

Appellant

#43

April 24, 2018

VIA ELECTRONIC MAIL AND HAND DELIVERY

Honorable Michael Ranalli, Chair
El Dorado County Board of Supervisors
330 Fairlane, Building A
Placerville, CA 95667

***Re: Agenda Item No. 43 - Appeal of Beland Grading Permit #263768
Response to Master Report – File ID #18-0586***

Honorable Mr. Ranalli and Members of the Board:

Please be advised that this office represents Roland and Penny Brecek with respect to the above referenced appeal. We write to address the Master Report prepared by County Staff.

Specifically, we write to address staff's interpretation of Zoning Ordinance Section 130.30.050.C. and staff's request that the Board find that Grading Permit #263768 is exempt from review under the California Environmental Quality Act ("CEQA").

DISCUSSION

Zoning Ordinance Section 130.30.050.C. – Retaining Walls

County Planning Staff asserts that the requirements of Section 130.30.050.C. are exclusively limited to circumstances wherein a project proponent proposes the use of "cut" retaining walls in conjunction with their project proposal.

This jaundiced interpretation is inconsistent with the plain reading of the Ordinance, which clearly applies broadly to multiple wall types. It is also contrary to the stated purpose of the Ordinance, which is to ensure that walls over seven (7) feet "will not impact [an adjacent neighbors'] view nor will it restrict light or movement of air[.]"

Cut retaining walls, which remove material from a site, would never have the potential to restrict light or the movement of air. Therefore, for the Ordinance to have any meaning, it must reasonably be interpreted to apply to both cut retaining walls and fill retaining walls, as are proposed in the present case.

This broad interpretation is further reinforced by the County's own historic practices, which have applied Section 130.30.050.C. to fill retaining walls. Indeed, in the present case, the applicants, their licensed architect, and County Staff all interpreted the Ordinance to apply to the

retaining walls identified in Grading Permit #263768. It was only after the Brecek's appeal that County Staff reversed its historic practice and "re-interpreted" the Ordinance to only apply to cut retaining walls.

Therefore, given the above, it is clear that Grading Permit #263768 should be reversed until the applicants have complied with Section 130.30.050.C. of the County Ordinance Code.

Class 3 Categorical Exemption – Unusual Circumstances Exception

County Staff has requested that the Board find that the present permit is exempt from the requirements of CEQA pursuant to a Class 3 exemption for single family residences. As discussed below, an exception to the exemption exists, which precludes its use in the present case.

At the outset, we note that section 5.3.3.C. of the County's Land Development Manual (Board Resolution 199-91) expressly provides that grading permits are projects subject to environmental review under CEQA. In the present case, however, the County failed to comply with its own requirements and approved Grading Permit #263768 without the benefit of any CEQA review whatsoever.

In the face of the present appeal, County Staff is now attempting to remedy this legal error by recommending a Class 3 exemption. In doing so, however, staff has failed to provide any meaningful evidence in support of such a finding. The only justification asserted in the Master Report is that the permit is "associated with a single family residence." This conclusory statement is insufficient on its face to support a Categorical Exemption in this case.

Even assuming, for the sake of argument, that an initial exemption can be sustained, there are unusual circumstances in the present case, which create an exception to the exemption and dictate the preparation of a full environmental review by the County.

Although the proposed project is generally consistent, in terms of square footage, as other properties within the surrounding community, the overall project design and method of construction is highly unusual. Given the neighborhoods proximity to Folsom Lake, most lots exhibit substantial topographic relief and homes within the neighborhood are multi-story with the homes designed to conform to the existing topography.

Instead of constructing within the existing topography, the current project proposes to import approximately 13,000 cubic yards of fill and approximately 1,300 cubic yards of concrete to effectively flatten out the site and accommodate the development of a single-story home. (see, Grading Permit #263768.)

This unusual circumstance overcomes the claimed Class 3 exemption and, in turn, creates significant environmental impacts that must be evaluated by the County. Specifically, the gross quantity of fill and concrete necessary to develop the project will exceed more than 1,300 total truck trips. In addition to severely impacting existing air quality through the production of criteria pollutants, construction activities will have significant adverse transportation impacts.

The only viable haul route to the project site is on Francisco Drive, which is a narrow neighborhood collector street that is not designed to accommodate this quantity of heavy construction traffic from both an operational and design perspective. More significantly, however, this haul route is immediately adjacent to Marina Middle School in introduces potentially significant air quality to school children and other potentially sensitive receptors.

These impacts are further exacerbated by the project's location within an isolated, private subdivision. The southern reach of Guadalupe Drive is a narrow, private road. Engineering analysis of the road, including boring samples, clearly demonstrate that Guadalupe Drive is structural insufficient to support the total number of truck trips. As a result, the road will suffer structural failures.

Furthermore, given that Guadalupe Drive is the single point of ingress and egress, such a failure has the potential to create life safety issues and prevent first responders from accessing the neighborhood in an emergency.

Therefore, as the foregoing makes clear, the County has failed to comply with the its legal obligations under CEQA. The proposed Class 3 exemption is not supported by substantial evidence in the record and, as demonstrated above, there is a reasonable possibility that the project will significant effects in the environment due to unusual circumstances, which would create an exception from the asserted Class 3 exemption.

CONCLUSION

For the forgoing reasons, we respectfully request that the Board reject the proposed CEQA finding outlined in the Master Report, approve the appeal, and deny Grading Permit #263768.

Best Regards,
HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

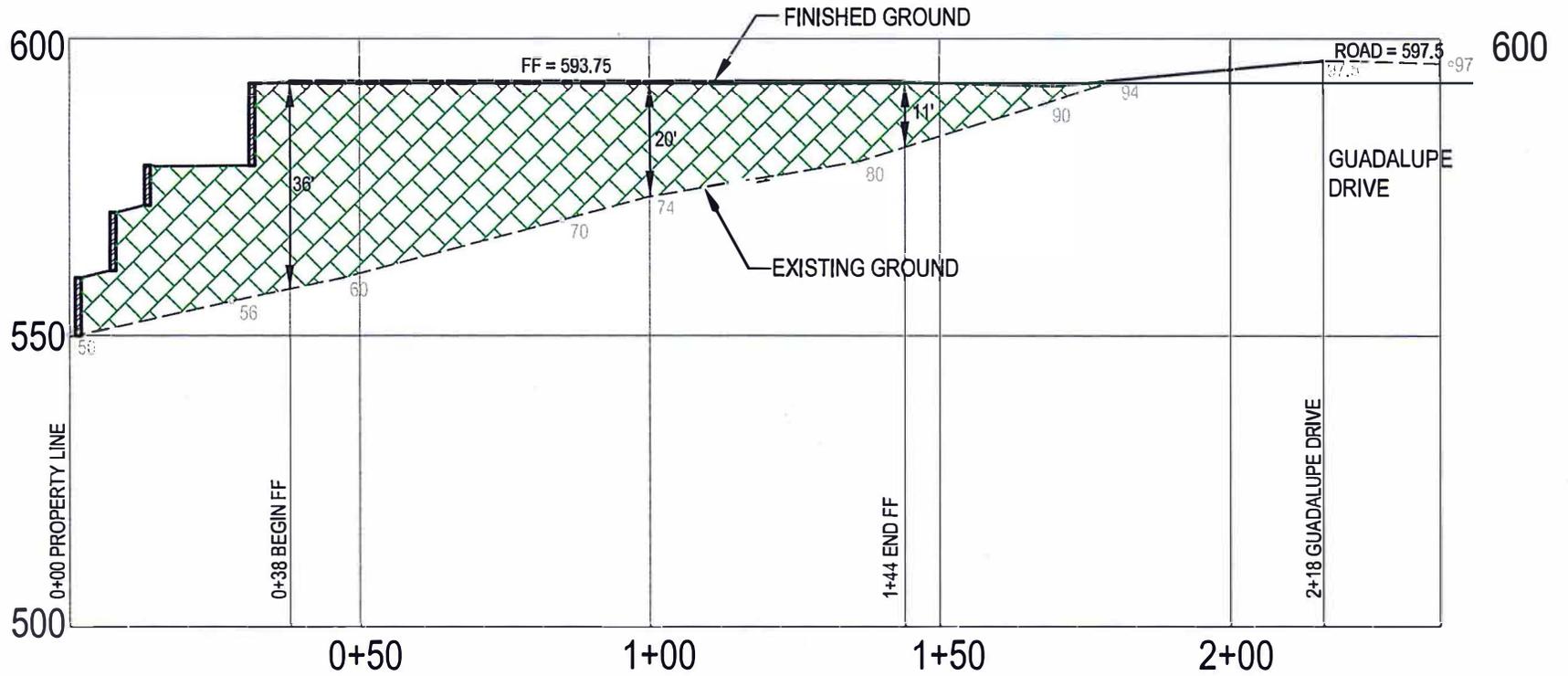
By:


David P. Temblador, Esq.

DPT/kc

cc: Roger Trout, County of El Dorado
Michael J. Ciccozzi, Esq., County of El Dorado
Clerk of the Board, County of El Dorado
Roland and Penny Brecek

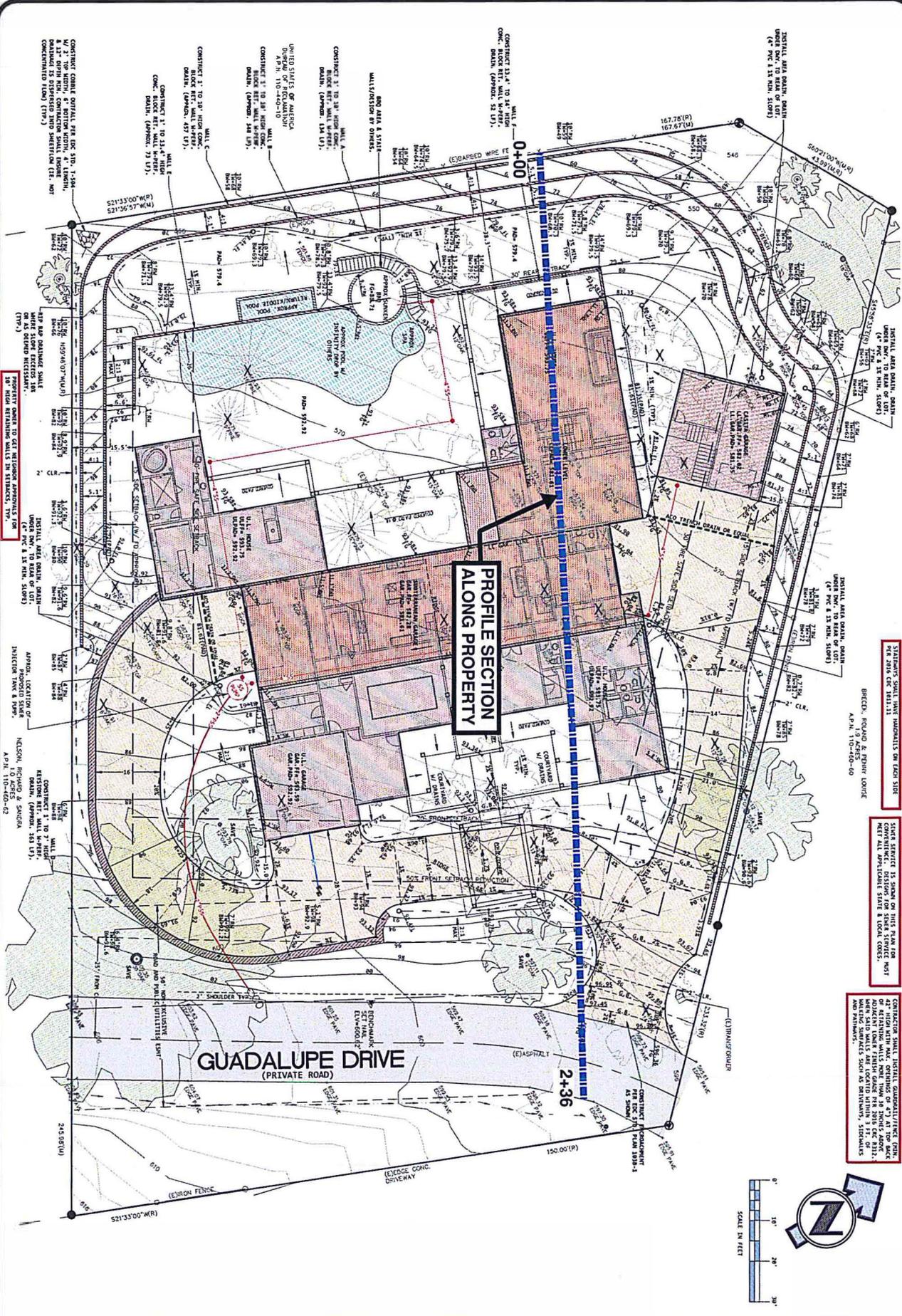
FOLSOM LAKE



75 GUADALUPE DRIVE

EXISTING AND PROPOSED PROFILE ALONG PROPERTY



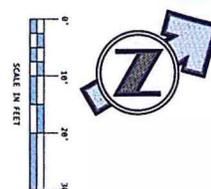


STAIRWAYS SHALL HAVE HANDRAILS ON EACH SIDE
 PER 2016 CBC 101.11.1

EXISTING ERECTION IS SHOWN ON THIS PLAN FOR
 CONFORMANCE. REVISIONS FOR THIS SERVICE MUST
 MEET ALL APPLICABLE STATE & LOCAL CODES.

CONTRACTOR SHALL INSTALL GUARDRAIL/STREET FURNISHING WITH MAXIMUM SPACING OF 4' AT TOP BACK
 OF CURB AND 6' AT BOTTOM. GUARDRAIL SHALL BE
 INSTALLED WITHIN 3' OF CURB AND SHALL BE
 INSTALLED WITHIN 3' OF SIDEWALK, SIDEWALKS
 AND PARKWAYS.

APR. 11, 2020-04-10



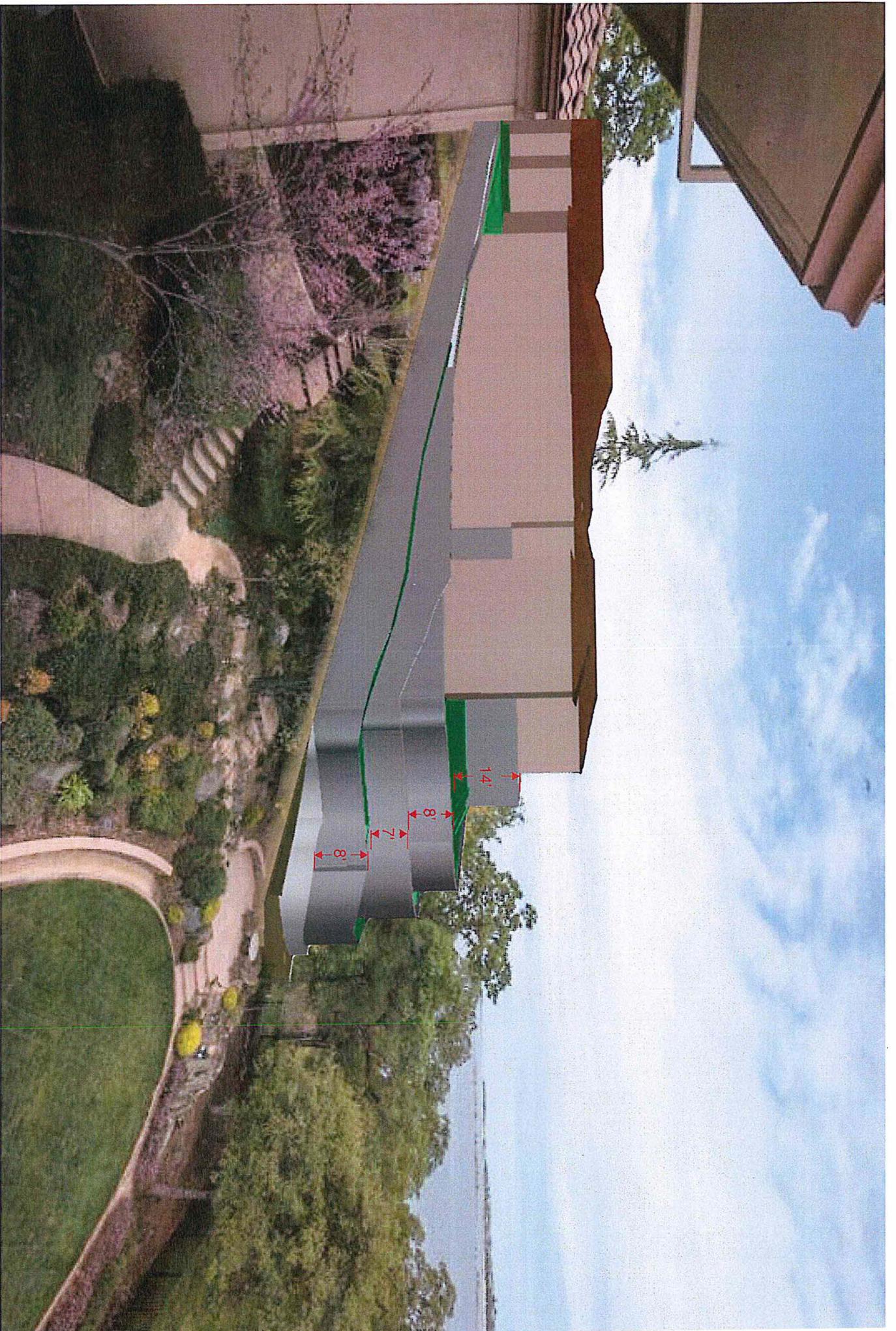
G2
 PREPARED FOR:
 BRIAN & DENAE BELAND
 2729 CAPETANIOS DRIVE
 EL DORADO HILLS, CA 95762
 209-200-0118
 EMAIL: belandda@jls.edu

GRADING PLANS
GRADING PLAN
 Parcel 2, PM 47/25
 75 Guadalupe Dr., El Dorado Hills, CA APN: 110-460-61

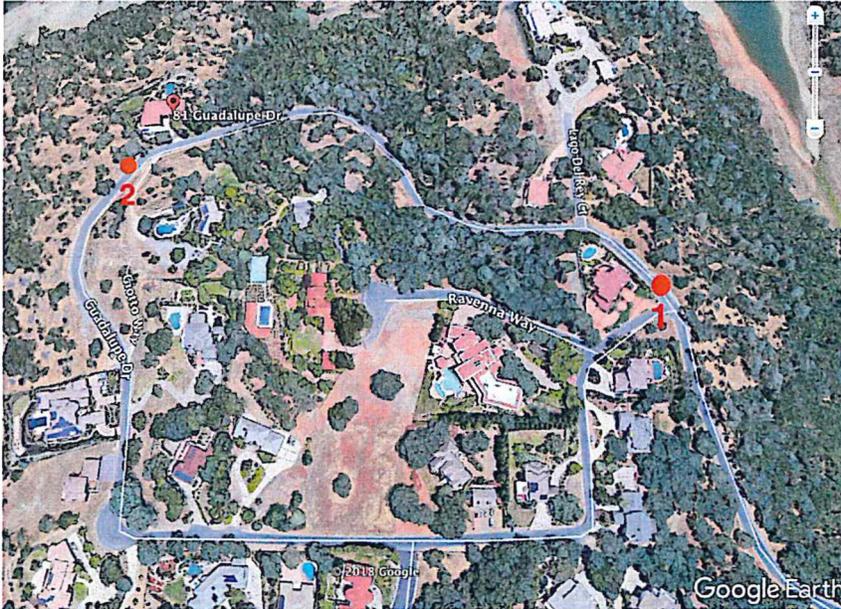


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Project No: 10-18066G Exploration Date: April 20, 2018



FINDINGS SUMMARY:

LOCATION 1: 3" Asphalt Concrete / 6 ½" Aggregate Base / subgrade soil - red-brown, silty sand with variable gravel (Unified Soil Classification: SM)

LOCATION 2: 2¾" Asphalt Concrete / 2 ½" Aggregate Base / subgrade soil - red-brown, silty sand with variable gravel (Unified Soil Classification: SM)

It is our opinion that the road structural section found in the core at location 1 is capable of supporting light to moderate vehicular traffic (e.g., weekly garbage truck) and at location 2 only very light vehicular traffic (this location does not meet the current structural section of 2" AC / 6" AB).

Lakepoint View Village

75 Guadalupe Dr

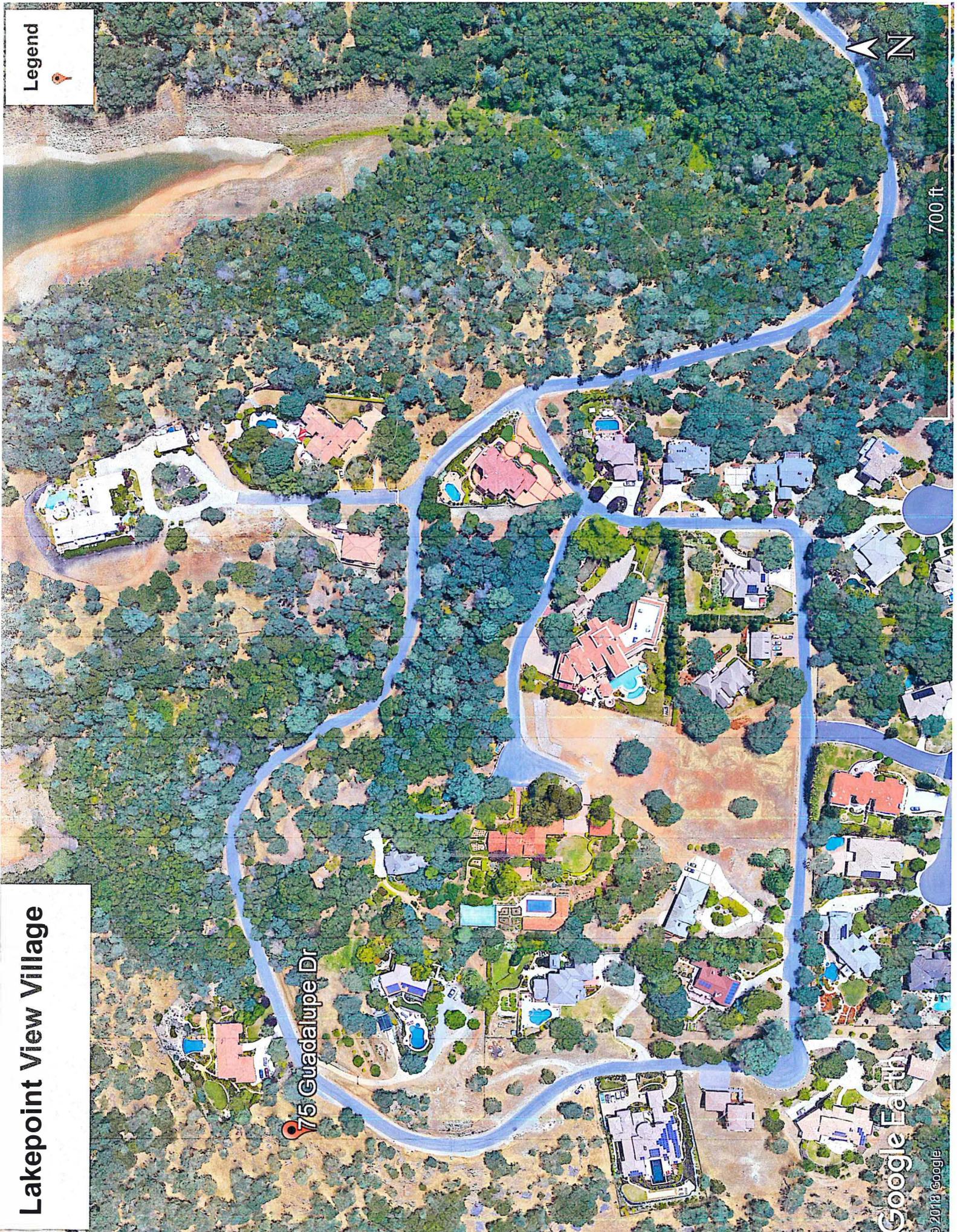
Legend



700 ft

Google Earth

© 2013 Google



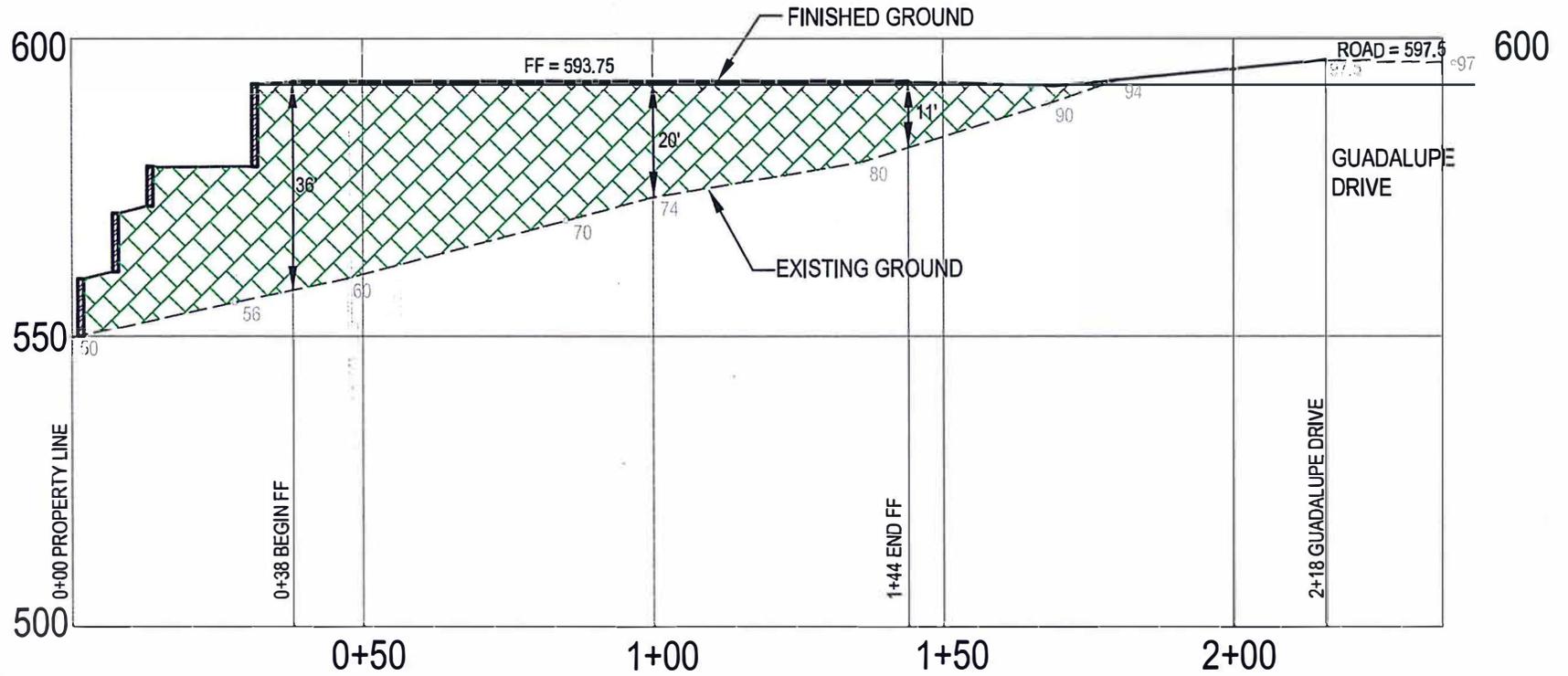






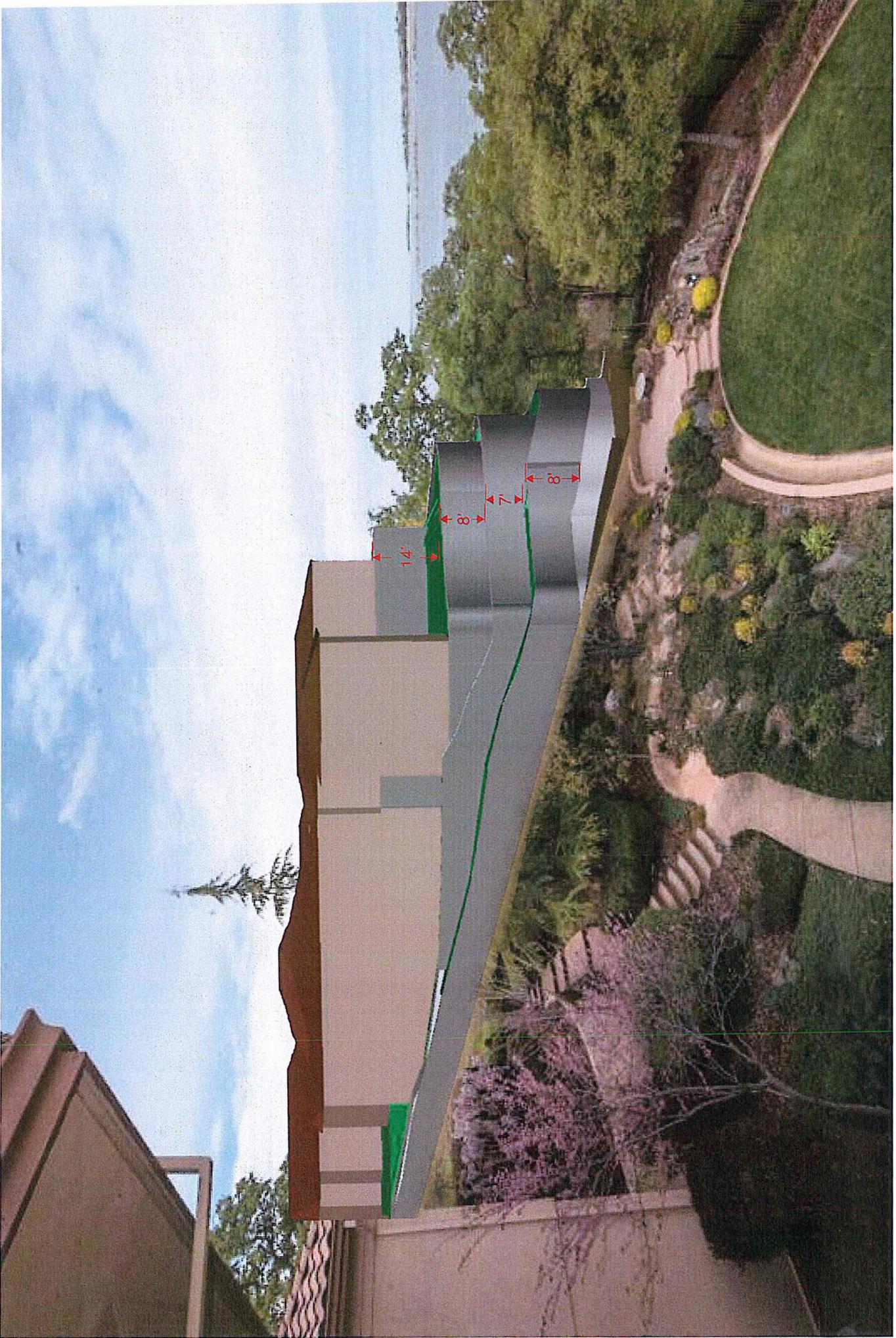


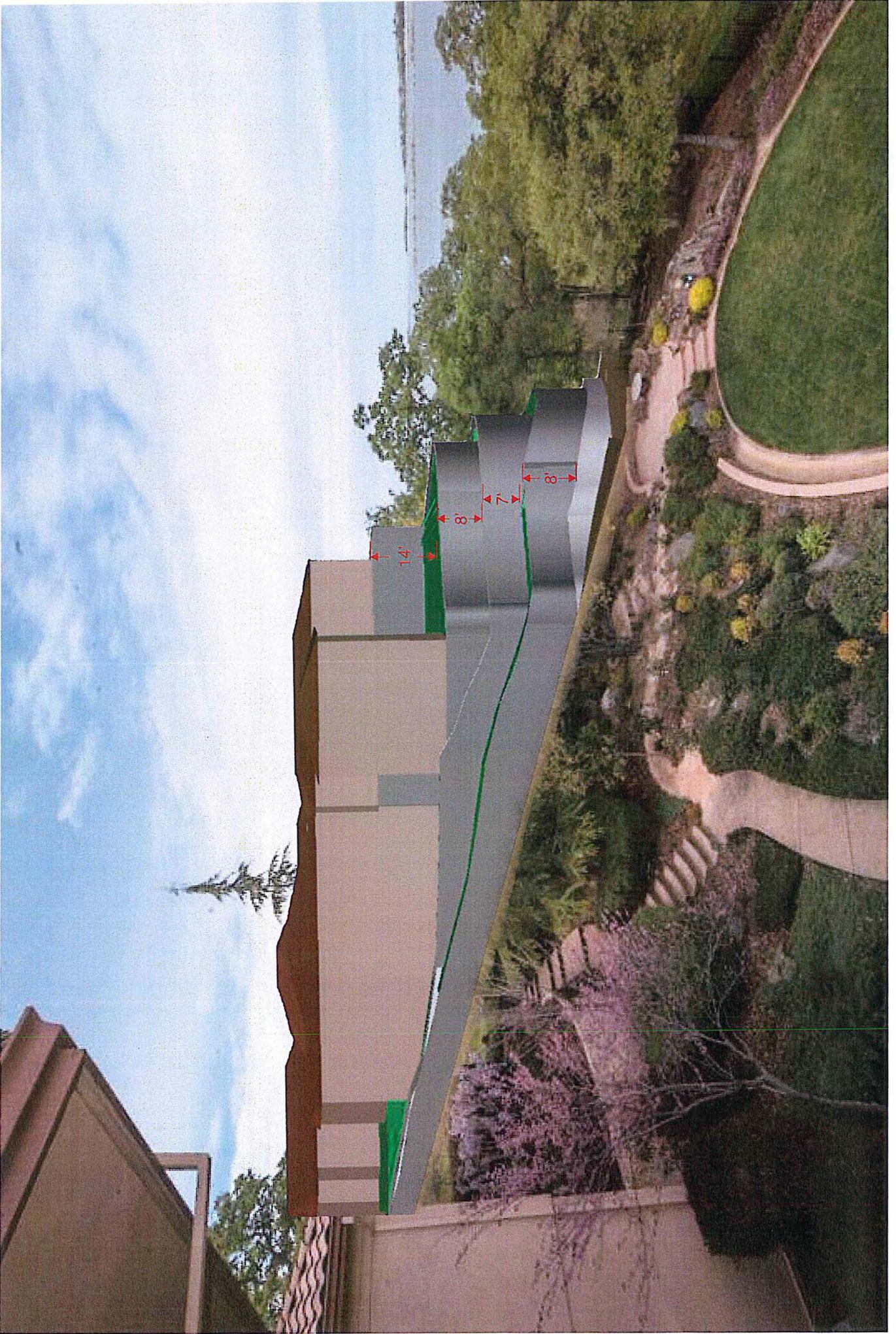
FOLSOM
LAKE

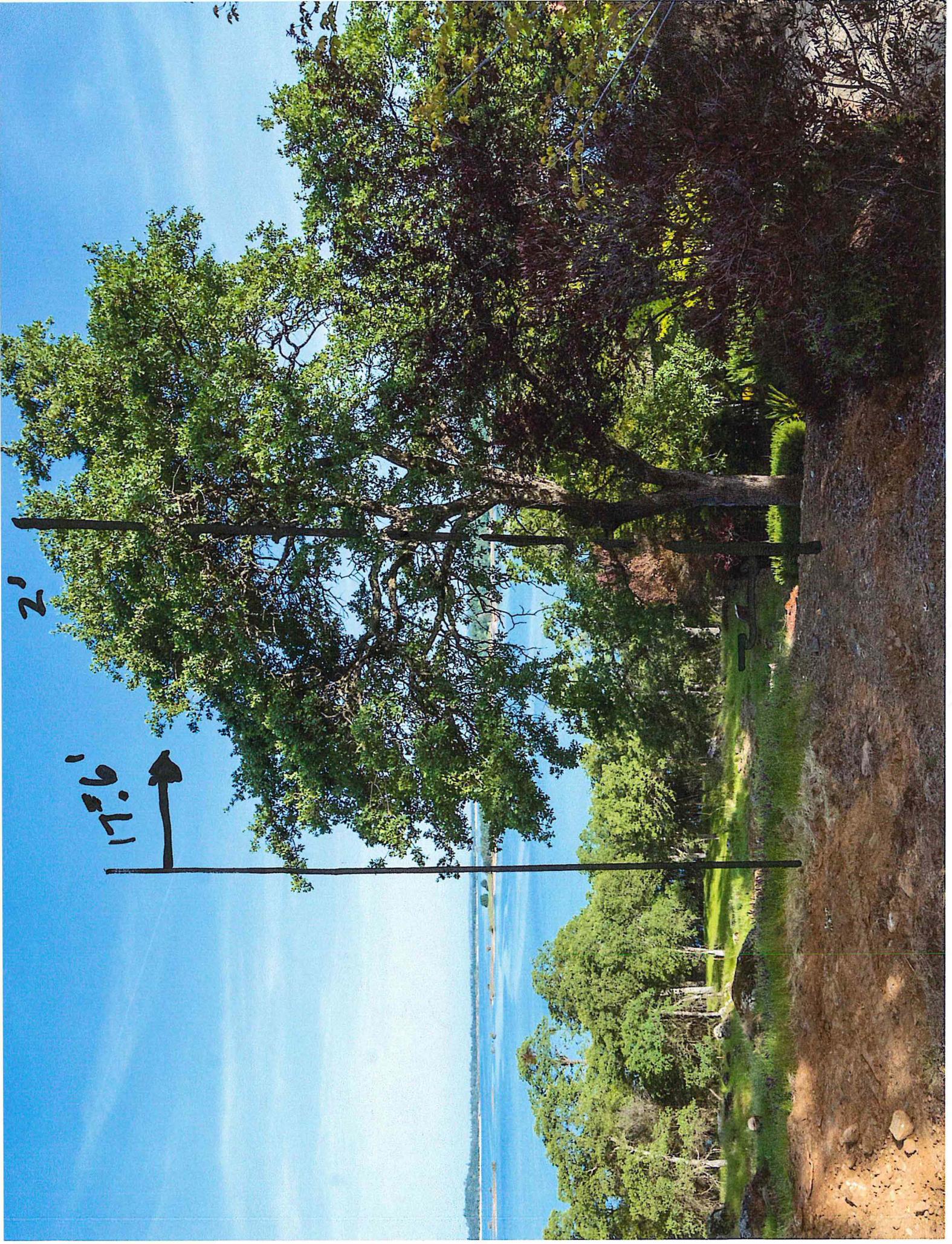


75 GUADALUPE DRIVE
EXISTING AND PROPOSED PROFILE ALONG PROPERTY









OAK
593.78

11" →
DIA ← 119"

600.35'

592.92'

UPPER GARAGE

PAD 597.92'

7.83' 18.74' Lower

6.4' WALL

7' FUR TRUNK

LOWER GARAGE

PAD 581.61'

18.74'

LOWER

Section B: DESIGN AND CONSTRUCTION STANDARDS

1. **Mass pad grading:** Due to the severe terrain encountered in the county, grading may be required to create adequately-drained, near-level building sites and to provide for adequate access to these sites. The volume of grading shall be limited to that necessary to accomplish the proposed development. It is the intent of this section, consistent with the El Dorado County General Plan, that all grading shall reflect, to the greatest extent possible, the natural gradient and contours of the site. Grading shall be designed to minimize the creation of extensive, artificial banks or terraces which may be visible from public streets or other public views. Grading shall conform to the design standards provided in this Volume unless demonstrated through adequate analysis and report to the satisfaction of the Director that an alternate design can provide a stable slope that avoids severe erosion and other hazards.
2. **Excavation – cut slope standards:** Cut slopes shall be constructed in a manner that does not create unstable conditions or induce severe erosion. Unless recommended otherwise in a Geologic Report or Geotechnical Report accepted by the Director, the following minimum design standards are required by the County to assure the stability of permitted cuts:
 - A. **Slope steepness:** No excavation shall be made with a cut face steeper in slope than two horizontal to one vertical (2:1), exclusive of required terraces and roundings described herein. *(The face of cut slopes between terraces shall be no steeper than two horizontal to one vertical.)* The Director may permit a cut with a steeper slope if the applicant demonstrates through engineering, geotechnical engineering and engineering geology reports that the underlying earth material is capable of standing on a steeper slope. Alternately, the Director may limit a cut slope to a steepness less than a 2:1 gradient due to the presence of earth materials that would potentially be unstable at such a slope angle.
 - B. **Unsupported foliation or bedding planes:** No slope shall be cut at an angle steeper than the bedding/foliation planes or orientation of the principal joint sets in any formation where such planes or joints dip toward the proposed cut face. A cut slope with this underlying condition (i.e. downslope-dipping bedding planes or joint sets) may be permitted by the Director if the applicant demonstrates through engineering, geotechnical engineering and engineering geology reports that the slope would be stable at a steeper angle.
 - C. **Terrace requirements:** For cut slopes up to 60 feet in height, terraces at least 8 feet (2.4 meters) in width shall be established at not more than 30-foot (9.1 meters) vertical intervals on all cut slopes to control surface drainage and debris except that where only one terrace is required, it shall be at midheight. For cut slopes greater than 60 feet (18 meters) and up to 120 feet (37 meters) in vertical height, one additional terrace at approximately midheight shall be 12 feet (3.6 meters) in width. Terraces shall slope a minimum of 5 percent gradient toward the hillside and be accessible for maintenance. Terrace widths and spacing for cut slopes greater than 120 feet (36 meters) in height shall be designed by the

I was amazed and shocked that the Planning Department approved the Permit Application for the project for the following reasons:

According to the FINAL Revised Grading Design Manual 2-5-07, Page 7 of 39 Section B: DESIGN AND CONSTRUCTION STANDARDS 1.

Mass pad grading: Due to the severe terrain encountered in the county, grading may be required to create adequately-drained, near-level building sites and to provide for adequate access to these sites.

THE VOLUME OF GRADING SHALL BE LIMITED TO THAT NECESSARY TO ACCOMPLISH THE PROPOSED DEVELOPMENT. IT IS THE INTENT OF THIS SECTION, CONSISTENT WITH THE EL DORADO COUNTY GENERAL PLAN, THAT ALL GRADING SHALL REFLECT, TO THE GREATEST EXTENT POSSIBLE, THE NATURAL GRADIENT AND CONTOURS OF THE SITE. GRADING SHALL BE DESIGNED TO MINIMIZE THE CREATION OF EXTENSIVE, ARTIFICIAL BANKS OR TERRACES WHICH MAY BE VISIBLE FROM PUBLIC STREETS OR OTHER PUBLIC VIEWS.

(FOLSOM LAKE). Grading shall conform to the design standards provided in this Volume unless demonstrated through adequate analysis and report to the satisfaction of the Director that an Alternate design can provide a stable slope that avoids severe erosion and other hazards.

There is no question the proposed project violates the intent of the EDC General Plan!!! The project needs to be downsized!!!

The lot had a full canopy of Oak trees. EDC approved 24 of them for removal and saved three. Two of the remaining three will die because of the proposed design – one a protected 37.9 inch diameter (119 inch circumference) measured 4.5 feet above ground level Heritage Oak. The permit application lists it as 36 inches – the minimum to be protected. An 11 inch diameter limb was already illegally removed from the tree. The proposed design shows a 6.4 foot retaining wall located 7 feet from the trunk and a concrete driveway behind it. No arborist would ever allow that!!! You are never supposed to construct

anything under the drip line of an oak tree. Ground level of the Heritage Oak is 600.35 feet. The finished pad of the upper garage is at 592.92 feet or 7.83 feet lower. The finished pad of the lower garage is at 581.61 feet or 18.74 feet lower. The Heritage Oak has little chance to survive.

The second Oak tree is on the opposite property line and is an 18" Oak at an elevation of 584.17 feet. There is a proposed retaining wall of seven feet to two feet located two feet from the trunk of the Oak. The Oak tree leans heavily to the subject property with approximately 75 percent of the drip line (17.6 feet) over the subject property. In addition the concrete driveway is 3 feet from the Oak trunk. The driveway entrance is at 596.73 feet and the driveway at the Oak tree is at 589 feet resulting with 4.83 feet of dirt and concrete within the drip line. Again this Oak tree has little chance to survive.