

## Planning Commission Staff Report

January 23, 2013

Item 6.a.

- SUBJECT:** P12-1796
- APPLICANT:** City of Pleasanton
- PROPERTY OWNERS:** Various owners
- PURPOSE:** Application to amend Title 18 (Zoning) of the Pleasanton Municipal Code to create Chapter 18.70 Ridgeline and Hillside Protection and Preservation, development standards and review procedures for development proposed in the hillside areas of the City.
- GENERAL PLAN:** Various.
- ZONING:** Various.
- LOCATIONS:** Hillside and ridgeline areas within and surrounding the City.
- EXHIBITS:**
- A. Draft Amendment to Title 18, for Chapter 18.70 Ridgeline and Hillside Protection and Preservation, dated January 23, 2013.
  - B. City Council Special Meeting staff report, dated November 27, 2012, analyzing implementation options for Measure PP provisions.
  - C. Minutes of the City Council special meeting of November 27, 2012.
  - D. "Analysis of the Impacts and Effects of the 'Save Pleasanton's Hills & Housing Cap Initiative,'" prepared by staff dated June 11, 2008.
  - E. Minutes of the City Council public hearings held on May 20, 2008, June 26, 2008, and June 17, 2008.
  - F. Chapter 18.76 H-P-D Hillside Planned Development District, Chapter 18.68 PUD Planned Unit Development District, and Chapter 18.78 West Foothill Road Corridor Overlay District.
  - G. Appendix J, Grading Definitions, of 2010 California Building Code.

## **I. BACKGROUND**

On November 27, 2012, the Pleasanton City Council held its special meeting to discuss and provide direction on the implementation of the November 2008 voter-adopted Measure PP. The City Council addressed the following items:

1. Measuring slope grades;
2. Defining the terms ridge and ridgeline;
3. Deciding if streets are structures subject to Measure PP grading limits; and,
4. Determining whether the limitations on slopes having a 25-percent grade or greater apply to manufactured slopes.

The City Council supported the staff recommended options for the above-listed items, with changes to the recommended options on streets and roads on slopes having a 25-percent grade or greater, and to manufactured slopes having a 25-percent grade or greater. The Council directed staff to prepare an amendment to Title 18, the Pleasanton Municipal Code, for a new chapter on ridgeline and hillside protection and to have the proposed amendment before the Planning Commission in January 2013.

The City Council staff report and the minutes of the special meeting are attached as Exhibit B and Exhibit C, respectively. Additional background is provided by Exhibit D, the "Analysis of the Impacts and Effects of the 'Save Pleasanton's Hills & Housing Cap Initiative,'" dated June 11, 2008, and Exhibit E, the minutes of the City Council public hearings held on May 20, 2008, June 26, 2008, and July 15, 2008 on Measure PP.

## **II. PROJECT DESCRIPTION**

The proposed Chapter 18.70, Ridgeline and Hillside Protection and Preservation, would codify the City Council's direction made at its special meeting on the implementation of Measure PP. The proposed chapter would regulate ridgeline and hillside development in compliance to the goals, policies, and programs of the Pleasanton General Plan and to the requirements of Measure PP, which would be considered the policy required by Measure QQ.

The proposed chapter would apply to the vacant and/or underdeveloped hillside areas surrounding the City, such as west and southeast Pleasanton; and to the infill areas within the City having relatively large, potentially developable areas of hillside land. The proposed Chapter would not be applicable to the flatter areas of the City, such as the City's Bernal Park property.

## **III. CITY COUNCIL SPECIAL MEETING**

On November 27, 2012, the City Council discussed the implementation options for Measure PP. The minutes of the City Council meeting are attached (Exhibit C). Public

comments were made by Alan Roberts, Amy Lofland, Greg O'Conner, Karla Brown, and Kay Ayala. The Council discussed the implementation options and staff recommended options identified in the attached staff report (Exhibit B). When questioned by the City Council, staff replied that:

1. A pre-existing building pad located on property having a 25-percent slope or greater could be developed if the driveway to the pad did not cross a 25-percent slope;
2. An existing lot on land area of a 25-percent slope or greater could be developed if there was adequate property area less than a 25-percent slope;
3. The definition of slope used in the staff report affirms the slope definition used in the 1996 General Plan;
4. The staff recommendations do not incorporate any aspect of the Weighted Increment Slope (WIS) used by the City's H-P-D District;
5. Specific Plans do not constitute vested rights; and,
6. The proposed Code Chapter is intended to protect hillside areas and not flat land areas, such as the Bernal Park property.

Public comments received at the City Council's special meeting generally supported the staff recommendations, with the following changes suggested to the City Council:

1. Regarding streets and roads:  
That streets or roads are structures covered by Measure PP unless the street or road is intended to only provide access to a public park, trail, or similar facility and/or is covered by a previous Specific Plan and PUD Development Plan approved prior to November 2008 when Measure PP was passed;
2. Regarding slopes:  
That a two-foot contour interval measured over 10 vertical feet should be used.
3. Regarding manufactured slopes:  
That manufactured slopes over a 25-percent grade are covered by Measure PP and should be excluded from development.

The City Council discussed the staff recommendations, public comments, and the ability to include an exemption process within the proposed chapter for streets or roads referenced by previous PUD Development Plans and/or Specific Plans on slopes having a 25-percent grade or greater and whether manufactured slopes having a 25-percent grade or greater should be included or excluded from the developable area of a proposed development. For manufactured slopes, the Council felt that an exemption process with a public hearing should be incorporated into the proposed code chapter to

enable the City to support an exception if it was consistent with the intent of the Code chapter.

The City Council approved the following recommendations, numbered according to the numbering in the attached staff report, for incorporation into the proposed Code chapter:

- 1.a. **Methodology for Determining 25-Percent Slope.**  
The City Council chose Option One – Calculate 25-percent slope as a specific value based on the distance between contour lines on a topographic map with the added wording that the WIS (Weighted Increment Slope) formula will not be used in the calculation of slope.
- 1.b. **Methodology for Defining Contour Intervals**  
The City Council chose Option One – Two-foot contour intervals, provided that any reference to WIS in the methodology is eliminated from the definition.
2. **Definition of Ridge and Ridgeline and the 100-Foot Setback.**  
The City Council chose Option Two – Define ridgeline as a continuous ground line connecting a series of hills located at their highest elevations ending at the last peak on each end of the landform. The “last peak” would be defined as the point at which the elevation of the ridgeline no longer rises in elevation, and only decreases in elevation.
3. **Definition of Streets and Roads as Structures.**  
The City Council chose Option Three as amended – Determine that streets and/or roads and their attendant infrastructure are a structure in that they are a physical improvement on the property intended to accommodate development of residential and commercial structures and, therefore, are covered by Measure PP unless the street or road is covered by a Specific Plan or PUD Development Plan approved prior to November 2008.
4. **Manufactured Slopes over a 25-Percent Grade as amended.**  
The City Council chose Option Two – Determine that manufactured slopes of 25-percent or greater are covered by Measure PP and are excluded from the developable area of the property, but allow for the consideration of potential exceptions on a case-by-case basis through the public review process.

#### **IV. GENERAL PLAN**

The proposed Chapter implements Measure PP and Measure QQ and complies with the policy and/or program directions of the Pleasanton General Plan including:

1. **Policy 21 of the Land Use Element:**  
“Preserve scenic hillside and ridgeline views of the Pleasanton, Main, and Southeast Hills ridges (Measure QQ, 2008);”

2. Program 21-3 of the Land Use Element:  
"Ridgelines and hillsides shall be protected. Housing units and structures shall not be placed on slopes of 25 percent or greater, or within 100 vertical feet of a ridgeline. No grading to construct residential or commercial structures shall occur on hillside slopes 25 percent or greater or within 100 vertical feet of a ridgeline. Exempt from this policy are housing developments of 10 or fewer units on a single property. Splitting, dividing, or subdividing a 'legal parcel'<sup>1</sup> to approve more than 10 housing unit is not allowed (Measure PP, 2008)."
3. Policy 6 of the Open Space and Conservation Element:  
"Protect all large continuous areas of open space, as designated on the General Plan Map, from intrusion by urban development (Measure QQ, 2008)."

## V. DISCUSSION

### **Purpose and Objectives.**

The purpose of the hillside and ridgeline protection standards of Chapter 18.70 would be to: preserve the predominant views of hillside and ridgeline areas; protect hillside and ridgeline areas from development; direct development away from environmentally sensitive land, land with open space value, or land difficult to provide city services to because of slopes; while maintaining the city's ability to meet community goals for services including, but not limited to, parks and open space areas, trails and staging areas, and utilities.

### **Applicability.**

As directed by Measure PP, the regulations of this chapter shall apply to the hillside and ridgeline areas of the City for commercial buildings and developments and for residential developments of 11 units or greater. Staff considers "units" to include dwellings such as single-family detached homes (with or without a second unit)<sup>2</sup>, townhomes and condominiums, and apartments.

The proposed Chapter exempts from these requirements housing developments of ten or fewer units on a single property that was, as of January 1, 2007, a legal parcel created pursuant to the California Subdivision Map Act<sup>3</sup>. Where the construction of a multi-unit residential development exceeding ten units would be phased, the entire development must be shown on a single PUD development plan application with the entire development, e.g., building and lot locations, streets and parking, open space areas, etc., shown on the development plan and the development application including the information required by Section 18.70.050 of the proposed chapter (Exhibit A).

Although new residential developments of ten or fewer units are exempt from the requirements of the proposed code chapter, the Pleasanton General Plan contains other policies addressing hillside developments.

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<sup>1</sup> Measure PP defined "legal parcel" as a lot created prior to January 1, 2007.

<sup>2</sup> A single-family home with an attached or detached second unit is considered one unit per California Government Code §65852.

<sup>3</sup> California Government Code §§ 66410 – 66413.5.

**Regulations and Implementation.**

The City will implement the regulations of the proposed chapter with review of PUD Development Plan, Design Review, and/or Tentative Subdivision Map.

The proposed regulations of Chapter 18.70 would work together with State and Federal regulations and with present City regulations on, but not limited to, ridgeline and hillside protection, protection of jurisdictional waters, species, and habitat areas, trees, wildland fire mitigation, urban storm water runoff treatment and necessary mitigation, etc., and would be implemented with review of development applications. Where the regulations of the proposed Chapter may conflict with other provisions of the Pleasanton Municipal Code<sup>4</sup>, the regulations of this Chapter shall control.

**Definitions.**

The City Council approved the use of the following concepts in the proposed chapter.

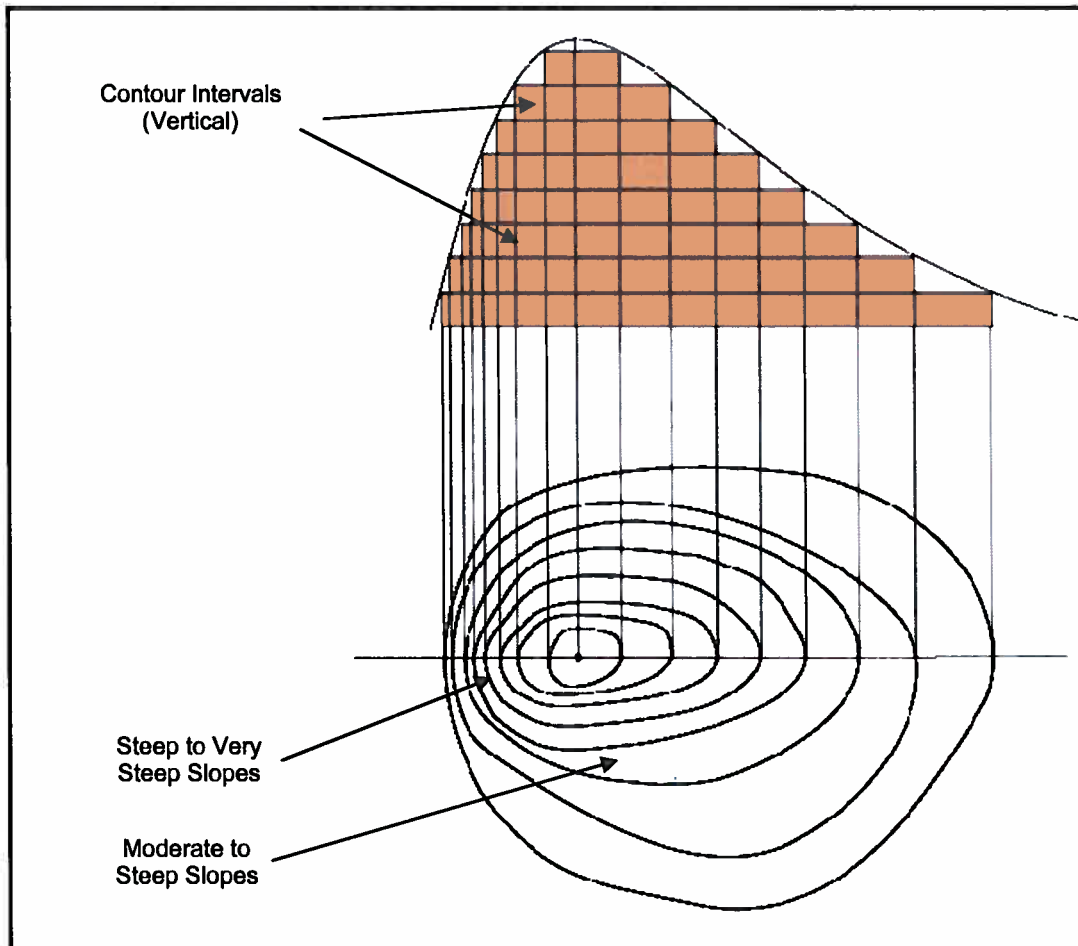
**Contour Interval and Contour Line.**

The City Council directed two-foot contour intervals – the difference in elevation between adjacent contour lines on a contour map or topographical map – in order to provide a high level of land form detail that would be used to verify compliance with Measure PP. (Two-foot contour intervals are typically used on slope inventory maps and preliminary grading plans provided with development applications, and would require the least interpolation between the intervals.)

Contour intervals are shown as contour lines, the horizontal lines, curved or straight, that join points of the same elevation (height) above sea level. The spacing between contour lines – wide or narrow – can graphically show the relative steepness (grade) of the slope. Figure 1, on the following page, shows how contour intervals are reflected as contour lines, and how the spacing between the contour lines can graphically indicate the relative steepness (grade) of the slope.

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<sup>4</sup> Including, but not limited to, Chapter 18.76 H-P-D Hillside Planned Development District, Chapter 18.68 PUD Planned Unit Development District, and Chapter 18.78 West Foothill Road Corridor Overlay District (Exhibit F).



**Figure 1: Contour Intervals, Contour Lines, and Slope Grades.**

Staff review of the slope inventory map will still be required combined with field visits of the property to evaluate the significance of land features. Isolated and/or insignificant land features are not considered to trigger the 25-percent slope prohibition. These minor land forms would be addressed during the review of the proposed development.

**Ridge/Ridgeline.**

The City Council defined ridge/ridgeline as a continuous ground line connecting a series of hills located at their highest elevations ending at the last peak on each end of the landform at which the elevation of the ridgeline no longer rises in elevation, and only decreases in elevation. Figure 2, on the following page, shows the ridge/ridgeline definition.

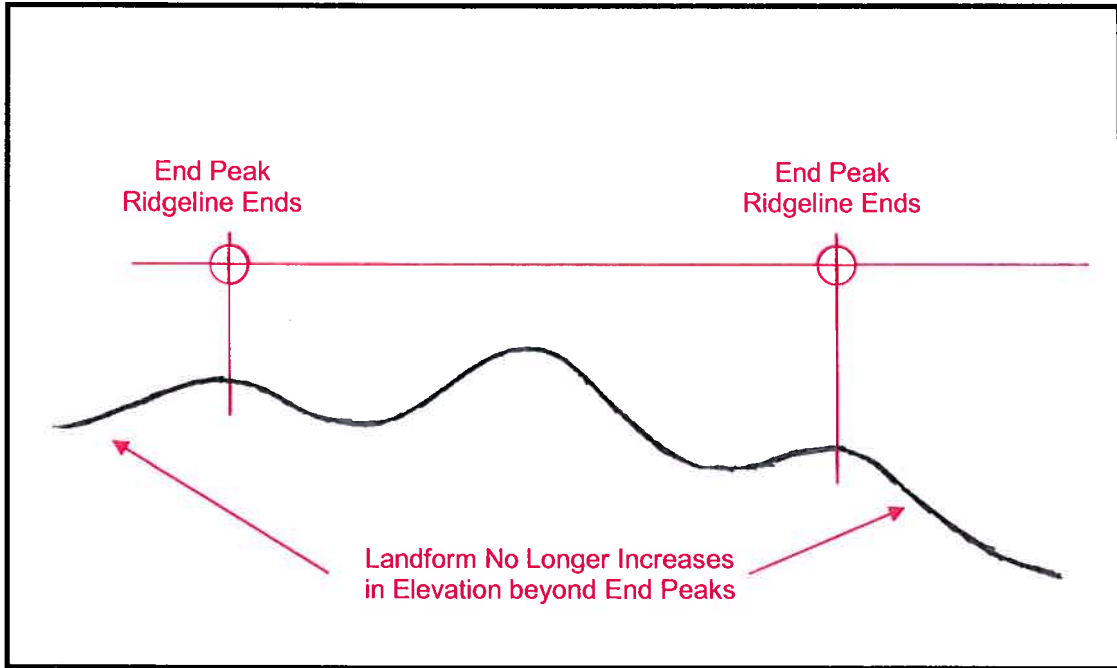


Figure 2: Definition of Ridge/Ridgeline.

Slope.

The City Council defined slope as a specific value, the ratio of height (rise) over distance (run) for a segment of land, where a vertical line would have an infinite slope. The 25-percent slope standard used in this chapter is the ratio of a one-foot rise over a four-foot run, i.e., 25-percent. Slopes are typically measured between adjacent contour lines and perpendicular to the contour lines. Figure 3, below, shows the 25-percent slope as a one unit rise over a four unit run.

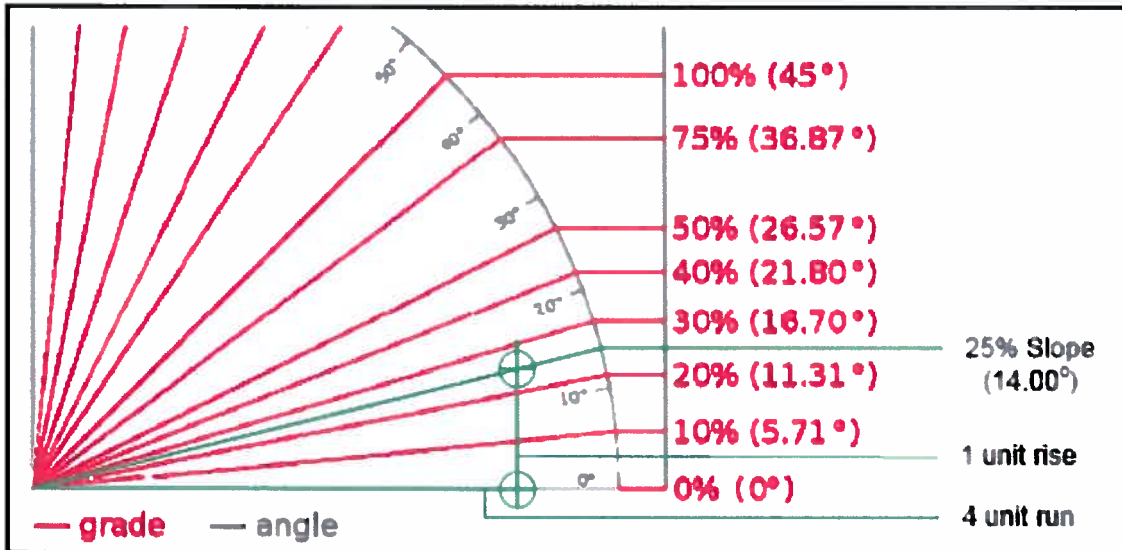


Figure 3: 25-percent slope.



**Required Information.**

The proposed Chapter would require submittal of a contour map/topographic map, prepared by a registered Civil Engineer or by a registered Land Surveyor at the discretion of the Community Development Director, with an application for commercial development or residential development of 11 units or greater on hillside property having a 25-percent slope or greater.

The scale of the contour map/topographic map would be based on property size. Staff based the following information to be shown on the contour map/topographic map already required by Chapter 18.68 PUD Planned Unit Development District and Chapter 18.76 H-P-D Hillside Planned Development District:

1. Existing contour lines prior to grading at an interval of not more than two feet;
2. Slope classifications in contrasting colors of all land that has a slope less than 25 percent and land that a slope greater than 25 percent;
3. Location of all ridgelines on the property and the 100-foot ridgeline setback;
4. Existing on-site streets or roads, trails and pathways, and off-site connections;
5. Existing buildings and structures including drainage structures, fences, sheds, etc.;
6. Existing arroyos, streams, and drainage courses including jurisdictional waters;
7. Existing trees and shrubs; and,
8. Off-site development and topography at a distance no less than 100 feet from the property lines.

The requirement for a contour map/topographic map would not be new to applicants. Contour maps/topographic maps in some form are already submitted to the City with development applications, even for custom home design applications, especially for the applications on hillside properties regardless of slope grade to show existing contours, buildings, tree/shrub cover, drainage courses, etc.

**Review Procedures and Exemptions.**

The workflow that could be used in reviewing a contour/topographic map would be to:

1. First, verify the plot of the 25-percent slope setback line as a continuous horizontal on the contour map/topographic map of the property.
2. Second, verify the location of ridgelines and ridgeline setback lines as a continuous horizontal line on the contour map/topographic map of the property; and,

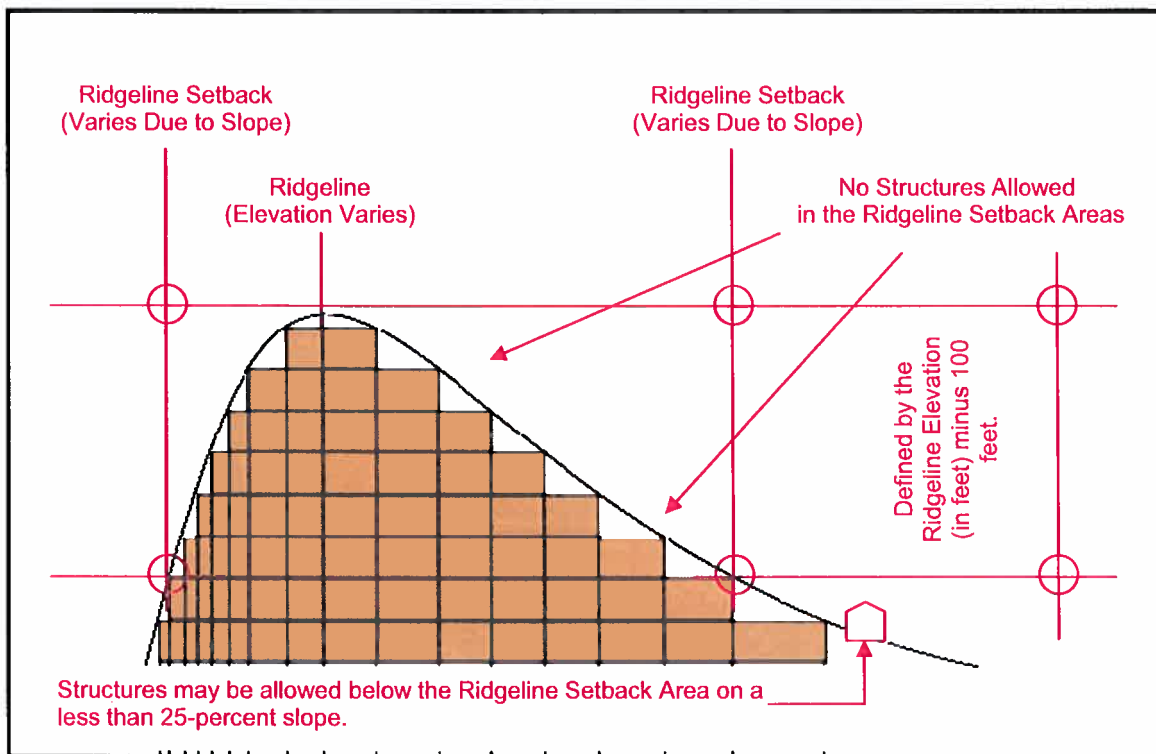
3. Third, verify the hillside development limit line on the property as the more restrictive of the two standards, i.e., the development standard that locates the limit of development on the lowest portion(s) of the hillside; and,

Determining the 25-Percent Slope Line.

Staff, where appropriate, may exclude isolated property features such as sink-holes, mounds, ditches, ravines, furrows, etc., that are surrounded by significant property area having a slope less than a 25-percent grade.

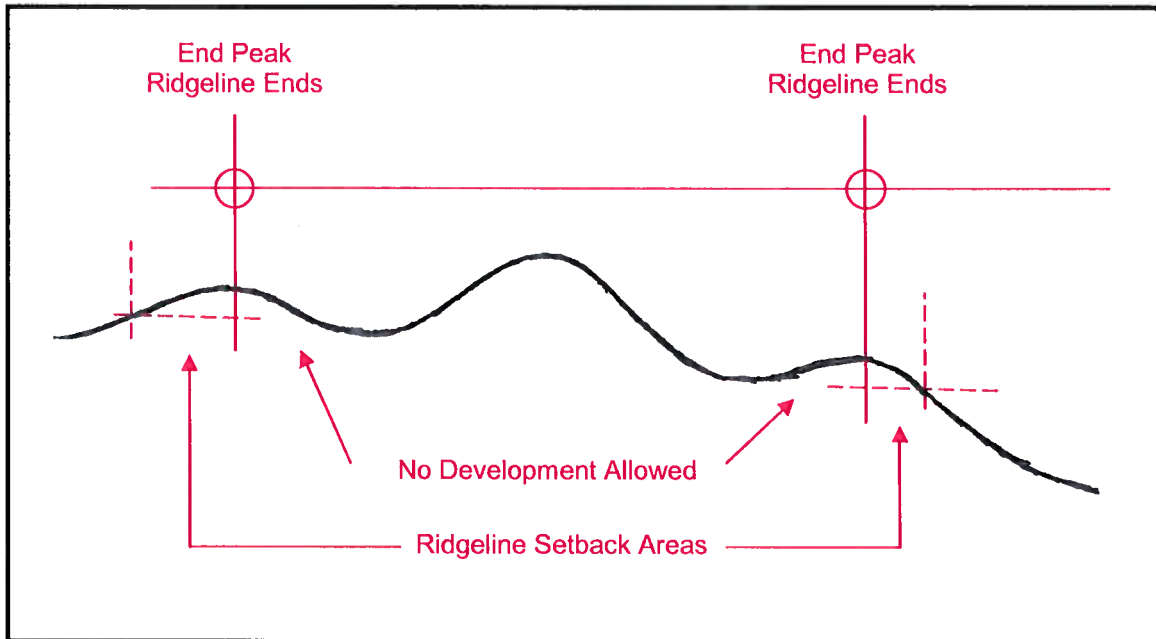
Determining the Ridge/Ridgeline Setback Line.

The vertical elevation of the ridgeline setback will vary based on the elevation of the ridgeline. The horizontal distance of the ridgeline setback from the ridgeline will vary based on the slope of the hillside. Figure 4, below, shows how the 100-foot ridgeline setback line is determined on a cross section of the ridge.



**Figure 4: Slope Cross Section with the Ridgeline Setback.**

Figure 5, on the following page, shows how the ridgeline definition and ridgeline setbacks would be applied to the "ends" of a ridge.



**Figure 5: Slope Cross Section Designating Ridgelines and Ridgeline Setbacks**

**Determining the Hillside Development Limit Line.**

The Hillside Development Limit Line is the most restrictive of the 25-Percent Slope Line standard and the Ridge/Ridgeline Setback Line standard – the development standard that locates the limit of development on the lowest portion of the hillside.

**Existing Manufactured Slopes Exceeding 25-Percent Grade.**

The City Council directed that manufactured slopes having a 25-percent grade or greater be excluded from the developable area of the property. However, the City Council also wanted to maintain the ability to grant an exemption to allow development on manufactured slopes 25-percent or greater, if:

1. The grade of the original slope was less than a 25-percent grade based on a review of contour/topographic maps; and,
2. The development to be allowed by the exemption is consistent with the purpose of these regulations.

Figure 6 and Figure 7, on the following page, are views of a manufactured slope on the Lund property that exceeds a 25-percent grade surrounded by land area having less than a 25-percent grade.



**Figure 6: Cut Slope which Exceeds a 25-Percent Grade.**



**Figure 7: Looking Back at the Cut Slope in Figure 7.**

### Public and Private Streets and Roads.

The City Council considered public and private streets and/or roads and their attendant infrastructure serving residential or commercial development to be structures subject to these restrictions. However, if a road was part of a Specific Plan or PUD Development Plan approved prior to November 2008, then the limitations would not apply. Such grandfathered streets would still be subject to the City's review processes to direct the road's location and design to mitigate or preserve environmentally sensitive features, and to make the streets or roads as unobtrusive as practical and to blend with natural terrain. With a public hearing, the city may grant an exemption to allow new streets intended to provide access to city facilities and to landlocked areas designated for development by the Pleasanton General Plan.

### Public Facilities.

The proposed ordinance also includes provisions whereby following a public hearing, the city may exempt public facilities (e.g. water tanks, parks trails and staging areas), and the roads serving such facilities, from these restrictions. This is consistent with the language of Measure PP, which is directed to residential and commercial development. This section still provides that the City would mitigate any impacts as part of the review process.

## **VI. ENVIRONMENTAL ASSESSMENT**

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15308, Actions by Regulatory Agencies for Protection of the Environment. Therefore, no environmental document accompanies this report.

## **VII. PUBLIC NOTICE**

Notice of this item was published in *The Valley Times*. Written notices of the public meeting were sent to the people who spoke at the City Council's Special meeting. At the time that the staff report was written, staff had not received any written or verbal comments. Staff will forward to the Planning Commission, any new public comment received after publication of the staff report.

## **VIII. CONCLUSION**

The proposed Chapter 18.70 would implement the ridgeline and hillside protection and preservation measures outlined in the Pleasanton General Plan including Measure PP and Measure QQ. The proposed chapter implements the location and setback standards of Measure PP with terms and methodologies to determine the location of ridgelines and slopes integral to the review of hillside development. Manufactured slopes or streets and roads on land greater than 25-percent grade are covered.

## **IX. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission approve Case P12-1796 by taking the following actions:

1. Find that the proposed amendment to Title 18 is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15308, Actions by Regulatory Agencies for Protection of the Environment; and
2. Adopt a resolution recommending approval of the Draft Chapter 18.70 Ridgeline and Hillside Protection and Preservation, Exhibit A, dated January 23, 2012.

**Staff Planner:** *Marion Pavan*, (925) 931-5610, [mpavan@cityofpleasantonca.gov](mailto:mpavan@cityofpleasantonca.gov)



**PLANNING COMMISSION  
MEETING MINUTES**

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**City Council Chamber**  
200 Old Bernal Avenue, Pleasanton, CA 94566

**APPROVED**

**Wednesday, January 23, 2013**

*(Staff has reviewed the proposed changes against the recorded proceedings  
and confirms that these Minutes are accurate.)*

**CALL TO ORDER**

The Planning Commission Meeting of January 23, 2013, was called to order at 7:00 p.m. by Chair Phil Blank.

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Commissioner Olson.

**1. ROLL CALL**

Staff Members Present: Brian Dolan, Director of Community Development; Janice Stern, Planning Manager; Julie Harryman, Assistant City Attorney; Steve Otto, Senior Planner; Marion Pavan, Associate Planner; Steve Kirkpatrick, City Engineer; Rosalind Rondash, Associate Planner; Deborah Diamond, Consulting Planner; and Maria L. Hoey, Recording Secretary

Commissioners Present: Chair Phil Blank, Commissioners Kathy Narum, Greg O'Connor, Arne Olson, and Jennifer Pearce

Commissioners Absent: None

**2. APPROVAL OF MINUTES**

**a. December 12, 2012**

Chair Blank referred to the first and second sentences of the fifth paragraph on page 5 and noted that there appeared to be missing modifiers in his statements. He requested staff to review the recording tape and revise the statements accordingly.

Commissioner Olson requested that the sentence in the fourth paragraph from the bottom of page 29 be modified to read as follows: "Commissioner Olson stated that he does not have an issue with it."

Commissioner O'Connor requested that the fifth sentence of the fourth paragraph on page 7 be modified to read as follows: "He further noted that the big vehicles do have not come with flaggers...." He then noted that the first two sentences of the first paragraph on page 31 do not read very well. He requested that the sentences be modified to reflect what he was trying to say that the parking or the driveway would be affected by pulling the unit out to make it long enough for that two-foot recessed area.

Commissioner Pearce requested that the word "obviously" be deleted from the first sentence of the fourth paragraph on page 36 to read as follows: Commissioner Pearce stated that she ~~obviously~~ reviewed the list and it is fine."

**Commissioner Pearce moved to approve the Minutes of December 12, 2012 as amended.**

**Commissioner Narum seconded the motion.**

**ROLL CALL VOTE:**

**AYES: Commissioners Blank, Narum, O'Connor, Olson, and Pearce.**

**NOES: None**

**ABSTAIN: None**

**RECUSED: None**

**ABSENT: None**

The Minutes of the December 12, 2012 meeting were approved as amended.

**b. January 9, 2013**

Chair Blank requested that the last sentence of the first paragraph on page 11 be modified to read as follows: "He indicated that he ~~does not think~~ believes Livermore chose to make what he considers to be an error in judgment and apologized to anyone from the Livermore community, but he does not think Pleasanton should make that same error in judgment."

**Commissioner Narum moved to approve the Minutes of January 9, 2013 as amended.**

**Commissioner Pearce seconded the motion.**



**ROLL CALL VOTE:**

**AYES:** Commissioners Blank, Narum, O'Connor, Olson, and Pearce.  
**NOES:** None.  
**ABSTAIN:** None.  
**RECUSED:** None.  
**ABSENT:** None.

The Minutes of the January 9, 2013 meeting were approved as amended.

**3. MEETING OPEN FOR ANY MEMBER OF THE AUDIENCE TO ADDRESS THE PLANNING COMMISSION ON ANY ITEM WHICH IS NOT ALREADY ON THE AGENDA**

There were no members of the audience wishing to address the Planning Commission.

**4. REVISIONS AND OMISSIONS TO THE AGENDA**

Janice Stern apologized for the lateness of the staff report for Item 6c, P12-1785, City of Pleasanton and stated that it was her understanding that there is a preference to continue the item. She indicated that staff was fine with continuing it to the February 13, 2013 meeting.

Chair Blank advised the audience that the item was noticed but that the staff report was not produced until yesterday, which would have been difficult for anyone in the public to really have a chance to review that report. He indicated that the Commission will put off that item until the next meeting.

**5. CONSENT CALENDAR**

- a. **P12-1788, Bruce Luther, Santa Rita Tow**  
Application for a Conditional Use Permit to operate a towing company with indoor and outdoor vehicle storage at 3862 Old Santa Rita. Zoning for the property is PUD-C-S (Planned Unit Development – Commercial Service) District.
- b. **P12-1818, Bruce Luther, Santa Rita Auto Sales and Service**  
Application for a Conditional Use Permit to operate an auto repair shop and a used car sales business at 3878 Old Santa Rita. Zoning for the property is PUD-C-S (Planned Unit Development – Commercial Service) District.

Commissioner Narum moved to make the required conditional use findings for P12-1788 and P12-1818 as described in their respective staff reports and to approve Cases P12-1788 and P12-1818, subject to the Conditions of Approval as listed in Exhibit A of the staff reports.

**Commissioner Pearce seconded the motion.**

**ROLL CALL VOTE:**

**AYES: Commissioners Blank, Narum, O'Connor, Olson, and Pearce.**  
**NOES: None.**  
**ABSTAIN: None.**  
**RECUSED: None.**  
**ABSENT: None.**

Resolutions Nos. PC-2013-04 approving Case P12-1788 and PC-2013-05 approving Case P12-1818 were entered and adopted as motioned.

**6. PUBLIC HEARINGS AND OTHER MATTERS**

**a. P12-1796, City of Pleasanton**

**Application to amend Title 18 of the Pleasanton Municipal Code by adding a new Chapter 18.70, Ridgeline and Hillside Protection and Preservation, with development standards and review procedures for commercial and residential developments in the hillside areas of the City.**

Brian Dolan presented the staff report, indicating that this item stems back to Measures PP and QQ, which were passed by the Pleasanton voters in 2008 and included some substantial restrictions on development on hillsides in particular areas, most notably anywhere that has a slope of 25 percent or greater or within 100 vertical feet of a ridgeline. He added that it had some other general language about protecting the hillsides for view purposes as well as for environmental resource purposes. He noted that there was an exemption for smaller developments of ten or fewer units.

Mr. Dolan stated that moving forward, the City has started to get projects that will be affected by this, and it was determined that some of the provisions of those measures needed to be codified in the Pleasanton Municipal Code because there were some areas that were open to interpretation. He noted that he believes this was a sentiment felt by the Planning Commission who had some frustration when it was first discussed at a previous meeting. He further noted that the City Council ultimately agreed and held a Workshop where several of the most pertinent items were discussed: measuring slope grades; defining the terms "ridge" and "ridgeline"; deciding if streets are structures subject to Measure PP grading limits, because the Measure does limit structures from being located in the 25-percent slope area; and determining whether limitations on slopes having a 25-percent grade or greater apply to manufactured or man-made slopes.

Mr. Dolan stated that staff received feedback from the Council, and there was a lot of dialogue back and forth. He added that as recently as late this afternoon, it has been suggested that there was at least one item that staff has misinterpreted ultimately what

the direction of Council was, and that item relates to the subject of roads: what the Council's conclusions were and whether or not there should be an exception process.

Mr. Dolan stated that while writing the report, Marion Pavan, Associate Planner, reviewed the video recording tape three times. He added that he and Mr. Pavan took a look at it once again about 45 minutes ago, and he [Mr. Dolan] believes staff got it right. He noted that anyone watching the dialogue can think that it is possible something else was intended. He indicated that he thinks the Council would benefit from the Planning Commission's position on this issue regardless of what its direction was. He added that he thinks the Councilmembers are going to want to hear from the Commission whether or not it agrees with that because obviously this will move on to them for the final decision. He noted that with the exception of this area, what this ordinance includes is basically implementing the direction directly from that Council Workshop.

Mr. Dolan stated that, as earlier mentioned, Measure PP applies to developments greater than ten units, but it also refers to the fact that it applies to commercial developments, which would relatively be unlikely in our hillside area. He noted that it is not out of the question to see a commercial development in the hillside areas, such as a commercial equestrian center or something which actually could have a big impact. He indicated that as written, it now technically applies to public and private streets that are intended to accommodate residential and commercial development, as well as to City facilities such as water tanks, park, recreation areas, public and private pedestrian, bicycle, and equestrian trails and staging areas. He added that there obviously would be an exemption for smaller projects.

Mr. Dolan then discussed the first question of how a 25-percent slope is measured. He indicated that measuring slopes involves looking at topographic maps and the contour lines shown on those topographic maps: if the contour lines are far apart, the slope is flatter, and if they are closer together, it is steeper. He noted that the biggest question in terms of implementation is how detailed it can get and what the contour interval is. He further noted that each line represents a different elevation above sea level, and when they are all connected, they turn into a line. He stated that staff suggested to the Council that a two-foot contour was the appropriate one and is actually very, very detailed. He explained that going down to a one-foot contour would suggest a level of accuracy that probably would not be possible to have with the methodology used, and that a five-foot or ten-foot contour would probably be fine as well, but a little bit of detail would be lost; hence, staff decided to be conservative and go with the two-foot contour, and the Council agreed.

Mr. Dolan stated that the second thing was trying to define what a ridgeline was because that is what the City is trying to protect, and staff came up with this definition which the Council approved: *"A continuous ground line, connecting a series of hills located at their highest elevations, ending at the last peak on each end of the landform at which the elevation of the ridgeline no longer rises in elevation, and only decreases in elevation."* He explained that the problem with the implementation of ridgeline protection is to determine where the ridgeline actually ends because going all the way

down to zero would be protecting flat land at some point. He noted that the Council agreed with this. He added that there is also the 100-foot setback that is required by Measure PP that had to be incorporated into this ordinance.

He then presented some graphics demonstrating a ridgeline and where it ends, and how the 100-foot setback from the ridgeline is determined: horizontally, it will move back and forth depending on how steep it is; and vertically, the reduction in height 100 feet down from the top of the line at any given point is the start of where development could be considered. He noted that the Council agreed with this.

Mr. Dolan then presented some slides showing a 25-percent slope as basically one unit rise over a four-unit run. He noted that some people would look at that and say it is steep, and others would look at it and say it does not seem that steep. He indicated that it is a fairly common threshold for cities starting to restrict development, and it is steeper than the typical standard for a road slope. He noted that staff would typically limit a road to go up about 15 percent and not allow the road to go up a slope that steep for a lot of reasons, including what the Fire Department's say in terms of getting its trucks up and down and how it operates on slopes steeper than that.

Mr. Dolan stated that one of the more complicated or more controversial issues is that there are some properties, including one that has already submitted a development application, with areas on the site where the natural slope is below 25 percent yet there has been some grading, in this case a cut, but the same could occur for a mound of some kind, and that cut results in a slope that exceeds 25 percent. He indicated that there was a lot of discussion about whether or not the letter of the verbiage should be applied to those man-made slopes, as the Measure did not mention man-made slopes at all. He noted that the Council discussed this at length and it decided that the base position should be that there would be no exclusion for them, but they could be considered on a case-by-case basis. He indicated that the draft ordinance thus allows for an exemption on those and they can be considered on a case-by-case basis. He pointed out that the test before the exception is granted is really whether or not the intent of the overall ordinance is being met. He indicated that this would be at the discretion of the Council. He added that one may question if the Measure actually gives the Council that discretion, and staff's position is that it does, because the Measure does not address it. He explained that should one want to build on that slope, the initial answer would be *no*, but there would be an opportunity to demonstrate that this really is not an issue.

Chair Blank noted that the ordinance uses the term "hillside" when referring to slopes 25 percent or greater.

Mr. Dolan replied that in the example used, this actually occurs on a hillside, except that it does not occur on a hillside that is greater than 25-percent slope until a 25-percent slope was created with the grading.

Chair Blank commented that the language of the ordinance does not specify whether it is a natural hillside or an artificial hillside. He questioned whether it is really a hillside if it has been graded.

Mr. Dolan continued that staff tried not to talk about specific pieces of property, but it is impossible not to, as this is the situation occurs on Lund Ranch II, where there is this slope which staff calculated to be somewhere in the vicinity of 16 percent in its natural state, and the people who farmed the property at some point wanted to get from one side of the property to the other, and they plowed right through it and created this lower roadway, but the banks that they left are quite steep, just like what happens when a freeway is built. He noted that if this is considered an unbuildable area and cannot be graded, a development will be built all around it with that feature in the middle, which will never be visible because the houses will be around it. He indicated that the essence of the question is what has been accomplished with this relative to the purposes of Measure PP. He stated that he thinks the Council's position is well measured in that here is a circumstance where it does make sense, so the Council included this and directed staff to create a process for an exception, which is what staff did.

Chair Blank noted that this looks like an extreme example and inquired if there are less extreme examples.

Mr. Dolan replied that this is really the only one that staff knows of. He noted that staff did struggle with the issue on a previous, somewhat different, application with the Hana Japan restaurant.

Mr. Dolan then displayed a slide of a more distant view of the Lund Ranch II land which demonstrates what the 16-percent natural slope used to be, with the cut going through it. He added that a second aspect to this is that the slope continues down and at the bottom of it is a creek. He noted that what it looks like is that they wanted to build a barn down next to the creek, and so they actually scraped out a flat area at the toe of this slope and formed another slope that is obviously graded to create that flat space at the creek. He pointed out that the slope maps for this site shows two little slivers: one is that passageway that they created, and the other is where they scraped away the toe to have a flat spot for the barn.

Chair Blank inquired if it is a safe assumption that staff would not normally let this practice continue today. He noted that thinking ahead, if other people start doing this kind of activity which leaves natural slopes of greater than 25 percent, it would create more of an issue there.

Mr. Dolan replied that this is out in the middle of a farm, and the City was not involved when this happened. He continued that this level of grading would probably require a grading permit, and staff would determine if the land was stable. He stated that he doubted there would be any more of this in the future, especially if there is any intention to develop later. He added that it would not serve the owners well as they would be

basically removing part of their land from the opportunity to even be reviewed for development.

Chair Blank stated that it is only if manufactured slopes are included; but if manufactured slopes are excluded, then in effect they could do that without any consequences.

Mr. Dolan explained that right now, the way the ordinance is written as directed by Council, they are excluded and they have to prove that they are meeting the general intent. He noted that nothing about the purposes of Measure PP is lost if an exception was granted.

Mr. Dolan continued that this would occur as a conversation point in the development review process: the application would come through, and wherever there was a need for an exception, this would be identified as one of the discussion points. He added that if an exception is needed, it would be considered in the staff report, evaluated, all of the environmental done in advance of that, and ready for the consideration of the Commission and the Council.

Commissioner Pearce stated that she assumes, when an application requesting an exception comes through, that the Commission would get not just the picture but the topographic map to demonstrate that the slope was originally less than 25 percent.

Mr. Dolan said yes. He explained that there would be a slope map of the whole site, probably a few pictures, and staff might even take the Commission out there to look at the site.

Commissioner O'Connor referred to Mr. Dolan's statement that if someone wanted to do this grading today, staff would probably want to look at it to make sure it is stable. He noted that when cutting, other than the steepness of the sides, stability is not as critical an issue as wanting to fill such a large cavern after the fact for stability of that fill if they are going to develop and build on top of it.

Mr. Dolan replied that for a significant subdivision being built on flat land, the elevation that at the end is generally not the same as what it was at the start as there are all kinds of things such as some minor grading pushing things around. He indicated that if this area were allowed to be developed, it would not necessarily have a home sitting right across where a tunnel used to be. He added that there might be some fill on one side, a cut on another, and a bunch of infrastructure in there; it would all be engineered so there would be no issue with filling that up.

Commissioner O'Connor agreed but noted that there have been some engineered sites, especially in hills where things have moved, so this would be just another level of risk.

Mr. Dolan stated that was right; however, every neighborhood in the hills now has had some sort of engineered grading and filling on it as part of the process of development.

Commissioner O'Connor inquired if the City has done that extensive of a cut and fill.

Mr. Dolan said yes.

Mr. Dolan continued that the next issue which generated quite a bit of discussion was whether or not public and/or private streets are subject to this 25-percent provision, if they are considered to be structures. He noted that when the Commission had a Work Session on this, it decided to take the most conservative approach to start with and suggested that they could be considered a structure. He further noted that the Commission determined that was not necessarily the intent and that it probably was too conservative. He stated that staff presented that question to Council and its ultimate decision was that it believed that they should be considered structures. He noted, however, that in making its motion, there was a lot of dialogue which was not very clear; about how, in a public hearing, the Council might be able to consider certain roads and essentially make an exception. He further noted that when the motion was ultimately made, the Council referred to an alternative that was in the staff report and the alternative did not expressly mention a process for an exception. He added that staff had not even considered exceptions until that meeting, but the Council suggested that it wanted an opportunity to do something different, something of an exception, particularly in the case of trying to accommodate some sort of public facility such as a park or to get up to a park or a reservoir or some other City facility. He indicated that following this discussion, the way staff wrote this draft ordinance is that there is an exception process there for that, and staff did not make a distinction of whether or not it was for private development versus public development. He added that the other aspect of this is that there are certain roads that have been identified in previous planning efforts, namely Specific Plans and approved PUDs, that have possible good reasons for exemption because multiple decisions have been made based on those, and because those decisions were made in advance of Measure PP, and therefore, should be accommodated for those. He stated that this was actually a suggestion staff made to the Council, who had a lot of discussion about its pros and cons, and ultimately decided to leave those exceptions in.

Chair Blank asked Mr. Dolan if he meant leaving those exceptions in or leaving the exception process in.

Mr. Dolan clarified that he was referring to the specific exceptions for something that was envisioned in an approved PUD or a Specific Plan and not to the exception process. He continued that staff included PUDs because staff had not done all the research to figure out what is out there that could be affected by this. He added that it does not necessarily have to reference a PUD, and all the ones staff can think of are actually just referenced in a Specific Plan, and it would be adequate just to have something carved out for roadways as envisioned in a Specific Plan. He noted that there may be a PUD that staff just has not been able to determine, but either it is approved and it is going to happen as it is entitled and vested, or it is subject to this ordinance. He indicated that he is not sure if that language is still necessary; however,

the Council agreed to leave it in for Specific Plans or PUDs that were approved prior to November 2008.

Chair Blank noted that the proposed language says "with a public hearing" and inquired how literal the discussion was about the exemption process. He further inquired if that means that it could be noticed on a Friday, a hearing held 72 hours later, and an exception granted; or does it mean it comes before the Planning Commission.

Mr. Dolan replied that he is not sure that language is necessary because all of this would go to a public hearing. He continued that if it is a development project, it would have a public hearing before the Planning Commission. He noted that there may be some circumstance where a road up to a tank would not necessarily have a public hearing; however, if the City is going to design and fund the project, the City would want to make sure there is a hearing. He emphasized that under most circumstances, definitely in a private development situation, there will be multiple public hearings, whether or not this ordinance is adopted.

Mr. Dolan stated that the question is whether or not the Commission agrees with the Council regarding the special circumstance for something envisioned by a Specific Plan or a PUD. He indicated that this is a little less controversial; and although not everyone was 100 percent on board, it was ultimately included in the motion. He continued that the second part, probably where there may be a little bit more disagreement, is if the Commission wants to allow an exception process on a case-by-case basis for that or not. He noted that in the video recording, an exception process was not necessarily mentioned, but there was talk that the Council would have the ability to approve something like this that was brought before it. He added that to do this, there has to be a process in place, so staff built that in. He further added that there obviously will need to be some clarification at Council but that he thinks the Council would benefit from the Commission's opinion on this issue.

Chair Blank commented that there surely has been a lot of research done about putting in the exemption process which is not specified in the ordinance. He asked if the City Attorney has any position on that one way or the other as to whether or not there is a precedent and challengeable by referendum.

Ms. Harryman asked Chair Blank, for clarification purposes, if he is asking what former Councilmember Cindy McGovern asked in her email to staff.

Chair Blank replied that it would be a good start. He added that he just does not know what the legal position is; the City brought it up as a general issue, and wanted to find out if this is something that can be challenged.

Ms. Harryman stated that the Council is charged with interpreting what the voters put in place, and so it is looking at roads as a structure. She continued that some people could argue that only buildings are structures, but the Council appears to be going in the direction that roads are structures, but it seems to also want a balance and looking at an



exception as being a balance. She indicated that she sees the Council as having the ability to interpret the language because it is not defined in the initiative; it does not necessarily have to be all taken back through the initiative process for the voters to define "ridgeline."

Chair Blank stated that he agreed with everything Ms. Harryman said and understands the Council interpreting what a ridgeline is, a structure, and a roadway. He noted, however, that the exemption process is an issue that is not addressed at all in the ordinance. He added that he is just trying to understand if the voters intended for there to be an exceptions process even though one was not stated in the ordinance.

Ms. Harryman replied that she thinks what the Council is trying to do is to find a way to implement the ordinance and interpret the ordinance, and even though it does not explicitly state a lot of things that have been decided or look like they may be decided.

Commissioner Olson stated that in his view, looking at the process the Commission goes through when a project comes in and may require a variance, the Commission may or may not agree on granting the variance, and that, in effect, would be an exception process.

Commissioner O'Connor stated that he had a conversation with Legal some time ago and it was his understanding that the Council should be looking at interpreting some of these unknowns. He referred to "streets" as an example and asked if it is a structure or not. He indicated that he thinks the Planning Commission said it was and recommended that to the Council; and the Council agreed that a street was a structure, and so the Council has now defined street as a structure. He noted that now, exceptions are being discussed to allow or not allow a structure, which is not defined at all in Measure PP. He indicated that his understanding is that, if there is now the desire to allow an exception or a variance to an item that was voted on by the people of Pleasanton, only the voters have the right to overturn that and to grant that exception.

Mr. Dolan explained that he thinks the most important thing that Ms. Harryman said was exactly what he wanted to say, and that is that there is this question about whether or not a road is a structure. He noted that Commissioner O'Connor agrees that the Council has the discretion to determine whether or not that is true. He continued that in his opinion, reasonable people could disagree on that, and he does not have any problem with people who think it is or who do not think it is; but that is a decision that everyone seems to be comfortable with the Council making. He noted that it could go one way or another and questioned why the it cannot pick one side, but then give a little bit of an out to the other side because both answers are within the realm of its authority.

Ms. Harryman added that the word "exception" is being used in this discussion, but she thinks the Council did not use the word "exemption" or "exception." She indicated that the idea was to consider those approvals or those roads that were contemplated pre-Measure PP. She pointed out that it is just another interpretation and

implementation and that she was not looking at it so much as an exception as a way to interpret what the purpose and intent of the voters were when they adopted this.

Commissioner O'Connor commented that maybe they were looking too deep on what is the intent, and maybe they should just read what the ordinance was and know that the voters passed it. He indicated that it is a fairly simple ordinance; the voters wrote it simple so it would not have all this controversy. He noted that every single word cannot be defined and that documents would be so long if every word has to be defined.

Mr. Dolan commented that if the ordinance was that simple, then there would be no need for an implementing ordinance.

Commissioner O'Connor agreed.

Mr. Dolan continued that yet everyone agrees an implementing ordinance is necessary.

Commissioner O'Connor replied that he was not so sure.

Referring to the ridgeline or the 100-foot setback from a ridgeline, Commissioner Narum inquired, for illustrative purposes, should that 100-foot setback be at a 1,000-foot elevation, if that means that the foundation of the house could be built at 999.9 feet with the house then extending up into that 100-foot setback, or if the entire house needs to be below that 100-foot setback line.

Mr. Dolan noted that is an excellent question and thinks that without further direction, he would interpret it as the foundation. He noted that because that line moves, it would have to be mapped. He added that if the Commission wants to be specific and say that it is not, then it would be a good thing to include in this ordinance.

Commissioner Narum indicated that this is something she will want to discuss.

#### **THE PUBLIC HEARING WAS OPENED.**

Allen Roberts stated that he was one of the signature-gatherers for Measure PP. He indicated that he brought up the definition of "ridgeline" at the Council Workshop and he thinks it was not very clear as to whether or not this would cover the things that the voters wanted, which was specifically the protection of the ridgelines. He added that prior to tonight's meeting, he thought about the Pleasanton Ridge and that everyone would say that they would want this ordinance to apply to the Pleasanton Ridge. He noted, however, that in the evening, the Pleasanton Ridge, with the sun behind it, has a long slope that is probably several miles long and drops maybe 500 to 600 vertical feet. He further noted that with the definition that staff has come up with for a ridgeline, that entire miles of slope would not be applied as a ridge because the highest point, which is probably north of Castlewood, would be defined as the end of the ridge, and all the rest of it would not be applied as a ridge. He stated that he thinks that is not what the voters wanted and that this definition of a ridgeline does not cut it.

Mr. Roberts agreed with Commissioner O'Connor that the ordinance was really clear that the provisions of the ordinance or the initiative can be amended and repealed only by the voters of the City of Pleasanton. He indicated that there was nothing in there that said exceptions could be granted; that whether a road is defined as a structure or not is fine, but then there are no exceptions. He stated that he thinks the intent was not that someone could later come in and interpret it and allow houses or structures on the ridges because of this exception. He stated that the intent of the voters is to protect the ridges from structures being built, and if a road is defined as a structure, then that is the way it ought to be.

With respect to these man-made things, Mr. Roberts stated that it would be very helpful if there were a limit of some relatively small number of vertical feet. He referred to the example staff had of this cut that looked like it was about 10-15 vertical feet and stated an exception to the voters' 100-foot limit cannot be more than 10 or 20 vertical feet. He added that when this was discussed by Council, the phrase *"landlocked areas designated for development by the Pleasanton General Plan"* was not included and seemingly was just added recently. He noted that this would be a huge exception and that just about every parcel could have that exception.

Carol Spain read the following prepared statement into the record:

*"Good evening. My name is Carol Spain, and my husband and I have lived at \_\_\_\_\_ since 1989. I have served on the Ventana Hills Steering Committee since its inception, when the Bode Ranch development was first proposed.*

*"I would like to bring to your attention three key points within the proposed amendment to Title 18, all pertaining to Public and Private streets and Roads, which can be found in the Draft Municipal Code Amendment, P12-1796, Ridgeline and Hillside Protection and Preservation, dated January 23, 2013, Chapter 18.70, page 9, items E1-E3.*

*"1. First, the City should grandfather Specific Plans or PUD Development Plans approved prior to November 2008 (which is when Measures PP and QQ were passed.) Previous members of City Staff, Planning Commissioners, City Council Members, and various people within the community worked many long and difficult hours to reach these agreements and they should be upheld. Proposing anything other than grandfathering these plans represents an insult to the process as well as to those who sat before you who approved these plans in the best interest of the City and surrounding communities. Documentation relative to supporting the key issue is included in the Draft Municipal Code Amendment (Item E-1), and it is written in a way that aligns with the meeting minutes from the Special City Council Meeting that was held on November 27, 2012.*

*"2. My second point is associated with the wording included in the Planning Commission staff report dated 1/23/2013, which references: Public and Private Streets and Roads, and more importantly (since this is what is proposed to*

*become Pleasanton Municipal Code) the Draft Municipal Code Amendment, P12-1796, Ridgeline and Hillside Protection and Preservation, 1/23/2013, Chapter 18.70, Item E-3. It is important to note that Chapter 18.70, is inconsistent with the meeting minutes from the Special City Council Meeting that was held on November 27, 2012. An email outlining these discrepancies was sent from Amy Loughlin (a fellow member of the Ventana Hills Steering Committee) to Brian Dolan and Marion Pavan on 1/21/13, and Mr. Pavan indicated that a copy of Amy's message would be sent to the Planning Commission prior to this meeting. Please take the time to review that email (if you haven't already) so that you can better understand how this verbiage has been embellished to include a far broader interpretation than the minutes show from the November 27, 2012 Special City Council Meeting.*

- "3. My third point was also referenced in the email from Amy. We asked the City for clarification relative to 'what other specific properties besides Lund Ranch II, if any, or potential PUDs within Pleasanton could be affected (if developed in the future) by Chapter 18.70.' I do not believe that we have received an acceptable response from the City as of yet, and we would appreciate one. To us it appears, that the wording in the Draft Municipal Code Amendment, P12-1796, dated 1/23/2013, Chapter 18.70, Item E.3 has been written specifically to enable the City and Greenbriar Homes to ignore and disregard PUDs and Specific Plans written prior to November 2008. This seems to be the case since we are not aware of any future PUDs where Specific Plans or PUDs approved prior to November, 2008 regarding Public and Private Streets and Roads would be affected (other than Lund II). Greenbriar wants to route all traffic from the proposed Lund II development through the Ventana and Mission Hills neighborhoods via Lund Ranch Road, Independence Drive, and Junipero. This traffic flow proposal from the builder is unacceptable and it is not in line with ten prior agreements and understandings (also previously shared and discussed with Mr. Dolan and Mr. Pavan) with regard to the Lund Ranch II development connecting to Sycamore Creek Way (the East/West collector).*

*"If you have not seen the email from Amy and/or the ten documents referenced regarding the Lund II traffic flow, we would be happy to forward them to you.*

*"Thank you."*

Justin Brown, a resident in the Mission Hills neighborhood, stated that he was not a member of the Ventana Hills Steering Committee but has been in coordination with its members and represents some of the interests of people living on Junipero Street. He indicated that they fully echo the same sentiments just expressed by Ms. Spain. He stated that Item E-3 in many ways undermines the intent of Item E-1 to preserve and capitalize on the investments and decisions made in the past. He noted that a lot of money, time, effort has been spent in building road infrastructure and other investments in order to move the community forward, and giving an out in exception E-3 essentially

undermines the intent of Item E-1. He indicated that he was adding his support to the importance of Item E-1 and to the importance of rewording and rephrasing Item E-3.

Kay Ayala cautioned the Commission to go slowly in making law in order to get this right and easier for future staff, Planning Commissions, City Councils, developers to come and understand the laws clearly. She noted that it is doubly complicated because the City Council Minutes and recommendations that the Commission has before it were from the old City Council, and there is now a new Council of four members who are surely relying heavily on this Planning Commission to study the issues thoroughly. She urged the Commission not to rush but give the Council thought-out recommendations.

Ms. Ayala stated that the complication comes with approved PUDs, the ten prior agreements associated with the Lund Ranch II development, and this is one she cannot let go of because she sat on the Council when these PUDs were approved, and she knows that the Council felt that the road structure should go through the PUDs that were approved in Bridle Creek and Sycamore Heights. She noted that she cannot see a group of people from the early 1990's, starting in 1991, who worked with the City Councils and Planning Commissions to make sure laws were put in place so they could, in their minds, approve of development but know that they were secure and Lund Ranch Road would not go through. She indicated that this is one part of the ordinance that she will fight with that community to save the laws that were put in place: Specific Plans, General Plan, and PUDs that these people have fought every step along the way from the 1990's. She noted that they were at the Council meetings and Planning Commission meetings reminding the powers that be that these promises were made. She stated that Pleasanton is a Community of Character, and she is appealing to the Commission not to move too quickly on this until it understands all the implications of PUDs. She added that she has asked staff for a long time to do the work for the approved PUDs and adjacent PUDs to these properties, in the same way that the Ventana Hills Group has taken to time to do its research, but staff has not done this to date.

Ms. Ayala stated that another complication is the manufactured slopes. She noted that when she first read about manufactured slopes, she thought it was ridiculous and that they were making this up. She added, however, that after she was taken on a tour of the Lund Ranch II property just this week, she can now see their argument. She agreed with staff that there was a hill and a ridge, and a road was just cut through this ridge. She stated that she did not think it was the intent for anybody to say that that could not be built upon. She recommended that the Commissioners visit the site and understand what they are putting into law because her mind was changed on the manufactured slopes after her tour and that she believes the Council. She added that the complication goes further to the Spotorno property, whose owners also want to develop. She indicated her agreement with Mr. Roberts regarding the slope issue. She stated that she thinks people probably do not understand exactly what a slope map is, and walking the land and looking at slopes is different from seeing it on paper.

**THE PUBLIC HEARING WAS CLOSED.**

For the benefit of the audience, Chair Blank read a section of the Measure PP Initiative: *"Policy 15 on page 11-19 of the City of Pleasanton August 6, 1996 General Plan is added as shown. ... III. The provisions of this Initiative may be amended or repealed only by the voters of the City of Pleasanton at a City general election and overrides any existing General Plan."* He stated that he understands the issue about the 25 percent manufactured slope but that he was a little nervous about the exception language, particularly the landlocked part of the exception, because he was worried it could be used not today and not by the people in this room, but 10 or 15 years down the road to start the whole process over again.

Commissioner Olson stated that he really resonated with what the second speaker, Ms. Spain, said about agreements made way back when that ought to be honored. He indicated that if calling a road a structure will prevent that road from being built and results in traffic affecting an established neighborhood which building that structure would have prevented, then he thinks that in a case like, an exception process is necessary. He added that, at the same time, if an exception process is applied to everything, then everything is open and soon enough, a ridgeline that all would agree is a ridgeline is vulnerable to development. He recalled that when the Commission previously considered this matter, the idea surfaced regarding creating an inventory of ridgelines in the City to which Measure PP would apply. He stated that the Pleasanton Ridge would obviously be one of those ridgelines, even though as, Mr. Roberts pointed out, it has a descending slope that extends for several miles.

Chair Blank commented that Commissioner Olson's statement was a great idea and asked staff to comment on the Pleasanton Ridge.

Mr. Dolan replied that he is aware there have been disagreements in the past on what a ridge is, but staff thought then that the definition was adequate and that that it would not be that difficult to identify what a ridge was. He noted that was is difficult to identify is when does it end, and the definition could be faulty when applied to the Pleasanton Ridge; however, he did not think there is necessarily any developable land on the Ridge that would be affected by that. He added that it is a kind of theoretical opportunity where, as described by Mr. Roberts, one could run into a situation where that definition would be problematic; however, he did not think that in that specific instance, that question would ever have to be answered. He noted that the Council spent most of its time on the manufactured slope and roadway issues and suggested that the assumed situation was not something that troubled the Council. He added, however, that staff could take another look at it.

Mr. Dolan stated that if the Commission addresses the exceptions to the roadway, it ought to make a distinction between its comments about whether or not it would defer to existing Specific Plans and PUDs, which the Council pretty much agreed to defer to, and any exception process beyond that for some circumstance that the Commission thinks makes sense.

Chair Blank stated that he could see someone saying that this has been approved and has been in the General Plan for years, which was approved by the vote of the citizenry at some point. He indicated that he is personally a little less troubled by the grandfathering of those as he is by the general exception concept and that he does not know how to reconcile those two.

Mr. Dolan stated that if it is the Commission's sentiment, it could leave in the language about the PUDs and the Specific Plans and eliminate the exception process.

Commissioner Pearce asked the Commission what its role is in this process. She recalled that the Commission struggled with Lund Ranch and asked the Council to provide some direction, which the Council has done. She indicated that she came in to the meeting this evening viewing the Commission's role as taking Council's direction and staff's recommendation and making sure they lined up and clarifying things, as opposed to saying the Commission does not like what the Council did and think the Commission should change it. She stated that she wants to make sure the Commissioners are all starting on the same place because her impression is that the Commission asked for the Council's guidance, which the Council gave; therefore, the Commission should make sure it is implementing that guidance as opposed to completely pulling it apart.

Chair Blank stated that he does not disagree with that but that it was strictly an issue of taking the Council's guidance and making sure what was written lined up with that guidance, and the Council would not need to bring it back to the Commission to do that.

Commissioner O'Connor noted that Mr. Dolan had mentioned that the Council directed that this be brought back to the Commission to see if it was in alignment with Council's guidance. He added that the Council Minutes shows that the Council jumped around quite a bit and there was not really any consensus. He noted that the Council must have made two or three motions at one time, and now it has come back to the Commission to give guidance to the Council. He pointed out that, as Ms. Ayala mentioned, this is a different Council: three of the members who voted on these topics are no longer there, and the members who will ultimately make the final decision have differed somewhat. He added that he sees this as fair game and part of the Commission's job to take what those five Councilmembers had to say and either accept it, further tweak it, or repackage it for the new Council.

Commissioner Pearce stated that she felt like it was a threshold question that the Commission needed to have a discussion about because she thinks the Commissioners can differ in terms of the Commission's role, given the unique situation that it finds itself in.

Commissioner O'Connor stated that as far as these two topics are concerned, he was concerned, as former Councilmember Cindy McGovern was, as in her letter to the Commission, she is trying to clarify what she thought she meant and it was not quite reflected that way in the Minutes. He indicated that he agreed with the first thing

Ms. McGovern said, and he was not sure Measure PP allows any exceptions. He added that from the Measure itself, as Chair Blank read it, any exceptions to what the Commission thought was a clear initiative, would have to be approved by a vote of the people. He stated that he finds it difficult to take and that he does not think the Commission has that as an option. He added that with respect to grandfathering things, again, it is clear from the Measure that the Measure overrides what is in the General Plan, and he thinks the voters' intent is to also override Specific Plans if there is a violation of Measure PP. He noted that the voters went back and did a referendum on a project they thought was done wrong, so he does not think they wanted to grandfather anything in. He stated that PUDs are different because PUDs actually grant vested rights to property owner, but General Plans and Specific Plans are guidelines which are changed all the time, sometimes radically. He noted that was done for the Bypass Road to the golf course, changing it from where it was originally approved after all the work the Commission and Council did on it.

Chair Blank asked Ms. Harryman if the Legal Department has looked at any case law surrounding this in terms of the City Council's discretion regarding interpreting the will of the people.

Ms. Harryman replied that both Larissa Seto, Assistant City Attorney, and Jonathan Lowell, City Attorney, worked with staff on this report; however, she was not certain if they specifically researched case law on that issue.

Commissioner Pearce stated that she agreed with Commissioner O'Connor regarding Specific Plans and PUDs in that if what was passed says that it overrides the General Plan, by definition it also overrides Specific Plans because Specific Plans are referenced in the General Plan. She noted, however, that her preference would be to have exceptions, especially with the street and the road; and then only reference PUDs, as opposed to saying that if it is in a Specific Plan, then it is fine, as that seems to go against voter intent.

Commissioner O'Connor stated that one other clarification he wanted to make that he thinks is important for the City is that Measure PP basically says that this is for residential and commercial development. He indicated that he knows there was concern on the part of the City about if it wanted to put in a City amenity such as a water tank or a tower or a park or something that is not a residential or commercial development or if it wanted to have access to get to a trail. He further indicated that he thinks there is no issue here because this does not pertain to the City, and it is clear that this only pertains to the hillsides for commercial and residential. He added that he would hope, though, that the City would not want to build a four-lane road going up to some little park or trailhead somewhere, that it would do something a little more restrained, maybe call it a pathway or roadway as opposed to a major road.

Commissioner Narum noted that building a City park would still require a public hearing in some form.



Commissioner O'Connor stated that he is not sure if that is legally required but in Pleasanton, the City goes out of its way to get extra public input.

Commissioner Pearce proposed that the Commission go one by one through the five things that Council discussed and see what the Commissioners are in agreement on and then have a discussion on the rest to see if the Commission can get a majority opinion.

Chair Blank noted that was a good idea.

**1.a. Methodology for Determining 25-Percent Slope**

**1.b. Methodology for Defining Contour Intervals**

Commissioners Narum, Olson, Pearce, O'Connor, and Blank indicated that they were fine with both methodologies.

**2. Definition of Ridge and Ridgeline and the 100-Foot Setback**

Commissioner Narum stated that the Commission needs to clarify if it is the foundation or the entire house or some part of the house that should be below the 100-foot setback. She noted that she thinks the intent here was to protect the ridgelines and to not see the houses. She gave, as an example, if the 100-foot setback is at an elevation of 1,000 feet and the foundation is at 999.9 feet, the house would now have potentially gone 30 feet up the hill.

Commissioner Olson commented that was a good point and noted that the house would be about three or four stories up.

Commissioner O'Connor commented that a house coming up the side of a hill that is under a 25-percent slope would have a fairly flat area to grade for a foundation. He continued that considering 100 feet below the top of the ridge, a three-story house would be 35 to 40 feet, which would be still 60 feet under the ridge. He stated that the only reason he is bringing this up is, and staff alluded to this, is that if there were a line that was 100 feet below whatever is defined as the ridgeline, it would be a continuous line that could be followed for development. He added that if the Commission has to look at every single application for every home that is 20 feet, 30 feet, or 40 feet high at different elevations, the Commission would have to almost have to look at every single lot individually, which would be very problematic.

Commissioner Narum commented that part of the Oak Grove development application was that every single house would have to come before the Commission.

Commissioner O'Connor noted that the Oak Grove houses were going to be individually built, as opposed to being built by a developer, so they would have come to the Commission individually anyway, as that is the process for every one-house developer.

Commissioner Narum stated that she thinks this is something the Commission needs to consider.

Commissioner O'Connor stated that he assumed they were talking about grading, that grading above the 100-foot line is not allowed, regardless of whether it is for a foundation or a pad or something else.

Commissioner Olson commented that if the house has to be 100 feet below the top of the ridge, then this means that the foundation is going to be 140 feet below.

Ms. Harryman noted that it might be helpful to read that section of Measure PP.

Commissioner O'Connor read that section: *"Housing units and structures shall not be placed on slopes 25 percent or greater, or within 100 vertical feet of a ridgeline."* He added that he thinks it is the placement, which is the bottom and, therefore, the grading.

Commissioner Olson stated that going that way would defeat the idea of protecting the view of that ridge.

Chair Blank stated that he agrees with Commissioner Olson because, theoretically, somebody could build a 125-foot high house, although it would still have to go through the review process.

Commissioner Narum commented that the Commission would never approve a house like that. She indicated that her point was that if the house is built right at that 100-foot area, even if it is a single story house with a little bit of a pitched roof, the house would still be 15 to 20 feet into the 100 feet. She added that she is not sure that was what the voters wanted.

Chair Blank stated that the Measure says *"housing units and structures"* and *"shall not be placed."* He noted that it distinguishes between "housing units" and "structures," and to him, that "structure" language indicates that it is the top of the structure and not the bottom.

Commissioner Olson agreed.

Commissioner O'Connor agreed that he could certainly see that interpretation.

Commissioner Pearce inquired what the Commission is proposing.

Chair Blank replied that it be the top.

Commissioner Narum added that it could also be some arbitrary number.

Chair Blank stated that maybe staff needs to go back and look at that a little more.

Mr. Dolan noted that he thinks the Commission can now clearly see that interpretation is required, and just like in some of the other issues, the Commission has to come up with something. He indicated that the way it is written, he would read it as the foundation; however, that it is the roof is also a reasonable interpretation for the Commission to recommend to the Council. He added that he does not know that it needs to be studied; it is just a choice.

Commissioner Olson stated that he votes for the roofline.

Chair Blank and Commissioners Narum and O'Connor agreed.

Commissioner Pearce stated that she thinks the intent is either way, and this is a more conservative approach. She indicated that she was fine with that interpretation.

Commissioner Narum commented that the Commission does not have the final decision.

### ***3. Definition of Streets and Roads as Structures***

Chair Blank noted that the email from Ms. McGovern states that the Council chose Option 2 as opposed to Option 3. He inquired if staff agrees with that.

Commissioner O'Connor stated that he thinks Option 1 stated that streets and roads were not structures; Option 2 stated that they were; and Option 3 had exceptions in it.

Commissioner Olson inquired who was right.

Mr. Dolan stated that on that particular item, staff will have to check if this is an incorrect reference or if it is actually the substance that is incorrect. He suggested that the Commission move on to the next item in the meantime.

### ***4. Manufactured Slopes Over a 25-Percent Grade, as Amended***

Commissioner Olson stated that again, the public would have access to this deliberation through the Planning Commission and City Council public review process. He noted that if the manufactured slope can be mitigated by filling that in and stabilizing it, for example, where the owners graded a road through the hill and created an extreme slope, then he does not see why building on it would not be allowed.

Commissioner O'Connor stated that the issue is not that it is unstable but that they are asking to make an exception and fill it so that they can get more acreage for development and use some level of construction on it, whether it is a street or a home.

Commissioner Olson inquired if the extreme slope along that manmade road is part of the viewscape in the City.

Commissioner O'Connor replied that he would say it is not.

Commissioner Olson noted that it is really not a ridge then.

Commissioner O'Connor stated that it is not that it is a ridge but that it is within the hills that are over 25-percent slope.

Commissioner Narum noted that if it is built back in, it would be less than 25 percent.

Commissioner Olson agreed.

Commissioner Narum stated that she visited that site, and before she visited it, her thinking was not to allow building on manufactured slopes over 25-percent grade. She continued that when she saw the cut, she did not believe that was the intent of Measure PP. She noted that where that particular cut was located did not appear to her to be a ridge and did not appear to be visible to everybody. She indicated that it was unfortunate that the owner of the land did something with his land, but she would not have any problem granting an exception in that particular case.

Commissioner Narum continued that she was struggling a little bit with the idea of granting exceptions at all; however, if she just looked at this manufactured slope situation, she would tend to say that manufactured slopes would not be included as long as in their natural state, they were less than 25 percent. She noted that in this case, she thought this was pretty clear looking at that hill, that if it had not been cut out, the slope of that line was quite a bit less than 25 percent. She stated that maybe that is a little different way of looking at it, getting away from the exception process but still staying within the intent of Measure PP.

Commissioner O'Connor stated that he was struggling with the letter of the Initiative. He indicated that he thinks that if it is over 25-percent slope today, then it falls under Measure PP, and exceptions are supposed to be approved by a vote of the people. He noted that the intent of the people might have been different and that he is certain that if the people all walked this property, there would probably be about 49 different variations of the intent.

Chair Blank noted that he thinks that if the people looked at that, they would say nobody is going to try to develop on that and put a cut there.

Commissioner Narum noted that that is not what the City is trying to protect.

Commissioners Olson and Pearce agreed.

Commissioner Olson stated that the Commission could do what Commissioner Narum has suggested and not apply an exception.

Commissioner Narum stated that she tends to agree with Commissioner O'Connor and one of the other speakers that starting with exceptions is going down a slippery path, but at the same time, there was no doubt in her mind that that was the kind of thing the voters were trying to protect. She noted that Ms. Ayala even basically agreed with that in that particular case after seeing it. She indicating that she is merely suggesting it as a way to get away from the exceptions and going the other way; that building on these kinds of things is allowed as long as it can be determined that prior to the cut it was less than 25 percent.

Chair Blank clarified that what Commissioner Narum is saying is that if the cut created 25 percent in grade and the cut could be filled for example and restored back to its natural condition and the slope was two percent % or something, it seems reasonable.

Commissioners Olson and Pearce agreed.

Commissioner Pearce stated that her original inclination before the City Council went through this was that manufactured slopes would not be included at all because the intent is to protect the natural hills; not to protect what someone already changed by grading. She indicated that she thinks this is a good compromise and is comfortable with this because it allows for flexibility under very tight circumstances and with appropriate scrutiny.

Commissioner Narum agreed. She added that there would be no incentive to go and grade by night to be able to build on it.

Commissioners Pearce and Olson noted that all the Commissioners are mostly in agreement on this.

Commissioner O'Connor questioned what the Commission would do if the owners did the opposite, if they went in and actually graded something flat to accommodate development but when put back to its natural state would be over 25-percent grade.

Commissioner Narum replied that then it would not enter what she is suggesting and it would not be allowed because that would be over 25 percent.

Commissioner Pearce stated that the Commissioner cannot do that, and the owners would not be able to do that.

Chair Blank stated that following that last discussion, the Commission was saying that if the property is restored to its natural state and the grade is less than 25 percent, they are good to go. He continued that then, if someone were to shave off a top of a mountain and the Commission said they had to restore it to its natural state and the natural state is greater than 25 percent, then they are not good to go.

Commissioner Narum noted that if it is on top of the mountain, they are not going to go either.

Chair Blank noted that it would be an extreme case.

Commissioner O'Connor questioned if the Commission would always say it has to come back to the original state.

Chair Blank replied that the Commission talked about this at its last discussion on the topic: if it was something graded 50 years ago, and through erosion and time and the forces of nature, it is not possible to tell if it is the natural slope; then someone comes up with a picture from 50 years ago which showed that it was flat and so he wanted to shave the top.

Commissioner Pearce stated that the City has records from 50 years ago but maybe not from 100 years ago. She added that it would be a different story and that she is not going to support somebody coming in and flattening the land.

Chair Blank stated that neither would he.

Commissioner O'Connor stated that at the Council meeting, former Commissioner Matt Sullivan actually mentioned that he knew of someone who had a flat lot that had been graded and wanted to know if they could develop that lot if they had graded it flat; and staff said yes, they could develop it if the driveway or the roadway to that lot was less than 25-percent slope. He questioned if had that pad originally been more than 25-percent slope, he should not be able to build on it.

Chair Blank asked the Commissioners if they are saying they want the exception or not, if manufactured slopes are fine.

Commissioner Pearce stated she is fine with them.

Commissioner O'Connor addressed the four other Commissioners and stated that what they are saying is that they are fine with an exception to a manufactured slope as long as the original slope was less than 25 percent. He noted that then, the owner who graded out a lot that was over 25 percent should not get a development agreement or permit.

Commissioner Narum responded to Commissioner O'Connor that he is also assuming that it is one of more than ten lots on the same parcel. She noted that there are a lot of "what if's" and that they could sit here all night trying to think of all the different scenarios

Commissioner O'Connor agreed that if it was a single home it would not apply. He added that the scenario Mr. Sullivan brought up probably was a single lot.

Commissioner Pearce stated that it would then not be included.

Commissioner Narum stated that she would like to come up with a way to get away from having to discuss exceptions, that gives some clarity and meets the intent of Measure PP.

Chair Blank stated that the Commission could modify this language, but even it did, there would not be an exception process but it would still be an exception to Measure PP.

Commissioner Narum stated that it would be silent on manmade versus natural as Measure PP talks about slopes.

Chair Blank noted that was a good point.

Commissioner Olson stated that manufactured slopes are here and that the Commission has to address them. He indicated that he thinks the way Commissioner Narum described it initially is the way to do it.

Commissioner Pearce stated that she thinks the Commission has to call it out.

The Commission then went back to discuss Item 3: ***Definition of Streets and Roads as Structures.***

Chair Blank asked Mr. Dolan if staff has been able to do some research on this item.

Mr. Dolan stated that staff's information shows that Ms. McGovern picked Option 3 and amended the language, crossing out some of the parts of Option 3 but including some of the others regarding the references to the Specific Plan and PUD.

Commissioner O'Connor stated that it could also be that if Ms. McGovern motioned Option 3, her intent may have been Option 2.

Mr. Dolan stated that Ms. McGovern took Option 3 and took quite a bit of it out to make it more like Option 2, but she still left in the language about the provisions for giving status to things approved in a Specific Plan or PUD.

Chair Blank stated that he is reading that it was seconded by McGovern to acknowledge the following formula: calculation of slope of Option 1; definition of ridges Option 2; manufactured slope Option 2; and streets and roadways Option 2. He noted that he does not see any reference to Option 3.

Mr. Dolan noted that Ms. McGovern started with Option 2. He added then maybe it would be more worthwhile then to figure out what it is the Commission thinks about the substance of Ms. McGovern's motion that staff got wrong.

Chair Blank stated that he looked at both motions that were passed, skipping the intervening discussion, and in both motions, it appears that Option 3 is not in existence anywhere.

Commissioner O'Connor noted that in the first motion, Ms. McGovern did not like Option 3, and she went on to say why. He continued that Mayor Hosterman then made a new motion made which was later withdrawn; and the last motion shows Option 2 on streets and roadways. He stated that, unfortunately, after that motion was made, the Minutes did not go any further to list any clarifications to Option 2. He noted, however, that he thinks that based on her letter, her intent was it should have been Option 2, that she does not think there is any room for exceptions.

Commissioner Pearce stated that she thought Ms. McGovern ultimately suggested *"unless the street or road is covered by a Specific Plan or PUD, development plan approved prior to November 2008."* She noted that things were crossed out and then taken out, and Mayor Hosterman then withdrew her motion to favor the substitute motion. Commissioner Pearce agreed that it does not appear that that necessarily got into the Minutes verbatim, but she interpreted this as being part of what Council agreed with and the reason why Mayor Hosterman withdrew her motion.

Commissioner O'Connor noted that the first sentence of that paragraph quoted by Commissioner Pearce reads : *"Councilmember McGovern stressed her concern over vesting rights within a Specific Plan..."* which sounds different from the last sentence.

Chair Blank inquired if these Minutes have been officially approved or if they are still Draft Minutes from the Council.

Mr. Dolan replied that he believes they are approved.

Commissioner O'Connor noted that they were then approved by people who were not on that Council.

Mr. Dolan stated that staff got the reference to which one Ms. McGovern approved based not on what was written in the Minutes but on watching the tape. He noted that there was a dialogue back and forth between Ms. McGovern and Mr. Sullivan and City Manager Nelson Fialho. He indicated that he thinks this is where the confusion comes in. He noted that it was actually a point raised by Commissioner O'Connor and the talk about the ability to do something for the public and whether or not it is covered. He admitted that this particular issue is unclear and thinks that for the time being, the Commission should assume that Ms. McGovern did not want the exception process. He noted, however, that the Commission should decide what it thinks and recommend it to the Council.

Chair Blank expressed some concern that what staff was watching on the video and what is reflected in the Minutes are two different things. He noted that his understanding is that the Minutes are the official record. He was concerned that while the Minutes were approved by a Council different from who made them, what was written in the staff report was apparently based on the video rather than on the approved Minutes. He indicated that while he absolutely trusts staff's judgment and



feeling of it because they looked at it with a critical eye, it is really troubling and not an issue they can fix.

Commissioner Olson went back to Mr. Dolan's question and asked the Commissioners if they think there should be an exception process.

Chair Blank replied that based on Commissioner Narum's proposal, if the Commission can do this without an exception process, he thinks it is cleaner because the language in Measure PP is really, really clear. He added that while he certainly respects the judgment of legal counsel, that interpreting any of the language here is absolutely within its purview and absolutely the right thing to do, that creating a process that does not exist may be technically legal and there may be a court case that says cities do that all the time, he does not like the exception process and feels a little uneasy about it.

Commissioner Narum agreed with Mr. Dolan that she can make a good argument that a road or a street is a structure and just as good an argument that it is not. She continued that if the Commission wants not have to deal with exceptions, she would probably tend to say that roads and streets are not structures and, therefore, there is no question about whether or not an exception is necessary to get an exemption. She noted that she thinks it fits the right criteria which she believes is actually pretty clear.

Chair Blank noted that Commissioner Narum brought up a point earlier that even if something is exempt from Measure PP, it is still going to come to this Commission and to the Council.

Commissioner Narum agreed, noting that if the City is going to build a water tank or a park or spend money for something somewhere in the public, it would still be subject to the public review process.

Commissioner O'Connor commented that he thought the controversy was over manmade versus non-manmade slopes. He stated that he thinks the streets were clear and that legal counsel made a good argument as to why a street is a structure. He added that everything in the General Plan says so. He noted that he did not think that was so controversial because this is about streets and roads for residential and commercial development, not for City use to get to a tower, which does not need an exception because it does not pertain to those.

Chair Blank asked the Commissioners if the language in Item 3 as it is written on page 4 of the staff report but without the phrase "*Specific Plan*": "...are covered by Measure PP unless the street or road is covered by a PUD Development Plan approved prior to November 2008." is acceptable to them.

Commissioner Pearce stated that she was comfortable with that.

Commissioner O'Connor agreed. He added that the Commission does not have to clarify anything regarding the City wanting to build anything or to go to a park or to a trail

because that is not covered by Measure PP at all, which covers only residential and commercial development.

Commissioner Narum noted that if the Commission chose this definition, and if a road needed to go partly on a slope that was greater than 25 percent to get to a flat area or a reasonable area for building, then that could not happen.

Commissioner O'Connor stated that it would be an exception.

Commissioner Narum commented that maybe she is missing something here because she is not reading where this says it can grant an exception.

Chair Blank clarified that what the Commission is saying is that it determines that roads are intended as a structure and that they are a physical improvement of property and, therefore, are covered by Measure PP unless the street or road is covered by a PUD Development Plan. He noted that the exception is the PUD Development Plan.

Commissioner Narum replied that if there is a piece of land that was not covered by a PUD, and to get to a part of the land that made sense to build, part of the road had to go on a 25-percent slope, then that would not be allowed.

Chair Blank confirmed that it would be prohibited by this language.

Commissioner Narum inquired if that is necessarily what the Commission wants to do.

Commissioner O'Connor stated that he thinks that was the intent of Measure PP.

Commissioner Pearce agreed. She added that if the Commission says it is a structure, then that is what the Commission wants to do.

Commissioner Narum suggested that maybe the Commission might preclude a potentially better spot where they might want to put the houses. She stated that she has been back and forth both ways.

Chair Blank stated that he thinks this could be argued either way. He noted, however, that the City Council made the call that a road is a structure, and he could support that.

Commissioner O'Connor added that it is not just that but that if it was not a structure, a road could be sometimes more scarring to a hillside than a development.

Commissioner Olson agreed. He indicated that the City does not want buildings or roads there.

Commissioner Pearce also agreed. She stated that she is not inclined to grant any additional exceptions apart from already being in a PUD.

Chair Blank confirmed that the Commission is generally fine with the language in Item 3 with the deletion of the term *"Specific Plan"* and just make it *"PUD Development Plan."*

Commissioner Narum stated that she could probably live with that. She indicated that she is just a little concerned that the Commission is maybe backing into a corner a little bit that may not be necessary down the road.

Chair Blank stated that he hears what Commissioner Narum is saying but that he is just trying to avoid another referendum.

Commissioner O'Connor inquired if anyone had an idea to do something with the manufactured slope, that it did not have to be an exception.

Chair Blank stated that it is engineered language that has to be translated.

Commissioner Narum stated that she had some language to the effect of *"manmade slopes greater than 25 percent slope may be built on if it can be determined that the slope was less than 25 percent prior to when the grading occurred."*

Chair Blank asked staff if they can work on that in terms of legalese.

Ms. Harryman said yes. She indicated that she actually wrote something that is a little different but is the same concept. She indicated that she does not look at this as an exception as much as it is just explaining what is meant by how to measure the 25-percent slope.

Chair Blank noted that it is an implementation procedure.

Ms. Harryman agreed. She stated that is it looking at a natural slope and not at a slope that has been altered. She added that in determining whether a slope is 25 percent or greater, one has to look to the natural slope based on contour maps and topographies; it is not an exception.

Commissioner Narum noted that it is pretty clear, where somebody had drawn in the line across that.

Commissioner O'Connor stated that it would cover both directions, whether someone altered it to bring it below 25 percent or it became greater than 25 percent, whether the original slope was 25 percent or less.

Ms. Harryman agreed. She noted that in determining 25-percent slope, one needs to look at the natural, not what has been altered, based on the evidence that is there.

Chair Blank stated that the staff recommendation is to adopt a resolution recommending approval of the Draft Chapter 18.70 Ridgeline and Hillside Protection Preservation, Exhibit A, dated January 23, 2013. He indicated that the Commission was unanimous

on 1.a. and 1.b; on 2., the roofline has to be 100 feet below the ridgeline; on 3., "Specific Plan" is deleted; and on 4., a combination of Commissioner Narum's and Ms. Harryman's language will be used. He asked staff if the Commission needs to finish this tonight because if that is the case, staff and the Commission will be here for a while.

Mr. Dolan said no. He indicated that it is on a schedule for Council, but the reason it was brought forward so quickly is because the last Council asked that it come forward as it did not want it to get put off.

Chair Blank stated that he does not disagree with that but indicated that he would rather get it right than have it rushed.

Commissioner O'Connor inquired what else was needed.

Chair Blank replied that what he was thinking is that the Commission has to change the language of the proposed ordinance, and he wants to see that final language.

Mr. Dolan agreed. He added that he thinks the best way is for staff to bring it back to the Commission fixed and amended as it wanted at the next meeting.

Commissioner Narum stated that she would be interested in re-opening the public hearing and asking for a very short comment on what the preferred process is.

Chair Blank stated that before doing that, he would like to request staff to go back and do two things: first, look at the definition of ridgeline in view of the tonight's testimony about the Pleasanton Ridge; and second, consider Commissioner Olson's suggestion of making a ridge inventory. He indicated that he does not know how easy or hard that would be, and if that is something staff could invest an hour or two in and kind of get an order of magnitude, in order to see if it would be a good investment at, say, \$10,000, and determine which ones were going to be covered by Measures PP and QQ, and then it would be settled forever.

Commissioner Olson stated that is the reason he brought it up.

Mr. Dolan replied that it would be done in-house and would be just an investment in time. He explained that it would involve looking at topography maps, excluding those on public property or property that is already developed. He added that the parcels that are going to be subject to Measure PP that are in the City limits right now would be about half-a-dozen to a dozen, and staff could do that. He noted that the problem with that is if there is an issue on one site and the Commissioners disagree about whether it is a knoll or a ridge, then the whole thing collapses and the Commission cannot move forward with anything. He indicated that he knows there is at least one site where that will probably be the case.

Commissioner Pearce stated that it will be a higher-level discussion when the Commission gets the text back.

Chair Blank stated that when the Commission gets the text back, it could think about the Pleasanton Ridge example and make sure that has been accommodated.

Commissioner O'Connor stated that he thinks that would be a bigger issue.

Mr. Dolan stated that he thinks staff can just document that there is nothing in the Pleasanton Ridge that Pleasanton has control over because there are no properties there.

Chair Blank agreed but suggested that it might be worthwhile to look at a topography map and see if there are ridgelines in some of the developable properties that might have the Pleasanton Ridge situation.

Mr. Dolan indicated that staff will attempt to do that before the next meeting.

Chair Blank stated that he thinks it is the sense of the Commission that this be prioritized as the first item on the next agenda.

#### **THE PUBLIC HEARING WAS RE-OPENED.**

Allen Roberts stated that the Pleasanton Ridge thing was just something he knew the Commission could understand and visualize. He noted that as he looks at things like Oak Grove, there are a number of ridges like that which do not fall into the definition that staff came up with, and that is the reason he brought it up.

Carol Spain stated that one point she mentioned that was in the email from Amy Laughlin was to re-look at what was written up in Item E-3 to ensure that the verbiage is an accurate reflection of what the intent was, to better match what was in the Minutes, although that may be a concern now that what is in the Minutes does not match what is in the tapes.

#### **THE PUBLIC HEARING WAS CLOSED.**

Ms. Harryman requested clarification regarding Item E.2. where the word "*exemption*" is used. She indicated that she is hearing Commissioner O'Connor's interpretation, for example, that these public amenities are not commercial or residential, so they are really not an exception but an interpretation. She noted that just as she saw in the manufactured slope, she is seeing this as an interpretation and so it does not apply, but it can be a clarification. She added that the word exemption/exception, given how initiatives work and not wanting to amend, is not necessarily an amendment, but one can sort of see how it gets there. She asked how the Commission felt about changing this language so it is not an exemption but an interpretation or clarification.

Chair Blank suggested the verbiage: *"With a public hearing, the City may permit new streets intended to provide access to City facilities."*

Commissioner O'Connor stated that this could be said as a clarification.

Commissioner Narum agreed and stated that this would document what the thinking was, why the Commission is not doing an exception.

Mr. Dolan proposed that it be put in the Applicability section where it is clarified that it does not apply to public facilities which will be reviewed through the City's own process.

Ms. Harryman stated that she feels the same way for Item 3 as far as the street being subject to the City's environmental and discretionary review processes, as it always is the case.

Mr. Dolan agreed that it is just a repetition.

Ms. Harryman said yes.

Chair Blank stated that it is the same for Item E.1.

Ms. Harryman agreed.

Commissioner O'Connor stated that Item E.3. is really the standard procedure needed today for every roadway.

Ms. Harryman stated that was correct.

Commissioners Pearce and Narum indicated they were fine with it.

Chair Blank asked Ms. Harryman if she has the language on the artificial cut and the fill and the natural terrain.

Ms. Harryman said yes.

**Commissioner Narum moved to continue the item to the February 13, 2013 meeting.**

**Commissioner O'Connor seconded the motion.**

**ROLL CALL VOTE:**

**AYES: Commissioners Blank, Narum, O'Connor, Olson, and Pearce.**  
**NOES: None**  
**ABSTAIN: None**  
**RECUSED: None**  
**ABSENT: None**

The item was continued to the February 13, 2013 meeting.

Chair Blank called for a break at 9:15 p.m. and thereafter resumed the regular meeting at 9:26 p.m.

**b. P12-1786, City of Pleasanton**

**Application to amend various chapters of Title 18 of the Pleasanton Municipal Code to comply with California Government Code Sections 65583 and 65589.5 and with the 2012 Pleasanton Housing Element pertaining to emergency homeless shelters and supportive and transitional housing.**

Janice Stern advised that the staff report would be presented by Deborah Diamond, an experienced planner and Planning Consultant who has worked in several Bay Area agencies and on several Housing Elements, and is now working with staff on doing the implementation actions from the Housing Element to keep the City on track for all the items in the Housing Element that the City promised it would get completed within certain timeframes.

Ms. Diamond then presented the staff report and described the background and key elements of the proposed Code Amendments. She indicated that staff had received some phone calls and some questions regarding this item, and she clarified that there is no specific proposal to develop a homeless shelter or a transitional or supportive housing in Pleasanton at this time.

Commissioner Narum asked what is meant by "standard for the proximity of one shelter to another."

Ms. Diamond replied that this means that to address over-concentration of a specific use, a distance limitation could be defined that one facility cannot be located at less than a certain distance from another facility.

Commissioner Olson inquired if supportive and transitional housing are essentially units that currently exist.

Ms. Diamond replied that they could be units that currently exist or they could be proposed as part of a new residential development project.

Commissioner Olson inquired if any such units that could be developed by the City would count toward its ABAG's housing requirements.

Ms. Diamond said yes.

With respect to Item 2 of the proposed development standards for homeless shelters in Pleasanton, Commissioner Narum inquired if her understanding is correct that a



**CITY COUNCIL SPECIAL MEETING  
AGENDA REPORT**

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November 27, 2012  
Department of Community Development  
Planning Division

**TITLE:           CONSIDER THE REPORT ANALYZING IMPLEMENTATION OPTIONS  
FOR MEASURE PP PROVISIONS FOR THE DEVELOPMENT OF  
HILLSIDE AREAS WITHIN THE CITY OF PLEASANTON**

**SUMMARY**

The following report has been prepared to assist in the discussion of the implementation of Measure PP. It addresses questions on how to measure slopes, the definitions of the terms ridge and ridgeline, and whether the limitations of slopes 25 percent or greater apply to manmade slopes or roadways.

**ENVIRONMENTAL REVIEW**

Environmental review is not required for a discussion on policies. Any future project subject to Measure PP will undergo an environmental analysis as required by CEQA.

**RECOMMENDATION**

Discuss the information provided in the following staff report, review the options and staff recommendations, and provide direction on implementation.



## **BACKGROUND**

### **Purpose**

The purpose of this special meeting is to request the City Council's input on the implementation of Measure PP, specifically the following items: 1) how to measure slopes, 2) the definition of ridge and ridgeline, and 3) whether the construction limitations on slopes 25 percent or greater apply to manmade slopes or roadways. This report describes implementation options on each issue and a staff recommended option for consideration by the City Council.

Staff proposes that the options selected by the City Council be incorporated into a new Chapter of the Zoning Ordinance (Title 18) that provides comprehensive direction on the implementation of Measure PP. This code amendment would be brought forward in January 2013.

Measure PP limitations to the development of hillside properties shall apply in conjunction with the ongoing requirements of City, State, and Federal regulations addressing ridgeline protection, protection of jurisdictional waters and habitat areas, trees, wildland fire mitigation, urban stormwater runoff treatment and necessary mitigation identified in individual project review.

### **Measure PP**

In November 2008, Pleasanton voters passed Measure PP, the "Save Pleasanton's Hills & Housing Cap Initiative." Measure PP states, in part:

"No grading to construct residential or commercial structures shall occur on hillside slopes 25% or greater, or within 100 vertical feet of a ridgeline."

Measure PP amended the City's General Plan adding a land use policy that addresses the location of commercial and residential structures on the City's hillside areas with respect to slopes and ridges. However, it did not define the terms slope, ridge and ridgeline, or structures, nor did it address the streets or roads covered by previous City approved Specific Plans and/or PUD developments located on hillside areas with a 25-percent or greater slope, and the treatment of manufactured slopes of 25-percent or greater.

Attached is the "Analysis of the Impacts and Effects of the Save Pleasanton's Hills & Housing Cap Initiative" with a copy of Measure PP, dated June 11, 2008 (Attachment 1), and copies of the minutes of the May 20, 2008, June 26, 2008, and July 15, 2008 City Council public hearings (Attachment 2) on Measure PP.

## **Terms from Measure PP**

Excerpts from the Measure PP Text:

1. "Ridgelines and hillsides shall be protected."
2. "Housing units and structures shall not be placed on slopes of 25 percent or greater, or within 100 vertical feet of a ridgeline."
3. "No grading to construct residential or commercial structures shall occur on hillside slopes 25% or greater, or within 100 vertical feet of a ridgeline."

And excerpts from the "Notice to Circulate Petition" for Measure PP:

1. "Protect our scenic hills from development that destroys the character of our town."
2. "To direct development and development speculation away from lands with environmentally sensitive features, lands with primary open space values, and lands difficult to service by existing jurisdictions."
3. "Exempt from this policy are housing developments of 10 or fewer housing units on a single property that was, as of January 1, 2007, 'legal parcel' pursuant to the California Subdivision Map law."

## **Measure PP and Measure QQ**

In November 2008, Pleasanton voters passed Measure QQ along with Measure PP. As stated in the text of the Land Use Element<sup>1</sup> of the Pleasanton General Plan 2005 – 2025,

"Measure QQ's substantive hillside policies involve the re-adoption and re-affirmation of existing policies and a program for the 1996 General Plan to generally: 1) preserve hillside and ridge views of the Pleasanton, Main, and Southeast Hills; 2) study the feasibility of preserving large open-space areas in the Southeast Hills; and, 3) protect all large, contiguous areas of open space."

The City Council's directions on Measure PP implementation will resolve any outstanding issues on the implementation of Measure QQ.

## **DISCUSSION**

### **Methodologies and Definitions**

For housing developments of 11 units or more, Measure PP relies upon two development standards to determine the limit of development (development limit line) on hillside properties: no grading to construct structures is allowed in an area with a 25-percent

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<sup>1</sup> Note: Page 2-9 of the Pleasanton General Plan 2005 – 2035.

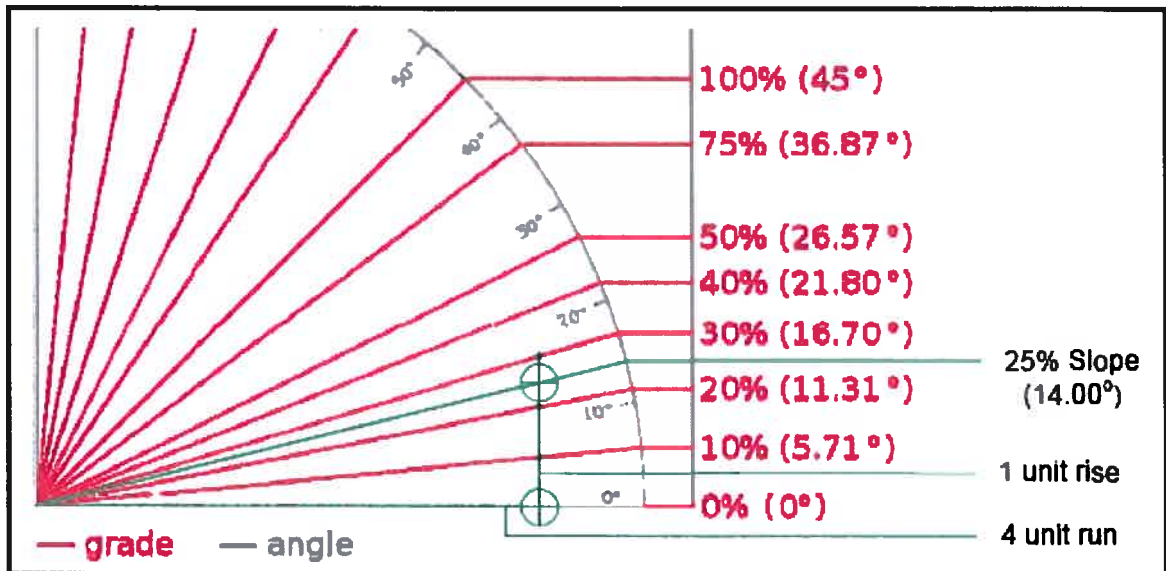
slope or greater, and no development shall occur within 100 vertical feet of a ridgeline.<sup>2</sup> The slope and ridgeline development standards are each represented as a continuous horizontal line plotted on a contour map of the property. The limit of development is then determined by the more restrictive of the two standards<sup>3</sup>, i.e., the development standard that locates the limit of development on the lowest portion of the hillside.

**1. Slope.**

**1.a. Methodologies for Determining 25-Percent Slope.**

Slope is the ratio of height (rise) over distance (run) for a segment of land. Page II-21 of the 1996 Pleasanton General Plan (Attachment 4) defined “slope” as, “The ratio of the rise over the run of a segment of land, where a vertical line would have an infinite slope. For example, a vertical rise of one foot over a horizontal run of one foot (equal to 45-degree angle), has a slope of 100 percent.” The 25-percent slope<sup>4</sup> standard referenced in Measure PP and in the Pleasanton General Plan is, therefore, the ratio of a 25-foot rise over a 100-foot run, i.e., 25 percent. (Note: A 25-percent slope is equal to a 14-degree angle.)

Figure 1, below, illustrates a 25-percent slope by showing a one unit rise over a four unit run.



**Figure 1: 25-percent slope.**

For the purpose of evaluating hillside development, slopes can be defined as an average value, also called a Weighted Incremental Slope (WIS), or as a specific value. These two options would affect the extent of the slope-based developable

<sup>2</sup> Note: Measure PP does exempt from these limitations: “...housing developments of 10 or fewer housing units on a single property ...”.

<sup>3</sup> Note: Defining the development standard as the greater of two development standards is used by the Pleasanton Municipal Code (PMC) to calculate parking for medical/dental offices and for restaurants (PMC Section 18.88.030C.6.&7.).

<sup>4</sup> The grade of a slope is always measured perpendicular to the contour lines.

area on hillside properties with respect to Measure PP standards. Staff believes the two options for measuring slope include:

- **Option One:**  
Calculate 25-percent slope as a specific value based on the distance between contour lines on a topographic map.
- **Option Two:**  
Calculate 25-percent slope as an average value, such as the WIS formula of the City's Hillside Planned Development District (Attachment 3) even though this method, which is an average of slopes less than 25 percent and potentially greater than 25 percent, may include slopes over a 25-percent grade.

**Staff Recommendation:** Option One.

Option One is consistent with the Measure PP provision that, "No grading to construct residential or commercial structures shall occur on hillside slopes 25-percent or greater..." This is the more conservative of the two options as it will only allow development on slopes less than 25-percent.

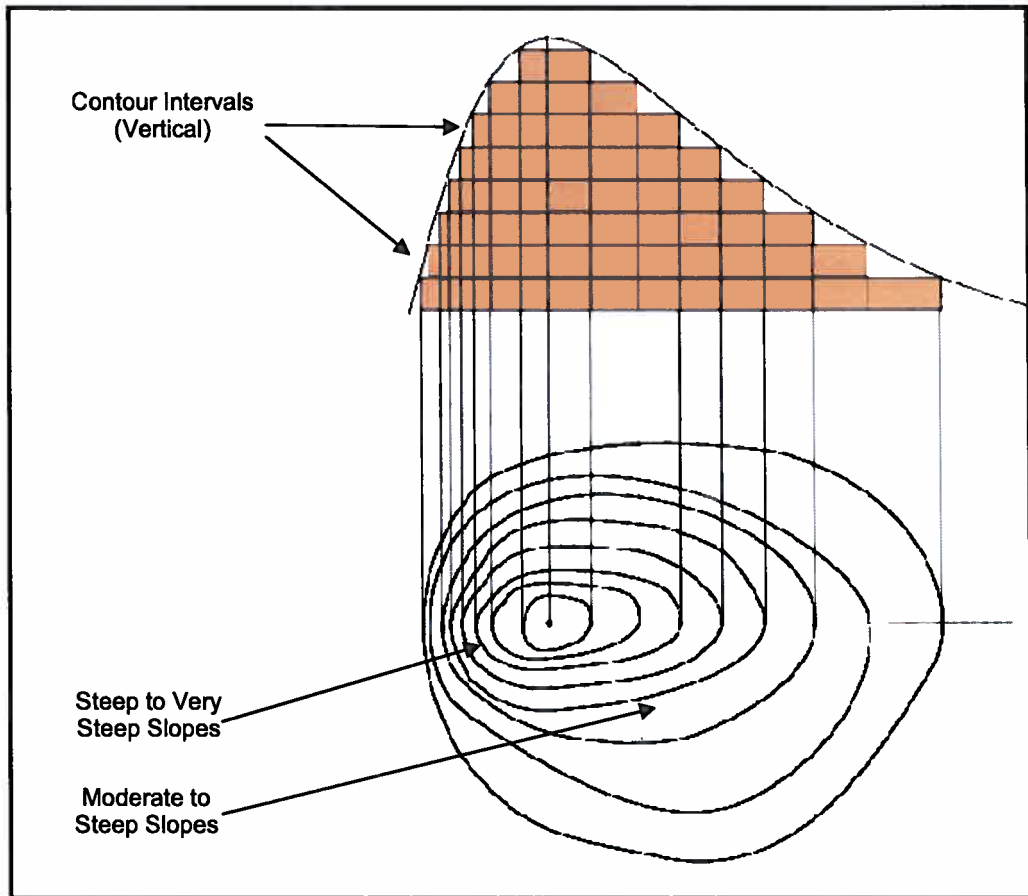
**1.b. Methodology for Defining Contour Intervals**

The contour interval is the difference in elevation between adjacent contour lines. Contour lines are the horizontal lines, curved or straight, that join points of the same elevation (height) above a given level, such as mean sea level<sup>5</sup>. Contour lines and intervals can graphically show land features such as valleys, hills, creeks, ridgelines, etc., and can show the relative steepness of slopes by the spacing between the adjacent contour lines.

Figure 2, on the following page, shows how the contour intervals are reflected as contour lines, and how the spacing between the contour lines – wide or narrow – can graphically indicate the relative steepness (grade) of the slope.

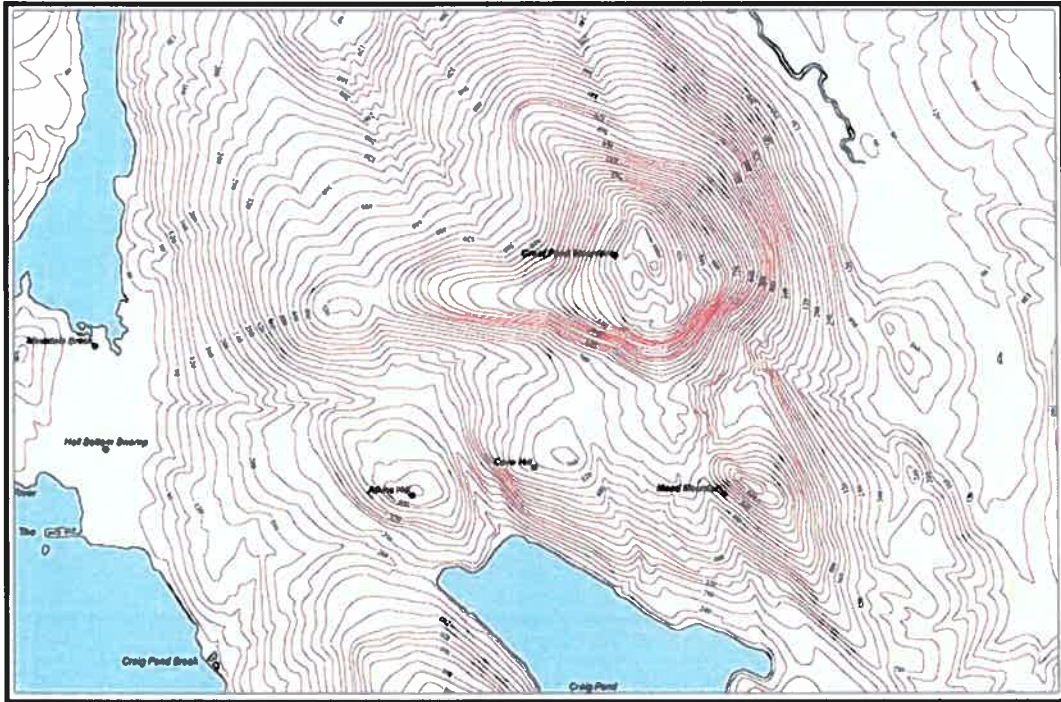
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<sup>5</sup> Note: Typically expressed as NGVD (National Vertical Datum of 1929), the system that has been used by surveyors and engineers for most of the 20<sup>th</sup> Century as the basis for relating ground and flood elevations.



**Figure 2: Contour Intervals, Contour Lines, and Slope Grades.**

Figure 3, on the following page, is a contour map for a relatively large land area with contour lines, contour intervals stated as elevations, natural features including peaks and water features, and points of interest.



**Figure 3: Contour Map with Contour Lines and Intervals and Natural Features.**

The vertical distance between contour intervals affects the land form details that are shown on the map: a narrow separation provides great accuracy and will show minor land form details, such as small ravines, mounds, outcroppings, and swales; larger separations may exclude minor slope variations and minor land form details.

The three options to define contour interval(s) for the slope analysis maps used to calculate 25-percent slope include:

- **Option One: Two-foot contour intervals.**  
Two-foot contour intervals provide a high level of detail showing minor land forms, such as small ravines, mounds, outcroppings, and swales, that would be used to verify compliance with Measure PP. Staff notes that Section 18.76.140.E.2 of the City's H-P-D District (Attachment 3) requires two-foot contour intervals to calculate Weighted Increment Slope. Two-foot contour intervals are also typically used on slope inventory maps and preliminary grading plans provided with development applications, and require the least interpolation between contour intervals. Staff believes that contour intervals of less than two feet suggest an artificial level of accuracy that cannot be achieved.
- **Option Two: Five-foot contour intervals.**  
Five-foot contour intervals would provide slightly less detail on slope inventory maps and may potentially allow grading over minor topographic features such as small ravines, mounds, outcroppings, and swales. Excluding isolated or

minor land forms, such as a 25-percent slope “bump” surrounded by less-than-25-percent slopes, will make slope analyses simpler.

- **Option Three: Ten-foot contour intervals.**  
Ten-foot contour intervals would provide the least detail of the three options as to slope variation and land form detail and could allow grading over these topographic features. The ten-foot contour interval will be lacking in the detail of the two-foot or five-foot contour intervals thereby increasing the complexity of slope analyses.

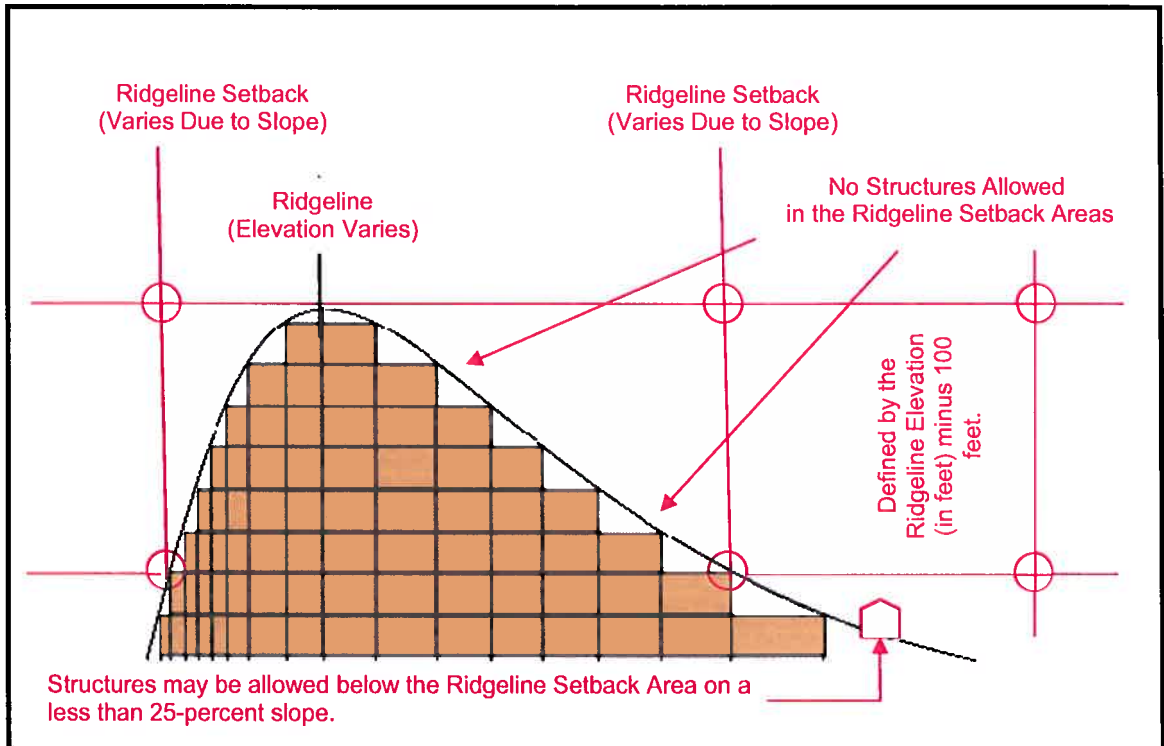
**Staff Recommendation: Option One.**

All of these options will require discretionary review of slope maps coupled with field visits to evaluate the significance of land features – isolated and/or insignificant land features are not considered as triggering the 25-percent slope – and the application of Measure PP to them. Based on City experience in the review of slope maps from the entitlement stage to the construction stage and due to the sensitivity to this issue among some in this community, staff recommends that the more conservative and detailed two-foot contour intervals be used.

## **2. Definition of Ridge and Ridgeline and the 100-Foot Setback.**

Measure PP prohibits development within 100 vertical feet of a ridgeline. The ridgeline setback could be defined as the horizontal ground line, measured 100-feet below the ridgeline and then plotted on the contour map or topographic map of the site. The horizontal distance of the ridgeline setback from the ridgeline will vary based on the slope of the hillside. Similar to the 25-percent slope line, the ridgeline setback is a continuous ground line.

Figure 4, on the following page, is an example of the 100-foot ridgeline setback for a general cross section of a hillside; it is not intended to represent an actual hillside in Pleasanton.



**Figure 4: Slope Cross Section<sup>6</sup> with the Measure PP Ridgeline Setback.**

There is no formal definition of ridge or ridgeline in Measure PP or in the Pleasanton General Plan. Chapter 18.76 of the Municipal Code for the Hillside Planned Development District (Attachment 3), for which only one property in the City is currently zoned, defines ridge as “a connected series of major and minor hills”, and a ridgeline as “a ground line located at the highest elevation of the ridge running parallel to the long axis of the ridge.” This definition distinguishes a ridge from a knoll, individual hill, or slope bank.

Working from the language of Measure PP and the City’s Hillside Planned Development District, staff developed the following options for the City Council and Planning Commission to consider in defining ridge and ridgeline.

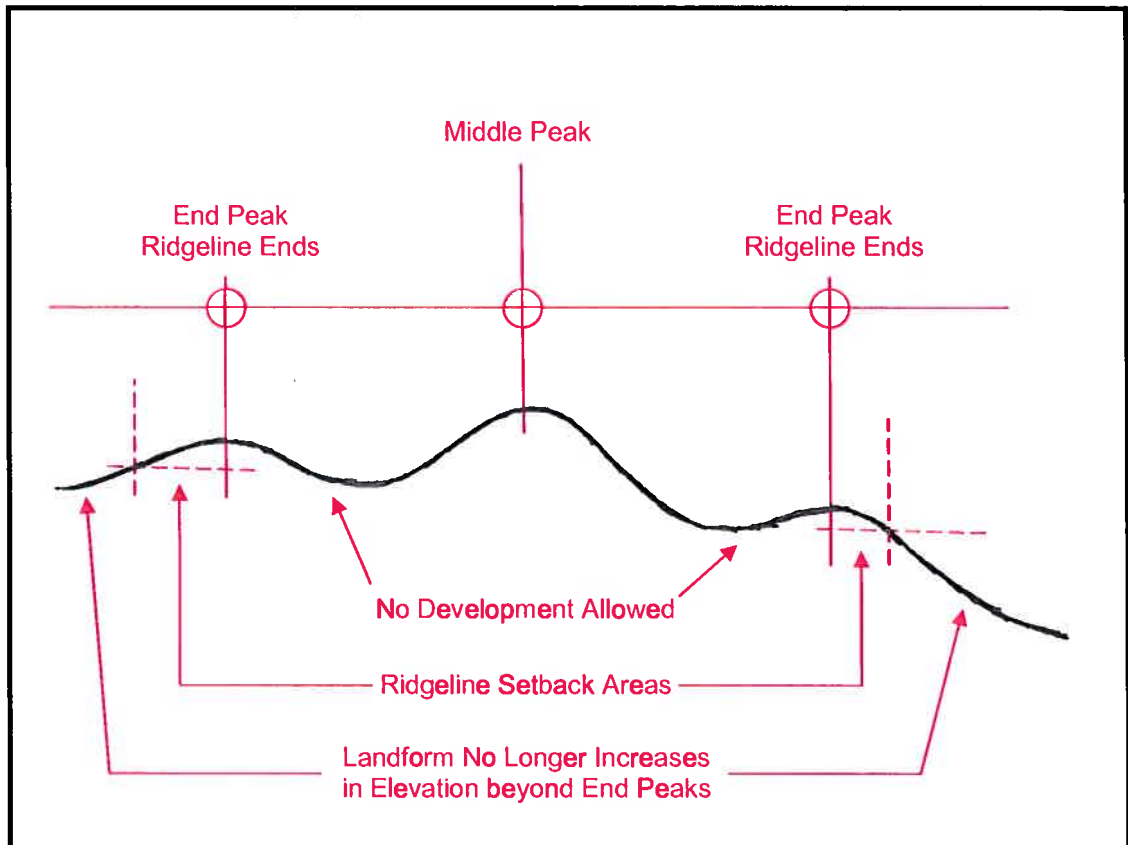
- **Option One:**  
Define ridge as a connected series of major and minor hills and the ridgeline as a ground line located at the highest elevation of a ridge running parallel to the long axis of the ridge.

This is the verbatim definition from Chapter 18.76 of the Municipal Code for the Hillside Planned Development District. This definition is lacking for purposes of implementing Measure PP in that it does not give any guidance regarding where on the “ground line” the “ridge” or “ridgeline” begins or ends.

<sup>6</sup> Note: Cross Section is not drawn to scale.



- **Option Two:**  
Define ridgeline as a continuous ground line connecting a series of hills located at their highest elevations ending at the last peak on each end of the landform. The “last peak” would be defined as the point at which the elevation of the ridgeline no longer rises in elevation, and only decreases in elevation. Figure 5, below, is a conceptual representation of Option Two.



**Figure 5: Slope Cross Section<sup>7</sup> Designating Ridgelines**

**Staff Recommendation:**

Option Two because this option provided direction on where a ridgeline ends.

### **3. Definition of Streets and Roads as Structures.**

The Pleasanton Municipal Code §18.08.535 defines “structure” as “anything constructed or erected which requires a location on the ground, including a building or a swimming pool, but not including a fence or a wall used as a fence if the height does not exceed six feet, or access drives or walks.” The Pleasanton Municipal Code also adopts the California Building Code by reference, which defines structure as “that which is built or constructed” which could be interpreted to mean public or private streets or roads.

<sup>7</sup> Note: Cross Section is not drawn to scale.

Measure PP is not clear whether it considers a street a structure and, therefore, if the grading and construction for a street or road is subject to the slope and ridgeline standards of Measure PP. City policy is to generally design streets or roads with a maximum grade of 10- to 15-percent, which can be constructed on land exceeding a 25-percent slope through grading and the use of retaining walls. However, streets or roads on hillside property involve visible cut and fill slopes that may not match surrounding terrain; the alteration of drainage features; the installation of surface and sub-surface structures such as "V"-ditches; and the construction of retaining walls; etc., any of which could be determined to be a "structure".

Figure 7, below, is an example of a road section on hillsides.

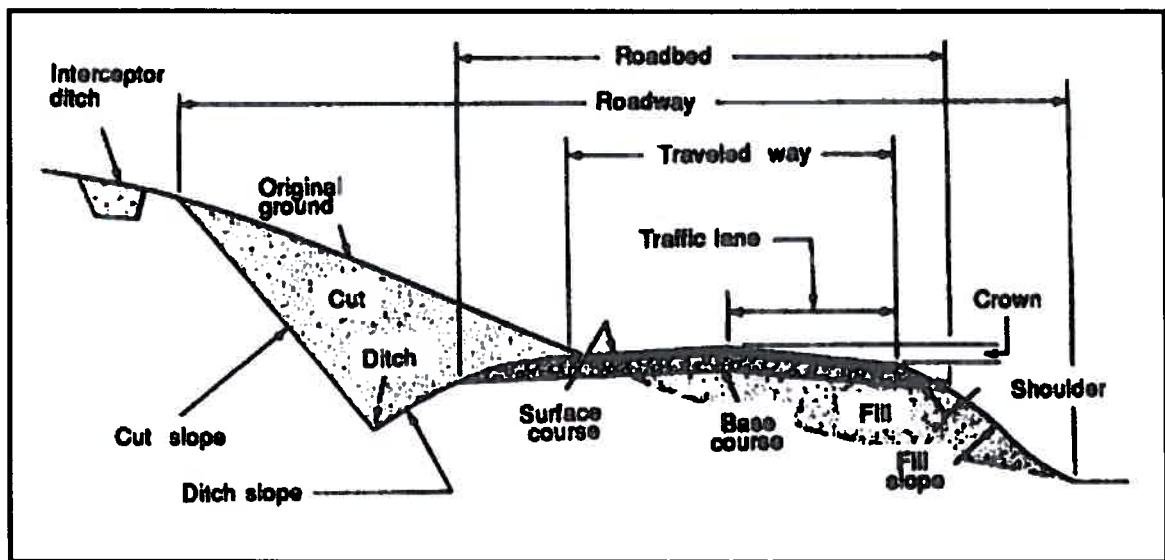


Figure 7: Example of a Road Section on Hillsides

The absence of a specific definition leaves the question of whether streets or roads are structures and, therefore, covered by Measure PP. (The following options and narrative considers roads to include the paved curb-to-curb section and their attendant infrastructure such as retaining walls, drainage features, etc.)

- Option One:  
Determine that streets and roads and their attendant infrastructure are not structures and, therefore, are exempt from Measure PP.

Such an interpretation would not preclude the City's discretionary review authority whereby the proposed street or road can be prohibited due to design concerns and any related impacts, but would allow roads to be constructed on 25-percent slopes.

- Option Two:  
Determine that streets and/or roads and their attendant infrastructure are structures in that they are physical improvements on the property intended to

accommodate development of residential or commercial structures and, therefore, are covered by Measure PP.

Interpreting Measure PP to prohibit grading to build streets and roads on property with slopes of 25-percent or greater is consistent with the intent of Measure PP to protect hillsides and ridgelines from development, i.e., preserve these areas in their natural state and, as paraphrased from Measure PP, to direct development away from lands with environmentally sensitive features and primary open space values.

However, interpreting Measure PP to apply to grading and attendant infrastructure for roads on a 25-percent slope or greater – therefore, prohibiting the construction of roads could preclude access to City facilities such as water tanks or parks, off-site developable areas where a second access point is required for access and/or for emergency vehicles, or to provide off-site access covered by an approved Specific Plan and/or PUD Development Plan, such as the proposed By-Pass Road called for in the Happy Valley Specific Plan.

- **Option Three:**

Determine that streets and/or roads and their attendant infrastructure are a structure in that they are a physical improvement on the property intended to accommodate development of residential and commercial structures and, therefore, are covered by Measure PP unless the street or road is intended to provide access to a public park, trail, or similar facility and/or is covered by a Specific Plan, PUD Development Plan, or Development Agreement.

This option meets the intent of Measure PP to protect hillsides and ridgelines from development, thereby preserving these areas in their natural state, and to provide discretionary review to the City to permit on- and off-site road connections on slopes 25 percent or greater needed to provide access to landlocked areas that are within the Urban Growth Boundary Line and designated for development by the Land Use Element of the Pleasanton General Plan, City facilities, and to street connections covered by previous Specific Plans and/or PUD Development Plans. However, the extension of such streets or roads will still be subject to the City's environmental and discretionary review to direct the road's location and design to mitigate or preserve environmentally sensitive features.

**Staff Recommendation: Option Three.**

This option balances Measure PP's purpose and intent to protect hillsides and ridgelines by prohibiting new development from these areas and by maintaining the planned street connections of previous City plans and approvals to prevent landlocked property, to provide access to future City facilities, or to provide the street connections of previous plans and/or other approvals. However, the extension of such streets or roads will still be subject to the City's environmental and discretionary review.

#### **4. Manufactured Slopes Over a 25-Percent Grade.**

In some cases, potential development sites will contain slopes 25 percent and steeper that have been created by prior grading and/or construction rather than appearing naturally in the landscape.

For example, with the development application of the Hana Japan restaurant site (southwest corner of Dublin Canyon Road and Foothill Road), the City determined that the slope bank along the Dublin Canyon Road and Foothill Road sides of the project site were manufactured slopes previously created with the road widening and, therefore, the Hana Japan site was not subject to the requirements of Measure PP. However, this determination was specific to the Hana Japan project and does not necessarily apply Citywide. The following options would address the application of Measure PP to manufactured slopes Citywide.

- **Option One:**

Determine that manufactured slopes with a 25-percent or greater slope are not covered by Measure PP if the original natural slope was less than 25-percent based on a topographic and/or visual analysis of the property's grades.

This option reviews the manufactured slope in the context of the grades of the original slopes. Therefore, if the grade of the original slope is less than 25 percent based on a review of topographic maps, the manufactured slope would be exempt from Measure PP consideration. If, however, the previous natural grade can be determined to have been 25 percent or greater, then the manufactured slope would be prohibited from re-grading.

- **Option Two:**

Determine that manufactured slopes of 25-percent or greater are covered by Measure PP and are excluded from the developable area of the property.

This option ignores the grades of the original slopes and would exclude any manufactured grade 25 percent or greater from being graded for development. This application would have precluded the Hana Japan approval.

**Staff Recommendation:** Option One.

If the original slope was less than 25 percent, then the manufactured slope even if 25-percent or greater slope can be graded for development. Applying the 25-percent criteria to a manmade slope is inconsistent with the purposes of Measure PP.

#### **ENVIRONMENTAL REVIEW**

The topics discussed in this special meeting are exempt as feasibility and planning studies per title 14 California Code of Regulations §15262. The environmental review for any future development of hillside properties covered by Measure PP standards will be subject to review under the California Environmental Quality Act (CEQA).

**CONCLUSION**

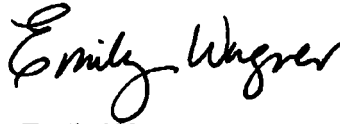
Measure PP generally addressed the location of developments on the City's hillside areas with respect to steep slopes and/or near ridgelines, but it did not define key terms, or provide methodologies for determining the location of, ridges, ridgelines, or slope which are terms that are integral to the review of hillside development. Measure PP also did not address the treatment of manufactured slopes or the location of roads on land at or greater than 25-percent grade. City Council direction on and/or definition of these items will assist City staff in its review of hillside developments to meet the requirements of Measure PP.

Submitted by:



Brian Dolan  
Director of  
Community Development

Fiscal Review:



Emily Wagner  
Director of Finance

Approved by:



Nelson Fialho  
City Manager

Attachments:

1. Report on "Analysis of the Impacts and Effects of the 'Save Pleasanton's Hills & Housing Cap Initiative,'" prepared by staff dated June 11, 2008.
2. City Council Minutes: May 20, 2008, June 26, 2008, and July 15, 2008.
3. Chapter 18.76, HPD District, of the Pleasanton Municipal Code.
4. Page II-21 of the 1996 Pleasanton General Plan.

**MINUTES  
CITY OF PLEASANTON  
SPECIAL CITY COUNCIL MEETING  
November 27, 2012**

**1. CALL TO ORDER**

Mayor Hosterman called the special meeting to order at the hour of 6:00 p.m.

**2. ROLL CALL**

Present: Councilmembers Cook-Kallio, McGovern, Sullivan, Thorn , Mayor Hosterman

Absent: None

**3. PUBLIC COMMENT: None**

**4. Consider the implementation options of Measure PP provisions related to the development of hillside areas within the City of Pleasanton**

Community Development Director Dolan presented the staff report. He advised the Council that the direction provided this evening would return to the Council in the form of an addition to the Zoning Ordinance, which would ultimately be passed by the subsequent Council. Measure PP, which was passed by the Pleasanton voters in November 2008, contains provisions that prohibit grading for the purposes of constructing residential or commercial structures on hillsides with slopes of 25% or more or within 100 vertical feet of a ridgeline. The primary challenges in implementing the directive relate to how slope is measured, identification of the point from which a ridgeline is measured and whether these limitations apply to streets, roadways or manmade slopes.

Mr. Dolan noted that certain developments whose proposals were for ten or fewer housing units and predate the approval of Measure PP, are exempt from these provisions. He also noted that in addition to the provisions of PP, the General Plan and City's own environmental review as well as certain state and federal regulations provide protection of environmental resources and in some cases might actually go beyond the limitations of PP.

Mr. Dolan presented the Council with several options for determining slope, the current definition of which is general and widely accepted but does not delve into the mechanics of measurement. Slope is the ratio of rise (height) over run (distance) for a particular segment of land. A 25% slope consists of a 25-foot rise over a 100-foot run and is equivalent to a 14-degree angle. In determining slope, one can measure the real slope as a specific value based on the distance between contour lines on a topographical map. An alternative method that has been the practice of many jurisdictions including Pleasanton, is to calculate an average slope value over the entire site. Using the latter would likely result in a slight increase in developable land, some of which might actually exceed 25%. Staff's position is that for the purposes of PP, using real slope to determine the developable footprint would be most appropriate.

A sub issue of slope determination relates to contour intervals, which reflect the actual change in elevation represented by the space between adjacent topographic rings and differ based on the size map that is used. Staff has proposed that the Council consider using 2, 5 or 10-foot contour intervals. Staff conducted several tests on real sites in Pleasanton to determine the effect of each alternative, found the differences to be negligible and therefore is supportive of implementing the most conservative 2-foot option.

The next issue for the Council to consider is how to define and measure a ridgeline. While the current code does define a ridgeline, which is listed as Option 1, staff feels it is insufficient in providing direction on where to start and stop measuring the setback from the ridge. Staff studied several alternatives and found it made the most sense to define the end of the ridgeline as the point at which it starts to only decrease in elevation and to measure the setback from this point.

The Council is also being asked to make a determination on whether streets and roads are considered "structures" in this context. While not the most common use of the term, even sensitive construction of streets or roadways on a hillside require improvements that scar the landscape in a way that is not dissimilar to residential development. Staff has identified several options for the Council's consideration, the first two of which is extreme and identifies streets and roadways as either exempt from or subject to the same limitations that any other development would be under PP. Staff was not particularly satisfied with either option, as they could recall several preexisting Specific Plans that anticipated a particular road that would be prohibited under these conditions or could envision specific areas of town where it would be unavoidable to access public resources without crossing a 25% slope. Staff therefore supports Option 3, which determines streets and/or roads are a structure and therefore, covered by PP unless the street or road is intended to provide access to a public park, trail, or similar facility and/or is covered by a previous Specific Plan, PUD Development Plan, or Development Agreement.

The final issue for the Council's consideration is that of manufactured slopes. While not common, some potential development sites contain slopes 25% or greater that has been created by prior grading and/or construction rather than appearing naturally in the landscape and staff does not believe their preservation to be consistent with the purposes of PP. Therefore, staff recommends that manufactured slopes of 25% or greater not be covered by PP if the original and natural slope was less than 25% based on topographic and/or visual analysis of the property's grades.

Councilmember Sullivan asked if there were any way that development would be allowable, under this ordinance, on a lot that was predominately sloped at 25% or more but contained a very small portion with a 24% slope.

Mr. Dolan said that specific issue has not been addressed but, without any further guidance, the developer could be allowed to build if the portion sloped at 24% were sizable enough for a residential building pad and met the setback requirements. This would not however be allowed if the lesser-sloped portion were situated such that driveway access to the home would have to cross the 25% slope as driveways are considered part of the residential development rather than a street or road.

Councilmember Sullivan attempted to clarify his question, asking if it would be possible to apply both Options 1 and 2 for determining slope to avoid any sort of loophole in this circumstance. He said he posed the question to the City Manager several times already and has not yet heard a good answer.

Mr. Dolan explained that anything meeting the requirements of the more conservative Option 1, which staff is recommending, would inherently meet the requirements under Option 2.

Councilmember Sullivan said he supported the staff recommendation regarding manufactured slopes. He asked if the same exemption would apply to preexisting building pads constructed on slopes exceeding 25%, even if never approved by the City.

Mr. Dolan said yes, provided the site could achieve driveway access that did not cross a 25% slope.

Councilmember Sullivan asked and staff confirmed that the Council is being asked to provide staff with direction which staff will then bring to the next Council in the form of a draft ordinance. Mr. Dolan added

that as part of the Zoning Ordinance, the ordinance would go before the Planning Commission for a recommendation prior to returning to the Council.

Councilmember McGovern asked and Mr. Dolan confirmed that the definition for slope used here reaffirms, rather than changes, the definition contained within the 1996 General Plan and Measure QQ.

Councilmember McGovern said the issue of manmade slopes really seems to relate to the Lund Ranch II property, which is a sizable piece of land and calls for the development of nine homes. She said she considered something of this scope to be very different from a manufactured molehill both in terms of overall size and because it has become a part of the contour of the property, and did not feel it was appropriate to call out as exempt.

Councilmember Cook-Kallio requested clarification on the staff recommendation on pages 5 and 7, noting that Weighted Increment Slope (WIS) is included in both options depending on which page one refers to.

Mr. Dolan clarified that the reference was largely for discussion purposes and staff does not recommend the use of WIS or slope averaging.

Councilmember McGovern said she posed the same question to staff and shared their written response with Councilmember Cook-Kallio.

Mayor Hosterman opened the public hearing.

Kay Ayala said they, whom she did not define, were supportive of staff's recommendation with some additional language. She asked that Option 3 regarding streets and/or roads read that streets and/or roads are a structure and therefore, covered by PP unless the street or road is intended to *only* provide access to a public park, trail, or similar facility and/or is covered by a previous Specific Plan, PUD Development Plan, or Development Agreement **approved prior to November 2008 when Measure PP was passed**. She noted that she had inquired about and accepted staff's definition of "similar facility" as something like a water tower. She asked the Council to clarify with staff whether the intent was to exempt only those PUD plans that were approved and built as opposed to those that had not yet constructed.

City Manager Fialho said staff is proposing to grandfather those plans and development agreements. He noted that there is a bit of a legal question around whether a previously approved PUD on one site can bind the PUD on another site that is yet to be developed, as would be the case with Lund Ranch II. The answer to that is unclear from a legal perspective, but the City can rely on the larger Specific Plan, in this case the North Sycamore Specific Plan, which says that certain connections will be made.

Karla Brown, Councilmember Elect and one of the Measure PP signatories, read the language of PP and quoted from the voters' pamphlet. She said the authors support staff's recommendation for Option 1 with regards to slope, with the addition of language explicitly prohibiting the use of the more generalized WIS method. She also indicated support for staff's recommendation regarding ridgeline measurement and for Option 1 with regards to contour intervals, but asked that any references to WIS usage be deleted. She disagreed with staff's interpretation that PP is unclear regarding streets and roadways. She noted the Pleasanton Municipal Code defines a structure as anything constructed or erected, which requires location on a ground, and that the California Building Code also recognizes a structure as anything built or constructed. She reiterated Ms. Ayala's request that Specific Plans and PUDs be grandfathered. She said the authors felt there was insufficient information regarding manufactured slopes and grades to support an intelligent determination on whether or how these differ from natural slopes and requested a field trip to Lund Ranch II before making such a decision.



Amy Lofland stated her support for the staff recommendation on streets and roadways, assuming that PUDs, Specific Plans and CC&Rs approved prior to November 2008 are exempted. Her specific concern related to PUD 90-18 for Bonde Ranch, PUD 97-03 for Greenbriar for Bridle Creek, PUD 97-12 for Sycamore Heights, the North Sycamore Specific Plan, Happy Valley Specific Plan and the CC&Rs for Bridle Creek and Sycamore Heights.

Allen Roberts recommended an alternative to staff's Option 1 regarding slope, which would include even very small changes in elevation in the calculation of slope or allow staff to determine that the change was insignificant. He recommended that they instead use the 2-foot contour interval over 10 vertical feet. He suggested that several real and clarifying examples of how ridgelines are to be measured would be very helpful to the public. He also stated that PP did not make distinction between manmade and natural slopes and neither should the ordinance.

Greg O'Connor said he had several issues with staff's recommendations regarding measurement of slope and the definition of the ridgeline. While he always assumed slope would be measured as a continuous line, he said he could support using a 2-foot rise for the purposes of practicality. He felt staff's recommendation regarding ridges would not capture the entire ridgeline, but that it was certainly a good starting point. He said PP is clear and does not provide for exceptions with regard to streets and roadways, except for those PUDs and Development Agreements approved prior to 2008, or manufactured slopes. He did not feel streets or roadways discussed in Specific Plans, which are modified as the needs of the community evolve, should be exempt from the provisions of PP. He cited the 1996 General Plan, which made several references to prohibiting grading where existing slopes are 25% or greater.

Mayor Hosterman closed the public hearing.

Councilmember Sullivan asked and Ms. Ayala confirmed that the PP authors support staff's recommendation for Option 3 regarding streets and roadways. Ms. Ayala reiterated her request for the additional language and said she did not think it critical to include Development Agreements in the exemption. She also suggested that the City conclude its outstanding lawsuits prior to putting any new laws on the books.

Councilmember McGovern said she would be more comfortable with Option 2 for streets and roadways as this would enable a public hearing process rather opposed to a blanket allowance. She asked and Mr. Fialho confirmed that the details such as road connections of an approved PUD are vested rights whereas those in a Specific Plans are not. Her concern with exempting road connections discussed in a Specific Plan is that it suggests they are in fact vested rights. She asked if staff reviews the PUDs of adjacent properties when a project comes forward.

Mr. Fialho said staff would draw guidance from the adjacent PUDs as well as any related Specific Plans in evaluating a project. Lund Ranch II for instance is bordered by sites with approved PUDs that assume a roadway connection on that site. Lund Ranch II has no PUD but there is a Specific Plan that provides very detailed discussion on how the roadway would be constructed. In order to encourage that those connections be made, staff would rely on the fact that PUDs are required to comply with Specific Plans.

Councilmember Sullivan asked and the PP authors confirmed that they wish to exempt any previously approved roadways or connections that may now violate PP.

Mayor Hosterman said staff has done an amazing job in crafting a set of definitions and language that the community can really get behind. She agreed with Councilmember McGovern that to make any kind

of major modification to or condition any of these issues warrants a full public hearing and said she also agreed with many of Mr. O'Connor's points. She moved the staff recommendation on all items.

Councilmember Cook-Kallio referred to meeting minutes of June 6, 2008, in which Councilmember Sullivan confirmed with Ms. Brown that the intent of the initiative was to control construction of residential and commercial structures, not roads, on slopes of 25% or more. She is also noted to have commented several times that she felt it was important to use exact language at that time so that they did not create this very sort of situation where they pick and choose which items to make exceptions for.

Councilmember McGovern reiterated her earlier point that Specific Plans do not indicate vested rights. She referred to the Happy Valley Bypass Road as an example of a roadway that is identified in a Specific Plan but could ultimately turn out different than originally envisioned based on the kind of growth that eventually occurs. She referred to the Planning Commission's minutes of March 14 regarding Lund Ranch II, in which staff agreed that a road is a structure. She said she would much rather conduct a public hearing process to make exception for an individual roadway than to grant blanket approval for something that someone might need someday. She reiterated her position that Option 2 is a better option.

Councilmember Sullivan asked and Mr. Fialho confirmed that Option 3 would still involve a public process at both the Planning Commission and City Council level. He also noted the language acknowledges that such streets and roads would still be subject to the City's environmental and discretionary review and direction on the road's location and design to mitigate or preserve any environmentally sensitive features.

Councilmember McGovern said it would seem appropriate then to pursue Option 2 and allow the public process to happen. She referred again to the Planning Commission minutes of March 14, in which a Commissioner is cited several times as interpreting that a slope was manufactured 25 or 30 years before, has found its natural resting point and, if 25% or greater, should be left intact. This is a clear indication that PP should not be interpreted as excluding manmade slopes.

Councilmember Thorne requested clarification on the motion with respect to manufactured slopes.

Mayor Hosterman said she moved the staff recommendation, as presented.

Councilmember Cook-Kallio said she felt PP was silent with regard to existing manmade slopes, that it could easily be argued either way, and that this is her issue with this type of ordinance. She asked what impact this would have on a pile of dirt with a 25% slope on the Bernal property.

Mr. Fialho explained that this is hillside preservation, not valley floor preservation, ordinance and therefore, the Bernal site is not subject to the provisions of PP.

Councilmember Cook-Kallio asked and Mr. Fialho confirmed that PP is silent with regard to manmade slopes.

**MOTION:** It was m/s by Hosterman/Cook-Kallio to approve the staff recommendation.

Councilmember Sullivan asked whether, assuming no distinction was made between natural and manmade slopes, there would be a process to apply for an exception or waiver to develop on a manmade 25% slope that does not otherwise conflict with the intent or language of PP. He referred to the Hana Japan site as an example.

Mr. Dolan said they could always apply for a variance; however, the findings are rigorous and difficult to make. He suggested that building in an exception process based on more of a common sense threshold might be a more suitable alternative.

Councilmember McGovern made the following substitute motion: slope – Option 1, prohibiting the use of WIS; contour intervals – Option 1, deleting any mention of WIS; ridges and ridgelines – Option 2; streets and roadways – Option 2; manmade slopes – Option 2.

Councilmember Sullivan said he largely agreed with staff's conservative approach, which generally meets his understanding of the intent of PP. He said he could support the substitute motion with several changes. While he initially supported Option 2 for streets and roads, he could see the benefit of allowing some roads under certain conditions. He felt the Council should defer to the initiative authors with Option 3 and the additional language they requested. He said he could support Option 2 for manmade slopes, with the provision of an exception process.

**MOTION:** It was m/s by McGovern/Sullivan to approve the following recommendation: slope – Option 1, prohibiting the use of WIS; contour intervals – Option 1, deleting any mention of WIS; ridges and ridgelines – Option 2; streets and roadways – Option 2; manmade slopes – Option 2.

Mayor Hosterman questioned and Councilmember Sullivan clarified that his intent was to grandfather streets and roadways addressed in PUDs and Specific Plans implemented prior to 2008.

Councilmember Cook-Kallio asked whether staff would prefer to build in an exception or allow for the public process with regard to manmade slopes.

Mr. Fialho said the better option from staff's perspective would be to retain the ability to evaluate each proposal as it comes forward through a public process.

Councilmember Cook-Kallio said she heard Ms. Brown say this evening that a road is a structure but referred again to the minutes of June 6, 2008, which reflect the opposite. While more restrictive than what was reflected in the minutes, she said she preferred staff's recommended Option 3 over Option 2.

Councilmember McGovern disagreed. She said Option 3 sets the tone for automatic approval and essentially makes the public process a useless exercise.

Mr. Fialho clarified that Option 3 is simply an acknowledgement that certain PUDs and Specific Plans exist. It still provides the Council with the flexibility to determine whether the road is even of value to the community and to adjust its placement, but does rely on these existing documents for guidance.

Councilmember McGovern stressed her concern over vesting rights within a Specific Plan. She and staff discussed several amendments and she ultimately suggested the following: "Determine that streets and/or roads and their attendant infrastructure are a structure in that they are a physical improvement on the property intended to accommodate development of residential and commercial structures and, therefore, are covered by Measure PP unless the street or road ~~is intended to provide access to a public park, trail, or similar facility and/or~~ is covered by a Specific Plan or PUD Development Plan approved prior to November 2008."

Mayor Hosterman withdrew her motion in favor of the substitute motion.

**MOTION:** It was m/s by McGovern/Sullivan to approve the following recommendation: Calculation of 25% slope – Option 1, with language acknowledging that the WIS formula will not be used in the calculation of slope; Methodology for defining contour intervals – Option 1, provided a ty reference to

WIS in the methodology is eliminated from the definition; Definition of ridges and ridgelines – Option 2; Manufactured slopes exceeding 25% grade – Option 2, with an additional provision allowing the evaluation of each situation on a case by case basis through the public review process; Streets and roadways – Option 2, as amended by Councilmember McGovern. Motion carried by the following vote:

Ayes: Councilmembers Cook-Kallio, McGovern, Sullivan, Thorne, Mayor Hosterman  
Noes: None  
Absent: None

- 1. Public Hearing: P11-0824/P12-0798, City of Pleasanton** – Consider the Draft Downtown Hospitality Guidelines for commercial businesses and special events within the Downtown Specific Plan Area (Downtown) and related Pleasanton Municipal Code (PMC) amendments, including the creation of new hospitality districts and new hour, noise, and operation requirements for hospitality uses Downtown; and a City-wide PMC amendment changing when restaurants serving alcohol must apply for a Conditional Use Permit, and for the preparation of a Negative Declaration

Director of Economic Development Ott presented the staff report, stating that in October 2011 the Council approved an 11-member Downtown Hospitality Guidelines (DHG) Task Force to develop a set of hospitality guidelines for entertainment, music and special events that would address key elements in creating a positive and responsible environment for downtown vitality. The Task Force was comprised of two Planning Commission members, two Council members, two Pleasanton Downtown Association (PDA) board members, and five at large residents. They met over a period of nine months in a very open and inclusive public process that incorporated participation from residents, downtown property owners, business owners, members of the Economic Vitality Committee (EVC) and representatives from the Chamber of Commerce.

The DHG Task Force recommended a set of draft guidelines, which passed by a 6-5 vote at its meeting on May 31, 2011. Key concepts of the guidelines include the designation of downtown hospitality areas, incorporation of a good neighbor policy, a notification and disclosure process, commercial guidelines around entertainment, music and bars, and guidance surrounding special events. These guidelines are envisioned to be a good fit for most, certainly not all, businesses in the downtown and those wanting something different that what is described in the guidelines would always be welcome to apply for such through the City's regular review process. Ms. Ott noted that staff's recommendation differs slightly from the guidelines approved by the Task Force and do also include certain recommendations by the Planning Commission.

Ms. Ott presented a map of the proposed Downtown Hospitality Area, which is ultimately defined by a central core area with more intensified use and a transition area that serves as a buffer between the downtown and adjacent residences. She noted again that staff's recommendation differs from that of the Task Force and essentially increases the transition area along Peters Avenue to the depth of two properties. Staff feels this amendment strikes an appropriate balance between encouraging downtown vitality and preserving the quality of life for residents who live in and around the downtown area.

She reviewed the following key elements of the commercial guidelines:

- Create a new use category (special downtown accessory entertainment use) that would allow occasional music or entertainment as a permitted use;
- Increase noise standards in the core area from 70 to 74 decibels from 8 a.m. to 10 p.m. Sunday through Wednesday and 8 a.m. to 11 p.m. Thursday through Saturday;
- Decrease noise standards in the transition area from 70 to 60 decibels from 9 p.m. to 8 a.m.;

- Encourage restaurants to stay open later by changing the hour when a CUP is required for restaurants serving alcohol from 10 p.m. to 11 p.m. She noted this change would be City-wide;
- Create a process for modifying existing CUPs requesting to adhere to the new guidelines;
- Capture the new guidelines in the CUP process

Mayor Hosterman and Councilmember McGovern requested clarification on current requirements for restaurants serving alcohol.

Ms. Ott explained that restaurants are currently allowed to serve alcohol after 10 p.m. with a CUP. Bars automatically require a CUP. She noted that both the PDA and EVC made recommendations over and above those of the Task Force, some of which staff supported. The most notable is the ability for businesses wishing to operate under these guidelines to make such modification within their existing CUP. Staff also supported their recommendation for annual reporting in order to provide feedback on the efficacy and acceptance of the guidelines.

Mayor Hosterman said she received numerous comments from the public in just the last two days and it would seem beneficial, whatever the Council's decision, to bring this back for evaluation and potential modifications after some specified period.

Councilmember McGovern said the staff report indicated the monitoring report would be prepared by the PDA but that she felt the City had some responsibility here as well.

Ms. Ott explained that the PDA offered to do so and that staff certainly anticipated assisting in the process.

Councilmember Cook-Kallio said she was somewhat uncomfortable with the sheer number of phone calls and emails she had received on this within the last few days and with making a decision without addressing these concerns. She requested clarification on what the focus of the report would be.

Ms. Ott said they have not laid out that framework but would suggest that it include feedback from downtown businesses and residents as well information on any complaints or violations.

Ms. Ott stated that staff evaluated the guidelines against the California Environmental Quality Act (CEQA) and generally found the impacts to be less than significant. The guidelines do not propose any construction, demolition, changes to underlying zoning or increases in occupancy and these types of use are already addressed in the City's General Plan and EIR. The one area that seemed to warrant focus relative to CEQA was noise impacts. While the guidelines do propose an increase in allowable decibels from 70 to 74 dba in the core area, the guidelines in the transition or residential areas either decrease or remain unchanged.

She noted that staff received a number of comments over the last two days. Residents' concerns focused on the noise impacts from increased outdoor music, that residents would be acting as enforcement agents, that increased vitality could generate more noise, parking, loitering and littering impacts, that certain business might not be able to provide adequate sound attenuation, and overcrowded downtown. Staff received requests for the City to build a new parking structure to accommodate the increased traffic resulting from downtown events. However, staff was also contacted by a number of residents to share their support for increased activity and vitality in the downtown and their willingness to tolerate occasional traffic and noise impacts given this benefit. Several residents felt the increased vitality would actually increase their property values. Several property owners requested to have their own properties located within the core rather than the transition area. Ms. Ott noted that the Planning Commission had acknowledged the potential for such requests and recommended an

amendment whereby owners with property in the transition area that directly abutted the core area could submit such a request to the City, to be reviewed by the Planning Commission.

Staff recommends that the Council find the DHG would not have a significant effect on the environment, adopt the resolution recommending approval of the Negative Declaration, adopt the resolution approving the draft guidelines, and introduce the ordinance adopting the draft amendments to the Municipal Code.

Mayor Hosterman opened the public hearing.

Mike Hughes, Baci Bistro and Café Main, thanked the City for finally bringing this all together. He acknowledged the concerns regarding noise and increased activity but said it has been a real struggle to develop late night business in what is essentially labeled a ghost town after 9 p.m. These guidelines will go a long way towards demonstrating that Pleasanton is open for business. He said that restaurants are the anchors of the downtown and believed their success would benefit all local businesses and in turn, the community.

Mark Shawver said he is a long time resident, recently relocated to the downtown, and is very excited by the work represented in these guidelines.

Margene Rivara said she and her husband very much support downtown vitality and respect the property rights of all owners. She said the staff recommendation is arbitrarily discriminating against certain owners by placing them in the transition zone and limiting their use, in some instances directly across the street from another property that can benefit from the more lenient guidelines for the core zone. She said she and her husband are very willing to tolerate the noise and extra traffic in the downtown and that they very much support the recommendation of the EVC and PDA. She read an email from Dr. Long, who could not attend, in which he stated that his property at 363 St. Mary's Street was singled out with just three others to be discriminated against in the transition zone. He further stated that this was done without prior notification or explanation by City staff and against the recommendations of the EVC and Chamber of Commerce, an officious and discriminatory devaluation and covert decision to which he objected.

Joseph Barone, Barone's Restaurant, said he concurred with Mr. Hughes and supported the guidelines proposed by staff. He said Pleasanton was a wonderful place to do business 18 years ago but that it has become a real struggle in the last few years. Outdoor music has really evolved into something that not only supports his business, but also supports this community. He noted that Barone's was not included in the core zone but was ultimately voted in at his request. He thanked the task force and the public for all their hard work.

Rick Ring, Pastas Trattoria, said the guidelines represent a tremendous undertaking that will benefit the entire downtown. In reading through some of the comments the Council received, he said it is important to remember the substantial investment that restaurateurs have made in their business and in the City. The proposed guidelines represent changes that are extremely important to the vitality of the downtown and the longevity of these operators. With regards to noise, he said there is more to consider than just entertainment. Religious groups regularly congregate downtown and use loud speakers to amplify content that is not only offensive but also unregulated. He also noted that the recent influx of food trucks, which now gather at Amador High School, detract from local businesses who have invested in the community where they have not. He agreed that parking is a concern that warrants examination.

Maricela Barone echoed her husband's comments. She said the activity and vitality is part of the charm of living in the downtown and that she is very excited about this revitalization.

Andrew Shaper said he very much appreciated the effort of the task force and all those involved. He said he enjoys the vitality of living downtown and generally supports the recommendations. He did however feel that the guidelines failed to satisfactorily address the issue of enforcement, which is reactive rather than proactive. He suggested that businesses providing outdoor amplified music be required to monitor noise levels hourly and recommended several inexpensive devices or apps for doing so.

Karla Brown said she attended the Planning Commission field trip and, while they were able to mitigate the sound to 60 decibels in the residential district, the general consensus was that the method employed was not an effective measurement tool. She said the guidelines did not appear to address the idea of noise impacts on adjacent businesses. She conducted her own real life test and found it difficult to hold a conversation when the adjacent business was hosting loud outdoor music. She said she supported the idea of the buffer zone, for noise as well parking, traffic, and the ambient noise created by the hustle and bustle of an active downtown. She asked if the expanded hours for alcohol service would require that restaurants also make food service available during these hours. She also asked why Thursday, which is traditionally a work and school night, was granted the same expanded noise guidelines as Friday and Saturday evenings.

Jerry Hodnefield said the task force has done a marvelous job balancing all the forces in play. He said he and his family fully support the guidelines as recommended by the EVC and without the changes proposed by staff.

Brenda Sauter said she attended all but the first two task force meetings, was extremely impressed by staff's work and that she found the Planning Commission's participation particularly helpful. She noted there are a significant number of downtown businesses that already have the ability to serve alcohol until 11 p.m. or later, yet they choose to close earlier. She said she was grateful to City staff who gave equal weight to the comments made by residents and homeowners, despite the fact that they were grossly underrepresented on the task force. She asked the Council to approve the guidelines, as recommended by staff.

Mike Hosterman said he supports the guidelines as both a downtown business owner and the PDA President. He called attention to the differences between staff's recommendation and that of the EVC and PDA. He noted that the depth of the transition area along Peters Avenue really only effects noise levels in the core area, as the noise level must be 60 decibels at the residential line no matter where it is. He also stressed that this is reduction from the 70 decibels that are currently allowed in the downtown and under Section 9.04.040 of the City's Noise Ordinance. He asked that the Council revert to the EVC and PDA recommendations with respect to these two items.

Gene Finch said he lives downtown and has personal experience with increasing noise issues in the area. He applauded everyone's efforts in developing the guidelines but said he had particular issue with the modification of allowable noise levels. He said that late night noise, coupled with the abuse and destruction of his personal property, is an exceptionally frustrating experience. He has reported the issue several times over the years but the local police can only do so much. He asked the noise consultant to address how noise levels are calculated from a particular location.

Laura Olson said remaining relevant and vibrant is a critical issue for the downtown. She said the PDA fully supports and is eager to implement the guidelines, as recommended by the EVC and PDA.

Janice Phalen, EVC and Task Force member, said she endorsed the guidelines as recommended by the EVC and PDA. She particularly commended modifications to the alcohol service hours and the simplified CUP process.

**Mayor Hosterman closed the public hearing.**

**Councilmember Sullivan asked how the guidelines propose to address cumulative noise sources that may end up exceeding 60 decibels at the residential plane.**

**Alan Rosen, acoustical consultant with Rosen Goldberg Der & Lewitz, said this was not addressed in the guidelines and would likely be managed on a case by case basis. He explained several methods but said it would be an iterative process to try and identify the dominant noise source and likely result in all sources being asked to lower their amplification.**

**Councilmember Sullivan strongly recommended that staff develop a clear process for identifying noise sources, enforcing a reduction in amplification, and then repeating measurements to ensure compliance. He said enforcement is something they discussed at the Task Force level and is of significant concern. He asked if the increase in operating hours and noise levels would result in increased police presence or active monitoring efforts.**

**Police Chief Spiller said the department's downtown presence would be very similar to its current posture. Specifically, the guidelines will not result in additional staff positions or formal redeployment to the downtown area.**

**Councilmember Sullivan asked that the staff and Council revisit the idea of monitoring and enforcement as the effects of the guidelines evolve.**

**Councilmember McGovern asked how many officers are on shift between the hours of 11 p.m. and 7 a.m., and whether any are specifically assigned to the downtown.**

**Chief Spiller said the number varies from as few as 5 to as many as 20 officers due to overlapping shifts and depending on the community activities scheduled.**

**Councilmember McGovern said that while everyone likely supports vitality, there are definitely consequences if not done properly. She noted at least one local bar that has increased police presence as their closing time approaches. She asked whether it would be possible to increase presence downtown between 11 p.m. and 2 a.m. in order to discourage some of the more inappropriate behavior that tends to accompany public drunkenness.**

**Mr. Fialho advised against inventing that directive in the document but said the Chief could certainly emphasize that in terms of his deployment.**

**Councilmember McGovern asked how staff reconciles the Negative Declaration, which says the increase in allowable noise levels is insignificant, with the General Plan statement that an increase in exterior noise of more than 4 decibels is required before the increase is considered significant.**

**Mr. Rosen noted the General Plan identifies an increase of more than 4 decibels. He explained that the General Plan refers to a 24-hour average noise level, which is different from instantaneous noise levels like those being proposed here. He also explained the perception of noise relative to changes in decibels. He said that increases generally start to be noticeable, but not dramatic, at an increase of 5 decibels and 10 decibels the point at which one might perceive a doubling of loudness. He felt that an increase of 4 decibels would be just a little more than noticeable, if at all. He also explained that while the perception does vary based on the original noise level, it is generally less noticeable at higher levels due to the compression in the sound.**



Councilmember McGovern said she shared Councilmember Sullivan's concern over cumulative noise as well as the idea that a business might be negatively affected by music or significant ambient noise from an adjacent commercial use.

Councilmember Cook-Kallio asked if the type of music has any influence on the perception of sound.

Mr. Rosen said yes, but humans tend to accentuate sounds that are in the speech frequencies versus the very low and high frequency sounds. Music with more vocal content will generally be perceived as louder, although music with a repetitive low frequency sound like heavy bass might be more annoying to some.

Councilmember Cook-Kallio asked at what point consistent exposure presents a health concern.

Mr. Rosen said OSHA identifies the point at which hearing protection should be considered as 85 around decibels.

Councilmember Cook-Kallio asked Mr. Rosen if he perceived any appreciable difference between the zone map recommended by staff versus that recommended by the EVC and PDA relative to noise.

Mr. Rosen said that if noise levels were between 70 and 74 decibels at the core zone property line, sound would have further to travel and therefore be better attenuated before reaching the residential property line with staff's recommendation.

Councilmember Cook-Kallio noted that the requirement is 60 decibels regardless of the depth of the transition zone and asked what the purpose of the larger transition zone recommended by staff is.

Ms. Ott said the idea is related to noise as well foot traffic, loitering, littering and other impacts that accompany increased vitality.

Councilmember Cook-Kallio noted that no bars or restaurants currently operate within the transitional buffer zone and said she felt it to be a bit of an artificial barrier. She struggled with understanding what exactly was accomplished by creating a deeper transition zone along Peters Avenue, given that the noise level would have to be at 60 decibels in the same place on either map.

Mr. Fialho said the area was adjusted in part because of the comments and concerns raised by the neighborhood and was staff's attempt to balance the need for economic vitality in the core area with what seemed to be a moderate and appropriate buffer area for adjacent residences. He also stressed that the Task Force action in approving the EVC and PDA recommendation was not unanimous and was in fact barely approved on a 6-5 vote.

Councilmember Cook-Kallio acknowledged the concern for the residents but reiterated her point that it seemed artificial. She asked about the allowable noise level for fairground events, which she can clearly hear at her own home.

Ms. Ott consulted the City's Noise Ordinance, explained that any community activity, sporting event or special event occurring at the Alameda County Fairgrounds is exempt from the provisions of the ordinance, and not required to comply with the City's standards.

Councilmember Cook-Kallio requested clarification on an email received from Peter McDonald in which he referred to a bank being downzoned.

**Ms. Ott said the guidelines do not propose any zoning changes but that there is a perception that properties in the transition zone may be less desirable to prospective tenants than those in the core zone due to lower standards relative to noise and operating hours.**

**Councilmember Cook-Kallio asked and Ms. Ott confirmed that properties in the transition area and abutting the core area can request to be moved to the core area through the City's regular review area. This would require a change in the map defining the core and hospitality area but would not necessarily require a CUP.**

**Mr. Fialho said the decision would likely be based on some sort of development application or business proposal rather than the simple desire of the property owner.**

**Councilmember Cook-Kallio asked and Mr. Fialho confirmed that the Council's recent action relative to banks in the downtown area did not prohibit new banks as a use; it simply changed them from permitted to requiring a CUP.**

**Councilmember McGovern referred to Enhancing Downtown Hospitality – Potential Future Topics in the draft guidelines, said she would like to see additional parking in the corridor addressed within the next year, and asked what sort of timeline staff has identified for these topics.**

**Ms. Ott said that while they are within the PDA's Hospitality Plan and certainly in the City's long-range plans, no definitive timeline has been discussed. She suggested that there is an opportunity for education and outreach regarding the some of the City's underutilized parking areas, such as those along the transportation corridor and others not right on Main Street.**

**Councilmember McGovern inquired about staff's recommendation relative to Thursday evenings.**

**Ms. Ott said there was a strong sentiment that Thursdays are an entryway into the weekend for many and that they look for opportunities to eat out and participate in activities much like they would on a Friday or Saturday.**

**Councilmember McGovern said she did not necessarily agree with that. She asked if the guidelines require business owners to monitor noise generated within or by their establishment. She felt this would be a more proactive approach to minimizing noise complaints and go a long way towards supporting the good neighbor policy.**

**Ms. Ott said no, although the Planning Commission did include it as a tool for reviewing CUPs.**

**Councilmember McGovern said she felt loitering was as much of a concern during business hours as it was after. She said she felt comfortable that the staff recommendations balanced the needs of both residents and businesses and that a review in 6 or 12 months would provide the Council with an opportunity to adjust the guidelines as needed.**

**Councilmember Thorne asked if staff had any data supporting the idea that a noise level of 74 decibels at the commercial property line would be attenuated to 60 decibels at the residential property line**

**Ms. Ott said they know that 60 decibels can be achieved with a volume of 74 decibels in the core area. Using the EVC and PDA recommendation would result in 60.6 decibels at the residential property line. Staff's recommended map would of course allow for even greater attenuation.**

Councilmember Thorne asked and Ms. Ott confirmed that under the staff recommendation, a business within the core zone could generate as much as 80 decibels and still achieve 60 decibels at the residential line. Ms. Ott noted that this would however exceed the 74 decibels allowed.

Mayor Hosterman said also received many emails and phone calls from those concerned with maintaining the central core area as recommended by the Task Force. She said she would support that recommendation, as opposed to staffs, and that she would prefer not to apply the more lax requirements for Friday and Saturday to Thursday.

Councilmember Sullivan said he served on the Task Force and found it to be a very lopsided committee that was heavily skewed towards business interests. He stressed the work that Mr. Fialho and staff did in crafting a compromise that balances the needs of businesses and residents. The transition area was a significant component of that compromise and at one point, there was general agreement by the Task Force to support the changes. The very next meeting, staff's hard work was overturned in what was a very controversial backtracking on a compromise that took a long time to come to. He noted that both Councilmembers and one Planning Commissioner voted against the EVC and PDA recommendation in favor of the staff recommendation, which he continues to support. He felt that approving the guidelines as recommended by the EVC and PDA would be akin to stabbing residents in the back and not at all representative of what the outcome of this 12-month process should be.

Mayor Hosterman said the idea of the exercise is to address the guidelines in a meaningful way and that she liked what the Task Force and community had come up with. She acknowledged the compromise prepared by staff but said she would prefer to see the guidelines implemented fully before grappling with what changes might best benefit the combined interests of the community.

Councilmember Cook-Kallio said she could support the expanded transition zone, provided there would be a simple process for those wishing to convert to the core zone. She reiterated her position that the expanded buffer does little to change anything for residents either in terms of noise or other impacts. Her real concern, which was not suitably addressed, is how to mitigate the behavioral nuisances that tend accompany public drunkenness. Enforcement of the guidelines relies largely on resident's complaints and the resources available to the Police Department at any given time. Nor does this address the broader issue of reduced personnel, lower budgets, and increased activity.

Mayor Hosterman concurred and said the Council has had more than one discussion regarding the ill effects of a thriving downtown. At the same time, she felt it was very important to allow the community to embrace the guidelines before making any larger sweeping changes.

**MOTION:** It was m/s by Cook-Kallio/McGovern to approve the staff recommendation with the caveat that those with businesses adjoining the core area could easily petition to be reassigned to the core area.

Councilmember Thorne said he served on the Task Force, is a member of the EVC, and was one of those who voted against the Task Force's action. While he supported the EVC's recommendations, he felt they needed at least one additional meeting to reach greater consensus. He said he also had issues with the conflicting noise standards mentioned earlier, which would allow for 80 decibels at the commercial property line while still achieving 60 decibels or less at the residential property line. He said he felt it would likely be an easier process to move properties from the transition zone into the core zone than vice versa. He said he tended to favor the staff recommendation and would support the motion, but request clarification on Councilmember Cook-Kallio's definition of "easy" in this context.

Councilmember Cook-Kallio said she did not wish for it to be overly cumbersome for either owners or staff. She suggested an initial period during which someone could simply petition to have a property in

the area added by staff reevaluated for assignment in the core area. She noted that she had received at least two, if not three, emails from people wished to be reassigned to the core area.

Mr. Fialho suggested there would be two ways of doing so. The first would be a simple over the counter petition. He said it seemed that it warranted enough consideration to pursue something more formal that might be attached to a business license application or real estate transaction.

Councilmember McGovern concurred with Mr. Fialho that a petition of this sort warranted evaluation and withdrew her second.

Councilmember Cook-Kallio said her intent was to address the handful of business owners who felt the designation negatively affected their property values. She considered it rather arbitrary to determine that Fernando's or Barone's should be added simply at the owners' request but then put others through a more onerous process.

Councilmember Sullivan noted that the flip side of that argument is that the residents have repeatedly asked that they not increase the size of the core area. He suggested that it would actually be more consistent with the public's desire to reassign Barone's and Fernando's back to the transition area.

Councilmember McGovern made a substitute motion for staff's recommendation. Councilmember Sullivan seconded the motion.

Ms. Ott clarified that the guidelines, as currently proposed, allow any property wishing to move from the transition to the core area to make a request to the City and submit to the normal review process before the Planning Commission and City Council.

**MOTION:** It was m/s by McGovern/Sullivan to approve the staff recommendation. Motion failed by the following vote:

**Ayes:** Councilmembers McGovern, Sullivan  
**Noes:** Councilmembers Cook-Kallio, Thorne, Mayor Hosterman  
**Absent:** None

**MOTION:** It was m/s by Cook-Kallio/Hosterman to approve the staff recommendation, with the caveat that those with businesses along Peters Avenue and adjoining the core area be given a specific amount of time to petition for inclusion in the core area. Following that, any petition would be subject to the City's normal review process. Motion passed by the following vote:

**Ayes:** Councilmembers Cook-Kallio, Thorne, Mayor Hosterman  
**Noes:** Councilmembers McGovern, Sullivan  
**Absent:** None

## **BREAK**

Mayor Hosterman called a brief recess at 9:26 p.m. and reconvened the regular meeting at 9:33 p.m.

## **2. Public Hearing:** Adopt a resolution establishing fixed and uniform refuse collection and recycling service rates for residential and commercial customers

Assistant City Manager Bocian presented the staff report, stating that the City maintains a franchise agreement for refuse collection and recycling with Pleasanton Garbage Service (PGS). Following receipt of a new rate proposal from PGS, the Council approved an agreement with the consultancy firm NewPoint Group to assist with reviewing the information provided. PGS' total request, which is

somewhat of a rolling request that does increase the more implementation is delayed, is for a 12.7% increase. Staff has not yet completed its review but feels it is appropriate and of benefit to the City to act on at least a portion of the request at this time.

Mr. Bocian stated the most recent rate adjustment was approved by the Council in 2009, although the commercial aspect was not enacted until the implementation of the new voluntary commercial recycling program. The residential curbside recycling program implemented in 2009 has been quite successful, with the latest information from Stopwaste.org showing a diversion rate of 73%. Staff believes that actual diversion rates at present are closer to 75%. The Council may recall that as part of that action, it also authorized an independent firm to prepare an analysis of PGS operations. While PGS, and the refuse business in general, continues to face inflationary costs that are reflected in the rate adjustment, the overall recommendations of the report were favorable.

Staff met with NewPoint and the City Council Refuse and Recycling Subcommittee on several occasions and is currently recommending a 5% increase to rates across the board. Based on information provided PGS, staff supports this portion of the rate adjustment that relates to cost of living increases, increased landfill costs, wage adjustments, miscellaneous expenses, and the 1% franchise fee.

Mr. Bocian discussed the proposal's impact on current rates, which would increase by \$1.46 per month for 35-gallon and \$1.73 for 96-gallon residential customers. NewPoint Group prepared a rate comparison, which demonstrates that PGS is above average in terms of 35-gallon can rates but is quite affordable on its 96-gallon cans. Staff feels this is at least partially due to the transition from larger to smaller sized waste cans and expects to see a more affordable average over time. PGS' commercial rates are approximately 20% above the average. The Council authorized a change to the way the franchise fee is calculated back in 2009, which yielded approximately \$214,000 in annual revenue for the City to support environmentally related programs. He noted the fee is still well below the average, which ranges from 8-14%, and said staff feels the increase justified by the additional costs in maintaining the franchise and refuse related information.

Mr. Bocian highlighted the outstanding issues relative to PGS' proposal:

- Agreement regarding the City's rate setting authority and PGS' obligation to operate within the approved rate. While this has not been a significant issue in the past, it does become more so as the end of the franchise nears;
- Examination of the financial records of PGS related companies, whose charges affect PGS' total expenses and pass through to the ratepayer, as part of the City's rate review;
- Agreement regarding the applicability of balancing accounts. This would potentially allow for any deficit of expenditures versus revenues collected to be placed into a balancing account, which rate payers are then asked to true up in the next rate term;
- Renegotiation of the current 50/50 split on recycling revenues;
- Explore the potential of a short term extension of the franchise agreement, should PGS agree to some of the aforementioned provisions requested by the City;
- Exploration of the commercial rate structure to assure it reflects the intent of the City's mandatory commercial recycling ordinance.

Mr. Bocian stated that staff is recommending the Council adopt the resolution setting forth the rate structure and authorizing the subcommittee to continue negotiations with PGS, approve Amendment #1 to the NewPoint Group agreement for additional services throughout this process, and approve an allocation of \$25,000 for legal services related to further negotiations. He reminded the Council that the departure of Mayor Hosterman and Councilmember Sullivan would require the assignment of two new

Councilmembers to the subcommittee. He stated that if approved, staff expects to report back to the Council within 9 months with a recommendation on the outstanding issues.

Mayor Hosterman opened the public hearing.

Victor Bailey said he had little issue with residential rates but does object to being woken between 5:15 and 5:30 a.m. every Thursday morning by PGS trucks. He asked that PGS adjust their route to start in a less residential area such as the aquatic park. He asked where the City stands with regards to the second noise barrier along the railroad tracks. He also noted that no additional parking has been proposed as part of the aquatic center expansion and asked why the City does not impose the same standards upon itself as it does others.

Mayor Hosterman explained that these items are not on the agenda and therefore the Council cannot comment. She recommended that Mr. Bailey speak with staff for an update regarding the railroad noise barriers.

Councilmember Sullivan said he was under the impression that PGS is not allowed to begin service in residential neighborhoods until 6 a.m.

Mr. Bocian said that is not the case but that PGS has been very responsive when approached with similar complaints in the past. He and Mr. Fialho agreed to follow up on the matter

Gordon Galvan, PGS, said PGS is a family owned business that has provided quality refuse and recycling service for the City of Pleasanton for over 40 years. He acknowledged that the current operating agreement is outdated and that it could benefit from updates that better meet the needs of the City, PGS and today's consumers. He said he looked forward to working together to create solutions that work for everyone. He said that while the garbage and recycling business might seem very simple on the surface, it is layered in complexities, regulatory requirements, and constantly fluctuating costs. The uncertainty in these cost centers and regulatory requirements add to the expense of providing services that needs to be accounted for in the new rate adjustment. He asked that the Council support the staff recommendation for the 5% rate adjustment and to take the next few months to discuss those areas that lack consensus, with the goal of creating an agreement that satisfies all parties.

Mayor Hosterman closed the public hearing.

Councilmember Thorne indicated his support for the staff recommendation. He agreed there are a number of outstanding issues. He also advised that as the end of the franchise agreement approaches, the City needs to consider whether or not to go out on a competitive basis for the next franchise as most other Alameda County cities do.

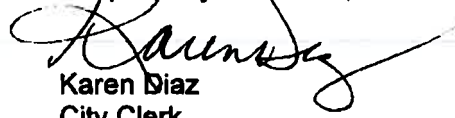
**MOTION:** It was m/s by Thorne/Hosterman to approve the staff recommendation. Motion passed by the following vote:

**Ayes:** Councilmembers Cook-Kallio, McGovern, Sullivan, Thorne, Mayor Hosterman  
**Noes:** None  
**Absent:** None

## **ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:51 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Karen Diaz', written in a cursive style.

Karen Diaz  
City Clerk