P12-1796, City of Pleasanton
Application to amend Title 18 of the Pleasanton Municipal Code by adding a new Chapter 18.70, Ridgeline and Hillside Protection and Preservation, with development standards and review procedures for commercial and residential developments in the hillside areas of the City.

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

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

Mr. Dolan stated that staff received feedback from the Council, and there was a lot of dialogue back and forth. He added that as recently as late this afternoon, it has been suggested that there was at least one item that staff has misinterpreted ultimately what the direction of Council was, and that item relates to the subject of roads: what the Council's conclusions were and whether or not there should be an exception process.

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

Mr. Dolan stated that, as earlier mentioned, Measure PP applies to developments greater than ten units, but it also refers to the fact that it applies to commercial

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

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

Mr. Dolan stated that the second thing was trying to define what a ridgeline was because that is what the City is trying to protect, and staff came up with this definition which the Council approved: *"A continuous ground line, connecting a series of hills located at their highest elevations, ending at the last peak on each end of the landform at which the elevation of the ridgeline no longer rises in elevation, and only decreases in elevation."* He explained that the problem with the implementation of ridgeline protection is to determine where the ridgeline actually ends because going all the way down to zero would be protecting flat land at some point. He noted that the Council agreed with this. He added that there is also the 100-foot setback that is required by Measure PP that had to be incorporated into this ordinance.

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

Mr. Dolan then presented some slides showing a 25-percent slope as basically one unit rise over a four-unit run. He noted that some people would look at that and say it is steep, and others would look at it and say it does not seem that steep. He indicated that it is a fairly common threshold for cities starting to restrict development, and it is steeper than the typical standard for a road slope. He noted that staff would typically limit a road to go up about 15 percent and not allow the road to go up a slope that steep

for a lot of reasons, including what the Fire Department's say in terms of getting its trucks up and down and how it operates on slopes steeper than that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Dolan said yes.

Mr. Dolan continued that the next issue which generated quite a bit of discussion was whether or not public and/or private streets are subject to this 25-percent provision, if they are considered to be structures. He noted that when the Commission had a Work Session on this, it decided to take the most conservative approach to start with and suggested that they could be considered a structure. He further noted that the Commission determined that was not necessarily the intent and that it probably was too conservative. He stated that staff presented that question to Council and its ultimate decision was that it believed that they should be considered structures. He noted, however, that in making its motion, there was a lot of dialogue which was not very clear; about how, in a public hearing, the Council might be able to consider certain roads and essentially make an exception. He further noted that when the motion was ultimately made, the Council referred to an alternative that was in the staff report and the alternative did not expressly mention a process for an exception. He added that staff

had not even considered exceptions until that meeting, but the Council suggested that it wanted an opportunity to do something different, something of an exception, particularly in the case of trying to accommodate some sort of public facility such as a park or to get up to a park or a reservoir or some other City facility. He indicated that following this discussion, the way staff wrote this draft ordinance is that there is an exception process there for that, and staff did not make a distinction of whether or not it was for private development versus public development. He added that the other aspect of this is that there are certain roads that have been identified in previous planning efforts, namely Specific Plans and approved PUDs, that have possible good reasons for exemption because multiple decisions have been made based on those, and because those decisions were made in advance of Measure PP, and therefore, should be accommodated for those. He stated that this was actually a suggestion staff made to the Council, who had a lot of discussion about its pros and cons, and ultimately decided to leave those exceptions in.

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

Mr. Dolan clarified that he was referring to the specific exceptions for something that was envisioned in an approved PUD or a Specific Plan and not to the exception process. He continued that staff included PUDs because staff had not done all the research to figure out what is out there that could be affected by this. He added that it does not necessarily have to reference a PUD, and all the ones staff can think of are actually just referenced in a Specific Plan, and it would be adequate just to have something carved out for roadways as envisioned in a Specific Plan. He noted that there may be a PUD that staff just has not been able to determine, but either it is approved and it is going to happen as it is entitled and vested, or it is subject to this ordinance. He indicated that he is not sure if that language is still necessary; however, the Council agreed to leave it in for Specific Plans or PUDs that were approved prior to November 2008.

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

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

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

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

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

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

Ms. Harryman stated that the Council is charged with interpreting what the voters put in place, and so it is looking at roads as a structure. She continued that some people could argue that only buildings are structures, but the Council appears to be going in the direction that roads are structures, but it seems to also want a balance and looking at an exception as being a balance. She indicated that she sees the Council as having the ability to interpret the language because it is not defined in the initiative; it does not necessarily have to be all taken back through the initiative process for the voters to define "ridgeline."

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

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

Commissioner Olson stated that in his view, looking at the process the Commission goes through when a project comes in and may require a variance, the Commission

may or may not agree on granting the variance, and that, in effect, would be an exception process.

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

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

Ms. Harryman added that the word "exception" is being used in this discussion, but she thinks the Council did not use the word "exemption" or "exception." She indicated that the idea was to consider those approvals or those roads that were contemplated pre-Measure PP. She pointed out that it is just another interpretation and implementation and that she was not looking at it so much as an exception as a way to interpret what the purpose and intent of the voters were when they adopted this.

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

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

Commissioner O'Connor agreed.

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

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

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

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

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

THE PUBLIC HEARING WAS OPENED.

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

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

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

seemingly was just added recently. He noted that this would be a huge exception and that just about every parcel could have that exception.

Carol Spain read the following prepared statement into the record:

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

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

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

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

"3. My third point was also referenced in the email from Amy. We asked the City for clarification relative to 'what other specific properties besides Lund Ranch II, if any, or potential PUDs within Pleasanton could be affected (if developed in the future) by Chapter 18.70.' I do not believe that we have received an acceptable

response from the City as of yet, and we would appreciate one. To us it appears, that the wording in the Draft Municipal Code Amendment, P12-1796, dated 1/23/2013, Chapter 18.70, Item E.3 has been written specifically to enable the City and Greenbriar Homes to ignore and disregard PUDs and Specific Plans written prior to November 2008. This seems to be the case since we are not aware of any future PUDs where Specific Plans or PUDs approved prior to November, 2008 regarding Public and Private Streets and Roads would be affected (other than Lund II). Greenbriar wants to route all traffic from the proposed Lund II development through the Ventana and Mission Hills neighborhoods via Lund Ranch Road, Independence Drive, and Junipero. This traffic flow proposal from the builder is unacceptable and it is not in line with ten prior agreements and understandings (also previously shared and discussed with Mr. Dolan and Mr. Pavan) with regard to the Lund Ranch II development connecting to Sycamore Creek Way (the East/West collector).

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

"Thank you."

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

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

Ms. Ayala stated that the complication comes with approved PUDs, the ten prior agreements associated with the Lund Ranch II development, and this is one she cannot let go of because she sat on the Council when these PUDs were approved, and she knows that the Council felt that the road structure should go through the PUDs that were approved in Bridle Creek and Sycamore Heights. She noted that she cannot see a group of people from the early 1990's, starting in 1991, who worked with the City Councils and Planning Commissions to make sure laws were put in place so they could,

in their minds, approve of development but know that they were secure and Lund Ranch Road would not go through. She indicated that this is one part of the ordinance that she will fight with that community to save the laws that were put in place: Specific Plans, General Plan, and PUDs that these people have fought every step along the way from the 1990's. She noted that they were at the Council meetings and Planning Commission meetings reminding the powers that be that these promises were made. She stated that Pleasanton is a Community of Character, and she is appealing to the Commission not to move too quickly on this until it understands all the implications of PUDs. She added that she has asked staff for a long time to do the work for the approved PUDs and adjacent PUDs to these properties, in the same way that the Ventana Hills Group has taken to time to do its research, but staff has not done this to date.

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

THE PUBLIC HEARING WAS CLOSED.

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

Commissioner Olson stated that he really resonated with what the second speaker, Ms. Spain, said about agreements made way back when that ought to be honored. He indicated that if calling a road a structure will prevent that road from being built and results in traffic affecting an established neighborhood which building that structure would have prevented, then he thinks that in a case like, an exception process is necessary. He added that, at the same time, if an exception process is applied to everything, then everything is open and soon enough, a ridgeline that all would agree is

a ridgeline is vulnerable to development. He recalled that when the Commission previously considered this matter, the idea surfaced regarding creating an inventory of ridgelines in the City to which Measure PP would apply. He stated that the Pleasanton Ridge would obviously be one of those ridgelines, even though as, Mr. Roberts pointed out, it has a descending slope that extends for several miles.

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

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

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

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

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

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

Commission should make sure it is implementing that guidance as opposed to completely pulling it apart.

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

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

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

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

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

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

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

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

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

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

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

Chair Blank noted that was a good idea.

1.a. Methodology for Determining 25-Percent Slope

1.b. Methodology for Defining Contour Intervals

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

2. Definition or Ridge and Ridgeline and the 100-Foot Setback

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commissioner Olson agreed.

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

Commissioner Pearce inquired what the Commission is proposing.

Chair Blank replied that it be the top.

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

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

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

Commissioner Olson stated that he votes for the roofline.

Chair Blank and Commissioners Narum and O'Connor agreed.

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

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

3. Definition of Streets and Roads as Structures

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

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

Commissioner Olson inquired who was right.

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

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

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

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

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

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

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

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

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

Commissioner Olson agreed.

Commissioner Narum stated that she visited that site, and before she visited it, her thinking was not to allow building on manufactured slopes over 25-percent grade. She continued that when she saw the cut, she did not believe that was the intent of Measure PP. She noted that where that particular cut was located did not appear to her to be a ridge and did not appear to be visible to everybody. She indicated that it was

unfortunate that the owner of the land did something with his land, but she would not have any problem granting an exception in that particular case.

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

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

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

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

Commissioners Olson and Pearce agreed.

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

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

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

Commissioners Olson and Pearce agreed.

Commissioner Pearce stated that her original inclination before the City Council went through this was that manufactured slopes would not be included at all because the

intent is to protect the natural hills; not to protect what someone already changed by grading. She indicated that she thinks this is a good compromise and is comfortable with this because it allows for flexibility under very tight circumstances and with appropriate scrutiny.

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

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

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

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

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

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

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

Chair Blank noted that it would be an extreme case.

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

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

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

Chair Blank stated that neither would he.

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

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

Commissioner Pearce stated she is fine with them.

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

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

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

Commissioner Pearce stated that it would then not be included.

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

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

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

Chair Blank noted that was a good point.
Commissioner Olson stated that manufactured slopes are here and that the Commission has to address them. He indicated that he thinks the way Commissioner Narum described it initially is the way to do it.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Dolan replied that he believes they are approved.

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

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

Chair Blank expressed some concern that what staff was watching on the video and what is reflected in the Minutes are two different things. He noted that his understanding is that the Minutes are the official record. He was concerned that while the Minutes were approved by a Council different from who made them, what was written in the staff report was apparently based on the video rather than on the approved Minutes. He indicated that while he absolutely trusts staff's judgment and feeling of it because they looked at it with a critical eye, it is really troubling and not an issue they can fix.

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

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

Commissioner Narum agreed with Mr. Dolan that she can make a good argument that a road or a street is a structure and just as good an argument that it is not. She continued that if the Commission wants not have to deal with exceptions, she would probably tend

to say that roads and streets are not structures and, therefore, there is no question about whether or not an exception is necessary to get an exemption. She noted that she thinks it fits the right criteria which she believes is actually pretty clear.

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

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

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

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

Commissioner Pearce stated that she was comfortable with that.

Commissioner O'Connor agreed. He added that the Commission does not have to clarify anything regarding the City wanting to build anything or to go to a park or to a trail because that is not covered by Measure PP at all, which covers only residential and commercial development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chair Blank noted that it is an implementation procedure.

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

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

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

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

Chair Blank stated that the staff recommendation is to adopt a resolution recommending approval of the Draft Chapter 18.70 Ridgeline and Hillside Protection Preservation, Exhibit A, dated January 23, 2013. He indicated that the Commission was unanimous on 1.a. and 1.b; on 2., the roofline has to be 100 feet below the ridgeline; on 3., *"Specific Plan"* is deleted; and on 4., a combination of Commissioner Narum's and Ms. Harryman's language will be used. He asked staff if the Commission needs to finish this tonight because if that is the case, staff and the Commission will be here for a while.

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

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

Commissioner O'Connor inquired what else was needed.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE PUBLIC HEARING WAS RE-OPENED.

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

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

THE PUBLIC HEARING WAS CLOSED.

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

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

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

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

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

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

Mr. Dolan agreed that it is just a repetition.

Ms. Harryman said yes.

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

Ms. Harryman agreed.

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

Ms. Harryman stated that was correct.

Commissioners Pearce and Narum indicated they were fine with it.

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

Ms. Harryman said yes.

Commissioner Narum moved to continue the item to the February 13, 2013 meeting.
Commissioner O'Connor seconded the motion.

ROLL CALL VOTE:

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

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

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

EXHIBIT C

Marion Pavan

From: Allen Roberts
Sent: Thursday, January 31, 2013 4:02 PM
To: Marion Pavan
Cc: "Planning Commissioners" mhoey@ci.pleasanton.ca.us
Subject: P12-1796 Ridgeline Definition

Marion:

I have been thinking about the proposed ridgeline definition for PP. When this was first proposed, I voiced my concern to the Council that it needed some real world examples to see how this definition would work in practice. At the Commission meeting of January 23, I pointed out that the majority of Pleasanton Ridge would not meet the definition of a ridge using the "*as a continuous ground line connecting a series of hills located at their highest elevations ending at the last peak on each end of the landform at which the elevation of the ridgeline no longer rises in elevation, and only decreases in elevation*". The reason is the majority of ridge is gently sloping to south without a "last peak" until it hits the valley floor miles away. If the major ridge in town doesn't qualify under the proposed definition, the definition must be fatally flawed.

At the conclusion of the Commission's discussion they directed Staff to rework the ridgeline definition and to also consider the idea of mapping the ridges.

I have looked on the web to see how other regions have defined a ridge for hillside preservation and it seems that most agree with Commissioner Olson suggestion that a mapped inventory be used, rather than a verbal description. I strongly suggest the staff look at that approach.

Thank you.

Allen Roberts

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Marion Pavan

From: Allen Roberts
Sent: Monday, February 04, 2013 6:43 PM
To: Marion Pavan
Cc: "Planning Commissioners" mhoey@ci.pleasanton.ca.us
Subject: P12-1796 Ridgeline Definition
Attachments: ridgeline map.jpg

Marion: (Maria, please forward to the Commission Members)

I thought I would take a look to see how difficult it would be to take a ridgeline "inventory" of the southeast hills. I used a terrain map with an overlay of property lines. I'm sure that the City has a similar but more detailed database.

I don't think the inventory needs to be much more detailed than this, which completely eliminates the need for a ridgeline verbal definition other than the existing definition in Municipal Code:

F. "Ridge" means a connected series of major and minor hills.

G. "Ridgeline" means a ground line located at the highest elevation of the ridge running parallel to the long axis of the ridge.

Thank you.

Allen Roberts

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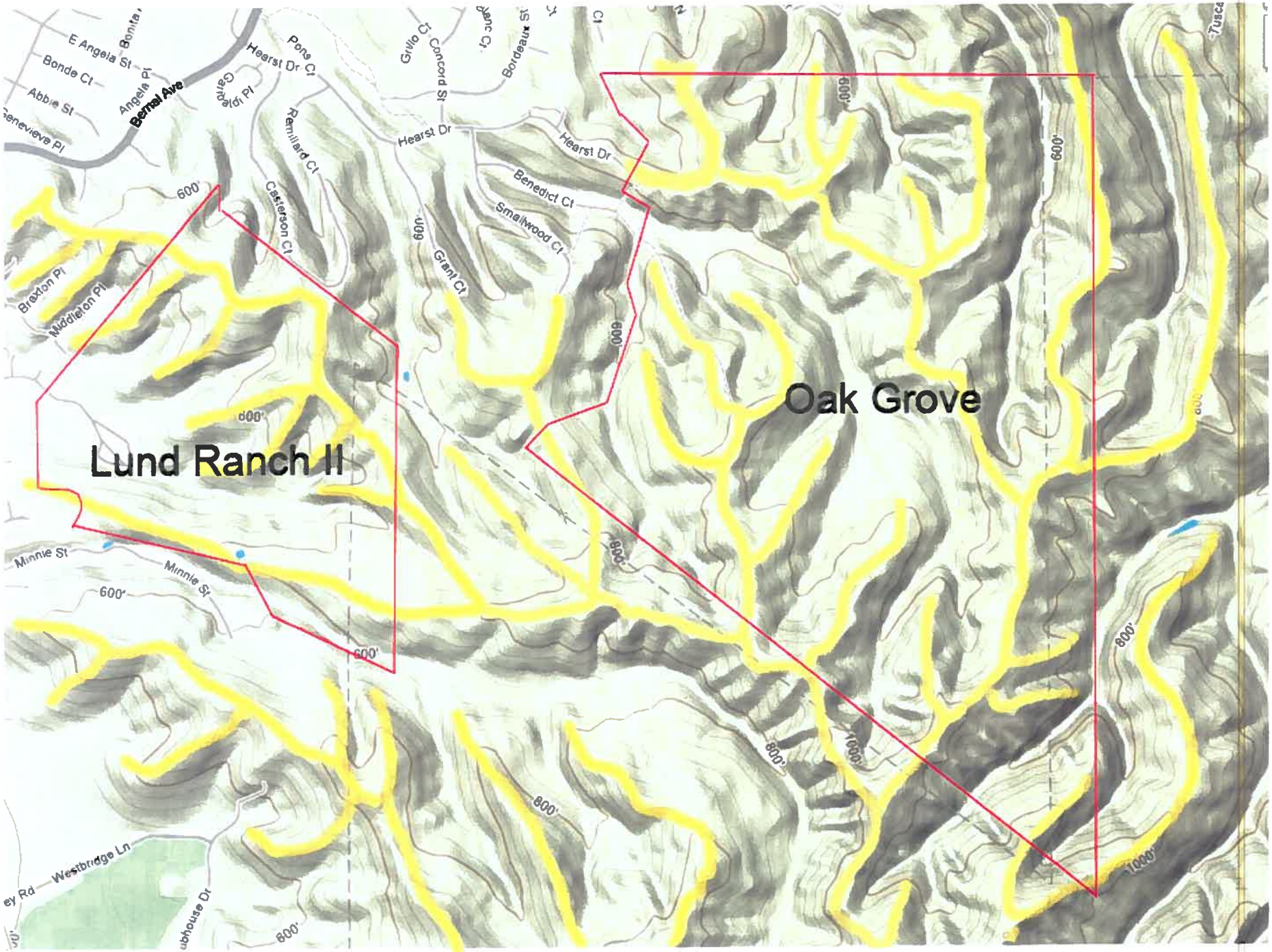
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