

2005 Pleasanton Plan 2025

1. INTRODUCTION



It identifies methods for improving public facilities and services to meet community needs and establishes a framework for implementing zoning, subdivision, and other government regulations. It provides information regarding the community, documents existing conditions, and projects future trends. It also explains City policy and offers specific programs to alleviate potential problems. Finally, the Plan serves as a reference document to help locate information from a variety of sources. In Pleasanton the City Council is the final authority for amending and interpreting the Plan.



Veterans Memorial Building

Using the General Plan

The General Plan is intended for all members of the community including residents, businesses, and City officials, as well as any other person or organization interested in the city's future. The City has written the Plan in lay language with technical terms defined throughout the text and with detailed technical data referenced in supporting documents.

This introduction, the thirteen General Plan elements, and the General Plan Land Use Map comprise the Plan. Each element discusses background, existing and future conditions, and then describes City goals, policies, and implementation programs.

The Plan also contains footnotes, which cite source material referenced in the text. The City of Pleasanton Community Development Department provided all technical and background data, unless otherwise noted. A General Plan Land Use Map accompanies this document and graphically depicts land-use and related physical development policies described in the text.

GENERAL PLAN ACCOMPLISHMENTS

~~The 1996 General Plan envisioned managed growth of the City consistent with a 29,000-unit residential cap and an Urban Growth Boundary. Consequently, residential **Residential** and commercial development **was has been** focused on infill sites with existing infrastructure or in Specific Plan areas in Happy Valley, along Stoneridge Drive, in the Vineyard Avenue Corridor, and on the Bernal Property. During the last ten years, the city has also seen significant development in its business parks, and redevelopment of some sites such as the former Kaiser Aluminum site at Sunol Boulevard and I-680 which is now a growing campus for Applied Biosystems. Of special note, Pleasanton has pioneered implementation of an ordinance requiring “green building” techniques to be used in commercial, civic, and residential developments.⁴~~

Open-space acquisitions along the Pleasanton Ridge and in Happy Valley have reinforced the open-space framework to the west and

⁴ Green building is the concept of creating structures and site designs using construction, siting, design, and operation techniques as well as renewable and environmentally friendly materials that limit the negative effects upon the surrounding natural environment and promote the health of building occupants.

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2. LAND USE ELEMENT



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It also allows the development of 750,000 square feet of commercial/office-building floor space. Phase II provides for community uses including parks and open space, a youth and community center, as well as an amphitheater and agricultural uses.

4. Laguna Oaks Specific Plan. This Specific Plan is essentially a development plan for the Laguna Oaks subdivision, where the first homes were completed in 1995.
5. North Sycamore Specific Plan. The City adopted this 135-acre Specific Plan in 1992 with the objective of providing guidance for annexation and development while retaining the area's rural character. Land-use designations include Low-Density Residential, Agricultural, and some Commercial and Medium-Density Residential near Sunol Boulevard. As of 2006, residential development of the area is mainly complete, although some commercial development is yet to be constructed.
6. Happy Valley Specific Plan. In 1998 the City adopted the 860-acre Specific Plan for Happy Valley. The Specific Plan area, which includes both incorporated and unincorporated land, includes a municipal golf course, open space and agricultural lands, as well as land for development of low-, medium-, and semi-rural-density homes. The Callippe Preserve Golf Course opened in 2005 and several golf-course custom homes have been developed.
7. Vineyard Avenue Corridor Specific Plan. This Specific Plan covers 384 acres on both sides of old Vineyard Avenue. The Plan allows a mix of single-family homes, vineyards, open space, community park, elementary school, and possible wine country related commercial sites. As of 2006, most of the single-family homes are either built or have planning approvals, and Vineyard Avenue has been realigned.

Future Specific Plans

In order to evaluate land use options and to provide detailed planning guidance in an area undergoing land-use transition, Pleasanton will initiate a specific plan for the East Pleasanton area.



Callippe Preserve Golf Course in Happy Valley area

In 1998 the City initiated a planning process for this area, which in 1999 the City deferred in order to complete the Bernal Property Specific Plan. This area includes approximately 1,000 acres in East Pleasanton and consists of lakes (reclaimed sand-and-gravel pits) now owned by Zone 7 Water Agency and Pleasanton Gravel Company, and land formerly owned by Hanson (Kaiser) Aggregates and Kiewit Corporation. Pleasanton will coordinate with Zone 7 on the planning of land uses in this area. This area, which the Livermore Airport impacts with aircraft noise, may include development of commercial, residential, and office/industrial uses, as well as use of lakes for flood protection, groundwater recharge, habitat, and recreation purposes. In addition, the Specific Plan will also define a circulation system for the area, including improvements to El Charro Road, will plan the extension of utilities, and would create a funding mechanism for the infrastructure required to support development.

GROWTH MANAGEMENT

The orderly growth and development of the city together with the preservation of an open-space frame has been a high priority for the Pleasanton community. The City has used several tools to attain this goal including the adoption of an Urban Growth Boundary; **and** a

Growth Management Program, and a cap on residential development.

Urban Growth Boundary

The General Plan Map designates an Urban Growth Boundary (UGB) line around the edge of land planned for urban development at General Plan buildout. Pleasanton voters ratified the Urban Growth Boundary in 1996. The line distinguishes areas generally suitable for urban development where urban public facilities and services are provided from those areas not suitable for urban development. Areas outside the Urban Growth Boundary are generally suitable for the long-term protection of natural resources, large-lot agriculture and grazing, parks and recreation, public health and safety, subregionally significant wildlands, buffers between communities, and scenic ridgeline views. The Urban Growth Boundary is intended to permanently define the line beyond which urban development will not occur, although the initiative also described some circumstance under which the Urban Growth Boundary could be adjusted.

Note that one existing development is located outside of the Urban Growth Boundary: the Little Valley Road neighborhood in Alameda County's jurisdiction south of Pleasanton. This area is designated as Rural Density Residential. Because this neighborhood is an existing



Hillside homes

partially developed area, the General Plan allows five-acre minimum parcel sizes without the provision of standard urban water and sewer service, subject to public health and safety considerations.

In November 2000, the voters of Alameda County approved an Urban Growth Boundary (*Measure D*) which is co-terminus with the city's Urban Growth Boundary in Pleasanton and also includes the Cities of Livermore and Dublin.

Residential Cap

The 1996 General Plan and a subsequent vote of the citizens of Pleasanton established a residential cap of 29,000 housing units within the Pleasanton Planning Area. In 2008, the voters approved *Measure PP* that broadly defines a housing unit, and approved *Measure QQ* which more specifically lists the types of units that count towards the housing cap. As projects are considered, the housing unit definitions in Measures PP and QQ will be applied in conjunction with the definitions from the US Census Bureau, State law, and information submitted by *Measure PP* petitioners into the public record.

In the future, Pleasanton is projected to grow to hold a maximum of 29,000 homes. This number assumes buildout of all residential lands shown on the General Plan Map at average densities (see Table 2-3) or consistent with an adopted Specific Plan where applicable. The City's Growth Management Program currently limits, subject to certain exceptions for qualified affordable housing projects, annual housing growth to 350 units, although actual growth has averaged around 250 units per year since 2001. At this rate, and including the addition of a small number of second units each year,

~~Pleasanton would reach a population of about 78,200 in the Planning Area in the year 2025.~~

TABLE 2-3: GENERAL PLAN DENSITIES			
Land Use Designation	Allowable Density Range	Average Density used for Holding Capacity	
Rural-Density Residential	0-0.2 du/acre	0.2 du/acre	
Low-Density Residential	0-2 du/acre	1.0 du/acre	
Medium-Density Residential	2-8 du/acre	5.0 du/acre	
High-Density Residential	8+ du/acre	15.0 du/acre	
Mixed-Use: Residential	20+ du/acre ^a	Not Applicable ^a	
Commercial	0-150% FAR		
Mixed Use/Business Park	^c	^c	
Commercial/Office	0-60% FAR ^b	35% FAR	
General & Limited Industrial	0-50% FAR	31% FAR	
Business Park	0-60% FAR	32% FAR	
Sand and Gravel Harvesting	Not Applicable	Not applicable	

Notes: du = dwelling unit(s), FAR = floor area ratio
^a This will be based on a planned unit development (PUD) or Specific Plan, as either may be amended from time to time, subject to the 150 percent maximum FAR..
^b An FAR of up to 300 percent is allowed in the Downtown Specific Plan area.
^c Projects may use the Mixed Use FAR and density ranges only if they include uses that are authorized by the Mixed Use land use designation. Conventional business park projects shall be subject to the FAR limitations in the Business Park land use designation.

Source: Community Development Department, 2008.

~~These projections depend on many factors including the national and local economies, Tri-Valley job growth, household size, average vacancy rate, commute patterns, water supply, wastewater treatment capacity, traffic capacity, air quality, and other factors.~~

Growth Management Program

The City adopted its first growth management ordinance in 1978, designed to regulate the location and rate of new residential growth in a period of sewage treatment constraints and air quality concerns. The growth management program was modified following the comprehensive revisions to the General Plan in 1986 and 1996. Currently the *Growth Management Ordinance*:

- Establishes an annual limit for new residential units.
- Requires the apportionment of yearly total new residential units to categories of projects (i.e., affordable projects; major projects; first-come, first-served projects; small projects).
- Defines a process for obtaining an allocation under the program.

In recent years, as fewer large residential development sites are available and the number of residential units seeking building permits is significantly lower than the annual allocation, there has been less need for a growth management system that acts to meter residential development. In the future, it is anticipated that the overall residential growth rate will decrease as the number of units approaches the 29,000 unit cap (see below). However ~~however~~, there may be years when large-scale multifamily or mixed use projects near the BART stations or in East Pleasanton compete with smaller projects for residential allocations. In addition, there is an opportunity to incorporate goals of this General Plan such as energy conservation, affordable housing, and sustainability into the allocation process. Future refinements of the Growth Management Program should seek to simplify the system and to incorporate the City Council's priorities.



Older homes along Saint Mary Street

Holding Capacity

Holding capacity is the ultimate size of the community that the Planning Area would accommodate if all land uses shown on the General Plan Map were to be built. Capacity is expressed in terms of housing units, population, commercial/office/industrial building floor area, and jobs at buildout.

By 2025, if all residential land shown on the General Plan Map is built out, Pleasanton will contain a ~~maximum of~~ **approximately** 29,000 housing units, ~~approximately~~ **600** second units, and ~~approximately~~ **1,100** residents in congregate (group) living facilities. These units will support a residential population of about 78,200. This population estimate assumes that vacancy rates will average three percent and household size will average 2.72 persons per household. The residential holding capacity is based on buildout at average densities ~~and, as stated above, has been validated by a vote of Pleasanton residents.~~

If all commercial, office, industrial, and other employment-generating land were built out (including assumptions for East Pleasanton), Pleasanton would contain approximately 35 million square feet of building floor area, enough to support about 97,000 jobs. Without counting potential development in the East Pleasanton Specific Plan area this figure would be about 86,000 jobs. This holding capacity estimate assumes that employment generating uses are built at average densities (Table 2-3, above), vacancy rates average seven percent, and employment densities will approximate current levels (Table 2-4, below). *ABAG Projections 2007* estimates a somewhat lower number of jobs with 76,020 in 2025 and 81,270 jobs in 2035.

TABLE 2-4: EMPLOYEE DENSITY STANDARDS

<u>Workplace Type</u>	<u>Average Square Foot Per Employee</u>
Office	300
Research & Development	340
Light Manufacturing	435
Warehouse/Service Industrial	560
Service Commercial	625
Retail	510
Restaurant	170
Hotel/Motel	1,370

Source: ITE (Institute of Transportation Engineers) Trip Generation Manual, 7th Edition rates, adjusted for Pleasanton.

Table 2-5 summarizes the number of acres of each land use designated within the Pleasanton Planning Area.

When zoning individual properties, the City shall attempt to balance development at the upper end of the General Plan density range with the lower end so that the City can apply average densities – shown in Table 2-3 – city-wide. ~~Within the Planning Area, the City shall maintain a maximum build-out of 29,000 housing units.~~ The average densities shown in Table 2-3 were used to calculate the holding capacity of the General Plan and resulting levels of traffic, noise, and air quality.

The General Plan Map’s conceptual depiction of major arroyos as Open Space-Public Health and Safety applies the Open Space designation to the entirety of flood-control channel rights-of-way as ultimately determined by the City. These arroyos are not to be counted as part of residentially designated gross developable acres. The City shall consider terrain of the land when designating land uses, so that it does not redesignate land that is not feasible or appropriate for development to Low-, Medium-, or High-Density Residential.

All projects receiving PUD approval prior to the adoption of this comprehensive General Plan update in 2009 shall be deemed in conformance with the provisions of this Plan.

Residential Areas

Any housing type (detached and attached single-family homes, duplexes, townhouses, condominiums, and apartments) in addition to religious facilities, schools, daycare facilities, and other community facilities, may be allowed in any of the residential designations provided that all requirements of the *Zoning Ordinance* are met.



Residential neighborhood in Pleasanton

- Rural-Density Residential - No more than 0.2 dwelling units per gross developable acre. Clustering of development shall be encouraged with lots of one acre and larger.
- Low-Density Residential - A maximum of two dwelling units per gross developable acre. In the Happy Valley area the density allowed is one dwelling unit per two gross acres with one unit per one-and-one-half gross acres when developed in conjunction with major open-space land or agricultural/open-space easement dedication.

- Medium-Density Residential - Between two and eight dwelling units per gross developable acre.
- High-Density Residential - Greater than eight dwelling units per gross developable acre.

Mixed Use

The Mixed-Use designation allows any combination of business park, office, retail, hotel and other commercial uses, community facilities, research and development, and residential uses in a single building, on a single site, or on adjacent sites where the uses are integrated and include a functional interrelationship and a coherent physical design. Higher density residential uses (30 units per acre or more) are encouraged in locations proximate to BART stations, and other areas near transit, although such residential development is not precluded in other areas designated Mixed-Use. Also consistent with the Mixed Use designation is:

- Existing development (as of General Plan adoption date) consisting of a single land use on a site, and
- Future development of a single use on a site if such a use is approved as part of a Development Agreement or Planned Unit Development (PUD)

The location of specific land uses in areas designated Mixed-Use is determined by the associated PUD zoning or specific plan. ~~In any case, the number of housing units in the Pleasanton Planning Area may not exceed 29,000.~~

Industrial, Commercial, and Offices

- Commercial and Offices (Retail, Highway, and Service Commercial; Business and Professional Offices) - Floor area ratios (FARs) are not to exceed 60 percent, except for hotels or motels which should not exceed 70 percent and for projects within the Downtown Specific Plan area which should not exceed 300 percent. Certain uses, such as warehouses, where employee density and traffic generation are minimal, may be allowed with higher FARs provided they meet the requirements of the *Zoning Ordinance* as well as all other City requirements.

General and Limited Industrial - FARs are not to exceed 0.5. Certain uses, such as warehouses, where employee density and traffic generation are minimal, may be allowed with higher FARs provided they meet the requirements of the *Zoning Ordinance* as well as all other City requirements.

- Sand and Gravel Harvesting - Land or buildings used for the extraction of mineral resources and related low-intensity activities such as ready-mix facilities and asphalt batch plants. No significant development is allowed in these areas.

- Business Park (Industrial and Commercial, including Offices) - Intended primarily to accommodate high-quality, campus-like development, including administrative, professional office, and research uses. Retail commercial uses are limited to those primarily serving business park employees. FARs are not to exceed 0.6.

- Program 15.2: Promote the location of business services in Pleasanton to support industrial, commercial, and office complexes.
- Program 15.3: Generally discourage the redesignation of commercial, business park, and industrial land to residential use, except for the area surrounding the BART Stations. Encourage the designation of land as mixed-use where impacts can be mitigated, and where there is potential to reduce traffic and facilitate affordable housing.
- Program 15.4: Require non-residential projects to provide a landscape buffer between new non-residential development and areas designated for residential use.
- Program 15.5: Industrial, retail, and office projects should generally conform to the average densities assumed in Table 2-3. However, projects proposing intensities greater than the average assumed in Table 2-3 may be allowed up to the maximum indicated, provided that sufficient amenities and mitigations are incorporated into the project to justify the increased density.

Mixed Use

Policy 16:	Encourage mixed-use development which encompasses any combination of commercial development, housing units, or community facilities in an integrated development. In areas served by transit, encourage mixed use and residential densities that support affordable housing and transit.
Policy 17:	The specific location of land uses, appropriate floor area ratios, and residential densities in mixed-use areas will be determined by the City Council through the planned unit development process or through the preparation of specific plans. In any case, the number of housing units in the Pleasanton Planning Area may not exceed 29,000.
Policy 18:	Establish a well-planned mixture of land uses around the BART Stations.

- Program 18.1: Work with the Hacienda Owners Association to prepare a comprehensive planned unit development amendment for the Hacienda Business Park with special emphasis on creating a mixed-use, pedestrian-friendly area around the East Pleasanton/Dublin BART Station. This General Plan confers no additional development entitlement above what is currently entitled in Hacienda.

- Program 22.5: The foregoing Policy 22 and Programs 22.1 through 22.4, this Program 22.5, and the Urban Growth Boundary designated on the City of Pleasanton General Plan Map as adopted by the Pleasanton Urban Growth Boundary Initiative in November 1996, shall be amended only by a vote of the people.
- Program 22.6: Reevaluate Urban Growth Boundary locations in East Pleasanton at such time as comprehensive land-use designation changes are considered for the reclaimed quarry lands.

Policy 23: Regulate the number of housing units approved each year to adequately plan for infrastructure and assure City residents of a predictable growth rate.

- Program 23.1: Review and modify the City's Growth Management Program to ensure an orderly process for developing the remaining residential units under the cap and to ensure that the City's goals for affordable housing and energy sustainability are met.
- Program 23.2: Prepare a "Growth Management" report as needed on which the City Council can base its Growth Management allocations.

Policy 24: Maintain a maximum housing buildout of 29,000 housing units within the Planning Area. Each single-family residential unit and each multi-family residential unit (for example, a condominium, townhouse, each half of a duplex, a mobile home, or an apartment unit), whether market rate or affordable, shall count towards the maximum housing buildout. Units within assisted living facilities are generally not counted toward the maximum housing buildout due to their commercial nature, but a proportion of such developments may be counted toward the maximum housing buildout based on impacts on community services and infrastructure. Second units and extended stay hotel rooms shall not count against the maximum housing buildout. (Measure QQ, Nov. 2008)

- Program 24.1: Monitor and zone future residential developments so as not to exceed the maximum housing buildout.
- Program 24.2: The foregoing Policy 24 and Program 24.1, and this Program 24.2, shall be amended only by a vote of the people.
- Program 24.3: A housing unit is defined to include any residence that includes a kitchen (sink, cooking device, and refrigerator) and a bathroom (toilet, tub or shower). The City Council shall uphold the housing cap and shall not grant waivers that exclude housing units consistent with this definition. (Measure PP, Nov. 2008)

Policy 25
24: Annex urbanized pockets of unincorporated land adjacent to the city limits in areas where landowners are willing to accept City services and development standards.

Program 254.1: Explore methods of annexing the remaining unincorporated pockets of urbanized land.

Policy 26
25: Encourage development in locations which would complete or install planned public facility systems.

Program 265.1: Invest in public facilities and amenities that support infill development.

Program 265.2: Assure that services to existing developed areas are maintained at an acceptable level when new development occurs.

Citizen Participation

Goal 4: Encourage the participation of residents, businesses, and neighboring jurisdictions in planning for community development.

Policy 27
26: Encourage the participation and collaboration of Pleasanton residents and businesses in land-use planning and decision making.

Program 276.1: Involve citizen committees in the formulation of City plans and programs such as the future specific plan for East Pleasanton and the comprehensive planned unit development amendment process for Hacienda Business Park.

Program 276.2: Disseminate information regarding City policies and services to Pleasanton residents and businesses through the use of newsletters, information brochures, the Internet, televised public meetings, and cooperation with the media.

Program 276.3: Provide advance information about upcoming changes, projects, and issues, and encourage the collaborative exchange of ideas between project sponsors, residents, and the business community.

Policy 28
27: Review and update the Pleasanton General Plan as conditions change.

Program 287.1: Conduct a review of General Plan elements, policies, and land uses by public officials and citizens, including all economic segments of the community, every five to eight years.

Program 287.2: Prepare an annual review of the General Plan status as required by State law.

City of Pleasanton

GENERAL PLAN HOUSING ELEMENT



**Department of Planning and Community Development
Adopted by the City Council on April 15, 2003**

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~~At General Plan build-out, the Pleasanton Planning Area is expected to contain 29,000 housing units, the dwelling unit cap which was approved by voters with the adoption of the 1996 General Plan. Build-out of all residential land within the Planning Area is projected to occur about the year 2015, based on current growth rates and on the dwelling unit ceiling. Based on these assumptions, the City will support a population of about 76,500 at build-out.~~

Housing Stock

The City's existing housing stock reflects its varied history in terms of its mix of types, tenure, age, and condition. Since most of the City's 24,000-plus dwelling units have been constructed in the last twenty-five years, it is generally in good condition. The City's oldest housing, including several heritage homes as well as a number of apartment buildings constructed between the 1960's through the 1980's, is found in the Downtown area. Also, although Pleasanton's housing stock has always been predominately single-family detached, the proportion of multiple-family and single-family attached housing has been increasing in recent years. Small-lot single-family housing became very popular in the mid- to late-1990's as a means of increasing affordability while providing a single-family detached product. At the same time, development of large-lot single-family lots in the hill areas of Pleasanton has seen the construction of a number of homes over 4,000 square feet on one-acre-plus lots. Thus, the City's housing stock continues to be varied and in good condition.



Rate of Growth

The growth of Pleasanton's housing stock has fluctuated since 1970, as shown in Table IV-2. The construction of several thousand housing units during the early 1970's led to an overburdened sewage treatment system and a resulting slowdown of housing growth during the late 1970's. These fluctuations resulted in the City adopting a Growth Management Program (GMP) in 1978, which has managed the residential growth rate according to

to January 1, 2001, Pleasanton has built 1,144 housing units of the 5,059 allocated by ABAG. However, the prior Housing Element period extended to 1996, and an additional 1,690 units were built between 1996 and 1999, resulting in 2,834 housing units built since the last Housing Element period. See Table IV-5.

Since 1986, the City has strengthened its commitment to lower-income housing by including a specific set-aside as part of the Growth Management Program. Currently, 100 units per year are reserved for projects which include 25 percent or more units affordable to lower-income households. This provision has been effective in encouraging the production of lower-income housing in Pleasanton over the years. ("Lower-income housing" is defined as housing units used by households with incomes no greater than 80 percent of the median family income and, therefore, includes the "low-income" and "very-low-income" categories. Please refer to Table IV-10.)

Sufficient infrastructure and public facilities have been planned (see Public Facilities Element) to accommodate the projected amount of residential growth through build-out of the Planning Area. The Growth Management Program has helped the City and other local service providers to keep pace with new housing with no reduction in services.

~~An issue not relevant to this Housing Element cycle but which most likely will be for the next cycle is the General Plan housing unit cap. Depending on the City's regional housing allocation during the next period, the City may be in a position of having to address its voter-approved housing cap if the next ABAG allocation would require the City to build housing in excess of 29,000 dwelling units.~~

Housing Type and Density

Pleasanton has historically been a city of predominantly single-family detached homes in traditional subdivisions of three to five units per acre. However, recent trends have decreased the proportion of detached single-family homes, which have declined from 74 percent to 65 percent of the total housing stock since 1985. The lack of vacant land for large developments in urban portions of the Bay Area, including Pleasanton, has led in part to an escalation of land values. This has resulted in an acceptance of smaller houses on smaller lots which are more affordable to middle-income households. Six percent of the housing stock consists of small-lot single-family detached units, and nine percent consists of duets or townhomes. Furthermore, the percentage of multiple-family units (not including duets and townhomes) has increased from 19 percent of the total housing stock in 1974 to 25 percent in 2000.

Since 1996, the City has constructed about 943 attached single-family and multiple-family housing units, which is approximately 35 percent of the total housing stock, as shown in Table IV-2. In addition, four small-lot single-family units are currently under construction, and 259 apartments, attached single-family units, and small-lot single-family units are approved but not currently under construction.

to year in the Report, it also functions as a monitoring mechanism, keeping track of the number of units constructed compared to regional housing goals, and projecting the amount of additional housing likely to be constructed over the upcoming years. This information allows the City to determine Growth Management allocations for the year; every year a separate determination is made based on all of these factors. However, the lower-income units carry over from year to year.

In order for the City to better ensure that a sufficient number of permits are available to accommodate its regional housing need throughout the planning period, the Housing Element contains a policy to continue to use the Growth Management Report to monitor the numbers and types of units at all income levels (Program 34.6). The Growth Management Report will continue to be used to inform decision-makers of the City's progress in meeting its housing goals and to guide them in making housing allocations sufficient to meet the City's housing needs.

Although the existing Growth Management Ordinance, which calls for decreasing the annual residential building permit allocation, is a constraint to meeting the City's regional housing needs, the General Plan allows up to 750 units per year, giving the City Council the legal authority to issue a sufficient number of building permits to meet the City's housing goals. Housing Element Program 34.5 states that the Growth Management Ordinance will be amended to provide a mechanism to override its annual allocations to approve projects, especially affordable-housing projects, to meet its total regional housing goals; this will enable the City to allow larger high-density housing projects with large percentages of affordable housing to be approved. Due to the potential of such projects to add large numbers of housing units of all income categories, particularly moderate-, low-, and very-low-income units, this approach is considered to be a quite feasible method for the City to accommodate its remaining regional housing need. Furthermore, one or two years of such overrides can easily allow the City to reach its housing goals, especially when considering the number of units already approved with Growth Management allocations.

The projects listed on Table IV-15 constitute 864 units which have been approved and which have growth management approval in the sense that they are classified as "first-come, first-served" projects, a category which allows up to 100 units per year to obtain building permits without needing specific growth management reservations. Historically and as projected for the remainder of this planning period, these projects would fit within this limit and would be able to build without constraint. In addition, the 557 units shown as "approved" in Table IV-16 have either received their growth management allocations or are similarly first-come, first-served projects. These 1,421 units (864 + 557) represent almost 60 percent of the City's remaining housing need for the planning period. As a result, as long as economic conditions encourage the building industry to build approved units as well as those units likely to be approved in lands expected to be converted to residential use, the City will be able to achieve its build-out projections and to meet its regional housing needs at all income levels.

~~Housing Cap: The Pleasanton General Plan includes a maximum number of housing units to be developed in the City. This housing cap of 29,000 dwelling units can only be changed by a vote of the people. The housing cap is not a factor in this Housing Element period since construction of all 5,059 of the units identified as Pleasanton's housing need would still result in fewer than~~

~~29,000 units. Although the housing cap does not impact Pleasanton's ability to meet its housing goals during the current Housing Element period, it has the potential to create an impact in future planning periods, depending on the following factors:~~

- ~~▪ Pleasanton's regional housing needs allocation for the next planning period;~~
- ~~▪ Future job growth in Pleasanton;~~
- ~~▪ Local environmental constraints, including traffic;~~
- ~~▪ Adequacy of infrastructure;~~
- ~~▪ Regional traffic issues and their impacts on Pleasanton;~~
- ~~▪ Sub-regional issues such as air quality and water availability; and~~
- ~~▪ Economic conditions at the local, state, and national levels.~~

~~The City will evaluate its regional housing needs for the next planning period based on the above factors and will develop an appropriate strategy once this information is available.~~

Urban Growth Boundary: The City's Urban Growth Boundary has been incorporated into Pleasanton's General Plan as an expression of the practical limits to the City's physical boundaries. The northern and eastern boundary lines represent other City limits, Dublin and Livermore, respectively, beyond which Pleasanton cannot extend. The western and southern boundaries, comprised on steep slopes and ridgelines, reflect the joint policies of the City, Alameda County, and the Local Agency Formation Commission (LAFCO) to avoid development in topographically and environmentally constrained lands and encourage development within in-fill areas of existing City limits. Its intent is not to limit growth but to promote "smart growth" by focusing new housing in areas which can be readily serviced and which avoid major environmental issues. The City's analysis of approved and potential new units shows that the City can meet its share of the regional housing needs within its Urban Growth Boundary.

The City can also be pro-active in the attainment of housing affordability. Sending positive signals to non-profit and for-profit developers interested in building affordable housing through incentives can attract such development to the City. Creating educational programs to inform the public what "affordable housing" developments can look like and that they are intended to house people who may already live and work in the community are positive steps which government can take to overcome perceptions and to facilitate housing to meet the community's needs.

Non-Governmental Constraints

Non-governmental constraints to housing production and affordability include market conditions such as land costs, construction costs, and the availability of financing that affect the cost of housing. These costs are not directly related to local government regulations or policies.

Land Costs: The cost of land is a major determinant of the price of housing. Not only does the City not have direct control of land costs, but the cost of land is also a function of the regional housing market; therefore, any efforts the City may make in this area would be limited. Nonetheless, the City's ability to influence the supply of developable land which is zoned for housing can result in the production of more housing, which may have a positive influence on housing cost. As a result, Tables IV-15, -16, and -17 identify land with residential development

2005 Pleasanton Plan 2025

9. AIR QUALITY AND CLIMATE CHANGE ELEMENT



- A baseline greenhouse gas emissions inventory and forecast;
- Assistance in developing an emission-reduction target;
- A survey of existing polices and programs to reduce emissions and save energy;
- A template local Climate Action Plan that Pleasanton can use as a start in developing its individual local action plan.

In 2007 the City joined both the Alameda County Climate Protection Project and ICLEI for a one year period. During this time the City has worked with ICLEI to develop an inventory of greenhouse gas emissions. The next step will be to prepare a climate action plan that consists of polices and measures that include existing and future actions capable of meeting local greenhouse-gas-reduction targets. The City will implement, monitor, and report appropriate and achievable components of the proposed action plan.

In March 2009, the Pleasanton City Council reviewed the greenhouse gas inventory prepared by ICLEI for both City operations and the community. Previously, a less complex, “order of magnitude” analysis was prepared by LSA Associates¹¹ in order to evaluate the comparative level of emissions for existing development and buildout. (Additional data related to the project alternatives were also included in the Draft EIR for the General Plan.) This information is shown in Table 9.4.

The table shows that currently transportation accounts for the largest share of greenhouse gas emissions, with emissions from residential development the second largest category. In the future, at buildout, transportation is still the largest share, but emissions from commercial/office/R&D will be the second largest share. Emissions

¹¹ Memorandum dated August 12, 2008, from Ronald Brugger, Air Quality Specialist, LSA, to Janice Stern, Principal Planner, City of Pleasanton.

from residential development in 2025 are expected to be only slightly more than existing levels, because of the cap on residential development of 29,000 units:

TABLE 9.4: GREENHOUSE GAS EMISSIONS

Emission Source	Existing Conditions (2005)		Buildout (2025)	
	CO ₂ e in MT/Year	% all CO ₂ e	CO ₂ e in MT/Year	% all CO ₂ e
Residential	0.277	21	0.319	16
Commercial/Office/R&D/Other	0.241	18	0.404	21
Industrial	0.043	3	0.082	4
Transportation	0.777	58	1.140	59
Total Annual Emissions	1.338	100	1.940	100

Notes: CO₂ = carbon dioxide, e = equivalent, CO₂e = carbon dioxide equivalent, MT=million tons

Source: LSA Associates, August 2008.

The increase in CO₂e (carbon dioxide equivalents) per year shown in the table represents the “business as usual” scenario. This increase does not take into account potential reductions that would result from the implementation of many new programs in this General Plan. The following section lists and describes those policies and programs.

In September 2008, the City Council adopted a resolution establishing a Committee on Energy and the Environment to advise the City Council on energy and environmental related issues, strategies, planning and protections and opportunities for conservation. The Committee will have the following duties and responsibilities:

- Work closely with City staff to prepare an Energy and Environmental Priorities Plan focusing on energy and environmental issues and strategies reflecting community opportunities, needs and interest;

2005 Pleasanton Plan 2025

13. ECONOMIC AND FISCAL ELEMENT





Downtown commercial area

contributing factor is that the City has experienced increased retail competition by neighboring cities in the I-580/I-680 freeway corridors.

With the development of the remaining vacant commercial land in Pleasanton, the City will benefit from additional new sales-tax-generating businesses. However, retail development in the I-580/I-680 corridors from Livermore to Dublin and from Dublin to San Ramon also continues to expand. Because of the increase in retail outlets in neighboring cities and the remote possibility that the State will redistribute some of the City's sales tax dollars in the future, it is unlikely that Pleasanton will soon, if ever, see the growth in sales tax revenues that it did in the past.

Property assessed values continue to rise, although not at the levels of the prior two decades. Property tax revenues are projected to increase

five to six percent over the next few years but could trend in the range of four to five percent as the City gets closer to General Plan build-out.

Reassessments based on both residential and commercial property resales will be an important factor affecting the future growth rates in property tax revenue. In addition, the remaining few new housing units **allowed planned for** in the General Plan will contribute to increased property tax revenue, but new and remodeled commercial properties will likely comprise a bigger share of the increase in the long term.

Figure 13-3 reflects the historical percentage of General Fund revenue derived from property and sales taxes combined. In 1986-87, the two sources comprised 55 percent of total General Fund revenue. For 2005-06, they are projected to comprise over 70 percent of the total General Fund revenue.

Figure 13-4 reflects the historical percentage derived from each of the two revenue sources. Note that during the period 1996-97 through 1998-99, sales taxes surpassed property taxes as the primary source of revenue. This trend was previously expected to prevail as the City approached build-out.

However, this trend was quickly reversed starting in 1999-2000, when for the reasons previously described, property tax dollars once again outpaced sales tax as the major revenue source. While property taxes are a far less volatile revenue source than sales tax, the resulting trend is toward a concentration in fewer revenue sources. However, to remain fiscally sustainable, it is important for the City to have as much local control over revenue sources as possible, and to have as much diversity as possible. Several goals and policies in the Element address this issue.

2005 Pleasanton Plan 2025

Appendix A: Greenhouse Gas Reduction Measures

10. Energy Element

Goal 1	Move toward a sustainable energy future.	Program 5.1	Partnerships to improve energy conservation/efficiency.
Policy 1	Reduce the City government's energy demand.	Policy 6	Preserve/strengthen City's green building policies/regulations.
Program 1.1	Reduce City government energy consumption.	Program 6.1	Better educate the public about green building opportunities.
Program 1.2	Make the City a model by increasing insulation/weatherization	Program 6.2	Review <i>Green Building Ordinance</i> for Green Points change.
Program 1.3	Coordinate schools and City for facilities energy management.	Program 6.3	Encourage green building practices for all projects.
Program 1.4	Adopt a City "Green Fleet" policy.	Program 6.4	Recognize exemplary green building projects with awards.
Program 1.5	Energy efficient lighting, air conditioning, heating, irrigation.	Program 6.5	Ensure that <i>Green Building Ordinance</i> is working as intended.
Program 1.6	Other public agencies to consider green-building practices.	Policy 7	Promote renewable energy.
Policy 2	Energy efficiency and energy conservation through education.	Program 7.1	Encourage public and private to generate renewable energy.
Program 2.1	Energy workshops for homeowners, businesses, professionals.	Program 7.2	Use solar in public and private facilities.
Program 2.2	Distribute energy-related educational materials to public.	Program 7.3	Photovoltaic demonstration projects with all development.
Program 2.3	Create educational displays on energy conservation.	Program 7.4	Photovoltaic co-op program & related financial considerations.
Program 2.4	Energy conservation/efficiency info on City's web page.	Program 7.5	City to purchase solar panels in bulk. Pass savings to public.
Program 2.5	Educational program about conservation, energy, and rebates.	Program 7.6	New home construction with roofs to hold solar panels.
Program 2.6	Promote using less energy during peak demand periods.	Program: 7.7	Solar water heating/solar-ready roofs in new construction.
Program 2.7	Share information about link between water and electricity use.	Program 7.8	Alternative/renewable fuels and fuelling stations.
Policy 3	Reduce demand for electricity and natural gas.	Program 7.9	Photovoltaic joint venture project on private property.
Program 3.1	Create incentives for energy efficiency and support PG&E's.	Program 7.10	Solar cities program for standardized photovoltaic installation.
Program 3.2	Identify insulation needs. Incentive program to insulate.	Program 7.11	AB 811 funds: energy efficiency upgrades in houses/businesses.
Program 3.3	Alternative energy technology in private and public projects.	Policy 8	Consider other sustainable means energy supply in the city.
Program 3.4	Educational materials in energy efficiency for property owners.	Program 8.1	Explore the use of alternative energy technologies.
Program 3.5	Financial incentives for development of low energy homes.	Program 8.2	Support DSRSD's use of methane from the sewage treatment
Program 3.6	Categorize/allocate low-energy homes under housing cap City's Growth Management Program.	Policy 10	Businesses to implement sustainable energy projects.
Policy 4	Reduce heating and cooling energy use in the city.	Program 10.1	Encourage energy efficiency reviews.
Program 4.1	Development to use properties of nature, i.e., passive solar.	Program 10.2	City program for businesses for energy efficiency reviews
Program: 4.2	Parking lot tree planting to cool parking, surrounding areas.	Program 10.3	Require the installation of energy efficient lighting.
Program 4.3	Reduce heat gain / air-conditioning w/ light-colored paving.	Program 10.4	Commend businesses/individuals that save more energy.
Policy 5	Partnerships to reduce electricity/natural gas demand.		



CITY COUNCIL AGENDA REPORT

15

August 17, 2010
City Manager
City Attorney

TITLE: APPROVAL OF SETTLEMENT AGREEMENT CONCERNING *Urban Habitat v. City of Pleasanton* LITIGATION

SUMMARY

The City Council has conducted several open meetings for the purpose of informing the public of the March 12, 2010 Superior Court ruling in the *Urban Habitat v. City of Pleasanton* litigation. Since receiving public comment regarding potential courses of action relating to the litigation, the City Council has been working with Urban Habitat, Public Advocates, Inc. and the Attorney General's Office, in an attempt to reach a settlement of the entire case. A tentative settlement agreement/settlement term sheet (Tentative Agreement) was arrived at between representatives of all parties, and on July 20, 2010 the Council unanimously (with Council member Sullivan absent) approved the general terms contained in that Tentative Agreement and authorized the preparation of a Settlement Agreement. The Settlement Agreement, which will dispose of all remaining causes of action and pending lawsuits relating to the Urban Habitat litigation, is now before the City Council for its consideration and approval.

RECOMMENDATION

1. Authorize the City Manager to execute the Settlement Agreement (Attachment 1).
2. Authorize first payment of \$995,000 from the Self-Insurance Retention fund (218).
3. Direct the City Manager and City Attorney to take appropriate steps to effectuate the City Council's intent in entering into the Settlement Agreement.

FINANCIAL STATEMENT

The Settlement Agreement requires the payment of attorney's fees equaling \$995,000 within thirty days, and an additional \$995,000 no later than July 31, 2011. The Self-Insurance Retention fund (218) will be used for the initial payment. The second payment will be addressed as part of the 2011-12 Budget.

BACKGROUND

In November 2006, Urban Habitat filed a lawsuit against the City claiming that various City policies and ordinances prevent or hinder the development of affordable housing in Pleasanton during what is known under the State Housing Element Law (Government Code section 65583 *et seq.*) as the "Third Planning Period" ending in 2009. The Petitioners' complaint, which was amended in 2009 to assert similar claims arising in connection with the City's housing requirements for the Fourth Planning Period, and which the State Attorney General then joined, alleged (among other claims):

- That the City's Housing Cap violates state law in a number of respects, including that the Cap prevented the City from accommodating its regional "fair share" housing needs assessment numbers ("RHNA"), and sought to have the Cap declared invalid.
- That the City failed to carry out mandatory duties under Program 19.1 of the 2003 Housing Element, and under the so-called Least Cost Zoning Law (Government Code section 65913.1 *et seq.*), namely, that the City failed to zone sufficient property to accommodate its regional affordable housing obligations.
- That the City failed to carry out mandatory duties under another General Plan program by failing to amend its Growth Management Ordinance to override the annual housing allocation in order to meet regional housing needs.

In addition, the Attorney General filed a separate lawsuit in 2009 challenging the City's 2009 General Plan update. That lawsuit asserted claims that the General Plan update Environmental Impact Report (EIR) was inadequate under the California Environmental Quality Act (CEQA), and that the update itself violated State law in several respects. The Attorney General and the City agreed to suspend litigation on the General Plan lawsuit pending the outcome of the Urban Habitat litigation.

On March 12, 2010, the Court issued a decision in the Urban Habitat matter which may be distilled as follows:

- The Cap conflicts with State law RHNA requirements.
- The City cured any defects in its Growth Management Ordinance by its recent (October 2009) amendment allowing the Council to override the ordinance to satisfy RHNA requirements.
- The City failed to carry out a mandatory duty, under Program 19.1 of the 2003 Housing Element and under the Least Cost Zoning Law, to rezone sufficient properties to high density residential (e.g., 30 units/acre) in order to accommodate the remaining housing units required for the Third Planning Period. Although in October 2009, the City Council rezoned properties in the Hacienda Business Park to meet this obligation, the Court agreed with Urban Habitat that this rezoning was "illusory," and did not satisfy Program 19.1 or State law because it did not actually allow development to occur until after completion of the Hacienda PUD amendment process that is anticipated to last at least one year.

The Court's order invalidates the Cap in its entirety. It also directs the City to:

- "Cease and desist" from enforcing, administering and/or implementing the Cap.
- Remove references to the Cap from its General Plan.
- Affect sufficient, "non-illusory" rezonings to accommodate the "unmet" RHNA (521 units) for the Third Planning Period.
- Cease issuing any non-residential building and all related permits for construction or development until it brings its General Plan into compliance.

To fully inform the public of the Court decision, and solicit complete public involvement, the City Council held public meetings on April 6 and 20 during which potential responses to the Court ruling were discussed. While a range of comments were presented to the Council, many members of the public expressed an interest in resolving all legal matters as expeditiously as possible. In addition, many members of the public stated their concern over continued legal appeals/challenges and the expenses stemming from continuing this legal dispute. In response, and in view of information provided by staff and legal counsel, the City Council decided to pursue a settlement of the entire lawsuit and related second lawsuit and through it discussions, five general goals were identified upon which settlement options were evaluated. The five goals are as follows:

- Retain local control and flexibility to the maximum extent possible relative to the Hacienda rezonings and development process, including retention of a meaningful role for the Hacienda Task Force and public input;
- Restore City's non-residential permitting authority as quickly as possible;
- Retain control over the City Housing Element update process to assure it reflects both State law and the interests of the community;
- Reach a global settlement that addresses the Court's entire March 12, 2010 ruling as well as other outstanding litigation.
- Minimize financial impacts of the litigation;

To facilitate the negotiations, the City Council appointed Mayor Hosterman and Councilmember McGovern to serve on a negotiating team, which also included the City Manager, City Attorney, the City's contract legal counsel and various staff members, for the purpose of attempting to reach a settlement agreement. Numerous negotiations have occurred over the past few months which resulted in the Tentative Agreement approved by the City Council on July 20, 2010, and now the Settlement Agreement (Attachment 1). The negotiating team has determined that the Settlement Agreement meets the City Council's settlement goals, and as a result, the Settlement Agreement is being recommended for approval.

DISCUSSION

The Settlement Agreement basically tracks the Tentative Agreement. Below is an article by article explanation of the Settlement Agreement. (The term "Plaintiffs" refers to Public Advocates, Inc., Urban Habitat, Sandra DeGregorio *et al.*; the term "Intervener" refers to the California Attorney General.)

Article 1 (Recitals). These statements set forth the underlying facts that led to the parties entering into the Settlement Agreement. This is typical of any settlement agreement as it makes clear what dispute is being resolved and under what circumstances. Section 1.9 incorporates the Court's March 2010 ruling. Section 1.10 reflects that through the Settlement Agreement all the parties are achieving results that they could not have achieved through a litigated outcome. Section 1.11 emphasizes that the parties worked in good faith to arrive at this Settlement Agreement. Section 1.12 incorporates the Tentative Agreement previously agreed to by the parties. Section 1.13 makes clear the parties' desire to fully settle and resolve the merits of the Urban Habitat Litigation and General Plan/CEQA Litigation.

Article 2 (Definitions). Terms used in the Settlement Agreement have specific meanings which are set forth in this article. In reviewing the Settlement Agreement, one should refer back to these definitions.

Article 3 (Recitals). This makes clear that the parties agree that what is set forth in the Recitals is correct.

Article 4 (Housing Cap). These provisions bind the City to eliminating references to the Housing Cap from the Pleasanton General Plan by October 19, 2010. The City shall not implement the Housing Cap in the interim before those specific provisions are removed from the General Plan. It is specifically acknowledged that the City has the authority to enact growth control regulations in compliance with State law and consistent with the Settlement Agreement. This latter point was very important to the City Council in approaching the negotiations that led to this Settlement Agreement.

Article 5 (Non-Discrimination Policy). It is acknowledged that the City adopted a non-discrimination resolution, Resolution No. 10-390, on July 20, 2010, consistent with the previously agreed upon Term Sheet, and its terms are incorporated into the Settlement Agreement by reference. Should the City violate the terms of the Resolution, the Plaintiffs and Intervener could allege that the City has also violated the terms of the Settlement Agreement.

Article 6 (Housing Element). As per the Tentative Agreement, the City is subject to an aggressive timeline (which closely tracks what was ordered by the Court) to submit a draft updated Housing Element for the fourth planning period to the State Housing and Community Development Department (HCD) by August 16, 2011. Thereafter, following receipt of HCD's comments, the City will have 90 days to adopt an updated Housing Element. (An extension of this date may be agreed to by the parties in the event of unique and unforeseen circumstances, but HCD's failure to credit the City for the rezoning of 350 lower income units in the prior planning period based on approval of the

Windstar project will not be considered as such a circumstance. The City reserves the right to pursue this matter with HCD in the event of an initial adverse determination from HCD.) The City will release a draft Housing Element inventory as contemplated under the Government Code no later than February 20, 2011. As part of the Housing Element process the City will study and consider goals and programs that promote affordable non-profit housing and development for families, as well as special needs households, and that strengthen and promote construction of affordable units for families. The City will implement the actions set forth in sections 2 and 3 of Resolution No. 10-390 adopted on July 20, 2010, as the City deems appropriate. The City will complete any and all rezoning and General Plan amendments necessary to accommodate in full its RHNA at each income level for the fourth planning period prior to or concurrent with its adoption of the updated Housing Element. The City will prepare and certify an EIR as part of the Housing Element update process.

Article 7 (Hacienda Business Park Rezonings). These provisions reflect what the parties agreed to in the Tentative Agreement. No later than November 2, 2010, the City Council will amend Ordinance No. 1998 to delete Section 5, "PUD Modification Contingency." By January 4, 2011, the Council will approve core development standards for the three Hacienda sites which will entail: densities of a minimum of 30 units per acre; affordability requirements such that the greater of (a) 15% of units of all units, or (b) 130 units, will be made available exclusively to very-low income (50% of AMI [Average Median Income]) households; through the affordable housing agreements entered into between the City and each developer, the developments will be required to accept HUD Section 8 Rental Vouchers as a means of assisting qualified applicants; a minimum of 10% of the total affordable units will be three-bedroom units, a minimum of 35% of the total affordable units will be two-bedroom units, and the remaining affordable units will be one bedroom units; and affordable units will be dispersed throughout the development.

No later than March 1, 2011, the City will develop and approve non-core development standards and design guidelines for the three Hacienda sites that are not inconsistent with the core development standards.

No later than March 1, 2011, the City Council will adopt a PUD zoning ordinance for the three Hacienda sites setting forth the core and non-core development standards and design guidelines. Commencing at the effective date of the PUD Zoning Ordinance, the City will accept development application(s) from developer(s)/property owner(s) as part of the City's PUD application process to determine conformity with development standards and design guidelines.

In processing development applications, the City will use its discretion to adopt conditions relative to interpretation of design standards and design guidelines, but shall not deny a PUD application for a housing development on the three Hacienda Sites that meet the core and non-core development standards and/or design guidelines, and in accordance with Government Code §65589.5, shall not condition a project in a manner that makes it infeasible.

Article 8 (Climate Action Plan). No later than February 17, 2012, the City will adopt a Climate Action Plan. The City shall prepare a General Plan SEIR for the Climate Action

Plan. The City will implement the Scope of Services incorporated into the professional services agreement entered into between the City and ESA on July 20, 2010; provided, however, that the City may, in its discretion, and after providing advance written notice to Intervener and Plaintiffs, modify the Scope of Services in a manner that does not prevent the City from fully addressing the allegations raised by the General Plan/CEQA litigation. The Climate Action Plan will address the allegations raised by the General Plan/CEQA litigation, as spelled out in the Scope of Services. The Attorney General's Office has interpreted CEQA and its Guidelines to require that the City analyze its GHG emissions and reduction strategies for the life of a project (through 2025 for the City's General Plan), and to require that the City measure GHG impacts against physical environmental conditions as they exist at the time a Notice of Preparation is published, not against a "business as usual" scenario. The City acknowledges, but is not bound by, these interpretations of the Attorney General's Office, and shall consider drafting the SEIR to be consistent with these interpretations. Nothing in the Settlement Agreement requires the City to undertake any obligation with respect to the Climate Action Plan, or the SEIR for the Climate Action Plan, in excess of the obligations generally imposed under CEQA or any other State law.

Article 9 (CEQA). As appropriate, and as agreed to in the Tentative Agreement, the City will conduct environmental analysis in accordance with CEQA and CEQA Guidelines for the actions identified in the Settlement Agreement.

Article 10 (No Additional Litigation; Plaintiffs' Waiver and Release). The parties agree to terminate all litigation. The City will not appeal or further contest the actions. The Plaintiffs and Intervener agree to dismiss with prejudice all outstanding causes of action and litigation. Dismissal with prejudice means they are agreeing not to sue the City again based upon any issue that was raised in the Urban Habitat litigation. But, they reserve the right to enforce the Settlement Agreement and challenge future implementation actions by the City, i.e. adoption of the Housing Element update and the Climate Action Plan. Enforcement of this agreement could entail reinstatement by the Court of cessation of the City's permitting authority.

Article 11 (Permitting Authority). The City's permitting authority shall be fully and immediately restored upon approval of the Settlement Agreement.

Article 12 (Judgment and Enforcement). The Settlement Agreement shall be made a part of a Judgment to be approved by the Court. The Court will retain jurisdiction over the case pending completion of all items agreed to by the parties. If one party believes the other has breached the terms of the agreement, there is a mechanism to notify the other party of the concern and an opportunity to meet and confer together before a party pursues judicial enforcement. It is acknowledged that Plaintiffs and Intervener may seek from the Court re-imposition of restriction of the City's permitting authority in the event of a breach of the Settlement Agreement by the City.

Article 13 (Attorneys Fees and Litigation Costs). The City shall pay \$1,990,000 to Public Advocates, Inc. in two equal payments, one within 30 days of the date of approval, and the second no later than July 31, 2011. The State Attorney General's Office does not seek recovery of fees. If Plaintiffs or Intervener make(s) a claim arising from some

alleged occurrence before the approval of the Settlement Agreement, the City's obligation to make any remaining payment shall cease and Plaintiffs shall be obligated to reimburse the City for any payment already made (a strong incentive for not engaging in additional litigation against the City of Pleasanton.) Plaintiffs and Intervener are not waiving rights to claims for alleged wrongdoing by the City occurring after approval of this Settlement Agreement.

Article 14 (Other Provisions). No party admits liability or fault by entering into the Settlement Agreement. No third party may rely upon the Settlement Agreement to claim a benefit under the agreement, i.e. the parties do not intend for the Settlement Agreement to confer rights upon a third party that such third party might seek to enforce against the City or other parties. The remaining provisions in this article are standard clauses in release agreements and are appropriate for inclusion in the Settlement Agreement.

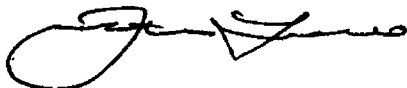
OTHER RELATED MATTERS

In recognition of the complexity associated with implementation of this Settlement Agreement and the importance of transparency in its execution, staff will be recommending to the City Council the establishment of a Settlement Agreement/Growth Management Sub-Committee comprised of two Council members and City staff. The goal of this sub-committee will be to monitor ongoing implementation of the Settlement Agreement and provide quarterly updates to the public. The group will also be charged with reviewing, researching and investigating alternative growth management strategies for consideration and implementation by the City, prior to and or following adoption of the new Housing Element. Establishment of the subcommittee will be presented to the City Council for its consideration in September.

CONCLUSION

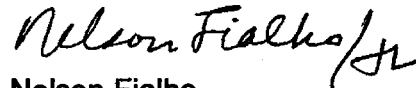
Staff, City legal counsel and the City Council negotiating team believe this Settlement Agreement meets the goals the City Council set in order to address this situation and settle the litigation pending against the City. The Settlement Agreement places considerable obligations upon the City which must be met within very short time periods. Still, this Settlement Agreement results in greater certainty for the City, residents, future residents, businesses and property owners. It will allow the City to proceed with updating its Housing Element and adopting a Climate Action Plan in accordance with State law.

Submitted by:



Jonathan P. Lowell
City Attorney

Approved by:



Nelson Fialho
City Manager

Attachments

1. Settlement Agreement signed by Plaintiffs and Intervener, with attachments
2. July 20, 2010 City Council Agenda Report concerning Urban Habitat litigation, with attachments
3. July 20, 2010 City Council Agenda Report approving agreement with Environmental Sciences Associates to prepare Climate Action Plan and EIR, with attachments

SETTLEMENT AGREEMENT

This Settlement Agreement and Covenant Not to Sue (“Settlement Agreement”) is entered into by and among Plaintiffs URBAN HABITAT PROGRAM and SANDRA DE GREGORIO, Intervenor PEOPLE OF THE STATE OF CALIFORNIA, EX REL. EDMUND G. BROWN JR., ATTORNEY GENERAL and Defendants CITY OF PLEASANTON and CITY COUNCIL OF PLEASANTON.

1. RECITALS

This Settlement Agreement is entered into based upon the following facts:

- 1.1 On or about June 20, 2006, Plaintiffs sent a letter to the City of Pleasanton asserting various shortcomings in the City’s compliance with affordable housing laws, and requesting a meeting to resolve the issues identified. A meeting was held on or about August 22, 2006, but the parties could not resolve the matter at the time.
- 1.2 After further informal discussions proved unsuccessful, on or about October 17, 2006, Plaintiffs Urban Habitat Program and Sandra De Gregorio filed an action in Alameda Superior Court known as *Urban Habitat Program, et al. v. City of Pleasanton, et al.*, Case No. RG 06 293831 (“Urban Habitat Litigation”). The Complaint alleged, among other things, and the City denies, that the City had failed to complete the rezoning of sites for affordable housing, that certain City ordinances and housing practices, including the City’s 29,000-unit “Housing Cap,” conflicted with State law, and that certain acts and omissions of the City unlawfully discriminated against housing for lower-income households and against lower-income families with children. The Complaint asserted, and the City denies, eight causes of action, alleging violations of State statutes and the State Constitution.
- 1.3 On or about May 17, 2007, after a previous demurrer had been sustained with leave to amend, the Superior Court sustained the City’s demurrer to the First Amended Complaint without leave to amend. The Court held that all eight causes of action were time-barred and that three causes of action were unripe.
- 1.4 On or about June 20, 2008, the Court of Appeal reversed the Superior Court, reinstating six of the eight causes of action asserted. *Urban Habitat Program v. City of Pleasanton*, 164 Cal. App. 4th 1561 (2008). The California Supreme Court denied the City’s petition for review on or about October 22, 2008.
- 1.5 On remittitur to the Superior Court, Plaintiffs filed a Second Supplemental and Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief on or about May 1, 2009. The Second Amended Complaint included causes of action, which the City contests, for writ of

mandate (first through fourth causes of action) and additional causes of action for declaratory and injunctive relief (seventh and eighth causes of action). The Parties agreed to bifurcate the seventh and eighth causes of action for separate trial.

- 1.6 On or about June 24, 2009, People of the State of California, ex rel. Edmund G. Brown Jr., Attorney General, filed a Complaint in Intervention in the Urban Habitat Litigation, joining in Plaintiffs' first three causes of action. The Court overruled the City's demurrers to the Second Amended Complaint and the Complaint in Intervention on or about August 27, 2009.
- 1.7 On or about August 21, 2009, People of the State of California, ex. Rel. Edmund G. Brown Jr., Attorney General, filed an action in Alameda Superior Court known as *People of the State of California v. City of Pleasanton, et al.*, Case No. RG 09 469878 ("General Plan/CEQA Litigation"). The Complaint alleged, among other things, and the City denies, that in adopting an updated General Plan and certifying an environmental impact report the City failed to fully evaluate and disclose reasonably foreseeable environmental effects or to consider less environmentally harmful alternatives, in violation of the California Environmental Quality Act ("CEQA"). On or about September 15, 2009, the Superior Court entered the Parties' stipulated stay of the General Plan/CEQA litigation pending the Court's ruling in the Urban Habitat Litigation.
- 1.8 On or about October 15, 2009, Plaintiffs filed a Motion for Writ of Mandate on their first, second, third, and fourth causes of action in the Urban Habitat Litigation. Intervenor concurrently filed a Motion for Writ of Mandate on its first, second, and third causes of action. Those motions came on regularly for hearing before the trial court on December 18, 2009.
- 1.9 On or about March 12, 2010, the Court issued its Order Granting Petition for Writ of Mandate ("March 12, 2010 Order"). For purposes of reference, the March 12, 2010 Order is attached hereto as **Exhibit A**.
- 1.10 Soon after entry of the March 12, 2010 Order, the Parties began a series of meetings to determine whether negotiation of a resolution of Plaintiffs' and Intervenor's disputed claims would be possible and advisable. The tenor of these meetings was amicable and the negotiations were constructive. The parties have worked extensively to reach a settlement that benefits all participants and achieves results for each party that they could not have achieved through a litigated outcome.
- 1.11 The Parties have worked in good faith to arrive at this Settlement Agreement. As reflected herein, the City has an interest in making housing more available and affordable in Pleasanton, and has worked with Plaintiffs and Intervenor to arrive at a resolution of the issues that promote

the interests of the Pleasanton community while meeting the housing needs of lower-income families. The City has agreed to satisfy the obligations set forth in this Settlement Agreement. The City has welcomed, and welcomes, the participation of Plaintiffs and Intervenor in all public processes relating thereto.

1.12 In July 2010, the Parties agreed in concept on a tentative settlement. That tentative settlement was memorialized by a Term Sheet and attachments thereto. Plaintiffs and Intervenor approved the Term Sheet and attachments on July 14, 2010; the City Council approved the Term Sheet and attachments on July 20, 2010. For purposes of reference, the Term Sheet and attachments are attached hereto as **Exhibit B**.

1.13 The Parties desire to fully settle and resolve the merits of the Urban Habitat Litigation and General Plan/CEQA Litigation, without further litigation on the terms set forth herein.

2. DEFINITIONS

2.1 “DATE OF APPROVAL” means the first date on which all of the parties have executed this Agreement.

2.2 “PLAINTIFFS” means Urban Habitat Program and Sandra De Gregorio.

2.3 “INTERVENOR” means the People of the State of California, ex rel. Edmund G. Brown Jr. Attorney General.

2.4 “DEFENDANTS” and “CITY” may be used interchangeably herein, and mean the City of Pleasanton and its City Council.

2.5 “URBAN HABITAT LITIGATION” means the action filed by Plaintiffs on or about October 17, 2006 known as *Urban Habitat Program, et al. v. City of Pleasanton, et al.*, Case No. RG 06 293831, in which the People of the State of California, ex rel. Edmund G. Brown Jr., Attorney General intervened on or about June 24, 2009.

2.6 “GENERAL PLAN” means the City’s updated General Plan for the period 2005-2025, adopted on or about July 21, 2009.

2.7 “GENERAL PLAN/CEQA LITIGATION” means the action filed by The State of California on or about August 21, 2009 known as *People of the State of California, ex rel. Edmund G. Brown Jr., Attorney General v. City of Pleasanton, et al.*, Case No. RG 09 469878.

2.8 “HOUSING CAP” means the City’s maximum housing buildout of 29,000 units within its Planning Area, as currently designated in Policy 24 and Programs 24.1, 24.2, and 24.3 of the Land Use Element of the General Plan of the City of Pleasanton.

- 2.9 “HCD” means the California Department of Housing and Community Development.
- 2.10 “HUD” means the U.S. Department of Housing and Urban Development.
- 2.11 “RHNA” means the Regional Housing Needs Allocation as set periodically by the Association of Bay Area Governments pursuant to California Government Code section 65584.
- 2.12 “AMI” means the Area Median Income, as adjusted for household size, and as determined from time to time by HUD and HCD.
- 2.13 “PRIOR PLANNING PERIOD” means the period covering the third revision of the housing element, for which the Association of Bay Area Governments assigned the City, in or about March 2001, a RHNA comprising 5,059 total units, including 729 very-low income units, 455 low-income units, 1,239 moderate-income units, and 2,636 above-moderate income units.
- 2.14 “CURRENT PLANNING PERIOD” means the period covering the fourth revision of the housing element, for which the Association of Bay Area Governments assigned the City, in or about May 2008, a RHNA comprising 3,277 total units, including 1,076 very-low income units, 728 low-income units, 720 moderate-income units, and 753 above-moderate income units.
- 2.15 “THREE HACIENDA SITES” means the three sites referenced in City Ordinance No. 1998, specifically, sites 7G (the WP Carey site at the southeast corner of Owens Drive and Willow Road, Assessor Parcel No. (APN) 941-2778-013-00 and part of APN 941-2778-012-00), 7E (the BRE site at the north corner of Hacienda Drive and Gibraltar Drive, APN 941-2778-011-00), and portions of Site 6 (the Roche Molecular Systems site south of Gibraltar Drive between Willow Road and Hacienda Drive, a portion of APN 941-2761-003-00) in the Hacienda Business Park.
- 2.16 “WINDSTAR” means the 350-unit residential project which the City approved in or around September 2008, to be located on a 6.9-acre parcel adjacent to the future West Dublin/Pleasanton BART station.

AGREEMENT

3. RECITALS INCORPORATED.

- 3.1 The above recitals and definitions are incorporated into and made a part of this Settlement Agreement.

4. HOUSING CAP

- 4.1 No later than October 19, 2010, the City Council will amend the Pleasanton General Plan by:
 - 4.1.1 Eliminating Policy 24 and Programs 24.1, 24.2 and 24.3 from the Land Use Element of its General Plan, and
 - 4.1.2 Eliminating all references to the Housing Cap and related programs and policies throughout the various elements of its General Plan.
 - 4.1.3 Pending the amendment of the General Plan as set forth in this Paragraph 4.1, the City shall continue not to implement, administer or enforce Policy 24 or Programs 24.1, 24.2 and 24.3 of its General Plan.
- 4.2 Nothing in this Settlement Agreement shall prohibit the City from exercising its legislative authority to enact new and different growth management or other regulations in compliance with State law and consistent with this Settlement Agreement.

5. NON-DISCRIMINATION POLICY

- 5.1 The City represents, and Plaintiffs and Intervenor agree, that on July 20, 2010, the City adopted a non-discrimination resolution, Resolution No. 10-390. That Resolution is attached as **Exhibit C** to this Settlement Agreement, and incorporated herein by this reference.

6. HOUSING ELEMENT

- 6.1 No later than August 16, 2011, the City will submit to HCD, for its statutory compliance review, a draft updated Housing Element for the Current Planning Period.
- 6.2 The City will adopt an updated Housing Element for the Current Planning Period within 90 days after receiving HCD's comments on its draft Housing Element.
 - 6.2.1 For unique and unforeseen circumstances, the Parties may agree to a reasonable extension of this date. Any delay or controversy in the Housing Element update and HCD review process related to any claim by the City that it should be credited for the rezoning of 350 lower-income units during the Prior Planning Period, based on its approval of the 350-unit Windstar project in or around September 2008, shall not constitute a unique and unforeseen circumstance for purposes of this section. Nothing in this Settlement Agreement shall limit the City's right, which the City reserves, to argue and address this issue during the Housing Element update and HCD review process.

- 6.3 No later than February 20, 2011, the City will release to the public, and provide to Plaintiffs and Intervenor, a draft Housing Element site inventory pursuant to Government Code §§ 65583(a)(3) and 65583.2.
- 6.4 As part of its Housing Element update process, the City will study, evaluate and consider adoption of Housing Element goals and programs that promote affordable non profit housing development for families as well as special needs households and that strengthen and promote construction of affordable units for families, as set forth more fully in **Exhibit C**.
- 6.5 The City will implement the actions set forth in Sections 2 and 3 of Resolution No. 10-390, adopted by the City Council on July 20, 2010, in the form attached as **Exhibit C** to this Settlement Agreement, in the course of the City's Housing Element update process. Nothing in this section or this Settlement Agreement is intended to limit the City's discretion with respect to the implementation of Resolution No. 10-390.
- 6.6 The City will complete any and all rezonings and General Plan amendments necessary to accommodate in full its RHNA at each income level for the Current Planning Period prior to or concurrent with its adoption of the updated Housing Element.
- 6.7 The City will prepare and certify an environmental impact report (EIR) prior to or concurrent with adoption of the updated Housing Element.

7. HACIENDA BUSINESS PARK REZONINGS

- 7.1 The obligations of this section shall apply solely to the Three Hacienda Sites.
- 7.2 No later than November 2, 2010, the City Council will amend Ordinance No. 1998 to delete Section 5, "PUD Modification Contingency."
- 7.3 Development Standards, Design Guidelines and Application Process
 - 7.3.1 Phase I: Core Development Standards
 - (a) No later than January 4, 2011, the City Council will approve the following core development standards for the three Hacienda sites:
 - (i) Density: Minimum of 30 units per acre
 - (ii) Affordability: The greater of (a) 15% of all units, or (b) 130 units, will be made available exclusively to very-low income (50% of AMI) households. Through the affordable housing

agreements entered into between the City and each developer, these affordable units will be deed-restricted in perpetuity. The affordable housing agreements will be recorded and will run with the land.

- (iii) Section 8 Rental Assistance Vouchers: Through the affordable housing agreements entered into between the City and each developer, the developments will be required to accept HUD Section 8 Rental Vouchers as a means of assisting qualified applicants.
- (iv) Bedroom Mix of Affordable Units: A minimum of 10% of the total affordable units will be three-bedroom units; a minimum of 35% of the total affordable units will be two-bedroom units; and the remaining affordable units will be one bedroom units.
- (v) Location of Affordable Units: Affordable units will be dispersed throughout the development.

7.3.2 Phase II: Non-Core Development Standards and Design Guidelines

- (a) No later than March 1, 2011, the City will develop and approve non-core development standards and design guidelines for the three Hacienda sites that are not inconsistent with the core development standards set forth in Section 7.3.1.

7.3.3 Phase III: Adoption of Development Standards and Design Guidelines

- (a) No later than March 1, 2011, the City Council will adopt a PUD zoning ordinance for the three Hacienda sites setting forth the core and non-core development standards and design guidelines, as described in Sections 7.3.1 and 7.3.2.

7.3.4 Phase IV: Project Application

- (a) Commencing at the effective date of the PUD Zoning Ordinance, the City will accept development application(s) from developer(s)/property owner(s) as part of the City's PUD application process to determine

conformity with development standards and design guidelines.

7.3.5 Phase IV Project Approvals

- (a) In processing Phase IV development applications, the City will use its discretion to adopt conditions relative to interpretation of design standards and design guidelines but shall not deny a PUD application for a housing development on the three Hacienda Sites that meet the core and non-core development standards and/or design guidelines, and in accordance with Government Code §65589.5 shall not condition a project in a manner that makes it infeasible.

8. CLIMATE ACTION PLAN

- 8.1 No later than February 17, 2012, the City will adopt a Climate Action Plan. The City shall prepare a Supplemental Environmental Impact Report (“SEIR”) for the Climate Action Plan.
- 8.2 On July 20, 2010 the City approved a professional services agreement, incorporating a July 8, 2010 Revised Scope, Budget and Timeline for Pleasanton Climate Action Plan: General Plan Update and Housing Element Environmental Documentation with ESA, a consultant for the preparation of the Climate Action Plan and SEIR. The proposal upon which that agreement was based, which the City has provided to Plaintiffs and Intervenor, is attached hereto as **Exhibit D**. The City will implement the Scope of Services as proposed; provided, however, that the City may, in its discretion, and after providing advance written notice to Intervenor and Plaintiffs, modify the Scope of Services in a manner that does not prevent the City from fully addressing the allegations raised by the General Plan/CEQA litigation.
- 8.3 The Climate Action Plan will address the allegations raised by the GENERAL PLAN/CEQA LITIGATION, as spelled out in the Scope of Services.
- 8.4 The Attorney General’s Office has interpreted CEQA and its Guidelines to require that the City analyze its GHG emissions and reduction strategies for the life of a project (through 2025 for the City’s General Plan), and to require that the City measure GHG impacts against physical environmental conditions as they exist at the time a Notice of Preparation is published, not against a “business as usual” scenario. The City acknowledges, but is not bound by, these interpretations, and shall consider drafting the SEIR to be consistent with these interpretations.

8.5 Except as otherwise expressly provided herein, nothing in this Settlement Agreement requires the City to undertake any obligation with respect to the Climate Action Plan, or the SEIR for the Climate Action Plan, in excess of the obligations generally imposed under CEQA or any other State law.

9. CEQA

9.1 As appropriate, the City will conduct environmental analysis in accordance with CEQA and CEQA Guidelines for the actions identified in this Settlement Agreement.

10. NO ADDITIONAL LITIGATION; PLAINTIFFS' WAIVER AND RELEASE

10.1 The City shall not pursue an appeal or further litigation of claims brought by Plaintiffs or Intervenor in the Urban Habitat Litigation or the General Plan/CEQA Litigation.

10.2 Upon entry of judgment in accordance with section 12.1, Plaintiffs and Intervenor shall voluntarily dismiss with prejudice the two remaining causes of action in the Urban Habitat Litigation (Seventh and Eighth Causes of Action) and the entire General Plan/CEQA Litigation.

10.3 Except as expressly provided herein, for and in consideration of the covenants made herein, Plaintiffs do hereby completely waive, release and forever discharge the City, and the City's predecessors and successors-in-interest, heirs, assigns, past, present, and future, Council members, staff, principals, agents, officers or directors, managers, employees, attorneys, insurers and all other persons or entities in any manner related thereto or acting on their behalf, from any and all claims, demands, actions, proceedings and causes of action of any and every sort, whether known or unknown, arising out of or relating to the Urban Habitat Litigation. Except as expressly provided herein, Plaintiffs further covenant not to sue the City for claims, damages and/or any and all other relief arising from or in any manner connected with the Urban Habitat Litigation, and promise and agree that they will not file, participate in, or encourage, assist or instigate the filing of any claims and/or causes of action in any state or federal court or any proceedings before any local, state, or federal agency, against the City arising out of the Urban Habitat Litigation.

10.4 Plaintiffs and the City intend this Settlement Agreement to be and constitute a full general release and to constitute a full and final accord and satisfaction extending to all claims arising out of or relating to the Urban Habitat Litigation, whether the same are known, unknown, suspected or anticipated, unsuspected or unanticipated. Accordingly, except as expressly provided herein, Plaintiffs, by signing this Settlement

Agreement, agree and warrant that they have read, understand and expressly release and waive the provisions of California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs understand and acknowledge that the significance and consequence of this release and waiver of California Civil Code Section 1542 is that, except as expressly provided herein, even if Plaintiffs should eventually suffer additional damages or losses arising out of or relating to the Urban Habitat Litigation, or should there exist other undisclosed rights, obligations or liabilities arising out of or relating to the Urban Habitat Litigation or the General Plan/CEQA Litigation, Plaintiffs may not make any claim for those damages, losses or obligations.

- 10.5 In consideration of the City's satisfaction of its obligations under this Settlement Agreement, Plaintiffs and Intervenor will not pursue additional litigation against the City in any state or federal court or before any local, state or federal agency with respect to any claims existing as of the Date of Approval, known or unknown, with respect to the matters alleged in the Urban Habitat Litigation and the General Plan/CEQA Litigation. Plaintiffs shall not encourage or assist any other person or entity to do so.
- 10.6 This Settlement Agreement shall not extend to any claim or cause of action arising from any transaction or occurrence subsequent to the Date of Approval, including without limitation any claim that Plaintiffs or Intervenor may assert in connection with the City's new Housing Element update or the City's Climate Action Plan prepared pursuant to Section 8 of this Agreement.

11. CITY PERMITTING AUTHORITY

- 11.1 Effective on the Date of Approval, all restrictions on the City's non-residential permitting authority imposed by the Court's March 12, 2010 Order shall be lifted, and the City's full permitting authority shall be restored completely and without limitation or restriction of any kind. The City's rights under this paragraph shall be and are automatic and self-effectuating, and shall not require any additional approval by Plaintiffs, Intervenor and/or the Court.

12. JUDGMENT AND ENFORCEMENT

- 12.1 This Settlement Agreement shall be incorporated into a Judgment of the Court, in the form attached as **Exhibit E**, and shall be enforceable pursuant to Code of Civil Procedure Section 664.6.
- 12.2 The Court shall retain continuing jurisdiction to effectuate the provisions of the Settlement Agreement and Judgment until such time as the Parties have completely performed all the terms of the Agreement.
- 12.3 In the event that any Party believes that another Party is in breach of any of the terms set forth in this Settlement Agreement, that Party asserting a breach shall give written notice to the other Party of the breach and the Parties shall meet and confer within fourteen (14) business days of such notice before any party seeks judicial enforcement.
- 12.4 Nothing shall preclude Plaintiffs or Intervenor from seeking the imposition of permitting restrictions or other enforcement remedies if judicial enforcement of any provision of this Settlement Agreement is required.

13. ATTORNEYS' FEES AND LITIGATION COSTS

- 13.1 The City shall pay Public Advocates, Inc., on behalf of Plaintiffs and Plaintiffs co-counsel, the sum of One Million Nine Hundred and Ninety Thousand Dollars (\$1,990,000.00) in full settlement of Plaintiffs' attorneys' fees and costs for prosecuting the Urban Habitat Litigation through the Date of Approval of this Settlement Agreement. Payment of this settlement amount shall be made in two equal payments, as follows:
 - 13.1.1 The City shall make payment of one-half of the settlement amount, namely, Nine Hundred and Ninety-Five Thousand Dollars (\$995,000.00), within thirty days of the Date of Approval.
 - 13.1.2 The City shall make payment of one-half of the settlement amount, namely, Nine Hundred and Ninety-Five Thousand Dollars (\$995,000.00), no later than July 31, 2011.
- 13.2 Intervenor shall not seek any recovery of attorneys' fees in connection with the Urban Habitat Litigation or General Plan/CEQA Litigation.
- 13.3 Except as expressly set forth herein, Plaintiffs, Intervenor and their attorneys shall have no other claim or right to, and hereby waive and release the City from, any and all other or additional consideration or payment of any kind in connection with or arising from the Urban Habitat Litigation and the General Plan/CEQA Litigation arising prior to the Date of Approval. If Plaintiffs, Intervenor or their attorneys, or any other person or entity acting on their behalf, makes any claim or assertion for additional or other attorneys fees or compensation of any kind arising

prior to the Date of Approval, the City's obligation to pay attorneys fees and costs under this Paragraph 13 shall be null and void, and Plaintiffs and their attorneys shall be obligated to immediately reimburse the City for any and all payments made by the City under this Paragraph 13. This waiver and release shall not apply to claims for attorneys fees and costs incurred after the Date of Approval to enforce the Settlement Agreement.

14. OTHER PROVISIONS

- 14.1 No Admission of Liability. Nothing in this Settlement Agreement may be used or construed by the Parties or by any other person or entity as an admission of liability or fault.
- 14.2 Effective Date; Counterparts. This Settlement Agreement shall be effective as of the Date of Approval. This Settlement Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be as effective as delivery of a manually executed counterpart of this Settlement Agreement.
- 14.3 Integration. This Settlement Agreement embodies the entire agreement and understanding which exists between the signatories hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and undertakings. No supplement, modification, or amendment of this Settlement Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Settlement Agreement shall be deemed, or shall constitute, a waiver of any other provisions whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 14.4 Gender/Tense. Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine, feminine and neuter genders shall each be deemed to include the other.
- 14.5 Headings. The headings in this Settlement Agreement are inserted for convenience only and shall not be used to define, limit, or describe the scope of this Settlement Agreement or any of the obligations herein. All attachments that are labeled Exhibits are attached hereto and incorporated herein by reference.
- 14.6 California Law. This Settlement Agreement shall be construed, interpreted, and governed by the laws of California without regard to the choice of law provisions thereof.

- 14.7 Additional Documents and Good Faith Cooperation. All Parties agree to cooperate fully in good faith and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.
- 14.8 No Inducement. The Parties acknowledge, warrant and represent that no promises, inducements or agreements not expressly contained herein have been made to enter into this Settlement Agreement and that this Settlement Agreement, including all Releases herein, constitute the entire agreement between the Parties, are contractual and binding and are not merely recitals.
- 14.9 Advice of Counsel. Each Party warrants and represents that prior to executing this Settlement Agreement, said Party has relied upon the advice of legal counsel of said Party's choice. The Settlement Agreement, its text and other consequences and risks have been completely explained to the Parties by their respective counsel and the Parties warrant and represent that they understand and accept the terms of this Settlement Agreement and intend, by their signatures, to enter into and be bound hereby.
- 14.10 Authority of Signatories. The Parties covenant that they possess the necessary capacity and authority to sign and enter into this Settlement Agreement.
- 14.11 Tax Treatment and Consequences. Plaintiffs understand and agree that the City is neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Settlement Agreement. Plaintiffs further agree that they will not seek any indemnification from the City for any tax obligations or consequences that may arise from this Settlement Agreement. Plaintiffs agree that in the event that any taxing body determines that additional taxes are due from them, Plaintiffs and Intervenor acknowledge and assume all responsibility for the payment of any such taxes and agrees to indemnify, defend and hold the City harmless for the payment of such taxes, and any failure to withhold. Plaintiffs further agree to pay, on the City's behalf, any interest or penalties imposed as a consequence of such tax obligations, and to pay any judgments, penalties, taxes, costs and attorneys' fees incurred by the City as a consequence of Plaintiffs' failure to pay any taxes due.
- 14.12 No Waiver. The failure of the Parties, or either of them, to insist upon strict adherence to any term of this Settlement Agreement on any occasion shall not be considered a waiver thereof, or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Settlement Agreement.

14.13 Cooperation In Litigation Challenging Settlement Agreement. Plaintiffs and Intervenor shall cooperate with the City in any litigation brought by a third party or parties challenging this Settlement Agreement, which could include support or assistance at the discretion of Intervenor or Plaintiffs.

14.14 Binding On Successors. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and the Parties' successors, devisees, executors, heirs, administrators, managers, officers, representatives, assigns, insurers, and employees.

14.15 No Third Party Beneficiaries. The Parties do not intend to create any third party beneficiary of, or any other rights under, this Agreement.

IN WITNESS WHEREOF, the undersigned agree and stipulate to the terms and conditions stated above:

DATED: _____

CITY OF PLEASANTON and CITY COUNCIL
OF PLEASANTON

By: _____
NELSON FIALHO, CITY MANAGER

DATED: _____

URBAN HABITAT PROGRAM

By: _____

Its: _____

DATED: 8/12/2010

SANDRA DE GREGORIO

By: Sandra De Gregorio

DATED: _____

PEOPLE OF THE STATE OF CALIFORNIA ex
rel. EDMUND G. BROWN JR., ATTORNEY
GENERAL

By: _____

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DATED: _____

CITY OF PLEASANTON and CITY COUNCIL
OF PLEASANTON

By: _____
NELSON FIALHO, CITY MANAGER

DATED: _____

URBAN HABITAT PROGRAM

By: _____

Its: _____

DATED: _____

SANDRA DE GREGORIO

By: _____

DATED: Aug. 12, 2010

PEOPLE OF THE STATE OF CALIFORNIA ex
rel. EDMUND G. BROWN JR., ATTORNEY
GENERAL

By: Lisa Mantley

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

1800 Third Street, Suite 430
P. O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177 / FAX (916) 327-2643
www.hcd.ca.gov



September 7, 2010

Ms. Janice Stern, Planning Manager
Community Development Department
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566-0802

Dear Ms. Stern:

RE: Review of Proposed Amendments to the City of Pleasanton's Housing Element

Thank you for submitting draft amendments to Pleasanton's housing element adopted April 15, 2003. As a result of a court order from litigation concerning Urban Habitat v. City of Pleasanton, the Department is required to review draft housing element amendments and report its findings to the locality pursuant to Government Code Section 65754(a). The proposed amendments to the City's 2003 element (from the prior planning period) removes various references to measures which limit the number of housing units in Pleasanton.

The draft proposes amendments to the housing element for the prior planning period. As Pleasanton has not submitted an updated housing element for the planning period beginning June 30, 2009 as required by Government Code Sections 65585 and 65588, the element does not comply with State housing element law (Article 10.6 of the Government Code).

In addition, as you know, on March 7, 2005 the Department determined Pleasanton's housing element did not comply with requirements of State housing element law (Article 10.6 of Chapter 3 of Division 1 of Title 7 of the Government Code) due to the failure to implement Program 19.1 and rezone sites at higher densities to accommodate the regional housing need for lower-income households. Government Code Sections 65584.09 and 65583(c)(1) (Chapter 614, Statutes of 2005 [AB 1233]) requires the City to zone sufficient sites to accommodate the unaccommodated need from the previous planning period within the first year of the 2009-2014 planning period (e.g., June 30, 2010). As this date has passed, the Department will not be able find the housing element update in compliance until the required rezoning is complete or otherwise sufficient sites are made available pursuant to the statute. Please see the Department's memo at http://www.hcd.ca.gov/hpd/hrc/plan/he/ab_1233_final_dt.pdf.

Ms. Janice Stern, Planning Manager
Page 2

The Department is aware the City is currently moving forward with an update of its housing element pursuant to Government Code Section 65588. We are committed to assist Pleasanton in addressing all statutory requirements of housing element law and look forward to working with you and your staff. For technical assistance, please see the Department's, *Building Blocks for Effective Housing Elements* at http://www.hcd.ca.gov/hpd/housing_element2/index.php. If you have any questions or would like to schedule a visit, please contact Paul McDougall, of our staff, at (916) 322-7995.

Sincerely,



Cathy E. Creswell
Deputy Director