

COMMENT LETTER # ORG1



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June 28, 2012

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Please Reply To:
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Ann Merideth, City of Lafayette
3675 Mount Diablo Boulevard
Suite 210
Lafayette, CA 94549

*Re: Draft Environmental Impact Report dated May 8, 2012 (Terraces DEIR)
Comments from Dettmer/O'Brien (Apartment Project Landowner and Applicant)*

Dear Ms. Merideth:

Our offices, and the Law Office of David J. Bowie, continue to represent both Anna Maria Dettmer as Trustee of the AMD Family Trust (Dettmer) and the O'Brien Land Company, LLC (O'Brien). As you know, Dettmer is the owner of the property known by the City as APN 232-150-027 (Property or Project site), and O'Brien is the developer of the Property. Together, Dettmer and O'Brien have submitted the application documents (Application) for the 315-unit apartment project known as the Terraces of Lafayette Project (Apartment Project or Project).

The City has issued the Draft Environmental Impact Report (DEIR) for the Apartment Project, dated May 8, 2012. Please consider this cover letter, together with Attachment 1 (General Comments and Legal Analysis); Attachment 2 (Specific Comments) and all Appendices thereto as the Dettmer/O'Brien comments (Comments) on the DEIR.

Needless to say, Dettmer/O'Brien and each of their consultants are extremely disappointed in the DEIR. As shown in these Comments, the DEIR attempts to serve two conflicting purposes: (i) to review the impacts of the Apartment Project; and (ii) to address the City's long-proposed downzone of the Project site (City Downzoning). This "dual-purpose" approach results in a DEIR that is inadequate and illegal under CEQA and all relevant case law.

ORG1-1

ORG1-2

Respectfully, the DEIR reads -- not as an "informational document" as required by CEQA -- but rather as an advocacy document, addressing both the Apartment Project and the City Downzoning. Please note that the City as the lead agency is responsible for both the *adequacy* and the *objectivity* of the DEIR.¹

ORG1-3

These Comments will show, based on substantive evidence, that the DEIR violates the most basic requirements of CEQA. The DEIR: (i) fails to set forth a valid project description; (ii) fails to provide an accurate baseline of existing environmental conditions; (iii) misleads and confuses the public; (iv) fails to consider the Application data; (v) fails to identify mitigation measures and alternatives; and (vi) fails to address the Project's consistency with the City's General Plan and zoning designations.

ORG1-4

Finally, these Comments will show that the DEIR violates Dettmer/O'Brien's constitutional rights of due process, equal protection, and to a fair hearing.

Respectfully, whatever the intentions of the City and/or the DEIR consultants, the DEIR should have at minimum considered and addressed the Project Application, filed on March 21, 2011 and March 24, 2011, together with professional consultant data and letters from our office and David Bowie's office.

ORG1-5

Please reference specifically the Dettmer/O'Brien information regarding the City's interpretation and application of the Hillside Development Ordinance² and related Class I Ridgeline setback issues. The Application specifically sets forth Dettmer/O'Brien's position that the City's Hillside Development Ordinance does not apply to the Project, and that the Project site does not fall within a Ridgeline setback. Further, Dettmer/O'Brien's soils consultant Engeo, Incorporated submitted extensive reports, including "Existing Site Conditions"³ and "Geotechnical Evaluation of Ridge Ordinance."⁴ The Engeo reports confirm, professionally and precisely, that: (i) approximately over 85% of the Project site has been graded/disturbed by earlier quarrying and other development activity; and (ii) there is no Class I Ridgeline or Class I Ridgeline setback on the site. The Engeo reports back up their conclusions with precise measurements, and attach maps and figures illustrating the Engeo findings.

ORG1-6

In response, the DEIR merely states, multiple times: "*The City's [Ridge Map] shows a Class I Ridgeline located on the Project site,*" and "*[A] Class I Ridgeline setback is located on the Project site.*"⁵ As shown by the Project Application and the Engeo reports, the City's Ridge Map is in error and these statements are false. Nevertheless, on

¹ Guidelines §15084(e).

² Lafayette Municipal Code at Chapter 6.20, §6-2001 *et seq.*

³ *Existing Site Conditions*, Engeo, September 2, 2011.

⁴ *Geotechnical Evaluation of Ridge Ordinance*, Engeo, Revised August 20, 2011.

⁵ See DEIR at pp. 2-1; 3-5; 3-9; 3-13; 4.9-8.

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the basis of these unsupported statements and similar claims, the DEIR finds numerous significant and unavoidable impacts.

Given that nearly half of the "significant and unavoidable" impacts referenced in the DEIR concern hillside development issues, the DEIR's failure to consider and discuss the Application, the Engeo reports and related data on these critical threshold issues is incomprehensible. Simply stated, Dettmer/O'Brien and their Project consultants have never experienced a DEIR that so completely fails to address a project application and related consultant reports.

The City Council has directed that the Project site be downzoned to allow *one unit per five acres*, an open space/single-family residential designation (City Downzoning). The DEIR states that, following the preparation of the EIR, the City will immediately recommence such City Downzoning. Finally, the DEIR states that the City will utilize the DEIR to address both the Apartment Project and the City Downzoning.⁶

As stated throughout these Comments, these City pre-determinations violate Dettmer/O'Brien's constitutional rights, and are improper and invalid under CEQA and relevant case law. Respectfully, we can only state that this DEIR is the latest in a long line of efforts by the City to ensure that the Project site is downzoned.

We request that the City and DEIR consultant carefully review our Comments, and prepare a Final EIR (FEIR) that fairly, impartially and objectively evaluates the Apartment Project as required by CEQA.

Very truly yours,



Allan C. Moore

Enclosures

Attachment 1: General Comments and Legal Analysis

Attachment 2: Specific Comments

cc: Mala Subramanian *w/enc.*
City Attorney

David Bowie *w/enc.*
Clients *w/enc.*

⁶ DEIR at pp. 4.9-14, 4.9-15.

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ORG1-8



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TERRACES OF LAFAYETTE: DETTMER/O'BRIEN COMMENTS ON DEIR

ATTACHMENT 1: GENERAL COMMENTS AND LEGAL ANALYSIS

I. INTRODUCTION

This General Comments and Legal Analysis, together with the Specific Comments at Attachment 2 (Comments) will show, based on the administrative record, that the Draft Environmental Impact Report (DEIR) improperly proposes to serve two conflicting purposes: (i) to evaluate the Terraces of Lafayette Project (Apartment Project); and (ii) to justify the City-proposed downzone of the Project parcel known as APN 232-050-027 (Property, or Project site).

ORG1-9

These Comments will further show that the DEIR violates the requirements of the California Environmental Quality Act (CEQA). The DEIR: (i) fails to set forth a valid project description; (ii) fails to provide an accurate baseline of existing environmental conditions; (iii) misleads and confuses the public; (iv) fails to consider the Application data; (v) fails to identify mitigation measures and alternatives; and (vi) fails to address the Project's consistency with the City's General Plan and zoning designations.

ORG1-10

Finally, these Comments will show that the DEIR violates Dettmer/O'Brien's constitutional rights of due process, equal protection, and to a fair hearing.

II. PLANNING HISTORY

The DEIR fails to set forth an accurate history of the Project site and the Apartment Project. A history is set forth below, including the City's 10-year attempt to downzone the Project site. The history confirms the DEIR's stated intent to utilize the DEIR/EIR for both the review of the Apartment Project and to justify the City's downzone of the Project site.

ORG1-11

A. The City's 10-year Attempt to Downzone the Property

The background of the Apartment Project and the City's preparation of the DEIR can be summarized in the following statements.¹

1. For the past ten years, from 2002 through the present date, the City has made repeated attempts to downzone the Project site from the City's highest density General Plan and zoning designations (APO/35 dwelling units per acre) to a low density, primarily single-family designation (City Downzoning).

2. On April 26, 2010, the City Council directed Staff to prepare documents for the City Downzoning, and specifically to amend the General Plan and zoning designations of the Project site to LR- 5, an open space designation allowing only 1 dwelling unit per 5 acres. In making this determination, the City Council stated that the Project site can only support a maximum of 4 single-family residences.²

3. On March 21, 2011, Dettmer/O'Brien submitted a project application (Application) for the Apartment Project consistent with the City General Plan and zoning designations (APO). The Apartment Project is a moderate income housing project as defined under the Housing Accountability Act.³ The City formally determined the Application was complete by letter dated July 5, 2011.⁴

4. On May 9, 2011, in response to the Dettmer/O'Brien Application, the City Council directed Staff to amend the General Plan to prepare documentation for the currently-proposed City Downzoning.⁵ Dettmer/O'Brien submitted correspondence to the City confirming that the City's "dual processing" of the Apartment Project and the City Downzoning violates Dettmer/O'Brien's constitutional rights.⁶

ORG1-11
Cont.

¹ As set forth in the Specific Comments, the DEIR's section on "Planning Context" at pp. 4.9-13 *et seq.* is entirely inaccurate and misleading to the DEIR reader.

² See Minutes of City Council hearing April 26, 2010.

³ Cal. Gov. Code §65589.5, *et seq.*

⁴ Dettmer/O'Brien have taken the position that the Application was complete at an earlier date upon the submission of all information requested by the City.

⁵ See Minutes of City Council May 9, 2011 hearing.

⁶ See Gagen McCoy letter dated August 9, 2011.

5. The City Council nevertheless thereafter moved forward with the City Downzoning concurrently with processing the Apartment Project Application under the APO designations.

6. On September 12, 2011, the City held a hearing on the City Downzoning. At that hearing, Dettmer/O'Brien submitted significant information to the effect that the City Downzoning would result in a "taking" of all reasonable use of the Property -- a reduction from a potential of approximately 770 units down to 4 or less units.⁷ The City indicated that given the amount of information received, the City would continue the City Downzoning hearing to a future date.

7. Numerous Lafayette citizens opposing the Apartment Project appeared at the September 12, 2011 hearing. The opponents requested that the City deny the Apartment Project, and further requested that the City approve the City Downzoning.⁸

8. Thereafter, project opponents prepared an on-line Petition, severely criticizing the City for its failure to complete the City Downzoning. The Petition demands that the City (i) deny the Apartment Project; and (ii) move forward with the City Downzoning.⁹

9. On April 9, 2012, the City Attorney published notice to the public that the City will utilize the DEIR -- not only for the Apartment Project -- *but also to evaluate the extent of the City Downzoning*. The City Attorney's notice (incorporated into the DEIR) states that following the preparation of the DEIR *the City will recommence the City Downzoning*.¹⁰

B. The City's "dual-purpose" DEIR

When viewed in the above 10-year planning context, the City's direction in preparing the DEIR becomes quite clear. The City, in response to citizen "demands" to deny the Apartment Project and to complete the City Downzoning, has stated that it will utilize the DEIR for two conflicting purposes: (i) to review the Apartment Project; *and* (ii) to justify the City Downzoning.

⁷ See Staff Report and Minutes for September 12, 2011 City Council hearing.

⁸ See Minutes of September 12, 2011 hearing.

⁹ See online Petition at "www.ipetitions.com/petition/terraces-of-lafayette."

¹⁰ City Attorney Staff Report dated April 9, 2012, discussed in detail *infra*.

ORG1-11
Cont.

ORG1-12

Please reference in this regard the DEIR at Section 3, Project Description.¹¹ This Section describes the Apartment Project, including the location, site characteristics, and surrounding lands uses. However, throughout the remainder of the DEIR, the document references the *second* intended use of the DEIR -- to evaluate the extent of the City Downzoning.

The DEIR at Section 4.9, Land Use and Planning, states as follows:

On April 9, 2012, the City Attorney issued a staff report indicating that the City will wait until after this EIR for the proposed Project has been completed before recommencing General Plan amendments and rezoning for the Project site.¹²

The City Attorney's staff report as referenced in the DEIR states as follows:

....[T]he data collected for the [DEIR] environmental review will likely provide new and useful information for the City as it makes its final determinations regarding the most appropriate zoning designation for the Property. *Therefore, once the City has had the opportunity to thoroughly review the EIR and its description of the likely impacts that development would bring to the eastern Deer Hill Road area, the City will recommence the appropriate general plan and zoning amendments for the Property.*¹³

The City thus makes the extraordinary statement in the DEIR confirming that the City will utilize the EIR -- not only to evaluate the Apartment Project -- *but also to determine the extent of the City's proposed General Plan and zoning amendments (City Downzoning) of the Project site.*¹⁴ Again, the current direction from the City Council is to downzone the Project site to LR-5, allowing a maximum of only 4 single family homes on the site.¹⁵

The City further makes the extraordinary statement that it will recommence the general plan and zoning amendments for the Property *regardless of the information and outcome of the DEIR/EIR, and regardless of the City's decision on the Apartment Project.* This pre-determination by the City is absolutely improper. What happens if the City approves the Apartment Project consistent with the current General Plan and zoning

ORG1-12
Cont.

ORG1-13

¹¹ DEIR at p. 3-1 *et seq.*

¹² DEIR at p. 4.9-15.

¹³ City Attorney Staff Report dated April 9, 2012, page 2. (Emphasis added).

¹⁴ Given that the Project site is designated APO, allowing the highest possible density provided in the General Plan (35 du per acre), any City Council proposed General Plan and zoning amendments would constitute a "downzone" of the site.

¹⁵ See Minutes of April 26, 2010 hearing, Minutes of September 12, 2011 hearing.

designations of APO? Why would the City recommence its General Plan and zoning amendments if the EIR was certified and the Apartment Project was approved? Clearly, the City has either (i) pre-determined that the Project will be not be approved, or (ii) committed to downzoning the Project site even if the Apartment Project is approved. Either way, these pre-determinations are illegal and invalid.

ORG1-13
Cont.

Under the Housing Accountability Act, the City is required to make specific findings prior to denying or making infeasible housing projects, based upon the General Plan and zoning designations in place at the time the Application is complete.¹⁶ The City Attorney has confirmed that these provisions apply to the Apartment Project.¹⁷ Under these circumstances, what purpose is served by continuing the City Downzoning process even if the Apartment Project is approved?

ORG1-14

The City Council has stated on the record the Council's intent to downzone the Project site to LR-5, an open space and single family zoning designation, allowing only a maximum of 4 single family residences.¹⁸ The City has stated on the record that the City is processing the Apartment Project because it has "no choice but to process" the Application under the law.¹⁹ The City has stated on the record that it intends to recommence the City Downzoning following the preparation of the EIR -- and regardless of the results of the EIR.²⁰ Finally, the City has stated on the record that it will use the EIR to evaluate not only the Apartment Project, but also the extent of the City Downzoning.²¹

ORG1-15

Clearly, any reader of the City's statements and the DEIR would reasonably conclude that the City Council opposes the Apartment Project, and would not process the Application except for the fact that the City is required by law to do so. Such reader would further reasonably conclude that following preparation of the EIR -- and regardless of the results of the EIR or of the City's decision on the Apartment Project-- the City Council will immediately proceed with the City Downzoning as demanded by opponents of the Apartment Project.

III. LEGAL ANALYSIS

The City's dual-purpose use of the DEIR for the evaluation of both the Apartment Project and the City Downzoning violates the California Environmental Quality Act

ORG1-16

¹⁶ Cal. Gov. Code §65589.5(d),(i),(j).

¹⁷ See City Attorney's confirmation in Minutes of City Council hearing, September 11, 2012, at p. 12.

¹⁸ See Minutes of City Council hearing April 26, 2010.

¹⁹ City Attorney Staff Report dated April 9, 2012, at pp. 1-2; City Manager's Weekly Message dated Friday, April 13, 2012, at par. 3.

²⁰ City Attorney Staff Report dated April 9, 2012, at p. 2.

²¹ *Id.*

(CEQA)²² and the CEQA Guidelines.²³ The DEIR further violates Dettmer/O'Brien's constitutional rights of due process, equal protection, and to a fair hearing.

ORG1-16
Cont.

A. The DEIR violates CEQA requirements for an accurate, stable and finite project description

An accurate project description throughout the entire EIR is an essential part of the EIR.²⁴ California appellate case law confirms that "(A)n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."²⁵

The leading case regarding the need for an accurate project description is *County of Inyo v. City of Los Angeles*. In *County of Inyo*, the project description section defined the "project" as a proposal to increase the city's exaction of water for use in Inyo and Mono Counties. In subsequent parts of the EIR, however, the project was more broadly defined to reference a larger operation of the Los Angeles Aqueduct System.²⁶

The court in *County of Inyo* stated that this broadening of the project description violated CEQA and invalidated the EIR. The court stated:

The incessant shifts among different project descriptions do vitiate the city's EIR process as a vehicle for intelligent public participation.²⁷

...Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefits against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project alternative") and weigh other alternatives in the balance.²⁸

Stated another way, when the DEIR attempts to shift the *use and objectives* of the DEIR, the public and decisionmakers become uncertain regarding the "project" and cannot accurately discuss or make determinations regarding the project.²⁹ This is precisely what is happening here.

ORG1-17

²² Pub. Res. Code §21000 *et seq.*, hereinafter referenced as PRC §[].

²³ California Code of Regulations, title 14, §15000 *et seq.*, hereinafter referenced as Guidelines §[].

²⁴ See *Practice Under the Environmental Quality Act*, Koska, Zischke, March 2012 Update, §12.11; Guidelines §15124.

²⁵ *County of Inyo v. City of Los Angeles* (1977), 71 Cal. App. 3d 185, 193.

²⁶ *Id.* at 189-190.

²⁷ *Id.* at 197.

²⁸ *Id.* at 192-193.

²⁹ 71 Cal.App.3d at 198

1. The DEIR amends the project description regarding the dual purposes

In the (Terraces) DEIR, the Project Description describes the Apartment Project -- while other sections indicate that the DEIR will be used to evaluate the City Downzoning. These two intended descriptions and uses of the DEIR -- for apartment uses and separately for single family uses -- are *inherently inconsistent*. How can the Lafayette City Council utilize the same DEIR to fairly evaluate the 315-unit Apartment Project, *and concurrently* to evaluate the City Downzoning of the Project site?

Please reference in this regard the City's own Addendum, prepared on direction of the City Council for the proposed City Downzoning to LR-5. The City's consultant states as follows:

It should be noted that an application for a multi-family residential project has been filed with the City . . . This project (the Terraces of Lafayette) is not a "related project" in the context of this CEQA document as *the Terraces Project and the proposed Project [the City Downzoning] are mutually exclusive: i.e., either one of the other can be implemented but both cannot be implemented at the same time.*³⁰

The City thus states, in August, 2011, that the Apartment Project and the City Downzoning are mutually exclusive and *cannot be implemented at the same time*. Now, in 2012, the DEIR states the Council will move forward with both "projects" and that the DEIR can be used to analyze the impacts of both projects. Simply stated, the DEIR cannot serve both objectives.

2. The DEIR amends the project description regarding the southbound traffic lane

The DEIR further amends the Project Description by "removing" the Project's proposed southbound traffic lane on Pleasant Hill Road -- and thereafter analyzing the revised Project without such lane.

The Project Application sets forth each of the Project components for the 315-unit Apartment Project. The Project components are listed and outlined in the Application and on site plans submitted with the Application. The components include 14 buildings containing the apartments; an internal roadway system to access the buildings; three entryways; and a new southbound lane on Pleasant Hill Road.

³⁰2011 Addendum to the Lafayette General Plan Revision Final EIR, August 2011, prepared by Leonard Charles and Associates, at p. 6 (not certified pending continuance on September 12, 2011). (Emphasis added).

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ORG1-19

The DEIR's Project Description confirms that the Project includes a new southbound lane:

In addition, [the Project] would construct a new southbound through-lane on Pleasant Hill Road from north of Deer Hill to the State Highway 24 freeway on ramp. This new southbound through lane would be constructed within the existing right-of-way and a minor dedication from the Project property.³¹

The DEIR recognizes that the new southbound lane *would reduce the Project traffic delay impacts at the Deer Hill Road-Stanley Boulevard intersection.*³² Following the Project Description, however, the DEIR describes the new southbound lane --not as part of the Project Application -- *but as mere potential "mitigation" for the Project:*

Project plans propose adding a third lane for south-bound through traffic on Pleasant Hill Road . . . This project is considered below [throughout the Traffic Section] *as a potential mitigation, and not part of the baseline for Project conditions.*³³

The DEIR converts the new southbound lane from being part of the Project Application to being a *potential mitigation measure*. The DEIR then reviews -- not the original Project with a southbound lane -- but the Project as "revised" by the DEIR without the southbound lane.

The DEIR states several reasons why the southbound lane as a "mitigation measure" is infeasible. Each of these reasons is addressed in our Specific Comments, however, for purposes of this General Comments and Legal Analysis, it is clear that the DEIR's analysis is invalid because *it amends the Project Application and the Project Description.*

The DEIR concludes:

Because adding a southbound lane on Pleasant Hill Road would result in significant secondary impacts and other undesirable effects, the additional southbound lane on Pleasant Hill Road *is not considered as feasible as mitigation* for the impact to the Deer Hill Road - Stanley Boulevard/Pleasant Hill Road intersection.³⁴

³¹ DEIR at p. 3-25.

³² DEIR at p. 4.13-38.

³³ DEIR at p. 4.13-32. (Emphasis added).

³⁴ DEIR at p. 4.13-40. (Emphasis added).

ORG1-19
Cont.

ORG1-20

The inherent problem with the DEIR's analysis is that the new southbound lane was not proposed as mitigation -- it was proposed as part of the Project Application. The southbound lane utilizes the Project site, and is an integral part of the Apartment Project, no different than the entryways, internal road systems, and placement of buildings. The DEIR thus "amends" the Project Application (including the site plans) and the Project description -- from a Project that has a new southbound lane to a Project that does not have such a lane. On that basis, the DEIR concludes that the Project would have significant and unavoidable traffic impacts.

ORG1-20
Cont.

The DEIR's amendment of the Project Application without the Applicant's knowledge or consent, and the DEIR's subsequent review of the "revised Project," is invalid and improper under CEQA. Stated simply -- the DEIR reviews a different project than the one proposed.

B. The DEIR fails to establish a baseline of environmental conditions

CEQA requires that the EIR establish a firm "baseline" of existing environmental conditions.³⁵

An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published . . .

This environmental setting will normally constitute the *baseline* physical condition by which a Lead Agency determines whether an impact is significant.³⁶

The purpose of CEQA's requirements are to ensure that the Lead Agency establishes a firm and accurate *baseline* from which to determine a project's impacts. Without such baseline, the DEIR may improperly conclude that a project causes impacts based upon past "natural" environmental conditions -- without recognition of the *existing* state of property.³⁷ Therefore, appellate cases confirm that if property has been extensively quarried, graded or mined, and is significantly "disturbed" by such uses -- the *baseline for environmental review is the site in such "disturbed" condition.*³⁸

ORG1-21

Dettmer/O'Brien submitted to the City extensive information regarding the existing, "disturbed" state of the Project site during the Application process. This extensive information includes three reports by Engeo, Incorporated: "Geotechnical

³⁵ *Guide to California Environmental Quality Act*, Remy, Thomas, Moose & Manley, 11th Ed., at p. 198 *et seq.*

³⁶ Guidelines at §15125(a). (Emphasis added).

³⁷ *Guide to California Environmental Quality Act*, *supra*, at pp. 202-203.

³⁸ *Riverwatch v. County of San Diego* (1999) 76 Cal. App. 4th 1428, 1453.

Evaluation, The Terraces of Lafayette” (Revised September 2, 2011); “Geotechnical Evaluation of Ridge Ordinance” (Revised August 20, 2011); and “Existing Site Conditions “(September 2, 2011) (together Engeo Reports).³⁹

The Engeo Reports confirm the “baseline” of physical, existing conditions for CEQA purposes as follows:

Existing Conditions:

Approximately 85% of the [site] has been disturbed by past site use, as depicted in Figure 1. A comparison of USGS topography to existing topography shows that cuts of as much as 60 to 80 feet were made on the site as part of quarry operations. Areas adjacent to Highway 24 and Deer hill road were filled to create road embankments...

The current topography is a series of artificial terraces and graded slopes upon which natural soils and native vegetation are absent...⁴⁰

The referenced Figure 1 contains a detailed map showing areas of significant cut, areas of significant fill, and areas of other disturbance.⁴¹ The Engeo Reports confirm that the “baseline” is a site that has been almost completely disturbed (85%), and topography that consists of a series of artificial terraces and graded slopes, void of natural soils and native vegetation.

The DEIR fails to reference the Engeo Reports, and fails to identify or recognize the established “baseline.” The DEIR, under “Site History,” makes reference to the fact that quarry operations resulted in the disturbance of 85% of the site.⁴² However, thereafter, the DEIR proceeds to analyze the Project site as though the topography is in a natural, undeveloped state. The DEIR references the site as “characterized as a steep hillside” (without reference to the artificially-created terraces).⁴³ At another point, the DEIR references the Project site as being “four relatively flat lying areas (terraces)” -- again without referencing the man-made creation of the terraces.⁴⁴ Thereafter, the DEIR

ORG1-21
Cont.

³⁹ The *Geotechnical Evaluation of Ridge Ordinance* and *Existing Site Conditions* Reports were submitted to the City Staff for purposes of the DEIR and included in the DEIR consultant's Technical Documents List discussed herein.

⁴⁰ Engeo Report, *Existing Site Conditions*, September 2, 2011, at pp. 1-2. (Emphasis added).

⁴¹ *Existing Site Conditions*, at Figure 1.

⁴² DEIR at p. 3-7 “Site History”.

⁴³ DEIR at p. 3-8.

⁴⁴ DEIR at p. 3-13.

states that the Project would develop a “grassy largely undeveloped site.”⁴⁵ All of these references infer a “natural” setting which simply does not exist.

ORG1-21
Cont.

The DEIR’s failure to set an accurate baseline as part of the Project site’s environmental setting allows the DEIR to find “significant and unavoidable impacts” starting from a baseline of a natural, undisturbed project setting. The DEIR states:

Mitigation Measure LU-1: No feasible mitigation measure would maintain the *natural, undeveloped* appearance of the hillside on the Project site.⁴⁶

The DEIR makes this false conclusion without reference, analysis, or discussion of the Engeo Reports.

ORG1-22

The DEIR’s descriptions of the site as “natural and undeveloped” are easily shown to be false and misleading. One need only walk the site -- or look at any of the current aerial photos in the DEIR, to confirm that the site is not a natural setting. A walk of the site shows the cut and fill, the compacted soils, the loss of ridges and the terraces -- all created by the earlier quarrying, the construction of Deer Hill Road, and the widening of Highway 24. The DEIR’s aerial photos show a large level grey-colored area lacking soil or vegetation that dominate the entire central portion of the Project site.⁴⁷

As stated herein, Dettmer/O’Brien submitted the Engeo Reports to the City and its DEIR consultants in a timely manner to professionally confirm the extent of soil disturbance of the site. The DEIR completely ignores this professional analysis.

ORG1-23

Respectfully, if the drafters of the DEIR did not agree with the Engeo Reports, then such drafters should have, at minimum, referenced the Engeo Reports and pointed out in a professional manner where they disagree. Such a professional discussion and analysis would allow for the informed decision process required under CEQA.⁴⁸

Given the second objective of the DEIR -- to review the City Downzoning, it is clear why the DEIR avoids discussion of the Engeo Reports and other related, professional analyses. The DEIR relies heavily on the Hillside Development Ordinance (HDO) to find significant impacts from the Apartment Project. However, the HDO *limits its protection to the “natural topographic features” and “natural hillsides.”*⁴⁹ The Engeo Reports and other Application documents confirm that the Project site is almost completely disturbed and artificial, with no significant remaining natural features. If the

ORG1-24

⁴⁵ DEIR at p. 4.1-44.

⁴⁶ DEIR at p. 4.9-33. (Emphasis added).

⁴⁷ DEIR at Figure 4.9-1, 4.9-2.

⁴⁸ Guidelines §15121.

⁴⁹ Hillside Ordinance at §6-2001.A, B.

DEIR contained a thorough discussion of the Engeo Reports, such analysis would undermine the DEIR's conclusions regarding impacts to natural topographic features and natural hillsides.

The DEIR avoids discussion of the extensive Engeo Reports and other Dettmer/O'Brien information, which professionally confirm that the Project site contains no natural features and consists of a series of artificially created level terraces and intervening steepened slope areas. Instead, the DEIR attempts, without authority, to set the baseline for project impacts as a "grassy largely undeveloped site," with a "natural, undeveloped appearance." This baseline description is entirely inaccurate.

ORG1-24
Cont.

C. The DEIR confuses and misleads the public

In the *County of Inyo* case, referenced above, the appellate court noted that the EIR, by failing to have a stable project description, confused and misled the public.

Among the public comments in the final EIR were many objections and expressions of uncertainty aroused by the [City's] homemade project description.⁵⁰

The defined project and not some different project must be the EIR's bona fide subject.⁵¹

In the referenced on-line Petition, opponents to the Apartment Project requested that the City deny the Apartment Project and move forward with the City Downzoning. At the recent Planning Commission hearing on the DEIR, neighbors appeared and requested that the DEIR consider an alternative to the Apartment Project consistent with the City Downzoning.⁵² One neighbor specifically requested that the City Council's directed zoning to LR-5 be considered in the DEIR. Another neighbor requested review of a 14-lot alternative. As set forth herein in our Comments regarding Project Alternatives, a valid alternative must be consistent with the General Plan and with the project objectives. Given that the General Plan designation is Administrative/Professional Office/Multifamily Residential, a single family alternative is infeasible (and would require a General Plan amendment and rezoning).

ORG1-25

This is precisely the type of public confusion that occurs when the DEIR attempts to serve multiple objectives.

⁵⁰ *County of Inyo, supra*, at p. 198.

⁵¹ *Id.* at 199.

⁵² See transcript of Planning Commission hearing on DEIR, June 18, 2012.

D. The DEIR fails to: (i) provide information on project impacts and (ii) identify mitigation measures and alternatives.

The basic purposes of CEQA are: (i) to inform decisionmakers and the public about potential significant impacts of proposed activities; and (ii) to identify ways the impacts can be reduced through mitigation measures and project alternatives.⁵³

Similarly, CEQA provides that an EIR is an *informational* document:

An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.⁵⁴

The City's proposed DEIR does not act as an informational document with a professional discussion of the extensive submitted materials regarding the potential impacts of the Apartment Project.

Respectfully, as shown in these Comments, the DEIR instead reads as an "advocacy" document, designed to lead the reader to conclude that the Apartment Project would result in significant, unavoidable impacts, and that the City Downzoning should be approved.

1. The DEIR fails to consider the Application's extensive consultant reports and data

By cover letter dated March 21, 2011, the Applicants submitted applications for a Land Use Permit, Design Review, and Tree Removal Permit. By letter dated March 24, 2011, the Applicants submitted an application for a Hillside Development Permit. The Project Applicants submitted extensive information and reports as part of the Project Application. The information included reports by leading consultants, including: LCA Architects (Architectural drawings and Visual Assessment); Marylee Guinon (Biological Resource Assessment); Engeo Incorporated (Geotechnical Feasibility); BKF Engineers (civil engineering); and Abrams Associates (Traffic Assessment.).

Further, Dettmer/O'Brien submitted with the Application several letters from land use attorneys.⁵⁵ The attorney letters review the City's Hillside Development Ordinance

⁵³ Guidelines §15002(a)(1)-(4).

⁵⁴ Guidelines §15121(a).

⁵⁵ See letters dated March 21, 2011 and March 23, 2011 from Law Offices of David J. Bowie, *see also* letter dated March 21, 2011 from Gagen McCoy.

ORG1-26

ORG1-27

(HDO), and state reasons why the Apartment Project does not fall within the provisions of the HDO.⁵⁶

The Applicants were concerned that the extensive Application documents would be ignored in the DEIR. The Applicants therefore met with Staff and ensured that a Technical Documents List was drawn up, confirming that the DEIR consultant would review the information and include discussion thereof in the DEIR. A copy of the Technical Documents List is attached to this General Comments and Legal Analysis at Appendix 1.

ORG1-27

Inexplicably, the DEIR fails to reference, discuss or consider the most critical project Application documents and information. On such basis, the DEIR finds seventeen (17) "significant impacts" which "cannot be mitigated." Examples include the following.

a. Application data regarding the Hillside Development

Ordinance

One of the most important parts of the Project Application is the interpretation of the City's Hillside Development Ordinance (HDO).⁵⁷ The HDO establishes standards and restrictions for development within the Hillside Overlay District. The Hillside Overlay District is defined by the Hillside Overlay District Map, attached as Figure 3-4 to the DEIR.

The critical threshold question is whether the Apartment Project falls within the provisions of the HDO. In the Application, Dettmer/O'Brien set forth the position that the Apartment Project is not governed by the HDO for the primary reason that the HDO is intended to protect "natural hillsides and ridgelines" -- not the heavily altered and quarried property of the Project site.

ORG1-28

Further, the HDO specifically limits the application of the Hillside Overlay District to the following:

- (1) a *residential lot* existing on July 8, 2002;
- (2) a division of two or more lots; and
- (3) a lot line adjustment.

Dettmer/O'Brien submitted extensive information as part of the Project Application confirming that the Apartment Project does not come within any of these

⁵⁶ *Id.*

⁵⁷ City of Lafayette Municipal Code at Chapter 6.20, "Hillside Development," §§6-2001 *et seq.*

three categories. The Project site is not a "residential lot" existing on July 8, 2002 -- the Project site is designated Administrative/Professional Office/Multifamily Residential in the General Plan and APO in the zoning ordinance. The Project does not involve a subdivision -- because the Apartment Project does not require a subdivision map under the Subdivision Map Act. For these reasons, the Application documents carefully set forth our position and specifically reserved the right to contest the application of the HDO to the Apartment Project based on the submitted information.⁵⁸

ORG1-28
Cont.

The DEIR does not reference the extensive Application materials. The DEIR simply states, without reference or authority, that the Project is within the HDO. Given the extensive information on this issue submitted by Dettmer/O'Brien, and the importance of this issue to the determination of project impacts, it is utterly inexplicable why the DEIR does not address this issue.

ORG1-29

b. Application data regarding the Class I Ridgeline Setback

The City's Hillside Overlay District Map also shows the location of Class I, II, and III Ridgelines, and the required building setbacks from such Ridgelines (400 ft. from a Class I Ridgeline, and 250 ft. from a Class II Ridgeline).

The DEIR states repeatedly as follows:

"As previously noted, the City's Lafayette Area Ridge Map shows a Class I Ridgeline located on the project site. LMC 6-2023 states that no development may take place within 400 feet . . .of a Class I Ridgeline without an exception."⁵⁹

ORG1-30

The DEIR makes this same statement numerous times throughout the entire document⁶⁰ -- and each time the statement is made, it is entirely false.

There is no Class I Ridgeline on the Project site as claimed repeatedly in the DEIR. As the City is well aware, the City's Lafayette Area Ridge Map (Ridge Map) is based on outdated USGS contour maps prepared prior to the construction of Deer Hill Road, the widening of Highway 24, and the removal of the topography on the Project site. These projects occurred over 40 years ago. The Ridge Map is so outdated that it shows a Ridgeline passing right through existing Highway 24. The Ridge Map further shows that portions of Pleasant Hill Road and Acalanes High School are within the Class I Ridgeline setback. Of course, none of these portrayals are even remotely accurate.

⁵⁸ See David Bowie letters dated March 21, 2011 and March 23, 2011.

⁵⁹ DEIR at p. 3-13.

⁶⁰ DEIR at p. 2-1; 3-9; 3-13; 3-32; 4.9-8; 4.9-25.

The fact that the DEIR states repeatedly that there is a Class I Ridgeline on the Project site calls into question the extent of the professional analysis performed on site for the DEIR. A walk of the site confirms that the City's Ridge Map is totally inaccurate and that there is no ridge topography on the Project site as portrayed on the Ridge Map. The Ridge Map portrays a ridgeline running approximately northwest/southeast -- while the artificial terraces of the Project site run northeast/southwest. It appears that the consultants relied heavily on information provided by the City (including the City's outdated Ridge Map) rather than on independent analysis and/or documents submitted with the Application.

Dettmer/O'Brien and their consultants submitted extensive information as part of the Project Application on this issue. Please reference the Engeo Report entitled "Geotechnical Evaluation of Ridge Ordinance," revised August 30, 2011 (Engeo Ridge Report). A copy of the Engeo Ridge Report is attached to this General Comments and Legal Analysis at Appendix 2. The Engeo Ridge Report professionally addresses the history and setting of the Lafayette Ridge, the Lafayette Ridge Map, and the Hillside Development Ordinance (HDO) provisions for Class I Ridges and setbacks. The Engeo Ridge Report includes precise definitions and measurements, and attaches three figures illustrating its analysis. The Engeo Ridge Report concludes as follows:

1. The landform designated as "Lafayette Ridge" by the USGS terminates well north of the Project site, at an elevation of approximately 750 feet. (See point A2 on Figure 2 of the Report.)
2. A separate Class II spur ridge exists, again well to the north of the Project site (See points B1 to B2 on Figure 2 of the Report). This spur ridge ends approximately 650 feet to the northwest of the Project site.
3. The City's Ridge Map *inaccurately* shows an extension of the Class I Ridge southward all the way across Deer Hill Road. There is in fact no Ridge in that area. The City's Ridge Map evidently utilized outdated USGS contours that do not accurately reflect the ground surface. Stated simply, there is no Class I Ridge near the Project site, and no setbacks apply.

The Engeo Ridge Report further notes that the HDO specifically recognizes that the Ridge Map may not be accurate. The HDO provides that if a precise onsite measurement shows that the boundary of the Hillside Overlay District or the location of a ridge varies from the City Ridge Map -- then such precise onsite measurement applies.⁶¹

⁶¹ Hillside Development Ordinance at §6-2005 and § 6-2006.

ORG1-30
Cont.

ORG1-31

The Engeo Ridge Report sets forth the precise onsite measurement referenced in the HDO, confirming that the Class I Ridge terminates well to the north of the Project site, and therefore no Ridgeline exception is required.

ORG1-31
Cont.

What is the City DEIR's response to the Applicant's submitted information and the Engeo Ridge Report? *The DEIR fails to consider the Engeo Ridge Report, and fails to even attach the Report as an Appendix.* Instead, the City's DEIR merely repeats, multiple times, the "fact" that a Class I Ridgeline and/or its setback extends onto the Project site. Based on such "fact," the City's DEIR finds numerous significant impacts that cannot be mitigated.

CEQA states that any person, including the applicant, may submit information to the lead agency to assist in the preparation of the DEIR. CEQA provides that in such case the lead agency "must consider all information and comments received."⁶² We do not believe the DEIR consultant considered the extensive consultant information submitted, both as part of the Application and thereafter. Respectfully, we would ask the City to compare the professional report prepared by Engeo regarding the definition and precise location of the Class I and Class II Ridgelines and setbacks, with the summary analysis provided in the DEIR.

ORG1-32

Please further note that the DEIR purports to list the issues that may be of particular concern or controversy during the process.⁶³ The DEIR's list does not include the critical threshold issue of whether the Hillside Development Ordinance applies to the Apartment Project, or whether a Class I Ridgeline and its setback exists on the Project site. A reader of the DEIR would not even be aware of these critical issues, and would not have an opportunity to review the Engeo Ridge Report or other professional documents.

ORG1-33

c. Application data regarding aesthetics and visual analysis

LCA Architects submitted two extensive visual analyses, dated May 6, 2011 ("Visual Simulations") and August 19, 2011 ("Parcel 27 Visual Analyses). The LCA visual analyses contain precise photo simulations from the vantage points requested by the City Staff. The DEIR fails to reference, discuss or consider the LCA visual analyses. The DEIR merely states that the DEIR analysis "is based on visual simulations prepared by the EIR consultant."

ORG1-34

Given that, as cited above, an EIR is intended to be an informational document -- providing the public and decisionmakers the information needed to evaluate a project -- we cannot understand the DEIR's failure to reference or consider the applicant's visual

⁶² Guidelines §15084(c).

⁶³ DEIR at Section 2.B. "Areas of Controversy," pp. 2-5 *et seq.*

analyses. At minimum, the DEIR could have stated the differences between the LCA Visual Analyses and the EIR's analysis -- and explained why the consultant believes the EIR's analysis is more accurate. *The LCA visual analyses are not even attached as an Appendix to the DEIR.* A copy of the visual analyses is attached to this General Comment and Legal Analysis at Appendix 3 and Appendix 4, respectively.

ORG1-34
Cont.

We further note, under our Specific Comments, that the DEIR Visual Analysis includes photosimulations that exaggerate the visual impacts of the site. On that basis, the DEIR Visual Analysis finds significant impacts that cannot be mitigated. As stated in our Specific Comments, we respectfully disagree with those conclusions.

ORG1-35

2. The DEIR contains gross overstatements of Apartment Project impacts, without recommendation of mitigation measures and alternatives.

The City's use of the DEIR for more than one purpose, and the City's failure to reference or consider Dettmer/O'Brien's submitted information, allows the City to make gross overstatements of the Apartment Project impacts -- without recommendations of mitigation and alternatives as required by CEQA.

Example: The DEIR states as follows:

Impact AES-2: The Project would develop a grassy, largely undeveloped site that many members of the community would consider to be a visual resource, causing an impact to visual character that would be considered *significant*...[t]here is no feasible mitigation measure . . .⁶⁴

ORG1-36

As stated, Dettmer/O'Brien submitted significant information confirming that 85% of the Project site has been developed and altered, and that there is virtually no natural terrain or ridgeline left on the site. We respectfully ask how the DEIR could ignore such information and conclude that the Apartment Project would develop "a grassy largely undeveloped site"?

Impact AES-2 utilizes as its objective standard the statement that "many members of the community would consider [the site] to be a "visual resource." Given that this is private property zoned for decades for multi-family use, we do not concur in the DEIR's conclusion that there is a significant impact merely because "members of the community" driving by the property consider the site to be a "visual resource." We note the DEIR makes no reference to documentation of the supposed community's concerns -- we can only surmise that the City is considering here the public comments regarding visual impacts submitted during the extensive 10-year process for the City Downzoning.

ORG1-37

⁶⁴ DEIR at p. 4.1-44.

Finally, we note that in this example and numerous other examples throughout the DEIR, the document fails to reference any meaningful mitigation measures, including landscape screening, architectural design, project layout, and related measures.

Example: The DEIR states as follows:

Impact AES-4: The Project would be lighted in conformance with the City's exterior lighting requirements. In addition, proposed lighting would be shielded (downward facing) to minimize light spill, glare, and reflection, maintaining "dark skies." Nevertheless, the Project would bring new light sources to the Project site, which currently contains no light sources, which would cause a significant impact. There is no feasible mitigation . . .⁶⁵

ORG1-38

The DEIR confirms that the Project is in 100% compliance with all of the City's lighting requirements. The DEIR does not identify any objective standards that have been exceeded under CEQA. Despite this evidence, the DEIR summarily concludes that the impact from lighting and glare is significant *and* that there is no possible mitigation.

The DEIR concludes that whenever a light source is introduced to a dark area there is a significant impact that cannot be mitigated. We respectfully submit that this is an absurdity -- this position would require an EIR for almost any project within the City's hillside areas -- including a single family residence-- and would require the conclusion that there is no possible mitigation.

3. The DEIR fails to include feasible project alternatives

CEQA requires that the DEIR describe a "range" of reasonable alternatives to a project.⁶⁶ The "range" must: feasibly obtain most of the basic objectives to the project, while avoiding or substantially lessen any of the significant effects of the project. The DEIR must further evaluate the comparative merits of the alternatives.⁶⁷

a. The DEIR's alternatives are inadequate

ORG1-39

The DEIR offers only two substantive alternatives: (i) a Mitigated Project Alternative; which reduces the number of units to 153; and (ii) an Office Development Alternative, which proposes an office development on the site.

The DEIR's alternatives do not even attempt to provide feasible alternatives to the Apartment Project.

⁶⁵ DEIR at p. 4.1-44.

⁶⁶ Guidelines §15126.6.

⁶⁷ *Guide to California Environmental Quality Act, supra*, at pp. 563 *et seq.*

The City's Mitigated Project Alternative reduces the number of units to less than half of the 315-unit Apartment Project. Please note that the Apartment Project is already less than half of the maximum density provided for the General Plan designation. We do not know how or why the DEIR drafters chose the number of 153 units -- however such reduced density would not achieve the objectives of the Project. The primary Project objectives include: (i) providing multi-family moderate-income rental housing in Lafayette; and (ii) developing a financially feasible project with a "critical mass" of units to support the developer-provided moderate income subsidies.⁶⁸

ORG1-40

The City's Office Development Alternative would not achieve any of the objectives of the Apartment Project, and would not provide any of the affordable housing that is needed by the City of Lafayette.

ORG1-41

b. Applicant Refined Alternative Plan

Please reference our Specific Comments, at Attachment 2. Contained therein is a letter from LCA Architects and Appendices setting forth a proposed "Applicant Refined Alternative Plan" (ARAP). The LCA letter confirms that the ARAP is a superior alternative to the City's alternatives, while achieving most of the objectives of the Apartment Project.

ORG1-42

4. The DEIR fails to address Apartment Project consistency with the General Plan and zoning designations and goals/policies

The general plan is the "constitution for all future development."⁶⁹ The California Supreme Court has confirmed that the general plan is the "single most important planning document."⁷⁰ Because of the supremacy of the general plan, any subordinate land use action that is not consistent with a city's general plan is invalid when passed.⁷¹

ORG1-43

A City's zoning ordinance (including the City's HDO) is subordinate to the General Plan, and is required to be consistent with the general plan.⁷²

a. The Apartment Project is consistent with the General Plan

The General Plan designation for the Project site is Administrative/Professional Office/Multifamily Residential. The General Plan states as follows regarding this designation:

ORG1-44

⁶⁸ DEIR at p. 3-12.

⁶⁹ See *Curtin's California Land Use and Planning Law*, 29th Ed., 2009, at p. 10.

⁷⁰ *Id.*, citing *Citizens of Goleta Valley v. Board of Supervisors*, (1990), 52 Cal. 3d 553, 570-71.

⁷¹ *Leshar Communications, Inc. v. City of Walnut Creek*, (1990), 52 Cal. 3d 531, 541.

⁷² Cal. Gov. Code §65860.

This designation provides for a mixture of professional office and multifamily residential uses adjacent to Downtown that are close to public transit, shopping, and shopping facilities. The height limit in the Multifamily/Residential/Office designation is 35 feet. The maximum density for multi-family residential uses is 35 units per acre.⁷³

The City determined in its General Plan that the Project site is: (i) adjacent to Downtown; and (ii) close to public transit, shopping, and shopping facilities. Therefore, the City determined in its General Plan that the Project site should have the maximum density allowed in the City (35 dwelling units per acre), and a height limit of 35 feet.

ORG1-44
Cont.

The proposed Apartment Project is entirely consistent with the City's General Plan land use designation. The Apartment Project is less than half of the allowable density (approximately 14 dwelling units per acre); and does not exceed the 35 foot height limit. Stated another way, the Apartment Project is precisely the kind of project contemplated by the General Plan for the specific Project site.

General plans have several required elements, including land use, housing, and open space elements. Such elements must be internally consistent -- both among the elements and within each element.⁷⁴

Here, the City's General Plan has a specific land use designation with a specific purpose and density. The General Plan further has goals and policies, throughout the General Plan, referencing the protection of open space, hillsides, and the natural hillsides of the City. A close reading of the General Plan, however, shows that these open space and natural hillside policies were not intended to usurp the General Plan designation of Administrative/Professional Office/Multifamily Residential. *Indeed, if the open space and natural hillside policies are read to prevent the use of the Project site as designated-- then the General Plan would be internally inconsistent and invalid.*⁷⁵

ORG1-45

When the General Plan was adopted, it provided only for a small number of parcels to be zoned Administrative/Professional Office/Multifamily Residential. The General Plan references the Administrative/Professional Office/Multifamily Residential designation under its Commercial and Office Land Uses. For each of these parcels, the General Plan determined that they were close to downtown, and specifically needed by the City for higher density commercial, office and residential uses. Note that the Goals and Policies following the Commercial and Office Land Uses section primarily reference development in the Commercial and Downtown districts.

ORG1-46

⁷³Lafayette General Plan at p. I-15

⁷⁴ Cal. Gov. Code §65300.5

⁷⁵ *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal. App.3d 90, 103.

In contrast, the Goals and Policies referenced in the DEIR regarding open space and hillsides follow the *Residential Neighborhood* section in the General Plan -- not the Commercial and Office Land Uses section.

ORG1-46
Cont.

For example, see the following:

Goal LU-2: Ensure that development respects the natural environment of Lafayette. Preserve the scenic quality of ridgelines, hills, creek area, and trees.

Policy LU-2.1: Land use densities should not adversely affect the significant natural features of hill areas.

The DEIR states that the Apartment Project is inconsistent with these goals and polices, and related goals/policies. Respectfully, this is a simplistic approach that does not recognize General Plan designation for the Project site and the Apartment Project. The DEIR gives short discussion to the consistency of the Apartment Project with the specific designation of the Project site General Plan, and instead focuses on broader goals and policies protecting "natural hillsides." There is simply no effective discussion balancing the competing interests of the General Plan designation and these "natural hillside" goals and policies.

ORG1-47

As stated herein, the Project site is not a natural site -- and there are no significant natural features for protection. Just as importantly, however, the fact of this matter is that the General Plan simply did not intend the Administrative/Professional Office/Multifamily Residential designation to be "overruled" by the hillside goals and polices.

b. The Apartment Project is consistent with the zoning ordinance

The zoning designation for the Project site is found within the City's Municipal Code under Chapter 6-10: Office Districts. The Project site is designated Administrative/Professional Office District (APO).⁷⁶ Multifamily buildings are allowed with a land use permit.⁷⁷ Like the General Plan designation, the zoning designation was placed on the Project site with specific awareness of the site's characteristics. In fact, the APO zoning district contains a plat map of the project site, showing the terraced areas of the site, and showing the allowable heights for each area.

ORG1-48

⁷⁶ LMC §6-1001 *et seq.*

⁷⁷ LMC §6-1004(f).

The DEIR, however, relies heavily on the City's Hillside Development Ordinance (HDO), to find significant and unavoidable impacts. As stated herein, we believe the HDO does not apply to the Apartment Project. However, even assuming for sake of argument that the HDO does apply, *it cannot be applied in a manner that conflicts with the General Plan.*⁷⁸

The DEIR states that the Apartment Project would be inconsistent with several HDO requirements regarding aesthetics and visibility. If these provisions were to be applied strictly as proposed, *the City could not approve any project of any size on the site.*

Given that the General Plan explicitly designates the Project Site for Administrative/Professional Office/Multi-Family Residential, with the highest density allowed in the City, the HDO cannot be applied to "rezone" the site to open space.

c. The Apartment Project is consistent with General Plan goals and policies

As stated, the DEIR focuses on General Plan goals and policies that broadly reference the protection of natural hillsides -- while virtually ignoring the goals and policies that specifically apply to the Apartment Project and the Project site.

Please reference in this regard two letters submitted as part of our Specific Comments at Attachment 2: (i) letter from LCA Architects, setting forth comments on the DEIR's Section 4.1, "Aesthetics and Visual Resources," and (ii) letter from Michael Henn, AICP, setting forth comments on the DEIR's Section 4.11, "Population and Housing."

Appellate case law confirms that no project can comply with all policies of a general plan -- given the competing interests covered in the plan.⁷⁹ Instead, a finding of consistency requires only that the project be *compatible* with the objectives, policies, etc., specified in the applicable plan. This has been interpreted as requiring that a project be "in harmony with" the terms of the applicable plan -- not in rigid conformity with every detail.⁸⁰

The referenced letters and other Specific Comments confirm that the Apartment Project is consistent with the vast majority of the applicable General Plan goals and policies -- and specifically with the goals and policies most relevant to the Project.

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⁷⁸ Cal. Govt. Code §65860.

⁷⁹ *Sequoyah Hills Homeowners Assn v. City of Oakland* (1993), 23 Cal. App. 4th 704, 719-20.

⁸⁰ *San Franciscan Upholding the Downtown Plan v. City and County of San Francisco* (2002), 102 Cal. App. 4th 656, 678.

ORG1-49

ORG1-50

E. The DEIR fails to address the City's need for affordable housing

A primary Project objective is to provide an all-moderate income rental housing project to the City, which is desperate need of such housing. All (100%) of the units will be restricted to moderate income housing.

The DEIR at Section 4.11 references "Population and Housing," and in such Section discusses the City's Housing Element. The DEIR confirms that the state Housing Element law requires each local jurisdiction (city) to provide its fair share of the region's projected housing needs. This share is called the Regional Housing Needs Allocation (or RHNA).

The DEIR states as follows:

During the period between 1999 and 2007, the City of Lafayette has been generally successful in achieving the RHNA goals.⁸¹

Respectfully, this statement and similar statements in the DEIR are entirely misleading to the reader. The fact of the matter is that, according to the City's own data, *no multi-family units have been constructed in the last eight years -- and only 182 multi-family units have been built City-wide in the past 32 years.*⁸² By any measure, the City has been utterly and completely unsuccessful in providing for multi-family and/or affordable housing during the past several decades.

The DEIR fails to point out the City's significant need for multi-family and affordable housing. The DEIR fails to reference the Housing Accountability Act and other state laws setting forth such need and requiring cities to make certain findings prior to denying housing projects. The DEIR fails to show the Apartment Project's consistency with applicable laws and policies of the state -- and with General Plan policies in favor of a diverse housing stock (including affordable housing) and in-fill development.

The fact of the matter is that the City is proposing to *downzone* the Project site -- which is one of the few sites currently zoned and available for the multi-family and affordable housing that the City needs. The City instead points to other sites in the downtown area that the City believes are "available" for affordable housing -- *however such sites are currently developed with other uses and are not available for affordable housing.*

ORG1-51

ORG1-52

ORG1-53

⁸¹ DEIR at p. 4.11-6.

⁸² See letter from Mike Henn, AICP, dated June 28, 2012, at Attachment 2, Specific Comments.

A reader of the DEIR would reasonably believe that the City has met all state goals and has plenty of multi-family and affordable housing. As shown in our Specific Comments, this belief would be in error.⁸³

ORG1-53
Cont.

F. The DEIR violates Dettmer/O'Brien's constitutional rights of due process, equal protection and to a fair hearing.

The City's actions in (i) processing the Apartment Project, and (ii) concurrently moving forward with the City Downzoning, violate Dettmer/O'Brien's rights of due process, equal protection and fair hearing.

1. The City Cannot Fairly Review Both the Apartment Project and the City Downzoning.

ORG1-54

Given that the City Council has already stated on the record its intent to downzone the Project site to LR-5,⁸⁴ and has stated that it will recommence the City Downzoning upon completion of the EIR, we question how the City Council can fairly evaluate this DEIR for the Apartment Project.

2. The City's Costs for Preparation of the DEIR violate due process Dettmer/O'Brien's constitutional rights

As shown below, Dettmer/O'Brien have to date paid hundreds of thousands of dollars for the DEIR.

Following the start of the DEIR consultant's work on the project, the City informed Dettmer/O'Brien stating that the original cost of the EIR would be raised by \$116,482 -- a 50% increase.⁸⁵ Dettmer/O'Brien counsel expressed concern regarding the increase and the expanded scope of work to be addressed in the DEIR. Dettmer/O'Brien representatives requested a meeting with Staff, and prepared an Agenda for such meeting to address issues of concern.⁸⁶ The Agenda lists Dettmer/O'Brien's concerns about increased costs and scope of work, and the need for communication between the Project consultants and the DEIR consultants as part of the Administrative Draft EIR. The Agenda shows Dettmer/O'Brien further raised issues regarding the City's interpretation of the Hillside Ordinance and Ridgeline exceptions.

ORG1-55

A meeting was held with Staff and the Dettmer/O'Brien consultants on November 21, 2011. All issues on the Agenda were discussed, the Engeo Reports were given to the City, and Dettmer/O'Brien consultants believed the City would address the issues raised.

⁸³ *Id.*

⁸⁴ As stated, the City Council on April 26, 2010 confirmed its intent to downzone the Project site to LR-5.

⁸⁵ City letter dated November 7, 2011.

⁸⁶ See Agenda dated November 21, 2011.

However, as shown in these Comments, the City did not follow through with any of the items on the Agenda (except of course regarding the increased costs of the DEIR). Indeed, the City allowed almost no further communication with the DEIR consultants as part of the DEIR -- and the DEIR did not reference or discuss the Engeo Reports regarding the Hillside Ordinance and Ridgeline exceptions.

At time of this writing, Dettmer/O'Brien has paid the City approximately \$337,652 for DEIR costs. This sum does not include separate Staff and Attorney time the City continues to charge to Dettmer/O'Brien, and other potential fees to complete the process. For the size of this Project, this sum is by far the most costly EIR that our office has ever experienced in 40 years of land use practice.

Please note the inherent due process violations from this process. Dettmer/O'Brien have now paid the City hundreds of thousands of dollars for the DEIR. In response, the DEIR has failed to discuss or address several of the most critical Dettmer/O'Brien Application documents. This has caused Dettmer/O'Brien to submit significant comments and to "re-submit" several of the documents that should have been considered in the DEIR. Further, and even more damaging, the DEIR now states that the DEIR/EIR *will be utilized to determine the extent of the City Downzoning*. Stated another way, the City is requiring Dettmer/O'Brien to fund the downzoning of the Project property.

3. Comparison of recent CEQA documents prepared by City shows bias against the Apartment Project.

The DEIR for the Terraces of Lafayette finds a total of seventeen (17) significant impacts that cannot be mitigated. A brief comparison of recent CEQA documents prepared by the City clearly shows the City's bias against the Apartment Project.

a. Soldier Field Subdivision EIR

The Soldier Field Subdivision EIR was prepared in 2005 for a residential project within the City's Hillside Development Ordinance (HDO) area. The project consisted of 8 custom estate lots clustered in an area (approximately 28 acres) similar in size to the Terraces of Lafayette Project site. The Soldier Field application consisted of a Tentative Map, a Hillside Development Plan, and exceptions to the HDO for Class I and Class II Ridgeline setbacks.

The Soldier Field Subdivision EIR, after listing extensive mitigation measures, *found no significant and unavoidable impacts*.⁸⁷ With regard to visibility, the EIR noted that the site is located on a prominent hillside within the HDO overlay district -- and that

⁸⁷ Soldier Field DEIR at 6-1.

ORG1-55

ORG1-56

the project is visible from lower areas. However, the EIR found that with identified mitigation measures (Design Guidelines and other measures) the visibility can be reduced to less-than-significant levels. With regard to the alteration of "natural" features of the hillsides, the EIR found that with identified mitigation measures, including design and orientation of the buildings, the construction would be less-than-significant. This is the type of analysis, discussion and mitigation that Dettmer/O'Brien would have expected to find in the (Terraces) DEIR.

ORG1-56
Cont.

We further note that the Soldier Field EIR does not raise lighting/glare, grassland and several other impacts found to be "significant and unavoidable" in the Terraces DEIR.

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b. City Downtown Specific Plan EIR

The City's Downtown Specific Plan (DSP) is currently under consideration by the City. The DSP is an enormously large project, covering the entire Downtown area, and providing the land use and design policies for such area over the next 20 years.⁸⁸ Aside from the extensive land use policies, we understand the buildout projection for the DSP area includes an additional 730 units, 138,000 square feet of retail, and 138,000 square feet of office space.⁸⁹

The DSP DEIR sets forth the scope of this project -- and raises dozens of potentially significant impacts. *However the DSP DEIR further identifies, analyzes, and proposes extensive mitigation measures.* As a result, after all of such identified mitigation, the DSP DEIR lists only a total of seven (7) significant and unavoidable impacts.⁹⁰ In comparison, the Terraces DEIR, with a project size consisting of a small fraction of the DSP, *finds ten (10) more significant and unavoidable impacts (17).*

ORG1-58

A simple side-by-side comparison of the Terraces DEIR and the DSP DEIR shows that the DSP DEIR contains a far greater analysis and discussion of potential mitigation measures. The DSP DEIR does not merely dismiss potential impacts as "significant and unavoidable with no feasible mitigation" (as consistently done in the Terraces DEIR). Instead, the DSP DEIR contains a lengthy, thoughtful analysis of each potentially significant impact and of all the mitigation measures that reduce such impact to less-than-significant levels.

Dettmer/O'Brien would have hoped for a similar analysis in the Terraces DEIR. Dettmer/O'Brien can only conclude that the extensive differences significance and mitigation analysis in the two documents can be found in the fact that the City supports

⁸⁸ Downtown Specific Plan at p. 9.

⁸⁹ Planning Commission Resolution 2011-17.

⁹⁰ See DSP DEIR.

the DSP as a benefit to the City -- while the City has indicated on the record that the Apartment Project site should be downzoned to single family uses.

ORG1-58
Cont.

c. City Staff CEQA Review for Multi-Family Development on Project Site

In 2009, City Staff prepared environmental review for a potential zoning on the Project Site that would allow total of 33 dwellings, including 29 townhome and 4 single family homes (Staff CEQA Analysis). The Staff CEQA Analysis was not certified by the City, but it confirms Staff's earlier view of visibility impacts and other potentially significant impacts on Parcel 27. The Staff CEQA Analysis states:

Multi-family development on the southerly part of Parcel 27 would be visible, but views in this area are already compromised by views of Highway 24, Pleasant Hill Road, a gas station, and high school, and the visibility effect would not be expected to be significant given compliance with the required design review.⁹¹

ORG1-59

The Staff CEQA Analysis does not raise aesthetics, hillside development, lighting and glare and other significant and unavoidable impacts as raised by the Terraces DEIR -- and ultimately finds no significant and unavoidable impacts.

IV. Conclusion

As shown herein, the City's DEIR: (i) fails to set forth a valid project description; (ii) fails to provide an accurate baseline of existing environmental conditions; (iii) misleads and confuses the public; (iv) fails to consider the Application data; (v) fails to identify mitigation measures and alternatives; and (vi) fails to address the Project's consistency with the City's General Plan and zoning designations.

We must respectfully state that in failing to reference significant information submitted as part of the Application, the DEIR does a great disservice to the Applicant, the general public as readers of the EIR, and to the City decisionmakers. By systematically ignoring information that does not support the City's pre-determined position, the DEIR conveys to the reader and City decisionmakers a false and misleading impression of the Apartment Project.

ORG1-60

As stated, the purpose of the DEIR under CEQA is to *provide information* -- not to advocate a City position regarding the Apartment Project or the City Downzoning. Without careful discussion of the submitted information, and a professional and impartial analysis, the EIR becomes meaningless.

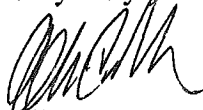
⁹¹ Staff CEQA Analysis, 2009 at p. 26.

The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decisionmakers, and the public, with the information about the project that is required by CEQA.⁹²

ORG1-60
Cont.

We respectfully request that the City carefully consider these Comments and make changes and additions to the DEIR as requested herein.

Very truly yours,



Allan C. Moore

Appendices

Appendix 1 Technical Documents List (Rev. Sept. 23, 2011)

Appendix 2 Engeo Geotechnical Evaluation of Ridge Ordinance (Aug. 30, 2011)

Appendix 3 Visual Simulations (May 6, 2011)

Appendix 4 Parcel 27 Visual Analysis (August 19, 2011)

cc: Mala Subramanian
City Attorney

Anna Maria Dettmer
Dennis O'Brien
David Bowie, Esq.

⁹² *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 721-722.

Environmental Impact Report Technical Documents List
The Terraces at Lafayette Project - State Clearinghouse No. 2011072055
September 20, 2011
Revised September 23, 2011

Items Pending:

- Norm will provide vertical profiles for the two Deer Hill Road driveways
- Norm will provide the revised Engineering (Civil) plans
- Norm will provide Landscape plans
- ~~Marylee will the Rare Plant Survey~~ (received Rare Plant Survey 9-22-11)
- Marylee will provide documentation regarding any site visits by the Corps, other agencies
- ~~Marylee will provide information about the potential mitigation on the site across Deer Hill Road, if that site is selected (Draft Materials provided 9-22-11)~~
- Marylee will update the Biological Resource Assessment dated March 17, 2011 to address the occurrence of the stand of native creeping wild rye on the site, above the driveway to the existing residence (Jeff Olberding Botanist, Chris B., will GPS locations of *Leymus triticoides* next week [9-26-11] and update the plant report and vegetative communities map to reflect findings)
- Marylee will provide the wetland Report prepared by Olberding after Olberding has submitted to USACE
- Allan will get a key(s) for Jim to check for bats

Items Received:

Noticing

- ◆ NOP Response Letters for Comment Period July 25 through August 23, 2011:

Agencies:

- NOP Office of Planning and Research, Confirmation July 27, 2011
- Native American Heritage Committee, August 3, 2011
- California Department of Fish and Game, August 8, 2011
- Acalanes Union High School District, August 11, 2011
- California Department of Transportation, August 17, 2011
- East Bay Municipal Utility District, August 22, 2011 (See BKF 9-19-11 response letter below)

Public:

- Roni Melmed, April 1, 2011
- Chad Follmer, April 4, 2011
- Roberto Castellon, April 12, 2011
- John Steele, September 6, 2011

- ◆ ABAG CEQA Log July 29, 2011

- ◆ Public Scoping Meeting Scheduled Monday, October 17, 2011

Site Plans

- ◆ Architectural Plans prepared by LCA Architects on March 21, 2011
- ◆ Civil Plans prepared by LCA Architects on May 6, 2011 [To Be Updated as of 9-20-11]

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Aesthetics

- ◆ *Visual Simulations*, prepared by LCA Architects on May 6, 2011 (12 viewpoints: existing, day of completion, 5-years out)
- ◆ *Parcel 27 Visual Analysis*, prepared by LCA Architects on August 19, 2011

Air Quality

- ◆ *Screening Analyses of GHG, Criteria Pollutants and Air Toxics*, prepared by Shari Beth Lebicki on June 8, 2011

Biological Resources

- ◆ *Biological Opportunities and Constraints Analysis Eastern Deer Hill Road Planning Area* prepared by MHA Environmental Consulting, Inc., January 12, 2006
- ◆ *Jurisdictional Wetland Map* prepared by Olberding Environmental, Inc. on March 11, 2011 (submitted by City [9-19-11] and Marylee [9-23-11])
- ◆ *Vegetation Communities Map* prepared by Olberding Environmental, Inc. on March 11, 2011
- ◆ *Special-Status Plant Survey Report For The Terraces At Lafayette Property* prepared by Olberding Environmental on July 26, 2011 [Figure 5. Vegetative Communities Exhibit is separate file.]
- ◆ *Tree Inventory & Assessment for the Deer Hill & Pleasant Hill Rd. Project* prepared by Traverso Tree Service on March 15, 2011
- ◆ *Biological Resource Assessment for The Terraces of Lafayette* [No Figures or Appendix] prepared by Marylee Guinon and Olberding Environmental on March 17, 2011. (PDF file)
- ◆ *Biological Resource Assessment for The Terraces of Lafayette Appendix A, B, C* [No Appendix D] prepared by Marylee Guinon and Olberding Environmental on March 17, 2011. (PDF file)
- ◆ *Biological Resource Assessment for The Terraces of Lafayette* prepared by Marylee Guinon and Olberding Environmental on March 17, 2011. (MS Word file named "Final" dated March 18, 2011)
- ◆ *Draft Wetland Delineation Map for AMD_properties_North of Deer Hill Rd* (for possible mitigation) prepared by Olberding Environmental on July 13, 2011.

Cultural Resources

- ◆ *AcalanesHighSchool1950v3.jpg* - an aerial from 1950 which shows the portion of the site (in the lower left corner) and no Deer Hill Road
- ◆ Historic Topographic Maps
- ◆ Historic Photos

Geology & Soils

- ◆ *Preliminary Geotechnical Feasibility The Terraces of Lafayette* prepared by ENGEO Incorporated on March 18, 2011
- ◆ *Geotechnical Evaluation of Ridge Ordinance* prepared by ENGEO Incorporated on August 3, 2011 and revised August 30, 2011
- ◆ *Geotechnical Exploration The Terraces Of Lafayette* prepared by ENGEO Incorporated on August 18, 2011 and revised September 2, 2011
- ◆ *Existing Site Conditions* (with regards to existing soil and topographic conditions) by ENGEO Incorporated on September 2, 2011

Hazards and Hazardous Materials

- ◆ *Phase I and Phase II Environmental Site Assessment The Terraces Of Lafayette* prepared by ENGEO Incorporated on June 21, 2011

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Cont.

Hydrology and Water Quality

- ◆ *Preliminary Stormwater Control Plan for The Terraces of Lafayette* prepared by BKF on March 21, 2011
- ◆ Letter to EBMUD in response to their August 22, 2011 letter, from BKF on September 16, 2011.

Land Use and Planning

- ◆ *Moderate Housing Letter* from O'Brien Land Company (Applicant) to Ann Merideth (City), August 15, 2011
- ◆ *Chapter 6-20 Hillside Development Ordinance* prepared by the City of Lafayette, revised September 25, 2006
- ◆ *City Council Action* regarding Rezoning, September 12, 2011
- ◆ *Christmas Tree Lot Plan, August 25, 2011 (for existing conditions documentation)*
- ◆ *APQ Zoning District Regulations* prepared by the City of Lafayette
- ◆ *2011 Addendum to the Lafayette General Plan Revision Final EIR (GP02-08/RZ02-08), August 2011*

Noise

- ◆ *Preliminary Stormwater Control Plan for The Terraces of Lafayette* prepared by Wilson Ihrig & Associates, June 16, 2011.

Traffic and Circulation

- ◆ *City of Lafayette Staff Report Parking Analysis for the Downtown Core* prepared by Niroop K. Srivatsa (City) on January 3, 2011.
- ◆ *Traffic Impact Study* prepared by Abrams Associates, Inc on June 30, 2011.

2006 Studies

- ◆ *Eastern Deer Hill Opportunities and Constraints Analysis* prepared by MHA Environmental Consulting, Inc., August 2006.

ORG1-61
Cont.



**GEOTECHNICAL EVALUATION
OF RIDGE ORDINANCE**

**AMD TRUST PROPERTY
LAFAYETTE, CALIFORNIA**



**ENGEIO
INCORPORATED**

**Submitted to:
O'Brien Land Company, LLC
3031 Stanford Ranch Road, Suite 2-310
Rocklin, CA 95765**

**Prepared by:
ENGEIO Incorporated**

**August 3, 2011
Revised August 30, 2011**

Project No. 9181.100.000

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- Expect Excellence -

Project No.
9181.100.000

August 3, 2011
Revised August 30, 2011

Mr. David R. Baker
O'Brien Land Company, LLC
3031 Stanford Ranch Road, Suite 2-310
Rocklin, CA 95765

Subject: AMD Trust Property
Deer Hill Road
Lafayette, California

GEOTECHNICAL EVALUATION OF RIDGE ORDINANCE

Dear Mr. Baker:

We have prepared this report to provide a geotechnical analysis of the Lafayette Area Ridge Map Hillside Overlay Ridge Map prepared by the City of Lafayette. The purpose of this study was to evaluate the ridge mapping from the standpoint of physical geography, topography and geology and to provide our opinions with respect to the applicability of the current map to the AMD Trust Property

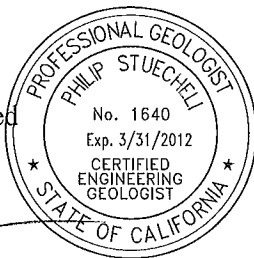
If you have any questions or comments regarding this report, please call and we will be glad to discuss them with you.

Sincerely,

ENGEO Incorporated



Philip J. Stuecheli, CEG
pjs/dsh/jf:eval



Daniel S. Haynosch, GE



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4.0 LIMITATIONS AND UNIFORMITY OF CONDITIONS.....4

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Cont.**

FIGURES

1.0 PURPOSE AND SCOPE

The Lafayette Area Ridge Map, Hillside Overlay District Map (HODM) prepared by the City of Lafayette and incorporated into its Municipal Code designates Lafayette Ridge as a Class I ridgeline extending from the vicinity of Russell Peak in Briones Regional Park to the rough boundary of the AMD Trust Property and Deer Hill Road. Based upon purely visual observation, the HODM Class I Ridgeline designation does not appear consistent with actual field conditions as it appears that the topography of much of the area has been significantly altered due to extensive excavation and grading. ENGEEO has prepared this report as an analysis of the Lafayette Ridge landform in order to verify the accuracy of the HODM and the propriety of its ridgeline designations within the general vicinity of the AMD Trust Property.

2.0 LAFAYETTE RIDGE

According to the United States Geological Survey (USGS) Briones Valley and Walnut Creek 7½-minute topographic quadrangles, the topographic feature designated as Lafayette Ridge extends from the vicinity of Russell Peak in Briones Regional Park for a distance of approximately 2.2 miles southeast. Over that distance, the ridge crest consists of a narrow steep-sided spine varying in elevation from approximately 1,200 feet to approximately 750 feet above mean sea level (msl). The main ridge spine is surrounded by numerous lower ridges extending laterally away from the main ridge at lower elevations. The regional topography of Lafayette ridge from the USGS quadrangle maps is depicted on Figure 1A.

2.1 AMD TRUST PROPERTY

The AMD Trust Property is located southeast of Deer Hill Road and northwest of the intersection of Pleasant Hill Road and Highway 24 in Lafayette, California. Cuts and fills related to grading for Deer Hill Road, Highway 24 and a prior quarry operation have altered the original topography of the site (Figure 3). The current topography of the property can generally be characterized as four relatively flat-lying terraces separated by slopes that vary from inclinations of 1.5:1 to 4:1 (horizontal:vertical). Current elevations range from a high of about 463 feet above mean sea level (msl) on the northernmost terrace adjacent to Deer Hill Road to a low of about 330 feet above msl at the drainage near Pleasant Hill Road at the eastern edge of the site.

2.2 LAFAYETTE AREA RIDGE MAP

The City Zoning Ordinance Section 6-2022 states:

“ For the purpose and application of this article, each ridge designated on the Lafayette area ridge map is grouped into one of three classes, I, II and III, depending upon its location, height, significance in relation to other nearby topographical features and the impact that development on or near the ridgeline would have upon scenic views of ridges and hillsides and the protection of open space, wildlife corridors, and native grassland, oak woodland, chaparral and riparian areas. “

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Cont.

The City HODM defines "Class I" and "Class II" ridgelines as shown on Figure 1A. Class I ridges are assigned a ridgeline setback of 400 feet and Class II ridges are assigned a setback of 250 feet. For the purposes of this study, we have focused on the southeast end of Lafayette Ridge, where the HODM identifies a single Class I ridge and 10 Class II ridges around the flanks of the Class I portion of Lafayette Ridge. The Class I ridge designation for Lafayette Ridge extends from Russell Peak at an elevation of 1,357 feet for approximately 2.2 miles, where the Class I ridge bifurcates and extends to the east and south. This portion of the HODM Class I ridge approximately coincides with the USGS designation of "Lafayette Ridge." The HODM then indicates that the Class I Ridge extends for approximately one-half mile from the bifurcation (Figure 2; Point A1) to the south to the termination of the southern fork (Point B3). Over that same distance, the HODM Class I Ridge drops in elevation from 750 to 460 feet just southeast of Deer Hill Road, on the AMD Trust property. The USGS Walnut Creek Quadrangle topographic map was last updated in 1995. It depicts the elevation at the end of the Class I ridge at 500 feet. The USGS map uses a shaded overlay to denote areas of urbanization since prior map editions but the map contours have not been updated since the edition of 1959. The HODM and the USGS maps are approximately consistent; however, they both obviously fail to take into account the extensive alterations to site topography in the vicinity of the AMD Trust Property caused by prior excavations made in around 1968 to construct Deer Hill road and as part of the prior quarry operations (Figure 3). It appears that the HODM was based on the out-dated USGS topography. Neither map reflects actual conditions despite the more than 30 years that have lapsed since the original topography was substantially altered.

The City Zoning Ordinance Section 6-2006 states:

"...If a precise onsite measurement shows that the area within which development is prohibited varies from that shown on the City's map, the area shown by the onsite measurement controls."

Figures 2 and 3 show "onsite measurement" of actual post road and quarry grading conditions.

2.3 GEOMORPHOLOGY AND GEOLOGY

According to the Glossary of Geology, a "ridge" is "a general term for a long, narrow elevation of the Earth's surface, usually sharp-crested with steep sides, occurring either independently or as part of a larger mountain or hill; e.g. an extended upland between valleys" or, "the top or upper part of a hill; a narrow, elongated crest of a hill or mountain." The Glossary defines a "spur ridge" as "a subordinate ridge of lesser elevation that projects sharply from the side of a hill, mountain, or other high land surface." In geomorphology, landforms are commonly assigned an "order" to distinguish primary landforms from subordinate features. The topography of Lafayette Ridge includes both a main, first-order "ridge" and second-order "spur ridges" that project at high angles from the main ridge as depicted on Figure 1A. Under this system of classification, the first-order landform of Lafayette Ridge ends at the approximately point A2 (Figure 2) on the HODM Class I ridge. The east and south extensions of the Class I ridge, and both HODM-designated Class I ridges would be classified as second-order spur ridges.

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Cont.**

Lafayette Ridge is formed by layers of northwest-trending sedimentary rocks. The ridge crest runs parallel to the bedrock layers at an orientation of 65 degrees west of north and is truncated at the location of the Lafayette fault, as depicted on Figures 1A-1D. East of the fault, the topography drops approximately 200 feet over a distance of 900 feet forming a pronounced break, and the south spur ridge deviates from the orientation of the first-order ridge by about 80 degrees. This pronounced geomorphic break separates the first-order portion of Lafayette Ridge from the spur ridges to the east that are clearly second-order ridges.

2.4 RIDGE LINE PROFILES

We constructed profiles of several of the HODM ridge lines to evaluate consistency of the designations based on topography as shown on Figure 1. The profiles were constructed based on a 1/9 arc-second digital elevation model produced by the USGS National Elevation Database (NED) program. On Figure 1B, the main, Class I ridge profile is depicted as a red line, while the selected Class II ridge lines are depicted as orange lines. Perspective views, shown on Figures 1C and 1D, show the relative elevations of the designated Class I and Class II ridges from a vantage point south of the site. As the figures show, the Class II ridges typically terminate at elevations of 200 to approximately 250 feet above the valley floor. The south spur ridge, which the HODM depicts as terminating at the AMD Trust Property, is classified as Class I even though it bears few, if any, of the characteristics of classified ridges shown elsewhere. Thus, the south spur ridge bifurcates at a nearly right angle from the established Lafayette Ridge Landform and then extends to an elevation of as low as 460 feet on the AMD Trust Property, which is also only about 120 feet above the adjacent valley floor (Figures 1A through 1D). The southeastern extension of this jurisdictional ridge extends approximately 650 feet beyond the logical termination of the second-order spur ridge at a well-defined slope break at an elevation of approximately 600 feet (Point B2), as depicted on Figures 1A through 1D and Figure 2.

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Cont.

3.0 CONCLUSIONS

Based on the geology, geomorphology and topography of the southeast end of Lafayette Ridge and its appurtenant spur ridges, we conclude the following.

1. The landform designated as "Lafayette Ridge" by the USGS on the Walnut Creek and Briones Valley 7½ minute quadrangles terminates at an elevation of approximately 750 feet (Point A2) at a sharp slope break approximately 2.2 miles southeast of Russell Peak, as indicated by the USGS place-name label. This slope break is the geologic expression of the Lafayette Fault, which truncates the rock layers that form the high crest of the ridge.
2. The Lafayette Ridge landform described above fits the Glossary of Geology description of a "ridge", and can be classified as a first-order ridgeline. The HODM Class II ridgelines fit the Glossary definition of "spur ridges" and can be considered second or third-order ridgelines. The approximately one-half mile long extension of the HODM Class I ridgeline from Point A2 should properly be classified as a spur ridge or second-order ridge, along with the adjacent HODM Class II ridges. Its classification as a Class I ridge is not consistent with the overall geomorphology of Lafayette Ridge. It can also be argued that the spur ridge that

extends on to the AMD Trust Property should, in fact, be delineated as a completely separate Class II ridge, since the contours locally close at the saddle near the Lafayette Fault, as depicted on Figure 2 (between Points B1 and B2).

3. The extension of the Class I ridge across Deer Hill Road and onto the AMD Trust Property appears to have been an error in the compilation of the HODM related to the use of out-dated USGS contours that do not accurately depict the ground surface. Excavations in the late 1960s, well before the adoption of the HODM, removed the southeast end of the former spur ridge and lowered elevations by 40 to 60 feet. These excavations effectively re-configured the topography into a series of broad, flat terraces. The landform used to define the end of the Class I ridge, designated Point B3 on Figure 2, no longer exists. Based on the existing topography, the most logical place to designate the end of the spur ridge is the slope break approximately 650 feet northwest of the site at an elevation of 600 feet, designated Point B2 on Figure 2.
4. The designation of a Class I ridgeline on the property is not consistent with designations of adjacent Class II ridge lines. The adjacent Class II ridges are consistently at least 140 feet higher in elevation (above msl), and typically 200 to 250 feet above adjacent valleys. Conversely, the Class I ridge on the AMD Trust Property extends lower in elevation than any of the supposedly subordinate Class II ridges, including one that is located only a few hundred feet to the west (D1-D2 on Figure 2).

Based on these findings and consistent with "onsite measurements" per Section 6-2006 of the Lafayette code, it is our opinion that the HODM Class I ridge defined through the AMD Trust property should terminate at Point B2 on Figure 2, at the end of the spur ridge 650 feet west of the site. In addition, it would, in our opinion, be more consistent to define the Class I ridge as a Class II ridge, based both on geomorphology and the mapping of adjacent Class II ridges on the HODM.

4.0 LIMITATIONS AND UNIFORMITY OF CONDITIONS

This report presents preliminary geotechnical recommendations for planning purposes. If changes occur in the nature or design of the project, we should be allowed to review this report and provide additional recommendations, if any. It is the responsibility of the owner to transmit the information and recommendations of this report to the appropriate organizations or people involved in design of the project, including but not limited to developers, owners, buyers, architects, engineers, and designers. The conclusions and recommendations contained in this report are solely professional opinions and are valid for a period of no more than 2 years from the date of report issuance.

We strived to perform our professional services in accordance with generally accepted geotechnical engineering principles and practices currently employed in the area; no warranty is expressed or implied. There are risks of earth movement and property damages inherent in building on or with earth materials. We are unable to eliminate all risks or provide insurance; therefore, we are unable to guarantee or warrant the results of our services.

**ORG1-62
Cont.**

This report is based upon field and other conditions discovered at the time of report preparation. We developed this report with no subsurface exploration data. Considering possible underground variability of soil, rock, stockpiled material, and groundwater, additional costs may be required to complete the project. We recommend that the owner establish a contingency fund to cover such costs. If unexpected conditions are encountered, notify ENGEO immediately to review these conditions and provide additional and/or modified recommendations, as necessary.

This document must not be subject to unauthorized reuse; that is, reusing without written authorization of ENGEO. Such authorization is essential because it requires ENGEO to evaluate the document's applicability given new circumstances, not the least of which is passage of time.

Actual field or other conditions will necessitate clarifications, adjustments, modifications or other changes to ENGEO's documents. Therefore, ENGEO must be engaged to prepare the necessary clarifications, adjustments, modifications or other changes before construction activities commence or further activity proceeds. If ENGEO's scope of services does not include onsite construction observation, or if other persons or entities are retained to provide such services, ENGEO cannot be held responsible for any or all claims arising from or resulting from the performance of such services by other persons or entities, and from any or all claims arising from or resulting from clarifications, adjustments, modifications, discrepancies or other changes necessary to reflect changed field or other conditions.

**ORG1-62
Cont.**

REFERENCES

City of Lafayette, Lafayette Area Ridge Map Hillside Overlay District Map, Adopted July 8, 2002.

City of Lafayette, Zoning Ordinance Section 6-2022, 2000:

Dibblee, T. W., Jr., 2005, Geologic Map of the Walnut Creek Quadrangle, Alameda and Contra Costa Counties, California, DF 149, 2005.

USGS, Briones Valley and Walnut Creek 7 ½-Minute Quadrangles, Edition of 1973, at 1:24,000 scale.

USGS, National Elevation Database, 1/9 Arc-Second Digital Elevation Model, Processed to create 2-foot contours

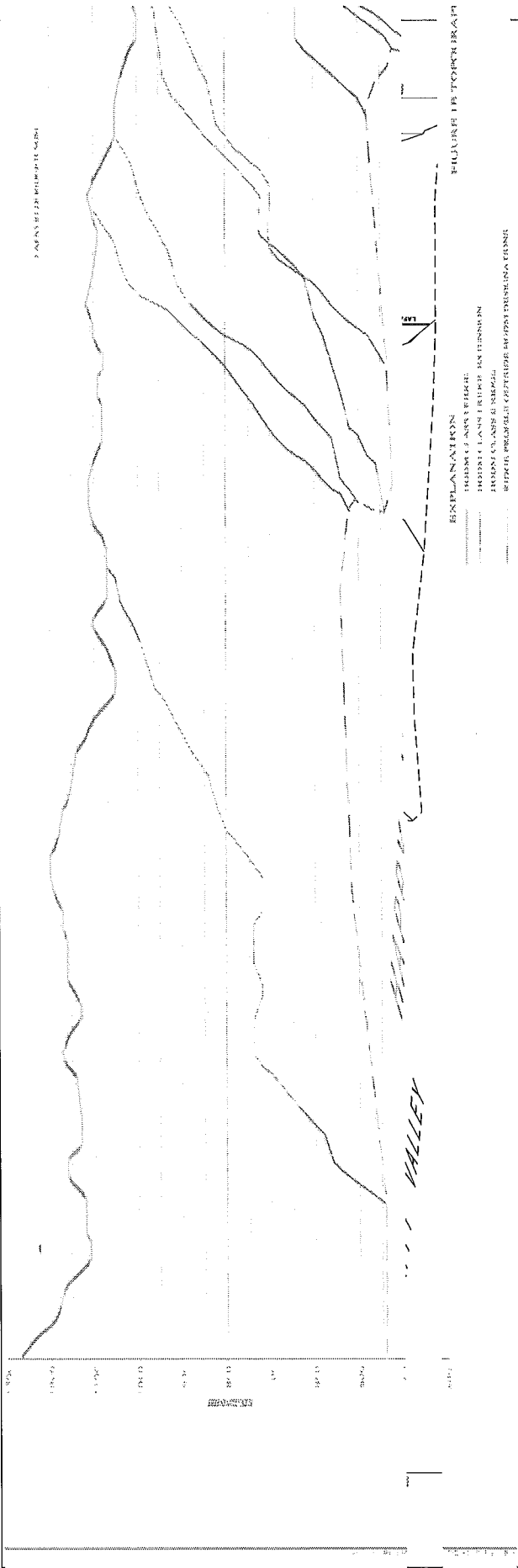
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FIGURES

- Figure 1** **Geomorphic Analysis of Ridgeline Designation**
- Figure 2** **Ridge Plan**
- Figure 3** **Areas of Grading Disturbance**



7 1/2" x 11" (21.6 x 27.9 CM)



PLANNING

EXPLANATION

Hatched areas indicate
 proposed lands to be used
 for the project
 Shaded areas indicate
 lands to be used for
 the project

PLANNING

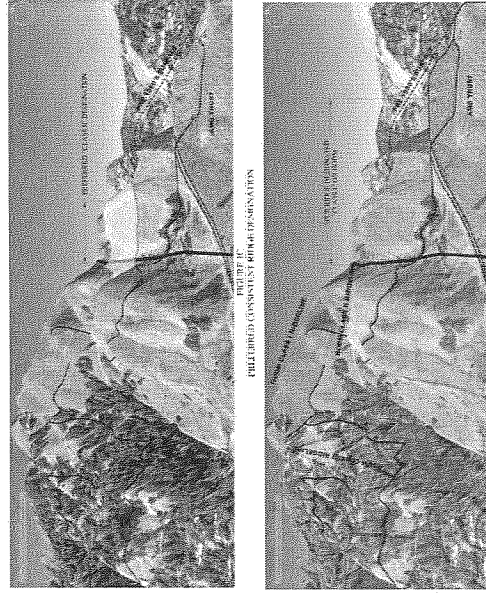


FIGURE 10

FIGURE 11

COUNTY OF LOS ANGELES
 PUBLIC WORKS DEPARTMENT
 PLANNING DIVISION
 LAND USE DIVISION
 LAND USE PLANNING SECTION
 1200 N. GARDEN STREET, SUITE 200
 LOS ANGELES, CALIFORNIA 90012
 PHONE: (213) 473-2222
 FAX: (213) 473-2222

EXPLANATION
 CLASSIFICATION CODE
 01 - 02 - 03 - 04 - 05
 06 - 07 - 08 - 09 - 10
 11 - 12 - 13 - 14 - 15
 16 - 17 - 18 - 19 - 20

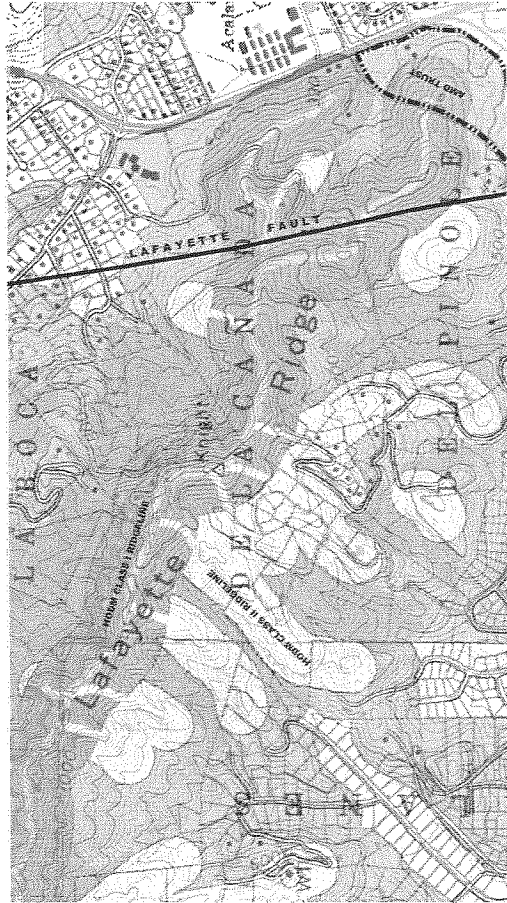
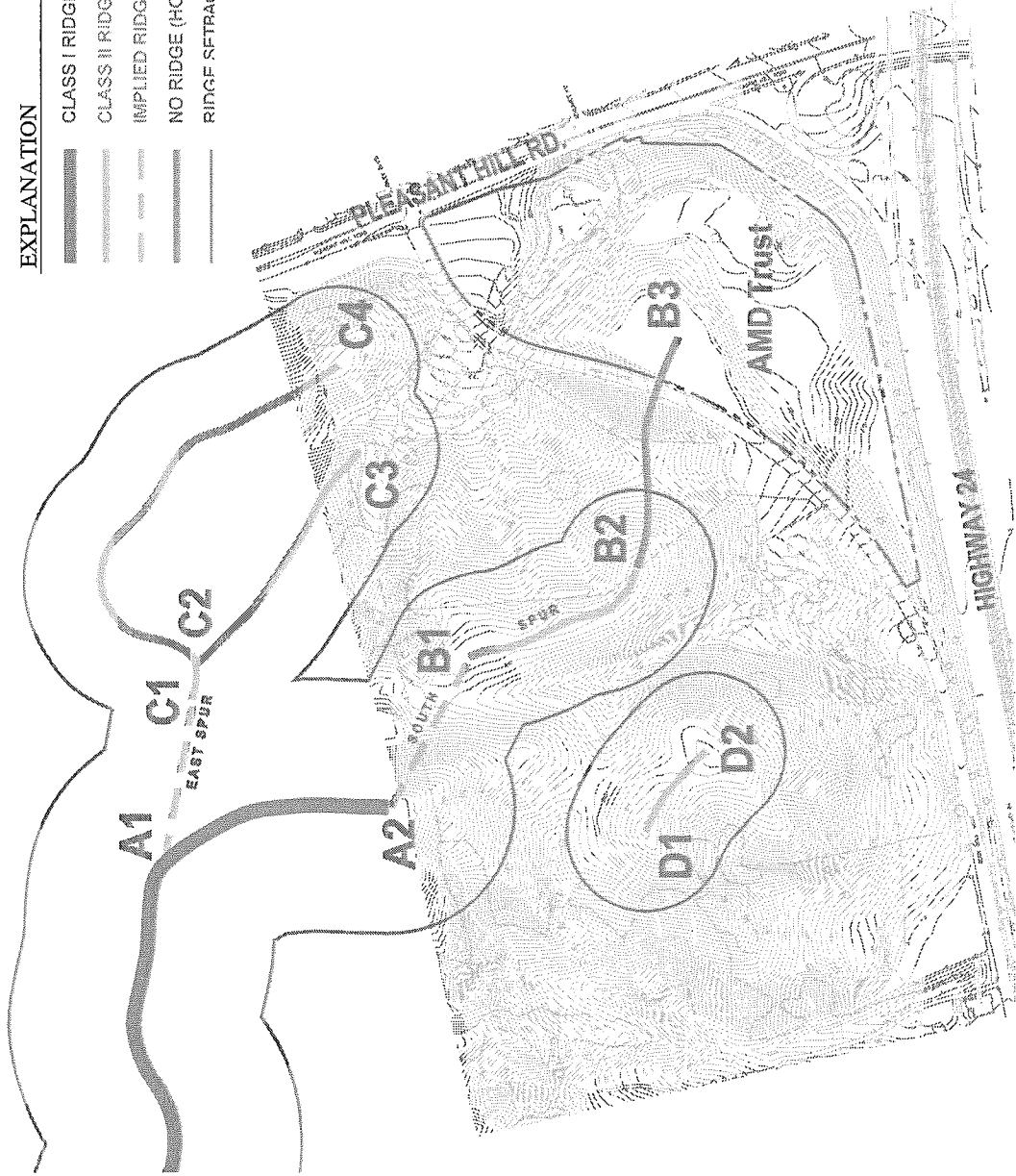


FIGURE 1A

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Cont.

EXPLANATION

- CLASS I RIDGE (400' SETBACK)
- CLASS II RIDGE (260' SETBACK)
- IMPLIED RIDGE (NO FEATURE)
- NO RIDGE (HODM BASED ON INACCURATE TOPO)
- RIDGE SETBACK



BASE MAP SOURCE: LCA ARCHITECTS











RIDGE PLAN
 AMD TRUST PROPERTY
 LAFAYETTE, CALIFORNIA

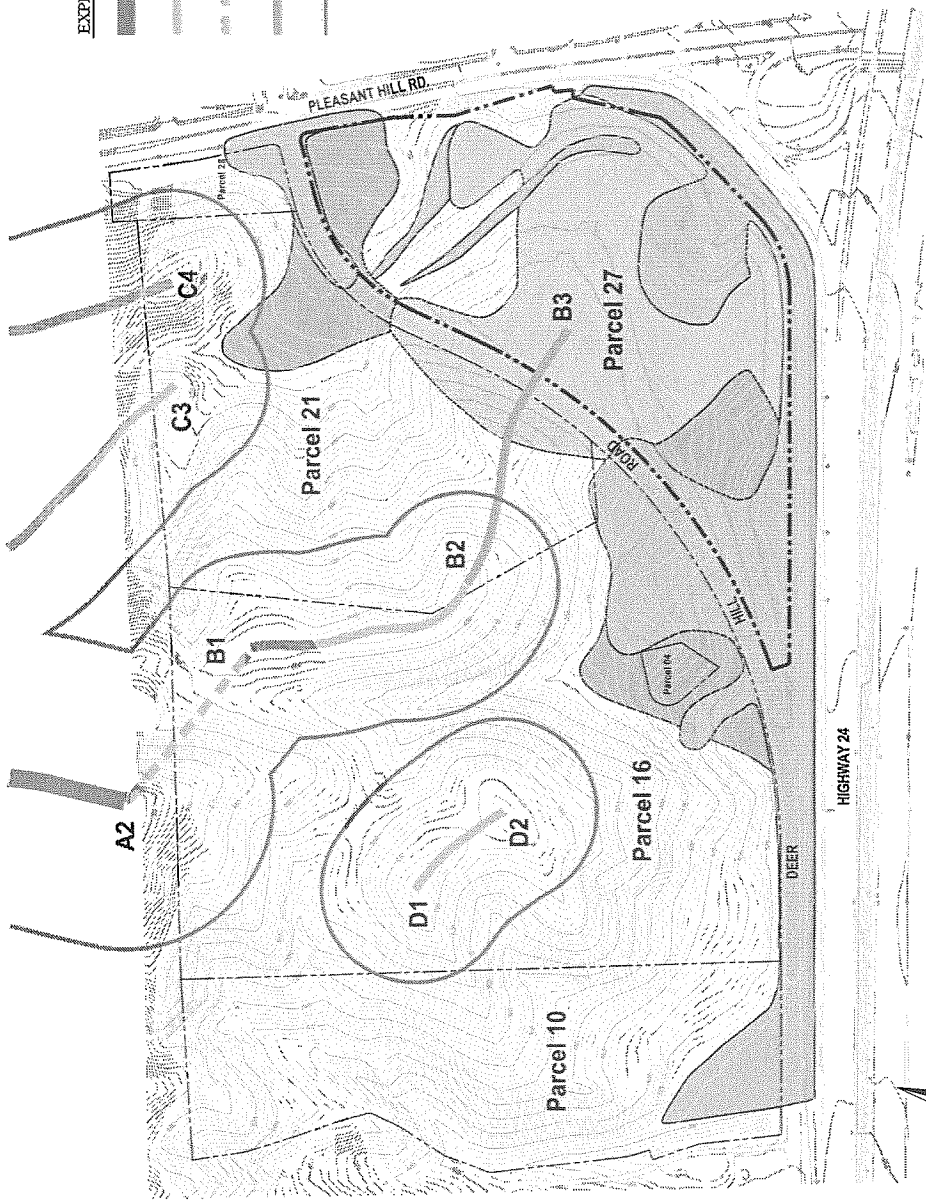
PROJECT NO: 9181.000.100	FIGURE NO: 2
SCALE: AS SHOWN	
DRAWN BY: PC	CHECKED BY: PS

ORIGINAL FIGURE PRINTED IN COLOR

ORG1-62
 Cont.

EXPLANATION

-  CLASS I RIDGE (400' SETBACK)
-  CLASS II RIDGE (250' SETBACK)
-  IMPLIED RIDGE (NO FEATURE)
-  NO RIDGE (HODM BASED ON OUTDATED TOPO)
-  RIDGE SETBACK
-  AREAS OF SIGNIFICANT CUT
-  AREAS OF SIGNIFICANT FILL
-  AREAS OF OTHER DISTURBANCE



BASE MAP SOURCE: *ica-architects*



EASTERN DEER HILL PLANNING AREA
AREAS OF GRADING DISTURBANCE
AND TRUST PROPERTY
LAPAYETTE, CALIFORNIA

PROJECT NO: 9181.000.100	REVISION
SCALE: AS SHOWN	3
DRAWN BY: PC	CHECKED BY: PS

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