

Martinez General Plan 2035

White Paper



635 Vine Hill Way Land Use Designation



March 2017

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 $\frac{1}{2}$ 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 recommended 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% of 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

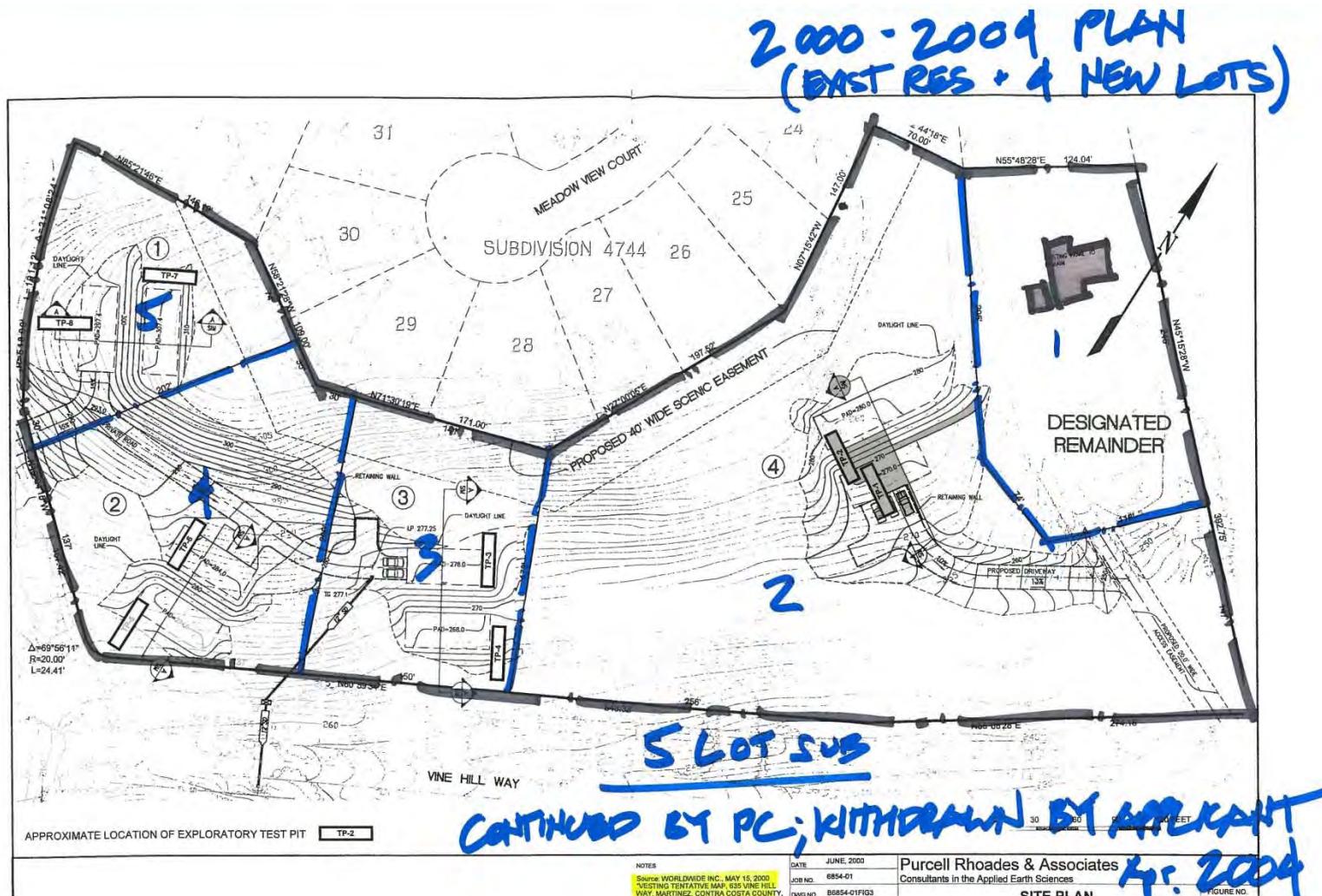
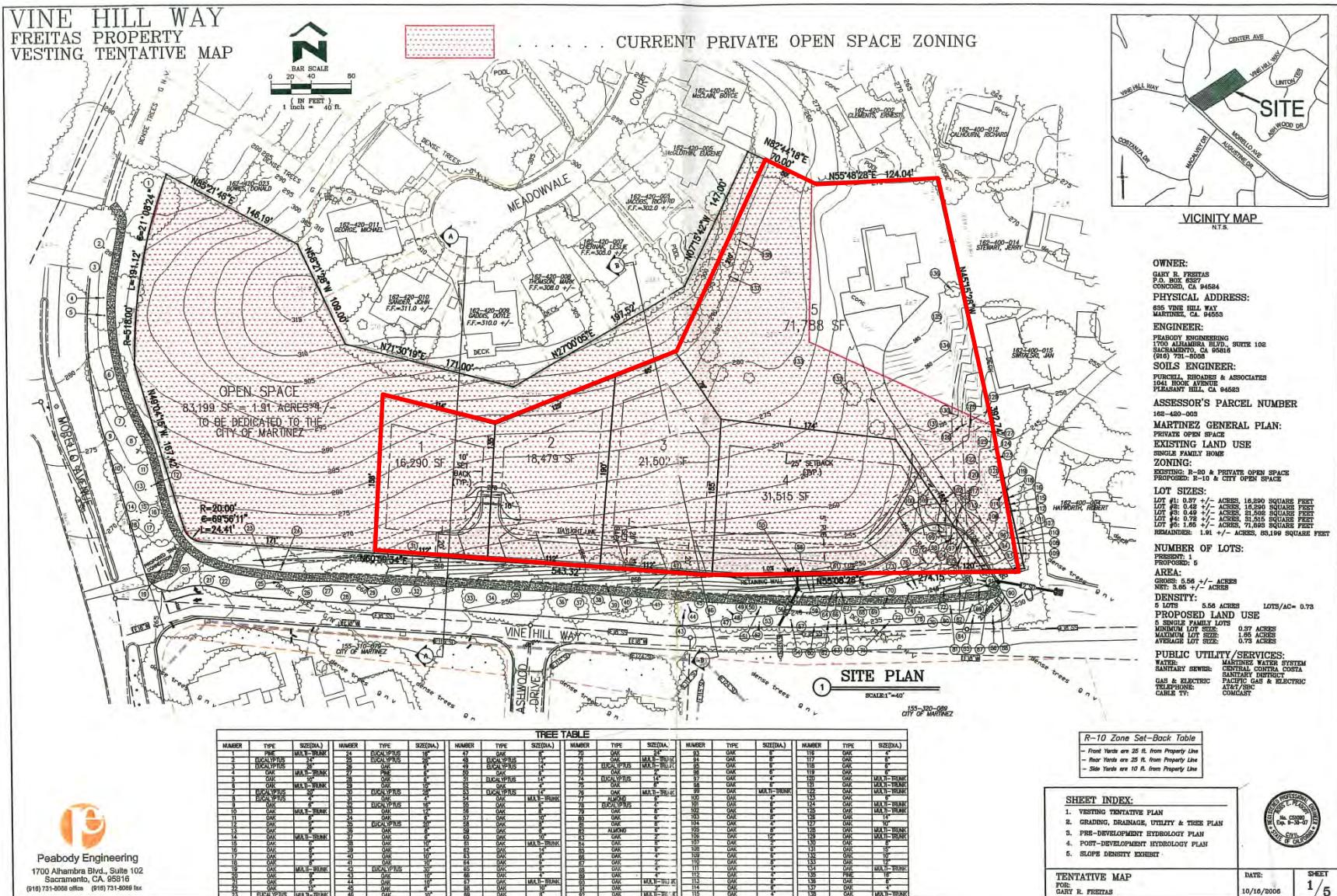


Figure 4: 2007 Proposal for 5-Lot Subdivision of 635 Vine Hill Way



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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 5: Detail of 1988 Plans Used as Base for 2012 Visual Simulation Study

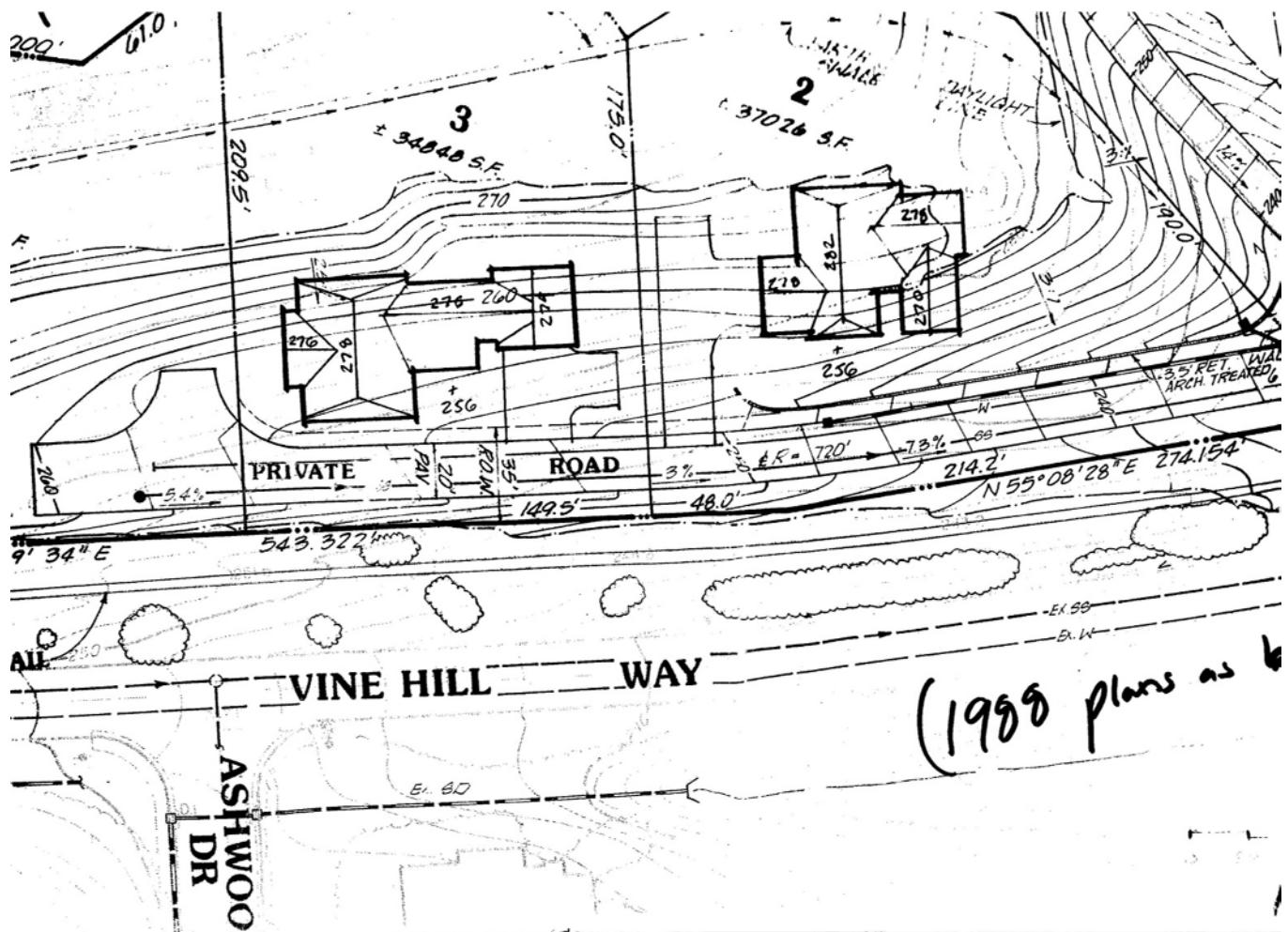


Figure 6: Existing and Simulate Views of Vine Hill Way Site – View 1

 A photograph showing a view from Vine Hill Way/Ashwood Drive. In the foreground, there is a paved road with a stop sign. Behind the stop sign, there is a hillside with sparse vegetation and a few trees. The sky is clear and blue.	<p>View 1 Existing Site - View from Vine Hill Way/Ashwood Drive</p>
 A photograph showing a simulated view of the site with residential development. The hillside appears more developed with additional trees and possibly some buildings. The stop sign and paved road are visible in the foreground.	<p>View 1 Simulated View of Site with Residential Development - View from Vine Hill Way/Ashwood Drive</p>
 A photograph showing a simulated view of the site with residential development and landscaping. The hillside is more densely covered with trees and shrubs. The stop sign and paved road are visible in the foreground.	<p>View 1 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>View 2</p> <p>Existing Site - View from private road along eastern border of site at Vine Hill Way</p>
	<p>View 2</p> <p>Simulated View of Site with Residential Development - View from private road along eastern border of site at Vine Hill Way</p>
	<p>View 2</p> <p>Simulated View of Site with Residential Development and Landscaping - View from private road along eastern border of site at Vine Hill Way</p>

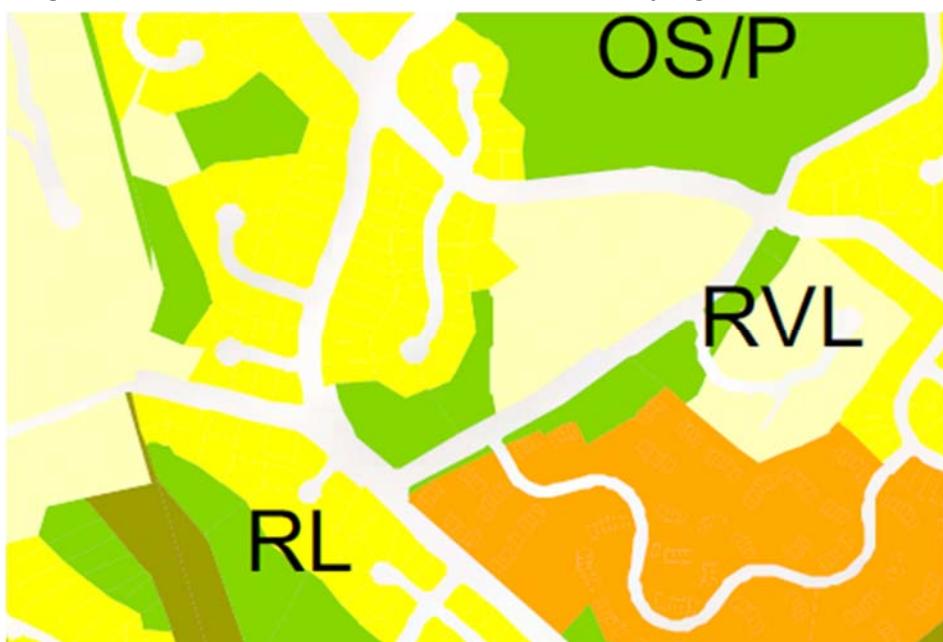
Figure 8: Existing and Simulate Views of Vine Hill Way Site – View 3

 A photograph showing a view from Vine Hill Way looking down a paved road with a double yellow line. The road curves to the right. On the left, there is a grassy hillside with some trees and a small structure. The sky is clear and blue.	<p>View 3 Existing Site - View from Vine Hill Way</p>
 A photograph showing a simulated view from Vine Hill Way. The scene is similar to the existing view, but a multi-story residential building is visible on the hillside to the left. A few cars are parked in front of the building. The sky is clear and blue.	<p>View 3 Simulated View of Site with Residential Development - View from Vine Hill Way</p>
 A photograph showing a simulated view from Vine Hill Way. The scene is similar to the previous simulated view, but the hillside in front of the building is now covered with dense green trees and shrubs, representing landscaping. The sky is clear and blue.	<p>View 3 Simulated View of Site with Residential Development and Landscaping - View from Vine Hill Way</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 siting [sic] techniques.

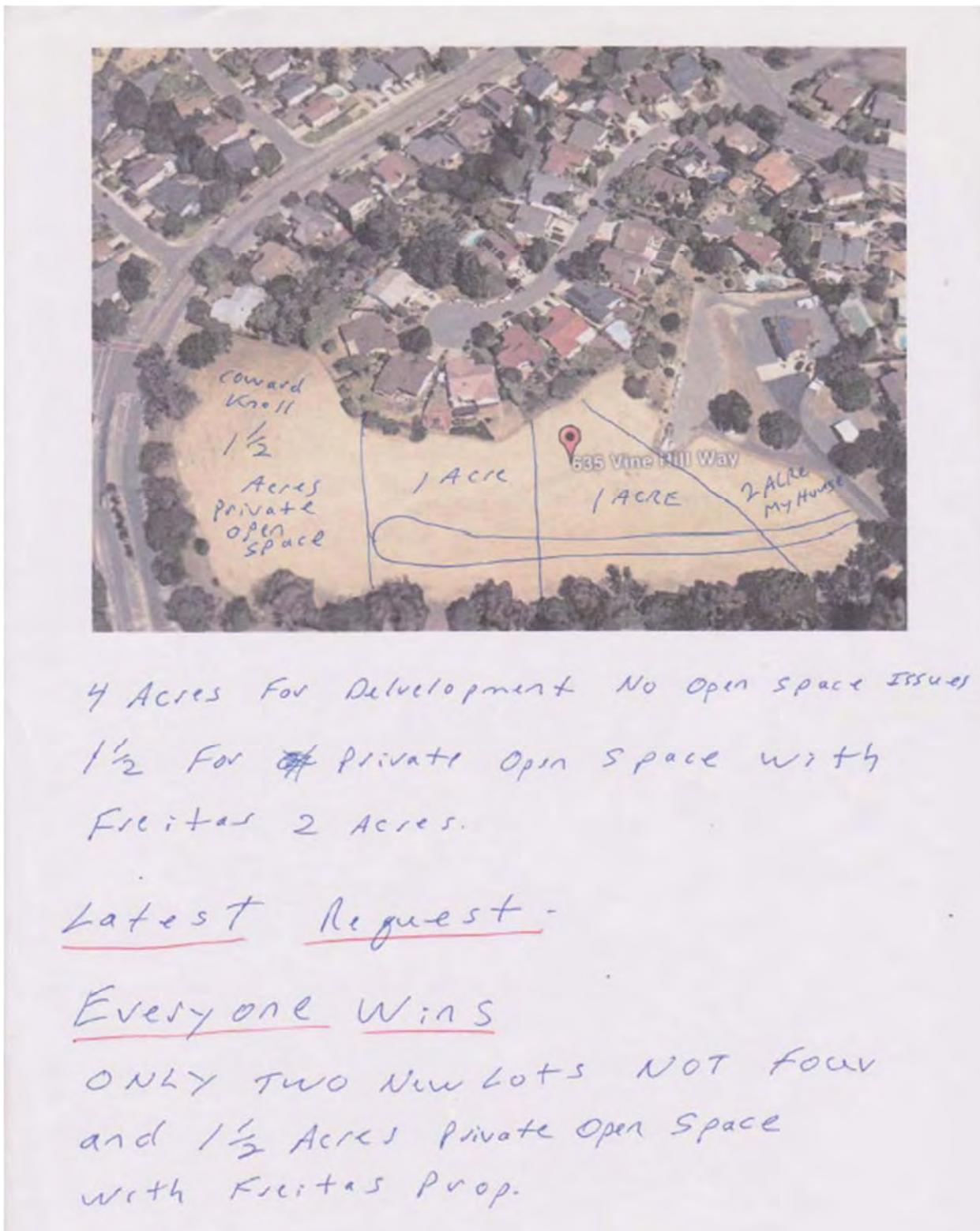
The DEIR concludes that even with the implementation of the policies and implementation measures in the General Plan, the potential for new development to substantially degrade the visual character or quality of the Planning Area remains. While the policies and actions would ensure that impacts are reduced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



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 1998 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 the 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. 4th 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.