

The Roots of a Legacy.
A History of Walnut Creek, California's Open Space
by Sande DeSalles

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To the memory of Robert Pond, and
to Ron and Marnie White, keepers of the open space.

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God, who hath given the World to Men in common, hath also given them reason to make use of it to the best advantage of Life, and convenience. The Earth, and all that is therein, is given to Men for the Support and Comfort of their being. And though all the Fruits it naturally produces, and Beasts it feeds, belong to Mankind in common, as they are produced by the spontaneous hand of Nature; and no body has originally a private Dominion, exclusive of the rest of Mankind, in any of them, as they are thus in their natural state: yet being given for the use of Men, there must of necessity be a means *appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man.

John Locke,
The Second Treatise on Civil Government

I have lived in Walnut Creek, California, for the past thirty years, yet I am always surprised to encounter in winter the damp mist that blankets the rolling foothills and oak savannas surrounding the city. Not long ago, I drove through the fog into the Mt. Diablo foothills on an early January morning. As I slowed for a curve, I heard the song of a meadowlark and then the shrill call of a red-tailed hawk echoing through the valleys. I recalled reading that the western meadowlark was once considered a "bad bird" that had powers to harm and was feared by Indians nearly everywhere in California.¹ But on this damp morning, in the hustle of twentieth-century urban life, the meadowlark's song gave me a respite from modernity. The headlights of my car cast a glare into the mist as I drove up the winding road to the home of Ranger Ron White and his wife Marnie, who reside at the historic site of the Old Borges Ranch -- a working ranch -- near the base of Mt. Diablo. They live in the "open space" region of Walnut Creek.

I swerved and came to a sudden stop as my headlights flashed on a bobcat sitting near the road, head cocked listening to my approaching car. He glared in my direction for a

moment. Perhaps I was interrupting his early morning foraging. He rose abruptly and quickly darted up the road. I could see the muscles in his hind legs bulge as he pushed hard to gain traction. He quickly accelerated then disappeared into the fog. Absolutely amazing, I thought. This ranch is no more than a five-minute drive from a booming urban center, and yet anyone who wishes to step into a wildlife habitat or visit a historical working ranch need only close his office door, don a pair of jeans and sturdy shoes, and head for the hills. How could all this be possible? I shifted my car into first gear and quickly made my way to the Old Borges Ranch in order to keep my appointment with Ranger Ron White.

Ranger White was anxious to get to business. Weather toughened and rugged, he spoke with a friendly booming voice filled with a strong sense of urgency. “The twenty-fifth anniversary of the open space is coming up in two years and we’re already planning the celebration. There aren’t too many folks who can recall the story about how we’ve managed to maintain a wildlife preserve and ranch in the middle of Walnut Creek. That history needs to be uncovered and written down. The folks that made it happen twenty-some years ago are getting older, some have died. We must tell people about the folks who made all this a reality.”

In 1970, a grassroots movement of concerned homeowners, frustrated by the pro-growth and pro-business policies of Walnut Creek’s City Council, recognized and then used the political clout of the Walnut Creek Homeowners’ Council and other organizations to pressure City Council members into responding to their concerns. On June 6, 1974, after an emotional and sometimes volatile struggle, the citizens of Walnut Creek by a two-thirds vote passed Measures G and F and authorized a \$6,750,000 bond to purchase 1,812 acres of open space, park, and trail lands. How did a grassroots movement which began as an angry protest against a developer’s proposed plan to build hillside cluster dwellings, become a movement that saved nearly 2000 acres of grasslands, oak stands, rock outcroppings, and wildlife from falling under the metal treads of bulldozers? The answer

comes packaged with all the elements of a good novel, perhaps even with a little mystery included.

A historical event, be it large or small, is a process which gathers substance and weight over time. Understanding the 1974 “yes” vote for purchasing nearly 2000 acres and preserving them as open space requires a brief look back in time. There is evidence that humans lived as much as 10,000 years ago in California.² Walnut Creek can boast accountings of people making their home within the city limits 4000 years ago.

Archeologists have identified, in the central district, at least seventeen pre-contact Indian habitation sites.³ In 1769, Spaniards established their first settlements in what was then Alta California. Settlers along with missionaries and soldiers established missions and presidios up and down the coastal region. And in 1821, shortly after Mexico won its independence from Spain, the Mexican government began issuing its citizens large land grants in Alta California. Doña Juana Sanchez de Pacheco received 17,734 acres in 1834, and it was her grandson, Ysidro Sibrian, who constructed his home just north of what is now Ygnacio Valley Road and Walnut Boulevard.⁴ Such large grants of land were used for grazing cattle. *Vaqueros* periodically rounded-up and butchered the animals for hides and tallow.

It was not until after California’s statehood in 1850 that significant settlement took place in the Arroyo de las Nueces (Walnut Creek) area, which was known then as “The Corners.” By 1852 half a dozen farmers had bought or agreed to buy land they had settled on. Of particular interest was Mrs. Welch, a widow who after confirmation of her land claim in 1870, surveyed and divided her acreage into twenty-five-acre parcels that she subsequently sold.⁵ Widow Welch might be considered one of Walnut Creek’s first realtors.

In 1871 another entrepreneur, Homer Shuey, bought fifty-seven acres in the central part of Walnut Creek and sold dozens of lots in the center of the village.⁶ But it was the

completion of the Caldecott Tunnel through the Oakland hills in 1903 that spurred the interest of San Francisco Bay area residents in the village of Walnut Creek.

The Martinez, California, *Daily Gazette*, of February 19, 1916 featured an article claiming Walnut Creek had “taken its place well toward the head of California’s list of garden spots.” The lengthy article highlighted charming residences nestled throughout the Ygnacio Valley, which had been purchased for “only a moderate sum of money” by residents of San Francisco. The concluding paragraph accurately foretold that Walnut Creek was destined to become one of the most popular districts for country homes in central California.⁷

In 1914 Walnut Creek residents voted to incorporate the city. On October 14, 1914, the first Board of Trustees’ meeting was held. The trustees’ minutes of the meetings reveal the issues addressed and the decisions made to build the community. In general, the Board of Trustees was occupied with building a business district; not until 1926 were funds designated for a children’s playground.

As Walnut Creek grew, the need for administrative offices increased. Therefore, Board of Trustee councilmen also served simultaneously as commissioners of city departments. Councilmen held dual roles until 1956, at which time the state legislature enacted provisions to the state code that authorized cities to hire professional city managers.⁸ In 1972, the newly appointed Walnut Creek city manager, Thomas Dunn, would play a major role in the controversy over the open space, but in 1926 Walnut Creek was still a fledgling town in an agricultural region.

Quite a different story, however, was taking place in Oakland and Berkeley, twenty miles away. In 1928, the newly formed East Bay Municipal Utility District found that it no longer needed all of its land and put up approximately 10,000 acres for sale.⁹ Builders and developers recognized the value of the land and quickly submitted proposals to build homes and businesses. At the same time, concerned citizens campaigned to protect the undeveloped land. Their goal was to establish a regional park district.

In 1934, state legislators voted in favor of AB 1114 which authorized the East Bay Regional Park District and a governing board.¹⁰ However, prior to its passage, the Contra Costa County Board of Supervisors, refused to sanction AB 1114. In 1934 the Great Depression was still a reality, Contra Costa was still rural farmland, and the Contra Costa Board of Supervisors was not willing to remove land from tax rolls. But what effect would the East Bay Regional Park District have on Contra Costa County in the future?

Because Contra Costa County was predominately an agricultural county, it would hold firm against the park district until 1963. The years following World War II brought significant changes. Agriculture gradually took a back seat as business and white-collar families moved into the central part of the county. By 1963, several Contra Costa leaders supported a drive to annex large portions of the county to the East Bay Regional Park District. Despite the battle cry, "Not a single picnic table available in Contra Costa County," the campaign for annexation was strongly rejected by farmers and ranchers. But supporters continued, undaunted by the agriculturists, and in June of 1963, the annexation was voted in by a narrow margin. Even though Contra Costa County became a reluctant member of the East Bay Regional Park District in 1963, park officials would play an important role in the open space controversy seven years later.

Although the *Martinez Daily Gazette* stated on February 16, 1916, that "it is a small wonder that people who have traveled and who have tasted of life's best offerings, are seeking homes" in Walnut Creek, it would not be until the 1950s that "The Corners" would see rapid population growth.¹¹ In 1950, 12,000 residents called Walnut Creek their home. By 1970 the number of residents had grown to 75,000. The flatlands nestled between the Mt. Diablo foothills quickly disappeared, as developers and speculators bought large tracts of land from farmers, ranchers, and property owners and poured foundations for homes, churches, schools, and businesses.¹² Although Walnut Creek's senior citizen population had steadily increased, about 65 percent of the city now included young, industrious, and affluent residents. However, 50 percent of the working community commuted to the San

Francisco-Oakland area. But, they insisted that their new homes be located near green belt-ways that included parks and adequate trails for hiking and bicycle-riding. They also expressed interest in preservation of significant features of the open space, nodded approval to a tree preservation ordinance, and requested stringent hillside ordinances.¹³

Long time residents and preservation-minded newcomers to Walnut Creek took notice of the rapid expansion. On December 9, 1970, *The Midweek Sun* published "Assault On Hills Next: How gone are our valleys?" which responded to an article the *Sun* had published the week before ("The Bulldozer Is Your Friend") which had unabashedly supported builders who claimed that more subdivisions would enhance the area. Meanwhile, residents and outdoor organizations complained about developers and builders inching toward Mt. Diablo's foothills, yet it appeared to them that the Council had "other ideas" regarding the future of "The Corners." On April 9, 1970, the *Contra Costa Times* printed a summary of Council candidates' appraisals of the future. Incumbent Councilman Robert Schroder's observations summarized the sentiments of the candidates.

Although Councilman Schroder said he would continue to work to preserve the city's environment, he believed that Walnut Creek needed new revenues from high-rise apartments and offices restricted to the downtown Bay Area Rapid Transit station area.¹⁴ In a February 1997 interview, former Mayor and Councilman Schroder recalled that in the late 1960s and early 1970s, the City Council had focused its attention on building a central downtown business district. He believed that a strong sales tax base would be essential to support the future plans of the city. The Council insisted that the business district should not encroach into the surrounding residential areas. Although councilmembers recognized that Walnut Creek was ideally located in a beautiful valley, preservation of open space was not an issue frequently debated. Councilmen were concerned with bringing businesses into Walnut Creek, which the city would be proud of and profit from.¹⁵ Incumbent councilmen and the candidates seeking seats looked to private enterprise to build the city.

The *Contra Costa Times* article captured the mood of the 1970 City Council candidates: pro-growth and pro-business policies would be necessary for the future of Walnut Creek. However, on November 16, 1970, after years of pro-growth and pro-business city government, Walnut Creek residents balked. That night, dozens of local citizens attended the last in a series of four Council public hearings regarding a proposed development. Residents became shocked, then angered, when the Council approved a rezoning application submitted by Louis Scott of Pacific Homes. Scott, a successful developer who had built several housing subdivisions in Walnut Creek, proposed to build 600 cluster home units on 200 acres of slopes along Shell Ridge, located in the undeveloped foothills near the downtown district.

Residents and representatives from outdoor, school, and homeowners' organizations were given time to argue against the proposal. The well prepared residents submitted three protest petitions, one including 3,285 signatures. Spokesmen from the Sierra Club, Walnut Creek Homeowners' Council, Walnut Heights Homeowners' Association, and local schools raised concerns that included preservation of archeological features, geological disturbances, school crowding, traffic congestion, drainage problems, and "scalping" Shell Ridge (leveling the hilltops and outcroppings with bulldozers to make way for development). Roy Rocklin, a student from Y gancio Valley High School, suggested that Shell Ridge be designated an open space reserve.¹⁶ To irate residents, Scott countered that the Shell Ridge proposal was professionally designed and the property had been examined by engineers and land planners. He also reminded the audience that 60 percent of the proposal would remain undeveloped.¹⁷

Mayor Schroder thanked all the concerned citizens, organizations, and parties who had participated in the public hearings and then called upon each Councilmen for comments. Although it appeared that the members had understood the sentiments of citizens, the final vote went in favor of the project. Councilman Newell B. Case and John Grobe voted for Scott's development; Councilmen John Clemson and Benjamin Clarke voted against.

Mayor Schroder stated for the record that although he opposed any “scalping” of the ridges, cluster development was proper for hillside development. Residents booed as he cast the deciding vote in favor of approving the Shell Ridge proposal. However, the councilmembers soon realized that the residents of Walnut Creek would not be ignored.

That evening, residents joined together as neighbors speaking out against Scott’s proposed development. Within the week following the decision, the scope of the protest broadened significantly, as dismayed Walnut Heights homeowners met twice to discuss alternatives. The association members submitted, to the Walnut Creek Homeowners’ Council a referendum proposal to halt the Scott building plan. Representatives from the Homeowners’ Council then met with Mayor Schroder. The mayor assured the homeowners that no “scalping” of the ridges would take place; however, the representatives insisted that the assurances be in writing. In other words, if the “no-cutting or scalping” clause were not included in the conditions attached to Scott’s building proposal, the referendum movement would proceed.¹⁸ The council’s nineteen-point conditions attached to Scott’s proposal failed to allay the concerns of Walnut Heights residents. Residents now demanded stronger guarantees to protect the ridge from being “scalped.” Joanne Hanna, a former commissioner on the Walnut Creek Planning Commission vividly recalled during a February 1997 interview how alarmed she was by the possibility of developers “scalping” Shell Ridge. Accompanied by other Planning Commission members, Hanna went on a walking tour of the ridge with building engineers.¹⁹ While on the ridge, engineers explained to the commissioners that proposed building sites would replace geomorphic outcroppings and segments of the ridgeline. Bulldozers would flatten formations that had taken millions of years to form. Hanna left the ridge shocked. The possibility of “scalping” the hillsides was unacceptable.

By early December, Walnut Heights residents had begun a door-to-door campaign to hand out “fact sheets” and to collect enough signatures to require a referendum. Mayor Schroder and Councilmen Grobe and Case protested the referendum movement. They

believed citizens circulating “fact sheets” had misinterpreted the nineteen-point conditions attached to the Pacific Homes proposal.²⁰ But the residents were not intimidated; they continued their campaign, which now included the Committee Organized to Preserve the Environment (COPE). COPE wished to halt another proposal as well, this one submitted by Hallcraft Homes, Incorporated, which proposed to develop the open space adjacent to Rossmoor’s retirement division.²¹

During the following months, members of the City Council, developers, and the coalition of homeowners supported by environmental organizations, jockeyed to gain control of the situation. In February, the City Council voted unanimously to rezone Scott’s Shell Ridge property to its original unclassified status after he had retracted the controversial proposal. In August, Scott submitted a revised proposal that stipulated that one hundred acres were to be designated open space adjacent to the new cluster dwellings proposed.²² The Council believed that Scott’s new compromise proposal, which offered an open space dedication, would satisfy those who were calling for the referendum. But the homeowners disagreed, and they proceeded with the referendum directed at the original Scott proposal.²³ Then a mysterious incident occurred.

The *Contra Costa Times* reported that an anonymous letter had been sent to 249 residents who had circulated the call for referendum petitions. The mailing, received in a plain white envelope without a return address or accompanying letter, outlined the penalty for misrepresenting facts when circulating a petition. Audrey Bramhill, an active member of the Walnut Heights Homeowners’ Association, recalled that while some recipients considered the letter a prank, others felt threatened, and a few even dropped out of the Homeowners’ Association.²⁴ Others filed complaints with the Walnut Creek police. Some residents speculated that Mayor Schroder or members of the City Council had sent the letter. Both the mayor and the councilmen denied involvement. Lou Scott was high on the suspect list. One month later, the *Contra Costa Times* reported that a request had been

made to the Contra Costa Grand Jury to investigate the mystery of the anonymous letter.²⁵ No conclusion was ever reported. The mystery was never solved.

By October, a group of citizens submitted to Walnut Creek's City Clerk two sets of completed petitions that included 5,603 signatures, calling for a referendum on the Scott and Hallcraft proposals. Yet development of the hills was for many residents no longer the sole issue; concern now focused on the City Council itself, which, residents believed, had become out of touch with citizens and was guilty of poor long-term planning.²⁶ Through the referendum, city activists believed that they were taking back their city government, and they hoped to install a new City Council in the next elections.

The referendum movement was itself only a temporary expedient to stop hillside development; it was not the final solution to the open space controversy. It was, nonetheless, a catalyst that brought a unique group of citizens and bureaucrats together. The movement also triggered the City Council to organize the Walnut Creek Citizens' Open Space Action Committee in the spring of 1971, which included representatives from city and county staff and developers, as well as the Sierra Club and other outdoor organizations, the Chamber of Commerce, citizens' organizations, high school students, and, most significantly, the Walnut Creek Homeowners' Association and Council. The city also hired Duncan and Jones, urban and environmental planners, to draw up a final report on the Action Committee's findings.²⁷ The committee's goal was to develop a written policy and action plan to ensure that open space would be a permanent part of Walnut Creek's environment.²⁸ Suddenly the city had become, if tentatively, an advocate of open space.

For two years, Action Committee members met regularly, conducted focus groups, consulted outdoor organizations, and listened to residents throughout Walnut Creek. In the meantime, city staff members assigned to the committee reported back to their administrative offices. They proceeded to do the research and work necessary to implement the Action Committee's ideas.

It was during the course of the Action Committee work that a significant idea emerged. According to Audrey Bramhill, Chairman of the Committee, the group was determined that final recommendations, submitted to the City Council, would incorporate open space and park opportunities for every resident of Walnut Creek -- not just residents of the Walnut Heights area near Shell Ridge.²⁹ This idea shifted the goal of the committee from a neighborhood issue -- protecting open space on Shell Ridge -- to a city-wide issue -- protecting open space for all residents of Walnut Creek. While the new committee met in an office located over a local pharmacy, the residents of Walnut Creek prepared to vote “for” or “against” the referendums that would halt or approve building in the open space.

In January 1972, the referendum debate intensified. The League of Women Voters compiled a list of pros and cons to help citizens understand the referendum.³⁰ The tug-of-war continued as the opposing sides gained strength. Scott warned that if the referendum passed, he would retract even his compromise Shell Ridge proposal. He was supported by the Walnut Creek Citizens’ Committee on Yes for Open Space (which despite the name, opposed open space) and by Dean S. Leshner, publisher of the *Contra Costa Times*.³¹ Organizations that opposed the ordinances included the Contra Costa Soil Conservation District, the Sierra Club, Citizens’ Committee for No on High Density, and the Shell Ridge Preservation Committee. At last, Walnut Creek residents had the final vote. With an almost 42 percent turnout (52 percent in the Rossmoor precincts), residents rejected the Pacific Homes and Hallcraft Homes building plans. Representatives from Hallcraft Homes stated that they would not pursue the development project. However, Scott would not give up the battle.

In the meantime, preservation of the open space would come before pro-growth and pro-business plans. The Walnut Creek city councilmen had now “got religion”; they understood that citizens would not be ignored; development would have to be restrained. Still, the Council had not fully redeemed itself; one resident, jubilant after the referendum

vote, told the *Contra Costa Times* "We've got to follow up with some new city councilmen who will be responsive to the wishes of voters."³²

The next city election, in April 1971, saw -- for the first time in the city's history -- the election of a City Council member who campaigned on a planned, sustained growth platform. The new member, Margaret Kovar, was also the first woman in the history of Walnut Creek to be elected councilwoman and mayor. Attorney James Hill, who ran on a similar platform, was also elected to the council. City Councilman Sanford Skaggs had filled a vacant council seat in February, and Councilmen Robert Schroder and John Clemson maintained their council seats.

Historians have shown that many movements, ideas and inventions have been generated simultaneously by different people in different parts of the world. It should come as no surprise, then, that the idea that Walnut Creek should buy open space land originated from many people and groups. Two people, however, deserve special credit for the purchase of open space.

The day after Ordinances 1080 and 1081 were defeated, Councilman Robert Schroder, who as mayor had supported the original Scott development plan, now proposed that Walnut Creek not simply stop building on hillsides, but actually purchase open space land. On January 19, 1972, Schroder sent a letter to the Shell Ridge Preservation Committee, the Walnut Heights Homeowners' Association, and the Walnut Creek Homeowners' Council. He charged that since these organizations had been instrumental in stopping development on the hillsides, they should now move to acquire the open space through an initiative action. That way, Lou Scott and other developers would be compensated for hillside land they owned but could no longer develop, and the city of Walnut Creek would gain title to its open space. Councilman Schroder pledged to support the initiative to purchase the open space.³³ However, the three associations did not agree that the city should pay for the open space; they instead sought financial assistance from federal, state, and county agencies, as well as the East Bay Regional Park District.

Directors of the Homeowners' Association, Homeowners' Council, and Open Space Preservation Committee soon discovered, however, that there would be few financial options. Richard Trudeau, general manager of the East Bay Regional Park District, advised the associations that there could be no guarantees that the district would provide assistance. He encouraged the residents to support pending city legislation for strong hillside ordinances.³⁴

At the same time, James Hazard vice-chairman of the Walnut Creek Citizens' Open Space Action Committee, made a lasting impression on members of the Action Committee, who remember him as the young attorney who helped them articulate a new paradigm to solve the open space land problems.³⁵ Hazard (who later served as City Councilman and Mayor), worked to expand the scope of the committee to include more formidable recommendations for future city-wide parks and recreation services.³⁶ Hazard believed if Walnut Creek residents wanted to preserve the open space because it had value, then they ought to pay for it. He convinced the committee that the most beautiful open space and the open space that would be most appropriate for future generations was the least developable.

Hazard suggested that the committee develop a clear and comprehensive plan: the committee was to identify land that had the greatest visual amenities, the greatest historical significance, and the richest flora and fauna. Perhaps more importantly, Hazard suggested that the committee not simply attempt to stop all development; Hazard thought that building in areas adjacent to the open space be permitted.³⁷ In other words, Walnut Creek could buy hillside open space land and allow development of less hilly -- and less scenic -- areas below. His suggestion provided a workable solution for everyone. It could be packaged and presented to voters in a city-wide initiative proposal that was affordable.

With that idea in place, the Open Space Action Committee worked to identify land in locations that would be accessible from several points in the city for all residents. But their plan took almost two years to complete. While they worked, Scott continued a legal battle

to develop his private property on Shell Ridge. In April, he filed a \$1,200,000 claim against the city of Walnut Creek, alleging damages as a result of the referendum election.³⁸

Former Mayor and Councilwoman Margaret Kovar explained that, although Scott might have been portrayed as an antagonist throughout the Shell Ridge controversy, from her point of view, he was not. Scott was simply a developer who had submitted a building proposal that was in compliance with existing codes and ordinances of the city. The problem was not Scott, the problem was poor codes and ordinances written by pro-growth, pro-business councilmen elected to office in preceding years.³⁹ The new city council was charged with writing new city laws and providing a strong revised General Plan. But the process was slow, and the ordinances were not necessarily written with the goal of preserving the hillsides. For example, Councilman James Hill led the council in adopting a strong Hillside Planned Development District Ordinance, which was supported by General Manager Richard Trudeau of the East Bay Regional Park District. However, while the Hillside Ordinance provided strict building and zoning directives, it did not prohibit development on the hillsides.⁴⁰

While the city council worked to pass the Hillside Ordinance, City Attorney Dan Curtin had won a California Supreme Court ruling for the city of Walnut Creek. In *Associated Home Builders of the Greater East Bay, Inc., v. Walnut Creek*, the Supreme Court upheld state law and the city's ordinance and resolutions requiring park land to be dedicated by builders in subdivisions.⁴¹ But requiring developers to set aside 100 acres for open space was not enough for many people.

The Shell Ridge controversy still pricked the conscience of some city officials, residents, and journalists. Robert H. Grinstead wrote a compelling article in *Freedom News* in March of 1972 restating Councilman Schroder's and Chairman Hazard's proposal that the residents of Walnut Creek purchase the open space. He prodded readers when he wrote that, if the public could not or would not purchase open space land, then it was only fair to

allow the land to be developed by its private owners (including Scott). However, if preservation of open space was the goal, the people had considerable work to do.⁴²

A tremendous amount of work was done. The city council continued with public hearings and meetings. They were committed to listening to public opinion. They studied rezoning requests -- including the hotly debated request to rezone Indian Hills. They listened to arguments "for" and "against" the Hillside Planned Development District Ordinance. The City Council and the planning commissioners contemplated suggestions that residents, organizations, and city staff members made regarding the revision of the General Plan. At the same time, the new city manager, Tom Dunn, arrived one month after the new City Council had been elected. Former Mayor and Councilwomen Margaret Kovar recalled that Dunn worked very well with the new, young, and energetic Council.⁴³

Then, in May of 1973, Duncan and Jones, who had worked in conjunction with the Walnut Creek Citizens' Open Space Action Committee, submitted its feasibility study to the committee. It was a comprehensive report that outlined a proposed action plan to acquire open space land in and around Walnut Creek. The proposal was drawn up after extensive field investigations, aerial and ground photographic interpretation, discussions conducted with property owners and city staff, and intensive analysis of various maps and environmental impact reports.⁴⁴

Several parcels of land were designated as open space, including Shell Ridge (the largest parcel with 2,600 acres), Sugarloaf Hill, Acalanes Ridge, Lime Ridge, Hallcraft property (open space adjacent to Rossmoor), and Heather Farms (city park, swimming facility, and tennis courts). The plan also called for acquisition of smaller park sites within residential and business districts. The report included a recommendation for a \$5,000,000 (rough estimate) general bond issue to fund the purchase of open space land.⁴⁵

The acquisition of land in the designated open space would be a complicated process. Most of the open space on Shell Ridge was privately owned by eight major landowners. Duncan & Jones warned that current land prices were increasing rapidly and that the value

of land discussed in the report would skyrocket. The consultants added that Walnut Creek was at a critical point; if additional park sites were ever to be acquired, the city had to act immediately.⁴⁶

The report maintained that because the proposed open space acquisition included land both inside and outside the city limits, a special taxing area had to be set up to make sure everyone paid for the open space, not just residents of Walnut Creek.⁴⁷ The researchers also noted that if the land was left as open space, Walnut Creek would remain a desirable area to live, and property values would appreciate rapidly due to the scarcity of potential sites for development. The consultants concluded that Walnut Creek would become exclusively limited to residents with upper incomes.⁴⁸

The Duncan & Jones report also recommended that a job of “staff open space specialist” be created to carry out an active promotional campaign to protect and acquire the city’s park and open space resources.⁴⁹ The recommendation proved to be vital to the success of the open space plan in the following years. The Duncan & Jones study was completed and in mid-October 1973 the Citizens’ Action Committee presented its recommendations to the City Council and the residents of Walnut Creek.

By November 1973, after a series of special City Council meetings, public hearings were conducted so that residents could voice their opinions about the proposed recommendations. Their response was overwhelmingly positive. Residents indicated they wanted more city parks and protected open space land and offered additional recommendations to acquire the land.⁵⁰ And by the end of November, the Council unanimously voted to adopt Resolution No. 3059, a park, trails, conservation, and open space plan as part of the revised city of Walnut Creek General Plan.

In the following months, City Attorney Dan Curtin finalized details and recommended that the Council endorse the creation of County Service Area #R-8, agree to a tax rate that would fund the on-going administration of the plan, and support a five-member advisory committee -- three members appointed by the council and two by the Contra Costa Board of

Supervisors -- to oversee the plan.⁵¹ The city councilmen, following meetings with the County Board of Supervisors, submitted to the voters two ballot measures to be considered on June 4, 1974: an operating property tax levy for administration and maintenance service; and a \$6,750,000 general obligation bond issue for property acquisition and related costs. The bond gained support from residents as information about the bond issue circulated throughout Walnut Creek.⁵²

In May 1974, the *Contra Costa Times* supported the two ballot measures F and G. This was a significant change in attitude for the *Times*, which had previously supported pro-growth and pro-business measures in Walnut Creek. The editorial agreed that it was time for voters to "put the community's money where its mouth is." If the city wanted open space land, it should pay for it so property owners were not left holding the bag. The residents were faced with a difficult decision; Walnut Creek was at a turning point that would set the pattern for action in the city for a long time.⁵³

Finally, the choice was put in the hands of Walnut Creek citizens. On June 4, 1974, the residents voted overwhelmingly to pay for the acquisition and the preservation of open space lands in and around the city. Voters had now grown from city dwellers to preservationists. They could be called good stewards of the land.

After two controversial years of hearings, emotional and angry debates, mystery letters, lawsuits, campaigns for referendums, and the defeat of a pro-growth, pro-business City Council in a city election, what appeared to be the impossible became a reality. Now the city government was charged with the implementation of the open space plan.⁵⁴

City Manager Thomas Dunn played a key role in making the project work. He recalled that one of the most important decisions he ever made on behalf of Walnut Creek was to hire Robert M. Pond as the Open Space Specialist. In an interview in January 1997, Dunn recalled that Bob Pond took a very fine program, developed by the will of the Walnut Creek Citizens' Open Space Action Committee, city and county staff members, and supporting organizations, and "truly gave it life." Dunn grew emotional as he recalled how

much the community loved Pond, and how much confidence the city had in him; Pond had credibility all around.⁵⁵ He had a unique ability to bring property owners and city staff together to negotiate fair prices for the open space land acquisition.⁵⁶

Tom Dunn recalled that Pond “lined up” the future of the open space for the city and that the directives he implemented as open space specialist twenty years ago are still used today. Dunn contemplated the significance of the referendum movement in the early 1970s and applauded the willingness of the Walnut Creek residents -- 68 percent of the community -- to tax themselves in order to preserve the open space. He added that even after California state Proposition 13 had passed, Walnut Creek residents continued to appropriate funds for the expansion of the open space. Residents understood the importance of funding the open space administration to ensure the ongoing preservation of the hills.⁵⁷

As he looked out onto the open space land adjacent to his Walnut Creek home, Tom Dunn also recalled the hard work done by Audrey Bramhill, Joanne Hanna, Jim Hazard, and many others. But he reflected that in the end, it was the citizens of Walnut Creek who came together, for a brief moment, and voted to make Walnut Creek an extraordinary city. Through the innovative efforts and tireless work of Walnut Creek Citizens’ Open Space Action Committee, along with city and county staff, numerous organizations, and concerned individuals, Walnut Creek developed an open space administration and comprehensive guidelines that could be duplicated by cities throughout the United States. At the same time, new state and federal laws were created to support open space policies in cities and counties.⁵⁸ In November 1974, Californians pledged their support to the preservation of open space by voting for state Proposition 1, a bond act which provided \$250,000,000 for the purchase and development of land for recreational uses.⁵⁹ However, from their noteworthy vote, Walnut Creek residents were able to preserve the gateway to Mt. Diablo and provide a geographically unique wildlife habitat in and around Walnut Creek.

In 1970, a grassroots movement of concerned homeowners, frustrated by the pro-growth and pro-business policies of Walnut Creek's City Council, recognized and then used the political clout of the Walnut Creek Homeowners' Council and other organizations to pressure City Council members into responding to their concerns. Because of their call to action and hard work, a legacy of good citizenship and stewardship for preserving precious open space was passed on to the children of Walnut Creek.

Two of the people most responsible for that stewardship and preservation are Ron and Marnie White, who were hired by Pond in 1976 (Ron became manager of the open space and Old Borges Ranch, while Marnie became naturalist and historian). Ron and Marnie White have now served the city for more than nineteen years. During a recent interview conducted for this project, they recalled the moment they realized they would accept their positions. When Bob Pond interviewed them, he took them on a tour of their future home -- the Old Borges Ranch. As the interview concluded, Pond showed the Whites the cement brick foundation of the old Borges house. Frank and Mary Borges, the original owners of the ranch, and their children -- following Portuguese tradition -- had placed personal memorabilia in the cement bricks of the foundation when it had been laid. Even today one can see these artifacts: old farm tools, a toy gun, kitchen teaspoons, the handprint of a child, and colored glass. As the Whites reached out to touch the wall, they marvelled at the history it told, and they realized that they would become part of that history. In 1981, through the efforts of the Whites, the refurbished Borges house and ranch was placed on the National Register of Historic Places.

At a recent meeting of the Board of Directors of the Borges Ranch Interpretive Foundation, however, former Planning Commissioner Joanne Hanna recalled, that shortly before his death in 1982, Bob Pond reminded her that only "constant vigilance" by Walnut Creek residents would protect open space in years to come. The legacy that Walnut Creek residents inherited was passed on with a warning. Open space can only be protected by "constant vigilance" from the city's new generation of good stewards to the land.

Organizations such as the Walnut Creek Open Space Foundation, founded by Marnie White in 1979, the Borges Ranch Interpretive Foundation, also founded by White in 1994, and the Save Mt. Diablo Foundation, founded in 1971, have worked diligently to carry on the legacy and protect the open space. But these organizations have not worked alone. Near the hay barn at the Old Borges Ranch, Ranger White has placed a small tribute to the Eagle Scouts, Girl Scouts, church organizations, local businesses, large corporations, and private individuals who have contributed labor, time, and money to the ranch and the open space. Ranger White praised the contributions that residents -- young and old -- have made to the open space. He stated that their work represents the community's commitment to preserve and protect the wildlife habitat. Marnie White added that the residents' hard work has increased pride and public awareness for the open space. Ron and Marnie's own roles, moreover, have grown from rangers and custodians to teachers and guardians of the open space and innovators of new wildlife preservation technology. Ron and Marnie help the city continue the legacy of the open space.

Recently, I enjoyed an early morning hike with a friend on Shell Ridge. We each had the opportunity to close the office door, don a pair of jeans and hiking boots, and walk away from the demands of the day. We stopped for a brief time and sat on a large redwood bench alongside Joaquin Pond. From our vantage point we watched two red-tailed hawks circle overhead. They appeared to be conducting mock aerial combat as they dipped and glided, circled and turned around each other. A downy woodpecker noisily pecked at an acorn he had stored in the bark of a hundred-year-old oak near the pond. California quail skirted into the brush and dusted themselves with loose dirt. Abruptly, not more than a hundred feet from us, five young coyotes scampered and tumbled down the hill. They halted abruptly when they noticed us. The small dogs quickly lined up in what appeared to be a "coyote choir" formation. To our delight, the coyotes began to howl a woodland melody. On this warm late winter morning I understood the legacy left by a concerned group of citizens brought together for a moment in time.

NOTES

¹ Robert F. Heizer and Albert B. Elasser, *The Natural World of the California Indians* (Berkeley: University of California Press, 1980), 127.

² *Ibid.*, 1.

³ George Emanuels, *Walnut Creek: Arroyo de las Nueces* (Walnut Creek, CA: Diablo Books, 1984), xvi.

⁴ *Ibid.*, 5.

⁵ *Ibid.*, 4.

⁶ Although agriculture was still the primary business in "The Corners," Emanuel discovered that between 1870 and 1890 Walnut Creek began to build its strong business identity. He wrote that Mr. Homer Shuey conducted thirty-eight real-estate transactions in the central district during the 1870s. Four churches were established: Methodist, 1869; Catholic, 1875; Presbyterian, 1878; and, Episcopalian, 1887. The Rogers Hotel was opened for business in 1890. By 1897, three physicians and a pharmacist practiced medicine. A volunteer fire department was established in 1883. In 1882 G. B. Leavitt established Walnut Creek's first newspaper *The Walnut Creek Independent*; in 1894 E. R. Vanlandingham and W. C. Lewis established the *Walnut Creek Sentinel*. The Southern Pacific Company included service to Walnut Creek in 1891, after farmers donated land along right-of-way; Emanuels, *Walnut Creek*, 21.

⁷ *Daily Gazette*, "Walnut Creek - The Gateway to Picturesque Mt. Diablo Country" (Martinez, CA, February 19, 1916).

⁸ *Ibid.*, 124.

⁹ During the first years of the twentieth century, several small water companies provided water to communities planted throughout the East Bay. The companies competed for service and each purchased land to keep it out of the hands of competitors. The small companies proved ineffectual during a severe draught in 1923. The East Bay Municipal Utility District (EBMUD) was organized after citizens voted for a new water system that

would deliver water from the Mokelumne River; Mimi Stein, *A Vision Achieved: Fifty Years of East Bay Regional Park District*. (East Bay Regional Park District, CA, 1984), 3-4.

¹⁰ Robert Sibley, Executive Manager of the University of California Alumni Association was a prime catalyst in starting a grassroots movement to save the open space. He worked closely with Berkeley City Manager Hollis Thompson, and organized the East Bay Metropolitan Park Association. The organization was supported by Harold French and the Contra Costa Hills Club, the Sierra Club, the East Bay Planning Association, the Oakland Park League, the Oakland Recreation Commission, and other civic organizations. The goal was to acquire 22 miles from Lake Chabot to Wildcat Canyon and build a chain of public parks. East Bay Municipal Utility District ignored the petitions of the organizations. On January 31, 1931, 1000 East Bay residents met at the Hotel Oakland and organized a petition campaign. Many of those same residents lobbied State legislators in Sacramento. On August 7, 1933, Governor James Rolph signed AB 1114, which authorized the establishment of a regional park district and a board to govern it. It was the first law of its kind in the United States; Stein, *A Vision Achieved*, 5-12.

¹¹ *Daily Gazette*, "Walnut Creek - The Gateway to Picturesque Mt. Diablo Country," February 16, 1916.

¹² During the 1960s most of the new residential and commercial development within the Planning Area took place within the city limits. The city increased in population from 9,900 to almost 40,000, while the planning area increased from 35,000 to about 65,000 in 1970. Employment increased significantly from less than 3,000 jobs in 1960 to 10,000 in 1970. In order to house this large increase in population 5,300 new single family dwelling units, 3,800 multiple family dwelling units, and more than 3,400 Rossmoor dwelling units were built during the 1960-1970 period within the planning area;" "General Plan, City of Walnut Creek," (Walnut Creek, CA, Planning Department, 1974), 1.4 -1.5.

¹³ Ibid., 1.6-1.8.

¹⁴ Ibid., 4.

¹⁵ Robert I. Schroder, former Walnut Creek mayor and city councilman, interviewed by author, tape recording, Walnut Creek, CA, February 5, 1997.

¹⁶ Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, November 16, 1970), 2.

¹⁷ Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, November 16, 1970), 2.

¹⁸ *Contra Costa Times*, "Shell Ridge Sparks Referendum Talk by Homeowners" (Walnut Creek, CA, November 24, 1970).

¹⁹ Joanne Hanna, former commissioner of the Walnut Creek Planning Commission; member of the Board of Directors of the Borges Ranch Interpretive Association, interviewed by author, tape recording, Walnut Creek, CA, February 8, 1997.

²⁰ "Fact Sheet," copy included in Audrey Bramhill's open space files.

²¹ City councilmen unanimously carried to adopt Ordinance No. 1050, rezoning the residential area of Rossmoor P-D-1050; Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, February 1, 1971), 1.

²² Public Hearing - Rezoning Application No. 621 - Scott Development, Inc. - 200 acre parcel at southeastern end of Walnut Boulevard - from S to P-D; Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, August 16, 1971), 3.

²³ City Attorney Dan Curtin advised City Council members that an adequate number of signatures on a referendum petition had been filed against Ordinances 1080 and 1081, requiring the Council to consider them. He advised that by law the Council could either repeal or submit them to a referendum election. Resolution 2723 and 2724, set special Municipal Referendum Elections for 1080 and 1081 and were adopted by the Council. The

date for the election was January 18, 1972; Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, November 15, 1971), 3.

²⁴ *Contra Costa Times*, "Anonymous Letters Add Mystery to Shell Ridge Controversy on Zoning," February 11, 1971.

²⁵ *Contra Costa Times*, "Grand Jury Asked to Probe Shell Ridge Dispute Letters," March 18, 1971.

²⁶ *Contra Costa Times*, "Election Petition are Filed," by Larry Boggs, October 8, 1971.

²⁷ The eleven member committee was drawn up by Tom Andrusky, Walnut Creek Assistant City Manager. The committee worked through the Park and Recreation Commission. The committee's core membership included: 2 Park and Recreation commissioner, 1 City Planning commissioners, 1 Civic Arts commissioner, 1 Park and Recreation staff representative, 1 City Manager's representative, 2 Walnut Creek Homeowners' Council representatives, 1 Goals Environment Committee representative, 1 Contra Costa County Planning staff representative, and 1 Contra Costa County Homebuilders' Council representative. The working committee was expanded and included students from local high schools; representatives from The League of Women Voters, Save Shell Ridge Association, Walnut Creek Chamber of Commerce, Sierra Club, Equestrian Center Association, Walnut Creek Action for Beauty Council, and the Contra Costa Board of Realtors. Open Space consultants were hired by the city to work with the committee. They included, Duncan and Jones, Urban & Environmental Planners, Douglas Duncan, A.I.P., Douglas Caldow, and Dan Neivelt; Walnut Creek Citizens' Open Space Action Committee, "Park, Trails, Conservation, and Open Space Plan for the City of Walnut Creek," prepared in conjunction with Duncan and Jones, Urban & Environmental Planners, and The City of Walnut Creek Planning Division. (Walnut Creek, CA, September, 1973).

²⁸ *Contra Costa Times*, "Open Space Action Committee Meet Is Scheduled," April 22, 1971.

²⁹ Audrey Bramhill, former Chairwoman of the Walnut Creek Citizens' Open Space Action Committee; former member of Citizens' Advisory Committee to the County Service Area #R-8, Contra Costa; and former Chairman of the Walnut Creek Homeowners' Council, interviewed by author, tape recording, Walnut Creek, CA, February 8, 1997.

³⁰ The League of Women Voters published the pros and cons regarding the open space controversy. The league explained that Shell Ridge was privately owned and the majority of it was in Contra Costa County - not within the Walnut Creek city limits. The portion of Shell Ridge involved in the Scott Development was about 1-50th of the important portion of Shell Ridge that the Shell Ridge Preservation Committee was concerned with saving. Those in favor of Ordinance 1081 believed, if the ridge were not developed according to proposed plans, it would revert to private property and would become inaccessible to the public. Those against the ordinance believed that the area should not be developed at all, but be preserved as natural open space because of its geological interest and recreational possibilities; *Contra Costa Times*, "The League Speaks Out: Shell Ridge Pros and Cons," January 9, 1972.

³¹ Leshner admonished citizens who supported Ordinances 1080 and 1081. He wrote that the zoning issues were complex and should be managed by qualified people who were trained in that field. That was the function of the Walnut Creek Planning Department. He stated that the developments proposed by Lou Scott of Pacific Homes and Hallcraft Homes, Inc., were excellent. He concluded that the controversy that surrounded Shell Ridge and the open space was created by misinformation, "For example, a very small group of persons belonging to the Sierra Club have used the name of that club to oppose the development;" *Contra Costa Times*, "Vote Yes on City Ordinances," January 16, 1972.

³² *Contra Costa Times*, "Hallcraft Gives Up Ordinances Battle," January 20, 1972.

³³ *Contra Costa Times*, "Walnut Creek Councilman Urges City Buy Shell Ridge," January 20, 1972.

³⁴ The Hillside Planned Development Ordinance 1146 was passed on August 14, 1972; Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, August 4, 1972).

³⁵ James Hazard, Esq.; former Walnut Creek mayor and city councilman; member of the Board of Directors of the Livorna Estates Homeowners' Association; former chairman of the Walnut Creek Citizens' Open Space Action Committee; former chairman of the Citizens' Advisory Committee of the County Service Area #R-8, County of Contra Costa, interviewed by author, tape recording, Walnut Creek, CA, January 23, 1997.

³⁶ Audrey Bramhill, interview, February 8, 1997.

³⁷ James Hazard, Esq., interview, January 23, 1997.

³⁸ Scott had submitted a revised building proposal for his Shell Ridge property following the referendum election on January 18, 1972. The proposal was rejected by the City Council. Under the law, developers could not submit new plans for the same property within one year if the earlier plan had been denied - unless the new plan was substantially different. In April, City Attorney Dan Curtin reported to the Council that Scott had filed a claim against the city for \$1,200,000, alleging damages in inverse condemnation as a result of the referendum election involving his property on Shell Ridge; Walnut Creek City Council, "Council Minutes of the Meeting," (Walnut Creek, CA, April 3, 1972), 4.

³⁹ Margaret Kovar, former Walnut Creek mayor and city councilwoman; former president of the League of Women Voters (Contra Costa County); former president of the Save Mt. Diablo Foundation, interviewed by author, tape recording, Walnut Creek, CA, February 3, 1997.

⁴⁰ The Hillside Planned Development Ordinance 1146 was passed on August 14, 1972; Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, August 4, 1972).

⁴¹ The city of Walnut Creek had been in court since 1967 to uphold the validity of the Park Land Dedication Ordinance and preservation of open space in subdivisions. In 1968

the Superior Court ruled in favor of upholding the city's ordinances and resolutions. The ruling was appealed by Associated Home Builders of the Greater East Bay. The Supreme Court determined that the city's requirement did not constitute taking property without due compensation.

City Attorney Dan Curtin was awarded several accolades for his outstanding legal work. In 1971, he was named the State of California's outstanding City Attorney of the Year. Mr. Curtin was also presented with a plaque and honorary lifetime membership in the California Park and Recreation Association in recognition of his special services in the field of Parks and Recreation for the year 1972; Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, April 26, 1971 and March 6, 1972).

⁴² *Freedom News*, "'Progress Equals Development' Clique Routed in Walnut Creek," (Walnut Creek, CA, March 1972), #26.

⁴³ Margaret Kovar, interview, February 3, 1997.

⁴⁴ *Contra Costa Times*, "Open Space Cost Today: \$5 Million," by Kathy Hyams, June 1, 1973.

⁴⁵ *Ibid.*

⁴⁶ *Contra Costa Times*, "Walnut Creek Committee Ponders Shell Ridge Acquisition," by Kathy Hyams, June 5, 1973.

⁴⁷ *Contra Costa Times*, "Open Space Group Wants Lot of Land," by Kathy Hyams, August 8, 1973.

⁴⁸ *Contra Costa Times*, "Open Space: A Red-Ink Investment for Walnut Creek," by Kathy Hyams, September 20, 1973.

⁴⁹ *Contra Costa Times*, "Open Space Cost Today: \$5 Million," by Kathy Hyams, June 1, 1973.

⁵⁰ In November 1973, Hazard addressed the city council during the public hearing. He pointed out that additional land had been added to the Walnut Creek Citizens' Open Space Action Committee recommendations. The addition of land included 1,000 acres of Lime

Ridge not zoned under the Williamson Act. (The Williamson Act allows a city, at the request of a landowner to zone property for agricultural use for a period of ten years. This means the cost of the property does not skyrocket when new developments are built around it.) Mike Pingatore, representing the Walnut Creek Homeowners' Council, supported the additional open space proposal; Walnut Creek City Council, "Council Minutes of the Meeting" (Walnut Creek, CA, April 26, 1971 and November 12, 1973).

⁵¹ *County Service Area #8, County of Contra Costa, \$6,750,000 1974 Park and Open Space Bonds* (a synopsis of essential facts respecting the Bonds), prepared by Wainwright & Ramsey Inc., Consultants on Municipal Finance. (Walnut Creek, CA, November 24, 1974).

⁵² The city of Walnut Creek distributed a booklet, *Open Space and Your Space*, which detailed the bond issue proposed.

The initial total property tax rate for administration and implementation of the program is 19.9¢. The financial impact of this tax rate will be an additional \$1.45 a month in property taxes for a resident with a home assessed at \$35,000, and \$2.28 for a resident with a home assessed at \$50,000; Walnut Creek Citizens' Open Space Action Committee, *Open Space and Your Space*. (Walnut Creek, CA, 1974) 2, 12:

⁵³ *Contra Costa Times*, "Open Space Gives a Positive Choice," May 30, 1974.

⁵⁴ Robert Pond, Open Space Specialist, Letter and "Annual Report FY 75/75: Contra Costa County Service Area R-8;" includes Appendix I, a chronology of Open Space measures (F & G bond approval, policy implementation, and land acquisitions) addressed to Arthur Will, Contra Costa County Administrator. (Walnut Creek, CA, September 12, 1975).

⁵⁵ Tom Dunn, former Walnut Creek city manager, interviewed by author; tape recording, Walnut Creek, CA, January 20, 1997.

⁵⁶ In most cases, Open Space Specialist Bob Pond, city administrators, the city attorney, and retained municipal realtors negotiated open space land purchases. However in some

instances, the city acting for R-8 through its city attorney initiated condemnation action on those pieces of property which negotiations to purchase were not successful.

One of those was a 134-acre parcel of property on Sugar Loaf on which Leadership Housing Systems planned to build a minimum of 139 units residential subdivision. Leadership claimed that the City's denial of its land use development in light of passage of the bond issue amounted to taking its property in violation of the Fifth Amendment to the United States Constitution. This case was the only legal challenge on the acquisition of open space properties through the R-8 program. [In *City of Walnut Creek v. Leadership Housing Systems, Inc.*, 73 CAL. App. 3D 611 (1977), City Attorney Dan Curtain won an appellate court ruling for the City.] The appellate court in ruling for the City and its open space policies adopted a principle of law to assist other cities and counties in acquiring open space in the future. The appellate court, in denying money damages, state that "the inclusion of the property for public use in a general plan does not give rise to a cause of action. If calling a bond election and urging passage to secure funds for a public purpose constituted a taking, the agency so acting would be subject to suit whether or not the issue carried. The expression of political preference cannot be so burdened."

Later the United States Supreme Court in its famous seminal case upholding the open space regulations of Tiburon entitled *Agins v. City of Tiburon*, 447 U.S. 255 (1980), made reference to the *Leadership* case stating a city's good faith planning activities did not so burden a property owner's enjoyment of their property as to constitute a taking; former City Attorney Dan Curtain, "Court Challenge Effecting Open Space Funds" (Walnut Creek, CA, October 5, 1994).

⁵⁷ When Measures F and G were passed by the voters, they also agreed to a tax rate to operate the open space plan. However, after California state Proposition 13 significantly reduced property taxes, since no surplus money came from the state, the district's income was decreased by sixty percent in 1978; *Contra Costa Times*, "Open Space -- A Dream Come True for Walnut Creek," (Walnut Creek, CA, October 5, 1978).

In October 1988 the City Council formed the Open Space Committee. It was intended to be a short term committee whose task would be to evaluate how and on what the city should spend eight million dollars set aside in the Capital Improvement Program for purchase of additional open space land. During the 1988-1990 period, several large pieces of property were purchased; City Open Space Committee, "To All City Commissions/Open Space Foundation," March 28, 1989 and Walnut Creek Public Services Director/Open Space Committee, "Open Space Committee Recommendations on the Purchase of Additional Open Space" (May 16, 1989).

⁵⁸ California has had a long history of passing conservation and preservation legislation to protect its natural resources and open spaces. Prior to the Walnut Creek open space controversy the California Assembly held hearings on the subject. Hearing included: discussion of tax exempt bonds to assist land development (January 17, 1964); hearings to establish laws regarding acquisition of open space land through eminent domain (November 26, 1969); joint hearings with the Senate for the preparation and adoption of the open space element (January 13, 1972); and the California Legislature Joint Committee on Open Space developed the "State Open Space and Resource Conservation Program for California" (April 1972). The final report included a recommendation that the state should take a more active leading role in the preservation, conservation, and management of open space lands.

⁵⁹ *Contra Costa Times*, "Open space issues facing CC cities," January 11, 1976.

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Mr. Dan Curtin, Esq., former Walnut Creek City Attorney. Interviewed by author, January 21, 1997, tape recording.

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