

ORDINANCE NO. 401

AN ORDINANCE OF THE PEOPLE OF THE CITY OF HERCULES - HERCULES GENERAL PLAN AMENDMENT AND LAND USE DESIGNATIONS FOR THE FRANKLIN CANYON AREA”

WHEREAS, on June 22, 2004, certification of the Initiative was presented to the Hercules City Council; and

WHEREAS, on June 22, 2004, in accordance with Elections Code Section 9215, the Hercules City Council ordered the preparation of a report pursuant to Elections Code Section 9212; and

WHEREAS, the report pursuant to Elections Code Section 9212 has been duly presented to the City Council; and

WHEREAS, the Hercules City Council determines that it is in the best interests of the City of Hercules to submit the Initiative to the voters of the City of Hercules; and

WHEREAS, at the General Municipal Election held in the City of Hercules on November 2, 2004, Measure M - Hercules General Plan Amendment And Land Use Designations For The Franklin Canyon Area passed as determined by a majority of the votes cast.

Measure M	General Plan Amendment	Yes	5,214
	Franklin Canyon	No	3,054

NOW, THEREFORE, THE PEOPLE OF THE CITY OF HERCULES DO HEREBY ORDAIN AS DESCRIBED IN EXHIBIT A ATTACHED HERETO.

THE FOREGOING ORDINANCE was passed by a majority of the votes cast at the General Municipal Election held in the City of Hercules on November 2, 2005. The results of said election were declared at a special meeting of the Hercules City Council on the 14th day of December 2004, by the following vote:

AYES: Balico, Batara, Evans-Young, Valstad, Ward

NOES: None

ABSENT: None

ATTEST



*Doreen Mathews*  
 Doreen Mathews, City Clerk

*Joanne Ward*  
 Joanne Ward, Mayor

## Protect Franklin Canyon Area Initiative

The people of the City of Hercules do ordain as follows:

### Section 1. Purpose

The purpose of this ordinance is to protect Franklin Canyon and nearby open space lands from harmful and unnecessary development. The ordinance maintains existing use of the Canyon and surrounding areas for agriculture, outdoor recreation, very low-density residential, and open space uses. The objectives are to preserve and protect natural resources, watersheds and water quality, wildlife habitat, beauty and tranquility, and scenic hill views, while permitting proximity to nature and outdoor recreation for the residents of Hercules. It is designed to prevent urban-type sprawl on steep and frequently unstable terrain, thereby avoiding high costs to taxpayers for public facilities and services, as well as loss to the environment. The ordinance will help limit traffic congestion and air and water pollution. By providing a needed balance between urban development and rural, natural qualities, the measure helps preserve and protect the special character and identity of Hercules and the high quality of life in the City.

### Section 2. Findings

The citizens of Hercules do deliberately find and declare the following:

- (a) Development in Hercules: There has been extensive urban development in Hercules. Many of the valuable natural qualities of the City have been impaired by this development. Much of what remains is in jeopardy. Growth in Hercules has been explosive. In 1974, the City had only 150 residents; by 2003, the population had risen to 20,500. According to current projections, the City will add nearly 6,000 more residents in the next two decades. There is mounting pressure to develop the remaining open space and environmentally sensitive lands in the City.
- (b) Franklin Canyon: Franklin Canyon is an important and unique part of Hercules' identity and its historic and valued characteristics. Historically used for grazing, Franklin Canyon now provides the City with watershed, wild animal and plant habitat, recreation, beautiful views, proximity to nature, and a striking peaceful, rural contrast to the heavily built-up parts of the City. At present, there are few public facilities in Franklin Canyon except ranch roads and the Franklin Canyon Golf Course. Franklin Canyon is a unique natural area of the City and is deserving of lasting and special protection.
- (c) Current Development Regulation: Existing Hercules General Plan policies do not provide adequate, secure protection for the Franklin Canyon area against unnecessary and harmful development. That part of the area now within the city limits was not included in the General Plan revision process and is subject to high residential density whenever government decides to apply a zoning designation to the area. That portion beyond the city boundary, under County jurisdiction, could be annexed and developed at high densities. Several property owners in the area have expressed a desire to be incorporated into the City. Residents have repeatedly opposed development in Franklin Canyon, including a successful referendum in 1992 overturning General Plan amendments that would have permitted development.

- (d) Effects of Franklin Canyon Development: Intensive development in Franklin Canyon would eliminate or harm wildlife, watersheds, scenic views and other valuable environmental qualities. It would prevent the reintroduction of agriculture, which has been its historic use. It would add to air and water pollution, and exacerbate already intolerable levels of traffic and congestion in Hercules. It would impair the ability of the City to provide public facilities and services at a reasonable cost to taxpayers and residents. Substantial development would eliminate variety and change the esteemed character of the City.
- (e) Agriculture: A combination of soils and climate make Franklin Canyon and the nearby hill areas highly productive rangelands. The existing pattern of relatively large parcels under consolidated ownership is necessary for successful range practices. Residential development interferes with agriculture in various significant ways. Lands in the Franklin Canyon area and surrounding hills have been covered by agricultural preserve contracts, which permit assessment for property tax purposes at agricultural rather than development values. Many of these contracts have not been renewed, however, presaging conversion to nonagricultural uses if protections are not established. To forestall development, Hercules entered into an agreement with other cities and Contra Costa County creating the Briones Hills Agricultural Preservation Area adjacent to the City for the purpose of protecting regional agriculture and other open space uses.
- (f) Wildlife Habitats: A number of special-status plant and animal species occur in Franklin Canyon. Substantial parts of the Franklin Canyon area have been designated by the United States Fish and Wildlife Service as critical habitat for wildlife threatened with extinction. Land use must be carefully controlled to avoid extirpating these species, ruining their habitats, or obstructing the corridors that connect habitats. Franklin Canyon area habitats are vital for biological diversity.
- (g) Watercourses: Streams that flow through Hercules into San Pablo Bay arise in the hills and flow through the canyons. Excessive development can have an adverse effect on the quantity of water in those streams, including flooding, and on the quality of the water. Development generally exacerbates erosion and siltation, as well as pollution. Problems are created in trying to prevent flooding and erosion, yet preserving the natural beauty and other values (wildlife habitats, vegetation) of streams.
- (h) Traffic: Traffic congestion and long commutes are becoming increasingly intolerable, adversely affecting the quality of our lives in countless ways. The Hercules General Plan cites several intersections at which the delays range from substantial to severe, and predicts that by 2010, even with all recommended improvements two intersections will operate at levels of service F during commute hours. Proposed development in Franklin Canyon would add another 7000 car trips per day to already crowded City streets, exacerbating delays and inconvenience.
- (i) Housing: This ordinance will support properly planned, compact development in and near existing urban development where infrastructure is available. This is much more economical to users and taxpayers than sprawl in the outlying areas, where there are now no sewer or water lines, roads are nonexistent, and construction is often difficult and costly. There are extensive areas of slope instability in the hill areas; much of the development there would occur on parcels with geologic constraints. Franklin

Canyon is vulnerable to wildfires because of its rugged terrain, flammable non-native brush and grasses, and remoteness. Hercules has provided more than its share of housing for the region; there is a large surplus of housing over jobs in the City.

- (j) Burden of Proof: Within the meaning of California Evidence Code Section 669.5(c)(3), this ordinance is designed to protect agricultural use as defined in Government Code Section 51201(b), and open space land as defined in Government Code Section 65560(b).

- (k) Federal and State Law

This ordinance is subject to Federal and State law. Because that law is not always clear or settled, and because of frequent changes in the law, this ordinance contains provisions that it does not apply if and when the application would be inconsistent with Federal or State law. These provisions are designed to prevent the ordinance, over time, from being in conflict with law.

### Section 3. Additions to the General Plan

- (a) Sections 4 through 20 of this ordinance are additions to the Hercules General Plan. They shall be located as appropriate in Chapter II, Land Use Element, Chapter V, Open Space/Conservation Element, and Chapter VI, Safety Element, subject to relocation or further location in the Plan by City officials.
- (b) The provisions of this ordinance added to the Plan are to be deemed as part of the Plan's Open Space Element.

### Section 4. Protection of Legal Rights

Notwithstanding their literal terms, the provisions of the ordinance do not apply to the extent that courts determine that if they were to be applied they would deprive any person of constitutional or statutory rights or privileges, or otherwise would be contrary to the United States or State constitutions or law. The purpose of this limitation is to make certain that the ordinance does not infringe any person's constitutional or legal rights or violate the law in any way, or subject the City of Hercules to any legal liability. To the extent that a provision or provisions of the ordinance are not applicable because of this section, the City may permit only that parcel creation, development or use required by law which is most consistent with the provisions and purposes of the ordinance, and that complies with other General Plan provisions.

### Section 5. Area Covered by Ordinance

- (a) Unless otherwise specified the ordinance applies to the Franklin Canyon Area. For the purposes of the ordinance, the Franklin Canyon Area consists of land within the city limits designated on January 1, 2004, Franklin Canyon Area on the City of Hercules General Plan Land Use Designations diagram (Page II-28 of the General Plan), and land south of State Route 4 within the City of Hercules Sphere of Influence (SOI) on January 1, 2004. (The diagram in Appendix 1 depicts approximately the boundary of the Franklin Canyon Area, the existing Hercules city limits and the Hercules Sphere of Influence. The diagram is for purposes of illustration only and is not adopted by the ordinance.)
- (b) Part of the Franklin Canyon Area is not within the city limits of Hercules and is under the jurisdiction of the County. The ordinance will be operative in those areas if and when they are annexed to the City.

**Section 6. State Housing Requirements**

- (a) Nothing in the ordinance, including in this section, shall be applied to preclude City compliance with obligations to provide for housing that are mandated by State law.
- (b) To the maximum extent practicable, the City shall meet any State legal requirements outside the Franklin Canyon Area in accordance with this Plan.
- (c) If the City must use the Franklin Canyon Area to comply with State housing requirements, the voters of the City may redesignate a portion of the Area for this purpose. If necessary, the City Council also may approve housing in the Franklin Canyon Area, provided:
  - (1) there is no land outside the Franklin Canyon Area to meet a State requirement through new development, more intensive development, or redevelopment;
  - (2) no more land is used in the Franklin Canyon Area than is necessary for the housing required by State law;
  - (3) there will be adequate public facilities and services for the housing.
- (d) If the City must provide housing in the Franklin Canyon Area, minimum parcel size, residential density limits, maximum development envelopes and floor areas, and height restrictions in the ordinance shall not apply to the extent necessary to confine the housing to the minimum area needed to comply with State legal requirements. Required housing shall not be built on or protrude over hilltops or ridgelines, on slopes of more than 20%, wetlands, critical wildlife habitat, or within a riparian corridor.

**Section 7. Non-Withdrawal from the Briones Hills Agricultural Preservation Area**

Unless approved by the voters of Hercules, the City may not withdraw from the Briones Hills Agricultural Preservation Area agreement executed in 1988. Should such withdrawal take place, any land subsequently annexed to the City within the Briones Hills Agricultural Preservation Area when the ordinance becomes effective shall be subject to the same restrictions with respect to minimum parcel size, amount and nature of development, development envelopes, maximum floor areas, permissible uses, visual safeguards, and protections of areas of special environmental concern, as are imposed by the ordinance in the Franklin Canyon Area.

**Section 8. Minimum Parcel Size**

The minimum new parcel size shall be at least forty (40) acres in the Franklin Canyon Area.

**Section 9. Uses**

The following uses and their normal and appropriate accessory uses and non-residential structures (as well as uses preemptively authorized by Federal and State law) are permitted in the Franklin Canyon Area, if they comply with all of the provisions of the Plan and with other City prohibitions, restrictions, regulations, conditions and requirements that further the Plan:

- (a) One single family residence on each legal parcel, secondary units to the extent required by State law, and dwelling units for persons employed on the parcel, or on a ranch or farm that includes the parcel.
- (b) Rental of rooms, including with board, not exceeding two units in a residence.
- (c) Agriculture including grazing, horticulture, floraculture and arboriculture, but not including (1) commercial feedlots, except for livestock that primarily receive their sustenance in the Franklin Canyon Area from grazing on a ranch or farm that includes the

- parcel, (2) large or medium-size pig farms, poultry ranches or commercial vineyards, or (3) Christmas tree farms.
- (d) Small-scale, low-intensity rearing, custodianship, training or care of animals, other than ruminants which shall be governed as agriculture by subsection (c), that does not cause material environmental harm.
- (e) Commercial uses, limited to the following:
- (1) Low-intensity outdoor recreation and pastimes predominantly for active participants that is compatible with preserving the natural qualities of the area (this category of permitted uses does not include, among other things, amusement or theme parks and motor vehicle tracks, courses or recreational activities);
  - (2) Nature observation, study or enjoyment;
  - (3) Accommodations for short term occupancy and for provision of food and drink (including low-intensity campgrounds and picnic facilities), predominantly for persons engaged in outdoor recreation or nature observation, study or enjoyment;
  - (4) Uses in historic structures, incidental to preserving the structures and their historic qualities and setting, provided there are no deleterious effects on the natural environment;
  - (5) Home occupations and offices, subordinate to residential use and conducted primarily by occupants of the property, that will have no deleterious effects on the environment or visual qualities or materially increase local traffic;
  - (6) Neighborhood stores and services, predominantly to serve the unmet agricultural and other needs of the population of the Franklin Canyon Area, that cannot practicably be met outside the Area;
  - (7) Healthcare;
  - (8) Packaging, processing, storage or sale of agricultural produce or plants, a substantial portion of which were grown in the Franklin Canyon Area, that will have no significant deleterious effects on the environment;
  - (9) Special, occasional short-term events related to agriculture, animals or outdoor recreation, that do not interfere substantially with the use of land for agriculture or cause lasting environmental harm or adverse visual effects, provided access for vehicles and emergency equipment and for parking meet generally applicable City standards.
- (f) Institutional and other non-profit uses that primarily serve Franklin Canyon Area residents, or whenever and to the same extent like for-profit uses would be permitted.
- (g) City and other government facilities and uses, and public utility facilities, that are limited to meeting the needs created by uses permitted in the Franklin Canyon Area unless the City Council reasonably finds more extensive public need, that cannot practicably be met outside the Franklin Canyon Area. However, this exception for more extensive public need shall not apply to waste treatment and disposal or commercial electrical power generating facilities. Publicly provided outdoor recreation and nature observation and enjoyment and ancillary accommodations are permitted whenever like for-profit uses would be allowed.

Section 10. Areas of Special Environmental Concern – Further Safeguards

In addition to the other provisions of the ordinance, the following restrictions apply in the Franklin Canyon Area:

(a) **Wetlands and Riparian Corridors**

No development or use is permitted if the quantity or biological quality of wetlands will be reduced measurably. "Wetlands" are areas permanently or periodically covered by water, where hydrophytic vegetation is present under normal conditions, or that have soils primarily hydric in nature.

No development is permitted that appreciably impairs the quantity or biological quality of water or habitat in a riparian corridor, except for flood control purposes necessary to protect human health and safety. "Riparian corridors" are the areas within 250 feet from the center of a permanent or intermittent stream bed.

(b) **Critical Wildlife Habitat**

No development or use may be permitted that would impair a habitat or migratory corridor for special-status or other protected species so as to reduce the number, or prevent the recovery in number, of one or more species.

(c) **Steep Slopes**

No building site, in whole or in part, may be located on a slope of twenty percent (20%) or more. No building may be located on a site that cumulatively has access of more than fifty (50) feet over a slope of twenty percent (20%) or more. No grading may take place on a slope of twenty percent (20%) or more unless necessary to maintain fire trails. No greenhouses, in whole or in part, may be located on a slope of fifteen percent (15%) or more. Cultivated agriculture may not be conducted on a slope of twenty percent (20%) or more.

Percentages are based on the steepness of slopes in their natural, unaltered state, and are calculated by dividing altitude increase by twenty over each twenty feet of surface distance.

(d) **Ridgelines and Hilltops**

Structures may not be located on ridgelines or hilltops, or where they will project into the visual plane of a ridgeline or hilltop, as viewed from public roads, trails, or other public places, unless there is no other building site on the parcel.

Unless there is no other possible configuration, new parcels may not be created that have no building sites other than a ridgeline or hilltop, or that would entail a building projecting into the visual plane of a ridgeline or hilltop, as viewed from a public place.

**Section 11. Development Envelopes**

All buildings on a parcel shall be placed within a contiguous "development envelope," as compact as reasonably practicable, not to exceed two acres, except for buildings that the City Council finds reasonably must be located outside the envelope for agricultural or recreational uses, security needs, or for government or public utility facilities.

**Section 12. Maximum Floor Areas**

The maximum aggregate floor area for all floors (regardless of composition) in buildings on a parcel may not exceed one percent (1%) of the parcel's area, or 20,000 square feet, whichever is less, but for any parcel a minimum of 10,000 square feet shall be permitted. Greenhouses are subject to a maximum aggregate floor area of one percent (1%) or 40,000 square feet, whichever is less. Government facilities are not subject to the aggregate limit to the extent that the City Council finds reasonably that they are necessary to serve important public needs, that they cannot practicably be located outside the Franklin Canyon Area, and that they

must exceed the floor area maximum. The City Council may also authorize up to an additional 20,000 square feet if needed for housing for bona fide agricultural workers employed full-time on a farm or ranch that includes the parcel, or for processing, packaging or storage of agricultural produce or plants, a substantial portion of which were grown in the Franklin Canyon Area, or for other agricultural purpose.

Section 13. Visual Safeguards

- (a) New or reconfigured parcels, including those resulting from lot line adjustments, must be created or drawn to minimize visibility of development from public places.
- (b) To the extent practicable, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel that minimizes visibility from public places, except agricultural structures essential for agricultural purposes may be located in more visible areas if necessary.
- (c) Development shall be subordinate to and blend with the natural and open space qualities of the area where located, so as to be as unobtrusive as possible, and not to impair those qualities. Consistent with that end, alteration of topography by grading, excavating, filling or other development activity shall be minimized. In all cases, appropriate landscaping, preservation of vegetation, screening, and building materials shall be required by the City to minimize the visual impact of development. To the maximum extent practicable, exterior lighting must be located, designed and shielded so as to confine direct rays to the parcel where the lighting is located and to protect the darkness of the night sky.
- (d) The height of buildings shall not exceed 35 feet.

Section 14. Lot Line Adjustments

Apart from the regular subdivision process, the City may not permit lot line adjustments, except as required by State law, if the adjusted parcels for any reason would not comply with the General Plan and all city zoning and building ordinances including minimum parcel sizes, or adjustments between more than four (4) parcels, or part of a plan or series of adjustments between more than four (4) parcels.

Section 15. Certificates of Compliance

The City shall not grant certificates of compliance or conditional certificates of compliance except as required by State law. The City shall impose all conditions permissible under State law on conditional certificates of compliance, and shall hold the owner or subsequent transferee to strict compliance with these conditions. A certificate of compliance, by itself, creates no right to develop, nor diminishes in any respect the City's authority to control development.

Section 16. Deed Restrictions

A deed restriction, to the benefit of the City or the City's appropriate designee and duly recorded, shall be required for each parcel with respect to which development is permitted. The deed restriction shall bar any further development or use that would not be permitted under the ordinance. The deed restriction shall be negative only; it shall convey no possessory interest to the City or its designee, nor confer any right of public access. The City has no responsibility or liability because of the deed restriction for acts or omissions on the parcel, except in good faith

and effectually to remedy or prevent violations of the deed restriction. The restrictions may not be waived, rescinded or canceled, except for exigent reasons of public health or safety.

Section 17. Definitions

For purposes of the ordinance, unless the text or context clearly indicates otherwise:

“Development” includes the placement or construction of any building or structure, including mobile dwelling units, and grading, excavation or fill of land.

“Building” is any structure having a roof supported by walls or columns, or both, except for greenhouses, and intended for the shelter, housing or enclosure of any person, animal or property.

“Ordinance” means the Protect Franklin Canyon Area Initiative.

“Practicable” means capable of being done.

“Special-status species” are plants and animals that are legally protected under the State and/or federal Endangered Species Acts or other regulations, and species that are considered sufficiently rare by the scientific community and trustee agencies to warrant special consideration, particularly with regard to protection of isolated populations, breeding locations, communal roosts, and other essential habitat. Special-status plants and animals include but are not limited to species in the following categories:

- (a) species listed, proposed for listing or candidates for possible future listing as threatened or endangered under the federal Endangered Species Act;
- (b) species listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act;
- (c) species that meet the definitions of rare or endangered or at their range limit under the California Environmental Quality Act;
- (d) plants listed as rare under the California Native Plant Protection Act;
- (e) animal species, plant species or plant communities of special concern to the California Department of Fish and Game; and
- (f) animals protected in California under California Fish and Game Code, Sections 3511 (birds), 4700 (mammals), and 5050 (amphibians and reptiles).

“Structure” includes but is not limited to any building, greenhouse, tower, antenna, utility line, retaining wall, dam, pumping facility, water tank or anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground.

“State law” means State Constitutional provisions, valid statutes and regulations, and court declared common law.

Section 18. Application

- (a) The ordinance does not affect the validity of existing parcels, development, structures, and uses that are legal at the time it becomes effective unless their authorized time limit expires or they are voluntarily eliminated or abandoned. However, parcels, development, structures and uses may not be expanded or changed in ways that are inconsistent with the prohibitions, limits or requirements of the ordinance, except as authorized by State law.
- (b) The restrictions and requirements imposed by the ordinance shall apply to proposed development, parcels and uses that have not received all necessary discretionary City and other authorizations and approvals prior to the ordinance’s effective date, except to the extent precluded by State law.

- (c) The provisions of the ordinance apply to the City and other governmental entities and to their properties in the Franklin Canyon Area.

Section 19. Inconsistent City Plans, Ordinances and Actions

- (a) Except as provided in Section 24, if there is any inconsistency between provisions of the ordinance and other provisions of this Plan, despite efforts in Section 25 to avoid all inconsistencies, those other provisions to the extent they are inconsistent are superseded and the ordinance governs, unless the voters approved the other provisions subsequent to approval of the ordinance.
- (b) Any provision of any existing or subsequently adopted specific or area plan, that is not part of the General Plan, and any provision of any zoning ordinance or any other ordinance, resolution, regulation or policy of the City, not part of the General Plan, is ineffective to the extent that the provision is inconsistent with the ordinance, except as State law may mandate otherwise.
- (c) No subdivision map, development agreement, development plan, special or use permit, variance or other action inconsistent with the ordinance may be permitted, approved or taken by the City, or its agencies or officials, including approval or permission by operation of law because of inaction, except as required by State law.
- (d) General Plan provisions and other City plans, ordinances, regulations, and actions are not to be deemed inconsistent with and are not affected by the ordinance to the extent that they impose additional prohibitions, restrictions, conditions, regulations or requirements beyond or in addition to those imposed by the ordinance on the division, development or use of land in the Franklin Canyon Area. In that respect, the ordinance shall be deemed to establish only minimum standards, which the City may augment or extend without creating inconsistency with its provisions.

Section 20. Compliance and Enforcement

The City Council and other agencies, officials and employees of Hercules shall implement and enforce the provisions of the ordinance diligently and effectually. They are hereby mandated by the voters of Hercules to use the most effective means available, subject to any official discretion required by State law, to prevent, abate and remedy violations. Residents of the City may also enforce the ordinance by legal proceedings against the City or any person or entity in violation, or to prevent impending violations, to the extent not precluded by State law. The City shall be notified prior to any private legal proceedings to enforce the ordinance.

Section 21. Effective Date

This ordinance shall become effective as provided by statute, except if all the General Plan amendments permitted by law in the year in which the ordinance is approved by the voters have been made, the ordinance shall become effective and amend the Plan on January 1 of the following year.

Section 22. Amendments

This ordinance may be repealed or amended only by vote of the people of Hercules, except the City Council may amend the ordinance to impose further prohibitions, restrictions, conditions and requirements on division, development and use of land. The Council may also make or provide for technical or non-substantive modifications to the terms of the ordinance, for

purpose of clarification, consistency, coherence, or organization of the General Plan. Any modifications must be consistent with the substantive provisions and purposes of this ordinance.

Section 23. Severability

If any portion, section, subsection, paragraph, subparagraph, sentence, clause, or application of this ordinance is held unconstitutional or otherwise invalid, the invalidity of that part or application shall not affect the validity of any other part or application unless the effect clearly would be to defeat overall the purposes of the ordinance. Consistent with that, the provisions and applications of this ordinance shall be deemed severable, and the voters of Hercules expressly and deliberately declare that each portion, section, subsection, paragraph, subparagraph, sentence, clause and application would have been enacted as it was irrespective of the fact that one or more other parts or applications is declared invalid unless the effect clearly would be to defeat overall the purposes of the ordinance.

Section 24. Conflicting Measures

If there are other General Plan amendments on the same election ballot as this measure that are approved by the voters, this ordinance shall nevertheless be effective, except to the extent that its provisions are in actual, irreconcilable conflict with specific General Plan amendments of one or more other measures and that measure or those measures received more votes. Provisions in another measure otherwise purporting to nullify the provisions of this ordinance shall be ineffective.

Section 25. General Plan Consistency

- (a) The General Plan is amended as follows to eliminate or revise material that is or may be deemed to be inconsistent with this ordinance or no longer appropriate. Material deleted is in strikeout type. Material added is underlined (except some subsection headings are underlined in the existing Plan). Material unchanged is omitted, even within paragraphs, unless deemed necessary to make sense of an amendment.
- (b) Provisions in this section may be amended by the City Council, provided the amendment is consistent with the other sections of this ordinance including Section 22

Chapter II. LAND USE ELEMENT

Page II-6, under 4. Agricultural and Natural Resource Lands

The incorporated area of Hercules includes no land used for agricultural purposes ~~or containing significant natural resources.~~

Page II-16, under Policy 5B

State law requires the City to consider ~~allow~~ development of new residential areas and units as part of meeting the regional need for housing.

Page II-23, under Policy 14B

Preserve the existing natural topography, ridgelines and valleys where feasible and desirable, and in accordance with the ordinance.

Page II-28, City of Hercules Land Use Designations September 1998 diagram  
(~~Land Uses to Be Determined~~)

Page II-36, under Franklin Canyon Golf Course Area

The Franklin Canyon Golf Course area is located in the City of Hercules, consists of 633 acres with a public golf course, parking and clubhouse facilities. The Franklin Canyon Golf Course was not included in the General Plan revision process. It is subject to an initiative passed by the voters of Hercules in 2004. The initiative limits development in the Franklin Canyon Area to protect natural resources and permits only very low density residential and open space compatible uses. The golf course property has a settlement agreement approved by the Contra Costa Board of Supervisors, City of Hercules and the property owner. The settlement agreement conditions the golf course property to postpone residential development until Highway 4 is improved.

The development applications and process for the Franklin Canyon Golf Course property will require:

- ~~a. A specific plan with design guidelines.~~
- ~~b. A Planned Development Plan.~~
- ~~c. A design review permit.~~
- ~~d. An EIR analyzing the impacts of the proposed development.~~
- ~~e. A subdivision tract map.~~

Page II-37, last paragraph

Several of the property owners within the Sphere of Influence Area have expressed a desire to be incorporated into the City of Hercules. This will require annexation approvals from the Local Agency Formation Commission, pre-zoning approvals, and an EIR analyzing the impacts of the proposed land uses. That portion of the Sphere south of Highway 4 is subject to an initiative passed by the voters of Hercules in 2004. Should that portion be annexed to the City only very low density residential and open space compatible uses will be permitted.

#### Chapter IV. HOUSING ELEMENT

Page 5, second paragraph under Progress Towards Meeting the Need

...As shown in Table 2.3, Hercules is currently experiencing extensive residential construction activity, with 401 new units built or approved since January 1999, and another ~~2,872~~ 2,303 new units in the pipeline. The total of ~~3,273~~ 2,704 units far exceeds the City's total regional housing need of 792 units.

Page 6, Table 2.2 Anticipated Ability to Meet the Regional Housing Need

	Very Low and Low Income	Moderate Income	Above Moderate Income	Total
Pipeline Projects	197*	<del>194*</del> <u>224*</u>	<del>2,480**</del> <u>1,882**</u>	<del>2,871</del> <u>2,303</u>
Anticipated Ability to Meet Need*** (84)		<del>(5)</del> <u>(35)</u>	<del>(2,381)</del> <u>(1,783)</u>	<del>(2,470)</del> <u>(1,902)</u>
(Remaining Need less Pipeline Projects)				

\*\*\*Numbers in parentheses indicate units in excess of the regional housing need.

Page 7, Table 2.3 Built, Approved and Pipeline Projects Since January 1999

Franklin Canyon	<del>570</del>	<del>10%</del>	<del>57</del>	<del>57</del>	<del>Mod Rental</del>	<del>In planning</del>	<del>Hillside development area</del>
Pipeline Projects Subtotal	<u>2,303</u>	<u>2,873</u>	<u>334</u>	<u>391</u>	<u>338</u>	<u>395</u>	

Page 9, Figure 2.1 Map of Built, Approved and Pipeline Projects

Delete the numeral "10" and shading from the Franklin Canyon Area of the map. Delete "10 Franklin Canyon" from the map legend.

Page 39

second paragraph

~~The only exception, where significant infrastructure development will be required as a condition of development approval, is the Franklin Canyon site~~

third paragraph

~~Excluding the Franklin Canyon properties, for which planning and development approvals may not be achieved within the current planning period (by 2006), the City's inventory of sites for residential development will accommodate more than 2,700 units.~~

Page 40, Table 4.1 Inventory of Sites with Residential Development Potential

~~Longer Term Pipeline Projects~~

~~Franklin Canyon 570 57 Mod Rental In planning~~

Chapter V. THE OPEN SPACE/CONSERVATION ELEMENT

Page V-6, first paragraph under 1. Parks

~~It is anticipated that there will also be a new park in the Franklin Canyon/sphere of influence area to serve the anticipated population within this area.~~

Page V-7, under 2. Open Space

third paragraph, last sentence

~~It is anticipated the Franklin Canyon site will provides approximately 633 ~~220~~ acres of additional open space.~~

Page V-20, City of Hercules Open Space and Conservation Plan diagram

~~(Land Uses to be Determined)~~

Page V-26, under Policy 2a

In the Franklin Canyon Area, no development or use is permitted if the quantity or biological quality of wetlands will be reduced measurably.

Page V-28, under Program 6b.1

In the Franklin Canyon Area, no development or use may be permitted that would impair a habitat or migratory corridor for special-status or other protected species so as to reduce the number, or prevent the recovery in number, of one or more species.

Page V-35, under SCENIC RESOURCES, Policy 13d

Additional restrictions apply in the Franklin Canyon Area to protect that area's unique scenic resources.

Chapter VI. SAFETY ELEMENT

Page VI-8, City of Hercules, Figure 1: Baymud.  
(~~Land Uses to be Determined~~)

Page VI-13, City of Hercules, Figure 2: Floodprone Areas  
(~~Land Uses to be Determined~~)

Page VI-18

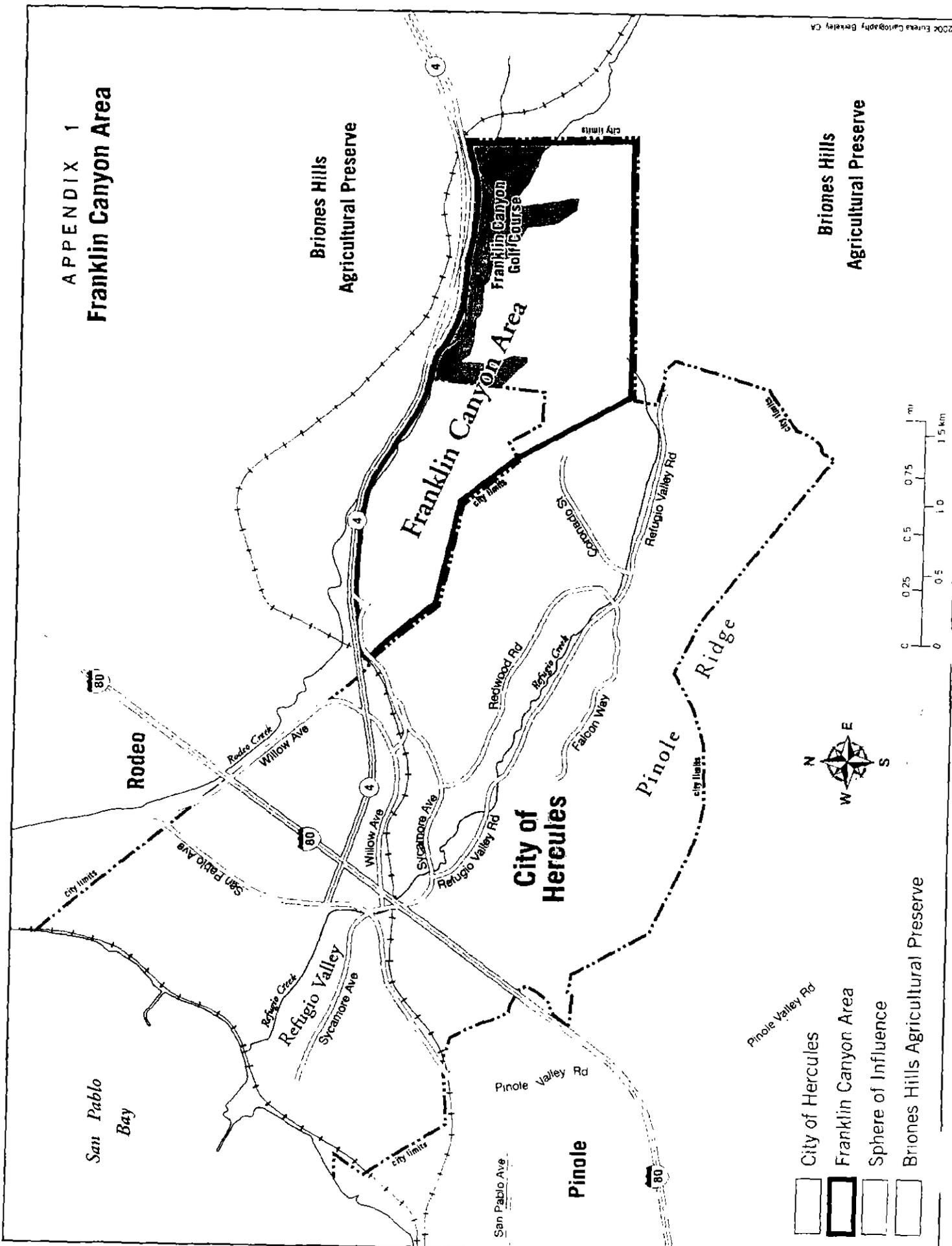
17) Minimize amount of grading when building on hillsides. No grading shall occur on slopes steeper than 30 percent, and cut slope angles no greater than 33 percent shall be maintained. In the Franklin Canyon Area, no grading shall occur on slopes equal to or steeper than 20 percent unless necessary to maintain fire trails.

Chapter X, Growth Management Element

Page X-9, under D. Proposed New Facilities Improvements

3. Parks: Two new neighborhood parks are planned, Forest Run Park and the School Park, which would add about 11 acres of parkland within the City. ~~In addition, a new neighborhood park will be planned for the Franklin Canyon Golf Course property; on-site trails will connect to the regional trail system.~~

APPENDIX 1  
Franklin Canyon Area



-  City of Hercules
-  Franklin Canyon Area
-  Sphere of Influence
-  Briones Hills Agricultural Preserve