

Writer's Direct Line: 415-774-2996
dlanferman@sheppardmullin.com

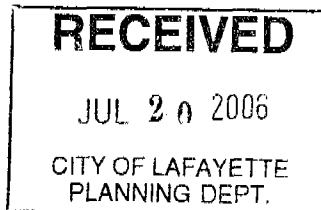
July 19, 2006

Our File Number: 11GE-122211

VIA FEDERAL EXPRESS

Steven Falk
City Manager
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549

Christine Sinnette
Senior Planner
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549



Re: **TR 6569 and HDP 86-04, and EIR (SCH # 2005032054)**
Soldier Field Partners, LLC
Notice of Appeal to City Council

Dear Mr. Falk and Ms. Sinnette:

On behalf of our clients, Ms. Marciarille and Mr. DeLong (owners of the home at 1 Lucas Court, Lafayette) we respectfully submit this request for an APPEAL to the City Council from the Planning Commission's actions of July 6, 2006, granting approvals for this project.

Grounds for Appeal: We respectfully appeal on the grounds that the Commission's actions were erroneously based upon the Commission's certification of an Environmental Impact Report for the project which failed to comply with the requirements of the California Environmental Quality Act (for reasons previously specified by the appellants in their correspondence to the Commission [see copies attached as Exhibits _ and _], and their comments and objections before the Commission, as well as reasons stated by other persons commenting on and objecting to the proposed EIR).

In addition, this appeal will be based on the failure of the applicant to comply with the City's Hillside Development Ordinance; the failure of the Commission to require legally adequate conditions or mitigation measures to assure appropriate curative or preventative action by the applicant regarding restoration of landslide damage, slope stabilization, drainage, and measures to minimize future soils movement as conditions of approval; the failure of the Commission to make legally sufficient findings to support its approvals for the project; and the absence of substantial evidence in the record to support the Commission's findings in support of the project.

Filing Fee for Appeal: We have been informed by City Staff that the "standard filing fee" required by the City of Lafayette for requesting an appeal of this type to the City Council is \$6525.00. Notwithstanding our concerns regarding the apparently excessive amount

Steven Falk and Christine Sinnette

July 19, 2006

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of the fee demanded, we have enclosed our check payable in the amount demanded, to assure the timely processing and consideration of our clients' appeal to the City Council in this matter.

We have questioned City staff regarding the amount of that fee, and protest its application to this appeal. We have explained that such a large "fee" for an administrative appeal appears to be grossly excessive, if not prohibitive, and in violation of Government Code section 66014. See also, the California Supreme Court's decision in *California Teacher's Ass'n. v. State of California* (1999) 20 Cal.4th 327, holding that it was unconstitutional for a state statute to require an appellant to pay 1/2 of the cost of an appeal to an administrative law judge as a condition of pursuing an administrative appeal. "... See also, *Sea & Sage Audubon Society v. Planning Commission* (1983) 34 Cal.3d 412, questioning the constitutionality and applicability of a similar "appeal fee" calculated on the basis of the original fees paid by the project applicant for project review. Please note that we continue to respectfully reserve our clients' rights to seek relief from, and reimbursement of, such portions of the protested fee as may ultimately be deemed to be unlawful or otherwise not appropriate.

Conclusion: Please contact the undersigned if there may be any questions regarding this appeal. Please note that undersigned counsel for the appellants will be out of town and unavailable during the period August 4-August 18, and hope that the City may be able to accommodate this schedule in conducting its review and hearing on the appeal. In my absence, please contact my assistant Rose Whigham at (415) 774-2924.

We look forward to the Council's review and reconsideration of the substantial issues raised for the community and for our clients by this proposed hillside development.

Very truly yours,



David P. Lanferman

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:FPD\400036912.1

Enclosures:

- Letter to C. Sinnette dated November 16, 2005
- Letter to C. Sinnette dated January 19, 2006
- Letter to City of Lafayette dated February 28, 2006
- Letter to C. Sinnette dated March 6, 2006
- Letter to C. Sinnette dated April 11, 2006
- SMRH Check No. – 028207

cc: Ms. A. Marciarille

1 Lucas Court
Lafayette, CA 94549

November 16, 2005

Ms. Christine Sinnette
Senior Planner
Planning Commission
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

RE: HDP86-04 Greg Woehrle (Applicant), Soldier Field Partners, LLC (Owner); LR Zoning and H-O-D - Review of Draft Environmental Impact Report

Dear Ms. Sinnette:

Introduction

We are the owners and occupants of the house and property found at 1 Lucas Court in Lafayette, California. We write to submit our written comments on the October 7, 2005 draft Environmental Impact Report ("DEIR") for the above-captioned project consistent with the California Environmental Quality Act ("CEQA") and its Guidelines, CEQA Guidelines, § 15200 *et seq.*

We have resided at the house at 1 Lucas Court in Lafayette -- a house at the bottom of a swale identified as Swale A in the draft EIR -- on a full time basis since July of 1996 performing all of that property's drainage system maintenance ourselves. This hands on experience has made us, of necessity, expert observers of the swale above our house, its associated mudslides, its associated soil creep, and of the limitations of our own drainage system at 1 Lucas Court when confronted with that swale's seasonal discharge of mud and silt.

These comments, in part, are designed to share our expertise with the Lafayette Planning Commission and the applicant as well as fulfill a number of the other purposes outlined in the CEQA Guidelines at § 15200 (a) - (f).

Substantive Omissions/ Errors in the Graphics Presentations Render the DEIR Incomplete and Thwart CEQA's Goal of Public Participation in the DEIR Comment Process

Our home is at 1 Lucas Court. The proposed hillside development at Lucas Ranch runs to the south and the east of our property. We are likely the single largest abutter to the proposed sub-division. You may locate our house as at the bottom of what the DEIR designates Swale A,

in close proximity to Lot Two's building site. We have appeared previously at numerous public hearings before you and other Lafayette governmental entities involving this applicant, the Lucas Ranch property, and various sub-division proposals to express our concern that all project maps mapping abutters include our property at 1 Lucas Court, apparently to no avail. Indeed, the house at the parcel known as 1 Lucas Court is omitted from virtually every graphic and visual depiction found in this DEIR, rendering the DEIR incomplete and erroneous in this regard.

We are mindful that one of the purposes of the DEIR comment process is to invite all interested parties to participate in the process of "checking for accuracy" and "detecting omissions," CEQA Guidelines § 15200, but there are some omissions and inaccuracies that are so substantive as to render a DEIR unready and unacceptable for its statutory purpose. These graphics omissions and errors are so substantial that they make the report statutorily incomplete – difficult if not impossible for the public to read and comment on in a fully meaningful way, as contemplated by the goals of CEQA. "Public participation is an essential part of the CEQA process." CEQA Guidelines at § 15201.

All Privacy Concerns Articulated in the General Plan Policy Analysis Section of the DEIR Omit Any Cognizance of or Analysis of the Privacy Interests of the Residents of 1 Lucas Court

The DEIR's General Plan Policy Analysis for "adjacent homesites", as found on page 3.2-14, does not discuss the privacy interests of the residents of 1 Lucas Court vis a vis the homesite described as Lot Two.

In addition, the mitigation measures listed at 3.2-2A and 3.2-2b are not mitigation measures. They are postponement measures. The story poles erected by the applicant through the summer and into the fall at Lot Two tell the tale. The story poles on Lot Two appeared to be erected as close to the lot line between Lot Two and 1 Lucas Court as the setback rules would allow. Presumably, this is because of the degraded condition of Lot Two, with its close proximity to Swale A above 1 Lucas Court. All summer the story poles loomed above us (our house is considerably downslope from Lot Two) providing a vivid depiction of the loss of privacy that would accompany a house built on Lot Two's boundary with our property at 1 Lucas Court.

Slope Instability Exacerbated by Construction Grading Runoff and Increased Hard Surfaces Runoff from Lots One and Two Threatens the Safety of Our Family, Home, and Property

The DEIR, at page 3.7-7, notes the unstable nature of the lot known as Lot One. And we are gravely concerned about the residential development of Lot Two as well. Most of the drainage from Lot Two drains into the natural swale that also drains to our residence. Our own geotechnical report indicates that this is a very sensitive area. The DEIR's representation that collection of winter storm runoff will not be increased by the increase of hard surfaces is in direct conflict with the best advice provided by our own geotechnical consultant. We have included a

copy of the November 3, 2005 geotechnical report of Robert B. Rogers, consulting engineer, with these draft comments as Attachment A.

Our own experience, as 9.5 year residents of our home and property is that Swale A bleeds mudslide and silt when the winter rains are heavy, eventually overwhelming and clogging the drainage system that runs through a drainage ditch under our deck, behind our garage, and dumps into the seasonal creek that runs through our property. We shovel this silt out of the drainage system with a wary eye on activity above where active slides are clearly visible. We are eager to see nothing done to further activate these slides. We do not find the mitigation measures outlined in the SEIR reassuring. We are persuaded that building a house on Lot Two, as currently configured both as a lot and a house site, would increase the volume of water, mud, and silt pouring down Swale A to our house, placing our house and ourselves at grave health and safety risk.

The discussion of drainage, found at Potential Impact 3.8-3 of the DEIR, is incorrect. Our house is built on a landslide deposit. Discharge of Lucas Ranch runoff, particularly but not exclusively from Lot Two, would result in substantial erosion in the swale and onto landslide deposits and unstable colluvium.

Energy dissipators and sedimentation mitigation measures such as those discussed in the DEIR, at Mitigation Measures 3.8-1A-3.8-1d, are the least effective way (and, perhaps coincidentally, the least expensive way) to deal with excessive storm runoff. The DEIR is deficient in its omission of any discussion of other measures including but not limited to catchment basins and holding pools to deal with the increased storm runoff from this proposed subdivision and from Lots One and Two in particular. In addition, the DEIR's mitigation measures that are included are insufficiently detailed (location, implementation, responsibility for maintenance, etc.) in presentation in order for us to be able to comment meaningfully as to their feasibility. "A legally adequate EIR must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug." *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692, 733.

Potential Impact 3.8-4 of the DEIR posits that the development would actually decrease flow on Swale A. Geotechnical Engineer Rogers disagrees (see Attachment A) and so do we. Potential Impact 3.8-4 is also incomplete, referencing no studies on current volumes of water, mud, and silt that flow down Swale A. In addition, Potential Impact 3.8-4 is insufficiently detailed in its assertion that Swale A's flow would decrease following a build out on Lot Two by failing to specify if the decrease would be in storm water, mud, or silt. All three would be impacted, in differing ways, by a build out on Lot Two as currently configured.

The DEIR is incomplete in failing to include, or reference, this information on winter storm season peak flows of water, mud, and silt in Swale A. If information has been gathered on baseline conditions for Swale A's flow of storm water, mud, and silt it should be referenced as a supporting document to the Draft EIR, made available for public review, and be the subject of this public comment period. The CEQA Guidelines authorize the incorporation of other

documents by reference. If such information has not been gathered, we think it should be as part of the DEIR process. "An agency's opinion concerning matters within its expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment." *Santiago Water District v. County of Orange* (4th Dist. 1981) 118 Cal.App.3d 818, 831.

As further discussed below, we do note the DEIR's concern about the risk of slides **within the proposed subdivision** when it concerns discussions of alternative subdivision plans and house sites within the subdivision, as found at page 5-13, paragraph 5.3.1.6. We do not think the DEIR complete, for example, in its bare assertions that alternative subdivision plans be rejected on the grounds that "more home sites ... would be impacted by existing landslides and unstable colluvium soils identified on the site" when it does not quantify the number and location of all sites to be impacted by existing landslides and unstable colluvium soils, **including downhill abutters**, for the original proposal as well as any of the alternatives.

Alternatives to the Proposals for Lots One and Two Found in the Report of Geotechnical Engineer Rogers Should Be Evaluated by the Planning Commission

Either in a supplemental EIR or by means of administrative findings, we request the Planning Commission to consider the following alternatives:

- 1) Placing the residence for Lot Two along the east side and grading the building pad/roof to drain east to the existing Lucas Drive and not west or northwest into Swale A on Figure 3.7-3.
- 2) Directing the collected surface and subsurface runoff to the swale to the east on Lot One via a Drainage Easement rather than onto the ridge or swale (Swale A) that drains onto 1 Lucas Court.

Mr. Roger's recommendations highlight that the environmental impact of the proposed sub-division is substantial, unmitigated and yet not inevitable, unless Lot Two's building site and drainage plans remain unchanged.

Conclusion

For the foregoing reasons, we believe Lot Two, as currently configured with its story poled building site, to be a health and safety threat to our family. In addition, for all of the foregoing reasons, we do not find the DEIR to be either complete or accurate in its analysis of significant environmental issues and impacts of the Lucas Ranch proposed development on its downhill abutters.

Very truly yours,



Ann Marie Marciarille



Brad DeLong

Enclosure

Attachment A

ROBERT B. ROGERS P. E. M. ENG.

P. O. Box 1456
Antioch, CA 94509
(925) 778-4950
FAX (925) 779-9890

3 November 2005

Ms. Ann Marie Marciarille
1 Lucas Ct.
Lafayette, CA 94549
FAX: 283-3897

Second Party Review of
Geotechnical Aspects of
Soldier Field EIS
East Side of Burton Valley
Lafayette, California

Dear Ms. Marciarille:

At your request, and in accordance with my written proposal dated 25 July 2002, authorized on 28 July 2002, I have reviewed the geotechnical information, reports, maps and recommendations contained in the RBF Consulting Environmental Impact Report dated October 2005 regarding the proposed hillside development to the south and east of your lot at 1 Lucas Ct. I had previously conducted a Second Party Review of your lot and residence dated 24 April 1996 and consulted with you regarding the previous development proposal in March of 2001.

REVIEW OF GEOTECHNICAL INFORMATION

The report prepared by RBF Consulting, dated October 2005 included a review of the published geologic hazard mapping, aerial photos, previous geotechnical reports as well as newer geotechnical reports prepared by Cal Engineering and Geology of Walnut Creek. They provided a map of the geology and identified landslide deposits close to where the published mapping suggested they would be. The report did not include any effects upon your large lot however.

The 2005 Soldier Field proposal has fewer residential lots above your lot. Lots 1, 2 & 3 are the only proposed lots directly above your lot, with Lot 2 as primary interest since most of proposed Lot 2 drains directly onto a natural swale/valley that also drains to your residence. Therefore, this area is the *most sensitive area of concern* in this report affecting your residence. The report proposed that the residence be placed on the east side of this swale, on a northwest trending bedrock ridge and this location will provide the *least* adverse impact on the swale and your lot. However, there is still some

concern that additional winter rain runoff will end up flowing to the sensitive swale and onto your lot/residence. The area of concern is labeled 'Swale A' on Fig. 3.8-1 and the proposed development plan shows some drainage directed to a leach field or bubbler down slope to the west so that it would eventually drain over the slope onto your property and enter the sensitive swale on your lot.

CONCLUSIONS

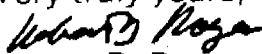
The 2005 Soldier Field development proposal is LESS intensive than the 2001 proposal, so there should be significantly LESS impact. However, the swale 'A' area is identified as a landslide deposit directly above your residence and most of the natural runoff from Lot 2 will tend to flow to this sensitive area. Placing the proposed residence on the east side of Lot 2 helps minimize this risky condition and the basic location is about as good as it will get. Lot 1 to the east also will drain into a sensitive area and onto your lot well east of your residence so, while the geotechnical concerns are about equal, your residence is not affected by the increased risk. Therefore, I will only address Lot 2 in the recommendations section below.

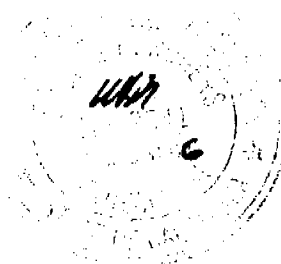
With any up slope development, an increase in runoff is expected since there will be more impermeable surfaces (roof, driveway, patios and walkways) than the current natural hillside condition. The sensitive Swale A as an identified landslide deposit may activate under any additional (or even natural) runoff load. Therefore, your objective is to eliminate ANY additional runoff into Swale A on Fig. 3.7-3 to minimize the risk of future damage to your residence.

RECOMMENDATIONS

Based upon the above review and conclusions, I have the following recommendations to request the Lafayette Planning Department to require with future residential development on Lot 2:

- 1) Place the residence for Lot 2 along the east side and grade the building pad/roof to drain east to the existing Lucas Dr. and NOT west or northwest into Swale A on Figure 3.7-3. This request may conflict with other recommendations for height since some fall to Lucas Dr. via the driveway to the residence would be required.
- 2) Direct the collected surface and any subsurface runoff to the swale to the east on Lot 1 via a Drainage Easement rather than onto the ridge or swale that drains onto your residence. This is the most significant change that you could ask for and I highly recommend this change for your future safety.

Very truly yours,

Robert B. Rogers G. E.



SHEPPARD MULLIN

SHEPPARD MULLIN RICHTER & HAMPTON LLP

ATTORNEYS AT LAW

17th Floor | Four Embarcadero Center | San Francisco, CA 94111-4106
415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.com

Writer's Direct Line: 415-774-2996
dlanferman@sheppardmullin.com

Our File Number: 0100-092189

January 19, 2006

VIA HAND DELIVERY

Christine Sinnette
Senior Planner
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549

Members of the Planning Commission
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549

Re: **Planning Commission Meeting – January 19, 2006**
Soldier Field Partners, LLC
TR 6569 and HDP 86-04

Request for Deferral of Action and Request for City Consideration of
Additional Information on Soils Stability and Drainage Issues

Dear Ms. Sinnette and Honorable Members of the Planning Commission:

We respectfully request this opportunity to submit comments, and to reiterate our clients' concerns, regarding the pending application for tentative map approval, issuance of a hillside development permit, and related development applications in connection with this project.

On behalf of A.M. Marciarille and J.B. DeLong, owners of the home at 1 Lucas Court, immediately adjacent to the proposed development, we request that the Planning Commission and the City *defer* any consideration or action on the pending development applications until such time as the City obtains updated analysis and recommendations from qualified experts regarding the soils, geology, and drainage at the project – particularly in light of the recent and massive landslides which have occurred on the applicant's property.

It is our understanding that the items on the Commission's agenda for January 19 are limited to the preliminary consideration of issues relating to the possibility of making exceptions to the City's Hillside Ordinance for this project or the possibility of making the findings required to justify a Hillside Development Permit. Despite the limited scope of the issues on this agenda, we nevertheless submit that it would be premature for any aspect of this development proposal to be considered at this time, since the issues of possible hillside development are inherently dependent upon the City and the public (and the applicant) having complete and current information on the critical issues of soil stability and drainage. The uncertainty and obvious risks to public health and safety revealed by the recent landslides require that the members of the Planning Commission and members of the public not be asked to take

even a preliminary position on such Hillside Development Permit without full and updated information on the geological and hydrological conditions of the property – and the possible effects of hillside development on the surrounding community. Accordingly, our clients reserve their rights to submit more comprehensive comments on the proposed Hillside Development exceptions and permit until such time as the public record includes all of the relevant and necessary technical information, which is not yet available to the Commission or to the public. Based on the limited information presently available, the evidence would appear insufficient to allow the Commission to make the findings required for a Hillside Development Permit [LMC § 6-2067, especially sub-sections (a),(e) and (f)], for subdivision in a Hillside Overlay District [LMC § 6-2071 (b), (g), and (h)], or for tentative map approval generally [Gov't Code § 66474].

The Draft EIR was issued in October 2005, and the owners of 1 Lucas Court submitted written comments on that draft. The Draft EIR however was prepared and public comments were submitted before the recent landslides and thus did not take into account the full extent of the geologic and hydrologic concerns and new issues revealed by these slides. For example, the Draft EIR only identified potentially unstable soils near the building sites on Lots 1,3, and 6 [DEIR, pp. 3.7-12 – 3.7-15.] Recent events revealed extensive areas of unstable soil on Lot 2 as well. The recent debris flow landslide from "Lot 2" is approximately 70 feet wide and 180 long, and extended more than 160 feet downslope, and damaged our clients' home. This dramatic evidence of more extensive slope failure and flooding constitutes "significant new information" which warrant additional technical analysis and may require recirculation of the Draft EIR (or relevant portions of the Draft EIR) as provided by the California Environmental Quality Act ("CEQA"). See, e.g., Public Resources Code Section 21092.1, and the California Secretary of Resources' CEQA Guidelines, Section 15088.5.

For example, geologic studies undertaken after the recent landslides may reveal the need for additional or different mitigation measures beyond those included in the Draft EIR, or may indicate that additional portions of the applicant's property may not safely be used as construction pads. This new technical information may necessitate that the applicant consider reconfiguration of the proposed development, or alternative drainage and soil stabilization measures, or possible elimination of one or more proposed construction pads, or possible consideration of additional project alternatives. Such information is not only essential for an accurate CEQA analysis, but is also inextricably intertwined with the City's evaluation of the "economic viability" of the applicant's property. Many of the requested exceptions to the City's Hillside Development policies involve the avoidance of "takings" liability. However, if portions of the site may not be "buildable" due to natural conditions (rather than regulatory constraints), such information is relevant and essential to even a preliminary consideration of such requested exceptions. Additional geotechnical reports (as well as the EIR consultant's responses to comments) should be provided to the City in the next few weeks, for consideration in conjunction with the project as a whole. In addition, it is our understanding that there may be other evidence that the applicant or others may be submitting on these or other issues, as well as the additional information that the City staff anticipates submitting in connection with the proposed next phase of this hearing. It is therefore premature for the applicant to require the

Commission or members of the public participate in a piecemeal hearing process on these hillside development issues.

Since the Final EIR has not yet been completed, and staff has reported that additional evidence or analysis (which is necessary for the consideration of possible exceptions from the Hillside Development Ordinance) has not yet been received, this request for consideration of the full and updated technical evidence on soils and drainage issues would *not* necessarily impose any significant additional delay on the ultimate hearing on the merits of the proposed project. In any event, State law and City planning policies require that the various development applications, including applications for waivers of City Hillside Development policies, be considered only in connection with the current and complete evidence of the potential environmental impacts of the proposal – not before.

While we recognize that time is important to the applicant, it should also be recognized that public safety and the integrity of the City's Hillside Ordinance and planning processes are important considerations as well. Moreover, while CEQA does encourage diligence in processing development applications, it is also important to bear in mind that CEQA prohibits the consideration or approval of projects by piecemeal processing which fails to consider the full environmental impacts of the project as a whole.

We therefore request that the City defer hearing or action on any pieces of the development application until the City is in receipt of the additional information described above. We respectfully reiterate the previously expressed concerns regarding the need for adequate and appropriate project design, environmental review based on accurate information, and consideration of project alternatives and mitigation measures to completely minimize the risk of harm from soils movement or drainage problems, in order to protect adjoining homes, and to promote the community's interests in safe, aesthetic and well-designed residential neighborhoods.

Thank you for your consideration.

Very truly yours,

David P. Lanferman

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

TODD ENGINEERS

GROUNDWATER • WATER RESOURCES • HYDROGEOLOGY • ENVIRONMENTAL ENGINEERING

City of Lafayette
Planning Services Division
P.O. Box 1968
Lafayette, CA 94549

February 28, 2006

Attn: Christine Sinette, Senior Planner

Re: Proposed Lucas Ranch Project, Tract 6569/Soldier Field Subdivision
City of Lafayette, Contra Costa County, California

Dear Christine,

This letter is submitted on behalf of James Bradford DeLong and Ann Marie Marciarille, owners of 1 Lucas Court, Lafayette, California. This letter is a joint technical report reflecting the investigation and analysis of Todd Engineers and of Gilpin Geosciences. Todd Engineers' are licensed hydrologists, with over 25 years of experience in their area of expertise. Gilpin Geosciences are licensed geologists with over 25 years of experience. We have both conducted several site inspections. The DeLong Marciarille property is adjacent to the Lucas Ranch property proposed for development of eight new residences. A portion of the proposed development is shown on Figure 1. Lot number 2 is directly south of the DeLong Marciarille property.

Existing Conditions: The proposed subdivision is located along two intersecting ridgelines, with very steep side slopes. Upslope north of the 1 Lucas Court residence the slopes exceed 35 percent as exhibited in the Slope Analysis Map, Exhibit 6, Lucas Ranch Project Opportunities and Constraints Analysis, July 2002.

The soils upgradient of 1 Lucas Court support a very minimal vegetation of grass and a few isolated oak trees as indicated in the aerial photograph Exhibit 3, Lucas Ranch Project, Opportunities and Constraints Analysis, July 2002.

The conditions of high ground surface gradients and minimal cover result in high rainfall runoff and potential for soil erosion.

The soil and bedrock in the area of the proposed development are also unstable and have experienced numerous land slides as indicated on the Landslide Hazard Identification Map No.38, California Division of Mines and Geology, 1996. The swale above 1 Lucas Court on Lot 2 of the proposed Lucas Ranch Project has been subject to erosion and debris landslide failure over a long period of time. Since 1928, the date of the first

stereographic aerial photographs reviewed we observed erosion or shallow debris slides on the photographs dated 1954, 1968, 1984, 1987, 1997, 1999, and 2000, indicating that erosion and slope instability are a significant periodic hazard on this hillside.

On January 1, 2006, a local debris slide occurred on the Lucas Ranch parcel directly upslope of the 1 Lucas Court residence, resulting in damages to the residence as described in the letter to the City from the residents, (January 2006).

Because of the inherent slope failure risks involved during and after construction of the proposed residences, roads, trails and based on our site investigations, the information in the project documents, and other sources, we recommend that the City and the applicant include the following measures in the project conditions in addition to the standard City of Lafayette or County of Contra Costa Building codes and to pertinent ordinances. Suggested measures are listed below.

Conditions of Approval

Attenuation of Surface Water Runoff

- Permeable landscaping: open pavers for driveways and landscaping, infiltration trenches or vaults
- Energy dissipation: grade control structures such as weirs, sills, drop structures
- Rainwater collection: cisterns, detention basins, infiltration trenches
- Temporary construction: hay bales, erosion control blankets

Prevent Sediment Transport

- Erosion control and pollution prevention
- Outfall protection: direct discharge to street or storm sewers
- Silt fencing around construction grading areas
- Cover building material stockpiles with waterproof sheeting
- No storage of hazardous materials

Design Criteria

- All stormwater collection gutters and piping sized for 25 years
- Excavation prohibited on ground slopes greater than 25 percent

Geotechnical Constraints

- Reassess landslide areas mapped by Cal Engineering & Geology in light of recent storm related slope failures.
- Mitigation measures should include removal of active debris slide material to a depth of competent bedrock, to be replaced with well drained and compacted engineered fill.

- Regrading of the slope above 1 Lucas Court should include mid slope drainage benches that capture surface runoff and collect it into drain pipes that outlet in the creek below the 1 Lucas Court Residence.
- Other slopes should be assessed for moderate to high potential debris slide hazards and appropriately mitigated.

Construction Inspection

Residents of 1 Lucas Court require access to the Lucas Ranch development upgradient of the 1 Lucas Court property during construction to inspect the site grading, excavation, and installation of the storm water collection system components, drainage and erosion control features and proposed debris flow slope repairs.

Post Construction

Residents of 1 Lucas Court require access to the Lucas Ranch development upgradient of the 1 Lucas Court property following construction of the proposed roads, residences, trails, etc. to examine and inspect site conditions and assess maintenance and functioning of drainage systems, slope stability erosion control features, and general condition of the improvements.

Home Owners Association

Because the proposed improvements are being developed as Low Density Residential, which requires average 1 unit per 5 acres, we believe there is a need for there to be a Homeowners Association (HOA) or an Improvement/Assessment District designated area of influence that will require monitoring of drainage and slope stability performance of the development over the life of the project. This monitoring would provide periodic inspections and maintenance of the surface drainage and the stormwater control systems to minimize the impact of heavy precipitation events on the downslope neighborhoods.

Please call Mr. Raymond K. Will at (510) 595-2120 or Mr. Gilpin at (707) 251-8543 if you have any questions

Sincerely

Raymond K. Will

Raymond K. Will, P.E.
Principal Engineer
Todd Engineers

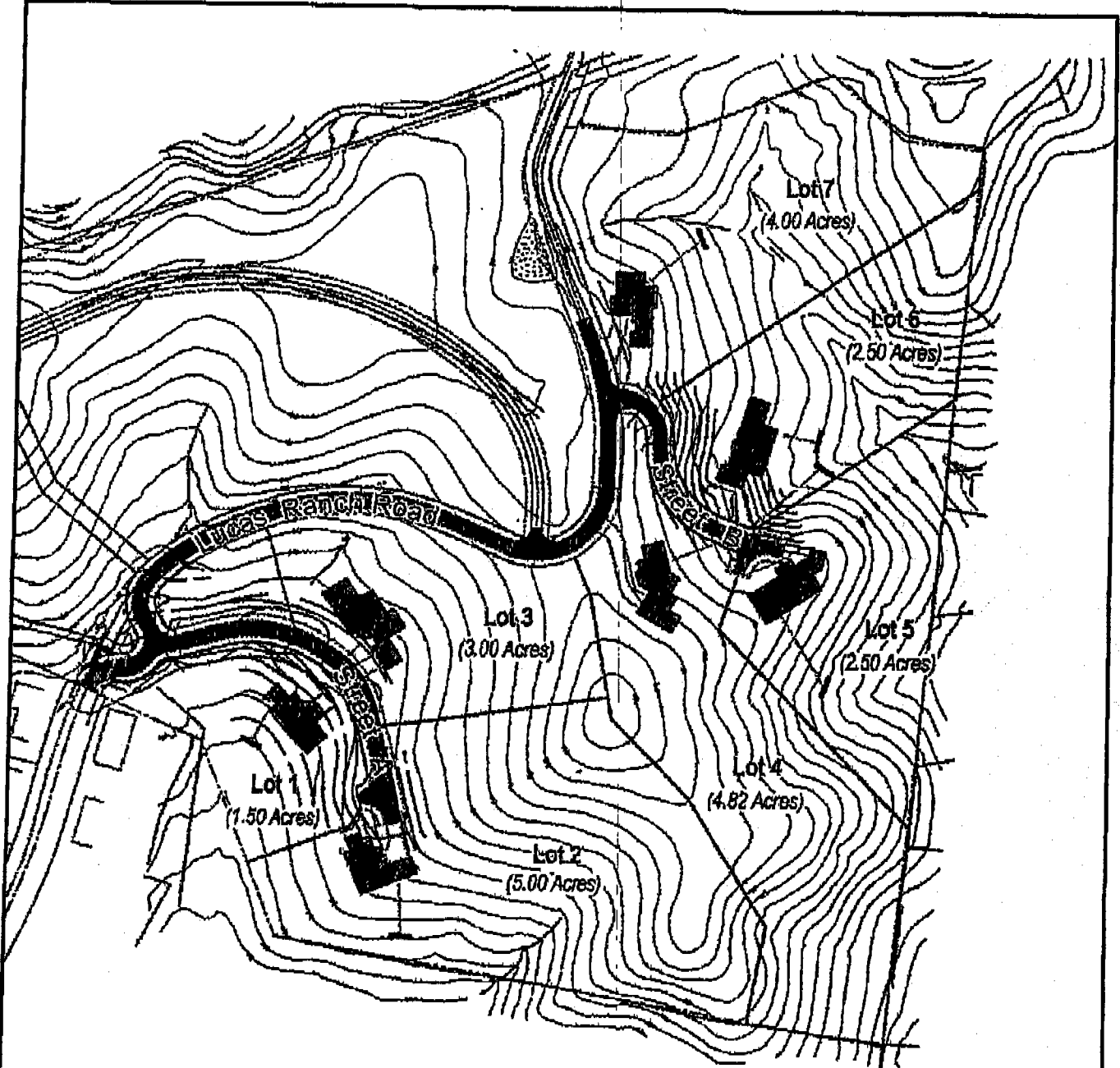


Sincerely

L.M. Gilpin

Lou Gilpin, C.E.G.
Principal Geologist
Gilpin Geosciences

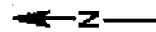




Legend

 Proposed Building Footprint

 Property Boundary



0 200



Approximate Scale In Feet

Portion of proposed development at the Lucas Ranch Project showing proposed residences and topography.

Source: RBF Consulting: Draft Environmental Impact Report, Soldier Field Subdivision, October 2005.

February 2006
TODD ENGINEERS
 Emeryville, California

Figure 1
Lucas Ranch Project

SHEPPARD MULLIN

SHEPPARD MULLIN RICHTER & HAMPTON LLP

ATTORNEYS AT LAW

17th Floor | Four Embarcadero Center | San Francisco, CA 94111-4106
415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.comWriter's Direct Line: 415-774-2996
dlanferman@sheppardmullin.com

Our File Number: 11GE-122211

March 6, 2006

VIA FACSIMILE AND EMAILChristine Sinnette
Senior Planner
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549
Facsimile: (925) 299-0134Members of the Planning Commission
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549

Re: **Planning Commission Meeting – March 9, 2006**
Soldier Field Partners, LLC
TR 6569 and HDP 86-04
Comments on Proposed "Final EIR"

Dear Ms. Sinnette and Honorable Members of the Planning Commission:

On behalf of our clients, A. M. Marciarille and J. B. DeLong, the owners and residents of the home located at 1 Lucas Court, Lafayette, we respectfully submit the following comments on the recently-released "final environmental impact report" proposed for this project.

In brief, the consultant's proposed final EIR fails to adequately respond to the previous comments by our clients and other comments from many members of the public on the draft EIR. While there are some responses in this document (the "FEIR") which appear to acknowledge the serious and substantial adverse impacts and dangers posed by this proposed development project, in many respects this proposed FEIR continues to provide inaccurate, incomplete or superficial responses which fail to meet the requirements of the California Environmental Quality Act ("CEQA") and which fail to provide the City or the public with sufficient information to upon which to base any decision, much less approval, as to any aspect of this development project proposed in a highly-sensitive part of the City.

It is our understanding from the City Staff that the Planning Commission anticipates a separate process for review and public comment upon the applicant's request for relief from the City's Hillside Development policies, and for issuance of a hillside development permit, and for approval of its proposed tentative map and related development applications in connection with this project. We respectfully question the efficiency and legality of separating the environmental review for this project from the specific design review and development approvals for the project, particularly since this proposed final EIR expressly defers many issues, alternatives, and proposed mitigation measures till such later review. Without waiving our objections to the apparent "piecemealing" of the review process and improper deferral of

environmental analysis inherent in this approach, we will limit our comments to those issues and inadequacies which are directly related to this proposed final EIR, and will defer our more specific comments on the particular proposed design and development of the project.

Inadequacies of "Master Responses to Comments":

The proposed FEIR includes, as Section 9.5, purported responses "to public comments referring to the same common topic area" which it refers to as "Master Comments." While this approach may be convenient and efficient in some situations, the "Master Responses" approach in this document is deceptive in that it gives the appearance that the FEIR acknowledges the widespread public concerns on several critical issues, but obscures the fact that much of the critical project-specific information necessary to adequately respond to those concerns has been improperly deferred to later consideration.

CEQA has long prohibited the tactic of deferring the analysis and mitigation of identified impacts to unspecified future review. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) Instead, the deferral of the specifics of mitigation is only permissible where the lead agency, such as the City "commits itself to mitigation" and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan, and provides definite performance standards that must be met by any future mitigation. (See, *Sacramento Old City Ass'n. v. City Council* (1991) 229 Cal.App.3d 1011, 1028.) The purported master responses here fail to meet these standards, and instead simply provide narrative describing the concerns but failing to show how the applicant or the City have "committed" to take specific measures in response to those concerns. Such superficial responses generally dismiss the public concerns and improperly defer the requisite environmental responses.

Master Response 9.5.1: The proposed FEIR simply describes these issues relating to several **Land Use and Planning impacts**, including (a) the applicant's request for exceptions to the Hillside Development Ordinance; (b) "off-site visibility" impacts; and (c) "privacy" impacts of the project on the surrounding community. The "master responses" generally dismiss these concerns, and merely explain why the consultants did not deem it necessary to respond to these concerns in the proposed FEIR. The proposed FEIR dodges the issue of compliance with the Hillside Ordinance, leaving that for subsequent determination by the Planning Commission. The proposed FEIR simply assumes that if the City ultimately allows fewer exceptions from the Hillside Ordinance than sought by the applicant, then "the scope of the project and its resulting impacts will be reduced commensurately..." -- without providing any information or analysis as to how that might occur (p. 9-4). There is no evidence to support the FEIR's blithe assumption that the possibility that the City may in the future impose requirements "reducing the scope" of the project in terms of the Hillside Ordinance would automatically reduce the adverse impacts of the project as to all of the aspects questioned by the members of the public. Similarly, the FEIR admits that it is deferring unspecified areas of impact to the City for unspecified "conditions of approval or additional mitigation" without any standards, guidelines or assurance that such speculative future measures will be enacted or effective (p. 9-4). This is contrary to the mandates of CEQA.

With regard to "off-site visibility" the FEIR simply describes the issues and the project, and does not respond to those issues in any detail (other than the reference to MM 3.3-1c) and tries to defend the project against these concerns based on the limited intent of the Hillside Ordinance. The FEIR also claims that the Ordinance "means" that "new or existing vegetation may be used to conceal structures..." despite the fact that the portions of the Hillside Ordinance quoted in the FEIR (§ 6-2048) do not expressly provide for the use of "new" vegetation to screen ridgeline construction, and the FEIR offers no support for its lenient interpretation of the Ordinance.

The "Master Response" to the commonly expressed concerns about "privacy" was limited to three (3) sentences. This "response" again improperly defers the analysis and mitigation of those concerns to such later time as the applicant seeks approval of a "master plan and design guidelines." It provides no "commitment" to mitigation, nor any performance standards nor any basis for its assertion that such future design guidelines "would include methods to address privacy issues...." (p. 9-7.) Courts have rejected just such superficial treatment in an EIR. See, e.g. *Quail Botanical Gardens v. City of Encinitas* (1994) 1597, 1605 (EIR improperly deferred height mitigation to post-approval "design review" process).

Master Response 9.5.2 – Aesthetics: The proposed FEIR acknowledges that several of the proposed homesites would be visible from both public and private viewing locations (pages 9-7 and 9-8). However, it deliberately omitted consideration of any adverse aesthetic impacts as viewed from private viewing points, simply because they were "private" (despite some "public use"). This was contrary to CEQA, as CEQA itself makes no distinction between "public" viewpoints and viewpoints located on private property in determining the extent of environmental impacts:

"Any substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas, supra*, 29 Cal.App.4th at p. 1604, 35 Cal.Rptr.2d 470.) Appendix G to the CEQA Guidelines (Cal.Code Regs., Title 14, § 15000 *et seq.*) recommends that the lead agency consider the following questions:

"... Would the project:

- "a) Have a substantial adverse effect on a scenic vista?
- "b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
- "c) Substantially degrade the existing visual character or quality of the site and its surroundings?
- "d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?" (*Id.* at § 15387.)"

Arguments such as those included in the proposed FEIR have been rejected by California courts. See, e.g., *Ocean View Estates HOA v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402, in which the Court rejected the public agency's approval of a mitigated negative declaration which failed to adequately evaluate project impacts on private views:

"The District cites nothing in CEQA that relieves it from considering the impact of the project on private views. To say there is no common law right to a private view, is not to say that the District is relieved from considering the impact of its project on such views."

Moreover, even as to the views from "public" viewpoints, the proposed FEIR simply reasserts — without supporting evidence or analysis — that the "overall aesthetic impacts" would be "less than significant with incorporation of mitigation." However, no additional "mitigation" is provided.

Master Response 9.5.3 – Geology and Soils: This purported "master response" is blatantly inadequate and non-responsive to the concerns expressed by many commentators. This portion of the proposed FEIR cites the "preliminary geotechnical report" prepared for the project in August 2005¹ – well before the most recent series of landslides and soils movements revealed additional information regarding the instability of the project area.² That preliminary report did not address soils movement hazards in the vicinity of Lot 2 or our clients' property. As previously pointed out, the Draft EIR only identified potentially unstable soils near the building sites on Lots 1,3, and 6 [DEIR, pp. 3.7-12 – 3.7-15.]

Recent events revealed extensive areas of unstable soil on Lot 2 as well.³ The recent debris flow landslide from "Lot 2" is approximately 70 feet wide and 180 long, and extended more than 160 feet down slope, and damaged our clients' home. This evidence of more extensive slope failure and flooding, as acknowledged by the Cal Engineers' letter at Appendix F, constitutes "significant new information" which warrants additional technical analysis and may require recirculation of the Draft EIR (or relevant portions of the Draft EIR) as provided by the California Environmental Quality Act ("CEQA"). See, e.g., Public Resources Code Section 21092.1, and the CEQA Guidelines, Section 15088.5.

¹ Although the applicant's engineer submitted a letter dated Feb. 9, 2006, attached to the FEIR as "Appendix F", this part of the proposed FEIR did not cite that letter.

² That 2005 Preliminary Report contains an express limitation that it may be considered valid for only a period of 3 years, "unless the conditions of the site change." (Exhibit E, at p. 19.)

³ Our clients sent the City a letter on Jan. 4, 2006 notifying them of the slide. Also, our clients sent the City photos of the slide damage which are not reflected in the Final EIR.

The proposed FEIR also cites a 20-year old report on subsurface conditions for an earlier proposal. It concludes by simply re-asserting that the applicant "would be required" to submit site-specific analysis and recommendations in the future (pp. 9-8 and 9-9). Once again, this is improper deferral of mitigation in the absence of a binding commitment and objective performance standards (and in the absence of financial security that such future "mitigation measures" will be constructed and completed, before allowing any earth movement).

Master Response 9.5.4 – Hydrology and Water Quality: See comments under 9.5.3, above.

In addition, this part of the proposed FEIR apparently relies on the letter from Cal Engineering at Appendix F regarding Hydrology impacts. The anticipated reduction of runoff to Swale A is only stated in terms of a 10-year "design storm." That is not an adequate or appropriate design or performance standard.

Moreover, the private engineer's conclusions as to the anticipated reduction in runoff is apparently predicated upon the assumption that the project would be built "as currently planned" (p. 9-10.) — although it is not clear that there is any binding commitment or mandatory mitigation measure requiring the construction on Lot 2 to be built in any particular manner at present. To the contrary, the proposed FEIR affirmatively (but improperly) defers the specific design and mitigation measures to a future review.

On a positive note, the proposed FEIR refers to a revised Mitigation Measure 3.8.4 which is intended to address some of our clients' specific concerns re off-site drainage impacts. However, while MM 3.8.4 has reportedly been "updated" to incorporate specific performance criteria for off-site drainage, it is not clear that the mitigation will incorporate financial guarantees from the applicant to assure the completion of all such mitigation measures before issuance of grading permits or other permits for construction on site.⁴ Even with the "updated" inclusion of performance standards in this MM, the mitigation measures in the proposed FEIR are still not sufficient. Mitigation should require financial guarantees of completion, timely inspection and provisions for ongoing monitoring and maintenance of any improvements required by the City. See, e.g., *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1395 (mitigation for off-site drainage impacts).⁵

⁴ The copy of the proposed FEIR that was provided to our clients was missing page 3.8-10 which apparently includes this critical "updated" MM 3.8.4. We have requested a copy of that missing page from City staff.

⁵ "Similarly, condition 75 requires McMillin to submit improvement plans, grading plans, and a final map, which must be approved by the County Flood Control and Water Conservation District. These plans and maps were subject to a host of specific performance criteria imposed by various ordinances, codes, and standards, as well as

Technical Report and Mitigation Measures: Finally, our clients have retained geological and hydrological experts to review the proposed project and the site. Attached to this comment letter is the joint report of those experts, Mr. Gilpin and Mr. Wills, regarding mitigation measures and conditions of approval that must be incorporated into any approvals for the proposed project. We respectfully include those expert technical comments on behalf of our clients.

Specific Responses to Comments:

Our clients submitted written comments on the Draft EIR and also testified at the public hearing on the Draft EIR. The proposed FEIR identifies those specific comments as items 15-1 through 15-7. However, the FEIR fails to provide adequate responses to our clients' specific comments, as follows:

15-1: This comment points out that the EIR includes maps and graphics which are not accurate, and which failed to depict our clients' home adjacent to the project. The "response" to this comment as well as the "Response 2-4" referred to therein improperly dismiss these errors and inaccuracies in the EIR. CEQA requires an "accurate" description of the project and its setting in order to serve its important role in provide information to the public and to the decision makers. CEQA Guidelines § 15124; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192. The City should not accept nor approve documents which contain such fundamental (and correctable) errors.

15-2: The proposed FEIR does not respond to this comment about privacy concerns or aesthetics, but rather simply seeks to explain why the Draft EIR failed to address such impacts. The response does not cite any particular provision in the CEQA Guidelines or the City Code to support its contention that an EIR may disregard impacts on "individual residences." As noted above, CEQA does not support such disregard of impacts simply because they affect "private" aesthetics. *Oceanic View Estates, supra*. The response improperly seeks to defer environmental analysis to the post-approval design review process, and runs the risk that it may not be possible to consider alternatives or to incorporate adequate mitigation at such late stage in the process.

15-3: See comments on inadequate Master Response re drainage.

15-4: See comments above. While the incorporation of specific performance criteria as a binding mitigation measure for off site drainage is an improvement over the Draft EIR, such mitigation measures must also include provisions for an adequate "design storm" (not less than 100-year storm) and provisions to assure financial commitment to complete all such

other mitigation conditions. The City's mitigation monitoring program committed it to monitoring McMillin's compliance with these criteria."

specific mitigation measures before the applicant is permitted to conduct any grading or construction on-site.

15-5: See comments above.

15-6: See comments above. Improper deferral of environmental review.

15-7: "Comment noted" is not an adequate "response." See comments above.

Conclusion:

Recent revelations regarding the extent of unstable soils, exposure to flooding, adverse impacts on aesthetics and privacy concerns, and the consultant's reliance upon unfounded assumptions that CEQA does not require evaluation of impacts in a wider range of settings require the need for additional environmental analysis. The proposed FEIR perpetuates the errors of the draft EIR by improperly deferring significant issues for unspecified future analysis and mitigation, without binding commitments or adequate performance standards. Such additional study may well indicate the possibility of better alternatives or additional feasible mitigation measures beyond those included in the current EIR.

We respectfully submit that this proposed FEIR is factually and legally inadequate to comply with CEQA and urge the City to demand that the applicant provide a more complete and legally-sufficient document to serve as the basis for the City's consideration of this project.

Thank you for your consideration.

Very truly yours,



David P. Lanferman

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-SF:FPD\61486818.1

cc: Ms. A. M. Marciarille

TODD ENGINEERS

GROUNDWATER • WATER RESOURCES • HYDROGEOLOGY • ENVIRONMENTAL ENGINEERING

City of Lafayette
Planning Services Division
P.O. Box 1968
Lafayette, CA 94549

February 28, 2006

Attn: Christine Sinette, Senior Planner

Re: Proposed Lucas Ranch Project, Tract 6569/Soldier Field Subdivision
City of Lafayette, Contra Costa County, California

Dear Christine,

This letter is submitted on behalf of James Bradford Delong and Ann Marie Marciarille, owners of 1 Lucas Court, Lafayette, California. This letter is a joint technical report reflecting the investigation and analysis of Todd Engineers and of Gilpin Geosciences. Todd Engineers' are licensed hydrologists, with over 25 years of experience in their area of expertise. Gilpin Geosciences are licensed geologists with over 25 years of experience. We have both conducted several site inspections. The Delong Marciarille property is adjacent to the Lucas Ranch property proposed for development of eight new residences. A portion of the proposed development is shown on Figure 1. Lot number 2 is directly south of the Delong Marciarille property.

Existing Conditions: The proposed subdivision is located along two intersecting ridgelines, with very steep side slopes. Upslope north of the 1 Lucas Court residence the slopes exceed 35 percent as exhibited in the Slope Analysis Map, Exhibit 6, Lucas Ranch Project Opportunities and Constraints Analysis, July 2002.

The soils upgradient of 1 Lucas Court support a very minimal vegetation of grass and a few isolated oak trees as indicated in the aerial photograph Exhibit 3, Lucas Ranch Project, Opportunities and Constraints Analysis, July 2002.

The conditions of high ground surface gradients and minimal cover result in high rainfall runoff and potential for soil erosion.

The soil and bedrock in the area of the proposed development are also unstable and have experienced numerous land slides as indicated on the Landslide Hazard Identification Map No.38, California Division of Mines and Geology, 1996. The swale above 1 Lucas Court on Lot 2 of the proposed Lucas Ranch Project has been subject to erosion and debris landslide failure over a long period of time. Since 1928, the date of the first

stereographic aerial photographs reviewed we observed erosion or shallow debris slides on the photographs dated 1954, 1968, 1984, 1987, 1997, 1999, and 2000, indicating that erosion and slope instability are a significant periodic hazard on this hillside.

On January 1, 2006, a local debris slide occurred on the Lucas Ranch parcel directly upslope of the 1 Lucas Court residence, resulting in damages to the residence as described in the letter to the City from the residents, (January 2006).

Because of the inherent slope failure risks involved during and after construction of the proposed residences, roads, trails and based on our site investigations, the information in the project documents, and other sources, we recommend that the City and the applicant include the following measures in the project conditions in addition to the standard City of Lafayette or County of Contra Costa Building codes and to pertinent ordinances. Suggested measures are listed below.

Conditions of Approval

Attenuation of Surface Water Runoff

- Permeable landscaping: open pavers for driveways and landscaping, infiltration trenches or vaults
- Energy dissipation: grade control structures such as weirs, sills, drop structures
- Rainwater collection: cisterns, detention basins, infiltration trenches
- Temporary construction: hay bales, erosion control blankets

Prevent Sediment Transport

- Erosion control and pollution prevention
- Outfall protection: direct discharge to street or storm sewers
- Silt fencing around construction grading areas
- Cover building material stockpiles with waterproof sheeting
- No storage of hazardous materials

Design Criteria

- All stormwater collection gutters and piping sized for 25 years
- Excavation prohibited on ground slopes greater than 25 percent

Geotechnical Constraints

- Reassess landslide areas mapped by Cal Engineering & Geology in light of recent storm related slope failures.
- Mitigation measures should include removal of active debris slide material to a depth of competent bedrock, to be replaced with well drained and compacted engineered fill.

- Regrading of the slope above 1 Lucas Court should include mid slope drainage benches that capture surface runoff and collect it into drain pipes that outlet in the creek below the 1 Lucas Court Residence.
- Other slopes should be assessed for moderate to high potential debris slide hazards and appropriately mitigated.

Construction Inspection

Residents of 1 Lucas Court require access to the Lucas Ranch development upgradient of the 1 Lucas Court property during construction to inspect the site grading, excavation, and installation of the storm water collection system components, drainage and erosion control features and proposed debris flow slope repairs.

Post Construction

Residents of 1 Lucas Court require access to the Lucas Ranch development upgradient of the 1 Lucas Court property following construction of the proposed roads, residences, trails, etc. to examine and inspect site conditions and assess maintenance and functioning of drainage systems, slope stability erosion control features, and general condition of the improvements.

Home Owners Association

Because the proposed improvements are being developed as Low Density Residential, which requires average 1 unit per 5 acres, we believe there is a need for there to be a Homeowners Association (HOA) or an Improvement/Assessment District designated area of influence that will require monitoring of drainage and slope stability performance of the development over the life of the project. This monitoring would provide periodic inspections and maintenance of the surface drainage and the stormwater control systems to minimize the impact of heavy precipitation events on the downslope neighborhoods.

Please call Mr. Raymond K. Will at (510) 595-2120 or Mr. Gilpin at (707) 251-8543 if you have any questions

Sincerely

Raymond K. Will

Raymond K. Will, P.E.
Principal Engineer
Todd Engineers

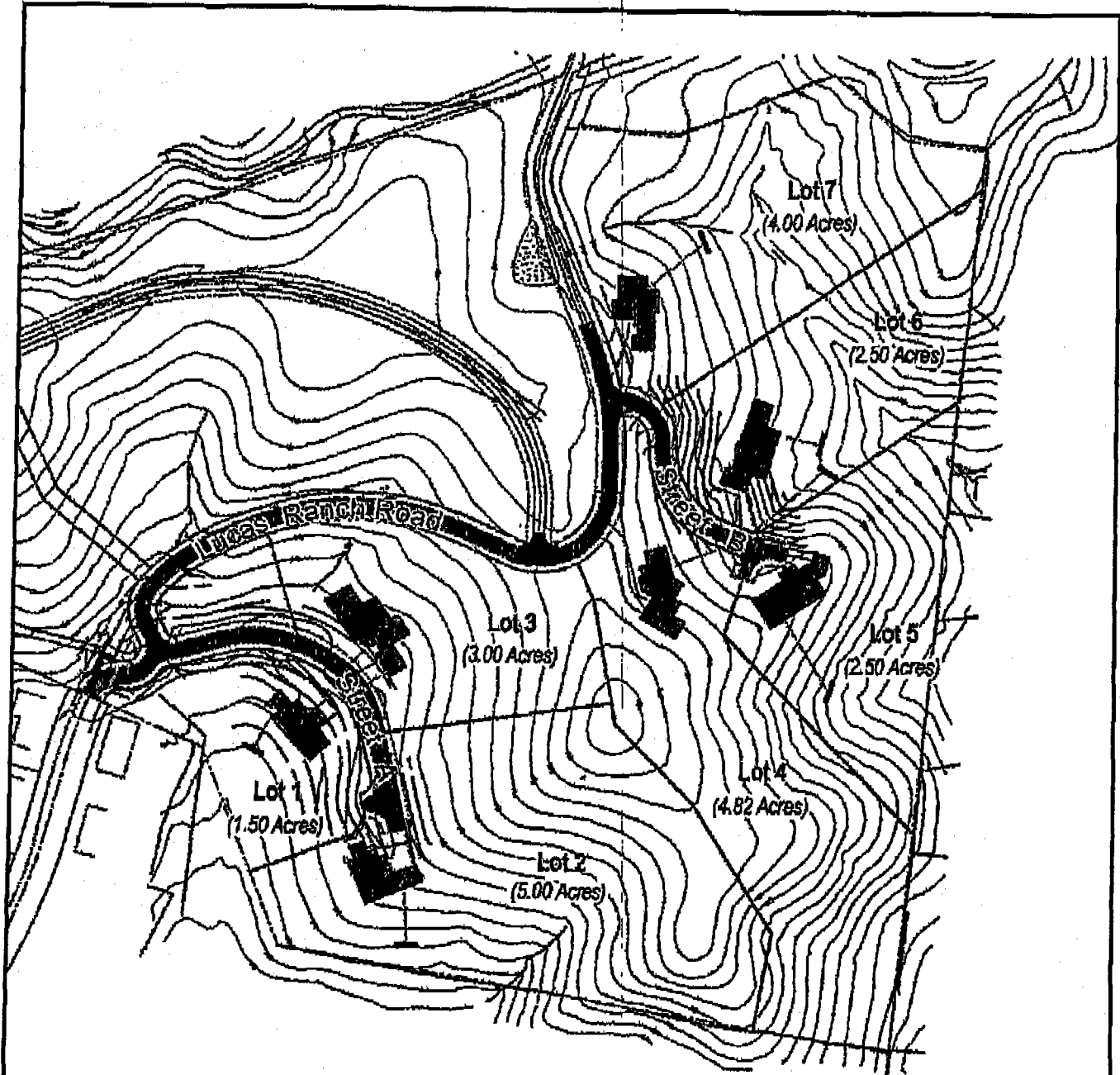


Sincerely



L.M. Gilpin

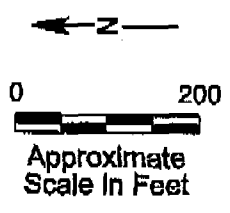
Lou Gilpin, C.E.G.
Principal Geologist
Gilpin Geosciences





Legend

-  Proposed Building Footprint
-  Property Boundary



Portion of proposed development at the Lucas Ranch Project showing proposed residences and topography.

Source: RBF Consulting: Draft Environmental Impact Report, Soldier Field Subdivision, October 2005.

February 2006	Figure 1 Lucas Ranch Project
TODD ENGINEERS Emeryville, California	

Writer's Direct Line: 415-774-2996
dlanferman@sheppardmullin.com

April 11, 2006

Our File Number: 11GE-122211

VIA FACSIMILE AND E-MAIL

Christine Sinnette
Senior Planner
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549
Facsimile: (925) 299-0134

Members of the Planning Commission
CITY OF LAFAYETTE
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549

Re: **TR 6569 and HDP 86-04 [Soldier Field Partners, LLC]**
Continued Planning Commission hearings
Comments on the Pending Applications

Dear Honorable Members of the Planning Commission and Ms. Sinnette:

On behalf of our clients, Ms. Marciarille and Mr. DeLong (owners of the home at 1 Lucas Court) we appreciated the opportunity to appear and comment upon these still-incomplete applications at the Commission's hearing on April 6, 2006. We also appreciated the comments and issues raised by the Commission members in the public discussions of this application, and Commission's directions to the applicants to provide more complete and detailed information on several aspects of the application in order to afford more meaningful review.

This letter will serve to follow up on those comments and to highlight some of our clients' concerns before this matter is returned for further public review on April 20 (or such other dates as it may be continued). The first two items refer to sections of the Staff Report for the April 6, 2006, Planning Commission hearing.

1. **"Planning Commission Requests for Additional Information:"**

As noted in the Staff Report (p. 11), the Commission previously requested additional studies or information from the applicant or staff prior to approval of the pending applications. We join in and support those requests for additional information, which is necessary to adequately describe and define the proposed development "project" and to facilitate public review.

We also agree, as the Commission accurately observed on 04/06/06, that the current application materials remain incomplete, and thus do not permit meaningful or effective review and comment. Unless and until better information is provided with regard to the layout of the building sites, elevation, grading, slide repairs, and drainage systems (for example), it remains difficult if not impossible to assess whether the proposal will in fact address the

concerns and constraints which have been put forward by the Commission, City staff, and members of the affected community. (See, e.g., CEQA Guidelines, § 15124(c), emphasizing that the project description "shall contain" technical and environmental characteristics, "including the principal engineering proposals if any, ...") These concerns were clearly articulated by the Commission members and members of the public in discussions of this item on 04/06/06; e.g., the still unknown scope and extent of grading work to be done at each site, the placement and direction of drainage systems and location of impervious surfaces, the extent of required slope repairs, landscape screening, privacy impacts, visibility of structures from viewpoints in the vicinity, hillside and ridgeline aesthetics, and additional information to assure that the application properly addresses the acknowledged geological instability of parts of the site, etc.

Accordingly, it would be inappropriate and would deprive the public of critical information for the City to consider possible approval of these applications before such additional information is provided to the public, including (without limitation) the **Design Guidelines**, and more detailed "**schematic site plans**" for each of the lots proposed for improvements. Since it appears that the City proposes to use those (not yet definite) schematic plans as the basis for issuance of building permits, it is essential that the Commission and the public have an opportunity to see and comment upon such schematics before the proposed tentative map or Hillside ordinance permits are considered for approval – not after, as the recent staff report appeared to suggest.

We also urge that the requested **Peer Review of the preliminary Geological Studies** be provided prior to final public consideration of the tentative map/Hillside development permit applications, as directed by the Commission at the hearing on 03/09/06. Such peer review should not be deferred until grading permit or final map as that would preclude members of the public, or the Commission, from having any opportunity for review and comment upon a critical facet of these applications. In light of the reported difficulties in identifying consultants to undertake such peer review work, we would be pleased to offer to the City the names of geotechnical consultants who may be interested in providing the City with an appropriate level of peer review – before the close of public review on these applications.

2. Mitigation Monitoring and Reporting Program:

The Staff Report included a revised, proposed, Mitigation Monitoring and Reporting Program ("MMRP") which reflects some of the recent revisions to the FEIR. However, that MMRP should be revised to reflect more accurate site plan and improvement information (see above), and should be revised to reflect comments from the public (including our clients) during the review of the EIR. The MMRP also remains flawed by improper deferral of mitigation in several respects (as previously noted; see, e.g., our letter of 03/06/06).

Proposed **Mitigation Measures 3.7-3a, 3.7-3b, 3.8-1b, 3.8-4** should be revised to provide for review of the proposed grading plan, erosion control plan, hydrology and hydraulic analysis by the public, either at tentative map, or at some appropriate "public review" or "design review" public hearing prior to issuance of a final map or grading permit. As currently proposed

such proposed mitigation measure improperly defer such work to an undefined time "prior to final map approval or issuance of a grading permit" in a process which would be closed to any review by the Commission or the affected members of the community.

MM 3.8-4 should be clarified and made internally consistent. Currently it provides only vague direction that "*any impacts or deficiencies [site drainage] shall be mitigated as part of the subdivision improvements.*" However, it does not contain any description, definition, or timing as to how this is to be done "as part of the [unspecified] subdivision improvements" – thereby rendering it unenforceable by City staff. In addition, this MM fails to include any "monitoring responsibility" or "monitoring timeframe" for the mitigation of such impacts as part of the subdivision improvements.

Moreover, as previously commented (03/06/06 letter, and 03/09/06 hearing) the MMRP fails to provide any financial assurances or securities for the successful performance of the required drainage mitigation measures and slope repairs, nor for the long-term follow up, inspection or repairs of such mitigation improvements and repairs.

3. General Comments:

Request for Notice and Copies of New Documentation: We again request NOTICE of any and all upcoming hearings or proceedings on this project. We also request a COPY of any new Schematic Plans, or new Geotechnical Reports or similar information that may be submitted by the applicant before the next public hearing, as well as the new "Economic Feasibility Study" when it becomes available.

Inadequate EIR: We again note that despite the Commission's best efforts, the FEIR that was approved last month is not legally adequate to serve as a basis for considering, much less approving, this proposed "project." The EIR is fatally flawed by the absence of a stable and finite project description,¹ among other reasons as pointed out by our clients and many other members of the public commenting upon that document last month.

Improper Process: We reiterate our fundamental concerns about the highly peculiar process by which the applicant fragmented these applications and submitted the proposal to the Commission and the public for review before the applicant had completed the essential project descriptions and supporting information. As a result of this inverted "cart-before-the-horse" process, both the Commission and the concerned neighbors have been put in the untenable position of attempting to "comment" upon the proposed development without yet

¹ "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.... Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal and weigh other alternatives in the balance." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; CEQA Guidelines § 15124.

having an accurate or complete description of the "project." As the Commission members properly observed at the Commission hearing on 04/06/06: "This whole 'project' is *still a moving target*."

4. Additional Information/Documents Required:

Based on the Commission's directions to the applicant and the public comments at the recent hearings, the following additional information or documents (at a minimum) are required for review by the Commission and the public, before the tentative map or Hillside ordinance permits/variances may be considered on their merits:

- A. New Economic Feasibility Analysis (relevant to consideration of possible variances from the Hillside Ordinance, and determination of which units may be constructed);
- B. More accurate Tentative Map, based on the actual approved units;
- C. More detailed Schematic Plans, showing the layout of each proposed building site and paved area, elevation, grading, landscape screening, slide repairs, and the placement and direction of drainage systems and detention facilities;
- D. New Design Guidelines, meeting Commission's criteria;
- E. Engineering calculations (or accurate estimates) of the scope and extent of grading and earth-movement at each building site;
- F. Peer Review of the applicant's preliminary Geotechnical recommendations for slide repairs and site stabilization;
- G. Revised MMRP addressing Commission's comments regarding mitigation of landscaping and visibility issues, and our comments regarding drainage and geology issues;
- H. Updated and less incomplete EIR based upon an accurate "project description" including mitigation measures and addressing comments.

5. Conclusion:

We also respectfully renew our clients' previous comments and objections, both written and verbal, during the public review of this project, and incorporate those comments in this submittal. We also note that our clients' geologic and hydrologic consultants did submit comments and questions in connection with these applications on 02/28/06, which are also incorporated.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Christine Sinnette/Planning Commission

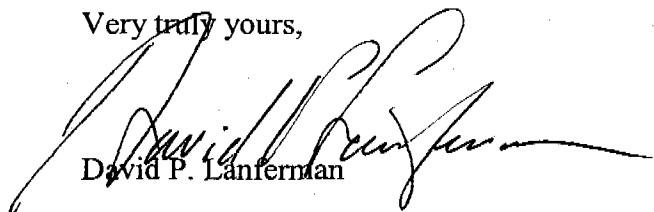
April 11, 2006

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The applicant still has not provided the Commission or the public with sufficient information about the proposed development of this highly sensitive and unstable site to permit meaningful public review. *There is simply no way that these incomplete applications can be considered or approved, even at a continued hearing, in the absence of public dissemination and review of better project information, including the technical information described above.*

Thank you again for your consideration of our comments and concerns.

Very truly yours,



David P. Lanferman

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

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cc: Ms. A. Marciarille