

Colin Elliott
3356 Hermosa Way, Lafayette, CA 94549

June 23, 2020

Dear Chair Sturm and Planning Commissioners:

Re: The Proposed Terraces Project

As you consider the revived Terraces application, I thought it might be informative for you to review a copy of the November 25, 2013 City Staff Report for the Design Review Commission authored by Mr. Greg Wolff recommending denial of The Terraces application. In addition to City staff, both the Circulation Commission and Design Review Commission (DRC) recommended denial of the project to the Planning Commission in 2013. In Exhibit 1 of this City Staff Report to the DRC is a list of twenty-one General Plan (GP) goals, policies and programs from the Land Use Chapter of the GP (as it existed at the time the application was deemed complete) as they apply to the project. **Of those twenty-one GP goals, policies and programs, the project was found to be inconsistent with nineteen of them.** Obviously, more than sufficient grounds for denial of the project. An approval of the project would require major changes to the General Plan. **Since the same City staff is now recommending approval of the project, why aren't they also finding the same inconsistencies to the GP?**

Given the Planning Commission and subsequently the City Council had previously certified the EIR in August 2013 containing 13 significant adverse impacts that could not be mitigated, one could also conclude this project, which is basically the same project that is before you, would have been denied by both bodies. This denial would most likely have happened, except the Homes project intervened.

What has changed in this area since 2013, a time when the country was just starting to rebound from the great recession? The traffic congestion has become significantly worse, the air pollution has multiplied and we know much more about pollution's serious health impacts, and - with many intervening drought years - the wildfire risk has become more prevalent, wildlife on the land has increased, and local schools have become overcrowded.

Why then not deny a similar project as recommended by two commissions and City staff in 2013 and inconsistent with the GP? According to City staff, the City is concerned about prevailing in a lawsuit under the Housing Accountability Act (HAA), as threatened by the developer's attorney. **However, the HAA was in effect in 2013, when the same City staff recommended denial of a similar project and the developer was threatening to sue the City.** While there has been some tightening up of the HAA since, the changes do not materially impact this situation, so **no change here.** And today there is even more reason to deny the project with (i) more significant adverse impacts that cannot be mitigated; (ii) an approved Housing Element and more than double the number of housing units approved and/or in process than required under the Housing Element; and (iii) a project that is inconsistent with the City's General Plan and Zoning, both today and as it existed in 2013. The City's legal position is much stronger today than in 2013, and, therefore, **the reasoning by City staff on the HAA position appears faulty at best.**

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The City staff has also expressed concern over the potential financial impact to the City, as threatened by the developer's attorneys, if it denies the project. However, there are no financial penalties if the City has acted in good faith, which it clearly has done, and the City certainly intends to abide by any court decision. **Thus, there is no potential financial risk to the City if it denies the project, except the cost of a lawsuit, which is true for any application and was true in 2013 for this project.** Should the City staff and City government approve every project a developer brings before them due to threats or concern over the legal cost?

What makes the City staff's position even more tenuous is the fact such things as the HAA and potential financial risk to the City should not even be considered at this point in the application. **An independent decision on CEQA must, by law, be decided and certified before any consideration of the HAA and potential financial risk. And, the Planning Commission should make its decision based on the City's established and well-conceived planning goals; it is the purview of the City Council to consider financial and legal risks.**

Unfortunately, it seems you are not getting the full and independent information you need from City Staff to make an informed decision on this project. In order to do so, you should first require a Subsequent EIR, including a new traffic analysis done by an independent party, not one who has worked for the applicant, and further studies of wildfire risk and evacuation, air pollution, noise, wildlife and other biological impacts, and a number of other areas. If done properly, a Subsequent EIR, which is legally required to be circulated for comments and responses, should provide you with all the information you need to address the many questions and concerns that you and the community have, including the General Plan's written Emergency Preparedness policies. **Without this, you cannot make the necessary findings about this application. The City will meet most of its current RHNA goals without this project and the list of supposed significant benefits contained in Staff's draft Statement of Overriding Considerations do not even come close to offsetting the significant negative impacts and breaches of the City's well-established planning and health and safety policies. This is a discretionary use permit application and you do not need to approve it.**

Thank you for your consideration.

Colin Elliott

Attachment: 2013 Design Review Staff Report

City of Lafayette Staff Report

For: Design Review Commission

By: Greg Wolff, Senior Planner

Meeting Date: November 25, 2013

Subject: **L03-11 O'BRIEN LAND CO., LLC (APPLICANT), AMD FAMILY TRUST (OWNER), APO ZONING:** Request for a Land Use Permit, Hillside Development Permit, Design Review Permit, Grading Permit, and Tree Permit for the construction of 14 buildings (seven three-story and seven two-story) consisting of 315 apartments. The application also proposes to construct two additional buildings for a club house (13,300 sq.ft.) and a leasing office (950 sq.ft.) and 569 parking spaces. The residential building area is 332,395 sq.ft; the total project building area is 410,547 sq.ft. and would require removal of 92 trees and 500,000 cubic yards of earth movement. The property is located within the Hillside Overlay District at 3233 Deer Hill Road. APN 232-150-027 (The project is referred to as "The Terraces of Lafayette")

Statutory Deadline: February 8, 2014 for the Planning Commission to action on the application

PURPOSE & SCOPE

The subject application is before the Design Review Commission (DRC) as a referral body. The Planning Commission will act on the application and seeks comments and a recommendation from the Design Review Commission to inform its review and action.

BACKGROUND

On September 30, 2013 the Design Review Commission held its first public hearing on the subject application. The Terraces of Lafayette project was introduced to the Commission via the staff report, attached exhibits, and the applicant's presentation at the meeting. The Commission also had the opportunity to receive public comments and request any additional information or clarification from the applicant and staff. The Commission posed several questions to the applicant, including how the proposed design was arrived at and how it responds to the opportunities and constraints of the lot. The Commission provided initial comments and asked the applicant to bring back alternative designs. The applicant indicated a desire to work with the Commission to improve the Project and agreed to return to the Commission with alternatives.

On October 28, 2013, the Design Review Commission held a second public hearing to consider the project. In response to the Commission's request for alternatives, the applicant provided a "Concept Site Plan" dated October 15, 2013 showing 208-units, along with four site sections. The Commission found that the 208-unit concept plan showed multiple improvements over the 315-unit Project plan, and that significant additional information would be necessary to fully evaluate the plan. The Commission further found that, while both plans met the setbacks, height limits and density set forth in the zoning and General Plan, both plans were inconsistent with multiple aspects of the General Plan

and zoning. The Commission found that the applicant had not demonstrated that either plan met with the findings required for the requested permits. At the conclusion of the meeting, the Commission continued the matter to November 25, 2013 and directed staff to prepare a resolution recommending denial of the project because the project does not meet the findings required to approve the permits.

NO NEW SUBMITTALS

The Design Review Commission did not request any additional information or design work at the October 28, 2013 meeting. Therefore, the applicant has not submitted any new materials for the Design Review Commission to consider.

STAFF RECOMMENDATION

Staff recommends that the Design Review Commission adopt DRC Resolution #2013-17 recommending denial to the Planning Commission because the DRC finds the project does not meet the findings required to approve the requested permits.

ATTACHMENTS

- Exhibit 1. Design Review Commission Resolution 2013-17 [DRAFT]
General Plan Land Use Consistency Analysis dated 10/28/2013 (exhibit to the resolution)
- Exhibit 2. Design Review Commission Meeting Minutes from October 28, 2013 [DRAFT]
- Exhibit 3. Public Comments

Design Review Commission Resolution 2013-17

A RESOLUTION OF THE DESIGN REVIEW COMMISSION OF THE CITY OF LAFAYETTE RECOMMENDING TO THE PLANNING COMMISSION DENIAL OF: L03-11 O'BRIEN LAND CO., LLC (APPLICANT), AND FAMILY TRUST (OWNER), APO ZONING: Request for a Land Use Permit, Hillside Development Permit, Design Review Permit, Grading Permit, and Tree Permit for the construction of 14 buildings (seven three-story and seven two-story) consisting of 315 apartments. The application also proposes to construct two additional buildings for a club house (13,300 sq.ft.) and a leasing office (950 sq.ft.) and 569 parking spaces. The residential building area is 332,395 sq.ft; the total Project building area is 410,547 sq.ft. and would require removal of 92 trees and 500,000 cubic yards of earth movement. The property is located within the Hillside Overlay District at 3233 Deer Hill Road. APN 232-150-027 (The Project is referred to as "The Terraces of Lafayette")

WHEREAS, on March 21, 2011, the City of Lafayette ("City") received an application for The Terraces of Lafayette Project ("Project"), a proposed 315-unit multifamily, moderate-income apartment project at the southwest corner of Pleasant Hill Road and Deer Hill Road; and

WHEREAS, the Project application included requests for a Land Use Permit (L03-11), Hillside Development Permit and Class I Ridgeline Exception (HDP06-11), Design Review (DR03-11), Grading Permit (GR04-11), and Tree Permit (TP07-11); and

WHEREAS, on April 19, 2011, the City determined the application to be incomplete; and

WHEREAS, on May 25, 2011, after reviewing supplemental material provided by the applicant, the City determined the application to be incomplete; and

WHEREAS, on July 5, 2011, after reviewing additional supplemental material provided by the applicant, the City deemed the Project application to be complete; and

WHEREAS, on July 22, 2011, the City completed an Environmental Checklist / Initial Study, and, making all three Mandatory Findings of Significance, determined that an Environmental Impact Report ("EIR") was required and subsequently entered into an agreement for professional services with The Planning Center / DC&E to complete the EIR for the Project; and

WHEREAS, on May 8, 2012, the Draft EIR was released for public review, and the Notice of Completion of a Draft EIR was filed with the State Office of Planning and Research Clearinghouse; and

WHEREAS, the Final EIR, including the Responses to Comments, was released on November 19, 2012; and

WHEREAS, on January 7, 2013 and March 4, 2013, the Planning Commission held public hearings, at which all persons wishing to testify were heard, and on March 4, 2013 the Planning Commission adopted a resolution (Resolution #2013-01) certifying the Final EIR for the Project. As the Planning Commission had not yet considered the requested entitlements of the Project, its decision and the resolution were limited to certification of the EIR; and

WHEREAS, on March 18, 2013, within the timeframe for appeal prescribed by §6-226 LMC, the applicant appealed the Planning Commission's decision certifying the Final EIR to the City Council; and

WHEREAS, on April 29, June 24 and August 12, 2013, the City Council held public hearings to consider the appeal and certification of the Final EIR, at which all persons wishing to testify were heard. On August 12, 2013 the City Council adopted Resolution #2013-18 affirming the decision of the Planning Commission certifying the Final Environmental Impact Report for the Terraces of Lafayette Project; and

WHEREAS, on September 30, 2013, the Design Review Commission held a public hearing to consider the merits of the Project, at which all persons wishing to testify were heard. The Design Review Commission posed several questions to the applicant, including how the proposed Project design was arrived at and how it responds to the opportunities and constraints of the lot. The Commission provided initial comments and asked the applicant to bring back alternatives to the proposed Project design. The applicant indicated a desire to work with the Commission to improve the Project and agreed to bring back alternative designs.

WHEREAS, on October 28, 2013, the Design Review Commission held a second public hearing to consider the Project, at which all persons wishing to testify were heard. In response to the Commission's prior request for alternatives to the proposed design, the applicant provided a "Concept Site Plan" dated October 15, 2013 showing 208-units, along with four site sections. The Commission found that the 208-unit concept plan showed multiple improvements over the 315-unit Project plan, and that significant additional information would be necessary to fully evaluate the plan. The Commission further found that, while both plans met the setbacks, height limits and density set forth in the zoning and General Plan, both plans were inconsistent with multiple aspects of the General Plan and zoning. The Commission found that the applicant had not demonstrated that either plan met with the findings required for the requested entitlement applications of Land Use Permit, Hillside Development Permit, Design Review, Grading Permit and Tree Permit. At the conclusion of the meeting, the Commission continued the matter to November 25, 2013 and directed staff to prepare a resolution recommending denial of the Project design because the Commission could not make the required findings.

WHEREAS, on November 25, 2013, the Design Review Commission held a third public hearing to consider the Project, at which all persons wishing to testify were heard, and the Commission considered a draft of this resolution. No additional plans, design revisions or other materials were submitted by the applicant for consideration by the Commission in advance of the meeting.

WHEREAS, each Design Review Commissioner has reviewed the materials submitted by the applicant including, but not limited to, the Project plans dated May 6, 2011, subsequent revisions and new plans, the May 6, 2011 Visual Analysis by LCA Architects, and pertinent sections of the Project EIR.

WHEREAS, at the request of the applicant, each Design Review Commissioner has independently visited the subject property and viewed the property from off-site, including locations on the City's adopted Viewing Evaluation Map, from which views will be considered.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. The required findings for Land Use Permit, Hillside Development Permit, Design Review, Grading Permit and Tree Permit have been evaluated by the Design Review Commission as follows:

§6-215 Findings Required For a Land Use Permit.

A land use permit may be granted only when the proposed land use:

1. Is not detrimental to the health, safety, and general welfare of the city;

The proposed Project is not in the best interest of the public health, safety and general welfare. The EIR finds that the Project will result in 13 significant and unavoidable environmental impacts in the areas of aesthetics, air quality, biological resources, land use, and traffic. The Project does not comply with goals and policies of the General Plan, as articulated in Exhibit 1. General Plan Consistency Analysis attached hereto and incorporated herein by reference, as well as findings for the required permits, as articulated herein.

2. Will not adversely affect the orderly development of property within the city;

The property is separated from other properties by public right of way and travel lanes for Deer Hill Road, Pleasant Hill Road and State Route 24. The proposed land use and circulation would be internal to the site, with no other properties relying on access or other aspects of the subject parcel. Because of this separation and the proposed design and operation, the Project would not adversely affect the orderly development of the other parcels in the APO zoning district or elsewhere in the city.

3. Will not adversely affect the preservation of property values and the protection of the tax base within the city;

The proposed Project would increase the property value and tax base for the subject parcel. The effect that the Project would have on the value of other properties in the city is uncertain. Some have argued that property values in surrounding neighborhoods would decrease because of the additional traffic and congestion that the Project would bring to the area, particularly the intersection of Deer Hill Road and Pleasant Hill Road. Others have stated that property values would diminish because the Project would add students to the schools which currently do not receive adequate funding from the state to cover the cost of educating each student. The increased student load would exacerbate this ongoing operational funding shortfall. At this time, there is no empirical evidence in the record to substantiate claims of decreased property values.

4. Is consistent with the general plan and each element of it and will not adversely affect the policies and goals set forth in the general plan;

The Project is not consistent with many goals and policies of the General Plan. Please see Exhibit 1. General Plan Consistency Analysis for additional detail.

5. Will not create a nuisance or enforcement problem within the neighborhood;

Studies have shown that owner occupied properties tend to have a higher degree of maintenance than rental properties. As well, affordable housing Projects in some communities are not well maintained. There is no evidence in the record to suggest that either of these issues is a factor for this Project in this community, or that the Project would create a nuisance or enforcement problem. The Project would be privately developed and maintained, and is

located in a community with above average household incomes. The Project would be affordable to moderate income households, which means that a family of four could earn an annual income of up to \$112,200 based on 2013 income levels published by the California Department of Housing and Community Development.

6. Will not encourage marginal development within the neighborhood; and

Multiple-family residential housing is a use that requires a Land Use Permit in the APO zoning district. The Project is also subject to the findings required for Hillside Development Permit, Design Review, Grading Permit and Tree Permit. Land on the north of State Route 24 is zoned almost exclusively for single-family residential development, and thus has different zoning standards and permitted land uses than the subject property. The Project is also separated from these residential neighborhoods by public right-of-way on all sides. The Project will not encourage marginal development within those or other neighborhoods.

7. Is consistent with the purpose section of the zoning district in which it is located.

Section 6-1002 LMC "Purpose" reads as follows:

"The purpose of this [district] is to allow administrative and professional offices where such uses need not be located in the central area in order to best function to the benefit of the community, but where carefully conceived plans are necessary to provide comprehensive development that will assure safe, rational and functional internal and external circulation; design and landscaping compatible with unique, highly visible settings; the optimum in quality development; and development consistent with the goals, policies and other provisions of the general plan. (Ord. 170 § 2 (part), 1976) "

The Project would not provide administrative or professional offices, but would provide housing, which is permitted with the benefit of a Land Use Permit granted by the Planning Commission. The review of the Project by the Circulation Commission, Design Review Commission and Planning Commission will evaluate the safe, rational and functional circulation, as well as the design in light of the highly visible setting, and the quality of the development. The Project does not comply with many goals and policies of the General Plan, as articulated in Exhibit 1. General Plan Consistency Analysis.

6-2067 Finding Required for Grant of Exception Permitting Development on an Existing Lot of Record Within a Restricted Ridgeline Area.

The planning commission may grant an exception permitting development on an existing lot of record within a restricted ridgeline area if it finds that the site plan and design are such that the proposed development would strictly satisfy the findings set forth in Section 6-2071.

Please see below.

§6-2071 Findings Required for a Hillside Development Permit on an Existing Lot of Record.

The hearing authority may approve an application for a hillside development permit on an existing lot of record in the hillside overlay district only after making the following findings:

- (a) The development is consistent with the applicable goals and policies of the general plan and is in conformance with applicable zoning regulations;

The Project does not comply with goals and policies of the General Plan, as articulated in Exhibit 1. General Plan Consistency Analysis.

- (b) The development will preserve open space and physical features, including rock outcroppings and other prominent geological features, streams, streambeds, ponds, drainage swales, native vegetation, native riparian vegetation, animal habitats and other natural features;

While the site housed quarry operations in the past, it has naturalized over the intervening decades and does not appear as a quarry, but rather as grassy slopes and terraces ascending from the freeway to Deer Hill Road. The Project would re-grade the site, including 500,000 cubic yards of earth movement, with cut-and-fill up to 40-ft. deep. The Project would remove 92 of the existing 117 trees on the site, and would also remove existing areas of native wild ryegrass. The Project does not preserve the existing open space and physical features of the site.

- (c) Structures in the hillside overlay district will, to the extent feasible, be located away from prominent locations such as ridgelines, hilltops, knolls and open slopes;

Structures are not located away from prominent locations such as ridgelines, hilltops, knolls and open slopes. The Project proposes to place structures at the highest portion of the site, well within the Class I Ridgeline setback. The Project would re-grade the site, expanding the total flat area by roughly one third, and would place structures at the top of the fill slopes on the newly created terraces.

- (d) The development, including site design and the location and massing of all structures and improvements will, to the extent feasible:

- (1) Minimize the loss of privacy to surrounding residents and not unduly impact, restrict or block significant views;

The Project is a significant distance from the nearest residences, which are generally screened by existing topography. Because of this, the Project would neither have significant privacy impacts, nor impact significant views enjoyed by surrounding residents.

- (2) Not have a significant visual impact when viewed from lower elevations from public places, using the viewing evaluation map as a guide to establish locations from which views are considered; and

The Project would result in a significant and unavoidable visual impact when viewed from lower elevations from public places, as analyzed in Chapter 4.1 Aesthetics and Visual Resources of the Environmental Impact Report. The Project would block views of ridgelines, would develop a grassy, largely undeveloped site considered by many to be a visual resource, and would block views from State Highway 24, a State-designated scenic highway.

- (3) Not interfere with a ridgeline trail corridor or compromise the open space or scenic character of the corridor.

There is not a ridgeline trail corridor on the Project site.

- (d) Within 100 feet of a restricted ridgeline area, or when an exception to a ridgeline setback has been granted, the development will result in each structure being substantially concealed by terrain or vegetation when viewed from lower elevations from public places, using the viewing evaluation map as a guide to establish locations from which views are considered;

The proposed Project would place structures within 100-ft. of the Class I Ridgeline setback and within the setback itself. The development will not result in each structure being substantially concealed by terrain or vegetation when viewed from lower elevations from public places. No terrain features, like berms, are proposed to conceal the development. Buildings are placed at the top-of-slope atop newly re-graded terraces. Proposed landscaping includes significant numbers of native evergreen trees. However, this site is a south facing open slope, which generally does not have significant vegetation beyond grasses; trees generally occur in swales and north facing slopes where water is more prevalent. Considering the proposed grading, siting and building heights, the proposed trees would not substantially conceal the structures.

- (e) Development grading will be minimized to limit scarring and cutting of hillsides especially for long roads or driveways, preserve existing geologic features, topographic conditions and existing vegetation, reduce short and long-term erosion, slides and flooding, and abate visual impacts;

The existing topography of the site will be significantly altered by the proposed grading, with 500,000 cubic yards of earth movement, and cut-and-fill up to 40-ft. deep. Development grading is not minimized. Existing topographic features and vegetation are not preserved.

- (f) The development provides adequate emergency vehicle access, including turn-around space, to the building site and surrounding on-site undeveloped or isolated areas;

The Project plans submitted to the city and analyzed in the EIR do not provide adequate emergency vehicle access because of inadequate turning radii internal to the site. The developer has indicated that these radii have been revised to meet Fire Protection District standards. The developer has yet to submit documentation from the Fire Protection District that the revised plans meet the District's standards.

- (g) Each structure and proposed landscaping complies with the city's residential design guidelines;

Please see the findings for Design Review under Section 6-275 below.

- (h) The new or replacement vegetation for the development is native to the surrounding area in areas abutting open space and natural areas, such as oak woodland, chaparral, grassland and riparian areas, and conforms to the policies of Section 6-2051; and

The Project proposes a native plant palette for new and replacement vegetation. Along with native species, naturalistic groupings and planting patterns would further the goal that the planting should be a seamless blending with the natural vegetation.

- (j) The development will not create a nuisance, hazard or enforcement problem within the neighborhood or the city, nor require the city to provide an unusual or disproportionate level of public services.

Please see response to Section 6-215 (5) above. There is no evidence in the record to indicate that the Project would create a nuisance, hazard or enforcement problem within the neighborhood or the city, nor require the city to provide an unusual or disproportionate level of public services.

§6-2070 Grant of Exception Permitting Development Within the 15-degree Declination.

The planning commission may grant an exception to the restriction of development within the 15-degree declination line of a class I or class II ridge if it makes the findings in A or B or C below:

(a) The topography or existing vegetation are such that

- (1) The building will not have a substantial visual impact and will not silhouette above the ridge when viewed from lower elevations in the city, using the Viewing Evaluation Map as a guide for areas from which views are considered; and

The proposed Project would place buildings within the Class I Ridgeline setback and which would encroach into the 15-degree declination of the ridge. The Project would have a substantial visual impact. Buildings would silhouette above the terminus of the ridge, as shown on the Hillside Overlay District and Lafayette Area Ridge Map, when viewed from lower elevations in the city, using the Viewing Evaluation Map as a guide; and

- (2) The granting of an exception will not interfere with an existing or proposed ridge trail or compromise its open space and scenic character.

There is no existing or proposed ridge trail on the subject parcel.

(b) For existing lots of record where it is not possible to substantially conceal the building in conformance with subsection (a) above, the Planning Commission may grant an exception if it finds that:

- (1) The height, size, siting, design and landscaping are such that the building is concealed to the maximum extent feasible and the structure will not silhouette above the ridge when viewed from lower elevations in the city, using the Viewing Evaluation Map as a guide for areas from which views are considered; and

The height, size, siting, design and landscaping of the proposed project are not such that the buildings would be concealed to the maximum extent feasible. Three-story buildings are sited on the most visible portions of the site, atop newly graded terraces. Their proposed size and design do not lend toward concealment and blending into the surroundings. Buildings would silhouette above the terminus of the ridge, when viewed from lower elevations, using the Viewing Evaluation Map as a guide.

- (2) Grant of an exception will not interfere with an existing or proposed ridge trail or compromise its open space and scenic character.

There is no existing or proposed ridge trail on the subject parcel.

(c) For subdivision, when the prohibition would deprive the property of all economically viable use and the subdivision meets the standards in section 6-2071 to the maximum extent feasible. In granting an exception under this subsection the density:

- (1) Shall not exceed the density permitted by the slope density formula or the underlying zoning district, whichever is less; and
- (2) Shall not exceed that necessary to avoid an unconstitutional taking of property.

The Project does not propose subdivision of the property, thus this finding is not applicable.

§6-275 Findings Required For Design Review

1. Every provision of this chapter is complied with;

The applicant has complied with the application provisions of Chapter 6-2.

2. The approval of the plan is in the best interest of the public health, safety and general welfare;

The proposed Project is not in the best interest of the public health, safety and general welfare. The EIR finds that the Project will result in 13 significant and unavoidable environmental impacts in the areas of aesthetics, air quality, biological resources, land use, and traffic. The Project does not comply with goals and policies of the General Plan, as articulated in Exhibit 1. General Plan Consistency Analysis, as well as findings for the required permits, as articulated herein.

3. General site considerations, including site layout, open space and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, public safety and similar elements have been designed to provide a desirable environment for the development;

The site design of the Project is not sensitive to the existing conditions of the site or the context of the surroundings. The Project would impose flatland site planning and architecture onto a terraced hillside site. The proposed grading would dramatically change the topography of the site. While some grading is required for stabilization, the proposed grades are not a function of this remedial grading, but rather a function of the site design and architecture. Three story buildings are permitted under the height limits of the APO zone, however their placement at the top-of-slope at the perimeter of the site maximizes their apparent bulk and mass, and off-site visibility.

4. General architectural considerations, including the character, scale and quality of the design, the architectural relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and signing and similar elements have been incorporated in order to ensure the compatibility of this development with its design concept and the character of adjacent buildings; and

Three-story buildings exist elsewhere in Lafayette, but not in a similar the context of a highly visible hillside lot. The proposed architecture does not have a precedent in the community and is inconsistent with the semi-rural character called for in the General Plan. The building designs are repetitive and lack differentiation in response to site conditions. The Project site is highly visible and a gateway to the community, which warrants an overall design that is responsive to the site opportunities and constraints and which is consistent the community's aesthetic.

5. General landscape considerations, including the location, type, size, color, texture and coverage of plant materials, provisions for irrigation, maintenance and protection of landscaped areas and similar elements have been considered to ensure visual relief, to complement buildings and structures and to provide an attractive environment for the enjoyment of the public.

The character of the site, when viewed from below, is an open sloping grassland with spotted groves of trees. This character existed prior to the site being quarried, and the slopes have reverted to this appearance in the years since quarry operations ceased. This open sloping grassland character extends to the northwest along Lafayette Ridge into Briones Regional Park. Significant groves of trees are generally found in draws, drainages and creek areas

where water is more plentiful, not on open grassy hillsides. The Project proposes to plant over 700 new trees throughout the site to provide visual screening of the buildings. This would significantly change the character of this highly visible site and would be inconsistent with its current character and that of the surrounding properties.

§3-701 Findings Required For Approval Of Grading Exceeding 200 Cubic Yards

1. The grading will not endanger the stability of the site or adjacent property or pose a significant ground movement hazard to an adjacent property. The decision making authority may require the Project geotechnical engineer to certify the suitability of the Project supported by appropriate technical studies, including subsurface investigation;

The soil conditions on the site require remediation in order for development to occur. ENGEO has conducted reconnaissance, conducted borings, dug test pits, and prepared reports and plans outlining the grading that would be required to support the proposed Project. If the grading were to be performed to ENGEO's recommendations and specifications, it would not endanger the stability of the site or adjacent property or pose a significant ground movement hazard to an adjacent property

2. The grading will not significantly increase erosion or flooding affecting the site or other property and will not cause impacts to riparian habitats, stream channel capacity or water quality that cannot be substantially mitigated;

The proposed grading is subject to the Contra Costa Clean Water Program's stormwater control provisions, which would require the project to mitigate any potential erosion or flooding on the subject parcel. The Project EIR analyzed potential impacts to riparian habitats, stream channel capacity and water quality and concluded that such impacts can be mitigated to a less-than-significant level.

3. The grading, when completed, will result in a building site that is visually compatible with the surrounding land;

The Project site is the southern terminus of Lafayette Ridge which originates in Briones Regional Park to the northwest. The site appears as grassy slopes and terraces ascending from the freeway to Deer Hill Road, despite its use as a quarry for a period of time decades ago. The Project would re-grade the site with 500,000 cubic yards of earth movement and cut-and-fill up to 40-ft. deep. The grading would yield roughly one third more flat area on the site, created by steep engineered fill slopes, both of which are visually inconsistent with the surrounding natural undulating hills and valleys.

4. The grading is sensitive to the existing landforms, topography and natural features on the site; and

The design of the Project will significantly change the existing landforms, topography and natural features of the site. The proposed grading would eliminate the existing terraces to consolidate and expand the flat area by roughly one third. The cut slopes and fill slopes would appear severely engineered and not in character with the surrounding natural hillsides, or the site as it exists today.

5. The design of the Project preserves existing trees on the site and trees on adjoining property to the extent possible.

Significant grading is required to remediate the site and stabilize it for the proposed development. However, the proposed design would require removal of 92 of the 117 trees, as

well as native grassland that warrant protection. The extent of the proposed grading and resultant tree removal are a function of the Project design, not the remedial grading.

§6-1706 & 6-1707 Protected Tree Removal Associated With a Development Application

In acting on the application, the manager, or committee, commission or city council, shall consider the following factors:

1. Health, condition and form of the tree;
2. Number, size and location of other trees to remain in the area;
3. Relationship of the property to riparian corridors, a scenic or biological resource area or a restricted ridgeline area;
4. Role of the tree in a tree grove or woodland habitat;
5. Value of the tree to the neighborhood in terms of visual effect, wind screening and privacy;
6. Damage caused by the tree to utilities, streets, sidewalks or existing private structures or improvements;
7. Role of the tree in mitigating drainage, erosion or geologic stability impacts; and
8. Health and condition of the area within the protected perimeter.
9. Necessity for the pruning or removal in order to construct a required improvement on public property or within a public right-of-way or to construct an improvement that allows reasonable economic enjoyment of private property;
10. Extent to which a proposed improvement may be modified to preserve and maintain a protected tree; and
11. Extent to which a proposed change in the existing grade within the protected perimeter may be modified to preserve and maintain a protected tree.

The Project would remove 92 of the 117 trees on the site. The proposal involves significant re-grading of the site, eliminating the existing terraces to expand the flat areas by roughly one third to accommodate flatland site planning and architecture. In so doing, the Project would eliminate scores of vital protected trees, many of which could otherwise have been saved with a design that is more sensitive to the topography and existing natural features of the site.

Section 2. The Design Review Commission finds that the proposed Project does not meet with the required finding necessary to approve the Project and hereby recommends to the Planning Commission denial of the subject applications for The Terraces of Lafayette for Land Use Permit (L03-11), Hillside Development Permit and Class I Ridgeline Exception (HDP06-11), Design Review (DR03-11), Grading Permit (GR04-11), and Tree Permit (TP07-11).

Section 3. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the Design Review Commission made its decision is as follows: Secretary to the Design Review Commission, City of Lafayette, 3675 Mount Diablo Boulevard, Suite 210, Lafayette, California 94549.

PASSED AND ADOPTED by the Design Review Commission of the City of Lafayette at a public meeting held on November 25, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Niroop K. Srivatsa, Director
Planning & Building Department

Bob Cleaver, Acting Chair
Design Review Commission

ATTACHED

Exhibit 1. General Plan Consistency Analysis (10/28/2013)

DESIGN REVIEW COMMISSION RESOLUTION 2013-17

EXHIBIT 1. GENERAL PLAN CONSISTENCY ANALYSIS

Prepared by Planning Staff • 10/28/2013

APPLICABLE GOALS, POLICIES AND PROGRAMS FROM the LAND USE CHAPTER		Staff Comments
Goal LU-1	Protect the character and patterns of development of residential neighborhoods.	Not Consistent. The character and pattern of the proposed development is unprecedented in Lafayette and not compatible with the residential neighborhoods in the vicinity of the project, which are characterized by one-and-two story residences fronting on a network of residential streets.
Policy LU-1.1	<u>Scale</u> : Development shall be compatible with the scale and pattern of existing neighborhoods.	Not Consistent. The scale and pattern of the proposed development is unprecedented in Lafayette and not compatible with the residential neighborhoods in the vicinity of the project, which are characterized by one-and-two story residences fronting on a network of residential streets.
Policy LU-1.2	<u>Design</u> : Development should respect the architectural character of the neighborhood.	Not Consistent. The neighborhoods in the vicinity of the project contain a variety of architectural styles, predominantly post war ranch homes and updated versions of classic architectural styles, such as Craftsman and Mediterranean. The proposed architectural style is not in keeping with any of the architectural styles seen in the neighborhoods in the vicinity of the project.
Goal LU-2	<p>Ensure that development respects the natural environment of Lafayette. Preserve the scenic quality of ridgelines, hills, creek areas, and trees.</p> <p><i>Appropriate site planning provides for the preservation of visual and functional open space in conjunction with overall site development. Clustering buildings on a site allows development to occur on the most</i></p>	Not Consistent. The proposed project does not respect the natural environment of the site and does not preserve the scenic quality of the ridgeline, hillsides, creek areas, and trees on the site. While significant grading is required to stabilize the site for development, the proposed project would go far beyond that and significantly alter the existing contours. The open slopes would be re-graded to maximum steepness and apartment buildings would be located on top of the hillside, blocking views of the ridgeline beyond. The project would fill in nearly 300-ft. of streambed and would remove 92 of the 117 trees existing on the site.

	<p><i>buildable portions of lots, minimizing grading for building sites and roads. Density remains the same as could be feasibly developed under the zoning regulations which apply to the property at the time an application is made.</i></p> <p><i>Refer to the Open Space and Conservation Chapter for additional goals, policies and programs to preserve ridgelines, hills, creek areas and trees.</i></p>	<p>The proposed site planning does not provide for the preservation of visual and functional open space. Instead, the site is re-graded into larger terraced areas, different from those that exist today, and filled with buildings, driveways and parking lots. The buildings are not clustered; rather they are spread across the site, avoiding only the engineered fill slopes necessary to stabilize the site for development. While grading is required for site stability reasons, grading for building sites and roads is not minimized.</p>
Policy LU-2.1	<p><u>Density of Hillside Development:</u> Land use densities should not adversely affect the significant natural features of hill areas.</p>	<p>Not Consistent. The proposed residential density of 14 du/acre would not exceed the maximum of 35 du/acre allowed under the existing General Plan land use designation and zoning; however, construction of the proposed project would result in substantial development on, and in place of the existing hillsides on the site. A lesser density and clustering of the structures could avoid adversely affecting the natural features of the site.</p>
Policy LU-2.2	<p><u>Cluster Development:</u> Preserve important visual and functional open space by requiring development to be clustered on the most buildable portions of lots, minimizing grading for building sites and roads.</p>	<p>Not Consistent. The Lafayette Municipal Code defines clustering as the grouping of residential buildings on a parcel so as to create substantial contiguous open space that is separate from development on the parcel (Section 6-2003). The site plan shows the 14 proposed buildings are generally spread throughout the project site and after construction, substantial contiguous open space would not remain. The project does not minimize grading for building sites and roads. While significant remedial grading is required to stabilize the site for development, the proposed grading goes far beyond the minimum necessary and expands the flat areas of the site by some 30%.</p>
Policy LU-2.3	<p><u>Preservation of Views:</u> Structures in the hillside overlay area shall be sited and designed to be substantially concealed when viewed from below from publicly owned property. The hillsides and ridgelines should appear essentially undeveloped, to the maximum extent feasible.</p>	<p>Not Consistent. The proposed project does not site and design structures to be substantially concealed when viewed from below from publicly owned property. Instead, the project sites three story buildings at the top-of-slope – the most visible portion of the site. Providing the maximum setback possible from the top-of-slope, and utilizing two-story buildings, would be more consistent with this policy. The proposed project does not attempt to site and design the proposed buildings so that the hillsides and ridgelines would appear</p>

		essentially undeveloped. Instead, the buildings are sited and designed without consideration of this policy, and landscaping is proposed to provide screening. The proposed landscaping is insufficient to meet the goal of substantial concealment.
Goal LU-3:	Encourage well-designed residential development.	Not Consistent. The project fails to meet the required findings for design review set forth in the Section 6-275 of the Lafayette Municipal Code.
Policy LU-3.1	<u>Design:</u> Development should be characterized by good functional design.	Not Consistent. The project fails to meet the required findings for design review set forth in the Section 6-275 of the Lafayette Municipal Code.
Goal LU-4:	Ensure that the semi-rural character of the community is protected by appropriate infrastructure design.	Not Consistent. The infrastructure necessary to support the proposed 14 apartment buildings, including but not limited to driveways and parking lots, is inconsistent with the policies for hillside development, protection of natural features, and having hillsides and ridgelines appear as undeveloped as feasible. The proposed project would significantly re-grade the site, driveways and parking lots would traverse the hillsides and ridgeline, would result in the removal of significant protected trees and grassland, and would not preserve existing open space on the property. This is inconsistent with protecting the semi-rural character of the community.
Policy LU-4.1	<u>Infrastructure Design:</u> Public and private infrastructure should reinforce the semi-rural qualities of residential neighborhoods.	Not Consistent. Please see response to LU-4 above. Additionally, as discussed in Chapter 4.1 of the EIR, the introduction of new light and glare sources on the essentially unlit project site would result in significant lighting impacts and the project would not be consistent with Policy LU-4.1. Please see Impact AES-2 in the project EIR for detailed discussion of impacts associated with proposed lighting.
Goal LU-5:	<p>Preserve and enhance the open space, scenic viewsheds, and semi-rural qualities around the residential entryways to Lafayette.</p> <p><i>Lafayette's Residential Entryways should be distinctive and attractive, establish a positive image of the community and reflect the semi-rural residential character of the community. These Residential Entryways include: Acalanes</i></p>	Not Consistent. While the site once housed quarry activities, the existing site is characterized by undeveloped grassy hillsides with intermittent trees, consistent with views of the ridgeline visible beyond the property. The project would re-grade the site and build 14 two-and-three story apartment buildings in conflict with the open space, scenic viewsheds, and semi-rural qualities around this entryway to Lafayette. Please see responses to Goal LU-2 and LU-4, and Policies LU2.1, 2.2 and 2.3 above.

	<i>Road, Mt. Diablo Boulevard from Acalanes Road to Risa Road, El Nido Ranch Road, Glorietta Boulevard, Happy Valley Road, Moraga Road, Olympic Boulevard, Pleasant Hill Road, Reliez Valley Road, St. Mary's Road, and Taylor Boulevard. Refer to Map I-2.</i>	
Policy LU-5.1	<u>Residential Entryways</u> : Residential entryways to the City should be distinctive and attractive features of the City's landscape.	Not Consistent. Please see response to Goal LU-5 above.
<u>Program LU-5.1.2</u> :	<p>Prepare a specific plan for the following entryways and establish appropriate design guidelines: Acalanes Road, Mt. Diablo Boulevard from Acalanes Road to Risa Road, and Pleasant Hill Road. Consider preserving the northwest corner of Pleasant Hill Road and Highway 24 in as natural a state as possible. These plans should seek to:</p> <ol style="list-style-type: none"> 1) Incorporate design features that create a semi-rural atmosphere, 2) preserve prominent views by limiting the height of development, where necessary, 3) provide distinctive native landscaping, and 4) increase setbacks from the street. 	<p>Not Consistent. The proposed two-and-three story apartment buildings are not semi-rural in character or appearance.</p> <p>The project proposes three-story buildings at the most visible portion of the site, at the top-of-slope, blocking views of the ridge beyond.</p> <p>The project proposes planting significant numbers and extent of native plant species to screen the proposed development. This would significantly alter the existing appearance of the site, which is a south-facing grassy hillside, where stands of oaks are typically intermittent.</p> <p>The project meets the setbacks required in the APO zoning district.</p>
<u>Goal LU-13</u> :	Ensure that the Eastern Deer Hill Road area near the intersection of Pleasant Hill Road is developed, where development is appropriate, in a manner consistent with Lafayette's community identity.	<p>Not Consistent. While the site once housed quarry activities, the existing site is characterized by undeveloped grassy hillsides with intermittent trees, consistent with views of the ridgeline visible beyond the property. The project would re-grade the site and build 14 two-and-three story apartment buildings in conflict with the open space, scenic viewsheds, and semi-rural qualities around this entryway to Lafayette.</p> <p>The proposed two-and-three story apartment buildings are not semi-rural in</p>

	<p>their siting, character or appearance. Three-story buildings are proposed at the top-of-slope, which would block views of the ridge beyond.</p> <p>The project proposes planting significant numbers and extent of native plant species to screen the proposed development. This would significantly alter the existing appearance of the site, which is a south-facing grassy hillside, where stands of oaks are typically intermittent.</p> <p>The proposed project does not respect the natural environment of the site and does not preserve the scenic quality of the ridgeline, hillsides, creek areas, and trees on the site. While significant grading is required to stabilize the site for development, the proposed project would go far beyond that and significantly alter the existing contours. The open slopes would be re-graded to maximum steepness and apartment buildings would be located on top of the hillside, blocking views of the ridgeline beyond. The project would fill in nearly 300-ft. of streambed and would remove 92 of the 117 trees existing on the site.</p> <p>The proposed site planning does not provide for the preservation of visual and functional open space. Instead, the site is re-graded into larger terraced areas, different from those that exist today, and filled with buildings, driveways and parking lots. The buildings are not clustered; rather they are spread across the site, avoiding only the engineered fill slopes necessary to stabilize the site for development. While grading is required for site stability reasons, grading for building sites and roads is not minimized.</p> <p>The project does not preserve or protect the semi-rural character of the area or help communicate the image of Lafayette as a semi-rural community. For these reasons, the proposed project is inconsistent with Lafayette's community identity.</p>
<p>Policy LU-13.2 Consider options for development south of Deer Hill Road and north of Deer Hill Road where adjacent to Pleasant Hill Road.</p>	<p>Not Consistent. Please see response to Goal LU-13 above.</p>
<p><u>Program LU-13.2.2:</u> Prepare through a community planning process an Eastern Deer Hill Road Specific Plan that includes the following requirements:</p>	<p>Not Consistent. Please see response to Goal LU-13 above.</p>

<ul style="list-style-type: none"> a) Protect and enhance the rural character of the area north of Deer Hill Road where not adjacent to Pleasant Hill Road. b) Preserve prominent views. c) Include development standards that maintain the semi-rural character of the area and the community. d) Utilize the property south of Deer Hill Road to help communicate the image of Lafayette as a semi-rural community. <p><u>Remainder of Deer Hill Road Corridor (from Elizabeth Street west to Happy Valley Road)</u></p> <p><i>Due to the proximity to the Downtown and the BART station, this section of Deer Hill Road and the single-family neighborhood that lies north of Deer Hill Road are constantly faced with development pressures to utilize the infill areas more intensively than currently planned or zoned. It is specific intent of the community to restrict commercial and multifamily uses to the south side of the freeway, which in this area is the terminus of the Downtown to the south, in order to protect the single-family residential neighborhoods that lie north of the freeway.</i></p>	
<p><u>Goal LU 14:</u> Protect the single-family residential neighborhoods north of Hwy 24 from commercial and multi-family development.</p>	<p>Consistent. North of State Highway 24, two single-family residential neighborhoods are located in proximity to the project site. Immediately to the east across Pleasant Hill Road, the closest residences are located approximately 150 feet from the eastern boundary of the project site. A residential neighborhood is also located to the west of the project site on the far side of Elizabeth Street; the nearest residence in this neighborhood is approximately 0.25 miles from the western boundary of the project site. Neither of these neighborhoods adjoins the project site. Pleasant Hill Road physically separates the project site from the neighborhood to the east, and undeveloped open space on the hillside to the north of Deer Hill Road acts as a buffer between the</p>

		project site and the neighborhood west of Elizabeth Street.
<u>Policy LU-20.1</u>	Traffic Service Standards: Consider the level of service (LOS) goals and standards set forth in the Circulation Chapter when evaluating development proposals.	Not Consistent. Chapter 4.13, Transportation and Traffic, of the EIR evaluates the proposed project against the LOS standards set forth by the City's General Plan. Impact TRAF-1 would be significant and unavoidable because no feasible mitigation measures are available to reduce this impact to a less-than significant level.
<u>Policy LU-20.4</u>	Fire: Review all development projects for their impacts on standards for fire service specified in the General Plan: fire stations three miles apart in urban areas, six miles apart in rural areas, with a five-minute response time. Require fair share payments and/or mitigation measures to ensure that these standards or their equivalent are maintained.	Consistent. As described in Chapter 4.12 of the EIR, the Contra Costa County Fire Prevention District would assess an impact fee of \$285 per dwelling unit on the Project and collection of this fee would be sufficient to accommodate new development without further compromising the delivery of fire services in the vicinity of the project site.
<u>Policy LU-20.12</u>	Growth Management Implementation: Review development projects for conformance with adopted performance standards and require mitigation measures where necessary to maintain adopted standards. Capital improvements shall be in place at the time of project implementation when necessary to maintain adopted performance standards.	Not Consistent. The project EIR identifies three significant an unavoidable transportation related impacts that would result from the project (LOS F at Deer Hill Rd. – Stanley Blvd./Pleasant Hill Rd., Northbound Pleasant Hill Road AM peak hour traffic would exceed the capacity of the left turn lane at Deer Hill Rd., and significant increase in the Delay Index for southbound traffic in the AM peak hour and northbound traffic in the PM peak hour).

