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2 Chair Humann recused himself from the next item.

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4 **8. CONTINUED PUBLIC HEARINGS**

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6 **A. TR6569 Greg Woehrle (Applicant), Soldier Field Partners, LLC (Owner); LR**
7 **Zoning and H-O-D:** Request for a subdivision of 87.9 acres into eight residential lots
8 and one remainder open space lot pursuant to Part 6, Lafayette Municipal Code and
9 California Government Code Sections 66410 et seq., located at 3148 Lucas Drive. APN
10 238-080-019.

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12 **HDP86-04 Greg Woehrle (Applicant), Soldier Field Partners, LLC (Owner); LR**
13 **Zoning and H-O-D:** Request for 1) a Hillside Development permit for a subdivision of
14 87.9 acres into eight residential lots and one remainder open space lot pursuant to
15 Chapter 6-20, Lafayette Municipal Code (LMC), and 2) an exception to development
16 within a Class I and Class II ridgeline pursuant to Sections 6-2026 and 6-2027,
17 respectively, LMC, located at 3148 Lucas Drive. APN 238-080-019.

18 **Recommendation:** Open public hearing, take testimony, and continue to May 18,
19 2006.

20 **Project Planner:** Christine Sinnette, Tel: 925-299-3241, csinnette@ci.Lafayette.ca.us
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22 Ms. Subramanian said there has been previous litigation that is germane to this property and whether the
23 new hillside ordinance applied to the 17-lot application. At that time the City attorney provided
24 information that the City was considering revising the hillside ordinance, which the City did and the new
25 ordinance did apply to the application. This was challenged in court and the court determined that the
26 ordinance was adequate. On page 3 of the staff report, there is a table of exceptions requested. All of
27 the lots are impacted by ridgeline restrictions. Two lots are within 400-feet of a Class I ridgeline. The
28 other exceptions are those that are within 250-feet of a Class II ridgeline, structures that project above
29 the 15° declination, building sites that are in excess of the 30% slope, and alteration of a slope in excess
30 of 35%. The table lists, which lots apply to which exception. The table should be corrected to state that
31 Lot 3 does not fall within the category of an alteration of a slope in excess of 35% but that Lot 5 does.
32 Because of the exceptions being requested, certain findings have to be made. The two findings are that
33 the density shall not exceed the density permitted by the slope density formula or the underlying zoning
34 district whichever is less but that is not an issue. The second finding is that the density shall not exceed
35 that necessary to avoid an unconstitutional taking.

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37 Ms. Subramanian continued that a legal analysis was done and there are two categories of takings: a
38 non-categorical and a categorical. A non-categorical would be when a complete wipeout occurs. There
39 is a City ordinance that could prohibit development on this property and not grant any exceptions and no
40 lots could be permitted. The ordinance provides for a granting of exceptions so as not to exceed that
41 which would be considered a taking. She has factored the economic impacts and the regulations of the
42 new Hillside Ordinance. She looked at when the property was purchased and what regulations were in
43 effect at that time. With the old ordinance, and reviewing the property, the applicant would have been
44 allowed 8 lots for a total value of \$4,350,000. When the applicant purchased the property he could have
45 reasonably expected to develop 8 lots. What the new ordinance does is to grant the minimum allowed to
46 avoid a taking. There is no real formula and she looked at a variety of cases. The City could preclude
47 development of lots with a value of 66% of \$4,350,000 or \$2,871,000. Therefore the applicant could
48 build on 1/3 of the property for a total value of 1/3 of the \$4,350,000 or \$1,435,000, which permits 3 lots
49 to be developed. Parcel A retains its value because of the cell tower and conservation easement, which
50 has not yet been appraised. She recommends the Commission grant 3 lots and parcel A. Tthe
51 Commission could look at which 3 lots would comply most with the ordinance.

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53 Chair Ateljevich asked if the ordinance recommended clustering.
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1 Ms. Subramanian said yes, that lots should be those that most comply with the ordinance. The
2 Commission could also rank the lots.

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4 Chair Ateljevich noted that Commissioner Humann had recused himself from this item.

5
6 Ms. Subramanian said this was intertwined with the economic impact of the regulation to the extent to
7 which the regulation addresses investment back expectations. If 17 lots were not reasonably expected,
8 then the reasonable factor of 8 lots from the old ordinance should be the factor.

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10 Ms. Sinnette said there are two other issues. The applicant had provided information on the preliminary
11 grading and staff has included an analysis of that. She would like to know if the Commission feels this is
12 adequate for the remedial grading.

13
14 Chair Ateljevich said that helps a great deal.

15
16 Ms. Sinnette said there is a discussion of the alternatives in the EIR. In order to comply with CEQA, they
17 need to acknowledge that they had looked at these alternatives. The applicant may be presenting
18 information on site planning and design issues as well as responding to the staff report. The statutory
19 deadline is June 8 including an extension which was granted by the applicant.

20
21 Vice Chair Mitchell asked about the conditions of approval or was it too early to do that.

22
23 Ms. Sinnette answered that she hoped to have at least project specific conditions at the next meeting on
24 May 18.

25
26 David Bowie, applicant's attorney, said from the last meeting, they submitted different plans where they
27 moved lot 8. He is disappointed in the staff report. He said this is a planning function the Commission is
28 undertaking and feels the report from staff was let's see how few lots are justified under any extreme
29 reading of the law. He does not feel this is appropriate. He feels staff's analysis is flawed. This project
30 was found to have no unmitigable effects made in the context of Lafayette's ordinances and hearings.
31 Staff continues to create grids, which has pluses and minuses indicating whether the lots are in
32 compliance with the ordinance and this is inappropriate because there has already been a finding on the
33 environmental impacts and approved. It does not mean the Commission can rewrite the findings, which
34 were based upon objective evidence. They don't have to face the economic analysis because they could
35 move the lots so that not one of them is within a Class I setback. Regarding the Class II setbacks, there
36 are other standards they could meet regardless of the economic viability standard. Regarding the issue
37 of declination, but if they read the Lafayette ordinance, it says that no portion of a structure may be
38 erected adjacent to a Class I or Class II ridge and this was to avoid a silhouette against the ridgeline.
39 The Planning Commission routinely grants exceptions to that declination rule.

40
41 Mr. Bowie continued regarding the taking issue, he feels they have been asking the wrong question.
42 What they should be asking is what are the adverse impacts, which the ordinance is designed to avoid
43 and mitigate. The critical factor is whether or not the legislation that the City has is intended to foster
44 and substantially advance legitimate state interests. It does not tell an applicant you get the least
45 number of lots. This is handled on a case-by-case basis and analysis and if you look at the open space
46 that is being exacted from this application, 2/3 of the land is being taken away from the applicant,
47 leaving 1/3 subject to development. There has to be a nexus with whatever taking you are going to do
48 and the purpose of the regulation. The certified EIR for this project closes the door on that analysis in
49 his opinion. The economic analysis is appropriate and indicates there is no economically viable use for
50 this property without 8 lots and that has been dismissed. Staff is suggesting that they could only have 8
51 lots under the present legislation and that is pure speculation and there is no basis for that. They
52 undertook an extensive EIR process and met everyone's concerns.

1 Allan Moore, 279 Front Street, Danville, received the staff report late. He was a Planning Commissioner
2 in Walnut Creek for 9 years and feels he has never seen such an unfair result in the staff report. The EIR
3 concluded there were no environmental impacts and it appears as though staff is not even looking at
4 what the EIR says. The numbers quoted by staff are unfair whether it pertains to the old or new
5 ordinance. You have to look at this as planners and consider what is the best plan for the property not
6 how little do I have to give them under the constitution. He is a trained legal attorney and the staff
7 report makes no sense to him, and he does not understand it. He is not prepared to make any further
8 remarks this evening.
9

10 Tim Ward, architect, said he submitted a revised plan and reconfigured the 8 lots so they are more
11 clustered. Three of the sites are where they originally were, and he has relocated sites 5 and 7 using the
12 alternative sites in the EIR. Lots 7 and 8 are in the Class I ridge and he has placed them to avoid the
13 slopes over 30%. He has placed them with the intent to show how the houses would be designed and
14 where the active/outside areas of the homes would be. All of the homes are one-story with a maximum
15 height and a similar type of architecture.
16

17 Vice Chair Mitchell said that the new lots 7 and 8 seem to be in a portion of the restricted Class I
18 ridgeline, and wondered if he picked those sites because they were in the EIR.
19

20 Mr. Ward replied in the affirmative.
21

22 Commissioner Chastain said he received the information from Mr. Ward and has reviewed it. He
23 appreciated the additional information and feels this will help them assess the relationship of the sites.
24 He asked for more explicit information regarding the size of the houses and whether they are more open.
25

26 Chair Ateljevich opened the public comment period on this item.
27

28 Clifford Tong, 9 Dianne Court, representing burtonvalley.com, said the EIR was evaluated because a lot
29 of emphasis on the assumption that the EIR was not contested and there were no unmitigatable impacts
30 and they should be approving what is proposed. He asked before the Commission certified the EIR
31 whether they would still go site-by-site and he assumed they would to do that. Regarding speculation
32 under the old ordinance vs. the new ordinance they have to be able to compare old to new. He
33 recognizes this is a difficult property and when they go site by site they will find which meet the findings
34 and grant exceptions accordingly.
35

36 Sherry Hoover, 3212 Sharon Court, representing burtonvalley.com, said she was upset by Mr. Bowie's
37 tone and wanted to recognize the effort of the Commissioners and thanked them.
38

39 David George, 2730 Oak Canyon Road, said he was outraged by the tone of the lawyers. He reminded
40 the Commission that they represent the City of Lafayette, the property owners and the ordinances. The
41 EIR was for a specific purpose to pass judgement on specific environmental impacts, not the project.
42 The Planning Commission interprets the ordinance. They have viable alternatives offered by staff and
43 burtonvalley.com. The homes violate the natural hillside ridge because they are visible.
44

45 Marie Blits, 3166 Lucas Drive, also represented burtonvalley.com, and thanked the Commission. The EIR
46 does not say the project meets all the zoning regulations. She said they relied upon the Commission to
47 represent them. Because an EIR has been certified it does not change whether a project comports with
48 the zoning criteria or not.
49

50 Mr. Bowie said he appreciates that all the Commissioners volunteer their time. They need to balance
51 everyone's interests and be fair. The most critical issue is what governmental purpose depriving them of
52 5 homes legitimately advanced. He said this was frivolous and inappropriate. They still do have a project
53 with homes in the Class I ridgeline but they can submit a project at the next meeting with no sites within
54 the Class I ridgeline. That will take care of this issue. They have pursued in good faith and at great

1 expense and it is pure speculation on the part of Mr. Tong that the most they would have gotten was the
2 8 lots by the ordinance. All the other neighbors are sitting on ridgelines but the ordinances were not in
3 effect then. The people who live in the new homes will have to look at these other homes that are
4 already there. According to case law, there had better be a nexus between the regulatory take and
5 purposes and the burden that is being imposed on the applicant. It is not what few lots you can get
6 away with giving them but from a planning standpoint what real adverse impact is posed by this
7 development. They will come back with revised drawings so they don't have this issue.
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9 Chair Ateljevich said that each of the items that are sited over 30% slope including visibility have to meet
10 the findings. It cannot be assumed that all the findings were met.
11

12 Mr. Bowie said that is why they retained Mr. Ward and they have findings and conclusions reached by
13 this Commission and certified in the EIR, which was an objective analysis of all these factors in the
14 context of the City's ordinances.
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16 Chair Ateljevich said the EIR states that if the exceptions could be granted then the findings could be
17 granted.
18

19 Ms. Subramanian said the EIR does not make a determination on the economic viable use and states it is
20 undetermined and that the Commission will make that determination during the project approval process.
21

22 Mr. Bowie said that objectively it would be hard not to find that this is a project that meets those
23 exceptions.
24

25 Ms. Subramanian said if they come back with the lots changed that would be a new application.
26

27 Mr. Bowie said it would be the same development and they would expect the Commission to act on this
28 application in a timely fashion.
29

30 Ms. Subramanian said they would have to do a review on the revised application and that would include
31 an initial study as to what environmental review would be necessary.
32

33 Mr. Bowie said that she was incorrect in that conclusion as they would not change the siting, they would
34 simply be moving a few lots around and that would not require further environmental review.
35

36 Ms. Subramanian said if they submit a revision to the lots she guarantees they will be making an initial
37 study and make that determination.
38

39 Mr. Bowie said he respectfully submits that any such review would not be required and does expect this
40 application to be acted on in a timely fashion.
41

42 Mr. Moore said that one of the speakers said they would make lots of profit. The numbers tossed out for
43 the old ordinance totaled a value of \$4.3 million, which was reduced to a value of \$1.435 million with the
44 new ordinance. It will take more than that amount of development just to develop three lots.
45

46 Chair Ateljevich closed the public comment period on this item.
47

48 Commissioner Lovitt said he went through Mr. Moore's letter of the 22nd and attachments and saw his
49 name mentioned. In 2002, he was the land use representative for the Happy Valley Improvement
50 Association and his job was to communicate Board recommendations on land use issues. When he was
51 appointed to the Commission, he resigned from the Board and his only remaining connection is the \$10
52 in membership dues that he pays. His comments were to uphold the Hillside Ordinance and they were
53 not his comments and he was speaking on behalf of the association. He feels he can treat the project
54 with fairness and impartiality as with any other project.

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Vice Chair Mitchell asked what was expected of the Commission this evening.

Ms. Sinnette responded that according to the City attorney the Commission needs to identify the most appropriate lots that could be approved in light of the regulations it would be subject to. The Commission could rank all 8 lots. The project before the Commission is for 8 lots and slightly modified building sites. They should take a look at the alternatives with additional comments they might have on the grading plan.

Chair Ateljevich said they should discuss the alternatives and whether there were any that the Commission was interested in.

Vice Chair Mitchell clarified that they are supposed to look at this as an 8-lot subdivision for this evening and whether it was these 8 lots that they are seeing for the first time.

Ms. Sinnette suggested they should be considering the building sites as currently proposed. The value of the exhibit shown tonight was that lot 1 was moved in response to a mitigation of the EIR. Lot 6 requires quite a bit of grading and setbacks from the wetlands area and has been moved. They could review them in light of the alternatives because she has verified that the new lots 7 and 8 do conform to lots 5 and 2 of the alternative analysis. They could look at lot 8 as proposed and could feel comfortable looking at the new 1, 7, and 8. If the applicant revises the site plan, they could hold off making a determination on the 3 lots but looking at the 8 lots is the best approach.

Chair Ateljevich thanked Ms. Subramanian for her efforts. She suggested each Commissioner take 2 locations so that they could end up with a 3-lot scenario.

Vice Chair Mitchell proposed they disregard the new proposed lots and use only the original proposal.

Commissioner Holt said they are constrained in time and feels it would be prudent to move beyond the 3 lots that were part of the original application. He recommended they do all 8 lots and prioritize them.

Commissioner Chastain agrees with Commissioner Holt. They are not just ranking the lots but are discussing the values of each site.

Commissioner Lovitt said he would like to see something clustered in the area of lots 1, 2, and 3.

Vice Chair Mitchell said he likes the original lot 8 the least and feels this is the most problematic.

All Commissioners agreed with Vice Chair Mitchell.

Vice Chair Mitchell said he liked lot 7 the second least, as it was within a Class I ridgeline.

Commissioner Holt said he did not have much of a problem with lot 7 and while it is within the Class I ridgeline it does not require a lot of grading, and is tucked into the hillside.

Chair Ateljevich said lot 5 is her second least favorite.

Commissioner Chastain suggested they go through lots 1-8 and see how it falls out.

Vice Chair Mitchell said he liked lots 1, 2, and 3, then 4 and 6 in the middle, with lots 5, 7, and 8 the least as it relates to the original application.

Commissioner Holt said he sees two clusterable areas on the west side and upper side. He does not like the Lucas Court area. In concept, he could accept two clusters in the areas of 4/5 and 6/7.

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2 Commissioner Chastain said that 5 is a very problematic site but on the new plan it is in a better position.
3 The new plan starts to lose some of the clustering. As a general approach the further you intrude on the
4 site, the more disturbance there is, so that the more houses can be moved closer to the access to the
5 site, the better. As a critique, the original plan worked a bit harder at clustering and feels 8 as originally
6 proposed is a hard to understand site.

7
8 Commissioner Holt said he agrees with Commissioner Chastain.

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10 Chair Ateljevich said 1, 2 and 3 could be one cluster adjusting it away from the wetlands, and 4, 6, and 7
11 as an alternate.

12
13 Commissioner Holt said that for the record, they should address lot 8.

14
15 Ms. Subramanian said the Commission has given some direction and staff will come back with additional
16 analysis.

17
18 Vice Chair Mitchell asked at what point would they give direction to the applicant on the number of sites
19 that they feel are appropriate based on the information they have been given.

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21 Ms. Subramanian said they would make that determination at the next meeting.

22
23 Commissioner Holt suggested considering smaller lots with smaller houses and feels this is a common
24 sense approach to land use.

25
26 Ms. Subramanian recommended the Planning Commission stay within the framework of what is before
27 them this evening.

28
29 Commissioner Lovitt said if enough changes are made and a new application has to be made, then the
30 applicant needs to know that. The Planning Commission needs time to deliberate and understand what is
31 being presented.

32
33 Ms. Sinnette asked if the Commission was satisfied with the preliminary grading plan.

34
35 The Commission agreed by consensus that the grading plan was sufficient.

36
37 Commissioner Chastain recapped that the Commission liked the cluster of 1, 2, and 3 best, the bottom
38 two would be lots 8 and 5, while lots 4, 6, and 7 are okay.

39
40 The Commission agreed to Commissioner Chastain's summation by consensus.

41
42 Ms. Sinnette said there were comments at the last meeting regarding the mitigation monitoring program
43 and wondered if they wanted this brought back as part of the next meeting.

44
45 The Commission agreed that they had no further comments on that program.

46
47 **Commissioner Holt moved and Commissioner Chastain seconded to continue TR6569 and**
48 **HDP86-04 to the meeting of May 18, 2006.**

49
50 **AYES: Ateljevich, Chastain, Holt, Humann, Lovitt, and Mitchell**
51 **NOES: None**
52 **ABSENT: Harris**
53 **ABSTAIN: None**
54