

## “FREITAS PROPERTY” – GPA, Rezone & Sub # 9120 - Site & Project History – June 26, 2008

DATE	DOCUMENT	ADOPTED POLICY OR ACTION
1971-73	General Plan & Hidden Lakes Specific Area Plan	<p>Entire area that is now “Pine Meadows” (subdivision 4744) was designated as “Open Space”:</p> <ul style="list-style-type: none"> <li>• The General Plan designated entire area as “Public Permanent Open Space.”</li> <li>• Hidden Lakes Specific Area Plan designated the portion of sub 4744 that becomes Freitas Property &amp; Meadowvale Court as “Open Space - 30% Over Slopes.” Most other areas of future sub 4744 designated “Open Space-Other Values.”</li> </ul>
1973, Dec 12	Hidden Lakes Study Area General Plan Amendments (GPA)	<p>Hidden Lakes Study Area GPA amends above plan in anticipation of greater development potential than envisioned in 1971 <b>[Exhibit H-1]</b>:</p> <ul style="list-style-type: none"> <li>• The “Coward Knoll” area of Pine Meadows (area that becomes the bulb of Meadowvale Court and the Freitas Property) was re-designated as “Permanent Open Space” from “Open Space - 30% Over Slopes.”</li> <li>• Balance of the future Pine Meadows area was re-designated for single-family residential development - 0-6 units/acre.</li> </ul>
1975, February	Application for subdivision 4744 filed	<p>Developer (Security Owners Corporation/James Busby) filed tentative map application for subdivision:</p> <ul style="list-style-type: none"> <li>• Proposal was delete all open space areas. “Coward Knoll” and (future) Freitas property were to have been mass graded for residential lots.</li> <li>• Planning Commission denied the application, Developer appealed to Council, who referred item back to the Commission, and directed developer to provide alternate plan.</li> </ul>
1976, March	Revised tentative map for sub 4744 submitted	<p>Revised map closer to 1973 Hidden Lakes Study GPA, but still reduced Open Space Areas. Staff generally supported revised map as a compromise:</p> <ul style="list-style-type: none"> <li>• The Environmental Impact Report (EIR) staff prepared for the new map recognized the area to become the Freitas Property as “mitigation” for adverse visual impacts: <i>“a minimum 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 knoll.”</i> <b>[Exhibit H-2]</b>.</li> </ul>

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1976, Jul 6	PC report and recommendations to City Council – General Plan Amendments and rezoning supported.	<p>Planning Commission recommended that the City Council adopt General Plan Amendments to permit the approval of the March 1976 map:</p> <ul style="list-style-type: none"> <li>• The open space area at “Coward Knoll” is reduced from 8-10 acres to approximately 6 acres, <i>“of private open space alongside Vine Hill Way, incorporated into a <u>horse set-up lot</u> restricted by a ‘scenic easement’ prohibiting the erection of structures, obscure fencing or grading.”</i></li> </ul>
1976, Jul 6	PC conditions of approval for sub4744	<p>Revised sub 4744 tentative map approved by PC <b>[Exhibit H-3]</b>:</p> <ul style="list-style-type: none"> <li>• A condition of approval required that for <u>all of</u> Lots 26 and 27 (now part of Freitas Property), <i>“scenic easements prohibiting grading, tree removal, construction of obscure fencing and structures of any type except barns... shall be dedicated to the City of Martinez.”</i></li> </ul>
1976, Aug 18	City Council resolution 108-76 approving GPA’s	<p>City Council amends General Plan/Hidden Lakes Study area with designations to match approved sub 4744 tentative map <b>[Exhibit H-4]</b>:</p> <ul style="list-style-type: none"> <li>• Lots 26 and 27 (to be purchased by Freitas), as “Private Permanent Open Space.”</li> </ul>
1977, March	City Council ord.# 856 C.S., rezoning areas within sub 4744	<p>City Council amends Zoning Map with designations to match approved sub 4744 tentative map <b>[Exhibit H-5]</b>:</p> <ul style="list-style-type: none"> <li>• Lot 25 (which was ultimately combined with Lots 26 and 27) rezoned from “R-7.5” to “R-20” District. Thus the ½ acre “homesite” portion of the Freitas property is within a different zoning district than the balance of the property</li> <li>• Lots 26 and 27 (total size of approximately 5 acres) rezoned from “R-7.5” to “Open Space”. ( A four-fifths vote of the City Council is now required to delete an open space zoning designation).</li> </ul>
1977, Nov 4	Final Map for sub 4744 recorded	<p>As per the July 6, 1976 conditions of approval for sub 4744:</p> <ul style="list-style-type: none"> <li>• Lots 25, 26 and 27 were consolidated into one parcel, to be known on the final map as Lot 22. (to be purchased by Freitas).</li> </ul> <p>Other differences between tentative map (as conditioned) &amp; final map:</p> <ul style="list-style-type: none"> <li>• Access to Lot 22 shifted from “flag” off Meadowvale Court to Vine Hill Way.</li> <li>• Required scenic easements omitted (see below).</li> </ul>

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1977, Dec 6	C C & C's for sub 4744 recorded.	Developer recorded "standard" C C & R's for subdivision which included restriction on <u>all lots</u> within sub 4744 that: <ul style="list-style-type: none"> <li>• <i>"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."</i></li> </ul>
1978, November	-	Gary Freitas purchased property, begins intermittent pasturing of horses
1979, Jul 10	PC recommendation that City Council accept sub 4744 (e.g. engineering improvements, landscaping etc.)	Subdivision was accepted, but PC Staff report stated: <ul style="list-style-type: none"> <li>• <i>"due to an oversight by the developer and City, scenic easements were <u>not</u> recorded wit the final map."</i></li> <li>• Council and Developer advised of situation, and developer offered to facilitate amending the recorded map of willing property owners. All but one property owner were <u>unwilling</u> to have the scenic easements recorded.</li> <li>• No scenic easements ever recorded on Lot 22.</li> </ul>
1988, Nov 23	Gary Freitas filed application for 6-lot subdivision, and for GPA's and rezone [1 <sup>st</sup> of 3 applications ends "withdrawal"]	Commission took testimony at the February 28 1989 and March 14 1989 meetings: <ul style="list-style-type: none"> <li>• Many neighbors were opposed to the application, and refer to the C C &amp; R's as a "contract" prohibiting additional subdivision of existing lots.</li> <li>• The Commission's consensus was that the open space should be retained, and denied subdivision, recommended denial of the GPA, rezone.</li> <li>• Mr. Freitas filed an appeal to City Council, but subsequently withdrew it, asking the Council to consider reviewing open space restrictions as they apply to privately held property.</li> </ul>
1990, Nov 6	Staff's Development Review Committee's review of preliminary application for swimming pool on Lot 22	The Committee found the swimming pool request to be inconsistent with existing open space general plan and zoning designations, so Mr. Freitas was told that general plan amendment and rezoning applications were required. (no formal application for this request were made).

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

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

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		<ul style="list-style-type: none"> <li>• At this study session, only one neighbor spoke and was in favor of the application.</li> <li>• With the appearance of neighborhood “buy-in” and the appearance of no pre-existing policy to permanently preserve the property as open space, the Commission concludes that it would be appropriate for the application to proceed through the hearing process.</li> </ul>
2003, April	Design Review Committee reviews architectural and landscape plans for subdivision.	DRC supports the design as proposed, and recommends approval to the PC.
2003, Sept-Nov	Current tentative map submitted by applicant, copies sent to interested agencies (i.e. Fire Protection District) for comment	No opposition from other agencies was received.
2003, Dec 18	City ‘s goetechnical consultant completes “peer review” of applicants soils study	City’s consultant generally accepts applicant’s plans and soil engineers’ recommendations, but recommends some minor refinements
2004, Jan 27	Staff report and minutes for first PC public hearing re: current application	<p>No action was taken at first hearing, as staff became aware that the public notice and draft Negative Declaration had erroneously identified the rezone request to R-15 (as per the originally application) as opposed to the current request for R-10. Staff recommended that the Commission take public testimony, and continue the item. Application re-noticed with corrected rezoning request for March 23 hearing:</p> <ul style="list-style-type: none"> <li>• Prior to meeting, 5 letters were received (4 in opposition, 1 in support).</li> <li>• Over 20 residents spoke at hearing; a slight majority was opposed to application. Several stated that this was the first public meeting notice they</li> </ul>

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		<p>had received, which implies that the earlier study sessions were not as widely noticed as the current hearing (¼ mile radius notification required for a hearing to act on a major subdivision request).</p> <ul style="list-style-type: none"> <li>• Since Jan 27 hearing, 2 more letters in opposition, and one in support, have been received.</li> <li>• Commission direct staff to conduct further research into the site's history.</li> </ul>
2004, Mar 23	Meeting minutes	Additional testimony taken from public, and discussion by Commissioners. Commission again continues item, directs staff to prepare resolution with findings for denial, for action at future meeting.
2004, April 1	letter of withdrawal [2 <sup>nd</sup> of 3 applications ends "withdrawal"]	Mr. Freitas withdraws all pending applications, no further Commission action is taken. Commissioners discuss possibility of adopting resolution in support of retaining the open space designation as per sub 4744's original approval, but Commission does not reach consensus.
2006-2007	Revised application	Current application (sub 9120 filed). Development shifted eastward, avoiding "coward Knoll" hill face. Application found to be incomplete. Staff recommends Study Session with Planning Commission (prior to formal completion of tentative map application) to allow public and Planning Commission comment prior to further expense.
2007, Feb 13	Staff report and meeting minutes	Prior to completion of application, "2006" application return to Planning Commission as study session item, commission unable to reach consensus; hopes that City Council can "weigh-in" on fundamental General Plan question first. City Attorney recommend against such an approach, as it may create the opportunity for a challenge to Council member's "impartiality" when they take final action on the project.
2007, Mar-June	Letter from applicant, & Initial Study with visual simulations	Rather than go to a study session at the City Council, the applicant, with staff's concurrence, requests the City take final action on the GPA first. Action on GPA trigger the preparation of a new Initial Study (focus of environmental doc on visual impact, simulations prepared) Staff circulates draft "mitigated neg dec", recommending "mitigations measures" (lower grade and/or building heights) to reduce visual impact to "less than significant impact."

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2007, July 24	Staff report	GPA request goes to Planning Commission for recommendation. On 5-2 vote, recommends DENIAL. Of 5 voting to deny, 3 are conceptually opposed in principal, 2 more are not conceptually opposed, but find plans inadequate to support at this time
2007.Oct 3	CC Staff report	Staff recommends following PC's recommendation to DENY. Council indicates, 5-0 its desire to support approval of GPA. Directs staff to prepare draft reso etc for action to approve.
2007 Dec 5	CC Staff report, letters from neighbor's attorney	Attorney of neighbors' in opposition raises CEQA process questions in regards to 1976 EIR for "Pine Meadows," and role of Freitas' private open space as mitigation measure for "Pine Meadows"'s 1977 approval.
2008 Feb 6	CC Staff report, letters from applicant's attorney, and additional opposition attorney.....	CEQA questions not adequately answered, Council goes into closed session – item again continued
2008.June 26	letter of withdrawal <b>[3<sup>rd</sup> of 3 applications ends in "withdrawal"]</b>	Mr. Freitas' Attorney, Dana Dean, writing to Jeff Walter, City Attorney, withdraws all pending applications, no further Council action is taken.