



BOARD OF APPEALS

Date Filed: April 3, 2024

City & County of San Francisco

REHEARING REQUEST FOR APPEAL NOS. 24-005 and 24-006

Martin Eng, Appellant(s) seeks a rehearing of **Appeal Nos. 24-005 and 24-006** which were decided on **March 27, 2024**. This request for rehearing will be considered by the Board of Appeals on **Wednesday, April 17, 2024, at 5:00 p.m. at City Hall, Room 416 and parties can attend via Zoom video platform.**

The **response** to the written request for rehearing must be submitted by the opposing party and/or Department **on or before 4:30 p.m. on April 11, 2024** and must not exceed twelve (12) double-spaced pages in length, with unlimited exhibits (12 pages are permitted because there the request is to rehear two appeals). The brief shall be double-spaced with a minimum 12-point font size. An electronic copy should be e-mailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, matthew.greene@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org and me2461111@gmail.com

You or your representative **MUST** be present at the hearing. At the hearing the parties will have 6 minutes each to address the Board and no rebuttal. Public comment is permitted.

Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.

Based on the evidence and testimony submitted, the Board will make a decision to either grant or deny your request. Four votes are necessary to grant a rehearing. If your request is denied, a rehearing will not be scheduled and the decisions of the Board will become final. If your request is granted, a rehearing will be scheduled, the original decision of the Board will be set aside, and after the rehearing, a second decision will be made. Only one request for rehearing and one rehearing are permitted under the Rules of the Board.

Requestor,

Signature: Via Email

Print Name: Martin Eng, Appellant

Subject: Request for Rehearing – Appeal No. : 24-005 and 24-006

Martin Lee Eng
953 Lombard Street, San Francisco, CA 94133
415-246-1111 mobile, Email: eagle5555@live.com

Board of Appeals: 49 South Van Ness Avenue, Suite 1475 San Francisco, CA 94103

Dear Members of the Board of Appeals,

Respectfully to request a rehearing regarding a decision was rendered on 3/27/2024.

Subject: 939 Lombard St. Permit Type: Site Permit & demolition permit.

Permit No.: 2021/07/09/4046 and Permit 2021/07/09/4044

Reasons for Rehearing: Additional evidence on Public safety laws, experts letters and testimonies, saving the school is paramount.

Conditions on permit: 1. Test on the risk of excavation or no deep piling to be done;
2. Safety laws on complete prevention to stop the dusts, chemicals to leak out; 3.
Setback from the lot line; 4. Eight feet fence to be erected; 9. Safety door for the
school to exit; 10. Reduction to 30 feet height, reduce the house to 3,000 sf.

Proposed Hearing Date: 30 days out to any date is fine.

I appreciate your attention to this matter and I thank you for your time.

Sincerely,

/s/Martin Lee Eng

With expert witnesses and opinions will help all of us to make the rightful decision. The permit is not worth the danger to public safety and the danger to the children welfares. that can result in a billion dollar class action lawsuit. At the re-hearing: Expert witnesses' letters and or personal appearances on: 1. Children health; 2 deep

excavation is high risk; 3. Lawyer on class action lawsuit from the children.

All the buildings surrounded the elementary school were built mostly over 100 years ago and plenty of open spaces away from the school which is only about 50 years old.

But this new house permit is right on the lot line with zero feet away from the school.

No soil test, going deep down the land 15+ feet minimum or more will damage the integrity of the land in all direction and open to the city liabilities.

This project will hurt the city of San Francisco, and the SF Unified School District permanently during construction and after construction; the school building and playground functionality will be decreased as well from more bad shadows, less sunlight, loss of greenery for more fresh air and noise filtering. The 30,000+ square feet of land will suffered a loss in value.

Additional evidence for:

Deep excavation risk: There are no test to confirm the safety. The ground that are build are with solid hard rock, dangerous and costly; the foundation will damage the land area in all direction. The new house permit across the street took 7 years to obtain because the neighboring land owners have concern on the excavation; safest is not to build at all.

Class Action Lawsuits:

- **Sovereign Immunity:** Cities often enjoy **sovereign immunity**,
-
- which limits their liability in civil tort suits. However, exceptions exist,
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- especially when it comes to public safety and negligence.
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- **Negligence:** If the city or developers acted negligently (e.g., by not
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- conducting proper environmental assessments or ignoring health

-
- risks), they could be held liable.
-
- **Environmental Impact Assessments:** Laws may require thorough
-
- assessments before construction near schools to evaluate potential
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- health risks.
-
- **Social Media Companies:** School districts have filed lawsuits
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- against social media companies, claiming harm to children's mental
-
- health.

Risk of not selling: Lawsuits, financing, quiet title, mechanic liens, bankruptcy, lis pendens...can delay and scare buyers away.

It can take over a year to sell. Squatters are very common these days; likely buyers are: 1. organized crime cartels; 2. Start up companies use it as office and live in; 3. Since it is extra noisy right next to a school, and less privacy between the school and the existing house in the rear, regardless even if it is own by one owner;

CEQA violation: No test of any kind were taken and or given to the public.

Grant deed restrictions: There are two grant deed restrictions that cannot be voided by a State Court Judge and who is an expert mostly on criminal and family laws.

The steep hill: Especially is next to hundreds of small children. The steep hill lot made this project permanently dangerous, especially on a zero setback lot line with the small children playing.

AB 251 (2023): Requires schools to install fencing or other physical barriers around playgrounds

and recreational areas to prevent unauthorized access.

More evidence to present some potential laws or regulations.

Health hazard: Proving health risks related to a housing development near a school requires a thorough assessment of potential hazards and a scientifically-supported argument. Here are some steps the school might take:

1. Conduct a health impact assessment (HIA): An HIA is a systematic study of the potential health effects of a development on the surrounding community. The school can hire a professional to conduct an HIA, which would consider factors like air quality, noise pollution, and potential health outcomes.
2. Consult with experts: Collaborate with professionals in relevant fields, such as:
 - * Environmental health scientists
 - * Epidemiologists
 - * Public health experts
 - * Medical professionals

Steep Hill Construction: Houses built on hills are at a higher risk of falling/sliding over 100%.

More risk from mudslide, earthquake shifting the house, house sliding off the foundation, more expensive bedrock foundation but can damage all the buildings in the surrounding areas.

These steps can build a strong case to demonstrate the potential health risks associated with the housing development and advocate for the well-being of students and staff and tourists.

Enclosed are 30 exhibits, mostly photos: 1. Steep slope is always cost much more to build; 2. Much more dangerous to build; 3. Take longer to build; 4. More prone to mudslide, flood, earthquake; 5. Bedrocks will crack and always damage all surrounding buildings and the foundations but never will improve the land integrity.

Again, legal research to show that if there are no test(s); the parties that include the city, agencies, city employees are more open to liabilities. Damages are many: Cracked foundations, cracked sidewalks, cracked driveway, mudslides, buildings tumble down...

Again, reduction in height and size will reduce the danger of earthquake, flood, mudslide, cracking the bedrock...This is not a sound and safe project, not good for health, not financial sound project to speculate; this is not an owner move in project; not affordable, not multi-unit but it can be, difficult to build on a steep slope; \$1.5 million cost to build is way too low, it should takes \$4 million+ for cost.

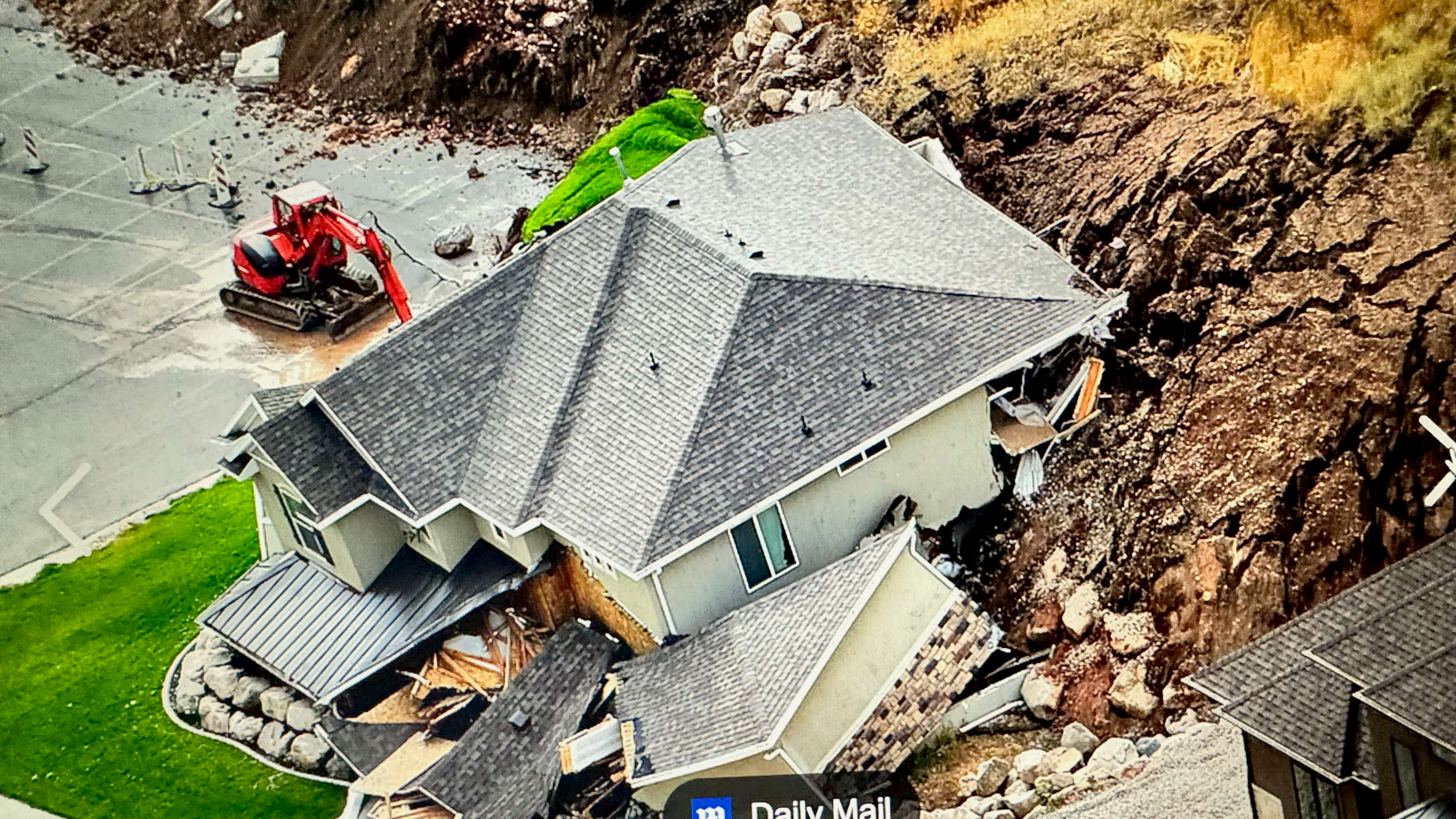
I am 100% sure there will be lawsuit to sue for mega millions in damages from the deep excavation and so close to the 4 condominiums and the 3 flats right next door and permanently hurt the school in functionality and the school land values. Not even mentioning the class action lawsuit, costing the city millions in attorney fees.

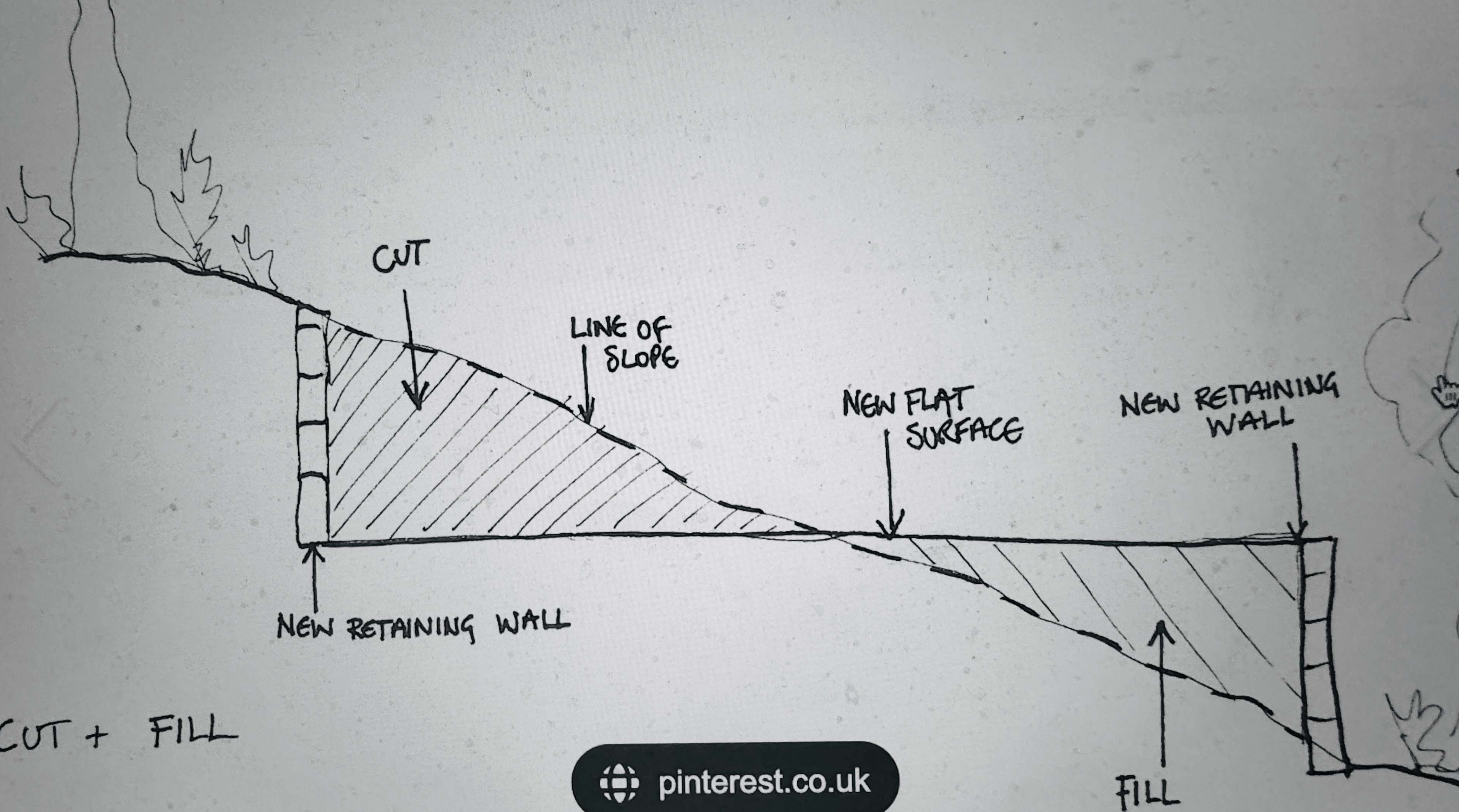
Respectfully submitted;

/s/ Martin Eng
4/3/2024

What Are the Costs & Considerations When Building on a Steep Slope?







CUT

LINE OF SLOPE

NEW FLAT SURFACE

NEW RETAINING WALL

NEW RETAINING WALL

FILL

CUT + FILL





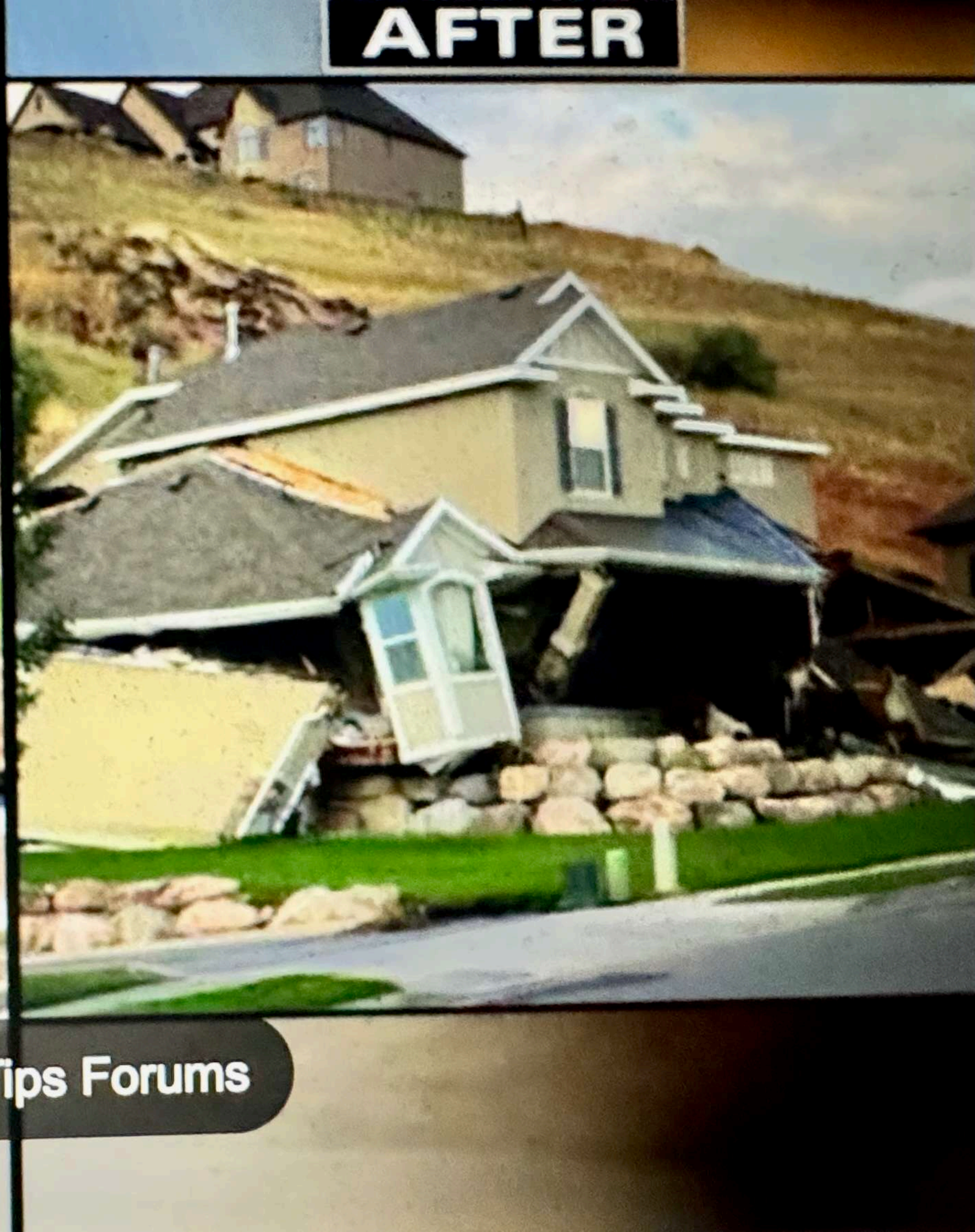




BEFORE



AFTER





CUT

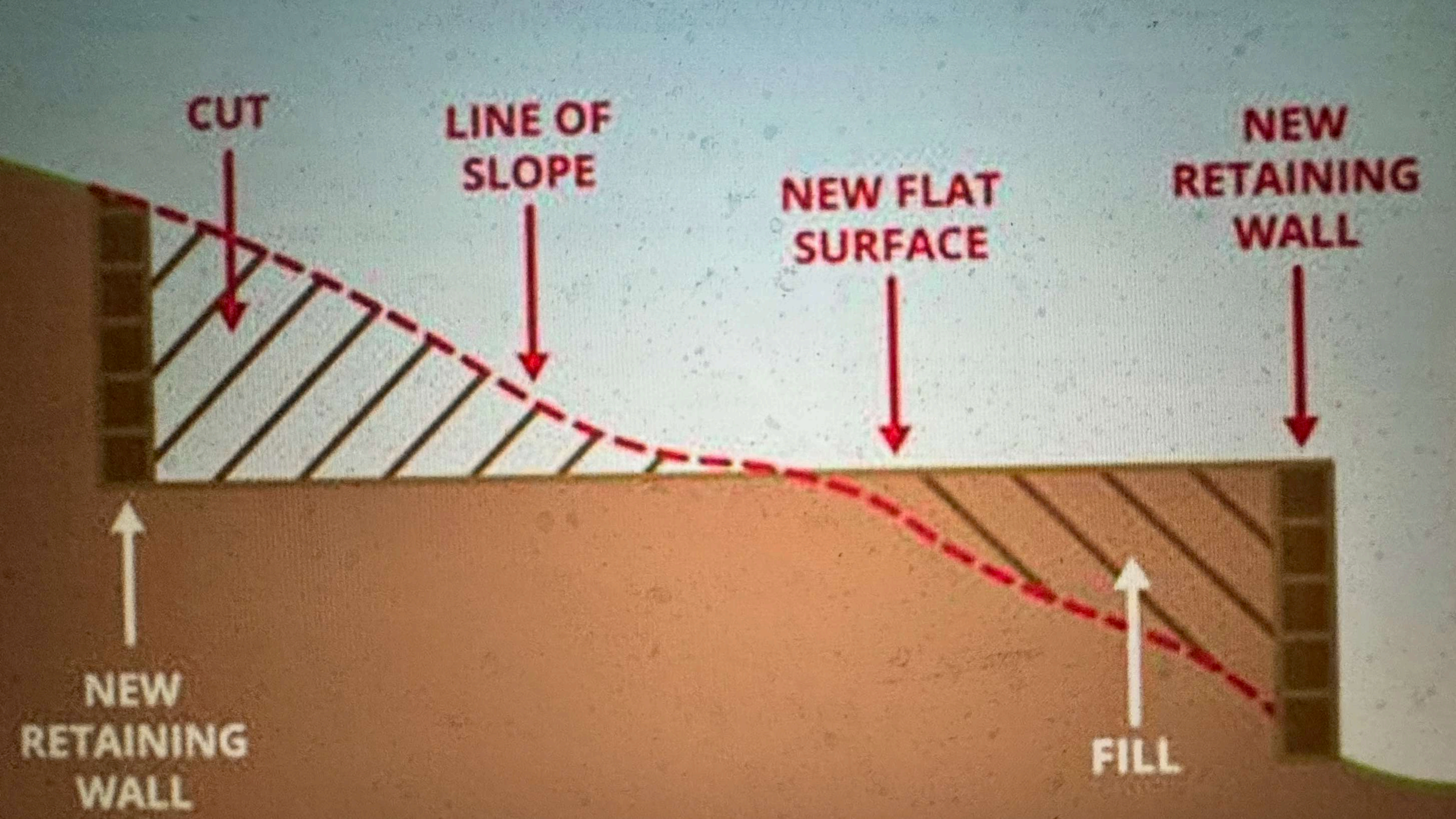
LINE OF
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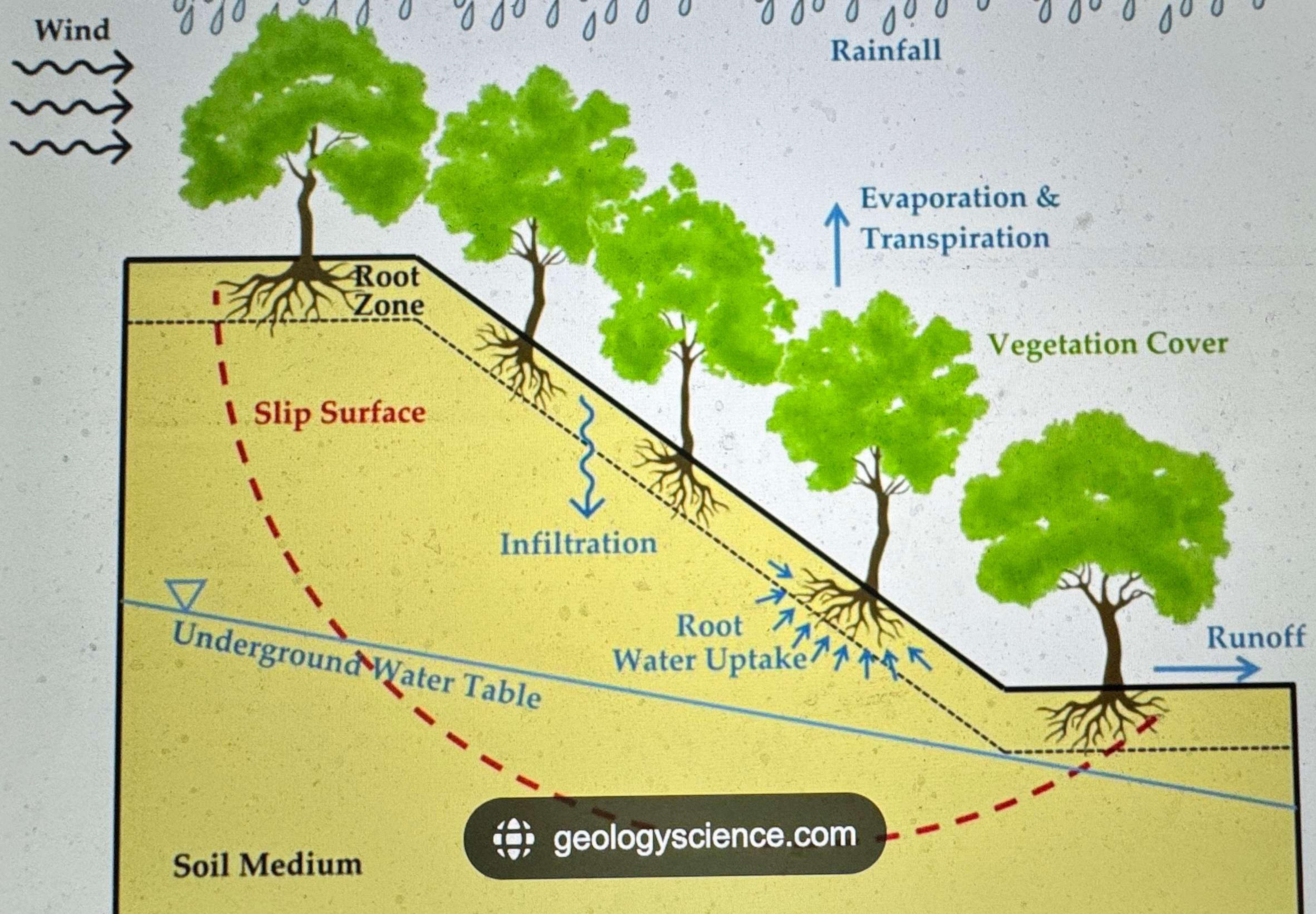
FILL














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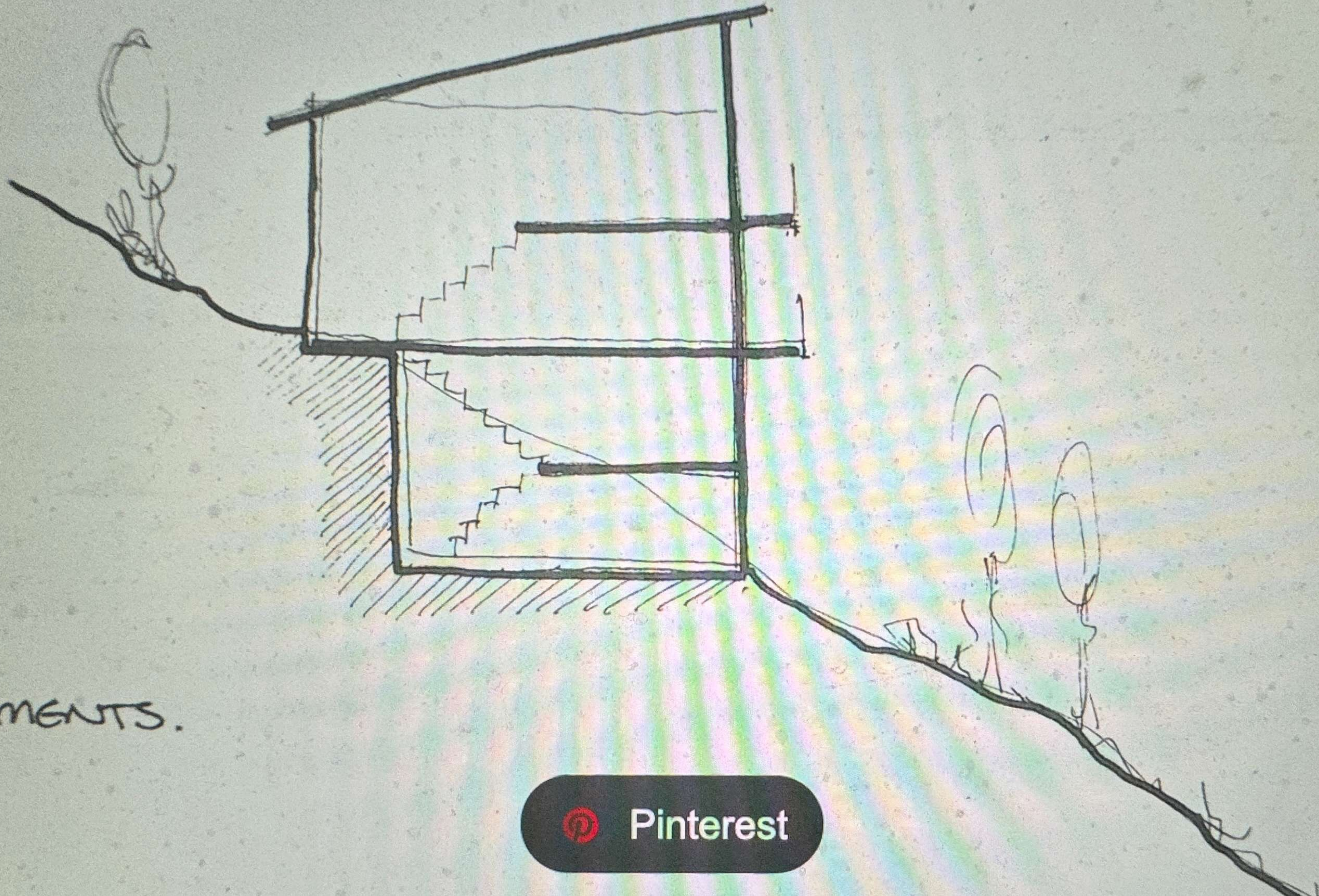
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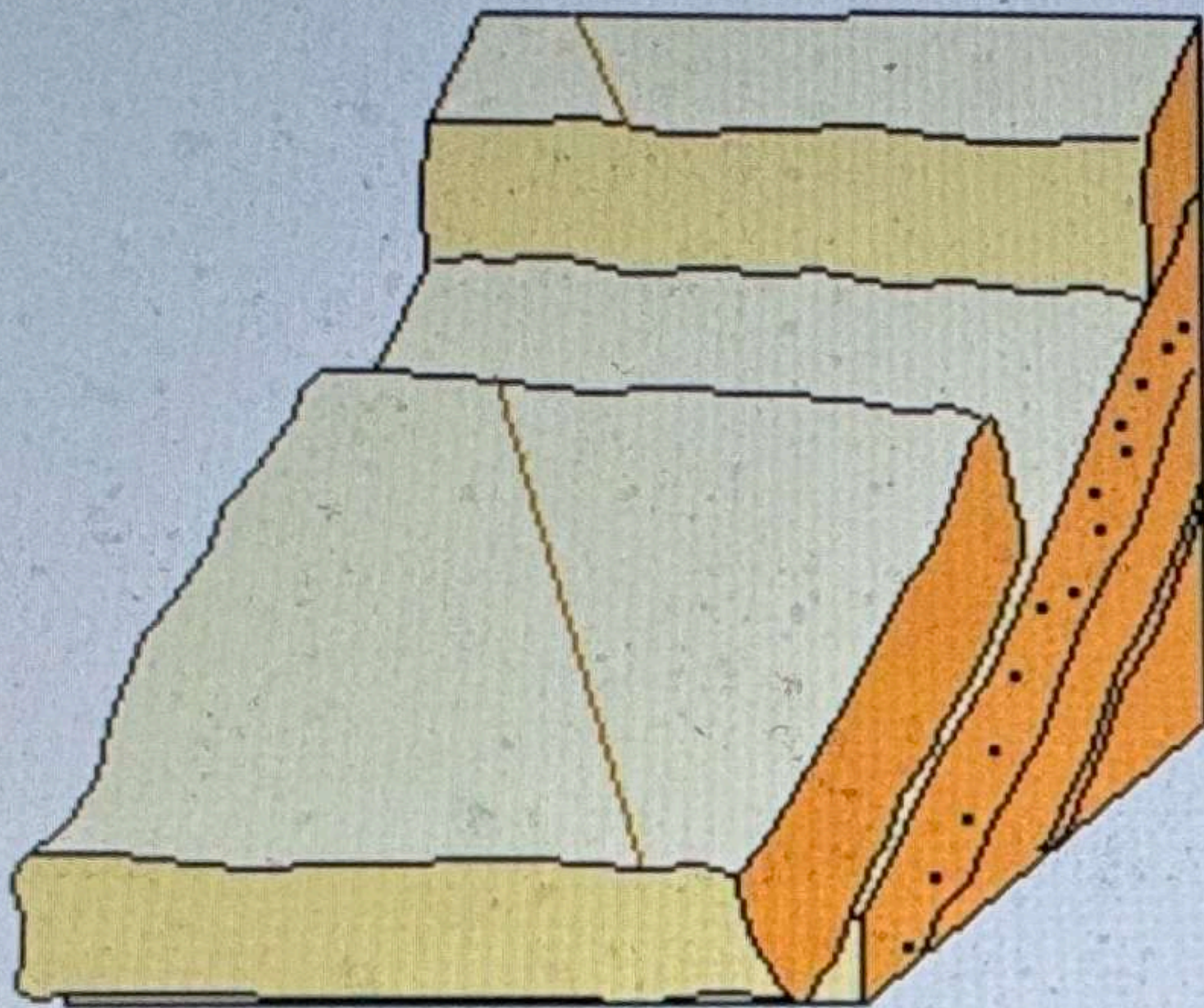


BASEMENTS.



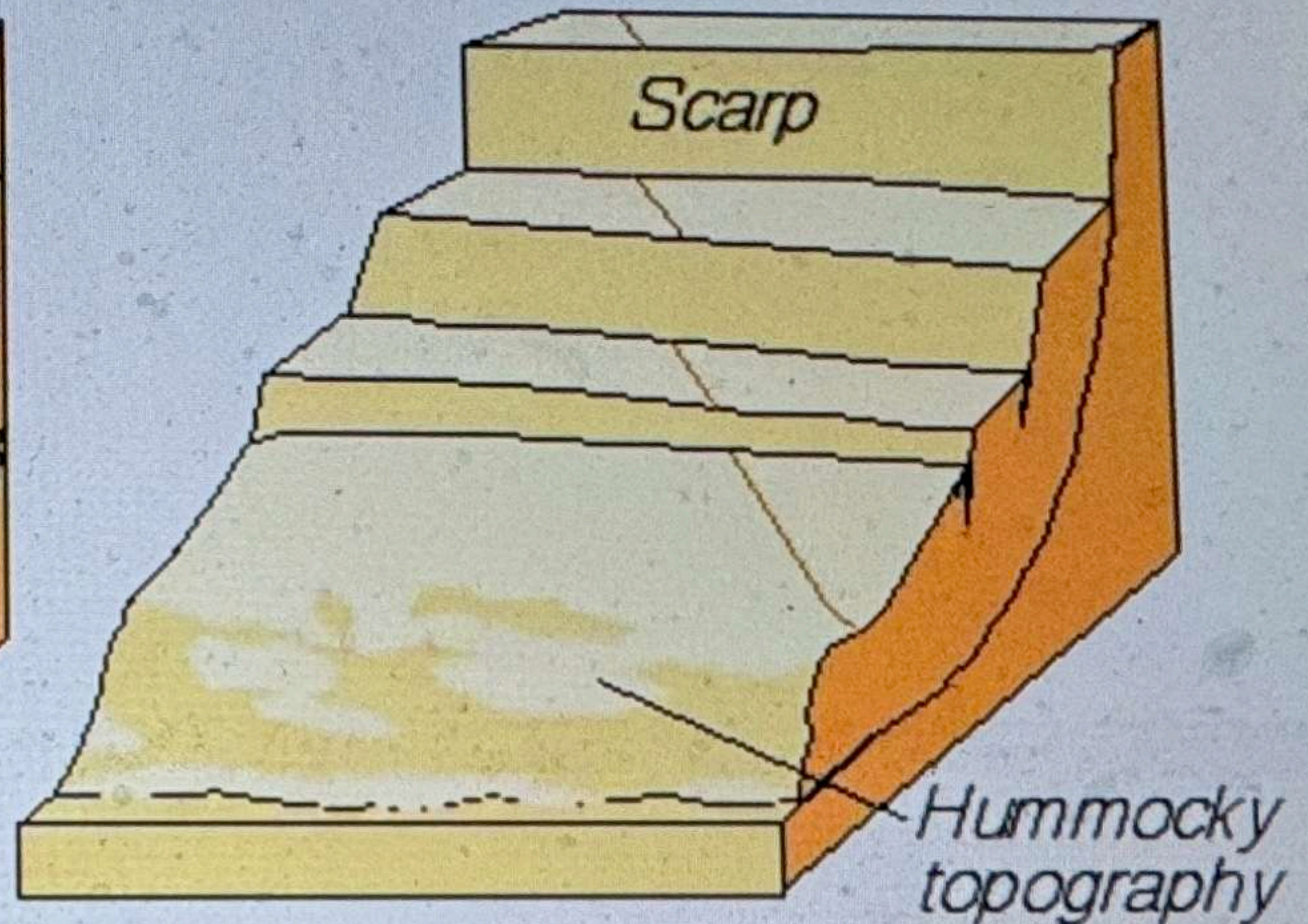
Styles of Mass Wasting

Glide (or Slide)



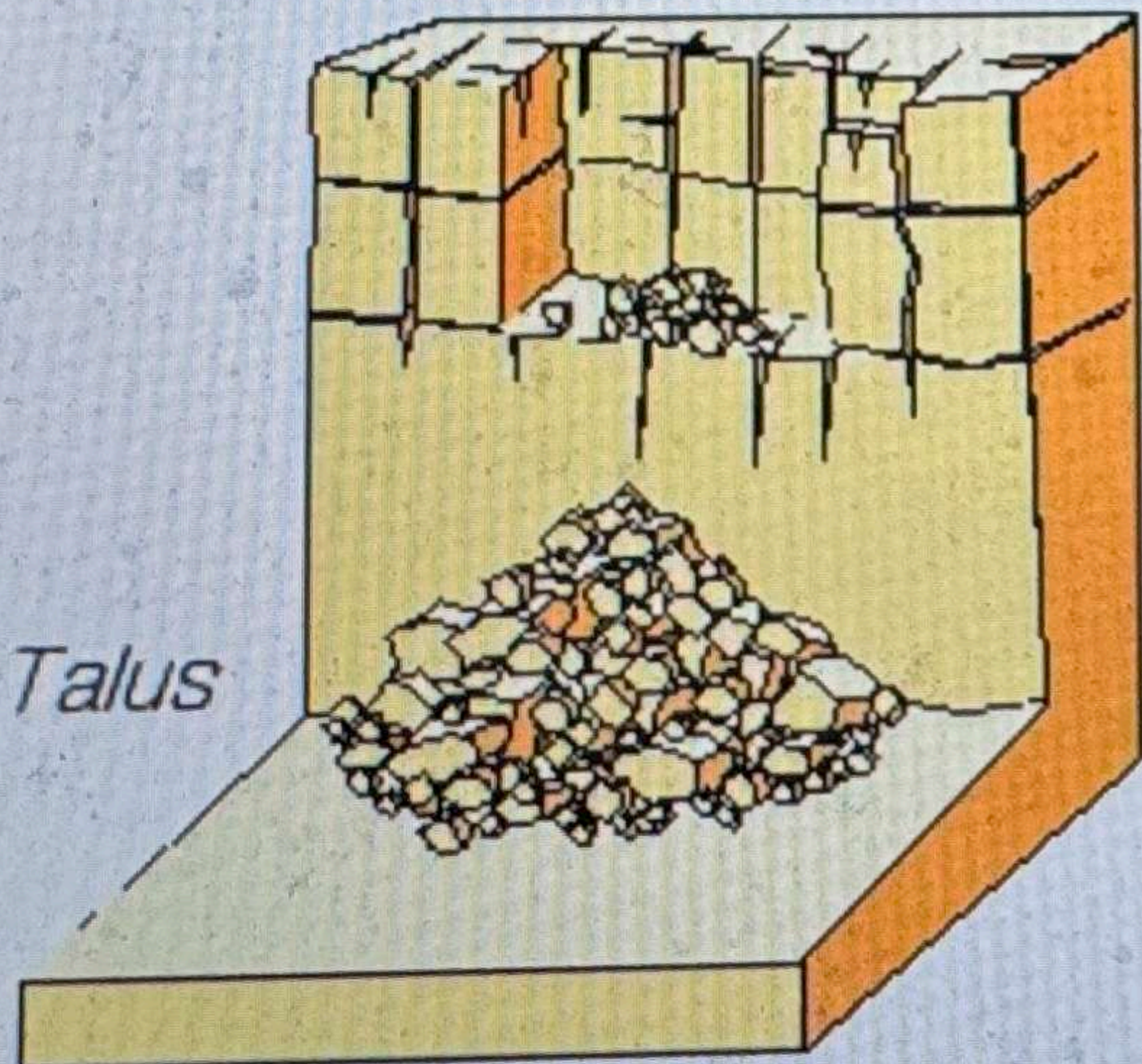
Most likely in layered rocks with bedding planes or fractures parallel to slope

Slump



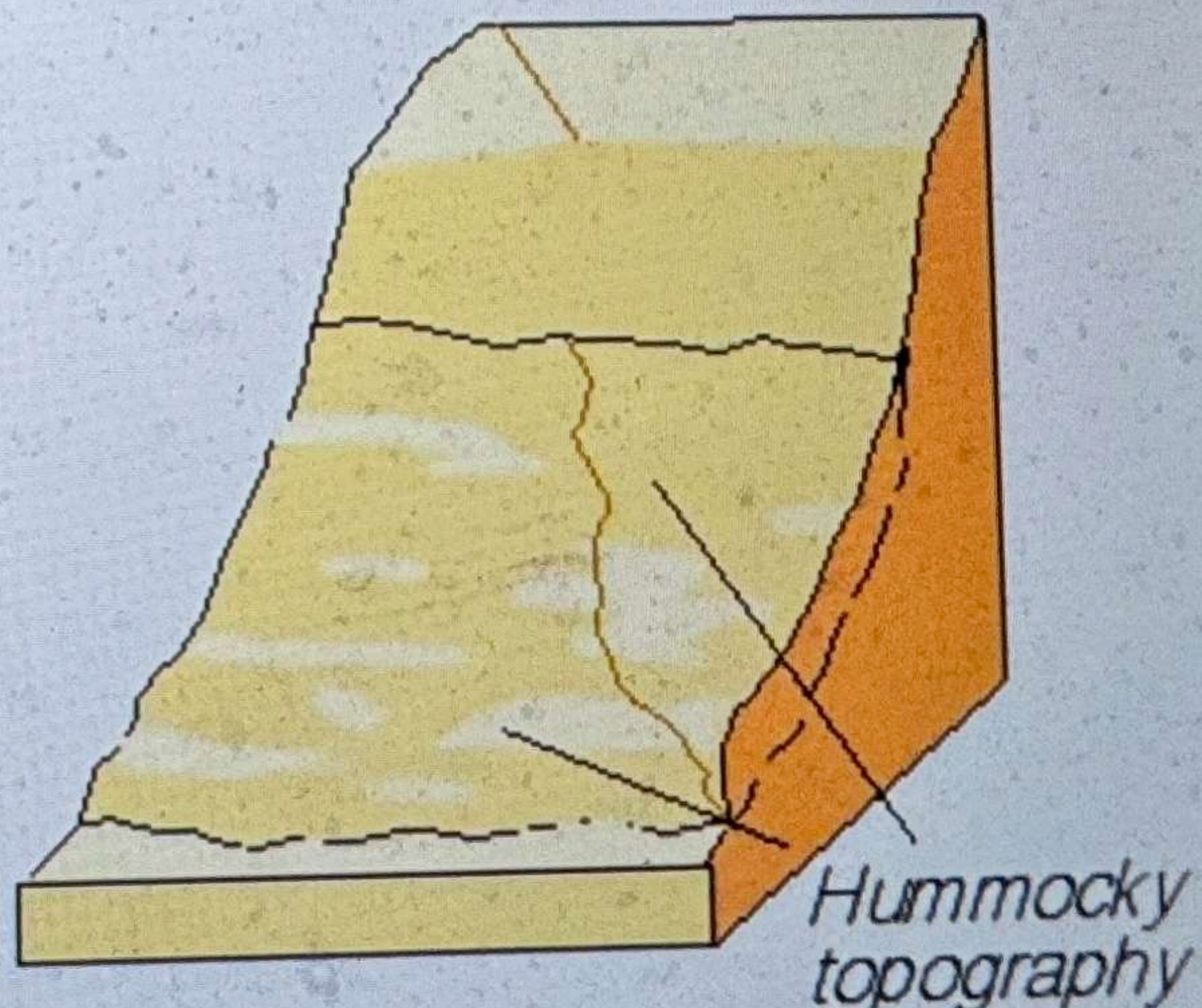
Most likely in consolidated clays or soils

Rockfall

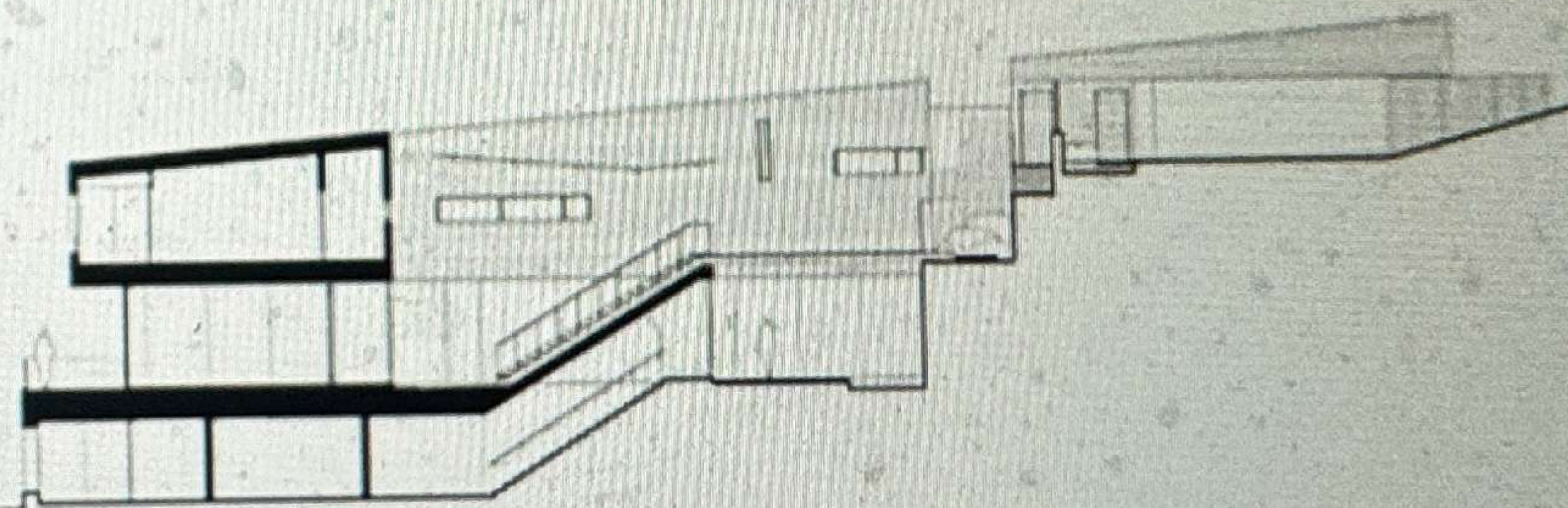
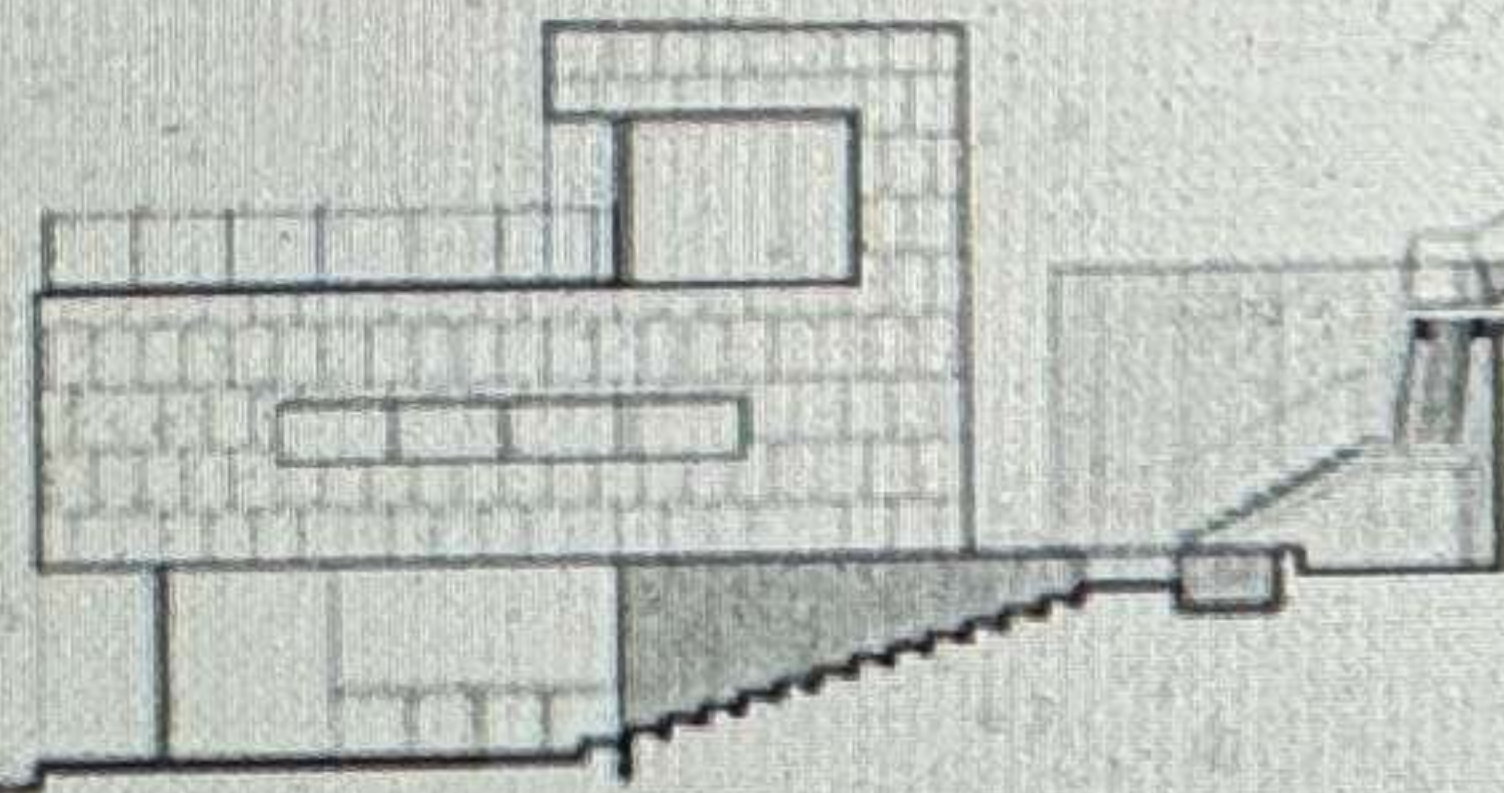
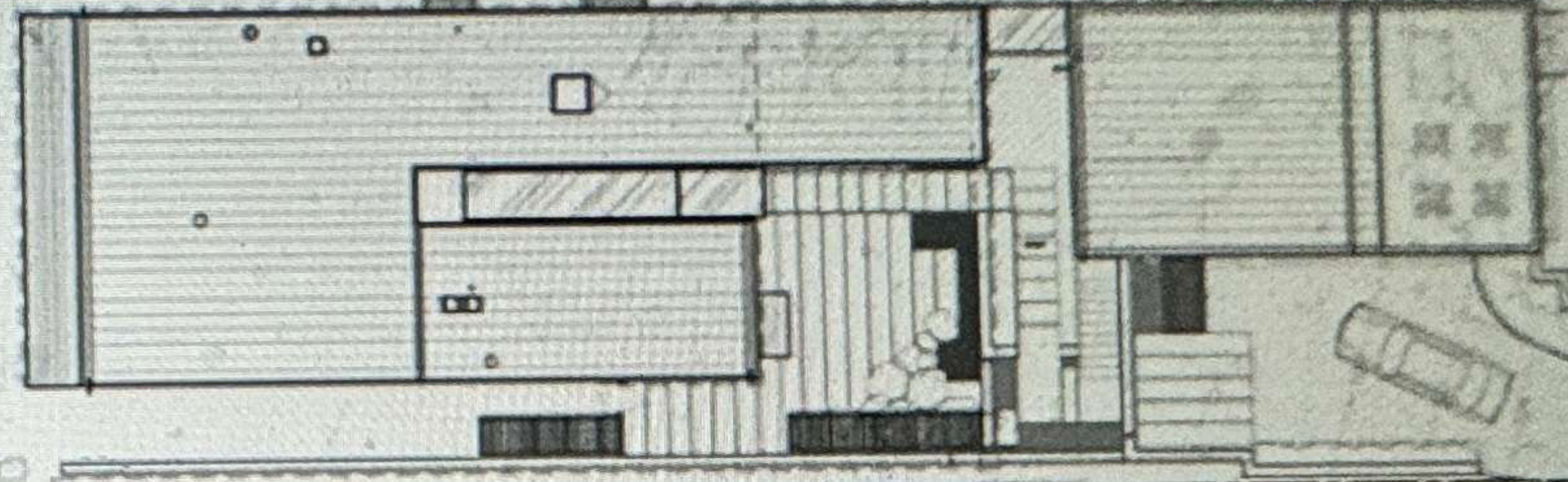
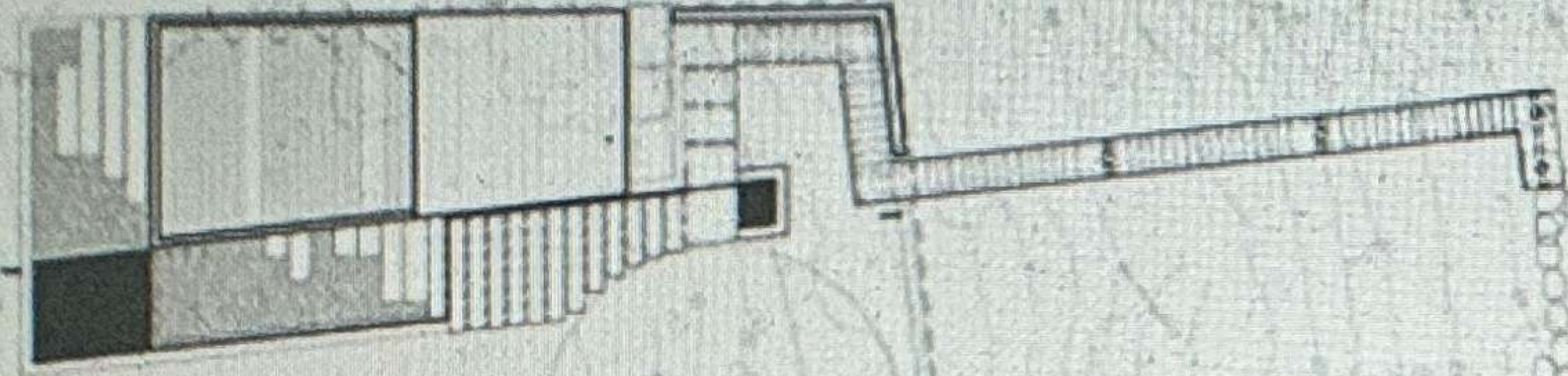


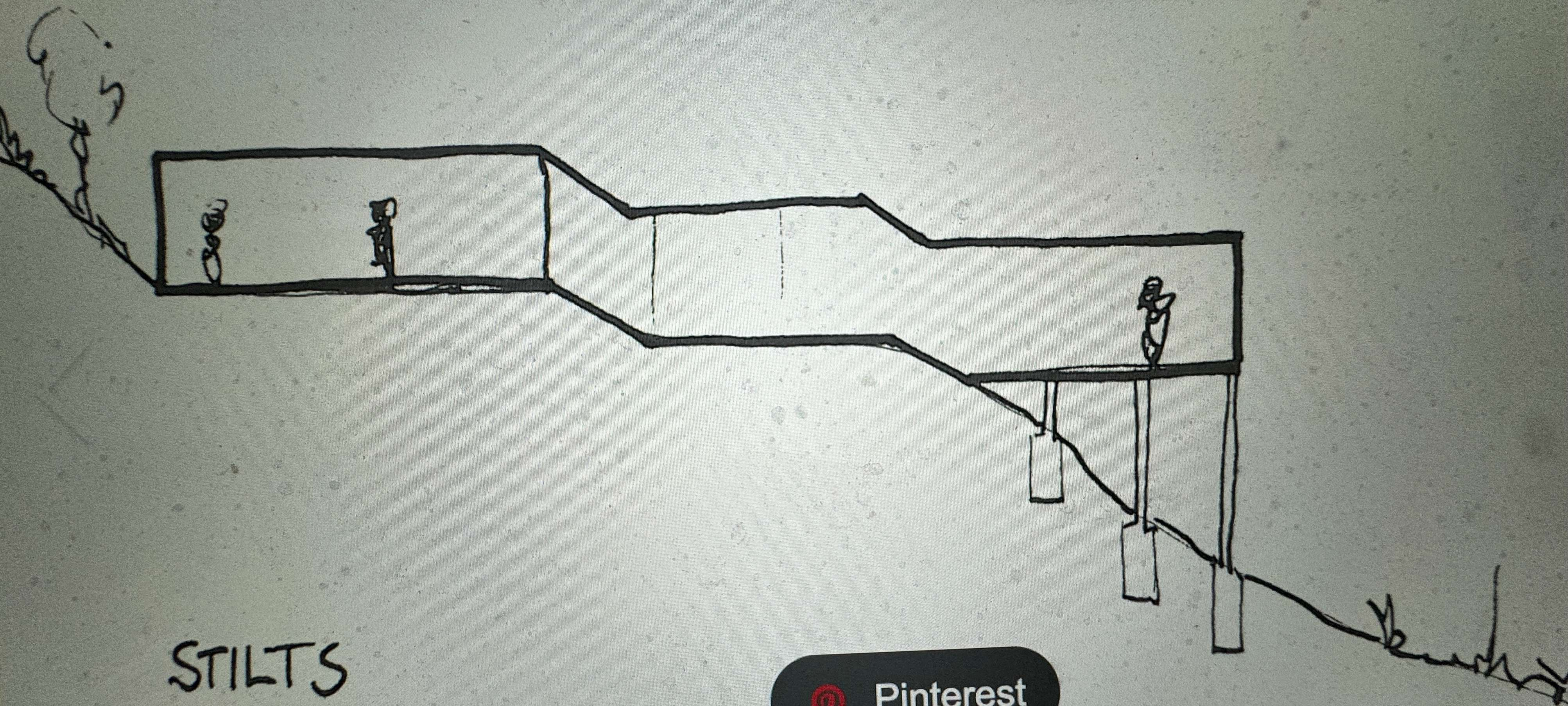
Most likely in fractured rocks at cliffs

Flow



Most likely in sandy sediments or soils, or unconsolidated clays; especially if wet.





STILTS



























BRIEF SUBMITTED BY PERMIT HOLDER(S)

REUBEN, JUNIUS & ROSE, LLP

Tara Sullivan
tsullivan@reubenlaw.com

April 11, 2024

President Jose Lopez
San Francisco Board of Appeals
49 South Van Ness Ave., Suite 1475
San Francisco, CA 94103

Re: Permit Holder Brief in Opposition of Rehearing Request
Subject Property: 939 Lombard Street
Appeal Nos.: 24-005 & 24-006
Hearing Date: April 17, 2024

Dear President Lopez and Commissioners:

Our office represents Enda Keane, the owner of the property located at 939 Lombard Street (the “**Respondent**” and the “**Property**,” respectively) and holder of issued Building Permit Applications Nos. 2021.0709.4004 and 2021.0709.4046 (the “**Permits**”), which are for the demolition of the existing carport at the front of the Property and construction of a new single-family home in its place (the “**Project**”). On March 27, 2024, this Board considered both Permits in Appeal Nos. 24-005 and 24-006 and voted 5-0 to uphold them (the “**Appeal Hearing**”).¹

After the conclusion of the Appeal Hearing, Mr. Eng (the “**Appellant**”) submitted a Rehearing Request (“**Rehearing**”) on April 3, 2024, citing “new information” that he believes would change the outcome of the Board’s vote. Upon review of the Appellant’s new submittal, it is clear that this is another attempt at delaying the Project. Simply put, Appellant has not presented

¹The previously submitted appeal briefs and associated exhibits for both parties can be found in the records of the Board of Appeal, as part of the agenda for its March 27, 2024, hearing. For convenience, the relevant record can be accessed online at: https://www.sf.gov/sites/default/files/2024-03/Item%206A%20and%206B%2C%20Appeal%20Nos.%2024-005%20and%2024-006%20%40%20939%20Lombard%20Street_Redacted.pdf

any new information that warrants a Rehearing. We request that the Board of Appeals **deny** the Rehearing request and uphold the issuance of the Permits.

I. STANDARD OF REVIEW

The Rules of the Board of Appeals outlines the standard of review for a Rehearing Request. The Board may grant a Rehearing Request “only upon a showing that *new or different material facts or circumstances have arisen*, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing” (*emphasis added*; Rules of the Board of Appeals, Art. V, § 9(b)). Accordingly, a written request (for a Rehearing) shall state:

1. The nature and character of the new facts or circumstances;
2. The names of the witnesses and/or a description of the documents to be produced; and
3. Why the evidence was not produced at the original hearing.

The Rules go on to state that “failure to exercise due diligence to produce the new facts and circumstances at the previous hearing shall be deemed grounds for denial of the request” (*Ibid.*).

As described more fully below, the Appellant has not presented any new or different material facts and circumstances that have arisen since the Appeal Hearing on March 27th.

II. APPELLANT HAS FAILED TO MEET THE REQUIRED STANDARD FOR REHEARING

The Appellant has failed to allege, let alone demonstrate, factual conditions that justify a Rehearing. Instead, he essentially argues for more time to make the same arguments he made at the Appeal Hearing because he believes the city got it wrong (three separate times). This is not the standard for a Rehearing. As we previously submitted to this Board, the Appellant began his quest to stop this Project on May 4, 2023, nearly a year ago, and has had three separate hearings

in front of three different decision-making bodies. At no time did he present “expert witnesses”, demonstrate the need for additional testing (or provide data on the need for additional testing), or show evidence about how health and safety laws are being violated. The Board’s standards require specificity; none has been presented.

The Board’s standards also require a written explanation of why this “new” evidence was not presented in prior hearings. The Appellant has not provided any such justification. Why is the Appellant just now seeking expert testimony, when he had ample opportunity to do so at the Discretionary Review hearing on June 29, 2023, at the CEQA appeal hearing on September 12, 2023, and at the Appeal hearing on March 27, 2024? The base standard for a Rehearing has not been met. The Appellant has been heard. As a matter of fairness and as a matter of law, the Respondent is entitled to move on from this process.

a. Excavation Concerns

The Appellant continues to raise the same issues regarding excavation and construction on the Property. He says there “are no test to confirm the safety,” “the foundation will damage the land area in all direction,” and says the “safest is not to build at all” (*see* Rehearing Request, pg. 2). The Rehearing Request does not provide new data about how the Project’s proposed foundation will damage the surrounding land or what in the previous studies and approvals is incorrect, such that the outcome of the Appeal Hearing would have been different. Nor does he suggest that an expert will provide this information. He complains about the steep slope of the Property, but his “new evidence” consists of photographs of randomly selected buildings, none of which are identified (location), that have had some sort of collapse. There is no correlation between these images and the excavation/construction of the Project. The Appellant has not provided new

evidence about the Project's Permits or how this Board incorrectly upheld the Permits as it relates to excavation, construction, or slope. That is the standard that has to be met for a Rehearing.

b. Health Hazard Concerns

The Appellant continues to raise issues regarding health risks near a school. He states that the Project is a "danger to the children's welfares," and that the school "must be saved" (*see* Rehearing Request pg. 2). There is no new or different material facts or circumstances that have arisen since the March 27th Appeal Hearing that would have affected the outcome of the Boards' decision regarding health impacts. The Rehearing Request does not provide any specifics about how the Project will harm the children; it repeats the arguments he made at the Appeal Hearing that any construction next to a school is harmful. This is not new evidence.

Shadow, usability, and construction impacts to the school that are raised in this request have already been discussed at the Appeal Hearing. The Appellant requests that health impact assessments be conducted and that certain medical and public health experts be consulted, on the basis that these experts will show impacts that should be considered. The Appellant has failed to meet the base standard for a Rehearing. Why were these experts not called previously? What specifically about the Project is now known that would have changed the Board's previous decision at the March 27th Appeals Hearing? No reasons or new information is given. The issues related to health impacts were discussed at the Appeal Hearing. The Board found that the existing city and state regulations for construction management were appropriate and would appropriately mitigate adverse impacts and sufficiently protect the school. The Appellant has not provided new facts that would have changed the outcome of the Appeal Hearing.

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III. ISSUES UNRELATED TO A REHEARING REQUEST

The Appellant's other concerns, such as those relating to property values, future litigation, and financial speculation were all raised during the Appeal Hearing. They are not within the scope of permit review and do not provide a basis to grant a Rehearing. Further, the Appellant has not provided any new information on these matters such that it would have changed the outcome of the Appeal Hearing.

IV. CONCLUSION

The Appellant seeks a Rehearing by this Board, but he raises no new facts or circumstances to support the Rehearing request, that, if known at the time of the Appeal Hearing, could have affected the outcome, as required by the Board's Rules. Instead, the Appellant continues to come to sensationalized conclusions without any factual support or even superficial investigation. Even assuming, for the sake of argument, that some of the facts had any truth, none of them are new facts that have arisen since the Appeal Hearing, as required by the Board's rules. The Appellant's concerns have been considered several times by the Planning Commission, the Board of Supervisors, and this Board, each of which found the Project and Permits were appropriately approved.

The Board's Rules state that "failure to exercise due diligence to produce the new facts and circumstances at the previous hearing shall be deemed grounds for denial of the request." The Appellant has had ample opportunities to provide the evidence he is now seeking to admit. His negligence to do so at the three previous hearings should not be a reason to grant a Rehearing Request. The Appellant has not met the threshold of a Rehearing Request and there are no reasons to further delay this Project. For these reasons, we respectfully request that the Board deny the Rehearing Request.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

A handwritten signature in black ink, appearing to read "Tara", with a long horizontal flourish extending to the right.

Tara Sullivan

cc: Alex Lemberg, Vice-President
Rick Swig, Commissioner
John Trasviña, Commissioner
J.R. Eppler, Commissioner
Julie Rosenburg, Executive Director
Tina Tam, Deputy Zoning Administrator
Matthew Green
Martin Eng