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March 9, 2016

Martinez City Council and
Mayor
525 Henrietta Street
Martinez, CA, 94553-2394

Re: Actions rescinding approvals for Pine Meadow Residential Project and rescinding call for referendum election on Resolution 009-15.

Dear Mayor and City Council,

I represent the proponents of the successful referendum petition on the general plan amendment for the Pine Meadow residential project. That petition challenged the city's action in adopting a general plan amendment redesignating the area from Open Space and Recreation, Permanent to Residential use.

Once the referendum petition had qualified for the ballot, the City Council had a choice, under Elections Code §9241, of either placing the referendum on the ballot or directly rescinding the challenged legislation. At the time, the City Council chose to place the referendum on the November 2016 election ballot and so notified the Registrar of Voters.

Now, the developer has asked the City Council to rescind the general plan amendment, along with the other project approvals for the Pine Meadow Residential Project that had been passed along with it.

While this action may be legal and avoid the expense of conducting an election, my clients nevertheless feel it would benefit the City to have the public discussion and vote that would occur in a referendum election. They therefore urge that you allow the election to go forward, even if you rescind the project-specific approvals.

I also want to caution you about the effect of what you are being asked to do. When a referended action is rescinded, whether by a referendum election or by council vote, no substantially similar measure may be enacted by the City for at least a year.

The developer apparently feels that once the City has rescinded the prior general plan amendment, it can re-enact a similar general plan amendment changing the land use of the project area, so long as the associated project is substantially different from the prior project. However, the developer is wrong. In considering whether a subsequently enacted measure

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violates this prohibition, courts generally consider the intent of the referendum petition's signers.

In deciding whether a new measure is "essentially the same" or "essentially different," we focus on the features that gave rise to popular objection. *Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1110.)

In this case, the referended general plan amendment changed the land use designation from open space and recreation, permanent to residential. The question is what motivated the objections to that change. It could have been one of two things: either the removal of the open space land use or the imposition in its place of a residential land use. In either case, re-enacting a residential land use, or even a mixed use or planned development designation that would provide for residential use, would both eliminate the open space use and replace it with residential use. Those are the very things that made the prior general plan amendment objectionable. Thus such a general plan amendment is prohibited under Elections Code §9241.

The courts generally will bend over backwards to reserve the voters' powers of initiative and referendum. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776.) If the City were to rescind its prior general plan amendment only to reapprove a general plan amendment with the same effect, that enactment would be subject to challenge under Elections Code §9241. The Council should keep this in mind in deciding what actions to take.

Most sincerely,

A handwritten signature in black ink that reads "Stuart M. Flashman". The signature is written in a cursive, flowing style.

Stuart M. Flashman