



STAFF REPORT

TO: PLANNING COMMISSION

PREPARED BY:  Albert Lopez, Deputy Community Development Director

GENERAL INFORMATION

OWNER: Ostrosky Enterprises Inc.

APPLICANT: Peter Ostrosky, Robert DeVries

LOCATION: Approximately 160 acre parcel located west of Alhambra Way, between Christie Drive and Lindsey Dr.

GENERAL PLAN: Alhambra Hills Specific Plan – non-development area, and remote homesite location.

ZONING: Single Family Residential, R-10 and R-7.5.

ENVIRONMENTAL REVIEW: Staff proposes that the Planning Commission find that this project be exempt pursuant to Section 15061 of the CEQA guidelines, as a project rejected or not approved by the public agency. If the Planning Commission adopts this proposed finding, no further environmental review would be required by State law.

APPROVALS REQUESTED: Lot Line Adjustment #06-04, a request to adjust parcel boundaries between four existing lots, creating a new 4-lot configuration as proposed by applicant, ranging in size from 8.45 to 64.41 acres. Total site area of all parcels is approximately 160 acres.

RECOMMENDATION

Deny lot line adjustment #06-04

BACKGROUND

The applicant is seeking approval of a lot line adjustment pursuant to the Subdivision Map Act, and is proposing to reconfigure four existing parcels to create four newly configured parcels ranging in size from 8.45 to 52.38 parcels (see exhibits). The total land area of the existing and proposed parcels is approximately 160 acres. The existing parcels are remnants of the Forest Hills subdivision as shown in the exhibits. These

remnant parcels are in an environmentally sensitive area with limited frontage and difficult access. Any new access roads would have to be cut through sloped terrain, and/or go through existing neighborhoods at ends of cul-de-sacs.

The recent development history of the 160 acre site is limited to the current proposal, and the design review approval of a one acre building site with a 10,000 square foot home by Melvin Phillips in 1984. When the City approved the Phillips project it also required a large portion of the site (120 acres) be protected with a scenic easement, limiting future development to the one approved acre, plus a 40 acre area where future development could occur. Those 40 acres were ostensibly kept out of the easement as the most reasonable place to consider future development, if any at all were to be permitted.

Although the City's files reflect that in connection with Mr. Phillips' application for development of his 10,000 square foot home, City staff recommended a condition requiring Mr. Phillips to dedicate the southern 120 of his 160 acres to the City as open space (which condition was ultimately approved by the Council), the precise boundaries of that 120 acre open space area remain uncertain. This is so because the 1984 open space easement deed actually executed and recorded by the Phillips in favor of the City contained a legal description that covered the entire 160 acres owned by the Phillips (but reserved to the Phillips the right to build a single family home on the one acre site for which they had earlier received design review approval). Nevertheless, during the 1987 Alhambra Hills Specific Plan (AHSP) process that occurred shortly after Mr. Phillips received his one acre building site approval, the official record of the AHSP EIR shows that Mr. Phillips did not want any development south of Christie Drive, and the plan was ultimately approved as such. So it can be inferred that the 40 acres was intended to be located in the northern-most portion of the 160 acre holdings of the Phillips. This is further supported by the four remote home site locations ultimately approved in the AHSP, as they are all located north of Christie Drive, and that area is the only area of all the 160 acre site (with the exception of the original one acre building site) where development can occur (absent a general plan amendment). See attached copy of the AHSP's Land Use and Circulation map, figure 31.30.

CURRENT REGULATIONS

The land is currently under the land use restrictions as adopted by the City in the 1987 Alhambra Hills Specific Plan (AHSP) in which no portion of the entire 160 acres is considered a "Development Area". However the plan does recognize the approved one acre home site, plus it allows four "remote" home sites to be located within the northern portion of the 160 acre site. See attached CEQA findings which shows that the AHSP clearly precludes development south of Christie Drive, which is consistent with the four remote homesite locations.

The applicant's existing four parcels are located such that their development potential is limited. Only Parcel "A" (where the AHSP locates four remote homesites) plus Parcel "B" (one acre Phillips parcel) are areas where development is permitted, but Parcel "C"

& "D" are within the AHSP's "non-development" area and do not contain any of the four remote homesites as designated in the AHSP. Development on "C" & "D" cannot occur unless a General Plan Amendment is approved (and resolution of the location of the 120 acres open space easement is achieved), allowing additional remote home sites. Alternatively, the parcels can be reconfigured through a lot line adjustment to place them into conformance with the AHSP.

CONFORMANCE WITH SPECIFIC PLAN

The City Attorney has provided staff with the appropriate language from the Subdivision Map Act that governs this application, specifically:

A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. Cal. Gov't Code section 66412(d).

The applicant has submitted a lot line adjustment application which proposes reconfiguring the existing four lots into four new lots. The two northern-most "new" lots include one or more remote homesites as shown on AHSP's figure 31.30. The middle "new" lot includes the former Phillips' home site and the fourth, southern-most "new" lot is located entirely within a non-development area as so shown on AHSP's figure 31.30 and upon which no development can occur.

California Government Code section 66412(d) (quoted above) requires that the "parcels" resulting from a proposed lot line adjustment "conform" to the applicable specific plan. "Conform" means "to make the same or similar. . . to bring into harmony or agreement". Webster's New World Dictionary, 2nd College Edition. The four lot configuration proposed by the applicant here does not conform to and does not bring these lots into harmony with the AHSP. Even if "conform" as used in section 66412(d) is equivalent to "make consistent", "consistency" has been construed in the context of general plan consistency as follows: "An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." Governor's Office of Planning and Research, *General Plan Guidelines* (2003), p. 164. Permitting the applicant to create a lot that cannot be built upon under the AHSP cannot be said to "promote" or "further" the objectives of the AHSP and acts as a precursor obstruction to the attainment of the AHSP's goals and policies.

The applicant has argued in support of its application that all it is doing is drawing lines on a map – that it is not now seeking development of these parcels. Thus, according to the applicant, any inconsistency with the AHSP's development preclusions is not now before the City or Planning Commission. The resolution of that issue is put off for another day, namely, when the applicant or new owners of these four parcels return to the City for development approvals.

It is staff's opinion that the requirement that a lot line adjustment "conform" to the AHSP cannot be read so narrowly. What the applicant is essentially arguing is that the City must ignore reality and address its application in a vacuum, pretending that all that is involved here is drawing lines on a piece of paper. However, it is clear that whether it is a subdivision of 500 lots or a lot line adjustment for four parcels, even if development is not being contemporaneously proposed, the City is required to compare such a proposal to its applicable general and specific plans. Those plans contain a myriad of *development and use* criteria that must be complied with in order to obtain approval for such parcelization proposals. Whether it is density limitations, minimum lot size requirements or requirements as to the location of permitted development, if those conditions are specified in an applicable general or specific plan, the City is entitled and required to apply them to an application that creates or relocates parcels.

In the context of determining whether CEQA compels preparation of an EIR instead of a negative declaration, the courts are clear that the reviewing agency cannot put blinders on and pretend that planning documents are not a precursor to the development that they presage, and thereby avoid having to analyze that development when approving the plan. In *City of Carmel etc. v. Board of Sups.* (1986) 183 Cal App.3d 229, 244, the court required the preparation of an EIR for a proposed re-zoning even though no specific development project was being proposed at the time. The court explained that the re-zoning "was a necessary first step to approval of a specific development project. Even if this were not so, the re-zoning by itself . . . represented a commitment to expanded use of the property . . ."

Under the same reasoning, the lot line adjustment in issue here is a harbinger and commitment to development on the parcels that are proposed to be re-configured. However, that likely development is antithetical to the AHSP and, thus, cannot be found to "conform" to the AHSP.

RECOMMENDATION

Staff has suggested to the applicant a lot configuration (see attachment #2c) that would allow the applicant to take advantage of the four remote homesites as identified in the AHSP, and it would keep intact the 120 acre open space easement. The plan proposed to the applicant creates three, relatively good-sized, developable parcels north of Christie Drive (as required by the AHSP), with the remaining fourth parcel comprising the balance of the property south of Christie Drive, thereby upholding the integrity of the 120 acre easement by limiting development in the remaining, southern area to the

original Phillips homesite.

The applicant has not expressed an interest in the lot configuration proposed by staff, and is pursuing its own proposal with this application request.

In this light, staff is recommending denial of the lot line adjustment application, on grounds that it does not conform to the Alhambra Hills Specific Plan. If this conformity finding cannot be made by the Planning Commission, the application must be denied.

ATTACHMENTS

1. Site Context Map and Aerial Photo
2. Existing and Proposed Lot Lines
3. City Council resolution adopting Alhambra Hills Specific Plan
4. Land Use Map 31.30 and CEQA findings
5. Draft Resolution

EXHIBITS

Applicant's civil package 24"x36", 3 sheets

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2407 C.R. 14B
SEPT. 8, 1955

FOREST HILLS ESTATES
DEC. 20, 1957

ALHAMBRA AVE

APPROXIMATE NORTH LINE OF HASTING AND WALNUT
CREEK ROAD, IN 1954, NOW RELOCATED SOUTH-ONLY AND

VITAL REFERENCES

REF.	DATE	DEED OR TRACT REFERENCE
(1)	9/8/55	2407 C.R. 14B
(2)	9/8/55	2407 C.R. 14B
(3)	9/8/55	2407 C.R. 14B

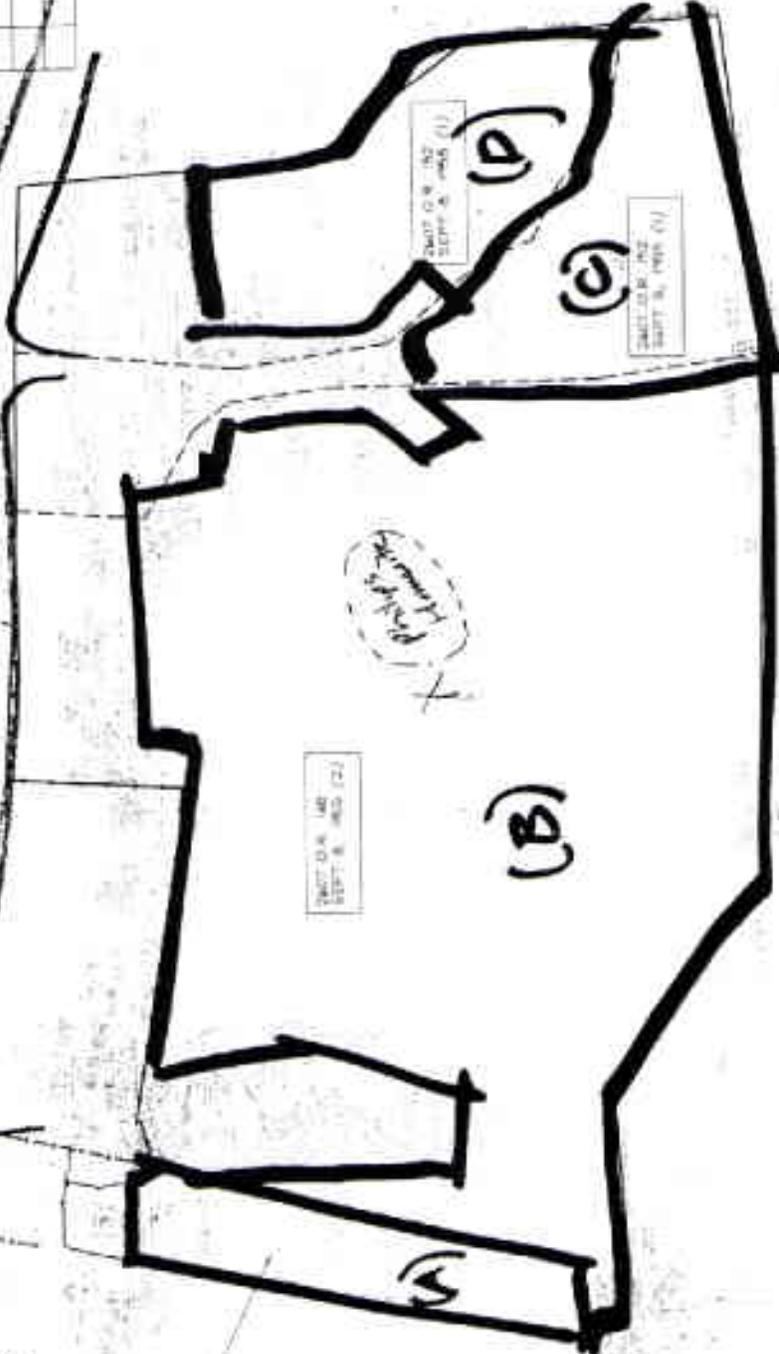
2407 C.R. 14B
SEPT. 8, 1955

2407 C.R. 14B
SEPT. 8, 1955 (2)

2407 C.R. 14B
SEPT. 8, 1955 (1)

2407 C.R. 14B
SEPT. 8, 1955 (1)

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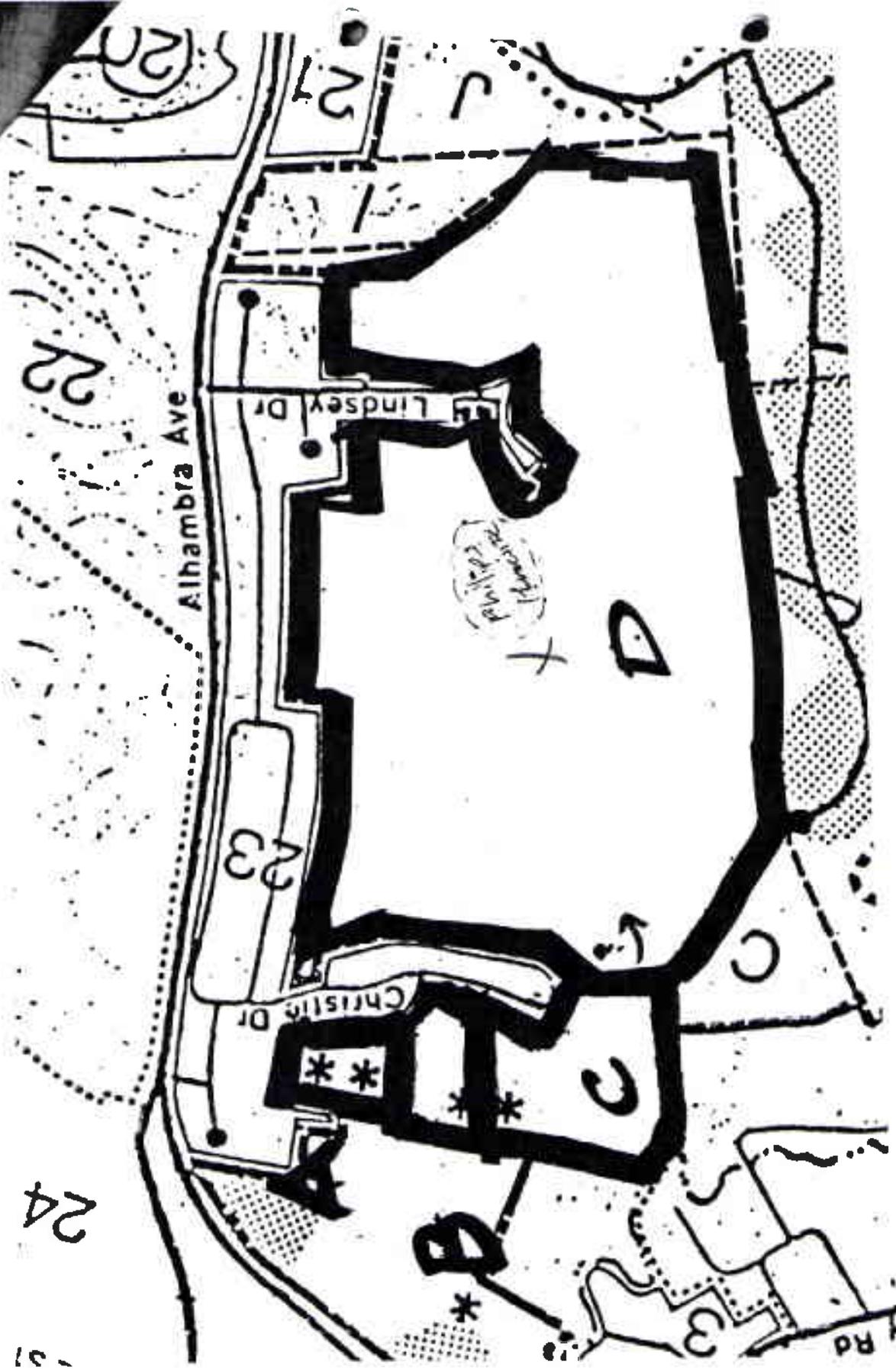
ENGINEER'S CERTIFICATE
 THIS MAP HAS BEEN PREPARED FROM RECORD DATA & US BUREAU OF LAND MANAGEMENT, AND REPRESENTS THE CLAIM OF TITLE FROM
 ALHAMBRA AVE TO THE SOUTH AND THE LANDS OF DECEASED DANIEL S. SHERMAN
 DEC. 20, 1957, SITUATED FROM THE LANDS OF MARY ANN COOKER,
 CAROL A. COOKER, AND WALTER FRANK EDGEMORE 2407 C.R. 14B, ALHAMBRA,
 CALIF.

- LEGEND
- PARCEL LIMITS TRANSFERRED
 - LIMITS OF EXISTING PARCELS
 - EXTERIOR BOUNDARY OF REMAINING LANDS

HYSTOCK INVESTMENTS INC.
 CARE OF FIELD BOUNTY
 JOB
 A SECTION BY RANCHO DEL HARTRE
 IN THE CITY
 OF MARTINEZ, CALIFORNIA

SEPT. 1955 - BEFORE

#2a
 2007.06.26
 4m
 = "EXISTING" (per 2007 certificates of compliance) 1/3



"PROPOSED BY STAFF"
 (CONFORMING TO 1987 ALHAMBRA HILLS S.P.) 3/3

#2c

RESOLUTION NO. 56-87

ADOPTING THE ALHAMBRA HILLS SPECIFIC PLAN

WHEREAS, the Final EIR for the proposed Alhambra Hills Specific Plan was certified as adequate by the Planning Commission of the City of Martinez on April 29, 1986 and the certification of the EIR was upheld on appeal by the City Council of the City of Martinez on June 4, 1986; and

WHEREAS, the Planning Commission of the City of Martinez held public hearings on the Draft Alhambra Hills Specific Plan; and

WHEREAS, the Planning Commission recommended Council approval of the Plan on February 10, 1987; and

WHEREAS, the City Council held a public hearing on March 18, 1987; and

WHEREAS, the City Council reviewed and considered the Final EIR and addenda in adopting the Specific Plan; and

WHEREAS, the City Council finds that the Final EIR and addenda together are adequate and in compliance with CEQA; and

WHEREAS, the current Alhambra Hills Specific Area Plan includes a larger area than the new Alhambra Hills Specific Plan.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez that:

- A. The Alhambra Hills Specific Plan as shown on Exhibit A is adopted; and
- B. The written findings (recommended by the Planning Commission Exhibit B) required by CEQA to approve a project are adopted;
- C. Properties within the 1973 Alhambra Hills Specific Plan Area and not within the new Specific Plan Area shall remain within the jurisdiction of the 1973 Alhambra Hills Plan.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a regular meeting of said Council held on the 6th day of May, 1987, by the following vote:

AYES: Councilmembers Hernandez, Langley, Pollacek, Vice Mayor Radke and Mayor Menesini.

NOES: None.

ABSENT: None.

GUS S. KRAMER
City Clerk

By: Sherry M. Kelly

Sherry M. Kelly
Deputy City Clerk

nb:57

EXHIBIT B
CEQA FINDINGS

Impact Cited in Final EIR

Land Use Impacts

The "Third Draft" plan net density characteristics for plateau development areas 1-7 could result in housing "footprints" that are much more intensive than the predominant surrounding residential pattern.

The proposed boundaries of 8 of the 14 development areas would include more than one ownership reducing prospects for unified and harmonious development.

Max. allowable net densities for areas 11 - 14 would be significantly higher than predominant residential development pattern along Alhambra Avenue.

The owner of the Phillips property has stated an objection to any urban development on that parcel south of Christie Drive.

Circulation System Impacts

Offsite Roadway Links

By 1990, peak-hour volumes on the 2-lane section of Alhambra Avenue south of Elderwood are expected to increase by 25 percent due to cumulative development, including the planning area. By year 2000, peak-hour volumes on this section of Alhambra Avenue are expected to exceed the road's design capacity due to cumulative development.

By year 2000, the 2-lane section of Alhambra Avenue between Alhambra Valley and State Route 4 would be approaching design capacity.

By year 2000, Blue Ridge Drive volumes could approach maximum tolerable levels for a residential street.

Recommended Finding

Plan has been altered. Plateau area densities on the Land Use Map 31.30 are equal to or slightly less than surrounding development.

Alterations incorporated in plan. Policy 31.349 requires consistency between adjoining developments.

Plan has been altered. Density as shown on Map 31.30 shall be no higher than the adjoining development.

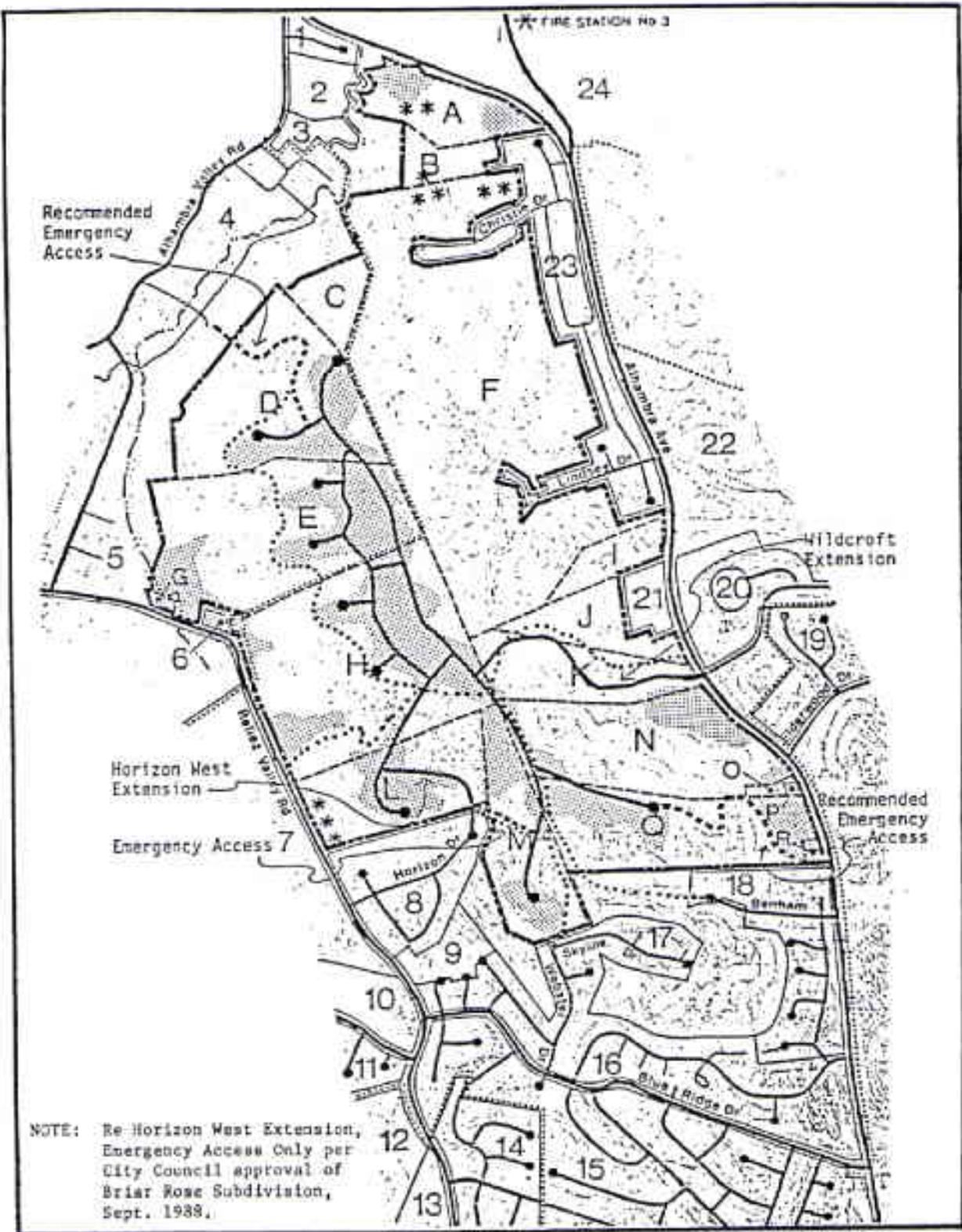
Plan has been altered. No development on Phillips property south of Christie Drive (Map 31.30).

Recommended Finding

Alterations required by the plan. Policy 31.336 requires that mitigation fees contributed by developers be used to finance all cumulative off-site road improvement needs identified by the EIR and the Traffic Study addendum including: widen Alhambra Avenue from 2 to 4 lanes between Wildcroft Drive and Benham Drive when warranted. Require left-turn acceleration lanes on Alhambra Avenue at unsignalized intersections like Macalvey Drive and Lindsey Drive.

Alterations required by the plan. Policy 31.336 requires widening Alhambra Avenue from 2 to 4 Road lanes between Alhambra Valley Road and State Route 4 when warranted.

Plan has been altered. Significant reduction in overall density in the plan area will substantially lessen this impact.

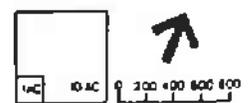


LEGEND

- Planning Area Boundary
- Marlinez City Limits
- Primary Access Roads
- Emergency Egress
- Conceptual Nature Trail
- Development Area
- * Remote Homesites

Land Use and Circulation Figure 31.30

ALHAMBRA HILLS SPECIFIC PLAN



RESOLUTION #07-16

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MARTINEZ DENYING A REQUEST FOR A LOT LINE ADJUSTMENT (#06-04) TO ADJUST FOUR PARCELS COMPRISING A 160 ACRE SITE INTO A NEW CONFIGURATION, AS THE PROPOSED CONFIGURATION IS NOT CONSISTENT WITH THE ADOPTED ALHAMBRA HILLS SPECIFIC PLAN, AND A FINDING OF CONSISTENCY WITH THE MARTINEZ GENERAL PLAN CANNOT BE MADE

WHEREAS, the applicant, Ostrosky Enterprises Inc. submitted an application for a lot line adjustment to adjust the lot configuration of four lots, comprising a 160 acre parcel; and,

WHEREAS, the project consists of lots A, B, C & D as shown in the exhibits; and,

WHEREAS, the proposed location of lot D does not conform to the Alhambra Hills Specific Plan in that the site falls outside of the development area and is not a remote home site as detailed in figure 31.30 of said plan; and,

WHEREAS, the Alhambra Hills Specific Plan serves as the leading General Plan document for this planning area, and was adopted in 1987 to allow limited development in an environmentally sensitive area, and the Martinez City Council adopted a specific finding identifying portions of the project area (south of Christie Drive) as development restricted.

WHEREAS, to further the goals and objectives of the Alhambra Hills Specific Plan, an existing 120 acre open space easement exists on the property, clustering all development possibilities north of Christie Drive in four remote home sites.

WHEREAS, a duly noticed public hearing was held on November 13th, 2007 by the Planning Commission, public comment was received and the public hearing was closed; and,

WHEREAS, the Planning Commission finds this project exempt pursuant to Section 15061 of the CEQA guidelines, as a project rejected or not approved by the public agency.

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

1. That the above recitals are found to be true and constitute part of the findings upon which this resolution is based.

#5a

2. That the proposed lot line adjustment, and specifically lot D, does not conform to the land use policies of the adopted Alhambra Hills Specific Plan.
3. That a finding of General Plan consistency cannot be made

NOW, BE IT FURTHER RESOLVED that the Planning Commission hereby denies Lot Line Adjustment application #06-04.

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 13th day of November, 2007:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Mark Hughes
Planning Commission Chair

Albert Lopez
Deputy Community Development Director