March 2, 2016

Jim Jakel, City Manager
City of Martinez
525 Henrietta Street
Martinez CA 94553

via e-mail to jjakel@cityofmartinez.org

Re: Comments by Developer on Pine Meadow and the 2035 General Plan Update and DEIR

Dear Mr. Jakel,

As it is unclear to us who is currently responsible for the General Plan Update, we are addressing this to you with copies to the Mayor and City Council. Please distribute to the appropriate people, including the City Attorney, and make this letter a part of the public record.

Three letters from Civic Martinez LLC, DeNova Homes or their representatives have been sent to the City (letters dated 6/10/15, 6/26/15 and 10/29/15) regarding Pine Meadow and its status as Permanent Open Space/Recreation. Other letters and communication may exist, but we are not aware of any. If there is other information on this issue, we request copies of it.

The subject of the latest of these letters (from Manatt, Phelps & Phillips dated October 29,2015) is "…an erroneous land use designation for the Property (which we assume was simply a mistake)…". and "… a corrected land use designation that allows residential development at a minimum density of 1 dwelling unit per 7,500 square feet…". The letter further states: "Unless the draft General Plan update and DEIR are corrected, the City may not lawfully consider the General Plan update for approval without significant legal risk."

We are contesting these and other allegations in the developer letters to you.

The Manatt letter states, "A review and analysis of all applicable planning documents indicates that it was never the City's intent to designate the Property as permanent open space."

This contention that the designation of Pine Meadow as open space was an error is not supported by the facts.

The General Plan Resolution No. 69 dated June 20, 1973 adopts the General Plan incorporating the Hidden Lakes Specific Area Plan (HLSAP). The HLSAP clearly shows Pine Meadow as open space in the Figure F32.1 map that is called out in the first paragraph of the HLSAP. Paragraph 32.1 "Introduction"

states “F32.1 The Hidden Lakes Specific Area Plan map is shown in Figure F32.1.”

The resolution states “…no one appeared at the Public Hearing to oppose said revision…”

An amendment to the General Plan-Hidden Lakes Area, Resolution No. 149 dated September 21, 1977 shows the F32.1 map noted “July 1977 Amendment” and still showed Pine Meadow as open space, reaffirming it as correct and intentional.

The City has reaffirmed there was no error in the designation of Pine Meadow by requiring a General Plan Amendment to consider the change from Open Space in the current case of the De Nova Homes project for Pine Meadow.

Other examples of instances where the Pine Meadow open space designation could have been challenged and was not can be provided, if needed.

The developer’s contention that there is internal conflict between the General Plan and the map designating Pine Meadow as open space is incorrect.

The developer bases the assumption of a conflict in the General Plan on the interpretation of Paragraph 32.4231 in the Hidden Lakes Specific Area Plan (HLSAP) contained in the General Plan. Paragraph 32.4231 states “The base density for the plan area shall permit one dwelling unit per 7500 square feet of site area as allocated under a R-1 zoning classification.”

This refers to only the areas shown as “Residential” on the F32.1 map, not to the entire HLSAP area, and we believe this base density is included because density increases for low and moderate income housing and the conversion of residential property to open space are laid out in the rest of the section. So a base residential density needed to be clear.

No planner would consider the base density to be extended to the areas of the map shown as open space, but the developer does. This incorrect interpretation of Paragraph 32.4231 is what we understand as the basis for the ‘conflict’, i.e., that the F32.1 map shows Pine Meadow as open space, but this paragraph says it is to be developed.

The contention that there is a conflict in the General Plan regarding Pine Meadow is incorrect because the developer’s interpretation of Paragraph 32.4231 is incorrect.

The City has reaffirmed there is no internal conflict in the plan by requiring a General Plan Amendment for several attempts to change open space over the years, including in the case of the De Nova Homes project for Pine Meadow.

Both the contention that the designation of Pine Meadow as open space was an error and that there is a conflict in the General Plan regarding Pine Meadow are not supported by history.

In the last 40+ years, we believe no one has ever questioned that open space designation, nor the HLSAP itself.

The City has confirmed neither contention is valid by requiring a General Plan Amendment for several attempts to change open space over the years, including in the current case of the De Nova Homes project for Pine Meadow.

Furthermore, there is a well-established timeliness necessary to question land use decisions, and 40+ years after the fact is too late. It is too late to now question the validity of the 1973 General Plan. General Plan land use questions must be brought up quickly, not decades later. We understand Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 387 and A Local & Regional Monitor v. City of Los Angeles (1993) 12 Cal.App.4th 1773, 1816 may be pertinent here.

Much of the developer's detailed rational for contesting the designation of Pine Meadow is based on the developer using selective quotes from the "Hidden Lakes Open Space Study Committee Report" (HLOSSCR). The study was received by the City in April 1972 according to the date stamp. We can find no record that it was ever accepted or made an official document by the Council, nor could City staff, when we asked recently. The HLOSSCR appears to have no official status and should not be the basis for questioning the General Plan or the HLSAP.

Most important, the General Plan Resolution No. 69 adopting the General Plan incorporating the Hidden Lakes Specific Area Plan (HLSAP) occurred in June, 1973, over a year after the HLOSSCR was received by the City. It would be logical to believe the Council incorporated what they wanted from the HLOSSCR into the General Plan and HLSAP.

(Should the HLOSSCR be found relevant, we believe the developer's use of it to bolster his arguments is inaccurate, and will provide specifics, if necessary. Please advise us, if you would like such information.)

In addition, the input of the General Plan Task Force has been misstated as providing recommendations on Pine Meadow. No official report was ever issued by the Task Force. The Task Force met during the early stages of the General Plan Update to give input for plan elements. It was envisioned that they would meet throughout the process and give a more formal approval of the General Plan Update when the Planning Department finished the work.

Instead the Task Force was essentially disbanded and Dina Tasini finished the report without any further input from the Task Force. The Task Force was given an early opportunity to comment on the General Plan Update during August of 2015. Most Task Force members that commented thought that the process was not completed and the resulting General Plan had significant deficits.

The letter states, "…the intent in planning for this area was to preserve the string of small lakes at the center of the area, as well as the natural knolls and ridges at its border and adjacent to Pleasant Hill." This is not correct.

Paragraph 32.31 states: "The major portion of the site area shall be retained for open space use, primarily preserved as public open space, with a portion preserved in private ownership." Figure F32.1 shows major sections of open space well to the north and west of the Hidden Lakes area, and of Pine Meadow itself, well away from the small lakes and Pleasant Hill border.

A major open space exists to the northwest of Pine Meadow, and within approximately 500 yards. Several open spaces, including the Freitas/Vine Hill Open Space and a number of other private open spaces exist closer to Pine Meadow.

The connection to the California Hiking and Riding Trail that extends for miles and connects to many other open space, parks and trails is across the street from Pine Meadow and down a shaded pathway that skirts both the Freitas/Vine Hill Open Space and the Ashwood Drive Open Space.

Pine Meadow is clearly part of a large network of open spaces, trails and parks that extend well beyond Pine Meadow, and is not limited to the small lakes and lands near the Pleasant Hill border.

The letter implies Pine Meadow does not qualify as open space, but this is not true.

The connections described approve point out the interrelation of Pine Meadow to other open spaces, parks and trails. Flora and fauna on the property are indicative of natural areas, and are reported in both personal recitals and official records of tree surveys.

Paragraph 32.32 states "The existing golf course is an appropriate use within the plan area." It calls out Pine Meadow specifically as a golf course. The sentence is included to clarify its open space use, and shows the Council understanding that golf course use does not preclude an open space designation.

Furthermore, other golf courses are considered for open space. For instance, one is currently being discussed in Livermore, Springtown Golf Course, for conversion to open space.

The use of Pine Meadow as a golf course has been contended as disqualifying it as open space. But open space is rarely unused property in Contra Costa County. Much is farm/grazing land that has been overrun by cattle, crisscrossed by roads, fencing and by plowed and graded areas for ponds, etc. Invasive species like yellow star thistle and exotic trees are prevalent.

Many require extensive restoration, like Fernandez Ranch where the creek bed had to be restored. Many include structures that remain to both serve the public and to underscore the history of the open space. (We hope that occurs at Pine Meadow too.) Even coal mines, landfills and oil refineries have been converted to open space and parks.

Pine Meadow is in better condition than many open space areas, and provides views, wildlife and trees and vegetation, rolling contours and a sense of serenity that accomplish the primary goals of open space.

The letter states, "Importantly, the owners of the property have been paying taxes and assessments to the City and the County based on an assumption that the property was designated for residential development." We have found no evidence to support this contention, and available evidence contradicts this contention.

Taxes on the property have never been high. As late as 2013, the entire tax bill was $10,710.44. Property tax of $2148.88 was based on an assessed value of $214,688.

The largest tax item is $6968 for a special situation, MT D Mello Roos. Clearly, as private property, the tax applied to Pine Meadow. The tax had no category for private open space. The closest category that could possibly fit, even though Pine Meadow was a hybrid, was "c. Commercial Property including Hotels and Motels: Four taxable units per acre". This category works out perfectly to the tax amount they are charged: 26 acres x $67/taxable unit x 4units/acre=$6968.

The developer backs into a residential rate by simply taking the total tax bill and dividing it by the rate for residential. That is why the number of units he comes up with, 104, bears no relation to any logical number of units for the parcel.

There are other contestable statements in this letter and the other two, and we reserve the right to discuss them if necessary.

We believe there is no basis to question the designation of Pine Meadow as open space, and will contest any efforts to do so.

Sincerely,

Mark Thomson and Tim Platt
For Friends of Pine Meadow

918 Meadowvale Court

Martinez CA 94553

cc:
Mayor and City Council; Mercy Cabral

manatt
manatt | phelps | phillips

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October 29, 2015

BY E-MAIL [DTASINI@CITYOFMARTINEZ.ORG]

Dina Tasini, Planning Manager
City of Martinez
525 Henrietta Street
Martinez, CA 94553

Re: City of Martinez 2035 General Plan and Draft Program Environmental Impact Report

Dear Ms. Tasini:

This firm represents DeNova Homes, Inc., and Civic Martinez, LLC (collectively, "DeNova"). DeNova has a long history working and building homes in the City of Martinez (the "City"), and is pleased to see the City's General Plan update finally moving forward toward completion. DeNova is also the owner of the approximately 26-acre parcel located at 451 Vine Hill Way in the City (the "Property"), which includes the former Pine Meadows Golf Course. On behalf of DeNova, we have reviewed the draft Martinez General Plan 2035 and the draft Environmental Impact Report dated September 11, 2015 ("DEIR") and submit these comments for the City's consideration and inclusion in the final EIR and response to comments. We note that in addition to these comments, our client previously submitted scoping comments by letters dated June 10, 2015 and June 26, 2015, in response to the notice of preparation, copies of which letters are attached hereto and incorporated herein. Please note that, as we informed the City by separate correspondence, we were retained by DeNova earlier this week and the comments included herein should be considered preliminary in nature. We reserve the right to provide further comment up to and at the final hearing to consider the General Plan update.

The DEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA"; Public Resources Code, Secs. 21000-21178) and the California Code of Regulations, Title 14, Secs. 15000 *et seq.* (the "CEQA Guidelines")). As discussed below, because the General Plan update includes an erroneous land use designation for the Property (which we assume was simply a mistake), we request that the City correct and revise the DEIR to reflect a corrected land use designation that allows residential development at a minimum density of 1 dwelling unit per 7,500 square feet and analyze the potentially significant environmental impacts of the draft General Plan update in accordance with this correct land use

designation. Unless the draft General Plan update and DEIR are corrected, the City may not lawfully consider the General Plan update for approval without significant legal risk.

By way of background, the City has long recognized that when it adopted the Hidden Lakes Specific Area Plan as part of the General Plan in 1973, it erroneously designated the Property as Open Space –Recreation "OS&R" on the hardcopy of the Land Use Map, with corresponding language stating that lands with an open space designation should remain for "open uses." Because the General Plan also stated that the Property could be developed for residential use at a density of 1 dwelling unit per 7,500 square feet, this new designation resulted in an impermissible internal inconsistency within the General Plan because no residential density was to be assigned to land designated as permanent Open Space.

A review and analysis of all applicable planning documents indicates that it was never the City's intent to designate the Property as permanent open space. The Property is located within the Hidden Lakes Specific Area Plan area, which included 565 acres of undeveloped pasture lands surrounded by residential subdivisions. The intent in planning for this area was to preserve the string of small lakes at the center of the area, as well as the natural knolls and ridges at its border and adjacent to the City of Pleasant Hill. The Property, located at the northern portion of the planning area, was operated as a private golf course beginning in the 1960s. The Property is not considered park land or preserve, and does not have a natural knoll or ridge upon it, having been significantly disturbed from its natural state through excavation and grading for the development of the golf course. The continuous use of the Property since the 1960s, has been commercial in nature, with manicured greenways, buildings, parking lots, golf course paths, a pump station and water catch basin, a bar and restaurant, and a pro shop that operated for more than 50 years. Importantly, the owners of the property have been paying taxes and assessments to the City and the County based on an assumption that the property was designated for residential development.

Now, for some inexplicable reason, the draft General Plan update proposes a wholesale downzoning of the *privately-owned* commercial Property to a new land use category - Open Space, Preservation ("OS/P") - which appears to be a designation for *public* lands preserved as a scenic or environmental resources, either by public or common interest ownership, or through dedication of scenic open space or other easements or through conditions of development approval or previous designation and zoning action. While alteration of such properties for active recreation is typically not envisioned, naturalistic and agricultural plantings, and trails, may be possible if consistent with the intent of preserving the intended scenic resource and as may be permitted by any easements. A non-Residential Floor Area Ratio of up to 0.1 is permitted. (General Plan 2035, Land Use Element, p. 2-31.) Applicable Zoning Districts are identified as: OS (Open Space District); All R – and RR- (Residential and Rural Residential Districts, with use restrictions as prescribed by applicable scenic easements and/or final

subdivision map dedications). Given that the Property in question is owned by DeNova, and is not owned by a public entity, it is clear the designation as OS/P was made in error.

We note that the City has acknowledged but nevertheless refused to correct the erroneous open space land use designation that has been mistakenly associated with the Property for over 40 years. (However, as indicated above, the City has been more than willing to collect monetary assessments from the Property owner based on a proposed residential density of the site in excess of 100 residential units.) The General Plan update process now provides an opportunity for the City to formally correct this error by taking the proper steps to assign a correct land use designation that would allow residential development at a minimum of 1 du/7,500 square feet and through the EIR, identify, analyze and mitigate any potentially significant environmental impacts of the General Plan update. Instead, the draft General Plan update carries over the erroneous open space land use designation, which results in the DEIR failing to adequately identify, analyze and mitigate the impacts of the General Plan based on an inaccurate project description and flawed description of the existing setting.

1. The DEIR's Project Description is Inaccurate and Legally Inadequate.

An accurate, stable, and finite project description is the indispensable prerequisite to an informative and legally sufficient EIR. The Project Description provided in Chapter 2.0 of the DEIR references each of the seven mandatory elements of the General Plan, including the Land Use Element, which shows in Figure 2.0, that the Property is designated Open Space Preservation. (General Plan 2035, Land Use Element, p. 2-43.) The Open Space Map provided in Figure 3.0 of the Open Space Element also shows the Property designated as Open Space Preservation. The DEIR shows in Figure 3.10-3 that the current General Plan Land Use Map designates the Property for Open Space and Recreation, Permanent use. (General Plan 2035, Open Space Element, p. 3-29.) Neither the draft General Plan nor the DEIR, acknowledge that the Open Space, Permanent land use designation is erroneous, or that the proposed Open Space Preservation designation contained in the draft General Plan update represents a change from the actual, existing designation that should allow residential development, and continued use.[1]

The DEIR's failure to describe the change effectuated by the General Plan update results in an inaccurate project description that forms the foundation for the entire DEIR. As stated by the court in *County of Inyo v. City of Los Angeles*, "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance. An

[1] The DEIR states in part that the Land Use Element "includes the Land Use Map, which identifies land use designations for each parcel in the city limits and SOI (Figure 2-2)." (DEIR, p. 2.0-4.) However, as indicated above, the Land Use Map appears in Figure 2.0 and the Land Use Element does not include a Figure 2-2.

accurate, stable and finite project description is the s*ine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) These errors in the Project Description must be corrected and the Final EIR must revise and correct its analysis to ensure that the DEIR's environmental analysis accurately reflects the General Plan update.

2. The DEIR's Description of the Existing Environmental Setting is Inaccurate and Results in an Improper Baseline Against Which Changes to the Environment Must Be Measured

An EIR must describe existing environmental conditions in the vicinity of the proposed project, which is referred to as the "environmental setting" for the projects. (CEQA Guidelines, Sec. 15125.) This description of existing environmental conditions ordinarily serves as the "baseline" for measuring the changes to the environment that will result from the project and for determining whether those environmental effects are significant. (CEQA Guidelines, Secs. 15125, 15126.2(a); *see Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447 [noting that the EIR "must delineate environmental conditions prevailing absent the project, defining a 'baseline' against which predicted effects can be described and quantified."].) An EIR's description of the environmental setting is the starting point for the impact analysis. Again, from the 1960s until earlier this year, the Property has been used for a commercial golf course with manicured greenways, buildings, parking lots, golf course paths, a pump station and water catch basin, a bar and restaurant, and a pro shop. Moreover, the City has continuously recognized the error made in 1973 and has acknowledged that the Property may be developed for residential use.

3. The DEIR Does Not Adequately Identify and Analyze the Project's Potential Impacts

Under CEQA, an EIR must identify and describe a project's significant environmental effects, including direct, indirect, and long-term effects. (Pub. Resources Code, Sec. 21100(b)(1); 14 Cal. Code Regs., Sec. 15126.2(a). This requirement serves the fundamental purpose of an EIR, which is "to provide public agencies and the public in general with detailed information about the effect which a project is likely to have on the environment." (Pub. Resources Code, Sec. 21061; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 20 Cal.4th 412, 428.) Here, the DEIR fails to satisfy the requirement to adequately address a project's potentially significant environmental effects, particularly in the areas of aesthetics, air quality, and land use and planning. Moreover, as a result of the DEIR's failure to identify the General Plan's potentially significant impacts, the DEIR does not adequately describe necessary mitigation measures. Without the proper identification of the

existing land use designation of the Property, the DEIR simply cannot provide the environmental analysis mandated by CEQA.

In sum, until such time as the erroneous land use designation is corrected, the City's consideration of the EIR and adoption of the General Plan may not lawfully proceed. The DEIR is inadequate and a revised DEIR must be prepared and recirculated for meaningful public review. We look forward to receiving a revised DEIR, and will provide further comment at that time. Please feel free to contact the undersigned if you have any questions.

Very truly yours,

Kristina Lawson/psc

Kristina Lawson

cc: Dana Tsubota, General Counsel, DeNova Homes, Inc.
Ed Burg (via email [eburg@manatt.com])
Robia Crisp (via email [rcrisp@manatt.com])

315463313.1

Civic Martinez, LLC
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June 10, 2015

City of Martinez
Community Development Department
Dina Tasini, Planning Manager
525 Henrietta Street
Martinez, CA 94533

Re: Notice of Preparation – General Plan Update (Environmental Impact Report Scoping Session)

Dear Ms. Tasini:

This letter is an initial comment on the scope of the Notice of Preparation issued for the City's General Plan Update dated May 26, 2015 ("NOP").

The NOP is seeking comments on the scope and content of the Environmental Impact Report ("EIR") that will be prepared for the new General Plan. Our initial comment pertains to the scoping session being held on June 10, 2015, which we anticipate will impact the privately owned property that once included the Pine Meadow Golf Course, located at 451 Vine Hill Way, Martinez ("Golf Course").

Over the course of the last six years, the fate of the Golf Course has been a topic of extensive discussion at City meetings. As has been expressed at numerous meetings and hearings on the Pine Meadow residential development application, the Golf Course has not been a feasible or economically beneficial or viable use for the property for many years. As a matter of fact, due to the economic hardship in continuing to operate the Golf Course, it was shut down a few months ago. For the very same reasons, other open space uses are not feasible or economically beneficial or viable uses for the Golf Course property. As has already been debated and analyzed by the City, the Golf Course property is best suited for residential use.

We strongly encourage the City to update the General Plan to identify the Golf Course property as a site suitable for residential use. Figure 2 to the NOP is a proposed land use map, but we cannot ascertain the proposed land use for the Golf Course property from that Figure. As was explained throughout the development application process for the Pine Meadow

residential project, designating this property for residential use is consistent with the recommendation of the General Plan Update Task Force. We trust this recommendation will be respected in the new General Plan.

Consistent with a residential designation on the property, the EIR must recognize and analyze residential uses on the Golf Course property. As was already demonstrated in the Mitigated Negative Declaration prepared and approved by the City Council on the Pine Meadow resident project, residential uses on the Golf Course property will not result in any significant, unavoidable environmental impact.

Thank you for this opportunity to comment.

Very truly yours,

Dana C. Tsubota
Vice President and General Counsel

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June 26, 2015

Dina Tasini, Planning Manager
City of Martinez
Community Development Department
525 Henrietta Street
Martinez, CA 94533

Re: Comments re Environmental Impact Report Scope and Content Pursuant to Notice of Preparation of City of Martinez General Plan Update

Dear Ms. Tasini:

This letter is submitted in response to the Notice of Preparation issued for the City's General Plan Update and dated May 26, 2015 ("**NOP**").

The NOP is seeking comments on the scope and content of the Environmental Impact Report ("**EIR**") that will be prepared for the updated General Plan. While we have previously submitted initial comments in advance of the scoping session that was held on June 10, 2015, this letter will set forth more fully our legal position regarding the General Plan Update and its impact on the privately owned property that once included the Pine Meadow Golf Course, located at 451 Vine Hill Way, Martinez ("**Property**") *if* the City of Martinez ("**City**") fails to designate the Property for residential use.

Relevant Factual Background

In or about 1970, the Coward property (which included the Property discussed herein) and the Valerga property were annexed into the City from Contra Costa County as agricultural lands. The Valegra property had one house on it, and the northeast portion of the Coward property included the approximately 26 acre golf course.

The City placed both parcels into the "H" – Holding Zoning District, which at that time allowed the City to annex land without committing to any changes in permitted land uses.

In or about 1972, an application was filed to entitle the southwesterly 21 acres of the Coward property as the "Granite Oaks" subdivision, rezoning the site from "H" (Holding) to "R-1-7500" (equivalent to today's "R-7.5" single-family zoning district). The Planning Commission recommended denial of the application, and the City Council concurred when it upheld the denial and found that the project was in conflict with the *Hidden Lake Specific Area* (General Plan) *Study* that was underway at the time. Members of the Planning Commission and City Council believed that all or part of the Coward property should be acquired by the City to be preserved as public open space.

Thereafter, the City explored public acquisition of the Coward property, but the City did not have the fiscal support needed for public purchase.

In 1973, the Hidden Lake Specific Area Plan ("**Hidden Lakes area plan**") was adopted and became part of the General Plan. This portion of the General Plan includes specific policies and goals for the Hidden Lakes area; these policies and goals implement the broader policies and goals in the General Plan (see, e.g., Preface of General Plan). This portion of the General Plan includes the following:

- Residential development on the southeasterly 20+/- acres of the Coward property (at a lower density than that which had been proposed in the Granite Oaks application); and,

- A base density for the plan area (which includes the Property) at one dwelling unit per 7,500 square feet as allowed by the R-1 zoning classification.

The General Plan land use map, however, identified the golf course and remainder of the Coward property as "OS&R," and the zoning map designated the property as "M-OS/RF" (Mixed Use – Open Space/Recreation Facility). In the Land Use section of the General Plan, it states that lands with an open space designation should remain for "open uses" (see Section 21.21). The General Plan does not include a definition of "open uses" and does not include a description of uses that are allowed in areas designated "open space."

It was at this point in time that the City erred because it did not adopt a General Plan that was internally consistent with all its elements. While the land use map identified the property with the OS&R designation, policies in

another section of the General Plan permitted the Property to develop at 1du/7,500 sq. ft. [1]

In or about 1975, another application was submitted for development of the Coward property. The application proposed residential development on that portion of the Coward property previously proposed for the Granite Oaks subdivision. This new application, submitted as the Pine Meadows subdivision, went through several revisions before it finally received City Council approval in 1976. The entitlements for the Pine Meadows subdivision also included zoning and general plan amendments. The subdivision was ultimately constructed on 21 acres of property; the remaining Coward property (the current Property, including the 26+/- acres at 451 Vine Hill Way) became a separate parcel.

Since 1973, the golf course Property has incorrectly been designated as open space. Then, roughly 30 years ago, the term "permanent" was added to the land use designation. This, too, was in error since the term "permanent" is used when public agencies acquire property with the intent to secure a lasting land use designation for public benefit. (Such a land use designation is not used with private property to avoid takings claims.)

Although the City's General Plan currently designates the site as OS&R, it was never the City's intent to designate the Property as permanent open space. The Property is located within the Hidden Lakes area plan, which consists of 565 acres of undeveloped pasture lands surrounded by residential subdivisions. The City's admitted intent in planning for this area was to preserve the string of small lakes at the center of the area, as well as the natural knolls and ridges at its border and adjacent to the City of Pleasant Hill. The Property, at the northern portion of the planning area, has been a private golf course since the 1960s. The Property is not considered park land or preserve. The Property does not have a natural knoll or ridge upon it, having been excavated and graded for development of a golf course more than 50 years ago.

The use of the Property has consistently been commercial in nature, with manicured greenways, buildings, parking lots, golf course paths, a pump

[1]Arguably the City in adopting the more specific policies in the Hidden Lakes area plan determined that the base density of 1 du/7500 sq. ft. is allowed under the open space designation on the Property; this interpretation would make the two sections of the General Plan consistent. We raised this position with the City during the processing of the last development application (for the proposed subdivision). We were told an amendment to the General Plan was required to change the designation on the Property so that the residential development as proposed could occur. Is this yet another error on the part of the City?

station and water catch basin, a bar and restaurant, and a pro shop operating consistently for more than five decades.

Over the course of the last six years, the fate of the golf course has been a topic of extensive discussion at City meetings. At the same time that the City's General Plan Update Task Force ("**Task Force**") was meeting to discuss land use designations City-wide, another application for development of the Property was submitted to the City for conversion of the existing commercial use (i.e., the golf course) to a residential development ("**Application**").

As has been expressed at numerous meetings and hearings on the Application, the golf course has not been a feasible or economically beneficial or viable use for the property for many years. As a matter of fact, due to the economic hardship in continuing to operate the golf course, it was shut down a couple of months ago.

For the very same reasons, other open space uses are not feasible or economically beneficial or viable uses for the Property.

As has already been debated and analyzed by the City and its Task Force, the Property is best suited for residential use.

The Application was amended with the Task Force recommendations in mind. It included a General Plan Amendment (at the City's request, even though the City should have simply corrected its own error), an application for Rezone/Planned Unit Development, and a Vesting Tentative Map that would permit development of 99 single family residential units on approximately 25.9 acres on the Property.

During the two Planning Commission hearings on the Application, some members of the public and Commission expressed concern regarding the loss of "open space" due to the proposed conversion of the golf course to a residential use. The City analyzed the Property history, the existing open space areas in the Hidden Lakes area plan, and adjoining uses.

City Staff found that the majority of the single family residential developments in the area were developed at a density and scale similar to the project proposed in the Application, and generally those developments had no open space within the project areas. The surrounding developments relied upon the knolls, hills, pathways and public parks within the Hidden Lakes area plan.

The Hidden Lakes area plan is comprised of 565 acres, of which 190 acres are designated open space. Residential development is permitted in the area plan at 7,500 square feet per unit. The General Plan assumed an overall permitted density of 3,277 units; there are currently approximately 1,229 units within the area plan. The General Plan was designed to allow development at a density that is slightly higher than otherwise may have been permitted in certain plan areas, in exchange for the preservation of large swaths of open space for the public benefit. This development concept is memorialized in the General Plan and specifically, in the goals and policies created for the Hidden Lakes area plan. Currently, this area plan includes significantly more park and open space than is enforceable under the Quimby Act (California Government Code section 66477(a)(2)).

Staff further found that the City maintains approximately 226.52 acres of parks throughout the City. Since the 1980s, the City has established a ration of number of acres of parks per population to be 5 acres of park space per 1,000 residents. Pursuant to the Quimby Act, 5 acres per 1,000 residents is at the highest end of the range for which a City can impose park dedication requirements or in lieu fees.

Martinez residents currently enjoy 6.22 acres of park space per every 1,000 residents. In addition, Martinez residents also have access to over 410 additional acres of publicly accessible open space areas, such as the property within the Specific Plan area. These natural areas are maintained by the City, the East Bay Regional Parks District, and/or the Muir Heritage Land Trust.

Equipped with City Staff's full report on park and open space within the Hidden Lakes area plan and City-wide, having conducted two hearings on the Application, having reviewed the Application, and with full knowledge of the Task Force's more than 20 public meetings that resulted in a recommendation for designating the Property for residential development, the Planning Commission recommended approval of the Mitigated Negative Declaration, the General Plan Amendment and the Rezoning/Planned Development application.

The City Council thereafter approved the Application, finding that residential uses was both anticipated and recommended for the Property.

Legal Analysis

A. The City is Obligated to Fix its Land Use Designation Error

The City erred when it failed to amend the General Plan Map to include a designation on the Property that was consistent with the density mandated in General Plan Policy 32.4231. This Policy clearly states that the base density for the Property shall permit one dwelling unit per 7,500 square feet as allocated under an R-1 Zoning classification. The City has consistently failed to correct this decades-old error. The error was intensified when, more than 30 years ago and without landowner approval, the City added the word "permanent" to the land use designation on the General Plan Map, thereby "taking" the Property without just compensation.

The City has contemplated development on this Property for some time and it is imperative that the City finally follow through with its intentions. The City's desire to see this area developed with residential uses is evidenced by the following:

1. The City Council's adoption of the Hidden Lakes Specific Plan Area portion of the General Plan, which specifically allows 1 du/7500 sq. ft. on the Property.

2. The City Council's approval of the 99 unit Pine Meadow Project.

3. The Task Force recommendation to identify this Property with a designation to permit residential development.

In addition, the Property has been assessed as a residential property for many years, and all assessments have been paid consistent with the residential uses in the area. Specifically, the property owner has been assessed by the Mt. Diablo School District based on 104 units (started in 1989) and all sewer assessments have been based upon residential rates since 1973.

A general plan must be integrated and internally consistent, both among elements and within each element. (*See* California Government Code Section 65300.5; *see also Concerned Citizens of Calaveras County*, 166 Cal. App. 3d at 97-98.) It is long past time for the City to correct its error. The Hidden Lakes area plan allows 1 du/7500 sq. ft. on the Property, and the City must take this opportunity to adopt a General Plan that is internally consistent and reflects the residential development vision it has contemplated for this Property for so many years. This is the same vision the property owner has come to rely upon through the acts of the City. Correcting the General Plan

error at this time is absolutely necessary since open space uses are no longer feasible or economically beneficial or viable for the Property.

B. The City Can, and Should, Amend Its General Plan to Identify the Property as a Site Suitable for Residential Development

As outlined above, designating the Property as open space on the General Plan Map created an internal inconsistency in the General Plan. The City, when it adopts its General Plan update, is legally **obligated** to bring the General Plan into conformance and correct this internal inconsistency. Proponents of the pending referendum may argue that their referendum of the project that was recently approved by the City on the Property prevents the City from correcting the internal inconsistency at this time. Even assuming the referendum is ultimately successful -- which remains to be seen -- this proposition is fundamentally incorrect.

When a project is successfully referred, the California Elections Code prohibits a city council from re-adopting the *exact same project* for a period of 12 months from the date of the project's repeal. (California Elections Code section 9241.) However, filing a referendum against a specific project approval does not prevent the City from taking any immediate action with respect to the affected property. To the contrary, the City may take any action and grant any approval, so long as the project the City subsequently approves is "essentially different" than the project that was referred. (*See, e.g., Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563.)

Simply approving a residential land use designation in the General Plan, which is legally necessary to make the plan internally consistent, does not approve a specific project and does not prevent the City from ultimately approving a residential development project that is "essentially different" from the project that is the subject of the pending referendum. For example, after correcting the inconsistency in the General Plan, the City could adopt a zoning designation that is different than the one that was referred, and approve a new project with different features than the project that was previously approved. The mere fact that both projects may contain a residential component certainly does not prevent the projects from being "essentially different." (See *id.* at 577 ["the new features in the Zone Ordinance, on their face, render it 'essentially different'"].)

In short, the referendum -- even if successful -- cannot legally preclude the City from simply adopting a residential land use designation for the

Property. This is particularly true given the circumstances here, where the designation is legally required to maintain General Plan consistency.[2]

Requested Course of Action

We strongly encourage the City to update the General Plan to identify the Property as a site suitable for residential use. The City has long acknowledged that this Property was improperly designated with an open space designation since the 1970s; the Property has been a commercial golf course for more than 5 decades. The City has further acknowledged that the improper designation should have been fixed years ago. Designating this Property for residential use is consistent with the recommendation of the Task Force and the actions taken by the City and relied upon by the property owner. We trust this recommendation will be respected in the new General Plan.

Consistent with a residential designation on the property, the EIR must recognize and analyze residential uses on the Golf Course property. As was already demonstrated in the Mitigated Negative Declaration prepared and approved by the City Council on the proposed resident project on the Property, residential uses on the Property will not result in any significant, unavoidable environmental impact.

Thank you for this opportunity to comment.

Very truly yours,

Dana C. Tsuboi
Vice President and General Counsel

[2] We also note that if a land use designation is successfully referred, the property in question simply reverts back to its prior, *effective* designation. As discussed at length above, the designation of the Property as OS&R on the General Plan Map is, and always has been, erroneous, internally inconsistent, and legally ineffective. Therefore, even if the referendum is ultimately successful, the General Plan land use designation on the property must revert back to a residential designation that is consistent with the rest of the General Plan (and the Hidden Lakes area plan within the General Plan), and the City will be able to adopt any zoning designation and specific project approvals that are "essentially different" from the referred project.