

1 March 10, 1977, a letter to the Lafayette City Attorney dated March 22, 1977, a section of the minutes from
2 the Planning Commission meeting in 1976, a page from a letter from the City addressed to Mr. Busby
3 dated May 10, 1976, and a copy of subdivision 4747 owner's certificate. She states that Mr. Busby
4 voluntarily agreed to conditions 7 and 8 relative to the approval of subdivision. Condition 7 states that
5 "There shall be no development of any kind on lot 15 until vehicular access is available from Cambridge
6 Drive" and "All access rights to the property from Palo Alto Drive with the exception of Toledo Drive, shall
7 be relinquished". Her comments included a chronology of the access issue for lot 15. She is opposed to
8 the application.

9
10 Keith Thomas, 3853 Palo Alto Drive, said the applicants are disingenuous with regards to their claims of
11 being good neighbors. He feels that the applicants have tried to railroad this through with little notice
12 being given to the residents. Neither Mr. Busby nor the applicants have ever contacted him, and his
13 property adjoins the proposed access. The owner has never taken financial responsibility for the overflow
14 and water damage caused from the runoff from lot 15. This should be decided in a court of law.

15
16 Marcia Thomas, 3853 Palo Alto Drive, said her points had been covered.

17
18 Jeff Johnson, 3906 Quail Ridge Road, said the applicants never got the residents on Quail Ridge Road
19 together as a group or tell them what they intend to do with the site. He feels there is a lack of
20 forthcomingness on the part of the applicants.

21
22 Mr. Winther said he has sent letters to the residents of Quail Ridge Road but they would not meet with
23 him and were not cooperative. Mr. Gold and he each wanted to build a home on the property but after
24 analysis found it would be impractical for two homes. They wanted to hear what the Planning
25 Commission's expectations might be on their application and that staff indicated the Planning
26 Commission usually gives this kind of guidance.

27
28 Chair Ateljevich closed the public comment period on this item.

29
30 Commissioner Harris apologized to the public for his earlier motion, which could have been construed as
31 an attempt to prevent the public from expressing their opinions and concerns. It is clear from what the
32 Commission has heard this evening that there are significant legal and factual issues involved included
33 but not limited to the conditions that were issued to Mr. Busby on the tentative map approval, whether
34 they still have legal effect, whether they survived or not, the potential for claims of detrimental reliance of
35 some property owners, legal issues about the rights of access to this property, whether there are
36 prescriptive easements claims that would prevent the use of that strip for a roadway, whether Mr. Busby
37 or subsequent owners might have a claim to that easement by necessity, etc. Based on the fact that
38 these are significant legal issues, he does not believe the Commission has the authority or jurisdiction to
39 make this determination.

40
41 **Commissioner Harris moved and Commissioner Holt seconded to neither grant nor deny the**
42 **application, as the Planning Commission has determined they do not have the jurisdiction to do**
43 **so.**

44
45 **AYES: Ateljevich, Harris, Holt, Lovitt, and Mitchell**
46 **NOES: None**
47 **ABSENT: Chastain and Humann**
48 **ABSTAIN: None**

49
50 The Commission took a break at 10:00 PM.

51
52 The Commission resumed their meeting at 10:10 PM.

53
54 **C. TR6569 Greg Woehrle (Applicant), Soldier Field Partners, LLC (Owner); LR Zoning**
55 **and H-O-D: Request for a subdivision of 87.9 acres into eight residential lots and one**
56 **remainder open space lot pursuant to Part 6, Lafayette Municipal Code and California**

1 Government Code Sections 66410 et seq., located at 3148 Lucas Drive. APN 238-080-
2 019.

3
4 **HDP86-04 Greg Woehrl (Applicant), Soldier Field Partners, LLC (Owner); LR**
5 **Zoning and H-O-D:** Request for 1) a Hillside Development permit for a subdivision of
6 87.9 acres into eight residential lots and one remainder open space lot pursuant to
7 Chapter 6-20, Lafayette Municipal Code (LMC), and 2) an exception to development
8 within a Class I and Class II ridgeline pursuant to Sections 6-2026 and 6-2027,
9 respectively, LMC, located at 3148 Lucas Drive. APN 238-080-019. Discussion of
10 proposed site plan, site plan alternatives, findings, and draft conditions of approval.
11 **Recommendation:** Review the site plan and select three building sites/lots; provide
12 direction to staff on project findings and conditions of approval; continue public hearing to
13 June 8, 2006 for final project determination.
14 **Project Planner:** Christine Sinnette, Tel: 925-299-3241, csinnette@ci.Lafayette.ca.us
15

16 Commissioner Chastain rejoined the Commission.
17

18 Ms. Sinnette said the application is for approval of an 87.9-acre lot into 8 residential lots and a remainder
19 parcel. On March 9th, the Commission certified the final EIR, which concluded that all project impacts
20 could be mitigated to less than significant levels. An extensive list of mitigation measures was proposed
21 and will be included in the mitigation monitoring and reporting program to be adopted by the Planning
22 Commission. The applicant has submitted a revised 8-lot site plan with only one lot remaining within a
23 ridgeline setback. All sites require exceptions to the 15-degree declination regulation. It has previously
24 been determined that based upon a conservative taking analysis, the Planning Commission could
25 consider granting 3 lots. In the revised project, lots 3, 5, and 7 are clustered just inside the project site
26 west of Lucas Ranch Road. Lots R6 and R7 are located on the south side of the Class II ridge and could
27 be considered a secondary building cluster. Included in the staff report are draft findings for approval of
28 the application and draft conditions of approval. It is suggested that the Planning Commission review the
29 revised site plan, identify the 3 most appropriate lots and could include a hierarchy of all 8 lots, determine
30 which exceptions to grant, review the proposed findings for project approval, review the draft conditions of
31 approval, and continue the public hearing to June 8th.
32

33 Commissioner Harris asked if it was staff's position that the revised proposal is close enough to what they
34 have been considering all along and that it is not a new application and that the EIR sufficiently covers the
35 revised proposal.
36

37 Ms. Sinnette answered the revised plan responds to two mitigation measures that are required prior to
38 tentative map approval and that was moving former lot 1 and 7 away from the wetlands area. It also
39 addresses some comments made by the Commission and the public regarding visibility issues, as well as
40 additional effort in trying to get as many lots out of the ridgeline setbacks. Revised lots 1, 3, and 5
41 correspond for the most part to the original proposal or were required to be moved by mitigation or were
42 analyzed in the EIR. Lots 6 and 7 are in close proximity to former lots. Lots 2 and 8 are still problematic
43 and staff has not evaluated them nor can staff say that these are close enough to any locations that were
44 previously evaluated. If the Commission feels that these two deserve further attention, then staff would
45 ask counsel to determine whether they did constitute a new application and need additional review.
46

47 Commissioner Harris said if you set aside the 15-degree declination, would staff agree or disagree with
48 the applicant's analysis regarding the required exemptions particularly for ridgeline setbacks and slope.
49

50 Ms. Sinnette said on the table on page 5 of the staff report, if the 15-degree declination regulation were
51 removed, then an exception would be required for revised lot 4, Lucas Ranch Road and lot B because
52 they are within the setback area.
53

54 Chair Ateljevich said that lot 7 is within the setback or Class II ridge.
55

56 Ms. Sinnette said the structure is straddling and could be redesigned to be totally out.
57

1 Commissioner Harris asked if the table on page 5 is a complete list of all the exceptions required under
2 the new proposal.

3
4 Ms. Sinnette said that staff is recommending the Commission grant the 30% exception for roadways
5 which is not listed.

6
7 Commissioner Harris said in a couple of places in the report, staff used the phrase "generally outside the
8 setbacks" and what does generally mean.

9
10 Ms. Sinnette answered that meant in relation to the 30% slope with the assumption that the houses could
11 be redesigned to be totally out. If the Design Review Commission approved certain lots, structures could
12 be designed to be totally out of the 30%.

13
14 Commissioner Harris asked what a secondary development cluster meant.

15
16 Ms. Sinnette answered this term was brought up at the last meeting with the consensus of the
17 Commission that the area inside of the project site, west of Lucas Road, was an appropriate location.
18 Staff feels it would be a good idea for the Commission to create a hierarchy of lots.

19
20 Commissioner Harris said there was concerns expressed by residents about slides, and wondered how
21 those concerns were being addressed in the proposal.

22
23 Ms. Sinnette answered the certified EIR identified significant impacts and listed mitigation measures that
24 would reduce these to less than significant levels. The City Engineer feels confident with additional
25 information and standard repair technology that any unstable soils in the area of development could be
26 mitigated and repaired. Regarding drainage, additional studies related to downstream impacts and
27 hydrology need to be determined but according to the mitigation measure the project can contribute no
28 more volume to downstream channels and it must retain the water on site and percolate naturally.

29
30 Commissioner Lovitt said he has concerns regarding privacy on lots 4, 6, and 7, and the EIR suggested
31 those could be mitigated. If they cannot be mitigated, he wondered what recourse they have.

32
33 Ms. Sinnette said they should be suggesting specific changes to the design guidelines, which is where
34 privacy is addressed. There are design solutions such as where the house should be sited.

35
36 Vice Chair Mitchell said the visibility analysis for lots 2 and 8 have not been thoroughly investigated
37 because these are difficult locations, and he contends that lot 4 is on the ridgeline and in a different
38 position with possible visibility issues to the northwest.

39
40 Ms. Sinnette said that revised lot 4 is in the same location and has not been moved.

41
42 Vice Chair Mitchell said he thought the slope was lower with revised lot 6.

43
44 Looking further at revised lot 4, Ms. Sinnette said it did look like it had dropped a little. The revised plan
45 shows more of a driveway, which was previously described as a street, but now the road seems to be
46 lower, functioning as a driveway, but the grading and landslide repair is probably similar.

47
48 Chair Ateljevich asked why Lucas Ranch Road is shown on the top of the hill.

49
50 Ms. Sinnette said it seems to be a little narrower and there still has to be a minimum standard as it
51 provides access to Rossmoor and the water tank.

52
53 David Bowie, attorney for the applicant, said at the last hearing the Commission was considering an 8 lot
54 subdivision, which had 2 lots within the Class I ridgeline setback. Staff failed to consider in the economic
55 analysis in a meaningful fashion and gave the Commission a direction that only 3 lots could be approved.
56 He feels there was a major omission in the analysis in that they needed to apply the regulation and
57 application to a legitimate public purpose and no evidence was given to support that. He feels that was a

1 fatal flaw. They took into account the previous comments and revised the application so that it would
2 minimize the number of exceptions and get the project completely outside the Class I setback. Lot 8 was
3 pulled from the previous location and moved into the bowl area. They did the same with lot 5 putting it in
4 the bowl area. These lots were clearly studied in the EIR as an alternative. They pulled lot 7 off the
5 ridgeline. Only 1 lot is left in the Class II ridgeline setback and it is not necessary to do an economic
6 viability analysis for that exception. The conclusions in the final certified EIR are sufficient to conclude
7 that approval for the exceptions has already been made. That leaves the issue of the declination for
8 which they did a quick study. The language of the declination ordinance would allow them to build with
9 an underground device and that is an absurd result. The declination ordinance is the equivalent of a 27%
10 slope. If the slope were steeper they could build structures and not be in violation of the ordinance, which
11 makes no sense. The ordinance applies to any portion of a structure adjacent to a ridge to avoid
12 silhouetting the structure against the ridge. The City has routinely applied this exception. Page 5 of the
13 staff report essentially states that there are no exceptions the Commission needs to make. They are
14 entitled legally to 8 lots. The design review process can make improvements regarding privacy.

15
16 Commissioner Harris said with regards to lot 4, is he contending that it is not adjacent to a Class II
17 ridgeline.

18
19 Mr. Bowie said lot 4 is in the same location and is within the Class II ridgeline setback.

20
21 Commissioner Harris said he is proposing a definition of the 15-degree declination that is adjacent to a
22 ridgeline and he assumed Mr. Bowie is contending that they are not near enough.

23
24 Mr. Bowie said the declination refers to no portion of a structure. Where a lot is, doesn't make any
25 difference as it refers to a structure. The structure has to be adjacent to a ridge according to the
26 language of the ordinance.

27
28 Chair Ateljevich opened the meeting to public comment on this item.

29
30 Matthew Geiser, 3360 Sweet Drive, did not wish to speak but favors the development of 8 lots and 3 is
31 fine.

32
33 Rex Martin, 3360 Sweet Drive, did not wish to speak but favors the development of eight homes.

34
35 Ray Bland, Lafayette, did not wish to speak but supports Lucas Ranch with no fewer than 8 homes.

36
37 Jesse Wellen, 941 Oak View Circle, Lafayette, did not wish to speak but believed at least 8 lots should be
38 approved. The EIR shows no problem with 8 lots.

39
40 Theresa Wellen, 941 Oak View Circle, did not wish to speak but believes that 8 lots are very reasonable.

41
42 Mike Lewis, 225 Camellia Lane, did not wish to speak but totally supports this project and feels that the
43 City and the neighbors are putting these developers through way too much!

44
45 Toni Lewis, 225 Camellia Lane, did not wish to speak but wanted to say that she has read the reports and
46 been to a couple of very informative meetings and supports this project.

47
48 Anick Shamiyeh, 1145 Upper Happy Valley Road, did not wish to speak but supports the project.

49
50 Ann Denny, P.O. Box 966, Lafayette, did not wish to speak but supports the project.

51
52 Brad DeLong, 1 Lucas Court, lives downhill from the bowl and are the closest house to R1 and R2 on the
53 map. He said his geotechnical engineers worry about the soil, as it is unstable. He is happy with a
54 development on Lucas Ranch that plans to stabilize the hillside. Everything so far says it will be possible
55 to mitigate any impact on water flow and soil stability but not how this will be accomplished.

56

1 Buck Worthing, 1171 Monticello Road, said the Commission needs to balance public interest. This has
2 been going on for 8 years; an EIR that cost \$175,000, which concluded there would be no impacts on
3 homes, and feels the Commission cannot ignore this. The applicant is donating 70 acres for open space
4 and public access that will never be built on. As a taxpayer of Lafayette, if the Commission focuses on 3
5 homes, this will go to lawsuit, which will cost the City hundreds of thousands of dollars. We have police
6 issues, a library shortfall, and road issues. The Commission needs to end this and approve 8 homes and
7 not support a lawsuit.

8
9 Bryan Goldwyn, 2750 Rohrer Drive, said he appreciates moving lot 5 but lot 6 is visible from his backyard
10 and is concerned with the closeness to his property.

11
12 Clifford Tong, 9 Dianne Court, representing burtonvalley.com, said he agrees there should be a balance
13 of public interest. He doesn't agree with how the number 3 was arrived at but doesn't think the revised
14 homes could make the findings. There are significant visibility issues and soil stability issues. He feels
15 something could be done to lots 3 and 5 regarding privacy issues. Lot 1 is reasonable and an extension
16 of Lucas Drive. Lot 8 is below the level of the road.

17
18 Mr. Bowie said Mr. Goldwyn's visibility concerns would be addressed at the design review level and had
19 Tim Ward develop design guidelines. Mr. Tong said he agreed about balancing public interest but only
20 for his own interests representing Burton Valley. They did not put Mr. DeLong's house on their map
21 because they aren't doing anything to Mr. DeLong's home. He feels the development will improve the soil
22 situation, as they will make remedial repairs. The economic/taking analysis done by staff is incorrect and
23 urged the Commission to approve the 8 lots and continue the process to design review.

24
25 Chair Ateljevich closed the public comment period on this item.

26
27 The Commission had been handed out a letter from Foley McIntosh Frey & Claytor dated May 15, 2006
28 representing Mr. Goldwyn's concerns, and a letter from Andy and Marianna Ford in support of the
29 project.

30
31 Commissioner Harris said he is happy that the old lot 8 is gone. He is pleased with the partial
32 implementation of the alternative neighborhood extension idea. Lot 6 has been moved off a prominent
33 ridge and into a swale. The 68 acres being given to open space is a positive public benefit and the trail
34 easement is important. Lot 4 is problematic because it is on the ridgeline and he is not convinced there
35 are unique/compelling circumstances that would justify an exception. Lots 6 and 7 have privacy issues
36 and it would be critical for the Design Review Commission to review these lots. He is concerned that staff
37 has not reviewed lots 2 and 8. They look like they might be okay but he needs more information or
38 confirmation from the City Engineer that soil impacts can be mitigated. He does not agree with the 3-lot
39 idea that boils down to the 15-degree declination. He thinks Mr. Bowie's analysis is on the right track and
40 feels the purpose of the declination is to avoid silhouetting. For the Commission to use only the 15-
41 degree declination as a basis for requiring only 3 lots for avoiding takings is placing them with a problem.
42 He doesn't agree with this from a policy standpoint. Given this revised proposal and with assurances
43 about visibility and stability on lots 2 and 8 and satisfied that design review procedures for lots 7 and 8
44 would deal with privacy issues, he could see them approving more than 3 lots. Lot 4 is the one that he
45 has the most problems with.

46
47 Commissioner Holt said he may or may not be available to attend the June 8 meeting. He has concerns
48 regarding balance and fairness. The City would be getting 70 acres and a trail easement and there would
49 be considerable soil improvement for the people living around the project. He could support more than 3
50 lots. He would like confirmation from the City Engineer and the Design Review Commission that they
51 could envision privacy issues would be addressed. He is uncomfortable stopping at 3 lots.

52
53 Commissioner Chastain said he has many of the same sensibilities regarding the public good of this
54 project and the reasonable expectations of the applicant. He finds it frustrating that much of the decision-
55 making has been taken out of their hands in terms of planning. He would like to speak about the merits of
56 the project directly and yet they have this 3-lot directive in front of them and he understands this is the
57 governing thing moving them forward.

1
2 Commissioner Harris said that because all of the structures would be above the 15-degree declination
3 line we must make an exception to approve them. The language of the exception is that we can approve
4 no more than the number of lots that would be necessary to prevent a taking. It boils down to what does
5 that 15-degree declination line mean and how does it apply in the circumstances of this project. He feels
6 if they apply it in terms of its purpose to prevent silhouetting above the ridgeline, except for lot 4, there is
7 no need for an exception and there is no limitation to the number that would be the minimum amount
8 necessary to prevent a taking. It boils down to how they apply the 15-degree declination.
9
10 Chair Ateljevich said that staff has asked the Commission to make a determination of 3 lots and
11 suggested they make a choice giving staff time to digest what the Commissioners have said.
12
13 Commissioner Holt said he could support in theory the secondary lots and feels constrained by 3 but
14 could do that because staff has asked them to.
15
16 Vice Chair Mitchell said lots 2 and 8 have not been analyzed. Lot 8 looks like it is below the road and in
17 his opinion would not have any visual impacts. Regarding lot 2, the further you move out in a southerly
18 direction, the exposure becomes much greater. In his perspective, lot 2 is more visible than lot 1. He
19 shares Commissioner Chastain's feeling of constraint and not wanting to step outside of that, so he is
20 inclined to do what staff has requested. He could approve lots 8, 5, and 3.
21
22 Commissioners Chastain and Holt and Chair Ateljevich agreed with lots 8, 5, and 3.
23
24 Commissioner Harris said he would approve just 3 lots.
25
26 Commissioner Holt said he liked the cluster of lots 7, 6, and 4 if lot 4 could be modified/lowered off the
27 Class II ridge. He could support 7 lots and is open to lot 4.
28
29 Vice Chair Mitchell said he feels it would be a perfect match if lot 1 were added to the cluster of 8, 5, and
30 3. He would pick lot 2 also.
31
32 Commissioner Lovitt said he could extend the list to include lots 1 and 2.
33
34 Commissioner Chastain said that much has been done to try to improve the project as possible and the
35 applicant has tried to respond to comments. Lot 4 is problematic. Lots 7 and 6 could be taken care of in
36 design review with regards to privacy issues. His concern with lot 2 is that it is more visible.
37
38 Commissioner Harris said he could not see how lot 4 could be resuscitated. It looks like a 7-lot
39 subdivision to him. Lot 2 has some visibility issues but it looks like it could be made slightly smaller and
40 moved slightly to the east the visibility would be better. Lot 7 needs to be looked at closely but it makes
41 sense.
42
43 Chair Ateljevich recapped the ranking by the Commission, which is 8, 5, and 3, then 1, 2, 6, 7, and 4.
44
45 Chair Ateljevich said the applicant needs to minimize the grading for the roads and driveways. Regarding
46 the sample lot 4 in the design guidelines, on the whole they look okay but the emphasis in the early
47 chapters is about two types of homes and they have said repeatedly that is not what they want. They
48 cannot picture this new neighborhood as relating architecturally with the existing neighborhood. The
49 existing neighborhood has two story homes and these homes should be one-story.
50
51 Commissioner Chastain said the test of design guidelines is design so one could see if the constraints of
52 the guidelines work. He was happy with the activity guidelines. Orientation of the homes in the
53 guidelines would be helpful. He said they were good in speaking to materials and colors.
54
55 Vice Chair Mitchell asked about the monitoring program in the conditions of approval and if there was
56 going to be ongoing monitoring of retention basins.
57

1 Ms. Sinnette answered if there are stormwater improvements, there will be a requirement for an
2 Operations & Maintenance Plan, which has yearly reporting requirements. There is a provision that if
3 there is no maintenance the City could go in and correct this. The maintenance control plan goes on for
4 the life of the system. The City has an inspection program and the burden is on the property owner to
5 have the project engineer or some other qualified geologist do the certification.

6
7 Chair Ateljevich asked where are the conditions regarding the design and landscape plans.

8
9 Ms. Sinnette answered this was required for final map approval and can be found under 37 and 38, as
10 well as 52, 53, 54, and 55.

11
12 Ms. Sinnette said the Commission wanted activity designs for all 8 lots, and more detailed schematics
13 with 5 exhibits for all 8 homes sites including a floor plan, window concentrations, mass, height, and
14 elevations. For the next meeting, Ms. Sinnette summarized that the Commission wants the language
15 about the two areas stricken, the diagram 1.5 height and story guideline to show more of a bunkering of
16 the floors, and exhibits 1-5 for all 8 lots.

17
18 Commissioner Holt said these should include elevations on the more prominent sites.

19
20 Vice Chair Mitchell asked about the condition on page 14 regarding the construction equipment staging
21 being at least 200-feet from the nearest residence, and would like the location checked into by the City
22 Engineer. He said that regarding no. 53 on page 14, he felt this was about the old lot 8.

23
24 Ms. Sinnette responded that was why it was important to understand which house sites the Commission
25 would be approving so staff could modify the conditions accordingly.

26
27 Commissioner Chastain said it has been frustrating that the architect has not been present.

28
29 Mr. Bowie said that Tim was out of town. He would be willing to extend the time deadline.

30
31 **Commissioner Holt moved and Commissioner Harris seconded to continue TR6569 and HDP86-04**
32 **to the meeting of June 8, 2006.**

33
34 **AYES: Ateljevich, Chastain, Harris, Holt, Lovitt, and Mitchell**

35 **NOES: None**

36 **ABSENT: Humann**

37 **ABSTAIN: None**

38
39 **7. NEW PUBLIC HEARINGS**

- 40
41 **A. HDP09-06 William Simpson (Applicant), Katherine Gray (Owner), R-20 Zoning:**
42 Request a 1) Hillside Development Permit pursuant to Section 6-2015 of the Lafayette
43 Municipal Code (LMC); 2) Exception for development within a Class II ridgeline setback
44 pursuant to Section 6-2027 LMC; 3) Exception to exceed the height limitation based on
45 the 15° declination requirement; 4) Design review approval pursuant to Section 6-1903
46 LMC; and 5) Category II tree removal permit pursuant to Section 6-1707 LMC to
47 construct 969 sq. ft. one-story additions, requiring the removal of a 15-inch California bay
48 tree, and raise the maximum ridge height by approximately 9 inches to 26' 9 1/2" to an
49 existing 3,082 sq. ft. one-story residence and basement on a lot within the Hillside
50 Overlay District and on a Class II ridgeline, located at 1122 Via Media. APN 244-083-
51 006.

52 **Recommendation:** Conduct public hearing, review application and provide direction, and
53 continue the matter to the June 22, 2006 meeting to allow applicant to make
54 modifications.

55 **Project Planner:** Michael Cass, Tel: 925-299-3219, mcass@lovelafayette.org

56
57 This item was continued to the June 22, 2006 Planning Commission meeting.