I. Application Basics

A. Zoning Permits Required:
- Hillside Development Permit because the slope of the hillside is 20% or greater (approximate slope: 65%), under MMC §8.136.050.
- Design Review Board approval of new residential structure, under MMC §8.72.060.
- Tree Removal Permit for 5 native trees, under MMC §12.12.030.

B. CEQA Determination: An initial study (IS) was prepared for the project on September 15, 2011. The Planning Commission continued its hearing on the mitigated negative declaration at its November 7, 2011 meeting pending receipt of additional information. The IS has been revised to include reference to a Biotic Survey and an arborist's report for removal of 15 trees, including 5 native trees. The revised IS also includes recommendations from a supplemental geotechnical evaluation of the proposed building foundation with rain water catchment storage under the building. The proposed mitigation measures in the draft mitigated negative declaration were also revised on the basis of the supplemental reports. The Mitigated Negative Declaration is discussed in greater detail in the body of this report.

C. Parties Involved:
- Applicant: James Phillip Wright, 5 Greenvalley Court, Lafayette, CA 94549
- Property Owner: Stephen Williams / Pensco Trust Co., 2647 Pleasant Hill Road, Pleasant Hill, CA 94523
Figure 1: Vicinity Map

Table 1: Land Use Information

<table>
<thead>
<tr>
<th>Location</th>
<th>Existing Use</th>
<th>Zoning District</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Property</td>
<td>Vacant</td>
<td>6-DUA</td>
<td>Residential 6 du / ac</td>
</tr>
<tr>
<td>Surrounding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Properties North</td>
<td>Duplex Residential Units</td>
<td>6-DUA</td>
<td>Residential 6 du / ac</td>
</tr>
<tr>
<td>South</td>
<td>Vacant Open Space and Single Family homes further south</td>
<td>OS-M (MOSO)</td>
<td>MOSO Open Space and Residential 2 du / ac further south (Note Discrepancy with zoning)</td>
</tr>
<tr>
<td>East</td>
<td>Hacienda de las Flores Park</td>
<td>OS-M (MOSO)</td>
<td>MOSO Open Space</td>
</tr>
<tr>
<td>West</td>
<td>Mulholland Open Space Preserve</td>
<td>OS-M (MOSO)</td>
<td>MOSO Open Space</td>
</tr>
</tbody>
</table>
Figure 2: Site Plan
Table 2: Special Characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOSO</td>
<td>No</td>
<td>Project is not in the OS-M zoning District.</td>
</tr>
<tr>
<td>Slope/Geotechnical</td>
<td>Yes</td>
<td>Slope of site is 65% and a HDP is required with geotechnical peer review of applicant’s geotechnical investigations.</td>
</tr>
<tr>
<td>Creeks</td>
<td>No</td>
<td>No creeks or riparian habitat on project site.</td>
</tr>
<tr>
<td>Native Trees</td>
<td>Yes</td>
<td>2 oak trees and 3 bay trees will be removed in addition to 10 general trees for construction of the project.</td>
</tr>
<tr>
<td>Trails/Open Space</td>
<td>No</td>
<td>No trails cross the project site.</td>
</tr>
<tr>
<td>Scenic Corridor</td>
<td>No</td>
<td>Project is further than 500 feet from the Moraga Road scenic corridor and cannot be seen from the upper portion of Donald Drive.</td>
</tr>
<tr>
<td>Soil/Groundwater Contamination</td>
<td>Yes</td>
<td>Project will need to comply with BMPs for stormwater and erosion control.</td>
</tr>
<tr>
<td>Construction impacts on slope &amp; Donald Dr.</td>
<td>Yes</td>
<td>Applicant was asked to address construction procedures for dealing with steep slope and traffic control on Donald Drive.</td>
</tr>
<tr>
<td>Foundation Excavation</td>
<td>Yes</td>
<td>Project has been designed to be exempt from a grading permit with minimal excavations of 3-foot depth or less for cuts into slope. Safety of water catchment area under the residence pier hole excavations to bedrock have been addressed by project geotechnical engineer.</td>
</tr>
<tr>
<td>Building Height and Number of Floors</td>
<td>Yes</td>
<td>Proposed residence does not exceed 35-foot height limit or 45-foot aggregate height limit. Project Architect has adjusted offset of garage areas above lowest floor to avoid three floor levels above one another.</td>
</tr>
</tbody>
</table>

Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31, 2011</td>
<td>Multi-Family Residential DRB Application submitted</td>
</tr>
<tr>
<td>April 27, 2011</td>
<td>Application deemed incomplete – requested Hillside Development Permit (HDP) Application and information for preparation of an Initial Study (IS)</td>
</tr>
<tr>
<td>June 22, 2011</td>
<td>Application for HDP submitted with updated geotechnical investigation, which was sent to Cal Engineering &amp; Geology (CE&amp;G) for peer review</td>
</tr>
<tr>
<td>August 22, 2011</td>
<td>Received geotechnical peer review report from CE&amp;G</td>
</tr>
<tr>
<td>Sept. 15, 2011</td>
<td>Draft Initial Study completed</td>
</tr>
<tr>
<td>October 18, 2011</td>
<td>Notice of Intent to Adopt a Mitigated Negative Declaration (MND) filed with CCC Recorder and public hearing notices mailed and posted for Planning Commission (PC) hearing</td>
</tr>
</tbody>
</table>
Nov. 7, 2011  PC hearing to consider MND and HDP. PC requested additional information for Initial Study, installation of story poles on the site and study session with the Design Review Board (DRB) before returning project to PC.

January 3, 2012  Biotic Survey and Title Report for property received


January 23, 2012  DRB study session public meeting

Feb. 21, 2012  Public hearing notice mailed for revised IS, Draft MND and HDP for project.

March 5, 2012  PC public hearing scheduled

July 10, 2012  CEQA based on January 12, 2012 date for completed application

To be determined  PSA (will be 60 days after adoption of a negative declaration)

1. Negative declaration must be adopted within 180 days after application is deemed complete, EIR within 365 days (CEQA Guidelines, Article 8).
2. Project must be approved or denied within 60 days after being deemed complete if exempt from CEQA, or 60 days after adoption of a negative declaration, or 180 days after adoption of an EIR (Govt. Code § 65950).

Table 4: Development Standards

<table>
<thead>
<tr>
<th>Standard MMC §8.32.060</th>
<th>Existing</th>
<th>Addition/ (Reduction)</th>
<th>Proposed Total</th>
<th>Permitted/ Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>13,203 sq.ft.</td>
<td>No Change</td>
<td>13,203 sq.ft.</td>
<td>10,000 sq.ft. minimum lot area required</td>
</tr>
<tr>
<td>Gross Floor Area (sq. ft.)</td>
<td>None</td>
<td>New Building</td>
<td>5,134 sq.ft. w-shell space</td>
<td>No maximum floor area is stipulated by code</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>No Building</td>
<td>New Building</td>
<td>0.388</td>
<td>N/A - FAR does not apply to multiple residential</td>
</tr>
<tr>
<td>Dwelling Units</td>
<td>None</td>
<td>2 units</td>
<td>2 units</td>
<td>Duplex residential is a permitted use by MMC §8.32.020-B Maximum density six dwelling units per acre.</td>
</tr>
<tr>
<td>Building Height Maximum (ft.)</td>
<td>None</td>
<td>New Building</td>
<td>35 feet</td>
<td>35 feet maximum</td>
</tr>
<tr>
<td>Aggregate Maximum (ft.)</td>
<td>None</td>
<td>New Building</td>
<td>45 feet</td>
<td>45 feet maximum</td>
</tr>
<tr>
<td>Stories</td>
<td>None</td>
<td>New Building</td>
<td>2 stories with three offset floor levels</td>
<td>Two stories See MMC §8.32.070-B.</td>
</tr>
<tr>
<td>Building Setbacks (ft.)</td>
<td>Front (SW side)</td>
<td>N/A</td>
<td>New Building</td>
<td>25 feet</td>
</tr>
<tr>
<td></td>
<td>Rear (NE side)</td>
<td>N/A</td>
<td>New Building</td>
<td>33 feet to building and 21 feet to deck</td>
</tr>
<tr>
<td></td>
<td>Left (NW) Side</td>
<td>N/A</td>
<td>New Building</td>
<td>20 feet</td>
</tr>
<tr>
<td></td>
<td>Right (SE) Side</td>
<td>N/A</td>
<td>New Building</td>
<td>20 feet</td>
</tr>
</tbody>
</table>
II. Project Setting

A. Neighborhood/Area Description:
The project site is located above an existing duplex residential unit at 2092 - 2094 Donald Drive. The properties located to the northeast and northwest of the project site are zoned 6-DUA (six dwelling units per acre, Multi-Family Residential District) and are developed with existing duplex units. The properties located to the southeast and southwest of the project site are zoned OSM-DT (Open Space-MOSO-Density Transfer). The property to the southeast is known as the Hacienda de las Flores Park, with a public parking lot for the park is located about 200 feet east of the subject property. The property on the southwest side across Donald Drive is known as the Mulholland Ridge Open Space Preserve and is owned by the Town of Moraga. There are four single family homes located about 800 feet further up Donald Drive above the project site.

B. Site Conditions:
The project site is comprised of a rectangular shaped parcel located on the downhill side of Donald Drive. The site is heavily wooded and contains over 29 trees. The trees include eight (8) coast live oak, seven (7) black walnut, one (1) box elder, ten (10) California bays, one (1) plum and three (3) Monterey Pines, ranging in diameter from 5” to 46”. The two species of native trees (subject MMC Chapter 12.12, Tree Preservation) are the coast live oaks, which range in diameter from 5” to 29”, and the California bays, which range in diameter from 6” to 13”. The trees’ health and structure range from dead or failed (box elder and Monterey Pine) to poor (9” plum and 9” black walnut) to good (nine (9) California bays and two (2) coast live oaks). The project site is also very steep, with an approximate average slope of 65%. The project site is vacant and undeveloped.

C. Background:
The Planning Commission considered the proposed project at its November 7, 2011 meeting. At that time, the Commission directed the applicant and staff to provide additional information about the project, including providing a biotic survey and...
arborist report. In addition, the Commission referred the project to the Design Review Board for their initial review and comment. The Design Review Board held a study session at its January 23, 2012 meeting (see Section IV.B of this report).

The parcel was formed in 1964 when Contra Costa County approved a minor subdivision which split a 25,498-square foot lot at 2092 - 2094 Donald Drive into two lots. The project site was Parcel “A” and the existing duplex was Parcel “B”. Following the lot split, three separate applications were submitted requesting approval to construct residences on the project site, all of which required variances. Contra Costa County denied two of the variance applications (numbers 352-71 and 1029-74) before the Town incorporated. The Town of Moraga denied the third variance application (file no.1001-76) in 1976 because the General Plan and Zoning Ordinance were not yet adopted.

After the General Plan was adopted in 1980, planning staff did not accept or process applications to develop Parcel “A” because the portion of Donald Drive south of Laird Drive was a private road, and the Town required proof that the owner of Parcel “A” had a legal access easement on Donald Drive. The private portion of Donald Drive leading up to Mulholland Ridge was first owned by the Rheem California Land Company (Donald Rheem), then Northwood Homes, Inc. and finally by Wayne Batavia. In 1998, Mr. Batavia gave the Town of Moraga approximately 300 acres for the Mulholland Open Space Preserve. As a result, Donald Drive became a publicly-owned road which provides access to Parcel “A.”

The most recent application for the project site proposed a significantly different project requiring numerous variances in 2007. That application was deemed withdrawn after several public hearings.

III. Project Description
The applicant proposes constructing a two-family residential structure with attached garage. The garage would be located at the top of the building, accessed from a semicircular bridge driveway, which was designed to allow vehicles to enter and leave the site in a forward direction and to allow the top floor to be below the level of the Donald Drive. The main living level would have access from stairs and an elevator from the garage level above. The middle floor level would contain 2,647 square feet, including the kitchen, dining, living room area, master bedroom and bathroom for the primary residence. The middle level would also include the 553-square foot second residential unit. A cantilevered deck would project twelve feet (12’) beyond the rear of the building, extending into the rear yard setback. The lowest floor level would include 559 square feet for two bedrooms and two bathrooms and 718 square feet of unconditioned shell space. The lower floor would be offset from the top level garage area so that the structure does not have three floors in the same vertical plane. In order to have sufficient offset of the floors, the architect has modified sheet A2.0 (Upper Level Plan) to have tandem parking for the primary unit so that the previously proposed double wide garage will not be a “third” story above the lowest floor level. Sheet A4.0 of the plan set includes cross sections through the building. Attic and crawl spaces with less than 6 feet of height
do not count as floor levels. The applicant proposes a building foundation that requires less than 50 cubic yards of soil excavation and no cuts greater than 3 feet to comply with the Town's Grading Ordinance for minimum grading and exemptions for foundation grading. The project plans are enclosed as Attachment C. Story poles were also erected on the project site as requested by the Planning Commission at the November 7, 2011 hearing.

IV. Community Discussion

A. Neighbor/Community Concerns:
The public meeting notice for this application (Attachment O) was mailed to property owners within 800 feet of the subject property on February 21, 2012. The notice list was expanded beyond the minimum 300-foot radius to include all residents living on Donald Drive above the project site and owners of property along Donald Drive to the intersection of Laird Drive. The notice was also posted on a telephone pole near 2092 Donald Drive and on a tree above the project site at 1800 Donald Drive. Previous correspondence received for the Planning Commission hearing on November 7, 2011 is enclosed as Attachment P. A letter dated October 24, 2011 and signed by Carol and Ted Gamble (1762 Donald Dr.), Sandra Reed (1750 Donald Dr.) and Michelle and J.P. Maeders (1758 Donald Dr.) opposed to the project and expresses concerns for obstruction of traffic and emergency vehicles on Donald Drive during construction. The Town also received a letter from Lynda Deschambault dated November 5, 2011 and an email from Lynda dated November 28, 2011. The testimony from neighbors and residents in the vicinity of the project at the November 7, 2011 Planning Commission meeting is included in the meeting minutes as Attachment M. Any new written correspondence received prior to the Planning Commission hearing will be brought to the meeting.

B. Committee Review:
The Planning Commission requested that the project be presented to the Design Review Board at a study session after the story poles were erected on the property and prior to returning to the Planning Commission for deliberation on the proposed mitigated negative declaration and hillside development permit. The Design Review Board reviewed the plans on January 23, 2012 and a copy of their meeting minutes are enclosed as Attachment N. The Board’s primary concern was the 12-foot cantilevered deck at the rear of the residence. They recommended that the rear setback for the deck be increased to reduce the impact to the existing duplex below. MMC §8.32.060-A requires a minimum 20-foot side yard and rear yard building setback, but it also states that the setback cannot be less than height of building, which is 35 feet. The DRB did not object to the 20-foot side yards because there are no other structures on either side of the proposed residence. Since the structure is elevated well above the existing duplex at 2092-2094 Donald Drive, the Board felt that the deck needs to have a substantial setback and recommended a much narrower deck at the rear. The impact of the deck on potential tree removal was also a concern.
V. Issues and Analysis

A. Key Issues:

1. **Environmental Review:** Prior to making any discretionary decision on a project, the California Environmental Quality Act (CEQA) requires the reviewing body to make an environmental determination. The proposed project is not exempt from CEQA because it will involve grading for the building foundation on a slope over 10%. The Initial Study (IS) that was previously completed on September 15, 2011 has been amended to include additional information, including a biotic survey of the property, an arborist’s report on the number and species of trees to be removed for the project and a supplemental letter from the project geotechnical engineer regarding the storm water catchment system proposed within the foundation under the building. The amended IS is enclosed as Attachment D. Although the proposed project could have a significant effect on the environment, the IS found that there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A revised draft Mitigated Negative Declaration has been prepared based on the additional environmental information received. The draft Mitigated Negative Declaration includes mitigation measures to reduce potentially significant environmental impacts to a less than significant level. The draft Mitigated Negative Declaration is enclosed as Attachment E.

If the Mitigated Negative Declaration is adopted, all the mitigation measures will become mandatory conditions of approval for the project. The proposed mitigation measures are listed in Attachment F. The mitigation measures will be clearly labeled as “mitigation measures” in the conditions of approval so that they will not be eliminated or changed without re-opening the public hearing on the Mitigated Negative Declaration. Review of final project plans for compliance with the conditions of approval serves as the “mitigation monitoring program” for the project. However, long term mitigation measures may also require an agreement with the property owner or the recording of deed restrictions to require adherence to mitigation measures by future owners of the property.

Supplemental reports referenced in the IS include: the Biotic Survey (Attachment G), Arborist’s Report and Tree Inventory Map (Attachment H), Geotechnical Reports and Letters from Friar Associates, Inc. and Peer Review Report from Cal Engineering and Geology (Attachment I), a letter describing the proposed construction procedures for the steep hillside from Canyon Construction dated January 12, 2012 (Attachment J), and the Title Report for 1800 Donald Drive (Attachment K). The biotic survey did not find any significant or endangered species on the property. The arborist report from Traverso Tree Service inventoried a total of 29 trees on the property and two trees that overhang the property from adjacent properties. The arborist recommends removal of 16 trees to accommodate the construction of the building and/or due to the poor condition of the trees. Six of the remaining 15 trees will require protection measures since the driveway bridge will encroach into the drip line of the trees. Five of the trees...
are Black Walnut trees ranging in diameter from 9” to 16”. Three California Bay trees (diameters 9” to 13”) and three Monterey Pines (diameters 42” to 46”) would be removed. Two Coast Live Oak trees with trunk diameters of 10” and 18” would be removed. A Plum tree and a Box Elder would also be removed. Two of the trees have already fallen on the ground, one of the Monterey Pines and the Box Elder. The plans have been revised to show the piers under the stepped foundation that will anchor the foundation into the bedrock below the building.

The applicant has agreed to make revisions to the project necessary to implement the mitigation measures. After hearing public testimony regarding the IS and the draft Mitigated Negative Declaration, the Commission should discuss whether the proposed mitigation measures will reduce all the environmental impacts to a “less than significant” level and consider the findings in the draft Mitigated Negative Declaration. The Planning Commission can make amendments to the Mitigation Measures and to the findings in the Mitigated Negative Declaration. Following adoption of the Mitigated Negative Declaration, no significant changes can be made to the mitigation measures without reopening the public hearing on the environmental determination, unless the change is an alternate mitigation measure that would be equally effective at reducing the environmental impact.

If the Commission finds that the IS has adequately discussed all the issues and that the environmental impacts can be adequately mitigated, then a motion should be made to adopt the Mitigated Negative Declaration. If the Commission finds that one or more environmental impacts are not adequately addressed or mitigated in the Initial Study, staff should be directed to amend the Initial Study and address the deficiency.

2. **Hillside Development Permit:** Following approval of a Mitigated Negative Declaration, the Planning Commission can then open the hearing to consider approval of a hillside development permit (HDP) for the project, which is required by the Town’s Slope Density Ordinance (MMC Chapter 8.136) because the slope of the property exceeds 20 percent. The slope under the building (65%) is equivalent to a 33-degree angle. MMC §8.136.070 (Standards for Review and Approval of Hillside Development Permit) lists the factors to be considered for a HDP. The factors include slope, soil instability, drainage, soil characteristics, seismic factors, existing and future residential development, view shed, access, potential traffic congestion, fire risk, noise, glare, wildlife, dust and impact on existing vegetation. A discussion of these factors is included in Attachment L.

With regard to slope stability and soil characteristics, the Town’s geotechnical peer review consultant, Cal Engineering and Geology (CE&G), completed its review of the applicant’s geotechnical investigation update report on August 22, 2011 (Attachment I).
In addition to the factors discussed in Attachment L, MMC §8.136.070 requires an appropriate living space consistent with the sites constraints, with the building site located at the lowest possible elevation on the site and residential development designed with the principal and accessory structures blending with the topography. The location of the building site is at the lowest feasible elevation because the garages on the top of the building cannot be any lower without making the driveway bridges too steep. Also, if the building site is lower on the hillside, it would also be closer to the rear property line. There will be no grading beyond the footprint of the building and the foundation is designed to step down the existing slope with minimal grading. The curved roof over the garages follows the slope of the hillside and helps to blend the structure with the topography. Since the property has no level outdoor area, the plans include a large 600-square foot cantilevered deck. The Design Review Board recommended that the deck be reconfigured so that it does not extend as far toward the rear property line. Both residential units should have access to exterior deck areas.

Under MMC §8.136.080 (Additional Development Requirements), the Planning Commission may impose additional requirements on a parcel of hillside land if it finds that the parcel requires protection because of its prominence and location or determines that there may be exceptional hazards to its development. The Slope Density Ordinance does not list any required findings for approval of a hillside development permit, but Sections 8.136.010-A and B list the declarations of intent and purpose of the ordinance. These have been modified as “findings” in the draft resolution for approval of the hillside development permit. Comments on the intent and purpose of the Slope density Ordinance are included below.

a) Traditional flat land practices for residential development should not be used on hillside land to minimize cut and fill operations to retain the natural character of the hill areas and to preserve the predominant views both from and of the hill areas.

Comment: There will be no fill on the site. The excavated soil for the stepped foundation will be removed from the site. There will be no grading or padding of the hillside beyond the proposed footprint of the home. The home has been designed to have as low a profile as possible given the steep topography. The applicant wants to retain as many trees as possible in order to preserve the natural forested look of the hillside. The exterior walls of the structure use milled planks from redwood trees with the bark left on the planks so that the building will blend with the trees on the site. However, in an effort to avoid a grading permit and a variance, the structure is effectively presents as a “flat land” design. While the foundation is stepped with a series of 3’ internal retaining walls, the residence is stepped with only three levels of garage and living space, and the cantilevered deck extends significantly beyond the structure. The structure is also set down away from the hillside, rather than cut into the hillside to follow the slope’s contours. The net effect is a residence that appears to float on the hillside. In addition, the bridge that provides the driveway and off-street parking will predominate the appearance of the structure from upper Donald Drive.
b) The retention of hillsides in as near a natural state as is feasible is important for the maintenance of community values.
Comment: The grading for the project has been limited to the minimum necessary to install the stepped foundation for the building. It is the applicant’s intention to do no grading beyond the foundation of the home, except as may be required to install a drainage retention basin for preservation of storm water quality.

c) Maintain the suburban character and beauty of the town by preserving its open and natural topographic features.
Comment: The existing steep slope on the site will not be altered except under the building, where the view of the cuts into the hillside will be blocked by the building.

d) Minimize soil erosion and slides and potential residual damage to life or property associated with involuntary and seismic-induced earth movement.
Comment: The design of the foundation has been modified to comply with the recommendations of the geotechnical engineers for piers to anchor the foundation into the weathered bedrock and prevent the downslope creep of the undocumented fill and colluviums that overlay the weathered bedrock. There are no mapped landslides on the property.

e) Control the scarring and cutting of hillsides.
Comment: The only grading will be for the foundation under the building and possibly a drainage retention basin, if the internal catchment basin under the home is not incorporated into the design. If a retention basin is required, the design shall be reviewed by the Town Engineer to minimize any scarring and cutting of the hillside below the home.

f) Limit the development of hillsides so that the foregoing purposes are achieved.
Comment: The subject property was subdivided in Contra Costa County prior to the incorporation of the Town of Moraga and is a legal lot. The proposed development of this lot was designed to achieve most of the goals to preserve the hillside.

g) Regulate the development of hillside areas by providing for the imposition of standards for streets, trails and other improvements consistent with these purposes.
Comment: Since this is not a subdivision application, most of the standards for street and trail improvements cannot be implemented; however, the proposed project will have significantly less impact on Donald Drive than previous applications for this lot because the double bridge driveway allows for forward egress from the site and additional guest parking on the site.
3. **Zoning Compliance:** The proposed project meets or exceeds most of the zoning requirements. The circular driveway bridge allows the residence to be moved further down the slope and provides additional area for on-site (and off-street) guest parking and to comply with the front yard setback. There are three exceptions, as discussed in the following sections.

4. **Setbacks:** The minimum side and rear yard setback is twenty feet (20’) or the height of the structure, whichever is greater (MMC §8.32.060, Site Standards). Because the project proposes a 35’ height, the side and rear yard setbacks exceed the zoning requirements. In addition, MMC §8.32.060.B (Increase in Side and Rear Yard Setback Requirements) allows the Planning Commission and Design Review Board to establish a greater setback (or allow a lesser setback) “upon finding that the adjustment is necessary to establish a proper site planning relationship to existing and proposed uses.” A reduction in setbacks would require approval of a Variance, per MMC §8.12.130 (Specific Findings Necessary for a Variance). Section V.C.1 of this report (DRB Discussion: Side and Rear Yard Setbacks) provides additional discussion regarding this issue.

5. **Parking:** The parking requirements are not met for a duplex. The small second residential unit includes a kitchen area and qualifies as a duplex unit. Duplex units are a “permitted use” under MMC §8.32.020-B in the 6-DUA Multifamily Residential District. The proposed project requires four covered parking spaces (two per unit), and the project proposes three covered spaces. A single-family residence in the 6-DUA district requires a conditional use permit.

6. **Residential Density:** MMC §8.32.040-A stipulates that “No more than six dwelling units shall be erected on any one acre, exclusive of streets, except as provided in subsection B of this section and in Goal 4, Policy 8 of the land use element of the general plan.” A density of 6 units per acre is equivalent to one unit for each 7,260 square feet of lot area. Therefore, two units would require a minimum lot area of 14,520 square feet. The actual lot area is 13,203 square feet or 1,317 square feet less than required for two units. (Note: The minimum lot size in the 6-DUA zone is 10,000 square feet, which would not provide sufficient area to comply with the 6 units per acre density requirement.) Subsection B noted above allows for an increase in density to 8 units per acre when the living unit is designated for persons of limited means.

**B. General and Area Plan Consistency:**

**General Plan Policy Analysis:** The 2002 General Plan contains several policies applicable to the project, including the following:

1. **Policy LU1.8—Slope Restrictions:** The first part of General Plan Policy LU1.8 states, “No new residential structures may be placed on after-graded average slopes of 25 percent or steeper within the development area, except that this provision shall not apply to new residential structures on existing lots that were
either legally created after March 1, 1951 or specifically approved by the Town Council after April 15, 2002.”

Staff Analysis: The subject property was legally subdivided on February 28, 1964 and is exempt from this first provision of LU1.8.

2. Policy LU1.8–Slope Restrictions: The second part of General Plan Policy LU1.8 states “Grading on any non-MOSO land with an average predevelopment slope of 25% or more within the proposed development area shall be prohibited unless formally approved by the Town Council where it can be supported by site-specific analysis and shown that a minimum amount of grading is proposed in the spirit of and not incompatible with all other policies of the General Plan.”

Staff Analysis: On August 9, 2006 the Town Council adopted a new Grading Ordinance (MMC Chapter 14) for the Town. “Grading” is defined under MMC §14.56.010 as “the physical movement of Earth Material by forces other than nature including but not limited to, excavating, filling, compacting, hauling, and related work, excluding diskng.” Under this broad definition, the foundation of the building and excavation of the pier holes would involve and would require Town Council approval. However, MMC §14.04.031 of the Grading Ordinance lists quantities of soil and other parameters which require a “grading permit”, such as movement of 50 cubic yards of soil or more, and excavations measured vertically greater than 3 feet deep. In addition, MMC §14.04.032 lists exemptions from a grading permit including excavations below finished grade for basements and footings of a building, retaining wall, swimming pool, or other structure authorized by a valid building permit. The project architect worked with the Town’s Engineering Department to design a foundation that would be exempt from a grading permit. Less than 50 cubic yards of soil would be excavated for the building foundation, and cuts into the slope would not exceed three feet (’3’), excluding any drilled piers that may be necessary into the bedrock below the surficial soils. There would be no other grading on the site other than trenching that may be necessary for drainage retention areas.

3. Policy PS4.10–Grading: The first part of General Plan Policy PS4.10 states, “Grading for any purpose whatsoever may be permitted only in accordance with an approved development plan that is found to be geologically safe and aesthetically consistent with the Town’s Design Guidelines.”

Staff Analysis: The geotechnical reports from Friar Associates, Inc. and peer review report from Cal Engineering and Geology address the geological issues. No landslides were identified on the property and geotechnical recommendations indicate that a foundation with piers into the underlying weathered bedrock could be “geologically safe”. The design of the structure steps down the hill with a series of three-foot (’3’) retaining walls. However, the structure would set on the hill, rather than being cut into the hillside, in order to avoid the Town’s grading permit regulations. In one way, the structure conforms to the Town’s policies and regulations regarding hillside development and avoiding grading. In another way, however, the structure would not blend into the hillside and would instead appear to float on the hillside. When the project is reviewed by the Design Review Board,
the Board will make a determination regarding whether the proposed structure is “aesthetically consistent with the Town’s Design Guidelines.” However, as part of the Initial Study/Mitigated Negative Declaration and the Hillside Development Permit, the Planning Commission also has the discretion and ability to attach mitigations and/or conditions to the project to ensure the project is aesthetically consistent with the Town’s Design Guidelines.

4. **Policy PS4.10–Grading:** The second part of General Plan Policy PS4.10 states, “Land with a predevelopment average slope of 25% or greater within the development area shall not be graded except at the specific direction of the Town Council and only where it can be shown that a minimum amount of grading is proposed in the spirit of, and not incompatible with, the intention and purpose of all other policies of the General Plan.”

   **Staff Analysis:** This policy is essentially the same as the second part of General Plan Policy LU1.8, which was discussed above.

5. **Policy PS4.10–Grading:** The third part of General Plan Policy PS4.10 states, “The Town shall develop an average slope limit beyond which grading shall be prohibited unless grading is required for landslide repair or slope stabilization.”

   **Staff Analysis:** Grading restriction number 4 in § 14.04.033 of the new grading ordinance states “No Grading shall occur on Predevelopment Average Slopes steeper than 25% (4 horizontal to 1 vertical) unless Grading is required for landslide repair, slope stabilization or other emergencies, and at the specific direction of the Town Council” If the Town Council does not allow any grading on the site, then construction of a residence on the property would have to be supported on piers with no excavations or fill on the hillside. This would increase the height of the structure and the mass or bulk of the building would appear to increase since no part of the structure would be below grade. Alternatively, if limited grading and cuts into the hillside were allowed, the structure could be designed to better comply with other General Plan policies and the Town’s Design Guidelines regarding maintaining hillsides.

C. **Issues discussed by the Design Review Board at the Study Session:**

1. **Side and Rear Yard Setbacks:** The Design Review Board recommended that the 20-foot minimum side yards would be acceptable because there are no buildings at either side of the proposed duplex. The Board also noted that very few of the existing duplexes in the vicinity comply with the 20-foot side yard requirement. However, the Board did not recommend a minimum 20-foot rear yard setback because the new building could have an impact on the privacy of the existing duplex below. In addition, the Board was concerned that the building setbacks only apply to structures with roofs or walls and not to decks. They felt that any deck that is at a higher elevation relative to the adjacent property should adhere to setback requirements, and they recommended that the proposed 12-foot projection of the proposed deck be reduced substantially to lessen the visual impact on the duplex below.
2. Mass of new building above existing duplex at 2092-2094 Donald Drive: The project plans (Sheet A-1.1) include a section through the parcel and the existing duplex at 2092-2094 Donald Drive. A “parcel elevation” also shows the straight horizontal projection of the proposed building above the existing duplex. This parcel elevation is visually misleading because the angle of view from the street below would prevent an observer from seeing the top of the roof of the new duplex. The story poles provide a better indication of the actual position and height of the proposed building above the existing duplex, although it is difficult to observe the story poles through the density of the project site’s trees. The story poles at the southeast side of the proposed building are faintly visible above and to the right side of the chimney in the photo below.

The view of the story poles has been enlarged at right. The top of the poles appear to be much lower than the horizontal projection shown on the parcel elevation on sheet A-1.1 because the angle of view in the photo is much lower than the horizontal projection. An observer would have to be about 30 feet above the street in order to see the view presented in the parcel elevation. The story poles can be seen more clearly from the front of the project site, but pictures taken from the upper portion of Donald Drive do not show the visual relationship between the existing duplex and the new structure on the lot above.
3. **Maximum Building Height:** MMC §8.32.070-B states: “At no point shall the building height of a structure in this district exceed two stories or thirty-five (35) feet, whichever is less. However, if upon design review, the reviewing authority finds that the building height proposed for the structure will create a significant adverse effect on neighboring properties or is incompatible with the natural terrain or vegetation, the reviewing authority may reduce the maximum building height permitted to a height which eliminates or mitigates the adverse effects of the building height proposed.”

As noted in the project description, the applicant has revised sheet A 2.0 with tandem parking for the primary unit in order to eliminate any overlap of the top and bottom floors to conform to the two-story limit. The site sections show that the overall building height does not exceed the 35-foot maximum. The Planning Commission could require a lower building height if it believes the structure will have a significant adverse effect on the neighboring properties. The Design Review Board did not recommend a lower height because the density of trees below the building would effectively screen the view of the structure. If the building were set deeper into the ground, then it might be possible to reduce the height a little, but the height of the parking deck cannot be reduced significantly because the slope of the circular driveway bridge cannot be too steep.

4. **Maximum Aggregate Building Height:** MMC §8.32.070-H. reads: “On sloped lots where a structure is stepped down the slope, the maximum aggregate building height shall not exceed forty-five (45) feet. However, if upon design review, the reviewing authority finds that the building height proposed for the structure will create a significant adverse effect on neighboring properties or is incompatible with the natural terrain or vegetation, the reviewing authority may reduce the maximum building height permitted to a height which eliminates or mitigates the adverse effects of the building height proposed.

The aggregate building height is measured from the highest point of the roof to the lowest point of the foundation. The site sections on sheet A4.0 show that the aggregate building height is exactly 45 feet. If the Planning Commission finds that the structure will have a significant adverse effect on neighboring properties, then it can require the aggregate building height to be reduced. But it is not likely that the aggregate height could be reduced by a significant amount because the parking level on the roof would have to remain at approximately the same elevation and the only way to reduce the aggregate building height would be to make the width of the building down the slope narrower.

5. **Required Number of Parking Spaces:** MMC §8.76.100-A requires every dwelling unit to have two covered off-street automobile storage spaces. Since this is a duplex dwelling unit under MMC §8.32.020-B, each of the dwelling units should have 2 covered parking spaces or a total of 4 covered spaces. MMC §8.04.020 (Definitions) defines a duplex as “a detached building designed for occupancy as the residence of two families living independently of each other.” The definition does not stipulate that the two units must be of equal or similar size. In this case,
the attached second unit is significantly smaller than the primary unit, similar to a “secondary living unit” at a single family residence. However, the reduced parking requirement for one parking space for a second living unit under MMC §8.124.060 (Development Standards, Secondary Living Units) could only be considered if a conditional use permit is first granted for a “residential structure other than one duplex on one lot” under MMC §8.32.030 (Conditional Uses, 6-DUA).

MMC §8.124.060-G states: “In addition to parking required for the existing primary unit, one off-street parking space measuring at least nine feet by nineteen (19) feet and not more than seventeen (17) feet by nineteen (19) feet shall be provided for the secondary living unit. Such parking space may not be located within a required setback area and may not block vehicular access to a parking space, which is required for the existing primary unit. The parking space for the secondary living unit shall be located adjacent to the parking spaces for the existing primary unit and shall match the design of the existing primary unit parking spaces. Access to the secondary living unit parking space shall be provided by a driveway that also provides access to the required parking spaces for the existing primary unit. The size of the existing driveway curb cut shall not be increased. The guest parking spaces required by Moraga Municipal Code §8.76.100(C) and (D) are not required for a secondary living unit.”

Since the 553-square foot second living unit is much smaller than the 3,001-square foot primary unit, it would be reasonable to apply the second living unit parking requirement to this project. However, as noted above, a conditional use permit would be necessary and approval of a second living unit under the specific limitations in MMC Chapter 8.124 (Secondary Living Unit) would probably not be possible. For example, the second living unit must be on the first floor under the Town’s ministerial requirements for approval. In addition, MMC §8.124.060 (Development Standards) specifies that a “secondary living unit is allowed on a single-family or multifamily residential lot containing an existing primary unit.”

The circular driveway bridge will provide for some off-street guest parking. Tandem parking for single family homes is not as functional as side by side parking. The minimum width for a two-car garage or carport would be 18 feet wide. It would seem feasible to make an offset between the top garage floor and the bottom bedroom floor to allow for a side by side garage as originally proposed. The main problem in achieving this seems to be the location of the elevator shaft between the garage and main living level.

6. Slope Stability and Water Catchment Storage within Foundation: The project has been designed to use a minimum amount of energy. The cooling system for the home would utilize water stored in a catchment basin within the foundation under the building. Concerns were raised at the November 7, 2011 Planning Commission meeting that the weight of the water could adversely impact the performance of the foundation or the slope stability under the foundation. The applicant’s geotechnical engineer reviewed the water catchment storage and
submitted a letter with recommendations on January 12, 2012. Friar Associates, Inc. letter is enclosed with the geotechnical reports in Attachment I. The Design Review Board stated that this issue was essentially a technical issue and did not impact the exterior design of the building.

7. **Construction Issues:** Neighbors of the project living in the homes above the project site on Donald Drive raised concerns about blockage of Donald Drive during construction of the project and the impact of construction equipment and heavy trucks on the condition of the road surface. Others inquired about the construction methods to be used on the site since the topography was so steep. Canyon Construction submitted a letter on January 12, 2012 describing some of the proposed procedures for construction of the project and the time schedule for completion of construction. Their letter is enclosed as Attachment J. The Design Review Board thought that some additional information should be provided on the methods for excavation and removal of earth for the foundation. Staff also noted concern for the location of the staging platform between the two bridges where it could impact several more trees.

8. **Access to Donald Drive:** Legal access to Donald Drive had been an issue with previous development proposals on this lot. Donald Drive was a private road until Wayne Batavia deeded the Mulholland Ridge Open Space to the town. The applicant has provided the title report for the property, which verifies that Longwood Moraga L.P. granted a non-exclusive easement “over a strip of land 60 feet in width (commonly known as Donald Drive-Private Road)”. The legal description of the easement is at the bottom of page 6 of the title report, enclosed as Attachment K.

9. **Tree Removal Permit:** A tree removal permit will be necessary to remove five (5) native trees, per MMC §12.12.030 (Destruction or Removal of Native Trees, Orchard Trees or Trees of Historic Significance – Permit Required). Staff recommends that the tree removal permit be considered by the Design Review Board in case there are adjustments to the building and/or driveway bridge locations that change the number of trees that would need to be removed. The Moraga-Orinda Fire District could also require the removal of any large trees within 15 feet of the new residence to maintain a defensible space around the new home. However, the Planning Commission should provide comment on the number of trees being removed; the effect the tree removal will have on the hillside and environment, and the tree removal’s consistency with the General Plan.

**VI. Recommendation**

Prior to any discretionary decision on the project, the Planning Commission must first consider approval of the Mitigated Negative Declaration. The MND, including its mitigations, may be amended after the Planning Commission receives testimony from the public. Staff has enclosed a draft resolution for approval of the mitigated negative declaration, which is enclosed as Attachment A.
If the MND is adopted, then the hearing can be re-opened for discussion of the hillside development permit for the project. Staff has prepared a second draft resolution for approval of the hillside development permit, which is enclosed as Attachment B. The recommended conditions of approval for the hillside development permit include all the mitigation measures from the Negative Declaration. Since the project will also require Design Review Board approval, the draft resolution for the hillside development permit does not include any specific conditions with regard to the design of the structure. However, the Planning Commission may include any additional conditions regarding to the structure’s design and may also include recommendations it wants the Design Review Board to consider during its review.

**Attachments:**

A. Draft Resolution for approval of the Mitigated Negative Declaration  
B. Draft Resolution for approval of the Hillside Development Permit  
C. Project Plans, received on January 12, 2012  
D. Draft Initial Study amended February 28, 2012  
E. Draft Mitigated Negative Declaration  
F. Mitigation Measures for 1800 Donald Drive  
G. Biotic Survey  
H. Arborist’s Report and Tree Inventory Map  
I. Geotechnical Reports from Friar Associates, Inc. and Peer Review Report from Cal Engineering and Geology, Inc.  
J. Construction Procedures from Canyon Construction received January 12, 2012  
K. Title Report for 1800 Donald Drive  
L. Hillside Development Permit Factors  
M. Planning Commission meeting minutes from November 7, 2011 (excerpt)  
N. Design Review Board meeting minutes from January 23, 2011 (excerpt)  
O. Notice Area Map, Mailing List and Public Hearing Notice  
P. Correspondence Received

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