



MEMORANDUM

TO: PLANNING COMMISSION

MEETING DATE: May 26, 2009

PREPARED BY: Corey Simon, Senior Planner

APPROVED BY: Karen Majors, Assistant City Manager, Community & Economic Development

RE: NONCONFORMING USE AT 1000 HOWE ROAD (northeast corner of Howe Road and Parkway Drive, and opposite Mt. View Park). Request of Kingdom Financial LLC/David Harris to reestablish a nonconforming use (storage, dispatching and maintenance of an average of 45 school buses) pursuant to Martinez Municipal Code Section 22.38.060: *Abandonment of Nonconforming Use*. The property was rezoned from M-R&D/LI (Mixed Use District – Research and Development/Light Industrial) to R-1.5/PD (Multi - Family Residential: 1,500 sq. ft. minimum site area per dwelling unit; with approved Planned Development) in September 2006.

BACKGROUND and DISCUSSION:

The subject 7½ acre site has historically been used as a light industrial storage facility, with an 8,000 sq. ft. office/warehouse building, and the majority of the site used for outdoor storage. In June 2005, a residential development company (Trumark) entered into an agreement with the property owner, Kingdom Financial LLC, to purchase the property upon its securing of necessary City approvals for a 70 single-family (“The Paseos”) subdivision. Just prior to the Trumark Companies’ filing of an application to allow for residential development of the property in March 2006, the site was jointly used by R. M. Harris Co (a heavy construction/bridge contractor) and Laidlaw Transit (a school bus operator). In anticipation of what appeared to be the imminent sale and residential development of the property, Kingdom Financial LLC terminated Laidlaw’s lease prior to Trumark receiving final approval for their development, including the rezoning of the property from “Light Industrial” to “Residential” in September 2006. After the rezoning, R. M. Harris’ began using the entire site, and its use of the property has been continuous since.

Due to the declining housing market and challenging economic climate, Trumark terminated its purchase agreement with Kingdom Financial LLC in October 2008. While the site will remain designated for residential rather than industrial uses, R. M. Harris’ use of the property may continue indefinitely as a “nonconforming use.” It should be recalled that:

*A **nonconforming use** is defined as a use of land which was lawfully established and maintained prior to the adoption of <the current zoning regulations,> but which does not conform to the use regulations for the district in which it is located.*

Section 22.38.020 states that such a nonconforming use *may be continued* but the right to continue terminates if the use is discontinued for over one year. With R.H Harris utilizing the entire site, the nonconforming use of the property as a facility for the storing, dispatching and maintenance of school buses has lapsed for more than one year.

However, the City's Zoning Ordinance Section 22.38.060 states that:

Abandonment of Nonconforming Use: *Whenever a nonconforming use has been abandoned, discontinued or changed to a conforming use of one year ,<or more>, the nonconforming use shall not be reestablished without prior approval of the Planning Commission.*

With no immediate residential use envisioned, the property owner now wishes to re-lease that portion of the property to the school bus company (now know as First Student) that it occupied prior to 2006. Since the nonconforming school bus operation was discontinued over one year ago, its reestablishment is now only possible with the Planning Commission's approval. To reestablish this school bus storing, dispatching and maintenance use, the Commission needs to concur that the scope and scale of the school bus use is comparable to that which was physically discontinued in 2005, and which could have been re-established as a nonconforming use (without Planning Commission approval) within the one year period immediately after operations stopped. A more complete history of the site's use is provided as Attachment B. An overview of the proposed operation is provided by the potential school bus operator First Student, as Attachment C. It is staff's understanding that the proposal is consistent with Laidlaw's previous operation. The applicant has mailed a letter directly to all property owners within the 300' notification radius (Attachment D), including copies of First Student's operational report.

SUMMARY

The applicant has informed staff that he has received no negative responses from his direct mailing to the neighbors. Provided that neighboring property owners and residents do not indicate opposition to the reestablishment of the school bus storing, dispatching and maintenance use to the Commission, staff would recommend approval of the request, given that:

- The hours of operation (5:45 a.m. initial dispatch and 4:30 after school day return) and number of buses (45) is consistent with the level of operation that existed in 2005.
- The subject site was rezoned "residential" (along with five other sites) for the purposes of providing additional housing opportunities as mandated by the City's 2001-2007 Housing Element of the General Plan. The subject acreage was needed for the City's current Housing Element to be approved by the State, and this acreage will be needed for the next Housing Element currently being prepared. Thus the City has a vested interest in maintaining the property's residential land use designations. Even if the current market is discouraging to housing development, it is important for the City to keep this site available for possible residential construction in the future.

RECOMMENDATION

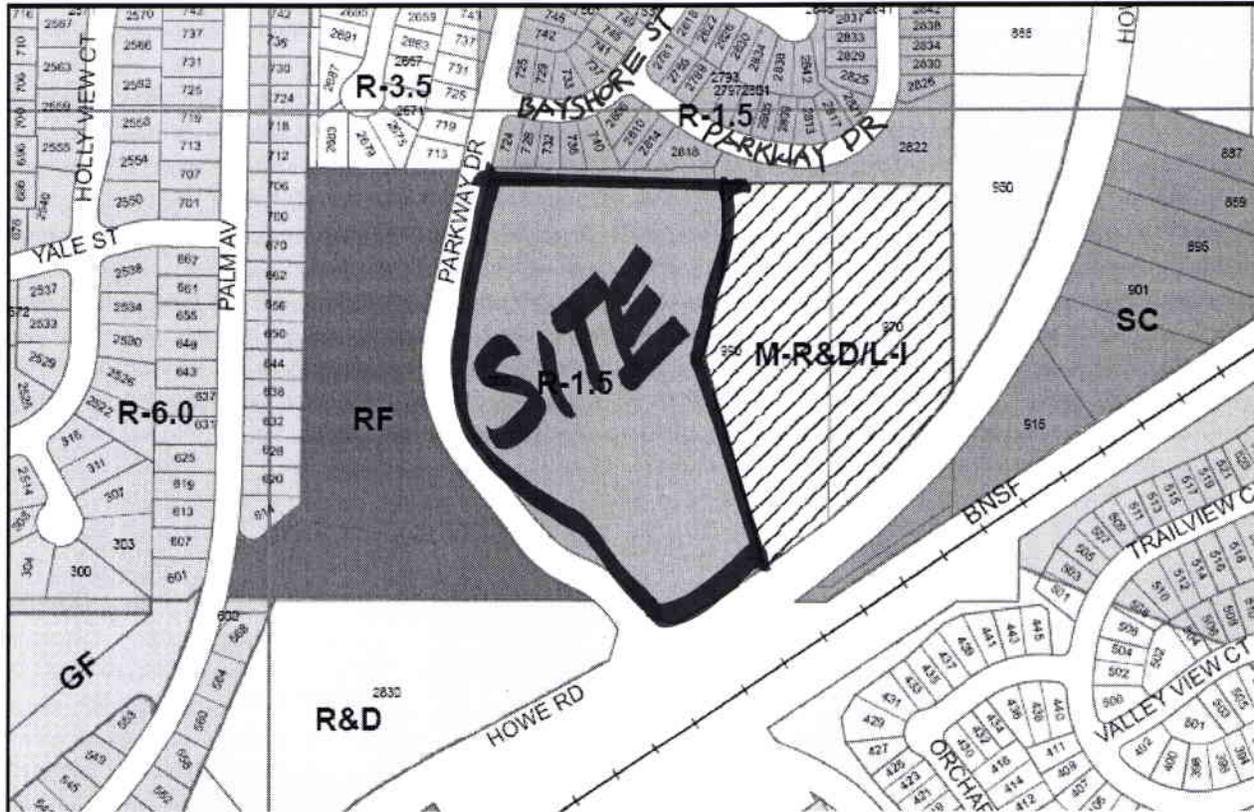
Review proposal, accept public comment, and if appropriate, adopt the draft resolution PC 09-03.

ATTACHMENTS

- A. Site Context Map & Conceptual Site Plan (annotated by staff)
 - B. History provided by property owner
 - C. "Operational Report" provided by school bus operator, First Student
 - D. Letter to neighboring property owners
- Resolution 09-03 [DRAFT]

ATTACHMENT A

SITE VICINITY MAP



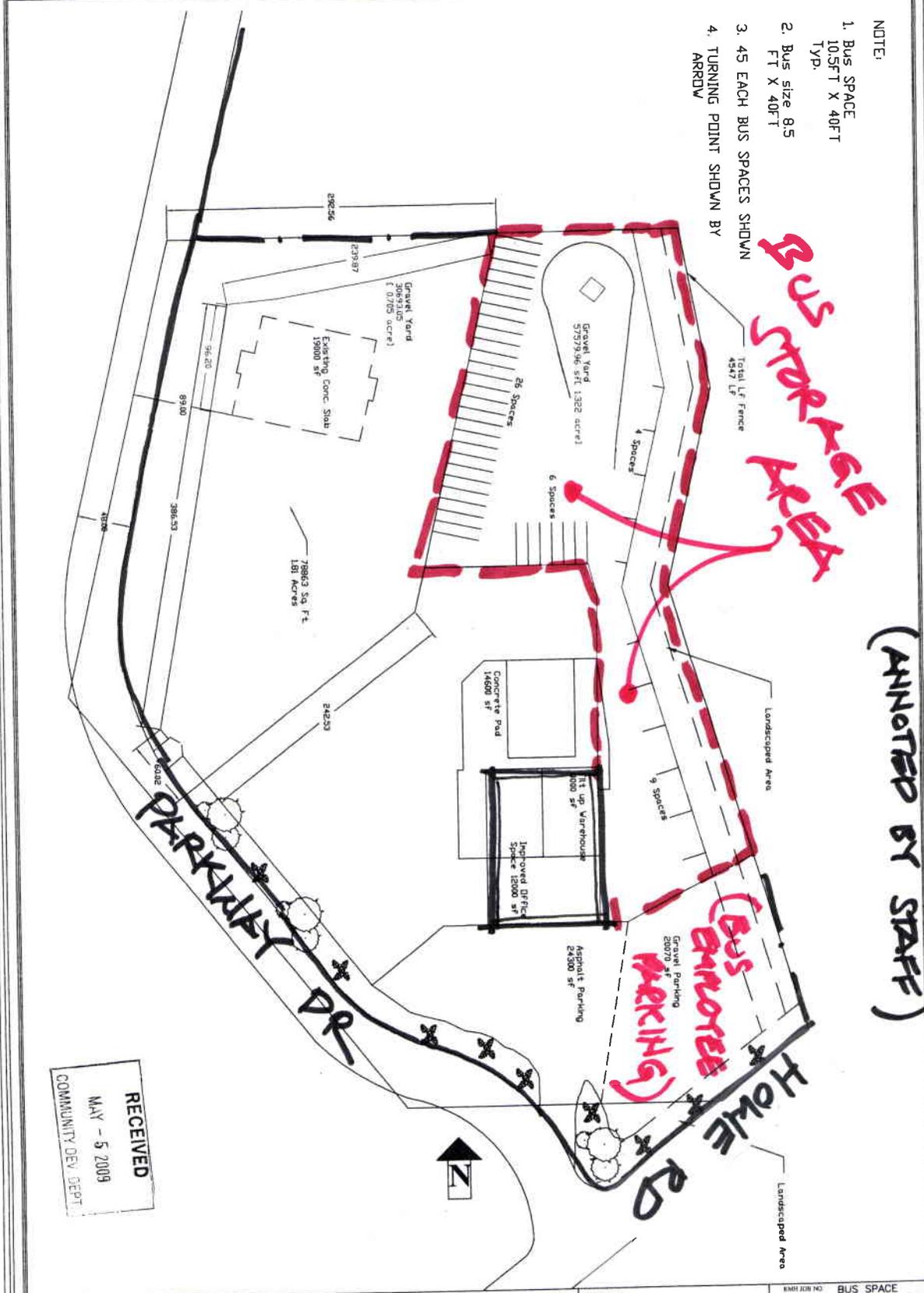
1000 HOWE ROAD

KINGDOM FINANCIAL LLC\DAVID HARRIS
REESTABLISHMENT OF NONCONFORMING SCHOOL BUS STORAGE USE

SITE PLAN

(ANNOTATED BY STAFF)

- NOTE:
1. BUS SPACE 10.5FT X 40FT TYP.
 2. Bus size 8.5 FT X 40FT
 3. 45 EACH BUS SPACES SHOWN
 4. TURNING POINT SHOWN BY ARROW



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MAY - 5 2009
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R. M. HARRIS Co. Inc.
1000 Howe Rd. Suite 200, Martinez Ca. 94553

1000 Howe Rd., Martinez CA
R.M. Harris Co. Inc.

REVISION NO.	EMR JOB NO.	BUS SPACE
DATE 05-01-09		
DRAWN BY: RE		DRAWING NO. 1 OF 1
SCALE: As Shown		

ATTACHMENT B

PROPERTY OWNER'S OUTLINE OF USE HISTORY



THE 1000 HOWE ROAD SENARIO

In January 2000, The Kingdom LLC purchased the property at 1000 Howe Road, Martinez, California. In June of 2000, R. M. Harris Co. moved into the west side of the property. The east side of the property was already occupied by Laidlaw Transit, a school bus company. After R. M. Harris Co. moved in, they removed the unfinished two-story building located at the northwest corner of the property. Laidlaw Transit terminated their lease in June 2005 and R. M. Harris Co. then continued with its lease to occupy all the property now available.

In June 2005, The Kingdom LLC agreed to sell the property to Trumark with the condition that the sale would not be final until Trumark had been able to have the property rezoned residential and had an approved subdivision map or the contractual deadline of December 2006 arrived, whichever occurred first.

The housing market was down at the end of 2006 and Trumark requested an extension to the closing date. This request was granted by The Kingdom LLC. Finally, in October 2008, Trumark determined that the housing decline was going to continue and terminated the sales agreement.

Due to the housing situation that started in 2006 and continues today, it is not feasible to construct housing on the property now or probably for some years in the future. Therefore, The Kingdom LLC has found a tenant that would like to rent the portion of the property that was formally occupied by Laidlaw Transit and is now being used by R. M. Harris Co. This tenant, First Student, is also a school bus company. Their operations would be very similar to the Laidlaw Transit operation. The yard area of their portion of the property would be used to park the buses when they were not in use. All of their other operations would take place in or adjacent to their portion of the existing building. Both R. M. Harris Co. and First Student would continue to rent the property for at least the next five years.

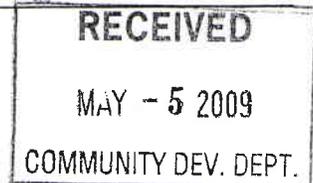
Prior to the purchase of 1000 Howe Road by The Kingdom Financial LLC in January 2000, the portion of the property that First Student would like to rent was occupied by school bus companies. They operated at this location from the early nineteen nineties until June 2005. If the proposed sale of the property had not begun in June 2005, we believe that the property would have continued to be used by a school bus company. The lack of use as a school bus yard was due entirely to the relatively short time from the commencement of the proposed sale to the proposed close of escrow.

ATTACHMENT C

“OPERATIONAL REPORT” PROVIDED BY SCHOOL BUS COMPANY, FIRST STUDENT

Operational Report

Date: May 4, 2009
Property Address: 1000 Howe Road Martinez, CA
Contra Costa County



Proposed Operations: First Student would house and maintain an average of 45 school buses here. They would have an average of 45 private automobiles parking in the existing parking lot on the south end of the property. Five days a week, the school buses are dispatched between 5:45 to 6:45 a.m. and return to the site around 8:30 to 9:30 a.m. The process is repeated in the afternoon, starting around 1:30, with the buses returning by 4:30 p.m. Maintenance operations during the day include cleaning of the buses, safety checks, brake work, tire replacement, and repairs ranging from light bulb and windshield wiper replacement up to an occasional engine-change out. This work would be done inside of the building in the two maintenance bays.

Washing of the buses would be done outside on the existing concrete wash pad.

There will be occasional bus operations on the weekends to accommodate athletic events, field trips etc.

The landlord's operations as a bridge contractor will continue as existing.



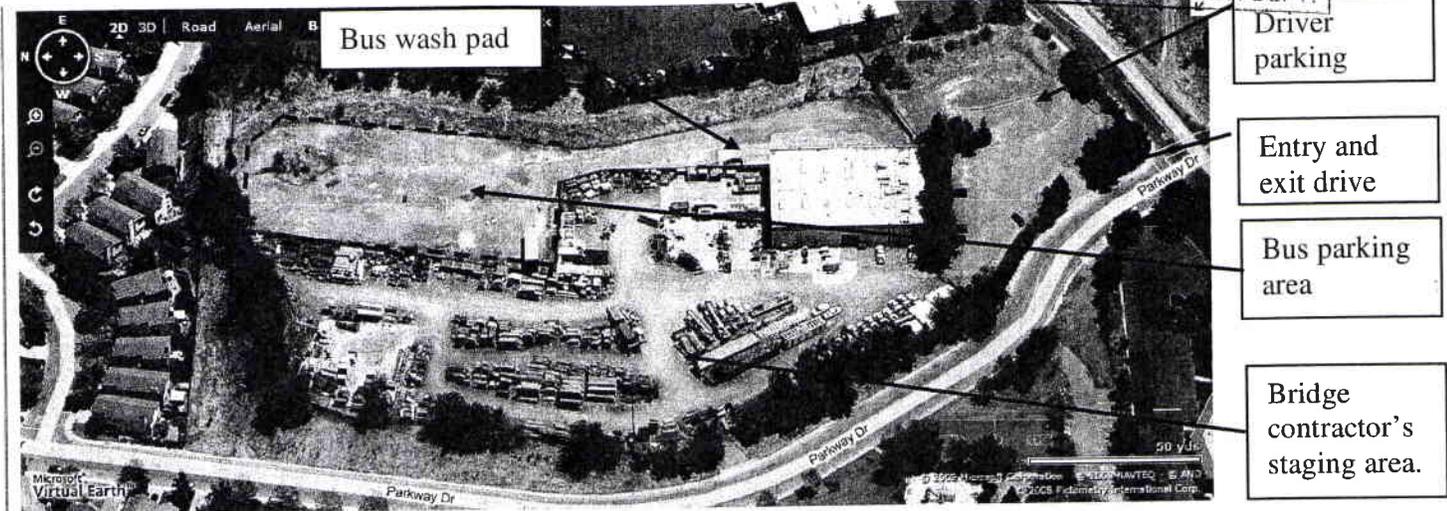
Aerial Photo - Maps.live.com

Operational Report

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COMMUNITY DEV. DEPT.



Close up of site. Rotated; north is to the left on this view.

Attachments:

1. Aerial image of site

Prepared By:

David Grubbs
Consultant for First Student
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Billings MT 59102
406 252-4596
davidgrubbs59@bresnan.net

ATTACHMENT D

COPY OF LETTER FROM PROPERTY OWNER TO NEIGHBORING RESIDENTS

MAY 18 2009
COMMUNITY DEV. DEPT.

May 7, 2009

Dear ^{RESIDENT} [Ronald and Darron DeGeorges]:

In January 2000, The Kingdom LLC purchased the property at 1000 Howe Road in Martinez, California. In June of 2000, R. M. Harris Co. moved in the west side of the property. The east side of the property was already occupied by Laidlaw Transit, a school bus company. After R. M. Harris Co. moved in, they removed the unfinished two story building located at the Northwest corner of the property. Laidlaw Transit terminated their lease in June 2005. R. M. Harris Co. continues to lease all the property now available.

In June 2005, The Kingdom LLC agreed to sell the property to Trumark with the condition that the sale would not be final until Trumark had been able to have the property rezoned residential and had an approved subdivision or December 2006, whichever ever occurred first.

The housing market was down at the end of 2006 and Trumark requested an extension to the closing date. This request was granted by The Kingdom LLC. Finally, in October 2008, Trumark determined that the housing decline was going to continue and terminated the sales agreement.

Due to the housing situation that started in 2006 and continues today, it is not feasible to construct housing on the property now or probably for some years in the future. Therefore, The Kingdom LLC has found a tenant that would like to rent the portion of the property that was formally occupied by Laidlaw Transit and is now being used by R. M. Harris Co. This tenant, First Student, is also a school bus company. Their operations would be very similar to the Laidlaw Transit operation. The yard area of their portion of the property would be used to park the buses when they were not running. All their other operations would take place in or adjacent to their portion of the existing building. Both R. M. Harris Co. and First Student would continue to rent the property for at least the next five years.

The Kingdom LLC would like to know if you would have any objection to First Student resuming the operations formally pursued by Laidlaw Transit. We have attached herewith the proposed operation plan for First Student. If you have any questions or concerns about First Student operating their buses from 1000 Howe Road please contact me at 1-510-816-9100. Thank you for your time and consideration.

Sincerely,

The Kingdom Financial LLC



David R. Harris

Manager

RESOLUTION NO. PC 09-03 [DRAFT]

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MARTINEZ,
APPROVING THE RE-ESTABLISHMENT OF A NONCONFORMING USE (THE
STORING, DISPATCHING AND MAINTENANCE OF SCHOOL BUSES) ON
PROPERTY NOW WITHIN THE R-1.5 ZONING DISTRICT (MULTI-FAMILY
RESIDENTIAL; 1,500 SQ. FT. MINIMUM SITE AREA PER DWELLING UNIT),
LOCATED ON A 7½ ACRE PARCEL LOCATED AT 1000 HOWE ROAD @
PARKWAY DRIVE (APN: 376-081-012)**

WHEREAS, on May 5, 2009, the City of Martinez received an application from David Harris/Kingdom Financial LLC for Planning Commission approval to reestablish a nonconforming use (storage, dispatching and maintenance of up to 45 school buses) pursuant to Martinez Municipal Code Section 22.38.060: *Abandonment of Nonconforming Use*; and

WHEREAS, in June 2005, the property owner, Kingdom Financial LLC, entered into an agreement with a residential development company (Trumark) to purchase the property upon its securing of necessary City approvals for a 70 single-family ("The Paseos") subdivision; and

WHEREAS, the school bus use was made nonconforming upon the rezoning of the property from M-R&D/LI (Mixed Use District – Research and Development/Light Industrial) to R-1.5/PD (Multi-Family Residential: 1,500 sq. ft. minimum site area per dwelling unit; with approved Planned Development) in September 2006; and

WHEREAS, the lease with the school bus company, Laidlaw Transit was discontinued in anticipation of the reuse of the property by Trumark; and

WHEREAS, due to the subsequent decline in the housing market, Trumark terminated its sales agreement to purchase the now entitled property from Kingdom Financial LLC in October 2008; and

WHEREAS, The subject site was rezoned "residential" (along with five other sites) for the purposes of providing additional housing opportunities as mandated by the City's 2001-2007 Housing Element of the General Plan. The subject acreage was needed for the City's current Housing Element to be approved by the State in 2005, and this acreage will be needed as an opportunity site for the next Housing Element currently being drafted. Thus the City has a vested interest in maintaining the property's residential land use designations; and

WHEREAS, the project is categorically exempt from the requirements of CEQA, under Sections 15301 CEQA Guidelines, Existing Facilities; and

WHEREAS, the Planning Commission of the City of Martinez held a duly noticed public hearing on May 26, 2009, and listened to testimony from the public.

NOW, THEREFORE, the Planning Commission of the City of Martinez resolves as follows:

1. That the storage, dispatching and maintenance of school buses use, as outlined below and conceptually described by applicant in Exhibit A (attached), may be reestablished as a nonconforming use as set forth in Martinez Municipal Code Section 22.38.060, specifically as follows
 - A. An approximate two acre portion of the site may be used for the storage of not more than 45 buses, and for the parking of the drivers' passenger vehicles while the buses are in service.
 - B. The hours of operation on school days shall be based on a 5:45 a.m. initial dispatch and 4:30 p.m. after school day return. Weekend operations shall be limited to occasional Saturdays to accommodate school related activities, such as athletic events, which are not to exceed 20 Saturdays in one year and two Saturdays in one month. Saturday operations are to comply with Martinez Municipal Code Chapter 8.34; Noise Control, in that exterior noise levels at the property line shall not exceed a day night noise level (Ldn) of 50 bBA between 10:00 p.m. and 7:00 a.m.
 - C. Bus maintenance operations, which are only permitted during the business day, are limited to light mechanical/engine repair (including engine-change out), shall be is done inside the existing warehouse building in the two maintenance bays.
 - D. Bus washing, which are only permitted during the business day, may be done only on the existing washing pad location and drain water disposal shall comply with the current requirements of the Contra Costa County Clean Water Program
2. Based on testimony given, the Planning Commission finds that the above use, if reestablished, would be compatible with the neighborhood and the existing nonconforming uses currently on the property.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 26th day of May by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Frank Kluber
Planning Commission Chair

Corey M. Simon
Senior Planner

EXHIBIT A

PLANNING COMMISSION RESOLUTION 09-03

REESTABLISHMENT OF NONCONFORMING SCHOOL BUS STORAGE USE - 1000 HOWE ROAD

Operational Report

Date: May 4, 2009
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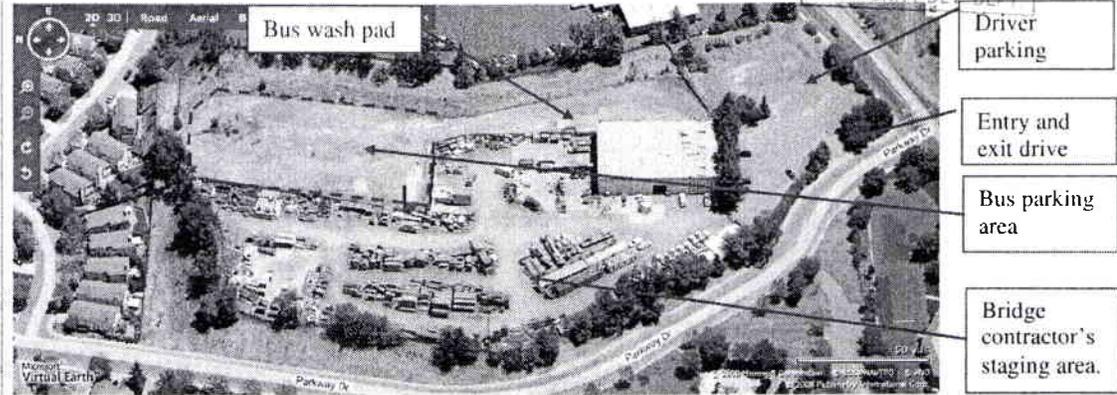
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