



To: Mayor and City Council

From: Jim Reese, Special Advisor

Subject: Hearing on Appeal of Incomplete Application Determination
Vesting Tentative Map for Major Subdivision (Tr 9358) 98 Single Family Lots at
451 Vine Hill Way – Pine Meadows – DeNova Homes

Date: December 22, 2016

Recommendation:

The options for City Council consideration on appeal are as follows:

- A. Adopt a resolution upholding the director determination, and finding that the application for a Vesting Tentative Map for the Project is incomplete as General Plan and Zoning Amendments are required for residential use of the Subject Property.
- B. Adopt a resolution granting the appeal, overturning the director determination and finding that no General Plan amendment or rezoning is required for residential use of the Subject Property.

Background:

On October 2, 2013 DeNova Homes, Inc. submitted an application for a General Plan Amendment, Rezone/Planned Unit Development, and a Vesting Tentative Map that would permit the development of 99 single family residential units on approximately 25.9 acres located at 451 Vine Hill Way, generally at the intersection of Center Avenue and Vine Hill Way (Subject Property). The applicant also submitted a preliminary landscape, grading and drainage, utility, stormwater control, and tree removal plans as well as a demolition plan for the removal of existing structures (See, **Exhibits Tab K**).

The City processed the development applications, prepared an Initial Study and Mitigated Negative Declaration pursuant to the California Environmental Quality Act (CEQA), and held hearings on the requested entitlements before both the Planning Commission and the City Council. On January 21, 2015, the City Council adopted Resolution 008-15, (Adopting a Mitigated Negative Declaration and a Mitigation and Monitoring and Reporting Program), Resolution No. 009-15 Amending the General Plan (Hidden Lakes Specific Area Plan) Designation from Open Space and Recreation, Permanent to Residential 0-6 Units/Gross Acre for a 25.9 Acre Parcel and Text Amendment to Delete Language Pertaining to Golf Course Use on the Property Located at 451 Vine Hill Way (Pine Meadow) GPA 13-02 and, Resolution 010- 15, (Approving a Vesting Tentative Map), (the "Entitlements")(See, **Exhibits Tab K**).

Thereafter, on February 17, 2015, prior to the effective date of the Resolution No. 009-15, a petition requesting a referendum against Resolution No. 009-15 (the General Plan Amendments) was submitted to the City Elections Official. The Petition specifically requested that the City Council “either rescind its approval of said resolution or submit same to the voters of Martinez for their adoption or rejection at an election in accordance with state law”.

Pursuant to California Elections Code sections 9239 and 9210, the referendum petition was accepted for filing, signatures verified and the Petition was submitted to the City Council for a decision regarding whether the City Council would repeal Resolution No. 009-15 or call an election of the Martinez voters relating thereto. At the City Council meeting of March 18, 2015, the City Council determined to call the election and adopted Resolution 031-15, A Resolution Calling and Giving Notice of the Holding of a General Municipal Election to be Held November 8, 2016 and Requesting the Board of Supervisors of the County of Contra Costa to Conduct Said Election; and Authorizing the City Clerk or His Duly authorized Officers and Agents to Carry Out All the Necessary Procedures for Said Election Submitting to the Voters an Election for a Referendum to Resolution No. 009-15.

On December 10, 2015, the applicant and owner submitted a request to repeal the Project Entitlements. The owner and developer clarified by subsequent letter that they no longer intended to proceed with development of the Project as originally proposed and that they were working on revised plans to be submitted sometime in the future. On February 29, 2016 the City Council considered the developer’s request and:

- (1)** adopted a Resolution Rescinding Resolution 031-15, Calling and Giving Notice of the Holding of a General Municipal Election to be Held November 8, 2016 and Requesting the Board of Supervisors of the County of Contra Costa to Conduct Said Election; and Authorizing the City Clerk or His Duly authorized Officers and Agents to Carry Out All the Necessary Procedures for Said Election Submitting to the Voters an Election for a Referendum to Resolution No. 009-15;

- (2)** adopted a Resolution: **A)** Rescinding Resolution No. 009-15, Amending the General Plan (Hidden Lakes Specific Area Plan) Designation from Open Space and Recreation, Permanent to Residential 0-6 Acre for A 25 Acre Parcel and Text Amendment to Delete Language Pertaining to Golf Course Use on the Property Located at 451 Vine Hill Way (Pine Meadow) GPA 10-02; **B)** Resolution 008-15, Adopting a Mitigated Negative Declaration and a Mitigation and Monitoring and Reporting Program Pursuant to the California Environmental Quality Act for a Development Project Consisting of: 1) General Plan Amendments to Amend the Hidden Lakes Specific Area Plan and to Amend Land Use Map 1 to Red-designate the Subject Property from Open Space and Recreation, Permanent to Residential 0-6 Units Per Acre; 2) a Zoning Map Amendment to Re-zone the Subject Property from M-OS/RF (Mixed Use Open Space Recreation) to a Combination of R-7.5/PUD Overlay (Single Family Residential: Minimum 7500 Square Feet per Dwelling Unit/Planned Unit Development Overlay) and Approve a Planned Unit Development Plan; 3) Vesting Tentative Map; and 4) Design Review, for Development of up to 99 Single Family Homes on a 25.9 Acre Parcel Located at 451 Vine Hill Way—APN

162-020-019 (Subject Property) – Pine Meadow Project 13 PLN-0029, Sub 9358 (Project); **C)** Resolution 010-15, A Resolution of the City Council of the City of Martinez Approving a Vesting Tentative Map for the Development of a Planned Unit Development with Up to 99 Single-Family Units (“Pine Meadow”) on an Approximate 25.9 Site Located at 451 Vine Hill Way (APN: 162-020-019) Sub #9358; and

- (3)** introduced an Ordinance Repealing Ordinance 1383 C.S. Rezoning a 25.9 Acre Property Located at 451 Vine Hill Way from M-OS/RF (Mixed Use Open Space Recreation) to a Combination of R-7.5/PUD Overlay (Single Family Residential: Minimum 7,500 Square Feet Per Dwelling Unit/Planned Unit Development Overlay) and a PUD Plan to Allow Development of 99 Single Family Homes.

Subsequent to Council’s repeal of the 2015 Entitlements for the Pine Meadow project, DeNova homes submitted a revised application for only a tentative map on the Subject Property contending that the property was already designated and zoned for residential development and that no general plan amendment or rezoning was required. Staff prepared incompleteness letters relating to this revised submittal and the determination of staff regarding the requirement for a general plan amendment and rezoning has been appealed to the City Council (See, **Exhibits, Tab M**). In summary, the appeal rests on the applicant’s position that the City’s determination that the Land Use Designation for the property is Open Space and Recreation, Permanent and the zoning for the property is Mixed Use District – Open Space/Recreational Facilities (M-OS/RF) Zone is incorrect.

History of Land Use Based on City Records

Staff has reviewed countless documents in the City in order to attempt to confirm the land use history for the property in question based upon the City’s records. The results of staff’s review are set forth below. The documents are contained in the attached Exhibits.

- 1) Annexation and the Designation of the Property as contained within the “Holding” Zoning District.

The Pine Meadow Golf Course was privately build as a public golf course in the 1960’s. The property was annexed into the City of Martinez in 1970 with properties owned by the Coward and Valerga families. City records indicate that upon annexation, the property was placed in a “holding” zoning district, pending future land use actions. This was the practice of the City at that time (See, **Exhibits, Tab A, B and C**). the “holding” zoning district was a place holder pending actions to adopt both land use designations and zoning for parcels coming into the City. It is important however to note that zoning was the controlling regulation for land use in California at the time the property was annexed. General Plans were not mandatory in California until 1971 (1971 Cal. Stat. ch 1446.) and zoning was not at that time required to be in conformance with a General Plan. Subsequent statutory enactments and case law have made clear the breadth of the “consistency doctrine” applies to virtually any local agency decision affecting land use (See, California Government Code Sections 65359, 65860, 65867.5, 66473.5, *deBottari v City Council* 171 Cal. App. 3d 1024 (1985), *Citizens of Goleta Valley v Board of*

Supervisors, 52 Cal 3d 553 (1990), *Leshar Communications, Inc. v City of Walnut Creek*, 52 Cal 3d 531 (1990)).

The area surrounding the golf course property has been the subject of numerous actions over the past 45 years. These actions have perhaps contributed to the confusion regarding the land use designation and zoning for the property.

2) The Hidden Lakes Open Space Committee Action.

Following the Coward/Valerga annexation, a committee of citizens and officials, comprising the Hidden Lakes Open Space Committee, met during 1971 to develop a specific area plan for the Hidden Lakes area and consider an appropriate mix of uses in the area, including open space. This area included lands that were annexed between 1955 and 1970. There were discussions in this committee and they are born out in the plan itself, that a “base density” should be applied to the entire area. This approach was intended to allow for transfer of density and development rights between parcels in the area. It does not appear that there was ever an intention that the whole area should allow for R-7500 residential zoning. In fact, the committee was focused on preserving open space in the area and on retaining the golf course. (See, **Exhibits, Tab D**). The final report of the committee was presented to the City Council which accepted the report and appears to have considered it in taking subsequent general plan and zoning actions relating to the area. The report itself did not, and under state law, could not, operate as a land use designation or rezoning action.

3) The 1972 Failed Busby Subdivision

Following the Hidden Lakes Open Space Committee’s work, a plan was submitted in March of 1972 by Seeno Construction on behalf of the property owners, James and Julie Coward, for consideration by the Planning Commission. That proposal included a Tentative Map for 85 single family lots on the 21-acre site adjoining the golf course. The application requested rezoning of the 21-acre site from H (Holding) zone to R0-1-7500 (Single Family Residential) zone. Clearly, it was understood at that time that the underlying zoning following the annexation was H (Holding). The Planning Commission denied the application (See, **Exhibits, Tab E**).

4) 1973 Adoption of the General Plan and General Plan Map

A General Plan and Map was approved by the City Council in June of 1973, by the adoption of Resolution 69-73. This action designated most of the area covered by the Hidden Lakes Area Plan as Public Permanent Open Space (See, **Exhibits, Tab F**). This use designation was applied to all of the properties included in the 1970 Coward/Valerga annexation, including the golf course property. It wasn’t until later that year that the recommendations of the Hidden Lakes Open Space Committee were considered for incorporation into the General Plan.

5) 1973 Consideration of Land Use Amendments for the Hidden Lakes Study Area

On December 12, 1973 the City Council approved Resolution 154 entitled “Amends General Plan – Hidden Lakes Study Area.” An executed copy of the minutes of the meeting, a copy of Resolution 154 (1973 series) and a map entitled Hidden Lakes Study Area – General Plan Amendment – 11/72 are included at **Tab G**. The map clearly indicates that the Pine Meadows Golf Course is designated for Permanent Open Space/Recreational Use. The designation is further reinforced by Figures 31.1 and 32.1 in the General Plan. It should also be noted that these figures have been a part of the City’s General Plan since the 1970s and, therefore, available for public inspection at any time during the last 43 years. A copy of the General Plan, including these figures is available from the City Clerk and will be available at the City Council meeting.

6) The 1974 Adoption of the Revised Zoning Ordinance and Map

At its meeting of May 22, 1974, the City Council approved Ordinance No. 788 a Zoning Map for the City (in atlas format) that designated the golf course site as Mixed Use District – Open Space/Recreational Facilities (M-OS/RF). A copy of that ordinance with excerpts of the minutes from five City Council meetings held where this map was discussed, January 2, 1974, April 3, 1974, April 17, 1974, May 22, 1974 and finally June 5, 1974, when the second reading of the ordinance occurred is set forth in **Tab H**. At the April 17, 1974 meeting the City Council referred the matter of the rezoning of the site adjacent to the Pine Meadow Golf Course back to the Planning Commission for further consideration of the R-7500 zoning classification. That zoning was ultimately approved for the property next to the golf course as part of Ordinance No. 788.

7) The 1976 Zoning Amendment for Tract 4744

On July 6, 1976, the Planning Commission approved a rezoning and tentative map for a 61-acre site including the golf course. Attached to the Planning Commission staff report is a map entitled “Zoning Plan – Tract 4744”. It is evident from the exhibit that the golf course property is zoned M-OS/RF (Mixed Use District – Open Space/Recreational Facilities). At the time this application was submitted much/all of the property was owned by the Coward family. A copy of the staff report is set forth in **Exhibits, Tab I**.

8) 1976 General Plan Amendment for Subdivision Tracts 4744 and 4774

Portions of the Hidden Lakes Area were also the subject of a General Plan amendment approved by the City Council on August 18, 1976 by the adoption of Resolution 108. Attached to this resolution is a map depicting the area surrounding the golf course, which area was the subject of the General Plan amendment. The resolution and map make it clear that the golf course property was not included in this action as it references the golf course as the boundary of the amendments and also the golf course is depicted in the attached map as outside the area of amendment (it is noted as Pine Meadow Golf Course) (See, **Exhibits, Tab I**). The primary purpose of this amendment was to change the land use designations for the two subdivision tracts to permit residential development on property near, but not including the Subject Property.

9) The 1977 Amendments to the General Plan for the Hidden Lakes Area

The Hidden Lakes area was also the subject of the General Plan Amendment approved by the City Council on September 21, 1977 by the adoption of Resolution 149. That amendment was intended to conform the General Plan to the previously approved Hidden Lakes Subdivision #3 and included the adoption of General Plan Figure 32.1. This action was considered by the Planning Commission in July of 1977 and the Council in September of 1977. The Map identifies areas that were included in the Coward/Valegra annexation and designated for residential development, with limitations identified under the Slope Density Ordinance. Again, the golf course property is described not as residential property but as Open Space (See, **Exhibits, Tab I**).

10) The 2010 General Plan Map Update

On October 6, 2010 the City Council approved an updated Land Use Map for the City's General Plan. This action was intended to memorialize changes to the City's General Plan and associated Land Use Maps made since 1973 when the General Plan was adopted. The Planning Commission also held a public hearing on August 10, 2010 and recommended that the map be adopted by the City Council. According to the staff report for this action: "Since 1973, the General Plan and associated Land Use Maps have been amended numerous times through legislative actions by the City Council upon recommendations of the Planning Commission. It is general practice in most local jurisdictions to maintain an updated General Plan and associated Land Use Map that reflects these amendments. This has not been the case for the City of Martinez. Text amendments have been made to the General Plan and Land Use Maps have been amended without the comprehensive memorialization of the changes to the actual documents." A copy of this staff report, along with the approved Land Use Map and public hearing notice are included in **Exhibits, Tab J**. While memorializing the amendments to the General Plan does not technically constitute an update of the plan, the public was notified of this action and given an opportunity at both the Planning Commission and City Council level to challenge a designation. According to the minutes of the meetings on this subject no challenge was raised.

11) The 2015 Project Approvals

On January 21, 2015, the City Council adopted Resolution No. 009-15 approving an application for a General Plan Amendment, Rezone/Planned Unit Development and Vesting Tentative Map that would permit the development of 99 single-family residences on approximately 25.9 acres at the intersection of Center Avenue and Vine Hill Way. This is the site of the golf course. An Initial Study/Mitigated Negative Declaration/Mitigation and Monitoring Program were also approved at that time. A copy of the City Council agenda item is included at **Exhibits, Tab K**. Also, as a part of this action by City Council, a text amendment was approved to the Hidden Lakes Specific Area Plan deleting the following language..."32.32 The existing golf course is an appropriate use within the Plan area:" Also the General Plan text section 21.21 was amended adding the following language..."21.21...This designation shall apply to the private golf course."

Discussion was had at the time of the application between staff and the applicant's development team as to the need for a general plan amendment for the project. Ultimately, upon explanation by staff, the applicant did submit an application for a General Plan amendment at that time. However, the zoning designation for the property was never questioned by the applicant at that time.

On February 17, 2016, prior to the effective date of Resolution No. 009-15, a petition requesting a referendum against the resolution was submitted to the City Elections Official. The Petition specifically requested that the City Council "either rescind its approval of said resolution or submit same to the voters of Martinez for their adoption or rejection at an election in accordance with state law." Pursuant to the Elections Code the referendum petition was accepted for filing, the signatures were verified and, at the March 18, 2015 meeting of the City Council, a resolution was adopted setting the date of the election on the referendum for November 8, 2016.

12) The Request for Repeal of the Entitlements

On December 15, 2015, the City Clerk received a request from the owner of the property that the City repeal the entitlements for the Pine Meadow project. Following a public hearing held before the City Council on March 9, 2016, the Council rescinded both Resolution 009-15, which granted entitlements for the development of the property, as well as the election that had been set for November 8, 2016 on the petition. A copy of the staff report for that item is included in **Exhibits, Tab M**.

Discussion:

As noted above, the applicant has appealed the determination that the VTM application is incomplete. The appeal is based upon the applicant's position that a General Plan amendment and rezoning are not required for the Subject Property to be put to residential use. The discussion below addresses each of the points raised by the applicant and includes information obtained from the applicant and provided to staff.

A) In its appeal, the applicant contends that a General Plan Amendment is not required for the proposed project.

The applicant contends that the Subject Property is not currently designated as Permanent Open Space/Recreational use. The applicant's position in this regard rests on both the fact that Resolution 154 is not signed and the fact that they believe the exhibit for Resolution 154 contained an "erroneous notation", cannot be ascertained to be the proper exhibit/version and is not an "official copy" of the resolution. The applicant further states that the City cannot describe who made the "notation" and that the notation appears to be a clerical "mistake".

It is true that Resolution 154 is unsigned. However, Resolution 154 was found by staff to exist in numerous City records, including, the City Clerk's bound book of official resolutions, and the bound paper copy of the General Plan with Appendix which includes amendments to the General Plan approved by the City from 1973 to January of 1995. In addition, the signed

minutes of the meeting in which Resolution 154 was approved were also included in the bound minutes book and make clear that Resolution 154 was in fact adopted. The map depicting the parcels discussed in Resolution 154, was not bound into the Clerk's book of resolutions (no large maps or exhibits typically are). The map was found to be stored with the other maps in the planning department. The map contains a clearly written notation at the bottom that it is the map of the HIDDEN LAKES STUDY AREA – GENERAL PLAN AMENDMENTS dated 11/73 (date of preparation) and the map clearly depicts parcels 12-16. The listed designation for parcel 16 (a portion of which includes the golf course) is noted as Permanent Open Space/Recreation.

In addition, the original map (a copy of which will be available at the hearing on appeal), includes no after added "notations" that relate to the land use designations. The map itself is a "blue line" drawing typical of maps at that time. None of the designation language is in different pen or writing. Staff cannot therefore ascertain what "notation" the applicant is referring to.

The applicant has also verbally stated their position that there is "clearly an error" because the map in question includes a Permanent Open Space designation for the remainder of Parcel 16 which was subsequently developed with residential uses. The problem with this argument is twofold. 1) the residentially developed portion of the former Coward property was re-designated several times subsequent to Resolution 154, once in 1976 by the adoption of Resolution 108-76, and again in 1977 by the adoption of Resolution 149-77 (see discussion of these actions above) in each of these actions it was made clear that the Subject Property (the golf course) was not itself being re-designated and it is also clear that the Subject Property was considered "open space" at that time; and 2) even assuming that the applicant is correct or that there exists a doubt as to whether Resolution 154 created a new General Plan land use designation of Permanent Open Space/Recreation for the Subject Property, if the map approved by Resolution 154 is not valid, then we would need to look back to original Land Use Policy Map for the 1973 General Plan adopted by Resolution 69 in 1973. That Land Use Map designated the Subject Property (golf course site) as Public Permanent Open Space (See discussion above). There is no action identified to date by the applicant, or that staff has been able to find, which ever placed the property in a residential land use designation.

The applicant has also stated its position that Section 32.4231 of the Hidden Lakes Specific Area Plan (Area Plan) which states that "The base density for the plan area shall permit one dwelling unit per 7,500 square feet of site area as allocated under a R-1 Zoning classification.", is a controlling statement which applicant believes designates all property within the Hidden Lakes Specific Area Plan as residential. This position fails to take note of the other contrary sections of the Area Plan and the General Plan itself. Specifically, Section 32.1, Introduction, of the Area Plan states that the "plan includes sections devoted to Land Use and Development, Open Space and Conservation, Housing, Circulation and Trails". The stated purpose of the Area Plan was to balance the need for housing against the desire to retain open space. Section 32.3 sets forth the Land Use and Development Policies for the Plan Area. Section 32.31 states that "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." Section 32.32 states that "The existing golf course is an appropriate use within the Plan Area". In addition, included in

the Area Plan was Map Figure 32.1 which designated the Subject Property as Open Space (Figure 32.1 was superseded by General Plan Land Use Map 1 in 2010 which map retains the Permanent Open Space/Recreation designation). As noted above, Figure 32.1 is also consistent with Figure 21.1, the Land Use Policy Map which was adopted with the General Plan in 1973. (Figure 21.1 was also superseded by LU-Map 1, in 2010). Finally, as Figures 21.1 and 32.1 make clear, many portions of the Area Plan are designated as Open Space rather than residential. Finally, even assuming that the Area Plan sets forth a policy relating to “base density” that is applicable to the Subject Property, such policy would be in direct conflict with the Land Use maps. As noted above, the “consistency doctrine” requires that the text of the Area Plan be consistent with the remainder of the General Plan including the Land Use Maps. While staff believes that they are, in fact, consistent, since the “base density” statement in the Area Plan, only applies to residentially designated land, if there were determined to be an inconsistency, it is staff’s view that the specific land use maps would control.

The applicant has also provided to staff new information subsequent to the filing of the appeal which the applicant believes supports its position. The new information received includes declarations from former Mayor John Sparacino, and County Assessor Gus Kramer and an affidavit from James Busby (see, **Exhibits Tab N.**)

The Sparacino declaration notes that the City did not intend to buy the golf course property, nor pay to “take” the property. It also states that Mr. Sparacino does not recall a map designating the property as Open Space. Staff does not believe that this declaration alone provides sufficient evidence to rebut the information staff has obtained from the City’s files. First, there is no debate that there was some discussion about buying the golf course as a public course and there was a decision not to do so. Second, as to whether Mr. Sparacino has any recollection of a map from the 1970’s is largely irrelevant. He does not say that there was no map, he just says he does not recall one. Given that the actions relating to the land use for the Subject Property took place more than 40 years ago, such lack of recall is not surprising.

The Kramer declaration includes information regarding the tax assessments for the Subject Property. Mr. Kramer states that by reviewing the tax bills for a particular property he is “usually able to determine” the zoning of the property. He states that the tax bill for the Subject Property shows ad valorem taxes payable by residentially zoned property and that based thereon, the Subject Property has been “classified” as residentially – zoned for 120 lots since the 1980. Staff notes that Mr. Kramer’s declaration does not state how the County Assessor established this “classification” or how the figure of 120 lots was reached. Additionally, it is important to note that property tax assessments do not in and of themselves establish a land use designation or zoning for property. In addition, none of the assessments in question are City assessments. They are assessments whose rates are set by other public entities, namely the school districts. No evidence has been presented that the City provided any information regarding a residential designation to the County Assessor’s office or that the City had any involvement in the school districts methodology for setting its assessments.

The affidavit of Mr. Busby submitted by the applicant states that he was the developer of subdivision tract 4774. This is the subdivision that surrounds the Subject Property. He states that he purchased the land surrounding the golf course from Mr. Coward and that he wanted to also purchase the Subject Property (golf course), but that Mr. Coward would not sell it. Mr. Busby states that at “no time has the City represented that any of the “Pine Meadows” property or the golf course to be a part of the “Hidden Lakes Park”. In response to Mr. Busby’s affidavit, Staff notes that the question is not whether the Subject Property was ever to be a part of “Hidden Lakes Park”, but rather the question raised by the appeal is what is the land use designation for the Subject Property. The Subject Property can be Open Space/Recreation without being a part of Hidden Lakes Park. In fact, as the Subject Property is privately owned and was, until recently, an operating private golf course, it would not have ever been a part of “Hidden Lakes Park”.

Staff believes that it is important to point out three additional pieces of information for Council consideration relating to the land use designation for the Subject Property.

First, the City adopted a comprehensive new General Plan Land Use Map incorporating all changes between 1973 and 2010 (**Tab J**). The actions before the Planning Commission and City Council to adopt this map were noticed and no objections were received. As noted above, this map confirmed the Open Space/Recreation designation for the golf course property. The adoption of this map was described as not making any land use changes but rather confirming actions already made. The 2010 map therefore represented a confirmation of the City’s understanding in 2010 that the land use designation for the Subject Property is Open Space/Recreation. At any time in the last 43 years if any person or entity checked any publically available General Plan document or map, only Open Space/Recreation designations would have appeared for the Subject Property.

Second, the 2015 land use entitlements and the actions of the City and applicant relating thereto provide further evidence of the City’s previous interpretations of its own General Plan and zoning for the property. The applications submitted for the project approved in 2015 and the City actions related thereto included the General Plan amendments and re-zoning action. Thus, clearly in 2015, the City understood the land use designation for the property to be Open Space/Recreation, and the applicant was on notice of that position at that time.

Finally, staff has been advised that the California Supreme Court issued an opinion on December 15, 2016 in a case in southern California which is of particular note. In *Orange Citizens for Parks and Recreation v Superior Court of Orange County*, opinion filed 12/15/18 (see, **Exhibits, Tab O**), the California Supreme Court found that the City of Orange abused its discretion in finding a proposed project to convert a private golf course to residential use consistent with the General Plan. The *Orange* case is of particular note in that the facts at issue therein were nearly identical to the situation before you. In the *Orange* case, the City had re-designated a golf course from Open Space to residential as part of a development application. The action of the City was subsequently the subject of a successful referendum. At the urging of the developer, the City later found that a “clerical error” had inadvertently resulted in a 1973 General Plan amendment re-designating the property from Open Space to Residential not being

incorporated into the General Plan and that therefore no General Plan amendment was actually needed because the property was already designated residential. In overturning the Court of Appeal, the California Supreme Court found that the publically available General Plan land use map “designates the Property as open space . . .” and that based thereon, no “reasonable person could conclude that the Property could be developed without a general plan amendment changing its land use designation”. The Court concluded that the land use designation set forth in the publically available General Plan was controlling, notwithstanding any other previous intent of the City and that the City could not “evade the effect of the referendum” by “administrative correction” of the General Plan. Based on the *Orange* case, it appears that even if the City were to agree with the applicant that a “mistake” had been made relating to the land use designation for the “Subject Property”, a reviewing court, relying on the *Orange* case would likely overturn such action.

The applicant contends that a Zoning Amendment is not required for the proposed project.

The applicant’s position with regard to the zoning for the property is less clear than its position relating to the General Plan. The applicants state in the letter from Kristina Lawson dated June 13, 2016 (**Tab M**), submitted as part of their appeal of the incompleteness determination, that Ordinance 788 has no relevance to the property as they believe this ordinance did nothing more than make changes to zoning for property adjacent to the Subject Property. The applicant has provided no additional evidence or documentary support for this position.

Ordinance 788 on its face does much more than rezone property adjacent to the golf course (See, **Tab H**). As the face of Ordinance 788 makes clear in Section 1 it adopted a completely new Planning and Zoning Chapter of the Martinez Municipal Code. As Section 2 makes clear, Ordinance 788 also adopted a new zoning map. Section 2 a) and b) describe changes to that new map one of which relates to the property adjacent to the current golf course property. The zoning map was noted in Ordinance 788 to be “on file in the office of the City Clerk” and the notation in the upper right corner of the map “City Clerk’s file 9.4” shows that this is the map on file in the clerk’s office.

The applicants have verbally questioned whether this map is in fact official. They have noted that there is other writing on the map and that no “official copy” of this map appears to exist. It is true that there are other notations on the map which staff has found which were written by Corey Simon as the copy provided to the applicant and included at **Tab H** is the planning department’s copy of the map and Mr. Simon marked same to be sure that the map was retained in planning, as it represents a historical map.

It is also important to note that, at the meeting of January 2, 1974, which was one of the hearings for Ordinance 788, Mr. Coward, the owner of the Pine Meadow Golf Course, “asked for 7,500 square feet minimum on 20 acres adjacent to the golf course rather than the proposed one-half acre minimum for the site.” Clearly, at this time, Mr. Coward did not think he had an R-7500 zoning designation on the Subject Property in 1974. At the April 17, 1974 meeting the City Council referred the matter of the rezoning of this site adjacent to the Subject Property back to the Planning Commission for further consideration of the R-7500 zoning

classification. That zoning was ultimately approved for the property next to the Subject Property/golf course as a part of Ordinance No. 788. However, the zoning for the 26-acre portion of the property containing the golf course (i.e.: the Subject Property) remained as Mixed Use District – Open Space/Recreational Facilities (M-OS/RF) as indicated on the zoning map.

Conclusion:

The City Council essentially has two options before it for consideration on appeal:

1. Adopt a resolution upholding the director determination, and finding that the application for a Vesting Tentative Map for the Project is incomplete as General Plan and Zoning Amendments are required for residential use of the Subject Property; or
2. Adopt a resolution granting the appeal, overturning the director determination and finding that no General Plan amendment or rezoning is required for residential use of the Subject Property.


Fiscal Impact:

The fiscal impact of the completeness/land use determination on appeal is unknown and speculative at this time.

Attachments:

1. Draft Resolution (To be provided under separate cover.)
2. Exhibits Tab A-O (available online and City Clerk's Office)

APPROVED BY



Brad Kilger, City Manager

