

## Amy Ow

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**From:** Dave Michaels <dm94402@gmail.com>  
**Sent:** Thursday, June 17, 2021 4:59 PM  
**To:** Camille Leung; Steve Monowitz; Amy Ow; Dave Pine; David Canepa; Carole Groom; Don Horsley; Warren Slocum  
**Subject:** Comment on Highland Estates EIR Addendum and Modifications  
**Attachments:** lot11 compare.jpg; kite.jpg; page 17 3-3 eir addendum grading table 5-8.pdf; FEIR comments re adequate geo tech, trees, rm amendment.pdf; Cornerstone 2015 3-year disclaimer.pdf

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Dear. Ms. Leung,

I'm writing to comment on the EIR Addendum ("CEQA document") and efforts to frame a massive grading increase as a minor modification.

**The premise of both the grading increase and this EIR Addendum -- namely that the grading increase is "due to" the implementation of GEO-2B -- is flawed and incorrect.** This flawed premise forms the basis of the dual assertions that the increased grading is justified and minor, and that an EIR addendum (vs EIR supplement or new EIR) is appropriate. The CEQA document says the following:

"In 2015, pursuant to Mitigation Measure GEO-2b, the Cornerstone Earth Group performed an updated design-level geotechnical investigation for Lots 5 through 11"

and when describing increased grading:

"As described below under Chapter 3, Modifications to the Implementation of the Approved Project, this change is a result of implementation of Mitigation Measure GEO-2b in the approved project's Mitigation Monitoring and Reporting Program"

Mitigations don't *cause* significant grading increases; they bring them to light.

This framing of the grading increase as "due to" the mitigation was not discussed for the first several years after the grading increase was initially requested; it entered the conversation several years after the 2015 report was created. This premise seems to be employed as a tactic to 1) deflect from grading changes that were either not discovered or not disclosed by the builder in 2010 and 2) defend the assertion that an "addendum" was appropriate vs a more significant, transparent and in-depth type of additional CEQA review.

An addendum is only appropriate if there's nothing new; no major changes have happened or are being requested. That clearly is not the situation here.

GEO-2B was a mitigation whereby a cross-section geo-tech study done by the builder in 2009 would be repeated and monitored by the county prior to construction to confirm compliance with methods, re-verify results, and confirm that current conditions at the site had not changed. Commenters in 2010 were concerned about this being used in the future to justify increased grading like we're seeing now! But the public was assured in the FEIR that this mitigation was only implemented as a safety net and that it would not be used to recalculate grading or change anything that could be considered an impact in an EIR:

From the FEIR (attached)

"Adequate geotechnical data were generated prior to and during the preparation of the recirculated draft EIR that allowed for the impacts of the project to be fully characterized and disclosed in the recirculated draft EIR. None of the mitigation measures in the recirculated draft EIR are future studies that would be used to characterize the project's environmental impacts."

and

"(Mitigation GEO-2b) is included in the EIR as a mitigation measure mainly to assure the decision makers and the public that this investigation will be completed under the oversight of the County ..."

**The CEQA document's reliance on a 2015 investigation by Cornerstone Earth is improper.** Cornerstone Earth clearly says in this investigation their findings in the report may only be valid for three years and that a follow up report should be obtained by them at that time. (excerpt below and see Cornerstone 3-year disclaimer, attached)

"Conclusions and recommendations presented in this report are valid as of the present time for the development as currently planned. Changes in the condition of the property or adjacent properties may occur with the passage of time, whether by natural processes or the acts of other persons. In addition, changes in applicable or appropriate standards may occur through legislation or the broadening of knowledge. **Therefore, the conclusions and recommendations presented in this report may be invalidated, wholly or in part, by changes beyond Cornerstone's control. This report should be reviewed by Cornerstone after a period of three (3) years has elapsed from the date of this report.** In addition, if the current project design is changed, then Cornerstone must review the proposed changes and provide supplemental recommendations, as needed."

No such follow up from the past six years can be found in the public record or is cited in this CEQA document.

Additionally, Cornerstone Earth created a report in 2017 stating that 25,000 cubic yards of grading -- solely for slope remediation -- would be needed, based on their 2015 investigation on lots 5-8. This quantity did not include other aspects of grading on those lots beyond slope remediation. (see Cornerstone 2017 report attached). This report is not included in this CEQA document either, and this advice from the author of the primary document seems to have been erased from memory.

Was Cornerstone ever hired to revisit/re-validate the 2015 findings? Commenters are left to understand that it was not. This removes the ability of the CEQA document to primarily rely on this 2015 report as its basis. Since the 2015 *report may be invalidated* after three years, and it is now six years later, it would be a stretch to claim that GEO-2B has been satisfied. If GEO-2b has not been satisfied, it removes the ability of the CEQA document to be called an "addendum", or the grading increase to be called minor, because both relied on (albeit improperly) GEO-2B. Moreover, the 25,000 cubic yards figure, from the expert who authored the investigation, raises too many questions for this investigation to be used as the basis of a CEQA analysis. At the very least it raises too many questions to be resolved in a one-way 45-day comment period. This must be resolved in a more transparent and open forum, in a hearing, after sufficient EIR review.

**A primary source of data cited by the CEQA document for the requested grading increase is mis-attributed or doesn't exist** -- a 2020 spreadsheet authored by "County of San Mateo". However this document is not published. "The County" may not be cited as the author of an unpublished document. (see "addendum grading table" attached).

**The CEQA document improperly describes that height-verification mitigations for the project have applied and will continue to apply, and therefore does not deserve additional EIR review.** Mitigation AES-1 has not been satisfied, which was confirmed with a recent records act request. The three required surveys for each home already built (21 total), and the sea level heights from the Staff Report Full Packet (Approval) to which to compare the surveys, were not produced and do not seem to exist in the

record. However the mitigation's wording requires this. The community was afraid the worst could happen, and it did! (see attached house 11 photo). House 11 was built 10-15' higher than shown anywhere in the only (and therefore de facto) height data shown in the EIR and Staff Report Full Packet. (House 11 also shifted 10 feet to the side without major modification, resulted in loss of additional significant trees as shown in the attached photo, and blocked the bay view that was promised to the neighborhood).

Why should we believe that 5-8 will be any different if the Mitigation has not been followed? This needs to be fleshed out in proper EIR review before any more disasters happen (aesthetic or otherwise). The failure to comply with this mitigation is, in and of itself, reason to require additional environmental review and a hearing, at minimum.

**This CEQA document both sheds light on and voids a 2016 failure to secure the required amendment under the RM permit for additional significant tree removals.** In 2016 neighbors received an email purporting to be a "notice", but no findings, stating that several significant trees would be removed, including a significant cypress on lot 5. Neighbors were notified in writing shortly after that the request from the builder for the tree had been withdrawn. However, several trees on lots 9-11 were still removed in this manner.

The re-opening of the grading issues on lots 5-8 necessitates that any future significant tree removals be subject to the proper procedures and that any increase in grading must be considered in the context of trees impacted, especially as it relates to implementation of GEO-2b. This is strongly emphasized in the FEIR (page attached and excerpted below):

"Given that qualified geotechnical consultants confirmed that the site plans as proposed were viable, the EIR's description and evaluation of site grading and tree removal is accurate. To the extent that subsequent design-level geotechnical investigation shows the need for modified grading or slight changes to the project footprint such that additional protected trees are affected, the County will require an amendment to the RM permit that is issued for the project"

**The CEQA document does not adequately consider the impacts of increased duration of grading/construction and square footage numbers that differ from the EIR.**

From the CEQA document:

"The Final EIR assumed concurrent construction of 11 single-family homes ranging in size from approximately 2,800 to 3,600 square feet and other subdivision improvements, all to be completed in 1 year."

The CEQA document references current grading and construction timelines that are not only three times longer but ten years later, and not concurrent construction but instead cumulative/sequential! Life has changed since then. Community members are working, being educated and convalescing at home. This simply will not work.

Moreover the sizes quoted above in the CEQA document (2,800 to 3,600 square feet) are no longer accurate and a proper updated EIR review must reflect that. A licensed engineer hired by neighbors calculated the plans on homes 9-11 to be 4,200 square feet each, not 3,600 square feet each! And homes on lots 5-8 on the steep hillside being discussed now were only considered in the EIR at 2,700 square feet each. Yet a licensed engineer hired by neighbors calculated the house plans for lots 5-8 homes at 3,500 square feet each!

Through a series of complex internal procedural maneuvers, these homes were "approved" (though no formal findings provided, and without a hearing) in 2016 to be built at 3500'. The project grading changes being considered in the CEQA document must be considered in light of 3500' feet homes on lots 5-8 or the actual sizes must go before the Board of Supervisors so the approval can be amended to reflect the home sizes accurately.

**Protected Species White Tailed Kite** The Original EIR said the project was not habitat for white tailed kite but here is a picture and it actually is its habitat and needs to be reviewed in a supplemental EIR (pic attached). Additional pictures can be provided in and around the project site.

**The comment period is inadequate because the Public Record is insufficient, incomplete and inaccessible.** Despite hours spent unraveling complex issues and searching for missing documents, a proper review could still not be completed within the 45 days provided. I respectfully request an additional 15 days added to the 45 days, for a 60 day review period as allowed under CEQA. Issues related to the public record have been discussed elsewhere during this comment period by me and other commenters. The project site purports to serve in lieu of FOIA requests. As such it should be accessible and complete.

Kindly enter all emails and attachments from this email address during the comment period into the numbered public comments on this issue. They are as follows:

- 6/4 EIR Addendum - request for documents related to AES-1a (Highlands)(plus four attachments)
- 6/9 EIR Addendum - MMRP revision (Highlands) (plus one attachment)
- 6/14 Highlands request for "grading comments" doc
- 6/14 EIR Addendum - request for documents related to AES-1a (Highlands)(plus four attachments)
- 6/15 Comments and Request for missing grading data (EIR Addendum Highlands) (plus four attachments)
- 6/15 Request for Grading Documents / totals (Highlands EIR addendum) (plus five attachments)
- 6/16 Request for additional 15 days for review of EIR Addendum under CEQA (plus one attachment)
- 6/17 this email plus five attachments

Very truly yours,  
Dave