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May 3, 2006

Ms. Christine Sinnette
Senior Planner
City of Lafayette
3675 Mt. Diablo Blvd.
Lafayette, CA 94549

Re: TR6569/HDP86-04 - Soldier Field staff report dated 4/24/06 (meeting date 5/4/06)

Dear Christine,

We commend the Economic Analysis Committee (EAC), staff, and the City Attorney for their hard work and diligence in trying to determine how to establish reasonable criteria for granting exceptions to the Hillside Ordinance requested by Soldier Field. We agree with the methodology undertaken, but not with all of its specific conclusions. Our comments follow.

We agree with the conclusion that the number of home sites that would have been approved under the *Old* Hillside Ordinance in force at the time Soldier Field's 17-home application was being processed would have certainly been less than 17. We do not however agree that the number would have been eight. In reviewing the rough locations mapped on Attachment J, it appears that at least two and perhaps as many as six would have had difficulty meeting the visibility and privacy standards required by the ordinance.

Soldier Field's letter dated 4/27/06 fails to acknowledge the fact that the city already had a fairly strong hillside ordinance in place at the time they purchased the property. We should recognize that the main differences between the Old and New Hillside Ordinances were: a) reduction in density, and b) increase of ridgeline setback area from 250' to 400'. Soldier Field's property was not and is not constrained by density – it is constrained by other provisions (visibility, steep slopes, privacy, etc.) that are present in both the old and new versions of the ordinance. So for all practical purposes, an alternative methodology would be to look only at those sites that are between 250' and 400' from the Class 1 ridgeline or within 250' of the Class 2 ridgeline (and not already constrained by steep slopes, visibility, privacy, etc.), and determine whether the loss of these sites could create a potential takings exposure.

We also question the definition of "economically viable use" being used in the context of granting an exception under 6-2068 of the Lafayette Municipal Code. Page nine of the staff report states: "Obviously, the more Soldier Field has invested capital in their property, the more reasonable the claim that they had a distinct investment backed expectation to develop the property in the manner prohibited by the New Ordinance". It is quite clear that Soldier Field's investment expectations regarding how many lots could be approved have been unrealistic from the start, as witnessed by the progression of proposals from 28 homes to 25 and 17 – all under the Old Hillside Ordinance. The fact that they sued the city and have continued to spend money to pressure the city to violate the intent and letter of the Hillside

Ordinance should not be factored into consideration on the question of economic viability. Soldier Field already had an economically viable use when they purchased the property in the form of recurring revenue from the cell antennas, the ability to build one home, and the almost certain approval of a minor subdivision. The city and its residents should not have to foot the bill for the “millions” of dollars Soldier Field says they have spent due to their own unreasonable investment expectations.

Soldier Field would have had a difficult time getting as many as eight home sites approved under the Old Hillside Ordinance, and they are now trying to use the New Hillside Ordinance as a “scapegoat” for granting exceptions under threat of a takings claim. We urge the Planning Commission to not bow to this pressure and proceed with a stringent and fair site by site evaluation of potential sites that do not require the granting of exceptions except for the 15-degree declination clause.

Sincerely,

A handwritten signature in black ink, appearing to read 'CMT', with a stylized flourish extending to the right.

Clifford Tong
BurtonValley.com

Cc: Lafayette Planning Commissioners