belief in the just application of the rules, but chose to omit them, as they directly contra-indicate his speculative narrative of "political convenience" and "expediency" i.e. acting in bad faith to circumvent the rules.

We have had to explain similar occurrences of this elsewhere in the administrative record, particularly in responses to Mr. Baer and Mr. Hickman. This distortion is not characteristic of a fair argument.

12. Mr. Tsai has incorrectly claimed that our project would result in the net loss of an acre of oak woodland, nearly the entire size of our lot, of which the home covers ~3%.

In his letter dated April 11, 2016, Mr. Tsai stated:

"Moreover, Ms. Latta's testimony and report demonstrate that the project will result in a substantial impact on oak woodland, as it will result in both the loss of individual oaks as well as a loss of net acreage of oak woodland, a little more than one acre. The County should reevaluate the Project for

consistency with the Oak Woodlands Conservation Plan."

As we noted at our April 19 hearing, "Our entire lot is only a little more than one acre, and the footprint of our home is less than 3% of that. We don't understand how the attorney could have arrived at this figure." (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

13. Mr. Tsai has incorrectly claimed that neighbors with encroached trees must agree to that encroachment.

In his letter dated September 6, 2016, Mr. Tsai stated:

"The Project will have a significant impact on Oak Tree No. 1, an oak tree that is on land not owned by the Project Applicant. The Project's application does not indicate that the Project has received written permission from the owner of Oak Tree No. 1, John Lynch. In fact, the owner of Oak Tree No. 1, John Lynch, in fact has expressly objected to the Project's encroachment upon Oak Tree No. 1. The Project's application materials admit that the Project's activities will encroach upon Oak Tree No. 1, but fail to indicate whether or not the Project Applicant has received written permission from the owner of Oak Tree No. 1."

Mr. Tsai misinterprets a requirement prohibiting hostile and unsolicited oak tree reports on a subject property as essentially requiring the approval of a neighbor with any encroached tree in order to obtain an oak tree permit. Because an oak tree permit is required in order to improve our lot for its zoned purpose, his claim would lead to the absurd consequence that an opposed neighbor possesses veto authority over any adjacent development. Neither do neighbors, nor the Altadena Community Standards, nor the county itself have the right to effect a "taking" in this way. The term "premises" is not defined explicitly by County Code §22.08 Definitions. However, Merriam-Webster defines it as "a building and the area of land that it is on." The statute states that the applicant for an oak tree permit must either be the owner of the building proposed and land upon it, or else the applicant (as e.g. a project manager) must have the written permission of the owner.

As we discuss in Attachment 19 at 16, Ms. Latta has authored an oak tree report for which construction on one property affected a tree belonging to a neighbor to a greater extent than we will encroach on #1 (25% root zone and 15% lower canopy impacts).

For the sake of clarity, we will note that our site plan and the recorded survey on which it is based show that the trunk of oak tree #1 spans 3589 Canyon Crest and the county right of way easement for Canyon Crest Road. Pursuant to Civil Code Section 834, it is the joint property of 3589 Canyon Crest Road and the county. These joint owners have the reasonable expectation that we will do everything we can to minimize our impacts to this tree, which has been severely encroached by the excavation of a 5'x35' seepage pit and sewer lateral (Attachment 32) by a previous owner of 3589 Canyon Crest, and by the compacted slab-on-grade construction of 3589 Canyon Crest, the driveway for 3589 Canyon Crest, and of Canyon Crest Road itself.

These mitigation efforts include building upon the existing layer of mulch and laying down 3/4" plywood to minimize compaction from heavy equipment. The Alabama Cooperative Extension

System's “A Guide to Preventing Soil Compaction During Construction” is a resource that Ms. Latta has acknowledged in previous claims, and it states “Research shows that mulch under ¾-inch-thick plywood is the most effective technique for reducing soil compaction in [Tree Protected Zones]. This technique is optimal for areas where there will be significant movement of equipment.” (see Attachment 14, citation HH).

It should also be noted that per our oak tree report exhibit map, approximately 21% of the protected zone of oak tree #1 is coincident with our lot (see attachment 15 at 5-6).

Attachment 10

Response to claims of significant impacts of our project on aesthetics

November 10, 2016

Purpose:

The purpose of this attachment is to factually address claims that our project will result in significant impacts on aesthetics.

Key Issues:

1. Mr. Tsai and other have arbitrarily constrained their basis for comparison of the existing neighborhood to variably a single home, or only those five homes that exist on the west side of Canyon Crest Rd.
2. Mr. Tsai and others have reduced their assessment of the massing of our home to a single figure that is still well within the Altadena Community Standards. While we voluntarily chose to reduce this height even further to address neighbor concerns, this over-simplification was distortionary and not characteristic of a fair argument, especially considering that many of the homes offered for comparison have maximum and average heights above the street grade plane that are equivalent (where ours most assuredly are not), possess setbacks from the road that are nearer than our own, and present their major axis to the road, blocking views with tall fences, hedges and dense vegetation to conceal their homes, yards, pools, driveways and other pavement.
3. Mr. Tsai and others have not submitted substantial evidence to indicate that the stated thresholds of significance in the Los Angeles County General Plan under which our project was analyzed indicate that our project occludes a scenic vista. There are no mapped scenic resources that our project affects. Furthermore, our project is sensibly designed to be occluded to a large extent by oak trees to remain, as seen from neighboring residences and from the street.
4. Mr. Tsai and others have not submitted substantial evidence that Altadena in general or the neighborhood of lower Canyon Crest in particular possess a unifying style. There are many examples of distinctive homes in both areas of scope. The coloration for our home is similar to other homes on lower Canyon Crest Rd and in the Meadows neighborhood further north.

In his letter dated September 6, 2016, Mitchell Tsai claimed:

“The Project will have a significant impact on aesthetics in and around the Project Site. The Project will block scenic vistas visible from Canyon Crest Road as well as for numerous surrounding neighbors. Project Rendering (attached as Exhibit E); Statement of Opposition from Randall Baer (undated) 1 - 3 (attached as Exhibit F) (hereinafter "Baer Statement"). Moreover, the Project is out of character with the surrounding neighborhood, proposing a peak height, 32 feet, that is nearly 4 times higher than surrounding neighborhood homes. Baer Statement at 2.”

This statement is clearly false, and truly extraordinary coming from a neighbor immediately across the street who lives in a house with a higher average height above the street grade plane than ours had been, at similar minimum setback to the road. The *maximum* height of our house above the street grade plane is now lower than the *minimum* height of his house above the street grade plane, over a width of ~70ft, compared to our ~30ft of street-facing frontage. The home two houses to the south of Mr. Baer possesses a height *above grade* that is in excess of our maximum height above street grade. It's height above the street grade

plane is higher than the height of our home above grade at any point in its footprint. In making this claim, Mr. Baer used a claimed height above street grade that was characteristic only of the (anomalous) 3589 Canyon Crest adjacent, which is somewhat sunken from the road and generally of a low-slung, non-descript ranch style design. Other homes have gable roofs with substantial pitch rendering their maximum height above the street grade plane as high as 16ft or greater. “Neighborhood” comparisons are not comprised of a reference to a single anomalous house. Mr. Tsai is incorrect in his statement that adjacent *homes* – plural – were four times shorter than our design had been. Only a single home was offered as evidence.

Distilling the “height” of our home to the height at only the highest point above grade or above street grade is also clearly not a basis for proper comparison. The entire volume of a home must be assessed to compare its visual impacts to another home's.

While some in opposition to our project have somehow decided that the character of the neighborhood is informed only by the five existing houses along the west side of Canyon Crest Road at the rim of Millard Canyon, this is clearly specious. Both sides of the street are characterized by homes with fences, hedges and dense native and non-native vegetation and trees, as we attribute in Attachment 30. There is not an appreciable “view” of the canyon from the road across this developed extent. Also, some houses and garages along the west of Canyon Crest Road are set back from the road at (code non-compliant) diminutive setbacks. While these structures may be shorter, because they are sited so close to the road they subtend an angular field of view when seen from the street that is greater than our own, as we attribute subsequently.

Substantial evidence has not been submitted that Mr. Baer possesses a view of the canyon that our home's volume will occlude. Across the volume of our home, he possesses a view of dense oak tree canopy, much of which will remain to shroud our home.



Illustration 1: View from 3588 Canyon Crest living room onto subject property (window header runs across top of image, as determined by LIDAR scan), after pruning for clearance, showing a large extent of occlusion of our home by canopy to remain.

Likewise, our home is screened to a substantial extent from the patio of 3589 Canyon Crest by tree canopy to remain.

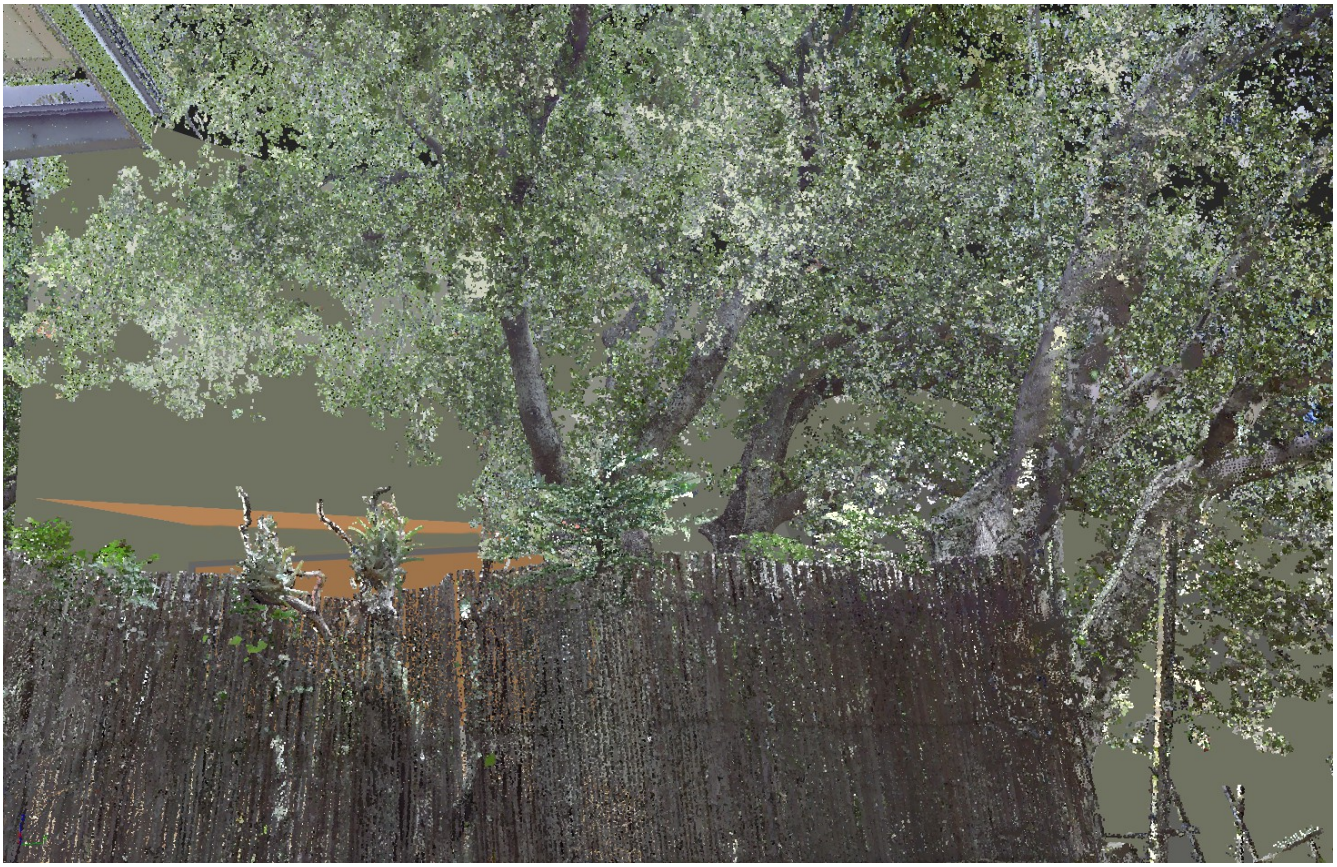


Illustration 2: View from patio of 3589 Canyon Crest, showing large extent of occlusion from canopy of trees #7, #8 and #9, after all required pruning of #7.

We address claims of scenic vistas subsequently.

In his letter dated September 6, 2016, Mitchell Tsai claimed:

"d. The Project Will Have Significant Impacts On Aesthetics.

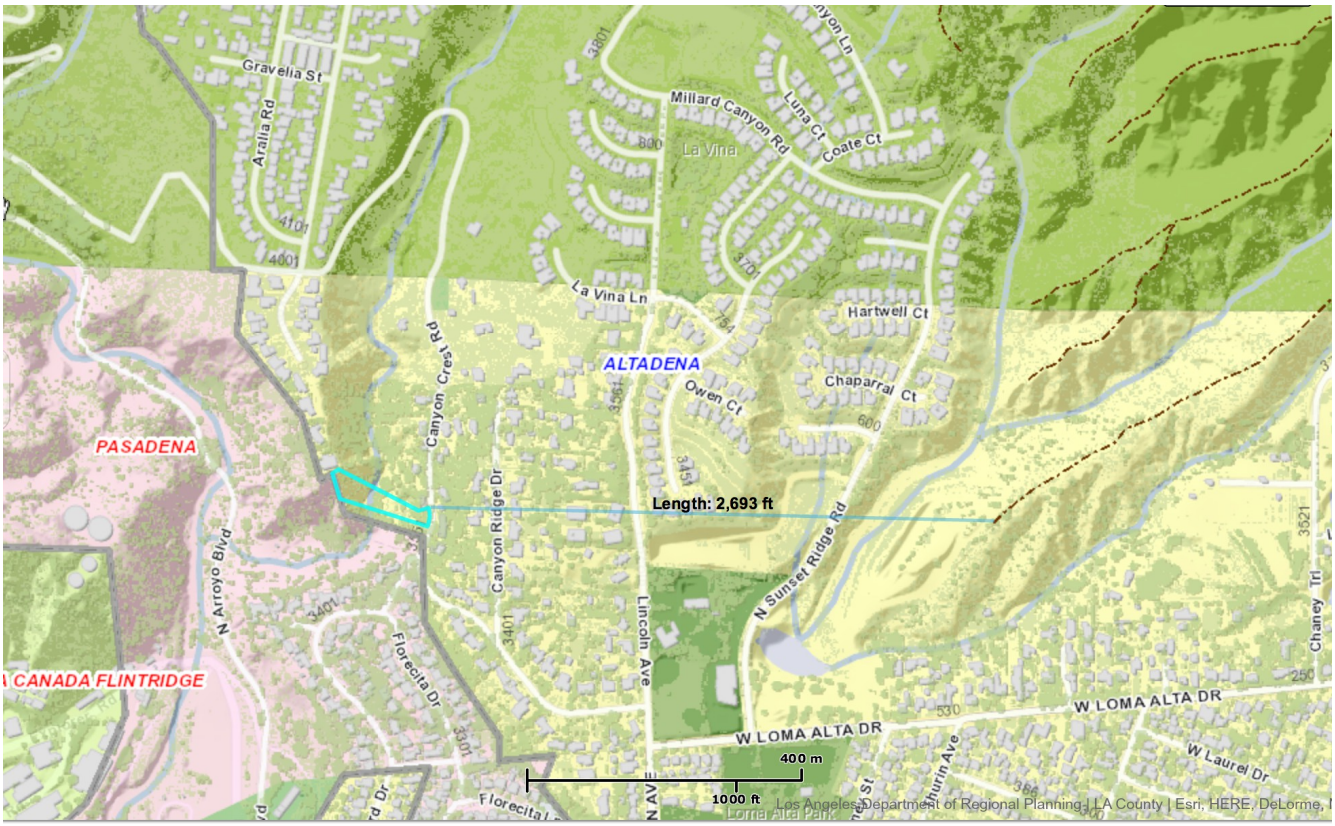
The Project will have a significant impact on aesthetics. CEQA requires that a Project analyze its impacts to aesthetics, inquiring as to whether a project may significantly adversely impact a scenic vista, scenic resources, visual character or quality of the site and its surroundings or otherwise create a source of substantial light or glare. CEQA Guidelines Appdx. G.

According to Mr. Ikeda:
The visual screening that is provided and quality of these oaks significantly establish the visual character of the neighborhood. However, the "Environmental Checklist – Initial Study" for this project states that the project will have a less than significant impact to scenic vistas and daytime or nighttime views in the area. This statement is questionable. The existing residential development on the opposite side of the canyon will have their views impacted by the extent and height of the proposed structure along with the removal of an oak tree, and pruning of others required to clear the structure. Over the long term, if the oaks have a shortened life, the views and visual quality of the neighborhood would be

even further compromised.
Ikeda at 4."

As our initial study notes, "The proposed project is not sited near any designated scenic highways, significant ridge-line, or other identified scenic resources, and would not result in any impacts related to having a substantial adverse effect on a scenic vista. *(Source: State of California Dept. of Transportation, California Scenic Highway Program)*.
. . . .
Riding and hiking trails have been designated throughout unincorporated Los Angeles County. At present, there are officially adopted trails in the Antelope Valley, the Santa Clarita Valley, and the Santa Monica Mountains designated by the General Plan or applicable Area/Community Plan and Local Coastal Program. Although the Arroyo Seco is west of the site and the Altadena Crest Trail and Cheney Trail are to the east, the proposed project is not sited adjacent to any designated riding or hiking trails, and would not result in any impacts related to having a substantial adverse visual impact on these resources. *(Source: County of Los Angeles Department of Parks and Recreation, U.S. National Forest Service).*"

Neither is the unincorporated area of Altadena immature in its designation of scenic resources. The Altadena Community Standards District Hillside Management Supplement (County Code § 22.44.127) explicitly designated those scenic ridge-lines that it intended to protect from insensitive development (see Attachment 14, citation V). We are more than 2,500 feet from the nearest protected ridge-line, separated by dozens of homes, including the La Vina development.



Ilustration 3: Distance of 3577 Canyon Crest Road to nearest significant ridgeline

The beautiful Meadows neighborhood to the north-east of our site, the majority of which is situated in the Los Angeles National Forest, contains 227 lots with some improvements, sited on several ridge-lines that are visible from Hahamongna Watershed park, lower Canyon Crest Road and other areas of Altadena. Our home is nearly 1,000ft from the Los Angeles National Forest, separated by other homes along Canyon Crest Rd. We have been particularly saddened to field comments from neighbors of the Meadows who choose to financially validate development well within the Angeles National Forest but claim that our project nearly 1,000ft outside of it should not be allowed because of proximity to it. Claiming that “the damage has been done” and it might as well be “taken advantage of” can be used to sustain and advance any sort of bad behavior. One neighbor who wrote several opposition letters possessed of clear misunderstandings believed it was acceptable to publicly equate our development with “rape.” We were shocked and saddened to encounter such a cruel and insensitive comparison, deeply disturbed when our neighbors at 3589 Canyon Crest chose to read this neighbor's letter verbatim at our April 19 Hearing Officer Hearing, and grateful when the Hearing Officer interrupted our neighbor before she reached this claim, aware of its inappropriateness. This behavior is not characteristic of an effort to compromise in good faith.

We also note for clarity that the nearest public parks or gardens are Loma Alta Park, more than 1,000 feet to the east and Hahamongna Watershed park, more than 1,000 feet to the south. There are no sight-lines from these parks to any part of our lot or proposed home.



Illustration 4: Distance of 3577 Canyon Crest Road from nearest public parks

In illustrations to come, we show the extent to which views of the opposite slope of Millard Canyon across the volume of our home are already occluded by oak tree canopy, much of which will remain between our home and the vantages from adjacent residences, and from much of the road, whether driving north or south.

We note that in the spring of 2016, some neighbors installed a small bench on the private property of the lot immediately to the south, adjacent to the power pole. This bench is not visible in Google Street View (imagery from October 2011), and although we traverse the road several times daily, we have never seen anybody sitting on it.

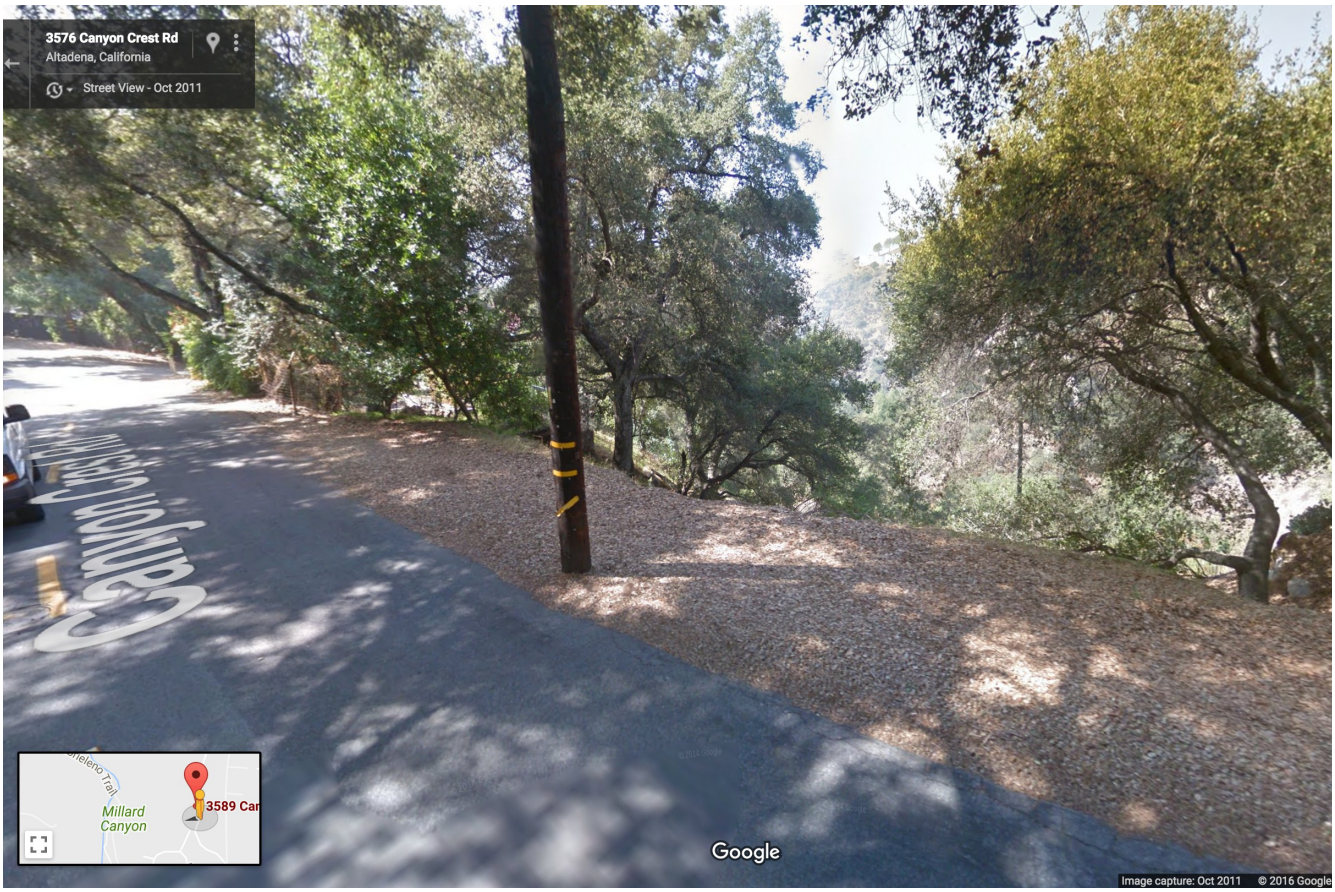


Illustration 5: Vicinity of the bench installed spring of 2016, circa October 2011

Its manufactured presence cannot credibly be used to support any claim of a scenic viewpoint. Nearly all of the existing view of the canyon from this point will remain after our home is built.



Illustration 6: Bench installed in spring of 2016 on adjacent private property.

In Rominger v. County of Colusa (2014) 226 Cal. App. 4th 690, the court upheld the guidance made explicit in CEQA guidelines and in Save Cuyama Valley v. County of Santa Barbara (2013) 213 Cal.App.4th 1059, 1068 that a lead agency is free to devise its own significance thresholds. The court states:

"First, the Guidelines make clear that the checklist form in appendix G is "only suggested, and public agencies are free to devise their own format for an initial study." (Guidelines, § 15063, subd. (f).) Furthermore, "CEQA grants agencies discretion to develop their own thresholds of significance (CEQA Guidelines, § 15064, subd. (d))." (Save Cuyama Valley v. County of Santa Barbara (2013) 213 Cal.App.4th 1059, 1068.) "To require any deviation from [the standards of significance in appendix G] to be documented and justified . . . is to elevate Appendix G from a suggested threshold to the presumptive threshold. This flatly contradicts both CEQA's description of Appendix G as only suggested and CEQA's mandate that agencies have the power to devise their own thresholds." (Save Cuyama Valley, at p. 1068.)"

In other words, each jurisdiction is encouraged to create and publicly state its thresholds for

significance. The County of Los Angeles has also done this. As concerns aesthetics, from Appendix D of the Los Angeles County CEQA Guidelines (see Attachment 14 citation M):

“A project will normally have a significant effect on the environment if it will:
(a) Conflict with adopted environmental plans and goals of the community where it is located;
(b) Have a substantial, demonstrable negative aesthetic effect;”

The Los Angeles County CEQA Guidelines (see attachment 14 citation L at 402.F) clarify that “If the project will have no significant effect on the environment (considering both primary and secondary effects) as determined by the Initial Study and a review of the examples of possible significant effects included in Appendix D, the lead County agency shall prepare a Negative Declaration. If there is substantial evidence that the project may have a significant effect on the physical environment, the agency shall prepare a draft EIR. The decision shall be based on information in the record of the lead County agency and may be guided by serious environmental controversy or disagreement between experts.”

Thus, the initial study checklist is informed by the documented thresholds of significance stated above. In contrast to some jurisdictions, these thresholds are largely qualitative and therefore are at the discretion of the lead agency to apply. As we attribute in Attachment 14 at 14-15, a lead agency need not regard even expert testimony that is not credible, or that is based on misunderstandings or speculation.

As concerns aesthetics, it states only that the effect must be “substantial,” “demonstrable,” and “negative.” “Substantial” is a synonym for significant, and is therefore essentially circular. Immediately, then, the Department of Regional Planning is given authority to establish a discretionary threshold for substantiality. “Demonstrable” means that it must be shown that the project will change the aesthetic, which in other EIRs has generally been regarded as existing land usage with contextual vegetation. A home that creates the same coloration by mimicking that of the canopy of the surrounding trees – and which uses those trees as camouflage – is a defensible approach to preserving the existing aesthetic, which is single-family residential development of varying styles, interspersed with oak woodland and other non-native vegetation. Finally, the effect must be deemed “negative.” This is entirely subjective. Neighbors with an interest in avoiding the inconvenience of construction or preserving their parking are suspect sources in this regard. An AIAA-licensed architect completely unacquainted with us read about our project in a newspaper when the appellant tried to arouse more public concern over it, and wrote that, “Although we are not residents of Altadena, we feel strongly about appropriate hillside development as well as good design. We believe the Kuhn's home is successful on both fronts. It respects its site. It is an innovative (but not radical) design. It will be an asset to its neighborhood. In addition we feel that the Kuhn's have played by the rules and have proven their dedication to their new home and to the city's planning process.” This letter is included on page 85 of our Regional Planning Commission Hearing Package.

Our lot is designated R-1, meaning Los Angeles County intends that a home should be built on it. As a home must inhabit a volume, and that volume will affect the sight lines from some adjacent viewpoints, it follows that a home cannot be expected to result in *no impact* to views. Jurisdictions establish regulations to limit the extent of that volume in order to limit the impact

to existing views. Our home is compliant with both the county and the tighter Altadena community standards. In determining significant aesthetic impacts, our planner looked quite reasonably to the impact of our project on *mapped* aesthetic resources. Our project is not visible from any scenic highway or mapped scenic viewpoint. Neither is it visible from any mapped public trail, ridge-line, park or garden i.e. areas often enjoying of some view. Determining the presence of and effect on *formally identified* aesthetic resources is a time-honored approach for determining whether a significant aesthetic effect is present. Formal identification is important, as otherwise an applicant has no means of assessing whether they are about to walk into valid litigation, and should pre-emptively prepare an EIR to quiet it. We knew when we purchased our site that no mapped scenic resource was present.

Neither does it appear that the county has abrogated the thresholds alluded in Appendix G of the sample CEQA initial study checklist, which it uses only as guidance, without being bound to it. Question a.) references “scenic vistas” and question c.) references “visual character or quality.”

The “professional” visual evidence our opposition has offered in the record to support their claim of inconsistency with size, scale and character of adjacent residences is comically inaccurate and misleading, as we show in Attachment 8 at 16-19. He has completely *omitted* any of the volumes of adjacent homes, *flattened* the terrain using an orbitally derived mesh that is completely inappropriate for this scale, and *denuded* the entirety of the terrain in this overly coarse mesh. Any lead agency is justified to reject it outright for the slander that it is. In Attachment 17 at 12-20, we show that our home is compatible with the height of residences immediately adjacent to it, and the figure below indicates it is compatible with the size of surrounding residences. Its 1,699sqft (including the loft, which as unconditioned space sharing ventilation with the garage is not properly counted in the square footage) being significantly smaller than the average home within 300ft. The renderings at the end of this attachment show that we are preserving the large majority of the existing canopy on the site, much of which will be used to screen our home. These renderings also show the extent to which views of the canyon or hills beyond from adjacent residences are already occluded by oak tree canopy across the volume our home will inhabit, and the extent to which canopy will continue to screen our home from these vantages, and from much of the road.

Average square footage of the 19 homes within the 300ft minor CUP mailer radius.

Address	sqft
3589 Canyon Crest	958
3617 Canyon Crest	1978
3637 Canyon Crest	1605
3665 Canyon Crest	1616
3624 Canyon Crest	1262
3588 Canyon Crest	1259
3566 Canyon Crest	2105
3556 Canyon Crest	2276
3550 Canyon Crest	1237
3506 Canyon Crest	1920
3500 Canyon Crest	1509
3483 Canyon Ridge	1842
3497 Canyon Ridge	2188
3535 Canyon Ridge	4683
3551 Canyon Ridge	3000
3410 Florecita	1431
3425 Florecita	3756
4001 Canyon Dell	1834
4003 Canyon Dell	2442
Average:	2047.4

Illustration 7: List of the assessed square footages of all homes within 300ft of our lot

At the end of this attachment we explore the final look of our home in greater detail. While our opposition has previously objected to wireframe renderings localizing surveyed features to those visible in the terrain, the approach we used in these renderings is to model the terrain with ground-based LIDAR data accurate to ~1/16" (see Attachment 14 citation RR), with global localization from dozens of scans containing a maximum error/discontinuity in any one scan with respect to all others of a fraction of an inch.

In his letter dated August 26th 2016 (included on page 55 of the Regional Planning Commission Hearing Package), Randall Baer, the President of the Canyon Crest Conservancy stated:

"If Mr. Kuhn's garage were a standard 14' height it would be more compatible with the single story homes in our neighborhood. A 14' garage height would also reduce the necessity of cutting major branches from the adjacent oak trees thus mitigating some of the severe impact they will be subjected to during construction. Reducing the garage height through elimination of the enclosed loft would also allow the continued enjoyment of my current view of Millard Canyon instead of the blank steel side of Mr. Kuhn's garage loft."

Furthermore, in his letter dated April 15, 2016 (included on page 177 of the Regional Planning

Commission Hearing Package), John Lynch, the appellant for the Board of Supervisors appeal stated:

"We also share our neighbors concerns with the second level above the garage. We all believe that if you reduce the height of the structure above street level by a least half it would greatly reduce the impacts to the Oak canopy and the aesthetic of our neighborhood without sacrificing any of your livable space."

There are several factual inaccuracies in both of these statements, but each is significant in claiming that height is the most significant issue at hand for those opposed to our project, and that reducing the height to 14'-15'7" (half of 32'2.5") is perceived as rendering our project compatible with the scale of the neighborhood. We want to again call attention to our choice to reduce the height of our home after these letters were written, and after we obtained approval from the Regional Planning Commission, in order to further address our neighbors' concerns, in spite of the unfair and inaccurate claims they have made, and in spite of the fact that both parties quoted above signed a petition requesting to "restrict new hillside construction...and keep this canyon property in its natural state," i.e. to perpetrate a legal "taking" of the rights for this R-1 zoned property.

We will address the inaccuracies in turn.

First, as we attribute with LIDAR scans in Attachment 17 at 12-13, the President of the Canyon Crest Conservancy lives in a home (3588 Canyon Crest) that is set back over its nearly 70ft width by ~28-49ft from the road, with projections visible from the road rising to a height of ~27.5-28.8ft above the street grade plane, continuously for at least 70 feet of frontage. He also has a detached carport structure at a closer setback to the road. Some in opposition to our project have somehow claimed that this side of the road is immaterial and should not be used for comparison, as though our neighborhood were comprised only of the five homes on the west side of Canyon Crest at the rim of the canyon, in some cases citing "views" that are present across these homes. However, this existing development on the canyon side, with homes that present their major axis to the road and incorporate tall fencing, hedges and other trees and vegetation, already nearly uniformly occlude views of the canyon along most of the extent of lower Canyon Crest (see Attachment 30). The views on either side of the road become predominantly vegetation with interspersed homes and fences. The 2+-story home two houses to the south of Mr. Baer (3556 Canyon Crest) is set back 49-51ft from the road, with projections visible from the road rising to a height of ~36-38ft above the street grade plane, continuously for at least 30ft. Some other homes along lower Canyon Crest and the immediate vicinity possess two or even three stories.

Randall Baer has not attributed how a 14' height is "standard." Nor has he attributed how a 14' height results in the cutting of substantially fewer limbs. In the illustrations below, we have veritably "lopped off" the part of our home that extends more than 14' above street grade. The 9.5" trunk on oak tree #4, the 10" scaffold on oak tree #7 and the still need to be cut. Only minor reductions to other pruning would result. Critically, the visual intrusion to Mr. Baer is unattributable through the canopies of oak trees #1, #2 and #4.

Our opposition has offered no credible design alternatives or sought to portray what any

acceptable suggestion might look like. While some object to our design, others with whom we have no prior acquaintance have complimented it. Architect Noam Maitless and wife Dr. Anna Moore wrote a letter (included on page 85 of the Regional Planning Commission Hearing Package) after encountering an article in a local newspaper about our home: “Although we are not residents of Altadena, we feel strongly about appropriate hillside development as well as good design. We believe the Kuhn's home is successful on both fronts. It respects its site. It is an innovative (but not radical) design. It will be an asset to its neighborhood. In addition we feel that the Kuhn's have played by the rules and have proven their dedication to their new home and to the city's planning process.”

According to Attachment 14 citation MM, the Bureau of the Census notes that the average height of a new home in the West of the United States for 2010 – the last year for which data is available – is 2,386sqft. Wikipedia attributes the average height of a story as 10ft (see Attachment 14 citation SS). According to the National Association of Certified Home Inspectors, widely used conventional asphalt shingles require a minimum slope of 4:12. (see Attachment 14 citation TT). A simple two story design with a 30'x40' footprint resulting in 2,400sqft with a gable roof at 4:12 slope along the minor axis (which closely matches our 29’5” width of street-facing frontage) will result in a maximum height on level ground of 10' + 10' + (30'/2)*sin(atan(4/12)) = 24'9”. This is the maximum height of our home above the street grade plane. The average height of such a home would be greater than our own.

The average height of the street-facing side of our home is now ~18-19’ above street grade, below the average height of any two-story home comprised of average stories, even one with a flat or parapet roof. This north-east corner will remain shrouded in oak tree canopy to remain, as seen from much of the road and adjacent residences (see visuals at end of this attachment). It should be noted that our oak tree report states the height of oak tree #1 as 50ft, oak tree #4 as 45ft and of oak tree #7 as 40ft, estimates our LIDAR scans support to within a few feet.

Mr. Baer has also repeatedly claimed that he has a view of the canyon across the volume of our home, which he has not attributed with any substantial evidence. He has a view of the oak tree canopy, possibly of some hills beyond in some directions – though not over oak tree #1 – the power pole and high voltage wires that span it. Whatever view he has of the canyon is of small pockets through dense canopy, as we attribute in Illustration 5 below, taken from immediately below his living room window, which is the vantage he has professed to wish to preserve. The views from other windows in his house also look out onto the roof and mechanical equipment of 3589 Canyon Crest Road.



Illustration 8: View from 3588 Canyon Crest Rd across the volume of our home. Note that canopy from oak tree #1 largely occludes the north-east corner of our home. This canopy will not be pruned. We attribute this in greater detail using the LIDAR scans taken after canopy removals are made. Note the story pole present for the north-east corner of the home, barely visible beyond 10ft. Note as well that our LIDAR scan documents the height of the power pole visible at left as 49.2ft.



Illustration 9: View from 3566 Canyon Crest Rd, which has several front yard trees and shrubs that largely occlude the view across the volume our home will inhabit. Views of the canyon are again through intermittent small pockets. Note also the vertically seamed wooden batten siding of a green/brown color. Our home's cladding is aesthetically consistent with this.



Illustration 10: View from 3556 Canyon Crest Rd, across the large oak tree visible at left. Note the yellow cladding and 2.5-story profile. The height of this home above grade is higher than the maximum height of our home above the street grade plane.

Legal Discussion

Porterville Citizens for Responsible Hillside Development vs. City of Porterville (2007) 157 Cal.App.4th 885 provides some relevant analysis as it concerns the visual impacts for our project. The court states:

"The record does not contain substantial evidence supporting a fair argument that the housing project may cause a significant adverse effect on aesthetics. "Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. [Citation.]" (Mira Mar, supra, 119 Cal.App.4th at p. 492; see also Pocket Protectors, supra, 124 Cal.App.4th at p. 929). Furthermore, "California landowners do not have a right of access to air, light and view over adjoining properly." (Mira Mar, supra, 119 Cal.App.4th at p. 492.)"

It goes on to state:

"The initial study states that there are no scenic views or vistas located in the project vicinity. There is no evidence in the record contradicting this determination. Also, the record does not contain any evidence indicating that the housing project is near any public gardens, parks or trails.
. . .
Association for Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720 is instructive. There, the court determined that height, view and privacy objections raised by appellant to construction of a single-family dwelling on a lot did not raise a fair argument of a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances. The court explained that "we must differentiate between adverse impacts upon particular persons and adverse impacts upon the environment of persons in general." (Id. at p. 734.) It determined that there was no evidence that construction of the proposed dwelling "would adversely affect the environment of persons in general. Moreover, the height, view and privacy objections … impacted only a few of the neighbors and were properly considered by City in connection with its site development permit approval, along with other aesthetic concerns. These concerns did not affect the environment of persons generally and did not result from 'unusual circumstances.'" (Ibid.)
. . .
Landowners surrounding a proposed project site do not state a valid CEQA concern when they express fears that the proposed project could adversely affect their property value. (Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1205 (BCLC); state CEQA Guidelines, § 15131, subd. (a).)" (Ibid.)

To more explicitly contextualize the referenced Ukiah finding in relation to our own permit request, the court stated, "There was no evidence presented that construction of a single-family dwelling on this lot-the last to be developed in a neighborhood of single-family residences-would adversely affect the environment of persons in general." (Ukiah supra).

Our home is also an infill lot and one of the last vacant lots in an area with hundreds of homes in all directions.



Illustration 11: Context of development, showing homes to the south (Florecita Farms neighborhood and Altadena), east (lower Canyon Crest neighborhood and La Vina development), north (Meadows neighborhood) and west (Jet Propulsion Laboratory and La Canada Flintridge)

More specifically, Pub Res C §21061.3 defines an infill site as “a site in an urbanized area that meets one of the following two requirements: (1) The site itself was previously developed for qualified urban uses; or (2) If the site itself is not developed for qualified urban uses, then either all immediately adjacent parcels are developed with qualified urban uses, or 75 percent of the site perimeter adjoins parcels developed with qualified urban uses and the remainder of the site perimeter adjoins sites that have previously been developed for such uses.”

Under CEQA 15387, “'Urbanized area' means a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. A Lead Agency shall determine whether a particular area meets the criteria in this section either by examining the area or by referring to a map prepared by the U.S. Bureau of the Census which designates the area as

urbanized."

Under Pub Res C § 21072, "'Qualified urban use' means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses."

According to neighbor John Lynch at 3589 Canyon Crest in his letter dated August 5, 2015 and included on page 749 of the Regional Planning Commission hearing package, "the flat area has been in continuous use for storage and off street parking by the occupants of our home and their/our guests for over 65 years." In the same document, he noted that "the only flat area on the proposed site consists of fill that was originally dumped during the construction of our home sometime before 1949." In other words, development constituting substantial grading occurred prior to 1949 to make our property suitable for off-street parking and storage. The area has been in use for these residential purposes since that time. It follows that our property has been previously developed for qualified urban uses.

To qualify as an infill site, it remains to show that our parcel is located in an "urbanized area." Maps prepared by the U.S. Bureau of the Census are deemed suitable for this determination. At Attachment 14 citation W, the latest (2010) U.S. Bureau of the Census Map for the Los Angeles-Long Beach-Anaheim urbanized area shows that our project is located well within that area, acknowledging the significant developments to the south (Florecita Farms neighborhood and Altadena), east (lower Canyon Crest neighborhood and La Vina), north (Meadows neighborhood) and west (Jet Propulsion Laboratory and La Canada Flintridge).

Therefore, we qualify as an infill site under Pub Res C §21061.3, and are not distinguishable from the Ukiah ruling in that respect.

In the Ukiah decision, the court continues:

"We are convinced from our review of the record that no substantial evidence was presented supporting a reasonable possibility that construction of this residence would have a significant effect upon the environment due to unusual circumstances. Neither the size of the house (2,700 square feet), nor its height, nor its hillside site is so unusual in the vicinity as to constitute the type of unusual circumstance required to support application of this exception. The house would have been exempt as a ministerial project (requiring only a building permit and no exercise of discretion by the City) but for the narrowness of the lot. . . . The lot exceeds the minimum single-family residential lot size in the City by more than 2,000 square feet and complies with side yard setback requirements. (Ukiah City Code, § 9019.) A site development permit was required only because the lot is nine feet narrower than the minimum lot width. Objections raised by the Association, however, relate to the height of the house and not its width. The potential environmental impacts which Association posits seem to us to be normal and common considerations in the construction of a single-family residence and are in no way due to "unusual circumstances." (Ibid.)

Our home meets all zoning requirements and would also have been a ministerial approval save for the Altadena Community Standard requiring a minor Conditional Use Permit for construction or grading on slopes >25%, as well as an oak tree permit for removal of one tree.

As no sensitive or reasonably sized home could be built on our lot without construction or grading on a slope >25%, and given that many adjacent residences are also built on slopes >25%, and even as high as 100% (see the illustration below), neither is our home unusual in this respect, though many of these homes altered the grade substantially in their construction. Nor is construction on 100% slopes unusual generally. In Chapter 1, Article 2, Section 12.21.C.10.f.6, part of the city of Los Angeles' hillside ordinance entitled “Grading activity on 100% slopes,” incorporated by citation, it is stated that grading and construction on 100% slopes is permitted with conservative geotechnical assumptions.

3737 Canyon Crest is nearest to the canyon both laterally and vertically of all the homes. It also extends below street level to an equal or greater extent than our design.



Zoom for DRP GIS measurements of the minimum lateral distance between homes along the west edge of Canyon Crest and the nearest section of streambed on their property.

Lateral distances are provided both to the DRP stream overlay (S-most segment attached to each home) and our best estimate of where the streambed actually is (N-most segment).

Vertical distances can be derived from the topo (2ft overlay).

Illustration 12: Regional Planning topographic lines show similarly steep slopes at the building edges of 3589 Canyon Crest, 3617 Canyon Crest, 3665 Canyon Crest and 3737 Canyon Crest, all at vertical and horizontal offsets to the mapped course of Millard stream that are in family with our own, and in many cases smaller. See other iterations of this visual in the administrative record for higher resolution.

Mr. Tsai and others have also posited environmental impacts that are in fact, as the court notes, “common considerations in the construction of a single-family residence.” In contrast to

the existing homes, which were built by leveling flat pads in the hillside with hundreds or thousands of cubic yards of excavation, we have proposed a terraced design requiring less disruptive amounts of excavation. This is supported by the County of Los Angeles Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8). Our project also meets the stated criteria for approval under those guidelines - though they were enacted after our permitting process began - providing another indication of the soundness of our design.

Though lower Canyon Crest and the Meadows is an eclectic neighborhood with many distinctive homes (see Attachment 37), Mr. Tsai and others have also expressed differing tastes as it concerns the suitability of the design of our home. *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572 states:

"But we do not believe that our Legislature in enacting CEQA, any more than Congress in enacting NEPA, intended to require an EIR where the sole environmental impact is the aesthetic merit of a building in a highly developed area. (Maryland-National, supra, at pp. 1038-1039; Wildlife Alive v. Chickering, supra, 18 Cal.3d at p. 201; Del Mar Terrace Conservancy, Inc. v. City Council, supra, 10 Cal.App.4th at p. 732.) To rule otherwise would mean that an EIR would be required for every urban building project that is not exempt under CEQA if enough people could be marshaled to complain about how it will look."

Our project is compliant with all quantified zoning regulations of both Los Angeles County and the Altadena Community Standards. We are also compliant with the specified number of the newly enacted County of Los Angeles Hillside Management Area Design Guidelines, though our permit applications predate adoption of this part of the county code.

We have chosen a cladding color that will blend with the oak tree canopy, and in contrast to many residents of lower Canyon Crest, including all other houses on the west side of lower Canyon Crest (see Attachment 30), we do not intend to occlude remaining views by fencing our home across its frontage. Mr. Ikeda has speculated that the three oak trees nearest the street – which are encroached only by our permeable gravel driveway – will succumb and die, when many fine oak trees in the immediate vicinity are encroached to a far greater extent by the impermeable pavement of the road or driveway (see Attachment 30), and by past excavation (see Attachment 32). We explicitly designed our home to preserve as many of these trees as we could, to provide a visual buffer from the road and adjacent residences.

As we note on our website, "We examined many different home configurations and evaluated them for their impacts. We could have designed a somewhat more conventional if unsatisfactory home that did not require an mCUP (which we describe subsequently, for building on a greater than 25% slope, or 1:4 grade). However, the design we settled on struck a balance among many competing aims. It avoids cutting down any but the least vigorous (and one of the smaller) protected oak trees on our lot. It leaves a ~1000sqft pad for construction staging, to keep construction vehicles, materials and equipment out of the road. It allows for parking on our lot N of our driveway for potential use by neighbors. It places the livable square footage of the home below street level and at the farthest possible remove to the S, to minimize impacts to the privacy of neighbors. It shrouds much of the house in oak tree canopy, to minimize visual impacts from the street and other houses. And our windows look out on the natural environment to the S and to the canyon below, which we love.

All of the other designs we considered resulted in cutting down the large oak around which our current design folds, as well as at least one other tree. Many reduced or eliminated the post-construction parking available to the north of our driveway, or reduced the space available for construction staging, with potential impacts to traffic. Some required more substantial disturbance of the root systems of the oak trees to remain, and much larger amounts of excavation. Single story designs uniformly resulted in cutting many oaks, and we ruled out this approach early in design development. Finally, these designs were less visually appealing to us, and didn't seem to be a worthy addition to a beautiful neighborhood.

We realize that there is variance in personal taste and that our home doesn't look exactly like its neighbors. But we value the diversity and architectural freedom embodied in the homes of Altadena and lower Canyon Crest, and welcome feedback on the aesthetics of our home. The beautiful contemporary home built on the foundations of Boulder Crest on Canyon Crest is rightly celebrated by the Altadena Historical Society and can also be described as different from its neighbors. So too the historic Casa Roca on Canyon Ridge."

Altadena is a quirky mix of a large number of architectural styles, including several examples of true moderns, as well as many fine examples of mid-century moderns. There is no architectural design review committee or prevailing style to adhere to. There are homes in Altadena with great modern style by Gregory Ain, Frank Lloyd Wright, Jack Simison, Buff, Straub and Hensman and others. We currently live across from a modern by Simison in the Meadows neighborhood and find it to be lovely. The Altadena Heritage Society celebrates the "radically modern" homes designed by Ain in Altadena's Highview block of houses (http://altadenaheritage.org/the-aha-program/). The first Altadena Heritage Area was a section of street on N Garfield: "It was chosen because the 20 small houses on the street, a subdivision built in an old olive grove in the 1930s, represented just about every architectural style then prevalent. You'll find Spanish to Cotswold cottage to traditional homes on North Garfield."

Just in the immediate vicinity of lower Canyon Crest, there are a large variety of architectural styles (Attachment 37), and that extends to other homes in the Meadows neighborhood on Canyon Crest and other streets, as we show in that attachment.

Our home is not "an industrial style metal structure," as neighbor John Lynch claimed in his letter dated August 23rd 2016. The cladding we will employ in a fire-prone area is painted at the factory to create a finished texture that is no different than painted fiber cement or vinyl, common cladding materials that are however not as robust in a Very High Fire Severity Zone. The vertically seamed cladding also allows us to avoid scaffolding in the protected zones of our trees by hanging the cladding from a cleat at the roofline. The under-stated green we have chosen is similar to that of several homes we attribute in Attachment 37, and chosen to blend with the oak tree canopy. Vertically seamed cladding is a common feature on lower Canyon Crest, with many homes incorporating vertical wood cladding with wood battens, including the home directly across the street. While this material is not allowed under modern code, the vertical seams are quite prominent, more so than will be characteristic of our home. Our home also makes use of a cedar garage door and soffit visible from the road when driving south, which lend warmth and natural materials to our home. Mr. Lynch's own home

presents nothing but a bare wall and roof with many penetrations and mechanical equipment to the road. These are properties that are discouraged in the Los Angeles County HMA Design Guidelines.

The Los Angeles County code and Altadena Community Standards in effect at the time of our project submittal each contain some guidelines as it concerns the aesthetics of a home. The Los Angeles County Hillside Management Area Ordinance was adopted after our project was submitted. As a point of reference in support of our claim of designing a sensitive hillside home, we have filled out the HMA Sensitive Design Guidelines checklist for our project, in Attachment 17.

The Los Angeles County Code §22.20.105 “Development Standards for Single-family Residences” states only that:

- Roofing shall comply with the building code, prohibiting only glossy or reflective metal.
- Cladding shall comply with the building code, prohibiting only glossy or reflective metal.
- Homes on lots of sufficient width shall be at least 20feet in width across some dimension oriented parallel to the street.
- Homes shall have a floor area of at least 800sqft.

Our home is compliant with all of these requirements, and no other requirements exist that pertain to aesthetics. In Attachment 4 at 8-11, we have addressed the inaccurate claims that our home does not comply with the prohibition on glossy or reflective metal cladding and roofing.

Altadena Community Standards §22.44.127.C.2 – the Hillside Management section – provides guidelines for hillside development on slopes greater than 25%.

We have lawfully complied with 22.44.127.C.2 to submit a minor Conditional Use Permit for construction on a slope greater than 25%, along with a burden of proof that exists in the administrative record on pages 376-381 of the Regional Planning Commission hearing package. As noted on page 1 of the Hearing Officer Package, Draft Findings 30 and 31 as well as the conclusions found under letters "H" and "I" of the draft findings address the Hillside Management Burden of Proof.

Section 22.44.127.C.2.c.ii.B provides some additional aesthetic guidelines; however, this applies only to a full Conditional Use Permit for grading in excess of 2,500 yards, as 22.44.127.C.2.c.ii declares. The amount of grading for our project is nearly a hundred times below this threshold. Some of these requirements are not applicable for our home as it possesses no grading outside its footprint. Others like the use of articulated surfaces and low reflectance are characteristic of our walls and roofline and matte painted cladding and roofing. Our project will also comply with all required DPW BMPs for erosion and sediment control.

There are no other aesthetic guidelines in the Altadena Community Standards for R-1 development.

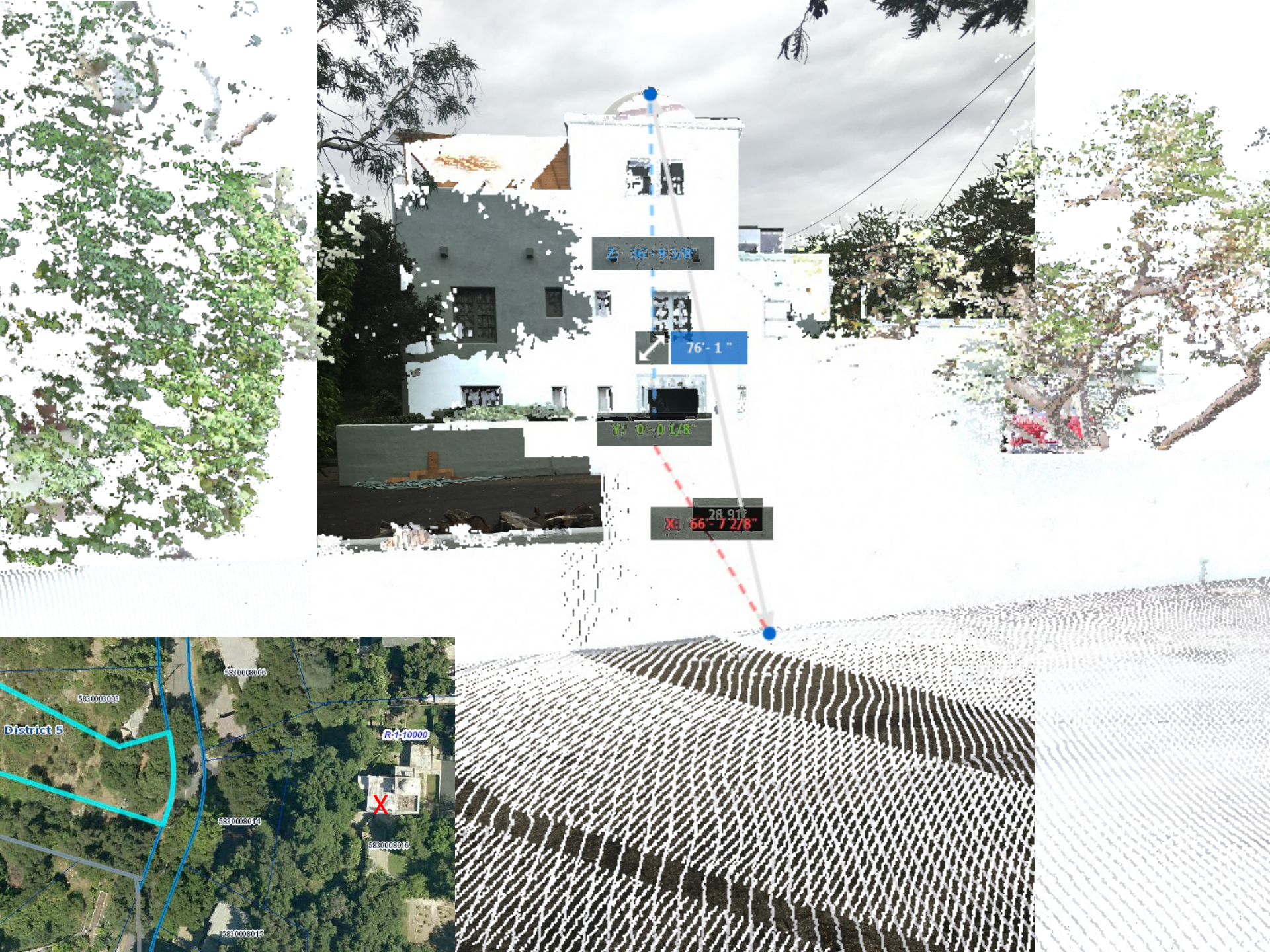
View driving south
on Canyon Crest Rd

View driving north
on Canyon Crest Rd

View from 3588
Canyon Crest Rd

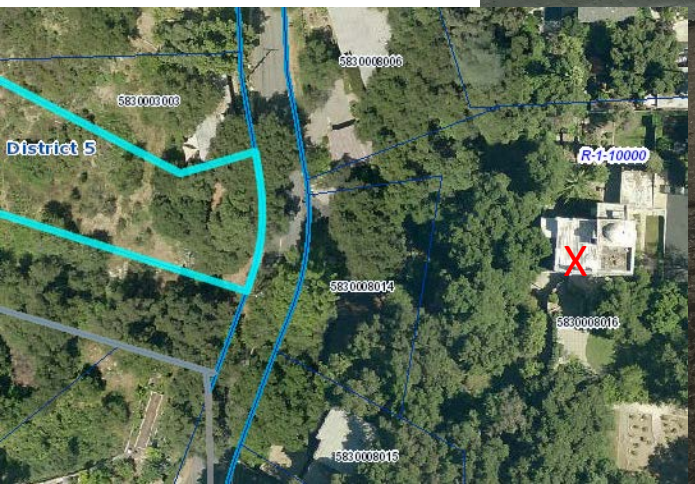


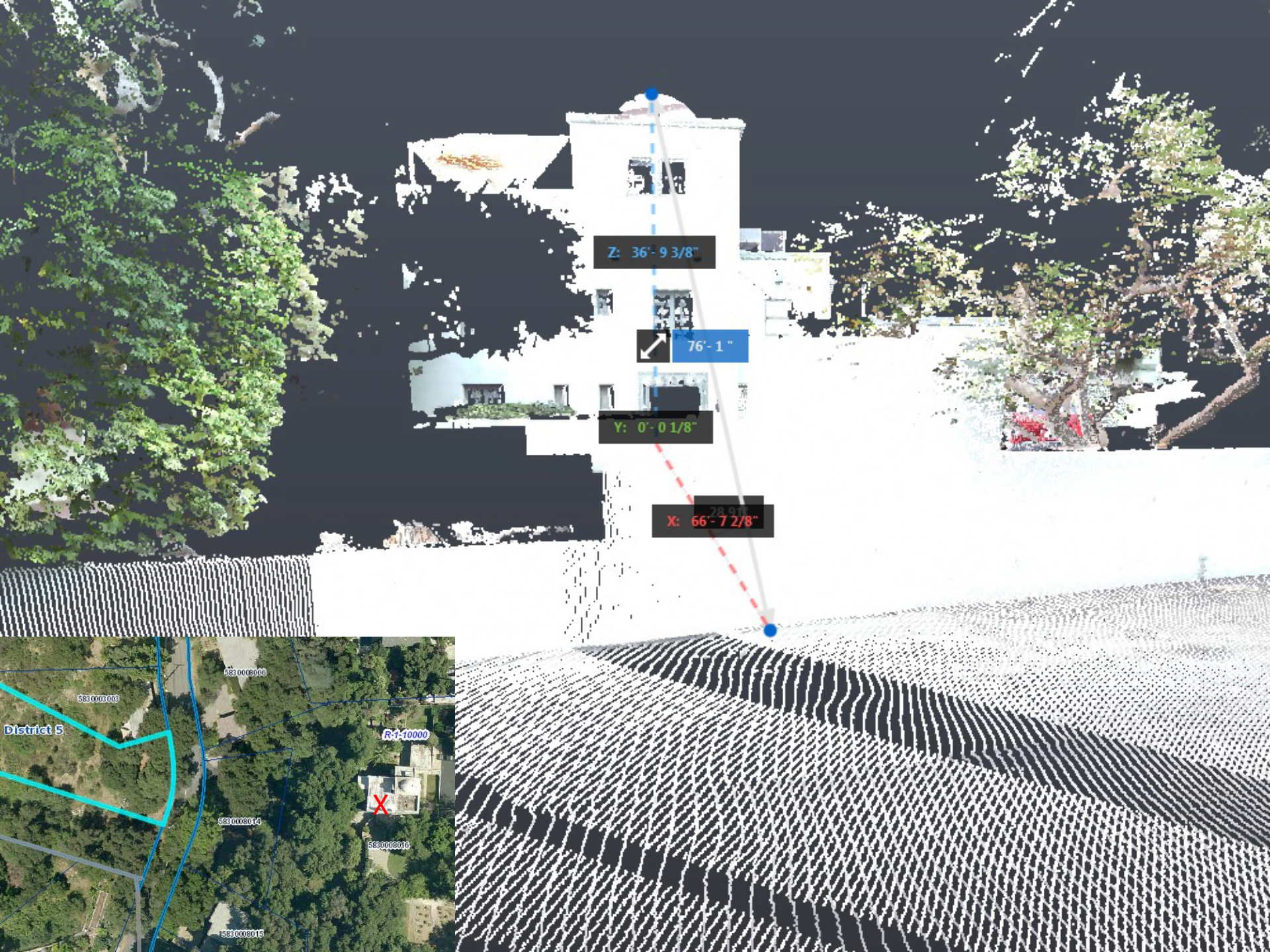
View from patio of 3589
Canyon Crest Rd


Z: 36' 9 3/8"
76' - 1 "
Y: 0' - 0 1/8"
X: 66' - 7 2/8"

5830008006
5830008003
District 5
R-1-10000
5830008014
5830008013
5830008015




5830008006
5830008003
District 5
R-1-10000
X
5830008014
5830008013
5830008015

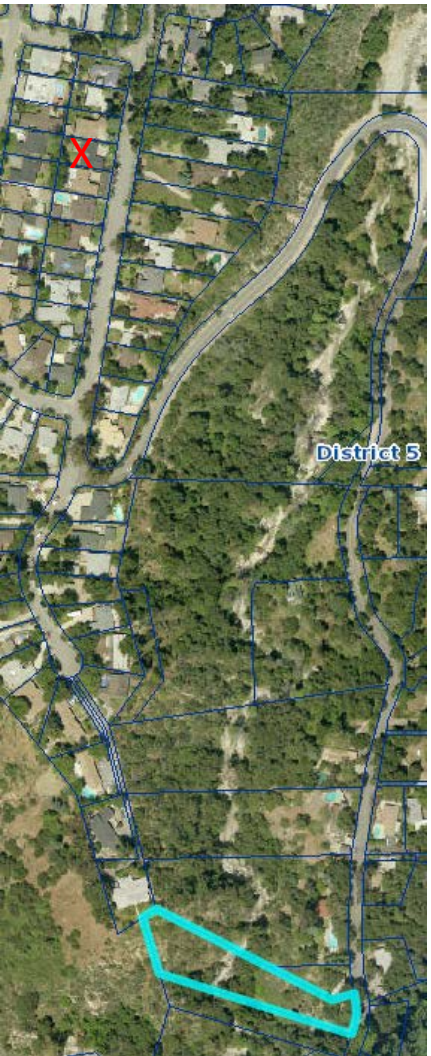

Z: 36' - 9 3/8"
76' - 1 "
Y: 0' - 0 1/8"
X: 66' - 7 2/8"
District 5
R-1-10000
5830008006
5830008003
5830008014
5830008018
5830008015

4209 Canyon Crest Rd



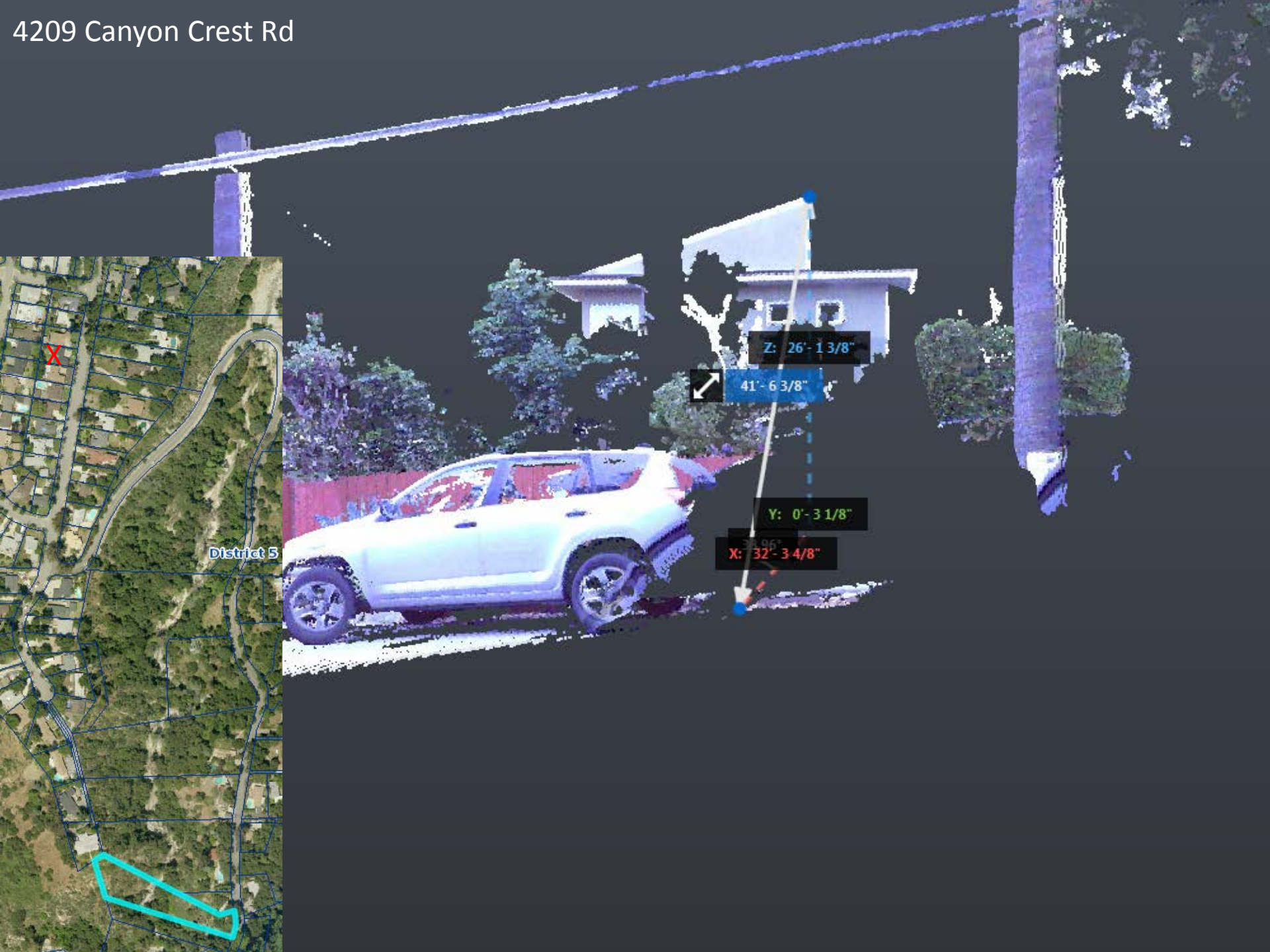


4209 Canyon Crest Rd

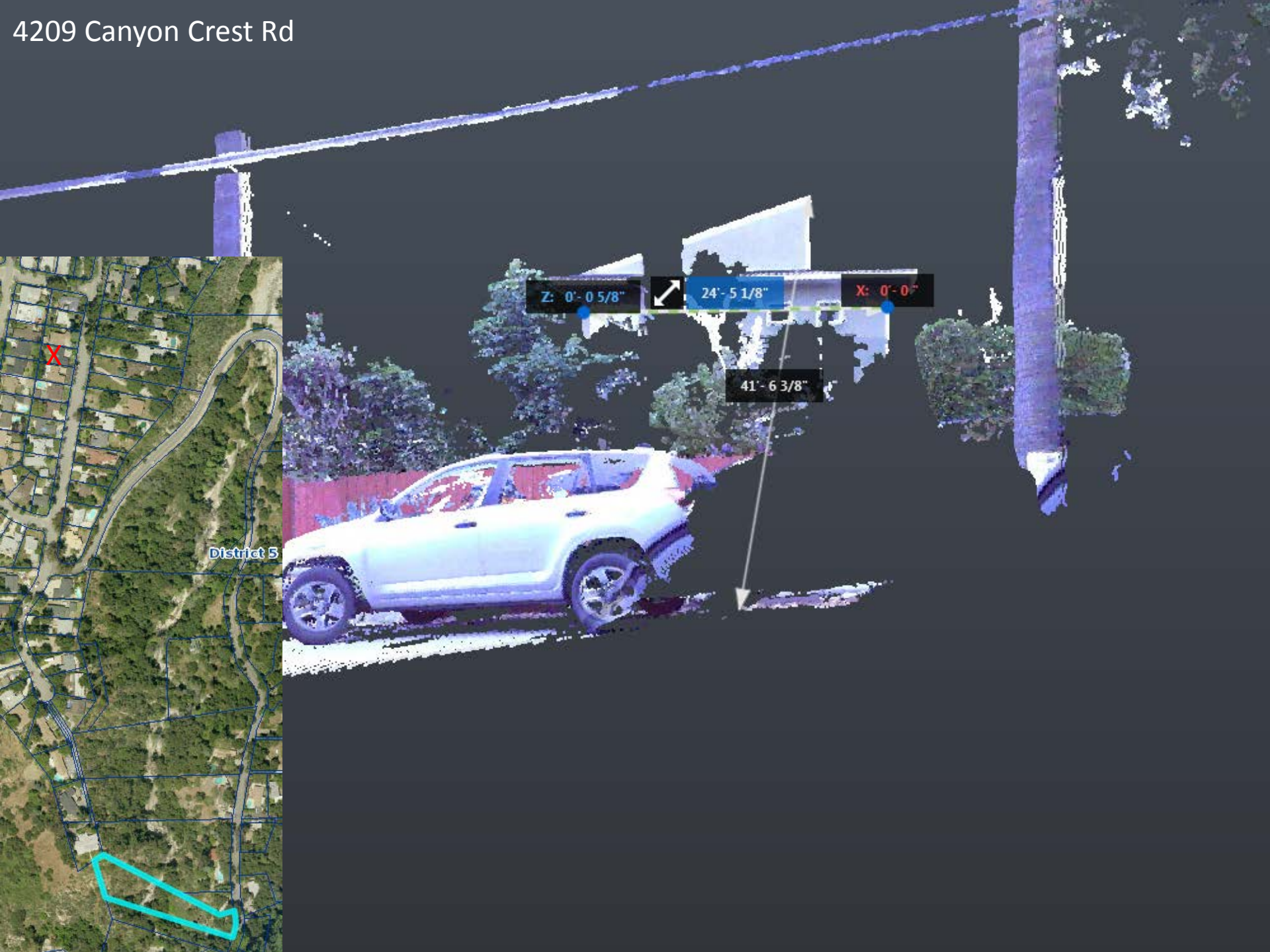




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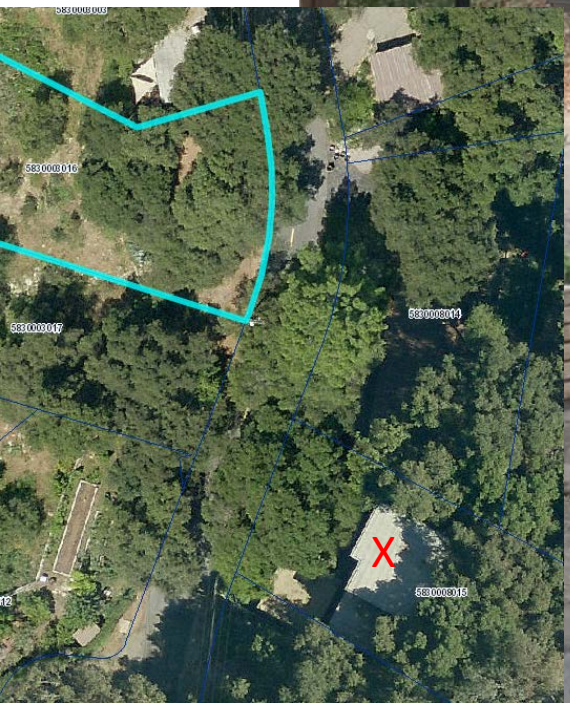


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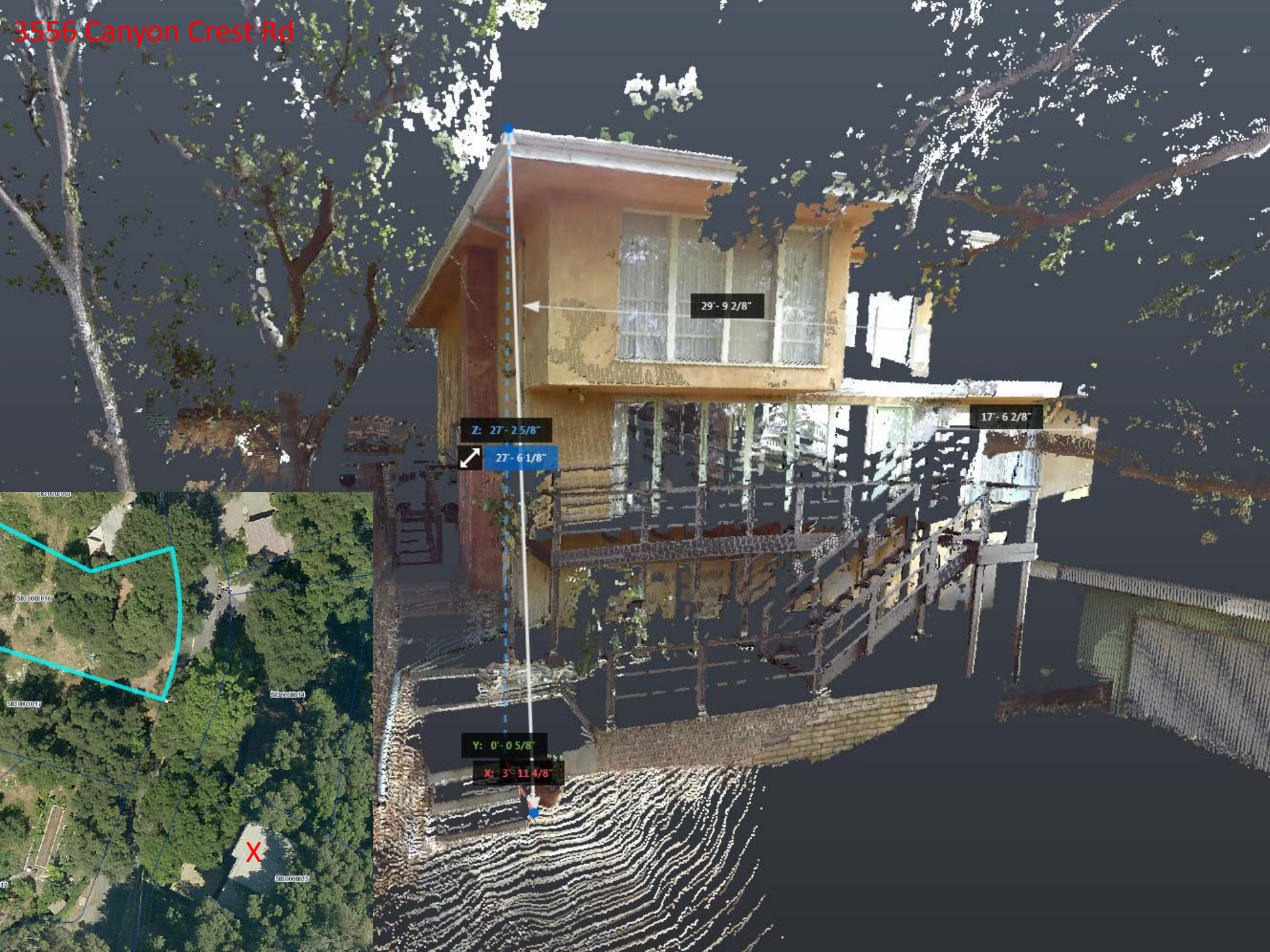



3556 Canyon Crest Rd
Z: 36' - 3 5/8"
61' - 3 6/8"
36.31°
Y: 0" - 0"
X: 49' - 4 7/8"
X

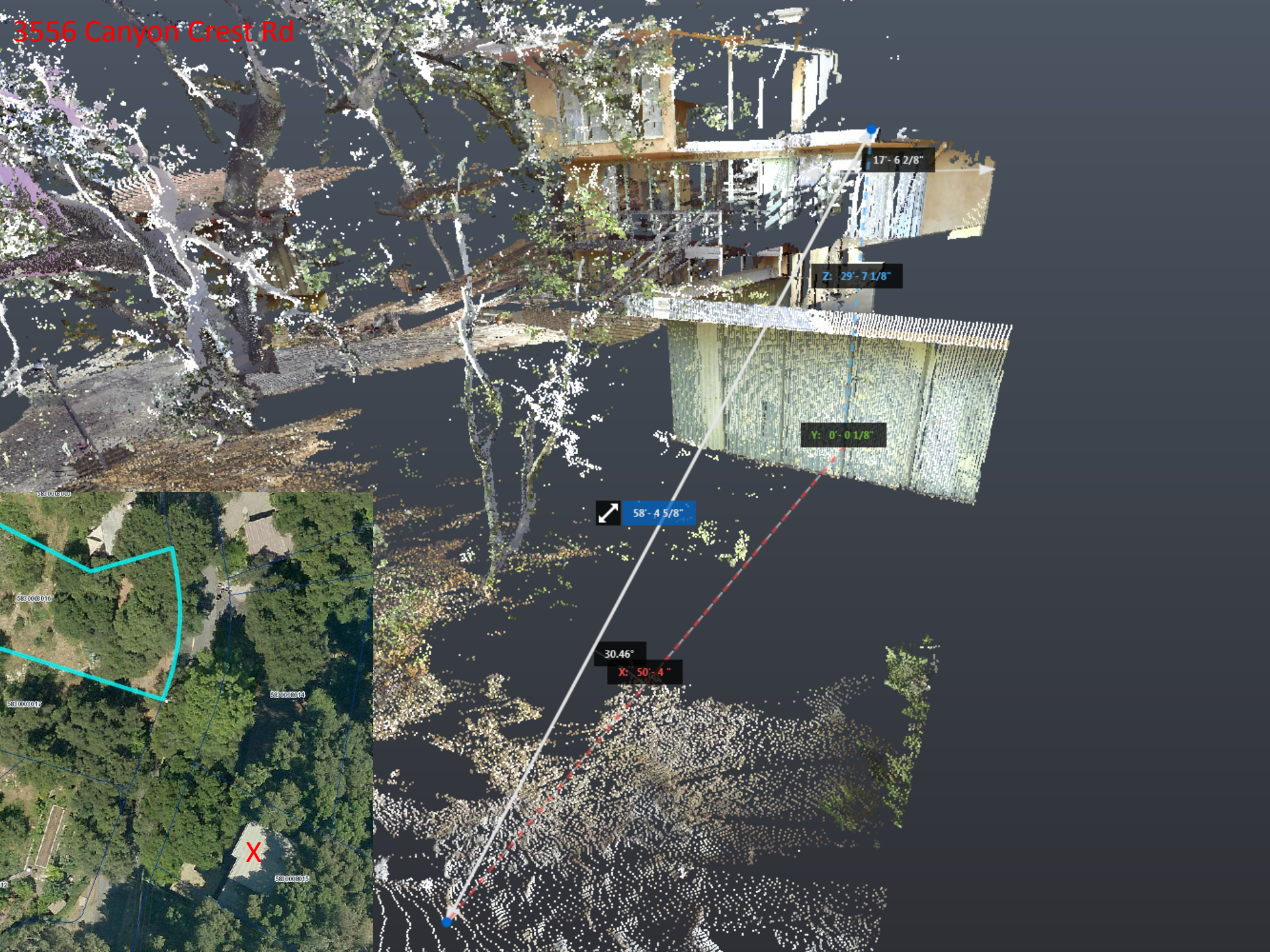
3556 Canyon Crest Rd




3556 Canyon Crest Rd
Z: 36' - 3 5/8"
61' - 3 6/8"
36.31°
Y: 0' - 0"
X: 49' - 4 7/8"
X


3556 Canyon Crest Rd
29' - 9 2/8"
17' - 6 2/8"
Z: 27' - 2 5/8"
27' - 6 1/8"
Y: 0' - 0 5/8"
X: 3' - 11 4/8"
X


3556 Canyon Crest Rd
17' - 6 2/8"
Z: 38' - 1 7/8"
63' - 9 3/8"
Y: 0' - 0 4/8"
36.74'
X: 51' - 1 3/8"
X


3556 Canyon Crest Rd
17'- 6 2/8"
Z: 29'- 7 1/8"
Y: 0'- 0 1/8"
58'- 4 5/8"
30.46°
X: 50'- 4 "
X

3588 Canyon Crest Rd



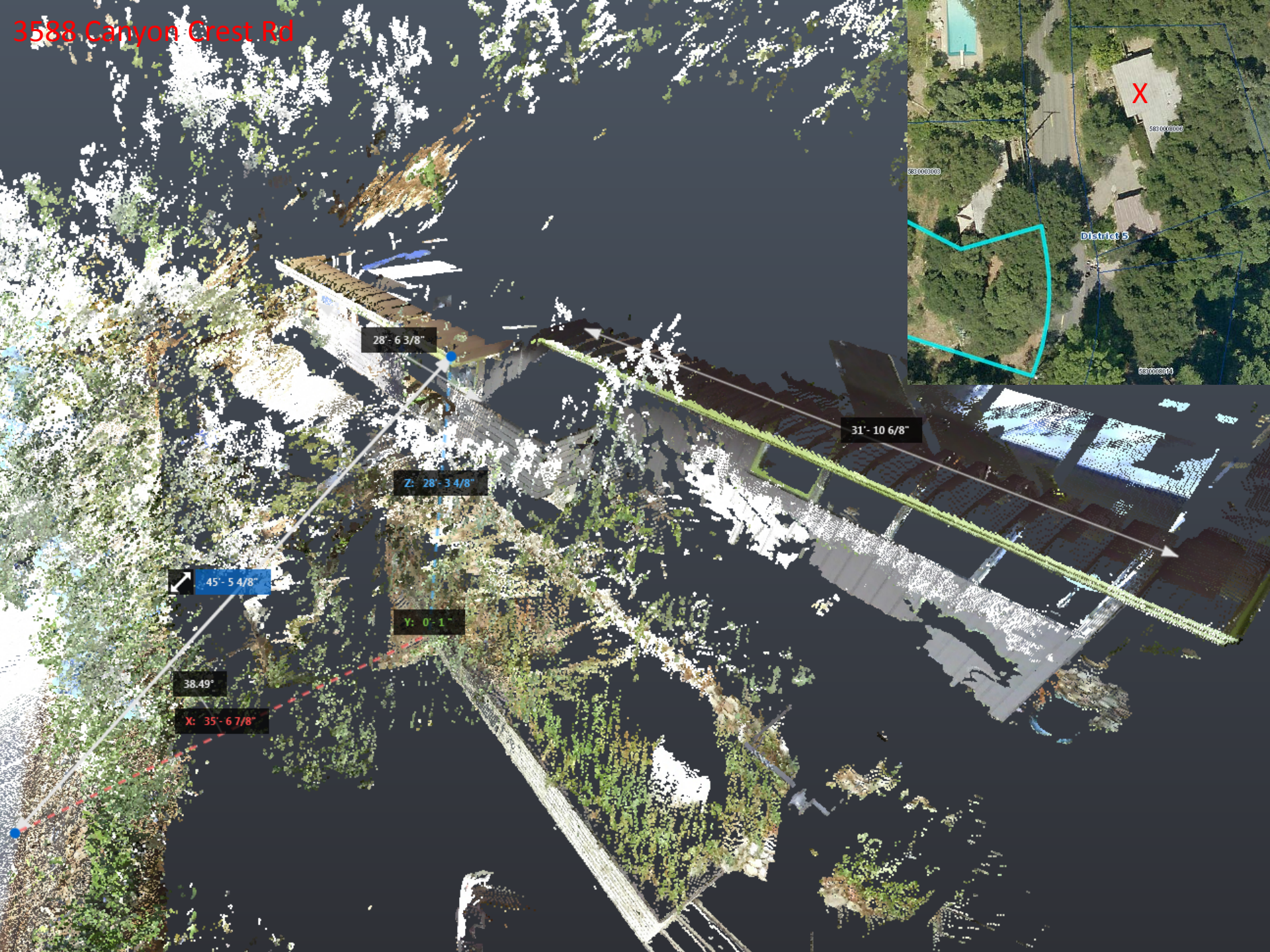
3588 Canyon Crest Rd



3588 Canyon Crest Rd




3588 Canyon Crest Rd
31' - 10 6/8"
28' - 6 3/8"
Z: 27' - 6 3/8"
39' - 7"
44.07°
Y: 0' - 0 1/8"
X: 28' - 5 2/8"
X
District 5

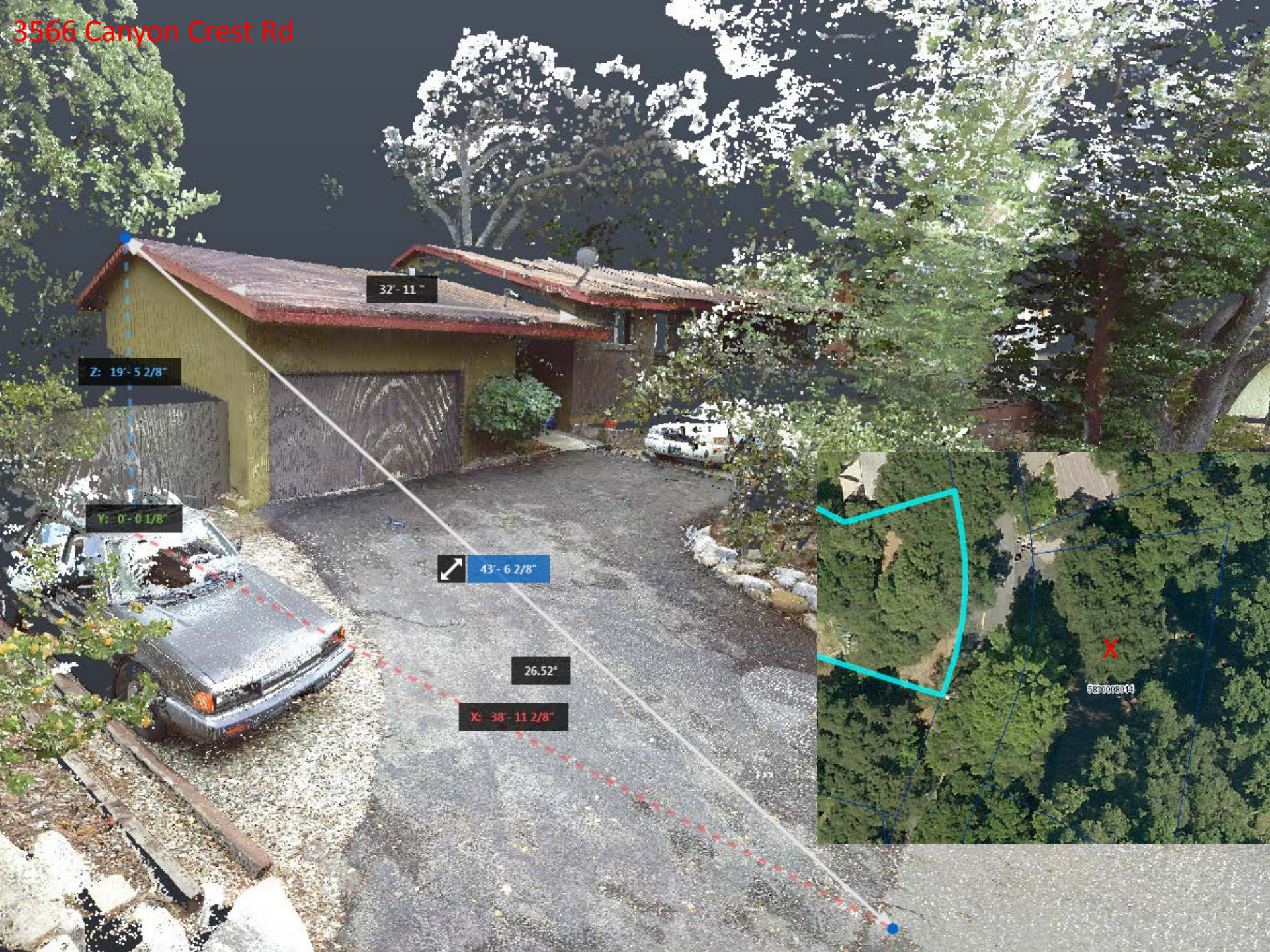

3588 Canyon Crest Rd
X
District 5
28' - 6 3/8"
31' - 10 6/8"
Z: 28' - 3 4/8"
45' - 5 4/8"
Y: 0' - 1"
38.49°
X: 35' - 6 7/8"


3566 Canyon Crest Rd
Z: 24'- 9 "
55'- 2 "
26.65°
Y: 0'- 0 2/8"
X: 49'- 3 5/8"
5830008044

3566 Canyon Crest Rd




3566 Canyon Crest Rd
Z: 24' - 9"
55' - 2"
26.65°
Y: 0' - 0 2/8"
X: 49' - 3 5/8"
X
5830008044


3566 Canyon Crest Rd
32'- 11 "
Z: 19'- 5 2/8"
Y: 0'- 0 1/8"
43'- 6 2/8"
26.52°
X: 38'- 11 2/8"
X
5800008014


3566 Canyon Crest Rd
72' - 3"
Z: 25' - 7 3/8"
Y: 0' - 0 1/8"
58' - 3"
26.08"
X: 52' - 3 6/8"
5830008014

Attachment 11

Response to claims of significant impacts of our project on biological resources, including oak woodlands and wildlife

November 10, 2016

Purpose:

The purpose of this attachment is to factually address claims that our project will result in significant impacts on biological resources, including oak woodland and wildlife.

Key Issues:

1. Substantial evidence has not been presented that the Oak Woodlands Management Plan ("Plan") Part II recommendations apply to our project except at the discretion of the Department of Regional Planning. The Plan has not yet been fully implemented in the County of Los Angeles General Plan, and was adopted into the General Plan after our permit applications were submitted, and after our initial study was completed. No Plan elements or supplementary requirements were exposed to us at any point in our process, nor have any requirements been formalized in the County Code in Title 22: Planning and Zoning. According to the statement of applicability of the 2035 General Plan, we need not be governed by it.
2. Substantial evidence has not been presented that removal of one mature (>8"DBH) and two immature (<8"DBH), highly asymmetrical and nearly completely shaded out oak trees will result in a significant impact to that woodland – *even before any permit conditions are applied*. Were permit conditions to be included, replacement of oak trees in a 2:1 ratio in accordance with the non-discretionary Los Angeles County Oak Woodland Ordinance is an accepted method of oak woodland restoration ensuring that no permanent net loss of woodlands occurs. This ratio is cited by other Oak Woodland Management Plans in the state of California, by sources in the literature, and by Environmental Impact Reports mitigating for significant impacts to coast live oak woodlands.
3. Substantial evidence has not been presented that the death of as many as three additional mature oak trees claimed by opposing counsel's consultant arborist would result in the net conversion of oak woodland, when our permit conditions require that we replace any trees that die in a ratio of 2:1, and the monitoring interval for this has been extended to seven years, consistent with California Public Resources Code 21083.4(b)(2)(B) and the recommendation in the recently created Los Angeles County Oak Woodland Conservation Management Plan Guide. The estimates used to justify these potential removals reflect some misunderstandings, and some are contra-indicated by facts in the administrative record. Note that there is ample suitable habitat on our lot of more than an acre for establishment of even dozens of replacement oak trees
4. Opposing counsel has argued that compliance with a broad range of the non-discretionary regulations that govern any single-family residence in this jurisdiction should be elevated from an *implicit expectation* or *permit approval condition* to a *CEQA mitigation* for a potentially significant impact on the Environment. It is a slippery slope to require that an Initial Study analysis – which is intended to be brief – evaluate hypothetical impacts were all governing regulations not to be in effect, as a means of determining whether they are "required" to mitigate significant impacts to the Environment, or irrelevant. The point is moot, because the regulations are in effect, with the due oversight of enforcement assigned to some agency. The legal basis for

this response is developed further in Attachment 14.

5. Professional testimony has exhibited several misunderstandings affecting impact assessments (see Attachment 7), as well as speculation, ascribing construction methods that would be irresponsible instead of engaging with us to clarify the construction methods we will actually employ. Using factual information of construction methods and manner of encroachment, our arborist has given all encroached trees to remain a good probability of surviving
6. Quantified professional assessments were provided without supporting evidence, and conflict to substantial extents with factual evidence in the record, also attributed in Attachment 16.
7. Substantial evidence has not been presented that the portion of our lot to which construction impacts are confined functions as a wildlife corridor, or that our construction activities will impact the part of our parcel that contains a canyon bottom that does function as a wildlife corridor. The irregular, un-patterned presence of wildlife is widespread throughout the area, with sightings in heavily developed settings reported regularly. We can attest to this as residents at the end of Canyon Crest Rd for years.

Background on Oak Woodland regulation:

The letter from Richard Bruckner to the Los Angeles County Board of Supervisors dated November 27, 2012 (incorporated by reference, see Attachment 14) contains the following information describing the development and scope of an Oak Woodland Management Plan in the County of Los Angeles:

"According to the California Oak Woodlands Conservation Act (AB 242), Los Angeles County (County) is required to develop an Oak Woodlands Conservation Management Plan (Plan) in order to qualify for funding to preserve oak woodlands through the State of California's Oak Woodlands Conservation Fund (Fund).

. . .

The Plan is divided into two parts. Part I of the Plan contains a voluntary oak woodlands conservation strategy that allows the County to qualify for funds distributed through the Fund. Part II of the Plan contains a comprehensive set of recommendations designed to assist the County in revising, expanding, and implementing policies and regulations to preserve oak woodlands.

. . .

There are three identified focuses of the Plan. These are to prioritize the preservation of oak woodlands, to promote conservation by integrating oak woodlands into the development process in a sustainable manner, and to effectively mitigate the loss of oak woodlands. The Plan implements these objectives through a series of recommendations to revise and expand County plans, codes and processes. These recommendations are categorized and outlined below:

- Alterations to the County's development and environmental review process;
- Revisions to the process by which County agencies address impacts to oak woodlands;
- Expansion of goals and policies contained in the County's General Plan;
- Changes to the County Zoning Code; and
- Long range implementation efforts.

. . .

Using the Plan as a foundation, DRP will create a guidance document to formalize, expand, and standardize this process. The guidance document will be utilized by all planners when reviewing discretionary development projects and will consist of four parts intended to outline the various phases of processing projects located in oak woodlands in order to best achieve the Plan's stated goal of no net loss of oak woodlands. These parts are as follows:

- Part One will outline how applicants determine if their project is located in an oak woodlands;
- Part Two will outline how planners process projects located in oak woodlands;
- Part Three will summarize mitigation strategies in cases where oak woodlands are impacted, damaged, or taken; and
- Part Four will outline guidelines for post-mitigation monitoring.

. . .

DRP considers the best and most feasible mitigation alternatives on a case-by-case basis when reviewing a development project requiring discretionary approval, but it does not have a formal documented process for the prioritization of mitigation strategies. As previously discussed, DRP will detail this process in Part Three of the guidance document, which will be made publicly available. This document will clearly outline the range of mitigation options using recommendations form the Plan, such as those mentioned above, as guidelines.

. . .

Furthermore, DRP will use the completed guidance document to create additional materials, such as a brochure or pamphlet, for potential developers that outline the manner in which projects located in oak woodlands are processed, as well as what mitigation strategies can be expected.

. . .

The Plan calls for a comprehensive review of the County's Oak Tree Ordinance. . . . A comprehensive review of the County's Oak Tree Ordinance, or the development of a new Oak Woodlands Ordinance, is not possible at this time given resource constraints.

. . .

The Plan also makes recommendations for long range strategies geared toward the protection of oak woodlands. A major component of these recommendations involves the comprehensive documentation of the current status and range of oak woodlands in the unincorporated areas of the County. While the Plan provides a map of oak woodlands in the State of California's CALVEG dataset and "potential oak woodlands," DRP requires a more detailed and up-to-date data set in order to accurately document the status of current oak woodlands. . . . In the meantime, the CALVEG data set and the Plan's Oak Woodlands Conservation Map will be made available on the DRP website for both County staff and members of the public."

As noted above, the existence of the Plan is traced to the passage of AB 242 in 2001, creating an Oak Woodlands Conservation Program. The State of California Wildlife Conservation Board administers this program and describes it at https://wcb.ca.gov/Programs/Oaks:

"The Oak Woodlands Conservation Program offers landowners, conservation organizations, cities and counties, an opportunity to obtain funding for projects designed to conserve and restore California's oak woodlands. While the Program is statewide in nature, it provides opportunities to address oak woodland issues on a regional priority basis.

The Program is designed to help local efforts achieve oak woodland protection. More importantly, this Program provides a mechanism to bring ranchers and conservationists together in a manner that allows both to achieve that which is so valued - sustainable ranch and farming operations and healthy oak woodlands."

The AB 242 Program Application and Guidelines (Attachment 14 citation D) states:

"The Act mandates the Wildlife Conservation Board to establish a grant program designed to protect and restore oak woodlands using conservation easements, cost-share and long-term agreements, technical assistance and public education and outreach. The Program provides incentives designed to foster the conservation of oak woodlands in a manner that promotes local priorities while sustaining the economic viability of farming and ranching operations.

. . .

Recognizing the importance of oak woodlands and the critical role private landowners have in the conservation of oaks, the Legislature created the Oak Woodlands Program with the expressed intent the Program accomplish the following:

1. Support and encourage voluntary, long-term private stewardship and conservation of California oak woodlands by offering landowners financial incentives to protect and promote biologically functional oak woodlands;
2. Provide incentives to protect and encourage farming and ranching operations that are operated in a manner that protect and promote healthy oak woodlands;
3. Provide incentives for the protection of oak trees providing superior wildlife values on private land, and;
4. Encourage planning that is consistent with oak woodlands preservation.
. . .
To accomplish the legislative intent, the Act identifies the Wildlife Conservation Board (WCB) as the responsible entity to implement the Oak Woodlands Conservation Program. The Act authorizes the WCB to purchase oak woodland conservation easements and provide grants for land improvements and restoration efforts.

In addition, the WCB is authorized to award cost-sharing incentive payments to private landowners who enter into long-term agreements. Such agreements will be structured to include management practices that benefit oak woodlands and promote the economic sustainability of the farming or ranching operation.

The Act requires that at least 80 percent of the money be used for grants for the purchase of easements, for restoration activities or for enhancement projects. In addition, the funds may be used for grants that provide cost-share incentive payments and long-term agreements.

The remaining 20 percent may be used for public education and outreach efforts by local governments, park and open space districts, resource conservation districts and nonprofit organizations. Within the 20 percent category, funds may also be used for grants designed to provide technical assistance and to develop and implement oak conservation elements in local general plans.

While the Act specifies how the monies are to be allocated, the Act requires that priority be given to grants that result in the purchase of oak woodland conservation easements.
. . .
The Oak Woodlands Conservation Act requires that to qualify for a grant, the county or city in which the grant money would be spent, shall prepare or demonstrate that it has already prepared an oak woodlands management plan. Once the city or county has prepared or demonstrated that an Oak Woodland Management Plan exists, a landowner would then be eligible to participate in the program.
. . .
To assist with the preparation of the plan, the Act allows a nonprofit organization, park or open space district, resources conservation district or other local government entity to apply to the Board for funds to develop an Oak Woodlands Management Plan for a county or city. However, the county or city shall maintain ultimate authority to approve the Oak Woodlands Management Plan.
. . .
The Advisory Committee recognized that such a plan should contain elements designed to encourage the long-term conservation of oak woodlands. More importantly, the committee recognized that elements of the required plan should not be overly restrictive to discourage landowners, or local jurisdictions from participating in the program.
. . .
To participate in the Oak Woodlands Conservation Program, a county or city shall adopt an Oak Woodlands Management Plan in the form of a Resolution. The Resolution does not have to be part of the General Plan. If a county or city currently has a plan in place that meets the minimum requirements of the Oak Woodlands Management Plan, a resolution by the governing body certifying such compliance is sufficient.

A Resolution shall be adopted that contains at least the following elements:

1. The county or city agrees to adopt a Resolution to offer private landowners the opportunity to participate in the Oak Woodlands Conservation Program. The Oak Woodlands Management Plan and Resolution is adopted pursuant to the requirements of California Fish and Game Code Section 1366 (a). Previously adopted resolutions are acceptable if they meet the minimum requirements of the Resolution.
2. The county or city shall prepare statements that describe the status of oak woodlands in their jurisdiction. Such statements shall include a description of all native oak species, estimates of the current and historical

distribution of oak woodlands, existing threats, status of natural regeneration and growth trends. To the extent possible, local jurisdictions shall prepare maps displaying the current distribution of oak woodlands.
3. The county or city shall prepare statements recognizing the economic value of oak woodlands to landowners and the community at large. These statements shall encourages and support farming, ranching and grazing operations that are compatible with oak woodland conservation.
4. The county or city shall prepare statements recognizing the natural resource values of oak woodlands including the critical role oak woodlands play relative to the health and function of local watersheds, soil and water retention, wildlife habitat, open space and the reproduction or reduction of fuel loads.
5. The county or city shall prepare statements recognizing that the loss of oak woodlands has serious effects on wildlife habitat, retention of soil and water and that planning decisions for oak woodlands should take into account potential effects of fragmentation of oak woodlands.
6. The county or city shall prepare statements expressing support for landowners that participate in the Oak Woodlands Conservation Program. To qualify for funding consideration by the Wildlife Conservation Board, the county or city agree, pursuant to Section 1366 (f) of the Act to certify that individual proposals are consistent with the county or city Oak Woodlands Management Plan.
7. The county or city shall prepare statements that support and encourage education and outreach efforts designed to demonstrate the economic, social and ecological values associated with oak woodlands.
8. The county or city shall review and update as necessary, the Oak Woodlands Management Plan.
. . .
The Oak Woodlands Conservation Program is designed to consider grant proposals from the following participants: private landowners, local government entities, park and open space districts, resource conservation districts and nonprofit organizations. Participants are encouraged to develop partnerships with interested individuals or organizations that are designed to leverage available technical and financial resources.

In addition, pursuant to Section 1366 (f), the county or city shall certify that proposed grant requests are consistent with the Oak Woodlands Management Plan of the county or city. As such, eligible participants must consult with the local county or city and obtain a certification (see Application, Required Attachments and Certifications) that the proposal is consistent with local Oak Woodlands Management Plan.
. . .
To qualify for funding consideration for a restoration, enhancement, purchase of an oak conservation easement or long-term agreement, projects must meet one or more of the following criteria, must contain an appropriate management plan to assure project goals are maintained and the oak stand must have greater than 10 percent canopy:

- The project is of sufficient size to provide superior wildlife values.
- The project area contains a diverse size-class structure of oak woodlands and/or a diversity of oak species that will promote the sustainability and perpetuation of oak woodlands.
- The property is adjacent to other protected areas or will contribute toward ease of wildlife movement across ownerships.
- The project contributes toward regional or community goals, provides scenic open-space, protects historic or archeological values, or contains unique geologic features.
- The property is a working landscape. The landowners have implemented or agree to implement stewardship practices that recognize and incorporate the ecological requirements of oak woodlands and associated habitats, thus promoting the economic and resource sustainability of the farming and ranching operation
- The property removes or reduces the threat of habitat conversion from oak woodlands to some other use.
- The project has the potential to serve as a stewardship model for other landowners."

Thus, AB 242 provides grants as a financial incentive for voluntary dedication of oak woodland conservation easements. In order that landowners may qualify for these grants, the authority having jurisdiction must create an Oak Woodlands Management Plan to provide guidelines for conforming preservation of oak woodlands. While the Plan has some required elements, the county or city has ultimate authority for approval of the Plan (and by extension, content of the plan), and AB 242 intends that the Plan should not be overly restrictive to

discourage landowners from participating.

In other words, the statute seeks to financially incentivize oak woodland preservation consistent with the guidelines in a Plan, by offering grants to landowners who do so. By specifying that the Plan should not be too onerous that landowners bear more burden in compliance than the value obtained from the grant, it is clear that AB 242 intends this process to be voluntary.

A voluntary process does not require an update to the General Plan or corresponding Environmental Impact Report, and so AB 242 clarifies that it is sufficient that the county Board of Supervisors adopt this by resolution.

On August 23, 2011, the Board of Supervisors adopted a motion to accept the following recommendation of the Department of Regional Planning, dated August 2, 2011 (Attachment 14 citation A):

"1. Adopt Part I of the Los Angeles County Oak Woodlands Conservation Management Plan ("County Oak Woodlands Plan") by approving the attached Resolution; and

2. Direct the Department of Regional Planning ("Regional Planning") with input from the Forestry Division of the Fire Department and in consultation with any affected County departments, to review the recommended actions in Part II of the County Oak Woodlands Plan and thereafter provide recommended action(s) to be reviewed and considered through the normal public review and/or hearing processes.
. . .
Part I of the plan meets the requirements of the Oak Woodlands Conservation Act by describing and mapping the extent of Oak Woodlands in the county, and describing methods for characterizing oak woodlands suitable for preservation. Part II provides recommendations for the comprehensive conservation, preservation or mitigation of oak woodlands. Part II's recommendations include incorporation of oak woodlands conservation policies into the updated General Plan; project design guidelines to avoid oak woodlands; revision of the County Initial Study form to account for oak woodlands; comprehensive review and revision of the County Oak Tree Ordinance; and establishment of a County Oak Tree and Oak Woodlands Preservation Manager to oversee implementation of the Plan.
. . .
Regional Planning determined that approval of the County Oak Woodlands Plan is categorically exempt from the California Environmental Quality Act as a Class 7 Categorical Exemption (Guideline § 15307) because it is authorized by the Oak Woodlands Conservation Act, 2001 (AB 242), which seeks to preserve the remaining oak woodlands on privately held land."

In other words, the County of Los Angeles accepted the incentive provided by AB 242 to prepare an Oak Woodland Management Plan ("Plan") that rendered landowners in Los Angeles County eligible for voluntary dedication of oak woodland conservation easements in return for grants. Part I of the Plan meets the intent of AB 242 and may be adopted by resolution. Part II of the plan is supplementary to this purpose, and must be subjected to the "normal public review and/or hearing processes". Only Part I was given a Class 7 Categorical Exemption from CEQA review, because only Part I is ascribed to the purpose and mandate of AB 242.

In May of 2011, a final Oak Woodland Management Plan was created (Attachment 14 citation C). It states:

"The primary goal of the Los Angeles County Oak Woodlands Conservation Management Plan (OWCMP) is to develop a consistent policy for the management of oak woodlands that can be incorporated into the Los Angeles County General Plan and other relevant planning documents.
. . .
A secondary goal of the OWCMP is to meet the requirements of the California Oak Woodlands Conservation Act (AB 242). In order to be eligible for project funding under this bill, counties must create an Oak Woodlands Management Plan.
. . .
This plan includes two parts:

PART I presents a voluntary oak woodlands conservation strategy for Los Angeles County. This section contains the elements needed to meet the requirements of the California Oak Woodlands Conservation Act (AB 242) in order for the County to be eligible for oak woodlands project funding. The Los Angeles County Board of Supervisors can adopt a resolution to follow the guidelines in Part I, thereby making the County eligible to submit grant requests for conservation, preservation and/or restoration project funding from the state Oak Woodlands Conservation Fund.

PART II provides recommendations for planning and implementation elements of the OWCMP for incorporation into relevant County regulations and planning documents. Some of the recommendations involve only administrative changes, but others need more than administrative review to be fully adopted. Implementation of Part II will require that the Board of Supervisors consider directing the appropriate County departments to evaluate impacts of the proposed recommendations. Subsequently, those County departments will provide recommended actions that can proceed through the normal public review and hearing processes."

The Department of Regional Planning assumed the directive to evaluate the recommendations of Part II, and to coordinate a response with interested County agencies. The Director of the Department of Regional Planning responded to the Board of Supervisors in a letter dated November 27, 2012 (Attachment 14 citation A), excerpted at the start of this section.

In that response, the Director noted that the Plan implements its objectives through recommendations to revise the General Plan, update County Code "Title 22: Planning and Zoning" with a new Woodland Ordinance and revision/reconciliation of the existing Oak Tree Ordinance, update the process of environmental review, and facilitate long-range planning by identifying areas of woodland upon which to focus priorities (independent of the inclusive and easily identifiable geometric definition provided in the Oak Woodland Conservation Management Plan Guide, discussed subsequently). The director further notes that updates to Title 22 and the Oak Tree Ordinance were not possible. In other words, there would be no changes to the codes that lawfully regulate projects, but the Department of Regional Planning would update their own processes, which they justly oversee at their discretion. Referenced Department of Regional Planning oak woodlands guidance documents have yet to be completed or made publicly available as of October 2016.

The Plan acknowledges that updates to regulations would "need more than administrative review to be fully adopted." They would in fact need proper consideration with the process to which Los Angeles County subjects substantial new regulations, including an Environmental Impact Report. In *Center for Sierra Nevada Conservation v. County of El Dorado*, 202 Cal. App. 4Th 1156 (2012), the court held that although the General Plan EIR anticipated the development of the oak woodland management plan, it didn't analyze key provisions of the plan the County ultimately adopted, so the plan had to be analyzed in a new tiered EIR.

Subsequent to this letter, the County of Los Angeles undertook an effort to update its General Plan. This was duly subjected to proper review with an Environmental Impact Report. Several goals were updated in this revision of the General Plan, including some related to Oak Woodlands. Specifically, Policy C/NR 4.1 was incorporated to "Preserve and restore oak woodlands and other native woodlands that are conserved in perpetuity with a goal of no net loss of existing woodlands."

The goal is to preserve oak woodland *and restore* oak woodland that cannot be preserved.

This is also the intent of the Oak Tree Ordinance and oak tree permit process that currently governs our project, as our planner notes in analysis of Initial Study question 4(e). Its 2:1 ratio of replacement is noted in Attachment 14 citation EE as being specified by Giusti et al in "A Guide for Planners to Determine Significant Impacts to Oaks". This threshold was also referenced in Oak Woodland Management Plans elsewhere in the state. A few include:

- Napa County (Attachment 14 citation CC at 18): "Provide replacement of lost oak woodlands or preservation of like habitat at a 2:1 ratio when retention of existing vegetation is found to be infeasible. Removal of oak species limited in distribution shall be avoided to the maximum extent feasible."
- Santa Clara County (attachment 14 citation DD at 2): "The objective of tree planting shall be to restore former oak woodland at a ratio of 2:1 or 3:1 based on the condition of the oak woodland habitat. 2:1 restoration is recommended for medium quality oak woodland habitat, and 3:1 restoration is recommended for high quality oak woodland habitat."
- El Dorado County (Attachment 14 citation EE at 10): "Replacing lost acres of oak woodland at a 2:1 ratio is consistent with guidance in "A Planner's Guide to Oak Woodland" (Guisti et al., 2005).

In addition, the Environmental Impact Report for the Lincoln Bypass in Placer County (see Attachment 14, citation XX at 4-95) assess a 2:1 ratio of replacement trees as sufficient replacement to mitigate the significant environmental effect of removing acres of oak woodland.

Lead agencies are afforded discretion to determine what is sufficient to address that other "half" of oak woodland mitigation besides replacement. Los Angeles County has gone through an analogous process for another single family residential project that entailed removal of four oak trees from a more intact oak woodland, along with encroachment on 12, to build an 8,000sqft single-family residence (see Attachment 20). Needless to say, a project of that size has knobs in its design that ours does not. That project's initial study (see Attachment 14, citation QQ) notes: "Considering its degraded character, resource values of the on-site woodland are manifest primarily in the trees themselves, and habitat restorative efforts aimed at creation of a pristine woodland stand are generally not warranted. Replacement of the 4 removed oak trees with 8 newly-planted trees, per the requirements of the Oak Tree Ordinance will provide some measure of mitigation for impacts to the woodland; the additional "half" of the required mitigation per 2(c) above will be provided by the following:

1. non-native species control to foster the development of a native understory;

2. long-term preservation of the mitigation planting site(s) as depicted with a “no-build”, “mitigation oak trees to remain” or similar depiction on the approved project Site Plan; and
3. a 7-year monitoring program to ensure the vigor of the replacement trees and understory development.”

In other words, removal of four *mature* oak trees – with trunk diameters of 24, 16, 16 and 12 inches – was analyzed to be a potentially significant effect for this project site given the condition of this stand of oak woodland – which was moderately, not severely degraded. However, the removal of a single tree in a severely degraded oak woodland for our project is a less than significant effect, and the mitigation employed to render the effects of this project less than significant are also discretionary parts of our project. We intend to foster development of a native understory by controlling non-native species. Our replacement oak trees are sited in the riparian environment where they are suited to thrive, and we intend to plant many more than the statute requires, as well as dedicate a conservation easement for this environment. Our monitoring interval is also 7 years. It is at the discretion of the lead agency to determine whether these things are *required* as *mitigation measures* for a significant environmental impact, or merely conscientious, thoughtful planning and design practice.

Furthermore, all attachments we have submitted may supplement the brief explanations required of an Initial Study. “Because an agency's determination on a proposed negative declaration must be based on the whole record, information missing from the initial study can be supplied by other data in the record. See *Sundstrom v County of Mendocino* (1988) 202 CA3d 296, 305.” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) §6.20)

Every General Plan policy goal is supplied in Chapter 16 with an Implementation Program, which includes both a timeframe and a description enumerating more specific desired outcomes for that goal. For C/NR 4.1, the timeframe is listed as 1-2 years (as measured from the date of adoption i.e. October 6, 2015).

This timeframe contains a discrepancy with the final General Plan EIR. The final EIR (attachment 14 citation J at 2-15) has the following comment, addressing feedback from the Endangered Habitats League:

“As recommended in your comment letter dated July 7, 2014, the implementation timeframe of Program C/NR-4 Native Woodlands Conservation Management Plan has been changed to Years *3-5*.” (emphasis added)

Regardless of whether the timeframe is properly 1-2 years or 3-5 years, and independent of the scope allotted to the policy goal, the implementation would still presently be *in progress*, barely a year after adoption of the General Plan.

In addressing the scope of the goal, the program implementation description is stated as:

“Implement the County’s Oak Woodlands Conservation Management Plan through the

following actions:

- Develop a process for documenting oaks that are added by a property owner ("volunteer oaks") as part of the Zoning Ordinance Update Program; and
- Work with the Los Angeles Region Imagery Acquisition Consortium to lobby for the inclusion of infrared imagery acquisition that will help document existing oak woodlands."

No other specific goals of Part II of the Oak Woodland Management Plan were enumerated in this chapter. Neither were many of the recommendations of part II of the Oak Woodland Management Plan discussed or analyzed in the draft EIR (attachment 14 citation I). In the draft EIR, discussion of the Oak Woodland Management Plan is confined to the following statements:

"To further the County's compliance with Public Resources Code Section 21083.4, which provides for the conservation of oak woodlands, the County adopted the Los Angeles County Oak Woodlands Conservation Management Plan (OWCMP) in 2012. The OWCMP develops a consistent policy for the management of oak woodlands by providing a voluntary conservation strategy in order to meet the requirements of the California Oak Woodlands Conservation Act (AB 242). The OWCMP extends CEQA consideration of impacts to oak woodlands comprised of oaks greater than 5 inches at DBH and recognizes that conservation of oak woodland habitat extends beyond the protection of individual trees.

. . .

The Oak Tree Ordinance regulates oak trees of 25 inches or more in circumference (8 inches in diameter), or in the case of an oak with more than one trunk, whose combined circumference of any two trunks is at least 38 inches (12 inches in diameter) DBH. An oak tree permit must be obtained in order to cut, destroy, remove, relocate, inflict damage, or encroach into the protected zone of any regulated oak tree. Additionally, the County adopted the Oak Woodlands Conservation Management Plan (OWCMP) in 2012, which develops a consistent policy for the management of oak woodlands. The OWCMP extends CEQA consideration of impacts to oak woodlands comprised of oaks 5 inches or larger in DBH.

In 2012, the County adopted the Los Angeles County Oak Woodlands Conservation Management Plan to encourage the preservation of oak woodlands through Los Angeles County. It is the intent of the County to maintain and expand the oak woodland habitat by requiring development designs to avoid impacts to oak woodlands and require appropriate compensatory mitigation where oak woodland impacts disturb or remove such habitat.

In addition, the County has recently finished an Oak Woodlands Conversation Management Plan Guide, which details the process by which the County will determine the extent of oak woodland habitat, the requirement for the preparation of an oak woodland report, an analysis of impacts to the extant oak woodland and the need for mitigation for impacts to the oak woodland habitat. This discretionary review by the County will be in compliance with CEQA."

This limited description is the extent of analysis pertaining to the Oak Woodlands Management Plan in the draft EIR. Many of the recommendations of Part II are not discussed at all, and the Guide is summarized in a single sentence, despite recommending new county regulations and advancing an inclusive interpretation for the definition of a woodland with significant potential consequences. Critically, the EIR contains the required scope of analysis by referring to the application of the Oak Woodland Management Plan as "discretionary review by the County," which is already within its purview.

We note that Los Angeles County has not made public nor have staff in the Department of Regional Planning claimed to be aware of any application of the Oak Woodland Management Plan Guide recommendation to create an oak woodland report. The process is not advertised in the oak tree permit or zoning permit checklists (see Attachment 14, citations Z and AA).

General Plan applicability:

"Chapter 2: Applicability" of the General Plan states:

"The following provisions shall apply to complete applications filed prior to the effective date of this General Plan.

The applicant may choose whether the application will be reviewed for consistency with the previously adopted General Plan or with this General Plan. In either case, approval of the application is not guaranteed.

If the applicant chooses to have the application be reviewed for consistency with the previously adopted General Plan, the application may be modified prior to consideration by the Los Angeles County Board of Supervisors, the Regional Planning Commission, the Hearing Officer or the Director, and still be reviewed for consistency with the previously adopted General Plan as long as the requested modification does not:

- Change the project's housing type (e.g., from single-family to two-family or multi-family);
- Increase the project's residential density;
- Increase the project's floor area or lot coverage for non-residential space;
- Increase the amount of grading for the project; or
- Increase the area of ground disturbance resulting from the project.

Such a modification may necessitate submittal by the applicant of revised, updated, or additional materials, including, but not limited to, site plans, elevations, and oak tree reports. If the requested modification does not meet all of the criteria listed above, the modified project shall be reviewed for consistency with this General Plan."

In other words, the General Plan acknowledges that its governing provisions need not apply to projects submitted prior to its date of adoption, provided they fulfill several requirements. Our project was submitted in August of 2014, as our Regional Planning project number (R2014-02411) attests. Furthermore, our draft initial study was completed before the 2035 General Plan was adopted. According to http://planning.lacounty.gov/generalplan, "The General Plan was adopted by the Los Angeles County Board of Supervisors on October 6, 2015." Our planner indicated the draft Initial Study was submitted to county agencies for review on this same date. The email record included below indicates that our planner was working on the initial study prior to this date.

Kristina Kulczycki <kkulczycki@planning.lacounty.gov> 8/17/15

to me

Hi Stephen,

That sounds like a plan. I think it is best to do an initial study to cover our bases. This project may qualify as a Class 3 exemption, but the only way to ensure that we have evaluated the impacts on the stream is to do an initial study and consult with the other agencies. Will provide you with receipts for all the fee transfers tomorrow and will continue working diligently to complete the draft initial study and get it out for consultation as soon as possible.

Regards,

Kristina

Kristina Kulczycki
Regional Planning Assistant II
Zoning Permits East
Department of Regional Planning
http://planning.lacounty.gov
213-974-6435

Illustration 1: Email communication indicating the initial study was being worked on well in advance of the General Plan adoption on October 6, 2015

More to the point, our planner cited General Plan references in the initial study that are dated consistently with the previous General Plan, not with the newly incoming 2035 General Plan. See for instance “General Plan 1980 Special Management Areas Map” (initial study at 8). The 2035 General Plan also has a Special Management Areas Map, dated November 2014 (Attachment 14 citation O), but this was not used for our initial study. It follows that our project was justly and reasonably reviewed against the General Plan in effect at the time - that dating to 1980.

As it concerns the fulfillment of the referenced requirements:

- Our housing type has remained consistent as single-family residential.
- Residential density is without meaning for a single home.
- Our project's floor area has not increased, nor are we a non-residential project.
- The amount of grading for our home has not changed.
- The area of ground disturbance for our home has not changed.

Our project fulfills all requirements. It is governed by the previous General Plan.

As further indication of this, we note that the County of Los Angeles Hillside Management Area Ordinance was adopted into the 2035 General Plan. At http://planning.lacounty.gov/hma, the Department of Regional Planning clarifies that the HMA Ordinance came into effect on November 5, 2015. Though Attachment 17 steps through the Design Guidelines checklist as a point of reference to demonstrate our compliance with the stated criteria of the checklist and therefore intent of the Ordinance, our project was never subjected to this process, nor was any report documenting compliance generated as required by County Code §22.56.217.G. It follows that we are not governed by this Ordinance, having submitted our application in 2014.

Oak Woodland Regulation Summation:

- In 2001, the California legislature passed AB 242, creating a voluntary program financially incentivizing private landowners to preserve oak woodland and requiring jurisdictions to create an Oak Woodland Management Plan ("Plan") with certain requirements, in order that landowners may be made eligible to apply for grants.
- The County of Los Angeles duly complied in creating an Oak Woodland Management Plan Guide, part I. This became legally effective by adoption of a resolution by the Board of Supervisors on August 23, 2011, consistent with the explicit guidance in AB 242.
- The creators of the Plan also authored a part II creating recommendations for extensive adjustments to county policies and the zoning code. Part II was further developed with a Plan Guide.
- Part II was evaluated by the Department of Regional Planning, which concluded that changes to the zoning code were not possible at the time, but that some recommendations would be incorporated into discretionary Regional Planning processes. No updates to Title 22 have been made as of the date of this response.
- The Plan and Plan Guide were subsequently referenced in the 2035 General Plan and General Plan EIR. There was no analysis and little discussion of the "requirements" of the Plan or Plan Guide in that EIR. The General Plan acknowledged that the Plan was implemented at the discretion of the Department of Regional Planning, obviating the need for detailed review and analysis, as a change to the zoning code would require.
- The Department of Regional Planning had not and has not exposed any oak woodland process in any applicable permit application checklist, including the oak tree permit. No additional requirements or site plan annotations were requested of us, and no mention was made to us of the existence of the Plan until Mr. Tsai's letter dated March 24, 2016.
- However, the initial study questionnaire used by the Department of Regional Planning for our project had been updated to reflect Plan recommendations, at the just discretion of the Lead Agency to structure this analysis.
- The 2035 General Plan was adopted on October 6, 2015, more than a year after our project application submission, and after our draft initial study was completed and sent out for review to other county agencies. No comments were received from either county or state agencies.
- The 2035 General Plan acknowledges that a project need not be governed by a new General Plan, if the project application was submitted prior to its adoption, and if it meets certain requirements, which our project fulfills.
- Our initial study was authored with analysis using documentation from the previous General Plan.
- Our project is therefore lawfully governed by the previous General Plan, and by the Oak Tree Ordinance, which already prescribes replacement in a manner that was deemed acceptable to restore oak woodland by other Oak Woodland Management Plans in the state of California, by leading references, and by other EIRs. The Los Angeles County Oak Woodland Management Plan does not prescribe a ratio of replacement, though it acknowledges on-site replacement as acceptable to meet the

intent of restoring oak woodland where it cannot be preserved.

- Furthermore, the monitoring period for our project has already been extended to seven years, consistent with the Plan Guide recommendation and with California Public Resources Code 21083.4(b)(2)(B), at the just discretion of the Department of Regional Planning to author the conditions it finds appropriate.

Oak Woodland Plan Guide:

Though our project is not formally governed by the Oak Woodland Management Plan process except as the Department of Regional Planning determines in their just exercise of discretionary review, we will step through the recommendations contained in the Guide as they pertain to our project.

The Oak Woodland Management Plan Guide states:

"On October 7, 2001, the Governor approved the California Oak Woodlands Conservation Act (AB 242) which requires that Los Angeles County (County) develop an Oak Woodlands Conservation Management Plan (Plan) to qualify for funding to preserve oak woodlands through the State of California's Oak Woodlands Conservation Fund (Fund).

. . .

As of January 2005, California Public Resources Code Section 21083.4 (2004 Senate Bill 1334) requires that when a county is determining the applicability of the California Environmental Quality Act to a project, it must determine whether that project "may result in a conversion of oak woodlands that will have a significant effect on the environment." If such effects (either individual impacts or cumulative) are identified, the law requires that they be mitigated. Acceptable mitigation measures include, but are not limited to, conservation of other oak woodlands through the use of conservation easements and planting replacement trees, which must be maintained for seven years.

. . .

The main goal of the Plan is to preserve and restore oak woodlands so they are conserved in perpetuity with no net loss of existing woodlands. There are three important objectives of the Plan: prioritize the preservation of oak woodlands, promote conservation by integrating oak woodlands into the development process in a sustainable manner, and effectively mitigate the loss of oak woodlands. The Plan implements these objectives through a series of recommendations that are grouped in the following categories:

- Alterations to the County's development and environmental review process;
- Revisions to the process by which County agencies address impacts to oak woodlands;
- Expansion of goals and policies contained in the County's General Plan;
- Changes to the County Zoning Code; and
- Long range implementation and monitoring efforts.

This guide focuses on the first two categories of recommendations and does not include revisions to Title 22 or a new permit type. The main changes to the existing permit and environmental assessment processes are in the form of a revised Environmental Assessment Questionnaire, additional site plan requirements, a required oak woodland report, prioritized mitigation measures and improved mitigation monitoring. This document is intended to implement portions of the Plan and to be a resource to assist County staff when processing development applications for discretionary projects that are not exempt from CEQA and that may impact oak woodlands.

. . .

Oak tree is defined by the plan as "all native trees of the genus Quercus. This includes small shrubby oaks typically clustered on slopes, as well as individual large oaks that are naturally widely distributed across the landscape. Under California state law, oaks [that are part of a woodland] greater than 5 inch diameters at breast height (DBH) are also protected (California Public Resources Code 21083.4a)." (Plan page 28)

Oak stand is defined by the plan as “a group of similar [oak] trees growing in a contiguous pattern, having sufficiently diverse age-class distribution, composition and structure, and growing on a site of sufficiently uniform quality that it is distinguishable as a unit. Stands are a basic physical unit of vegetation in the landscape and do not have a set size.” (Plan page 29)

Oak woodlands are defined by California Department of Fish and Wildlife Code Section 1361.h and by the Plan (page 28) as “an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover.” This document interprets the Plan’s definition of an oak woodland (pages 28-29) as an oak stand, including its understory, which consists of two or more oak trees of at least five inches in diameter measured at 4.5 feet above mean natural grade, with greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover as early as January 1, 2005 (effective date of California Public Resources Code Section 21083.4).

. . .

If the staff biologist determines that an oak woodland is located on the project site, the staff biologist will likely recommend that the case planner request a oak woodland report (OWR) from the applicant. The OWR must be completed by an “individual with expertise acceptable to the director and the County Forester,” be certified to be true and correct and include:

- A description of the baseline condition of the oak woodland, including the species of oak trees present, the density of trees (number/acre), a demographic assessment of the trees (e.g. size or age range and the proportion of trees in young, mature, and declining classes), the vegetation type of the understory (e.g. scrub, grass/herb, barren, ornamental, etc.), the presence or potential use of the site by special-status species, and the spatial relationship to other woodland stands in the vicinity (e.g., immediately adjacent and fully integrated, isolated by urban development, etc.);
- A determination of the habitat value/integrity of the woodland (See Table 1);
- An analysis of impacts to the oak woodland and their severity (See Tables 2 and 3);
- An analysis of recreational or aesthetic value of the woodland based on the presence of trails, location within a viewshed visible from parks or scenic highways, etc; and
- An analysis of alternative project options that includes an explanation of why avoidance of the oak woodland was not feasible.
- Impact of introduced pests and disease on the oak woodland.
- A summary of ecosystem services provided by oak woodlands as described by the Plan and how those services may change with development of the proposed project.

It is recommended that consultants writing an OWR report use the Plan as a resource. It has a wealth of information that is useful in the preparation of an OWR.”

It is useful to first discuss some definitions in the Guide.

The verbal definition of an “oak tree” in the Guide is clear and non-discretionary – any member of the genus Quercus with a diameter at breast height greater than 5”.

The verbal definition of “oak stand” is discretionary, stating that a stand is comprised of oaks growing in a “contiguous pattern,” with “a diverse age-class distribution, composition and structure, and growing on a site of sufficiently uniform quality that it is distinguishable as a unit.” Ms. Latta has provided some guidance in this discretionary determination, in stating that the oak trees on our lot at street level and those distant 170ft horizontally and 80ft vertically from our development in the riparian environment below are part of the same oak woodland, and therefore the same oak stand (Attachment 6 at 11). She has also stated that the trees on adjacent lots should be considered part of the same oak woodland and impacted (Attachment 6 at 5). Therefore, according to her, “site” and “unit” span the boundaries of our parcel. If a “site” spans a parcel boundary, there are no other logical boundaries to constrain the extent of an oak stand. The Guide explicitly reduces this relationship in its Figures 1-3 to geometric

criteria, with no further qualification of the extent of a site or unit.

The verbal definition of “oak woodlands” in the Plan is again non-discretionary – for a given definition of an oak stand. The Plan “interprets” the California state definition for oak woodlands as applying even to two trees at least 5” in diameter at breast height, provided their trunks are within a distance from each other less than three (more accurately 3.33...) times the sum of the radii of the protected zones of each tree along this line of distance. In other words, there is no native unit of area for which 10% canopy coverage is applied (e.g. a single parcel, or an acre, etc.), and so the plan has assumed the smallest possible. Given the lack of clarification of a unit of area in state code, this is the only non-arbitrary definition conceivable, but it qualifies substantial swathes and pockets of highly developed and urbanized area as oak woodlands, potentially subject to a new process that has not been adopted or advertised to applicants.

Given this inclusive definition, the presence of oak woodlands for our project can be determined by inspection that ten oak trees are included in our Oak Tree Report, and the presence of oak woodlands was noted in our initial study.

Under the Plan definition, oak woodlands is present on every one of the 19 homes within 300ft of our lot - the threshold of notice for a minor Conditional Use Permit – and every lot along lower Canyon Crest abutting Millard Canyon (see Attachment 30).

More importantly, given these definitions, our trees are part of a *single oak stand forming a single oak woodlands*, comprised of at least hundreds and likely thousands of oak trees stretching through miles of Millard Canyon and the Arroyo Seco. The assessment of significance should and did take into account the extent of oak woodland being impacted, and the prevailing character of much of that oak woodland as being interspersed with existing development (see again Attachment 30).

No Oak Woodland Management Plan requirements were exposed (see permit checklists in Attachment 14, citation Z and AA), the year the Guide reached maturity. We had not even heard of an Oak Woodland Management Plan until March of 2016, when the claim was submitted by a lawyer that our project should be denied [sic] – not delayed in order to write the report – because it did not possess such a report. It had never been a topic of discussion with our planners, nor had any planner requested any supplemental information on our site plan. As the plan does not appear in the County Code or any permit applications we were given, it is unclear to us what we might have done differently, or how any claimed deficiencies in our documentation might be supported by rule of law, as opposed to discretionary application of recommendations.

The guide references several key California state regulations. California Public Resources Code Section 21083.4 (2004 Senate Bill 1334) states that the “county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment.” It does not equate conversion of oak woodlands with a significant effect on the environment. Rather, it states that each county shall determine a threshold for significance. The Guide acknowledges that some impacts to oak woodland are less than significant *before any mitigation is applied*.

The Guide states that it is *likely* an oak woodland report will be prepared, not that an oak woodland report *shall* be prepared. This statement appears to be based on an unsupported assumption that it is likely the County Biologist will interpret that a given project's impact on an oak woodland will be significant. We step through this decisional process subsequently. It does not automatically follow that a majority of projects will fall on one side or the other of the threshold. The Department of Regional Planning has not made public on its website *any* oak woodland report, designated as such, to adduce or gauge this balance. Staff in the Department of Regional Planning were not aware of any instance in which an oak woodland report has yet been created.

As the Oak Woodland Management Plan applies only to projects that are not categorically exempt from CEQA, this statement of likelihood cannot reasonably be construed as deferential to a positive assessment of significant impacts for a single family residence, because construction of a single family residence is categorically exempt under CEQA 15303 except where “unusual circumstances” are present. Where oak woodland is to be found in residential settings under the inclusive definition created in the Plan Guide, it is not typically found in isolation (see e.g. lower Canyon Crest neighborhood), and thousands of residential lots throughout the county contain at least two oak trees constituting an oak woodland under the Guide. This is therefore not an “unusual circumstance.” See also *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, in which the applicant sought a hillside permit for a 6,478-square-foot house with an attached 3,394-square-foot 10-car garage, covering 16% of a steeply sloped (about 50%) lot in a heavily wooded area, in which the court rejected the claim that development under these circumstances constituted an “unusual circumstance,” as adjacent lots were similarly wooded. Ms. Latta's own former employer of Agoura Hills claimed the 15303 categorical exemption for single family residences adjacent to SEAs that were originally analyzed to remove as many as 20 mature oak trees (see Attachment 23), *after* the passage of SB1334 created Public Resources Code 21083.4, in September of 2004. Precedent does not support the claim that a single family residential lot possessing oak woodland should deny a single family residence its just categorical exemption, provided the presence of such oak woodland does not constitute an “unusual circumstance” in the area.

It is also important to assess the added value of an Oak Woodland Report in a particular context. We will step through the stated requirements of the report individually:

1. A description of the baseline condition of the oak woodland, including the species of oak trees present, the density of trees (number/acre), a demographic assessment of the trees (e.g. size or age range and the proportion of trees in young, mature, and declining classes), the vegetation type of the understory (e.g. scrub, grass/herb, barren, ornamental, etc.), the presence or potential use of the site by special-status species, and the spatial relationship to other woodland stands in the vicinity (e.g., immediately adjacent and fully integrated, isolated by urban development, etc.);

Our oak tree report includes the species of each tree, and our exhibit map can be used to derive a density. Our oak tree report already includes size measurements and ratings of each tree. Our oak tree permit exhibit photos and the testimony of the county biologist indicate that

little to no understory is present. Our initial study speaks to the use of any oak tree anywhere in the county as potentially supportive of special-status species. Our oak tree permit aerial exhibit key and many visuals submitted as part of this hearing process, as well as the site visits by the county biologist, confirm that the site is part of a large oak stand comprising an extensive oak woodlands, that extends for hundreds or thousands of feet in all directions. This was not somehow "missed" because we did not do an oak woodland report.

It is not clear what purpose is served by the aggregation of this existing documentation in an oak woodland report.

2. A determination of the habitat value/integrity of the woodland (See Table 1);

The county biologist already must make this assessment in order to determine significance, according to the process the Guide lays out.

3. An analysis of impacts to the oak woodland and their severity (See Tables 2 and 3);

The county biologist already must make this assessment in order to determine significance, according to the process the Guide lays out.

4. An analysis of recreational or aesthetic value of the woodland based on the presence of trails, location within a viewshed visible from parks or scenic highways, etc; and

As our initial study notes, "The proposed project is not sited near any designated scenic highways, significant ridge-line, or other identified scenic resources, and would not result in any impacts related to having a substantial adverse effect on a scenic vista. *(Source: State of California Dept. of Transportation, California Scenic Highway Program)*.
. . . .
Riding and hiking trails have been designated throughout unincorporated Los Angeles County. At present, there are officially adopted trails in the Antelope Valley, the Santa Clarita Valley, and the Santa Monica Mountains designated by the General Plan or applicable Area/Community Plan and Local Coastal Program. Although the Arroyo Seco is west of the site and the Altadena Crest Trail and Cheney Trail are to the east, the proposed project is not sited adjacent to any designated riding or hiking trails, and would not result in any impacts related to having a substantial adverse visual impact on these resources. *(Source: County of Los Angeles Department of Parks and Recreation, U.S. National Forest Service).*"

Neither is the unincorporated area of Altadena immature in its designation of scenic resources. The Altadena Community Standards District Hillside Management Supplement (County Code §22.44.127) explicitly designated those scenic ridge-lines that it intended to protect from insensitive development (Attachment 14 citation V). We are more than 2,500 feet from the nearest protected ridge-line (see Attachment 10 at 4), separated by dozens of homes, including the La Vina development.

It is not clear what purpose is served by the aggregation of this existing documentation in an oak woodland report.

5. An analysis of alternative project options that includes an explanation of why avoidance of

the oak woodland was not feasible.

As finding #29 of our Regional Planning Commission Approval Package notes, “The project site is located in oak woodland. The applicant has explored alternative designs for the project, but they would require the removal of additional oak trees. The Project is designed around the oak trees and the terrain of the site. Therefore, the Hearing Officer finds that the removal of the oak tree proposed is necessary as continued existence at present location frustrates the planned improvement or proposed use of the subject property to the extent that placement of such tree precludes the reasonable and efficient use of such property for a use otherwise authorized.”

As we note on our website, “We examined many different home configurations and evaluated them for their impacts. We could have designed a somewhat more conventional if unsatisfactory home that did not require an mCUP (which we describe subsequently, for building on a greater than 25% slope, or 1:4 grade). However, the design we settled on struck a balance among many competing aims. It avoids cutting down any but the least vigorous (and one of the smaller) protected oak trees on our lot. It leaves a ~1000sqft pad for construction staging, to keep construction vehicles, materials and equipment out of the road. It allows for parking on our lot N of our driveway for potential use by neighbors. It places the livable square footage of the home below street level and at the farthest possible remove to the S, to minimize impacts to the privacy of neighbors. It shrouds much of the house in oak tree canopy, to minimize visual impacts from the street and other houses. And our windows look out on the natural environment to the S and to the canyon below, which we love.

All of the other designs we considered resulted in cutting down the large oak around which our current design folds, as well as at least one other tree. Many reduced or eliminated the post-construction parking available to the north of our driveway, or reduced the space available for construction staging, with potential impacts to traffic. Some required more substantial disturbance of the root systems of the oak trees to remain, and much larger amounts of excavation. Single story designs uniformly resulted in cutting many oaks, and we ruled out this approach early in design development. Finally, these designs were less visually appealing to us, and didn't seem to be a worthy addition to a beautiful neighborhood.

We realize that there is variance in personal taste and that our home doesn't look exactly like its neighbors. But we value the diversity and architectural freedom embodied in the homes of Altadena and lower Canyon Crest, and welcome feedback on the aesthetics of our home. The beautiful contemporary home built on the foundations of Boulder Crest on Canyon Crest is rightly celebrated by the Altadena Historical Society and can also be described as different from its neighbors. So too the historic Casa Roca on Canyon Ridge.”

It is not clear what purpose is served by the aggregation of this existing documentation in an oak woodland report.

6. Impact of introduced pests and disease on the oak woodland.

It is not clear what analysis might be provided here. Construction activities using properly sourced materials do not introduce pests or disease. While a case may be made that any

encroachment on any tree reduces its reserves to sustain damage from independently introduced pests and disease, this is a fundamental and expected property of encroachment, and cannot reasonably disallow it.

7. A summary of ecosystem services provided by oak woodlands as described by the Plan and how those services may change with development of the proposed project.

As the county biologist noted at our April 19 hearing, “frankly, there aren't any resources in the woodland besides the trees themselves,” and “the oak tree permit requires replacement of trees that are removed at 2:1,” and “it also requires follow-up monitoring for encroachments to make sure that those remaining trees survive.” (Unofficial Minutes of April 19 Hearing Officer Hearing).

As the initial study notes, “The proposed development is sited on a disturbed portion of the property supporting oak trees and non-native species. Disturbances related to road construction and dumping are present. Habitats suitable for special-status species are associated with the oak trees on the property, and these may support nesting and roosting by special-status bird and bat species. Compliance with state and federal laws protecting nesting bird and non-game mammal species, required as a condition of approval, would reduce any project-related effects to special-status species to a less than significant level.”

Neither are claims that the footprint of our home acts as a wildlife corridor based on factual, fair evidence. Those who map and seek to preserve or establish wildlife corridors in southern California (Attachment 14, citation FF) have assigned a suitability score of 1-100 to several different environments, including “riparian,” “canyon bottom,” “slope,” “ridge-top,” “urban,” and “distance to paved road <50m”. An urban environment (roads and houses) receives a score of 0, as most animals are not able or inclined to make their way across the noise, fences, walls, pools and pavement of developed areas. “Ridge-top” and “slope” receive low scores of 20, acknowledging the exposure and greater difficulty of travel. Likewise, environments with a distance to a paved road of <50m admit a greater human presence and are graded with a low score of 30. “Canyon bottom” receives a high score of 80 and “riparian” the highest score of all, 100. The footprint of our home is everywhere <80ft (~25m) from a road. All of our footprint is located on a slope. These result in poor metrics for suitability as a wildlife corridor.

Given this existing analysis, there is little additional that can be generated to describe the present ecosystem services of the encroached trees at street level.

As the Oak Woodland Management Plan Guide has enumerated the content of the oak woodland report, it is not clear to us what additional purpose this report would serve that has not already been addressed by the extensive review and lengthy exchanges occurring as part of our environmental review and this hearing process. We again note that the monitoring interval for our trees has already been extended to the seven years recommended in the Guide.

Reference - Oak Woodland Management Plan Decision Process:

Though for the reasons attributed above the Oak Woodland Management Plan ("Plan") process does not formally govern our project except to the extent the Department of Regional Planning chooses to exercise its discretionary authority, we will explicitly follow the decisional flowchart process described in the Plan Guide.

We would like to thank the authors of the Plan and Plan Guide for their efforts to preserve and replace oak woodlands, goals we also value and wish to see honored in our project. We can appreciate the extensive care they put into these documents. We believe they have constructed a Guide that in most places is very clear and will help to serve the County as it continues phasing the Plan recommendations into its processes, and perhaps someday into its codes as well.

Node 1: Is project discretionary and does the project area have 2 or more oak trees with diameters of at least 5 Inches?

Answer: Yes. We note that this low threshold for oak woodland is descriptive of essentially every home along lower Canyon Crest (see Attachment 30), and hundreds if not thousands of homes in north-west Altadena, and Altadena at large. If yes:

Node 1 Guideline 1: Recommend one-stop meeting with staff biologist and Forester if appropriate. Also recommend redesign if project could significantly impact oak woodland(s).

We met with county staff including the staff biologist and forester. As we have noted repeatedly in our hearing text and on our website, we have already designed our home to avoid as many of the impacts to our oak trees as was possible. Our website notes:

"We examined many different home configurations and evaluated them for their impacts. We could have designed a somewhat more conventional if unsatisfactory home that did not require an mCUP (which we describe subsequently, for building on a greater than 25% slope, or 1:4 grade). However, the design we settled on struck a balance among many competing aims. It avoids cutting down any but the least vigorous (and one of the smaller) protected oak trees on our lot. It leaves a ~1000sqft pad for construction staging, to keep construction vehicles, materials and equipment out of the road. It allows for parking on our lot N of our driveway for potential use by neighbors. It places the livable square footage of the home below street level and at the farthest possible remove to the S, to minimize impacts to the privacy of neighbors. It shrouds much of the house in oak tree canopy, to minimize visual impacts from the street and other houses. And our windows look out on the natural environment to the S and to the canyon below, which we love.

All of the other designs we considered resulted in cutting down the large oak around which our current design folds, as well as at least one other tree. Many reduced or eliminated the post-construction parking available to the N of our driveway, or reduced the space available for construction staging, with potential impacts to traffic. Some required more substantial disturbance of the root systems of the oak trees to remain, and much larger amounts of excavation. Single story designs uniformly resulted in cutting many oaks, and we ruled out this approach early in design development. Finally, these designs were less visually

appealing to us, and didn't seem to be a worthy addition to a beautiful neighborhood."

Node 1 Guideline 2: Require site plan with oak trees and woodlands depicted and labeled.

Our oak tree report labeled all affected oak trees, and under the inclusive definition for "oak woodland" established in the Guide, there can be no question that our oak trees would qualify. More to the point, our initial study acknowledges the presence of oak woodland.

Node 2: Consult staff biologist. Oak woodland on project site?

Answer: Yes. If yes:

Node 3: Could the project have a significant impact on an oak woodland?

Answer: Based on the guidance in the Oak Woodland Conservation Management Plan Guide, no.

Table 1 determines the Existing Conditions. A "Severely Degraded" existing condition is defined as, "Site has been drastically altered from the natural condition to accommodate residential, commercial or industrial uses, and oak woodlands remain in scattered locations. Natural regeneration is not possible. Soil is compacted, contaminated or paved. Wildlife habitat is limited and associated understory vegetation has been replaced by managed non-native landscaping."

As Ms. Latta acknowledges, the re-grading of as many as several feet that occurred at some time in the past 10-15 years in the protected zones of nearly all encroached trees, along with the use of much of the same area for parking and storage, as well as for Canyon Crest Road, and for the driveway, patio and slab-on-grade construction of 3589 Canyon Crest, has drastically altered the natural condition to accommodate residential uses. Our arborist also references "multiple pruning events" in nearly all trees for roadway, parking or power line clearance and the cabling of large scaffolds for huge planters and a hammock belonging to 3589 Canyon Crest. Our arborist notes that some trees are growing into a concrete drainage device, and an artificial stone-lined drainage swale cuts through the protected zone of many trees. The soil has been compacted by the repeated crossings of the 5,000+lb truck and cars that have used the pad and road-side spaces for parking, as well as by the construction of the road, driveway and home at 3589 Canyon Crest. There is also little to no understory, native or otherwise, and none can exist in an area used for storage and parking by our neighbors at 3589 Canyon Crest. Our initial study notes the existence of "non-native species" in the little understory that does exist. In other words, all of the conditions for a severely degraded woodland are met.

Neither would it be proper to dilute the assessment of the existing conditions of an oak woodland beyond those trees that are impacted, at street level. The full extent of an oak woodland is necessary to understand in order to place impacts in a proper context. However, as the single stand of oak woodland is comprised of hundreds or thousands of trees, it becomes absurd to use the average condition of all of these trees, rather than the condition of only those trees that are impacted. Ms. Latta references the wildlife corridor in the riparian

environment below to justify her claim of moderate degradation, but our arborist assessed no impacts to these trees, and Ms. Latta has not provided a factual argument assessing any impacts from our construction, instead speculating as to physical damage from debris flow and changes to hydrology.

We addressed the misunderstanding that our home was in the tributary drainage for any trees on our lot. Even for those trees on adjacent lots that are downslope of our home, the change in hydrology from rainfall interception by our 1159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in sandy loam), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff cannot reasonably be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree. Ms. Latta has not clarified what assessment an oak tree report might conceivably provide in this respect.

Despite the reasonable assessment of the county biologist that these trees are part of a severely degraded oak woodland, we will address the claim that they are properly qualified as moderately degraded. A “Moderately Degraded” oak woodland is defined as, “Even though the site has been altered, oak woodlands persist and retain some of their functions. Natural regeneration is possible, wildlife use still occurs, and some level of ecosystem services is still present. The majority of oak woodlands in the County fall within this category.”

This definition contains substantial overlap with “Severely Degraded.” A “severely degraded” condition also permits the persistence of scattered oak woodland that must surely retain some of the functions of an oak woodland. Natural regeneration is not possible in an area used for parking and storage, roads, driveways and houses. Even “severely degraded” oak trees retain some level of ecosystem services, still supporting canopy usage by roosting and nesting birds and bats. We submit that “the majority of oak woodlands in the county” cannot be encroached to such a substantial extent by previous illegal dumping, a long history of encroachment from parking in the protected zone, substantial pruning for road, parking and power line clearance, and the other encroachments described in our oak tree report. Still, we will follow this notional assessment through to impact severity.

With an existing condition established, the guide moves on to Table 2, the impact severity. For a severely degraded oak woodland, the criteria for a Moderate Impact is “Loss of a majority of existing trees; activities will inhibit or harm residual tree health and vigor; barriers constructed will increase fragmentation; ecosystem services will be lost or degraded.”

There are 10 encroached ordinance-sized oak trees and two additional immature trees included for assessment under the lower threshold for the oak woodland ordinance, one of which is a boundary tree. In addition, according to our own registered survey and arborist's statement in our oak tree report (“There are approximately eight (8) additional oak trees that are located on-site approximately 170 feet downslope from the proposed development.”), there are at least eight mature oak trees on our lot in the riparian environment below our home that are a part of the same cluster of oak woodland under the statute, whether that relationship is transferred through the oak trees to the south of our lot, or more tenuously through direct relationship of the trees on our own lot.

One of our ordinance-sized trees will be removed, along with the two juveniles. This is three of at least 19 (eight encroached ordinance-sized, one removed ordinance-sized, two removed juveniles, eight un-encroached ordinance-sized) existing oak trees on our lot. This is not a majority. Even if we assume the removal of oak trees #4, #5 and #7 (the only trees to see any root zone excavation or pruning whatsoever), neither does six of 19 constitute a majority, much less as constituents of a much broader, single oak stand that spans our and dozens of other parcels. Ms. Latta has stated in her letter dated April 16 that, “To only look at the oaks at the top of the slope ignores the rest of the trees on the site. The oak woodland guidelines are not written in that manner. . . . Using the County’s guidelines, the tree canopy is roughly contiguous if you apply the 10x sphere of influence. In my opinion, looking at the County’s guidelines, the property is an oak woodland and the two areas of oak trees should not be considered separately.” Clearly, Ms. Latta believes that the number of oak trees in this cluster (of hundreds to thousands) on our site should include those riparian trees that bring the figure to 19, and even using her incorrect quantified assessments in support of removing four mature and two juvenile trees, six removals is 32%, well below the 50+% threshold for a majority.

We aggregate our response to her assessments for oak trees #4, #5, and #7 in Attachment 7.

We are conditioned to lay down mulch and plywood to preserve the health of remaining trees, and will stage the bulk of our building materials on our garage floor after it is cast. The Alabama Cooperative Extension System's “A Guide to Preventing Soil Compaction During Construction” is a resource that Ms. Latta has cited, which acknowledges this method as effective for reducing soil compaction. It should also be noted that our impacts to trees should be assessed as a net change to soil compaction. Our staging area has been used for decades for parking and storage of materials by owners of 3589 Canyon Crest, without the mitigation of a thick layer of mulch or plywood. Our arborist has also indicated that remedial aeration of the soil with an air spade may be recommended after construction is complete, depending on assessments of compaction, consistent with the findings of “Smiley, E.T. 1999. Air excavation, the next arboricultural frontier. Arbor Age, 20,8-10,” as documented in the materials for the Richardson Grove EIR (see Attachment 14 citation KK at 16), which note “virtually no damage” and the long-term experiment documented in Attachment 33.

As is portrayed on our site plan, and in contrast to most neighbors along lower Canyon Crest, we do not intend to fence our lot.

The threshold for a “moderate impact” to a “severely degraded” oak woodland is not met.

A “low” impact for a “severely degraded” woodland is described as, “Majority of remnant trees are retained; understory removal or road widening does not compromise existing tree health; no further loss of ecosystem services considered. In the absence of special circumstances, statutes or ordinances, this may represent a non-significant impact.”

As indicated above, we retain the majority of trees. Neither is there native understory to remove, nor will we widen any road. As the county biologist noted at our April 19 hearing, “frankly, there aren't any resources in the woodland besides the trees themselves,” and “the

oak tree permit requires replacement of trees that are removed at 2:1," and "it also requires follow-up monitoring for encroachments to make sure that those remaining trees survive." (Unofficial Transcripts of April 19 Hearing Officer hearing). Under the Plan definition, oak woodland is present on every one of the 19 homes within 300ft of our lot - the threshold of notice for a minor Conditional Use Permit – and every lot along lower Canyon Crest abutting Millard Canyon (Attachment 30). In other words, the existence of oak woodland does not constitute an "unusual" or "special" circumstance.

Following the notional "moderately degraded" condition assessment, a "moderate impact" is defined as "Regeneration potential is being marginalized; developed areas expand into previously undeveloped areas; new roads or stream crossings proposed; habitat features are being lost; activities will add exotic and invasive species." A "low impact" is defined as "Regeneration potential is being maintained across the site; understory oak associates present or can be restored; expansion of developed areas are centralized; new road and stream crossings not being considered."

Here as well, there is substantial overlap between these definitions. The definition for low impact admits that developed areas may be expanded, but seeks to confine that expansion to the immediate vicinity of existing development. Technically, any new development will result in *some* expansion into previously undeveloped areas, but the low impact definition qualifies this. The expansion we are proposing is sited at street level amid existing development and is therefore centralized at the edge of our parcel, as near the street and as far from the canyon as front yard setbacks allow. Together, the footprint of our home and driveway constitute the only places where regeneration is not possible. Together, these are less than 5% of the footprint of our parcel, which Ms. Latta has claimed is not even necessarily the extent of the "site," as we attributed earlier in this attachment. Regeneration is possible across the length and width of our site, and independent of any statute requirements, we intend to plant a large number of oak trees and see them prosper in a favorable environment. We propose no new road or stream crossings. The definition and extent of "habitat features" is not qualified, but we can again state that *some* habitat is lost when any tree is removed, and that this may therefore still be characteristic of a low impact. There are no special features impacted beyond the trees themselves. We have specified no invasive species in our landscape plan, nor do we intend to allow weeds to propagate under the layer of thick mulch we are conditioned to provide in the protected zone of our trees. We have stated the intention to establish an un-irrigated native understory compatible with our oak trees. In accordance with Los Angeles County Green Building Code Title 31 §5.304.1, an excess of 75% of the new plants we will establish are California natives. The remainder are non-invasive natives from Mediterranean climates in other parts of the world.

The threshold for a "moderate impact" to a "moderately degraded" oak woodland is not met.

A low impact does not require an oak woodland report. We should also note that if a significant impact were found, and if we follow the subsequent decisional node, there is little additional that could reasonably be done to reduce the impacts of our home construction.

The Guide suggests that planting replacement trees on-site is an appropriate mitigation strategy:

“If a project cannot be redesigned to avoid impacts to oak woodlands, the case planner should work with the staff biologist and the County Forester to determine an appropriate mitigation strategy.
. . .
On-site restoration should be utilized when circumstances at the site allow for long-term sustainability of the replacement plantings, the potential to expand/connect to adjacent oak woodlands, and/or the improvement of degraded oak woodlands. The permittee shall replace/restore lost canopy area.”

The non-discretionary Oak Tree Ordinance already requires replacement plantings protected in perpetuity to ensure the long-term sustenance of oak woodlands. The planner, staff biologist and forester are given the discretion to determine the sufficiency of these lawfully required mitigations, and the guide does not suggest any alternative ratio for replacement. Our planner and staff biologist have already exercised their just discretion to increase the period of monitoring from the two years required by the Oak Tree Ordinance to the seven years suggested in the Guide, and in the unlikely event any trees succumb in this interval they too will be replaced in a 2:1 ratio.

Our project cannot reasonably be re-designed to avoid impacts to more trees than it does already. It is hemmed in on four of five sides by oak tree canopy, and on the fifth by zoning regulations. The fold in our home around oak tree #7 barely meets county regulations for minimum width. Our home is significantly smaller than the average home within 300ft of our lot, as we attribute in Attachment 10 at 10, and less than 20% of the 9,000sqft permitted to us in the Altadena CSD. The amount of grading for our home is nearly 100 times lower than the threshold for a CUP in the Altadena CSD. Our garage loft space allows us storage so that we can park in our garage and make available a parking space on our lot for our neighbors at 3589 Canyon Crest, who have only stacked parking.

If no significant impact is present:

Node 4: Is project categorically exempt?

Answer: Technically, single family residences are exempt per CEQA 15303. Ms. Latta's previous sub-contracted employer – the City of Agoura Hills – claimed this exemption for its single family residences requiring an oak tree report, one of which included the removal of at least seven protected oak trees on a steep hillside (Attachment 23), revised downward from an originally analyzed 20 in the original project description. That project directly abutted the Santa Monica Mountains Significant Ecological Area. The presence of oak woodland is not an “unusual circumstance” on any of the 19 residential lots within 300ft of our home, anywhere along lower Canyon Crest, or in the hundreds of homes in north-west Altadena that possess two or more oak trees. However, the county chose to more thoroughly address potential concerns in performing an initial study. If we had followed the “yes” answer, from this high level declaration of scope, no oak woodland management process would be indicated. However, we will follow the “no” answer:

Node 4 Guideline 1: Draft Initial Study.

This was done for our project.

Node 5: Will the project have a significant impact on an oak woodland?

Answer: No. When taken in proper context, as a part of an oak woodland with hundreds or thousands of trees blanketing lower Canyon Crest and extending along Millard Canyon in both directions for thousands of feet, the removal of one tree and the pruning of three trees does not represent a significant effect on this oak woodland. Even if confining the extent of oak woodland to an area <200ft from our encroachments, the character embodied in the dozens of oak trees interspersed with existing development or densely clustered along the canyon is not significantly altered by a home that also seeks to slot in among the oak trees already present, to be shrouded by them to a significant extent, and to preserve the riparian woodland. Even if confining the extent of oak woodland to the at least 19 oak trees on our lot, the impacts do not meet the threshold for a significant impact as laid out in the Oak Woodlands Conservation Plan Guide, a document that is unsupported by any zoning code.

Plants on project site:

It should be noted that after our project application was submitted, the neighbor at 3589 Canyon Crest Rd planted several types of plant and tree species on our property, some in or adjacent to the footprint of our home, where there had been done prior. Should any of these plant or tree species be rare or protected, a fair argument is not constructed from their manufactured presence.

Wildlife impacts:

In his letter dated September 6, Mitchell Tsai claimed:

“The Project will have significant impacts on oak woodlands. CEQA requires that a project as part of its CEQA environmental review determine “whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment.” Pub. Res. Code § 21083.4. According to Ms. Latta, the Project will likely have a significant impact on oak woodlands as:

The removal of 5 trees in a woodland supporting a wildlife corridor is a moderate impact. So I consider the impacts to be significant. Here are the main areas of impact:”

It is not attributed how the footprint of our home constitutes a wildlife corridor. AB 498 defines a wildlife corridor as “a habitat linkage that joins two or more areas of wildlife habitat, allowing for fish passage or the movement of wildlife from one area to another.” We do not find it otherwise explicitly defined in Cal Code Regs, but anticipate a similar definition were we to have missed it.

The bottom of Millard Canyon is a wildlife corridor. It connects the wildlife habitat of upper Millard Canyon and the San Gabriel mountains (part of the Angeles National Forest) with the wildlife habitat of the Arroyo Seco. This canyon bottom is more than 200ft horizontally distant

and 90ft vertically distant from our development and will not be impacted by it.

The footprint of our home connects the riparian canyon bottom to the largely fenced, developed lots and roads of lower Canyon Crest, Florecita Farms and north-west Altadena.

Those who map and seek to preserve or establish wildlife corridors in southern California (Attachment 14 citation FF) have assigned a suitability score of 1-100 to several different environments, including “riparian,” “canyon bottom,” “slope,” “ridge-top,” “urban,” and “distance to paved road <50m”. An urban environment (roads and houses) receives a score of 0, as most animals are not able or inclined to make their way across the noise, fences, walls, pools and pavement of developed areas. “Ridge-top” and “slope” receive low scores of 20, acknowledging the exposure and greater difficulty of travel. Likewise, environments with a distance to a paved road of <50m admit a greater human presence and are graded with a low score of 30. “Canyon bottom” receives a high score of 80 and “riparian” the highest score of all, 100.

The developed lots and roads of lower Canyon Crest, Florecita Farms and north-west Altadena are not a wildlife habitat, and therefore the area connecting them to wildlife habitats is not a wildlife corridor.

Ms. Latta does not make a fair argument that our home affects a wildlife corridor.

• “Net loss of Oak Woodland Acreage (with the loss of 5 trees, by my estimates).”

The oak tree ordinance seeks to balance the loss of a single non-heritage tree with the addition (and protection in like kind regardless of age) of two additional oak trees. In this way, the long-term maintenance of oak tree population is preserved.

Furthermore, there is in excess of 10,000sqft on our property separating the oak trees in the riparian environment from those at street level. This entire area is suited to the establishment of oak trees. As we've noted repeatedly, if any additional trees succumb, we will be required to replace in a 2:1 ratio per condition #10 of our oak tree permit, and the monitoring for this has already been extended to seven years to match the recommendation in the Oak Woodland Management Plan, from the two specified by the Oak Tree Ordinance.

Independent of any statute requirements, we have advertised our intent to plant many new oak trees on our property and to dedicate a conservation easement for the riparian environment of the canyon below.

We have earlier addressed that Ms. Latta's misunderstandings of construction impacts have elevated her estimates into substantial inaccuracy.

Ms. Latta does not make a fair argument that a permanent net loss in oak woodland will occur.

• “Conversion of oak woodland to other uses.”
• “Net loss of nesting, burrowing, roosting habitat for wildlife.”

Our lot is zoned R1. Its designated use is for residential development. These claims are inherited from the claim that a permanent net loss of oak woodland will occur. The Oak Tree Ordinance is written to acknowledge that even sensitive development may require the removal of oak trees, and that when this occurs, the replacement of these oak trees is an acceptable mitigation.

• "Grading and trenching will increase potential for sedimentation and constitute a change in hydrology that could negatively affect existing oak trees."

Ms. Latta is not a civil engineer and has offered assumptions for methods of construction that are inconsistent with what we will employ. We have no grading outside the footprint of our home, and must comply with Low Impact Development requirements, as well as the Grading and Drainage design review process. This process is represented by the work of civil engineers who are competent to assess and mitigate these risks with appropriate conditions and BMPs.

• "It is probable that invasive plants will be introduced into the environment through soil disturbance and weed seed either being mechanically transported on truck tires or blown in from adjacent invasive weed sources. These invasive weeds tend to be more flammable than the native vegetation and are considered 'flashy fuels' by the local firehouses."

Ms. Latta appears to claim that we will allow weeds to grow and that these will violate fuel modification requirements, despite being conditioned to mulch the protected zone of our oak trees, despite our stated intention to establish a native understory compatible with our oak trees, and despite annual inspections by fuel modification inspectors.

She has offered no substantial evidence that we will do so.

We are saddened that she has continued to speculate that we will act incompetently or irresponsibly, when we have given her no cause to make such assumptions, and when she has never engaged with us to clarify her speculation.

Ms. Latta does not make a fair argument that invasive plants will be allowed to propagate as a consequence of our construction.

• Loss of view-shed for the neighborhood. These trees signify an 'entry' to the Meadows area of Altadena.

The other homes along the canyon side of lower Canyon Crest all fence their lots across their frontage (Attachment 30) and employ substantial landscaping and/or orientations that present their major axes to the road (in contrast to our design). In contrast, we do not intend to fence our lot. As we portray in Attachment 10, oak tree canopy already obstructs the view across much of the volume our home will inhabit, as seen from the road and from neighboring residences. We explicitly designed our home to slot in as well as possible among the existing trees, and to be clad in a color that blends with the tree canopy.

The “entry” to the Meadows is the culmination of the drive along the scenic ridge where the Meadows neighborhood sign welcomes residents and visitors, more than a half mile up the road (Attachment 30). Other homes along lower Canyon Crest are visible along this drive. If an earlier “entry” were to be posited, the beginning of Canyon Crest Road is as likely. This area is characterized by typical residential development on both sides of the road (Attachment 30).

• Loss of ecosystem services which include pollution filtration, rainfall interception and erosion control.
Latta at 8 – 9.

Again, Ms. Latta is not a civil engineer and has not offered substantial evidence for this claim. As we've stated on our website, “Water will not divert onto adjacent properties during a storm, save that the natural path of the drainage channel already leaves our property and enters APN:5830-003-017, before exhausting into the canyon on APN:5830-004-900. Our slight modification of this path upstream and 10-15ft from the property edge - which will not throttle flow - will have no impact to the drainage across either property or Millard canyon below, nor will it impact the flow under Canyon Crest through the culvert, being ~10ft in elevation below the culvert. In other words, flow will only be affected (slightly) on our own property. Over the footprint of our home, what had been sheet runoff collected by the open swale will become gutter runoff intercepted by a rain garden (per LID requirements, to improve the quality of the runoff) and thereafter routed right back into the same open swale. The drainage pattern downhill of our home is thus left substantially unaltered.”

Ms. Latta has not provided substantial evidence that “pollution filtration” by the oak tree canopy alone (given the lack of understory) would be expected to be superior to the pollution filtration provided by purposely designed and maintained rain gardens in accordance with Low Impact Development standards to process our downspout discharge, which “filter and settle sediment and pollutants, and [remove] pollutants through nutrient cycling or by sequestering pollutants in the soil or in the plants themselves.” (Attachment 14 citation LL).

Ms. Latta has not provided substantial evidence that “Rainfall interception and erosion control” by the oak tree canopy would be expected to be superior to that provided by the structure of our home.

In his letter dated March 24, 2016, Mr Tsai claimed:

“The Project will have significant impacts on wildlife, particularly wildlife crossings in and around the Project Site. CCC members have observed numerous animal species utilizing the Project Site, including mountain lions, bears, foxes, bobcats, deer, and a host of smaller native mammals such as opossums, raccoons, skunks, and three species of squirrel to cross Canyon Crest Road to access wildlife below. Email from Mary Ellen Schoeman to Kristina Kulczycki, County of Los Angeles (Jan 16, 2016) (attached as Exhibit A) (hereinafter "Schoeman Letter"); Letter from Michael and Mindy Hickman (undated) (attached as Exhibit G).”

Mr. Tsai has not drawn any distinction between the parts of our site that are to remain wild and the small part that is impacted by development.

His cited exhibits contain photographic evidence from locations that are not on the project site. Some examples appear to be professional photography lifted directly from Google Images. At least one picture is known to us by its background – that containing a mountain lion – and more than a half mile up Canyon Crest Rd from our own development, close to the entry to the Meadows, which is adjacent to the development of the Meadows. The siting of a mountain lion at this close remove to existing development might more reasonably be applied as evidence that the wildlife can adapt to development.

Living in and among wildlife is a fundamental aspect of living in the San Gabriel foothills. We are current residents of the Meadows neighborhood, at the very end of Canyon Crest Rd. Encountering wildlife even in a heavily developed, fenced neighborhood at the periphery of wild lands is a regular occurrence. We have had bears in our garbage, deer in our seedlings, raccoons at the back door, coyotes in our driveway and owls (and the ubiquitous parrots) in our trees. On our walk into work down into El Prieto Canyon and the Arroyo Seco we have five times seen bobcat and heard a mountain lion growl at a rock slide. These observations neither indict nor absolve the existence of development, but show that wildlife is not easily partitioned, especially when development is sensitive and preserves as much habitat as is possible.

Some Altadena residents have created self-reported annual “critter maps,” dating back many years. The creators of this map (http://altadenablog.altadenahistoricalsociety.org/archive/www.altadenablog.com/2010/06/critter-map-2010-asset_id=6a00d83455629c69e20133f18f9df9970b.html) note that there are “too many coyotes, possums, raccoons to bother with.”

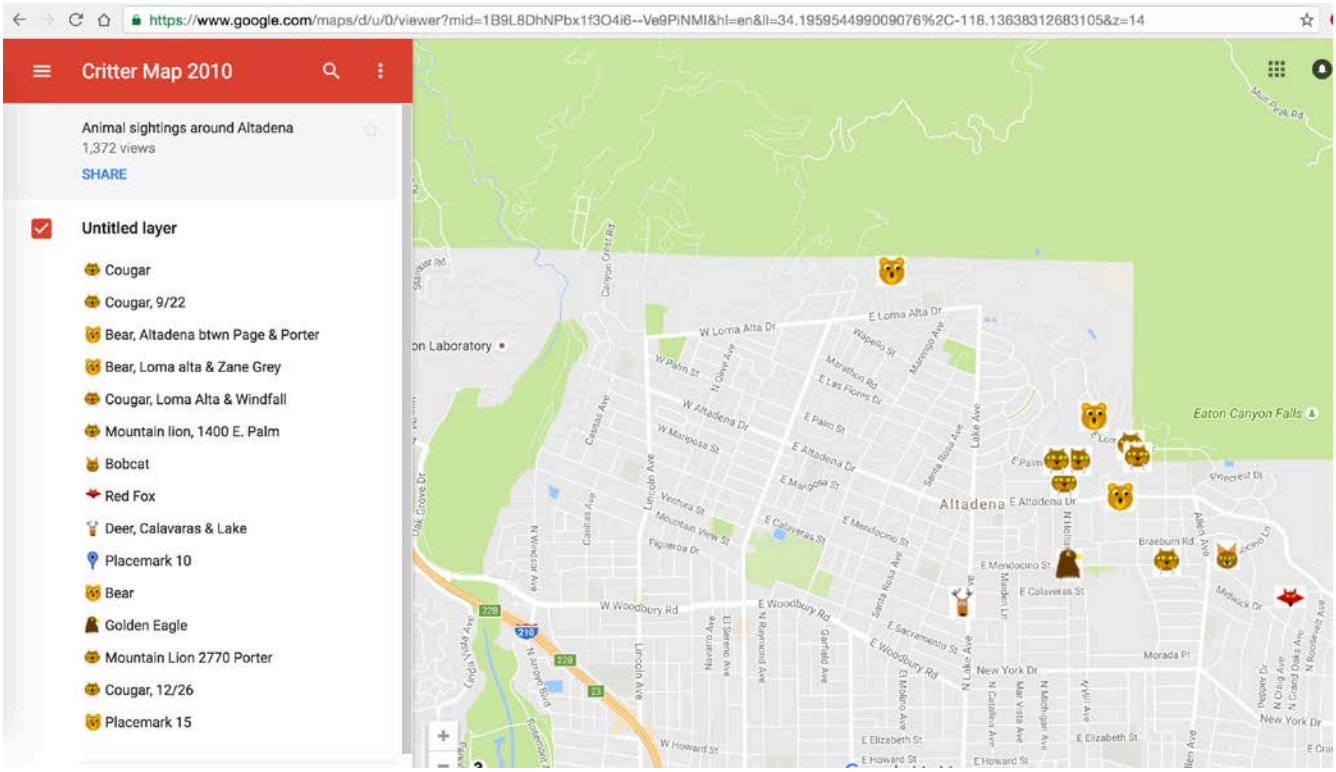


Illustration 2: Altadena wildlife map documenting mountain lion, bear, bobcat, deer, red fox, golden eagle at locations well inside the urban/wildland boundary

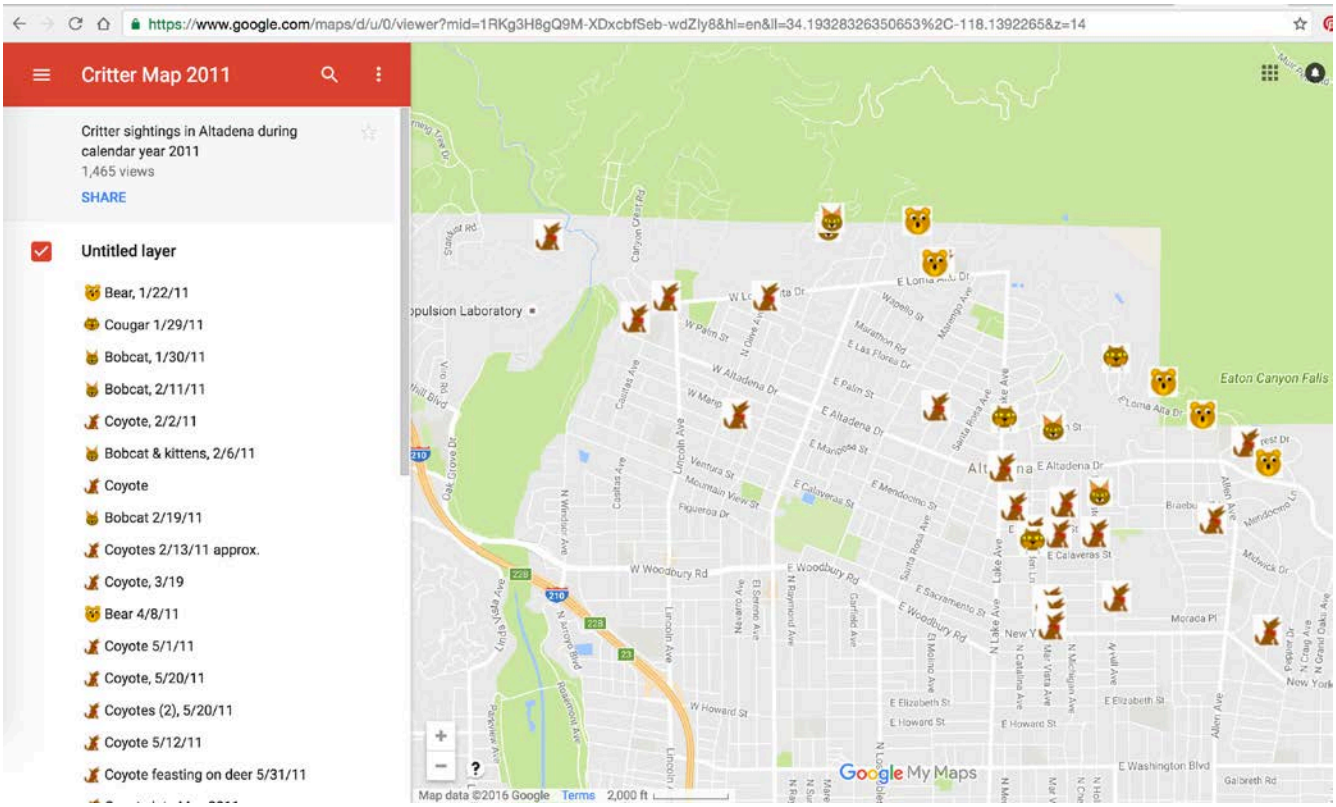


Illustration 3: Altadena wildlife map showing sightings of bear, mountain lion, bobcat, and coyote at locations well inside the urban/wildland boundary.

The footprint of our home connects the riparian canyon bottom to the largely fenced, developed lots and roads of lower Canyon Crest, the Florecita Farms neighborhood, and north-west Altadena. If wildlife is presently able to make its way to or from this developed environment across the footprint of our home, it is likely to be able to make its way on our unfenced lot around our home.

Mr. Tsai does not make a fair argument in claiming that the longstanding presence of wildlife in these developed areas and on their periphery will be significantly affected by the marginal addition of a single home, when hundreds of homes in the vicinity are already developed.

In his letter dated April 4, 2016, Mr. Tsai claimed:

In addition to the concerns that CCC presented concerning the Project's impact on the Project Site as a wildlife crossing in CCC's March 23, 2016 Comment Letter, CCC has uncovered additional evidence of the use of the Project Site as a wildlife crossing and the significant impact that the Project will have on wildlife. The Project Site is located in Lower Millard Canyon, a crucial area for wildlife. Arroyo & Foothills Conservancy, Wildland Hubs and Corridors: San Gabriel Foothills. The County should reject the Project's Initial Study and prepare a full environmental impact report due to the project's potentially significant environmental impacts.

The map of Regional Habitat Linkages incorporated into the 2035 Los Angeles General Plan

(Attachment 14, citation X) do not connect the San Gabriel Mountains with the Arroyo Seco and San Rafael Hills. The habitat linkages in the vicinity are drawn roughly coincident with the Angeles National Forest, and as a regional map, extremely under-resolved at the level of each boundary. The entire Meadows neighborhood to the north-west is rendered as a few pixels.

The document cited above is referenced in Attachment 14 citation AAA. While higher resolution, it also renders the entirety of our property in ten or so pixels of width. The area outlined in red as a long-term conservation project area is drawn around hundreds of homes, including the entirety of the Meadows neighborhood to the north-east of our project site. The area in green designated as a wildland hub and corridor includes dozens of existing homes, as e.g. to the north of Devonwood Drive in the area designated as the Altadena Foothills Hub.

Again, the canyon bottom is a wildlife corridor. The footprint of our home is not. Substantial evidence has not been presented that construction of our home in accordance with all regulations and specified BMPs from the Department of Public Works will impact this wildlife corridor nearly 200ft distant from the edge of our construction.



Illustration 4: Illustration of level of resolution of designation in Altadena Foothills Hub. Project footprint is roughly centered in this view, on red line across 4-5 pixels of width.

Attachment 12

Response to claims of significant impacts of our project on water quality and hydrology

November 10, 2016

Purpose:

The purpose of this attachment is to factually address claims that our project will result in significant impacts on water quality and hydrology.

Key Issues:

1. Substantial evidence has not been submitted that our project affects a watercourse.
2. Substantial evidence has not been submitted that our project will significantly effect a Water of the United States. Diversion of roof runoff will be conditioned by a rain garden, and add a trivial portion to the flow of the Los Angeles River.
3. Substantial evidence has not been submitted that interception of rain water in the tributary area of an oak tree dozens or hundreds of feet uphill in soil with high percolation will result in the decline of that tree, or any appreciable effect at all.
4. Substantial evidence has not been submitted that the transient flow of water in a rock-lined drainage swale comprises appreciable irrigation for the protected zone of a tree that intersects that swale.

In his letter dated September 6, 2016, Mitchell Tsai claimed:

"e. The Project Will Have A Significant Impact On Water Quality, Hydrology, and Biological Resources.

The Project will have a substantial impact on hydrology, water quality, and biological resources. The Project proposes to divert a drainage ditch that drains water from the surrounding neighborhood. The drainage ditch flows into a stream at the bottom of the canyon, into the Arroyo Seco river, a tributary to the Los Angeles River, a federally designated Waters Of The United States.

The Project's Initial Study claims that the Project will not cause water discharges into jurisdictional areas. Initial Study at 12. However, the Project's Initial Study later admits that the Project will cause a discharge into a Water of the United States, stating that the Project "is required to comply with the water quality requirements imposed by the Los Angeles Regional Water Quality Control Board . . . [as well as] National Pollutant Discharge Elimination System." Initial Study at 24 –25.

Moreover, the Initial Study notes that the Project will "alter the existing drainage pattern of the site and will increase the amount of surface runoff . . . ." Initial Study at 25.

All water flows from tributaries to ever-greater bodies of water. A substantial portion of the San Fernando and San Gabriel valleys, and much of Los Angeles eventually flows into the Los Angeles river. Mr. Tsai appears to state that because our roof – as is typical of any roof – intercepts water and routes it to downspouts, we are thereby impacting water quality in a federally designated Waters of the United States i.e. the Los Angeles River. Using this rationale without further qualification, every development in this area, the roof diversion of which all ultimately flow to the Los Angeles river (or local aquifers where percolation can intercept) would have a significant impact on water quality and hydrology. This is clearly specious. To develop this claim more specifically, it assumes that our interception of this flow

results in degraded water quality. Implicitly, it also assumes the impact from this supposedly contaminated flow to be measurable in relation to the flow of the Los Angeles River at the point of interception (i.e. the point of junction between the Los Angeles River and the Arroyo Seco, into which Millard stream flows).

To address the first assumption, our initial study goes on to note that, "The project will alter the existing drainage pattern of the site and will also increase the amount of surface runoff with the addition of impermeable surface area. However, all projects must comply with all applicable NPDES requirements and the Low Impact Development (LID) standards for small-scale residential projects which include management of drainage and surface runoff. Therefore, the project is not expected to result in substantial erosion or siltation on or off-site, increase the rate or amount of surface runoff in a manner that would result in flooding on or offsite, create or contribute runoff water which would exceed the capacity of exist or planned stormwater drainage systems, or generate construction or post-construction runoff that would violate applicable stormwater NPDES permits or significantly affect surface water or groundwater quality" (initial study at 24-25).

Compliance with NPDES and LID requirements are a ministerial part of obtaining a building permit, not a mitigation.

As we have noted on our website, "Over the footprint of our home, what had been sheet runoff collected by the open swale will become gutter runoff intercepted by a rain garden (per LID requirements, to improve the quality of the runoff) and thereafter routed right back into the same open swale. The drainage pattern downhill of our home is thus left substantially unaltered."

Even for those trees on adjacent lots that are downslope of our home, the change in hydrology from rainfall interception by our 1,159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in the sandy loam analyzed from the samples taken in our geotechnical report), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff cannot reasonably be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree.

To address the second assumption, we again note explicitly that we have no impermeable surfaces outside the 1159sqft footprint of our home, in contrast to nearly every other neighbor in the vicinity, who make use of sometimes significant amounts of impermeable driveway and parking area pavement (see Attachment 30). Altadena receives an average of 22in of rain a year, according to the Western Regional Climate Center (http://www.wrcc.dri.edu/cgi-bin/cliMAIN.pl?ca0144). If we assume that *all* of the water intercepted by our roof would have percolated in our footprint (though some would surely be routed to the drainage swale as sheet runoff during periods of heavy rain and saturation), and that *none* of it percolates in transit from our downspout to the Los Angeles River, then we are adding fewer than 16,000 gallons of annual flow. According to the City of Los Angeles (http://lariver.org/blog/la-river-facts), the Los Angeles River discharges on average 207 million gallons per day, or ~75 billion gallons per year. The marginal added flow under these assumptions is 0.000021%. Even if our runoff were somehow contaminated, dissimilarly from the hundreds of thousands

of other developments that drain to the Los Angeles River, this level of dilution clearly would result in a less than significant effect. We are saddened that Mr. Tsai felt that he had brought an acceptable level of rigor in making this claim.

Mr. Tsai does not make a fair argument when he claims that our development will have a significant impact on the Los Angeles River and therefore the Environment.

Mr. Tsai also references a “drainage ditch,” more accurately a drainage “swale,” following the valley lines of the existing terrain, the route of which we are altering by a maximum of 3-5ft only over a length of ~10-12ft, well within the bounds of our property, in order to place the south-east corner of our home. This is lined with riprap over a small part of its course from the 18” diameter (which has partially infilled, leaving at present about a half foot of passage) culvert under Canyon Crest Road to Millard stream below, with the remainder constituted of an unlined erosional channel to decomposed granite bedrock. As we show in Illustration 2, this drains an extent of ~1-2 acres and channels flow from roofs, pavement and sheet runoff in this area. There are no springs or other sources that allow it to run except in transients during substantial rainfall. It is not a “streambed that feeds Millard Creek,” as John Lynch claimed in his letter dated August 23rd, 2016.

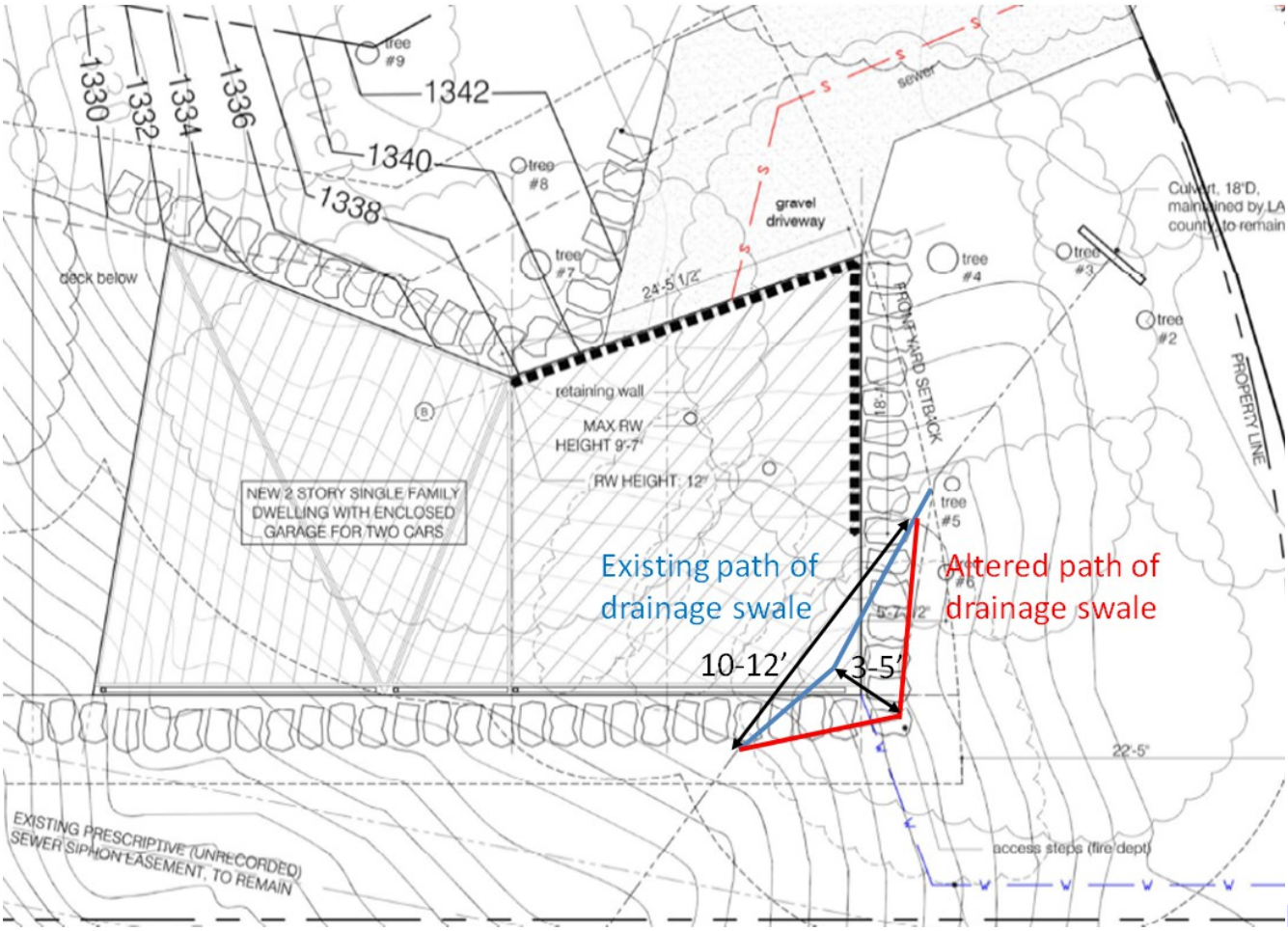


Illustration 1: Alteration to drainage swale. This alteration will not require excavation. The channel will be defined by replaced riprap, and the concrete wall of our home.

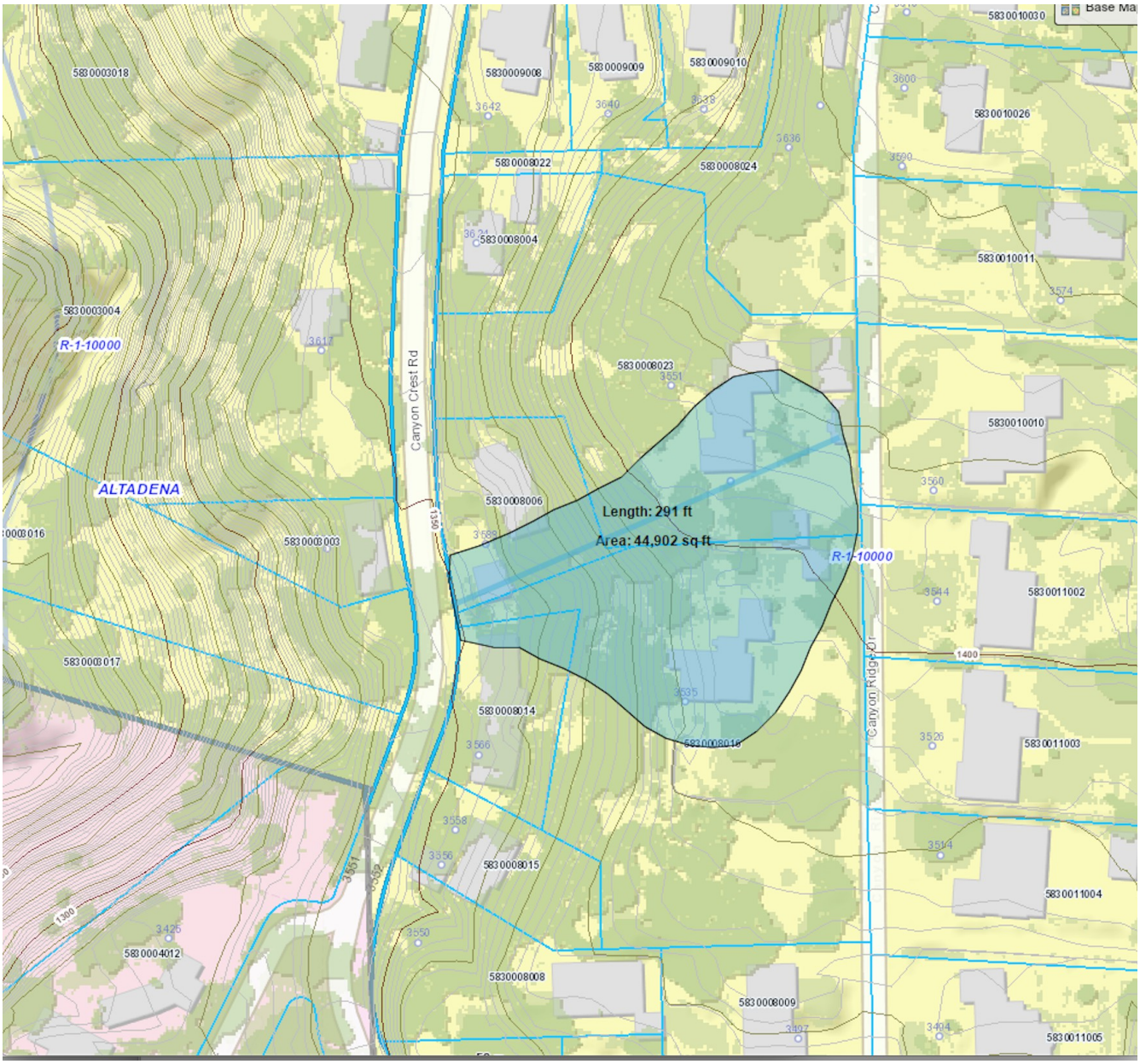


Illustration 2: Illustration of limited extent of tributary area of drainage swale, comprised of an acre with no more than an additional acre at all conceivable. Canyon Ridge Rd provides sheet runoff for areas further east.



Illustration 3: LIDAR point cloud of culvert area (between trees #2, left, and #3, right), illustrating dimensions of drainage culvert.



Illustration 4: LIDAR point cloud illustrating drainage swale on our property (oak tree #5, left foreground, oak tree #6, left background)

In Steiger v. City of San Diego, 163 Cal. App. 2d 110, 329 P.2d 94 (1958), it is stated:

“The courts of the state [of California] have decided that whether a depression is a watercourse or not is a question of law and not a question of fact. (Sanguinetti v. Pock, 136 Cal. 466, 470 [69 P. 98, 89 Am.St.Rep. 169].)

In Los Angeles C. Assn. v. City of Los Angeles, 103 Cal. 461, 464 [37 P. 375], the court said:

"A watercourse is defined to be 'a running stream of water; a natural stream, including rivers, creeks, runs, and rivulets.' (Black's Law Dictionary, title 'Watercourse.')

"There must be a stream usually flowing in a particular direction, though it need not flow continually. It may sometimes be dry. It must flow in a definite channel, having a bed, sides, or banks, and usually discharge itself into some other stream or body of water. *It must be something more than a mere surface drainage* over the entire face of a tract of land, occasioned by unusual freshets or other extraordinary causes. It does not include the water flowing in the hollows or ravines in land, which is the mere surface water from rain or melting snow, and is discharged through them from a higher to a lower level, but which at other times are destitute of water. Such hollows or ravines are not, in legal contemplation, watercourses. (Angell on Watercourses, 3-7; Shields v. Arndt, 4 N.J.Eq. 234; Hoyt v. City of Hudson, 27 Wis. 656 [9 Am.Rep. 473]; Luther v. Winnisimmet Co., 9 Cush. 171; Washburn on Easements, 209, 210.)"

[3] The evidence does not bring the draw or swale on plaintiffs' property within this definition of a watercourse. The trial court's determination that in contemplation of law it was not a watercourse is adequately sustained by the evidence in this case." (emphasis added).

In other words, a watercourse – which a stream must be as surely as a watercourse is a stream – cannot be composed solely of the runoff from rain and at other times be dry. The drainage swale is not a stream.

Mr. Tsai and others do not make a fair argument when they claim that the slight alteration of a drainage swale will have a significant impact on the Environment.

In her letter dated April 16, 2016, Ms. Latta claims that:

"The County oak tree ordinance requires that trees within 200 feet of construction be addressed. The trees are 170 feet away from the construction, but due to the steepness of the slope may have be impacted. The downslope trees could be impacted specifically by erosion, changes in drainage/hydrology, and runaway construction materials."

Ms. Latta appears unaware that these trees are not in fact "downslope" of the footprint of our home, or anything close to it. As we've stated on our website, "the natural path of the drainage channel already leaves our property and enters APN:5830-003-017, before exhausting into the canyon on APN:5830-004-900." In Illustration 5, we show the valley (drainage) lines in the footprint of our home, down to either the drainage swale or Millard stream. The nearest line is more than 70ft from any oak tree on our property, at the same elevation for those oak trees. Thus, neither runaway construction materials (which are mitigated with erosion and sediment control BMPs) nor changes to hydrology will impact these trees. Even should they have been, Ms. Latta has provided no suggestion as to appropriate conditions to mitigate for this, and these are properly provided by the civil engineers in the Department of Public Works who are competent to assess the suitability of mitigations.

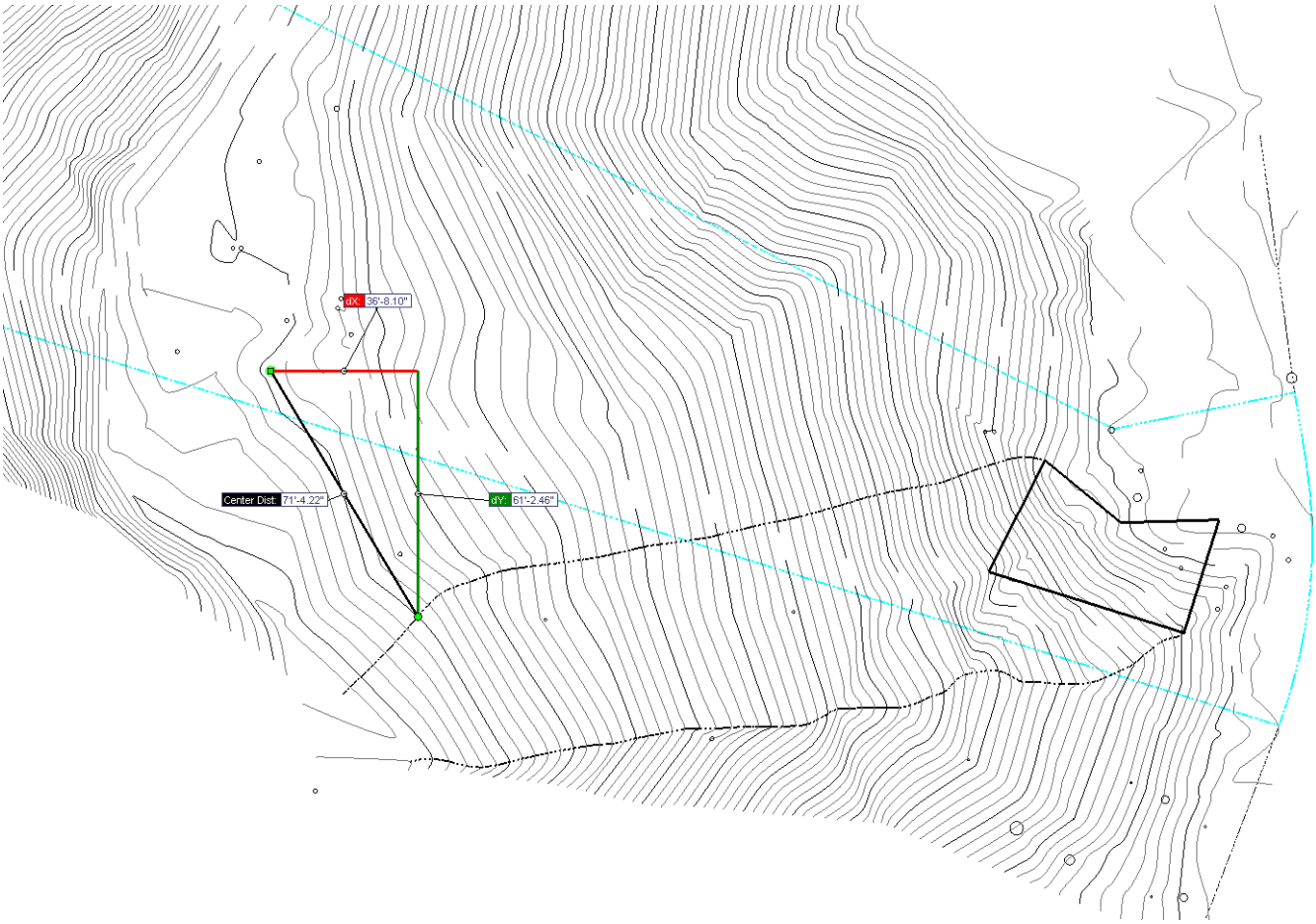


Illustration 5: Valley lines for the footprint of our home. While a few oak trees on the adjacent property do possess tributary drainage that includes the footprint of our house, none of the riparian trees on our property do. Substantial evidence has not been presented to prove that trees dozens or hundreds of feet distant will be significantly impacted by this tenuous change to hydrology.

As we attributed in Illustration 2, the drainage swale serves a modest tributary area of 1-2 acres of residential development. The water that flows in it does not provide a supply that lasts for more than a brief transient, in contrast to the spring-fed Millard stream, which also drains thousands of acres.

Ms. Latta is mistaken that all trees within 200ft of the project site need be included under the Oak Tree Ordinance. The ordinance *requests* for inclusion all trees within 200ft on the *subject property*, but allows that where a concurrent permit application is being filed, it is at the discretion of the Director [of Regional Planning] to waive any and all requirements referenced in the section that specifies this request. No requirement is levied by the statute to assess un-impacted trees on adjacent properties, and owners cannot be compelled to grant an arborist access to do so. It is in fact quite reasonable to omit trees that are nearly 200ft distant and *completely unaffected*, not even being downslope of our development. This is consistent with all three county oak tree reports included in Attachments 20-22. It is also consistent with Ms.

Latta's own oak tree report in Attachment 26, which also omits off-site trees that are directly downslope of excavation and installation of pavement, as we attribute in Attachment 19 at 13.

Even for those trees on adjacent lots that are downslope of our home, the change in hydrology from rainfall interception by our 1159sqft impermeable footprint is confined only to those periods where rainfall exceeds the capacity of percolation (which is substantial in sandy loam), resulting in sheet runoff. However, in such saturated conditions, a reduction in sheet runoff cannot be claimed to significantly affect any tree, as the runoff continues over similarly saturated soil in the root zone of the tree. Ms. Latta has not clarified what assessment an oak tree report might conceivably provide in this respect.

Ms. Latta has herself generated oak tree reports for which not only were those unaffected trees within 200ft on adjacent lots not included, but also for which an entire stand of oak woodland on the subject property was not included. As she notes in Attachment 26, the tree report for construction of a new 3,000+sqft single family residence, "…the area above the building pad was recommended for preservation with no impacts. [The project architect] received approval from the City of Monrovia to consider the area as intact oak woodland. Individual trees were not surveyed in the area." As we discuss in Attachment 19 at 13, these were all far less than 200ft distant from the home. Presumably then, Ms. Latta's objection to not including unaffected trees is derived from her perception that they will in fact be affected, based on her claim that they inhabit a drainage for which the footprint of our home is tributary. We have addressed this misunderstanding.

Ms. Latta is speculating as the existence of runaway construction materials. We are subject to all applicable BMPs the Department of Public Works requires to mitigate for debris flow, and are excavating a very small volume compared to typical hillside development (see attachment 14 citation NN at 3), by hand.

In her letter dated April 16, Ms. Latta has assumed that water from a steep, stone-lined drainage swale comprises an appreciable percentage of irrigation to oak tree #5.

"It is my understanding that the house will be built over the current drainage. Small changes in hydrology can impact oak trees if they are accustomed to the water source especially in a drought year."

The riprap-lined drainage swale serves a modest tributary area of 1-2 acres of developed area. It is an example of "water flowing in the hollows or ravines in land, which is the mere surface water from rain or melting snow, and is discharged through them from a higher to a lower level, but which at other times are destitute of water." The water that flows in this drainage swale does not provide a supply that lasts for more than a brief transient during rain, in contrast to the spring-fed Millard stream, which also drains thousands of acres.

Ms. Latta does not make a fair argument that a significant percentage of the uptake of water by a tree's roots is derived from flow only active during periods of heavy rain, over a small area of the protected zone of that tree, in a channel that is lined to a large extent with rock.

Attachment 13

Response to claims of significant impacts of our project on traffic

November 10, 2016

Purpose:

The purpose of this attachment is to factually address claims that our project will result in significant impacts to traffic.

Key Issues:

1. Substantial evidence has not been presented that we will be unable to stage the required construction equipment and vehicles on our lot. Our staging area of ~1,000sqft is more than 30ft deep and accommodates a full-size concrete truck.
2. Substantial evidence has not been presented that blocking off a single lane of the road for construction of a utility connection will have a significant effect on the environment. This continues to occur for more than an hour every 60 days to service the sewer siphon with manhole access immediately adjacent to our lot and the power pole, and a long-side utility connection was installed on our lot in 2005 without incident.
3. Substantial evidence has not been presented that our driveway will function any differently than those already present on Canyon Crest Road. According to the claims of our neighbors, our driveway has been used for parking by the residents of 3589 Canyon Crest for decades. Other driveways on the road have similar or reduced visual clearances.

In his letter dated March 24, 2016, Mr. Tsai claims:

"The Project will have significant impacts on traffic in and around the Project Site. The Project Site is located on a narrow, winding mountain road that serves as the only vehicle access in or out of a single-family neighborhood. The Project proposes to contain the entirety of the staging area on a small site currently only able to accommodate 1-2 small vehicles, a near impossibility. Schoeman Letter at p. 1."

Mr. Tsai has cited as evidence neighbor testimony reflecting a clear misunderstanding of the extent of our lot. As we show below, there is a nearly 30ft wide by more than 30ft deep flat area at street grade that is part of our property but which we have allowed the adjacent neighbors at 3589 Canyon Crest Rd to use for parking and storage. The neighbor Mr. Tsai cited (Ms. Schoeman) appeared unaware that this area was a part of our lot. It can accommodate three full-size parking spaces stacked side-to-side with significant additional room to the west for materials, or a cement or flatbed truck (see below), along with another two full-size parking spaces parallel to the road. As we noted in our response to Ms. Latta's letter dated March 17, "Once our main level and garage is cast, we will have an additional ~1000sf of area to stage building materials off of the unimproved ground in the protected zones of our oak trees. It is after this point that most deliveries – framing lumber, sheathing, drywall, cladding, roofing, windows and doors, etc. - will be made."

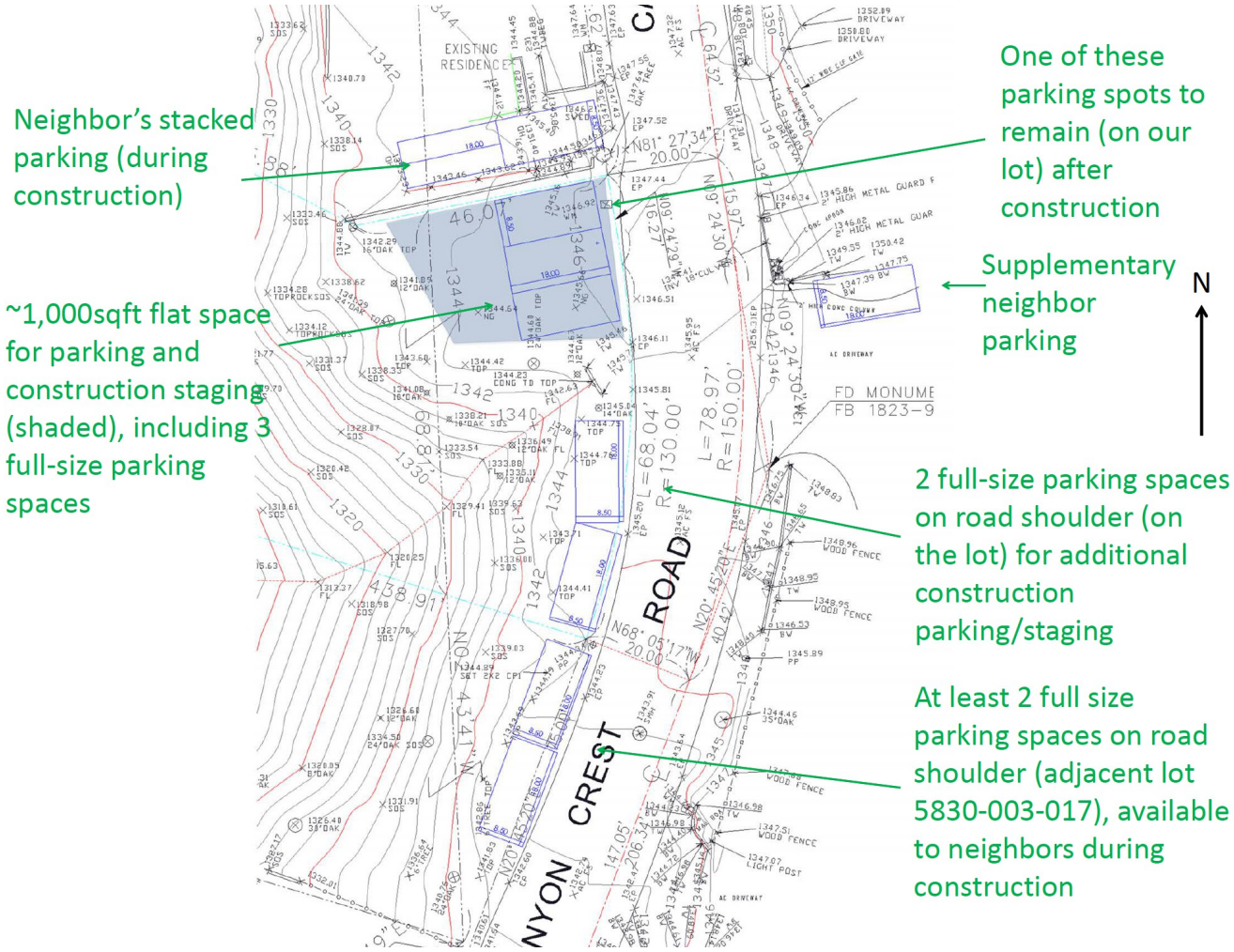


Illustration 1: Parking overlay indicating that five full-size parking spaces exist on our lot, with additional room for storage, and the depth to accommodate truck deliveries

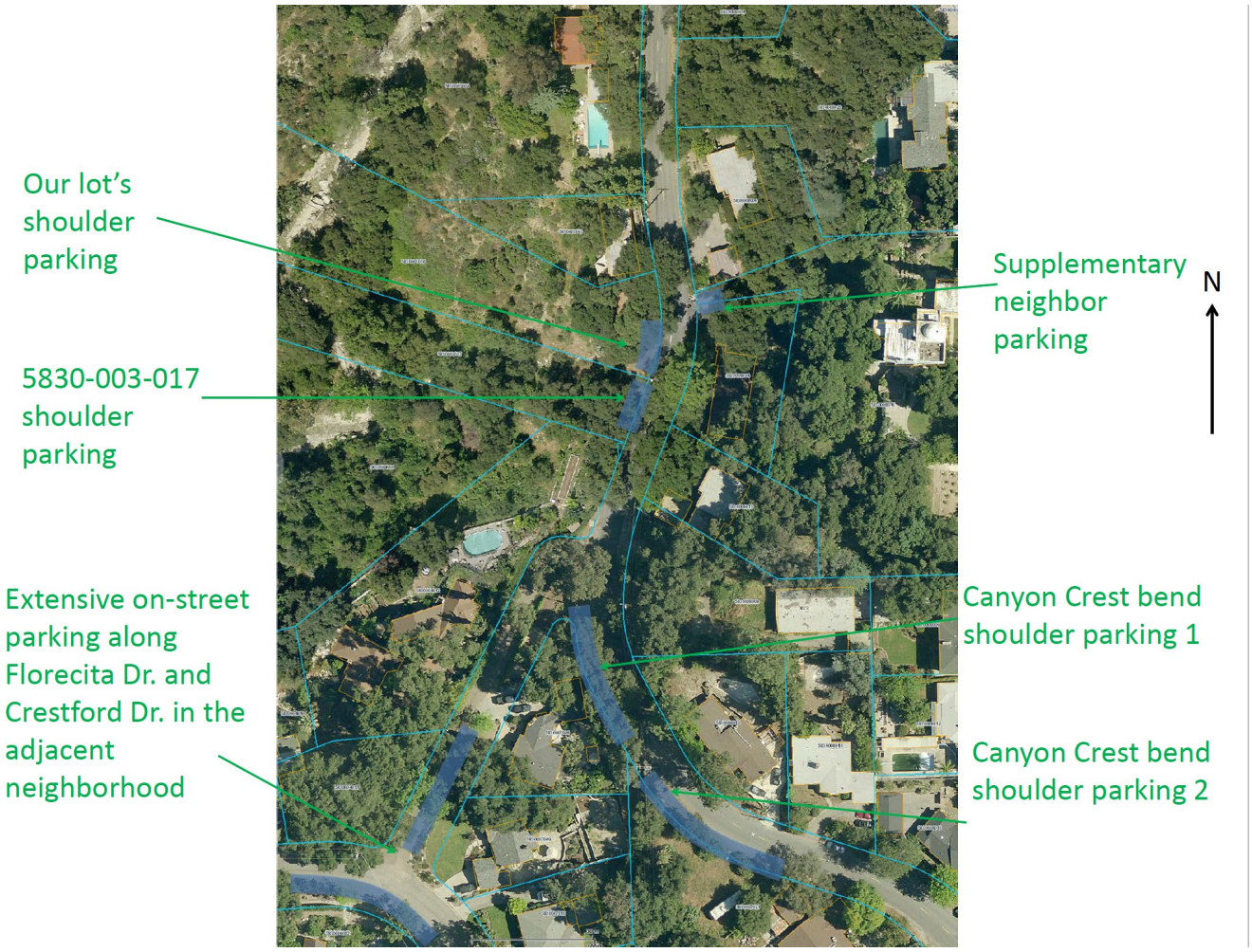


Illustration 2: Overhead view of street parking along lower Canyon Crest Road and adjacent area

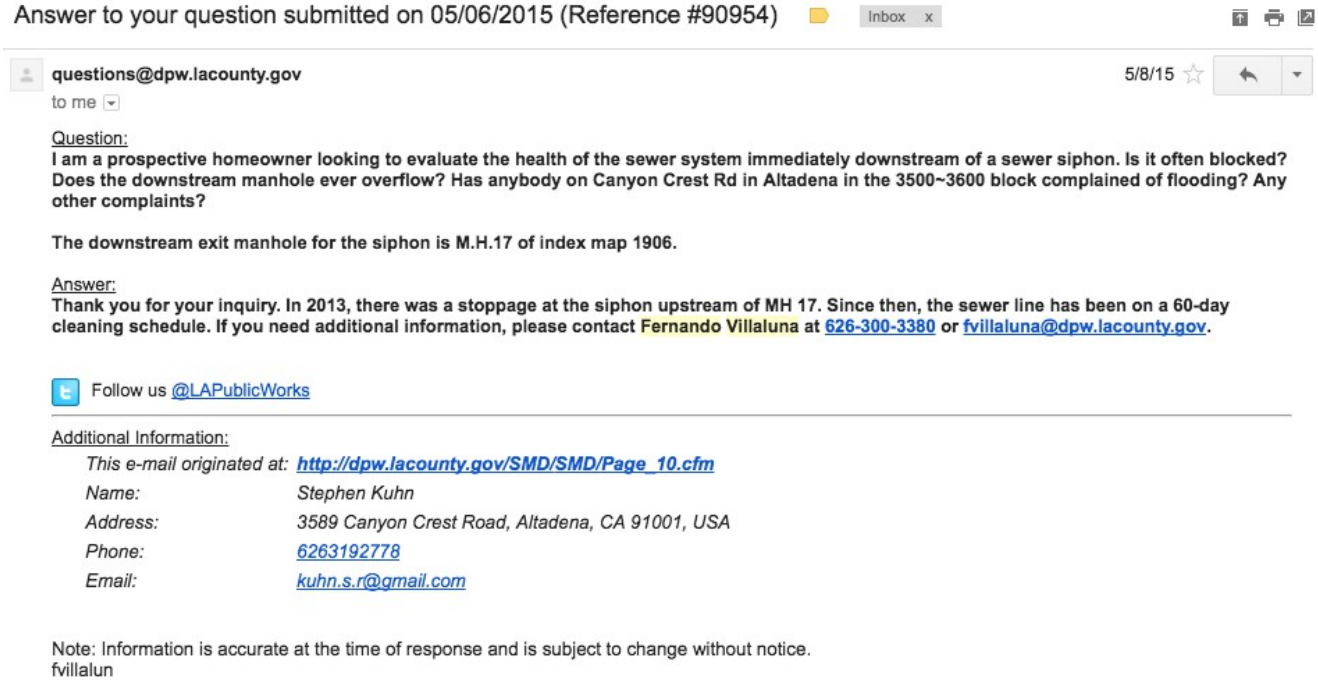
As we've noted on our website, "As the paving repair of utility maintenance excavation trenches along Canyon Crest will attest, as well as our own experience as residents of the Meadows for years, temporary single lane closures occur periodically. Some of you may have observed what this looks like during regularly scheduled cleaning of the sewer siphon that outlets near the edge of our property, which occurs about every 60 days. Our personal experience has been that this is not unduly disruptive to traffic. Cones clearly advertise the activity, and workers with flags ensure safe speeds and the alternation of lanes when needed. Work is generally scheduled as much as possible outside the morning and evening hours when levels of traffic are higher. As no sub-street utility has an infinite lifetime, and every street's utilities are subject to repair and replacement, the DPW Traffic & Lighting Division has a standard process to govern this."

When the DPW services the sewer siphon, they block the lane for more than an hour, as we've experienced on several occasions in driving to and from work, as residents further up the road. A single lane is able to be blocked for this extended interval – even during peak

morning traffic hours – without resulting in a backlog of traffic for the 227 homes of the Meadows above.



Illustration 3: The DPW blocks off a single lane of traffic right in front of our property for more than an hour every 60 days, in order to service the sewer siphon that runs through our lot. This entails threading equipment several hundred feet through the lines to the lowest point in the siphon at the canyon bottom.



Answer to your question submitted on 05/06/2015 (Reference #90954) Inbox x

questions@dpw.lacounty.gov 5/8/15

to me

Question:
I am a prospective homeowner looking to evaluate the health of the sewer system immediately downstream of a sewer siphon. Is it often blocked? Does the downstream manhole ever overflow? Has anybody on Canyon Crest Rd in Altadena in the 3500~3600 block complained of flooding? Any other complaints?

The downstream exit manhole for the siphon is M.H.17 of index map 1906.

Answer:
Thank you for your inquiry. In 2013, there was a stoppage at the siphon upstream of MH 17. Since then, the sewer line has been on a 60-day cleaning schedule. If you need additional information, please contact Fernando Villaluna at 626-300-3380 or fvillaluna@dpw.lacounty.gov.

Follow us @LAPublicWorks

Additional Information:

This e-mail originated at:	*http://dpw.lacounty.gov/SMD/SMD/Page_10.cfm*
Name:	*Stephen Kuhn*
Address:	*3589 Canyon Crest Road, Altadena, CA 91001, USA*
Phone:	*6263192778*
Email:	*kuhn.s.r@gmail.com*

Note: Information is accurate at the time of response and is subject to change without notice.
fvillalun

Illustration 4: Support for the claim that the sewer siphon is serviced every 60 days, blocking off a single lane of traffic immediately adjacent to the project.



Illustration 5: Single lane closure two houses to the north of subject property, without even active flagging.



Illustration 6: Concrete truck parked for extended interval encroaching into road during renovation at 3737 Canyon Crest Rd, without even cones or signage.



Illustration 7: Single lane closure to the north of 3737 Canyon Crest, for oak tree removal from slope to right.



Illustration 8: Much of the length of lower Canyon Crest Rd shows signs of previous utility trenching, on near side of centerline, parallel to centerline. Utility trenching blocks off a single lane of traffic.

Our own property was serviced with a long-side water utility hookup in 2005 (see Attachment 32 at 2). This is very similar to the process for connecting to utilities we will experience.

“Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence. See *Taxpayers for Accountable Sch. Bond Spending v San Diego Unified Sch. Dist.* (2013) 215 CA4th 1013, 1042 (general objection to noise in neighborhood not substantial evidence); *Porterville Citizens for Responsible Hillside Dev. V City of Porterville* (2007) 157 CA4th 885, 905 (general objections to project density and quality were not substantial evidence of environmental impact); *Bowman v City of Berkeley* (2004) 122 CA4th 572, 588 (generalized aesthetic objections to project without regard to surrounding context of urbanized development were not substantial evidence); San Joaquin Raptor/Wildlife Rescue Ct. v County of Stanislaus (1996) 42 CA4th 608 (conclusory statement about cumulative impacts was not substantial evidence; *Lucas Valley Homeowners Ass'n v County of Marin* (1991) 233 CA3d 130 (expressions of generalized concerns and fears about traffic and parking impacts was not substantial evidence); *Leonoff v Monterey County Bd. Of Supervisors* (1990) 222 CA3d 1337 (opponents' subjective concerns and unsubstantiated opinions about dangerous traffic conditions are not substantial evidence); *Perley v Board of Supervisors* (1982) 137 CA3d 424 (neighbors' unsubstantiated fears and concerns about project's impacts lacked objective basis for challenge and did not constitute substantial evidence).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

Mr. Tsai has not provided substantial evidence to support a claim that we will be unable to stage our building materials on our property. Nor has he provided substantial evidence to indicate that blocking a single lane temporarily and briefly for a utility hookup will result in a significant impact on traffic. He has only provided complaints, fear and suspicion from neighbors not possessed of an accurate understanding of our project.

Some have claimed that we would be unable to fit a concrete truck on our property without parking it on the road. This is refuted by the illustrations below.

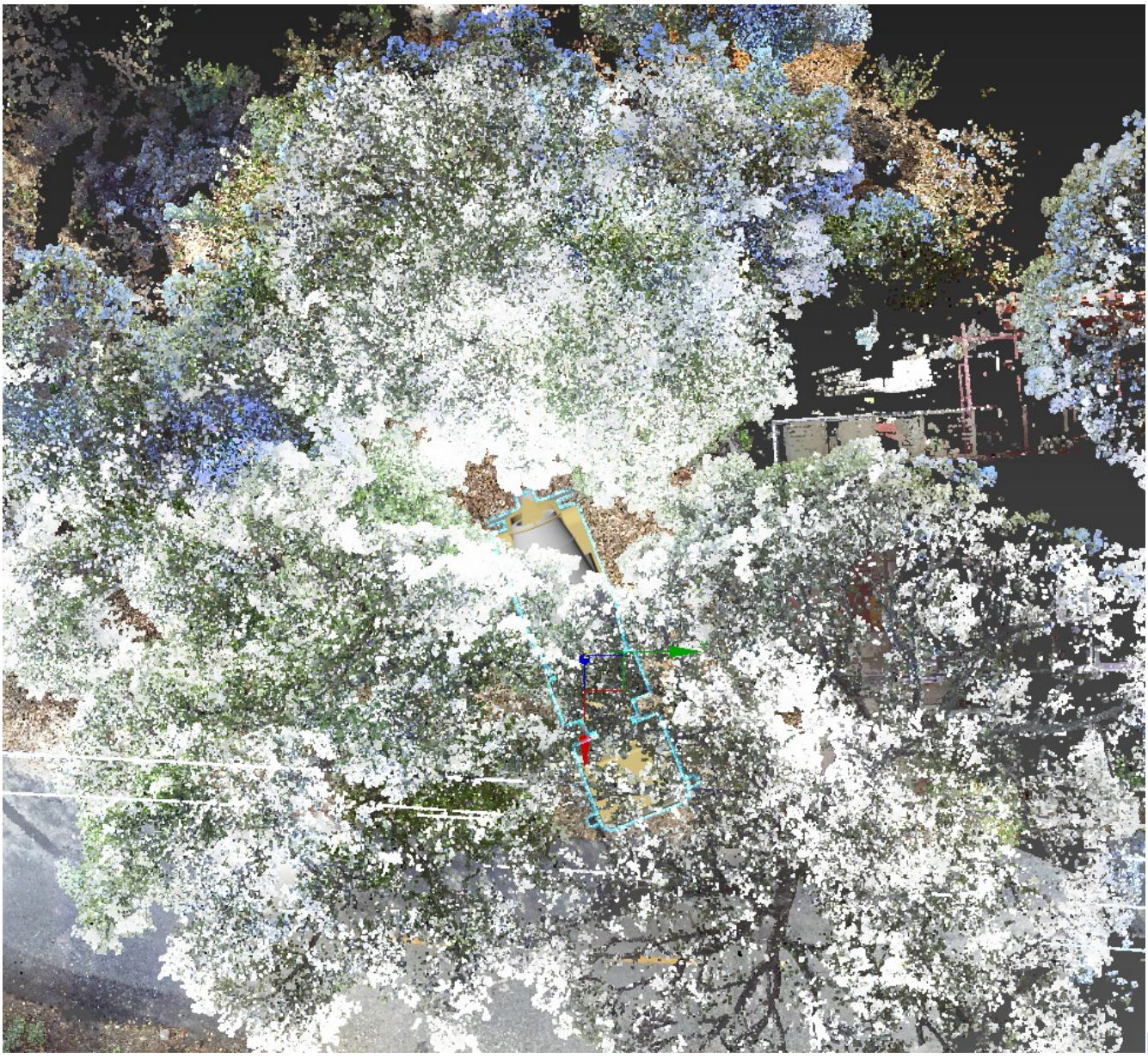


Illustration 9: Cement truck on subject property, as seen from overhead in LIDAR point cloud. The edge of the truck is far removed from the trunk and canopy of oak trees #7, #8 and #9, at the edge of their driplines.



Illustration 10: Cement truck on subject property, as viewed from the north-east in LIDAR point cloud. The truck has clearance without intersecting any oak tree canopy on trees #1 or #4.

Neither does the placement and servicing of a 5- or 10-yard dumpster beyond the capacity of our pad, nor would it intersect with canopy. Our pad is more than 30ft deep, and this more than accommodates the type of dumpster shown below.


JH FR IX
& S ON
404 456 3920
J.H. Frix & Son
GRADING
CONTRACTOR
770-887-8221


JH FR IX
& S ON
404 456 3920





Neither is the visibility when pulling out of our lot dissimilar from other homes on the street. Our driveway has been used for parking for decades, and so pulling out from it has been a normal part of the function of this area.



Illustration 11: Existing homes on road have driveways with poorer visibility around a curve. See driveway to left of hydrant, for home three houses to the south of subject property.


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Attachment 14

Response to claims of inadequate or unlawful oversight of our project

November 10, 2016

Purpose:

The purpose of this attachment is to factually address claims that our project has been subject to inadequate or unlawful oversight, including the manner of environmental review under the California Environmental Quality Act.

Key Issues:

1. Opposing counsel has cited distinguishable CEQA litigation in advancement of his claim that our project should become the seventh ever single-family residence on vacant land to be subjected to an Environmental Impact Report of any kind. The other six projects are all distinguishable, as we attribute in Attachment 18.
2. Opposing counsel has claimed that standard permit conditions are *unenforceable*, without submitting substantial evidence to support this claim.
3. Opposing counsel has argued that *standard permit conditions* should be rendered as *mitigation measures*, without submitting substantial evidence that a significant impact to the Environment would occur without the permit condition.
4. Substantial evidence has not been submitted to support a claim that our project possesses "unusual circumstances," and is therefore not entitled to a 15303 categorical exemption under CEQA. The Department of Regional Planning understandably decided to perform an initial study out of an abundance of caution given the stream and riparian oak woodland bisecting our lot nearly 200 feet from our development, in order to provide a formal opportunity for comment from other agencies and given non-technical but vocal concerns by neighbors – not because it determined "unusual circumstances" were present and that we were therefore not entitled to this exemption. Similar proximity to this stream is also characteristic of dozens of adjacent residences.

Incorporation by Reference:

Pursuant to sections 15148 and 15150 of CEQA Guidelines, the following public records are incorporated into the administrative record by citation. They are referenced in one or more attachments.

A. Letter from Richard Bruckner to the Los Angeles County Board of Supervisors dated November 27, 2012 (http://planning.lacounty.gov/assets/upl/official/official_20121127_oak-woodlands.pdf)
B. Los Angeles County Oak Woodlands Conservation Management Plan, dated May 2011 (http://planning.lacounty.gov/assets/upl/project/oakwoodlands_conservation-management-plan.pdf)
C. County of Los Angeles Oak Woodland Management Plan Guide, dated March 18, 2014 (http://planning.lacounty.gov/assets/upl/project/oakwoodlands_conservation-management-plan-guide.pdf)
D. The Oak Woodlands Conservation Act of 2001 Program Applications and Guidelines (undated) (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18730)
E. Proposed Resolution to Adopt the Los Angeles County Oak Woodlands Conservation Management Plan, dated August 2, 2011 (http://file.lacounty.gov/SDSInter/bos/bc/164199_official_20110802_oakwoodlands.pdf)

F. Los Angeles County 2035 General Plan, Chapter 2: Applicability (http://planning.lacounty.gov/assets/upl/project/gp_final-general-plan-ch2.pdf)
G. Los Angeles County 2035 General Plan, Chapter 9: Conservation and Natural Resource Element (http://planning.lacounty.gov/assets/upl/project/gp_final-general-plan-ch9.pdf)
H. Los Angeles County 2035 General Plan, Chapter 16: General Plan Implementation Program (http://planning.lacounty.gov/assets/upl/project/gp_final-general-plan-ch16.pdf)
I. Los Angeles County General Plan Update Draft Environmental Impact Report, State Clearinghouse #2011081042, dated June 2014 (http://planning.lacounty.gov/assets/upl/project/gp_2035_deir.pdf)
J. Los Angeles County General Plan Update Final Environmental Impact Report, dated March 2015 (http://planning.lacounty.gov/assets/upl/project/gp_2035_lac-gpu-final-eir-final.pdf)
K. CEQA Findings of Fact and Statement of Overriding Considerations for the Final Environmental Impact Report for the Los Angeles County General Plan Update EIR (undated) (http://planning.lacounty.gov/assets/upl/project/gp_2035_lac-fof-soc-final.pdf)
L. Los Angeles County CEQA Guidelines Part 1 – Main Document, dated November 17, 1987 (http://planning.lacounty.gov/assets/upl/general/LAC_CEQA_Guidelines_1.pdf)
M. Los Angeles County CEQA Guidelines Part 3 – Appendices C-Q, undated (http://planning.lacounty.gov/assets/upl/general/LAC_CEQA_Guidelines_3.pdf)
N. Los Angeles County Special Management Areas Policy Map, dated November 1980 (http://planning.lacounty.gov/assets/upl/project/gp_web80-special-management-areas-map-4.pdf)
O. Los Angeles County Special Management Areas Policy Map, dated November 2014 (http://planning.lacounty.gov/assets/upl/project/gp_2035_2014-FIG_6-1_special_mgt_overlay.pdf)
P. Title 22: Planning and Zoning, County of Los Angeles Code (https://www.municode.com/library/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT22PLZO)
Q. Letter to the Board of Supervisors from the Department of Regional Planning RE: Hearing on the Technical Update to Title 22, dated September 22, 2015 (http://file.lacounty.gov/SDSInter/bos/supdocs/97125.pdf)
R. Title 22 Technical Update Volume I Countywide Provisions (undated) (http://file.lacounty.gov/SDSInter/bos/supdocs/97129.pdf)
S. Los Angeles County Hillside Management Area Ordinance Sensitive Design Guidelines (undated) (http://planning.lacounty.gov/assets/upl/apps/hma_sensitive-design-guidelines.pdf)
T. Altadena Community Plan Map, as amended through 8/21/90 (http://planning.lacounty.gov/assets/upl/data/LUP_Altadena.pdf)
U. City of Pasadena Zoning Map, dated April 9, 2016 (http://www.cityofpasadena.net/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=8589942941&libID=8589942943)
V. Altadena Community Standards District Significant Ridgelines & Slopes of 25% or More (undated) (http://planning.lacounty.gov/assets/upl/data/ord_altadena-ridgelines-map.pdf)

W. Bureau of the Census 2010 Census Urban Area Reference Map – Los Angeles-Long Beach-Anaheim, CA (http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua51445_los_angeles--long_beach--anaheim_ca/DC10UA51445_003.pdf)
X. Regional Habitat Linkages, dated May 2014 (http://planning.lacounty.gov/assets/upl/project/gp_2035_2014-FIG_9-2_Regional_Wildlife_Linkages.pdf)
Y. Oak Woodland Impact Decision Matrix: A Guide for Planners to Determine Significant Impacts to Oaks as Required by SB1334 (Public Resources Code 21083.4) (http://ucanr.edu/sites/oakplanner/files/71734.pdf)
Z. Los Angeles County Department of Regional Planning Oak Tree Permit (with Public Hearing) Checklist (undated) (http://planning.lacounty.gov/assets/upl/apps/oak-tree-permit-english_checklist.pdf)
AA. Los Angeles County Department of Regional Planning Zoning Permit Instructions & Checklist (undated) (http://planning.lacounty.gov/assets/upl/apps/zoning-permit-checklist_english.pdf)
BB. County of Los Angeles Fire Department Fuel Modification Plan Guidelines: A Firewise Landscape Guide for Creating and Maintaining Defensible Space, dated August 10, 2011 (https://www.fire.lacounty.gov/wp-content/uploads/2014/02/Fuel-Modification-Plan-Guidelines-8-10-11.pdf)
CC. Napa County Voluntary Oak Woodland Management Plan, dated October 26, 2010. (http://www.countyofnapa.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4294973990)
DD. Santa Clara County Planning Office Guide to Evaluating Oak Woodlands Impacts (undated) (https://www.sccgov.org/sites/dpd/DocsForms/Documents/Oakwoodlands_Guide.pdf)
EE. El Dorado County Oak Woodland Management Plan, dated April 2008 (https://www.edcgov.us/Government/Planning/OakWoodlands/OakDraftAugust2007_SectionV.aspx)
FF. Conceptual Steps for Designing Wildlife Corridors (undated) (http://corridordesign.org/dl/docs/ConceptualStepsForDesigningCorridors.pdf)
GG. Purdue Extension FNR-473-W, Tree Appraisal (undated) (https://www.extension.purdue.edu/extmedia/fnr/fnr-473-w.pdf)
HH. A Guide to Preventing Soil Compaction During Construction ANR-1455, Alabama Cooperative Extension System (undated) (http://www.aces.edu/pubs/docs/A/ANR-1455/ANR-1455.pdf)
II. International Society of Arboriculture Arborist News: At the Root of It (undated) (http://www.isa-arbor.com/education/resources/educ_Portal_RootGrowth_AN.pdf)
JJ. Soil Compaction & Trees: Causes, Symptoms & Effects, dated July 2000 (https://www.extension.iastate.edu/forestry/publications/PDF_files/for00-003.pdf)
KK. An Evaluation of the Potential Effects on Old-growth Redwoods from Implementation of the Richardson Grove Operational Improvement Project (http://www.dot.ca.gov/dist1/d1projects/richardson_grove/rg_tree_eval_final_9-16-2013.pdf)
LL. Rain Gardens (undated) (http://extension.oregonstate.edu/stormwater/sites/default/files/Rain%20Gardens.pdf)

MM. Bureau of the Census Median and Average Square Feet of Floor Area in New Single-Family Houses Completed by Location (undated, through 2010) (https://www.census.gov/const/C25Ann/sftotalmedavgsqft.pdf)
NN. Los Angeles County Regional Planning Commission Approval Package, Project No. 00-136-(5), dated August 18, 2016 (http://planning.lacounty.gov/assets/upl/case/tr52796_approval-package.pdf)
OO. International Building Code 2015, Chapter 2 Definitions (http://codes.iccsafe.org/app/book/content/2015%20San%20Antonio/2015%20IBC%20HTML/Chapter%202.html)
PP. [deleted]
QQ. initial study for Los Angeles County project R2012-01865 (http://planning.lacounty.gov/assets/upl/case/r2012-01865_initial-study.pdf)
RR. Faro Laser Scanner Focus X130 Performance Specifications (http://www.neo-tech.co.uk/assets/faro-focus-3d-x-130-laser-scanner-brochure.pdf)
SS. Definition of a building “story” (https://en.wikipedia.org/wiki/Storey)
TT. International Association of Certified Home Inspectors – Measuring Roof and Slope Pitch (https://www.nachi.org/roof-slope-pitch.htm)
UU. Tree Growth after Pruning and Compensatory Crown Pruning, Journal of Arboriculture 24(1): January 1998 (http://joa.isa-arbor.com/request.asp?JournalID=1&ArticleID=2790&Type=2)
VV. The Use of Surface Treatments for the Prevention of Soil Compaction During Site Construction, Journal of Arboriculture 20(4): July 1994 (http://joa.isa-arbor.com/request.asp?JournalID=1&ArticleID=2629&Type=2)
WW. Attaining Root:Crown Balance in Landscape Trees, Journal of Arboriculture 17(8): August 1991 (http://joa.isa-arbor.com/request.asp?JournalID=1&ArticleID=2447&Type=2)
XX. Lincoln Bypass Environmental Impact Report, SCH# 199090020626, dated 5/18/06 (https://books.google.com/books?id=Buo0AQAAMAAJ&pg=SA4-PA95&dq=lincoln+bypass+eir+2:1+ratio&hl=en&sa=X&ved=0ahUKEwiOxaiLvpXQAhXpzlQKHa2LDLQQ6AEIHDAA#v=onepage&q&f=false)
YY. 3D Forest (LIDAR post-processing) User Guide (https://sourceforge.net/projects/forest3d/files/3DFOREST_app_64bit/3D_Forest_User_Guide_041.pdf)
ZZ. County of Los Angeles Low Impact Development Standards Manual (https://dpw.lacounty.gov/ldd/lib/fp/Hydrology/Low%20Impact%20Development%20Standards%20Manual.pdf)
AAA. Arroyos and Foothills Conservancy, Wildland Hubs and Corridors (undated) (http://static1.1.sqspcdn.com/static/f/883361/26194410/1430708872200/HubsandCorridors.jpg?token=dnC53x6%2F6V2EST%2Fwa7RPKER3usE%3D)

Background on Unusual Circumstances and the 15303 Categorical Exemption:

“The three general exceptions to the use of categorical exemptions (significant impacts due to unusual circumstances, significant cumulative impacts, and impacts on a uniquely sensitive environment) are set forth in 14 Cal Code Regs §15300.2(a)-(c). See §§5.71-5.74. The supreme court in *Berkeley Hillside Preservation v City df Berkeley* (2015) 60 C4th 1086 established the standards that govern the first general exception... Under the exception set forth in 14 Cal Code Regs §15300.2(c), an agency may not find a project exempt if there is a "reasonable possibility" that it will have a significant effect on the environment "due to unusual circumstances." See §5.72. Courts apply the substantial evidence standard when reviewing an agency's factual determinations whether a project presents unusual circumstances. *Berkeley Hillside*, 60 C4th at 1114; *Citizens for Envt'l Responsibility v State of Cal. ex rel 14th Dist. Agric. Ass'n* (2015) 242 CA4th 555, 574. See also *Berkeley Hillside Preservation v City of Berkeley* (2015) 241 CA4th 943 (*Berkeley Hillside II*) (applying this standard of review on remand and finding no unusual circumstance).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 5.127)

“If there is a "reasonable possibility" that an activity will have a significant effect on the environment due to "unusual circumstances," an agency may not find the activity to be categorically exempt from CEQA. 14 Cal Code Regs §15300.2(c). This exception applies only when both unusual circumstances and a significant impact as a result of those unusual circumstances are shown. *Berkeley Hillside Preservation v City of Berkeley* (2015) 60 C4th 1086, 1104. The determination whether the exception applies thus involves two distinct questions: (1) whether the project presents unusual circumstances and (2) whether there is a reasonable possibility that a significant environmental impact will result from those unusual circumstances. 60 C4th at 1098, 1104. See also *Citizens for Envt'l Responsibility v State of Cal. ex rel 14th Dist. Agric. Ass'n* (2015) 242CA4th 555, 573.

Unusual circumstances may be found on the basis of a feature or condition that distinguishes the project from others in the exempt class, such as its size or location. *Berkeley Hillside*, 60 C4th at 1105. A lead agency may also find that an unusual circumstance exists when substantial evidence indicates that the project "will" in fact have a significant impact on the environment. 60 C4th at 1105. An agency's determination of either question involves a factual inquiry under which it weighs the evidence relating to environmental impacts together with the other relevant evidence to decide if the circumstances presented by the project are unusual. Judicial review of its decision is limited to whether the agency's conclusions are supported by substantial evidence. 60 C4th at 1114. See also *Citizens for Envt'l Responsibility v State of Cal. ex rel 14th Dist. Agric. Ass'n, supra*.

If the agency finds that the project presents unusual circumstances, the second question it must address is whether there is "a reasonable possibility of a significant effect on the environment due to" those circumstances. *Berkeley Hillside*, 60 C4th at 1115. The agency answers this question by determining if there is any substantial evidence before it that would support a fair argument that a significant impact on the environment may occur. 60 C4th at 1115. Judicial review of its decision is limited to whether the agency properly applied that

legal standard in considering the evidence. 60 C4th at 1115.

On remand from the supreme court, in *Berkeley Hillside Preservation v City of Berkeley* (2015) 241 CA4th 943 (*Berkeley Hillside II*), the court of appeal rejected the petitioners' argument that the project-a large home to be built on a steep hillside-involved circumstances that were unusual for projects subject to the "small structure" and "urban infill" exemptions. The court held that the petitioners' identification of evidence that the size, scale, and setting of the proposed home are atypical was insufficient to meet their burden to prove that the city's finding of no unusual circumstances was unsupported by substantial evidence. Compare *Berkeley Hillside ll* with *Citizens for Envt'l Responsibility v State of Cal. ex rel 14th Dist. Agric. Ass'n, supra* (proposed event at county fairground did not differ significantly in nature and scope from past events at that fairground, and there was no evidence showing conditions were unusual in comparison with other fairgrounds).

In cases prior to the supreme court's decision in Berkeley Hillside, a number of courts rejected application of the unusual circumstances exception, applying a variety of approaches in deciding that the project's circumstances did not differ significantly from the circumstances typical of the class of projects covered by the exemption. See *San Francisco Beautiful v City & County of San Francisco* (2014) 226 CA4th 1012, 1025 (city's decision to allow utility boxes in urban environment that already contains thousands of such structures is not unusual in context of city's urban environment); *Wollmer v City of Berkeley* (2011) 193 CA4th 1329, 1351(rejecting claims that location of infill project at crowded intersection was unusual circumstance, noting that this type of circumstance is expected in infill development context); *San Lorenzo Valley Community Advocates for Responsible Educ. v San Lorenza Valley Unified Sch. Dist.* (2006) 139 CA4th 1356 (no evidence that traffic, parking, and access problems are unusual circumstances in context of school consolidations); *Santa Monica Chamber of Commerce v City of Santa Monica* (2002) 101 CA4th 786, 802 (city ordinance that created residents-only parking district involved normal and common considerations relating to municipal parking regulations); *Fairbank v City of Mill Valley* (1999) 75 CA4th 1243, 1260 (nothing about small retail and office building sets it apart from other small commercial structures built in urbanized area); *Bloom v McGurk* (1994) 26 CA4th 1307, 1316 (presence of comparable facilities in immediate area adequately supported agency's implied finding that there were no unusual circumstances precluding application of categorical exemption for ongoing operation of existing facilities to medical waste treatment plant); *City of Pasadena v State* (1993) 14 CA4th 810 (decision by State Department of Corrections to lease space in existing building in civic center area for use as parole office was not unusual circumstance given presence of other custodial and criminal justice facilities in immediate area); *Association for Protection of Envt'l Values v City of Ukiah* (1991) 2 CA4th 720, 731 (size, height, and hillside location of house not unusual in that area, and potential environmental impacts alleged are common in construction of single-family residence).

In other cases, the court found it unnecessary to address the unusual circumstances question on the ground that no showing had been made that the project might have a significant environmental impact. See *North Coast Rivers Alliance v Westlands Water Dist.* (2014) 227 CA4th 832,869; *Banker's Hill, Hillcrest, Park W. Community Preservation Group v City of San Diego* (2006) 139 CA4th 249,261." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 5.72)

According to the Department of Regional Planning, the determination as to whether our project required an initial study was made before the clarification provided by the *Berkeley Hillside* case was disseminated to Regional Planning staff by county counsel, and we deferred to Regional Planning staff in this determination.

In the *Berkeley Hillside* case, the applicant sought a hillside permit for a 6,478-square-foot house with an attached 3,394-square-foot 10-car garage, covering 16% of a steeply sloped (about 50%) lot in a heavily wooded area on Rose Street in Berkeley. The trial court denied the petition for a writ of mandate by the neighborhood group holding there were not unusual circumstances to the project, but the Court of Appeal reversed and granted it. The Supreme Court then took up the issue of how the unusual circumstances exception to categorical exemptions should be applied by lead agencies.

The Supreme Court held that the "unusual circumstances" exception can only be used to preclude the use of a categorical exemption if an "unusual circumstance" that differentiates the project from the general class of similarly situated projects; and, if so, when the unusual circumstance that pertains to the project creates a "reasonable possibility" that the project may result in a "significant environmental impact." The Court expressly rejected the appellate court's interpretation of the "unusual circumstances" test, finding that "the Court of Appeal erred by holding that a potentially significant environmental effect itself constitutes unusual circumstances."

Following the Supreme Court's decision, the First District Court of Appeal filed its opinion affirming the trial court's judgment on September 23, and later ordered it published on October 15, 2015. *Berkeley Hillside Preservation, et al. v. City of Berkeley* (1st Dist., Div. 4, 2015) 241 Cal. App. 4th 943, 2015WL 6470455. The opinion states that a party challenging a categorical exemption decision by seeking to establish the unusual circumstances exception cannot prevail merely by providing substantial evidence that the project may have a significant environmental effect. Rather, such a party must establish an unusual circumstance by distinguishing the project from others in the exempt class.

On February 3, 2016, the California Supreme Court denied further review of the case, thus letting the Court of Appeal's decision stand, i.e., there were no unusual circumstances that precluded the use of the categorical exemption for the proposed residence despite its size, large garage, and construction on a steep slope.

The presence of severely degraded oak woodland on our lot is not unusual on lower Canyon Crest or many areas of north-west Altadena. The majority of homes along lower Canyon Crest possess degraded oak woodland, as well as much of the surrounding area (Attachment 30). Neither is the siting of our home at the canyon rim, nor our horizontal or vertical proximity to Millard stream an unusual circumstance. Neither is adjacency to a slope as steep as 100% inconsistent with some existing residences (Attachment 10 at 19). We are compliant with all county regulations for size and bulk of a home, and existing homes along the west of Canyon Crest Road as well as some dense vegetation already block from much of the road whatever view of the canyon might have prevailed in their absence (see again Attachment 30).

Department of Regional Planning staff exercised an understandable abundance of caution in performing an initial study so that local and state agencies would have a formal chance for comment and to more systematically address the (non-technical) concerns voiced by neighbors as to impacts to the riparian environment of the canyon nearly 200 feet below our project (see Attachment 11 at 13). No agencies chose to comment on our project, and impacts were found to be less than significant with the application of standard permit conditions and the assumed compliance with the regulations and review processes of the Department of Public Works.

The Department of Regional Planning has not identified any unusual circumstances that would prevent the justification of a 15303 categorical exemption for our project. Substantial evidence has not been submitted in the administrative record that unusual circumstances exist to distinguish our project from its neighbors.

Even among those few residences that have ever had an EIR performed, the lead agency rejected the “no development” alternative, reasoning that another project would replace it in the future, and that to assume otherwise and indefinitely deny development would constitute a “taking.” It is extremely difficult to justify making our modest and sensitive home the seventh individual single-family residence constructed on vacant land to ever have an EIR performed.

We would note that Ms. Latta's previous employer of Agoura Hills repeatedly and appropriately claimed the 15303 categorical exemption for hillside homes that removed oak trees and possessed oak woodland, during Ms. Latta's tenure reviewing oak tree reports from 2002-2007 (Attachments 23-25). One such project (Attachment 23) was adjacent to the Santa Monica Mountain Significant Ecological Area and removed seven mature oak trees, revised downward from the original 20 that was granted an exemption, after the passage of SB1334 created Public Resources Code 21083.4, in September of 2004.

Background on Negative Declarations:

“A negative declaration is a written statement by the lead agency describing the reasons a proposed project will not have a significant effect on the environment and therefore does not require preparation of an environmental impact report (EIR). Pub Res C §21064; 14 Cal Code Regs §15371” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 7.2)

“If a project as initially proposed is modified to avoid significant environmental impacts, the agency may prepare a “mitigated negative declaration.” A mitigated negative declaration may be adopted whenever the initial study identifies potentially significant effects, and the proposed project is modified to eliminate them before a proposed negative declaration is circulated for public review.” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.2)

Per the definition of a Mitigated Negative Declaration in Public Resources Code §21064.5, “A Mitigated Negative Declaration (MND) is a Negative Declaration prepared for a project when the initial study has identified potentially significant effects on the environment but the effects now pose no significant effect on the environment *because the project was revised***.** The

revisions to the project plans must mitigate the harmful effects to the environment and there must be no substantial evidence supporting that the revised project will have a negative effect on the environment." (emphasis added)

Thus, a mitigated negative declaration is proper where a significant impact is analyzed in an initial study and the project applicant subsequently makes changes to reduce that impact to less than significant, before public distribution for review. Our initial study was completed in October of 2015, and the public comment period ended on January 26, 2016 (http://www.ceqanet.ca.gov/DocDescription.asp?DocPK=698131). We were still presenting to the Altadena Town Council in March of 2016. As part of this just hearing review process for a minor Conditional Use Permit, we have made modest adjustments to our project to reduce impacts and address neighbor concerns – after the initial study was complete, and after the public review period had passed. These changes have not resulted in a change of project impacts from significant to less than significant, because impacts were not significant to begin with.

Background on Mitigation Measures:

14 Cal Code Regs §15126.4 discusses mitigation measures, but places them only in the context of an Environmental Impact Report. 14 Cal Code Regs §15126.4(a)(3) states that "Mitigation measures are not required for effects which are not found to be significant."

"The CEQA Guidelines provide a broad definition of mitigation, which also includes actions taken to rectify or compensate for a significant impact. Under 14 Cal Code Regs §15370, "mitigation" includes the following:

- Avoiding an impact altogether by not taking a certain action or part of an action;
- Minimizing an impact by limiting the magnitude of a proposed action and its implementation
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environmental resource;
- Reducing or eliminating an impact over a period of time through preservation or maintenance operations during the life of the action; and
- Compensating for the impact by providing substitute resources or environments.

Mitigation measures may consist of measures included in the project as proposed and measures that could reduce adverse impacts if imposed as conditions of project approval. 14 Cal Code Regs §15126.4(a)(1)(A)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 14.6)

"CEQA and CEQA Guidelines impose few standards for determining sufficiency of mitigation measures...:

- Courts usually defer to the agency's determination that mitigation measures are adequate. …
- A requirement that the project comply with applicable laws may be an adequate mitigation measure."

(Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) §

14.1)

Thus, compliance with an applicable law *may* be an adequate mitigation measure, if substantial evidence exists that a project may create a significant effect on the environment in the manner the law regulates. However, it would be nonsensical to argue that compliance with an applicable law *shall* be a mitigation measure. Myriad laws – all with some mechanism of enforcement – govern a project, and speculating as to which if violated would allow a malicious applicant to significantly affect the environment is a wasteful exercise in speculation.

"Compliance with applicable regulatory standards can provide a basis for determining that the project will not have a significant environmental impact. *Tracy First v City of Tracy* (2009) 177 CA4th 912. A requirement that a project comply with specific laws or regulations may *also* serve as adequate mitigation of environmental impacts in an appropriate situation. As the court explained in *Oakland Heritage Alliance v City of Oakland* (2011) 195 CA4th 884, 906, "a condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance." The court upheld the city's reliance on standards in the building code and city building ordinances to mitigate seismic impacts. See also *Center for Biological Diversity v Department of Fish and Wildlife* (2015) 234 CA4th 214, 245 (compliance with federal regulations for hatchery genetic management plan is reasonable mitigation measure); *Citizens Opposing a Dangerous Env't v County of Kern* (2014) 228 CA4th 360, 383 (compliance with Federal Aviation Administration procedures held to be appropriate mitigation for aviation safety impacts); *Leonoff v Monterey County Bd. of Supervisors* (1990) 222 CA3d 1337, 1355 (upholding mitigated negative declaration that included requirement that project comply with environmental laws on registering hazardous materials and monitoring underground tanks for leaks); *Sundstrom v County of Mendocino* (1988) 202 CA3d 296, 308 (upholding measures in mitigated negative declaration requiring compliance with air and water quality standards); *Perley v Board of Supervisors* (1982) 137 CA3d 424 (upholding mitigated negative declaration that included compliance with requirements of various environmental agencies among its mitigation measures)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) §14.15, emphasis added in line 3)

Thus, in a given circumstance, compliance with laws can *either* determine a basis that an effect will be less than significant, *or* serve as mitigation for an effect that was hypothesized by a lead agency – at their just discretion – to be potentially significant, but which they believe a law sufficiently addresses.

It should be noted that as we attribute below, the initial study is intended to provide a venue for brief discussion of relevant information to an analyzed category. The mention of governing laws as a pertinent piece of information is not equivalent to an admission that the law is being used as a mitigation for an effect that was analyzed to be potentially significant. A lead agency may determine that the effect of a project as proposed is less than significant, and note the existence of a law that buttresses this belief with *supplementary* protection.

Compliance with applicable laws is referenced in places in the initial study not because impacts were analyzed to be potentially significant in the absence of these laws, but rather as

a supporting indication that a mechanism already exists to enforce the desired less than significant effect, and further, more detailed analysis need not be performed. Similarly, failure to comply with some aspect of the building code could result in a significant impact due to catastrophic structural failure and ensuing physical effects, but further, more detailed analysis of this hypothetical is without purpose. Compliance is in fact reasonably assumed, and need not be made explicit as a mitigation measure (or even as a permit condition, except at the discretion of the lead agency to highlight the response to a concern).

When a single-family residence removes a single oak tree that may serve as a nesting place for special-status bird and bat species, an Environmental Impact Report is of course not required. In fact, no documentation of any kind is required – CEQA or otherwise – as removal of a single tree from a residential lot is exempt from the oak tree permit process under County Code §22.56.2090.F.2, and single family residences are exempt from CEQA under 15303. These are examples of laws that reasonably *qualify* the extent of impacts to determine that an effect will be less than significant *by inspection*.

Likewise, a distinction must be drawn between “standard permit conditions” and “mitigation measures.” For instance, it is a “standard permit condition” that excavation in the protected zones of oak trees be performed by hand tools or small power equipment. It is a “standard permit condition” that mitigations like mulch and plywood be employed to reduce compaction in the protected zone of oak trees. It is a “standard permit condition” that removed oak trees be replaced in a 2:1 ratio. Attachments 20-22 document County of Los Angeles oak tree permits for single-family residences that entail multiple oak tree removals, with many of these same standard permit conditions. It would be *possible* to go through the thought exercise of assessing whether the project would fail in its objectives and render an effect significant if any one of these (dozens of) standard permit conditions were not honored, but this would devolve into wasteful analysis of many speculative scenarios, which is clearly not in keeping with prevailing practice, or any sort of reasonable interpretation of a just or practical law.

As noted above, lead agencies are given discretion and afforded deference by the court in determining appropriate mitigation measures, and distinguishing these from standard permit conditions.

Background on Initial Studies:

“An initial study is a preliminary analysis prepared by the lead agency to determine whether an EIR or a negative declaration must be prepared for the project or to identify the signifiant environmental effects to be analyzed in an EIR. 14 Cal Code Regs §15365. The purposes of an initial study are (14 Cal Code Regs §15063(c)):

- To provide the lead agency with information to use as a basis for deciding whether to prepare an EIR or a negative declaration. …
- To enable an applicant or the lead agency to modify a project to mitigate significant adverse impacts, thus enabling the project to qualify for a mitigated negative declaration. …
- To assist in preparing an EIR...

- To facilitate environmental assessment early in a project's design. …
- To provide documentation of the factual basis for the required findings in a negative declaration that a project will not have a significant effect on the environment. …
- To eliminate unnecessary EIRs. …
- To determine whether a previously prepared EIR could be used for the project. …"

(Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.3)

"Relevant evidence in the record of the agency's proceedings can cure deficiencies in an initial study's analysis of the project's impacts. *San Joaquin Raptor/Wildlife Rescue Ctr. v County of Stanislaus* (1996) 42 CA4th 608, 625; *Gentry v City of Murrieta* (1995) 36 CA4th 1359, 1378; *Leonoff v Monterrey County Bd. Of Supervisors* (1990) 222 CA3d 1337, 1347." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.16)

"Because an agency's determination on a proposed negative declaration must be based on the whole record, information missing from the initial study can be supplied by other data in the record. See *Sundstrom v County of Mendocino* (1988) 202 CA3d 296, 305." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.20)

Therefore, all references and analysis provided in the attachments we have submitted may supplement the analysis present in the initial study, for purposes of determining the sufficiency of environmental review.

"A lead agency may satisfy the requirement that an initial study's environmental findings be briefly explained through a narrative discussion or a reference to a source of information such as a map, photographs, or an earlier EIR or negative declaration. 14 Cal Code Regs §15063(a)(3). In *Lighthouse Field Beach Rescue v City of Santa Cruz* (2005) 131 CA4th 1170, the court rejected a challenge to the identification of environmental setting in an initial study, noting that an initial study is supposed to be "brief" and that initial studies are not governed by the same standards as those for EIRs." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.18)

Thus, the role of the initial study is to be thorough but brief, and the analysis of earlier created EIRs, initial studies and negative declarations is applicable where a substantial parallel exists.

"An argument that a project may have a significant environmental effect must be based on relevant evidence sufficient to support that conclusion. An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts. *Parker Shattuck Neighbors v Berkeley City Council* (2013) 222 Ca4th 768, 785." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.38)

"Under Pub Res C §§21080(e) and 21082.2(c), and 14 Cal Code Regs §§15064(f)(5) and 15384, the following constitute substantial evidence:

- Facts;
- Reasonable assumptions predicated on facts; and
- Expert opinions supported by facts
- Under the same sections, the following do not constitute substantial evidence:

- Argument;
- Speculation;
- Unsubstantiated opinion or narrative;
- Clearly inaccurate or erroneous evidence;
- Evidence that is not credible;
- Evidence of social and economic impacts that do not contribute to, and are not caused by, physical impacts on the environment."

(Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.39)

"An agency's determination whether information in the record constitutes "substantial evidence" boils down to a determination not only that the information is relevant and material but also that it is sufficiently reliable to have solid evidentiary value. To determine the reliability of the evidence, a lead agency may consider several factors:

- Whether the evidence has an adequate foundation in the witness's personal knowledge of facts. See *Lucas Valley Homeowners Ass'n v County of Marin, supra; Oro Fino Gold Mining Corp. v County of El Dorado* (1990) 225 CA3d 872. Expressions of subjective concersn and personal beliefs do not constitute substantial evidence. See *Newberry Springs Water Ass'n v County of San Bernardino* (1984) 150 CA3d 740; *Perley v Board of Supervisors* (1982) 137 CA3d 424. Speculation, argument and unfounded conclusions are likewise not substantial evidence. See *e.g. Pala Band of Mission Indians v County of San Diego* (1998) 68 CA4th 556, 571; *Citizens Comm. To Save Our Village v City of Claremont* (1995) 37 CA4th 1157, 1171; *Citizen Action to Serve All Students v Thornley* (1990) 222 CA3d 748.
- Whether the evidence is provided by a qualified source. ...
- Whether the evidence is credible. See *Lucas Valley Homeowners Ass'n v County of Marin, supra*. A lead agency may disregard even uncontradicted testimony if the witness is biased or if the testimony is inherently improbable or not credible for other reasons. See *Bowman v City of Berkeley* (2004) 122 CA4th 572, 583; *Leonoff v Monterrey County Bd. Of Supervisors* (1990) 222 CA3d 1337; *Newberry Spring Water Ass'n v County of San Bernardino* (1984) 150 CA3d 740, 750; *Brentwood Assn' for No Drilling, Inc. v City of Los Angeles* (1982) 134 CA3d 491, 504. A witness's personal stake in the outcome can be a ground for finding testimony not credible. *Citizens Ass'n for Sensible Dev. V County of Inyo* (1985) 172 CA3d 151, 173.
- Whether the evidence is clearly inaccurate or erroneous. Under Pub Res C §§21080(e)(2) and 21082.2(c), evidence that is "clearly inaccurate or erroneous" is not substantial evidence. These provisions of the statute allow a lead agency to conclude that information presented to it is not substantial evidence when it is clear from a review of the entire record that the information is incorrect.
- Whether the evidence is not reliable for other reasons. A lead agency may find that hearsay is not sufficiently reliable to be treated as substantial evidence. See *Citizens for Responsible Dev. V City of W. Hollywood* (1995) 39 CA4th 490, 499 n2; *Association for Protection of Envt'l Values v City of Ukiah* (1991) 2 CA4th 720 (categorical exemption case)."

(Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.40)

“A lead agency need not accept expert testimony that lacks an adequate factual foundation. *Lucas Valley Homeowners Ass'n v County of Marin* (19910 233 CA3d 130, 157 (testimony by real estate agent on potential decline in nearby property values was properly rejected as imprecise opinion without supporting verifiable data, such as comparable sales); *Gentry v City of Murrieta* (1995) 36 CA4th 1359, 1422 (letter from engineering professor about groundwater and erosion impacts was not substantial evidence because it was based on inadequate foundation of specific information about the project); *Citizens Comm. to Save Our Village v City of Claremont* (1995) 37 CA4th 1157, 1170 (no factual foundation for architect's letter claiming historically significant landscape plan had been implemented on project site).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

Thus, analysis provided without any supporting evidence grounded in facts may be discounted, even if it comes from an expert. Likewise, testimony may be judged for bias. Ms. Latta has stated that:

“I'd really like to emphasize the oak woodland information. I was actually on the committee that developed that Oak Woodland Management Plan, and I can tell you that the kind of project that we were trying to catch in the system were projects that had continuous canopy of oak tree and more than a certain percentage of oak trees...So given that, and my understanding of the Oak Woodland Management Plan as we developed it, this particular residential project would have been one of those that we would have wanted to go through this process. Now I understand that the county tries to be reasonable, and tries not to drag every little residential project through this process, and I think the county has been pretty good about trying to make those determinations as to when a residential property might have to go through this process. I am begging you, in this case, to please consider having this property go through that oak woodland process because I do believe given the sensitive nature of the habitat on that property and the fact that it's so close to adjacent [sic] and the fact that it's on an extremely steep slope where there's potential for the project to damage that area, that an oak woodland procedure – the management plan – should be developed, and the property should have to go through that process.“ (Unofficial Transcripts of the April 19 Hearing Officer hearing).

We note that according to Regional Planning staff, they are unaware of any project that has created an oak woodland report or been subjected to this process, residential or otherwise. The report itself is of limited scope, as we attribute in Attachment 11, nearly all of which already exists in the administrative record for our project. The lack of existing reports is consistent with the discussion we provide in Attachment 11 regarding the extent and timeframe for implementation of Parts I and II of the Oak Woodland Management Plan into the 2035 General Plan, which does not apply to our project. We can find no mention of an oak woodland report on the Department of Regional Planning website, and we would have expected that such a report would be made public as part of a hearing.

“Expert opinion that is not directly relevant to the project's environmental impacts may be disregarded...See also *Berkeley Hillside Preservation v City of Berkeley* (2015) 60 C4th 1086, 1119 (categorical exemption case holding that expert opinion was insufficient because it was

based on project opponent's assertions about design of project rather than project as actually approved).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

Thus, analysis that makes assumptions about a project that do not correspond to the project as actually approved may be discounted, even if it comes from an expert.

“Interpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public on such issues does not qualify as substantial evidence. *Porterville Citizens for Responsible Hillside Dev. V City of Porterville* (2007) 157 CA4th 885, 907 (neighbors' general concerns about erosion and drainage were not substantial evidence because neighbors did not show expertise that would qualify them to interpret report); *Pala Band of Mission Indians v County of San Diego* (1998) 68 CA4th 556, 580 (attorney's comment consisting of argument and opinion did not qualify as substantial evidence).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

Thus, technical concerns from parties without experience or qualification in that field may be discounted, even if that party has technical expertise in another domain.

“Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence. See *Taxpayers for Accountable Sch. Bond Spending v San Diego Unified Sch. Dist.* (2013) 215 CA4th 1013, 1042 (general objection to noise in neighborhood not substantial evidence); *Porterville Citizens for Responsible Hillside Dev. V City of Porterville* (2007) 157 CA4th 885, 905 (general objections to project density and quality were not substantial evidence of environmental impact); *Bowman v City of Berkeley* (2004) 122 CA4th 572, 588 (generalized aesthetic objections to project without regard to surrounding context of urbanized development were not substantial evidence); *San Joaquin Raptor/Wildlife Rescue Ct. v County of Stanislaus* (1996) 42 CA4th 608 (conclusory statement about cumulative impacts was not substantial evidence; *Lucas Valley Homeowners Ass'n v County of Marin* (1991) 233 CA3d 130 (expressions of generalized concerns and fears about traffic and parking impacts was not substantial evidence); *Leonoff v Monterey County Bd. Of Supervisors* (1990) 222 CA3d 1337 (opponents' subjective concerns and unsubstantiated opinions about dangerous traffic conditions are not substantial evidence); *Perley v Board of Supervisors* (1982) 137 CA3d 424 (neighbors' unsubstantiated fears and concerns about project's impacts lacked objective basis for challenge and did not constitute substantial evidence).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.41)

Thus, neighbor concerns that are based on misunderstandings about a project, or suspicions that are not grounded in factual evidence, may be discounted.

“Speculation about a project's impacts also has no evidentiary value. *Keep Our Mountains Quiet v County of Santa Clara* (2015) 236 CA4th 714, 734 (claimed noise impacts on trails that might be established in future held to be speculative); Friends of Davis v City of Davis (2000) 83 CA4th 1004, 1020 (assumption of competitive impact from retail tenant speculative); *Pala Band of Mission Indians v County of San Diego* (1998) 68 CA4th 556, 580

(comment letter submitted by counsel for opponents consisting almost exclusively of “mere argument and opinion” did not constitute substantial evidence); *Citizen Action to Serve All Students v Thornley* (1990) 222 CA3d 748 (speculation and generalizations about traffic, parking, economic effects, and earthquake safety did not constitute substantial evidence); *Snyder v City of S. Pasadena* (1975) 53 CA3d 1051, 1060 n4 (public comment that unforeseen factors may lead to traffic impacts of street closing plan properly disregarded as speculation). (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.42)

Thus, speculation – even speculation based on common but irresponsible behavior, as e.g. a particular construction methodology where different methods exist – has no evidentiary value, even when speculation originates with an expert in some domain.

“Comments from public agencies that are within the area of expertise can constitute substantial evidence supporting a fair argument that a project may have a significant effect on the environment. . . . Such comments may also be relied on to support a determination that significant impacts will not occur. *San Joaquin Raptor/Wildlife Rescue Ctr. v County of Stanislaus* (1996) 42 CA4th 608, 625 (testimony by biologist with State Department of Fish and Game relating to absence of impacts).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.43)

By inference, comments that are *not* received from public agencies are meaningful. If a public agency may comment to support a claim that a significant impact is not present, the lack of comment is functionally equivalent to a statement that the project is not concerning. We note that no local or state public agency chose to comment on our project.

“Under 14 Cal Code Regs §§15063(a) and 15070, only one initial study need be prepared for a project. If a project is modified after the study has been prepared, the agency need not prepare a second initial study. Gentry v City of Murrieta (1995) 36 CA4th 1359, 1384; Uhler v City of Encinitas (1991) 227 CA3d 795, 803. . . . When changes are made to a project, the agency should ensure that the administrative record contains substantial evidence that the changes are not significant. *Building Code Action v Energy Resources Conserv. & Dev. Comm'n* (1980) 102 CA3d 577.” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.28)

Thus, the changes we have made to our project – that have only reduced its volume and associated impacts – need not trigger renewed environmental analysis, as explained by the lead agency in Staff Memo to the Hearing Officer dated March 31, 2016.

“It is also reflected in Pub Res C §21080(e) and 14 Cal Code Regs §1064(f)(6), which provide that evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment is not substantial evidence of a significant effect on the environment. See also Pub Res C §21082.2(c). See...*Porterville Citizens for Responsible Hillside Dev. v City of Porterville* (2007) 157 CA4th 885, 903 (claimed impact of new homes on existing home values is economic impact)...*Gabric v City of Rancho Palos Verdes* (1977) 73 CA3d 183, 200 (city's refusal to approve negative declaration was abuse of discretion because evidence that construction of residence would affect character of neighborhood is

not evidence of environmental impact that would require EIR); *Hecton v People ex rel Department of Transp.* (1976) 58 CA3d 653, 656 (CEQA not designed to protect against decline in commercial value of property adjacent to public project...” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 6.36)

Thus, the social and economic impacts of our home on neighbors is not evidence of a significant impact on the environment.

Background on Thresholds of Significance:

“Title 14 Cal Code Regs §15064.7 (part of the CEQA Guidelines) encourages lead agencies to adopt and publish “thresholds of significance” for use in determining whether environmental impacts are significant. A threshold of significance is defined as “an identifiable, quantitative, qualitative or performance level of a particular environmental effect.” 14 Cal Code Regs §15064.7(a). Once such thresholds are established, an impact that complies with the applicable threshold will “normally” be found insignificant, and an impact that does not comply with the applicable threshold will “normally” be found significant. 14 Cal Code Regs §15064.7(a).” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 13.12)

As attributed in Attachment 11, our project is governed by the General Plan dating from 1980. That General Plan describes the following thresholds of significance:

“A project will normally have a significant effect on the environment if it will:
(a) Conflict with adopted environmental plans and goals of the community where it is located;
(b) Have a substantial, demonstrable negative aesthetic effect;
(c) Substantially affect a rare or endangered species of animal or plant or the habitat of the species;
(d) Interfere substantially with the movement of any resident fish or wildlife species, or migratory fish or wildlife species;
(e) Breach published national, state or local standards relating to solid waste or litter control
(f) Substantially degrade water quality;
(g) Contaminate a public water supply;
(h) Substantially degrade or deplete ground water resources;
(i) Interfere substantially with ground water recharge;
(j) Disrupt or adversely affect prehistoric or historic archaeological sites or a property of historical or cultural significance to a community or ethnic or social group; or a paleontological site except as part of a scientific study of the site;
(k) Induce substantial growth or concentration of population;
(l) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system
(m) Displace a large number of people;
(n) Encourage activities which result in the use of large amounts of fuel, water or energy;
(o) Use fuel, water or energy in a wasteful manner
(p) Increase substantially the ambient noise levels for adjoining areas;

(q) Cause substantial flooding, erosion or siltation;
(r) Expose people or structures to major geological hazards;
(s) Extend a sewer trunk line with capacity to serve new development;
(t) Substantially diminish habitat for fish, wildlife or plants;
(u) Disrupt or divide the physical arrangement of an established community;
(v) Create a potential public health or safety hazard; or involve the use, production or disposal of materials which pose a hazard to people or animals or plant populations in the area affected;
(w) Conflict with established recreational, educational, religious or scientific uses of the area;
(x) Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations.
(y) Convert prime agricultural land to non-agricultural use or impair the agricultural productivity of prime agricultural land
(z) Interfere with emergency response plans or emergency evacuation plans." (see citation L)

"Lead agencies often use performance standards adopted by regulatory agencies as thresholds of significance. A project's compliance with these standards usually can be presumed to provide an adequate level of protection for environmental resources subject to such regulation. See, *e.g. Oakland Heritage Alliance v City of Oakland* (2011) 195 CA4th 884, 903 (upholding determination that seismic safety impacts of project were less than significant based on California Building Code compliance); *Tracy First v City of Tracy* (2009) 177 CA4th 912 (upholding determination that energy impact of project was less than significant because the project achieved energy efficiencies greater than those required by California Building Energy Efficiency Standards); *Cadiz Land Co. v Rail Cycle* (2000) 83 CA4th 74 (upholding finding that incremental impacts of criteria air pollutants on sensitive crops grown at nearby farm were expected to be less than significant based on National Ambient Air Quality Standards promulgated to protect public health and welfare from adverse effects of a pollutant). . . As the court in [*Communities for a Better Env't v California Resources Agency* (2002) 103 CA4th 98, 128] noted, use of existing environmental standards in determining the significance of impacts "is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation." 103 CA4th at 111." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 13.13)

"In determining whether an environmental impact is significant, "the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." *Eureka Citizens for Responsible Gov't v City of Eureka* (2007) 147 CA4th 357, 376; Mira Mar Mobile Community v City of Oceanside (2004) 119 CA4th 477, 492. See also *Association for Protection of Envt'l Values v City of Ukiah* (1991) 2 CA4th 720, 734 (exemption case); *Lucas Valley Homeowners Ass'n v County of Marin* (1991) 233 CA3d 130, 156 (negative declaration case); *Topanga Beach Renters Ass'n v Department of Gen. Servs.* (1976) 58 CA3d 188, 195 (negative declaration case)." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed Cal CEB) § 13.4)

Background on Significant Ecological Areas

Opposing counsel claimed in his letter dated March 24, 2016 that:

"Moreover, the Project fails to meet the burden of proof required for permits issued in significant ecological areas. Section 22.56.215.E of the County Code requires that applicants demonstrate that proposed projects be "highly compatible with the biotic resources present," "maintain water bodies, watercourses, and their tributaries," and that "wildlife movement corridors (migratory paths) arc left in an undisturbed and natural state." The Project fails to meet any of these burdens as it will have significant impacts on biological resources, water quality, hydrology, and wildlife movement. Supra."

Section 22.56.215.A of the County Code states: "...a conditional use permit shall be applied for and approved as provided by this Section only when, unless a conditional use permit is otherwise required by this Title 22, the property contains an area that, on or after January 1, 2012, was designated in the General Plan as a significant ecological area, *and if the proposed project includes development on the portion of that property that is located in the significant ecological area*" (emphasis added). Subsequent sections of 22.56.215 qualify the purpose and requirements of that permit.

As our planner stated at our April 19 hearing, "...first, when the project was submitted, there was no SEA on the property. Subsequently, there was a conceptual SEA that's outside of the footprint of the residence, but it is conceptual only." (Unofficial Transcripts of April 19 Hearing Officer Hearing). Furthermore, finding #19 of our Regional Planning Commission Approval Package recounts, "The Hearing Officer asked staff for clarification on whether any part of the project is located in a Significant Ecological Area ("SEA"). Staff responded by stating that there was no SEA on the subject property at the time that the project applications were submitted to the Department of Regional Planning. Subsequently, a conceptual SEA was mapped on the site, but is not located within the project footprint."

A conceptual SEA is defined with the following description (from http://planning.lacounty.gov/sea/proposed):

"At the December 10th [2014] hearing the Regional Planning Commission expressed concern that the SEA Map should require specific review for compatibility with community plans in the following communities: Altadena, Rowland Heights and Hacienda Heights. In order to accomplish this review, the Regional Planning Commission recommended creation of a new SEA category, known as the "Conceptual SEAs". The Conceptual SEAs are the proposed SEAs prior to the December 10th hearing which have been presented by the Department of Regional Planning within the areas contained in the Community Plans for Hacienda Heights, Rowland Heights and Altadena.

For these communities the adopted SEAs will be retained and the designation of Conceptual SEA were added as overlay showing where the proposed SEA Boundary updates would be within these three areas. Conceptual SEAs will replace the current adopted SEAs in these three communities only as each community amends or updates its own community plan."

In other words, a "conceptual" SEA is a latent designation, a placeholder for communities to

consider in their next revision of their community plan. Our project application was submitted in August of 2014, before this conceptual SEA came into existence. As our planner noted at our April 19 Hearing Officer Hearing, the conceptual SEA was drawn to avoid the homes and backyards of existing development, and the footprint of our home – sited at street level with existing development – is not located in the conceptual SEA: "When the project was submitted, there was no SEA on the property. Subsequently, there was a conceptual SEA that's outside the footprint of the residence, but it is conceptual only." (Unofficial Transcripts of the April 19 Hearing Officer Hearing).

County Code §22.56.215.A states that a permit is necessary only where the SEA was designated in the General Plan, only where development occurs on the parcel within the SEA, only where the project is not already applying for some type of Conditional Use Permit, and only where not exempted under 22.56.215.C, which includes single family residences. None of these four conditions hold for our project, and no conditional use permit is required.

"A. Permit Required. Except as specified in subsection C, below, prior to the issuance of any building or grading permits...a conditional use permit shall be applied for and approved as provided by this Section only when, *unless a conditional use permit is otherwise required by this Title 22*, the property contains an area that, on or after January 1, 2012, *was designated in the General Plan* as a significant ecological area, and if the proposed project *includes development on the portion of that property that is located in the significant ecological area*.
. . .
C. Exemptions from Permit. Permit exemptions include:
. . .
3. *Individual single-family residences* where not more than one such residence is proposed to be built by the same person on contiguous lots or parcels of land." (County Code §22.56.215, emphasis added)

Mr. Tsai does not make a fair argument that our project does not meet the Burden of Proof for a regulation, when that regulation does not govern our project.

Attachment 15

Model support for arborist estimates of impacts

November 10, 2016

Purpose:

The purpose of this attachment is to factually quantify the root and canopy encroachments sustained by our oak trees.

We begin with a brief overview of the methodology. Nearly 50 scans were made of the project site with a ground-based survey LIDAR with a range of 130m and ranging accuracy of 2mm (Attachment 14 citation RR), together comprising several billions points of data. The scans were co-registered in software for the purpose with variances in overlap of a fraction of an inch, and thereafter decimated on a 2mm grid to approximately 200 million points. For root zone encroachments, the data was further post-processed to generate meshes admitting of volumetric analysis. This served as the raw data from which to make estimates of root and canopy encroachment.

The procedure for root encroachment is straightforward. The protected zone of a tree is the greater of five feet past its dripline or 15ft. This area was cropped, and then extruded three feet. Ms. Latta has herself noted that roots are typically found in the first three feet of soil (see Attachment 26 at 7). Root removals were constructed using conservative and in some cases best-estimate approaches, using an assumption of 10" of over-excavation for blind-side formwork from the wall locations documented in our site plan (see Attachment 50). Note that the tree locations depicted on the survey are approximate as tree trunks typically lean and surveys do not always measure the location of trees consistently or highly accurately, as they lean and may be measured at different heights, or with different approximations for co-dominant trunks. Our LIDAR scan corroborates this. The root removal was effected by removing the physical volume encroached by construction and over-excavation. The volume before and after removal can then be compared.

In addition to root removal, oak trees #1, #5 and #7 provide estimates for temporary (remediable) encroachment from notional marginal compaction from staging, as well as driveway encroachment. The term "notional" is appropriate because this entire area has been used for parking (to a great depth on the pad) by a 5,000+lb truck and other large vehicles belonging to 3589 Canyon Crest Rd. After mulch and plywood is applied, the loads from staging should not see substantially greater compaction than has already been created by this prevailing use, unmitigated even by a sufficiently thick layer of mulch.

Our current arborist has advised that an air spade is minimally disruptive, causing no significant permanent damage, consistent with the findings of "Smiley, E.T. 1999. Air excavation, the next arboricultural frontier. Arbor Age, 20,8-10," as documented in the materials for the Richardson Grove EIR (see Attachment 14 citation KK at 16), which note "virtually no damage," and the long-term experiment documented in Attachment 33. Thus, this may be set aside, as utility laterals will be placed during vertical aeration remediation post-construction.

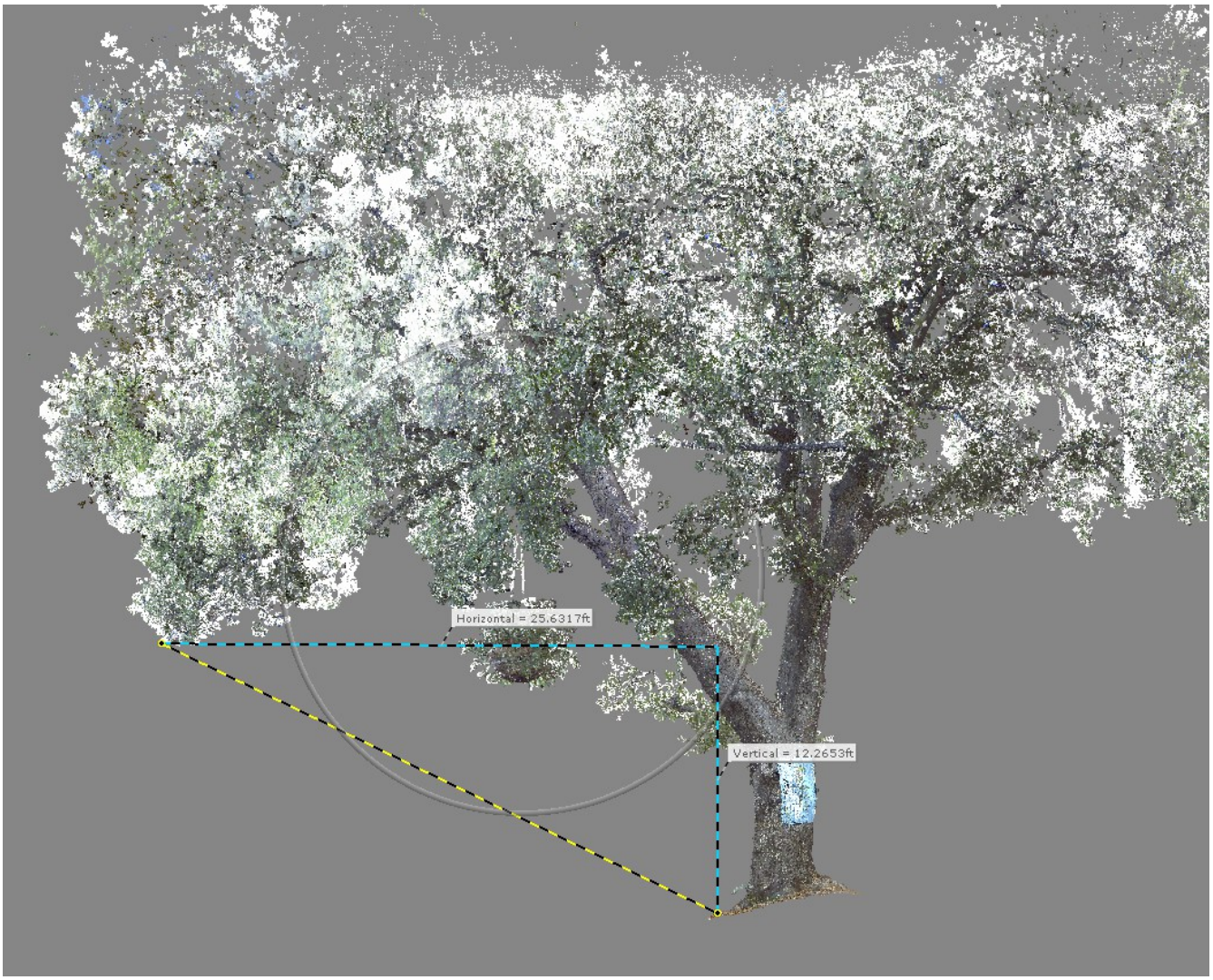
Of course, root removal as a percentage figure is not exact, as the structure of subsurface roots cannot be known until excavation is permitted. However, as we show in Attachments 20-28, it is prevailing practice to just provide a single percentage figure to describe root

encroachments, though we have showed our work to a far greater extent than appears to be customary. We remain willing to explore slight adjustments in the footprint of our home to preserve threshold roots.

Estimating canopy removal is less straightforward. Simply counting points of a particular color is not rigorous, as canopy higher up in the trees becomes less densely sampled due to inherent resolution and greater occlusion. There are several approaches in the literature that are highly post-processed, and typically also require the union of aerial and terrestrial LIDAR scans. Instead, ordinal orthographic and overhead views are provided to facilitate more easily the visual estimation that is done in the field. However, LIDAR data provides evidence that may be objectively evaluated, not the fiat of unsupported opinion that may be biased. Note that point cloud density is greatest nearest the ground, where the extent of pruning is greater, resulting in higher visual density nearer the ground.

Oak #1

Oak tree #1 sees no pruning, as the lowest of its canopy is more than 12ft above the level of its trunk, able to accommodate the delivery vehicles required without removal. Even should slight pruning to have been required, clearance in excess of 13'6” is possible while trimming only branches <2” in diameter, as permitted under the Oak Tree Ordinance.



Ilustration 1: Minimum vertical clearance of oak tree #1

Our arborist notes that the extent of subsurface disturbance/removal for oak tree #1 is for lateral placement at a distance of 21ft, though we will perform our lateral excavation with an air spade, as noted above. Apart from this, the tree experiences only notional marginal temporary compaction impacts from staging.

As oak tree #1 is encroached by 3589 Canyon Crest Rd, and a mesh of the surface with which to define areas breaks down over the volume of the home, we defer instead to our arborist's documentation of the protected zone in the electronic form of the exhibit map that accompanies our oak tree permit. This is consistent with the dripline documented in our LIDAR scans.

Oak tree #1 experiences temporary compaction encroachment that can be no greater than the intersection of its protected zone with our lot, as well as the lateral encroachments in the roadway that occur at the edge of the dripline. In our arborist's survey, ~21% of its protected

root zone overlaps with our lot. Our arborist correctly notes less than 6% of the protected zone of oak tree #1 is encroached by our driveway. The sewer lateral intersects only a few additional percent of the root zone, though this is marginal at best, as it occurs at the edge of the dripline under impermeable pavement that has also been subjected to a high degree of compression.

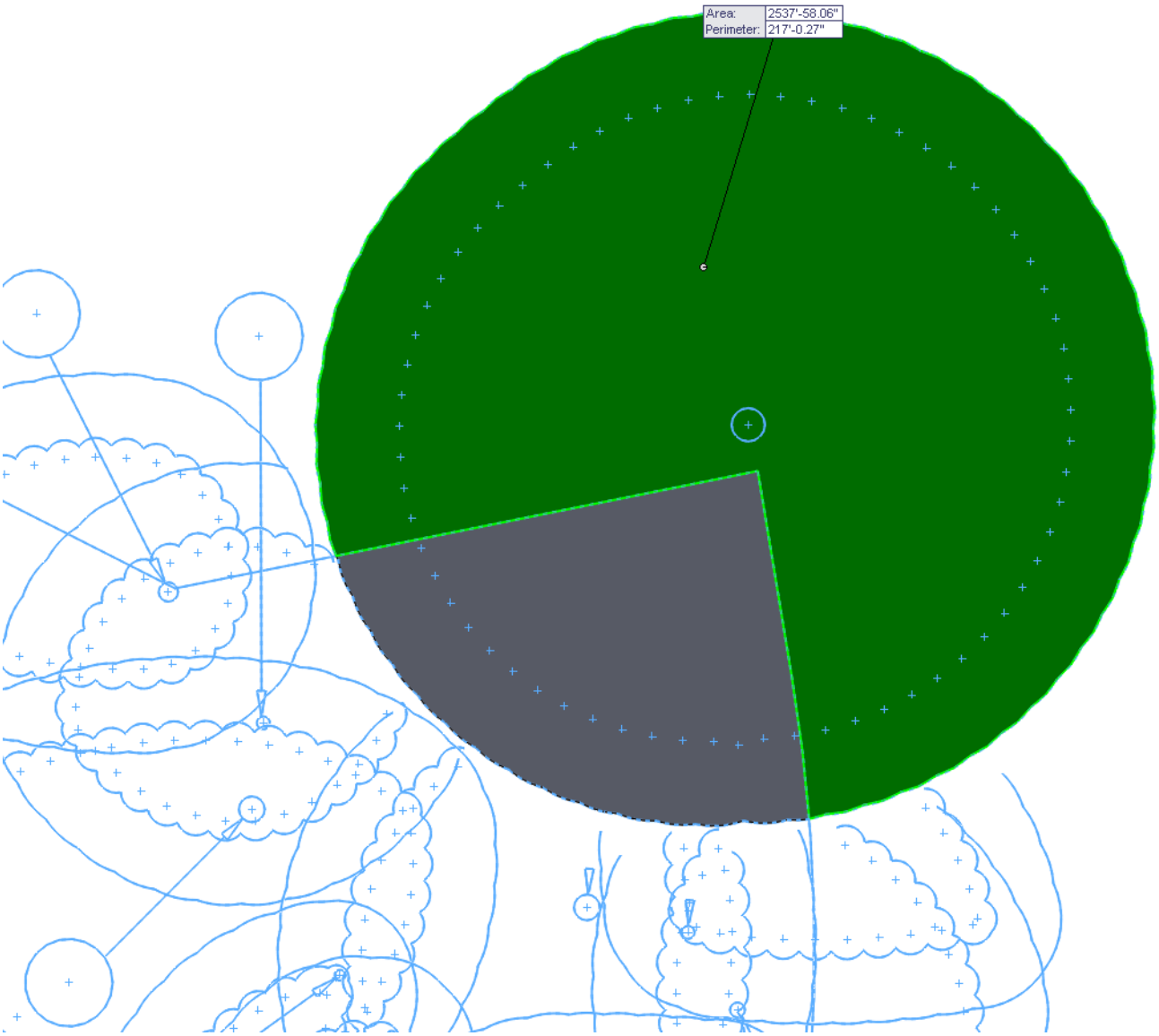


Illustration 2: Amount of oak tree #1 protected zone outside the subject property, according to oak tree report

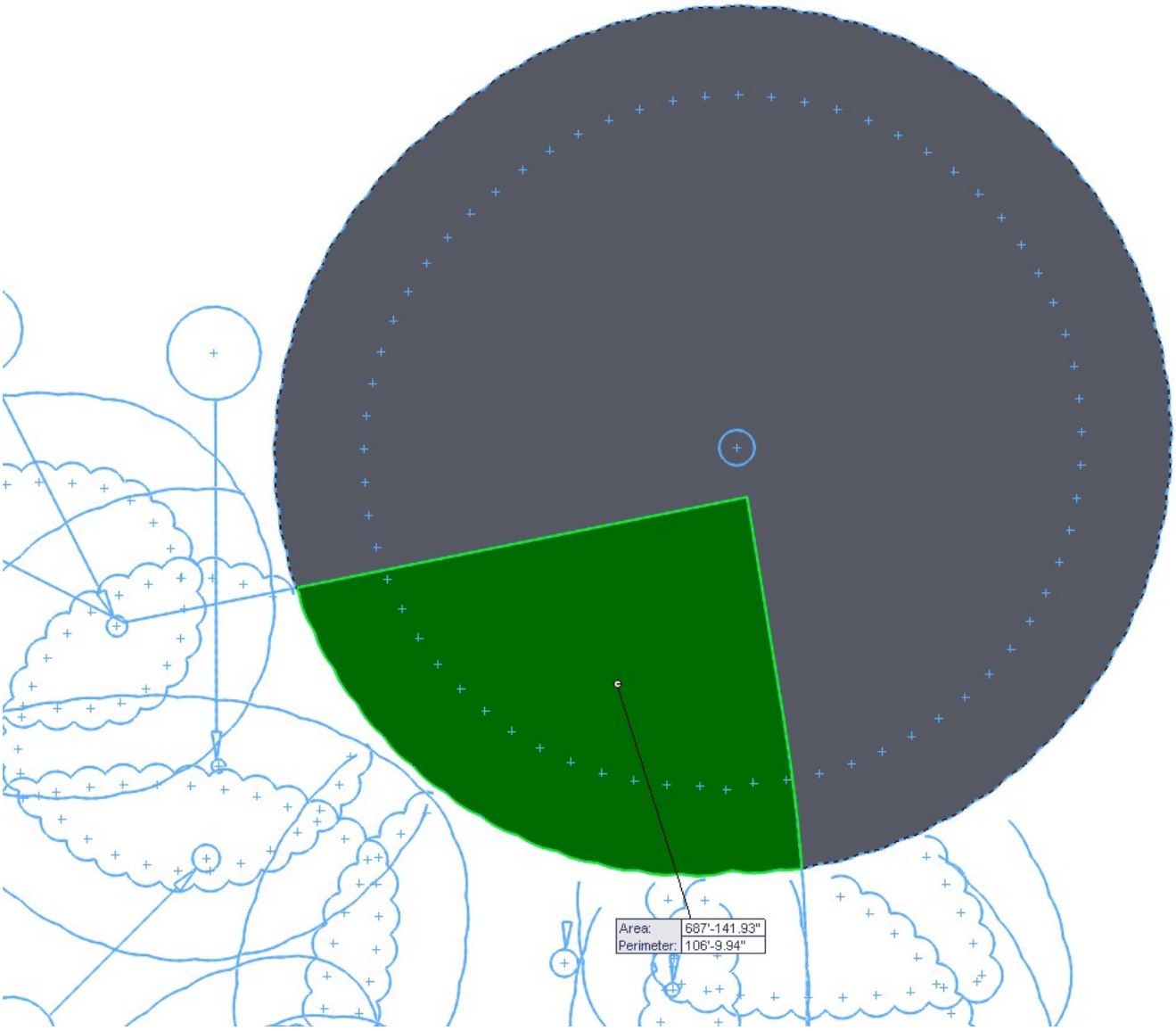


Illustration 3: Amount of oak tree #1 protected zone on the subject property, according to oak tree report

Oak #4

As our arborist notes in his letter dated April 18, 2016, oak #4 requires “the removal of the 9.5” trunk that leans west over the slope where residence will be situated. In addition, a 6” scaffold, a 5” branch, and a 3” branch will be pruned from the western canopy.”

Visual analysis of LIDAR data support an assessment of ~30-35% canopy removal. Several

arborists have noted in their reports excerpted in Attachments 20-28 figures as high or higher than 35%, including Ms. Latta in Attachment 28. While this level of pruning is not ideal compared to the 25% (in a single season) recommended by ANSI pruning standards, neither are these amounts so severe as to render the tree unlikely to survive. Root and crown removals are close to being balanced for oak tree #4, better preserving the critical balance of nutrient and energy exchange (see Attachment 14 citation WW). We had hoped to do the pruning for oak trees #4, #5 and #7 in the recommended July-September months in two phases, beginning this year. Our opposition's repeated appeals and request for delay of appeals have upended this intent.

Permanent compaction from our gravel driveway (with appropriately sized gravel of sufficient thickness to reduce compaction impacts to roughly that of 4-6” of mulch) is roughly coincident with temporary (remediable) compaction from construction staging, at the periphery of 3-5x the DBH of trees #4 and #2. The total protected zone of oak #4 is ~1891sqft. The driveway encroachment is ~460sqft, or ~24%, roughly consistent with our arborist's estimate in his April 18 letter of ~20%, using less precise data. Because a large 5,000+lb truck has already parked in this area, as well as other cars going back at least 67 years, it would be improper to count this as a marginal impact to the trees, most of which have spent all or a substantial majority of their lives subjected to this impact. We both drive compact cars that are less than half the weight of this truck. The gravel will also provide better load-spreading than the inconstantly maintained, overly thin layer of mulch presently on the pad. This is therefore not a marginal, or net, impact.

The total protected root zone volume is ~5,186cuft, assuming a nearly 3ft deep extrusion of the root layer. A conservative assessment of root removal would cut away all the roots in the footprint of the home (which includes all grade beams), the aforementioned 10” of over-excavation, as well as any roots intersecting the home along a radius from the tree. However, as the grade beam along the east edge of the house transitions from buried to slightly above grade at the SE pile, this is not our best estimate of root removal. The conservative assessment would leave ~4,189cuft, corresponding to removal of 997cuft, or ~19%, roughly consistent with our arborist's estimate in his April 18 letter of 25%, using less precise data. As this figure is not excessive, we did not endeavor to create a best estimate, but it may be closer to 15-17%, with the difference encroached to some extent by impermeable surface, with feeder roots extending south-west beyond the south-east corner of our home.

Cumulative net impacts become ~19% permanent root removal and 30-35% canopy removal. As our arborist correctly noted, these are not insignificant. But neither do we desire to remove a beautiful tree that has a good chance of surviving these impacts. This tree provides useful screening of our home from adjacent residences and from much of the road. There are trees we encounter every day that have sustained similar or greater encroachment (see Attachment 31), across a wide range of encroachment types, over a period of decades, even such that nearly the entirety of the protected root zone is covered in impermeable pavement.

Oak #5

As our arborist notes in his letter dated April 18, 2016, oak #5 requires “the removal of an 8”

scaffold and a 4” branch.”

Visual analysis of LIDAR data support an assessment of ~35-40% canopy removal. Root and crown removals are close to being balanced for oak tree #4, better preserving the critical balance of nutrient and energy exchange (see Attachment 14 citation WW).

The total protected root zone volume is ~4,950cuft, assuming a nearly 3ft deep extrusion of the root layer. A conservative assessment of root removal would cut away all the roots in the footprint of the home, the aforementioned 10” of over-excavation, as well as any roots intersecting the home along a radius from the tree. However, as the grade beam along the east edge of the house transitions from buried to slightly above grade at the SE pile, this is not our best estimate of root removal. The conservative assessment would leave ~3,540cuft, corresponding to removal of ~1,410cuft, or ~28%. The best estimate assessment would leave ~4,273cuft, corresponding to removal of 677cuft, or ~14%, as this pivot point occurs right where encroachment distance is least, and so is levered. A figure of 20% is taken to split the difference.

There is no temporary or permanent compaction from construction staging or driveway encroachment for oak tree #5, beyond what is experienced in root removal. Note that parts of the terrain cannot be reconstructed as large agave plants occlude. This volume would only reduce the removal percentage.

Cumulative net impacts become ~20% permanent root removal and ~35-40% canopy removal. As our arborist correctly noted, these are not insignificant. But neither do we desire to remove a beautiful tree that has a good chance of surviving these impacts. This tree provides useful screening of our home from the road when driving north, as we show in Attachment 10.

Oak #7

As our arborist notes in his letter dated April 18, 2016, oak #7 requires “the removal of a 10” scaffold, 7” branch, 5” branch and 2” branch.”

Visual analysis of LIDAR data support an assessment of ~30-35% canopy removal.

Temporary (remediable) compaction from construction staging may occur at the periphery of 3-5x the DBH of trees #7, #8 and #9, where construction fencing will be placed. For oak tree #7, this is confined to ~80sqft, or ~3% of the protected root zone.

Oak tree #7 sees two types of physical root zone encroachments, and it is important to distinguish. Physical root removal occurs to notch the hillside to place the cellar volume in the building segment that contains the loft. Roots extending out radially from this volume are also severed. It also experiences a form of encroachment from the shell of our home that intercepts rainwater, but that still permits oxygen/gas exchange to the crawlspace under the west of our home. Feeder roots are still able to spread out beyond this area, to nearly two times the dripline in some cases, as 2'x2' grade beams will be formed mostly above grade, to

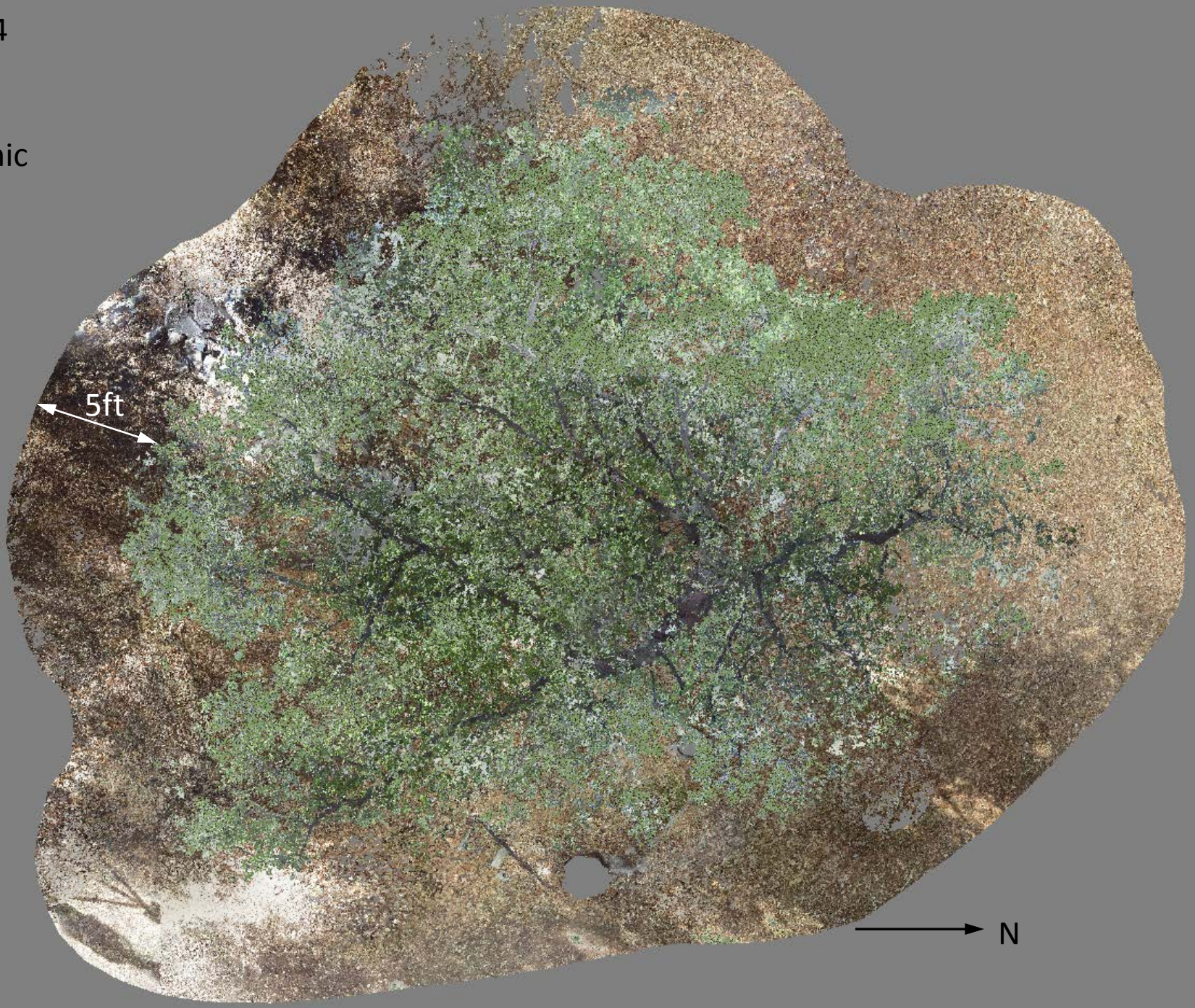
the extent possible. It would be improper to extend this type of encroachment radially.

The total protected root zone volume is ~5,320cuft, assuming a nearly 3ft deep extrusion of the root layer. Physical root removal takes away ~1,030cuft, or ~19%. Interception of rainwater by the physical shell of the home occurs over roughly the western half of the home, an area of ~600sqft. This is ~25% of the protected root zone, in addition to the ~19% physical removal.

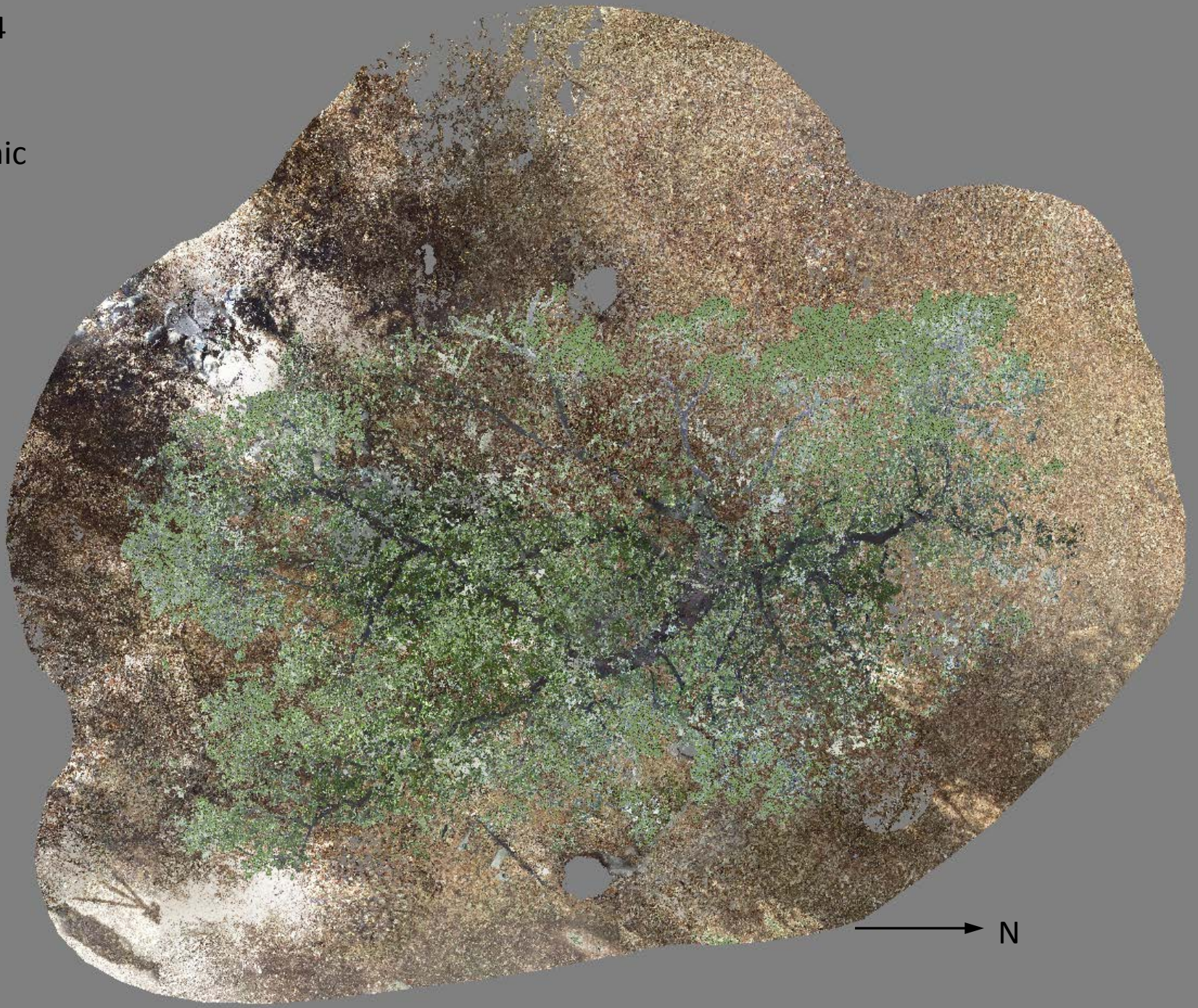
Cumulative net impacts become ~19% permanent root removal, ~25% root encroachment by a permeable rain intercepting surface, and ~30-35% canopy removal. As our arborist correctly noted, these are not insignificant. But neither do we desire to remove a beautiful tree that has a good chance of surviving these impacts. Our home folds around this tree in order to do our best to save it, and it will provide useful shade for our home, reducing energy costs. It also provides visual screening from neighboring residences and from the road.

Oak trees #2, #3, #8, #9 and #10 see encroachments that are minor, confined to temporary (remediable) staging impacts of a small part of the protected zone, as well as very minor driveway impacts. Oak tree #6 is removed.

Oak Tree #4
Unpruned,
Top,
Orthographic



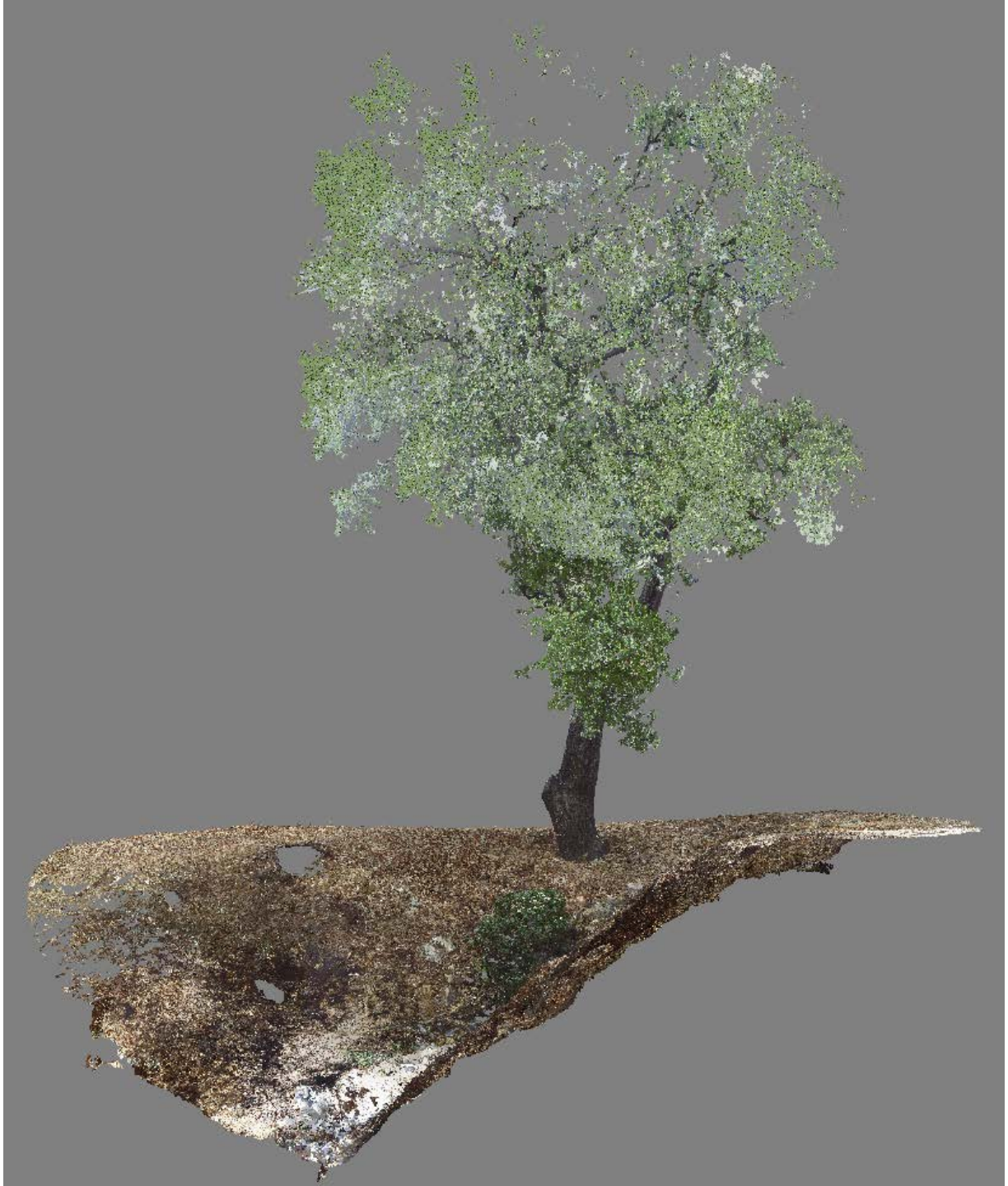
Oak Tree #4
Pruned,
Top,
Orthographic



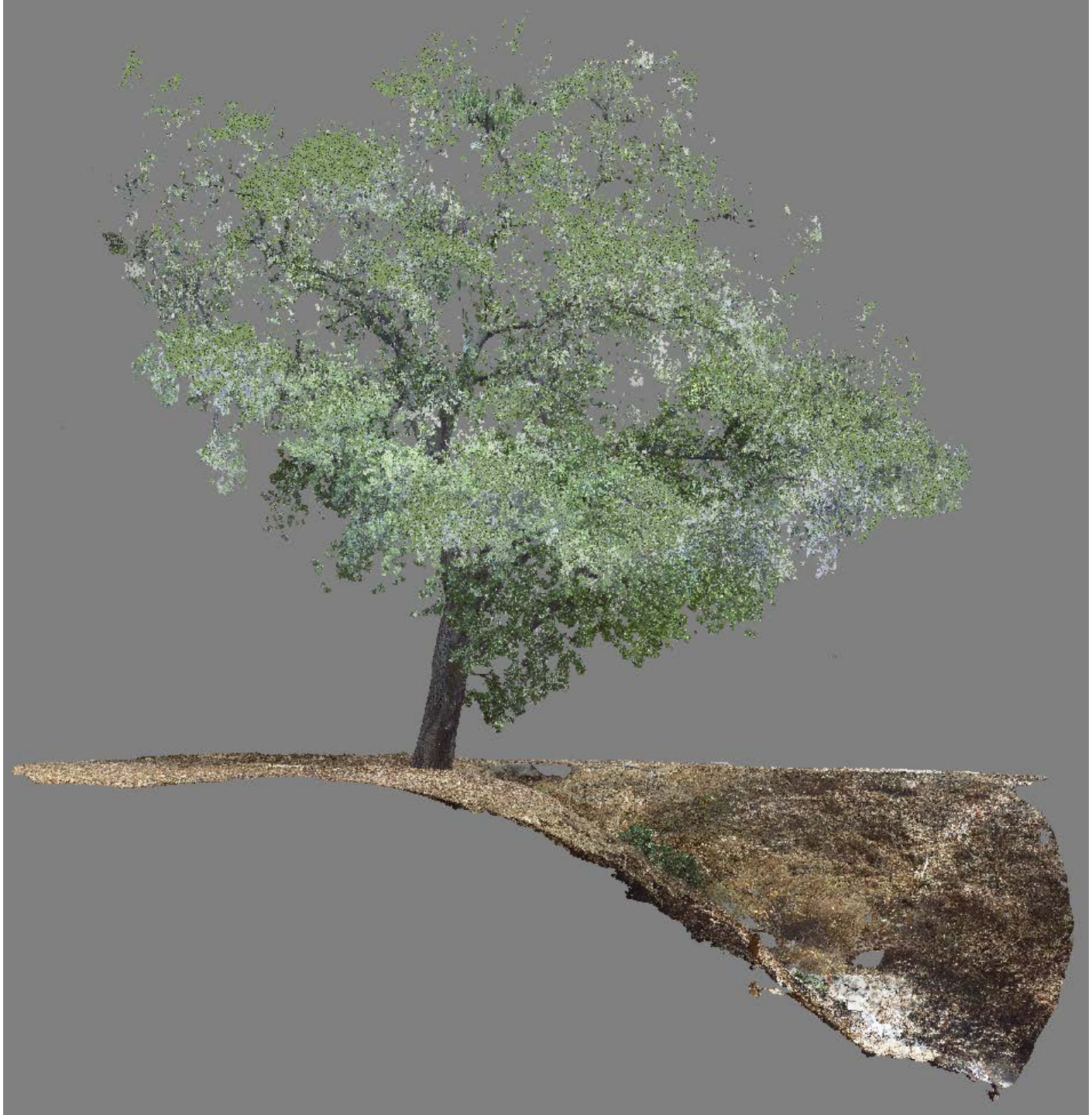
Oak Tree #4
Unpruned,
South,
Orthographic



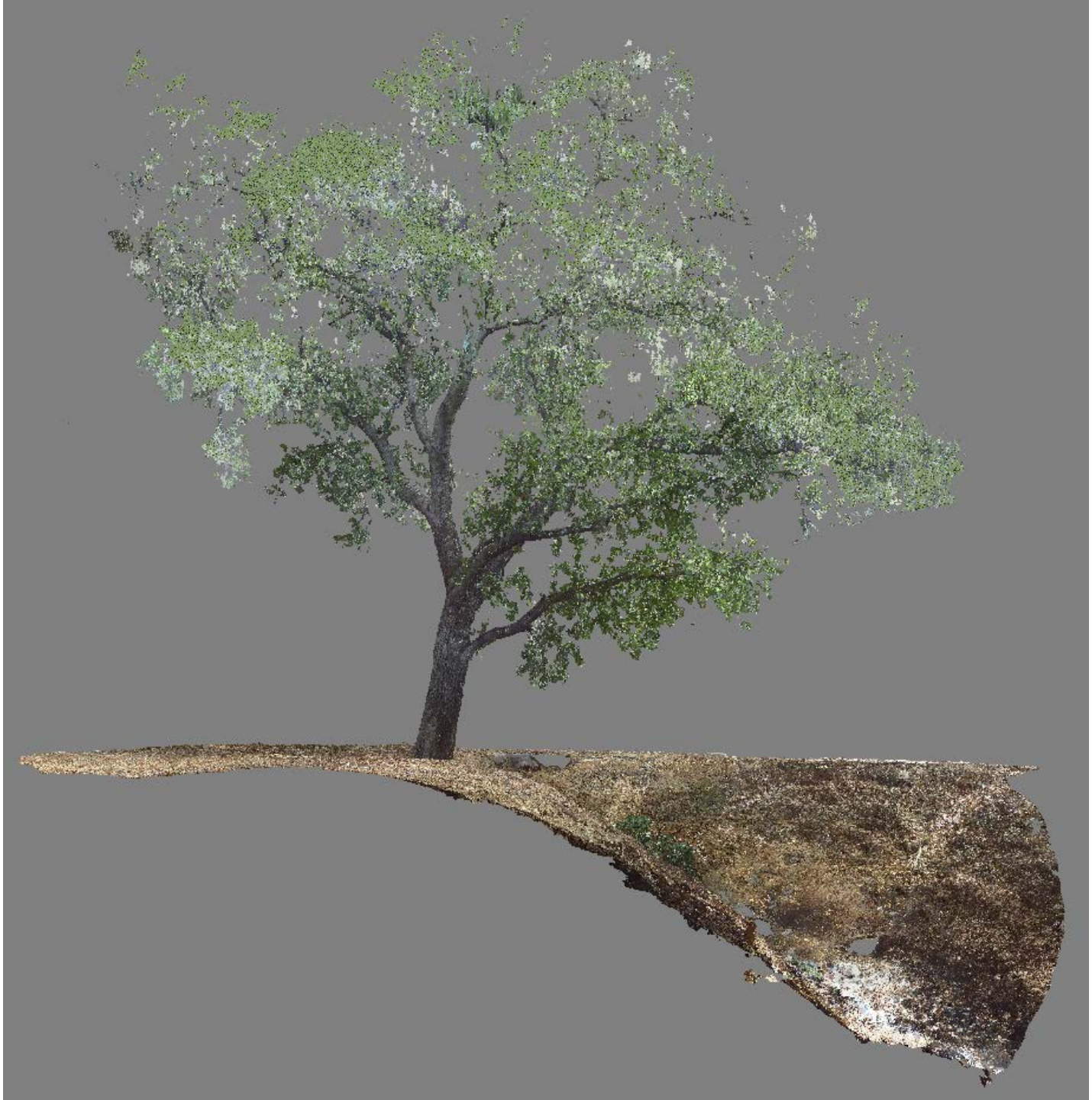
Oak Tree #4
Pruned,
South,
Orthographic



Oak Tree #4
Unpruned,
West,
Orthographic



Oak Tree #4
Pruned,
West,
Orthographic



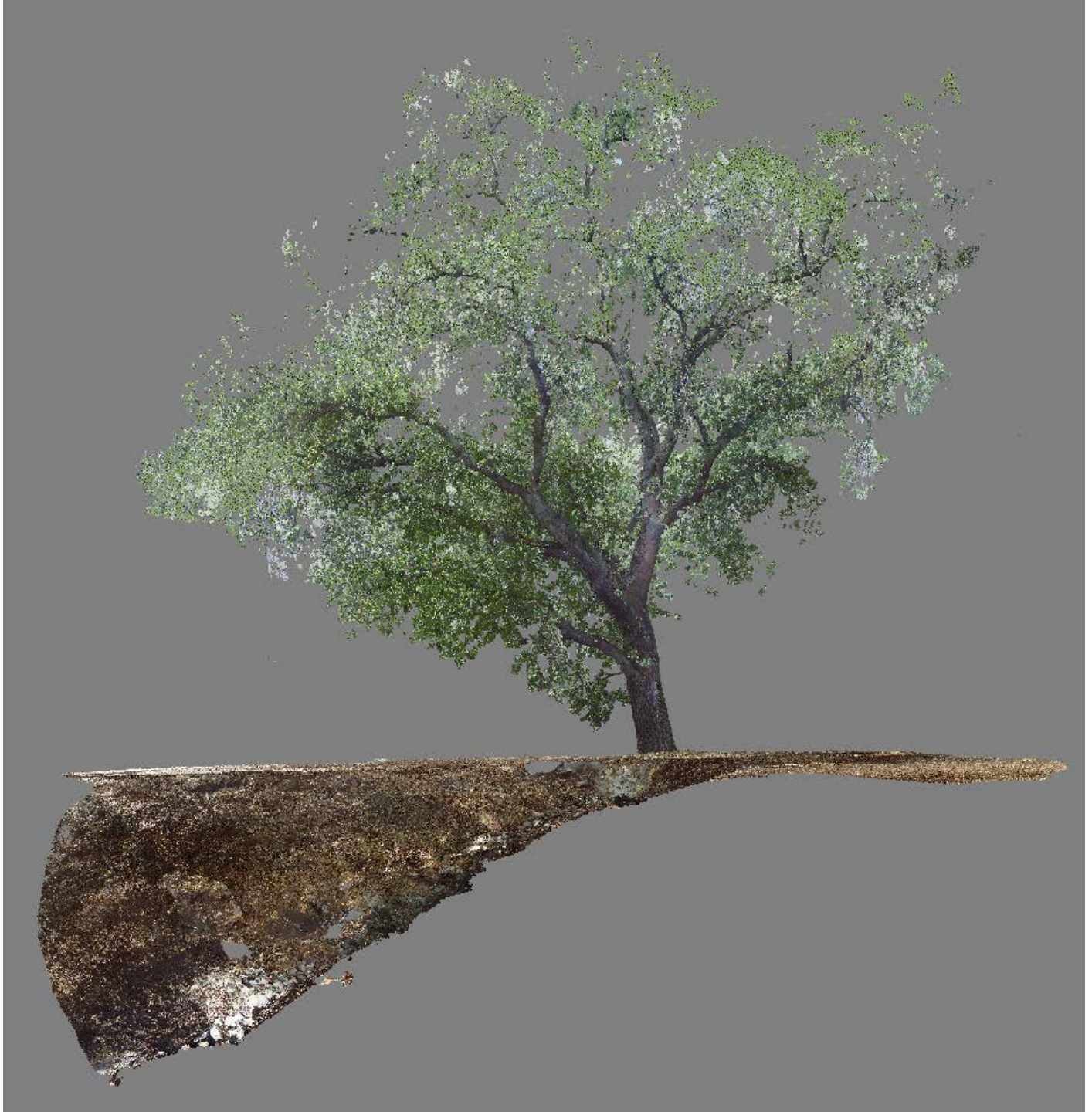
Oak Tree #4
Unpruned,
North,
Orthographic



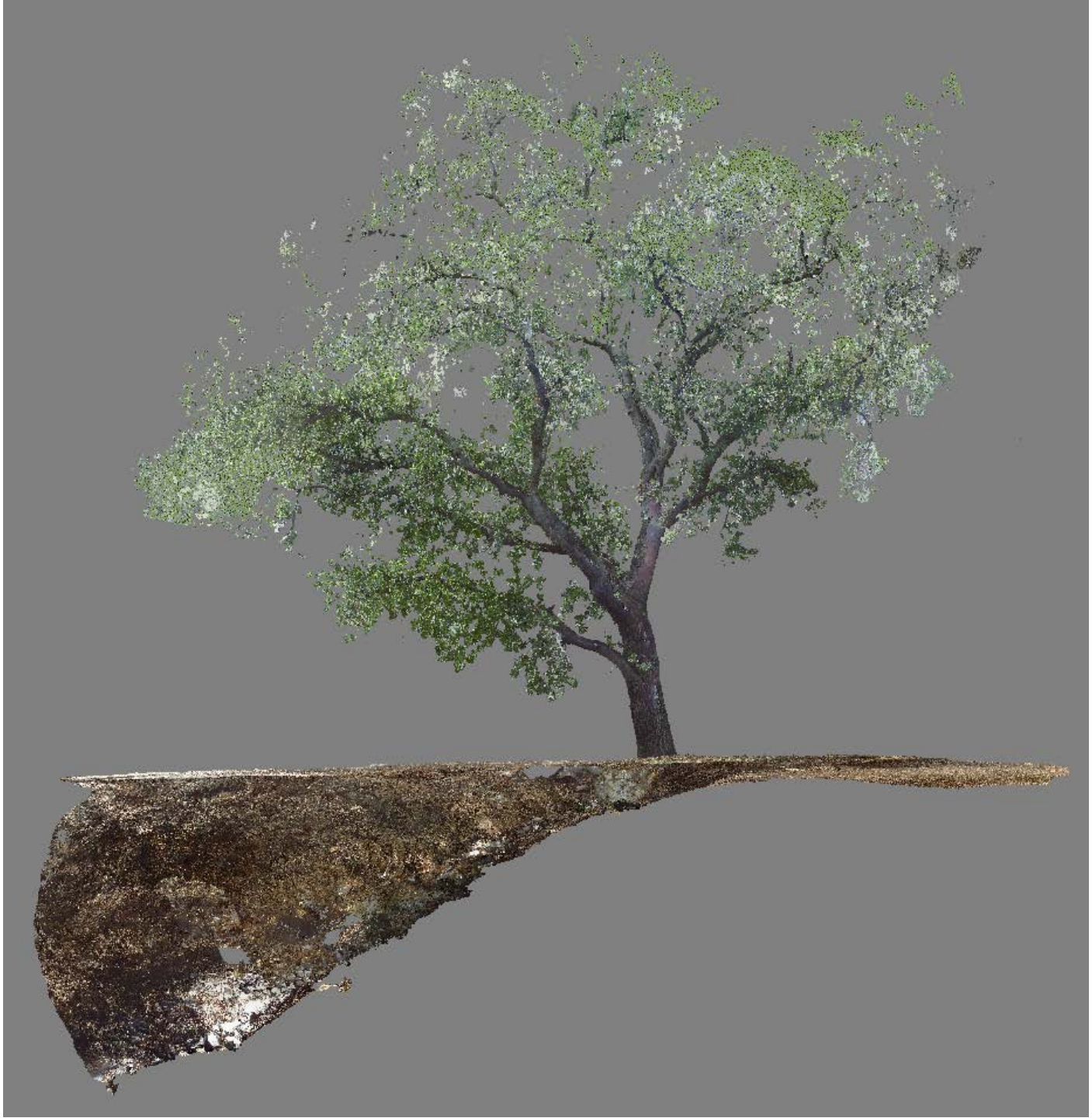
Oak Tree #4
Pruned,
North,
Orthographic



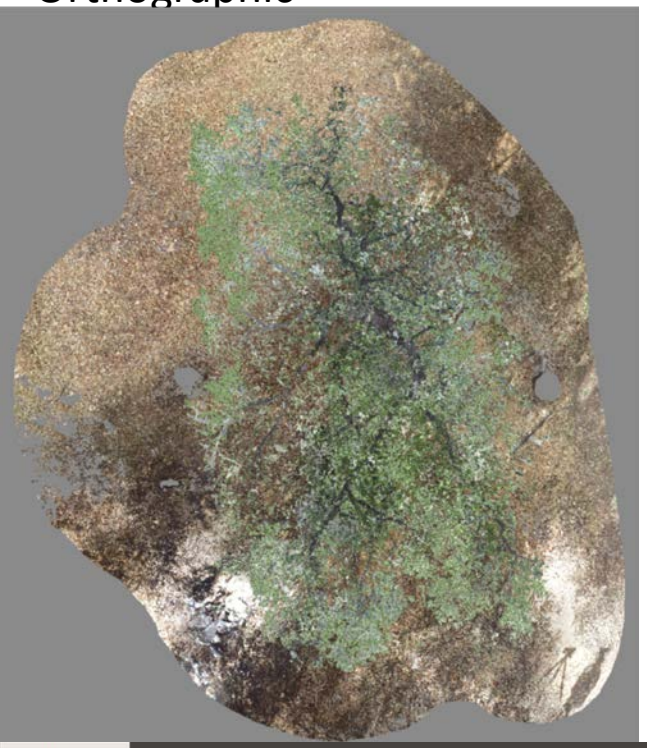
Oak Tree #4
Unpruned,
East,
Orthographic

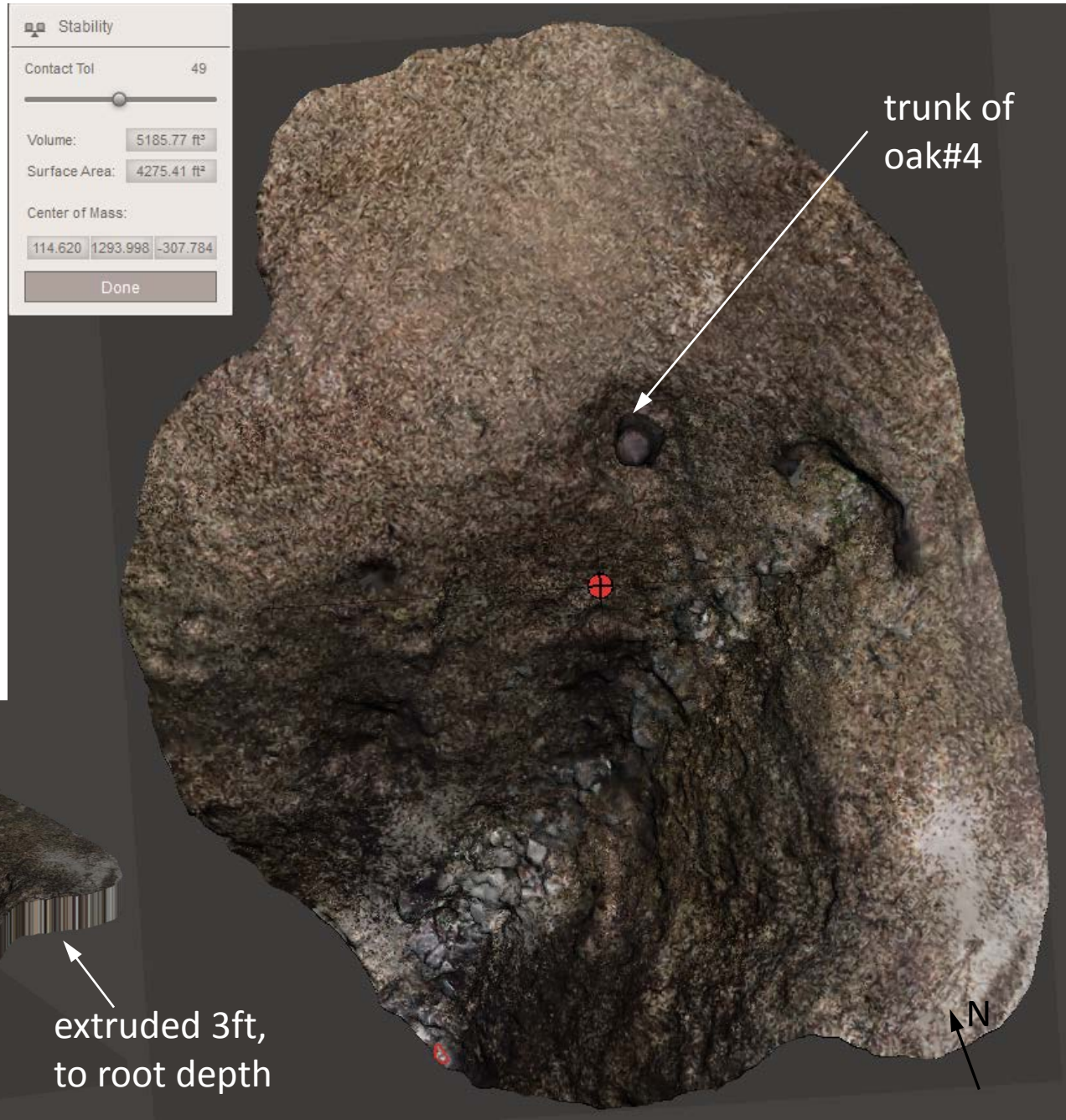


Oak Tree #4
Pruned,
East,
Orthographic

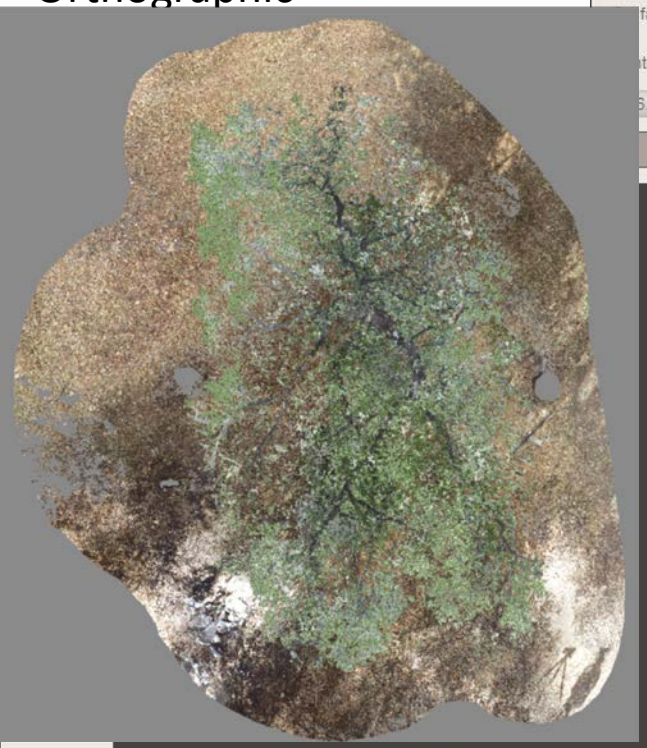


Oak Tree #4
Before excavation,
Orthographic

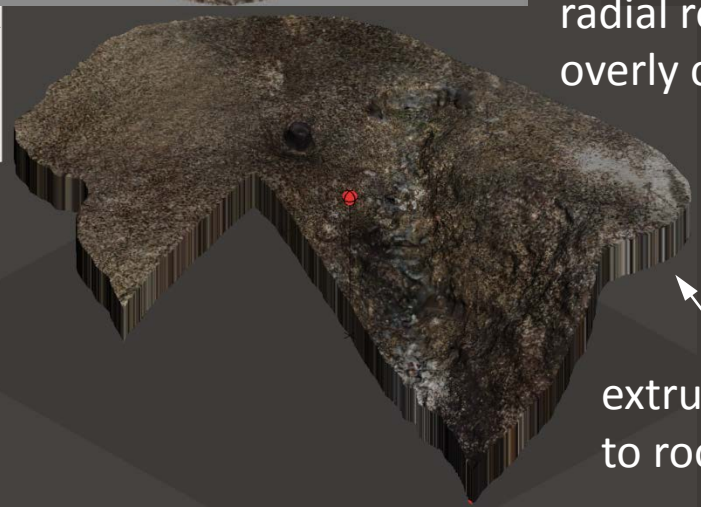




Oak Tree #4
Root removal, conservative
Orthographic







trunk of oak#4

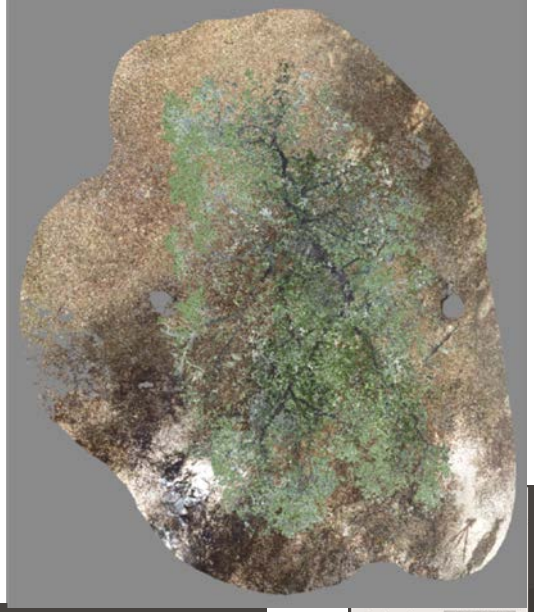
~4ft

SE corner of house

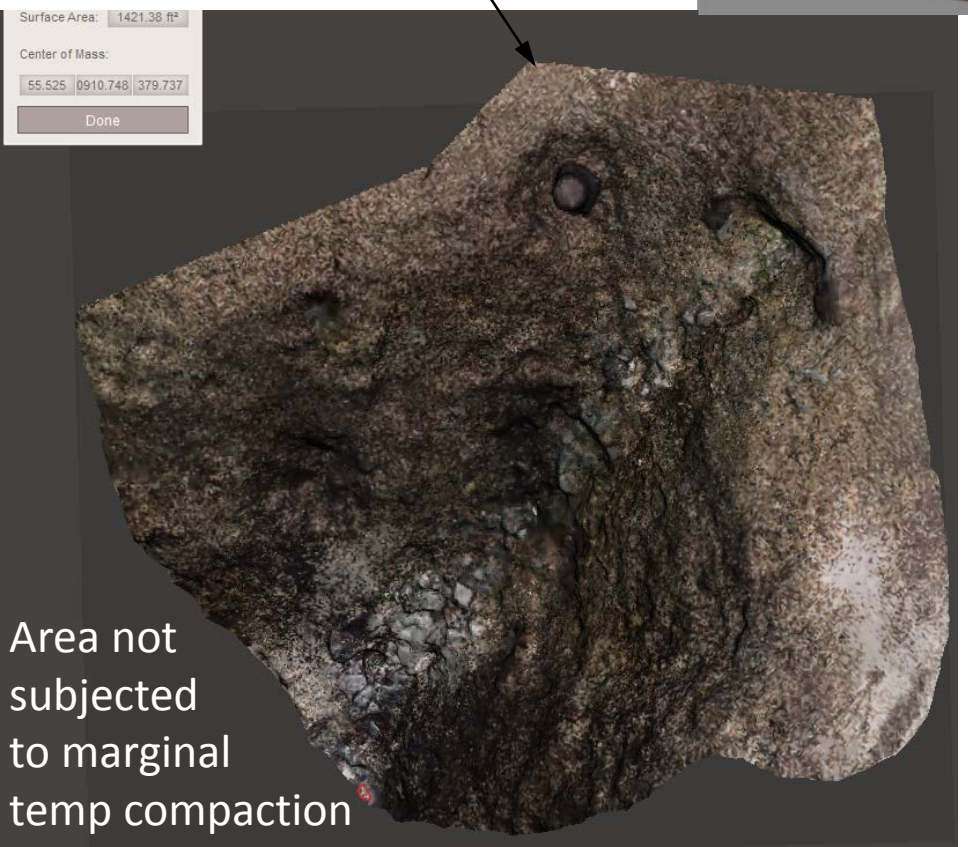
radial root loss, overly conservatively

extruded 3ft, to root depth

Oak Tree #4
Driveway encroachment (and temp compaction)
Orthographic



Edge of driveway/ construction fence at 3-5x DBH

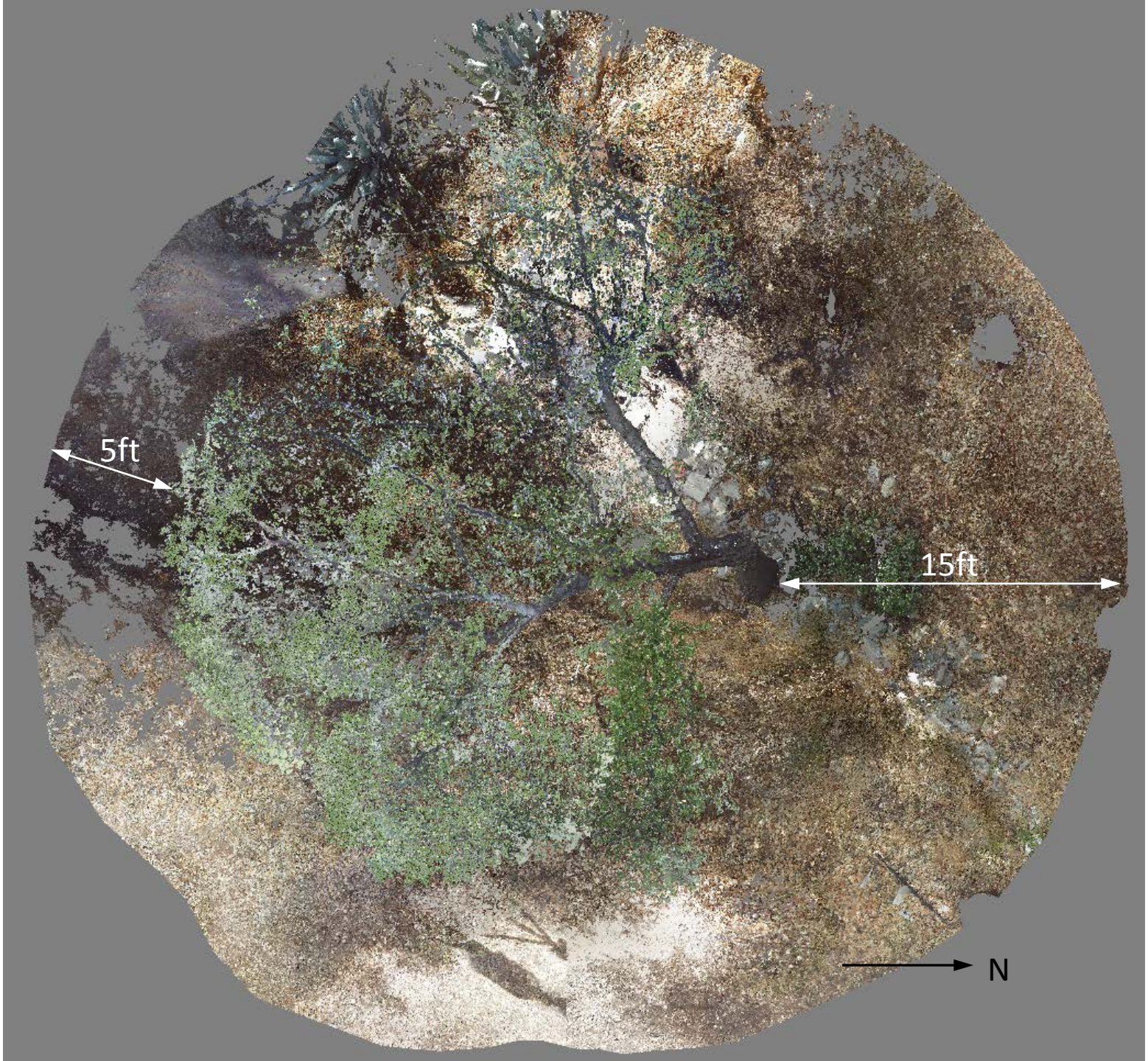


Area not subjected to marginal temp compaction

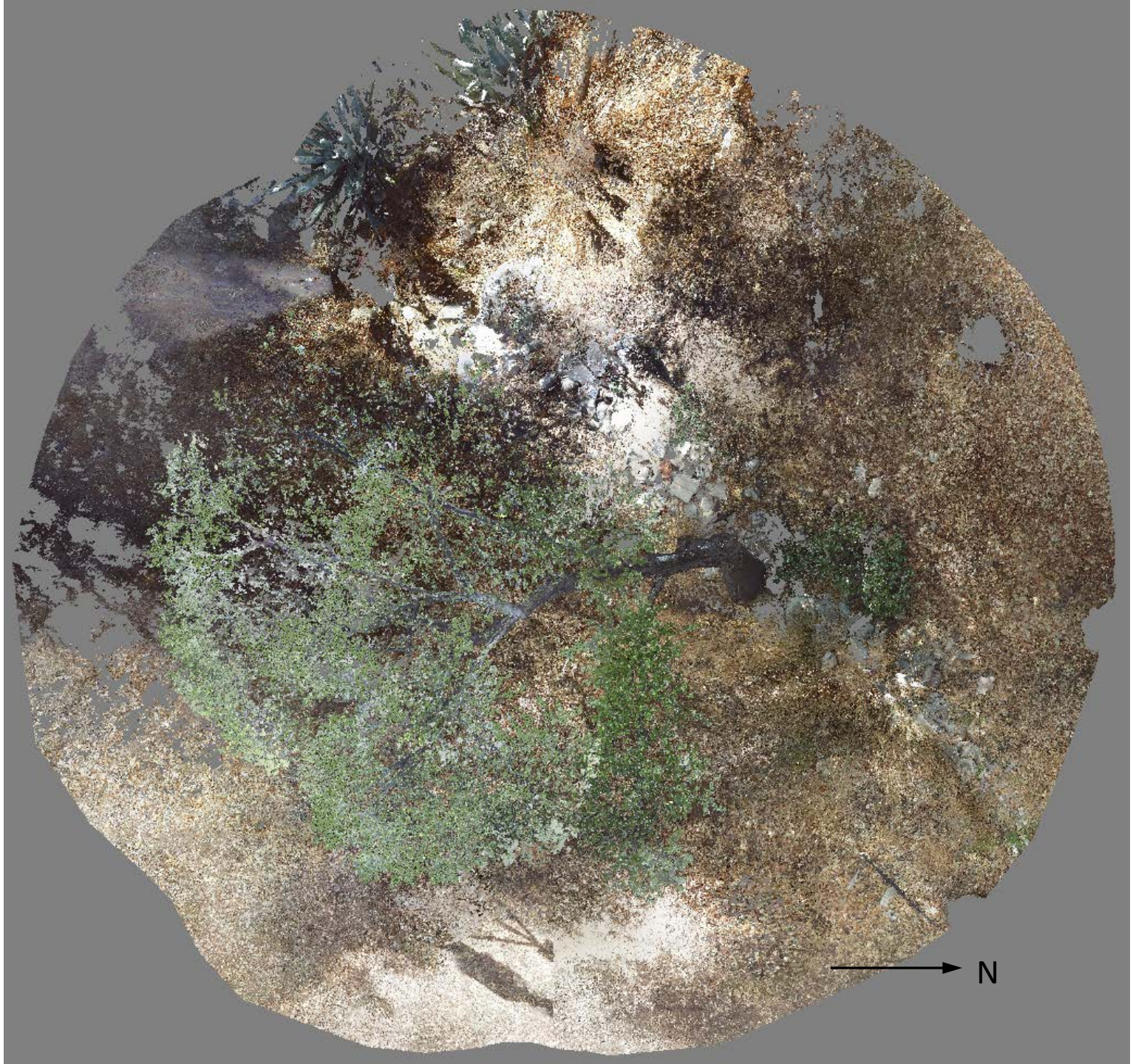


trunk of oak#4

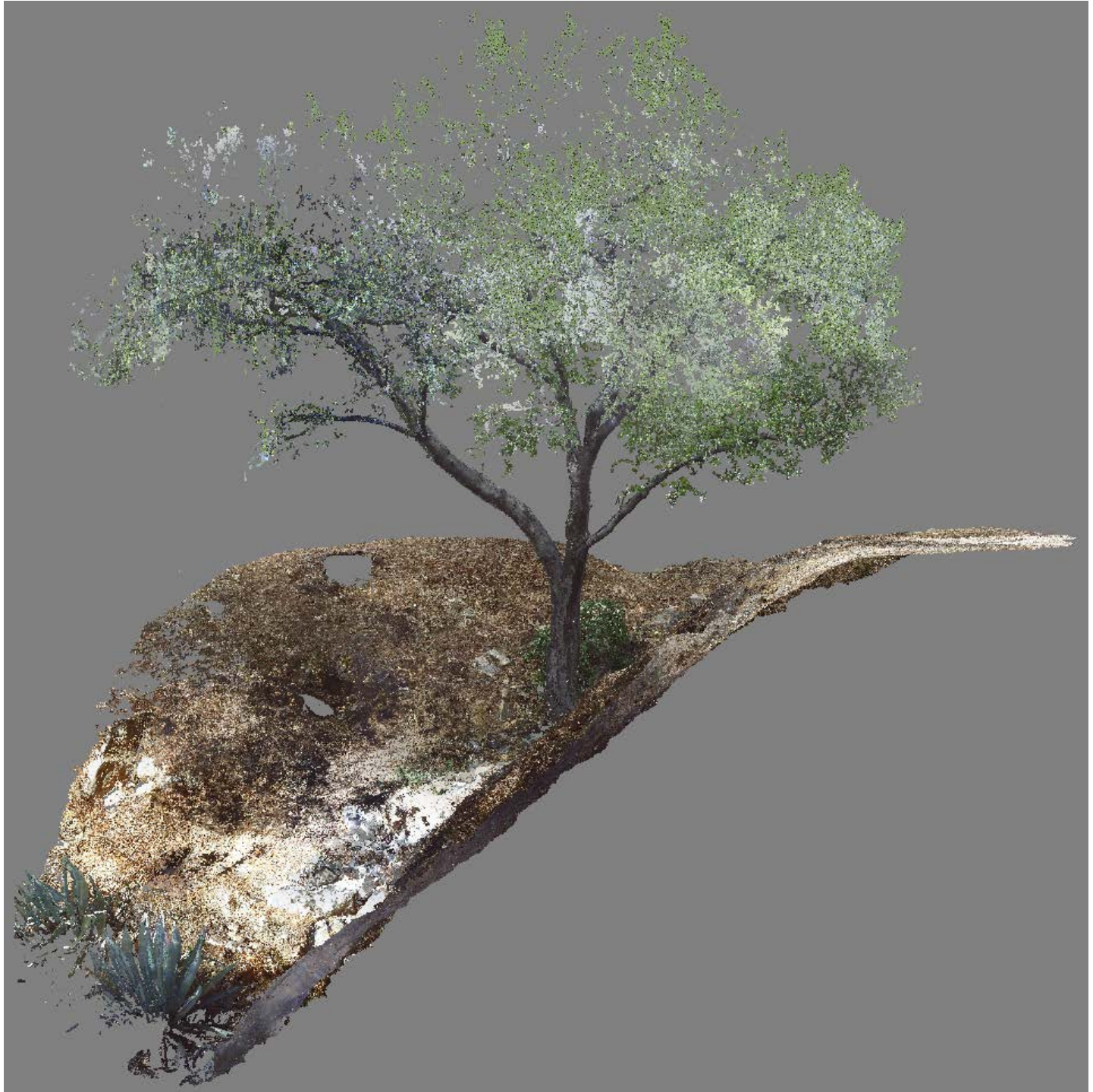
Oak Tree #5
Unpruned,
Top,
Orthographic



Oak Tree #5
Pruned,
Top,
Orthographic



Oak Tree #5
Unpruned,
South,
Orthographic



Oak Tree #5
Pruned,
South,
Orthographic



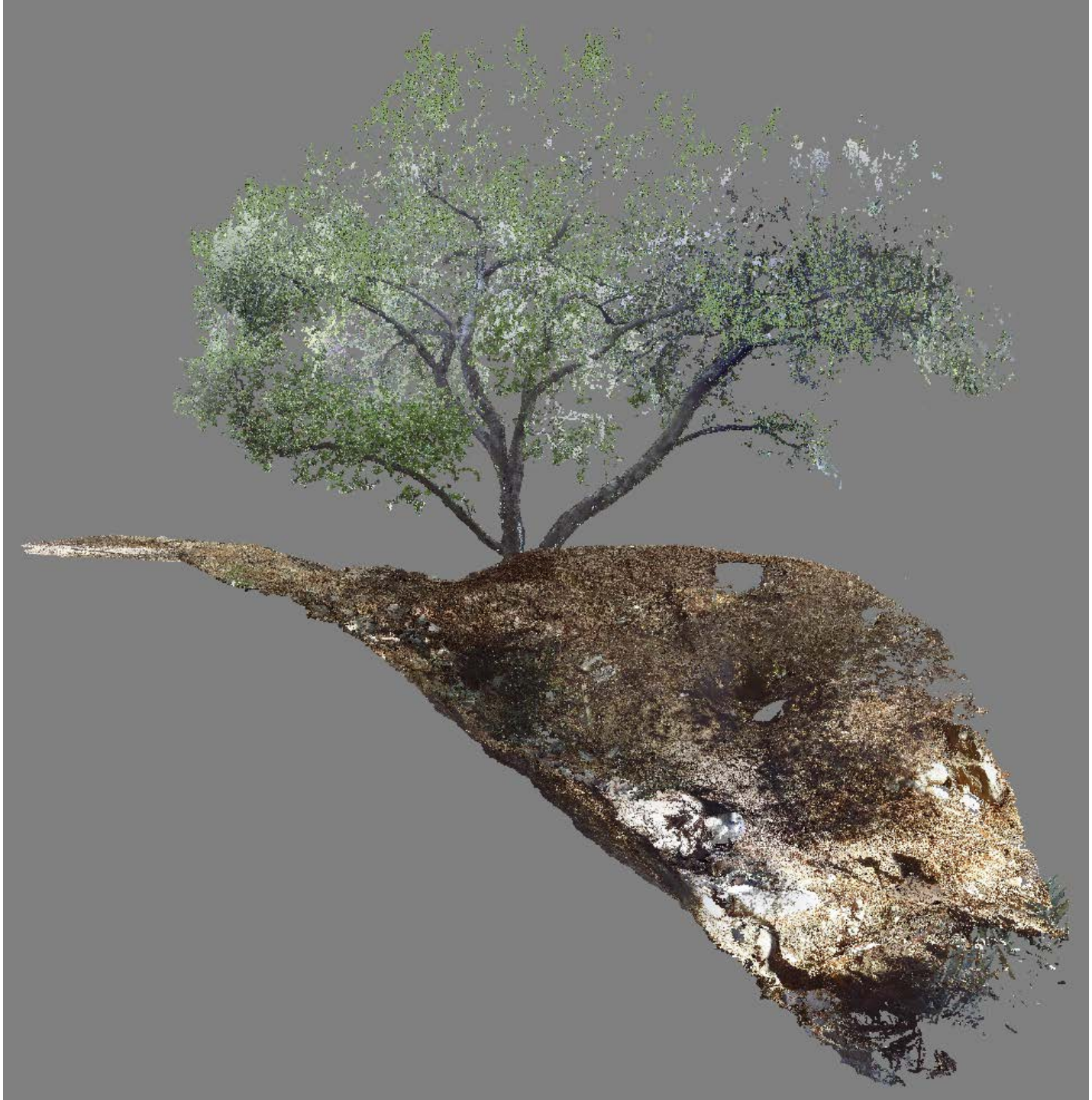
Oak Tree #5
Unpruned,
West,
Orthographic



Oak Tree #5
Pruned,
West,
Orthographic



Oak Tree #5
Unpruned,
North,
Orthographic



Oak Tree #5
Pruned,
North,
Orthographic



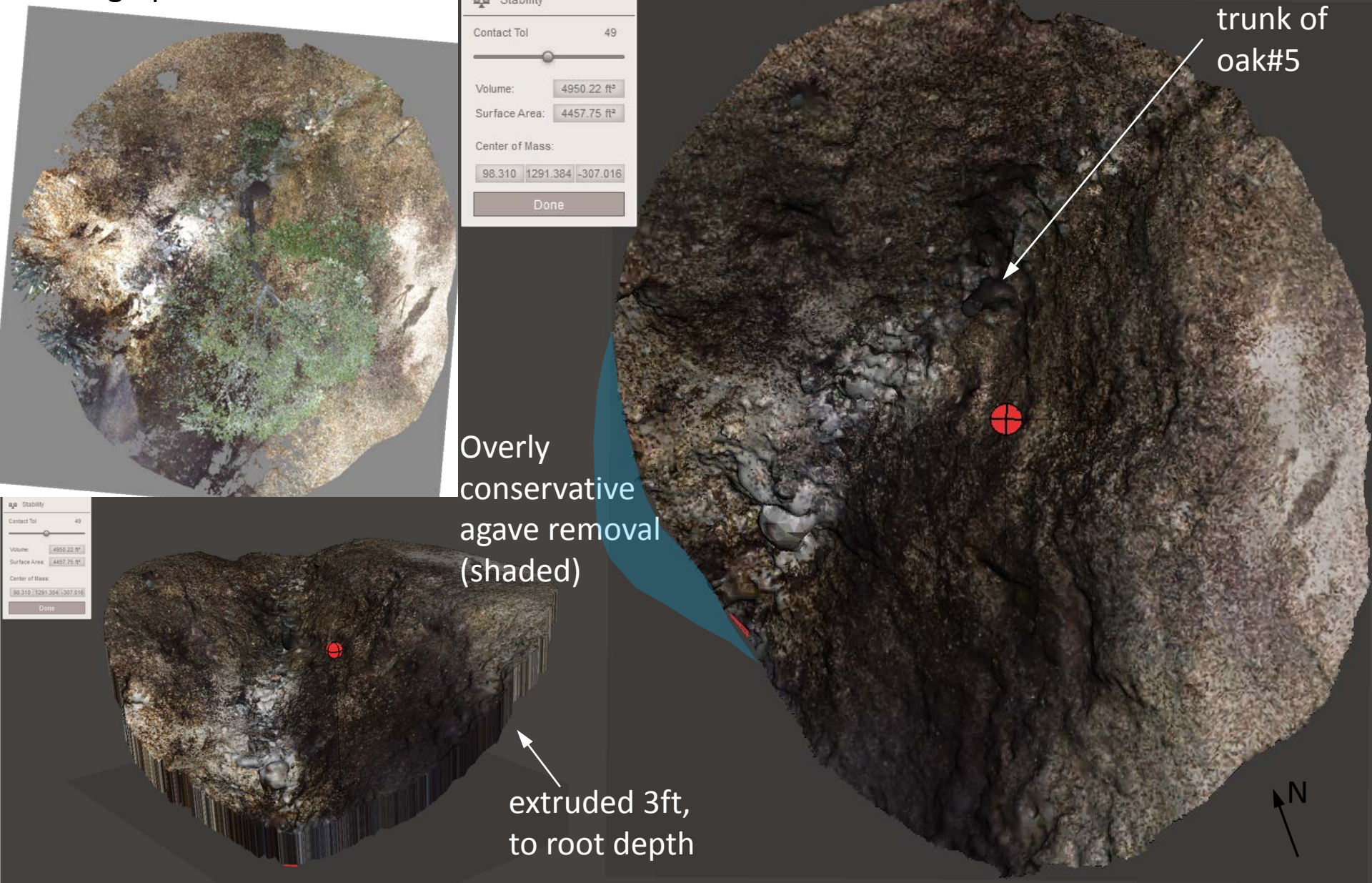
Oak Tree #5
Unpruned,
East,
Orthographic



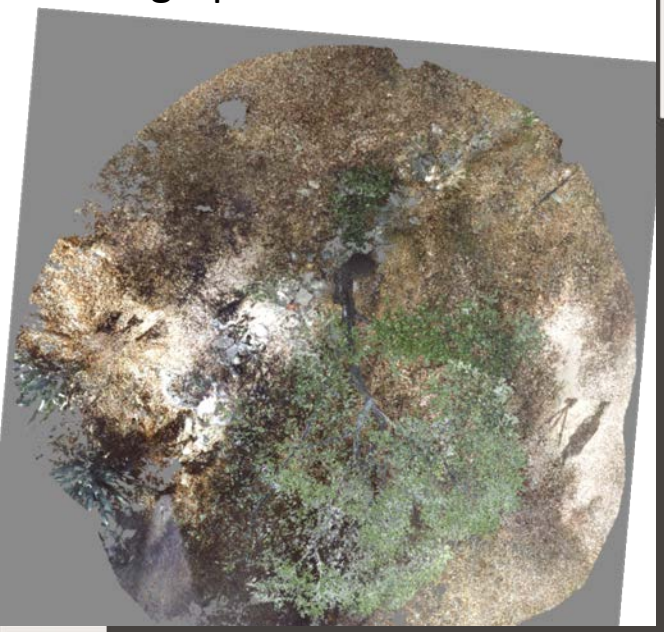
Oak Tree #5
Pruned,
East,
Orthographic

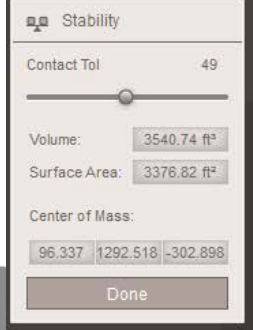


Oak Tree #5
Before excavation,
Orthographic

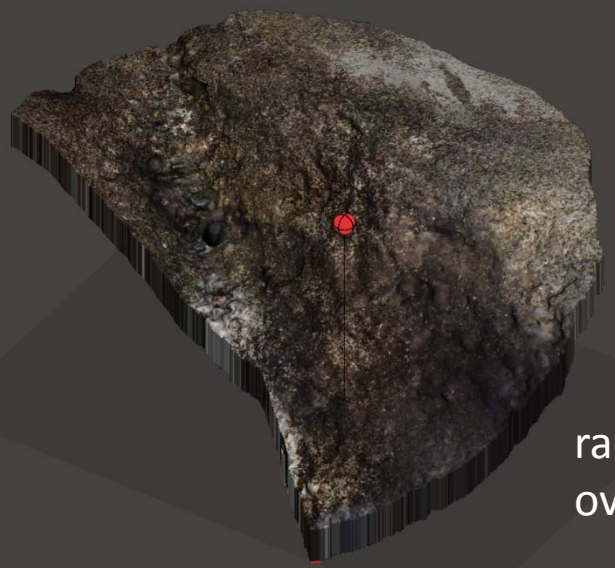


Oak Tree #5
Root removal, conservative
Orthographic









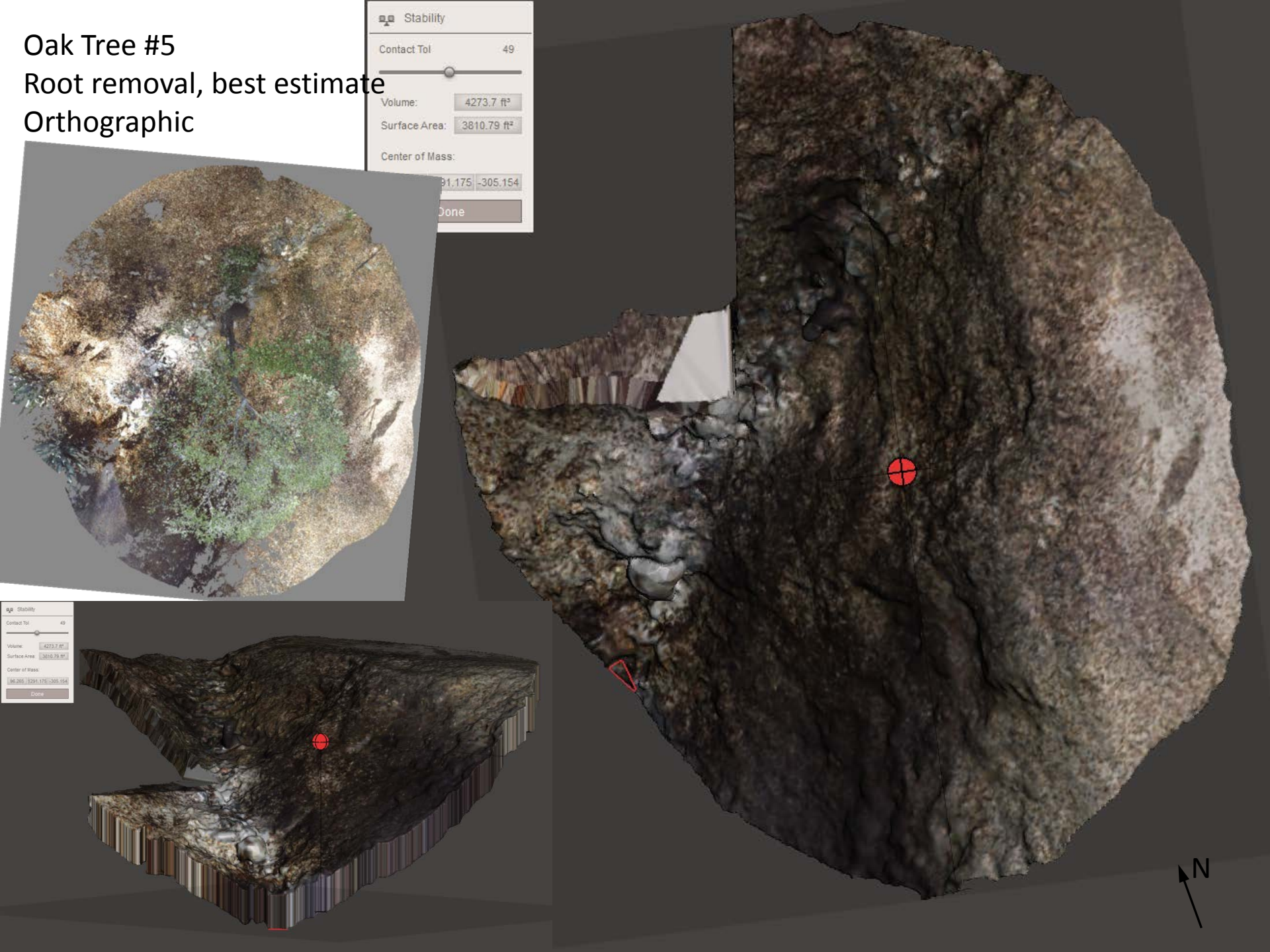
~5ft

SE corner
of house

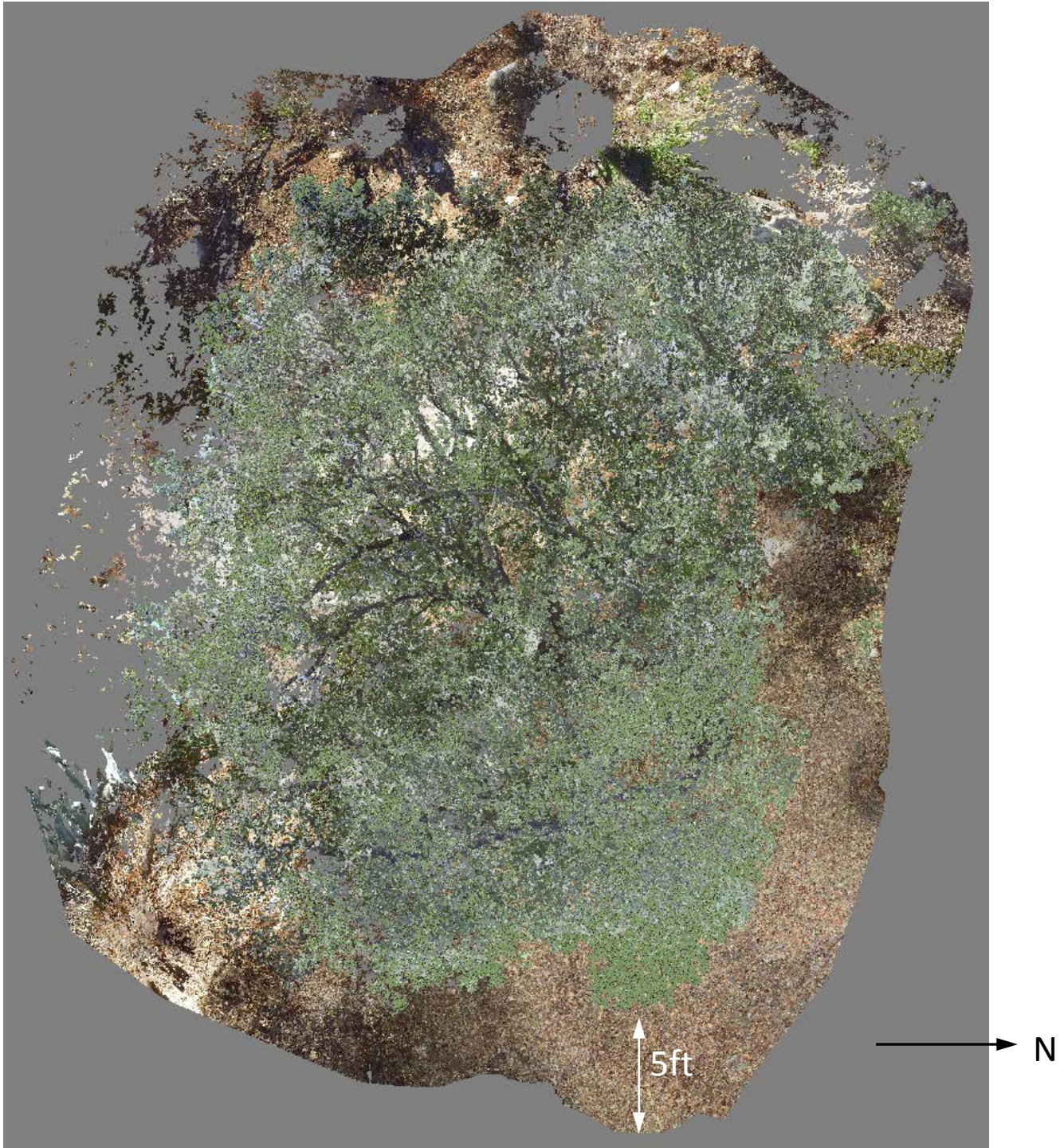
radial root loss,
overly conservatively

N

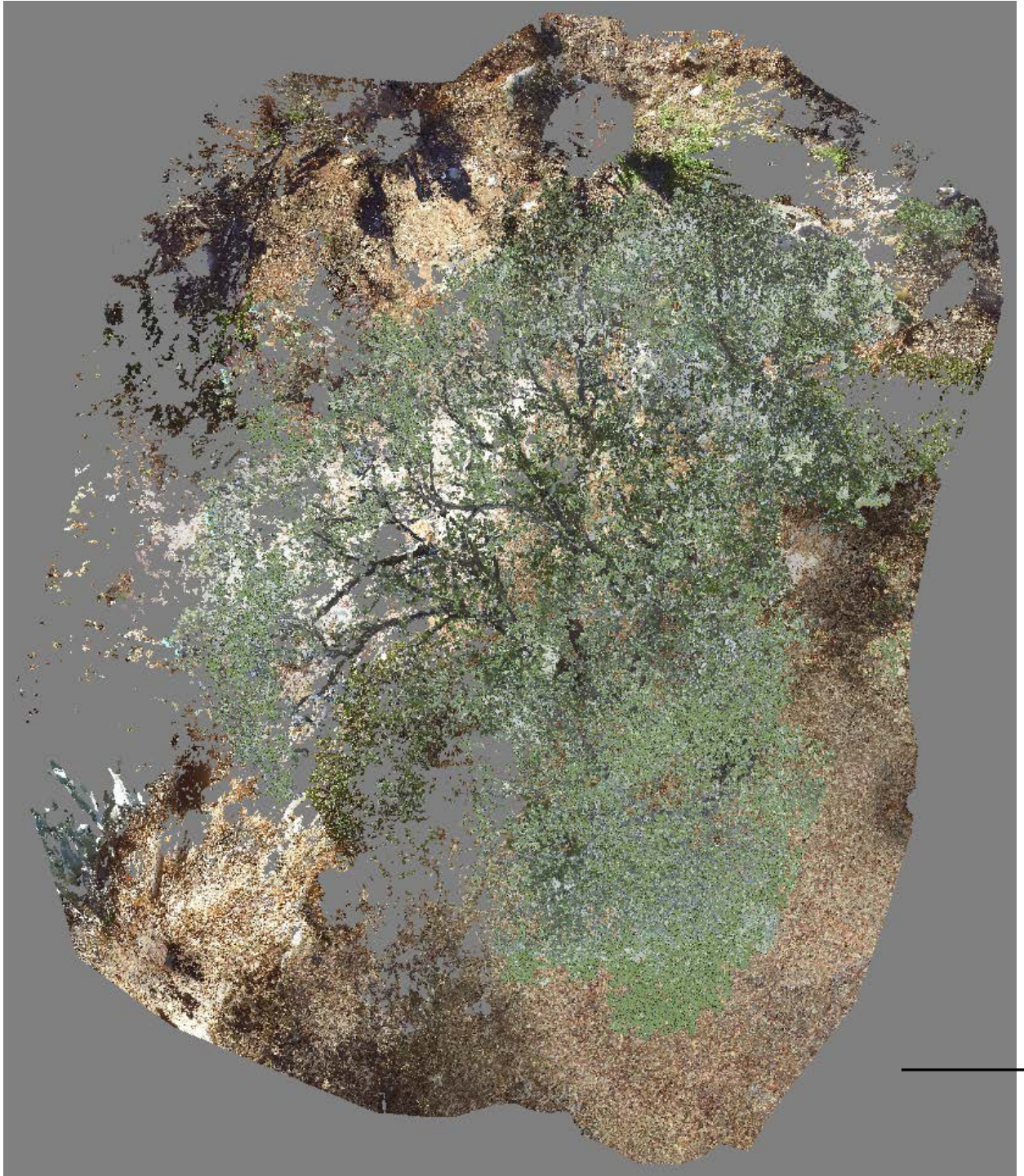
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Root removal, best estimate
Orthographic



Oak Tree #7
Unpruned,
Top,
Orthographic



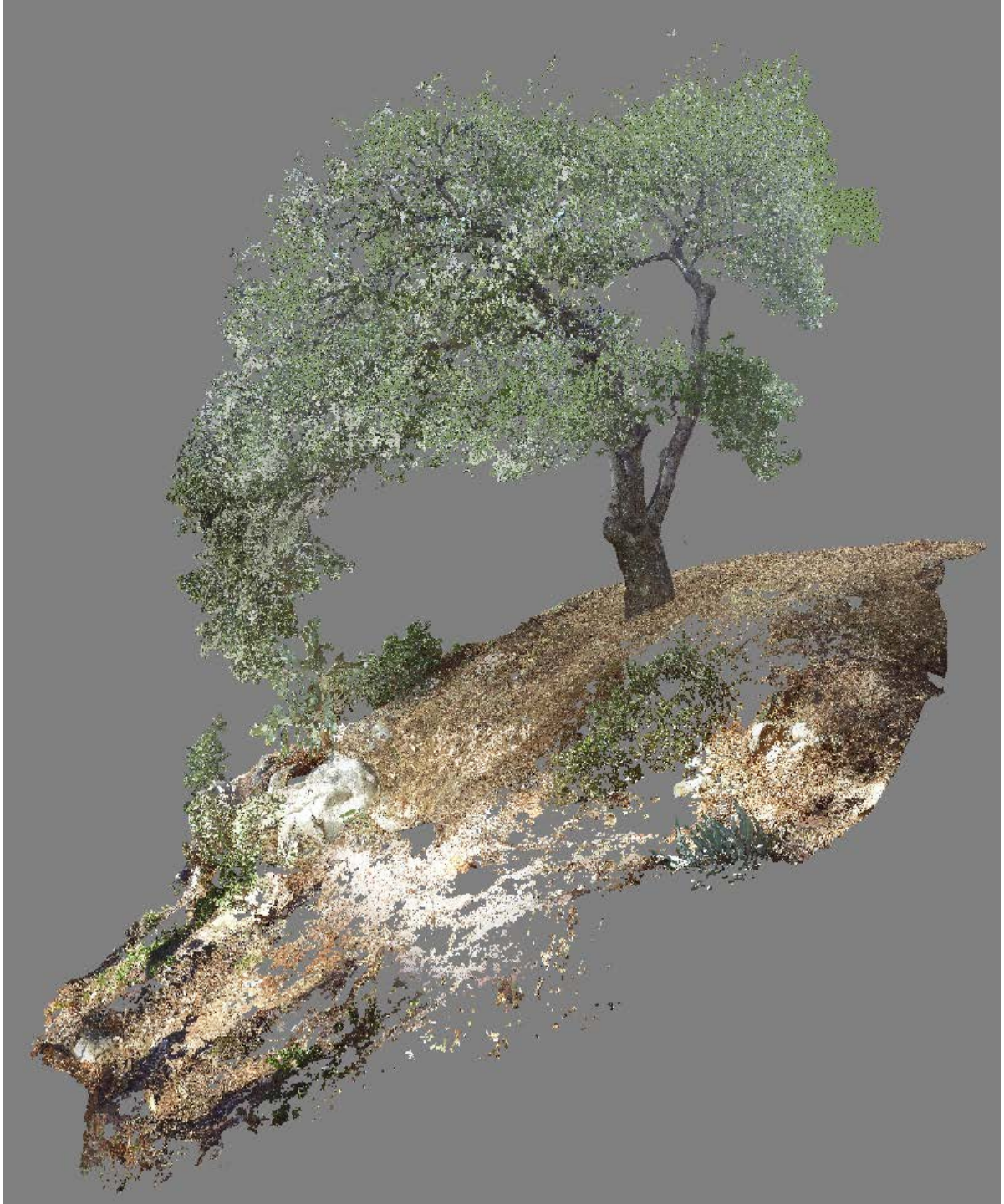
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Top,
Orthographic



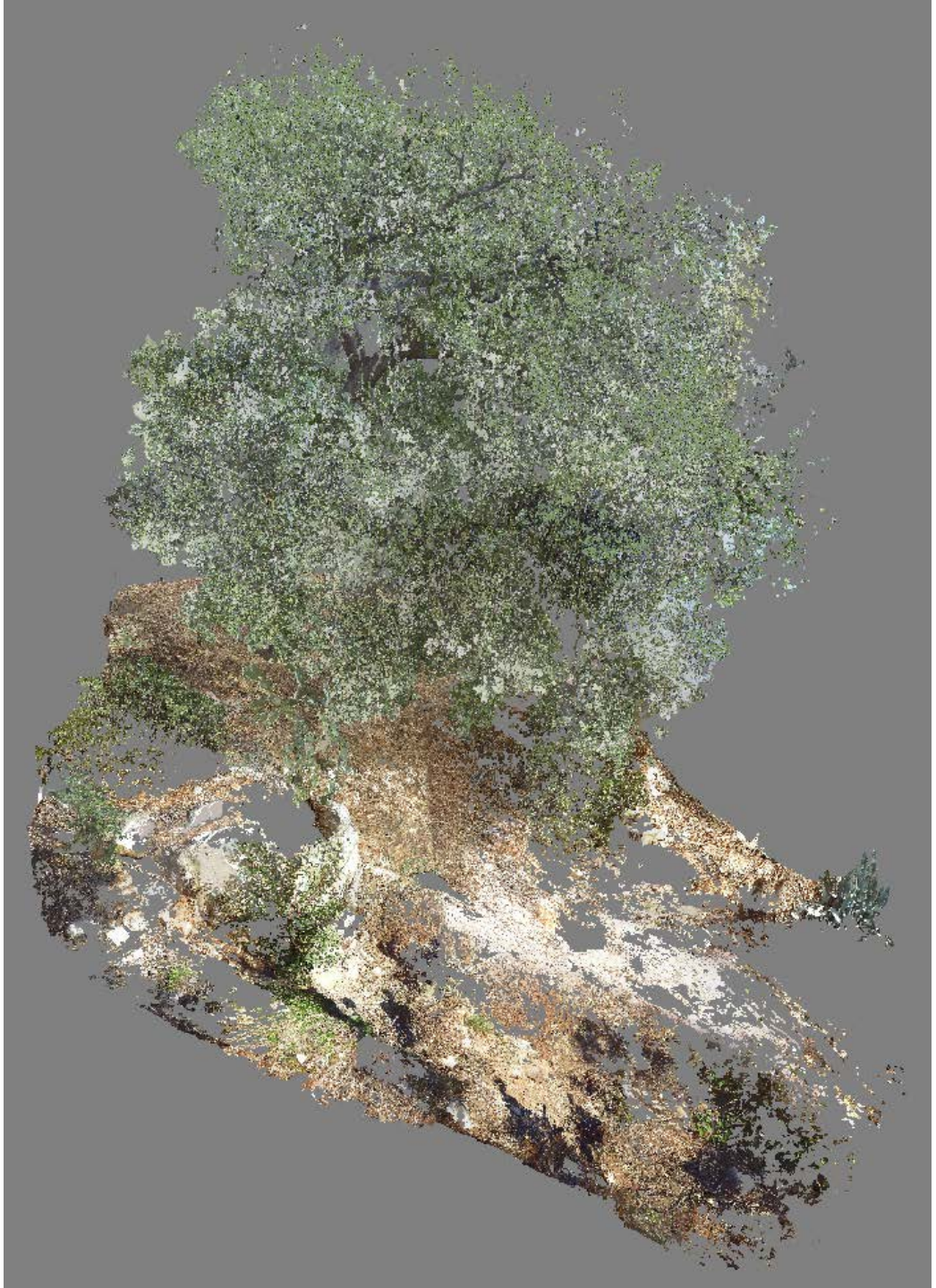
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South,
Orthographic



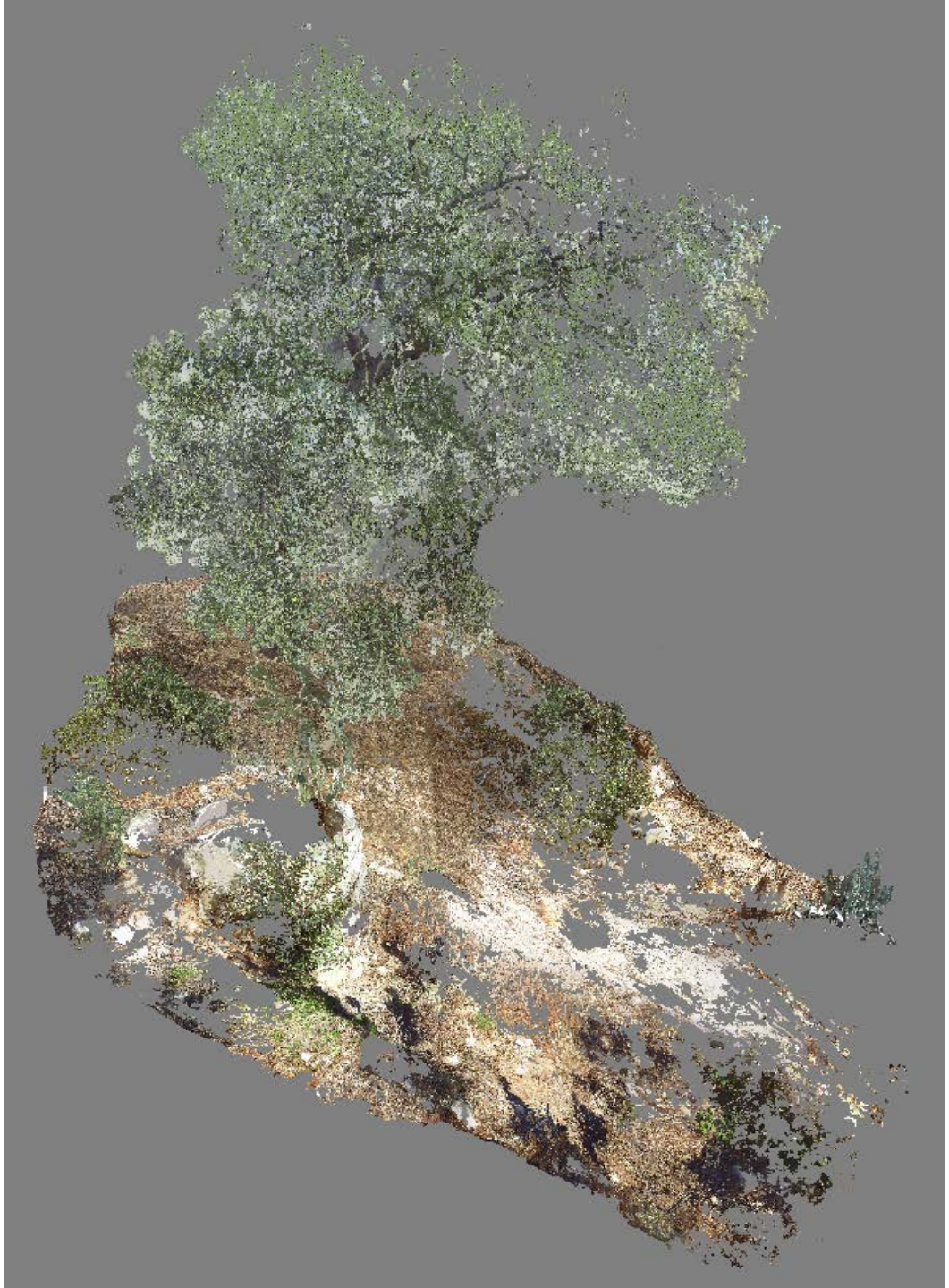
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South,
Orthographic



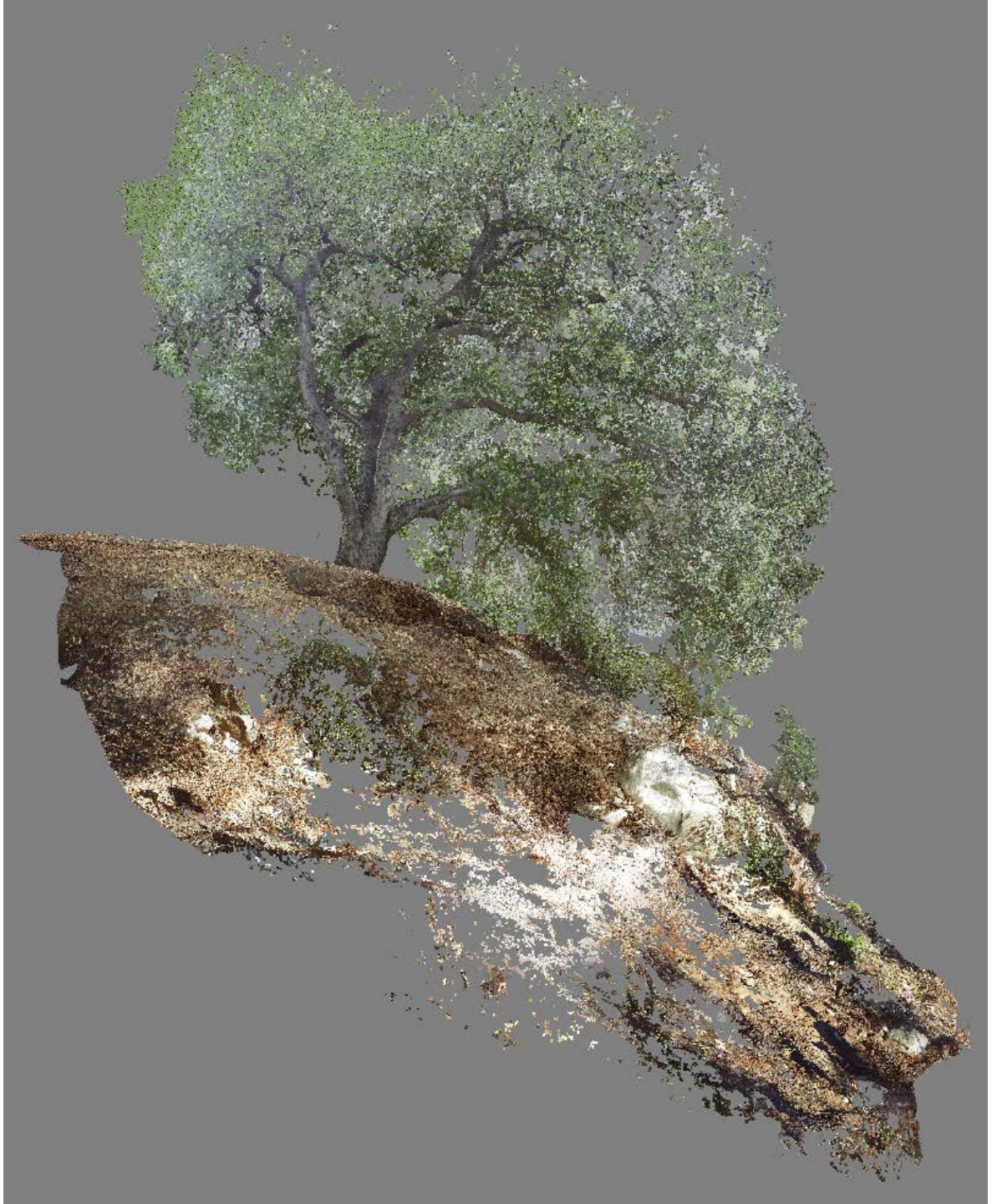
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Unpruned,
West,
Orthographic



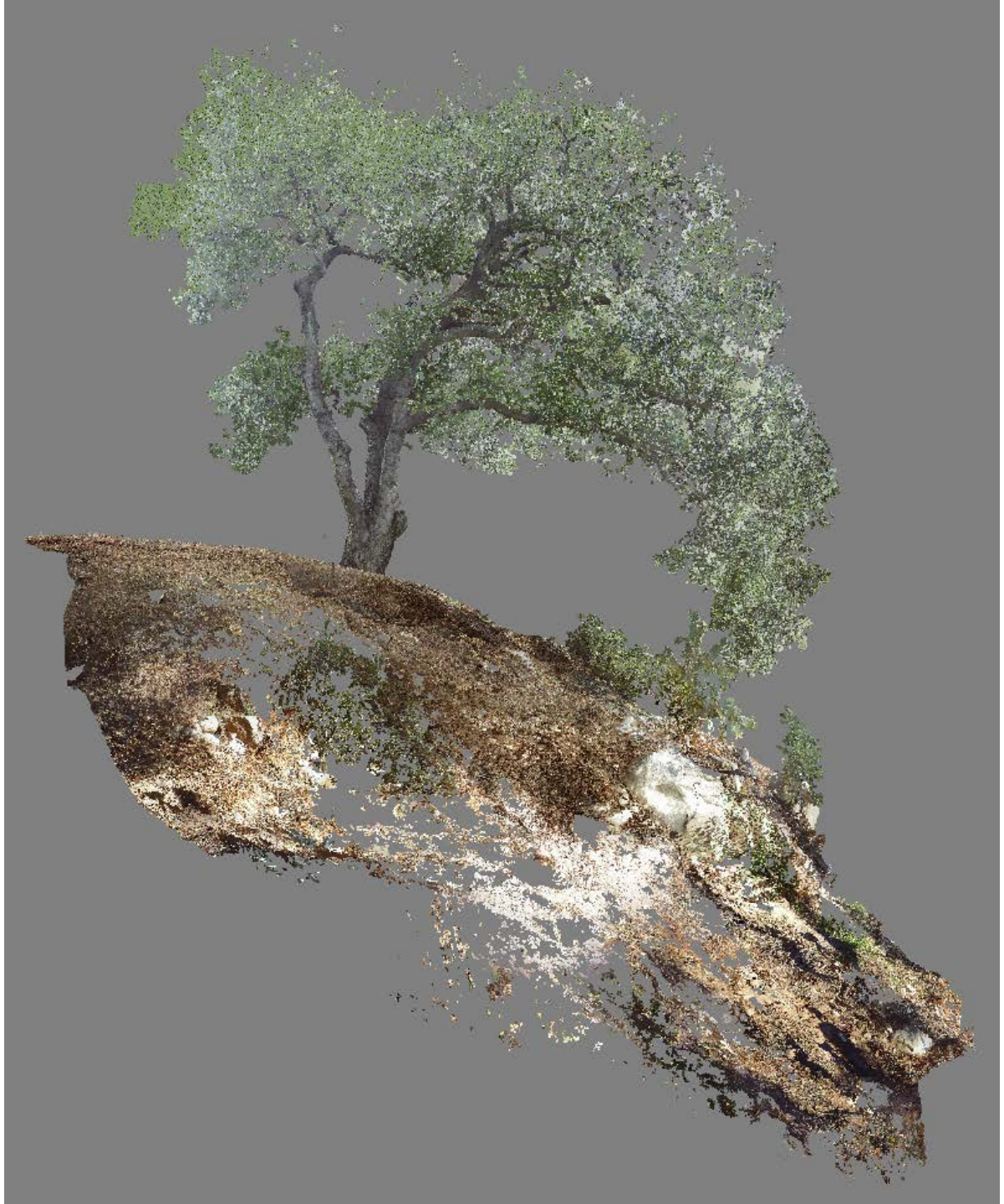
Oak Tree #7
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West,
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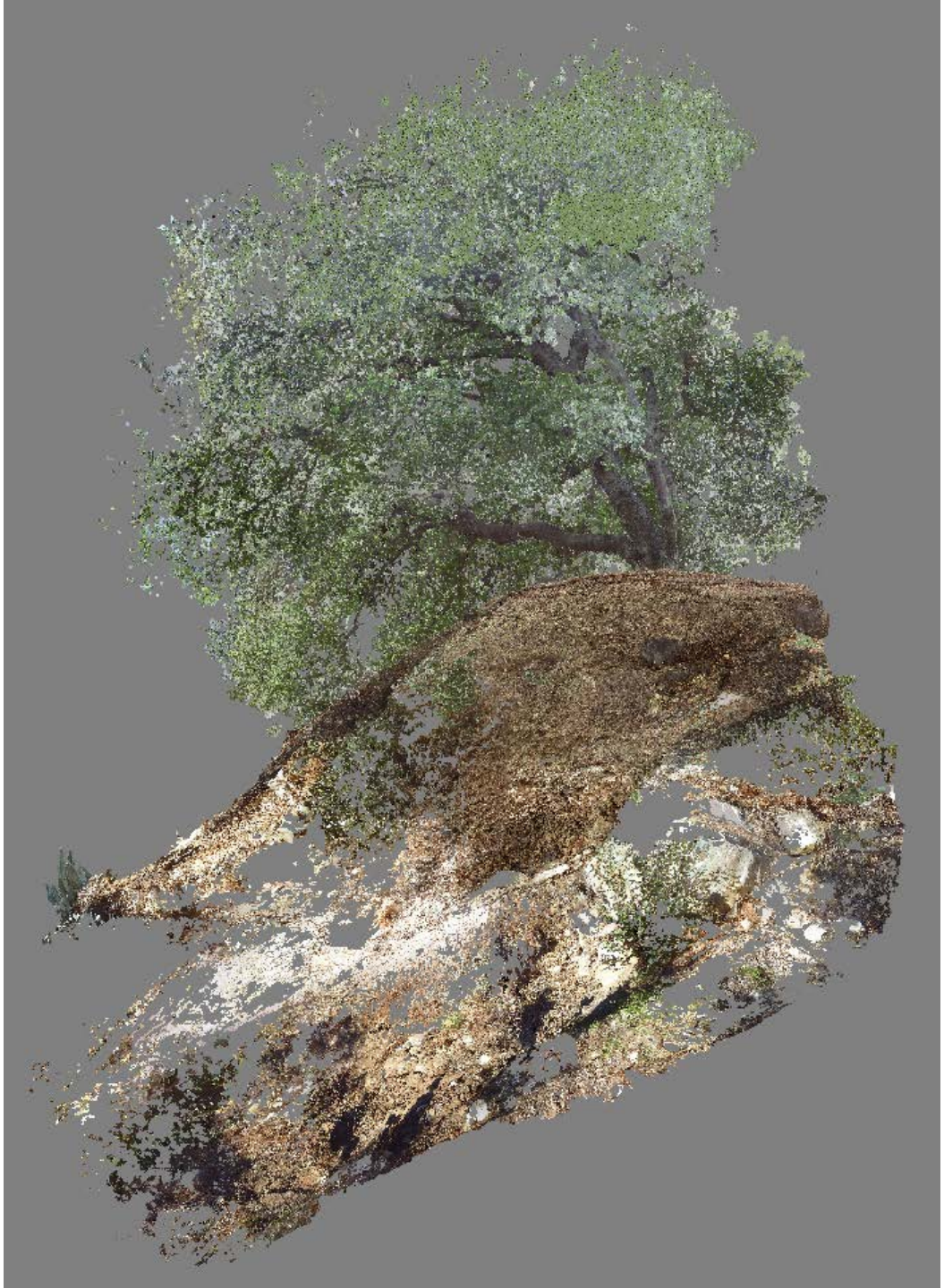
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Unpruned,
North,
Orthographic



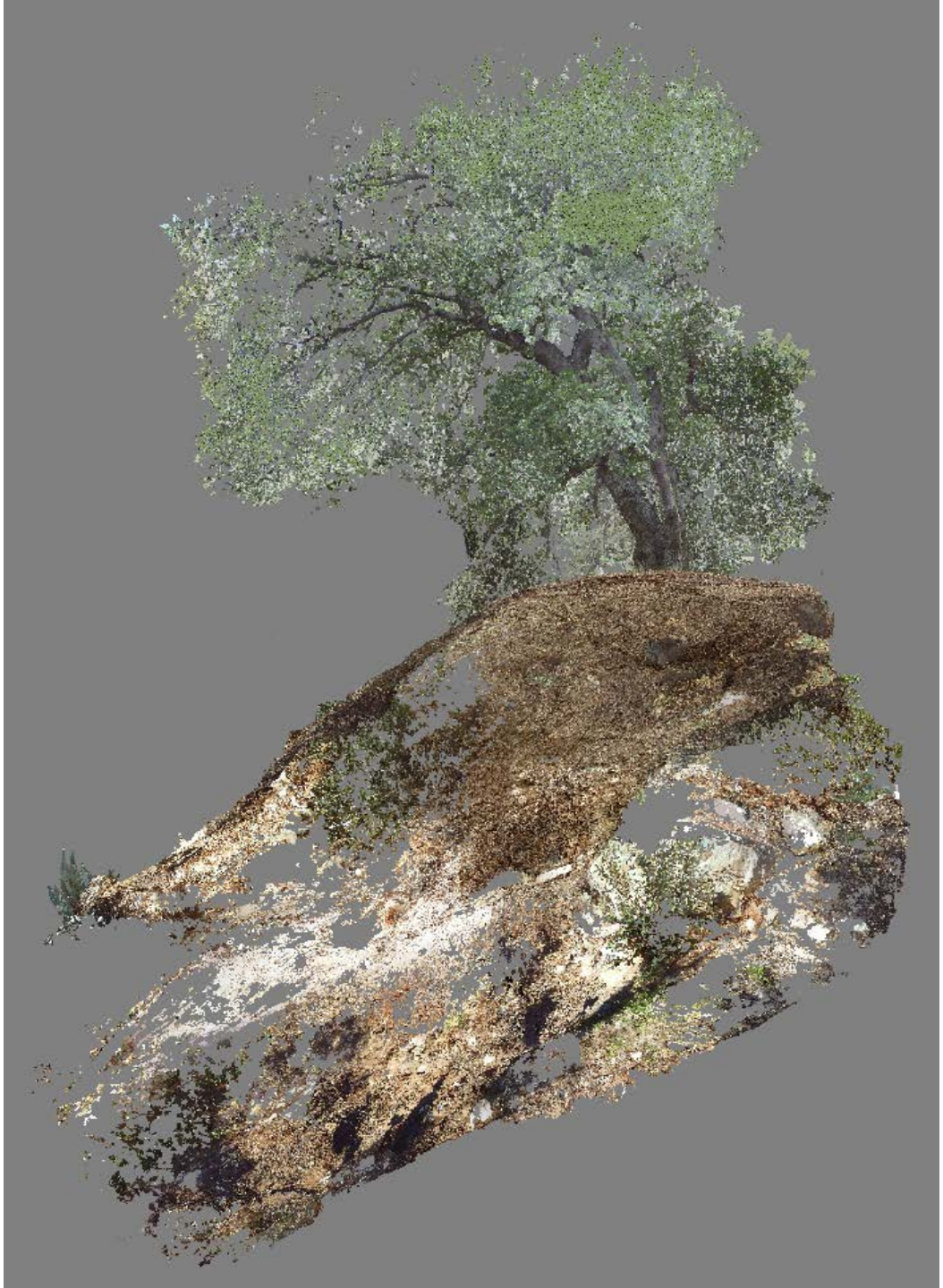
Oak Tree #7
Pruned,
North,
Orthographic



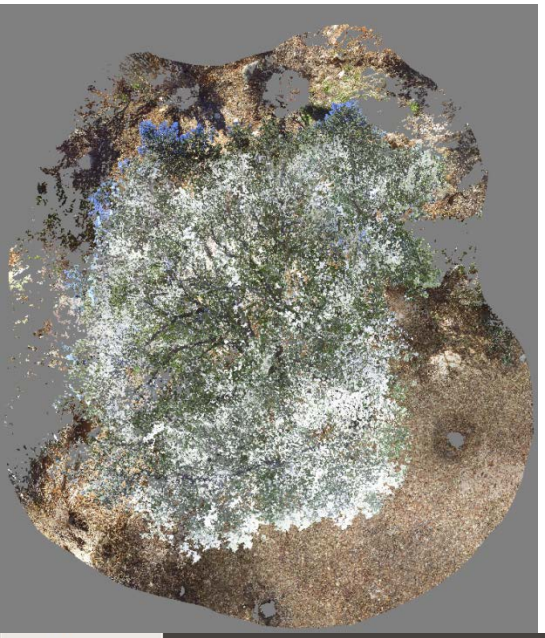
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Unpruned,
East,
Orthographic

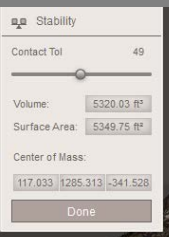


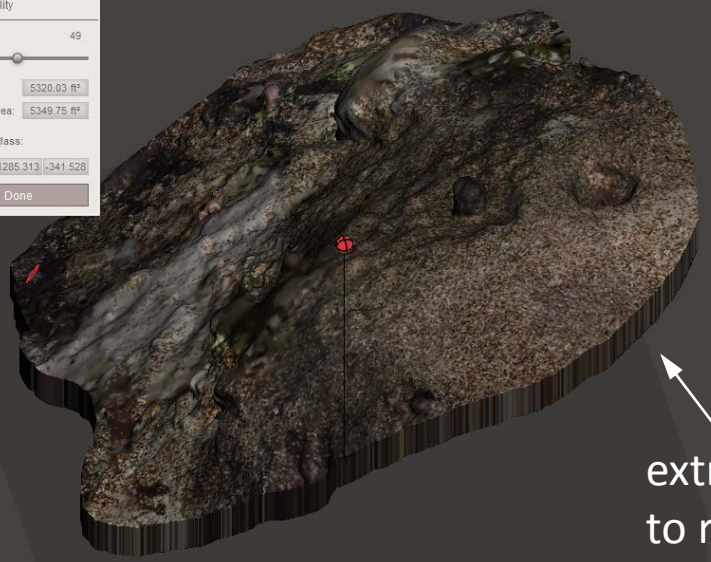
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Pruned,
East,
Orthographic



Oak Tree #7
Before excavation,
Orthographic





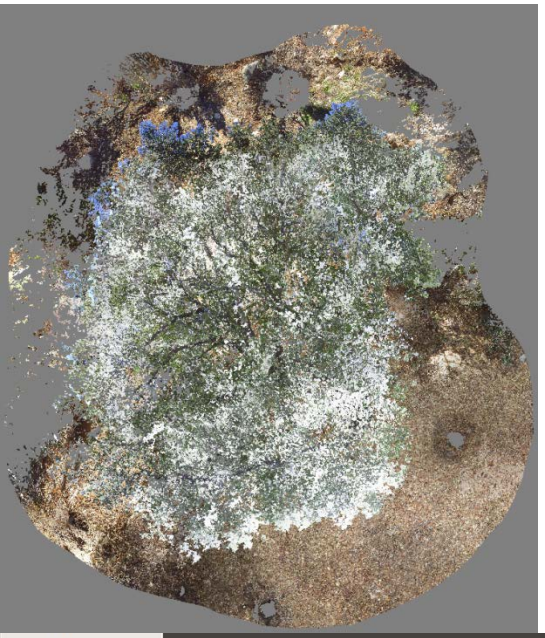


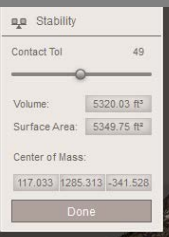
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to root depth

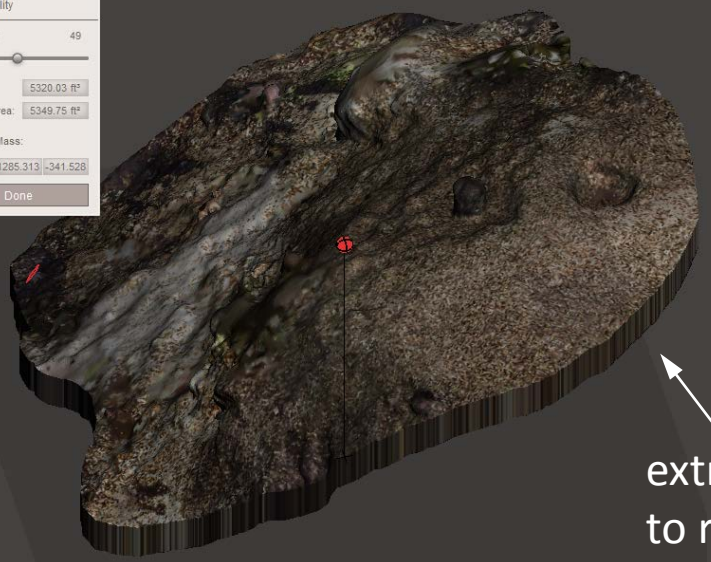
trunk of
oak#7

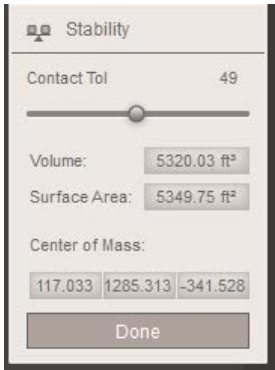
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Oak Tree #7
Before excavation,
Orthographic







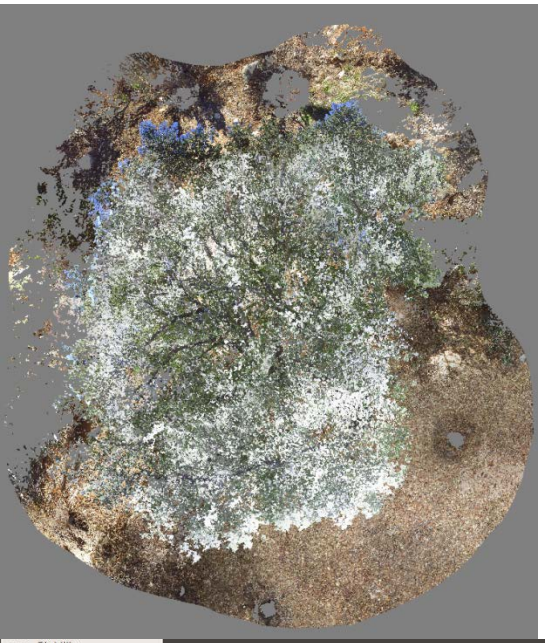


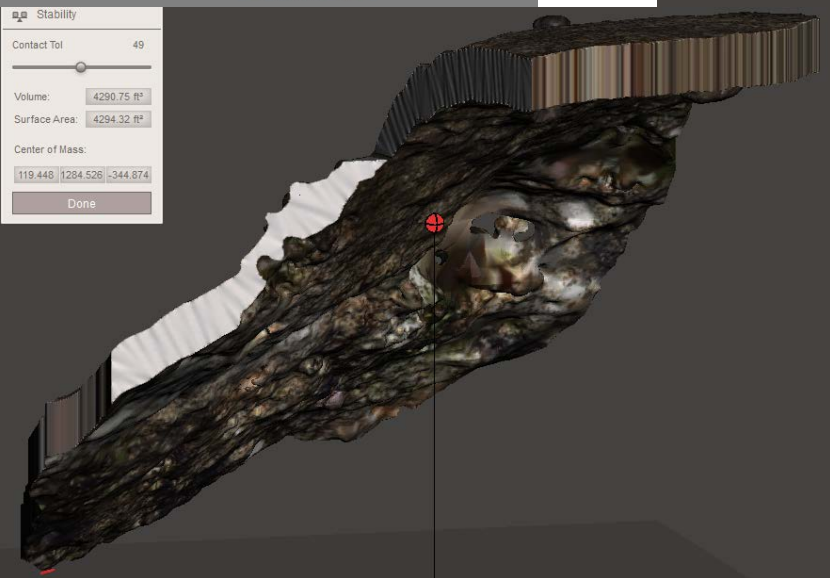
trunk of
oak#7

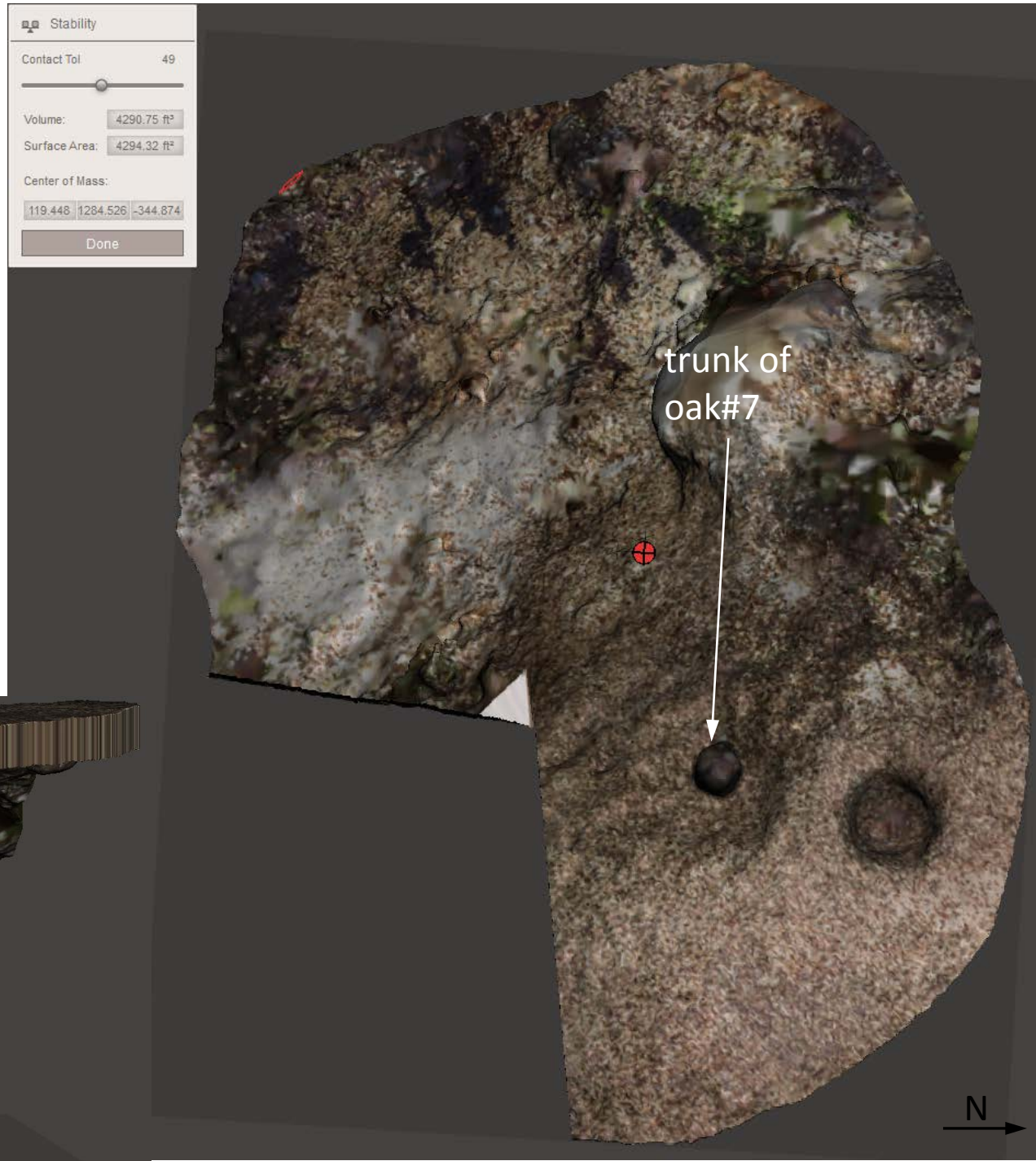
extruded 3ft,
to root depth

N

Oak Tree #7
Root removal,
Orthographic







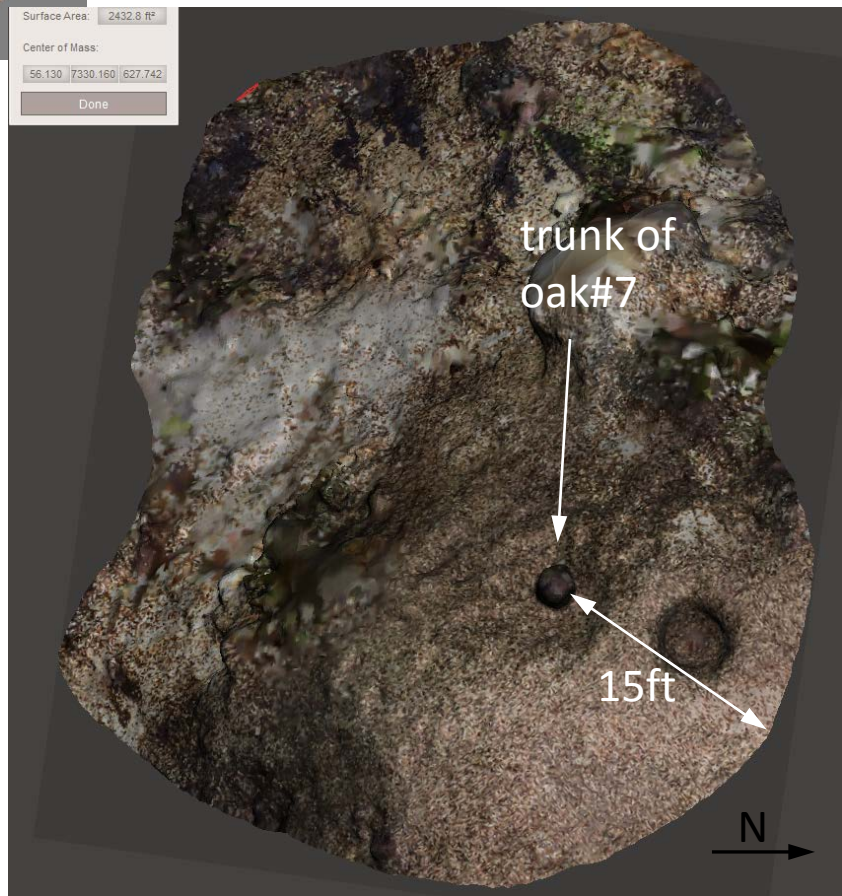
Oak Tree #7
temp compaction
Orthographic



Edge of
construction
fence at 3-5x DBH



Area not
subjected
to marginal
temp compaction



Attachment 16

Code bodies, municipalities and expert opinion supporting County of Los Angeles planning practice

November 20, 2016

Purpose:

The purpose of this attachment is to provide for reference some guidance from code bodies, expert opinion and other municipal codes that make explicit or otherwise support the planning practices applied to our case by the Department of Regional Planning.

Key Issues:

1. Mr. Tsai and his planning consultant appear unfamiliar with the concept of "building segments" in stepped or terraced building designs, and with the separate assessment of height and stories above grade in each segment. Note that the County of Los Angeles explicitly encourages terraced or split-level designs in its Hillside Management Area Design Guidelines (see Attachment 14, citation S at 8).
2. Mr. Tsai and his planning consultant appear unfamiliar with the prevailing method of measurement of height in hillside planning districts, instead arguing for an interpretation in which "height" is not measured vertically. The County of Los Angeles uses "plumb-line" height, the most accurate, least prescriptive approach there is to measure height.
3. Mr. Tsai and his planning consultant have misunderstood the extent of building segments that the County has classified as a "cellar." Despite explicit dimensions in supporting materials, they also appear to have misunderstood the extent of the home that is below grade. These errors have cascaded to other claims that our project "does not meet the County's minimum habitable space requirements," an interesting assertion for a group seeking to further reduce the already modest size of our project.

Building Segments:

We believe the California city of Brisbane in San Mateo county on the hilly lower slopes of San Bruno Mountain has the clearest explanation of building segments, as they apply to their definition of height:

"Height is not necessarily measured from the top of a building to the bottom. While from a distance, for example, a building containing four floors that step up or down a hillside in three two-story *segments* may look taller than the three-story, single-*segment* building next door, the opposite may be the case. Because height is measured per *segment*, a building map made up of multiple *segments* can have a lower height than one made of a single *segment*." (emphasis in the original, from http://www.brisbaneca.org/sites/default/files/Guidelines%20for%20Measuring%20Height.pdf at 5).

Each building segment is defined by some change in the floor levels that comprise a structure. A given floor level may be classified differently across its area i.e. it may span several building segments, and function as the first story above grade, second story above grade, a basement, etc. The International Building Code Handbook has a figure that makes this clear:

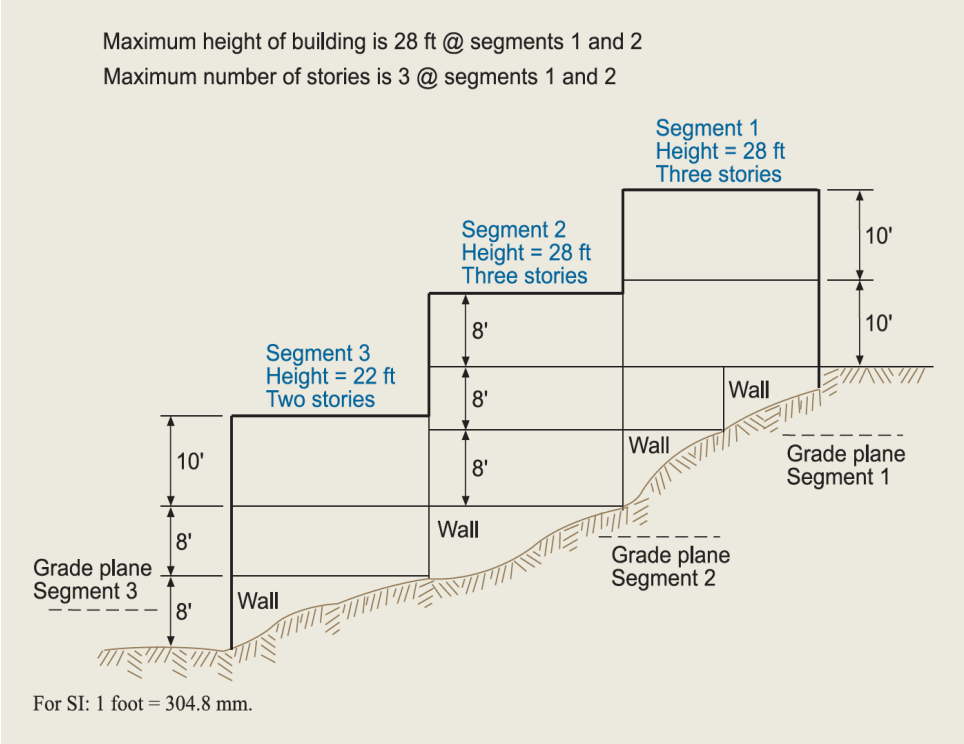


Figure 202-15
Terraced building.

Illustration 1: From the IBC Handbook, 2012, terraced building segments are evaluated separately for each segment.

In this figure, five levels are presented, and e.g. the second from the lowest level functions as either the second story above grade of two stories, or the first story above grade of three stories. Fundamentally, the term “story *above grade*” implies that an assessment is made *vertically*. Any other interpretation would be *arbitrary*. Thus, one stands on the lowest level of each building segment and counts the number of floors above i.e. along zenith. Assess the lowest level as a story above grade or not according to the definition provided by the jurisdiction, and these two pieces of information dictate the number of stories above grade at that point in the footprint. This is done over every point in the footprint. To be crisp, the IBC Handbook acknowledges that the five-level building included above has three stories.

We also show our home in this simplified sense. We have four building segments. Segment one contains the office. In this segment, the main level is the second of two stories above grade. Segment two describes the main level where there is neither office below nor garage above. In this segment, the main level is the first and only story above grade. Segment three describes the main level where there is *only* garage space above, and no office below. In this segment, the main level is the first of two stories above grade. Segment four describes the main level where there is garage and loft level above. Only in this fourth segment does the main level need to qualify as a cellar to be compliant with the code.

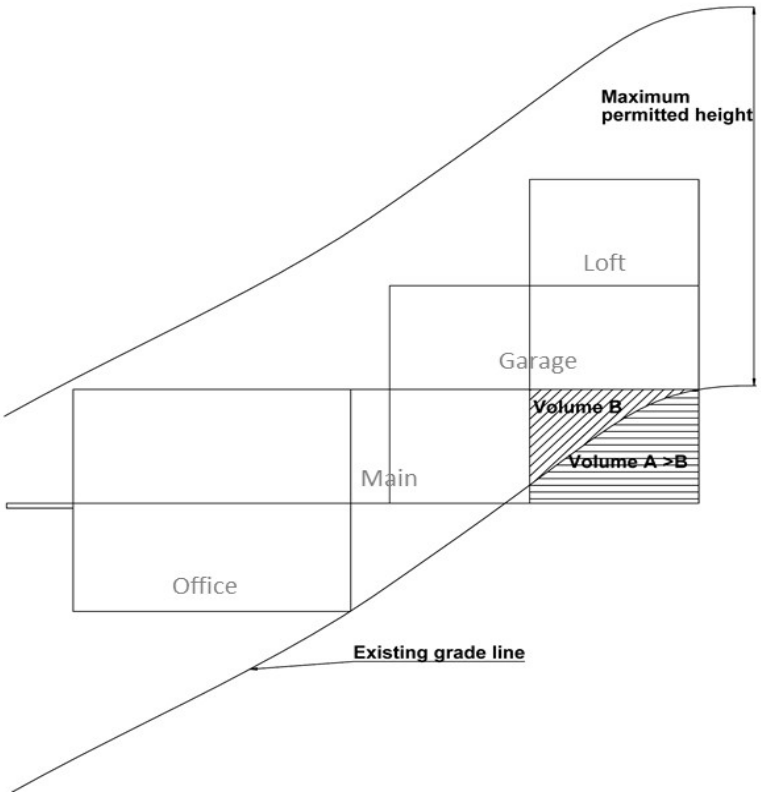


Illustration 2: Analogous representation of 3577 Canyon Crest, showing four distinct building segments.

Many other municipal codes (excerpting below just a few of those in California) contain this statement ascribing the separate reference of each building segment:

"The height of a stepped or terraced building is the maximum height of any segment of the building."

- San Diego: https://www.definedterm.com/a/definition/170326
- Long Beach: http://longbeach-ca.elaws.us/code/muco_voliii_title21_ch21.15_sec21.15.1330
- Sonoma County: http://www.sonoma-county.org/prmd/docs/techbulletin/b-26x.pdf
- Napa County: http://countyofnapa.org/WorkArea/DownloadAsset.aspx?id=4294967670
- City of Brisbane: http://www.brisbaneca.org/sites/default/files/Guidelines%20for%20Measuring%20Height.pdf
- Paradise: https://www.municode.com/library/ca/paradise/codes/code_of_ordinances?nodeId=TIT17ZO_CH17.06GESIDERE_17.06.300REDE

This statement with the Uniform Building Code, the basis for many California municipal codes before it was rolled up into the IBC: https://books.google.com/books?id=ADrLrR-rw8gC&pg=PA61&lpg=PA61&dq=%22stepped+or+terraced+building%22&source=bl&ots=luRdi_ZrVZ&sig=uOkR8TIbylchFdKgAwr0zct8la0&hl=en&sa=X&ved=0a

hUKEwjng9LFv6TQAhXrK8AKHTxuBdkQ6AEIQzAK#v=onepage&q=%22stepped%20or%20terraced%20building%22&f=false.

Cellar and "story above grade"

Opposition misunderstandings may stem in part from grafting connotations onto the terms "cellar" and "basement," and an unwillingness to acknowledge that the County defines these as a "portion" of a building i.e. not necessarily the entirety of a level. These are essentially loan words approximating a definition of volumetric relationships to grade, for building segments – or portions – of a building. The county definition of "cellar" means that more of the volume of a single level in a building segment is below the ground than above. The county definition of "basement" means that some part of the volume of a single level in a building segment is below the ground, but more is above the ground than below. A basement qualifies as a story above grade, while a cellar does not. This is an eminently reasonable threshold to apply (in fact, the only plausible non-arbitrary threshold), and more conservative than the comparatively arbitrary threshold used by the International Building Code, as a point of reference.

The International Building Code defines a story above grade as:

"STORY ABOVE GRADE PLANE. Any story having its finished floor surface entirely above grade plane, or in which the finished surface of the floor next above is:
More than 6 feet (1829 mm) above grade plane; or
More than 12 feet (3658 mm) above the finished ground level at any point." (see Attachment 14 citation OO).

In the International Building Code the grade plane is measured separately for each building segment, per Figure 202-15 above and is calculated as a horizontal "average" of the grade across that building segment, per Figure 202-12 below. This is a prescriptive approach often derived from elevations at the corners of a building segment. It is consistent with the presumption of a lack of topographical survey, which is uncommon in residential projects in most jurisdictions.

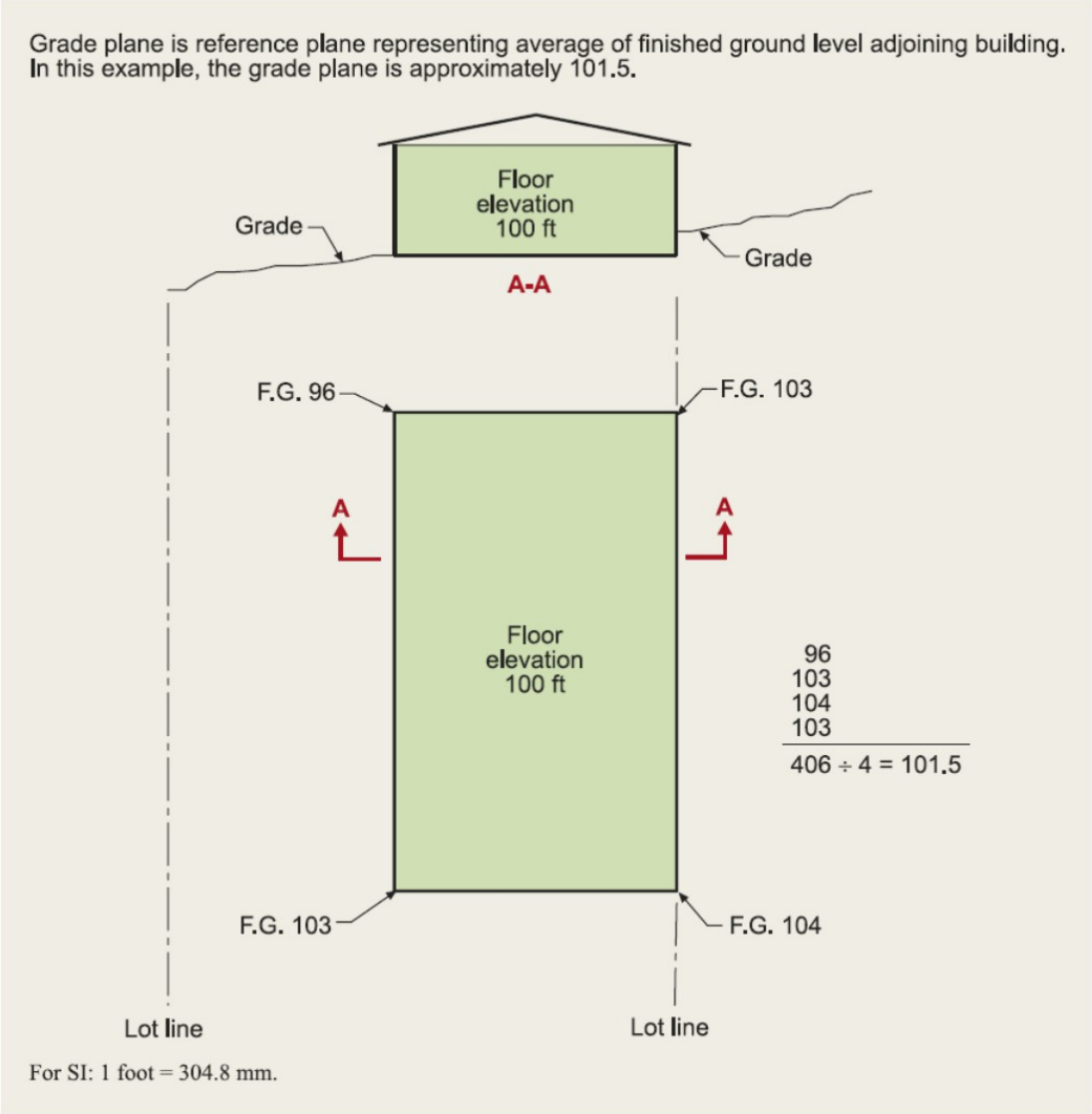


Figure 202-12
Grade plane calculation.

Illustration 3: From the IBC Handbook (2012), grade plane definition, establishing it as an average of grade over an area.

These definitions make it clear that in the International Building Code, a level in a building segment need not be *entirely* below grade to avoid becoming a story above grade. The code explicitly acknowledges potential variability in the grade by clarifying that the floor above a story below grade can nowhere be more than 12' above grade at any point in its area. In other words, according the International Building Code, if we assume the floor spacing in a story is 10', the floor level of a story *below* grade may *at some point* be as much as 2' *above* grade, provided it is below grade over a sufficiently large area and to a sufficient extent elsewhere in the footprint.

In the building segment that includes the garage loft, in the portion of the main level that qualifies as a cellar, the distance between floor and ceiling is 8ft. The distance between floor

and the floor level next above is 8'9.5”. The volumetric analysis confirming this portion of the home as a cellar (floor to ceiling more below grade than above) would place the grade plane for this building segment no less than 4ft above the floor level, resulting in a distance between grade plane to the floor next above that is no greater than 4'9.5”. This is less than 6ft. Likewise, at no point in this building segment does the garage floor rise more than 12ft above the pre-existing ground level. Over nearly the entire extent of this building segment, the ground is less than 8'9.5” below the garage floor.

Independent of any claimed interpretations under Los Angeles County Code, the International Building Code does not treat the portion of the main level of our home in the building segment of the garage loft as a story above grade. According to the International Code Council (http://www.iccsafe.org/codes-tech-support/codes/2015-i-codes/ibc/), the IBC “is in use or adopted in 50 states, the District of Columbia, Guam, Northern Marianas Islands, New York City, the U.S. Virgin Islands and Puerto Rico.” This is a strong indicator of support for the underlying reasonableness and consistency of Los Angeles County planning practice with prevailing methods.

Opposition excerpted a figure that is not terraced to make the claim that we possess no level in a building segment that qualifies as a cellar. The International Building Code has a very similar model indicating the threshold for a “basement” (which is the terminology in the IBC that indicates that a story is below grade, as a cellar is in Los Angeles County). However, in a segmented building, each building segment is considered separately.

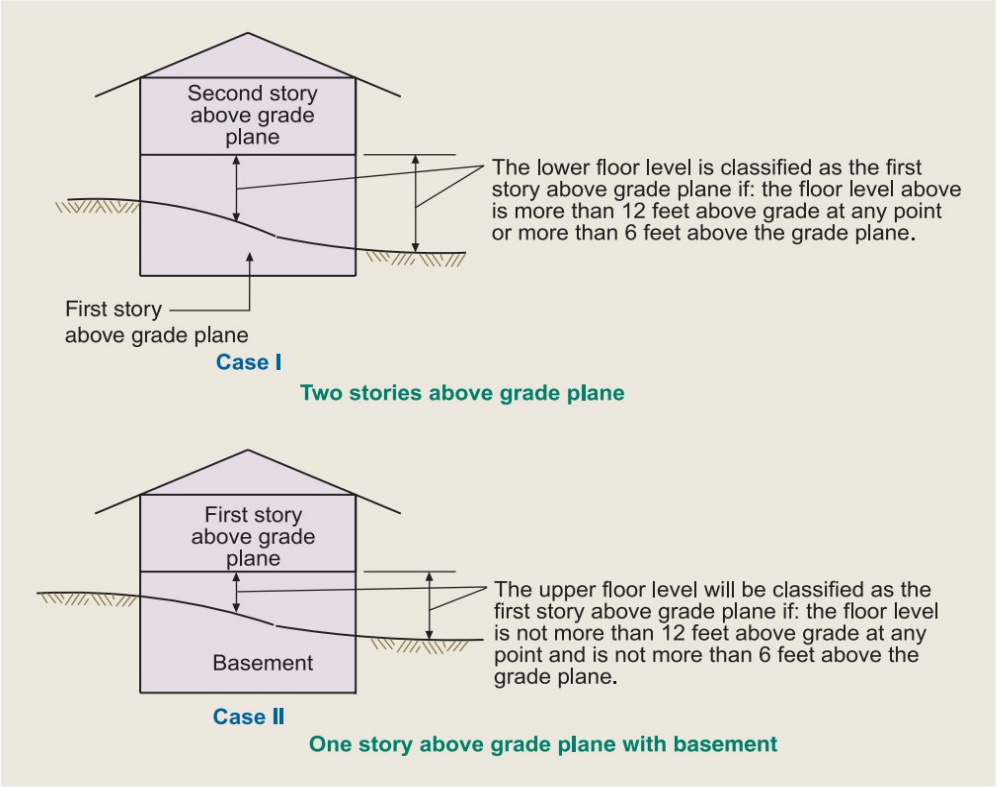


Figure 202-21
Multistory building.

Illustration 4: From the IBC Handbook, 2012, non-terraced story above grade determination.

One of the authors of the International Building Code Handbook was kind enough to clarify that he believed assessing each building segment separately for height and number of stories above grade was a time-honored approach, in large part owing to the practical consideration that egress/fire access requirements that are distinguishable for basements, first and second stories above grade need to stay referenced to the grade.

Doug Thornburg Oct 24

to me

Hello Stephen. I apologize for the tardiness in my reply, I have been out of the office the last couple of weeks. As you mention, there are varying approaches for the determination of building height and number of stories due to the code's lack of specificity. The example in the IBC Handbook is a long recognized approach in the evaluation of a terraced design. It should be noted that the primary concerns taken into account in the opinion are 1) means of egress for the building occupants under emergency conditions, and 2) fire department access to the structure during a fire event. It recognizes the proximity to ground at each building level individually rather than evaluation of the building as a whole.

In response to your question, it is my opinion that your analysis is consistent with the approach taken in the Handbook. As you are no doubt aware, the local jurisdiction has the responsibility and authority to make the final determination. However, the Handbook sets forth a time-honored opinion on how a terraced building could be addressed.

Best wishes on your new home. Doug

From: Stephen Kuhn [mailto:kuhn.s.r@gmail.com]
Sent: Wednesday, October 12, 2016 11:25 PM
To: Doug Thornburg
Subject: IBC Handbook Figure 202-15 - nuance

Hello Douglas,

My wife and I are in the final permitting stages for a modest, net-zero, terraced hillside home of ~1500sqft in the county of Los Angeles. Some neighbors in opposition to our project have tried to seize upon the terraced design - something that is encouraged in our local design guidelines - to claim that our home violates height and story limitations. We find the guidance in Figure 202-15 of the IBC Handbook to be extremely useful as a point of illustration of prevailing practice. While the dozens of municipalities in the county of Los Angeles all have different thresholds for height and number of stories, and different methods for approximating existing grade (e.g. plumb-line envelope, average horizontal grade plane, etc.), we believe the principle is widespread that separate building segments in a terraced design are considered individually for the purposes of measuring height and number of stories.

However, we were looking for a point of clarification that was not made explicit in your description of Figure 202-15 (which I've attached). To us, it follows logically that a single level spanning building segments may serve as either a basement, the first story above grade, or the second story above grade, etc - separately for each building segment. This is relevant where not only height but also the number of stories above grade is constrained by the code. I have illustrated this in the attached, which is an idealized representation of our home. The main level serves as either a basement (as defined in the IBC), the first story above grade, or the second story above grade, depending on the building segment. Do you agree that this follows logically from Figure 202-15?

I will note that the county of Los Angeles defines a story above grade as any portion of a building level that is more above grade than below i.e. possessing a perimeter wall area that is more above ground than below. I also note that the county uses the plumb-line method of measuring height (which is most accurate and feasible because all hillside lots must possess a full topographical survey).

We understand completely if you do not have the time to address this question and appreciate the clarity you have helped bring to the code in your IBC Handbook.

Regards,

Stephen Kuhn

Register now for the International Code Council's ***2016 Annual Conference, Public Comment Hearings & Expo,*** Oct. 16 – 25, in Kansas City, Mo. Join us for top-notch education, great networking opportunities, and to contribute your expertise in the development of the 2018 I-Codes.

Illustration 5: Personal Communication from Doug Thornburg, co-author of the International Building Code Handbook and Vice-President of Education and Certification for the International Code Council (ICC), indicating that this approach to cellar determination is consistent with the Handbook. See credentials here: http://educode.us/pdf/instructorbio.pdf

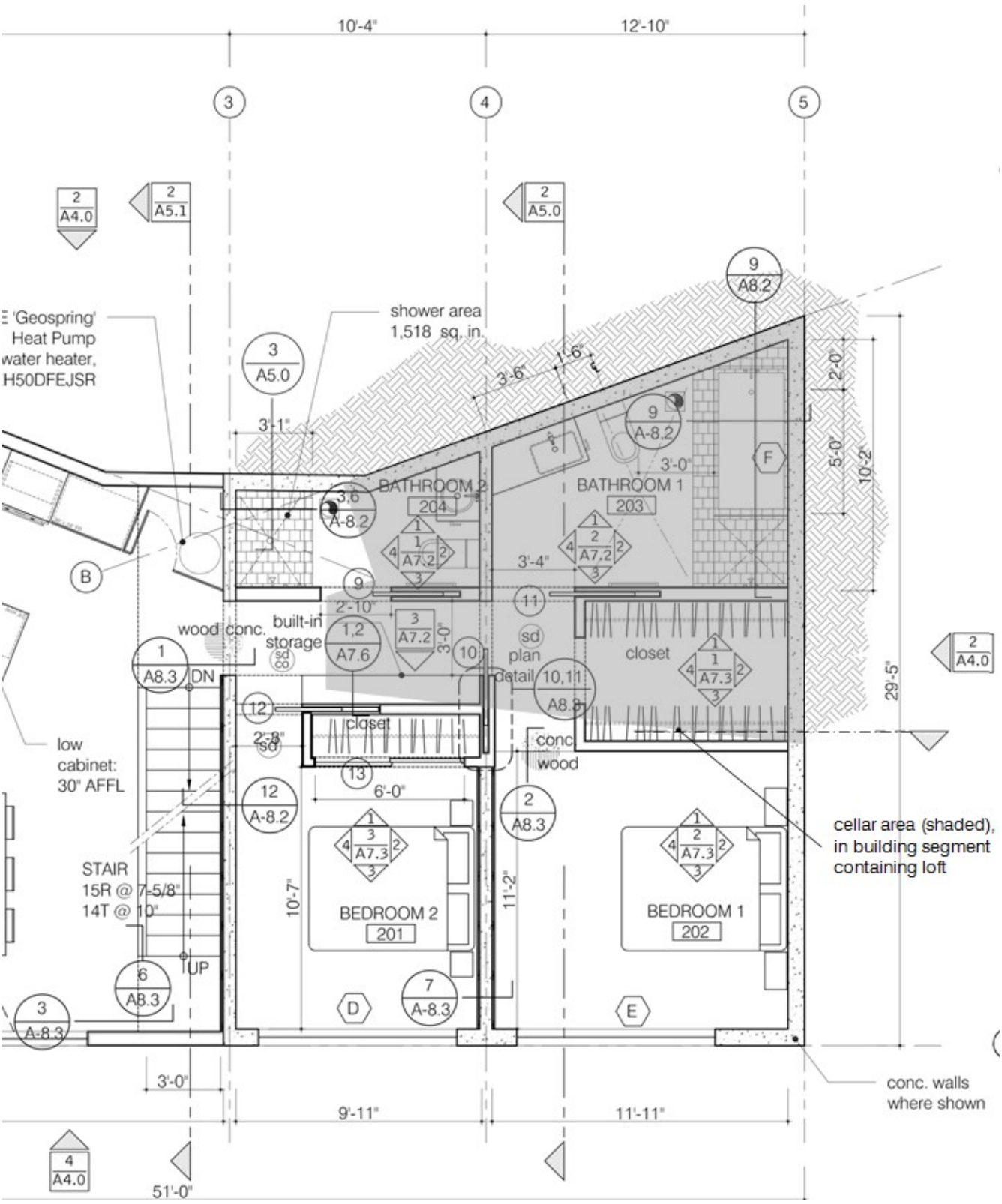
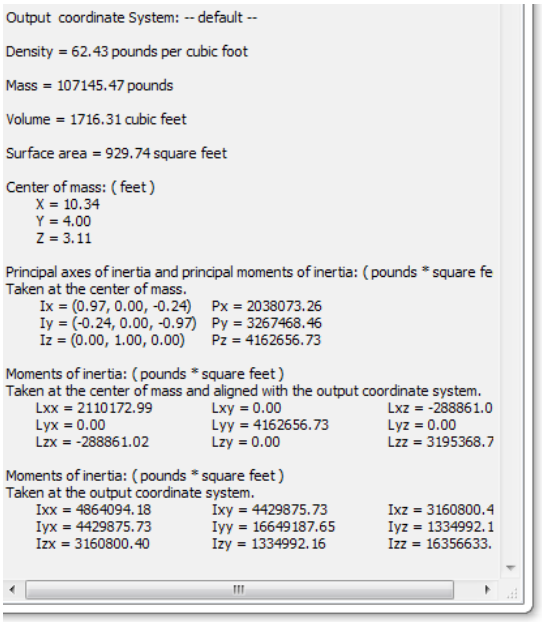


Illustration 6: Excerpt from Floor Plans, showing cellar area in building segment containing loft. This area contains bathrooms, halls and closets. The north edge of the cellar is entirely below grade, as the garage above is accessed across this width. The east edge transitions from fully below grade to partly below grade.

The reduction in square footage of the loft from moving the stairwell to the loft into the garage reduces the cellar volume where it had been most above grade. Our original analysis had chosen the most conservative conceivable interpretation of the cellar volume as a point of illustration, whereas in the analysis included below, we have used the proper interpretation (measuring to the ceiling above per the County Code §22.08 definition of “cellar”, rather than to floor above, as would be done for a story above grade). This distance is 8ft. The entire northern edge of this cellar volume is completely below grade, with our driveway above. We have also incorporated the more accurate LIDAR scan to assess the grade. A 2ft topographical survey exceeds the precision to accurately measure such small volumes.



```
Output  coordinate System: -- default --

Density = 62.43 pounds per cubic foot

Mass = 107145.47 pounds

Volume = 1716.31 cubic feet

Surface area = 929.74 square feet

Center of mass: ( feet )
     X = 10.34
     Y = 4.00
     Z = 3.11

Principal axes of inertia and principal moments of inertia: ( pounds * square fe
Taken at the center of mass.
     Ix = (0.97, 0.00, -0.24)    Px = 2038073.26
     Iy = (-0.24, 0.00, -0.97)   Py = 3267468.46
     Iz = (0.00, 1.00, 0.00)     Pz = 4162656.73

Moments of inertia: ( pounds * square feet )
Taken at the center of mass and aligned with the output coordinate system.
     Lxx = 2110172.99            Lxy = 0.00                  Lxz = -288861.0
     Lyx = 0.00                  Lyy = 4162656.73            Lyz = 0.00
     Lzx = -288861.02            Lzy = 0.00                  Lzz = 3195368.7

Moments of inertia: ( pounds * square feet )
Taken at the output coordinate system.
     Ixx = 4864094.18            Ixy = 4429875.73            Ixz = 3160800.4
     Iyx = 4429875.73            Iyy = 16649187.65           Iyz = 1334992.1
     Izx = 3160800.40            Izy = 1334992.16            Izz = 16356633.
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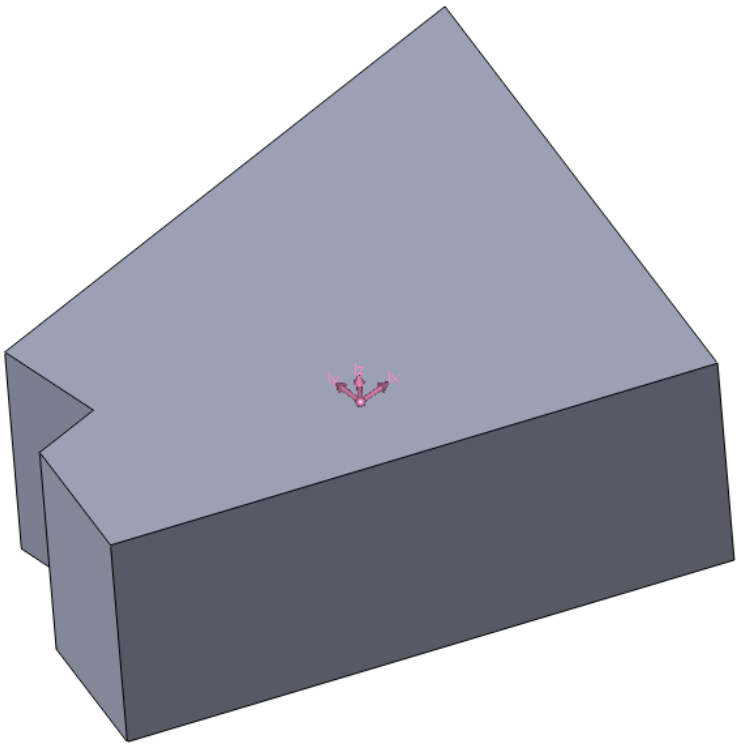


Illustration 7: Cellar volume, comprised of footprint of loft, extruded 8ft (floor to ceiling).

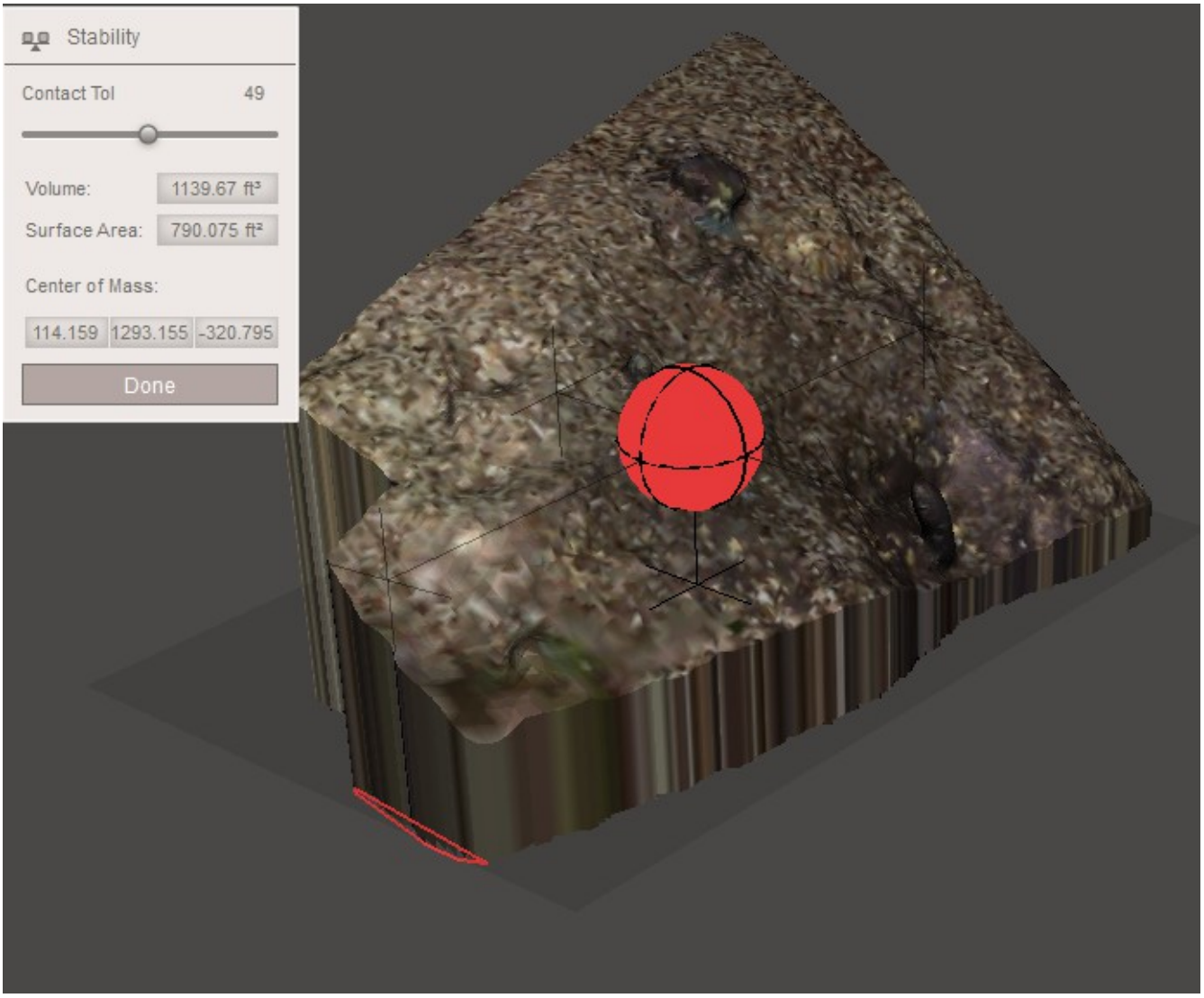


Illustration 8: Terrain mesh, cut to intersect the cellar volume. This volume measures the amount of the cellar volume that is below grade.

As the illustrations above show, the cellar volume in the building segment of the main level that contains the loft is 1716cuft. The amount of terrain that intersects this volume is 1139cuft. This means that 66% of the cellar volume is below grade. This is more than half and meets the county definition of a cellar. The change from an earlier figure of 51% is attributable to the reduced cellar area, measuring from floor to ceiling instead of floor to floor, and a more accurate mesh.

Grade

County Code Section 22.08.070-G defines “grade” as:

“'Grade' means the approved grade of a lot or parcel of land at the time such lot or parcel is

created, except when excavation is proposed. When excavation occurs after the lot or parcel is created, the grade of the excavated area shall be the grade after the excavation. Where fill material has been placed on a lot or parcel after such lot or parcel is created, grade shall be determined by the director. Grade within the perimeter of a structure shall be considered to transition uniformly from the lowest to the highest points of grade at the perimeter of the structure."

The county definition of grade is somewhat circular in that "grade" is an elemental term, referring to the surface of the ground. Depending on the jurisdiction, this is refined with prescriptive approximations of this variable surface (so that a full topographical survey is not required in order to determine where grade is at any given point in a parcel) into a grade plane or reference datum, and treatments of cut and fill are formalized. It is typical to measure grade as the lower of the pre-existing surface, or the finished surface where cut is excavated outside the footprint of the home, leaving a new intersection of the building with ground i.e. a new grade line.

When a building exists and an applicant, say, wishes to add a story, the code clarifies that because the surface of the ground within the perimeter of a house cannot be measured directly by a topographical survey – as is possible for vacant land – it will be assumed to transition linearly i.e. uniformly, from the lowest to highest points of grade along the perimeter. This is the only non-arbitrary approach. The specification of *points* – plural – is required. A planar surface cannot be mathematically defined by two points (the highest and lowest at *any* part of the perimeter) forming a line, and a grade surface is needed over the entire extent of the footprint. So, a surface is constructed from interpolating between grade points around the perimeter using some equitable grid.

This form of approximation is not necessary where no structure is yet present, and so is completely irrelevant to our project, which has a registered topographical survey. As we have no grading outside the footprint of our home, the grade for our home is quite simply the surface of the ground.

Height

While the version of Title 22 currently in effect does not provide explicit guidance on measuring height, because it is commonly understood that height is measured vertically, an impending update to Title 22 does make this clear:

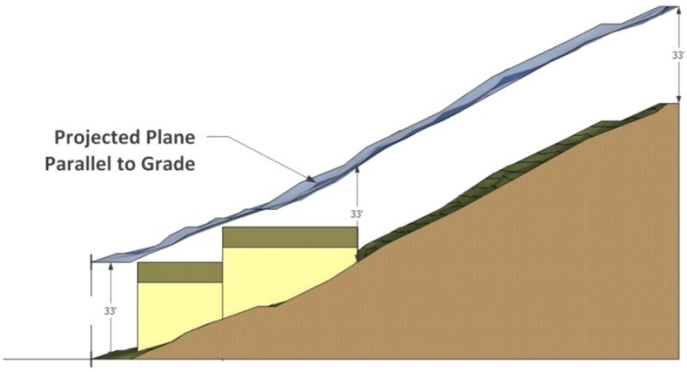
It states that "Measurement of the height of building or structure shall be the plumb line distance from the point being measured to the grade." (see Attachment 14, citation R at 13-14). A plumb-line of course is the line described by a suspended weight (plumb bob) in equilibrium, aligned therefore with gravity i.e. vertically. This is the most accurate and least approximative approach there is to measure height. It describes an envelope with respect to grade, essentially a mirror of grade projected upwards by the height limit.

This is also the approach that the City of Los Angeles adopts, as illustrated in the figure below.

a. Measurement of Height. [§ 12.21 C.10.(d)(1) of the LAMC]

Notwithstanding any other provision in the Code, the height limits in Table 5 – Maximum Height of Structures above shall be measured as set forth below.

(1) **Maximum Envelope Height.** Envelope height (otherwise known as vertical height or "plumb line" height) shall be the vertical distance from the Grade of the site to a projected plane at the roof Structure or parapet wall located directly above and parallel to the Grade. Measurement of the envelope height shall originate at the lowest Grade within 5 horizontal feet of the exterior walls of a Building or Structure.



14

At no point shall any given section of any part of the proposed Building or Structure exceed the maximum envelope height.

A topographic map shall be submitted as a separate plan sheet or as part of the site plan identifying the 5-foot perimeter of the exterior walls, or any other information which the Department of Building and Safety deems necessary to determine compliance with this provision.

Illustration 9: From the City of Los Angeles Baseline Hillside Ordinance, the use of plumb-line height is the most accurate and the least approximative.

Attachment 17

Hillside Management Ordinance Design Measures Checklist for 3577 Canyon Crest

Purpose:

The purpose of this attachment is to demonstrate that even though the Hillside Management Area Ordinance came into effect on November 5, 2015 (as noted at http://planning.lacounty.gov/hma), well after our project application was submitted, our project is compliant with its stated criteria for sensitive hillside development. This supports the Department of Regional Planning review of the appropriateness of our project.

As the Checklist notes:

“Due to the variety, size, geology, hydrology, and complexity of development projects, there is no set number of design measures required in a project to ensure that it, as stated in subsection A of Section 22.56.217 of Title 22, preserves and enhances the physical integrity and scenic values of HMAs, provides open space, and is compatible with and enhances community character. Staff and project applicants are advised that *four design measures per category* (Site Planning, Grading and Facilities, Road Circulation, Building Design, and Landscaping) is typically the appropriate number of design measures to be included in a project to allow the required Ordinance findings to be made for that project.

Staff and applicants are also advised that these numbers are general recommendations, and not absolute requirements. Because projects are tailored to the individual site requirements and conditions, it is possible that more or less measures may be appropriate. When considering whether to support a request for a lower number of measures from an applicant, factors that staff may consider include density, the size of the project, or whether the project is able to meet several partial credit design measures.

In situations where it is unclear whether a design measure is being fully utilized, County staff will use its recommendation for whole or partial design measure "credit" towards satisfying the Ordinance findings.” (emphasis added)

In other words, compliance with four design measures is generally deemed sufficient, though a greater or lesser number is permitted the Department of Regional Planning at its discretion, as site conditions render a greater or lesser number of design measures relevant.

County Code Section 22.56.217.B.9 notes that “'Sensitive Hillside Design Techniques' means any site planning, engineering, landscaping, and/or architectural design technique(s) that, individually or combined, minimize horizontal and vertical cut or fill hillside disturbance; minimize the total volume of grading; minimize impact to scenic hillside views; and are compatible with or enhance community character. Such techniques may be found in the Hillside Design Guidelines.”

1. Site Planning

Conserve land area and form, link open spaces, and promote a more attractive pattern of development that complements the hillside terrain.

We note that most of the measures outlined in this section pertain to the structure of subdivisions or neighborhood layout and thus are not directly applicable to a single-family residence on an existing lot, though the correspondence of our lot with these intentions is referenced in places.

Design measures:

1.1. Locate 50% or more of the project's buildings and developable lots within 500 feet (ft.) of existing sewer, water and roadway infrastructure.

100% of our home is located within 100ft of existing sewer, water and roadway infrastructure. This measure is satisfied.

1.2. Locate at least 50% of the development footprint on the flattest portions of the site (i.e., those areas having slopes of less than 25%) when that area does not contain rare, sensitive, or State or federally listed threatened or endangered species.

We make use of the 1,000+sqft flat area at road level for our permeable gravel driveway, for our construction staging area, and for supplementary parking for our neighbors at 3589 Canyon Crest Rd, after construction completes.

1.3. Utilize all previously graded or disturbed areas on the site for new development to the greatest extent possible, before developing new areas, so that new development within undisturbed areas is reduced.

The flat area at road level has been graded and disturbed, and is made use of to the extent possible for our driveway, parking and staging. However, more substantial encroachment in the placement of part of our structure would have resulted in greater impacts to oak trees.

1.4. For new land divisions, contain at least 75% of developable lots within blocks that have a perimeter of ¼ mile (1,320 ft.) or less, measured from the roadway centerline. (Note: The purpose of this design measure is to avoid unattractive "superblocks" of development on the hillside and instead use smaller block sizes that are more distinguishable from each other and can better fit in with the natural topography.)

This measure is not applicable.

1.5. For new land divisions, where lot clustering is allowed and compatible with community character, reduce all single-family lot sizes to 15,000 square feet (sf.) or less.

This measure is not applicable.

1.6 For new land divisions, utilize a variety of small, medium and large lot sizes (such as 5,000, 10,000 and 20,000 sf.) in such a manner that it will produce different building layouts and sizes.

This measure is not applicable.

1.7. Throughout the project site, differentiate elevations so that elevations between adjacent pads, between adjacent blocks, or between adjacent streets, range from 1 to 30 ft.

The difference in elevation between the lowest absolute elevation of our home and street grade, and between the highest absolute elevation of our home and street grade are both less than 30ft. Building pads along lower Canyon Crest occur at a variety of elevations, following the natural topography of the terrain. Our lowest and highest absolute elevations are also within 30ft of the building pad of 3589 Canyon Crest Rd, the residence immediately to the north. This measure is satisfied.

1.8. Place the narrow side of the lot (or building pad) such that it allows the building façade to face the roadway.

The minor axis of our home is designed to face the roadway, in contrast to most other homes on lower Canyon Crest. This measure is satisfied.

1.9. Utilize terraced building pads in select areas within the site to preserve slopes that exceed 50%.

We employ a terraced design, but make limited use of grading to create new building pads.

1.10. Preserve the most prominent and unique slopes, hilltops and ridgelines on the site for recreational uses within dedicated (or common) open space areas.

This measure is not applicable.

1.11. Exceed the minimum Ordinance open space acreage requirements by 10% or more.

The minimum Ordinance open space acreage requirement for any land use designation except “rural” is 25%. “Required Open Space. At least 25 percent of the net area of the development site shall be provided as required open space. Development in a Residential Planned Development Zone shall also comply with open space requirements in accordance with subsection B.4 of Section 22.20.460.” (County Code §22.56.217.E.1.b). As the footprint of our home is less than 3% of the coverage of our more than 1 acre lot, we are preserving even more than 10% in excess of the rural open space acreage requirement of 70%. This measure is satisfied.

1.12. Preserve contiguous undisturbed open space throughout the site, utilizing segments of land that are at least 150 ft. wide.

This measure is worded vaguely. It is not possible to develop a site and to preserve open

space throughout the site. We preserve the vast majority of our site as open space, with a contiguous length of more than 400ft.

1.13. Utilize at least 25% of the overall project's disturbed (improved) open space for recreational purposes.

This measure is not applicable.

1.14. Locate and design improved open space as a buffer (recommended at least 50 ft. wide) between undisturbed open space and development.

To the extent the improvement of the ~50-100ft of the hillside below our home with native chaparral to augment slope stability may be accurately called "improved open space," and given that the open space of the riparian environment of the canyon below will remain undisturbed, this measure is satisfied.

1.15. Create scenic vista points at prominent locations such as hilltops and ridgelines, providing amenities at the points and making them accessible to the public. When provided, this shall count as improved open space.

This measure is not applicable.

1.16. Provide private (connector) trails or pedestrian paseos that link together all of the project's open space areas (1 acre or larger) and connect to any onsite or offsite public trails.

This measure is not applicable.

1.17. For new land division blocks of development that exceed 800 ft. between intersections, design mid-block through-paths such as trails or pedestrian paseos, that connect to intervening streets or open space areas, and make the paths accessible to the public.

This measure is not applicable.

1.18. Use any other site planning techniques not listed in this section that either through innovation or in consideration of specific site constraints or other specific project factors, are tailored to are tailored to allow the project to meet the findings required by this Ordinance.

Though much of this section does not apply to single-family residences, we believe we comply with at least five measures, and possibly with the intent or spirit of additional measures.

2. Grading and Facilities

Avoid mass landform alteration, preserve the physical shape of the hillside, and maintain pleasant views.

2.1. For projects with more than 100,000 cubic yards of onsite earthwork, avoid any mass cut and fill grading that would result a 25 ft. or greater in elevation change from the existing natural grade to the finished manufactured grade at any one point on the site.

As our home does not require more than 100,000 cubic yards of onsite earthwork, this measure is not applicable.

2.2. Use contoured grading lines that match or closely match the existing topography, generally avoiding lines that trace 45 to 90 degrees against the natural contour.

Our home requires no grading outside the footprint of our home, and so we are compliant with the spirit of the rule to preserve the existing topography. This measure is satisfied.

2.3. Utilize undulating banks for graded slopes in order to maintain the natural pattern of the topography to the greatest extent feasible.

Our home requires no grading outside the footprint of our home, and so we are compliant with the spirit of the rule to preserve the existing topography. This measure is satisfied.

2.4. Design the project's longer graded horizontal slope surfaces and slope increments (typically 300 or more ft. in length) to be variable in terms of height and spacing to replicate natural topographical patterns, taking into account hydrology design and any sewer, water and storm drain infrastructure.

Our home requires no grading outside the footprint of our home, and so we are compliant with the spirit of the rule to preserve the existing topography. This measure is satisfied.

2.5. Locate water tanks and other similar types of structures that are 20 ft. tall or taller so that their highest point is at least 50 ft. below the crest of the highest hilltop or ridgeline, on or off the site, that is located within 500 ft. of the water tank or similar structure.

This measure is not applicable.

2.6. Locate visually intrusive structures (such as water tanks) so that they are hidden from public views, placing them behind hills, buildings, landscaping, existing trees or other more appropriate and attractive screening objects.

This measure is not applicable.

2.7. Avoid berms and block walls that obstruct views from or to buildings. Instead, locate and design the buildings in accordance with the other site planning, road circulation, building and landscaping design measures contained in these Guidelines.

Our home does not make use of berms or block walls, and so we are compliant with the spirit of the rule to minimize visual impacts from berms or block walls. This measure is satisfied.

2.8. Design drainage facilities as multi-purpose site features that are attractively landscaped, conserve water, improve water quality, and provide opportunity for recreational activity. (Note: These features may be counted towards required open space acreage, as improved open space, if designed to the County's satisfaction. Such features should be located in areas already designated for improvement such as park sites, roadsides, or previously-graded flat areas.)

As our home requires no new landscape drainage features, and given the reference to recreational activity, this measure is not applicable.

2.9. Build retaining walls to be less than six ft. in exposed height, and terrace the walls where appropriate and in a manner that does not substantially increase visual impacts. Subject to the approval of Los Angeles County Department of Public Works.

Our home does not make use of any exposed retaining walls, and so we are compliant with the spirit of the rule to minimize visual impacts from retaining walls. This measure is satisfied.

2.10. Use earth-tone colors and materials for exposed hardscape surfaces such as block walls, retaining walls, drainage terraces and storm gutters.

Our home does not make use of exposed block walls, retaining walls, or drainage terraces. The term "storm gutters" in this context may mean a manufactured swale. The existing drainage swale that runs across our property is lined with (earth-colored) stone, and our own roof drainage gutters and downspouts are concealed as an integral part of the roof and wall. This measure is satisfied.

2.11. Use attractive designs and materials that are compatible with, or that enhance, community character for any walls or fencing used to enclose public facilities (such as debris and retention basins), especially when such facilities are in highly-visible locations and/or are designed as "multi-purpose" site features. (Note: Safety and security shall be maintained for the facilities when using a more attractive wall or fence design.)

As our home does not enclose any public facilities or make use of any fencing, this measure is not applicable.

2.12. Use any other grading and public facility design techniques not listed in this section that either through innovation or in consideration of specific site constraints or other specific project factors, are tailored to the site and allow it to meet the findings required by this Ordinance.

This section again referenced several measures that apply only to larger subdivisions or mixed use facilities. Many of the measures also assume the existence of more impactful

design properties, such as the use of exposed retaining walls, drainage devices, and grading outside the footprint of development. In creating a design that avoids these altogether, we are compliant with the intention of the rules to minimize their impact, satisfying at least six measures.

3. Road Circulation

Preserve the physical shape of the hillside, maintain good connectivity, and provide scenic roadway views.

All of the measures outlined in this section pertain to the structure of subdivisions or neighborhood layout and thus are not applicable to a single-family residence on an existing lot served by an existing roadway. In other words, all of these measures are not applicable.

3.1. Provide at least two points of paved roadway access to a County highway (major or secondary) for any project (or portion of development) greater than 50 dwelling units and 10 acres in size. (Note: This practice should only be considered when the second road connection will not require a substantial amount of additional grading; special consideration may be given when connecting to an adjacent community or providing access to community services such as schools and parks.)

3.2. Locate and design new roadways to follow the existing natural slope contours, avoiding mass landform alteration and excessive grading.

- Subject to the approval of Los Angeles County Department of Regional Planning.
- May be a private roadway or fire lane but shall be un-gated, accessible by the public, and of sufficient width to meet Los Angeles County Fire Department requirements.
- Subject to the sight distance, signing, striping and marking requirements of Los Angeles County Department of PublicWorks.

3.3. Utilize private drives instead of public streets on 50% or more of the project road circulation system to allow slightly higher gradients (up to 15%) that result in less grading and better conformance to natural slope contours, taking into account hydrology design and any sewer, water and storm drain infrastructure.

3.4. Use undulating patterns and varying grades for roadway segments exceeding 1,000 ft. in length.

3.5. Connect roadways to form blocks wherever feasible (2,000 sf. or less block perimeter), such that at least 75% of the development footprint (to include public facilities) is contained within blocks. (Note: The purpose of this is to provide good access and connectivity for safety reasons, and to use roadways to buffer development from natural vegetated areas.)

3.6. Use culs-de-sac in limited instances, such as where road connections would require grading into 50% or greater slopes or grading into 25% or greater slopes for a distance of more than 500 ft.

3.7. Provide unpaved trail or paved pedestrian path thru-connections (e.g. pedestrian paseos) for all culs-de-sac. (Note: Fee-dedicated strips are recommended instead of easements on private lots.)

3.8. Utilize “edge” (single-loaded) roads along at least 50% of the development perimeter, in areas with steep hillside terrain, and to buffer development from undisturbed open space.

3.9. Place all new roadways and paved driveways at least 100 ft. below the crest of the tallest hilltop or ridgeline located onsite, or offsite within 500 ft. of the project boundary.

3.10. Design “split” roadways or landscaped medians to preserve unique or important natural features (such as oak trees or rock outcroppings).

3.11. Use bridge design techniques that are attractive, maximize the preservation of natural watercourses, and allow easy wildlife migration beneath the bridge (minimum 6 ft. of vertical and horizontal clearance recommended).

3.12. Use private drives instead of public roadways when it will result in narrower roadway widths that create less grading. (Note: Private drives should conform to the Los Angeles County Private Drives and Traffic Calming Manual, and should not eliminate sidewalks or reduce sidewalk connections throughout the development.)

3.13. Use any other roadway circulation design techniques not listed in this section that either through innovation or in consideration of specific site constraints or other specific project factors, are tailored to the site and allow it to meet the findings required by this Ordinance.

4. Building Design

Promote more attractive views through building siting and orientation, and use of building materials and colors that complement natural hillside features.

4.1. Place structures and/or limit their height so that their rooflines are equal to or below the elevation of the roadway grade of the development above.

Given the topography of our lot, it is not possible to fit a house entirely below street grade, nor do any of the houses along the west side of Canyon Crest do so, with the exception of 3737 Canyon Crest at a setback of nearly 90ft, far closer to the canyon bottom. The three developments above our home are located at 3588 Canyon Crest, 3566 Canyon Crest and 3556 Canyon Crest. Peak and average roofline elevations above the street grade plane for those portions of the home visible from the road were obtained with LIDAR scans.

3588 Canyon Crest Road:

This home presents more than 60ft of frontage, with offsets to the road at peak elevations varying from ~28 to 49ft. The height of the home above the street grade plane varies from ~27.5' to ~28.8'. As the roofline is uniform across this frontage, the average height above the street grade plane is therefore ~28.1', and the maximum height above the street grade plane is 28.8'.



Illustration 1: Height of 3588 Canyon Crest above the street grade plane at SW corner



Illustration 2: Height of 3588 Canyon Crest above the street grade plane at NW corner, and width

3566 Canyon Crest Road:

This home with its garage presents more than 105ft of frontage, with offsets to the road at peak elevations varying from ~39ft to 52ft, and offsets to the road at lower elevations closer still. The height of the home above the street grade plane varies from ~19.4' to 25.6'. The average height of the garage above the street grade plane is no less than 19.4', over ~31% of the width of the home. The average height of the home itself above the street grade plane is ~25.1'. Therefore the average height of the home and garage above the street grade plane is 19.4*0.31 + 25.1*0.69 = 23.3', and the maximum height above the street grade plane is 25.6'.



Illustration 3: Height of 3566 Canyon Crest Road above the street grade plane at north of house



Illustration 4: Height of 3566 Canyon Crest Road above the street grade plane at garage, and width

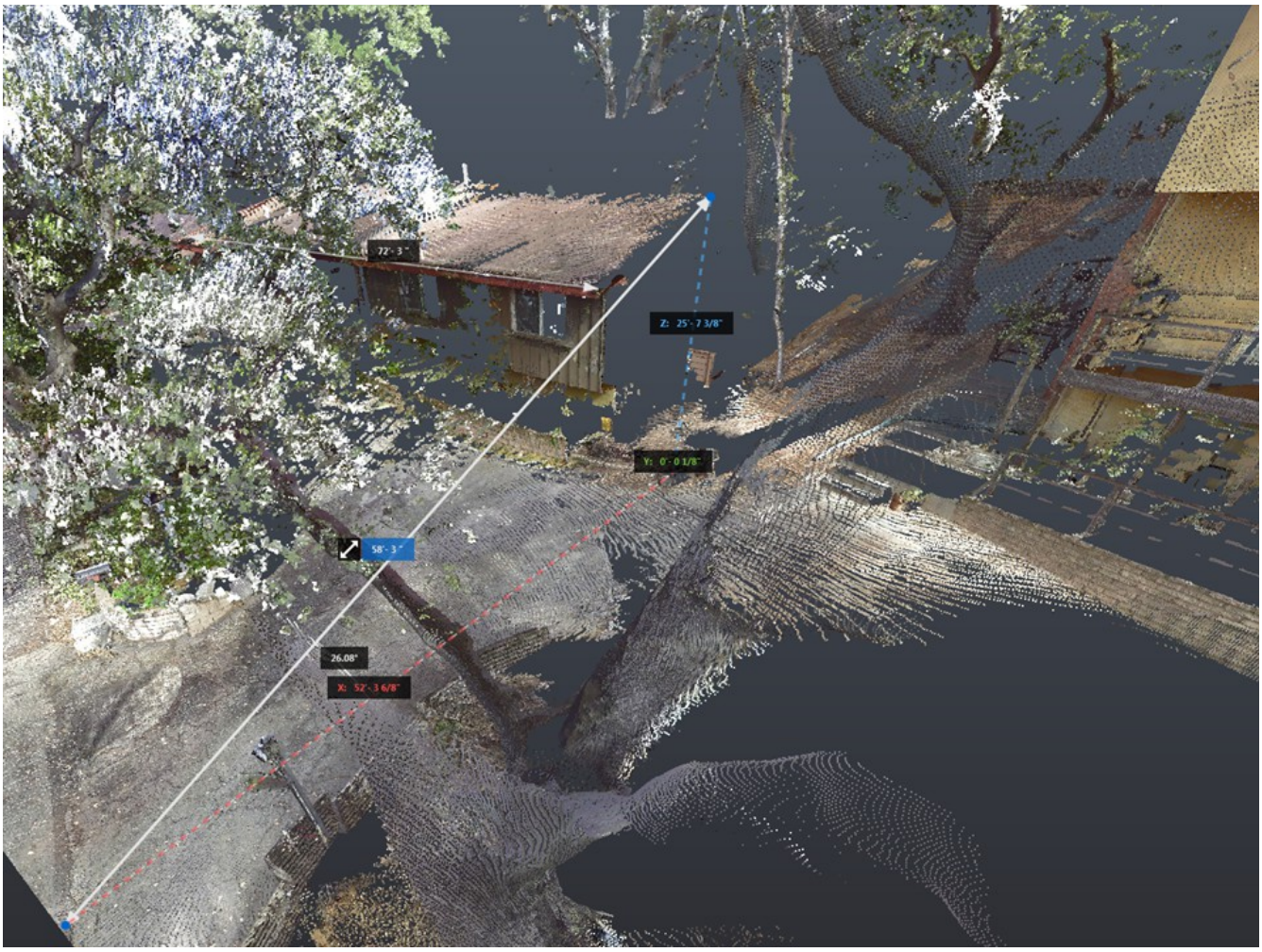


Illustration 5: Height of 3566 Canyon Crest Road above the street grade plane at south of house, and width

3556 Canyon Crest Road:

This home presents nearly 30ft of frontage at 2.5 stories, and an additional ~17ft of frontage at 1.5 stories, with offsets to the road at peak elevations ranging from ~49 to 51ft. The height above the street grade plane varies from ~29.6' to 36.3'. The average height above the street grade plane of the 2.5 story building segment is no less than 36.3', over ~64% of the width of the home. The average change in elevation above street grade of the 1.5 story building segment is ~29.6'. Therefore the average change in elevation of the home above street grade is 36.3*0.64 + 29.6*0.36 = 33.9', and the maximum change in elevation above street grade is 36.3'. It should be noted that the maximum height of the home above grade (not change in elevation above grade) appears to be ~27'.



Illustration 6: Height of 3556 Canyon Crest Road above the street grade plane, at north of house

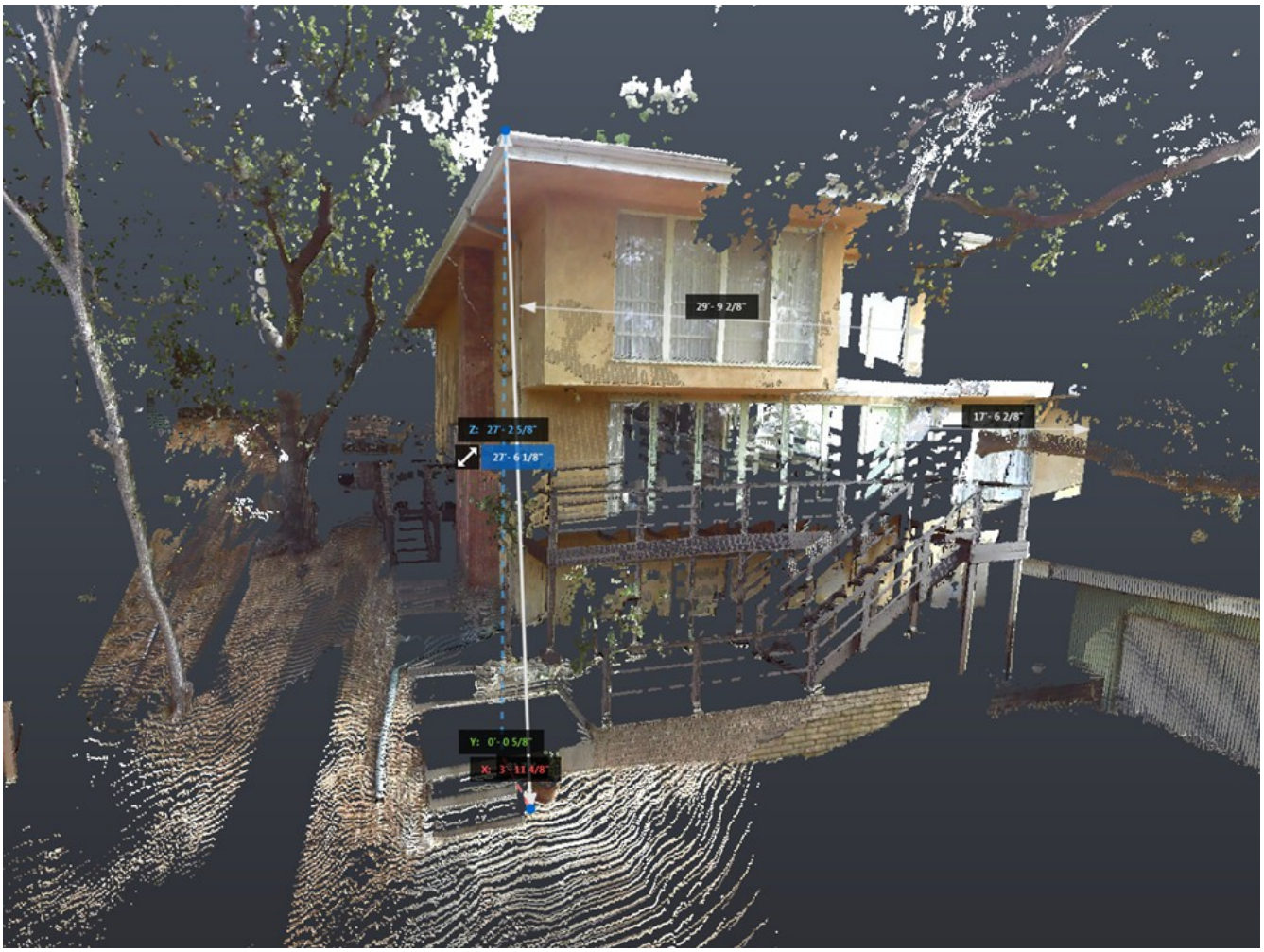


Illustration 7: Height of 3588 Canyon Crest above grade, and width of 2.5-story and 1.5-story building segments.

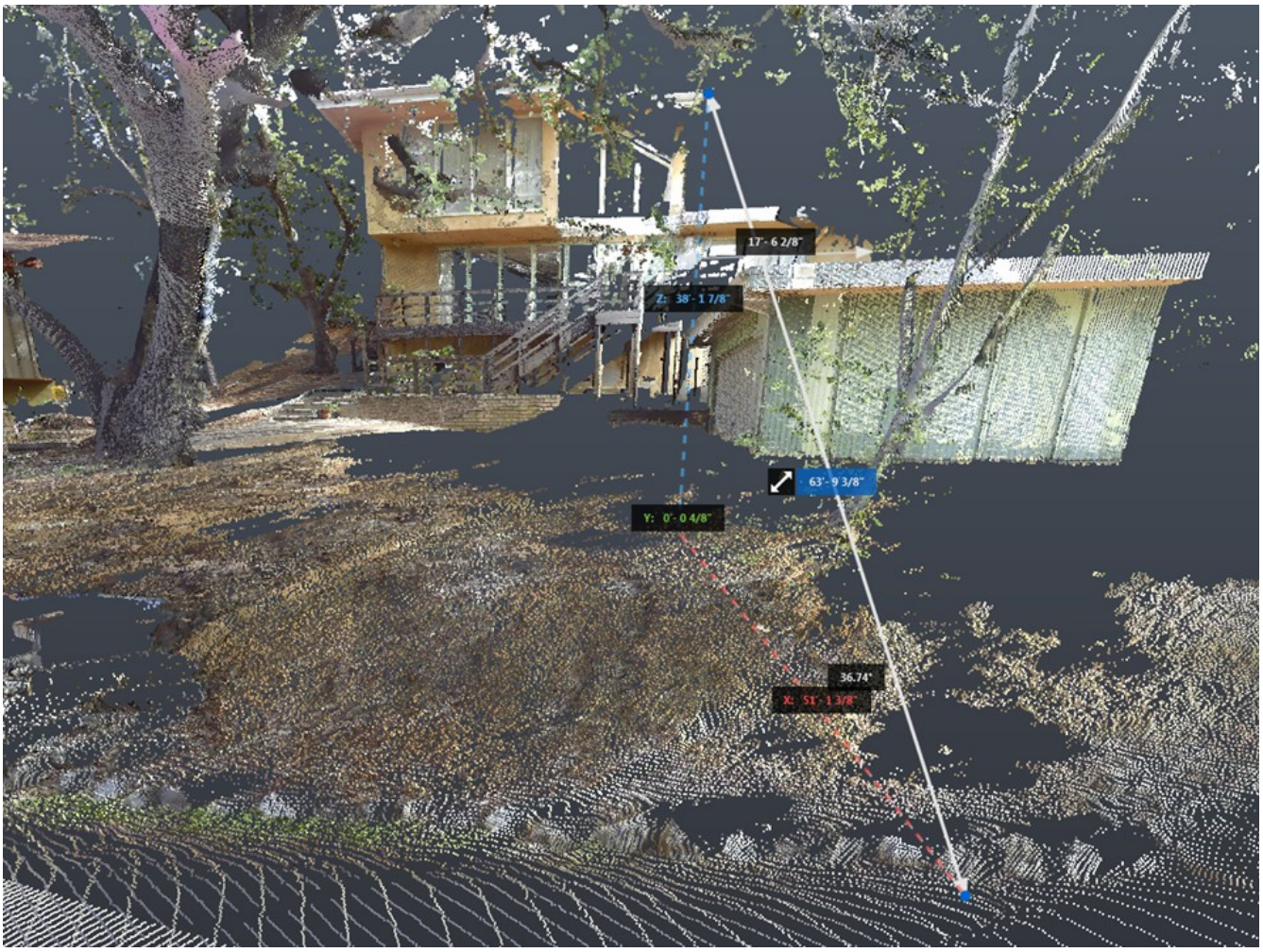


Illustration 8: Height of 3556 Canyon Crest Road above the street grade plane at south of 2.5-story building segment

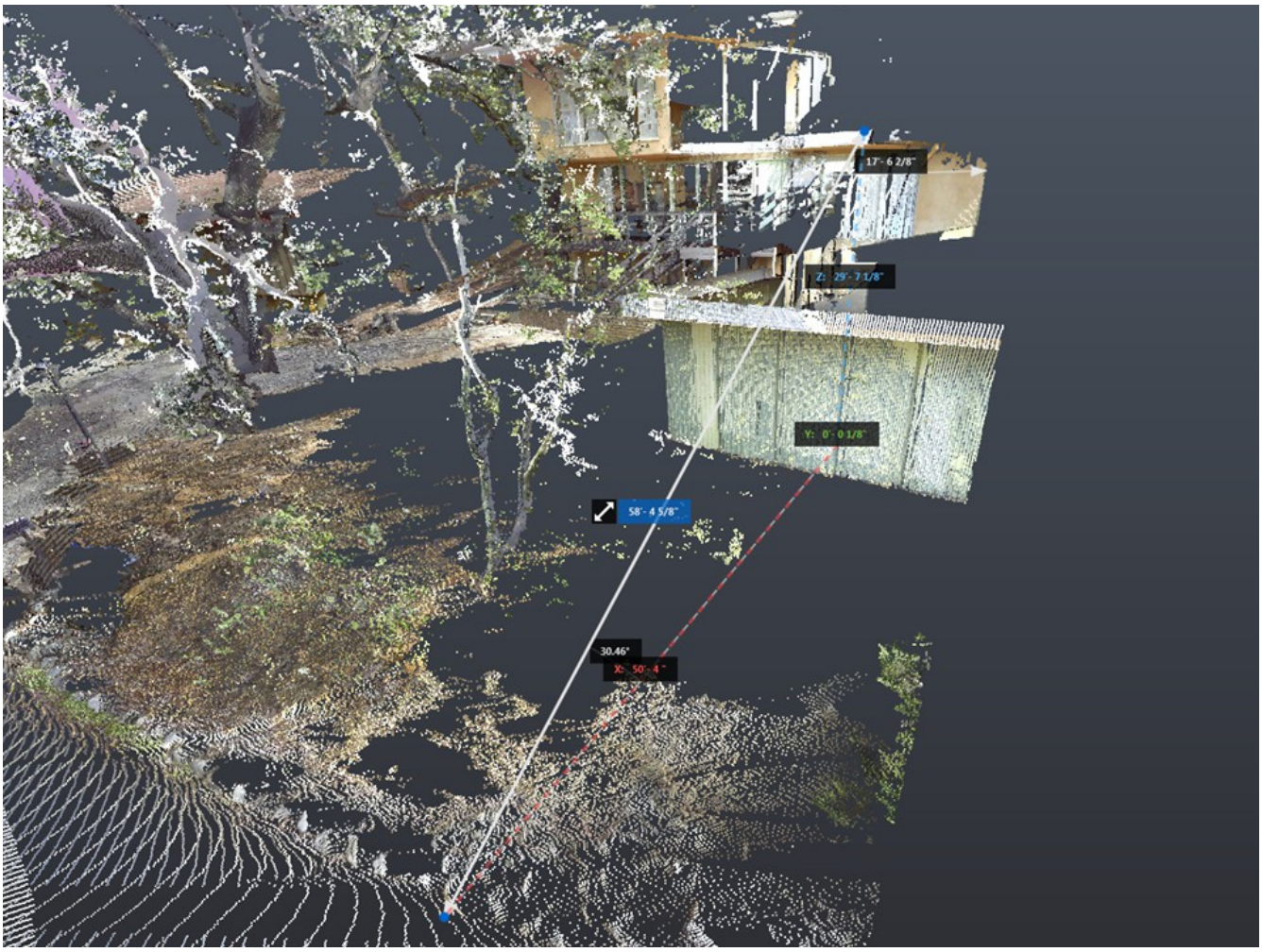


Illustration 9: Height of 3556 Canyon Crest Road above the street grade plane at 1.5-story building segment

As our east elevation shows, our home presents less than 30ft of frontage facing the road. Our maximum roofline elevation is less than 24'11" above street grade. The roofline drops to ~11-12' above street grade, for an average height of ~18-19'. This is less than the average height of a two-story home with a flat or parapet roof.

Thus, the massing of our home is in family with existing development. While some in opposition to our project have somehow decided that the character of the neighborhood is informed only by the five existing houses along the west side of Canyon Crest Rd at the rim of Millard Canyon, this is specious. Both sides of the street are characterized by homes with fences, hedges and dense native and non-native vegetation and trees, as we attribute in Attachment 30. There is not an appreciable "view" of the canyon from the road across this developed extent. Also, some houses and garages along the west of Canyon Crest Road are set back from the road at (code non-compliant) diminutive setbacks. While these structures may be somewhat shorter, they subtend an angular field of view when seen from the street that is greater than our own.

4.2. Utilize terraced (split-level) or “cantilevered” building designs wherever feasible on 25% or greater slopes. (Note: Split-level homes should have a second floor exterior that is visibly set-back from the first floor exterior so that a terraced profile can be seen from the public view.)

Our home employs a split-level, terraced design on 25% or greater slopes. The roof-line of our home echoes the existing grade to reveal this terraced design. This measure is satisfied.

4.3. Use a variety of house, garage and other building placements that better responds to the hillside terrain and created a more interesting and attractive streetscape.

The quintessence of our design is that it responds to the hillside terrain and limits the footprint of the house and garage itself, to less than 1200sqft. The placement allows us to orient our garage facing north, in such a way that cars on Canyon Crest driving south see a mixture of wood cladding and soffit, as well as understated green cladding. The design of our home preserves existing trees to the extent possible, such that the canopy softens the outlines of our home and provides visual screening. This measure is satisfied.

4.4. Limit building heights to 2 stories (or 25 ft.) when sited on 25% or greater slopes or when the building pad elevation is located less than 50 ft. below the crest of the nearest hilltop or ridgeline located within a linear distance of 500 ft.

This design measure is somewhat vague in that it does not clarify whether 25ft is an alternate approximation for two stories, or a co-governing threshold. In conjunction with the guidance for a split-level design, it is certain that the guideline intends to limit the number of stories above grade, as the Altadena CSD does. Our home is nowhere more than two stories above grade. Over much of the footprint, it is also less than 25ft in height above grade.

4.5. Use a wider variety of architectural treatments and materials for the facades and exteriors of buildings that are located in highly visible areas on the site (such as main entryways, higher elevations, and isolated lots or building pads that can be seen from public view).

Our main entryway is characterized by the use of cedar soffit and siding, to contrast with the understated green of most of our cladding. The frames of our windows contrast with a dark anodize.

4.6. Use pitched roofs (at least 1.5:1) and shingles for new residences.

Our home employs a pitched roof, and meets the presumed spec of 1.5” in 1' (as the more conventional specification of inches of rise over run is neither in the customary format e.g. 4:12 or range of prevailing slopes). In a Very High Fire Severity Zone, a standing seam roof provides better protection and a longer service life. As our roof is pitched in a direction that is not facing the road, much of it will not be visible. A large percentage of the roof will also be covered in solar panels.

4.7. Utilize architectural design techniques to screen rooftop mechanical equipment from

public view.

Our home is designed such that no mechanical equipment will be visible on the roof, or at any location visible from the road, and so we are compliant with the spirit of the rule to limit visual impacts from this equipment. This measure is satisfied.

4.8. Design building exteriors with stonework and/or woodwork that matches rock and tree varieties found in visible locations on the site or in the surrounding community within a distance of one mile. (Note: Materials shall not be sourced from sensitive or scarce local resources such as oak trees, unless the project design is already removing these materials on site due to other project constraints and reusing them).

We intend to make use of native granodiorite common in builders throughout the area as riprap to improve the robustness of the drainage swale, which is currently lined inconsistently. The cladding and soffit in the vicinity of our entryway will also be of cedar that complements the existing trees.

4.9. For business signs, use wood construction materials and painted lettering/logos, avoiding the use of metal and plastic, and with 18 sf. or less total sign surface area (10 sf. for projecting signs) per business establishment.

- Such as metal, stone, wood, brick, plaster, and concrete.
- Subject to approval by the Los Angeles County Fire Department.

This measure is not applicable.

4.10. Design monument signs to be constructed with wood, stone, brick and/or decorative concrete, and to be no more than 6 ft. in height. (Note: The placement of all monument signs shall accommodate an adequate line of sight to the adjacent roadway.)

This measure is not applicable.

4.11. Limit all signs so that they project upward no higher than the roofline of the building (or nearest adjacent building), and do not disrupt sightlines to the horizon.

This measure is not applicable.

4.12. Illuminate signs from the exterior, with downward-projecting, hooded light fixtures that minimize light trespass.

This measure is not applicable.

4.13. Use any other building design techniques not listed in this section that either through innovation or in consideration of specific site constraints or other specific project factors, are tailored to the site and allow it to meet the findings required by this Ordinance.

The design of our home is uniquely tailored to the site and to the existing oak trees on it and has been acknowledged as innovative, even by project detractors. This measure is satisfied.

Though much of this section is discretionary, we believe we comply with at least four measures, and likely with the intent or spirit of additional measures.

5. Landscaping

Preserve existing vegetation, conserve water and provide more attractive and shaded settings within the developed areas of the hillside project.

5.1. Retain and incorporate 50% or more of existing on-site trees and woodlands (particularly native and drought-tolerant species, and oak woodlands) into the overall project landscaping plan.

We are removing one mature, and two immature of at least 19 oak trees on our property, incorporating the trees to remain to screen our home. This measure is satisfied.

5.2. Avoid all healthy oak tree encroachments and removals through the sensitive location and design of development.

We have minimized the extent of oak tree removal and encroachment on our lot, but it is not possible to build without encroaching.

5.3. Landscape all graded slopes and improved open spaces in an attractive manner that accomplishes at least two or more of the following beyond a State or County-required minimum (whichever is more restrictive): a) restores habitat; b) conserves water or improves water quality; c) provides shade for pedestrians and bicyclists; d) enhances slope stability (must landscape all slopes ≥ 5 ft. high); e) increases fire protection; and f) provides recreational opportunities.

The minimum requirements for new development in Los Angeles County are already substantial, including two Low Impact Development design measures to improve water quality, and requirements related to fuel modification. However, the county does not *require* that a slope be landscaped, only that the plants placed conform to fuel modification guidelines. We have chosen a large array of natives noted for low water consumption and improvement of slope stability for the hill below our property. These will provide a habitat for native birds and insects, conserve water and enhance slope stability, beyond the sparse native chaparral and other non-native plants that presently exist. This measure is satisfied.

5.4. Utilize native and drought-tolerant trees, shrubs and ground cover over all exposed graded areas.

- May require consultation with the County biologist prior to conceptual landscaping plan approval.
- As determined by a qualified arborist. Only applies to oaks that are the minimum ordinance size or larger.

We have no exposed or graded area outside the footprint of our home, and so we are compliant with the spirit of the rule to retain the character of graded areas. This measure is satisfied.

5.5. Landscape at least 50% of all graded slopes and improved open spaces at a minimum ratio of one new shrub per 100 sf. of total graded slopes and improved open space area, and

one new tree per 800 sf. of total graded slopes and improved open space area.

We have no graded area outside the footprint of our home, and so we are compliant with the spirit of the rule to retain the character of graded areas. This measure is satisfied.

5.6. Vary the height, placement and color of appropriate landscaping materials throughout the site.

We have chosen a mixture of native trees, shrubs and ground-covers, some with colorful flowers or berries. This measure is satisfied.

5.7. Use a wide variety of local and non-invasive plant species within the project's improved open space areas, matching or exceeding the variety found on-site and listed in the project's plant surveys and biota reports.

We have chosen a large array of natives noted for low water consumption and improvement of slope stability for the hill below our property. This measure is satisfied.

5.8. Plant new native and drought-tolerant trees and shrubs of a sufficient interval, size and height to screen hardscape surfaces and unadorned features such as block walls; infrastructure; and exposed and prominently located building facades.

We have no new hardscape surfaces or block walls. Our building facade is already screened to a large extent by oak trees to remain, such that planting new trees is not feasible.

5.9. Use plant materials and irrigation systems that, combined, conserve water 20% or more beyond State and County requirements.

The use of native chaparral that is suited to tapering off of any supplemental irrigation whatsoever except in time of drought will conserve water in excess of requirements. The use of targeted irrigation to establish and sustain our natives as needed is more efficient than the sprinklers typical of many homes in the area. This measure is satisfied.

5.10. Reapply the graded topsoil to manufactured slopes and improved open space areas.

We have no graded area outside the footprint of our home, and so we are compliant with the spirit of the rule to retain the character of graded areas. This measure is satisfied.

5.11. Use any other landscaping design techniques not listed in this section that either through innovation or in consideration of specific site constraints or other specific project factors, are tailored to the site and allow it to meet the findings required by this Ordinance.

Many of the measures in this section assume the existence of more impactful design properties, such as grading outside the footprint of development. In creating a design that avoids this altogether, we are compliant with the intention of the rules to minimize their impacts, satisfying at least eight measures.

Attachment 18

Distinguishability of the six Environmental Impact Reports ever performed in the state of California for construction of a new single-family residence on vacant land

November 10, 2016

Purpose:

The purpose of this attachment is to enumerate the ways in which every other single-family residence constructed on vacant land that has ever had a tiered or full Environmental Impact Report performed is distinguishable from our own project.

We begin with a brief overview of methodology. An EIR has only been performed for a new, individual single-family residence on vacant land six times in the 46-year history of CEQA, entailing the construction of five million new homes in the state of California. Each case is briefly described, and then attributed for its distinguishability. The entire draft and in some cases final EIRs are available in Attachments 38-45, except where the EIR was not available electronically, for which the project description is excerpted.

Attachment 38: 3121 Old Topanga Canyon Road, Calabasas

The Project consists of the construction of a 7,633 square-foot, split-level, single-family residence plus associated garage area, basement and OWTS, located on a designated significant ridgeline in a designated scenic corridor in the Santa Monica Mountains Significant Ecological Area. The project requested a variance from development standards requiring a 50-foot setback from the ridgeline.

Areas of controversy were noted to include the project's large size and visibility sited on a significant ridgeline in a mapped scenic corridor, water quality impacts from the OWTS in an SEA, and public trail access, among others.

Apart from its much larger size, the home is distinguishable from ours because it:

- is sited in a designated visually sensitive resource – namely, the Old Topanga Canyon Road scenic corridor on a mapped scenic ridgeline;
- does not follow all applicable building regulations and therefore requires a variance.

The “no development” alternative reasonably assumed that “it would result in development of the site consistent with the site’s existing zoning and the City’s existing regulations regarding hillside and ridgeline development, unmodified by a variance.” In other words, the environmental impact analysis equated “no development” with the construction of a home someday in the future that followed all planning and building regulations without need of a variance. To assume otherwise would be to assume a “taking” had been effected.

Despite its size and location, the EIR found no significant aesthetic environmental effect. An EIR would doubtless come to the same conclusion for our project.

Despite the location of the project across the sight line to the ocean from a public park, the EIR confirmed no significant aesthetic impacts, because the building conformed to R-1 development standards.

Attachment 39: 2333 Pacific Avenue, Newport Beach

The Project consists of the construction of a 3,566 square-foot, single-family residence in

three levels with a “modification permit” aka variance to violate the front yard setback, located across the sight line from a public park (Begonia Park) to the Pacific Ocean. The version of the project that predated the EIR also violated the maximum height limit.
Despite its size and location, the EIR found no significant aesthetic environmental effect. The evidence provided was subjective analysis of renderings showing the massing of the home. An EIR would doubtless come to the same conclusion for our project.

Apart from its much larger size, the home is distinguishable from ours because it:

- is sited across the line of sight of a public space with the expectation of some publicly shared scenic quality (i.e. park, garden, trail) to a scenic resource (the ocean);
- does not follow all applicable building regulations and therefore required a variance.

Attachment 40: 3599 Lankershim Blvd, Los Angeles

The Project consists of construction of a new 3,826 square-foot, two-story single-family residence with basement and four-car garage in the outer corridor of the Mulholland Scenic Parkway, on a lot containing oak woodland. The project required the removal of three mature coast live oak trees and one scrub oak tree.

Despite its size and location, the EIR found no significant aesthetic environmental effect. It correctly applied the thresholds of significance provided in the city of Los Angeles to conclude that scenic vistas must be mapped, and that the nearest vista was along Mulholland Drive. The visual character of the area was assessed as being defined by scattered residential development, that would not be significantly altered by one additional home. An EIR would doubtless come to the same conclusion for our project.

The elevation of this project from an initial study is an outlier and a poor decision in several respects.

We find particularly egregious the following language summarizing the writ: “The construction project would require grading and filling in areas where there are no structures. The observations of local residents constitute substantial evidence that a fair argument exists as to the potentially significant effect of the project.“ This is contra-indicated by *Association for Protection of Envt'l Values v City of Ukiah* (1991) 2 CA4th 720, 734 and *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572. This home was complying with all applicable building rules, and every home will inhabit some volume where previously there was no structure. If this is to be the test for an EIR, then every home that is built anywhere is a candidate. This is clearly absurd and not consistent with precedent. Of course, the EIR found that there was no significant effect on the environment.

The nearest major vista point was 0.4 miles away, and the “balloon test” cited in the writ indicating some visibility at this remove was the thinnest of threads upon which to base a fair argument. Granting deference for such a tenuous thread was wasteful, as the outcome of the analysis was fore-ordained. A “fair argument” must still be “fair,” i.e. grounded in reason and plausibility.

Likewise, while a spring may technically be a watercourse requiring assessment of impacts to

riparian habitat, this spring was noted as being sufficiently isolated and of such low flow that it did not support any aquatic habitat. It was questionable to require an EIR when this qualification had already been provided in the initial study.

Apart from its much larger size, the home is distinguishable from ours because it:

- was (barely) visible from a designated scenic resource, the Mulholland Scenic Parkway;
- impacted the flow of a spring i.e. a watercourse not composed solely of surface drainage, that was claimed to be supportive of riparian habitat;
- possessed a grouping of plants deemed potentially worthy of inclusion in the California Natural Diversity Database.

Attachment 41: [Deleted, as the project entailed demolition of a historic structure to construct a new home, not the construction of a new home on vacant land]

Attachment 42: [Deleted, as the project entailed demolition of a historic structure to construct a new home, not the construction of a new home on vacant land]

Attachment 43: 4 Dunecrest Avenue, Monterey

The Project consists of construction of a 1,440sqft two-story single-family residence. The project was quite reasonably initially granted a Negative Declaration, and only elevated at the request of the City Council, at their just discretion.

The home is distinguishable from ours because it:

- impacted dune habitat adjacent to the Pacific Ocean, a mapped visual resource, without any visual screening of the home with vegetation.

Attachment 44: 5 Southfield Drive, Rolling Hills

The Project consists of construction of a new 2,864 square-foot single-family residence with an 880 square foot detached garage and OWTS, along with a driveway, paved walks, patio and deck on a steep slope above existing residential development on a prominent ridgeline visible from much of the Palos Verdes area.

The project was controversial because of concerns for landsliding and the safety consequences thereof given its location uphill of existing single-family residential development, as well as subsidence of the road that served the home. The EIR was focused primarily on this area of controversy, with some treatment of noise, traffic and aesthetics.

Despite its size and location on a prominent ridgeline, the EIR found that aesthetic impacts would be less than significant.

The home is distinguishable from ours because it:

- was sited in an area of geotechnical instability uphill of existing residential development;

- was prominently visible from much of the surrounding network of roads.

Attachment 45: Gypsy Hill residence, Pacifica

The Project consists of construction of a new 6,814 square-foot, three-story single-family residence with a 2,705 square foot attached garage on a hill overlooking the Pacific Ocean, also adjacent to and visible from two public parks (Sharp Park and Fairway Park). The project entailed a rezoning of the site and required the removal of a dozen pine trees, including four heritage trees, along with 4,000cuyd of cut, with 3,000cuyd of that removed off site.

The project was controversial because of concerns that it did not meet development standards for lot coverage in the City's Hillside Preservation District, was aesthetically incompatible with existing development, and added geotechnical/erosion risk given the project's site above a major road, among others.

The project was initially granted a Mitigated Negative Declaration, and only elevated at the request of the City Council, at their just discretion.

Despite its size and location, the EIR found no significant aesthetic environmental effect.

Apart from its much larger size, the home is distinguishable from ours because it:

- was sited in an area of geotechnical instability uphill of existing development;
- was prominently visible from much of the surrounding network of roads, including from a public park;

Attachment 19

Discussion of Oak Tree Permit Prevailing Practice

November 10, 2016

Purpose:

The purpose of this attachment is to objectively compare the body of material in the administrative record from our arborist to other accepted oak tree reports for analogous projects in the County of Los Angeles (Attachments 20-22), in the city of Agoura Hills from 2002-2007 when Ms. Latta was sub-contracted to assist in their review (Attachments 23-25), and from Ms. Latta herself (Attachments 26-28). We note that the County of Los Angeles was unable to find any Oak Tree Report from Ms. Latta for any county projects. The purpose is not to claim any deficiency or otherwise criticize any oak tree report referenced. On the contrary, we find them to be sufficiently detailed for their purpose, as our oak tree report and arborist responses are, and we especially appreciate the context and guidance provided in Attachment 22. Rather, these provide the raw comparative material for the claims Ms. Latta has made of information or discussion "missing" from our oak tree report. Together, these constitute oak tree reports generated by six independent arborists, as well as Ms. Latta.

Key Issues:

1. All oak tree reports describe impacts in general terms, using either percentage encroachments, closest distance of encroachment or both. Most oak tree reports do not attribute individual branches requiring pruning. Between our oak tree report and responses to Ms. Latta, our arborist has provided more information than is typical of these reports.
2. All oak tree reports share many of the same standard permit conditions intending to minimize damage, such as use of hand excavation, fencing around the inner protected zone over the root crown at least, mulch to limit compaction impacts, arborist oversight of pruning, etc. Our oak tree report is very much in family with this body of evidence.
3. All oak tree reports possess some to many additional oak trees within 200ft of the project site, that are not included in the report. This is eminently reasonable, but not consistent with claims made about our project.
4. Despite removal of as many as dozens of trees after the passage of AB2224, lead agencies determined projects to be either categorically exempt or possessed of less than significant impacts – either with or without explicitly identified mitigation measures incorporated.

Background:

A representative set of oak tree reports were selected from those publicly identifiable from Los Angeles County, the City of Agoura Hills, and Ms. Latta herself, each for a single-family residences entailing multiple removals or encroachments. Each jurisdiction has somewhat different statutory requirements for tree reports, and different nomenclature, but they all share the mandate to describe and analyze oak trees being encroached and removed and to lay out measures to reduce impacts.

Attachment 20:

Attachment 20 is a County of Los Angeles Oak Tree Report for 2230 Villa Heights Road in

unincorporated Pasadena. The site contains oak woodland and is ~250ft distant from the Angeles National Forest. The project entailed construction of a new “2-story, approximately 8,000 square foot six bedroom single-family residence with walkout basement, three car garage and 15'x30' swimming pool”, hardscape, and On-site Wastewater Treatment System, on a 0.93ac lot. While initially granted a 15303 categorical exemption, in an abundance of caution the county performed an initial study to evaluate the impacts to oak woodland – not an unusual circumstance in the area. The permit requested removal of four oak trees and encroachment on 12 additional. While some degradation was present due to adjacent development, the extent of existing encroachment was less substantial than our own, as the grade had not been altered, the trees had not been pruned for roadway, parking or power line clearance. The inner protected zone of the oak trees was also not compacted by parking usage as many of ours have been, though some oak trees were encroached by the driveway of the neighboring lot, as is also true for our lot.

The initial study (see attachment 14, citation QQ at 9) notes: “Considering its degraded character, resource values of the on-site woodland are manifest primarily in the trees themselves, and habitat restorative efforts aimed at creation of a pristine woodland stand are generally not warranted. Replacement of the 4 removed oak trees with 8 newly-planted trees, per the requirements of the Oak Tree Ordinance will provide some measure of mitigation for impacts to the woodland; the additional “half” of the required mitigation per 2(c) above will be provided by the following:

1. non-native species control to foster the development of a native understory;
2. long-term preservation of the mitigation planting site(s) as depicted with a “no-build”, “mitigation oak trees to remain” or similar depiction on the approved project Site Plan; and
3. a 7-year monitoring program to ensure the vigor of the replacement trees and understory development.”

In other words, removal of four *mature* oak trees – with trunk diameters of 24, 16, 16 and 12 inches – was analyzed to be a potentially significant effect for this project site given the condition of this stand of oak woodland – which was moderately, not severely degraded. However, the removal of a single tree in a severely degraded oak woodland for our project is a less than significant effect, and the mitigation employed to render the effects of this project less than significant are also discretionary parts of our project. We intend to foster development of a native understory by controlling non-native species. Our replacement oak trees are sited in the riparian environment where they are suited to thrive, and we intend to plant many more than the statute requires, as well as dedicate a conservation easement for this environment. Our monitoring interval is also 7 years, enforcing these outcomes. It is at the discretion of the lead agency to determine whether these things are *required* as *mitigation measures* for a significant environmental impact, or merely conscientious, thoughtful planning and design practice.

Oak tree #11 was preserved with significant pruning: “#11 – This tree will have three (3) removal cuts, two (2) @ 8” and one (1) @ 12”. The 12” cut is larger than the largest cut any of our oak trees require.

The initial study notes that 500cuyd of cut is specified, to be balanced on site.

Eight trees are identified as having drip-line encroachments for some excavation. Five additional trees are identified as having some excavation for trenching of utilities or concrete work.

Standard mitigating permit conditions are similar to our own – protective fencing where possible at 5x the DBH, and if not possible, deposition of a thick layer of mulch in the protected zones of the trees (we also employ plywood on top of this mulch, and cover the entirety of the protected zone well past 5x the DBH); performance of excavation by hand; and clean cuts with a sterilized tool when root pruning.

The arborist goes on to note:

“Costello and Jones studied root loss and root pruning in their book, “Reducing Infrastructure Damage by Tree Roots: A Compendium of Strategies.” The book has some data and recommendations including the following:

There are no precise recommendations specifying the percentage of root mass that can be cut, probably because each situation is unique and requires careful analysis. … The number, size of roots cut, and distance from the trunk are more important than the percentage of roots cut. It's not uncommon for trees to survive after losing more than 50 percent of their root systems. … Costello and Jones list *Quercus agrifolia*, coast live oak, as being a species which is tolerant of root pruning and moderately tolerant of root loss which means that the species will recover from being root pruned so long as only a moderate amount of root are severed.”

As portrayed in Illustration 1, the area is dense with oak woodland. There are dozens of trees within 200ft of the project site, but these are not included in the report.

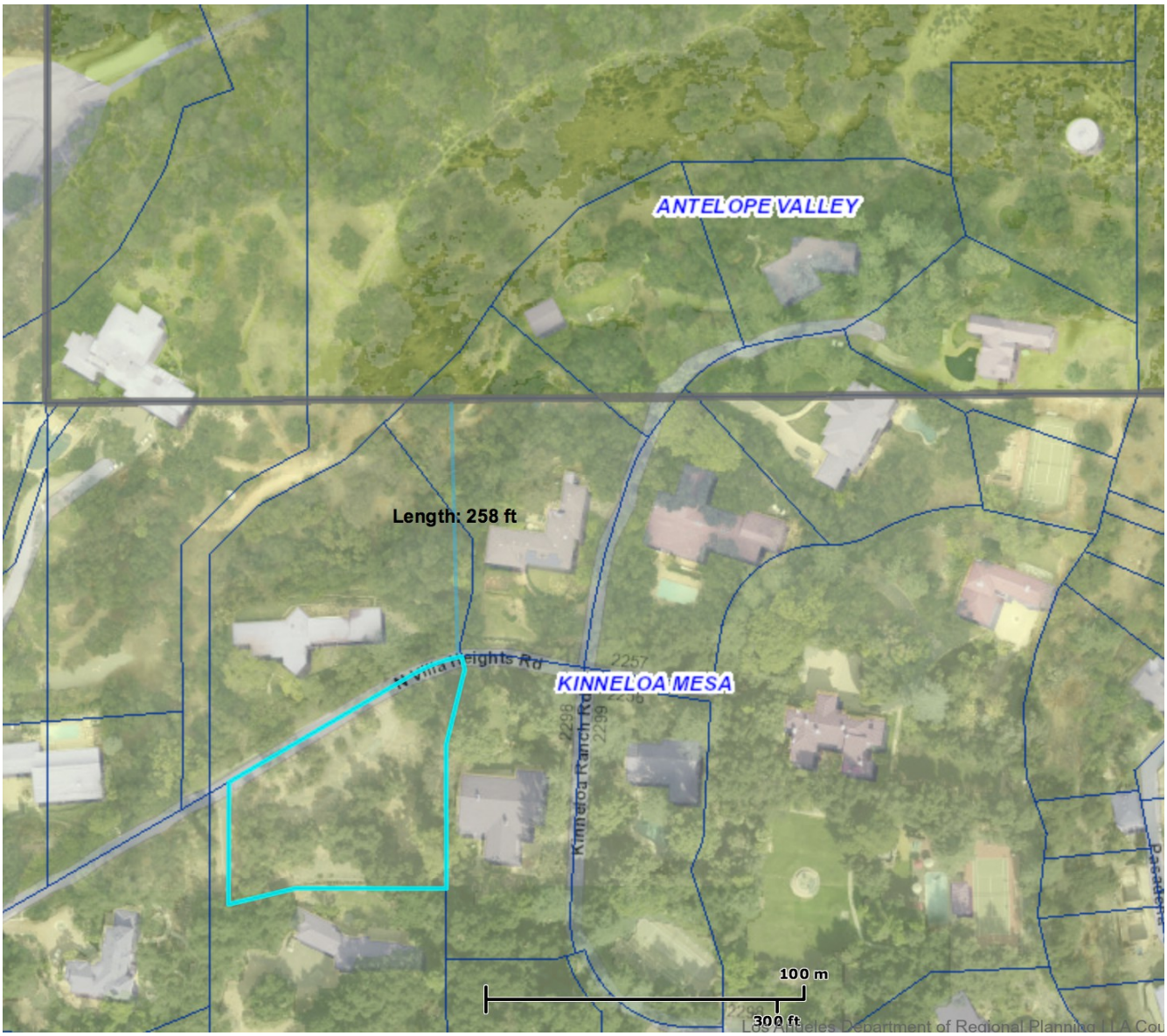


Illustration 1: Context for Attachment 20, showing widespread interspersed oak woodland.

Attachment 21:

Attachment 21 is a County of Los Angeles Oak Tree Report for 540 Thrift Road in unincorporated Malibu. The project entailed construction of a new two-story 2,261sqft single-family residence with a pool, deck and septic tank comprising 2,718sqft on a parcel 9,980sqft (0.23ac) in size. Given that the project site was almost completely covered in oak woodland, and given its location in the Buffer Area 3B of the Zuma Canyon Significant Ecological Area (now aggregated with other previous SEAs as the Santa Monica Mountains SEA), an initial study was performed, incorporating off-site mitigation given the inability to completely restore woodland on-site. The permit requested removal of 14 oak trees and encroachment on eight additional oak trees. The project entailed 27cuyd of cut and 188cuyd of fill, substantially

higher than our project, but still low by most hillside and many non-hillside single-family residential standards (see also the above description of Attachment 20). The protected zone of off-property trees were encroached by pavement, retaining/boundary walls and septic tank installation.

The oak tree report underwent two iterations from the original, both of which are included in Attachment 21.

Six trees are identified as having drip-line encroachments for some excavation. Two additional trees are identified as having encroachments beyond the drip-line but within the protected zone. Of these, one tree is identified as having a retaining wall, concrete sediment control box, and discharge gravel surface constructed ~10' from the trunk. One tree with a 17" Diameter at Breast Height (DBH) is identified as having grading for a septic tank and a 12" wide concrete swale installed ~5' from the trunk (at a normalized encroachment distance of 3.5x the DBH), along with minor (unquantified) pruning. One tree with a 19"DBH is identified as having grading and a 12" wide concrete swale installed ~3' from the trunk (at a normalized encroachment distance of 1.9x). One off-site tree is identified as having a boundary wall with excavated footing ~3' from the trunk, along with minor (unquantified) pruning and excavation for a septic tank at the edge of its protected zone. One off-site tree is identified as having a boundary wall with excavated footing ~4' from the trunk. One off-site tree is identified as having a boundary wall with excavated footing ~6' from the trunk. One off-site tree is identified as having a boundary wall with excavated footing ~15' from the trunk.

Standard mitigating permit conditions are similar to our own – performance of excavation by hand, arborist presence for root and canopy pruning, and protective fencing where possible.

As portrayed in Illustration 2, the area is dense with oak woodland. There are dozens of trees within 200ft of the project site, but these are not included in the report.

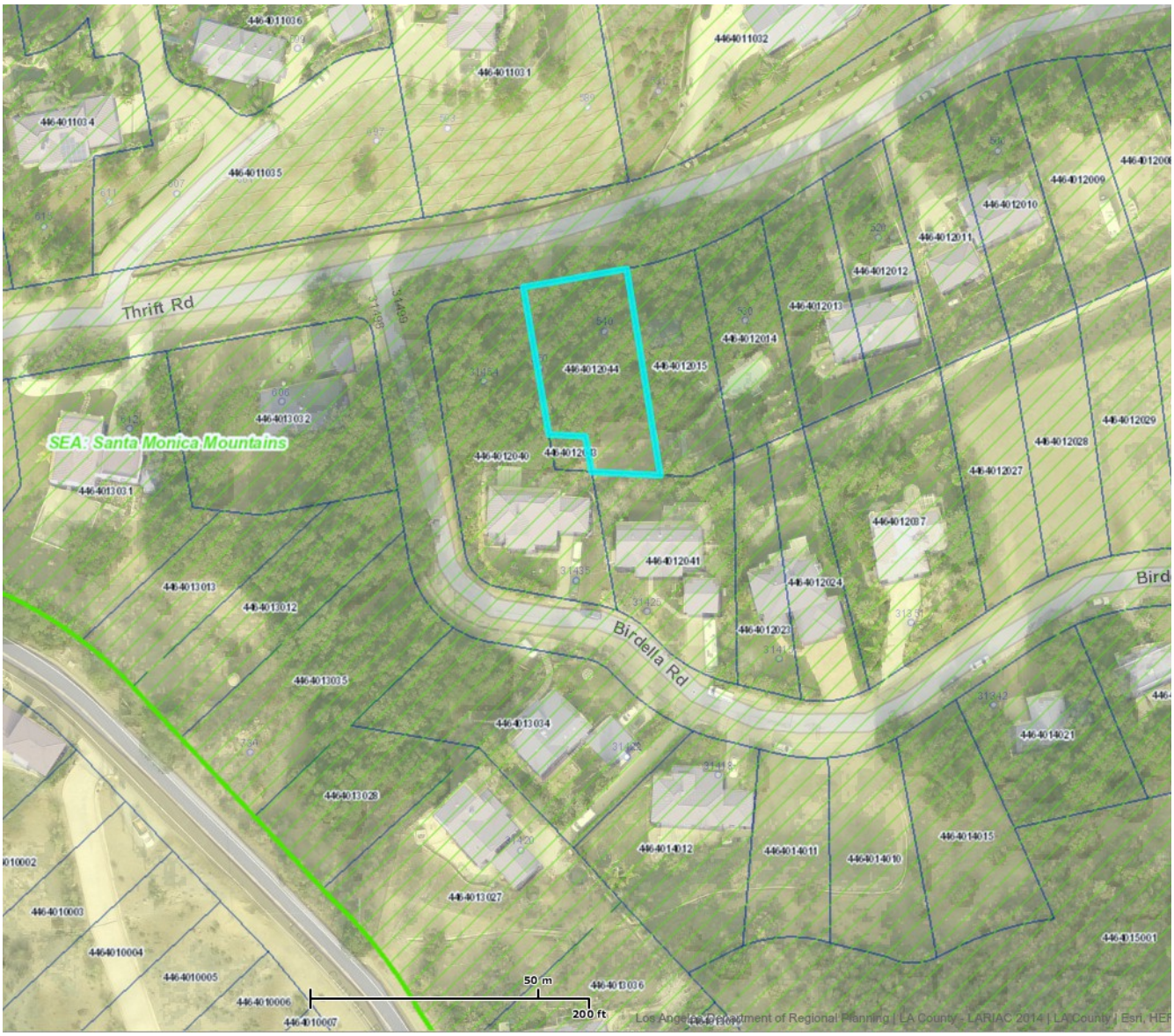


Illustration 2: Context for Attachment 21, showing widespread interspersed oak woodland, and nearly complete lot coverage of oak woodland.

Attachment 22:

Attachment 22 is a County of Los Angeles Oak Tree Report for 15702 Spunky Canyon Road in unincorporated Santa Clarita. The site is within the Angeles National Forest and immediately adjacent (parcel ranges from ~23ft to ~185ft, the latter figure being farther than the distance of the nearest edge of our home to Millard Creek) to a blue line stream canyon wash that is tributary to the Santa Clara River, less than a mile from the Santa Clara River Significant Ecological Area. It is also located ~2miles from the San Andreas Significant Ecological Area. The project entailed substantial renovation to a derelict single-family residence, with addition of 753sqft to the existing 1,189sqft, largely un-permitted residence,

as well as construction of a 1,056sqft detached garage/workshop structure. These additions together are larger than our entire home. The project also entailed driveway widening. The permit requested removal of 2 oak trees and encroachment on up to 21 additional oak trees.

The oak tree report underwent an iteration from the original, which is included in Attachment 22.

In addition to a thoughtful description of the project history and recommended construction techniques (several of which we are ourselves employing e.g. “caisson footings” and “floating slab”), the oak tree report describes seven oak trees as being encroached at distances of at least 6' by the permeable driveway, two at distances of at least 6' by propane tank placement and subterranean gas lines, five by the existing home and proposed addition (some at distances less than 6'), three at distances of at least 6' by the new workshop/garage and three at distances of at least 6' by a future proposed accessory structure. Additional trees were noted as possibly being encroached by a future septic tank site. Two oak trees are included for removal – each with 14”DBH. The report notes that an un-encroached heritage oak exists on the property.

Standard mitigating permit conditions are similar to our own – performance of excavation by hand, protective fencing where possible, arborist presence for root and canopy pruning, and clean cuts with a sterilized tool when root pruning.

As the Hearing Officer package for R2013-02211-(5) notes:

“County Staff recommends that this project qualifies for a Class 3, New Construction or Conversion of Small Structures, categorical exemption from the California Environmental Quality Act (Public Resources Code section 21000, et seq.) (“CEQA”), the State CEQA Guidelines, and the Environmental Reporting Procedures and Guidelines for the County. The Project involves a small single-family residential addition and new accessory structure. The Project Site does not contain any designated, precisely mapped, and officially adopted environmental resource of hazardous or critical concern.
. . .
The Project Site, along with the entire community of Green Valley, is within Angeles National Forest. The Project is compatible with the surrounding environment and with the community.
. . .
The Project is located in an urban land use category and within an existing developed community.”

In other words, close proximity to a blue-line stream does not possess a site in and of itself with an “environmental resource of hazardous or critical concern.” Neither does location within the Angeles National Forest discount an urban land use designation.

As portrayed in Illustration 3, the area is dense with oak woodland. There are dozens of trees within 200ft of the project site, but these are not included in the report.



Illustration 3: Context for Attachment 22, showing widespread interspersed oak woodland, and proximity to blue-line stream tributary of the Santa Clara River.

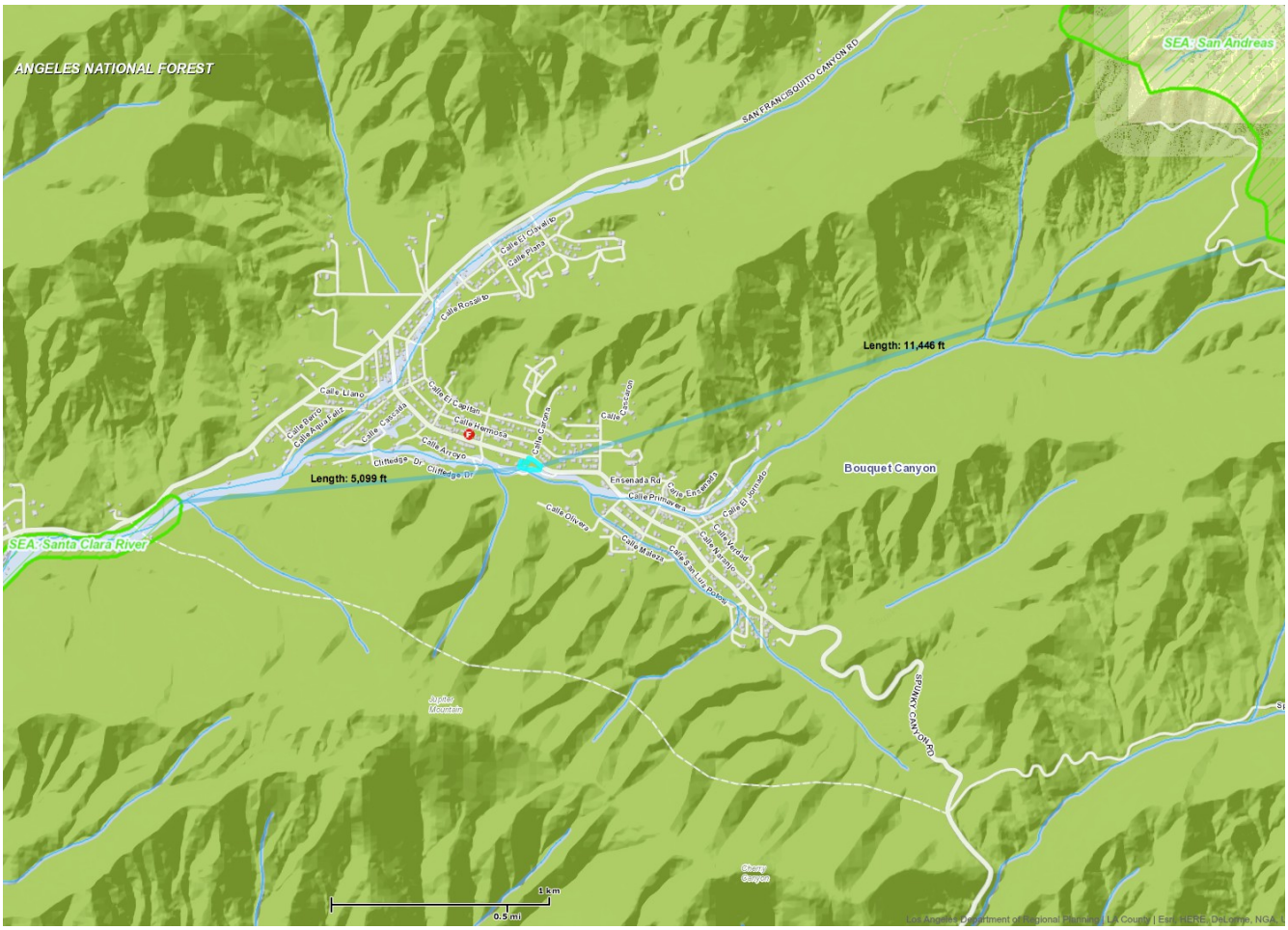


Illustration 4: Context for Attachment 22, showing proximity to the Santa Clara River SEA, San Andreas SEA, and general location in the Los Angeles National Forest.

Attachment 23:

Attachment 23 is a City of Agoura Hills Oak Tree Report for 28221 Laura La Plante Drive in the City of Agoura Hills, under oak tree permit 05-OTP-015, indicating a 2005 submittal date. The project entailed construction of a new 3,400sqft single-family residence with 580sqft three-car detached garage and patio. The project site is located ~200ft distant from the Santa Monica Mountains Significant Ecological Area.

The oak tree report process entailed several supplementary responses to comments, in order to respond to City requests and design changes that reduced impacts from the original scope of 20 oak tree removals. These are included in Attachment 23.

The final version of the oak tree report notes seven oak tree removals, five relocations, and encroachments on thirteen additional trees. While all removals were scrub oaks and hence smaller than mature coast live oaks, coast live oaks were among those impacted. Nearly all encroached or removed oak trees were greater than 5”DBH i.e. impacts were to constituent

trees of an oak woodland.

Among the larger impacts are 30% canopy impact and 8% root zone impact to oak #8, 25% canopy impact and 15% root zone impact to oak #10, 30% canopy impact and 20% rootzone impact to oak #11, and 20% canopy impact and 20% root zone impact to oak #25.

Notably, several trees exceed the recommended pruning standards of 25% of the canopy but are approved to remain. Understandably, these standards are intended to provide excellent probabilities that the tree will successfully sustain the impact. In the County of Los Angeles, 20% canopy removal of branches smaller than 2" in diameter requires no permit whatsoever i.e. it is expected to be sustainable *by inspection.* Exceeding these standards requires some analysis and greater care before, during and after construction, and probability of successfully sustaining the impact may decrease, but still remain acceptably high to recommend retaining the tree.

A version of the report addressing an earlier design iteration stated:

"Oak #7S – Remove two 6" diameter limbs from the canopy at west side. Estimated percentage canopy loss = 50%. This is a significant percentage but it is my experience that this species will typically tolerate this degree of pruning with little or no long term effect on health or longevity."

Standard mitigating permit conditions are similar to our own – performance of excavation by hand, protective fencing where possible, arborist presence for root and canopy pruning, permeable pavement and clean cuts with a sterilized tool when root pruning.

The project was deemed categorically exempt under CEQA 15303 (see http://www.ci.agoura-hills.ca.us/home/showdocument?id=4223 at 3)

Despite the size of the home, the oak tree report states, "These removals appear to be unavoidable and are necessary to allow for the successful completion of this home construction project."



Illustration 5: Context for Attachment 23, showing interspersed oak woodland and proximity to Santa Monica Mountain Significant Ecological Area.

Attachment 24:

Attachment 24 is a City of Agoura Hills Oak Tree Report for 6149 Palo Comado Drive in the City of Agoura Hills, under oak tree permit 03-OTP-017, indicating a 2003 submittal date. However, the project did not receive final approvals until 2012 or later. The project entailed construction of a new 3,994 square foot, two-story single-family residence with a 475 square foot attached two-car garage and a horse-keeping area. The project site is located ~600ft distant from the Santa Monica Mountains Significant Ecological Area.

The oak tree report went through several iterations of comment responses and notes encroachment on ten oak trees, for grading and construction of retaining wall, fence and paved swale, as well as pruning for structural clearance in all ten trees.

Standard mitigating permit conditions are similar to our own – performance of excavation by hand, protective fencing where possible, arborist presence for root and canopy pruning, clean cuts with a sterilized tool when root pruning, ideally to a branching lateral.

The project was deemed categorically exempt under CEQA 15303 (see http://www.ci.agoura-hills.ca.us/home/showdocument?id=10969 at 1), in 2012.



Illustration 6: Context for Attachment 24, showing interspersed oak woodland and proximity to Santa Monica Mountains Significant Ecological Area.

Attachment 25:

Attachment 25 is a City of Agoura Hills Oak Tree Report for 6160 Fairview Place in the City of Agoura Hills, under oak tree permit 06-OTP-008, indicating a 2006 submittal date. The project entailed construction of a new 5,623 square foot, two-story single-family residence with a 956 square foot attached four-car garage and a swimming pool. The project site is located ~350ft distant from the Santa Monica Mountains Significant Ecological Area.

The oak tree report notes encroachment up to approximately 10 feet into the dripline of four mature coast live oak trees, as well as construction of a masonry wall in the protected zone of a valley oak.

Standard mitigating permit conditions are similar to our own – performance of excavation by hand, protective fencing where possible, minimization of encroachments where possible.

The project was deemed categorically exempt under CEQA 15303 (see http://www.ci.agoura-hills.ca.us/home/showdocument?id=5716 at 10), in 2007.



Illustration 7: Context for Attachment 25, showing interspersed oak woodland and proximity to Santa Monica Mountain Significant Ecological Area

Attachment 26:

Attachment 26 is a Tree Health Evaluation and Construction Preservation Report for 9 Hidden Valley Road in the City of Monrovia. The site contains oak woodland and is immediately adjacent to the San Gabriel Canyon Significant Ecological Area, which connects to the

Angeles National Forest approximately a mile to the north. The project entails construction of a 3,000sqft (variably annotated with 3,527sqft) single family residence on a 1.3ac lot, with a 535sqft garage excavated into the side of a slope, along with expansion of an existing shared access driveway (impermeable concrete, with permeable median strips) requiring a retaining wall of at most six feet in height. Though grading is not quantified, a requested Hillside Development Permit notes cut or fill in excess of 5ft over at least 500sqft. This is at least 92cuyd of cut or fill, and given the extent of grading noted on the plans, quantities are likely significantly higher.

The oak tree report notes the existence of 10 oak trees on the property (not counting the un-analyzed members of the oak woodland above the home), and 16 on properties immediately adjacent *with some part of their protected zone encroached*. The aerial site plan overlay included at the end of Attachment 26 as well as Illustration 6 clearly show numerous additional oak trees on adjacent parcels that are not impacted by development, but that are less than 50ft from development. Many of these are downslope of the development, following the downhill direction generally from north to south. In other words, Ms. Latta felt it was appropriate to distinguish oak trees on adjacent sites that were physically unaffected, as well as extremely tenuously affected hydrologically, and refrain from providing any further impact assessment or note of any kind with respect to them. This is an eminently reasonable approach, but it is not consistent with her testimony regarding our project. In her letter dated April 16, 2016 Ms. Latta stated:

“The project proposes to change surface flow that might affect the oaks downslope. It is my understanding that the house will be built over the current drainage. Small changes in hydrology can impact oak trees if they are accustomed to the water source especially in a drought year. It is my opinion that the downslope trees should have been mapped and discussed in more detail since the property is an oak woodland (greater than 10% canopy - using the oak woodland guidelines).
. . .
The County oak tree ordinance requires that trees within 200 feet of construction be addressed. The trees are 170 feet away from the construction, but due to the steepness of the slope may have be [sic] impacted. The downslope trees could be impacted specifically by erosion, changes in drainage/hydrology, and runaway construction materials.
. . .
The applicant only considered the trees at the top of the slope to achieve his 9% coverage. To only look at the oaks at the top of the slope ignores the rest of the trees on the site. The oak woodland guidelines are not written in that manner. The trees at the top of the hill are part of the same watershed as the trees on the lower slope.”

It is untrue that the riparian trees on our site possess a tributary drainage that intersects the footprint of our home. They are in fact ~70ft distant from the tributary drainage, as we attribute in Attachment 12 at 10. For our project, the trees on adjacent lots that are downslope are not distinguishable from the un-analyzed downslope trees on adjacent properties for this project. It is also unclear what “analysis” would be reasonably provided. Neither would a mere mention provide any actionable information, nor did Ms. Latta believe it was necessary for this project to mention trees in the downslope drainage on adjacent lots.

The report states that “pruning of live wood will also be required in the canopy for 5 trees along the lower driveway for vehicular clearance.” The remainder of the 18 encroachments entail only root zone impacts. The root and canopy impacts are summarized in quantified form for each tree. Off-property oak tree #2 was possessed of 25% root zone and 15% lower canopy impacts. The root zone impacts occur well within the dripline and entail some physical removal of feeder roots and possibly lateral roots well within the dripline in the widening of the driveway, construction of driveway retaining wall and placement of utility lines. Ms. Latta does not quantify the distances to these encroachments, but the water utility line appears on the exhibit map at the end of Attachment 26 to be less than 10ft from the trunk of the tree. It should be noted that 22% of our project's oak tree #1 – jointly owned by 3589 Canyon Crest Rd and the County of Los Angeles – is coincident with our lot. No excavation is proposed in this zone, and mulch and plywood are proposed to reduce compaction impacts during construction staging. Vertical aeration is proposed after construction is complete, to remedy the current compacted state from parking of our neighbor's 5,000+lb pickup truck without any mitigating measures to reduce compaction, such as gravel or an adequately thick, well-maintained layer of mulch. No canopy removals of oak tree #1 are required for our project. In summation, Ms. Latta believes it is acceptable for a neighboring project to encroach on an oak tree to a greater extent than we encroach on oak tree #1.

As regards the oak trees *on the project site* that were not surveyed, Ms. Latta notes:

“During the initial meetings, the area above the building pad was recommended for preservation with no impacts. Joe Catalano, project architect, received approval from the City of Monrovia to consider the area as intact oak woodland. Individual trees were not surveyed in the area.”

In other words, though the site contains greater than 10% of oak woodland and would after growing canopy diameters 3x be essentially entirely covered, Ms. Latta felt it was appropriate to distinguish the oak woodland on only a part of the lot – a part not impacted by construction – from the other trees in that same stand of oak woodland that were impacted. This is an eminently reasonable approach, but it is not consistent with her testimony regarding our project, as noted in the excerpts from the April 16 letter above.

Per the site plan included at the end of Attachment 26, the edge of this oak woodland above the building pad is approximately 50ft distant from the home, and closer still to the grading above the home.

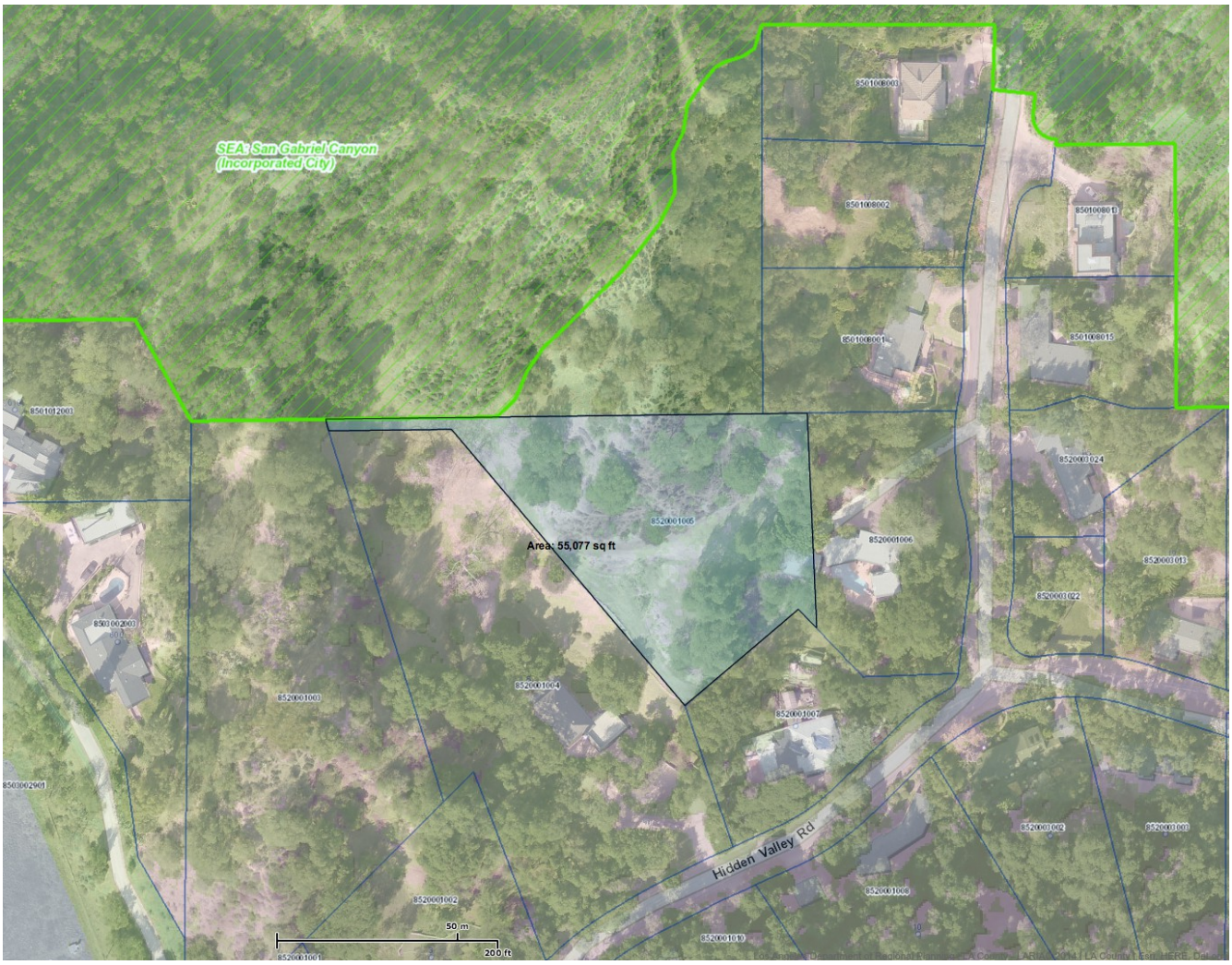


Illustration 8: Context for Attachment 26, showing widespread interspersed oak woodland and adjacency to San Gabriel Canyon SEA

Attachment 27:

Attachment 27 is a Tree Preservation Report for 411 La Loma Road in the City of Glendale. The site contains oak woodland (under the expansive definition advanced by the Los Angeles County Oak Woodland Management Plan Guide) but is also immediately adjacent to the 134 Freeway. The project entails construction of a 1,799sqft two-story single-family residence with an attached garage on a lot of 5,998sqft (0.14ac). Placement of the garage requires some unidentified amount of excavation and installation of a stepped retaining wall, visible on the sections.

The report notes 20% pruning (reduce end weight) and 20-30% root impacts to oak tree #1, and 25% pruning (structural clearance) and 20-30% root impacts to oak tree #2. One of the trees originally identified to remain is noted as possessing polyphagous shot hole borer or foamy canker, but was recommended for retention. The branches to be removed are not

identified, nor is any diagram of root zone impacts provided. Each tree was rated a B- for health, using criteria that is somehwat different than our own arborist's. Where our own arborist states that a tree with a grade of C is “average, moderately good trees...with an equal chance to decline or continue...[from] moderate stem and branch dieback, some bark exfoliation, or stem cavitation with rot...They may also show various amounts of insect damage to leaves etc. or are impacted and shaded or crowded by adjacent trees in such a way that it is expected to negatively affect the tree.” In other words, this can be an average tree in a crowded setting. Ms. Latta's rating of B- indicates that “Less than 25% of overall health of tree affected by disease, stress, decay, insect infestation, or fire damage.” A fair rating of C would have 25-50% of the tree so affected.

Subsequently, a design modification incorporated a change to the driveway (that appears in the site plans to be deep excavation in a quadrant of the tree at essentially no remove from its trunk), causing Ms. Latta to change her assessment and recommend the removal of tree #1. As Ms. Latta notes, “This is a very small lot and the project cannot be feasibly constructed on the small lot without significant encroachment on this tree.” In other words, Ms. Latta acknowledges that where a project has done well (or even passably, as appears to be the case here) to avoid impacts and this still results in the loss of oak trees from an oak woodland, that is a *reasonable outcome*. The existence of oak woodland does not supplant the right of a property for conscientious improvement.

The distance of the remaining oak tree #2 – a tree with a resultant from three trunks of ~18”DBH – to the home was not provided, though it appears from the site plan to be ~6' from the north-west corner of the home. A story is excavated below grade at this corner, resulting in root zone impacts at an encroachment distance to diameter at breast height of ~4x. It is also encroached at a somewhat greater distance by excavation for the driveway and retaining wall. A visual analysis using color overlays in Illustration 8 of the documented encroachment with respect to the documented dripline shows that 341,247 of the pixels are red (within the footprint of the house and retaining wall) and 338,801 are blue (outside the area of the house and retaining wall), meaning the root zone is encroached by removal that transitions from partial to complete over *approximately half* of the protected zone of the tree – before *any* over-excavation is included for construction of below grade walls of the home or the retaining wall for the driveway. The extent of over-excavation is unknown because the construction methods are not discussed, as appears to be the standard practice for any oak tree report. Even accounting for portions of this disturbance that may not completely broach the 2-3ft thick root layer and result in complete physical removal, an assessment of 20-30% root zone impacts is difficult to reconcile with this approved site plan.

Footings for a block wall as deep as several feet are described in the sections (excerpted in Illustration 9 below) but are not discussed in the oak tree report. As this may constitute an existing encroachment, we do not address them further, though it appears to come within 2ft of oak tree #2, according to the site plan excerpted in Illustration 8.

Standard mitigating permit conditions are similar to our own – performance of excavation by hand, protective fencing where possible, arborist presence for root and canopy pruning, and clean cuts with a sterilized tool when root pruning.

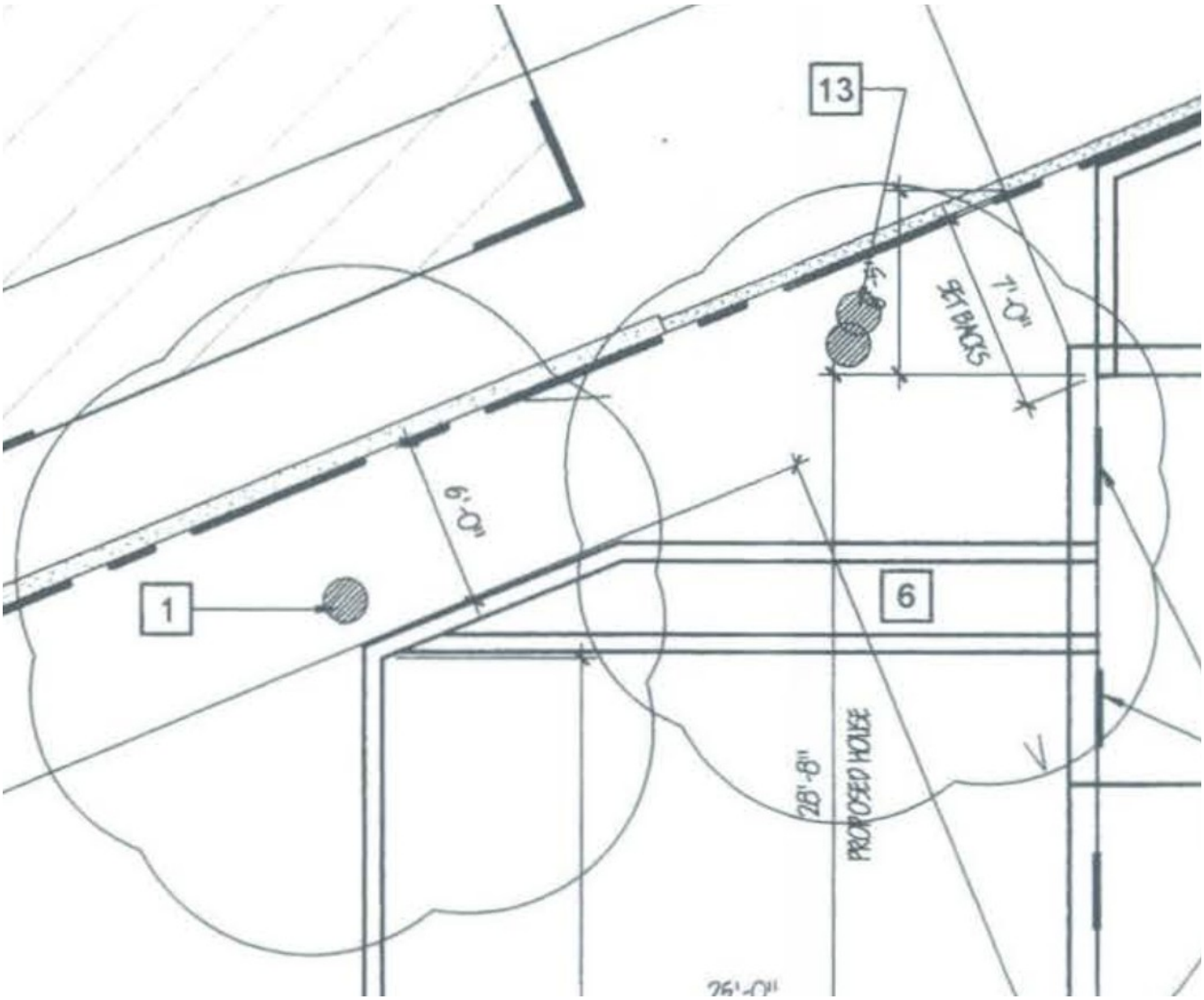


Illustration 9: Context for oak trees #1 (annotated 1) and #2 (annotated 13), indicating home outline to east and retaining wall outline to south, from the site plan included at the end of Attachment 27

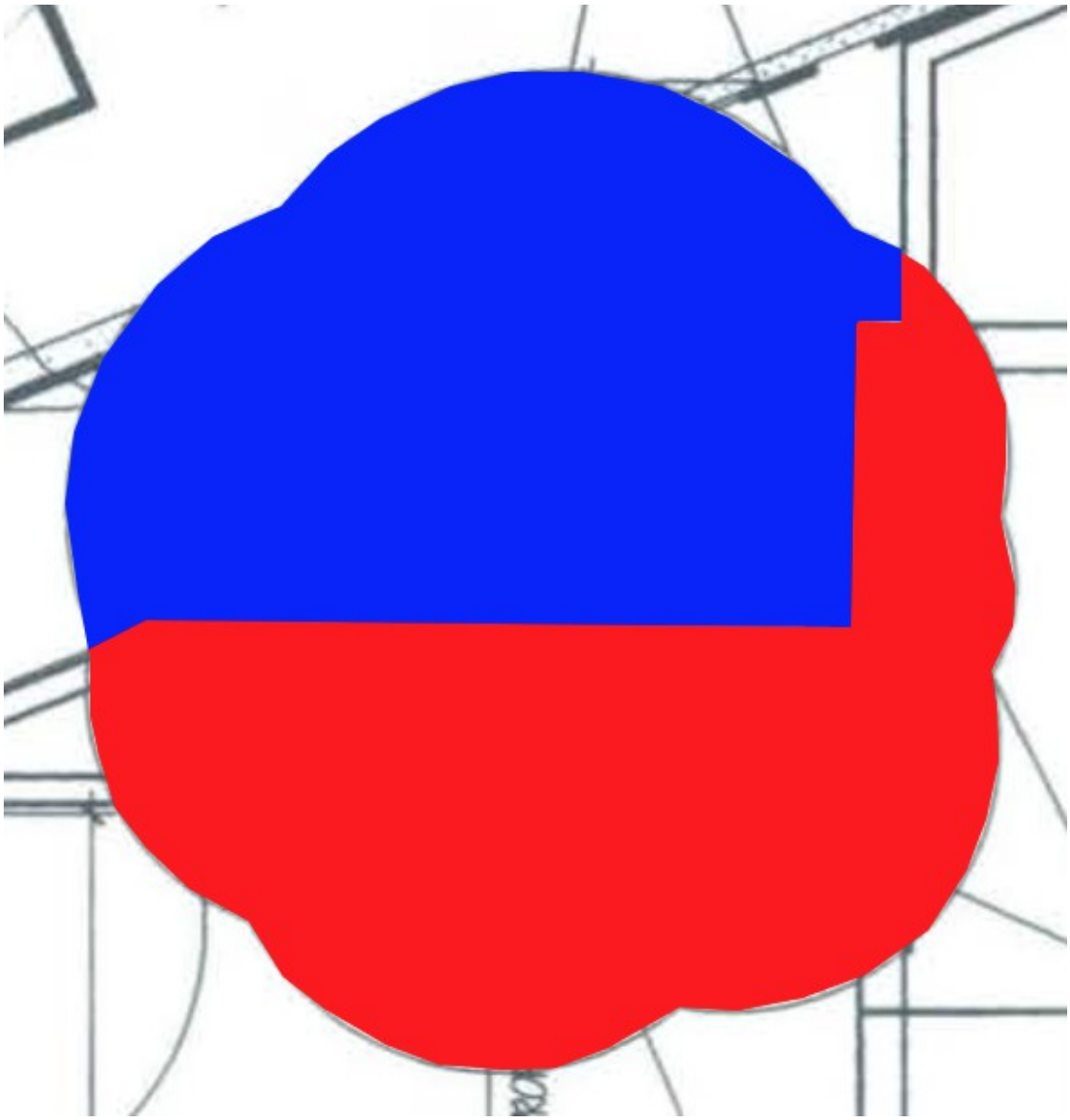


Illustration 10: Visual analysis of root zone encroachments for oak tree #2 (red), with blue indicating the area outside of the encroachments, not counting any clearance or over-excavation whatsoever.

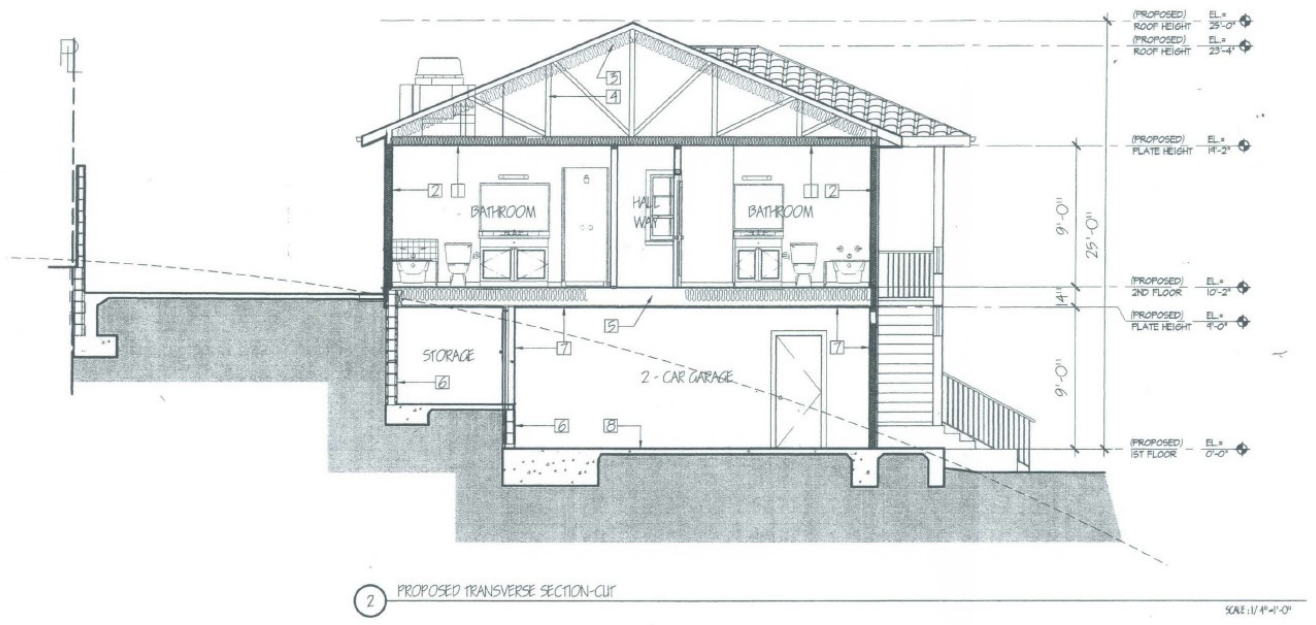


Illustration 11: Sections for Attachment 27 showing footings for the block wall at the edge of the property, on the left. The site plan shows this block wall to extend along the entire north of the property. Impacts from this excavation - which would occur within 2-3ft of oak tree #2 - are not discussed in the oak tree report.

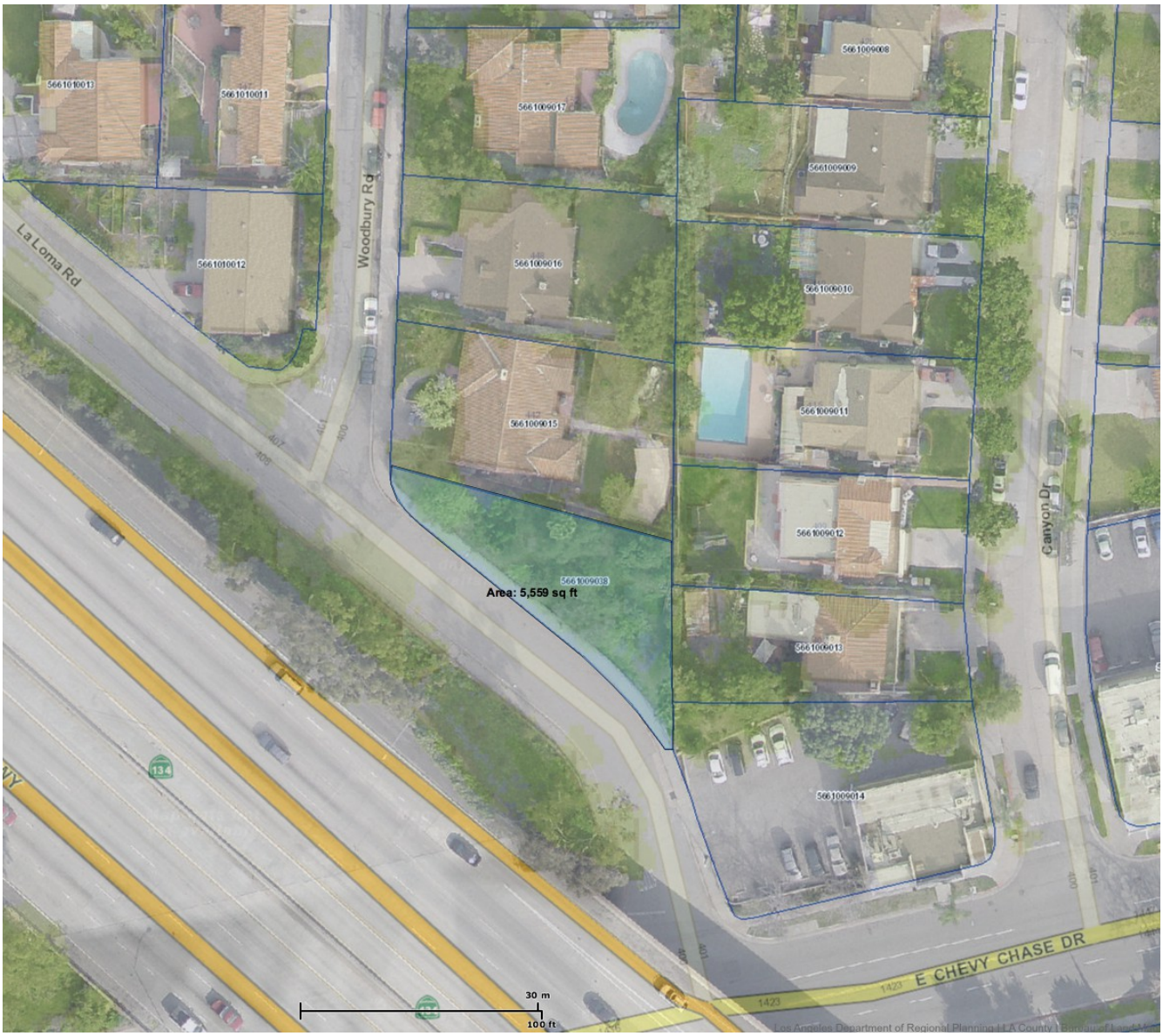


Illustration 12: Context for Attachment 27, showing sparse interspersed oak and other trees in a heavily developed environment.

Attachment 28:

Attachment 28 is an Independent Arborist Assessment of Construction Damage to Protected Trees and Tree Health Evaluation and Construction Preservation Report for 1001 Rosalind Road, San Marino. The project site was once completely covered in oak woodland and is located in a region of generally dense oak woodland interspersed with low density, large scale residential development, less than 1,500ft from Huntington Gardens. The project entails construction of a 10,911sqft [sic] single-family residence with paved driveway and other hardscape, either a 6- or 10-car subterranean garage, tennis court, and bridge on a 67,082sqft (1.54ac) lot. The initial study (Attachment 47) notes 1,200 cubic yards of grading.

Though the initial study notes the removal of 21 mature coast live oak trees (later revised upward, as we attribute subsequently), the project also received a Negative Declaration, not a Mitigated Negative Declaration. The initial study was drafted in May of 2008 after the passage of SB1334 created Public Resources Code 21083.4, in September of 2004. Despite the scale of the project, the initial study congratulates the applicant for only removing 21 of the 50 trees on site, stating that "It is complimentary to the applicant that they are proposing to preserve the majority of trees on site." (Attachment 47 at 16)

The report is somewhat dissimilar from others in that it is not only assessing impacts to come, but also those that have occurred. However, the mandate to provide recommendations for reducing oak tree impacts from future construction is held in common, and the choice as to retention or removal is instructive.

The report notes the presence of 59 coast live oaks, and a total of 68 trees on and immediately adjacent at the road off-site. 17 oaks had been approved for removal under an earlier oak tree report, as well as 7 relocations, and Ms. Latta recommended an additional 6 for removal based on signs of disease and other contributing factors.

Existing tree impacts are described in terms of root zone impacts and estimated percent pruning. The type of root zone impact is not generally qualified, except with the statement that equipment with tines may have penetrated at least a foot into the ground. Other potential equipment impacts are referenced in various brief assessments. Trees 1-15, 17-19, 31-34, 36, 42-46, 48, 51, 53, and 64-65 were recommended to keep.

These trees recommended to remain are described as follows, ordered roughly in most to least significant cumulative impact.

#	DBH (in.)	% damage to root zone	% pruning	Mechanical damage	Comments
12	25	80	25		Center stripped, raised up, 12-14 inch branch cut, ground disturbance
31	19	100	30		Center stripped, ground disturbance
34	20	100	25		Center stripped, ground disturbance
11	17	30	35		Center stripped, raised up, 6", 5", 3x3" cuts made, ground disturbance
3	18	50	30		Center stripped, ground disturbance
1	22	65	20		Center stripped, 4", 5" cuts, ground disturbance
14	18	50	25		Center stripped, 3", 4" diameter cuts, ground disturbance
13	27	75	10		Crown buried, ground disturbance
18	20	100	10		Ground disturbance, pruning

46	20	100	0		Ground disturbance
8	13	75	0	Lower trunk	New dirt in root zone, trunk damage from equipment, ground disturbance
6	21	60	0		Ground disturbance
4	27	25	0		Ground disturbance
5	16	25	0		Ground disturbance

Root zone impacts may entail physical removal of all roots; interception of rainfall; disruption of oxygen/gas exchange with an impermeable surface; physical removal of feeder roots while preserving lateral roots when trenching; permanent, un-remediated compaction; or temporary, remediated compaction, among others. Each manner of encroachment impacts in varying ways and to varying extents. Ms. Latta does not qualify in this report – nor did she qualify in her assessments of our project – the type of encroachment and the varying extent of its impact. A single percentage figure is all that is given. In Attachment 16, we attribute the properly assessed encroachments by each type in greater detail. Clearly, 100% root zone impacts would not be survivable if the manner of encroachment was physical removal (though 90+% is sustained by transplanted trees, with a significant minority of coast live oaks surviving to stability in the literature).

Notably, several trees that exceed recommended pruning standards of 25% of the canopy by 5-10% are recommended for retention. Understandably, these standards are intended to provide excellent probabilities that the tree will successfully sustain the impact. In the County of Los Angeles, 20% canopy removal of branches smaller than 2” in diameter requires no permit whatsoever i.e. it is expected to be sustainable *by inspection*. Exceeding these standards requires some analysis, and probability of successfully sustaining the impact may decrease, but still remain acceptably high to recommend retaining the tree.

Standard mitigating permit conditions are similar to our own – performance of excavation by hand, protective fencing where possible, arborist presence for root and canopy pruning, supplemental irrigation, and clean cuts with a sterilized tool when root pruning.

Ms. Latta acknowledges that “During the construction process, it may be discovered that additional trees may need to be removed to construct the project” and that permission must first be granted.



Illustration 13: Context for Attachment 28 showing widespread oak woodland interspersed among large-scale residential development

Response to claims of "missing" information:

For each of the 11 items below, we first attribute the claims of analysis that was "missing" from our arborist's materials. We then compare to the nine oak tree reports referenced above. We do not respond to the claims here. Rather, the purpose is to demonstrate that Ms. Latta has asked for information that goes beyond the scope of other oak tree reports in analogous circumstances.

1. In her letter dated March 30, 2016, Ms. Latta asked for an "impact analysis" for oak tree #10. This tree is not properly encroached, as the edge of our piling is outside the 15ft protected zone, and more than 5ft past the dripline. As we show in Attachment 15, neither does our deck intersect with its canopy requiring any pruning. However, our arborist responded that it may be encroached at the edge of the zone, with little pruning for clearance, if any.

In attachment 20, an impact analysis is merely a mention that the tree will be encroached, sometimes with a brief description of the type of encroachment, but without providing a closest encroachment distance or percentage figures, or identification of branches to be pruned.

In attachments 21, 22, and 25, an impact analysis is a brief description of the type of encroachment and closest distance, but without percentage figures, or identification of branches to be pruned. This was our arborist's approach in our original oak tree report.

In attachments 24, 26 and 27, an impact analysis is a percentage figure, along with a brief description of the type of encroachment, but without a closest distance, or identification of branches to be pruned.

In attachment 23, an impact analysis is a brief description of the type of encroachment, the closest encroachment distance, and a percentage figure, but without identification of which branches are to be pruned. All of this information together was drawn out only as part of comment responses. Between our original oak tree report and comments in response to Ms. Latta, our arborist has provided this same information. We have built upon this extensively in Attachment 15.

As concerns the analysis for each tree, our arborist devoted an entire page to describing each tree, using a template that appeared to us to be more detailed than any of the other nine reports included. He also described the existing defects in each tree in the comments of each tree assessment page, as appears to be customary.

2. In her letter dated March 30, 2016, Ms. Latta says that analysis of sewer and water line impacts are missing from the report.

Our arborist indicated in his report that all utility laterals should be dug by hand, taking care to preserve roots greater than 2” in diameter and threading the utility lines underneath these.

In each of the attachments, analysis of utility trenching is a subset of the general impact assessment, and employs the same approach. All reports echo the standard guidance provided in the Los Angeles County Oak Tree Care and Maintenance Guide to dig laterals by hand and thread under large diameter roots to remain.

It is not clear what degree of freedom might be present that this “analysis” would serve to inform. Every one of these projects has utility laterals, and the means of installation appears to be standard. The location of our laterals was chosen to maximize offsets to our trees, as may or may not have been the case in these other projects, as most or all oak tree reports don't speak to this. Our current arborist has advised that an air spade is likely to be even less disruptive, causing no permanent damage, consistent with the findings of “Smiley, E.T. 1999. Air excavation, the next arboricultural frontier. Arbor Age, 20,8-10,” as documented in the materials for the Richardson Grove EIR (see Attachment 14 citation KK at 16), which note “virtually no damage” and the long-term experiment documented in Attachment 33.

3. In her letter dated March 30, 2016, Ms. Latta claims that analysis of the below grade

retaining wall is missing from the report.

As for the other impact assessments, our arborist gave a brief description of this impact including a quantified amount of overall grading, along with a closest distance. In each of the attachments, analysis of excavation is a subset of the general impact assessment, and employs the same approach.

The project analyzed in Attachment 20 required excavation for footings, as well as 500cuyd of grading that is not addressed anywhere in the arborist report.

The project analyzed in Attachment 21 required more than 200cuyd of grading for placement of retaining walls, septic tank and drainage swale. The amount of grading in the protected zone of each tree is not noted.

The project analyzed in Attachment 23 required excavation as deep as 10ft for below grade walls and footings, as well as a drainage swale. The amount of grading in the protected zone of each tree is not noted.

The project analyzed in Attachment 24 required excavation for retaining walls and a paved swale. The amount of grading in the protected zone of each tree is not noted.

The project analyzed in Attachment 25 required excavation for creation of a building pad with an associated system of retaining walls and steps, along with a graded pad for a riding area, rear patio and pool and motor courtyard. The amount of grading in the protected zone of each tree is not noted.

The project analyzed in Attachment 26 required excavation as deep as six feet for placement of a driveway retaining wall. The total amount of grading is not noted, but is at least 92cuyd, and likely substantially higher. The amount of grading in the protected zone of each of the eighteen trees encroached by this excavation is not noted.

The project analyzed in Attachment 27 required excavation for a driveway and retaining wall, the lower story of the house, and footings for a boundary wall. The amount of grading in the protected zone of the oak tree to remain is not noted but is substantial and in close proximity.

The project analyzed in Attachment 28 required excavation for a driveway, bridge, subterranean garage and building pad for a 10,911sqft home, noted in its initial study to be 1,200cuyd. The amount of grading in the protected zone of each tree is not noted.

4. In her letter dated March 30, 2016, Ms. Latta claimed that individual branches requiring pruning should be specified.

The project analyzed in Attachment 20 required removal cuts in two trees totaling 3 8” cuts and 1 12” cut. The branches to be removed were not annotated.

The project analyzed in Attachment 21 required “minor live wood pruning.” The branches to be pruned were not annotated.

The project analyzed in Attachment 22 required no major structural pruning.

The project analyzed in Attachment 23 did diagram larger diameter cuts on one tree, but did not do so for the majority of trees, that saw more moderate pruning. Thaearborist notes, “The recommended pruning of the oaks...is, in some cases, more severe than typically advisable. However, this species is extremely hardy and can sustain significant pruning (or fire damage). It is the owner's desire to preserve as many native trees as possibly and it is my opinion that these trees can remain and should continue to thrive after the recommended clearance pruning.”

The project analyzed in Attachment 24 noted that pruning of some low limbs may be required. The branches to be pruned were not annotated.

The project analyzed in Attachment 25 required no major structural pruning.

The project analyzed in Attachment 26 noted clearance pruning for vehicle passage was required. The branches to be pruned were not annotated.

The project analyzed in Attachment 27 noted required pruning of 20-25% in one tree for structural clearance. The branches to be removed were not annotated.

The project analyzed in Attachment 28 does not annotate the branch removals that had occurred or were expected to occur.

5. In her letter dated March 30, 2016, Ms. Latta believed that the following construction details were missing:

- precise piling size
- description of notional shoring required for the piles
- plan for removal of soil from the pile holes
- plan for temporary placement of spoil
- plan for placement of a crane [sic] over the holes
- clearance diagrams for a dump truck
- design specs for vapor permeable driveway (aka gravel of a given size and thickness)

No other oak tree report so much as mentions any of these construction details. Ms. Latta has incorrectly assumed certain equipment that is not actually used for drilling, such as a crane.

6. In her letter dated March 30, 2016, Ms. Latta believed that alteration of drainage of oak trees due to construction should be discussed.

No other oak tree report discusses the alteration of drainage on trees. It is unclear what analysis might be provided here. Of the oak tree reports sampled, we note only the specification to install weep holes in retaining walls to avoid pooling of water in the soil, a service our subdrains also provide.

7. In her letter dated March 30, 2016, Ms. Latta claimed that root and canopy zone percentage impacts should be discussed.

No other oak tree report discusses root and canopy zone encroachments. The encroachment figures are reported, and in most reports not even corroborated with a diagram. In none of the materials she has submitted for our project has Ms. Latta provided any visual evidence, only assertions without any attribution.

8. In her letter dated March 30, 2016, Ms. Latta claimed that attribution of required clearance of canopy around the structure should be provided. She also mis-attributed a clearance specification that applied only to firemen on foot.

No other oak tree report attributes the governing specification for canopy clearance.

9. In her letter dated March 30, 2016, Ms. Latta claimed that our report was missing assessment of trees as far as 200ft off our property, and not in the tributary drainage of our home.

No other oak tree report discussed off-site trees that were not impacted, or sought to catalogue the full set of trees within 200ft.

10. In her letter dated March 30, 2016, Ms. Latta claimed that the oak tree report should document erosion and sediment control measures.

No other oak tree report discusses this engineering consideration. Arborists are not qualified to assess this.

11. In her letter dated March 30, 2016, Ms. Latta claimed that the depth of excavation should be quantified.

This had already been done in our sections. Some other oak tree reports noted dimensions of some excavations, but many did not.

In summation, it appears as though Ms. Latta has held us to a standard to which she does not hold herself, and which is not consistent with the prevailing practice.