



## City Council Agenda April 19, 2017

**To:** Mayor and City Council

**From:** Brad Kilger, City Manager  
Patrick O’Keeffe, Special Advisor, Planning Services

**Subject:** Review and Consideration of Policy Paper Regarding Changing the Land Use Designation for a Portion of 635 Vine Hill Way (Freitas) from Open Space to Residential and Providing Direction to Staff Relating Thereto for Inclusion of any Possible Changes to the Draft General Plan Update

**Date:** April 19, 2017

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### **Recommendation**

Staff recommends the City Council provide direction to incorporate Option 2 in the final general plan, which would retain the existing land use split (90% open space/ 10% residential) for the 5.5-acre parcel at 635 Vine Hill Way.

### **Background**

In April of 2016 the City Council approved a contract with Christine O’Rourke, General Plan Consultant, to prepare four “white papers” or policy papers addressing specific issues raised by comments received by the City on the Draft General Plan Update (DGPU). The DGPU was circulated, along with the Draft Environmental Impact Report (DEIR), for review and comment in late 2015. The circulation of these documents represented the culmination of a seven-year process that started with a work session with the Planning Commission in February 2008. The process involved hundreds of community members using a series of surveys and other outreach vehicles intended to solicit input on this long-range planning document. A 19-member Task Force was appointed to oversee this public input process and to: (1) help formulate and participate in the outreach effort, (2) assist in formulating a vision for the General Plan, (3) identify issues of concern, (4) hear from experts on various topics, (5) review background materials and policy choices and (6) provide an opportunity for key property owners to submit their ideas.

At the conclusion of the review of the policy papers, a determination will be made on whether modifications will be made to the DGPU based on policy direction of the City Council. If modifications are desired, it will then be determined whether such modifications will require changes to the DEIR and if so, whether those changes will require the revised DEIR to be re-circulated for additional public comment. If this step is not necessary, then the DGPU and DEIR will be presented to the Planning Commission and City Council for final hearings and adoption. The General Plan Consultant estimates that, if recirculation is not necessary, then this process could be concluded sometime in mid-2017.

The first policy paper, Trail Segments, has been completed and was reviewed by both the Planning Commission and City Council. Two additional policy papers were presented to the Planning Commission at its March 28<sup>th</sup> meeting addressing: (1) The “unique agricultural land” designation for Viano winery, and (2) The general plan land use designation for 635 Vine Hill Way/Freitas property. A fourth policy paper regarding the land use designations in downtown will be presented in the near future. The purpose of this report is to discuss the staff recommendation for the 635 Vine Hill Way policy paper (see

attached), and for the Council to provide direction on any changes to be made to the Draft General Plan prior to bringing the Draft General Plan forward for formal public hearings before the Planning Commission and City Council.

## **Discussion**

The existing land use designation for this parcel on 635 Vine Hill Way is currently a split designation: the majority (90%) of the parcel is designated Open Space and a small portion (10%) of the parcel is designated Residential Very Low/ R-20 (minimum 20,000 square foot lot size – see Figure 1 in the policy report). The property owner, Gary Freitas, desires to change the land use designation to allow additional residential development in the area currently designated for open space. Three applications have been made by the owner over the last 29 years to change the land use designation. The history of these applications is set forth in the attached white paper (See Appendix A) and the attached information from the property owner (see documents that start with an aerial photo of the parcel with a hand drawn subdivision showing two additional residential lots).

When the General Plan update commenced, the city agreed to analyze an option to modify the land use designation to allow additional residential and reduced open space. This was expressed in the draft general plan as an approximate 54% open space/46% residential split as depicted in the proposed Land Use Map in Figure 9 of the policy report. Undertaking the analysis was consistent with the discussion at the General Plan Task Force deliberations. The following is a summary of the Task Force consensus:

“The easterly half of the site could contain limited additional residential development of not more than two units; and this ONLY upon documentation, through the environmental review process, that such development would not reduce the mitigation affect [sic] of the site’s current status as visual open space (preserving the rural visual corridor of the Vine Hill Way corridor). Maximum building heights of one story/25’ roof ridge elevation are recommended.”

The draft environmental impact report (DEIR) for the draft general plan update (DGPU) analyzed the impact of this proposed change. The general plan update and DEIR were circulated for comment. The City received approximately 125 letters from individuals with comments on the DGPU. Fifteen of these letters concerned preserving the 635 Vine Hill Way/Freitas parcel as open space (See Appendix D of the policy paper).

The open space was created as part of the original Pine Meadows subdivision. As originally set forth in the approvals for the Pine Meadows subdivision, there were three constraints to prohibit additional residential development as contemplated by the property owner’s desired change in land use:

1. Scenic Easement – which was a condition of the original Pine Meadows subdivision;
2. CC&R Restrictions – set forth in the homeowner’s association regulations; and
3. Environmental Mitigation Measure – of the Pine Meadows Environmental Impact Report (EIR)

As set forth in detail in the policy report and the owner documentation, the scenic easement was never recorded against the property. While the comment letter from Keep Our Open Space (See Appendix C) makes the argument that recordation was not needed to implement the easement, this analysis assumes that the failure to record the easement leaves the parcel free of the contemplated contractual limitations. The CC&R’s, as originally recorded at the time of the approval of the Pine Meadows

subdivision, did include a prohibition of further subdivision, however, the CC&Rs were subsequently amended by the homeowner's association and the court. As amended, the CC&Rs would no longer prohibit subdivision of and conversion of the subject property from open space to residential. Based upon the above, staff concludes these two constraints are no longer applicable. The remaining constraint is the designation of 90% of the parcel as open space as mitigation for the development of the Vine Hill knoll area as part of the original Pine Meadows subdivision.

The analysis section of the white paper policy report discusses the conclusion of the general plan update DEIR that the conversion of the open space to residential would result in a significant and unavoidable environmental impact. Approval of the DEIR with the reduction of open space would require adoption of a statement of overriding considerations. The report also discusses deleting or modifying the mitigation measure from the original subdivision as legally possible per case law, but only if the city can state the reasons for the deletion based upon substantial evidence in the record. Staff has examined the possible reasons which could arguably support deletion/modification of the mitigation measure and adoption of a statement of overriding considerations. One possible policy reason for consideration of the deletion/modification of the mitigation measure could be for the creation of additional housing to meet the housing element policies, which could potentially offset the unavoidable impact and support the overriding considerations.

The white paper policy report sets forth three policy options for the City Council to consider:

1. Retain the 54/46 split proposed in the general plan update to allow additional residential development and reduction of open space
2. Revise the general plan update to retain the existing land use split of 90% open space and 10% residential
3. Revise the general plan update to create a different split to allow additional residential and reduced open space

The pros and cons of each policy alternative are summarized in the white paper.

### **Planning Commission Recommendation**

On March 28<sup>th</sup> the Planning Commission considered the attached white paper, the testimony of the property owner and the public, and the staff recommendation. Staff recommended that the Commission make a recommendation to the City Council for how the parcel should be addressed in the general plan update. Per the attached Commission minutes, the Commission was conflicted between the desires of the owner to subdivide the property for further development, and the requirement that the parcel be retained as open space per the mitigation measure of the original subdivision. After hearing from the City Attorney that the Commission was not legally required to make a recommendation at this stage in the process, the Commission decided to forward the matter to the Council without a recommendation, but including their comments.

### **Staff Recommendation**

After considering the testimony at the Commission meeting and the Commission's discussion of the options, **staff continues to recommend that Option 2 be pursued for the final general plan**, which would **retain the existing land use split (90% open space/ 10% residential)**, retain the existing Pine Meadows mitigation measure, and would require a minor modification of the draft general plan land use map.

The staff recommendation is based on the fact that the creation of this open space was a trade off the city made when the Pine Meadows subdivision was approved. The trade off, in the form of the mitigation measure and revised subdivision plan, allowed greater development in other parts of the Vine Hill Way area in exchange for the permanent open space. The residents of the area, and the city as a whole, rely on the open space designation as part of the visual amenities of the area. To now reduce this mitigation is, in staff's view, inconsistent with the original compromise when Pine Meadows was approved, and reduces the visual amenities the public now enjoys. Further, the environmental analysis in the DEIR for the general plan update recommends mitigation measures if the land use split is revised, but states that even with these new mitigation measures "the potential for new development to substantially degrade the visual character or quality of the Planning Area remains." This conclusion does not appear to be consistent with the Task Force recommendation that the land use be revised only if "such development would not reduce the mitigation affect [sic] of the site's current status as visual open space (preserving the rural visual corridor of the Vine Hill Way corridor)."

### **Required Findings for Supporting Options One or Three**

In the event the City Council decides it supports the desires of the property owner to reduce the open space and subdivide the parcel for residential development, it will ultimately be necessary, at the time of adoption of the General Plan, for the City Council to make findings to satisfy the requirement for the city to state the reasons for the deletion/modification of the mitigation measure backed by substantial evidence. In addition, the findings will need to support the adoption of an overriding consideration that the need for additional housing outweigh the unavoidable environmental impacts, and thus adverse environmental impacts are considered to be acceptable. In this regard, staff offers the following Housing Element policies that the City Council may wish to consider:

- The need for additional housing is set forth in the Housing Element including the following statements: "For the City of Martinez, ABAG projects population growth of 5% between 2010 and 2020 and 6% between 2020 and 2030"; "At the same time the population is projected to increase, the average size of households is projected to decrease. As a result, the growth rate of households will exceed the growth rate of the population and it is likely that more houses will be required to accommodate the same number of people"; "The optimal homeowner vacancy rate for a city or County will fall within the range of two to four percent of the total occupied housing units, while the optimal rental vacancy rate usually falls between five to six percent. Martinez's vacancy rates reveal that the City is well below the optimal rates. Lower vacancy rates for both renter-occupied and owner-occupied housing in Martinez equate to a tight rental and homebuyer's market". The City Council could find that creation of additional housing through reduction of open space on the Freitas parcel will create additional housing to help address these needs.
- Housing Element policies that support residential development include:
  - **"Goal #3 – We Have a Mix of Housing Types and Choices** - Provide for an adequate supply of safe, decent and affordable housing for all segments of the community and promote throughout the City a mix of housing types responsive to household size, income, age and accessibility needs."
  - **"Policy 3.6 - Variety of Housing Choices.** Encourage a mix of housing units throughout the City including:

- 1) Lower income seniors, families with children, single parents, young families, victims of domestic violence, and the disabled.
  - 2) Housing that is affordable to first time buyers and renters of all income levels.
  - 3) A variety of rental and ownership housing opportunities for low and moderate-income households.
  - 4) Recognition that higher priced residential opportunities must also be provided.
  - 5) Smaller size housing units.
  - 6) Single level multi-family housing.”
- **Policy 3.10 - Housing for New Employees and their Families.** Given the amount of commercial and retail development expected through build-out of the City, encourage an adequate supply and variety of rental and ownership housing that meets the needs of new employees and their families.

In addition, should the open space be reduced for additional residential development, the Draft Environmental Impact Report (DEIR) required a mitigation measure (Vis-1) to ensure new development, including development proposed for 635 Vine Hill Way, is designed, landscaped, and sited to reduce impacts associated with the loss of open space and changes in visual character. A new policy and implementation measure were incorporated the Draft General Plan to accomplish this mitigation measure as follows:

- LU-P-3.6            New buildings which are proposed in highly visible and scenic areas, such as on hillsides, shall be sited, designed, and landscaped so that the building mass, supporting columns, piers, and building undersides, are [sic] paved site improvements such as private roads and driveways are not visually dominant.
- LU-P-3.6a            New development should complement the existing environment in terms of form, scale, and physical appearance. Structures shall complement the existing topography to the greatest extent possible while reducing visual impacts of such development through the use of landscaping, screening, and sitting [sic] techniques.

If additional development is considered for the parcel, the subdivision and building plans would be required to conform to these new mitigation measures.

Should the Council decide to support Option 1, the amount of open space remaining will be set at 54%. If Option 3 is supported it will be necessary for the Council to provide direction to staff on the percentage of the parcel that should remain in open space.

#### **Required 4/5ths Vote for Options One or Three**

Options one or three would reduce the amount of open space. Section 22.28.070 of the zoning ordinance requires 4 affirmative votes of the City Council to reduce the size of an open space easement. The term “open space easement” has a broad definition of what it encompasses, including: “...other property restrictions imposed or required by the City... which limitation results from the City’s (conditional) approval of a ... subdivision...” The open space mitigation measure of the original Pine Meadows subdivision fits within the definition of a limitation that results from a conditional subdivision approval, therefore the contemplated land use change will require the affirmative vote of 4 of the City

Councilmembers in order to be effective.

**Attachment(s)**

1. 635 Vine Hill Way White Paper
2. Information from Gary Freitas, Property Owner
3. March 28, 2017 Planning Commission Minutes

**APPROVED BY:**



Brad Kilger, City Manager

# Martinez General Plan 2035

## White Paper



## 635 Vine Hill Way Land Use Designation



## **THE ISSUE**

The draft Martinez General Plan 2035 and Draft Program Environmental Impact Report (DEIR) were released for public review on September 15, 2015. One significant land use change contained in the draft General Plan and analyzed in the DEIR pertains to a 5.57 acre parcel located at 635 Vine Hill Way. Approximately 5 acres of the parcel was given an “Open Space” land use designation and zoning designation in 1976 as part of the Pine Meadows subdivision, and it contains one single family home in the northeast area of the property. The draft General Plan proposes to adjust the existing split designation for the parcel, with approximately 2.6 acres of the property designated for residential development and the remainder for Open Space. With a Residential Low designation and appropriate rezoning, the site could accommodate two additional residences. The new designation was an attempt to reach a compromise between the property owner’s desire to develop housing on the property and the adjacent neighbors’ desire to preserve the land as open space. The purpose of this white paper is to provide a brief history on the property and to provide information to assist the Planning Commission and City Council in deciding whether or not to revise the draft General Plan designation for the parcel.

## **WHITE PAPER PURPOSE**

The purpose of the General Plan White Papers is to analyze and discuss policy issues that have been identified during public review of the draft Martinez General Plan 2035 and Draft Program Environmental Impact Report. Staff initially selected the White Paper topics and the City Council confirmed them on April 20, 2016. White Papers are intended to resolve significant policy options before the preparation of the final Environmental Impact Report and Planning Commission and City Council hearings on the full draft General Plan.

## **INTRODUCTION**

A general plan is a city’s road map for the future. It describes a community’s long-term vision and sets forth goals, policies and programs to manage growth, direct land use decision making, and preserve the environment and character of the community.

State law requires the land use element of the General Plan to designate the general distribution and location of uses of the land for housing, business, industry, open space, agriculture, etc. This is accomplished through the identification of “land use designations.” The City’s zoning code identifies zoning districts that are compatible with the general plan land use designations. As an example, the Martinez General Plan land use designation “Residential Low” is associated with the R-10 and R-20 zoning districts. It is the zoning district that ultimately determines the parcel size and development standards that are required for development of a specific parcel.

## **BACKGROUND**

The 5.57 acre parcel located at 635 Vine Hill Way (APN 162-420-003) has a long planning history with the City of Martinez. A detailed account of the site and project history is included as Appendix A. Below is a summary of that history.



The entire area that is now known as Pine Meadows was originally designated Public Permanent Open Space in the June 1973 General Plan. In November 1973, the General Plan was amended ("Hidden Lakes Study Area") in anticipation of greater development potential. Most of the future Pine Meadows area was re-designated for single family residential development. An exception was made for the "Coward Knoll" area of approximately 8-10 acres that eventually became the subject parcel and the bulb of Meadowvale Court. This area was re-designated as "Permanent Open Space."

In 1975, the developer filed a tentative map application for the Pine Meadows subdivision. The original proposal was to remove all open space areas and mass grade the entire area for residential lots. Eventually, the developer and City reached a compromise to concentrate development in the Morello and Center Avenue area while preserving several areas for open space and the semi-rural visual character of Vine Hill Way. The open space area at Coward Knoll was reduced to approximately 6 acres, preserving the slope face as open space rather than the top of the knoll. The 1976 Environmental Impact Report (EIR) prepared for the Pine Meadows (Tract 4744) subdivision recognized several "mitigations" of the project plans that would reduce the visual impact along Vine Hill Way, including "a minimum 250-300 foot wide scenic and open space easement that is planned adjoining Vine Hill Way, between the street grade and the lots at the top of the knoll." As an additional mitigation, the EIR required the lots on the knoll top to be single story construction to minimize their visual impact.

Originally, the subject parcel consisted of three lots (Lots #25, 26 and 27). In 1976, the lots were re-designated as "Planned Private Open Space." Lots #26 and 27 were subsequently rezoned to "Open Space" and Lot #25 was rezoned to the R-20 District, as shown in

Figure 1. Thus, the ½ acre "homesite" portion of the site is within a different zoning district than the rest of the property. The lots were consolidated in one parcel known as Lot #22 when the Final Map was recorded in 1977.

The developer recorded Covenants, Conditions and Restrictions (CC&Rs) for the Pine Meadows subdivision which included a restriction on all lots in Tract 4744 that "no building shall be...permitted... other than one single family dwelling...No lot shall be re-subdivided for the purposes of creating one or more additional home sites."

**Figure 1: Current Zoning of 635 Vine Hill Way Site**



It should be noted that in its approval of the Subdivision 4744 tentative map in 1976, the Planning Commission approved conditions requiring scenic easements for four parcels within the subdivision

(including the 5-acre portion of the subject property) that would prohibit prohibiting “grading, tree removal, construction of obscure fencing and structures of any type except barns and/or sheds associated with and incidental to the keeping of animals on the site.” Other lots (including Lot #25) were to be subject to a similar scenic easement except for “reasonable areas for residences and associated building and yards.” Due to an oversight by the developer and City, the scenic easements were not initially recorded for these lots. Subsequently the developer was required to facilitate the recording of the scenic easement of willing property owners. Mr. Freitas, as the buyer of Lot #22, was not willing to record the easement.

In 1978, the property was purchased by Mr. Gary Freitas, who currently owns the parcel. Over the years, Mr. Freitas has applied for a General Plan Amendment to redesignate his parcel to allow residential development on three occasions. A proposal in 1988 sought to create 5 additional lots, spreading the new residences across the entire Vine Hill Way/Morello Avenue frontages, as shown in Figure 2. Many neighbors were opposed to the application, citing the CC&R’s that prohibited additional subdivision of the lots in Pine Meadows. The Planning Commission denied the subdivision and recommend denial of the General Plan Amendment. Mr. Freitas filed an appeal to the City Council but subsequently withdrew it.

In 1998, Mr. Freitas sought to amend the CC&R’s to allow his lot to be subdivided to allow for four new single family residences, in addition to the existing single family residence , for a total of five houses. Mr. Freitas had earlier circulated a petition, and over 50% the 127 property owners voted to amend the CC&R’s. The Superior Court found that the change in density was not “unreasonable” and ordered the amendment to the CC&R’s to be recorded. The Court’s order effectively removed the CC&R’s prohibition against additional development, but did not mandate approval of a five-lot subdivision. The City retains the full range of discretionary options in changing the General Plan land use designation, rezoning the property, and approving, conditionally approving or denying any subdivision request.

In 2000, Mr. Freitas initiated an application that proposed 4 additional lots, as shown in Figure 3. Similar to the first application, the proposed plans showed the houses spread out along the Vine Hill Way and Morello Avenue frontages. The second application was withdrawn in 2004 before the Commission acted upon it.

In 2006, Mr. Freitas initiated a third application in order to allow the possibility of creating four single family homes in addition to the existing a single family home on the parcel. This proposal differed from the previous proposal in that it located the new homes on the eastern side of the property, as shown in Figure 4. The proposal sought to enlarge the 26,179 sq. ft. “homesite” to a 1.65 acre lot and create four additional lots ranging in size from 16,290 sq. ft. to 30,250 sq. ft. The application also proposed a 1.91 acre open space parcel consisting of the western portion of the site and a 50 to 80-foot buffer at the northern edge of the property.

Figure 2: 1988 Proposal for 6-Lot Subdivision of 635 Vine Hill Way



Figure 3: 2000 Proposal of 5-Lot Subdivision of 635 Vine Hill Way

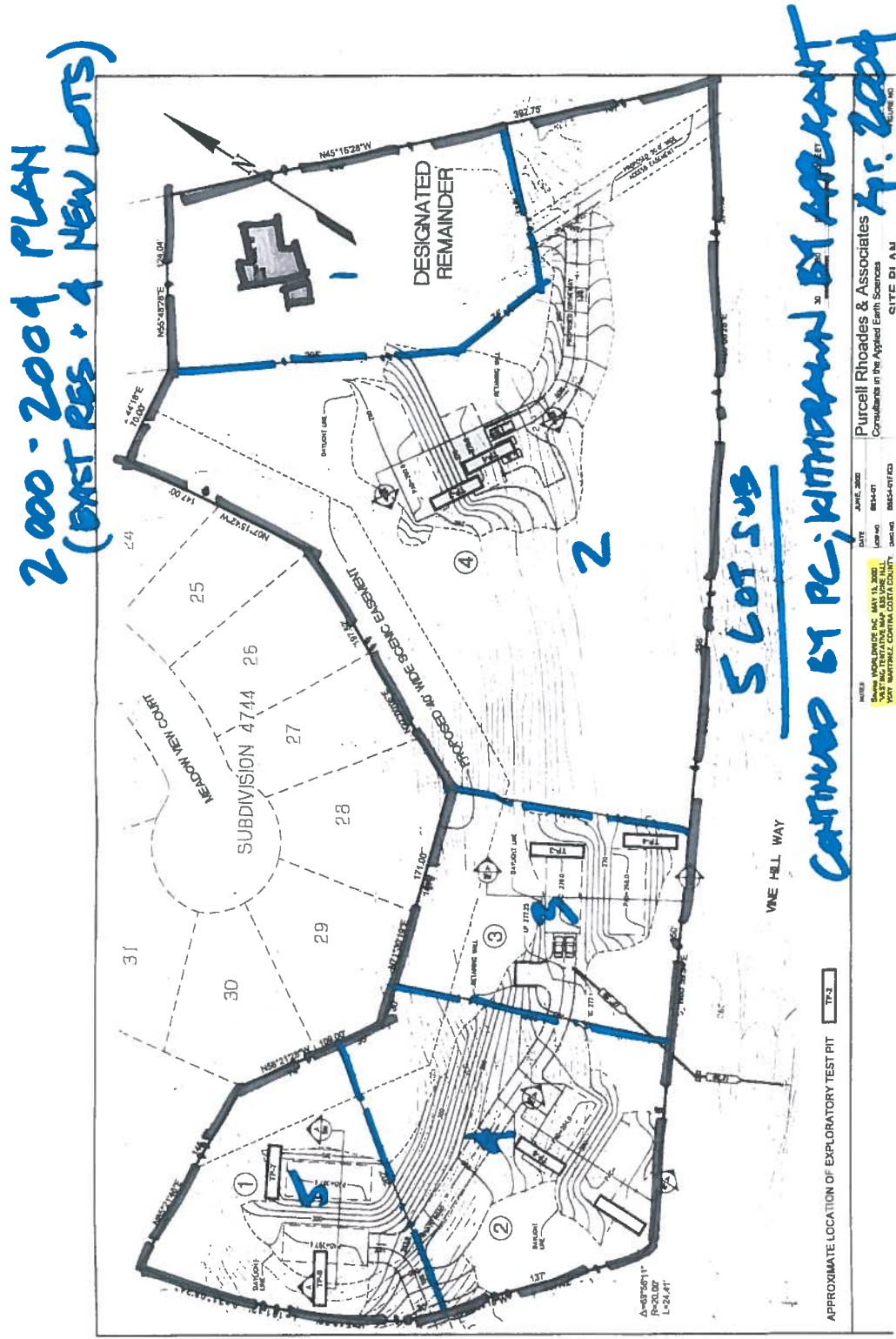
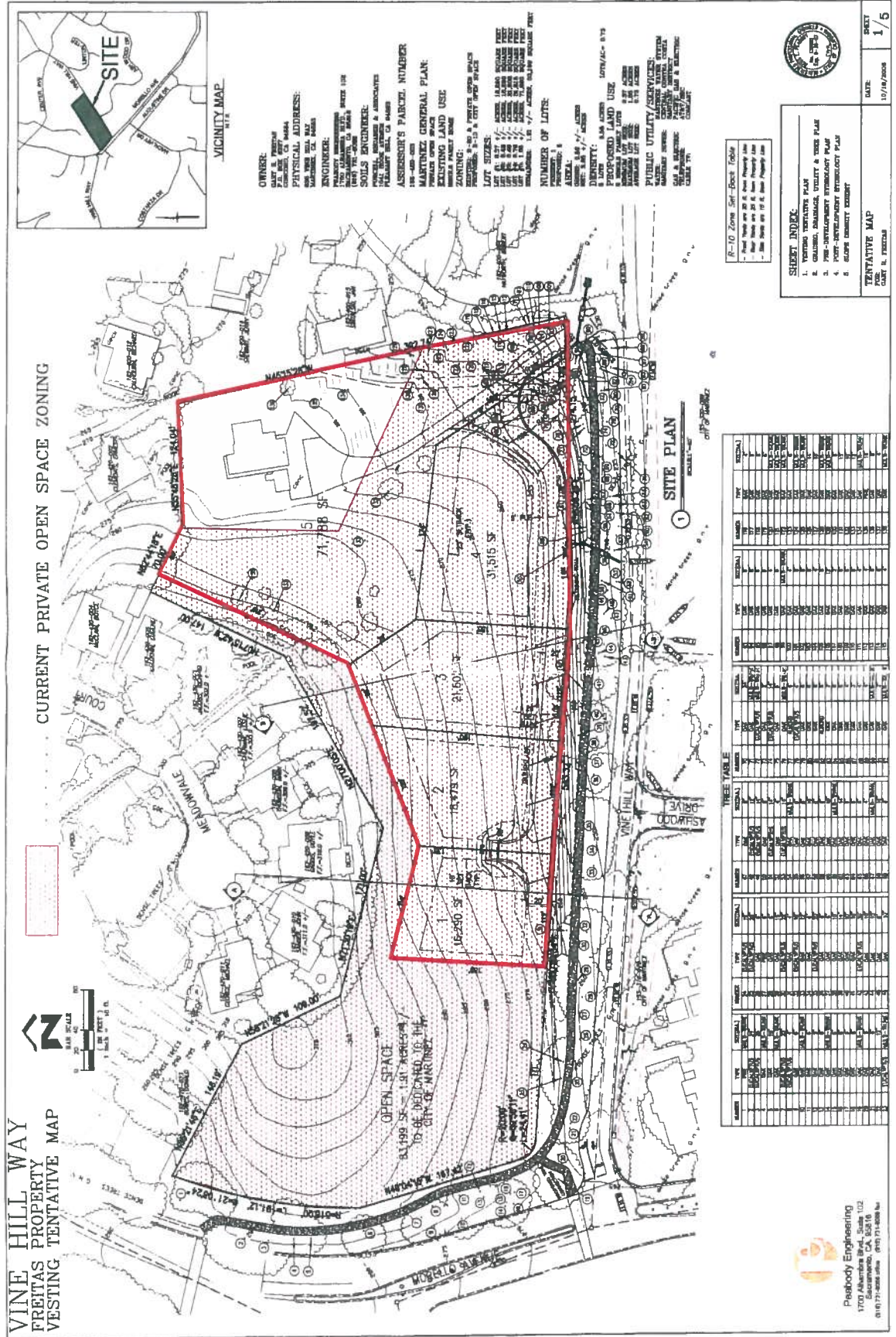




Figure 4: 2006 Proposal for 5-Lot Subdivision of 635 Vine Hill Way



The Planning Commission recommended the Council deny the General Plan Amendment application, but the Council indicated in October 2007, on a 5-0 vote, its desire to support approval of the General Plan amendment. The attorney of neighbors in opposition to the development subsequently raised issues concerning the role of the subject parcel as an EIR mitigation measure for the Pine Meadows 1977 approval. Mr. Freitas withdrew his application in June 2008. He states that this decision was made in order to have the redesignation of his property considered as part of the General Plan update process.

A comprehensive update of the General Plan commenced in 2008. The Mayor and City Council selected a 19-member task force of community members to assist in the process. The General Plan Task Force convened 22 times during the span of two years. As part of this process, the Task Force discussed redesignation of the Freitas property. A memo prepared for the April 25, 2012, Task Force meeting offers the following recommendation and point of discussion:

The easterly half of the site could contain limited additional residential development of not more than two units; and this ONLY upon documentation, through the environmental review process, that such development would not reduce the mitigation affect [sic] of the site's current status as visual open space (preserving the rural visual corridor of the Vine Hill Way corridor). Maximum building heights of one story/25' roof ridge elevation are recommended.




Although there are no meeting minutes to document the Task Force's direction on the matter, staff states that a majority of Task Force members were supportive of the idea of a 3-lot subdivision that included the two eastern lots (indicated as lots as #3 and 4 in Figure 3). Presumably, the Task Force supported such development under the conditions outlined in the meeting memo. According to staff, the Task Force also generally agreed that the remainder of the parcel should be designated as an Open Space parcel owned by a homeowner's association or as an open space easement within one of the three residential lots.

This narrative is supported by the fact that Mr. Freitas paid \$10,815 for a visual massing study for the CEQA evaluation on May 8, 2012, about two weeks after the Task Force meeting. The study, completed in January 2013, utilized a 1988 plan that showed two units in the area between Ashwood Drive and the existing driveway, where it was anticipated that approval of the requested residential designation would be most likely (Figure 5 and Appendix B). It was also determined that locating new residences in this location would have the least impact on public views of the existing open space from Vine Hill Way. Figures 6 through 8 depict views of the subject parcel under existing conditions and with residential development.





**Figure 6: Existing and Simulate Views of Vine Hill Way Site – View 1**




	<p><b>View 1</b> Existing Site - View from Vine Hill Way/Ashwood Drive</p>
	<p><b>View 1</b> Simulated View of Site with Residential Development - View from Vine Hill Way/Ashwood Drive</p>
	<p><b>View 1</b> Simulated View of Site with Residential Development and Landscaping - View from Vine Hill Way/Ashwood Drive</p>



**Figure 7: Existing and Simulate Views of Vine Hill Way Site – View 2**

	<p><b>View 2</b> <b>Existing Site - View from private road along eastern border of site at Vine Hill Way</b></p>
	<p><b>View 2</b> <b>Simulated View of Site with Residential Development - View from private road along eastern border of site at Vine Hill Way</b></p>
	<p><b>View 2</b> <b>Simulated View of Site with Residential Development and Landscaping - View from private road along eastern border of site at Vine Hill Way</b></p>

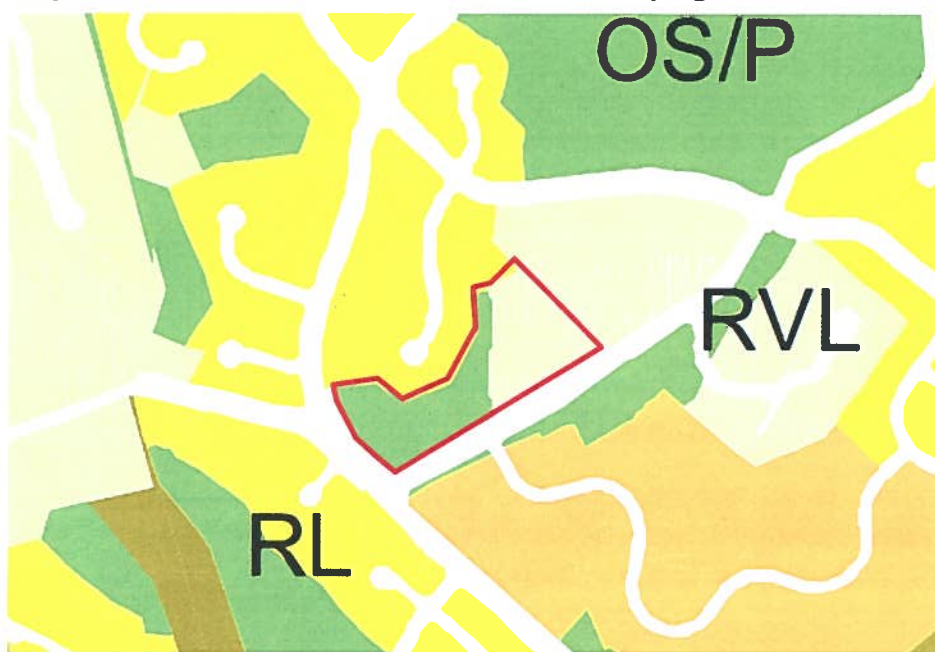
**Figure 8: Existing and Simulate Views of Vine Hill Way Site – View 3**

	<p><b>View 3</b> <b>Existing Site - View from</b> <b>Vine Hill Way</b></p>
	<p><b>View 3</b> <b>Simulated View of Site with</b> <b>Residential Development -</b> <b>View from Vine Hill Way</b></p>
	<p><b>View 3</b> <b>Simulated View of Site with</b> <b>Residential Development</b> <b>and Landscaping - View</b> <b>from Vine Hill Way</b></p>

## DRAFT GENERAL PLAN DESIGNATION AND DRAFT EIR ANALYSIS FOR 635 VINE HILL WAY

The parcel currently carries a split designation on the draft General Plan Land Use Map, as shown in Figure 9. Approximately 2.6 acres of the 5.57 acre is designated Residential Low and the remaining parcel, approximately 3.0 acres, is designated Open Space. (Due to a mapping error, the residential area of the parcel was erroneously mapped as Residential Very Low in the Draft General Plan and analyzed as such in the Draft EIR. However, the environmental consultant has stated that the correction will not change the analysis of the parcel as the number and location of the potential new houses will not change.) Under the Residential Low designation, the site could accommodate two additional residences. The Open Space area includes an approximately 70-foot buffer along the northwestern portion of the site that abuts parcels on Meadowvale Court.

**Figure 9: Detail from the General Plan Land Use Map Figure 2.0**



*Note: Parcel boundary has been added to the figure and is approximate.*

The Draft EIR analyzes the visual impact of the proposed development of 635 Vine Hill Way as part of the aesthetics analysis required under CEQA. The Draft EIR acknowledges that the proposed change in land use designation to the property would modify the mitigation adopted in association with the 1976 EIR for the Pine Meadows subdivision. In the analysis of the visual studies prepared for the proposed development (Figures 6 through 8), the document states that the simulated views with landscaping were prepared prior to completion of the proposed General Plan and do not reflect the siting, massing and landscaping requirements included in the proposed General Plan. In particular, Policy LU-P-6.1 would ensure that the structures blend into, rather than dominate, the natural setting and that massing of new structures is compatible with the natural setting. The Draft EIR further states Policy LU-P-6.1 requires mature stand of trees and other natural features to be preserved to the greatest extent

possible in the design of new projects, and that this policy would provide for shielding of development beyond that depicted in Figures 6 through 8.

The Draft Environmental Impact Report (DEIR) required a mitigation measure Vis-1 to ensure new development, including development proposed for 635 Vine Hill Way, is designed, landscaped, and sited to reduce impacts associated with the loss of open space and changes in visual character. A new policy and implementation measure were incorporated the Draft General Plan to accomplish this mitigation measure as follows:

- LU-P-6.1b      New buildings which are proposed in highly visible and scenic areas, such as on hillsides, shall be sited, designed, and landscaped so that the building mass, supporting columns, piers, and building undersides, are [sic] paved site improvements such as private roads and driveways are not visually dominant.
- LU-P-6.1d      New development should complement the existing environment in terms of form, scale, and physical appearance. Structures shall complement the existing topography to the greatest extent possible while reducing visual impacts of such development through the use of landscaping, screening, and sitting [sic] techniques.

The DEIR concludes that even with the implementation of the policies and implementation measures in the General Plan, the potential for new development to substantially degrade the visual character or quality of the Planning Area remains. While the policies and actions would ensure that impacts are reduced to the greatest extent feasible, the impact is significant and unavoidable.

#### **COMMENTS ON THE DRAFT GENERAL PLAN AND DRAFT EIR RELATED TO 635 VINE HILL WAY**

The property owner is supportive of a split land use designation for the parcel that allows two new residences in addition to his existing house. However, Mr. Freitas would prefer to have a greater percentage of the parcel designated for Residential use, as shown in Figure 10. He has proposed expanding his property to 2 acres, and creating two new one-acre lots, leaving 1 ½ acres for private open space at the western end of the property and no dedicated open space buffer between the new residences and the Meadowvale Court parcels.

The City received a comment letter on the Draft General Plan and DEIR from the attorneys who represent Keep Our Open Space, an association of Martinez residents including Mark and Lorna Thomson who reside at 918 Meadowvale Court. This letter is attached as Appendix C. In general, the group opposes the re-designation of the land from Open Space to Residential based on 1) the contention that the scenic easement referenced as a condition of approval of the Pine Meadows subdivision is an enforceable asset of the City; and 2) deleting the open space mitigation measure adopted by the City pursuant to the Pine Meadows subdivision EIR would violate the California Environmental Quality Act.



Figure 10: Property Owner's Preferred Lot Configuration



4 Acres For Development No Open Space Issues  
1 1/2 For ~~off~~ Private Open Space with  
Front as 2 Acres

Latest Request -

Everyone Wins

Only Two New Lots Not Allowed  
and 1 1/2 Acres Private Open Space  
with Front as Prop.

The City also received 15 draft General Plan comment letters opposing conversion of Open Space land to Residential use (Appendix D). Ten of these letters specifically identified the Freitas property.

## ANALYSIS

The split land use designation for 635 Vine Hill Way was created in an attempt to reach a compromise between the property owner's desire to develop the property, the neighboring property owners' interest in preserving the visual character of the neighborhood, and the community's interest in preserving existing open space. According to City staff, the visual simulations were prepared using a lot and building configuration that had conceptually been approved by the General Plan Task Force. Mr. Freitas, who paid for the simulations, was aware that the 1988 plans were to be used in the visual simulations prepared for the Environmental Impact Report. Mr. Freitas' desire to now increase the size of the residential lots and change the locations of the new residences is not consistent with the plans that were used in the visual simulations and analyzed in the Draft EIR. In particular, the house proposed for the western area of the site would be located across the street from Ashwood Drive, not to the east of where the road intersects Vine Hill Way as shown in Figure 5. In order to consider the new proposal, new visual simulations would need to be created and the DEIR would need to be revised. This would result in a substantial delay in the review process and approval of the draft General Plan.

The California court has determined that a governing body may delete an earlier adopted mitigation measure. However, "a governing body must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence." (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal. App. 4<sup>th</sup> 342) In the *Napa Citizens* case, the court further stated: "The modified EIR also must address the decision to delete a mitigation measure. In other words, the measure cannot be deleted without a showing that it is infeasible."

In order to delete the previously adopted mitigation measure, the City would need to state legitimate reasons for the deletion and support that statement of reason with substantial evidence. One possible reason to delete the mitigation measure is to create additional sites for housing. Locating housing on infill sites, such as the Freitas property, is particularly desirable in order to reduce sprawl and reduce greenhouse gas emissions. However, the City has already identified more than enough housing sites to meet its regional housing need for moderate and above moderate income households (the expected income level of occupants of new housing located on the Freitas property) through 2022 in the Housing Element. The Housing Element identifies sites that could accommodate housing for 831 units affordable to moderate and above-moderate households, while the regional housing need requirement for these two income categories is 273 units.

As discussed above, the 1976 EIR prepared for the Pine Meadows (Tract 474) subdivision recognized several mitigations of the project plans that would reduce the visual impact along Vine Hill Way, including a minimum 250-300 foot wide scenic and open space easement along Vine Hill Way, between

the street grade and the lots at the top of the knoll – the area which now constitutes the Freitas property (Appendix E). The 1976 EIR recognized that “[a]dverse visual impacts are expected to occur in two locations - along Vine Hill Way (and from some of the Vine Hill Townhouses which overlook a portion of the site) adjoining the projects and from several lots within Muir Oaks overlooking the subject projects.” The EIR discussion of the visual impacts included the following: “Since originally submitted the project plans have been extensively modified to reduce the visual impact along Vine Hill Way. As now proposed no lots front Vine Hill Way; hence, none but minor improvements are proposed for Vine Hill Way...From Morello Avenue easterly a minimum of 250-300 foot wide scenic and open space easement is planned adjoining Vine Hill Way, between the street grade and the lots at the top of the hill.” The mitigation measure adopted in the EIR states: **“In addition to the mitigation already incorporated into the plans (in the nature of moving the lots away from Vine Hill Way,** reducing the cuts and saving an oak tree) a requirement that the lots on the knoll-top be restricted to single story construction above street grade would minimize their impact on the scene” [emphasis added]. The replacement of lots in the original subdivision plan with a scenic easement along Vine Hill Way is the mitigation for the visual impacts of the development on Vine Hill Way.

The draft General Plan Update considered changing the land use designation of a portion or all of the parcel to residential due to three applications that were filed for a General Plan amendment discussed above. The draft General Plan DEIR analyzed the visual impact of additional development on the Freitas property and found that, while the draft General Plan policies and actions would ensure that visual impacts are reduced to the greatest extent feasible, the potential to substantially degrade the visual character or quality of the area remains and is a significant and unavoidable impact. Based upon this analysis in the draft General Plan EIR, the proposed land use changes would require the adoption of a statement of overriding considerations under CEQA. In addition to making the findings regarding deletion/modification of the 1976 mitigation measures, pursuant to CEQA Guidelines Section 15093, in order to approve the proposed land use change, the City Council would need to make findings that specific economic, legal, social, technological or other benefits of the land use changes, outweigh the unavoidable adverse environmental effects of the proposed change. These findings would also need to be supported by substantial evidence in the record.

## **POLICY OPTIONS**

There are three options for the Planning Commission and City Council’s consideration in response to the proposed General Plan land use designation for 635 Vine Hill Way (APN 162-420-003). These options and analysis of the pros and cons of each option are discussed below.

***1. Retain the draft General Plan split land use designation for 635 Vine Hill Way with approximately 2.6 acres designated as Residential Low, allowing development of two additional residences, and 3.0 acres as Open Space.***

Pros: Attempts to reflect a “compromise position” between the desires of the property owner to develop the site and the neighbors and community members to preserve the site as open space. Would not require any change to the draft General Plan.

Cons: Would require the City to identify a legitimate reason for deleting/modifying the earlier adopted mitigation measure and also a statement of overriding considerations. Both findings would need to be supported by substantial evidence in the record.

***2. Revise the draft General Plan to designate the existing 0.6 acre homesite of 635 Vine Hill Way as Residential Low and the remaining 5 acres as Open Space.***

Pros: Reflects the existing use of the property and preserves the 1976 Pine Meadow Subdivision EIR mitigation measure to reduce visual impacts along Vine Hill Way.

Cons: Would require a minor modification to the draft General Plan Land Use Map.

***3. Revise the draft General Plan to assign a different split Residential Low/Open Space designation to the 5.57-acre parcel located at 635 Vine Hill Way.***

Pros: Would potentially reflect a compromise position that can be supported by the affected property owners.

Cons: Would require the City to identify a legitimate reason for deleting/modifying the earlier adopted mitigation measure, and also a statement of overriding considerations, both findings would need to be supported by substantial evidence in the record.

Could require new visual simulations in order to analyze the visual impact of a newly configured development proposal and the DEIR to be revised. This would result in a substantial delay in the review process and approval of the draft General Plan.





4 Acres For Development No Open Space Issue  
 1 1/2 For ~~the~~ Private Open Space with  
 Freitas 2 Acres.

Latest Request -

Everyone Wins

ONLY TWO New Lots NOT FOUR  
 and 1 1/2 Acres Private Open Space  
 with Freitas Prop.

The developer of P. : Meadows I (Tract 4744) has requested City acceptance of Tract 4744. (Attached are the conditions of the tract's tentative map approval of July 9, 1976).

Per staff observation all Planning conditions of approval have been completed with one exception:

Condition #5: Scenic Easements: Scenic easements prohibiting grading, tree removal, construction of obscure fencing and structures of any type except barns and/or sheds associated with and incidental to the keeping of animals on the site shall be dedicated to the City of Martinez over all of Lots #26, 27, 59, 77 and 78, and all of Lots #25, 66, 67, 102-106, 107 and 112 except reasonable area for residences and associated buildings and yards therefore (all lots as shown on the proposed Tentative Map).

Discussion:

Due to an oversight by the developer and the City, scenic easements were not recorded with the final map. Since the final map has been filed and all homes in the tract have been built and are occupied by private owners, the City can no longer require easements to be recorded.

Condition #7 (5th paragraph): The developer shall dedicate a trail over oil pipeline easement(s) in the vicinity of Lots #133-134, and unusable portions of Lot #133, and construct a 12-foot trail, two rows of trees, and a crosswalk from the California Riding and Hiking Trail on Lot 133 to the dedicated Lot #134.

Discussion:

The trail has been graded and required landscaping has been installed; however, 4' paved walkway has not been constructed from California Riding and Hiking Trail to Center Avenue.

Condition #7 (last paragraph) A 20 ft. wide non-exclusive easement shall be dedicated to provide access to the California Riding and Hiking Trail over the driveway to Lot 112 and between Lots 111 and 113.

Discussion:

Dedication of 20 ft. non-exclusive easement over Lot #112 has not been recorded with the final map. As in Condition #5, since the final map has been properly filed, the City can no longer cause this easement to be recorded. Per State Subdivision Map Act, once the final map for the subdivision has been properly filed with the County Recorder, changes, additions or corrections to the filed document, as approved by the City, are permitted only to the extent that property rights are not affected.

-Condition

8g. All trees required above, plus lawn installation in all front yards and street-side side yard areas shall be shown on a plan to be approved







# STAFF REPORT

DATE	DOCUMENT	ADOPTED POLICY OR ACTION
1977, Dec 6	C C & C's for sub 4744 recorded.	Developer recorded "standard" C C & R's for subdivision which included restriction on all lots within sub 4744 that: <ul style="list-style-type: none"> <li>"no building shall be... permitted... other than one single family dwelling...</li> <li>No lot shall be re-subdivided for the purposes of creating one or more additional home sites."</li> </ul>
1978, November	-	Gary Freitas purchased property, begins intermittent pasturing of horses
1979, Jul 10	PC recommendation that City Council accept sub 4744 (e.g. engineering improvements, landscaping etc.)	Subdivision was accepted, but PC Staff report stated: <ul style="list-style-type: none"> <li>"due to an oversight by the developer and City, scenic easements were <u>not recorded with the final map.</u>"</li> <li>Council and Developer advised of situation, and developer offered to facilitate amending the recorded map of willing property owners. All but one property owner were <u>unwilling</u> to have the scenic easements recorded.</li> <li>No scenic easements ever recorded on Lot 22. <u>My Lot (Freitas)</u></li> </ul>
1988, Nov 23	Gary Freitas filed application for 6-lot subdivision, and for GPA's and rezone	Commission took testimony at the February 28 1989 and March 14 1989 meetings: <ul style="list-style-type: none"> <li>Many neighbors were opposed to the application, and refer to the C C &amp; R's as a "contract" prohibiting additional subdivision of existing lots.</li> <li>The Commission's consensus was that the open space should be retained, and denied the GPA, rezone and subdivision.</li> <li>Mr. Freitas filed an appeal to City Council, but subsequently withdrew it, asking the Council to consider reviewing open space restrictions as they apply to privately held property.</li> </ul>
1990, Nov 6	Staff's Development Review Committee's review of preliminary application for swimming pool on Lot 22	The Committee found the swimming pool request to be inconsistent with existing open space general plan and zoning designations, so Mr. Freitas was told that general plan amendment and rezoning applications were required. (no formal application for this request were made).

F.D.D.  
N.O.T.  
S.I.G.

DATE	DOCUMENT	ADOPTED POLICY OR ACTION
1998-1999 	Draft amendment to C C & C's circulated and voted on	Property owners of sub 4744 are asked to vote on amending subdivision's C C & R's to read "no lot may be re-subdivided for the purpose of creating additional home sites <i>except for Lot 22, which may be subdivided to allow for four new single family residences (for a total of five)...</i> " <i>Lot 22 - Freitas Lot 14</i>
1999, May 17 	Superior Court order, accepting petition of Gary Freitas to amend C C & R's	With over 50% of affirmative votes of 127 property owners in sub 4744 (57.94% of votes cast, 50.39% of total property owners) the judge finds against the opponents of the petition, stating that the change in density is not "unreasonable." The above change in C C & R's is ordered to be recorded, and mailed to all lot owners. [NOTE: the Court's order does not mandate approval of a 5 lot subdivision - it just removes the prohibition of such a possibility. The City retains the full range of discretionary options in approving, conditionally approving or denying any general plan amendment, rezone and subdivision request.]
1999, Nov 15	Project Review Committee (PRC) review of Mr. Freitas revised plan with 5-lot subdivision	Staff did not <u>"believe this property is prime open space and could support the construction of several homes, as long as there is support from the surrounding home owners."</u> Staff gave instructions regarding the submittals of the required applications, including conformance to the <u>Hillside Development Regulations.</u> <i>Achieved Support = See Above. ↑</i>
2000, Sep 19	Application for subdivision 8452 (a re-subdivision of Lot 22, sub 4744) filed, along with request for GPA to "Residential 0-6 units/acre" and Rezone to R-15.	<ul style="list-style-type: none"> <li>• Staff continued to work with Mr. Freitas' consultants to complete application package.</li> <li>• Preliminary architectural plans were submitted on March 30, 2001. Applicant and staff continue to work on application, with allowable slope density issues remaining outstanding.</li> <li>• On January 15, 2002, Mr. Freitas hosted a neighborhood meeting, with notices sent to owners within 300' of his property, to discuss concerns and alternatives to the Sept. 2000 plans. Meadowdale Court owners expressed concern that their views should not be blocked by new development below them.</li> </ul>



DATE	DOCUMENT	ADOPTED POLICY OR ACTION
2002, Mar-Aug	Application is amended, along with GPA request now for "Residential, Slope Density " and rezoned request from R-15 to R-10.	<p>Applicant refines and alters applications package with various plans and documents. Of note:</p> <ul style="list-style-type: none"> <li>Issues regarding allowable "slope density" and applicable <i>Hillside Development Regulations</i> (HDR's) are clarified. Requested general plan designation would allow residential density up to the maximum permitted by HDR's.</li> <li>In order to permit 5 lots, the R-10, rather than the R-15 district would be necessary.</li> </ul>
2003, Jan 14	Staff report and minutes for first PC study session re: current application.	<p>Commissioners requested additional historical background and continued the study session to future meeting.</p> <ul style="list-style-type: none"> <li>Of specific concern was whether any type of "promise" was made in the approval process for sub 4744 to keep the Freitas property as open space.</li> <li>Only 3 neighboring residents spoke at meeting - all 3 were in favor of applicant's proposal.</li> </ul>
2003, Feb 25	Staff report and minutes for second PC study session re: current application	<p>Staff presented its limited research, which at that time, appeared to support the applicant's [erroneous] claim that the subject property was never intentionally made protected open space as part of the City's land use approvals for sub 4744:</p> <ul style="list-style-type: none"> <li>February 10 letter from James Coward, who sold the area that became sub 4744 to developer James Busby in the mid 1975's, contributes to this view by stating that <i>"there was never any indication that any of my land was going to be zoned 'open space'...nowhere in the paperwork for the sale of the property of it for subdivision, is there any reference to open space...I don't know who could promise private property would be open space."</i> (sic)</li> <li>Mr. Coward's opinion is inconsistent with historical record, as preservation of this property as open space was confirmed by the Council's GPA's in November 1973 and again in August 1976. Mr. Coward's, and subsequently staff's, confusion may have arisen from the fact that <u>public dedication</u> of the (Freitas) open space property was not made a condition of sub 4744's approval.</li> <li>At this study session, only one neighbor spoke and was in favor of the</li> </ul>

*In favor of Freitas*

October 3, 2007

To: The Mayor & City Council of Martinez

From: Former Mayor, John Sparacino  
314 Escobar St., Martinez, CA

I have received a copy of the Staff Report and appurtenant documents in regards to the proposed General Plan Amendment to re-designate approximately 3 acres of private open space to residential, located at 635 Vine Hill Way, Martinez. Upon reviewing the entire Staff Report, from cover to cover, I have come to the conclusion that I am in support of the proposed General Plan Amendment.

Sincerely,

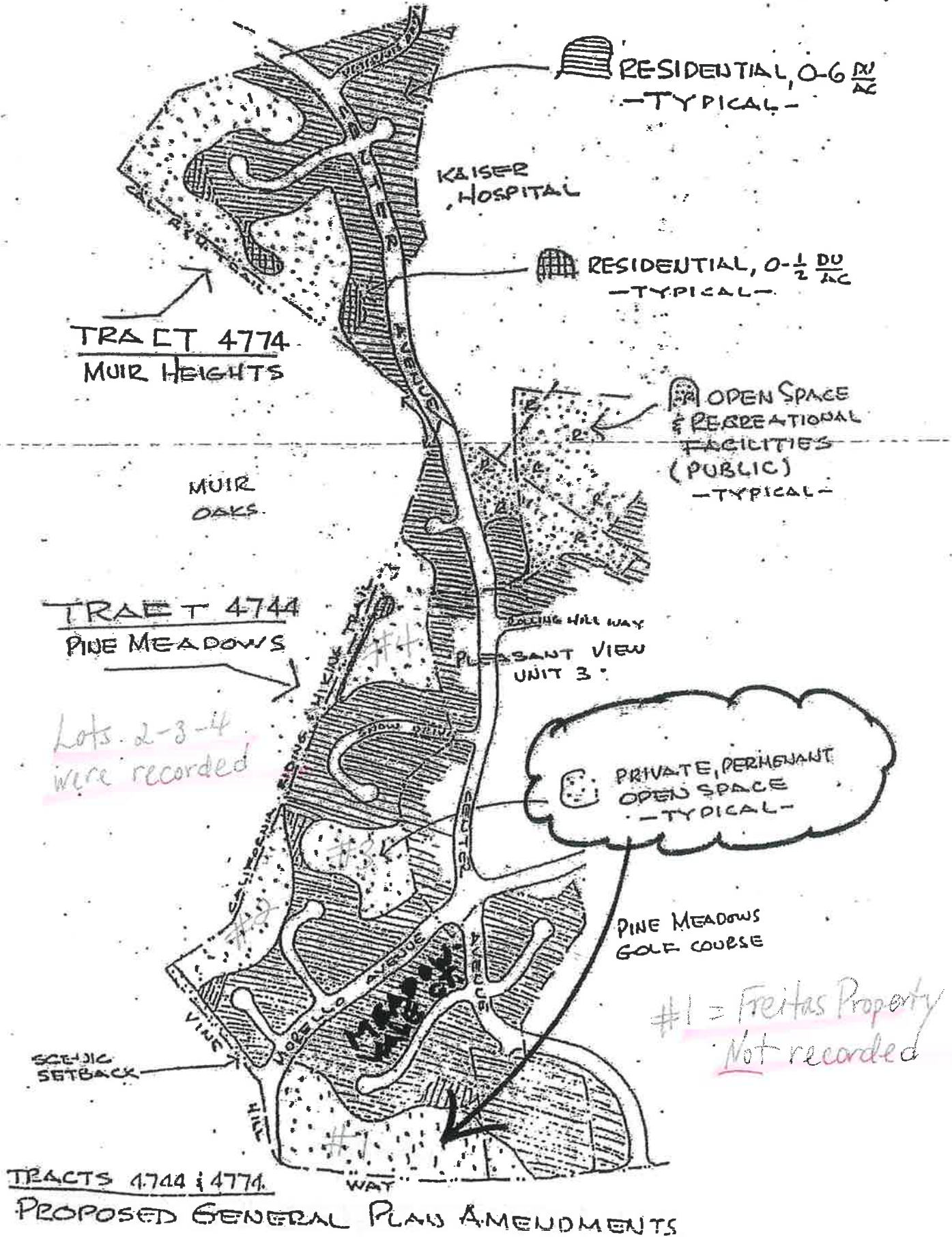


John Sparacino  
Former Mayor of Martinez.

# EXHIBIT H-4

1976 G.P.A. TO PRIVATE O.S.

H-4  
(p1+4)





RECORDING REQUESTED BY  
Transamerica Title Ins. Co.

OCT 17 1978

78-148457

RECORDED AT REQUEST OF BOOK 9064 PAGE 270  
TRANSAMERICA TITLE INS. CO.

AT OCT 17 1978 11:17 A.M.

AND WHEN RECORDED MAIL TO

Name  
Street  
Address  
City  
State  
Zip

Gary R. Freitas  
635 Vine Hill Way  
Martinez, Calif. 94553

OCT 17 1978

CONTRA COSTA CO.  
TRANSFER TAX  
PAID \$ 117.70

OFFICIAL RECORDS OF  
CONTRA COSTA COUNTY  
R. OLSSON, County Recorder  
Fee \$ 3.00

MAIL TAX STATEMENTS TO

Name  
Street  
Address  
City  
State  
Zip

Santa Barbara Savings & Loan  
2200

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ 117.70  
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,  
OR COMPUTED ON FULL VALUE LESS LIENS AND  
ENCUMBRANCES REMAINING AT TIME OF SALE.  
Signature of Declarant or Agent determining tax, Full Name

## GRANT DEED (CORPORATION)

(Exem No. 226 422)  
User Fee/No

By this instrument dated October 16, 1978, for a valuable consideration,

SECURITY OWNERS CORPORATION, a California corporation

hereby GRANTS to

GARY R. FREITAS, an unmarried man

the following described Real Property in the State of California, County of Contra Costa

City of Martinez

Lot 22 as shown on the Map of Subdivision 4744, filed November 4, 1977, Map Book 204, pages 9 through 22, inclusive, in the office of the County Recorder of Contra Costa County, State of California, and as amended by Certificates of Correction recorded January 13, 1978, Book 8668, page 485, Series No. 78-6383; and April 18, 1978, Book 8797, page 163, Series No. 78-50910, Official Records.

SUBJECT TO:

Covenants, Conditions and Restrictions recorded December 6, 1977, in Book 8617, Page 428, Official Records of said county which are hereby incorporated with reference thereto.

SEAL AFFIXED

SECURITY OWNERS CORPORATION,

No Mention of Open Space  
ONLY CC+R'S which Superior  
Court has changed For LOT  
22 TO Have 5 LOTS

Print No. 111 Revised 9-67

ST  
CC  
cha

for said  
to be the  
portion  
have.



# SUBDIVISION 474-1 PIKE MEADOWS

A PORTION OF THE RANCHO LAS UÑAS  
CITY OF MARTINEZ  
FERGUSON & MOLLAN, CONSULTING ENGINEERS  
200 GREGORY LANE, PLEASANT HILL, CALIFORNIA  
SEPT. 1976

## BASIS OF BEARINGS

THE ALIGNMENT LINE OF CENTER AVENUE  
BETWEEN SNOW DRIVE AND ROLLING HILL  
WAY, TAKEN AS N 39° 00' 33" W AS SHOWN  
ON TRACT 3579 (116 N 51)

## LEGEND

- FIND STANDARD MONUMENT
- SET STANDARD MONUMENT
- FIND IRON PIPE AS SHOWN
- SET 3/4" IRON PIPE TIE
- SET ACE 3261
- EXISTING FENCE

SCALE 1"=40'

22

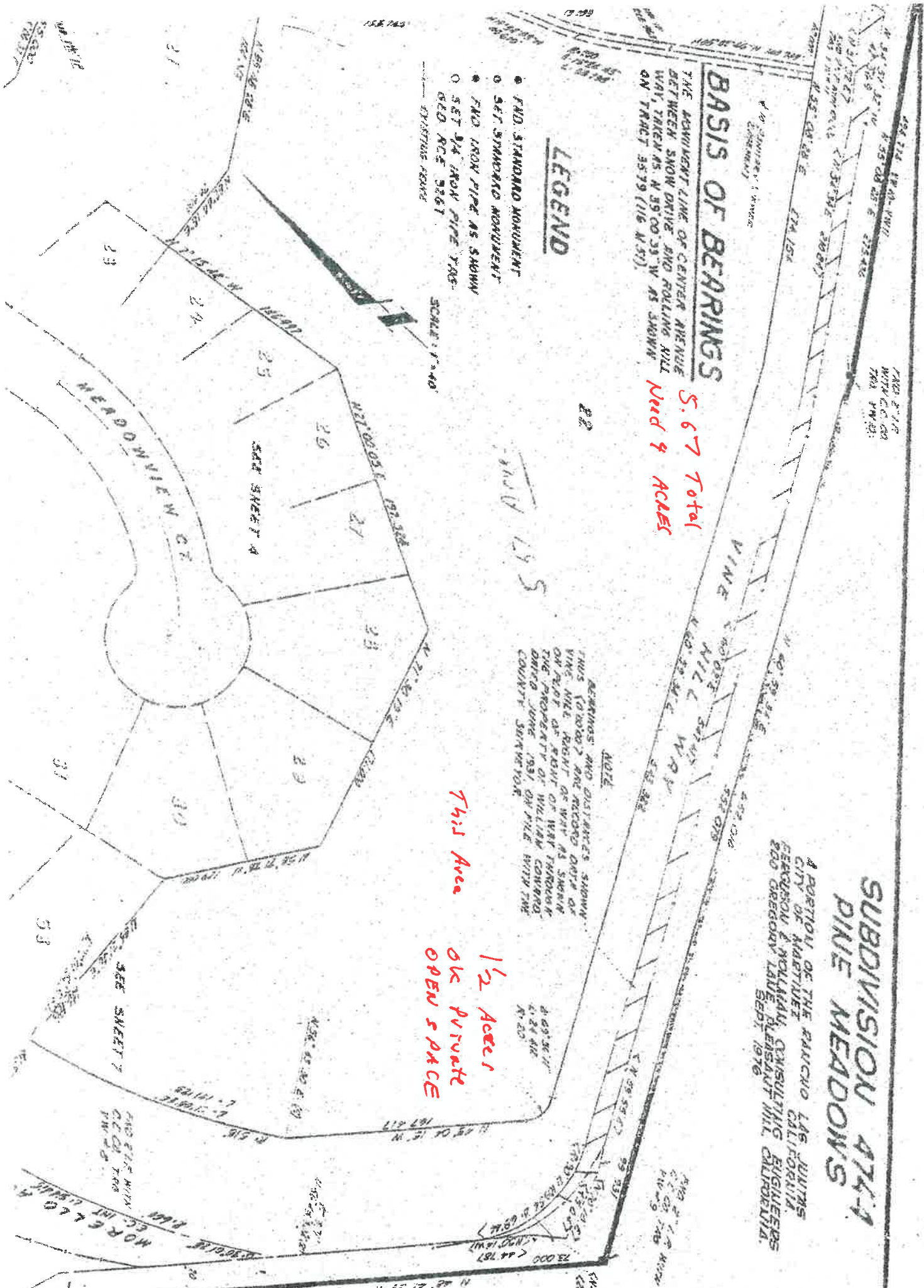
740 195

S. 67 Total  
Und 9 ACRES

### NOTE

BEARINGS AND DISTANCES SHOWN  
THIS (2000) ARE RECORD DATA OF  
VINE HILL, BEHIND OF WAY AS SHOWN  
ON PLAT OF RIGHT OF WAY THROUGH  
THE PROPERTY OF WILLIAM CONRAD  
DUNN, JUNE 1931, ON FILE WITH THE  
COUNTY SURVEYOR

This Area  
1 1/2 Acres  
is Private  
OPEN SPACE



LAW OFFICES OF  
**RIVES, HUFFAKER, LITTORNO & JENNY**  
2211 RAILROAD AVENUE  
PITTSBURG, CALIFORNIA 94565  
(925) 432-3511 (925) 757-0771  
FAX: (925) 432-3516  
**TRANSMITTAL**

AUG 23 1999

REC -

OF COUNSEL  
STANLEY K. DODSON

RONALD P. RIVES  
JEFFREY D. HUFFAKER  
RICHARD A. LITTORNO  
SCOTT E. JENNY

August 20, 1999

To: Gary Freitas  
PO Box 6327  
Concord, CA 94524

Re: Gary Freitas matter  
Case No. C99-01395

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ENCLOSED PLEASE FIND THE FOLLOWING:

NUMBER OF ORIGINALS [ ]      NUMBER OF COPIES [ 1 ]

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DESCRIPTION:

RULING AND ORDER FOLLOWING HEARING PURSUANT TO CIVIL  
CODE SECTION 1356

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<input type="checkbox"/> FOR NECESSARY ACTION	<input type="checkbox"/> APPROVED AS NOTED
<input type="checkbox"/> FOR SIGNATURE & RETURN	<input type="checkbox"/> APPROVED
<input type="checkbox"/> FOR SIGNATURE & FORWARDING	<input type="checkbox"/> DISAPPROVED
AS NOTED BELOW	<input type="checkbox"/> FOR PAYMENT
<input type="checkbox"/> FOR CORRECTION	<input type="checkbox"/> FOR RECORDATION
<input type="checkbox"/> FOR FILING & RETURN	<input type="checkbox"/> SEE REMARKS BELOW
<input type="checkbox"/> FOR YOUR REVIEW	<input type="checkbox"/> FOR YOUR FILES
<input checked="" type="checkbox"/> PER YOUR REQUEST	<input type="checkbox"/> FOR YOUR INFORMATION

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REMARKS:

BY:   
Teresa Contreras  
Secretary to SCOTT E. JENNY, Esq.

SEJ:tcc  
enclosure(s)

Satisfactory proof having been made, and good cause appearing,

IT IS ORDERED THAT:

1. THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

(C.C. & R.'s) filed in this county on December 6, 1977 are amended as follows:

The existing provision:

1. LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one half stories in height and a private garage for not more than three cars. No lot shall be resubdivided for the purpose of creating one or more additional home sites.

Is hereby replaced with the following provision:

1. LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one half stories in height and a private garage for not more than three cars. No lot shall be resubdivided for the purpose of creating one or more additional home sites except for Lot 22, which may be subdivided to allow for four new single family residences (for a total of five) each not to exceed two and one half stories in height and a private garage for each for not more than three cars.

2. This order shall be recorded in the Contra Costa County Recorder's Office and shall become effective upon such recordation. Upon recordation, said order shall have the same force and effect as if it had been adopted in compliance with every requirement for amendment imposed by the CC&Rs.

3. Within a reasonable time after the amendment is recorded, petitioner shall mail a copy of the amendment to each lot owner.

July 21, 1999



Richard S. Flier  
Judge of the Superior Court

This document is a correct copy  
of the original on file in this office  
ATTEST

AUG 10 1999

K. TORRES, CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
- COUNTY OF CONTRA COSTA  
By K. TORRES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

FILED  
JUL 21 1999  
K. TORRE, CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By [Signature], Deputy Clerk

In re the Matter of

GARY FREITAS,

Petitioner

NO. C99-01395  
RULING AND ORDER  
FOLLOWING HEARING  
PURSUANT TO CIVIL CODE  
SECTION 1356

On May 17, 1999 this matter came on regularly for noticed hearing before Department 15 of the above-entitled court, Hon. Richard S. Flier, presiding.

Scott E. Jenny, Esq., of the law firm of Rives, Huffaker, Littorno & Jenny, was present representing Gary Freitas, the petitioner.

Michael George was present as a Pine Meadows Association member.

Christine Dean was present as an interested neighbor of the association.

Statements were made by the above-identified persons and the matter was submitted to the court for its decision pursuant to Civil Code section 1356.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. Findings

The Petitioner has given not less than 15 days written notice of the court hearing to all members of the association. (See Proof of Service filed May 7, 1999, which indicates the Order Setting the Hearing was mailed on April 28, 1999) The "Declaration" (Exhibit A to the Petition of Gary Freitas) does not contain any notice provision for a mortgagee of a mortgage or beneficiary of a deed of trust, or the city and county where the property is located.

The Declaration contains no specific provision for balloting except for item 17 which discusses how to change terms of the covenants. It says, "... an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in



part." Exhibit A to the declaration of Christopher L. Freitas would satisfy this condition. These are the affirmative ballots signed by various landowners. The court also determines that reasonably diligent efforts were utilized to permit all eligible members to vote on the proposed amendment. (See the declaration of Christopher L. Freitas).

At the hearing, the opponents of the petition suggested the possibility of irregularities. It was suggested that the signatures might be forgeries, the members might have been misled, Christopher Freitas might be related to Gary Freitas and would be biased. Although these arguments might have some significance to the legitimacy of the balloting, no evidence was presented to support any of these allegations. Consequently, the court finds no factual basis for any allegation of irregularities in the balloting process.

The court finds that there are 127 property owners of Pine Meadows, and there were 64 affirmative votes. (The court did not consider the votes from 1221 Center Avenue or 1270 Oakcrest Court as affirmative votes.) Owners having more than 50% of the votes voted in favor of the amendment. This would constitute 57.94% of the votes cast. This would constitute 50.39% of the property owners.

The opponents allege that some of these properties are owned by married couples and both partners did not sign. Even if this assertion were true, the Declaration does not give extra votes to married couples. There is no legal argument presented which suggests that a joint owner cannot vote his/her property's vote without conferring with the other person. There is no showing that any of the joint owners dissented from the vote cast.

Lastly, although this amendment will change the density of use of Mr. Freitas' property, it is not an unreasonable change. It also appears that the petition is not improper for any reason stated in Civil Code section 1356(e)

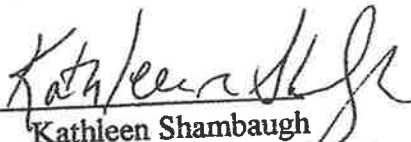
## II. Order

CERTIFICATE OF MAILING

I, the undersigned, certify under penalty of perjury that I am a citizen of the United States, over 18 years of age, employed in Contra Costa County, and not a party to the within action; that my business address is Court House, 725 Court Street, Martinez, California, 94553; that I served the above-attached RULING AND ORDER FOLLOWING HEARING PURSUANT TO CIVIL CODE SECTION 1356 by causing a true copy thereof in an envelope addressed to the parties or attorneys for the parties, as shown below, which envelope was then sealed and postage fully prepaid thereon, and thereafter was deposited in the United States Mail at Martinez, California, on date shown below; that there is delivery service by the United States Mail between the place of mailing and the place so addressed.

Scott Jenny, Esq.  
Rives, Huffaker, Littorno & Jenny  
2211 Railroad Avenue  
Pittsburg, CA 94565

I declare under penalty of perjury that the foregoing is true and correct. Executed at Martinez, California, on July 21, 1999

By   
Kathleen Shambaugh  
Deputy Clerk of the Court

CERTIFICATE OF MAIL

From: Gary Freitas (garyfreitas@sbcglobal.net)  
To: tblount@cityofmartinez.org;  
Date: Thu, October 21, 2010 5:06:51 PM  
Cc:  
Subject: General Plan Amendment

Hi Terry, *After 5 years of Wasted Time He was Fined*  
BLOUNT

Last night at the Martinez City Council meeting Mayor Schroder directed me to you on the subject of my property at 635 Vine Hill Way. I have attached the write up that I gave to the mayor and city council last night. My fiancée Sue Higgins spoke to you once on the phone regarding our property situation as well. I have a detailed written history that I can share with you to fully understand the events over the last 22 years. We respectfully ask that you include our property as part of the General Plan Amendment. We are happy and willing to meet with you regarding this matter.

Best Regards,  
Gary Freitas  
635 Vine Hill Way  
Martinez, CA 94553  
(925) 570-9210

Sue Higgins  
(925) 570-9247

Hello Mayor and City Council, although I don't come to many city council meetings, I always record them.

Last meeting I heard Mike Alford mention my property. Mike is for preserving open space and so am I. But when it comes to my 5 1/2 acres there is a big problem, just like the Ostrosky property, NOT PROCESSED CORRECTLY. I don't feel I should pay any longer for the mistakes of the city and the developer. The staff report has documented that it was done incorrectly and it has been admitted at council meetings that are on tape. Yet here I am still with the same problem unresolved after spending \$700K+ over the past 22 years. For example if someone was riding in my car and I get a speeding ticket should I expect them to pay for it?

Several years ago I won the decision at the Superior Court regarding the CC&R's and this granted me the privilege to have 4 lots and my existing home. Why would a judge grant me this right if he believed that a legal Open Space designation existed? If I go back to the court house instead of the city council and win the decision over the open space issue, I believe Mike Alford for one, would remain in favor of my project. Going back to court with 22 years of evidence showing that I have complied with the city's process, I think a judge would agree with me that why would the city accept application not once, but 3 times, if they really believed that open space on my property was correct?

I am the first and only owner of lot 22, before I purchased this lot; it was part of a much bigger property that became 127 lots. Nearly a year after I purchased my property a letter came to me asking for my signature agreeing to an open space description on my land. I did not sign this letter or agree that this description was correct then or now. Again, why would the letter be necessary if the lot description was legally correct when purchased it?

I feel I have as much of a chance for a win as Ostrosky, but this process is going to cost the city a lot of expense just like this last case did. Why not use the General Plan update to correct this error of open space on my property and we will all be better off.

My understanding is that you are going to take all of the changes over the last 37 years and update one map from many. Now, the BIG question? Are you going to make any new changes to zoning of properties through this update? My property for example?

I am getting plenty of attention from attorneys and developers, since I am willing to give 1 to 2 lots for payment, if we achieve a successful project. I have no problem with this city council I just need something back for the error that I have been paying for. I continue to verbally support candidates this year, but not financially. One last thing, I never want to hurt the city I have lived in for 69 years, but the city should have the same feelings for me. Thank you.



July 20, 2011

## Martinez City Council Meeting

Mayor and Council:

My family and I really appreciate your time both here at city meetings as well as other opportunities that you have made yourselves available.

The 3 of us will only take 9 minutes total to cover some of the past as well as looking to the future.

We have spent many hours condensing numerous boxes of information into these easy to read binders and then took about a dozen pages of important facts to give to you for future reference.

## Very Important Info

July 20, 2001

Martinez City Council Meeting

After 20+ years and spending close to a million dollars trying to get a 4 lot subdivision plus my home on my 5 ½ acre property, I now feel that the cart was put before the horse.

In 1988 I filed my first application for 5 lots plus my home and took it to the planning commission.

Why didn't the city staff that I was working with, which I feel were all good people, not tell me to go and have the CC&R's revised and that the city needs to correct the Private Open Space issue before a lot of money and time is wasted for both sides?

The CC&R's stated that no lot could be split unless 51% of the subdivision agreed to it and they had already realized that the developer and the city had made a serious oversight on processing the 4 estate lots within this 127 lot subdivision. In fact within a year of purchasing those 4 lots in 1978, the owners received letters asking them to sign a document that would correct their error. 3 of them signed but I did not. This is stated in the city staff report of July 10, 1979....an admitted oversight.

So, per instructions from Barbra Bacon with the City of Martinez, before we could present our 2<sup>nd</sup> application we needed to show that the process had been completed regarding the CC&R's. Without this I was told that I would have no chance to succeed. It took me and my staff 2+ years and fifty to one hundred thousand dollars to obtain the 51% of signatures in favor of the change. I took this to the Contra Costa Superior Court where it was ruled in my favor to allow my home plus 4 lots on my property. This is all in the court records.

I then moved forward with my 2<sup>nd</sup> application, again spending a lot of time and money. Although I was making much better progress with the Planning Commission, and had achieved the CC&R change needed, it turns out that the city had not corrected their oversight on the property.

At that point I was advised to go to the City Council and ask them to correct the private open space issue with a General Plan Amendment, then later pursue the subdivision.

I did just that and received 4 out of 4 votes in my favor from the city council. Shortly after that I was told that with that vote in my favor I would have to accept all the financial liability should a law suit be filed against the city and I were to lose.

This seemed very risky and so I pulled my application, and was advised to wait for the city wide General Plan Update to take place and that my request would be a good fit for that process.

Now my son-in-law Rob will use his 3 minutes and last will be Sue, total of 9 minutes covering 20+ years and many many boxes of information about my project.

now 2017- still waiting

July 20, 2011     Martinez City Council Meeting

My name is Robert Slater and I am Gary Freitas' son-in-law.

I really feel that Gary's 3<sup>rd</sup> application, at his expense, and time for a General Plan Update on his property made the city of Martinez aware just how long they had not had a general plan update...over 30 years. This probably should have been done every 10 years or so. There may even be laws governing the amount of time allowed between updates.

I believe that this city council, that gave Gary the 4 of 4 votes would still be in his favor and do him right after all that he has gone through. If it was a solid NO then why have 3 applications accepted over the last 20 years?

We don't believe that a law suit threat is a big issue if this oversight is corrected by this General Plan Update and by this council. Why else would Gary have been advised to wait for 3 or 4 years more for this possible win, when he already had the 4 out of 4 votes.

Gary waited 2 years just for the General Plan Update to get started. In order to get more advice he also consulted with 4 law firms, during this time. None of them felt that the city is entitled to a win in court because they had intended something that was never correctly processed.

It also seems that Gary's property has been labels a CEQA project. Well any piece of property that looks to try and have a project approved, for example Pine Meadows Golf Course, can be looked at to see if CEQA applies. In fact the Golf Course and Gary's property are cut from the same ranch. It should not be referred to as a "CEQA" property, just because it could have CEQA issues.

The City of Martinez Staff report dated November 15, 1999 stated that, staff did not believe Gary's property to be Prime Open Space, and that it could support the construction of several homes, as long as there is support from surrounding home owners. The CC&R's win he achieved within the 127 lot subdivision satisfies that request. Also, it is on record that over the last 20 years whenever we had meetings during the 3 applications it was pretty much equal amounts of people either for or against the project.

If the General Plan is in favor of Gary, his new proposal would be to ask for his existing home and land for 4 lots (which the Superior Court agreed on) be free of Private Open Space. He would suggest in his application to have approx 2 acres of lot #4 to be labeled Private Open Space which takes the liability away from the city and keeps it with the lot owner. Lot #4 would be across the street from the entrance to the California Horse Trail, and the owner could have 1 or 2 horses, how great that would be. Everyone would win with this scenario which we feel is an unselfish proposal that eliminates court expenses for both sides. Please do him right. Thank you.

July 20, 2011

Mayor and City Council I am Sue Higgins and

I know that you are all aware of the long history that Gary has had trying to get our property situation straightened out. We have worked with the Martinez Planning Commission and Staff, Martinez Mayor and City Council, Martinez Design Review Committee and even the Superior Court of Contra Costa County.

The land designation of "Private Open Space" on the property is incorrect. We know this to be true and the City has commented on this in staff reports, newspaper articles and during meetings. *NOW 2017 STILL WAITING*

We were told that the updating of the General Plan was a perfect fit for having this issue corrected. So we took the advice and waited the two years that it took for the task force to get started and now it is in motion.

We have been in contact with Mr. Terry Blount by telephone, email and attended his neighborhood meeting. Currently Gary is scheduled to speak at the next General Plan Update meeting a week from today. We feel we have had to push in order to get on an agenda and now we are being asked to meet with Terry and Corey prior to that meeting to discuss how much time we will use and what we expect the outcome from the Task Force discussion to be. When Christine Dean spoke to the task force in April she was not asked to meet prior to the meeting and in a previous email to Terry I assured him that Gary would not take up more than 5 minutes of their time. We get reminded that any proposal of ours would still need to go through the application process and be very costly and time consuming. Believe me we are very familiar with this, but that is not the objective at this point, it is only to have the land designation be corrected.

It appears that the properties that are being considered are already designated on this map. Most look to be commercial sites including Pine Meadows Golf Course, our neighbor and friends. However, the 5 1/2 acres at 635 Vine Hill Way our property is not included on this map. We thought a significant part of the update is to look at specific properties and identify if we are making the best use of the land. A dry field of weeds with a barb wire fence cannot possibly be the best use of our property when all around us is a thriving residential community.

Mayor how would you, the council and Planning Commission even be aware of our request to have the "Private Open Space" designation corrected? I have been told that the committee only makes recommendations, but how can they even review our case under these circumstances?

Thank you for your time.



Did not need  
to Task Force

Should Have  
Bad Advice

July 27, 2011

Attention: General Plan Update Task Force

My name is Gary Freitas and I own the property at 635 Vine Hill Way between Morello and Center Ave.

Some of you may know that I have tried to correct the Private Open Space issue on my property for the last 20+ years of the 32 years I have owned the property.

During this time the Martinez Planning Commission accepted 2 applications from me regarding my property. The Martinez City Council accepted an application to amend the General Plan in order to correct this issue on my property and gave me 4 out of 4 votes in my favor.

It has been said by some that I knew this property was Open Space when I purchased it in 1978. This is wrong, I surveyed this property which is included in Pine Meadow I subdivision. There were 4 large estate lots out of the 127 total lots. What I did know is that the City and Developer did not process the Open Space, even though that was the intent. I have 45 years in the Land Surveying business and owned my company for 30 years. I built it from 1 employee to 100 employees. Why would I buy property that I intended to use for my retirement income if I knew it was Open Space? Within the first year of my purchase the 4 large lot owners received letters from the City. We were asked to sign and agree to fix this very serious error. All signed accept me.

This action is admitting a serious error, one of the first of many over the next 20 years. The city attorney has said during city council meetings that it was not processed correctly, but it was intended. How would that fly in court before a judge? Nobody is above the law.

Another huge win for me was the CC&R's issue. The Pine Meadows I subdivision has 127 lots and the cc&r's stated that no lots splits were possible unless 51% of the owners agreed to it. I spent two long years and \$50,000 to \$100,000 in labor costs knocking on doors, and received over the 51% needed to change the cc&r's. I then went to Superior Court where a judge ruled in my favor to have my original home plus 4 lots on my 5 1/2 acres. This has all been recorded. More recently, Mayor Schroeder has stated during a city council meeting that "nothing is permanent".

I am attempting to go over 32 years in a few minutes and that is difficult. I have spent \$700,000 to 1 million dollars of my resources over these past 20+ years to correct this situation. Why would the city of Martinez and the Superior court accept applications and judge in my favor if this Open Space designation was so firm?

During one of your meetings Rachel asked Chris Dean, owner of the Pine Meadows Golf Course, to have neighborhood meetings regarding her plans to develop the land. Great suggestion and I have done this in regards to mine plans many times. I held large meetings at the Sherriff's hall as well as one on one meetings in my home with opposing individuals, where compromises were met to the satisfaction of both sides. During many



planning commission and city council meetings over the years, there would usually be 50/50 for and against my project with 15 to 20 people on either side. Always pretty even, and this is also on record.

It seems now that I would have been better off bringing a law suit against the city. But I have lived in Martinez for 70 years, my mom is 93 and lived here and my grandparents before her. I don't want to hurt the city I live in, but my back is against the wall. I have spoken to several attorneys who don't agree with our city attorney Jeff Walters, that says the "intent" was there and that is enough, even though it was not processes correctly.

I am asking this committee to recommend the correction of the open space designation for me and my family. This would allow our home plus 3 future lots to be free of open space, however it could place "private open space" on part of the approximate 2+ acres that would make up lot 4 on the far west corner of the property. This would give the residents of that lot convenient access to the entrance to the California Horse Riding Trail that is directly across the street, if having horses was of interest to them. Under this plan the city of Martinez would bear no responsibility for maintaining the open space area. I understand that this is what this committee is all about, looking out for the best interest of the city, not just a handful of neighbors that were given wrong or incomplete information about my property.

Mark Thompson is on this committee who has been my neighbor for approximately 6 years, and he is against me big time. He wants to go by the law of the land and I agree with Mark. But he needs to go back 32 years not only the last 6 years since he bought his home, listening to a realtors sales pitch, with possible incorrect information and for sure the incomplete history of the property. *He Hired A Lawyer TO Fight Me*  
*Now He is on The Task Force Committee < This is a Conflict of Interest*

It is very obvious that there is a huge error that we are living with, and you can't have a property owner spend close to a million dollars and not feel something was done wrong way back in the beginning. This is an opportunity for all of us to win and move onto much bigger and more important issues in these bad times.

My little island of land surrounded by tract homes, custom homes and condos would be a great fix to all of this by using the unselfish solution that I have proposed. For example property tax income, approximate 1/3 of property as open space and my family and I can use part of it for retirement purposes.

Thank you all for your time tonight,  
Gary Freitas

April 30, 2012

Mr. Jeff Walter  
Martinez City Attorney  
670 West Napa Street, Suite F  
Sonoma, CA 95476

Dear Mr. Walter:

I am writing you today in regards to the Martinez General Plan Update Task Force Committee. Please accept this letter as my formal request to have Mr. Mark Thomson, task force member, recuse himself in regards to my property which is located at 635 Vine Hill Way, Martinez, CA 94553.

I respect and appreciate the work that the GPU TF is doing, but it is unprofessional and unneeded to have Mr. Thomson interact with me during the meetings in such an aggressive manner. His actions have created a hostile environment at the meetings where although I am invited to attend, I do not feel I can speak openly and freely without interruption.

The fact that Mr. Thomson is my neighbor does not cause my concern, it is his prior involvement in litigation against me that does. Mr. Thomson has already brought in legal representation against me publicly at the Martinez City Council meetings, and it is my understanding that he will do this again should I have another proposal come before the city.

Mr. Thomas Lippe is an attorney which was hired to represent the "group" as well as Mark and Lorna Thomson specifically, which are against any development of my property. Mr. Thomson created this website in opposition to my proposed project [www.keepouropenspace.org](http://www.keepouropenspace.org). Mr. Thomson has left me certain that as long as he is involved, any fair consideration to changes on my property will be impossible.

Per the advice and direction of the City and Staff, I have agreed to move forward and pay The Planning Center/ DC&E the \$10,500 fee to prepare the visual massing simulations needed at this time.

Please resolve this conflict of interest as soon as possible so that going forward the land use policies on 635 Vine Hill Way can be reviewed and discussed without bias. Thank you for your time.

Sincerely,

Gary R. Freitas

635 Vine Hill Way

Martinez, CA 94553

(925) 570-9210

cc: Mr. Terry Blount  
Mr. Corey Simon  
Mr. Philip Vince

May 6, 2014

Attention: Martinez New Gazette Editor

Response to "Stop this attack on open space" by Tim Platt  
Weekend edition May3-4, 2014.

Friends and neighbors,

Anyone who knows me at all understands how important true and complete facts are to me. That is why I feel compelled to respond to Tim Platt's letter in the Gazette this past weekend.

When I submitted the first application to the Martinez Planning Commission they had a CC&R concern about my property. In order to satisfy this issue I pulled my application and proceeded to obtain the needed approval of over 51% of the 127 homeowners in my subdivision pine Meadows I. This was for 4 lots plus my existing home on 5.62 acres. The Contra Costa County Superior Court reviewed and accepted the neighborhood approval of the 4 lots plus mine and it has been recorded.

The 2<sup>nd</sup> application the Planning Commission was also not rejected, I decided to pull my application and go before the Martinez City Council to ask for a General Plan update which is a process that the city has in place in order for them to make change. We felt that this was a better way to go.

With the 3<sup>rd</sup> application I went before the City Council for a General Plan Update on my property. Tim Platt is correct regarding the 4-0 votes in favor of my 4 lots, and that Mark Ross recused himself. However it is Incorrect that Mark Thomson's group and lawyer stopped my approval. It was upon the advice of the City to wait for the city wide General Plan Update to take place, with my property included. This is a legal procedure that the city has and can use to make change.

At 73 years of age I have seen many many changes in Martinez my home town, and I believe this will always be a part of our life and the world we live in.

Gary Freitas

Dana Dean  
Amber Vierling Of Counsel  
Venus Vilorio Berdan Associate

Law Offices of  
DANA DEAN



835 First Street  
Benicia, California 94510  
p 707.747-5206 • f 707.747-5209

June 25, 2008

Mr. Jeff Walter  
670 West Napa Street, Suite F  
Sonoma, California 95476

*My Lawyer would continue to fight  
we already had 4 of 4 votes in my favor  
from Council I refuse*

*But we decided to go with General Plan  
2008 Now 2017*

VIA FACSIMILE AND U.S. MAIL

Re: Freitas Development Matter

Dear Mr. Walter:

As I indicated in my conversation with you yesterday, my client has decided to withdraw his application in the above-referenced matter, pending consideration of other options available to him. Please be aware that this withdrawal is done under something akin to protest that results from roughly two decades of missteps, misrepresentations and broken promises from the city.

As you are well aware, the record is replete with examples of the City's continued misdirections and my client's repeated efforts to meet the City's ever-changing demands. Such efforts, including but not limited to, modifying the CC&R's to reflect approval of the planned subdivision, changed applications, changed conditions, etc. have all resulted in an enormous expenditure of resources (time, money and energy) that remain largely unanswered by the City. It is a shame that the City determined once again to require Mr. Freitas to commit so much life force to an application it now purportedly deems unfit.

With all of this in mind please accept this correspondence as formal notice of my client's intent to withdraw his application pending consideration of other available options.

Sincerely,

Dana Dean

DD:sa

cc: Karen Majors  
Lisa Marshall  
Gary Freitas



The most problematic parcels are those located north of the railroad tracks. Since these tracks are currently utilized for both rail and freight service, it is possible that a train could temporarily block one or more of the railroad tracks, thereby obstructing the route of an emergency vehicle. However, the improvement listed above would significantly improve emergency access to development on the north side of the tracks, as the majority of time, trains will not block both crossings at the same time. As a result, this impact would not be considered significant."

**Assistant City Attorney's Response:** If this property had been designated for residential use at the time of the adoption of the Downtown Specific Plan (DSP), the EIR would have needed a Statement of Overriding Considerations, because the improvements needed to provide adequate emergency access were considered financially infeasible (this is staff's recollection of the events at the time and will be verified prior to the Task Force meeting). A Statement is required when a plan or a project is approved where there is a significant unavoidable impact associated with it. In the case of this property, which was included in the DSP area, the significant unavoidable impact was that associated with emergency access. In order for this property to now be designated for residential use through the Update process the EIR for the Update will have to include a mitigation measure that reduces this impact to a less than significant level. The mitigation would require that adequate emergency access be created and that it be done so at the property owner/developer's expense. This could include an extension of Joe DiMaggio Drive as noted above or possibly a bridge over or a tunnel under the railroad tracks on Alhambra Avenue.

#### Freitas Property Designation

The easterly half of the site could contain limited additional residential development of not more than two units; and this ONLY upon documentation, through the environmental review process, that such development would not reduce the mitigation affect of the site's current status as visual open space (preserving the rural visual character of the Vine Hill Way corridor). Maximum building heights of one story/ 25' roof ridge elevation are recommended.

**Assistant City Attorney's Response:** Staff has been in contact with the property owner regarding the additional environmental review required for the designation of this property to be changed to allow a limited amount of additional residential development. The property owner would be required to bear the expense of this additional review. Since the property owner to date has not agreed to proceed with the additional review the property should remain designated as it currently is, open space. At such time in the future the property owner wishes to proceed with their plans for further development, the appropriate level of environmental review would have to be conducted.

ON 5/08/12 we wrote a CVR FOR 10,815  
FOR THIS STUDY

Now After All These Years and Close TO 1 Million \$'S

December 2016

After all these years and spending nearly one million dollars on several studies, several of which have been repeated over the years including this study. Lawyers have been a big expense also.

On May 8, 2012 we wrote a check for \$10,815, which the City of Martinez insist we do, for the requested study which had been done in the past on the entire property. Were other property owners asked to do this?

We now feel that I made a mistake by pulling my proposal with a 4 out of 4 votes in my favor by the Martinez City Council. I was strongly advised to do this and was told if I waited for the General Plan Update I would not need to pay for an EIR which would cost me \$120,000.

After five years the city fired the people working on the General Plan Update, then hired Dina Tasini, who I think was doing a great job, then hired Christine O'Rourke, who I also feel is doing a great job.

But now eight more years have gone by, enough already! My request is one where everyone wins. This issue is better for all to be resolved at the city level not in the courthouse. I feel I have provided enough information to show a lot of errors, mistakes and wrong doings, one of my lawyers has explained in this packet. This is the time to be fair and end this long costly issue. I have shown a lot of patience with the entire City of Martinez which is been my home for 75 years.

**CALL TO ORDER**

Mayor Schroder called the meeting to order at 5:45 p.m. with all members present except Vice Mayor Ross who was excused and Councilmember Menesini who arrived shortly after roll call. Council adjourned to Closed Session in the City Manager's Office.

**I. CLOSED SESSION**

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one case relating to letter received from Thomas Lippe dated November 28, 2007)

**II. RECONVENE - PLEDGE OF ALLEGIANCE - ROLL CALL**

Mayor Schroder reconvened the meeting at 7:00 p.m. in the Council Chambers with Councilmembers Lara DeLaney, Janet Kennedy, Michael Menesini, and Vice Mayor Ross present. Mayor Schroder reported that a Closed Session was held and that it was the decision of the Council to continue Item #8A & B.

Vice Mayor Ross recused himself and left the dais.

On motion by Michael Menesini, Councilmember, seconded by Janet Kennedy, Councilmember, approve the continuation of Item #8, Freitas General Plan Amendment to the first meeting in March. Motion unanimously passed 4 - 0. Yes: Lara DeLaney, Councilmember, Janet Kennedy, Councilmember, Michael Menesini, Councilmember, and Robert Schroder, Mayor

Councilmember Ross returned to the dais.

**PRESENTATION(S)/PROCLAMATION(S)**

- A. Swearing in of Gerardo Espinoza as Police Officer; Detective Aaron Roth as Police Sergeant; and Police Sergeant Eric Ghisletta as Police Commander.

Chief Tom Simonetti introduced the Officers and described their backgrounds. Swearing in performed by City Clerk Gary Hernandez. Mrs. Espinoza pinned her husband Officer Gerardo Espinoza, Mrs. Roth pinned her husband Sergeant Aaron Roth, and Mrs. Ghisletta pinned her husband Commander Eric Ghisletta. The City Council congratulated Officer Espinoza, Sergeant Roth, and Commander Ghisletta.

Mayor Schroder called a short recess at 7:21 p.m.

- B. Presentation by Katherine Hern, Chairperson for "Citizens Committee on Parks Bonds."

Ms. Hern updated the Council on the progress of the Committee. She indicated that the support and volunteers are growing. Ms. Hern stated that it was the intent of the Committee to stay focused and narrow the bond to the municipal pool, library renovations, park and field improvements, and the bocce courts. She thanked Mayor Schroder and Councilmember Kennedy for volunteering to work on the Committee; and urged the Council's continued support and to approve the necessary bond professionals needed to prepare

**CHRONOLOGICAL DATES OF EVENTS**  
**635 VINE HILL WAY, MARTINEZ**  
 March 16, 2004

July 21, 1999 – Superior Court issued ruling on validity of amending CC&R's in favor of Gary Freitas.

October 20, 1999 – Meeting with City (Barbara Bacon) to discuss processing requirements of the Tentative Map. Alvin in attendance.

November 19, 1999 – Letter from City (Barbara Bacon) stating that **"Staff does not believe that this property is prime open space and could support the construction of several homes as long as there is support from the surrounding home owners."**

May 16, 2000 – Meeting with City (no names, probably Barbara Bacon) to discuss Tentative Map guidelines and processing fees. Alvin in attendance.

August 29, 2000 – Meeting with City (Barbara Bacon and A D Dopson) to discuss details to add to the Tentative Map. Alvin in attendance.

— October 18, 2000 – Received letter from Cindy Gnos, contract planner acknowledging receipt of our Tentative Map application and requesting additional information.

— December 13, 2000 – Meeting with City (Cathy Munneke (**NEW PLANNER**) & A D Dopson) to discuss requirements on Tentative Map, noise study requirements for environmental processing, General Plan Amendment requirements and vote of CC&R's from immediate neighbors. Alvin in attendance.

— March 28, 2001 – Meeting with City (Janet Homrighausen – **NEW PLANNER**) to discuss submittal requirements for Tentative Map and architecture. Alvin and Cliff Deutscher in attendance.

January 15, 2002 – Informational Presentation by Dennis Hummel at Sheriff's Association Hall. Some neighbors expressed their concerns as to their views being obstructed. There were also neighbors that spoke in favor of the project.

January 14, 2003 – Planning Commission Study Session. Dennis Hummel presented the project. Frank Abejo prepared the staff report. This was a question and answer session between the commissioners, staff and the applicant. No neighborhood opposition to the project.

February 25, 2003 – Planning Commission Study Session. Dennis presented the project. Commissioners studied the architecture. No neighborhood opposition to the project.

— April 9, 2003 – Design Review Committee to review architecture and landscaping. Attendees were the DRC members, Frank Abejo – **NEW PLANNER**, Alvin, Dennis, Cliff Deutscher, Dave Bennet, Sue and Gene.

June 27, 2003 – Letter to Tim Tucker. Alvin Leung met with Tim prior to this letter to discuss the City's requirements for the widening and improvements to Vine Hill Way. The letter is the outcome of the meeting and the proposed improvements are reflected on the Tentative Map.

— November 12, 2003 – Meeting with City (Dina Tasini – **NEW PLANNER**) to discuss Planning Commission date of January 13, 2004. Alvin in attendance.

January 27, 2004 – Planning Commission meeting. Originally scheduled for approval of the Tentative Map, Rezoning and General Plan Amendment. Changed to Study Session due to neighbors calling Dina Tasini with concerns on open space. Planning Commission directed staff to research open space validity.



City made a mistake on the Initial Study stating rezoning to R-15 instead of R-10. Alvin and Dennis presented the project.

- February 19, 2004 – Meeting with City (Corey Simon – **NEW PLANNER**) to discuss status of project and his findings based on his research. Corey found City Council Resolution on private open space over the property. He did not count out the project but said there are alternatives between the current project and no project. He will continue researching and tentatively set a March 23<sup>rd</sup> date for the next Planning Commission meeting. Alvin, Gene and Sue in attendance.

We Feel He Ignored 15 years of a lot of work  
Time and Expense on Both Sides 2004 TO 2017

Look How That Worked out

A Period of 5 years with Terry Blout and a waste of  
Time admitted by The City and on and on

Give us our 4 Acres Free of Private OPEN SPACE  
and 1 1/2 Acres of Private OPEN SPACE And END This

Thank  
You

Before Corey we had 1989 to 2004 Invested already  
15 years

March 1, 2004

My name is Gary Freitas and I am the applicant for this proposed project. I have lived in Martinez for 62 years and I am the original property owner of 635 Vine Hill Way and have lived there for the past 25 years. Thank you for this opportunity to speak to you this evening. I feel that I can present enough factual information on the history of this property to satisfy any doubts that you may have concerning my request for approval on this high quality, low-density 5 lot subdivision which consists of 4 lots plus my existing home.

Please allow me the few minutes of time I need to speak on my own behalf recapping the events of the last 25 years.

As I stated I have lived in Martinez my entire life. But my family ties to Martinez run much deeper than this. My mother who is 87 years old was born and raised here and my immigrant grandparents before her settled here to make a life for themselves. Believe me I understand about change in a community like ours. The very street I now live on was the same one my mother traveled on by horse and buggy, and the homes, shopping area and movie theater that we are familiar with, are sitting on ranch land once owned by my mother's side of the family. There was definitely a time when we had more cows, orchards and vineyards then people living in this area.

I would also like to further qualify my information on this subject by letting you know that I have been in a closely related industry to land developing as I have worked as a land surveyor for 40 years and an owner of a land surveying and civil engineering business for the last 28 years. I have personally worked on local jobs such as Pine Meadows I and II, all the Hidden Lakes projects including the parks, Nob Hill Shopping Center, Alhambra Hills, KMART and Alhambra High School just to name a few. We also purchased Alhambra Land Surveyors on Main Street and added yet more local contracts to our business. With the expertise that I have gained over the years I am not a novice at how these types of projects get accomplished.

To give you a clear idea of how my property sits you need to know that on the east end is a 5 acre parcel that was developed into 9 lots with custom homes, to the west is Colton Place which consists of 15 lots and homes

sitting on only 8 acres, north is a 127 lot subdivision and south is a large condominium complex. This is quite a typical thriving suburban area – not rural countryside. In fact the condos are high density with tennis courts, a swimming pool and a clubhouse. We have 2 local parks, Hidden Valley and Hidden Lakes both within walking distance as well as a walk path, a horse trail along with numerous other open areas. Sounds like a generous amount of open space to me.

I would like to explain many of my experiences and expenses regarding the property.

The current zoning allows for 2 horses for the first acre and 1 horse for each additional acre – at 5.57 acres this allows a total of 6 horses at any time.

Some of the reasons that this does not work in this location are the following:

Adjoining neighbors and the public throw garbage, building materials etc. into the field that have caused serious injuries to the horses resulting in costly veterinarian bills. I would then have to make numerous time-consuming sweeps of the property to clean out other people's debris to protect the animals.

Due to the easy access of the property the general public have approached and fed the horses without permission including the cases of small children being allowed to touch and feed them. The possibility of someone, adult or child getting hurt is very high along with the chance of the horse getting sick when it is being fed food by people who have no knowledge of its current health, allergies or dietary restrictions.

Dog owners who do not keep their pets on leashes have allowed them to roam freely with many occasions of the dogs running onto the property and chasing the horses into an agitated state.

Not everyone in the area share the same level of enthusiasm for animals and nature, and I have had many adjoining neighbors complain that along with the horses came an unpleasant odor and an abundance of horse flies.

At one point I kept 2 pet steers on the property named Mutt and Jeff. Unfortunately their safety was put into jeopardy when two men positioned themselves on the roof of the condos across the street and thought it would

be okay to shoot at them, using them for target practice. This shocking and cruel action was responded to by the Martinez Police Department and of course I then felt that I had no choice but to move the steers out and find them a less hostile home environment. Prior to moving them I had also experienced complaints from the north boundary neighbors that the steers were eating their back yard shrubbery that was growing through their cyclone fences. In response to this I installed a parallel barbwire fence along the north boundary line to stop this problem.

In general the property is viewed by most as just some vacant land that does not deserve the same privacy, respect and protection as the rest of the front and back yards that my neighbors own.

Over the years the fences have been destroyed by people using my property as a short-cut to reach their destination, rather than staying on the paths, adjoining neighbors have felt entitled to dispose of everything from weekly yard clipping and tree trimmings to conduit and other construction material by throwing them over their fences onto my land, and I have had to collect countless golf balls that are hit over the fences onto the property by those neighbors that feel this is a personal driving range for them to use. I had a city parks employee knock at my door very upset and ready to lodge a complaint with me due to the walk path below being flooded out. However it was not my negligence causing this problem, instead it was a case of one of my neighbors along the top ridge going out of town while leaving their yard water on. In 25 years I have never been delinquent on my duty of keeping the grasses cut for weed abatement, yet still I have had to endure my neighbors complaining even though my due date has not expired at that time. The fire department has agreed that I am able to mow the field rather than disc it, due to the dust that disking creates and also upsets the neighbors. If I could keep the animals there successfully I would need only a perimeter firebreak. But as I explained there is no winning this issue. So why not build four homes and conform to the rest of the surrounding properties?

In keeping with the idea of what my definition of a good neighbor is, I have been very generous with working with them to suit their needs. When one of the adjoining neighbors planned to have a new swimming pool built I agree to let their contractors dump all of the diggings onto my property so



that they would not have a haul off charge – the savings was quite substantial, when another neighbor was also having work done that needed construction equipment I agreed to let them access their yard through my property. In fact during one of these projects the neighbor did not even have the courtesy to talk to me directly or thank me, they send their contractor to knock on my door instead. When 3 eucalyptus trees were a concern to one of my neighbors, worried that they may fall over, I agreed to share the expense for removing them. This same neighbor some years later was concerned about two more trees falling over and again I agreed to join with another neighbor to share the expense for removal of the trees. When my next door neighbor decided to go on a crusade to neuter and spay the feral cat population I contributed \$300 to the cause, although it brought me a lot of frustration with wild cats climbing all over my vehicles and using my yard as a litter box. I tried to work with this same neighbor on having a fence installed between our properties. They were given free reign to choose a fence of their choice, of their taste, so that everyone would be satisfied with the outcome. Conveniently they were never able to find one that they liked. It is no secret that they do not want any fences put up. In fact I am the only home around them that is left without a fence separating the properties in this nine-lot subdivision east of me. At one point this neighbor was so inclined to ask me to watch over some grading work that they were having done to their property. They needed to leave to have their taxes prepared and obviously felt I was a good candidate to be there since this is what I do for a living. My experience with this neighbor has been all a one-way streets. All for them and nothing for me. Twice in the last year I have had neighbors call the Martinez Police Department on me to complain about dirt bike riding on my property. These were planned family outing with my child, relatives and friends enjoying a day of riding on my private property. The police had absolutely no issues with me on these occasions. The children were using all the necessary safety equipment, the motorcycles are legal and no laws were broken. In fact, on both occasions it was said that my neighbors should mind their own business instead of making this type of complaint. ~~Currently I am still experiencing an on going problem with one of the neighbors on the ridge who own a dog that routinely jumps their fence onto my property. Initially we thought it was a problem with their back gate and I even had my own company carpenter climb up there and secure the gate and fence. I have called them each time I am aware that their dog is loose, concerned not only for the mess he makes on my hill, the stress he causes my dog which is in her kennel but for the safety of the innocent dog~~

<This neighbor is now a supporter of the project.>

~~who could be hurt once it reaches Vine Hill Way. To date the problem still exists.~~

Honestly how many of you would feel it is okay, and tolerate any of these situations, let alone if all of these things were to continue to happen at your home, on your property?

As my fiancée stated at the meeting on January 27<sup>th</sup> I took great offense when I found out that some neighbors wanted to accuse me of buying off the city and that is why they had not been notified of the previous meeting. This insults my character as a person but also is ludicrous when you go over my timeline of working with the city.

In 1988, after living on the property for ten years and experiencing the problems I was having I attempted this project for the first time. As it happens I had 2 friends that were either on the planning commission or city council at the time the late Tony Alameda and Gary Hernandez. They both agreed to abstain in any type of vote due to their relationship with me. Is this not an honest practice? My aunt had also spent virtually her entire career working for the city of Martinez, including working for Barry Whitaker City Engineer for Martinez. Clearly I did not take advantage of either of these situations. After a short time and much consideration, due to the opposition, I put the project to rest and did not file an appeal on the project. I concentrated on working to improve my own business.

It was in 1997, that I came back to the city to try again. Due to the continuous problems I was enduring I felt I should attempt this again, now having lived here 19 years. At that time I was told by Barbara Bacon to literally knock on all the necessary doors to achieve a yes vote of 51% or more of the 127 subdivision's homeowners. This would then allow the CC&R's to be changed allowing me to subdivide. She assured me this was the best way to achieve my goal. This endeavor was of considerable expense to my company and took over a full year of work, but in June of 1998 I had accomplished it gaining the majority support I needed. My peers consider this a great accomplishment, gaining the majority of the support of the subdivision.

Much to my dismay this achievement was still not enough for the city after all. It then forced me to seek legal council, where we took our case to Superior Court. Immediately it was approved and accepted as what was

needed to make the change. Obviously this shows that someone thinks I have my rights.

It was then in September of 2000 that the city of Martinez finally accepted my application.

This totals a seven-year process to date, since my application has been accepted three and a half years ago. Let me assure you that I would not be able to stay in business if this project was for one of my clients. No one could endure this amount of time or expense for an additional 4-lot subdivision.

To reiterate my willingness to work with the neighbors. The first time around in 1988 I had meetings at my home with neighbors for and against my project. And again just recently I had a meeting at the sheriffs hall inviting people for and against the project to try to work out the differences. I have found some people you just can't work with no matter how hard you try.

Each and every step that I have taken has been under the direction of the city. Work sessions, study groups, design reviews, landscape architects etc., all with my time and expense. I am the one suffering behind the delays and confusion being created.

Ironically, many years ago this same thing happened to my grandfather on my father's side in the hills of Lafayette. The original intent or plan for his land and the modern day reality of what happened to the area could not coexist together. It started as 160 acres of ranch land that eventually saw Rossmoor built on one side and a large subdivision on the other side. Soon problems became overwhelming causing my family to subdivide and sell. Even at that they kept with the belief of sensible development and sold it as large parcels usually 5 to 10 acres including one that was 50 acres with just one house on it. He became an island inside a regular suburban residential neighborhood, and that is what I feel I am, here in Martinez.

My history with this property also includes knowing the original owner the late Mr. Coward who just recently has passed away, Mr. Busby the developer, who I also worked for, and Ms. Huillade the realtor who sold me the home. It was never an issue at the time of the sale that this was sanctioned to be or remain an open space. As my neighbor, also an original

owner Mr. Clements has expressed to you at more than one commission meeting. In fact we both moved into our homes the same weekend.

When I first moved in I had contacted the city about a granny unit. They mentioned open space to me, but could not define the line on the property or show me a document to prove that it existed. Now, after all these years the city has produced a document to me for the first time. The document states that the property was considered open space in 1976, two years before my home was built on it. Regardless of all this the city has always said that I was applying for re-zoning from open space. So what's new? The majority of the subdivision has voted in my favor, and the superior court backed it as well, allowing me to change the CC&R's to subdivide.

In plain English the current situation is just not working or suitable for the area. I am not a greedy man, I am one that is willing to compromise and that is why I feel this proposal is so workable for our neighborhood.

I respectfully ask that you consider and accept my proposal that I feel I am entitled to. I am proud to be a life long citizen of Martinez and a local business owner. I would never suggest anything to the commission, the council or the neighborhood that would not make good sense, be in good taste and enhance our quality of life.

Thank you for your time.



FROM PAGE 25

does not hold a scenic easement on the property.

"The reason we use (scenic easements) is it protects land in perpetuity, in theory, so no one can ever build on it," said Albert Lopez, deputy community development director. "It's a tool the city can use to be able to get open space without having to either own it or rezone it."

Typically, property owners agree to easements in return for city approval of housing projects that include valuable extras such as additional lots or larger lot sizes.

But easements only work if they are attached to the deed. Freitas and the owners of property at 370 Lindsey Drive, where the city was supposed to have been granted a scenic easement on 120 acres, believe the documents were recorded incorrectly.

The City Council classified the Freitas property as "permanent open space" in 1976.

"We have attorneys who are stating that after 25 years, if you overlooked something, it's just too bad," said Freitas, who has sought permission to build on his property three times. "I never signed anything saying I agreed that it can be private open space."



CINDI CHRISTIE/STAFF

**MARK THOMSON** and his dog stand above a field near his Martinez home where four homes may be built. Two incorrectly recorded easements could open more than 120 acres.

Thomson, who represents a group of neighbors who have hired an attorney to prevent Freitas from building on the land, disagrees.

"It comes down to the fact that the city and developer of the entire subdivision made an agreement that it would be open space," he said. "It was open space, and it should stay

open space."

Attorney Scott Sommer represents Peter Ostrosky and Bob Devries, owners of the 163-acre Lindsey Drive property, which is zoned residential.

He said the easement is invalid because the original owner and the city never agreed where the 120 acres

subject to it were located on the property. Ostrosky and Devries are suing to force the city to settle the easement issue and subdivide the lots so the partners can sell the property.

"I think the chance of open space being rezoned is probably remote unless we get to the point at some time in the

future when it's crucial, and we need land for homes," said Mayor Rob Schroder.

Schroder said the original owner of the Ostrosky property never bothered to record the easement, although the council approved a resolution accepting the 120 acres as open space in 1985.

About the Ostrosky matter, Schroder added, "I think the intent is pretty clear what the city was asking for and what (the original owner) agreed to, so it's going to be played out in court."

Lopez, the deputy community development director, acknowledged that both easements were incorrectly recorded, although he said the original owner of the Lindsey Drive land, not the city, dropped the ball.

"That's the big lesson to the city. You have to record them properly to make sure you don't have problems," Lopez said. "That, of course, makes the land much more vulnerable."

According to the Greenbelt Alliance, Contra Costa County has 210,000 acres of open space which are protected by policy, such as being located outside the urban limit line. Of those, the group says about 82,000 acres still are at risk for development.

Christina Wong, East Bay field representative for Green-

belt Alliance, said privately owned open space is not uncommon in the county, nor are attempts to build on it. Property owners often ask for zoning changes or general plan amendments to shake the open space restrictions, she said.

"You can't take designated open space for granted; things can always change based on political changes or property owners," Wong said. "The bottom line is there are several ways that people continue to build on open space, and it's really up to the community to protect this open space by always being vigilant."

Lisa P. White covers Pleasant Hill and Martinez. Reach her at 925-943-8011 or [lwhite@bayareanews.org](mailto:lwhite@bayareanews.org).

The Lost City Case  
This City  
COST CITY  
\$500,000  
\$800,000

Later Thompson is on the Task Force Committee  
we say Big Conflict Here Legal Problem



**PLANNING COMMISSION  
REGULAR MEETING  
MARCH 28, 2017  
Martinez, California, 94553**

**CALL TO ORDER**

The Planning Commission meeting was called to order by Chair Sigrid Waggener at 7:00 P.M., at City Hall Council Chambers, 525 Henrietta Street, Martinez, California, 94553.

**PRESENT:** Chair Sigrid Waggener, Vice Chair Jeffrey Keller, and Commissioners James Blair, Gabriel Lemus, and Alternate Tracey Casella

**EXCUSED:** Commissioners Kimberly Glover and Paul Kelly

**ABSENT:** None

**STAFF:** Veronica Nebb, Assistant City Attorney; Corey Simon, Senior Planner; Patrick O'Keeffe, Management Partners; and Christine O'Rourke, General Plan Consultant

**AGENDA CHANGES**

There were no changes to the agenda.

**PUBLIC COMMENT**

There were no comments from the public.

**CONSENT ITEMS**

**1. Minutes of July 28, 2015, July 26, 2016 and November 29, 2016 meetings**

Assistant City Attorney Veronica Nebb reported on the lack of a quorum to take action on the July 28, 2015 and July 26, 2016 Planning Commission minutes. There was a quorum of Planning Commissioners to take action on the November 29, 2016 meeting minutes.

Chair Waggener advised the meeting minutes of July 28, 2015 and July 26, 2016 would be held over to the next meeting of the Planning Commission scheduled for April 11, 2017.

On motion by Commissioner Keller, seconded by Commissioner Blair, to approve the Planning Commission Minutes of November 29, 2016, as shown. The motion carried by the following vote:

Ayes:	Blair, Casella (Alternate), Keller, Lemus, Waggener
Noes:	None
Abstain:	None
Absent:	Glover, Kelly

## **REGULAR ITEMS**

- 2. Review a report prepared in response to comments on the Draft General Plan Update Project and make a recommendation to the City Council. The report describes policy options concerning the General Plan Land Use designation of a 5.57- acre parcel within the city limits at 635 Vine Hill Way (APN #162-420-003). The current land use designation for the parcel is Private Open Space for the majority of the parcel, and Residential Low (R-20) for a small portion of the parcel. The options to be considered include changing the land use designation in the Draft General Plan to 2.6 acres Residential Low and 3.0 acres Open Space. Applicant: City of Martinez (PO)**

PATRICK O'KEEFFE, Management Partners, reported that Interim Planning Manager Jim Reece had moved on to another assignment and he would provide assistance while the City recruited for a permanent Community Development Director, which position should be filled in the summer. He introduced Christine O'Rourke, General Plan Consultant, who would make the presentation of the White Papers for the Freitas parcel on Vine Hill Way, one of four White Papers to be presented as part of the discussion of General Plan Updates. There are four major topic areas where staff is seeking input from the Planning Commission and City Council, which will take the form of policies or changes to the Land Use Map or various technical revisions to the General Plan.

The General Plan Update will be brought back to the Planning Commission for final consideration in the summer, dependent upon whether the Final Environmental Impact Report (FEIR) requires re-circulation.

CHRISTINE O'ROURKE, General Plan Consultant, presented a PowerPoint presentation and an overview of White Paper #2, 635 Vine Hill Way, for Martinez General Plan 2035;

detailed the General Plan Update process; planning history of 635 Vine Hill Way; General Plan Task Force direction; proposed land use designation; Draft DEIR analysis; detailed comments received from Gary Freitas, the property owner and an attorney representing Keep Our Open Space; and the options for the land use designation in the General Plan for Planning Commission consideration.

The land use designation options were identified as Option 1, Retain Draft General Plan Land Use split designation with 2.6 acres Residential Low and 3 acres Open Space; Option 2, Designate the existing .6 acre homesite as Residential Low and the remaining 5 acres as Open Space; and Option 3, Assign a different split Residential Low/Open Space designation.

Mr. O'Keeffe detailed the staff recommendation for the Planning Commission to recommend City Council approval of Option 2. In addition to the public letters identified by Ms. O'Rourke, the Planning Commission had been provided copies of four e-mails received after the distribution of the staff report.

Chair Waggener opened the public comment.

GARY FREITAS, 635 Vine Hill Way, Martinez, asked for a head count of those present in the audience to speak to the item in support of his position; and was asked by the Chair to collect the individuals' names prior to addressing the Planning Commission.

SUSANNE HIGGINS, 635 Vine Hill Way, Martinez, stated she had been working on the subdivision proposal with Mr. Freitas for the past 17 years. The property sat on a 5.57-acre parcel located near the intersection of Vine Hill Way and Morello Avenue, situated in the Pine Meadows One Tract Subdivision which contained 127 homes; 825 feet of frontage on Vine Hill Way directly faced a 210-unit townhome complex on Ashwood Drive; 370 feet of frontage on Morello Avenue directly faced Morello Avenue and the Colton Place homes; and a residence sat on the most northeasterly corner of the property going up a 300-foot driveway, with the rest of the 5.57 acre parcel a vacant lot. She described the property as an island, with no value, underutilized, covered in grass and weeds, a fire danger, and a continuous maintenance obligation.

Ms. Higgins referenced numerous attempts over the years to use the property in different capacities, all of which had failed, with the property having been abused over the years by garbage, debris and the like, flooding from a neighboring property, and trespassing. She referenced the number of existing City parks and hiking trails and stated that Hidden Valley and Hidden Lakes Parks were situated within walking distance of the property.



Ms. Higgins questioned the assertion the City and its residents as a whole relied on the property as open space, a visual amenity of the area, and any new development would substantially degrade the visual character of the area. She detailed the history of Mr. Freitas' effort to develop the property, and highlighted the requirements of the scenic easement in the area and the fact that easements had been mishandled in the past, as verified by various City staff members in memorandums, reports and newspaper articles. While she understood and recognized the importance of an Open Space designation, the City had an abundance of open space and she asked the Planning Commission to realize that voting in favor of the private property owner would not set a dangerous precedent but rather would show the City recognized and supported smart growth development.

TIM PLATT, Martinez, provided a copy of an e-mail from a resident who had received a late notice of the hearing and had been unable to attend the meeting. He spoke to the beauty of the Vine Hill Way walk facing the east side of the road, from Pine Meadow to Morello Avenue, adjacent to open space and which had some private land which was also kept as open space. The walkway was nicely shaded connecting to the California Walking and Hiking Trail. He stated that by developing homes, there would be visual and physical changes that would impact the open space in almost every direction. Recognizing housing was needed, he stated the proposed homes would not serve a needed population or the population in general, and would have no public benefit. With open space and parkland sought throughout the community, now was not the time to lessen those resources in a populated area. He also suggested allowing development would set a precedent and referenced the City's decision for the Pine Meadow development. He urged the Planning Commission to recommend City Council consideration of Option 2.

MARK THOMSON, 918 Meadow Vale Court, Martinez, a member of Keep Our Open Space, pointed out the original EIR and the California Environmental Quality Act (CEQA), stated the property should be Open Space as designated by the City and a prior property owner, and cited the history of the property and his understanding the scenic easement was enforceable. He emphasized the neighborhood loved the property and he would like to see the Planning Commission support the recommendation of Option 2, as described. He added the property was a trove for wildlife and should not be developed for housing, but recognized and appreciated the fact the property owner had maintained the land.

PETER RADETIC, Martinez, also spoke to the history of the property and the private property owner, suggested there were enough parks in the City, emphasized the time and money the property owners had put into the property, noted the private property was not for public use, and noted a 2006 proposal offered a nice compromise and included some open space.

MR. GARY FREITAS questioned whether any Planning Commissioners had been present 10 years ago, and in an effort to educate everyone on the history of the property, detailed his history with the City; why he was so connected with the property; the money spent and the legal issues he had related to the project; and expressed concern with a number of inaccuracies from the City related to his project. He identified his plans to use the property; noted the property had been a conduit for garbage and debris with impacts to the animals kept on the property; detailed the proposal to build on the property without the removal of existing trees; issues related to the golf course and existing development around the site; submittal of a subdivision application with the City in 1989; work with numerous City Planners over the years; the ultimate decision to pull the application pending a General Plan Update in 2009; and emphasized that his proposed development would have allowed the development of estate lots with the possibility for in-law units.

SUSAN GUSTOFSON, Martinez, was aware of the history of the proposal, which she too referenced; spoke to her experience in the environmental arena; found the landowner had been patient during the process; but the fact was the property was private property not available for public use, and no one had requested High Density. She suggested Low Density could be achieved on the property, with environmental and visual impacts minimized, which could accomplish what the landowner and the open space advocates desired. Amending the General Plan was the first step and there would be future opportunities for discussion given that any development project would return to the Planning Commission. She requested an example of substantial evidence and overriding consideration as to what may have to be amended in the General Plan to appease the landowner and meet the City's requirements.

DONNA ALLEN, Martinez, a member of the General Plan Task Force, provided details on the visual mitigations of an existing subdivision and conditions of approval; understood the land owner's frustration dealing with so many different people at the staff level; the site was one which the Task Force had been tasked to form solutions, with discussions about existing conditions of approval and other sites that had the same situation; and concerns the project could set a precedent. She could not recall the Task Force making specific recommendations of a split in acreage other than considering the matter again after environmental review nor had the DEIR come back to the Task Force for final review and input.

Chair Waggener closed the public comment.

As a member of the General Plan Task Force, Vice Chair Keller recalled the discussions about the parcel, and while there may not have been an actual recommendation, the Task

Force had discussed home sites and the need for mitigation. At this time, he supported Option 1.

Chair Waggener stated she had reviewed the extensive history of the property. The open space was adopted as visual impact mitigation. She read into the record the mitigation measure contained in the FEIR, which had been identified as a condition of approval for the subdivision. She respected the desire of a developer or private property owner to move forward to develop their land to the highest and best use within the confines of the law, but struggled with the mitigation measure that included an exaction that had been put into place in 1976 for the privilege of allowing the Pine Meadow development to move forward. She read into the record court statements related to the adoption of that mitigation measure along with the staff response, and based on that information, did not see a legitimate reason to delete the mitigation measure establishing the open space.

Commissioner Lemus asked staff to identify a legitimate reason to override that mitigation, and Mr. O'Keeffe detailed suggested language for the General Plan, as shown on page 13 of the White Paper, which would speak to the design of new development. Those types of findings could be made as part of that determination, and there may be others yet to be explored.

Assistant City Attorney Nebb understood the question was whether there was substantial evidence in the record to delete the mitigation measure to allow the construction of two additional homes. She stated questions related to CEQA and Statements of Overriding Consideration could be addressed by legitimate social, economic, or other reasons articulated for the record as to why two additional homes were desired or why they would be appropriate in the subject location, or as to what was being balanced in terms of interest, all appropriate in a Statement of Overriding Consideration. In this case, it was clear the Planning Commission recognized staff's struggle to come up with factors to indicate there was a legitimate substantial reason to delete the previous mitigation measure, which did not mean that those factors did not exist. As the history had shown, staff had struggled with that issue for some time, and it had been an issue for the City Council in the past as well. The applicant at that time had withdrawn the application, the issue being a mitigation measure at that time, which had been a concern raised by the opponents and attorneys representing the opponents. Staff was open to any suggestions the Planning Commission may have relative to this issue.

Chair Waggener referenced page 7 of the White Paper, and a memorandum from April 25, 2012 where the Task Force was not necessarily opposed to the development of two units if through an environmental process it could be demonstrated it would not eliminate the beneficial effect of the view mitigation. If there was another way to allow development

and ensure the view and spirit of the actual impact of that mitigation measure was preserved, it would honor the Task Force recommendation and allow development of private property within the confines of the law. She did not have the information to support making that determination at this time.

Commissioner Casella clarified with Assistant City Attorney Nebb that the record appeared to show when the subdivision had been developed the exaction of mitigation had been imposed on it through conditions of approval at that time, and the subdivider, the seller of the property at that time, had clearly been aware of the conditions of approval. Mr. Freitas at the time had worked for the subdivider (Mr. Busby), and as City records indicated, had served as the surveyor on the site. The General Plan Land Use designation and the zoning had also been imposed at that time, so that when the property had been sold to Mr. Freitas it had been sold as open space.

Commissioner Blair found it difficult to understand how the surveyor of the property, who had been intimately involved in the development of the entire area by connection, had not been aware of the EIR. He provided his knowledge of the easement as outlined in the EIR, his tenure on the General Plan Task Force, and the fact he too could not recall a recommendation from the Task Force other than a discussion of the project being subject to environmental review.

Commissioner Blair recalled the General Plan Task Force had discussed two homes in addition to what was currently in existence, with further review to occur when the EIR was complete. He did not support overturning the planning process that had been designed as mitigation to allow development to destroy what had then been open space. He supported the staff recommendation for Option 2 since there had been no testimony to support changing what had been the exaction at the time to preserve open space.

Chair Waggener shared the same position with the caveat that if there was a determination by either the City Council, staff, or demonstration by substantial evidence, the development of the two lots could take place without eviscerating the mitigation measure and without in any way degrading the purpose in which it had been adopted and implemented against the property. She would be willing to consider allowing the property owner the easterly development of the two homesites.

Commissioner Blair stated while he could have supported that caveat, it would continue the uncertainty about potential development that Mr. Freitas has demonstrated had occurred over the years. He found it a disservice not to state an exaction for open space had been made and continue to extend the possibility of development that should not have occurred to begin with.



Vice Chair Keller commented that based on the comments of the Chair and Vice Chair, and the efforts of the General Plan Task Force, he could support moving the item forward based on the condition the property owner or someone else come up with a legitimate reason for eliminating or modifying the adopted mitigation measure.

Assistant City Attorney Nebb confirmed that the Planning Commission also had the option to take no action and forward the item on to the City Council.

On motion by Commissioner Blair, seconded by Commissioner Casella, to forward the item to the City Council without a recommendation from the Planning Commission for a City Council decision as the elected representatives of the City of Martinez. The motion carried by the following roll call vote:

Ayes:	Blair, Casella (Alternate), Keller, Lemus, Waggener
Noes:	None
Abstain:	None
Absent:	Glover, Kelly

Assistant City Attorney Nebb advised that the Planning Commission's comments would be forwarded to the City Council.

- 3, Review a report prepared in response to comments on the Draft General Plan Update project and make a recommendation to the City Council. The report describes policy options concerning the General Plan Land Use designation of a 4.5-acre parcel, within the City limits at 180 Morello Avenue (APN #161-180-001), currently part of the Viano Vineyards. The options include changing the land use designation from the current designation of Residential Low to a designation of Agricultural Lands, in the Draft General Plan. Applicant: City of Martinez (PO)**

General Plan Consultant O'Rourke presented a PowerPoint presentation and overview of the White Paper for 180 Morello Avenue; the CEQA requirements for environmental analysis of the Draft General Plan; Draft EIR project alternatives; farmland classification categories; impacts on 180 Morello Avenue; and options for land use designation in the General Plan. The options for land use designation were identified as Option 1, change designation from Residential Low to Agricultural Lands; Option 2, retain the Residential Low designation (preferred option of the property owner); and Option 3, assign a split land designation of Residential Low and Agricultural Lands.

Mr. O’Keeffe identified the staff recommendation for Option 3, assign a split land designation of Residential Low and Agricultural Lands given that the parcel had already been partially developed, a majority of the property would be retained in the Agricultural designation consistent with unique farmland, would support the findings of Overriding Consideration, and a portion of the land would remain developable consistent with the current land use designation allowing some residential development.

Chair Waggener opened the public comment.

JOHN VIANO, Martinez, stated the General Plan Update had been in process since 2008, he had learned of the White Paper in May 2016. His family had approximately 100 acres of Agricultural Lands already in the Williamson Act, which supported agricultural activity, and the property bordering Morello Avenue had been kept as a Residential designation to support any future family or expansion of the family business. The Williamson Act limited what could be done with the remainder of the property, and the Viano family sought flexibility for the properties on the outside of that designation which was why they had not been included in the rest of the properties when the Williamson Act was applied.

Mr. Viano suggested the program used for the State Agricultural mapping process had been flawed given that it had taken at least one acre to designate unique farmland before it recognized what else was already there, while two parcels to the north included at least one acre of area already developed, encompassing other residences and part of the business, designated as unique farmland. He pointed out he had not met or communicated with anyone who made the Agricultural designation.

Mr. Viano suggested the only uniqueness about the area was that it remained open; the land was still farmed. He asked that the Planning Commission allow the Viano family to continue what it already had, provide flexibility to remain viable, and allow the Viano family to build a home or warehouse if needed for the business to continue. If the property became unviable, the remainder of the farm would be unviable. He expressed concern that as the area was developed and the City continued to seek more open space, the last available property would take the burden of those efforts.

SUSAN GUSTOFSON, Martinez, had lived near the Viano Winery since 1988, and was familiar with the development of the area when the land had been farmland with vineyards on both sides. She found it foolish to consider a designation of such a small area given that such a large portion of the property was governed by the Williamson Act. She urged the City to allow the Viano family flexibility for the continued use of the property.

Chair Waggener closed the public comment.

Commissioner Blair clarified with the Assistant City Attorney a desire to keep the property flexible for ancillary structure usage was not permitted in the Residential District. If the property owner desired other ancillary uses, or a warehouse, as an example, the property owner would have to file an application to rezone the property for an appropriate use. He understood the intent of the Williamson Act, although the corridor would be a great use for small home development consistent with the zoning. He was concerned forcing an agricultural determination since the City wanted to preserve farmland.

Chair Waggener opposed Option 1 for obvious reasons and shared the same concerns raised by Commissioner Blair.

In response, the Assistant City Attorney clarified that a Zoning Amendment would be required for the property owner to go from current conditions to residential development for that portion of the property within the City limits. If nothing were done, legislative action would be required to change the current zoning designation from Undesignated to Residential. The City did not control agricultural designations, which was a State regulation, although CEQA required its consideration, which triggered a significant and unavoidable impact if the current land use was left residential.

Assistant City Attorney Nebb confirmed that a Statement of Overriding Consideration was another possibility as with the previous agenda item, although the same issues would be involved as to whether there were facts to support an overriding consideration that still existed. She reiterated the reasons staff had recommended Option 3.

Vice Chair Keller found it unfortunate that the property owner had not been contacted to participate during the General Plan Task Force process and had just learned of the City's plans to change the designation of the property.

Assistant City Attorney Nebb clarified the issue had come up as a result of an initiated item in the environmental documents and not a situation where staff had proposed a change. It had been the environmental document informing staff of a problem that should be solved.

Vice Chair Keller supported moving forward with Option 2 at this time.

The Assistant City Attorney clarified that if the Planning Commission recommended the City Council approve Option 2, staff would have to make findings to reject the environmentally superior alternative, findings in a Statement of Overriding Consideration relative to what technological, social or economic benefits existed, which would have the

same challenges as the previous agenda item, although in this case, the property had existing development.

Chair Waggener respected the fact the State process was moving slowly, although based on the evidence on the ground and the existing facts, whether or not the State-mapping tool was cognizant of that the City was cognizant of that fact. She added it would not be spot zoning in that it would be consistent with adjacent properties.

Assistant City Attorney Nebb understood the Planning Commission's desire for staff to fashion a set of findings for a Statement of Overriding Consideration but also to address the disconnect between the mapping and what was on the ground, which tied into the home as a residence. She also confirmed an agricultural designation would allow agricultural support structures, staff would have to review whether farmworker housing would be permitted, and based on the discussion she understood the Planning Commission sought an examination of the pros and cons of a split designation with the property owner, to carry those forward to the City Council.

When advised of the options available to the Commission, Chair Waggener supported a continuance with more information on what could, or could not be done.

Commissioner Lemus agreed with a continuance since it was difficult to make a decision at this time given that the property owner had not had a discussion with staff.

Mr. O'Keeffe summarized the direction to staff for more information on the ability of the land owner to develop residential; ability to construct buildings related to the winery operations; a deeper conversation with the property owner to determine whether there was some compromise position to allow the Planning Commission to make a recommendation in keeping with the environmental requirements of CEQA, and preserve the operations as they existed and for reasonable future operation changes.

On motion by Commissioner Blair, seconded by Vice Chair Keller, to continue the item to the Planning Commission meeting of April 11, 2017, to allow further discussion with the property owner and consideration of alternative solutions. The motion carried by the following roll call vote:

Ayes:	Blair, Casella (Alternate), Keller, Lemus, Waggener
Noes:	None
Abstain:	None
Absent:	Glover, Kelly



### **COMMISSION ITEMS**

There were no Commission items.

### **STAFF ITEMS**

There were no staff items.

### **COMMUNICATIONS**

There were no communications.

### **ADJOURNMENT**

The meeting adjourned at 9:30 P.M. to the next regular meeting scheduled for April 11, 2017.

Respectfully Submitted,  
Sherri Lewis

Approved by the Planning Commission  
Sigrid Waggener, Chair