

BurtonValley.com

9 Dianne Ct.

Lafayette CA 94549

Ph: 925-284-9350

Fx: 925-226-3940

Web: www.Burtonvalley.com

November 12, 2005

Planning Commission
City of Lafayette
3675 Mt. Diablo Blvd., Ste. 210
Lafayette CA 94549

Re: TR6569 AND HDP86-04 GREG WOEHRLE (APPLICANT), SOLDIER FIELD PARTNERS, LLC

Dear Planning Commissioners,

We have reviewed the October 2005 Draft EIR for Soldier Field, and have some significant concerns about its analysis, choice of project alternatives, and conclusions. In addition, we have concerns about how Soldier Field's economic feasibility analysis (Sedway Group study) will be interpreted in conjunction with the possible granting of exceptions under the Hillside Ordinance.

We would like to offer the following comments and concerns to be addressed by the city and its EIR consultant, RBF Consulting:

1. **Visibility** – As we all know, visibility is an important consideration in the city's General Plan and Hillside Ordinance. The DEIR's visibility analysis is flawed and the proposed mitigation measures are woefully inadequate. The visibility analysis only takes into consideration viewing points from a distance and not those from closer proximity, such as on Lucas Drive and Rohrer Drive. The analysis appears to make attempts to emphasize locations where one *can't* see the homesites instead of where one *can* see them, using un-zoomed, wide-angle photographs that distort the true impact of the visibility. The proposed mitigation measures consisting of nothing more than a landscaping and vegetation plan are non-compliant with the Hillside Ordinance, which require all structures to be substantially concealed by *existing* vegetation or terrain (6-2048). The reality is that the visibility of the proposed development cannot be mitigated, and the final EIR should acknowledge that.
2. **Privacy** – This is also an important component of the Hillside Ordinance and a required finding that must be made for each homesite (6-2071). A number of the proposed homesites will significantly infringe on the privacy of existing homes, yet the DEIR does not appear to acknowledge, analyze, or mitigate the impact of this issue.
3. **Soil stability/drainage** – A number of the adjacent homeowners have expressed concerns about soil stability on the subject property, which has a history of problems related to its inherent geological and storm water runoff characteristics. While the DEIR does acknowledge that there has been a history of landslides on the property and the "proposed project could expose people or structures to the risk of loss, injury, or death from the collapse or failure of proposed structures due to landslide or unstable soil" (Page 3.7-13), its proposed mitigation measure is basically to defer addressing this problem with an action plan until prior to a final subdivision map or grading permit approval. The same mitigation measure is recommended to address storm water runoff and drainage issues. Making an assumption that developing plans later on can reduce these problems to a less than significant impact seems dubious at best. The final EIR should either do the more detailed analyses to determine whether that conclusion is valid, or leave these issues as potentially significant impacts until there is clear evidence to support it.

4. **Project alternatives** – The selection and analysis of project alternatives in the DEIR is flawed. First, at least one of the alternatives analyzed should have included less than eight homesites. According to CEQA Guidelines under the California Code of Regulations (15126.6c), “the range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects”. The “basic objective” of the project is to build homes, not to satisfy the financial criteria set by the developer. Clearly an alternative with fewer homesites would reduce or avoid the issues raised in this letter, and should have been considered. Second, the “no exceptions” alternative should not have been ruled out, and instead considered without application of the 15-degree declination restriction. The reasoning for this is that it is fair to assume the city will probably have to grant some exception in order to allow development of the property, and should strive to minimize the number and environmental impact of those exceptions. Since it appears that the 15-degree declination restriction would cover almost all of the property, whereas the application of the ridgeline and slope restrictions would still permit development on a significant portion of the property, a project alternative under this scenario should have been considered. Third, the “neighborhood extension” alternative should be altered to achieve its stated objectives of being more clustered, maintaining neighborhood character, minimizing ridgeline grading, and maximizing open space. This can be done by eliminating the northern lots off the Lucas Circle extension, straightening the Lucas Drive extension, adding lots to the end of Lucas Drive that are roughly the same size as existing homes. This idea was proposed by Brad Kisner to the Planning Commission at its 2/17/05 hearing.

At the 11/3/05 Planning Commission hearing, there was also some discussion about Soldier Field’s Economic Feasibility Analysis (conducted by Sedway Group), and staff was directed to conduct a peer review of the analysis. Before we begin discussing the accuracy and validity of the Feasibility Analysis, we need to first consider its relevance. Assumedly this analysis was commissioned to provide evidence that the city should grant exceptions to the Hillside Ordinance (under 6-2068 and 6-2069) because the project as proposed would not be financially viable without them. Unfortunately the analysis does not address the two key standards under the Hillside Ordinance for granting the exceptions. For a Class 2 or 3 ridgeline (6-2069), one of the criteria for granting an exception is that it is “necessary to allow an economically viable use of the property”. The viable use does not need to be the proposed project, so an analysis of whether the proposed project is financially viable is irrelevant. For a Class 1 ridgeline, the standard is even higher. An exception could be granted under 6-2068 if not granting it would have “the effect of depriving the property of all economically viable use”. An economic study to show this would essentially have to prove that the property is essentially worthless and the owner a victim of a constitutional takings. Clearly there are complex legal issues to deal with here, and we recommend that the City Attorney be consulted to interpret the statute and provide the Planning Commission with guidance. Conducting a peer review of a study that is not clearly relevant to this development application would be a waste of time and money.

We appreciate your taking the time to review and consider our comments, as well as your continued support of the community.

Sincerely,



Clifford Tong
Burtonvalley.com

Cc: Christine Sinnette