

**CHAPTER 6-20 HILLSIDE DEVELOPMENT**  
Proposed 2006 Revisions • Strikeout & Underline Version  
June 18, 2006

NOTE: TABLE OF CONTENTS TO BE REVISED BASED ON FINAL APPROVED REVISIONS.

*Italicized text following revisions is explanatory of the proposed change and is not intended to be part of the adopted ordinance.*

**Article 1. General Provisions**

6-2001	Purpose and intent.
6-2002	Application of this chapter.
6-2003	Definitions.
6-2004	Adoption of maps.
6-2005	Modification of Hillside Overlay District.
6-2006	Modification of Lafayette Area Ridge Map.

**Article 2. Hillside Overlay District**

6-2011	Purpose of the hillside overlay district.
6-2012	Zoning district designation.
6-2013	Application of the hillside overlay district.
6-2014	Uses.
6-2015	Hillside development permit required.

**Article 3. Ridgeline Protection**

6-2021	Purpose and intent.
6-2022	Classification of ridges.
6-2023	Development restriction on class I or II ridge.
6-2024	Development restriction on class III ridge.
6-2025	Activities exempt from development restrictions in sections 6-2023 and 6-2024.
6-2026	Grant of exception permitting development within class I ridgeline setback.
6-2027	Grant of exception permitting development within class II ridgeline setback.
6-2028	Requirement for vegetation in restricted ridgeline areas.

**Article 4. Development Requirements for Existing Lots of Record  
in the Hillside Overlay District**

6-2031	Application of development requirements.
6-2032	Requirements for development on existing lots of record.
6-2033	Additional requirements.
6-2034	Findings required for development on existing lots of record in the hillside overlay district.

## **Article 5. Development Requirements for Subdivisions in the Hillside Overlay District**

- 6-2041 Purpose and intent.
- 6-2042 Application of development requirements.
- 6-2043 Lot area and density.
- 6-2044 Calculation of average slope as used in section 6-2043.
- 6-2045 Exception to section 6-2043.
- 6-2046 Clustering.
- 6-2047 Building site requirements; exceptions.
- 6-2048 Off-site visibility.
- 6-2049 Trails.
- 6-2050 Steep slopes; exceptions.
- 6-2051 Vegetation.
- 6-2052 Open space, scenic and conservation easements.
- 6-2053 Utilities.
- 6-2054 Streets.
- 6-2055 Fire safety.
- 6-2056 Additional requirements.
- 6-2057 Findings required for a subdivision in the hillside overlay district.

## **Article 6. Hillside Development Permit Approval Process**

- 6-2061 Hillside development permit process.
- 6-2062 Submittal requirements.
- 6-2063 Waiver of application submittals.
- 6-2064 Notice.
- 6-2065 Procedure for obtaining a hillside development permit.
- 6-2066 Imposition of conditions.
- 6-2067 General findings for a hillside development permit.
- 6-2068 Findings required for grant of exception permitting development within class I  
ridgeline setback.
- 6-2069 Findings required for grant of exception permitting development within class II  
or III ridgeline setback.
- 6-2070 Findings required for approval of development on existing lots of record in  
hillside overlay district.
- 6-2071 Findings required for approval of subdivision in the hillside overlay district.
- 6-2072 Permit expiration.
- 6-2073 Issuance of permits.
- 6-2074 Decisions and appeals.

## **Article 7. Procedures for the Granting of Exceptions Under This Chapter**

- 6-2081 Scope and application of procedures.
- 6-2082 Application requirements and additional submittals.
- 6-2083 Notice.
- 6-2084 Planning commission as hearing authority.
- 6-2085 Factors in determination.
- 6-2086 Findings supporting recommendation and decision.
- 6-2087 Time limit for judicial review.

## Article 1. General Provisions

### 6-2001 Purpose and intent.

#### A. The city council finds that:

1. There are hills and ridges within the city that constitute significant natural topographical features and impart a sense of identity and image to the city;
2. It is desirable to insure the existence of a harmonious relationship between the existing natural hillside environment and the manmade environment through development standards designed for hillside development;
3. The retention of hillsides in as near as natural state as is feasible is an important policy expressed in the general plan;
4. The hillsides and ridgelines contain appropriate routes for equestrian and pedestrian trails which may be acquired as allowed by law through permitted dedications; and
5. The hillsides and ridgeline areas contain important wildlife corridors and habitats.

#### B. The purpose of this chapter is to:

1. Maintain the semi-rural character and beauty of the city by preserving its open and uncluttered topographic features in their natural state;
2. Encourage an alternate approach to conventional flat land development practices;
3. Minimize grading and cut and fill operations consistent with the retention of the natural character of the hillsides;
4. Achieve land use densities in keeping with the general plan while retaining the significant natural features of hillside areas through densities that diminish as the slope of terrain increases;
5. Minimize water runoff and soil erosion when terrain is graded to meet onsite and offsite development needs;
6. Maintain steep slopes, riparian areas and woodlands in as nearly natural a condition as is feasible;
7. Prohibit development on significant ridgelines and prohibit development which, when viewed from lower elevations, protrudes above these ridgelines;

8. Preserve the predominant views both from and of the hillsides;
9. Regulate the development of hillside and ridgelines areas by imposing standards for ridgeline setbacks, streets, trails and other improvements consistent with the purpose of this chapter; and
10. Regulate the development of hillside and ridgeline areas in a manner so as not to take private property without just compensation.

6-2002 Application of this chapter.

The requirements of this chapter are in addition to those made applicable by other provisions of the Lafayette Municipal Code. If there is a conflict between this chapter and another provision of the Lafayette Municipal Code, this chapter controls.

6-2003 Definitions.

In this chapter unless the context requires otherwise:

A. “Applicant” is the person that has submitted an application for a proposed development pursuant to this chapter either as the property owner or as the authorized representative of the property owner;

B. “Building” means any structure with a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals or chattels.

*This definition is added so that we can distinguish between two-dimensional structures such as roads or paths and 3-dimensional structures that might require economic takings analysis.*

B.C. “Cluster” or “clustering” refers to the grouping together of residential building sites contained in a subdivided parcel such that:

1. There exists substantial open space within the subdivided parcel; and
2. Such open space adjoins existing contiguous open space not part of the subdivision;

C.D. “Construction” is the act of placing, erecting, modifying or relocating a structure, or the act of preparing a site for such work, including grading;

D.E. “Density” refers to the number of residential units per acre;

E.F. “Development” or “develop” means the use to which land is to be put, the structure to be put on it and every alteration of the land incident thereto. Development includes construction, grading, removing of a native tree of four inches or more in diameter as measured at four feet six inches above grade or native riparian vegetation, major landscaping, change in the density or intensity of land use, subdivision pursuant to

the Subdivision Map Act, and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public use;

~~F.G.~~ “Fire district” refers to the Contra Costa County Fire Protection District.

~~G.H.~~ “Hearing authority” is the authority designated by this chapter to review, hear and make a determination on a proposed development or grant an exception under this chapter, and includes the zoning administrator, design review commission, planning commission, and, in the case of an appeal, city council;

~~H.I.~~ “Hillside development” is a development, any part of which is in a hillside overlay district;

~~I.J.~~ “Hillside overlay district” is the area shown on the map entitled Hillside Overlay District dated July 8, 2002, a copy of which is on file in the office of the manager.

~~J.K.~~ “Manager” refers to the planning and building services manager for the city.

~~L.~~ “Major landscaping” is the planting of over 5,000 sq.ft. of non-native vegetation and does not include vegetation for erosion control or land stabilization.

*Definition added because the City has consistently reviewed large-scale plantings such as vineyards, but the current ordinance is not explicitly clear on such project.*

~~K.M.~~ “Native riparian vegetation” is vegetation indigenous to a riparian habitat along a perennial or intermittent creek, stream or other water course;

~~L.N.~~ “Native vegetation” is vegetation indigenous to an oak woodland, chaparral, grassland or riparian habitat;

~~O.~~ “Public places” are outdoor places where members of the public congregate or travel and are shown on the Viewing Evaluation Map.

*This definition is added to replace language used frequently in the text that strictly limits viewing to publicly owned places. See the definition of Viewing Evaluation Map.*

~~M.P.~~ “Residential design review guidelines” are city adopted design guidelines intended to minimize visibility of structures, retain natural features of land and protect habitat and native vegetation;

~~N.Q.~~ “Restricted ridgeline area” is a class III ridgeline or an area within 400 feet of a class I ridge or 250 feet of a class II ridge;

~~O.R.~~ “Ridge” is a ridge designated as class I, II or III on the map entitled Lafayette Area Ridge Map, dated July 8, 2002;

~~P.S.~~ “Ridgeline” is a line connecting the highest points along a ridge and separating drainage basins or small-scale drainage systems from one another;

~~Q.T.~~ “Structure” includes anything constructed or erected, such as a road, building or retaining wall, that requires a fixed location on the ground or is attached to something having a fixed location on the ground;

~~R.U.~~ “Viewing evaluation map” is the map entitled Viewing Evaluation Map, dated March 1, 1993 ~~as amended [amendment date]~~, which is intended as a guide to establish locations from which views are considered in the determination of the visual impact of a proposed structure.

*The committee is recommending that The Viewing Evaluation Map be amended to include a few privately-owned sites that provide outdoor spaces that are used by the public such as swim clubs, tennis clubs and private schools. One such site, Bentley School, has always been listed on the Viewing Evaluation Map. Private roads or private residences are not proposed to be added. If the Planning Commission supports the idea, staff will bring the matter back to the Commission at subsequent public hearing.*

#### 6-2004 Adoption of maps.

A. The following maps are adopted as part of this chapter:

1. Map of ridges entitled Lafayette Area Ridge Map, dated July 8, 2002;
2. Hillside overlay district map entitled Hillside Overlay District Map, dated July 8, 2002; and
3. Viewing evaluation map entitled Viewing Evaluation Map, dated March 1, 1993 ~~as amended [amendment date]~~.

B. Each original map is on file in the office of the city clerk. A copy shall be kept on file in the office of the manager and shall be made available to the public.

C. The city council may amend a map referred to in subsection A. by resolution after following the notice and hearing procedure prescribed for the adoption or amendment of a zoning ordinance (Government Code § 65853 et seq.).

#### ~~6-2005 Repealed by Ord. \_\_\_\_\_ Modification of Hillside Overlay District.~~

~~The Hillside Overlay District within which development is regulated by this chapter is described in the map adopted by section 6-2004. If a precise onsite measurement shows that the district boundary varies from that shown on the City map, the boundary shown by onsite measurement controls.~~

*This section is repealed because it does not provide either a process or criteria for amending the H.O.D.*

## 6-2006 Modification of Lafayette Area Ridge Map.

Each restricted ridgeline area within which development is prohibited by sections 6-2023 and 6-2024 is described in the map adopted by section 6-2004. If a precise onsite measurement shows that the area within which development is prohibited varies from that shown on the City's map, the area shown by the onsite measurement controls.

### **Article 2. Hillside Overlay District**

#### 6-2011 Purpose of the hillside overlay district.

The hillside overlay district is intended to protect the health, safety and welfare of the city by establishing regulations for the development of ridgeline, hillside and other rural residential areas within the city. The district is created and established to implement the goals, policies and programs of the general plan that relate to hillside and ridgeline development, development hazards and protection of open space lands and hillside residential areas.

#### 6-2012 Zoning district designation.

The hillside overlay district shall overlay and be combined with the principal underlying zoning district for land located within the hillside overlay district. The hillside overlay district is shown on the hillside overlay district map and is indicated by the letters: HOD.

#### 6-2013 Application of the hillside overlay district.

- A. The regulations in this article apply in the hillside overlay district to (1) a residential lot existing on July 8 2002, (2) a division of land into two or more lots and, (3) to the extent provided in chapter 6-24, to a lot line adjustment approved after July 8, 2002. If there is a conflict between the regulations of the underlying principal zoning district and this article, this article controls.
- B. If according to the hillside overlay district map, the HOD boundary does not correspond to a property line but instead divides a lot, the map governs the applicability of the regulations in this article. Development within the HOD boundary is subject to this article but development outside it is not. If any part of a proposed development is within the HOD boundary, the entire development is subject to this article.

#### 6-2014 Uses.

- A. Permitted uses. The uses permitted in the hillside overlay district are those uses permitted in the underlying principal zoning district.
- B. Uses requiring a land use permit. The planning commission may grant a land use permit for a conditional use in the hillside overlay district that is permitted in the underlying principal zoning district with the benefit of a land use permit.

#### 6-2015 Hillside development permit required.

A. Development within the hillside overlay district requires a hillside development permit as prescribed in article 6 of this chapter (sections 6-2061 et seq.), except when:-  
~~A hillside development permit is not required when:~~

1. The construction does not require a building or grading permit; or
2. The construction is entirely within the interior of an existing structure; or
3. The construction is routine maintenance or replacement work that does not change the exterior appearance of the existing structure.

B. Major landscaping within the hillside overlay district requires a hillside development permit as prescribed in article 6 of this chapter (sections 6-2061 et seq.)

C. All development and new vegetation within a Class I or Class II ridgeline setback requires a hillside development permit and grant of exception, if required, except when:

1. The construction is entirely within the interior of an existing structure, or
2. The construction is routine maintenance or replacement work that does not change the exterior appearance of the existing structure.

*Part B is added so that the City can review major landscaping area in the hills, such as vineyards.*

*Part C is added to clarify that within the ridgeline setbacks the requirement for permits is not limited to that which requires a building or grading permit. This not a new requirement, rather it is a clarification of the existing ordinance.*

### **Article 3. Ridgeline Protection**

#### 6-2021 Purpose and intent.

The general plan provides that:

- A. Ridgelines within the city constitute significant scenic topographical features and their retention in as near a natural state as feasible is an important community value; and
- B. Undeveloped ridgelines support a range of animal life, function as wildlife corridors for animal movement between open space areas, and contain native grassland, oak woodland, chaparral and riparian habitats.

#### 6-2022 Classification of ridges.

For the purpose and application of this article, each ridge designated on the Lafayette area ridge map is grouped into one of three classes, I, II and III, depending upon its location, height, significance in relation to other nearby topographical features and the impact that development on

or near the ridgeline would have upon scenic views of ridges and hillsides and the protection of open space, wildlife corridors, and native grassland, oak woodland, chaparral and riparian areas.

6-2023 Development restriction on class I or II ridge.

- A. Class I ridge setback. No development may take place within 400 feet (measured in plan view) ~~of the centerline~~ of a class I ridge line.
- B. Class II ridge setback. No development may take place within 250 feet (measured in plan view) ~~of the centerline~~ of a class II ridge line.
- C. Declination. ~~When the planning commission has granted an exception to (A) or (B) above, then the 15-degree declination restriction in section 6-2029 applies. No portion of a structure may be erected adjacent to a class I or class II ridge that is higher than a plane sloping downward at a declination of 15 degrees from the horizontal intercept of the ridge. The measurement shall be made at the nearest point of the development to the ridgeline and measured perpendicular to the ridgeline or as a radius from the endpoint of the ridgeline. The declination line terminates at the boundary line of the hillside overlay district.~~

[See section 6-2029 for an explanation of the changes to the declination provisions.](#)

6-2024 Development restriction on class III ridge.

No portion of a structure may be erected adjacent to a class III ridge that is higher than a horizontal plane that intercepts the ridge. The horizontal plane shall be at the nearest point of the development to the ridgeline and perpendicular to the ridgeline or have an arc of 90 degrees from the endpoint of the ridgeline.

6-2025 Activities exempt from development restrictions in section 6-2023 and 6-2024.

The following activities are exempt from the development restrictions in sections 6-2023 and 6-2024:

- A. A development proposal for a structure that received approval before July 8, 2002;
- B. A fence of an open agricultural nature approved by the manager;
- C. An activity required in the interest of public safety such as removal of poisonous or noxious plants, the controlled removal or thinning of vegetation as a part of a fire protection program required by the fire district, or other public safety purpose approved by the manager;
- D. Construction of a trail which comprises a component of the city's adopted master trails map or adopted regional trail plan;
- E. Construction of a road and attendant utilities ~~that cross a ridge~~ if the planning commission finds that the ~~crossing road~~ crossing road is necessary for orderly development.

*A road will continue to require a Hillside Development Permit and approval by the planning commission. The committee finds that it is not appropriate to require exception findings that require economic takings analysis for roads that are necessary for orderly development.*

6-2026 Grant of exception permitting ~~development subdivision~~ within a class I ridge~~line~~ setback.

The planning commission may grant an exception to the restriction of development on a class I ridge imposed by section 6-2023 to allow subdivision if it makes the findings required by section 6-2068. To apply for an exception, the applicant shall apply for a hillside development permit under article 6 of this chapter. An exception shall be subject to the 15-degree declination restriction of section 6-2029.

*This section now restricts subdivision rather than both development of lots-of-record and subdivision. Thus the takings analysis is restricted to subdivisions for which it more appropriate.*

6-2027 Grant of exception permitting ~~development subdivision~~ within a class II ridge setback or class III restricted ridgeline ~~setback~~area.

The planning commission may grant an exception to the restriction of development on a class II ridge by section 6-2023(b) and a class III ridge imposed by section 6-2024 to allow subdivision if it makes the findings required by section 6-2069. To apply for an exception, the applicant shall apply for a hillside development permit under article 6 of this chapter. In a class II ridgeline setback an exception shall be subject to the 15-degree declination restriction of section 6-2029.

*This section now restricts subdivision rather than both development of lots-of-record and subdivision. Thus the takings analysis is restricted to subdivisions for which it more appropriate.*

~~6-2028 Requirement for vegetation in restricted ridgeline areas.~~

~~New or replacement vegetation in a restricted ridgeline area described in section 6-2023 shall be native to the surrounding area and shall be approved by the manager, after review by the city's landscape consultant or as approved in the hillside development permit approval process. This requirement does not apply to a restricted area within 100 feet of a home that existed on December 8, 1993.~~

*This section is deleted because it is redundant to §6-2051 which was found to be more appropriate.*

6-2028 Grant of exception permitting development on an existing lot of record within a restricted ridgeline area.

The planning commission may grant an exception permitting development on an existing lot of record within a restricted ridgeline area if it finds that the site plan and design are such that the proposed development would provide a result that strictly satisfies the findings set forth in Section 6-2067. To apply for an exception, the applicant shall apply for a hillside development permit under article 6 of this chapter. In a class I or class II ridgeline setback an exception shall be subject to the 15-degree declination restriction of section 6-2029.

*This is a new section making it possible for development within a restricted ridgeline area on an existing lot of record to occur without invoking an economic takings analysis. Under current regulations an existing home on a lot-of-record in a class I ridgeline setback cannot make any additions regardless of how well-concealed the project is. The declination continues to apply.*

6-2029 Restriction of development within a 15-degree declination of a class I or class II ridgeline setback.

- A. When the Planning Commission has granted an exception to permit development within a class I or class II ridgeline setback in accordance with sections 6-2067, 6-2068 or 6-2069, no development shall be approved that will result in any portion of a building within a class I or class II ridge setback that is higher than a plane sloping downward at a declination of 15 degrees from the horizontal intercept of the ridge. The measurement shall be made at the nearest point of the development to the ridgeline and measured perpendicular to the ridgeline or as a radius from the endpoint of the ridgeline.
- B. The planning commission may grant an exception to the restriction of subdivision imposed by section (A) above, if it makes the findings required by section 6-207X (following 6-2069). To apply for an exception, the applicant shall apply for a hillside development permit under article 6 of this chapter.

*The declination regulation is one of the original requirements of the first hillside ordinance adopted in 1993. At the time, it was far more narrowly applied and it applied only within the setbacks (250') of the two major ridgelines. When the current ordinance was adopted it not only covered many more ridgelines but extended to the limits of the HOD. So while the current ordinance requires that the structures being reviewed be adjacent to the ridgelines it extends a considerable distance from the ridgeline in some cases.*

*As a practical matter staff has found it difficult to implement because very often accurate topographical information was not available for the properties between the proposal and the ridgeline and the city's topographical maps are not always accurate enough to correctly identify the location of the ridgeline. It is still, nevertheless, a useful tool and the committee is recommending that it be used within the restricted ridgeline areas where accurate topographical information will be provided by an applicant.*

**Article 4. Development Requirements for Existing Lots of Record  
in the Hillside Overlay District**

6-2031 Application of development requirements.

This article applies within the hillside overlay district for lots of record existing on July 8, 2002.

6-2032 Requirements for development on existing lots of record.

The width, depth, height, yard and parking requirements for a lot of record are those requirements imposed by the underlying zoning district. The minimum lot area is the lot area existing on July 8, 2002.

6-2033 Additional requirements.

The hearing authority may impose additional requirements if it finds that the property requires protection because of its prominence and location, or determines that there may be exceptional hazards to its development.

6-2034 Findings required for development on existing lots of record in the hillside overlay district.

In approving development on an existing lot of record in the hillside overlay district the hearing authority shall make the findings required by section 6-2070 ~~in addition to the general findings for a Hillside Development Permit set forth in section 6-2067.~~

## **Article 5. Development Requirements for Subdivisions in the Hillside Overlay District**

### 6-2041 Purpose and intent.

- A. The city recognizes the intrinsic value and sensitive nature of its scenic hillsides and major ridgelines. They constitute significant natural topographical features and comprise a large part of the natural open space and rural residential areas of the city because of their physical dominance of the city's landscape.
- B. Clustered development provides an opportunity for development that best serves the purpose of preserving the city's hillsides and ridgelines.
- C. By minimizing grading for roads and grouping dwelling units in areas where visibility to the public is minimal, habitat for wildlife and vegetation can be protected, usable public open space can be provided and hillsides can be maintained in as nearly natural a condition as feasible consistent with development.
- D. Each property has its own unique characteristics, including but not limited to topography, tree-cover and visual impact. The regulations in this article are intended to provide flexibility in the treatment of the development of individual properties as indicated by their uniqueness rather than to provide a fixed set of strict standards applicable in the same manner to all properties.
- E. These regulations are intended to allow a diversity in the relationship of buildings, structures, lot sizes, building site requirements and open spaces while ensuring compliance with the general plan and meeting minimum standards necessary to satisfy the requirements of the public health, safety and general welfare without unduly inhibiting the advantages of integrated site planning.

### 6-2042 Application of development requirements.

This article applies within the hillside overlay district to each new lot created under the Subdivision Map Act and, to the extent provided in chapter 6-24, to an existing lot whose boundaries are reconfigured using the lot line adjustment process.

### 6-2043 Lot area and density.

- A. The maximum density in the hillside overlay district for a subdivision approved after July 8, 2002 is the maximum density permitted in the underlying zoning district or that required by the following table, whichever is less.

Average % Slope	Maximum Density
15 – 15.9%	1.43 du / acre
16 – 16.9%	1.25 du / acre
17 – 17.9%	1.11 du / acre
18 – 18.9%	1.00 du / acre
19 – 19.9%	.91 du / acre
20 – 20.9%	.83 du / acre
21 – 21.9%	.77 du / acre
22 – 22.9%	.71 du / acre
23 – 23.9%	.67 du / acre
24 – 24.9%	.63 du / acre
25 – 25.9%	.56 du / acre
26 – 26.9%	.50 du / acre
27 – 27.9%	.45 du / acre

du = dwelling units

Average % Slope	Maximum Density
28 – 28.9%	.42 du / acre
29 – 29.9%	.38 du / acre
30 – 30.9%	.36 du / acre
31 – 31.9%	.32 du / acre
32 – 32.9%	.29 du / acre
33 – 33.9%	.26 du / acre
34 – 34.9%	.23 du / acre
35 – 35.9%	.20 du / acre
36 – 36.9%	.17 du / acre
37 – 37.9%	.14 du / acre
38 – 38.9%	.13 du / acre
39 – 39.9%	.11 du / acre
40% and over	.10 du / acre

du = dwelling units

- B. There is no minimum lot area requirement for new lots created within the hillside overlay district, however, the total number of lots in the subdivision shall not exceed the density established by subsection A, disregarding any fractional remainder in the calculated number of dwelling units.

6-2044 Calculation of average slope as used in section 6-2043.

- A. In section 6-2043, “average percent slope” (“S”) is computed on the area of an unsubdivided parcel less the area of access easements or street rights-of-way by the following formulas:

$$S = \frac{0.002296 \, l \, L}{A} \text{ or } S = \frac{100 \, l \, L}{a}$$

Where S = average percent slope  
 l = contour interval in feet  
 L = summation of length of all contours in feet  
 A = area in acres of parcel being considered  
 a = area in square feet of parcel being considered

- B. In calculating the average percent of slope, a part or parts of an unsubdivided parcel may be excluded from the calculation at the option of the applicant if the applicant demonstrates and the manager determines:
1. Each excluded area consists of a distinct topographical feature of the parcel such as a deep ravine, creek bank, or steep cut and fill bank for a street, the slope of which varies substantially from and is inconsistent with the topography of the remainder of the parcel;
  2. The total excluded area is not greater than 25 percent of the total area of the unsubdivided parcel; and

3. The unexcluded area meets the maximum density requirements of the zoning district regulations applicable to the unsubdivided parcel.

The total excluded area may not be used in a calculation for density nor be used to exempt the remaining area from a requirement applicable to land in the hillside overlay district. The total excluded area is precluded from further development and, when appropriate, shall be protected by an open space, scenic or conservation easement.

An interested party may appeal the determination of the manager under this subsection to the planning commission.

- C. The calculation of the average percent of slope shall be based upon a complete topographic survey of the parcel provided at the expense of the applicant. A contour interval no greater than five feet and a horizontal map scale of one inch equals 100 feet, or as required by the manager, shall be used.

6-2045 Exception to section 6-2043.

- A. The planning commission may grant an increase in the maximum density set forth in section 6-2043, not to exceed a total of 40 percent increase in density only if, in addition to the findings for a subdivision required by section 6-2071, it makes the following findings:
  1. The subject property is located in one of the following single family residential districts: R-6, R-10, R-12, R-15, R-20, or R-40;
  2. The resulting dwelling unit density will not exceed the average density of existing dwelling units on properties any portion of which is within 500 feet of the subject property and within the same zoning district as the subject property; and
  3. The resulting density will not be greater than the maximum density allowed by the underlying zoning district.
- B. In single-family residential district R-65 or R-100, the planning commission may grant an increase in the maximum density in section 6-2043 upon making the findings 2. and 3. in subsection A. This increase may not exceed a total of 20 percent and applies only to the division of land into not more than two lots.

6-2046 Clustering.

- A. Development within a subdivision in the hillside overlay district shall be clustered in a manner consistent with the purpose and intent of section 6-2041 and with findings required in section 6-2071. The lots may not exceed the density established by section 6-2043.
- B. The interior setbacks of each clustered lot within a subdivision are the setbacks established by an approved subdivision map and are set forth in recorded covenants, conditions and restrictions.

- C. The exterior setbacks are the setbacks of the underlying zoning district. Exterior setbacks refer to setbacks that abut properties adjacent to the subdivision.

6-2047 Building site requirements; exceptions.

- A. Each lot shall have a suitable naturally contoured building site of thirty (30) percent or less slope. A “naturally” contoured building site does not include a manmade site unless it was created through a permit process before January 1, 1988. The percent slope of the building site is determined by section 6-2044. Each building site shall meet the following standards:
1. Each structure, including access facility such as a parking apron or required fire equipment turn-around, shall be sited so as to require minimal grading and to preserve the natural features of the site such as swales, rock outcroppings and vegetation;
  2. Construction shall take place within the designated 30 percent slope area with the exception of:
    - a. An access road or driveway (not parking area), which shall be designed to require minimum grading;
    - b. An ancillary structure, such as deck supported by posts or cantilevered, and where the natural grade is undisturbed.
  3. The 30 percent slope area shall be of reasonably regular configuration; and
  4. A conceptual siting, massing and design study is required where the 30 percent slope area is less than 15,000 square feet.
- B. The planning commission may grant an exception to the requirement that the building site must be 30 percent or less slope if it finds that the application of the 30 percent maximum slope requirement would deprive the property of economically viable use. In granting an exception under this subsection B, the density:
1. Shall not exceed the density permitted by the underlying zoning district or the slope density formula, whichever is less; and
  2. Shall not exceed that necessary to avoid an unconstitutional taking of property.

6-2048 Off-site visibility.

- A. Each structure shall be located away from a prominent location such as a ridgeline, hilltop, knoll or open slope and shall be substantially concealed by vegetation, ~~or existing terrain~~ or proposed architecture when viewed from lower elevations from public places, using the viewing evaluation map as a guide to establish locations from which views are considered. ~~publicly owned property (including freeways, roadways, open space, parks and trails).~~

B. Within 100 feet of a restricted ridgeline area or where an exception is granted to allow development within a ridgeline setback, each structure shall be substantially concealed by existing vegetation, existing terrain or proposed architecture to the extent feasible when viewed from lower elevations from public places, using the viewing evaluation map as a guide to establish locations from which views are considered. ~~publicly owned property (including freeways, roadways, open space, parks and trails).~~

C. The requirements of this section are intended to protect views of the open and highly visible portions of the scenic hillsides and ridgelines so that they appear essentially undeveloped as viewed from below the dwelling. The viewing evaluation map is intended as a guide to establish locations from which views are considered.

D. The planning commission may grant an exception to the prohibition imposed by subsection (B) above if it finds that the prohibition would deprive the property of economically viable use. In granting an exception under this subsection, the density:

(1) Shall not exceed the density permitted by the underlying zoning district or the slope density formula, whichever is less; and

(2) Shall not exceed that necessary to avoid an unconstitutional taking of property.

*The committee proposes to add “proposed architecture” to those things that can substantially conceal a building because architecture is an important component of concealment. It is often suggested that a newly planted tree will soon conceal a two-story house.*

*In section B the notion that in subdivision concealment by existing vegetation or existing terrain or proposed architecture is only to be done “if feasible”*

#### 6-2049 Trails.

When a property proposed for subdivision includes a trail or portion of a trail designated either on the city’s adopted master trails map or an adopted regional trail plan, the subdivision shall provide for such trail. The trail shall, as appropriate, be dedicated and improved as allowed by law in accordance with adopted city standards.

#### 6-2050 Steep slopes; exceptions.

A. The portion of a lot which has a ground slope in excess of 35 percent may not be altered by grading, the removal or alteration of a natural feature, such as a stream, rock outcrop, ridgeline, drainage swale, the removal of vegetation or other activity related to the preparation of the site for development except:

1. As may be required in the interest of public safety, such as the removal of poisonous or noxious plants, the controlled removal or thinning of vegetation as a part of a fire protection program required by the fire district, or other public safety purpose approved by the manager;

2. Provision for a trail comprising a component of the city's adopted master trails plan or an adopted regional trail plan; or
  3. When the planning commission finds that an exception is necessary in order to provide the least intensive or damaging access to an approved building site.
- B. The planning commission may grant an exception to the prohibition imposed by subsection A if it finds that the prohibition would deprive the property of economically viable use. In granting an exception under this subsection B, the density:
1. Shall not exceed the density permitted by the underlying zoning district or the slope density formula, whichever is less; and
  2. Shall not exceed that necessary to avoid an unconstitutional taking of property.

#### 6-2051 Vegetation.

New or replacement vegetation in an area within or abutting open space or natural areas, such as oak woodland, chaparral, grassland and riparian areas, excluding planting for erosion control or land stabilization, shall be native to the surrounding area. The goal of the planting should be a seamless blending with the natural vegetation. The reviewing authority may grant an exception to this requirement for a small garden area near the home provided it is not visible from public places and contains no non-native trees or shrubs over 6-ft. in height, or large green expanses.

*This section is modified to allow for small more personal gardens close to a home to occur as long as they are sensitive to the natural environment.*

#### 6-2052 Open space, scenic and conservation easements.

The planning commission may require dedication of open space, scenic or conservation easements to protect natural riparian vegetation, terrain, a scenic vista, trail corridor, stream or watercourse, wildlife, or other area of ecological significance or to limit a drainage or erosion problem.

A specific percentage of open space is not required. However, the development shall be planned and designed for the preservation of open space and the open space shall be a significant feature of the development. Open space shall be planned in mass rather than in "leftover" fragments. Open spaces shall be linked visually and when physically possible should form a system of open spaces. Where appropriate, trails should link open spaces.

#### 6-2053 Utilities.

Utilities shall be installed underground in accordance with applicable underground utility ordinances and with the rules and regulations of the state Public Utilities Commission.

#### 6-2054 Streets.

Each street right of way, improvement and pavement width shall conform to adopted city standards, provided that the planning commission may permit a pavement width less than the adopted standard for a two-way street after consideration of each of the following factors:

- A. Steepness of terrain;
- B. Depth of cut, amount of cut and fill required, height and appearance of required retaining walls;
- C. Type and quantity of trees and vegetation either existing or required to be installed;
- D. Ability to grade required cut and fill areas to give the appearance of a natural slope;
- E. Ability to landscape cut and fill areas to give the appearance of a natural slope;
- F. Existence of off-street parking to compensate for parking not provided on the street;
- G. Existence of adequate turn-arounds every 500 to 1,000 feet;
- H. Adequacy of sight distance and safety of driveway entrances;
- I. The maximum number of home sites which can ultimately be served by the street; and
- J. Whether the street is or can become a through street.

6-2055 Fire safety.

- A. Each dwelling unit must be accessed by a road or driveway adequate to meet fire safety requirements. A narrow road or driveway is preferred in order to protect valuable trees or to minimize grading. A fire equipment turn-around shall be provided as required by the fire district and shall be shown and labeled on development plans.
- B. Each fire hydrant shall be installed in a location and to standards recommended by the fire district.
- C. The applicant shall provide a roadway system that will be adequate to allow a fire fighting vehicle reasonable access to an isolated or large undeveloped area of the property.

6-2056 Additional requirements.

The planning commission may impose additional requirements if it finds that the parcel requires protection because of its prominence and location, or determines that there may be exceptional hazards to its development.

6-2057 Findings required for a subdivision in the hillside overlay district.

In approving a subdivision in the hillside overlay district the planning commission shall make the findings required by section 6-2071 in addition to the findings required by Government Code section 66474.

## **Article 6. Hillside Development Permit Approval Process**

### 6-2061 Hillside development permit process.

Development within the Hillside Overlay District requires a permit. A proposal for development within the Hillside Overlay District shall be initiated by an application on a form prescribed by the city together with the required fee.

### 6-2062 Submittal requirements.

In addition to the submittal requirements imposed by the city's zoning, subdivision, building and grading regulations and environmental review procedures, an applicant for a hillside development permit shall submit the following in the form of textual material and general schematics:

- A. Proposed use of the land;
- B. Existing natural land features and topography including each designated ridgeline. The topography shall be shown at a maximum of two foot contour intervals in the area to be developed;
- C. Surveyed locations of each tree having a trunk of four or more inches in diameter at four feet six inches above grade and within 100 feet of all construction and grading. The plan shall denote tree species, show accurate drip lines, base of trunk elevations and indicate whether or not the tree is to be removed;
- D. Circulation plan for each vehicular and pedestrian way;
- E. Proposed building site;
- F. General location of each hiking, riding and bicycle trail and recreational facility;
- G. Plan showing the natural open space which will remain upon completion of development;
- H. Location and dimensions of each existing structure;
- I. Landscaping, parking area and all proposed structures;
- J. Anticipated grading for the development;
- K. Current preliminary soils and geological report in each proposed building site prepared by a registered geotechnical engineer;

- L. Written legal description of the property;
- M. Preliminary report indicating provision for storm drainage, sewage disposal and public utilities;
- N. Statement indicating how the proposed development conforms to the general plan;
- O. Biotic resources analysis that includes the following:
  - 1. Type and location of threatened and endangered plant and animal species;
  - 2. Riparian vegetation on and within 100 feet of subject property;
  - 3. Oak woodland and other plant communities providing habitat;
  - 4. Location of watercourses, springs, drainage swales and other natural features that may provide habitat;
  - 5. Wildlife corridors;
  - 6. Area and location of undeveloped land on the subject property required to protect and enhance the continued viability of significant biotic resources, where applicable; and
  - 7. Mitigation measures for impacts on significant biotic resources; and
- P. Additional information required by the manager.

6-2063 Waiver of application submittals.

The manager may waive a submittal requirement imposed by section 6-2062 upon determination that:

- A. The information is not required in order to make one or more of the required findings;
- B. The information required is not applicable in the case of an addition to an existing dwelling or remodel;
- C. A recent report exists covering the same subject matter on the same site; or
- D. The material required is or will be part of an environmental impact report or negative declaration.

The decision of the manager may be appealed as provided in section 6-214 of the Lafayette Municipal Code.

6-2064 Notice.

Notice of a public hearing on an application for a hillside development permit shall be given in the same manner as the notice requirement for a variance as prescribed in 6-211.

6-2065 Procedure for hillside development permit.

A. The procedure for obtaining a hillside development permit is as follows:

1. An application for hillside development permit shall be submitted to the zoning administrator accompanied by the required fee;
2. If the zoning administrator finds that the proposed development is minimal in nature and complies with the purpose and intent of this chapter, the zoning administrator may issue a hillside development permit without the requirement for a public hearing;
3. If the zoning administrator determines that a public hearing is required, the zoning administrator shall provide notice as prescribed in Section 6-2064;
4. The zoning administrator may refer the application to the design review commission or planning commission for review and action and require submission of the required fee for consideration of a hillside development permit by the design review or planning commission;
5. The design review commission may refer the application to the planning commission for review and action and require submission of the required fee for consideration of a hillside development permit by the planning commission;
6. The zoning administrator, design review commission or planning commission may approve, conditionally approve or deny the application.
7. A decision of the zoning administrator or planning commission is subject to the right of appeal in the manner set forth in Chapter 6-2 Article 3, Sections 6-225 through 6-238. A decision of the design review commission is subject to the right of appeal in the matter set forth in Chapter 2, Article 5, Section 2-511.

8. Development of a building on a vacant lot in the Hillside Overlay District shall be reviewed in two separate Hillside Development Permit applications made on a form and in such manner as prescribed by the manager.

a. Application 1: Siting and massing determination by the Planning Commission

b. Application 2: Review of the design and impacts of the project

*This codifies a process which has been developed since the current ordinance was adopted. It is appropriate to determine siting and massing prior to the applicant investing significant time and energy doing design development and going through Design Review Commission hearings.*

B. The Planning Commission shall be the hearing authority for the following:

1. Development within 100 feet of a restricted ridgeline area, except where the zoning administrator determines that the proposed development is minimal in nature and complies with the purpose and intent of this chapter;
2. Development requiring an exception to permit development within a restricted ridgeline area, except where the zoning administrator determines that the proposed development is minimal in nature and complies with the purpose and intent of this chapter; or
3. A subdivision in the hillside overlay district.

Subsections 1. and 2. above will allow some very minor applications to be approved by the zoning administrator which, have until now required planning commission approval.

#### 6-2066 Imposition of conditions.

The hearing authority may impose a condition to an approval if it determines that the condition is necessary to carry out the purpose and intent of this chapter.

#### ~~6-2067 General findings for a hillside development permit.~~

~~The hearing authority may approve an application for a hillside development permit only after making the following findings:~~

- ~~A. The development is consistent with the applicable goals and policies of the general plan and is in conformance with applicable zoning regulations;~~
- ~~B. The development will preserve open space and physical features, including rock outcroppings and other prominent geological features, streams, streambeds and ponds, native vegetation, native riparian vegetation, animal habitats and other natural features;~~
- ~~C. The development and each associated improvement is located and designed to complement the natural terrain and landscape of the site and surrounding properties, and relates to the development pattern, including density and distribution, of the surrounding neighborhood;~~
- ~~D. Structures in a hillside overlay district will, to the extent feasible, be located away from prominent locations such as ridgelines, hilltops, knolls and open slopes.~~
- ~~E. Development grading will be minimized to reduce cut and fill, preserve existing geologic features, topographic conditions and existing vegetation, reduce short and long-term erosion, slides and flooding, and abate visual impacts;~~
- ~~F. Each structure proposed complies with the city's residential design guidelines, and development landscaping will ensure visual relief and complement each proposed structure to provide an attractive environment; and~~

~~G. The development will not create a nuisance, hazard or enforcement problem within the neighborhood or the city, nor require the city to provide an unusual or disproportionate level of public services.~~

~~I. The new or replacement vegetation for the development is native to the surrounding area in areas abutting open space and natural areas, such as oak woodland, chaparral, grassland and riparian areas, excluding planting for erosion control or land stabilization.~~

6-2067 Finding required for grant of exception permitting development on an existing lot of record within a restricted ridgeline area.

The planning commission may grant an exception permitting development on an existing lot of record within a restricted ridgeline area if it finds that the site plan and design are such that the proposed development would strictly satisfy the findings set forth in Section 6-2070.

*The findings in what used to be 6-2067 General Findings for a Hillside Development Permit have been integrated into two sets of findings, 6-2070 for existing lots of record and 6-2071 for subdivision. This allowed us to eliminate redundancy and to somewhat streamline the process.*

6-2068 Findings required for grant of exception permitting ~~development-subdivision~~ within a class I ridgeline setback.

In order to grant an exception to the prohibition of ~~development-subdivision~~ on a class I ridge imposed by section 6-2023(A), the planning commission shall make, in addition to other findings required by this chapter (refer to sections ~~6-2067 and 6-2070 or~~ 6-2071), the following findings:

- A. The prohibition of section 6-2023 has the effect of depriving the property of all economically viable use;
- B. The density does not exceed the density permitted by the underlying zoning district or the slope density formula, whichever is less; and
- C. The density permitted does not exceed that necessary to provide the property with an economically viable use.

*These are the same findings as those in the current ordinance except that they no longer apply to lots of record.*

6-2069 Findings required for grant of exception permitting ~~development-subdivision~~ within a class II ~~or III ridgeline setback~~ or class III restricted ridgeline area.

In order to grant an exception to the prohibition of ~~development on~~subdivision within a class II ridge setback imposed by section 6-2023(B) or on a class III ridge imposed by section 6-2024, the planning commission shall find either that:

- A. Special conditions and unique characteristics of the subject property exist and a site plan and design is such that the proposed development would provide a result that satisfies the ~~policies in section 6-2067 and 6-2070 or~~ strictly satisfies the findings set forth in Section 6-2071, as

~~the case may be, and that would otherwise satisfy the strict standards of sections 6-2023 or 6-2024; or~~

- B. An exception is necessary to allow an economically viable use of the property and the ~~development subdivision~~ meets the standards in section ~~6-2070 or~~ 6-2071 to the maximum extent feasible, as the case may be. In granting an exception under this subsection B the density:
1. Shall not exceed the density permitted by the slope density formula or the underlying zoning district, whichever is less; and
  2. Shall not exceed that necessary to avoid an unconstitutional taking of property.

*These are essentially the same findings that are in the current ordinance except that they no longer apply to lots of record.*

#### 6-207X Grant of exception permitting development within the 15-degree declination

The planning commission may grant an exception to the restriction of development within the 15 degree declination line of a class I or class II ridge if it makes the findings in A or B or C below:

##### A. The topography and existing vegetation and proposed architecture are such that

- (1) The building will not have a substantial visual impact and will not protrude above the ridge when viewed from lower elevations in the city, using the Viewing Evaluation Map as a guide for areas from which views are considered; and
- (2) grant of an exception will not interfere with an existing or proposed ridge trail or compromise its open space and scenic character.

##### B. For existing lots of record where it is not possible to substantially conceal the building in conformance with subsection (A) above, the Planning Commission may grant an exception if it finds that:

- (1) The height, size, siting, design and landscaping are such that the building is concealed to the maximum extent feasible and the structure will not protrude above the ridge when viewed from lower elevations in the city, using the Viewing Evaluation Map as a guide for areas from which views are considered; and
- (2) Grant of an exception will not interfere with an existing or proposed ridge trail or compromise its open space and scenic character.

##### C. For subdivision, ~~when~~ an exception is necessary to allow an economically viable use of the property and the subdivision meets the standards in section 6-2071 to the maximum extent feasible. In granting an exception under this subsection the density:

1. Shall not exceed the density permitted by the slope density formula or the underlying zoning district, whichever is less; and

2. Shall not exceed that necessary to avoid an unconstitutional taking of property.

*These findings create criteria that allow for exception to the 15 degree declination without the need for a takings evaluation, both for existing lots of record and subdivision. They are developed because there are some situations where the declination line runs underground through most of a property and even though the property is well-concealed it cannot be developed or in the case of a lot of record, remodeled. This particularly true in the case of class I ridges.*

**~~§6-2070 Findings required for approval of development on existing lots of record in hillside overlay district.~~**

~~The findings required to approve development on an existing lot of record in the hillside overlay district are the findings set forth in section 6-2067 and the following additional findings:~~

- ~~A. When within a L-R-10 or L-R-5 district, within 100 feet of a restricted ridgeline area, or when an exception to a ridgeline setback has been granted, the development will result in each structure being substantially concealed when viewed from lower elevations from publicly owned property (including freeways, roadways, open space, parks and trails), using the viewing evaluation map as a guide to establish locations from which views are considered.~~
- ~~B. The development uses site planning techniques to the extent feasible to preserve hillsides, knolls, ridgelines and open space, minimize grading and impacts to habitat, and preserve on-site open space and vegetation, terrain, scenic vistas, streams or other courses, or other areas of ecological significance.~~
- ~~C. The development provides adequate emergency vehicle access, including turn-around space, to the building site and surrounding on-site undeveloped or isolated areas while protecting trees, minimizing grading and preserving to the extent feasible the natural hillside character of the site.~~
- ~~D. The development, including site design and the location and massing of all structures and improvements will, to the extent feasible:
  - ~~(1) Preserve the open space and uncluttered topography of the city;~~
  - ~~(2) Minimize the loss of privacy to surrounding residents;~~
  - ~~(3) Not have a significant visual impact when viewed from lower elevations from publicly owned properties (including freeways, roadways, open space, parks and trails), using the viewing evaluation map as a guide; and~~
  - ~~(4) Not interfere with a ridgeline trail corridor or compromise the open space or scenic character of the corridor.~~~~

6-2070 Findings for Hillside Development Permit on Existing Lots of Record

The hearing authority may approve an application for a hillside development permit on an existing lot of record only after making the following findings:

- a. The development is consistent with the applicable goals and policies of the general plan and is in conformance with applicable zoning regulations: [from §6-2067 (1)]
- b. The development will preserve open space and physical features, including rock outcroppings and other prominent geological features, streams, streambeds, ponds,

- drainage swales, native vegetation, native riparian vegetation, animal habitats and other natural features; [from §6-2067 (2)]
- c. Structures in the hillside overlay district will, to the extent feasible, be located away from prominent locations such as ridgelines, hilltops, knolls and open slopes; [from §6-2067 (4)]
- d. The development, including site design and the location and massing of all structures and improvements will, to the extent feasible: [from §6-2070 (D)]
1. Minimize the loss of privacy to surrounding residents and not unduly impact, restrict or block significant views;
  2. Not have a significant visual impact when viewed from lower elevations from public placespublicly owned properties (including freeways, roadways, open space, parks and trails), using the viewing evaluation map as a guide to establish locations from which views are considered; and
  3. Not interfere with a ridgeline trail corridor or compromise the open space or scenic character of the corridor.
- e. ~~When within a L-R-10 or L-R-5 district, w~~Within 100 feet of a restricted ridgeline area, or when a exception to a ridgeline setback has been granted, the development will result in each structure being substantially concealed by terrain, vegetation and proposed architecture when viewed from lower elevations from public placespublicly owned property (including freeways, roadways, open space, parks and trails), using the viewing evaluation map as a guide to establish locations from which views are considered. [from §6-2070 (A)]
- f. Development grading will be minimized to limit scarring and cutting of hillsides especially for long roads or driveways, preserve existing geologic features, topographic conditions and existing vegetation, reduce short and long-term erosion, slides and flooding, and abate visual impacts; [from §6-2067 (5)]
- g. The development provides adequate emergency vehicle access, including turn-around space, to the building site and surrounding on-site undeveloped or isolated areas. [from §6-2070 (C)]
- h. Each structure and proposed landscaping complies with the city's residential design guidelines; [from §6-2067 (6)]
- i. The new or replacement vegetation for the development is native to the surrounding area in areas abutting open space and natural areas, such as oak woodland, chaparral, grassland and riparian areas, and conforms to the policies of Section 6-2051. [from §6-2067 (8)]
- j. The development will not create a nuisance, hazard or enforcement problem within the neighborhood or the city, nor require the city to provide an unusual or disproportionate level of public services; [from §6-2067 (7)]

**§6-2071 Findings required for approval of subdivision in the Hillside Overlay District.**

~~————~~The findings required to approve a subdivision in the Hillside Overlay District are the findings set forth in Section 6-2067 and the following additional findings:

- ~~a. ———~~The design of the subdivision and the proposed development are derived from naturally contoured sites of reasonably regular configuration, do not create

~~building sites on slopes exceeding 30 percent nor result in the need for construction of primary structures outside the areas of 30 percent or less slopes;~~

- ~~b. The design of the subdivision and the proposed development will result in each structure being substantially concealed, as required by LMC Section 2-2048, when viewed from lower elevations from publicly owned property (including freeways, roadways, open space, parks and trails), using the viewing elevation map as a guide to establish locations from which views are considered;~~
- ~~c. The design of the subdivision provides for a trail or portions of trails in conformance with the City's adopted Master Trails Map or an adopted regional trail plan, and the trail is dedicated and conditioned for improvement in accordance with adopted standards;~~
- ~~d. The design of the subdivision and proposed development use clustering or other site planning techniques to preserve hillsides, ridgelines and open space, minimize grading and impacts on wildlife habitats to the extent feasible, and provide for the preservation of on-site open space and vegetation, terrain, scenic vistas, trail corridors, streams or water courses, or other areas of ecological significance through dedication, easement, land trust or suitable regulation;~~
- ~~e. The design of the subdivision and the proposed development are arranged so that no portion of the lot exceeding a slope of 35 percent, is proposed to be altered by grading removal or alteration of a natural feature, the removal of vegetation or other activity related to the preparation of the site for development, except fire protection, or other measures necessary for public safety, slope or geologic stabilization or the provision of a trail in conformance with the City's adopted Master Trails Map or an adopted regional trail plan or where the Planning Commission finds that an exception is necessary to provide the least intrusive or damaging access to an approved building site;~~
- ~~f. The development, including site design and the location and massing of all structures and improvements, will preserve the open and uncluttered topography of the City, and not interfere with a ridgeline corridor or compromise the open space or scenic character of the corridor;~~
- ~~g. Each proposed house location and the location of each related structure is sited to minimize loss of privacy and not unduly impact, restrict or block significant views;~~
- ~~h. The design of streets, streetlights, storm drainage, utilities and other common improvements incorporated into the subdivision comply with adopted City standards and are designed to preserve the character of the site and surrounding area, minimize visual impact and avoid adverse impacts on surrounding properties and neighborhoods;~~
- ~~i. Street right of way incorporated into the design of the subdivision is based on the following conditions;
  - ~~1. Steepness of terrain;~~
  - ~~2. Depth of cut, amount of cut and fill, height and appearance of retaining walls;~~
  - ~~3. Type and quantity of existing and proposed trees and vegetation;~~
  - ~~4. Ability to give the appearance of a natural slope after grading and landscaping;~~~~

- ~~5. Adequacy of off street parking to compensate for any lack of on street parking;~~
- ~~6. Adequacy of required turn around spaces every 500—1,000 feet;~~
- ~~7. Adequacy of sight distances around curves and near driveway entrances;~~
- ~~8. Number of home sites to be served by the street;~~
- ~~9. Potential for future extension of the street; and~~
- ~~j. The design of the subdivision and the proposed development provide adequate emergency vehicle access, including turn around space, to each building site and surrounding undeveloped areas, while protecting valuable trees, minimizing grading and preserving the natural hillside character of the site and vicinity.~~

6-2071 Findings required for approval of subdivision in the hillside overlay district.

- A. The development is consistent with the applicable goals and policies of the general plan and is in conformance with applicable zoning regulations; [from §6-2067(a)]
- B. The development will preserve open space and physical features, including rock outcroppings and other prominent geological features, streams, streambeds, ponds, drainage swales, native vegetation, native riparian vegetation, animal habitats and other natural features; [from §6-2067 (b)]
- C. The design of the subdivision and the proposed development are derived from naturally contoured sites of reasonably regular configuration, do not create building sites on slopes exceeding 30 percent nor result in the need for construction of primary structures outside the areas of 30 percent or less slopes; [from §6-2071 (a)]
- D. The design of the subdivision and the proposed development will result in each structure being substantially concealed, as required by section 2-2048, when viewed from lower elevations from public places, using the viewing evaluation map as a guide to establish locations from which views are considered; [from §6-2071 (b)]
- E. The design of the subdivision provides for a trail or portions of trails in conformance with the city's adopted master trails map or an adopted regional trail plan, and the trail is dedicated and conditioned for improvement in accordance with adopted standards; [from §6-2071 (c)]
- F. The design of the subdivision and proposed development use clustering or other site planning techniques to preserve hillsides, ridgelines, knolls and open space, minimize impacts on wildlife habitats to the extent feasible, and provide for the preservation of vegetation, terrain, scenic vistas, trail corridors, streams or water courses, or other areas of ecological significance through dedication, easement, land trust or other suitable regulation; [from §6-2071 (a)]
- G. Development grading will be minimized to limit scarring and cutting of hillsides especially for long roads or driveways, preserve existing geologic features, topographic conditions and

existing vegetation, reduce short and long-term erosion, slides and flooding, and abate visual impacts. [from §6-2067 (e)]

H. The design of the subdivision and the proposed development are arranged so that no portion of the lot exceeding a slope of 35 percent, is proposed to be altered by grading removal or alteration of a natural feature, the removal of vegetation or other activity related to the preparation of the site for development, except fire protection, or other measures necessary for public safety, slope or geologic stabilization or the provision of a trail in conformance with the city's adopted master trails map or an adopted regional trail plan or where the planning commission finds that an exception is necessary to provide the least intrusive or damaging access to an approved building site; [from §6-2071 (e)]

I. The development, including site design and the location and massing of all structures and improvements will be located away from prominent locations such as ridgelines, hilltops, knolls and open slopes, preserve the open and uncluttered topography of the city, and not interfere with a ridgeline corridor or compromise the open space or scenic character of the corridor; [from §6-2067 (d) and §6-2071 (f)]

J. The development and each associated improvement is located and designed to complement the natural terrain and landscape of the site and surrounding properties, and in when in close proximity to an existing neighborhood relates to the development pattern, including density and distribution, of that neighborhood; [from §6-2067 (e)]

K. The new or replacement vegetation for the development is native to the surrounding area in areas abutting open space and natural areas, such as oak woodland, chaparral, grassland and riparian areas, excluding planting for erosion control or land stabilization, and conforms to the policies of Section 6-2051. [from §6-2067 (h)]

L. The development complies with the city's residential design guidelines, and landscaping will ensure visual relief and complement each proposed structure to provide an attractive environment; [from §6-2067 (f)]

M. Each proposed house location and the location of each related structure is sited to minimize loss of privacy and not unduly impact, restrict or block significant views; [from §6-2071 (g)]

N. The design of streets, streetlights, storm drainage, utilities and other common improvements incorporated into the subdivision comply with adopted city standards and are designed to preserve the character of the site and surrounding area, minimize visual impact and avoid adverse impacts on surrounding properties and neighborhoods; [from §6-2071 (h)]

O. Street right-of-way incorporated into the design of the subdivision is based on the conditions set forth in Section 6-2054 "Streets"; [from §6-2071 (i)]

P. The design of the subdivision and the proposed development provide adequate emergency vehicle access, including turn-around space, to each building site and surrounding

undeveloped areas, while protecting valuable trees, minimizing grading and preserving the natural hillside character of the site and vicinity; [from §6-2071 (j)]

Q. The development will not create a nuisance, hazard or enforcement problem within the neighborhood or the city, nor require the city to provide an unusual or disproportionate level of public services. [from §6-2067 (g)]

*The findings in what used to be 6-2067 General findings have been integrated into two sets of findings, 6-2070 for existing lots of record and 6-2071 for subdivision. This allowed us to eliminate redundancy and simplify. The references in parenthesis at the end of each finding indicate the source of the finding.*

#### 6-2072 Permit expiration.

A permit approval automatically expires if the use or action authorized is not started or construction incident thereto is not begun on or before the time limit specified in the permit, and thereafter diligently pursued. If no time is specified, the permit expires 12 months after the date of approval. The manager may grant one 12-month extension of time upon written request if the city has not made relevant changes to the Lafayette Municipal Code and the development is not changed.

#### 6-2073 Issuance of permits.

The city shall not authorize the issuance of a building permit nor an occupancy permit for a development unless it conforms to the terms and conditions of a hillside development permit.

#### 6-2074 Decisions and appeals.

The time and manner for decision and appeal upon an application of a hillside development permit are governed by section 6-225 through 6-238.

### **Article 7. Procedures for the Granting of Exceptions Under This Chapter**

#### 6-2081 Scope and application of procedures.

This article governs the procedure for the grant of an exception under sections 6-2023 and 6-2024. The provisions of articles 1, 2 and 3 of Chapter 6-2 of this code (section 6-201 through 6-238) governing applications and permits apply to the grant of an exception under this article to the extent those provisions are not inconsistent with this article.

#### 6-2082 Application requirements and additional submittals.

A. The city shall prescribe the form of application requesting the grant of an exception under this chapter. The applicant shall be required to pay all costs of the city's processing of the application including verification of the information submitted and economic analysis.

- B. The applicant shall provide information that sets forth the basis upon which the applicant believes that the exception is necessary to provide the property with economically viable use. This information shall include each of the following:
1. Basis for application.
    - a. Date of acquisition of the property;
    - b. Purchase price of the property; and
    - c. An explanation of how the exception is necessary to provide the property with an economically viable use.
  2. Economic data:
    - a. Current market value of the property;
    - b. Dates and amounts of invested capital following acquisition of the property;
    - c. Description and amount of each assessment imposed upon the property for public improvements;
    - d. Existing activities for the property;
    - e. Planned activities for the property including the timing for development;
    - f. Market value claimed if the exception is denied;
    - g. Portion of the property retaining economic use if the exception is not granted; and
    - h. Reduced profits if the exception is not granted including the assumptions underlying the estimates.
  3. Additional information. Such additional information as the city may request in order to take action on the request. The applicant shall cooperate with city requests for financial information regarding the property. Confidential business information provided by an applicant to the city shall remain confidential consistent with the requirements of the Public Records Act (Government. Code § 6250 et. seq.)
  4. Consultants and experts. The name, address and occupation of each consultant and expert providing information or in any way assisting in the preparation of the application.

6-2083 Notice.

The city shall give notice of the filing of an application in the manner prescribed by section 6-211 and shall be given by posting and mailing as prescribed in section 6-211(a), (2) and (3) of the Lafayette Municipal Code.

6-2084 Planning commission as hearing authority.

The planning commission shall act on the original application with the right of an aggrieved party to appeal the decision of the planning commission to the city council.

6-2085 Factors in determination.

In acting upon an application, the planning commission shall consider, among other matters, each of the following:

- A. Present use of the property and duration of that use, including:
  - 1. Each general plan designation and zoning classification applied to the property; and
  - 2. Each use to which the property was put;
- B. Fair market value of the property before the restriction that is the subject of the exception application imposed;
- C. Alternate uses that are available for the property; and
- D. The fair market value of the property if the exception is denied.

6-2086 Findings supporting recommendation and decision.

The planning commission shall make its decision based on the evidence presented to it. The decision shall be in writing with specific findings on the economic impact of the application of the restriction for which the exception is requested.

6-2087 Time limit for judicial review.

The time limit for judicial review of the decision on the application is governed by Code of Civil Procedure § 1094.6(b).