

**MEASURE SUBMITTED TO THE VOTERS**

**MUNICIPAL**

**TOWN OF TIBURON  
INITIATIVE DEFINING PRIME OPEN SPACE  
MEASURE I**

Shall the Town adopt the General Plan amendment defining "prime open space" and prohibiting development of such land unless necessary to avoid environmental impacts, to avoid an unconstitutional taking, or to allow affordable housing?

**TOWN OF TIBURON  
AN INITIATIVE DEFINING "PRIME OPEN SPACE" AS LAND  
MEETING SPECIFIED CRITERIA AND PROHIBITING  
DEVELOPMENT OF SUCH LAND UNLESS NECESSARY  
TO AVOID ENVIRONMENTAL IMPACTS, TO AVOID AN  
UNCONSTITUTIONAL TAKING, OR TO ALLOW  
AFFORDABLE HOUSING  
FULL TEXT OF INITIATIVE  
MEASURE I**

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE  
VOTERS**

The Town Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

**Title:** AN INITIATIVE DEFINING "PRIME OPEN SPACE" AS LAND MEETING SPECIFIED CRITERIA AND PROHIBITING DEVELOPMENT OF SUCH LAND UNLESS NECESSARY TO AVOID ENVIRONMENTAL IMPACTS, TO AVOID AN UNCONSTITUTIONAL TAKING, OR TO ALLOW AFFORDABLE HOUSING

**Summary:** The Tiburon General Plan Open Space & Conservation Element encourages the protection of prime open space to the maximum extent feasible. The proposed initiative would amend the Town's General Plan to more precisely define "prime open space" and prohibit any development of prime open space land, subject to limited exceptions.

The proposed initiative defines as prime open space any portion of any parcel depicted in the current General Plan as "potential open space" (Diagram OSC-3) that meets any of the following criteria:

1. within 150 horizontal feet, or 50 vertical feet, of either side of Tiburon Ridge; or
2. within 100 horizontal feet of either side of any ridge, other than Tiburon Ridge, that is identified on the Town's Significant Ridgelines Map; or
3. within 30 vertical feet of any ridge, other than Tiburon Ridge, identified on the Town's Significant Ridgelines Map (limited to 150 horizontal feet or less in either direction); or
4. with slopes exceeding 40%; or
5. within the 100-year flood zone; or
6. containing jurisdictional wetlands or other jurisdictional waters; or
7. within 100 feet from (a) the top of the bank of any permanent water body; (b) the top of the bank of any perennial or intermittent natural watercourse; or (c) the edge of any ephemeral watercourse or drainage way meeting specified criteria; or
8. with significant habitat for special-status species, as defined by the initiative; or
9. with sensitive plant species, as defined by the initiative; or

10. with significant woodland stands, as defined by the initiative.

This initiative would prohibit the Town from approving any development of prime open space lands except after a vote of the people or where the Council determines that an exception is necessary to:

1. Avoid adverse environmental impacts (requires minimum of four-fifths Council vote);
2. Avoid an unconstitutional taking;
3. Comply with state laws governing the provision of affordable housing; or
4. Provide access to the non-prime open space portions of a parcel.

With respect to the second exception, the Council would consider a variety of specified economic factors; could allow only as much development as necessary to avoid an unconstitutional taking; and would try to locate such development on the portion of the property with the lowest open space value.

The initiative would not apply to (1) any application limited to a single residence on a legal parcel that was previously both within the Town and recorded as a separate parcel; or (2) any development project or activity that has obtained vested rights as of the effective date of the initiative.

Any changes to the requirements and policies of the initiative would require a vote of the people until December 31, 2022. Thereafter, the Town Council would be able to adopt amendments found to be in the public interest.

**Notice of Intent to Circulate Petition**

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the Town of Tiburon for the purpose of protecting the Town's remaining prime open space from unnecessary development. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

**WHAT IT DOES:** The Tiburon Open Space Protection Initiative protects the Town's most important open space lands from the adverse environmental and traffic impacts associated with development. It does so by requiring the Town to identify the most important (or "prime") open space lands before they are developed and by requiring that, to the maximum extent legally permissible, development not be permitted on those portions of any particular property that contain prime open space. By preserving the Town's unique ridgelines, hillsides, and other prime open spaces, the Initiative helps to maintain the Town's essential character and quality of life.

**THREAT TO PRIME OPEN SPACE:** Rising land values and pressure from private parties to develop the remaining parcels of open space pose an immediate threat to the Town's ability to preserve prime open space. Increased development on lands that include prime open space also poses an immediate and long-term threat to the Town's public health, safety, and welfare by causing increased traffic congestion, air and water pollution, degradation of biological resources and scenic views, and depletion of water resources. Accordingly, additional protection for prime open space is urgently needed.

**ALLOWS THE TOWN TO MEET AFFORDABLE HOUSING REQUIREMENTS AND PROTECT RESIDENTS' QUALITY OF LIFE:** The Initiative allows the Town Council to permit development on prime open space if the Council finds that doing so is necessary to meet state affordable housing requirements, to avoid an unconstitutional taking of property, or to avoid other adverse environmental impacts.

**WHO'S BEHIND IT?** The Initiative is sponsored by the Last Chance Committee to Save Old Saint Hilary's Open Space.

/s/ Jerry A. Riessen, Last Chance Committee Co-Chairperson  
616 Ridge Road, Tiburon, CA 94920

/s/ Joanna M. Kemper, Last Chance Committee Co-Chairperson  
1911 Straits View Drive, Tiburon, CA 94920

**To the Honorable Clerk of the Town of Tiburon:** We, the undersigned, registered and qualified voters of the Town of Tiburon, hereby propose an initiative measure to amend the Town of Tiburon General Plan. We petition you to submit this measure to the Town Council for the Town of Tiburon for adoption without change, or for submission of the measure to the voters of the Town of Tiburon at the earliest regular or special election for which it qualifies. The measure provides as follows:

**MEASURE I CONTINUED ON NEXT PAGE**



## TIBURON OPEN SPACE PROTECTION INITIATIVE

The people of the Town of Tiburon hereby ordain as follows:

### SECTION 1: PURPOSE AND FINDINGS

**A. Purpose:** The purpose of this Tiburon Open Space Protection Initiative ("Initiative") is to protect the Town of Tiburon's remaining prime open space lands from the adverse visual, biologic, geologic, hydrologic, traffic, and other environmental impacts associated with development of such lands and to help preserve the Town's essential character and quality of life. This Initiative amends the Town's General Plan, as adopted on September 28, 1989, and amended through April 30, 2002 ("General Plan"), to restrict development on prime open space lands.

**B. Tiburon's Unique Character:** Tiburon's uniqueness results in large part from the attractiveness and diversity of its landscape. From the scenic beauty of its ridgelines and hillsides, to its varied shorelines, wetlands, and open waters, these resources provide vital contributions to the Town's identity, quality of life, and economy, as well as to the continued existence of sensitive plant and animal species within the Town and its planning area.

**C. Protection of Prime Open Space:** Of particular importance to the Town's character are its "prime" open space lands. According to the General Plan, prime open space lands are areas that merit permanent protection due to their unique open space attributes, sensitive resources, and other specified criteria. The current General Plan provides that developers wishing to develop areas that include such lands must "protect[ ] prime open space areas to the maximum extent feasible." General Plan, Open Space & Conservation Element at page 15. The General Plan also contains a diagram showing all "potential" open space within the Town's planning area. Open Space & Conservation Element Diagram OSC-3 (attached to this Initiative as Exhibit 1). To date, however, the Town has not established a sufficient mechanism either for identifying which "potential" open space lands qualify as prime open space or for ensuring that prime open space is protected to the maximum extent feasible.

**D. Threats to Prime Open Space:** Rising land values and pressure from private parties to develop the remaining parcels of open space pose an immediate threat to the Town's ability to preserve prime open space. Increased development on lands that include prime open space also poses an immediate and long-term threat to the Town's public health, safety, and welfare by causing increased traffic congestion, air and water pollution, degradation of biological resources and scenic views, and depletion of water resources. Accordingly, additional protection for prime open space is urgently needed.

**E. Development Approval Process:** The Town's development approval process can involve numerous separate decisions by Town officials under a variety of laws and regulations, such as a general plan amendment that specifies the amount of development allowed in a particular area, or a subdivision of land that generally determines the number of homes that will ultimately be built on what was once a single parcel. Depending upon the circumstances, each of these decisions may have important implications for the Town's future ability to achieve the goals set forth in its General Plan. Accordingly, consistent with the dictates of state and federal law, it is both prudent and necessary for the Town to evaluate the potential impacts of the widest possible range of land use decisions on the Town's open space protection goals.

**F. Providing Notice to Property Owners:** This Initiative promotes good land use planning by ensuring that property owners are on notice early in the development process that the parcel that they seek to develop includes lands that are potentially subject to designation as prime open space. By requiring property owners, early in the development process, to provide parcel-specific information regarding the criteria set forth in the Initiative for identifying prime open space, the Initiative promotes a land use design that avoids those portions of the project site least appropriate for development.

**G. Accommodating Housing Needs:** Adequate housing is essential to a thriving community. The Tiburon General Plan promotes necessary housing development in the Town through measures such as encouraging the creation of affordable housing units, seeking to diversify housing opportunities in the Town, and granting density bonuses in appropriate circumstances. This Initiative allows the Town to continue to meet the housing needs of all economic segments of the population, while at the same time promoting the Town's open space preservation goals.

**H. Effect of Initiative:** This Initiative would amend the General Plan to place an Open Space Overlay on all lands presently shown as "potential open space" in the General Plan's Open Space and Conservation Element. Before the Town could approve any development on lands within the Overlay, it would first need to identify which lands constitute prime open space pursuant to criteria specified in the Initiative. The Town could not permit any development on prime open space lands unless necessary to avoid an unconstitutional taking, comply with State housing laws, or protect the public health, safety, or the environment. The Initiative also repeals portions of the Town's existing General Plan regarding prime open space. Single family homes proposed for existing legal parcels within the Town would be exempt from the Initiative.

**I. Exhibits:** Copies of the following two diagrams previously adopted by the Town are attached to this Initiative for reference purposes: (1) General Plan Open Space & Conservation Element Diagram OSC-3, attached hereto as Exhibit 1; and (2) a reduced copy of a map entitled "Significant Ridgelines in Potentially Developable Areas" (dated March 1992), attached hereto as Exhibit 2. These exhibits are provided for illustrative purposes only and are not readopted or amended by this Initiative.

### SECTION 2: GENERAL PLAN AMENDMENTS

This Section of the Initiative enacts amendments to the Town of Tiburon General Plan adopted on September 28, 1989, as that General Plan has been modified by any amendments adopted up to and including April 30, 2002 ("General Plan"). Text to be inserted in the General Plan is indicated in **bold** type.

The General Plan is hereby amended by adding the following new policies immediately preceding Policy OSC-2 on page 3 of the General Plan Open Space & Conservation Element. General Plan Open Space & Conservation Element Diagram OSC-3, and the map entitled "Significant Ridgelines in Potentially Developable Areas," referenced below, are attached to this Initiative as Exhibits.

**OSC-1.1: Open Space Overlay.** The Tiburon Open Space Protection Initiative creates an Open Space Overlay for the Town of Tiburon. All lands that, as of April 30, 2002, are designated as "potential open space" on Open Space & Conservation Element Diagram OSC-3, shall be included within the Open Space Overlay. The Town shall not permit development on parcels that include lands within the Open Space Overlay except pursuant to the Tiburon Open Space Protection Initiative ("Initiative").

**OSC-1.2: Identification and Preservation of Prime Open Space.** Prior to approving or allowing any development of any parcel that includes lands within the Open Space Overlay, the Town shall identify all Prime Open Space on such parcel(s) pursuant to Policy OSC-1.3. Except pursuant to a vote of the people or as otherwise authorized by the Initiative, the Town shall not approve any development that would allow the erection or placement of any structure on lands identified as Prime Open Space.

**OSC-1.3: Criteria for Identifying Prime Open Space.**

(A) All portions of any parcel within the Open Space Overlay meeting any of the following criteria shall constitute Prime Open Space:

1) within 150 horizontal feet of either side of Tiburon Ridge; or

MEASURE I CONTINUED ON NEXT PAGE



- (2) within 50 vertical feet of Tiburon Ridge measured from the highest point of the proposed roofline of a structure; or
- (3) within 100 horizontal feet of either side of any ridge, other than Tiburon Ridge, that is identified on the Town's Significant Ridgelines Map; or
- (4) within 30 vertical feet of any ridge, other than Tiburon Ridge, that is identified on the Town's Significant Ridgelines Map, as measured from the highest point of the proposed roofline of a structure, provided, however, that the lands deemed to constitute Prime Open Space pursuant to this criterion shall not extend more than 150 horizontal feet in either direction from the center of any such ridge; or
- (5) with slopes exceeding 40%; or
- (6) within the 100-year flood zone; or
- (7) containing jurisdictional wetlands or other jurisdictional waters; or
- (8) within 100 feet from (a) the top of the bank of any permanent water body; (b) the top of the bank of any perennial or intermittent natural watercourse shown as a solid or dashed blue line on the most recent United States Geological Survey quad sheet available at the time of the permit application; or (c) the edge of any ephemeral watercourse or drainage way that supports riparian vegetation for a length of 100 contiguous feet or more; or
- (9) with significant habitat for special-status species; or
- (10) with sensitive plant species; or
- (11) with significant woodland stands.

(B) After the effective date of the Initiative, no development application for any parcel(s) lying partly or wholly within the Open Space Overlay shall be accepted as complete unless the application contains the information necessary for the Town to identify which lands meet any of criteria 1 through 8 above. For criteria 9 through 11, the applicant shall provide such information with its application where feasible. The Town shall corroborate and consider the information provided by the applicant, as well as any other information the Town deems appropriate, in identifying the Prime Open Space on the parcel(s). For any pending development application that the Town has accepted as complete prior to the effective date of the Initiative, the Town shall obtain, consistent with applicable state and federal mandates, any additional information necessary to identify Prime Open Space as part of the Town's process for considering approval of the development application. Pursuant to Policy OSC-1.2, the Town shall make a final determination as to which lands constitute Prime Open Space prior to, or as part of, the Town's taking final action on any development application.

(C) Where the Town Council ("Council") determines that applying the Initiative to a proposed development would result in adverse environmental impact(s) that could be avoided if the Initiative were not applied, the Council may grant an Environmental Protection Exception to permit development to be located on Prime Open Space within the affected parcel(s). In order to grant an Environmental Protection Exception, the Council must first make all of the following findings by at least a four-fifths vote: (i) application of the Initiative would otherwise result in adverse environmental impact(s) specifically identified by the Town; (ii) there is no other feasible means of avoiding the identified adverse environmental impact(s); and (iii) the total density of development permitted on the affected parcel(s) is no greater than would be permitted in the absence of an Environmental Protection Exception.

(D) Nothing in this Initiative shall preclude the Town from exercising its police powers to protect public health and safety. If the Town determines that, due to public health or safety concerns, the only potentially available location for development on a parcel is on Prime Open Space, then the Town may grant an Economic Exception where warranted under Policy OSC-1.4.

(E) Nothing in this Initiative shall preclude the Town from determining that lands which meet criteria other than those set forth in this Policy OSC-1.3 also constitute Prime Open Space.

#### OSC-1.4. Economic Exception Procedure.

(A) Where a project applicant's entire contiguous landholdings constitute Prime Open Space, or where an applicant believes that applying the Initiative to a particular parcel or parcels would constitute an unconstitutional taking under the United States or California Constitutions, the applicant may apply for an Economic Exception from the Initiative. The applicant may request an Economic Exception either as part of its development application or as part of any appeal authorized under the Town's General Plan, zoning ordinance, or other land use regulations. The applicant shall submit to the Town the information necessary for the Town to determine whether applying the Initiative to the affected parcel(s) would constitute an unconstitutional taking. Such information shall include, but not be limited to, the following:

- (1) the date the applicant purchased or otherwise acquired the property;
- (2) the purchase price that the applicant paid for the property or other information establishing the property's value at the time that the applicant acquired its interest in the property;
- (3) the fair market value of the property at the time of acquisition;
- (4) the general plan, zoning, and other land use requirements applicable to the property at the time of acquisition, if known;
- (5) any other restrictions on the use of the property;
- (6) the present and historic uses of the property;
- (7) any annual costs associated with owning the property;
- (8) any rents or other revenues derived from the property, including the proceeds from any sale or transfer of a portion of the property since the property was acquired; and
- (9) any change(s) in the size (i.e., total area) of the property since it was acquired, including the date(s) on which any such change(s) occurred.

(B) For purposes of the information required to be submitted under this Policy, the term "property" shall refer to all geographically contiguous parcels in which the applicant holds or held any ownership interest.

(C) Where the Town determines that an Economic Exception is warranted under this Policy, the Town shall first determine which portion of the parcel(s) has the highest open space value, giving paramount consideration to (1) lands within 150 horizontal feet of either side of Tiburon Ridge; (2) lands within 50 vertical feet of Tiburon Ridge, as measured from the highest point of the proposed roofline of a structure; (3) lands within 100 horizontal feet of either side of any other ridges identified on the Significant Ridgelines Map; and (4) lands that would result in preservation of the largest possible contiguous areas of open space. The Town shall then grant an exception from the requirements of the Initiative to the extent necessary to avoid an unconstitutional taking. Unless necessary to avoid an unconstitutional taking, no lands possessing the highest open space value shall be developed under an Economic Exception.

OSC-1.5. Access Exception. The Town may grant an Access Exception to provide access to non-Prime Open Space portions of a parcel where the Town determines that the only feasible access to the parcel is over Prime Open Space. Any access authorized pursuant to an Access Exception under this policy shall avoid Prime Open Space to the maximum extent feasible.



**OSC-1.6. Affordable Housing Exception.** The Town may grant an Affordable Housing Exception from the requirements of the Initiative where it determines that doing so is necessary to comply with State law governing the provision of affordable housing. The Town may do so only if it first makes each of the following findings based on substantial evidence in the record: (i) a specific provision of State law requires the Town to accommodate the proposed housing; and (ii) no feasible alternative exists that would allow for the required number of housing units to be built on portions of the proposed project site that do not constitute Prime Open Space. Where the Town determines that an Affordable Housing Exception is necessary pursuant to this Policy, it shall use the procedures set forth in paragraph (C) of Policy OSC-1.4 to identify the portion of the parcel(s) that have the highest open space value. To the maximum extent feasible, the Town shall avoid locating any development on lands having the highest open space value.

**OSC-1.7. Permanent Preservation of Prime Open Space.** To the extent permitted by law, as a condition of approving any development application for any parcel that includes lands within the Open Space Overlay, the Town shall require the applicant to permanently preserve all Prime Open Space identified on its property by easement, deed restriction, conveyance to an appropriate government agency or land trust, or other similar mechanism approved by the Town. No provision of the Initiative shall be interpreted either to (1) require public access to any land preserved under this Policy; or (2) prohibit public access where required or allowed under some other provision of law or by the consent of the landowner.

**OSC-1.8 Definitions.** For the purpose of the Tiburon Open Space Protection Initiative, the following definitions shall apply:

"Applicant" shall mean the owner of a property on which a proposed development is located, and any agent of the owner, as designated by the owner in writing. Applicant shall also include the Town of Tiburon where the Town is sponsoring a proposed development.

"Development" shall include any General Plan update or amendment, rezoning, zoning ordinance update or amendment, specific plan, specific plan amendment, precise development plan, tentative subdivision map, conditional use permit, or development agreement.

"Development application" shall include any proposal or application for development submitted to the Town.

"Initiative" shall mean the Tiburon Open Space Protection Initiative.

"Protected tree" shall include any tree which has a trunk with a circumference exceeding sixty (60) inches, measured twenty-four (24) inches above the ground level; any Oak tree, including coast live oak, blue oak, California black oak, interior live oak, canyon live oak, Engelmann oak, or valley oak tree; and any tree of significance so designated by resolution of the Town Council.

"Sensitive plant species" shall mean any plant species designated as rare, threatened, or endangered under state or federal law; any plant species listed on California Native Plant Society (CNPS) list 1B or 2; or any vegetation series or association identified by the California Department of Fish and Game's California Natural Diversity Database as "rare and worthy of consideration."

"Significant habitat" shall mean any habitat that has been designated as critical habitat for any special-status species, and any specialized habitat that supports or has the potential to support special-status species."

"Significant woodland stand" shall mean any group of ten or more "protected trees" located within any one-acre portion of a parcel. For the purpose of applying this definition, the Town shall superimpose a grid consisting of one-acre squares over the entire parcel. Any portion(s) of the parcel less than one acre shall be treated as follows: any portion greater than 0.50 acre, but less than one acre, shall constitute a "significant woodland stand" if it contains ten or more "protected trees;" any portion that is 0.50 acre or less shall constitute a "significant woodland stand" if it contains five or more "protected trees."

"Significant Ridgelines Map" shall mean the March 1992 map entitled "Significant Ridgelines in Potentially Developable Areas."

"Special-status species" shall mean any animal species designated as rare, threatened, or endangered under state or federal law.

"Structure" includes any road, building, or other thing constructed or erected that requires a fixed location on the ground or that is attached to something having a fixed location on the ground. Structure does not include construction of a trail which comprises a component of any trail system open to the public.

**OSC-1.9. Amendments to the Tiburon Open Space Protection Initiative.** Policies OSC-1.1 through OSC-1.9 were enacted by the Tiburon Open Space Protection Initiative. Until December 31, 2022, these policies may not be amended or repealed except by the voters of the Town of Tiburon. These Policies may, however, be renumbered or reordered by the Town during the course of ongoing updates to the General Plan conducted in accordance with State law. After December 31, 2022, this Policy OSC-1.9 shall not apply, and the Town Council, if it deems it in the public interest, may amend Policies OSC-1.1 through OSC-1.8 without a vote of the people. In addition, the Town may amend Open Space and Conservation Element Diagram OSC-3 without a vote of the people, provided, however, that the Town does not narrow the boundaries of the Open Space Overlay established by the Initiative.

### SECTION 3: CONFORMING GENERAL PLAN AMENDMENTS

In light of the General Plan amendments set forth above in Section 2 of this Initiative, the General Plan is hereby further amended as set forth below in order to promote internal consistency among the various elements of the General Plan. In this Section, text to be inserted into the General Plan is indicated in *bold italic* type while text to be stricken is presented in ~~strikethrough~~ type; text in standard type currently appears in the General Plan and remains unchanged by this Initiative. The language adopted in the following amendments may be further amended as appropriate without a vote of the people in the course of future updates and revisions to the General Plan.

A. The text under the heading "Evaluation of Prime Open Space" on pages 8 and 9 of the Open Space & Conservation Element is hereby amended as follows:

#### "EVALUATION OF PRIME OPEN SPACE

Prime open space is that open space which because of its characteristics and attributes is worthy of permanent protection to the extent such protection is feasible. Open space lands will be converted to permanent open space when though dedication, acquisition for open space or other legal means the development potential of the parcel is



relinquished. It is hoped that some of the existing open space may, where legally permissible, be converted to permanent open space in connection with subsequent applications for development by the landowner of the particular lands in question. **The Tiburon Open Space Protection Initiative establishes the Town's cornerstone policies for evaluating and protecting Prime Open Space.**

Landowners are encouraged to design their projects to maximize protection of the open space areas with the characteristics and attributes described herein to the maximum extent feasible.

**Consistent with the requirements of the Tiburon Open Space Protection Initiative,** the Tiburon Town Council and Planning Commission shall ultimately determine the appropriate development entitlements and the legally permissible form and amount of open space dedication at such time as development entitlements are decided in accordance with this element and other elements of the Tiburon General Plan.

Evaluation of **Prime Open Space** during through the development review process shall take place pursuant to the policies established by the Tiburon Open Space Protection Initiative. In addition, the Town's evaluation of Prime Open Space shall include, but shall not be limited to, the following characteristics and attributes described herein to the maximum extent feasible:

- Water and shoreline areas.
- Presence of wetlands.
- Greenbelt potential (areas located between development and/or providing linkage between open space areas).
- Presence of riparian corridors and drainageways.
- Presence of flood-prone areas **that do not constitute Prime Open Space under Open Space Policy OSC-1.3(A).**
- Presence of significant secondary ridgelines.
- Presence of significant vegetation and rare or endangered species.
- Presence of geologic hazards, including steep slopes **that do not constitute Prime Open Space under Open Space Policy OSC-1.3(A),** and debris flows.
- Degree of visibility from designated roadways and other key viewing areas.
- Other areas of high visibility and significant views."

B. The text under the heading "Process of Determining Prime Open Space" on page 15 of the General Plan's Open Space & Conservation Element is hereby amended as follows:

**"PROCESS OF DETERMINING PRIME OPEN SPACE**

**The Tiburon Open Space Protection Initiative establishes the Town's primary mechanism for determining Prime Open Space. The Town shall also consider any additional criteria for evaluating Prime Open Space set forth in other provisions of this General Plan, and in the Town's Zoning Ordinance and Subdivision Ordinance.**

The diagrams contained within this Element are general by definition and more precise delineation will be made from the Zoning Ordinance, Subdivision Ordinance, programs contained herein, and from developers as they submit proposed projects to the Town. The following procedures are to be used for a more precise delineation of prime open space:

~~Any property owners or their representatives may develop property with the goal of guiding development away from prime open space to the maximum extent feasible. The Town may require preservation of prime open space to the extent legally permissible in connection with development entitlement decisions.~~

~~Any property owners or their representatives wanting to develop some areas of their parcels with prime open space may be permitted to do so through the zoning and subdivision process. Where applicants want to develop areas with the prime open space attributes and characteristics described herein or shown on the proposed open space map, the applicant shall demonstrate through the development review process that their proposal protects prime open space areas to the maximum extent feasible and appropriately balances competing open space values."~~

**SECTION 4: IMPLEMENTATION**

**A. Effective Date.** As provided in Elections Code section 9217, this Initiative shall take effect ten days after the date on which the election results are declared by the Town Council. Upon the effective date of this Initiative, the provisions of Sections 2 and 3 of the Initiative are hereby inserted into the Town of Tiburon General Plan, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by State law for any given calendar year have already been utilized in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the Town of Tiburon General Plan on January 1 of the next year. Upon the effective date of this Initiative, any provisions of the Town of Tiburon Zoning Ordinance—as reflected in the ordinance itself or in the Town of Tiburon Zoning Map—that are inconsistent with the General Plan amendment adopted by this Initiative shall not be enforced.

**B. Interim Amendments.** The date that the Notice of Intent to Circulate this Initiative measure was submitted to the Town Elections Official is referenced herein as the "submittal date." The Town of Tiburon General Plan in effect on the submittal date and the General Plan as amended by this Initiative comprise an integrated, internally consistent and compatible statement of policies for the Town of Tiburon. In order to ensure that nothing in this Initiative measure would prevent the Town of Tiburon General Plan from being an integrated, internally consistent and compatible statement of Town policies, as required by State law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment to the General Plan that is adopted between the submittal date and the date that the General Plan is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by Sections 2 and 3 of this Initiative measure, be amended as soon as possible and in the manner and time required by State law to ensure consistency between the provisions adopted by this Initiative and other elements of the Town of Tiburon General Plan.

**C. Other Town Ordinances and Policies.** The Town of Tiburon is hereby authorized and directed to amend the General Plan, the Local Coastal Program, all specific plans, the Zoning Ordinance, the Zoning Map, and other ordinances and policies affected by this Initiative as soon as possible and in the manner and time required by any applicable State law, to ensure consistency between the policies adopted in this Initiative and other elements of the Town of Tiburon General Plan, the Local Coastal Program, all specific plans, the Town of Tiburon Zoning Ordinance, the Town of Tiburon Zoning Map, and other Town ordinances and policies.

**SECTION 5: EXEMPTIONS**

Nothing in this Initiative shall apply to any of the following: (1) any development application that is limited to a single residence on a legal parcel that is both within the Town and recorded as a separate parcel as of this Initiative's submittal date; and (2) any development project or ongoing activity that has obtained, as of the effective date of the Initiative, a vested right pursuant to State or local law. Nothing in this Initiative precludes the use of density bonuses where authorized by State law.





## SECTION 6: SEVERABILITY AND INTERPRETATION

This Initiative shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application. This Initiative shall be broadly construed in order to achieve the purposes stated in this Initiative. It is the intent of the voters that the provisions of this Initiative shall be interpreted by the Town in a manner that facilitates the protection of open space within the Town's Planning Area.

## SECTION 7: EFFECT OF ALTERNATIVE MEASURE ON THE SAME BALLOT

This Initiative adopts a comprehensive set of policies for protecting the Town of Tiburon's Prime Open Space from being prematurely or unnecessarily developed without prior approval by Town voters. By voting for this Initiative, the voters expressly declare that any other measure that appears on the same ballot as this Initiative and conflicts with, or purports to amend, any provision of this Initiative, or allows development of Prime Open Space lands that is more intensive than that allowed by this Initiative, shall be deemed to conflict with the entire set of policies adopted by this Initiative. Because of this conflict, if this Initiative and any such other measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail in its entirety and no provision of the other measure shall take effect.

## SECTION 8: AMENDMENT OR REPEAL

Except as otherwise provided herein, this Initiative may be amended or repealed only by vote of the voters of the Town of Tiburon.

## EXHIBIT LIST:

- Exhibit 1:** General Plan Open Space & Conservation Element Diagram OSC-3. (pages 21-523 and 21-524)  
**Exhibit 2:** "Significant Ridgelines in Potentially Developable Areas" (dated March 1992) (pages 21-525 and 21-526)

## IMPARTIAL ANALYSIS BY TOWN ATTORNEY MEASURE I

Tiburon's current General Plan encourages the protection of prime open space to the maximum extent feasible. The General Plan lists certain property characteristics to be considered in evaluating prime open space, but does not mandate that any particular property be so designated. In addition, the current restrictions contain some flexibility to allow the Town to balance open space concerns with other goals.

The proposed Initiative would amend the Town's General Plan to more precisely identify lands considered "prime open space." The Initiative defines as prime open space as any portion of any parcel depicted in the current General Plan as "potential open space" that meets any of the following criteria:

1. within 150 horizontal feet, or 50 vertical feet, of either side of Tiburon Ridge;
2. within 100 horizontal feet of either side of any other ridge, that is identified on the Town's Significant Ridgelines Map;
3. within 30 vertical feet of any ridge, other than Tiburon Ridge, identified on the Town's Significant Ridgelines Map (limited to 150 horizontal feet or less in either direction);
4. with slopes exceeding 40%;
5. within the 100-year flood zone;
6. containing jurisdictional wetlands or other jurisdictional waters; or
7. within 100 feet from (a) the top of the bank of any permanent water body; (b) the top of the bank of any perennial or intermittent natural watercourse; or (c) the edge of any ephemeral watercourse or drainage way meeting specified criteria; or
8. with significant habitat for special-status species, sensitive plant species or significant woodland stands, all as defined by the initiative.

The Initiative would prohibit any development of prime open space land, except after a vote of the people or where the Council determines that an exception is necessary to avoid adverse environmental impacts, provide access to the non-prime open space portions of a parcel, avoid an unconstitutional taking or comply with state affordable housing laws.

The Initiative would not apply to (1) any application for a single residence on a parcel that was previously both within the Town and recorded as a separate parcel; or (2) any development project or activity that has obtained vested rights as of the effective date of the Initiative.

The Initiative could affect 18 undeveloped parcels. The proposed Initiative would reduce the Town's discretion in processing applications for those parcels and could significantly reduce the number and location of new homes. Given that this will reduce the potential land value of affected properties, the most significant fiscal impact of the Initiative is likely to be the cost of defending its application to development proposals against legal attack by the owners of these parcels. Such expenditures can cost hundreds of thousands of dollars (and in rare cases, more). However, the Town regularly faces land use litigation, arising from the Town's already-restrictive regulations. Because of this, and the vagaries of litigating individual cases, any estimate of the Initiative's impacts on litigation costs is necessarily speculative.

Dated: August 19, 2002

ANN R. DANFORTH  
Town Attorney

MEASURE I CONTINUED ON NEXT PAGE



EXHIBIT 1 TO THE TIBURON OPEN SPACE PROTECTION INITIATIVE

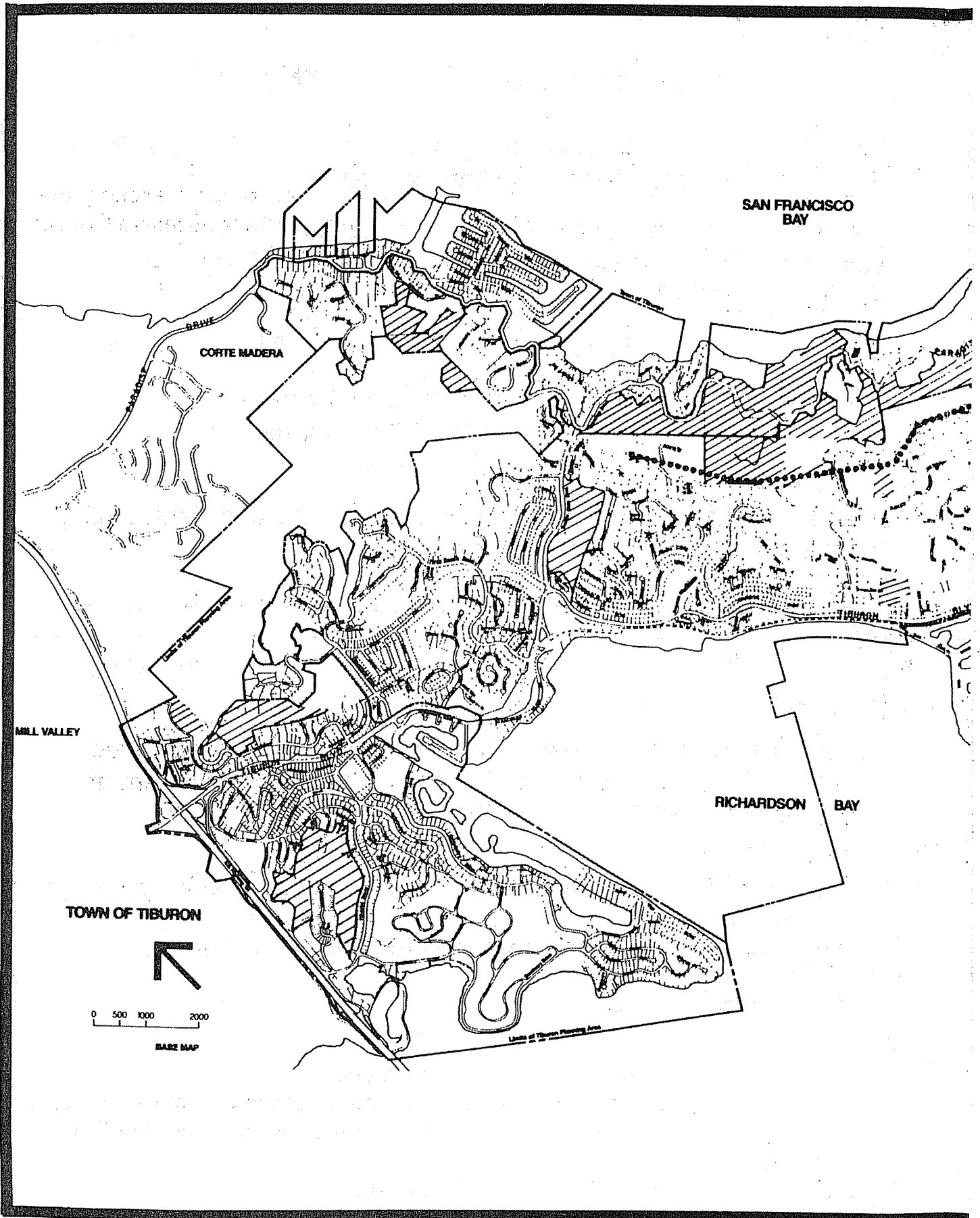
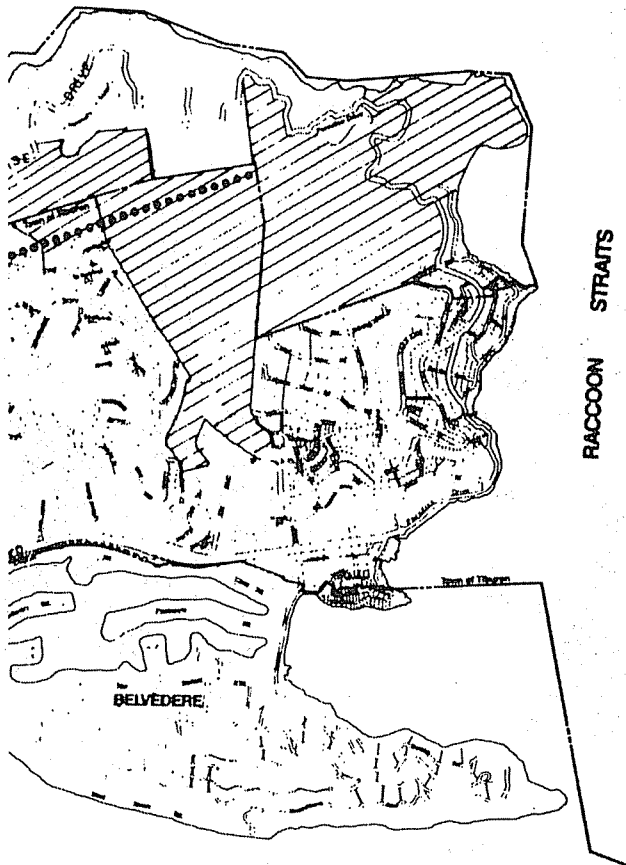


EXHIBIT 1 TO THE TIBURON OPEN SPACE PROTECTION INITIATIVE

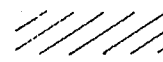


# DIAGRAM OSC-3

# POTENTIAL OPEN SPACE



### LEGEND



POTENTIAL OPEN SPACE



TIBURON RIDGELINE  
(APPROXIMATELY)

**PROPONENT'S NOTE:** This exhibit is a copy of General Plan Open Space & Conservation Element Diagram OSC-3, entitled "Potential Open Space." This exhibit is provided for illustrative purposes only and is not readopted or amended by this initiative.

ORIGINAL ADOPTED 9/28/89

Date Revised	Res. #	By
1/16/91	3757	SA





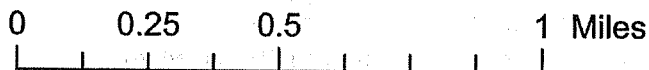
# Town of Tiburon

## SIGNIFICANT RIDGELINES IN POTENTIALLY DEVELOPABLE AREAS



### Legend

- Town of Tiburon
- Tiburon Ridge
- Significant Ridgelines



Resolution No. 2859

March 1992

**PROPONENT'S NOTE:** This exhibit shows a reproduction of a map entitled "Significant Ridgelines in Potentially Developable Areas" (dated March 1992), which was adopted by the Town Council pursuant to Resolution No. 2859. This exhibit is provided for illustrative purposes only and is not readopted or amended by this initiative.

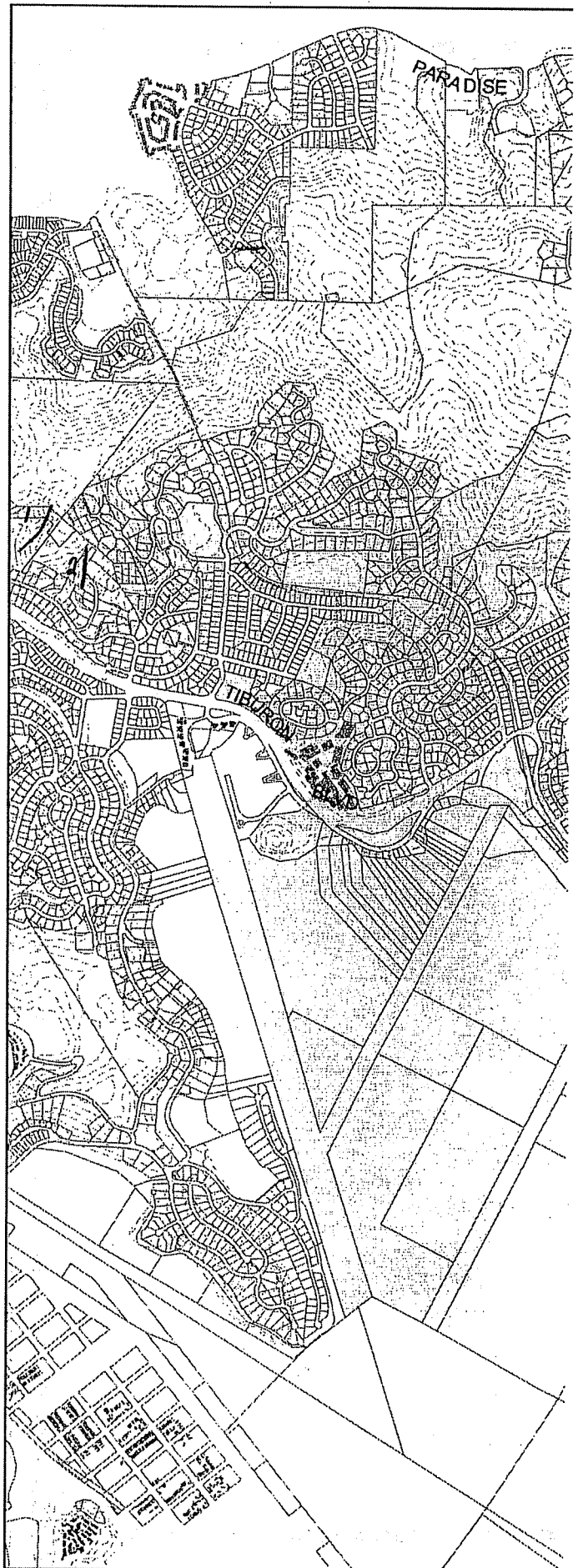


EXHIBIT 2 TO THE TIBURON OPEN  
SPACE PROTECTION INITIATIVE



## ARGUMENT IN FAVOR OF MEASURE I

### WHY WOULD ANYONE WANT LESS OPEN SPACE PROTECTION THAN THE LAW ALLOWS?

#### WHO WANTS MORE TRAFFIC AND HOUSES?

MEASURE I seeks to **protect** the Town's remaining undeveloped ridgelines, varied shorelines, wetlands and woodlands. Such protection is vital to the Town's identity, quality of life and economy, as well as to the continued existence of rare and endangered habitat and wildlife.

The Tiburon General Plan already says "protect[ ] prime open space areas to the maximum extent feasible." We want to make it **specific and predictable**. Town Councils come and go and we want to be certain that prime open space will always be consistently and fairly protected.

Experts drafted the Initiative based on Tiburon's existing General Plan. Plus, the Initiative gives the Town Council flexibility to provide for **GOOD PLANNING**: the Council can move any lot allowed under the Initiative to avoid adverse visual and other environmental impacts.

Don't be misled by the scare tactics of the opponents and their lawyers. Landowners have sued in the past when they didn't get what they wanted. They are likely to sue in the future, **WITH OR WITHOUT THE INITIATIVE**.

This Initiative provides a fair playing field for developers and citizens. It was written to give developers a **FAIR RETURN** on their investment, while protecting the most environmentally sensitive portions of the properties.

#### MEASURE I IS NOT A TAX

**YES ON I APPLIES ONLY TO MULTI-LOT DEVELOPMENT (NOT to single family lots).**

**ADDITIONAL CONSISTENT PROTECTION OF PRIME OPEN SPACE IS URGENTLY NEEDED.**

**YES ON I allows the town to meet state and federal requirements and protect residents quality of life.**

**THIS INITIATIVE IS ON THE BALLOT BECAUSE SO MANY TIBURON CITIZENS SIGNED THE PETITION TO PLACE IT HERE. NOW IS THE TIME TO VOTE IT INTO LAW!**

#### VOTE "YES" ON I

- s/ Jerry Riessen, Co-chair  
Last Chance Committee
- s/ Joanna Kemper, Co-chair  
Last Chance Committee
- s/ Alice Fredericks  
Council Member, Town of Tiburon

## REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE I

The argument in favor of Measure I is as misguided as this costly initiative. Measure I seeks open space protection that in fact already exists, but does so in a manner that will inevitably result in waves of lawsuits and litigation expense for Tiburon, less – not more – protection for open space as a consequence, disastrous financial impacts, and less money for the town services on which we all depend.

The proponents of Measure I suggest voters should not be scared by this procession of potential adverse consequences, suggesting they are tactical inventions of the opponents and their lawyers. To the contrary, the official report on the initiative prepared by Tiburon's Town attorney states:

**"The end result...could be inferior site planning achieved only after expensive litigation."**

Proponents of Measure I also argue the purpose of this ill-conceived initiative is to make Tiburon's General Plan's policies regarding open space "specific and predictable."

**Tiburon's General Plan and open space policies are already rigorously and consistently interpreted AND enforced:**

- Under Tiburon's General Plan and approval process, well over two-thirds of the developed parcels remains as open space.
- In the 38 years since Tiburon was incorporated, its citizens and town governments have done an exemplary job of conserving open space and there is no reason to risk the dire consequences of this measure.

**Measure I will result in poor planning and expensive litigation, yet will not achieve greater protection of our open space!**

Please join Tiburon's community leaders in voting **NO** on this unnecessary, unworkable and costly initiative.

s/ Gary R. Spratling  
Former Mayor

s/ James G. Wilson  
Former Councilmember

s/ Edgar B. Ross  
Former Mayor, Tiburon

s/ Kirk Hanson  
Former Mayor

MEASURE I CONTINUED ON NEXT PAGE



## ARGUMENT AGAINST MEASURE I

Measure I makes a mockery of Tiburon's General Plan and the council, planning commission and town staff who have done an outstanding job enforcing it.

Don't be fooled by the proponents of Measure I. This initiative is based on the false premise that Tiburon's General Plan and its elected and appointed officials are incapable of accomplishing the legitimate and reasonable protection of open space in Tiburon.

The two obvious reasons to vote against this poorly conceived measure are:

### Measure I Will Result in Drastic Financial Consequences for Tiburon

There are 18 private properties that will be affected by Measure I that could result in the town defending itself against 18 separate lawsuits. Measure I would prohibit building any structure on almost all of the area on many of these properties. The owners of the land will have no recourse but to fight this illegal confiscation of their properties through the courts. These lawsuits could cost Tiburon more than four times the town's annual budget.

Read Tiburon's official staff report for the details.

### Measure I Subverts Intelligent Planning

The measure's proponents would have you believe that Measure I will result in better planning but the report prepared by the town's own attorney regarding this ill-founded measure states otherwise:

Measure I "...dictates the location of development on these properties using criteria that are not necessarily tied to common sense, logical site planning, or access. The result could be poor and/or inferior site planning."

We urge you to join a broad coalition of community leaders who oppose this poorly thought out measure. Complicated policy and legislative issues should be made through the town's legislative process — not by ill-conceived initiatives.

Show that you care about the future of Tiburon by Voting NO on Measure I.

- s/ Kirk Hanson, Former Mayor
- s/ Peter Logan, Former Mayor
- s/ Valerie Bergmann, Former Mayor
- s/ Nicky Wolf, Former Mayor
- s/ Mogens Bach, Former Mayor

## REBUTTAL TO ARGUMENT AGAINST MEASURE I

### MEASURE I STRENGTHENS TIBURON'S GENERAL PLAN TO IMPROVE PROTECTION OF PRIME OPEN SPACE

Don't be misled by opponents' scare tactics. The Initiative was written by legal experts who have drafted similar land use procedures, NONE of which have been overturned. They successfully defended Tiburon in the landmark Agins case, where the US Supreme Court UNANIMOUSLY rejected claims that Tiburon's open space zoning took private property.

### WHY ARE SO MANY DEVELOPERS AND THEIR LAWYERS AGAINST MEASURE I ?

To maximize their profit, property owners may CLAIM that Measure I takes their property. In reality, Measure I allows development on all 18 properties. It also provides a FAIR exception procedure to help ENSURE owners that their property won't be taken. The League of California Cities-through its Institute for Local Self Government—encourages cities to adopt a similar exception because it "...TREATS PROPERTY OWNERS FAIRLY."

Developers may sue. They have sued in the past and will probably sue again, regardless of the Initiative. Even Tiburon's town attorney notes, "...any estimate of the Initiative's impacts on litigation costs is necessarily speculative."

### WHY HAVE MORE TRAFFIC AND BUILD MORE HOUSES THAN ARE NEEDED?

MEASURE I provides for GOOD PLANNING. It encourages strict adherence to our General Plan. Measure I allows the Town to grant exceptions and to relocate development if necessary to avoid adverse environmental impacts.

### THIS MAY BE YOUR LAST CHANCE TO PROVIDE CONSISTENT FAIR PROTECTION FOR TIBURON OPEN SPACE

VOTE "YES" ON I

- s/ Jerry Riessen  
Co-chair, Last Chance Committee
- s/ Joanna Kemper  
Co-chair, Last Chance Committee
- s/ Alice Fredericks  
Council Member, Town of Tiburon
- s/ William M. Lukens
- s/ Sharon S. Bass

END OF MEASURE I

