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December 5, 2018

**VIA E-MAIL AND U.S. MAIL**

Robert B. Hodil  
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**Re: Conflict of Interest Issues Regarding City Council Member-Elect  
Susan Candell with Respect to the Terraces of Lafayette Apartment Project**

Dear Rob:

This letter is in response to your call late Friday afternoon, on November 30, 2018, after having received and reviewed our letter earlier that day documenting Councilmember-elect Susan Candell's long history actively opposing our clients' proposed 315-unit affordable apartment project in Lafayette and even expressing personal hostility to our clients. You called to ask for my thoughts on *City of Fairfield v. Superior Court*, 14 Cal.3d 768 (1975), which I briefly explained is both off point and distinguishable. This letter elaborates further on that topic.

As you know, *Fairfield* is an older California Supreme Court decision that addressed a planned unit development permit for a new shopping center. There, the city council scheduled a hearing to consider the adequacy of the project EIR and to determine whether to grant the permit. At the outset of the hearing, the developer's attorney requested that the mayor and one councilmember disqualify themselves from participation and filed two declarations in support of the request. One declaration stated that before the hearing the mayor had told the developer he was opposed to the project. The other stated that the other councilmember spoke against the project at two meetings of the planning commission, and in response to an audience question at a candidate's night meeting, reiterating his opposition. Both councilmembers refused to disqualify themselves and voted with a three-member majority to deny the project.

Without waiting for an answer to its complaint alleging that the bias of the councilmembers denied the developer a fair hearing, the developer sought to depose the councilmembers. One category of questions sought to inquire into the evidence the council examined and relied upon and the reasoning process underlying the denial of the project, including the factors the mayor considered in making up his mind to vote against the project. A second category sought to discover when the councilmembers

had decided to vote against the project and whether they had stated their opposition to the project at a date earlier than the council meeting. The trial court ordered the councilmembers to respond to the questions. The city sought to restrain enforcement of that order in the court of appeal. The court of appeal disagreed with the trial court and held that because the developer made no showing that its questions were reasonably calculated to lead to the discovery of admissible evidence, as required by Code of Civil Procedure section 1094.5(e) (evidence additional to the administrative record can be introduced only if that evidence could not with reasonable diligence have been presented at the administrative hearing, or was improperly excluded at that hearing), the trial court erred in granting the developer's motion to compel answers.

The *Fairfield* decision focused on whether, under section 1094.5, the mayor and the councilmember could be deposed about the mental deliberations that led to their decision to vote against the project. Importantly, the city's zoning ordinance did not prescribe any specific standards for the grant of a planned unit development permit and thus the proceedings before the city council did not turn upon the adjudication of disputed facts or the application of specific standards to the facts found. As a result, "the few factual controversies were submerged in the overriding issue of whether construction of the shopping center would serve the public interest" because in a city of Fairfield's size at the time, the council's decision on the location and construction of a shopping center could significantly influence the nature and direction of future economic growth as an issue of local policy:

"The construction of that center will increase both the city's revenue and its expenditures; will affect the value not only of neighboring property but of alternative shopping center sites and of existing businesses; will give employment but may also aggravate traffic and pollution problems. These topics are matters of concern to the civic-minded people of the community, who will naturally exchange views and opinions concerning the desirability of the shopping center with each other and with their elected representatives."

Accordingly, the court acknowledged in dicta that a councilmember may discuss issues of vital concern with his constituents and state his views on matters of public importance. The court qualified this point, however, by noting that most of the comments at issue occurred in the context of a political campaign, where candidates should have some freedom to express their policy views about matters of importance in the community.

The *Fairfield* decision did not discuss, much less consider and analyze, the concept of common law bias. And while *Nasha v. City of Los Angeles*, 125 Cal.App.4th 470 (2004) did not discuss or distinguish *Fairfield*, the court in *Clark v. City of Hermosa Beach*, 48 Cal.App.4th 1152 (1996) did. It construed *Fairfield* narrowly, as tolerating general comments about local policy only, as distinguished from comments about a specific project:

“Of course, a public official may express opinions on subjects of community concern (e.g., the height of new construction) without tainting his vote on such matters should they come before him. [citation omitted]. Here, Benz’s conflict of interest arose, not because of his general opposition to 35-foot buildings, but because the specific project before the Council, if approved, would have had a direct impact on the quality of his own residence. In addition, Benz’s personal animosity toward the Clarks contributed to his conflict of interest; he was not a disinterested, unbiased decisionmaker.”

In short, *Nasha* and *Clark* are on point and deal squarely with the constitutional legal requirement for unbiased decision-makers in adjudicative matters such as land use permitting. In contrast, however, *Fairfield* was focused largely on the council’s mental deliberations and whether discovery on that subject could appropriately be conducted. It also dealt with elected officials already sworn into office, not prospective elected officials who opposed a project before their candidacy or election. In addition, *Fairfield* did not address common law rules against constitutionally impermissible bias and was focused heavily on city policy issues rather than adjudicative fair hearing rights.

Of course, we are not interested in conducting discovery into Susan Candell’s mental deliberations, particularly when she has freely volunteered her thoughts about the project publicly for years, and she was not a candidate for office much less an elected official when she made the vast majority of her extensive statements in opposition. In addition, the Terraces project is about the issuance of an adjudicative land use permit under the findings established in Lafayette Municipal Code section 6-215, subject to the strict rules established by the state’s Housing Accountability Act (Gov’t Code section 65589.5), and has nothing to do with general city land use or housing policy. In fact, if the project has anything at all to do with policy it has to do with *state* policy and the legislature’s command that the HAA “be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing,” (section 65589.5(a)(1)(L)). As shown in our November 30 letter, however, Ms. Candell has already expressed her hope that the City attempt to figure out “what it would take to make [the HAA’s] findings” to deny the project, an objective contrary to the plain terms of the HAA.

Again, Ms. Candell’s deeply held opposition to the project is extensively documented and widely known. Indeed, it helped catapult her into office. Thus, we note that Ms. Candell could not have washed away her passionate project opposition with any self-serving statement about her ability to be neutral and fair once elected, and to her credit she has not made any attempt even to try to do so. Instead, the only facts in the record are Ms. Candell’s repeated expressions of opposition to the project, freely made, without compulsion or coercion. This clearly indicates that she cannot fairly consider it. No reasonable person could conclude otherwise.

While we acknowledge again that Ms. Candell had a right to express herself as a private citizen and to advocate against the project, a right she regularly exercised for more than half a dozen years, there is a consequence to having done so now that she

has been elected to the City Council. Once sworn in Ms. Candell will be required to uphold the law, including compliance with the HAA and our clients' legal rights to impartial adjudicators. But she cannot fulfill that role here, however, when it comes to the project, because she is embroiled in her long and spirited battle against it.

Thus, we again respectfully make clear that Ms. Candell must recuse herself from participating in any part of the City's ongoing processing of the project (including open meetings and closed sessions, meetings or conversations with other City officials and staff, and otherwise) and indicate publicly, on the record, that she has so recused herself. As the chief legal officer for the City itself, embodied in the City Council as a whole, the City Attorney previously provided such sound advice under far more benign facts several years ago when Councilmember Traci Reilly signed but a single petition against the project while still a private citizen. Similarly here, to ensure the City's upcoming permitting process for the project is fair and legally valid, we are confident that similar advice will and must be provided under the abundant facts here that establish a level of unusually committed project opposition and resultant bias that has never been and cannot be credibly denied.

Thank you in advance for your prompt assistance with this important matter.

Sincerely,

MILLER STARR REGALIA

*Bryan W. Wenter*

Bryan W. Wenter, AICP

BWW/kli

cc: Honorable Mayor Don Tatzin and City Councilmembers  
Steve Falk, City Manager  
Dennis O'Brien  
Caryn Kali  
Dave Baker  
Anna Maria Dettmer  
Allan Moore, Esq.  
Arthur F. Coon, Esq.



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San Francisco, CA 94104  
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**Re: Conflict of Interest Issues Regarding City Council Member-Elect  
Susan Candell with Respect to the Terraces of Lafayette Apartment Project**

Dear Rob:

Along with Allan Moore of Wendel, Rosen, Black & Dean LLP, we represent O'Brien Land Company, LLC and Anna Maria Dettmer in connection with the above-referenced 315-unit affordable apartment project, the application for which was "deemed complete" in 2011, pursuant to the Permit Streamlining Act (Cal. Govt. Code § 65920 *et seq.*) ("**Project**").

Given the inherent sensitivity in raising such issues, we write with significant reluctance to address the unequivocally-expressed bias of newly elected City Council member Susan Candell with respect to the Project. We are compelled do so because Ms. Candell has been a long, frequent, and ardent adversary of the Project dating at least as far back as 2012 when the City was processing the Project's draft Environmental Impact Report ("**EIR**"). Unfortunately, Ms. Candell's many public statements, including those throughout the summer of 2018 on the cusp of—and even during—her campaign, make clear that she is irretrievably biased against the Project. In addition, she has made clear she also holds material animosity to our clients.

Ms. Candell's dogged opposition easily exceeds the minimum legal standard for disqualification—"an unacceptable probability of actual bias." See, e.g., *Nasha v. City of Los Angeles*, 125 Cal.App.4th 470, 483 (2004). Moreover, the representative evidence shown below establishes that Ms. Candell has repeatedly crossed far beyond that critical minimum legal threshold. Indeed, the evidence shows that she is unequivocally and *actually* biased against the Project and has worked tirelessly to attempt to cause its failure.<sup>1</sup>

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<sup>1</sup> The evidence referenced in this letter omits many other statements Ms. Candell has made regarding the Project demonstrating her vehement opposition to it, and it omits almost the entirety of an equally if not more voluminous body

Thus, while we certainly wish Ms. Candell a successful tenure on the City Council generally, for the reasons explained herein she cannot—without violating our clients' constitutional rights to due process and statutory rights to fair procedure—lawfully participate in any part of the City's consideration of the Project, whether in an open and noticed public meeting, in a publicly noticed closed session, in private meetings or conversations with City officials or staff, or otherwise.

## FACTS

Ms. Candell's opposition to the Project manifests itself in numerous ways. For example, she has characterized the Project as a catalyst for her desire to run. Her campaign website (<https://www.susancandell.com/>) admits that:

"My intense civic involvement began 5 years ago with the Deer Hill project, first as 315 Apartments then with 44 Homes. As an engineer, when faced with complicated problems, I knew it was time to roll up my sleeves and delve into the mountain of paperwork for the Homes project. When I discovered that the cancer risk to students at Acalanes High School during construction of the Homes was above allowed limits, I instantly called my friend whose daughter at Acalanes is a cancer survivor, and explained what I had found. She said, 'We have to stop this, Susan.' That's when Mama Bear came out, and my deep civic involvement began."  
(Attachment 1).

Consistent with that voluntary public admission, Ms. Candell explained to the *Lamorinda Weekly*, in an article published September 19, 2018, that "[t]he 315 Apartments at Deer Hill will cause irreparable harm to the environment and gridlock. Lafayette urgently needs to be proactive." (Attachment 2). While this statement alone exceeds the standard the courts have established for constitutionally impermissible bias requiring recusal, there is much more in the same vein.

Predating her run for office by more than half a decade, on January 16, 2012 Ms. Candell signed a petition opposing the Project (signature #86). (Attachment 3). The petition was submitted to the City and made a part of the administrative record for the EIR. Former City Councilmember Traci Reilly signed the same petition (signature #441) and, as explained in the minutes of the City Council's December 9, 2013 meeting,<sup>2</sup> properly recused herself from all aspects of the Project as a result. (Attachment 4).

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of opposition to The Homes at Deer Hill project alternative, which was ultimately defeated in a ballot referendum following a change in the law. See *City of Morgan Hill v. Bushey*, \_\_ Cal.5th \_\_ (2018) (Case No. 243042) ("The Court of Appeal's decision here constituted a change in law . . ."). Ms. Candell was a key participant and community leader in the "Vote NO on Measure L!" campaign. Although we cannot imagine additional documentation is needed to demonstrate Ms. Candell's probable bias beyond that which is provided with this letter—much less her actual bias— if the City requires more evidence, we are prepared to provide it.

<sup>2</sup> Agenda item 9(B) "Council Reorganization"

On January 7, 2013, Ms. Candell wrote the City a technical letter identifying an earthquake that occurred on the Project site in 2007. (Attachment 5).

Later the same year, on August 5, 2013, Ms. Candell signed another petition urging the City to “approve the FEIR, with its 13 significant and unavoidable impacts.” Apparently thinking it would be more difficult to approve a project with additional impacts, she added “that it would be even better if you instead adopt[ed] the Resolution as written by Eliot Hudson” showing 16 significant and unavoidable impacts. (Attachment 6).

Similarly, on August 7, 2013, Ms. Candell wrote a letter to the City Council opposing the Project and asserting, among other things, that the potential of children living in the Project crossing Deer Hill Road **“is clearly a very new and HUGE safety issue. Deer Hill Road is blind. This is an accident waiting to happen.”** (Attachment 7; emphasis in her letter).

And this year, during the summer months leading to her eventual candidacy for the City Council as well as during her campaign, when she might have realized the need to appear to be open-minded with respect to the Project, Ms. Candell attended and spoke at several City Council meetings—including those of June 11, 2018<sup>3</sup> and June 25, 2018<sup>4</sup>—urging the Council to take steps she hoped would kill the Project, including quickly rezoning the Project site, scheduling emergency meetings on 24 hours’ notice, and hiring additional outside counsel (i.e., someone other than the long-tenured and well-qualified City Attorney with whom Ms. Candell and other staunch Project opponents have baselessly disagreed about the City Attorney’s correct legal advice)<sup>5</sup> to assist the City in its handling of the Project. (Attachment 8 and Attachment 9).

On June 28, 2018, Ms. Candell co-authored (along with Scott Sommer, another active and vocal project opponent) a lengthy technical letter to the City Council and Planning Commission, maligning the “integrity and reputation” of the City’s environmental consultant for the Homes at Deer Hill project and arguing that “[a]s concerned citizens, we respectfully submit that the city should select a new qualified EIR consultant for the supplemental environmental work that will be required for the resubmitted Terraces (315 Apartments) application” and that “[t]he Terraces project is an enormous project as compared to the Homes.” (Attachment 10).

On July 1, 2018, Ms. Candell provided the City Council another letter, regarding the Council’s July 3, 2018 agenda item 7(B) (“Consideration of Appointing Additional Legal

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<sup>3</sup> Agenda item 8(A) “Rezoning options for property located at 3233 Deer Hill Road, APN 232-150-027, also known as the “Terraces of Lafayette” and “Homes at Deer Hill” and consideration of potential changes to the general plan designation”

<sup>4</sup> Agenda item 5 “Public Comments”

<sup>5</sup> Examples include (1) Ms. Candell’s and other Project opponents’ disagreement with the City Attorney’s correct determination in December 2015 that the referendum was invalid under *deBottari v. City Council*, 171 Cal.App.3d 1204 (1985), before the law changed; (2) the City Attorney’s correct determination that the Process Agreement was valid; and (3) the City Attorney’s correct determination that the Permit Streamlining Act is intended for the protection of project applicants and does not operate to cause project denials, the latter two of which you also correctly informed the City Council of during its August 13 meeting (see Attachment 13).

Counsel Regarding Terraces Apartment Project located at 3233 Deer Hill Road”), writing that “[i]n addition, this counsel must have a [sic] very strong arguments for defending the city against the 315 apartments proposal . . . Through the efforts by so many citizens, the City of Lafayette effectively ‘set back the clock’ for this property. This happened with the defeat of Measure L, proving that the Alternative proposal was also not acceptable for this site.” (Attachment 11).

Ms. Candell also addressed the City Council on August 13, 2018,<sup>6</sup> on the same day she filed her official “Candidate Statement of Qualifications” (Attachment 12), to say she “was not sure the Council was finished with this topic, stating the EIR disclosed 13 significant and unavoidable impacts, 5 of which are health and safety and are likely to be the ones investigated under the HAA and see what it would take to make those findings” (i.e., to deny the Project). At the same meeting she stated that the “health and safety impacts of the Terraces dwarfs the Homes at Deer Hill effort . . . The one out of five health and safety impacts which [sic] is the largest is the 30,000 dump truck trips from this site as the hillside is decimated.” The minutes for that meeting show that Councilmember Anderson disclosed he had recently met about the Project with Ms. Candell and other active project opponents. (Attachment 13).

Ms. Candell has also posted many statements on Nextdoor (a social networking service for neighborhoods) (a selected and more detailed partial summary of which is included as Attachment 14), including the following:

- “A CEQA lawsuit can be filed if, for example, our city approves the Terraces project in its current form with its 13 significant and unavoidable impacts. Since the HAA may also be at play, if any of the 5 health or safety impacts can be shown to be significant, the project can also be denied. What the issue is TONIGHT is whether the city retains the land use expert attorney to defend that the project also violates the general plan . . . .”
- “It’s an overlooked fact that the Terraces Apartments were not totally in compliance with General or Site Specific zoning . . . .”
- “Is O’Brien from Hillsborough somehow our new neighbor? I was cracking up!”
- “I’m also against a developer who has threatened so much that he has kept our city held as hostage for 7 years. I believe the reasoning by Save Lafayette’s attorney that we are no longer hostage by Apartments.”
- There are many totally valid ways of fighting the 315 Apartments . . . .”

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<sup>6</sup> Agenda item 13B(2) “Discussion Regarding Release of Memo from Coblenz Patch Duffy & Bass LLP”



- “City Council Must Not Give Away the 315 Apartments Project to Developer . . . ALL of these efforts will be wasted with a single wrong legal move by the City of Lafayette before July 15 in response to the Terraces Application . . . .”
- “The only way to ‘change’ the Terraces project and remove these Significant and Unavoidable Impacts is to submit a brand-new project, and then start from the beginning and generate a new EIR. The Terraces project that was just resubmitted does not change anything.”
- “I hope the developer comes up with a new proposal that doesn’t involve 30,000 dump trucks.”
- “[D]uring this unapproved time between when the Homes project started and now, Lafayette's General Plan changed, so there is now a mismatch with the APO zoning for that site and the General Plan. A re-zoning will need to happen to fix this, which is then subject to the referendum process just like was done for the Homes. I feel now extremely confident that we citizens will rise to the vote if the 315 Apartments project comes back!”
- “Same legal issues as the 315 Apartments - a zoning change would need to occur, so again our rights to petition for a referendum works for that too!”
- “[A] No vote will better serve both the historic goals of our community as well as better position us for future challenges[.]”
- “A huge project like Deer Hill . . . .”
- “These next 15 days are CRITICAL. The city must immediately retain legal counsel experienced in land use law, municipal law, and litigation to properly handle the re-zoning and the resubmitted 315 Apartments.”
- “[T]wo very important documents need to be produced, the first on [sic] by July 15 in response to the developers resubmission of the 315 apartments, and the other to defend the new rezone.”
- “[O]ur Hillside Ordinance, which applies to this site, dictates R65 as the appropriate zoning for this very hilly site.”
- “A new lawyer has been hired to get a second opinion, and is very likely to be in opposition to our City Attorney on this exact issue. What we can do - all of this is happening BEHIND CLOSED DOORS, ALONG WITH MEETINGS WITH THE DEVELOPER. WE PUBLIC HAVE NO IDEA AND NO INPUT TO THIS PROCESS. For a matter that clearly has SO MUCH AT STAKE, BOTH IN TERMS OF MONEY AND TIME FOR OUR CITY, IT IS EGREGIOUS THAT THEY CONTINUE TO HOLD MEETINGS BEHIND CLOSED DOORS. It appears it is still 'process as usual' for our City. Secret meetings with developer are happening this week . . . Please, everyone start

demanding that for any change in the current Apartments legal strategy or any change to the Project, including new EIR be discussed in OPEN SESSIONS [sic].”

- “The rezone in 2010 was legal, but not implemented because of failed legal advice. The citizens set back the clock, and this time the rezone by Planning Commission is R65, or 14 Homes, up from the R5 in 2010, or 5 Homes. The vote on that comes back next week. Everything the city is doing this time so far is legal and defensible, but two very important documents need to be produced, the first on by July 15 in response to the developers resubmission of the 315 apartments, and the other to defend the new rezone. These documents must be perfect and they must be quick. An independent counsel with land use expertise can create these. Written well and lawsuits could be averted. Written poorly and lawsuits will fly. Our current attorney is not a land use expert, and Ivor Samson has found the perfect person who can jump in after the vote tonight. This will be money well spent! Please support Ivor and his choice! He is the only attorney on Council, and we are very lucky to have him!”
- “The basic problem for BOTH Apartments and Commercial developments on this site is that the General Plan was modified in 2015 to specify "Low Density" single-family residences for this parcel, which is inconsistent with both Apartments and Commercial projects. So in order for either of them to be approved, the General Plan would have to be modified back to APO as well, and this is a legislative act that is subject to referendum. We citizens that don't want either a big apartment or commercial development there can petition to get it on the ballot and vote against it.”
- “The new state housing laws don't effect this site, and Deer Hill was never part of Lafayette's Housing Element. If the developer does try to change anything with that site application, we as citizens still have our rights to petition for a referendum, again. The fear factor over the apartments is what seems to be still driving people's decisions, but if you read Scott's posts, this is simply not true anymore.”

#### **PROCEDURAL DUE PROCESS AND APPLICABLE LEGAL STANDARDS**

Ms. Candell’s extensive comments on and opposition to the Project in light of her pending role on the City Council must be framed in the proper legal context because they directly impact our clients due process rights.

The Due Process Clause of the U.S. Constitution provides that “nor shall any state deprive any person of life, liberty, or property, without due process of law . . . .” U.S. Const. amend. XIV, section 1. The equivalent provision in the California Constitution provides that “[a] person may not be deprived of life, liberty, or property without due process of law . . . . Cal. Const. art. I, section 7. Code of Civil Procedure section

1094.5 similarly mandates that an applicant for a use permit receive a fair hearing. See, e.g., *Applebaum v. Board of Directors*, 104 Cal.App.3d 648, 657-58 (1980) (biased decision makers are constitutionally impermissible and even the probability of unfairness is to be avoided).

Numerous cases address whether procedural due process—the requirement that public entities conduct hearings in a fair manner with neutral and unbiased decision-makers—is provided when a member of an adjudicatory body considering a discretionary, quasi-judicial decision is, or may be, biased against a party. See, e.g., *Woody's Group, Inc. v. City of Newport Beach*, 233 Cal.App.4th 1012, 1022-23 (member of city council “strongly opposed” to planning commission decision appealed the commission’s decision to the council); *Nasha v. City of Los Angeles*, *supra*, 125 Cal.App.4th 470, 483 (member of planning commission wrote article “attacking” project under consideration; member held biased, and commission’s decision reversed); *Clark v. City of Hermosa Beach*, *supra*, 48 Cal.App.4th 1152, 1173 (1996) (city council member should have recused himself because proposed project had “direct impact” on the “quality of his own residence”); *Gai v. City of Selma*, 68 Cal.App.4th 213, 219 (1998) (member of personnel commission investigating officer’s discharge should have recused himself because he was actually biased against officer); *Mennig v. City Council*, 86 Cal.App.3d 341, 351 (1978) (members of city council who became personally “embroiled” in conflict with police chief should have recused themselves on question of discipline of police chief).

The courts have repeatedly held that procedural due process applies to land use permitting. See, e.g., *Woody's Group, Inc. v. City of Newport Beach*, *supra*, 233 Cal.App.4th at 1021-23; *Clark v. City of Hermosa Beach*, *supra*, 48 Cal.App.4th at 1170-73; and *Nasha v. City of Los Angeles*, *supra*, 125 Cal.App.4th at 483-84. Procedural due process always requires a level playing field, the so-called “constitutional floor” of a fair hearing in a fair tribunal—in other words, a fair hearing before a neutral and unbiased decision-maker:

“[I]n order to prevail on a claim of bias violating fair hearing requirements, *Nasha* must establish ‘an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims.’ ” [citation] A party seeking to show bias or prejudice on the part of an administrative decision maker is required to prove the same “with concrete facts: ‘[b]ias and prejudice are never implied and must be established by clear averments.’ ”

*Nasha v. City of Los Angeles*, *supra*, 125 Cal. App. 4th at 483 (quoting *BreakZone Billiards v. City of Torrance*, 81 Cal.App.4th 1205, 1236 (2000)).

Thus, to prevail on a procedural due process claim, actual bias is not required. Instead, such contention must simply be established by showing that there is “an unacceptable probability of actual bias” on the part of those who have actual decision-making power over the issue at hand.

## RELEVANT CASES ADDRESSING BIAS

*Nasha v. City of Los Angeles*, one of several leading cases in this area, made clear that allowing a biased decision-maker to participate in a discretionary decision is enough to invalidate the decision. There, a city planning director approved a five-residence development project. A neighbor and a conservancy appealed the decision to the planning commission.

Prior to the hearing by the commission, however, one of the planning commission members wrote an unsigned article in a local homeowner's association newsletter advocating "a position against the project" because he perceived the project to be a threat to wildlife migration patterns. He also spoke against the project at a neighborhood association meeting, while asserting that "I feel I can make a fair and impartial decision regarding this matter."

The developer subsequently sought a writ of mandate to overturn the planning commission decision, but the trial court denied it. The Court of Appeal reversed, concluding the planning commission's decision was "tainted by bias and must be vacated," with directions to the trial court to issue an order to the planning commission to reconsider the appeal before "an impartial panel." The *Nasha* Court held the developer had established "an unacceptable probability of actual bias" on the commission member's part.

In particular, the Court was persuaded that the newsletter article alone constituted the concrete fact (singular) necessary to prove an "an unacceptable probability of actual bias." The article was printed in the Court's decision and Court added the italics to signify the troubling language:

**"MULTIVIEW DRIVE PROJECT THREAT TO WILDLIFE CORRIDOR [¶] A proposed project taking five legal lots totaling 3.8 acres for five proposed large homes with swimming pools served by a common driveway off Multiview Drive is winding its way through the Planning process. [¶] After wildlife leaves Briar Summit heading eastward they must either head south towards Mt. Olympus or north to the slopes above Universal City. *The Multiview Drive site is an absolutely crucial habitat corridor.* Please contact Paul Edelman with the Conservancy at 310/ . . . or Mark Hennessy who lives adjacent to the project at 323/ . . . if you have any questions."**  
(Emphasis in original).

Thus, the Court did not care that the article was unsigned when it appeared in the newsletter. Moreover, the offending portion is somewhat generic in content and tone, which indicates the very low bar with respect to the evidence required to establish an "unacceptable probability of actual bias," which, as noted above, is the relevant legal standard, *not* actual bias.

The evidence of probable bias was more extensive in *Clark v. City of Hermosa Beach*. There, a city council member was held to be biased in connection with a vote denying a condominium project where the council member: (1) prior to being elected had opposed a prior iteration of the project and had appealed the project approval from the planning commission to the city council; (2) resided in an apartment in proximity to the project site; and (3) had demonstrated hostility to the project applicants by urinating on their property and periodically making loud noises in the immediate vicinity of the applicants' property disrupting their quiet enjoyment.

The Court held that the combined effect of these factors was sufficient evidence to warrant a conclusion that the council member could not be an impartial decision-maker and that the council's decision was tainted by his participation. The *Clark* case is farther along the spectrum from *Nasha* in terms of the quantum of evidence a court has relied on to conclude there was impermissible bias. It is useful to note, however, that the courts evaluate all types of indications when determining whether evidence shows an "unacceptable probability of actual bias." In any event, the quantum of evidence of Ms. Candell's bias against the Project is overwhelming and far surpasses the evidence sufficient to meet the legal standards of both *Nasha* and *Clark*.

In sum, the common law rule against bias has been framed in terms of probabilities, not certainties. The law does not require the disappointed applicant to prove actual bias. Rather, a common law conflict of interest will exist where there is concrete evidence that a decision-maker has by words, actions, or otherwise demonstrated that he or she has demonstrated an "unacceptable probability of actual bias" prior to conducting an adjudicatory public hearing on a project.

#### **ANALYSIS**

As a private citizen, we acknowledge that Ms. Candell had a right to exercise her free speech and petition rights in opposition to the Project. Our clients have never suggested otherwise, and have never hinted at, much less taken action toward, trying to limit her expression of those rights. In her role as an elected official, however, Ms. Candell will no longer be acting in the capacity of private citizen. Once sworn into office, she will be a voting member of a legislative body charged with fairly considering the Project under the law. And the law requires Ms. Candell to be unbiased on a wide range of subjects—including the Project—or to recuse herself in the event "concrete facts" undermine her neutrality, as they objectively do here.

While the law does not require proof of actual bias, there must not be "an unacceptable probability of actual bias" on the part of a municipal decision-maker or potential decision-maker such as Ms. Candell. *Nasha v. City of Los Angeles, supra*, 125 Cal.App.4th at 483. Probable bias alone is enough to show a violation of the due process right to fair procedure. Unfortunately, Ms. Candell is not only probably biased against the Project, she is actually biased.

***“The language of the law is replete with synonyms for fairness: due process, equal protection, good faith, harmless error are all ways of expressing our commitment to fairness.”***

*Woody’s Group, Inc. v. City of Newport Beach, supra*, 233 Cal.App.4th at 1016.

As shown herein, with but a partial representation of Ms. Candell’s tenacious and unrelenting Project opposition, for more than five years she has committed extensive time and effort attempting to thwart the Project as well as The Homes at Deer Hill project alternative that was ultimately defeated by a referendum petition in part through her efforts. Among other things, Ms. Candell signed two petitions against the Project. She has also spoken against the Project at numerous public meetings, written lengthy correspondence regarding the Project to the City Council detailing her many objections to it, written about the Project on social media sharing her strident and unwavering objections, and has emphasized the Project’s role in igniting her community activism and eventual decision to pursue local elected office. Her firmly held position against the Project and her animosity to our clients could not be clearer.

Ms. Candell’s well- and frequently-publicized opposition began years ago, it continued throughout the summer before she ran for City Council and during her successful campaign, and it endures today in the waning days before she will be asked to take the following oath of office:

“I, Susan Candell, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter . . . .”

We take Ms. Candell at her word. As shown by the voluminous evidence we have provided, Ms. Candell has expressed extraordinary, long-held, and unshakeable views for an elected decision-maker who might possibly claim to be unbiased regarding the Project. But these are not the typical statements of a person who can credibly maintain any semblance of impartiality. Rather, they are the statements of a tenacious and committed Project opponent, someone who has become deeply embroiled in the issue and long ago made up her mind that the Project must be denied. Thus, this is not a close case under any legal standard, including those established by *Nasha* and *Clark*. We have long known that Ms. Candell disapproves of the Project and would never support it, thus any possible assertion to the contrary belies the objective facts.

And the facts indisputably show that Ms. Candell has crossed the legal threshold of “an unacceptable probability of actual bias,” which is all that is needed to require her recusal, and that she is in reality unequivocally, actually, and unapologetically biased against the Project. Thus, even if the Project were not being processed under the

stringent and powerful requirements of the Housing Accountability Act, which severely limits the circumstances under which it could lawfully be denied, our clients are entitled to due process, including consideration and action by fair and open-minded City officials who have not actively, frequently, and directly opposed the Project. Ms. Candell cannot “unring this bell,” and we are not aware of any publicly available evidence that she has ever tried to do so.

While Ms. Candell appears well-qualified to represent the City in many of its varied interests generally, she cannot credibly claim to be anything other than a resolute Project opponent, and she thus cannot represent the City *in any capacity* regarding the ongoing processing of the Project, whether in a noticed public meeting, closed session, or otherwise, including in any meetings or communications with City staff or her future Council colleagues.

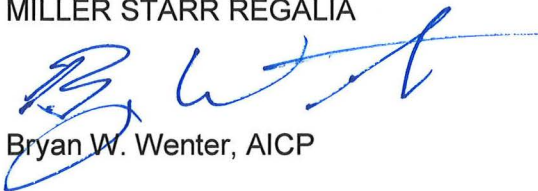
As noted above, former City Councilmember Reilly appropriately recused herself several years ago, out of an abundance of caution, merely because she signed a single petition against the Project, as a private citizen prior to her election. We expect Ms. Candell to exhibit similar ethics and concern for the City’s integrity and legal exposure given her own vastly more extensive, impassioned, and demonstrable opposition to the Project.

#### CONCLUSION

For all of the foregoing reasons, while we must reluctantly raise these uncomfortable issues given the substantial constitutional and statutory rights at stake, we respectfully request—and, indeed, must demand—that Ms. Candell recuse herself from participating in any part of the City’s ongoing processing of the Project and indicate publicly, on the record, that she has so recused herself.

Sincerely,

MILLER STARR REGALIA



Bryan W. Wenter, AICP

BWW/kli

- Attachments:
1. Portion of Susan Candell campaign website.
  2. September 19, 2018 *Lamorinda Weekly* article.
  3. 2012 petition and relevant signature pages.
  4. Relevant portion of December 9, 2013 City Council minutes.
  5. January 7, 2013 letter.
  6. 2013 petition and relevant signature pages.
  7. August 7, 2013 letter.
  8. Relevant portion of June 11, 2018 City Council minutes.

Robert B. Hodil  
November 30, 2018  
Page 12

9. Relevant portion of June 25, 2018 City Council minutes.
10. June 28, 2018 letter.
11. July 1, 2018 letter.
12. Candidate Statement of Qualifications.
13. Relevant portion of August 13, 2018 City Council minutes.
14. Selected Nextdoor posts.

cc: Honorable Mayor Don Tatzin and City Councilmembers  
Steve Falk, City Manager  
Dennis O'Brien  
Caryn Kali  
Dave Baker  
Anna Maria Dettmer  
Allan Moore, Esq.  
Arthur F. Coon, Esq.



# **ATTACHMENT 1**



(/)

Home (/)  
Meet Susan (/About/)  
Issues That Matter In Lafayette (/Issues-That-Matter/)  
Conflict Of Interest Reform (/Coi/)  
People Support Susan (/People/)  
Get Involved (/Get-Involved/)  
Events (/Events/)  
Donate (/Donate/)

EAST BAY TIMES ENDORSES CANDELL AND SAMSON (/east-bay-times-endorses-candell/)  
Avon Wilson Endorsement (/letters/)  
Eliot Hudson Endorsement (/eliot-hudson-endorsement/)  
Traci Reilly Endorsement (/traci-reilly-endorsement/)  
Tribute to Mark Mitchell (/tribute-to-mark-mitchell/)

## Meet Susan

I am Susan Candell, and I want to earn your vote for City Council.

A  
Lamorinda  
Resident

As a "newly emancipated parent" with fresh time on my hands, I want to give back to Lafayette now more than ever. I have 40+ years in Lamorinda, the last 20 years here in Lafayette with my husband and children, so my knowledge of the people, issues, geography, lifestyles, and concerns is deep and nuanced, and I believe that I can best represent you and protect our rights as a semi-rural city, while addressing the housing affordability issues that have come to the forefront of our communities, as we begin our next 50 years.

My intense civic involvement began 5 years ago with the Deer Hill project, first as 315 Apartments then with 44 Homes.

As an engineer, when faced with complicated problems, I knew it was time to roll up my sleeves and delve into the mountain of paperwork for the Homes project. When I discovered that the cancer risk to students at Acalanes High School during construction of the Homes was above allowed limits, I instantly called my friend whose daughter at Acalanes is a cancer survivor, and explained what I had found. She said,

for over  
40 years



I Ask for  
Your  
Vote

*"We have to stop this, Susan." That's when Mama Bear came out, and my deep civic involvement began.*

What I had realized was that this report had been read by the Planning Staff, the Planning Commission, the Design Review Commission, and the City Council, and NO ONE brought this issue up as a problem. Why was nobody instantly concerned about the kids cancer risk at Acalanes like I was! I took the "technical deep dive", and found myself educating everyone about construction risk and health hazards, including our City Engineer, who was fighting me simply because he did not understand the affordable technology available to measure this risk in real-time. In the end, the developer agreed to install active air quality monitors around the site during construction to make sure that their construction pollution does not adversely affect the students at Acalanes. If pollution levels become too high, especially due to wind patterns that day, the developer must halt construction immediately due to the real-time measurements. I was resolved to continue protecting residents, and began

*"As an engineer and 20 year Lafayette resident, I believe I can help our city do a better job in listening to our residents, truly understand their concerns and issues, and actually provide answers and solutions for them. We don't have any high tech on our Council, and I think I can bring my analytical skills and results-driven training, along with my determination to preserve our*

writing over 20 technical letters to the city regarding Health, Safety, and Traffic impacts to our residents.

Timing has become extremely critical in today's political environment – Lafayette has a virtual target on our back in regards to high density development around our BART station. With the continual introduction of all the new state laws that force accelerated growth in our City, I am willing and able to study the wide variety of impacts from these projects and really understand the details, as almost of the new laws have wording that allows local disqualifications for adverse Health and Safety impacts. I have witnessed the great work that Councilman Ivor Samson has done in the last two years as a brilliant attorney, and I believe that adding my technical expertise to Council along with his knowledge of the law is the right strategy to best protect our rights.

I do completely support land owners' rights, but I also completely believe in our local ordinances, the General and Downtown Specific Plans, the Lafayette

*semi-rural quality of life, to really help Lafayette tackle the upcoming challenges we face. This is why I believe I am a great candidate for Lafayette City Council, and believe that electing professionals is the right strategy for Lafayette."*

*Please vote for me, Susan Candell, for Lafayette City Council on November 6.*

**Get in  
touch**

Housing Element Update of 2014, and especially our Hillside and Ridgeline Ordinances. Many years of hard work through staff analysis and community involvement have gone into these documents to maintain the beauty and integrity by defining responsible development that our city services can support in terms of police, services, schools, utilities and roadways. As Lafayette residents, we have all had to comply to these rules when developing and remodeling our own homes, and it is imperative that we hold big developers to the same level of compliance.

The passing of the Commissioner Conflicts Ordinance has resulted in amazing appointments to the Planning Commission and Design Review Commission with residents who have a remarkable array of credentials. I vigorously supported this ordinance, and I am looking forward to working with the new Commissioners to protect our rights as a semi-rural city as we face the onslaught of new state laws.

Susan would like to hear from you about your neighborhood concerns.

**SEND  
SUSAN A  
NOTE ▶**

My current appointment to the Circulation Commission allows me to study the tradeoffs between safety and efficiency and I am looking forward to implementing improvements from the Downtown Congestion Study that will really address the traffic issues we have all been experiencing. We have unique traffic issues due to our location on the freeway, near a BART station, and with traffic from cities to the north and south driving through Lafayette to reach Highway 24 and the BART station parking lots. These issues need to be addressed, especially with new residential construction all around us; especially to the north and northeast of our city. We should soon be getting new lights along Deer Hill Road, and synchronizing these lights as well as the ones on Mt. Diablo. More improvements around Stanley Middle School and School Street are in the works. Within my capacity as a Circulation Committee member with both a city and a regional focus, I look forward to finding ways for all children throughout Lafayette, and especially those in NE Lafayette who are

struggling with inbound traffic from outside communities, to get to school both safely and efficiently.

As PG&E struggles with liability issues and the removal of trees to limit that liability at the expense of our beautiful semi-rural environment, I would like to increase communication with the residents and strengthen relations with PG&E to find more optimal solutions that are both more suitable for our city and yet meet their needs. EBMUD also has projects in our city, and we can improve relations with them as well, and encourage better communication to affected communities.

On a personal note, my niece, who also lives in Lafayette and is a new registered voter, asked me why I was running for City Council. As her aunt, I need to give her the honest answer that she deserves, so after some real soul searching, this was my response:

*"As an engineer and 20 year Lafayette resident, I believe I can help our city do a better job in listening to our residents, truly understand their concerns and*



*issues, and actually provide answers and solutions for them. We don't have any high tech on our Council, and I think I can bring my analytical skills and results-driven training, along with my determination to preserve our semi-rural quality of life, to really help Lafayette tackle the upcoming challenges we face. This is why I believe I am a great candidate for Lafayette City Council, and believe that electing professionals is the right strategy for Lafayette."*

## Susan's Credentials

Susan Candell currently works for Carl Zeiss X-Ray Microscopy, Inc., with previous employers General Electric and Siemens AG. She has Nuclear Engineering degrees from both UC Berkeley (BS) and MIT (MS). Susan's husband, Dr. Brian Candell, is a local Lamorinda Internist. They raised their children Allison and Peter here in Lafayette, and Allison just graduated from UCLA and Peter attends Colorado State University in Fort Collins. Her volunteer work has included Lafayette

Community Foundation Board, and 20+ years raising money for UCSF Benioff Children's Hospital Oakland with the local Lombardy Branch. She is currently a Lafayette Circulation Commissioner and President of the Springhill Valley Homeowners Association. Susan kick-started the first 'Senior Gift' at Acalanes High School, which is a gift directly to the LPIE Endowment Fund, in order to help build a permanent funding source for all Lafayette schools. Cities like Orinda, Moraga, and Piedmont are ahead of Lafayette in funding their endowments, and she truly believes that Lafayette should invest in this stable funding for our schools. Her children received most of her spare time, with years of Cheer Mom, Soccer Mom, and Costume Director for Peter Pan Foundation as her more recent titles. She's given up on her competitive water skiing career, but still enjoys recreational skiing (water and snow), and spends many hours hiking our glorious hills.

# Paid for by Susan Candell 2018 City Council

**Lafayette, CA 94549**

(925) 639-4321

susancandell2018@gmail.com

(mailto:susancandell2018@gmail.com)

Learn more about Ivor

Samson

(<https://ivorsamsonforcitycouncil.net/>) for Lafayette  
(<https://ivorsamsonforcitycouncil.net/>)

Powered by Squarespace

([http://www.squarespace.com?channel=word\\_of\\_mouth&subchannel=customer&source=footer&campaign=4fd1028ee4b02be53c65dfb3](http://www.squarespace.com?channel=word_of_mouth&subchannel=customer&source=footer&campaign=4fd1028ee4b02be53c65dfb3))

# **ATTACHMENT 2**

# Lafayette City Council candidates answer questions ahead of the November election

By Pippa Fisher



Susan Candell Photo provided



Teresa Gerring



Karen Maggio



Ivor Samson



Dave Smith

Lamorinda Weekly reached out to the Lafayette City Council candidates and posed four questions on key topics pertaining to Lafayette. Responses were limited to 50 words due to space constraints. The issues are complex, however, and to learn more, residents can attend the Lafayette Homeowners Council Candidates Night, to hear what all city council candidates and school board members have to say at 7 p.m. Sept. 20 at the Lafayette Veterans Memorial Hall.

Running for city council this year are Susan Candell, Teresa Gerring, Karen Maggio, Ivor Samson and Dave Smith.

Responses are listed below each question and are presented in alphabetical order of the candidates' last name.

**1. How should city government handle downtown development and what is your opinion about the recent Deer Hill Road development proposal or the passage of Assembly Bill 2923?**

**Candell:** Lafayette can and should act now to enforce balance between growth, parking, traffic and infrastructure. AB2923 is flawed and sets minimum zoning standards that our infrastructure cannot manage. The 315 Apartments at Deer Hill will cause irreparable harm to the environment and

gridlock. Lafayette urgently needs to be proactive.

**Gerring:** Development needs to adhere to the General and Downtown Specific plans, to safeguard school, traffic and safety impacts. AB2923 is new law that allows BART to step in to build housing and commercial space on its property; I worked hard against this measure because it bypasses local planning.

**Maggio:** Lafayette's General Plan, the Downtown Specific Plan, and the Hillside Ordinances guide our city's progress. The plans and rules were developed after years of community input. AB 2923 would undermine these and our community's authority to control planning decisions near BART stations. Cities should band together to vigorously oppose AB2923.

**Samson:** Downtown development must be consistent with the General and Downtown Specific plans and must be scrutinized for impacts, especially on traffic. Proposed development on Deer Hill should be carefully reviewed for impacts, especially on schools, traffic and public health. I fought for retention of legal counsel with land use expertise.

**Smith:** As I've knocked on doors, I've heard concern about development negatively impact-

ing our quality of life and frustration that resident voices are often ignored. Deer Hill exposed divides and AB2923 will further test us. It's been 16 years since we last updated Lafayette's General Plan. Let's unite around a collective vision.

**2. Traffic is a growing concern among Lafayette residents. What do you think is the best strategy for tackling traffic, especially in the Pleasant Hill Road corridor?**

**Candell:** As a Circulation Commissioner, I'm helping roll out the Downtown Congestion improvements. I advocated for residents on Reliez Valley Road to increase safety and reduce delays for their bus routes, and will continue this new regional cooperation and find real traffic solutions for Pleasant Hill Road without an enormous price tag.

**Gerring:** Pleasant Hill Corridor traffic is a regional issue requiring collaboration with other jurisdictions to implement solutions, like efforts to reduce Reliez Valley Road traffic. Continued collaboration with schools to implement recommendations of the Downtown Congestion Reduction Study, particularly pedestrian/bike pathways to schools, downtown and BART is also required.

**Maggio:** Planning tools such as Streetlight Insight access data

from smart devices, determine root causes of congestion, and forecast future conditions. Unlike surveys and traffic counts, the tools determine trip origins (residents vs. non residents) and best ways to mitigate traffic at its source. I would deploy such tools to inform strategies.

**Samson:** Traffic congestion is a reality which, given geography and infrastructure, can only be tweaked. I advocated for traffic calming along Reliez Valley Road, which has helped somewhat. Because the ability to control traffic stops at the city limits, meaningful change along the Pleasant Hill Road corridor requires regional solutions.

**Smith:** With kids at Springhill and Diablo Valley Middle School, I've experienced painful commutes and difficulty of BART parking. We must rethink our traffic patterns, public transportation, and parking options. I propose a Lamorinda Jitney (regional transit option) that leverages technology, takes cars off our roads, and meets the needs of our working families.

**3. Do you think transparency in the current city council is an issue? If so, how would you suggest improving it? If not, please feel free to take a moment to explain your position.**

**Candell:** City council should

not approve significant deals with utilities, developers or others without public communication and discussion. Conflicts of interest have been addressed for commissioners, which I supported. Lafayette residents are knowledgeable, involved, and well-informed, and I will advocate for more resident input and transparency, not less.

**Gerring:** As a 19-year member of the Lafayette School Board, I believe in engaging the community in transparent, open and meaningful ways, and complying with open meeting laws that define what business is conducted in open or closed session. Given these rules the current council operates in a transparent manner.

**Maggio:** The Brown Act requires full disclosure in documentation of city matters and council activities. While the city may comply with Brown, the issue is in a lack of detail and content in its documents. I would ensure that all documentation is complete, clear, and fully covers the matters disclosed.

**Samson:** Yes. I fought for a stringent conflict of interest ordinance over strenuous opposition and have advocated other measures to improve accountability and transparency.

... continued on next page

## SUSAN CANDELL

A Voice for the Voters!

for LAFAYETTE CITY COUNCIL



A Lamorinda resident for 40+ years, Nuclear Engineer, MIT and Cal graduate, married with two children

"...Susan has been an active community volunteer in many municipal areas, including traffic, safe school routes, planning and development. She's respectfully encouraged our current City Council members to push their thinking beyond the status quo. Susan's decision making process is always well-informed, independent and objective. Lafayette needs Susan's fresh approach."

-- Jean Follmer, Former Lafayette School Board Member

- ✓ SUPPORT INTELLIGENT GROWTH IN LINE WITH INFRASTRUCTURE CAPACITY
- ✓ CREATE STRONG CITY - SCHOOL PARTNERSHIP
- ✓ PROVIDE SAFER ROUTES TO SCHOOL
- ✓ REDUCE TRAFFIC CONGESTION
- ✓ PROTECT OUR HILLSIDES AND RIDGELINES

**Susan Candell is the Most Qualified Candidate to Deliver Smart Solutions!**

### Established, Experienced Community Leader

- Circulation Commissioner
- Lafayette Community Foundation Board Member
- President, Springhill Valley Homeowners Association
- Active at City Council meetings for past 5 years
- Deep understanding of Traffic and Parking problems

### Will Stand for What is Right for Citizens

- Advocate for our residents and our semi-rural quality of life
- Will protect our City and voter rights when faced with excessive growth
- Supported new Conflict of Interest Ordinance (commissioner code of ethics)

### Results-driven Professional Engineer

- Will bring much-needed Tech and Engineering expertise to City Council
- Will provide technical evaluations of our programs for health and safety
- Submitted 20+ technical letters to the City regarding negative impacts of proposed projects

"I am not supporting Susan because I know I will agree with her on every decision. I am supporting her because I know she will truly listen, that she has the technical background to understand complex issues, and because she has the courage and determination to do what she thinks is right for the community."

-- Traci Reilly, Former Lafayette City Council Member

Follow Susan @susanforlafayette

**VOTE SUSAN CANDELL Lafayette City Council!**

to learn more or to get involved, go to our website at...

**SUSANCANDELL.COM**

# **ATTACHMENT 3**

Home > Categories > Other > Terraces of Lafayette aka Christmas Tree Lot

# Terraces of Lafayette aka Christmas Tree Lot

Sign      Blog      Signatures      Email friends

Like  Send

Tweet

0

602

Goal: 1,000 signatures

## The Petition

Carol Federighi Mayor  
 City of Lafayette  
 3675 Mt Diablo Boulevard, Suite 210  
 Lafayette CA 94549

Dear  
 Lafayette Mayor and City Council Members:

The residents of Lafayette have signed this petition, because of our concerns regarding the rezoning of the property known as the "Christmas Tree Lot". The City Council recommended on April 26, 2010, that the five parcels located along Deer Hill Road at Pleasant Hill Road (including the "Christmas Tree" lot across from Acalanes High School) be zoned low-density LR-5, which would permit one home per five acres, resulting in a maximum of four homes on the 22 acre parcel. Public support for this zoning was overwhelming. So many people showed up at the first hearing that the matter had to be continued for further comment at the second hearing. Three homeowners associations sent representatives in support of the low density zoning.

However, the City failed to finalize the low density residential zoning for a year and a half, thus permitting the owner to file an application for a massive apartment complex. This delay by the city may jeopardize the community's interests and must be corrected immediately. Further delay increases the potential that this property will be developed as high density, multifamily housing. The owner, whom inherited the property, and lives out of state, has filed an application to build 315 "moderate income" affordable housing apartments on the property; this proposal will fundamentally change the character of our community for the worse. Further, this development project will significantly impact traffic, threaten the safety of children crossing the street on their way to school, and decrease property values of hundreds of homes.

The community of Lafayette is angry that the City failed to finalize the low density zoning for this property prior to the owner filling an application. We want the North-east portion of Lafayette to maintain its semi-rural and single family residential character. This intersection is a crucial entrance to the city and our neighborhoods. We should not be forced to accept urbanization that will bring substantially increased traffic, and force expansion into broader roadways to accommodate all the cars.

We understand that the developer will contend that its proposal should be considered under the current zoning. We will deal with that contention in due course, but regardless the City needs to finalize the LR-5 rezoning as soon as possible, for the following reasons:

To finalize their earlier recommendation and commitment

To protect the character and views of this area

## Sponsor

In April 2010, the City Council, after numerous well-attended hearings, agreed with the overwhelming input from the community that the parcel across the street from Acalanes was inappropriate for high density housing. It passed a resolution to zone the parcel LR-5 (low density residential development). Unfortunately, city staff never enacted the zoning change. In July 2011, 15 months after the City Council voted to rezone the parcel to low density, the landowner submitted an application to build a 315-unit apartment complex on the parcel. As of February 2012, the zoning change approved in 2010 has still not been enacted. The petition below does not seek to revisit the issue, which was thoroughly discussed by various stakeholders.

Because city staff has not enacted the change, residents are petitioning the City Council to direct staff to follow through on the zoning decision made almost two years ago.

There will be City Council meetings in the near future, your attendance and voice are very important!

This petition is only one step in fighting this project.

IND23-2

## Spread the word

Help promote this petition with a widget on your site

## Links

<http://www.facebook.com/pages/Stop-the-Terraces-of-Lafayette/198489963572243>

Sponsored links

To minimize the proposed traffic impacts of a high-density development

To bring the zoning in conformance with the City's Hillside and Ridgeline Ordinance

To bring the zoning into conformance with the General Plan, which calls for development consistent with the surrounding neighborhoods

To maintain the City's long standing policy of single family development north of the freeway

We look to the City Council members to represent the community, and to follow through with commitments they've made to our community.

PLEASE NOTE:  
WHEN SIGNING THIS PETITION THE:

Show my name in the online signature list

MUST BE CHECKED FOR YOUR SIGNATURE TO COUNT

AFTER SIGNING THIS PETITION IPETITIONS WILL ASK YOU FOR A \$2 DONATION IN A POP UP SCREEN TO SUPPORT THEIR SITE. PLEASE DISREGARD/SAY NO AS THIS IS NOT A DONATION FOR STOP THE TERRACES OF LAFAYETTE.

The views expressed in this petition are solely those of the petition's sponsor and do not in any way reflect the views of iPetitions. iPetitions is solely a provider of technical services to the petition sponsor and cannot be held liable for any damages or injury or other harm arising from this petition. In the event no adequate sponsor is named, iPetitions will consider the individual account holder with which the petition was created as the lawful sponsor.

IND23-2  
cont.

Sign petition

Fields marked with \* are required

Name: \*

Email: \*

Comments:

**Display options**

Show my name in the online signature list

Keep me informed on this and similar petitions

**Sign now**



86  
Name: Susan Candell on Jan 16, 2012  
Comments:  
Flag

87  
Name: John Merrion on Jan 16, 2012  
Comments: Don't build apartments in Lafayette!  
Flag

88  
Name: Graham Westphal on Jan 16, 2012  
Comments: I live at 3310 Springhill rd, we drive through the deer hill/pleasant hill intersection many times a day, it is currently a nightmare of traffic and kids walking to school. Allowing this development is negligent on the part of the city. Please don't allow the permits to be issued for this massive traffic nightmare!  
Flag

89  
Name: Kerry Shaw on Jan 16, 2012  
Comments:  
Flag

90  
Name: Kim Greer on Jan 16, 2012  
Comments: Redevelopment is important to the vitality of Laf. But this project has too many negative impacts not only on traffic but the high school across the street.  
Flag

91  
Name: Kevin Montoya on Jan 16, 2012  
Comments:  
Flag

92  
Name: Anonymous on Jan 16, 2012  
Comments: I agree with the many residents of Lafayette that the proposal does not benefit the overall look and feel of the city of Lafayette  
Flag

93  
Name: Anonymous on Jan 16, 2012  
Comments:  
Flag

94  
Name: Anders Thorson on Jan 16, 2012  
Comments: This project will change the character of Lafayette in a negative way and add to the "highway" feel of Pleasant Hill Road.  
Flag

95  
Name: Anonymous on Jan 16, 2012  
Comments: This is a travesty Way too much congestion for the high school to handle Stop the project!!  
Flag

96  
Name: Laurie Wondolowski on Jan 16, 2012  
Comments:  
Flag

97  
Name: Maarit Baker on Jan 16, 2012  
Comments:  
Flag

98  
Name: Darren Baker on Jan 16, 2012  
Comments:

IND23-2  
cont.

**Name:** Patty Gonser on Jan 24, 2012  
**Comments:**  
**Flag**

438  
**Name:** Aleece Gottfried on Jan 24, 2012  
**Comments:**  
**Flag**

439  
**Name:** Aleece Gottfried on Jan 24, 2012  
**Comments:**  
**Flag**

440  
**Name:** Jennifer Gonzales on Jan 25, 2012  
**Comments:**  
**Flag**

441  
**Name:** Traci Reilly on Jan 25, 2012  
**Comments:** This should be a mute point, since the Council voted on a 3 - 2 vote to re-zone this property in 2010. Why it wasn't done by the City is a mystery? This area cannot support the additional traffic and congestion from such a large scale project . It will negatively impact our current residents.  
**Flag**

442  
**Name:** Tandy McMannes on Jan 25, 2012  
**Comments:** I oppose the high density housing being foisted upon the city by an out-of-state owner. The City must take action ASAP to ensure that the character and rural feel of Lafayette be maintained through the low density housing alternative.  
**Flag**

443  
**Name:** Dennis Kurimai on Jan 25, 2012  
**Comments:**  
**Flag**

444  
  
**Name:** Aaron Hope on Jan 25, 2012  
**Comments:**  
**Flag**

445  
**Name:** Shannon Nicosia on Jan 25, 2012  
**Comments:**  
**Flag**

446  
**Name:** Laurelle Thom on Jan 25, 2012  
**Comments:**  
**Flag**

447  
**Name:** Peter Thom on Jan 25, 2012  
**Comments:**  
**Flag**

448  
**Name:** Cristina Harman on Jan 25, 2012  
**Comments:**  
**Flag**

449  
**Name:** Carol Davis on Jan 25, 2012  
**Comments:** Traffic is already a nightmare daily! This is not a high density housing area.  
**Flag**

IND23-2  
cont.

**ATTACHMENT 4**

Vice Mayor B. Andersson stated the Vice Mayor has three jobs—to check in with the Mayor, administer the City's vice, and to help the Mayor and Council move things along. The Mayor has outlined a number of initiatives and he hopes to assist him with them. In particular, he sits on the Public Safety Committee which will be a focus of what he is doing this next year. In addition, he sits on the Public Works Committee with Councilmember Mitchell looking at assessment district issues. What this chance gives him is to thank people. He reiterated the former Mayor's comments about new Councilmembers who have been a great addition to the Council. He agreed staff is invested in the Council and beyond, recognized and thanked Commissioners for their volunteer service and the members of the public. He noted that a very wise Mayor once told him that the best advice he could give was to never make your final decision until hearing from the public, which he agrees with wholeheartedly.

**Cake Break** – The Council took a brief recess to celebrate and thereafter, reconvened the regular meeting.

Mayor Tatzin reordered the agenda and moved up Item 12B.

### **RECUSAL/COUNCILMEMBER REILLY**

Councilmember Reilly read into the record that prior to running for elected office when she was a private citizen she signed a petition related to the Terraces project. She could not have predicted then that this action would present a problem. Although she signed this petition some time ago before she was elected to the City Council, she firmly believes she can review this project in a neutral and impartial manner. However, out of an abundance of caution primarily due to the fact that there has been a threat of litigation, the City Attorney feels it is prudent for her to recuse herself. She is greatly disappointed she cannot review and consider this project, but she feels it is in the best interest of the City and its residents that she follows the advice of the City Attorney and recuse herself from hearing this application. She then left the dais.

#### **A. Steven Falk, City Manager**

##### **Presentation of Option to Settle Potential Litigation Regarding Terraces of Lafayette Development**

Recommendation: Receive presentation; direct city attorney to draft agreement; schedule public meetings on January 13 and 22 to consider agreement.

Mayor Tatzin stated it is important for everybody to know what the Council is and is not doing tonight. The purpose of tonight's discussion is to present an alternate project in a public setting and to initiate public discussion. They will be taking an initial look at a proposed alternate project including its components and implications and a discussion of a process to evaluate the alternate and ultimately make or not make an approval decision. The Council will also decide whether to continue the public discussion to two meetings in January and then possibly launch the project review process depending upon the outcome of those January discussions. They will also be discussing about what information people may want to see at the January discussions.

What the Council is not doing tonight is making any decisions about this or any other project concept. To be clear, there will be no decisions on any particular project, be it the application outstanding or what the public will hear this evening.

Mayor Tatzin outlined the process as follows:

- The City Manager will provide a presentation;
- There will be an opportunity for Councilmembers to ask questions;

**ATTACHMENT 5**

SUSAN CANDELL

Ann Merideth  
Project Consultant for City of Lafayette  
amerideth@ci.lafayette.ca.us  
January 7, 2013

Re: Terraces of Lafayette Project

Dear Ms. Merideth,

These written comments are in response to the Draft EIR of the above referenced Project on behalf of myself, Susan Candell, professional engineer for over 20 years and resident of Lafayette. These comments are based upon review Appendix M2 which is included in this submittal as it applies to the earthquake which was centered directly under the site on March 1, 2007.

**I. Earthquake on March 1, 2007**

A magnitude 4.2 earthquake was recorded on March 1, 2007, at location 37.901N 122.098W, <http://www.cisn.org/special/evt.07.03.01/>

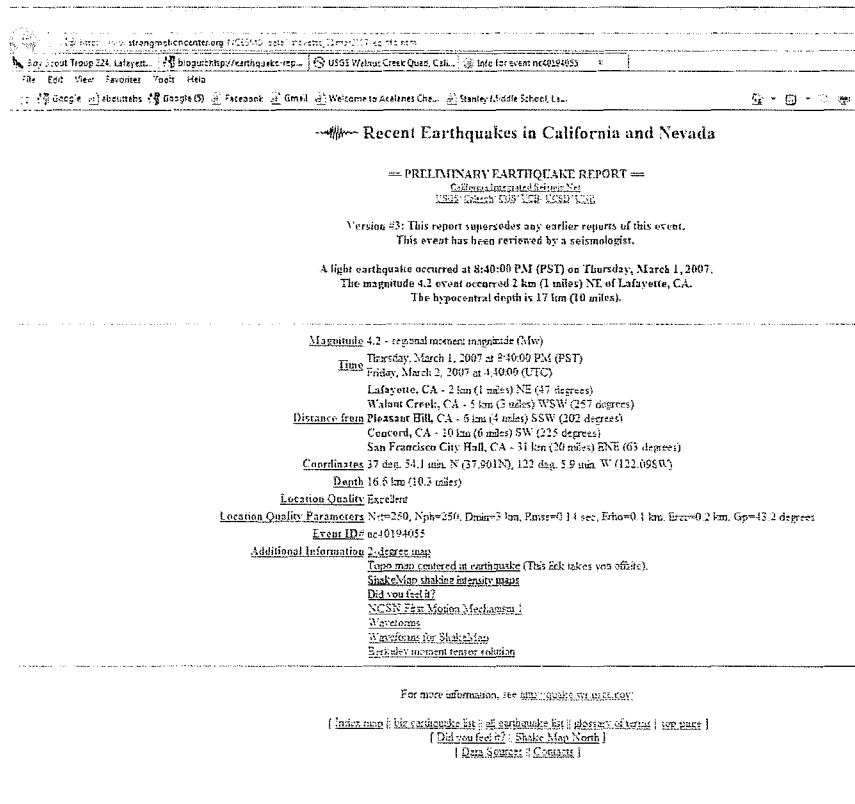


Figure 1: USGS Report of Earthquake March 1, 2007

1352 Martino Road, Lafayette, CA 94549  
Phone: 925.299.2337  
scandell@xradia.com, thecandells@comcast.net

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Using the link to the topography map from this page, which centers itself to the earthquake position, shows the true epicenter to be on the Terraces site.

<http://www.topozone.com/map.asp?lat=37.901&lon=-122.0983&s=100&size=s&u=1&sym=http://earthquakes.usgs.gov/recenteqsUS/x.gif&symx=18&symy=19>

The screenshot shows a web browser window with the URL <http://www.topozone.com/map.asp?lat=37.901&lon=-122.0983&s=100&size=s&u=1&sym=http://earthquakes.usgs.gov/recenteqsUS/x.gif&symx=18&symy=19>. The browser's address bar and tabs are visible. The main content area displays the 'TopoZone' logo and a navigation breadcrumb: Home Page » Browse Topo Maps » California » W » Walnut Creek. Below this is the title 'USGS Walnut Creek Quad, California, Topographic Map' and a descriptive paragraph: 'Walnut Creek quad is a topographic map (topo) in the state of California (CA), located at latitude - longitude coordinates (also known as lat-long or GPS coordinates) of N 37.90092 and W -122.09938. Walnut Creek is sourced from the USGS (United States Geographical Survey). The nearest major town is Lafayette, CA.' The central part of the page features a topographic map of the Walnut Creek area, showing contour lines, roads, and the town of Lafayette. To the right of the map are several interactive controls: 'Use these Map Controls on Trails.com', 'Map Zoom Level' (with a zoom slider), 'Map Size' (with three size icons), 'Map Layer' (set to 'Topo (shaded)'), 'Map Tools' (including Save, Email, Print Portrait, Print Landscape, and Download Map), and 'GPS Controls (Show)'. Below the map is a scale bar in kilometers (0 to 0.5) and miles (0 to 0.5), a north arrow, and a small inset map of California showing the location of the map. At the bottom of the page, there are several small links for 'Trails.com' (Terms of Use, Privacy Policy, About Us, Contact Us, Help) and 'TopoZone.com' (Site Map).

Figure 2: Topo Map from link from USGS Website

The topology map below is now shown with cross-hairs drawn from the map show the epicenter.

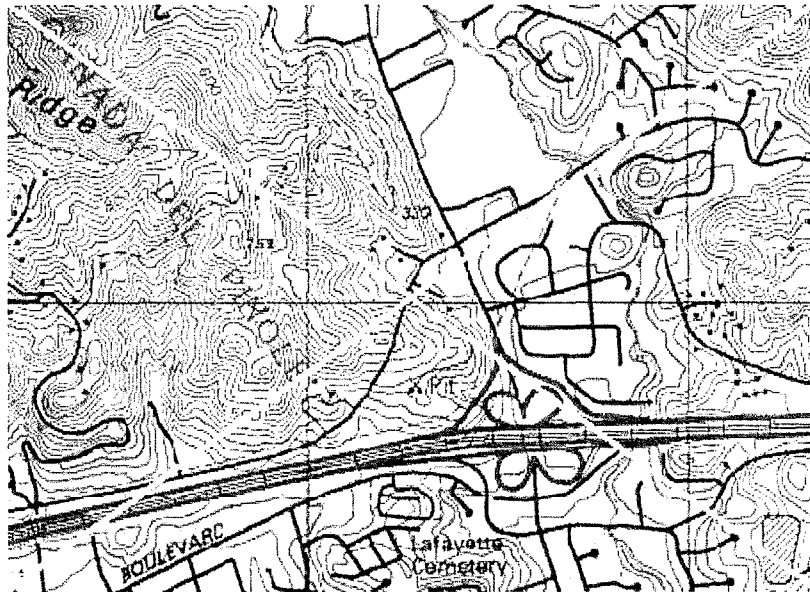


Figure 3: Topo Map with Epicenter drawn

The topology of this earthquake clearly shows the epicenter of the event to be on the proposed Terraces site.

## 2. Preliminary Geotechnical Feasibility Report from ENGEO

*Appendix M2: Preliminary Geotechnical Feasibility Report* was submitted to the O'Brien Land Company, LLC on March 18, 2011, and was prepared by ENGEO Incorporated. In this report, ENGEO quotes:

“Based on an evaluation of the termination of the northern Calaveras fault by Unruh and Kelson (2002), the Lafayette fault, which is located approximately 200 feet west of the project site, is considered to be a potentially active right-lateral strike-slip fault that is interpreted as one of a series of structures that may accommodate slip on the northern Calaveras fault.”

Upon review of the Unruh and Kelson 2002 report, it is clear that this report could not and does not refer to any activity on the site from the event in 2007.

In this report, ENGEO also quotes:



“The Uniform California Earthquake Rupture Forecast (UCERF) (2008) evaluated the 30-year probability of a M6.7 or greater earthquake occurring on the known active fault systems in the Bay Area, including the Calaveras fault.”

Upon review of the UCERF 2008 document, the fault traces in Table 1: Fault parameters, including source of trace and slip-rate information, includes data for the Calaveras fault only from 2002, and nothing later.

**Table 1. Fault parameters, including sources of trace and slip rate information**

Fault Name (ID # in Quaternary Fault and Fold Database - indicates if fault compilation not yet completed)	Source of fault trace	Year	Strike	Dip	Slip direction	Slip rate (mm/yr)	Slip rate error	Asseismic slip	Top depth (km)	Bottom depth (km)	Details of slip rate, black from 1996 model, red from 2002 model, blue from 2006
Hayward (Northern) (55a)	2002	180	90	n/a	0	2	0.4	0	12	12	12
Hayward (Southern) (55b)	2002	180	90	n/a	0	2	0.4	0	12	12	12
Rodgers Creek (52)	2002	180	90	n/a	9	2	0	0	12	12	12
Calaveras (Northern) (54a)	2002	180	90	n/a	0	2	0.2	0	13	13	13
Calaveras (Central) (54b)	2002	160	90	n/a	15	3	0.7	0	13	13	13
Calaveras (Southern) (54c)	2002	180	90	n/a	15	3	0.8	0	13	13	13

Fault revised since 2002 model:  Fault added since 2002 model:  Alternate slip rates in deformation models:

Figure 4: Fault parameters for Calaveras only from 2002

More detailed information later in the same table for the San Francisco Bay Area also does not include any new data since 2002.

SUSAN CANDELL

**Table 1. Fault parameters, including source of trace and slip rate information**

Fault Name (ID # in Quaternary Fault and Fold Database; * indicates Q-faults compilation not yet completed)	model	Source of fault trace	strike	dip	dip direction	slip rate mm/yr	slip rate error	Asym. mic. slip	top depth km	bottom depth km	Details of slip rate, black from 1999 model, red from 2002 model, blue from 2006
Great Valley 13 (Coalinga) [28m*]	CFM-R	90	15	W	1.5	1	0	9.1	15.2	Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994).	
Great Valley 14 (Kettleman Hills) [28n]	CFM-R	90	22	W	1.5	1	0	8.1	22.5	Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994).	
Hosgn [81a, 81b, 81c, 81d]	CFM-R	180	80	E	2.5	1	0	0	6.8	Slip rate based on San Simeon fault slip rate reported in Hanson and Lewis (1994).	
Hosgn extension	CFM-R	80	E	0	0	0	0	7.5	Extension of fault based on CFM-R. Slip rate not known.		
Lions Head [83*]	2002	90	75	NE	0.02	0.02	0	0	0	Poorly constrained slip rate based on offset marine terraces (Clark, 1994).	
Los Alamos-W. Baseline [85*]	2002	90	30	S	0.7	0.7	0	0	0	Poorly constrained slip rate based in part on no slip displacement of a 40m horizon (Spero, et al., 1991).	
Los Osos [79a, 79b, 79c, 79d]	2002	90	45	SW	0.8	0.4	0	0	0	Poorly constrained late Quaternary slip rate based on uplift of marine terraces and assumed ft. dip of 50-65 degrees (Letic & Hall, 1994).	
Omgalita [50a, 50b, 50c, 50d]	2002	180	90	n/a	1	0.5	0	0	0	Poorly constrained slip rate based on vertical slip rate reported by Clark, et al. (1984) (0.01-0.04 mm/yr), assumptions regarding H/V ratio, and geomorphic expression of ft. consistent with about 1 m/yr.	
Rinconada [82a, 82b, 82c]	CFM-R	180	90	n/a	1	1	0	0	0	Long term slip rate of about 3 mm/yr based on Hart (1958). Lacks obvious Holocene offset.	
San Juan [77*]	2002	180	90	n/a	1	1	0	0	0	Poorly constrained slip rate based on Anderson (1984).	
San Luis Range (S margin) [82*]	2002	90	45	N	0.2	0.1	0	0	0	3* fault system with composite slip rate of about 0.2 mm/yr, includes San Luis Obispo Bay, Oceana, Winter Ave., Olson, and Santa Maria River (e.g. Letic, et al., 1994).	
<b>San Francisco Bay Area and Central Coast Ranges</b>											
Barred Springs fault system (26a, 26b, 26c)	2002	180	90	n/a	6	3	0.5	0	0	15 Slip rate based on assumption that slip is carried from Concord Green Valley system (WGNCEP, 1999). Taylor and Cowan (1991) and Sloan and Taylor (1991) reported minimum slip rate of 0.2 mm/yr for segment at L. Pittsburg, based on apparent vertical extension and plunge of slinkstones. Asymmetric slip factor of 0.5 applied based on factor calculations for Concord Green Valley fault.	
Collayomi [34]	2002	180	90	n/a	0.6	0.3	0	0	0	10 Slip rate based on Clark, et al. (1984).	
Concord [35a, 35b, 35c]	2002	180	90	n/a	4	2	0.5	0	0	16 WGNCEP source parameters used in 2002, which effectively results in fault being treated as an "A" fault.	
Great Valley 1 (25a*)	2002	90	15	W	0.1	0.05	0	7	7	6.6 Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994).	
Great Valley (28a*)	2002	90	15	W	0.1	0.05	0	7	7	6.6 Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994).	
Great Valley 3, Mysterious Ridge [23a]	2002	90	15	W	1.25	0.75	0	9	14	Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994). Revised trace and slip rate based on O'Connell and Ulrich (2003).	
Great Valley 3a, Dunnigan Hills [23a, 23b]	2002	90	20	E			0	3	6	Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994). Revised trace based on O'Connell and Ulrich (2003).	
Great Valley 4a, Trout Creek [23a]	2002	90	20	W	1.25	0.75	0	9	14	Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994). Revised trace and slip rate based on O'Connell and Ulrich (2003).	
Fault revised since 2002 model <input type="checkbox"/> Fault added since 2002 model <input type="checkbox"/> Alternate slip rates in deformation models <input type="checkbox"/>											

**Table 1. Fault parameters, including source of trace and slip rate information**

Fault Name (ID # in Quaternary Fault and Fold Database; * indicates Q-faults compilation not yet completed)	model	Source of fault trace	strike	dip	dip direction	slip rate mm/yr	slip rate error	Asym. mic. slip	top depth km	bottom depth km	Details of slip rate, black from 1999 model, red from 2002 model, blue from 2006
Ulani (2000)											
Great Valley 4b, Gordon Valley [26a*]	2002	90	30	W	1.25	0.75	0	8	14	Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994). Revised trace and slip rate based on O'Connell and Ulrich (2003).	
Great Valley 5, Pilsburg - Kirby Hills [26a*]	2002	180	90	W	1.5	1	0	8	14	Slip rate and sections from WGNCEP (1999) and Wakabayashi and Smith (1994). Revised trace, dip, and sense of displacement based on O'Connell and Ulrich (2003).	
Green Valley [37]	2002	180	90	n/a	5	3	0.5	0.50	14	WGNCEP source parameters used in 2002, which effectively results in fault being treated as an "A" fault.	
Greenville [53b, 53c]	2002	180	90	n/a	2	1	0.1	0	0	15 WGNCEP source parameters used in 2002, which effectively results in fault being treated as an "A" fault.	
Hunting Creek-Berryessa [35a, 35b, 35c]	2002	180	90	n/a	6	3	0	0	0	12 Slip rate based on assumption that slip is carried from Concord Green Valley system (WGNCEP, 1999).	
Maecama-Garberville [30a, 30b, 10*]	2002	180	90	n/a	9	2	0.4	0	0	12 Slip rate of 8 mm/yr based on assumption that central slip from Hayward Ridge (e.g. Clark, 1994) carries slip along Maecama zone (WGNCEP, 1999). Ft. has creep rate of 0.8 mm/yr in Ulani (Salmhouse, 1992). Asymmetric slip factor of 0.4 applied based on factor calculations for Hayward fault.	
Monterey Bay-Tularocitos [82a, 82b, 82c]	2002	150	90	n/a	0.5	0.4	0	0	0	Slip rate is composite of ft. in Monterey area (Tularocitos, Chuznes, Navy, etc. in Monterey Bay). Rates of individual ft. estimated to be about 0.1 mm/yr (Rosenberg & Clark, 1992).	
Mount Diablo Thrust [253*]	2002	80	38	NE	2	1	0	8	16	WGNCEP source parameters used in 2002, which effectively results in fault being treated as an "A" fault.	
Monte Vista-Shannon [55]	2002	90	45	W	0.4	0.3	0	0	0	Poorly constrained slip rate based on vertical separation of late Pleistocene terraces and assumptions of age of terrace (25-12 ka) and ft. dip reported by Haxelwood, et al. (1994). Actual dip and fault width is variable, 15 km with approximate average.	
Point Reyes [81*]	2002	90	50	NE	0.3	0.2	0	0	0	Poorly constrained long term (post-Miocene) slip rate based on vertical offset of crystalline basement (McCulloch, 1957).	
Queen Sabe [84]	2002	180	90	n/a	1	1	0	0	0	Poorly constrained slip rate estimated by authors based on vertically offset alluvial fan (Spout, 1955) and assumptions regarding H/V ratio (ft. is 14) based on 2002/98 H/V & asymmetry (Hill, et al., 1990) and age of the surface based on soil profile development.	
San Gregorio (North) [80a]	2002	180	90	n/a	7	3	0.1	0	0	12 Weiler and Fisher (1965) reported Holocene slip rate of 3 mm/yr; based on Pleistocene slip rate of 5 mm/yr (min) and ft. Cr. slip rate of about 4 mm/yr reported by Sisson, et al. (written communication to J. Lieberman, 1993). WGNCEP source parameters used in 2002, which effectively results in fault being treated as an "A" fault.	
San Gregorio (South) [80b]	2002	180	90	n/a	3	2	0.1	0	0	12 Lita Cr. slip rate of 1.3 mm/yr based on assumed transfer of slip from Hosgn ft. slip rate from San Simeon St. (Hanson and Lewis (1994) and S&W, et al. (1994). WGNCEP source parameters used in 2002, which effectively results in fault being treated as an "A" fault.	
West Napa [36a, 36b]	2002	180	90	n/a	1	1	0	0	0	Unconstrained slip rate based on assumption that geomorphic expression of fault is consistent with about 1 mm/yr slip rate (WGNCEP, 1999).	
Zayante-Vergeles [56]	2002	150	90	n/a	0.1	0.1	0	0	0	12 Slip rate reported by Clark, et al. (1984).	
Fault revised since 2002 model <input type="checkbox"/> Fault added since 2002 model <input type="checkbox"/> Alternate slip rates in deformation models <input type="checkbox"/>											

Figure 5: SF Bay Area Fault Parameters

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SUSAN CANDELL

I did pursue a more detailed and recent Earthquake report like the 2002 Unruh report, and did not find a detailed report which included this site using data any later than March 2007.

Respectfully, my research seems to show that any earthquake impact assessment for this site does not include the data from the March 1, 2007 event. Since most likely the largest impact from any earthquake at this site is a landslide, and this site includes regions of high slope (4:1), the most recent and best data should be used in any EIR for this site.

Thank you very much,

Susan Candell  
Engineer, Xradia Inc.  
Lafayette Resident

1352 Martino Road, Lafayette, CA 94549  
Phone: 925.299.2337  
[scandell@xradia.com](mailto:scandell@xradia.com), [thecandells@comcast.net](mailto:thecandells@comcast.net)

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~~3-2~~

**ATTACHMENT 6**

**Wolff, Greg**

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**From:** The Candells <thecandells@comcast.net>  
**Sent:** Wednesday, August 07, 2013 6:46 AM  
**To:** Robbins, Joanne; Robbins, Joanne; Wolff, Greg  
**Subject:** Petition for Terraces  
**Attachments:** Petition Terraces page 2.jpg; Petition Terraces page 1.jpg

Please see the attached petition that was signed at my house on Monday, August 5.

Thank you so much,  
Susan Candell

City Council of Lafayette  
 Joanne Robbins  
[joanne@lafayettecity.org](mailto:joanne@lafayettecity.org)  
 Greg Wolff  
[greg@lafayettecity.org](mailto:greg@lafayettecity.org)

August 5, 2013

Re: Terraces of Lafayette Project

Dear City Council, Ms. Robbins, and Mr. Wolff,

We, the undersigned, would like to urge you to approve the FEIR, with its 13 significant and unavoidable impacts.

We, the undersigned, believe that it would be even better if you instead adopt the Resolution **as written** by Eliot Hudson. These 16 significant and unavoidable impacts, along with the changes in wording, provide a more accurate and definitive response than the existing resolution.

We, the undersigned, would also like to strongly urge you not to allow any significant changes (i.e. number of units, changes of building configurations, etc.) to the project without a full resubmission of the project. The 'Revised Plan' as submitted by the developer should not be considered as a valid proposal at this time. It should be considered as a new project.

Thank you,

The Undersigned

Name (printed)	Address	Signature
Susan Candell	1352 Martino Rd Laf	[Signature]
Wendy TAYLOR	1344 San Rafael Ct Laf	[Signature]
Nancy Moskwa	1 Redwood Ln Laf	[Signature]
Richard Morrison	1414 Eagle Point Court Laf.	[Signature]
Stephene Techaran	3265 Redwood Ct, Lafayette, CA	[Signature]
Don Techaran	3265 Redwood Ct, Lafayette, CA	[Signature]
Richard Kahn	2 Redwood Hill Rd Laf	[Signature]
[Name]	[Address]	[Signature]
Carolynn Thelemagne	3364 Deer Hill Rd	[Signature]
Greg Schultz	" "	[Signature]
Eleonor Whittell	1205 Woodburning Rd. Lafayette CA	[Signature]



# **ATTACHMENT 7**



S U S A N   C A N D E L L

City Council of Lafayette  
Joanne Robbins  
[cityhall@lovelafayette.org](mailto:cityhall@lovelafayette.org)  
[jrobbins@lovelafayette.org](mailto:jrobbins@lovelafayette.org)

Greg Wolff  
[gwolff@ci.lafayette.ca.us](mailto:gwolff@ci.lafayette.ca.us)

August 7, 2013

Re: Terraces of Lafayette Project

Dear City Council, Ms. Robbins, and Mr. Wolff,

The intersection of Deer Hill Road, Stanley Blvd. and Pleasant Hill Road is one of the most dangerous intersections in Lafayette.

For the Terraces apartments, where is the closest place to play for the children? Acalanes High School. Acalanes has big fields, turf football field, hallways, and parking lot to play in. This means that kids of ALL ages will be crossing Pleasant Hill Road at ALL TIMES OF THE DAY to get to Acalanes to play. The drivers in the area are only used to a limited amount of high school kids crossing the road either right before or right after school. This is clearly a very new and very big safety issue.

Kids, bless their hearts, will also take the SHORTEST route to get to where they are going. This means that no matter how many fences are built, no matter if sidewalks are built or not, they will also be taking Deer Hill Road from the upper apartments to get to Acalanes High School. Deer Hill Road is fast, steep, and blind. Now there will be children of all ages, on all modes of transport, at all hours, going up and down Deer Hill Road. This is clearly a very new and very big safety issue.

The kids will also want to play in the fields across the road on the other side of Deer Hill Road. There are many paths and open spaces to play in. Now these children of all ages will be CROSSING Deer Hill Road at whatever point happens to be closest from their apartment to the fields. This means that children will be darting across Deer Hill Road sometimes at the most dangerous parts of that road, near the top, where it is steepest and most blind. **This is clearly a very new and HUGE safety issue. Deer Hill Road is blind. This is an accident waiting to happen.**

Thank you,

Susan Candell

1352 Martino Road, Lafayette, CA 94549  
Phone: 925.299.2337  
[scandell@xradia.com](mailto:scandell@xradia.com), [thecandells@comcast.net](mailto:thecandells@comcast.net)

# **ATTACHMENT 8**

responsible for the citizens they represent and to correct previous errors. She read a portion of last Friday's Weekly Roundup article and looks forward to future actions and meetings where open, competent and transparent decisions are made with all relevant facts considered, and asked that the Council consider the City Attorney's past legal advice.

SUZANNE ROGGE said the defeat of Measure L made it clear that the majority of Lafayette voters were not in favor, said she lives two miles from the site, is adamantly opposed to any outdoor amenities for children because of air quality issues, opposed development of 315 apartments given existing congestion and critical emergency vehicle access issues, asked that the Council move to immediately rezone the Deer Hill property from APO to LR5 and suggested some of the housing stock built be designated for lower income residents. She also recognized that rezoning this property to LR5 creates an additional legal defense against another project like the Terraces, should the developer go that route again.

SUSAN CANDELL echoed the importance of rezoning, stated emergency meetings can be held with 24 hours' notice, and spoke regarding the recusal of former Councilmember Reilly whenever discussing the Deer Hill project and its relevance to Mayor Tatzin and Vice Mayor Burks' engagement of endorsement, which she thinks posed an arbitrary standard for recusal.

Councilmember Anderson clarified that Councilmember Reilly recused herself from making decisions as a Councilmember related to the project. But, he believes as a Councilmember as an individual, Councilmembers are able to participate in campaigns related to issues. The issue is beyond decision at this level because it is now part of the public arena. Therefore, he thinks this is the difference, and Ms. Candell voiced her disagreement.

MICHAEL GRIFFITHS ceded time to John Sallay.

JOHN A. SALLAY discussed election results posted in the East Bay Times from Wednesday through Friday, indicating 7,717 or 66% "yes" votes and 3,975 or 34% "no" votes on Measure L and voiced confusion. He also stated he had difficulties hearing in the Council chambers during meetings.

Mayor Tatzin asked Mr. Sallay contact the City Clerk to learn more about the City's system for those with hearing difficulties. Secondly, he checked the County Elections Office results and the last posting made was late Friday afternoon. At that time it indicated the "no" vote was 55% to a "yes" vote or 45%, or a margin of about 600 votes. He noted that the election results have not yet been certified but the "no" votes continue to lead.

MICHAEL GRIFFITHS, Save Lafayette, offered to work with the City and developer on the topic, spoke of the group's work in being consistent with the majority of voters, and shared the following feedback regarding Measure L: They were concerned with the adversarial attitude of the City Council towards a majority of the voters; concerned about the amount of money the City is paying having to fight citizen lawsuits; and disinformation is a disservice to voters. They offered four positive comments based upon the outcome of Measure L: Take the \$3 million for the sports field and use it to turf existing fields to get greater usage or create another sports field in a safer location; improve the existing dog parks; money set aside for the roundabouts could be used to improve existing problems with traffic management; hire back a replacement for the City Engineer for a dedicated traffic specialist; and work closely with BAAQMD in a long-term transparent process, noting that it takes 3 years of data gathering to obtain true data about pollution around the freeway.

# **ATTACHMENT 9**

handle that. The Council should include in it the fact there is a General Plan designation of low density single-family residential, are in the process of making the zoning consistent and not provide the developer an argument that somehow the City is waiving its rights, and asked that the process agreement needs to be seriously evaluated given the gravity of the situation. He re-emphasized the need to obtain a second opinion very quickly.

SUSAN CANDELL stated she believes the City should hire supplemental counsel for this 45-day moratorium period, believes in the City, its hillside ordinances, and the Planning Commission who is reviewing the rezoning and recommendations that make sense for the site. The developer has rights to develop on the property and all projects thus far have been in excess of what is determined to be correct under the hillside ordinances. She thinks the developer should follow the same process she would have had to do; she would have followed the hillside ordinance and make the right choices, but is afraid the Council may run in to the problem if it repeats the same errors they had in 2010.

She said there are three groups of people who have threatened litigation on this property and extra help is needed and fast. She suggested hiring very good land use attorneys, having them work for this short period of time and asked to make sure the right development is proposed for the parcel.

BERYL SILVER ceded her time to Eliot Hudson.

ELIOT HUDSON said it has been almost 8 ½ years since the residents asked the Council to rezone the Deer Hill property, and questioned the many hundreds of thousands of dollars and man hours have been spent. The Council has followed the advice of the existing City Attorney and at every major juncture, the City Attorney has advised delay or a course of action that has been wrong and has been to the detriment of residents of the City. He asked if she will do it again and said she is out of time, stating there is a very short period before July 13 when the developer's application must have some sort of action. The City has a 45 day moratorium period to act on the rezoning.

He said he has been a lawyer for 42 ½ years, have litigated cases around the United States including \$650 million Ponzi schemes in the southern district in New York, major superfund site litigation in Oregon, and cases here and he does not say this to aggrandize himself but because he has seen excellent lawyers for decades and the City needs help.

In February 2010 and not at the beginning of the process, he said he wrote his first letter to the Council asking to have the property rezoned. Over a year later, it was not rezoned. The existing City Attorney was very much part of that advice and as a result of the failure to rezone the property, the developer put in their application they are now using 7 ½ years later from when they did it to claim they have a right to develop the property in a way that the residents of this City has continually told the Council they do not want. That opened the door and here everybody is.

He said the same City Attorney advised the Council not to rezone the property while the application was pending. There was no legal reason it could not have been zoned and tactically, it accomplished nothing. That advice was wrong. It could have been rezoned today without a moratorium and before this renewed application, if it is valid which they think it is not.

The City Attorney advised the Council that the residents of this town did not have a right to vote on the Deer Hill approval and that was wrong. It took the Court of Appeals to tell the Council that advice was wrong. The City Attorney has taken the position that the Terraces process agreement is still in effect.

**ATTACHMENT 10**

July 28, 2018

Dear Lafayette City Council and Planning Commission,

The EIR consultants at PlaceWorks who recently worked on the Homes at Deer Hill project has omitted important information and demonstrated a lack of objectivity. As concerned citizens, we respectfully submit that the city should select a new qualified EIR consultant for the supplemental environmental work that will be required for the resubmitted Terraces (315 Apartments) application<sup>1</sup>.

The California Environmental Quality Act (CEQA) imposes a legal obligation on the city to consider all significant effects on the environment of a proposed project. Many agencies expressly require that the environmental consultant selected for the preparation of an EIR certify that all pertinent environmental information will be disclosed and that no pertinent information has been withheld or omitted. PlaceWorks acknowledged on page 1-1 of the Final Supplemental EIR for the Homes the obligation “to disclose to decision makers and the public the significant environmental effects of the proposed activities” and “to identify ways to avoid or reduce environmental damage”. The author of recent materials submitted by the developer, Steve Bush of PlaceWorks, is listed as an engineer and is subject to ethical obligations to fulfill these objectives of CEQA in the preparation of environmental reports. For example, such obligations include a professional duty to hold as paramount the safety, health, and welfare of the public, to submit only work that promotes public health and welfare, to be objective and truthful in professional reports, and *include all relevant and pertinent information* (refer, e.g. to American Council of Engineering Companies (ACEC) Professional and Ethical Conduct Guidelines I, III). It is the duty of the EIR consultant to disclose all required information, not to serve the interest of any one party.

An alarming recent issue with PlaceWorks occurred in two separate communications with BAAQMD in the months leading up to Measure L in June, 2018. In April 2018, O’Brien Homes requested and paid PlaceWorks for a “Health Risk Assessment” study for the Sports Field and Tot Lot for the Homes at Deer Hill. The PlaceWorks results said that there was risk to children at these locations. Pressure was put on PlaceWorks to communicate with BAAQMD to validate their results. Mr. Bush from PlaceWorks contacted Alison Kirk at BAAQMD, and he directly misled Ms. Kirk both written and verbally. The byproduct was that BAAQMD released a statement supporting the Yes on L campaign, which was sent to the public *within hours* of their statement. However, when Scott Sommer and Susan Candell followed up and gave BAAQMD the actual data necessary for their statement, they retracted it, as they realized that they were misled by Mr. Bush at PlaceWorks. In a subsequent communication with Alison Kirk with BAAQMD, he again misled her with incorrect information, which again had to be corrected by Susan Candell with Alison Kirk.

**These are serious violations that the city should absolutely consider in determining whether or not the City of Lafayette should continue to employ PlaceWorks as EIR Consultants for the Terraces project. PlaceWorks put into jeopardy their integrity and reputation in front of our governing body, BAAQMD.**

The details of these events are contained at the end of this letter.

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<sup>1</sup> The original Terraces EIR was written by The Planning Center, DC&E.

In addition, PlaceWorks and Mr. Bush have not met all CEQA standards, including:

1. The PlaceWorks Draft Supplemental EIR, Air Quality section 4.2, at page 4.2-6 and 7, mentions the risks of ultrafine particulates (0.1 microns) [“Emerging evidence indicates particulates that are even smaller...known as ultrafine particulates (UFPs) have human health implications... may lead to adverse effects to the heart, lungs, and other organs”]. The nature of such UFP risks have been the subject of comment by agencies such as the Bay Area Air Quality Management District and South Coast Air Quality Management District, and health officials. However, in the subsequent PlaceWorks' discussion of air quality risks, hazards, and mitigation measures (4.2-29 through 34) ultrafine particulates *are ignored*. At 4.2-34, air filters for units are proposed, but a size of 1.0 microns and larger is suggested *without any disclosure* that this will fail to protect occupants from ultrafine particulates. *No discussion* of health risks to children residing in the units and playing outdoors, whether from ultrafine or fine particulates, is present.
2. PlaceWorks' website recites that it is experienced in school facilities, and it therefore must be familiar with SB 352 (Ed. Code 17213), the California school site law enacted in 2003. This law restricts new school site facilities within 500 feet of busy traffic corridors and freeways, and requires study within one-quarter mile of such corridors, consultation with the air quality management district, and a finding that exposure poses neither short-term nor long-term exposure to children. Detailed procedures and standards apply. School sites include “playgrounds, athletic fields” per Ed. Code 17609(f). Although not legally binding on the city, the project included a park and field area for children that are the same as would be covered under SB 352 if proposed by a public school district. However, PlaceWorks and Mr. Bush *ignored* this body of analogous and more rigorous information, relevant to decision makers and the public.
3. The methodology in the Draft Supplemental EIR Air Quality section is questionable. First, PlaceWorks made *no mention* of conducting onsite air monitoring, widely acknowledged by air quality authorities, including the Bay Area Air Quality Management District, as one of the most accurate ways of evaluating a site. PlaceWorks made *no mention* of significant air pollution at similar sites in Concord and Oakland monitored by BAAQMD for particulate matter that report in the Unhealthy for Sensitive Groups range several months a year. Instead, PlaceWorks *ignored* ultrafine particulates and this data, and reached a theoretical conclusion that the proximity to almost 50,000 vehicles/day from Pleasant Hill Road and Deer Hill Road, and 185,000 vehicles/day from Hwy 24, posed only a nominal risk, equivalent to a number of one on the Air Quality Index scale, a dubious result.
4. Further, in its report and communications in 2018, PlaceWorks and Mr. Bush made *no mention* of the 2016 BAAQMD Planning Healthy Places guidance and conclusions, another serious omission that would have deprived decision makers of the current recommendations of the BAAQMD.

This is not necessarily an exhaustive list, but it demonstrates that PlaceWorks and Mr. Bush have pursued a practice of minimizing and failing to disclose measurable and accurate air quality



July 28, 2018

information using techniques currently used by experts. In the case of the communications with BAAQMD, the developer's project was artificially promoted and decision makers and the public were being deprived of important and pertinent information on detrimental health risks.

The Terraces project is an enormous project as compared to the Homes. The FEIR currently documents 13 Significant and Unavoidable risks, 5 of which adversely impact Health and Safety. It includes 30,000 dump truck trips due to the ~300,000 cuft of grading to be off-hauled from this site. PlaceWorks not only under-assessed risks from the Homes project, they intentionally attempted to mislead BAAQMD when asked to assess these risks. They cannot be trusted with an even bigger project with FAR more risks identified for our residents, and especially our children.

For this reason, further environmental work on the Terraces 315 Apartments application should be performed by a new qualified and objective EIR consultant independently selected by the city with public input.

Thank you for your consideration,

Scott Sommer and Susan Candell

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### Supplemental information regarding communications between Mr. Bush and BAAQMD leading into the Measure L election.

On May 18, 2018, during the Measure L campaign, Mr. Bush of PlaceWorks submitted a communication to BAAQMD that omitted a significant portion of the public area project description so as to obtain misleading statements about the safety of the project. The Deer Hill homes project included acquisition by the city of an 8 acre parcel for park, family picnic area, trails, children play area, and sport field for children. The project description submitted by Mr. Bush on May 18 was inconsistent with the actual EIR project description and map and *omitted* all of the public areas in the 'purple zone' from BAAQMD's Planning Healthy Places guidelines, then obtained a written comment from BAAQMD dated May 29 that none of the project was in the area for which BAAQMD recommended its Planning Healthy Places guidance. This incorrect statement was circulated to the Lafayette electorate *within hours* by the Yes on L campaign.

However, the misrepresentation was pointed out by Susan Candell and Scott Sommer, and BAAQMD issued a correction dated May 31 confirming that the project "*does include* areas recommended for 'Best Practices' in BAAQMD's Planning Healthy Places" and "*is in the purple zone* on the PHP online maps". BAAQMD issued a further correction on June 5 that "the reference to the Air District and the statement that there is 'no health risk to children playing on that field' *is inaccurate.*"

In addition, when Susan Candell challenged the distances used in the Screening Risk Calculator, the HRA itself documents that the worst lifetime risk is experienced by the children in the Tot

Lot area, so the distances used to measure risk from Pleasant Hill Road and Hwy 24 should be measured from the Tot Lot, and not the Sports Field. But in subsequent discussions between Mr. Bush of PlaceWorks and Alison Kirk at BAAQMD, he misled her by mis-quoting his own HRA, changing the worst lifetime risk to the Sports Field from the Tot Lot. Only after pointing out his error, did Ms. Kirk understand the errors in the HRA's analysis.

Remember also that the HRA was requested and paid for by the DEVELOPER, O'Brien Homes, not the City of Lafayette.

1. April 2018:

- a. Mr. Bush provided incomplete and highly misleading maps and explanations to Ms. Kirk about the locations and uses of the Deer Hill public areas (Sports Field and Tot-lot) in defense of his HRA for Deer Hill Park and Sports Field report from April 2018. He omitted large sections of the public spaces that are part of the project.
  - i. In so doing, he knowingly increased the distances from both Pleasant Hill Road and Hwy 24, making any calculations incorrect and underestimate risks.
- b. Ms. Kirk wrote the BAAQMD statement that supported his conclusions, based on his incorrect maps. She confirmed that she did not look up original EIR maps.
- c. Scott Sommer and Susan Candell followed up with Ms. Kirk and her boss David Vintze. We sent them the ACTUAL site maps from the EIR, they reversed their support of the PlaceWorks HRA, and instead issued the statement "the reference to the Air District and the statement that there is 'no health risk to children playing on that field' *is inaccurate.*"

2. June 2018:

- a. Susan Candell challenged the distances used in the HRA results from PlaceWorks, as they were not consistent with the original EIR distances.
  - i. The screening distances used were from the Sports Field, not the Tot Lot, again underestimating the risks since worst lifetime risk at Tot Lot.
- b. Mr. Bush contacted Ms. Kirk and again, he provide verbal and written information to her that was incorrect and misleading, and OPPOSITE of the information provided in his own HRA, saying that the worst exposure risk was at the Sports Field, contradicting his own HRA which stated the worst exposure risk was at the Tot Lot.
- c. Susan Candell followed up with Ms. Kirk, and again, after receiving all of the correct information from the EIR and the HRA, she retracted her statement.

Technical Details contained in letter to City Council from Susan Candell, Dated 6/2/2018, "HRA Rebuttal"

## MEASURE L: HEALTH RISK ASSESSMENT UNDERSTATES HEALTH RISK AT PROPOSED SPORTS FIELD AND PLAY AREA

### Executive Summary:

Further discussions with BAAQMD's Alison Kirk, Senior Environmental Planner, her manager David Vintze, Manager, Planning and Climate Protection, Scott Sommer and myself has so far resulted in these major findings:

1. The maps sent to BAAQMD by Placeworks did not represent the 'Project', but an edited version not representative of the full Project proposed. Since public activity by children also occurs in the Park attached that is much closer to Pleasant Hill Road than in the edited version, BAAQMD now places the site in the 'Purple Zone' on the PHP online maps and is subject to 'Best Practices'.
2. The April 2018 HRA did not use the correct distances to Pleasant Hill Road in its 'Screening Health Risk Values' Table 1. The distance used was **225 ft**, which vastly underestimates the distance of the Park to Pleasant Hill Road. Using the correct distance of 50ft or less, the Screening Health Risk Values are now exceeding the BAAQMD Individual Source risks for both cancer risk and PM2.5, and should have also have been subject to the 'Refined Modeling' that was only done for State Route 24. This is important since in the 'Refined Modeling Cumulative Result', the PM2.5 volume went UP for State Route 24, so it's likely that Pleasant Hill Road is also underestimated.
3. The decision to use the 'Napa County Airport' met station instead of the Oakland International Airport met station will be further discussed with the metrology team at BAAQMD.

### Maps Sent to BAAQMD

The map sent to BAAQMD on May 18, 2018 for assessment was not the Project map, but an edited version just showing the Sports Field and Tot Lot. Since there are regions intended to be used by the public outside of these areas and are far closer to Pleasant Hill Road, their original assessment did not represent the true risks to the Project from nearby emission sources.

When the actual Project map was given to BAAQMD, not the edited map sent by Placeworks, the new question from Scott Sommer on May 31, 2018 has a different answer:

(Scott Sommer) **If the "project description" is all of the public areas depicted on the EIR project description sent to you by Susan Candell, refer also to Figure 1 of the April 2018 report, including all area and improvements between the sports field and right-of-ways of Pleasant Hill Road and Deer Hill Road, would it be correct to say that the project does then include areas recommended for "Best Practices" in BAAQMD's Planning Healthy Places and is in the purple zone on the PHP online maps?**

(Alison Kirk, BAAQMD) **Answer from BAAQMD: Yes**

This is the 'map' sent to BAAQMD by Placeworks on May 18, 2018:

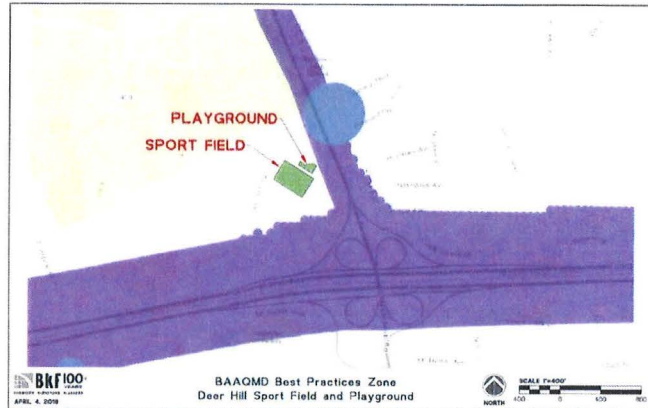


Figure 1: Incomplete map sent to BAAQMD from Placeworks May 2018

Since this 'map' is not a map of the project, but of just the tot-lot and sports field, we then sent BAAQMD the correct maps of the project from the EIR:



Figure 2: EIR Maps of Project sent to BAAQMD by Susan Candell and Scott Sommer, May 2018

The obvious difference between the edited map sent by Placeworks and actual EIR maps of the Project were compelling enough to change BAAQMD's answer to YES, the project is in the sensitive Purple zone.

**Screening Health Risk Values**

Based on the actual locations of the park, which extend beyond the actual sand play area, BAAQMD is going to reassess the results from the HRA based on this true layout of the project. In Placeworks original EIR for the Homes, they used distance for the project of 10 feet from Pleasant Hill Road for the residents, which is conservative. However, they did NOT use the correct distances in the HRA for the Sports Field and Playground.

**Contra Costa County  
PM<sub>2.5</sub> Concentrations and Cancer Risks  
Generated from Surface Streets**

**How to use the screening tables:**

- Distance is from the edge of the nearest travel lane of a street to the facility or development
- When two or more streets are within the influence area, sum the contribution from each street

**PM<sub>2.5</sub> CONCENTRATIONS (UG/M<sup>3</sup>)**

NORTH-SOUTH DIRECTIONAL ROADWAY								EAST-WEST DIRECTIONAL ROADWAY							
Annual Average Daily Traffic	Distance East or West of Surface Street - PM <sub>2.5</sub> Concentration (ug/m <sup>3</sup> )							Annual Average Daily Traffic	Distance North or South of Surface Street - PM <sub>2.5</sub> Concentration (ug/m <sup>3</sup> )						
	10 feet	50 feet	100 feet	200 feet	500 feet	700 feet	1,000 feet		10 feet	50 feet	100 feet	200 feet	500 feet	700 feet	1,000 feet
1,000	No analysis required							1,000	No analysis required						
5,000	0.097	0.078	0.070	0.017	0.003	0.000	0.000	5,000	0.061	0.052	0.042	0.017	0.011	0.003	0.000
10,000	0.096	0.087	0.077	0.020	0.016	0.016	0.001	10,000	0.056	0.079	0.059	0.020	0.019	0.016	0.015
20,000	0.130	0.122	0.104	0.030	0.021	0.015	0.010	20,000	0.130	0.113	0.096	0.030	0.030	0.020	0.017
30,000	0.165	0.158	0.139	0.039	0.031	0.019	0.014	30,000	0.211	0.200	0.186	0.066	0.043	0.033	0.017
40,000	0.225	0.226	0.191	0.133	0.032	0.020	0.016	40,000	0.381	0.339	0.281	0.113	0.050	0.038	0.020
50,000	0.317	0.309	0.252	0.155	0.042	0.027	0.019	50,000	0.413	0.352	0.287	0.135	0.060	0.045	0.033
60,000	0.400	0.391	0.313	0.183	0.052	0.035	0.022	60,000	0.435	0.365	0.313	0.156	0.071	0.052	0.040
80,000	0.457	0.447	0.358	0.203	0.060	0.040	0.025	80,000	0.497	0.417	0.358	0.179	0.081	0.060	0.045
100,000	0.514	0.503	0.402	0.235	0.067	0.045	0.028	100,000	0.559	0.469	0.402	0.207	0.092	0.067	0.051
100,000	0.571	0.559	0.447	0.261	0.075	0.050	0.031	100,000	0.621	0.522	0.447	0.224	0.102	0.075	0.057

**LIFETIME CANCER RISK**

NORTH-SOUTH DIRECTIONAL ROADWAY								EAST-WEST DIRECTIONAL ROADWAY							
Annual Average Daily Traffic	Distance East or West of Surface Street - Cancer Risk (per million)							Annual Average Daily Traffic	Distance North or South of Surface Street - Cancer Risk (per million)						
	10 feet	50 feet	100 feet	200 feet	500 feet	700 feet	1,000 feet		10 feet	50 feet	100 feet	200 feet	500 feet	700 feet	1,000 feet
1,000	No analysis required							1,000	No analysis required						
5,000	0.39	2.30	1.94	0.57	0.27	0.23	0.19	5,000	1.73	1.57	1.25	0.62	0.41	0.35	0.31
10,000	2.42	2.35	2.04	1.35	0.45	0.32	0.22	10,000	2.52	2.35	1.84	1.34	0.73	0.55	0.45
20,000	3.41	3.25	2.89	2.04	0.83	0.43	0.28	20,000	3.71	3.14	2.87	1.59	0.84	0.63	0.50
30,000	4.55	4.39	3.72	2.52	0.99	0.50	0.37	30,000	5.62	5.25	4.19	2.92	1.15	0.89	0.68
40,000	6.23	6.03	5.24	3.41	1.04	0.58	0.46	40,000	9.47	8.41	6.31	3.04	1.46	1.20	0.83
50,000	8.39	8.00	6.58	4.19	1.25	0.61	0.53	50,000	10.27	9.18	7.10	3.88	1.73	1.38	1.02
60,000	10.49	9.68	7.88	4.68	1.47	0.54	0.60	60,000	11.98	9.96	7.88	4.60	1.99	1.52	1.20
80,000	11.45	11.40	9.01	5.69	1.68	1.08	0.89	80,000	12.66	11.38	9.01	5.26	2.27	1.73	1.37
100,000	13.69	12.83	10.13	6.40	1.88	1.21	0.77	100,000	14.26	12.83	10.13	5.92	2.58	1.99	1.58
100,000	14.99	14.25	11.28	7.11	2.09	1.35	0.80	100,000	15.83	14.22	11.28	6.57	2.84	2.17	1.72

• Screening tables based on meteorological data collected from Chevron Refinery in 2005.  
• The maximum acute and chronic hazard index for the distances and AADT shown in the table will be less than 0.02.

Figure 3: Homes Appendix G, page 119, showing use of 10ft from Pleasant Hill Road

In Table 1 in the 'Screening Health Risk Values', they used a distance for Pleasant Hill Road of 225 feet. Looking at the grading documents above, the playground and spaces that children will be 'playing' is not restricted to the tot-lot, but that entire region that extends to the bike trail. These are indisputably far closer to Pleasant Hill Road than 225 feet.

Source - Segment	Distance from Project (ft)	Cancer Risk (per million)	Chronic Hazard Index	Acute Hazard Index	PM <sub>2.5</sub> (µg/m <sup>3</sup> )
State Route 24 (Link 1075) <sup>1</sup>	750 ft south	18	0.017	0.010	0.16
Pleasant Hill Road <sup>2</sup>	225 ft east	4.3	0.020	0.020	0.11
Deer Hill Road <sup>2</sup>	50 ft north	4.0	0.020	0.020	0.11
Mt. Diablo Boulevard <sup>2</sup>	1000 ft south	0.7	0.020	0.020	0.02
Shell Gasoline Station <sup>3</sup>	120 ft east	8.9	0.012	0.012	n/a
BAAQMD Significance Threshold - Individual Source		10	1.0	1.0	0.3
<b>Is Refined Modeling Required?</b>		<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>

1 The health risk values for SR-24, Link 1075, Contra Costa County, 6-foot elevation (BAAQMD, 2011).  
2 The health risk values were calculated using BAAQMD's Roadway Screening Analysis Calculator (BAAQMD, 2015) and Surface Street Screening Tables for Contra Costa County (BAAQMD, 2011).  
3 The health risk values were calculated using BAAQMD's Stationary Source Screening Tool (BAAQMD, 2012) and Gas Station Distance Multiplier for Shell Gasoline Station (BAAQMD, 2012).

Figure 4: HRA for Sports Field April 2018

When they ran the 'Roadway Screening Analysis Calculator', they used the following information. The 'Calculator' is free to download at <http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools>, and when the same numbers are entered as in the HRA, the numbers agree with the numbers quoted in the HRA.

**Roadway Screening Analysis Calculator**  
 County specific tables containing estimates of risk and hazard impacts from roadways in the Bay Area.

**INSTRUCTIONS:**

Input the site-specific characteristics of your project by using the drop down menu in the "Search Parameter" box. We recommend that this analysis be used for roadways with 10,000 ADT and above.

- **County:** Select the County where the project is located. The calculator is only applicable for projects within the nine Bay Area counties.
- **Roadway Direction:** Orient the orientation that best matches the roadway. If the roadway orientation is neither clearly north-south nor east-west, use the highest values predicted from either orientation.
- **Side of the Roadway:** Identify on which side of the roadway the project is located.
- **Distance from Roadway:** Enter the distance in feet from the nearest edge of the roadway to the project site. The calculator estimates values for distances greater than 10 feet and less than 1000 feet. For distances greater than 1000 feet, the user can choose to extrapolate values using a distribution curve or apply 1000 feet values for greater distances.
- **Annual Average Daily Traffic (ADT):** Enter the annual average daily traffic on the roadway. These data may be collected from the city or the county (if the area is unincorporated).

When the user has completed the data entries, the screening level PM2.5 annual average concentration and the cancer risk results will appear in the Results Box on the right. Please note that the roadway tool is not applicable for California State Highways and the District refers the user to the Highway Screening Analysis Tool at: <http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Tools-and-Methodology.aspx>.

Notes and References listed below the Search Boxes:

Search Parameters	Results
County: Contra Costa Roadway Direction: North-South Side of the Roadway: East Distance from Roadway: 225 feet Annual Average Daily Traffic (ADT): 34,360	<b>Contra Costa County</b> NORTH-SOUTH DIRECTIONAL ROADWAY PM2.5 annual average: 0.108 (µg/m <sup>3</sup> ) Cancer Risk: 4.28 (per million)

Data for Contra Costa County based on meteorological data collected from Chevron Refinery in 2008.

**Notes and References:**

1. Emissions were developed using EMFAC2011 for feet/mi in 2014 assuming 10,000 ADT and includes impacts from diesel and gasoline vehicle exhaust, brake and tire wear, and resuspended dust.
2. Roadways were modeled using CALINE4 air dispersion model assuming a source length of one kilometer. Meteorological data used to estimate the screening values are noted at the bottom of the "Results" box.
3. Cancer risks were estimated for 70 year lifetime exposure starting in 2014 that includes sensitivity values for early life exposures and CEHRA toxicity values adopted in 2013.

Figure 5: Roadway Screening Analysis Calculator from HRA April 2018

But using a number that reflects where children can actually be, that number, in order to remain 'conservative', should be less than 50ft. In fact they used 10ft in the EIR for the Homes for the residents, which is even more conservative. **This is what BAAQMD will be looking into on Monday.**

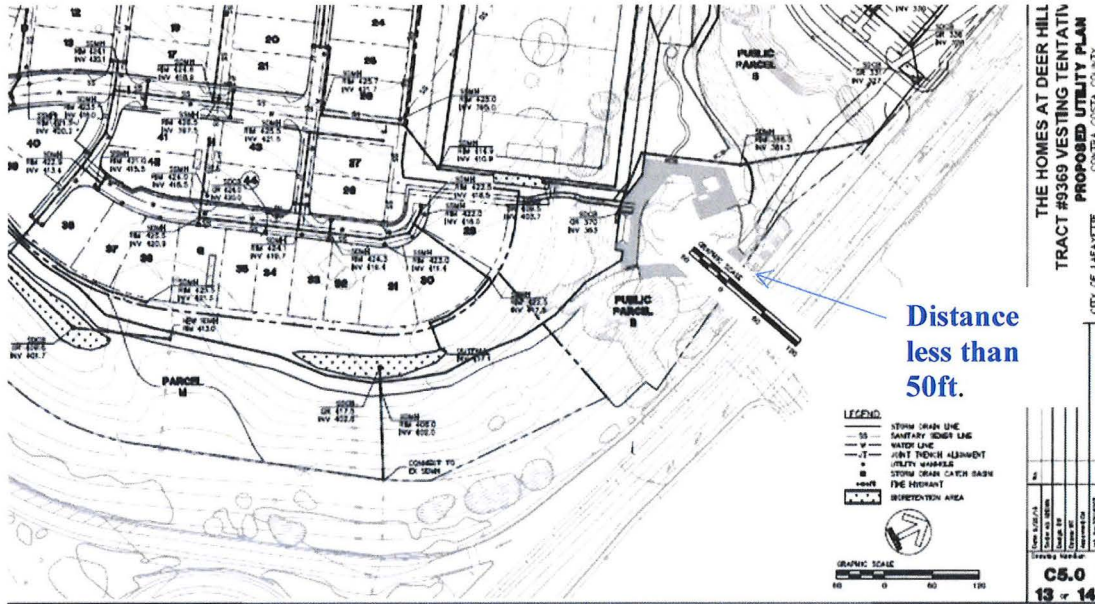


Figure 6: EIR Grading Map with Scale (0, 60ft, 120ft) rotated

Using the Roadway Screening Analysis program with both 50ft and 10ft, the values are very different.

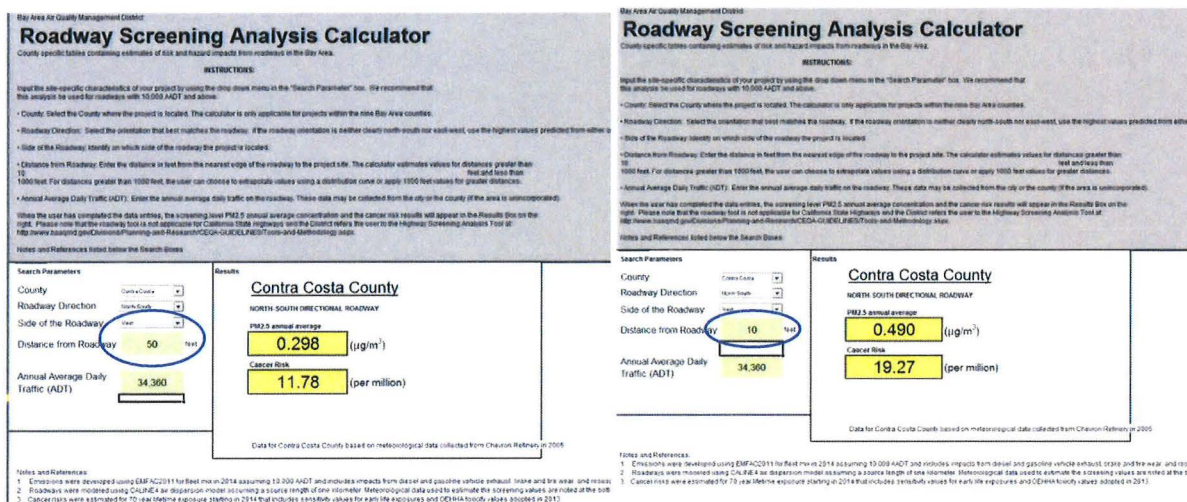


Figure 7: Roadway Screening Analysis Calculator for PHR at 50ft and at 10ft

The values for 50ft for Cancer Risk is 11.78, and PM2.5 is 0.30, both of which trigger the 'Refined Modeling'. The values for 10ft for Cancer risk is 19.27, and PM2.5 is 0.49, both of which trigger the 'Refined Modeling' assessment.

So the Table 1 should have been at least using the 50ft distance below for Pleasant Hill Road.

Table 1 Screening Health Risk Values

Source - Segment	Distance from Project (ft)	Cancer Risk (per million)	Chronic Hazard Index	Acute Hazard Index	PM 2.5 (ug/m3)
State Route 24 (Link 1075)	750 ft south	<b>18</b>	0.017	0.010	0.16
Pleasant Hill Road	50 ft east	<b>11.78</b>			<b>0.30</b>
Deer Hill Road	50 ft north	4.0	0.020	0.020	0.11
Mt. Diablo Blvd.	1000 ft south	0.7	0.020	0.020	0.02
Shell Gasoline Station	120 ft east	8.9	0.012	0.012	n/a
BAAQMD Significance Threshold – Individual Source		10	1.0	1.0	0.3
<b>Is Refined Modeling Required?</b>		<b>YES</b>	<b>NO</b>	<b>NO</b>	<b>YES</b>

Figure 8: Table 1 Screening Health Risks using 50ft to Pleasant Hill Road

With the proper distances input to the Screening tests, the additional modeling for the risk from Pleasant Hill Road should have been done, in addition to the risks from State Route 24.

**Why is this important? It's important because when Placeworks did the 'Refined Modeling' for State Route 24, the Particulates load was HIGHER than from the Screening Values.**

SR24 from Screening Analysis was 0.16, but in the Cumulative Analysis, it rose to 0.20.

Since the original Screening for Pleasant Hill Road Particulates was 0.11, based on 225ft from Pleasant Hill Road, and is now at least at 0.30 based on 50ft from Pleasant Hill Road, both the Individual Source Analysis and the Cumulative Analysis results are now getting much closer to the maximum allowed levels for PM 2.5.

**Wind Models**

Placeworks used Napa County Airport met station and not the better matched Oakland Airport met station. BAAQMD will be speaking with their meteorologist on this assumption. In the EIR for the Homes, they use the Concord station for modeling data (Page 19, Appendix G, Health Risk Assessment).

**Conclusion**

BAAQMD has reversed its position to YES for the question about if the Project is in the Purple Zone. The answer is now YES based on the actual maps of the project, not the edited maps earlier received.

Alison Kirk and David Vintze are pursuing the larger question about the distances to Pleasant Hill Road and necessity to re-perform the HRA done by Placeworks in April 2018 in order to change their answer to the CEQA question about Individual or Cumulative Risks. There is a very high likelihood that the HRA is not in compliance because the Refined Modeling was not done for Pleasant Hill Road.

Questions about the appropriateness or conservativeness of assumptions about using the different Met stations for this work is also being evaluated by BAAQMD.

The magnitude of the errors in methodology both in the HRA and in the misleading communications between Placeworks and BAAQMD in May 2018 can only lead to the conclusion that this Project has not yet been properly assessed. We are waiting for their official response on Monday, June 4, 2018.



# **ATTACHMENT 11**

S U S A N C A N D E L L

City Council of Lafayette  
July 1, 2018  
Re: Consideration of Appointing Additional Legal Counsel

Dear City Council,

I am absolutely in agreement with the recommendations made by Scott Sommer and Eliot Hudson, both very accomplished land use attorneys, who have written their reasons why the City of Lafayette should immediately hire additional counsel for the Deer Hill property.

In addition, this counsel must have a very strong arguments for defending the city against the 315 apartments proposal, including the validity and limitations of the Process Agreement. No applicant should be considered who cannot successfully argue these points.

Through the efforts by so many citizens, the City of Lafayette effectively 'set back the clock' for this property. This happened with the defeat of Measure L, proving that the Alternative proposal was also not acceptable for this site. **ALL of these efforts will be wasted with a single wrong legal move by the City of Lafayette before July 15 in response to the Terraces Application, and before the end of the 45-day moratorium to complete the re-zoning as required by the Appeals Court to comply with the General Plan.**

It is critical that powerful counsel be hired immediately to guide our city for these next steps.

Summary list of specific arguments made by Scott Sommer and Eliot Hudson in their letters regarding the needs and urgency to hire supplementation counsel for the Deer Hill property:

1. The Process Agreement dated January 22, 2014 did not provide for a particular General Plan designation
2. The Permit Streamlining Act does not provide for any vested right to a particular General Plan or zoning designation.
  - a. The *only* way the Legislature has provided to avoid "change in any applicable general or specific plan, zoning..." is by use of a *development agreement* under Govt Code 65865.4 (refer generally to Govt Code 65864-65869.5)(an equivalent provision under the Subdivision Map Act is not applicable because a vesting tentative map is not involved in the 315 apartments application)
3. A contractual provision that purports to restrict a City's power to enact General Plan or Zoning amendments is "Invalid and Unenforceable as Contrary to Public Policy"
4. Denial under the Housing Accountability Act, Govt Code 65589.5(d)(5).
  - a. Govt. Code 65589.5(d)(2) provides one ground for denial for any or all of the 5 significant and unavoidable public health and safety impacts in the certified Apts EIR.
5. The City should take action under Govt. Code 65943(a) within 30 days of June 15.
6. Lafayette's City Attorney has failed to represent the city adequately with regards to this property in many ways, including:
  - a. Failure to notify the city of the consequences of not rezoning in 2010-2011;
  - b. Arguing against going forward with rezoning after the Terraces application was submitted;

S U S A N C A N D E L L

- c. Stating that voters of Lafayette are not entitled to vote on Approval of the Homes at Deer Hill Alternative project;
- d. Arguing for the inclusion of the 'exemption' for the Terraces project during the current 45-day moratorium;
- e. Stating that the Process Agreement for the Terraces is still valid
- f. Failure to notify the city of their obligation to respond to the Terraces submittal within 30 days.

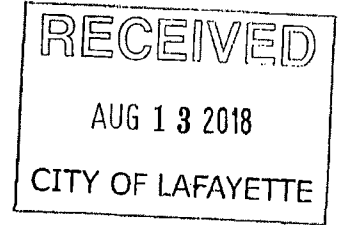
I also agree completely with Scott Sommer's conclusion:

*"The City should (1) immediately retain legal counsel experienced in land use law, municipal law, and litigation to advise the City, countermand the City Attorney and staff memos, respond properly to the two letters from the developer's counsel, and advise on the proper content of the Govt. Code 65943(a) response to the developer including information on the applicable LDSFR General Plan designation and pending zoning amendment, and (2) serve that Govt. Code 65943(a) response on the developer on or before July 15."*

Thank you for your consideration,  
Susan Candell

# **ATTACHMENT 12**

**Candidate Statement of Qualifications**  
**For the General Election to be held November 6, 2018**  
(Elections Code 13307, 13309, and 13311)



I'm Susan Candell, and I'm running for City Council because I have the passion, willingness to listen, and technical background needed to help find positive solutions to the very complex problems facing Lafayette.

A UC Berkeley and MIT graduate, I've been employed as a Nuclear Engineer for 30 years. I grew up in Orinda, and for the past 20 years my husband Brian and I raised our two children in Lafayette, who both attended public schools. I've had the privilege to work with our schools and city, and am currently serving as Lafayette Circulation Commissioner, President of the Springhill Valley Homeowners Association, Lafayette Community Foundation Board, and LPIE Fundraising Chair at Acalanes.

Fighting hard for the physical health and well-being for our residents is my goal. My professional training helped me uncover an incorrect EIR Consultant's conclusions about potential Deer Hill site hazards, and fought and won protections for Acalanes students. I'll continue my staunch support of traffic initiatives to help all students get to school safely and efficiently. I supported the newly adopted Commissioner Conflicts Ordinance. I am fiscally prudent, and am against deficit spending. I will continue to support our Police Department and police services.

I, like many residents, have concerns about traffic, parking, public safety, transparency in government and protecting open space. My analytical skills and results-driven background, coupled with my determination to preserve our semi-rural quality of life, are what's needed to tackle the upcoming challenges we face.

I ask for your vote in 2018.

Office Name: Councilmember Contest ID: \_\_\_\_\_ Candidate ID: \_\_\_\_\_

Word Limit: 250 • Cost: \$ 365.00 • Paid By: Candidate  District

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Candidate Name: **SUSAN CANDELL**

I have reviewed the attached statement and I understand that no corrections or changes are allowed after it has been filed (pursuant to EC 13307). I understand that Contra Costa County is mandated under the Voting Rights Act to provide voting materials and information in English, Spanish, and Chinese.

I do not wish to file a Candidate Statement.

Dated 8/13/18 Signature of Candidate S. Candell

**ATTACHMENT 13**

Mr. Hodil confirmed and said it is a statutory restriction on the City's ability to use any changes in the General Plan.

Councilmember Anderson summarized that the City made those changes to the General Plan and cannot enforce that as a standard for the proposal coming before them on the land and Mr. Hodil confirmed as it applies to the project which was the subject of that application in 2011.

Councilmember Samson said his only comment would be to join in on what Mayor Tatzin has said. He appreciates Mr. Hodil providing what he feels is a complete analysis in a very short period of time.

Councilmember Mitchell said as it relates to the HAA, it states "specific adverse impacts on health and safety" and asked if those are quantitative standards the City has already established, and asked how that works.

Mr. Hodil said this was something not included in the scope of his review. They would be happy to look further and it is possible that impacts under the EIR could be considered, but they have not fully analyzed what the EIR has disclosed in terms of impacts or looked into how that particular provision has been interpreted as to whether those types of impacts or what else has been upheld as constituting supportive findings.

Mayor Tatzin asked Councilmembers to remember that they asked Mr. Hodil to consider a limited number of questions which he has provided.

Mayor Tatzin opened the public comment period.

SUSAN CANDELL thanked the Council for hiring Mr. Hodil and for his good explanations. She was not sure the Council was finished with this topic, stating the EIR disclosed 13 significant and unavoidable impacts, 5 of which are health and safety and are likely to be the ones investigated under the HAA and see what it would take to make those findings.

Mayor Tatzin noted that the Council agreed early on that they would move Item 13.B.2 which is creating a retention agreement with Coblenz Patch Duffy & Bass LLP and the City and because there are many other items on the agenda, they agreed they would discuss the item for 20 minutes. If they have not reached a conclusion at the end of that time they will continue it as they were until after Item 10.B which is a discussion regarding the potential acquisition of the Park Theater. The purpose of this is that other people have made assumptions about when to get here in order to have their item considered, so if they were to move an item up, they agreed they did not want to penalize the others too much.

He received a request from a Councilmember to continue on with some sort of retention agreement with Mr. Hodil's firm. They both spoke and Mr. Hodil contacted him back with an email and he indicated that the Council did not know how much assistance they would need and exactly when in the process but they wanted the ability to bring in the firm on an as-needed basis.

Mr. Hodil said they would be glad to continue with assisting preferably through a task-based agreement for particular scopes of work. The details of how that would work would need to be worked out with his partner, John Bass and can return to the Council on this.

**ATTACHMENT 14**



"Sue, yes, they have raised 10:1 over Save Lafayette, but follow the article and IT'S ALL FROM THE DEVELOPER!! Actually, \$2k from the Cronk family, who I think has nothing to do with this particular development, and the >\$60,000 from O'Brien! And the title said something like neighbors donating? Is O'Brien from Hillsborough somehow our new neighbor? I was cracking up!"

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"If you vote No on L, you will at least have a chance of improving on the current Homes project. There are many totally valid ways of fighting the 315 Apartments, all depending on how the city handles it if the developer even wants to bring those back."

\*\*\*\*\*

"Our ONLY City Councilman Ivor Samson who supports No on L says: "I believe that a NO vote is legally sound, reflects our historic land use policies... that a NO vote will better serve both the historic goals of our community as well as better position us for future challenges"

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"Yes, the traffic impact is significant and unavoidable. A vote YES will mean this is now OK in the future. A huge project like Deer Hill in the future will be able to say that this is also OK. The term 'Precedent' is legal."

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"The City Council on Wednesday put in place a 45 day moratorium so they can't approve any development inconsistent with the General Plan for 45 days, which is 2 homes per acre. This will give the City time to rezone the specific plan for that site to match the General Plan, as ordered by the Appeals court. A couple things to note: 1. At the special Council meeting on Wednesday, our city Attorney wrote the 45 day moratorium, but included an 'Exception' which would have made the Terraces exempt to the moratorium. Ivor Samson strongly objected to this Exception, as it is not necessary. The Terraces project, now resubmitted, can be processed, just not approved. Mike Anderson and Cam Burks also agreed to take the Exception out, but Don argued for about an hour to keep it in, but finally agreed. 2. The Developer agreed orally at the Council meeting on Monday that 2 homes per acre is acceptable. 3. The Constraints analysis in 2010 showed 14 homes as maximum, which was also agreed upon by the developer in 2010. 4. The site rezone will be sent down to the Planning Commission for review in 2 weeks. 3 options are to be considered, none at LR5, and only up to LR20. Many folks hope that a compromise project can be found. Hopefully this time it will be done with more community input."

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"Thank you Keith. I believe that many who voted Yes on L also feel the same way about the property. These next 15 days are CRITICAL. The city must immediately retain legal counsel experienced in land use law, municipal law, and litigation to properly handle the re-zoning and the resubmitted 315 Apartments."

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"The rezone in 2010 was legal, but not implemented because of failed legal advice. The citizens set back the clock, and this time the rezone by Planning Commission is R65, or 14 Homes, up from the R5 in 2010, or 5 Homes. The vote on that comes back next week. Everything the city is doing this time so far is legal and defensible, but two very important documents need to be produced, the first on by July 15 in response to the developers resubmission of the 315 apartments, and the other to defend the new rezone. These documents must be perfect and they must be quick. An independent counsel with land use expertise can create these. Written well and lawsuits could be averted. Written poorly and lawsuits will fly. Our current attorney is not a land use expert, and Ivor Samson has found the perfect person who can jump in after the vote tonight. This will be money well spent! Please support Ivor and his choice! He is the only attorney on Council, and we are very lucky to have him!"

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"Good question! It is a complicated past, but here it is. General Plan zoning is the 'master plan' for the whole area, and the Site zoning is specific for just that parcel. When they are inconsistent, the General Plan 'wins'. 1. In 2010, The original General Plan and Site zoning of the property in 2010 was administrative professional office, and with a land-use permit issued by the city (or denied), could be increased to 35 units per acre. The city in that year voted to have the Site zoning reduced to LR5, or 5 Homes per acre. O'Brien submitted the 315 Apartments, threatening lawsuits, and our city attorney said the city couldn't down zone in that time., so the rezone didn't go through. 2. In 2013, the city did not approve the 315 Apartments, but came out with the 'Alternative Homes' project. 3. In 2015, right before approving the Homes at Deer Hill, a General Plan amendment went through that rezoned the site to R20, or 44 homes. The city approved the Homes at Deer Hill, with 44 Homes, sports field, dog park, tot-lot, and 2 new roundabouts, along with a Site zoning down to R20. The Save Lafayette group got 2000+ signatures on a referendum to allow the voters to vote on the project, and the county approved the signatures. The city denied the referendum, so Save Lafayette sued the city to allow the vote. 4. In 2018, the Appeals Court sided with Save Lafayette, and Measure L was put on the ballot in June. This referendum ONLY reverses the SITE zoning, not the General Plan zoning, and the General Plan is the 'master' if the two are out of sync. When Measure L was defeated, the SITE zoning went back to the original APO zoning. The Appeals Court ruled that the City must re-zone the SITE to match the General Plan, which is going on right now. The Planning Commission has now recommended R65, or 14 Homes, which is more than the 2010 LR5 for 5 homes. Lafayette's Hillside Ordinance, which is also applicable at this site since it's so hilly, is a calculated number, and it also calculates 14 Homes, which is a big reason why Planning Commission chose this zoning. If the vote passes next Monday, the General Plan will be still R20, but since this site is so hilly, the Hillside Ordinance calculates R65, or 14 Homes, which will likely be also approved by City Council. This entire 8 years of hundreds of thousands of dollars and literally endless hours of city and citizens time would have been avoided if the City Attorney would have allowed the rezoning for that site in 2010. Well, we are again back to 2010, and this time we all hope to get it right!"

\*\*\*\*\*

"The EIR for the Terraces was certified as complete I believe in 2014. All of the impacts were defined, studied, some mitigated, and 13 Significant and Unavoidable impacts remain. 5 of them are Health and Safety. The only way to 'change' the Terraces project and remove these Significant and Unavoidable Impacts is to submit a brand-new project, and then start

from the beginning and generate a new EIR. The Terraces project that was just resubmitted does not change anything.”

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“Coblentz firm. They are only hired through this Friday, unless we citizens can convince our Council otherwise. Since there isn’t a Council meeting for a week+ after that, I hope they distribute their opinion earlier than the next meeting. They should be weighing in on whether or not our City Attorney’s advice on the General Plan rezoning in 2015 applies to the Terraces or not. Gold Mine? Not sure - after how much effort our own city has paid since 2010 (and before), I think this firm will get a very small fraction of the full price of this project to date. Then add 8 years of effort by our community, it’s still a small fraction. Money long overdue for getting expert land use advice.”

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“I support the R20 General Plan rezoning in 2015. I support additional low income housing as well. I hope the developer comes up with a new proposal that doesn’t involve 30,000 dump trucks.”

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“And the General Plan was altered in 2015, which now PRESIDES OVER the old site zoning, and it was rezoned to R20, or 44 homes, the same as the whole Deer Hill Road area around it. Upon Measure L defeat, the specific site zoning was out of compliance with the General Plan, and the Appeals Court of California instructed the City of Lafayette in 2018 to change the site zoning to match the R20 General Plan. Our Planning Commission and City Council both voted for the new Site Zoning of R65, which allows for 14 homes on this site 2 weeks ago. Why did they do this? Because our Hillside Ordinance, which applies to this site, dictates R65 as the appropriate zoning for this very hilly site. For the Homes project that was defeated, that project admitted that they were in violation of the Hillside Ordinance which should have limited that project to 14 Homes instead of 44. The Process Agreement does NOT include a single word about Zoning, and especially any General Plan zoning changes during the Process Agreement. This is the main reason the city has hired Coblentz, to get a second opinion about many things, including any mention of any Zoning changes to this site during the Process Agreement. George, if you are thinking that the old APO zoning still applies, then show us the words in the Process Agreement that would over-rule the new General Plan R20 zoning?”

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“The city had every right to apply the new downzoning to the Apartments on July 15. Ivor Samson led the Council effort to do this, but could not get enough votes from others to implement. A new lawyer has been hired to get a second opinion, and is very likely to be in opposition to our City Attorney on this exact issue. What we can do - all of this is happening BEHIND CLOSED DOORS, ALONG WITH MEETINGS WITH THE DEVELOPER. WE PUBLIC HAVE NO IDEA AND NO INPUT TO THIS PROCESS. For a matter that clearly has SO MUCH AT STAKE, BOTH IN TERMS OF MONEY AND TIME FOR OUR CITY, IT IS EGREGIOUS THAT THEY CONTINUE TO HOLD MEETINGS BEHIND CLOSED DOORS. It appears it is still ‘process as usual’ for our City. Secret meetings with developer are happening this week as said by Niroop, and discussions about a new Supplemental EIR and

it's contents discussed without our input. Please, everyone start demanding that for any change in the current Apartments legal strategy or any change to the Project, including new EIR be discussed in OPEN SESSIONS. Let's avoid the mistakes in 2010 and 2015!"

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"A CEQA lawsuit can be filed if, for example, our city approves the Terraces project in its current form with its 13 significant and unavoidable impacts. Since the HAA may also be at play, if any of the 5 health or safety impacts can be shown to be significant, the project can also be denied. What the issue is TONIGHT is whether the city retains the land use expert attorney to defend that the project also violates the general plan, which many very smart attorneys completely agree with. This too defends against the HAA."

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"It's an overlooked fact that the Terraces Apartments were not totally in compliance with General or Site Specific zoning, as those were APO, which is light commercial. Multi-family units are required to get a conditional use permit, to allow residential rather than light commercial. This permit is granted through Planning Commission, which I don't believe was completed. For relevance, SF does not allow ANY conditional use permits, so the Terraces would not have been permitted to be built if this project were in SF."

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"George, in the Appellate decision, the decision recites Government Code section 65860, subdivision (c), which provides that if "a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan ... the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended." (See highlights at pp. 665 fn. 3 & 667 [.pdf p. 7, 9] of attached decision.) The recent adoption of the R-65 district complies because the allowed one unit per 1.5 acres is "consistent" with the amended general plan's restriction to "up to 2 dwelling units per acre" (although the statutory allowance of second units on each lot could arguably make it inconsistent). So I asked you for 'proof' of one of your arguments, and asked you to look in the Process Agreement for any mentions of changes of General Plan zoning that would somehow NOT affect this site. I made good on your question, now it's your turn. If you can't, then please stop your arguments, and try to follow what is actually happening to this parcel in real-time. It's happening quickly, and if we citizens want to make sure this is done transparently instead of behind closed doors, I again suggest to email [jrobbins@lovelafayette.org](mailto:jrobbins@lovelafayette.org), and ask Council to have public comment for all city actions for this site!"

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"And 30,000 dump truck trips to move about 300,000 cu ft of dirt off the site. These would be limited to just over 1200 dump trips a day for 9 months, and in the last review, they would be travelling past DVMS preschool since the traffic impact would be too big for Pleasant Hill Road. The hillside is not going to look anything like it does now in order to fit the 14 buildings scattered across the property. These dump truck trips and massive earth moving equipment are the source of the adverse health effects, far worse than the Homes at Deer Hill."

\*\*\*\*\*

"In 2010, our City Council (yes with Don and Mike) voted UNANIMOUSLY for 1 home per 2 acres, and 3 actually voted for 5 homes (1 home/5 acres). The reasons are the topography – it's really steep in most sites, and if the 'normal' Lafayette rules applied for this site, anywhere from 5-11 homes could be built. Our staff apparently got too busy to rezone it, and after 6 months of nothing, the first Terraces proposal was prepared, but it wasn't 'complete' for about 6 more months after that. Our city had AMPLE opportunity to deny this project years ago, but did not. We need to Vote No on L to explore any of these other ideas! If you vote YES, then the door will be open FOREVER for DEVELOPERS who want to hold us hostage like O'Brien did! And Ms. Dettmer owns more property on Deer Hill, so this could push even more development down the corridor!"

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"If 'No' on Measure L passes, the Homes project can still be in play but not begun for a year, and there will need to be something substantial changed about the project, like No Sports Field and Tot-Lot next to the freeway, no roundabout on the hill, etc. It is not my personal intention to say no to 44 thoughtful homes as our region needs housing, but I feel strongly against the lack of any mitigations requested by citizens to the heavy traffic impacts in the area and the improper handling of a public facility next to a freeway according to our regional jurisdictional authority, BAAQMD. If 'No' on Measure L passes, the developer could bring back the unapproved Terraces 315 Apartments back for a vote by Council. However, during this unapproved time between when the Homes project started and now, Lafayette's General Plan changed, so there is now a mismatch with the APO zoning for that site and the General Plan. A re-zoning will need to happen to fix this, which is then subject to the referendum process just like was done for the Homes. I feel now extremely confident that we citizens will rise to the vote if the 315 Apartments project comes back! Thank you Mr. Garfinkle for guiding the citizens to this legal and effective way to vote on important projects in our City!"

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"Same legal issues as the 315 Apartments - a zoning change would need to occur, so again our rights to petition for a referendum works for that too!"

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"The new state housing laws don't effect this site, and Deer Hill was never part of Lafayette's Housing Element. If the developer does try to change anything with that site application, we as citizens still have our rights to petition for a referendum, again. The fear factor over the apartments is what seems to be still driving people's decisions, but if you read Scott's posts, this is simply not true anymore. I guess an approach to take is to imagine this Homes project just by itself, and if you support it without allowing the fear factor of the apartments, then vote for it. If you don't think the city should spend \$3M on a sports field and tot lot that are in a location documented by BAAQMD as 'elevated levels of fine particulates and/or toxic air contaminants', then vote against it."

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"Brad, #2 - the city of Lafayette has clear building guidelines for 'your neighbors', including setbacks, heights, and landscaping. If they go out of those guidelines, they have to go through the review process, and the City has to approve of any variances. The Homes project literally violates every single one of our guidelines, and even has some documented

adverse impacts on all of us and to it's own residents. A City Council can approve of any project, harmful or not, as 'approved with overriding considerations'. This is what happened for the Homes, and enough citizens signed a petition to vote on the project, and even though our City Attorney tried to deny the vote, the Court of Appeals over-ruled that decision. So I will vote NO because although I'm not against the Homes, I'm against City Leaders who would rather spend \$3M of our money on a single field that is in a very bad site for pollution and for grid-locked traffic, because they want a MUNICIPAL field. I would rather spend \$1M each on 3 safer fields on existing School or Community Park sites. And these same officials voted for an unsafe roundabout at the Homes entrance which will close Deer Hill completely for months. I say NO because even through the 7 years, it's still not good enough for our kids health. I think 3 new year-round fields at school sites would be far better. I'm also against a developer who has threatened so much that he has kept our city held as hostage for 7 years. I believe the reasoning by Save Lafayette's attorney that we are no longer hostage by Apartments. The campaign for YES is not being funded by our citizens - it has \$2000 from the Cronk Family, and \$62,000 from the developer. I am voting NO because I don't like this final project, and because we citizens need to stand up to big developers. Dettmer owns far more property in our City, and this is only Round 1."