

1 Vice Chair Mitchell said he agreed with Commissioner Holt. This is a small modification to a home. He
2 defers to Chair Ateljevich on conditions of approval regarding the landscaping. He feels the stucco color
3 could be darker.

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5 Chair Ateljevich requested that a more compatible landscape plan be prepared consistent with the
6 constraints she mentioned. The three oak trees, which are not shown on the plan, should be shown. No
7 irrigation should be proposed under the driplines of the trees.

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9 **Vice Chair Mitchell moved and Commissioner Holt seconded to continue HDP09-06 to the July 6th**
10 **meeting on consent to allow staff to prepare a resolution with conditions of approval to include**
11 **Chair Ateljevich's comments.**

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13 **AYES: Ateljevich, Chastain, Holt, and Mitchell**
14 **NOES: None**
15 **ABSENT: Harris, Humann, and Lovitt**
16 **ABSTAIN: None**

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18 **B. TR6569 Greg Woehrle (Applicant), Soldier Field Partners, LLC (Owner); LR Zoning**
19 **and H-O-D: Request for a subdivision of 87.9 acres into eight residential lots and one**
20 **remainder open space lot pursuant to Part 6, Lafayette Municipal Code and California**
21 **Government Code Sections 66410 et seq., located at 3148 Lucas Drive. APN 238-080-**
22 **019.**

23
24 **HDP86-04 Greg Woehrle (Applicant), Soldier Field Partners, LLC (Owner); LR**
25 **Zoning and H-O-D: Request for 1) a Hillside Development permit for a subdivision of**
26 **87.9 acres into eight residential lots and one remainder open space lot pursuant to**
27 **Chapter 6-20, Lafayette Municipal Code (LMC), and 2) an exception to development**
28 **within a Class I and Class II ridgeline pursuant to Sections 6-2026 and 6-2027,**
29 **respectively, LMC, located at 3148 Lucas Drive. APN 238-080-019. Discussion of**
30 **proposed site plan, and draft conditions of approval.**

31 **Recommendation: Review the proposed applications and continue to July 6, 2006 for**
32 **final project determination.**

33 **Project Planner: Christine Sinnette, Tel: 925-299-3241, csinnette@ci.Lafayette.ca.us**

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35 Ms. Sinnette said that based on comments made by the Planning Commission and the public, and to
36 address a mitigation measure requiring setbacks from the two on-site riparian areas, the applicant has
37 revised the tentative map. The house sites for lots 1, 2, 3, 5, and 8 are clustered at the end of Lucas
38 Drive. They are not located in ridgeline setback areas. Although substantially concealed by existing
39 vegetation and terrain, when viewed from most off-site locations, the house sites would be visible from
40 the southern end of Lucas Drive and still continue to be partially visible from Sweet Drive. Structures on
41 all five lots and Street A still project above the 15-degree declination line. These lots appear to be the
42 best configured.

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44 Lot 4 is still located in the Class II ridgeline setback area. The house site is partially visible from a public
45 trail and from Lucas Drive and Burton Drive. Structures on lot 6 would be visible from a public trail and
46 are located above the 15-degree declination line. Portions of the building footprint for lot 7 are within the
47 Class II ridgeline setback. Structures would be visible from a public trail and are located above the 15-
48 degree declination line.

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50 At the meeting of May 18th, the Planning Commission ranked lots 8, 5, and 3 as the best, followed by lots
51 1, 2, 6, 7, and 4.

52
53 Despite a revised site plan, the proposed subdivision still requires exceptions. Portions of Lucas Ranch
54 Road are located within a Class I ridgeline setback and project above the declination line. However, staff
55 is recommending that the Commission make the allowed finding that Lucas Ranch Road is exempt as it is
56 an existing roadway providing access to a telecommunications facility, electrical distribution lines, and a
57 water tank, and that it is necessary for the orderly development of the property.

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2 Structures on lots 4 and 7, and portions of Street B are located within a Class II ridgeline setback. Street
3 A is located above the declination line. Since exceptions are needed to the 15-degree declination
4 regulation, the Commission must rely on the finding to grant an exception based on approving only the
5 number of lots needed to avoid an unconstitutional taking of the property. This has previously been
6 determined to be 3 lots.

7
8 During previous meetings, the Planning Commission has discussed the applicability of the 15-degree
9 declination regulation. It has been stated that the purpose of this regulation is to prevent structures from
10 being silhouetted against a ridgeline when viewed from lower elevations. As long as proposed structures
11 are not silhouetted against a ridgeline and can otherwise be substantially concealed, then strict
12 conformance with the regulation may not be warranted. If the Commission agrees with this interpretation
13 of the regulation, then it would not have to rely on the takings analysis and could review the project on
14 other merits. Impacts related to structures projecting above the declination line could be minimized by
15 appropriate building mass, form, colors, and screening vegetation, and by implementation of the design
16 related mitigation measures required by the Final EIR.

17
18 Ms. Sinnette continued that the only exception issue remaining is that related to structures in areas of
19 greater than 35 percent slope. The Hillside Ordinance prohibits the alteration of a ground slope in excess
20 of 35 percent by grading, the removal or alteration of a natural feature or other activity related to the
21 preparation of the site for development except when the Planning Commission finds that an exception is
22 necessary in order to provide the least intensive or damaging access to an approved building site.
23 Construction of a portion of Street B will require some alteration of slopes in excess of 35 percent. The
24 driveway to lot 6 has a 20 percent slope and encroaches into an existing drainage swale. If the Planning
25 Commission finds that the alterations to accommodate Street B are necessary, then the Commission can
26 make a determination that these improvements are exempt from the 35 percent slope restriction. If the
27 Commission cannot make this finding, then an exception can only be granted pursuant to the finding that
28 the prohibition would deprive the property of economically viable use.

29
30 The revised site plan is currently undergoing review by the environmental consultant. Based on a
31 preliminary review, the re-designed project is not expected to result in new or significant impacts not
32 already identified in the Final EIR. The environmental review will be included with the next staff report.

33
34 Also included in the staff report are conditions of approval. These conditions are in draft form and are
35 subject to modification. Vice Chair Mitchell has asked that condition 49 be revised to clarify that the
36 project must tie into a municipal sewer system and that septic systems and leach fields will not be
37 allowed. Staff suggests that the Planning Commission review the revised site plan; consider whether or
38 not exceptions to development within areas greater than 30 percent and 35 percent slopes are needed;
39 consider the applicability of the 15-degree declination regulation; identify which lots may be approved
40 subject to the required findings; review the draft conditions of approval; and continue the public hearing to
41 July 6, 2006 for final action.

42
43 The Commission was handed out a letter from Foley McIntosh Frey & Claytor.

44
45 Commissioner Holt said it was his understanding that septic tanks and leech fields would not be allowed
46 so he wondered why that was put in as a condition.

47
48 Ms. Sinnette replied that the Commission wanted to be sure that was clear to the applicant.

49
50 Commissioner Holt asked for clarification of the definition of "substantially concealed".

51
52 Ms. Sinnette replied that in March 2002, the Council determined that some of the factors to consider in
53 determining substantial concealment are site topography, the presence of natural features such as trees
54 and other types of vegetation, the placement of principal and accessory structures, the proposed building
55 design and materials and view angle, and whether the structure dominates the view and location. There
56 is no standard or typical development application in Lafayette to which a common rule can be applied.

1 The reviewing body will assess the individual impacts of each application on a case-by-case basis. The
2 Council did determine that off-site vegetation could be used for screening.

3
4 Commissioner Chastain said this included how the house was designed.

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6 Ms. Sinnette replied that was correct.

7
8 David Bowie, attorney for the applicant, said the staff report was quite accurate in most respects. He has
9 prepared a memo regarding the conditions of approval and will leave it with staff. He appreciates
10 Commissioner Chastain's comments with their architect. They are trying to address all the concerns and
11 hope to submit revisions next week. He said that lot 4 and a portion of lot 7 no longer need any
12 exceptions. He believes the declination analysis was intended for structures that are adjacent to a
13 ridgeline. They do not have any structures adjacent to a ridgeline and therefore he does not feel the
14 declination exception applies. He feels the Commission can make the findings because the EIR process
15 concluded that there are not impacts that cannot be mitigated. They could get lot 4 out of the Class II
16 ridgeline by moving it back to the original location for lot 5. The Planning Commission should come up
17 with a good land use solution to this project. They could squeeze lot 7 out of any setback but he does not
18 feel that would be the best location. Lot 4 is tucked into an area just below the existing road and
19 adequately meets their standards. They need 8 lots for this subdivision. The largest portion of the
20 property is dedicated to open space. He looked at 6-2071 and he feels the Commission could make
21 those findings. There is concern about the 30% slope and they are talking about an access road and
22 they are minimizing grading.

23
24 Chair Ateljevich asked about lot 4 and that every illustration of that lot has put lot 4 at the top above the
25 existing grade and wondered if they could lower the house.

26
27 Mike Mussano answered they could cut a portion of the floor into the hillside.

28
29 Chair Ateljevich asked about the drive to lot 6, she is concerned about the swale, which appears sharper
30 on the tentative map, and wondered about the safety of the driveway, which has a 35% slope stretch.

31
32 Mr. Mussano answered that they would need to do that along the grade and he calculated this and it was
33 an average over the entire length. The civil engineer would work that out.

34
35 Chair Ateljevich voiced her concern that if the Commission approved the plan as presented only to
36 discover at a later date there was no way to safely access the lot this would certainly present a problem.
37 Commissioner Chastain said it would be a simple schematic diagram.

38
39 Chair Ateljevich said a small amount of lot 7 is in the setback and wondered why it could not be moved
40 10-feet further in and then that would be one less conformity to analyze.

41
42 Mr. Bowie said that something like that would be shown in the design guidelines.

43
44 Chair Ateljevich opened the meeting to public comment on this item.

45
46 David George, 2730 Oak Canyon Road, said part of their easement on Oak Canyon is a public trail. He
47 complimented the architect/engineer on their efforts. He is opposed to lots 4, 6, and 7, which he feels are
48 highly visible and not concealed by any existing vegetation. Lot 4 is closest to the ridge and violates the
49 ordinance. Lots 6 and 7 should be moved into the swale where they would be less visible and he finds lot
50 4 objectionable. He insists the Commission uphold the spirit of the law and keep these 3 homes off the
51 slope.

52
53 James Claytor of Foley McIntosh Frey & Claytor, representing Bryan Goldwyn, said he agrees with Mr.
54 Bowie that it is not appropriate to delve too deeply into the ordinances but they are talking about land use
55 planning of the project. The homes that are of concern are lots 4, 6, and 7, particularly 6 and 7. There is
56 a completely unnecessary and highly visible road that would need to be built to reach these lots requiring
57 extensive grading. He disagrees with Mr. Bowie on his analysis of the declination line. If the intent of the

1 City were that the line would stop where the Class II ridgeline ended, then the last line would not be there.
2 It is not simply a question of how high up it silhouettes. Lots 6 and 7 are clearly within 100-feet of a Class
3 II ridgeline and have to be substantially concealed by existing vegetation.

4
5 Ann Marie Marciarille, 1 Lucas Court, lives closest to lots 1 and 2. There has been no commitment from
6 the applicant for repair of her property.

7
8 Bill Nagle, 3172 A Lucas Drive, said there should be integrity of the ordinance and any exceptions should
9 have a really good cause. There is nothing put forth from the applicants regarding the economic viable
10 use and feels that they are making a lot of money on this project.

11
12 Marie Blits, 3166 Lucas Drive, representing burtonvalley.com, echoes the previous speaker's concerns
13 and the neighbors on Lucas Court. She is concerned with privacy rights of existing neighbors. She is
14 glad to see the current project is more in compliance with the ordinances however there are no story
15 poles to look at.

16
17 Clifford Tong, 9 Dianne Court, representing burtonvalley.com, said he is concerned they could be stuck
18 with unbuildable property without reasonably specific plans on where they will locate these homes. There
19 is a tight building envelope for most of these sites. The lack of story poling is a major problem. Lot 2
20 could be very visible from Burton Valley Elementary School and the field. Lots 6 and 7 could be very
21 visible from the public trail. There needs to be a more rigorous visual analysis.

22
23 Chair Ateljevich wondered under condition 54 regarding siting and massing, how much flexibility was
24 there to move the siting.

25
26 Ms. Sinnette said the Commission has all discretion. The exhibits will show the proposed building sites.

27
28 Commissioner Chastain said the design guidelines are not proposing plans but are proposing guidelines
29 per lot.

30
31 Ms. Sinnette replied that was correct and these would run with the project. If there were any deviation,
32 this would follow the normal change of conditions process.

33
34 Vice Chair Mitchell said that Mr. Bowie referred to visibility standards and in 6-2048 regarding off-site
35 visibility of subdivisions. This has two parts but the second part refers to structures within 100-feet of a
36 ridgeline setback and wondered if that was the issue on which they should be focusing.

37
38 Ms. Sinnette answered that was correct. On the revised site plan, all building sites except for lot 1 are still
39 within 100-feet of a ridgeline setback.

40
41 Robin Picard, P.O. Box 1698, Lafayette, said his thoughts had been covered.

42
43 Brett Hathaway, 3159 Lucas Drive, said he is concerned with lots 1 and 2 and would like to see story
44 poles for the sites.

45
46 Mr. Bowie said he was sensitive to Ms. Marciarille's comments and he has spoken with her attorney and
47 they are working with the soils engineer. He feels the project would go a long way towards solving some
48 of the soil concerns. Mr. Tong said they don't have 30 acres to move homes around when they have 90
49 acres but have tried to be sensitive about placement. They have been diligent in trying to follow the
50 ordinances. Mr. Claytor spoke about the declination standard and the law is not at all clear about what is
51 intended by the declination standard. He feels his interpretation is correct. Concerns about visibility are
52 understandable but the standard is from lower elevations and public viewing areas. The reference to 6-
53 2048 is to existing vegetation to the extent feasible and they have applied that. 6-2028 refers to new or
54 replacement vegetation. 6-2067 refers to new or replacement vegetation. The intention is to substantially
55 conceal and they have done that. They would be happy to move lot 4 to where the old lot 5 was. They
56 have moved lots to be responsive to the comments from neighbors and the Commission. He has been
57 told that there are stakes of the building areas.

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Chair Ateljevich closed the public comment period on this item.

Ms. Sinnette said the Commission should consider whether they accept the analysis that Lucas Ranch Road which is in the Class I ridgeline setback can be automatically exempt from the findings for development in Class I because it is necessary for the orderly development of this property, it is existing, and provides access to legally established uses.

Commissioner Chastain said he liked the new lots and did find the stakes. Part of how they go forward depends on how they interpret the declination. Lots 1, 2, 3, 5, and 8 are outside the problems of the issues of declination. Lots 6, 7, and especially 4 are problematic. Lot 7 needs to be moved out of the setback. He would have no problem with the number of lots if they were of a good design.

Commissioner Holt said he agreed with Commissioner Chastain. Lot 7 is more of a concern because of its visibility. Lot 4 is problematic and suggested looking into tucking it more into the hillside or adding more vegetation. Regarding declination, he was concerned about the silhouetting. For lot 4 he would need to be convinced by the applicant with the application of design, vegetation, and burying it a little bit before he could approve it.

Chair Ateljevich said she agrees and reminded the Commission that this is a Class II ridgeline and they could approve the exception if there is complete compliance with the findings.

Vice Chair Mitchell said that lots 1, 2, 3, 5, and 8 fall into a certain category and lots 4, 6, and 7 into another category. In evaluating the views for lots 4, 6, and 7, he could not make the findings for 4 because of the Class II ridgeline. The Final EIR made specific reference to viewing from the public trail and hiked up that trail to look at both sites. Lot 7 is not bad using the trail as an evaluation location. Looking down on Mr. Goldwyn's property you could see the play structure and a small portion of the roof but 90% of the view is the horse portion.

Chair Ateljevich said that lot 6 worries her because of the steepness of the road. The cluster makes sense and feels the grading issues could be worked out.

Commissioner Chastain said he feels many of the comments allude to privacy rather than visibility. Lots 1 and 2 depend on the orientation of the homes, which could be intrusive on existing homes, but if the activity areas are located southeast, they would not be looking in on anyone.

Chair Ateljevich suggested waiting to approve lots 4, 6, and 7 until they get more details.

Vice Chair Mitchell said where lot 2 is currently flagged, if they don't move it further west they are on the downside of the knoll, and plant some oaks there would be a parallel cluster of trees reducing visibility to a minimum.

Chair Ateljevich asked staff to check with the fire department to find out what their minimum was for the narrowest allowable road.

Ms. Sinnette said this was discussed with another planner and their position in condition 15 is the standard. If a road deviates from the standard, then the fire department looks at each on a case-by-case basis.

Commissioner Holt said he was concerned about the visibility of parking along the road and he would like to control that.

Ms. Sinnette asked if he were referring to condition 19 and if it needs to be revised to clarify that.

The Commission agreed that this condition looked good to them.

Ms. Sinnette said she added that the Planning Commission should have an advisory role in #13.

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2 Vice Chair Mitchell asked about #24 regarding soils and wondered if it included a sub-surface
3 examination below the road and the houses.

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5 Ms. Sinnette replied that it did.

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7 Chair Ateljevich suggested adding privacy to #54.

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9 Vice Chair Mitchell asked about #56 regarding low single story homes.

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11 Ms. Sinnette said that this mitigation was specific to declination encroachment.

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13 Ms. Sinnette said that she would supply a strikeout version for the next meeting and review the comments
14 of the applicant.

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16 **Vice Chair Mitchell moved and Commissioner Chastain seconded to continue the public hearing
17 on this item to the July 6, 2006 meeting.**

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19 **AYES: Ateljevich, Chastain, Holt, and Mitchell**
20 **NOES: None**
21 **ABSENT: Harris, Humann, and Lovitt**
22 **ABSTAIN: None**

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24 The Commission took a break at 9:55 PM.

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26 The Commission resumed their meeting at 10:04 PM.

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28 **7. NEW PUBLIC HEARINGS**

- 29
30 **A. MS505-05 and HDP88-05 Bimal and Grishma Patel (Applicants & Owners), LR and**
31 **R-40 Zoning:** Request for a minor subdivision and a Hillside Development Permit to
32 divide a 9.32 acre parcel located in the Hillside Overlay District into three single family
33 residential lots pursuant to Chapter 6-30 and 6-20 respectively of the Lafayette Municipal
34 Code, located at 1755 Reliez Valley Road. APN 167-070-001.
35 **Recommendation:** Review the proposed subdivision, provide comment, and continue
36 action on the applications and adoption of a mitigated negative declaration to the meeting
37 of July 20, 2006.
38 **Project Planner:** Christine Sinnette, Tel: 925-299-3241, csinnette@lovelafayette.org
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40 Ms. Sinnette said that this was an application requesting a minor subdivision of a 9-acre lot into three lots.
41 Parcel A is developed with a home and is 300,000 sq. ft. Parcels B and C are vacant and a little over an
42 acre each. The tentative parcel map also identifies proposed building pads for parcels B and C. As
43 mentioned in the staff report, the proposed subdivision is consistent with the General Plan and conforms
44 to the development standards of the R-40 zoning district. The City Engineer has verified the creek
45 setback. Setbacks from the top of the creek bank range from 20 ft. on parcel B to 58 ft. on parcel C. The
46 property has been story-poled. The home sites on parcels B and C will only be minimally screened by
47 existing vegetation and topography but the applicant has submitted a landscaping plan and proposes a
48 low, decorative wall which could help to screen the house on parcel C.

49
50 At least 6 trees will have to be removed (2 oaks and 4 fruit) and grading for the house pad for parcel B
51 and the parking pad for parcel C would impact possibly 8 more trees. These trees do provide some minor
52 screening so final design review would be critical for landscaping and screening. The Design Review
53 Commission reviewed the proposed subdivision and house sites. The applicant made changes as
54 requested by the Commission. The Design Review Commission said they did like the plan as it was re-
55 designed but that this was preliminary and any future homes would be subject to design review. They
56 said the development for parcel C would still be difficult due to the amount of grading and tree removal,