

THE CORE IDEA IS THAT THERE CAN NO DEVELOPMENT OF OPEN SPACE IN  
THERE CEMETERY UNTIL THERE IS A MASTER PLAN IN PLACE WHICH  
CONTEMPLATES DEVELOPMENT OF ANY SUCH OPEN SPACE ... JUST  
BECAUSE GREEN HILLS HAS A CONDITIONAL RIGHT TO DEVELOP SOME  
AREAS OF THE CEMETERY DOES NOT MEAN GREEN HILLS HAS THE  
UNCONDITIONAL RIGHT TO DEVELOP ALL AREAS OF THE CEMETERY...

**COMMENTS OF SHARON LOVEYS AT PLANNING COMMISSION HEARING  
DATED JUNE 26, 2018 IN SUPPORT OF APPEAL – CASE NO. PLGR 2018-00008**

• **OBLIGATION TO MEDIATE:**

When Green Hills applied back in 2007 to amend the Master Plan, Green Hills did not say that the Master Plan was advisory only; or that it was the functional equivalent of a smorgasbord menu where it could pick and choose which aspects to follow and which to ignore.

With regard to the obligation to mediate, Condition 40 of the City's Resolution No. 2015-102 (which has not been modified) states that

***"If requested by the Vista Verde Homeowners, Green Hills will undertake an appraisal to determine if there has been a loss of real estate value resulting to the homeowners from the construction of the Mausoleum and what that loss may be. Green Hills will participate in a mediation process with the Vista Verde Homeowners and attempt to settle claims by such homeowners for values up to the amount of the appraisal differential, using either the existing appraisal or a new appraisal requested by the Vista Verde Homeowners. . . "***

Earlier this year, Green Hills **unconditionally** promised to participate in a mediation to take place in late May, 2018. Green Hills then violated its promise and pulled out of the mediation after a lawsuit was filed challenging (i) the land use entitlements Green Hills received earlier this year on the Arroyo Vista development and (ii) the Council's right to amend the Conditional Use Permit as part of a compliance review.

We renew our request for a mediation. We also request that any approval of this entitlement be conditioned on Green Hills being held to its mediation promise. Until then, Green Hills is out of compliance with its commitment to mediate and should not be granted any further land use entitlements until it meets its mediation commitments.

• **OBLIGATION TO FOLLOW THE LAW AS IT RELATES TO  
IMPLEMENTATION OF THE MASTER PLAN**

A few undisputed facts and legal factors need to be acknowledged:

- Green Hills' right to use and develop the cemetery **is not absolute**. It is **conditional**.
- Green Hills is free to modify the conditions by making formal application to (1) amend the conditional use permit, or (2) amend the Master Plan. In the case of the proposed Alta Vista Development, Green Hills has done neither.
- The purpose of the Master Plan is to guide the future development of the cemetery.
- No City Council Resolution to date has allowed Green Hills the right to develop areas identified in the Master Plan as undeveloped open space.
- The Alta Vista area of the cemetery (Area 2) which is sought to be "graded" under the grading permit which is the subject of this appeal is open space. It was never contemplated to be developed.

Green Hills' effort to modify the conditional use permit and/or Master Plan by the presentation and processing of a grading permit application to "install" (whatever that means) 44 "lawn

crypts” (whatever that means) should be rejected. To allow Green Hills to exempt itself from the rules yet again would be to establish another dangerous, reckless, and unlawful precedent. We ask that the City’s zoning code (Section 17.28.030 (cited in the appendix to the appeal – pages 19-20)) be followed and not ignored.

Green Hills’ position that the 44 earth interments proposed in the “Grading Application” have already been approved is not accurate. The whole point of the Master Plan is to guide the future development of the Cemetery. This area of the Cemetery involved in this appeal was never contemplated to be improved in either the Master Plan or the Conditional Use Permit.

Back on February 20, 2007, the Public Notice issued by the City in support of the Master Plan Revision stated that one purpose of the Master Plan Revision was to clarify:

“That the total number of ground burial sites at Green Hills Memorial Park [was] to be 13,589 Double Depth Burials (27,178 interments), 388 Single Depth Burials (388 interments), and 408 family estates (4080 interments)”. (Item 3 on Page 1 of Notice dated February 6, 2007).

To date, no audit or evaluation of whether these density limits have been exceeded has been done. It needs to be. The current density and intensity of use is unknown. Therefore, no finding can be made that Green Hills is in compliance with the density limitations of the Master Plan which, to date, have never been modified.

The fact that City Council Resolution No. 2018-07 referred to Green Hills’ conditional right to conduct “earth interments. . . . throughout the Cemetery” did not vest in Green Hills the unconditional right to develop open space areas in the cemetery in any manner it desires. The City Council’s action on February 6, 2018 in adopting Resolution No. 2018-07 was part of an “Annual [Compliance] Review” not a formal conditional permit amendment application. To the extent that the Master Plan was “revised”, that revision was limited to the scope of the Council’s proposed action. . evaluating Green Hills’ compliance with the existing conditions. Resolution No. 2018-07 was not a license for Green Hills to ignore the use limitations incorporated into the Master Plan and Conditional Use Permit. At no time has the City Council ever modified the number of allowed (or permitted) earth interments allowed in the Cemetery under the Master Plan or Green Hills’ Conditional Use Permit.

So the following questions remain which must be answered before this open space area (identified as “Alta Vista Gardens”) is developed:

- Of the 27,178 Double Depth earth interments authorized under the Master Plan in 2007, how many Double Depth earth interments are there; and how many remain to be conducted?
- Of the 388 Single Depth earth interments authorized under the Master Plan in 2007, how many Single Depth earth interments are there; and how many remain to be conducted.
- Of the 408 family estates (4080 earth interments) authorized under the Master Plan in

2007, how many family estates are there; what are the number of earth interments are there in the collective number of family estates; and how many remain to be conducted. Conditional uses are intended to supplement the City's zoning laws; not supplant the City's zoning laws. If Green Hills wants to develop open space areas of the cemetery, then Green Hills needs to follow the same laws which apply to everyone else. That means applying for a conditional use permit. Then out of that process, the necessary fact-finding will occur to ensure that the laws have been followed and not ignored.

**APPEAL OF SHARON LOVEYS TO CITY COUNCIL OF DECISION OF  
PLANNING COMMISSION DATED JUNE 26, 2018  
RE: ALTA VISTA GARDENS DEVELOPMENT  
CASE NO. PLG2018-0008**

SHARON LOVEYS appeals to the Rancho Palos Verdes City Council the decision of the Planning Commission announced at its meeting on June 26, 2018, as per the Notice of Decision dated June 28, 2018, denying her appeal of the decision of the Planning Director to approve a *grading permit* application of Green Hills Memorial Park allowing for the “cut” (212 cubic yards) and “fill” (212 cubic yards) of dirt in an undeveloped open space portion of “Area 2” identified in the Site Plan supporting the *grading permit* application as the “*Alta Vista Gardens Family Estates/Private Estates*”.

In support of this Appeal, Ms. Loveys attaches hereto and incorporates by reference her original appeal to the Planning Commission dated May 29, 2018, as well as her written comments dated June 26, 2018, delivered orally to the Commission on June 26, 2018.<sup>1</sup>

**GROUND FOR APPEAL**

1. The City’s need to *First Process a Conditional Use Permit Application* under Chapter 17.28 of the City’s Development (Cemetery Zoning) Code (and specifically §17.28.030(H)) and then make the requisite “Findings” under §17.030(H) and §17.76.040(E) of the City’s Development Code prior to approving a *Grading Permit*.

*a. Inconsistency Between Planning Commission Decision and  
Development Sought by Green Hills.*

The Planning Commission failed to reconcile the inherent inconsistency between Green Hills’ Application for a “*Major Grading Permit*” (§17.76.040(B)) and Green Hills’ stated intent to develop the *current open space area* of the cemetery with the *Alta Vista Gardens Family Estate/Private Estate Development*. This development contemplates (i) the “installation” and (ii) the “use” of 44 *lawn crypts*<sup>2</sup> (so installed) to inter human

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<sup>1</sup> All Code References in this Appeal are to the Development Code (or the City’s Zoning Code which incorporates its development standards) of the City of Rancho Palos Verdes. Copies of the relevant portions of the Code Sections cited are reproduced in the Appendix to this Appeal.

<sup>2</sup> The reference to “*lawn crypts*” in the Major Grading Permit Application was clarified by Green Hills’ counsel to mean “burial containers” into which coffins or caskets are placed. (Letter of Ellen Berkowitz dated June 19, 2018, to RPV Planning Commission (Footnote 2)). While the letter goes on to state on page 3 (second full paragraph) that Green Hills “intends” to (i) grade

remains as part of Green Hills' cemetery operations. The grading of what is currently undeveloped open space is required in order to effectuate and complete the development. So far, the City has not approved the *Alta Vista Gardens Family Estate/Private Estate Development*. Yet Green Hills wants approval to grade undeveloped open space. How can this be? This is, in a word, Green Hills "gaming the system" yet again through the use of contrived ambiguity, omission, and deflection for the purpose of avoiding the clearly established protocol set out in the City's Development (Zoning) Code. If Green Hills wants to now develop a particular site-specific parcel of open space in Area 2 which the Master Plan never contemplated being developed, then Green Hills needs to formally apply for a conditional use permit to authorize its (site-specific) development. Until Green Hills has done so, it would be an abuse of discretion and an error of law for the City Council to allow the *Alta Vista Gardens Family Estate/Private Estate Development* to proceed via the issuance of just a grading permit.<sup>3</sup>

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the described area; (ii) install lawn crypts within the graded area; and (iii) conduct interments within those lawn crypts "at some point in the future", Green Hills and the Planning Commission dodge (or ignore) the core issue presented which is whether the grading permit authorizes the interment of human remains in the lawn crypts at an undefined future time absent a site-specific conditional use permit. Green Hills' position seems to be that the right to develop (undeveloped) open space in the cemetery is already an absolute; that it has already been "permitted" by the CUP; and, therefore, that the approval of the major grading permit applied for is all that required in order for Green Hills to (1) develop the open space portion of Area 2 and then (2) inter human remains in the 44 lawn crypts to which the grading permit refers. It is appellant's position that the City has not made a determination authorizing this site-specific "use" of this open space (undeveloped) area of the Cemetery (Area 2) to either (i) store or bury concrete containers, or (ii) inter human remains (contained in coffins) inside the concrete containers; and that before any such "use" is to be "permitted", Green Hills needs to procure the City's advance permission, either by way of a *Site Plan Review* (with its required "Findings" (See Chapter 17.70 and specifically 17.70.030(B)), or the issuance of a site-specific *Conditional Use Permit* supported by the "Findings" required under §17.28.030(H) that the proposed development of the (currently undeveloped) open space should be allowed to permit its "use" for (i) the installation of 44 burial containers (lawn crypts) and (ii) the interment of human remains (placed in coffins) inside the burial containers; and specifically, that said site-specific use is (a) similar to the uses previously approved, and will be "no more intensive" in density or intensity than the uses previously approved. (§17.28.030(H)). Because the Planning Commission made no such "Findings", its decision approving of the Major Grading Permit was both legal error and an abuse of discretion.

<sup>3</sup> In this context, the issuance of a grading permit is not ministerial; it is discretionary under the provisions of §17.76.040(E) where specific "Findings" have to be made in support of the grading permit. No such "Findings" were made. The issuance of a grading permit presupposes that the City has authorized the site-specific development of the *Alta Vista Gardens Family Estate/Private Estate Development* on what is currently open space, undeveloped land under the Master Plan as currently constituted. Because no such site-specific authorization has been forthcoming, the grading permit issued in this case pursuant to this site-specific application

The specific inconsistency lies in Green Hills' request to (1) perform (major) "grading" activities (as defined in §17.96.820 (i.e. the "excavation" (defined in §17.96.650) of an undeveloped open space land area within Area 2 of the Green Hills Master Plan which involves the "cut" (defined in §17.96.490) and "fill" (defined in §17.96.720) of 424 cubic yards of earth (212 cubic yards of "cut" and 212 cubic yards of "fill")) so as (2) to "accommodate"<sup>4</sup> Green Hills intent to develop the open space (undeveloped) area (the *Alta Vista Garden Family Estate/Private Estate Development*) by installing 44 "lawn crypts" (burial containers) in the identified open space (currently undeveloped) area of the Cemetery; and then making use of the developed space to (iii) inter human remains (in caskets or coffins) inside each "lawn crypt".

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cannot be held to be consistent with the City's policies or development standards (as incorporated into the City's Zoning (& Development) Code.

<sup>4</sup> The term "accommodate" is a "contrived ambiguity" (a "weasel word") intended to deflect off of the fact that Green Hills has ***not*** applied for a conditional use permit allowing for the development of the proposed (currently undeveloped) *Alta Vista Gardens Family Estate/Private Estate Development*; nor has Green Hills applied for a Site Plan Review under §17.70.020. Green Hills position (not addressed by the Planning Commission) is that no ***site specific*** "Finding" as to whether the proposed *density or intensity of use* contemplated by the *Alta Vista Gardens Family Estate/Private Estate Development* is necessary because ¶2(a)(6) of City Council Resolution No. 2018-07 (approved following just a "Compliance Review Hearing" when Green Hills had requested neither a CUP Application or a Master Plan Amendment) generally authorized "grading throughout the property" subject to the Director's "Finding" that the grading substantially complies with the Master Plan. As noted in the appeal, while Section 3 of the Planning Commission's "Findings" referenced the Master Plan with regard to the allowed quantity of grading to be permitted, the Planning Commission erred and abused its discretion when it failed to require or make a "Finding" under §17.28.030(H) as to whether the "density" and "intensity" of the proposed use was consistent with the Master Plan. Because the area sought to be developed as part of the *Alta Vista Gardens Family Estate/Private Estate Development* was never contemplated to be developed under the Master Plan, it is simply not possible to "Find" that the *Alta Vista Gardens Family Estate/Private Estate Development* is consistent with the Master Plan unless the Master Plan is amended to allow for development of this open space. In order for that to occur, however, there must first be an analysis and comparison of (1) the degree of density and intensity of development ***contemplated*** under the Master Plan as currently constituted, (2) the amount of ***actual*** development completed, and (3) the amount of ***proposed*** development for which land use entitlements have been granted, but not effectuated. Absent such an evaluation, neither the Director, the Planning Commission, nor the City Council could make the needed "Finding" in support of the *Alta Vista Gardens Family Estate/Private Estate Development*. Unless and until such a "Finding" allowing for the underlying "use" is made, no grading permit should be approved.

Grading activities at a specific development site are different from and inconsistent with the activities attendant to the “use” of the current undeveloped open space to (i) install 44 “lawn crypts” and then (ii) inter caskets or coffins containing human remains within each “lawn crypt”.

Approval to “grade” does not equate with the approval to expand cemetery “use” to an open space, undeveloped area of the cemetery never contemplated under the Master Plan to be developed.

The issuance of any grading permit is thus premature. Green Hills contention that the City Council has approved an amendment to the Master Plan which approves site-specific development of open space (undeveloped areas of the cemetery) is not correct because (i) Green Hills never formally applied for any such broad-based Master Plan amendment (development “anywhere” is not the functional equivalent of development “everywhere”), and (ii) any amendment to the Master Plan under Resolution 2017-03 rendered under the guise of what was a “*Compliance Review*” hearing (where no such proposed amendment was pending) was and is an abuse of discretion undermining the purpose of the Master Plan and rendering it (*de facto*) illusory as to those purported “amendments” which extended beyond the scope of the “*Compliance Review*” (agendized) hearing.

The Planning Commission’s decision does not address the specific fact that (i) development of the *Alta Vista Garden Family Estate/Private Estate Development* was never specifically contemplated by the Master Plan, (ii) that the City Council has never authorized this area of open space in the cemetery to be developed absent a formal Master Plan Amendment (which would require an application) or a site-specific *Conditional Use Permit* which incorporated the “Findings” mandated by §17.28.030(H), (iii) that no “Findings” of consistency with the Master Plan can therefore be made, and (iv) that no “Findings” as to the propriety and appropriateness of the “density” and “intensity” of the proposed *Alta Vista Garden Family Estate/Private Estate Development* can thus be made absent either (i) a site-specific Site Plan Review and analysis of the nature and extent to which Green Hills has complied with the degree of density and intensity of use contemplated under the Master Plan under §17.70.020(B); or (ii) a site-specific conditional use permit application and review (not done here) as required by §17.28.030(H) and contemplated under ¶2(b)(4) of Resolution No. 2018-07 (relied on by the Planning Commission).

Making “Findings” with regard to the “grading” quantities to be permitted accomplishes only half of the analysis. Intellectual honesty and consistency require that the “Findings” attendant to the other half of the analysis also be made. This involves

making the requisite “Finding” under §17.28.030(H) that the “insanity” and “density” of the proposed *Alta Vista Garden Family Estate/Private Estate Development* is both (i) “similar” to the uses currently authorized under the Master Plan, and (ii) no more intensive” than the uses currently authorized under the Master Plan.

This is significant and important because as noted on page 12 of the Appeal to the City Planning Commission, Area 2 (Inspiration Slope) contemplated a total of 388 single depth lawn crypts, 1720 double depth lawn crypts, and 48 family estates (each family estate with a capacity 8-12 lawn crypts).<sup>5</sup>

Since the Master Plan was approved, the “density” and “intensity” of use has increased beyond that contemplated under the Master Plan as follows: (1) the storage of 578 concrete vaults on the roof-top of the Inspiration Slope Mausoleum has been informally “permitted” by a letter agreement dated June 28, 2016 (Exhibit “3” hereto); and (2) the City approved the “*Vista Del Ponte Development Project*” which added another 229 interments (121 earth interments and 108 cinerary interments) (See Exhibit “2” hereto). Before adding to the “density” and “intensity” of any site-specific proposed use as sought under the *Alta Vista Garden Family Estate/Private Estate Development Project*, the full extent of the existing “density” and “intensity” of use of Area 2 (Inspiration Slope) as currently authorized must be evaluated in the context of if, how, and to what extent the proposed *Alta Vista Garden Family Estate/Private Estate Development Project* impacts on the existing and contemplated use of Area 2 (Inspiration Slope section) of the cemetery. A mere citation to the Master Plan or to the

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<sup>5</sup> 2800 vault or crypt interments spaces were also contemplated and authorized in connection with the development of a one-story Mausoleum (with no roof-top interments). In addition, since the Master Plan was adopted, the City approved the “storage” of over 578 “crypts” or concrete vaults on the roof of the Inspiration Slope Mausoleum. In addition, the City approved the development of *Vista del Ponte* which added another 229 interments (121 earth interments; 108 “niche” interments), thereby further increasing the density and intensity of the use of Area 2. Paragraph 2(b)(4) of the Conditions of Approval (City Council Resolution No. 2017-03) which directs that “any” modification of the Master Plan be approved by way of direct review to the City Council which shall process the same “as a revision to the Conditional Use Permit”. Because the *Alta Vista Garden Family Estate/Private Estate Development* involves the development of a previously undeveloped area of the Cemetery, the project first has to be approved via a conditional use permit application. Green Hills did not submit any such application. It must first do so before any grading permit can be considered (or submit a conditional use permit application and a grading application simultaneously). Such application should also contain a complete inventory of the extent of the number of interments approved under the Master Plan, the number actually developed, and other facts which demonstrate how the proposed *Alta Vista Garden Family Estate/Private Estate Development* will not be “more intense” or dense than the uses already permitted.

existing conditions of approval which contemplate the general development of the cemetery is not sufficient. The specifics of this project must be evaluated in the context of a site-specific conditional use permit application under §17.28.030(H). To do so requires that Green Hills produce an inventory of all interments (earth interments, vault interments, and cinerary interments) approved to date, and once that metric and base-line has been established, compare the number of interments contemplated under the *Alta Vista Garden Family Estate/Private Estate Development Project*, and then render an objective determination with respect to whether the *Alta Vista Garden Family Estate/Private Estate Development Project*, as proposed is no more “intensive” than the uses which have already been approved (as required under §17.28.030(H)).

Where does the *Alta Vista Garden Family Estate/Private Estate Development* fall within this proposed density and intensity of use? We do not know; and until we do, no development should be permitted; and no grading permit should be authorized because to do so would be inconsistent with the City’s protocol which first authorizes the site-specific development of undeveloped open space under §17.28.030(H), and then, once approved, the issuance of a grading permit, subject to separate “Findings” which are required to support its issuance (§17.76.040(E)).

b. Any Development of Undeveloped Open Space Requires Green Hills To Procure a Conditional Use Permit Under ¶2(b)(4) of the Conditions Of Approval.

Under Paragraph 2(b)(4) of Resolution No. 2018-07 (which Resolution was cited by the Planning Commission in its decision):

“4. Any modification to the Master Plan or conditions of approval, including, but not limited to, new structures in undesignated areas of the Master Plan, which shall be processed as a revision to the Conditional Use Permit (not Site Plan Review).” (Emphasis added).

This section is mandatory. It divests the Director of jurisdiction over the *Alta Vista Garden Family Estate/Private Estate Development Project* given that the area contemplated by the proposed *Alta Vista Garden Family Estate/Private Estate Development* is currently undeveloped open space under the Master Plan. To develop undeveloped open space under the Master Plan requires direct City Council Review under ¶2(b) given that “any” development of undeveloped open space represents a modification to the Master Plan, by definition.

The development of an area identified in the Master Plan as an undeveloped open space area of the cemetery is “significant” (by definition) because it involves the development of an area of the cemetery never contemplated to be developed under the Master Plan as currently approved. Accordingly, the Master Plan must be amended to allow for the development of any and all such open space, undeveloped areas. Allowing development of the open space, undeveloped area in Area 2 contemplated by the *Alta Vista Garden Family Estate/Private Estate Development Project* falls within the category of “any” modification and is thus, by definition, “significant”. As such, under ¶2(b)(4), the Director lacks the authority to approve the *Alta Vista Garden Family Estate/Private Estate Development Project*. That includes the issuance of a grading permit.

The Director’s failure to abstain from any action with respect to the *Alta Vista Garden Family Estate/Private Estate Development Project* and refer the matter to the City Council for direct review and evaluation of **both** the site-specific proposed (conditional) use (Development) of the undeveloped open space in Area 2 sought to be developed as the *Alta Vista Garden Family Estate/Private Estate Development Project* for “Findings” under §17.28.030(H), and the separate *grading permit* application for “Findings” under §17.76.040(E) was error and an abuse of discretion (i.e. the failure to exercise discretion itself being an abuse of discretion).

The Planning Commission’s reliance on Condition No. 2(a)(6) is not appropriate for two reasons: (1) the condition was added by Council Resolution No. 2017-03 which was agendized as a “*Compliance Review*” hearing, not a hearing whose purpose was to amend the Conditional Use Permit Conditions; and (2) generalized permission to grade undefined undeveloped open areas of the cemetery cannot reasonably be construed to constitute an approval to develop the site-specific open space (undeveloped) portion of Area 2 contemplated by the *Alta Vista Garden Family Estate/Private Estate Development Project*; particularly in light of Condition No. 2(b)(4) quoted above (which mandates direct City Council review of any application which seeks “any” modification of the Master Plan (as to both “use” and “grading”. Development of a site-specific open space undeveloped area identified in the Master Plan constitutes such a modification of the Master Plan). ¶2(a)(6) refers solely to “grading”. It omits any reference to a proposed “use” of identified undeveloped open space for development.

The same applies to the Planning Commission’s reference to ¶1(b) (which also only references “grading”). It does not contemplate the protocol to be applied where site-specific “development” of undeveloped open space is sought, as is the case with the *Alta Vista Garden Family Estate/Private Estate Development Project*. (See §17.96.560 (Definition of “*Development*”) which references and defines “*Development*” as

including any “*change in the density or intensity of use of land*”. Clearly the *Alta Vista Garden Family Estate/Private Estate Development Project* involves a change in the “density and intensity” of the use of the open space undeveloped area contemplated in Green Hills grading permit application. As a proposed “development”, its approval must follow the City’s protocol as it pertains both to the site-specific conditional use (under §17.28.030(H)) and the proposed site-specific grading regime necessary to effectuate the proposed site-specific conditional use (approved under §17.76.040(E)).

The Planning Commission’s reference to ¶1(e) is also not apt because it constitutes merely a generalized reference to the fact that earth interments are “permitted” throughout the cemetery. There are no specific reference to site-specific areas of undeveloped open space. To the contrary, ¶1(e) references ¶1(h) which deals solely with “Minor Cemetery Improvements”. There is no “Finding” (nor can there logically be a “Finding”) by the Planning Commission that the *Alta Vista Garden Family Estate/Private Estate Development* is a “Minor Cemetery Improvement”. The reason? Because by definition, development of areas identified in the Master Plan as undeveloped open space, where development was never contemplated, cannot and should not be considered “minor”; particularly where, as here, Area 2 (Inspiration Slope) has been and continues to be the subject of more intense development than was ever contemplated under the Master Plan. (See Exhibits “1” and “2” below). Until a thorough and thoughtful evaluation is made with respect to the “density” and “intensity” of Area 2’s development, and the Master Plan amended (after an application has been made to amend the Master Plan (not done in this case) by way of direct City Council Review under ¶2(b)(4), based on “Findings” mandated by §17.28.030(H) (site-specific conditional use) and “Findings” mandated by §17.76.040(E) (site-specific grading permit approval), no grading permit application can legally be issued to Green Hills for the *Alta Vista Garden Family Estate/Private Estate Development Project*.

*c. The lack of “Findings” under §17.76.040(E) Renders the Planning Commission’s Decision Deficient.*

Under §17.76.040(E) of the City’s Development (Zoning) Code requires, among other things, a “Finding” that (i) the grading sought to be approved does not exceed that which is necessary for the permitted primary use (§17.76.040(E)(1)); (ii) the proposed grading does not significantly adversely affect the visual relationships with, nor the views from the viewing area of neighboring properties (§17.76.040(E)(2)); (iii) the nature of the grading minimizes disturbance to the natural contours and finished contours are reasonably natural (§17.76.040(E)(3)); and (iv) a fill or cut is not to exceed a depth of five feet unless such grading is reasonable and necessary (§17.76.040(E)(9)(c)), and will not be detrimental to the public safety or to other property (§17.76.040(E)(10)(d)).

None of the foregoing “Findings” was made by the Planning Commission. The lack of the mandated grading permit “Findings” set out above in §17.76.040(E) renders the Planning Commission’s determination deficient; and the Director’s action an abuse of discretion and error of law.

2. Green Hills’ Failure to Mediate Its Dispute with the Vista Verde Homeowners as Mandated by ¶11(h)(10) Violates the Conditions of Approval which should Disqualify Green Hills from Procuring Any Permits until Green Hills’ Mediates with the Vista Verde Homeowners.

Condition 11(h)(10) directs as follows:

“(10) **Mediation with Homeowners.** Owners in the Vista Verde Condominium Project have made objections and claims against the City concerning the fact that the Pacific Terrace/Memorial Mausoleum is constructed at the 8 foot setback line instead of the previous setback which existed before 2007. If requested by the Vista Verde Homeowners, Green Hills will undertake an appraisal to determine if there has been a loss of real estate value resulting to the homeowners from the construction of the Mausoleum and what that loss might be. Green Hills will participate in a mediation process with the Vista Verde Homeowners and attempt to settle claims by such homeowners up to the amount of the appraisal differential, using either the existing appraisal or a new appraisal requested by the Vista Verde Homeowners. City representatives will also participate in this mediation on behalf of the City. If the Vista Verde Homeowners refuse to participate in the mediation, or the mediation does not result in a settlement of the disputes, then Green Hills is responsible for the defense of its entitlements pursuant to the indemnification provision in Condition 33.”

Condition 33 directs as follows:

“33. **Defense of Claims Against Project.**

a. **Non-Liability of City.** The Parties acknowledge that: (i) In the future, there may be challenges to legality, validity, and adequacy of Project approvals; and (ii) if successful, such challenges could delay or prevent the ongoing use of the Project as provided herein. In addition to the other provisions of the CUP, including without limitation, the provisions of this Section, City shall have no liability under the CUP for the inability of property owner to develop the Property as contemplated by the Master Plan or the CUP as the result of a judicial determination that the General Plan, Master Plan, the Land Use Regulations, the CUP, or portions thereof, are invalid or inadequate or not in compliance with law. . . .

b. **Scope of Indemnification.** The property owner shall agree to defend, indemnify, and hold harmless the City, its agents, officers and employees from any claim, action, or proceeding against the City and the application will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City fails to promptly notify the property owner of any such claim, action, or proceeding or fails to cooperate fully in the defense, the property owner shall not, thereafter, be responsible to defend, indemnify or hold harmless the City. Notwithstanding the foregoing, the city retains the right to settle or abandon the matter without the property owner's consent, but should it do so, the City shall waive the indemnification herein, except the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal shall not cause a waiver of indemnification rights herein; providing, however, that the adverse judgment or failure to appeal is not due to the City's failure to promptly notify Applicant or to cooperate fully in the defense. The foregoing includes, but is not limited to, any and all claim(s), causes of action or lawsuit(s) brought by the Claimants, by their homeowners' association or by anyone else on their behalf.

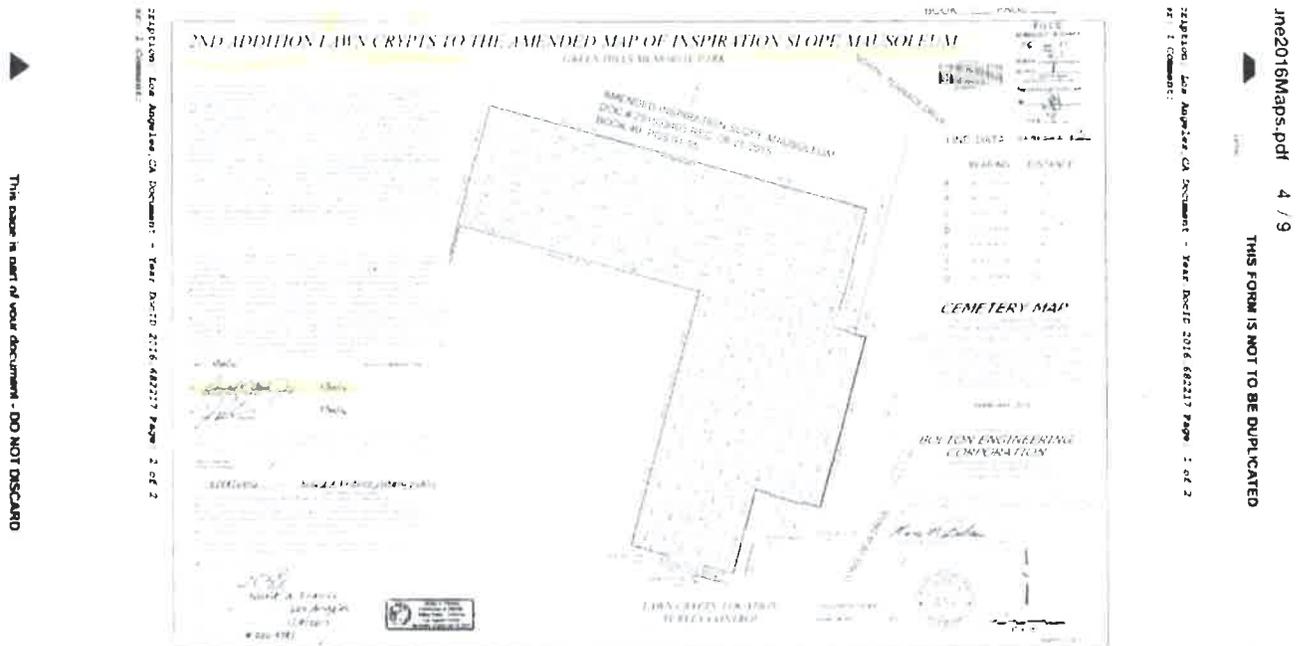
c. **Limitation of Indemnity.** Notwithstanding the generality of the above, for purposes of the current claims by the Vista Verde homeowners concerning the Mausoleum, the City shall bear its own legal defense costs, but this restriction shall not apply to future matters.”

Mediation has been requested by 24 Vista Verde Homeowners (18 units) of Green Hills on several occasions within the last year. Initially Green Hills promised it would mediate and a May 28<sup>th</sup> date was set. Green Hills later backed out of its promise and commitment following service of Sharon Loveys lawsuit (filed on March 20, 2018) brought to challenge (1) the Council's Resolution No. 2018-07 (to the extent the Resolution purports to amend the Green Hills Master Plan or Conditional Use Permit) because Resolution No. 2018-07 flowed from an agendaized “*Compliance Review*” hearing, where the sole topic and focus was if, whether, and to what extent Green Hills' overall cemetery operations were in compliance with all conditions (the contention being that the Master Plan and CUP Conditions cannot be amended except to the extent necessary to bring Green Hills into compliance with existing conditions. Absent an application and public hearing on a conditional use permit amendment application, the City cannot amend the CUP under the guise of conducting a “*Compliance Review*” hearing; and (2) the legal validity of the City's approval of the land use entitlements attendant to the *Arroyo Vista Development Project* in Area 5.

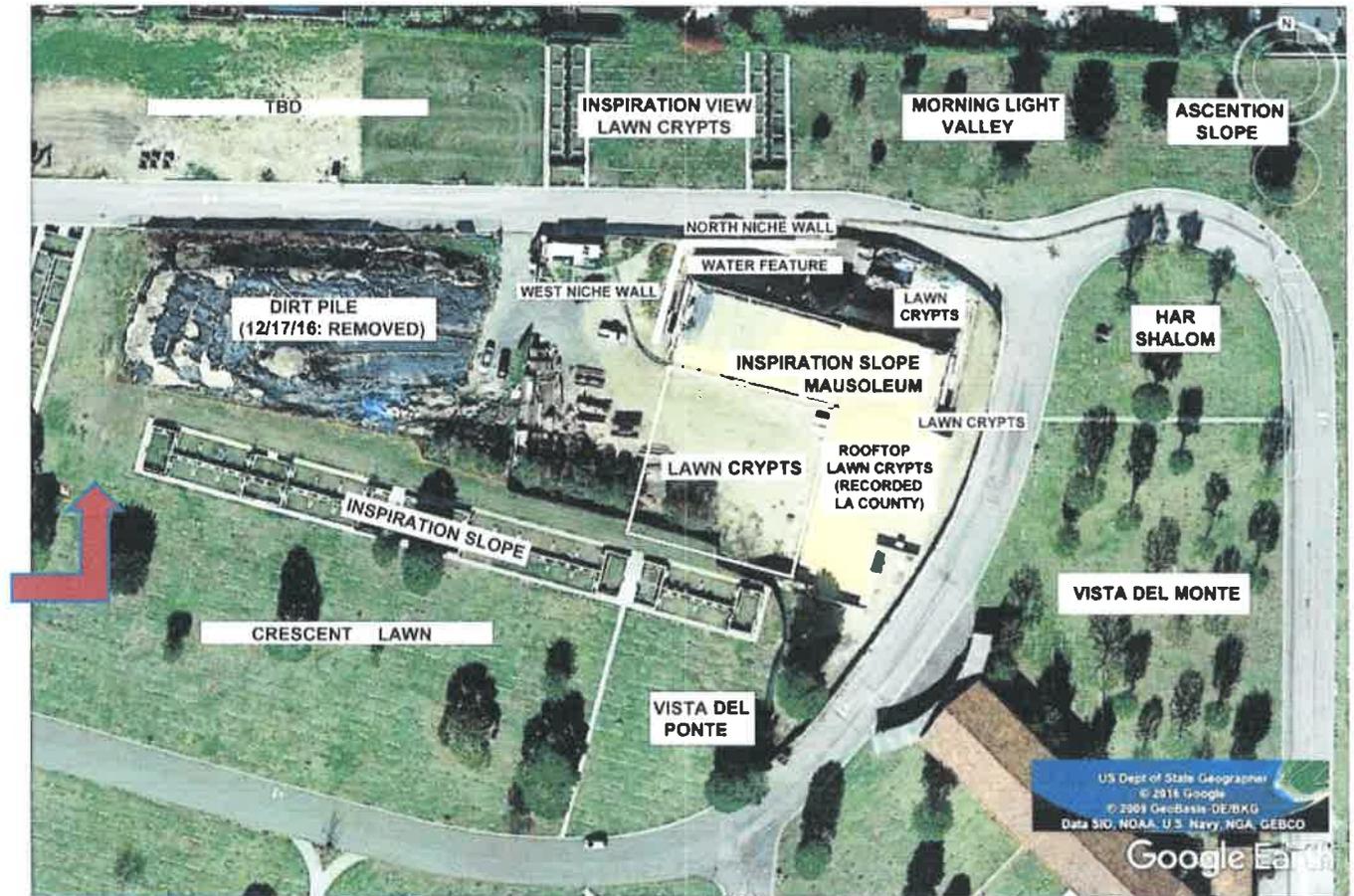
In her appeal to the Planning Commission of the *Alta Vista Garden Family Estate/Private Estate Development Project*, Ms. Loveys raised this issue of Green Hills refusal to mediate. The Planning Commission never addressed the issue. Ms. Loveys therefore renews her request that until Green Hills comes into compliance with its mediation obligations under the Conditional Use Permit, Green Hills should not be granted any further permits or land use entitlements.

Alternatively, Ms. Loveys requests that the City initiate revocation proceedings under ¶25 of the CUP where Green Hills is required to show cause why its use rights under the Conditional Use Permit should not be revoked or suspended pending Green Hills coming into compliance with its mediation obligations to the Vista Verde Homeowners under ¶11(h)(10).

## EXHIBITS TO APPEAL



**Exhibit “1”**- Shows addition of 578 roof-top interments (564 double depth vaults plus 14 single depth vaults) to be placed on the roof of the Inspiration Slope Mausoleum. This quantity was never specifically contemplated or referenced under the Master Plan. Both Green Hills and the City acknowledged that as of June 28, 2016, while the City authorized the “storage” of the vaults on the roof of the Inspiration Slope Mausoleum, there is a difference between “storage” and “use” which Green Hills and the City both acknowledged in a written “Letter Agreement” dated June 28, 2016 (Exhibit “3” below). As such, Green Hills knows that it does not possess the right to “use” the vaults to contain the coffins or caskets of human remains so interred on the roof of the Inspiration Slope Mausoleum (assuming it is otherwise legal to use mausoleum roofs as a venue to inter human remains) without specific City Council approval under §17.29.030(H) (See ¶2(b) of the Conditions of Approval set out in Resolution No. 2017-03). Arguably, the same protocol applies to the development of undeveloped open space under the Master Plan pursuant to ¶2(b)(4) of Resolution No. 2017-03) (referencing “any modification” to the Master Plan or conditions of approval) as is the case here. What this demonstrates is that since the Master Plan has been approved, since 2015, there has been development of Inspiration Slope. The density and intensity of that development (and proposed development) needs to be acknowledged and evaluated as a condition precedent to (i) first the grant of a conditional use to develop the *Alta Vista Garden Family Estate/Private Estate Development* and then (ii) the approval of a grading permit to complete the actual development, as approved.



**Exhibit “2”** – The open (undeveloped) space of the proposed *Alta Vista Garden Family Estate/Private Estate Development* is identified by the red arrow. The specific nature of the density and intensity of the development of the entirety of Area 2 is not clear until a complete inventory of all approved development and potential development is undertaken; against which the intensity and density of the proposed development can be measured. This was not done by the Planning Department or the Planning Commission. Yet it is a required prerequisite to be able to make a “finding” under §17.28.030(H). No “finding” of consistency with the Master Plan can be made where, as here, the *Alta Vista Garden Family Estate/Private Estate Development* contemplates the development of an area identified under the Master Plan as undeveloped open space. The fact that the Master Plan generally contemplates development throughout the cemetery does not constitute an authorization for a specific development at a specific (currently undeveloped) area of the cemetery. (See §17.96.560 (Definition of “Development”) which defines “Development” as including the “change in the density or intensity of use of land” and the “grading of any materials”). The *Alta Vista Garden Family Estate/Private Estate Project* is a

“Development” which must be processed by way of a conditional use permit, with the requisite “Findings” made under §17.28.030(H). Also to be noted is that the Vista del Ponte Project (also not contemplated under the Master Plan) approved 121 added lawn crypts and 108 niche interments; while the another 578 crypts were allowed to be “stored” on the roof of the Inspiration Slope Mausoleum (with Green Hills recording the existence of the lawn crypts with the County Recorder even though Green Hills does not have the right to use the area as interment plots).



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Green Hills acknowledges that the Resolution amended Green Hills' CUP, which now provides for an administrative substantial compliance review so that, except for improvements consistent with the Master Plan or those subject to the Planning Commission, all improvements must be reviewed by the Director to determine if they substantially comply with the Master Plan (Condition 1.k.). Condition 1.k. specifically provides that review of an application for rooftop burials can be performed by the Director. The Director can, at his or her discretion, refer a matter directly to the Planning Commission. Condition 2 provides that the following matters are directly reviewable by the Planning Commission: (i) the construction or modification of a mausoleum or other significant building, (ii) any significant change to the grading, (iii) any development of a future phase of Green Hills where the Master Plan has not designated a development plan or uses, or (iv) any amendment to the Master Plan.

Thus, while rooftop burials at Inspiration Slope are contemplated in the Master Plan, Condition 1.k. of the CUP now provides that Green Hills may not perform such burials prior to obtaining administrative approval from the Director or the Planning Commission, pursuant to the Resolution.

In anticipation of possible rooftop burials, Green Hills has purchased and with the oral understanding memorialized herein, installed concrete vaults on the roof of the Mausoleum. Green Hills intends to cover the vaults with dirt and ground cover, per Condition 22 of the CUP. However, Green Hills has not to date filed an application to conduct rooftop burials at the Mausoleum per Condition 1.k of the CUP. Unless and until Green Hills obtains permission from the Director or the Planning Commission, Condition 1.k provides that Green Hills may not perform rooftop burials at the Mausoleum.

Green Hills does not have a readily available storage space for the vaults which have been ordered and has requested that it be allowed to (i) install the vaults on the roof top, and (ii) bury and backfill them. The City Manager has agreed that Green Hills may store the empty concrete burial vaults on the roof of the Mausoleum, and that such vaults shall be buried and the entirety of the roof shall be backfilled with dirt and ground cover, provided that Green Hills waives any claims for damages against the City related to the placement of the vaults should rooftop burials not be approved for the rooftop at the Mausoleum.

Accordingly, if Green Hills submits an application to perform rooftop burials at the Mausoleum, and should the application be approved by the City, the concrete vaults may be utilized for that purpose. However, in the event that the City decides to deny any application by Green Hills to perform rooftop burials at the Inspiration Slope Mausoleum, Green Hills agrees not to utilize the buried concrete vaults for rooftop burials unless and until it complies with applicable laws and releases the City from any liability or damages to Green Hills related to the placement of the vaults arising from such decision, and assumes all risks therefore, as provided below.

Based on the above, and on the City's police power expressly granted to it by state law, Green Hills agrees that the provisions of this Agreement are reasonable and do not impose an undue burden on Green Hills, and that the provisions of this Agreement are consistent with the agreed-to conditions of approval in the Resolution.

**2. Waiver of Claims Against the City.**

Green Hills acknowledges that any future application for rooftop burials at the Inspiration Slope Mausoleum is within the City's police power expressly granted to it by state law to grant or deny and is consistent with Condition 41.a. of the CUP. Further, the City shall not be liable to Green Hills for any loss or damages related to the placement of the vaults whatsoever arising out of the City's denial of any such application for rooftop burials at Inspiration Slope. Green Hills waives all rights to future claims for damages arising out of the City's rejection of Green Hills' application for rooftop burials at the Inspiration Slope Mausoleum, but reserves the right to legally challenge the validity of any such denial except as may be otherwise provided herein. Green Hills further acknowledges that the denial of such an application does not constitute a compensable interest that would give rise to a takings or other monetary claim.

**3. Police Power.**

Green Hills acknowledges that the City has the authority to grant or deny discretionary applications for uses within the City in part based on concerns of public health, safety, and welfare. Green Hills agrees that the City retains its authority to determine the appropriateness of rooftop burials at the Mausoleum at a future date.

Nothing in this Agreement, shall limit the City's authority to exercise its police powers or governmental authority, or take other appropriate actions to address issues of public health, safety, and welfare. Green Hills acknowledges that no rights arise under this Agreement as to the City's police power, including but not limited to, the approval or denial of any required permits. Further, this Agreement does not constitute a development agreement pursuant to Government Code Section 65864, and thus the Mausoleum remains subject to all applicable statutes, ordinances, regulations, and codes.

**4. Indemnity.**

Green Hills, as a material part of the consideration to the City, shall indemnify, defend, protect and hold the City, its officers, directors, agents, representatives, City Council members and employees (collectively, "City"), harmless from and against all liens and encumbrances of any nature whatsoever which may arise from this Agreement or in the exercise of Green Hills' rights hereunder, and from any and all claims, causes of action, liabilities, costs and expenses (including reasonable attorneys' fees), losses or damages arising from City's agreement to allow the placement of the concrete vaults on the rooftop of the Inspiration Slope Mausoleum, or any act or failure to act of Green Hills or Green Hills's agents, employees, construction workers, or invitees (collectively, "Green Hills"), except those arising out of the sole willful misconduct of the City.

**5. Waiver of Civil Code Section 1542.**

By releasing and forever discharging claims both known and unknown as provided herein, Green Hills expressly waives any and all rights under California Civil Code Section 1542 in connection with any Claim or Liability against the City. Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Green Hills waives and relinquishes any and all rights and benefits which it may have under Section 1542 of the California Civil Code and any similar code provision or protection. Green Hills represents that it has performed a full and complete investigation of the facts pertaining to this Agreement. Nevertheless, Green Hills acknowledges and is aware that it may hereafter discover facts in addition to or different than those which it now knows or believes to be true with respect to potential claims, allegations, events and facts set forth herein, but it is Green Hill's intention hereby to fully and finally settle and release any and all matters, disputes, and differences, known or unknown, suspected or unsuspected, which may exist, as against the City, and in furtherance of this intention, the release herein given shall be and remain in effect as a full and complete general release notwithstanding discovery or existence of any such additional or different facts.

**6. Integration; Amendment.**

This Agreement contains all of the agreements of the parties and cannot be modified, terminated, or rescinded, in whole or in part, except by an instrument in writing signed by all parties hereto. Green Hills acknowledges that it was permitted to commence installation of the concrete vaults based on an oral understanding consistent with the terms hereof and which is memorialized in this letter agreement. Green Hills agrees that it cannot use the fact that it was allowed to install the vaults pursuant to this agreement against the City or the validity of the City's actions in any manner in any subsequent legal proceeding.

**7. Interpretation and Enforcement; Governing Law.**

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Los Angeles, State of California, or in any other appropriate court with jurisdiction in such county, and the parties agree to submit to the personal jurisdiction of such court.

**8. Prevailing Party Attorney Fees.**

In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorneys' fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding, the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty

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to exist or against the drafting party. This Agreement shall be governed by and interpreted under the laws of the State of California.

9. Severability.

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Please carefully review the terms of this letter agreement and, if you find them acceptable, execute the enclosed copy. This agreement may be executed in counterparts and by fax signature. By signing below, Parties represent and warranty that they have authority to bind the Parties to this Agreement. Please return the executed letter agreement by fax and by enclosing an executed original in the envelope provided.

Sincerely,



Doug Willmore  
City Manager

Cc: City Council  
City Clerk

I HAVE RECEIVED THE ORIGINAL OF THIS LETTER AGREEMENT AND UNDERSTAND THE FOREGOING TERMS AND CONDITIONS AND AGREE TO THEM. I HAVE THE AUTHORITY TO SIGN ON BEHALF OF AND BIND GREEN HILLS.

GREEN HILLS MEMORIAL PARK

Dated: June 28, 2016

By:   
John Resich  
Title: Chairman of the Board

**APPENDIX TO APPEAL – CASE NO. PLGR 2018-0008**

**CHAPTER 17.96 - DEFINITIONS**

**17.96.490 - Cut.**

"Cut" means an excavation of the earth.

**17.96.560 - Development.**

"**Development**" **means**, on land in or under water, the placement or erecting of any solid material or structure; the discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; **the grading, removing, dredging, mining or extraction of any materials**; **the change in the density or intensity of use of land**, including, but not limited to, a subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water or of access thereto; **construction**, reconstruction, demolition or alteration of the size **of any structure**, including any facility of any private, public or municipal utility, and the removal or harvesting of major vegetation other than for agricultural purposes. As used in this definition, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line and electrical power transmission and distribution line.

(Ord. 320 § 7 (part), 1997; Ord. 277 § 8 (part), 1992)

**17.96.720 - Fill.**

"Fill" means **any act by which earth**, sand, gravel, rock or any other similar material **is deposited**, placed, pulled or transported by man, and shall include the conditions resulting therefrom.

(Ord. 320 § 7 (part), 1997; Ord. 277 § 8 (part), 1992)

**17.96.820 - Grading.**

"Grading" means excavation or fill, or any combination thereof, and includes the conditions resulting from any excavation or fill.

(Ord. 320 § 7 (part), 1997; Ord. 277 § 8 (part), 1992)

**17.96.2210 - Use, primary.**

"Primary use" means **the most important purpose for which a particular zoning district was established**. Thus, for example, in a residential district it would be dwellings; in a commercial district it would be the retail sale of goods, the provision of services to the public and office

functions; in institutional districts it would be major, public/quasi-public institutional and auxiliary uses; in cemetery districts it would be permanent interment.

(Ord. 320 § 7 (part), 1997: Ord. 277 § 8 (part), 1992)

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**Chapter 17.70 - SITE PLAN REVIEW**

**17.70.010 - Purpose.**

The site plan review procedure enables the director and/or planning commission to check development proposals for conformity with the provisions of this title and for the manner in which they are applied, when no other application is required under this title.

(Ord. 320 § 7 (part), 1997: Ord. 75 (part), 1975)

**17.70.020 - Application.**

**A.**

Unless otherwise specified in this title, a site plan review application shall be required for all new development, as defined in Chapter 17.96 (Definitions) of this title, which does not otherwise qualify for review under a review process or application procedure listed in this title. The applicant shall submit the site plan review application to the director and shall pay a fee as established by resolution of the city council. The number of site plan copies required shall be determined by the director.

**B.**

Unless otherwise specified in this title, the site plan shall be reviewed by the director for conformity with provisions of this title.

**C.**

No building permit shall be issued until all applicable site plans have been approved in accordance with this section and no building permit shall be finalized or certificate of occupancy issued unless the development complies with the approved site plan as conditioned.

**D.**

The site plan shall indicate the following information clearly and with full dimensions, unless the director waives the requirement of particular information:

1.

Lot dimensions;

2.

The location, size, height, proposed use and location of doors on all buildings and structures;

3.

Yards and space between buildings;

4.

The location, height and materials of walls, fences and landscaping;

5.

The location, dimensions of parking area, number of spaces, arrangement of spaces and internal circulation pattern of off-street parking;

6.

Pedestrian, vehicular and service access and definitions of all points of ingress and egress;

7.

The location, size, height and method of illumination of signs;

8.

The location, dimensions, number of spaces, internal circulation and access from public streets of loading facilities;

9.

The general nature, location and hooding devices of lighting;

10.

Proposed street dedications and improvements;

11.

Landscaping, if required by the provisions of this title;

12.

The type, location and height of screening devices of outdoor storage and activities, if permitted in the zoning district;

13.

Drainage and grading;

14.

Waste disposal facilities;

15.

Location of utility poles;

16.

Location of any easements; and

17.

Applications that involve the construction of a new single-family residence shall include a geology report determining that the project is geologically feasible. The city geologist shall review and approve said report prior to the application for said project being deemed complete for processing.

18.

Such other data as may be required by the director to assist in review of the plan.

(Ord. 320 § 7 (part), 1997; Ord. 75 (part), 1975)

(Ord. No. 529, § 7, 11-15-11)

#### **17.70.030 - Approval.**

If the development proposal, with any changes noted by the city, is fully consistent with the provisions of this title, the director or a staff member, authorized by the director, shall sign the site plan to indicate site plan review approval and shall notify the applicant of such. Unless a site plan review application is issued for a discretionary decision, as otherwise specified in this title, the director's approval of the site plan review application is final when rendered and no appeal may be made to the planning commission or city council.

(Ord. 320 § 7 (part), 1997; Ord. 75 (part), 1975)

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**17.76.040 - Grading permit.**

**A.**

**Purpose.** The city finds and declares that it is necessary to adopt this section to promote the public health, safety and general welfare. Where this section is in conflict with other city ordinances, the stricter shall apply. Specifically, this section provides for:

1.

Permitting reasonable development of land and minimizing fire hazards, ensuring the maximum retention of groundcover to aid in protection against flooding, erosion, earth movement, siltation and other similar hazards;

2.

Ensuring the maximum preservation of the natural scenic character of the area consistent with reasonable economic use of such property;

3.

Ensuring that the development of each parcel of land, as well as watercourses, streets and other public lands and places, occurs in a manner harmonious with adjacent lands so as to minimize problems of flooding, drainage, erosion, earth movement and similar hazards, and to maintain the visual continuity of hill and valley without unsightly continuous benching of buildable sites; and

4.

Ensuring that each project complies with all goals and policies of the general plan, any specific plan and any amendments.

**B.**

**Grading Allowed.** The following grading **may be allowed** with a minor grading permit, a major grading permit or a remedial grading permit. Each parcel of land involved requires separate approval:

1.

A minor grading permit shall be used for those projects which meet all of the following criteria:

a.

An excavation, fill or combination thereof, in excess of 20 cubic yards, but less than 50 cubic yards, in any two-year period, on a slope of less than 35 percent, or

b.

An excavation three feet or more, but less than five feet, below natural grade or a fill three feet or more, but less than five feet, above natural grade on a slope of less than 35 percent;

2.

A major grading permit shall be used for those projects which result in any of the following:

a.

An excavation, fill or combination thereof, in excess of 50 cubic yards in any two-year period,

b.

An excavation five feet or more below natural grade or a fill five feet or more above natural grade,

c.

Notwithstanding exemptions (C)(1) and (C)(2) of this section, any excavation or fill which encroaches on or alters a natural drainage channel or watercourse, and

d.

Unless otherwise exempted by subsection C of this section, an excavation or fill on an extreme slope (35 percent or more);

3.

A remedial grading permit shall be used for excavations, fill or any redistribution of earth materials for the purpose of enhancing soil stability and reducing geotechnical hazards due to natural land movement or the presence of natural hazards.

C.

**Grading Exempt.** The following grading shall be exempt from this section:

1.

An excavation, fill or combination thereof, less than 20 cubic yards in any two-year period;

2.

An excavation less than three feet below natural grade, or a fill less than three feet above natural grade;

3.

Grading pursuant to a permit for excavation in public streets;

4.

Grading in connection with a public improvement or other public works project for which inspection is provided by the city or another public agency, as approved by the city engineer;

5.

Grading in private easements by a public utility, cable franchisee or a mutual water company;

6.

An excavation or fill on private property made by an individual to repair or replace a sewer line, water line or other underground utility line;

7.

An excavation less than ten feet below existing grade for the foundation or footings of a structure or a swimming pool located on a slope less than 35 percent and not involving a caisson foundation. Caisson foundations or any excavation for a footing or foundation ten feet or more below existing grade shall require the approval of a minor grading permit. This exemption shall not affect the applicability of this section to, nor the requirement of a grading approval for, any fill made with the material from such excavation; and

8.

Tilling of the soil for agricultural and horticultural purposes; and discing the soil for fire hazard abatement purposes.

*For purposes of this section, grading shall be calculated in cubic yards and shall represent the total earth movement on a lot or parcel. The total earth movement shall be the total amount of excavation plus the total amount of fill, regardless of whether there is a net balance of cut and fill quantities on a site.*

D.

**Application.**

1.

To obtain the approval required by this section, an applicant shall file a completed minor grading, major grading or remedial grading application on a form furnished by the city. The application shall be signed by the owner of the property where the work is to be performed, or by his duly authorized agent. An agent's authority must be shown in writing. The director may require additional information as necessary to carry out the purposes of this section.

2.

Unless waived by the director, the application shall be accompanied by scaled plans or drawings, prepared and signed, as appropriate, by a registered civil engineer, architect or landscape architect which show the following:

a.

A plot plan identifying property lines, easements, existing and proposed structures, accurate contours of existing topographic conditions and finished contours of all proposed grading. One-foot contour intervals are required. Five-foot contour intervals may be accepted if deemed appropriate by the director;

b.

The location of any existing structure within fifteen feet of the proposed grading, whether or not that structure is located on the lot to be graded;

c.

Typical and highest/greatest point cross-sections of retaining walls, cut slopes and fill slopes;

d.

Any additional plans, drawings or calculations deemed necessary by the director to demonstrate that the proposed grading complies with the provisions of the **development code**;

e.

The plot plan shall establish the elevation of some permanent benchmark or other reference point on or adjacent to the subject property. The reference point shall not be altered in elevation or location. Any grading depths and heights of future structures on this property shall be referenced to this point;

f.

The plans shall label the areas of cut and fill with different markings for each, and each area labeled shall designate the amount of cut or fill in cubic yards.

g.

Applications involving vacant property shall indicate the average percent slope of each parcel and shall demonstrate the method used in calculating the average percent slope. Applications involving developed property shall indicate slope averaging calculations using the formulas and methods described in the diagrams contained in Exhibit "76-A" of this section titled: "Slope Calculation" and "Average Cross Slope Calculation," at various locations on the subject building site, as determined by the director.

h.

Applications which involve the construction of a new single-family residence shall include a geology report determining that the project is geologically feasible. The city geologist shall review and approve said report prior to the application for said project being deemed complete for processing.

3.

Applications for a remedial grading permit shall be accompanied by geological and/or soils reports which justify the need for the remedial grading and indicate that the grading will not aggravate the existing soils and/or geologic conditions. Unless waived by the

director, applications for a minor grading or grading permit shall be accompanied by geological and/or soils reports which indicate that the grading will not aggravate the existing soils and/or geologic condition.

4.

Applications Referred to Planning Commission. When a major grading application proposes earth movement involving one thousand or more cubic yards of earth or when a remedial grading application proposes earth movement involving five thousand or more cubic yards of earth, the application shall be referred to the planning commission for consideration under the criteria set forth in this section. However, grading for construction of a basement, cellar or other structure located below grade and not visible from any surrounding public right-of-way, shall not be referred to the planning commission regardless of the total cubic yards of earth movement; provided, that no exportation of fill off of the grading site results from the grading. An application referred to the planning commission shall be noticed to a newspaper of general circulation and given to owners of property within five hundred feet of the project, all persons requesting notice, to any affected homeowner associations and the applicant pursuant to [Section 17.80.090](#) (Notice of Hearing) of this title.

5.

Fees.

a.

Each application shall be accompanied by a fee, as established by resolution of the city council.

b.

Any revision to an approved application must be approved by the review body of the city which gave final approval to the original application and a fee shall be paid, as established by resolution of the city council.

c.

In addition to the application fees, the applicant shall pay building permit and plan check fees as specified by Chapter 3 of the Uniform Building Code.

6.

Deposits. If excavated material in excess of twenty cubic yards is to be deposited off the grading site, the applicant shall deposit with the city a deposit fee established by

resolution of the city council in the form of cash, check or money order as security for the proper removal of the excavated material before being granted a minor grading, grading or remedial grading permit allowing such excavation, by the city's building official. Such excavated material shall be disposed of in the manner set forth and at the location indicated on the city's "Notice to Contractors and Property Owners—Requirements for Removal of Excavated Materials." Upon submission to the building official of dump receipts which substantiate the proper removal of all excavated material from the building site as shown on the notice, the deposit shall be returned. Failure to present valid receipts to the city within one hundred eighty days of final approval, cancellation or expiration of the minor grading, grading or remedial grading permit shall result in forfeiture of the security deposit. Forfeited deposits shall be placed in the general fund of the city and used to cover the cost of removing illegally dumped material.

7.

Final Approval. Upon approval of the application by the director or planning commission, the applicant must still conform to all conditions imposed by Chapter 70 of the Uniform Building Code, including all required fees, and approval by the director is not final until approval has been granted by the city engineer.

E.

**Criteria for Evaluation of Minor Grading and Major Grading Applications.** A minor grading or major grading application shall be assessed in light of the following criteria:

1.

The grading does not exceed that which is necessary for the permitted primary use of the lot, as defined in Chapter 17.96 (Definitions) of this title;

2.

The proposed grading and/or related construction does not significantly adversely affect the visual relationships with, nor the views from the viewing area of neighboring properties. In cases where grading is proposed for a new residence or an addition to an existing residence, this finding shall be satisfied when the proposed grading results in a lower finished grade under the building footprint such that the height of the proposed structure, as measured pursuant to [Section 17.02.040\(B\)](#) of this title, is lower than a structure that could have been built in the same location on the lot if measured from preconstruction (existing) grade;

3.

*The nature of the grading minimizes disturbance to the natural contours and finished contours are reasonably natural;*

4.

*The grading takes into account the preservation of natural topographic features and appearances by means of land sculpturing so as to blend any man-made or manufactured slope into the natural topography;*

5.

For new single-family residences, the grading and/or related construction is compatible with the immediate neighborhood character, as defined in [Chapter 17.02](#) (Single-family Residential Districts);

6.

In new residential tracts, the grading includes provisions for the preservation and introduction of plant materials so as to protect slopes from soil erosion and slippage and minimize the visual effects of grading and construction on hillside areas;

7.

The grading utilizes street designs and improvements which serve to minimize grading alternatives and harmonize with the natural contours and character of the hillside;

8.

The grading would not cause excessive and unnecessary disturbance of the natural landscape or wildlife habitat through removal of vegetation;

9.

*The grading conforms to the following standards:*

a.

Grading on slopes *equal to or exceeding thirty-five percent* shall be allowed on recorded and legally subdivided lots existing as of November 25, 1975 or if within Eastview, existing as of January 5, 1983, which are not currently zoned open space/hazard, if the director or planning commission finds *that such grading, as conditioned, will not threaten the public health, safety and welfare.*

b.

No finished slopes greater than thirty-five percent shall be created, except at the point of vehicular access adjacent to driveways, as per subsection (E)(9)(f) of this section.

c.

Except for the excavation of a basement or cellar, a fill or cut shall not exceed a depth of five feet at any point except where the director or the planning commission determines that unusual topography, soil conditions, previous grading or other circumstances make such grading reasonable and necessary.

d.

No fill or cut shall be permitted on a slope exceeding fifty percent gradient, unless the grading is on a sixty-seven percent slope, allowed pursuant to subsection (E)(9)(f) of this section.

e.

Retaining Walls.

i.

Unless located within the required front or street side setback, one upslope retaining wall not to exceed eight feet in height may be used. Retaining walls located in the required front or streetside setback shall not exceed three and one-half feet in height;

ii.

One downslope retaining wall not to exceed three and one-half feet in height may be used;

iii.

On lots sloping with the street and other configurations not discussed above, one retaining wall not to exceed three and one-half feet may be used on each side of the lot;

iv.

Retaining walls may be allowed up to five feet in height, adjacent to driveways, only if required for access or slope stabilization. There shall be no more than one upslope or one downslope retaining wall adjacent to driveways;

v.

Retaining walls which are an integral part of a structure may exceed eight feet, within the building footprint;

f.

Driveways.

i.

Driveways which exceed twenty percent slope shall not be permitted except that one length, not at the point of access, of not more than ten linear feet may have a slope of up to twenty-two percent;

ii.

Slopes not greater than sixty-seven percent may be permitted adjacent to driveways;

10.

The director may grant a grading permit for development in excess of that permissible under subsection (E)(9) of this section upon finding that:

a.

The criteria of subsections (E)(1) through (E)(8) of this section are satisfied;

b.

The approval is consistent with the purposes set forth in subsection A of this section;

c.

Departure from the standards in subsection (E)(9) of this section will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity; and

d.

Departure from the standards of subsection (E)(9) of this section will not be detrimental to the public safety nor to other property;

e.

Notice of such decision shall be given to the applicant and to all owners of property adjacent to the subject property. Notice of denial shall be given to only the applicant. *Any interested person may appeal the director's decision to the planning commission and the planning commission decision to the city council pursuant to Chapter 17.80* (Hearing Notice and Appeal Procedures) of this title.

F.

**Criteria for Evaluation of Remedial Grading Applications.** A remedial grading application shall be assessed in light of the following criteria:

1.

The maximum vertical height of cut or fill should not exceed that which is necessary to enhance soil stability and reduce geotechnical hazards due to natural land movement or the presence of natural hazards, except that fissures of any depth may be filled to the level of the adjacent ground surface. Such grading should be designed to reduce the local topographic relief and in no case should fill be placed on a slope steeper than thirty-five percent such that it might cause a soil slip or mud-flow.

2.

Where remedial grading on a residential lot involves importation of fill material from a source outside of the lot, no more than that which is necessary to enhance soil stability and reduce geotechnical hazards due to natural land movement or the presence of natural hazards should be permitted.

3.

Remedial grading along private roads should be restricted to maintaining the roads in a safe and usable condition and to improving surface drainage so that runoff water does not flow into closed depressions or fissures. In areas adjacent to scarps, the crests of the scarps should be periodically lowered so as to reduce the volume of imported fill needed to maintain the proper road grade on the down-thrown sides of the scarps. In no event shall remedial grading bring the road surface higher than the original grade. Such remedial grading should be the responsibility of the appropriate homeowners association or the adjacent property owners.

4.

Stockpiling will be allowed for road repair and remedial grading; providing, the stockpiles in any given area do not exceed two hundred cubic yards, are not in yard areas visible from any right-of-way and are not stockpiled for more than six months.

5.

Remedial grading shall be designed to improve surface drainage and in no case cause ponding or surface runoff so as to increase the likelihood of surface water infiltration.

6.

The nature of the grading shall minimize disturbance to the natural contours and finished contours should remain reasonably natural.

7.

The grading shall take into account the preservation of natural topographic features and appearances by means of land sculpturing so as to blend any man-made or manufactured slope into the natural topography.

8.

The grading shall avoid or minimize disturbance to coastal sage scrub habitat. If disturbances or impacts to coastal sage scrub are unavoidable, all impacts shall be mitigated to the satisfaction of the city.

9.

Where appropriate, the grading shall include provisions for the preservation and introduction of plant materials so as to protect slopes from soil erosion and slippage and minimize the visual effects of grading and construction on hillside areas.

10.

Where appropriate, the grading should utilize street designs and improvements which serve to minimize grading alternatives and harmonize with the natural contours and character of the hillside.

11.

The grading should not cause excessive and unnecessary scarring of the natural landscape through removal of vegetation.

G.

**Conditions Upon Issuance.** In granting any approval under this chapter, the director or the planning commission may impose such conditions as may be reasonably necessary to prevent danger to public or private property, to prevent conduct likely to create a

nuisance or to preserve the intent of any goal or policy of the general plan. No person shall violate any conditions imposed by the director or planning commission. Such conditions may include, but shall not be limited to:

1.

Limitations on the days and hours of operation in which work may be performed;

2.

Designation of routes and means of access to the site;

3.

Designation of the place and manner of disposal of excavated materials and of the acquisition of fill;

4.

Requirements as to the mitigation of dust and dirt, the prevention of noise and other results offensive or injurious to the neighborhood, the general public or any portion thereof, including due consideration, care and respect for the property rights, convenience and reasonable desires and needs of neighbors;

5.

Designation of maximum or minimum slopes;

6.

Regulations as to the use of public streets and places;

7.

Landscaping, in addition to the minimum required by Chapter 70 of the Uniform Building Code;

8.

The submittal of a performance bond or trust deposit to ensure that grading, landscaping or other conditions imposed under this section are performed; and

9.

For any remedial grading permit, the recordation of a covenant against the property subject to any significant remedial grading, which is defined as excavation, fill or any combination thereof, which involves the redistribution of earth materials for the purpose of reestablishing the stability and continuity of such area, and which involves: (1) excavation, fill or any combination thereof in excess of one thousand cubic yards within any two-year period, or (2) excavation ten feet or more below preconstruction grade or fill ten feet or more above preconstruction grade. The covenant shall document the nature and scope of the significant remedial grading completed to enhance soil stability and reduce geotechnical hazards due to land movement or the presence of natural hazards.

H.

Appeal. Any interested person may appeal any decision of the director to the planning commission and any decision of the planning commission to the city council pursuant to Chapter 17.80 (Hearing Notice and Appeal Procedures) of this title.

I.

**Prohibited Deposits of Earth, Rock or Excavated Material.** No person shall dump, move or place any earth, sand, gravel, rock, stone or other excavated material or debris so as to cause the same to be deposited upon or to roll, blow, flow or wash upon or over any public place or right-of-way or upon or over the premises of another, without the express written consent of the owner of such premises so affected. No person shall, when hauling any earth, sand, gravel, rock, stone or other excavated material or debris over any public street, alley or other public place, allow such material to blow or spill over and upon such street, alley or place, or adjacent private property. If there is a violation of this subsection whereby any earth, sand, gravel, rock, stone or other excavated material is caused to be deposited upon or to roll, flow or wash upon any public place or private property, the person responsible shall cause the same to be removed from such public place or private property within thirty-six hours, or immediately after notification by the city, if a hazardous condition is caused. In the event it is not so removed, the director of public works shall cause such removal and the cost of such removal shall be paid to the city by the person who failed to so remove the material.

(Ord. 416 § 6, 2005; Ord. 405 § 10, 2004; Ord. 400U § 10, 2004; Ord. 340 § 8 (part), 1998; amended during 11-97 supplement; Ord. 320 § 7 (part), 1997; Ord. 194 § 12 (part), 1985; Ord. 150 §§ 3—5, 1982; Ord. 89 § 1 (part), 1977; Ord. 87 § 1, 1977; Ord. 86 § 1, 1977; Ord. 78 (part), 1975)

(Ord. No. 529, § 8, 11-15-11)