June 10, 2020

Mayor Mike Anderson (manderson@lovelafayette.org)
Council Member Susan Candell (scandell@lovelafayette.org) Council Member Steven Bliss (sbliss@lovelafayette.org)
Council Member Cameron Burks (cburks@lovelafayette.org) Council Member Teresa Gerringer (tgerringer@lovelafayette.org) c/o City Clerk Joanne Robbins, City Clerk
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Chair Kristina Sturm
Members of the Planning Commission
Planners: Greg Wolff (gwolff@lovelafayette.org); Nancy Tran (ntran@lovelafayette.org)
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549
planningcommission@lovelafayette.org

Re: Roadmap for Denial: A Summary of the Grounds for Denial of Application L03-11 Terraces of Lafayette (Deer Hill); Planning Commission Agenda June 15, 2020

Dear Mayor Anderson and Members of the City Council, Chair Sturm and Members of the Planning Commission:

It is the purpose of this correspondence to provide an 'executive summary' or roadmap, with citation to the supporting materials in the record, of the grounds on which the City should deny the pending Terraces application when considered by the Planning Commission on June 15.

1. FAILURE TO COMPLY WITH THE GENERAL PLAN AND ZONING.

A. Failure to Comply with 2015 General Plan and Zoning.

The application fails to comply with the General Plan designation for the property of Low Density Single Family Residential (SFR-LD) enacted August 10, 2015 by Resolution no. 2015-51 and Single Family residential District-65 (R-65) adopted July 23, 2018, and is deficient for failure to seek a General Plan amendment and zoning change.

Staff and the developer have submitted no legal authority for this failure to apply the General Plan and zoning. Save Lafayette is aware of only a superficial memo from the city attorney during the Measure L campaign vaguely referring to the 2014 process agreement with the developer, but no legal authority was provided. That agreement does not mention the General Plan, let alone recite it would be indefinitely preserved. Such an effect, even if it could be read into that agreement, would have been beyond the power of the city council under state law. Refer to the correspondence of Save Lafayette dated August 11, 2019 and attachments.

Save Lafayette recently requested that staff and the Planning Commission explain and cite legal authority for ignoring the General Plan and zoning at the May 18 hearing. The request was ignored.

A General Plan amendment is required to approve the project on the merits, but would be a legislative act subject to referendum (Gov. Code §65301.5). This position of the developer and staff is obviously designed to again avoid the people's right of referendum, notwithstanding the City's loss in the court case of *Save Lafayette v. City of Lafayette* (2018) 20 Cal.App.5th 657, 663 ["The City Improperly Interfered with the Referendum Process"].

A General Plan is the blueprint that guides and controls a city's land use decisions. It is adopted subject to detailed requirements of state law, Gov. Code §§65300 et seq. Staff has pointed to no exceptions in any of the controlling documents, including the California Planning and Zoning Law, applicable caselaw, or local ordinance, which authorizes disregard of the current General Plan. Accordingly, the application should be denied as inconsistent with the General Plan and zoning.

Supporting Materials: Save Lafayette correspondence dated August 11, 2019, repeatedly submitted thereafter including my letter of May 13, 2020.

B. Failure to Comply with Previous General Plan.

In addition, the project does not even comply with the policies, goals, and requirements of the previous superseded General Plan.

Supporting Materials: Refer to November 25, 2013 Staff Report to the Design Review Commission authored by Greg Wolff recommending denial of the 315 apartments project as inconsistent with 19 of 21 applicable goals, policies, and programs; Letter dated May 14, 2020 from Guy Atwood, Chair of the General Plan Advisory Committee that wrote the current General Plan, explaining inconsistencies of the project with the General Plan, including a General Plan goal calling for all multi-family development to be in the downtown.

2. THE ADDENDUM DOES NOT COMPLY WITH CEQA SECTION 21166 AND CEQA GUIDELINES 15162 AND 15164.

The 'Addendum' submitted in support of the application fails to comply with CEQA and cannot be approved. A subsequent EIR within the meaning of CEQA, Public Resource Code §21166 and CEQA Guideline 15162(a)(3), is required but has not been submitted. There are multiple unmitigated significant and unavoidable public health and safety impacts that have not been adequately addressed. It will be a violation of CEQA to approve the Addendum and proceed to determine the application on the merits.

The new information of substantial importance, not known at the time of the original EIR prepared prior to 2013, includes the enhanced wildfire danger, very high fire risk adopted for the area, the October 27, 2019 fire in the vicinity of the project that destroyed the Lafayette Tennis Club and adjacent hillsides and required aerial tankers and dozens of firefighters to extinguish, the Sonoma and Paradise fires that have added new understanding of wildfire risks to life and property, the PGE Public Safety Power Shutoff Policy of September, 2019, the biological impacts surveyed in 2020 by Dr. Smallwood not considered in 2013, additional tree destruction over the original project, impacts on Pleasant Hill Road and evacuation planning, air quality, traffic impacts including the report from Elite Transportation, and General Plan and Zoning inconsistency.

SB 330, Gov. Code §65589.5(e) and (o)(6), does not lessen the requirements of CEQA nor authorize in any manner any shortcuts in the CEQA process, including, but not limited to, any purported substitution of an 'Addendum' in derogation of Public Resource Code §21166 and CEQA Guideline 15162(a)(3).

The clear path for determination of the Terraces application is under CEQA, by finding the Addendum fails to comply with applicable law. The developer's assertion of the Housing Accountability Act, Gov. Code §65589.5 and purported penalties is not reached unless and until CEQA review of the project is completed and approved. CEQA precludes any finding that the Addendum complies with appliable requirements. This should be the determination of the Planning Commission and City Council.

Supporting Materials: Refer to the correspondence of Lozeau Drury LLP dated May 18, 2020 pp. 5-23 and documents referenced and attachments; Elite Transportation Report; correspondence sent April 2, May 17 and June 10, 2020.

3. ABSENCE OF GROUNDS FOR ADOPTION OF STATEMENT OF OVERRIDING CONSIDERATIONS.

In addition to the violation of CEQA by the inadequate and misdirected Addendum, staff has also failed to properly advise the City about the issue of the statement of overriding considerations under CEQA required to consider approval of the Terraces application. The staff report admits some significant and unavoidable public health and safety impacts, and there are many more unaddressed or inadequately addressed in the Addendum as addressed above and in the supporting materials.

There is *absolutely no legal requirement whatsoever* that the City adopt a statement of overriding considerations under CEQA, Pub. Resource Code §21081, CEQA Guidelines 15191-15193, necessary to move the application to approval. SB 330, Gov. Code §65589.5(e) and (o)(6), does not lessen the obligation to comply with CEQA nor require adoption of overriding considerations.

The City's Adopted Housing Element, 5th Cycle (2015-2023), was certified as being "in full compliance" with state law by the California Department of Housing and Community Development, by letter dated March 26, 2015. The City has adequate zoning and land available for compliance with all RHNA requirements. The project site has significant and unavoidable impacts on wildfire safety, evacuation, traffic, protected trees, air quality, the plans and goals of the General Plan and Hillside Development Ordinance, etc. There are multiple policy and legal reasons for denial of the statement under §21081 and CEQA Guidelines 15191-15193, which is purely a matter of local discretion. Issuance of a statement of overriding considerations will violate the General Plan and set a precedent that will seriously damage local land use control and the quality of life in Lafayette. It would be an unnecessary gift to the developer.

Supporting Materials: Refer to the correspondence of Lozeau Drury LLP dated May 18, 2020, pp. 8-9.

4. MISSTATEMENT OF RHNA REQUIREMENTS UNDER THE HOUSING ACCOUNTABILITY ACT IN THE STAFF REPORT AND EXISTING GROUND FOR DENIAL UNDER HAA §65589.5(d)(5).

At p. 7-8, the May 18, 2020 staff report presents a largely irrelevant review of Regional Housing Needs Allocation (RHNA) goals and delivered units. The Housing Accountability Act, Gov. Code §§65588 and 65589.5 are based on compliance of the city's "housing element," not these numbers at a particular point in time.

As addressed above, the California Department of Housing and Community Development certified that Lafayette's Housing Element was "in full compliance" with state law for the period 2015-2023. The Terraces application was resubmitted in 2018, and is subject to this certification.

The City's Housing Element therefore satisfies the standard for denial of a project under HAA §65589.5(d)(5) ["the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article [the HAA]].

The staff report completely fails to advise the Planning Commission and public that the Housing Element meets the requirements of state law and that HAA §65589.5(d)(5) provides for denial of the Terraces Application. Denial is appropriate also for policy reasons as multiple appropriate sites for multi-family housing are currently zoned in Lafayette that do not have the significant and unavoidable public health and safety impacts and other negative effects of this massive hillside development in a Low Density Single Family Residential Zone.

Supporting Materials: Letter dated March 26, 2015 from Department of Housing and Community Development.

5. DENIAL UNDER HAA §65589.5(d)(2) AND (d)(5).

As addressed above, the Terraces project should be denied on CEQA grounds, and the HAA should never be reached under the current application and the 'Addendum' which fails to meet CEQA requirements.

Apart from this, §65589.5(d)(2) of the HAA, as currently in effect for the period of January 1, 2020 to January 1, 2025, provides for denial because the project would have "specific, adverse impact upon the public health or safety." It is to be underscored that the standards for the public health and safety impacts of delay to emergency responders and wildfire risks are specifically documented in section 6 of the Lafayette General Plan, as well as other documentation. *This is another point the staff report dated May 18, 2020 fails to address.*

§65589.5(d)(5) provides for denial as the Lafayette Housing Element is in compliance with state law. As for staff's reference to the original submission of the apartments application, note that the operative date is 2018 when the developer resubmitted the application. Refer to explanation in the Save Lafayette correspondence dated August 11, 2019 of the rigid non-waivable time limits under the Permit Streamlining Act, under which the developer's Terraces application timed-out on January 27, 2014.

Supporting Materials: Save Lafayette correspondence dated August 11, 2019, Letter dated March 26, 2015 from Department of Housing and Community Development, correspondence of Lozeau Drury LLP dated May 18, 2020 pp. 23-25.

6. BROWN ACT VIOLATION.

The meeting format of the May 18, 2020, coupled with the closing of the public comment, violates the Brown Act.

Supporting Materials: Correspondence of Lozeau Drury LLP dated May 11, 2020 and June 10, 2020.

7. CONCLUSION.

Save Lafayette respectfully submits that the City is required to make a finding that the 'Addendum' does not comply with the requirements of CEQA, and the application denied on that basis.

In addition, under CEQA, there are no legal or policy reasons the City should adopt a statement of overriding considerations- this is a violation of sound public policy and would be an unwarranted gift to the developer that injures the public interest.

Lastly, although it should not be reached given the failure of the Addendum to comply with CEQA, the application, when and if ultimately considered, should be denied under §§65589.5(d)(2) and (d)(5) of the HAA.

Very truly yours,

Michael Griffiths

Save Lafayette