

- D. Letter dated August 28, 2006 from David Stromberg, President, Lafayette School Governing Board, inviting council participation by attending a focus group or completing the Leadership Profile Assessment form.**

Recommendation: Discuss.

The Council acknowledged receipt of the letter.

- E. Letter dated August 29, 2006 from Martin Otero, Director of Operations and Resource Recovery, Goodwill Industries of the Greater Bay Inc. requesting city cooperation for a one or two day collection event in Lafayette for electronic waste disposal.**

Recommendation: Approve city cooperation for a one or two day collection event in Lafayette for electronic waste disposal.

Mayor Samson described the event as a collection event for electronic waste that would not cost the city anything. Councilmember Anduri questioned whether the Acalanes Environmental Club was doing the same thing, and said they were holding their event as a fundraiser. Ms. Merideth said they contracted with an organization and it was not Goodwill Industries. She said there was a significant demand and the events were welcome and very much needed.

ACTION: It was M/S/C (Samson/Anderson) to approve City cooperation for a one or two day collection event in Lafayette for electronic waste disposal. Vote: 5-0 (Ayes: Samson, Federighi, Anderson, Anduri and Tatzin; Noes: None).

11A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

Vice Mayor Federighi said the item was skipped. She said the League of California Cities held its annual conference in San Diego, said Tracy Robinson and Steve Falk attended and she attended a portion of the conference as a voting delegate. She felt the conference was valuable and said the code enforcement workshop was particularly interesting.

9. PUBLIC HEARINGS

A. Christine Sinnette, Senior Planner

Appeal of Planning Commission approval of TR6569 and HDP86-04 Greg Woehrlé (applicant), Soldier Field Partners, LLC (owner); LR Zoning and H-O-D: Appeal filed by Sheppard Mullin Richter & Hampton LLP on behalf of Ann Marie Marciarille and Brad Delong: Subdivision of 87.9 acres into eight residential lots 3148 Lucas Drive, APN 238-080-019

Recommendation: Deny appeal and uphold Planning Commission certification of the Final EIR and Addendum for the Soldier Field Subdivision and approval of TR6569 and HDP86-04 and continued to the meeting of October 10, 2006 to allow staff to prepare a City Council resolution denying the appeal.

Mayor Samson discussed the public hearing process.

Senior Planner Christine Sinnette gave the staff report, stating the applicant submitted applications for an 8-lot subdivision along Burton Ridge at the end of Lucas Drive. Proposed was to subdivide 87 acres into 8 residential lots and a 60-acre open space parcel. The current

zoning was low density residential with a minimum 10 acre lot and the current project complies with the allowed density of 8 dwelling units. The property is also located in the Hillside Overlay District. In January 2005, the Planning Services Division determined that the preparation of an EIR was required, the scope of the EIR was reviewed at a public hearing, and a draft EIR was prepared by the City's consultant, RBF Consulting.

The draft EIR was completed in October 2005 and the Planning Commission held 3 hearings on the draft EIR. The Final EIR was completed in February of 2006 and a hearing was conducted on the Final EIR which was certified on March 9, 2006 as being in compliance with CEQA and all other required state regulations. The Final EIR concluded there would be no significant impacts related to traffic and transportation. It identified impacts relating to land use, aesthetics, biological resources, geology and soils and hydrology but concluded that all impacts could be mitigated and the Planning Commission approved an extensive list of mitigation measures.

The Planning Commission then began to hold public hearings on the applications and between January and July, 6 hearings were held. The hearings considered review of the original vesting tentative map and subsequent revisions based on comments of the Planning Commission, the public, and as required by mitigation in the EIR. The Commission also considered the applicant's request for development within Class I and Class II ridgeline setbacks.

Economic analyses were also prepared by the applicant and by City staff and a City consultant. On July 6, the Planning Commission voted 3-1 to approve the 8 lot subdivision, adopted a resolution approving conditions of approval, a mitigation monitoring and reporting program and exceptions to development in the Class I and II ridgelines.

On July 20 an appeal was filed on behalf of the property owners at 1 Lucas Court. The grounds for appeal were that the Planning Commission certified an EIR that did not comply with CEQA, approved legally inadequate conditions of approval and mitigation measures, based their approvals on insufficient findings and evidence in the record. Their letter also stated that the applicant failed to comply with the City's hillside development ordinance. Also supplied were 5 letters that had been previously submitted to the Planning Commission. Most were answered either directly as part of the responses to comments in the Final EIR or indirectly during public hearings and subsequent staff reports, documents, testimony and in meeting minutes. Ms. Sinnette said it was staff's opinion that the grounds of the appeal have no merit.

As outlined in the staff report and documented in the Planning Commission resolution, staff reports, minutes and other attachments, the Planning Commission, in addition to receiving comments from the Circulation Commission, Design Review Commission and the Parks, Trails and Recreation Commission, spent over 18 months reviewing environmental documents, technical reports, written correspondence and heard public testimony prior to certifying the Final EIR and approving the development of the 8 lot subdivision.

Ms. Sinnette said staff was recommending that the City Council deny the appeal and uphold the Planning Commission's decision on the Final EIR and on the project itself and continue the hearing to the meeting of October 10, 2006 to allow staff and the City Attorney to prepare a resolution stating the denial of the appeal. She confirmed the hearing was a de novo hearing.

Councilmember Anderson said it seemed that much of the appeal was based on a legal question and Ms. Subramanian said most points were referenced in previous letters sent to the Planning Commission when the application was originally heard by the Planning Commission. She said the City did feel the questions were addressed adequately in the EIR.

Councilmember Tatzin noted receipt of a letter from David Bowie prior to the July hearing, which purports that the methodology for having the applicant provide road repair on Lucas Drive would be through a video tape of roads in the vicinity. He questioned the definition of "vicinity" and Ms. Sinnette noted the City Engineer would define "vicinity" and she said this had not been challenged by the applicant. Mr. Bowie could challenge it under an appeal of the staff decision, and Councilmember Tatzin confirmed the term should be defined.

Councilmember Tatzin confirmed with Ms. Sinnette there were no situations where the Planning Commission disagreed with any of the staff recommendations. He confirmed that some of the home sites were within 100 feet of the ridgeline setback, there were a number of conditions of approval and special conditions which would need to be fulfilled prior to filing the final map, they would become lots of record when the final map was recorded, and if one of the homes were not suitable for development the application would return to the Planning Commission to refine a better building site.

Councilmember Tatzin felt the City did not know when the lots would actually be developed, new owners would want to build a home under the City's hillside ordinance and they could introduce terrain and vegetation to conceal the home, whereas Section 6.2048 of the new ordinance talks about off-site visibility when a subdivision is considered and that substantial concealment must come from existing vegetation or existing terrain. So, he questioned the process to make it clear that when someone files for Design Review, that the standard is the one adopted for the subdivision, rather than the one adopted for a subsequent lot of record.

Ms. Sinnette said in addition to the approval of the subdivision, the Planning Commission approved a set of preliminary design guidelines which would indicate the orientation of proposed houses, include screening and the requirement for submission of site specific design details with massing. Councilmember Tatzin said it was his understanding that a revised set of guidelines would return to the Commission, which the Council did not currently possess and questioned the ability for new homeowners to know that the standard for concealment would be specified in Section 6.2048 as opposed to anything subsequent, and Ms. Sinnette this was not written anywhere.

Vice Mayor Federighi confirmed with Ms Sinnette that the design guidelines did incorporate and allowed for some additional planting for screening. Councilmember Tatzin felt the distinction was that the City could require a house to be substantially concealed by existing vegetation and terrain which the subdivision ordinance specifies, design review could require more planting to further conceal in terms of the size of the house and substantial concealment by existing terrain vegetation. So, his concern was that someone could believe they could build a certain size house which is not concealed, but because of the installation of vegetation, it could be concealed and this was not the City Council's intent of the hillside ordinance, and wanted to make this clearer. Given this, he questioned whether the design guidelines provide an entitlement to property owners, and Ms. Sinnette felt it was not an entitlement and felt the final map provides for entitlement to build on the land but that an architect would need to design the home based on the guidelines and it would have to be approved by the commission.

Councilmember Tatzin asked at what level did the project need to comply with the NPDES regulations, and Ms. Sinnette said the project at the present time did not need to. It was deemed complete prior to the one acre threshold; however, there were conditions of approval and mitigation measures requiring them to comply with the maximum extent practical and best management practices requirements of the City's NPDES permit for each of the lots and in the

subdivision. They are not required to comply with the new C-3 regulations, but must minimize the amount of impervious surfacing and collect drainage.

Councilmember Tatzin confirmed the owner of the 60 acre parcel would be vested with the current property owner and there would be a conservation easement, which could be requested to be removed in the future. Ms. Sinnette **said yes and** noted however that the telecommunications area would not be subject to the restriction.

Councilmember Anduri said if, at the time, an individual applicant seeking to build a home comes in and applies for a building permit and it is determined that the house design does not meet the requirements, a house site would need to be deemed in compliance. Ms. Sinnette felt if issues related to being substantially concealed, off-visibility or appropriate colors and materials were brought up, then they could be dealt with in the design review stage without necessarily moving a building site.

Councilmember Anduri confirmed with Ms. Sinnette that the design guidelines prepared by Tim Ward were approved by the Planning Commission as preliminary designs, but they needed to be designed on a more formal basis and massing studies would be part of this, as well, and he confirmed that there was a final condition of approval that required that the guidelines needed to be approved before the map was approved.

Mayor Samson felt that Council's concerns were the EIR's failure to adequately address run-off and rainwater issues and the potential implications this has on soils stability. He asked that the appellant and respondent focus on this and asked what provisions there would be to further address the concern.

Kristie Wheeler, RBF Consulting, said the comment raised in the appellant's letter regarding drainage and slope stability was an issue raised during the public review period on the draft EIR. The comment was responded to in the Final EIR. She said there were a number of issues raised during the public review period on drainage and slope stability. In order to address those comments, they had a master response in the Final EIR.

Ms. Wheeler said the project engineer did prepare a hydrology report and found the development that flows into swale A would result in some increase in drainage; however, they also found that the drainage improvements proposed and constructed as part of the project would reduce some of the volume in the swale.

Mayor Samson asked what degree of specificity would be required for additional conditions to be imposed and when to deal with the water and soil stability issues. Ms. Wheeler said there was a mitigation measure proposed (3.8-4) that was updated as a result of the comment and would require performance criteria for both on and off site drainage for the project to be submitted prior to final map recordation and improvement plan approval.

Mayor Samson asked if this condition or a similar condition be incorporated into conditions of approval for the project itself, and Ms. Wheeler said they felt the mitigation and the adopted conditions of approval were adequate to address the particular impact. Ms. Sinnette said specifically, conditions 33, 34, 35, and 36 address geology and soils and hydrology, and she discussed each and she confirmed with Mayor Samson that each of the requirements in the conditions say that the project itself cannot increase the rate or volume of water beyond that which is there without the project.

Councilmember Anderson asked how the potential impact of removal and re-grading of soil on the site was dealt with or other major changes on the parcel. Ms. Sinnette said this was one of the comments of the Planning Commission. The project engineer submitted preliminary landslide remedial plans (Attachment 15) which shows three major areas of potential slide repair; one of which was no longer valid and she discussed the areas for development. Councilmember Anderson said if there was any remediation needed of land slides, staff would look at the extent that was required. She said if it were determined to be significant by staff, a subsequent EIR might need to be done. The preliminary grading was based on the preliminary geologic studies that show where existing landslides were. She said there were minor things that could also be done at the site such as foundation and engineering design, etc.

Councilmember Anduri confirmed that the applicants have one year to get the final map completed and they could request additional extensions. He referred to Condition 49 and asked if approval by the Planning Commission modified site plan building areas or did it modify both preliminary guidelines and site plan building areas. Ms. Sinnette stated the applicants have two years to get the final map completed and noted the preliminary guidelines were approved by the Planning Commission and confirmed the set contained in the packet were those approved. Councilmember Anduri confirmed that the final guidelines would need to be approved prior to sale of any lot.

Councilmember Tatzin referred to the July Planning Commission minutes and felt that there had been some degree of slide on a portion of the property, that the slide had taken place prior to any development related to the project and it was a private matter. He asked to what extent did the City have the ability to create a condition that requires the remediation of this problem as part of the overall conditions of approval for the project. Ms. Subramanian said the Council would need to find a nexus between the subdivision and the need for repair. She said it was her understanding that there was no nexus in terms of the slide, as it was created before the subdivision was even approved. So, there would need to be evidence that the subdivision would create an additional impact on that landslide, which did not happen in the course of the testimony.

Mayor Samson noted Councilmember-Elect Brandt Andersen was present in the audience.

Dave Lanferman, representing the appellants Ann Marie Marciarille and Brad DeLong, said it was important to note that the City Council should realize their clients were not out to kill the project but simply to have the City conduct appropriate review of the project to ensure that all relevant questions have been properly addressed and answered. He felt Council highlighted many of the reasons for their concern, felt the project might be beautifully designed, appropriate environmentally; however, based on the environmental review conducted, his clients have not had an adequate opportunity to determine what was proposed, and conditions have continued to evolve and change. The process was originally driven by timelines developed from settlement of separate litigation between the applicants and the City, so he felt the applicants put forward an incomplete project proposal that did not include all detailed information and answers to questions. They do not share staff's and applicant's naive assumption that foundations can be driven down to make the lot buildable. He felt it might be necessary to change the location of the lot and to change the building plan. He felt the City had precise parameters for development on the ridge, and there were also soils and hydrology constraints which would be created, and he asked the Council to direct staff to develop more precise and detailed conditions. He felt the problems do not need to be fatal, said the project came in backwards, felt the Planning Commission commented frustrations of incompleteness and provided quotes from members one month after the project was certified as being complete. He

asked that staff provide findings and conditions that address the soils, drainage and hydrology in the same level of detail that other issues of public concern, such as visibility, landscaping, and hillside regulations and felt there was a dramatic contrast. He asked the Council to pay attention to conditions 33-36 and mitigation measures and felt impacts are not properly addressed. He did not want the project to move forward and get approved without having the questions answered. He said there were preliminary design guidelines which could be changed dramatically, questioned what type of sacrifices would be made that might affect his client's interests, questioned the amount of water that would come off the site, and asked that the project be remanded back to the Planning Commission or staff and direct them to prepare more precise conditions particularly focused on drainage, geology and hydrology comparable to the types of conditions that have been approved for the rest of the project.

Councilmember Tatzin confirmed that Mr. Lanferman's concerns were primarily with proposed Lots 1 and 2 and those that may cause soils and geology problems for them. He said once the Council decides to deny the appeal, the process now becomes one of document exchange and discussion between the applicant and City staff to make the findings in part for the final map, he confirmed that every time the applicant submits a document or study to the City it becomes a public record, and any action of City staff can also be appealed.

Councilmember Anduri referred to the letter of July 19th, he said Mr. Lanferman states that in addition, the appeal would be based on the failure of the applicant to comply with the City's hillside development ordinance. He asked if Mr. Lanferman was continuing to base his appeal on this. Mr. Lanferman said they were not concerned about the ordinance in the same way as others who believe it should be based on a limit on the number of lots; they were concerned that the hillside ordinance does include provisions regarding the location of structures on the ridgeline such that they do not pose an adverse impact on other properties.

Vice Mayor Federighi said Mr. Lanferman would like to see conditions of approval and mitigation measures address with the same specificity the drainage issues as they do in other areas. She noted mitigation measure 3.8-4 states that the final hydrology and hydraulic analysis shall demonstrate to the satisfaction of the City Engineering Services Manager that the project meets performance criteria including requirements for post project peak run-off and detention system standards, and peak discharge at, below or equal to existing discharge run-off conditions. She felt this might protect the drainage system at least to current conditions and asked Mr. Lanferman what more he would like to see.

Mr. Lanferman said the final hydrology study would be reviewed by the City Engineer. He said they do not disagree with performance standards, but they have no assurance that they would be met or could be met. Also, information should be found out sooner rather than later prior to lots being marketed and developed. He also said there was no mitigation and monitoring provisions to make sure the drainage facilities constructed are going to be maintained, and Vice Mayor Federighi said the association formed would be required to be responsible for maintenance. Ms. Sinnette said there would need to be maintenance agreements, there is 10 year monitoring for landscaping, they will have to provide a specific operation and maintenance plan for drainage improvements, as well.

Mr. Lanferman felt all the problems were solvable; however, it was their preference that the City makes these conditions of approval at this point and not deferred further into the process.

Vice Mayor Federighi asked if the amount of specificity was appropriate at this time, and Ms. Subramanian said their experts felt what they had was appropriate and it was felt that additional information was not needed at this time.

Mayor Samson said just focusing on mitigation measure 3.8-4, he confirmed that Mr. Lanferman does not have a problem with performance standards as written, but rather the method of implementation of those performance standards should be subject to public scrutiny prior to certification.

David Bowie, representing the applicant, said they have gone through 18 months of hearings, spent a lot of money on an EIR and felt this was an extremely important issue for them. He said he has had communication with Mr. Lanferman, have attempted to take steps to address concerns, but he felt his concerns were misplaced. He said Mr. Lanferman did not have problems with the performance standards with the mitigation measures or conditions to final approval which have been imposed; his concern is over the potential for not getting full public viewing of the actual implementation of those conditions, which he felt was misplaced. The process is public, felt everyone has a right to participate and if in disagreement, appeal. He felt it was unusual to require the kind of detail that will be required for this project before a final map is recorded. He felt it was much more typical that you end up with a tentative map which determines where your lots are. Doing a study in the abstract was not meaningful and existing conditions should be addressed and this was why there is a tentative map and recorded final map, and then all of the soils and hydrology conditions were usually implemented as part of the actual building permit process. He felt anyone can be involved in the public process, said they have no problem with providing copies of communications that they undertake to present to staff in the context of soils and engineering.

Mr. Bowie said there was an issue posed as to whether or not it was something where they could be compelled as a part of the conditions of the tentative map approval to undertake remediation measures on private property, and he said the City Attorney said no, this could not be done because there was no nexus between their project and any conditions that may exist. He felt this highlights exactly what the EIR process was all about, which is supposed to provide adequate information to make an overall judgment as to the environmental impacts of the project. There are existing conditions that have nothing to do with the project because they have not done their project yet. The significant environmental impacts, if any, cannot be mitigated fully by the project, and he felt the project has no such impacts including no impacts from the standpoint of soils and hydrology, and going forward would only improve the hydrology and soils in the area. Also, the performance standards imposed on them which have been accepted indicate clearly that they must meet those performance standards as part of the entire process. So, he did not think there was any legal question that is posed as to the viability of the environmental process or the final certification.

Mr. Bowie said there was a concern about the Tom Chastain design guidelines. They did two versions of these; an initial draft and a further re-draft which both were discussed with Mr. Chastain and many of his comments were included in this. The idea behind the guidelines was to give everyone a feeling for what they were looking at; how are we going to present the project and to give any new buyer some indication as to what might result when they would go through a comprehensive design review process.

Mr. Bowie said there was a question by Councilmember Anduri as to whether or not the standards of section 6-2048 would apply, and he agrees that this is the current state of the Code and they will have to adapt their presentation and project to those concerns and they fully

intend to comply with all of the code requirements that are imposed upon them. They went to great lengths to come up with a project that would not require any exceptions findings and they have done that; however, the only one that might apply would be that with respect to a couple of roads, but there are exceptions to those exceptions, such as the long existing road used by EBMUD and PG&E. But the other issue was that having to do with the declination requirement of 15 degrees. He felt the intent of this was to avoid silhouetting buildings against the ridgeline, and this does not apply. He said they meet the general plan standards, meet the zoning standards and the 60 acres of open space would be managed by a homeowners association and which can have imposed requirements to ensure maintenance, and there is significant open space on each lot that would be maintained by the homeowner.

Councilmember Tatzin said he recalled some of the lot lines kept moving up until the July meeting. It was at the July meeting where Planning Commission approval was given for a certain tentative map. Within a couple of weeks there was an appeal and conditions for the appeal, and that Mr. Bowie knew what the conditions of the appeal were. He noted that Mr. Lanferman suggested that his clients, if not satisfied with the outcome of the City Council's decision, might file a lawsuit. The City's conditions state that the applicant would be responsible for holding the City harmless in any lawsuit, so he felt, given that Mr. Bowie understands what the appellant is concerned about were lots 1 and 2, having received the Planning Commission approval in July, why wouldn't the studies be started relating to mitigation measures 3.8-4 so that by the time they came to the City Council, it would be underway and it could be shared with the applicant and appellants and the issue can be resolved.

Mr. Bowie said there have become other parties involved and they did undertake a study of what they would need to do on their property to go ahead and address existing conditions, they had complete drawings done of this which have been submitted, and he has had material in place for about one month to try and resolve it. But, unfortunately, time got short and they were not quite able to get together to fully resolve it. Saying that, in good faith, they have actual existing plans and are prepared to pull a permit on the plans to work on their property to address the issues they believe are posed with respect to the Marciarille property.

Councilmember Tatzin said Mr. Bowie was referring to the landslides that already exist on the property, which were a matter between private property owners. He said Mr. Lanferman's issue was how to address the issues relating to mitigation measure 3.8-4 in his letter. He wondered if work could be started that would demonstrate that the performance conditions under this mitigation measure could be met. Mr. Bowie said it was their understanding that the priority issue had to do with resolving the landslide issue and this was where they devoted their resources and felt no one did test borings at this stage. He felt nothing in CEQA requires that a certain study be done at this stage of the process.

Councilmember Anderson felt Mr. Bowie was willing to keep the appellant informed of the plans that are developed to meet the performance criteria regardless of the City Council's decision tonight. He hoped that this commitment was being heard by the appellant, and Mr. Bowie agreed.

ALLAN MOORE, Land Use Attorney, Danville, said it was very important that he be able to provide the background on the matter from a land use processing standpoint. He noted the process has gone on for 8 years and his current involvement has been over two years. He disagreed with Mr. Lanferman on the timelines. Their application of October 14, 2004 was submitted as a new application for 8 lots, said it was not hurried or rushed for review in terms of a timeline, said they have worked with the system by requesting 8 lots out of an original request

of 28 and then 17 lots. They worked to submit what was consistent with the zoning ordinance and their application was consistent, which is for a clustered residential development. Their firm has never experienced an EIR requirement for an infill residential project that does not have a general plan amendment, rezoning or variance and he noted this was the first. He noted the review took two years and that the draft EIR, final EIR and an addendum were all completed at a cost of approximately \$250,000 and they are the City's documents which incorporate findings that have been thoroughly evaluated. He felt the Planning Commission did an excellent job and voted that the EIR was true and there were no environmental impacts.

The public hearing was opened.

Public Comments:

BUCK WORTHING, felt that nothing comes into Lafayette back end first, felt that the City and Planning Commission have been working on the project for 7-8 years and have done a good job, said there is a certified EIR, the project consists of 60 acres of open space that will not be developed, and felt that the project should be approved.

Jeanne Ateljevich, Planning Commissioner, pointed out that Condition 49 requires design review and approval by the Planning Commission and read the condition. Condition 35 requires geotechnical work and soils testing be done, and this would be heard in public. Regarding design review and landscape conditions changing between now and when the project would get built, because landscape review is required prior to the Final Map, whatever conditions the Planning Commission approves would remain in effect.

Councilmember Tatzin asked if Commissioner Ateljevich believed that the design guidelines should incorporate comments that are within 6-2048 of the hillside ordinance regarding substantial concealment.

Commissioner Ateljevich said the ordinance, as currently written, requires that for both existing lots of record and for subdivisions, it is by existing landscaping and terrain if feasible and she did not feel these should be incorporated into the conditions. She felt the architectural review they would do must make sure that the houses themselves are designed to be as least visible as possible and they would require landscaping and to the extent possible, use existing vegetation; however, she acknowledged that this would only be the case for a few of the lots.

Councilmember Anduri said if the individual house was being evaluated and it could not be concealed by existing vegetation or terrain, he confirmed with Commissioner Ateljevich that they would do the best they could in concealment, such as being made to be lowered into the ground, plant mature vegetation, keep rooflines low and consistent with contours, maintaining certain sizes, and others. She did not feel that too many of the lots would have problems with visibility, but the one she would worry about was lot 4, and the applicant is aware this lot must be carefully done.

Mark Balfrey, said he has followed the project for about 7 years, said he has watched how the process has unfolded and he feels that staff and the Council have done an excellent job, feels there is responsible reduction on the applicant's part to reduce the lots to what is within the code of 8 lots, felt there were many positives relating to the project, and the biggest concern of the appellants was the process, which he did not feel was a problem. He said he was very much in support of the project.

CLIFF TONG, burtonvalley.com, said he has mixed feelings about the project; on one hand he was glad there has been a decision rendered, felt Soldier Field has made sincere efforts to listen to the community and neighbors of their concerns. On the other hand, he was concerned about the process, degree and level of the enforcement of the hillside ordinance and how it was interpreted and applied in this case. He felt this project would set a precedent for similar proposals in the future. He was always under the impression that a subdivision was treated differently from a single lot of record with regard to the hillside ordinance and the bar should be much higher with regard to adding additional lots as opposed to dealing with somebody that has a single lot that is very difficult to build on. He feels the methodology that should be deployed in that situation is to start with one and then add on as appropriate. As long as the findings can be made under the hillside ordinance, you keep adding until whatever the maximum zoning allowed is. He felt it seems that the way the process has unfolded is that they started with 8 lots which needed an exception for almost all of the lots. They were pulled back and they still ended up with 8, but if they had counted from one up instead of eight down, the end number would have been different. He felt that there were a number of sites with visibility concerns, some were moved, not story polled, and specifically, lots 1, 2, 5 and 8 were in different locations and have potential visibility concerns from Burton Valley Elementary School. Lots 4, 6, and 7 will be visible from the public trail at the top of Rohrer Drive. It is not a heavily used trail, but it is a trail and he was relying on the fact that there should be some discretion in terms of upholding the ordinance in terms of visibility from public locations. Also, privacy issues exist on Lots 1, 2, 3, and 5. Most significantly is that there were no exceptions required under the final proposal, which was not the case. There is an exception for the Class II ridgeline setback required for Lot 4, and he felt that the rationale being 60 acres of open space and trail does not meet the standard.

Mayor Samson said he received a letter from the Lafayette Chamber of Commerce dated this date and in summary, the Chamber of Commerce voted to support the Soldier Field subdivision as proposed.

Rebuttal

Dave Lanferman, attorney for the appellant, confirmed that Condition 49 requires that prior to final map approval, the final design guidelines would go before the Planning Commission for review and approval. Regarding the final map stage, he said it occurs in public session and the Council does vote on the final map; however, if the City Engineer certifies that the final map is substantially in compliance with the tentative map conditions, courts have held that the City Council has very limited discretion to do anything other than approve the staff's recommendation to approve the final map. So, there might be someone who disagrees with the City Engineer's opinion as to whether the engineering is sufficient to solve any problems. The City Attorney would advise the Council to a very limited ability to not heed the staff recommendation to approve it. So, while it is public it is somewhat more of a formality than it is at this type of a hearing, or as it would be at a tentative map approval hearing.

Mr. Lanferman said he agrees with Mr. Moore that it is unusual for an infill residential project like this to go through a full EIR process, but this was an unusually sensitive site and having committed to do an EIR, this does not mean the EIR process should be short-circuited or information should be left out. He also pointed out that his clients did not cause the decision to go to an EIR, and he would like the applicants to agree that there be better mitigation monitoring conditions relating to soils, drainage and hydrology that do not have to require further study. He acknowledged that there has been an increased pace of communications between Mr. Bowie's office and his office, felt that a possible solution would be that the matter be continued for two

weeks and felt that conditions for the subdivision need to be such that the condition not be made any worse, the EIR only noted that there were soils issues with lots 1, 3 and 6, lot 2 was not addressed in the addendum, he felt there was a gap of information, felt the supplemental report needed to be part of the process and felt that a 3-1 vote of a 7-member Planning Commission was somewhat questionable.

Councilmember Anderson said the owner would be willing to share with the appellants the information they would be using in the process to get to approval of their map, which was something Mr. Lanferman committed to. He said there was some clarification in the conditions that requires that information to be part of a public process which was discounted by Mr. Lanferman, but was still a public process. He questioned whether those two elements helped him or his clients feel more comfortable or was he still feeling that the environmental process was flawed and needs to be started over again.

Mr. Lanferman said he did not feel it was flawed but felt it was incomplete. He felt that the applicant and city staff did a good job going as far as they did; however, on issues of particular concern, he felt they did not go far enough. He felt the City benefits from having the process completed and felt it was not in their best interest in having a project built that is not adequately drained, and felt the same measures should be used as the rest of the project for their issues of concern.

The public hearing was closed.

BREAK

Mayor Samson called for a ten-minute break, and then reconvened the meeting.

Councilmember Tatzin said he understood from the appellants that the lot locations were acceptable, the performance conditions regarding hydrology are acceptable, but there was uncertainty about whether those conditions could be achieved and understands the applicant's concerns that they are moving into another level of review and do not know exactly how everything would work. He hoped that the Council could outline a way for the appellants to participate which also provides for the opportunity to appeal up to the City Manager. Until the performance criteria is satisfied, the lots do not become lots of record. He hoped in the future applicants could start to have the work done when they have Planning Commission approval to reduce the level of anxiety that occurs, and he would support to reject the appeal.

Councilmember Tatzin felt what would be important in the future is what the homes would look like and how visible they will be, which is unknown today, and questioned what the opportunity was for the Council to participate in the final review of the design guidelines.

Councilmember Anduri said assuming the final design guidelines were approved, the map is recorded and then each house goes through design review by the Planning Commission, and he confirmed there would be an opportunity to raise questions and concerns about visibility of each home.

Ms. Subramanian felt it was not the normal procedure to have the Council participate in the design guidelines, but if the Council chose to, they could amend the conditions of approval to reflect this.

Councilmember Tatzin said he also raised the definition of "vicinity" and wanted to know from what roads the applicant was talking about.

Vice Mayor Federighi felt the process has been difficult and long, agrees with Councilmember Tatzin to reject the appeal and thanked those who participated in the public hearing process. She felt the applicant was willing to supply geotechnical information and the Planning Commission would review how conditions would be met at a public hearing. She recognized the validity of comments by Cliff Tong, felt it was difficult to judge what the City would need in the ordinance to mean “substantially concealed by existing vegetation or terrain”, but she felt the Planning Commission and staff have worked hard to put controls in place for the project.

Councilmember Anderson agreed and he hoped the appellant would recognize the opportunity to move forward, felt there was still opportunity for public input in the process, recognized the applicant’s willingness to provide information, and supported denial of the appeal.

Councilmember Anduri felt that in terms of the EIR, the Council must rely heavily on what staff and experts are indicating, and based on this, he would support the approval of the EIR. He agreed completely with Cliff Tong’s analysis and felt the project was completely different 8 years ago. Regarding visibility of the houses, from the Burton Valley School’s view, 3 of the lots could be seen. If going south to the trail head of other public viewing areas, they are extraordinarily visible, and there is nothing hiding lot 4, so the only way this could be approved would be to ignore the ordinance or make a policy decision that the Council would accept the 60 acres of open space in exchange for accepting homes that are highly visible from one direction and possibly visible from the view from the west. He would vote no on the project and would look forward to the process when the Planning Commission approves the final design guidelines. He also looks forward to the process of when the homes were presented individually, recognizing that the Council was approving something that in no way could be substantially or partially concealed.

Mayor Samson felt Mr. Tong was correct in his analysis, felt the ordinance was fundamentally lacking and he did not understand how the Council could make findings that say the City can violate the visibility aspects of the ordinance in exchange for 60 acres of open space, and he did not see a basis for approving the project. So, he would vote against upholding the project. Regarding other issues, he felt the EIR was an overview of the environmental impacts of the project and it is not supposed to be specific guidelines, it addresses hydrology and felt the EIR findings were adequate.

Vice Mayor Federighi said she did not feel it was necessary for the Council to be involved in the design review guidelines, and Councilmember Anderson agreed and felt there were many people who would be involved in what would be a tough process.

ACTION: It was M/S/C (Federighi/Anderson) to deny the appeal and uphold the Planning Commission certification of the final EIR and Addendum for the Soldier Field Subdivision and approval of TR6569 and HDP86-04 pursuant to Planning Commission Resolution 2006-15; and continue the hearing to the meeting of October 10, 2006 to allow staff to prepare a City Council resolution denying the appeal. Vote: 3-2 (Ayes: Federighi, Anderson and Tatzin; Noes: Anduri and Samson).

**B. Leah Greenblat, Transportation Planner
Consideration of Lafayette’s Bike Plan**

Recommendation: Continue to September 25, 2006.