

A P P E N D I X B

Walnut Creek Hillside / Open Space Protection Ordinance

Ordinance 1781

November 29, 1991

As amended by Judgment No. C 92 00587

Building Industry Association of Northern California; Sheridan Hale

v.

City of Walnut Creek

ORDINANCE NO. 1781

WALNUT CREEK HILLSIDE/OPEN SPACE PROTECTION INITIATIVE

The people of the City of Walnut Creek ORDAIN as follows:

Section 1. Short Title.

This Ordinance shall be known as the "Walnut Creek Hillside/Open Space Protection Ordinance."

Section 2. Findings.

The people of the City of Walnut Creek (hereinafter referred to as "City") find and declare the following:

a. The character and feel of the City is contingent upon the preservation of a substantial amount of open space, the protection of the scenic views of major and minor ridgelines, and the regulation of development in sensitive hillside and open space areas.

b. The City has experienced significant development pressures in recent years which threaten the amount and quality of open space resources of the City and which adversely affect the capacity of the City's public facilities, such as drainage and traffic facilities, and are otherwise altering the character of the community.

c. It is the intent of the people of the City to protect the remaining open space resources within and adjacent to the City in the interest of: (1) preserving the feel and character of the community; (2) ensuring the adequacy of recreational opportunities which are contingent on such open spaces; (3) ensuring the protection of local and regional wildlife resources which are dependent on the habitat provided by such open space; (4) ensuring that development does not occur in sensitive viewshed areas; (5) protecting the health and safety of the residents of the City by restricting development on steep or unstable slopes; and (6) ensuring that development within the City is consistent with the capacity of local and regional streets and other public facilities and does not contribute to the degradation of local or regional air quality.

d. It is the purpose of this Ordinance to revise and augment the policies of the City recorded in the General Plan and the ordinances of the City relating to the preservation of open space and protection of ridgelines. This Ordinance is consistent with and implements the following policies contained in the City's General Plan:

(i) Policy 3 of the Residential Subelement of the Community Development Element, which provides for the preservation of hillside areas, by permitting only low density development, requiring open space preservation and ensuring the protection of natural features such as heritage quality trees, knolls and ridgelines.

(ii) Policy 9 of the City Design Subelement of the Community Development Element, which provides for improving the appearance of gateways and scenic corridors.

(iii) Policy 3 of the Conservation/Open Space Subelement of the Community Resources Element, which provides for supporting retention of privately owned ranch lands adjacent to Mount Diablo State Park in an Open Space Preserve.

(iv) Policy 4 of the Conservation/Open Space Subelement of the Community Resources Element, which provides for maintaining heritage trees, ridges, hillslopes and natural habitat areas in their natural state, to the greatest degree possible.

(v) Policies 1 and 2 of the Safety Subelement of the Public Safety Element, which provide for minimizing the risk of property damage and personal injury due to seismic hazards or resulting from slope instability.

e. This Ordinance and all provisions thereof are consistent with the City's General Plan.

f. In addition to the reasons described above, this Ordinance is necessary to promote the general health, safety and welfare of the residents of the City.

Section 3. General Plan Protection of Open Space.

The City's General Plan is amended as follows:

a. The Open Space/Agriculture (OS/A) land use category described in Table 2-1 of the Residential Subelement of the Community Development Element is revised to read as follows:

<u>"Land Use</u>	<u>Description</u>
Open Space/Agricultural (OS/A) .1 du/ac 2.9 persons/unit	Designates areas currently undeveloped or used for grazing, equestrian or other agricultural pursuits. Intent is to maintain open space/agricultural character."

b. Goal 1 of the Residential Subelement of the Community Development Element is revised to read as follows: "To strengthen, preserve and enhance the unique identity of the City's neighborhoods, hillside vistas, open space resources and natural features."

c. Policy 3 of the Residential Subelement of the Community Development Element is revised to read as follows: "Preserve hillside areas (areas where the average slope is 15% or greater) and open space resources by permitting only low density development, encouraging clustering, requiring public open space dedication to the maximum extent allowed by law, and by requiring the protection of natural features such as heritage quality trees, creeks, knolls, ridgelines and rock outcroppings. Protect Open

Space/Agriculture Lands, as defined in this Ordinance, by: (1) prohibiting Development on slopes with existing grades of twenty percent (20%) or greater, or within 75 vertical feet of any Ridgeline, or within the area surrounding any Native Tree for a distance of one and one-half times the distance from the trunk to the dripline, which slopes and areas shall be left in their natural state; (2) limiting Development to detached, single-family residential housing and normal appurtenances, with a maximum density of one (1) dwelling unit per ten (10) acres; (3) requiring that any permitted Development be located and constructed in such a manner as to prevent visual impacts on scenic vistas and existing neighborhoods; and (4) prohibiting the cutting of or damage to any Native Tree. Limit Development within areas identified as High Risk Areas to a maximum density of one (1) dwelling unit per twenty (20) acres. Encourage density transfers from Open Space/Agriculture Lands to other lands, so long as no dwelling units are transferred to Open Space/Agriculture Lands or to High Risk Areas, and so long as the density of the transferee lands does not exceed the maximum density allowed under the zoning applicable to such transferee lands."

d. Goal 1 of the Housing Element is revised to read as follows: "To ensure the availability of housing types for all economic segments of the community consistent with the infrastructure and service capacities of the City and consistent with the need to preserve and protect hillside vistas, open space resources and natural features."

e. Policy 7 of the Housing Element is revised to read as follows: "Provide an adequate supply of residentially zoned land at sufficient densities to accommodate existing and future housing needs, so long as such development does not jeopardize hillside vistas, open space resources or natural features."

f. The following language is added to Policy 4 of the Conservation/Open Space Subelement of the Community Resources Element: "Preserve Open Space/Agriculture Lands, as defined in this Ordinance, by: (1) prohibiting Development on existing slopes with grades of twenty percent (20%) or greater, or within 75 vertical feet of any Ridgeline, or within the area surrounding any Native Tree for a distance of one and one-half times the distance from the trunk to the dripline, which slopes and areas shall be preserved in their natural state; (2) limiting Development to detached, single-family residential housing and normal appurtenances, with a maximum density of one (1) dwelling unit per ten (10) acres; (3) requiring that any permitted Development be located and constructed in such a manner as to prevent visual impacts on scenic vistas and existing neighborhoods; and (4) prohibiting the cutting of or damage to any Native Tree."

g. The following language is added to Policy 2 of the Safety Subelement of the Public Safety Element: "Limit Development within areas identified as High Risk Areas to a maximum density of one (1) dwelling unit per twenty (20) acres."

h. Program 2.1 of the Safety Subelement of the Public Safety Element is revised to read as follows: "Identify High Risk Areas after taking into account soil stability, history of soil slippage,

proximity to earthquake faults, slope grade, accessibility, and drainage conditions, and continue to assign low intensity uses, not exceeding a density of one (1) dwelling unit per twenty (20) acres, to such areas. Responsibility: City Council"

i. All Hillside Open Space, as defined in this Ordinance, is hereby given a General Plan designation of "Open Space/Agriculture" ("OS/A"). All General Plan amendments previously approved by the City Council, to the extent they designate said lands for higher density use, are hereby repealed and are of no further force or effect, including without limitation those portions of Resolution No. 4880 (February 22, 1989) and Resolution No. 4954 (August 8, 1989) designating said lands for higher density use.

Section 4. Zoning Protection of Open Space.

The City's zoning ordinances are amended as follows:

a. The following language is added to Section 10-2.1302 of the Walnut Creek Municipal Code: "All Open Space/Agriculture Lands, as defined in this Ordinance, are hereby zoned 'Hillside Planned Development' ('H-P-D') and shall be limited to a maximum density of one (1) dwelling unit per ten (10) acres. The City Council may authorize density transfers from Open Space/Agriculture Lands to other lands pursuant to the procedures set forth in this code or pursuant to procedures established by the City Council; provided that in no event shall dwelling units be transferred to Open Space/Agriculture Lands or High Risk Areas, and in no event shall the density of the transferee lands exceed the maximum density allowed under the zoning applicable to such transferee lands. In determining the appropriate density transfer credit applicable to any such Open Space/Agriculture Land, the City Council may authorize the transfer of a new density of no greater than one (1) dwelling unit per ten (10) acres."

b. Subsection (j) is added to Section 10-2.2220 of the Walnut Creek Municipal Code to read as follows: "(j) Open Space/Agriculture Land density. Development on any Open Space/Agriculture Lands, as defined in this Ordinance, shall: (a) be prohibited on slopes with existing grades of twenty percent (20%) or greater, or within 75 vertical feet of any Ridgeline, or within the area surrounding any Native Tree for a distance of one and one-half times the distance from the trunk to the dripline, which slopes and areas shall be left in their natural state; (b) not exceed a density of one (1) dwelling unit per ten (10) acres; (c) be limited to detached, single-family residential housing and normal appurtenances; (d) be located and constructed in such a manner as to prevent visual impacts on scenic vistas and existing neighborhoods; (e) not result in the cutting of or damage to any Native Tree; and (f) not be eligible for density bonuses, adjustments or averaging, including without limitation those provided in Subsection (g) of this Section 10-2.2220."

c. Subsection (k) is added to Section 10-2.2220 of the Walnut Creek Municipal Code to read as follows: "(k) High Risk Area density. Development within areas identified as High Risk Areas shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. If any High Risk Area is located wholly or

partly within Open Space/Agriculture Lands, said area shall be subject to the provisions of Subsection (j) of this Section 10-2.2220, except that the maximum density shall be as specified in this Subsection (k)."

d. The provisions of this Section 4 shall apply to all Open Space/Agriculture Lands, as defined in this Ordinance, and shall control over any conflicting provisions in existing City ordinances. All zonings, rezonings and prezonings previously approved by the City Council, to the extent they would allow higher density use of the foregoing lands, are hereby repealed and are of no further force or effect.

Section 5. Protection of Rossmoor Open Space.

The open space areas in Rossmoor, as identified in Exhibit "A" to Ordinance No. 1319 dated July 12, 1977, shall not be subject to this Ordinance; provided, however, that said open space areas shall not be used for any purpose other than those specified in Condition No. 3 of said ordinance, as enacted on July 12, 1977, unless first approved by majority vote of the eligible voters of Rossmoor, and Ordinance No. 1319 and the development permit issued pursuant thereto are hereby amended accordingly.

Section 6. Annexation of Adjacent Open Space.

To the extent any Open Space/Agriculture Lands are located outside the city limits of the City, the City Council shall immediately commence proceedings to annex said lands to the City and shall utilize its best efforts to cause such proceedings to be completed in a prompt, successful manner.

Section 7. Definitions

The following definitions shall apply to terms used in this Ordinance:

(1) "Development" means the construction, installation or placement of any dwelling, structure, paving or other improvement, or any portion thereof, regardless of size, type or material, or the performance of grading.

(2) "High Risk Area" means an area subject to landslides, mudslides, subsidence, drainage problems or other soil instability, which area poses a risk to person or property.

(3) "Hillside Open Space" means all or any part of those lands designated as Assessor's Parcels Nos. 134-091-001-5, 134-091-002-3, 134-091-005-6, 135-021-001-7, 172-080-007-5, 172-150-012-0, 187-260-005-9 and 187-260-006-7 on plats on file in the office of the Contra Costa County Assessor. Said lands, which contain portions of Lime Ridge, Shell Ridge or other prominent ridges located within the City Planning Area, are commonly called the Newhall North, Newhall South, Seven Hills Ranch and Post Properties.

(4) "Open Space/Agriculture Lands" mean those lands designated "Open Space/Agriculture" ("OS/A") in the Walnut Creek General Plan

as such Plan existed on August 8, 1989 (see Figure 2-1 "Land Use Map") or designated as such by this Ordinance.

(5) "Native Tree" means any tree native to Contra Costa County with a trunk diameter of at least eight inches.

(6) "Ridgeline" means a ground line running along all crests of a major ridge, minor ridge or hill, which line runs the same direction as the long axis of the ridge or hill.

Section 8. Vested Rights.

To the extent prohibited by state law, the provisions of this Ordinance shall not apply to any building permit obtained as of the date of the election, if substantial construction expenses have been incurred in good faith reliance on such permit.

Section 9. No Unconstitutional Taking of Private Property.

Nothing in this Ordinance shall operate to deprive any landowner of substantially all the market value of the landowner's property or otherwise constitute an unconstitutional taking without compensation. If application of any of the provisions of this Ordinance would create an unconstitutional taking, and if the City Council so finds on the basis of clear and convincing evidence, the City Council may allow additional land uses or otherwise adjust permit requirements, but only to the extent necessary to avoid such unconstitutional taking. Any such additional land uses or other adjustments shall be specifically tailored to carry out the goals and provisions of this Ordinance to the maximum extent feasible.

Section 10. Implementation; Interim Development Controls; Interpretation.

a. Promptly after the enactment of this Ordinance, the City Council shall adopt such revisions to the General Plan and zoning ordinances as may be necessary to fully implement this Ordinance or to ensure the internal consistency of the General Plan or the consistency of this Ordinance with the General Plan; provided that the City Council shall not amend or modify any requirement of this Ordinance without approval by the electorate at a general election.

b. Until the full implementation of this Ordinance as contemplated by paragraph a of this Section 10, the City Council, or any other reviewing authority, shall not issue any permit or otherwise authorize or approve any use or development, including but not limited to divisions of land, with a density greater than one (1) dwelling unit per ten (10) acres on any Open Space/Agriculture Lands, as defined in this Ordinance. Nothing in this paragraph is intended to authorize issuance of any permit or approval of any development except in full compliance with Section 4 above.

Section 11. Severability.

If any section, subsection, paragraph, subparagraph, clause or phrase of this Ordinance, or any amendment or revision of this Ordinance is, for any reason, held to be invalid or

unconstitutional, the remaining sections, subsections, paragraphs, subparagraphs, clauses and phrases shall not be affected, but shall remain in full force and effect.

PASSED AND ADOPTED by a vote of the people of the City of Walnut Creek at the regular municipal election held in the City of Walnut Creek on the 5th day of November, 1991. This ordinance shall become effective November 29, 1991.


Mayor of the City of Walnut Creek

Attest:


City Clerk of the City of Walnut Creek

I HEREBY CERTIFY that the foregoing ordinance was duly and regularly passed and adopted by a vote of the people of the City of Walnut Creek, County of Contra Costa, State of California, at a regular municipal election held in said City on the 5th day of November, 1991.


City Clerk of the City of Walnut Creek

FILED

MAY 25 A 11:44

CLERK OF SUPERIOR COURT
CONTRA COSTA COUNTY
BY [Signature] CLERK

1 THOMAS HAAS, CITY ATTORNEY
2 PAUL VALLE-RIEJSTRA, ASSISTANT CITY ATTORNEY
3 City of Walnut Creek
4 P.O. Box 8039, 1666 North Main Street
5 Walnut Creek, California 94596
6 Telephone: (510) 943-5813

7 WILLIAM L. OWEN, Esq. (State Bar No. 038143)
8 KIRK B. TROST, Esq. (State Bar No. 127097)
9 Hyde, Miller & Owen
10 A Professional Corporation
11 428 J Street, Suite 400
12 Sacramento, CA 95814
13 Telephone: (916) 447-7933

14 Attorneys for Respondents and Defendants City
15 of Walnut Creek and Walnut Creek City Council

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF CONTRA COSTA

18 BUILDING INDUSTRY ASSOCIATION OF
19 NORTHERN CALIFORNIA; SHERIDAN HALE,

) No. C 92 00587

20 Petitioners and Plaintiffs,

) JUDGMENT

21 v.

22 CITY OF WALNUT CREEK, a political
23 subdivision of the State of
24 California, the WALNUT CREEK CITY
25 COUNCIL, and DOES 1 through 20,

26 Respondents and Defendants.
27
28

29 The Court has previously granted Petitioners' motion for summary adjudication of the
30 second, fourth, fifth, fourteenth, and fifteenth causes of action contained in their Second
31 Amended and Supplemental Verified Petition for Writ of Mandate and Complaint for Injunctive
32 Declaratory Relief. Petitioners' remaining causes of action have been dismissed without
33 prejudice. Accordingly, the Court hereby renders judgment in favor of Petitioners as follows:

34 ///

35 ///

MAY 25 1995

ENTERED ON MICROFILM

2

1 Defendants and Respondents, City of Walnut Creek and Walnut Creek City Council shall
 2 not enforce any provision of sections 3, 4, 6, and 10 of Measure P against the property owned
 3 by Petitioner Sheridan Hale commonly referred to as the Seven Hills Ranch.

4
 5 DATED: MAY 23 1995, 1995

Ellen Jones
 JUDGE OF THE SUPERIOR COURT

6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

e92-00587

SETTLEMENT AGREEMENT

This settlement agreement is entered into by Sheridan Hale ("Hale") and the City of Walnut Creek ("City"), with regard to the following.

Hale is a resident of an unincorporated area of Contra Costa County. He owns and lives on property known as Seven Hills Ranch which is physically located outside of the City.

In 1992, the electorate of the City enacted an initiative measure known as Measure P. Measure P purported to amend the City's general plan and zoning ordinances to (1) expand the general plan's definition of "Open Space/Agricultural Land" ("OS/A") to include areas not then developed, as well as those used for grazing or agricultural purposes; (2) limit development of such lands to one single family dwelling unit per ten acres; and (3) impose other development restrictions on certain of such acres. Measure P also purported to affect the City's annexation policy by directing the City Council of the City to immediately commence proceedings to annex all OS/A lands outside the City's limits to the City.

Measure P also singled out eight specific parcels for treatment as "Hillside Open Space" and designated those parcels as OS/A in the City's general plan, including Hale's Seven Hills Ranch.

In February 1993, Hale filed suit against the City, seeking to invalidate Measure P insofar as it purported to affect or regulate the use of his Seven Hills Ranch, and insofar as it purported to direct the City to annex his property to the

City. In that litigation, the Contra Costa County Superior Court concluded that Measure P was an invalid exercise of the initiative power insofar as it purported to affect or regulate the use of Hale's Seven Hills Ranch, and insofar as it purported to direct the City to annex Seven Hills Ranch to the City.

In April 2006, the City enacted a new general plan. That new general plan included Measure P as an appendix, without any indication that it had been held invalid insofar as it purported to affect Hale's Seven Hills Ranch. The new general plan also included a "General Plan Land Use Map City of Walnut Creek 2025" that designates Hale's Seven Hills Ranch parcels as Open Space/Agriculture (OS/A), as per the designation that had been included in Measure P.

As a result, Hale thereafter filed litigation challenging the validity of the City's new general plan, insofar as it either purported to enforce Measure P or suggested that the City had the authority to enforce Measure P against Seven Hills Ranch. *Sheridan Hale v. City of Walnut Creek*, Contra Costa County Superior Court No. N06-0990.

Hale and the City wish to settle that litigation. As a result, Hale and the City agree to the following:

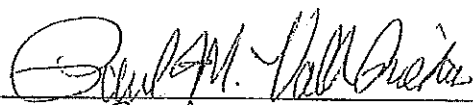
1. The City will include the Court's prior ruling in the Measure P litigation in the appendix of the City's new general plan as that plan is reprinted, so the inapplicability of Measure P to Hale's Seven Hills Ranch will be apparent from the general plan;

2. The City will include the general plan designation that was in place prior to the adoption of Measure P on Hale's Seven Hills Ranch in the "General Plan Land Use Map City of Walnut Creek 2025" in its new general plan, and will have the map currently included in the new general plan reprinted to show such designations. The reprinted map will be included in all future copies of that plan;

3. The City Attorney will sign the letter attached hereto as Exhibit A on behalf of the City and transmit it to Hale's legal counsel as a statement of the City's position with regard to the general plan and zoning designations applicable to Hale's Seven Hills Ranch; and

4. Following the completion of the actions of the City specified above, Hale will dismiss his litigation against the City with prejudice, with each party to bear his and its own costs and attorney's fees.

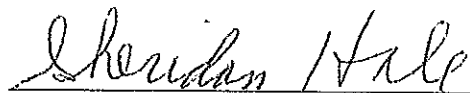
Dated:



City Attorney
for The City of Walnut Creek

Dated:

OCT 16 2006



Sheridan Hale

EXHIBIT A

Richard C. Jacobs, Esq.
Howard Rice Nemerovski
Canady Falk & Rabkin
3 Embarcadero Center, 7th Floor
San Francisco, CA 94111

Re: Sheridan Hale and Seven Hills Ranch

Dear Mr. Jacobs:

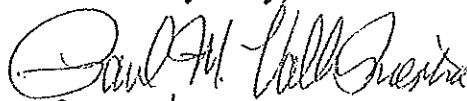
I write on behalf of the City of Walnut Creek to confirm the general plan and zoning status of the Seven Hills Ranch owned by Sheridan Hale.

In 1992, the voters of the City of Walnut Creek enacted Measure P which attempted to impose a general plan designation and rezone Mr. Hale's property as "OS-A." It also purported to direct the City to annex the property to the City. In subsequent litigation brought by Mr. Hale, the Contra Costa Superior Court invalidated Measure P to the extent it attempted to affect his property. Since that ruling, the City has not commenced proceedings to annex the property or to change the general plan or zoning designations on the property.

As a result, only Contra Costa County, and not the City of Walnut Creek, has the current authority to determine the general plan and zoning classifications for the property; the County's general plan and zoning thus now controls its possible development and use. In addition, if the City were at some point in the future to seek annexation of the property to the City, it would then have to determine what type of City general plan designation and zoning was appropriate, and the general plan and zoning designation included in Measure P would not automatically apply to or govern development and use of the property.

I trust this clarifies the current general plan and zoning classifications for Mr. Hale's property.

Yours very truly,


City Attorney